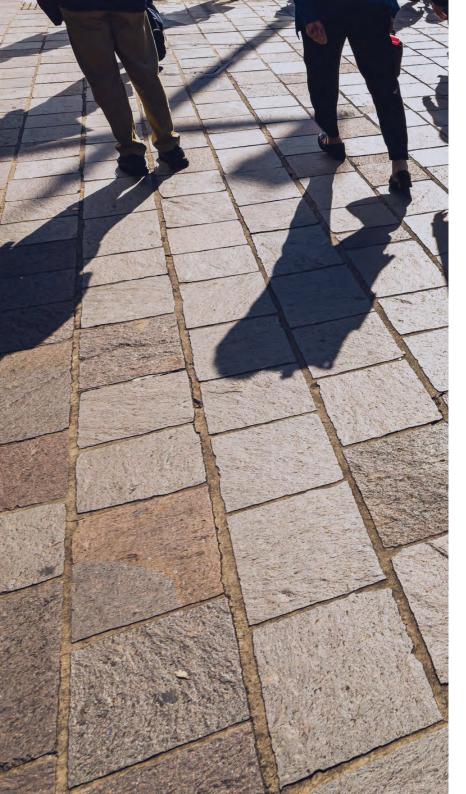


Legal Registers and ISO Compliance in Africa: The Four Decisive Trends

**Afriwise** 



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## **Executive Summary**

The American business writer Tom Peters once wrote: "Excellent firms don't believe in excellence - only in constant improvement and **constant change.**" That quote seems tailor-made for the central ethos of the International Organization for Standardization (ISO), with its slew of management system standards predicated on the principles of continuous improvement. ISO standards across multiple disciplines and industry sectors worldwide are a pervasive and well-respected hallmark of business today. However, the implementation of ISO standards by the private and public sectors in Africa continues to lag behind the rest of the world.

This paper will provide an overview of the ISO system, including brief insights into the most popular and common ISO standards. The purpose and attributes of legal registers will be highlighted, including, importantly, their role in ensuring compliance to ISO standards. The paper will then turn to an analysis of four of the leading trends in Africa regarding ISO compliance and the uptake of legal registers. This analysis will include considering the challenges that lead to the uptake of ISO standards continuing to be mostly lethargic, at best.



## The ISO system

The ISO, which was founded in 1947, independent organisation based in Geneva, Switzerland, which is tasked with the development of international standards. As of 2022, the ISO comprises the various national standards organisations of its 167 member countries. It should be noted that the ISO only compiles and releases standards, including those it updates on an ongoing basis. The ISO is not in the certification business. Certifications based on ISO standards are done by third-party certification companies authorised by the ISO to do so.

At the heart of any ISO standard is the **management system**. The ISO believes that a management system is "the way in which an organization manages the interrelated parts of its business in order to achieve its objectives". Importantly, there is no "set" management system within a given

ISO standard. Instead, the standards are specifically designed to be generic enough so that they can be applied by any organisation in any economic sector, regardless of its size, and applicable in any part of the world. Likewise, the complexity of an organisation's management system is entirely dependent on the organisation itself, including its size, industry sector, locality, business objectives, and so forth.

Legal registers, which provide an organisation with access to current legislation and regulations with which it must comply, are often an integral part of successful management systems. Most organisations ensure that they have legal registers in place when applying ISO standards to their systems. Some ISO standards even mandate that a legal register be in place as a certification requirement.

The fundamentals of any ISO standard include:

- Compliance with an ISO standard should be based on sound management system principles;
  i.e. with comprehensive and fit-for-purpose planning, implementation, checking and corrective actions and review process of the system, based on the organisation's actual activities and processes.
- An ISO standard is a guide, not a prescriptive checklist of requirements.
- Certification against an ISO standard is a benchmarking process and the organisation's management system is benchmarked; i.e. compared for compliance; against the standard's various requirements based on the organisation's operational and strategic realities.
- Certification against a given standard is optional, not mandatory. Therefore, an entity may choose to have a management system in place aligned to an ISO standard without having to be certified against it.





