

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

18 January 2023

Agenda item 6: provisions on procedural measures and law enforcement

- Thank you very much, Chair.
- We will focus on article 42.
- We strongly support its inclusion. Clearly spelling out conditions and safeguards is indispensable to ensure the orderly execution of procedural and law enforcement measures and avoid overreach and human rights violations.
- We welcome the clear references to human rights, the principles of proportionality, necessity and legality, the protection of privacy and personal data, as well as several concrete conditions and safeguards.
 - This said, we urge the parties to the negotiations to add and further clarify conditions, safeguards and limitations to article 42 and other relevant provisions to bring the language of the Convention fully in line with obligations under international human rights law.
 - Our recent [submission](#) to the Ad Hoc Committee outlines such additional aspects, including prior independent authorization, access to remedies, and the confidentiality of legitimate attorney-client and other privileged communications.
- Reacting to yesterday's discussion, allow me to note that the principles of necessity and proportionality are established core principles of international human rights law, recognized by UN Member States and UN human rights mechanisms.
 - Consequently, rights-restricting procedural and law enforcement measures must comply with these principles.
 - Their inclusion in the text of the convention is therefore not only appropriate but indispensable.
- Numerous consensus resolutions of the General Assembly and the Human Rights Council have referred to necessity and proportionality as principles that must guide all restrictions of human rights.

- The most recent resolutions of the General Assembly ([77/211](#)) and the Human Rights Council ([48/4](#)) on the right to privacy in the digital age, for example, recalled “that States should ensure that any interference with the right to privacy is consistent with the principles of legality, necessity and proportionality”.
- The recent General Assembly resolution on Countering disinformation for the promotion and protection of human rights and fundamental freedoms ([76/227](#)) contains similar language.
- Human rights treaty bodies consistently apply the principle of necessity and proportionality.
 - In its [General Comment No. 31](#) on the nature of the general legal obligation on States parties to the International Covenant on Civil and Political Rights, for example, the Human Rights Committee provides that where “restrictions are made, States must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims”.
 - References to necessity and proportionality can be found in several other of its General Comments and throughout its case law.
 - Similarly, the Committee on the Rights of the Child in its [General Comment No. 25](#) on children’s rights in relation to the digital environment underscores the centrality of the necessity and proportionality requirement.
- I also refer to the extensive body of work developed by the High Commissioner and OHCHR, in particular four reports on the right to privacy in the digital age ([A/HRC/51/17](#), [A/HRC/48/31](#), [A/HRC/39/29](#); [A/HRC/27/37](#)), that provides relevant in-depth analysis and recommendations.

Thank you, Chair.