



## About the rule of law in cyberspace

How effective are the investigation, prosecution and adjudication of cybercrime and of any other crime involving electronic evidence in India?

Would India benefit from joining the Budapest Convention?

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[www.coe.int/cybercrime](http://www.coe.int/cybercrime)



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## Cybercrime and electronic evidence: challenges

Offences against and by means of computers (Cybercrime)

- ▶ Attacks against core values of democratic societies

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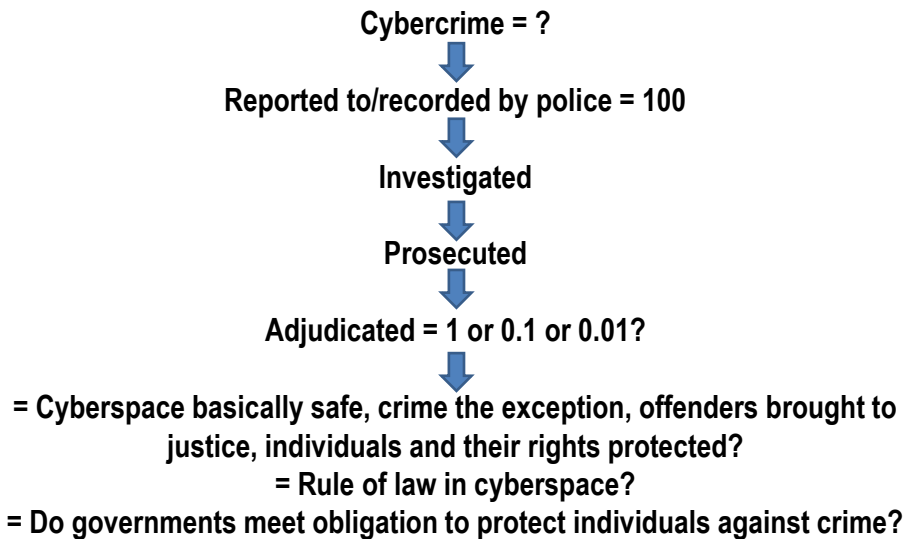
Evidence in relation to any crime stored on computer systems or storage devices

- ▶ Often "somewhere" in the cloud)

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## Cybercrime and the rule of law in cyberspace



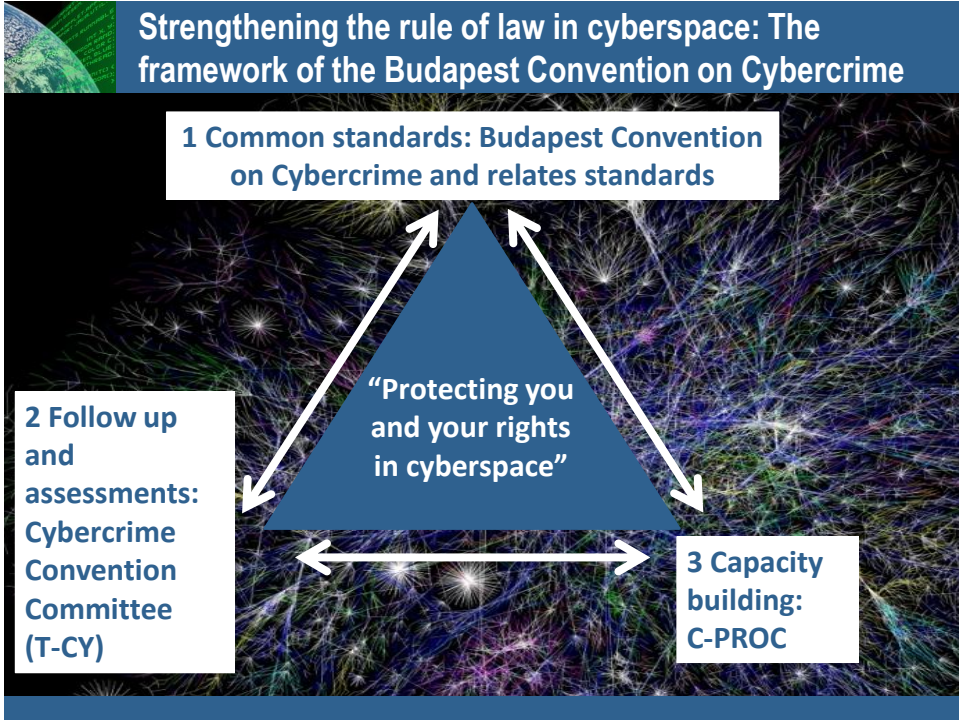
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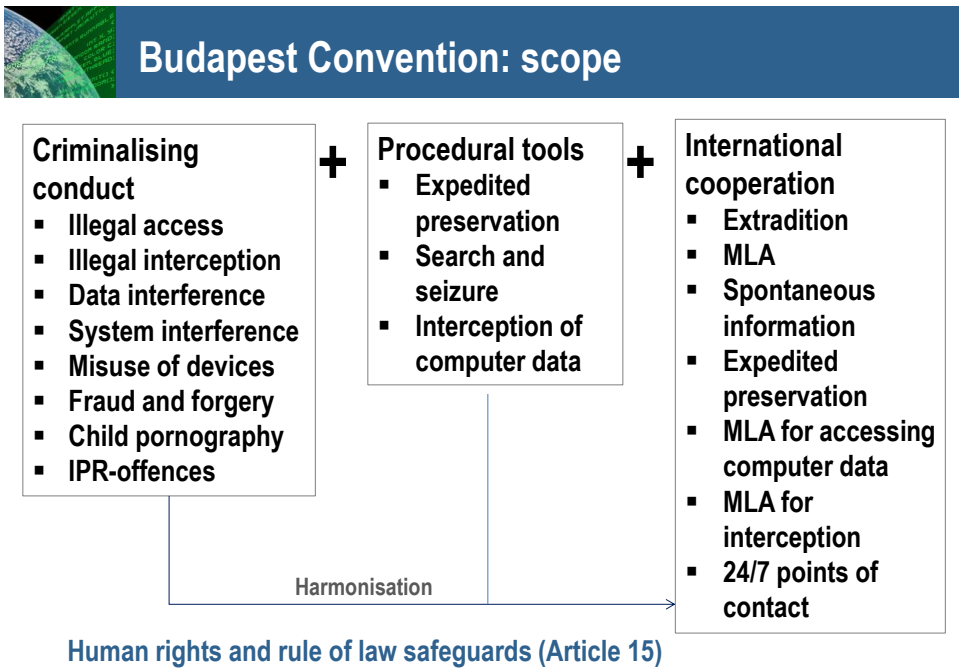
## Cybercrime and electronic evidence: Challenges for criminal justice

