External Evaluation of UNCTAD's *E-Commerce and Law Reform Project**

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Abstract

The objective of the *E-Commerce and Law Reform Project* is to support decision-makers and lawmakers of beneficiary countries in mastering the complexities of the legal aspects of ICT, and in preparing harmonized legal and regulatory frameworks that facilitate the conduct of domestic and international trade and the development of e-government services. The objective of this evaluation, undertaken at the request of the Government of Finland, is to inform their assessment of further contributions to this project, as well as to document results and lessons learned in the implementation of the project, and to formulate recommendations in order to strengthen the work of UNCTAD in this area.

This evaluation finds that the Project has been *pioneering* the introduction of the legal dimension of ICT to its beneficiaries and initiating cyber-law reform and harmonization processes. In fact, through this project, draft cyber laws have either been enacted, or are ready for government endorsement in Cambodia, the Lao People's Democratic Republic, as well as in the EAC Member States. The mix of legal advice and training, backed by awareness-raising and institutional capacity-building, builds the confidence and commitment of the Project partners to achieve *compliance* with international ICT standards as part of their efforts towards graduation from LDC status. *Ownership* by the Project's partners*,* especially where there is knowledge of the legal issues at stake in ICT for development, is instrumental in keeping up the momentum for cyber law reform.

The evaluation makes a number of recommendations towards strengthening this area of work. They include a recommendation for additional resources for the Project, both human and financial, given the relevance of the subject matter and the legitimate interest of developing countries (in particular, LDCs) in accessing technical assistance in the ICT sector. In order to strengthen the sustainability of outcomes, the evaluation recommends that a comprehensive *road map* with agreed timelines, harmonization benchmarks and an exit strategy be worked out for each beneficiary. Such actions will keep the cyber law reform process in motion, while allowing for a shifting of technical assistance to other beneficiaries in the pipeline, in view of the perceived need for the Project to expand its geographical coverage.

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INTRODUCTION

Overview of project

The *E-Commerce and Law Reform Project* (hereinafter referred to as "the Project") is part of UNCTAD's technical assistance to governments in mastering information and communications technologies (ICT) for sustainable development purposes.

These technologies provide new avenues for businesses in developing countries to prosper, provided that there is cyber legislation in place to ensure both trust among commercial partners and compliance with international provisions.

As the digital divide recedes in developing countries – including the least developed countries (LDCs) – rapid transformation is taking place in the ICT landscape, where the pace of cyber law reforms is, often, lagging far behind.

The Project is, therefore, specifically designed to help beneficiaries in reviewing the cyber legislation in place, so as to fill normative and regulatory gaps, with a view to establishing an enabling environment that can spread the developmental potential of the information economy.

Directly addressing the lack of expertise to draft and administer cyber legislation, the Project:
- Provides *legal advice* to deal with the complexities of ICT. The fundamentals of cyber legislation are included in a five-day training course designed to prepare and orient policymakers and lawmakers concerned with ICT legal reform. Delivered online or in face-to-face sessions, the course covers issues ranging from e-signatures and e-contracting, to security, privacy, consumer and IPR protection, and taxation, for its target audience in English-, French- and Spanish-speaking countries.
- Prepares *legal frameworks,* with a view to achieving international *harmonization*. This starts with an inventory and a critical review of the jurisprudence in place (or to be put in place) for a compatibility assessment and for the actual drafting of legal texts.
- Conducts *awareness-raising* campaigns designed to facilitate the shaping of an enabling environment for the sound application of ICTs. Country-wide/region-wide consensus-building is instrumental in making progress in the cyber law reform process. Therefore, the Project maintains public–private dialogue, either in the form of stakeholders' roundtables, or through the dissemination of specialized studies providing documentary evidence on ICT law initiatives and the results achieved so far throughout the world.

Since 2006, the contribution from the Government of Finland has made it possible for **Cambodia**, the **Lao People's Democratic Republic** and the **East African Community Member States** to fully benefit from the services delivered by the Project.

For Cambodia and the Lao People's Democratic Republic, this represents a natural continuation of UNCTAD's support[1] initiated in 2003 with financial assistance from the Government of France under the *Train for Trade* programme.

This geographical coverage complements – and builds upon – the Project's extensive action already being carried out in Latin America with financial support from the Government of Spain.

Ad hoc initiatives have been made possible too, such as the translation of two studies on *Prospects for Harmonizing Cyber Laws in Latin and Central America,* at the request of the English-speaking audience.

The growing significance of inter-institutional collaboration with the United Nations Commission on International Trade Law (UNCITRAL), the United Nations Economic Commission for Africa (UNECA), and, since 2009, the Organization for Economic Cooperation and Development (OECD), to name a selected few in the ICT scenario, is evidence of the multifaceted reality of ICT for development, and of how the Project has been constantly exposed to the creation of synergies in order to properly address all of the issues at stake.

Objective of the evaluation

This external evaluation, undertaken at the request of the Government of Finland,[2] is intended to substantiate the progress made by the Project since it initially started when it addressed, in 2006, the legal discipline pertaining to *e-commerce,* and then evolved, in 2009, into a broader coverage of the ICT features and the related cyber law reform.

Documentary evidence emerging from this evaluation exercise is expected to facilitate an informed decision on extended financial support to the Project, and, more broadly, on future implementation patterns both for the Government of Finland, as the donor, and for UNCTAD, as the Project's implementing agency.

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[1] The *Train for Trade* project implemented in Cambodia and the Lao People's Democratic Republic was the subject of an evaluation in 2007, the results of which shaped the two countries' continued participation in the current Project.

[2] *"Upon request by the Government of Finland, an evaluation of the activities under the e-Commerce and Law Reform Project is to be undertaken in order to inform their assessment of further contributions to this project planned for 2011. The objective of the evaluation is to satisfy this requirement, as well as to document results and lessons learned in the implementation of the project and to formulate recommendations in order to strengthen the work of UNCTAD in this area."* (See Terms of Reference, purpose of the evaluation, p.1).

Intended audience

The direct recipients of this evaluation report are UNCTAD, as the implementing agency, and the Government of Finland, as the Project's donor.

At UNCTAD's discretion, extracts from this evaluation report may be shared, as appropriate, with other actual and potential donors, as well as with the Project's consultants and with national/regional managers responsible for the implementation of activities.

By reviewing the Project's actions in the light of the evaluation criteria, the Project's key stakeholders have been provided with an opportunity to critically assess the progress made so far, thereby identifying eventual imbalances and regaining momentum for their respective cyber law drafts in the context of wider ICT master plans.

Methodology

The external evaluation has been carried out under the coordination and supervision of UNCTAD's *Evaluation and Planning Unit*.

The set of *evaluation criteria* are spelled out in the Terms of Reference prepared for the assignment and are reflected in the *Evaluation Matrix* (in annex).

For review and reporting purposes, the evaluation methodology drew upon the *UNEG Quality Checklist for Evaluation Reports.*[3] The structure of this report closely follows the methodology recommended therein.

Field investigation complemented (and enlivened) the *desk review* of the Project material, as specified below. In addition, the evaluator was presented with other relevant material produced by the Project as a result of implementation in the Latin American region.

In the awareness that measuring e-commerce is still a challenge for the development community, the evaluation draws upon *qualitative* rather than *quantitative* elements.
It would, in fact, be arbitrary to establish a direct correlation between e-trade flows and the cyber legislation in place, as much as it would be artificial to attribute a share of their growth *solely* to an enabling cyber environment.

The guiding principles for the external evaluator throughout the evaluation exercise are briefly presented below.

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[3] Guidance document UNEG/G(2010(/2 approved at the UNEG AGM 2010.

The donor's main interests and concerns, as gathered during the informative discussions held with the Finnish representatives both in the capital and in Geneva, were also taken into consideration.

These included the need for a coherent *vision* for the Project, as well as the establishment of an *institutional memory* that would allow for easy tracking of the pre- and post-Project situation in future monitoring.

A specific effort was made to review the Project in the light of the *Aid for Trade* (AfT) strategy adopted by the Government of Finland,[4] which provided the reference framework for measuring the consistency, coherence and complementarities of Trade-Related Technical Assistance. In Finland's Aid for Trade *Action Plan 2008–2011*, *Information Society* is listed in the thematic priorities, stating that "the possibilities of utilizing Finnish ICT know-how to contribute to AfT cooperation at the country and regional level will be analysed." Acknowledged by international sources, Finnish capacity to master ICT provides a role model for the AfT category of *productive capacity,* where institutional reform processes would build upon joint public–private partnerships at local and international levels.

The Project's *value addition* has been the core indicator in revisiting national and regional implementation experiences, with a view to orienting forthcoming action by providing evidence that may facilitate the planning ahead (the mission briefs provided in annex are intended to serve that purpose).

Detecting *ownership* has also been focused on during the investigation, as this represents the fundamental attribute for securing sustainability. A longer-term developmental impact, in fact, is only produced when transfer of know-how results in an upgrading of local human resources – in spite of shifting policy priorities and/or the (often high) rate of turnover of government staff.

The time span of the evaluation was five months – from December 2010 to April 2011.

Being an *observer* of the Project during an extended period of time allowed the evaluator to have a close reading of its pace of evolution and of the timeliness of the technical solutions deployed on the beneficiaries' request.

