



**Fourth session of the Ad Hoc Committee to elaborate a comprehensive convention
on countering the use of information and communications technologies for
criminal purposes**

17 January 2023

Agenda item 5: General Provisions

Madam Chair,

- OHCHR would like to express our deep appreciation for the hard work done by you and the Secretariat in convening this session and for the opportunity to share our observations with you. Given the limited available time, we focus on a few key points.
- Article 3(2): OHCHR recommends that the scope of application for procedural measures and law enforcement as set out in Chapter III be narrow.
 - Language should be included that ensures that any interferences with human rights caused by procedural and law enforcement measures be proportionate.
 - Any wording that would make it possible that the measures outlined in Chapter III could be adopted to investigate crimes irrespective of their level of seriousness must be avoided since it would entail disproportionate restrictions of human rights.
- Concerns also arise with regard to article 3(3), determining that criminal offences under the Convention by default do not need to result in damage or harm.
 - This may lead to criminalization of legitimate behaviour and would provide an overbroad scope for initiating procedural and law enforcement measures.
 - For this reason, we recommend removing this provision – and in addition strengthening harm requirements in the chapter on Criminalization.
- Article 5: OHCHR strongly supports the inclusion of a general provision dedicated to human rights and underscores the importance of taking a gender perspective throughout the convention.
 - Article 5 would be an important element of the Convention to ensure that the interpretation and implementation of the convention would be in compliance with all human rights obligations of the State Parties.
- Article 5 could benefit from a number of improvements.



- We recommend enhancing and strengthening article 5(1) by articulating more explicitly elements of the human rights law that are particularly relevant to prevent arbitrary infringements of individual rights.
 - In addition to a general reference to international human rights law, it should make an explicit reference to international human rights instruments, including the International Covenant on Civil and Political Rights, as well as an explicit acknowledgement of the rights particularly affected by the future Convention (including the right to privacy, the right to freedom of expression, the prohibition against discrimination).
 - Moreover, any modern Convention on crime prevention and investigation should also refer to key principles, such as rule of law, due process and minimum standards in the administration of justice, and the respect for democratic principles and institutions. Examples of general human rights clauses with enhanced language can for example be found in the African Union Convention on Preventing and Combatting Corruption.
- We fully support the spirit of the second paragraph but have proposals for changes that would avoid some of the issues highlighted by numerous delegates. It would ground the provision in the principle of non-discrimination that is a core element of international human rights law.
 - We will provide more details in writing.

Thank you.