

**Red en Defensa de los Derechos Digitales (R3D), Derechos Digitales (DD) and
Electronic Frontier Foundation (EFF)' Oral Intervention on Criminal Procedural
Measures**

**Delivered By Grecia Macias, R3D
Fourth Session - 9 January to 20 January 2023**

Red en Defensa de Los Derechos Digitales, jointly with Derechos Digitales and the Electronic Frontier Foundation, welcomes the opportunity to address the Ad-Hoc committee on the Consolidated Draft of the proposed Cybercrime treaty.

We appreciate the opportunity to speak today on the safeguards needed to protect human rights, Articles 41 and 42.

We believe that human rights protections and safeguards should drive the scope of the Convention's provisions governing criminal procedure and law enforcement powers. How and under what circumstances police are allowed to access data during investigations can implicate people's rights and put them at risk.

We recommend that the treaty's scope is designed explicitly to prevent overreach and abuse. Therefore, we recommend that Article 41 limits the range of procedural measures to crimes established by the Convention.

Article 42, on condition and safeguards, is also fundamental as it aims to provide the safeguards applicable to the investigative powers contained in Articles 43 to 49. Hence it is necessary that additional safeguards are included and existing ones are further clarified and strengthened to avoid the risk of human rights abuses in the applications of these functions.

At a minimum, we recommend the following:

- Article 42 should be more detailed and robust and should ensure that interferences with privacy are premised on a factual basis for accessing the data, in particular, a factual indication for suspecting that such person is planning, committing or having committed a criminal act;
- Article 42 should apply to all types of personal data, including non-content data such as metadata, traffic data, and subscriber information;
- Paragraph 2, Article 42 should be strengthened to require not only independent supervision but also prior independent or, strongly preferably, judicial authorization of surveillance measures;
- It should include a right to an effective remedy and user notification;
- Should add a provision to require that any investigative powers listed in this Convention should be conducted in ways that do not compromise the security of digital communications and services, and
- Explicitly prohibit any data processing and any interference with the right to privacy that is not lawful, necessary, legitimate, and proportionate.
- Finally, we recommend adding adequate grounds for the refusal of int'l cooperation.

Thank you for your consideration, madame chair.