

DIGITAL TRADE FOR AFRICA



**Digital Trade for Africa (DTA)
WB–WTO Joint Project**

Kenya

**Digital Trade Review
and Next Steps**

The WTO–World Bank joint work on Digital Trade for Africa (DTA) seeks to support greater engagement in digital trade by African countries. The project seeks to help African countries share fully in the benefits that digital trade brings and improve their development prospects. It builds on a joint World Bank and WTO policy note entitled “Turning Digital Trade into a Catalyst for African Development” (2023), which finds that digital trade offers new opportunities to boost trade-based growth for African countries, especially for SMEs, but requires a supportive ecosystem comprising connectivity infrastructure and a conducive policy and regulatory environment, as well as strengthened international assistance.

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EXECUTIVE SUMMARY

Kenya stands out in the East African Region as the digital trade leader and innovator in digitally delivered services. As one of the pioneers in the liberalization of the telecom sector, Kenya has developed a strong digitally enabled services sector, including major innovations like mobile money, and is consolidating as the regional hub for digital technologies.

Kenya has significantly expanded Internet usage and continues to push for better digital infrastructure. Kenya has steadily grown its average number of Internet users year upon year, enough to align with the average for Africa. This is due in part to the development of digital infrastructure, notably with an increase in international submarine cables, the outstanding growth in mobile network coverage, and lower costs to use the Internet. However, further investment is required to strengthen last mile connectivity.

Despite improvements in Internet coverage, the scope for more inclusive technology adoption remains significant. Technology uptake remains low in rural areas, due to lack of affordability, limited broadband adoption, skills and literacy gaps, and limited access to reliable power. Strengthening digital infrastructure networks, especially in rural areas, supporting a more competitive telecommunications sector, and improving digital literacy and skills are proposed measures to boost the development of the digital economy.

Kenya's exports and imports of digitally delivered services have been on an overall upward trajectory. Growth in exports has been driven mainly by telecommunications and financial services, which in 2024 accounted for nearly 90% of Kenya's total exports of digitally delivered services. Meanwhile, imports remain concentrated in other business services, insurance and pension services, and financial services, which together accounted for nearly 95% of digitally delivered services imports in 2024.

Kenya is engaged in various international and regional trade fora relevant to digital trade. In the WTO, Kenya has ratified the Trade Facilitation Agreement (TFA) and has undertaken GATS commitments in a number of digital trade-enabling services, notably telecommunication services. It has participated alongside various WTO Members in a rule-making initiative that resulted in the Agreement on Electronic Commerce, which aims to foster an enabling environment for digital trade and whose incorporation into the WTO rulebook is currently being pursued. However, Kenya has not taken up the WTO disciplines on "services domestic regulation", nor has it participated in the negotiations that led to the Investment Facilitation for Development Agreement, both of which may help foster digital trade. Additionally, Kenya participates in regional trade agreements, such as COMESA and the AfCFTA.

In general, Kenya exhibits varying levels of readiness in different aspects of digital trade regulation. The country shows strong regulatory frameworks in areas such as data protection but needs significant improvements in others, particularly in cross-border data transfers, online consumer protection, e-signatures, and intermediary liability. In all regulatory areas noted, Kenya's laws contain a foundation that can be strengthened.

Amending existing laws and adopting capacity building initiatives would serve to continue Kenya's efforts in maximizing digital trade. Current regulations lack measures that limit data localization requirements, recognize simple electronic signatures, create online consumer remedies for fraud and imperfect goods, ensure that consumer protection regulations extend beyond Kenya's borders, establish protections against spam, and extend intermediary liability to all online hosting entities. Critically, any new regulations need the support of awareness campaigns and skills-based trainings.

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1 INTRODUCTION

Digital trade¹ has become a cornerstone of global economic activity. Digital technologies reduce the cost of engaging in international trade, allow direct connections between producers and consumers around the world, help diffuse ideas and technologies, and facilitate the coordination of global value chains. In Africa, the potential for digital trade to spur economic growth and development is particularly significant. While Africa represents a small share of global trade in digitally delivered services (less than 1%) exports of digitally delivered services are the fastest growing segment of African trade, showing fast and continued growth in the last 15 years.² The World Trade Organisation (WTO) estimates show that global exports of digitally delivered services have more than quadrupled in value since 2005, and they have registered an 8.3% yearly growth rate between 2005 and 2024, outpacing exports of goods (4.5%) and other services exports (4.9%).

Nevertheless, challenges for digital trade abound, ranging from connectivity investment to policies and regulations. Although connectivity infrastructure in Africa has advanced significantly over the last decade, many gaps remain, particularly in last-mile connectivity. Estimates obtained using the WTO Trade Cost Index show that improving digital connectivity would reduce the costs of trading both goods and services in Africa, especially for business and professional services.³ Moreover, connectivity is only one (important) piece in a large and complex puzzle, with other challenges to be addressed including lack of affordability, digital skills, and competition.

Digital trade demands a supportive ecosystem, starting with a solid digital connectivity infrastructure. It is critically important that advances in connectivity infrastructure go hand in hand with policy and regulatory reforms to ensure that digital communications are affordable, the population has the necessary digital and entrepreneurial skills, and businesses can leverage those opportunities. Trade policy is an important component of this ecosystem, as it fosters policy predictability and promotes access to global digital markets while advancing broader public policy goals.

In 2023, Kenya adopted a national e-commerce policy with support from the United Nations Conference on Trade and Development (UNCTAD). The Government has requested support for operationalising the policy under the World Bank's Kenya Digital Economy Acceleration Program (KDEAP) and has also volunteered as a pilot country in the World Bank–WTO Digital Trade for Africa (DTA) project. The World Bank is also supporting a study of cross-border data flows, under KDEAP, which should help to accelerate participation in e-commerce.

Kenya stands out as an innovator in digitally delivered services and the trade leader in the East African Region for these services. As one of the pioneers in the liberalization of the telecom sector, Kenya has developed a strong offer of digitally enabled services, including major innovations like mobile money services, and is consolidating as the regional hub for digital technologies. Led by financial and telecom services, Kenyan firms are quickly expanding across the region.

This report assesses the policy frameworks relevant for digital trade in Kenya from two perspectives. First, it examines general policy frameworks that, while not directly targeting digital trade, are key facilitators of this trade. As a point of reference, the analysis looks into enabling services trade regimes, tariffs on information and communication technology (ICT) goods and facilitation of border processes, amongst others. Second, it reviews regulatory domains specifically related to key aspects of digital trade. It is based on existing information and data sources and complemented by the World Bank's gap analysis.

¹ Digital trade is defined in this report as all trade that is digitally ordered and/or digitally delivered, as per the IMF/OECD/UNCTAD/WTO (2023), *Handbook on Measuring Digital Trade*. The terms digital trade and electronic commerce are used interchangeably. See also Box 1.

² WBG/WTO (2023a).

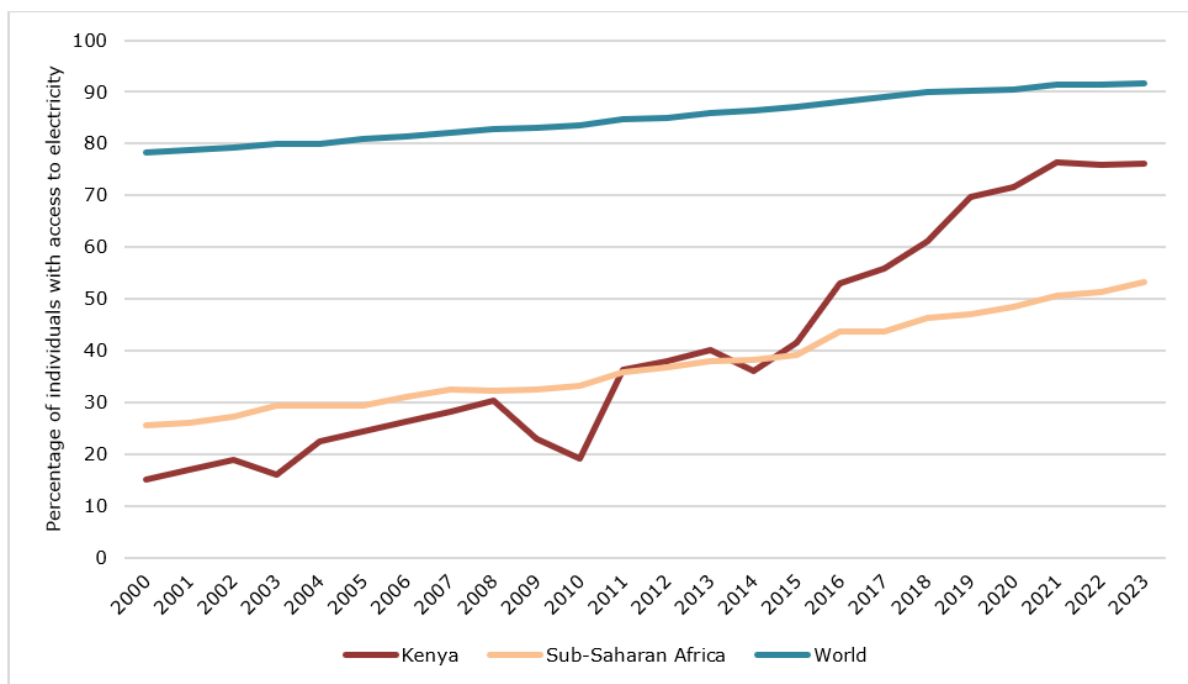
³ Ibid.

2 BACKGROUND

2.1 Digital connectivity foundations

Access to electricity in Kenya has improved significantly over time. After lagging behind its continental peers until 2010, the country has made remarkable strides since and now considerably outperforms them. Nevertheless, some room for improvement remains, as Kenya still trails the global average (see Figure 1). While access to the Internet is essential for digital trade, so too is access to electricity. The devices, servers, and communication infrastructure necessary to connect Kenyans to the Internet all require a reliable electricity supply. Without it, these components cannot function, limiting access to the Internet and, in turn, to digital trade.

Figure 1. Electricity access in Kenya (2000-2023)

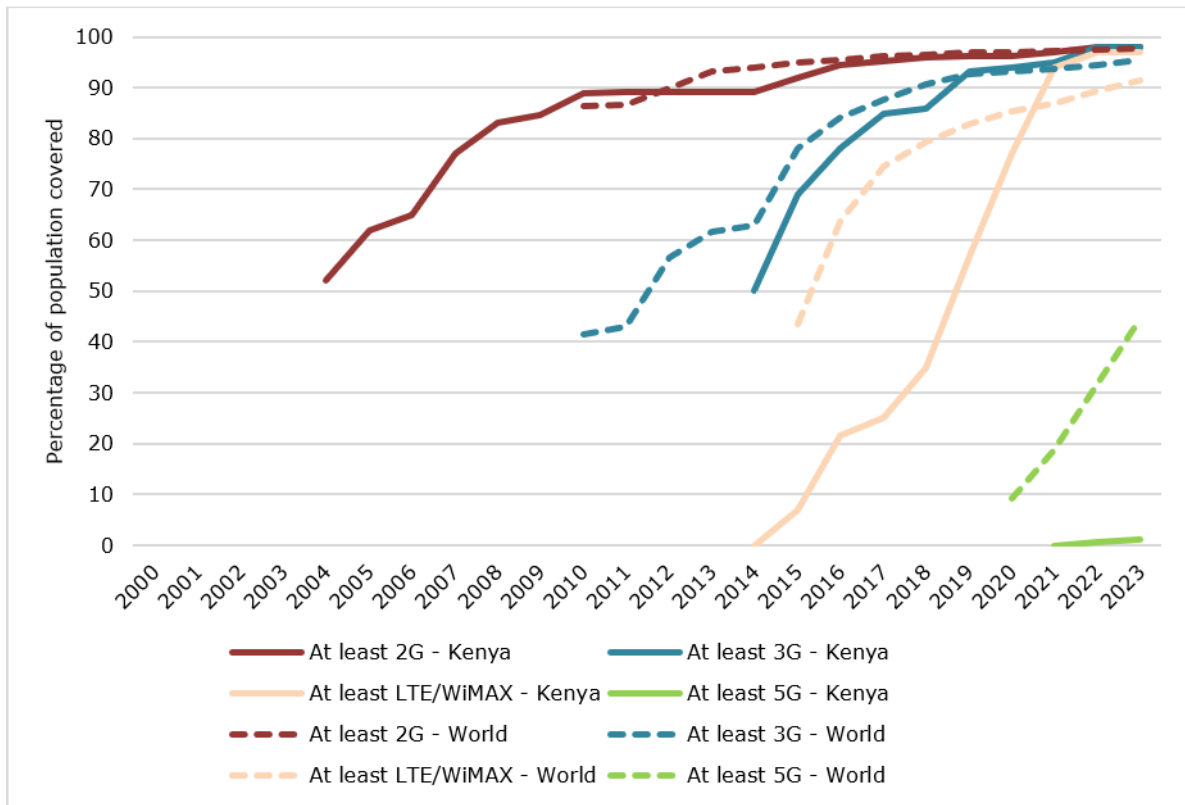


Source: World Bank Development Indicators.

