

Malaysia: Violence against Women and ICT

Jac sm Kee and Sonia Randhawa¹



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¹Jac sm Kee is a feminist activist committed to transformative politics in the issues of violence against women, culture, 'race', identities, technology, communication rights and sexualities. Based in Malaysia, Jac is currently the Women's Rights and ICT Policy Coordinator for the Association of Progressive Communications, Women's Networking Support Programme. Email: jacATapcwomenDOTorg.

Sonia Randhawa works on issues of freedom of expression, freedom of information and community media in Malaysia and is a director of the Centre for Independent Journalism, Malaysia. She produces a feminist radio show, writes a monthly newspaper column and is the deputy president of the World Association of Community Radio Broadcasters (AMARC) Asia-Pacific.

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Preface

Information and communication technologies (ICT) are changing the ways women experience and confront violence. Despite this, there has been little attention paid to issues arising from the intersection of ICT and violence against women. The Association for Progressive Communications Women's Networking Support Programme (APC WNSP) regards this intersection as a critical site of intervention both for women's rights activists and those working in the ICT development and policy arena. In this context, the APC WNSP commissioned the following overview paper as part of its 12-country project, "Strengthening women's organisations use of ICTs to end violence against women and girls" supported by the Dutch government's MDG3 Fund to promote gender equality and women's empowerment. The two-and-a-half year project is being carried out in Africa, Asia and Latin America and includes ICT technical training, support for ICT-enabled initiatives to end violence against women and policy advocacy. Papers from each of the participating countries provide an initial scoping of the current state of ICTs and violence against women to generate further reflection, discussion and action by stakeholders in women's rights and ICT arenas. While the research undertaken in the writing of the country papers is not exhaustive, reports do map the existing legislation and policy landscape in both areas, provide examples of strategic use of ICTs to end VAW, highlight incidents of VAW perpetrated via ICT and unearth specific concerns regarding women's rights with the emergence of new technologies. The papers are a starting point for learning and exploration and a step towards increased awareness of the potential and risks of ICT in each country.

Opinions expressed in the paper are those of the author(s) and do not represent the opinion of APC WNSP.

For more information about the "Strengthening women's organisations use of ICTs to end violence against women and girls" project visit www.apcwomen.org/ictstoendvaw or write ictstoendvaw@apcwomen.org.

I. Executive summary

Although violence against women (VAW) is a widely recognised issue in Malaysia, there exist significant challenges to its eradication. Women's groups have adeptly strategised and lobbied on issues related to the media to address VAW, but this has been largely limited in terms of visibility and representation. Such advocacy also has not been extended to the area of information communications technologies (ICT). This is augmented by the fact that ICT is framed under the paradigm of development and political neutrality. Nonetheless, the heavily-regulated public spaces for speech, expression and information have alerted women's groups to the critical importance of appropriating ICT more effectively in their advocacy. In addition, several recent high-profile incidents related the ICT are catalysing greater engagement on this issue.

VAW received clear government commitment during the 1980s and 1990s, in tandem with global women's movements' efforts in rendering VAW a human rights issue from the First World Conference on the Status of Women in 1975 to the Beijing Platform for Action in 1995. This was

also when many women's rights organisations were established in the country, mostly focussing on legislative advocacy on VAW. As a result, there is a wide acknowledgement of issues such as domestic violence, rape and sexual harassment – forms of VAW that also have some form of recognition and redress in laws. However, since the Eighth Malaysia Plan 2001-2005 which was ironically also the period when the Federal Constitution was amended to include prohibition of discrimination on the basis of gender, there has been a de-prioritisation of VAW specifically, and women's rights generally. National development priorities for women focussed on her reproductive role in the family, and her productive role in the economy.

During this period of declining focus on VAW and women's rights, there was a strong focus on ICT in the national development agenda. ICT was conceived as the primary vehicle to propel the nation into fully developed status by 2020; and heavy investment in terms of policy, infrastructure and budgetary allocations was placed into the development of Malaysia as a model country in ICT for development. The private sector played and continues to play an influential role in development and enforcement of ICT policy. The economic framework that drives ICT development has also resulted in an internet space that has been free from state intervention in the form of censorship. This is significant given the strictly regulated space for communication and expression in other forms of media and communication channels. However, there has been an increase in state intervention to regulate the free flow of information and expression on the internet in recent years. For example, in 2009, online news site Malaysiakini.com has been warned by the Malaysian Communications and Multimedia Commission (MCMC) for posting videos on their site, including one video of a ministerial press conference; the barring of online journalists from the Prime Minister's press conferences; and six people were charged, with five pleading guilty, with "improper use of network facilities" after posting comments on a website, criticising the Perak state royalty. Measures which have generally relied on existing peripheral laws such as the Sedition Act, Official Secrets Act and the Internal Security Act, are shifting toward more ICT-specific mechanisms and laws, such as the Communications and Multimedia Act, amendments to the Penal Code in 2006 to allow state surveillance in attempts to combat terrorism and plans to introduce internet filtering to "protect children from the culture of internet pornography" (*The Star* 7 August 2009). The 2009 change in the configuration of the Ministry of Information, Culture and Communications that is responsible for communications also demonstrates that the government understands ICT as being much more than just infrastructure, but an area that is profoundly implicated in power and nation-building.

This presents both challenges and opportunities for women's rights movements to end VAW and to advance women's rights. Challenges include analysing and articulating how ICT has affected VAW such as the use of private and intimate photographs to control partners in domestic violence situations; responding to issues of censorship and content regulation that take into account issues of fair and equal representation of women in the changing landscape of media; and articulating a clear stance on emerging issues such as privacy and security from the perspective of women's rights. Discourses on sexuality, culture and morality are deeply entwined with this issue, necessitating a clear stance by women's rights advocates to reclaim the capacity of a woman to control and make decisions about her own body, spaces, action and life as an inalienable and

fundamental principle. Opportunities include the repositioning of VAW as an issue of national priority by integrating ICT and VAW through the framework of public participation and governance, identifying new potential allies in the private sector and government bodies, engaging in multi-stakeholder platforms and mechanisms that have been created due to the model of ICT governance adopted by the government, and claiming and shaping digital spaces and the discourses that proliferate through them through strategic and creative use of ICT. This, however, requires new knowledge and capacity in understanding the interconnection between VAW and ICT in women's current and diverse realities, as well as greater clarity on the policy and technology of ICT.

This country report highlights forms of VAW that have received recognition in Malaysia and provides the context of ICT development and national policy objectives. It is not an exhaustive assessment of the current state of VAW, but rather aims to show some of the interconnections between ICT issues and VAW and areas of potential opportunities for advocacy, as well as looking at related cyber laws and areas of regulation, particularly content regulation, privacy and surveillance.

II. Overview

Violence against women (VAW) is a widely recognised issue in Malaysia. The most acknowledged forms of VAW are also the ones in which women's groups have played a strong advocacy role, namely, domestic violence, rape and sexual harassment. This also reverberates in some way with the global women's movement's efforts in rendering violence against women a human rights issue from the First World Conference on the Status of Women in Mexico City in 1975, to the Beijing Platform for Action (BPFA) in 1995. During that period, violence against women became widely recognised as a critical human rights issue to which states must respond. This call received a positive and strong response from the Malaysian government. Since the inception of the National Policy for Women in 1989, violence against women has consistently remained a priority issue. This has been augmented by the advocacy efforts of women's rights groups, many of which were formed in the 1980s when the global discourse of VAW as a violation of women's fundamental human rights was being powerfully articulated. The country's women's rights movement has worked collectively to raise awareness about the issue, advocate for new legislation and reforms in existing laws to address VAW, and to provide direct services to survivors of VAW.

In contrast to many other rights-based issues and groups, the women's movement has been uniquely successful in garnering both political and media support for their issues. Generally, the mass media has reported consistently on issues related to VAW, especially when it involves instances of extreme violence, and regularly features reports on cases of sexual assault and rape. The women's movement, working with the mass media, has also been able to mobilise public response to these issues. In some cases, coverage has catalysed government response. For example, the media support given to the women's movement in their call for the immediate enactment and implementation of the Domestic Violence Act 1994 played a contributing role in its success, by locating it as a critical issue of public concern. More recently, it can also be seen in the rape and murder cases of Canny Ong in June 2003 and Nurul Huda in January 2004. In the case of

Canny Ong, her brutal rape and murder sparked a series of highly publicised rape reports in the media. This acted to maintain the visibility and currency of violent sexual assault and rape in public debates, and helped garner support for the revival of the “Citizens Against Rape: Make Public Spaces Safe - Towards a Violence-free Community” campaign in 2003. More than 500 members of the public participated at the campaign rally at Kolej Damansara Utama, which continues to act as a significant moment of perceivable public support to end VAW.

However, this points to some significant challenges in addressing VAW. Although VAW is widely recognised as an important social issue, public demonstration of outrage is uncommon. Awareness campaigns and programmes across mass media platforms are increasingly absorbed as being part of the overall problem of public safety and crime, or relegated and compartmentalised as a women-specific issue that is primarily the responsibility of women’s rights groups.² It rarely receives the same kind of broad-based urgency and politicisation as other rights-based issues such as the right to peaceful assembly, or the response to arbitrary arrests. It is also possible to critique the treatment given by mass media to the representation of gender relations in their reporting of VAW. Reporting of rape and sexual assault often reinforces the myths surrounding them, through sexualisation of the crime, calling for the restriction of women’s mobility as preventative measures, citing choice of clothing as a contributing factor to the act, and the emphasis on women as victims rather than men as perpetrators.

On the other hand, information and communications technologies (ICT) issues are still seen largely in terms of technology and access to technology, rather than as issues with cross-cutting effects on gender, socio-cultural relations or even the environment. The social dimensions of ICT are primarily framed within the discourse of economic development. This limits discussion on the issues to selected groups of experts, with a focus on how the technology can best be used to help improve Malaysia’s GDP and how it can “leapfrog” more developed nations. Reporting on ICT issues focuses on games and technology, often in specialised sections of daily newspapers, with little reporting on how it can impact on gender relations. There is occasional coverage of issues such as creating enough Malay-language material online to ensure that Malay-speakers are able to engage effectively with the technology, and to ensuring universal access, but such coverage is occasional and rarely strays outside these bounds.

Technology is primarily understood as neutral, acting as a depoliticised tool or platform. The focus is limited to equal access to education and/or employment for the purposes of economic development. This paradigm is reflected in how the women’s movement has approached ICT. In the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) shadow report (NGO Shadow Report Group 2005), ICT and technology issues were addressed in terms of health (risks related to computer use), education and employment.³ There is little analysis of ICT from a rights-based perspective in terms of its relationship with a broad range of issues and rights such as privacy and mobility. In more recent public debates, discussions on the negative effects of

²Interview with Abigail de Vries, Programme Officer All-Women’s Action Society Malaysia (AWAM), 16 June 2009.

³The 2005 Malaysia CEDAW shadow report was written in collaboration by various women’s rights groups and advocates under the purview of the National Council of Women’s Organisation.

technology have focused on the lack of responsibility of bloggers, the effect of the internet on the mainstream media and the need to police pornography, in particular, child pornography .⁴

This points to an increasingly evident tension between the government's recognition of ICT's important role in development, and its concurrent capacity and potential to create an environment for greater accountability and transparency in governance. Although the internet is intended to be free from censorship – a significant promise given the strict laws related to media, expression and information in Malaysia – peripheral laws and the wide definition of offences and powers within new communications law work to place significant restrictions on what kinds of content, speech and practices are allowed online. Coupled with the discourse of neutrality, technicality and utility surrounding ICT policymaking and development in the country, participation from a wide range of civil society actors from decision-making processes is effectively discouraged. Nonetheless, several highly publicised cases related to the transmission of online images, arrests of bloggers and punitive sentences meted out for crimes related to internet activity have created a sense of urgency to engage with these issues through the various advocacy perspectives of civil society actors. Civil society actors who have worked on issues of media freedom see the internet and the proliferation of alternative media as an extension of the right to expression and information. Along with those directly affected such as bloggers and content creators, they are also increasingly noting the internet as a critical space to negotiate for competing rights. These actors are significant allies of the women's movement to engage with the issue of internet governance more directly.

The following section of the paper highlights forms of VAW that have received recognition in Malaysia. It is not an exhaustive assessment of the current state of VAW, but rather aims to highlight some of the interconnections between ICT issues and VAW and areas of potential opportunities for advocacy. The section that follows provides the context of ICT development and national policy objectives. It looks at related cyber laws and the areas of regulation. In particular, the areas of content regulation, privacy and surveillance. Section V examines the major issues raised and makes recommendations to both government and non-governmental organisations, while the final part of this report looks at the key stakeholders in the debate.

III. Law and policy on VAW

a) Evolution of policy and state commitment

In 1989, the National Policy for Women was formulated to address the status of women in Malaysia (Secretariat for Women's Affairs 1989). The policy is accompanied by a Women Action Plan to implement its aim of "integrat[ing] women fully in national development into programmes and projects" (Secretariat for Women's Affairs undated).⁵ Although existing within the framework of development, the policy, significantly, understands developmental issues as being broader than just economic. Within the nine areas identified for action, VAW was identified as a specific area of legal reform and policy development. VAW was identified as one of the priority issues to be

⁴Murali, The Star 18 August 2009, Sujata, The Star 26 July 2006, Timbuong, The Star 7 August 2009

⁵http://www.kpwkm.gov.my/new_index.php?page

addressed in national development plans for women in the Sixth (1991-1995) and Seventh Malaysia Plans (1996-2000) where the government's commitment to the Beijing Platform for Action (BPFA) was specifically identified.⁶ In 1995, the Malaysian government ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), with some reservations. The reservations are mainly related to areas deemed to be "in conflict with the provisions of the Islamic Sharia law and the Federal Constitution of Malaysia" on inheritance, the appointment of public officers related to government agencies that deal with matters related to Islam, and the minimum age for marriage.⁷

The national machinery for women's issues has evolved in both form and function. In 1976, the National Advisory Council on the Integration of Women in Development (NACIWID) was formed in response to the UN resolution to integrate women into development processes (United Nations General Assembly 1975). Its work was supported by the Secretariat for Women's Affairs (HAWA), established in 1983. Amongst other things, the National Policy for Women calls for the strengthening of state machinery, including policymaking powers and budgetary allocation, to better address issues related to the status of women. The Action Plan specifically calls for a review and strengthening of HAWA's role, and subsequently it was empowered as a department under the Ministry of National Unity and Social Development in 1997. In January 2001, a specific Ministry for Women's Affairs was formed, followed by an August 2001 amendment in the Federal Constitution that prohibited discrimination on the basis of gender.⁸

The ministry's focus on women was shortlived as the ministry was transformed just one month later into the Ministry of Women and Family Development.⁹ In March 2004 this was further diluted by including community development within its purview. The ministry responsible for the advancement of women is now the Ministry of Women, Family and Community Development (KPWKM), with four agencies within it: the Department for Women's Development (JPW), the Social Welfare Department of Malaysia (JKMM), the National Population and Family Development Board (LPPKN) and the Social Institute of Malaysia (ISIM) (Ministry of Women, Family and Community Development undated).

