

# WHEN PROTECTION BECOMES AN EXCUSE FOR CRIMINALISATION

Gender considerations on  
cybercrime frameworks



## **When protection becomes an excuse for criminalisation: Gender considerations on cybercrime frameworks**

This publication was prepared by Derechos Digitales and the Association for Progressive Communications (APC). Derechos Digitales is an independent and non-profit organisation, founded in 2005, whose mission is the defence, promotion and development of fundamental rights in digital environments in Latin America. APC is an international networked organisation dedicated to empowering and supporting people working for peace, human rights, development and protection of the environment, through the strategic use of information and communication technologies (ICTs). APC has 62 organisational members and 41 associates active in 74 countries, mostly in the global South.

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APC and Derechos Digitales would like to thank Tatiana Tropina, assistant professor at ISGA, Leiden University, for her feedback on the first draft of this report.

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Published by the Association for Progressive Communications  
August 2023

ISBN 978-92-95113-64-0

APC-202308-GAPS-R-EN-DIGITAL-354



This publication was developed with support from the UK Government.

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# I. INTRODUCTION

In 2008, APC launched a dedicated edition of GenderIT.org<sup>1</sup> focusing on the issue of cybercrime legislation through a gendered perspective. This publication sought to respond to concerns raised by its network members on the increasing pervasiveness of cybercrime laws in different regions and their potential impact on women's rights.

One of the articles in this edition noted:

As policy makers are called upon to respond, it becomes critical to consider how cybercrime and the emergent legislation will have an impact on the social, economic and political participation of women and other marginalised groups.<sup>2</sup>

Another article stressed:

[G]ender and ICT activists as well as women's organisations working on the issue of violence against women are quick to underscore the need to ensure a proper balance between the interests of law enforcement and respect for fundamental human rights. Such rights also include the right to freedom of expression and the rights concerning the respect for privacy. However, given the free and boundary-less nature of ICTs, the lines are often blurred and finding the right balance between becomes an extremely difficult task.<sup>3</sup>

One of the women interviewed for the edition also underscored the struggle to balance women's agency and women's victimisation when it comes to fighting gender-based violence, be it online or offline.<sup>4</sup>

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1. <https://genderit.org/editions>

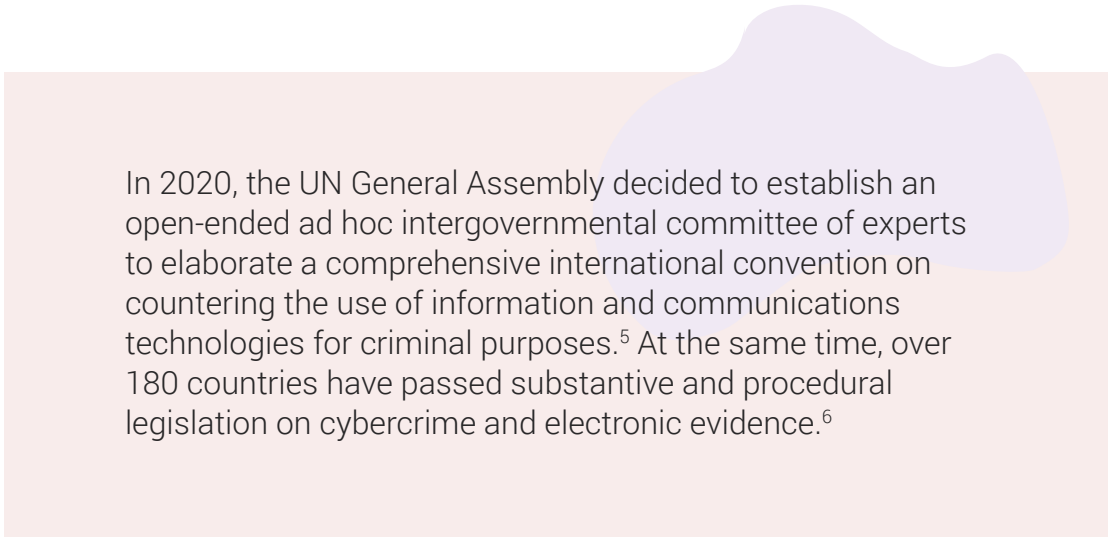
2. Xu, W. (2010, 2 June). Unequal protection, cyber crime and the internet in India. *GenderIT.org*. <https://genderit.org/articles/unequal-protection-cyber-crime-and-internet-india>

3. Cabrera-Balleza, M. (2010, 2 June). Finding a difficult balance: Human rights, law enforcement and cyber violence against women. *GenderIT.org*. <https://genderit.org/articles/finding-difficult-balance-human-rights-law-enforcement-and-cyber-violence-against-women>

4. Ibid.

At that point, a number of questions were raised and discussed, such as, “What is meant by ‘cybercrime’?”, “Can cybercrime restrict the exercise of individual rights to privacy, freedom of expression and civil liberties?”, “Can the rhetoric of fighting cybercrimes in effect be used to restrict the exercise of women’s freedom of expression?”, “How can the issue of cybercrimes be analysed from a feminist perspective?”, and “Is the issue currently part of women’s movements’ agendas?”

So many of these questions remain not only central, but astonishingly relevant today. Not only is the impetus to expand the number and scope of national cybercrime laws continuing, but there are also currently ongoing negotiations to adopt a new global treaty on the matter.



In 2020, the UN General Assembly decided to establish an open-ended ad hoc intergovernmental committee of experts to elaborate a comprehensive international convention on countering the use of information and communications technologies for criminal purposes.<sup>5</sup> At the same time, over 180 countries have passed substantive and procedural legislation on cybercrime and electronic evidence.<sup>6</sup>

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5. Work on the proposed cybercrime convention was initially established by General Assembly Resolution 74/247, and is now undertaken by an ad hoc committee supported by the United Nations Office on Drugs and Crime (UNODC) as secretariat, in accordance with General Assembly Resolution 75/282.

6. UNODC Cybercrime Repository. <https://www.unodc.org/unodc/en/cybercrime/cybercrime-repository.html>

Inspired by the current context and discussions concerning cybercrime, APC and Derechos Digitales decided to revisit some of the responses collected 15 years ago – and the continued work of women’s rights and digital rights groups since then – to provide a targeted contribution to policy makers and activists tackling proposals to legislate on cybercrime.

Women have been using online spaces and ICTs to communicate, organise, share, mobilise and learn. The use of these technologies has been instrumental to enable women’s exercise of a number of rights, in particular freedom of expression and freedom of association. However, the use of ICTs by women and gender-diverse people faces two major challenges:

- Despite significant advances in access and digital inclusion, the gender gap (and other digital divides) remains a reality for large numbers of women and gender-diverse individuals.
- When women and gender-diverse people manage to connect, too often they are subjected to harassment, discrimination and violence.

The online context not only replicates the structural misogyny to which women have been subject for centuries offline, it also provides specific tools and processes that have the potential to amplify exponentially some of these problems. Not only that, but the online and offline contexts can no longer be clearly separated; they constitute a continuum in which the rights that are exercised online and the consequences that are suffered offline (and vice versa) are often interrelated.<sup>7</sup>

Many studies show how women and gender-diverse people are more commonly targeted by technology-facilitated violence. The differentiated harms that they face are also well documented and show how women human rights defenders, journalists and activists are particularly subject to gender-based forms of violence and threats for expressing themselves or simply for being women who have a leadership role.<sup>8</sup> In addition, people with intersectional marginalised identities such as LGBTQIA+ people suffer more frequent and concerted attacks on their identities.<sup>9</sup>

On the other hand, the use of the justice system as a weapon to silence women and LGBTQIA+ people has been consolidated through the increase in cybercrime legislation. These situations generate a chilling effect that impacts both the individual and social sphere, causing negative effects for public debate, since online spaces are the main space for freedom of expression in the digital era. If the voices of these groups are silenced on the internet, it is possible that they will not be heard at all.<sup>10</sup>

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7. Khan, I. (2021). *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*. A/76/258. <https://undocs.org/A/76/258>

8. Ibid.

9. Ibid.

10. Ibid.

The use of the criminal system to undermine freedom of expression does not arise with, nor is it limited to, cybercrime legislation. For example, in what has been characterised by the UN Special Rapporteur on freedom of expression as a “perverse turn” in the era of the #MeToo movement, more and more women who publicly expose alleged perpetrators of sexual violence are being sued or accused of defamation or false denunciation of crimes,<sup>11</sup> which in addition to generating violations of the law, fosters impunity.

However, the increase in online violence, hate speech, disinformation and malicious acts in cyberspace, such as those impacting state infrastructure, has given rise to alarmist responses by states that have resulted in cybercrime legislations that – contrary to the principles of legality, necessity and proportionality – are characterised by broad and vague definitions, allowing for arbitrary or discretionary application and resulting in legal uncertainty, presenting serious dangers to the exercise of fundamental rights due to their criminalising effects which, in turn, deepen gender inequalities.

Several different types of conduct that generate harm on the internet have been classified as “cybercrime” by national laws, mainly because they occur in online spaces or because they are committed through the use of technology. In some cases, as will be seen below, acts that constitute online gender-based violence are included within these legislations. Cybercrime laws, however, normally refer to non-gender-specific acts or are designed without due consideration to gender inequalities. Criminal definitions are drafted in a broad manner and without applying a gender perspective in their formulation and in their implementation. As a result, the impact of the criminalisation generated by these laws also has specific effects on gender equality.

As per international law, states are obliged to take positive measures aimed at protecting people’s rights in digital spaces. Despite such obligations, state efforts to address the aforementioned challenges of the online context have been concentrated predominantly in the criminal arena, through the passing of legislation that claims to promote protection and safety online, while its implementation generates the opposite effect. Laws created with the aim of combating online gender-based violence, for example, are used to legitimise disproportionate censorship and surveillance measures, and in some cases are even used against those who invoke them for their protection. In turn, laws used to allegedly restrict disinformation are used to silence dissent, and national security and public order are invoked to initiate criminal prosecutions based on ill-defined offences in cybercrime legislation that often end up being used to repress dissent and control the online space, and “as a pretext to push back against the new digital civil society.”<sup>12</sup>

11. Ibid.

12. Voule, C. N. (2019). *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*. A/HRC/41/41. <https://undocs.org/A/HRC/41/41>

Thus, most cybercrime laws end up being not only ineffective and disproportionate,<sup>13</sup> but their own provisions end up violating human rights by criminalising the online activities of individuals and organisations, by being used by political and economic powers as a legal tool to silence critical voices and restrict civic space. Previous work by APC in this area pointed out:

The biggest criticism made against many of the laws on cybercrime is the lack of consideration on their social impact. Often pushed by the private sector to regulate intellectual property matters, or by states to enforce control and surveillance on citizens, it is uncertain whether women's rights stand to be protected or traded off in this debate.<sup>14</sup>

## Do we need a new cybercrime treaty?

There are existing instruments such as the Budapest Convention that addresses cybercrime, which has the broadest support internationally, being ratified by 65 countries. Nevertheless, at the same time that it is referred to as the “gold standard” of international conventions on cybercrime, human rights experts have emphasised the need to incorporate stronger safeguards for human rights.<sup>15</sup> For such reasons, we have questioned the need for a new international convention, considering that building on and improving existing documents could be more desirable and useful than generating a whole new framework that could increase the risks that already exist in the Budapest Convention. In fact, while some articles in the draft zero<sup>16</sup> of the proposed convention are exact reproductions of some articles contained in the Budapest Convention, others exclude existing guarantees in that treaty. For example, in the article on conditions and safeguards (art. 24 of the draft zero), the reference to the need to provide adequate protection to human rights and liberties – which is in the Budapest Convention – was excluded. Likewise, while in previous versions the article included the obligation to comply with the principles of proportionality, necessity and legality, as well as the protection of privacy and personal data, in the latest version these references were eliminated, leaving only “proportionality”, as it is in the Budapest Convention. This makes us wonder whether the new convention will serve to lower the already problematic and insufficient standards in the Budapest Convention.