#### **ISO Standards**

This section will focus on the three most common ISO standards for businesses and other entities worldwide, namely ISO 9001, 14001 and 45001.

#### **ISO 9001 (quality management)**

ISO 9001, which was released in 1987, focuses on quality management, and is primarily concerned with production processes and the quality of products or services offered to customers. A 9001 quality management system (QMS) primarily deals with ways to manage and improve supply chain management and allied processes<sup>1</sup>. It differs to other ISO standards in that it is not legal-compliance driven.

#### An example of ISO 9001 in Africa:

Clarke Energy Nigeria specialises in the engineering, installation and maintenance of distributed power-generation solutions. It successfully achieved ISO 9001:2015 certification in 2019 based on a surveillance audit (i.e. a re-audit for a company that has already achieved certification) for its Nigerian offices and plant. The Nigerian company contends that being ISO 9001 certified is a prerequisite for many of its customers. The company believes it provides customers with confidence that it is working according to standards and procedures that ensure high levels of customer service and satisfaction. Clarke Energy Nigeria further believes that its ISO certification has resulted in better internal management and less wastage, as well as improved efficiency, productivity and profit for the company<sup>2</sup>.

#### **ISO 14001 (environmental management)**

ISO 14001 was first released in 1996 and provides the general requirements for an environmental management system (EMS). ISO 14001 differs to other ISO standards by focusing on aspects and impacts, rather than hazards and risks, since the former terms are in keeping with internationally accepted terminology regarding that which may cause harm or alter the environment. The latest version, issued by the ISO in 2015, made significant changes to the standard, including insistence on increased prominence of environmental management within an organisation's strategic planning processes, as well as more inputs and a stronger commitment to environmental performance by an organisation's top management. The latest version also introduced a need for an EMS to focus on "cradle-to-grave" life-cycle considerations regarding all environmental aspects of what an organisation does and makes; i.e. from development to end-of-life aspects<sup>3</sup>.

#### An example of ISO 14001 in Africa:

A 2018 study by Botchway & Gbedemah of ISO 14001 implementation in a cable-manufacturing company in Tema, Ghana, found that the main driver for the firm investing in ISO 14001 certification was so that it could take advantage of certification to expand its market share. The study also found that the Ghanaian firm believed that reduction in potential environmental liability risks due to its ISO 14001 certification provided it with a distinct competitive advantage in the market, both in Ghana and internationally. Furthermore, the findings showed that the firm made significant savings in energy costs due to the energy-efficiency measures it introduced as part of its EMS<sup>4</sup>.

<sup>9001</sup> Simplified: https://www.9001simplified.com/learn/what-is-iso-9001.

Clarke Energy: https://www.clarke-energy.com/2019/iso-certification-nige-

# ISO 45001 (occupational health and safety management)

ISO had this to say when it released its 45001 standard in 2018: "It has become one of the most eagerly awaited standards in the world, and is set to drastically improve levels of workplace safety." ISO was making reference to the fact that ISO 45001 had replaced OHSAS 18001, the British Standards Institute (BSIO) standard that had been the global health and safety benchmark until then. Important differences between the two standards include that ISO 45001 is process-based, while OHSAS 18001 was procedure-based; i.e. document-based. In addition, ISO 45001 considers both risk and opportunities, while OHSAS 18001 dealt with risk only. ISO 45001 also insists that health and safety be integral to an organisation's overall risk programme and strategy.