This transformation affected how national policies are formed to address the status of women. There was a perceivable shift in prioritising women's role in the family and reproductive functions in understanding women's rights and issues in the Eighth Malaysian Plan (2001-2005). Here, the broad understanding of the multiple dimensions of development in the previous two plans was

⁶The Ministry of Women, Family and Community Development has pulled this together under the Women Action Plan (Secretariat for Women's Affairs undated). [ccesp://www.kpwkm.gov.my/new_index.php?pag](http://www.kpwkm.gov.my/new_index.php?pag)

⁷CEDAW/C/MYS/1-2 2004, paragraph 69, p.17.

⁸Article 8 (2) states: "Except as expressly authorized by this Constitution, there shall be no discrimination against citizens on the ground only of religion, race, descent, place of birth or gender in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment". Clause (2): The words "descent, place of birth or gender" were substituted for "descent or place of birth" by Act A1130, section 3, in force from 28-09-2001.

⁹In fact, when the Ministry was first established, women's groups expressed some reservations, since in its former structure "as the Women's Division under the Prime Minister's Department (the former MWFD), sited as it was in the Prime Minister's Department which housed the Economic Planning Unit which is responsible for the national development of the country, was perceived as having more political clout in respect of policy revision and gender mainstreaming", (NGO Shadow Report Group 2005, Articles 1-4, Paragraph 4,

replaced by a more narrow interpretation of development as primarily an economic issue. ICT is mentioned specifically to better equip women to “meet the demands of the knowledge-based economy as well as to facilitate their upward mobility into higher-paying occupations”.¹⁰ It notes the relevance of ICT only as a tool toward economic development instead a rights-based issue. Further, measures to address women’s participation in the economy were closely linked with her role in the family. For example, it calls for the establishment of child-care centres at the workplace, and in lauding amendments to the Employment Act 1955 which provide for flexible working hours to permit “women, especially housewives, to be gainfully employed in part-time employment, while allowing them the flexibility to meet their family obligations.”¹¹ Measures for legal reform that previously dealt with laws related to VAW were now focused almost exclusively on family law. The only instance where VAW is specifically mentioned is in relation to the introduction of the Code of Ethics for the Prevention of Sexual Harassment at the Workplace ¹². In other words, VAW is only recognised as an issue when it affects women’s ability to participate in economic development.

This is revealing in three ways.

First, the recognition of women’s multiple roles in public and private life can be read as a positive step in recognising both structural and informal barriers to gender equality. According to the 2009 UN Special Rapporteur on Violence against Women report on the political economy of women’s human rights, it is important to integrate social, cultural and economic rights (such as issues related to housing, property, inheritance, food, water, education, health and the right to decent work and social security) in the analysis of and strategies to end VAW (Ertürk 2009). The Eighth Malaysian Plan directly addresses most of these factors by providing measures to increase women’s participation in the economy through employment, skills-building and education, as well dealing with health, barriers faced in family law and the feminisation of poverty.

However, it stops short of an integrated approach to address the prevalence of VAW when it fails to incorporate an analysis of how such factors contribute to an increase in women’s autonomy and bargaining power in private and public life and thus to address the underlying causes of VAW. The visibly diminished status of VAW in this plan – its mention only in relation to the issue of sexual harassment – actually points to an increased fragmentation of measures to address the issue. VAW is not only treated in isolation, but, in effect, de-prioritised in a dominant framework of economic development instead of a rights-based framework. This occurred despite the fact that this national policy plan was developed during a period of significant demonstration of government commitment to addressing gender discrimination through the amendment to the Federal Constitution that expressly prohibited discrimination on the basis of gender, and the ratification of CEDAW, where it is stated that “the definition of discrimination includes gender-based violence” (CEDAW/GR/19 p.6). It cannot be said that in the Eighth Malaysian Plan VAW has been approached as a form of systemic discrimination against women that necessitated a

¹⁰Economic Planning Unit 2001, Paragraph 20.32, p.567

¹¹Economic Planning Unit 2001, Paragraph 20.09, p.560

¹²Economic Planning Unit 2001, Paragraph 20.21, p.564

comprehensive and integrated approach. Instead, VAW only becomes relevant when it affects women's productive role in terms of economic development.

Second, the lack of an integrated approach is accompanied by an emphasis on women's reproductive functions and role in the family. This further compounds the failure of the policy to address women's autonomy and agency. As stated in the 2009 UN Special Rapporteur on Violence against Women report, "[p]reventing violence against women and ensuring gender equality in a neoliberal global environment requires a holistic approach to women's human rights [...] Unless women's agency is recognized and their capabilities supported through social, economic and political empowerment the human rights they are promised will remain abstract concepts" (Ertürk 2009, p.2). There appears to be a disconnect between the various items outlined for strategic action, each seen as a separate component in which women are positioned as needing special attention due to their role in the family and in reproduction. For example, the area under the heading of "health" states that women's right to health are adequately addressed through the "Family Health Programme" where indicators are linked directly to maternal and child health (Economic Planning Unit 2001, Chapter 12.17, p.563). Measures to address the feminisation of poverty were limited to female-headed households and training programmes for single mothers¹³

Such emphasis on women's reproductive roles not only does not address women's concerns within a broad framework of rights and equality, but can also dangerously reproduce structural inequalities that expose women to greater risks of VAW. For example, part-time and flexi-hour work is being promoted for women in consideration of their role in caring for the family. However, such work, which is often considered low-skilled and dispensable, can lead to an increased vulnerability towards VAW with women occupying these forms of employment to be the first to lose their work during times of economic instability. In a neoliberal capitalist environment, this does not provide women with the secure and sustained access to productive resources, which in turn makes them "easy targets for abuse and undermines the prospects for the progressive realization of their rights"¹⁴

Third, despite the privileging of women's role in the family, forms of VAW that take place in the home and between family members remain conspicuously absent in the national development plan. Marital rape, domestic violence, women's vulnerability to HIV/AIDS due to unequal bargaining power in intimate heterosexual relationships, etc. are not touched upon or mentioned. Taken together, there appears to be little attempt by the government to address unequal gender relations and power structures at all levels, which translates into a shift in focus and emphasis away from the eradication of VAW.

This analysis and approach toward addressing discrimination against women and VAW can be seen to affect the subsequent and current Ninth Malaysia Plan (2006-2010). Although VAW returns as a strategic thrust to be addressed under the chapter on Women and Development alongside reiterations of international and regional commitments, suggested actions emphasised women's

¹³Economic Planning Unit 2001, Chapter 20.20, p. 564

¹⁴Ertürk 2009, Chapter 31, p.10

economic participation¹⁵. The rationale for part-time and flexi-hour work and its concomitant implications on VAW are carried forward in this plan through an emphasis on encouraging home-office businesses for women.¹⁶ Specific measures to address VAW are mentioned in tandem with the importance of ensuring the safety and well-being of the family and in "maintaining family harmony"¹⁷ gal reform focuses on laws related to employment, and VAW is again only mentioned in relation to addressing workplace sexual harassment. Even then, there appears to be no commitment toward specific sexual harassment legislation despite persistent lobbying since 2001 by women's groups highlighting the inefficacy of the voluntary Code of Ethics and proposing to replace it with a sexual harassment bill.¹⁸ Insead, plans for reform focus on amendments to the current Employment Act 1955, the Industrial Relations Act 1957 and the Occupational Safety and Health Act 1994.¹⁹

Measures to address violence against women appear to focus on raising awareness and the provision of direct services (Economic Planning Unit 2006, Paragraph 13.36 and 37, p.292). This can be read as an understanding that VAW stems primarily from cultural and informal norms instead of structural inequalities. Measures are limited to training, awareness building programmes and gender sensitisation courses for government agencies. There are no stated measures in this chapter that aim to empower women with skills or decision-making capacity in defining cultural and informal social norms, or through advancing the status of women in religious institutions or in the media. ICT is mentioned in relation to capacity and knowledge building to better equip women with skills that are "relevant to industry needs, particularly in view of the rapid changes in technology."²⁰

This has implications for budgetary allocations for programmes and for the prioritisation of activities developed for the advancement of women's rights. The Women Action Plan lays out 13 comprehensive sectors for the advancement of women's rights and to address gender discrimination and inequality, which in its revised version includes collaboration with the ministry responsible for matters related to ICT in efforts to counter VAW²¹. However, the translation of this plan into activities and programmes is dependent on current prioritisation and accompanying budgetary allocations. To date, women's groups have found little material demonstration from the government to meet the stated objectives and programmes.

There appears to be an urgent need to re-prioritise the eradication of VAW in a comprehensive and integrated manner in national plans. Government commitments to the Millennium Development Goals, CEDAW and BPFA provide persuasive platforms for lobbying for a review of analysis and strategy in plans to advance women's rights and in the eradication of VAW. With the national

¹⁵Economic Planning Unit 2006, Chapter 13, p.281-294

¹⁶The Star 31 March 2006

¹⁷Economic Planning Unit 2006, Paragraph 13.36, p.292

¹⁸NGO Shadow Report Group 2005, Paragraph 1.3, General Recommendation 19, p.144

¹⁹Economic Planning Unit 2006, Paragraph 13.32, p.291

²⁰Economic Planning Unit 2006, Chapter 13.29, p.290

²¹Secretariat for Women's Affairs undated, Sector 4, Item 1.2 This is under the area of "violence". However, it is unclear if this is the final version of the revised text. Nonetheless, the plan to include and integrate ICT into programmes for addressing VAW is notable and worth exploring in this regard.

emphasis on economic development and the veering of strategies toward raising awareness, examining the intersectionality between ICT and VAW may present women’s groups with an opportunity to re-examine the causes, challenges and possible strategies to address VAW. This will necessitate an interrogation of the political, economic and social structures that work together to perpetuate unequal power relations between men and women, and its manifestation through VAW in multiple dimensions of a woman’s life and reality. In the process, this would involve linking government commitment and investment in ICT for development with the realisation of the broad range of women’s rights.

b) Forms of VAW - law and discourse

i) Domestic violence

Table 1: Female victims of domestic violence cases by state and sex, 2002-2006²²

State	2002		2003		2004		2005		2006	
	F	Total								
Johor	73	74	65	66	76	76	47	47	51	53
Kedah	22	22	41	42	6	6	25	26	41	41
Kelantan	23	23	32	32	15	15	17	17	24	24
Melaka	104	107	75	77	42	42	35	35	11	13
Negeri Sembilan	35	35	51	53	22	23	52	56	49	50
Pahang	5	5	16	16	21	21	19	20	5	6
Perak	24	24	35	36	35	38	48	49	26	26
Perlis	3	3	1	1	9	9	3	3	0	0
Pulau Pinang	81	83	102	105	113	120	98	109	121	135
Sabah	12	12	42	42	19	19
Sarawak	11	11	48	49	61	62	0	0	58	59
Selangor	147	150	60	61	85	87	42	42	32	33
Terengganu	9	9	20	20	8	8	5	5	12	12
WP Kuala Lumpur	40	40	34	36	32	34	12	12	33	33
WP Labuan	0	0	0	0	0	0	0	0	0	0
Total	589	598	622	636	544	560	403	421	463	485

Source: Department of Social Welfare, Malaysia

The main piece of legislation relating to VAW is the Domestic Violence Act (DVA). Notably, the women’s movement struggled for the criminalisation of domestic violence for over a decade, from 1985 when activists established the Joint Action Group – Violence Against Women (JAG-VAW) - until it was passed by parliament in 1994, and then implemented two years later in 1996.

While the act was a major step forward for the protection of those suffering from domestic violence, it contained several critical loopholes. The DVA is attached to the Penal Code, and does not define domestic violence as a crime in itself. Instead, the act deals primarily with the right to a protection order and defines those who can lodge a report on domestic violence. According to information published on the Women’s Aid Organisation (WAO) website, one problem is that it

²²Statistics are collated from the Ministry of Women, Family & Community Development website (Ministry of Women, Family & Community Development 2008).

does not criminalise domestic violence in the act itself, relying instead on amendments in the Penal Code to provide for criminal prosecution of perpetrators (Women's Aid Organisation undated a). This lack of definition means that the dynamics of domestic violence are inadequately addressed by the act. This includes forms of violence that are not physical in nature, such as emotional or psychological harm or threats. Importantly, this also leaves new permutations of VAW that are linked to ICT, such as stalking of spouses through SMS and surveillance of private online communications, without recourse for protection. As noted in the 2005 Malaysian CEDAW shadow report, "a woman who is forced by her husband to watch him have sex with another woman, view pornographic material, or pose nude for home video[...]" has no recourse. "[These] are not crimes under the Penal Code. A victim of domestic violence in this position is thus left without relief under the DVA" (NGO Shadow Report Group 2005, Annex 3).

ICTs are being used in situations of domestic violence. For example, WAO reports that a woman who left her abusive situation was receiving countless phone calls and sexualised email messages from her former partner²³. This left her in a situation of fear. She felt that she had to respond to his constant communication (phone calls, emails, sms) because otherwise he would get increasingly violent, for example by showing up at the workplace and threatening her. She was unsure of how to respond to the communication, which had violent sexual undertones. The current DVA is not able to address violence that is perpetrated through this form of communication. The woman had to apply for an interim protection order (IPO) on the basis of previous threats of violence to her, in particular that he had threatened to kill her. This raises the interesting point of control of women's lives, bodies and sense of safety and security through the discourse of sexuality and shame, which appear to still be largely outside of a woman's control.

The failure to fully understand and incorporate the specific dynamics of domestic violence also creates procedural issues for victims. A recent article, first published on The Nut Graph and subsequently posted on the Bar Council's website, argues convincingly that:

The DVA has been described by High Court judge Justice Abdul Malik Ishak (as he then was) as "a toothless tiger" in the case of *Chan Ah Moi v Phang Wai Ann* (1995). He said this because "most cases of domestic violence like punching, kicking, assaulting etc. would fall squarely under the category of non-seizable offences. There is, therefore, no immediate need for the police to investigate unless the deputy public prosecutor issues an order to investigate" (Hassan, The Nutgraph 6 June 2009).

This has serious implication in terms of the primary capacity of the Act to provide protection for domestic violence survivors, since an interim protection order can only be attained if investigations occur. In other words, they will have to rely on the discretion of the police and the Attorney-General's office to decide whether to proceed with a criminal investigation.

The 2005 CEDAW shadow report comprehensively details the challenges in the effective implementation of the law and makes recommendations for amendment.²⁴ This includes differences in interpretation of the law, a lack of gender sensitivity and awareness on the part of

²³Interview with Kerina Francis, Programme Officer of Women's Aid Organisation, 6 June 2009.

