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Jurasz, Olga and Barker, Kim (2019). Written Submission of Evidence to the Joint Committee on Human Rights inquiry on Democracy, free speech and freedom of association. UK Parliament.

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Version: Version of Record

Link(s) to article on publisher's website:

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/human-rights-committee/democracy-free-s>

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Written Submission of Evidence to the Joint Committee on Human Rights
inquiry on Democracy, free speech and freedom of association.

by Dr Kim Barker and Dr Olga Jurasz

March 2019

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Democracy, free speech and freedom of association

1. We are responding to the call for evidence in our capacity as experts on social media abuse, online violence against women, and online misogyny. We have in the past made significant contributions to the UN calls for evidence on online violence against women, to the Bracadale Review on Hate Crime in Scotland, the Women and Equalities Committee inquiry into sexual harassment of women and girls in public spaces, and to Scottish Government's 'One Scotland: Hate Has no Home Here' Consultation on amending Scottish hate crime legislation.¹ In addition, we have made representations to the Scottish Government as to the need to amend legislation to cover a wider range of harassing and abusive behaviours online. We have recently published a world-leading volume '*Online Misogyny as a Hate Crime: a Challenge for Legal Regulation*' (Routledge 2019). We have been working on issues relating to harassment of women and girls in online spaces since 2013. We are possibly your only evidence respondents that have experience of the wider issues surrounding online harassment, and who take a holistic approach to the legal problems posed by such harassment, merging criminal law, gender, human rights, and internet law expertise. As such, we have been encouraged to provide further evidence (as per below), which would supplement the other expert evidence provided. We would add that we are happy to give evidence orally to the Committee if this was of use. We are only commenting on the questions posed from the perspective of our research, which includes particular consideration of experiences of women politicians and the gender perspective on the questions asked.

¹ Kim Barker and Olga Jurasz, 'Submission of Evidence on Online Violence Against Women to the UN Special Rapporteur on Violence Against Women, its Causes and Consequences, Dr Dubravka Šimonović' (Open University, November 2017) <http://oro.open.ac.uk/52611/>; Kim Barker and Olga Jurasz, 'Submission of Evidence to Scottish Government Independent Review of Hate Crime Legislation (Bracadale Review)' (Open University, December 2017) <http://oro.open.ac.uk/52612/>; Kim Barker and Olga Jurasz, 'Written Submission of Evidence to the Women and Equalities Committee Inquiry into Sexual Harassment of Women and Girls in Public Spaces' (Open University, March 2018) <http://oro.open.ac.uk/53804/>.

The right to speak freely on political matters is strongly protected. Can it be given the protection it needs without permitting harassment or hate speech against MPs?

2. The right to speak freely on political matters is strongly protected not only under national law, but also under international human rights law. In particular, women's rights to participation in public and political life of the country, on equal terms with men, is protected under international law – specifically under Article 7 of the UN Convention on Elimination of All Forms of Discrimination Against Women. As a state party to this Convention, the UK has obligations to ensure that it takes 'all appropriate measures to eliminate discrimination against women in the political and public life'.

3. Nowadays, opinions on political matters are expressed largely online – especially using social media platforms – and politicians are largely expected to have a strong online presence. Nevertheless, female politicians have been subjected to considerable amounts of online abuse, including online hate speech, in response to expressing their political views online or when campaigning leading up to elections. As a study carried out by Amnesty International showed, female politicians from all sides of the political spectrum have received abuse and threats online, with BAME female MPs receiving significantly larger numbers of abusive tweets than the white female MPs surveyed in the study.²

4. Such behaviours have a chilling effect on democratic and equal participation in political life – especially on women's equal representation and equal participation in political spheres. Ensuring freedom of expression should be placed on an equal standing with ensuring gender equality (and, captured within that, equality of participation in public and political life). Online violence against women (including against female politicians), embodied by abusive messages, online threats, online harassment, and (gendered) hate speech against female MPs is one of the biggest obstacles to ensuring equality of participation in modern day world. Such forms of online abuse and online violence have a negative impact on the right to freedom of expression to be exercised equally.

² Amnesty International, *Unsocial Media: Tracking Twitter Abuse against Women MPs* (3 September 2017) <https://medium.com/@AmnestyInsights/unsocial-media-tracking-twitter-abuse-against-women-mps-fc28aeca498a>

What is the role of social media in relation to free speech and threats to MPs? How, if at all, should it be regulated?

