



TRADE IN THE DIGITAL ECONOMY

a tralac guide



tralac | trade law centre



E-commerce, the digital economy & trade

The digitalisation of the economy requires new ways of thinking about competition, intellectual property, taxation, industrial policy, privacy, cybersecurity, the labour market, immigration and skills and, of course trade.

The wheels of international trade are powered by the internet. From the smallest informal trade to a major supply agreement, contracts are transacted online; whether via email, e-commerce store, or digital platform. Any formal trade relies on the internet for implementation – financing, documentation and logistics are all digitally driven, and becoming more and more so. Whether it is an emailed order, an online purchase, or merely the financial arrangements behind the transaction, the internet will inevitably be used in conducting international trade.

Digitisation has contributed to a changing trade environment in many ways - facilitating multinational value chains, enabling the rise of the micro-multinational and giving us new tradeable goods and services. It is also blurring the traditional boundaries between goods and services, blurring the boundaries between jurisdictions and bringing into question the way our legal and regulatory infrastructure operates at national, regional and global levels. The digital permeates every aspect of trade – from agriculture to clothing, from manufactured goods to business services.





E-commerce in trade agreements

Trade agreements have an important contribution to make to the legal and institutional frameworks that will enable e-commerce and digital trade. Increasingly, regional and bilateral trade agreements include provisions on electronic commerce, digital trade and the digital economy. The Regional Trade Agreements database includes 87 trade agreements with e-commerce provisions (out of 303 currently notified to the WTO). These range from best endeavours agreements to promote e-commerce all the way to the comprehensive, justiciable provisions of the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP).

In 1998, WTO members adopted a Declaration on Global Electronic Commerce along with a work programme on e-commerce. Plurilateral negotiations on e-commerce were launched in 2019, with 78 members initially joining the negotiations.

There are currently no plans to include e-commerce in the AfCFTA.

United States-Morocco FTA

ARTICLE 14.1: GENERAL

The Parties recognize the economic growth and opportunity that electronic commerce provides, the importance of avoiding barriers to its use and development, and the applicability of the WTO Agreement to measures affecting electronic commerce.

What's on the global e-commerce trade agenda?



Enabling digital trade/e-commerce

- Customs, digital trade facilitation and logistics
- Facilitating electronic transactions
- Customs duties on electronic transmissions



Openness and digital trade/e-commerce

- Market access (for both services and goods trade)
- Flow of information
- Access and non-discrimination



Trust and digital trade/e-commerce

- Business trust
- Consumer trust
- Intellectual property

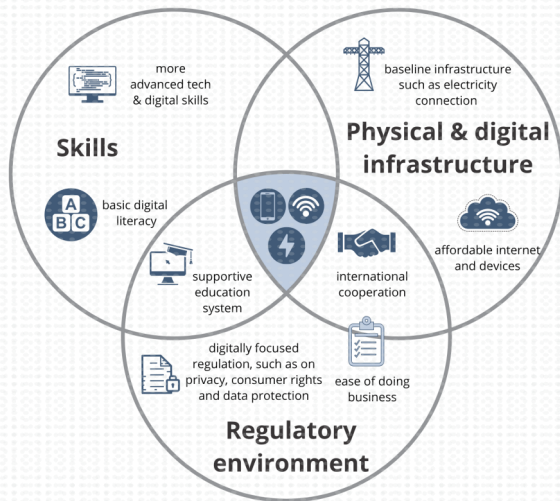


Cross cutting issues

- Transparency
- Infrastructure gaps/digital divide
- Cooperation

Africa's digital economy

For African economies, there is a genuine risk of being left behind and exacerbating the digital divide. Africa lags the rest of the world in internet use, with an average of only 40% of people using the internet in 2019, compared with 60% for the rest of the world.

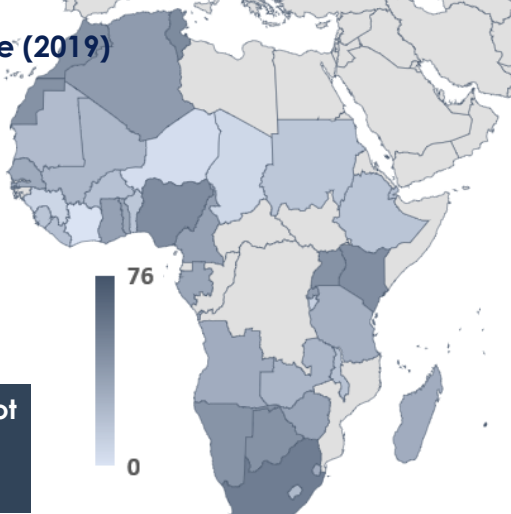


Digital development requires an intersecting set of policy interventions, international cooperation and support from Governments across the continent, in order to create an environment in which the digital economy can thrive. The foundation of this is connectivity—devices, electricity and internet access.

Without these fundamentals, engagement with the digital economy will still occur, but it will be piecemeal and uneven. Those that are already advantaged will be able to capture the benefits: incumbent business and privileged individuals will have access to the digital economy, but start-up and micro businesses and those disadvantaged by poverty, geographical location, gender, race or other factors will be shut out.

UNCTAD E-commerce readiness score (2019)

The UNCTAD e-commerce readiness score is a composite indicator of a country's readiness for B2C e-commerce transacting (out of a possible 100). It comprises ICTs necessary for online shopping, payment methods and delivery methods. As a continent, e-commerce readiness is mixed – from relatively high in Mauritius, South Africa and Nigeria, to very low in Guinea, Chad and Niger. However, this is changing rapidly and the policy choices taken now will have an important impact on how the digital economy develops.



