

Letter To Negotiating States Regarding The Chair's Proposal On Main Pending Provisions

The Office of the High Commissioner for Human Rights ([OHCHR](#)), [independent human rights experts](#), [human rights groups](#), and [industry actors](#) have all identified that the proposed Cybercrime Convention as presented at the start of the reconvened final session of negotiations (Revision 3) still contains critical shortcomings and poses unacceptable risks to human rights.

We maintain that the Convention as drafted fails to address the significant concerns raised by civil society and others and should not therefore proceed to adoption. At the same time, we took note that in recent statements and consultations relating to the draft Convention, states committed to maintain certain “redlines” and to ensure that the Convention is not further weakened from a human rights perspective compared with Revision 3.

Despite this, in the Chair's proposal on the main pending provisions of the UDTC, and in other proposals by negotiating states, we have seen language put forward which represents a further deterioration of the text compared with Revision 3 and states agreed redlines. In addition, we have heard of proposals to trade off certain protective provisions in exchange for others, where both are necessary, and, in fact, continue to fall short of the minimum level of conditions and safeguards required to mitigate risks to human rights. These include:

- Revisions to the Convention's title which introduces further ambiguity and appears to indicate there may be cybercrimes *not* committed through the use of ICTs systems. This could be interpreted as defining any criminal act committed via an ICT system (or not) as cybercrime, and will incentivise overly vague and expansive application.
- Revisions to article 6(2) to introduce a reference to “in accordance and in a manner consistent with international human rights law”. This amendment introduces unnecessary qualification that brings further confusion to the provision which appears to be aimed at undermining its protective scope.
- Proposals to delete the only reference to gender mainstreaming in paragraph 10 of the preamble or to replace it with the reference to “equality”; to compromise on changing “affirming” for “noting”; and to delete the reference to “gender-based” in article 53(3)(h) on gender-based violence which poses serious risks to gender equality and to efforts to protect the human rights of historically marginalised groups.
- Revisions to article 24(2) which limit judicial or other independent review to “review at the domestic level or as provided for in any other legally binding international instruments to which a State party is a party.” This could be interpreted to exclude other independent review bodies, including the Conference of State Parties mandated by this Convention to monitor its implementation.
- Chair's proposal to move article 23(4) to 24(4) with some light amendments was followed by proposals by some states to delete article 24(4) which ensures the application of the conditions and safeguards with respect to both domestic criminal investigations and proceedings and for the purpose of rendering international cooperation and which is therefore of paramount importance.
- Proposals to further expand the scope of offences through a supplementary protocol to the Convention are proceeding as a given without incorporating further protective conditions required to mitigate risks to human rights.

While we have seen backsliding on a number of key provisions, we note that in other key areas, proposals to ensure protective safeguards which have received a considerable degree of support have not been taken forward, including for incorporating grounds of refusal on the basis of political offences in the chapter on international cooperation. Likewise, a proposal to facilitate additional scrutiny prior to the Convention's entry into force through incorporating a higher threshold of ratification of sixty member states has been ignored despite significant cross-regional support.

We urge negotiating states to maintain the commitments they have made to guarantee that conditions and safeguards are incorporated throughout the draft Convention. This is necessary to mitigate some of the most substantial risks that may eventuate from the Convention's implementation. We urge all states to honour their commitments with respect to human rights and the rule of law by providing their unequivocal support to the few carve out protections achieved in a long and difficult process.

Endorsed by:

- **Access Now**
- **Centre for Feminist Foreign Policy (CFFP)**
- **Derechos Digitales (América Latina)**
- **Electronic Frontier Foundation (EFF)**
- **Epicenter.works**
- **Fundacion Karisma**
- **Global Partners Digital (GPD)**
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