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Review of e-commerce
legislation harmonization
in the Economic
Community of West
African States



REVIEW OF E-COMMERCE LEGISLATION HARMONIZATION IN ECOWAS

FEBRUARY 2015

NOTE

Within the UNCTAD Division on Technology and Logistics, the ICT Analysis Section carries out policy-oriented analytical work on the development implications of information and communication technologies (ICTs). It is responsible for the preparation of the *Information Economy Report* as well as thematic studies on ICT for Development. The ICT Analysis Section promotes international dialogue on issues related to ICTs for development, and contributes to building developing countries' capacities to measure the information economy and to design and implement relevant policies and legal frameworks. Regional comparative studies are available for the ASEAN, the East African Community, Latin America and the Caribbean.

The TrainForTrade programme seeks to address trade-related human and institutional capacity needs of developing and transition economies. The ultimate goal is to increase countries' participation in international trade in an equitable and sustainable manner. TrainForTrade has proven to be instrumental in connecting UNCTAD research and analysis with sustainable capacity-building activities in member States. Its activities help to facilitate South-South and North-South collaboration and foster communication between trade and training experts.

The following symbols have been used in the tables:

Two dots (..) indicate that data are not available or are not separately reported. Rows in tables have been omitted in those cases where no data are available for any of the elements in the row;

A dash (–) indicates that the item is equal to zero or its value is negligible;

A blank in a table indicates that the item is not applicable, unless otherwise indicated;

A slash (/) between dates representing years, for example, 1994/95, indicates a financial year;

Use of an en dash (–) between dates representing years, for example, 1994–1995, signifies the full period involved, including the beginning and end years;

Reference to “dollars” (\$) means United States dollars, unless otherwise indicated;

Annual rates of growth or change, unless otherwise stated, refer to annual compound rates;

Details and percentages in tables do not necessarily add up to the totals because of rounding.

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PREFACE

The Economic Community of West African States (ECOWAS) has adopted several regulatory frameworks that govern electronic commerce with the aim of creating a harmonized regulatory environment in the area of e-transactions, data protection and cybercrime. In order to support their domestic implementation, UNCTAD, in cooperation with the ECOWAS Commission, has organized a series of capacity building workshops to assist Member States to develop harmonized legislation on electronic commerce.

This Review relies on data received from regional workshops and distance learning courses organized in the ECOWAS region from 2013 to 2014. It provides an informed assessment of the state of e-commerce legislation in the region, identifies challenges and makes specific recommendations towards furthering harmonization within the region. In addition to the transposition of ECOWAS instruments, the need for additional work in the areas of electronic signatures, consumer protection and taxation procedures was recognized by Member States in the framework of UNCTAD's project. A call for more capacity building initiatives for policymakers, legislators, the police, the judiciary, prosecutors and computer emergency response teams (CERTs) as well as the strengthening of enforcement agencies with emphasis on regional cooperation are part of these important recommendations.

Since 2000, the UNCTAD E-commerce and Law Reform Programme has provided support to developing countries in Africa, Asia, Latin America and the Caribbean through capacity building training workshops including briefings of parliamentarians, assistance with preparing and enacting legal frameworks and regional reviews of e-commerce legislation harmonization. UNCTAD is proud to support the ECOWAS and its Member States in their efforts to achieve harmonization.

I would like to express my sincere appreciation to everyone who has contributed in the process. I hope that the analysis and recommendations will be of significant value and help to accelerate progress in the region. Let me assure you of UNCTAD's commitment to continue to support the ECOWAS and its Member States in this context.

Anne Miroux
Director
Division on Technology and Logistics
UNCTAD

PREFACE

Over the last few years, the Information and Communication Technology (ICT) sector has seen important technological development, especially marked by the convergence of digital telecommunications technology platforms and computer and audiovisual systems.

The direct contribution of ICT to the national budget of member States, as well as its substantial contribution to development of other sectors of socio-economic activity is constantly increasing. The contribution of ICT to the GDP within West African countries is in steady growth.

For this reason the ECOWAS recognises ICT not only as a priority for its integration programs, but also as a tool for the realisation of the ECOWAS Vision 2020. In particular, ICT facilitates, among other activities, the development of commerce and free movement of people, goods and services.

Therefore the ECOWAS has developed a set of Community Acts in order to encourage competitiveness, provide more efficient regulation for the ICT market, as well as trustworthy and secure services and applications for consumers and create investment appeal for a faster and more harmonious development of the ICT sector.

Three of these acts promote electronic transactions:

- Supplementary Act A/SA.1/01/10 on personal data protection
- Supplementary Act A/SA.2/01/10 on electronic transactions
- Directive C/DIR/1/08/11 of 19 august 2011 on cybercrime

In fact, electronic transactions have seen strong and steady growth within the ECOWAS zone, and throughout Africa in general, particularly in the areas of mobile telephone banking transfers and online government activities. It is therefore of the utmost importance that there be a legal framework, necessary for the emergence of trustworthy electronic transactions, especially in electronic commerce, and that security is guaranteed within the ECOWAS.

The cross-border character of electronic transactions and electronic communications in general, needs a harmonized regulatory framework at both the regional and continental levels. Harmonization offers enormous advantages, notably:

- The facilitation of regulation, especially within a regional and global context.
- The creation of an environment that promotes business for the sake of all economic stakeholders
- Greater consumer choice and, especially, electronic transaction security.

It is within this context that UNCTAD carried out the current study on the harmonization of cyber legislation within the ECOWAS. The legislation adopted by the ECOWAS in 2010 and 2011 on electronic transactions, protection of personal data and cybercrime has enabled the member States to lay the foundations for the harmonization of their cyber legislation, take charge of priority areas for the development of ICT and to bridge the digital gap within the ECOWAS.

I have no doubt that the publication of this study, supported by several groups of stakeholders,

further reinforces the capabilities of member States to develop electronic commerce both in our community and at an international level.

The development of broadband, in particular mobile broadband, will increase Internet penetration rates in both urban and rural areas.

The development of electronic transactions will therefore inevitably be boosted by the intensification of 3G, 4G/LTE and the boom of more affordable smart-phones, thus facilitating high speed internet access to more and more citizens and providing quality electronic transactions.

Dr Isaias Barreto da Rosa
Commissioner for Telecommunication and Information Technology
ECOWAS Commission

ABBREVIATIONS

ARTAO : Association des Régulateurs des Télécommunications de l’Afrique de l’Ouest

AU : African Union

CDP : Commission des Données Personnelles (Sénégal)

CERT : Computer Emergency Response Team

ECOWAS : Economic Community of West African States

ICANN : Internet Corporation for Assigned Names and Numbers

ICT : information and communications technology

IXP : Internet Exchange Point

NIC : Network Information Center

NICCI : Network Information Center Côte d’Ivoire

OHADA : Organisation pour l’Harmonization en Afrique du Droit des Affaires

UEMOA : Union Economique et Monétaire Ouest Africaine

UNCTAD : United Nations Conference on Trade and Development

UNCITRAL : Commission des Nations Unies pour le Droit Commercial International

WAEMU : West African Economic and Monetary Union

ACKNOWLEDGEMENTS

This Review was prepared by the UNCTAD Secretariat in close co-operation with the ECOWAS Commission. It is part of a joint capacity-building project between the TrainForTrade Programme and the E-Commerce and Law Reform Programme of the Division on Technology and Logistics of UNCTAD. The project aims to support the regional cyberlaw harmonization process in strengthening the capacity of policy and law makers of ECOWAS.

The study's principal consultants were Professors Abdoullah Cissé and Ian Walden. The study was prepared by a team from UNCTAD comprising Torbjörn Fredriksson, Cécile Barayre, Ngozi Onodugo, Dominique Chantrel and Gonzalo Ayala under the overall guidance of Anne Miroux. Statistical support was provided by Smita Lakhe and Agnès Collardeau-Angleys.

National inputs provided by representatives of ECOWAS Member States are greatly appreciated, as well as comments received from the African Union Commission and ECOWAS Commission, particularly Dr Isaias Barreto and Dr Raphael Koffi.

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EXECUTIVE SUMMARY

The Economic Community of West African States (ECOWAS) is a regional group of fifteen countries consisting of Benin, Burkina Faso, Cape Verde, Ivory Coast, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo. Its mission as per the ECOWAS Treaty is to promote economic integration in “all areas of economic activity, in particular, in industry, transport, telecommunications, energy, agriculture, natural resources and commerce, as well as taking into consideration monetary, financial, social and cultural issues...”¹

The ECOWAS recognises ICT not only as a priority for its regional integration programs, but also as a tool for the realisation of the ECOWAS Vision 2020.²

The framework for harmonization of the ICT sector, in which member States cooperate to achieve their common objectives, is based on the 1975 ECOWAS Treaty, revised on 24 July 1993, and the 1994 WAEMU Treaty,³ revised on 29 January 2003.

These treaties provide, in particular, a certain number of guidelines and objectives (for the promotion and development of ICT) which States can utilise when seeking the convergence of standards and regulation, as well as the harmonization of their justice and legal systems.

Noting the delay in Africa in the deployment of ICT and in benefiting from it, the ECOWAS has begun the process of cyberlaw harmonization in member countries. Its objective is not only to provide a harmonized legal framework to promote the development of electronic transactions, but also to foster the ability of enterprises in the member countries to compete in the digital economy.

The Western African Telecommunications Regulators Assembly (WATRA)⁴ was created to support the ECOWAS Commission in its implementation of programs, with the following principal objectives:

- Seek the development and harmonization of regulations for service providers and for pricing of telecommunication services within the countries of the sub-region;
- Contribute to the development of policies to enhance universal access and telecommunication penetration in rural and under-served areas in the sub-region;

Seek the creation of harmonized service standards in the sub-region and the adoption of harmonized technical and quality standards on applications and telecommunication equipment in the sub-region. In addition, the ECOWAS has adopted a series of Supplementary Acts, referred to as the “Telecoms Package”,⁵ to enable the member States to create a reliable national infrastructure, with the principal objective of achieving regional economic integration.

The importance of adopting a legal framework for electronic transactions is more than ever a priority in ECOWAS, and more widely in Africa, due to the growth in the use of electronic money as well as the development of government services provided online.

¹ See at www.comm.ecowas.int/sec/?id=treaty&lang=en

² See at <http://www.spu.ecowas.int/wp-content/uploads/2010/03/ECOWAS-VISION-2020-THEMATICICT-PAMPHLETS-in-English.pdf>

³ The WAEMU member countries are also ECOWAS members.

⁴ <http://www.watra.org>

⁵ http://www.itu.int/dms_pub/itu-d/opb/reg/D-REG-HIPSSA-2010-PDF-E.pdf

In order to establish a harmonized legal framework to regulate electronic transactions within the member States, the ECOWAS has developed two Supplementary Acts on e-transactions A/SA.2/01/10,⁶ and on personal data protection A/SA.1/01/10,⁷ as well as the Directive C/DIR/1/08/11 of 19 August 2011 on fighting cybercrime.⁸ These were developed with the support of the Economic Commission for Africa and the International Telecommunications Union, in its project “Harmonization of ICT Policies in Sub-Saharan Africa” (HIPSSA)⁹ and that is in line with the guidelines and spirit of the African Union Convention on Cybersecurity and Personal Data.

Member States were required to implement the Supplementary Acts within two years of their adoption, and the Directive by 1 January 2014 at the latest. However, as of December 2014, effective implementation had not occurred in all member States. Although, certain countries already had a legal framework that regulates electronic transactions and the use of ICT, others were at the stage of creating draft laws. The adoption of the African Union Convention on cybersecurity and personal data protection on 27 June 2014¹⁰ reinforces the process of regional harmonization undertaken by the ECOWAS. The provisions of the African Union Convention on electronic transactions, personal data protection and cybercrime are essentially in the same spirit as the aforementioned ECOWAS texts and are applicable to the Union's member States. Due to the importance of the Convention on the development of the information society in Africa it will need to be both signed and ratified by a large number of member States.¹¹

In 2013, the United Nations Conference on Trade and Development (UNCTAD) engaged with the ECOWAS in a capacity building programme in support of the implementation of regional texts at the domestic level. Two online trainings on the legal aspects of e-commerce¹² were organized for 380 policy and law makers and three regional workshops gathered 80 representatives from ECOWAS member States. The objectives were to strengthen the capacity and the expertise of the delegates, to review the current situation of cyber legislation in the ECOWAS region and to discuss the best ways to advance the cyberlaw harmonization process in the areas of e-transactions, data protection and cybercrime. Beyond those areas for which a regional framework is available, other areas such as consumer protection, online regulation and domain regulation were also integrated as they affect e-commerce development. As part of this project, UNCTAD prepared this study based on the results of the workshops.

Summary of cyber legislation harmonization in ECOWAS member States

Table 1 summarises the state of cyberlaw adoption in the ECOWAS. The implementation of the Supplementary Act on Electronic Transactions is well established within ECOWAS member States, with seven countries having already adopted the related legislation. The remaining countries have designed draft legislation, except for Guinea and Sierra Leone, both of which have still not developed a strategy in relation to electronic transactions. With regard to consumer protection, nine member States have regulated the consumer protection area. Three have drafted laws that are yet to be adopted.

⁶ http://www.ecowas.int/publications/en/actes_add_telecoms/SIGNED-Electronic_Transaction.pdf

⁷ http://www.ecowas.int/publications/en/actes_add_telecoms/SIGNED-Personal_Data.pdf

⁸ http://www.ecowas.int/publications/en/actes_add_telecoms/SIGNED-Cybercrime.pdf

⁹ <http://www.itu.int/en/ITU-D/Projects/ITU-EC-ACP/HIPSSA/Pages/default.aspx>

¹⁰ See at

http://pages.au.int/sites/default/files/en_AU%20Convention%20on%20CyberSecurity%20Pers%20Data%20Protec%20AUCyC%20adopted%20Malabo.pdf

¹¹ The Convention must be ratified by fifteen states to enter into force.

¹² The trainings and workshops were organized in cooperation with the TrainForTrade Programme of UNCTAD. See at <http://learn.unctad.org/>.

The majority of member States have, in general, taken steps towards the implementation of the Supplementary Act on Personal Data Protection. Seven member States have legislation on data protection. With the exception of Guinea, the remainder have developed draft projects that are in the process of being adopted.

Four member States have adopted laws on cybercrime while six have developed draft legislation.

Regulation of online content is the area that has received the least attention by the member States in their law harmonization process. Only four member States have regulation in this area. Otherwise, neither legislation nor draft legislation have been formulated elsewhere within the ECOWAS zone.

To date, eight countries have legislation on domain names and one has developed a draft legislation that has not yet been adopted. The remaining member States have not taken any steps towards the regulation of domain names.

Table 1. Status of harmonization in the ECOWAS Member States as of December 2014

| Member Country | Electronic Transactions | Consumer Protection | Data Protection and Privacy | Cybercrime and Cyber security | On line content Regulation | Domain Name |
|----------------------|-------------------------|---------------------|-----------------------------|-------------------------------|----------------------------|-------------|
| Benin | Proposal | None | Adopted | Proposal | None | None |
| Burkina Faso | Adopted | None | Partial | Proposal | None | Adopted |
| Cape Verde | Adopted | Partial | Adopted | Partial | None | Adopted |
| Ivory Coast | Adopted | Adopted | Proposal | Adopted | Adopted | Proposal |
| Gambia | Adopted | Adopted | Partial | Adopted | Adopted | Partial |
| Ghana | Adopted | Adopted | Adopted | Adopted | Adopted | Adopted |
| Guinea | None | None | None | None | None | None |
| Guinea-Bissau | Proposal | Adopted | None | None | None | Adopted |
| Liberia | Adopted | Partial | Partial | None | None | None |
| Mali | Proposal | None | Partial | Proposal | None | None |
| Niger | Proposal | Proposal | Proposal | Proposal | None | None |
| Nigeria | Proposal | Partial & Proposal | Proposal | Proposal | Adopted | Partial |
| Senegal | Adopted | Adopted | Adopted | Adopted | Adopted | None |
| Sierra Leone | None | Partial | Project | None | None | Adopted |
| Togo | Draft | Draft | Draft | Draft | None | Adopted |

• Recommendations

As a result of the discussions among the participants of the ECOWAS/UNCTAD workshops held in 2014, the following three recommendations were formulated:

1. Member States should continue the transposition and implementation of regional legislation on e-

transactions, data protection and cybercrime with a clearly defined strategy and specific deadlines; in this process, the ratification of the African Union Convention on the Establishment of a Legal Framework Conducive to Cybersecurity in Africa (AUCC) could reinforce the cyberlegislation harmonization process

2. At the ECOWAS level, the process of harmonization should continue by **(i) including other areas** such as consumer protection or taxation; and **(ii)** considering all areas i.e. e-money, online administration and new issues arising from cloud computing
3. The existing legislation should be disseminated to stakeholders at all levels. This step would necessitate training or capacity building for those tasked with the application of ICT regulation e.g. those in priority sectors such as the courts, the police force and parliamentarians.

The implementation of those recommendations may benefit from the support from member States, from the ECOWAS Commission and from international organisations, including UNCTAD.

INTRODUCTION

The Economic Community of West African States (ECOWAS) is a regional group of fifteen countries consisting of Benin, Burkina Faso, Cape Verde, Ivory Coast, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo.

Its mission is to promote economic integration in “all areas of economic activity, in particular, in industry, transport, telecommunications, energy, agriculture, natural resources and commerce, as well as taking into consideration monetary, financial, social and cultural issues...”¹³

In the area of electronic communications, the legal foundations of harmonizing activities are based, in part, on Article 32 of the ECOWAS Founding Treaty.