Main reasons why the household does not have internet

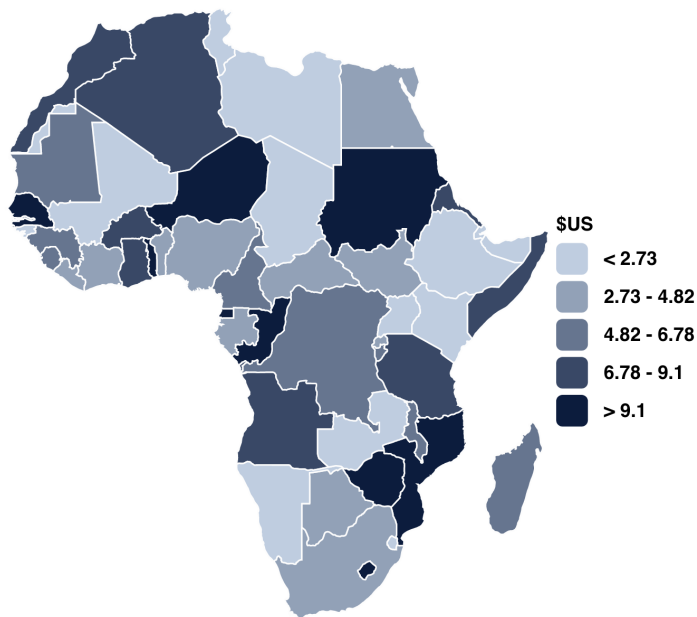
Research ICT After Access Survey

Country	COST OF EQUIP- MENT TOO HIGH	COST OF SERVICE TOO HIGH	DO NOT NEED THE INTERNET	HAVE ACCESS ELSEWHERE	NOT AVAILBLE IN MY AREA	DON'T KNOW HOW TO USE IT	PRIVACY OR SECURITY CONCERNS
KENYA	22%	17%	27%	4%	10%	18%	1%
MOZAMBIQUE	61%	14%	3%	2%	4%	6%	
GHANA	23%	16%	25%	5%	6%	15%	1%
NIGERIA	24%	10%	24%	7%	5%	23%	1%
RWANDA	34%	9%	16%	1%	11%	25%	
SOUTH AFRICA	24%	27%	19%	6%	4%	13%	1%
LESOTHO	21%	6%	15%	17%	7%	35%	
UGANDA	38%	6%	19%	3%	4%	29%	
SENEGAL	42%	13%	15%	7%	7%	5%	

Africa's digital economy

ICTs have been identified as amplifiers of economic growth and social cohesion, with ICT targets underpinning several of the UN 2030 Sustainable Development Goals. Despite this, many African countries have not yet reached the critical mass of Internet connections of around 20% required to enjoy the network effects of investments in ICT infrastructure. Costs, infrastructure and access to devices inhibit digital development.

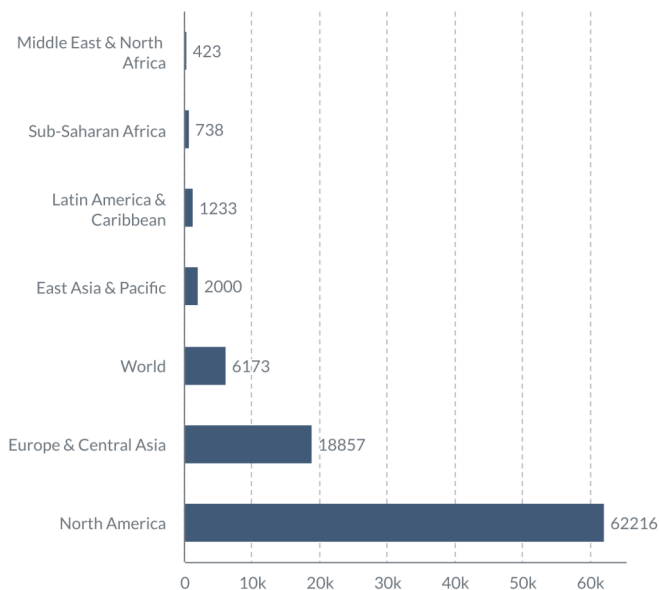
Cheapest 1GB bundle, mobile data



Mobile penetration—Africa's Regions

Region	GDP (2018)	Mobile (2017)	Mobile (2014)	Mobile Change
AMU	344	113	115	-1.5%
CENSAD	1158	83	79	5.5%
COMESA	531	116	57	104.6%
EAC	158	71	56	26.1%
ECCAS	239	85	41	109.7%
ECOWAS	610	76	71	8.0%
IGAD	223	59	41	43.7%
SADC	668	116	62	85.8%

Secure internet servers per million population



Secure internet servers are an essential requirement for ICTs services such as offshoring, the cloud, e-commerce and online outsourcing.

The figure for SSA is very low at only 738, a fraction of the world aggregate.



Common Market for Eastern & Southern Africa

COMESA has 21 member states. COMESA members cross over with EAC, SADC and IGAD members.

In late 2017 COMESA announced that its Secretariat had ‘completed the design of the digital free trade area’. This is essentially aimed to be a Free Trade Area – that is, COMESA—that has ‘gone digital’.

COMESA DIGITAL FREE TRADE AREA

The COMESA DFTA will consist of a number of digital instruments to support trade in COMESA, including an electronic certificate of origin, underpinned by blockchain technology, and a mobile application for cross-border traders. The DFTA has three pillars:

E-regulation

- Ensuring that the regulatory environment is supportive of paperless trading
- The government itself is digital – including making laws and regulations governing trade available online.

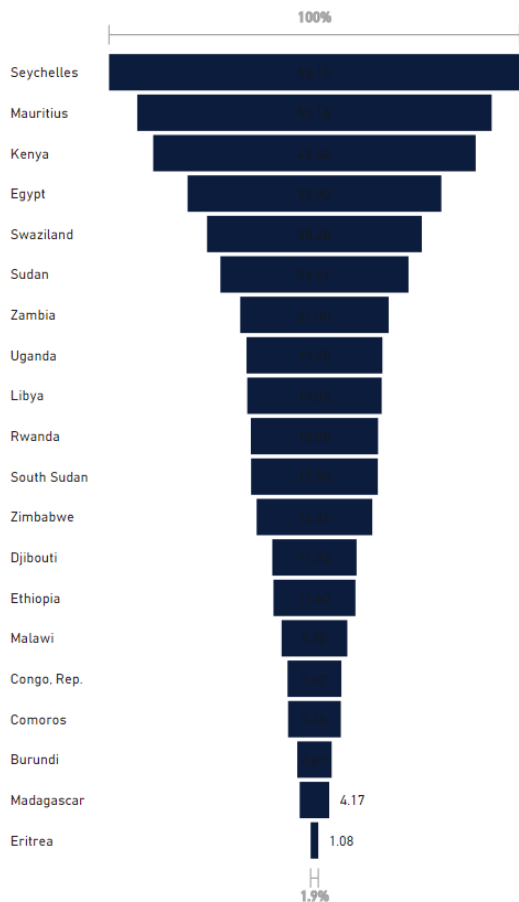
E-logistics

- Digitising trade documentation, such as certificates of origin, bills of lading etc
- Blockchain based digitised trade platform
- Digitising trade finance