Access to the Internet is a prerequisite for engaging in digital trade (see Box 1). Internet availability, or “coverage” has improved with the spread of broadband mobile networks (3G, 4G and higher) and many countries in the region, including Kenya, are now also licensing low-earth-orbit (LEO) satellite networks. But fixed-line connectivity, though copper or fibre, remains limited. Beyond availability, the quality of the Internet connection, which includes the speed, latency, and reliability of the connection, is also crucial. High-speed Internet is necessary to engage in activities such as real-time customer service and accessing cloud-based applications, all of which have become increasingly essential for digital trade operations to thrive. Finally, Internet access must be affordable for its effective utilization. High costs can be a significant barrier, particularly for micro, small, and medium-sized enterprises (MSMEs).

Mobile network coverage continues to grow in Kenya. As seen from ITU data (see Figure 2), Kenya made remarkable improvements in mobile network coverage over the last 20 years. In 2023, Kenya achieved near-universal coverage in 2G, 3G, and LTE/WiMAX technologies, even surpassing the global average for the latter. Fifth generation mobile services (5G) have also been launched, but coverage is currently limited to major towns. It should be noted, however, that 5G technology only became generally available shortly before 2022, and that investments in 5G infrastructure have been announced in 2023 and 2024. When more recent figures become available, it would be reasonable to expect higher shares of 5G penetration.

Figure 2: Population coverage, by mobile network technology (2000-2023)



Source: Compiled with data from ITU DataHub: <https://datahub.itu.int/data>.

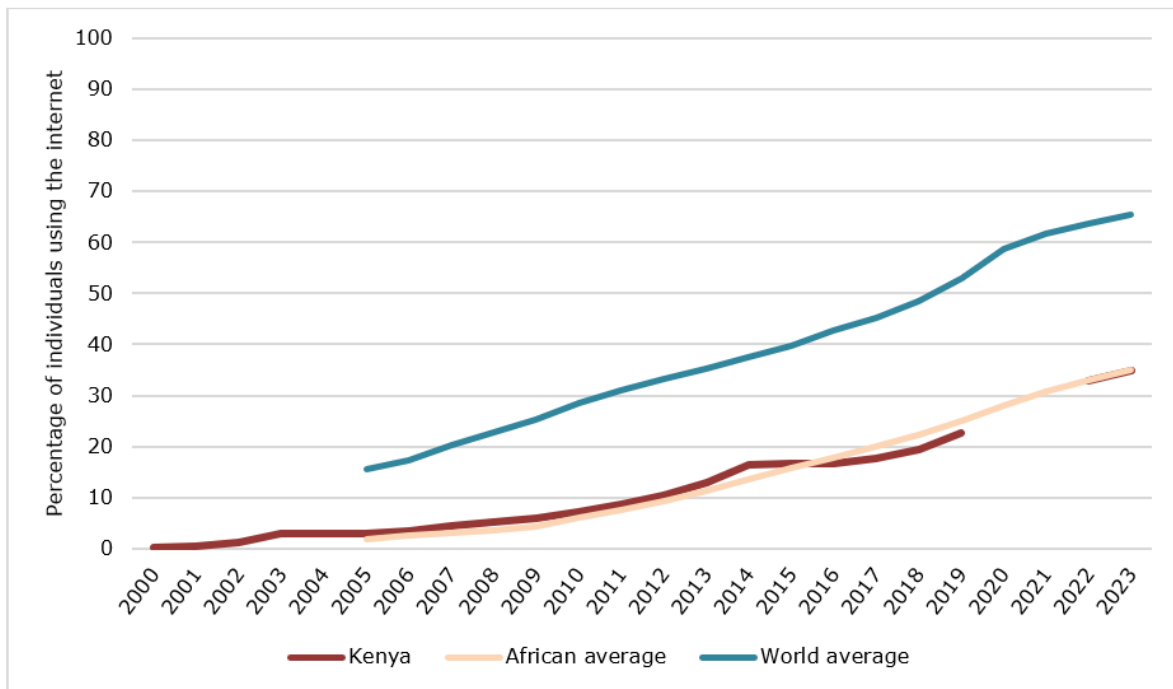
Internet usage has increased significantly in Kenya. According to data from the International Telecommunication Union (ITU)⁴, around 7.2% of the Kenyan population were using the Internet in 2010 (see Figure 3). By 2019, this figure had increased to 22.7%, a considerable improvement; that year, around 55.2% of Kenyans used mobile cellular devices⁵, with the total number of active mobile broadband subscriptions hovering around 22 million.⁶ The rate of improvement continued at a steady pace, in line with global trends, and in 2023, 35% of the Kenyan population was using the Internet, compared to the global average of 65.4%. While Kenya still falls significantly short of the global average, it is worth noting that the country's performance has been largely in line with that of the rest of Africa.

⁴ Kenya, ITU Datahub, <https://datahub.itu.int/data/?c=701&i=11624&v=chart&e=KEN>.

⁵ *Ibid*, <https://datahub.itu.int/data/?c=701&i=11624&v=chart&e=KEN>

⁶ Fourth Quarter Sector Statistics Report for the Financial Year 2018/2019, Communications Authority of Kenya, <https://www.ca.go.ke/sites/default/files/2023-09/Sector%20Statistics%20Report%20Q4%202018-2019.pdf>.

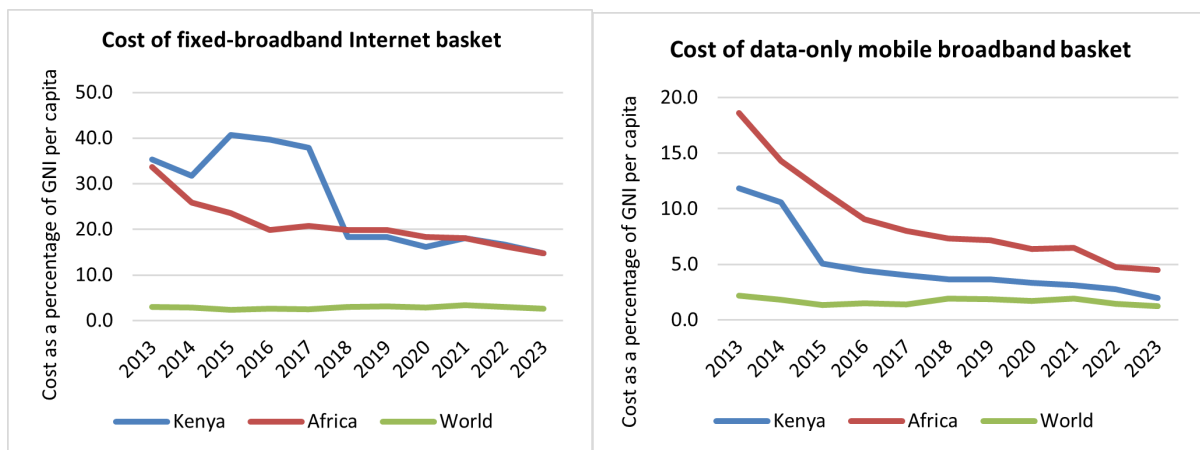
Figure 3. Internet usage in Kenya (2000-2023)



Source: Compiled with data from ITU DataHub.

Internet affordability has improved appreciably over the last few years but still has some way to go to align with global benchmarks. The costs associated with connecting to the Internet in Kenya have declined significantly in recent years (see Figure 4). This is corroborated by ITU data, which show the decrease in costs over time of fixed-broadband and data only mobile-broadband baskets. The cost of an entry-level fixed-broadband basket stood at 35.3% of Gross National Income (GNI) per capita in 2013 in Kenya, compared to a global average of approximately 3%; by 2023, the cost in Kenya had progressively fallen to 14.8%.⁷ Meanwhile, an entry-level data-only mobile broadband basket cost Kenyans 11.8% of GNI per capita in 2013 (compared to a global average of 2.2%), and it progressively fell to below 2% in 2023.⁸ Notably, Kenya continues to outperform the rest of Africa in lowering the cost of its data-only mobile broadband basket.

Figure 4. Internet access cost trends in Kenya (2013-2023)



Note: For fixed-line basket, up to 2017 it is based on a calculation of 1 GB per month and after 2017 5 GB. For mobile data basket, up to 2017, it is based on a calculation of 1 GB per month, from 2018-20, 1.5 GB and after 2020, 2 GB per month.

Source: Compiled with data from ITU DataHub.

⁷ Kenya, ITU Datahub, <https://datahub.itu.int/data/?c=701&i=34616&v=chart&e=KEN>.

⁸ Ibid, <https://datahub.itu.int/data/?c=701&i=34617&v=chart&e=KEN>.

Despite improvements in connectivity, the scope for technology adoption remains significant, particularly in rural areas. The country has significantly improved Internet coverage and mobile broadband, as well as access to the Internet through up to eight international cables.⁹ However, adoption is still relatively low, especially in rural areas, due to low affordability (especially for handsets), limited broadband, skills and literacy gaps, and limited access to reliable power. The gender divide on cell phone use is non-existent, with both men's and women's usage rates holding at 55%, but there exists a more significant divide between urban and rural areas.¹⁰ Whereas 71% of the urban population operates cell phones for personal use, the figure drops to 48% in the case of the rural population. Strengthening digital infrastructure networks (especially in rural areas) and supporting a more competitive telecommunications sector are key measures to boost the development of the digital economy.¹¹

Kenya's Internet infrastructure requires more coverage to solve the low rates of last mile connectivity. Last mile connectivity refers to the final piece of digital connection that links the network infrastructure to a premises at the users' endpoint, for example the connection between the fibre optic network running along a highway to the home sitting along the route. In its national broadband strategy 2018-2023, Kenya found that its citizens often needed to walk or commute 2 kilometres or more to acquire a cell phone signal. Although Kenya continues to build up its fibre optic networks, it has not yet raised the rate on last mile connectivity substantially. However, plans are in place between multiple organizations and the Kenyan government to change this fact. The World Bank's Kenya Digital Economy Acceleration Project pledged USD 390 million in its initial phase work with the Kenyan government and other organizations to extend the fibre-optic cables to a national target of 100,000 km before 2032.¹²

Even when access to the Internet is available, adequate, and affordable, a lack of digital literacy and necessary skills can still impede the ability to participate in digital trade. While the digital economy in Kenya is growing rapidly, significant challenges relating to digital literacy and skills remain. Digital skills are unevenly distributed across the population, with urban areas having better access to training and resources compared to rural areas.¹³ Using limited quantitative data, a World Bank Project Appraisal estimated the Kenyan digital literacy gap between urban and rural areas to be at around 17%.¹⁴ This uneven distribution of digital skills hinders Kenya's ability to fully capitalize on the opportunities presented by the digital economy. When considering that 78% of the Kenyan population is literate, meaning approximately 22% could gain more literacy skills, the data suggests a good opportunity to increase digital literacy skills with further training.¹⁵

2.2 Participation in digital trade

The measurement of digital trade is challenging. Measuring the exact participation of any economy in digital trade is complicated by the lack of internally comparable statistics for digitally ordered trade (see Box 1). However, the WTO provides estimates for digitally delivered services trade¹⁶, which allow for an assessment of Kenyan participation in this segment of digital trade.

