

**ITU-EC-RWANDA PROJECT FOR THE
HARMONISATION OF ICT POLICIES IN SUB-SAHARA
AFRICA (HIPSSA)**

**NATIONAL ASSESSMENT REPORT
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1. Introduction.

The harmonization of ICT policies in Sub-Sahara Africa (HIPSSA) is an ITU-EC joint project aiming at developing and promoting harmonized regional and national policies and regulatory guidelines for the ICT market conducive to significant investments in the ICT infrastructures and services.

2. Objective.

The purpose of this assignment is to provide draft legislation on electronic transactions in light of regional best practices, namely the East African Community (EAC) recommendations for cyber laws and the Southern African Development Community (SADC) Model Law on Electronic Transactions and Electronic Commerce, and make proposals for amendments of the Information Communication Technology (ICT) Bill before it is adopted in Parliament.

3. Methodology.

The work consists of identifying electronic transaction provisions in the current legislation in Rwanda, namely, Law 18/2010 of 12/05/2010 (Law 18/2010) relating to electronic messages, electronic signatures and electronic transactions, together with the provisions on electronic transactions in the ICT Bill, and comparing them with regional best practices on the one hand, and drafting an amended legislation on electronic transactions that would incorporate the recommendations of the abovementioned best practices.



4. The legal framework on electronic transactions.

Electronic transaction provisions relate to:

a. The formation and validity of contracts.

Articles 72, 73 and 75 of law 18/2010; articles 198 and 199 of the ICT Bill, recommendation 6 of EAC and section 10(1) and (2) of SADC.

Where an electronic message is used in the formation of a contract, the contract shall not be denied validity or enforceability on the sole ground that an electronic message was used for the purpose.

An agreement may be formed where all parties to a transaction or either one of them uses an electronic agent.

A proposal to conclude a contract made through one or more electronic communications, which is not addressed to one or more specific parties, but is generally accessible to parties making use of information systems (including proposals that make use of interactive applications for the placement of orders through such information systems) is to be considered as an invitation to make offers, unless it clearly indicates the intention of the party making the proposal to be bound in case of acceptance.

No agreement is formed where a person interacts directly with the electronic agent of another person and has made a material error during the creation of an electronic message and the electronic agent did not provide that person with an opportunity to prevent or correct the error, the party that made an error notifies the other person of the error as soon as practicable after that person has learned of it, and that person returns any performance received or, if instructed to do so, destroys that performance.

Provisions on electronic messages shall also apply to payment orders when executed by electronic messages.



b. The variation by agreement.

Article 200 of the ICT Bill, recommendation 3 of EAC and section 11 of SADC.

The provisions relating to the formation and validity of agreements for electronic transactions, the time and place of communications, dispatch and receipt, the expression of intent or other statement, the attribution of data messages to the originator or the acknowledgement of receipt of data messages may be varied by agreement.

However, such agreement should not undermine the general thrust of these provisions, or cause some other forms of harm, such as to consumers.

c. The time of transaction.

Article 18(a) and (b) of Law 18/2010, articles 201 and 202 of the ICT Bill, recommendation 9 of EAC and sections 12, 13 and 15 of SADC.

Dispatch occurs when the electronic message leaves an information system under the control of the originator or of the party who sent it on behalf of the originator or, if it has not left that information system, the time when the electronic communication is received. If the addressee has designated an electronic address, the time of receipt of an electronic communication is the time when it reaches the addressee's electronic address.

Where parties conclude a contract by means of electronic communications, such contract is formed at the time when and the place where the acceptance of the offer becomes effective.



An offer in the form of an electronic communication becomes effective at the time it is received by the offeree.

The acceptance of an offer by means of an electronic communication becomes effective at the time and place that it is received by the offeror.

d. The place of transaction.

Article 18(c) of Law 18/2010, article 203 of the ICT Bill, recommendation 9 of EAC and section 14 of SADC.

The place of dispatch is the place of business of the originator or the addressee. A party's place of business is the location indicated by that party. In the absence of such indication, the place of business is that which has the closest relationship to the relevant contract, taking into account the circumstances known to or contemplated by the parties at any time before or at the conclusion of the contract. If a natural person does not have a place of business, reference is to be made to the person's habitual residence.

However, a location is not a place of business merely because that is where the equipment and technology supporting an information system used by a party in connection with the formation of a contract are located or where the information system may be accessed by the parties.

The sole fact that a party makes use of a domain name or electronic mail address connected to a specific country does not create a presumption that its place of business is located in that country.



5. Recommendations.

a. At the commencement of the law

EAC recommends that specific provision be made in electronic transaction law stating that public authorities should accept electronic modes of communication so that the objective of facilitating e-government should be a stated objective at the commencement of the law (recommendation 10).

b. On the conditions of formation and validity of contracts

EAC recommendation 6 suggests that the ICT Bill should incorporate the provisions of article 8(2) of the United Nations Convention on the Use of Electronic Communications in Electronic Contracts (UN Convention):

A party's agreement to use or accept electronic communications may be inferred from the party's conduct.