#### An example of ISO 45001 in Africa:

The National Metrology Institute of South Africa (NMISA) was awarded its ISO 45001:2018 certification in 2022. According to NMISA, having an ISO-compliant occupational health and safety system has reduced its occupational health and safety risks and promoted a safe working environment within the agency. NMISA also believes that ISO 45001 certification provides confidence to its stakeholders and has opened up new markets and business relationships. Its certification has also helped the agency comply with South Africa's stringent and extensive occupational health and safety legal and regulatory requirements<sup>6</sup>. NMISA's commitments to ISO standards can be seen in its advertising for 2022/2023 internships with the agency, which stipulated that interns must have "basic Knowledge of Management System standards, particularly ISO 14001, ISO 9001, ISO 45001 and ISO/IEC 17025".<sup>7</sup> The latter standard is the one for testing and calibration laboratories.

#### Other ISO standards

There are many other ISO standards, including ISO 22000 (food safety management) and ISO 27001 (information technology management), even though neither of these have had much traction in most of Africa. They are nevertheless important standards for certain businesses. ISO 22000 helps organisations identify and control hazards and risks in any part of food production, distribution and sales. In the words of the ISO: "Applicable to all types of producer, ISO 22000 provides a layer of reassurance within the global food supply chain."8 The fundamental intent of ISO 22000 is obvious: to ensure that food produced is safe to eat by consumers. ISO 27001 was devised by the ISO in partnership with the International Electrotechnical Commission (IEC), which is why it is formally referred to as ISO/IEC 27001 and provides a framework by which an organisation can protect its IT infrastructure, regardless of size or sector, with the adoption of an information security management system (ISMS)9.

A list of other ISO standards used by businesses and public entities can be seen in <u>Appendix 1</u> at the conclusion of this paper.



ISO: https://www.iso.org/news/ref2271.html

<sup>6</sup> Engineering News: https://www.engineeringnews.co.za/article/nmisa-receives-ohs-iso-450012018-certification-2022-04-20

<sup>7</sup> MorePortal: https://moreportal.com/nmisa-internships/

ISO: https://www.iso.org/iso-22000-food-safety-management.html Advisera: https://advisera.com/27001academy/what-is-iso-27001/

### The Legal Register

A legal register has been defined as "a form of document or system that details legislation that an organisation has to be compliant with due to the activities it carries out" 10. The register may be specific to laws and regulations that are only relevant for a certain part or scope of a business, such as those for environmental management or occupational health and safety, or it could be organisation-wide. The legislation covered should be all the laws and rules that apply to an organisation's function, such as manufacturing or retail services. A business's objectives and how it operates will determine compliance requirements in line with the different legislation.

As previously stated, legal registers are **usually necessary to ensure compliance with most ISO standards**. In fact, some ISO standards such as ISO 14001, 27001 and 45001 require a legal register as a mandatory part of certification<sup>11</sup>. Even where not specifically mandated by a standard, the need for a legal register is considered almost mandatory if adherence to legal requirements in any way is prescribed by the standard. ISO 9001 is a good example of this.

