

# 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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# TRADE IN THE DIGITAL ECONOMY

*a tralac guide*



tralac | trade law centre

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## Digital economy, digital trade & e-commerce

There are no universally agreed definitions of digital economy, digital trade and e-commerce. These terms, though distinct, are often used interchangeably on the same issues. This booklet will refer to commonly used definitions of these terms.

Digital economy is understood as that part of economic output derived primarily from digital technologies with a business model based on digital goods and services. The main components of the digital economy include fundamental innovations (semiconductors, processors), core technologies (computers, electronic devices) and enabling infrastructures (the internet and telecoms networks), digital and information technology (e.g. digital platforms, mobile applications and payment services). The digital economy encompasses online platforms (e.g. Google, Facebook and Amazon), platform-enabled services (e.g. Uber and Airbnb), trade in electronic transmissions (e.g. online delivery of software, music, e-books, films and video game) and mobile technology and applications including mobile payment services.

## Financial inclusion in Africa

Mobile money has become an important enabler of financial inclusion in Sub-Saharan Africa—especially for women—as a driver of account ownership and account usage through mobile payments, saving, and borrowing. Mobile money accounts both grew and spread across Africa from 2014 to 2021.

	Middle East & North Africa	Sub-Saharan Africa	World
Used a debit or credit card to make a purchase in the past year	30%	12%	40%
Account (% age 15+)	53%	55%	76%
Made or received digital payments (% age 15+)	46%	50%	64%
Credit card ownership (% age 15+)	8%	3%	24%
Used a mobile phone or the internet to buy something online (%)	21%	7%	39%
Received wages: through a mobile phone (% age 15+)	2%	32%	7%

Source: World Bank Findex, 2022

## 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

## Digital economy, digital trade & e-commerce



Digital trade is defined as encompassing “digitally-enabled transactions of trade in goods and services that can either be digitally or physically delivered, and that involve consumers, firms, and governments.” (OECD)



E-commerce is defined as “the sale or purchase of goods or services, conducted over computer networks by methods specifically designed for the purpose of receiving or placing of orders.”

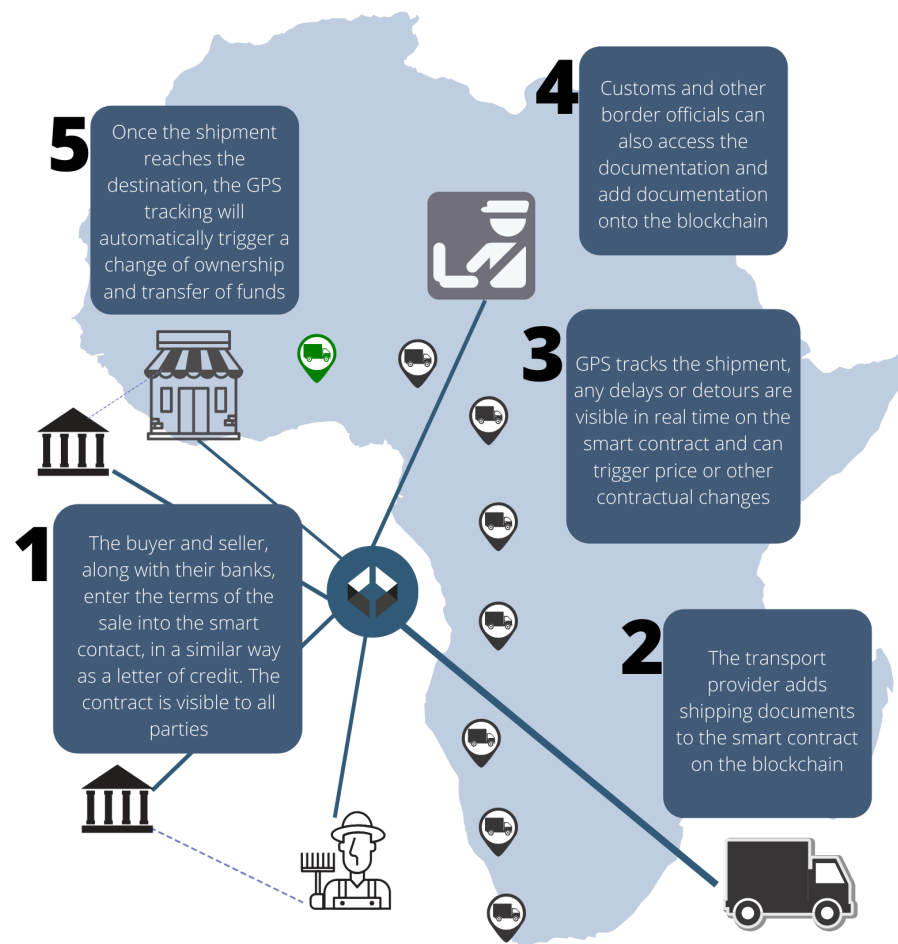
E-commerce orders are placed and received over the internet, but deliveries and payments do not necessarily happen online. Orders placed by phone, fax or e-mail are not considered e-commerce transactions. (OECD).

# E-commerce, the digital economy & trade

The digitalisation of the economy requires new ways of thinking about competition, intellectual property, taxation, industrial policy, privacy, cyber security, the labour market, immigration, skills, investment 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. Digital permeates every aspect of trade – from agriculture to clothing, from manufactured goods to business services.



# 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:

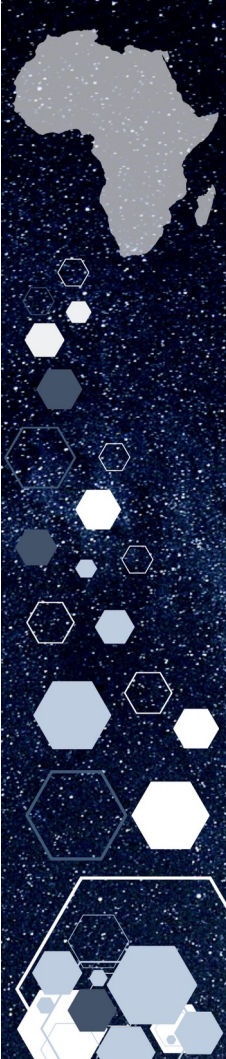
- supply chain management and logistics
- trade finance
- International payment
- customs procedures

**“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.





## Digital trade/e-commerce in trade agreements

Digital trade or e-commerce is increasingly becoming prominent in trade agreements. In 2021, there were about 105 trade agreements including e-commerce or digital trade provisions. The provisions range from *ren-dezvous* clauses and best endeavours to e-commerce all the way to the comprehensive and justiciable provisions.

