

Developing an Effective Regulatory Regime for E-Commerce in the Southern African Development Community (SADC): Proposed Solutions

V Chimeri* and T Shumba**

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Authors

Vongai Chimeri
Tapiwa Shumba

Affiliation

University of the Free State,
University of Fort Hare,
South Africa

Email

chimeri.v@ufs.ac.za
tshumba@ufh.ac.za

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Abstract

The outbreak of the Coronavirus Pandemic (COVID-19) in 2019 has accelerated digital transformations particularly in the area of e-commerce. The imposition of public health-related lockdowns limited physical movement and increased the demand and use of e-commerce worldwide. While other businesses in developed countries saw the outbreak of the COVID-19 as an opportunity to expand their digital markets, in Africa, particularly in the Southern African Development Community (SADC) it highlighted the need to bridge the digital divide both within and across the region, that continues to hinder greater participation in e-commerce activities. A regulatory framework that harmonises e-commerce laws to enhance legal certainty and predictability is considered important to enable the development of e-commerce. Although the *SADC Model Law on Electronic Transactions and Electronic Commerce (SADC Model Law)* was adopted with the aim of harmonising e-commerce laws in the SADC region, the regulation of e-commerce in the SADC remains inadequate, fragmented and in some instances outdated. This article examines the regulation of e-commerce in the SADC and concludes that it does not support the development of e-commerce in the region. It identifies some challenges that are inhibiting the development of e-commerce and offers some solutions that might help enable the development of e-commerce in the SADC.

Keywords

E-commerce; Southern African Development Community; *SADC Model Law on Electronic Commerce and Electronic Transactions*; regional integration.

1 Introduction

The outbreak of the COVID-19 pandemic resulted in the imposition of lockdown restrictions that limited some trade activities and other physical interactions.¹ These restrictions saw many people relying on e-commerce to secure basic necessities and as such accelerated the demand and use of e-commerce.² Although the pandemic period saw the growth of e-commerce world-wide, it also highlighted some legal challenges that continue to hinder the effective participation of SADC countries in e-commerce.³

The significance of e-commerce lies in its ability to create a borderless system which enables access to goods and services through electronic means originating from different parts of the world.⁴ With its unprecedented impact on trade, investment and market penetration, William and Fraser posit that e-commerce presents a unique opportunity for businesses particularly small and medium enterprises (SMEs) in a manner that supersedes any other technological developments.⁵ Trade barriers in the form of physical distance, inadequate market information, higher transportation and infrastructural costs that often hinder SMEs from expanding their commercial activities have become less significant.⁶ E-commerce therefore offers SMEs in SADC the opportunity to remotely assess conditions of market penetration, advertise their services or products and reach consumers throughout the world at a very low cost.⁷

One of the important pillars that enable the growth of e-commerce is a harmonised legal framework that eradicates unnecessary barriers and enhances legal certainty and predictability in e-commerce transactions. Despite the availability of the *SADC Model Law*, the Southern African Development Community (SADC) has not made significant progress to

* Vongai Chimeri. LLB LLD. Postdoctoral Researcher, University of the Free State, South Africa. E-mail: chimeri.v@ufs.ac.za. ORCID: <https://orcid.org/0009-0007-2490-2497>.

** Tapiwa Shumba. LLB LLM LLD. Senior Lecturer, University of Fort Hare, South Africa. E-mail: tshumba@ufh.ac.za. ORCID: <https://orcid.org/0000-0001-7366-827X>.

¹ UN 2022 https://unece.org/sites/default/files/2022-01/ECE_TRADE_468E_1.pdf; Gecit 2021 *IJRBS* 2436.

² WTO 2020 https://www.wto.org/english/tratop_e/covid19_e/ecommerce_report_e.pdf.

³ Banga and Banga 2022 *Journal of African Trade* 120.

⁴ Akomolede 2008 *PELJ* 2.

⁵ William and Fraser 2011 *JGIM* 30.

⁶ Manteaw 2003 *Global Business and Development Law Journal* 351.

⁷ Manteaw 2003 *Global Business and Development Law Journal* 351.

effectively regulate e-commerce in the region.⁸ The regulation of e-commerce in the SADC is fragmented and inadequate to support the development of e-commerce, from an integration perspective.⁹ This article examines the regulation of e-commerce in the SADC and identifies obstacles inhibiting the effective regulation of e-commerce within the region. It proposes solutions that may be effective in developing a regulatory framework that enables SADC countries to benefit from e-commerce and contribute to the economic development of the region.

2 A brief history of the SADC

The SADC is the successor of the Southern African Development Coordination Conference (SADCC) which was formed in 1980 by the former Frontline States with the adoption of the Lusaka Declaration (*Southern Africa: Towards Economic Liberation*).¹⁰ The SADCC was formed with the aim of advancing political independence in Southern African States and reducing the reliance on the then apartheid state of South Africa.¹¹ However, after most of the states attained independence, the regional body opted to review its objectives by focussing more on economic and political issues affecting the region in the post-colonial era.¹² As a result, the SADCC was transformed into the SADC by signing the *SADC Declaration and Treaty of the Southern African Development Community (SADC Treaty)* at a Summit held in Windhoek, Namibia, on 17 August 1992.¹³ Article 2 of the *SADC Treaty* established the SADC¹⁴ which is currently comprised of 16 countries namely Botswana, Lesotho, Namibia, Swaziland, South Africa, Mozambique, Zimbabwe, Zambia, Malawi, Tanzania, Angola, Mauritius, Madagascar, Democratic Republic of Congo, Seychelles and Comoros.¹⁵

⁸ SADC, Economic Commission for Africa and Africa Trade Policy Centre 2011 https://www.skylineuniversity.ac.ae/pdf/ecommerce/SADC_e-commerce_Strategy_FINAL_Oct18-FINAL.pdf.

⁹ SADC, Economic Commission for Africa and Africa Trade Policy Centre 2011 https://www.skylineuniversity.ac.ae/pdf/ecommerce/SADC_e-commerce_Strategy_FINAL_Oct18-FINAL.pdf.

¹⁰ The former frontline states included countries such as Angola, Botswana, Lesotho, Malawi, Mozambique, Swaziland, Tanzania, Zambia and Zimbabwe. See Osode 2003 *Journal for Juridical Science* 3. Also see SADC 2022 <https://www.sadc.int/pages/history-and-treaty>.

¹¹ The SADCC also aimed to "forge linkages to create genuine and equitable regional integration, to mobilise Member States' resources to promote the implementation of national, interstate and regional policies and lastly to secure international cooperation within the framework of the strategy for economic liberalisation". SADC 2022 <https://www.sadc.int/pages/history-and-treaty>.

¹² Mapuva and Muyengwa-Mapuva 2014 *LDD* 24.

¹³ SADC 2022 <https://www.sadc.int/pages/history-and-treaty>.

¹⁴ Art 2 of the *SADC Treaty*.

¹⁵ See SADC 2022 <https://www.sadc.int/member-states>.

3 SADC objectives

Among other objectives, Article 5 of the *SADC Treaty* provides that the SADC aims to "promote sustainable and equitable economic growth and socio-economic development that will ensure poverty alleviation with the ultimate objective of its eradication, enhance the standard and quality of life of the people of Southern Africa and support the socially disadvantaged through regional integration."¹⁶ Article 5(2) of the *SADC Treaty* stresses the importance of the development of rules harmonising the economic policies of Member States and the need to progressively eliminate obstacles to the free movement of capital and labour, goods, services and people within the region.¹⁷

In an attempt to fulfil the aims spelled out in the *SADC Treaty*, Member States signed the *Protocol on Trade* in 1996, which provides the legal framework for deeper economic regional integration through trade.¹⁸ It contains provisions that seek to eliminate intra-SADC barriers to trade, eliminate import and export duties,¹⁹ and harmonise customs procedures, trade laws and principles.²⁰ In order for the region to benefit economically from deep regional integration, Member States further adopted the *Regional Indicative Strategic Development Plan (RISDP) 2005-2020*, which is a non-binding framework that seeks to:

[d]eepen integration in the region with a view to accelerate poverty eradication and the attainment of other economic and non-economic development goals.²¹

To achieve this aim, ambitious targets to establish a Free Trade Area (FTA) by 2008, a Custom Union by 2010, a Common Market by 2015, a Monetary Union by 2016 and a regional currency by 2018 were also set.²² Although the FTA was established as envisaged, other targets have been missed.²³ After the *RISDP 2005-2020*, the Summit approved *RISDP 2020-2030*, which among other areas covers issues relating to industrial development,

¹⁶ See Art 5 of the *SADC Treaty*.

¹⁷ See Art 5(2) of the *SADC Treaty*.

¹⁸ The *Protocol on Trade* was signed in 1996 at the Maseru Summit and came into effect on 25 January 2000, upon ratification by two-thirds of the Member States. See Saurombe 2013 LDD 463.

