Harmonizing cyberlaws and regulations: the experience of the East African Community

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Outline

- Challenges for creating enabling legal environment for e-commerce
- UNCTAD’s response: the E-commerce and Law Reform Program
- The case of the East African Community
- Lessons learnt
Strategies to achieve e-commerce
A multidimensional challenge

- Key policy areas:
  - Infrastructure and access
  - Human resources
  - E-payment solutions
  - Legal issues

- Tailor national ICT strategies to each country
- Involve all stakeholders: supportive public intervention with private sector initiative
- Benchmark against and learn from other countries
- Develop indicators and collect data
Challenges for creating enabling legal environment for e-commerce

- Lack of trust in e-commerce
  - Brand recognition
  - E-payment solutions
  - Delivery, etc
- Limited understanding on legal issues related to e-commerce
- Shortage of skills and trained experts in establishing and implementing e-commerce laws
- Differences among countries (legislation, capacity, resources)
- Existing regional agreements
- Need for global interoperability, use of international models (e.g. UN Convention on E-Contracting)
Legal issues related to e-commerce

Finding common grounds

- Electronic signatures and authentication
- Electronic contracting
- Consumer protection
- Privacy and data protection
- Computer crime
- Taxation and custom duties
- Intellectual property rights

Cross-border e-commerce and regional harmonization

- International models: UNCITRAL Models Laws on e-commerce and Convention on e-contracting; Budapest Convention on Cybercrime; OECD Consumer Protection Guidelines, WIPO, etc.
- Harmonization of taxation, customs duties, data privacy and security, and computer crime difficult due to different socioeconomic conditions
UNCTAD’s E-commerce and Law Reform Program

- Launched in 2002 to respond to the needs expressed by policy makers of developing countries at various fora, including UNCTAD conferences and the World Summit on the Information Society (WSIS)
- Assists countries in Africa, Asia and Latin America in building legal and regulatory frameworks for e-commerce
- UNCTAD works in close collaboration with partners (AU, CTO, ITU, OECD, UNCITRAL, UN regional commissions, donors, etc)
- Financially supported by Finland
UNCTAD’s E-commerce and Law Reform

Objectives and activities

- Overall objective: to support developing countries’ efforts towards the preparation of an enabling legal and regulatory environment for electronic commerce by:
  
  ✓ **Raising awareness and building capacity** of policy and law makers, including Members of Parliaments
  
  ✓ **Training course** on Legal Aspects of E-commerce
  
  ✓ **Reviews of national laws and regional agreements**
  
  ✓ **Technical support** in the preparation of regional harmonized legal frameworks (e.g. East African Community and the ASEAN)
UNCTAD’s E-commerce and Law Reform

Some achievements to date

- Comparative studies on regional cyberlaw harmonization
  - Latin America
  - Central America
  - East African Community (EAC)
  - Association of South-east Asian Nations (ASEAN) (in 2013)
- Developed distance learning course
  - English, French, Spanish and Khmer
- Development of two cyberlaw frameworks in the EAC
- Helped with the drafting and revision of laws
  - Cambodia, Lao PDR, EAC
The need for cyberlaw harmonization in the EAC
Supporting the regional integration process

  - Enabling legal framework as a critical factor: e-transactions, cybersecurity
  - Harmonized regional and national legal frameworks
  - Creation of an EAC Task Force (2008)

- Regional ICT developments:
  - Improved fiber-optic links and expansion of mobile telephony and related services, notably mobile money
  - Business process outsourcing
Importance of the project recognized by EAC Ministers

“The East African Development Strategy (2011/12 – 2015/16) proposes the key drivers for the realization of the EAC regional integration agenda in the next five years to include, among others, creation of a strong legal framework (...) The development of cyber laws in the region is critical to underpin the realisation of full potentials in regional e-commerce, electronic financial transactions and business processes outsourcing.”

