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## Submission of Evidence on Online Violence Against Women to the UN Special Rapporteur on Violence Against Women, its Causes and Consequences, Dr Dubravka Šimonović

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## **Submission of Evidence on Online Violence Against Women**

**to the UN Special Rapporteur on Violence Against Women, Its Causes and Consequences,  
Dr Dubravka Šimonović**

November 2017

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## Table of Contents

<b>Submission of Evidence on Online Violence Against Women. ....</b>	<b>1</b>
Part I:.....	3
Background. ....	3
Part II:.....	5
Focus of Evidence to This Submission.....	5
Part III:.....	7
Existing Legislative Models, Criminal or Administrative, on Prosecuting and Punishing Various Forms of Online Violence Against Women .....	7
Part IV: .....	11
Existing Policies that Allow Identification, Reporting and Rectification of Incidents of Harassment or Violence Against Women via the Internet Services Providers.....	11
Part V: .....	14
Existing Jurisprudence from International, Regional, and National Courts, on Prosecution or Administrative Proceedings in Such Cases.....	14
Part VI: .....	16
Conclusions. ....	16

## Part I:

### Background.

Online violence against women is a modern phenomenon which affects women and girls worldwide. Online violence against women takes various forms of abuse and includes, but is not limited to, online misogyny, text-based abuse (e.g. on social media platforms such as Twitter or Facebook), upskirting, image-based sexual abuse (also referred to as 'revenge pornography'), rape pornography, doxing, cyberstalking and cyber-harassment.

The rise of online abuse against women not only undermines the ideal of an open, all-inclusive and participatory Internet but also demonstrates the pervasiveness of gender inequalities experienced by women in the online environments. The silencing effects of online misogyny and its negative impact on women's free and equal participation in the public sphere are not to be underestimated. Alarmingly, a UK-based 2016 GirlGuiding Girls' Attitudes Survey shows that 49% of girls aged 11-16 and 44% of young women aged 17-21 do not feel free to express their views online.<sup>1</sup> Furthermore, the study confirmed that 50% of girls and young women aged 11-21 think that sexism is worse online than offline, with a further 23% of respondents having had threatening things said about them on social media.<sup>2</sup>

Online misogyny is widespread, especially on social media and frequently takes the form of text-based abuse, e.g. in the form of abusive and misogynistic tweets. The 2016 study by DEMOS which investigated the scale of misogyny on social media showed that in the period of three weeks when the study was taking place, 6500 users in the UK were targeted by 10 000 tweets of an explicitly aggressive and misogynistic nature.<sup>3</sup> Internationally, these figures compare with 200 000 aggressive and misogynistic tweets sent to 80 000 persons in the same three weeks.<sup>4</sup>

The wide scale of online violence against women is further confirmed by studies looking at violence against women from a supranational level. The 2014 EU-wide survey on violence against women confirmed that whilst there exists a variation in the prevalence of cyber-harassment across Member States (between 5 % and 18 %), 11% of women have faced cyber-harassment since the age of 15.<sup>5</sup> The survey also highlighted that the risk of young women aged between 18 and 29 years becoming a target of threatening and offensive advances on the internet is twice as high as the risk for women aged between 40 and 49 years, and more than three times as high as the risk for women aged between 50 and 59 years.<sup>6</sup>

<sup>1</sup> Girlguiding, 'Girls' Attitudes Survey 2016', p.19 <https://www.girlguiding.org.uk/globalassets/docs-and-resources/research-and-campaigns/girls-attitudes-survey-2016.pdf>.

<sup>2</sup> Ibid., p.17.

<sup>3</sup> The study monitored specifically the use of words 'slut' and 'whore' on Twitter: DEMOS (2016) 'The use of misogynistic terms on Twitter' <https://www.demos.co.uk/wp-content/uploads/2016/05/Misogyny-online.pdf>.

<sup>4</sup> Ibid.

