

DIGITAL TRADE REGULATORY INTEGRATION

COUNTRY PROFILE **SOUTH SUDAN**



INTRODUCTION

The African Trade Policy Centre of the United Nations Economic Commission for Africa embarked on its Digital Trade Regulatory Integration initiative with four primary objectives:

- To provide information on digital services trade regulations that can facilitate negotiating and implementing the African Continental Free Trade Area protocol on Digital Trade.
- To inform the development of a digital trade integration index, which could become a component of possible future editions of the Africa Regional Integration Index.¹
- To encourage the addition of African countries to the Digital Services Trade Restrictiveness Index as developed by the Organisation for Economic Co-operation and Development.
- With data and tools, to offer a solid basis for further analytical work by ECA and others on digital trade.

The DTRI initiative researches the legal and regulatory environment associated with digital trade to help African countries better understand and address barriers to the growth and development of digital trade and e-commerce. Addressing issues that the DTRI identifies will help promote digital trade and e-commerce and make them a more plausible choice for commercial transactions between businesses and consumers.

This country profile is based on observations from two datasets developed for the DTRI. The first dataset, modelled on the OECD Digital STRI, compiled information on restrictions to digital services trade from 2014 to 2021. The second covers measures related to digital trade integration. It begins with the effective date of each measure and reflects the latest available information. The legal and regulatory measures are categorized into various policy areas in both digital services trade restrictions and digital trade integration. Accordingly, this country profile is presented

in two sections corresponding to the two datasets. To avoid repetition when there is overlap between the sections, attempts

are made to present results only once, to the extent possible.

RESTRICTIVENESS OF THE REGULATORY REGIME FOR DIGITAL SERVICES TRADE

To assess the restrictiveness of digital services trade, an in-depth review of policies, laws and regulations for digital services trade restrictions was conducted under the five pillars of the Digital STRI:

- Infrastructure and connectivity.
- Electronic transactions.
- Payment systems.
- Intellectual property.
- Other barriers affecting trade in digitally enabled services.

Infrastructure and connectivity

The National Telecommunication Authority is the communications regulator in South Sudan, under the National Communication Act 2012.² It also charged with ensuring universal access to communications services across the country at affordable prices.

Three primary operators in the telecommunications market deal mainly in mobile and internet services: Zain, MTN, and recently Degitle Telecoms. Each company offers similar services, which include fixed and mobile voice telephony, internet, data, value-added services, and international services. Other market players like internet service providers offer value-added services and internet direct to consumers.

The National Communications Act states that interconnection must be offered on both fair and reasonable terms and not to discriminate between fixed and mobile networks.³ Negotiations for interconnection charges are left to individual parties, but if the parties cannot agree, they may ask the National Telecommunication Authority to settle the dispute. The Act does not provide for vertical separation of either fixed or mobile networks.⁴

South Sudan does not have primary legislation for privacy and the protection of personal data.

Electronic transactions

The electronic transactions pillar refers to the requirements for engaging in e-commerce, the resolution of disputes emanating from cross-border digital trade, and the conditions for licences to engage in e-commerce.

The National Communication Act 2012 prohibits discriminatory practices in the licensing processes.⁵ South Sudan is not a signatory to the United Nations Convention on Contracts for the International Sale of Goods, the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Signatures (2001) and the UNCITRAL Model Law on Electronic Commerce (1996).⁶ More important, the National Communication Act 2012 gives the National Telecommunication Authority powers to settle disputes among the licensed telecoms operating in South Sudan.

Protection of business secrets is not provided in any law and is left to common law and contract law. Thus, parties to a contract may enter into nondisclosure agreements to protect their trade secrets.

Payment systems

Most of the South Sudanese population uses cash as part of the formal payment system, with only a small percentage using

noncash payment systems such as cheques and mobile money transfer services in light of the limited availability of safe, secure, convenient and cost-effective digital/electronic payment instruments. The country should thus be deliberate and intentional about the financial inclusion of marginalized groups to ensure that they also have access to financial services. In urban and rural centres, the use of payment systems such as automated teller machines and electronic payment systems is not visible.

Intellectual property rights

South Sudan is not a signatory to all the World Intellectual Property Treaties.⁷ And it is reported that the legal structure for intellectual property rights is weak and enforcement is lax in South Sudan. The Business Promotion Act 2009 includes a section 35 on the protection of IPRs, but recorded instances of intellectual property theft are rare due to lack of capacity. While neither the legislature nor any government ministry has implemented laws or regulations governing trademarks, copyrights, or patents.⁸

There is no discriminatory treatment of foreign firms for protection of copyrights and related rights, and section 391 of the South Sudan Penal Code 2008 can be used for the protection of intellectual property rights.⁹

Other barriers affecting trade in digitally enabled services

The paucity of legislature provisions makes it difficult to identify barriers or restrictions to digital trade. Section 323 of the Companies Act 2012 provides that small private companies shall be the domain of

South Sudanese nationals only and that medium and large private companies shall be open to non-South Sudanese investors on the condition that the South Sudanese investor is financially able and shall have not less than a 31% shareholding in such companies.¹⁰

INDICATORS OF DIGITAL TRADE INTEGRATION



This section discusses measures related to the level of digital trade integration. The regulatory regime of digital trade integration was assessed under 12 pillars:

- Tariffs and trade defence measures applied on ICT goods ✓
- Public procurement of ICT goods and online services
- Foreign direct investment in sectors relevant for digital trade ✓
- Intellectual property rights
- Telecom infrastructure and competition
- Cross-border data policies
- Domestic data policies ✓
- Intermediary liability ✓
- Content access ✓
- Quantitative trade restrictions for ICT goods and online services
- Technical standards applied to ICT goods and online services ✓
- Online sales and transactions ✓

Since the findings for some of these measures are discussed in the previous section on the Digital STRI, a duplicative discus-

sion is avoided here to the extent possible (the check marks indicate the measures covered in this section).

