

**Joint Civil Society Submission to the
UN Special Rapporteur
on Violence Against Women**

Online Violence Against Women

Submitted by:

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BERSIH 2.0

Justice for Sisters (JFS)

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National Council of Women's Organisations, Malaysia (NCWO)

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Supported by:

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Introduction

1. Persatuan Kesedaran Komuniti Selangor (EMPOWER), BERSIH 2.0, Justice for Sisters (JFS)), Malaysian Centre for Constitutionalism and Human Rights (MCCHR), National Council of Women's Organisations, Malaysia (NCWO), and Women's Aid Organisation (WAO) jointly submit this document for the UN Special Rapporteur on Violence Against Women on online violence against women (VAW), its causes and consequences, on the new challenges brought about by online VAW for prevention, protection, prosecution and redress.
2. This joint submission seeks to provide the Special Rapporteur evidence and information on the legal and policy framework for online VAW in the Malaysian context, within an overarching context of impunity for VAW. This submission also examines how existing legal and regulatory mechanisms and law enforcement bodies interact with VAW is mediated and occurs in the digital realm.

Context

3. According to the survey by the Malaysian Communications and Multimedia Commission (MCMC) in 2016, at least 78% of the Malaysian population is connected to the internet, and women compose 40.6% of internet users. Not only are women "slightly more engaged with their internet in terms of intensity of use," the survey also found that they are "savvier in getting things done online." Besides banking and shopping, women are also likelier to seek information via the internet.¹
4. Underpinning this technological consciousness is a growing political recognition of the internet as a key means by which women can exercise their human rights. However, policies on access to the internet in Malaysia is still predominantly framed as an economic infrastructure and opportunity. Issues such as human rights and gender equality remain reticent.
5. A false duality occurs between a tangible "real-world" (offline) where everyone exists, and an elusive "cyber" world (online) where everything is not "real". In a society where VAW remains pervasive, compounded by the lack of recognition of access to the internet as a human right, and the view that online spaces are not as "real", VAW that occurs in the digital realm are often trivialised and deemed less harmless without any "real physical" impact.
6. Incidents of online VAW are not episodic. Nor does it only occur to women with high visibility on the internet. Rather, various forms of online VAW are pervasive and everyday events of women's lived realities on social media and the internet. It happens in a continuum of multiple and interrelated forms, from private messaging to public platforms, and from online to offline.
7. While the networked design of platforms, especially social media, has given women a level of visibility and association that may not have been as accessible prior to their advent, these also render them more susceptible to attacks, harassment and threats. Once

¹ "Internet Users Survey 2016: Statistical Brief Number Twenty", Malaysian Communications and Multimedia Commission, accessed 21 October 2017, <https://www.mcmc.gov.my/skmmgovmy/media/General/pdf/IUS2016.pdf>

posted, the violating contents are generally accessible to those who have downloaded a copy, or share it on their accounts.

8. In Malaysia, cultural and religious pretexts are often put forward to justify the lack of acceptance of the principle of the universality of women's human rights. Women, in all diversity, are often made to bear the brunt of upholding moral, culture and religious values of society, at the expense of their freedom of expression, of association, of assembly and of mobility. Women who exercise agency, influence and power on the internet are deemed to have transgressed morally, culturally and religiously of what is touted to be appropriate behaviour for women and girls.

Case 1

During the month of Ramadhan in 2016, Maryam Lee, a young Muslim feminist, recounted her experience on social media, of being reprimanded by the restaurant manager and one male customer at a restaurant for eating during fasting hours. Maryam did not fast on that day because she had her menstruation and was accused of insulting Islam. The response she received online was overwhelmingly hostile, especially from Muslims. Milder comments were also shared by progressive Muslim allies, but often laced with condescension.

A year later, Maryam took to Twitter to talk about her decision to stop donning the *hijab*. It was not well received. She was attacked and called a deviant. One young person likened her to a virus that needed to be destroyed. Others said she was a threat to the religion, and some went further to say "*darah dia hala*" (killing her is permissible).