10 The Compliance People: https://thecompliancepeople.co.uk/updates/news/what-is-a-legal-register/

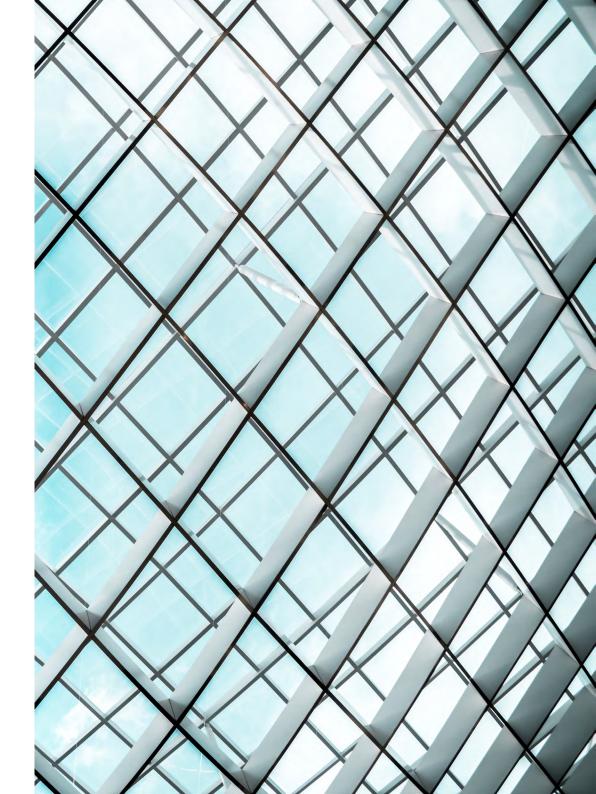


#### Common attributes of a legal register include:

- it is bound to a legal jurisdiction; i.e. the applicable national/federal laws of a given country, province, state or county and local area, city or municipality;
- it should be inclusive of all applicable laws and regulations for the given scope, and may also include directives and other quasi-legal rules, as required;
- it can be in either electronic or hard copy format or both, although the trend is increasingly for electronic registers, given that they are far easier to update and can be done so automatically by a legal-compliance service;
- the register should apply to the organisation's activities, processes and other aspects that may be affected by the legislation;
- it should be updated on a regular basis, given that legislation can be introduced, repealed or amended at any time;
- it should be readily available to any and all functions within the organisation that may be affected by the given legislation; and
- it should be easily accessible for the purpose of verification during a certification process or legal-compliance audit.

<sup>11</sup> British Assessment Bureau, supra note 2

**Four trends in Africa** 



#### **Trend one:**

#### South Africa leads the way

South Africa continues to lead the way regarding certifications for most ISO standards and, hence. has a strong market in the provision of legal registers by specialist consultancies and law firms alike. South Africa as an African leader in the ISO realm makes sense as it is by far the continent's most industrialised and diversified economy, even if it no longer has the largest GDP. Diversified export economies will have greater demand for ISO implementation and certification. The lack of diversification across nearly all African economies is quite astonishing. In its Economic Development in Africa Report 2022, the United Nations Conference on Trade and Development (UNCTAD) found that Africa is among the least diversified export regions in the world<sup>12</sup>. In fact, it is the least diversified. Commodities, which are high-risk export goods, account for no less than 60% of total merchandise exports in 45 out of 54 countries in Africa. This means that 83% of African countries are commodity-dependent, which is why Africa is so vulnerable to global commodity price shocks.

The chart above shows the stark reality of this heavy dependence on single commodities in most African countries. As seen, Nigeria may have the largest economy in Africa according to GDP, but it depends on oil and natural gas for 95,7% of its exports. Likewise, Ghana depends on gold for 94,9% of its exports, with Côte d'Ivoire heavily dependent (91,6%) on cocoa and Zambia (89,9%) on copper for their cash exports. Note that South Africa is not on this chart. In contrast, gems and precious metals are South Africa's biggest exports, making up only 23,3% of its exports, followed by ores, slag and ash and motor vehicles<sup>13</sup>. Not included in the above chart are Egypt, Morocco and Tunisia, which, together with South Africa, are among Africa's larger economies. Interestingly, these four countries will feature again in this paper.

<sup>12</sup> UNCTAD https://unctad.org/webflyer/economic-development-africa-report-2022

Agility PR: https://www.agilitypr.news/ISO-Standardisation-Could-Allay-Fear-Aro-18075

ISO certification, and thus legal registers, have been normative in South Africa for over two decades now, especially in terms of export advantage. South African analysts have noted how ISO certification has provided the country with much-needed credentials in international markets, particularly in light of the country's reputation for crime, corruption and instability. As one expert notes: "countries require guarantees that products emerging from SA continue to meet international quality controls and standards. Fortunately, the country enjoys a proud record in this regard, with the result that investor confidence in manufactured goods remains high<sup>14</sup>". Muhammad Ali, managing director and lead auditor of the Johannesburg based ISO consultancy WWISE, which also has offices in Botswana and Ghana, as well as Peru and Australia, points out that many South African companies get ISO certification due to local pressures. For example, most government tenders in South Africa demand ISO certification for all companies submitting tender proposals<sup>15</sup>.