²⁴NGO Shadow Report Group 2005, Annex 3

implementing agencies and authorities and the inefficacy of the current approach and legal procedure toward securing protection orders for the victim. Importantly, the report highlights that “some reservations that have been directed against the DVA stem from the concern that the act would encourage the disintegration of the family unit.”²⁵ This assumption on the inviolability of the family unit is also apparent in the implementation on sections of the act that deal with possession of shared residences, privileging of reconciliation efforts over protection and power to the court to issue orders for counselling or therapy instead of, or together with, an interim protection order. In the report’s analysis, it is clear that in its implementation there is still a strong prioritisation of normative gendered roles in the family when it comes to understanding domestic violence and how to overcome it.

Read together with a national policy prioritising women’s role in the family when it comes to the advancement of the status of women, this points to an urgent need to reaffirm and rearticulate women’s rights as individuals and as equal citizens or persons residing in the country. In other words, to disentangle the idea of women’s empowerment and equality from being necessarily appended to her role in the family.

ii) Rape and sexual violence

Table 2: Published rape cases reported to the police by state, 2000 - August 2006

State	2000	2001	2002	2003	2004	2005	2006
Perlis	12	10	13	11	21	26	15
Kedah	110	123	132	119	127	163	129
Pulau Pinang	61	75	73	70	89	71	83
Perak	91	79	100	118	121	148	126
Selangor	216	269	253	280	294	368	256
WP Kuala Lumpur	67	97	120	77	116	110	95
Negeri Sembilan	59	82	62	69	89	97	74
Melaka	43	43	57	67	100	78	83
Johor	194	234	235	312	323	324	209
Pahang	74	79	79	70	102	84	85
Terengganu	48	48	45	38	58	99	86
Kelantan	52	74	70	66	82	90	98
Sabah	109	94	115	111	149	156	130
Sarawak	81	79	77	71	94	117	92
Total	1217	1386	1431	1479	1765	1931	1561

Source: Royal Malaysian Police, Bukit Aman

Sexual violence offences are dealt with under Sections 375 to 377 of the Penal Code. Section 375 defines rape primarily as sexual intercourse between a man and a woman without valid consent, through threats of violence, deception and incapacity to give consent (age or mental impairment).

In 2006, several notable amendments were made to the laws related to rape.

One is the introduction of marital rape, under Section 375A, which notes:

²⁵NGO Shadow Report Group 2005, Conclusion, Annex 3

"Any man who during the subsistence of a valid marriage causes hurt or fear of death or hurt to his wife or any other person in order to have sexual intercourse with his wife shall be punished with imprisonment for a term which may extend to five years"²⁶.

This appears to be a response to the CEDAW committee's recommendation to the Malaysian government after its first review in 2005 which points to the potential persuasiveness of this platform for advocacy on VAW.²⁷ Given the hesitation of the government to take any steps that might potentially rupture the family unit (as explored above), this is a significant step toward recognising women's agency and rights within the structure of family and marriage.

Nonetheless, there has been some criticism levied against the amendment. Notably, the definition of marital rape is not based on consent (or lack of) as recommended by the CEDAW committee, but on the idea of potential and/or actual *physical* harm. As pointed out by Tan Beng Hui, this does take into account "threats not related to causing hurt or death were involved."²⁸ It also falls short of recognising women's capacity to make decisions around her own (sexed/sexual) body.

This can also be read as a form of awkward negotiation between differences in approach towards in Federal and sharia laws. The marital contract under Islamic family law includes the concept of "nusyuz," which is defined as when a wife "unreasonably refuses to obey the lawful wishes or commands of her husband."²⁹ "Nusyuz" is a ground for non-payment of maintenance by the husband. There are various interpretations of what constitutes "nusyuz," including the wife leaving the matrimonial house without the husband's permission, or her refusal to engage in sexual relations with her husband.³⁰ In other words, embedded within the idea of marriage is an assumption of the wife's submission to her husband's will in all matters relating to her role in the family, including her sexuality. The muddled lines of jurisdiction and the continuous hesitation of federal lawmakers to intervene in sharia matters present significant obstacles to recognising a woman's right to agency and decision-making and to criminalising marital rape, as it is assumed to be a wife's duty to the husband. This dilemma appears to be side-stepped by not criminalising the violation of the woman's right to decide whether or not she wants to engage in sexual relations, but criminalising physical harm.

This compromise presents several problems in providing women avenues to adequate redress and justice in situations of sexual violence. By framing marital rape in this way, the law implicitly removes a woman's right to bodily integrity, including her right to own and exercise control over her own body. This has an impact upon a range of issues, including sexual and reproductive health rights such as the right to abortion, equality within the family and in public and political life.

²⁶Section 375A, Penal Code (Amendment) Act 2006

²⁷Paragraph 22 of the CEDAW committee's concluding comments to the Malaysian government states: "The Committee requests the State party to enact legislation criminalizing marital rape, defining such rape on the basis of lack of consent of the wife." (CEDAW/C/MYS/CO/2 CEDAW Committee 2006)

²⁸for example, threatening to withhold financial support for the household or threatening to file for divorce and take away the children" Tan 2007

²⁹Each individual state has its own jurisdiction over Islamic laws, with variations within them. The definition of "nusyuz" given here is from Section 59(2), Islamic Family Law (Federal Territories) Act 1984, which was designed in 1984 to be a model for other states.

³⁰Section 61(2)(as) of the Sabah Islamic Family Law 1992 Enactment defines "nusyuz" as including "when she withholds her association or refuses sex with her husband". This discourse was also put forward in protest against the proposal to recognise marital rape by the Perak mufti and several Syariah lawyers (Kent, BBC News 23 August 2004).

Implications will also be seen in the context the right to privacy, particularly when this is related to sexual violence in the context of ICT, where embodiment needs to be understood not just in physical terms, but in terms of the distributed self in digital spaces. For example, can a husband pose intimate video clips or photographs of his wife on a website without her explicit and informed consent?³¹ For sexual harassment or intimidation to be recognised in situations where a woman is subject to sexual threats online, or have images of her body distributed to audiences and spaces without her consent, there needs to be first an acknowledgement of her capacity to make decisions about where, what, who and how images and representation of her "self" are to be located, disseminated and represented. Physical harm cannot be read in this instance, but the violation to her sense of safety, security and bodily integrity is material. The current amendment to the laws relating to rape is inadequate to address this issue, which, as can be seen in later parts of this paper, is becoming an increasingly real issue of VAW for women.

Other amendments include increased severity in punishment for rape that occurs in what women's groups term "aggravated" circumstances, from a maximum of twenty years imprisonment without a minimum term, to a maximum of 30 years with a minimum term of five years. "Aggravating" circumstances outlined by the amendment include rape that includes threat or actual harm to the victim or to another person, in the company or presence of any other person, without consent when the victim is under sixteen years old, with or without consent when the victim is under twelve years old, with consent when the consent is obtained through abuse of power and authority and when the victim is pregnant at the time she is raped. This amendment is similar to what women's groups have called for under the Memorandum on Laws Related to Rape in 2003 except in three instances (Anti-Rape Task Force 2003). Aggravating contexts stated in the memorandum included rape when the offender is infected with HIV/AIDS or other sexually transmitted infections, when the victim has mental or physical disabilities at the time of the offence, or when the victim is intoxicated or drunk, but these were not included in the amendment. Further, although the memorandum saw rape committed in the "presence of any other persons physically, virtually or through recording (emphasis added)" as aggravating factors, this understanding on the role of ICT in compounding the harm faced by rape victims was not explicitly included in the amendment, leaving the situation unaddressed by current laws.

³¹In fact, can her refusal to consent be construed as "nusyuz" in the context of Islamic Family Law?

iii) Sexual harassment

Table 4: Published molestation cases reported to the police by state, January 2000 - August 2006

State	2000	2001	2002	2003	2004	2005	2006
Perlis	16	8	8	9	17	24	14
Kedah	104	116	121	97	136	146	124
Pulau	123	100	86	105	88	128	99
Perak	74	61	87	121	126	123	87
Selangor	244	340	342	302	340	343	227
WP Kuala Lumpur	111	187	149	81	103	136	136
Negeri Sembilan	71	90	80	97	115	111	82
Melaka	36	37	78	51	60	60	69
Johor	199	211	214	204	266	214	189
Pahang	44	49	72	69	101	121	64
Terengganu	49	37	31	46	48	55	45
Kelantan	49	67	81	76	82	92	69
Sabah	52	42	92	65	105	125	110
Sarawak	62	48	81	76	74	68	34
Total	1234	1393	1522	1399	1661	1746	1349

Source: Royal Malaysian Police, Bukit Aman

Table 5: Published sexual harassment cases at the workplace, January 2000-August 2006

Suspects	2000	2001	2002	2003	2004	2005	2006
Employers	50	51	43	48	70	52	28
Colleagues	62	35	41	34	49	50	40
Total	112	86	84	82	119	102	68

Source: Royal Malaysian Police, Bukit Aman

Despite being the only form of VAW that was explicitly referred to in the Eighth and Ninth Malaysian Plan, there is no specific legislation that addresses sexual harassment. Instead, the Ministry of Human Resources launched a voluntary Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace. Women's groups deem this as inadequate, pointing out that its voluntary nature means that only a fraction of companies actually implemented the code. Although 4,500 companies have adopted the code as of March 2001, this comprises approximately 1.125% of the 400,000 employers registered with the Social Security Association (PERKESO) under the Ministry of Human Resources (Daily Express Newspaper Online 24 July 2003). The Joint Action Group on VAW led by Women's Centre for Change, Penang, has been advocating for a specific Sexual Harassment Act, and presented a Proposed Sexual Harassment Bill to the Deputy Minister of Human Resources in March 2001. There has been little demonstrated effort to table the bill, and the general response received is that either the Code of Practice is adequate to respond to the issue, or that existing laws can be applied.

Sexual harassment that occurs outside of the work place is addressed under the Penal Code. Section 354 of the Act deals with assault or the use of criminal force with the intent to outrage the modesty of another person, with a maximum sentence of ten years, with fine and/or whipping. Section 509 of the Penal Code deals with words or gestures that are intended to insult the modesty of a person, with a maximum sentence of five years imprisonment and/or a fine. Notably, it is also the only section under the Penal Code that expressly provides for the right to privacy.³² Presently, there are no specific laws that comprehensively deal with the right to privacy which will be explored in later in this paper.

The Communications and Multimedia Act (CMA) has recently been cited as providing protection for victims of online sexual harassment. Section 233 of the CMA, under "improper use of network facilities or network service, etc." makes it an offence to transmit, create or solicit any content that is "obscene, indecent, false, menacing or offensive in character with the intent to annoy, abuse, threaten or harass another person." The maximum sentence is a MYR 50,000 (USD 15,000) fine and/or one year imprisonment, with a further fine of MYR 1,000 (USD 300) for each day the offence is continued after conviction. However, this same section of the act was recently used for the first time to convict an internet user for posting a comment on a website that was deemed to be insulting to the monarchy. A hefty fine of MYR 10,000 (USD 3,000) was imposed to act as a deterrent and warning to members of the public from freely posting their thoughts online (The Nutgraph 13 March 2009).

This presents a real challenge for advocates of women's rights. To gain adequate redress and protection from sexual harassment in multiple spaces – including online – attention must be given to potential costs and conflicts that might arise. The CMA was developed primarily through consultation with the private sector. The emphasis placed on corporate offences indicates a privileging of those concerns coupled with the national policy thrust of ICT for economic development. Women's rights and realities that were ignored in its inception are now appended to the act. This calls for critical feminist analysis. In the first usage of this particular section of the act, it is used to restrict the free flow of expression and content on the internet. As can be seen later in this paper, this directly counters the guarantee of freedom from censorship on the internet as provided for under the preamble of the act.

³²Section 509, Penal Code, states: "Whoever, intending to insult the modesty of any person, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen by such person, or intrudes upon the privacy of such person, shall be punished with imprisonment for a term which may extend to five years or with fine or with both (emphasis added)."

iv) Privacy and intimidation

In February 2009, the issue of privacy hit national headlines when pictures of a female politician were sent to a local daily and subsequently posted online. While the newspaper did not publish the pictures, its questioning and perceived bullying of the politician caused some outrage, and overall support was overwhelmingly in favour of the woman perceived to be a victim of an invasion of privacy. This was in contrast to the resignation of a male politician from the ruling coalition, who was video taped in a hotel room with his mistress a year earlier. At that time, there was little discussion of the right to privacy, despite the obvious violation of that right.

One of the blogs that posted the pictures of the politician was subsequently closed down, allegedly in relation to this incident and allegedly by Google. The blog reopened under another name, and asked "Why would Google restrict a blog for posting pictures of a politician posing with her legs open for her boyfriend? The pictures were taken by her boyfriend and allegedly send (sic) to newspapers by him." There is little in this perspective which allows that the boyfriend was abusing trust and access (it was uncertain whether he had permission to take the photographs, it certainly does not appear that she was posing) and that this is a form of violence against women, or that by publishing the photographs the blogger was complicit in this abuse.

Further, while all political parties of the political divide in Malaysia expressed outrage at what had happened with only a few individuals attempting to make political capital from it, it did not seem to spur action on the (much belated) enactment of a Data Protection Act. The Malaysian Bar Council organised a public forum entitled "Privacy: Does it exist in Malaysia? Is it time to legislate?" on 27 February 2009, in response to the public concerns raised by this incident.³³ I the forum, Sonya Liew of the Bar Council's Human Rights Committee called for a comprehensive privacy act, something which is presently lacking in the country. At the moment, privacy is only indirectly provided for in limited situations through the Penal Code (such as on outrage of modesty), CMA (prohibition of unlawful interception in digital communications) and the law of confidence. She state that a Data Protection Act in itself would not be sufficient to deal with the complexity and breadth of the issue since it only addresses specific kinds of data collected by the government or private sector, and notes that potential conflict may arise in relation to sharia law.³⁴ According to the Bar Council's report, a women's rights activist who participated at the forum also raised the point that there are potential conflicts between recognising the right to privacy and issues of domestic violence, an important reminder on the conceptualisation of "privacy" and what it entails. Although all speakers concurred that there needs to be a privacy act to deal with digital communications, thus far, the debate seems to have died down along with any clarity on follow up action.

³³Loy, The Malaysian Bar Council 11 March 2009

³⁴For instance, religious authorities are empowered to check and investigate individuals of opposite sex, one of whom is a Muslim, in situations of "close proximity" for the sharia criminal offence of "Khalwat". The Syariah Criminal Provisions Act (Federal Territories), Section 27 defines "khalwat" as: "Any man who is found together with one or more women, not being his wife or mahram; or any woman who is found together with one or more men, not being her husband or mahram, in any secluded place or in a house or room under circumstances which may give rise to suspicion that they were engaged in immoral acts shall be guilty for an offence and shall on conviction be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both."

It is also clear that invasions of privacy are not just a concern for public figures. According to the All Women's Action Society (AWAM) and Women's Aid Organisation (WAO), NGOs that provide direct services to survivors of VAW, there has been an increase in counselling calls by women, especially younger women, who stated that they are not able to leave a violent situation because their partner/ spouse has intimate video clips or photographs of them.