<sup>5</sup> European Union Agency for Fundamental Rights, *Violence against women: an EU-wide survey. Main results* (March 2014) p.104.

<sup>6</sup> Ibid, p.105.



Despite its prevalence and severe impact on the victims, the recognition of online violence against women and its consequences has been rather slow, particularly when it comes to legal responses to this problem, both at domestic and international levels. There exists a significant disparity between states' legal frameworks regarding prevention and combatting of online violence against women. Furthermore, even when legislative provisions which allow punishment of some acts of online violence against women exist (most commonly, although not exclusively, through legal provisions tackling malicious communications), the overall legal landscape pertaining to deal with such offences is scattered and lacks consistency.

At an international level, references to online violence against women have been scarce and formulated in generic terms, without giving due recognition to the seriousness, scale and everyday impact of online abuse of women. The most recent *CEDAW General Recommendation No. 35 on gender-based violence against women, updating general recommendation No.19* (14 July 2017) acknowledged the continuum of gender-based violence against women and multiplicity of its forms, including 'technology-mediated settings', as well as its public and cross-jurisdictional nature. In addition, the Committee called for greater preventative measures aimed at tackling online violence against women, including self-regulatory mechanisms created by online and social media platforms, and stressed the need to address gender-based violence against women which takes place through online services and platforms.<sup>7</sup> However, *CEDAW General Recommendation No.35* did not elaborate further regarding the gender-based nature of online abuse of women and its damaging effects, nor addressed in greater detail the responsibilities of states in preventing and combatting online violence against women.

This slow progress has been further undermined by common misconceptions concerning online acts of gender-based violence. Online forms of violence against women are frequently perceived as 'not real' due to the fact that abuse happens in the online sphere, including social media. This dichotomy between 'offline' and 'online' is not only incorrect when it comes to combatting online violence against women but it also fails to take into account the fact that boundaries between 'online' and 'offline' aspects of everyday life are increasingly disappearing in the context of modern societies. Acts of online violence against women take place on the Internet, but their effects are not constrained to the online environment only. In fact, in many instances, acts of online violence against women can later translate into physical acts of violence. Furthermore, the anonymity of perpetrators, for instance in cases involving text-based gendered abuse on social media platforms, heightens the fear of violence and the overall distress experienced by the victims. In cases where perpetrators have been held accountable for online abuse, the victims described their experiences of abuse as 'life-changing' and emphasised the damaging effects of such abuse on their lives.<sup>8</sup>

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<sup>7</sup> CEDAW, General Recommendation No. 35 on gender-based violence against women, updating general recommendation No.19, CEDAW/C/GC/35 (14 July 2017), para.37(a).

<sup>8</sup> *R v Nimmo and Sorley* [2014] (unreported); Emma Holten 'Learning from revenge porn: online rights are human rights' (2015) available at: <http://bit.ly/2z0VUAI> .

## Part II:

### Focus of Evidence to This Submission

#### 1. Legal Jurisdictions within the UK.

The focus of this submission rests upon the legal landscape within the multiple jurisdictions that comprise the UK. Specific focus falls on two legally distinct jurisdictions, namely those of England & Wales, and of Scotland. That said, the legal picture is complicated still further by the fact that specific pieces of legislation are applicable across both of these jurisdictions. The jurisdiction of England & Wales has seen two very high-profile prosecutions<sup>9</sup> brought against so-called ‘trolls’ for abusive and threatening communications via social media, specifically the micro-blogging site Twitter.