¹⁹ See Art 4 of the *SADC Protocol on Trade*, which provides that "there shall be a phased reduction and eventual elimination of import duties, in accordance with Art 3 of this Protocol, on goods originating in Member States". Art 5 of the *SADC Protocol on Trade* also states that "Member States shall not apply any export duties on goods for export to other Member States."

²⁰ See Art 14 of the *SADC Protocol on Trade*. Also see Annex 2 Concerning Customs Co-operation within the Southern African Development Community to the *SADC Protocol on Trade*.

²¹ *SADC Regional Indicative Strategic Development Plan (RISDP) 2005-2020* (2015).

²² *SADC Regional Indicative Strategic Development Plan (RISDP) 2005-2020* (2015).

²³ Saurombe 2013 LDD 463.

market integration, and infrastructural development in support of regional integration.²⁴

The above objectives elucidated under SADC's founding and policy documents clearly depict an agenda for the attainment of sustainable economic development through deep regional integration fostered by increased intra-regional trade.²⁵ Increased intra-regional trade is important for SADC as it can assist with employment creation and the expansion of markets, that will in turn attract foreign direct investment and reduce poverty.²⁶

4 The role of regional integration in the development of e-commerce

E-commerce is generally considered as a catalyst that speeds up the regional integration agenda.²⁷ This is mainly because e-commerce has the ability to make geographical barriers disappear, thereby making it easy for businesses in the region to reach potential customers.²⁸ This unique ability of e-commerce presents an advantage to businesses, particularly SMEs, which were often deterred from accessing regional markets due to exorbitant costs.²⁹ Given its advantages, e-commerce has the potential to accelerate the regional integration agenda spelled out under the *SADC Treaty*. Regional cooperation is therefore important to ensure that policy and infrastructural barriers are eliminated in order to pave the way for the development of e-commerce in the region. This would also assist the region to achieve its vision of "sustainable economic growth and socio-economic development that will ensure poverty alleviation," as envisaged under Article 5 of the *SADC Treaty*.

5 SADC initiatives towards the regulation of e-commerce

Realising the importance of e-commerce in the economic development of the region and the necessity to eradicate some of the challenges facing e-commerce, SADC countries have taken several initiatives that seek to regulate e-commerce. Among others, the most significant ones are discussed below.

5.1 Declaration on Information and Communications Technology

The first step towards the regulation of e-commerce in the SADC was taken in 2001 when Member States signed the *Declaration on Information and*

²⁴ SADC Regional Indicative Strategic Development Plan (RISDP) 2020-2030 (2020).

²⁵ Mapuva and Muyengwa-Mapuva 2014 LDD 25.

²⁶ Mapuva and Muyengwa-Mapuva 2014 LDD 25.

²⁷ Nangela 2013 *SADC Law Journal* 80.

²⁸ Abazi and Abazi 2014 *Open Journal of Social Sciences* 458.

²⁹ Abazi and Abazi 2014 *Open Journal of Social Sciences* 458.

Communications Technology.³⁰ The *Declaration on Information and Communications Technology* was signed on 14 August 2001 after the realisation of the importance of a regional policy and strategy on Information Communications and Technology (ICT) that promotes sustainable economic development and bridges the digital divide that exists within the region and the rest of the world.³¹ Among other challenges, the declaration notes some of the barriers that are hindering the development of e-commerce within the region. These challenges include:

[s]hortage of skilled ICT personnel, high cost of development of ICT infrastructure, slow progress towards the deregulation of the telecommunications sectors leading to monopolies, unaffordability of universal access due to high tariffs and internet charges, lack of economic commerce readiness, reluctance of acceptance for ICT culture and innovations.³²

To this end the *Declaration on Information and Communications Technology* undertakes to:

Work together to remove barriers of e-commerce in our SADC countries as a means to opening opportunities and benefits such as increased access to markets, opportunities to create economic value from cultural assets, reduced administrative costs, and improvement of public services, there is need to adapt technologies that enable e-commerce capability to avoid increasing exclusion from the global economy.³³

Although the *Declaration on Information and Communications Technology* marks an important step towards the eradication of barriers that hinder the development of e-commerce within the region, the declaration does not place any binding obligations on Member States as it merely declares their commitment and intent.³⁴

5.2 SADC Model Law on Electronic Transactions and Electronic Commerce

In an attempt to address the challenges and harness the opportunities that are associated with ICTs, the International Telecommunication Union (ITU) and the European Commission (EC) through the Harmonisation of ICT Policies in Sub-Sahara Africa (HIPSSA) project sought to provide a legal

³⁰ SADC *Declaration on Information and Communications Technology* (2001).

³¹ Preamble of the *Declaration on Information and Communications Technology* (2001).

³² Preamble of the *Declaration on Information and Communications Technology* (2001)

³³ See para 1(d) of the *Declaration on Information and Communications Technology* (2001).

³⁴ The *Declaration on Information and Communications Technology* was signed by 14 SADC Member States namely, Angola, Botswana, DRC, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.

framework on e-commerce in the SADC region.³⁵ The HIPSSA project gave birth to the *SADC Model Law*, which was adopted by the SADC Ministers responsible for Telecommunications, Postal and ICT at a meeting in Mauritius in November 2012.³⁶ The *SADC Model Law* was adopted in order to provide "a tool that Member States can use to create a more secure legal environment for electronic transactions and e-commerce".³⁷ Among other issues, the framework provides guidance on issues relating to electronic communications, electronic transactions, electronic signatures, admissibility and evidentiary weight of electronic evidence, the protection of e-commerce consumers and the liability of internet service providers (ISPs).³⁸

The *SADC Model Law* was not adopted as a binding legal framework but merely to encourage SADC Member States to adopt uniform legislation that provides a more secure legal environment for electronic transactions and e-commerce.³⁹ Due to its nature, the *SADC Model Law* has not yet managed to harmonise e-commerce laws in the SADC region. After more than 10 years of its existence some Member countries have not managed to domesticate e-commerce legislation.⁴⁰ The regulation of e-commerce in the region is fragmented, inadequate and in some instances too out-dated to effectively regulate e-commerce.⁴¹ As a result, digital entrepreneurs are finding it difficult to access regional markets.⁴²

The major challenge involved in adopting the *SADC Model Law* is that it does not create any binding obligations on Member States. As such, its implementation or domestication is solely dependent upon the individual commitment of Member States.⁴³ Further, due to its nature the *SADC Model Law* sometimes gives Member States unnecessary freedom to pick or

³⁵ HIPSSA was initiated as a result of the request made by the economic integration organisations in Africa, as well as regional regulators associations, to the International Telecommunication Union (ITU) and the European Commission for assistance in harmonising ICT policies and legislation in sub-Saharan Africa. See ITU 2015 <http://www.itu.int/en/itu-d/projects/itu-ec-acp/hipssa/Pages/default.aspx>.

³⁶ ITU 2015 <http://www.itu.int/en/itu-d/projects/itu-ec-acp/hipssa/Pages/default.aspx>.

³⁷ See the preamble of the *SADC Model Law on Electronic Transactions and Electronic Commerce* (2012).

³⁸ Preamble of the *SADC Model Law on Electronic Transactions and Electronic Commerce* (2012); Abrahams 2017 AJIC 16.

³⁹ Preamble of the *SADC Model Law on Electronic Transactions and Electronic Commerce* (2012).

⁴⁰ Countries such as Democratic Republic of Congo (DRC), Comoros, Lesotho and Zimbabwe have not yet enacted comprehensive legislation on e-commerce.

⁴¹ SADC, Economic Commission for Africa and Africa Trade Policy Centre 2011 https://www.skylineuniversity.ac.ae/pdf/ecommerce/SADC_e-commerce_Strategy_FINAL_Oct18-FINAL.pdf.

⁴² SADC, Economic Commission for Africa and Africa Trade Policy Centre 2011 https://www.skylineuniversity.ac.ae/pdf/ecommerce/SADC_e-commerce_Strategy_FINAL_Oct18-FINAL.pdf.

⁴³ Shumba 2015 *Speculum Juris* 60.

choose provisions to domesticate and to leave out some provisions that are not in line with their developmental agenda.⁴⁴ This promotes fragmentation and uncertainty, which does not promote the harmonisation and development of e-commerce.

6 An analysis of the regulation of e-commerce legislation in SADC countries

This part discusses the regulation of e-commerce in SADC countries and identifies challenges that are hindering the development of e-commerce within the region. The first section focusses on countries that have not yet enacted e-commerce legislation, the second section deals with countries that have enacted e-commerce legislation and the last section deals with countries that have multiple legal regimes in their domestic frameworks.

