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RESOLUTION ESTABLISHING A WORKING GROUP ON INTERSECTIONAL GENDER PERSPECTIVE IN DATA PROTECTION

This resolution is presented by:

SPONSORS:

- National Institute for Transparency, Access to Information, and Personal Data Protection (INAI), Mexico.

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- Agencia de Acceso a la Información Pública, Argentina
- Privacy Commissioner, Bermuda
- Office of the Privacy Commissioner of Canada, Canada
- Persona Data Protection Service, Georgia
- The Federal Commissioner for Data Protection and Freedom of Information, Germany
- Norwegian Data Protection Authority, Norway
- Agencia Española de Protección de Datos, Spain
- National Privacy Commission, Philippines
- Federal Data Protection and Information Commissioner, Switzerland



Recognizing that:

1-. The digital era has created new opportunities for all individuals to communicate, explore and express themselves. It has also had a transformational effect on the experiences of women and individuals of diverse sexualities and gender expressions. The adoption of new technologies brings significant benefits, but they also create risks to individuals' privacy. It's important that data protection authorities seek to understand the potential impacts of the evolving online world so that they can help to protect and promote the privacy of individuals.

2-. The United Nations defines vulnerable individuals as those who, due to their race, class, gender, or sexual identity, religion, or other intersecting characteristics or circumstances, are more susceptible to human rights violations resulting in emotional, financial, or physical harm or neglect¹.

3-. Any person in vulnerable conditions should be considered in terms of the protection of their personal data, privacy, identity, dignity, and reputation, as the risks they face are higher.

4-. The digital era has facilitated new spaces of expression, transforming the ways in which the right to privacy and the protection of personal data can be violated, due to the rapid expansion of information and the issue of sensitive personal data. Therefore, it is crucial to ensure that fundamental rights are respected both in online and offline aspects and to reduce the digital gap².

5-. Acknowledging the need to guarantee uphold human dignity and human rights for vulnerable groups, international regulation provides a universal legal framework for the promotion and protection of marginalized individuals concerning privacy and the protection of personal data.

¹ <https://www.un.org/en/fight-racism/vulnerable-groups>

² <https://globalprivacyassembly.org/wp-content/uploads/2021/10/2021022-ADOPTED-Resolution-on-the-Assemblys-Strategic-Direction-2021-23.pdf>



The digital era has facilitated new spaces for expression for women and individuals of diverse sexualities and gender expressions. In this regard, it is necessary to understand and address the complexities of these new spaces, which are constantly evolving and, as a result, have transformed the ways in which these population groups may have their right to privacy violated.

Based on the general principle of law that all individuals are equal before the law, the right to privacy is a matter of particular importance for women and individuals of diverse sexualities or genders, as it constitutes a necessary condition to protect their human dignity and to prevent victimization and revictimization resulting from the improper treatment of their personal data.

Online gender-based violence is a severe human rights issue that has increased dramatically during the COVID-19 pandemic, as women and girls increased their internet use. According to research published by the UN, women and girls face online gender-based violence far more often than men. Certain groups of women, including those belonging to ethnic minorities, women with disabilities and those in the LGBTQIA+ communities, are particularly impacted. That being said, online violence is a concern for all internet users; particularly where they belong to the LGBTQIA+ community³.

Given this environment and recognizing the need to guarantee the right to privacy of individuals, existing international instruments on human rights provide a clear, universal legal foundation for the promotion and protection of the right to privacy and the protection of personal data. (See Annex).

Taking into account that:

³ <https://www.unwomen.org/en/digital-library/publications/2020/04/brief-online-and-ict-facilitated-violence-against-women-and-girls-during-covid-19>



Digital violence against women, girls, and the LGBTQ+ community is associated with psychological, social, and reproductive health impacts, often involving sexual and physical violence for both victims and survivors. Women and LGBTQ+ groups, especially those belonging to ethnic and indigenous minorities, as well as people with disabilities, are particularly subjected to violence.

