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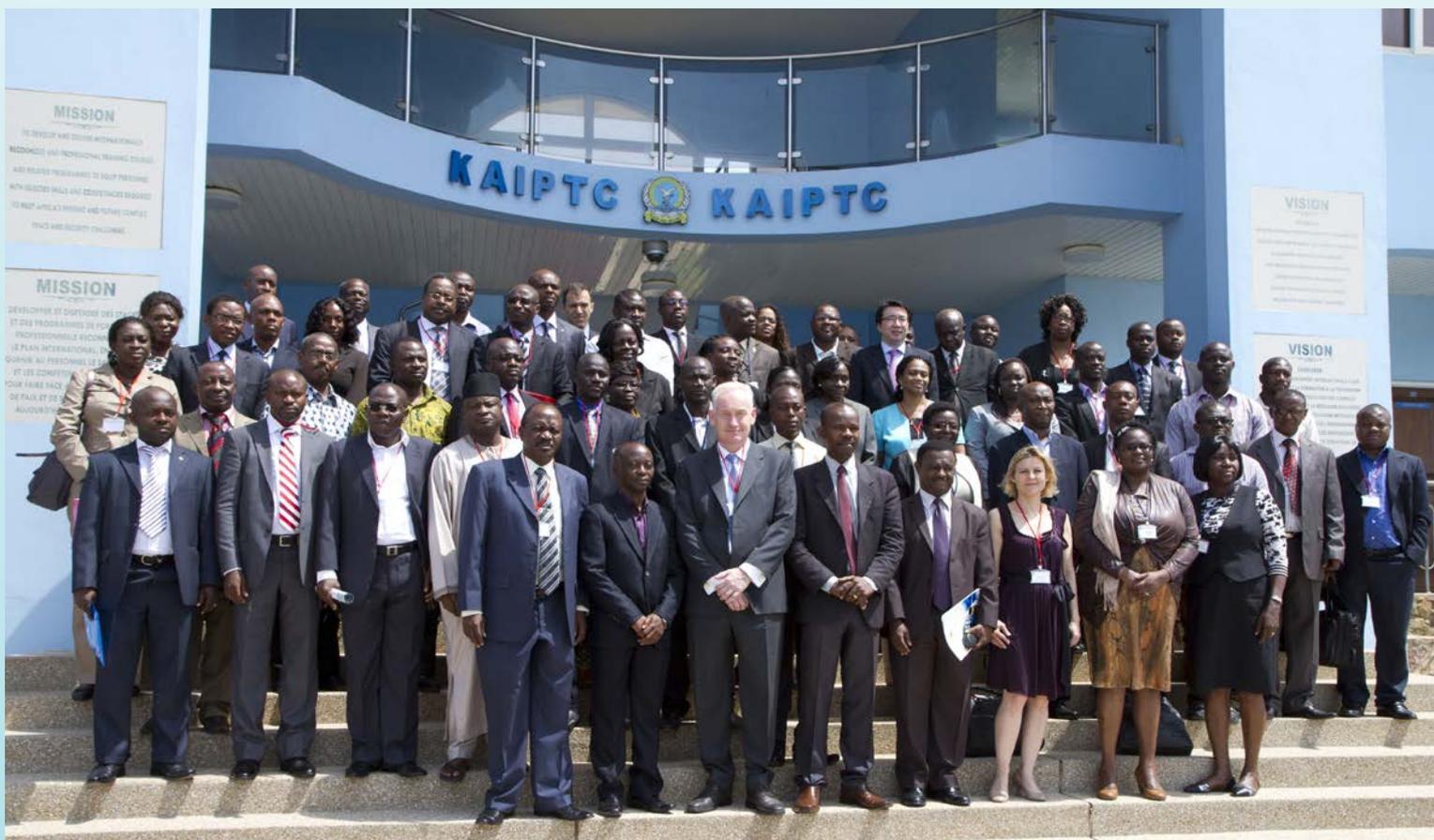


CONSEIL DE L'EUROPE



Harmonizing cyber legislation in the ECOWAS region

Accra, Ghana, 18-21 March 2014



FINAL REPORT

Summary

This four-day conference on harnessing cyber legislation in the ECOWAS region was jointly organised by the United Nations Conference on Trade and Development (UNCTAD), the African Centre for Cyber-law and Cybercrime Prevention (ACCP) and the Council of Europe. The objective of the conference was to strengthen regional harmonisation of laws on electronic commerce, ensure the implementation at the national level of regional cyber security frameworks on electronic transactions, data protection and cyber-crime, and to strengthen cyber legislation and criminal justice capacities.

