



ONLINE GENDER- BASED VIOLENCE: ISSUES AND POLICY IMPLICATIONS

POLICY BRIEF

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Online Gender-Based Violence: Issues and Policy Implications

EXECUTIVE SUMMARY

“ The internet is like our public street. Just because you got robbed, doesn't mean you don't step out again. . . . It is like asking after you have been robbed on the street, why do you go back to the street instead of just staying at your home for your protection. ”

[Research Interviewee, “Power x Expression x Violence: A Research on Women's Freedom of Expression on Social Media in Malaysia, 3rd November 2019]

The ubiquity of digital technologies means that there are new ways for gender-based violence (GBV) to manifest with even greater intensity and reach. The technology dimension adds elements of persistence, replicability and scalability which facilitate aggressors/perpetrators' access to the women and girls (and boys and men) whom they are targeting and can escalate and exacerbate the harm. Incidents like mob attacks, doxxing and harassment aggravate harm and violence through the use of the very same tools that are fundamental to the liberation of information and freedom of opinion and expression. Women and girls face specific threats including rape threats, online sexual harassment, abusive comments, non-consensual dissemination of intimate images (NCII), cyber- flashing, stalking etc. Many of these incidents of online GBV (OGBV) are not new and are, in fact, an extension of the forms of GBV experienced by women and girls.

The lack of awareness and redress mechanisms around OGBV as an extension of GBV is partly due to the false duality between a tangible “real-world” (offline) where everyone exists, and an elusive “cyber” world (online) where everything is “not quite real enough”. OGBV that occurs in the digital realm is often trivialised and deemed less harmful because of the perceived absence of physical violence. Yet, emotional or mental forms of violence can manifest physically for the victim. While there is some recognition of online harm, especially when it comes to children, we continue to grapple with a gender analysis and the collection and sharing of gender disaggregated data on online violence. Most data on bullying among teenagers and the effects of that bullying on the victims are not segregated by gender. Yet, there can be major differences that require analysis so that programmes are designed to effectively meet needs and counter the negative impacts.

There are challenges to addressing OGBV due to the extensiveness and pervasiveness of GBV, the technological feature of OGBV that tend to aggravate the speed and intensity of violence, and to some extent, render identification of aggressors difficult (especially these are mob attacks involving up to thousands of aggressors), the porousness of borders in the virtual world, the need for a multi-stakeholder approach consisting of civil society, government ministries, departments and agencies with various jurisdictions, and digital technology companies. OGBV is neither an incidental crime nor is it only experienced by women who are vocal online. They happen on a daily basis and affects women and girls from various backgrounds and identities. There are also systemic forms of OGBV in the form of gender-based hate speech by political parties, its members and supporters. To uproot OGBV, we need to move beyond mere elimination of violence or criminalisation of aggressors, and start looking at policies and programmes to bring about wholistic responses that actively appreciate and celebrate the importance of diversity in leadership, discourse and in the exercise of freedom of opinion and expression for the development of a mature and advanced society.

CONTEXT AND IMPORTANCE IN ADDRESSING ONLINE GENDER-BASED VIOLENCE

Online Gender-based Violence is Violence

Many of the incidents of online gender-based violence are not new and are, in fact, an extension of the forms of gender-based violence experienced by women and girls. For example, Women's Aid Organisation has reported that in some of their cases of domestic violence, SMS and Direct Messages platforms i.e. WhatsApp and Facebook Messenger, have been used to blackmail or coerce a partner to stay in an abusive relationship. These tools are increasingly prominent in their use to pressure a battered wife to stay with an abusive, violent husband.

P was in the process of leaving her abusive husband who refused to divorce 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 managed to get a list of the victim's phone records after bribing a worker at the victim's mobile phone service provider. 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. He then proceeded to threaten all the people whose numbers were on the phone record. When P found out, she wrote to the mobile phone service provider and demanded that her number be changed and records be made private. In this case, the threat of violence did not only affect her, but also her relatives and all those with whom she had been in contact.

Violence Amplified and Multiplied

The ubiquity of digital technologies means that there are new ways for gender-based violence to manifest with even greater intensity and reach. The technology dimension adds elements of persistence, replicability and scalability, all of which facilitate aggressors/perpetrators' access to the women and girls (and boys and men) whom they are targeting, and can escalate and exacerbate the harm. The networked digital platforms, for example, can and do facilitate non-consensual dissemination of intimate images (NCII) of a victim to a much wider group of audiences in ways that were not possible before the expansion of internet technologies. Incidents like mob attacks, doxing and harassment aggravate harm and violence through the use of the very same tools that are fundamental to the liberation of information and freedom of expression. Women and girls face specific threats including rape threats, online sexual harassment, abusive comments, NCII, cyber-flashing, stalking, etc. Online gender-based violence includes the disconcerting feature of being able to harm the victim without the victim's knowledge.

