
Gender mainstreaming and the proposed cybercrime convention: Commentary on the consolidated draft

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Since the first session of the Ad Hoc Committee to elaborate a Comprehensive International Convention on Countering the Use of Information and Communications Technologies for Criminal Purposes, Member States have expanded discussions on incorporating gender and gender equality, moving from several general initial commitments to women’s participation in treaty negotiations to some Member States providing more nuanced considerations of gendered dimensions of cybercrime and the importance of gender mainstreaming. This is reflected in the general provisions of the current consolidated negotiating draft, which designate gender mainstreaming as a core component of cybercrime prevention, and highlight the specific needs and vulnerabilities that may be experienced by women and girls in vulnerable situations.

In a [previous briefing paper](#), Chatham House outlined what it means to gender mainstream the cybercrime convention. This briefing paper provides a gender commentary on the consolidated negotiating draft that the Chair put together based on Member States submissions to the process. It highlights areas where protections for gender equality may be improved, where gender mainstreaming may strengthen equality and the convention’s implementation, and where the wording of the draft may inadvertently introduce risks to gender and sexual equality. While some Member States have made considerable progress in advocating for gender considerations in the convention, more remains to be done in the three main chapters on general provisions, provisions on criminalization, and provisions on procedural measures and law enforcement.

This is a shortened summary of the full briefing paper, which details the reasoning behind each recommendation in full, and can be found [here](#).

General Provisions

Article 5.2, which calls for states to make efforts to “mainstream a gender perspective and to take into consideration the special circumstances and needs of vulnerable groups, in particular women, children, and the elderly” is highly significant in its explicit consideration of gender, building on the various state submissions and AHC discussions summarized above. The prominent inclusion of wording relating to gender mainstreaming deserves substantial credit. This is an effective instance of **single-track gender mainstreaming** - a single clause pursuing some dimensions of gender equality as a stand-alone goal. Art. 5.2 is thus an important step towards gender equality in the future cybercrime convention.

Further negotiation regarding this article should consider that it contains two components – gender mainstreaming, and special needs and circumstances – that, though related, pertain to distinct dimensions of gender and cybercrime. The goal of gender mainstreaming is gender equality. Gender equality includes, but is not limited to, the particular needs of women and girls in vulnerable situations vis-à-vis cybercrime. There is a risk that, as currently written, the article could inadvertently limit considerations of gender equality and mainstreaming only to the particular needs of women and girls in vulnerable situations. Specifically, as currently written, the article may overlook the gendered effects of cybercrime in boys, men and people of diverse gender identities and expressions, as well as the wider role of women and girls in cybercrime governance. Specifically, we recommend that parties consider that:

- Promoting gender equality by implementing gender mainstreaming pertains to the entire convention beyond preventing/combating cybercrime;
- Gender mainstreaming itself should be intersectional, recognising and addressing the historical and social context within with patterns of multi-faceted inequality are located and experienced
- Intersectional gender equality requires recognition of the rights of people of diverse gender identities, expressions, and sexualities;
- Recognition of the right to privacy is essential to fostering gender and sexual equality.

Criminalization

In addition to the single-track approach to gender mainstreaming represented in Article 5.2, current international best practice advises **multi-track gender mainstreaming**, wherein gender is incorporated into all relevant parts of the convention. Given the differential legal status of diverse gender expressions, identities, and sexualities in various national jurisdictions, it is particularly important to consider the implications of all provisions – criminal and procedural – for the rights and wellbeing of gender and sexual minorities.

Our position is that the best way to preserve human rights, including gender equality, is to avoid any criminalization of content. The criminalization of content is complex, given wider issues around over-broad definition, misuse, and intermediary liability, as well as the existence of other UN processes and international legal instruments to address online gender-based violence. From a gender perspective, the best way to counter such risks, in addition to avoiding criminalization of content, is the implementation of strong legal protections for privacy as a human right for people of all genders.

If such provisions on criminalization do remain under consideration, we recommend that Member States carefully consider their gendered implications. In particular, Article 24 on sexual extortion and Article 25 on non-consensual dissemination of intimate images both pertain to online gender-based violence, in the sense that women and people of diverse gender identities, expressions, and sexual orientations experience particular vulnerabilities to this form of online harm. If drafted narrowly and precisely, with sufficient safeguarding of human rights and protections against misuse, these articles have the potential to improve the security of women and people of diverse gender identities, expressions, and sexual orientations by directing domestic and international law enforcement resources towards countering such activities as cybercrimes, as well as providing increased support to those affected by such activities.

More generally, gendered implications of criminalization for consideration should include:

- Privacy;
- Confidentiality of medical information (including sexual orientation, gender identity and expression, and sexual and reproductive health);
- Access to information relating to sexual education;
- Access to information relating to diverse gender identities, expressions, and sexual orientations;
- The safety of people engaged in sex work;
- Access to sexual and reproductive healthcare;
- The over-incarceration of young men from minoritized groups, as well as other stereotypes and biases regarding the roles that men, women and people of diverse genders adopt when in contact with criminal justice systems;
- Protections for whistleblowers, human rights defenders, and journalists.

Procedural measures and law enforcement

In the consolidated negotiating document, the chapter on procedural measures and law enforcement includes a key article on privacy (Article 42). This article is crucial to the overall gendered implications of

the consolidated negotiating document. It is laudable that this article explicitly mentions privacy protections in addition to general human rights obligations.

