

December 22, 2021

H.E. Ms Faouzia Boumaiza Mebarki

Chairperson

Ad Hoc Committee to Elaborate a Comprehensive International Convention on Countering the Use of Information and Communication Technologies for Criminal Purposes

Your Excellency,

We, the undersigned organizations and academics, work to protect and advance human rights, online and offline. Efforts to address cybercrime are of concern to us, both because cybercrime poses a threat to human rights and livelihoods, and because cybercrime laws, policies, and initiatives are currently being used to undermine people's rights. We therefore ask that the process through which the Ad Hoc Committee does its work includes robust civil society participation throughout all stages of the development and drafting of a convention, and that any proposed convention include human rights safeguards applicable to both its substantive and procedural provisions.

Background

The proposal to elaborate a comprehensive “international convention on countering the use of information and communications technologies for criminal purposes” is being put forward at the same time that UN human rights mechanisms are raising alarms about the abuse of cybercrime laws around the world. In his 2019 report, the UN special rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule, [observed](#), “A surge in legislation and policies aimed at combating cybercrime has also opened the door to punishing and surveilling activists and protesters in many countries around the world.” In [2019](#) and [once again this year](#), the UN General Assembly [expressed grave concerns](#) that cybercrime legislation is being misused to target human rights defenders or hinder their work and endanger their safety in a manner contrary to international law. This follows [years of reporting](#) from non-governmental organizations on the human rights abuses stemming from overbroad cybercrime laws.

When the convention was first proposed, over 40 leading digital rights and human rights organizations and experts, including many signatories of this letter, urged delegations to vote against the resolution, [warning that](#) the proposed convention poses a threat to human rights.

In advance of the first session of the Ad Hoc Committee, we reiterate these concerns. If a UN convention on cybercrime is to proceed, the goal should be to combat the use of information and communications technologies for criminal purposes without endangering the fundamental rights

of those it seeks to protect, so people can freely enjoy and exercise their rights, online and offline. Any proposed convention should incorporate clear and robust human rights safeguards. A convention without such safeguards or that dilutes States' human rights obligations would place individuals at risk and make our digital presence even more insecure, each threatening fundamental human rights.

As the Ad Hoc Committee commences its work drafting the convention in the coming months, it is vitally important to apply a human rights-based approach to ensure that the proposed text is not used as a tool to stifle freedom of expression, infringe on privacy and data protection, or endanger individuals and communities at risk.

The important work of combating cybercrime should be consistent with States' human rights obligations set forth in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and other international human rights instruments and standards. In other words, efforts to combat cybercrime should also protect, not undermine, human rights. We remind States that the same rights that individuals have offline should also be protected online.

Scope of Substantive Criminal Provisions

There is no consensus on how to tackle cybercrime at the global level or a common understanding or definition of what constitutes [cybercrime](#). From a human rights perspective, it is essential to keep the scope of any convention on cybercrime narrow. Just because a crime might involve technology does not mean it needs to be included in the proposed convention. For example, expansive cybercrime laws often simply add penalties due to the use of a computer or device in the commission of an existing offense. The laws are especially problematic when they include content-related crimes. Vaguely worded cybercrime laws purporting to combat [misinformation](#) and online support for or glorification of terrorism and extremism, can be misused to imprison [bloggers](#) or [block entire platforms](#) in a given country. As such, they fail to comply with international freedom of expression standards. Such laws put journalists, activists, researchers, LGBTQ communities, and dissenters in danger, and can have a chilling effect on society more broadly.

Even laws that focus more narrowly on cyber-enabled crimes are used to undermine rights. Laws criminalizing unauthorized access to computer networks or systems have been used to target [digital security researchers](#), whistleblowers, activists, and journalists. Too often, security researchers, who help keep everyone safe, are caught up in vague cybercrime laws and face criminal charges for identifying flaws in security systems. Some States have also interpreted unauthorized access laws so broadly as to effectively criminalize any and all whistleblowing; under these interpretations, [any disclosure of information in violation](#) of a corporate or

government policy could be treated as “cybercrime.” Any potential convention should explicitly include a malicious intent standard, should not transform corporate or government computer use policies into criminal liability, should provide a clearly articulated and expansive public interest defense, and include clear provisions that allow security researchers to do their work without fear of prosecution.

Human Rights and Procedural Safeguards

Our private and personal information, once locked in a desk drawer, now resides on our digital devices and in the cloud. Police around the world are using an increasingly intrusive set of investigative tools to access digital evidence. Frequently, their investigations cross borders without proper safeguards and bypass the protections in mutual legal assistance treaties. In many contexts, no judicial oversight is involved, and the role of independent data protection regulators is undermined. National laws, including cybercrime legislation, are often inadequate to protect against disproportionate or unnecessary surveillance.

