



The proposed UN Convention on Countering the Use of Information and Communications Technologies (ICT) for Criminal Purposes (the Convention) is becoming more crucial in an increasingly digitized world. However, the authors of this position paper categorically state that the provisions of the proposed Convention should not result in the arbitrary and unjustifiable infringement of existing human rights.

Several organizations<sup>1</sup> have noted concerns that the scope and application of the Convention will result in arbitrary surveillance of citizens, particularly human rights defenders, whistleblowers, and political opposition parties. We urge due consideration to be given to existing international human rights law and, where necessary, the application of the proportionality test provided in the International Covenant on Civil and Political Rights (ICCPR), which requires that any limitation or restriction of a human right should be proportionate, legitimate and legal.<sup>2</sup> Existing international human rights law and standards should be used to inform this Convention. And the Convention should have the necessary safeguards to ensure the protection and promotion of existing international human rights.

### **Crimes relating to online sexual exploitation of children, human trafficking and image-based sexual abuse**

Criminal activities such as the production and dissemination of child sexual abuse material (CSAM) and cyber-dependant forms of human trafficking have found new avenues through ICT. With the increasing access to and usage of the Internet, major criminal activity has expanded to the online sphere<sup>3</sup> which is increasingly used for human trafficking.<sup>4</sup> Traffickers and other exploiters can now transcend their criminal activities beyond national borders and jurisdictions and operate across multiple jurisdictions. These online crimes exploit the anonymity, reach, and rapid communication capabilities of the digital realm, presenting significant challenges for law enforcement and regulatory bodies worldwide.<sup>5</sup>

In the context of human trafficking, each element of the crime - *Action, Means and Purpose* - can be committed in cyberspace. It can involve combinations of online and offline activity within a single trafficking crime and the involvement of multiple persons and businesses in different locations in the world. Victims can be recruited into any

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<sup>1</sup> See <https://www.accessnow.org/press-release/joint-statement-cybercrime-treaty-concluding-session/>

<sup>2</sup> See Article 19(3) of the International Covenant on Civil and Political Rights

<sup>3</sup> Witting, S., (2017), '[Cyber' trafficking? An interpretation of the Palermo Protocol in the digital era - Völkerrechtsblog](#), Völkerrechtsblog,

<sup>4</sup> Chertoff, C. (2017), [A public policy perspective of the Dark Web](#), Journal of Cyber Policy 2(1), pp. 1-13.

<sup>5</sup> McDaniel, J. L. (Ed.), Stonard, K. E. (Ed.), & Cox, D. J. (Ed.) (2020), [The Development of Transnational Policing](#), London: Routledge.

form of exploitation via the Internet. However, among the most prevalent forms of human trafficking online is trafficking for sexual exploitation.<sup>6</sup>

Images of sexual exploitation of victims can be posted online by traffickers in advertisements, for instance, on pornography websites and on those advertising sexual services. Filming and uploading videos and images of sexual exploitation can be done with the simple use of a smartphone, which means that overheads, costs, and risks for traffickers are low, but the profits are high. Images of the rape and sexual abuse of adults and children can also be live-streamed for viewers who pay subscription fees or one-off payments online, including via mainstream pornography sites. With the advent of digital platforms dedicated to pornography, the ease of uploading it, and the explosion in demand for it, traffickers are increasingly exploiting victims for commercial sex acts and photographic and video material that provide new income streams.

A victim's physical image in any form that constitutes sexual exploitation can also be used for blackmail in the form of threats of general further exposure online or specific exposure to victims' families or communities. This can result in families disowning or stigmatizing victims, and in some cases, victims will receive threats of murder from their own communities due to cultural perceptions of 'dishonor'. Blackmail threats to expose victims on the Internet are highly effective in maintaining victims' fear and silence for years or throughout their lives.

Additionally, legislative language employing the phrase "person's sexual parts" poses a challenge, as it lacks universality in recognizing and safeguarding all facets of bodily autonomy. Notably, some national legislations omit breasts from the definition of personal parts or do not take into account cultural and/or religious considerations in determining what is an intimate image, therefore creating a vulnerability and highlighting a notable gap in legal protection. This deficient terminology can extend to the interpretation of victims' choices in clothing, perpetuating antiquated notions that unjustly place blame on the victim. Initiating a dialogue on victims' rights is imperative in this context, aiming to address legal inadequacies and challenge societal attitudes that sustain a detrimental and regressive framework surrounding sexual violence.