The importance of adopting a legal framework for electronic transactions is more than ever a priority in ECOWAS, and more widely in Africa, due to the growth in the use of electronic money as well as the development of government services provided online. The need to increase consumer confidence in the use of ICT and e-commerce has become a driver for the adoption of cyberlaws.

This study examines the state and harmonization of the region’s cyber legislation. The legal texts adopted by the ECOWAS in 2010 and 2011 on electronic transactions, personal data protection and cybercrime¹⁴ allowed member States to lay the foundations for the harmonization of their cyberlaws, take charge of areas judged to be priority for the development of ICT and bridge the digital divide within the ECOWAS.

1. The development of ICT and e-commerce within ECOWAS

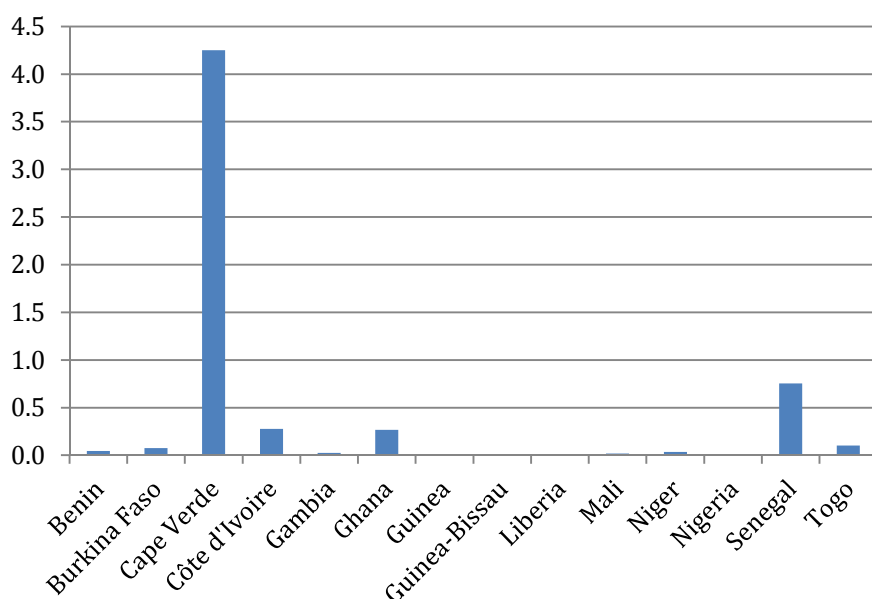
E-commerce offers both buyers and sellers several opportunities. It opens new markets thanks to its cross-border character, gives rise to strong competition between service providers and offers a wider range of choice to consumers. This is achieved by allowing them, more easily, to compare offers and proposed prices, and by doing so, make the choice that corresponds with their best interests.

In Africa, e-commerce development has long been hampered by low overall Internet penetration levels compared with other regions. However, the situation is rapidly improving. Undersea fibre-optic cables have encircled Africa’s coastlines and begun the long journey inland. Telecommunications providers are investing in 3G and subsidizing smartphone ownership. Innovative solutions are emerging that allow for the delivery of small pieces of the Internet even to basic handsets. At the same time, digital payment services are becoming more important and various online market places are spreading. At the same time, significant barriers remain in areas such as transport and logistics, limited purchasing power and inadequate legal frameworks (UNCTAD, 2015).

Figure 1. Fixed (wired)-Broadband subscribers per 100 inhabitants, 2013

¹³Article 32 of the ECOWAS Founding Treaty: “In order to ensure the harmonious integration and encourage and facilitate the movement of people, goods and services within the Community, the member States have undertaken the development of a common policy on Communications as well as relevant laws and regulations.”

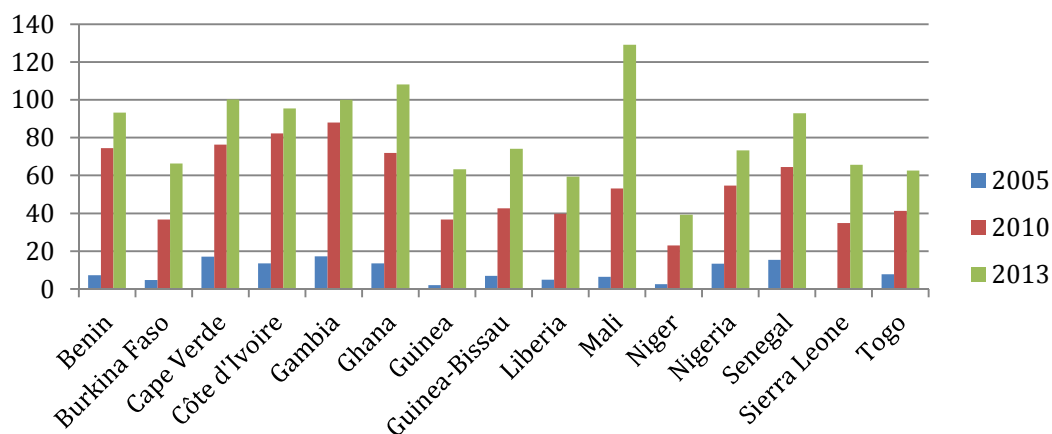
¹⁴Referring to the A/SA.2/01/10 Supplementary Act on electronic transactions and A/SA.1/01/10 Supplementary Act on personal data protection, and the C/DIR/1/08/11 Directive on the fight against cybercrime.



Source: ITU, 2014

The strong uptake of mobile phone use in the sub-region's market (figure 2) has given rise to a boom in mobile money financial services. As of February 2015, there were 52 Mobile money deployments in ECOWAS 19 of which in Nigeria.¹⁵ As of December 2014, three telecommunication operators were offering cross-border mobile money transfers between seven ECOWAS member States (table 1).

Figure 2. Mobile cellular telephone subscriptions in the ECOWAS per 100 inhabitants, 2005-2013



Source: ITU, 2014

¹⁵ <http://www.gsma.com/mobilefordevelopment/programmes/mobile-money-for-the-unbanked/insights/tracker>

Table 1. Operators offering international mobile money transfers between countries, 2014

| Operators | Countries |
|-----------|---|
| MTN | Benin, Ivory Coast, Guinea |
| Orange | Ivory Coast, Guinea, Mali, Niger, Senegal |
| MOOV | Ivory Coast, Togo |

Source: UNCTAD, 2014

The following services are on offer in all member countries:

- Transfers/receipt of money;
- Deposits/withdrawal of money;
- Payments to businesses;
- Payment of bills (telephone, water, electricity);
- Payments of school and university fees (e.g. Ivory Coast);
- Mobile phone top-ups.

In several African countries, mobile solutions represent the most viable infrastructure for e-services due to high degrees of financial exclusion, limited availability of fixed lines, cost of fixed lines and cost of the card infrastructure (Innopay, 2012).¹⁶ The success of mobile money has led to the development of many new payment services (UNCTAD, 2015). Low levels of credit card usage in developing regions are related to limited ownership of such cards. In 2011, less than five per cent of people aged 15 years and older had a credit card in Africa, compared with almost half of that age group in high-income economies (FINDEX, Global Financial Inclusion Database).

2. The ECOWAS and regional integration in the area of cyberlaws

The current study examines the ECOWAS countries, which are also members of the African Union. The francophone countries are furthermore members of the Organisation for the Harmonization of Business Law in Africa (OHADA)¹⁷ and the West African Economic and Monetary Union (WAEMU),¹⁸ with the exception of Guinea that does not share the single currency (the CFA franc).

These organisations are all actively working towards legislative harmonization in the sub-region, which will create a framework for the development of business on the continent. Their structure is based on the following different founding treaties and constitutional acts:

- 1975 ECOWAS Founding Treaty revised on 24 July 1993;¹⁹
- Treaty for the Harmonization of Business Law in Africa, 10 October 1993;²⁰

¹⁶ In Kenya, for example, online purchase payments from mobile phones accounted for 19 per cent of total e-commerce transaction value in 2012 (WorldPay, 2014). In October 2013, the value of mobile payment transactions in that country stood at \$68 million as compared with only \$12 million for card payments.

¹⁷ <http://www.ohada.org/>

¹⁸ <http://www.uemoa.int/Pages/Home.aspx>

¹⁹ <http://www.comm.ecowas.int/sec/?id=treaty&lang=en>

- Declaration of Syrte, 9 September 1999, leading to the creation of the African Union;²¹
- WAEMU founding treaty (1994) revised 29 January 2003.²²

These documents outline certain guidelines and objectives for the promotion and development of the business environment. Member States can use these not only when seeking convergence in relation to rules and regulations, but also in harmonizing ICT policies and strategies.

African Union

The African Union adopts strategies in diverse sectors in order to achieve the continent's integration within the global economic order. In the ICT sector, The Union Assembly of Heads of State and Governments²³ adopted the Convention on Cyber Security and Personal Data Protection,²⁴ on 27 June 2014 at Malabo. This document offers a trustworthy framework for cybersecurity in Africa, through:

- the organization of electronic transactions: the Convention determines the foundations of electronic commerce;
- personal data protection: the Convention provides a plan to combat attacks on privacy, likely to arise from activities such as the gathering, processing, transmission, storage and use of personal data;
- promotion of cybersecurity: the Convention urges the member States to design a national cybersecurity strategy.
- the fight against cybercrime: the Convention provides the main guidelines for criminalisation and punishment of cybercrime.

The last two points are closely related. On the one hand, cybercrime is dealt with by curative measures aimed at detecting cyber offences and punishing them. On the other hand, cybersecurity concerns the strategic and operational framework for preventing attacks on system integrity and on other technological tools used, in general, for information processing. In the proposed Convention, the policies on cybersecurity consist in an approach that obliges member States to adopt legislative measures and/or regulate against cybercrime through recognition of criminal offences: *“Acts that affect the confidentiality, integrity, availability and survivability of information and telecommunication technologies systems and the data they hold or process and related infrastructure networks; as well as effective procedural measures for the arrest and prosecution of offenders”*²⁵

The adoption of the Convention in 2014 was important for the development of the Information Society in Africa. The Convention has an expanded geographical scope and is designed to reinforce member States' legislation as well as regional cyberlaw harmonization initiatives.

In regards to electronic transactions, the Convention recognizes the right to unrestricted electronic commerce with the exception of gambling, legal representation and assistance as well as activities undertaken by notaries and equivalent authorities. Therefore, electronic documents are considered equivalent to hard-copy written documents and electronic evidence is admissible. Direct marketing

²⁰ <http://www.ohada.com/content/newsletters/1403/Comprendre-l-Ohada-en.pdf>

²¹ http://www.au2002.gov.za/docs/key_oau/sirte.pdf

²² <http://www.uemoa.int/documents/traitrevisuemoa.pdf>

²³ <http://www.au.int/en/decisions/assembly>

²⁴ <https://ccdcoe.org/sites/default/files/documents/AU-270614-CSConvention.pdf>

²⁵ http://au.int/en/sites/default/files/AU%20Convention%20EN.%20%283-9-2012%29%20clean_0.pdf

is prohibited and suppliers are fully responsible for the goods and services they provide.

In relation to personal data protection, the African Union Convention applies to all data processing – automatic or not – carried out within African Union territory. Data processing is considered to be “*all gathering, processing, transmission, storage or use of personal data carried out by a natural person, the State, local authorities or legal persons constituted under public or private law*”. Just like the A/SA.1/01/10 Supplementary Act on the protection of personal data, the Convention excludes the regulation of temporary copies of data made by technical intermediaries, such as internet providers, which only carry out automatic, intermediate or transitory storage of data. Moreover, data processing carried out in a purely personal context, where data is not collected for communication between third parties or dissemination, is also excluded. The principles of legitimacy, legality, loyalty and confidentiality of processing, as well as the requirement of consent in data processing, also need to be taken into account.

In regards to cybercrime, the Convention outlines offences related to attacks on computer systems and electronic data as well as those related to content and security measures in electronic data exchanges. Moreover, the Convention includes the field of ICT in the definition of certain offences such as crimes against property (theft, fraud, possession of stolen goods, abuse of trust, extortion and blackmail). Like Directive C/DIR/1/08/11 on the fight against cybercrime, the African Union Convention leaves it to the member States to decide sentencing.

The principal outcome of the Convention with respect to the ECOWAS legislation is the production of strategic rules on cybersecurity, which benefit the member States. In this way, the Convention responds to the need for cybersecurity law harmonization. Each member State has made a commitment to formulate a national cybersecurity policy as well as appropriate strategies to facilitate the implementation of legal reform, awareness raising, capacity building, public-private partnerships and international cooperation.

Organization for the Harmonization of Business Law in Africa

The Organization for the Harmonization of Business Law in Africa (OHADA) currently comprises ten member States. It has created several Uniform Acts applicable in the following domains:

- General commercial law;
- Commercial company law and public interest corporations law;
- Surety law;
- Simplified procedures of debt collecting and enforcement;
- Collective procedures for settling liabilities;
- Arbitration law;
- Organisation and harmonization of company accounting;
- Contracts for the carriage of goods by road.

In general, ICT was not regulated by any of the Uniform Acts. However, in recent reforms, the OHADA has taken certain aspects of ICT into account, such as the dematerialization of formalities

carried out at the Trade and Personal Property Credit Register,²⁶ regulated in the Uniform Act on General Commercial Law.

West African Economic and Monetary Union

In the ICT area, the WAEMU also contributes to regional integration. Regulation No. 15/2002/CM/WAEMU dedicates a large number of its provisions to defining a legal framework with respect to evidence for electronic signatures, but also specifically deals with the legal regulation of electronic payment procedures. Concerning personal data protection, some regulations, or at least incentives, are scattered throughout the directives of the WAEMU telecommunications package. Therefore to achieve the overall objective of securing electronic payments in a way that conforms with the various documents, the following steps need to be taken:

- recognition of electronic evidence with respect to all electronic instruments and electronic payment methods in the WAEMU zone;
- regulation of bank cards, electronic instruments and electronic payment methods;

The current ICT legal framework of the WAEMU is for the most part based on the following five legal texts:

- Regulation No. 15/2002/CM/WAEMU on payment methods within member States of the West African Economic and Monetary Union;
- Directive No. 01/2006/SP of 31 July 2006 of the Central Bank of West African States ('BCEAO') on the issuing of e-money and on electronic money institutions;
- Directive No. 01/2006/CM/WAEMU on harmonization of control and regulation policies for the telecommunications sector;
- The annexe of Directive No. 02/2006/CM/WAEMU on the harmonization of regimes applicable to network operators and service providers;
- Directive No. 04/2006/CM/WAEMU on universal service and network performance obligations.

3. The ECOWAS reform process on cyberlaws

In order to establish a harmonized legal framework to regulate electronic transactions within the member States, the ECOWAS has developed two Supplementary Acts on e-transactions (A/SA.2/01/10),²⁷ and on personal data protection (A/SA.1/01/10).²⁸ In addition, a Directive (C/DIR/1/08/11) of 19 August 2011 on fighting cybercrime has also been adopted.²⁹ These were developed with the support of the Economic Commission for Africa and the International Telecommunication Union, in its project "Harmonization of ICT Policies in Sub-Saharan Africa" (HIPSSA)³⁰ and that is in line with the guidelines and spirit of the African Union Convention on

²⁶ http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205403891_text

²⁷ http://www.ecowas.int/publications/en/actes_add_telecoms/SIGNED-Electronic_Transaction.pdf

²⁸ http://www.ecowas.int/publications/en/actes_add_telecoms/SIGNED-Personal_Data.pdf

²⁹ http://www.ecowas.int/publications/en/actes_add_telecoms/SIGNED-Cybercrime.pdf

³⁰ <http://www.itu.int/en/ITU-D/Projects/ITU-EC-ACP/HIPSSA/Pages/default.aspx>

Cybersecurity and Personal Data.

With regard to **electronic transactions**, the ECOWAS Treaty signatories must address four issues:

- Regulation of electronic commerce;
- Establishment of rules on electronic advertising;
- Establishment of a legal regime for electronic contracts;
- Definition of security rules for electronic transactions.

The following five strategic steps were taken in the development of a specific legal instrument on **the protection of personal data**:

- Outlining a legal framework for the protection of personal data;
- Setting standards for the processing of personal data;
- Establishment of an institutional base;
- Defining the rights of interested parties;
- Clarifying obligations of those responsible for personal data processing.

Fighting **cybercrime** is also one of the priorities included in the process of legislative harmonization in ECOWAS member States. Directive C/DIR/1/08/11 on fighting cybercrime, adopted in August 2011, reflects the recognition by local authorities of the need to face the increase in cybercrime. This directive includes the following four focus areas:

- Adaptation of substantive and procedural criminal law by ECOWAS member States to address the phenomenon of cybercrime;
- Defining specific offences inherently related to traditional crimes, such as theft, fraud, possession of stolen goods and blackmail, based on the harm or injury that would be caused through the use of the internet;
- Legal classification of offences committed through use of the Internet, and appropriate sanctions for those offences, based on the severity of the harm or injury caused;
- Promotion of legal cooperation in order to harmonize legal and justice systems.

Some member States have already incorporated this community legislation into domestic law, whereas others are still in the process of doing so. Tables 2-4 provide a summary of the status of the incorporation of the three texts within ECOWAS.