In 1998, WTO members adopted a Declaration on E-Commerce along with a Work Programme on Electronic Commerce and put in place a Moratorium on Customs Duties on Electronic Transmissions stating that WTO members would “continue their current practice of not imposing customs duties on electronic transmissions”. The Moratorium has been renewed every 2 years at the WTO Ministerial Conference (MC). The last renewal took place in June 2022 at the MC12.

In 2019, 76 WTO members confirmed in a joint statement (i.e. Joint Statement on E-Commerce) their intention to commence these negotiations. As of June 2022, there are 86 WTO members participating in these discussions.

In February 2020, the Assembly of the Heads of State and Government of the African Union decided to include a Protocol on E-Commerce in the AfCFTA. The negotiation of this Protocol (now on digital trade) is under-way.

## Taxation of the digital economy in Africa

Kenya, Nigeria, South Africa, Egypt, Tanzania, Mauritius, Uganda, Cameroon, Ghana and Zimbabwe have either implemented or indicated that they plan to implement unilateral direct or indirect tax approaches in taxing the digital economy. (African Tax Administration Forum, 2020).

### Examples of digital economy taxes in Africa

**Ghana:** With effect from 1 April 2022, the Ghanaian government is requiring all e-commerce and digital platforms without a physical presence in the country to file tax returns and pay monthly taxes just as local businesses.

**Nigeria:** In the 2021, signed into law a legislation requiring non-resident businesses providing digital services to pay a 6% tax on turnover.

**Kenya:** With effect from 1 January 2021, Kenya is levying a 1.5 per cent tax on income accruing through a ‘digital marketplace’, defined as a platform that enables the direct interaction between buyers and sellers of goods and services through electronic means.

**Benin:** a 5 franc/megabyte tax on social media data was reversed in 2018.

**Uganda:** introduced a social media tax in 2018.

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

# Taxing the digital economy

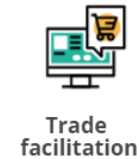
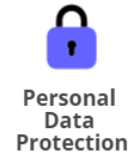
The development of the digital economy has brought many public policy and administrative challenges to governments worldwide. Among these is how an international taxation system that was designed for goods trade and physically present companies can work in a world where value crosses borders at lightning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

In January 2019, OECD/G20 Inclusive Framework (IF) on Base Erosion and Profit Shifting launched a process aimed at addressing some of the fundamental challenges arising from the digitalisation of the economy, including the allocation of taxing rights. Subsequently, the IF has agreed on a two-pillar solution aimed at (1) a fairer distribution of profits and taxing rights among jurisdictions; and (2) introducing a global minimum corporate tax rate of at least 15 per cent to protect the tax bases of respective countries and to curb international corporate tax competition.

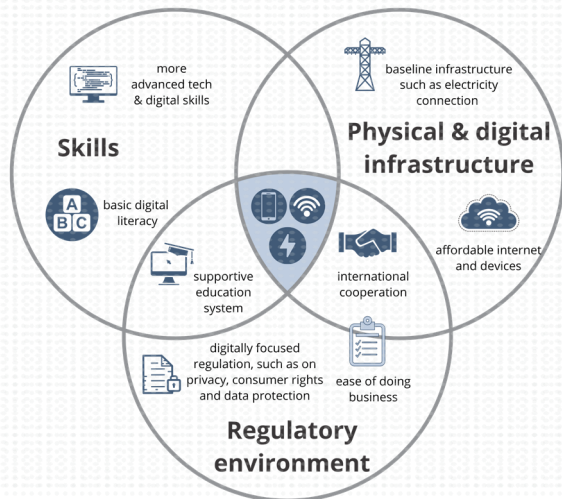
As of June 2022, 141 jurisdictions have joined IF including more than half of all African countries.

## Overview of common digital trade or e-commerce provisions in trade agreements



# Africa's digital economy

Africa's digital economy has the potential to contribute US\$180 billion to the broader economy by 2025, (approx. 5.2% of the continent's GDP), and grow to US\$712 billion (approx. 8.5% of the continent's GDP) by 2050 (IFC & Google, 2020).



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 businesses 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.

## Specific objectives of the Digital Transformation Strategy for Africa (2020-2030)

Build a secured Digital Single Market in Africa by 2030 where free movement of persons, services and capital is ensured and individuals and businesses can seamlessly access and engage in online activities in line

Setting up a digital sovereignty fund in order to close the digital infrastructure gap and achieve an accessible, affordable and secure broadband, across demography, gender, and geography

Setting up a digital sovereignty fund in order to close the digital infrastructure gap and achieve an accessible, affordable and secure broadband, across demography, gender, and geography

Harmonise policies, legislations and regulations and establish and improve digital networks and services

Enable the coherence of existing and future digital policies and strategies at regional and national levels and mobilise effective cooperation between institutions

Promote open standards and interoperability for cross-border trust framework, personal data protection and privacy

Create awareness and counterbalance issues of Cyber Security and Personal Data Protection and Privacy

Build inclusive digital skills and human capacity across the digital sciences, judiciary, and education

Foster the policies that create an enabling environment for productive digital trade and digital payment systems

# Digital Transformation Strategy for Africa (2020-2030)

In February 2020, the Executive Council of the African Union endorsed the Digital Transformation Strategy for Africa 2020-2030 (DTS). The overall objective of the DTS is “to harness digital technologies and innovation to transform African societies and economies to promote Africa's integration, generate inclusive economic growth, stimulate job creation, break the digital divide, and eradicate poverty for the continent's socio-economic development and ensure Africa's ownership of modern tools of digital management.” (DTS, 2020).