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13. Human Rights Watch. (2021, 5 May). Abuse of Cybercrime Measures Taints UN Talks. <https://www.hrw.org/news/2021/05/05/abuse-cybercrime-measures-taints-un-talks>

14. Fascendini, F. (2008, 19 August). Small thoughts around cybercrime legislations and gender. *GenderIT.org*. <https://gender-it.org/feminist-talk/small-thoughts-around-cybercrime-legislations-and-gender>

15. Human Rights Watch. (2021, 5 May). Op. cit.

16. UN Ad Hoc Committee to Elaborate a Comprehensive International Convention on Countering the Use of Information and Communications Technologies for Criminal Purposes, Sixth Session, A/AC.291/22. [https://www.unodc.org/documents/Cybercrime/AdHocCommittee/6th\\_Session/Pre-session-docs/A\\_AC\\_291\\_22\\_Advance\\_Copy.pdf](https://www.unodc.org/documents/Cybercrime/AdHocCommittee/6th_Session/Pre-session-docs/A_AC_291_22_Advance_Copy.pdf)



**This exploratory report seeks to contribute to ongoing and future discussions concerning gender and cybercrime by providing concrete evidence of how national cybercrime laws have been used to silence and criminalise women and LGBTQIA+ people around the world.**

Eleven cases from Cuba, Egypt, Jordan, Libya, Nicaragua, Russia, Saudi Arabia, Uganda and Venezuela are presented below. They demonstrate that while cybercrime regulations are multiplying around the world, they are not only ineffective in protecting the expression of women and LGBTQIA+ people, but also put them at risk – even more so in those countries where there are cultural and/or legal restrictions against certain gender expressions.

This paper, therefore, does not describe potential risks, but concrete and real harms.

While the criminal charges in the cases presented here exemplify different types of cybercrime norms, all apply legal concepts that criminalise online speech in an expansive manner and violate existing standards on freedom of expression. In general, this involves generic terms that are not properly defined and are open to abusive interpretation by the authorities. The risks are even greater in contexts of fragile democratic institutions and/or in the face of democratic backsliding.

The results are troubling and raise the alarm about the inherent dangers of advancing international standards on the issue without considering the diversity of national contexts or without including safeguards for the protection of human rights, particularly of historically marginalised groups.

# II. METHODOLOGY

The mapping of global cases such as those reported here is a difficult task and was possible only thanks to the monitoring and documentation carried out by human rights organisations acting locally, as well as journalistic coverage.

This report is the result of an investigation carried out via desk research and with direct dialogue with organisations that specialise in digital technologies and human rights.

A review of national norms took place in order to identify which countries have laws on cybercrime and related legislation, as well as to identify which of them have been used as tools for persecution of activists or dissenting voices.

A mapping of cases in which activists, specifically women (cis/trans) or LGBTQIA+ persons, have been prosecuted or threatened with prosecution under a cybercrime law was carried out through the use of a survey distributed to local organisations. The survey also aimed to collect information on the context for digital rights in the countries where cases were identified. The survey results indicate that not many organisations systemise the type of information requested.

The research methodology also included an analysis of international and regional standards as a baseline for the development of legislation and policies regarding these issues. In this sense, this report also provides an overview of the obligations that states are not fulfilling in relation to the respect and protection of human rights in digital spaces.

As explained later in this report, the relationship between gender justice and freedom of expression is of particular importance to understand the risks of cybercrime norms. Further research should focus on gathering additional evidence and learnings for the development of balanced and proportionate responses to crimes that occur within digital spaces and/or that are facilitated by technologies, in particular technology-facilitated gender-based violence (TFGBV).

# III. TFGBV, CYBER-INSECURITY AND CYBERCRIME

The digital age has generated new spaces for the exercise and enjoyment of human rights. As such, international law has confirmed that the protections provided to human rights must be enforced both offline and online. This applies to all rights, but is particularly relevant in relation to the rights to freedom of opinion and expression<sup>17</sup> as well as to states' obligation to combat all forms of discrimination against women and to protect their human rights.<sup>18</sup>

The obligation of states to guarantee women's equal enjoyment of human rights and fundamental freedoms necessarily implies addressing freedom of expression from a gender perspective, as the rights to equality and freedom of expression are interdependent,<sup>19</sup> indivisible and essential for the achievement of democracy and sustainable development.<sup>20</sup>

According to UN Women:

Technology-facilitated gender-based violence (TFGBV) is any act that is committed, assisted, aggravated or amplified by the use of information communication technologies or other digital tools which results in or is likely to result in physical, sexual, psychological, social, political or economic harm or other infringements of rights and freedoms.<sup>21</sup>

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17. UN Human Rights Council. (2012). *Promotion, protection and enjoyment of human rights on the Internet*. A/HRC/RES/20/8. <https://undocs.org/A/HRC/RES/20/8>

18. Šimonović, D. (2018). *Report of the Special Rapporteur on violence against women, its causes and consequences on online violence against women and girls from a human rights perspective*. A/HRC/38/47. <https://undocs.org/A/HRC/38/47>

19. Committee on the Elimination of Racial Discrimination. (2013). *General recommendation No. 35: Combating racist hate speech*. CERD/C/GC/35. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/471/38/PDF/G1347138.pdf?OpenElement>; Working Group on the issue of discrimination against women in law and in practice. (2013). *Report of the Working Group on the issue of discrimination against women in law and in practice*. A/HRC/23/50. <https://undocs.org/A/HRC/23/50>

20. Khan, I. (2021). Op. cit.

21. <https://www.unwomen.org/en/what-we-do/ending-violence-against-women/faqs/tech-facilitated-gender-based-violence>

A recent study from the Centre for International Governance Innovation (CIGI) collected data from 18,149 people of all genders in 18 countries. Almost 60% (59.7%) of all participants of all genders and sexual orientations had experienced at least one of the 13 forms of online harm surveyed. Women were much more likely to rate the various forms of online harm as harmful compared to men. More than one-quarter (27.7%) of all participants reported a very negative impact on their mental health. A higher proportion of transgender and gender-diverse people reported that being targeted online very negatively impacted their desire to live.<sup>22</sup>

Although TFGBV is a serious and urgent concern, the use of criminal legislation to address it may create even further problems. This is the case, for example, of cybercrime norms. Existing cybercrime laws tend to be open to abuse due to their vague terminology and lack of sufficient redress mechanisms. They are also not specifically tailored to address gender concerns.

Strong cybersecurity strategies that put people and gender at the centre of public policies and actions are an important response to TFGBV and an important alternative to the use of cybercrime norms, which should be narrowly applied and interpreted.

Cybercrime laws are often used in conjunction with other laws, like cybersecurity laws, criminal codes, and laws governing information and communications technologies (ICTs), telecommunications and counterterrorism, among others. As has been noted by civil society, these legislations are in general overly broad and criminalise online expression, association and assembly, targeting civil society organisations, human rights defenders, digital security researchers, whistleblowers and journalists.<sup>23</sup>

Cybersecurity provides a different approach to that of cybercrime. While cybersecurity is proactive and seeks to secure systems from attacks or errors, cybercrime is a “punitive, remedial, carceral and securitization framing.”<sup>24</sup>

Cybercrime legislation should be used solely for addressing offences that require the use of a computer system – the so called “cyber-dependent” crimes. The extension of cybercrime legislation to cover “cyber-enabled” crimes (traditional offences committed using a computer) is unnecessary and risky to a number of human rights.

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22. Dunn, S., Vaillancourt, T., & Brittain, H. (2023). *Supporting Safer Digital Spaces*. Centre for International Governance Innovation. <https://www.cigionline.org/publications/supporting-safer-digital-spaces>

23. Human Rights Watch. (2021, 5 May). Op. cit.

24. Knodel, M., Kumar, S., & Degezelle, W. (2023, 20 January). Mythbusting: Cybercrime versus Cybersecurity. *Tech Policy Press*. <https://techpolicy.press/mythbusting-cybercrime-versus-cybersecurity>

Common manifestations of TFGBV relate to attacks that in general refer to cyber-facilitated crimes, such as online harassment of women and gender-diverse people, hate speech, and others. These offences, although grave, do not require the passing of specific laws framing them as cybercrimes.

Gender-based violence should be addressed by holistic and dedicated legal frameworks (and other measures) and these legal frameworks should recognise that today, the online and offline continuum leads to a situation where acts initiated online may have offline effects, and offline violence may be compounded by online dimensions.<sup>25</sup> However, any law in this area must foreground rights to bodily autonomy, self-determination, freedom of expression and the right to participate in public debate. Morality and obscenity as rationale for protecting women and other communities affected by injustice must not be the basis for any legislative reform or new law in matters of gender-based violence.

As highlighted before by APC, some survivor lobby groups will often call for remedies that effectively entail prior censorship and invasion of privacy, which find an echo in government interests to eliminate anonymity and gain access to private communications in the name of national security.<sup>26</sup>

Also, it is important to consider that:

Offensive, discriminatory and even violent commentary may create an enabling environment for GBV, but in and of itself should not be subject to imprisonment. Furthermore, given patriarchal and racist judicial systems where impunity is more common than justice, there is the possibility of new laws being used against those vulnerable communities it was designed to protect.<sup>27</sup>

States should therefore ensure that legal frameworks adequately protect women's freedom of expression (including political, religious and sexual expression), privacy, and freedom from violence. Any restrictions to freedom of expression to respond to gender-based violence and abuse must be necessary and proportionate, should not be overbroad or vague in terms of what speech is restricted, and should not overpenalise (whether referring to criminal sentencing or responses which restrict internet or platform access).