This raises interesting questions on the issue of privacy and VAW, especially as it takes VAW out of the home and into the public arena. Previously, home was considered a private space and it was hard to make domestic violence a crime. In Malaysia, this was demonstrated through the resistance among certain authorities, particularly religious authorities, that felt it infringed upon a husband's private life and his right to "discipline" his wife. Now however, it appears that privacy is critical for an individual to feel in control of their own life and spaces.

As yet, women's groups and civil society have not engaged in this issue in a concerted fashion, and work is needed to untangle issues of regulation, censorship and abuse in this context.

v) Anti-trafficking legislation and policy

Malaysia adopted an anti-trafficking law in 2007. Like the "marital rape" amendment, this also seems to be a response to the CEDAW committee's recommendation to the government.³⁵ However, the lack of political will in implementing the legislation have been part of the reason behind Malaysia's appearance on the United States' trafficking blacklist in 2009 (Department of State, USA 2009, p.50). One of the trends noted by NGOs has been an increase in the trafficking of tribal women, who join the list of refugees and Chinese women who are trafficked either into Malaysia or with Malaysia serving as an important transit point (Kuppusamy, Inter Press Service 7 October 2008).

The United States Trafficking in Persons report 2009 claims that immigration authorities collude with traffickers (Department of State, USA 2009, p.29). For example, Burmese refugees in Malaysia have claimed that the authorities turn them over directly to human traffickers, who sell the women into prostitution, with male refugees working on fishing boats in conditions of slavery (Zusman, Democratic Voice of Burma 2 October 2009). A United States Department of State report concluded: "As a regional economic leader approaching developed nation status, Malaysia has the resources and government infrastructure to do more in addressing trafficking in persons" (Kuppusamy, Inter Press Service 24 June 2009).

Positive developments in the law include provisions that make past sexual behaviour of those who have been trafficked irrelevant to prosecution of the traffickers and immunity against criminal prosecution, a problem trafficked persons previously faced as they were classed as undocumented or illegal migrant workers.

³⁵ Paragraph 24 of the CEDAW committee's concluding comments to the Malaysian government states, "The Committee urges the State party to consider ratifying the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children Supplementary to the United Nations Convention against Transnational Organized Crime and to intensify its efforts to combat all forms of trafficking in women and girls, including by enacting specific and comprehensive legislation on the phenomenon." (CEDAW/C/MYS/CO/2CEDAW Committee 2006)

In terms of the role of ICT in trafficking, Section 32 of the Anti-Trafficking in Persons Act 2007 contains specific provisions allowing enforcement officials access to computerised data, including access to passwords, encryption and decryption codes, software or hardware. This follows from Section 31 which allows for search and seizure without a warrant when the enforcement officer has "reasonable grounds" to think that the delay in getting a warrant would adversely affect the investigation or cause evidence to be tampered with, removed, damaged or destroyed. However, following international trends, there is little awareness in legislation or policy of the potential impact of the globalisation of communications on the practice of trafficking (Maltzahn 2005), and little research on whether this has had an effect on trafficked persons in (or in transit through) Malaysia.

Attention needs to be given in women's rights advocacy to the issue of trafficking to ensure that information gathering and exchange, particularly between governments and enforcement agencies, do not translate into erosion of personal and private data protection. This is similar to women's groups analysis of the potential impact of the newly introduced Section 106c in the Criminal Procedure Act, amended in 2004, which allows police officers to intercept, listen to and retain any communication and related devices if the Public Prosecutor considers it "likely to contain any information relating to the commission of a terrorism offence (emphasis added)." In the 2005 Malaysian CEDAW shadow report, women's groups noted that such powers should be vested in the court with appropriate checks and balances, and subjected to a higher burden of proof to ensure that they do not infringe upon an individual's right to privacy (NGO Shadow Report Group 2005, B(III), Annex 4).

At present, there is no specific legislation on data protection, although the Data Protection Bill has been in the pipeline for more than ten years. The current draft of the bill, ironically, is kept under the Official Secrets Act. Preliminary analysis however, seems to indicate that the new draft provides the government with greater power to be excluded from regulation that is intended to protect personal data (Jawahitha et al 2007, pp.732-742). In a heavily-surveilled country, it is critical that information and data collection, processing and exchange be held accountable to principles of accountability and transparency, for all parties involved, whether they be government, private corporations or individuals.

vi) Migrant domestic worker abuse

Recurring cases of sometimes horrific abuse of domestic workers have made the headlines repeatedly in Malaysia. At the time of this report, the most recent high-profile case is that of Indonesian Siti Hajar, which has led the Indonesian government to put a temporary ban on Indonesians migrating to Malaysia for domestic work. The issue has been receiving additional coverage since the late 1990s, however, it is rarely framed as an issue of violence against women or women's rights, but in the framework of labour rights. Within this framework, little space is given to underlying power imbalances. Instead, in an effort to provide balanced coverage, approximately equal space is given to the abuse of domestic workers and abuse by domestic workers, in particular theft, child abuse, "running away," "stealing" husbands and having boyfriends.

There is little analysis of how running away could be related to working conditions, that domestic migrant workers should have equal rights with local workers, which includes the right to organise for reasonable working hours and the ability to negotiate living and working conditions. There is some analysis of how migrant workers living in an employer's house are vulnerable, but, again, this is often framed in a superficially balanced fashion, with the vulnerability of employers also given a lot of space, as has been documented by the Women's Aid Organisation (Women's Aid Organisation undated b). A suggestion mooted in June 2009, for example, about legislating a single day off per week for domestic workers from Indonesia was generally met with outrage, with commentators defending the rights of employers and expressing concern that such a measure would lead to increased crime. There are approximately 380,000 migrant domestic workers in the country, who are categorised as "servants" under the Employment Act, thus excluded from basic protection such as limitations on working hours, compulsory rest days, annual, sick or maternity leave and paid public holidays (The Malaysian Bar Council 2008).

The 2005 Malaysian CEDAW shadow report comprehensively details the issues on migrant domestic abuse which exacerbate unequal power relations between employer and employee, and present barriers to reporting and access to legal justice in situations of abuse. These include immigration regulations that prohibit migrant domestic workers from changing employers and the right to gainful employment while they wait for their cases against abusive employers to be settled in court or in the labour department. Further, the report notes that measures to introduce a security bond of MYR 500 (USD 150) to be paid by employers to cover the costs of detention and deportation of migrant domestic workers who have left their employment situation "may result in employers imposing inhumane restrictions on the movement and communication of the domestic worker with others, based on the underlying preconception that foreign domestic workers are easily influenced and will be lured into vice or immoral activities should they have contact with the outside world".³⁶ Most migrant domestic workers live and work in the private residences of the employer. This means that their right to mobility and access to information and communication are almost entirely up to the whim of the employer. Informed by such negative and xenophobic responses, this leaves migrant domestic workers in acutely vulnerable positions.

Further, intermediary bodies such as employment agencies hold little accountability for the welfare and protection of migrant domestic workers. When abuse happens, the cost of attaining justice lies with the migrant domestic worker themselves vis-à-vis the restrictive immigration regulations, or the employer. According to Tenaganita, migrant domestic workers are often not informed by their employment agency on the particulars of their potential employer, such as name, address or contact details.³⁷ This means that they are potentially cut off from their existing support network such as family members, should abuse occur. Workers who ask for such details are considered to be "troublesome" by employment agencies, and as such, would opt for silence rather than jeopardise their opportunities for employment. With such little information at hand, migrant domestic workers also become more vulnerable to instances of trafficking. Tenaganita further

³⁶(NGO Shadow Report Group 2005, Paragraph 4, General Recommendation 19)

³⁷Input during the "Strengthening the use of ICT to combat VAW by women and girls" pre-consultation meeting, 14 September 2009.

stated that little information is publicly available or accessible on policies that affect migrant domestic workers, to the point where even related government agencies sometimes admit ignorance on policy changes.

The CEDAW shadow report notes that government response in addressing migrant domestic worker abuse is rife with lack of transparency (NGO Shadow Report Group 2005, Paragraph 4, General Recommendation 19). For example, there is no information on the members of the established Cabinet Committee on Foreign Workers, its mandate, frequency of meetings or any of its outcomes. There is also no published data on the efficacy, numbers of calls or types of advice given on the police hotline for migrant worker abuse. This makes it difficult to assess the efficacy and impact of government response.

It is clear that migrant domestic workers' right to information and to communicate is critical to greater transparency and accountability by all parties. In addition, their right to privacy is paramount to reduce their vulnerability to sexual abuse due to their working conditions. In this sense, the call for a standard employment contract to address many of the inequalities that migrant domestic workers face must also include providing migrant domestic workers with the right to, for example, having contact information about their employers prior to travel, and the right to make decisions about their communication channels and frequency without being subjected to constant surveillance, digitally or physically.³⁸

The processes and platforms of policy formulation, decision-making and outcomes must also be accessible by the public to enable active participation in this process. The eGovernment Multimedia Super Corridor flagship project, which aims to, amongst other things, "effectively and efficiently [deliver] services from the government to the people of Malaysia, enabling the government to become more responsive to the needs of its citizens" presents an opportunity for advocacy (MSC Malaysia undated a). However, this would necessitate a clearer direction of the e-government project to understand citizens in terms of public participation in democratic governance as opposed to mere "users" or "consumers" of government services, as it currently stands.³⁹

IV. ICT law and policy in Malaysia

a) Policy thrust and development

The Malaysian Government has attempted to situate the country at the forefront of the knowledge economy, both through investment in ICT infrastructure and research and through providing a supportive legislative environment. There are two main pillars of this policy, the Multimedia Super Corridor (MSC) in terms of infrastructure, and the Communications and Multimedia Act 1998 (CMA) in terms of the legislative environment. These in turn have been supported by numerous other initiatives. In terms of infrastructure, there have been initiatives (such the Pusat Internet Desa) to overcome the digital divide, the Smart School system and support for increasing wireless and broadband coverage through universal service provision. In terms of legislation, there are

³⁸This was one of the proposals strongly recommended by the Malaysian Bar Council in the recent public debate on migrant domestic workers' rights (The Malaysian Bar Council 2009). Rou

³⁹Reddick 2009, p.822

laws on computer crimes and digital signatures, and ongoing discussions about policy on privacy and copyright.

Less formally, the government has also been active in initiatives such as the Global Knowledge Partnership and has made stated commitments to free and open source software and research. In global ICT policy processes, the Malaysian government has played an active role in the World Summit on the Information Society (WSIS) and consistently located itself as a visible champion of ICT for development. The Ministry of Science, Technology and Innovation (MOSTI) hosted the inaugural meeting of the Global Alliance for ICT and Development (UN GAID) in 2006. Organised by the United Nations, UN GAID is one of the two main outcomes from the WSIS process that aims to facilitate multi-stakeholder dialogue in global ICT policy. It primarily focuses on ICT for development, including meeting the Millennium Development Goals. Dr. Maximus Johnity Ongkili, the minister of MOSTI, is a member of UN GAID steering committee (United Nations - Global Alliance for ICT and Development undated). In 2008, Malaysia hosted the World Congress on Information Technology (WCIT), a global ICT forum that facilitates exchange on policy and ideas between governments, key industry players and academia, in conjunction with the UN GAID Ministerial and High Level Meeting held at the same time.

This part of the paper will explore each of these facets of government action, and look at how the policy landscape has been shaped, that is, which actors have played an important role, and which actors have been absent from policy discussions.

The International Telecommunications Union identified three main underpinnings to Malaysia's multimedia policy. The first was the explicit creation of legislation that was pro-competition. The second was that it was technologically neutral in that it could apply to all network technologies, from wireless internet applications to analogue radio, mobile phones or potential future technological developments. The third was the aim to achieve universal service (Minges and Gray 2002).

The centrepiece of Malaysia's internet policy was, and remains, the Multimedia Super Corridor. Over 48 billion ringgit Malaysia (USD 14.24 billion) was invested in 750 square kilometres to create a capital-intensive multimedia hub designed to lead Malaysia into the information age. The MSC included the new administrative capital of Malaysia, Putrajaya, a cybercity" Cyberjaya and incorporated educational initiatives such as the successful Multimedia University (MMU). Technopreneurs were given incentives to relocate to the MSC such as exemptions from immigration restrictions and tax incentives, although these were often offset by the high cost of operating a business in this corridor. At the time of its inception, the MSC was heralded as a pioneering global initiative to propel Malaysia's status as a developing country to a fully developed nation by 2020 through a strong focus on ICT.⁴⁰

The buy-in from the private sector was critical to ensure success. As such, several industrial leaders, including Microsoft, IBM and other multinational companies, were asked to advise on how to create an enabling and innovative environment. They had a direct impact upon the design and principles behind the MSC as evidenced in the clause in the MSC Bill of Guarantees that there

⁴⁰Harris 1998

would be no censorship of the internet. This clause was important to counter Malaysia's reputation of strict state control on the free flow of information and expression, in order to interest multinational industry players to invest in the MSC. However, despite the avowed intention to tackle the digital divide and provide universal service, no civil society groups – including women's rights groups – were invited to provide similar input.

It is unclear if HAWA and NACIWID, the government agencies responsible for women's affairs at the time, were invited to participate in the decision-making and development of the MSC. If they were, it probably would have been through collaboration between the Ministry of Education and the Ministry of National Unity and Social Development in terms of plans for education and its role in fostering national unity (Ministry of Education 2002). The peripheral nature and substance of this participation can be seen through how ICT is prioritised in relation to women in national development plans, as a tool for spurring women's involvement in the economy, with emphasis placed on training, education and business skills. The implication of ICT on a range of women's rights issues and VAW is not part of the national ICT agenda.

This is not surprising given the fact that there is almost no representation of women among the lead actors and agencies responsible for ICT development in the country. MIMOS Berhad, the key body behind the development of MSC, does not list the Ministry of Women, Family and Community Development as one of its key partners in government.⁴¹ Likewise, there are no women sitting as commission members under the Malaysian Communications and Multimedia Commission (SKMM), either as representatives from the government or otherwise.⁴² The SKMM has broad powers in the communications and ICT sector, with a mandate of promoting and implementing the government's national policy objectives, and oversight of new regulatory frameworks. Their powers include providing advice to the minister on policy objectives and recommending legal reforms, enforcement of the CMA, the Postal Services Act 1991 (PSA), the Digital Signatures Act 1997 (DSA) and relevant subsidiary legislations, issuing licences, conducting investigations, developing standard practices and industry benchmarks, monitoring compliance and more.⁴³

There is also clear gender disparity in terms of decision-making positions in both the newly formed Ministry of Information, Communications and Culture, within which sits the SKMM, and MOSTI, which appears to be spearheading the research and development area of ICT for development.