In such cases, the victims are usually not online or in the same digital spaces (such as chat groups, as in the rape threat bandied about in the WhatsApp chat group of some BAC students in 2017). It is a global phenomenon and research shows that female internet users face higher rates of threats, for longer and repeated periods of time. Persistent threats can, not only diminish well-being and cause psychological trauma, but can undercut career prospects and the ability to function effectively in the marketplace and participate in democracy.

Victims/Survivors of Online Gender-Based Violence

Victims and survivors of online gender-based violence come in many forms with very different backgrounds, very much like its perpetrators. Victims and survivors include:

- Young girls whose everyday photographs on social media are taken without consent and disseminated and sexualised on a different platform/digital space (e.g. V2K with allegations of the involvement of police personnel).
- Female Malaysian citizens who make up one half of Malaysian voters for merely expressing their lived realities, opinions, thoughts and beliefs, such as the young women who took part in Parlimen Digital (e.g. Yang Berkhidmat Selayang, Yang Berkhidmat Labis) and bloggers, like Cindy Tey whose online stalker was a woman¹.
- Female entrepreneurs or small business owners (e.g. Neelofa, Sajat, Joy Revfa, etc.). Female entrepreneurs who use digital platforms for their businesses or run online businesses frequently receive online sexual harassment, unsolicited "dick pic" from male customers and stalkers.
- Female sportspersons (e.g. Farah Ann Abdul Hadi, Ann Osman, Dhabitah Sabri, Pandalela Rinong, etc.) for wearing official sportswear attire, etc.
- Female journalists, lawyers and artistes (e.g. Aisyah Tajuddin, Tashny Sukumaran, Alia Affendy, Siti Kasim, Aidila Razak, Tehmina Kaosji, etc.) face harassment for critical opinions or for media coverage of current affairs and issues.
- Female politicians on both sides of the fence, liberal or conservative, Perikatan Nasional or Pakatan Harapan (e.g. YB Dato' Azalina Othman, YB Maria Chin Abdullah, YB Hannah Yeoh, YB Kasthurirani Patto, YB Dato Dr Noraini Ahmad, YB Siti Zailah, YB Syefura Othman, etc.).
- Female human rights activists and civil society leaders (e.g. Noor Faridah Ariffin of G25, Nisha Ayub of SEED, Fadiyah Nadwa Fikri who was with C4 at the time, Asiah Abdul Jalil, etc.).
- Female celebrities (e.g. Sheila Majid, Daphne Iking, Sharifah Amani, Emma Maembong, Nur Fathiah Latiff, Adibah Noor, Baby Shima, Zizi Kirana, Azar Azmi, Wan Sharmila, etc.).

- Male human rights activists, journalists and lawyers (e.g. Rizal Rozhan, Yu Ren Chung, Zurairi AR, etc.)
- Academics (e.g. Afiq Noor, etc.).

In almost all of these cases, what the victims and survivors have in common is that they are targeted because they are women or gender non-conforming persons.

Types of Costs of Online Gender-Based Violence

The costs of online gender-based violence to Malaysia are not apparent only because there is yet to be a more concerted effort in collecting the data and gender disaggregating the data for more efficient analysis. The cost of online gender-based violence to the nation, as a result, is largely invisible except to the individual victims/survivors who experience the harms. However, the normalisation of these harms and the growth of impunity of perpetrators are very real threats to the well-being of the nation if investment and opportunity costs are taken into account.

Online gender-based violence encourages an undesirable culture of impunity and vigilantism.

For example, Mohamad Edi Bin Mohamad Riyars aka Edi Rejang who accosted a Chinese Malaysian female beer promoter in November 2018, was later doxxed by netizens, to the point where they found out his child was studying in a Chinese education school. In his own video of accosting the beer promoter, he insisted on her speaking the Malay language. This quickly became about how his child profits from Chinese education, financed by Chinese Malaysians, and accusations of being a racist were hurled at him.

Online gender-based violence can widen and negatively impact the ethnic divide in this country, allowing for the ugly politicisation of ethnicity and religion. This will effectively work against any government efforts towards strengthening Malaysian unity and building a Malaysian identity.