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25. UN Women. (2022). *Accelerating efforts to tackle online and technology-facilitated violence against women and girls*. [https://www.unwomen.org/sites/default/files/2022-10/Accelerating-efforts-to-tackle-online-and-technology-facilitated-violence-against-women-and-girls-en\\_0.pdf](https://www.unwomen.org/sites/default/files/2022-10/Accelerating-efforts-to-tackle-online-and-technology-facilitated-violence-against-women-and-girls-en_0.pdf)

26. APC. (2017). *Online gender-based violence: A submission from the Association for Progressive Communications to the United Nations Special Rapporteur on violence against women, its causes and consequences*. [https://www.apc.org/sites/default/files/APCSubmission\\_UNSR\\_VAW\\_GBV\\_0\\_0.pdf](https://www.apc.org/sites/default/files/APCSubmission_UNSR_VAW_GBV_0_0.pdf)

27. Ibid.

# IV. GENDER AND FREEDOM OF EXPRESSION: THE GENDERED EFFECTS OF CRIMINALISATION

Freedom of opinion and expression empowers women and gender-diverse people to exercise not only their civil and political rights, but also their economic, social, cultural and environmental rights.<sup>28</sup> The use of different types of expression to give visibility to the invisible and to demand equality and justice has been key to the progress towards fairer and more democratic societies. The courageous activism of women and LGBTQIA+ people has achieved significant results in the recognition of rights and the development of public policies. In recent years, the use of the digital space has been consolidated as a socio-political tool of great relevance to influence public debate and make social demands visible.

For groups such as women and LGBTQIA+ people, who have been historically excluded from the political sphere, the internet has been a key instrument to enhance and expand the exercise of freedom of expression, association and assembly. The examples are numerous<sup>29</sup> and range from campaigns against sexual abuse, to the mobilisations in favour of legal and safe abortion or the denunciation and visibilisation of homophobic violence. Despite the enormous progress made by women and LGBTQIA+ people, gender equality with respect to freedom of expression remains a distant goal.<sup>30</sup> In fact, its exercise is increasingly endangered

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28. Khan, I. (2021). Op. cit.

29. Goldsman, F., & Venturini, J. (2021, 10 February). Building a Feminist Internet. *Centre for International Governance Innovation*. <https://www.cigionline.org/articles/building-feminist-internet>

30. Khan, I. (2021). Op. cit.

on and off the internet due to the fact that, as mentioned in previous sections, women and people of the LGBTQIA+ community are systematically subjected to online violence, while the generation of punitive legislation puts them at risk of criminalisation, affecting their ability to participate in the public debate.

This silencing generates differentiated effects for women, since the ability of these groups to make themselves heard is a key measure of gender equality.<sup>31</sup> For example, the exercise of women's right to freedom of expression is a tool to combat gender-based violence.<sup>32</sup> In this regard, the Special Rapporteur for Freedom of Expression from the Inter-American Commission on Human Rights (IACHR) has noted that expressions of protest against gender-based violence by women human rights defenders, artists and women's collectives – amplified through the power of digital spaces – have been crucial to raising awareness of a persistent problem that hinders women's right to enjoy a life free of violence.<sup>33</sup>

The guarantee of the exercise of freedom of expression necessarily requires a safe and enabling environment in order to be effective. Therefore, legislation that criminalises the ability to express social demands related to structural inequalities – either because of the content of the expression or the gender of the person expressing their opinion – may exclude women's voices, since illegitimate restrictions are a direct attack against their visibility and full participation in public life.<sup>34</sup> According to the Inter-American Court of Human Rights (IACtHR), one of the main consequences of silencing is that:

[T]he public loses relevant voices and points of view and, in particular, women's voices and points of view, which, in turn, leads to an increase in the gender gap [...] and attacks pluralism as an essential element of freedom of expression and democracy.<sup>35</sup>

Women and gender-diverse individuals never had the same freedom to express themselves as hetero cis male individuals. Achieving full freedom of expression is a much more distant goal for them. On the other hand, when freedom of expression is being curtailed, these groups – and marginalised communities more broadly – are the first to suffer the negative effects.

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31. Ibid.

32. IACHR. (n/d). The Office of the Special Rapporteur for Freedom of Expression expresses concern over criminal investigation initiated in Chile against members of Las Tesis. Press release R152/20. <https://www.oas.org/en/iachr/expression/showarticle.asp?artID=1178&IID=1>

33. Ibid.

34. Ibid.

35. Inter-American Court of Human Rights. Case of Bedoya Lima et al v. Colombia. Judgment of August 26, 2021. [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_431\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_431_ing.pdf)

The analysis of freedom of expression from a gender lens is crucial to make explicit why the criminalisation of speech is such a serious concern for women and gender-diverse people. “Public morals” and cultural values have been weaponised against them when they seek to express their identities, their sexuality, their views and opinions, especially when these views and opinions relate to gender-related issues.

The criminalisation of speech takes place through different forms, such as the abusive use of blasphemy laws, the adoption of restrictive “fake news” legislation, the sweeping use of defamation provisions, and expansive anti-terrorism norms. The 11 cases collected for this report demonstrate that cybercrime laws have been another critical example of this criminalisation. But not only that. The examples demonstrate how this criminalisation affects women and gender-diverse people’s expression and activism.



# V. RESTRICTIONS ON FREEDOM OF EXPRESSION MUST BE LAWFUL AND NECESSARY, AND MUST PROTECT LEGITIMATE OBJECTIVES

International bodies have been clear in establishing the obligation to include digital spaces in the scope of human rights protection, stating that human rights must be protected in the same manner offline and in digital spaces. It is important to note that the recognition of the right to freedom of expression on the internet was key to advance in recognition of human rights in online spaces.

The 2011 report of the UN Special Rapporteur on freedom of expression, which recognised the internet as a catalyst for the right to freedom of expression that “facilitates the exercise of various other human rights,”<sup>36</sup> was the basis for the Human Rights Council resolution that established that rights must be equally

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36. La Rue, F. (2011). *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*. A/HRC/17/27. <https://undocs.org/A/HRC/17/27>

protected on the internet.<sup>37</sup> This resolution emphasises that among human rights, freedom of expression in particular must be protected, and this is applicable regardless of borders and applies to all means of expression, in accordance with Article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.<sup>38</sup>

In line with that reasoning, the Special Rapporteur on violence against women released a report on online violence in 2018 in which she expressed that the interaction of technology and women's human rights norms is characterised by the recognition of the principle that the rights of individuals must also be protected in internet.<sup>39</sup> Thus, it is clear that the legal correlation established between the internet and human rights originates from the recognition of the protection of the right to freedom of expression in digital spaces.

While freedom of opinion is absolute, international human rights law recognises that freedom of expression may be restricted to pursue legitimate objectives, provided that such restriction is lawful, necessary and proportional. However, such restriction is only possible provided that it is carried out within the framework of basic democratic principles, that a number of safeguards of transparency, oversight and access to justice remain in place, and that the restrictions are lawful, necessary, proportionate and temporary.<sup>40</sup>

Given the primary responsibility of the state to guarantee rights and freedoms, there is an obligation to interpret all restrictions on freedom of expression strictly.<sup>41</sup> States must prove that any restriction applied is necessary and proportionate to the objective pursued. As has been held by UN mechanisms, "the principle of necessity and proportionality presumes that restrictions cannot be justified when the harm to freedom of expression is greater than the benefits."<sup>42</sup> Likewise, the IACtHR has recognised, when assessing the necessity of a limitation on the right to liberty, that "necessary" signifies that the means chosen "are absolutely essential to achieve the end pursued, and that among all the possible measures, there is none less severe in relation to the right involved, which is as adequate to achieve the proposed objective."<sup>43</sup>

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37. Human Rights Council. (2012). *The promotion, protection and enjoyment of human rights on the Internet*. A/HRC/RES/20/8. <https://undocs.org/A/HRC/RES/20/8>

38. Ibid.

39. Šimonović, D. (2018). Op. cit.

40. Inter-American Court of Human Rights. *Compulsory Membership in an Association of Journalists* (Arts. 13 and 29, American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985, para. 36-39.

41. Khan, I. (2021). Op. cit.

42. Ibid.

43. Inter-American Court of Human Rights. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, Preliminary Objections, Merits, Reparations and Costs, para. 93.

As will be seen in the next section, the laws invoked in the cases identified for this report do not meet the criteria of legality, necessity and legitimate objective, as they do not define with sufficient precision the criminal offences invoked – such as disinformation, terrorism or hate crimes – nor do they establish a concrete and well-founded link between the act committed and the harm caused. In turn, the concept of “public morals” is loosely applied, contrary to international standards that indicate that any law designed to preserve morals must be narrow and specific in scope,<sup>44</sup> clearly defined, determinable and compatible with international human rights law.<sup>45</sup>

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44. Khan, I. (2021). Op. cit.

45. Ibid.

# VI. CASES

## THE “TRUTH” USED AS A PERSECUTION TOOL

All the cases identified for this report refer to women or LGBTQIA+ persons persecuted for their activism, gender expression or simply for expressing dissent in relation to the authorities. In many cases, broad and generic concepts – such as “propagation of fake news” – associated with draconian penalties including imprisonment are used to criminalise legitimate activities, in violation of fundamental rights, such as freedom of expression and association.

As noted by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association in his 2019 report,<sup>46</sup> legislation such as cybercrime or fake news legislation can condemn online expression and association through the use of vague and undefined terms, applied in a discretionary manner, resulting in legal uncertainty and a chilling effect, preventing people from using the internet to exercise their rights.

The Joint Declaration on Freedom of Expression and “Fake News”, Disinformation and Propaganda stated:

General prohibitions on the dissemination of information based on vague and ambiguous concepts, including “fake news” or “non-objective information”, are incompatible with international standards on restrictions on freedom of expression.<sup>47</sup>

According to the UN Special Rapporteur on freedom of expression, the criminalisation of disinformation is counterproductive, since the most powerful antidote to disinformation is the promotion of an informed, digitally literate population with access to multiple and diverse forms of information and media, as well as the application of multifaceted and multistakeholder approaches to internet governance and content moderation, involving civil society – including women’s groups.<sup>48</sup>

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46. Voule, C. N. (2019). Op. cit.

47. UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS Special Rapporteur on Freedom of Expression, & ACHPR Special Rapporteur on Freedom of Expression and Access to Information. (2017). *Joint Declaration on Freedom of Expression and “Fake News”, Disinformation and Propaganda*. <https://www.oas.org/en/iachr/expression/showarticle.asp?artID=1056&IID=1>

48. Khan, I. (2021). Op. cit.

As will be seen in the cases identified, the criminal offences invoked are similar in their ambiguous language, and this allows the subjective delimitation of what the concept of “false news” – which is often applied to critical opinions – implies.

## **Kareli de la Vega**

Kareli de la Vega, known as Lady la Vulgaraza in her social media, is a trans activist and influencer who, through humour, exposes critical views and defends the rights of LGBTQIA+ people to a life free of discrimination in Nicaragua. She also ran a social project for children in her neighbourhood, which involved distributing food to the children of the town of Pochocuape and seeking support for people in vulnerable situations.

