
Chatham House submission to the second session of the Ad Hoc Committee to Elaborate a Comprehensive International Convention on Countering the Use of Information and Communications Technologies for Criminal Purposes

For the second session of the AHC, Chatham House has commissioned two briefing papers:

1. What does it mean to gender mainstream the proposed cybercrime convention?

This paper considers what it means – and how – to gender mainstream the proposed cybercrime convention and explores key definitions and concepts pertaining to gender, cybercrime, and international treaty making. This document includes a shortened version of the paper. The full version of the paper can be found [here](#), including translations into French, Spanish, Russian, Chinese and Arabic. This paper is authored by Dr Katharine Millar.

2. Lessons from UNTOC and UNCAC and their application to the cybercrime convention

The second paper provides key takeaways and conclusions aimed at informing the negotiation process of the cybercrime treaty based on lessons learned from the UNTOC and UNCAC negotiation processes. This paper is authored by Ian Tennant and can be found at the link [here](#).

What Does it Mean to Gender Mainstream the Proposed Cybercrime Convention?¹

Dr Katharine M Millar

What is Gender Mainstreaming?

The primary aim of gender mainstreaming is the promotion of **gender equality**, meaning “equal rights, opportunities and outcomes for girls and boys and men and women” and non-binary people.ⁱ Gender equality is enshrined in the Charter of the United Nations and confirmed in many other international commitments, including the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW 1979), the Beijing Declaration and Platform for Action (1995), Security Council resolution 1325 on Women, Peace, and Security (2000), and the 2030 Sustainable Development Goals (amongst others).ⁱⁱ Gender equality sits alongside other human rights commitments, including the civil and political rights outlined in the International Convention on Civil and Political Rights (1996).ⁱⁱⁱ

Gender mainstreaming is, then, just “the process of assessing the implications for girls and boys and men and women [and non-binary people] of any planned action, including legislation, policies and programmes”.^{iv} It is the United Nations system’s primary strategy for accelerating progress on gender equality, by ensuring that the distinct capacities and needs of women, girls, men, boys and non-binary people are incorporated into all aspects of all policy processes.^v As a result of unequal power relations in many contexts around the world, many practical gender mainstreaming processes emphasize women’s empowerment.

Gender Mainstreaming the Proposed Cybercrime Convention

Negotiations and drafting

Consultation and participation are key priorities for gender mainstreaming the negotiation and drafting of the convention. This has three dimensions.

First, the delegations for each state party might strive for **gender parity** both within the team and across levels of seniority and expertise. The same principles apply to UNODC Secretariat staff assisting state delegations in drafting the treaty. Gender parity in Ad Hoc Committee participation is a priority already identified in Annex III of the report of the First Ad Hoc Committee session (A/AC.291/7) with respect to expert panel discussions in intersessional consultations.^{vi} As cybercrime policy jobs are authoritative and prestigious, it is a matter of gender equality that women and non-binary people are able to access these positions. Greater gender (and sexual and racial, etc) diversity in policymaking teams can contribute to creative problem-solving and more gender inclusive policymaking.^{vii} For this to be meaningful rather than tokenistic, leadership must actively encourage the articulation of diverse perspectives and avoid soliciting input that conforms to gender stereotypes (e.g. assuming women are more caring and/or gender experts).^{viii}

Second, the Ad Hoc Committee may prioritize and facilitate **multistakeholder consultation** with women’s rights groups, LGBTQI+ groups, privacy advocates, civil and human rights groups, and criminal justice reform groups. Ensuring broad intersectional consultation would entail overcoming procedural obstacles to participation, such as ECOSOC accreditation and the prioritisation of state parties for oral statements in committee sessions. This could build on the strong work the Ad Hoc Committee has already done in

¹ This paper represents the views of the author and not Chatham House. Please note that this is a shortened version of the paper for the purposes of publication on the UN AHC website. Please find the full version (including translations into the other UN languages) on the Chatham House website at the link [here](#).

increasing opportunities for inclusive multi-stakeholder consultation. Extending this meaningful consultation would require further procedural flexibility. It could also involve proactively seeking out participation by smaller, grassroots organisations lacking the capacity to engage in formal UN processes.

