



CONFERENCE DES NATIONS UNIES SUR LE COMMERCE ET LE DEVELOPPEMENT

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TRAINFORTRADE

REGIONAL SEMINAR ON THE HARMONIZATION OF CYBERLEGISLATION IN ECOWAS

March, 23-24 March 2015



FINAL REPORT



UNCTAD Seminar on the Harmonisation of Legislation on Electronic Commerce within ECOWAS

Under the UNCTAD project to assist countries in the ECOWAS region to develop harmonised legislation on electronic commerce, the Division on Technology and Logistics organised a regional seminar from 23-24 March 2015 in Geneva as part of the UNCTAD E-Commerce Week.

The project is financed by the United Nations Development Account and the Government of Finland.¹

The project is also supported by the ECOWAS Commission and the African Union Commission in their efforts to ensure the implementation at national level of regional legal frameworks on electronic transactions (Supplementary Act A/SA.2/O1/10), data protection (Supplementary Act A/SA.1/O1/10) and cybercrime (Directive 1/OB/11).

Forty five representatives of the 15

ECOWAS countries participated in the seminar which provided an excellent platform to discuss ways and best practices to facilitate the implementation at the national level of existing regional legal frameworks.

The meeting was opened by Ms. Geneviève Féraud, Head of the Knowledge Development Branch, UNCTAD, and Her Excellency Ms. Nakpa Polo, Ambassador of the Permanent Mission of the Togolese Republic to the United Nations Office in Geneva.

Ms. Féraud gave an overview of the TrainForTrade project, which was launched in West Africa in 2012 and will run until the end of 2015. Its overall goal is to accelerate progress in West-African countries (Benin, Burkina Faso, the Gambia, Ghana, Guinea, Mali, Senegal and Togo) towards the achievement of internationally agreed development goals, particularly MDG 8 through trade-related training and capacity building.

¹

Ambassador Polo emphasized the need to create an enabling legal environment to reap benefits from information and communications technologies (ICTs). She thanked UNCTAD for supporting the building of capacities in the region.

Dr Raphael Koffi, Head of Telecommunication/ICT Division at the ECOWAS Commission thanked UNCTAD for having initiated this important Project and implemented for ECOWAS Member States. He also urged UNCTAD to pursue the assistance to ECOWAS in term of capacity building as well as developing and enacting legislation to complement the existing ones to ensure full development of e-commerce in the ECOWAS region.

Cyber legislation in the region needs to be further enhanced. Out the fifteen ECOWAS countries, seven had specific laws on e-transactions, 7 had data protection laws and 4 had adapted their legislation to cybercrime (see table 1).

His Excellency, Mr. Zotawon D, Titus, Deputy Minister, Department of ICT & Telecommunications, Ministry of Posts & Telecommunications, Liberia highlighted the challenges faced by the region and the need for such regional gathering: *"ECOWAS countries are at different phases in implementing electronic transactions and such transactions need to be safeguarded. Hence, the need for stakeholders across the region to ensure the harmonization of cyber law across member states has implications for effective governance as cyber crimes knows no boundary. Essentially, this workshop has accentuated the need for policy makers, regulatory authorities and other such players responsible to drive the sustainable development of the sector to adopt common principles and approaches to achieve this objective. Addressing cyberlaw harmonization with a sense of urgency is one of such approaches."*

This Regional Seminar was the third face-to-face event organized for the period between 2013-2015, supporting ECOWAS countries develop harmonised legislation on e-commerce. This seminar followed on distance learning courses on the Legal Aspects of Ecommerce that were organised by UNCTAD's TrainForTrade programme and ICT Analysis Section in 2014. The online training raised the awareness of 380 representatives of the public and private sectors in the region. This seminar provided an opportunity to the delegates who had successfully completed the online training to discuss further the thematic topics covered in the online course.



Representatives of the ECOWAS Commission, ITU, and UNCITRAL made presentations during the seminar.

The UNCITRAL representative appraised the state of existing legislation on electronic transactions and electronic signatures and the challenges that exist in the adoption of such legislation. The discussion clarified how ECOWAS member States could leverage UNCITRAL legal instruments to benchmark regional texts, such as those prepared by the African Union and the ECOWAS.

