

# Building Free Access to Law in Africa: Some Examples of Successful Projects

**Abstract:** Ruth Ward explains how open access to legislation in Africa is a much more recent development than in the developed world. Several recently launched projects are well underway, and are contributing towards promoting justice and the rule of law in Africa. Access to legislation facilitates great transparency and access to the law for the promotion of trade and investment; and supports the resulting economic development on the continent. Several different approaches to establishing projects which deliver reliable consolidated access to legislation are illustrated, and show that successful projects can be established and maintained on modest budgets by very small teams.

**Keywords:** free legal information; open access; Africa

## OPEN ACCESS TO LEGISLATION IN AFRICA

Access to published versions of current and historical legislation can be taken for granted in many developed countries. Professional legal publishers are in a position to consolidate existing legislation, process new developments in the law and make the results available to subscribers in a variety of formats. Free open access to laws for the general public, is also increasingly available. In many African countries, finding published, consolidated and up-to-date legislation, is often problematic.

Recent developments in Africa have highlighted the continent as an important economic region and a market with enormous potential. Access to the law is important for the promotion of justice and the rule of law. The benefits of this are accountability and improved transparency of governments, which hopefully promote a more stable and hospitable environment in which businesses, trade and investment can thrive.

According to Bruce Campbell, General Counsel at GE Africa, the main obstacle for organisations interested in doing business in the continent is “lack of visibility over regulatory developments. There is no transparency or no real database to track legislative change and developments. That’s a huge barrier.”<sup>1</sup> Significant improvements in the African legislative environment will be necessary to address this situation. These include the accessibility of reliable, up-to-date legal information.

The poor availability of legal information is a significant constraint for businesses and other organisations wanting to do business in Africa. But, recent initiatives to make consolidated legislation freely available in certain countries in Africa are beginning to improve this position.

## WHY THE INTEREST IN AFRICA?

According to the World Bank, the economies of sub-Saharan countries in Africa have seen fairly significant economic growth in recent years, with life expectancy and levels of education showing marked increases<sup>2</sup>. Mobile phone penetration in Africa has also greatly improved communication and access to the internet in recent years<sup>3</sup>.

“The economic outlook for Sub-Saharan Africa (SSA) is positive, with growth rising to 5.3% in 2012, and 5.6% in 2013, over the pre-crisis average level of 5%. Excluding South Africa, (until very recently the continent’s largest economy), growth in Sub-Saharan Africa is forecast to rise to 6%,” the World Bank reported<sup>4</sup>. According to another report, foreign direct investment (FDI) in Sub-Saharan Africa increased by 4.7% in 2013 while it declined in North Africa. “Africa’s share of global (FDI) projects has reached the highest level in a decade<sup>5</sup>”, it said.

“There has been a heightened interest in Africa, and in the next five years, I don’t see that interest waning,” says Ian Isdale, General Counsel of a leading African food and consumer goods company<sup>6</sup>. However, African countries do not generally feature very well in the World Bank’s *Ease of Doing Business* survey, with a few notable exceptions such as Mauritius<sup>7</sup>.

In recent years a number of global law firms have moved into Africa with the aim of participating in the growth and development of African economies.

“The reason for their interest is no great secret: collectively Africa’s economies continued to grow in the wake of the 2008 financial crisis, while those in Europe and the US stalled or shrank. Law firms then

see in Africa the potential to offset tougher trading environments and falling revenues elsewhere.<sup>8</sup>

Meanwhile, on the continent itself, awareness is growing of the importance of access to legislation. A number of African countries are young democracies with poor human rights records, and civilian activism is increasingly playing a role in their politics. Judiciaries need to be shielded from interference by governments. Public scrutiny of the judicial process and its decisions acts as an important mechanism for monitoring and minimizing of state interference.

In general, open access to law and published legislation is increasingly accepted as a fundamental principle of democracy. In developed countries, technology and the internet have enabled direct access to the published legislation for citizens, as well as the international community. Open access to legislation serves both the local community and international partners and investors because foreign direct investment is facilitated by access to accurate and reliable legislation in the destination country.

## FREE OPEN ACCESS TO LAW

The Free Access to Law Movement is now well established as a formal group, with members from over 54 countries, at least 16 of which are focused on Africa<sup>9</sup>. The guiding principles of open access are:

- citizens and other interested parties have **free access** to legislation;
- the legislation can be **freely reproduced and re-used**;
- the versions of the legislation provided must have **integrity and authoritativeness**;
- legislation must be **preserved**;
- and the legislation provided must be in **open formats**, with **metadata**, and based on **knowledge-based systems**.

In addition, the protection of personal information is receiving increased attention globally, and sensitive personal data in court judgments must be redacted before being made publicly available. The movement promotes the use of medium-neutral citation and provider-neutral sources are encouraged, as are translations of legislation.