#### Case study: South Africa leads in key African ISO certifications in 2020

Although there was rapid growth of ISO certifications in the 2010s, Africa still only accounted for 1% of ISO 14001 and 9001 certifications by 2015, according to a study by Tayo, Yuriev & Boiral (2018) regarding ISO on the continent. Of those certifications, more than 60% were concentrated in just two countries: South Africa and Egypt. In addition, Morocco, Tunisia, South Africa and Egypt accounted for 72% of 9001 certifications and 81% of 14001 certifications in 2015<sup>16</sup>.

Those numbers had barely changed by 2020, according to ISO statistics.<sup>17</sup> For example, there were 3072 ISO 14001 certifications in Africa that were reported to the ISO in 2020. Of those, Egypt had 799, or 26%, of African certifications, while South Africa led the way with 964, or 31%, of

the total. That is still 57% of all African ISO 14001 certifications in just those two countries at polar ends of the continent. Unsurprisingly, Tunisia and Morocco were the only two other countries to have certifications in the triple figures. Even Nigeria, currently the country with the continent's highest GDP due to the high price of oil, only had 77 ISO 14001 certifications in 2020. As for ISO 9001 there were 10307 certifications across Africa reported to the ISO in 2020. Of those, South Africa had 3399, or 33%, of all ISO quality certifications on the continent, followed yet again by Egypt with 1839 (17.8%) certifications, with Morocco and Tunisia in third and fourth position, respectively. Nigeria, by contrast, had 368 certifications, almost a tenth of those in South Africa.

ResearchGate: https://www.researchgate.net/publication/320333803\_Adopting\_ISO\_Management\_Standards\_in\_Africa\_Barriers\_and\_

ISO Technical Committee (TC): https://isotc.iso.org/livelink/livelink?func=ll&obild=18808772&obiAction=browse&viewTvpe=1

#### **Trend two:**

#### the emergence of legal technology

In Africa, legal technology, or "legal tech," is emerging, particularly among younger lawyers. This has been in part due to the phenomenal growth of the ICT sector in Africa over the past decade, including the fact that Africa's internet-user population grew to 70% by January 2022<sup>18</sup>. There has been an allied surge of IT-related start-ups across the continent, which has seen the growth of health tech, FinTech, eductech and agritech. Unsurprisingly, legal tech has also grown.

WeeTracker, a Pan-African research and media company, classifies African legal-tech companies and start-ups into four main categories<sup>19</sup>:

- e-discovery: whereby individuals can access justice or legal information through text messaging;
- online legal services: including legal advice, consultations and Q&A forums;
- **legal practice management**: systems and data analytics for clients in the legal profession; and
- legal documentation: for the generation of online legal documents for users.

It is the latter two categories that are particularly beneficial for the improved provision of legal registers, as well as faster and easier access thereto by clients. It was estimated that by 2022 there were over 100 start-ups in Africa solely geared at providing legal-tech solutions to corporates and citizens alike.

Even formerly rigid and archaic legal systems, such as that in Kenya, have seen a dramatic "digitalisation" of the way law is practised. Shem Otanga, a partner in the Nairobi office of corporate law firm Cliffe Dekker Hofmeyr noted: "We recognise that legal practice can no longer operate in the rigid manner that it did in the past and that our clients require dynamic, 21st century based solutions for their businesses." As law firms become more tech-savvy, electronic legal registers will be more readily available for African clients.



# Case study: Kenya-based Anjarwalla & Khanna partners with Microsoft to develop the "Legal Tech Incubator"

In 2020, Kenyan law firm Anjarwalla & Khanna, which has a presence in 14 African countries, partnered with Microsoft to launch its "Legal Tech Incubator" This IT solution supports the development and promotion of innovative technology-based solutions for legal challenges. Its aim is to enhance law and legal practice across the continent. Anjarwalla & Khanna's partner in charge of innovation, Dominic Rebelo, commented on how: "The initiative aims to help budding entrepreneurs translate their ideas into viable applications for the African market and ensure access to justice." The incubator will be part of Microsoft's development hub in Nairobi, which was opened in May 2022, and is the IT giant's first African development hub<sup>22</sup>.