Another emerging concern is the use of deepfakes and AI-generated content in sexual exploitation. Deepfakes involve using AI to create highly convincing manipulated videos or images, often indistinguishable from the real material. The sophistication of such technology adds a layer of complexity to investigations and challenges traditional methods of content moderation and authentication. Trafficking for the purpose of pornography production and child sexual abuse material (CSAM) are both impacted by this emerging trend. Although there is growing recognition of the confluence between trafficking for the purpose of sexual exploitation, pornography, CSAM, and deepfakes, the topic has rarely been explicitly addressed in both international and national legislation and policy.

Online sexual exploitation and abuse often result in life-long exploitation as images can rarely be removed from the Internet by victims even after they have left the control of their exploiters, including in cases where their exploiters have been convicted. It

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<sup>6</sup> See <https://www.unodc.org/toc/en/crimes/human-trafficking.html>

therefore leaves a permanent record of their abuse, which can significantly impede survivors' recovery and social inclusion.

The consequences and harms on survivors and the severity of its impacts are aggravated by gender, age and other specific characteristics of victims. The effective recovery processes of survivors of trafficking depend on their ability to receive the long-term support that fits their specific needs, including the removal of all pornography and CSAM materials produced or generated. These continue their victimization, heighten their vulnerability to being abused again, prevent social inclusion, and are a source of continued exploitation and trauma after their physical exit from the situation of exploitation.

The Beijing Platform for Action in 1995 recognizes that "the use of women and girls as sex objects, including pornography" is a "factor[] contributing to the continued prevalence of ... violence" against women and directs governments to "take appropriate measures to address the root factors..., that encourage trafficking in women and girls for prostitution and other forms of commercialized sex" and to protect their rights through both criminal and civil measures. At Beijing, states committed themselves to "take effective measures including appropriate legislation against pornography" and "strengthen the implementation of all relevant human rights instruments in order to combat and eliminate, including through international cooperation, organized and other forms of trafficking in women and children, including trafficking for the purposes of sexual exploitation, pornography, prostitution and sex tourism."

In addition, the Convention on the Elimination of Discrimination against Women (CEDAW) calls on states parties to "take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women." According to CEDAW Art. 6, states parties have the legal obligation to suppress all forms of trafficking in women and girls, and in response, anti-trafficking legal frameworks and policies should exist at the national, regional and international levels.

Considering this context, we recommend the following:

- That the scope of the definition of intimate images under Article 15 (1) should be expanded to include a wider range of images to recognize and safeguard all facets of bodily autonomy, including where: "because of the person's religious or cultural background, the person consistently wears particular attire of religious or cultural significance whenever the person is in public; and the material depicts, or appears to depict, the person: (a) without that attire; and (b) in circumstances in which an ordinary reasonable person would reasonably expect to be afforded privacy." Currently, Article 15(1) of the Convention provides that the scope of what would be considered an intimate image generally encompasses images that would be considered intimate and private and to which people would have a reasonable expectation of privacy. However, the scope of the definition is limited and does not consider intimate images which cause significant harm for cultural or religious reasons.