Third, state delegations and the UNODC Secretariat may engage in **capacity-building** to support women's participation in formal negotiations and civil society actors' participation in meaningful consultations. Within state delegations, this might involve mentorship, technical training, and access to leadership opportunities. For civil society organisations, this may involve access to substantive briefings by UNODC staff, technical assistance, and the financial support required to effectively participate in Committee sessions (and informal discussions) in person.

Finally, each state delegation may appoint a **gender advisor**,^{ix} responsible for mainstreaming each state's contributions to substantive and procedural negotiations. The gender advisor would be a formal position within each state negotiating team that oversees, for instance, the gender analysis of each state's proposals for substantive and procedural provisions, as well as strategies for national implementation. The gender advisor may also be the point of contact for women's and LGBTQI+ multi-stakeholder groups.

Substantive Provisions

Gender mainstreaming the draft treaty itself would involve taking seriously the needs and perspectives of men, women, and non-binary people throughout the text, strongly informed by the multistakeholder consultations. For substantive provisions, this has three key aspects.

First, any proposed provisions relating to explicitly gendered cybercrimes (e.g. provisions related to tools and software that, among other crimes, can be used for cyberstalking) would be drawn from multistakeholder consultation to ensure that a plurality of perspectives on gendered cybercrimes is considered. This is particularly important, as **gender biases** often lead to women being understood primarily as potential victims in need of the protection of the criminal justice system, rather than as full people engaging in society. Women, non-binary, and LGBTQI+ people also benefit from using the Internet, have the right to privacy, may be criminal justice system actors, and may commit cybercrimes, just as men may be victims. With this multidimensional perspective in mind, specific provisions on gendered cybercrime – *if any* – would be worded narrowly and precisely.

Second and relatedly, a **multi-track** gender mainstreamed convention would **write a broad commitment to gender equality into the text**. This might involve explicitly referring to gender equality alongside provisions declaring a commitment to human rights, fundamental freedoms, and the rule of law. It might also involve a provision that explicitly states that the application and interpretation of the treaty must not violate human rights, including gender equality (or with any adverse distinction on gender grounds).

Third, all proposed substantive provisions – particularly those related to specific crimes – should be subject to intersectional **gender analysis**. Gender analysis is “a critical examination of how differences in gender roles, activities, needs, opportunities, and rights/entitlements” affect men, women, girls, boys, and non-binary people as they interact with entire social spheres (e.g. the Internet), policy realms (e.g. cybercrime law), and specific interventions (e.g. substantive criminal provisions/definitions).^x This means that all proposed provisions – including those not explicitly mentioning gender – would be assessed to see if they risked producing gender differentiated effects (e.g. disproportionately affecting men, women, or non-binary people) and/or compounding gender inequality.

To avoid gender equality becoming a secondary concern within treaty drafting, however, it is essential that a specific gender advisory in each state delegation (and at the UNODC) is appointed to take up this analysis

and ensure it informs negotiations and implementation. Ultimately, it is state parties that hold responsibility for mainstreaming and gender equality.

Procedural Provisions and International Cooperation

A multitracked gender mainstreamed cyber convention would also incorporate a **gender perspective** and promotion of gender equality throughout the procedural provisions (and implementation) of the treaty.

The most direct way to do this would be for states to explicitly commit to **gender mainstreaming** the implementation and subsequent domestic oversight of the treaty. This could be done in a related General Assembly resolution (as in the case of the Sustainable Development Goals), but would preferably be written *into* the treaty as a procedural provision. This would ensure state parties commit to promoting gender equality in all their activities relating to the treaty, from criminal investigations to interactions with victims to drafting national cybercrime regulations and policies to international cooperation. The gender mainstreaming provision (or associated resolution) could also explicitly specify that the UNODC treaty implementation review mechanism will consider gender mainstreaming as part of its peer review. The implementation review process could also be opened to participation from multi-stakeholder groups, notably women's and LGBTQI+ groups, enabling them to consult on the treaty with both individual states and the UNODC as it enters into force.