#### 2. Text-Based Abuses.

This submission focuses on aspects relating to misogynistic text-based abuses rather than IBSA. Whilst both image-based and text-based abuses have extensive harmful and damaging effects on the victims, only IBSA has benefitted from a legislative appetite for reform. In contrast, there has been an alarming and complete lack of attention paid to text-based abuses within the context of legislative developments. This is concerning, especially given the harms suffered through these forms of online abuse – factors judicially recognised in the landmark case of *R v Nimmo & Sorley*. Consequently, there is a misperception concerning the level and significance of harm that can be inflicted through text – harms are not only caused by image-based abuse. The gap in legislative provisions compounds the silencing of women in public spaces which occurs through the legislative deficiencies when comparing action taken to prosecute image-based sexual abuses compared with the inaction taken for text-based abuses. Where there is a lack of action, the harm is still palpable: the initial harm arises through the abusive message, with a consequent harm resulting in silencing women in public spaces. This is therefore not just an issue of legislative reform, but also an issue concerning the (in)equality of participation in public spaces both offline and online.

#### 3. Harm.

The authors appreciate that the issue of jurisdiction in terms of the Internet is a complicating factor in considerations of online abuse, but it is important to understand the distinction between the operation of the Internet, and the legal jurisdictions to which this submission relates. That said, in tackling any aspect of online abuse, particularly online violence against women, identifying the location of the ‘harm’ suffered, and the location of the perpetrator of

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<sup>9</sup> *R v Nimmo & Sorley* [2014] (unreported); *R v Viscount St Davids* [2017] (unreported).

that harm<sup>10</sup> do not necessarily correlate to the same legal jurisdiction for mechanisms of redress. This problem is further compounded when suggestions of platform responsibility arise – notably for ‘Internet giants’ such as Twitter, Facebook and Google, which operate across physical borders, and across legal jurisdictions. Issues of platform responsibility are not to be ignored in dealing with online abuses, especially those perpetrated through social media platforms, and judicial decisions on related points have been made by senior courts within England & Wales,<sup>11</sup> and at a European level.<sup>12</sup>

#### **4. Threshold for Criminal Prosecution.**

Finally, some forms of online abuse will be of a sufficiently serious standard to attract criminal prosecution. That said, it is important to appreciate that not all forms of abusive message will reach the threshold for prosecution, and, conversely, those that do, may not result in a successful prosecution. In addition, not all online abuse will be regarded as hateful abuse, and not all hateful speech will be abusive. Furthermore, the underlying factor here is that the age of criminal responsibility is different in different jurisdictions and, simply because something meets the threshold, may not mean that there is a judicial remedy available.

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<sup>10</sup> Complex legal questions arise here in terms of the ‘jurisdictional’ competence of judicial and law-enforcement bodies. This submission does not seek to address those in any level of depth.

<sup>11</sup> *R v Sheppard* [2010] 1 WLR 2779.

<sup>12</sup> *Delfi v Estonia* (2015) ECtHR 64669/09.

## **Part III:**

### **Existing Legislative Models, Criminal or Administrative, on Prosecuting and Punishing Various Forms of Online Violence Against Women**

Within the territory of the United Kingdom, there are separate legal jurisdictions. Criminal prosecutions have different legal bases depending on the jurisdiction, i.e. in England & Wales and in Scotland. Some provisions have applicability across the UK (i.e. England & Wales, Scotland, Northern Ireland) whereas others apply only in individual jurisdictions (e.g. only in Scotland and therefore not in England & Wales nor in Northern Ireland). Accordingly, there are various pieces of legislation across England & Wales, and Scotland which can be applicable to regulation and punishment of online violence against women.

#### **1. UK-wide (England & Wales and Scotland)**

##### **1.1. Protection from Harassment Act 1997**

Prosecutions made under this provision address situations under section 4 for courses of conduct. In order to achieve a successful prosecution, courses of conduct will cause fear where “a person whose course of conduct causes another to fear, on at least two occasions, that violence will be used against him” and “he knows or ought to know that his course of conduct will cause the other so to fear on each of those occasions.” This section addresses multiple communications intended to create a course of conduct which causes fear of violence.

##### **1.2. Communications Act 2003**

This Act introduces criminal liability for an improper use of a public electronic communications network under section 127. Prosecutions made under this provision deal with messages or other matter that is “grossly offensive” or of an “indecent, obscene or menacing character.” This same section also provides that it is an offence to send or cause to be sent a false message “for the purpose of causing annoyance, inconvenience or needless anxiety to another.”