In 2005, the United Nations Department for Economics and Social Affairs (UN/DESA) hosted a Joint Conference of the European Commission and the Hague Conference on Private International Law in in Nariobi that was attended by 19 countries and various regional and international organisations. The theme of the conference was “Access to Foreign Law in Civil and Commercial Matters” and the professionals who attended, judges, notaries, lawyers, public sector officials, legal academics and legal librarians, from diverse

countries and regions, different cultures and legal traditions agreed on the following broad principles:

- Due to globalisation, migration and increasing cross-border commerce there is a need to access foreign law, and this need is likely to increase in the future;
- Access to foreign law is an important component of access to justice, strengthens the rule of law, and is fundamental to the proper administration of justice;
- There is a need for global co-operative mechanisms to facilitate access to foreign law;
- Information and Communication Technology (ICT) is a unique tool for making law available in the cross-border context.<sup>10</sup>

## HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW

A few years later, in 2008 the Hague Conference on Private International law identified ‘access to foreign law’ as a project. At this conference, the contribution of technological developments was discussed, including Akoma Ntoso, an XML mark-up language, used in the management and production of parliamentary documentation. Akoma Ntoso, which provides a flexible process for document management, publishing and content sharing, will be discussed briefly later in this article.

The Open Data foundation notes that ‘open data’ becomes ‘open knowledge’ when it is useful, usable and used<sup>11</sup>. Ease of use and clear presentation are essential if this objective is to be met. The Hague conference on Private International law concluded that ‘States should make available without cost to users legislation and relevant case law online. Such information should be authoritative, up-to-date and also include access to law previously in force’.<sup>12</sup>

This is still an aspiration for most sub-Saharan countries, but the foundations are being laid by various projects, which will be discussed in this article.

## THE LAWS OF SOUTH AFRICA – A SOUTH AFRICAN APPROACH

South Africa has three main commercial publishers of national legislation, but until recently no free public access to reliable, consolidated legislation was available. Many sites that provide legislation either post versions from commercial publishers or do not provide usable consolidated versions. The government website<sup>13</sup> provides access to legislation as gazetted but without consolidation, which makes it extremely difficult for the public to access and use.

For some years the law librarian at the University of Pretoria (UP), Shirley Gilmore, has promoted the need for free public access to reliable and consolidated South Africa legislation. The university library has a full set of national gazettes from 1910 onwards, the year of the Union of South Africa. They therefore had access to the sources necessary for embarking on a project to fill this gap.

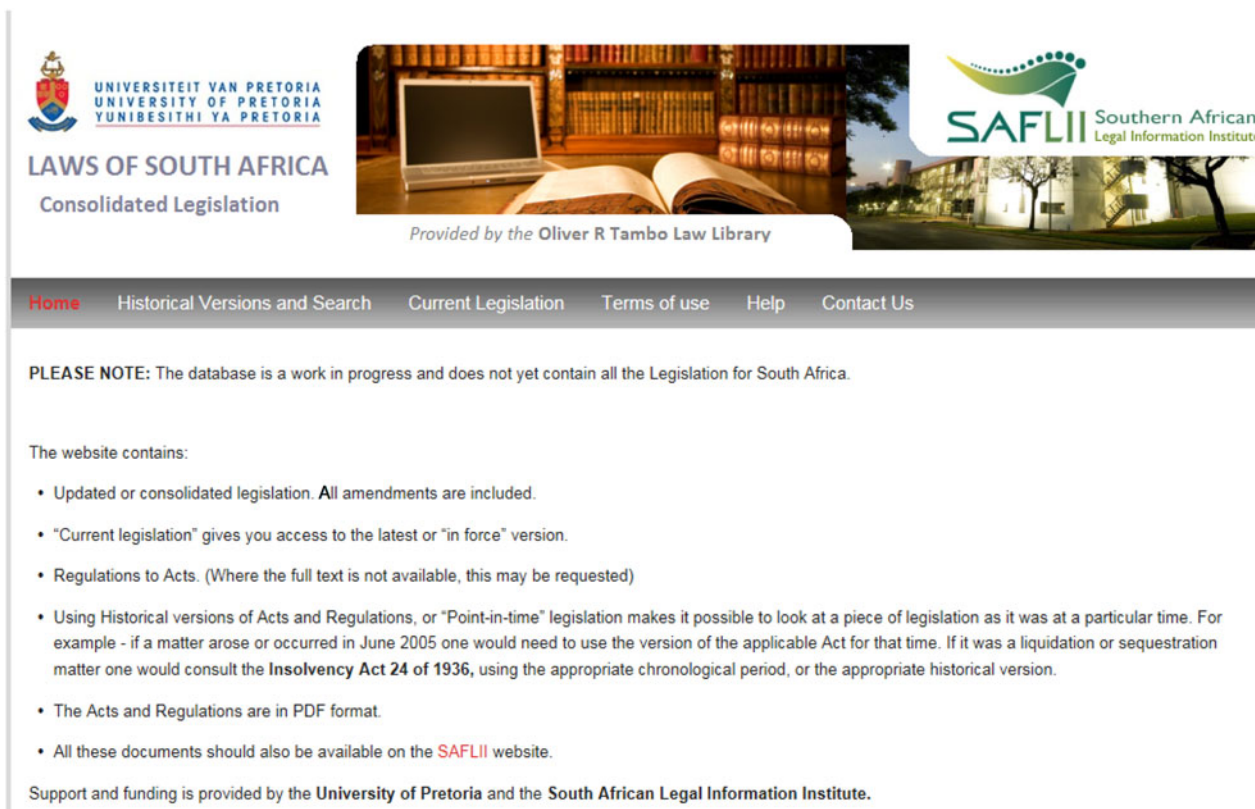


Figure 1: Home page of the Laws of South Africa website.