- The scale and quantity of cybercrime, devices, users and victims
- Technical challenges (VPN, anonymisers, encryption, VOIP, etc.)
- Cloud computing, territoriality and jurisdiction
  - Cloud computing: distributed systems ► distributed data ► distributed evidence
  - Unclear where data is stored and/or which legal regime applies
  - Service provider under different layers of jurisdiction
  - Unclear which provider for which services controls which data
  - Is data stored or in transit ► production orders, search/seizure or interception?
- The challenge of mutual legal assistance
- No data ► no evidence ► no justice
- And how to reconcile the need for efficient law enforcement and access to data with human rights and rule of law requirements?

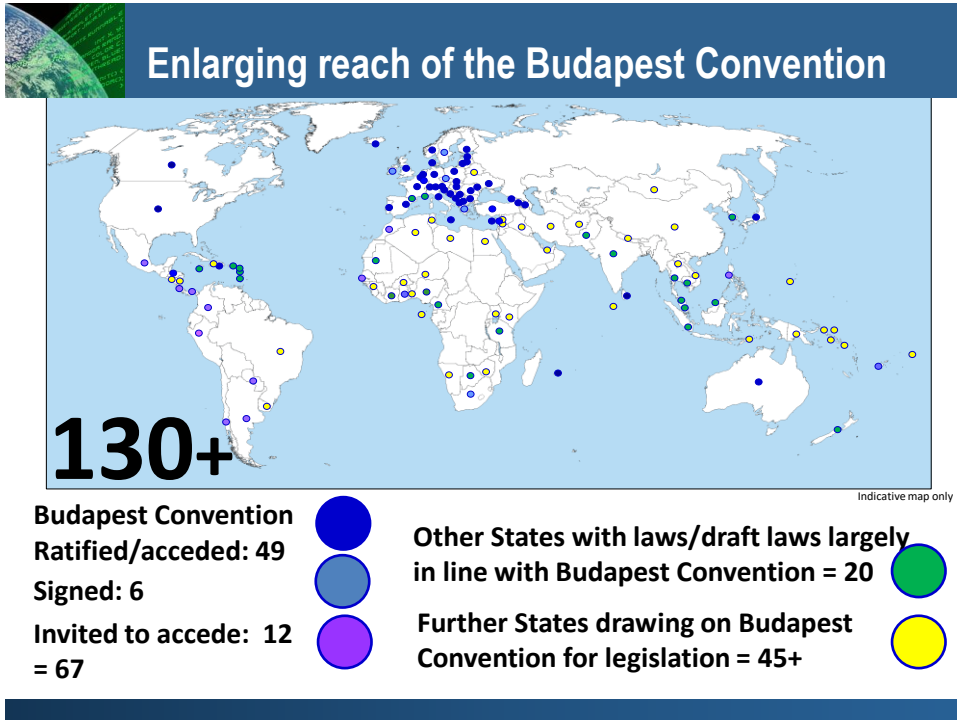
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## Enhancing effectiveness of Budapest Convention

### Cybercrime Convention Committee (T-CY)

(= Committee of Parties to Budapest Convention)

- **Assessment of implementation by the Parties: e.g. Recommendations to make MLA more efficient**
- **Guidance Notes for better use of existing provisions**
- **Promoting use of 24/7 Network of contact points**
- **Cloud Evidence Group: solutions for criminal justice access to evidence on servers in the “cloud”**
  - Focus on person “in possession or control” and less on location of data?
  - Direct cooperation with providers in foreign jurisdictions?
  - Expedited disclosure of subscriber information?
  - Emergency procedures?
  - Protocol to Budapest Convention?

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## Enhancing effectiveness of Budapest Convention

### Capacity building on cybercrime electronic evidence

Multiple programmes:

- Legislation
- Specialised law enforcement units
- Training of prosecutors and judges
- Public/private cooperation
- Targeting proceeds from crime online
- International cooperation

Priority to countries committed to implement Budapest Convention

Dedicated Cybercrime Programme Office of the Council of Europe (C-PROC) in Bucharest, Romania

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## Strengthening the rule of law in cyberspace

### Conclusion:

- Budapest Convention in place, functioning and evolving
- Backed up by Cybercrime Convention Committee (T-CY) and capacity building programmes
- Solutions to make mutual legal assistance more efficient identified and follow up underway
- Solutions regarding criminal justice access to evidence in the cloud being identified (possible future Protocol to Budapest Convention)
- 67 States and 10 international organisations currently participate in T-CY
- India would only benefit from joining this framework (rather sooner than later to participate in possible negotiation of a Protocol)

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