The evaluation activities consisted of:

- A desk review of the Project material for the 2006-2010 period (files, e-correspondence, feedback from workshop participants etc.);
- An e-survey to verify current trends and work on *ICT for Development*, including stock-taking and a comparative review of the main actions carried out by the ICT institutions concerned;

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[4] Finland's *Aid for Trade Action Plan 2008-2011,* Ministry of Foreign Affairs of Finland, 2008. In particular, Annex 2: *Aid for Trade checklist.*

- Collection and analysis of evidence, both qualitative and quantitative (annual budgeting sheets and progress reports, written requests for assistance from potential beneficiaries, exchanges of e-correspondence and written communications, draft legal texts prepared by the Project's consultants, and advisory briefs);
- Consultations with representatives of the Government of Finland, both in Geneva and in the capital, to achieve a common understanding of the external evaluation in terms of its scope and outcome, to share the *Evaluation Matrix,* and to update as progress was being made on the overall review exercise;
- Interviews with the UNCTAD staff responsible for the Project and for the Train for Trade platform, with a focus on its e-commerce training modules, as well as with the Project's consultants, UNICTRAL's legal advisers, and regional ICT advisers at UNECA and the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP);
- Field investigation, including focus-group discussions and individual interviews at the country and regional level. The mission to Cambodia and the Lao People's Democratic Republic took place in February 2011, and included consultations at UNESCAP headquarters. The mission to the East African Community (EAC) Secretariat in Arusha, United Republic of Tanzania, took place in March, followed by the national consultation in Nairobi and the participation at the Project event in Mombasa, Kenya;
- Participation as an *observer* in a Project event combining regional and national activities. The event was the *Meeting of the EAC Task Force on Cyber Law,* which took place on 28–30 March 2011 in Mombasa, Kenya, followed by the parliamentarians' briefing session held on 31 March–1 April 2011 which was specifically designed for the *Departmental Committee on Energy, Information and Communication*.

Participating in the meeting of the *EAC Task Force on Cyber Laws* provided a unique opportunity to verify preliminary findings and recommendations in a formal, yet open, gathering of key resource persons. The parliamentarians' briefing event, which was a first in the Project's agenda, was intended to initiate reflection on how best to prioritize the interest groups (regulators, parliamentarians, private sector and civil society representatives) deserving training/briefing, in light of the medium to long-term institutional capacity-building component of the Project.

The documentation prepared in order to support the carrying out of the evaluation exercise included:
- The *Evaluation Inception Report,* shared with UNCTAD's managers and administrators, to ensure a common understanding of the scope and purpose of the evaluation, as well as a meaningful scheduling of the phased evaluation activities.
- The *Evaluation Matrix,* reflecting the proposed evaluation criteria, and expressed in terms of the Project's key prerequisites and assumptions. The *Matrix* was provided

to UNCTAD's project managers and to the Finnish representatives, and also to the national/regional counterparts, for comments and adaptation, if any.

- In order to standardize the questions asked of the Project's stakeholders, an *Interview Guide* was produced, for sharing prior to the online discussion and field missions. Operational questions were formulated too, in order to guide the focus group discussion and to optimize the outcome of the qualitative investigation.

These evaluation tools were shared well in advance with all target respondents, and prior to the actual review being conducted, to allow for customization and adaptation of the interview format[5] to suit the target audience.

Data sources

All of the Project's relevant material was made available to the evaluator at the outset of the evaluation, including: project documents and annual progress reports; mission reports; dedicated access to the *Train for Trade* distance learning platform; specialized publications and technical briefs produced; lists of counterparts and resource persons; lists of beneficiaries and workshop/meeting participants; existing feedback (assessments, letters, surveys etc.); and relevant correspondence (e.g. e-mails, letters).

Data quality

A compilation of the draft cyber law texts was reviewed by the evaluator. These texts reflect the evolution of the draft law at subsequent steps of the Project's implementation.

Openness and *responsiveness* by the resource persons (listed in annex) allowed for *validation* of the evaluation's assumptions and preliminary conclusions; this also attests to the *reliability* of the Project's information.

Analysis of the pre-project situation

The benchmark situation against which the Project's progress has been verified was a lack of awareness of the legal issues linked to the use of ICT, and the direct implications of cyber law for building the environment of *trust* that allow business and trade to operate and grow in the ICT sector.

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[5] The format of the *Interview Guide* has been customized in collaboration with the national project managers. It proved particularly useful in conducting the discussion in the Lao People's Democratic Republic where "*you need to ask a precise question to get answers from persons not keen to express views spontaneously*" (S. Boupa, NPM Lao People's Democratic Republic).

This is coupled with existing gaps in the legal and regulatory frameworks applying to ICT, and with the need to amend/extend existing laws in order to fine-tune on account of the growing sophistication of ICT operations and administration.

As countries embark on the cyber law reform process, issues of *compliance* and *harmonization* with international ICT normative standards also emerge, in addition to the *conformity* and *consistency* challenges that occur when the cyber law *transposition* effort is being made by national/regional ICT regulatory authorities.

In anticipation of the facts and findings (discussed below in Parts I and II), the following is a summary of points acknowledged by beneficiaries as the pre-Project situation:

- E-commerce and ICT at large, operating in a *legal vacuum*
- Central administrations functioning in disparate conditions with respect to e-governance and e-transactions occurring in a borderless virtual space
- An urge to attain global interoperability and adopt model normative standards (e.g. the *UNCITRAL Convention on E-Contracting)*
- A tight harmonization schedule in compliance with international commitments (e.g. the *ASEAN ICT Master Plan 2015,* with its target of secure e-transactions in 2011, and the *EAC/E-Government and E-Commerce* programmes)
- Scarce or non-existent expertise, both in public authorities and in private law firms, to master the legal issues arising from the use of ICTs
- Lack of dedicated R&D focusing on ICT for development, and a lack of educational centres training people in ICT competencies and skills who may be able to collaborate on the Project.

In this scenario, "*the major constraints are the awareness, understanding, the necessity and timing and the Government's role model on disciplined ICT applications,(…)* (National Project Manager, Lao People's Democratic Republic).

PART I   THE SETTING

The *E-Commerce and Law Reform* project aims to "*build a sustainable capacity on legal aspects of e-commerce and provide advisory services to assist beneficiary countries to understand the legal implications of the development of e-commerce and its impact on their economies and enterprises and adapt their legal and regulatory frameworks.*"

From the outset, the Project intervention has had a solid relevance, given the significance of e-commerce for the developing countries, including the LDCs, and given their growing awareness of the need to be perceived as reliable e-trade partners in order to grasp emerging opportunities in the ICT sector.

As ICT infrastructure has spread across countries, with borderless applications and growing sophistication in its operational modalities, embarking on the cyber law reform process has started to feature prominently in governments' developmental priorities.

There is, therefore, ample justification for the Project to continue delivering technical assistance in establishing harmonized cyber legislation, as a way to properly administer and secure goods and services traded online.

The increasing volume and value of e-businesses, both within and beyond national boundaries, is necessitating a cyber law reform effort to fill the normative gap generated by ICTs and/or to amend existing legislation in order to comply with the internationally set standards for ICT administration.

UNCTAD has been a pioneer in accompanying the review and adjustment processes of its constituency. In particular, the Project is a *unique* contribution by UNCTAD to the wider process initiated by the 2003 *Geneva Plan of Action* adopted at the first phase of the *World Summit on the Information Society* (WSIS) and its continuation under the WSIS *Tunis Agenda* of 2005. Calling for institutional reform as well as reform of legal and regulatory frameworks in order for the information economy to prosper, the Tunis commitment engages governments with *internet governance* to be based on *security* and *stability* to build the *trust framework*.

With the twofold dimension of its institutional capacity-building component – consisting of specialized legal advice and training – the Project has been conceived to operationalize UNCTAD's mandate on ICT, which dates back to the Organization's tenth quadrennial conference held in Bangkok in 2000, and which has been consistently renewed, in the *São Paulo Consensus* of 2004 and the *Accra Accord* of 2008.

As the Accra Accord spells out, UNCTAD is called upon by its intergovernmental constituency to "*continue to provide technical assistance to countries in the area of ICT, notably on (…) legal and regulatory frameworks…*" (para. 160 of the Accord).

The education and awareness-raising components of the Project are designed to respond to the WSIS's call to international organizations "*to ensure that all stakeholders, particularly from developing countries, have the opportunity to participate in policy decision-making relating to digital governance.*"[6]

To this end, the Project has consistently built upon the wealth of knowledge and experiences gained by *Train for Trade,* UNCTAD's acknowledged platform which operates under the Division on Technology and Logistics. In fact, in 2003, the Project had already contributed to the e-commerce component of Train for Trade, in the form of a thirty-hour modular training course that provides the basis for understanding the legal implications of business and trade conducted in the cyber environment. Subsequently updated to reflect the changing nature of the ICT sector, this course[7] is an ideal means of building capacity where there is a lack of knowledge, or only limited knowledge, of the subject matter.

Through the Project, beneficiaries have gained access to what has been defined as "*a privileged vector of UNCTAD's technical assistance"* as well as extended exposure to its *"optimized use of intellectual production".*[8] This has provided a sound basis to consolidate legal expertise in the area of ICT and to further sharpen beneficiaries' focus as beneficiary parties become acquainted with the multiple features of ICT applications and commit to comply with their *transparency* and *predictability* requirements.

In view of the harmonization of cyber law and the borderless impact of its jurisdiction, close collaboration with UNCITRAL has provided a sound starting grid for orienting beneficiaries in their legal reform and harmonization efforts.

As the Project observed, "*many of legal reforms are based, in part, on international model laws,*[9] *such as the UNCITRAL Model Law on Electronic Commerce (1996), the UNCITRAL Model Law on Electronic Signatures (2001), and the United Nations Convention on the Use of Electronic Communications in International Contracts (2005). Being flexible and technology-neutral, the UNCITRAL Model Laws and the United Nations Convention appear to provide a suitable basis for adaptation by developing countries where legal drafting skills may represent a serious constraint to progress in having the e-legislation in place.*"

The analytical work being carried out by the Project feeds into UNCTAD's specialized publications, namely the annual *Information Economy Report,* which sheds light on legal topics pertaining to the e-domain and to ICT for development at large. To date, the following topics

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[6] *WSIS Tunis Agenda for the Information Society*, para. 51 and 52.
[7] The course is available in English and French, with translation into local languages – such as Khmer – whenever appropriate/feasible.
[8] "*Independent Evaluation of the Train-for-Trade Project for Cambodia and Laos",* Report, July 2007.
[9] Among the developing countries having recently adopted implementing provisions of the Model Law are Viet Nam (2005), Zambia (2009) and Rwanda (2010). See:
http://www.uncitral.org/uncitral/en/uncitral_texts/electronic_commerce/1996Model_status.html

have been dealt with: *overview of selected legal and regulatory developments in e-commerce, cyber crime, privacy, domain name systems, online dispute resolution, laws and contracts in an e-commerce environment, and the harmonization of cyber legislation in ASEAN*.