It is worth noting that, according to figures from UN Women during the COVID-19 pandemic, women and girls have used the internet more frequently, leading to an increase in online violence compared to men and boys. Globally, 73% of women have been exposed to or experienced some form of online violence⁴.

Moreover, the organization Human Rights Watch has stated that while digital platforms have allowed LGBTQ+ individuals to express themselves and amplify their voices, they have also become tools for repression.⁵

In the same vein, as mentioned earlier, while women and girls disproportionately suffer from gender-based violence, it should not be overlooked that men and boys can also be targeted. This means that gender-based violence in the digital spectrum is also directed towards LGBTQ+ populations, as it can involve attacks related to norms of masculinity, femininity, or gender⁶.

The **Guidance Note on Intersectionality, Racial Discrimination, and Protection of Minorities** published by the United Nations Office of the High Commissioner for Human Rights defines intersectionality as "a concept and theoretical framework that facilitates an understanding of how social identities overlap and create cumulative experiences of discrimination and concurrent forms of oppression based on two or more grounds [...]. Intersectionality promotes the general idea that individuals and groups face multiple forms of discrimination and concurrent forms of oppression

⁴<https://mexico.unwomen.org/sites/default/files/Field%20Office%20Mexico/Documentos/Publicaciones/2020/Diciembre%2020/FactSheet%20Violencia%20digital.pdf>

⁵ <https://www.hrw.org/report/2023/02/21/all-terror-because-photo/digital-targeting-and-its-offline-consequences-lgbt>

⁶ <https://www.unwomen.org/en/digital-library/publications/2020/04/brief-online-and-ict-facilitated-violence-against-women-and-girls-during-covid-19>



based on two or more grounds, rather than a single ground. Far from representing a simple sum of social identities, for example, ethnicity in addition to gender, the framework of intersectionality asserts that these two or more grounds are interdependent and mutually constituted. It has been pointed out that there is something uniquely and synergistically different when discrimination involves multiple identity characteristics."⁷

Commonly, intersectionality has been considered in the context of the principle of non-discrimination and equality, which is the foundation of international human rights law. This principle is guaranteed in a wide range of international instruments, including the United Nations Charter, the Universal Declaration of Human Rights (Articles 1 and 2)⁸, the International Covenant on Civil and Political Rights (Article 2, paragraph 1)⁹, the International Covenant on Economic, Social and Cultural Rights (Article 2, paragraph 2)¹⁰, the International Convention on the Elimination of All Forms of Racial Discrimination¹¹, the International Labour Organization (ILO) Convention concerning Discrimination in Respect of Employment and Occupation, 1958 (No. 111), and its Recommendation No. 111¹².

These instruments guarantee the exercise of human rights and establish non-exhaustive lists of prohibited grounds of discrimination, such as race, color, gender, sex, language, religion, political or other opinion, national or social origin, descent, property, birth, and other status. United Nations human rights mechanisms have identified additional grounds and have highlighted that non-discrimination and equality are essential for the full exercise and enjoyment of civil and political rights, as well as economic, social, and cultural rights, by all individuals and groups.

⁷ <https://www.ohchr.org/sites/default/files/documents/issues/minorities/30th-anniversary/2022-09-22/GuidanceNoteonIntersectionality.pdf>

⁸ <https://www.un.org/es/about-us/universal-declaration-of-human-rights>

⁹ <https://www.ohchr.org/es/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

¹⁰ <https://www.ohchr.org/es/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>

¹¹ <https://www.ohchr.org/es/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial>

¹² https://www.ilo.org/dyn/normlex/es/f?p=NORMLEXPUB:12100:0::NO::P12100_Ilo_Code:C111



Based on the above, it is important to mention that, from an intersectional perspective, privacy enforcement and data protection authorities are required to implement policies and plans for the protection of personal data, considering the analytical methodology of a gender perspective. This should include and consider the heightened vulnerability experienced by other sectors of the population, such as individuals with physical or mental disabilities, older adults, migrants, people living in poverty or social marginalization, and individuals belonging to indigenous peoples or native communities, among others.