6.1 Countries without e-commerce legislation

Zimbabwe does not have comprehensive legislation on e-commerce.⁴⁵ The existing legal framework was crafted largely with the aim of facilitating paper-based transactions, which require the use of documents and manual signatures.⁴⁶ At present there are various pieces of legislation that regulate the use of ICT, including electronic communications and certain aspects of e-commerce in Zimbabwe.⁴⁷ Among other legislation, e-commerce in Zimbabwe is mainly regulated by the *Consumer Protection Act*⁴⁸ and more recently the *Data Protection Act*.⁴⁹ None of these pieces of legislation adequately addresses legal issues in e-commerce. Although the country introduced the *Electronic Transactions and Electronic Commerce Bill* in 2013, the Bill has not yet been adopted into law.⁵⁰ The slow progress in the enactment of the Bill shows a lack of political will pertaining to the prioritisation of e-commerce regulation in the country.

Zimbabwe further lacks the necessary infrastructure that is pertinent for the development of e-commerce within and across the country. For instance, internet penetration is very low.⁵¹ This phenomenon is mainly attributed to poor telephone communications, an unreliable electricity supply and the fact

⁴⁴ Shumba 2015 *Speculum Juris* 60.

⁴⁵ UNCTAD 2021 <https://unctad.org/topic/ecommerce-and-digital-economy/ecommerce-law-reform/summary-adoption-e-commerce-legislation-worldwide>.

⁴⁶ UNCTAD 2021 <https://unctad.org/topic/ecommerce-and-digital-economy/ecommerce-law-reform/summary-adoption-e-commerce-legislation-worldwide>.

⁴⁷ African Development Bank date unknown https://www.afdb.org/fileadmin/uploads/afdb/Documents/GenericDocuments/14.%20Zimbabwe%20Report_Chapter%2012.pdf.

⁴⁸ *Consumer Protection Act* [Chapter 14:44] Act 5 of 2019.

⁴⁹ *Data Protection Act* [Chapter 11:12] Act 5 of 2021.

⁵⁰ UNCTAD 2021 <https://unctad.org/topic/ecommerce-and-digital-economy/ecommerce-law-reform/summary-adoption-e-commerce-legislation-worldwide>.

⁵¹ Batani, Denhere and Mawere 2015 *IJMS* 46.

that the internet is overpriced.⁵² The exorbitant pricing of the internet is mainly attributed to the harsh and unstable economic environment in the country, which forces internet service providers to charge more in order to avoid losses.⁵³ E-commerce, therefore, seems to be left to high income earners, as most people cannot afford to connect to the internet.⁵⁴ Further, there is no predictability regarding issues of domestic currency.⁵⁵ Debit cards which are not linked to the so called "Nostro Accounts" cannot make e-commerce cross-border purchases.⁵⁶ Given that cross-border e-commerce thrives on the availability and easy access of cross-border payment systems, it can be submitted that the current economic and legal environment of Zimbabwe is inadequate to support the development of e-commerce.

Lesotho, like Zimbabwe, has not yet enacted comprehensive legislation on e-commerce.⁵⁷ As a result, e-commerce in Lesotho is regulated through different pieces of legislation and various government policies.⁵⁸ However, these pieces of legislation lack regulations in critical areas of e-commerce such as electronic signatures and e-contracts.⁵⁹ Although the country drafted the *Electronic Transactions and Electronic Commerce Bill* in 2013, this piece of legislation has not yet been enacted to become law.⁶⁰ The slow adoption of e-commerce legislation shows a lack of the prioritisation of e-commerce issues by Lesotho and discourages the development of both domestic and cross-border e-commerce.

⁵² Batani, Denhere and Mawere 2015 *IJMBS* 47.

⁵³ Mawere and Mutero 2019 *IJERT* 110.

⁵⁴ Mawere and Mutero 2019 *IJERT* 110.

⁵⁵ Mawere and Mutero 2019 *IJERT* 110.

⁵⁶ A nostro account is a bank that holds foreign currency. See Institute of Chartered Accountants Zimbabwe 2018 <https://www.ica.org.zw/imisdocs/icaaz%20paper%20on%20reporting%20change%20in%20functional%20and%20presentation%20currency%20in%20zimbabwe%202018-ad.pdf>.

⁵⁷ UNCTAD 2019 https://unctad.org/system/files/official-document/dtlstict2019d8_en.pdf.

⁵⁸ For instance, e-commerce in Lesotho is regulated through the *Communications Act* 4 of 2012. See UNCTAD 2019 https://unctad.org/system/files/official-document/dtlstict2019d8_en.pdf.

⁵⁹ UNCTAD 2019 https://unctad.org/system/files/official-document/dtlstict2019d8_en.pdf.

⁶⁰ See the Preamble of the Lesotho *Electronic Transactions and Electronic Commerce Bill*, 2013 which states that the Bill aims to "(a)remove and prevent barriers to electronic communications and transactions in the Kingdom of Lesotho resulting from uncertainties over writing and signature requirements:(b) promote legal certainty and confidence in the integrity and reliability of electronic communications and electronic commerce, and to foster the development of electronic commerce through the use of electronic signatures to lend authenticity and integrity to correspondence in any electronic medium: (c) promote the development of the legal and business infrastructure necessary to implement secure electronic commerce".

Due to the lack of domestic legislation, there is a lack of trust in online systems, low acceptance of ICTs, and low levels of internet penetration.⁶¹ According to the UNCTAD, 35 percent of the country's population does not know how to use the internet and 15 percent believe that they do not need it.⁶² Also, the country does not have programmes that support e-commerce start-ups.⁶³ Given the state of e-commerce in Lesotho, it can be posited that the country has not yet managed to create a legislative environment that enables the development and growth of e-commerce.⁶⁴

Comoros also has not enacted legislation that deals specifically with e-commerce.⁶⁵ The country also lacks critical legislation such as cybercrime and privacy and data protection legislation that promotes a secure legal environment that enables the development and growth of e-commerce.⁶⁶ Internet penetration is also low and the country lacks the infrastructure necessary to enable the development of e-commerce.⁶⁷ In 2020, the UNCTAD B2C E-commerce index ranked Comoros 149th out of 152 countries surveyed.⁶⁸ Without the necessary infrastructure and comprehensive legislation on e-commerce, SADC countries such as Comoros may find it difficult to reap the benefits of e-commerce in the digital economy. This will increase the digital divide that currently exists between SADC countries and other developed and developing countries.

The Democratic Republic of Congo (DRC) does not have a legal instrument that comprehensively regulates e-commerce. As a result there are different pieces of legislation regulating e-commerce in the country.⁶⁹ E-commerce adoption in the DRC is still in its infancy and there is low internet penetration.⁷⁰ Large parts of the country remain unconnected due to the fact

⁶¹ UNCTAD 2019 https://unctad.org/system/files/official-document/dtlstict2019d8_en.pdf.

⁶² UNCTAD 2019 https://unctad.org/system/files/official-document/dtlstict2019d8_en.pdf.

⁶³ UNCTAD 2019 https://unctad.org/system/files/official-document/dtlstict2019d8_en.pdf.

⁶⁴ UNCTAD 2019 https://unctad.org/system/files/official-document/dtlstict2019d8_en.pdf.

⁶⁵ UNCTAD 2021 <https://unctad.org/topic/ecommerce-and-digital-economy/ecommerce-law-reform/summary-adoption-e-commerce-legislation-worldwide>.

⁶⁶ UNCTAD 2021 <https://unctad.org/topic/ecommerce-and-digital-economy/ecommerce-law-reform/summary-adoption-e-commerce-legislation-worldwide>.

⁶⁷ See E-Trade for All 2021 <https://etradeforall.org/wp-content/uploads/countryprofiles/2021/COMOROS.pdf>.

⁶⁸ UNCTAD 2021 https://unctad.org/system/files/official-document/tn_unctad_ict4d17_en.pdf.

⁶⁹ UNCTAD 2021 <https://unctad.org/topic/ecommerce-and-digital-economy/ecommerce-law-reform/summary-adoption-e-commerce-legislation-worldwide>.