Table 2: Status of the incorporation of the Supplementary Act on electronic transactions, as of December 2014

| | Legislation previous to the Supplementary Act | Incorporation of the Supplementary Act | Legislation in the process of adoption | No legislation |
|---------------|---|--|--|----------------|
| Benin | | | | |
| Burkina Faso | | | | |
| Cape Verde | | | | |
| Gambia | | | | |
| Ghana | | | | |
| Guinea | | | | |
| Guinea Bissau | | | | |
| Ivory Coast | | | | |
| Liberia | | | | |
| Mali | | | | |
| Niger | | | | |
| Nigeria | | | | |
| Senegal | | | | |
| Sierra Leone | | | | |
| Togo | | | | |

Table 3: Status of the incorporation of the Supplementary Act on the protection of personal data, as of December 2014

| | Legislation previous to the Supplementary Act | Incorporation of the Supplementary Act | Legislation in the process of being adopted | No legislation |
|---------------|---|--|---|----------------|
| Benin | | | | |
| Burkina Faso | | | | |
| Cape Verde | | | | |
| Gambia | | | | |
| Ghana | | | | |
| Guinea | | | | |
| Guinea Bissau | | | | |
| Ivory Coast | | | | |
| Liberia | | | | |
| Mali | | | | |
| Niger | | | | |
| Nigeria | | | | |
| Senegal | | | | |
| Sierra Leone | | | | |
| Togo | | | | |

Table 4: Status of the incorporation of the Directive on cybercrime, as of December 2014

| | Legislation previous to the Supplementary Act | Incorporation of the Supplementary Act | Legislation in the process of being adopted | No legislation |
|--------------|---|--|---|----------------|
| Benin | | | | |
| Burkina Faso | | | | |
| Cape Verde | | | | |
| Gambia | | | | |
| Ghana | | | | |

| | | | | |
|---------------|--|--|--|--|
| Guinea | | | | |
| Guinea Bissau | | | | |
| Ivory Coast | | | | |
| Liberia | | | | |
| Mali | | | | |
| Niger | | | | |
| Nigeria | | | | |
| Senegal | | | | |
| Sierra Leone | | | | |
| Togo | | | | |

4. UNCTAD assistance to the ECOWAS

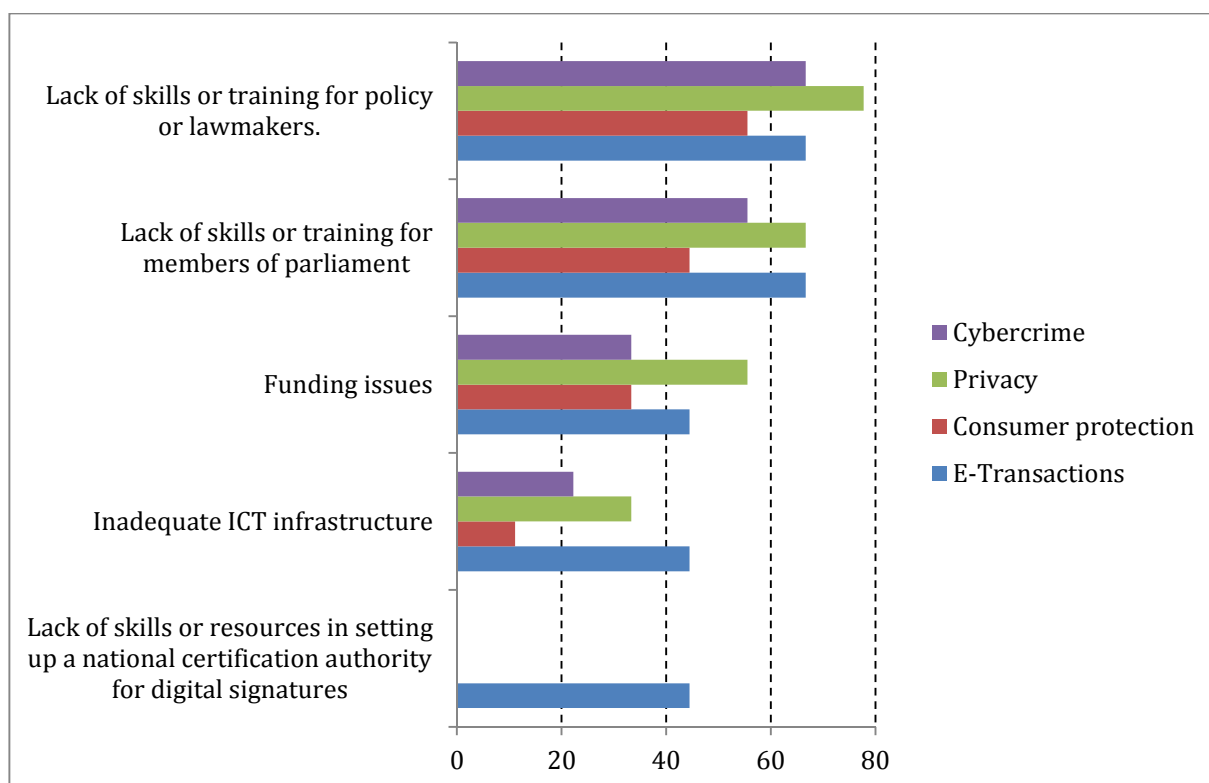
In 2013, the United Nations Conference on Trade and Development (UNCTAD) engaged with the ECOWAS in a capacity building programme in support of the implementation of regional texts at the domestic level. Two online trainings on the legal aspects of e-commerce were organized for 380 and three regional workshops gathered 80 representatives from ECOWAS member States.³¹ Face to face workshops allowed for the exchange of best practice between representatives of member countries and particularly assisted those who had not yet adopted any legislation. The current study, undertaken within the UNCTAD E-Commerce and Law Reform programme, has the objective of evaluating legislation on e-commerce in the region. It is based on contributions of member countries that participated in a capacity building program from 2013 to 2014.

UNCTAD conducted a survey of ECOWAS member States³² in 2014 to identify the challenges faced by governments in preparing and enacting legislation (figures 3 and 4). The results pointed to the need to build awareness and knowledge among law makers and the judiciary in order to formulate informed policies and laws in the area of e-commerce and to enforce them effectively. More than three quarters of the representatives reported difficulties in understanding legal issues related to privacy, 67 percent to e-transactions and cybercrime and over 55 percent to consumer protection. Similarly, between 44 and 67 percent of them noted that a lack of understanding among parliamentarians can delay the adoption of relevant laws. The enforcement of laws requires informed regulators and enforcement bodies as well as insufficient resources to create effective legal frameworks and national certification authorities.

Figure 3. Challenges to the enactment of e-commerce legislation in ECOWAS countries

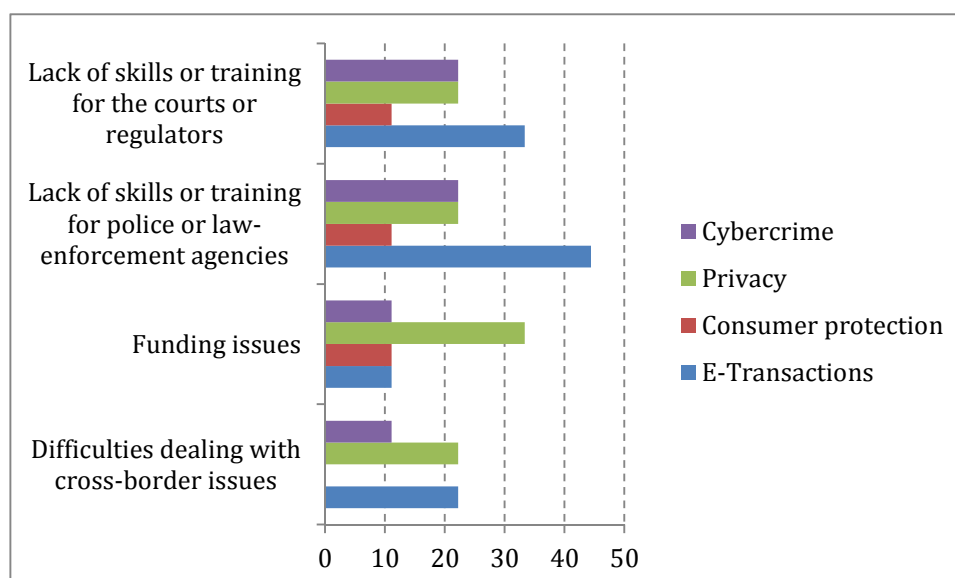
³¹ The trainings and workshops were organized in cooperation with the TrainForTrade Programme of UNCTAD. See at <http://learn.unctad.org/>

³² Nine countries out of 15 responded to the surveys.



Source: UNCTAD.

Figure 4. Challenges to the enforcement of e-commerce legislation in ECOWAS



Source: UNCTAD.

5. Areas for legislative harmonization on e-commerce

The ECOWAS legislation on electronic transactions, protection of personal data and fighting cybercrime has to be integrated into domestic law of member States. Effective incorporation will allow them to take advantage of the digital economy by ensuring greater competition between participants within their territory. During UNCTAD's workshops, participants expressed also the

need to extend law harmonization to other areas such as taxation and consumer protection which have not yet being discussed at the community level.

Electronic transactions

Although significant growth in ICT has been recorded in this area, particularly through the use and development of mobile money, considerable efforts are still required to integrate member countries into the e-commerce world by introducing the use of e-transactions. The lack of a trustworthy legal framework hinders an important aspect of e-commerce, namely cross-border transactions. The existence of national regulation applicable to electronic transactions is a vital prerequisite for building consumer trust.

Data protection

Personal data is dealt with on several levels and its dematerialization heightens the risk of its misuse, in particular in marketing and in identity fraud caused by a lack of data processing security. A lack of regulation in the processing of personal data constitutes a real danger. Apart from the standard regulations required to monitor ICT, the accelerated growth of the ICT area obliges States to adapt their legislation in order to comply with more advanced technology. In the area of personal data protection, cloud computing introduces new concerns, in particular, where the authority responsible for processing assigns its related responsibilities. While there is not necessarily a need to develop laws or regulations which are specific to cloud computing, legal reforms are clearly required in areas including privacy, data protection, information security and cybercrime. It is essential that governments of developing countries adopt and enforce appropriate laws and regulations in these areas. Putting such legislation in place will give local businesses, including local entrepreneurs, new opportunities to innovate in services and applications, seeking to address export as well as domestic markets (UNCTAD, 2013).

Computer crime

The ECOWAS provides a regulatory framework to combat cybercrime through the Directive C/DIR/1/08/11 of 19 August 2011 on cybercrime. The fight against cybercrime constantly gives rise to new challenges, given the considerable capacity of online offenders to adapt. One of the main challenges for States is to create a clearly defined strategy so as to dissuade online offenders. Regulation in the fight against cybercrime is necessary as compliance with the aforementioned Community Directive is obligatory, and more importantly, to engender trust and therefore economic appeal.

Consumer protection

When creating strategies for the regulation of e-commerce, ECOWAS member States currently do not adequately take into account the need to protect consumers. States must prioritize the development of a legal framework for consumer protection, adapted to ICT, in order to secure transactions, engender user trust and ultimately, facilitate the use of e-transactions. The strategy formulated by the member States should reflect international legislation of reference such as Directive 97/7/EC of 20 May 1997 on the protection of consumers in respect of distance contracts.

Online content

With the emergence of cloud computing, the regulation of online content faces new challenges, notably, in relation to its localisation, the nature and scope of different stakeholder responsibilities and the reversibility of outsourcing. These new problems add to those that surround intellectual

property rights of online content and, in particular, the regulation of such content on social networks.

These examples demonstrate the size of the challenges that States must face to achieve integration within the ICT society, however, by effectively addressing these issues in state legislation and community law within a harmonized legal framework for ICT, they can be overcome.

Domain names

Domain names are managed centrally by the Internet Corporation for Assigned Names and Numbers (ICANN)³³ and the member States are allowed to directly manage national domain names. The names constitute an element of commercial identification and are therefore likely to create competition between online stakeholders. For this reason, one can expect that States may have to resolve domain name related disputes. Therefore legal regulation will be necessary to manage such situations when they arise.

6. Challenges to the reform process and recommendations

The UNCTAD workshops provided participants with the opportunity to discuss the numerous challenges to regional harmonization of legislation.

The main challenges identified by the representatives of member States were the successful adoption and implementation of ECOWAS legislation on electronic transactions, data protection and cybercrime in order to effectively contribute to the regional integration process. It is expected that the ECOWAS harmonization model will increase transactions between member and non-member States, boosting investment within ECOWAS as a result of a more secure and harmonized legal framework.

As part of the discussions among participating countries at the workshops, there was an agreement that the reform process requires commitment from the highest levels of each State to facilitate the effective revision and adoption of legal texts. UNCTAD recommended the following steps should be taken by ECOWAS Member States to facilitate the legislation process:

- Undertaking a cyberlaw audit in order to assess the need for legal revision;
- Establishing a benchmark analysis based on international, regional and national best practice;
- Drafting preliminary legislation to guarantee coherence with existing legal documents, internally, regionally and internationally;
- Adopting the legislation;
- Developing guidelines for domestic enforcement of the legislation.

Some member States of ECOWAS have been assisted in these various steps by different international organisations and private law firms. UNCTAD recommends that member States share contacts and best practices among themselves.

³³ <http://www.icann.org>

The challenges of effective implementation need to be addressed. To this end, UNCTAD recommends that member States put in place inclusive communication strategies. These strategies could involve training, awareness raising campaigns on the main issues and capacity building sessions with stakeholders so they can understand the legal challenges posed by ICTs and the benefits of the legislation. Examples of such campaigns in other countries such as Uganda (UNCTAD, 2015) have proven to be successful in increasing stakeholders' trust in the use of ICT.

At an institutional level, States should create enforcement agencies to manage and monitor electronic services, to combat cyber offences (e.g. a national CERT) and to protect the processing of data

In addition, the following recommendations were formulated:

1. Member States should continue the transposition and implementation of regional legislation on e-transactions, data protection and cybercrime with a clearly defined strategy and specific deadlines;
2. At the ECOWAS level, the process of harmonization should continue by considering all relevant areas, including e-money, online administration and new issues arising from cloud computing.
3. The existing legislation should be disseminated to stakeholders at all levels. This step would necessitate training or capacity building for those tasked with the application of ICT regulation, including those in priority sectors such as the courts, the police force and parliamentarians.

**REPORTS ON THE LEGAL FRAMEWORK FOR E-
COMMERCE IN ECOWAS COUNTRIES**

Benin in brief

| | |
|--|-------------|
| Economy | 2013 |
| GDP current prices, million \$ | 8'240.0 |
| GDP per capita | 798.2 |
| Real GDP growth % | 4.6 |
| Trade | |
| <i>Merchandise Exports million \$</i> | 1'500 e |
| Merchandise exports % of exports of merch. & sServices | 71.6 |
| Main merchandise exports million \$ | |
| Cotton | 221.2 |
| Petroleum oils or bituminous minerals > 70 % oil | 163.4 |
| Gold, non-monetary (excluding gold ores and concentrates) | 162.7 |
| Fruits and nuts (excluding oil nuts), fresh or dried | 130.7 |
| ICT goods exports (percentage of total merchandise trade) | 0.0 |
| ICT goods imports (percentage of total merchandise trade) | 1.6 |
| <i>Services Exports million \$ (2012)</i> | 434.4 e |
| Services exports as % of exports of merch. & services | 28.4 e |
| Main category of services exports as % of total service exports | |
| Transport | 25.1 e |
| Travel | 39.9 e |
| Other services | 35.1 e |
| Demography | |
| Population (thousands) | 10'323.5 |
| Life expectancy at birth (years) (2012) | 59.1 |
| Adult literacy (15+) % (2006) | 28.7 |
| Youth literacy (15-24) % (2006) | 42.4 |
| Labour and Finance | |
| Employment in agriculture % | 43.2 |
| FDI inflows million \$ | 320.1 |
| Migrant remittances inflows million \$ | 184.7 |
| ICT access and use | |
| Fixed (wired) Internet subscriptions per 100 inhabitants (2012) | 0.4 |
| Fixed (wired) broadband Internet subscriptions per 100 inhabitants | 0.0 |
| Mobile cellular telephone subscriptions per 100 inhabitants | 93.3 |
| Percentage of households with Internet access at home | 2.9 |
| Percentage of Individuals using the Internet | 4.9 |

Notes:

e: estimates

Sources:

UNCTAD (UNCTADstat database), World Bank (World Development Indicators, Migration and

Remittances database), UNESCO (UIS statistics), ITU (World Telecommunication/ICT Indicators database), ILO (Global Employment Trends 2014)

Benin

Benin has defined a strategy for the promotion and development of the information society through Decree No. 2008-780, 31 December 2008, approving the Policy and Strategy Document for the telecommunications sector/ICT and Postal services.

The strategy is based on two fundamental pillars: online administration and e-business. In relation to the latter, the e-Regulation strategy³⁴ has the objective of facilitating procedures for investors and entrepreneurs. Benin is experiencing delays in the implementation of his strategy. The reasons for this have been identified as follows:

- Inequitable access to communication infrastructure;
- Nascent regulatory and institutional framework;
- Lack of human resources qualified in the areas of regulation and disciplines specific to ICT, such as the creation of technological applications;
- Limited spread of ICT within public administration and the business community.

The implementation of a legal framework—in line with international and regional standards such as and the UNCITRAL Convention on the Use of Electronic Communications in International Contracts and the ECOWAS Supplementary Acts on e-transactions and Data Protection and the Directive on Cybercrime—constitutes one of the priorities for further promotion and development of the ICT sector.