Target beneficiaries

The *direct* beneficiaries of the Project include:
- National and regional authorities/regulatory bodies in charge of law reform
- Policymakers from various ministries (commerce, finance, ICT, telecommunications etc.)

The *indirect* beneficiaries of the Project may include:
- Jurists, lawyers, regulators, ICT practitioners and researchers
- The private sector as a provider and user of ICT for development
- Civil society representatives (consumer associations and professional associations, R&D institutes)

to the extent to which the above are being associated with the cyber law review and reform processes, and more specifically, with the public–private consultative decision-making being facilitated by the Project to gain extended consensus to the processes mentioned.

Geographical coverage

In Asia, the Project has been operational in Cambodia and the Lao People's Democratic Republic in the framework of the *ASEAN ICT Harmonization Programme of Work.* Participation, since 2003, by the two countries in the French-funded *Train for Trade* project provided a natural continuation to the technical assistance being carried out there.

In Africa, the current Project beneficiaries are the East African Community and EAC partner States led by the *EAC Secretariat* within the scope and mandate of its *2006 e-governance* and *e-commerce* strategies.[10]

Duration

The Project activities under review were launched in 2006 and continued until 2010 upon yearly renewal of the donor's contribution. At time of writing this report, activities were being stretched into 2011 as an unspent balance was available (see below).

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[10] For more information on the importance and relevance of ICT in the EAC, and related documents, see http://www.eac.int/infrastructure/index.php?option=com_content&view=article&id=128&Itemid=141

Pipeline

The countries in the pipeline for the Project's technical assistance include: Albania, Botswana, Ethiopia, the member States of the Latin American Economic System (SELA), and Madagascar. Other requests were received by UNCITRAL and channelled to UNCTAD, from Burkina Faso and Niger.

This list is likely to expand, as harmonization deadlines are being set, and countries are keen to brand their own image and to build their own credibility in the multilateral trading system.

Budget

Over the 2006-2010 period, funding from the Government of Finland totalled approximately $560,000, with an average yearly contribution amounting to $140,000.

The reported unspent balance of $90,000 (as at the end of April 2011) results in a delivery rate for the Project of 70 per cent.[11] The figures for 2011 are, obviously, not reported at this stage.

During the four years of implementation, the allocation of funds shows a balanced disbursement, equally distributed between countries and activities, as per the table below.

Smooth operation has been secured through careful planning of activities in collaboration with the intended beneficiaries – allowing for optimal use of resources.

The Project has been operated, so far, by only one manager, with administrative support in the ICT Analysis Section of UNCTAD.[12] Among the Project Manager's multiple functions and tasks are (a) the coordination effort with the other specialized agencies and regional organizations (UNECA, UNESCAP) concerned with ICT for development, and (b) the creation of synergies with the work being carried out in the Latin American region under the Spanish-funded component of the Project.

Overview of activities

The existence of an *ICT Master Plan* (or similar policy framework) has been the prerequisite for accessing the Project's support. In the selection process for potential beneficiaries, close consultations have taken place with the Geneva-based representatives of countries, as well as with capitals, with a view to determining national *readiness* for the type of technical assistance envisaged, and also to identify suitable implementation partners .

At the Project' s outset, and for the first two years of implementation covering the period 2006-2007, two major areas of work were at the core of the Project's intervention:

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[11] This does not include the 2011 expenditure, taking into account the external evaluation time frame, i.e. 2006/2010.

[12] The project manager is also fully engaged with the Latin American component of the Project as well as any other upcoming national/regional action.

- Needs assessments in the LDCs to determine the *institutional capacity-building* priorities in terms of review and reform of their legislation

- *Drafting of e-commerce legislation*, based on a two-step approach where a legal inventory of existing legislation is conducted prior to providing *model law* frameworks.

In 2006, the EAC Secretariat and Cambodia put forward their request for technical assistance from UNCTAD on cyber legislation, and the new funding from the Government of Finland made it possible for the Project to launch activities there.

The Lao People's Democratic Republic – where the *Science, Technology and Environment Agency (STEA)* had already started working on draft e-commerce norms – also joined the Project in 2006.

For Cambodia and the Lao People's Democratic Republic, UNCTAD's *Train for Trade* methodology and learning platform had already prepared the ground for the Project's intervention, as both of these Asian LDCs had been benefiting, since 2003, from technical assistance delivered with the financial support of the Government of France under the *Train for Trade Project.*[13]

Training and awareness-raising proved an effective means to achieve a common understanding of the legal dimension of e-commerce, and, more broadly, the information economy.

This occurred at a point in time when the *WSIS Geneva Plan of Action* had been calling upon governments to act as model users and early adopters of e-commerce regulation, in recognition of the fact that a transparent and harmonized regulatory framework is a precondition in order for the economic benefits of ICT to materialize. The *Tunis Agenda for the Information Society* had also set the stage for action in the area of ICT-related institutional reform, so that the creation of an enabling ICT environment became a development priority and the Project's assistance was being sought by an increasing number of countries – i.e. Ethiopia, Lesotho, and Africa's French-speaking LDCs.

In the inception phase, the Project benefited from cross-fertilization with the activities under implementation in the Latin American region. This was conducive – among other things – to the adaptation of the training course on the "Legal aspects of e-commerce" prepared in 2003 and updated to reflect lessons learnt in the previous delivery of the technical material. Validation of the course by UNCITRAL came next, based on collaboration whereby UNCITRAL provided the *model law* format and conventions, together with coverage of other pertinent examples of cyber regulation (namely, online dispute settlements).

Synergies with UNCTAD's ongoing research work were made possible too, in the context of the *Information Economy Report* publications and the specialized research topics addressed therein. In particular, the ASEAN experience was surveyed to present a regional approach to cyber law harmonization and to share lessons of interest to other regional groupings, i.e ALADI,[14] EAC and UEMOA.

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[13] *Independent Evaluation Train for Trade Project for Cambodia and the Lao People's Democratic Republic, July 2007.*
[14] UNCTAD was already assisting ALADI member countries, with the financial support of the Government of Spain.

In the following biennium of 2008-2010, activities focused on follow-up action at the national and regional level, namely to accompany the work of the *EAC Cyber Law Task Force* which was formed in December 2007, and to support the Cambodian and Lao draft texts, which had not been adopted by the end of 2008 as envisaged under the *ASEAN Framework*, despite being repeatedly amended after translation into Khmer and Lao.

Substantive progress was recorded by the EAC's *Harmonized Framework for Cyber Law* in its Phase I.

This is substantiated in the readiness to move towards Phase II of the Framework, as endorsed by the work of the Task Force and the concluding recommendations of the April 2011 meeting.

Current status

Outstanding requests for further technical assistance being solicited by the current Project's beneficiaries include:

- In Cambodia, the perceived need to adjust the basic e-commerce law draft to the current sophistication of cyber legislation
- In the Lao People's Democratic Republic, the need to ensure consistency with the national legal and regulatory framework, and to ensure overall coherence in the scattered scenario of new ICT provisions which are being introduced on a rather ad hoc basis
- In the EAC Member States, national implementation of the recommendations contained in Phase II of the Framework implies an articulated policy dialogue on cyber law, given the cross-cutting relevance of the legal issues at stake. In this respect, the EAC Members have put forward a detailed list of training and awareness-raising actions for sensitive target groups (including parliamentarians, jurists, regulatory authorities, and private-sector stakeholders).

PART II   EVIDENCE AND FINDINGS

EVIDENCE

Over the last decade, UNCTAD's mandate in the field of ICT for development has been confirmed and restated at its quadrennial conferences and has been acknowledged by the Trade and Development Board.[15]

By calling upon UNCTAD to "*continue providing technical assistance to countries in the area of ICT, notably on (…) legal and regulatory frameworks…*", paragraph 160 of the *Accra Accord* sets the institutional foundation for the Project's intervention as a necessary component of the broader institutional capacity-building that is at the core of UNCTAD's support action in trade and development.

The pervasive influence of ICT, with its global outreach and economic potential, is weakening or breaking traditional modes of regulatory jurisdictions. There is ample justification for reviewing and adapting the legal grounds for businesses to operate and prosper in a healthy information economy.

Even though the digital divide between developed and developing countries remains substantial, the mobile commerce revolution has introduced a new dimension to economic empowerment, notably for LDCs. Nowadays, e-applications such as e-banking and e-taxation are spreading across modernizing administrations – this trend is reflected in the list of pipeline countries seeking the Project's assistance.

As such, the Project is fit for inclusion into UNCTAD's *vision* guiding the Agency's work on ICT for development.

Since its inception, the Project has played a pioneering role in conveying messages to its institutional counterparts on the complexities of e-commerce and ICT legislation, and the need to engage in legal reform in order to achieve an enabling cyber environment that would comply with international ICT benchmarks and standards.

Cambodia witnesses the pioneering role of UNCTAD in e-commerce and cyber law

▪ Cambodia has been participating in *Train for Trade* since 2003*,* with financial support by the Government of France. In 2006, the *E-commerce and Law Reform* project became the natural continuation of UNCTAD's technical assistance, as the Ministry of Commerce had acquired substantive understanding of the legal implications of e-commerce following the TrainforTrade training deliveries.

▪ As acknowledged by the Ministry of Commerce (MoC) during the evaluator's field mission, the Project has played a *pioneering role* in raising awareness of the legal dimension of e-commerce and its regulatory implications for the conduct of e-businesses, and of ICT at large.

▪ The private sector, which is closely involved with the legal reform process under way, is now suggesting building on the Project's tried and tested tools, starting with a *Khmer version* of the course on the legal aspects of e-commerce, in order to create a lobbying capacity for the draft cyber law to be enacted by the

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[15] See TD/B/57/7 and TD/B/57/7/Add.1 in particular, on revising and adapting legal and regulatory frameworks to the frantic pace of evolving ICT.

Government.

- According to the MoC, *compatibility* and *consistency* between the proposed e-commerce draft text and the system of coded norms currently in force (namely the *Civil Code* and the regulation on administering commercial enterprises) is challenging the MoC in the lead-up to e-commerce law reform.