Section 10(2) of SADC should also be incorporated in the ICT Bill:

A proposal to conclude a contract made through one or more electronic communications, which is not addressed to one or more specific parties, but is generally accessible to parties making use of information systems (including proposals that make use of interactive applications for the placement of orders through such information systems) is to be considered as an invitation to make offers, unless it clearly indicates the intention of the party making the proposal to be bound in case of acceptance.



Article 75 of Law 18/2010 should be incorporated in the ICT Bill:

Provisions on electronic messages shall also apply to payment orders when executed by electronic messages.

c. On the variation by Agreement

The provision of recommendation 3 of EAC should be added to article 200 of the ICT Bill:

Such agreement should not undermine the general thrust of these provisions, or cause some other forms of harm, such as to consumers.

d. On the time of transaction

Section 15 of SADC should be incorporated in the ICT Bill:

Where parties conclude a contract by means of electronic communications, such contract is formed at the time when and the place where the acceptance of the offer becomes effective.

An offer in the form of an electronic communication becomes effective at the time it is received by the offeree.



The acceptance of an offer by means of an electronic communication becomes effective at the time and place that is received by the offeror.

e. On the place of transaction

EAC recommendation 9 suggests that article 6(4) and (5) of the UN Convention should be incorporated in the ICT Bill:

A location is not a place of business merely because that is:

6(4) (a) Where equipment and technology supporting an information system used by a party in connection with the formation of a contract are located; or

6(4) (b) Where the information system may be accessed by other parties; and

6(5) The sole fact that a party makes use of a domain name or electronic mail address connected to a specific country does not create a presumption that its place of business is located in that country.

6. Drafting an amended legislation on electronic transactions.

Article 198 of the ICT Bill: The Formation and Validity of Contracts.

1. Where an electronic message is used in the formation of a contract, the contract shall not be denied validity or enforceability on the sole ground that an electronic message was used for that purpose.



2. A party's agreement to use or accept electronic communications may be inferred from the party's conduct.
3. Provisions on electronic messages shall also apply to payment orders when executed by electronic messages.

Article 199 of the ICT Bill: Automated transactions.

An agreement may be formed where all parties to a transaction or either one of them uses an electronic agent.

A proposal to conclude a contract made through one or more electronic communications, which is not addressed to one or more specific parties, but is generally accessible to parties making use of information systems (including proposals that make use of interactive applications for the placement of orders through such information systems) is to be considered as an invitation to make offers, unless it clearly indicates the intention of the party making the proposal to be bound in case of acceptance.

No agreement is formed where a person interacts directly with the electronic agent of another person and has made a material error during the creation of an electronic message and the electronic agent did not provide that person with an opportunity to prevent or correct the error, the party that made an error notifies the other person of the error as soon as practicable after that person has learned of it, and that person returns any performance received or, if instructed to do so, destroys that performance.



Article 200: Variation by Agreement.

1. The provisions relating to the formation and validity of agreements for electronic transactions, the time and place of communications, dispatch and receipt, the expression of intent or other statement, the attribution of data messages to the originator or the acknowledgement of receipt of data messages may be varied by agreement.
2. However, such agreement should not undermine the general thrust of these provisions, or cause some other forms of harm, such as to consumers.

Articles 201 and 202 of the ICT Bill: The Time of Transaction.

1. Dispatch occurs when the electronic message leaves an information system under the control of the originator or of the party who sent it on behalf of the originator or, if it has not left that information system, the time when the electronic communication is received.
2. If the addressee has designated an electronic address, the time of receipt of an electronic communication is the time when it reaches the addressee's electronic address.
3. Where parties conclude a contract by means of electronic communications, such contract is formed at the time when and the place where the acceptance of the offer becomes effective.
4. An offer in the form of an electronic communication becomes effective at the time it is received by the offeree.



5. The acceptance of an offer by means of an electronic communication becomes effective at the time and place that it is received by the offeror.

Article 203 of the ICT Bill: The place of Transaction.

1. The place of dispatch is the place of business of the originator or the addressee. A party's place of business is the location indicated by that party.
2. In the absence of such indication, the place of business is that which has the closest relationship to the relevant contract, taking into account the circumstances known to or contemplated by the parties at any time before, or at the conclusion of the contract.
3. If a natural person does not have a place of business, reference is to be made to the person's habitual residence.
4. However, a location is not a place of business merely because that is where the equipment and technology supporting an information system used by a party in connection with the formation of a contract are located or where the information system may be accessed by the parties.
5. The sole fact that a party makes use of a domain name or electronic mail address connected to a specific country does not create a presumption that its place of business is located in that country.



7 Conclusion.

It is compelling, in my view, to acknowledge and commend the remarkable work done by the ICT Bill drafters in relation to the harmonization of our legislation on electronic transactions with regional best practices on cyber laws.

As you may have noticed, no significant amendments were required precisely because the ICT Bill does incorporate most of these regional instruments' recommendations already.

Once it is passed into law, hopefully with the abovementioned suggestions for amendments, there is no doubt in my mind that the ultimate purpose for which this assignment was conceived, namely paving the way for significant investments in the ICT infrastructures and services, will be fulfilled.