⁷⁰ Providence, Chaoyi and Ganiyu 2019 *IJAR* 137.

that there is underinvestment in the digital infrastructure that is necessary to further the development of e-commerce.⁷¹ According to the UNCTAD:

DRC has one of the most under-developed and under-invested broadband markets in Africa with low internet and mobile phone penetration respectively at 9% and 38.7%. Affordability is a major constraint with elevated prices (58th most expensive country out of 61 in Africa) and very low purchasing power. DRC's underperformance in digital infrastructure is a binding constraint to the emergence of a digital economy.⁷²

The digital infrastructure of the DRC is a major impediment to the development of e-commerce.⁷³ The unstable political environment and poor governance are also contributing to an e-commerce-unfriendly environment.⁷⁴ There is poor government coordination and there is lack of necessary expertise to expand digital public service delivery.⁷⁵ Due to these challenges, DRC remains largely a cash economy with people minimally purchasing products through e-commerce.⁷⁶ This is mainly because many people do not have trust and confidence in digital transactions.⁷⁷ Without the necessary infrastructure and comprehensive legislation to boost the trust of both businesses and consumers, it is difficult to see the country reaping the benefits of e-commerce.⁷⁸

6.2 Countries with e-commerce legislation

Malawi enacted the *Electronic Transactions and Cyber Security Act*⁷⁹ in 2016. This is the main legal instrument dealing with e-commerce in Malawi. It was enacted after the adoption of the *SADC Model Law*. As such, it contains provisions that are similar to those in the regional instrument. However, in some instances the *Electronic Transactions and Cyber Security Act* deals with issues that go beyond the standards of the *SADC Model Law*. For instance, it adds comprehensive provisions regarding online content editors under the liability of ISPs, which the *SADC Model Law* and other SADC countries do not address. Further, part VI of the *Electronic Transactions and Cyber Security Act* titled "security and digital economy"

⁷¹ World Bank 2020 <https://thedocs.worldbank.org/en/doc/61714f214ed04bcd6e9623ad0e215897-0400012021/related/DRC-DE4A-EN-Final.pdf>.

⁷² World Bank 2020 <https://thedocs.worldbank.org/en/doc/61714f214ed04bcd6e9623ad0e215897-0400012021/related/DRC-DE4A-EN-Final.pdf>.

⁷³ World Bank 2020 <https://thedocs.worldbank.org/en/doc/61714f214ed04bcd6e9623ad0e215897-0400012021/related/DRC-DE4A-EN-Final.pdf>.

⁷⁴ World Bank 2020 <https://thedocs.worldbank.org/en/doc/61714f214ed04bcd6e9623ad0e215897-0400012021/related/DRC-DE4A-EN-Final.pdf>.

⁷⁵ World Bank 2020 <https://thedocs.worldbank.org/en/doc/61714f214ed04bcd6e9623ad0e215897-0400012021/related/DRC-DE4A-EN-Final.pdf>.

⁷⁶ See International Trade Administration 2022 <https://www.trade.gov/country-commercial-guides/democratic-republic-congo-ecommerce>.

⁷⁷ Providence, Chaoyi and Ganiyu 2019 *IJAR* 137.

⁷⁸ World Economic Forum 2019 http://www3.weforum.org/docs/WEF_consumer_protection.pdf.

⁷⁹ *Electronic Transactions and Cyber Security Act* 33 of 2016.

contains comprehensive provisions regarding the reliability of electronic signatures, requirements for issuing digital certificates, and the suspension of digital signatures. These provisions are absent from the *SADC Model Law* and the provisions of other SADC countries. Without proper coordination and cooperation different national requirements lead to fragmentation and regulatory discrepancies that breed legal uncertainty and unpredictability in cross-border e-commerce transactions.

Although Malawi enacted a legal instrument on e-commerce, it has not yet managed to capture e-commerce in its national policies, nor has it developed a strategy that implements its e-commerce laws domestically.⁸⁰ This is mainly because there is low prioritisation of e-commerce issues and lack of trust in digital transactions by both businesses and consumers.⁸¹ Further, the government does not have mechanisms that encourage businesses, particularly SMEs, to adopt e-commerce, and there are no programmes that educate or develop e-commerce skills.⁸²

Eswatini enacted the *Electronic Communications and Transactions Act*⁸³ in 2022. The adoption of the *Act* should be commended as it could go a long way towards boosting consumer confidence in e-commerce transactions. However, the piece of legislation does not address some of the issues that have been addressed in the *SADC Model Law* and other international instruments such as the *UNCITRAL Model Law on Electronic Transactions*. In particular, the *Electronic Communications and Transactions Act* do not address e-commerce issues regarding electronic advertisements and the admissibility and evidential weight of data messages. Failure to address these issues promotes fragmentation and undermines the uniformity that is pertinent for the development of e-commerce across the SADC region.

Tanzania has also enacted the *Electronic Transaction Act* in 2015.⁸⁴ Although this *Act* closely mirrors the *SADC Model Law*, it fails to address issues regarding the liability of ISPs and a general obligation to monitor that is included in the *SADC Model Law*. Given the non-binding nature of *SADC Model Law*, Tanzania does not have an obligation to include these provisions in its domestic legal framework, but their absence has the potential to create legal uncertainty in both domestic and cross-border e-commerce. Accordingly, it is submitted that the flexibility that the *SADC*

⁸⁰ UNCTAD 2019 https://unctad.org/system/files/official-document/dtlstict2019d14_en.pdf.

⁸¹ UNCTAD 2019 https://unctad.org/system/files/official-document/dtlstict2019d14_en.pdf.

⁸² UNCTAD 2019 https://unctad.org/system/files/official-document/dtlstict2019d14_en.pdf.

⁸³ See *Electronic Communications and Transactions Act* 3 of 2022.

⁸⁴ See the *Electronic Transactions Act* 13 of 2015.

Model Law gives to Member States when implementing its provisions impedes the harmonisation of e-commerce laws across the region.

E-commerce in Namibia is regulated mainly through the *Electronic Transaction Act*, which was enacted in 2019. Although the Namibia *Electronic Transaction Act* addresses various issues that have been addressed in the *SADC Model Law*, in some instances it goes further to develop unique standards that are absent from the *SADC Model Law* and that of other SADC countries. In particular, article 25 of the Namibia *Electronic Transaction Act* contains provisions on the admissibility and evidential weight of data messages and computer evidence that go beyond the other legislative texts.⁸⁵ The unilateral establishment of standards without proper regional cooperation and coordination promotes fragmentation and undermines the harmonisation process of e-commerce legislation in the SADC.

Although it is commendable that Namibia enacted the *Electronic Transaction Act*, the use of e-commerce, particularly cross-border e-commerce, is limited.⁸⁶ This is reflected by the limited use of debit and credit cards both within and across the country.⁸⁷ Although the use of mobile money services is prevalent in domestic transactions, without mechanisms to ensure inter-operability in cross-border transactions the development of cross-border e-commerce will remain limited.⁸⁸ Namibia also lacks important infrastructure that would enable the development of e-commerce.⁸⁹ For instance, its postal services are under-capacitated to

⁸⁵ Article 25(8) and 9 of the *Electronic Transactions Act* 13 of 2015 provides that:
 "(8) If in its opinion it is in the interest of the administration of justice, a court may allow a person to perform a demonstration on a computer system instead of a printout referred to in subsection (6), if such demonstration has been performed by a person who has authenticated such demonstration by means of admissible evidence.

(9) Evidence authenticating a printout or a demonstration must be evidence of –

(a) the steps that have been taken to create the printout;

(b) the software that has been used to create the printout or demonstration;

(c) if the steps referred to in paragraph (a), require any special expertise, the nature of the qualifications or experience of the person who performed those steps;

(d) particulars of any alterations made in order to create such printout or demonstration and if no such alteration has been made, a statement to that effect; and

(e) any other fact that is relevant in order to demonstrate that the evidence is reliable and is what it purports to be."

⁸⁶ Africa Arise 2022 <https://eu-africa-rise.com/storage/case-studies/October2022/Yored4K7S3Ar3ArKjxtF.pdf>

⁸⁷ Africa Arise 2022 <https://eu-africa-rise.com/storage/case-studies/October2022/Yored4K7S3Ar3ArKjxtF.pdf>.

⁸⁸ Africa Arise 2022 <https://eu-africa-rise.com/storage/case-studies/October2022/Yored4K7S3Ar3ArKjxtF.pdf>.

⁸⁹ Africa Arise 2022 <https://eu-africa-rise.com/storage/case-studies/October2022/Yored4K7S3Ar3ArKjxtF.pdf>.

adequately and timeously ensure the delivery of parcels that may be ordered through e-commerce.⁹⁰ Namibia has, therefore, not yet managed to create an e-commerce-enabling environment.

Zambia first enacted the *Electronic Transaction Act* in 2009 before the *SADC Model Law on Electronic Commerce and Electronic Transactions* was adopted. However, this piece of legislation was repealed and replaced by the *Electronic Communications and Transactions Act* of 2021, which provides comprehensive provisions for the regulation of e-commerce. Although it is aligned with the *SADC Model Law* to some extent, it does not include some of the provisions that are included in the *SADC Model Law* and also contains some provisions that are absent from the *SADC Model Law*. For instance, the *Zambia Electronic Communications and Transactions Act* does not include the provision regarding the time of contract formation that is included under the *SADC Model Law*. Further, sections 23 and 24 of the *Zambia Electronic Communications and Transactions Act* contain provisions on the acceptance of electronic filing, the issuing of documents, and the requirements for the electronic filing and issuing of documents that are absent from the *SADC Model Law*. Again, developing unique national standards without regional cooperation promotes fragmentation and compromises the harmonisation process that the *SADC Model Law* seeks to achieve.

