

EAST AFRICAN COMMUNITY

**THIRD MEETING OF THE EAC TASK FORCE ON
CYBERLAWS (PHASE II)**

24th – 26th October 2011

**Zanzibar Beach Hotel
Zanzibar, Tanzania**

REPORT OF THE MEETING

Ref: EAC/TFCL/ /3/2011

**EAC SECRETARIAT
Arusha, Tanzania
October 2011**

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THE THIRD MEETING OF THE EAC TASK FORCE ON CYBERLAWS (PHASE II)

REPORT OF THE MEETING

1 PRELIMINARIES

1.1 Convening of the Meeting

The 3rd Meeting of the EAC Task Force for Cyberlaws was convened to consider and finalize the Draft EAC Framework for Cyberlaws (Phase II).

1.2 Participants

The meeting was attended by participants representing EAC Partner States, EAC Secretariat, United Nations Conference on Trade and Development (UNCTAD), East African Law Society, African Union Commission (AUC), United Nations Economic Commission for Africa (UNECA), and US Embassies in Tanzania and Kenya. The List of Participants is attached as *Annex I*.

1.3 Constitution of the Bureau

In accordance with the Rules of Procedure for EAC Policy Organs meetings, the meeting was chaired by Mr. Pierre Ndamama, Technical Director, Secretariat Executif des Technologies de l'Information et de la Communications (SETIC), Republic of Burundi while Mr. James Kivuva, Senior Assistant Director, Ministry of East African Community, Republic of Kenya, was the Rapporteur.

1.4 Adoption of the Agenda and Programme

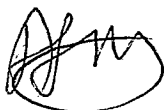
The adopted Agenda is attached as *Annex II*.

1.5 Opening Remarks

The EAC Secretariat, UNCTAD, United Republic of Tanzania and UNECA gave opening remarks. A summary of the remarks are presented below.

1.5.1 EAC Secretariat

Dr. Enos Bukuku, Deputy Secretary General (Planning and Infrastructure) welcomed the participants to the meeting. He thanked the participants for their attendance and participation and also thanked the people and government of Zanzibar for their welcome and hospitality. He noted, with gratitude, the technical and financial support provided by UNCTAD, with the coordination of Ms Cecile Barayre.



Dr. Bukuku informed the meeting that Partner States attach great importance to the work of the Task Force, as evidenced by the positive country reports on the implementation of the EAC Framework for Cyberlaws (Phase I). He expressed optimism that the Framework for Phase II, when finalized, will further consolidate the gains of previous work. He further noted that the EAC Framework for Cyberlaws will help establish a solid legal and regulatory regime for the implementation of the EAC Common Market, especially with regard to e-government and e-commerce. He called upon UNCTAD to continue its valuable support in this area, especially with regard to capacity building. Finally he thanked the experts, the consultant and UNCTAD for their work and wished the meeting success.

1.5.2 UNCTAD

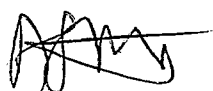
Ms Cecile Barayre, Economic Affairs Officer, UNCTAD, informed the participants that the main objective of the meeting was to finalize the draft Framework Phase II. She congratulated the Task Force for the work so far accomplished in preparing the two Frameworks. She informed the meeting that UNCTAD is ready and looking forward to working with the EAC in the implementation of both Frameworks. Ms Cecile added that UNCTAD has conducted a study on mobile money in EAC Partner States and that the draft report of the study will be presented to the meeting for consideration. She also introduced representatives of the following development partners who attended the meeting due to their interest in the EAC cyberlaws reform programme: AUC, UNECA and US Embassies in Tanzania and Kenya.

1.5.3 United Republic of Tanzania

Ms Khadija Omar, Director of Communications, Ministry of Infrastructure and Communications, Zanzibar, welcomed the participants to the United Republic of Tanzania, and to Zanzibar in particular. She acknowledged the work accomplished so far by the EAC Task Force on Cyberlaws in the preparation of legal frameworks and the support of UNCTAD in this process. She wished the meeting fruitful deliberations and a safe and enjoyable stay.

1.5.4 UNECA

Mr. Mactar Seck, Economic Affairs Office, UNECA Sub Regional Office for East Africa (SRO-EA) highlighted the cooperation between ECA and UNCTAD and noted that cyber security policies need to be harmonised for the successful growth of e-commerce on the East African sub region. He informed the meeting that the UNECA, in collaboration with AU, is addressing cybersecurity within the framework of African Information Society Initiative (AISII). The UNECA cyber security initiative will address cyber crime; personal data protection; electronic transactions; e-Signature / Certification. In conclusion, he called upon Partner States to put in place adequate legal and regulatory framework for cyber security.