The DTS is expected to complement existing strategies and policies at regional and national levels, as well as trigger the development of sectoral components of the strategy on digital industry, digital trade, financial services, digital governance and digital education, health and agriculture. For digital trade, the DTS includes two policy recommendations and actions:

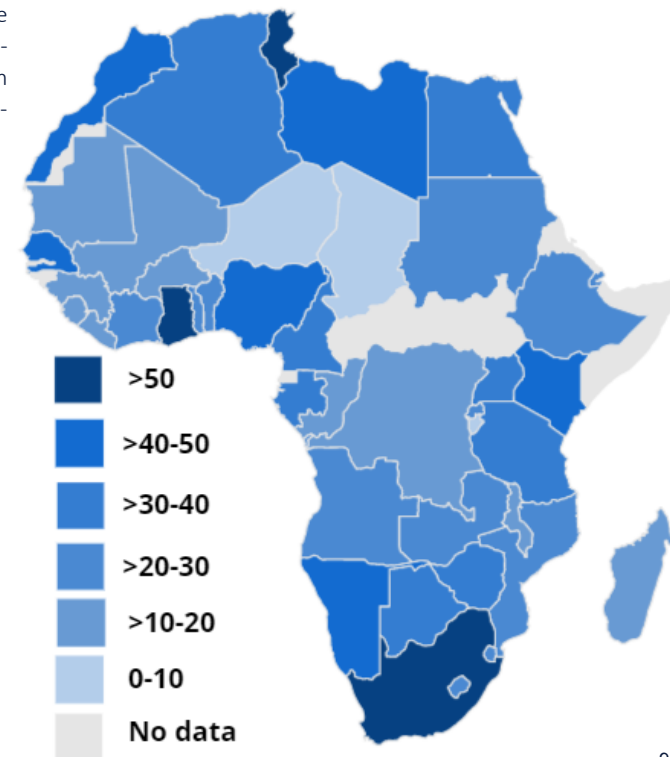
- promote intra-African integration in digital trade to achieve wider participation by enterprises in national, regional and international e-commerce (especially cross-border); and
- create a conducive environment for the development and up-take of digital financial services.

## UNCTAD B2C E-commerce Readiness Index (2020)

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, Africa's e-commerce readiness is mixed — from relatively high in Mauritius, South Africa and Tunisia, and very low in Burundi, Chad and Niger. The table below shows the top 10 highest-ranked African economies with respect to B2C e-commerce openness.

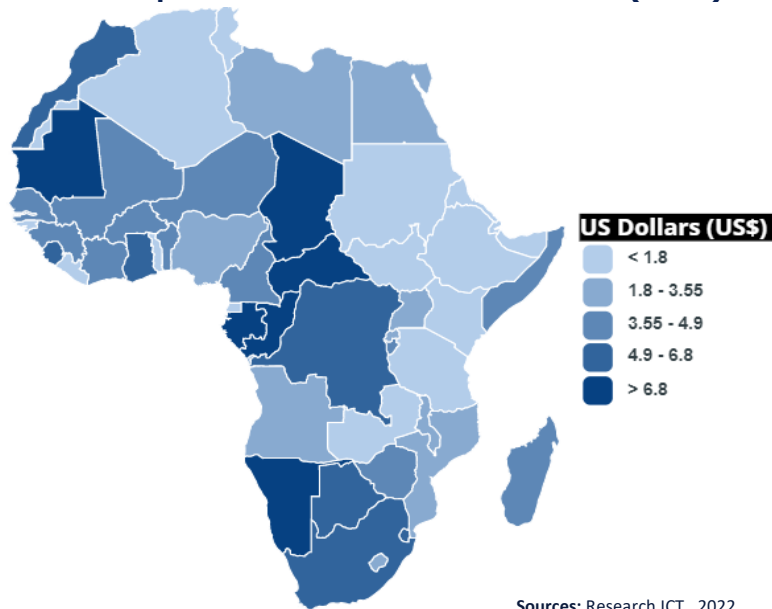
Africa's top 10	
Country	Score
MAURITIUS	76.0
SOUTH AFRICA	56.5
TUNISIA	54.6
ALGERIA	52.2
GHANA	51.9
LIBYA	49.7
KENYA	49.0
NIGERIA	46.2
MOROCCO	44.8
SENEGAL	44.1



# 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.

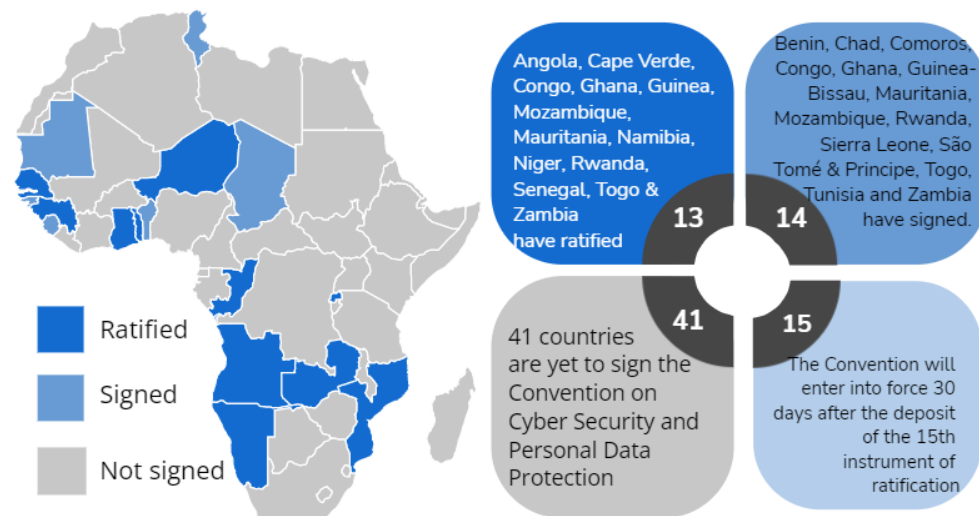
## Cheapest 1GB bundle, mobile data (2021)

