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Assessment Report on Interception of Communication

Presentation at the
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Working Group 1 – ITU-EC HIPCAR Project

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Background

- **Interception of communication is crucial for ensuring security protection to States, organizations, and individuals**
- **Balancing with privacy rights is essential to provide legitimate grounds**
- **Rapidly increasing volume of official requests, some of them coming from different parts of the world, poses complexity for analysis/management case-by-case or collectively**
- **Huge amounts of accumulated data and multiple parameters for storage keeping and discard makes interception a matter not only of law drafting but also of implementation**
- **Important technological challenges such as cryptography / steganography, cloud computing, and remailing techniques may make hard or even unfeasible to intercept communication or to analyse it.**
- **Model Interception of Communications Act prepared by the OECS Legislative Drafting Facility in 2003, approved by the Legal Affairs Committee in that same year, for enactment in all the OECS Member States**
- **ITU's "Toolkit for Cybercrime Legislation" and "Understanding Cybercrime: A Guide for Developing Countries"**

Connection with other areas:

- **Freedom of information**
- **National security**
- **Cybercrime**
- **Expedited preservation**
- **Production order**
- **Search and seizure**
- **Real-time collection**
- **Criptography**

INTERCEPTION OF COMMUNICATIONS - Regional laws

Tables: General status by Country, and individual status by subject matter

Obs.: Legends of classification:

Good - there is legislation which adequately addresses the key issues

Fair - there is some form of reference to the issues in legislation which does not adequately address the key issues

Limited - there is reference on the form of policy or consultation document or draft legislation. In case of Bill of Law, “Limited” is the default.

None - there is no reference in the legislative texts to the key issues.

INTERCEPTION OF COMMUNICATIONS

– General Status

[illegible]

Legal Mandate

- 2 of the legal texts in the targeted Caribbean countries provide for all, nearly all, or the most substantive portions of the key elements.
- No country legal text includes some of the key elements but miss substantial points.
- 5 countries have reference on the form of policy or consultation document or draft legislation.
- In 8 countries there is no reference in the legislative texts to the key issues

GOOD	FAIR	LIMITED	NONE
Jamaica, St. Lucia.		Antigua & Barbuda, Dominica, Grenada, St. Kitts & Nevis, St. Vincent & the Grenadines.	The Bahamas, Barbados, Belize, Dominican Rep., Guyana, Haiti, Suriname, Trinidad & Tobago.

Institutional Framework

- 2 of the legal texts in the targeted Caribbean countries provide for all, nearly all or the most substantive portions of the key elements.
- No country legal text includes some of the key elements but miss substantial points.
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Definition of Interception

- 2 of the legal texts in the targeted Caribbean countries provide for all, nearly all or the most substantive portions of the key elements.
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Right to Intercept

- 2 of the legal texts in the targeted Caribbean countries provide for all, nearly all or the most substantive portions of the key elements.
- The legal texts in 3 countries include some of the key elements but miss substantial points.
- 3 countries have reference on the form of policy or consultation document or draft legislation. In case of Bill of Law, “Limited” is the default.
- In 7 countries there is no reference in the legislative texts to the key issues.

GOOD	FAIR	LIMITED	NONE
Jamaica, St. Lucia.	Dominica, St. Vincent & the Grenadines, Suriname	Antigua & Barbuda, Grenada, St. Kitts & Nevis.	The Bahamas, Barbados, Belize, Dominican Rep., Guyana, Haiti, Trinidad & Tobago.

Approval of equipment with Interception capabilities

- 2 of the legal texts in the targeted Caribbean countries provide for all, nearly all or the most substantive portions of the key elements.
- No country legal text includes some of the key elements but miss substantial points.
- 5 countries have reference on the form of policy or consultation document or draft legislation. In case of Bill of Law, “Limited” is the default.
- In 8 countries there is no reference in the legislative texts to the key issues.

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Internal Safeguard Measures

- 2 of the legal texts in the targeted Caribbean countries provide for all, nearly all or the most substantive portions of the key elements.
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Monitoring

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Interception Capabilities

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Recommendations:

- **Glossary with proper definitions (“interception”, “communication”, “data”, “content”, “traffic”)**
- **Address “content data”, “location data”, “traffic data”, “image”**
- **Define scope of media subject to interception including any form of media (electronic, telephonic)**
- **Clear legal mandate / duty to cooperate by ISPs, Telcos, etc.**
- **Make implementation equally important as regulation**
- **Define criteria (concepts, standards, practices) for selection, storage, disclosure, discarding**
- **Establish connection with technical standards**
- **Refer to commonly accepted principles (ex.: principle of technological neutrality)**