Third 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 international cooperation

We would like to thank you, Madam Chair, and the Secretariat, for all the diligent work in preparing this meeting.

International cooperation is key in the efforts to combat cybercrime. Mutual legal assistance mechanisms should be designed in a way that prevents them from being used in a manner that jeopardizes human rights. Provisions on cross-border exchange of information in criminal investigations also need to be underpinned by a system of robust human rights safeguards.

Accordingly, the obligation to provide mutual legal assistance should be subject to strict compliance with applicable human rights standards. The executing State should be required to evaluate the request for compatibility with human rights standards, and to refuse the request on such grounds where applicable. Legal assistance should be refused when there are substantial reasons to believe that a person is being investigated or prosecuted on the grounds of political opinions, religious beliefs, nationality, sexual orientation, gender, race, or ethnic origin, or other prohibited ground of discrimination, or in respect of conduct which is protected under international human rights law. In addition, mutual legal assistance should be subject to a dual criminality requirement to ensure that the principle of legality is upheld. In other words, assistance should only be provided when the act at issue is considered a crime in both the requesting and executing jurisdiction.

Further, a robust level of scrutiny is necessary in order to guarantee human rights protections in cross-border exchange of electronic evidence. In executing mutual legal assistance requests, States should apply the same level of safeguards as provided under domestic laws for the same investigative measures. Any future convention should ensure decisions about producing data upon request for mutual legal assistance are subject to safeguards guaranteed in both jurisdictions and should need to be approved by competent authorities in both the requesting and executing state. States should refrain from making assistance requests when there is reason to believe that the information sought might be acquired in breach of human rights obligations, for example the prohibition of torture.

Lastly, industry or other private parties should not have the final decision-making authority whether or in what scope data is produced in response to a legal assistance request. As private parties generally do not have sufficient capacity to assess the legality and validity of requests for data issued by foreign law enforcement authorities, public authorities should have the responsibility to perform the essential task of scrutinizing mutual legal assistance requests in order to ensure adequate human rights protection.

Thank you.