Although Zambia has managed to develop a relatively strong policy framework for e-commerce, the current national development policies and strategies remain rather silent on e-commerce. There is a lack of coordination across government departments.⁹¹ Moreover, while internet penetration has increased in big cities like Lusaka and other big towns, penetration in rural areas remains low.⁹² The lack of digital infrastructure in rural areas amplifies the urban-rural divide in the adoption of ICTs and e-commerce.

Botswana enacted the *Electronic Transaction Act* of 2014 which is the main legal instrument on e-commerce. Unlike other SADC countries, Botswana has the potential to boost its e-commerce development.⁹³ This is because the country has a significant number of e-commerce-ready users with technological devices that could spearhead the proliferation of e-

⁹⁰ Africa Arise 2022 <https://eu-africa-rise.com/storage/case-studies/October2022/Yored4K7S3Ar3ArKjxtF.pdf>.

⁹¹ UNCTAD 2018 https://unctad.org/system/files/official-document/dtlstict2018d10_en.pdf.

⁹² UNCTAD 2018 https://unctad.org/system/files/official-document/dtlstict2018d10_en.pdf.

⁹³ UNCTAD 2018 https://unctad.org/system/files/official-document/dtlstict2018d10_en.pdf.

commerce.⁹⁴ Although the country has made significant progress in developing its ICT infrastructure, challenges such as the high cost of internet data and a lack of trust and confidence in digital transactions continue to hinder the development of e-commerce.⁹⁵ The lack of confidence in digital transactions may be attributed to limited awareness of ICTs and e-commerce among consumers and some businesses.⁹⁶ Further, government programmes do not adequately support SMEs, thereby limiting the ability of entrepreneurs to exploit e-commerce opportunities.⁹⁷

Although Angola managed to enact e-commerce legislation, Angolan e-commerce is still in its infancy and domestic policies are doing little to boost e-commerce in the country.⁹⁸ This is mainly because the country lacks the infrastructure necessary to enable the development of e-commerce.⁹⁹ Internet penetration is low and the use of credit cards and other internationally accepted payment methods is extremely limited.¹⁰⁰ Without easy access to international payment systems, it is difficult to promote cross-border e-commerce.¹⁰¹

Mozambique enacted the *Electronic Transactions Law* No 3/2017, which is the primary legislation dealing with e-commerce.¹⁰² Despite the availability of domestic legislation, e-commerce in Mozambique is still relatively sparse compared to that in some other countries.¹⁰³ Many people do not have access to debit or credit cards that enable them to conduct domestic and cross-border e-commerce transactions.¹⁰⁴ Further, internet access is limited to wealthy individuals due to the fact that data prices are expensive.¹⁰⁵ Also,

⁹⁴ UNCTAD 2021 https://unctad.org/system/files/official-document/dtlstict2021d4_en.pdf.

⁹⁵ UNCTAD 2021 https://unctad.org/system/files/official-document/dtlstict2021d4_en.pdf.

⁹⁶ UNCTAD 2021 https://unctad.org/system/files/official-document/dtlstict2021d4_en.pdf.

⁹⁷ UNCTAD 2021 https://unctad.org/system/files/official-document/dtlstict2021d4_en.pdf.

⁹⁸ See International Trade Administration 2022 <https://www.trade.gov/country-commercial-guides/angola-ecommerce>.

⁹⁹ Standard Bank 2023 <https://www.tradeclub.standardbank.com/portal/en/market-potential/angola/ecommerce>.

¹⁰⁰ Standard Bank 2023 <https://www.tradeclub.standardbank.com/portal/en/market-potential/angola/ecommerce>.

¹⁰¹ Standard Bank 2023 <https://www.tradeclub.standardbank.com/portal/en/market-potential/angola/ecommerce>.

¹⁰² LexAfrica date unknown <https://www.lexafrika.com/2017/08/review-of-the-electronic-transactions-act-in-mozambique/>.

¹⁰³ World Bank 2019 <https://thedocs.worldbank.org/en/doc/833211594395622030-0090022020/original/MozambiqueDECA.pdf>.

¹⁰⁴ International Trade Administration 2022 <https://www.trade.gov/country-commercial-guides/mozambique-ecommerce>.

¹⁰⁵ World Bank 2019 <https://thedocs.worldbank.org/en/doc/833211594395622030-0090022020/original/MozambiqueDECA.pdf>.

internet coverage is limited to big towns, thereby widening the rural-urban divide. The integration of consumers in rural areas in e-commerce is important for its development.

In South Africa the main instrument dealing with e-commerce is the *Electronic Communications and Transactions Act 25 of 2002 (ECT Act)*. The *ECT Act* was enacted before the *SADC Model Law* came into existence. As such, it has some provisions are different from those in the *SADC Model Law*. In particular, the definition contained in the *ECT Act* of an electronic signature is different from that in the *SADC Model Law*. While the *ECT Act* defines an electronic signature as “data attached to, incorporated in, or logically associated with other data and which is intended by the user to serve as a signature”. The *Model Law on Electronic Transactions and Electronic Commerce* defines an electronic signature as “data, including an electronic sound, symbol or process, executed or adopted to identify a party and to indicate that party’s approval or intention in respect of the information contained in the electronic communication and which is attached to or logically associated with such electronic communication.”¹⁰⁶

It can be noted in the above definitions that the *ECT Act* definition presents a unique requirement that is absent from the *SADC Model Law*. In particular, the requirement that the data must be intended to be used as an electronic signature is a unique requirement that is absent from the *SADC Model Law*.¹⁰⁷ Different definitions with different requirements breed competing obligations, which promotes the fragmentation of e-commerce laws across the region.

Compared to other countries within the SADC, South Africa's digital infrastructure is considered to be relatively robust, as it has "enabled progressively better market outcomes for consumers."¹⁰⁸ However, the rural-urban divide persists as some consumers in rural areas continue to be left behind.¹⁰⁹ While most towns are benefitting from the expansion of fibre-optic cable infrastructure that can increase consumer choice for fast internet connectivity, rural areas are being left behind with poor services and high mobile data prices.¹¹⁰ The current regulatory framework is not resulting in sufficient digital inclusion of SMEs, and government digital programmes

¹⁰⁶ See s 1 of the *SADC the Model Law on Electronic Transactions and Electronic Commerce* (2012).

¹⁰⁷ Eiselen 2014 *PELJ* 2812.

¹⁰⁸ World Bank 2019 <https://documents1.worldbank.org/curated/en/464421589343923215/pdf/South-Africa-Digital-Economy-Diagnostic.pdf>.

¹⁰⁹ World Bank 2019 <https://documents1.worldbank.org/curated/en/464421589343923215/pdf/South-Africa-Digital-Economy-Diagnostic.pdf>.

¹¹⁰ World Bank 2019 <https://documents1.worldbank.org/curated/en/464421589343923215/pdf/South-Africa-Digital-Economy-Diagnostic.pdf>.

have not been able to fill the gap.¹¹¹ Further, there are overlapping and sometimes blurred responsibilities among government departments that are responsible for ICTs and e-commerce, which is preventing the country from maximising the benefits of e-commerce and the digital economy.¹¹²

6.3 Countries with multiple legal regimes

SADC countries are party to other international and regional organisations that have legal instruments on e-commerce. For instance, the United Nations, of which SADC countries are members, has adopted three instruments on e-commerce, namely the *UNCITRAL Model Law on E-commerce* (MLEC), the *UNCITRAL Model Law on Electronic Signatures* (MLES) and the *United Nations Convention on the Use of Electronic Communications in International Contracts* (UN Convention). In addition, the SADC countries have members of other Regional Economic Communities (RECs) that have adopted their regional instruments on e-commerce.¹¹³ The East African Community (EAC) adopted the *EAC Legal Framework for Cyberlaws* and the Common Market for Eastern and Southern Africa (COMESA) adopted the *COMESA Model Law on Electronic Transactions* in 2010.

Given the different regional instruments on e-commerce, some SADC countries have adopted domestic legislation that is aligned more to other instruments than to the *SADC Model Law*. For instance, Seychelles enacted the *Electronic Transaction Act* in 2001 before the *SADC Model Law* had been adopted. As such, the legislation does not address some of the issues that are addressed by the *SADC Model Law*.¹¹⁴ For instance, it does not address issues regarding the liability of ISPs, the time of contract formation and consumer protection issues in e-commerce that are addressed by the *SADC Model Law*. Given the time of its enactment, the Seychelles Electronic Transaction Act is more aligned with the *UNCITRAL Model Law on E-commerce* (MLEC). Different regulatory approaches to the regulation of e-commerce in the SADC cause fragmentation and undermine the harmonisation of e-commerce laws within the SADC.