Some time was spent researching and reviewing various existing projects in other countries to identify an appropriate model for developing a reliable database of national laws and sub-ordinate legislation (called regulations). Various commercial software products, some offering outsourced hosting and sophisticated XML mark-up, were considered. Eventually it was decided that a 'shoestring' approach that delivered the objective quickly, efficiently, and cost effectively would be most practical. Accordingly, a simple and largely manual solution to the consolidation of the legislation was adopted.

This provides an example of a relatively low-cost, low-tech option for other countries wanting to undertake similar projects of national importance. The process described below could serve as a model for other countries wanting to provide open access to their national legislation. However, as this article also shows, there are alternative options, depending on available resources, skills and funding.

Finding a way to fund the University of Pretoria Laws of South Africa project was a time-consuming process. The university's approval was necessary before it could commence, and it particularly required assurances on the sustainability of the project. After discussions with a number of organisations and stakeholders, a combined project between the University of Pretoria and the Constitutional Court Trust was agreed on.

A software developer from the library's IT department took on the task of developing a framework for the

database using Joomla (open-source software), working with the librarian. Finding appropriate staff was another challenge, since the task of consolidating and updating legislation can be complex, and requires good language skills, focus and close attention to detail. After a search, two legislation editors were identified each with suitable experience.

The university agreed to provide the facilities and hardware, while key personnel were given permission to work on the project as part of their normal working hours.

This formed the foundation for the construction of a new, consolidated database of the country's legislation that would be available free online to the public. Once funding for a pilot project had been secured and approval obtained from the university administration to proceed, the labour-intensive task of compiling and consolidating national legislation began.

The consolidated Acts are currently being constructed from original gazetted Acts. When each amendment has been completed, the consolidated version of the law is saved as a PDF file, capturing the law as it was at that point in time, thus creating historical versions during the consolidation process. The entire database is fully text searchable.

Conventions for annotating the amendments were drafted and tested to ensure that they were as clear and explicit as possible, with non-legal users in mind.

Each Act and its regulations are displayed in their entirety in a single PDF document. All the versions can

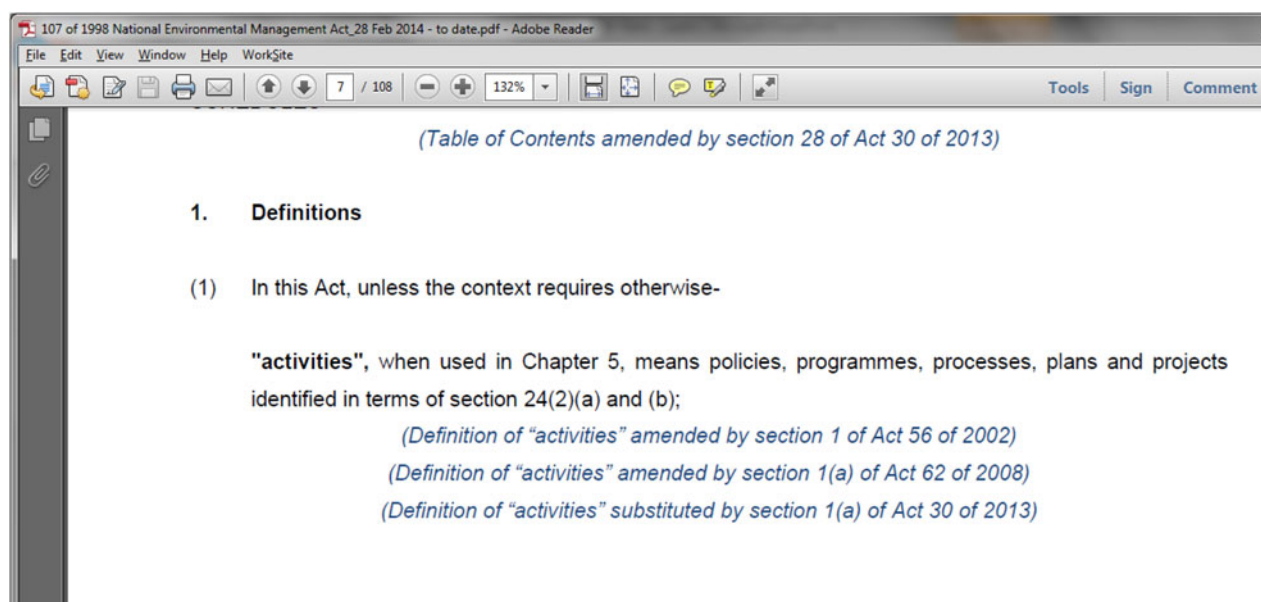


Figure 2: Sample of clear editorial annotations.

be easily downloaded and easily saved or printed. The Acts are arranged in broad subject categories to allow browsing by subject – particularly useful for non-legal users. Current and historical versions are grouped separately for browsing. The use of colour helps differentiate the text of the legislation from the editorial annotations, which detail how amendments were implemented and include commencement details.