Status of cyberlaws

In Benin, there is no legal framework or regulations specific to e-commerce. In virtue of Decree No. 2014-021 of 20 January 2014, the Ministry of Communication and ICT is responsible for defining and implementing government policy, as well as drafting laws and regulations on ICT.

Under the leadership of the Regulation and Cooperation Agency, the Ministry in charge of ICT has undertaken the vast work of developing draft legislation specific to the information society through the e-Benin Project. The first milestone was reached on 13 May 2014, when the National Assembly adopted the law on e-Communication and Postal services, which was promulgated on 9 July 2014. This law established two important institutions for the development of ICT: the Benin Agency for Universal Electronic and Postal Communications Service and the Regulatory Authority for Electronic Communications and Postal Services.

On 12 August 2014, the parliament approved the Law on Terrestrial Digital Radio Broadcasting (in

³⁴ UNCTAD has developed an electronic tool called eRegulations to help governments make rules and procedures fully transparent and to facilitate business, trade and investment. It has been installed in 26 countries, out of which eight in ECOWAS (Benin, Burkina Faso, Cape Verde, Guine Bissau, Mali, Niger, Senegal, Togo). In Benin, the number of steps for registering a company was reduced from 20 to 14, and the duration from 8 to 2 days without any legal reform. On the basis of the simplified procedures, UNCTAD helps countries to develop electronic single windows providing multiple services online. More information on <http://businessfacilitation.org/>.

relation to the transition from analogue to digital broadcasting).

Electronic transactions

A draft law on e-transactions exists as well as a draft law aiming at securing electronic transactions and setting standards on the legal framework for e-signature and e-certification services. A draft law on cryptology has also been prepared.

Computer crime and cyber security

A draft law on cybercrime has been prepared. In addition, the law No. 2011-20 of 12 October 2011 on the fight against corruption and other related offences in the Republic of Benin includes provisions that punish cybernetic offences related to acts of corruption. However, it is not primarily aimed at combatting cybercrime.

Benin is in the process of forming a cybersecurity policy and creating a cybercrime response cell. While a Cybercrime Emergency Response Team (CERT) does not yet exist, a project has been initiated and is a work in progress, as is the implementation of an Internet exchange point (IXP).

Data protection and privacy

The Law No. 2009-09 of 22 May 2009 on the protection of personal data is being revised in order to comply with the Supplementary Act A/SA.1/01/10 on Personal Data Protection within ECOWAS. In accordance with Law No. 2009-09 of May 22, 2009 on the protection of personal data, the National Commission on Information Technology and Civil Liberties was created. It is tasked with overseeing compliance with the requirements for the protection of personal data.

Consumer protection

Law No. 2007-21 of October 16, 2007 has a general scope and addresses consumer protection issues but not specifically in the context of e-commerce.

Burkina Faso

| | | |
|--|-------------|---|
| Economy | 2013 | |
| GDP current prices, million \$ | 11'882.8 | |
| GDP per capita | 701.7 | |
| Real GDP growth % | 6.9 | |
| Trade | | |
| <i>Total Merchandise Exports million \$</i> | 2'160.0 | e |
| Merchandise Exports % of exports of Merch.& Services | 82.5 | |
| Main merchandise exports million \$ | | |
| Gold, non-monetary (excluding gold ores and concentrates) | 967.2 | |
| Cotton | 658.7 | |
| Oil seeds and oleaginous fruits (excluding flour) | 145.7 | |
| Fruits and nuts (excluding oil nuts), fresh or dried | 82.0 | |
| ICT goods exports (percentage of total merchandise trade) | 0.0 | |
| ICT goods imports (percentage of total merchandise trade) | 1.8 | |
| <i>Services Exports million \$ (2012)</i> | 425.5 | e |
| Services Exports as % of exports of Merch. & Services | 17.5 | e |
| Main category of services exports as % of total service exports | | |
| Transport | 12.6 | e |
| Travel | 20.1 | e |
| Other services | 67.3 | e |
| Demography | | |
| Population (thousands) | 16'934.8 | |
| Life expectancy at birth (years) (2012) | 55.9 | |
| Adult literacy (15+) % (2007) | 28.7 | |
| Youth literacy (15-24) % (2007) | 39.3 | |
| Labour and Finance | | |
| Employment in Agriculture % | 84.6 | |
| FDI inflows million \$ | 374.3 | |
| Migrant remittances inflows million \$ | 133.1 | |
| ICT access and use | | |
| Fixed (wired) Internet subscriptions per 100 inhabitants (2012) | 0.2 | |
| Fixed (wired) broadband Internet subscriptions per 100 inhabitants | 0.1 | |
| Mobile cellular telephone subscriptions per 100 inhabitants | 66.4 | |
| Percentage of households with Internet access at home | 3.2 | |
| Percentage of Individuals using the Internet | 4.4 | |

Notes:

e: estimates

Sources:

UNCTAD (UNCTADstat database), World Bank (World Development Indicators, Migration and Remittances database), UNESCO (UIS statistics), ITU (World Telecommunication/ICT Indicators

database), ILO (Global Employment Trends 2014)

Burkina Faso

Since 2004, Burkina Faso has been implementing an ICT strategy for the development of e-government, online services for the development of rural areas, as well as e-commerce.

This national strategy seeks to integrate the country into the information society and to this end the following specific objectives have been identified:

- Making ICT widely available and easily accessible for all;
- Integrating ICT into national development strategies;
- Ensuring the convergence of policies on telecommunications, audiovisual media and information technology.

In 2005, in order to guarantee global coherence of procedures and synergy between different stakeholders, the Strategic Advisory Council for the Promotion of the Information Society was created. Before its inception, in May 2014 upon completion of the assessment of the ICT strategy, the lack of qualified human resources in several identified sectors (e-education, e-agriculture, e-health) had been singled out as the main hindrance to the mission of the Advisory Council..

Status of cyberlaws

Electronic transactions

In 2008, the adoption of Law No. 61-2008/AN, 27 November 2008 on the general standards of network and electronic communication services permitted the implementation of the ECOWAS Supplementary Acts, adopted 19 January 2007 in Ouagadougou, along with the A/SA 1/01/07 Supplementary Act on the harmonization of policies and of the regulatory framework for the ICT sector.³⁵

Thereafter, several laws were adopted to complete the legal framework and ICT standards. For example, the Law No. 045-2009/AN on the regulation of electronic services and transactions was adopted and a regulation authority created.

Computer crime and cyber security

A draft legislation on cybercrime foresees the incorporation of the following sections into the criminal code:

- “computer related offences” in order to criminalize computer-related fraud and forgery;
- “offences against confidentiality, integrity and the availability of computer data and systems” to criminalize non-authorized access to computer systems, interception of data, computer sabotage and hacking;
- “content-related offences” to criminalize diverse acts related to the possession and diffusion of child pornography, xenophobic, racist or negationist materials ;

The expected reform of the criminal procedure code also aims at regulating the identification of telecommunication service users, network searches, the tracking and interception of communications or wire-tapping.

Data protection and privacy

³⁵ See http://www.ecowas.int/publications/en/actes_add_telecoms/ICT_Policy_ECOWAS_Engl.pdf

With the adoption of the Law No. 010-2004/NA on the protection of personal data,³⁶ the country has been considered a forerunner within the sub-region in the field of personal data protection. However, because that law was adopted before the ECOWAS Supplementary Act on the protection of personal data, Burkina Faso has now to adapt its legislation so as to implement the provisions of the Act.

Domain name regulation

The LawNo. 011-2010/AN on The Regulation of Domain Names under the top level domain “.bf” govern domain names in Burkina Faso.

³⁶ See at <http://www.afapdp.org/wp-content/uploads/2012/01/Burkina-Faso-Loi-portant-protection-des-donn%C3%A9es-%C3%A0-caract%C3%A8re-personnel-20042.pdf>

Cabo Verde

| | |
|--------------------------------|-------------|
| Economy | 2013 |
| GDP current prices, million \$ | 2'113.4 |
| GDP per capita | 4'236.2 |
| Real GDP growth % | 4.3 |

Trade

| | |
|--|------|
| <i>Merchandise Exports million \$</i> | 68.9 |
| Merchandise Exports % of exports of Merch.& Services | 9.6 |
| Main merchandise exports million \$ | |
| Fish, aqua. invertebrates, prepared, preserved, n.e.s. | 24.1 |
| Fish, fresh (live or dead), chilled or frozen | 24.9 |
| Footwear | 4.7 |
| Ferrous waste, scrape; remelting ingots, iron, steel | 1.9 |
| ICT goods exports (percentage of total merchandise trade) (2007) | 0.3 |
| ICT goods imports (percentage of total merchandise trade) (2013) | 3.9 |

| | |
|---|-------|
| <i>Services Exports million \$</i> | 650.2 |
| Services Exports as % of exports of Merch. & Services | 90.4 |
| Main category of services exports as % of total service exports | |
| Transport | 18.8 |
| Travel | 71.1 |
| Other services | 10.1 |

Demography

| | |
|---|-------|
| Population (thousands) | 498.9 |
| Life expectancy at birth (years) (2012) | 74.5 |
| Adult literacy (15+) % (2012) | 85.3 |
| Youth literacy (15-24) % (2012) | 98.1 |

Labour and Finance

| | |
|--|-------|
| Employment in Agriculture % | 44.1 |
| FDI inflows million \$ | 18.7 |
| Migrant remittances inflows million \$ | 173.3 |

ICT access and use

| | |
|--|-------|
| Fixed (wired) Internet subscriptions per 100 inhabitants (2012) | 4.0 |
| Fixed (wired) broadband Internet subscriptions per 100 inhabitants | 4.3 |
| Mobile cellular telephone subscriptions per 100 inhabitants | 100.1 |
| Percentage of households with Internet access at home | 22.8 |
| Percentage of Individuals using the Internet | 37.5 |

Sources:

UNCTAD (UNCTADstat database), World Bank (World Development Indicators, Migration and Remittances database), UNESCO (UIS statistics), ITU (World Telecommunication/ICT Indicators database), ILO (Global Employment Trends 2014)

Cabo Verde

As an ex-colony of Portugal, Cape Verde's legal system reflects the civil law system found in Portugal. The Constitution dates from 1992 and was last amended in 2010. Cape Verde has adopted a range of legislative measures relating to e-commerce. Where legislative initiatives have been adopted, they tend to be based on Portuguese domestic legislation. In some areas, such as data protection, domestic legislation is based on European Union directives.

The telecommunications, postal and information and communication technology sectors are regulated by the Agência Nacional das Comunicações (ANAC)³⁷, established under Legislative Decree No. 7/2005 of 28 November.³⁸

Status of cyberlaws

Electronic transactions

Cape Verde has a comprehensive legal framework recognising the validity of electronic commerce, the use of electronic signatures and electronic invoices and the operation of a public key infrastructure ('PKI'):

- Decree-Laws No. 33/2007³⁹ and 18/2007, regulate electronic commerce in general as well as the use of electronic signatures; granting them legal recognition, providing for their accreditation and use in e-procurement;
- Decree-Law No. 42/2006, defines the legal regime applicable to electronic invoices, while Regulatory Decree No. 4/2007 establishes the conditions and requirements for the use of electronic invoices;
- Decree-Law No. 44/2009, establishes a Public Key Infrastructure for Cape Verde ('ICP-CV') and delegates powers to the accreditation authority to become the Root Certification Entity ('ECR-CV').

The electronic commerce law adopted in 2003 is based on the UNCITRAL Model Laws on Electronic Commerce (1996) and Electronic Signatures (2001).⁴⁰ The PKI is hierarchical with a single 'root' Certification Authority to support both public and private sector entities.

Computer crime and cyber security

Under the Penal Code⁴¹, which dates from 2003, there are a number of offences that refer to the use of computers in their commission:

- 'Illegal computer processing' criminalises not only those that process data without authorisation, but also those that fail to take precautions and implement security measures to prevent unauthorised processing (Article 187);
- Content-related crimes, such as slander and libel can be committed using computers (Article 171);

³⁷ <http://www.anac.cv/>

³⁸ http://www.anac.cv/images/stories/legislacao_tec/DLegislativo07-2005.pdf

³⁹ This repealed an earlier law, Decree-Law No. 49/2003, regulates the procedures and basic principles underpinning the use of electronic commerce.

⁴⁰ http://www.uncitral.org/uncitral/en/uncitral_texts/electronic_commerce/2001Model_status.html

⁴¹ Decree-Law No. 4/2003, of 18 November 2003.

- The use of computers to commit fraud is also a distinct offence; whether carried out by inputting false, incorrect or incomplete data, through programming techniques, or outputting false data (Article 212).

While not a comprehensive range of provisions addressing all aspects of cybercrime, they do represent a significant attempt to tackle some critical areas. The data protection laws, described below, also contain data security provisions with respect to the processing of personal data.

A Computer Incident Response Team is in the process of being established in Cape Verde.

Data protection and privacy

Under the Constitution, Article 41, a person's communications are confidential, unless authorised by a court order. Article 42 goes further and prohibits the use of computers to process certain types of personal data, i.e. a person's political, philosophical, ideological, religious faith or membership of a trade union. Breach of this Article is an offence under the Penal Code, with a maximum prison sentence of 3 years.⁴² In addition, the imposition of a single national number for citizens, such as a national identity card scheme, is prohibited. While such so-called 'sensitive data' is subject to additional protections under European Union law, the nature of the prohibition in Cape Verde appears absolute, rather than simply imposing tighter constraints on when and how such data is processed.

Building on the Constitutional provisions and reflecting European Union law, Cape Verde has both a general data protection law⁴³, as well as a sectoral law addressing data protection issues in the telecommunications sector.⁴⁴ Under the former, a data protection agency is to be established.⁴⁵

Consumer protection

Cape Verde's consumer protection law dates from 1998⁴⁶, which established the consumer defence association, known as ADECO, "to defend the legitimate rights and interests of consumers in general, and for this purpose take all reasonable order to achieve the envisaged activities".⁴⁷ The general law does not contain provisions specifically addressing internet-based commerce.

Decree-Law No. 46/2007 is a general law on advertising practices and is applicable to any form of advertising regardless of the medium.⁴⁸ Section V lays down additional rules for specified types of advertising, including, at Article 35, for 'information society services'. The term is not defined in the Decree, but it originates from EU law⁴⁹. It is broadly defined to include most of the major Internet-related services, such as e-commerce web sites and search engines, other than those comprising telecommunication services.

Article 35 requires service providers to make information available to consumers about the product

⁴² Penal Code, Article 188.

⁴³ Lei n° 133/V/2001 of 22 January 2001.

⁴⁴ Lei n° 134/V/2001 of 22 January 2001. Available at http://www.anac.cv/images/stories/legislacao_tec/Lei134-2001.pdf

⁴⁵ See Greenleaf, G., "Sheherezade and the 101 data privacy laws: Origins, significance and global trajectories", *Journal of Law, Information and Science*, 2013.

⁴⁶ Lei n° 88/V/98 of 31 December 1998. Available at http://adeco.cv.free.fr/lei_consumidor.htm

⁴⁷ <http://adeco.cv.free.fr/>

⁴⁸ Available at http://www.wipo.int/wipolex/en/text.jsp?file_id=206229

⁴⁹ Article 1(2) of Directive 98/34/EC as amended by Directive 98/48/EC.

or service being advertised, as well as any requirements, restrictions or conditions relating to a purchase or usage; but it does not require the provision of information about the supplier. It also attempts to regulate unsolicited advertising communications, by requiring the sender to provide the recipient with a means of request removal from the mailing list; with sanctions available if further messages are sent.

Online content

Freedom of expression is protected under the Constitution, although the law requires all broadcasters to be licenced and government approval is necessary to establish newspapers and other publications. There are no reported restrictions or monitoring of Internet access.⁵⁰ There are no rules addressing the liability of intermediary service providers, such as ISPs, for the content made accessible via such services.

In respect of intellectual property matters, a distinct regulatory authority has been established, the Institute for Intellectual Property of Cape Verde ('IPICV').

Domain name regulation

The operation of the country code TLD for Cape Verde, .cv, is subject to rules promulgated by ANAC.⁵¹

⁵⁰ See http://www.freedomhouse.org/report/freedom-press/2011/cape-verde#.U_xwjsVdWSo

Gambia

| | |
|--|-------------|
| Economy | 2013 |
| GDP current prices, million \$ | 909.1 |
| GDP per capita | 491.6 |
| Real GDP growth % | 7.1 |
| Trade | |
| <i>Merchandise Exports million \$</i> | 90.0 e |
| Merchandise Exports % of exports of Merch.& Services | 29.9 |
| Main merchandise exports million \$ | |
| Fruits and nuts (excluding oil nuts), fresh or dried | 19.0 |
| Wood in the rough or roughly squared | 11.4 |
| Ores and concentrates of base metals, n.e.s. | 8.7 |
| Fabrics, woven, of man-made fabrics | 6.9 |
| ICT goods exports (percentage of total merchandise trade) | 0.1 |
| ICT goods imports (percentage of total merchandise trade) | 1.8 |
| <i>Services Exports million \$</i> | 211.0 e |
| Services Exports as % of exports of Merch. & Services | 70.1 e |
| Main category of services exports as % of total service exports | |
| Transport | 32.8 e |
| Travel | 53.0 e |
| Other services | 14.1 e |
| Demography | |
| Population (thousands) | 1'849.3 |
| Life expectancy at birth (years) (2012) | 58.6 |
| Adult literacy (15+) % (2012) | 52.0 |
| Youth literacy (15-24) % (2012) | 69.4 |
| Labour and Finance | |
| Employment in Agriculture % | 63.7 |
| FDI inflows million \$ | 25.3 |
| Migrant remittances inflows million \$ | 180.6 |
| ICT access and use | |
| Fixed (wired) Internet subscriptions per 100 inhabitants (2007) | 0.2 |
| Fixed (wired) broadband Internet subscriptions per 100 inhabitants | 0.0 |
| Mobile cellular telephone subscriptions per 100 inhabitants | 100.0 |
| Percentage of households with Internet access at home | 7.6 |
| Percentage of Individuals using the Internet | 14 |

Notes:

e: estimates

Sources:

UNCTAD (UNCTADstat database), World Bank (World Development Indicators, Migration and

Remittances database), UNESCO (UIS statistics), ITU (World Telecommunication/ICT Indicators database), ILO (Global Employment Trends 2014)

Gambia

The Gambian legal system is based on three distinct systems: English law, customary law and Islamic law. The Constitution dates from 1997 and was last amended in 2001. In 2009, the Gambia adopted the Information and Communications Act ('ICA').⁵² It is designed as a comprehensive legislative response to the main issues raised by the Internet and cyberspace.