¹¹¹ World Bank 2019 <https://documents1.worldbank.org/curated/en/464421589343923215/pdf/South-Africa-Digital-Economy-Diagnostic.pdf>.

¹¹² World Bank 2019 <https://documents1.worldbank.org/curated/en/464421589343923215/pdf/South-Africa-Digital-Economy-Diagnostic.pdf>.

¹¹³ Tanzania and DRC are members of the East African Community (EAC) Swaziland, Botswana, Lesotho, Namibia and South Africa are members of Southern African Customs Union (SACU) DRC, Malawi, Zambia, Zimbabwe, Madagascar, Mauritius and Seychelles are members of Common Market for Eastern and Southern Africa. A country like DRC, for instance, is a member of three sub-regional groups namely EAC, COMESA and SADC, all of which have different regional frameworks on e-commerce.

¹¹⁴ UNCTAD 2018 https://unctad.org/system/files/official-document/tn_unctad_ict4d12_en.pdf.

Mauritius also enacted the *Electronic Transaction Act* in 2000 before the *SADC Model Law* was adopted.¹¹⁵ Given the fact that the *Electronic Transaction Act* was enacted before the *SADC Model Law*, it does not address issues regarding consumer protection, the time of contract formation, the admissibility and evidentiary weight of electronic communications and unsolicited electronic communications, these being issues that have been addressed in the *SADC Model Law*. Given that the legal instrument does not address some e-commerce topics, it is inadequate to deal with some legal issues that may arise as a result of the use of e-commerce. A failure to address some legal issues in e-commerce may result in a lack of confidence and trust in e-commerce transactions by both businesses and consumers.

In the area of e-commerce, Madagascar has enacted *Law 2014-024 on Electronic Transactions* and *Law 2014-025 on Electronic Signatures*. Although the legal texts were enacted after the adoption of the *SADC Model Laws*, they are more aligned to the MLEC, MLES and the UN Convention.¹¹⁶ This is mainly because *Law 2014-024 on Electronic Transactions* and *Law 2014-025 on Electronic Signature* were drafted in a joint initiative between the Government of Madagascar and the Secretariat of UNCITRAL with the aim of modernising the law of electronic transactions in the country.¹¹⁷ Given that the *SADC Model Law* had already been adopted when the legislation was enacted, it seems that there is a disregard of the *SADC Model Law* as a unifying text of e-commerce laws within the SADC region.

7 Moving towards a strengthened regulatory framework on e-commerce in the SADC region

The discussion above has revealed a number challenges that are affecting the development of e-commerce in the SADC. Among other challenges, e-commerce in SADC is facing challenges that include a lack of policy in critical areas, a lack of adequate infrastructure and a lack of trust and confidence in e-commerce.¹¹⁸ The discussion below explores some of the regulatory and other measures that SADC countries might implement to enhance and consolidate the region's e-commerce regulatory framework.

7.1 Adopting an instrument on e-commerce in the SADC

From the discussion above it can be noted that the SADC does not have a binding regional instrument on e-commerce. The *SADC Model Law* was

¹¹⁵ *Electronic Transactions Act* 23 of 2000.

¹¹⁶ UN 2015 <https://unis.unvienna.org/unis/en/pressrels/2015/unisl212.html>.

¹¹⁷ UN 2015 <https://unis.unvienna.org/unis/en/pressrels/2015/unisl212.html>.

¹¹⁸ SADC, Economic Commission for Africa and Africa Trade Policy Centre 2011 https://www.skylineuniversity.ac.ae/pdf/ecommerce/SADC_e-commerce_Strategy_FINAL_Oct18-FINAL.pdf.

adopted by the SADC Ministers responsible for Telecommunications, Postal Services and ICT as a non-binding framework. Member states, therefore, have the freedom to adopt it or to depart from its provisions when domesticating it in their national legislation. In the absence of a legally binding instrument, divergent national legislation leads to fragmentation, which makes it difficult for digital entrepreneurs to access regional markets.¹¹⁹ This will affect the development of e-commerce across the region and erode confidence and legal predictability in e-commerce transactions. Accordingly, it has become imperative for SADC countries to coordinate and adopt a legally binding regional instrument that will assist in enhancing legal predictability and certainty and promote the development of e-commerce. Regional cooperation and coordination is important if the SADC is to adopt a regional instrument that will promote the development of e-commerce within the region.

7.2 *Enactment of domestic laws which adequately regulate e-commerce*

Although the *SADC Model Law* was adopted in 2012, ten years later some countries, namely the DRC, Comoros, Lesotho and Zimbabwe have not yet enacted comprehensive national legislation on e-commerce.¹²⁰ Countries like Zimbabwe and Lesotho introduced e-commerce legislative Bills in 2013 which have not yet been adopted into law. There is a lack of the prioritisation of e-commerce domestic regulations in Member States. Further, other Member States' legislation is outdated as it fails to address some of the issues that have been addressed under the *SADC Model Law*. The lack of domestic frameworks and out-dated legislation on e-commerce breeds fragmentation and divergence in e-commerce regulation across the region.

In order to avoid the fragmentation of e-commerce domestic legislation, it is important for SADC Member States to corporate and coordinate on issues regarding the regulation of e-commerce. Cooperation and coordination are important in order to ensure that domestic legislation does not have competing obligations. Further, Member States must have the necessary political will and commitment to ensure that domestic frameworks are in line with the regional instrument. This would assist in instilling legal confidence and trust in cross-border e-commerce.

¹¹⁹ SADC, Economic Commission for Africa and Africa Trade Policy Centre 2011 https://www.skylineuniversity.ac.ae/pdf/ecommerce/SADC_e-commerce_Strategy_FINAL_Oct18-FINAL.pdf.

¹²⁰ UNCTAD 2021 <https://unctad.org/topic/ecommerce-and-digital-economy/ecommerce-law-reform/summary-adoption-e-commerce-legislation-worldwide>.

7.3 Promoting e-commerce literacy and education

The status of e-commerce laws across the SADC region shows to an extent the lack of knowledge of e-commerce issues in the region.¹²¹ Most SADC countries do not understand the nature and the potential of e-commerce across the region.¹²² The lack of understanding is revealed both at regional and at national level. At a regional level, the absence of a binding regional framework on e-commerce shows a lack of prioritisation and understanding of the importance of having uniform rules in e-commerce.¹²³ At national level, a lack of e-commerce policies, infrastructure and coordination between government departments to eradicate barriers to e-commerce highlights a lack of understanding of the importance of establishing legal rules in e-commerce.¹²⁴ As a result, governments are doing little to provide training and education on e-commerce. This has led many businesses and consumers to prefer using traditional methods of transacting rather than e-commerce methods.¹²⁵ It has, therefore, become important for SADC countries to share and learn best practices from other regional counterparts. Further, SADC governments must raise awareness, provide training and education on matters regarding e-commerce.¹²⁶

7.4 Developing adequate infrastructure

As evidenced from the above discussion, many SADC countries lack the infrastructure necessary to enable the development of e-commerce. In many countries internet services are poor and expensive for an average consumer.¹²⁷ Setting up infrastructure, that enables the development of e-commerce too is expensive for many SADC countries, given the fact that these countries are mostly low-income economies that are extremely poor.¹²⁸ It is pertinent for the region to cooperate and coordinate in order to develop collaborative ICT infrastructure that will assist Member States to benefit from e-commerce. For instance, SADC Member States could cooperate in building internet fibres that would assist in lowering internet prices across the region, thereby making it easier for SMEs and consumers to access the internet for e-commerce purposes.

¹²¹ UNCTAD 2019 https://unctad.org/system/files/official-document/dtlstict2019d14_en.pdf; World Bank 2019 <https://openknowledge.worldbank.org/bitstream/handle/10986/33786/South-Africa-Digital-Economy-Diagnostic.pdf>.

¹²² World Bank 2019 <https://openknowledge.worldbank.org/bitstream/handle/10986/33786/South-Africa-Digital-Economy-Diagnostic.pdf>.

¹²³ World Bank 2019 <https://openknowledge.worldbank.org/bitstream/handle/10986/33786/South-Africa-Digital-Economy-Diagnostic.pdf>.

¹²⁴ Goga, Paelo and Nyamwena 2019 https://www.researchgate.net/publication/333129143_Online_Retailing_in_South_Africa_An_Overview.

¹²⁵ Ndonga 2012 *AJLS* 254.

¹²⁶ Ndonga 2012 *AJLS* 264.

¹²⁷ Ndonga 2012 *AJLS* 264.

¹²⁸ Ndonga 2012 *AJLS* 264.