#### **2. England & Wales**

##### **2.1. Offences Against the Person 1861**

This piece of legislation addresses more serious offences. In the context of abusive online messages, this Act works in conjunction with the Protection from Harassment Act 1997 where threats have been made which are threats to kill under section 16.

##### **2.2. Malicious Communications Act 1988**

This Act introduces criminal liability for the sending of offensive communications where there is an intention to cause distress or anxiety. Under section 1, a criminal communication will be one which is “indecent or grossly offensive or which conveys a threat, or which is false, provided there is an intention to cause distress or anxiety to the recipient.”

### **2.3. Criminal Justice and Courts Act 2015**

This Act introduces criminal liability for the offence of “disclosing sexual photographs and films with intent to cause distress” under section 33 (also referred to as ‘image based sexual abuse’). In addition, the Act introduces criminal liability for possession of pornographic images of rape and assault by penetration (also referred to as ‘rape pornography’) under section 37.

## **3. Scotland**

### **3.1. Criminal Justice and Licensing (Scotland) Act 2010**

This legislation deals with similar issues as those which appear in the Malicious Communications Act 1988 (England & Wales). Under the 2010 Act, an offence will be committed if there is behaviour which is “threatening or abusive” and which would either be likely to cause “a reasonable person to suffer fear or alarm” under section 38(1)(b) or which “intends by the behaviour to cause fear or alarm or is reckless as to whether the behaviour would cause fear or alarm” under section 38(1)(c). The “threatening and abusive” behaviour can apply equally to things said or things done, and can be a singular act, or a course of conduct.

This provision also allows for custodial sentences of periods up to five years under section 38(4) – a distinguishing point from the similar criminal acts under the Malicious Communications Act (England & Wales), where custodial sentences are issued for a maximum period of two years.

### **3.2. Abusive Behaviour and Sexual Harm (Scotland) Act 2016**

Part 1, section 2 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 introduces criminal offences for disclosing, or threatening to disclose, an intimate photograph or film. These provisions are the equivalent provisions to those located within the Criminal Justice and Courts Act 2015 (which applies to only England & Wales).

## **4. Council of Europe & Online Violence Against Women**

### **Article 17 of the Istanbul Convention 2011**

Article 17 of the Council of Europe Convention on preventing and combatting violence against women and domestic violence (‘the Istanbul Convention’) foresees shared responsibility of state parties with the media providers and information and technology sector for preventing violence against women. The provision encourages the parties to work together to produce appropriate self-regulatory standards and guidelines and to effectively implement them. Whilst Article 17 does not specifically address online violence against women or lists acts which amount to such form of violence, the scope and purpose of the Convention should indicate a reading inclusive of acts of violence against women committed online, especially using social media. Furthermore, such interpretation would comply with the overall scope

and purpose of the Convention which explicitly recognises violence against women as ‘a major obstacle to the achievement of equality between women and men’ (Preamble).

At present (November 2017), the UK has not yet ratified the Istanbul Convention. However, on 24 April 2017, Preventing and Combating Violence Against Women and Domestic Violence (Ratification of Convention) Bill 2017 received Royal Assent, therefore becoming the law in the UK. This legislation commits the UK Government to take requisite steps to ratify the Istanbul Convention.

## 5. Comment on Existing Legislative Models

Whilst there are a number of legislative mechanisms pertaining to issues of online communications – especially those of a malicious nature – these are spread across disparate instruments operating at different levels across differing legal systems. This creates a confused system as these various sporadic legal provisions fail to address the phenomenon of online violence against women and contributes to the silencing of women in public spaces, most notably the Internet.