For example, Siti Fairrah Asyikin Kamaruddin (also known as Kiki) who damaged the car of 68-year-old Sim Hiak Hong, after an accident in July 2014 was soon doxxed by netizens. Kiki made a public apology and was forgiven by the victim. Her fine for road rage was quickly turned into a racial issue with allegations that the case received preferential treatment and hence a lighter fine, while others felt that it was too heavy a fine. Perkasa created a fund to help Kiki pay her fine of RM5,000, and even though DAP had also offered legal services, the incident remained a racial issue.

Costs to individual victims and survivors of online gender-based violence include:

1. Mental healthcare costs as victims have shared about their inability to work and focus for long periods of time. One victim found herself unable to focus on work for over a year.ⁱⁱ Contrary to the belief that harms of OGBV are only “virtual”, OGBV negatively impacts victim’s bodily wellbeing and safety. The omnipresence of digital networks means the perpetrators/aggressors can be anywhere and anyone. This puts a victim’s mind in a state of constant turmoil and can cause extreme distress that is invisible to others. Mental health can lead to real risk of suicide as with the case of R. Thivya Nayagi who took her life after a barrage of online violence targeting her for her Tik Tok video that featured her friendship/relationship with someone outside of her ethnic community;ⁱⁱⁱ
2. Inability to focus at work and absenteeism at work, which results in reduced productivity and loss of opportunities, possibly also a loss of benefits and/or promotions;
3. Inability to focus in studies and absenteeism from school/college/university or a complete drop out from studies, which interrupts students’ development of their potential;
4. Loss of talent that can boost Malaysia’s name on the global stage;
5. Loss of entrepreneurial initiatives by small and medium enterprises, the main driver of employment opportunities for most Malaysians, which can negatively affect Malaysia’s GDP even further, and increase the burden for the government of having to provide employment;
6. Withdrawal from social engagements which may affect familial, work and social relationships/interactions;
7. Withdrawal from public participation, which can mean that unmet needs are not expressed sufficiently or effectively for policy making;
8. Withdrawal from political participation (or self-censored political participation especially on political ideologies), which can severely affect the women’s wing of political parties and negatively impact on grassroots mobilization; which in turn can affect gender representation in governance and in decision-making/policy-making that may not be in touch with the lived realities of one-half of the nation;
9. Chilling effect on bystanders who have witnessed the violence, either encouraging them to become similarly violent or, if they disagree with the violence, effectively silencing them.

Costs at the individual level are costs to the nation in terms of:

1. Poor labour force participation rates: Research from ILO, UNDP, Pew Research and others show that gender discrimination and sexual harassment negatively affect women's labour force participation. Malaysia's female labour force participation rate is only 68.6% (DOSM, Q1, 2020) compared to its male labour force participation rate of 80.8% of the same quarter and year. Reducing the gender gap in labour force participation rates can substantially boost Malaysia's GDP. In order to reduce this gender gap, there is a need to understand the factors that obstruct women's labour force participation which includes issues of sexual harassment and online gender-based violence.
2. Negative effects on the development of Malaysia's skilled labour: Statistics show that more women than men are in universities (public or private), including in STEM degree programmes, meaning that those who are likely to form Malaysia's skilled labour force are women. However, as more and more offices go virtual and as more women go online whether for work or socially, online gender-based violence can render the work environment extremely unhealthy and non-conducive for productivity which in turn could lead to loss of skilled labour, loss of knowledge and loss of productivity for the nation. Women may start dropping out from engaging in the digital economy, which risks negatively impacting its growing contribution to Malaysia's GDP (a recorded 18.3% in 2017).^{iv}
3. The resultant lack of women's public and political participation: Qualitative research by Persatuan Kesedaran Komuniti Selangor, "Voice, Visibility and a Variety of Viciousness: A Malaysian Study of Women's Lived Realities on Social Media", shows that 1 out of every 2 women either temporarily leave the digital space or permanently erase their digital presence. This can have severe implications on the effectiveness of policy and the efficiency of programme design, development and implementation, which in turn can mean an extremely inefficient use of already limited resources.
4. An increasingly polarised and hostile environment which negatively impacts poverty alleviation and people-centred development efforts: In many cases, online gender-based violence is deployed to silence women and girls who put forward a different or unpopular opinion, including the demand for gender equality. The erasure of diversity of voices with violence such as in the weaponisation of religion by paid trolls is an antithesis to the development of a healthy democracy in Malaysia. These trolls and hired cybertroopers normalise intolerance and routinely demonise women, girls and vulnerable communities as unworthy.