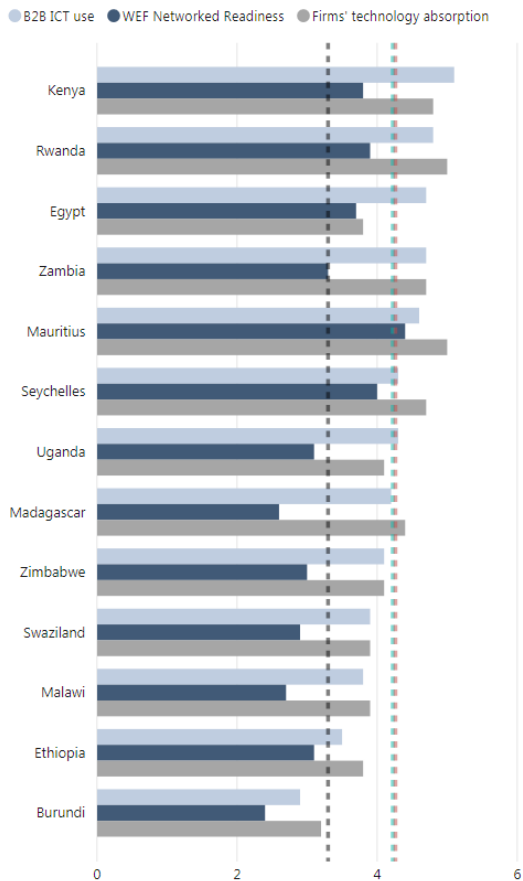
E-trade

- E-payments gateway
- Support for regional clearing and settlement
- Mobile app for small traders
- E-commerce platform

Internet users per 100 people



Indicators of ICT readiness





Southern African Development Community

SADC is a Regional Economic Community comprising 16 Member States; Angola, Botswana, Comoros, Democratic Republic of Congo, Eswatini, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Tanzania, Zambia and Zimbabwe.

In terms of B2C e-commerce readiness and Internet penetration, South Africa and the islands states Mauritius and Seychelles are in a leading group of three. The following three countries in the B2C e-commerce ranking are Botswana, Namibia and Zimbabwe, in that order.

SADC E-COMMERCE STRATEGY

With a vision to: “increase regional trade through e-commerce by 5 to 10% over 5 years”, and a mission to: enhance Business-2-Business (B2B) trade between the various countries and promote Business-2-customer e-commerce inside the countries, the SADC e-commerce strategy (approved in 2012) has 4 pillars, accompanied by a plan of action:

**ENABLED
E-COMMERCE
ENVIRONMENT**

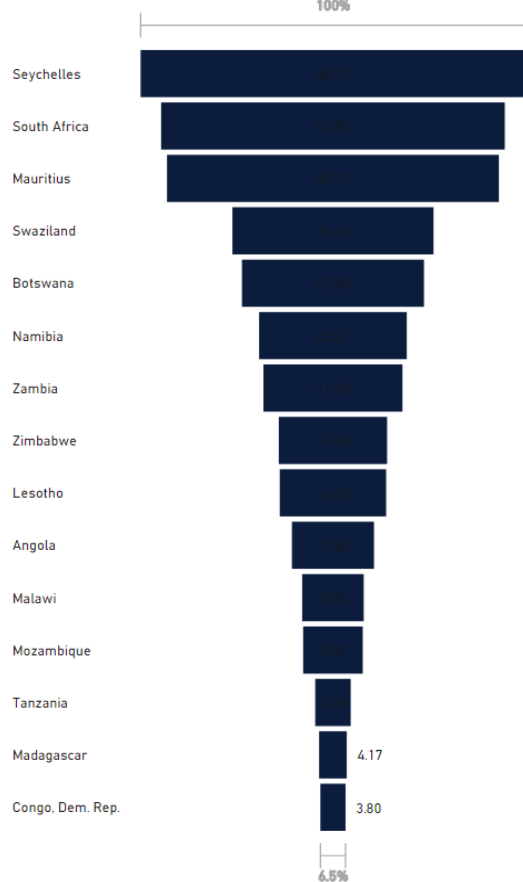
**CAPACITY
DEVELOPMENT
PROGRAMME**

**STRENGTHENING
E-COMMERCE
SUB-REGIONAL
AND NATIONAL
INFRASTRUCTURE**

**INSTITUTIONAL-
ISED
FRAMEWORK TO
IMPLEMENT,
EVOLVE AND
GOVERN THE
CURRENT
STRATEGY AT
REGIONAL LEVEL**

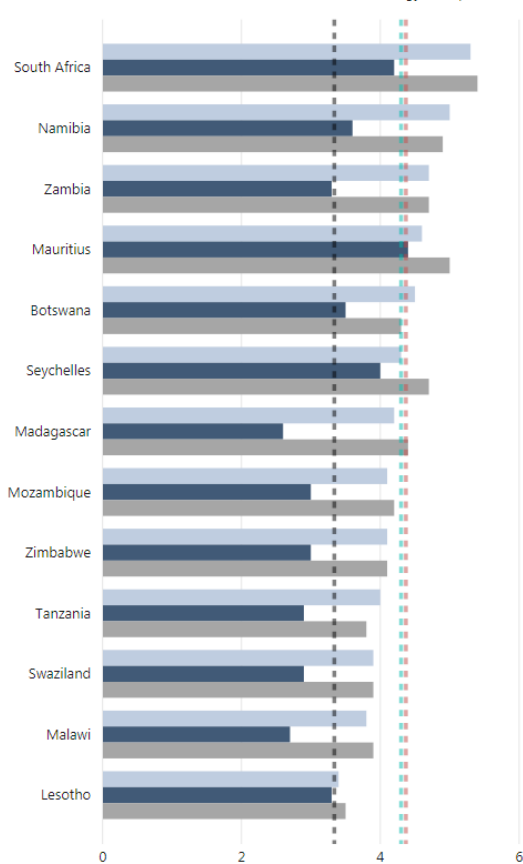
Internet users per 100 people

100%



Indicators of ICT readiness

● B2B ICT use ● WEF Networked Readiness ● Firms' technology absorption





Economic Community of Western African States

ECOWAS currently has 15 member states (Benin, Burkina Faso, Cape Verde, Ivory Coast, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo). All 15 countries are part of the ECOWAS Free Trade Area. In 2019, GSMA released a report: *Digital ECOWAS*. This report makes a number of recommendations to support digital investment, innovation and inclusion.