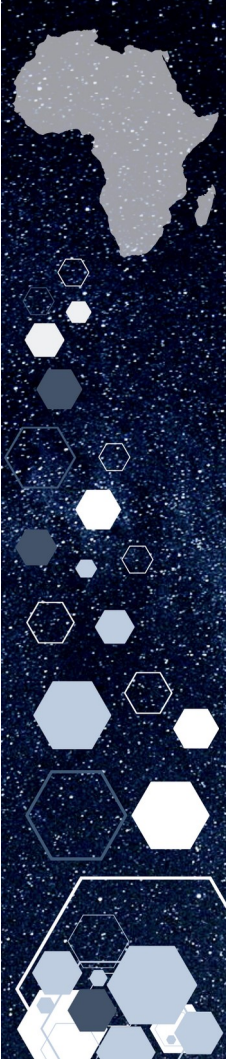


Sources: Research ICT , 2022

# Status of the Convention on Cyber Security and Personal Data Protection

As of June 2022, 14 AU Member States have signed the Convention on Cyber Security and Personal Data Protection, 13 have ratified the Convention. The Convention will enter into force 30 days after the deposit of the 15th instrument of ratification.





## Data protection & cyber-security

Data protection and cyber-security are essential in the digital economy. 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.

In June 2014, African Union (AU) Member States adopted the Convention on Cyber Security and Personal Data Protection to address data protection and cyber-security issues as well as electronic transactions.

The AU Convention on Cyber Security and Personal Data Protection can play a significant role in enhancing consumer trust in e-commerce transactions.

The Convention lays down 6 principles to govern processing personal data: consent and legitimacy; lawfulness and fairness; purpose, relevance and storage; accuracy; transparency; and confidentiality and security.

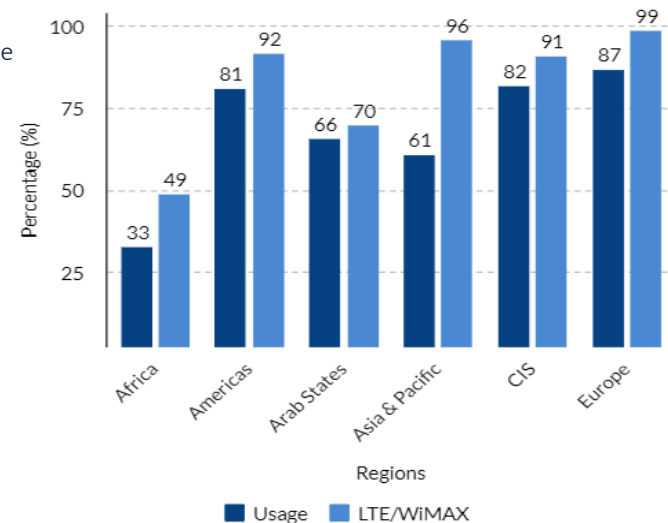
Convention on Cyber Security and Personal Data Protection will interact with the continental digital strategy, which is positioned to

## Africa's internet usage

Secure internet servers are an essential requirement for ICTs services such as offshoring, the cloud, e-commerce and online outsourcing. Despite jumping by 24% between 2019 and 2021, internet use in Africa remains behind other regions including the Americas, Arab States, Asia & Pacific, Commonwealth of Independent States (CIS) and Europe. Even in terms of broadband penetration particularly LTE/WiMAX is still trailing behind these regions

### Share of internet user (per 100 inhabitants), 2021

Drivers of internet usage include coverage, connectivity, affordability, skills and contents



## Common Market for Eastern & Southern Africa

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

In 2018, COMESA adopted a digital free trade area (DFTA). The COMESA DFTA constitutes three pillars namely E-Trade, E-Logistics and E-Regulation.

### COMESA DIGITAL FREE TRADE AREA

The pillars of DTFA are implemented through various instruments such as e-certificate of origin, online trade portal and electronic

#### 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
- Digitising trade finance
- Uses ICT as a tool to improve transporting of goods to custom-

#### E-TRADE

- Support for regional clearing and settlement
- E-commerce platform

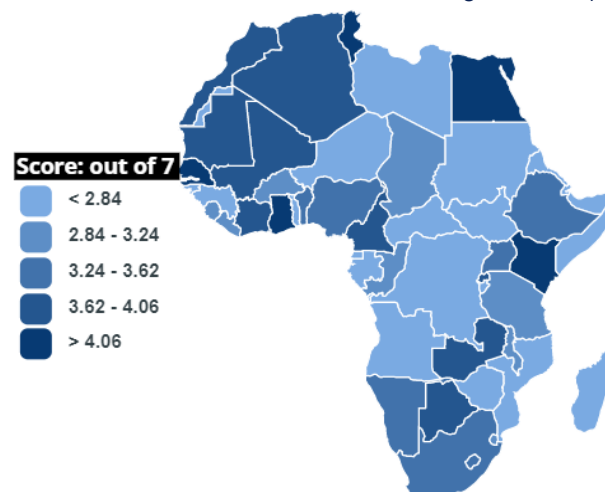
## Youth & the digital economy

The digital economy offers great opportunities and jobs for the youth. "Developing digital skills is critical both for job success and to participate fully in a digital society. Such skills include generic competencies like searching online, communication via email, or instant messaging, as well as the ability to use work-related online platforms and knowledge of digital financial services." (ITU, 2021).

There is still a shortage of digital skills (e.g. computer skills, basic coding, digital reading) in Africa. "In Sub-Saharan Africa, over 200 million jobs will require digital skills by 2030, creating the need for almost 600 million training opportunities." (IFC, 2019).