These overlapping legal provisions mean that some aspects of the criminal law dealing with communications offences create overlaps in the law – particularly between the Malicious Communications Act 1988 and the Communications Act 2003 – but also this leads to situations where there are ‘gaps’ in the legal provisions. This reflects an incoherent approach to tackling online violence against women. In addition to this, there are contradictory legal terms (and tests) used within the numerous legal instruments, ranging from hostility, to prejudice, to bias. This is compounded by the confused approaches to ‘abusive’ and ‘threatening’ behaviour, all of which when considered together indicates inconsistency of thinking and an inconsistent policy approach to existing legislative models aimed at prosecuting and punishing forms of violence against women. Furthermore, this leads to a situation whereby the legal threshold<sup>13</sup> for successful criminal prosecutions under the Malicious Communications Act 1988 and Communications Act 2003 is incredibly high, and often unreachable when considered alongside the need for prosecutions to be ‘in the public interest.’

Despite this criticism, recent efforts have been made to tackle selected aspects of online violence against women. The caveat to this – a significant caveat – is that the focus has fallen only on visual or image-based sexual abuses.<sup>14</sup> Whilst this is perceived as a positive step, this creates a gap in the current legislative landscape across the various jurisdictions within the UK where image-based sexual abuses are potentially subject to criminal prosecution yet text-

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<sup>13</sup> The threshold for prosecution attracted criticism from the Council of Europe Parliamentary Assembly Committee on Equality & Non-Discrimination, a point highlighted in the report by Ms Marit Majj (the Rapporteur of the Committee). Council of Europe, ‘Report: Ending cyber-discrimination and online hate’ Doc.14217 (13 December 2016), para.32, available at: <http://bit.ly/2hX6mPA>.

<sup>14</sup> This refers to rape pornography, revenge pornography or other intimate images.

based abuses are not.<sup>15</sup> To illustrate this point, both England & Wales, and Scotland have introduced specific legislation to prosecute so-called ‘revenge porn’ yet no legislative developments have been forthcoming to tackle the equally harmful misogynistic text-based abuses.<sup>16</sup>

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<sup>15</sup> Text-based abuse (TBA) refers to specific threatening messages sent predominantly through communications networks such as social media platforms, and includes rape-threats, death threats and other messages directed at female participants on social media networks.

<sup>16</sup> This recommendation was made by the authors (Dr Kim Barker and Dr Olga Jurasz) as a part of the submission to the Scottish Parliament’s Public Audit and Post-Legislative Scrutiny Committee in July 2017 (copy of the submission on file with authors and available upon request by emailing [kimberley.barker@stir.ac.uk](mailto:kimberley.barker@stir.ac.uk) or [olga.jurasz@open.ac.uk](mailto:olga.jurasz@open.ac.uk) ).

## Part IV:

### **Existing Policies that Allow Identification, Reporting and Rectification of Incidents of Harassment or Violence Against Women via the Internet Services Providers.**

#### **1. The IT Companies – Code of Conduct**

Given the pressure on social media platform providers – notably Twitter and Facebook – announcements have been made of initiatives and changes such providers have sought to implement as part of a scheme to identify and report incidents of harassment and violence. Unfortunately, the emphasis to date has fallen on aspects such as ‘hateful conduct’<sup>17</sup> or ‘terror-related content.’<sup>18</sup> In addressing issues of harassment and violence against women online, the European Commission together with ‘The IT Companies’<sup>19</sup> announced in May 2016, a ‘Code of Conduct on Illegal Hate Speech.’<sup>20</sup> Whilst undoubtedly this has signalled progress in terms of encouraging the ‘IT Companies’ to play a more responsible role in monitoring the content posted via their platforms, it is only by agreement that such initiatives have made any progress.

#### **2. The IT Companies – ‘Mute Buttons’**

Other mechanisms introduced by the platforms specifically have included things like ‘mute buttons’ on Twitter which allow individual users to ‘hide’ certain content from their feed. Again, whilst this is a potentially positive measure – especially as an indicator of Twitter taking the issue seriously – this is not a solution to the problem. The abusive messages are not ‘removed’ if muted – they remain, but are simply hidden from the view of the person to whom they were communicated. This is, therefore, essentially nothing other than a silencing mechanism in action.