2 PRESENTATION AND CONSIDERATION OF NATIONAL CYBERLAWS PROGRAMMES

Partner States presented progress reports on the status of national programmes on cyberlaws since the 2nd Task Force Meeting on Cyberlaws (ph.2), held in Mombasa, Kenya.

2.1 Republic of Burundi

The draft Electronic Transactions Bill was submitted to the Ministry of Justice for review. Plans are underway to sensitize members of Parliament on the draft Bill. Four draft decrees are being prepared to complement the Draft Bill, namely: decrees on data conservation, cryptology, electronic services, and electronic signatures. Following the adoption of the EAC Legal Framework for Cyberlaws (Ph.I), the National Bank of Burundi is conducting studies to develop regulatory instruments for mobile banking and financial transactions.

2.2 Republic of Kenya

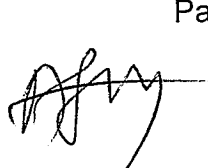
The Copyright Act Cap 103 (2003) recognizes use of digital technologies. The Competition Act (2010) is in force; it promotes and safeguards competition in the national economy, makes provisions for consumer protection and establishes and confers powers and authority on a competition tribunal. A Draft Consumer Protection Bill has been prepared. Kenya Communications Amendment Act (2009) has provisions on electronic transactions and consumer protection. A Computer Emergency Response Team (CERT) is in the process of being implemented.

2.3 Republic of Rwanda

Electronic Transactions Law was enacted and entered into force on 12th May 2010. A Public Key Infrastructure (PKI) is being implemented. Rwanda Utilities Regulatory Authority (RURA) will be the root certifying authority for digital signatures. A number of capacity building and sensitization programmes have been planned to build capacity and create awareness on cybersecurity issues. There is the Intellectual Property Law. The policy on competition and consumer protection is in place and a draft Bill on competition and consumer protection is under discussion. The establishment of CERT is in process.

2.4 United Republic of Tanzania

The Income Tax Act (2004), Section 69 was amended to recognize electronic transactions for tax administration. A Draft Bill on Electronic Payment Systems has been developed as well as draft regulations for electronic payment systems. On institutional frameworks, cybercrime units have been established within the Police and the Office of Director of Public Prosecution. A Cyberlaws Task Force has been established by the Attorney General. On capacity




building, plans are underway to conduct sensitization seminars to the legal fraternity and law enforcement authorities. A draft regulation on CERT has been developed. CERT is in the process of being established.

2.5 Republic of Uganda

Three cyber laws namely, the Electronic Transactions Act, Electronic Signatures Act and the Computer Misuse Act were recently enacted. The laws came into force on 15th April 2011. Currently, efforts are being made to develop subsidiary legislation for the three laws and also implement programmes on sensitization, capacity building and institutional framework.

Uganda is currently working on the development of regulations under the cyber laws. Draft regulations under the E - Transactions Act, 2011 have been developed while regulations under the E - Signatures Act, 2011 will be ready by December 2011. The Directorate of Public Prosecutions and the Uganda Police Force are implementing the Computer Misuse Act. The Uganda Police Force in particular has set up a Computer Crimes Unit. To further ensure security of online transactions, Uganda through the Ministry of Information and Communications Technology has finalised the National Information Security Strategy which will enable the creation of a directorate of Information Security under the National Information Technology Authority and the creation of a CERT.



3 CONSIDERATION OF DRAFT EAC FRAMEWORK FOR CYBERLAWS (PHASE II)

The Consultant, Prof. Ian Walden presented the Draft EAC Framework for Cyberlaws (Phase 2) for consideration and appropriate recommendations.

3.1 Consideration of the Draft Framework

The meeting considered the Draft Framework and made comments, observations and recommendations on various sections as presented below. The Draft Framework is attached as **Annex III**.

3.1.1 Intellectual Property Rights

Recommendation 1, which concerns the licensing mode for intellectual property rights, was amended to extend its scope to include 'related rights', such as broadcasting and performance rights. In addition, it was noted that the reference to 'other relevant international instruments' should be qualified to those under which the Partner States have obligations.

3.1.2 Competition

The recommendations were considered and adopted.

3.1.3 Taxation

The Secretariat informed the meeting that the EAC Task Force on Tax Harmonization has not considered the request made by the Cyberlaws Task Force at the Mombasa meeting in March 2011. This is because the Task Force on Tax Harmonization has not met since that time.


The Task Force on Cyberlaws had earlier noted that the issue of taxation is also under review by the EAC Task Force on Tax Harmonization. In this regard, the Cyberlaws Task Force recommended that the matters on e-taxation should also be considered by the Task Force on Tax Harmonization.

The meeting noted with concern the slow progress in concluding this matter and requested the Secretariat to expedite the process. The meeting also noted that issues on cyberlaws are cross-cutting. Therefore, the meeting recommended that Partner States should ensure wide stakeholder participation in cyberlaw reform programmes.