From this perspective, members are urged to understand the right to privacy from an intersectional gender perspective, where it is necessary to examine lived experiences in terms of privacy and its various forms, from its positive and negative dimensions, physical, psychological, sexual, financial, social, and moral, both online and offline. Privacy experiences of all individuals stemming from their gender, sexual orientation, sexual characteristics, and gender identity are relevant¹³.

GPA Members also recognise that they achieve a greater collective impact/outcome in investigations into cross-border operators who run services or products with a gender perspective where those investigations are able to share information [about know-how] across jurisdictional borders and/or they are able to cooperate in running investigations in parallel or even joint investigations.

Based on this legal and factual foundation, the scope is recognized in all international legal frameworks that protect fundamental rights, such as the protection of personal data, privacy, identity, dignity, and reputation, from an intersectional gender perspective. Given the role that data protection authorities play in upholding fundamental rights to the protection of personal data and privacy, integrating an intersectional gender perspective into the Assembly's approach can help authorities

¹³ https://www.ohchr.org/sites/default/files/Documents/Issues/Privacy/SR_Privacy/2019_HRC_Annex2_GenderReport.pdf



consider the specific privacy needs and risks of those disproportionately experiencing harm. This approach will help ensure that fundamental rights are respected for all individuals, including those who may be impacted because of their gender or sexuality. In this way, an intersectional approach will help to support the overall existing strategic priorities of the Global Privacy Assembly (GPA).”¹⁴.

Therefore,

This Resolution’s proposal to create a new Intersectional Gender Perspective Data Protection working group in the GPA seeks to reaffirm the GPA’s commitment to work from a human-centered and intersectional approach, as there is no other working group with this theme in any other of the international networks in which we collaborate.

The intersectional gender perspective examines the impact on opportunities, social roles, and interactions of individuals belonging to different vulnerable groups, enhancing the capabilities of the Assembly members by providing them with the appropriate tools for better policy formulation and recommendations to prevent and address human rights violations.

Likewise, it would contribute to the effectiveness of the work of the GPA to expand its membership community as well as its Reference Panel by asking the Working Group to consider drawing up a shortlist of organizations to invite to consider joining the GPA as a member or observer or as a Reference Panellist. This may include International Organizations, think tanks or NGOs working for inclusion and best governance practices, and others advocating for human rights. This will help benefit individuals from an intersectional gender perspective that respects their privacy and the protection of personal data.

¹⁴ <https://globalprivacyassembly.org/wp-content/uploads/2021/10/2021022-ADOPTED-Resolution-on-the-Assemblys-Strategic-Direction-2021-23.pdf>



Adopting an intersectional gender perspective is essential for the transformation of society, ensuring that all individuals have equal rights, resources, and opportunities to guarantee free human development in all areas.

Consequently:

The Global Privacy Assembly resolves to:

Establish a Gender Perspective and Personal Data Protection and Privacy Working Group, through which members will be empowered to:

- a) Foster dialogue on these topics and promote genuine reflection among members to find solutions and measures focused on addressing gender equality in the context of data protection and privacy.
- b) Collaborate cross-functionally with various working groups to implement an intersectional gender perspective with an intersectional approach in their work. This may also include exploring new opportunities within the GPA Working Groups or making practical recommendations to GPA Members to cooperate on investigations or identifying practical investigative techniques, skills, and expertise that GPA members all need to develop to successfully address privacy and data protection issues and resolve cases in relation to gender.
- c) Formulate practical recommendations for GPA Members to advise governments and international organizations on effective regulatory approaches to prevent violations of privacy and data protection with respect to intersectional gender perspectives.
- d) Develop a guide of best practices for processing personal data from an intersectional gender perspective in relevant areas such as media, law enforcement services, prosecutors, the healthcare sector, national identification services, etc., to support members in implementing public policies from this standpoint.



