

Derechos Digitales' statement to the Ad Hoc Committee to Elaborate a Comprehensive International Convention on Countering the Use of Information and Communications Technologies for Criminal Purposes

Delivered by Paloma Lara-Castro on July 30th, 2024.

Thank you, Chair. Throughout this process, we have consistently emphasized the need to protect human rights to ensure that the proposed Cybercrime Convention does not undermine gender equality. It's deeply concerning that, even in this final session, there remains strong opposition to safeguarding these rights. As a result, the discussions seem to be around the bare minimum. The latest draft still contains overly broad provisions that could criminalize legitimate online expression, potentially leading to discriminatory impacts and deepening gender inequality. This is exacerbated by the possible additional protocol.

We have provided evidence of how current local cybercrime legislations show that laws lacking a human rights and gender perspective, often characterized by broad and vague definitions, allow for arbitrary application. This creates legal uncertainty and poses significant risks to fundamental rights, exacerbating gender inequalities. Human rights mechanisms have identified a "growing trend" of these laws being used to surveil and punish activists, causing a chilling effect on advocacy and endangering the safety of human rights defenders.

The lack of effective human rights safeguards and robust data protection principles within the Convention is particularly troubling. This deficiency risks legitimizing surveillance practices with differentiated impacts based on gender, further threatening privacy and other fundamental rights. We are not discussing potential risks but concrete harms already being felt globally. The Convention must include strict limitations on procedural measures, ensuring they are applied only to clearly defined cybercrimes, and must incorporate principles of legality, necessity, and proportionality.

The Interamerican Court of Human Rights (IACrTHR) recent decision on the case *CAJAR vs. Colombian State*, recognized the right to defend human rights and data protection even in state intelligence tasks, granting individuals the right to control personal data held in public archives. The court mandated prior judicial authorization for surveillance activities and stressed special protections for journalists and lawyers to safeguard their communications and sources. This decision is of utmost importance for Latin American States.

We urge state delegations to: mainstream gender throughout the Convention; delete Article 4; include gender equality in Article 6; narrow the scope to specifically defined cyber-dependent crimes; mandate criminal intent for

offenses under Articles 7-11; ensure conditions and safeguards align with international law and apply these safeguards to international cooperation measures, especially concerning personal data transfer; and incorporate human rights-based data protection standards considering gender-related risks.

States must ensure that the Cybercrime Convention aligns with their human rights obligations and reject any provisions that do not.

Thank you.