

ONLINE LEGAL INFORMATION AND LAWYERS IN WESTERN AFRICA

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The world of online legal information in Western Africa has been subject to dramatic changes over the last decade. In the early 2000s, the Legal Information Chair at the University of Montréal (previously known as LexUM until it later became a private firm) began working with a number of partners in the area, including the local Bars and the International Development Research Centre (Canada), for the creation of a network of legal information institutes in the area. This network became known as the *Réseau d'information juridique africain* (RIJA). As a result, two legal information websites were launched: JuriBurkina and JuriNiger, primarily offering access to case law but also to legislation and a few secondary sources as well. In 2008, the Chair began working on a review of legal information, both in digital and paper form, as used by lawyers in four West African countries: Burkina Faso, Niger, Senegal and Togo. With research partners in Senegal, Burkina Faso and Togo, the projects aimed to look into the state of legal information in the area with a particular focus on what was available online, and for free. As the project focused on legal information as used by lawyers, we mostly met with lawyers, but also with law librarians, members of the judiciary, and staff members of legal information initiatives. This paper discusses the major findings of this three year project, developed country by country before proposing an overall assessment of the regional situation.

BURKINA FASO

Legal information in Burkina Faso is available from a number of sources in both electronic and paper format. Few of these sources, however, offer up-to-date, accessible and comprehensive collections. The libraries¹ often rely on donor funding which, we were told, is often too little, for too short a period to begin to address issues of comprehensiveness and up-to-dateness². There is a certain level of mobilization within the University of Ouagadougou, however, with regards to provision of legal information. The *Centre de recherche et d'études juridiques* has worked on a number of initiatives. In 1996, the Centre edited the complete collection of the Law of Burkina Faso in nine volumes thanks to funding from the Belgian government. In 2005, funding from the Netherlands provided for updates of four of these nine volumes. The Centre is also behind the *Revue burkinabè de droit* which came to be in 1981. Unfortunately, we were told that this

¹ We looked into the collections of the law library at the University of Ouagadougou, the National Assembly and that of the National Law Society.

² For example, we were told by the librarians we met at the University of Ouagadougou that the *Programme d'Appui à la Consolidation du Processus Démocratique, l'État de droit et la bonne Gouvernance*, funded by the European Union, had permitted the acquisition of certain new documents yet the interviewees felt funding was insufficient to satisfy the libraries needs

journal is published quite irregularly due to lack of resources. In addition to the production of these paper based resources, the Centre has produced an online database which provides free and open access to a certain amount of legal information known as FasoLex. When the Chair began its work in the region, there were no legal information websites available. Today, this is no longer the case. Along with JuriBurkina currently maintained by the national bar association, sites like FasoLex have appeared. A number of sites have been launched by academic departments, government institutions, international development organisations and regional legal organisations.³ One of the most prominent is Legiburkina, a website which offers free and open access to the Burkinabè *Journal Officiel* as of 1994.

We spoke to a number of lawyers about their use of these legal information resources and although we've seen an increase in legal information websites, the lawyers we met in Burkina Faso continue to favour accessing legal information through paper-based sources. Reasons included force of habit acquired in the course of studies in universities where paper-based sources were more available than electronic sources; limited internet access or insufficient speed for accessing documents; failure of internet services for weeks at a time; electronic sources being rarely updated; and access to a sufficiently high quality collection of hard copy law sources within the firm. These reasons are specific to legal information research however, as internet has been adopted for other uses such as emailing.

As far as content is concerned, and surely as a result of it being a civil law country, there is a greater need for statutes and statutory material than there is for case law. Users we met mention Legiburkina and Legifrance as high quality legal information sources. Only one mentioned JuriBurkina. Looking at the website's statistics however, between 2008 and 2009 there was a considerable increase in the number of hits⁴ - nearly twice the number of hits - and a just as considerable drop in 2010 back down to numbers lower than those of 2008. We could match this to users' complaints about lack of updates, yet if we look at the duration of the visits, and at the source from which the site was accessed, the numbers tell a slightly different story. In 2009, just under 40% of users accessed the site directly (meaning not through a search engine) and in 2010, this number climbed to nearly 55%. Users also stayed on the site longer in 2010 than in 2009 and 2008. These numbers require caution however and if they indicate that there is a certain amount of repeat business (users are coming back to the site more than once to access legal information), the decrease in use is nevertheless substantial. Lack of updates in addition to a higher need for statutes and preference for hard-copy sources are at the heart of the issue.

NIGER

The results are not dissimilar in Niger. The library of the Supreme Court is mostly filled with material from the colonial regime, but also holds the complete collection of Niger's *Journal Officiel* and a few out-dated French journals. The University of Adbou Moumouni previously published a journal but it has not been printed in a number of years. The *Cour de Cassation* also previously published a report of judgments but again, there are no available up-to-date issues. As a result, access to legal information in Niger is rather limited.

³ For a complete list of these websites, see chapter 2 of the Panorama de l'information et de la recherche juridique en Afrique de l'Ouest

⁴ Site statistics for 2008 are only available for 8 months. With a 12 month extrapolation, there were 19 710 hits in 2008 and 39 162 in 2009.