⁴¹Or the previous Ministry of National Unity and Social Development where HAWA used to be located in (MIMOS undated) <http://www.mimos>. August 2009)

⁴²Currently, commission members representing the government are Dato' Kamaruddin Bin Siaraf (Secretary General of KPKK, previously Secretary General of the Ministry of Information), Dato' Dr Halim Man (Secretary General of the Ministry of Energy, Green Technology and Water) and Datuk Mohd Zain Mohd Dom (Secretary General of the Ministry of Domestic Trade and Consumer Affairs). Interestingly, the Secretary General of MOSTI – one of the key leading government ministries on ICT for Development – Datin Madinah Mohamad (who happens to be a woman) is not sitting on the commission. Non government representatives of the commission are mainly made up of key actors in the private sector, who are: Dato' Dr Gan Khuan Poh (Chairman of Lintramax (M) Sdn Bhd and Silver Bird Group Berhad), Tan Sri Datuk C. Rajandram (Executive Deputy Chairman of Rating Agency Malaysia Holdings Berhad), Datuk Dr. Abdul Samad bin Haji Alias (Fellow of the Institute of Chartered Accountants in Australia), Datuk Idris bin Abdullah (Senior Partner of Idris and Company Advocates) and Encik Mohamed Sharil Mohamed Tarmizi who is currently the Chief Operating Officer of commission (previously Executive Director and Head of Strategy in BinaFikir Sdn Bhd). Their bios can be found on the SKMM's website (Malaysian Communications and Multimedia Commission undated a).

⁴³The extent of their powers and functions can be found on the SKMM's website (Malaysian Communications and Multimedia Commission undated b).

Both ministers and deputy ministers in the respective ministries are men. However, it is notable that the positions of secretary general and both deputy secretary general posts (policy and science) in MOSTI are occupied by women.

The recent reconfiguration of the ministry is indicative of how the government sees the changing role of ICT in governance and nation building. Previous to this communications, including matters related to ICT, were under the jurisdiction of the Ministry of Energy, Water and Communications. This signals an understanding of ICT primarily as an issue of infrastructure, which coincides with the inception of ICT as the primary vehicle toward the nation's development in the 1990s, through the intensive establishment of the MSC. The preoccupation during that time was to ensure that Putrajaya, Cyberjaya and the MSC could be built with sufficient infrastructure to attract foreign investment, which in turn, enables it to become the platform for capital and technology exchange, critical to its ability to meet its vision of propelling the nation to a developed status in 2020.

When Mohd Najib Razak took over as prime minister in April 2009, he formed the Ministry of Information, Communications and Culture (KPKK) by combining the Ministry of Information and the Ministry of Unity, Culture, Arts and Heritage, and the sector of Communications from the Ministry of Energy, Water and Communications. The Ministry of Information in particular has been seen to play a key role in governance, with its inception linked to countering political propaganda by the "British and Japanese imperialists" and communism during the period around WWII and independence (Ministry of Information, Communications and Culture - Information Sector undated). In fact, it was headed by the first Prime Minister of Malaysia Tunku Abdul Rahman Putra Al-Haj during its inception. The ministry (or rather, its portfolio under the current configuration) continues to hold great influence in ensuring the free flow of information in the public domain, and importantly, in maintaining government control over public discourse. By integrating ICT together with information, as well as with culture and arts, ICT is no longer an apolitical issue of technical infrastructure. It is clear that the current government understands the critical role that ICT plays in affecting the constitution of the nation through information exchange, discourse proliferation and expression.

The role of the private sector in providing direct input to policy formulation in the area of ICT is noteworthy. WSIS and subsequent global policy processes have emphasised the "multi-stakeholder" approach in internet and ICT governance. This is partially due to the important role that the private sector and academia have played in the development of the internet and subsequent communications technologies. The Malaysian government appears to be adopting this model, as can be seen through the formation of the SKMM with representation from both government and non-government actors.

However, the relatively muted civil society participation in the Malaysian multi-stakeholder model is worrying. As can be seen through the explicitly commercialised nature of the CMA below, priorities are set through a capitalist framework instead of through public interest or rights. This will have an effect on issues related to freedom of information, access to knowledge and information, right to privacy and governance. Faced with competing interests and conflict, the

predominant framework of capitalism and commercialisation will prevail unless equal footing is given to civil society actors in negotiating appropriate approaches in legislation and policy.

Instead of being viewed as citizens or residents with rights, individuals are constructed as either actual or potential consumers. This is evident through the language of the Malaysian Communications and Multimedia Content Code, which hails its subjects as “consumers” with the “right to choose” products and services toward the goal of “enhancing their quality of life and work” in its preamble, as opposed to civil society members or individuals who have a material stake in the governance of ICT in the exercise of their fundamental human rights. Likewise, in the E-Government MSC flagship project launched to “lead the country into the Information Age,” improvement of governance through the internet is narrowly perceived as service delivery to users, as opposed to improving transparency, accountability and public participation in policy processes (MSC Malaysia undated a).

The influence of commercial frameworks is clear even in how government agencies responsible for ICT locate themselves. The MOSTI and KPKK websites disconcertingly introduce the ministries' configuration in corporate language, under headings such as “corporate profile” and “top management.” Although appearing to be innocuous, this has implication in terms of how accountability and duty is imagined. Yet, private corporations and the government have vastly different structures of governance and decision-making. The weight given to the private sector is something that women’s groups need to contend with in the engagement with ICT policy and decision-making processes. This means an assessment of the women’s movement's relationship thus far with the private sector, identifying key partners who can be allies in the process, and to some extent, rethinking advocacy strategies and opportunities.

With ICT and technology sitting at the forefront of the nation’s plan and vision for development, and its important location in governance with impact on a broad range of rights, this lack of visible, direct and equal engagement from both government and civil society actors in the advancement of women’s rights deserves urgent attention. At minimum, there needs to be a response to the current gap of understanding and analysing the multiple implications of ICT on women’s diverse lives and realities.

b) Cyber-laws and issues

i) Access to infrastructure and content

One of the major developments with the Communications and Multimedia Act was its explicitly commercial nature. As the International Telecommunication Union (ITU) notes in a case study, the CMA has underpinned by a logic which is “pro-competition (it is the first Malaysian Act to directly address competition)” (Minges and Gray 2002). Chapter Two of Part VI of the Act, “General Competition Practices” establishes broad guidelines for action by the commission, for example a prohibition on anti-competitive conduct and restrictions on licensees in a “dominant position.” In principle, this provides for greater diversification in ownership of information channelling platforms, which, given the heavily regulated context of mass media in the country, potentially could enable greater transparency and accountability in governance. However, without specific

guidelines on what constitutes a monopoly or “dominant player” these have not had any real impact on the provision of services. For example, since the implementation of the act, the media conglomerate Media Prima has consolidated its hold over free-to-air television broadcasting, adding to its already extensive print and radio empire. No action has been taken to ensure greater diversity of ownership in analogue television broadcasting.

Since the institution of the act, the commission first came up with a paper determining what was meant by a “dominant position.” This seemed to obscure more than it clarified. However, a more comprehensive report following a public inquiry was conducted in December 2004, which provided much-needed clarification on what constituted a “dominant position” and investigated whether there was a dominant player in selected markets finding that Telekom Malaysia was in a dominant position in various sectors. It did not, however, investigate the potential dominance of television and radio networks (Malaysian Communications and Multimedia Commission 2004). The paper concluded that a determination of dominance would be issued, which occurred on 23 December 2004. It remains unclear what further action was taken.

These guidelines have not been implemented in the arguably more important content provision sector, particularly for radio and television. Further, this emphasis on the commercial and competitive aspects of communication services detracts from the public service component. In contrast to legislation such as the Thai Constitution of 1997, there is no provision to ensure community control of the airwaves. Neither is there any provision to ensure that the commission is in any way representative of society, or that it takes minority or marginalised interests into account in the awarding of licenses. The power to award, or choose not to award, a license rests solely in the hands of the minister. While the CMA improves on earlier legislation by providing an appeals process, it is unclear that public interest grounds would be recognised in arguing for or against the approval of a license. It also includes provision for class licenses, which would make it possible to obtain low-cost licenses for community radio stations, again an improvement on earlier legislation.

Public interest in the act is largely present in the form of protection from certain types of content, consumer protection and in universal service provision. There are provisions in the aims of the act on overcoming the digital divide, except in terms of universal service provision, which is dealt with in Chapter Five of Part VIII. The first clause in this chapter talks about both geographically under-served communities and sections of the community that are under-served “groups within the community.” The obligation to provide services to these groups or areas is watered down in the next section, which subjects universal service provision to the commercial viability of providing facilities and other mitigating factors. As it is unlikely that commercial operators would neglect a commercially viable market, this appears to nullify commitments to universal service provision.

ii) Content regulation

The CMA also allows for voluntary industry self-regulation. The Malaysian Communications and Multimedia Commission (SKMM) is empowered to create content guidelines or to facilitate the creation of voluntary industry guidelines on content or other regulatory matters. The context is the overarching aim to lead the industry to self-regulation. This appears to follow the European Union

model of industry self-regulation on matters related to content regulation on the internet, with a primary rationale being its capacity to ensure that innovation is not stifled through state-led interventions. However, the leeway given to industry to self-regulate is quite narrow. First, any voluntary codes have to be approved by the commission. In the event that the minister is unhappy with voluntary codes devised by industry, codes can be drawn up and imposed. These codes can also be made mandatory if the minister decides that this is necessary. As yet, this has not happened, and two voluntary codes have been drawn up. The first is the General Consumer Code, which deals with issues such as advertising of communications services, billing and sales. It is interesting to note that the CMA "may be the first piece of legislation in Malaysia which makes it a criminal offence not to give good customer service" (Surin 2004). The second, the Malaysian Communications and Multimedia Content Code, has more impact on the issue of violence against women and gender parity (The Communications and Multimedia Content Forum 2004).⁴⁴

It should be recognised that despite the provisions on lack of censorship within the Malaysian "cyberlaws," these laws have consistently watered down guarantees of freedom of expression online from the initial guarantees in the Multimedia Super Corridor Bill of Guarantees.⁴⁵ Further, the laws operate in an environment of pervasive government control of content. Legislation such as the Printing Presses and Publications Act 1984, the Sedition Act 1948 and the Internal Security Act 1960 have led to a culture of self-censorship and intimidation, ranging from the arrest of journalists for "their own protection," to the closure of newspapers and magazines, sometimes for unspecified offences. While the cyberlaws run contrary to this trend, as yet, there is no evidence that the more liberating cyberlaws are taking precedence despite consistent government rhetoric under both the current and previous Prime Ministers of increased media freedom.

This has been increasingly evident in the early months of 2009, with prosecutions under various pieces of legislation, including the CMA as mentioned in the above section, for the publication of material online.

The SKMM, together with players from industry, academics and selected prominent online individuals, developed the Communication and Multimedia Content Forum (CMCF) to provide a framework for voluntary self-regulation, and developed a Content Code to be applied by those who submit to this framework. There are no women represented in the council's executive committee, but it is interesting to note that the Heads of the Civic Groups Category within the forum are not only women, but are representative from the National Council of Women's Organisations (NCWO), who initiated the Malaysian NGO CEDAW shadow report in 2003 (The Communications and Multimedia Content Forum undated). It is unclear if NCWO actively sought the input from women's groups in its work at the CMCF, or in the development of the Content Code.

In many ways, the content guidelines are progressive. For example, section 2.9 reads that those subscribing to the Code should:

⁴⁴<http://www.cmcf.org.my/code.asp> (last accessed 8 August 2009)

⁴⁵Point 7 of the Bill of Guarantees states simply, "Ensure no internet censorship" (MSC Malaysia undated b).ust 20<http://www.mscomalaysia09>

Ensure, to the best of their ability, that their Content contains no abusive or discriminatory material or comment on matters of, but not limited to, race, religion, culture, ethnicity, national origin, gender, age, marital status, socio economic status, political persuasion, educational background, geographic location, sexual orientation or physical or mental ability, acknowledging that every person has a right to full and equal recognition and to enjoy certain fundamental rights and freedoms as contained in the Federal Constitution and other relevant statutes.

The reference to sexual orientation is particularly noteworthy in a country that prosecutes same-sex relations.

Further, in the discussion on promoting family values, section 9.1 notes that “content should reflect an awareness of the need to avoid and overcome biased portrayals on the basis of gender. Women and men should be portrayed as equals both economically and emotionally, and in both public and private spheres.” While section 9.2 and particularly 9.3 could be read as privileging heterosexuality and the nuclear family, the lack of definition of “family values” makes this open to interpretation. In particular through the explicit mention of men and women as “equal beneficiaries of family or single-person life (emphasis added)” in section 9.2, which appears to be a broader conceptualisation of “family” than that of the national development plans for example.

The code also addresses women in advertisements, the impact of advertising and content on children, and emphasises the need to balance freedom of expression with the potential harm that could be done to marginalised groups in society. Section 4.3(iii) of the code that deals with violence explicitly prohibits graphic representations of sexual violence, including rape, non-consensual sex, or “violent sexual behaviour.” It remains to be seen if sexual content related to sado-masochism, which is consensual albeit construable as violent, will be allowed. Sections 2 and 3 of the code also spell out prohibition on “indecent” and “obscene” content. “Indecent” content includes sex and nudity, while “obscene” is defined as content that “gives rise to a feeling of disgust by reason if its lewd portrayal and is essentially offensive to one’s prevailing notion of decency and modesty.” This includes pornography or explicit sex (under a reasonable person test), child pornography or sexually degrading content. Content for children, defined as under the age of 14 (as opposed to under 18 in the Child Act 2001), calls for caution when depicting domestic violence. The approach in this section – and arguably in all sections that call for prohibition or the exercise of care in potentially “dangerous” content – unfortunately assumes a simplistic cause-and-effect understanding of audience engagement. In its rationale, audiences are framed as passive subjects, easily susceptible to influence and prone to imitation. As can be seen, the code does address some of the issues around representation of women that have been raised by women’s groups, such as equality and non-degrading content, but at the same time, also approaches this from a protectionist rather than a rights-based framework.

It should be noted that this is a voluntary code, and there is no evidence that it has been used to argue for or against particular content. This is particularly stark in the area of advertising, given that all the major broadcasters have signed on to follow the code. There is little awareness, even among human and women’s rights advocates, of the Content Code, and thus little public or institutional pressure on large media corporations or forum members to implement the guidelines.

Instead, it appears that private companies are implementing their own policies and guidelines to meet the different concerns and potential liability that they might face. For example, Exabytes, a web-hosting company, changed their policy in May 2008 to prohibit "Adult content" on their server. This included "websites related to gay and lesbian (sic)" conflating pornographic content with any type of content produced by, about or for an already peripheral and discriminated section of society.⁴⁶ However, after receiving correspondence in protest of this policy, the explicit mention of "gay and lesbian" was removed, and replaced with the company's overriding right to decide what falls under this category. This situation augments the capacity and power of decision making to the private sector, leaving ordinary users with little recourse except to try and argue their case through a voluntary Content Code that indirectly prohibits content that discriminates on the grounds of sexual orientation. Again, this would depend on who sits on the CMCF's Executive Council and Complaints Bureau. Here, the presence of representatives from NCWO in this forum presents an opportunity for women's rights groups to engage with this process.