Tariffs and trade defence

South Sudan does not impose restrictions on imports of information and communication technology (ICT) goods and digital services, including on the quantity or volume of ICT goods or services that can be imported. Research on this issue finds no complaints or restrictive cases from any companies or countries.

Foreign direct investment

This pillar covers restrictions on foreign direct investment (FDI) in sectors relevant to the digital economy, such as telecommunications and telecommunications-related services, computer services, internet publishing services, manufacturing of telecommunication facilities and electronic retail.

Because a healthy investment landscape is a catalyst for digital trade, it is imperative that countries enact enabling legislation for sustainable investment promotion. The South Sudan Business Promotion Act 2009 mandates investment promotion and attraction, export promotion and development.¹¹

Although South Sudan has made efforts in liberalizing the telecommunications sector, the Public Procurement Act 2018¹² in section 41 mandates economic empowerment of South Sudanese in issues related to public tendering.

Domestic data policies

This pillar is concerned with policies on the domestic use of data, regardless of whether the data is processed by local or foreign companies. South Sudan has no comprehensive data protection regime.

Intermediary liability and content access

This pillar concerns the regulatory environment for intermediary liability and additional requirements of intermediaries. It also concerns restrictions on content access like blocking and filtering of commercial websites. South Sudan has no safe harbour law that shields intermediaries from liability, nor does any legislation provide for blocking or filtering web content. However, it is a criminal offence under the

Cybercrime and Computer Misuse Provisional Order 2021 for a person to publish pornographic or obscene materials, including child pornography, revenge pornography and racist or xenophobic materials.¹³

Standards

South Sudan adheres to international norms for product screening and testing, and the Bureau of Standards is recognized by the International Organization for Standardization. The procedures used in developing standards comply with the WTO's code of good practice for the development of standards. Third-party testing results are accepted.

Sections 15 through 18 of the law provide for declaration of standards by the Minister on the recommendations of the National Bureau of Standards, but not self-declarations of conformity.¹⁴ However, Sections 5 and 6 of the Consumer Protection Act 2011 protects consumers from unfair or unjust transactions or misleading or deceptive representations.¹⁵

Online sales and transactions

As the world becomes more interconnected, there is a need to increase digital trade through online sales and transactions. This pillar covers restrictions related to online sales and transactions, such as restrictions on online payments and on the use of domain names.

South Sudan has no restrictions against firms engaging in e-commerce (online sales, delivery and advertising) or against online payments. It does not have laws or regulations that require a local presence to

use a local domain or to engage in electronic retail. It does have comprehensive legislation on consumer protection through the Consumer Protection Act 2011.

CONCLUSIONS AND RECOMMENDATIONS

The objective of this study was to determine South Sudan legislative framework on digital services trade and digital trade integration. A comprehensive examination and assessment of current legislation has revealed that since 2016 South Sudan has promulgated some legislation to enable digital trade. But it has not signed some of the international treaties, especially in the areas of intellectual property, payment systems and electronic signatures.

In addition, as digital services trade has become multinational through sophisticated technological advances, the use of these technologies can pose various threats and requires the application of security measures to protect the platforms used for digital trade.

Restrictive measures were found in some areas and could be eased to facilitate digital trade.

In light of the foregoing findings, the following recommendations are proposed:

- To facilitate digital trade, consider becoming a signatory to the United Nations Convention on Contracts for the International Sale of Goods, commonly known as the Vienna Convention, and the WTO Information Technology Agreement. As many goods and services are increasingly traded through digital means, it would be prudent for Mauritius to harmonize its trade standards accordingly.
- Consolidate legislation related to promoting digital services trade to reduce the number of laws that must be complied with, especially those not easily accessible to foreign investors.
- Liberalize the telecommunication sector more in line with continental standards in the AfCFTA Agreement and open to more foreign investors to participate.
- Reconsider pushing the Economic Diversification Drive, where the government wants to significantly limit the participation of foreign firms in both public and private procurement.

- Make regulations on de minimis tax thresholds, to attract greater participation in e-commerce.

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ENDNOTES

¹ See <https://arii.uneca.org/>.

² <https://ictpolicyafrica.org/en/document/bfc7dffmhxj>.

³ Interconnection is mandated under sections 48, 50, 51 and 52 of the National Communication Act No. 24 of 2012.

⁴ The National Communication Act, 2012, has not provided for Vertical separation.

⁵ <https://ictpolicyafrica.org/en/document/bfc7dffmhxj>.

⁶ https://uncitral.un.org/en/texts/ecommerce/modellaw/electronic_commerce/status.

⁷ <https://njq-ip.com/country/south-sudan/patents/>.

⁸ <https://www.italaw.com/sites/default/files/laws/italaw170705.pdf>.

⁹ <https://www.warnathgroup.com/wp-content/uploads/2015/03/South-Sudan-Penal-Code-TIP-Articles.pdf>.

¹⁰ <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/98161/116696/F1167057094/SSD98161%20Eng.pdf>.

¹¹ <https://www.italaw.com/sites/default/files/laws/italaw170705.pdf>.

¹² [PP&DA Act 2018.pdf](#).

¹³ <s://dr.211check.org/wp-content/uploads/2022/05/Cyber-crimes-and-Computer-Misuse-Provisional-Order.pdf>.

¹⁴ https://www.wto.org/english/thewto_e/acc_e/ssd_e/wtaccssd6_leg_30.pdf.

¹⁵ https://www.wto.org/english/thewto_e/acc_e/ssd_e/wtaccssd6_leg_12.pdf.