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MEMORANDUM TO PARLIAMENT

BY:

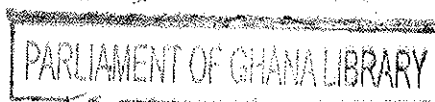
MRS. URSULA OWUSU-EKUFUL, MP
MINISTER FOR COMMUNICATIONS

TITLE:

REQUEST FOR APPROVAL FOR ACCESSION OF GHANA TO THE BUDAPEST
CONVENTION ON CYBERCRIME

DATE:

17th May, 2018



**REQUEST FOR APPROVAL FOR ACCESSION OF GHANA TO THE BUDAPEST
CONVENTION ON CYBERCRIME**

1.0 ACTION REQUIRED

Hon. Members are respectfully invited to consider and give approval for Ghana's Accession to the Budapest Convention on Cybercrime.

2.0 BACKGROUND

- 2.1. The Committee of Ministers of the Council of Europe extended an invitation to Ghana to accede to the Budapest Convention on Cybercrime in 2016. The invitation conveyed through the Ministry of Foreign Affairs and Regional Integration underscored the importance of international cooperation against criminal offences committed via the internet and other computer networks.
- 2.2. The invitation from the Council of Europe was as a result of Ghana's intention (which was communicated to the Executive Secretary of the Budapest Convention) to join the global community of countries which are signatories to the Budapest Convention to facilitate cooperation on cybercrime investigations and prosecutions.
- 2.3. The Ministry of Communications presented and received Cabinet's approval to proceed with the formal processes for Ghana's accession to the Budapest Convention which will facilitate the prosecution of cybercrimes and other online offences, in order to build confidence and trust in the deployment of ICT for national development and the realization of the Sustainable Development Goals (SDGs).
- 2.4. Cybercrime is borderless in nature and poses real challenges to all countries. Consequently, the global cyber security ecosystem is promoting international and regional cooperation in order to facilitate transnational response to both existing and emerging cyber threats through prevention, investigations and prosecution of cybercrimes.
- 2.5. In recognition of the need for Ghana to join international cooperation

arrangements to fight cybercrime, the President of the Republic of Ghana, in July 2017, signed the African Union Convention on Cyber Security and Personal Data Protection at Addis Ababa. The Convention on Cyber Security and Personal Data Protection, which is functionally complementary to the Budapest Convention is one of the international treaties on cybercrimes.

2.6 To ensure successful prosecutions of cross-border cyber-dependent and cyber-facilitated crimes, Ghana is required to be part of global arrangements that will strengthen our capacity to respond to cybercrime challenges. This will be realized when Ghana formally accedes to the Budapest Convention on cybercrime.

2.7. Preliminary assessment conducted by a team from the Council of Europe concluded that Ghana's domestic legislation responds adequately to the requirements for accession to the Budapest Convention, as our criminal laws provide for offences against the Confidentiality, Integrity and Availability (CIA) of computer data and systems. In particular, Ghana's Electronic Transactions Act, 2008 (Act 772) and the Data Protection Act, 2012 (Act 842) were identified as important legislations that are consistent with the provisions in the Budapest Convention.

3.0 ABOUT THE BUDAPEST CONVENTION ON CYBERCRIME

3.1. The 'Convention on Cybercrimes' also known as the Budapest Convention was enacted in 2001 by the Council of Europe. The Convention entered into force in 2004.

3.2. The Council of Europe is an international institution which focuses on protecting human rights, democracy and rule of law globally. The organization works directly with the European Union to promote human rights and the rule of law at the international level. The Council of Europe is the institution behind the Budapest Convention. The Council of Europe has its headquarters in Strasbourg, France.

3.3. As at May 2017, 55 States were Parties to the Convention including four

African countries (European countries as well as Australia, Canada, Chile, Dominican Republic, Israel, Japan, Panama, Mauritius, Sri Lanka, Senegal, Tonga and the USA, South Africa, Argentina, Colombia, Costa Rica, Mexico, Morocco, Paraguay, Peru, Philippines).

3.4. Other countries are currently being accessed by the Council of Europe for accession to the Convention. These countries include Ghana which has met the Council's requirements and Nigeria which received a formal invitation in July 2017 to accede to the Convention after series of assessments covering Nigeria's substantive and procedural legislation.

3.5 The Budapest Convention is regarded as the most complete international standard to date, since it provides a comprehensive and coherent framework on cybercrime and electronic evidence. It serves as a guideline for any country developing comprehensive national legislation against cybercrime and as a framework for international cooperation between State Parties to this treaty.

3.6. The Budapest Convention provides for:

- (i) the criminalization of conduct – ranging from illegal access, data and systems interference to computer-related fraud and child pornography;
- (ii) for procedural law tools to make the investigation of cybercrime and the securing of electronic evidence more effective; and
- (iii) for efficient international cooperation. The treaty is open for accession by any country.

3.7. Under current arrangements with the Council of Europe, Ghana is receiving various capacity building support under the Global Action on Cybercrime Extended (GLACY+ Project) of the Council of Europe. Some of the capacity programmes include:

- (i) Training for judges, prosecutors and investigators (various);
- (ii) Support with adoption of National Cyber Security Institutional Framework;
- (iii) Support for the review of Ghana's National Cyber Security Policy & Strategy (NCSPS);

- (iv) Participation by Ghana in a number of international workshops and seminars on cybercrime and electronic evidence;
- (v) Advisory on cybercrime investigations and prosecutions (mostly for the CID, State Prosecutors and the Judiciary).