Chapter II of the law establishes a regulatory regime for the provision of telecommunication systems and services. It includes a licensing and authorisation procedure, which is designed to facilitate competition within the market; rules on spectrum management, universal service and end-user rights. Chapter IV establishes a simply framework for the provision of broadcasting services. Both are largely governed by the Public Utilities Regulatory Authority ('PURA')⁵³, established since 2001, although the Minister of Information and Communication retains powers in respect of particular issues.

Where PURA intends to make a decision in relation to the provision of 'information and communications networks or services', it has an obligation to consult with all interested parties and to publish the results of any such consultation (ICA, section 4). Such procedures enable industry and civil society groups to make an input into the decision-making process.

Status of cyberlaws

Electronic transactions

Parts V to VIII of Chapter III of the ICA are concerned with electronic records, electronic signatures, electronic transactions, e-government services and the regulation of certification services. Such electronic transactions are granted legal recognition. Public agencies are given the freedom to permit acts to be done in an electronic form, subject to any requirements that it may choose to impose.

With regard to electronic signatures, the ICA provisions are based on the UNCITRAL Model Laws on Electronic Commerce (1996) and the UNCITRAL Model Law on Electronic Signatures (2001), as well as EU Directive 99/93/EC. Different and preferential legal treatment is given to certain electronic signature technologies, specifically public key cryptographic techniques and their administration by third-party certification service providers. As such, the provisions cannot be described as technology neutral.

Computer crime and cybersecurity

Chapter III, Part III and Part IV of the ICA establishes a series of offences relating to the use of computers. The offences can be sub-divided into three types:

- Computer-related crimes, where the computer is simply a tool for commission of traditional criminal offences, specifically extortion, fraud and forgery;
- Computer-integrity offences, where the computer is the target of the conduct, specifically illegal access and modification;
- Content-related offences, where the computer is the tool for distributing the illegal content, specifically indecent photographs of children.

⁵² No. 2 of 2009. See <http://moici.gov.gm/images/pdfs/ICACT2009.pdf>

⁵³ <http://www.pura.gm/>

In addition, there are specific offences in relation to mobile telephones, specifically related to the re-programming of mobile handsets.

Data protection and privacy

Article 23 of the Constitution grants individuals a right of privacy, including with regard to their communications. The ICA does not establish a comprehensive regime for the processing of personal data nor a regulatory agency. However, Chapter II, Part XIII lays down rules governing the use of communication services that may interfere in an individual's private life, such as unsolicited communications; as well as imposing obligations upon providers of communication services, especially in respect of implementing security measures. With respect to the provision of 'information society services', a supplier has an obligation to inform consumers of its 'privacy policy' (Chapter III, Part VI, art. 206(1)(p)). Responsibility for oversight and enforcement of these obligations resides with PURA.

Consumer protection

The Gambia adopted a Competition Act in 2007, which establishes a Competition Commission. The Act primarily regulates restrictive business practices, which will have an obvious impact on consumers. The Gambia adopted the Consumer Protection Act 2014 in April and the Gambian Competition Commission has been renamed the Gambian Competition and Consumer Protection Commission (GCCPC).⁵⁴

The 2014 Act contains provisions on distance-selling, which would obviously include Internet-based commerce. The obligations include requirements to provide certain information prior to the conclusion of a contract (e.g. the price of the goods including taxes and delivery costs); a right of cancellation and the ability for consumers to review orders and correct mistakes prior to confirmation.

The ICA also contains two sets of provisions granting rights to consumers. The first set covers consumer protection rights in respect of the use of communication services, addressing such issues as contractual terms and dispute resolution (Chapter II, Part XI); while the second grants rights to consumers of 'information society services' (Chapter III, Part VI).

Under the latter, suppliers have an obligation to provide information on the website from which they offer goods and services, concerning the supplier (e.g. company registration number), the characteristics of the goods or services being supplied and the conditions of such supply. Consumers are granted a right of withdrawal. Certain protections against unsolicited communications are also provided for, backed by criminal sanctions. These rules are also applicable to agreements subject to the laws of other jurisdictions. PURA continues to have the remit to regulate these rules, as distinct from the jurisdiction of the GCCPC.

Online content

The ICA does not contain any provisions concerning the responsibility and liability of 'information society services' or other intermediaries for third party content made available via the services.

Domain name regulation

⁵⁴ www.gcc.gm A summary of the Consumer Protection Act 2014 is available at <http://www.gcc.gm/pdf/THE%20CONSUMER%20PROTECTION%20ACT%202014%20-%20Article.pdf>

The .gm ccTLD is managed by NIC.⁵⁵ The ICA grants PURA the authority to lay down rules with respect to “electronic addressing of electronic communications services and related services”, including allocation and use.⁵⁶ To date, no such regulations have been adopted.

Ghana

| | |
|--|-------------|
| Economy | 2013 |
| GDP current prices, million \$ | 45'179.3 |
| GDP per capita | 1'744.1 |
| Real GDP growth % | 7.5 |
| Trade | |
| <i>Merchandise Exports million \$</i> | 13'751.9 |
| Merchandise Exports % of exports of Merch.& Services | 84.8 |
| Main merchandise exports million \$ | |
| Petroleum oils, oils from bitumin. materials, crude | 4'298.9 |
| Cocoa | 3'439.1 |
| Gold, non-monetary (excluding gold ores and concentrates) | 1'257.3 |
| Fruits and nuts (excluding oil nuts), fresh or dried | 1'208.9 |
| ICT goods exports (percentage of total merchandise trade) | 0.2 |
| ICT goods imports (percentage of total merchandise trade) (2012) | 3.8 |
| <i>Services Exports million \$</i> | 2'454.0 e |
| Services Exports as % of exports of Merch. & Services | 15.2 e |
| Main category of services exports as % of total service exports | |
| Transport (2012) | 28.5 |
| Travel (2012) | 28.1 |
| Other services (2012) | 43.4 |
| Demography | |
| Population (thousands) | 25'904.6 |
| Life expectancy at birth (years) (2012) | 60.9 |
| Adult literacy (15+) % (2010) | 71.5 |
| Youth literacy (15-24) % (2010) | 85.7 |
| Labour and Finance | |
| Employment in Agriculture % | 59.7 |
| FDI inflows million \$ | 3'226.3 |
| Migrant remittances inflows million \$ | 145.5 |
| ICT access and use | |
| Fixed (wired) Internet subscriptions per 100 inhabitants (2012) | 0.3 |
| Fixed (wired) broadband Internet subscriptions per 100 inhabitants | 0.3 |
| Mobile cellular telephone subscriptions per 100 inhabitants | 108.2 |
| Percentage of households with Internet access at home | 31.8 |
| Percentage of Individuals using the Internet | 12.3 |

Notes:

e: estimates

Sources:

UNCTAD (UNCTADstat database), World Bank (World Development Indicators, Migration and

Remittances database), UNESCO (UIS statistics), ITU (World Telecommunication/ICT Indicators database), ILO (Global Employment Trends 2014)

Ghana

Ghana's legal system is based on the common law system, while its constitution dates from 1992 (and last amended in 1996). Similar to the Gambia, in 2008 Ghana adopted the Electronic Transactions Act ('ETA')⁵⁷, which is comprehensive measure designed to remove barriers to the use of electronic communications; create legal certainty; promote electronic government services and ensure a secure environment. In the same year, the National Information Technology Agency ('NITA') was established under a separate statute.⁵⁸ These measures were part of a package provided for in Ghana's National Telecommunications Policy from 2005.

Regulations may be promulgated under the ETA by the Minister for Communications ('Minister') in respect of a range of matters, including prescribing records and information from the scope of the Act. The ETA provides for an 'Industry Forum' to be set-up, to enable issues of common interest to be raised for debate and discussion. While predominantly for industry, the Minister and NITA can participate in the Forum. The Forum may draw up voluntary codes of conduct, either on its own initiative or at the requested of the NITA. These voluntary codes are not considered 'effective' until registered with NITA, which requires it to approve the code. Decisions and orders of the NITA may be appealed to an Information Communication Technology Tribunal, established on an ad hoc basis under the ETA.

Status of cyberlaws

Electronic transactions

Sections 5-45 of the ETA address electronic transactions and electronic government services. The provisions on electronic transactions are based on the UNICTRAL Model Law of 1996, as well as elements of the United Nations Convention on the Use of Electronic Communications in International Contracts (2005).

The provisions recognise the legal validity, enforceability and admissibility of electronic messages; although the ETA is not applicable to certain specified legal acts and the parties are free to agree other rules. Digital signatures and certification procedures are granted recognition and a regulatory regime is outlined for the provision of 'encryption or authentication services', under the supervision of a 'Certifying Agency', established by the National Information Technology Agency.

Public bodies have a duty to ensure that its functions "are carried out, delivered or accessed electronically or online", either through its own actions or "enter into arrangements" (s. 25); which presumably includes the use of private sector service providers offering outsourced or cloud-based solutions.

Computer crime and cyber security

Sections 98-106 address issues of criminal procedure in cybercrime investigations, while sections 107-140 establish cyber offences.

The powers granted to so-called 'Cyber inspectors', i.e. persons from the NITA or any other agency enforcing the provisions of the ETA, are in addition to any traditional powers given to law enforcement agencies under the Criminal Procedure Code 1960 (Act 30). For example, a 'cyber

⁵⁷ Act No. 772.

⁵⁸ National Information Technology Act 2008 (Act No. 771). See www.nita.gov.gh

inspector' can request the assistance of a third party, such as an IT expert, in the course of an investigation. In addition, requests may be made to certain service providers to preserve electronic records that may be required as evidence, which would be subsequently disclosed in response to a valid court order. Service providers are also required to retain logs and records concerning the use of their services.

The ETA modifies the Criminal Offences Act 1960 in respect of a number of forms of criminal conduct, such as 'stealing', 'appropriation' and 'representation', in order to enable these traditional provisions to be used against similar conduct occurring within a cyberspace environment. New offences are also established under the ETA to address conduct aimed at undermining the integrity of computer systems, such as unauthorised access, interception and interference. The third category of offences relate to the distribution of illegal content, specifically child pornography.

In terms of cybersecurity, the ETA establishes a procedure whereby either the Minister of Communications can designate a computer, a system or network as 'protected', or such computers are 'protected' by virtue of being used for certain specified purposes, such as critical national infrastructure. Access to such 'protected' computers, systems or networks is a criminal offence. In addition, the Minister may designate certain types of information or databases as being 'critical'. Such 'critical electronic records' and 'critical databases' may be required to be registered, including detailing their location. The Minister can prescribe that these 'critical' records and databases must be managed in accordance with minimum standards designed to protect national security. These procedures could be used, for example, to prevent the use of outsourced or cloud service providers whose server infrastructure is located outside Ghana.

Data protection and privacy

Under the ETA 2008, consumer protection rules include restrictions on unsolicited communications, as well as specific rules prohibiting the disclosure of customer data by financial institutions detailing those holding electronic payment instruments. These rules are backed by criminal sanctions.

It was not until 2012 that Ghana adopted a stand-alone Data Protection Act ('DPA')⁵⁹. Under the DPA, a Data Protection Commission is to be established to implement and monitor compliance with the provisions of the Act, including maintenance of a Data Protection Register⁶⁰. To date, however, the Commission has not been established.

The DPA imposes obligations upon data controllers and grants certain rights to data subjects. It also contains a series of exemptions, for reasons such as the prevention and detection of crime.

Consumer protection

The ETA includes provisions imposing obligations on suppliers engaged in electronic transactions. The supplier is required to make available to the consumer on the applicable electronic platform certain information concerning the supplier themselves (e.g. physical address), the goods and services being offered (e.g. full price), the conditions of supply (e.g. returns policy) and the procedure in the event of a dispute, which should include subscription to an 'alternative dispute resolution code'. The process by which a consumer enters into a transaction and the transaction is performed is also regulated.

⁵⁹ Act No. 843.

⁶⁰ Ibid., s. 3.

In addition to the ETA, the Protection against Unfair Competition Act 2000 contains provisions designed to protect the public against misleading practices.

A consumer protection agency is in the process of being established.

Online content

The ETA contains provisions governing the liability of service providers and intermediaries for the content and conduct of their subscribers and users. Echoing European Union law⁶¹, service providers are not liable when engaged in the provision of ‘mere conduit’, ‘transmission’, ‘hosting’ services or ‘information location tools’, subject to specified conditions, including an absence of ‘actual knowledge’ concerning any infringing activity. A notice and take-down procedure is detailed in the ETA, to enable unlawful or illegal material to be removed.

Domain name regulation

The ETA provides for the establishment of a Domain Name Registry to manage the operation of the ccTLD .gh, including the licensing and oversight of ‘registries’. The records and databases held by these registries are considered ‘critical’, as outlined in section 3.2, above and to ensure compliance with the minimum standards, the government may require that an audit be carried out.

⁶¹ I.e. Directive 00/31/EC on electronic commerce, arts. 12-15.

Guinea

| | |
|--|-------------|
| Economy | 2013 |
| GDP current prices, million \$ | 6'811.8 |
| GDP per capita | 580.0 |
| Real GDP growth % | 4.2 |
| Trade | |
| <i>Merchandise Exports million \$</i> | 1300 e |
| Merchandise Exports % of exports of Merch.& Services | 93.5 |
| Main merchandise exports million \$ | |
| Aluminium ores and concentrates (incl. alumina) | 555.7 |
| Petroleum oils, oils from bitumin. materials, crude | 441.1 |
| Natural gas, whether or not liquefied | 63.1 |
| Gold, non-monetary (excluding gold ores and concentrates) | 91.2 |
| ICT goods exports (percentage of total merchandise trade) (2008) | 0.0 |
| ICT goods imports (percentage of total merchandise trade) (2008) | 5.2 |
| <i>Services Exports million \$ (2012)</i> | 159.1 |
| Services Exports as % of exports of Merch. & Services | 6.5 e |
| Main category of services exports as % of total service exports | |
| Transport (2012) | 3.0 |
| Travel (2012) | 0.9 |
| Other services (2012) | 96.1 |
| Demography | |
| Population (thousands) | 11'745.2 |
| Life expectancy at birth (years) (2012) | 55.8 |
| Adult literacy (15+) % (2010) | 25.3 |
| Youth literacy (15-24) % (2010) | 31.4 |
| Labour and Finance | |
| Employment in Agriculture % | 73.6 |
| FDI inflows million \$ | 24.8 |
| Migrant remittances inflows million \$ | 72.5 |
| ICT access and use | |
| Fixed (wired) Internet subscriptions per 100 inhabitants | .. |
| Fixed (wired) broadband Internet subscriptions per 100 inhabitants | 0.0 |
| Mobile cellular telephone subscriptions per 100 inhabitants | 63.3 |
| Percentage of households with Internet access at home | 1.4 |
| Percentage of Individuals using the Internet | 1.6 |

Notes:

e: estimates

Sources:

UNCTAD (UNCTADstat database), World Bank (World Development Indicators, Migration and Remittances database), UNESCO (UIS statistics), ITU (World Telecommunication/ICT Indicators

database), ILO (Global Employment Trends 2014)

Guinea

The Government of Guinea has not yet developed a strategy for taking advantage of ICTs. No specific legal framework exists in Guinea that addresses challenges and other issues brought by ICTs. The absence of a legal framework hampers the development of the digital economy. However, as part of the ECOWAS harmonization process, Guinea has taken steps to advance in this area. For instance, training programs have been initiated for police and law enforcement bodies to raise their awareness of existing problems in relation with cybercrime. In the area of consumer protection, Guinea plans to update its legislation and to incorporate electronic commerce.