The KPKK Minister, Rais Yatim, mooted in August 2009 the intention of the government to implement internet filtering to reduce "Malaysian children's exposure to online pornography" (The Star 7 August 2009). This proposal was met with alarm by content producers, in particular, alternative media providers and bloggers who relied on online platforms for publishing. In a context where various existing laws have already been used to control and regulate the flow of information and communication online, this proposal and its rationale needs to be interrogated critically. Women's groups, especially those who have worked on issues of child sexual abuse and incest, have not yet vocalised their perspective to inform this debate. The government is making moralistic and assertive statements without substantiating their claims of young people's consumption of online pornography, and how this actually constitutes harm. Vocal civil society actors are responding by citing the importance of online spaces for freedom of expression, but without directly engaging with this issue of potentially harmful content to young people. What is the value of the internet in the exercise of young people's rights, including their sexual rights? How is this especially important in the context of accessing information when the young person is in an abusive situation, such as a survivor of incest or child sexual abuse? On the other hand, what is the actual harm that they may be facing online? What different forms of strategies can be taken to address this harm, without compromising the competing rights to information and expression enabled by the internet – including those which are critical to the advancement of women's rights – and without relocating and augmenting decision-making powers either to the state or the private sector? It is also noteworthy that most content filtering software is produced in developed countries, where actual keywords and its mechanism of filtering are considered trade secrets.

iii) Intellectual property rights

The other pieces of legislation that form part of Malaysia's "cyber-laws" are primarily targeted at economic crimes and provisions to ensure digital security for business transactions, for example the Digital Signatures Act 1997, the Copyright (Amendment) Act 1997 and the Computer Crimes

⁴⁶A copy of an email by Exabytes that details this policy is reproduced in a blog that followed the protest by various individuals about the change in policy (Lainie, Lainie-Artworld Addict 25 April 2008).

Act 1997. Of these, the one with greatest implications for gender relations and violence against women is the Copyright (Amendment) Act 1997. Legislation on copyright in Malaysia tends to be ignored except on occasional high-profile raids on software and video pirates. These appear to make little difference to the widespread availability of pirated goods. Likewise, despite legislation and rhetoric on clamping down on pornography, most of the outlets selling pirated videos stock a wide range of pornography, primarily aimed at the heterosexual male market. There is undoubtedly a large intersection between the two industries in Malaysia.

Other relevant aspects of copyright legislation are that it contains extensive provisions for public interest use of copyrighted materials, particularly in terms of academic and non-profit use. The amendments of 1997 were designed to extend copyright to digital materials and to bring Malaysian legislation into line with international standards. Missing from this copyright legislation is recognition for traditional and indigenous knowledge with appropriate flexibility of the copyright regime to incorporate non-Western forms of knowledge. In 2006, under the auspices of the Multimedia Development Corporation (MDEC), a Malaysian Creative Commons license was launched, following public consultations and with comments from the public being incorporated into the final licence. However, as with Creative Commons licences internationally, there was no attempt to incorporate a licence that included communal rights to knowledge.

iv) Data protection and privacy

Also missing from the current array of legislation is anything on data protection or privacy. There has been discussion of a data protection act, but there are no timelines on when this can be expected. While it appears that the private sector has been consulted on the proposal, no civil society groups appear to have been consulted. For almost a decade, there has been regular information in the media, generally in the business pages, that such a bill is being drafted. As mentioned earlier, it has not yet seen the light of day with the second draft of the bill made in 2001 still being kept under the Official Secrets Act

The bill is being drafted in a manner consistent with the business-first priorities of the CMA and other cyber laws. It has been promoted and directed primarily at business, rather than looking at safeguarding the privacy of individuals. According to a 2003 report by Privacy International, the bill's delay has been primarily due to exemptions requested by business (Privacy International 2003).

The absence of legislation has created a situation where privacy protection is non-existent. For example, one mobile service provider offered the option of tracking another mobile phone. While the advertising was directed at parents, it was unclear whether the permission of the party being tracked was required, and implicit in the advertisement was the idea that it was not. This has obvious repercussions for women who may be subject to harassment and stalking, domestic violence victims and even the privacy of individuals from telephony companies themselves.

c) Legislation affecting freedom of expression used to regulate ICT⁴⁷

The Malaysian Constitution guarantees freedom of expression under Article 10. However, in practice, freedom of expression has been under consistent attack, particularly since the late 1980s

The Printing Presses and Publications Act 1984 (PPPA) is the main piece of legislation governing the print media, which includes newspapers, magazines and has recently been invoked against leaflets.⁴⁸ The law requires all newspapers and printing presses to obtain an annual publishing license.

Section 3 of the Act gives the Minister of Internal Security absolute discretion to grant a license and absolute discretion to refuse any application for a license. The license can be revoked or suspended at any time, and licenses can be given for a limited period.⁴⁹ Practice has been for a permit to be given annually, however the ministry has delayed giving licences to selected publications since 2005. While the publications, apparently with informal Ministry approval, have continued publishing, this has been in contravention of the law.⁵⁰

In addition, the minister has absolute discretion to determine the fate of presses and publications, with decisions not subject to judicial review. Under Section 13A, courts are cannot question ministerial decisions on any grounds whatsoever.

The possible reasons for a ban are extensive, but ill-defined:

Any publication which he is satisfied contains any article, caricature, photograph, report, notes, writing, sound, music, statement or any other thing which is likely to be prejudiced to, public order, morality, security, the relationship with any foreign country or government, or ,which is likely to alarm public opinion, or which is likely to contrary to any law or is otherwise prejudicial or is likely prejudicial to public interest or national interest.⁵¹

In granting a license, the minister may impose conditions such as insisting upon a deposit. The deposit may be forfeited if an offence under the PPPA is committed.⁵²

Amendments from 1984 also stipulate that the minister has the discretion to define offences under the category of publishing malicious "false news." Action can be taken against any presses or publications if their writings are defined as not taking "reasonable measures" to verify the truth of the news. Violation of the licensing requirement is a criminal offence for which individuals can be imprisoned for up to three years or fined up to 20,000 Ringgit or both.⁵³

⁴⁷Much of this section is drawn from a section of an earlier publication edited by one of the authors (Randhawa et al 2005).

⁴⁸A raid on the opposition Democratic Action Party headquarters on 23 May 2009 is believed to be in connection with leaflets distributed at a rally earlier. see eg, foxample Ong, A., Polikini.com, 23 May 2009.

⁴⁹Printing Presses and Publications Act 1984 (Act 301) as published by International Law Book Services as at 20th October 2001 (referred to as Printing Presses and Publications Act 1984), p3

⁵⁰The Centre for Independent Journalism, Malaysia was informed of the problem with regards to The Sun newspaper and others.

⁵¹ Printing Presses and Publications Act, Section 9(1), p8

⁵²Ibid, Section 10, p9

⁵³Ibid, Section 8, P7-8

The PPPA had been invoked several times, most recently on the eve of three crucial by-elections held in April 2009, that were taking place shortly after a handover of power to current Malaysian Prime Minister Najib Razak. Opposition newspapers Suara Keadilan and Harakah were both suspended. They were not told how they had contravened the act, or even if they had contravened the act.⁵⁴ Their licences were reinstated after the handover of power, before the by-elections took place. In February 2009, police confiscated copies of the opposition papers on the grounds that they were contravening the conditions of their licences, which state they may only be sold to party members (Centre for Independent Journalism 12 February 2009). It is not just the opposition parties that face threats. In September 2008, English-language daily *The Sun*, Chinese-language daily *Sin Chew Jit Poh*, and *Suara Keadilan* were all given letters by the ministry asking them to provide reasons why their licences should not be revoked, following their coverage of various political issues. The papers were given a week to respond (Centre for Independent Journalism et al 12 September 2008). According to figures released in parliament, the use of these “show-cause” letters has increased since 2005.

Action has also been taken against foreign media. In 2005, the Chinese-language free daily *The Epoch Times* was banned, with the ministry citing its impact on bilateral relations with China as the reason (Centre for Independent Journalism 2 August 2005). In 2001, then Prime Minister Dr Mahathir Mohamad openly criticised *Asiaweek* for publishing an unflattering picture of him. In February 2002, the home ministry delayed the distribution of various international magazines – *Far Eastern Economic Review*, *Newsweek*, *The Economist* and *Time* – for “inaccurate and untrue reporting of the situation in Malaysia”.⁵⁵

The Act has also been invoked against social activists. In 1996, Irene Fernandez, the director of an organisation working for women and migrant workers’ rights, *Tenaganita*, went on trial under the PPPA for “maliciously publishing false news.” Fernandez was charged for her documentation of allegations of ill-treatment, sex abuse and denial of adequate medical care to migrant workers held as alleged illegal immigrants in detention camps. She was found guilty and received a twelve month sentence on 16 October 2003, but eventually won an appeal on 26 November 2008 (Centre for Independent Journalism 26 November 2008).

Despite the concentration of power in the executive, ministers have still stated that the act needs strengthening. In April 2001, Dr Mahathir said the government may amend existing media laws to make them more relevant and effective. According to him, the amendment was necessary to curb the spread of lies in the high-tech information world (*The Star* 17 April 2001).

Another much-used piece of legislation is the Sedition Act 1948. The act has a very wide definition of sedition and places wide limitations on freedom of expression, especially regarding supposedly sensitive political issues.

Under the act, those who commit an offence can be fined up to MYR 5,000 (USD 1,500) and/or imprisoned up to three years. A second offence carries a sentence of up to five years’ imprisonment.

⁵⁴Personal correspondence with *Suara Keadilan* editor.

⁵⁵*The Star* 28 February 2002

Under Section 3(1), it is seditious:

- to bring into hatred or contempt or to excite disaffection against any Ruler or government.
- to seek alteration other than by lawful means of any matter by law established.
- to bring hatred or contempt the administration of justice in the country
- to raise discontent or disaffection amongst the subjects
- to promote ill-will and hostility between races or classes
- to question the provisions of the Constitution dealing with language, citizenship, the special privileges of the Malays and of the natives of Sabah and Sarawak and the sovereignty of the Rulers.⁵⁶

Section 4(1) of the act covers preparations for an act with "a seditious tendency." It also covers speech and the printing, publishing, selling (or offering for sale), distribution, reproduction or importation of seditious materials. In a briefing session with journalists, human rights lawyer Sivarasa Rasiyah pointed out that the burden of proof lay with the person who has in their possession articles deemed seditious.⁵⁷

In addition, under the act, members of parliament have had their parliamentary immunity suspended.

Historically, the Sedition Act has been invoked against those critical of the government. Over the years, many have been charged and found guilty. Academic and electoral reform activist Wong Chin Huat was arrested on 5 May 2009 and held in remand for three days, for allegedly seditious remarks made during a press conference where he called upon people to wear black to demonstrate their opposition to a controversial change of power in the northern state of Perak (Centre for Independent Journalism 6 May 2009). At the time of writing, he had not been charged. Blogger and news site editor Petra Kamaruddin has been charged with sedition. He was arrested on 6 May 2008. He was subsequently released, then arrested under the Internal Security Act (see below) and is believed to have fled the country prior to being charged in court. At the time of his arrest for sedition, businessman Syed Akbar Ali was also charged for authoring a post on Petra Kamaruddin's website. Both cases are related to allegations that there is a connection between current Prime Minister Najib Razak and the death of a Mongolian translator, Altantuya Shaariibuu (Hong, The Straits Times (Singapore) 7 May 2008).

In another case, then-opposition Member of Parliament Lim Guan Eng was found guilty under the Sedition Act and the PPPA in April 1998 and jailed for 18 months on each charge, to run concurrently. Lim was charged for "maliciously publishing false news" in a pamphlet entitled *Kisah Benar* (True Story), containing, among others, the words "mangsa dipenjarakan" (victim jailed) in reference to a teenage girl said to have been raped by the former Malacca Chief Minister Rahim Thamby Chik (Faruqui et al 1998, p.37). Guan Eng was thus disqualified from parliament. In August 1998, Amnesty International declared Guan Eng a prisoner of conscience and called for his immediate and unconditional release. He served his jail sentence following the Federal Court's

⁵⁶Sedition Act 1948 (Act 15), published by International Law Book Series, as at 20 March 2001, p4.

⁵⁷Following the Malaysiakini raid in January 2003.

decision to uphold his conviction and sentence. He was released after serving one year in jail. He was unable to stand in the 2004 elections due to the conviction.

Opposition leader Anwar Ibrahim's lead counsel Karpal Singh, was arrested and charged under the act for statements made during trial. He told the court that Anwar might have been poisoned, and that he suspected people in authority were responsible.

A third important piece of legislation is the Official Secrets Act 1972, which carries a maximum penalty of life imprisonment, as well as significant lesser penalties for actions associated with the wrongful collection, possession or communication of official information.

Any public officer can declare any material an official secret, a decision that cannot be questioned in court. The act allows for arrest and detention without a warrant, and substantially reverses the burden of proof from the prosecution to the defendant (Human Rights Watch 1998).

It states that "until the contrary is proven", any of the activities proscribed under the act will be presumed to have been undertaken "for a purpose prejudicial to the safety or interests of Malaysia."⁵⁸

The most recent arrest was that of blogger Nathaniel Tan, who was arrested under the Official Secrets Act on 13 July 2007 and held for four days, initially being denied access to lawyers (Centre for Independent Journalism 18 July 2007). He has not yet been charged.

These pieces of legislation are supplemented by others, prominent among them the Internal Security Act 1960. This act allows for indefinite detention without trial and has been used against political dissidents. In September 2008, it was used to detain journalist Tan Hoon Cheng. Home Minister Syed Hamid Albar was quoted by local sources as saying that she had been arrested for her own protection as she was the first journalist to report on racist remarks made by an United Malays National Organisation leader (My Sin Chew.com 16 September 2008). The ISA has also been used against bloggers, and those believed by the authorities to be "spreading rumours".

V. Issues and recommendations

a) "Family" and women's rights

It is clear that current national policy prioritises the idea and role of the family. This has implications for how the women's movement conceptualises women's rights in advocacy. There is an urgent need to articulate what constitutes "family" within the framework of women's rights, in a way that recognises women's multiple roles without compromising their rights as individuals.

It is important to politicise the idea of "family" from feminist analysis to, amongst other things:

- Broaden the category beyond the normative heterosexual nuclear family. While there is recognition for female-headed households such as single-mothers, this needs to be advocated from the basis of equal rights as opposed to need. This is to ensure that the

⁵⁸Official Secrets Act, 1972

plethora of women's rights are addressed in this instance, as opposed to only service or aid-oriented responses by government or civil society.

- Frame advocacy on women's rights in the family as an issue of equal citizenship and rights, so that it does not become relegated to a "soft" issue status, or one that affects only women.
- Forward women's empowerment, subjective agency and capacity to make decisions about her own life and body as the starting point of advocacy.
- Disentangle public morality from issues related to the family, to ensure that women's rights do not become subsumed as the rationale for protectionist measures and intervention.