4.0 STAKEHOLDER CONSULTATIONS & LEGAL CLEARANCE

- 4.1. The Ministry of Communications engaged the Ministries of the Interior, Foreign Affairs, the Judiciary, Attorney General's Department, the Police CID, the Army, Hon. Members of Parliament, civil society groups, and other stakeholders in series of workshops and seminars. The stakeholder engagement sessions allowed representatives to review the Budapest Convention for their contributions and suggestions.
- 4.2. The Advice of the Attorney General and Minister for Justice was sought in accordance with article 88 of the Constitution to determine:
 - 1. The legal obligations of the Republic of Ghana under the Treaty, Agreement or Convention; and
 - 2. If the Treaty, Agreement or Convention conflicts with domestic legislation.
- 4.3. Based on Attorney-General's advice, there will be no requirement for an amendment to legislation and there will be no need for the Republic of Ghana to make any reservations.

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5.0 JUSTIFICATION FOR GOVERNMENT ACTION

- 5.1. The accession of Ghana to the Budapest Convention on Cybercrime effectively places the country among the elite ICT-based countries of the world with respect to internet governance and commitment to the rule of law in the cyberspace. It will define our country as among the growing number of countries with domestic legislations which are consistent with international norms.
- 5.2. Accession to the Budapest Convention will safeguard the interests of citizens

against arbitrariness and improve the investment climate in the country for development especially in the area of ICT.

- 5.3. Accession to the Budapest Convention will provide for institutional capacity building and global cooperation for knowledge sharing. Most of the international support on cyber security including the Security Governance Initiative (SGI) by the US Government recommends Ghana's accession to the Budapest Convention.
- 5.4. As a developing economy which heavily relies on western technology (technology which is either developed or hosted in the US or the European Union), accession to the Budapest Convention is imperative as it will help the criminal justice practitioners to obtain relevant evidence from technology providers – such as Facebook, WhatsApp, Google, etc. to enhance investigations and prosecution of cybercrimes.
- 5.5. The Africa Union Convention on Cyber Security and Personal Data Protection – also called the Malabo Convention, which the President ratified in July 2017 at Addis Ababa is complementary to the Budapest Convention. Ghana's accession to the Budapest Convention is expected to help meet the country's obligations under the Malabo Convention.
- 5.6. Ghana is a signatory to the ECOWAS Directive on Cybercrimes (*ECOWAS Directive C/DIR. 1/08/11 on Fighting Cyber Crime within ECOWAS*) which provides for cross-border investigations and prosecutions of cybercrime cases within the ECOWAS region. The Budapest Convention is expected to expand the scope of Ghana's reach and its capacity to engage with other countries and international partners to investigate and prosecute cybercrimes.
- 5.7. Upon accession to the Convention, Ghana will automatically become a member of the Cybercrime Convention Committee, an expert group representing nations which will drive the world's response to cybercrime through international cooperation.
- 5.8. Ghana is expected to receive various capacity building programmes and

technical assistance in the area of cyber security and cybercrime response from the Council of Europe after our country's formal accession to the Budapest Convention.

- 5.9. International cooperation is one of the key pillars of our National Cyber Security Policy & Strategy (NCSPS) because of the borderless nature of technology-driven crimes. Ghana's accession to the Budapest Convention will give meaning to our national policy which is necessitated by government's vision to develop our economy through a safe and secured ICT systems.

6.0. RECOMMENDATIONS

- 6.1. Considering the necessity and the mandate of the government to protect our nation's ICT systems and the relevance of international cooperation in the fight against cybercrimes, Parliament is respectfully invited to consider and give approval for Ghana's Accession to the Budapest Convention on Cybercrime.



MRS URSULA OWUSU-EKUFU, MP
MINISTER FOR COMMUNICATIONS

DATE: .../.....^{F+H}.....May 2018

CONFIDENTIAL

*In case of reply the
number and date of this
letter should be quoted.*

My Ref. No OPCA.3/3/070518

Your Ref. No.....



REPUBLIC OF GHANA

OFFICE OF THE PRESIDENT
P.O. BOX 1627
ACCRA
TEL: 0302-201000/2

7th May, 2018

REQUEST FOR APPROVAL FOR ACCESSION OF GHANA TO
THE BUDAPEST CONVENTION ON CYBERCRIME

Cabinet at its Thirty-second meeting held on Thursday, 3rd May, 2018 discussed a report of the Cabinet Committee on Security on the above-mentioned Memorandum submitted by the Minister for Communications.

2. The Memorandum requested Cabinet to give approval for the accession of Ghana to the Budapest Convention on Cybercrime.

3. Cabinet approved the Memorandum and recommended same to Parliament for consideration.

4. In a related matter, Cabinet noted that in July 2017 the President signed the African Union Convention on Cyber Security and Personal Data Protection (also called the Malabo Convention) in Addis Ababa, Ethiopia. Since that Agreement has not been ratified, Cabinet directed the Minister for Communications to take the necessary steps to submit the Malabo Convention to Parliament for ratification.

5. I should be grateful if you could take requisite action on the decision by Cabinet.

MERCY DEBRAH-KARIKARI
SECRETARY TO THE CABINET

THE HON. MINISTER FOR COMMUNICATIONS

cc: Chief of Staff
Secretary to the President
Secretary to the Vice President
Chairperson, Cabinet Committee
on Security