As a result, little to no attention is paid to the fact that a stronger focus on maximising the productivity of women has greater benefits to the country. Women's paid and unpaid work is crucial for the survival of poor households, which suggests that women make better decision-makers and resource managers despite resources being limited. Women's paid and unpaid work is arguably crucial for the survival of small and medium enterprises, the main driver behind employment opportunities. Yet, this well-researched insight is overlooked by policy makers. Research shows that when women's productivity is maximised, the next generation will benefit and are likely to be better able to earn a higher income compared to the previous generation.^v It cannot be denied that women who have higher levels of education and income, when they marry, immediately boost the economic status of married households if they remain in the labour force.

5. Loss in higher financial performance. McKinsey (2015) has studied how diversity in leadership and the workforce in corporations (in the UK, USA and Canada, and Latin America), has a positive relationship to its financial performance and profitability. The study showed that the companies in the top quartile for gender diversity were 15 per cent more likely to have financial returns that were above their national industry median, and the companies in the top quartile for racial/ethnic diversity were 35 per cent more likely to have financial returns above their national industry median.^{vi} This suggests that problem solving and decision-making benefits from diverse perspectives and lived realities.
6. Increase in mental health care demands: This has a direct effect of burdening Malaysia's health care system with health care needs that could, in fact, be avoided or reduced if appropriate actions, are taken.

THE LOSS TO THE NATION IN RINGGIT AND SEN

In 2020, the female population for Malaysia was 48.6% or a total of 15.74 million out of a total population of 32.37 million. Female population of Malaysia fell gradually from 49.4% in 1971 to 48.6% in 2020.^{vii}

Malaysia is worried about an aging nation and the fact that Malaysia's population growth rate is decreasing. This has political ramifications as political leaders struggle with xenophobia in the country because of the negative sentiments and growing likelihood that economic benefits will soon no longer benefit Malaysians but foreign labour. On one hand, Malaysia desires a growing population and a non-aging society.

Yet on the other hand, Malaysia deprioritises women's public and political participation which have resulted in ineffective policies and programmes for development, such as the neglect in providing more support towards the caregiving roles and responsibilities of women. Table 1 shows how much the nation has lost in its investment in women and girls.

Table 1: Conservative Estimates of Real Costs to the Nation^{viii}

Type of Cost	Million Ringgit
Delivery costs estimated at RM7,000 per child x 15.74 million women/girls	110,180
Childcare costs (including food, diapers, medicine, vaccinations, etc.) estimated at RM12,000 per child x 15.74 million women/girls	188,880
Education costs estimated at RM20,000 (bare minimum) per woman/girl x 15.74 million women/girls	314,800
Non-participation in labour force of women graduates estimated at 1.05 million x RM25,000 for a degree course	26,250
Political Candidacy (campaign, election deposit) estimated at RM200,000 per candidate (Federal seats) x 2 and RM100,000 per candidate (state level) x 10	1.40
TOTAL COSTS	640,111.40

Table 1 uses extremely conservative estimates of how much it costs to raise and educate a girl child. Insurance companies provide a more realistic estimate of RM400,000 to RM1.1 million a child if we are to include the provision of shelter, clothes, tuition, etc. Even with these very conservative estimates, Malaysia is losing RM640.11 billion or RM8.38 billion a year when apportioned over a woman's life expectancy of 76.36 years in Malaysia. The figure is much higher if we apportion these investment and opportunity costs over a woman's reproductive/productivity years.

Implications for Malaysia's Development Vision of "No One Left Behind"

Irrespective of opinions, beliefs, thoughts and politics, the COVID-19 pandemic has shown that national security and the safety and wellbeing of the peoples of Malaysia is only robust if it is secured at the individual level. "No one left behind" cannot be merely measured from an economic standpoint, but must be measured from a more wholistic and wellbeing standpoint, equally for all and with the highest standards.

The global pandemic is fast-tracking Malaysia's digital transformation vision. Allowing online gender-based violence to go unchecked risks hampering the realisation of the full contribution potential of women and girls to Malaysia's digital economy and growth. The inevitable digital transformation for Malaysia means that "going offline" is no longer an option. When women and girls opt out of the digital space, they are denied job opportunities and career growth, access to healthcare, education, and their full rights as peoples in Malaysia.