GSMA Recommendations

AVAILABILITY

Universal service

- Redesign or abolish universal service funding mechanisms
- Incentivise operators for coverage

Spectrum

- Licences should be technology neutral

AFFORDABILITY

Taxes

- Move away from imposing additional taxes on telecoms

Infrastructure sharing

- Should be facilitated and carried out on a commercial basis

RELEVANCE

Local content

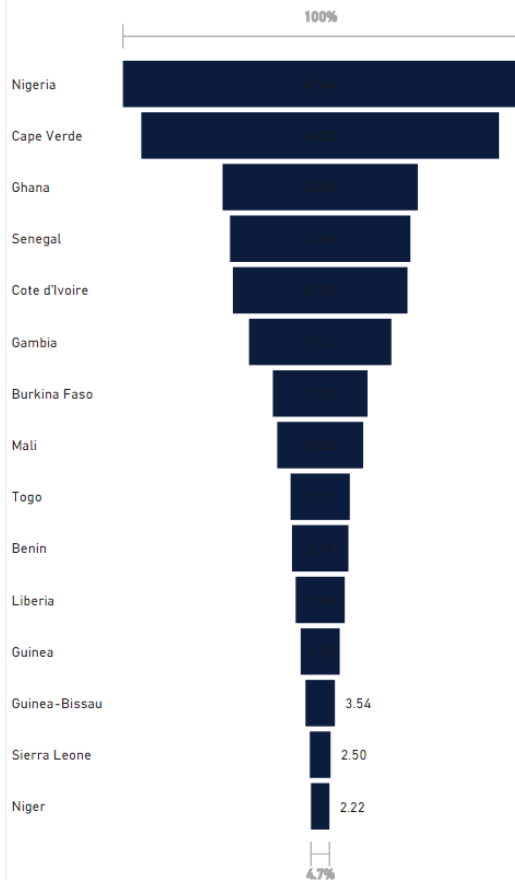
- Promotion of a local content ecosystem empowering local entrepreneurs

READINESS

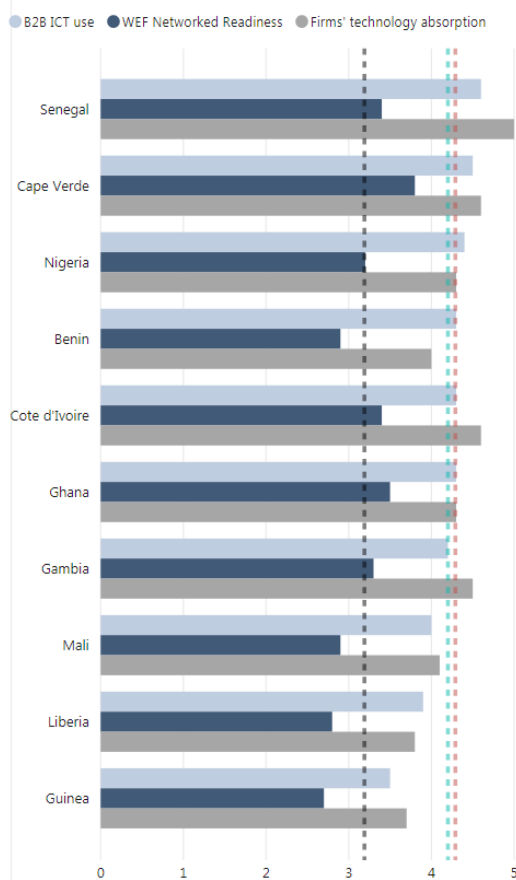
Digital readiness

- Measures to foster digital skills

Internet users per 100 people



Indicators of ICT readiness





East African Community

EAC is a customs union with duty-free intra-EAC trade and a common external tariff (CET). The EAC member states (Burundi, Rwanda, South Sudan, Kenya, Uganda and Tanzania) also adopted a Common Market Protocol in 2009, which came into effect in 2010.

In 2019, the World Bank published a report on a Single Digital Market in East Africa, however, it is unclear whether this has been adopted at the Community level.

East Africa Single Digital Market

Single connectivity market

- Remove barriers to regional telecom infrastructure and services deployment
- Encourage investment, improve performance, eliminate pricing and quality differentials between coastal and land-locked countries
- Expand access to connectivity to all

Single data market

- Enable secure exchange, storage, and processing of data across borders
- Support regional deployment of data infrastructure
- Drive supply and demand for data-driven services and innovation across the region

Single online market

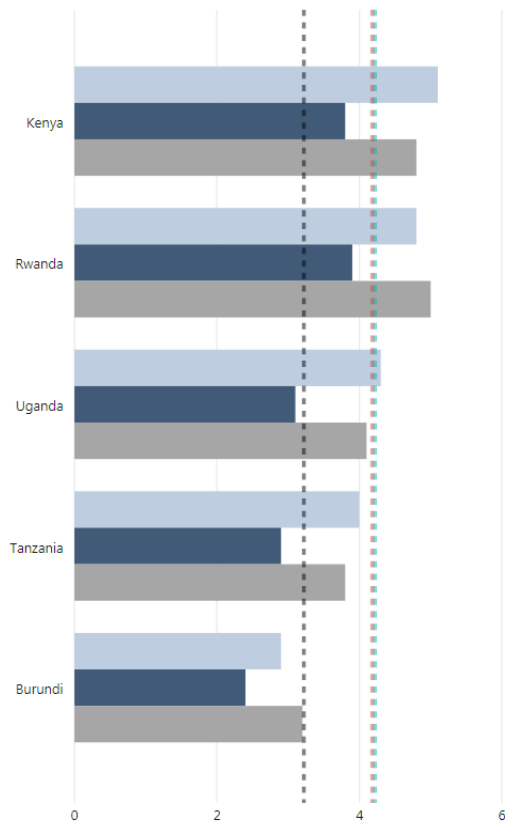
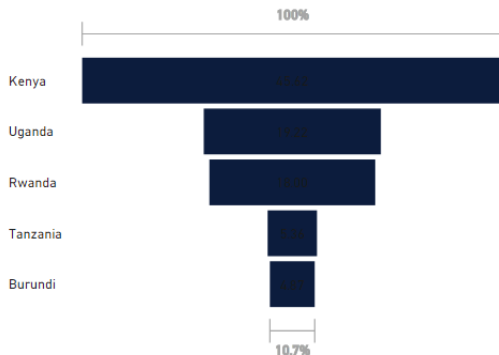
Allow firms, governments, and citizens to:

- access and deliver both public and private services online
- undertake e-commerce transactions and
- access digital content and information seamlessly from anywhere in the region

Indicators of ICT readiness

● B2B ICT use ● WEF Networked Readiness ● Firms' technology absorption

Internet users per 100 people



The Community of Sahel-Saharan States

CEN-SAD currently has 24 member states (Benin, Burkina Faso, Central African Republic, Chad, Comoros, Ivory Coast, Djibouti, Egypt, Eritrea, Gambia, Ghana, Guinea-Bissau, Libya, Mali, Mauritania, Morocco, Niger, Nigeria, Senegal, Sierra Leone, Somalia, Sudan, Togo and Tunisia) aspiring to the establishment of an Economic Union which includes the free movement of goods, services and commodities.