### Extent to which the active population possess sufficient digital skills, 2020

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

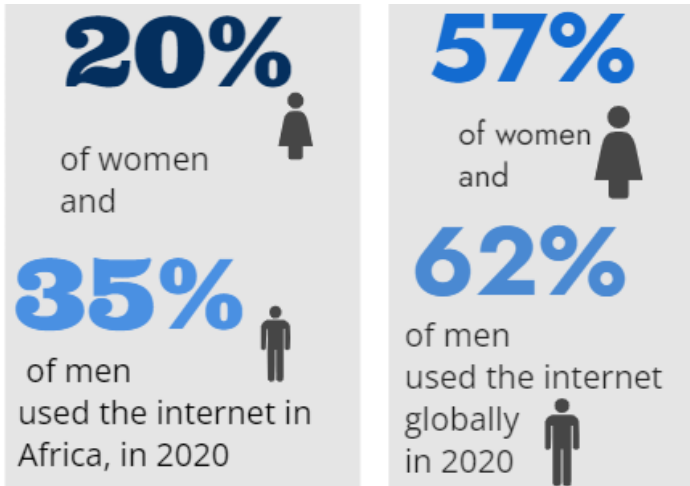


Based on available data, Kenya, Mauritius, Senegal, Seychelles, Tunisia, Egypt, Cape Verde and Ghana are leading with respect to active population possessing digital skills (scoring between 4.7 and 4.1)

Source: WEF Global Competitiveness Index, 2022

## Gender & the digital economy

Africa's gender gap in the digital divide is one of the largest globally.



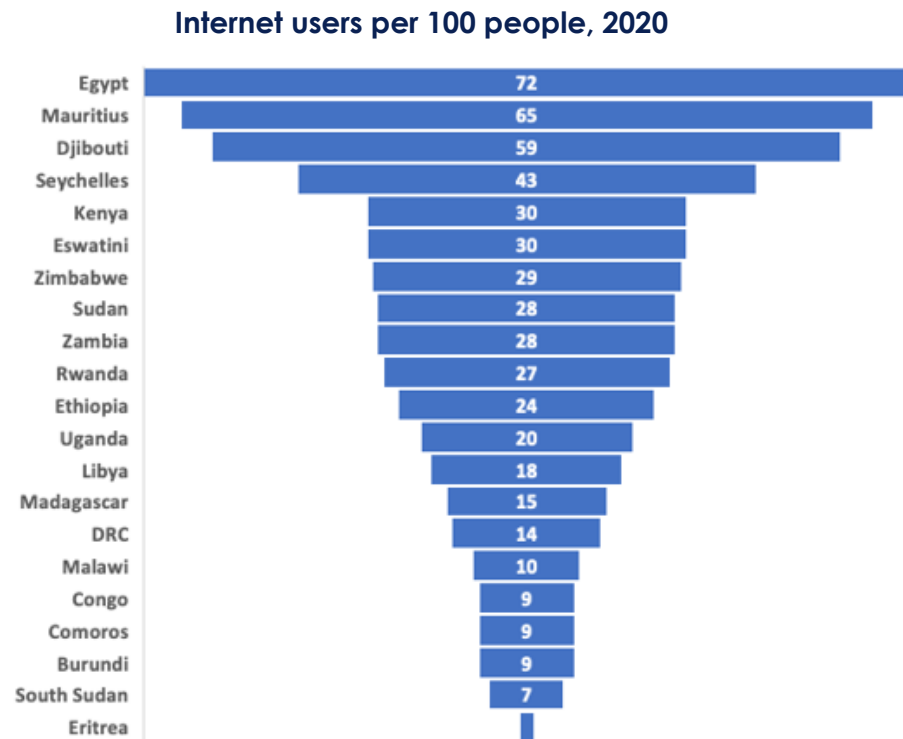
Country	Women	Men
Cape Verde	61%	63%
Ivory Coast	33%	40%
Guinea	15%	29%
Kenya	20%	25%
Tanzania	8%	19%
Zambia	13%	16%

Based on the available limited data, the gender divide is significant, with percentage differences of up to 14 per cent in Guinea. This divide is least pronounced in Cape Verde and Zambia

Source: ITU, 2022

## Internet usage in COMESA

In COMESA, internet usage is relatively high in Egypt, Mauritius and Djibouti, and low in Comoros, Burundi and South Sudan.



Sources: ITU, 2022

# Southern African Development Community

SADC comprises 16 Member States. SADC adopted a Model Law on Electronic Transactions and E-Commerce in 2013. The SADC Model Law on Electronic Transactions and E-Commerce provides a tool that the Member States can use to create a more secure legal environment for electronic transactions and e-commerce.

SADC has E-Commerce Strategy (approved in 2012) aimed at increasing trade between member states through e-commerce. The SADC E-Commerce Strategy has four pillars, accompanied by a Plan of Action.

## SADC E-COMMERCE STRATEGY

The SADC e-commerce strategy has 4 pillars: Enabling E-Commerce, Capacity Building Programme, Strengthening E-Commerce Sub-Regional and National Infrastructure, and Institutional Framework.

### ENABLING E-COMMERCE

- Harmonise legislation
- Improve specific e-commerce payments

### CAPACITY DEVELOPMENT PROGRAMME

- Increase e-commerce platforms
- Develop human capital

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

- Support the deployment of ICT infrastructure and services

### INSTITUTIONAL FRAMEWORK

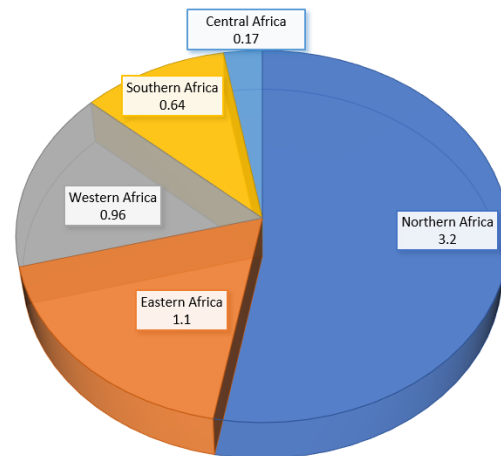
- Institutionalise the framework to implement, evolve and govern the current strategy at the regional level

# ICT Services Exports in Africa

In 2020, approximately US\$6 billion worth of ICT services (comprised of computer and telecommunication services) were exported from Africa, approximately 1% of the world's ICT services exports. Africa's ICT services exports account for 7% of total trade in services.