In the context of the April 2018 protests in the country, she consolidated herself as a voice of resistance by using her platform to report on and visibilise state repression in Nicaragua, where a gradual democratic shutdown has been taking place for more than 10 years.<sup>49</sup> As a result of her publications on social media regarding the political situation in the country, the activist reported having suffered constant threats and police harassment. For example, her house in Managua was guarded by police to prevent her from moving around. At the time, the house was used as a children’s soup kitchen. Considering that she was under threat of facing legal proceedings, Kareli decided to go into exile, first in Costa Rica and then in the United States.<sup>50</sup>

Lady la Vulgaraza had reasons to fear a possible conviction given the legal threats to freedom of expression used against media and journalists in Nicaragua,<sup>51</sup> such as the Special Law on Cybercrimes, passed in 2020.

## **Samantha Jirón**

One example of such legal threats is Cinthia Samantha Padilla Jirón, or Samantha Jirón, a journalism student and activist, who assisted people in need of medical attention in the 2018 social protests and due to government persecution had to relocate to Costa Rica. In 2019, she returned to Nicaragua, where she engaged in political and activism activities, joining the Alianza de Jóvenes y Estudiantes de Nicaragua (Nicaraguan Youth and Student Alliance), an organisation that forms part of the Alianza Cívica por la Justicia y la Democracia (Civic Alliance for Justice and Democracy). Subsequently, Samantha became part of the National Blue and White

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49. CEJIL. (2017). *Nicaragua: ¿cómo se reformó la institucionalidad para concentrar el poder?* <https://cejil.org/publicaciones/nicaragua-como-se-reformo-la-institucionalidad-para-concentrar-el-poder/>

50. Información Puntual. (2022, 6 July). Karelia de la Vega “Lady Vulgaraza” cumple un mes en el exilio. <https://ipnicaragua.com/karelia-de-la-vega-lady-vulgaraza-cumple-un-mes-en-el-exilio-nicaragua>

51. IACHR. (2020, 7 October). The IACHR and its Office of the Special Rapporteur for Freedom of Expression express concern over new legal threats to freedom of expression and indirect measures against media outlets and journalists in Nicaragua. <https://www.oas.org/en/iachr/expression/showarticle.asp?artID=1187&IID=1>

Unity coalition and also became involved in the campaign team of presidential pre-candidate Felix Maradiaga. In 2021, she was taken by people in civilian clothes. She was leaving the Holiday Inn Hotel in Managua, where she had given an interview to local media and was chased until she was captured. She went missing for 24 hours until her mother learned that she was being held in District III of the National Police in Managua.<sup>52</sup> In March of the following year, she was sentenced to five years in prison, four years for violating the cybercrime law – for crimes of treason and spreading false news. In addition, she was fined 30,000 córdobas (USD 843). One of the pieces of evidence used by the Prosecutor’s Office to justify the indictment were videos in which Cinthia expressed critical opinions regarding the government’s handling of the COVID-19 pandemic.

Recently, in 2023, 222 political prisoners, including Samantha, were released and exiled. Article 30 of Nicaragua’s Law No. 1042 on Cybercrime considers the “propagation of false news” as an offence, allowing the prosecution of “whoever publishes or disseminates false and/or misrepresented information that causes alarm, fear or anxiety.” The broad and ambiguous language of the article in question enables the arbitrary application of the criminal offence, since it allows the judicial authority to decide on the concept of false news. This implies that any person who creates or replicates information that the authority qualifies as “false” can be charged and face a prison sentence.

In 2021, the Inter-American Commission on Human Rights urged the Nicaraguan state to “derogate and/or adapt the laws approved to ensure their accordance with human right’s standards.”<sup>53</sup> According to the IACHR, “a de facto state of exception prevails in the country,” where arbitrary detention and criminalisation are part of a governmental strategy of persecution and repression.<sup>54</sup>

In the same vein, the Group of Human Rights Experts on Nicaragua noted in its report that since the 2018 protests seeking social reforms, human rights violations have been committed and continue to be committed, being perpetrated in a widespread and systematic manner for political reasons, constituting crimes against humanity of murder, imprisonment, torture, including sexual violence, forced deportation and persecution for political reasons, and indicated that the population “lives in fear regarding the actions that the government itself may take against them.”<sup>55</sup> They stated that the human rights violations have resulted from

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52. [https://nicaslibresya.org/perfiles\\_pp/samantha-jiron](https://nicaslibresya.org/perfiles_pp/samantha-jiron)

53. IACHR. (2021). Nicaragua: Concentration of power and the undermining of the Rule of Law. [https://www.oas.org/en/iachr/reports/pdfs/2021\\_nicaragua-en.pdf](https://www.oas.org/en/iachr/reports/pdfs/2021_nicaragua-en.pdf)

54. IACHR. (2021, 19 April). Three Years After the Start of the Human Rights Crisis in Nicaragua, IACHR Condemns Ongoing Impunity. [https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media\\_center/preleases/2021/093.asp](https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2021/093.asp); see also: IACHR. (2021, 15 November). IACHR Updates Death Toll Records of Human Rights Crisis that Started in April 2018 in Nicaragua. [https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media\\_center/preleases/2021/302.asp](https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2021/302.asp)

55. Group of Human Rights Experts on Nicaragua. (2023). *Report of the Group of Human Rights Experts on Nicaragua*. A/HRC/52/63. <https://www.ohchr.org/en/hr-bodies/hrc/ghre-nicaragua/index>

a planned process of dismantling the separation of powers and democratic guarantees that has led to the “destruction of the civic and democratic sphere”<sup>56</sup> and that “the high authorities of the Government have managed to instrumentalise the Executive, Legislative, Judicial and Electoral Powers, to develop and implement a legal framework that aims to repress the exercise of fundamental freedoms and persecute opponents” with the objective “to eliminate, by various means, any kind of opposition in the country.”<sup>57</sup>

It is important to mention that the criminal offence that served as the basis for Cinthia's conviction is not new in Latin America. For instance, the text of this article is practically the same as the text of the Venezuelan Law of Social Responsibility and the Law Against Hate, which have provided a legal basis for the persecution and arrest of doctors and journalists in the context of the pandemic.<sup>58</sup>

## Yaremis Flores

A similar situation was experienced by Yaremis Flores,<sup>59</sup> a Cuban lawyer and journalist, who published independently on news websites such as CubaNet, Diario de Cuba and Primavera Digital. In addition to her work as a journalist, Yaremis is the founder of the independent project Cubalex, an office that offers legal aid.

On 7 November 2012, she left her home to bring some soup to her father, who was in a polyclinic. As she was walking down the street from her home, a patrol car was slowly circling the area. As she was crossing the street, the car slowed down and a state security agent called her name, telling her that she should accompany him and turn off her cell phone. She was taken to the back seat without knowing the reasons for her detention nor where she was being taken. Afterwards she was subjected to more than three hours of interrogation, during which she was questioned about her collaboration with CubaNet. During her detention, she received threats, including that she would be subjected to criminal proceedings, accusing her of spreading false information against international peace. After more than 48 hours of being detained and held incommunicado, she was released.

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56. Ibid.

57. Ibid.

58. Díaz, M. (2020, 2 October). Proyecto de ley especial de cibercrimitos en Nicaragua: una herramienta más para la represión del disenso. *Derechos Digitales*. <https://www.derechosdigitales.org/14881/proyecto-de-ley-especial-de-cibercrimitos-en-nicaragua-una-herramienta-mas-para-la-represion-del-disenso>

59. Paz, L. (2012, 11 December). Cuban Journalist Accused of Spreading “False News”. *Institute for War and Peace Reporting*. <https://iwpr.net/global-voices/cuban-journalist-accused-spreading-false-news>

When Flores was detained, other independent journalists, bloggers and activists tried to obtain information about what was happening to her from Department 21 of State Security, which deals with the press. This resulted in a wave of arrests. Among those arrested were Veizant Boloy, lawyer and husband of Flores; Laritza Diversent, journalist and co-founder of Cubalex; and Antonio Rodiles, founder of the independent television programme Estado de Sats.

Accusations against Flores were based on article 115 of the 1987 Criminal Code,<sup>60</sup> which states that “anyone who disseminates false news with the purpose of disturbing international peace or endangering the prestige or credit of the Cuban state or its good relations with another state shall be punished by imprisonment for a term of one to four years.”<sup>61</sup> Once again, the criminal offence is extremely broad and vague in that it does not define what would constitute false news or the criteria for determining what would constitute an international disturbance, allowing for arbitrary interpretations. After a subsequent reform of the Cuban Criminal Code,<sup>62</sup> the previous text was maintained and new criminal offences equally risky to freedom of expression were incorporated.<sup>63</sup>

## **Sulmira Martínez**

Sulmira Martínez, a 21-year-old activist and influencer known as “SalemCuba”, uses her social media to express critical opinions.

In January 2023 she was arrested at her home after publishing a call on social media to protest against President Miguel Díaz-Canel. Not an hour had passed since she published those posts when three men appeared at her home, in the village of Las Guásimas in the municipality of Arroyo Naranjo, Havana, and told her that she should accompany them. Since then and until the time of closing of this report, Sulmira has not returned home.

At the time of her arrest, her house was searched by police officers who confiscated all her electronic devices. She has been held in custody, according to local media.<sup>64</sup> She was initially charged with “propaganda against the constitutional order”, which is penalised in Article 124 of the Criminal Code and entails sentences of up to 10 years of imprisonment. She was also charged with “instigation to commit a crime” under Article 268 of the same law, for which up to two years of imprisonment or a fine of up to 600 quotas may be imposed. She was first held in Villa Marista, the

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60. [https://oig.cepal.org/sites/default/files/1987\\_codigopenal\\_cuba.pdf](https://oig.cepal.org/sites/default/files/1987_codigopenal_cuba.pdf)

61. Ibid.

62. [https://www.parlamentocubano.gob.cu/sites/default/files/documento/2022-09/goc-2022-o93\\_0.pdf](https://www.parlamentocubano.gob.cu/sites/default/files/documento/2022-09/goc-2022-o93_0.pdf)

63. Amnesty International. (2022, 2 December). Cuba: New criminal code is a chilling prospect for 2023 and beyond. <https://www.amnesty.org/en/latest/news/2022/12/cuba-el-nuevo-codigo-penal-presenta-un-panorama-aterrador-para-2023-y-anos-posteriores>

64. DDC. (2023, 3 April). El régimen cambia la acusación a la influencer Sulmira Martínez y la traslada de prisión. [https://diariodecuba.com/derechos-humanos/1680525273\\_46232.html](https://diariodecuba.com/derechos-humanos/1680525273_46232.html)



main centre of operations of State Security in Cuba, for more than 40 days, where she was constantly subjected to interrogations, and on 17 March she was transferred to the El Guatao women's prison. However, her family does not have any document that justifies the incarceration.<sup>65</sup> Salem's mother expressed during an interview that her daughter "was traumatised" and that the prison's conditions are terrible.<sup>66</sup>

During the mentioned interrogations, she was filmed and the video was broadcasted on television as a "confession". The official programme Razones de Cuba accused her of generating "harmful and misleading content in digital spaces."<sup>67</sup> As was reported by news media, the material apart from screenshots of Martínez Pérez's publications and the repercussions of her arrest and prosecution in social media and independent media offers no other evidence to support the accusations.<sup>68</sup> Sulmira's mother stated that the confession was coerced and that even the exact words were dictated by the authorities, under promises that she would be released.<sup>69</sup>

In the opinion of Diario de Cuba's team of attorneys, the prosecution represents another chapter in the criminalisation of dissent in the country and is "a possible message of preventive and exemplary warning to any influencer or person who denounces, publishes or mobilises people for something that is not going well in Cuba and criticises the authorities."<sup>70</sup> The lawyers warned that the influencer is a "key factor" in the task that corresponds to the Ministry of the Interior by mandate of Decree-Law 35 and related regulations, such as Resolution 105 of 2021, of the Ministry of Communications. The Decree-Law contains the "Regulation on the National Action Model for the Response to Cybersecurity Incidents" by each ministry.<sup>71</sup> The lawyers recall that Decree-Law 35 is defined as a tool that enforces "the use of telecommunications services to be an instrument for the defence of the Revolution and not against it; to solve the general needs of the state, the government and those related to security and national defence, internal order and civil defence in the field of telecommunications/ICT and the use of the radio electric spectrum; and to 'protect' the interests of citizens, interests of third parties, national security, internal order and other general constitutional rights."<sup>72</sup>

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65. Ibid.