CEN-SAD has no overarching digital economy strategies in place, but countries within CEN-SAD have strategies underway, such as 'Digital Tunisia 2020' and 'Digital Senegal 2025'.

Digital Senegal 2025

Digital Senegal 2025 aims to increase the contribution of digital technologies to GDP by 10 per cent and create 35 000 direct jobs by 2025. The progress will be measured by international rankings.

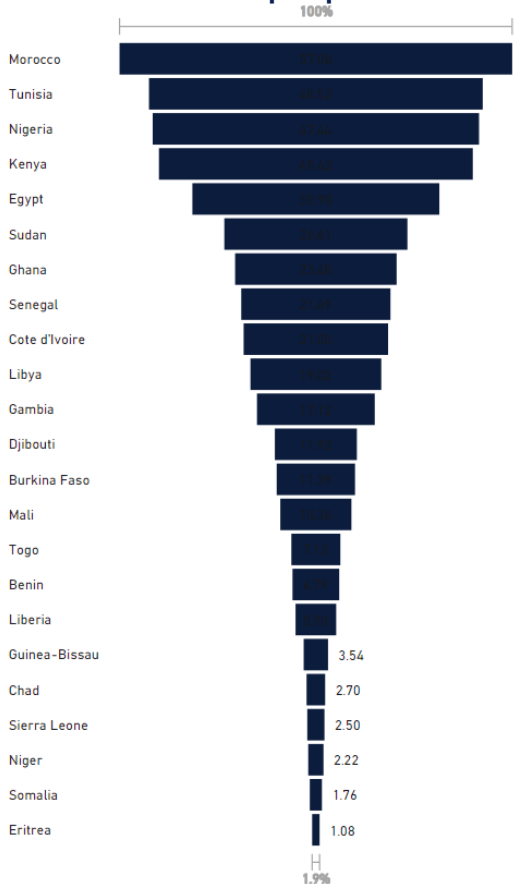
Networked readiness index



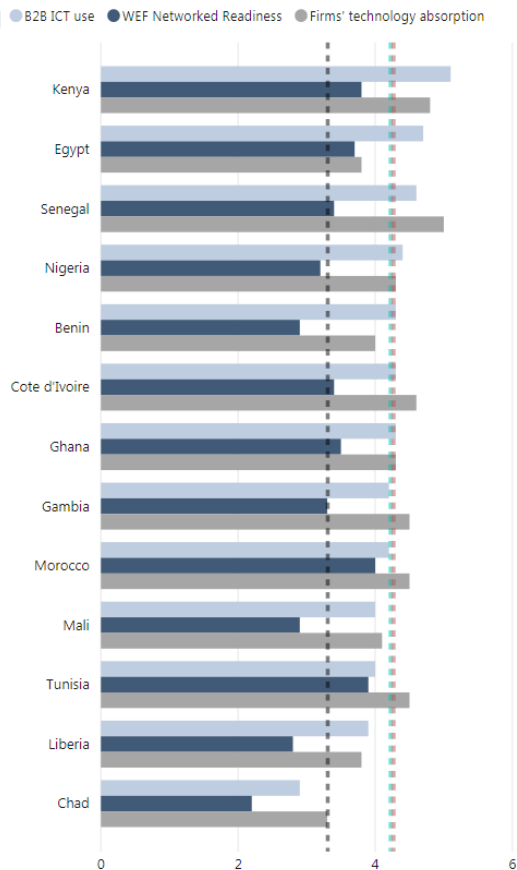
ICT development index



Internet users per 100 people



Indicators of ICT readiness





Economic Community of Central African States

The 11 ECCAS member states are Angola, Burundi, Cameroon, Central Africa Republic, Chad, Congo, DRC, Equatorial Guinea, Gabon, Rwanda and São Tomé and Príncipe.

According to the African Development Bank (AfDB), 73 in 100 ECCAS inhabitants have access to a mobile telephone, 26% of inhabitants have access to the active mobile broadband network but regional coverage is only 47% for 3G. The price of access is high, corresponding to 11.2% of the region's gross national income compared to 9.3% for sub-Saharan Africa and 3.7% for the rest of the world. A key component of the AfDB's strategy for central Africa is to improve ICT.

AfDB: CENTRAL AFRICAN REGIONAL DEVELOPMENT STRATEGY

Support the development of broadband networks and cross-border broadband interconnections.

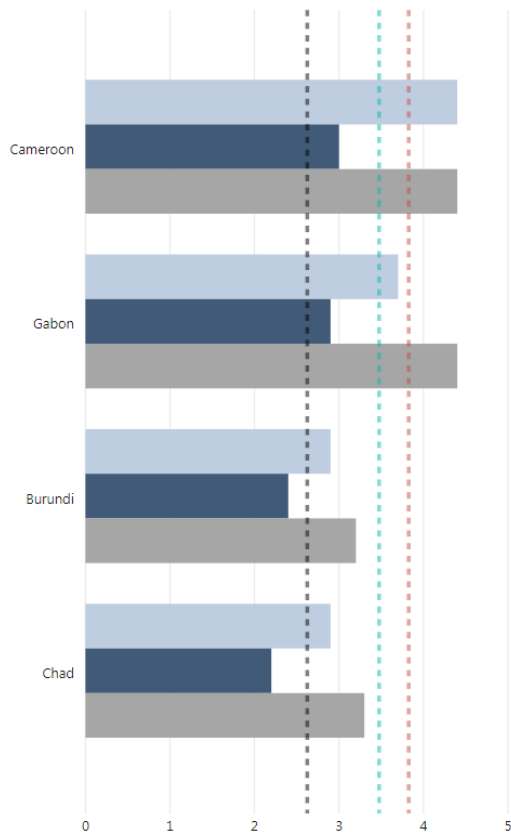
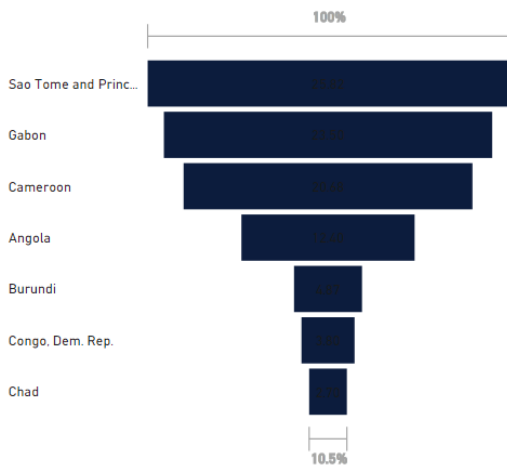
Support the establishment of harmonized national digital identity systems.