- As time continues to pass since the last sessions of the drafting committee took place to amend the draft provisions in line with the Stakeholders' Consultations Roundtables (2007/2008), the risk, as perceived by the MoC, is of a *model law* that is fast turning into an "obsolete" instrument, given the pace of development that is occurring in the digital applications of the information economy.

- In the awareness that the modern generation of economic transactions occurs in the borderless cyberspace, the MoC is further pressured by the missed deadline for ASEAN e-commerce harmonization (2008, as per the e-ASEAN Framework Agreement).

- Interestingly, the MoC has been successful in mobilizing funds under the TSDP initiative led by the World Bank Group. This will allow, among other inputs, the fielding of international and national expertise (as of March/April 2011).

In all countries surveyed, UNCTAD's *pivotal* role has set the stage for ICT legal reform in an area where the actions of the national government are likely to have immediate repercussions on the judiciary as well as on commercial ICT operators. In fact, the beneficiary countries have started to feel the positive effects of predictability and transparency of their respective ICT environments.

The Project's positive *spin-offs* are reflected in the shared awareness (and need) for e-commerce to be duly reflected in national trade statistics, so that its economic significance may act as an *incentive* for policymakers (parliamentarians and regulators/jurists) to adopt the expected legal reforms and engage in the necessary regulatory actions.

The Project has engendered a *multiplier effect* – namely, a growing audience becoming acquainted with the legal aspects of e-commerce due to the consultative and consensus-building initiatives that have been undertaken so far. As the representative of the Finance Ministry acknowledged during the field investigation in the Lao People's Democratic Republic, "*the relevance of cyber legislation in areas of national administration such as taxation were now clearer and the draft cyber text, thus, more than welcomed.*"

In spite of its limited resources (i.e. both human and financial resources), the Project is a key input in the value chain of ICT for development. In most instances, beneficiary countries have found themselves on a *two-speed* lane, where slow-motion institutional reforms are being challenged by the fast pace of borderless ICT innovation. With the Project's support, legal and regulatory gaps are being addressed in the beneficiary countries and corrective measures envisaged. This also allows for verifying the appropriateness of the model law texts, and of the extent to which these require updating or reviewing to best suit the evolving reality of ICTs.

As mobile communication, e-governance and e-finance reach out to the remotest areas with their borderless operations and cyber crimes, the Project beneficiaries are on the frontline, experiencing (often) unnecessary delays in passing e-legislation while being pressed by international ICT commitments and harmonization schedules. Again, the Project provides them with a channel to rationalize and coordinate ICT interventions and to raise the awareness of the authorities and the general public about the issues at stake.

In a situation of simultaneous adoption of ICT regulations/amendments, issues of compatibility and consistency between the proposed draft legislation and the existing norms are emerging. Countries report that this is disorienting and confusing, as the changes generally occur on an ad hoc basis (see below for the experience of the Lao People's Democratic Republic).

LAO PEOPLE'S DEMOCRATIC REPUBLIC INSTITUTIONAL CYBER REVIEW & REFORM ENGAGEMENT

- Since the Project was initiated under the *National Authority for Science & Technology* (NAST) in 2004, the Lao People's Democratic Republic has witnessed significant changes in its e-infrastructure as a result of the Government's transition strategy from a *landlocked* to a *land-linked* country.

- In its ambition to be a hub for peninsular cross-border transactions, the Government has engaged in a major e-modernization effort, introducing online taxation and customs administration[16] systems. E-finance is progressing too, triggered by the growing significance of e-banking for transport, tourism and mobile communication services.

- The World Trade Organization (WTO) accession process has brought additional momentum to the trade law reform process, as compliance with the MTS normative standards is the prerequisite for joining the WTO partners.

- As a member of ASEAN, the Lao People's Democratic Republic has also embarked on the *ASEAN ICT Master Plan 2015*[17] which, among other things, expects the securing of e-transactions within ASEAN partners to become a reality as of 2011.

- The *Draft Decree on E-Commerce* (*DDEC*) is the tangible achievement on the NAST agenda for Government approval in the course of 2011 following the *TeleCom Act* – the principal legislation regulating the ICT sector.

- Issues of *inter-institutional consistency* and *coordination* are at stake, as well as *conformity* with national jurisprudence. Furthermore, the e-commerce legislation needs to be mainstreamed into the agenda of the *Lao National Internet Committee (LNIC)* under the Prime Minister's Office[18].

- As the Lao People's Democratic Republic becomes acquainted with e-features, key government

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[16] ASYCUDA, July 2010.
[17] Adopted at the 10th ASEAN TELMIN and 11th ASEAN TELSOM in Malaysia, 10-14 January 2011.
[18] http://www.culturalprofiles.net/laos/units/600.html

authorities (e.g. the ministries of finance, posts & telecommunications, industry & commerce, and agriculture, and the aerospace agency)[19] have embarked on e-governance, where security, safety and transparency standards need to be complied with.

- This poses new challenges, because cyber law and e-governance reform actions occur in a scattered way, most often on an ad hoc basis and in the absence of a unified vision and implementation strategy.

For the Project, this implies going beyond the provision of a *model law* to its beneficiary recipients, as these are confronted with increasingly *sophisticated* cyber legislation, and with *compliance* between new e-provisions and the existing codified norms.

As a matter of fact, national Project counterparts now perceive the model law as a "*baseline*"[20] text which is expected to undergo further refinements as the frantic pace of new technologies imposes new rules of the game, and that issues of *consistency* with the principal jurisprudence are at stake – eventually even being invoked to justify delays in the cyber law process.

Harmonizing against the backdrop of regional integration adds further pressure, as legal benchmarking among neighbours imposes normative standardization along with stringent timeframes for accomplishing ICT harmonization work.

Among the Project's strengths, the competencies and dedication of the UNCTAD managing team are worth mentioning, in particular those of the project manager, whose competencies and commitment to success are a *plus* for the Project.

The backstopping function is performed on the basis of a two-way dialogue, where exchanges occur in a timely and proactive form. This is reflected in accurate filing, and in a consistent flow of correspondence where specialized advice is being sought, whether in-house or from external sources (e.g. UNCITRAL, OECD) as is most appropriate to address beneficiaries' concerns and questions.

The human factor is important in the partner countries too, where the responsiveness and engagement of knowledgeable NPPs goes well beyond a routine execution of implementation tasks.

In a field where qualitative rather than quantitative indicators matter, the Project's human capital is a determinant of success in institutional capacity-building.

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[19] *Digital Mapping for Sustainable Land Management* has just started within the 2011–2014 quadrennial plan supported by Finland, as a part of the renewed Finnish engagement in ICT & Development for the Mekong region.
[20] As defined by the Cambodian Secretary of State during the Evaluation Round Table, Ministry of Commerce, Phnom Penh, 1st February 2011.

FINDINGS

The evaluation's key findings are discussed below in the light of the evaluation criteria spelled out in the evaluation terms of reference (in annex) and operationalized in the evaluation matrix.

Concerning **relevance,** the Project's design properly reflects "*the continuous need to revise and adapt the legal and regulatory frameworks to the evolving ICT landscape at national as well as regional levels.*"[21]

A balanced *mix* of institutional training and legal advice has been delivered[22] during the four-year period under review, including specialized contributions on ICT compliance and harmonization issues as these become relevant to the legal reform process being undertaken by the Project's partners.

In terms of selecting beneficiary countries, keeping the focus on the LDCs is still proving the most suitable approach, as these countries lack exposure to the new cyber regime and are striving to keep the pace of institutional reform in line with fast ICT innovation paths.

In the Lao People's Democratic Republic, the *National Authority for Science & Technology (NAST)* is challenged by the fast spread of digital applications and the pressing call to introduce normative standards in a reform process particularly sensitive to preserving the national identity in the face of any imposed or artificial models of a modernized economy.

The fragile equilibrium of socio-economic forces often seen in LDCs gives the Project's awareness-raising activities a paramount importance, as the young generation approaches and joins the digital workforce, as socio-economic cohesion may be disrupted unless embodied in a national ICT master plan.

The Project allows, however, for the necessary flexibility to include *any* developing country[23] involved in the cyber law reform and harmonization processes. This is currently the case with Kenya, among the EAC Task Force partners. In fact, pointing at *role models* among the EAC grouping has a triggering effect and is beneficial in producing emulation effects.

To handle cyber law reform from a development perspective, the Project draws upon the wealth of knowledge and expertise that UNCTAD has acquired in almost half a century of delivering Trade-Related Technical Assistance.[24] Dynamic interactions between applied research and hands-on practice allow for the Project to deliver customized responses to its beneficiaries'

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[21] See *Trade & Development Board, 57th Session, 23 September 2010, Item 8 - Evaluation and review of UNCTAD 's implementation of the Accra Accord.*

[22] See also UNCTAD's TD/B/57/7/Add1.

[23] In fact, the Government of Finland agreed in 2010 to extend the Project to all African countries, irrespective of their developing or least developed status.

[24] UNCTAD was established in 1964.

queries. It should be noted that UNCTAD has been dealing with e-commerce issues since 1999, and that the Project benefits from the synergies between the work being done in the ICT4D area at UNCTAD and in other organizations.

This occurs *in real time,* by the capacity to mobilize internal and external expertise for the delivery of consulting and advisory services.

Having observed the multifaceted reality of cyber legislation and how this calls for a multidisciplinary approach – where legal factors are closely intertwined with economic and social considerations – the Project complements ITU's actions on the development of ICT infrastructure standards as well as UNCITRAL's[25] reference regulatory functions. In fact, none of the agencies mentioned has the capacity or mandate to combine intergovernmental functions with field action of such type. ITU deals with ICT infrastructure regulatory frameworks, UNCITRAL has minor field interventions, and none of the two is mandated to deliver TRTA in cyber law reform directly linked to international trade as UNCTAD does. Interview findings thus suggest that this integrated approach is UNCTAD's comparative advantage.

An authoritative member of the *Partnership on Measuring ICT for Development,* UNCTAD is one of the three members of its Steering Committee, together with ITU and ECLAC, and is also actively involved in the newly established *Task Group on Measuring the WSIS Targets.*[26]
For the Project, this result in privileged access to state-of-the-art work and expertise on ICT coupled with constant monitoring of the Information Economy.