The regulations are also available in current and historical versions in most instances. These can be voluminous, but their availability adds significantly to the usefulness of the database, since they generally embody the operational aspects of the law.

In less than a year since the work on the content began, the Laws of South Africa project has provided access to over 200 consolidated Acts and their

[107 of 1998 National Environmental Management Act\\_28 Feb 2014 - to date.pdf](#)

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[107 of 1998 National Environmental Management Act\\_ 1 May 2005 - 30 April 2009.pdf](#)

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Figure 3: The historical, point-in-time versions are clearly displayed on the Laws of South Africa database.



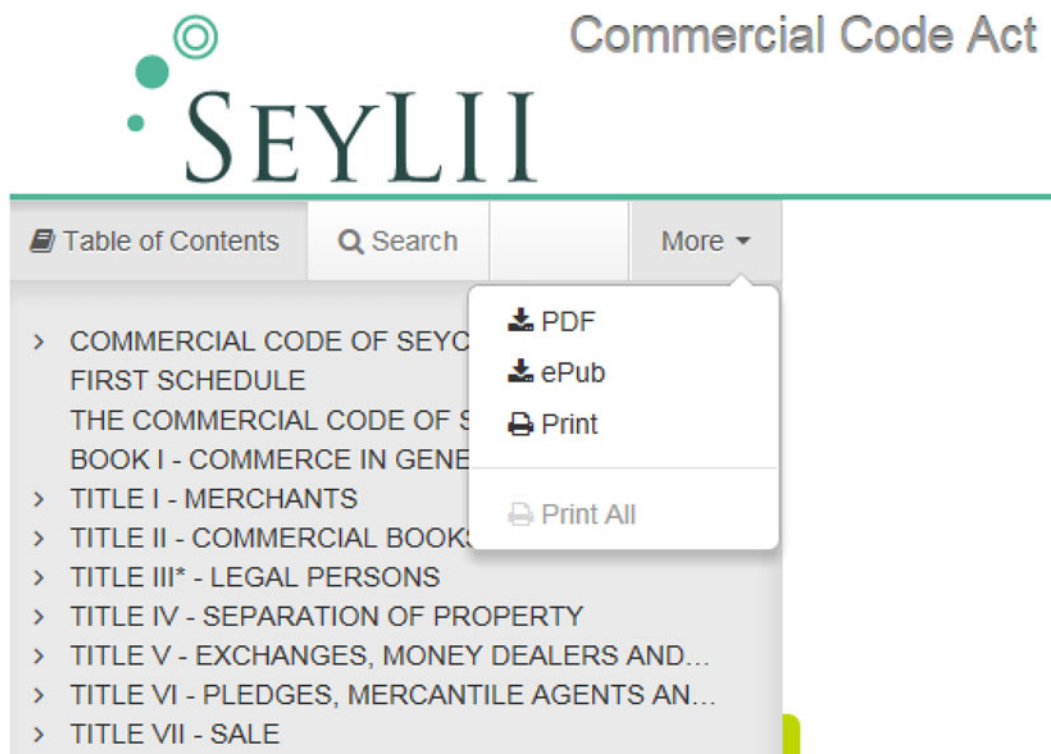


Figure 4: Contents of the Seychelles Commercial code.

regulations. Sticking to this clear and simple approach has enabled the quick and cost-effective publication of free, reliable, current and historical versions of a growing number of national laws and regulations in a remarkably short time.

Anyone planning to set up a similar project should ensure that the required specialist skills are available and that the individuals have a strong commitment to the project: finding replacement personnel can be very difficult. Since a very small team keeps the project running, failure to recruit appropriately skilled individuals could put the project at risk. Editorial staff with experience in drafting or editing legislation are key to the success of the project, but they are a rather scarce resource.

### Alternative Platform Via Saflii

In keeping with the principles of open access, the University of Pretoria content is also available via the South African Legal Information Institute (SAFLII). Unlike the subject grouping on the UP site, the legislation is arranged in an alphabetical list. The content is presented clearly and simply, and is updated regularly from the UP site. This serves as a useful back-up of the entire system, since all the content is copied to the SAFLII servers, and is also fully searchable using the SAFLII search software.

The Laws of South Africa database is not technologically feature-rich - it does not provide links between sections and bookmarking capabilities are limited- but the

benefit has been the very quick processing of content, and a cost-effective and relatively simple technological solution. The system now offers free access to a wide range of legislation covering commercial, environmental, labour legislation, among other topics and is growing daily.

More value-added features would be nice to add if future funding and resources permit. There is nothing to prevent further development of the system, as we will see in the SEYLI I example below. For the immediate future, capturing and editing the content is meeting a fundamental need for open access to reliable and consolidated legislation for South Africans, and anyone else who might be interested in South African legislation.

### How Have Others Approached Similar Projects in Africa?

#### Seychelles

The Seychelles Legal Information Institute (SeyLI I) was launched in 2012 as a project of AfricanLI I.

