



Access Now's statement to the fourth session of the Ad Hoc Committee to Elaborate a Comprehensive International Convention on Countering the Use of Information and Communication Technologies for Criminal Purposes

**Item 5 - General Provisions
17 January 2023**

Delivered by Raman Jit Singh Chima (Senior International Counsel | Global Cybersecurity Lead)

Madame Chair,

Thank you for providing us this additional opportunity to speak.

Building on our earlier comments around the general scope of the treaty, and in particular the agenda item on criminalisation, I wish to emphasize that **this proposed treaty should focus on cybercrime** - and indeed, **ideally limited to the core cyber dependent crimes** as has often been expressed by many delegations and other stakeholders to the AHC. Therefore, we support calls to make sure that the language of Article 1 focuses on the more precise and limited term of “cybercrime” or “cyber dependent crime”. We also support calls to **include the advancement of human rights and the furtherance of necessity and proportionality in cybercrime investigation and prosecution as an objective** of the treaty, and correspondingly included in Article 1.

The rest of my intervention focuses more specifically on Article 5. We believe that the current text of Article 5(1) requires alteration in order to **more correctly state the treaty's overarching relationship with international human rights law**. Article 5(1) should **drop the term “applicable”**, and instead, at minimum, state that “States Parties shall ensure that the implementation of their obligations under this Convention is in accordance with international human rights law”. We support the call to **include reference to specific international human rights instruments**, including at minimum the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. In this regard, we believe it important to draw the attention of the AHC to how other criminal justice treaties have sought to state their relationship to international human rights law. Even throughout negotiations for the United Nations Convention Against Transnational Organized Crime (UNTOC) - and particularly for its protocols - delegates pressed for the inclusion of references to specific international human rights instruments. The UNTOC Trafficking Protocol Preamble used the term “internationally

recognized” human rights; UNTOC Article 2 (Statement of purpose) uses the phrase “full respect for their human rights” (in reference to victims of trafficking), and the UNTOC’s Trafficking Protocol Article 14 (the Saving clause) invokes the “the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable”, and makes illustrative references to two such conventions. Therefore, there is **more than enough precedent for the AHC to improve the language of Article 5(1)** as we and many other stakeholders and delegates have proposed.

We welcome the effort made in Article 5(2) to draw particular attention to gender and the interests of vulnerable communities. As a digital security organization which works with many others in our wider civil society digital security community, we are more than aware of the differential harms that the misuse of digital technologies can have on vulnerable communities. In that regard, we found the research published by Chatham House and the corresponding discussion held last week on the sidelines of the AHC on gender mainstreaming very helpful. Gender mainstreaming is critical, but even in that, we must be cautious as to **whether we are actually providing true agency to vulnerable communities and the individuals who comprise them. The proposed treaty’s gender mainstreaming must not be inadvertently - or intentionally -paternalistic.** We therefore believe that Article 5(2) should be redrafted to state that the special circumstances and needs of **vulnerable groups should be actively involved and engaged by states in the formulation, implementation, governance, and oversight of the measures under the proposed treaty.**

Thank you Madame Chair, delegates.

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