A further indicator of UNCTAD's competitive edge in delivering technical assistance on e-commerce and law reform can be found in the inter-institutionalized dialogue that has been established more recently[27] with OECD. This recognizes UNCTAD's role and functions "*in the representation of the interests of developing countries when international standards are being prepared.*"[28]

To determine the Project's **effectiveness,** *tangible results* have been sought, as evidence for an unquestionable impact as a result of the Project's intervention.

These include, first of all, the *draft legal texts* on e-commerce/ICT now existing in each country/region where the Project has deployed its action. More precisely:
- Cambodia's *E-commerce Law (draft, pending governmental enactment)*
- The Lao People's Democratic Republic's *Draft Decree on E-Commerce* (ready for incorporation into the national ICT law)

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[25] UNICTRAL, in particular, has been complementing the Project's work covering the area of online dispute settlements for e-commerce, and plans are under discussion for joint expansion of activities to other developing regions, namely the Pacific.
[26] Launched by the Partnership in May 2010 during the WSIS, the overall objective of the Task Group is to develop a framework for monitoring the WSIS goals and targets based on internationally defined indicators and standards.
[27] Since 2009.
[28] See: *Cooperation with relevant international institutions, Annual Progress Report for the Trust Fund on ICT Policies for Development*. March 2010.

- EAC's *Legal Framework, Phase I* (endorsed by the *Sectoral Ministerial Council on Transport, Communication & Meteorology*, May 2010) followed by the *EAC Framework for Cyber Law Phase II,* endorsed by the Task Force on Cyber Law at its April 2011 meeting.

Amending of national legislation and awareness-raising are part of the continued efforts that each of the EAC Member States is deploying for the advancement of legal reform. In this respect, the Project provides the suitable forum for comparative stocktaking of progress, consultation and harmonization.

This is made possible by the existence, in each of the Project's beneficiaries, of a *core team* dedicated to cyber law/ICT reform. These ad hoc teams are the:

- *EAC Task Force on Cyber Laws*
- Cambodian *Department of Legal Affairs* acting as the *Working Group on Cyber Law Reform* in the Ministry of Commerce
- *National Authority for Science & Technology* acting as the e-commerce secretariat in the Lao People's Democratic Republic.

Established and facilitated by the Project, such teams continuously carry out activities, and their commitment to maintaining momentum for the e-law/ICT reform process can be counted among the results of the Project.

All of the above outputs and results are consistent with the logical framework analysis that includes the draft legal texts as the primary source of verification for the achievement of the Project's goal.

	Measurable indicators	Means of verification	Assumptions
Goal This project aims to assist developing countries' efforts in the definition of appropriate laws and regulations to create an enabling environment for e-commerce.	Laws and regulations are adapted to electronic commerce.	Number of persons trained. Draft legislations are available.	A positive and stable political environment for change in requisite legislation and policies, political commitment and a stable institutional situation in beneficiary countries.

Source: *Annex II, Logical Framework Analysis, E-Commerce & Law Reform Summary Project Outline.*

The *timely delivery* of planned activities has been considered as a further indicator of effective utilization of available resources, as these are allocated and distributed among beneficiaries according to their *absorption* capacity.

A *logic* and *consistent flow* exists in the sequencing of the Project's delivery, from the initial stage of awareness-raising and training, to the middle step of consultative roundtables, leading to the validation workshops where the draft text is endorsed by all stakeholders concerned.

Documentary evidence is available of the substantive contents of the training workshops organized and the follow-up made, based on the participants' feedback as expressed in the forms filled out by participants at the end of each training event.

The field investigation confirmed that the countries covered by the Project have moved from a situation where the legal dimension of the information economy, including e-commerce legislation, was a new territory to explore, to a situation where ICTs are being streamlined into developmental policies accompanied by the necessary legal and regulatory frameworks – the latter being shaped in conformity with international standard and practices.

The Project's counterparts have attributed this shift to the awareness-raising campaigns, and to the *face-to-face* training delivered by the Project, as well as to its continued effort to closely monitor the reform process in order to detect possible imbalances and organize adequate responses to move the process on further.

The briefing of Kenyan parliamentarian is one such event – the first attempt of its kind to prompt enactment by the Government of the cyber law at a crucial stage of ICT mobilization around the *2030 Vision*.

A widespread sense of *ownership* has been observed among the Project's beneficiaries, whose continued engagement in raising the awareness of their national authorities and private actors is contributing daily to the law reform process and to the growing interest in ensuring its success.

What is well understood, following the Project's intervention, is that keeping ICT in a *legal vacuum* is an undesirable situation, as this affects national and regional potential for attracting productive investment, as well as the national reputation and credibility for cyber-business transactions to flow and to spread the intended benefits.

On the measurement of **efficiency,** there is a major challenge to the Project in that national/local expertise on the legal aspects of computing is basically non-existent, and therefore there is a need to have recourse to international consultants, whose intervention is neither cheap nor exempt from limitations. In this respect, there is a difference of opinion between the Project's headquarters and the Project's beneficiaries. While local law firms have claimed to have adequate capacity to handle the legal aspects of e-commerce, the Geneva-based managers have reported experiencing difficulties in identifying local experts to collaborate with. (This is an area that deserves further analysis, and is addressed in the recommendations below.)

The issue of staff turnover is a recurrent feature of LDCs in particular, where the acquisition of specialist knowledge confers mobility in the labour market, causing staff to quit government positions in search of better-paid employment. This was the case in the Lao People's Democratic Republic, where the National Project Manager moved out of NAST taking the expertise he had acquired with him. Nonetheless, his prompt replacement prevented any disruption to the e-law reform process, and in fact, the process gained renewed interest with the appointment of the new NAST coordinator.

UNCTAD's extensive field experience facilitates the interactive communication between the Project's beneficiaries and the specialists at headquarters. In particular, IT tools have been developed and are constantly updated to serve users in the partner countries. This holds particularly true for the *Train for Trade* platform and its *discussion forum* where ICT issues are addressed in real time by experts. Once a user has participated in the distance learning, the system allows for permanent access, so that continued training is possible for those interested in taking part in the online discussion.

The user-friendliness of Train for Trade makes it suitable for continued educational purposes, so as to broaden the supply of ICT vocational training in collaboration with local academic and R&D institutions.

As a way to ensure the maximum **sustainability** of the impact, the Project's beneficiaries have been actively involved in the initiation, design and implementation of the Project. This is demonstrated by the fact that the project beneficiaries have been seeking additional financial support, or they are committed to the cyber reform, or a combination of the two.

Adequate follow-up and feedback to the work of the Project is provided, e.g. assisting with online specialized counselling on legal issues and/or, as observed above, maintaining momentum through timely organization of events as a way to support national and regional partners on the challenging path leading to adoption of the draft legislation.

Direct measuring of the Project's **impact** is challenging, as it is hampered by the obvious political dimension of adopting the legal reform and making the draft text a piece of the national legislation. This remains an integral part of the Project's risks and assumptions, and stretches well beyond the Project's control. Impact measurement also varies according to the specificities of each country's or region's situation. What ultimately matters is the process that has been put into motion supported by a flow of specialized communication on ICT legal issues, and its likelihood of producing substantive advancements in ICT for development.

In other words, although the proposed draft laws have not yet been adopted by the respective governments – with the exception of Kenya and Uganda – the Project has been playing a *pivotal role* in setting the stage for ICT legal revision and reform.

Field investigation has confirmed that the national Project partners are committed to *conformity* with regional and international standards and benchmarks, while being keen to gain institutional support for the process by mobilizing additional resources to the cyber legislation process.

Sound *e-governance* is also gaining additional momentum, as ICT makes its way into online government administration and the e-based operations occurring in the virtual economic space.

In terms of the *Millennium Development Goals*, it is evident that inasmuch as the Project can contribute to and facilitate an enabling environment for ICT to spread its developmental potentials, the MDG on poverty eradication is being met.

More specifically, the Project has contributed to the formulation of a comprehensive methodological approach to fighting poverty at a time when innovative action is required for ICTs to make a difference even for the most remote communities of the developing world.

By focusing on the nexus of *ICTs, Enterprises and Poverty Alleviation,*[29] the *2010 Information Economy Report (IER)* exhaustively explores connectivity and affordability trends and their significance for a growing portion of the goods and services in the ICT sector to be supplied by the poor. The IER also points to the policy and decision-making challenges, thus providing a reference analytical grid for the work ahead on cyber applications and related regulations.

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[29] UNCTAD, *Information Economy Report 2010. "ICTs, Enterprises and Poverty Alleviation"*, published by the ICT Analysis Section, Division on Technology and Logistics, with financial support from the Government of Finland.

PART III   CONCLUSIONS AND RECOMMENDATIONS

As developing countries – including LDCs – walk the path leading to ICT-driven *graduation*[30] from LDC status*, the Project's analytical and implementation tools will demand constant fine-tuning to best serve the purpose of ICT for development.

Given the growing sophistication of ICT innovation, beneficiaries are perceiving the *model* cyber legislation as either not adequate to regulate and administer the multiplicity of ICT operations (which is the case of Cambodia and the Lao People's Democratic Republic), or that the cross-cutting nature of ICT domains (ranging from e-governance to e-finance, e-taxation, e-competition) may pose serious compliance concerns for those entrusted with the legal reform (this is a concern for Kenya in its advanced stage of ICT law reform).

In this respect, the Project proves to be on the right track, as ***it captures the multifaceted reality of the information economy and translates it into modern pieces of ICT jurisprudence for its constituency to own and adopt.*** This is well documented in the work of the EAC Task Force and its stepped approach to legal drafting and enactment (see below).[31]

DRAFT FRAMEWORK FOR CYBER LAWS
PHASE II

- The *Draft Framework for Cyber Laws Phase II* was prepared by the *East African Community's EAC Task Force on Cyber Laws*, comprising representatives from the Member States (Burundi, Kenya, Rwanda, Uganda and the United Republic of Tanzania) under the coordination of the EAC Secretariat and with the Project's support.