Between 2019 and 2020, the value of Africa's ICT services exports decreased by 2%. In 2020, ICT services exported from Africa were highest in the Northern Africa region. The export value of ICT services in Northern Africa reached around US\$3.2 billion. In Eastern and Western Africa, ICT services exports amounted to approximately US\$1.1 billion and US\$956 million, respectively.

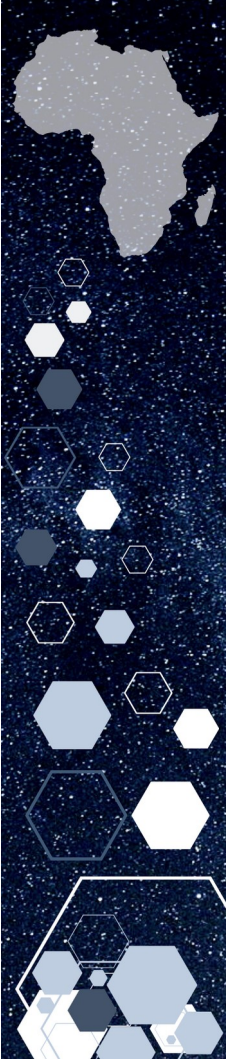
## Value of ICT services exported from Africa in 2020, (US\$ billion)



## Top 5 ICT services exporters in Africa, 2020



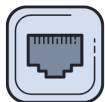
Sources: UNCTAD, 2022



## 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 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.

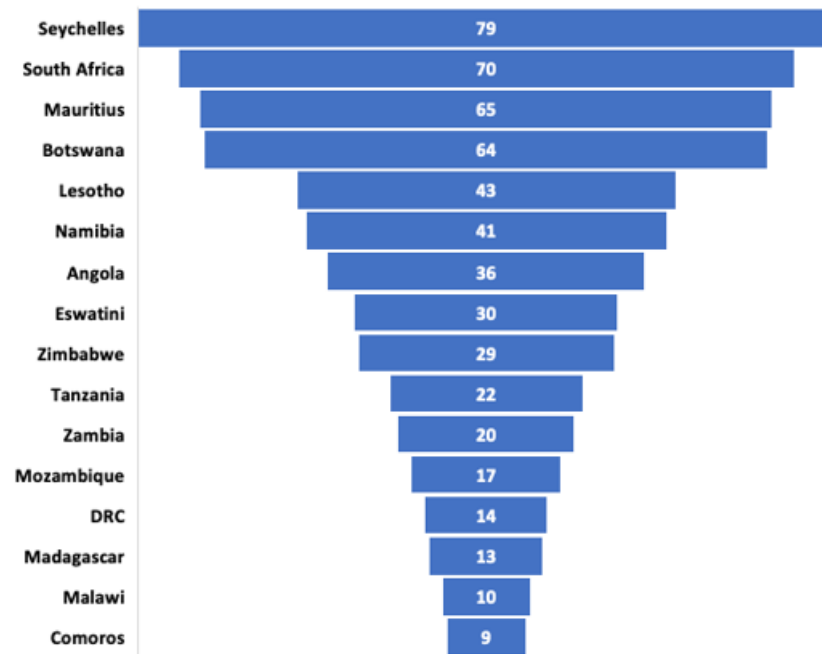
ICTs are also indispensable inputs into global value chains. The 'implicit' trade in ICTs services is as fundamental as the embodiment of basic word and data processing in back office software tools but as sophisticated as the computer-assisted design input into advanced engineering production output. 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.



## Internet usage in SADC

Internet usage in SADC is relatively high in Seychelles, South Africa and Mauritius, and low in Madagascar, Malawi and Comoros.

Internet users per 100 people, 2020



# Economic Community of Western African States

ECOWAS currently has 15 member states.

ECOWAS is in the process of developing a Regional E-Commerce Strategy with technical assistance from UNCTAD. The ECOWAS E-Commerce Strategy is intended to assist the region in its efforts to use technology to accelerate structural change and development, and foster regional integration through economic diversification, job creation and more inclusive trade.

## ECOWAS E-COMMERCE RELATED LAWS

In 2010, ECOWAS enacted key legal instruments on personal data protection and electronic transactions to harmonise Member States' legislation frameworks in these areas.

### ECOWAS Supplementary A/ SA.1/01/10

governs the collection, processing, transmission, storage and use of personal data.

### ECOWAS Supplementary Act A/SA.2/01/10

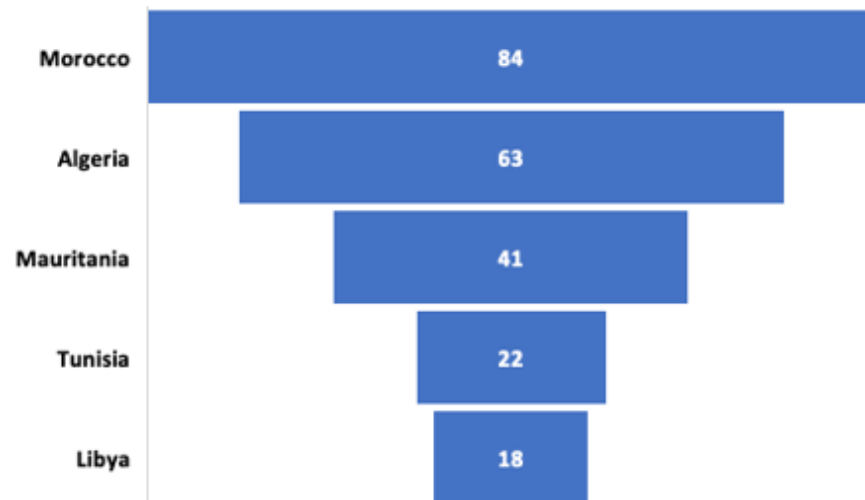
regulates electronic transactions, including online advertising and electronic contracts