JuriNiger aimed to fill this gap. In 2007, the Bar association wished to set up a service similar to that of JuriBurkina and a year later, JuriNiger was launched. Just like JuriBurkina, the site was launched in collaboration with LexUM, with funding from the International Development Research Centre, and maintained by the national Bar. Although primarily offering access to case law, JuriNiger also offers access to statutory and secondary material.

Preference for hard-copy legal information remains however. Only one respondent of the 5 stated searching online for legal information before consulting any other source. Lawyers we met were quick to criticize the poor quality of legal libraries, whether those of the Bars, the Universities, the Courts or the Ministry of Justice, but in almost all instances, the lawyers stated they still preferred hard copy legal information. In the case of the Nigerien lawyers we met, it was the collections found within private practices that were considered to be comparatively rich and up-to-date and favoured for research.

Again as in Burkina Faso, the primary need in legal information is for statutes and statutory materials. Unfortunately, there is no equivalent to LegiBurkina in Niger. The closest alternative is LegiFrance or, in certain circumstances, OHADA.com, the portal for business law in Africa.

Niger is not only the country included in this research with the least developed ICT infrastructure, but also that at the bottom of the ITU's Digital Opportunity Index⁵ for the World. Users spoke of losing internet access for days at a time, and when the service was available, the connexion would often be lost a number of times throughout a session. Constrained internet access without a doubt impacts the future of electronic, free an open access to law in this country. But free is key. All users had used a FAL resource or another at one point, but only one was subscribed to a commercial provider of electronic legal information.

Unlike JuriBurkina, JuriNiger's hits have never dropped; they have progressed steadily since the launch of the site. There is also a much higher proportion of users that stay on the site for over 5 minutes than in the case of JuriNiger. JuriNiger has never stopped being updated, although rather intermittently and with few documents at a time, since its launch. This perhaps has sufficed to maintain users' interest although the lawyers we met still stated lack of update as one of the major factors limiting their use of JuriNiger.

SENEGAL

Senegal is the only country of the four studied with a commercial legal publisher. The *Éditions juridiques africaines* publish journals, statutes and other statutory material for francophone countries in Africa.

In the past, there was also a national law journal published by the *Association sénégalaise d'études et de recherches juridiques* but this publication has not been produced since 1984. In March 2010 however, the Association did make the announcement that publication should soon be resumed.

Similarly to Legiburkina, www.jo.gouv.sn offers access to the Senegalese *Journal Officiel* but only going back to 2001.

There were also talks in Senegal to have the country join RIJA. LexUM met with the Bar association and a local IT firm. A preliminary version of the site was presented to the Bar in May 2006, funding was provided to support the Bar in setting up the service and material and

⁵ For more information on the Digital Opportunity Index, see: <http://www.itu.int/ITU-D/ict/doi/index.html>

training was provided by LexUM. However, interest on the part of the Bar quickly declined for reasons unstated and so the Association ceased collaboration preventing JuriSenegal from ever being launched.

Contrary to Burkina Faso, Senegal has few options for online legal information, despite the fact that the country has a more developed ICT infrastructure. In Senegal, only one lawyer stated rarely using the internet yet all lawyers, including those who have integrated the internet as part of their regular work day, prefer accessing legal information in hard-copy. Just as in Niger, there is a strong preference for hard-copy legal information available directly within the firm. The Internet tends to be considered a fall back option, only after the Bar's library is consulted. Three lawyers stated starting their online searches through Google as opposed to using a particular legal information site over another. Only one lawyer preferred electronic sources over paper based sources. This lawyer claimed always starting his searches online as he benefits from reliable internet access at work. He did highlight the abundance of French legal information available online however and deplored the lack of Senegal legal information in opposition.

Senegal is indeed a particular case: with the highest ICT penetration in the region, and the only of the four studied countries with a commercial legal publisher – leading to believe that there is an established market for legal information – there is at the same time a shockingly little amount of its national legal information freely available online.

TOGO

Togo is home to a remarkable free access to law resource: www.legitogo.gouv.tg. This site offers access to case law and statutory material going as far back as 1959. The site was launched in 2008 with the help of the United Nations Development Program (UNDP). LegiTogo is equipped with a detailed search engine and designed for targeted navigating. Of all the electronic resources available in the four studied countries, LegiTogo is without a doubt the most extensive collection of legal information. It is important to highlight however that LegiTogo is suffering the same fate as many of the projects stated in this paper: lack of updates. There have been no additions or updates to the site since its launch in 2008.

Lawyers we met stated using LegiTogo and also OHADA.com for online legal information. With OHADA regulation, lawyers can practice anywhere within the region and so it's important for them to have access to regional laws.

There is no "JuriTogo" at the moment as funding for RIJA had ceased when the national Bar demonstrated its interest in joining the project. There are efforts however, outside of the Legal Information Chair, currently in place to establish such a site.