The African Legal Information Institute (AfricanLI I) is a project of the Democratic Governance and Rights Unit (DGRU) at the Department of Public Law, Faculty of Law, University of Cape Town. Its main goal is to promote Free Access to Law and Open Justice in Africa. One of its stated goals is to “coordinate and support a collaborative resource pool for Legal Information Institutes across Africa.” AfricanLI I has a number of partners in various

African Countries; further details can be found on its website<sup>14</sup>.

After an appropriately qualified individual had been identified to process the Seychelles legislation – an experienced legislation drafter from the Attorney General's office – funding was provided for a two-year period to consolidate and update the legislation in MS Word format.

In a second step, these MS Word documents were then converted to plain text and parsed to automate the XML markup of the legislation. This is a technical process, which it is estimated accurately marks up around 80% of the content; the remaining 20% must be manually checked and marked up. The conversion of flat documents to XML was necessary because the team had selected an XML-based software solution for the hosting and presentation of the legislation. The software selected was Zuopio, which was developed by the team at Lexum, Montreal Canada and is supplied under a commercial license to SEYLII.

Working with XML allows greater flexibility for processing future amendments as well as value-added features that can enhance the ease-of-use of the legislation. SeyLII also wanted to support multilingual versions of the legislation, which is more complex than a single language system. The XML based Zuopio system enables the display and output of multiple formats, both PDF, and ePub. Importantly, this facilitates data portability.

Since the communications infrastructure in the Seychelles is not well developed, it was important to address the need for access to legislation in locations where there is no reliable internet connectivity. The project's *Grey Book* is a collection of some 80 core Acts and their statutory instruments, that can be browsed and searched online, printed or downloaded as individual ePub or PDF files. Multiple formats enhance the accessibility and portability of the legislation.

In particular, members of the judiciary now use the *Grey Book* on tablets. Judges are now able to take the current legislation with them when visiting remote courts, and this has already had a significant positive impact on the turnaround time for the delivery of judgments in the Seychelles.

Fredrick Egonda-Ntende, the Chief Justice of the Supreme Court of Seychelles is quoted on the SeyLII site as follows: "Zoupio enabled us to electronically publish the most significant legislation in use in the Seychelles and share it both online and offline to users with a smart phone, tablet, laptop or desktop. This has dramatically improved access to law in our jurisdiction. We are indebted to Lexum for making this possible."<sup>15</sup>

## Xml Mark up – Akoma Ntoso

Akoma Ntoso, an XML markup language for parliamentary documents, was developed by a team from University of Bologna in Italy under the direction of Monica Palmirani. AfricanLII director Mariya Badeva-

Bright is in close contact with this team, and adopted the standard for the SeyLII legislation project.

"Akoma Ntoso defines a set of simple, technology-neutral electronic representations of parliamentary, legislative and judiciary documents for e-services in a worldwide context and provides an enabling framework for the effective exchange of machine readable parliamentary, legislative and judiciary [sic] documents such as legislation, debate record, minutes, judgements, etc," the team says on its website<sup>16</sup>. A java based application (Bungeni Editor) is also available, for use with open source software which supports the mark-up of the Akoma Ntoso XML standard specifically for legislation.<sup>17</sup>

The development of the Akoma Ntoso standard is intended to help streamline the processing of parliamentary documents through the entire drafting process to the point of publication. It is also intended to assist in the harmonisation of laws in regions such as Common Market of East Africa (COMESA), L'Organisation pour l'Harmonisation en Afrique du Droit des affaires (OHADA) and the Economic Community of West African States (ECOWAS). XML markup provides a flexible foundation for the text from both an editing and presentation perspective. The Akoma Ntoso Standard is also being adopted by a range of institutions outside Africa, including the EU, Brazil, Chile, Uruguay, Nicaragua, Hong Kong and Kenya.<sup>18</sup>

## A Local Government Example

The Western Cape By-laws project in South Africa, is an example of a free public access local government legislation project.

Greg Kempe, a resident of South Africa's Western Cape, had a keen interest in cycling and he wanted to know the local by-laws as they related to the development of bicycle lanes in Cape Town. He discovered that no consolidated publically accessible version of the local by-laws were available. A software developer, he did some research into the topic and came across the Akoma Ntoso XML standard, and decided to experiment with it in relation to the by-laws of the Western Cape. The result, a free consolidation of by-laws, shows what can be done using public domain standards and tools. The result is an elegant and effective online database.

Akoma Ntoso offers the possibility of enhancing 'static' consolidated word versions of legislation. The xml markup makes the text more flexible and facilitates deep linking between sections. It also allows the printing of selected sections and other useful value-added features, such as comparisons between two versions of the same section of legislation from different historical versions and highlighting the differences. (This sort of legislation comparison capabilities are currently available on CanLII.)