Women's and girls' public and political participation must be better enabled if Malaysia is to be more effective in its governance and development of the country; and if it is indeed to become a digitally-driven, high-income nation and a regional leader in the digital economy.^{ix}

Considering that online gender-based violence is directed at all types of women and girls (and men and boys) of various beliefs, thoughts, opinions and political affiliations, there is a crucial need to ask, "what kind of Malaysian society are we nurturing? Are we working towards liveable cities and sustainable living without having the skills and capacity to develop arguments based on facts? What is the real impact of having a Malaysian society that is unable to have difficult conversations, and cannot respect and accept diversity of beliefs, opinions, thoughts, and politics? Will the rejection of diversity lead to our inability to think outside of the box, to problem solve, and to self-reflect?" These are critical questions irrespective of the politics policy makers may be vested in.

POLICY IMPLICATIONS

Not all forms of online gender-based violence fall under criminal behaviour. At the same time, there is no specific legislation addressing online gender-based violence. The normalisation of gender inequalities, stereotyping of gender roles and responsibilities, sexual harassment and moral policing lend to the fact that the same challenges in addressing gender-based violence persist in addressing online gender-based violence. This includes a culture of impunity and victim-blaming, which are further exacerbated by a lack of gender-sensitisation of the relevant authorities as well as the general public. While Malaysia has ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)^x and submitted two reports— combined initial and second reports which were due in 1999 and 2003, and combined 3rd to 5th period reports which were due in 2012 but only submitted in 2016 and presented in 2018—the State's latest report was silent on gender-based violence perpetrated online.

Even though there is awareness and outreach programs on cyberbullying and online harassment as seen under the government's CyberSAFE initiative,^{xi} the initiative takes on a protectionist approach and stops short at addressing the root causes of online gender-based violence, that is, gender-based discrimination against women and girls, and gender non-conforming persons. In most of the cases collected by civil society, victims of online gender-based violence rarely report their cases to law enforcement or government agencies.

In cases where police reports were made, these rarely led to prosecution of the perpetrator due to many reasons. Victims have received a mix of positive and negative responses from the police. Victims have been told by police officers that their leaked nude photos do not constitute a criminal offence because the photo was taken with the victims' consent; or that online harassment and stalking does not amount to actual harm. The failure of the police officers to recognise online threats and harassment as gender-based violence or even as crimes under the domestic laws, affects women's access to justice in a systemic way. In other cases, women have received empathy from the police officers but were told that there is nothing the police can do because the victim has deleted all proof of communication with the perpetrator out of fear and panic; or that it will be challenging to trace all the users online.

Gaps in Policies, Laws and Programmes/Services

Existing laws do criminalise certain forms of online gender-based violence to a certain extent, but there remain gaps that hamper victim's access to justice

Section 383^{xii} ("intentionally puts any person in fear of any injury...thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security...commits extortion") and Section 385^{xiii} ("putting or attempting to put in fear of injury, in order to commit extortion"). The provisions have been used to convict perpetrators who threaten to distribute the victim's sexually explicit photos through digital technologies if they refused to pay money. Nonetheless, applicability of such laws appears to only extend to cases where there is extortion and tends to neglect the potential psychological harm to women. In most cases, the act of non-consensual dissemination of intimate images (NCII) take place without any form of extortion but as a mere act to "punish" or intimidate the victim.

Section 509^{xiv} ("uttering any words or making any gesture intended to insult the modesty of a person") of the Penal Code has been used by the criminal court to convict perpetrators for the distribution of sexually explicit photos on social media. This provision however does not require the act of extortion so long as the violating act has been committed.

Nothing in the provision accord protection or legal rights to the victims before the distribution of their sexually explicit photos even if the victims themselves can reasonably foresee the violence. The provision is punitive and do not provide recourse for protection orders or injunctions.

Existing information and communication technologies (ICT)-related laws but are not applied in incidents of online gender-based violence

The Personal Data Protection Act 2010 which protects the personal data of individuals with respect to commercial transactions and Computer Crimes Act 1997 which provides for offences related to misuse of computers and unauthorised access to computer material, unauthorised access with intent to commit other offenses and unauthorised modification of computer contents have not been used to prosecute online gender-based violence where women's personal data is doxxed and shared widely without their consent.

When online gender-based violence is not seen as actual harm or seen as secondary or non-threatening compared to physical violence

The Domestic Violence Act recognises psychological violence as a form of violence in a domestic violence case, and this recognition is especially useful in cases where online gender-based violence is involved, in particular when communication technology is used to maintain the abusive control over the victim. However there remains challenges in training and educating law enforcers on the fact that "psychological harm" is real harm.