#### **3. Service Provider Liability**

This is symptomatic of a much broader problem – and that is the lack of liability which attaches to the platform providers at present in terms of the sending of the messages and the harm which is inflicted upon those receiving the messages. Partly this is due to jurisdictional issues, but this is also due to provisions at a European Union level which do not appear to

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<sup>17</sup> L La, ‘Twitter updates rules to combat abusive behaviour, hateful conduct’ (WIRED News, 29 December 2015): <https://www.cnet.com/news/twitter-updates-rules-to-combat-abusive-behavior-hateful-conduct/>.

<sup>18</sup> BBC News, ‘Tech firms to remove extremist posts within hours’ (20 October 2017): <http://www.bbc.co.uk/news/technology-41693777>.

<sup>19</sup> Notably Facebook, YouTube, Twitter & Microsoft.

<sup>20</sup> EU Commission, ‘EU Commission and IT Companies announce Code of Conduct on Illegal Online Hate Speech’ (31 May 2016): [http://europa.eu/rapid/press-release\\_IP-16-1937\\_en.htm](http://europa.eu/rapid/press-release_IP-16-1937_en.htm).



introduce any general monitoring duty on intermediaries.<sup>21</sup> However, there are suggestions (again at a European level) that the European Commission is considering altering that general approach, and instead, introducing stricter measures aimed at enhancing the responsibility of platform providers for illegal online content.<sup>22</sup> Most notably, the suggestion offered seems to include a system similar to that of ‘notice & takedown’ and is therefore likely to be controversial in light of freedom of expression rights.

#### **4. Local Police Force & ‘Labelling Gender-Based Hate’**

Finally, at a national level, several police forces in England and Wales have recently announced that they will be recording incidents of hate crime with additional labels<sup>23</sup> – notably as misogynistic incidents. This seems to be a significant step forward in terms of the recognition of gender-based abuses more broadly but, unfortunately, this results *only* in the recording of offences locally. The labelling and ‘flagging’ of such incidents bears no correlation to the prosecution of crimes on a similar basis – and, indeed, this is impossible as under hate crime laws in England & Wales, and Scotland, gender is not a protected characteristic. As such, whilst local police forces may be willing to record potential crimes as gender-based hate crimes, this is something which is legally unfounded and has no bearing on the judicial system, as the recording has no impact upon prosecution rates. This behaviour is, therefore, at best, a matter of identification, although there does not appear to be any shared nor any transparent basis on which the various police forces are making such recordings.

#### **5. Comment on Existing Policies**

The existing policies here indicate that there is an awareness of the potential harm – and perhaps even a partial willingness – to act in order to tackle issues of harassment and violence against women online. There are number of sporadic and piecemeal mechanisms that have been implemented by the social media platforms in order to offer so-called solutions.

These existing policies span a number of different approaches but have, to date, failed to engage or interact or complement the disparate legislative measures used to address some – limited – incidences of online violence against women. Whilst it is apparent that there can be a willingness to discuss potential policies and measures, the lack of any substantive policies addressing online violence against women, particularly text-based abuses, speaks volumes – especially when compared to the action taken in respect of image-based abuses and extremist content. This is, therefore, indicative of a lack of commitment to implementing effective mechanisms to tackle abusive behaviours online. Similar to the lack of legislative action on misogynistic text-based abuses, there has been little real impetus given to service

<sup>21</sup> Article 15, E-Commerce Directive 2000/31/EC.

<sup>22</sup> EU Commission, ‘Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions: Tackling Illegal Content Online – Towards an Enhanced Responsibility of Online Platforms.’ COM (2017) 555.