e) The working group will be chaired by a member of the Global Privacy Assembly who will maintain constant interaction with Executive Committee members and the Strategic Direction Subcommittee involving and keeping the rest of the members of the Assembly informed..

f) Elect a working group at the 45th Assembly, which:

- In its first year, will develop a work plan, which will be renewed every two years, that will include the conduct of literature reviews to begin building a knowledge base that will lay the foundation for the guides and recommendations it will issue.
- In its second year of work, the group will formulate recommendations and be able to assist the Executive Committee and the Secretariat in establishing advisory groups related to the incorporation of a gender perspective in the working groups.
- In the third year, a new work plan will be developed, which will be renewed every two years.

ANNEX



The right to privacy is recognized in the Universal Declaration of Human Rights as a prerogative to protect individual freedom, freedom of expression, privacy, and personal dignity. According to its Article 1, the idea of intrinsic dignity is postulated, leading to equal and inalienable rights for all individuals. Even though it does not expressly establish provisions regarding rights concerning sexual orientation and identity, it does develop considerations on equality and freedom without any distinction of any kind (Article 2.1). It also advocates for the protection of life, liberty, and personal security (Article 3), recognition of legal personality (Article 6), the right to equality before the law and protection against discrimination (Article 7), the right to marriage and to form a family (Article 16), and social security for all individuals without distinction (Article 22)¹⁵.

In the Inter-American context, the right to privacy is also regulated, specifically in Article 5 of the American **Declaration of the Rights and Duties of Man**, which establishes that every person has the right to protection by the law against abusive attacks on their honor, reputation, and private and family life. It also establishes the principle of equality before the law, stating that "all (human beings) are born free and equal in dignity and rights," and that "all persons are equal before the law and have the rights and duties recognized in this declaration without distinction of race, sex, language, creed, or any other factor."¹⁶

Likewise, in 2017, the Inter-American Court of Human Rights issued an **advisory opinion number OC-24/17 on gender identity, equality, and non-discrimination for same-sex couples**. It was established that neither sexual orientation nor gender identity or expression, whether real or perceived, should be grounds for restricting rights or perpetuating or reproducing the structural and historical discrimination that these groups have faced¹⁷.

¹⁵ <https://www.un.org/es/about-us/universal-declaration-of-human-rights>

¹⁶ https://www.oas.org/dil/esp/declaraci%C3%B3n_americanade_los_derechos_y_deberes_del_hombre_1948.pdf

¹⁷ https://www.corteidh.or.cr/docs/opiniones/seriea_24_esp.pdf



The **American Convention on Human Rights (San José Pact)**¹⁸ recognizes that no one can be subjected to arbitrary or abusive interference in their private life, family life, home, or correspondence, and that every person has the right to protection of the law against such interference or attacks.

Similarly, in many states, courts have established such rights by reference to, or relying on a combination of, one or more other rights. For example, the German Constitutional Court recognises a “general personality right” as well as a “right to informational self-determination” on the grounds of Article 2(1) (“right to self-determination”) in conjunction with Article 1(1) (“human dignity”) in the German Basic Law¹⁹. Canada protects aspects of individuals’ privacy as part of the rights to liberty and freedom from unreasonable searches and seizures set out in Article 7 and 8 of the Canadian Charter of Rights and Freedoms²⁰. A similar approach is taken in the US, which protects an individual’s “reasonable expectation of privacy” as part of the Fourth and Fourteenth Amendment (protection against unreasonable search and seizure and due process).

Furthermore, art. 8 of the **European Convention on Human Rights** on the right to respect for the private and family life states that:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for

¹⁸ https://www.oas.org/dil/esp/1969_Convenci%C3%B3n_Americana_sobre_Derechos_Humanos.pdf

¹⁹ <https://globalprivacyassembly.org/wp-content/uploads/2022/05/PSWG3-Narrative-Final.pdf>

²⁰ <https://www.canada.ca/en/canadian-heritage/services/how-rights-protected/guide-canadian-charter-rights-freedoms.html>



the protection of health or morals, or for the protection of the rights and freedoms of others:

In article 14 the Convention states that the enjoyment of the rights and freedoms established in the Convention must be secured without discrimination of any kind, such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or any other status²¹.