⁹ Submarine Cable Map, Telegeography, <https://www.submarinecablemap.com/>.

¹⁰ *Ibid.*, <https://www.submarinecablemap.com/>

¹¹ World Bank (2022).

¹² Kenya Digital Economy Acceleration Project, pg. 3. See <https://documents1.worldbank.org/curated/en/099082323151540728/pdf/P170941018efda0a09bc409f7e56a1b6fa.pdf>

¹³ WBG (2021).

¹⁴ Kenya Digital Economy Acceleration Project, pg. 17.

¹⁵ *Ibid.*

¹⁶ Digitally delivered services include other business services, computer services, financial services, charges for the use of intellectual property not included elsewhere, insurance and pension services, telecommunications services, personal, cultural and recreational services, and information services.

Box 1. Digital trade and electronic commerce – Fundamental concepts and statistical definitions

Over the years, different concepts and definitions relating to e-commerce and digital trade have been developed and used in international fora. The IMF/OECD/UNCTAD/WTO (2023) *Handbook on Measuring Digital Trade* clarifies the linkages between these concepts by providing a statistical definition of digital trade. It defines digital trade as “all international trade that is digitally ordered and/or digitally delivered.”

Digitally ordered trade covers transactions in both goods and services conducted over computer networks by methods “specifically designed for the purpose of receiving or placing orders.” These would include ordering a pair of shoes from abroad through a retailer’s website or booking a hotel room in another country through a digital intermediation platform. Digitally delivered trade, on the other hand, is defined in the Handbook as covering only services trade, which may take place via email, voice and video calls, apps and intermediation platforms. Examples range from computer services to medical transcriptions to banking services to d remote learning platforms.

Official data for digitally ordered trade are sparse and not comparable across economies. Statistics on online sales do not typically distinguish between domestic and international trade. However, WTO estimates on exports of digitally delivered services provide a measure of digitally delivered trade (WTO 2023) and a picture, albeit partial, of digital trade.

The definition of digital trade in the Handbook is compatible with the WTO definition of electronic commerce agreed under the Work Programme on Electronic Commerce, which refers to “the production, distribution, marketing, sale or delivery of goods and services by electronic means”.

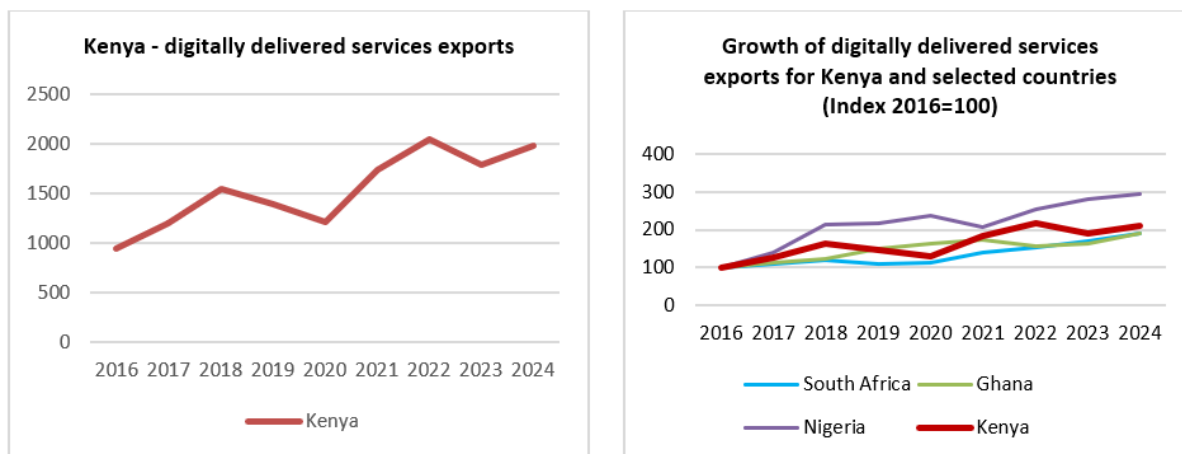
Source: Adapted from box B.1. of IMF/OECD/UNCTAD/World Bank/WTO (2023).

While Kenya’s participation in exports of digitally delivered services has fluctuated over the years, it has been on an upward trajectory, growing by approximately 110% in the period 2016-2024.¹⁷ Kenya's digital exports of services have become a strong pull factor for the domestic economy, placing the country amongst the top five exporters of digitally delivered services in Sub-Saharan Africa in 2024. Regionally, the country's export growth also compares quite favourably to that of other large African economies (see Figure 5a). Yet, a broader comparative analysis may suggest that an untapped potential remains for cross-border services trade. Kenya’s roughly 30% share of digitally delivered services in total services exports remains far from the 60% in South Africa, and still below the 50% global average for developing countries (about 40% pre-pandemic).¹⁸ The composition of Kenyan digitally delivered service exports reveals that the majority of the growth since 2016 has been driven by exports of telecommunications and financial services, which in 2024 accounted for nearly 90% of Kenya's total exports of digitally delivered services (see Figures 5b and 5c).

¹⁷ Digitally delivered services include other business services, computer services, financial services, charges for the use of intellectual property not included elsewhere, insurance and pension services, telecommunications services, personal, cultural and recreational services, and information services.

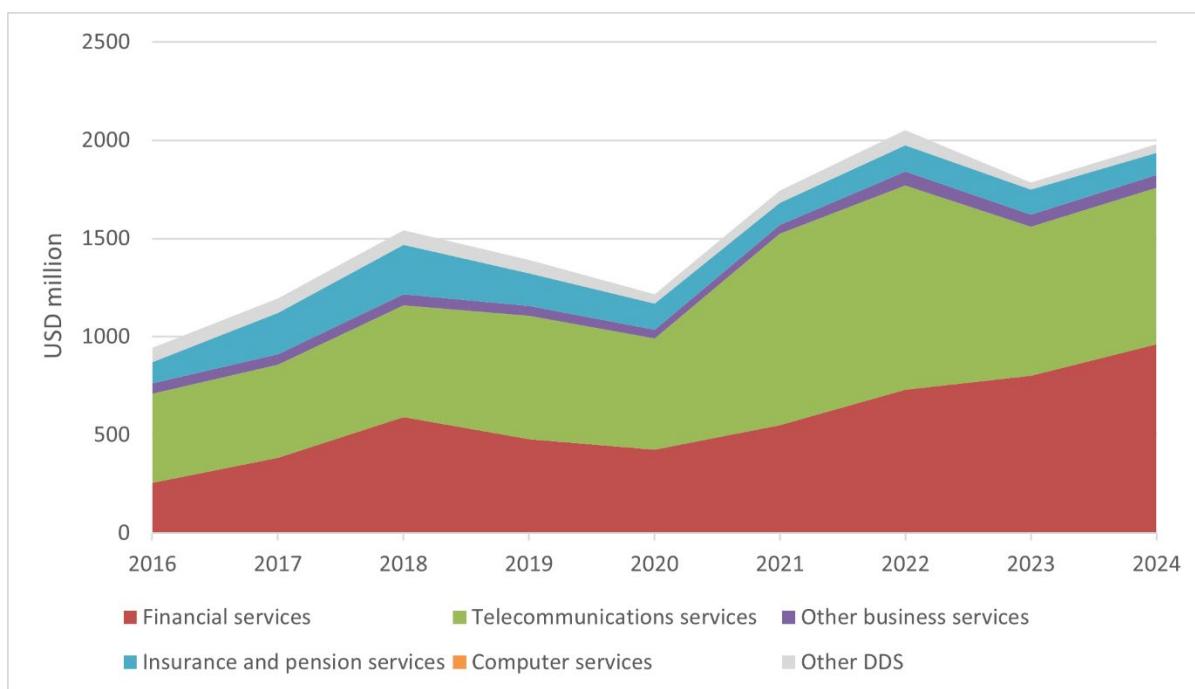
¹⁸ World Bank 2023.

Figure 5a. Kenya's digitally delivered services exports in a comparative perspective, 2016-2024



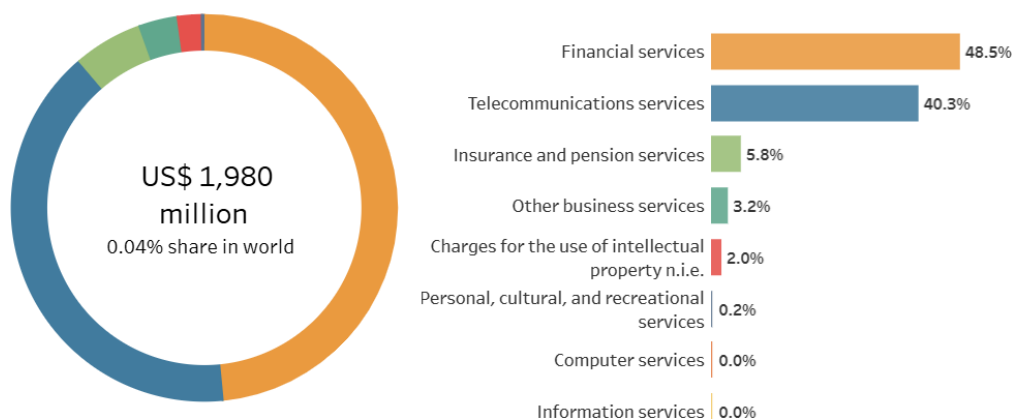
Source: [WTO | Statistics - Global Services Trade Data Hub](https://www.wto.org/trade/press/2024/kenya-digital-services-exports.htm)

Figure 5b. Breakdown of Kenya's digitally delivered services exports, 2016-2024



Source: [WTO | Statistics - Global Services Trade Data Hub](https://www.wto.org/trade/press/2024/kenya-digital-services-exports.htm)

Figure 5c. Structure of Kenya's digitally delivered services exports, 2024

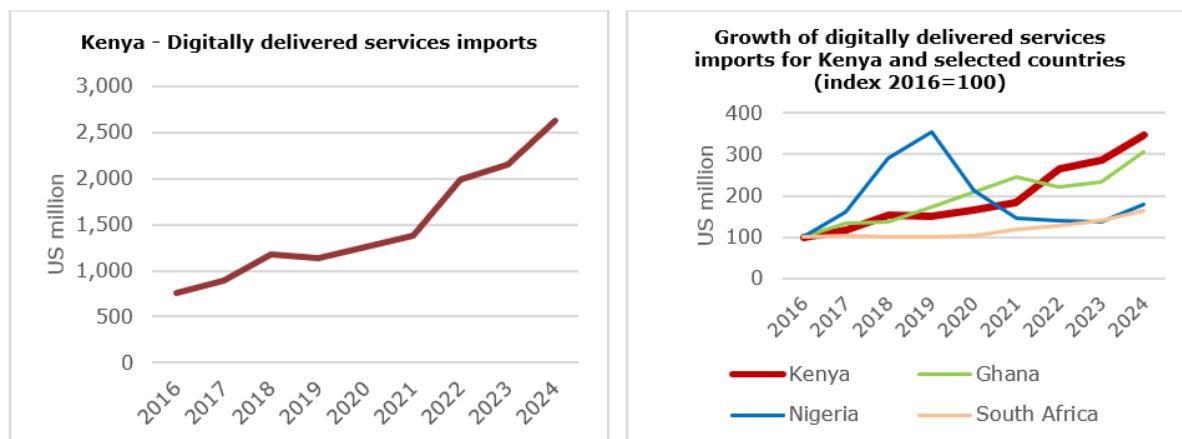


Source: [WTO | Statistics - Global Services Trade Data Hub](https://www.wto.org/trade_data/global_services_trade_data_hub/)

Many digitally delivered services are key inputs for overall economic activity. Importing these services provides an avenue for domestic firms to access greater choice, higher-quality and lower-priced inputs, thus strengthening their competitiveness and enhancing their overall digital trade performance.