Case 2

In January 2017, a Facebook page titled "Thaipusam Spraying Group" posted threats to spray paint women whom they deemed "inappropriately dressed" if they were to see them at the Thaipusam event that year. Pictures depicting the back of women donning different sarees with a comment: "Advance warning to Hindu female patrons coming to Thaipusam festival, beware of being sprayed with aerosol paint if found inappropriate dressed." The abusive online behavior has its roots in moral policing of women's bodily autonomy and sexuality.

The creator of the Facebookpage, aged 29, was reported to be arrested on 26 January 2017, two weeks before the actual day for Thaipusam.² However, it was not reported that whether any charge was made against him. No other known action was taken to identify the would-be perpetrators (if there were others), reflecting how authorities consider the severity of such threats, immediate danger versus the likelihood of these actually occurring. Doing such assessments fail to recognise that intimidation can still take place prior to the Thaipusam event and would likely be unreported.

9. Indigenous peoples in Malaysia experience multiple forms of discrimination and oppression due to their indigenous identity. These include land grabbing, displacement from ancestral territories, threats to natural resources and their cultural life. In addition, as indigenous women, they endure gender-based discrimination that emanates from prevailing gender biases in society and from traditional practices. The non-recognition of rights of indigenous peoples means that the indigenous women are subjected to greater

² "Thaipusam spraying group' creator nabbed." *The Star Online*, January 27, 2017. Accessed September 20, 2017. <http://www.thestar.com.my/news/nation/2017/01/27/thaipusam-spraying-group-creator-nabbed/>.

social and cultural surveillance, which often escape the interest of the state, resulting in greater harm because of incidences of online VAW.

Case 3

In a Facebook group for indigenous community, Idora* recounted an incident where a young male member posted a photo of a young woman without her knowledge or consent. The young woman is from a different tribe and was described by Idora as looking “urban”. The caption attached to the photo was the young man offering to set up sexual encounters with the woman. Insinuations were made in his caption about urban young indigenous women being “loose” as they intermingle with city folk.³

According to Idora, an explosion of reactions ensued on that post and many more agreed with the post. Although many also disagreed and have requested for the post to be removed, the post was not removed.

**Name has been changed for privacy and security reasons.*

10. The internet has become an important space for the lesbian, bisexual and transgender (LBT) people who face discrimination, stigmatisation and in some cases, criminalisation and non-recognition of their rights in Malaysia. The internet has become an important reality where they find association, express their identities, access important information that are otherwise restricted or censored, and to self-organise and self-mobilise among themselves for their human rights issues.

However, democratic spaces, whether online or offline, are shrinking and some of the severe reprisals and violence towards LBT had been observed in the past few years. The online reprisals and violence towards LBT persons, human rights defenders and human rights groups correlate with the government’s positions, policy, and rhetoric, amongst others.

Case 4

Menara.my, a website established in 2017, promotes anti pluralistic, liberal and LGBT themes and messages via its content, aligned with the government’s position. The website also targets human rights defenders⁴ and groups,⁵ especially those working in the area of freedom of religion, interfaith dialogues, LGBT, women’s rights, etc. or those seeking institutional reforms, especially in the area of syariah laws, gender equality and human rights in general.

Between 1 January and July 2017, over 100 articles related to LGBT persons and/or issues, including exposes of LGBT events were published on *menara.my*. Three out four LGBT events that were exposed on *menara.my* have led to cancellation. Based on the responses, the impact of these articles on *Menara* is far-reaching, insidious and escalating. Two out of three were followed by protest despite cancellation of the events. The cancellation of a gay party in September, the most recent cancellation, was followed by a no entry measure⁶ by the Immigration Department for the organizers and participants of the party.⁷

³ Juana Jaafar. *Voice, Visibility and A Variety of Viciousness*. Kuala Lumpur: EMPOWER, 2017.