Support the establishment of interoperable digital financial services.

Indicators of ICT readiness

● B2B ICT use ● WEF Networked Readiness ● Firms' technology absorption

Internet users per 100 people





Intergovernmental Authority on Development

IGAD member states are Djibouti, Eritrea, Ethiopia, Kenya, Somalia, South Sudan, Sudan and Uganda. IGAD focuses on policy and programme harmonisation, peace and security, food security and sustainable development, facilitating investment, capacity building and infrastructure development.

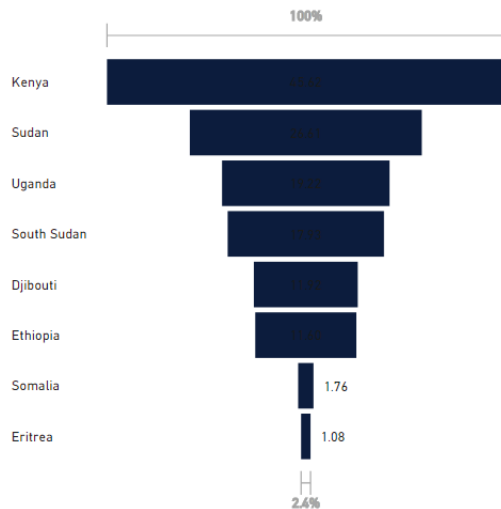
As part of its regional strategy (2016) IGAD is embarking on the formulation of information and communication policies, projects and programmes to be undertaken with the aim of narrowing the “digital divide” between the Region and the rest of the world. IGAD is also part of an EU funded ICT Support Programme along with COMESA, EAC and IOC.

ICT SUPPORT PROGRAMME

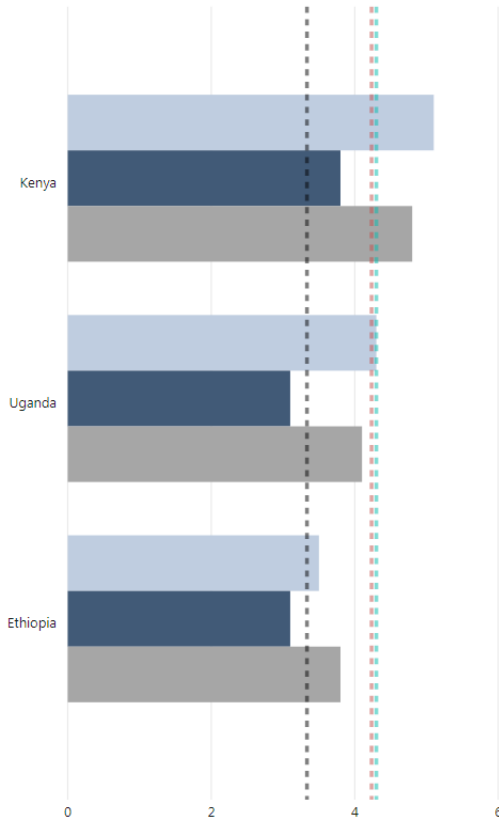
- Development and monitoring implementation of ICT policy guidelines & strategies
- Monitoring of e-readiness status
- High-speed internet connectivity provided to certain key regional stakeholders to reduce costs of doing business in the region
- Migration to ASYCUDA++ in selected countries
- More efficient access to practical economic, commercial and policy information
- Incubator projects to demonstrate the viability of the internet and e-commerce
- Improved capacity for entrepreneurs to exploit ICT and e-commerce opportunities

Indicators of ICT readiness

Internet users per 100 people



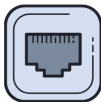
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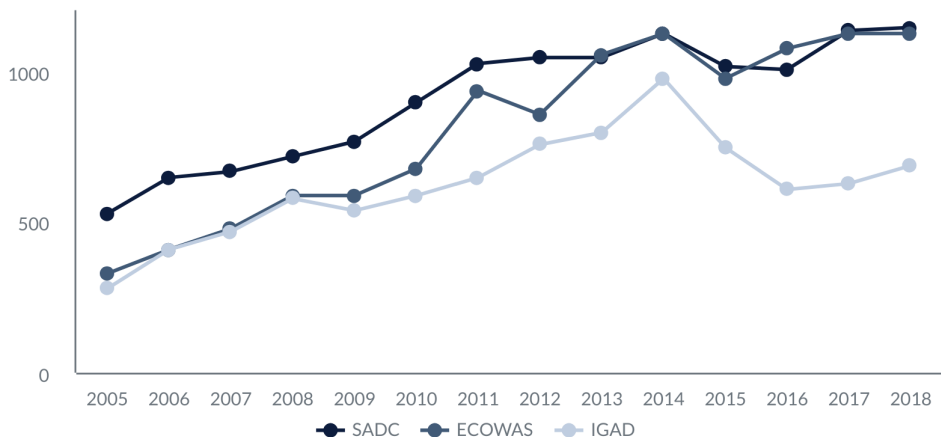
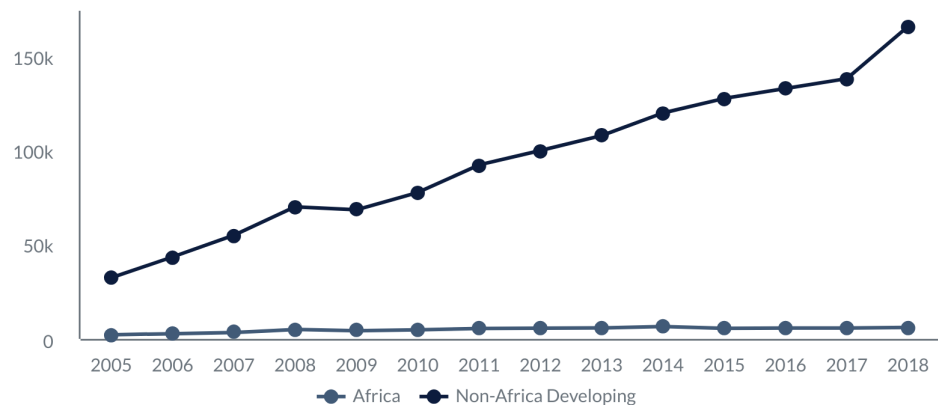
Services trade & the digital economy

From the 2000s, developing countries increasingly entered the global market as buyers and sellers of ICTs goods and services, from bandwidth usage, to ISP (internet service provider) services, platform services such as payment gateways as well as trade portals and communications networks. While the definition of 'ICTs services' is services that are ICTs themselves, trade also began to take place in 'ICTs-enabled services'. These are defined as services that could potentially have a mode of delivery that is not ICTs-based, such as call centre services, software development services, other 'offshored' services and media services, but which benefit greatly from the trade mode offered by ICTs.