Hon. Musa Sirma, Chairperson of the Council of Ministers of the East African Community and Minister for East African Community, Republic of Kenya, at the occasion of the presentation of the budget of the EAC for the financial year 2012/2013 to the legislative assembly.
A joint EAC/UNCTAD Programme
Benefitted from cooperation of relevant organizations

- Mix of legal advice and training workshops since 2006
- Two Cyberlaw Frameworks endorsed by the Task Force:
  - Phase I:
  - Phase II:
    - IPRs, competition, taxation and information security (to be considered by the 10th meeting of the Sectoral Council on Transport, Communications and Meteorology, May 2013)

Success of the project based on:
- Ownership from the EAC secretariat and political will
- Continuation and commitment of the EAC Task Force Members
- UNCTAD support and associated partners: UNCITRAL, UNECA, AU, ITU (HIPSSA)
Significant advances in implementing Framework I

<table>
<thead>
<tr>
<th></th>
<th>eContracting/ administration &amp; evidence</th>
<th>Data privacy</th>
<th>Consumer protection</th>
<th>Copyright</th>
<th>Domain name mechanisms</th>
<th>Internet &amp; mobile payment systems</th>
<th>Cyber crime &amp; cyber-security</th>
<th>Content control</th>
</tr>
</thead>
<tbody>
<tr>
<td>Burundi</td>
<td>Pending</td>
<td>Pending</td>
<td>Pending</td>
<td>(2005 Act)</td>
<td>Not reported</td>
<td>No regulations</td>
<td>(2009 Act &amp; Bill)</td>
<td>Pending</td>
</tr>
<tr>
<td>United Republic of Tanzania</td>
<td>No regulations</td>
<td>Partial under 2010 Law</td>
<td>No regulations</td>
<td>(1999 Act)</td>
<td>No regulations</td>
<td>No regulations</td>
<td>No regulations</td>
<td>Partial under 2010 Law</td>
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Source: UNCTAD, 2012

Uganda: Draft regulations made to give effect to the three cyberlaws enacted to implement Phase I of the EAC Cyber law Framework were validated in June 2012 by about 156 institutions before being issued by the Minister.
Snapshot of the reform process
2007-2012

Chart 1 – Summary of the reform process by EAC Task Force on Cyberlaws

<table>
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<tr>
<th>Years</th>
<th>Capacity-building activities</th>
<th>Implementation of harmonized cyberlaws</th>
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<tbody>
<tr>
<td>2007</td>
<td>Constitution of the EAC Task Force on Cyberlaws</td>
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<tr>
<td>2008</td>
<td>Three EAC Taskforce Meetings – Framework Phase I</td>
<td>Process definition; cyberlaw review; preparation Framework; identification capacity-building needs</td>
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<td>2009</td>
<td>Three EAC Taskforce Meetings – Framework Phase II</td>
<td>Training session on the Legal Aspects of e-Commerce in Burundi.</td>
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<tr>
<td>2010-2011</td>
<td>Three EAC Taskforce Meetings – Framework Phase II</td>
<td>Preparation Framework Phase II, technical assistance support for implementation of Phase I</td>
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<td>2012</td>
<td>Briefing session of the Kenyan Departmental Committee in Parliament</td>
<td>Distance learning courses on the Legal Aspects of e-Commerce</td>
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<td>EAC Sectoral Council on Transport, Communications and Meterology adopted Framework Phase I</td>
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<td></td>
<td>EAC Sectoral Council on Transport, Communications and Meterology to consider Framework Phase II in 2012</td>
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<td></td>
<td>Cyberlaw advances in EAC Partner States in implementing Framework Phase I</td>
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Source: UNCTAD
Lessons learnt (1)

- National and regional political will are essential
- Include all stakeholders: Law reform commissions, Ministries of Justice, ICT Ministries, regulators, e-government, central banks, revenue authorities, Parliamentarians
- Capacity-building needs should be addressed at all levels
  - Parliamentarians (Kenya, Cameroon, Tanzania)
- National awareness campaigns to inform all stakeholders and citizens alike
  - Uganda: Training of ICT and legal personnel of every bank; law society, registration service bureau, and plans to train insurance, traders, manufacturers, judges, police and other agencies and bodies
- South-south cooperation
Lessons learnt (2)

- Scope for enhanced international and regional cooperation mechanisms to deal with global cybersecurity issues to avoid duplication of work in the interest of securing the most effective support:
  - Support from various donors (USAID, WB, various developed countries, etc)
  - Support from various organizations competent in specific areas
    - E-transactions: UNCITRAL, existing legislations from countries
    - Data protection and privacy: OECD Privacy Guidelines, the EU Data Protection Directive and the APEC Privacy Framework.
- Example of the EAC requests to build capacity in several areas
Thank You for your attention!