⁴ This includes Siti Kassim, Marina Mahathir, Ani Zonnevald

⁵ Sisters In Islam, G25, Projek Dialog, KMu, Islamic Renaissance Front

⁶ Individuals who attempt to enter the country would be served the Not To Land (NTL) notice under Section 8 of the Immigration Act 1959/1963. Read more Immigration to deny entry to gay party participants,

<http://www.freemalaysiatoday.com/category/nation/2017/09/22/immigration-to-deny-entry-to-gay-party-participants/>

⁷ Immigration to bar KL gay party’s participants, organisers,

<http://www.themalaymailonline.com/malaysia/article/immigration-to-bar-kl-gay-partys-participants-organisers>

Case 5

In January 2016, a viral video of an impromptu performance of a trans woman in Sabah during which she had an accidental exposure of her breast resulted in an investigation of the trans woman under Section 294 of the Penal Code for obscene performance.⁸ The trans woman was subjected to misgendering, and social media details were shared in the media.

11. Social surveillance is reproduced on social media and informally governs online behavior which has real implication on women, queer women, trans people and gender non-conforming people's agency, identity, online self-expression. In some cases, non-conformity into the rigid and binary gender constructs led to online harassment and violence.

Case 6

The state Islamic departments have introduced at least two apps – 'Hotline JAIS', an app to report syariah offences and 'Hijrah Diri – homoseksual', an app for LGBT persons who are seeking to change their sexual orientation and/or gender identity.

Hotline JAIS, an app by the Selangor state Islamic department (JAIS) launched in October 2016, enables members of the public to report cases such as khalwat, consumption of alcohol, spread of deviant teachings, religious lectures without permit, and other matters related to Islam.⁹ While the efficacy of the app is unknown, the use of an app to facilitate moral policing is a cause for concern in a context that has seen deadly khalwat raids.

Hijrah Diri – Homoseksualan app by JAKIM designed for LGBT persons who are seeking information and support to change their sexual orientation and gender identity is essentially a state sponsored rehabilitation or conversion therapy app.¹⁰ The app is only a component of JAKIM'S 'soft approach' to curb LGBT¹¹ and the narrative that LGBT people can be changed.¹²

Case 7

In 2015, identification card of a trans woman was uploaded and shared on social media platforms¹³ to disclose her identity as a trans woman, causing the woman great distraught. In Malaysia, there are many legal barriers for trans people to change their details in the legal documents. In 2017, in an appeal by the National Registration Department, the Court of Appeal overturned a High Court decision which allowed a trans man to change his details in his legal documents.¹⁴ The lack of gender recognition increase vulnerability of trans people to doxxing, violation of privacy, personal security and safety, stress, public humiliation, among others.

⁸ 'Transvestite' performing at Suria Sabah told to report to police station

<http://www.theborneopost.com/2016/01/22/transvestite-performing-at-suria-sabah-told-to-report-to-police-station/>

⁹ "Malaysia: Islamic dept launches app allowing public to report Syariah offences." *The Asian Correspondent*. 6 October 2016. Accessed 2 November 2017. <https://asiancorrespondent.com/2016/10/malaysia-religious-app-public-report/#GKw4iosPYjRfzIWJ.99>

¹⁰ https://play.google.com/store/apps/details?id=com.app_hijrahhaqq.layout&hl=en

¹¹ "Jakim disagrees with discrimination and bullying of LGBT community." *The Star Online*. 19 June 2017. Accessed 2 November 2017. <https://www.thestar.com.my/news/nation/2017/06/19/jakim-disagrees-with-discrimination-and-bullying-of-lgbt-community/>

¹² "Sexual orientation can be changed, Jakim says in new LGBT video." *The Malay Mail Online*. 13 February 2017. Accessed 2 November 2017. <http://www.themalaymailonline.com/malaysia/article/sexual-orientation-can-be-changed-jakim-says-in-new-lgbt-video>

¹³ "(Video) Pondan Hafizal aka 'Princess Nur Bidadari' Merayu Berhenti Sebar Gambar Kad Pengenalan" Teh Panas. 5 April 2015. Accessed 2 November 2017. <http://www.tehpanas.com/pondan-hafizal-aka-princess-nur-bidadari-merayu-berhenti-sebar-ic/>

¹⁴ "Court overturns decision in trans man's case." *The Star Online*. 6 June 2017. Accessed 2 November 2017. <https://www.thestar.com.my/news/nation/2017/01/06/court-overturns-decision-in-trans-mans-case-there-is-merit-in-rd-appeal-says-judge/>

12. Women who are prominent tend to be subjected to more abuses when they express opinions offline or online. Such cases often attract more media attention than cases of women with lower visibility in public spaces.