ICTs are also indispensable inputs into global value chains (GVCs). The 'implicit' trade in ICTs services is as fundamental as the embodiment of basic word and data processing in back office software tools but as sophisticated as the computer-assisted design (CAD) input into advanced engineering production output. While services can be 'offshored', production can be modularized into cross-border value chains that are established on evolving patterns of comparative advantage and invite participation by industrialising and emerging economies.



Total ITC services trade (\$USm)



Gender & the digital economy

In sub-Saharan Africa, 25% fewer women use the internet than men. Yet global studies indicate that, for example, women-led tech businesses are more capital efficient and achieve 35% more return on investment than their male-led counterparts.



"It is not easy for a girl to leave home and purposely go maybe to a cyber café to access the Internet. This is because girls have responsibilities, like household chores..."

*Young adult female, urban Rwanda.
Participant in Research ICT After
access survey, 2017*

Worldwide some **327 million fewer** women than men have a **smartphone** and can access the **mobile Internet**.

Men are **four times** more likely than women to be **ICT specialists**.

At 15 years of age, on average, only **0.5%** of girls wish to become **ICT professionals**, compared to **5%** of boys.

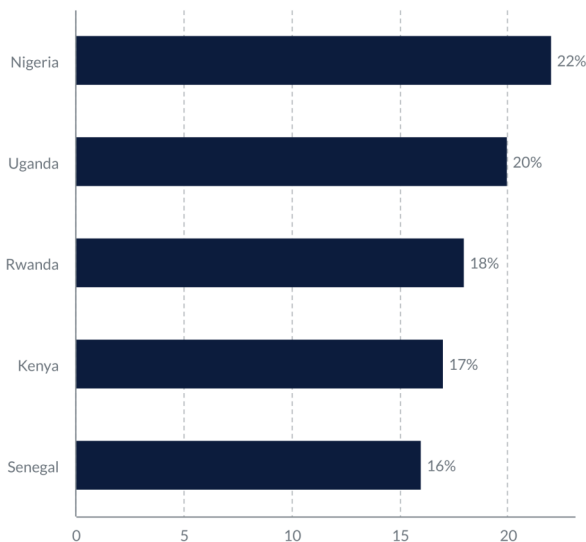
Women-owned **start-ups** receive **23%** less funding and are **30%** less likely to have a **positive exit** compared to male-owned businesses.

Youth & the digital economy

By 2050 Africa's youth population is expected to reach 460 million people, however youth unemployment is high at an average of 13.1% in sub-Saharan Africa, and much higher in some countries - South Africa's Q3 2019 youth unemployment rate was 58.2%. Young people also make up a disproportionate numbers of the working poor—23.5 out of the 38.1% in sub-Saharan Africa.

Young people are embracing the gig economy

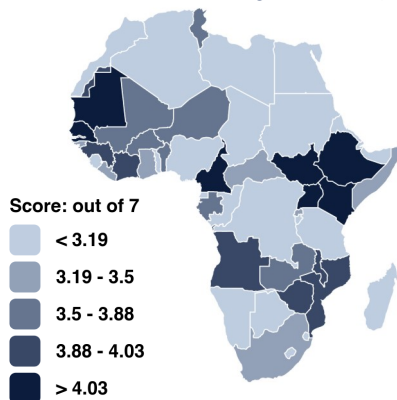
% of internet-users selling freelance services online



Thus, the digital economy offers great opportunities for young people, but skills and education will be essential to ensure Africa's youth can make the most of these developments.

To what extent does the active population possess sufficient digital skills?

1 = not at all; 7 = to a great extent)





Data protection & cyber-security

Data protection is not just about personal privacy, but rather, by creating trust in the digital environment, data protection is the foundation of a thriving data-driven economy.

Similarly, cyber-security and the prevention of cyber crime are essential in this digital era. AU members have attempted to address these issues, as well as electronic transactions, through the African Union Convention on Cyber Security and Personal Data Protection, adopted in June 2014. However, progress on ratification, and signature has been slow.

The following actions may encourage ratification by the remaining 50 AU member states:

- Allow for parts of the Convention to be ratified rather than the Convention as a whole
- Clarify and simplify the language in the Convention
- Insert mechanisms for pre-authorisations to ensure that they do not impede e-commerce
- Focus carefully on the harmonisation of AU country member data protection laws and tools and
- Enable industry to take the lead with standards and codes of conduct which could be incorporated into the Convention if approved by sufficient Member states

African Union Convention on Cyber Security and Personal Data Protection (Malabo Convention)



ELECTRONIC TRANSACTIONS

- Electronic commerce
- Electronic contracts
- Security



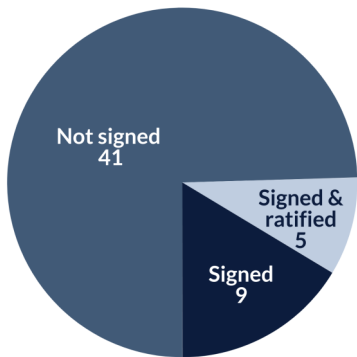
PERSONAL DATA PROTECTION

- Rights & obligations of data subject & data controller
- Principles
- Sensitive data
- Institutional frameworks



CYBERSECURITY & COMBATING CYBER CRIME

- National level
- International cooperation
- AU level: monitoring



The Convention will enter into force 30 days after the deposit of the 15th instrument of ratification.

Taxing the digital economy

The development of the digital economy has brought many public policy and administrative challenges to governments worldwide. Among these is how an international taxation system that was designed for goods trade and physically present companies can work in a world where value crosses borders at lightning speed and co-location is completely unnecessary for a business-to-consumer relationship.

Two key issues in the tax debate are:

- Customs duties on electronic transmissions (including what is an electronic transmission) and
- Corporate tax on companies that provide consumer services in a country, but have no physical presence there.

The first is being debated at the World Trade Organisation and the second under the [OECD/ G20 Inclusive Framework on Base Erosion and Profit Shifting](#) consisting of 135 members, including more than half of all African countries.



Benin: a 5 franc/megabyte tax on social media data was reversed in 2018 only 10 days after entering into effect after peaceful protesters took to the streets.

Kenya: a 15% excise on telephone and internet data tax is imposed on mobile network operators (MNOs).

Nigeria: Nigeria is reportedly planning to introduce a 5% VAT on all e-commerce sales, although critics point out that this is inconsistent with the Central Bank of Nigeria's push towards a cashless economy. This would apply to both local and cross-border e-commerce sales. Nigeria also has an additional 2% VAT on data services (above the normal 5%)

Tanzania: introduced a licensing regime in 2018 for online content creators (bloggers) with both a hefty fee and close monitoring.