<sup>23</sup> E Ashcroft, ‘Cat-calling and wolf-whistling now classed as gender-hate crimes by Avon and Somerset Police’ (Bristol Post, 16 October 2017) <http://bit.ly/2gBpUg1>.

provider or platform provider policies – evidence of a further systemic failure in tackling harmful behaviour.

The lack of impetus given to the service provider policies and scatter-gun approaches implemented stands in stark contrast to the actions of local police forces who are sporadically declaring their intentions to label and record crimes as potential gender-hate crimes. This, whilst a positive indicator, represents little more than acts of symbolism. There is no legal basis in England & Wales, or Scotland for labelling incidents as gender-based hate crimes, and this oddity is compounded by the lack of judicial impact or rectification of such ‘flagging’ and recording. When this, together with the policies of service providers is considered, the evidence is overwhelming that there has been little ‘joined-up’ thinking to date in addressing issues of online violence against women – irrespective of whether they are text or image-based.

**Part V:**

**Existing Jurisprudence from International, Regional, and National Courts, on Prosecution or Administrative Proceedings in Such Cases.**

**1. *R v Nimmo & Sorley* [2014] (unreported)**

The case concerned online abuse of a feminist campaigner, Caroline Criado-Perez, and a politician, Stella Creasy MP by the defendants: John Nimmo and Isabella Sorley. In 2013, Caroline Criado-Perez led a successful campaign to include more women on the Bank of England banknotes – something publically endorsed and supported by Stella Creasy. In July 2013, Nimmo and Sorley posted multiple tweets from their Twitter accounts which were of menacing character and directed towards both Criado-Perez and Creasy. The tweets included threats of violence (including sexual violence) and used extreme and offensive language. The defendants were both charged with – and entered guilty pleas to – separate offences of improper use of a public electronic communications network, contrary to section 127 of the Communications Act 2003.

The judgment in *R v Nimmo and Sorley* marked the first prosecution of Twitter trolls under section 127 Communications Act 2003. It gave important and long-awaited recognition to the harms caused by online abuse and the effects it has on the victims – something highlighted by Judge Riddle in his sentencing remarks. Important recognition was given to the economic dimensions of the harms suffered by the victims. It was acknowledged by Judge Riddle that recipients of the menacing tweets had to spend a significant amount of time and money to remain ‘as untrackable as possible’. Judge Riddle also stressed that the anonymity of the perpetrators was a factor which heightened the fear of the recipients of the tweets, and contributed to their substantial distress.

**2. *R v Viscount St Davids* [2017] (unreported)**

The case arose in the context of the aftermath of the Brexit referendum. It concerned the online abuse by Lord St. Davids of Gina Miller, a high-profile Remainer who challenged the UK Government’s approach to Brexit through the English courts. The defendant posted menacing content about Gina Miller on his Facebook page. This included the depiction of Miller in derogatory terms and putting a bounty of £5000 on Mrs Miller’s head. The court found that the defendant intended the content of his post to be of menacing character and also had the knowledge that this content (once posted) would be repeatedly shared by other users. The offence committed by Lord St. Davids was also found to be racially aggravated, therefore giving rise to a higher sentence.

The sentencing remarks of Judge Arbuthnot made several significant points. It was highlighted that the public profile of the victim was irrelevant to consideration of the impact of the offence on her. Furthermore, the grossly offensive, racist, and threatening character of the Facebook post was stressed, including the acknowledgement of additional personal security

measures which had to be employed by Mrs Miller in the aftermath of Lord St. Davids' post. The extreme racial abuse and the distress caused to Mrs Miller were of paramount consideration for the court at the sentencing stage, leading to the handing down of a sentence amounting to 12 weeks immediate imprisonment (as opposed to 8 weeks which would have been handed down if not for the racially aggravating feature).