Furthermore, in line with the principle of equality regarding respect for private life, it is recognized for any person, regardless of their nationality or residence, as stated in Article 1 of Council of Europe Convention 108 for the protection of individuals regarding the automated processing of personal data, and in the modernized Convention 108²².

The European Charter of Fundamental Rights in article 7 states that:

- "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

In an explicit reference to data protection article 8 of the Charter states:

1. Everyone has the right to the protection of personal data concerning him or her.

²¹ [European Convention on Human Rights \(coe.int\)](https://www.coe.int/en/web/european-convention-on-human-rights)

²² <https://www.coe.int/es/web/data-protection/convention108-and-protocol>



2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.

3. Compliance with these rules shall be subject to control by an independent authority²³.

Regarding violence against women, the **Council of Europe Convention on preventing and combating violence against women and domestic violence** (Istanbul Convention) provides a broad framework of policies and measures for the protection and assistance of all victims of violence against women and domestic violence, promotes international cooperation to eliminate violence against women and domestic violence, supports and assists organizations and law enforcement agencies in effectively cooperating to adopt an integrated approach to eliminate violence against women and **domestic violence**.²⁴

In accordance with the above, Article 17 of the Istanbul Convention emphasizes the urgency for the private sector and the media to respect freedom of expression and its independence. Therefore, their inclusion and active cooperation are necessary in the development and implementation of policies, as well as in the establishment of self-regulatory guidelines and standards to prevent violence against women and reinforce respect for their dignity. They shall work together with private sector actors to develop and promote the capacities of children, parents, caregivers, and educators to address an information and communication technology environment that provides access to sexually or violently degrading content that can be harmful.

Hence, the Istanbul Convention, in its article 65, recognizes that personal data will be processed in accordance with the obligations assumed by the Parties to the

²³ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>

²⁴ <https://rm.coe.int/1680462543>



Convention for the protection of individuals regarding the automated processing of personal data (Council of Europe Convention 108)²⁵, providing the guarantee that the data of individuals who are victims of gender-based violence will be protected.

Article 20 of The **Directive of the European Parliament and of the Council** on combating violence against women and domestic violence aims to ensure compliance with data protection rules²⁶.

In the Inter-American context, the **Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women**, known as the **Belem do Pará Convention**, establishes that the State parties condemn all forms of violence against women and agree to include in their domestic legislation the necessary norms and administrative measures to prevent, investigate, and punish violence against women, as well as the obligation to act with due diligence. Violence against women, as a group in a vulnerable situation, constitutes an offense against human dignity and a manifestation of historically unequal power relations between women and men, a violation of human rights that partially or completely limits the recognition, enjoyment, and exercise of their rights. Furthermore, **article 4** states that Every woman has the right to the recognition, enjoyment, exercise and protection of all human rights and freedoms embodied in regional and international human rights instruments, while **article 7** of the Convention establishes that all State Parties condemn all forms of violence against women and agree to adopt, by all appropriate means and without delay, policies aimed at preventing, punishing, and eradicating such violence²⁷.

In this regard, **the Inter-American Juridical Committee (IJC)**, an advisory body to the **Organization of American States (OAS)**, concluded its 98th regular session on April 9, 2022, with the unanimous approval of the "Updated Principles on Privacy

²⁵ <https://rm.coe.int/1680462543>

²⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0105>

²⁷ <https://www.oas.org/en/mesecvi/docs/BelemDoPara-ENGLISH.pdf>



and Protection of Personal Data, with Annotations" (hereinafter referred to as "The Principles"), through which, for the first time, a cross-cutting gender and human rights perspective was incorporated into its interpretation. This process involved not only the participation of OAS Member States but also actors such as the International Committee of the Red Cross, the Inter-American Commission of Women, and the Ibero-American Data Protection Network.