Guinea Bissau

| | |
|--|-------------|
| Economy | 2013 |
| GDP current prices, million \$ | 888.9 |
| GDP per capita | 521.6 |
| Real GDP growth % | 2.2 |
| Trade | |
| <i>Merchandise Exports million \$</i> | 130 e |
| Merchandise Exports % of exports of Merch.& Services | 90.3 |
| Main merchandise exports million \$ | 190.0 e |
| Fruits and nuts (excluding oil nuts), fresh or dried | 197.9 |
| Petroleum oils, oils from bitumin. materials, crude | 5.3 |
| Wood in the rough or roughly squared | 1.4 |
| Ferrous waste, scrape; remelting ingots, iron, steel | 0.9 |
| ICT goods exports (percentage of total merchandise trade) | .. |
| ICT goods imports (percentage of total merchandise trade) (2005) | 1.9 |
| <i>Services Exports million \$ (2012)</i> | 21.3 |
| Services Exports as % of exports of Merch. & Services | 9.7 e |
| Main category of services exports as % of total service exports | |
| Transport | 1.7 e |
| Travel | 31.5 e |
| Other services | 66.8 e |
| Demography | |
| Population (thousands) | 1'704.3 |
| Life expectancy at birth (years) (2012) | 54.0 |
| Adult literacy (15+) % (2012) | 56.7 |
| Youth literacy (15-24) % (2012) | 74.3 |
| Labour and Finance | |
| Employment in Agriculture % | 66.8 |
| FDI inflows million \$ | 14.5 |
| Migrant remittances inflows million \$ | 47.6 |
| ICT access and use | |
| Fixed (wired) Internet subscriptions per 100 inhabitants (2009) | 0.1 |
| Fixed (wired) broadband Internet subscriptions per 100 inhabitants | 0 |
| Mobile cellular telephone subscriptions per 100 inhabitants | 74.1 |
| Percentage of households with Internet access at home | 1.8 |
| Percentage of Individuals using the Internet | 3.1 |

Notes:

e: estimates

Sources:

UNCTAD (UNCTADstat database), World Bank (World Development Indicators, Migration and Remittances database), UNESCO (UIS statistics), ITU (World Telecommunication/ICT Indicators

database), ILO (Global Employment Trends 2014)

Guinea-Bissau

Guinea-Bissau has a legal system based on the Napoleonic civil code with elements of customary law. The constitution dates back to 1984, and last amended in 1996.

A national regulatory authority, the Autoridade Reguladora Nacional das Tecnologias de Informação e Comunicação ('ARN')⁶², was established in 2010, under the Basic Law on Information Technologies and Communication⁶³, with primary responsibility for the telecommunications sector. While there are currently no general laws relating to electronic commerce and cyberspace-related activities, some legislative initiatives are underway.

Status of cyberlaws

Electronic transactions

Draft legislation on electronic transactions is currently being prepared by ARN.

Computer crime and cybersecurity

Guinea-Bissau's Penal Code and Code on Criminal Procedure date back to 1993⁶⁴, but no computer-specific provisions have been adopted.

Data protection and privacy

A right to privacy is recognised under article 48 of the constitution. However, no other laws or regulatory agencies are present.

Consumer protection

With regard to consumer protection, Guinea adopted a decree in 2012⁶⁵.

Online content

An Industrial Property Code dates from 1996, while the Copyright Code dates back to 1966, which reflects the fact that Guinea-Bissau is a signatory to leading international treaties on such matters.⁶⁶

Domain name regulation

In October 2012, Decree No. 7/2012 granted ARN the legal authority to manage the .gw ccTLD, although in practice this did not occur until 2014, when the .gw was redelegated to ARN by IANA⁶⁷

⁶² <http://Arn-gb.com>

⁶³ Lei n° 5/2010. Available at http://arn-gb.com/anexos/webNews/files/Lei_de_Base_da_ARN_-_3o_Supl._B.O_20140422115726.pdf

⁶⁴ Decreto Lei n° 4/93 and 5/93 respectively, 13 October 1993.

⁶⁵ Decret n°. 7/2012, 23 October 2012.

⁶⁶ www.wipo.int/wipolex/en/profile.jsp?code=GW

Ivory Coast

| | |
|--|-------------|
| Economy | 2013 |
| GDP current prices, million \$ | 27'736.0 |
| GDP per capita | 1'365.2 |
| Real GDP growth % | 7.2 |
| Trade | |
| <i>Total Merchandise Exports million \$</i> | 13'247.3 |
| Merchandise Exports % of exports of Merch.& Services | 92.4 |
| Main merchandise exports million \$ | |
| Cocoa | 3'328.4 |
| Petroleum oils or bituminous minerals > 70 % oil | 1'807.2 |
| Petroleum oils, oils from bitumin. materials, crude | 1'667.8 |
| Natural rubber & similar gums, in primary forms | 719.4 |
| ICT goods exports (percentage of total merchandise trade) | 0.1 |
| ICT goods imports (percentage of total merchandise trade) | 2.1 |
| <i>Services Exports million \$ (2012)</i> | 984.4 e |
| Services Exports as % of exports of Merch. & Services | 7.6 e |
| Main category of services exports as % of total service exports | 15.4 e |
| Transport | 31.2 e |
| Travel | 53.4 e |
| Other services | |
| Demography | |
| Population (thousands) | 20'316.1 |
| Life expectancy at birth (years) (2012) | 50.4 |
| Adult literacy (15+) % (2012) | 41.0 |
| Youth literacy (15-24) % (2012) | 48.3 |
| Labour and Finance | |
| Employment in Agriculture % | 57.4 |
| FDI inflows million \$ | 371.0 |
| Migrant remittances inflows million \$ | 409.6 |
| ICT access and use | |
| Fixed (wired) Internet subscriptions per 100 inhabitants (2012) | 0.2 |
| Fixed (wired) broadband Internet subscriptions per 100 inhabitants | 0.3 |
| Mobile cellular telephone subscriptions per 100 inhabitants | 95.5 |
| Percentage of households with Internet access at home | 1.5 |
| Percentage of Individuals using the Internet | 2.6 |

Notes:

e: estimates

Sources:

UNCTAD (UNCTADstat database), World Bank (World Development Indicators, Migration and

Remittances database), UNESCO (UIS statistics), ITU (World Telecommunication/ICT Indicators database), ILO (Global Employment Trends 2014)

Ivory Coast

Ivory Coast has implemented its strategy of electronic governance (eGov) in order to improve the quality of services offered to users and to contribute to the country's digital emergence. This strategy is based on three fundamental principles: guaranteeing transparency, providing information to users and enabling participation in decisions through the use of ICT.

The strategy is present in a range of sectors including e-education, e-agriculture, e-health.

A National Committee of Implementation was created by Decree No. 003/MNTIC of 11 February 2010. This committee is comprised of representatives of different stakeholders: relevant ministers, regulatory authorities and consumer associations. Its aim is to produce a legal and regulatory framework that takes existing diverse interests into account.

In 2011, the National Committee of Implementation developed draft legislation in accordance with ECOWAS legislation on telecommunications and ICT. The draft legislation was adopted in 2012 and revised in 2013, the same year in which a series of texts on ICT regulation were adopted.

Status of cyberlaws

Electronic transactions

Law No. 2013-546 of 30 July 2013 on e-transactions, along with other legislation, was adopted by Ivory Coast for use in the application of its strategy for electronic governance. This Law implements the ECOWAS A/SA. 2/01/10 Supplementary Act on electronic transactions and reflects international best practice by drawing on the 1996 UNCITRAL Model Law on Electronic Commerce, the 2001 Model Law on Electronic Signatures and the UNCITRAL Convention on the Use of Electronic Communications in International Contracts. The Ivorian law on electronic transactions regulates electronic communications and electronic contracts. It recognises, under certain conditions, the validity of electronic signatures and electronic documents in general. When the law was adopted, one of the biggest challenges encountered was the lack of expertise and resources for the creation of a consumer protection agency. An additional challenge was the necessary training of authorities responsible for the enforcement of the law, such as the police force and the courts. To rectify this situation, the Ministry of ICT launched an awareness raising campaign at the beginning of March 2014.

Diverse forms of electronic payment are available in Ivory Coast. These include the use of credit and debit cards, mobile phones, online payment services such as Paypal, Alipay or Apple using the iTunes card, bank transfers and payment upon delivery.

Computer crime and cyber security

Law No. 2013-451 of 19 June 2013 implements Directive C/DR/1/08/11 of 19 August 2011 on the fight against cybercrime in the ECOWAS zone. It also takes into account a series of regional and international legislation such as the Budapest Convention on Cybercrime of 23 November 2001, and its additional protocol signed on 28 January 2003, as well as the African Union's draft Convention on Cybercrime and Cybersecurity which was finally adopted on 27 June 2014. In particular, the Law provides for offences specific to ICT, and imposes penalties for the infringement of intellectual property rights and the misuse of the electronic communication network. It also establishes obligatory audits and computer systems certification under the control of the regulator.

Ivory Coast has created a National CERT and a platform for the fight against cybercrime. This organisation was formed by the police with the aid of Ivory Coast's Telecommunications Regulatory Authority (ARTCI).

Data protection and privacy

Ivory Coast's Telecommunications Regulatory Authority is responsible for personal data protection. Ivory Coast has adopted Law No. 2013-450 of 19 June 2013 on the protection of personal data that incorporates the ECOWAS A/SA.1/01.10 Supplementary Act into its own domestic law. This law establishes the legal regimes for the processing and circulation of personal data and defines the responsibilities of those in charge of that activity. It sets forth the principle of prohibition of personal data transfer to third countries that don't guarantee sufficient data protection. In addition to the ECOWAS Supplementary Act that it incorporates, this law is guided by: pertinent provisions and best international practices such as Directive 2002/58/CE of 12 July 2002, referred to as “the Directive on privacy and electronic communications”; regulations from the European Parliament and the Council of 25 January 2012 concerning the protection of natural persons with respect to the processing of personal data and the unhindered circulation of this data and the Budapest Convention on Cybercrime of 23 November 2001.

Consumer protection

Ivory Coast has also adopted Ordinance No. 2012-293 of 21 March 2012 relating to Telecommunications and Information and Communication technologies which defines the consumer in article 2-21 as being, “any natural person who uses or requests a publicly accessible electronic communication service for non-professional purposes”. The Ordinance is not specific to consumer protection. It lays the legal and institutional framework for telecommunications activities in the following way:

- Setting a regime of telecommunication activities;
- Laying the general principles and norms regarding the involvement of individuals in the market and access to infrastructure and telecommunication resources;
- Establishing the rights and obligations of individuals, in particular, those rights and obligations concerning Universal Telecommunication services;
- Creating institutions to regulate the sector including a regulatory authority.

Consumer protection is not fully addressed by the March 21 Ordinance. Article 72 addresses the functions of the regulatory authority. The article specifically states that the regulatory body (ARTCI) should protect consumer interests, ensure that related questions are dealt with and receive consumer complaints.

The adoption of Ivorian legislation regulating ICT has encountered several difficulties such as the lack of funding and the lack of qualified human resources, including those tasked with implementing the relevant legislation. These difficulties are also encountered in terms of the legislation's enforcement due to a lack of training in the police force and the Courts. The difficulty in managing cross-border issues is also worth noting. The lack of resources, both financial and human, needed to create a consumer protection authority hinders the effective application of legislation dealing with ICT.

Online content

Online content is regulated by Law No. 2004-644 of 14 December 2004 on the legal regime pertaining to Audiovisual Communication and Law No. 2004-643 of 14 December 2004, on the

legal regime pertaining to the print media. To remain in line with best practices and international agreements these laws may need to be revisited to take into account new online government services, and “cloud computing” services.

Domain name regulation

In order to regulate domain names and handle related disputes, Ivory Coast has initiated a draft decree on the management of domain names.

Liberia

| | |
|--|-------------|
| Economy | 2013 |
| GDP current prices, million \$ | 1'655.2 |
| GDP per capita | 385.5 |
| Real GDP growth % | 7.5 |
| Trade | |
| <i>Total Merchandise Exports million \$</i> | 559 |
| Merchandise Exports % of exports of Merch.& Services | 59.1 |
| Main merchandise exports million \$ | |
| Natural rubber & similar gums, in primary forms | 103 |
| Ships, boats & floating structures | 128 |
| Iron ore and concentrates | 127 |
| Petroleum oils or bituminous minerals > 70 % oil | 62 |
| <i>Services Exports million \$</i> | 373 e |
| Services Exports as % of exports of Merch. & Services | 40.9 e |
| Main category of services exports as % of total service exports | |
| Transport (2012) | 21.8 e |
| Travel (2012) | 38.5 e |
| Other services (2012) | 39.7 e |
| Demography | |
| Population (thousands) | 4'294.1 |
| Life expectancy at birth (years) (2012) | 60.2 |
| Adult literacy (15+) % (2007) | 42.9 |
| Youth literacy (15-24) % (2007) | 49.1 |
| Labour and Finance | |
| Employment in Agriculture % | 45.3 |
| FDI inflows million \$ | 1'061.3 |
| Migrant remittances inflows million \$ | 382.9 |
| ICT access and use | |
| Fixed (wired) Internet subscriptions per 100 inhabitants (2007) | 0.4 |
| Fixed (wired) broadband Internet subscriptions per 100 inhabitants | 0 |
| Mobile cellular telephone subscriptions per 100 inhabitants | 59.5 |
| Percentage of households with Internet access at home | 1.5 |
| Percentage of Individuals using the Internet | 4.6 |

Notes:

e: estimates

Sources:

UNCTAD (UNCTADstat database), World Bank (World Development Indicators, Migration and Remittances database), UNESCO (UIS statistics), ITU (World Telecommunication/ICT Indicators database), ILO (Global Employment Trends 2014)

Liberia

The Liberian constitution dates from 1984. The legal system contains common law elements⁶⁸ as well as customary law. Liberia does not have a general law relating to cyber-related activities, but it does have a law to facilitate e-commerce.

Status of cyberlaws

Electronic transactions

An ‘Electronic Transactions Law’ (‘ETL’) to facilitate electronic transactions was adopted in 2002⁶⁹. Parts II to IV are largely based on the UNCITRAL Model Law on Electronic Commerce (1996). The second half of the Law, Parts VII-XII, establishes a regulatory regime under a ‘Recognition Authority’ for ‘certification authorities’, i.e. persons providing certificates in support of a digital signatures system. This is not based on the UNCITRAL Model Law on Electronic Signatures.

Part VI provides for the application of the provisions to Government ministries and other public authorities; facilitating the development of e-government services. While such public entities are not required to accept electronic records and signatures, the provision grants public authorities the power to make rules and operational regulations concerning such practices.

Computer crime and cybersecurity

To date, there is no law specifically addressing cybercrime issues. Cybersecurity issues relating to authentication and integrity are addressed through the provisions of the ETL dealing with certification authorities.

Data protection and privacy

Privacy is recognised as a fundamental right under the Liberian constitution, permitting interference only by ‘order of a court of competent jurisdiction’⁷⁰. While Liberia does not have any data protection laws, it does have a Freedom of Information Act 2010.

The Act grants access rights to information “in the possession of public authorities and private bodies performing public functions” (s. 2.1(a)). The Act exempts personal information from ‘unreasonable disclosure’ to third parties (s. 7.1), while also granting individuals a right of access to “his or her personal records” (s. 8.1). Tied to the right of access is a right to have records amended where they contain “incomplete, incorrect or misleading” information relating to the person (s. 8.2). Although partial in nature, such rights of access and correction do represent a significant advance in terms of granting citizens control over their personal information, especially given that the public sector is likely to be the largest processor of personal data.

Under the 2010 Act, oversight and enforcement is carried out by an Independent Information Commissioner; the first of whom was appointed in May 2012.

⁶⁸ E.g. Electronic Transactions Law, §13.20(4): “For the avoidance of doubt, it is stated that this section does not affect any rule of common law to the effect that the offeror may prescribe the method of communicating acceptance.”

⁶⁹ The full title is: ‘An Act amending the general business law, Title 14 of the Liberian Code of Laws Revised, by adding thereto Chapter 13 to facilitate the use of electronic transactions for commercial and other purposes, and to provide for matters arising from and related to such use’ (8 January 2002). Available at <https://www.liscr.com/liscr/Portals/0/Electronic%20Transactions%20Law.pdf>

⁷⁰ Article 16.

Consumer protection

The ETL contains a provision providing consumers with special rights with respect to electronic transactions. First, where the law requires that a consumer must receive certain information ‘in writing’; the provision of such information electronically requires the consumer’s affirmative consent, which may be withdrawn. Second, the consumer must be informed of any hardware or software requirements that impact the consumer’s ability to either access or retain the electronic record. Third, however, the failure to obtain such consent does not render any electronically formed contract invalid or unenforceable solely on the basis of the absence of consent.

Consumer protection issues are handled by a unit with the Ministry of Commerce. There is also a non-governmental organisation, the National Consumers Council of Liberia.

Online content

The ETL does not contain any provisions concerning the responsibility and liability of intermediary service providers, such as ISPs, for third party content made available via the services.

Domain name regulation

There are no regulations governing the use of the .lr ccTLD domain.