8 Conclusion

This article has demonstrated that the effective regulation of e-commerce in the SADC remains problematic, with several challenges inhibiting the development of e-commerce in the region. These challenges include the absence of a legally binding instrument, the proliferation of sub-regional laws on e-commerce, the lack of institutional capacity, the absence of laws regulating e-commerce at national level, and the lack of expertise in e-commerce. It has been argued that to overcome the aforesaid challenges, there is a need for the SADC to adopt a regulatory framework that enhances legal certainty and predictability as one of the important pillars that enables the development of e-commerce. This is achievable through the adoption of a standalone binding regional legal instruments on e-commerce, the development of collaborative e-commerce infrastructure, and the enactment of effective legislation which governs e-commerce at national level. However, these solutions can materialise only if the SADC countries exhibit political will directed towards the coordination and harmonisation of e-commerce rules and policies in the region. Such a development is a key for SADC countries to tap into the benefits that could be derived from e-commerce, which would then contribute to the flourishing of e-commerce business and translate into much-needed economic growth, employment creation and poverty alleviation.¹²⁹

Bibliography

Literature

- Abazi and Abazi 2014 *Open Journal of Social Sciences*
Abazi X and Abazi B "Regional Cooperation-Electronic Commerce Impact" 2014 *Open Journal of Social Sciences* 455-463
- Abrahams 2017 *AJIC*
Abrahams L "Regulatory Imperatives for the Future of SADC's Digital Complexity Ecosystem" 2017 *AJIC* 1-29
- Akomolede 2008 *PELJ*
Akomolede T "Contemporary Legal Issues in Electronic Commerce in Nigeria" 2008 *PELJ* 1-24
- Banga and Banga 2022 *Journal of African Trade*
Banga R and Banga K "Scoping the Potential for a Digital Led Recovery from COVID-19 in Africa" 2022 *Journal of African Trade* 120-143

¹²⁹ Ndonga 2012 *AJLS* 264.

Batani, Denhere and Mawere 2015 *IJMBS*

Batani J, Denhere T and Mawere T "The Role of E-commerce in Resuscitating the Economy of Zimbabwe" 2015 *IJMBS* 44-48

Eiselen 2014 *PELJ*

Eiselen S "Fiddling with the ECT Act - Electronic Signatures" 2014 *PELJ* 2805-2820

Gecit 2021 *IJRBS*

Gecit B "Electronic Commerce During the Covid-19 Pandemics: A Bibliometric Analysis Approach" 2021 *IJRBS* 2434-2444

Manteaw 2003 *Global Business and Development Law Journal*

Manteaw S "Entering the Digital Marketplace: E-commerce and Jurisdiction in Ghana" 2003 *Global Business and Development Law Journal* 345-393

Mapuva and Muyengwa-Mapuva 2014 *LDD*

Mapuva J and Muyengwa-Mapuva L "The SADC Regional Bloc: What Challenges and Prospects for Regional Integration" 2014 *LDD* 22-36

Mawere and Mutero 2019 *IJERT*

Mawere G and Mutero T "Effects of the Prevailing Zimbabwean Economic Situation on E-Commerce" 2019 *IJERT* 109-111

Nangela 2013 *SADC Law Journal*

Nangela J "Harmonisation or Unification of Laws in the Context of SADC Regional Integration: Analysing the SADC's Initiatives in the Era of E-commerce" 2013 *SADC Law Journal* 80-103

Ndonga 2012 *AJLS*

Ndonga D "E-Commerce in Africa: Challenges and Solutions" 2012 *AJLS* 243-268

Osode 2003 *Journal for Juridical Science*

Osode P "The Southern African Development Community in Legal Historical Perspective" 2003 *Journal for Juridical Science* 1-9

Providence, Chaoyi and Ganiyu 2019 *IJAR*

Providence A, Chaoyi X and Ganiyu S "An Empirical Study on Factors Influencing Consumer's Intention to Adopt E-Commerce in DRC" 2019 *IJAR* 137-148

Saurombe 2013 *LDD*

Saurombe A "The European Union as a Model for Regional Integration in the Southern African Development Community: A Selective Institutional Comparative Analysis" 2013 *LDD* 457-476

Shumba 2015 *Speculum Juris*

Shumba T "More than 25 Years of the Convention on Contracts for the International Sale of Goods (CISG): Rethinking the Role of the CISG in the SADC Region" 2015 *Speculum Juris* 41-62

William and Fraser 2011 *JGIM*

William W and Fraser S "Persistent Barriers to E-commerce in Developing Countries" 2011 *JGIM* 30-44

Legislation

Botswana

Electronic Transaction Act, 2014

Eswatini

Electronic Communications and Transactions Act 3 of 2022

Lesotho

Communications Act 4 of 2012

Consumer Protection Policy, 2013

Electronic Transactions and Electronic Commerce Bill, 2013

Madagascar

Law 2014-024 on Electronic Transactions

Law 2014-025 on Electronic Signature

Malawi

Electronic Transactions and Cyber Security Act 33 of 2016

Mauritius

Electronic Transactions Act 23 of 2000

Mozambique

Electronic Transactions Law 3 of 2017

Namibia

Electronic Transaction Act 4 of 2019

Seychelles

Electronic Transactions Act, 2001

South Africa

Electronic Communications and Transactions Act 25 of 2002

Tanzania

Electronic Transactions Act 13 of 2015

Zambia

Electronic Transaction Act, 2009

Electronic Communications and Transactions Act, 2021

Zimbabwe

Electronic Transactions and Electronic Commerce Bill, 2013

Data Protection Act [Chapter 11:12] Act 5 of 2019

Consumer Protection Act [Chapter 14:14] Act 5 of 2021

International instruments

Lusaka Declaration (Southern Africa: Toward Economic Liberation) (1980)

Protocol on Trade in the Southern African Development Community (1996)

SADC Declaration on Information and Communications Technology (2001)

SADC Model Law on Electronic Transactions and Electronic Commerce (2012)

SADC Regional Indicative Strategic Development Plan (RISDP) 2020-2030 (2020)

SADC Regional Indicative Strategic Development Plan (RISDP) 2005-2020 (2015)

Treaty of the Southern African Development Community (1992)

United Nations Commission on International Trade Law Model on Electronic Commerce with Guide to Enactment UN Doc A/51/628 (1996)

United Nations Commission on International Trade Law Model on Electronic Signatures with Guide to Enactment UN Doc A/56/588 (2001)

United Nations Convention on the Use of Electronic Communications in International Contracts UN Doc A/60/515 (2005)

Internet sources

Africa Arise 2022 <https://eu-africa-rise.com/storage/case-studies/October2022/Yored4K7S3Ar3ArKjxtF.pdf>

Africa Arise 2022 *Assessment of Namibia's E-commerce Readiness* <https://eu-africa-rise.com/storage/case-studies/October2022/Yored4K7S3Ar3ArkjxF.pdf> accessed 15 November 2023

African Development Bank date unknown https://www.afdb.org/fileadmin/uploads/afdb/Documents/GenericDocuments/14.%20Zimbabwe%20Report_Chapter%2012.pdf

African Development Bank date unknown *Information and Communications Technology* https://www.afdb.org/fileadmin/uploads/afdb/Documents/GenericDocuments/14.%20Zimbabwe%20Report_Chapter%2012.pdf accessed 7 January 2024

E-trade for All 2021 <https://etradeforall.org/wp-content/uploads/countryprofiles/2021/COMOROS.pdf>

E-Trade for All 2021 *Comoros* <https://etradeforall.org/wp-content/uploads/countryprofiles/2021/COMOROS.pdf> accessed 30 December 2023

Goga, Paelo and Nyamwena 2019 https://www.researchgate.net/publication/333129143_Online_Retailing_in_South_Africa_An_Overview
Goga S, Paelo A and Nyamwena J 2019 *Online Retailing in South Africa: An Overview (Centre for Competition for Regulation and Economic Development Working Paper 2/2019)* https://www.researchgate.net/publication/333129143_Online_Retailing_in_South_Africa_An_Overview accessed 23 November 2024

Institute of Chartered Accountants Zimbabwe 2018 <https://www.icaaz.org.zw/imisdocs/icaaz%20paper%20on%20reporting%20change%20in%20functional%20and%20presentation%20currency%20in%20zimbabwe%202018-ad.pdf>

Institute of Chartered Accountants Zimbabwe 2018 *ICAZ Paper on Reporting Change in Functional and Presentation Currency in Zimbabwe* <https://www.icaaz.org.zw/imisdocs/icaaz%20paper%20on%20reporting%20change%20in%20functional%20and%20presentation%20currency%20in%20zimbabwe%202018-ad.pdf> accessed 20 December 2023

International Trade Administration 2022 <https://www.trade.gov/country-commercial-guides/angola-ecommerce>

International Trade Administration 2022 *Angola Country Commercial Guide* <https://www.trade.gov/country-commercial-guides/angola-ecommerce> accessed 3 January 2024

International Trade Administration 2022 <https://www.trade.gov/country-commercial-guides/democratic-republic-congo-ecommerce>