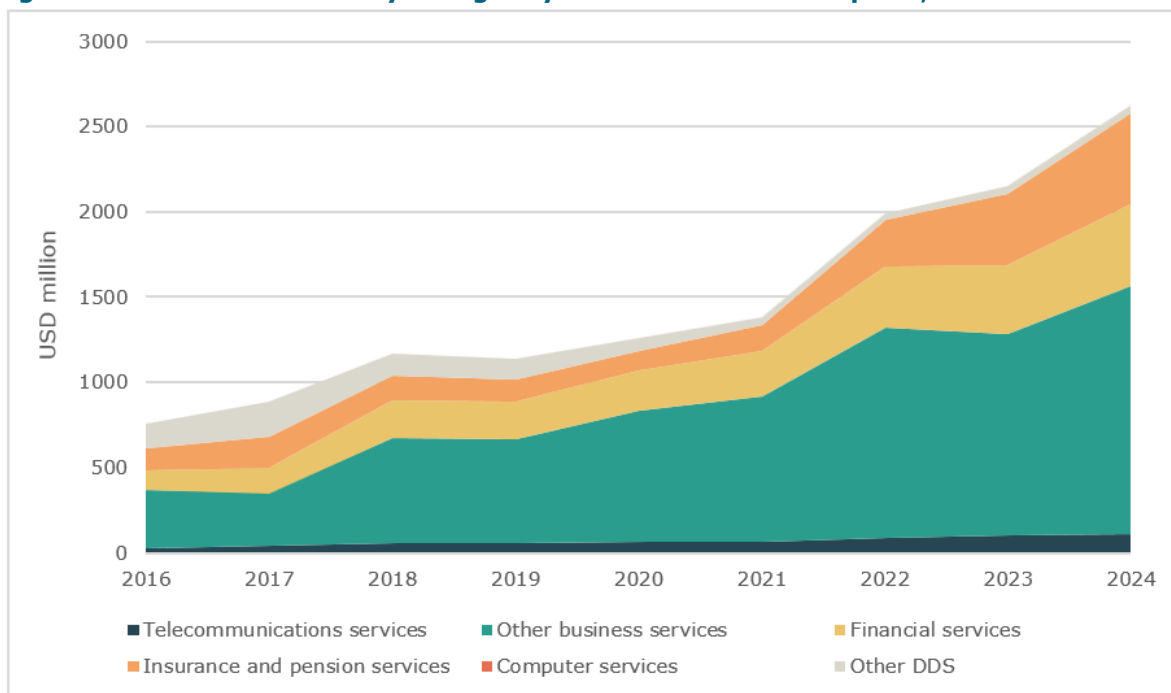
Kenya has witnessed a stable upward trend of DDS imports and, in 2024, ranks among the top ten importers in the continent. The country's imports of digitally delivered services have more than tripled since 2016 (see Figure 6a). Imports were largely driven by other business services, insurance and pension services, and financial services, which together accounted for nearly 95% of digitally delivered services imports in 2024 (see Figures 6b and 6c).

Figure 6a. Kenya's digitally delivered services imports from a comparative perspective, 2016-2024



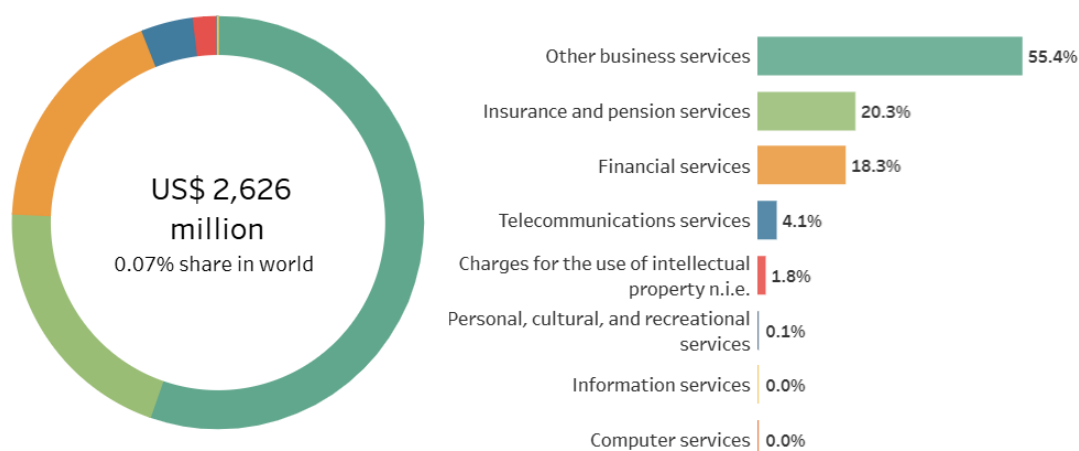
Source: [WTO | Statistics - Global Services Trade Data Hub](https://www.wto.org/trade_data/global_services_trade_data_hub/)

Figure 6b. Breakdown of Kenya's digitally delivered services imports, 2018-2024



Source: [WTO | Statistics - Global Services Trade Data Hub](https://www.wto.org/Statistics/Global_Services_Trade_Data_Hub)

Figure 6c. Structure of Kenya's digitally delivered services imports, 2024



Source: [WTO | Statistics - Global Services Trade Data Hub](https://www.wto.org/Statistics/Global_Services_Trade_Data_Hub)

3 GENERAL POLICY FRAMEWORK RELEVANT FOR DIGITAL TRADE

3.1 Trade agreements

Trade agreements foster predictability by providing an opportunity to anchor enabling policies and guarantee market opening for digital trade. This section presents Kenyan participation in trade agreements and negotiations, both at the WTO and in regional contexts, in terms of the main obligations and commitments of relevance to digital trade.

3.1.1 Kenya's participation in relevant WTO agreements and negotiations

Existing WTO rules and commitments apply to digital trade and additional ones are being developed by groups of WTO Members. In fact, WTO agreements do not distinguish between the different technological means through which goods or services may be traded. Several of Kenya's commitments at the WTO, as well as its engagement in relevant discussions, are therefore significant factors in shaping its digital trade ecosystem.

Kenya has ratified the WTO's Trade Facilitation Agreement (TFA), which expedites the movement, release and clearance of goods across borders. This faster border passage facilitates digitally ordered trade in goods, which involves goods that are marketed, purchased and/or paid for online but then delivered across borders physically. By simplifying and harmonizing international trade procedures, the TFA reduces red tape and improves the speed and efficiency of customs processes, to the specific benefit of digital trade activities that rely on quick delivery.¹⁹

Kenya has chosen not to eliminate tariffs on ICT goods that underpin the physical infrastructure of digital trade. The WTO's Information Technology Agreement (ITA)²⁰ has abolished tariffs on a wide range of goods, including computers, telecommunications equipment and semiconductors, that are critical components of the physical infrastructure which make digital trade possible. By reducing the cost of ICT goods, the ITA has the capacity to promote greater accessibility and adoption of technology worldwide. Not only is Kenya not a party to the ITA, but it has also not bound the tariffs on key ITA products like computers and smartphones in its General Agreement on Tariffs and Trade (GATT) schedules.

Services are a critical backbone of digital trade. Telecommunications, computer services, postal and courier services, distribution, financial services, transport and logistics are some of the key enabling sectors for digital trade. A "typical" digital trade value chain would start with a consumer accessing the Internet (telecommunication service), performing an Internet search (computer services), ordering a product online (distribution and payment services). The product is then delivered either physically (through postal, courier, and freight transport services) or digitally (through telecommunication services), such as in the case of purchase of software or the streaming of a movie.

The disciplines of the General Agreement on Trade in Services (GATS) provide guarantees for trade in these backbone services. The Agreement, which applies to measures affecting trade in services²¹, includes a key, generally applicable obligation that WTO Members must not discriminate between foreign services and services suppliers of different origins. Aside from this obligation, however, the main trade liberalizing disciplines of the GATS apply only in the sectors that each Member selects and to the extent set out in individual schedules of commitments.

Liberalizing trade in services has been shown to have a positive impact on digital trade. For instance, open telecommunications markets have been found²² to result in higher penetration rates for broadband Internet, lower prices and higher-quality services, thus increasing connectivity for a larger section of the population. The WTO and the World Bank estimate that if all of Africa improved its mobile broadband connectivity to the level of South Africa, which has the continent's best mobile broadband access, this would reduce the average cost of trade by 7% in goods and 9% in business and professional services. Moreover, in an open regulatory environment, these trade cost reductions would be even greater, amounting to 17% and 25%, respectively.²³

¹⁹ Kenya ratified the TFA in December 2015 and has committed to a phased implementation of various trade facilitation measures, aiming for full implementation by 2033. As of 30 June 2025, the country has achieved an implementation rate of 43.7%, with significant progress in various areas, including enhancing transparency, streamlining customs procedures, and establishing a single window for trade documentation (see <https://tfadatabase.org/en/members/kenya>).

²⁰ 82 economies participate in the ITA, and a further 50 Members have agreed to expand the agreement (see https://www.wto.org/english/tratop_e/inftec_e/inftec_e.htm).

²¹ GATS defines trade as four ways (or modes) in which a service can be supplied internationally: mode 1 describes "cross-border trade" (e.g. through the Internet); mode 2 describes "consumption abroad" (e.g. through tourism); mode 3 describes "commercial presence" of an enterprise (e.g. through foreign direct investment); and mode 4 describes the "movement of natural persons" (e.g. through temporary labour mobility).

²² WBG/WTO (2023b).

²³ WBG/WTO (2023a).

Binding this trade liberalization in GATS commitments has the additional advantage of guaranteeing market openness to foreign services and service suppliers. This provides certainty and predictability of trading conditions and may help attract more investment, including in key enabling services, thus enhancing a country's ability to leverage the opportunities offered by digital trade.

Kenya has undertaken GATS commitments in a number of digital trade-enabling services, notably telecommunication services. Kenya undertakes commitments for basic telecommunications, such as voice telephony or data transmission services, as well as for value-added telecommunications, including online information and database retrieval and/or data processing services. Kenya's cross-border (mode 1) commitments for telecommunication services are fairly open, with full commitments undertaken in value-added services. However, commitments related to the establishment of a commercial presence (mode 3) are relatively restricted, as foreign equity participation is limited to 30%. Kenya has also subscribed to the pro-competitive disciplines contained in the Basic Telecommunications Reference Paper in its GATS commitments.²⁴ The Reference Paper is an optional set of regulatory principles that govern anti-competitive cross-subsidization, the terms of interconnection, the misuse of information, licensing criteria, transparency, and other matters relevant to the prevention of abuse of dominant market positions with respect to basic telecommunication services. By promoting competitive conditions in the supply of basic telecommunication services, the adoption of the Reference Paper contributes to achieving affordable and efficient infrastructure. Around 105 WTO Members have undertaken the obligations of the Reference Paper, and Kenya is one of 12 African countries, out of a total of 44 African WTO Members, to have done so.

Kenya's GATS commitments also guarantee access to other backbone services, such as financial and certain transport services. The cross-border commitments for lending services and payment and money transmission services are fully open. For commercial presence, Kenya fully opened up market access but retains the possibility of discriminating in favour of its domestic suppliers. Kenya also undertakes commitments in road freight transport services wherein cross-border supply is kept fully open and supply through commercial presence is indicated closed.