66. ICLEP. (2023, 7 April). Presa Política Sulmira Martínez Pérez pudiera ser retornada a Villa Marista. <https://iclep.org/post/presa-politica-sulmira-martinez-perez-pudiera-ser-retornada-a-villa-marista>

67. DDC. (2023, 3 April). Op. cit.

68. DDC. (2023, 13 April). El régimen arranca una 'confesión' a la influencer cubana Sulmira Martínez y la expone en televisión. [https://diariodecuba.com/derechos-humanos/1681384808\\_46457.html](https://diariodecuba.com/derechos-humanos/1681384808_46457.html)

69. DDC. (2023, 17 April). La madre de Sulmira Martínez asegura que a su hija le dictaron las palabras de su 'confesión'. [https://diariodecuba.com/derechos-humanos/1681749026\\_46527.html](https://diariodecuba.com/derechos-humanos/1681749026_46527.html)

70. DDC. (2023, 20 April). El caso de la influencer cubana Sulmira Martínez, otra jugada del régimen para disuadir el disenso. [https://diariodecuba.com/derechos-humanos/1681992699\\_46532.html](https://diariodecuba.com/derechos-humanos/1681992699_46532.html)

71. Ibid.

72. Ibid.

As reported by the press, both the Decree-Law and the Resolution were hastily drafted and approved following the historic protests of 11 July and the announcement by the United States of greater efforts to provide internet to Cubans.<sup>73</sup>

As recognised by international bodies such as the IACHR, the human rights situation in Cuba has become more complex during 2021 and 2022 due to the repercussions of the 11 July protests, which have generated a situation of increased repression of dissidents in the country and serious human rights violations. Since the beginning of the protests, the Commission has received numerous complaints from civil society organisations, reporting the existence of a systematic pattern of criminalisation and persecution of peaceful demonstrators, activists and political opponents, through harassment, arbitrary detentions and criminal proceedings that do not observe the minimum guarantees of due process of law.<sup>74</sup>

## Olesya Krivtsova

Far from Latin America, Olesya Krivtsova faces a similar situation. The 20-year-old Russian pacifist student used her Instagram account to express her anti-war views and ended up being added to the list of “terrorists and extremists”. Before the criminal charges, she was already fined 30,000 rubles (USD 425) for posting anti-war stickers in public.<sup>75</sup>

In 2022, Olesya uploaded a post to her Instagram profile in which she expressed critical opinions against the Russian government over the war in Ukraine<sup>76</sup> and now faces a sentence of up to 10 years in prison.

The post was shared by some of her classmates who reported her to the authorities. On 26 December of the same year, she was violently arrested at her home by state agents, who threatened her verbally and physically. Natalya Krivtsova, her mother, stated that while the search was being conducted, a police officer stood over Krivtsova, intimidating her with a sledgehammer. Later an officer of the Interior Ministry’s anti-extremism centre told her and her husband separately that the visit was “a greeting from the Wagner” mercenary group.<sup>77</sup> This reference has a very important symbolic connotation given that a few weeks earlier, the Wagner group had released a violent video in which convicted murderer Yevgeny Nuzhin, who had been recruited from prison to fight in Ukraine, was branded a traitor and killed by having his skull crushed with a sledgehammer.<sup>78</sup>

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73. Ibid.

74. Human Rights Watch. (2023). *World Report 2023*. <https://www.hrw.org/world-report/2023>

75. Coalson, R. (2023, 1 February). Denounced By Her Classmates, Anti-War Russian Teen Faces A Long Prison Term. *Radio Free Europe*. <https://www.rferl.org/a/russia-antiwar-teen-prison-term-ukraine-war/32249520.html>

76. New York Times. (2023, 28 March). De Instagram a la lista de terroristas de Rusia: el caso de Olesya Krivtsova. <https://www.nytimes.com/es/2023/03/28/espanol/guerra-rusia-redes-sociales.html>

77. Coalson, R. (2023, 1 February). Op. cit.

78. Ibid.

Russian authorities charged Krivtsova with “discrediting the Russian Army”, “spreading fake news” and “acts justifying terrorism”. Two days after her arrest, Krivtsova faced a custody hearing, during which the court ordered her to remain under house arrest until the trial. A week later, police arrested her again. They requested a new custody hearing, arguing in court that two one-way train tickets to border areas of Russia had been purchased in her name and arguing that she could try to leave the country. Krivtsova denies having purchased the tickets, adding that she could not have done so because she does not have a valid internal passport. During the hearing, defence lawyers requested state railroad records showing when, where and how the alleged tickets were purchased, as well as the opportunity to cross-examine any witnesses. The judge denied their request. Finally, the court rejected the prosecution’s request that she be held in custody, instead imposing restrictions on her house arrest such as a ban on using the internet. Olga subsequently fled the country.<sup>79</sup>

Russia’s criminalisation of fake news has the same characteristics as those referred to in the cases above. On 4 March 2022, the Russian parliament passed two federal laws imposing administrative and criminal liability for the dissemination of “false” information, taking effect immediately on the same day. On 25 March 2022, the laws were further amended (collectively referred to as the “March 2022 Amendments”). With Federal Law No. 32-FZ, the Russian Criminal Code was amended to criminalise: dissemination of “knowingly false” information about the Russian Armed Forces (Article 207.3); dissemination of “knowingly false” information about the exercise of their powers by Russian state bodies outside the territory of Russia (Article 207.3, as amended 25 March 2022); public actions aimed at discrediting the use of the Russian Armed Forces, including public pleas or appeals to hinder their use (Article 280.3); public actions aimed at discrediting the exercise of their powers by Russian state organs outside the territory of Russia (Article 280.3, as amended 25 March 2022); and public pleas or appeals to foreign states and organisations to impose sanctions against Russia, its citizens or legal entities (Article 284.2).<sup>80</sup>

Applying the criminal offence of false news, which is considered to be committed if a person – or group – deemed to have abused their position or acted with “artificial evidence”, with “profit motive” or “for reasons of political, ideological, racial, national or religious hatred or enmity” against state entities, Krivtsova faces a sentence of up to 10 years in prison for expressing critical opinions.<sup>81</sup>

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79. New York Times. (2023, 28 March). Op. cit.

80. Thomson Reuters Foundation & the Committee to Protect Journalists. (2022). *Understanding the Laws Relating to “Fake News” in Russia*. <https://cpj.org/wp-content/uploads/2022/07/Guide-to-Understanding-the-Laws-Relating-to-Fake-News-in-Russia.pdf>

81. New York Times. (2023, 28 March). Op. cit.

As has been widely documented by civil society, Russia's invasion of Ukraine in February 2022 has deepened the restriction of political rights and freedoms by undermining internal dissent. The exercise of freedom of expression is criminalised by legislation that does not meet the human rights threshold. As a result, the political opposition has either emigrated or remains under constant threat of criminal charges and extra-legal pressures.<sup>82</sup>

## **Amal Fathy**

In Egypt, Amal Fathy, a human rights activist and sexual harassment survivor, used her social media account to demand protection of women's rights. Amal is a known activist who is a member of the now-banned April 6 youth movement that played a role in the 2011 protests that resulted in President Hosni Mubarak's ousting.<sup>83</sup>

On 9 May 2018 Amal posted a video on social media detailing how she was sexually harassed and criticised the government's lack of protection for women. Two days after the posting, Egyptian's security forces entered her home in a dawn raid and arrested her along with her husband (Mohamed Lofty, head of the Egyptian Independent Commission for Rights and Freedoms) and their three-year-old son, who were later released.

On 29 September 2018, a criminal court sentenced Fathy to two years in prison for "spreading false news" with the intention of harming the Egyptian state, possessing "indecent material", membership in a terrorist organisation, and using the internet to "promote ideas and beliefs calling for terrorists acts" – based on the Cybercrime Law – as well as a fine of 10,000 Egyptian pounds (USD 560) for making "public insults". As reported by Amal's lawyers, she was detained in a holding cell and was not present in the courtroom when the verdict was announced.<sup>84</sup>

She was released on parole in December 2018. The Court of Cassation upheld her conviction in January 2022, reducing her sentence to one year in prison for time served.

After the verdict, Amal's husband made the following statement to the press:

When a woman is subjected to sexual harassment and gets sentenced to two years and fined, then this means we are telling all Egyptian woman, "Shut your mouths."<sup>85</sup>

Along the same lines, Amnesty International said that Amal told the truth to the world and highlighted a vital issue of women's safety in Egypt and should not be punished for her bravery.

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82. Ibid.

83. New York Times. (2018, 30 September). Egypt Sentences Activist to Jail for 'False News' Over Sexual Harassment Video. <https://www.nytimes.com/2018/09/30/world/middleeast/egypt-amal-fathy-sexual-harassment.html>

84. Ibid.

85. Ibid.

Amal's case is based on cybercrime legislation that, similar to the other cases reported, provides penalties that are broad and does not contain definitions as to what constitutes false news. Amal's case is neither the first nor the only one where these laws have been used to criminalise the activities of activists and journalists, as documented by the international press.<sup>86</sup>

In fact, the Egyptian cybercrime legislation has been widely criticised by human rights organisations. The Cairo Institute for Human Rights Studies warned that the legislation could be used as a pretext to prosecute political opponents and human rights defenders on vague charges.<sup>87</sup> Indeed, criminalisation of expressions of dissent is a persistent problem in Egypt. As has been documented by civil society, civil liberties, including freedom of the press and freedom of assembly, are severely restricted.<sup>88</sup> In this regard, the UN Human Rights Committee expressed concern about reports of arbitrary detention, the systematic use of pre-trial detention and the repetition of charges to evade legal limits on the length of pre-trial detention, a practice often used to punish journalists, human rights defenders and political opponents of the government in Egypt.<sup>89</sup> It is relevant to note that in response to criticism of the cybercrime legislation, the government has defended it by saying that it was in part prompted by Egypt's ratification of the Arab Convention on Combating Information Technology Offences.<sup>90</sup>

## Salma al-Shehab

The case of Salma al-Shehab<sup>91</sup> highlights how far these laws can go in terms of sentencing and criminal conduct.

