



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 6 (Contd.) - Procedural Measures and Law Enforcement
18 January 2023**

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

Vice Chair,

Thank you for letting us take the floor again on the issue of procedural measures and law enforcement. Before we go deeper into our remarks, I wish to thank the Chair and the secretariat for the able organization of this session and managing the many challenges that this important, difficult process throws up. And specifically, we wish to express our appreciation of the Chair's correct decision on ensuring that the discussions on Articles 41 and 42 of the CND takes place before all of us here in plenary and was not added to the already challenging task assigned to Group B.

Our remarks here relate to Article 42. Specifically, we believe it is important to distinguish some of the remarks made yesterday in the discussion around this item, particularly about UN consensus around specifically protected privacy and data protection amongst internationally protected human rights.

We appreciate that many states wished to be clear about terminology as well as striving to ensure that the international community protects all rights provided by international human rights law. But we must be clear - **protecting privacy in a digital age requires recognising privacy as a specific human rights concern under threat**, requiring a range of actions on domestic safeguards including advancing legal frameworks for data protection. **Necessity and proportionality are not legal concepts that only certain states recognise or advance - it is a fundamental requirement under universally applicable international human rights applicable to all UN member states.** Chair, delegates, it is not only Access Now stating this - these are the words of the UN General Assembly. Many of the previous speakers have noted this - **UN Resolution 77/211 adopted by the General Assembly by consensus on 15 December 2022 categorically recognises the need to protect the right to privacy in the digital age.** The General Assembly, by consensus, in its preambular text to the resolution and in operative para 7,

sub-clauses (d), (e),(f) and (i) recognised the need for states to pay special attention to how to apply specific protections regarding privacy, legal frameworks regarding personal data, ensuring procedural safeguards, effective domestic oversight and remedies. Operative para 4 of UN resolution 77/211, agreed by consensus by all states participating in this AHC, categorically states that States should ensure that any interference with the right to privacy is consistent with the principles of legality, necessity and proportionality.

This AHC, a creature created by the General Assembly, cannot afford to wilfully ignore the consensus position and body of human rights law created by the General Assembly and other organs, agencies of the United Nations and its human rights system. We support the specific recommendations made by the OHCHR, Electronic Frontier Foundation, Global Partners Digital, R3D, and many others, as well draw your attention back to our remarks to the AHC on 11 January 2023. We welcome recognition of the explicit reference to judicial supervision in Article 42(2). We recommend that 42(2) also require the conditions and safeguards obligations on signing states to include reference to appeals and remedies, penalties for unlawful access, how emergency procedures would operate, as well as requirements around government transparency.

Thank you Vice Chair.

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