However, Kenya did not commit to open trade in other digital trade-enabling services in the WTO, nor did it subscribe to the disciplines on "services domestic regulation" (SDR). The country has no GATS bindings in computer, distribution, postal and courier, and maritime and rail transport services, which are all sectors supportive of digital trade. Kenya has also not adopted the SDR disciplines recently developed by a group of WTO Members.²⁵ These disciplines are aimed at increasing transparency, predictability, and efficiency of procedures for authorization of service suppliers, including those involved in digital trade.

A group of WTO Members, including Kenya, recently finalized negotiations on disciplines specifically targeted at, and aimed at facilitating, digital trade. These negotiations were launched in 2019 with the objective of developing provisions on the trade-related aspects of e-commerce that build on existing WTO rules, with the participation of as many WTO Members as possible. The outcome of the negotiations, namely the Agreement on Electronic Commerce (AEC), was circulated to all Members on 26 July 2024.²⁶ Relevant disciplines fall under issues such as an enabling environment for digital trade (e.g. e-authentication and e-signatures, electronic contracts, electronic invoicing and paperless trading), openness (e.g. prohibition of customs duties on electronic transmissions and open government data) and trust (e.g. online consumer protection, personal data protection and cybersecurity). The AEC also provides for certain additions to the regulatory obligations of the Reference Paper on telecommunication services. In addition, there are provisions on transparency and cooperation, as well as disciplines on development. Kenya joined the negotiations but has not yet signed up to the request of incorporating the AEC into the WTO rulebook.²⁷

²⁴ See https://www.wto.org/english/tratop_e/serv_e/telecom_e/tel23_e.htm.

²⁵ The disciplines have been adopted by more than 70 WTO governments so far (see [WTO | 2024 News items - New disciplines on regulation of services trade enter into force for four more Members](#)).

²⁶ See WTO document [INF/ECOM/87](#).

²⁷ WTO Members that are party to the Agreement on Electronic Commerce requested its incorporation into Annex 4 of the WTO Agreement as a plurilateral agreement in February 2025 (see WTO document [WT/GC/W/963](#)), but consensus on this has not been reached yet.

Kenya currently is not a Member party to the Investment Facilitation for Development (IFD) Agreement. The Agreement is presently endorsed by three-quarters of the WTO Membership, but there is no consensus yet on its incorporation in the WTO rulebook.²⁸ The IFD Agreement is aimed at improving investment procedures and facilitating the operations of investors in all economic sectors.²⁹ As such, the Agreement would also help attract more and higher-quality investment in digital connectivity infrastructure and other sectors relevant to digital trade. Kenya could join as a participant to the Agreement at any given moment, if it so decided.

3.1.2 Kenyan participation in regional trade agreements

Kenya is a party to a number of regional trade agreements (RTAs) that have been notified to the WTO. Some of these notified RTAs only cover goods, namely, the Common Market for Eastern and Southern Africa (COMESA), which is a customs union; the EU-Kenya Economic Partnership Agreement (EPA); and the Kenya-United Kingdom Economic Partnership Agreement. Kenya is also signatory to the East African Community (EAC), which comprises a customs union notified under the GATT as well as an economic integration agreement under the GATS, thus covering both goods and services.

As a Partner State of the EAC, Kenya has undertaken broader and deeper commitments for services trade than those scheduled under the GATS, including in digital trade-enabling sectors. These include commitments in sectors that are not bound in the GATS, such as on computer services, courier services, wholesale distribution and franchising services, as well as some commitments in telecommunication and transport services that are more open than those already undertaken in the GATS.

Furthermore, Kenya is a party to the Agreement Establishing the African Continental Free Trade Area (AfCFTA). The AfCFTA includes the Protocol on Trade in Goods, the Protocol on Trade in Services and the Protocol on Digital Trade. The goods Protocol has the capacity to further open trade in ICT goods on the continent; however, according to the IFC's analysis³⁰, this impact will likely be very modest unless external tariffs on ICT goods are significantly reduced, as these remain a key obstacle to increasing digital trade competitiveness across Africa. Similarly, the Protocol on Trade in Services could lead to further opening of services trade in sectors that are of importance for enabling digital trade, including communication, financial and transport services, which remain amongst the priority sectors that the AfCFTA negotiations are focused on. Once it is ratified and enters into force, the Protocol on Digital Trade will also take the continent closer to its goal of ultimately establishing a digital single market.

3.2 Applied trade policy regime

Actual trading conditions in Kenya tend to be more liberal than the bindings and commitments undertaken under trade agreements, particularly at the WTO. This section outlines the trade policy conditions that are applied on the ground. Although generally more open, the fact that these access conditions are not guaranteed by WTO bindings offers no predictability against trade-restrictive policy reversal and therefore does not provide the stability and positive impact on trade that international commitments on status quo trade regimes have been found to provide.

Kenya's applied tariff regime for key information technology products covered by the Information Technology Agreement is open. While the country has not made tariff reduction commitments on ICT goods under the ITA, it does not apply duties on key ITA products, like computers and smartphones.

Applied policies in digital trade enabling services are more liberal than that reflected in Kenya's GATS commitments. For instance, although the country has undertaken no commitments for computer, distribution, postal and courier, maritime and rail transport services, the applied trade frameworks for these sectors permit service supply both on a cross-border basis (mode 1) as well

²⁸ The IFD Agreement was finalized in February 2024, and its current number of participants stands at 127 WTO Members (see WTO document [WT/GC/W/927/Rev.3](#)). The Agreement had not been formally incorporated into Annex 4 of the WTO Agreement as a plurilateral agreement at the time of writing.

²⁹ See WTO document [INF/IFD/W/55](#).

³⁰ IFC (2022)

as through commercial presence (mode 3), subject to certain conditions. Distribution, and maritime and rail transport services are quite open for entry by foreign suppliers, with no restrictions on foreign capital participation, forms of establishment, or on the number of suppliers that may establish in Kenya. However, certain limitations of a horizontal nature may impact the operations of foreign service suppliers in all enabling sectors, such as restrictions on foreign ownership of land as well as on the cross-border transfer of data.

The World Bank–WTO Services Trade Restrictions Index (STRI) provides a synthetic measurement of the openness of an economy’s services trade regime.³¹ The STRI ranges from 0, for a completely open regime, to 100 for a totally closed one. It covers measures identified as trade barriers under the GATS (i.e. mainly quota-like restrictions and discriminatory measures) as well as other measures that may hinder trade in services (e.g. absence of good regulatory practices or recognition of qualifications, or lack of competition policy).³²

Kenya’s STRIs in services sectors that help facilitate digital trade show largely better results compared to the rest of the continent, save for commercial banking services. In relation to telecommunications, transport, and distribution services, the applied trade regime in Kenya is significantly more open than that of its continental peers.³³ For computer services, Kenya aligns with the average level of restrictiveness in the sector in Africa.³⁴ As for commercial banking services, Kenya’s applied trade regime is slightly more restrictive than the average applied regime in the continent.³⁵

4 WORLD BANK’S ASSESSMENT OF THE DIGITAL TRADE-SPECIFIC REGULATORY FRAMEWORK

A comprehensive and modern digital regulatory framework is essential for supporting digital trade. Regulation plays three critical roles for digital transactions. It provides the legal tools needed for concluding valid and enforceable electronic contracts, such as rules giving effect to the electronic authentication of documents and e-signatures. Second, regulations provide frameworks for personal data protection, online consumer protection, and cybersecurity that offer safeguards and enhance trust in digital markets. Finally, regulations on the legal liability of platforms for unlawful or harmful content and rules on the international transfers of data set out basic rules that support a transparent and predictable framework for digital markets.

Regulation can also introduce unwarranted limitations to digital trade. For instance, unnecessarily restrictive or overly cumbersome requirements for cross-border data transfers limit access to certain digitally delivered services. Limitations on the types of products offered online may be warranted by public policy goals (e.g. restrictions on guns or controlled substances) or may add costs and inefficiencies by segmenting markets (e.g. requiring the use of domestic cloud services). The central challenge for policymakers and regulators is hence to adopt balanced frameworks that minimize restrictions to digital trade while offering a comprehensive framework for digital transactions and sound safeguards for users. By requiring that measures taken in pursuit of public policy objectives not be more trade restrictive than necessary, trade agreements provide useful benchmarks on where to draw this frontier.

In the following section, the report offers a brief assessment by the World Bank of Kenya’s main policies and regulations specific to digital trade. The report reviews the country’s regulations on a series of policies commonly covered in international negotiations and agreements on digital trade, such as the AEC at the WTO, the AfCFTA Digital Trade Protocol and other bilateral or regional agreements. The list is indicative. Any one agreement may not include all these policy areas, or may include some additional ones not mentioned here, but they provide a useful reference of the key topics specifically relevant to digital trade. The analysis evaluates the country’s policies and regulations in light of the best regulatory practices in each of these areas.

Despite its forward-looking policies, Kenya’s policy and regulatory framework specific to digital trade features unduly restrictive regulations and significant regulatory gaps. Figure 7 summarizes the Digital Trade Policy Gap Analysis conducted by the World Bank. Based on

³¹ See [WB-WTO | I-TIP Services](#)

³² See <https://itip-services-worldbank.wto.org/docs/WB-WTO%20STRI%20Methodology.pdf>.

³³ See Figures A1, A2, A4, A5, A7, A8, and A9 in Annex 2.

³⁴ See Figure A3 in Annex 2.

³⁵ See Figure A6 in Annex 2.

a review of Kenyan regulations, the Gap Analysis assessed different policy areas and practices against requirements or standards reflected in trade agreements.³⁶ Kenya's gap analysis presents major gaps with regard to some of the most critical policies for digital trade. These challenges include major limitations to cross-border data transfers, the absence of a specific rules on intermediary liability, a limited and outdated framework for online consumer protection, and a partial framework for the use of electronic documents and e-signatures, including for customs procedures.

Figure 7. World Bank's Digital Trade Policy Gap Analysis

	Kenya
Critical	
Electronic signatures	2
Electronic contracts	4
Cybersecurity	4
Personal information/data protection	5
Cross-border data/information flows	2
Location of computing facilities	1
Intermediary Liability	3
High	
Electronic transactions frameworks	2
Electronic authentication	2
Single Windows	4
Access to and use of the Internet	2
Online consumer protection	2
Telecomm services – Reference Paper	2
Moderate	
Electronic invoicing	3
Paperless trading	2
Open government data	3
Indirect effect	
Unsolicited commercial electronic messages (spam)	1
Cooperation and cooperation mechanisms	4
Transparency	n/d
1	No regulation or heavy regulatory restrictions in place.
2	Minimal and inadequate regulation or burdensome restrictions in place.
3	Partial regulatory framework in place. Substantial gaps remain.
4	Broad and adequate regulation in place. Meaningful gaps remain.
5	Comprehensive and modern regulatory framework. Minor improvements may be considered.

Note: Highlighted sections indicate suggested policy areas for priority action.