Any potential convention should detail robust procedural and human rights safeguards that govern criminal investigations pursued under such a convention. It should ensure that [any interference with the right to privacy](#) complies with the principles of legality, necessity, and proportionality, including by requiring independent judicial authorization of surveillance measures. It should also not forbid States from adopting additional safeguards that limit law enforcement uses of personal data, as such a prohibition would undermine privacy and data protection. Any potential convention should also [reaffirm](#) the need for States to adopt and enforce “strong, robust and comprehensive privacy legislation, including on data privacy, that complies with international human rights law in terms of safeguards, oversight and remedies to effectively protect the right to privacy.”

There is a real risk that, in an attempt to entice all States to sign a proposed UN cybercrime convention, bad human rights practices will be accommodated, resulting in a race to the bottom. Therefore, it is essential that any potential convention explicitly reinforces procedural safeguards to protect human rights and resists shortcuts around mutual assistance agreements.

Meaningful Participation

Going forward, we ask the Ad Hoc Committee to actively include civil society organizations in consultations—including those dealing with digital security and groups assisting vulnerable communities and individuals—which did not happen when this process began in 2019 or in the time since.

Accordingly, we request that the Committee:

- Accredit interested technological and academic experts and nongovernmental groups, including those with relevant expertise in human rights but that do not have consultative status with the Economic and Social Council of the UN, in a timely and transparent manner, and allow participating groups to register multiple representatives to accommodate the remote participation across different time zones.
- Ensure that modalities for participation recognize the diversity of non-governmental stakeholders, giving each stakeholder group adequate speaking time, since civil society, the private sector, and academia can have divergent views and interests.
- Ensure effective participation by accredited participants, including the opportunity to receive timely access to documents, provide interpretation services, speak at the Committee's sessions (in-person and remotely), and submit written opinions and recommendations.
- Maintain an up-to-date, dedicated webpage with relevant information, such as practical information (details on accreditation, time/location, and remote participation), organizational documents (i.e., agendas, discussions documents, etc.), statements and other interventions by States and other stakeholders, background documents, working documents and draft outputs, and meeting reports.

Countering cybercrime should not come at the expense of the fundamental rights and dignity of those whose lives this proposed Convention will touch. States should ensure that any proposed cybercrime convention is in line with their human rights obligations, and they should oppose any proposed convention that is inconsistent with those obligations.

We would be highly appreciative if you could kindly circulate the present letter to the Ad Hoc Committee Members and publish it on the website of the Ad Hoc Committee.

Signatories,*

1. Access Now – International
2. Alternative ASEAN Network on Burma (ALTSEAN) – Burma
3. Alternatives – Canada
4. Alternative Informatics Association – Turkey
5. AqualtuneLab – Brazil
6. ArmSec Foundation – Armenia
7. ARTICLE 19 – International
8. Asociación por los Derechos Civiles (ADC) – Argentina
9. Asociación Trinidad / Radio Viva – Trinidad
10. Asociatia Pentru Tehnologie si Internet (ApTI) – Romania
11. Association for Progressive Communications (APC) – International

12. Associação Mundial de Rádios Comunitárias (Amarc Brasil) – Brazil
13. ASEAN Parliamentarians for Human Rights (APHR) – Southeast Asia
14. Bangladesh NGOs Network for Radio and Communication (BNNRC) – Bangladesh
15. BlueLink Information Network – Bulgaria
16. Brazilian Institute of Public Law - Brazil
17. Cambodian Center for Human Rights (CCHR) – Cambodia
18. Cambodian Institute for Democracy – Cambodia
19. Cambodia Journalists Alliance Association – Cambodia
20. Casa de Cultura Digital de Porto Alegre – Brazil
21. Centre for Democracy and Rule of Law – Ukraine
22. Centre for Free Expression – Canada
23. Centre for Multilateral Affairs – Uganda
24. Center for Democracy & Technology – United States
25. Civil Society Europe
26. Coalition Direitos na Rede – Brazil
27. Collaboration on International ICT Policy for East and Southern Africa (CIPESA) – Africa
28. CyberHUB-AM – Armenia
29. Data Privacy Brazil Research Association – Brazil
30. Dataskydd – Sweden
31. Derechos Digitales – Latin America
32. Defending Rights & Dissent – United States
33. Digital Citizens – Romania
34. DigitalReach – Southeast Asia
35. Digital Security Lab – Ukraine
36. Državljan D / Citizen D – Slovenia
37. Electronic Frontier Foundation (EFF) – International
38. Electronic Privacy Information Center (EPIC) – United States
39. Elektronisk Forpost Norge – Norway
40. Epicenter.works for digital rights – Austria
41. European Center For Not-For-Profit Law (ECNL) Stichting – Europe
42. European Civic Forum – Europe
43. European Digital Rights (EDRI) – Europe
44. eQuality Project – Canada
45. Fantsuam Foundation – Nigeria
46. Free Speech Coalition – United States
47. Foundation for Media Alternatives (FMA) – Philippines
48. Fundación Acceso – Central America
49. Fundación Ciudadanía y Desarrollo de Ecuador