### 3. Comment on Existing Jurisprudence

The examples of cases referred to above arose primarily due to the high profile of the claimants. It is recognised that public figures (both women and men) are frequently victims of text-based abuse. However, as stressed by Judge Arbuthnot in *R v Viscount St Davids*, public figures do not deserve to be victims of such 'warped behaviour'. Equally, the scale and impact of text-based abuse on individuals without public profiles should not be underestimated. Whilst the prosecutions of text-based abuses remain relatively rare and restricted (thus far) to high profile cases, adequate legislative provisions dealing with such forms of abuse should be created and enforced. As the case of image-based sexual abuse goes to show, enactment of adequate and specific legislation dealing with the issue can lead to a rise in successful prosecutions of perpetrators of such crimes. According to the Crown Prosecution Service Violence Against Women and Girls Report 2016-17, following the introduction of legislation criminalising 'rape pornography' and 'revenge porn' in 2015, there was a substantial rise in commenced prosecutions in relation to these offences.<sup>24</sup> In short, the key point here is that the profile of the alleged victim should be entirely irrelevant in terms of the alleged abuse received – the harm and the impact of the harm should be the determining features in tackling issues of online abuse. Unfortunately, this is yet to be recognised expressly by the legal system.

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<sup>24</sup> There were 24 prosecutions of rape pornography in 2016–17, a rise from three in 2015–16. There were 465 prosecutions commenced of the offence of disclosing private sexual images without consent (so-called revenge pornography) a rise from 206 in the previous year. Crown Prosecution Service, *Violence Against Women and Girls Report 2016-17. Tenth Edition* (October 2017) 16, available at: <http://www.cps.gov.uk/publications/docs/cps-vawg-report-2017.pdf> .

## Part VI:

### Conclusions.

Preventing and combatting online violence against women is an issue in pressing need of global and domestic recognition as well as action. Addressing online violence against women needs to start from recognizing the existence of online gender-based abuse, its scale, numerous forms, and the extensive impact it has on women and girls.

Furthermore, preventing acts of online violence against women as well as establishing accountability for them needs to be prioritised within multiple legal frameworks – preferably within those frameworks dealing with issues concerning online communications and the governance of online space.

Finally, online violence against women needs to be recognised as a form of gender-based abuse of women and girls as well as a factor standing in the way of their full and equal participation in public and online spaces.

As such, the evidence presented here supports the following conclusions:

- i. The phenomenon of online violence against women is widespread and increasingly prolific.
- ii. The authors respect the notion of freedom of expression and reiterate here that there must always be a balance struck between addressing abusive communications which reach a certain threshold that could lead to criminal prosecution, and those communications which may be distasteful but not necessarily of a sufficiently serious nature that they ought to be prosecuted under relevant criminal law provisions.
- iii. The criminal threshold for prosecution within England & Wales is widely accepted as being too high, and the lack of prosecutorial action in this area is a further indicator that this is a barrier to tackling online violence against women – especially where that violence is text-based.
- iv. There is a minimum of seven distinct pieces of legislation that attempt to deal with issues of harmful or abusive communications across the legally distinct jurisdictions comprising the UK. None of these have to date proved adequate in tackling aspects of online violence against women.
- v. The harms caused by image-based sexual abuses are widely recognised yet the equivalent harms for text-based abuses have not been afforded the same level of attention despite high-profile cases where these issues have been judicially addressed.

- vi. Within England & Wales, and Scotland, specific legislation has been enacted to tackle the problems of image-based violence against women in the form of criminal offences to tackle revenge pornography and rage pornography. No similar provisions have been enacted to tackle text-based abuses.
- vii. Providers and social media platforms have been engaged in discussions aimed at tackling forms of online abuse broadly, but these – to date – have proved to be ineffective and largely piecemeal when compared to the measures taken to tackle extremist content online.
- viii. Legal regulation cannot be the only form of regulation which is considered within the context of online abuse – and especially where that abuse takes the form of violence against women. To allow these criminal acts to continue is to allow the silencing of women to continue – and that, in our digital age, means excluding women from public spaces in an online (and offline) context.