Salma is a 34-year-old dental hygienist, medical educator, PhD student and mother of two children. At the time of the events described here she was studying at Leeds University and had returned home for the holidays. She was not an activist nor was she especially vocal either inside Saudi Arabia or in the UK, but described by her friends as a person who could not stomach injustice.<sup>92</sup>

Saudi authorities detained Samal in January 2021 and subsequently sentenced her to 34 years in prison and 34 years of travel restriction for having a Twitter account

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86. Michaelson, R. (2018, 27 July). 'Fake news' becomes tool of repression after Egypt passes new law. *The Guardian*. <https://www.theguardian.com/global-development/2018/jul/27/fake-news-becomes-tool-of-repression-after-egypt-passes-new-law>

87. Cairo Institute for Human Rights Studies. (2014, 12 January). When will Egypt get a constitution that respects Egyptians and protects their dignity? <http://www.cihrs.org/?p=7886&lang=en>

88. <https://freedomhouse.org/country/egypt/freedom-world/2021>

89. OHCHR. (2023, 24 March). UN Human Rights Committee publishes findings on Egypt, Panama, Peru, Sri Lanka, Turkmenistan and Zambia. <https://www.ohchr.org/en/press-releases/2023/03/un-human-rights-committee-publishes-findings-egypt-panama-peru-sri-lanka>

90. Association for Freedom of Thought and Expression. (2015, 15 March). Comment on the Arab Convention on Combating Information Technology-related Crimes. [http://afteegypt.org/digital\\_freedom/2015/03/11/9770-afteegypt.html](http://afteegypt.org/digital_freedom/2015/03/11/9770-afteegypt.html)

91. Kirchgaessner, S. (2022, 16 August). Saudi woman given 34-year prison sentence for using Twitter. *The Guardian*. [https://www.theguardian.com/world/2022/aug/16/saudi-woman-given-34-year-prison-sentence-for-using-twitter?iti-d=lk\\_inline\\_enhanced-template](https://www.theguardian.com/world/2022/aug/16/saudi-woman-given-34-year-prison-sentence-for-using-twitter?iti-d=lk_inline_enhanced-template)

92. Ibid.

and for following and retweeting dissidents and activists. Among tweets about COVID and pictures of her children, there were some retweets of dissidents' tweets which called for the release of political prisoners in the country. There were also retweets of demands for the freedom of Loujain al-Hathloul – a prominent feminist activist who fought for women's right to drive and was imprisoned and tortured for it.<sup>93</sup>

She was initially sentenced to six years in prison for the “crime” of using a website to “cause public unrest and destabilise civil and national security.” She was held in solitary confinement for 285 days. Subsequently, prosecutors in the case argued that she should be charged under anti-terrorism and cybercrime laws, leading to the 34-year sentence. During the trial, she tried to speak privately with the judge to provide information regarding how she was being treated, which she did not want to speak about in front of her father, but she was not permitted to do so.<sup>94</sup>

On 25 January 2023 she was re-sentenced to a reduced sentence of 27 years in prison. The European Saudi Organization for Human Rights condemned Salma's sentence, which it called the longest prison sentence handed down against any activist. It noted that many activists have been subjected to unfair trials resulting in arbitrary convictions and have suffered “severe torture”, including sexual harassment.<sup>95</sup>

The cybercrime law was adopted through Royal Decree No. M17 in 2007<sup>96</sup> on the grounds of strengthening information security and protecting rights, taking into account public interest, morals and values. According to Freedom House, Saudi Arabia's absolute monarchy restricts almost all political rights and civil liberties through surveillance, criminalisation of dissent, and appeals to sectarianism and ethnicity. In this scenario, women and members of religious minority groups face extensive discrimination in both law and practice.<sup>97</sup>

Beyond the fact that the judicial processes faced by Cinthia, Yaremis, Sulmira, Olesya, Amal and Salma were permeated by different types of abuses and irregularities, their cases show how a broad legislation with vague or undefined terms, without a human rights perspective or gender mainstreaming, can generate arbitrary interpretations producing legal uncertainty that leads to criminalisation, in addition to a chilling effect, which prevents women from using the internet to exercise their rights.

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93. Ibid.

94. Ibid.

95. Ibid.

96. <https://www.wipo.int/wipolex/en/legislation/details/14570>

97. <https://freedomhouse.org/country/saudi-arabia>

## MORALITY AS A BASIS FOR CRIMINALISATION

As noted by the UN Special Rapporteur on freedom of expression, in several countries, laws that refer to the protection of public morals as a reason for criminalising content that is considered inappropriate, obscene or indecent have been used to control women's online behaviour.<sup>98</sup>

### Haneen al-Abdali

This is the case Haneen al-Abdali, Libyan blogger and online content creator.

She was arrested in February 2023, being accused by the Interior Ministry in the city of Benghazi of insulting "the status of the chaste and dignified Libyan woman in our conservative society with acts and behaviours that are alien to us and offend our customs, traditions and true religion." She has since been detained in connection with cases of "attacks on honour and public morals" and for violating the anti-cybercrime law adopted by the House of Representatives in September, the ministry reported.<sup>99</sup> The announcement provided no details about the arrest or the objectionable content.<sup>100</sup>

The anti-cybercrime law passed by the Libyan House of Representatives in September 2022 contains vague and broad definitions that could lead to prosecution for peaceful expression and punishment with prison sentences of up to 15 years and high fines. For example, the law stipulates that the use of the internet and new technologies is legal only if "public order and morality" are respected. In this regard, UN experts who conducted an analysis of the draft law stated that it "could have a serious impact on the enjoyment of the right to freedom of opinion and expression and the right to privacy."<sup>101</sup>

Artistic freedom and its expression is protected by international human rights law and it plays an important role in the empowerment of individuals and communities.<sup>102</sup> However, patriarchal social constructs, religious interpretations and traditional values are often used to stifle cultural expression, including women's artistic freedom.<sup>103</sup> This is a situation known to the Special Rapporteur on cultural rights, who has warned that criminal laws on public morals are used to repress any cultural expression that is contrary to state interests and to suppress cultural diversity.<sup>104</sup>

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98. OHCHR. (2023, 24 March). Op. cit.

99. Magdy, S. (2023, 3 April). AP News, Rights group urges eastern Libya to free singer, blogger, April 3rd 2023. *AP* <https://apnews.com/article/libya-cybercrimes-rights-chaos-blogger-singer-42991edba48716c3b21acc4311625ada>

100. Human Rights Watch. (2023, 3 April). Libya: Revoke Repressive Anti-Cybercrime Law. <https://www.hrw.org/news/2023/04/03/libya-revoke-repressive-anti-cybercrime-law>

101. Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the right to privacy. <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?glId=27150>

102. Khan, I. (2021). Op. cit.

103. Ibid.

104. Ibid.

## UNDER THE EXCUSE OF “PROTECTION”: LAWS WEAPONISED FOR GENDER CENSORSHIP

Although there are international obligations of states to generate positive actions aimed at protecting the rights of individuals in digital spaces, the reality is that most cybercrime laws end up being ineffective and/or disproportionate<sup>105</sup> and tend to generate the opposite effect.

Organisations such as Body & Data,<sup>106</sup> Pollicy<sup>107</sup> and APC<sup>108</sup> have identified how laws theoretically created to protect people end up being used for censorship and criminalisation.

### Yamen

The case of Yamen, a 25-year-old gay man living in Amman, Jordan, was documented by Human Rights Watch<sup>109</sup> and evidences how institutions that should operate to protect against online violence can instead be instrumentalised to punish certain gender expressions.

Yamen was a victim of extortion and threats by a man he met on a dating app. In 2021 he made a complaint to a specialised unit in the country with the aim of preventing the non-consensual dissemination of an intimate video. His case was not only ignored, but he ended up charged and convicted of “online prostitution”, under the same cybercrime law<sup>110</sup> he sought to invoke to protect himself from the violence he faced. In addition, during the process Yamen suffered systematic discrimination regarding his sexual orientation by police and judicial agents who, in turn, applied a stigmatising vision regarding gender role stereotypes to judge the situation denounced and place Yamen within a “feminine” role, which put him under greater scrutiny.<sup>111</sup>

The conviction took place in a context where civil society and the media are hampered by restrictive laws and government pressures. The judicial system lacks independence and often fails to guarantee due process.<sup>112</sup> In this regard, the

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105. Human Rights Watch. (2021, 5 May). Op. cit.

106. Kayastha, S., & Baramu, R. (2021). *Mapping Laws Relevant to Online Violence in Nepal*. Body & Data. <https://bodyanddata.org/wp-content/uploads/2021/12/OnlineGBVLawsMapping-min.pdf>

107. Nwaodike, C., & Naidoo, N. (2020). *Fighting Violence Against Women Online: A Comparative Analysis of Legal Frameworks In Ethiopia, Kenya, Senegal, South Africa, and Uganda*. Internews & Pollicy. [https://ogbv.policyp.org/legal\\_analysis.pdf](https://ogbv.policyp.org/legal_analysis.pdf)

108. APC. (2017). *Unshackling expression: A study on laws criminalising expression online in Asia*. [https://www.giswatch.org/sites/default/files/giswspecial2017\\_web\\_0.pdf](https://www.giswatch.org/sites/default/files/giswspecial2017_web_0.pdf)

109. Human Rights Watch. (2023, 21 February). “All This Terror Because of a Photo”: Digital Targeting and Its Offline Consequences for LGBT People in the Middle East and North Africa. <https://www.hrw.org/report/2023/02/21/all-terror-because-photo/digital-targeting-and-its-offline-consequences-lgbt>

110. Ibid.

111. Ibid.

112. <https://freedomhouse.org/country/jordan/freedom-world/2022>



cybercrime law –intended to update the “internet regulation” law passed by the Jordanian government in 2010, which was widely condemned by civil society groups given that the government passed it in the absence of a parliament – generated several alarms from civil society in that it contains criminal penalties for vaguely defined criminal offences such as hate speech and spreading fake news, which could easily be used to prosecute activists and human rights defenders.<sup>113</sup>

## Stella Nyanzi

The case of Stella Nyanzi<sup>114</sup> shows the same pattern. Stella is a renowned feminist academic, poet and activist for gender equality and LGBTQIA+ rights. The mother of three is known for voicing critical opinions in a creative way. She embraces the anti-colonial Ugandan tradition of “radical rudeness” as a tool against oppression.<sup>115</sup>