The meeting considered and adopted the recommendations on taxation.

3.1.4 Information Security

It was agreed that the recommendation on mandated compliance with security standards should extend to those targeting specified circumstances and specified entities. All other recommendations were adopted as presented.



3.1.5 General Comments on the Draft Framework

The meeting agreed that a general recommendation should be made to the EAC Sectoral Council for a periodic review of emerging issues in the field of cyberspace and consideration of future law reform initiatives.

The meeting also appreciated the support of UNCTAD in the EAC Cyberlaws reform programme.

3.2 Recommendations

The Task Force on Cyberlaws:

- (a) Endorsed the Draft EAC Framework for Cyberlaws (Phase II) for submission to the Sectoral Council for Transport, Communications (TCM) for consideration and approval;
- (b) Recommended to the Sectoral Council on TCM to request the Council to direct the Task Force on Tax Harmonization to consider e-taxation matters in the Draft EAC Framework for Cyberlaws (Phase II).

4 BRIEFING ON AU CONVENTION ON CYBERSECURITY

Mr. Yanke from AUC informed the meeting that starting from the last WSIS in Tunis (2005), Africa, as other continent, decided to come with concrete commitment in order to strengthen the Information Society within the continent and to improve international cooperation in terms of fight against cybercrime. Therefore, Africa Union (AU) adopted many decisions, in particular, to elaborate a Draft Convention on Cyber Legislation. The AU Draft Convention gives effect to a Resolution of the last session of the Assembly of Heads of State and Government of the African Union (Addis-Ababa, January 2010), and seeks to harmonize African cyber legislations on electronic commerce organization, personal data protection, cyber security promotion and cyber crime control. The Draft Convention is intended not only to define the objectives and broad orientations for the Information Society in Africa, but also to strengthen existing legislations in Member States and the Regional Economic Communities (RECs) on the Information and Communication Technologies. It lays the foundation for an African Union-wide cyber ethics and enunciates fundamental principles in the key areas of cyber security.

5 DISCUSSION OF FUTURE UNCTAD ASSISTANCE AT NATIONAL AND REGIONAL LEVELS

UNCTAD held bilateral discussions with delegations of Partner States and the EAC Secretariat to discuss future support of relevant national and regional programmes. The outcome of the discussions are presented in **Annex IV**.



6 CONSIDERATION OF REPORT OF STUDY ON MOBILE MONEY IN EAC

UNCTAD is conducting a study on mobile money in EAC countries. The aim of the study was to establish and assess the status of the technical, commercial and regulatory aspects of mobile money systems within the EAC.

The study was conducted during period March – October 2011. The Draft Report of the Study was presented to the meeting. The meeting considered the Draft Report and noted that:

- i) There is need for the report to make references to the work of the EAC Monetary Affairs Committee;
- ii) The draft report is rich in valuable information; however, the consultant needs to improve the recommendations and conclusions;
- iii) The EAC Secretariat should consider convening a workshop of mobile money stakeholders to consider the final report of the Study.



7 CONSIDERATION OF THE WAY FORWARD

The meeting noted that since the Task Force was established in 2007, the Task Force has managed to develop two Frameworks on Cyberlaws. The meeting further noted that the Task Force will still be needed during the implementation of the Frameworks. The reasons include the fact that the Task Force may serve as a:

- i) Regional focal point for monitoring and evaluating the implementation of the Frameworks; and
- ii) Pool of resource persons for programmes on capacity building and sensitization related to the Frameworks.

The meeting therefore recommended that a draft future work plan for the Task Force be developed and a meeting be convened to consider the draft work plan.

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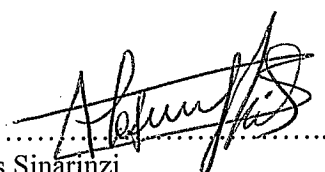


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8 CONSIDERATION OF ANY OTHER BUSSINESS

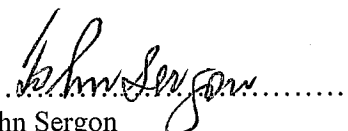
There was no any other business

Signed by the Leaders of Delegation this 26th day of October 2011.


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Alexis Sinarinzi
Legal Advisor

Agence de Regulation et de Controle
des Telecommunications (ARCT)

Republic of Burundi


.....
John Sergon
Director – ICT
Directorate of E-Government


Office of the President

Republic of Kenya


.....
Charles Mugisha
Head of Network Security


Rwanda Development Board - ICT

Republic of Rwanda


.....
Adam Mambi
Deputy Executive Secretary

Law Reform Commission

United Republic of Tanzania


.....
Dr. David Turahi
Director – Information Technology
and Information Management
Services

Ministry of Information and
Communications Technology

Republic of Uganda