When online gender-based violence is seen as justifiable against a victim

The Penal Code explicitly recognises rape and the absence of consent. However, as shown in one case, law enforcers stereotype what a rape victim should look like, that is, she/he must have cuts or bruises, their clothes torn, and so on. They also do not understand "consent" and that it can be withdrawn during sexual intercourse. Law enforcers can further stigmatise and discriminate against a victim. Leaking of police reports and personal data by the Police render victims completely helpless since The Personal Data Protection Act 2010 fails to hold to account State actors who abuse their power.

When existing complaint mechanisms deprioritise timely and effective responses to incidents of online gender-based violence

The Malaysia Communications and Multimedia Commission (MCMC) was set up by the government, among others, to regulate and monitor communications and multimedia activities. 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. Even though there has been favourable responses from MCMC, the responses have not been timely enough as the violating contents would have already been circulated and downloaded or screen shot repeatedly.

CyberSecurity is 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 356 cyber harassment related cases in 2019.^{xv} CyberSecurity has acknowledged that the situation could be worse, and that anyone can be a victim, it is just that these incidents do not receive media coverage and so the scale of the problem remains unknown.^{xvi} Cyber harassment includes bullying, stalking, sexual, religious and race based harassment.^{xvii} Once a complaint is received, MyCERT uses the “Service Level Agreement”^{xviii} guidelines in prioritising incidents and in determining the respond time.^{xix} Cyber bullying, cyber stalking and sexual-based harassment are given a “3-Medium” priority (the lowest among all) and a 24-hour response time frame. While cyber harassment that is related to religious and racial discrimination are given a “2-High” and a 24-hour response time frame. CyberSecurity and MyCERT tend to prioritise technical and commercially motivated crimes such as criminal fraud, denial-of-service (DoS) attack and phishing.

The Communications and Multimedia Content Forum (CMCF)^{xx} was set up by MCMC in 2001 to prepare guidelines, procedures and standards of content dissemination by service providers in the Malaysian communications and multimedia industry. CMCF developed the *Malaysian Communications and Multimedia Content Code* (“the Content Code”), which is a voluntary code that identifies what is offensive and objectionable while prescribing the obligations of content providers, and would be the expected code of conduct for those who register with the Commission. The code explicitly forbids, among others, “sex and nudity”, “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. These provisions would cover more obvious acts of OGBV such as aggravated cyber harassment and NCII. However, there is less clarity whether OGBV acts such as “doxing” (where one publicly broadcasts private information about an individual or organisation online with a menacing intent) are covered. Confusion on the scope of the Content Code may lead to certain OGBV cases being excluded from the purview of the Complaints Bureau (the body who investigates the complaints received by the CMCF).

Inadequate protections of women’s^{xxi} rights to privacy

While the courts have read the right to privacy into Article 5, even when there is no explicit provision for this right in the Federal Constitution, the issue of horizontal/vertical readings of rights and the State’s obligation remains problematic. The non-recognition of certain data as “private”, or where understanding of privacy and consent is open to cultural and social interpretation remains obstacles to understanding how these issues are strongly connected to an individual’s freedoms and dignity as protected under our Federal Constitution.

There is a huge gap in laws and policy when it comes to protecting women’s right to privacy. Violations of the right to privacy, consent and personal data is at the core of online gender-based violence i.e. non-consensual dissemination of intimate images and doxing. Consent that is given explicitly to an individual or posted on a platform cannot be expanded to consent for the data to be disseminated beyond the owner’s intended audience. As more and more of our everyday lives are mediated through digital technology, the private and public spaces are often blurred. However, our personal data does not become any less private merely because they are available in the public domain.

The right to privacy is not explicitly protected in the Federal Constitution which allows for an ambiguous understanding of our right to privacy.

POLICY ALTERNATIVES

Elimination of online gender-based violence requires a rethinking of current strategies on gender based violence as it involves a range of rights between freedom of expression, right to political participation and right to non-discrimination and safety, which are in turn perceived as competing rights to vested interests in the politics of the country. It also involves globally dispersed actors – government, the people, and the digital platforms; the latter often located in a different jurisdiction.