Case 8

On 18 October 2016, Maria Chin Abdullah, Chairperson of the Coalition for Clean and Fair Elections (BERSIH 2.0), received an anonymous death threat via WhatsApp. At the time, Maria's organisation, BERSIH 2.0, was carrying out a nationwide campaign on electoral and democratic reform in light of a corruption scandal involving the Prime Minister.

The message was accompanied by doctored images of Maria, her three children, and her colleagues being held at knife-point by the Islamic State. A police report was filed and police statements of those depicted in the images were taken the same day.

A second, similar anonymous WhatsApp message was sent to Maria on 11 November 2016. This WhatsApp message included doctored images of Maria, her three sons and her colleagues decapitated by the Islamic State. A second police report was filed.

Maria was subsequently informed by the police that they were unable to identify the sender of the WhatsApp message as a 'dummy' SIM card was used.

13. There is a growing trend of the particular risks that young women and girls face online, including sexual harassment, online grooming, sexual assault, rape etc.

Case 9

A growing number of underage Malaysian girls are being groomed and lured by sexual predators through mobile chat apps like Facebook Messenger, WeChat and BeeTalk, and then sexually assaulted. There has also been a staggering 300% increase in internet-related rape crimes between 2010 and 2015.

In the first five months of 2015, rape by Internet acquaintances made up 82% of sex offenders' modus operandi. Others such as influence by alcohol (7%), students who played truant (7%) and SMS acquaintances (3%) trail far behind.¹⁵

Legal Framework

14. While the Malaysian government has made several commitments to the elimination of all forms of VAW as a state party to the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW), the cases collected in this report show that online VAW occurs within a prevailing culture of impunity and shares its root causes with other forms of VAW, which has its roots in the unequal gender power relations enmeshed in society.
15. In Malaysia, while legislation addressing online VAW remains non-existent, there are other laws and mechanisms in place to enable women's access to justice. However, little is done to find and make accountable the perpetrators. Not even statements are made by those in authority and power when they learn of such online violations.

¹⁵ "Phone-Y Affairs: Rape by Mobile Messaging." *Star R. age*. 1 September 2015. Accessed 2 November 2017. <http://rage.com.my/phoney-affairs/>

16. The Malaysian government has rectified CEDAW. The central issues remains that CEDAW has yet to be incorporated into domestic law. While Article 8(2) of the Federal Constitution explicitly spells out prohibition of discrimination on grounds of gender, it is limited in its interpretation and coverage. There is no gender equality legislation in place providing for the comprehensive realisation of substantive equality of women in both public and private spheres of life.

Case 10

In the case of *Beatrice a/p Fernandez v Sistem Penerbangan Malaysia and Anor* ('Beatrice Fernandez case'), Beatrice Fernandez's employment was terminated from Malaysia Airlines System in 1991 when she fell pregnant and refused to resign. The court gave a vertical interpretation to Article 8(2) of the Federal Constitution and found that discrimination based on gender is prohibited only from violations of their rights by the state and public authorities, not private enterprises. In addition, the equal protection in Article 8(2) extends only to people in the same class. So if all women flight attendants are treated the same, no discrimination is taking place.