Participants included high-level representatives from Ministries in charge of e-commerce legislation, but also from the judiciary, law enforcement agencies, academia, civil society organisations, and security experts of Cape Verde, Ghana, The Gambia, Guinea-Bissau, Liberia, Nigeria and Sierra Leone.

The opening ceremony was chaired by Albert Antwi Boasiako from the e-crime Bureau (Ghana). A welcome address was made by Major General Obed Boamah Akwa, Commander of the Kofi Annan International Peacekeeping Training Centre (KAIPTC), followed by remarks from representatives of UNCTAD, the Council of Europe, the ACCP and the Ministry of Communications and the National Communications Agency. Dr Edward Kofi Omane Boamah, Minister for Communications in a speech read on his behalf by Mr Desmond Boateng, Director at the Ministry, said **the conference was unique as it marked one of the cravings**



for regional collaboration as a strategy to mobilise available capacity and resources in the region to deal with the issues of cybercrime.

Improved connectivity that has resulted from the mobile revolution and the increased capacity of submarine fibre-optic cables connecting Africa to cyberspace make it even more urgent for governments to prepare trustworthy legal frameworks for activities conducted online. Cybercrime continued to compromise the growth potentials of the Africa region. It is a relatively new trend of crime, highly volatile and massive in dysfunctional impact. The scourge of online criminality has followed the growing use and application of information and communications technologies (ICTs) which have recorded an unprecedented level, invariably overwhelming traditional means of crime control.

The first session was dedicated to the UNICTRAL instruments with regard to electronic commerce. The following discussions revolved around electronic evidence, authentication issues, and the need for capacity building both in legislative and technical aspects. It was noted that so far, there have





not been a lot of cases involving electronic commerce in African courts. It was recalled that becoming a party to the UN Electronic Communications Convention could be an easy solution to address legal issue related to cross-border online transactions.

It was also emphasised that states that have not yet enacted basic cyberlaws should base their legislation on the UNCITRAL instruments¹. Engagement at the highest political level is often the key to advancing cyberlaw reforms as well as achieving coordination among the relevant stakeholders. At the international level, relevant organizations also need to join forces to address the wide range of issues related to cyberlaw in an effective manner, through their respective mandates.

The second session was dedicated to computer crime. The trans-border nature of the Internet has given rise to unprecedented change economically and socially but also inevitably to new forms of crimes. Governments of developing countries should also adopt baseline cybercrime legislation.

The Budapest Convention was presented. The Convention² provides a guideline for legislation to ensure that States are able to outlaw cyber crime, to enable investigators

1 http://www.uncitral.org/uncitral/uncitral_texts/electronic_commerce.html

2 The substantive law provisions of the Convention deal with illegal access to data, damaging computer systems, fraud, forgery, dissemination of devices for use in crime, child pornography and intellectual property infringement.

to obtain the data they need to identify and locate suspects and to facilitate international convention through the harmonization of domestic legislation. The convention also requires countries to establish jurisdiction in respect of these offences. The procedural provisions of the Convention provide the necessary tools for investigators to access data held by service providers, which is often vital to cyber investigations and to search and seize electronically stored material. In addition the Convention acts as an instrument to enable mutual legal assistance and extradition. It was recalled that the international element of cybercrime coupled with issues connected to electronic evidence and evidence stored digitally creates challenges for investigators, prosecutors and judges. Given the volatile nature of the information required by investigators and prosecutors in cyber investigations it is imperative that States have enacted measures that allow for the urgent preservation of data.

During the third session, the principles of data protection and privacy were outlined: fair and lawful processing, proportionality, data quality, transparency, as well as the right of access and correction. The balance between the security interests of governments versus the privacy of individuals was discussed. In this context, applying fair balance and proportionality is key.

The emergence of cloud computing was also brought in the discussions in the context of the countless examples around the world of sensitive data being unlawfully accessed





from email accounts to credit cards.

It was recognized that there are different cultural approaches to privacy. However, it was recalled that the need to adopt data protection legislation is linked to the transnational nature of the Internet and the Information economy. In order to benefit from offshoring or Business Process Outsourcing involving data processing, countries need to have some form of data protection laws.