A procedural provision committing to gender mainstreaming the implementation of treaty and associated substantive national cybercrime legislation would not preclude the inclusion of other, gender-specific procedural provisions. A non-exhaustive list of these might include:

- Provisions specifying that data collection and investigation procedures must be conducted in line with the rule of law, human rights, and subject to intersectional **gender analysis** by the relevant national body (or bodies) to identify gendered and sexualised risks and vulnerabilities.
- Provisions specifying that data sharing and transfers, as well as extradition, are conducted in line with the rule of law, human rights, and subject to intersectional gender analysis to identify risks to individual safety (particularly for women, non-binary, and LGBTQI+ people).
- Provisions specifying that states have the ability to refuse a request for the mutual legal assistance if there are serious concerns that the request might be based on **gender or sexual orientation-based discrimination**.
- Provisions relating to encryption, if any, should also be subject to gender analysis. Encryption might seem to be gender neutral, but restricting it would pose gendered risks to women who rely on private communications to escape intimate partner violence; LGBTQI+ people whose sexual orientation and/or gender identity might be private; and human rights defenders and journalists, particularly women, whose safety is dependent upon confidentiality.
- State commitments to performing a **gender audit** on their existing cybercrime legislation and criminal justice procedures. This involves gender analysis of existing laws and experiences of the criminal justice system for gendered disparities and inequalities. It also involves assessing whether “internal practices and related support systems for gender mainstreaming are effective and reinforce each other and whether they are being followed”.^{xii} This helps organisations set a baseline for gender mainstreaming, regularise the use of gender analysis, and promote gender equality.
 - This would involve assessments of victims' experiences, the implementation of due process, and working conditions of criminal justice actors.
- State commitments to collecting **sex-disaggregated data** on experiences of cybercrime and the criminal justice system (with due regard for individual privacy).^{xiii} The UNODC may collect this data for comparison, research, and the sharing of best practices. It may also provide technical assistance to states in the gender-sensitive collection, storage, and use of this data.
- State commitments to working towards **gender balanced** participation in cybercrime policymaking, law enforcement, criminal justice, and domestic oversight.
- State commitments to providing **gender training** to all relevant cybercrime actors, including policymakers, law enforcement officials, prosecutors, judges, etc.

- Gender equality written into provisions relation to **capacity-building** and technical assistance. This might involve working toward gender parity in the state personnel engaged in these exchanges. It may also involve introducing intersectional gender training as itself a specific component of cybercrime capacity-building and assistance.
- As individual vulnerability to cybercrime is often related to a lack of digital literacy, technical skill, and awareness of cybersecurity best practices, states may commit to providing material (i.e. financial) resources to support closing the **gendered digital divide** as part of crime prevention.

Implementation and Oversight

Many of the key elements of gender mainstreaming the implementation and oversight of the proposed cybercrime convention are listed above as potential procedural treaty provisions. If state parties do not agree on any (or all) of the listed procedural provisions, they may yet be adopted by states individually at the domestic level. This discussion therefore focuses on what remains to be done at the national (and UNODC) level.

Fully gender mainstreaming the implementation of the cybercrime convention would involve incorporating gender mainstreaming into existing (and proposed) national cybercrime legislation. It would also involve an expansion of UNODC's strong existing framework and toolkits on gender mainstreaming to specifically tackle cybercrime.^{xiii} The UNODC may also provide technical gender and cybercrime assistance to states to build their capacity to gender mainstream treaty implementation.

Most importantly, gender mainstreaming lives and dies by **resourcing, leadership commitment, and accountability mechanisms**.^{xiv} Effective gender mainstreaming requires a specified **budget**, in each relevant institution, to support both gender mainstreaming programming (e.g. material support for victims of cybercrime, programmes to support the rehabilitation of cybercrime offenders) and the administrative and policy work associated with gender equality within the institution (e.g. gender and cybercrime training and professional development).

Gender mainstreaming also requires a commitment of institutional will and attention by relevant leaders. This can include **awareness-raising activities**, such as seminars, internal communications, and consultations with multi-stakeholders. Leadership would also involve the designation of **gender focal points** in all relevant cybercrime policy, criminal justice, and oversight institutions. Gender focal points are "change agents whose overriding role is one of advocating for increased attention to and integration of gender equality and women's empowerment in his or her agency's policy and programming and in the related work of...partners".^{xv} Gender focal points are people in positions of authority tasked with keeping gender equality on the agenda of their institutions and coordinating across agencies.