Mali

| | | |
|--|-------------|---|
| Economy | 2013 | |
| GDP current prices, million \$ | 11'072.2 | |
| GDP per capita | 723.6 | |
| Real GDP growth % | 3.5 | |
| Trade | | |
| <i>Merchandise Exports million \$</i> | 2'338.9 | |
| Merchandise Exports % of exports of Merch.& Services | 87.8 | |
| Main merchandise exports million \$ | | |
| Gold, non-monetary (excluding gold ores and concentrates) | 1'233.6 | |
| Cotton | 768.0 | |
| Fertilizers (other than those of group 272) | 118.5 | |
| Petroleum oils or bituminous minerals > 70 % oil | 71.5 | |
| ICT goods exports (percentage of total merchandise trade) (2012) | 0.1 | |
| ICT goods imports (percentage of total merchandise trade) (2012) | 3.6 | |
| <i>Services Exports million \$ (2012)</i> | 340 | e |
| Services Exports as % of exports of Merch. & Services | 12.2 | e |
| Main category of services exports as % of total service exports | | |
| Transport | 0.7 | e |
| Travel | 42.0 | e |
| Other services | 57.3 | e |
| Demography | | |
| Population (thousands) | 15'301.7 | |
| Life expectancy at birth (years) (2012) | 54.6 | |
| Adult literacy (15+) % (2011) | 33.6 | |
| Youth literacy (15-24) % (2011) | 47.1 | |
| Labour and Finance | | |
| Employment in Agriculture % | 65.8 | |
| FDI inflows million \$ | 410.3 | |
| Migrant remittances inflows million \$ | 842.2 | |
| ICT access and use | | |
| Fixed (wired) Internet subscriptions per 100 inhabitants (2012) | 0.2 | |
| Fixed (wired) broadband Internet subscriptions per 100 inhabitants | 0.0 | |
| Mobile cellular telephone subscriptions per 100 inhabitants | 129.1 | |
| Percentage of households with Internet access at home | 3 | |
| Percentage of Individuals using the Internet | 2.3 | |

Notes:

e: estimates

Sources:

UNCTAD (UNCTADstat database), World Bank (World Development Indicators, Migration and

Remittances database), UNESCO (UIS statistics), ITU (World Telecommunication/ICT Indicators database), ILO (Global Employment Trends 2014)

Mali

Mali has developed an e-governance strategy to take advantage of ICT. As part of this strategy, the country has initiated various projects in the areas of e-government, single windows, the management of the domain “.ml”; the computerization of courts through utilising the intranet in courts.

The Ordinance No. 023-2011/P-RM of 28 September 2011 grants the Ministry in charge of telecommunications and ICT the authority to devise and implement all policies related to ICT and telecommunications. A technical commission was created and was composed of representatives of all the ministries involved (ICT, Commerce, Justice, Internal Security, Civil Protection and Territorial Administration). This commission was tasked with drafting legislation to regulate the ICT sector.

Status of cyberlaws

When drafting the legislation, the commission ensured compliance with legislation produced at the community and international levels.

Electronic transactions

Mali has diverse legislation applicable to e- transactions and to ICT in general. The commission prepared the following draft laws on:

- General framework for the information society;
- Protection of personal data;
- Regulation of the activities of encryption service providers;
- E-transactions. This draft law draws on UNCITRAL's United Nations Convention on the Use of Electronic Communications in International Contracts and implements the Supplementary Act on electronic transactions within ECOWAS. It takes into account electronic communications and electronic documents which are considered equivalent to those on paper. Therefore, electronic contracts and electronic signatures are also recognised, however only advanced electronic signatures are granted a legal presumption by Malian law. The draft law on electronic transactions could, however, be due for modifications in order to comply with international and regional agreements and to support cloud computing services and new electronic payment systems.

Computer crime and cyber security

Combating cybercrime is governed by Law No. 01-079 of 20 August 2001 of the Malian Criminal Code. This text criminalizes computer fraud in particular in Article 264 and its related articles. However a draft law on cybercrime was prepared and will provide more comprehensive legislation. It is compliant with the Directive No. 1/08/11 on fighting cybercrime within the ECOWAS and with best regional and international practices, in particular, the Convention of the European Council on cybercrime and the AU's convention on cybercrime and cybersecurity.

The Government is planning the creation of a CERT.

Data protection and privacy

In order to guarantee the protection of personal data, Mali has adopted Law No. 2013-015 of 21 May 2013 and, since 2009, this legislation process has been accelerated due to the gathering and processing of data collected as part of the Administrative Census Vocation of Civil Status (RAVEC).

However, it does not take into account the conclusions and guidelines of the technical commission of the Ministry of ICT contained in the draft law on protection of personal data. These were formulated collaboratively by all the stakeholders represented within the Technical Commission of the Ministry of ICT. The principal challenge encountered in the implementation and endorsement of the law was the lack of training in the police force and courts.

Consumer protection

In the area of consumer protection, Mali does not have any specific legislation. However, certain provisions that protect the consumer are contained in Ordinance No. 2011-023/P-RM of 28 September 2011 on telecommunications/ICT. There is no consumer protection agency.

Domain names

Specific legislation on the regulation of domain names does not exist either. Nevertheless, Ordinance No. 2011-024/P-RM of 28 September 2011 entrusts the governance of domestic domain names to the Posts and Telecommunications Regulation Authority (AMRTP) and the governance of the “.ml” domain name to the ICT agency (AGETIC) which was created by Law No. 05-002 of 10 January 2005.

Niger

| | |
|--|-------------|
| Economy | 2013 |
| GDP current prices, million \$ | 7'642.3 |
| GDP per capita | 428.6 |
| Real GDP growth % | 6.2 |
| Trade | |
| <i>Merchandise Exports million \$</i> | 1550 e |
| Merchandise Exports % of exports of Merch.& Services | 95.1 |
| Main merchandise exports million \$ | |
| Petroleum oils or bituminous minerals > 70 % oil | 604.8 |
| Radio-actives and associated materials | 456.0 |
| Ores and concentrates of uranium or thorium | 274.8 |
| Live animals other than animals of division 03 | 31.3 |
| ICT goods exports (percentage of total merchandise trade) | 0.4 |
| ICT goods imports (percentage of total merchandise trade) | 2.7 |
| <i>Services Exports million \$ (2011)</i> | 73.7 |
| Services Exports as % of exports of Merch. & Services | 4.9 e |
| Main category of services exports as % of total service exports | |
| Transport | 7.1 e |
| Travel | 71.4 e |
| Other services | 21.5 e |
| Demography | |
| Population (thousands) | 17'831.3 |
| Life expectancy at birth (years) (2012) | 58.0 |
| Adult literacy (15+) % (2012) | 15.5 |
| Youth literacy (15-24) % (2012) | 23.5 |
| Labour and Finance | |
| Employment in Agriculture % | 57.1 |
| FDI inflows million \$ | 631.4 |
| Migrant remittances inflows million \$ | 148.6 |
| ICT access and use | |
| Fixed (wired) Internet subscriptions per 100 inhabitants (2011) | 0.1 |
| Fixed (wired) broadband Internet subscriptions per 100 inhabitants | 0.0 |
| Mobile cellular telephone subscriptions per 100 inhabitants | 39.3 |
| Percentage of households with Internet access at home | 1.8 |
| Percentage of Individuals using the Internet | 1.7 |

Notes:

e: estimates

Sources:

UNCTAD (UNCTADstat database), World Bank (World Development Indicators, Migration and Remittances database), UNESCO (UIS statistics), ITU (World Telecommunication/ICT Indicators

database), ILO (Global Employment Trends 2014)

Niger

Niger has adopted a National Information and Communication Infrastructure Plan (NICI) in 2004. This strategy was reinforced by the creation of a High Commissariat for Computer Science and New Information and Communication Technologies (HC/INTIC) in charge of coordinating all the government actions in the field of computing and ICT.

The main strategic axis of the Plan are:

- Infrastructure development;
- Development of a legal and regulatory framework for ICT ;
- Poverty reduction with the aim of “increasing the rate of national coverage of ICT from 54% in 2010 to 72% in 2015 and the rate of ICT penetration from 25% in 2010 to 50% in 2015”.
- Content development, with special priority given to the health and education sectors;
- Capacity building in ICTs.

Achievements have been so far limited. To date, infrastructure has only improved through the connexion of Niger to the European Submarine Cable System (ACE).⁷¹ The government intranet that was expected to be functional by 2006, in accordance with the provisional calendar, has still not been executed.

Status of cyberlaws

lthough Niger has had the most complete draft legislation on ICT in the sub-region, none of the draft have been adopted and yet need revision... Several challenges to the drafting of this legislation have been identified: the lack of skilled legislators, the lack of funding and the lack of regulatory bodies. There is a need to revise them to take into account international and regional legislation. At the same time, the revised legislation could take into account new ICT developments, including cloud government services, e-payment systems.

Electronic transactions

The draft law on e-transactions grants a legal status to electronic communications, electronic contracts, electronic documents and electronic signatures, however only advanced electronic signatures are granted a legal presumption.

Computer crime and cyber security

The fight against cybercrime is not covered by Nigerien law. However a draft law designed to complete the current criminal code is currently being developed.

In the area of cybersecurity, Niger is considering the establishment of a CERT. In the meantime, training and capacity building programs have been initiated for the police and authorities responsible for the application of the law. These programs aim to raise awareness of existing risks and how to manage them.

Data protection and privacy

The draft law on data protection draws on the OECD Guidelines, the European Directive on the

⁷¹ https://www.ace-submarinecable.com/ace/default/EN/all/ace_en/

Protection of Personal Data and the Asia-Pacific Economic Cooperation Forum's framework for privacy protection. It should incorporate the ECOWAS A/SA.1/01/10 Supplementary Act.

Consumer protection

Consumer protection is covered by a draft law reflecting United Nations Resolution No. 39/248 of 09 April 1985. Yet, this draft law needs to be reviewed.

Nigeria

| | | |
|--|-------------|---|
| Economy | 2013 | |
| GDP current prices, million \$ | 284'351.7 | |
| GDP per capita | 1'637.8 | |
| Real GDP growth % | 6.6 | |
| Trade | | |
| <i>Merchandise Exports million \$</i> | 100'000 | e |
| Merchandise Exports % of exports of Merch.& Services | 97.7 | |
| Main merchandise exports million \$ | | |
| Petroleum oils, oils from bitumin. materials, crude | 77'865.7 | |
| Natural gas, whether or not liquefied | 9'487.5 | |
| Petroleum oils or bituminous minerals > 70 % oil | 5'142.6 | |
| Natural rubber & similar gums, in primary forms | 900.5 | |
| ICT goods exports (percentage of total merchandise trade) | 0.0 | |
| ICT goods imports (percentage of total merchandise trade) | 3.6 | |
| <i>Services Exports million \$</i> | 2'362.1 | e |
| Services Exports as % of exports of Merch. & Services | 2.3 | e |
| Main category of services exports as % of total service exports | | |
| Transport | 46.8 | e |
| Travel | 22.9 | e |
| Other services | 30.3 | e |
| Demography | | |
| Population (thousands) | 173'615.3 | |
| Life expectancy at birth (years) (2012) | 52.1 | |
| Adult literacy (15+) % (2008) | 51.1 | |
| Youth literacy (15-24) % (2008) | 66.4 | |
| Labour and Finance | | |
| Employment in Agriculture % | 39.8 | |
| FDI inflows million \$ | 5'609.0 | |
| Migrant remittances inflows million \$ | 21'000.0 | |
| ICT access and use | | |
| Fixed (wired) Internet subscriptions per 100 inhabitants (2010) | 0.1 | |
| Fixed (wired) broadband Internet subscriptions per 100 inhabitants | 0.0 | |
| Mobile cellular telephone subscriptions per 100 inhabitants | 73.3 | |
| Percentage of households with Internet access at home | 7.8 | |
| Percentage of Individuals using the Internet | 38 | |

Notes:

e: estimates

Sources:

UNCTAD (UNCTADstat database), World Bank (World Development Indicators, Migration and Remittances database), UNESCO (UIS statistics), ITU (World Telecommunication/ICT Indicators

database), ILO (Global Employment Trends 2014)

Nigeria

The Nigerian legal system is based on English common law and the doctrines of equity, which are expressly recognised under the Interpretation Act⁷². Nigeria has a National Information Technology Development Agency ('NITDA')⁷³; while in the field of telecommunications, it has had a regulator, the Nigerian Communications Commission ('NCC')⁷⁴, since 1992. The NCC was granted significant new powers and independence in 2003, under the Nigerian Communications Act⁷⁵. The NCC has the power to adopt binding regulations under the 2003 Act.

Status of cyberlaws

Electronic transactions

There is currently a bill pending before Parliament on e-transactions, which was first placed before the National Assembly in 2011. It is designed to facilitate electronic transactions and can be subdivided into four groups of provisions:

- Non-discrimination provisions, recognising electronic means as being equivalent to paper forms of communication;
- Record-retention, record integrity and the recognition of foreign electronic documents and signatures;
- The use of electronic communications by the public sector, exemptions and contractual issues, and
- Expressions of will, attribution, and time and place of sending and receipt.

The timescales for the adoption of the Bill are uncertain.

The Evidence Act 2011 is applicable to all proceedings before the courts. Under section 84, evidence produced by a computer is admissible subject to certain conditions. These conditions include the need to show that the computer was "operating properly" during the relevant period. This provision effectively requires a hearing prior to, or in the course of, the main trial and can constitute a significant challenge for the party wanting to adduce such evidence. The section echoes provisions previously present under English law of evidence, which were repealed at the end of the last century. As such, the Nigerian provisions are somewhat dated and may constitute a barrier to the acceptance of electronic evidence.

Computer crime and cybersecurity

Nigeria is somewhat infamous in the area of cybercrime with respect to so-called '419' or 'advanced fee fraud' schemes, whereby unsolicited emails are sent requesting the payments of monies in order to secure the release of fictitious large sums of money. '419' refers to the specific offence under Criminal Code Act 1990. To address such concerns, Nigeria established the Economic and Financial Crimes Commission in 2002. Its remit includes computer-related frauds.

Over the years, numerous attempts have been made to amend the law to address the threat of cybercrime and the need for cyber security. In 2005, a 'Cybercrime Working Group' published a bill on 'Computer Security and Critical Information Infrastructure Protection'⁷⁶. Similarly, in 2008, a

⁷² Section 32(1).

⁷³ www.nitda.gov.ng

⁷⁴ <http://www.ncc.gov.ng/>

⁷⁵ http://www.ncc.gov.ng/index.php?option=com_docman&task=doc_download&gid=128&Itemid=55

⁷⁶ <http://www.nassnig.org/nass/legislation.php?id=103>

bill ‘for the establishment of the Cyber Security and Information Protection Agency’ was proposed⁷⁷. Most recently, the National Security Agency has promulgated a ‘Cybercrime Bill 2014’, which is designed to align Nigerian law with the Budapest Convention (2001), to facilitate international co-operation⁷⁸.

In terms of criminal procedure, the Criminal Procedure Act also dates from 1990 and contains no computer-related provisions. The NCC has recently issued draft regulations on lawful interception⁷⁹. The draft regulations state that interception is an offence unless carried out in compliance with the regulations; reflecting the right to privacy of communications under Article 37 of the Constitution. Parts III and IV of the draft regulations detail the procedure under which an interception is rendered lawful. Part V imposes an obligation upon licensees under the Nigerian Communications Act 2003 to implement an intercept capability, to enable authorised interceptions to take place. All costs relating to installation and operation of such a capability is to be borne by the licensee. Related to this capability, the licensee also has an obligation to enable the removal of any protection mechanism that is applied to any communication, such as encryption.

Data protection and privacy

The Nigerian constitution, at Article 37, grants citizens a right of privacy. However, to date, the only statutory protections for personal data are found in the Freedom of Information Act 2011. This exempts specified categories of personal information, which are held by public institutions, from being disclosed in response to a request, unless the person has consented or the information is otherwise publicly available⁸⁰.

A ‘Personal Information and Data Protection Bill’ was published in 2013. The Bill is only applicable to the private sector, not to “any government institution” (Art. 2(2)). This limitation does not reflect the commitment Nigeria entered into under the ECOWAS Supplementary Act on Personal Data in 2010, which is applicable to the collection of personal data by “any individual, by government, local authorities, and public or private legal entities”⁸¹.

The Bill would establish an Office of Privacy Commissioner. The Commissioner would have the power to investigate matters, either on its own initiative or in response to a complaint. However, in terms of enforcement, the Commissioner would only be able to resolve disputes through mediation and conciliation; otherwise a data subject would need to go to court. The only remedy available to the Commissioner is to report any adverse findings against an entity, and rely on the resultant bad publicity to generate a change of practice. The limited enforcement powers also fails to meet the standard required under the ECOWAS Act, which states that an authority should be able to demand that certain violations be halted; be able to prohibit certain processing activities and impose fines⁸².

Consumer protection

Nigeria has a Consumer Protection Council (‘CPC’), which was established by statute in 1992⁸³. The Council has various duties and powers, including resolving disputes, encouraging the development of industry codes of conduct and taking enforcement action against those that do not comply with existing rules. The CPC is a member of the International Consumer Protection and

⁷⁷ <http://www.nassnig.org/nass2/legislation.php?id=410>

⁷⁸ <http://pinigeria.org/download/cybercrimebill2013.pdf>

⁷⁹ http://www.ncc.gov.ng/index.php?option=com_docman&task=doc_download&gid=328&Itemid=

⁸⁰ Article 14.

⁸¹ Article 3(1).

⁸² Ibid. at Articles 18 and 19.

⁸³ Decree No. 66 of 1992, Consumer Protection Council Act (Chapter 25).

Enforcement Network.

In addition to the general regime, the NCC promulgated the Consumer Code of Practice Regulations 2007, which requires licenced operators to draft codes on consumer protection matters in relation to the provision of their services for approval by the NCC⁸⁴.

There is a Consumer Protection (Amendment) Bill currently before Parliament that would establish consumer rights applicable to an electronic commerce environment.

Online content

Licensees under the Communications Act 2003 have an obligation to use their ‘best endeavours’ to prevent the “network service, applications service or content application service” from being used to commit an offence under Nigerian law. Licensees are also required to assist ‘as far as reasonably necessary’ to prevent any such criminal conduct. Licensees are protected from any criminal liability arising from the performance of these duties⁸⁵.