UNCTAD/ECOWAS Project on e-commerce laws harmonisation

This workshop aimed to support ECOWAS countries in their efforts to build a trustworthy environment for e-commerce. It is part of an UNCTAD project 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.2/01/10), data protection (Supplementary Act A/SA.1/01/10) and cybercrime (Directive 1/08/11). This project is funded by the United Nations Development Account and by the Government of Finland which has been supporting UNCTAD's E-Commerce and Law Reform³ since 2007.

It was attended by twenty-two representatives from Cape Verde, Ghana, The Gambia, Guinea-Bissau, Liberia, Nigeria and Sierra

³ http://unctad.org/en/Pages/DTL/STI_and_ICTs/ICT4D-Legislation.aspx

Leone. The workshop followed the TrainForTrade⁴ distance-learning course on "Legal Aspects of Electronic Commerce" (October 2013) which raised awareness to 221 representatives from public and private sectors in the region. A similar workshop gathered twenty-three representatives of French-Speaking ECOWAS countries in Senegal (February 2014).

The workshop provided the delegates an opportunity to deepen topics covered in the distance-learning course and discuss the progress of regional harmonization legislation on electronic commerce in the region, in particular with respect to the ECOWAS instruments. It addressed the subjects of e-transactions and authentication, consumer protection, content regulation and intellectual property rights.

Status of cyberlaw reforms

The process of cyberlaw harmonization is mainly driven by the development of e-government projects. Out of the seven countries represented at the seminar, the Gambia and Ghana have laws on e-transactions, data protection and cybercrime. Cape Verde has laws on e-transaction and privacy and a draft law on cybercrime. Liberia and Nigeria have draft laws in the three areas. Guinea Bissau and Sierra Leone have no drafts legislation for now.

With the exception of Ghana, no other coun-



⁴ <http://learn.unctad.org>

Table 1 - Status of cyber security laws in ECOWAS (as of March 2014)

	E-transaction	Privacy	Cybercrime
Laws	Burkina Faso Cape Verde Cote d'Ivoire Gambia Ghana Senegal	Benin Burkina Faso Cape Verde Cote d'Ivoire Gambia Ghana Senegal	Cote d'Ivoire Gambia Ghana Senegal
Bills	Liberia Mali Niger Nigeria	Liberia Mali Niger Nigeria	Cape Verde Liberia Burkina Faso Niger Nigeria

Source: UNCTAD

tries have a PKI certification system in place and due to the complexity and costs of such solutions. It was recommended that a thorough costs-benefits analysis be done before adopting this solution. In terms of CERTs, only Ghana has one of such centres while in The Gambia, Nigeria and Sierra Leone they are under development. Two countries, Ghana and Nigeria, have Internet Exchange Points (IXPs).

With regard to consumer protection, the picture varies among countries: no consumer protection agency (Ghana), public body (Cape Verde) and/or consumer protection agency (Nigeria). Apart from Nigeria, the other countries are not part of the International Consumer Protection and Enforcement Network (ICPEN)⁵ and were



⁵ <https://icpen.org>

encouraged to consider joining it.

The group benefitted from a presentation on mobile money deployments in Nigeria where there are eighteen deployments. As of March 2014, a total of 44 of such systems existed in the ECOWAS.

Country representatives presented the status of cyberlaw reforms and discussed best practices. Table 1 summarizes the situation as of March 2014 regarding the adoption of cyber security laws in the region. Four countries are the most advanced in cyberlaw adoption in the region: Cote d'Ivoire, The Gambia, Ghana and Senegal have laws on e-transaction, privacy and computer crime.

The need to ensure that effective enforcement agencies and mechanisms of regional and international cooperation are in place to create a trustworthy environment was also stressed during the workshop.