B LEX Africa: https://www.lexafrica.com/2022/06/the-proliferation-of-technology-into-law/

<sup>9</sup> ibio

<sup>20</sup> Tech Cabal: https://techcabal.com/2021/09/07/legal-technology-at-the-forefront-of-change-in-africa/

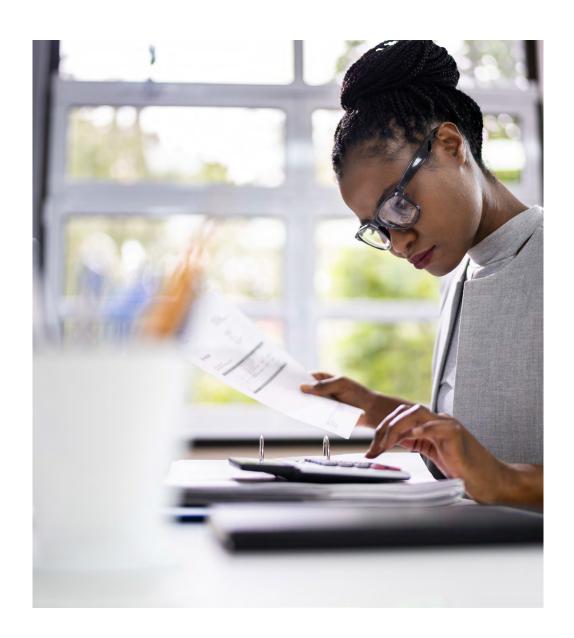
<sup>21</sup> ib

<sup>22</sup> Bowmans: https://www.bowmanslaw.com/insights/intellectual-property/kenya-google-and-microsoft-set-up-tech-development-hubs-inkenya/

#### **Trend three:**

# the growth of business ethics and competition enforcement

Legal enforcement against industry has been notoriously poor in Africa for decades. This is due to multiple factors, ranging from weak enforcement mechanisms and underfunded legal systems to corruption and lack of political will. This is hampered by the tendency of law-enforcement efforts in Africa, including citizen-led protests, to focus on crimes such as high-level corruption and different levels of bribery<sup>23</sup>. However, in recent years a greater emphasis on business integrity has become more evident in key African countries. Consider the direct correlation between levels of corruption and the standard of governance. including corporate governance, in African countries. The five best-performing countries in the 2019 Corruption Perceptions Index, namely Seychelles, Botswana, Cabo Verde, Rwanda and Namibia, were the same five countries that scored highest in the World Bank's 2018 Worldwide Governance Indicators (WGI)<sup>24</sup>.





<sup>23</sup> Transparency International: https://www.transparency.org/en/news/citizens-speak-out-about-corruption-in-africa

<sup>24</sup> Anti-Corruption Resource Centre: https://www.u4.no/publi-cations/sub-saharan-africa-overview-of-corruption-and-anti-corruption.

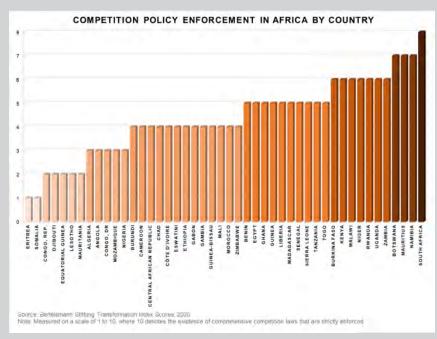
#### Case study: improved competition policy enforcement across Africa, as per a 2021 analysis by Baker McKenzie

Is there a direct correlation between African businesses increasingly requiring ISO certification and legal registers and their need to demonstrate compliance with international standards regarding corruption and governance? It is contended that this is due to one leading business-related factor: competition policy and enforcement. Where there is more stringent competition policy and enforcement, there is a automatically a greater need for businesses to be more transparent about their operations and have a distinct competitive advantage or edge. ISO standards tick both of those boxes. Recent studies have shown that there has been an uptick in competition enforcement across Africa, according to economic transformation matrices such as the Bertelsmann Transformation Index.