However, considering the best practice of multi-track gender mainstreaming discussed above, it is best practice to also mention gender - including sexuality, gender identity and expression - as private personal data that requires protection. Specific and strengthened privacy protections for protected forms of communication, including medical, legal, religious, or public interest, would also ensure the article adequately safeguards people of all genders in vulnerable situations. This is particularly important to ensuring the rights and wellbeing of women and people of diverse gender identities, expressions, and sexual orientations both broadly and in jurisdictions where access to abortion and/or the expression of LGBTQI+ identities is currently not legally permitted.

This chapter also provides relevant state agencies with significant powers, including on: the search, seizure and preservation of computer data; the real-time collection, preservation and partial disclosure of traffic data; the production of subscriber information and other data; and the interception of content. While these powers are necessary to collect intelligence and evidence regarding cybercrimes, from a gender perspective it is vital that they are accompanied by appropriate conditions and safeguards.

There is significant risk of over- or mis-use of law enforcement powers provided in this chapter to collect data on a wide variety of vulnerable or high-risk individuals or communities, especially minorities, as well as access to sexual and reproductive health care by people of all genders and ages. Law enforcement agencies also require appropriate training, including gender-, sexuality-, and age-sensitive training for legal and judicial personnel interacting with victims of cybercrime, including training on trauma-informed and culturally-relevant practices for legal and judicial personnel interacting with victims and accused people.

Conclusion

This paper has emphasized the importance of ensuring the protection of groups in vulnerable situations – including but not limited to women and girls – and securing broad protections for equality and human rights. This includes the rights to privacy and access to sexual and reproductive healthcare and related information. This paper has also emphasized the specific and substantial risks faced by people of diverse gender expressions, identities, and sexualities when encountering cybercrime and cybercrime governance, particularly but not exclusively in jurisdictions where LGBTQI+ identities and expressions are not legal.

We also note that many of the issues raised here – notably the inconsistent legality of LGBTQI+ identities and expression, sex work, and access to sexual and reproductive healthcare (including abortion) – have substantial implications for the discussions of dual criminality to come at AHC5. Likewise, the specific implications of much of the consolidated draft – particularly those provisions not explicitly relating to gender – depend significantly on the way such articles are interpreted and enacted. Alongside the human rights dimensions of dual criminality, it is therefore also essential that gender mainstreaming feature prominently in AHC5 negotiations on implementation.

Recommendations

A full list of recommendations is as follows:

Article in consolidated draft	Recommendation
Article 5	<p>Affirm the right to privacy as a core component of human rights law.</p> <p>Explicitly refer to gender equality as a component of international human rights that states “shall ensure”, including non-binary identities and gender expression as part of gender equality</p>
Article 5.2	<p>Clearly separate the text relating to gender mainstreaming from the text relating to special circumstances/vulnerability, and explicitly advocate an intersectional approach to gender mainstreaming.</p> <p>Explicitly affirm the right of women and people of diverse gender identities and expressions to participate in the governance, implementation, and oversight of cybercrime.</p> <p>Reframe “special circumstances and needs of vulnerable groups, in particular women, children and the elderly” to avoid positioning people, particularly women, as inherently vulnerable. This could be done by referring to the “special circumstances and needs of [groups experiencing particular cybercrime risks\groups in vulnerable situations] particularly women, children, people of diverse gender identities, expressions, and sexual orientations, elderly people, and people with disabilities”.</p>
Article 22	<p>Ensure that CSAM provisions are drafted sufficiently narrowly to ensure access to educational, medical, and emotional support information relating to gender, sexuality, and sexual and reproductive health remain available.</p>
Article 24, 25	<p>Support an article that does not depend on a particular motivation or intent (e.g. financial) to criminalize non-consensual dissemination of intimate images (i.e. Article 25 rather than Article 24), and do not include “intent to cause serious emotional distress” in Article 25. These recommendations do not mean that intentionality <i>per se</i> should not be essential to the criminalization of the act: i.e., the article should still retain the requirement of the act being committed “intentionally and unlawfully”.</p>
Articles 26, 27, 28, and 29	<p>Omit from Convention</p>
Article 33	<p>Consider how Article 33 both relates specifically to the use of ICTs - especially in clause 2b) - and how it improves on existing international legislation on anti-money-laundering. If there is no additional value, given the risks to sex workers, remove the article.</p>
Article 42	<p>Explicitly refer to gender mainstreaming</p> <p>Explicitly include gender and sexuality as part of privacy protections</p> <p>Provide stronger, specific protections for privileged communications (i.e. medical, legal, religious, public interest)</p> <p>Connect to privacy and gender provisions in Article 5</p>
Articles 43 through 49	<p>Ensure sufficient safeguards and conditions on law enforcement, including protections of the rights of gender and sexual minorities.</p> <p>Explicitly protect access to sexual and reproductive health care by people of all genders and ages.</p>
Article 52	<p>Explicitly include protection of whistleblowers and journalists.</p>

Article 53	Explicitly refer to importance of gender mainstreaming in reference to the rights of the accused and rights and wellbeing of victims.
	Explicitly commit to gender-, sexuality-, and age-sensitive training for legal and judicial personnel interacting with victims of cybercrime, including training on trauma-informed and culturally-relevant practices for legal and judicial personnel interacting with victims and accused people.