Recommendations

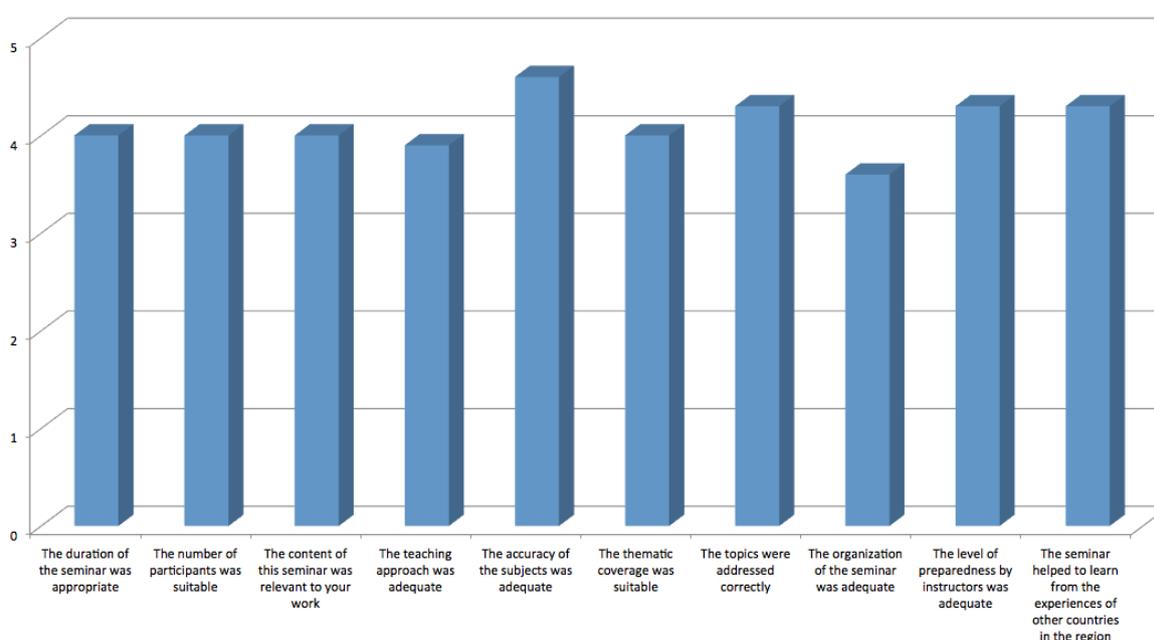
The discussions that followed countries presentations led to the following recommendations:

1. Continue the transposition of ECOWAS instruments integrating deadlines;
2. Set up a national “working group” on e-commerce legislation for a multi stakeholder approach;
3. Roll out awareness campaigns to sensitize on cyberlaws;
4. Build the capacity of:
 - Policy and law makers
 - Police, judiciary and prosecutors
5. Strengthen enforcement agencies; and
6. Enhance regional cooperation by sharing information and best practices (using TrainForTrade platform).

Delegates shared their intention to report back on the workshop and identify legal areas where they could relay their knowledge in their country to scale up the capacity building efforts. They were informed that a TrainForTrade distance learning course on the Legal Aspects of E-Commerce will be organized in October 2014, and will be followed by a face-to-face workshop. A review of cyberlaw harmonization in ECOWAS is being prepared to take stock of the advances made by countries, identify the challenges and propose recommendations to push this process forward. It should be published in English and French early 2015.



Summary of the opinion questionnaire



5 Strongly agree 4 Agree 3 Neutral opinion 2 Tend to disagree 1 Disagree



Comments by the participants

«This workshop has been timely and strategic as it forms the bases for a comprehensive and inclusive legislation for greater sub-regional cooperation and integration.» **James Kanja Cobba, Chief Technology Officer, Ministry of Information and Communications, Government of Sierra Leone.**

«The workshop avails the opportunity to learn more on the policy formation and implementation as the policy and decision makers in the Ministry of Communication, Nigeria in the areas of ecommerce, ICT critical infrastructure, as well as cybercrime. The regional harmonization of ecommerce laws on sub-regional level will enhance the expansion of the emerging markets both at ECOWAS and International levels.» **Engr. Solomon Ingba, Deputy Director (IT), Federal Ministry of Communication Technology, Nigeria.**

«The workshop has further enabled us to develop insight across different policy and legal issues in the ICT sector that our jurisdiction need to address. These include the need to protect critical infrastructure such as the fiber cable with specific provision in the law; e-signature and principles of e-commerce, and the protection of cyber space relying on CERT and other strategies.» **Cllr Roosevelt Gould and Mr. Zotawon Titus from the Ministry of Commerce and the Ministry of Post & Telecommunications, Liberia**

«The workshop was of immense benefit to me as the topics discussed were relevant to my work and it further exposed me to new areas in e-transactions I was unaware of before the workshop. It has also helped me to learn from the experiences of other countries in the region and at the national level.» **Niteabai Dominic, Senior Legal Officer, Telecoms Law and Regulations, Nigerian Communications Commission. Nigeria.**



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