17. There are, however, several substantive laws that can be invoked in cases of technology-related VAW:
 - i. Laws defining and penalising VAW – either existing as separate laws or contained within a country's penal law
 - ii. Specific laws penalising ICT offences
18. Laws defining and penalising violence against women

The Domestic Violence Act 1994 (DVA)

The Domestic Violence Act 1994 (DVA) was enacted to curb the use of violence as an instrument to settle domestic disputes and as a platform for the victims (spouse, former spouse, child, incapacitated adult or any member of the family) to seek protection and justice. In 2011, the DVA was amended to widen the definition of "domestic violence" to include emotional, mental and psychological forms of domestic violence. Again in 2017, it was amended to broaden the principal act of domestic violence to include "threatening the victim with intent to cause the victim to fear for his safety or the safety of his property, to fear the safety of a third person, or to suffer distress" and "communicating with victim, or communicating about the victim to a third person, with intent to insult the modesty of the victim through any means, electronic or otherwise."

Recognition of psychological violence in a domestic violence case is important and especially useful in cases where online VAW is involved, especially when communication technology is used to maintain the abusive control over the victim. However, this is only limited to cases of domestic violence and not applicable to cases where VAW, whether online and offline, is committed by a partner in a dating relationship, intimate relationship but not married or by a stranger.

Case 11

P was in the process of leaving her abusive husband who refused to leave her. He constantly turned up at her work place and forced her to speak to him. Her numerous police reports against her husband did not prevent him from harassing her. The husband then used SMS to harass her and those close to her. The man got a hold of confidential information after bribing a worker at the victim's phone service provider for a list of the victim's phone records. He had used her identity card number and name to find out the

details of her account and managed to secure a print out of all the calls she had made and received. When P found out, she wrote to the service provider and demanded that her number be changed and records be made private.¹⁶ In this case, the threat of violence did not only affect her, but also those with whom she had been in contact.

Penal Code

The other laws for VAW can be found in the Penal Code, which often fall short of the definition provided in Declaration on the Elimination of Violence against Women (DEVAW) and General Recommendations 19 and 35 of CEDAW. Section 385¹⁷ (“putting or attempting to put in fear of injury, in order to commit extortion”) and Section 509 (“uttering any words or making any gesture intended to insult the modesty of a person”) of the Penal Code have been used by the criminal court to convict perpetrators for blackmail in the distribution of sexually explicit photos through ICTs. Nonetheless, applicability of such laws is only extended to cases where there is financial extortion, and tends to neglect the potential psychological harm to women and the realities of how such images get distributed digitally with no proper remedy for women to retract or delete the photos once the photos are online.

Case 12

In June 2017, a lorry attendant was charged, inter alia, under Section 509 of the Penal Code for allegedly demanding RM3,000 (abt USD 750) from the victim and threatened to expose and circulate a half-naked photograph of her.¹⁸

Case 13

In 2015, a Facebook post went viral, with a description on how the author planned to break into the house of 69-year-old Datuk Noor Farida Ariffin and sexually assault her after she called to review the Sharia laws, including on those related to *khalwat*. She is the spokesperson for G25, a group of former high-ranking civil servants that encourages rationale and progressive discourse on Islam. When told off on Facebook by someone else that it was not funny to joke about sexual assault, the Facebook post author scoffed by saying it was his human right.

Despite the call by women’s rights organisations to investigate the rape threat under Section 503 of the Penal Code¹⁹ for criminal intimidation,²⁰ and instead of responding to the threat of bodily harm against Datuk Noor Farida Ariffin, the law enforcement prioritise prosecution of offences against religion by commencing a sedition investigation on her following her call to review Sharia laws.

¹⁶ “Wife’s Calls Records Compromised by Abusive Husband.” *Take Back the Tech*. 2011. Accessed September 20, 2017. https://www.takebackthetech.net/mapit/reports/view/91?l=pt_BR

¹⁷ “Guard fined RM3,500 for threatening to distribute nude pictures.” *Free Malaysia Today*, February 23, 2017. Accessed September 20, 2017. <http://www.freemalaysiatoday.com/category/nation/2017/02/23/guard-fined-rm3500-for-threatening-to-distribute-nude-pictures/>.