There is a need to reprioritise VAW on the national agenda, not as a women's issue, but as a matter of national concern where the government, private sector, communities and individuals have a duty and obligation to eliminate VAW. Given the prioritisation of economic development in terms of both women's rights and ICT policy, it would be both strategic and valuable to articulate a gendered economic analysis of VAW, and an analysis on the dimensions of VAW to economic development.

b) Communication rights and ICT in relation to VAW

Deeper knowledge needs to be built around how today's context of communication, spaces and technology affect how women experience forms of violence. This is to enable better understanding on the realities of VAW that women are facing in our diversity, to build capacity in responding both in terms of providing direct services to survivors, as well as in policy and legislative advocacy.

Some of the issues surfaced thus far include:

i) Privacy and surveillance

One of the areas that needs to be debated, discussed and defined as an issue for the women's movement is the right to privacy. There is an urgent need for feminists to participate in the construction of legislation on privacy, whether through a data protection act or a privacy act. Unfortunately, despite the perceived need for reform in this area, both resources and the manner in which ICT has been framed as a technological rather than rights-based arena constrain the participation of women's rights groups.⁵⁹ Bearing in mind lessons from VAW, especially with regards to construction of the private/public in relation to domestic violence and incest legislation, how can women's rights groups conceptualise the right to privacy in today's context?

Embodiment and harm is now inclusive of personal data created, disseminated, archived and "owned" by a number of actors including individuals, private sector and government. How can women's rights groups demand for the right to privacy that also includes control and ownership over personal data, as part of our construction of the "Self?" As yet, there has been little debate on how the right to privacy affects domestic violence, and vice-versa. Debates around consent and sexual violence must also include consent over how personal data will be used, as disregard for

⁵⁹In this context, it is interesting to note how difficult it was to find women's rights activists who felt competent to be interviewed for this paper. A common response was that they were not ICT literate and therefore felt that they were unable to comment.

such consent can constitute harm as evidenced by cases of online sexual harassment, blackmail and intimidation through private photographs. In other words, how will the inclusion of women's rights and feminist perspectives in debates around privacy and advocacy for the data protection act move the discourse from commercialised frameworks to the framework of rights?

ii) Censorship, right to information and expression

In a context where public spaces for expression, information exchange and creation are strictly regulated, how do women's rights groups value ICT in the advancement of women's rights? Are ICTs primarily tools, or do they also constitute important political spaces and agendas that need to be defined and defended with women's priorities and realities in mind? This is especially important given that arguments which feature women's bodies and sexualities are often used to rationalise the regulation and narrowing of public discourse.

ICT and its accompanying digital spaces such as forums, mailing lists, social networking groups, SMS, digital audio broadcast channels and video sharing platforms have become important for the workings of democracy in the country today. Such spaces represent an alternative paradigm for imagining public participation, a method to circumvent regulation and control in other forms of public institutions of information and communication, and a powerful channel for affecting and shaping discourse on important public issues. This is clearly recognised by the government, which is currently attempting to wrest back control of the internet through the CMA and other legislation that empower the state to monitor, regulate and retain what is being done and exchanged on communications platforms. The recent proposal on installing filtering software on the internet backbone justified through a protectionist (and patriarchal) framework needs to be viewed with scepticism and engagement by the women's movement is necessary to ensure that any intervention be from the principles of rights.

This is also important in order to safeguard issues of women's representation on media – a critical issue on the agenda of women's movements explicitly covered under Section J of the Beijing Platform for Action, and Article 5 of CEDAW – bearing in mind its shifts and changes due to the proliferation of content creators and disseminators enabled by emerging technologies. Forwarding the audience's capacity to interpret, assess and make decisions around content is also important to ensure that simplistic (and moralistic) analyses on the susceptibility of audiences to "dangerous content" are dispelled. This is to ensure that the women are able to retain ownership and control over the public domain where information and knowledge are created, disseminated and exchanged.

iii) Public participation in democratic governance

Both the government and NGO CEDAW shadow reports note the importance of comprehensive mechanisms to monitor the prevalence of VAW, analyse emerging trends and assess and evaluate the impact of various state and non-state interventions. Further, as surfaced through examining issues of violence against women in migration, access to information and decision-making processes, including bodies and individuals involved and the outcome of policies at various levels,

is seen as critical for effective advocacy on both participating in formulation and monitoring effective implementation.

ICT can play a valuable role in facilitating the documentation and dissemination of data to civil society, and also for effective communication within government bodies. With the multi-billion Ringgit investment in the Multimedia Super Corridor, the e-Government project has a duty not just to improve government services, but to improve access to mechanisms and platforms for public participation, toward greater transparency and accountability in governance. This includes taking adequate measures and steps in responding to discrimination on the basis of gender and to take effective measures in countering VAW as one of the clearly-stated commitments under the Federal Constitution and the ratification of CEDAW. How can women's rights organisations advocate for a national ICT agenda that understands development not just in economic terms, but inclusive of democratic participation and access to rights, justice and redress? There is an urgent need to use a gender and feminist lens in understanding the role of ICT and communication rights in this area, and to reposition women not just as users, learners or consumers or technology, but as decision-makers in how it is being developed and envisaged in the national agenda.

iv) Competing jurisdiction and public morality

Tensions between the sharia law and federal legislative system requires careful consideration in advancing legislative reforms and recommendations to address VAW, as can be seen through the way in which passing of the Domestic Violence Act and amendment to the Penal Code to include "marital rape" have played out. With the emphasis on women's role in the family and sharia law's jurisdiction over "personal laws," there is a need to articulate women's rights to privacy, sexuality, bodily integrity and security as inalienable and fundamental rights that are coherent with religious principles of justice and equality. In the same vein, to analyse and define culture and morality as issues which are not state-led, but defined collectively and continuously by the diverse populace of the nation. This is especially important with the current prioritisation and close linkage placed between communication, technology and culture by the government.

Culture and morality often become the definitive frameworks in which women's bodies are regulated to lay claim over national boundaries. This is especially so in the Malaysian context of party politics where political principles and ideologies are differentiated by race, and concomitantly, religion. In some ways, ICT has pushed private lives of government officials into the public space, and primarily through the discourse of sexuality and morality. This discourse is in urgent need of a clear and vociferous shift and redefinition through the perspective of women's rights and feminism. The women's movement's timely engagement with the issue of sexual rights is critical in this regard, and the effect of technology on this dimension needs to be included in the debate.

v) Advocacy and allies

The government appears to be responsive to international commitments. CEDAW and, to some extent, the Beijing Platform for Action remain as useful platforms to hold the government accountable to addressing gender discrimination and VAW. The attention given to ICT for

development in international arenas, particularly through the UN GAID, toward meeting the Millennium Development Goals as well as recent developments in the ASEAN Regional Mechanism for Human Rights, is also useful in this regard. These commitments are persuasive advocacy opportunities for women's rights groups to engage with to hold the government accountable in the formulation of appropriate policies in addressing VAW, by harnessing the transformative potentials of ICT and communication rights. However, greater knowledge and capacity are important for women's rights advocates to better and more effectively engage with these platforms, especially in the areas of the interconnection between ICT and VAW, ICT policy processes and frameworks and how they impact the advancement of women's rights (beyond economic terms) and to some extent, how technology works.

The visibly strong and influential role of the private sector in the governance model of ICT presents an interesting challenge and opportunity for women's rights groups in advocating for change. Key actors within the private sector can be new and potentially powerful allies in the advocacy to end VAW, for example, mobile telephony operators. However, they will need to better understand the gendered impact of their services. For example, the "friend finder" service offered by Maxis may be potentially used by abusive partners in domestic violence situations to control the mobility of their partners and given the unequal power relations in such situations, the abused party may not have any choice but to give "permission" to be tracked. Policies and mechanisms (for example, policy on confidentiality and data protection) will be meaningless without accompanying processes to ensure that no-third party such as employees of the company can access such data without express and explicit consent. How can women's rights groups work with the private sector as allies in policy advocacy, or expand the terms of current partnerships from awareness raising and/or financial sustainability, to joint advocacy for policy reform? How can lessons learned from existing or past partnerships support this endeavour?

The Malaysian Communications and Multimedia Commission and the National Council of Women's Organisations are key civil society representatives in the Communications and Multimedia Content and Consumer Forums. They are key allies in engaging with the implementation and future directions of the national ICT policy agenda in the effort to ensure that ICT and communication platforms and development work toward the advancement of women's rights in cognisance of their potential harm to women. Civil society actors such as internet content producers (bloggers, alternative media providers, etc.) and communication and media rights advocates are also key partners in this advocacy, to ensure that the struggle for the realisation of the right to information and expression integrates and appreciates women's realities and rights within their analysis of issue and impact.

VI. Key stakeholders

a) State

1. Ministry of Women, Family and Community Development

The ministry is presently led by Dato' Seri Shahrizat Abdul Jalil, responsible for promoting women's role (together with the family and community) in the nation's development. It is

responsible for development of projects and activities and in the implementation of the National Policy for Women.

2. Ministry of Information, Communications and Culture

The ministry responsible for overseeing the SKMM, presently headed by Rais Yatim, which replaced the Ministry of Energy, Water and Communications following the 2008 general elections. While this could herald a move to seeing communications in a different light from the obvious emphasis on infrastructure in the previous ministry, it remains to be seen how this will be implemented in practice. Among enunciated policies on the website are universal service provision and narrowing the digital divide.

3. Ministry of Education

The Ministry of Education, headed by Hishammudin Hussein, has been the lead ministry in implementing policies such as the Smart School initiative, creating space for ICT-related subjects at all levels of the education system and helping to establish new public universities with a focus on ICT, such as the well-regarded Multimedia University (MMU).

4. Ministry of Science, Technology and Innovation

This ministry plays a key role in the Malaysian government's international ICT for development processes, including hosting the UN GAID in 2006, and the High Level Inter-Ministerial meeting in 2008. In particular, it forwards research and development in ICT. It is headed by Maximus Johnity Ongkili.

b) Multi-stakeholder platforms

1. Malaysian Communications and Multimedia Commission

As noted above, the SKMM is a government body established by statute to oversee the regulation of networked services, which currently covers television, radio and internet networks. The commission is directly appointed by the minister, and must include at least three members representing the government, with a maximum of nine members. There are no criteria specifying that commission members must be representative of society, or that they should hold any particular qualifications.

In Malaysia the legislation on broadcasting licenses is more liberal than the licensing process for the print media, as the process is subject to judicial review and broadcast licenses are granted for periods of up to ten years (compared to one year for newspaper and magazine licenses). However, it should be noted that the commission's role is primarily one of making recommendations to the minister, who makes the ultimate licensing decision. It is also unclear (in the absence of any relevant cases) what grounds could be used to challenge decisions made by the minister.

There has been at least one application lodged for a community radio license. While no formal answer has been forthcoming, the applicant (the Centre for Independent Journalism) has

informally been told that they are unlikely to receive a license. It is possible that the refusal to award or deny a license is designed to deliberately pre-empt legal action.

2. Communications and Multimedia Content and Consumer Forums

The content forum (CMCF) is a self-regulatory body, consisting of advertisers, audiotext service providers, broadcasters, content creators/distributors, internet access service providers and civic groups. It is managed by a council of eighteen elected members plus a chairperson.

While, as noted above, the forum has established a progressive content code, there is little evidence that this has been implemented. Further, the content forum has not taken a proactive role in discussions on censorship, control or content provision. In this context, it should be noted that one of the objectives of the forum is promotion of national policy.

The Communications and Multimedia Consumer Forum has been set up under a similar model. While the legislative guarantees for consumer protection include specific legislation against poor quality service, this has not been enforced, and the consumer forum has been underutilised by consumers as a means for redressing grievances and concerns. The consumer code makes little reference to the aim of universal service provision, but concentrates on aspects such as after-sales service, which aim to protect existing customers.

3. Government Integrated Telecommunications Network (GITN)

The Government Integrated Telecommunications Network (GITN), is a private company established to help implement e-government. It currently has two main projects, the E*GNet infrastructure for e-government, and the SchoolNet project. The current CEO moved to GITN from Telekom Malaysia and the website notes that GITN is "a TM company,"⁶⁰ set up as a privatised company to implement government policy.

Despite a user-friendly website, it was not possible, even after repeated requests, to gain an interview with GITN to clarify how policy, particularly on content in the SchoolNet closed network system, is made.

c) Civil society

1. Women's rights collectives and organisations

The primary civil society actors who focus on VAW issues in Malaysia have formed a coalition: the Joint Action Group for Gender Equality (JAG-GE). It comprises of five to seven organisations working on women's rights issues, and have mobilised around the issue of VAW creating relatively strong partnerships with the government women's rights machinery in its advocacy initiatives.⁶¹

⁶⁰ As listed on the GITN website, <http://www.mysinchew.com/node/16272>

⁶¹ Currently, JAG-GE comprises Women's Aid Organisation (WAO), Women's Centre for Change Penang (WCC), Sisters in Islam (SIS), All Women's Action Society (AWAM), Women's Development Collective (WDC) and Malaysian Trades Union Congress (MTUC) - Women's Committee. This configuration shifts from time to time, through the coalition's effort at increasing its membership.

Other organisations working on VAW include Perak Women for Women, Tenaganita (notably focussing on issues of trafficking of persons and migrant workers' rights), and in East Malaysia, Sarawak Women for Women Society and Sabah Women Action Resource Group. Less formally organised collectives such as Kata Gender and Food Not Bombs have also focused on strategies to counter VAW in their actions.

2. Human rights organisations

There is general recognition and support by civil and political rights organisations and actors such as Suara Rakyat Malaysia (SUARAM), the Malaysian Bar Council and the National Human Rights Society (HAKAM) on issues related to VAW, which include issuing statements against particular VAW cases and organising activities to combat VAW as part of their programmes.

3. Communication Rights organisations, collectives and advocates

The Centre for Independent Journalism (CIJ) is Malaysia's leading civil society organisation working on issues of freedom of expression.⁶² The CIJ has an explicitly feminist perspective, and works closely with women's groups on freedom of expression issues. The CIJ and Writers Alliance for Media Independence (WAMI) often collaborate in advocacy on current communication rights issues. Alternative media providers, especially those operating mainly online and subjected to much of the government's attempts at regulating the free flow of information and expression online such as The Nut Graph and Malaysiakini are also directly invested in the issue, with The Nut Graph more visibly integrating gendered and feminist perspectives in their content.

d) Private sector

1. Internet web-hosting companies

Internet web-hosting companies are often at the front-line of content control allowing the Government to assume a hands-off approach, while simultaneously advising companies to remove content that is perceived to be controversial. While this is rarely directly political in nature, content relating to sexuality, to religion and gambling is routinely subject to scrutiny by the companies themselves. When contacted, none of the hosting companies interviewed were aware of the content code, and referred to occasional contact from "the Government" to remove content, and to "the law" – though neither of the two major companies were able to state which ministry or which law was being referred to.

Neither of the companies interviewed had an appeals process, and only one had an explicit content policy available on their website. In both cases, they stated that policy was generally only implemented after receiving complaints.⁶³

Likewise, neither was aware of the provisions, in both the CMA and the constitution, that protect freedom of expression, and both felt that it was their responsibility to remove potentially objectionable content, whether or not a complaint was received.