These Principles are interrelated, and their interpretation should be considered as a whole, with a cross-cutting gender and human rights perspective that allows for the identification of differentiated impacts on data processing. This perspective should enable both Data Controllers and Data Processors to take necessary measures to mitigate these inequalities and prevent such data processing from undermining the dignity and privacy of individuals facing particular vulnerabilities.

Furthermore, an explicit recommendation was made to establish special safeguards in cases of processing sensitive data that represent a high risk, such as identity theft, violation of sexual privacy, and gender-based digital violence. Additionally, data security is recognized in **paragraph IX**, which establishes that *the confidentiality, integrity, and availability of personal data must be protected through reasonable and appropriate technical, administrative, or organizational security safeguards against unauthorized or unlawful processing, including unauthorized access, loss, destruction, damage, or disclosure, even if such incidents occur accidentally*²⁸.

The nature of safeguards may vary depending on the sensitivity of the data in question. However, it is important to note that sensitive personal data requires a higher level of protection due to the risks of identity theft, financial loss, employability, invasion of sexual privacy, or acts of digital gender-based violence.

On the other hand, **Annex 2 of the Thematic Working Group on Privacy and Personality: The Human Right to Privacy: A Gender Perspective**" of the Report

²⁸ http://www.oas.org/es/sla/cji/docs/CJI-doc_638-21.pdf



of the United Nations Special Rapporteur on the Right to Privacy states that the United Nations Human Rights Council and the General Assembly have noted that violations and abuses of the right to privacy in the digital age can affect all individuals, including specific impacts on women, children, and individuals in vulnerable situations or belonging to marginalized groups. In this regard, Member States were called upon to "continue developing or maintaining preventive measures and remedies for violations and abuses related to the right to privacy in the digital age that can affect all individuals, including cases where there are specific impacts on women, children, and individuals in vulnerable situations or belonging to marginalized groups."²⁹

In the same situation of vulnerability, and from an intersectional approach, it is worth mentioning that gender-based violence is exacerbated for individuals belonging to other vulnerable groups, namely:

- The **Inter-American Convention on the Protection of the Human Rights of Older Persons**, in its Article 5, stipulates that states shall develop specific approaches in their policies, plans, and legislation on aging and old age, regarding older persons in vulnerable conditions and those who are victims of multiple discrimination, including women, persons with disabilities, persons of diverse sexual orientations and gender identities, migrants, persons living in poverty or social marginalization, Afro-descendants, indigenous peoples, homeless persons, persons deprived of liberty, individuals belonging to traditional peoples, and those belonging to ethnic, racial, national, linguistic, religious, and rural groups, among others.

In this line of thought, Article 16 of the mentioned Convention establishes that older persons have the right to privacy and intimacy.

- Regarding migration aspects, the UNHCR **Guidelines on International Protection**: The application of Article 1A(2) of the 1951 Convention and/or 1967

²⁹ https://www.ohchr.org/sites/default/files/Documents/Issues/Privacy/SR_Privacy/2019_HRC_Annex2_GenderReport.pdf



Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked, promote non-discrimination and international protection for LGBTQ+ individuals who are victims of violence and persecution due to their sexual orientation and gender identity³⁰.

- Additionally, the **Convention on the Rights of Persons with Disabilities**, in paragraph 2 of Article 22, states that States Parties shall protect the privacy of personal and health information of persons with disabilities on an equal basis with others. In this consideration, all persons with disabilities shall be treated with respect for their inherent dignity as human beings³¹.

³⁰ <https://www.unhcr.org/media/guidelines-international-protection-no-7-application-article-1a-2-1951-convention-and-or-0>

³¹ <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities#:~:text=The%20purpose%20of%20the%20present,respect%20for%20their%20inherent%20dignity.>