- *Framework Phase II* continues and complements *Framework Phase I,* as per the strategy adopted by the Task Force, recommending that the process be coordinated at regional level and benchmarked against international best practices. Following the legal inventory of national legal provisions, in November 2008 a draft legal framework was produced addressing the basic cyber law topics identified in Phase I.

- The topics of Framework Phase II are intellectual property, competition, taxation, and information security. In contrast to Phase I, the current cyber law issues are piecemeal and subtle, requiring amendments to existing bodies of law, rather than the distinct and independent set of normative measures proposed for e-transactions, e-signatures, data protection and computer crime.

- Regional institutions, such as the East African Business Council and the East African Legislative Assembly, as well as UNECA and UNCITRAL, have been closely associated with the legal drafting and harmonization processes, in the context of the participatory dialogue maintained by the Project since the beginning of the legal review and reform activities.

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[30] This applies to both Cambodia and the Lao People's Democratic Republic, with the latter having set its own graduation timeframe to 2020. For "*graduated*" countries such as Kenya, the only non-LDC in the current beneficiaries' group, ICT is already at work as the dynamic force behind the three-pillared *Vision 2030.*
[31] See: *Monitoring the implementation of EAC Legal Framework for Cyber Laws"*, draft 2011.

> - The growing *sophistication* of cyber legislation calls for increased coordination and collaboration among regulatory/statutory authorities at national and regional levels, as well as close public–private dialogue, in order for the innovative legislation to be successfully enacted and enforced.
>
> - The cross-border nature of ICT, coupled with cross-cutting legislative and regulatory issues, is putting a strain and extra workload on those entrusted with carrying out the legal revision and reform.
>
> - For the Project, this implies additional requests for tailored technical assistance, namely in the form of specialized training and briefing of core groups (the judiciary, parliamentarians, the private sector and civil society), in addition to a continuous counselling function on how best to address the complexities of the legal ICT domains.

However, there is a risk of the legal counselling process turning into an academic exercise whose ambitions may be frustrated by delays and imbalances in consensus-building and policy decision-making. In spite of the recruitment of national consultants – as has been the case of members of the EAC Task Force since its inception (Uganda and United Republic of Tanzania) in Phase II – their capacity to move the cyber law reform process forward remains subject to the political will to adopt cyber law drafts – and to the fluctuating priorities of the parliamentary assemblies. In other words, no matter how much they are perfected during repeated rounds of revision, the cyber drafts may be delayed due to reasons other than the adequacy, comprehensiveness, or rigour of the proposed texts.[32]

Sketching out and agreeing upon a *road map* for the draft legal texts not to remain a *stand-alone* piece of legislation may prove useful in this respect. In other words, the Project may encourage an *all-inclusive action* plan to orient and support its counterparts in handling the new normative provisions and blending them into national codes and regional ICT benchmarks and deadlines. This may, alternatively, take the form of a toolkit, with the legal inventory being the start-up.

Additional stocktaking – drawing on the initial legal inventory already carried out by the Project – would be instrumental in achieving *coherence* and *compatibility* within the legal environment governing trade, ICT and economics at large, in any given country-specific situation.[33]

The Project shows a sound orientation in proposing *role models* and case scenarios to its beneficiaries. Peer advice, based on best practices/lessons learnt, is being produced at

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[32] This is why EAC Member States are now calling for briefings for parliamentarians, following Kenya's example. One may argue that parliamentarians, nowadays exposed to the international debate on ICT for development, should be the ones engaging in the cyber reform with a trickledown effect to their constituency.

[33] Cambodia is showcasing this type of scenario. There, the *penalty clause* included in the Cambodian e-commerce draft law appears now to be in conflict with the civil legislation which has been enacted in the meantime as a part of the legal reform course. The private sector more broadly argues on the issue of consistency between the draft e-commerce text and the existing *Commercial Enterprises and Public Administration* regimes as well as on the regulatory modalities of enforcement under the Cambodian jurisdiction (*Government-Private Sector Forum*, IFC/World Bank Group's communication dated 10 November 2009).

national/regional events where the ICT stakeholders convened have an opportunity to discuss and compare experiences. The publications on harmonization of cyber legislation are also a useful tool for sharing best practices, and a study on the prospects for cyber legislation harmonization is under way for the EAC.

Even if addressing political imbalances and delays in the legal reform is beyond the scope and control of the Project, success stories on the introduction and enforcement of ICT legislation (whether occurring with the Project's support as in the case of Kenya and Rwanda, or outside its area of work as in the case of Viet Nam) are likely to generate an *emulation effect*, or peer pressure, while providing a concrete reference framework for decision-makers and lobbying groups. After all, the performance of neighbours is, in most instances, the best argument for internal revision and reform.[34]

Evidence should be collected, elaborated and disseminated on how the ICT legislation can contribute to the soundness of the economic environment for businesses to operate and prosper in a safe virtual space.

If the showcasing of country experiences is useful, it should be accompanied by the elaboration of a *methodological approach* to monitor the impact of adopting and implementing compliant ICT legislation – possibly starting by measuring the impact on selected target groups, e.g. private law firms, ICT providers, and vulnerable consumers' groups.

This would compensate for the current lack of statistical evidence to substantiate the effects – whether positive, neutral or negative – of cyber law on the trade and business environment and the economy at large.

Channelling the delivery of specialized legal advice through local ICT regulators, reformers and jurists – ideally in association with the legal advisers nowadays present in ICT suppliers – may prove a rewarding strategy, as these are the Project's main sources of feedback on the interests at stake as well as the vectors for change and reform.

By building *strategic partnerships* with the private sector and civil society, the Project can boost the cyber law reform process; these are the actors willing to move the reform process forward, so it is in the Project's interest to interact with them.

Legal reform is, first and foremost, an institutional matter that needs to be addressed in its proper jurisdictional setting for the draft law to be adopted, and yet due to continual advances

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[34] This was discussed during the field investigation, when Cambodian and Lao resource persons asked *how were their neighbouring countries doing.* The exponential growth of Viet Nam, in fact, is setting new benchmarks -not to mention the previous role model of Malaysia and Singapore, whose respective reputation has been preceding the one of their ICT firms in winning market penetration. *Business ethics* is part of a country's branding strategy and the legal and regulatory environment is the ground for anchoring it: this is an argument among those to be invoked in favour of ICT legislation for developmental purposes.

in ICTs, all ICT stakeholders need to be kept informed. In modernizing economies, ICT is nowadays connecting even the remotest communities to the multilateral trade arena.

As decentralization is prominent in national efforts to bridge the digital divide between urban and rural areas, collaboration with chambers of commerce and trade promotion organizations (TPOs) may increase the Project's *visibility* and *outreach*. This is part of the Project's awareness-raising/training-delivery actions already taking place, as well as the suggested need to link with local media/ICT providers. Resources permitting, cyber law reform events may take place in provincial sites, in addition to capitals, and attendance may be expanded to a wider audience in the context of a country-specific road map. Chambers of Commerce/TPOs may become depositories of the Project's training material and facilitate wider dissemination (this is, eventually, to be part of the exit strategy recommended for the Project once the baseline know-how has been established).

With a balanced dose of *pragmatism*, the Project may, on a case-by-case basis, identify appropriate *avenues* of collaboration. One-off initiatives may be identified in the context of broad country programming, such as the *Trade Development Support Programme* currently implemented to support Cambodia's *Trade Sector Wide Approach, SWAp.*[35] In particular, the *knowledge network* approach and its dedicated trade information website offer a prominent space for the Project to leverage.

As ICT is, ultimately, being dealt with, increased use of ICT media is recommended – including the local press, broadcasting and webcasting. With additional funds, the Project may "modernize" its delivery channels, through actions that need to be addressed in collaboration with each of the beneficiary partners. Ideally, this may become part of the *entry criteria* for the Project, to establish a clear line of demarcation and accountability between UNCTAD, the donor, and the beneficiary government.

In line with the Project's virtual training capacity and potentials, it is important to ensure that the distance-learning tools are tailored to the needs and expectations of a broad audience.

The training that the Project is delivering should be *recorded* and made available to the Project partners, in the form of *live modules,*[36] for further use and dissemination. This would allow the workshops' participants to revisit training contents, and also to introduce the cyber law topics to other interested parties.
Young professionals, both female and male, are increasingly being attracted by ICT and willing to join the ICT workforce. In this respect, *curriculum development* in collaboration with R&D institutions is crucial to *sustainability* and to local human capacity-building.

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[35] Managed under the aegis of the World Bank. The TDSP has three pillars: http://www.moc.gov.kh/tradeswap/

[36] Such as WTO's distance-learning modules developed as an *user-friendly package* where the WTO experts are introducing the various aspects of the WTO agreements. Visit the WTO Training Institute at www.wto.org

In order to compensate for the lack of a field presence by UNCTAD/the Project, which could diminish the Project's relevance and cause it to lose visibility in favour of TRTA providers that do have a field presence, inter-organizational collaboration may prove to be a viable route to pursue.

Inter-agency cooperation mechanisms should be strengthened – namely with those agencies that have a field presence – to streamline the ICT legislation into national/regional programming, and more specifically, to make the Project *consistently feature* in the ongoing and planned trade and development initiatives.

UNESCAP's newly adopted *holistic approach to ICT for Development* – whereby social and cultural factors are focused on too in order to measure the impact of cyber innovation – appears to match the Project's educational and reforming features. There may be merit in exploring how best UNESCAP would contribute to the delivery of ongoing activities, eventually serving as a *gateway* for the Project to expand its outreach to the Pacific region – provided that an appropriate framework is put in place tailored to the respective agencies' field of specialization.

As has been noted,:
> *"The above sounds like a grand plan to take over the world actually it is an example of how 1 + 1 = 5."*[37]

Greater emphasis on the Project's *institutional memory* will be instrumental in monitoring progress for all stakeholders concerned, in a field where pre- and post-Project situation analysis is rather scattered, or missing, or may only consist of stocktaking/fact-finding reporting.

RECOMMENDATIONS

> ➢ As the *facilitator* of the cyber law reform process, the Project needs to formulate its *exit strategy.* The shared opinion that technical assistance cannot be perpetuated holds particularly true in cyber law, an area where the growing sophistication of ICT applications entails continuous amending of legal texts – and, consequently, multiple demands in terms of legal advice and training.