¹⁸ “Lorry attendant charged with blackmail, raping nurse.” *The Malay Mail Online*, June 13, 2017. Accessed September 20, 2017. <http://www.themalaymailonline.com/malaysia/article/lorry-attendant-charged-with-blackmail-raping-nurse#uozHXCOM3kiilCrK.99>.

¹⁹ “Whoever threatens another with any injury to his person...with intent to cause alarm to that person...or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do...commits criminal intimidation.”

²⁰ “Decrying threats to G25 spokesperson Datuk Noor Farida Ariffin — The Joint Action Group for Gender Equality (JAG).” *The Malay Mail Online*, December 16, 2016. Accessed September 20, 2017. <http://www.themalaymailonline.com/what-you-think/article/decrying-threats-to-g25-spokesperson-datuk-noor-farida-ariffin-the-joint-ac#dUvCZ24eYTeXKwX7.99>

19. Specific laws penalising ICTs offences

The cases documented by civil society shows that the Malaysian government has been reluctant to extend existing laws specifically enacted to penalise information and communication technologies (ICTs) offences to address online VAW.

Communications and Multimedia Act 1998

Section 233 of the Communications and Multimedia Act 1998 (CMA) provides that it is an offence for anyone to make “any comment, request, suggestion or other communication which is obscene, indecent, false, menacing or offensive...with the intent to...harass another person.” The following legislations however are not being applied to cases of online GBV.

Personal Data Protection Act 2010

The Personal Data Protection Act 2010 (PDPA) was passed in June 2010 with the objective to protect the personal data of individuals with respect to commercial transactions.

PDPA does not bind the Malaysian government and there is currently no legislation in the country that regulates how personal data is processed and stored by the government. Substantial amount of personal data is processed by the government departments and agencies for various reasons and purposes. Sensitive information like details of survivors of sexual assault and gender-based violence ought to be protected and respected. Of even greater concern is that there are no sanctions to prevent civil servants from abusing such personal data other than the risk of disciplinary action.

Computer Crimes Act 1997

Computer Crimes Act 1997 is enacted to provide for offences related to misuse of computers. Among other things, the Act deals with unauthorised access to computer material, unauthorised access with intent to commit other offenses and unauthorised modification of computer contents.

However, these laws are oriented towards commercial offences and concerned with attacks on the security of computer systems, communication networks and computer data. Online VAW is not prioritised as a threat to cyber security or as harmful behaviour on the internet.

Responses to online VAW by law enforcers

20. The above examples of laws demonstrate that there are various existing laws that could have been applied in cases of online VAW. However, the law enforcers are often ignorant of possible remedies for women’s barriers or fail to understand that online VAW could bring about the same harm as offline crimes. There is also that risk of women victims (cisgender and transgender alike) being subjected to moral policing and judgement.
21. In most of the cases collected by civil society, victims of online VAW rarely report their cases to law enforcement or government agencies. Stories from others who seek help from state agencies on matters concerning gender-based violence, whether it is online or offline, have caused women in Malaysia to feel discouraged from doing the same.
22. Anecdotal cases have shown that where women did report instances of online VAW, their experiences are often trivialised and normalised. The failure of the police officer to

recognise online threats and harassment as VAW or even as crimes under the domestic laws, affects women's access to justice in a systematic way. Responses by police officers were either dismissive or condescending. Oftentimes the police would tell the victim that there is nothing they could do as it is a 'private affair' or that the victim should just delete his/her account.