That index alone has shown that 46 African countries had some form of competition enforcement in place by 2020. Nearly half of African countries scored at least five out of a possible 10 on the index, indicating at least robust enforcement of competition laws<sup>25</sup>. The 2020 findings can be seen in the Manhattan chart below, showing that South Africa leads the continent, with a score of eight on the index, followed by Namibia, Botswana and Mauritius, with a score of seven each. On the other side of the scale are Eritrea and Somalia, both of which scored just one. The continent's biggest economy, Nigeria, scored a measly three in the index<sup>26</sup>.

Law firm Baker MacKenzie noted how: "A number of African jurisdictions have strengthened their competition and antitrust regimes by way of amendments to existing legislation, the introduction of new laws and

regulations, and renewed fervor and political will to enforce existing laws."<sup>27</sup> According to the law firm, this has almost been inevitable: "Across Africa, competition policy enforcement is increasingly being employed as a tool to boost economic performance and promote the revitalization of trade and industry following the devastating impact of COVID-19.<sup>28</sup>"



Courtesy: Baker McKenzie

Baker McKenzie: https://www.bakermckenzie.com/en/insight/publications/2021/09/africa-increasing-competition-policy

ibid.

<sup>27</sup> ibid.

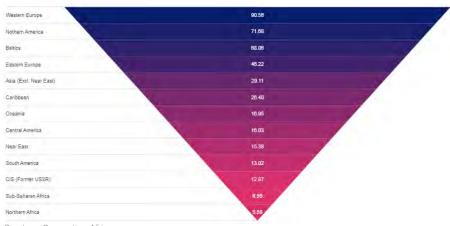
<sup>28</sup> ibid

<sup>29</sup> Connecting Africa: https://www.connectingafrica.com/author.asp?section\_id=761&doc\_id=772098#:~text=Meanwhile%2C%20Ethiopia%20(1.20%20Mbit%2Ethe%20world%20for%20network%20speed.

#### **Trend four:**

#### uptake remains lethargic due to IT challenges

IT systems, cloud services and general internet speeds continue to be slow and/ or expensive in most African countries, which hinders the provision of electronic registers and other online legal services, even as legal tech explodes across the continent. According to the website Cable.co.uk and its Worldwide Broadband Speed League 2021 survey of 224 countries and territories, Africa is seriously lagging behind all other regions regarding internet speeds, while North Africa has the slowest speeds in the world, followed by sub-Saharan Africa. Just how slow Africa is on average can be seen in the inverted pyramid graphic below showing average internet speeds by region:



Courtesy: Connecting Africa

The report found that only one of the top 50 countries with the highest internet speeds was in Africa, Réunion Island, the French overseas department, in 50th place. Réunion had an average internet speed of 43,62 megabits per second (Mbit/s), followed by South Africa with 19,94 Mbit/s in 90th place and the only sovereign African nation in the top 100.



## Case study: the high cost of poor connectivity to Nigerian businesses (as reported in 2021)

According to the Premium Times: "Erratic internet connection is routine in Nigeria, with the country trailing in terms of broadband penetration and speed averages." According to the 2021 Digital Quality of Life Index, a global digital well-being study conducted by Amsterdam-based cybersecurity firm Surfshark, Nigeria ranked 81 out of 110 countries in the study, which took business viability into account.

The problem is that Nigeria's current IT infrastructure was only planned for 2G and 3G networks, and so the country has lagged horribly in upgrading to 4G networking, let alone the infrastructure required for super-fast 5G connectivity. The impact that poor connectivity has on Nigerian business, including legal-tech firms, is immense when one takes this simple equation into account: every 10% increase in connectivity enables a 1,38% growth in GDP<sup>32</sup>. This is according to the World Bank – and, unfortunately, the converse would be equally true.

