



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

Statement on agenda item 4: provisions on criminalization

We would like to thank you, Madame Chair and the Secretariat for all the hard work on preparing this meeting.

The Office of the High Commissioner for Human Rights welcomes calls to include a human rights clause in the general provisions of the new treaty. However, human rights must be an integral part of the entire Convention. The parties to these negotiations should ensure that every provision of the Convention in conformity with international human rights law. In particular, all provisions should be drafted in a way that conforms with the principles of necessity and proportionality and prevents excessive implementations.

To help ensure that the future cybercrime treaty does not become a powerful instrument legitimising the repression of human rights, the treaty's provisions on criminalisation should be narrowly tailored to address the need, while maintaining safeguards to protect rights. The Office of the High Commissioner for Human Rights, therefore, recommends focussing only on a limited set of precisely defined crimes. This should only include crimes against confidentiality, integrity, and availability of data and systems, misuse of devices for committing such crimes, and, where necessary, a limited number of computer-related offences, such as computer-related fraud and forgery. OHCHR would like to emphasise that the treaty should criminalise only intentionally committed acts to avoid disproportionate criminalisation.

We would also strongly recommend that so-called content crimes not be included in the treaty. Under international human rights standards, criminalisation of expression should be used only as a last resort in limited circumstances and in a proportionate manner. Experience shows that content restrictions provide an open door for overly broad implementation that does not sufficiently reflect context and is contrary to human rights law. The inclusion of content crimes would risk that they can be used to legitimise overly extensive and disproportionate restrictions on freedom of expression and other rights.

Finally, offences against confidentiality, integrity and availability of data and systems can limit and penalise legitimate access to information and its disclosure by journalists, whistle-blowers, cybersecurity researchers, and human rights defenders if not carefully constructed. The Office of the High Commissioner for Human Rights, therefore, urges the parties to these negotiations to ensure that the provisions on criminalisation are constructed in a way that does not hamper the legitimate activities of journalists, human rights defenders, and cybersecurity researchers, and cannot be used to prosecute whistle-blowers.

Thank you.