While laws are necessary in cases where severe harms are caused, online gender-based violence also comprises a range of abusive behaviours including targeted harassment, coordinated mob attacks, and deliberate stigmatisation and discrimination that does not amount to criminal harm, even though it may lead to an aggregation of harmfulness, especially in cases of an online mob attack.

There is a need for a multi-stakeholder approach and an inter-government agency response to online gender-based violence. This would require the deployment of multifaceted strategies, from the macro- to the micro-level, involving laws and policy reforms, implementation and expansion of prevention programs, research and monitoring etc.

Policy Recommendations for State

1. To conduct nationwide empirical research to better understand people's experience with online gender-based violence, including why people perpetrate hate and violence online. The collection of data is key in understanding where it happens, who does it happen to, who are the perpetrators and why does it happen. The findings could then inform the design of victim-centric policies and laws, as well as the use of alternative approaches to ensuring justice for the victim, thereby increasing the effectiveness and relevance of such laws to the victims/survivors of online gender-based violence.
2. To gender-disaggregate data collected from reports and complaints of online gender-based violence to better enable analysis on the extent and forms of the violence, which victims are the primary targets and why.
3. To employ good prevention strategies and victim-centric redress mechanisms in learning institutions, including schools, colleges and universities.
4. To address internet etiquette and behaviour, as well as the importance of having non-discriminatory and respectful interactions online through educational programmes and suitable self-regulatory and monitoring mechanisms.
5. To provide guidance on what to do if bystanders witness an incident of online gender-based violence.
6. To review the standard operating procedures (SOP) of government agencies and the Police in dealing with complaints of online gender-based violence to be completely victim-centric, timely, and proactive.
7. To conduct regular public campaigns on raising awareness on hate speech, and online gender-based violence.
8. To address the systemic nature of online gender-based violence and criminalise the use of hate speech as a political tool by political parties, its members and supporters.
9. To conduct an evaluation and audit on existing responses by MCMC, CMCF, Cyber Security Agency and the police in addressing online gender-based violence and to provide recommendations for improvement, including establishing gender desks with the necessary expertise for response, and to add specific content/guidelines for OGBV cases, detailing approaches to adopt to address OGBV, or more specific guidelines to address specific forms of OGBV.
10. To study the issues, gaps and effectiveness of the Personal Data Protection Act in upholding the right to privacy. Provisions within the Act should be made to include violations by State actors so that abuse of power can be effectively addressed, e.g. such as leaking of police reports, and non-consensual sharing of women's phone numbers by police officers and personal data of victims/survivors.
11. To set up a response team for online gender-based violence where content takedown is urgently needed. This is especially for cases involving the non-consensual distribution of intimate images and personal data.
12. To enact the Gender Equality Act, the Sexual Harassment Act and amend the Penal Code to make stalking an offence.
13. To expand Article 5 of the Federal Constitution to include an explicit protection on the right to privacy.
14. Establish an Inter-Ministerial Task Team and conduct regular multi-stakeholder consultations with the relevant Ministries, government agencies, civil society, academics, media and social media platforms.
15. Appoint a gender equality Commissioner in the Human Rights Commission of Malaysia (SUHAKAM).

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This policy brief is constructed from our consultations with several organizations and individuals. The consultations are done with:

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3. Aina Mardhiah, Eksekutif Bayt al-Rahmah at Angkatan Belia Islam Malaysia (ABIM)
4. Alina Hassan, Student Activist
5. Amanda Thomas, Malaysia Reform Initiative (MARI)
6. Azlina Roszy, Central Committee Member WANITA IKRAM at Pertubuhan IKRAM Malaysia
7. Balqis Azhar, HELWA (Hal Ehwal Wanita) at Angkatan Belia Islam Malaysia (ABIM)
8. Cheryl Yesudas, Article 19
9. Clarissa Lee, Independent Researcher
10. Kimberley Tan, Founder of Bukan Salah Kamek
11. Mazni Ibrahim, Malaysian Centre for Constitutionalism and Human Rights (MCCHR)
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18. Thulsi Manogaran, Coordinator at Freedom of Expression (FOE) Cluster
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20. Yeap Yen Ying, Social Worker at Women's Centre for Change (WCC)
21. Zurairi A.R., Assistant News Editor at Malay Mail