Uganda: introduced a social media tax in 2018. In any given 24-hour period, a mobile phone user who wants to access twitter (for example) in Uganda will be blocked from doing so by the internet services provider until such as time as the tax is paid. The tax – 200 shillings/day – is paid from the consumer's existing 'airtime'. For mobile money, the tax is generally applied to transactions – on top of the fees (and in addition to the excise or VAT that the service provider pays on the fee) and is paid, with the facilitation of the mobile service provider, at the time of transaction.

Zambia: a tax on VOIP calls – a once-off payment per day, imposed on the user – has been explicitly described as intending to protect jobs in the telecommunications sector.



Blockchain and digital ledger technology

Digital ledger technology (“DLT”) is a database that exists across several locations or among multiple participants. It removes the necessity of any third party (to verify its identity) as the ledger is shared among participants and there is, therefore, no need for a centralised database in a fixed location. A blockchain is a type of DLT that involves an encoded and distributed database that acts a digital ledger, storing immutable records of transactions between parties.

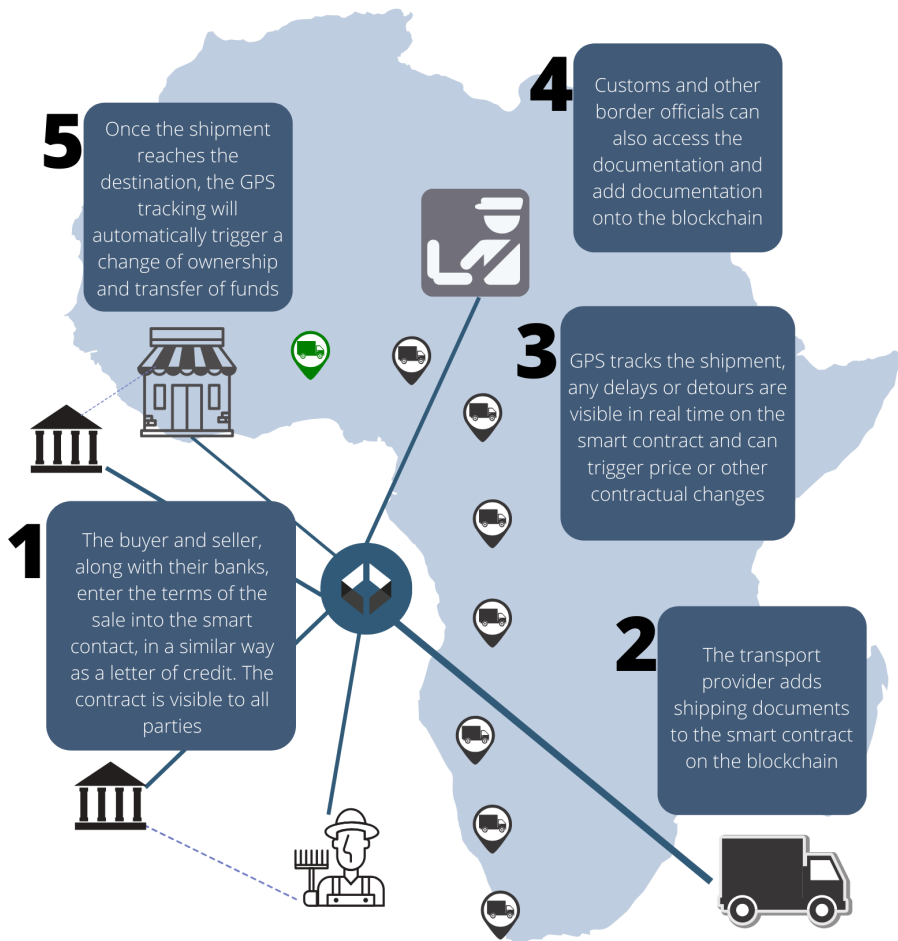
Blockchain & DLT are already being used in trade applications:

- supply chain management and logistics
- trade finance
- International payment
- customs procedures

“Just as the container lowered the costs of transportation and ICT the cost of communication, blockchain stands to lower the cost of information that is both crucial to, and a significant bottleneck, for international trade”

Hanna Norberg, Director, Trade Economist

DLTs and the virtual systems they enable are one of the most exciting sets of technological developments in recent years. Their potential has only just begun to be tapped and they hold much promise for the world of global trade. In many ways, Africa stands to benefit more than the developed world, in a relative sense, because Africa can transfer the technology when it is ready and skip many of the intermediate steps.





Fintech

Fintech (financial technology) it is generally used to describe businesses using technology for financial services. This can mean new financial services (such as mobile money) but typically means new ways of delivering existing financial services. The technology might provide a new or better user interface, such as an app; it might enable a greater reach (more people have mobile phones than local bank branches) or lower costs (for example 'robo-advisors' use algorithms rather than humans to give investment advice, typically making the advice cheaper).

Fintech solutions are facilitating international trade in several ways:

- Increasing access to finance (especially for MSMEs)
- Cross-border payment mechanisms
- Trade finance solutions

The AfCFTA can also contribute to the expansion of fintech through:



- Opening markets to financial services imports
- Commitments to regulatory recognition or harmonisation
- Supporting general digital infrastructure

	Middle East & North Africa	Sub-Saharan Africa	World
Used a debit or credit card to make a purchase in the past year (% age 15+)	21%	7%	33%
Account (% age 15+)	48%	43%	69%
Made or received digital payments in the past year (% age 15+)	38%	34%	52%
Credit card ownership (% age 15+)	7%	3%	18%
Used the internet to pay bills in the past year (% age 15+)	12%	6%	22%
Received wages: into an account (% wage recipients, age 15+)	54%	45%	62%
Used a mobile phone or the internet to access an account (% age 15+)	13%	21%	25%
Received wages: through a mobile phone (% age 15+)	1%	4%	4%
Received government payments: through a mobile phone (% age 15+)	1%	2%	1%

About tralac

(Trade Law Centre) **tralac** is a public benefit organisation based in South Africa. We develop technical expertise and capacity in trade governance across Africa.

We are committed to the principles of rules-based governance at the national, regional and international levels. We believe that better governance and strong institutions are essential elements for inclusive and sustainable growth. tralac's activities are anchored on three pillars.



Inform

- Publications
- Daily news service
- Trade data & infographics



Capacitate

- Training activities
- Internship program
- Strategic partnerships & consulting



Empower

- Policy dialogue and forums
- Policy dialogue contributions



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