South African by-laws are not particularly extensive, but they can be difficult for the public to source. For Kempe the Western Cape by-laws represented a manageable sample,

Open By-laws South Africa    By-laws    About    Contact    Blog    Search

## Environmental Health By-law 2003, as amended

By-laws • Cape Town • By-law of 2003

Table of Contents    Content    More Resources    Print

Introductory text  
Definitions  
**Part 1 - Prevention and suppression of health nuisances**  
Section 1  
Section 2  
Section 3  
Section 4  
Section 5  
Section 6  
Section 7  
Section 8  
Section 9  
Section 10

**Part 3 - Medical waste management**  
Section 23  
Section 24  
Section 25  
Section 26  
Section 27

**Part 4 - Trades**  
28. Accommodation establishments

### Environmental Health By-law 2003, as amended

Published in Province of Western Cape: Provincial Gazette no. 6041 on 2003-06-30  
Amended by City of Cape Town: Animal By-law, 2010 on 2011-08-05

#### Definitions

In this by-law, unless the context indicates otherwise:—

**"accommodation establishment"** means any premises in or upon which the business of supplying lodging with or without one or more meals per day is conducted or intended to be conducted for reward or gain, but does not include any such premises which is duly registered as a hotel under any law relating to the registration of hotels, or which provides lodging with one or more meals per day and has fewer than five beds available for occupation, or which provides no meals and has fewer than three rooms that are let or intended for letting;

**"agent"** means a person specifically or generally appointed to attend to the affairs of another;

**"animal"** means horse, pony, mule, donkey, cattle, pig, sheep, goat, camel, reptile, indigenous animal and other wild or exotic animal, but excludes dogs and cats kept as domestic pets;

**"boarder"** means any person to whom lodging or both lodging and meals in an accommodation establishment is or are supplied by the proprietor for reward or gain;

**"carcass"** means the remains of any animal or poultry;

Figure 5: Sample from Western Cape Bylaws – showing presentation flexibility of Akoma Ntoso XML markup.

particularly since many of them had been replaced since 1994. He was able to source the relevant by-laws and found that, (even as a non-lawyer), he was able to amend and publish a useful and flexible set of consolidated by-laws.

The ongoing maintenance of any project that is dependent on one individual is of course a concern. As one way of extending its life, the project could affiliate with other projects where technical and editorial expertise could be shared, particularly since it is based on an open standard.

Akoma Ntoso is technologically neutral. It aims to improve interoperability and to reduce the costs of ICT support systems in parliaments. The examples noted in this article are mainly concerned with the amendment and presentation of legislation, but Akoma Ntoso is mainly intended for use by parliaments in their management of the process and production of legislation. If successfully implemented in parliaments, the end result of the managed drafting process will be the fully marked-up presentation of amended legislation.

## Other Projects

As noted above, Akoma Ntoso is being implemented by the Pan-African Parliament as well as in the EU and some South American countries. The aim is to facilitate data-interchange between parliaments, for example with respect to data-protection laws, as well as to support a technical process in which there are apparently significant skills shortages. Another benefit of its implementation

will be that parliaments will be able to learn from, and potentially exchange data with each other.

Open access is more than just online access. Open access requires also a clear and usable organisation of materials, and it must also be searchable. So we see that varying approaches can achieve these objectives, but in different ways. The ultimate purpose of open access to law is to improve the transparency and accountability of governments. Greater access to and understanding of the law by citizens is important in everyday life, and essential for commerce and economic development.

## KENYALAW

This is a relatively well-established service, now managed by the National Council for Law Reporting. This is a semi-autonomous state corporation, the board of which is chaired by the Chief Justice / President of the Supreme Court<sup>19</sup>. The images from AfricanLII graphically illustrate the extent of the transition from manually amended hardcopy files to legislation that is openly accessible online.

## Other Resources For African Law

Inventory sites such as Lexadin, Law Library of Congress Country profiles; the World Bank's Doing Business guides, AfricanLII's Free law Portal and its 'Law Library' resources are, among many others, useful examples of what is available in the public domain. But establishing



Figure 6: Before Legislation was available on KenyaLaw.