These statutory provisions are supplemented by NCC ‘Guidelines for the Provision of Internet Service’, which provide for protection from liability for ISPs when acting as ‘content intermediaries’ and providing services as a ‘mere conduit’, ‘caching’ or ‘hosting’⁸⁶. ISPs are required to have ‘notice and take-down’ procedures in place to handle notices “to withdraw or disable access to identified content issued by the Commission or other legal authority”, such as a court⁸⁷. These rules reflect those adopted in the European Union, except as guidelines they have no direct formal authority.

Domain name regulation

The NCC has jurisdiction over both numbering and electronic addressing, including their assignment and use⁸⁸. However, to date, no regulations have been issued. Instead, the .ng ccTLD is managed by the Nigerian Internet Registration Association (‘NIRA’)⁸⁹. NIRA is independent from the NCC and its responsibilities to manage the national domain name were granted to it by the National Information Technology Development Agency on behalf of the Federal government in 2007. The NIRA governs through a constitution, a series of policies (e.g. dispute resolution policy) and contractual agreements with registrars and registrants.

⁸⁴ http://www.ncc.gov.ng/index.php?option=com_docman&task=doc_download&gid=102&Itemid=55

⁸⁵ Communications Act 2003, s. 146.

⁸⁶ Available at http://www.ncc.gov.ng/index.php?option=com_content&view=article&id=73&Itemid=88

⁸⁷ Ibid., at para. 12.

⁸⁸ Communications Act 2003, s. 128.

⁸⁹ <http://www.nira.org.ng/>

Senegal

| | |
|--|-------------|
| Economy | 2013 |
| GDP current prices, million \$ | 15'110.3 |
| GDP per capita | 1'069.1 |
| Real GDP growth % | 4.4 |
| Trade | |
| <i>Merchandise Exports million \$</i> | 2'640.0 e |
| Merchandise Exports % of exports of Merch.& Services | 64.8 |
| Main merchandise exports million \$ | |
| Petroleum oils or bituminous minerals > 70 % oil | 371.8 |
| Fish, fresh (live or dead), chilled or frozen | 266.3 |
| Inorganic chemical elements, oxides & halogen salts | 156.4 |
| Gold, non-monetary (excluding gold ores and concentrates) | 249.4 |
| ICT goods exports (percentage of total merchandise trade) (2012) | 0.3 |
| ICT goods imports (percentage of total merchandise trade) (2012) | 2.2 |
| <i>Services Exports million \$ (2012)</i> | 1306.6 e |
| Services Exports as % of exports of Merch. & Services | 35.2 e |
| Main category of services exports as % of total service exports | |
| Transport | 10.1 e |
| Travel | 34.3 e |
| Other services | 55.6 e |
| Demography | |
| Population (thousands) | 14'133.3 |
| Life expectancy at birth (years) (2012) | 63.2 |
| Adult literacy (15+) % (2011) | 52.1 |
| Youth literacy (15-24) % (2011) | 66.0 |
| Labour and Finance | |
| Employment in Agriculture % | 35.5 |
| FDI inflows million \$ | 298.3 |
| Migrant remittances inflows million \$ | 1'652.2 |
| ICT access and use | |
| Fixed (wired) Internet subscriptions per 100 inhabitants (2012) | 0.7 |
| Fixed (wired) broadband Internet subscriptions per 100 inhabitants | 0.8 |
| Mobile cellular telephone subscriptions per 100 inhabitants | 92.9 |
| Percentage of households with Internet access at home | 6.3 |
| Percentage of Individuals using the Internet | 20.9 |

Notes:

e: estimates

Sources:

UNCTAD (UNCTADstat database), World Bank (World Development Indicators, Migration and Remittances database), UNESCO (UIS statistics), ITU (World Telecommunication/ICT Indicators database), ILO (Global Employment Trends 2014)

Senegal

With the development of ICT, Senegal was challenged with creating an information society based on a vision of success. Through the use of ICT, the aim was to contribute to poverty reduction, good governance and sustainable development.

The creation of the Senegalese State Information Technology Agency (ADIE) was a milestone in the strategy of Senegal. This agency, charged with stimulating public action in the processing and dissemination of information in accordance with international legal and technical standards, oversaw a process that led to the creation of a government Intranet. This intranet permits the different ministries to undertake projects to ensure local services benefit users.

Status of cyberlaws

Electronic transactions

With regard to e-transactions, the Law No. 2008-08 of 25 January 2008 take into account the 1996 UNCITRAL Model Law on electronic commerce and the 2001 UNCITRAL Model Law on Electronic Signatures. Senegal has also signed the Convention of the United Nations on the use of electronic communications in international contracts. For the moment, a revision of the law is not on the agenda, however it could be encouraged by the need to improve compliance with certification, taxation, protection of cross-border payments, digital communications infrastructure, audiovisual communication freedom, intellectual property rights, consumer protection and domain names.

Senegalese legislation grants legal value to electronic communications, electronic contracts, electronic signatures and electronic documents in general. They are granted the same value as paper documents when they guarantee an equivalent level of trustworthiness. Therefore all legal signatures are recognised by the law, however only advanced electronic signatures are associated with presumptions of law. The application of the law poses numerous challenges, including the lack of expertise by authorities such as the police and the courts. Other challenges include the difficulty with regulating cross-border issues, the lack of funding to raise awareness in all stakeholders and the need to disseminate legislation.

Computer crime and cyber security

To assist with the fight against cybercrime, Senegal has adopted Law No. 2008-11 of 25 January 2008. This law defines offences related to ICT, adapts norms of criminal procedure to the digital environment, and takes best practices and international legislation into account.

Training of police and court personnel still represents a challenge as the lack of funding restricts the numbers of these authorities able to benefit from it. As Senegal is not the sole country that has to face the challenge of addressing cross border issues greater international co-operation is required.

Senegal does not have a national CERT however the prime minister's office has initiated a strategy to implement a national cybersecurity centre in order to group operators, service providers and technicians so they can collaborate on matters of cyber security.

Data protection and privacy

In accordance with the OECD guidelines, Senegal has adopted Law No. 2008-12 of 25 January 2008 on the protection of personal data and has created the Personal Data Commission (CDP), responsible for controlling its effective application. Although the law was adopted before the ECOWAS A/SA.1/01/10 Supplementary Act, it is in conformity with it and therefore does not need revision. A lack of funding as well as human resources hinders the work of the CDP. It has been

operational, however, since 2013 and is starting to deliberate on the diverse aspects related to its jurisdiction.

Consumer protection

There is no one specific legal text on consumer protection however provisions for this exist in several legal texts regulating ICT: Law No. 2008-08 of 25 January 2008 on electronic transactions, Law No. 2008-11 of 25 January 2008 on cybercrime and Decree No. 2008-718 of 30 June on electronic commerce.

Domain names regulations

The management of domain names is carried out by the Senegalese Network Internet Centre (NIC⁹⁰). The naming charter “.sn” permits the amicable resolution of domain names disputes under Senegal's top-level domain, however, Senegal does not legally regulate domain names or related conflicts that may arise.

⁹⁰ www.nic.sn

Sierra Leone

| | |
|--|-------------|
| Economy | 2013 |
| GDP current prices, million \$ | 5'322.0 |
| GDP per capita | 873.6 |
| Real GDP growth % | 12.6 |
| Trade | |
| <i>Merchandise Exports million \$</i> | 1'917 |
| Merchandise Exports % of exports of Merch.& Services | 91.6 |
| Main merchandise exports million \$ | |
| Cotton | 221.2 |
| Petroleum oils or bituminous minerals > 70 % oil | 163.4 |
| Gold, non-monetary (excluding gold ores and concentrates) | 162.7 |
| Fruits and nuts (excluding oil nuts), fresh or dried | 130.7 |
| <i>Services Exports million \$ (2012)</i> | 182.0 |
| Services Exports as % of exports of Merch. & Services | 8.4 e |
| Main category of services exports as % of total service exports | |
| Transport | 11.2 e |
| Travel | 26.0 e |
| Other services | 62.8 e |
| Demography | |
| Population (thousands) | 6'092.1 |
| Life expectancy at birth (years) (2012) | 45.3 |
| Adult literacy (15+) % (2012) | 44.5 |
| Youth literacy (15-24) % (2012) | 62.7 |
| Labour and Finance | |
| Employment in Agriculture % | 59.4 |
| FDI inflows million \$ | 579.1 |
| Migrant remittances inflows million \$ | 61.4 |
| ICT access and use | |
| Fixed (wired) Internet subscriptions per 100 inhabitants (2001) | 0.0 |
| Fixed (wired) broadband Internet subscriptions per 100 inhabitants | .. |
| Mobile cellular telephone subscriptions per 100 inhabitants | 44.1 |
| Percentage of households with Internet access at home | .. |
| Percentage of Individuals using the Internet | 1.7 |

Notes:

e: estimates

Sources:

UNCTAD (UNCTADstat database), World Bank (World Development Indicators, Migration and Remittances database), UNESCO (UIS statistics), ITU (World Telecommunication/ICT Indicators database), ILO (Global Employment Trends 2014)

Sierra Leone

Sierra Leone has a mixed system of law, embracing the English common law system, customary law and Islamic law. The Constitution dates from 1991, although it was last amended in 2008.

Under the Telecommunications Act 2006, as amended, the National Telecommunications Commission ('NATCOM') has a duty to "foster and protect an efficient market in ICT"⁹¹. In addition, there is an Independent Media Commission ('IMC'), which was established in 2007. Its remit extends to any 'media institution', which includes 'electronic media facilities'⁹². It requires all such institutions to be licensed or registered. Sierra Leone does not, however, have any general legislation addressing cyberspace-related issues.

Status of cyberlaws

Electronic transactions

Although Sierra Leone became a signatory to the United Nations Convention on the Use of Electronic Communications in International Contracts (2005) in September 2006⁹³, it does yet not have national legislation and therefore is unable to ratify the Convention.

Computer crime and cyber security

Sierra Leone does not currently have specific legislation on computer crime or cybersecurity.

The police have a specialist cybercrime task force, which has worked with the Commission to address illegal communications activities, such as SIM box fraud and 'top-up' theft⁹⁴.

The Sexual Offences Act 2012⁹⁵ includes provisions criminalising the production and possession of child pornography, which reflects the provisions of the Budapest Convention (2001).

Data protection and privacy

Article 22 of the Constitution grants individuals a right of privacy, including with respect to a person's 'electronic communications'. The right may be interfered with either on the basis of the person's own consent or for other specified reasons.

As outlined below, privacy protections form part of the Consumer Bill of Rights for telecommunication services. In addition, personal information is exempt information under the Right to Access Information Act 2013, which provides a general right of access to information "held by public authorities or by persons providing services for them"⁹⁶. Under section 21, personal information does not need to be disclosed if it is considered 'unreasonable'. Personal information is defined in the following terms:

"..information about an identifiable individual which contains intimate details in respect of which that individual has a reasonable expectation of privacy" (s. 1)

It would not be 'unreasonable', for example, if the individual has given their prior consent or the

⁹¹ <http://www.natcom.gov.sl/>

⁹² The Independent Media Commission Act 2007, s. 1. See generally <http://www.imc-sl.org/>

⁹³ See http://www.uncitral.org/uncitral/en/uncitral_texts/electronic_commerce/2005Convention_status.html

⁹⁴ <http://natcom.gov.sl/images/pdf/PublicNotice%20Top-up%20Theft.pdf>

⁹⁵ Supplement to the Sierra Leone Gazette Vol. CXLIII, No. 60, dated 1st November, 2012.

⁹⁶ <http://www.sierra-leone.org/Laws/2013-02.pdf>

individual was made aware when initially supplying the information to the public authority that it was of a class that may be made available.

Privacy protections can also be found in the Media Code of Practice, particularly applicable in the context of advertising⁹⁷.

Consumer protection

As with many other ECOWAS member states, a key source of consumer protection rules relate to the provision of telecommunication services and can be found under the Telecommunications Act 2006, as implemented by the national regulator, i.e. the Commission. The Commission has published a 'Consumer Bill of Rights' in respect of the provision of telecommunication services, which comprises five fundamental rights, i.e. the right to be informed, to safety, to privacy, to choice and to be heard⁹⁸.

Online Content

Sierra Leone does not have any general legislative provisions concerning the responsibility and liability of intermediary service providers, such as ISPs, for third party content made available via the services.

The IMC has published a 'Media Code of Practice', which covers all forms of media, section 3 of which deals with 'electronic media'⁹⁹. Although primarily directed at radio, terrestrial television and satellite services, the Commission can approve other categories for regulation.

Domain name regulations

AFcom has been appointed by the government as the registry for the .sl ccTLD, under the oversight of NATCOM.

⁹⁷⁹⁷ See section 7.5 below.

⁹⁸ <http://www.natcom.gov.sl/index.php/consumer-center/consumer-rights>

⁹⁹ Available at <http://www.imc-sl.org/LinkClick.aspx?fileticket=3rHh-6iKXv0%3d&tabid=63>

Togo

| | |
|--------------------------------|-------------|
| Economy | 2013 |
| GDP current prices, million \$ | 4'321.8 |
| GDP per capita | 634.0 |
| Real GDP growth % | 4.7 |

Trade

| | |
|--|-------|
| <i>Merchandise Exports million \$</i> | 1350 |
| Merchandise Exports % of exports of Merch.& Services | 72.3 |
| Main merchandise exports million \$ | |
| Lime, cement, fabrica. constr. mat. (excluding glass, clay) | 110.2 |
| Crude fertilizers (excluding those of division 56) | 108.6 |
| Gold, non-monetary (excluding gold ores and concentrates) | 114.7 |
| Cotton | 73.4 |
| ICT goods exports (percentage of total merchandise trade) | 0.0 |
| ICT goods imports (percentage of total merchandise trade) | 1.3 |
| Services Exports as % of exports of Merch. & Services | 27.7 |
| Main category of services exports as % of total service exports (est.) | |
| Transport | 27.8 |
| Travel | 11.9 |
| Other services | 60.3 |

Demography

| | |
|---|---------|
| Population (thousands) | 6'817.0 |
| Life expectancy at birth (years) (2012) | 56.2 |
| Adult literacy (15+) % (2011) | 60.4 |
| Youth literacy (15-24) % (2011) | 79.9 |

Labour and Finance

| | |
|--|-------|
| Employment in Agriculture % | 53.3 |
| FDI inflows million \$ | 84.2 |
| Migrant remittances inflows million \$ | 362.9 |

ICT access and use

| | |
|--|------|
| Fixed (wired) Internet subscriptions per 100 inhabitants (2012) | 0.6 |
| Fixed (wired) broadband Internet subscriptions per 100 inhabitants | 0.1 |
| Mobile cellular telephone subscriptions per 100 inhabitants | 62.5 |
| Percentage of households with Internet access at home | 1.4 |
| Percentage of Individuals using the Internet | 4.5 |

Notes:

e: estimates

Sources:

UNCTAD (UNCTADstat database), World Bank (World Development Indicators, Migration and Remittances database), UNESCO (UIS statistics), ITU (World Telecommunication/ICT Indicators database), ILO (Global EmploymentTrends 2014)

Togo

Togo adopted sector-specific policies for the promotion of ICT from 2011 to 2015. Infrastructure development and access, including in rural areas, together with the development of the digital economy have been some of the main pillars of its strategy.

The government of Togo has also implemented an e-government project to guarantee the efficiency of communication between the administration and users, as well as between its various services.

The adoption of sector-specific policies should constitute a starting point for a strategy to prepare relevant legislation to support those initiatives. However, to date, this legislation has yet to be developed.

Status of cyberlaws

Electronic transactions

Togo still has not adopted legislation that regulates electronic transactions. However, the scope of the required legislation has been identified and a draft law has been formulated. This draft law reflects the 1996 UNCITRAL Model Law on electronic commerce and the 2001 UNCITRAL Model Law on electronic signatures as well as the ECOWAS A/SA.2/01/10 Supplementary Act on electronic transactions. An inter-ministerial committee to be established aims at approving the draft law on electronic transactions.

Computer crime and cyber security

The draft law fighting cybercrime also needs revision by the stakeholders and the different advances in ICT and best regional and international practices should be taken into account.

Togo plans to create a national CERT. This project is to be led by the Regulatory Authority of Telecommunications and Postal services under the supervision of The International Telecommunication Unit and the International Multilateral Partnership Against Cyber Threats (IMPACT-ALLIANCE). A committee has been established to study the feasibility of this project. At present the Togolese security forces, in collaboration with Interpol, regulate the country's cybersecurity plan.

In order to raise cybersecurity awareness among the various stakeholders, training sessions and capacity building programs are organised by the Regulatory Authority of Telecommunications and Postal services with the assistance of the International Telecommunications Union and the International Multilateral Partnership Against Cyber Threats (IMPACT).¹⁰⁰

Data protection and privacy

In the area of personal data protection, the draft law reflects the ECOWAS A/SA.1/01/10 Supplementary Act. This text should be revised taking into account all stakeholders' opinions and the current context of e-commerce.

Consumer protection

Consumer protection is not the subject of specific regulation. However, the draft law on electronic transactions does contain some provisions on consumer protection.

¹⁰⁰ See at <http://www.impact-alliance.org/home/index.html>

Online content

To date, online content has not been addressed by the legislator.

Domain name regulations

The management of the “.tg” domain is entrusted to the Regulatory Authority by Law No. 2012-018 of 17 December 2012 and modified by Law No. 2013-003 of 19 February 2013. Draft legislation to regulate domain name disputes under the “.tg” domain and a Togolese “.tg” top level naming charter is in the process of being developed.