23. In 2014, the Cyber Investigation Response Centre (CIRC) was established under the Commercial Crimes Investigation Department of the Royal Malaysia Police (PDRM) as a special task force to monitor social media activities and comments. Although such mechanism exists, it is used to serve the ruling party's political agenda and online VAW is not an agenda considered by the task force. So far it has mostly been used by the police to monitor, investigate and arrest those who expressed critical views of the government and the police.
24. While there is a specific VAW desk in Malaysia – the Sexual, Women and Child Investigation Division (D11) Criminal Investigation Department of the Royal Malaysia Police, they are under-resourced, presenting a barrier to even receiving complaints and in commencing investigations. It is also observed that D11 police officers are not equipped with skills and knowledge to deal with technology-related security threats.
25. The Malaysia Communications and Multimedia Commission (MCMC) was set up by the government, among others, to regulate and monitor communications and multimedia activities. The complaint procedure to MCMC has been described by one of the women in EMPOWER's research as 'tedious'.²¹ A complaint portal is available online, however, complainants are first asked to exhaust all other complaints to internet service providers before submitting a complaint to MCMC. Alternatively, complainant has the option of calling or emailing the details of the incident.
26. Other than regulation, the Communications and Multimedia Content Forum (CMCF)²² was set up to meet the objective of fostering a self-regulatory framework for the communications and multimedia industry. It is supposed to govern electronic content and address content-related issues, based on a voluntary content code. It is made up of six "Ordinary" member categories: Advertisers, Audiotext Hosting Service Providers, Broadcasters, Civic Groups, Content Creators/Distributors and Internet Access Service. Civil society participated in the Content Forum,

The code explicitly forbids, among others, "the portrayal of women, men or children as mere sexual objects or to demean them in such manner is prohibited", "graphic representations of sexual violence" etc.²³

The CMCF has a complaint channel too for any content that is deemed to have violated the voluntary content code. The Complaints Bureau, chaired by a retired Judge, comprises a representative from each of the six categories stated above and civil society is represented on it. There is a secretariat to assist the committee to compile & research every complaint submitted to CMCF. It responds with an Order on all complaints relevant to the Content Code. The Bureau will submit an Order to the member media channel involved for immediate recommended action, if found guilty of violating the Code. Where necessary, a penalty (maximum: RM50,000, about USD 12,500) is imposed as well.

²¹ Juana Jaafar. *Voice, Visibility and A Variety of Viciousness*. Kuala Lumpur: EMPOWER, 2017.

²² <http://www.cmcf.my/home.php>

²³ <http://cmcf.my/onlineversion/part2-guidelines-content#2.0>

If the complaint is found to be not related to violation of the Code, the Bureau will advise the complainant accordingly and recommend alternative action where relevant. Information on all complaints and responses by CMCF is shared with MCMC.

There is yet a study on the effectiveness and adequacy of CMCF in addressing online VAW.

27. Other than law enforcer, victims of online VAW have the option of reaching out to CyberSecurity, a registered company set up under the Ministry of Science, Technology and Innovation (MOSTI). The company was set up as a specialist agency to provide cyber security services in preventing or minimising disruptions to critical information infrastructure. To offer emergency response on computer security related matters i.e. cyber harassment, hack attempts, MyCERT was set up by CyberSecurity. MyCERT has recorded a total of 463 cyber harassment related cases in 2017 (up through September 2017). The data does not disaggregate cases between men, women, and LGBT individuals.²⁴

Once a complaint is received, MyCERT uses the “Service Level Agreement”²⁵ guidelines in prioritising incidents and in determining the respond time.²⁶ Cyber bullying, cyber stalking and sexual-based harassment are given a ‘3-Medium’ priority (the lowest among all) and a 24-hours response time frame. While cyber harassment that is related to religious and racial discrimination are given a ‘2-High’ and a 24-hours response time frame.

Responses taken by MyCERT ranged from coordination with platform owners in content removal, cooperation with law enforcers where the incident is criminal in nature, securing the complainant’s digital devices and accounts etc.

28. Access to MyCERT is especially important to avoid recurrence of further violence – online VAW does not always stop at the creation of the violating materials, the violence recurs every time when the materials are shared, downloaded and republished. Though cooperation of internet intermediaries are often key in resolving content-related online VAW, MyCERT, being a government-linked institution, is in much better position in ensuring timely removal of contents by platform owners, before the contents get viral or seen by more people.

However, CyberSecurity and MyCERT tend to prioritise technical and commercially motivated crimes such as criminal fraud, denial-of-service (DoS) attack and phishing. The failure of the institution to see bullying, stalking and sexual-based harassment as a high priority, points to the trivialisation and normalisation of VAW.