⁶² Disclosure: One of the authors is a director for the Centre for Independent Journalism.

⁶³ Interviews conducted by the author between January and April 2009

2) Telecommunications providers

This includes key industry players such as Telekom Malaysia which has a strong monopoly over the country's internet access. Any efforts to implement internet filtering and data retention from the internet backbone will require its cooperation. Mobile telephony telco providers such as Maxis and Digi also play an important role in ensuring the protection of privacy of their subscribers. Currently, privacy policies are formulated based on each corporation's priorities.

Bibliography

Anti-Rape Task Force (2003) "Memorandum on Laws Related to Rape". Available at: http://www.wccpenang.org/files/docs/Anti-Rape_Task_Force_Memo_on_Laws_Related_to_Rape_-_September_2003.doc (last accessed 8 August 2009)

CEDAW/C/MYS/1-2 (2004) Malaysia Report to the United Nations Committee on the Elimination of Discrimination Against Women (First and Second Report). Available at: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=CEDAW/C/MYS/1-2&Lang=E> (last accessed 8 August 2009)

CEDAW/C/MYS/CO/2 (2006) Concluding comments of the Committee on the Elimination of Discrimination against Women: Malaysia. United Nations. Available at: [http://www.unhcr.ch/tbs/doc.nsf/385c2add1632f4a8c12565a9004dc311/626c3356d916bcdec125723e003b391a/\\$FILE/N0638440.pdf](http://www.unhcr.ch/tbs/doc.nsf/385c2add1632f4a8c12565a9004dc311/626c3356d916bcdec125723e003b391a/$FILE/N0638440.pdf)

CEDAW/GR/19 (1992) Convention on the Elimination of all forms of Discrimination Against Women, General Recommendation 19. Available at: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>. (last accessed 8 August 2009)

Centre for Independent Journalism (12 February 2009) "Press Statement: Confiscation of papers shows the BN is afraid of people's access to information"

Centre for Independent Journalism (18 July 2007) "Press Statement: Nathaniel Tan: Four days under the OSA"

Centre for Independent Journalism (2 August 2005) "Press Statement: Epoch Times appeal rejected; bilateral relations with China cited"

Centre for Independent Journalism (26 November 2008), "Press Statement: CIJ welcomes activist's acquittal after 13 years of charges of publishing false news"

Centre for Independent Journalism (6 May 2009) "Press Statement: CIJ condemns government intimidation against media and electoral reform activist"

Centre for Independent Journalism and the Writers Alliance for Media Independence (12 September 2008) "Press Statement: Govt should retract show cause letter to the media"

Communications and Multimedia Act 1998, available at: http://www.skmm.gov.my/the_law/NewAct/Act%20588/Act%20588/a0588.htm (last accessed 8 August 2009)

Daily Express Newspaper Online (24 July 2003) "Sexual harassment: Few take up code". Available at: <http://www.dailyexpress.com.my/news.cfm?NewsID=20433> (last accessed 8 August 2009)

Department of State, USA (2009) Trafficking in Persons Report
Economic Planning Unit (1991) Sixth Malaysia Plan, 1991-1995

Economic Planning Unit (1996) Seventh Malaysia Plan, 1996-2000

Economic Planning Unit (2001) Eighth Malaysia Plan, 2001-2005

Economic Planning Unit (2006) Ninth Malaysia Plan, 2006-2010

Ertürk, Y (2009) "Political economy of women's human rights, United Nations General Assembly A/HRC/11/6". Available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.6.pdf> (last accessed 8 August 2009)

Faruqi, S.S. & Ramanathan, S. (1998) "Mass Media Laws and Regulations in Malaysia", Singapore: Asian Media Information and Communication Centre.

- Harris, R.W (1998) "Malaysia's Multimedia Super Corridor - An IFIP WG 9.4 Position Paper"
- Hassan, M. H. (17 June 2009) "Is domestic violence a crime?" The Nutgraph. Available at: <http://thenutgraph.com/is-domestic-violence-a-crime> (last accessed 8 August 2009)
- Hong, C. (7 May 2008) "Blogger charged with sedition" The Straits Times (Singapore)
- Human Rights Watch (1998) "Malaysia - Official Secrets Act"
- Islamic Family Law (Federal Territories) Act 1984
- Islamic Family Law (Sabah) 1992 Act. Available at: http://www.lawnet.sabah.gov.my/viewdoc.asp?id=sabahlaws&title=Syariah_Laws&document=statelaws/IslamicFamilyLaw1992.htm (last accessed 8 August 2009)
- Jawahitha, S., Ishak, M. and Mazahir, M. (2007) "E-Data Privacy and the Personal Data Protection Bill of Malaysia" Journal of Applied Sciences, vol. 7(5)
- Kent J (23 August 2004) "Malaysian rape law provokes storm" BBC News. Available at: <http://news.bbc.co.uk/2/hi/asia-pacific/3592740.stm> (last accessed 8 August 2009)
- Kuppusamy, B. (24 June 2009) "Blacklisted for not enforcing trafficking laws" Inter Press Service. Available at: <http://ipsnews.net/news.asp?idnews=44154> (last accessed 8 August 2009)
- Kuppusamy, B. (7 October 2008) "Emerging trend in trafficking tribal women" Inter Press Service. Available at: <http://ipsnews.net/news.asp?idnews=44154> (last accessed 8 August 2009)
- Lainie (25 April 2008) "I will not like it if your website host is Exabytes" Lainie - Artworld Addict. Available at: [http://lainie.tabulas.com/2008/04/25/i-will-not-like-it-if-your-website-host-is-exabytes./](http://lainie.tabulas.com/2008/04/25/i-will-not-like-it-if-your-website-host-is-exabytes/) (last accessed 8 August 2009)
- Loy, J., (11 March 2009) "Privacy: Does it Exist in Malaysia? Is it time to legislate?" The Malaysian Bar Council. Available at: http://www.malaysianbar.org.my/human_rights/privacy_does_it_exist_in_malaysia_is_it_time_to_legislate_.html (last accessed 8 August 2009)
- Malaysian Communications and Multimedia Commission (2004) "A Report on a Public Inquiry: Assessment of Dominance in Communications Markets". Available at: <http://www.skmm.gov.my/Admin/FactsAndFigures/PublicEnquiryReport/67048282PI%20report%20Assessment%20Dominance.pdf> (last accessed 8 August 2009)
- Malaysian Communications and Multimedia Commission (undated) About Us - Commission Members. Available at: http://www.skmm.gov.my/about_us/members.asp (last accessed 8 August 2009)
- Malaysian Communications and Multimedia Commission (undated) What We Do. Available at: http://www.skmm.gov.my/what_we_do/licensing/licensing.asp (last accessed 8 August 2009)
- Maltzahn, K. (2005) "Digital Dangers: Information & Communication Technologies and Trafficking in Women" Association for Progressive Communications, Women's Networking Support Programme MIMOS (undated) Our Partners. Available at: <http://www.mimos.my/index29a6-2.html?sub=7&ma=7> (last accessed 8 August 2009)
- Minges, M. and Gray, V. (2002) "Multimedia Malaysia: An Internet Case Study" ITU
- Ministry of Education (2000) "Education for All – Malaysia Report" UNESCO, 2000". Available at: http://www.unesco.org/education/wef/countryreports/malaysia/rapport_1.html (last accessed 8 August 2009)
- Ministry of Information, Communications and Culture - Information Sector (undated) About the

Ministry - Ministry History. Available at: http://penerangan.kpkk.gov.my/index.php?option=com_content&task=view&id=174&Itemid=116 (last accessed 8 August 2009)

Ministry of Women, Family and Community Development (2008) Statistics. Available at: http://www.kpwkm.gov.my/new_index.php?page=statistic_content&year=2008&lang=eng (last accessed 8 August 2009)

Ministry of Women, Family and Community Development (undated) Background. Available at: http://www.kpwkm.gov.my/new_index.php?page=kpwkm/menu_latarbelakang&lang=english (last accessed 8 August 2009)

MSC Malaysia (undated) "E-Government; MSC Flagship Applications". Available at: <http://www.msomalaysia.my/topic/12073046901815> (last accessed 8 August 2009)

MSC Malaysia (undated) "MSC Malaysia 10 Point Bill of Guarantees". Available at: <http://www.msomalaysia.my/topic/MSOMalaysia+Bill+of+Guarantees> (last accessed 8 August 2009)

Murali, R.S.N. (18 August 2009) "Reckless bloggers can be prosecuted" The Star. Available at: <http://thestar.com.my/news/story.asp?file=/2009/8/18/nation/4540459&sec=nation> (last accessed 8 August 2009)

My Sin Chew.com (16 September 2008) "ISA Release Raises More Questions". Available at: <http://www.mysinchew.com/node/16272> (last accessed 8 August 2009)

NGO Shadow Report Group (2005) "NGO Shadow Report on the Initial and Second Periodic Report of the Malaysian Government: Reviewing the Government's Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)". Available at: http://www.iwraw-ap.org/resources/pdf/Malaysia_SR.pdf (last accessed 8 August 2009)
Official Secrets Act, 1972

Ong, A. (23 May 2009) "Police raid DAP HQ, computer seized" Malaysiakini.com

Penal Code (Amendment) 2006

Printing Presses and Publications Act 1984 (Act 301) as published by International Law Book Services as at 20th October 2001

Privacy International (2003) "Privacy & Human Rights 2003: An International Survey of Privacy Laws and Development". Available at: <http://www.privacyinternational.org/survey/phr2003/countries/malaysia.htm>

Randhawa, S., Puah, P., and Loone, S. (2005) "Freedom of Expression and the Media in Malaysia". Article 19: London and Suaram: Kuala Lumpur

Reddick, C (2009) "Handbook of Research on Strategies for Local E-Government Adoption and Implementation - Comparative Studies" IGI Global

Secretariat for Women's Affairs (1989) National Policy for Women. Available at: http://www.kpwkm.gov.my/new_index.php?page=kpwkm/menu_dasar_wanita&menu=kpwkm/dasar_wanita&lang=eng (last accessed 8 August 2009)

Secretariat for Women's Affairs (undated) Women Action Plan. Available at: http://www.kpwkm.gov.my/new_index.php?page=kpwkm/menu_dasar_pelan&menu=kpwkm/dasar_pelan&lang=eng (last accessed 8 August 2009)

Sedition Act 1948 (Act 15), published by International Law Book Series, as at 20 March 2001

Sujata, V.P. (26 July 2006) "The media more credible than blogs" The Star. Available at: <http://thestar.com.my/news/story.asp?file=/2006/7/26/nation/14945258&sec=nation> (last accessed 8 August 2009)

Surin, A.J. (2004) *Cyberlaw and its Implications*. Pelanduk Publications: Subang Jaya.

Tan, B.H., (2007) "One step forward, two steps back? Conundrums of the rape legal reform campaign in Malaysia". *Gender, Technology and Development* Vol 11, No. 1. Sage Publications

The Communications and Multimedia Content Forum (2004) *The Content Code*. Available at: <http://www.cmcf.org.my/code.asp> (last accessed 8 August 2009)

The Communications and Multimedia Content Forum (undated) *The Organisation Chart*. Available at: <http://www.cmcf.org.my/orgchart.asp#hccc> (last accessed 8 August 2009)

The Malaysian Bar Council (2008) "Press Statement: Stemming the Abuse of Domestic Workers/Foreign Workers". Available at: http://www.malaysianbar.org.my/law_reform_special_areas/press_statement_stemming_the_abuse_of_domestic_workers/foreign_workers_.html (last accessed 8 August 2009)

The Malaysian Bar Council (2009) "Roundtable Conference: Domestic Workers: The Need for a Standard and Fair Contract". Available at: http://www.malaysianbar.org.my/index2.php?option=com_content&do_pdf=1&id=24596 (last accessed 8 August 2009)

The Nutgraph (13 March 2009) "Fined RM10,000 for insulting Sultan". Available at: <http://thenutgraph.com/fined-rm10000-for-insulting-sultan> (last accessed 8 August 2009)

The Star (17 April 2001) "Media Laws May Be Tightened"

The Star (28 February 2002) "Distribution of Three Magazines Delayed"

The Star (31 March 2006) "Greater empowerment of women". Available at: <http://thestar.com.my/news/story.asp?file=/2006/3/31/9MP/13803466&sec=9MP> (last accessed 8 August 2009)

The Star (7 August 2009) "Najib: Govt will not censor the Internet (Update)" The Star 7 August 2009. Available at: <http://thestar.com.my/news/story.asp?file=/2009/8/7/nation/20090807143305&sec=nation> (last accessed 8 August 2009)

The Syariah Criminal Provisions Act (Federal Territories) Act 1997

Timbuong, J. (7 August 2009) "Internet users upset over Govt's filter attempt" The Star Available at: <http://star-techcentral.com/tech/story.asp?file=/2009/8/7/technology/20090806211439&sec=technology> (last accessed 8 August 2009)

United Nations - Global Alliance for ICT and Development (undated) *Steering Committee*. Available at: <http://www.un-gaid.org/About/Howdoesitfunction/SteeringCommittee/tabid/895/language/en-US/Default.aspx> (last accessed 8 August 2009)

United Nations General Assembly (1975) *Integration of Women In Development*. Resolution 3505 (XXX). Available at: [http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/RES/3505\(XXX\)&Lang=E&Area=RESOLUTION](http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/RES/3505(XXX)&Lang=E&Area=RESOLUTION) (last accessed 8 August 2009)

Women's Aid Organisation (undated) *Domestic Violence*. Available at: <http://www.wao.org.my/research/domesticviolence.htm> (last accessed 9 July 2009)

Women's Aid Organisation (undated) *Migrant Domestic Worker Abuse*. Available at: <http://www.wao.org.my/research/MDW.htm#prob> (last accessed 9 July 2009)

Zusman, K. (2 October 2009) "Still not safe: the trafficked lives of Burmese refugees" Democratic Voice of Burma. Available at: <http://www.reliefweb.int/rw/rwb.nsf/db900SID/SNAA-7WK36Z?OpenDocument> (last accessed 8 August 2009)

The APC WNSP is an international network of individual women and women's organisations promoting gender equality in the design, implementation, access and use of information and communications technologies (ICTs) and in the policy decisions and frameworks that regulate them.

The APC WNSP is made of feminists and activists who believe that ICTs have a strong role to play in transforming gender and social relations. In our ranks are techies and trainers who help women's organisations and other civil society groups take control of the tools they use to advance their missions and advocacies. More than 175 women from 55 countries – librarians, programmers, journalists, trainers, designers, scholars, communicators – come together to work online jointly in various projects in Africa, Asia-Pacific, Europe and Latin America.

APC WNSP is also a programme of the Association for Progressive Communications, an international network of civil society organisations dedicated to empowering and supporting those working for peace, human rights, development and protection of the environment through the strategic use of ICT.

APC works to build a world in which all people have easy, equal and affordable access to the creative potential of ICTs to improve their lives and create more democratic and egalitarian societies. www.apcwomen.org www.apc.org



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