50. Fundación CONSTRUIR – Bolivia
51. Fundación Karisma – Colombia
52. Fundación OpenlabEC – Ecuador
53. Fundamedios – Ecuador
54. Garoa Hacker Clube – Brazil
55. Global Partners Digital – United Kingdom
56. GreenNet – United Kingdom
57. GreatFire – China
58. Hiperderecho – Peru
59. Homo Digitalis – Greece
60. Human Rights in China – China
61. Human Rights Defenders Network – Sierra Leone
62. Human Rights Watch – International
63. Igarapé Institute -- Brazil
64. IFEX - International
65. Institute for Policy Research and Advocacy (ELSAM) – Indonesia
66. The Influencer Platform – Ukraine
67. INSM Network for Digital Rights – Iraq
68. Internews Ukraine
69. Instituto Beta: Internet & Democracia (IBIDEM) – Brazil
70. Instituto Brasileiro de Defesa do Consumidor (IDEC) – Brazil
71. Instituto Educadigital – Brazil
72. Instituto Nupef – Brazil
73. Instituto de Pesquisa em Direito e Tecnologia do Recife (IP.rec) – Brazil
74. Instituto de Referência em Internet e Sociedade (IRIS) – Brazil
75. Instituto Panameño de Derecho y Nuevas Tecnologías (IPANDETEC) – Panama
76. Instituto para la Sociedad de la Información y la Cuarta Revolución Industrial – Peru
77. International Commission of Jurists – International
78. The International Federation for Human Rights (FIDH)
79. IT-Pol – Denmark
80. JCA-NET – Japan
81. KICTANet – Kenya
82. Korean Progressive Network Jinbonet – South Korea
83. Laboratorio de Datos y Sociedad (Datysoc) – Uruguay
84. Laboratório de Políticas Públicas e Internet (LAPIN) – Brazil
85. Latin American Network of Surveillance, Technology and Society Studies (LAVITS)
86. Lawyers Hub Africa
87. Legal Initiatives for Vietnam

88. Ligue des droits de l'Homme (LDH) – France
89. Masaar - Technology and Law Community – Egypt
90. Manushya Foundation – Thailand
91. MINBYUN Lawyers for a Democratic Society - Korea
92. Open Culture Foundation – Taiwan
93. Open Media – Canada
94. Open Net Association – Korea
95. OpenNet Africa – Uganda
96. Panptykon Foundation – Poland
97. Paradigm Initiative – Nigeria
98. Privacy International – International
99. Radio Viva – Paraguay
100. Red en Defensa de los Derechos Digitales (R3D) – Mexico
101. Regional Center for Rights and Liberties – Egypt
102. Research ICT Africa
103. Samuelson-Glushko Canadian Internet Policy & Public Interest Clinic (CIPPIC) – Canada
104. Share Foundation - Serbia
105. Social Media Exchange (SMEX) – Lebanon, Arab Region
106. SocialTIC – Mexico
107. Southeast Asia Freedom of Expression Network (SAFEnet) – Southeast Asia
108. Supporters for the Health and Rights of Workers in the Semiconductor Industry (SHARPS) – South Korea
109. Surveillance Technology Oversight Project (STOP) – United States
110. Tecnología, Investigación y Comunidad (TEDIC) – Paraguay
111. Thai Netizen Network – Thailand
112. Unwanted Witness – Uganda
113. Vrijchrift – Netherlands
114. West African Human Rights Defenders Network – Togo
115. World Movement for Democracy – International
116. Zamleh – The Arab Center for the Advancement of Social Media – Arab Region

Individual Experts and Academics

1. Jacqueline Abreu, University of São Paulo
2. Chan-Mo Chung, Professor, Inha University School of Law
3. Danilo Doneda, Brazilian Institute of Public Law
4. David Kaye, Clinical Professor of Law, UC Irvine School of Law, former UN Special Rapporteur on Freedom of Opinion and Expression (2014-2020)

5. Wolfgang Kleinwächter, Professor Emeritus, University of Aarhus; Member, Global Commission on the Stability of Cyberspace
6. Douwe Korff, Emeritus Professor of International Law, London Metropolitan University
7. Fabiano Menke, Federal University of Rio Grande do Sul
8. Kyung-Sin Park, Professor, Korea University School of Law
9. Christopher Parsons, Senior Research Associate, Citizen Lab, Munk School of Global Affairs & Public Policy at the University of Toronto
10. Marietje Schaake, Stanford Cyber Policy Center
11. Valerie Steeves, J.D., Ph.D., Full Professor, Department of Criminology University of Ottawa

*List of signatories as of January 13, 2022