

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

29 August 2023

- Thank you very much for giving us the floor, Chair,
- OHCHR would like to express our deep appreciation for the hard work done preparing the zero draft and convening this session.
- International cooperation is one of the key chapters of the draft convention and could, if done well, in a rights-respecting way, become the basis for streamlined, more effective cross-border work between law enforcement agencies to combat cybercrime.
- It is of utmost importance that the various far-reaching powers and avenues of cooperation, accessing, collecting, sharing, and otherwise processing data are accompanied by strong, well-designed conditions and safeguards.
- Moreover, avoiding overreach requires a well-defined scope of application.
 - We welcome that article 35 attempts to limit the scope of Chapter V measures rather than requiring cooperation measures for all kinds of crimes. However, here as in art. 40, the reference to art. 17 risk blurring the lines and creating inconsistent international obligations.
 - Moreover, the current definition of “serious crimes” still raises concerns, as it could easily encompass a wide range of offences that are far from being serious.
 - To avoid inconsistent and rights-violating outcomes, in cases where the obligation to cooperate rests on the classification of the crime as serious, it should be required that it meets the conditions for seriousness in both the requesting and the responding state.
- We note with strong concern that currently, Chapter V is void of specific references to human rights and to key safeguards that need to be in place for intrusive measures to be human rights compliant. We strongly suggest inserting explicit references in article 35(1) to articles 23 and 24. In this context, we welcome proposals to extend the application of article 24 to the entire Convention.
- We recommend strengthening the grounds for refusal, including in articles 37 and 40. Such grounds should not only include cases where there are reasons to believe that the criminal offence will be treated as a political offence by the requesting State but also cover situations where the assistance could facilitate a violation of human rights.

- We welcome proposals by New Zealand and Argentina underscoring that there should be no obligation to cooperate where it would lead to discrimination on the basis of some prohibited grounds. We suggest an expansion of such provisions to all grounds recognized by international human rights law.
- We welcome the proposals for strengthening the commitments to robust data protection standards in article 36.
- Moreover, the provisions on specific measures should be enhanced by explicit safeguards, conditions and formal requirements. For example, article 44 currently contains little meaningful limitations to accessing stored data.
- Finally, concerning the period of preservation of data set out in article 42(7), we understand the need to ensure that such a period cannot be unworkably short. However, proportionality requires that a maximum period will be set as well. Otherwise, the interference with the rights of the people concerned could be excessive, not limited to what is necessary to carry out the investigation of a specific crime.
- For more details and additional proposals, we refer to our latest submission¹ to the Ad Hoc Committee.
- Thank you.

END

¹ https://www.unodc.org/documents/Cybercrime/AdHocCommittee/6th_Session/Submissions/Multi-stakeholders/OHCHR1.pdf & https://www.unodc.org/documents/Cybercrime/AdHocCommittee/6th_Session/Submissions/Multi-stakeholders/OHCHR2.pdf.