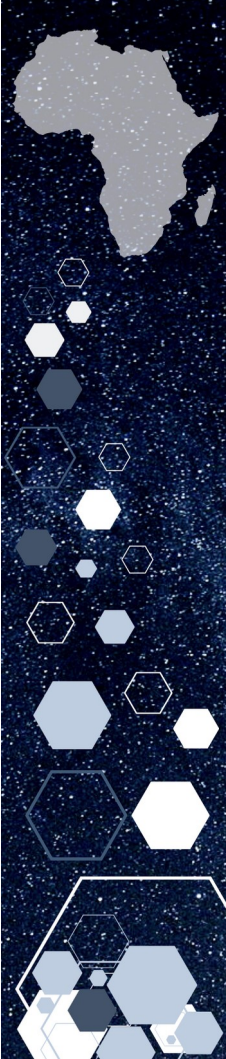
# Arab Maghreb Union

AMU has 5 member states and does not have a regional e-commerce strategy.

In terms of internet usage, Morocco, Algeria and Mauritania are leading. Internet usage in Tunisia and Libya is low.

## Internet users per 100 people, 2020



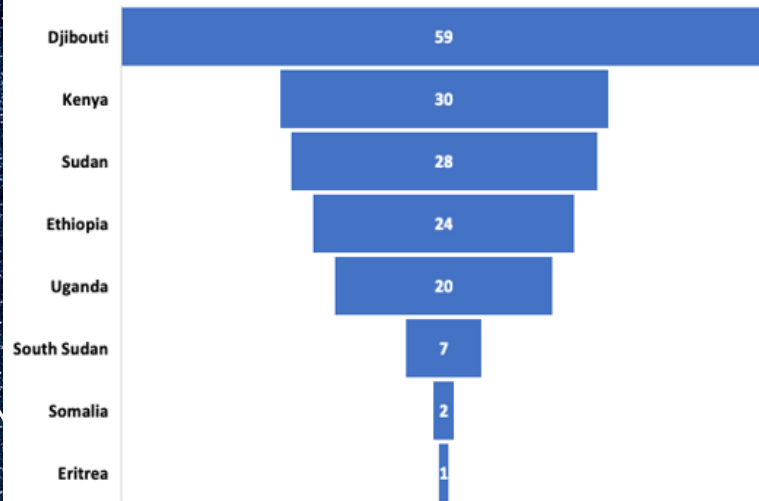


## Intergovernmental Authority on Development

IGAD has 8 member states.

IGAD adopted a Regional Strategy (2021-2025) Strategy which sets the strategic framework for priority interventions over the first 5 years for the implementation of IGAD Vision 2050. IGAD Regional Strategy 2021-2025 identifies ICT terrestrial broadband connectivity and cyber security infrastructure among key facilitators towards deepened regional integration.

Internet users per 100 people, 2020



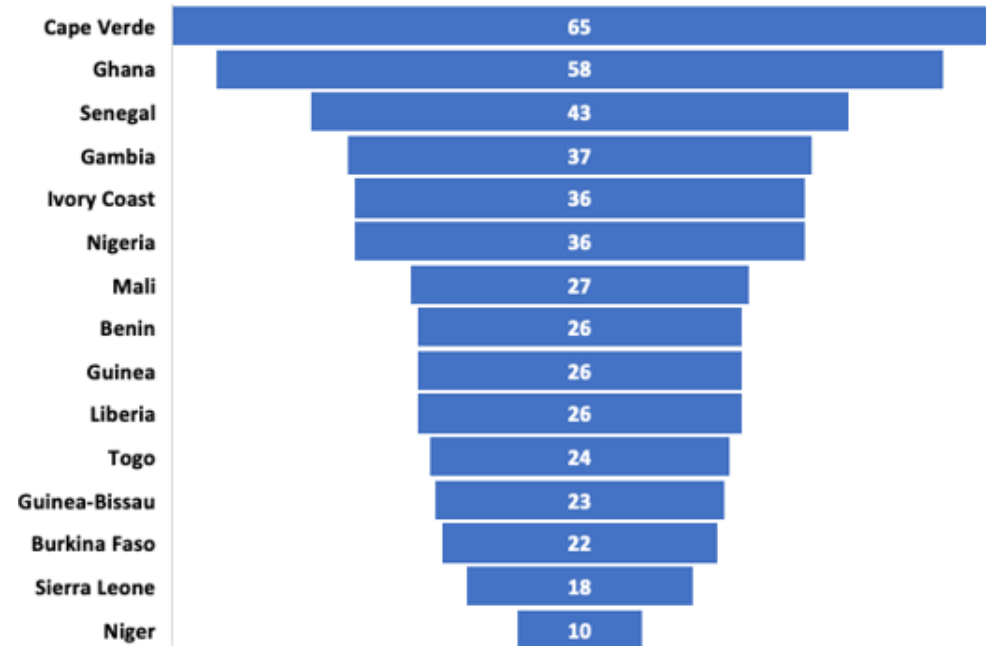
Sources: ITU, 2022

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## Internet usage in ECOWAS

Internet usage in ECOWAS is relatively high in Cape Verde, Ghana and Senegal, while low in Burkina Faso, Sierra Leone and Niger.

