



Commission for Gender Equality
A society free from gender oppression and inequality

SUBMISSION TO THE SELECT COMMITTEE ON SECURITY AND JUSTICE

Cybercrimes and Cybersecurity Bill

05 March 2019



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1. Introduction

The Commission for Gender Equality ('the Commission') is an independent statutory body created under Chapter 9 of the Constitution of the Republic of South Africa Act, 1996 ('the Constitution'). The Commission is mandated to promote and protect gender equality in government, civil society and the private sector. To this end, the Commission for Gender Equality Act 39 of 1996, as amended, ('the CGE Act') gives the Commission the power to monitor and evaluate policies and practices of organs of state at any level; statutory bodies and functionaries; public bodies and authorities and private businesses, enterprises and institutions to promote gender equality and make any recommendations that the Commission deems necessary.

The Commission also has the powers to evaluate any act of Parliament, make recommendations to Parliament or any legislature with regards to any law affecting gender equality or the status of women, and may recommend to Parliament the adoption of new legislation which will promote gender equality and the status of women.

It is against this backdrop that this submission is made to the Committee. There are various forms of cyber acts or deeds that may qualify as cyber violence against Women and Girls. There include, inter alia cyber stalking, non-consensual pornography / 'revenge porn', gender-based slurs, harassment based on gender or sexual orientation, 'slut-shaming', unsolicited pornography, 'sextortion', human trafficking, rape and death.



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Cyber stalking is stalking by means of email, text, social media posts and messages or the internet. Stalking involves repeated incidents, which may or may not individually be innocuous acts, but combined undermine the victim's sense of safety and cause distress, fear or alarm.

Cyber harassment can take many forms inter alia unwanted sexually explicit emails, text, social media messaging / posting; sexual content on websites or internet chat rooms; threats of physical and/or sexual violence by email, text, or social media posts / messages; hate speech, meaning language that denigrates, insults, threatens or targets an individual based on gender or sexual orientation or disability.

Non-consensual Pornography, also known as cyber exploitation or 'revenge porn', involves the online distribution of sexually graphic photographs or videos without the consent of the individual in the images. The perpetrator is often an ex-partner who obtains images or videos in the course of a prior relationship, and aims to publicly shame and humiliate the victim, in retaliation for ending a relationship. However, perpetrators are not necessarily partners or ex-partners and the motive is not always revenge. Images can also be obtained by hacking into the victim's computer, social media accounts or phone, and can aim to inflict real damage on the target's 'real-world' life.

Provision should also be made for victims in the live-broadcasting of incidents of sexual assault and rape via social media and the devastating impact thereof.



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There is further a trend which especially impacts children and teenagers where social media and other online platforms are used to show and teach self-harm and even suicide.

2. Definitions

Definition of a minor.

The CGE recommends that the definition of a minor as defined in the Children Act to be included in the Bill. The Children's Act defines a child to be any person under eighteen years of age.

Definition of cyberviolence

Cyberviolence includes, but is not limited to: cyber stalking, non-consensual pornography (or 'revenge porn'), gender-based slurs and harassment, 'slut-shaming', unsolicited pornography, 'sextortion', rape and death threats, 'doxing', electronically enabled human trafficking, any electronic communication relating to rape or death.

Definitions may also be given for the acts that constitute cyberviolence.

3. Section 10: Cyber Extortion

Cyber extortion as described in section 10 must be expanded to include extortion or blackmail through revenge porn / non-consensual pornography or sharing of intimate images. This concept is known as sextortion. Cyber extortion as a concept should not only focus on unlawful acquiring of data, the interference with data, data storage or programming, passwords and access codes, but also look at sextortion.



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4. Section 11: Aggravated offences

Section 11(2) refers to various instances where a person may be guilty of an aggravated offence.

The CGE submits that a person that infringes on the dignity and privacy, as well as the mental and emotional integrity of a person may be found guilty of an aggravated offence.

The CGE therefore proposes a sub-section, to read:

(2) Any person who commits an offence referred to in section 5(1), 6(1) or 10, which –

...(h) violates the dignity or privacy of any person, or any number of persons;

...(i) causes mental and emotional harm to a person, or any number of persons;

5. Section 16: Data message which incites damage to property or violence

The CGE supports clause 16, but submits that acts of cyberviolence as submitted under the definitions should resort under clause 16, with specific reference to the recording of sexual violence and rape on social media platforms and other electronic and online means. Online human trafficking should also be addressed in section 16 as an intention to incite violence and harm against a person or a group of persons.



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6. Section 17: Data message which is harmful

The CGE supports clause 17, and submits that the concepts of cyber harassment and cyber stalking should be included in section 17.

The CGE therefore submits that section 17(2) should read:

(2) for the purpose of subsection (1), a data message is harmful when-

.....

(e) cyber harassment or cyber stalking which is of a sexual nature are taking place by using data messages, computer system or broadcasting systems.

7. Section 18: Distribution of data message of intimate image without consent

The CGE supports section 18 and recommends a sub-clause Section 18 to read as follows:

Section 18(1)(a) Any person ("A") who unlawfully and intentionally makes available, broadcasts or distributes, by means of a computer system, a data message of an intimate image of a child, is guilty of an offence, despite the consent of the child.

Defences for the proposed section 18(1)(a)

The CGE recommends the inclusion of the below sub-clause for defences against offences in terms of the proposed section 18(1)(a).



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It is not a valid defence to a charge under section 18(1(a)), in respect of an intimate image of a child that-

(i) the accused person believed that data message of an intimate image of a person shown, was or was depicted as being 18 years or older unless the accused took all reasonable steps to ascertain the age of that person; and

(ii) took all reasonable steps to ensure that, where the person was 18 years or older, the intimate image did not depict that person as being under the age of 18 years.

8. Section 19: Order to protect complainant pending finalisation of criminal proceedings

The CGE supports section 19 that highlights the aggravating factors to be considered for imposing a sentence and recommends the following additional aggravating factors to be included:

- (a) The fact that the depiction of the intimate images was of child or children;
- (b) The fact that and the extent to which minor children have been exposed to the intimate images;
- (c) The fact that the depiction of the intimate images was of persons who are mentally disabled;
- (d) The fact that and the extent to which persons who are mentally disabled have been exposed to the intimate images.



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9. Section 22: Penalties

The CGE supports the provisions of section 22, but submits that a register for offenders should be established in respect of offences relating to cyberviolence and sexual offences. The register should have the same functionality and purpose as the Register prescribed by the Children's Act.

It is therefore submitted that section 22 should read:

(1) Any person who contravenes the provisions of section 16, 17 or 18 is liable on conviction to a fine or to imprisonment for a period not exceeding three years or to both a fine and such imprisonment. The person who contravenes the said provisions' details will be captured in a register in respect of cyberviolence and sexual offences.

10. Conclusion

The CGE asserts that the Cybercrimes and Cybersecurity Bill is progressive and avails itself for further engagements with the Portfolio Committee, with regard to the comments herein.