Strong leadership commitments would also include an investment in intra-institutional gender **capacity-building**, through both gender training and the provision of technical cybercrime education opportunities to women and people from minoritized groups. It may also involve making gender expertise a criterion for promotion and holding internal leadership positions. This may also include working towards **gender parity** in relevant cybercrime criminal justice and policy teams, and seeking to develop the expertise of and promote women and marginalised people to positions of authority.

Fulfilling the promise of gender mainstreaming to promote gender equality requires effective **accountability**. This can be achieved internally through the use of regularised **gender audits** of the gender mainstreaming programming and activities of both the national cybercrime apparatus overall, as well as within specific institutions and departments. Effective oversight also means subjecting the practices and policies used to implement the cybercrime convention to legislative and/or civilian oversight on a regular

basis through transparent reporting practices. **Gender parity** in the state teams conducting gender audits, programme monitoring, and civilian oversight is important.

Finally, it is essential that **civil society organisations**, particularly but not exclusively women's and LGBTQI+ groups, be included in oversight and accountability practices. States would therefore work towards developing pathways for activist, academia, and advocacy groups to **consult** on the cybercrime policymaking and criminal justice system in an ongoing manner. This might include meeting with state cybercrime officials, consulting on specific substantive changes to national legislation, and providing feedback on the gendered experiences and effects of cybercrime implementation practices (e.g. treatment of victims, experiences of the accused). Ideally states will also provide a pathway for civil society organisations and individuals to highlight shortcomings and express concerns about their experience of the cybercrime criminal justice system. This might be done, for instance, via existing human rights legislation, criminal justice oversight practices, and/or a specific Ombudsperson.

Cross-Cutting Considerations

In conclusion, this section briefly highlights key gender mainstreaming considerations that crosscut the cybercrime policy realm.

- It is important to place the rights of women, girls, and non-binary people, and moves to address gender-based cybercrime, in conversation with their other identities/social positions and the broader constellation of civil and political human rights. **Intersectionality** – attending to the relationship between gender identity and expression and sexual orientation and other axes of power and identity, such as class, race, nationality, ability, etc. – in gender analysis is key to achieving gender equality and avoiding unintended externalities that might arise from well-intentioned gender provisions and policies.
 - For instance, in many jurisdictions, national legislation intended to protect women and girls from online harassment has been used to suppress information relating to sex education, expressions of LGBTQI+ identities and rights, the work of women human rights defenders, etc.^{xvi}
- Gender mainstreaming also includes attending to the **needs and vulnerabilities of men and boys** (particularly from marginalised groups) in addressing cybercrime, as criminal justice actors, victims, and as citizens in contact with the criminal justice system.
 - For instance, intersectional gender analysis of proposed criminal offences and associated penalties would consider whether criminalisation will disproportionately affect young minoritized men, as is true in many jurisdictions,^{xvii} making them vulnerable to violence within criminal justice systems.
- People with **diverse gender identities**, including non-binary identities, have the right to gender equality. Gender mainstreaming provisions should note this directly. Associated policies, programmes, and practices should include gender identity and expression as a specific category in intersectional analysis.
 - Cybercrime practitioners should also be wary of reinforcing binary and stereotyped understandings of gender through the framing of the Convention, data collection, and oversight and reporting practices.^{xviii}
- The defining characteristic of gender mainstreaming is broad and meaningful **multistakeholder consultation** – particularly with women's and LGBTQI+ groups. Without consultation, mainstreaming fails in its central aim:^{xix} incorporating the needs and perspectives of men, women, non-binary people, boys, and girls into policymaking to promote **gender equality**.

ⁱ https://www.unodc.org/documents/Gender/20-04944_Gender_Note_final_ebook_cb.pdf, vi

ⁱⁱ https://www.unodc.org/documents/Gender/20-04944_Gender_Note_final_ebook_cb.pdf, 1; <https://www.unwomen.org/en/how-we-work/un-system-coordination/gender-mainstreaming>.