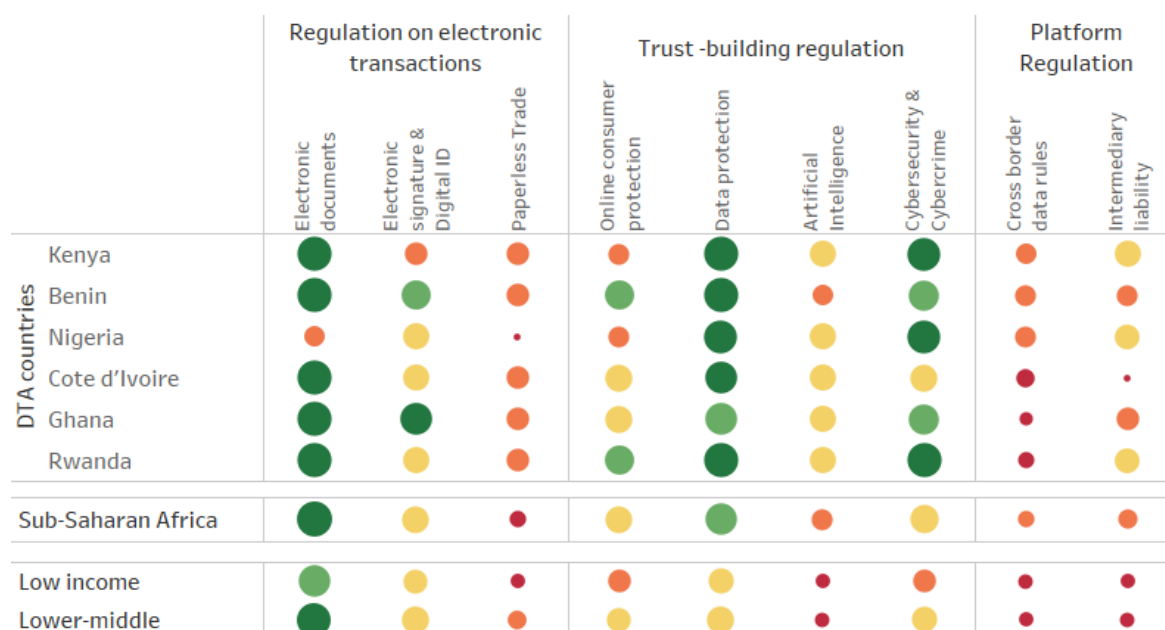
In general, Kenya exhibits varying levels of readiness in different aspects of digital trade regulation. The country shows strong regulatory frameworks in areas such as data protection but needs significant improvements in others, particularly in online consumer protection, e-signatures, and cross-border data transfer rules. This comparison highlights the areas where Kenya can focus its efforts to enhance

³⁶ The Gap analysis roughly classifies policies based on the degree of their likely effect on digital trade ("critical", "high", "moderate", and "indirect effect") taking into account the policies' scope (whether they apply across the board or to only a form of digital trade) and the nature of the regulation at hand (whether the regulation features a necessary regulatory tool, a restriction to digital trade, or a beneficial-but-not-essential solution). As a result, policies that apply to a broad gamut of trade in goods and services and have a potential to effectively limit or boost it (such as policies on cross-border data flows and measures to facilitate cross-border transactions) are ranked the highest; measures that affect only certain types of digital trade (such as paperless customs procedures that are only relevant to trade in goods), are ranked lower; and policies that don't necessarily have a direct and attributable impact on trade (such as transparency and cooperation) and/or are likely to affect only a limited subsector of digital trade are given the lowest prioritization.

its digital trade ecosystem and align more closely with leading regional examples. Figure 8 further compares the “readiness” of some of these policies in Kenya with regional partners countries and with relevant averages.

- A modern framework for electronic transactions provides the legal tools for concluding electronic contracts as well as for the digitalization of trade procedures. Kenya has made some progress in regulating electronic documents, but substantial work remains to be done in the areas of electronic signatures, and digital ID.
- Trust-building regulation is a critical area to foster digital trade. Kenya has recently adopted a strong data protection regulation — a welcome development across the continent, indicating a widespread recognition of the importance of data protection, also reflected on the signature of the Malabo Convention in 2020.³⁷ However, the implementation of data safeguards has been partial, focusing on licensing of data firms and paying limited attention to building users’ trust. For online consumer protection, Kenya and some neighbouring countries show moderate and poor regulatory “readiness”, indicating a need for more robust rules to protect digital market consumers.
- Platform regulation is an area where Kenya shows notable gaps. For cross-border data rules, Rwanda shows significant deficiencies. This challenge is common across the board, with all comparison countries showing limited progress on this area. In terms of intermediary liability, Kenya features no general regulation but does feature copyright safeguards.

Figure 8. World Bank’s digital trade regulatory “readiness” in Kenya and the region.



Note: Bubbles size and colour represent the regulatory “readiness” in each category of the country or grouping concerned, based on the share (in quintiles) of positive answers in that category from 0 to 100%.

Source: World Bank Digital Trade Regulatory Readiness (DTRR) database (forthcoming 2025)

4.1 Data governance

Robust data protection safeguards are essential to build consumer trust and promote the growth of digital domestic and international markets. Users are increasingly conscious of the implications of unrestricted access to personal data. A lack of trust in data management discourages users from engaging in electronic transactions, thereby limiting the growth of digital markets.³⁸ It is

³⁷ African Union Convention on Cyber Security and Personal Data Protection. See [29560-treaty-0048 - african union convention on cyber security and personal data protection e.pdf](#)

³⁸ WDR (2021).

essential to safeguard when and how firms may collect, process, and share personal data to create digital markets where users feel secure providing their personal information, knowing that its use and sharing is limited to necessary purposes.

Strong and consistent data protection regulations are crucial for digital trade, particularly in services. Some studies suggest that robust safeguards for personal data protection are associated with greater trade in digitally delivered services.³⁹ This trend is influenced by two factors: consumers feel safer transacting with vendors who are required to offer greater assurances about the use and sharing of their personal information, and countries are increasingly requiring comparable data protection measures to allow data sharing, incentivizing trade with countries that have similar data protection regimes.

Kenya has established strong data protection regulations. The Data Protection Act⁴⁰ lays out the framework on data protection, which, despite lacking some provisions, covers fundamental aspects effectively, such as legal basis for data collection and processing, users' rights to access and rectify their own personal data, and greater safeguards for sensitive data like biometric information. In addition, Kenya passed subsidiary legislation to clarify or expand upon certain requirements in the Data Protection (General) Regulations of 2021. The World Bank is supporting the Office of the Data Protection Commissioner (ODPC) under the Kenya Digital Economy Acceleration Project in a number of ways, including helping Kenya to host the 2024 meeting of the National African Data Protection Authorities (NADPA), assisting with office automation and digitization of records, developing standard operating procedures and equipping a library of data protection resources accessible by members of the public.

However, the Data Protection Act introduces restrictions to digital trade by requiring data to be stored within Kenyan borders when the Cabinet Secretary deems it a strategic interest.⁴¹ The Data Protection Act of 2019, Article 50, creates the requirement that any data the Cabinet Secretary deems a strategic interest must either be processed through a data server or centre, or at least one copy must be stored within Kenya. In accordance with the Data Protection (General) Regulations of 2021, a "strategic interest" includes identity management systems, data concerning educational information, health data, election-related data, national security, public services, and public finances data.⁴² These categories are broad and can include large swaths of data within Kenya.

Figure 9. Rules on cross-border data flow

	Cross-border data regime										Cross-border data limitations						
	57. Explicit framework on cross-border data transfers	58. Data protection in cross-border data transfers	59a. Data controller on its own terms--with no specific statutory requirements.	59b. Data controller based on statutory requirements.	59c. Government agency	60a. Agreement between governments, DPAs, or other.	60b. Intra-group transfers based on binding corporate	60c. Use of government approved contractual clauses.	60d. Accountability requirement, where domestic.	60e. Ad hoc approval by government agency	61. Personal data is explicitly allowed to transfer across border based on approval	Non-personal data	62. Required for cross-border data transfers:	63. Data localization requirements			
DTA countries																	
Kenya	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●
Benin	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●
Cote d'Ivoire	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●
Ghana	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●
Nigeria	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●
Rwanda	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●

Note: For individual countries, bubbles' size and colour indicate the existence of such regulatory measure. Green represents positive regulatory measures. Red indicates regulatory restrictions to digital trade.

Source: World Bank DTRR database (forthcoming 2025)

³⁹ WDR (2021), van der Marel and Ferracane (2021).

⁴⁰ Data Protection Act, No. 181 of 11 November 2019.

⁴¹ Article 26 Data Protection Law.

⁴² Data Protection (General) Regulations Art. 26(2).

These data flow regulations can slow or hinder digital trade in services, in particular, and limit access to international digital markets. Of the countries analyzed, all share the common feature of having some restrictive measures over data transfers. However, Kenya's data localization regulations cover the largest amount of categories reviewed (see Figure 9). Such restrictions can impact not only regional and international trade, but can also disproportionately impact domestic micro, small, and medium-sized enterprises' ability to enter the market and operate where the server cost of data must be factored into the budget.

Kenya has also made continued progress addressing cybersecurity and cybercrime regulation. The Information and Communications Act of 1998 first mandated protections against cybercrime that eventually led to the creation of the National Kenya Computer Incident Response Team–Coordination Centre (National KE-CIRT/CC)⁴³, a multi-agency framework tasked with responding to cyber threats. Building on this, the Computer Misuse and Cybercrimes Act of 2018 addresses risks from criminal and terrorist activities that threaten networks, devices, and data. The Data Protection Act further necessitates risk assessment procedures, reporting data breaches and the procedures to do so, and the designation of an officer to oversee compliance. Beyond the regulations currently in place, Kenya's cybersecurity strategy from 2022 has plans to continue growing protections through 2027.⁴⁴ These plans include increasing the dedicated cyber budget, enhancing the cyber units' infrastructure, amending laws, and—most importantly—continuing to monitor cyber threats as technologies develop. The KDEAP project is also further strengthening cybersecurity in the country, including by establishing a Government Security Operations Center (GovSOC).

4.2 Regulation of electronic transactions

With the surge in electronic transactions, the need for electronic authentication methods and substitutes to handwritten signatures has become increasingly important. E-documents and e-signatures laws are essential as they provide legal recognition for electronic transactions, thereby removing obstacles and facilitating their broader adoption and use. The primary global legal framework for electronic transactions is the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Commerce, established in 1996, and incorporated into the legislation of over 170 countries.⁴⁵ The UNCITRAL Model Law aims to harmonize international commercial law, thereby reducing trade costs and improving interoperability. The Model Law offers guidelines for states to adopt domestic legislation that facilitates electronic commerce, allowing them to tailor the content to fit their specific legal contexts.

Ensuring legal equivalence for electronic tools like e-contracts, e-evidence, e-signatures and e-communications is crucial for treating digital transactions the same as traditional paper-based ones. Transactions with final consumers, such as those on e-commerce platforms like Amazon, or Jumia, and app-based services like Airbnb, do not typically entail major documentation exchanges and can be concluded even without a specific regulatory framework for electronic transactions. However, for business-to-business transactions that entail customization of products and services over time — such as those that allow suppliers to connect to global value chains or that require peripatetic deliveries over extended periods — the ability to conclude or amend contracts across borders in a secure and reliable way is essential to reduce costs and expedite businesses. The legal recognition of e-documents and e-signatures and their equivalence with paper documents helps reduce legal uncertainties and risks related to international transactions, facilitating cross-border contracts.

A foundational digital ID system is vital for the e-transaction ecosystem, as it facilitates the verification of individuals' identities with the government, ensuring secure and reliable authentication. This system enhances access to e-government services and supports the implementation of e-commerce regulations, such as the legal recognition of e-signatures and electronic tools. Foundational digital ID systems play a key role in verifying legal identities in the digital realm, enabling broader access to rights and services, fostering societal and economic inclusion, and improving interactions with public and private entities. Additionally, robust digital ID

⁴³ Communications Authority of Kenya, The National KE-CIRT/CC, <https://ke-cirt.go.ke/>.

⁴⁴ National Cybersecurity Strategy (2022), <https://ict.go.ke/wp-content/uploads/2022/10/KENYA-CYBERSECURITY-STRATEGY-2022.pdf>.