Internet users per 100 people, 2020



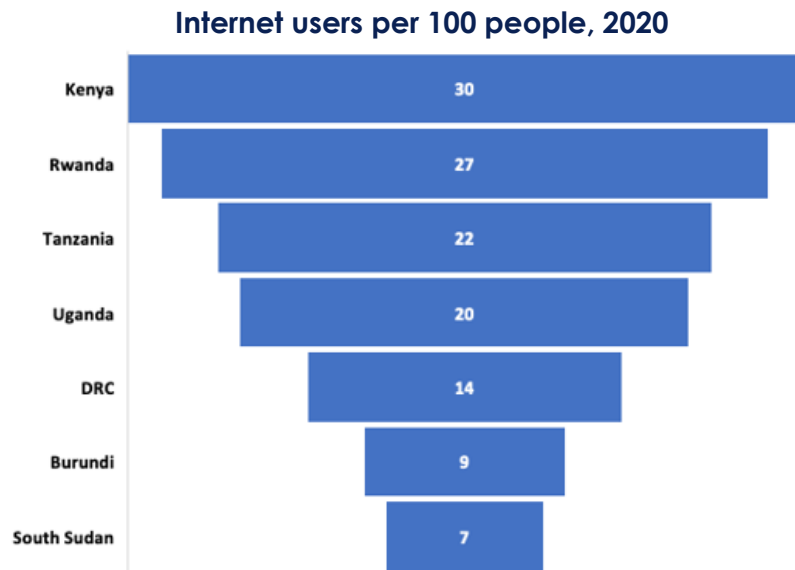
Sources: ITU, 2022

17

## East African Community

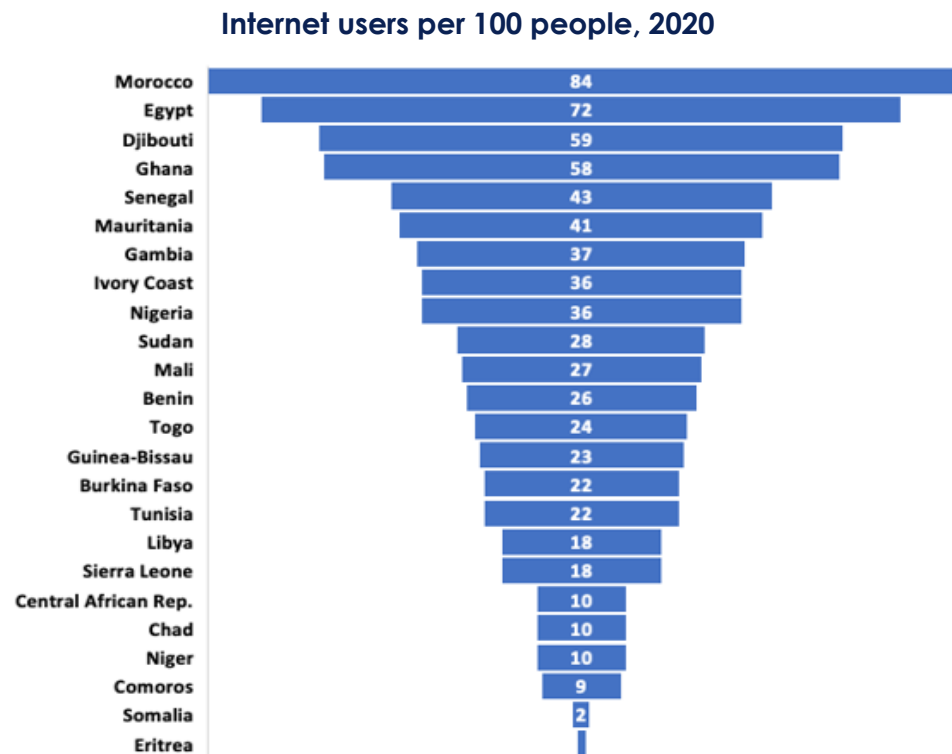
EAC has 7 member states. EAC developed an E-Commerce Strategy in 2021. The EAC Commerce Strategy comprises 6 pillars geared toward improving framework conditions and harmonising laws and regulations that are critical in enabling cross-border e-Commerce in the region. Partner States must implement the strategy and allow e-Commerce to thrive.

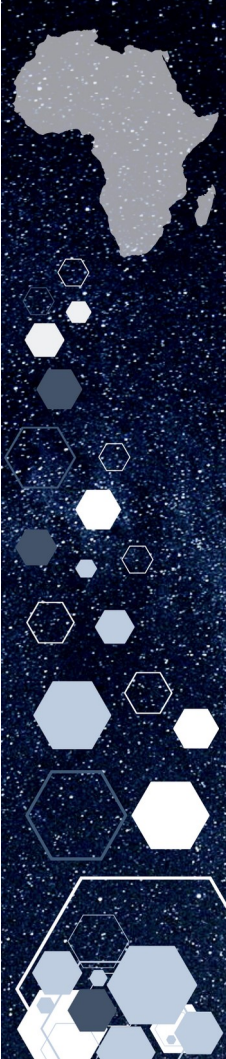
Internet usage in EAC, is relatively high in Kenya, Rwanda and Tanzania.



## Internet usage in CEN-SAD

In CEN-SAD, internet usage is high in Morocco, Egypt and Djibouti but low in Comoros, Somalia and Eritrea.





## Community of Sahel-Saharan States

CEN-SAD has 24 member states. CEN-SAD has no overarching digital economy or e-commerce strategy but some countries with region have strategies. For example, Egypt and Senegal have adopted national Digital or E-Commerce Strategies, in 2016 and 2017, respectively.

In 2018, Benin adopted a digital law to regulate electronic communications, digital archiving, electronic signatures, e-commerce, personal data protection, cybersecurity and the fight against cybercrime.

### EGYPT & SENEGAL NATIONAL E-COMMERCE STRATEGIES

#### EGYPT NATIONAL E-COMMERCE STRATEGY

aims to increase the wealth of the nation and of the Egyptian people by helping to unleash Egypt's productive capacity through e-commerce in the economy

#### DIGITAL SENEGAL 2025 STRATEGY

Pillar 4 of the Strategy recognises e-commerce and digital financial services as two of the priority economic sectors in which the use of digital technologies is to be supported.

## Economic Community of Central African States

ECCAS has 11 member states and does not have a regional e-commerce strategy.

Internet usage within the region is high in Gabon, Cameroon and Angola yet low in Chad, Burundi and Congo.

### Internet users per 100 people, 2020