> The Project should, therefore, reflect on when cyber law reform and harmonization have matured, so that the process can be handed over to national/regional implementation efforts with no major disruption occurring. A smooth transition strategy is required in order not to hinder further progress, while not preventing access by other potential Project beneficiaries – starting with those that have already been in the pipeline for technical assistance for an extended period of time.

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[37] From UNCITRAL officials on the joint work plan, communication dated 27.11.2010.

The Project should be able to deploy a kind of cost-benefit analysis device, so that when an activity such as the cyber law reform briefing of parliamentarians comes into planning, it becomes possible to determine whether this type of request can be accommodated and sustained on a continuous basis at no detriment to more basic cyber law reform activities for other countries in the pipeline.

Turnover of parliamentarians may become an issue at a later stage of Project implementation, as this turnover of government officials trained by the Project has, at times, been cited as a risk factor and as a determinant for sustainability and ownership. In conducting its analysis of external risks, the Projects indicates that:
"These may consist of possible political change in the government authorities and loss of key project focal points through change of vocation or office."[38]

Outputs for the three objectives of the Project	
1. At the end of the project, selected beneficiary countries will have the capacity to *understand* the legal implications of e-commerce and *identify* priority areas for law reform, to *mobilize* the different stakeholders, and to start the process of adapting their legislations.	✓
2. At the end of the project, a *legal inventory* will be carried out, and *proposals for amendments* will be put forward on the basis of the findings in the beneficiary countries.	✓
3. At the end of the project, a *draft* of a possible law on electronic commerce, consistent with existing national laws and international harmonization initiatives, will be completed, in consultation with relevant stakeholders in the beneficiary countries.	✓

Once the Project has produced the stated outputs by performing its functions in terms of

1. legal advisory and training services
2. a needs assessment, including a legal inventory of existing cyber legislation and amendments
3. drafting of the cyber law in compliance with international normative standards and harmonization commitments,

the situation is expected to have matured so that technical assistance can be shifted to other potential beneficiaries. This is supported by the Project's listed *indicators of achievement.*[39]

Indicators of achievement	Current status*
*Indicators for Activity 1: **Building capacity on legal aspects of e-commerce*** • Delivery of national group trainings on legal aspects of e-commerce: at least 20 trainees per	✓

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[38] Source: UNCTAD *Summary Project Outline "E-commerce & Law Reform"*, point *8.Risks analysis*
[39] Source: see above, point *7. Indicators of achievement.*

group training, including policymakers and private sector representatives; • One study published per year on legal issues, aimed at policymakers.	
Indicator for Activity 2: **Assessing the needs for law reform** • An assessment of the legal needs according to the level of e-commerce development in the beneficiary countries.	✓
Indicator for Activity 3: **Drafting e-commerce legislation** • Draft legislation prepared for the beneficiary countries.	✓

* Refers to current beneficiary countries: Cambodia, Lao People's Democratic Republic, EAC Member States.

Should this not be the case,

➢ then a revision of the Project document is advisable to better cater –and budget – for the expanding needs in terms of awareness-raising and mobilization of stakeholders' support to the cyber law reform process *beyond* the most direct target beneficiaries of the Project's capacity-building activities[40] – i.e. *the government authorities in LDCs responsible for defining general policy guidelines and elaborating national legal frameworks, as well as lawyers in the public and private sectors involved in electronic commerce issues(…) and potential service providers offering online products and services, namely SMEs and industry associations and organizations.*

With respect to private sector involvement, the Project may greatly benefit from closer association with ICT providers. As companies – including multinationals and large ICT suppliers – are increasingly solicited on social and environmental concerns, they may be interested in sponsoring awareness campaigns and/or offer platforms to enhance the Project's visibility and outreach.

This is in relation to the Project's medium to long-term poverty alleviation impact, as "*a growing ICT sector can offer jobs and income-generating opportunities and, in some cases, create entirely new livelihoods for the poor.*"[41]

There are, however, also risks, and not only opportunities, in putting the ICT sector at work for the poor, the net outcome being influenced primarily by the government's policies and their actual administration. The Project would be optimally placed to channel this message on cyber policy and enactment of the related legislation with the support of civil society players (e.g. consumers' and professional associations).

National authorities such as the *Communication Commission of Kenya,* the *Law Reform Commission of Tanzania*, and the *Rwanda Development Board*, should become *depositories* of the know-how on cyber law and the *promoters* of the cyber law process across their grouping.

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[40] See: *Project Purpose 1*

[41] In this respect, Kenya is actively implementing the ICT component of its developmental *Vision 2030:* the *2011 ICT Awards* are calling upon all economic actors *"to demonstrate how innovation and ICT applications have been improving the lives of Kenyans and is contributing towards achieving the Vision 2030 goals."* www.connected.go.ke/awards

In such a context, a regional authority such as the EAC Secretariat would have a facilitating role in cross-border exchanges of local expertise and the transposing of national positions to the supra-national decision-making mechanisms.

This would be the ideal scenario, once the proposed *validation* exercise has taken place within national jurisdictions.

➢ One project manager and administrative support is not proportionate to the Project's significance and relevance. It also misrepresents national governments' legitimate interests and calls for technical assistance in the ICT sector, where they are urged to achieve compliance and where failure to do so may result for them in missed trading opportunities.

Since the Project deals with ICT matters, it would be commendable for the Project to extend its online technical assistance, by

➢ establishing/consolidating existing national/regional[42] cyber law/ICT websites into a unified and multifunctional *e-portal* providing access to any legal provision related to ICT, as well as providing online support on legal issues pertaining to ICT for development. Ideally, this may include a *helpdesk* to address immediate questions on cyber law administration/implementation, as well as a *discussion forum* to be jointly monitored by the Project in collaboration with the specialized agencies (i.e. ITU and UNCITRAL) which is able, on a case-by-case basis, to convey the technical queries to relevant information sources in order to have responses delivered in real time.

As observed by one of the EAC Task Force representatives, "*ICT allows looking forward*",[43] and so should the Project's implementation tools.

In the same forward-looking vein,

➢ finalizing translation of the Project's material into French, as well as into local languages, is expected to emerge soon, taking into account the special significance of legal terminology in the codification of norms and standards when transposition of international provisions into national jurisprudence occurs.

To address gender equity,
➢ the Project should make a more explicit commitment to the promotion of gender balance. For instance, by inviting governments to carefully consider the composition of their delegations attending the Project's activities, and by making special arrangements during the "*intense and hard*"[44] training events to facilitate the attendance of female representatives having to combine professional and family responsibilities.

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[42] http://www.eac.int/communications

[43] *:* Dr Z. Yonah, ICT Director, Ministry of Communications, Science & Technology, United Republic of Tanzania, addressing the Task Force meeting in Mombasa, 30 March 2011.

[44] The Chief of Kenya's delegation in the EAC Task Force, Mrs. M. Wanjau, pointed out that she faced a challenging time to attend the intense one-week cyber law training, and the same is experienced by any professional woman having to combine professional and family responsibilities. During the interview, reference was made to the

Jurisprudence requires *practice* both in interpreting the legislation and in applying norms and regulations. It is likely, therefore, that the Project's beneficiaries will need to build such practice within their respective judiciary and regulating authorities as well as within private law firms, possibly drawing on real cases of jurisprudence and judgments emanating from it.

> ➤ For the Government of Finland – and any other donor country for which *ICT for Development* features prominently in the international cooperation agenda – it would be meaningful to back up the Project with *fellowship/internship opportunities* for selected nationals (e.g. young legal officers joining the judiciary system, ICT law reformers and practitioners) in collaboration with ICT suppliers and their respective legal offices.

Seconding key ICT specialists (e.g. legal reformers and cyber practitioners) to work on selected ICT initiatives is a concrete way of giving exposure to cyber law practices and, overall, to international ICT normative standards as these evolve with innovations in information technologies. There may be various ways of acquiring hands-on experience in cyber law reform and implementation, through the sharing of know-how at the regional and international level, e.g. exchanges between attorney-generals' offices and ICT legal offices, or internships with law-making authorities in the developed economies, or in relevant organizations of the United Nations system.

Key Findings

▪ **The Project has been *pioneering* the introduction of the legal dimension of ICT to its beneficiaries and initiating cyber-law reform and harmonization processes.**

▪ **In Cambodia and the Lao People's Democratic Republic, as well as in the EAC Member States, draft cyber laws have either been enacted, or are ready for government endorsement.**

▪ **Awareness is spreading among ICT stakeholders of the legal and regulatory implications of ICT and the extent to which an enabling environment – benchmarked and harmonized to international standards – is the prerequisite for ICT to generate the expected developmental potentials.**

▪ ***Ownership* by the Project's partners, especially where there is knowledge of the legal issues at stake in ICT for development, is instrumental in keeping up the momentum**

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widespread practices of other cooperation agencies, namely USAID, which are keen to facilitate women's access to developmental initiatives, thus deploying means to encourage female attendance in any technical assistance event. It may sound strange to refer to childcare facilities on the sophisticated topic of cyber law, and yet, a traditional – if not conservative – division of labour, coupled with prevailing socio-cultural behaviours, is still the reality for working women, with even more strain in developing and least developed economies.

for cyber law reform.

- The Project acts as a *catalyst* for other TRTA: the participating countries are mobilizing diverse providers of technical assistance to maintain the pace of ICT progress.

- UNCTAD's *Train for Trade* is confirmed as being a *suitable platform* for anchoring the know-how on cyber law, supported by continuous analytical work on the information economy.

- With its interregional coverage, namely the Latin American component, the Project contributes to *cross-fertilization* of experiences and practices on cyber law reform and ICT harmonization.

- *Synergy* occurs when there is collaboration with authoritative partners such as UNCITRAL, as well as with other leading agencies such as ITU and OECD.

- The mix of legal advice and training, backed by awareness-raising and institutional capacity-building, builds the confidence and commitment of the Project partners to achieve *compliance* with international ICT standards as a part of their major efforts towards graduation from LDC status.