FOOTNOTES

- ⁱ Adrina. 2014. “#WHY: Malaysian female blogger threatened by cyber stalker”. *Hype*, 17 July. <https://hype.my/2014/22603/why-malaysian-female-blogger-threatened-by-cyber-stalker/>.
- ⁱⁱ Case was documented by KRYSS Network.
- ⁱⁱⁱ Basyir, Mohamed and Perimbanayagam, Kalbana. 2020. Cyberbullying victim found dead after viral Tik Tok video”. Accessed on 31 July 2020. <https://www.nst.com.my/news/nation/2020/05/594223/cyberbullying-victim-found-dead-after-viral-tik-tok-video>
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- ^v See Buvinic, Mayra and Furst-Nichols, Rebecca. 2014. “Promoting Women’s Economic Empowerment: What Works?” *Policy Research Working Paper 7087*, November. World Bank Group. Accessed on 23 June 2021. <https://documents1.worldbank.org/curated/en/864621468337180679/pdf/WPS7087.pdf>. See also Gupta, Geeta Rao. “Chapter 1: Women and Poverty”. *Women in the World*. BC Campus. Accessed on 23 June 2021. <https://opentextbc.ca/womenintheworld/chapter/chapter-1-women-and-poverty/>.
- ^{vi} The correlation is not necessarily causal but the existence of the relationship is statistically significant and consistently present in the data. For more information, see <https://www.mckinsey.com/featured-insights/diversity-and-inclusion/diversity-wins-how-inclusion-matters>; and for the report, see <https://www.mckinsey.com/~media/mckinsey/business%20functions/organization/our%20insights/why%20diversity%20matters/diversity%20matters.pdf>.
- ^{vii} Website, knoema.com. Accessed on 23 June 2021. <https://knoema.com/atlas/Malaysia/topics/Demographics/Population/Female-population>
- ^{viii} Estimates are based on the following figures in these websites: AIA Malaysia website, <https://www.aia.com.my/en/what-matters/finance/cost-of-raising-a-child-in-malaysia.html>; iMoney website, <https://www.imoney.my/articles/political-donations-here-other-countries-where-does-malaysia-stand>; Department of Statistics Malaysia website, https://www.dosm.gov.my/v1/index.php?r=column/cthemByCat&cat=124&bul_id=Y3NVdE44azFHbzkyeFlaWGF2ZER6Zz09&menu_id=U3VPMldoYUxzVzFaYmNkWXZteGduZz09
- ^{ix} Mohamed, Mustapa. 2021. “Fast track to digital future”. *TheStar.com.my*, 21 February. Accessed on 26 June 2021. <https://www.thestar.com.my/news/nation/2021/02/21/fast-track-to-digital-future>.
- ^x Malaysia, to-date, has only ratified three conventions, issues under which are often bandied about as soft issues – women, children and people with disabilities.
- ^{xi} See: <https://www.cybersafe.my/en/>.
- ^{xii} “KL woman offered RM3k to model, sexually assaulted while bf locked inside car trunk instead.” *World of Buzz*, December 25, 2019, <https://worldofbuzz.com/kl-woman-offered-rm3k-to-model-sexually-assaulted-while-bf-locked-inside-car-trunk-instead/>.
- ^{xiii} “Guard fined RM3,500 for threatening to distribute nude pictures.” *Free Malaysia Today*, February 23, 2017, <http://www.freemalaysiatoday.com/category/nation/2017/02/23/guard-fined-rm3500-for-threatening-to-distribute-nude-pictures/>.
- ^{xiv} “Man fined RM4000 for posting ex girlfriend semi nude photo on Instagram” *The Star*, August 14, 2020, <https://www.thestar.com.my/news/nation/2020/08/14/man-fined-rm4000-for-posting-ex-girlfriend039s-semi-nude-photo-on-instagram>.
- ^{xv} See: <https://www.mycert.org.my/portal/statistics-content?menu=b75e037d-6ee3-4d11-8169-66677d694932&id=e49c91c1-4b04-4748-8152-294764f9c8dc>.
- ^{xvi} A total of 72 cases were reported in 2008 and it shot up 241 per cent to 174 cases in 2009. See <https://archives.thestar.com.my/news/story.asp?file=/2010/2/2/itfeature/5520802&sec=itfeature>.
- ^{xvii} See: <https://www.mycert.org.my/portal/full?id=44976922-60b2-4740-8cbf-0839907fcf8c>.
- ^{xviii} See https://www.mycert.org.my/en/services/report_incidents/cyber999/main/detail/800/index.html.
- ^{xix} 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.
- ^{xx} See <http://www.cmcf.my/home.php>.
- ^{xxi} These violations of rights to privacy can and do happen to lesbians, gays, bisexual, transgender and gender non-conforming persons as well.

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