29. MCMC and CyberSecurity work closely together in ensuring the safety of communications network and the online sphere. Cyber security is a major agenda for Malaysia. According to the Global Cyber Security Index (GCI) 2017, Malaysia is ranked third among 193 countries in terms of its commitment to cyber security, behind Singapore and the United States. The ranking is assessed based on five pillars, namely legal, technical,

²⁴ <https://www.mycert.org.my/statistics/2017.php>

²⁵ https://www.mycert.org.my/en/services/report_incidents/cyber999/main/detail/800/index.html

²⁶ Response Time is defined as the time taken between receiving of an incident and the time taken by a MyCERT staff to begin working on the incident which include analysis, communication and sending notifications to respective parties. Due to the wide diversity, complexity of incidents that can occur, and the methods needed to resolve them, response time IS NOT defined as the time taken between receiving of an incident and problem resolution

organisational, capacity building and cooperation.²⁷ However, even where cases of harassment are recognised as a threat to cyber security by the agencies, including those that are related to religion and race, the agencies are not necessary gender sensitive and lack proper training to handle technology-related VAW.

30. The above discussions show that there are several agencies and institutions to which women can report online VAW. However, the failure of duty bearers to recognise the cases as VAW happens too often, and most of them lack proper training in handling online VAW. Stories from women in Malaysia often reveal frustration in being made to run around to different agencies and departments when they want to file a complaint, without receiving any satisfactory assistance.

The Way Forward

31. Online VAW is a symptom of the historical, structural and systemic gender-based discrimination and inequalities. Therefore, contextualising online VAW within women's intersecting identities is important in developing a holistic approach in eliminating gender-based violence and in ensuring women's human rights.
32. It is important to understand that women are not a singular homogenous group and women's converging identities interact with power and technologies differently, resulting in varied forms of discrimination and barriers in exercising their human rights.
33. While having legislations in place that address online VAW is much required, it is important to note even in the presence of legislation, women's access to justice is negated by the gender-based biases and discrimination on the part of duty bearers, the socio-economic status of women, and prevailing societal attitudes and stigmatisation of women's voices, bodies and sexuality.
34. A holistic strategy that responds to the challenges women face has to take into account legal, political, economic and cultural factors. This entails addressing the root causes of online VAW, and VAW as a whole, including a focus not only on prosecution and reactionary measures, but also on protective and preventive ones.
35. Any measures should be based on evidence-based research and in consultation with women's human rights advocates and civil society. Women's human rights advocates and civil society play a crucial role in ensuring women's lived realities are reflected in government's policy and legislations. More importantly, any approach to counter online VAW should be bottom-up, need-based, and voices and needs of the victims of online VAW must drive the counter online VAW strategy.

One such example is the national prevention and awareness programme on "Keeping Our Women and Children #CYBERSAFE,"²⁸ where CyberSecurity is working closely with the National Council for Women's Organisations, Malaysia (NCWO) to generate more awareness on internet safety among public. The first national forum, held on 22 October 2017 was participated by the Ministry of Women, Family and Community Development, Ministry of Education, Ministry of Science, Technology and Innovation, Royal Malaysia Police, academia and PERMATA.

²⁷ "Report: Malaysia's cybersecurity is third best globally" *The Star Online*, July 6, 2017. Accessed September 20, 2017. <http://www.thestar.com.my/news/nation/2017/07/06/malaysia-rank-high-cybersecurity-commitment/#VA4RBBjWSeOeelo8.99>

²⁸ <http://www.programpermata.my/bm/seminars/cybersafe>

36. It is crucial to recognise that the internet and technology are neither neutral nor are they an entirely private space. Women's subordination in the ICT industry and unequal access to technology must be recognised by all stakeholders. Urgently, there is a need to ensure a bottom-up approach in developing infrastructures, platforms, services, contents and policies to ensure women's access to a safer, open and inclusive internet.