Again in Togo, the story of paper-based legal information is overall relatively similar to that of the three other countries: scattered across a number of libraries, out-dated and incomplete. Lawyers we met claimed the private collections of the country's two *Sociétés d'avocats* were of higher quality than the Bar association's library.

LESSONS LEARNED

When the Chair began its work in the region, there were no legal information websites available. Today, this is no longer the case. Along with JuriBurkina and JuriNiger currently maintained by the local bar associations, a number of sites have been launched by a number of organisations.

As a result, although dispersed across multiple websites, West African legal information is more available online today than ever before.

- *Paper rules...*

The Chair's Review of Legal Information in West Africa still found, however, that hard copy legal information remains the preferred resource for West African lawyers. Lawyers we met were quick to criticize the poor quality of legal libraries, whether those of the Bars, the Universities, the Courts or the Ministry of Justice, but in almost all instances, the lawyers stated they still preferred hard copy legal information. Upon visiting these libraries, our research confirmed the lawyers' criticisms: in some instances, collections had not been updated in over 15 years, in others, the country's legislative information was dispersed across three different libraries.

Further, combined with historical and political contexts, the absence of commercial legal editors in three of the four countries has meant an overabundance of French secondary sources in law libraries. Burkina Faso, Niger and Senegal have previously published law journals but this is no longer the case today. Perhaps the miniscule number of lawyers (about 600 lawyers all countries combined for a population of over 60 million) limits the chances of success of these national publications.

As a result, many lawyers told us, larger firms are now investing more in more in private legal information collections. As we saw in Togo, some firms had more complete and up-to-date libraries than those of the Bar associations. Additionally, in many cases, it is in these private collections, not at the public law libraries, that lawyers will obtain the hard copy legal information they require.

- *...while electronic sources continue to emerge*

Regardless, online legal information, as mentioned above, has managed to flourish over the past 8 years. Not only are legal information sites more numerous than ever, but the variety of stakeholders interested in supporting legal information has also multiplied. This reality can be analysed from at least two angles: first, the growth in potential stakeholders can be a sign of changing legal informational environments toward a more open and accessible standard; second, the multiplication of sites can also stand as call for collaboration between these rarely comprehensive or up-to-date resources. Indeed, lawyers we met stated both comprehensiveness and the fact that a site is maintained up-to-date as the two primary factors determining their adoption of a website as a principal source of legal information. The fact that hard copy information is preferred by lawyers may lead to believe that ICT penetration in the region is a determining factor as well. If lawyers stated certain difficulties with the reliability and speed of internet access, it must be highlighted that many of them are using ICTs for other parts of their work and will usually search online as a secondary solution if they are unable to locate the required legal information in hard copy format. In addition, website usage statistics, for JuriBurkina and JuriNiger, confirm highest usage at the times when the site was most complete but also most up-to-date. Since this time, JuriBurkina has been less frequently updated and hits has dropped. This may be one reason more why the multiple free access to law sites may consider pooling their resources for improved longevity.

- *Identifying partners of Free Access to Law*

As mentioned above, the multiplication of FAL websites indicates a multiplication of stakeholders interested in providing the law online, for free. University and government departments, development agencies, and bar associations are involved in the free dissemination of the law online.

These trends are generally encouraging, but the notion that law is a public good, which should be freely and openly accessible, is still far from being the norm. The notion has progressed throughout the years but may still not be strongly enough accepted to ensure sustainable processes for the online dissemination of the law from start to finish.

When LexUM was working on RIJA's inception phase, the project included Senegal, Chad and Madagascar but for a variety of reasons in each of these countries, a regional FAL network could not be established at the time. In Senegal in particular, the Bar's lack of interest in the project was clear. In Togo and in Niger, the personal implication of the president of the Bars had considerable impact on the advancement of a FAL project in their country. In addition to the president of the Bar, in Niger, the Minister of Justice took interest in the project which facilitated the data acquisition process. But again, free access is not considered the norm. Legal documents are not yet managed with the expectation that they are to be shared. If key stakeholders are no longer there to reaffirm their commitment to FAL, projects tend to be severely hurt.

Sustainability is an issue that was brought up in the course of this project and has been further developed in an upcoming study led by the Chair entitled "Free Access to Law - Is it Here to Stay?". When LexUM started working on RIJA, the plan to collaborate with the national Bar associations was based on the hypothesis that as primary users of legal information, lawyers would have a direct interest in maintaining FAL websites. And in the first moments of the project, the Bars were generally enthusiastic about setting up such a service. At the same time, the small number of lawyers in the region has a direct impact on the Bars' budgets and human resources. In addition, new Bar presidents are elected every two or four years posing a risk for the sustainability of a FAL site set up under the authority of a past president.

Nevertheless, JuriBurkina and JuriNiger, however seldom updated, did continue to be updated even after funding from IDRC and LexUM ceased. This may be the beginning of evidence supporting the original hypothesis that those who need access to law will have sufficient interest in a FAL site to maintain the service. Without a doubt, the systemic changes described earlier must take place as well to ensure the quality of the service, but it would appear that Bar associations can indeed play a key role in providing free access to law in their countries.