She has repeatedly voiced critical opinions against President Yoweri Museveni – who has ruled since 1986 – and the first lady. The posts that were used as the basis for the criminal prosecution arose out of the government’s failure to fulfil its commitment to provide sanitary pads to school girls. After the Education Ministry announced that due to economic reasons, they would not fulfil the promise, Stella conducted a crowdfunding campaign to buy menstrual products for girls and distribute them herself.<sup>116</sup>

In her posts, Stella said the president was no more than “a pair of buttocks” and that his wife was “empty brained”. She was arrested two months after the posts by police officers in plain clothes, very late on a Friday night. Maria Burnett, associate director of the Africa division of Human Rights Watch, expressed concerns about the way the arrest was made, given that they “looked for her all night and couldn’t find where she had been taken.” She stated:

There is no doubt that the way in which she was arrested was about seeking to intimidate and terrify her and her family and her community of supporters who are largely drawn from Uganda’s human rights, women’s and LGBTI movements.<sup>117</sup>

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113. Samaro, D., & Sayadi, E. (2019, 19 February). Cybercrime law in Jordan: pushing back on new amendments that could harm free expression and violate privacy. *Access Now*. <https://www.accessnow.org/cybercrime-law-in-jordan-pushing-back-on-new-amendments-that-could-harm-free-expression-and-violate-privacy>

114. Global Freedom of Expression. (2017, 24 August). Nyanzi v. Uganda. <https://globalfreedomofexpression.columbia.edu/cases/case-dr-stella-nyanzi>

115. Davies, L. (2022, 27 January). ‘I’m free at last’: Uganda’s rudest poet on prison, protest and finding a new voice in Germany. *The Guardian*. <https://www.theguardian.com/global-development/2022/jan/27/im-free-at-last-ugandas-rudest-poet-stella-nyanzi-on-prison-protest-and-finding-new-voice-in-germany>

116. Slawson, N. (2017, 13 April). Fury over arrest of academic who called Uganda’s president a pair of buttocks. *The Guardian*. <https://www.theguardian.com/global-development/2017/apr/13/stella-nyanzi-fury-arrest-uganda-president-a-pair-of-buttocks-yoweri-museveni-cyber-harassment>

117. Ibid.

Stella was then charged with the crime of cyber harassment. She was denied bail and was held in a maximum-security prison. In addition to suffering threats before and during the process, she reported being tortured in prison.

In 2020, her conviction was overturned by an appeal and she was later exiled to Germany.

In Uganda, the crime of cyberstalking is defined as using a computer to make any request, suggestion or proposal that is obscene, lewd or indecent; threatening violence or physical harm to a person or the property of any person; or knowingly permitting the use of one's devices for these purposes. The penalty is a fine, imprisonment for up to three years, or both. As the Uganda-based NGO Pollicy points out, definitions for "obscene", "lewd" and "indecent" are not provided in the law.<sup>118</sup>

An opinion issued by the United Nations Working Group on Arbitrary Detention categorised Stella's imprisonment as arbitrary.<sup>119</sup> The group also noted that broad and vaguely defined laws such as this can have a chilling effect on freedom of expression.

The conviction comes amid systematic violations of freedom of association, assembly and expression that have intensified after elections – in which Museveni, in power since 1986, was declared the winner – were marred by widespread violence and repression. According to Human Rights Watch, non-governmental organisations risk politically motivated charges for allegedly failing to comply with legal provisions that impose vague "special obligations" on independent groups. In turn, law enforcement, security and armed forces have impunity for serious violations, including torture and violations of the right to life.<sup>120</sup>

## Olga Mata

In the case of Olga Mata,<sup>121</sup> a 73-year-old woman who uses TikTok to post different kinds of videos, a humorous post insinuating that Venezuela's first lady would be widowed was used as a basis to prosecute her for "hate speech".

On 13 April 2022, an arrest warrant was issued against Olga after she recorded a humorous video posted on TikTok, in which she names different arepas<sup>122</sup> after high-ranking government officials and the type of filling they contain. On 14 April 2022, she and her son, Florencio Gil Mata, were arrested, and both were charged

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118. Nwaodike, C., & Naidoo, N. (2020). Op. cit.

119. Global Freedom of Expression. (2017, 24 August). Op. cit.

120. <https://www.hrw.org/africa/uganda>

121. Espacio Público. (2022, 29 April). Dictan medida cautelar a ciudadana Olga Mata por video de humor sobre funcionarios venezolanos. <https://espaciopublico.org/dictan-medida-cautelar-a-ciudadana-olga-mata-por-video-de-humor-sobre-funcionarios-venezolanos>

122. A South American staple, particularly in Columbia and Venezuela, arepas are stuffed cornmeal cakes.

with the crime of “promotion or instigation to hatred”. The arrest warrant was issued by the Fourth Control Court with jurisdiction in terrorism cases. Olga was charged and subjected to precautionary measures, including appearing in court every 30 days and the recording of a video in which Mata apologised to the government for “instigating the murder of the president.”<sup>123</sup>

According to Venezuela’s 2017 Anti-Hate Law, anyone who “encourages, promotes or incites hatred, discrimination or violence publicly shall be punished with imprisonment of 10 to 20 years.”<sup>124</sup> Again, the wording is broad and vague, without providing a description of what action would be liable to be subsumed in that criminal offence. As was mentioned in previous sections, various articles of that law are exactly the same as those found in Nicaragua’s cybercrime law.

As reported by international bodies, Venezuela continues to face a profound human rights crisis marked by crimes against humanity to repress dissent<sup>125</sup> where persistent concerns include brutal police practices, deplorable prison conditions, impunity for human rights violations, and harassment of human rights defenders and independent media.<sup>126</sup>

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123. Singer, F. (2022, 19 April). Venezuela detiene a una mujer de 72 años por hacer un chiste sobre la muerte de Maduro en Tik Tok. *El País*. <https://elpais.com/internacional/2022-04-20/venezuela-detiene-a-una-senora-de-72-anos-por-hacer-un-chiste-sobre-la-muerte-de-maduro-en-tik-tok.html>

124. Artículo 20, Ley contra el Odio, 2017.

125. OHCHR. (2022, 20 September). Venezuela: new UN report details responsibilities for crimes against humanity to repress dissent and highlights situation in remote mining areas. <https://www.ohchr.org/en/press-releases/2022/09/venezuela-new-un-report-details-responsibilities-crimes-against-humanity>

126. <https://www.hrw.org/world-report/2022/country-chapters/venezuela>

# VII. LOOKING FORWARD: THE NEED TO GENDER MAINSTREAM ANY FUTURE CONVENTION

The cases identified demonstrate that the use of criminal laws to address online violence is not only ineffective in protecting the free expression of women and LGBTQIA+ people, but also puts them at risk. Laws on cybercrime and/or legal provisions regulating freedom of expression online – such as legislation on disinformation – that are drafted without respecting human rights standards and without applying a gender perspective result in legislation that is used as a tool to criminalise critical expressions in the political sphere, directly affecting human rights activists and deepening gender inequalities.

As discussions on a global convention on cybercrime continue at the United Nations, there is a pressing need to ensure that these patterns are not reproduced in the treaty. To this end, it is important that these points are considered, as the convention can set the tone for countries that are still developing their cybercrime legislation or be used to legitimise existing local laws. In addition to avoiding the inclusion of content restrictions that validate manipulation by certain states or institutions, it is crucial that mechanisms are considered to ensure a gender perspective throughout the conception, implementation and monitoring of cybercrime and related regulations. Therefore, we have emphasised the need for gender mainstreaming to be a central element of this future convention.<sup>127</sup>

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127. Derechos Digitales & the Association for Progressive Communications. (2023). *Contribution to the Ad Hoc Committee to Elaborate a Comprehensive International Convention on Countering the Use of Information and Communications Technologies for Criminal Purposes - Fifth Session*. [https://www.unodc.org/documents/Cybercrime/AdHocCommittee/5th\\_session/Documents/Multi-stakeholders/Derechos\\_Digitales\\_APC.pdf](https://www.unodc.org/documents/Cybercrime/AdHocCommittee/5th_session/Documents/Multi-stakeholders/Derechos_Digitales_APC.pdf)

As the framework for developing gender-responsive cybersecurity policy developed by APC points out, gender mainstreaming is understood as a strategy for making women's and men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and social spheres so that inequality is not perpetuated. The ultimate goal of gender mainstreaming is to achieve gender equality.<sup>128</sup>

Specific gender impact assessments should be carried out before any discussions on a bill on cybercrime take place in countries that do not have cybercrime legislation. For countries that have such legislation, it is important that the regulations be analysed from a gender perspective to enable the necessary changes to be made on the basis of these considerations. It is crucial to question the need for and potential effectiveness of cybercrime norms and refrain from using vague and overly broad terms in criminal definitions.

International standards have recognised the need for legislation and policies to be "gender-sensitive" – that is, aware of differential impacts according to gender – and "gender-responsive" – that is, driving a more inclusive standards-development process that incorporates different gender perspectives, addresses gender inequalities and, ideally, empowers women and girls.<sup>129</sup> This need can be seen very clearly in the issue of online gender-based violence and the legislations created to combat it, as online gender-based violence tends to mirror and exacerbate gender norms and inequalities of the offline world;<sup>130</sup> gender inequalities, stereotypes, norms and values that are prevalent in cultures and societies are likely to be expressed or reflected in the laws, policies and institutions.<sup>131</sup>

In turn, gender-sensitive cybercrime legislation must take into consideration the significant differences in the capacities, needs and priorities of women in all their diversity, as well as LGBTQIA+ persons, as they operate within the criminal justice system and/or experience vulnerability to cybercrime.<sup>132</sup> Legislation that does not take these elements into account is gender-blind and has the potential to exacerbate the problem that the law generally furthers the "articulation of gendered inequalities".<sup>133</sup>

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128. APC. (2022). *A framework for developing gender-responsive cybersecurity policy: Literature review*. <https://www.apc.org/en/pubs/framework-developing-gender-responsive-cybersecurity-policy-literature-review>

129. United Nations Economic Commission for Europe. (2019). *Gender Responsive Standards*. [https://www.unece.org/fileadmin/DAM/trade/Publications/ECE\\_TRADE\\_445E.pdf](https://www.unece.org/fileadmin/DAM/trade/Publications/ECE_TRADE_445E.pdf)

130. APC. (2017). Op. cit.

131. UNODC. (2022). *Organized crime and gender: Issues relating to the United Nations Convention against Transnational Organized Crime*. [https://sherloc.unodc.org/cld/uploads/pdf/Issue\\_Paper\\_Organized\\_Crime\\_and\\_Gender\\_1.pdf](https://sherloc.unodc.org/cld/uploads/pdf/Issue_Paper_Organized_Crime_and_Gender_1.pdf)

132. Millar, K. (2022). *What Does it Mean to Gender Mainstream the Proposed Cybercrime Convention?* <https://chathamhouse.soutron.net/Portal/Public/en-GB/RecordView/Index/191233>

133. <https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-9/key-issues/1-gender-based-discrimination-and-women-in-conflict-with-the-law.html>

For the integration of a gender perspective to be effective, it must necessarily be intersectional, which implies considering how the multiple elements of our identities such as social class, race, ethnicity, sexual orientation and gender expression, among others, jointly interact with gender to produce patterns of exclusion. From an intersectional perspective, social problems have become more complex since the analysis considers multiple power systems that were seen separately until then. Recently, as a result of the discussions brought forward in the UN Commission on the Status of Woman (CSW67), in the document of agreed conclusions, the Commission recognises that the multiple and interrelated forms of discrimination and marginalisation are obstacles to the achievement of gender equality and the empowerment of all women and girls in the context of innovation and technological change.<sup>134</sup>

Current best practices in gender mainstreaming are “dual” or “multiple”: the gender perspective is incorporated into all aspects of policy and programme development and pursued as a distinct and independent objective.<sup>135</sup> A good example of gender mainstreaming is the 2030 Sustainable Development Goals (SDGs). In addition to having a specific goal on gender equality and the empowerment of women and girls (SDG 5), General Assembly Resolution A/RES/70/1 establishes the systematic incorporation of the gender perspective throughout the entire SDG agenda.