The ITU representative introduced participants to the challenges of helping ensure that security is made a key aspect of establishing e-commerce in the region as this affects the confidence of consumers and vendors alike. The representative then discussed the implementation of CERTs in the countries to respond to security incidents. The representative of the ECOWAS Commission also suggested complementing the national CERTs with a regional CERT.

The ICANN representative addressed the issue of domain name management. She discussed how legal frameworks may be backed by technical investment to ensure that jurisdiction and development are properly attributed to the region as e-commerce develops. This tied into the

taxation complexities that are introduced by e-commerce.

The representatives of ECOWAS, UNCITRAL, ITU and ICANN agreed that capacity-building activities were essential to strengthening the region's efforts to implementing a secure cyberspace that encourages the use of ICTs and e-commerce.

ELECTRONIC PAYMENTS

The use of electronic payments in the region has grown tremendously in recent years, the most prevalent forms being mobile payments developed and implemented mostly by mobile network operators. Participants stressed the lack of interoperability between systems across countries. This impediment will hinder the growth of regional e-commerce.

Some participants felt that legislation should be used to address interoperability and that, at a regional level, ECOWAS should develop community legislation. However, the discussion reflected on the rapid pace of innovation in ICTs that would make it difficult to keep up and also the fact that legislation might turn out to be a stifling influence on development and investment.

ELECTRONIC TRANSACTIONS

The adoption of regional and national legislation on electronic transactions and electronic signatures based on a global uniform model was encouraged as this would ensure compatibility and thus facilitate, among others, mutual legal recognition of electronic signatures and certificates across borders.

DATA PROTECTION

On the issues data protection, member states are transposing the Supplementary Act on Data Protection into their national legislation. The seven countries that already have adopted the legislation indicated that there were still gaps with regard to developments in data processing.

CONSUMER PROTECTION

In terms of consumer protection, Cape Verde, Ghana, Liberia, Sierra Leone and Niger have already adopted legislation while the remaining countries are working on bills. As the francophone countries of ECOWAS have benefited from adopting the WAEMU Treaty text and have advanced more than the Anglophone countries, the Anglophone countries could benefit from modelling their own text and legislation on the existing work to reduce the time to implementation and to reduce the possibility of incompatibilities.



CHALLENGES

While almost all the countries had taken steps towards harmonising legislation on e-commerce, there were several common challenges;

- Rate of transposition at national level is very slow;
- The level of awareness is low of new laws among stakeholders, including the judiciary, consumers, civil society and private sector.
- More efforts are needed to build human resources to exploit the opportunities presented by the new legislation.
- The necessary institutional structures need to be established to support the implementation and enforcement of new legislation.
- Some countries (including Mali and Guinea) referred to institutional instability, lack of resources and limited capacity as obstacles to the implementation of legislation.

RECOMMENDATIONS

During the seminar, the following recommendations were agreed upon:

1. Make necessary efforts to accelerate the transposition of community texts at the national level;
2. Harmonise legislation on electronic transactions and electronic signatures, private data and consumer protection;
3. Actively pursue capacity building for policy makers and legislators, and information sharing with national stakeholders on knowledge such as that acquired through the seminar;
4. Advocate for more publicity on new laws when they come into force to ensure their effective use;
5. Establish a Regional CERT to reinforce the efforts of its member states by complementing their

National CERTS;