<sup>30</sup> Premium Times (Nigeria): https://www.premiumtimesng.com/news/head-lines/491234-special-report-dogged-by-slow-internet-connectivity-nigerians-and-their-businesses-count-losses.html

ibid.

<sup>32</sup> World Bank: https://documents1worldbank.org/curated/en/178701467988875888/pdf/102955-WP-Box394845B-PUBLIC-WDR16-BP-Exploring-the-Relationship-between-Broadband-and-Economic-Growth-Mindex.pdf



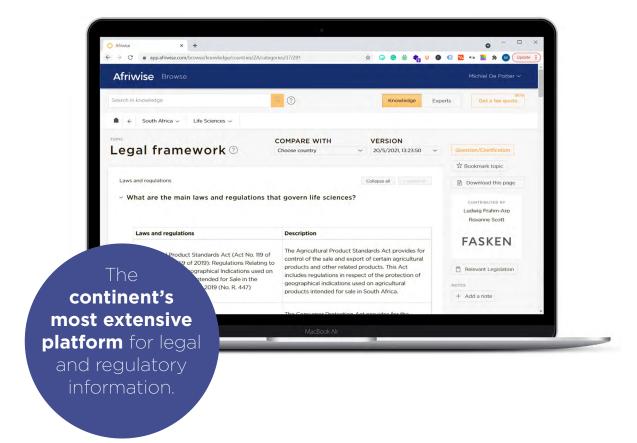
#### **Conclusion**

In conclusion, the African market remains robust and wide open for greater implementation and certification of ISO standards, in particular, those for quality management (9001), environmental management (14001), occupational health and safety management (45001) and information technology management (ISO/IEC 27001). Allied to this growth potential regarding the uptake of ISO standards is that of the provision and maintenance of legal registers, electronic registers in particular. These legal registers are invaluable in ensuring legal compliance within the context of a given ISO-benchmarked management system, even if an organisation has chosen not to go through the time and financial commitments of full ISO certification.

There are positive trends, as noted in this paper, most notably those regarding the impressive growth of legal tech in Africa in very recent years and improved enforcement of business and competition policies by many African countries. These trends both bode well for the future of ISO standards and legal registers in Africa. However, there are challenges too. As discussed, the rest of the continent needs to catch up to countries like Egypt, Morocco, Tunisia and, in particular, South Africa, regarding the number of ISO certifications being undertaken. African countries need to also attain the level of relative sophistication regarding ISO compliance, for both external and internal reasons, that South African businesses and government entities have fostered over the years. Furthermore, all African businesses can benefit from faster and more reliable internet connectivity, especially when one considers what connectivity can do for national GDP.

Nevertheless, like so much to do with Africa going into the third decade of the 21st century, there is much to be positive about, even buoyant. The continent is alive with promise, which can only bode well for ISO standards and legal registers.

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#### **APPENDIX 1:**

#### LIST OF COMMON ISO STANDARDS FOR BUSINESSES AND PUBLIC ENTITIES

	Year of first		Legal Register
ISO Standard	release	Focus	Mandatory?
ISO 19011	1990	Management system auditing	No
ISO 13485	1996	Medical devices - quality management	Yes
IISO/IEC 17025	1999	Competence of testing and calibration laboratories	Yes
ISO 20000	2005	IT service management	No
ISO 31000	2009	Risk management	Yes *
ISO 26000	2010	Social responsibility	No
ISO 50001	2011	Energy management **	Yes
ISO 20121	2012	Sustainable event management	No
ISO/IEC 38500	2015	Corporate governance of IT	No
ISO 37001	2016	Anti-bribery management	Yes

<sup>\*</sup> Legal register specifically required for legal risk

<sup>\*\*</sup> ISO 50001 is purposefully aligned to both ISO 14001 and ISO 9001