ⁱⁱⁱ <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

^{iv} UN Women, "Gender Mainstreaming", <https://www.unwomen.org/en/how-we-work/un-system-coordination/gender-mainstreaming>

^v European Institute for Gender Equality, "Gender Analysis", <https://eige.europa.eu/gender-mainstreaming/methods-tools/gender-analysis>. See also the GBA+ tool and training process developed by the Canadian Government, Status of Women Canada, "What is GBA+", 28 October 2020, <https://cfc-swc.gc.ca/gba-acis/index-en.html>;

^{vi} Annex III, Art 15, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/V22/016/71/PDF/V2201671.pdf?OpenElement>

^{vii} E. Dallaway, Closing the Gender Gap in Cybersecurity, Crest, 2016, <https://www.crest-approved.org/wp-content/uploads/CREST-Closing-the-Gender-Gap-in-Cyber-Security.pdf>; and Organisation for Economic Co-operation and Development (OECD), Bridging the Digital Gender Divide: Include, Upskill, Innovate, 2018, <http://www.oecd.org/internet/bridging-the-digital-gender-divide.pdf>, p. 15; Fortinet, "Exploring the Benefits of Gender Diversity in Cybersecurity", 4 October 2019, <https://www.fortinet.com/blog/business-and-technology/exploring-benefits-gender-diversity-cybersecurity>.

^{viii} See various networks of women in cybersecurity, including GFCE Gender Forum, Dutch Women in Cybersecurity (WiCS), Women in Cybersecurity (WiCyS), Women CyberSecurity Society, and Women Cyber Forum. See also National Cyber Security Centre and KPMG, Decrypting Diversity: Diversity and Inclusion in Cyber Security, 2020, <https://www.ncsc.gov.uk/report/diversity-and-inclusion-in-cyber-security-report>.

^{ix} <https://trainingcentre.unwomen.org/mod/glossary/view.php?id=36&mode=search&hook=gender+focal+point&fullsearch=1>

^x <https://trainingcentre.unwomen.org/mod/glossary/view.php?id=36&mode=search&hook=gender+analysis&fullsearch=1>

^{xi} <https://trainingcentre.unwomen.org/mod/glossary/view.php?id=36&mode=search&hook=gender+audit&fullsearch=1>

^{xii} D'ignazio, Catherine, and Lauren F. Klein. *Data feminism*. MIT press, 2020.

^{xiii} <https://www.unodc.org/unodc/en/gender/gender-and-thematic-areas/gender-thematic-areas-1.html>

^{xiv} True, Jacqui. "Mainstreaming gender in international institutions." *Gender matters in global politics: A feminist introduction to international relations* (2010): 189-203; Prugl, Elisabeth. "Does gender mainstreaming work?." *International Feminist Journal of Politics* 11, no. 2 (2009): 174-195; Prüggl, Elisabeth. "Does gender mainstreaming work? Feminist engagements with the German agricultural state." *International Feminist Journal of Politics* 11, no. 2 (2009): 174-195.

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<https://trainingcentre.unwomen.org/mod/glossary/view.php?id=36&mode=search&hook=gender+focal+point&fullsearch=1>

^{xvi} See, for instance, <https://www.hrw.org/news/2020/10/22/online-harassment-women-pakistan>; <https://www.independent.co.uk/news/world/americas/us-politics/dont-say-gay-bill-florida-ron-desantis-b2057359.html>; <https://www.hrw.org/news/2020/08/17/egypt-spate-morality-prosecutions-women>; <https://feministinternet.org>; <https://www.hrw.org/news/2021/05/05/abuse-cybercrime-measures-taints-un-talks>

^{xvii} https://www.unodc.org/documents/organized-crime/UNODC_CCPCJ_EG.4_2013/CYBERCRIME_STUDY_210213.pdf, pg xvii, 42; for example <https://www.bbc.co.uk/news/technology-35028690>

^{xviii} D'ignazio, Catherine, and Lauren F. Klein. *Data feminism*. MIT press, 2020.

^{xix} Otto, Dianne. "The exile of inclusion: reflections on gender issues in international law over the last decade." *Melbourne Journal of International Law* 10, no. 1 (2009): 11-26.pg 20