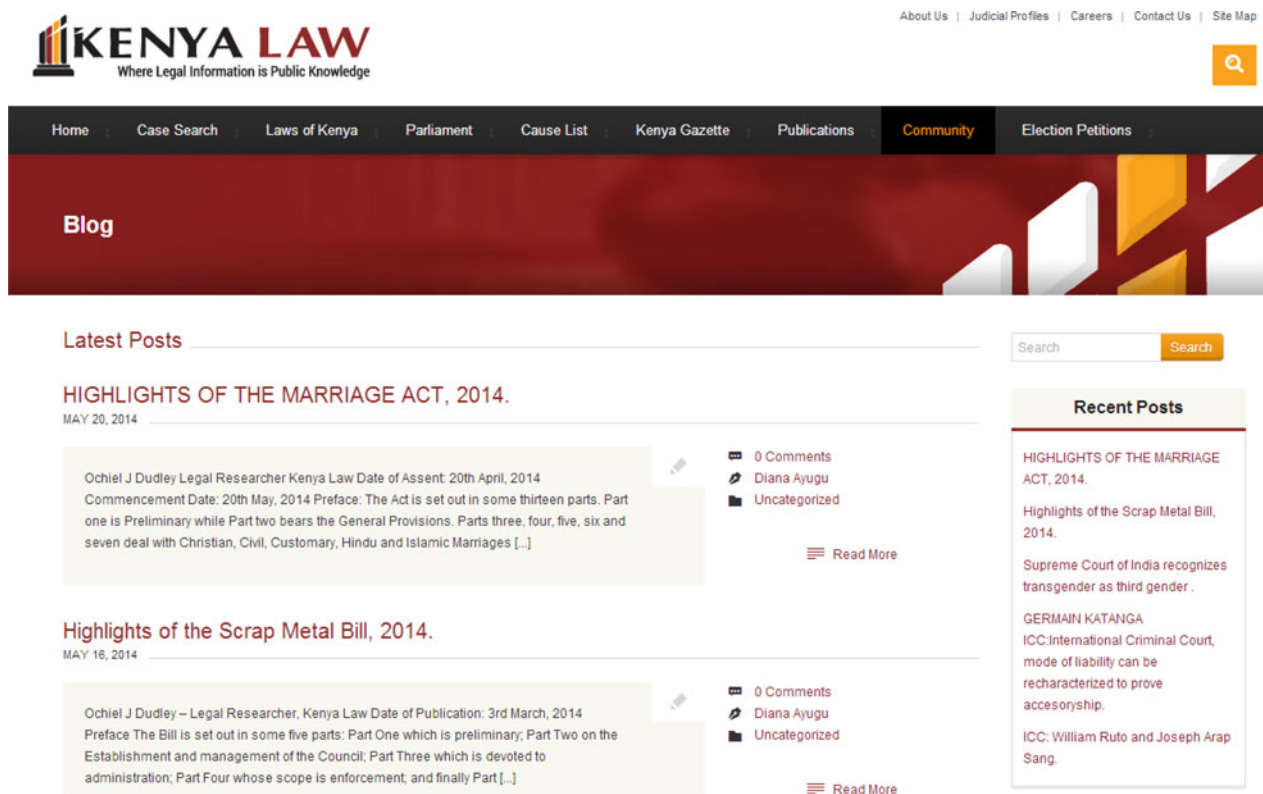


Figure 7: The online version of KenyaLaw.



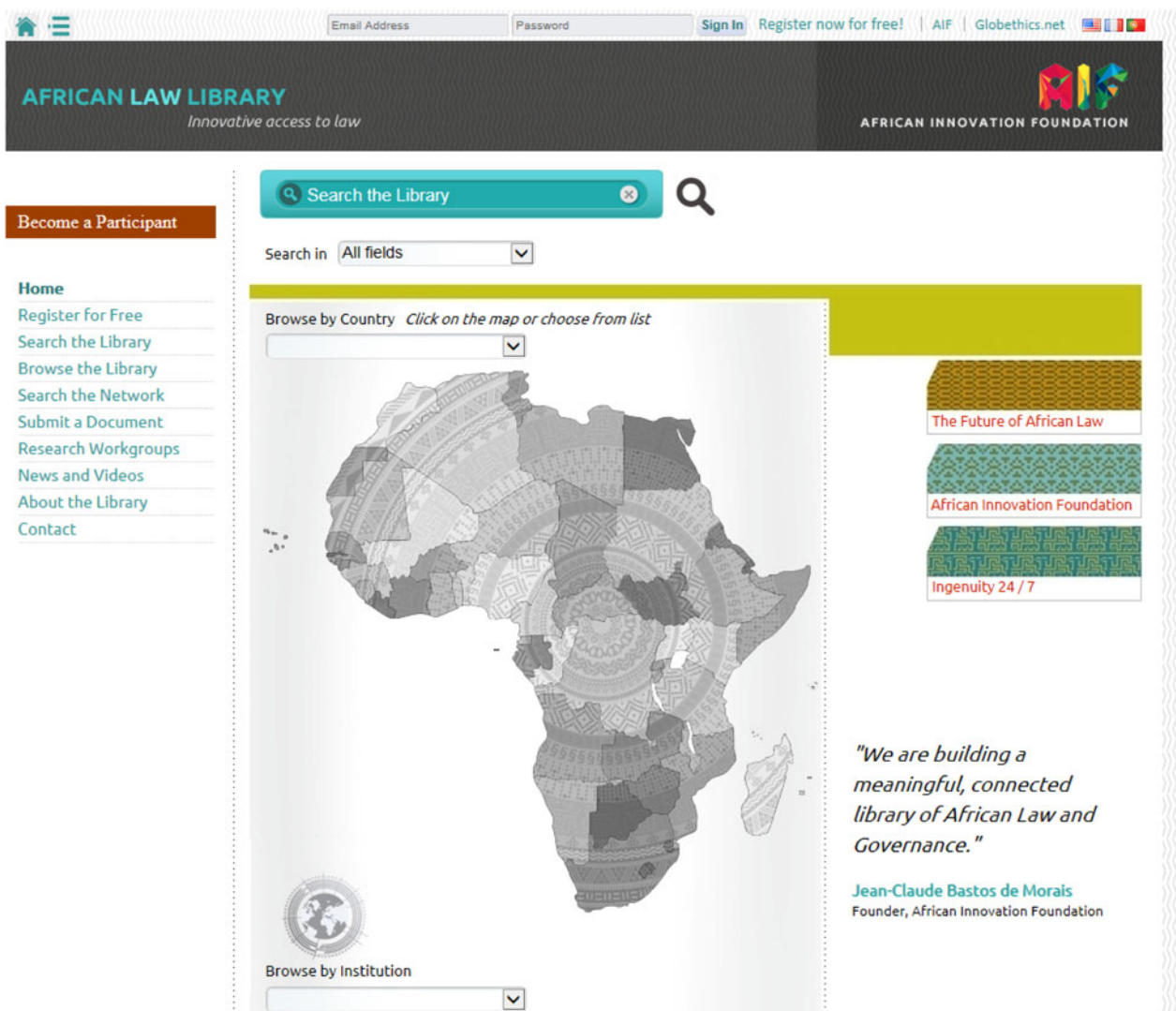


Figure 8: African Law Library home page.

the reliability and current status of a source is a significant challenge in most cases.