International Trade Administration 2022 *Democratic Republic of the Congo - Country Commercial Guide* <https://www.trade.gov/country-commercial-guides/democratic-republic-congo-ecommerce> accessed 3 January 2024

International Trade Administration 2022 <https://www.trade.gov/country-commercial-guides/mozambique-ecommerce>

International Trade Administration 2022 *Mozambique County Guide: Ecommerce* <https://www.trade.gov/country-commercial-guides/Mozambique-ecommerce> accessed 28 December 2023

ITU 2015 <http://www.itu.int/en/itu-d/projects/itu-ec-acp/hipssa/Pages/default.aspx>

International Trade Union 2015 *Support for Harmonisation of the ICT Policies in Sub-Saharan Africa* <http://www.itu.int/en/itu-d/projects/itu-ec-acp/hipssa/Pages/default.aspx> accessed 23 December 2023

LexAfrica date unknown <https://www.lexafrica.com/2017/08/review-of-the-electronic-transactions-act-in-mozambique/>

LexAfrica date unknown *Review of the Electronic Transactions Act in Mozambique* <https://www.lexafrica.com/2017/08/review-of-the-electronic-transactions-act-in-mozambique/> accessed 26 December 2023

SADC 2022 <https://www.sadc.int/pages/history-and-treaty>

Southern African Development Community 2022 *History and Treaty* <https://www.sadc.int/pages/history-and-treaty> accessed 28 December 2023

SADC 2022 <https://www.sadc.int/member-states>

Southern African Development Community 2022 *Member States* <https://www.sadc.int/member-states> accessed 30 December 2023

SADC, Economic Commission for Africa and Africa Trade Policy Centre 2011 https://www.skylineuniversity.ac.ae/pdf/ecommerce/SADC_ecommerce_Strategy_FINAL_Oct18-FINAL.pdf

Southern African Development Community, Economic Commission for Africa and Africa Trade Policy Centre 2011 *E-commerce in the SADC Sub-Region* https://www.skylineuniversity.ac.ae/pdf/ecommerce/SADC_ecommerce_Strategy_FINAL_Oct18-FINAL.pdf accessed 28 December 2023

Standard Bank 2023 <https://www.tradeclub.standardbank.com/portal/en/market-potential/angola/ecommerce>

Standard Bank 2023 *E-commerce in Angola* <https://www.tradeclub.standardbank.com/portal/en/market-potential/angola/ecommerce> accessed 2 January 2024

UN 2015 <https://unis.unvienna.org/unis/en/pressrels/2015/unisl212.html>

United Nations 2015 *Madagascar Adopts Electronic Transactions and Electronic Signature Law Based on UNCITRAL Texts* <https://unis.unvienna.org/unis/en/pressrels/2015/unisl212.html> accessed 23 November 2024

UNCTAD 2018 https://unctad.org/system/files/official-document/dtlstict2018d10_en.pdf

United Nations Conference on Trade and Development 2018 *Republic of Zambia Rapid eTrade Readiness Assessment* https://unctad.org/system/files/official-document/dtlstict2018d10_en.pdf accessed 29 October 2023

UNCTAD 2018 https://unctad.org/system/files/official-document/tn_unctad_ict4d12_en.pdf

United Nations Conference on Trade and Development 2018 *UNCTAD B2C E-Commerce Index 2018 Focus on Africa* 2018 https://unctad.org/system/files/official-document/tn_unctad_ict4d12_en.pdf accessed 5 January 2024

UNCTAD 2019 https://unctad.org/system/files/official-document/dtlstict2019d8_en.pdf

United Nations Conference on Trade and Development 2019 *Lesotho Rapid eTrade Readiness Assessment* https://unctad.org/system/files/official-document/dtlstict2019d8_en.pdf accessed 17 December 2023

UNCTAD 2019 https://unctad.org/system/files/official-document/dtlstict2019d14_en.pdf

United Nations Conference on Trade and Development 2019 *Malawi Rapid eTrade Readiness Assessment* https://unctad.org/system/files/official-document/dtlstict2019d14_en.pdf accessed 16 December 2023

UNCTAD 2021 https://unctad.org/system/files/official-document/dtlstict2021d4_en.pdf

United Nations Conference on Trade and Development 2021 *National ICT Policy Review and E-Commerce Strategy for Botswana* https://unctad.org/system/files/official-document/dtlstict2021d4_en.pdf accessed 29 October 2023

UNCTAD 2021 https://unctad.org/system/files/official-document/tn_unctad_ict4d17_en.pdf

United Nations Conference on Trade and Development 2021 *The UNCTAD B2C E-Commerce Index 2020: Spotlight on Latin America and the Caribbean* https://unctad.org/system/files/official-document/tn_unctad_ict4d17_en.pdf accessed 29 October 2023

UNCTAD 2021 <https://unctad.org/topic/ecommerce-and-digital-economy/ecommerce-law-reform/summary-adoption-e-commerce-legislation-worldwide>

United Nations Conference on Trade and Development 2021 *Summary of Adoption of E-Commerce Legislation Worldwide* <https://unctad.org/topic/ecommerce-and-digital-economy/ecommerce-law-reform/summary-adoption-e-commerce-legislation-worldwide> accessed 30 December 2023

UN 2022 https://unece.org/sites/default/files/2022-01/ECE_TRADE_468E_1.pdf

United Nations 2022 *COVID-19 Impact on E-Commerce Post-Pandemic COVID-19 Economic Recovery: Harnessing E-Commerce for the UNECE Transition Economies* https://unece.org/sites/default/files/2022-01/ECE_TRADE_468E_1.pdf accessed 12 December 2023

World Bank 2019 <https://openknowledge.worldbank.org/bitstream/handle/10986/33786/South-Africa-Digital-Economy-Diagnostic.pdf>

World Bank 2019 *South Africa Digital Economy Diagnostic* <https://openknowledge.worldbank.org/bitstream/handle/10986/33786/South-Africa-Digital-Economy-Diagnostic.pdf> accessed 7 January 2024

World Bank 2019 <https://thedocs.worldbank.org/en/doc/833211594395622030-0090022020/original/MozambiqueDECA.pdf>

World Bank 2019 *Mozambique Digital Economy Diagnostic* 2019 <https://thedocs.worldbank.org/en/doc/833211594395622030-0090022020/original/MozambiqueDECA.pdf> accessed 26 December 2023

World Bank 2020 <https://thedocs.worldbank.org/en/doc/61714f214ed04bcd6e9623ad0e215897-0400012021/related/DRC-DE4A-EN-Final.pdf>

World Bank 2020 *Democratic Republic of Congo - Digital Economy Assessment* <https://thedocs.worldbank.org/en/doc/61714f214ed04bcd6e9623ad0e215897-0400012021/related/DRC-DE4A-EN-Final.pdf> accessed 24 November 2023

World Economic Forum 2019 http://www3.weforum.org/docs/WEF_consumer_protection.pdf

World Economic Forum 2019 *The Global Governance of Online Consumer Protection and E-Commerce: Building Trust* http://www3.weforum.org/docs/WEF_consumer_protection.pdf accessed 22 December 2023

WTO 2020 https://www.wto.org/english/tratop_e/covid19_e/ecommerce_report_e.pdf

World Trade Organisation 2020 *E-Commerce, Trade and the Covid-19 Pandemic* https://www.wto.org/english/tratop_e/covid19_e/ecommerce_report_e.pdf accessed 17 December 2023

List of Abbreviations

AJIC	African Journal of Information and Communication
AJLS	African Journal of Legal Studies
COMESA	Common Market for Eastern and Southern Africa

DRC	Democratic Republic of Congo
EAC	East African Community
EC	European Commission
E-commerce	Electronic Commerce
ECT Act	Electronic Communications and Transactions Act 25 of 2002
FTA	Free Trade Area
HIPSSA	Harmonisation of ICT Policies in Sub-Sahara Africa
ICT	Information Communications and Technology
IJAR	International Journal of Advanced Research
IJERT	International Journal of Engineering Research and Technology
IJMBS	International Journal of Management and Business Studies
IJRBS	International Journal of Research in Business and Social Science
ISPs	internet service providers
ITU	International Telecommunication Union
JGIM	Journal of Global Information Management
LDD	Law, Democracy and Development
PELJ	Potchefstroom Electronic Law Journal
RECs	Regional Economic Communities
RISP	Regional Indicative Strategic Development Plan
SACU	Southern African Customs Union
SADC	Southern African Development Community
SADC Model Law	SADC Model Law on Electronic Transactions and Electronic Commerce
SADC Treaty	Treaty of the Southern African Development Community
SADCC	Southern African Development Coordination Conference
SMEs	Small to Medium Enterprises
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNCITRAL	United Nations Commission on International Trade Law
MLEC	UNCITRAL Model Law on E-commerce
MLES	UNCITRAL Model Law on Electronic Signatures
WTO	World Trade Organisation