⁴⁵ See <https://uncitral.un.org/en/texts/ecommerce#:~:text=The%20most%20widely%20enacted%20text,principles%20of%20non%20discrimination%20against>.

systems reduce transactional costs, build trust among stakeholders, and mitigate fraud and identity theft risks.⁴⁶ Developing reliable digital ID systems, however, is complex and requires careful considerations of privacy, security, and cybersecurity concerns, demanding a comprehensive approach. However, a recent World Bank study concluded that the Bank is not currently able to support the further roll-out of Digital ID in Kenya as required foundations for good practice are not yet in place.⁴⁷

The Kenyan legal framework provides for the validity of electronic contracts, but the system does not create a flexibility that allows businesses and consumers to enter the market easily. Kenya has established a legal framework to support electronic transactions, implemented by the Information and Communication Act of 1998. Although electronic contracts and records are legally recognized, the law only recognizes advanced and digital electronic signatures. Simple electronic signatures are useful when signing various legal documents where only the document needs verification, not the individual. Such a structure allows the efficient and cheaper signing of legal documents with established business relationships because the encryption requirements are lower and the identity verification requirements are non-existent.⁴⁸ Similarly, the mechanism for recognizing foreign electronic signatures is unclear, leading to practical challenges in their application.

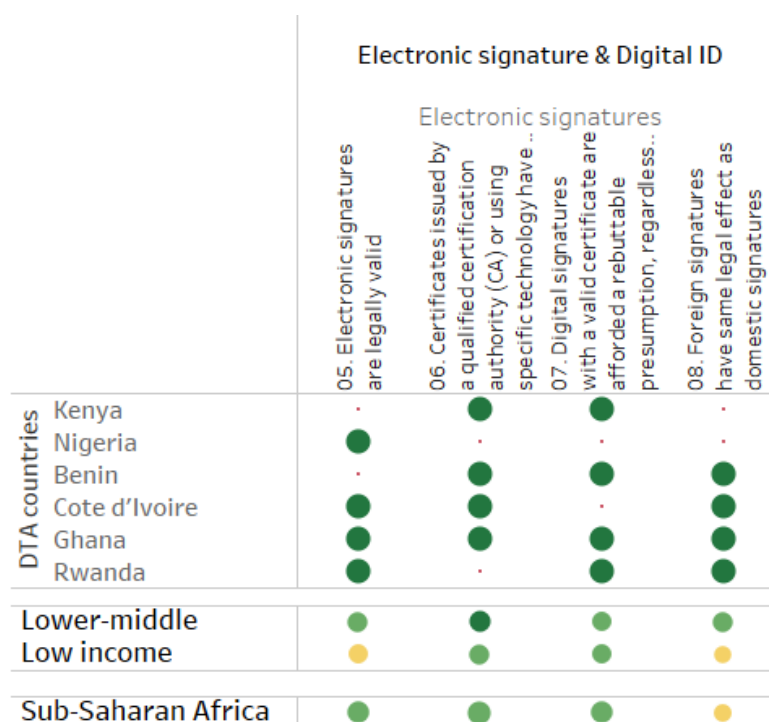
Although foreign e-signatures might be recognized, the practical mechanisms for their use are not legally defined. This limitation hampers the effective implementation and utilization of electronic authentication and signatures. Without a legal reference point and guidance clearly defined, foreign companies are more likely to be wary of contracting within Kenya when there is a lack of legal assurance. The other aspects of electronic signatures, however, are well-defined (see Figure 10). Electronic contracts are legally recognized in Kenya, and certificates issued by qualified certification authorities are accepted. Digital signatures with a valid certificate have the same legal effect as handwritten signatures. This is consistent across countries like Benin, Ghana and Senegal, which also have strong legal bases for electronic signatures. Under the KDEAP project, the World Bank is supporting Kenya to purchase 1.5 million secure digital signatures under a framework contract that can be extended, as required.

⁴⁶ World Bank (2018).

⁴⁷ See World Bank. 2023. *Assessing the State of Digital ID in Kenya: Policy Note*.

⁴⁸ See Your Guide to Understanding Simple E-Signatures and Qualified E-Signatures, Tresorit (Mar. 28, 2024), <https://tresorit.com/blog/your-guide-to-understanding-simple-e-signatures-and-qualified-e-signatures/>.

Figure 10. Electronic signature and digital identification



Note: For individual countries, bubbles' size and colour indicate the existence of such regulatory measure. Green represents positive regulatory measures. Red indicates regulatory restrictions to digital trade. For regional and income groups, bubbles represent the regulatory "readiness" in each category, based on the share (in quintiles) of positive answers in that category from 0 to 100.

Source: World Bank DTRR database (forthcoming 2025)

In summary, while Kenya has made advances in recognizing digital signatures and contracts through its Information and Communications Act, the absence of regulations concerning simple electronic signatures and foreign signatures creates an inefficiency in digital trade. Addressing these issues can strengthen electronic transactions and enhance the digital economy in Kenya.

4.3 Online consumer protection safeguards

Consumer protection regulation is key to fostering trust and strengthening digital markets, which are still developing. The main reason people avoid online purchases, especially internationally, is the lack of trust in remote electronic transactions.⁴⁹ Without face-to-face interaction, consumers may not be able to assess the properties of the goods, missing visual cues such as location and facilities that help assess a vendor's professionalism. In the digital environment, consumers must share sensitive information, such as home addresses or banking details, with retailers, online intermediaries, or digital platforms. This lack of trust in the security of cross-border online transactions and the lack of availability of remedies when problems occur is a major limiting factor in both developed and developing economies.⁵⁰

Rules on online consumer protection are essential to address information asymmetries between vendors and consumers in online transactions. Distance shopping poses challenges, such as the inability to physically inspect products before purchase. Online consumer protection laws aim to provide protection comparable to that in offline commerce.⁵¹ These laws build on traditional consumer protection principles and adapt them to digital markets, thus mitigating the challenges of online transactions.⁵²

Consumer protection rules also play an important role in international digital trade, especially for developing countries. As digital markets are still in their infancy, lack of trust in

⁴⁹ See <https://www.ipsos.com/en/2019-cigi-ipsos-global-survey-internet-security-and-trust>.

⁵⁰ World Economic Forum (2019).

⁵¹ UNCTAD (2017).

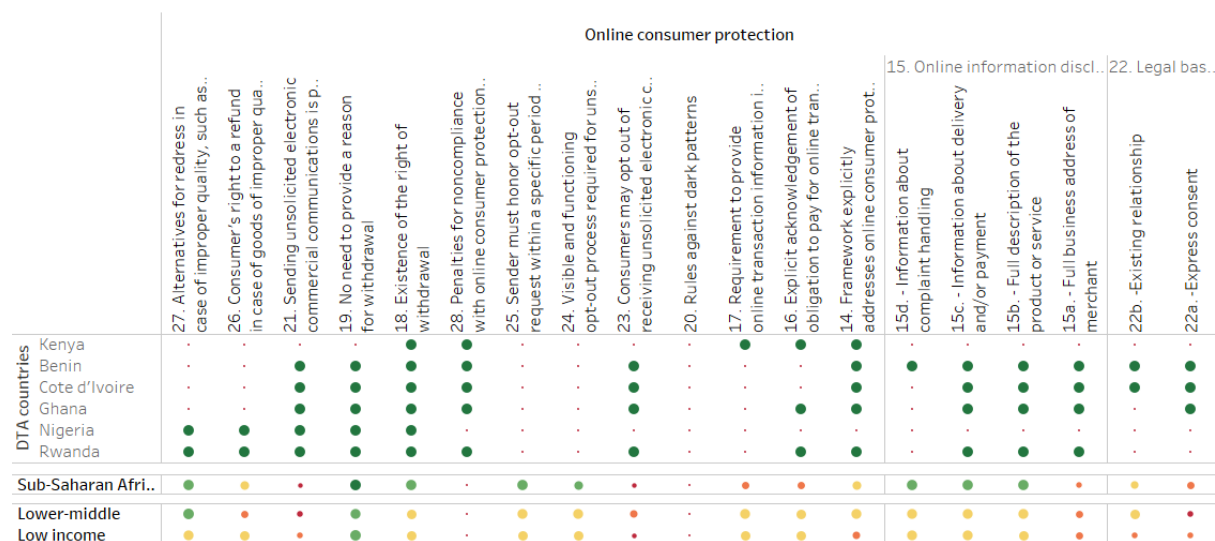
⁵² OECD (2000).

remote electronic transactions remains the top reason for not engaging in online purchases (CIGI-Ipsos Global Survey on the Internet, 2017 and 2019). While often designed for domestic markets, consumer protections are particularly important for digital trade, especially for digitally ordered goods, as trust in international orders of goods is typically lower. Online consumer protection regulations can help bridge these trust gaps by ensuring that cancellations and returns — including for international orders — are adequately set up and rules are clearly set out. In addition, requiring the establishment of online dispute resolution mechanisms also offers an important channel for boosting consumer confidence, especially when it allows the consumer to bring a claim directly to its national consumer protection agencies (Chung and Yu, 2021).

The absence of information on requirements and remedies causes a lack of trust in remote transactions that limits digital markets development in Kenya. The Consumer Protection Act of 2012 regulates many fundamental consumer rights; however, the law does not explicitly create protections that benefit remote transactions, particularly across borders. As shown in Figure 11, other regional counterparts have online information requirements before the transaction can be contracted. These informational requirements can give customers the ability to know the supplier's detailed business information and paths to make official complaints about products, which creates higher levels of trust in unknown suppliers. In addition, Kenya lacks regulations on remedies. Out of the six countries in the analysis, only Nigeria and Rwanda have regulations that establish a right to refund or other rights of redress when an online good does not meet the quality advertised. These requirements also generate higher levels of consumer trust.

The Consumer Protection Act does not explicitly apply extraterritorially. Domestic consumers have more trust in transacting outside of Kenya when the consumers know that their legal protections will extend beyond borders.⁵³ The absence of a provision that extends the arm of the law outside of Kenya creates an uncertainty that leads to a lack of trust of international transactions online.

Figure 11. Rules on online consumer protection



Note: For individual countries, bubbles' size and colour indicate the existence of such regulatory measure. Green represents positive regulatory measures. Red indicates regulatory restrictions to digital trade. For regional and income groups, bubbles represent the regulatory "readiness" in each category, based on the share (in quintiles) of positive answers in that category from 0 to 100.

Source: World Bank DTRR database (forthcoming 2025)

Kenyan law does not provide protections against spam. International organizations, like the Organisation for Economic Co-operation and Development (OECD), recognize the detrimental impact spam has on the online consumer environment because of its deceptive tactics that erode consumer confidence and the challenges it poses in finding infringers.⁵⁴ Besides the importance of banning spam entirely, Kenya lacks regulations that ensure customers may opt out of unsolicited messages.

⁵³ See CIGI-Ipsos Global Survey on the Internet, 2017 and 2019.

⁵⁴ Recommendation of the Council on Cross-Border Co-operation in the Enforcement of Laws Against Spam, OECD, adopted 13 April 2006.

Both protections regarding spam give consumers greater levels of confidence in legal recourses when conducting online transactions that require consumers to give personal details.