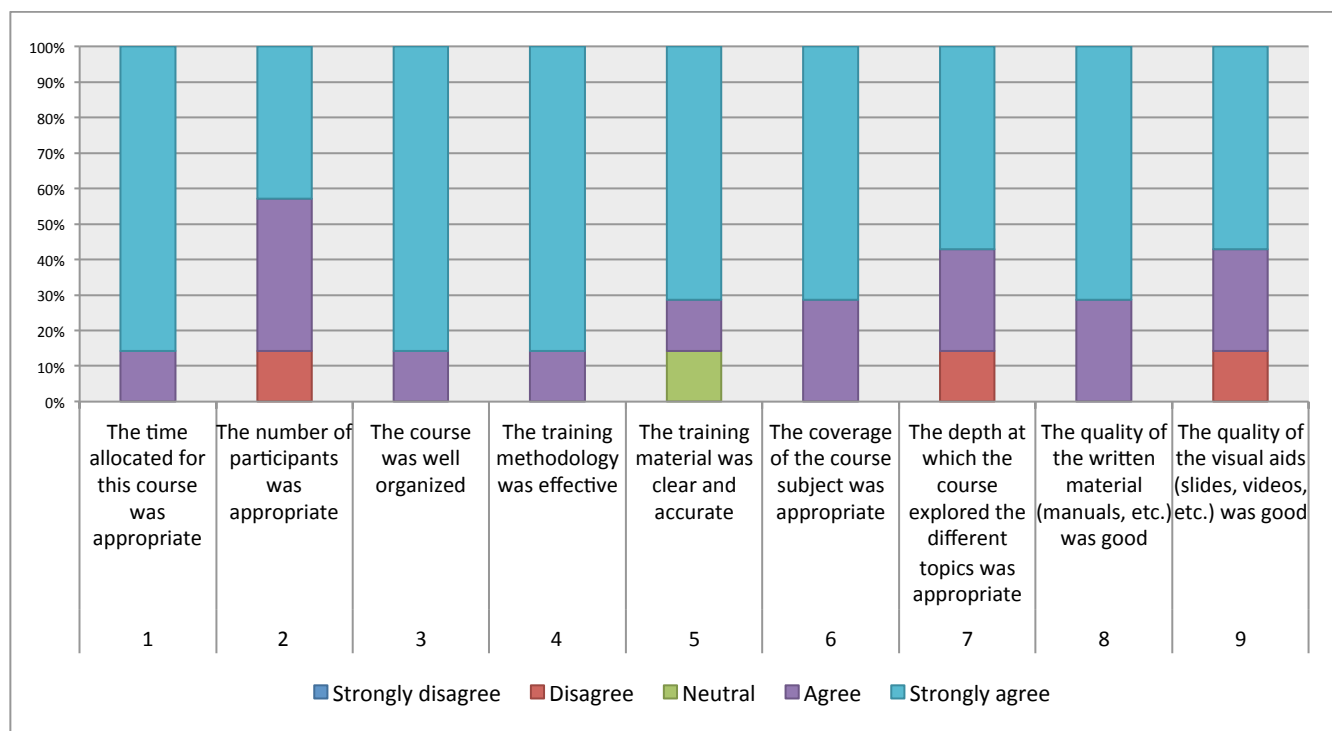
6. Establish an information-sharing network to ensure that participants continue to share lessons learned and other experiences critical to the successful harmonisation of ecommerce legislation in the region;
7. On cybersecurity, ECOWAS countries should ratify the Convention on Cybersecurity and the Protection of Personal Data of the African Union;
8. UNCTAD should extend the training and technical capacity building, including through the online TrainForTrade platform, to the judiciary and the police;
9. Africa needs to work on the .africa domain and the promotion of utilising local domains



Table 1. Status of harmonization in the ECOWAS Member States as of December 2014

Member Country	Electronic Transactions	Consumer Protection	Data Protection and Privacy	Cybercrime and Cyber security	On line content Regulation	Domain Name
Benin	Proposal	None	Adopted	Proposal	None	None
Burkina Faso	Adopted	None	Partial	Proposal	None	Adopted
Cape Verde	Adopted	Partial	Adopted	Partial	None	Adopted
Côte d'Ivoire	Adopted	Adopted	Adopted	Adopted	Adopted	Proposal
Gambia	Adopted	Adopted	Partial	Adopted	Adopted	Partial
Ghana	Adopted	Adopted	Adopted	Adopted	Adopted	Adopted
Guinea	None	None	None	None	None	None
Guinea-Bissau	Proposal	Adopted	None	None	None	Adopted
Liberia	Adopted	Partial	Partial	None	None	None
Mali	Proposal	None	Partial	Proposal	None	None
Niger	Proposal	Proposal	Proposal	Proposal	None	None
Nigeria	Proposal	Partial & Proposal	Proposal	Proposal	Adopted	Partial
Senegal	Adopted	Adopted	Adopted	Adopted	Adopted	None
Sierra Leone	None	Partial	Project	None	None	Adopted
Togo	Draft	Draft	Draft	Draft	None	Adopted

Summary of Opinion Questionnaires of the Seminar



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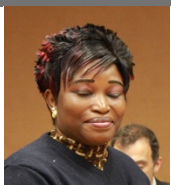
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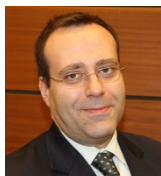
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