Recommendations

- As the digital divide narrows and ICT spreads with borderless operations, the number of countries requesting the Project's assistance is likely to grow exponentially. It is therefore recommended that there be reflection on an *exit strategy*, so that a beneficiary's *graduation* from support by this Project can be clearly defined, preventing any disruption of the cyber law reform process.

- Use of the *local expertise* and know-how built by the Project is key to maintaining the momentum of the cyber law reform and harmonization processes. The facilitation of cross-border exchanges of national/regional experts (e.g. from the regulatory authorities associated with the Project during the period under review) holds the potential to produce emulation effects as well as solutions tailored-made to local circumstances (e.g. *transposition* of the new cyber law into a national code that may be based either on the British or the French model legislation).[45]

- For the cyber legal *draft* not to remain a *stand-alone* piece of legislation, there is a need to develop a comprehensive *road map* with agreed timelines and harmonization benchmarks.

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[45] *"Solutions in emerging economies should emanate from the emerging markets as there is better understanding of the challenges"*, *Craft Silicom's* CEO statement, Nairobi, April 2011. *Craft Silicom* is Kenya's leading internet banking software supplier with a worldwide presence, accounting for over 80 per cent of Kenya's software exports.

- The Project needs to reflect on its *exit strategy* – one that will not disrupt the cyber law reform process in motion, while allowing for a shifting of technical assistance to other beneficiaries in the pipeline.

  - A *cyber law portal* may perform multiple functions: accessing the Project's distance-learning platform, sourcing legal advice, hosting a dedicated forum, and providing a gateway to national cyber law portals, showcasing any progress made along the way.

  - *Strategic partnerships* (e.g. jurists and lawyers, ITC providers and practitioners) are instrumental in keeping the Project's momentum and increasing its visibility.

  - *Curriculum development* is necessary in order to create local expertise able to maximize the Project's spin-offs and to secure ownership of the ICT legal reform.

  - Access to the media and to ICT providers would facilitate the awareness-raising efforts that are key to sustaining the cyber-law reform process and moving it forward, once the latter has matured for the Project to withdraw.

  - Translation of the Project material into French – and eventually into the native languages of beneficiary countries – will soon emerge as an issue, given the special significance of legal *terminology* in the codification of norms and standards.

  - There is a need for the Project to expand geographical coverage, and to fine-tune its ongoing analytical work to the growing sophistication of the ICT environment.

  - The *quality* and *punctuality* of the legal advice and consulting services have added credibility to the Project, giving it a solid reputation among actual and potential beneficiaries, whose growing expectations cannot be neglected.

  - Explicit gender provisions will enable equitable access to the Project by both male and female participants, given the high significance of ICT to women both as users and as workforce in the ICT sector, and also to youth and the disadvantaged, for whom specific devices are being deployed by ICT authorities and suppliers.

  - The Project deserves additional resources, both human and financial, given the relevance of the subject matter and the legitimate interest of developing countries (in particular, LDCs) in accessing technical assistance in the ICT sector, where international compliance is urged and where failure to comply may result in missed trading opportunities.

Annex 1 – Terms of reference

| CONFÉRENCE DES NATIONS UNIES SUR LE COMMERCE ET LE DÉVELOPPEMENT | UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT |

Terms of Reference (TOR)

External Evaluation of UNCTAD's e-Commerce and Law Reform Project

1.   **Introduction and Purpose**

Since 2006, the Government of Finland has been supporting capacity-building activities as well as advisory services on the legal aspects of e-commerce in the East African Community (EAC) Partner States, Cambodia and Lao People's Democratic Republic. The overall objective of the project is to support decision-makers and lawmakers of beneficiary countries in mastering the complexities of the legal aspects of ICT and in preparing harmonized legal and regulatory frameworks that facilitate the conduct of domestic and international trade and the development of e-government services.

Upon request by the Government of Finland, an evaluation of the activities under the e-Commerce and Law Reform Project is to be undertaken in order to inform their assessment of further contributions to this project planned for 2011. The objective of the evaluation is to satisfy this requirement, as well as to document results and lessons learned in the implementation of the project and to formulate recommendations in order to strengthen the work of UNCTAD in this area.

2.   **Background**

The mandate for the project on e-Commerce and Law Reform dates back to UNCTAD's tenth quadrennial conference held in Bangkok in 2002. This mandate was renewed in the following quadrennial conference (UNCTAD XI, held in Sao Paolo) and most recently in the Accra Accord, which calls on UNCTAD to "continue to provide technical assistance to countries in the area of ICT, notably on (…) legal and regulatory frameworks…" (Paragraph 160).

UNCTAD's e-Commerce and Law Reform programme was designed to respond to the needs expressed by policy makers in developing countries at various fora, including the World Summit on the Information Society (WSIS) to design e-commerce strategies, including the legal and regulatory framework, to be able to participate in the information economy. It is a unique programme within the United Nations System providing technical assistance to beneficiary countries in the definition of legal framework for e-commerce.

Launched in 2002, the e-Commerce and Law Reform programme aims at providing technical assistance to developing-country governments in Africa, Asia and Latin America in the preparation of legal frameworks governing the use of ICT. The Programme is implemented in cooperation with other relevant organizations such as UNCITRAL, regional United Nations Commissions and regional institutions of developing countries.

Specific activities under this project have included reviewing and advising on existing ICT-related draft laws and bills and organizing various meetings with policy-makers in order to discuss the various policy options available. Training and sensitization workshops were also held with various stakeholders.

3.   Scope of the Evaluation

The evaluation will consider all activities that have been implemented under this project, with the financing of the government of Finland. This means the activities undertaken with the EAC, in Cambodia and in the Lao People's Democratic Republic since 2006. The evaluation should be based on the following criteria:

(a)   *Relevance*
- Whether the project design and choice of beneficiary countries have properly reflected the needs of the beneficiaries, taking into account the mandates, and their possible impact;
- Whether UNCTAD demonstrates a comparative advantage in this area of work?

(b)   *Effectiveness*
- Whether the activities have achieved planned objectives and produced beneficial results;
- Whether the scope of the activities has been adequate in view of the existing resources and expertise;
- Whether effective coordination of internal resources and expertise was demonstrated to optimize outcomes for beneficiary countries.

(c)   *Efficiency*
- Whether the activities have used the most efficient means in delivering the activities, for example, through the use of local resources when appropriate;
- Whether project schedules were met or projects were completed within reasonable time parameters.

(d)   *Sustainability*
- Whether the activities have been designed and implemented in such a way to ensure maximum sustainability of their impact, for instance, whether beneficiary countries were actively involved in the initiation, design and implementation of the projects;
- Whether adequate follow-up to the work of the project is provided, e.g. providing support to beneficiaries until the adoption of draft laws, in order to promote sustainability of their impact.

(e) *Other issues*
- Whether the project was designed and has contributed to other related objectives, such as those related to the World Summit of the Information Society, the MDGs, or any other related to gender equality or poverty eradication, among others. What tangible results are evident in this regard?

4.   Deliverables

The evaluation, on the basis of its findings and assessments made on the above criteria, should draw conclusions, make recommendations and identify lessons learned for the future orientation of UNCTAD's work in the area of e-Commerce and Law Reform.

More specifically, the evaluation should:

- Highlight what has been successful and can be replicated elsewhere;
- Indicate shortcomings and constraints in implementing the project on e-Commerce and Law Reform while, at the same time identifying the remaining challenges, gaps and needs at the national and regional level for future courses of action;
- Make pragmatic recommendations, to suggest, how UNCTAD's work under the e-Commerce and Law Reform and related projects can be strengthened, with a view to attaining clear results for stakeholders.

The evaluator must ensure that all conclusions, recommendations and lessons learned must logically follow from the findings and assessments made in the report.

5.   Methodology

The evaluation activities are likely to comprise:

(i)   Study of relevant materials available
(ii)   Collection and analysis of evidence
(iii)   Interviews with direct beneficiaries and other relevant stakeholders in the field
(iv)   Interviews with representatives of the government of Finland
(v)   Interviews with relevant UNCTAD staff
(vi)   Questionnaires as may be required.
(vii)   Participation in a workshop undertaken in the framework of the project, if possible.

All relevant materials will be provided to the evaluators including: project documents and reports; mission reports; publications, documents and reports produced, material used for activities; resource-use information; list of beneficiaries and workshop/meeting participants, counterparts and resource persons; existing feedback (assessments, letters, surveys, etc.).

Field trips are envisaged so as to conduct interviews with beneficiaries and other relevant stakeholders at the country and regional level as well as to participate in a workshop organized in the framework of the project. The destination will be one or more of the beneficiary countries, preferably the location of the workshop to be attended. The decision of destination will be made in consultation with the project manager and the Evaluation and Planning Unit (EPU), based on the initial study of the available documentary evidence and schedule of future activities of the project.

6. Description of Duties

The evaluator will undertake the evaluation exercise under the guidance of the Evaluation and Planning Unit (EPU) and in coordination with the project manager. The evaluator will be responsible for the evaluation design, data collection, assessment and reporting. The evaluator must take full responsibility for the contents of the report generated and ensure its independence and accuracy.

7. Timetable

The total duration of the evaluation is estimated to be equivalent to three months of full-time work over a period of approximately five months.

A draft of the report must be presented by 31 December 2010 for verification by the Evaluation and Planning Unit (EPU) and the project manager, before submission of the final report.

The deadline for submission of the final report is 31 January 2011.

8. Monitoring/Progress Control

The evaluator must keep the Evaluation and Planning Unit informed of the progress made in the evaluation fortnightly. The evaluator will also present the draft report to the Evaluation and Planning Unit (EPU) and the project manager before the final submission, giving sufficient time for the verification of factual findings as well as its compliance with the terms-of-reference (approximately 3 weeks).

9. Expected output

The final output of the evaluation is a report composed of three parts, namely: (a) Introduction and a brief description of the project; (b) assessments according to the criteria listed above; and (c) strategic and operational recommendations drawn from the assessments. In the report, all the assessments made must be supported by facts, direct or indirect evidence, and/or well-substantiated logic. It follows that all the recommendations made should be supported by the assessments made. The evaluator is required to submit a separate list of those interviewed for the record. If necessary, the report may be accompanied by a supplement including supporting materials.