- That the provision of intent under Article 15 (5) be removed. Article 15 (5) makes provision for a State Party to “require the intent to cause harm before criminal liability attaches”. The intent requirement in non-consensual sharing of intimate images laws presents challenges for victims, who would need to prove intent to harm beyond a reasonable doubt, making it practically impossible for those victimized by strangers. It will also be difficult in cases where the victim knows the offender, as the offender can claim a number of plausible alternative motives. The “intent to harm or harass” requirement may enable the dissemination of intimate images for profit or entertainment with the defense that “harm” and/or “harassment” was not intended. It also confuses mens rea with motive.
- That AI-generated CSAM should not be exempted from being an offense in the proposed Convention. Providing State Parties with the option to require that the material identified in Article 13 ( 2) of the proposed Convention be limited to material that “(a) Depicts, describes or represents a real child; or (b) Visually depicts child sexual abuse or child sexual exploitation” will fall short of protecting children. Offenders may use AI-generated CSAM to groom or extort victims into generating CSAM. It will also make it easier for offenders to evade efforts to identify and remove CSAM and law enforcement efforts to apprehend offenders.<sup>7</sup> Representations of child sexual abuse should be illegal regardless of whether a “real child” is involved or whether a “real” child is depicted. Accordingly, Article 13( 2) should not be included in the Convention.
- That provision be made for technology platforms and websites to remove sexual abuse materials without delay. As victims of these crimes recount, it is extremely difficult to get this material removed when it circulates on digital platforms, and perpetrators continue to profit indefinitely from their image-based sexual abuse material, trafficking for the purpose of pornography, and CSAM.
- The proposed Convention clearly includes and properly classifies sexual exploitation and abuse crimes. The inadequate classification of crimes related to CSAM, OSEC, and trafficking via ICT can have serious consequences, potentially leading to the under-prioritization or under-resourcing of victim services. A crucial aspect in addressing this issue is the need for procedural reform to enable effective investigation and prosecution of online sexual exploitation. Several measures can be implemented, including the introduction of mandatory reporting for technology-facilitated trafficking and exploitation, mandatory age verification for individuals depicted in uploaded material, and mandatory age verification for those uploading and viewing such material.
- Additionally, regulatory frameworks governing the collection and use of digital evidence are essential. Consensus among law enforcement, policymakers, and magistrates on how evidence gathered by AI systems should be prioritized underscoring the need for clear policy guidance in criminal justice proceedings.

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<sup>7</sup> See <https://www.weprotect.org/wp-content/uploads/Global-Threat-Assessment-2023-English.pdf>

## **Survivors and lived experience experts' participation**

Victims and survivors of the different crimes mentioned in the proposed Convention have been critically under-represented in the negotiations. The attempts to minimize or delete already limited and non-holistic provisions under Art. 34, paragraphs 4 and 5 would be a grave infringement of the responsibility to protect victims. The mention of victims of cybercrime in the negotiations fails to recognize that we are actually talking about victims of sexual violence, victims of gender-based violence and/or victims of human trafficking and exploitation. The assistance should not only be gender and age-specific but also trauma-informed and comprehensive and should specifically include provisions for physical and psychological recovery, as well as social inclusion/reintegration.

The text mentioned *'in cooperation with relevant stakeholders'* is also crucially relevant, as in many countries, services for the victims of such crimes are almost exclusively provided by the third sector - be it nongovernmental organizations, civil society organizations, or volunteer organizations. We are also very concerned about the suggestion of putting the burden of proving victimhood on those who have faced enormous and significant trauma because of the violence they have suffered. These facts bring us to the following conclusions:

## **The need for interconnected, international responses**

This proposed Convention is an opportunity to provide for interconnected international responses for offenses facilitated by technology. This includes providing clarity on the elements, scope and definition of these offenses across Member State countries. The Convention should provide a global, gendered, harmonized and coordinated response from the international community and is an opportunity to increase and improve protections for victims of various crimes. Please do not turn this into a legal instrument facilitating impunity and authoritarian abuse: victims and survivors deserve better than that!

**eLiberare** is a Romanian organization focused on preventing human trafficking & commercial sexual exploitation. Our main directions for action are:

**PREVENTION EDUCATION:** We decrease the risks of trafficking by making people aware of the issues and empowering them to prevent trafficking.

**CAPACITY BUILDING:** We resource and equip people through specialized training sessions in order to bring about proactive identification of victims of trafficking.

**EXTERNAL ASSISTANCE:** We come alongside state and private facilities that help restore and reintegrate victims and survivors of human trafficking into healthy communities.

**STRATEGIC ADVOCACY:** We inform better legislation that protects victims and counters the culture of impunity.

**AWARENESS EVENTS:** We proactively go towards those vulnerable and those prone to using services of trafficked individuals in order to educate them about the phenomenon and deter harm.