5. The internet offers enormous potential for ‘good’. Social media platforms are optimal spaces that are designed to encourage participation, firmly representing not only social and political rights, but also representing the embodiment of equal opportunities. At the same time, social media platforms play an increasingly prominent role as outlets for threats, abuse, harassment, and even hate.³ This is particularly noticeable with the shift from online threats to offline violence – evidenced in the most horrific of ways with the murder of Jo Cox MP. Rather than the internet providing a platform for campaigning for equality, anti-discrimination, and gender-parity, it is evolving rapidly into a space which is increasingly hostile, particularly for women who dare to be advocates. The backlash that such women receive for speaking out – particularly about issues relating to equality – is staggering, damaging, and harmful. For social media platforms to not act, or to act slowly in respect of reports of abusive content that violates their respective content policies essentially shuts down any notion of free speech for those receiving the backlash. As such, where threats are made to MPs via social media platforms, but those platforms do not take action, they are complicit through their inaction.

6. The regulation of social media is not a straightforward issue yet one on which a lot of attention is currently focussed from different perspectives⁴ and is compounded by the applicability of the liability shields in operation under the e-Commerce Directive. There ought to be more effective regulation of social media platforms, and greater enforcement of relevant legal provisions. Those provisions have to be fit for the internet age, not merely adapted from the age of Victorian letters. That said, not all speech should be criminalised, and care must be taken to ensure that in attempting to protect the free speech of politicians on social media, the balance does not shift to curtail the free speech of those in opposition to, or with a dislike of politicians and political parties. Greater investment in moderators is not the answer to regulation, nor is a digital tax though these are mechanisms of a more holistic regulatory approach.

³ K Barker & O Jurasz, *Online Misogyny as a Hate Crime: A Challenge for Legal Regulation?* (Routledge, 2019).

⁴ HM Treasury, ‘Unlocking Digital Competition: Report of the Digital Competition Expert Panel’ (March 2019) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/785547/unlocking_digital_competition_furman_review_web.pdf; House of Lords Select Committee on Communications, ‘Regulating in a digital world’ (9 March 2019) HL Paper 299 <https://www.parliament.uk/business/committees/committees-a-z/lords-select/communications-committee/news-parliament-2017/internet-regulation-report-publication/>; DCMS, ‘Making Britain the safest place in the world to be online’ (11 October 2017) <https://www.gov.uk/government/news/making-britain-the-safest-place-in-the-world-to-be-online>; Law Commission, ‘Abusive and Offensive Online Communications: A Scoping Report’ (1 November 2018) Law Com No 381 <https://www.lawcom.gov.uk/abusive-and-offensive-online-communications/>.

What types of political abuse are most prevalent? What is driving this abuse and what more can be done to counter it?

7. As evidenced by the Amnesty International study, online abuse against female politicians is particularly prevalent. This encompasses sending of abusive tweets, including content that is threatening and/or sexually explicit and/or racist and/or anti-Semitic and/or anti-Muslim and/or misogynistic and/or hateful, as well as other forms of abusive communications online.

8. The motivators vary depending on the characteristics of the targeted person, but are unified by a common objective of silencing and intimidating the victim to allow the domination of the Internet space by the perpetrator. The current responses are lacking in effectiveness and timeliness, and offer limited avenues for redress. To remedy that, a holistic approach ought to be taken towards addressing abusive behaviours on social media platforms – especially their gendered manifestations. To that end, a multi-level and multi-actor response is required, including law reform but also educational measures as well as greater responsibility being assumed by the platform providers.

What has already been done to identify the scale of the problem and address it?

9. Selective reports have identified the scale and nature of the problem – however, little has been done so far to address it in a meaningful, comprehensive, and lasting manner. In particular, the gender perspective has been grossly missing from the responses and assessments articulated thus far. Issues of online violence against women, including violence against women in politics, have been largely excluded from reform considerations with regard to online communications, social media regulation, and hate crime (including its online manifestations).

10. Limited steps have been taken by social media platforms, but those have been predominantly focused on tackling extremist content online.⁵ As such, steps taken to address the problem are a matter of willingness – or otherwise – rather than a question of feasibility. More can – and should be done – but solutions must be multifaceted. Better responses are required rather than more.

⁵ Commission Recommendation of 1.3.2018 on measures to effectively tackle illegal content online (C(2018) 1177 final) <https://ec.europa.eu/digital-single-market/en/news/commission-recommendation-measures-effectively-tackle-illegal-content-online>.