While we celebrate the inclusion of the importance of mainstreaming a gender perspective in the preamble of the zero draft,<sup>136</sup> it is essential to mainstream gender across the convention as a whole and through the articles on efforts to prevent and combat cybercrime. Including such a perspective will allow the convention to address the specific needs and priorities of women and people of diverse sexualities and gender expressions and the differentiated impacts of cybercrime on the basis of gender in conjunction with other intersectionalities. This will lead to a more effective implementation of the convention, as well as provide special protection guarantees to groups in vulnerable situations.

The cases presented in this report demonstrate the pressing need to consider the gender impacts of criminalisation, as freedom of expression is essential for gender equality. In that sense it is important to point out that while some obvious content-related offences were eliminated from the zero draft, there are some articles that continue to be problematic because of their capacity to generate criminalisation. For instance, in the chapter on criminalisation (articles 6-21),

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134. Commission on the Status of Women. (2023, 10 March). CSW67 Agreed Conclusions: Innovation and technological change, and education in the digital age for achieving gender equality and the empowerment of all women and girls (advance unedited version). [https://www.unwomen.org/sites/default/files/2023-03/CSW67\\_Agreed%20Conclusions\\_Advance%20Unedited%20Version\\_20%20March%202023.pdf](https://www.unwomen.org/sites/default/files/2023-03/CSW67_Agreed%20Conclusions_Advance%20Unedited%20Version_20%20March%202023.pdf)

135. Millar, K. (2022). Op. cit.

136. UN Ad Hoc Committee to Elaborate a Comprehensive International Convention on Countering the Use of Information and Communications Technologies for Criminal Purposes, Sixth Session, A/AC.291/22. [https://www.unodc.org/documents/Cybercrime/AdHocCommittee/6th\\_Session/Pre-session-docs/A\\_AC\\_291\\_22\\_Advance\\_Copy.pdf](https://www.unodc.org/documents/Cybercrime/AdHocCommittee/6th_Session/Pre-session-docs/A_AC_291_22_Advance_Copy.pdf)

there were important modifications between the previous version of the non-negotiated text and the first draft. The most obvious change is the reduction of the number of cybercrimes included in the convention from 30 to 11 from one version to the other. Among the crimes that were excluded are those related to trafficking in arms and illegal substances, inducement to suicide, terrorism, copyright infringement and most of the crimes related to internet content. However, during the sixth session, proposals for content-related offences that had already been excluded were reintroduced, as were other proposals presented to extend the scope of cooperation to offences not expressly covered by the Convention.

At the same time, articles such as 23 (procedural measures and law enforcement) enable the convention to be applied to other offences that are not covered by articles 6-21, thus the main concerns around the possibility of the convention being used to legitimise the use of legislation to repress legitimate expression remain.

It is important to highlight the strong opposition of some states to consider gender as an important element within the convention. A concrete example seen in the sixth session is that in order to strengthen human rights guarantees in the treaty, Uruguay presented a proposal to amend the treaty to include a gender perspective within the scope of rights protection. Despite receiving support from several states, the amendment was not finally approved.

As we have stated on numerous occasions,<sup>137</sup> the fight against cybercrime must not come at the expense of fundamental rights, gender equality and the dignity of the people whose lives will be affected by this proposed convention. States must ensure that any proposed convention on cybercrime is consistent with their human rights obligations, and must oppose any proposed convention that is inconsistent with those obligations.

The negotiation process continues, with one more session remaining on the schedule. As the research has shown, there is a real risk when legislation does not include a gender perspective – even more so when it is complemented by broad national and cross-border surveillance powers. The treaty claims to offer protection, but the alarm bells of its dangers ring much louder.

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137. Derechos Digitales et al. (2021). *Joint NGO letter to UN AHC on Cybercrime*. [https://www.derechosdigitales.org/wp-content/uploads/Joint-NGO-letter-to-UN-AHC-on-Cybercrime-20211221\\_Copyedited-FINAL-ES.pdf](https://www.derechosdigitales.org/wp-content/uploads/Joint-NGO-letter-to-UN-AHC-on-Cybercrime-20211221_Copyedited-FINAL-ES.pdf)

## ANNEX 1. CASES MAPPED FOR THIS REPORT AND THEIR CURRENT STATUS

Case Country/Year	Description	Present status
<b><u>Kareli de la Vega</u></b> Nicaragua/2019	Activist and influencer belonging to the LGBTQIA+ community, known as “Lady la Vulgaraza”, who denounces and reports on state repression in Nicaragua through both in-person and online activism. Has sought asylum in countries like Costa Rica, having been the target of persecution and death threats.	Currently seeking asylum in the United States.
<b><u>Yaremis Flores</u></b> Cuba/2012	Attorney and independent journalist on news websites like CubaNet, Diario de Cuba and Primavera Digital. She was taking food to her hospitalised father when a police squad car detained her. She was charged with espionage and spreading false information regarding reports of prisoners in Mar Verde killed by rains from Hurricane Sandy due to the location of the prison.	Despite being detained and charged, she was subsequently released.
<b><u>Samantha Jirón</u></b> Nicaragua/2021	Samantha assisted people in need of medical care in the social protests of 2018, and facing government persecution, had to relocate to Costa Rica. Later, in 2019, she returned to Nicaragua, where she engaged in political activities and activism. In 2021 she was captured by persons in civilian attire and appeared as a detainee in National Police District III. In March 2022 she was sentenced to five years in prison for crimes of treason and spreading fake news.	Exiled.



<p><b><u>Sulmira Martínez</u></b> Cuba/2023</p>	<p>Activist and influencer, age 21, known as “SalemCuba”, she was detained and imprisoned on charges of disseminating “propaganda against the constitutional order.” However, she was recently informed that the charges had been changed to “instigating criminal activity.”</p>	<p>Presently in prison.</p>
<p><b><u>Olga Mata</u></b> Venezuela/2022</p>	<p>Olga Mata is a 73-year-old woman who used the platform TikTok to post a humorous video in which she mentioned the possibility of Cilia Flores (wife of Nicolas Maduro) being widowed. In response, she was charged with “hate crimes”, facing up to 20 years in prison.</p>	<p>At present, she has been formally charged and placed under pre-trial measures with an order to appear in court every 30 days and to release a video of public apology.</p>
<p><b><u>Olesya Krivtsova</u></b> Russia/2023</p>	<p>The Russian digital and anti-war activist, age 20, was charged with discrediting and justifying terrorism against the Russian armed forces, and faces a possible 10-year prison sentence.</p>	<p>Exiled</p>
<p><b><u>Haneen al-Abdali</u></b> Libya/2023</p>	<p>Activist and blogger who was arrested in February 2023 on charges of “violating public honour and morality, as well as the cybercrime act.” The announcement of her arrest provided no details about the reasons for it or the objectionable content.</p>	<p>Presently under arrest and in detention.</p>

<p><b><u>Amal Fathy</u></b> Egypt/2018</p>	<p>Egyptian activist who criticised the Egyptian government for failing to protect women’s rights, posting a video to Facebook where she shared her personal experiences of sexual harassment. Subsequently, she was detained with her husband and three-year-old son. Her husband and son were released, but Amal was convicted of spreading fake news, threatening national security and violating public decency, and was sentenced to two years in prison and a fine equivalent to USD 562.</p>	<p>In 2019 she was released from prison but remained under house arrest until the end of the sentence.</p>
<p><b><u>Salma al-Shehab</u></b> Saudi Arabia/ 2022</p>	<p>A Saudi student at Leeds University who had returned to her home country for a vacation and was sentenced to 34 years in prison for having a Twitter account and following and retweeting dissidents and activists. Salma al-Shehab, a 34-year-old mother of two young children, was initially sentenced to three years in prison for the “crime” of using a website to “cause public unrest and destabilise civil and national security.” However, an appeals court subsequently handed down a new sentence: 34 years in prison followed by a 34-year travel ban, after a public prosecutor asked the court to consider other alleged offences.</p>	<p>Sentenced to 34 years in prison and banned from leaving the country for 34 years. On 25 January 2023 she was re-sentenced to a reduced prison term of 27 years.</p>

<p><b><u>Stella Nyanzi</u></b> Uganda/2018</p>	<p>In 2018, Stella Nyanzi was arrested and charged with “cyberbullying” and “offences against the president” after publishing posts on Facebook in the form of a protest in which she criticised Ugandan President Yoweri Museveni and the first lady. She subsequently posted a poem in protest, where she talked about Museveni’s mother and criticised the government. She was then convicted of “cyberstalking” and sentenced to 16 months imprisonment, after having served the first two months of her prison sentence for the initial Facebook posts case. In 2020 she was finally released and was forced into exile in Germany.</p>	<p>Successive appeals processes were denied until 2020, when the Court of Appeals overturned her conviction. Living in exile in Germany.</p>
<p><b><u>Yamen</u></b> Jordan/2023</p>	<p>Yamen, a 25-year-old gay man from Amman, Jordan, said he met a man on a dating app in September 2021. When Yamen stopped responding to the man, the man sent him a video he had recorded of them having cybersex, which exposed Yamen’s face, and threatened to post it online. Yamen went to the Cybercrime Unit in Amman, where police officers took his statement. Subsequently, on the day the case went to trial, the prosecutor in charge presented him with a report incriminating him – Yamen – for soliciting online prostitution. The sentence was eventually reduced to a fine and one month’s detention.</p>	<p>Imprisonment for one month. No appeal pending.</p>



**WHEN PROTECTION BECOMES AN EXCUSE FOR  
CRIMINALISATION: GENDER CONSIDERATIONS  
ON CYBERCRIME FRAMEWORKS**