The establishment of AfricanLII is an attempt to guide and facilitate free access to law with the direct purpose of enhancing the rule of law in Africa. The project is however faced with significant co-ordination challenges, even where it has established local contacts in countries around the continent.

Another recently launched resource, the African Law Library is a project founded by Angolan entrepreneur Jean-Claude Bastos de Morais in association with GlobeEthics in Switzerland. This is an aggregation service, which has value in itself, but without primary legal resources to link to, there would be little that the site can add.

The aims of the African Law Library project tell us much about the need for access to legal information in Africa:

“The African Law Library focuses on visibility, access, knowledge, education and consolidation of the systems of law existing in African countries. It

does this by putting online downloadable, printable, multilingual-legal texts, selected court decisions and secondary literature for free.

By this means the Library aims to:

Strengthen justice, accountability, predictability and democracy;

Build a bridge between modern law and customary law to overcome colonial law;

Enhance trust in government and in the administration by promoting good governance practices;

Bring lawyers, the business sector, educators and government together to develop ownership in Africa through multidisciplinary research and interaction on comparative law;

Build a “New Culture of Africa” and provide a framework for sustainable social impact; and

Work towards an Africa without war, famine or poverty, which will allow its countries to stand on an equal footing with others in the global economy.<sup>20</sup>

## Sustainability

Ongoing funding for all these projects is a continuous challenge. Sourcing start-up and maintenance funding for a project may require different approaches. There is also the danger that donor funding comes with strings attached, which may risk compromising the focus or openness of the project.

Start-ups often rely on the dedication of a couple of individuals, as illustrated in each of the examples discussed here. Another potential threat they face is finding and retaining expert personnel. Skills transfer is therefore essential to ensure the continuity of these specialist projects. Collaboration is encouraged between members of the Free Access to Law Movement, but stimulating and encouraging local skills is also essential if projects are to be sustainable.

Long-term funding must be considered from the start, and so it is essential for start-ups to establish close partnerships with key individuals and organisations. Adv Tererai Mafukidze, one of the founding members of AfricanLII states that partnerships are key to the long-term success and sustainability of open access to law projects<sup>21</sup>. Kenya Law is an example of a project which started independently, but which now falls under the judiciary, as noted above.

## How Can We Help?

Support from global and leading law firms for open access to the law will help to promote the rule of law and strengthen acceptance of the idea that open access to reliable and consolidated legislation is a normal element of democracy. The content must be in an appropriate format for delivery to the intended audience. The growing emphasis on mobile access using smart phones is particularly relevant for Africa, where there is relatively good mobile communication infrastructure. Massive growth in internet access via mobile phones is predicted in the next few years.<sup>22</sup>

Each of the projects noted here has the primary focus of providing free, reliable access to the law for the public at large. But commercial entities – local and international – and governments also benefit significantly from open access to legislation. Many countries in Africa are keen to attract more foreign direct investment, and the stability and certainty of legal regimes is clearly an important requirement for stable economic development.

Building and supporting countries where the rule of law is respected and promoted is essential to the political and economic well-being of Africa and its citizens, and open access to the law has a crucial role to play in it.

## Footnotes

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## Biography

Ruth Ward started her career in Law Libraries at the University of the Witwatersrand in the late 1980s. She served on the OSALL committee, (Organisation of SA Law Libraries) in various roles for several years, and has a general interest in free access to law. Ruth is currently the head law librarian at Webber Wentzel in Johannesburg, South Africa.

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# The 10th Anniversary of GlobaLex: A Portal Dedicated to Foreign, Comparative and International Law Research

**Abstract:** Since it was established, GlobaLex has become a recognised and heavily accessed worldwide database of international, foreign, and comparative law research articles. As Mirela Roznovschi explains, GlobaLex represents a valuable component of legal research in today's cyberlegal environment. In February 2015 GlobaLex celebrates a 10 year anniversary. This article celebrates the success of the service.

**Keywords:** legal research; free legal information; GlobaLex

If you type into any search engine the words, *foreign international comparative law research*, in any order or even just one of the first three words followed by *law research*, you will retrieve hundreds of thousands of records linked directly, or indirectly (through the site's own search engine or evident links), to GlobaLex, <http://www.nyulawglobal.org/GlobaLex/>. Published on the platform launched ten

years ago by the New York University School of Law Hauser Global Program, <http://www.law.nyu.edu/global/>, these articles have become a recognised and authoritative resource for the international community at large. Authored by highly experienced and qualified scholars, lawyers, and legal information specialists from about one hundred and fifty jurisdictions, these legal research