4.4 Intermediary liability

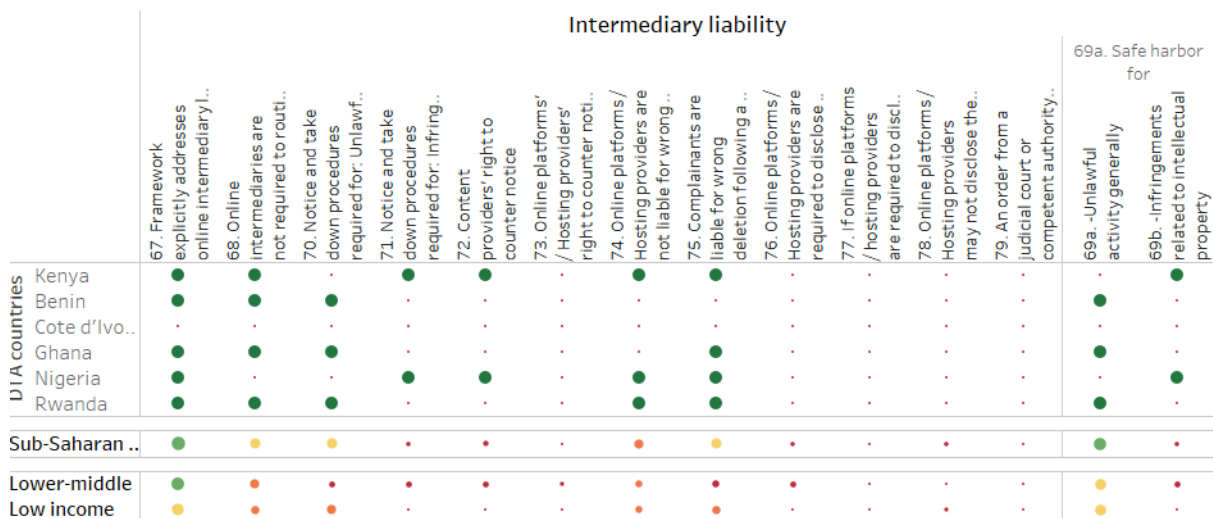
The Internet's ability to connect individuals worldwide has boosted business models based on intermediation between vendors and consumers. Distribution platforms like Jumia and Anka offer goods to consumers from thousands of different providers rather than their own stock. "Gig economy" apps offer services such as rides, lodging, or delivery of food or groceries from firms and individuals. Other services rely on content such as video (YouTube, Vimeo), opinions and reviews of products or services (Yelp, Google), or information (blogs) developed by thousands of users, most of whom remain relatively unknown to the final consumer. The relationship between the intermediary (websites and apps) and the firms or individuals offering their own goods or services is hence essential to the functioning of those digital transactions.

Given the central role of digital platforms, clear rules on intermediary liability are essential to digital trade. Social media and e-commerce platforms are the trademark of digital markets, inherently providing a natural environment for connecting suppliers and consumers around the world. Further, the network effects involved in digital platforms (i.e. the platform becomes more valuable when more people use it) incentivize the growth of a limited number of massive global providers. These providers, however, can face significant challenges in the absence of adequate, modern rules on intermediary liability. This can result in severe consequences due to user activities, even when the platforms themselves are not directly responsible. These consequences could include substantial fines, operational restrictions, or even forced shutdowns. Further, those risks disproportionately affect domestic start-ups, who may face potentially prohibitive costs in case of improper conduct by their users. By establishing balanced and transparent rules on intermediary liability, governments can foster a safer online environment for consumers while also ensuring that both dominant platforms and emerging domestic players can operate with legal certainty and fair accountability.

Rules on intermediary liability need to strike a balance between protecting consumer rights and supporting the expansion of digital markets. Intermediary liability rules set out the responsibility that falls upon online intermediaries, such as e-commerce marketplaces, social networks and other platforms for third-party content featured in, or goods and services offered through, their website or apps. Digital intermediaries manage relationships with the consumer and are often the larger more sophisticated actors involved in the transaction. As such, regulations can impose liability on intermediaries (jointly with the third party) for fake or faulty goods or services, or for offensive or illegal content, transacted through or featured in their services. On the other hand, intermediaries often do not have full knowledge of everything that is being offered by producers and content developers, who have greater control over it. In this context, well-defined and balanced rules provide assurances to consumers and users that digital platforms have procedures in place to minimize offensive or unlawful content. This also allows platforms, especially in the start-up stage, to engage in these business models by limiting the legal compliance risk and costs faced by them.

Kenya's intermediary liability regime is well-developed with intellectual property law but does not apply generally to online intermediaries. In accordance with its regional peers (see Figure 12), Kenya began the process of regulating online intermediaries with the Copyright Act of 2001. However, the law only pertains to intellectual property rights. Global trends are moving towards regulating online intermediaries both generally and with regard to copyright infringements. The mounting issue with Kenya regulating only copyright infringements is that it leaves suppliers and retailers in online marketplaces or social networks without adequate protection. As Kenya continues to develop, the lack of regulation in this key area will further limit trust in online transactions for suppliers. Smaller firms, especially start-ups, may find this legal risk daunting and potentially overwhelming, thus stifling growth and innovation in the local ecosystem for digital trade in services. While responsible businesses tend to adopt measures to monitor and limit potential unlawful content, the lack of explicit rules allows for fraudulent actors to also enter the market, reducing trust in online transactions and hampering growth of digital markets.

Figure 12. Rules on intermediary liability



Note: For individual countries, bubbles' size and colour indicate the existence of such regulatory measure. Green represents positive regulatory measures. Red indicates regulatory restrictions to digital trade. For regional and income groups, bubbles represent the regulatory "readiness" in each category, based on the share (in quintiles) of positive answers in that category from 0 to 100.

Source: World Bank DTRR database (forthcoming 2025)

5 MAIN FINDINGS AND NEXT STEPS

5.1 General observations and main findings

Kenya has made notable progress with digital connectivity. Internet access and affordability have increased significantly over the last two decades (see section 2). The country has also, on average, outperformed its regional peers in these metrics. However, Internet adoption remains relatively low—especially in rural areas—due to affordability challenges, limited broadband, skills and literacy gaps, and unreliable power.

Kenya's imports and exports of digitally delivered services have been on a steep upward trajectory between 2016 and 2024. Kenya's export performance compares favourably to that of other large African economies over the same period, second only to that of Nigeria. The growth of Kenya's digitally delivered service exports has been driven by telecommunications and financial services, which in 2024 accounted for nearly 90% of the total. On the import side, Kenya's digitally delivered services imports more than tripled over the same period.

Kenya has undertaken WTO commitments and participates in ongoing work that contribute to a facilitative environment for digital trade. The country has ratified the WTO's TFA and undertaken GATS commitments in a number of digital trade enabling services, notably telecommunication services. However, it does not participate in the ITA nor has it subscribed to disciplines aimed at increasing transparency and predictability of procedures related to investment and services trade. Still, Kenya has participated in the negotiations of the AEC, and is seeking its incorporation in the WTO rulebook. The country is a participant in regional frameworks, such as the AfCFTA, which can also promote digital trade.

Kenya has adopted meaningful steps in the regulation of digital trade, especially in the areas of data protection, legal framework for basic electronic documents, and intermediary liability over intellectual property. A particularly positive step has been the removal of foreign ownership restrictions for telecom service providers. These efforts are particularly valuable given the nascent nature of the digital sector in the country, especially e-commerce marketplaces, which suggest a vision to leverage digital technologies and digital businesses as a pillar of economic growth.

5.2 Maximising the benefits of trade agreements

Trade agreements offer the opportunity to build, and legally guarantee, policy regimes that are conducive to greater digital trade. Kenya may consider using existing and emerging

trade agreements to anchor its own efforts to increase its participation in digital trade. It can do so at the WTO or in regional contexts. For example, it can bring its commitments closer to its currently applied regimes for services and ICT goods trade, or even commit to the future opening of its trade policy regimes in a manner that increases competition and encourages greater investment in digital trade-enabling sectors. Making these commitments in the context of trade negotiations would have the potential added benefit of helping overcome resistance to domestic reforms by securing market openings in other sectors of domestic economic interest.⁵⁵

5.3 Policy and regulations

The current World Bank's Digital Trade Policy Gap Analysis points to a number of regulatory and institutional initiatives (see more details in Table 1 below) that would further help foster digital trade by increasing trust in digital transactions. Some specific recommendations⁵⁶ resulting from the analysis include:

- **Reducing barriers to cross-border data flows.** Potential requirements to store data within Kenya introduces higher trade costs on businesses residing within Kenya, particularly because of the Cabinet Secretary's power to declare certain data falls within the retainment requirement. While the measures may be adopted in response to legitimate policy concerns like the protection of sensitive data, blanket and uncertain requirements go well beyond these goals and introduce hefty costs in the Kenyan economy, especially to the burgeoning Kenyan digital sector. Kenya may consider limiting the types of data that have the possible localization requirements or eliminating the requirements altogether and instead enacting stronger encryption requirements on the data storage.
- **Relaxing e-signature encryption requirements and recognizing foreign e-signatures.** Kenya's regulations on digital signatures are strong but lack flexibility. Kenyan authorities may focus on passing regulations that permit simple electronic signatures for commercial use by private parties and recognize foreign e-signatures that meet similar requirements to Kenyan regulations. This flexibility will enable businesses and individuals to opt for the most efficient method for remote digital contracts in each case, balancing the costs and security in their transactions, ensuring that digital authentication and e-signatures are legally recognized and admissible in court, providing greater confidence in their use, and encouraging a wider adoption of digital solutions.
- **Improving the regime for online consumer protection.** Despite the recent growth of digital transactions, lack of general trust in digital markets remains a major challenge for the development of digital trade in Kenya. While the country has already adopted some foundational rules for online consumer protection, the framework remains largely absent and, more importantly, largely unknown to Kenyan consumers. These regulatory advances should be completed with adequate resources and technical capacity in the Kenyan Competition Authority to ensure their effectiveness. By entrusting the Authority to enforce such measures and giving them clear guidelines, it can be ensured that adequate information is provided to potential consumers, remedies are prepared, and unauthorized communications are limited. In addition, concrete measures like comprehensive awareness campaigns to disseminate consumer protection measures would be cost-effective in ensuring compliance with laws and regulations, as well as fostering synergies between the private sector and policymakers.
- **Adopt a balanced framework for intermediary liability.** Because Kenya already has an intellectual property framework in place, a generalized, modern, and balanced regulation to address the rights and obligations of intermediary platforms would support good practices and trust in the digital environment, while reducing legal risks faced by start-up platforms.

⁵⁵ See WTO (2019).

⁵⁶ The recommendations contained in sections 5.3 and 5.4 are from the World Bank only. The WTO Secretariat does not offer trade policy advice or recommendations.

Table 1. Action table of WB policy and regulatory recommendations

	Challenges	Possible Actions	
		Short term	Medium/Long term
Data protection and cross-border data flow	Unclear regime for data localization requirements	Amend or clarify Art. 50 to provide greater clarity on data localization requirements	- Adoption of EAC mechanism for cross-border data rules - Region-wide capacity building on data protection regimes
Digital authentication and e-signature regulations	Lack of flexibility	Amend regulations to recognize simple electronic signatures and better define legal requirements for foreign signatures	Region-wide capacity building on e-signatures laws and legal methods of recourse
Consumer protection	Lack of required remedies for remote transactions	Amend regulations to increase protections over remote transactions	Harmonize protections to meet regional standards
	Need regulations to ensure the consumer protection law applies outside of Kenya and covers spam	Pass regulation in the consumer protection law to ensure extraterritorial jurisdiction	Pass regulations regarding spam and deceptive online practices
Intermediary liability	Limited protections for general companies and users		Pass general intermediary liability regulations

5.4 Digital infrastructure⁵⁷

As noted in Section 2, digital infrastructure in Kenya has advanced substantially, but there is still scope for further growth in the overall adoption of digital technologies. While the gender gap has largely been addressed, additional efforts are needed to bridge the urban-rural gaps and to bring improved services to people with disabilities and the elderly. The Kenyan Government has identified a requirement to roll out 100,000 kms of fibre-optic installation to its backbone and last-mile infrastructure and has made this a specific target in its Digital Master Plan.⁵⁸ It has also targeted connecting schools, TVETs, universities, health centres and other government institutions to high-speed Internet. Currently, for instance, less than 10% of schools nationwide have a reliable and affordable Internet connection. Specific measures that can serve to that end include:

- The World Bank is engaged with Kenya both through lending operations (such as KDEAP), the new Development Policy Operation (DPOs) series and advisory and analytical services. These instruments provide robust mechanisms for implementing the recommended policy and regulatory reforms. Implementation would involve initiating technical assistance activities aimed at refining diagnostics for each reform area. This would include hiring consultants to conduct in-depth analyses, proposing concrete regulatory changes through normative draft texts, facilitating extensive consultations with stakeholders and supporting the adoption of reforms. Depending on the nature of the reforms — whether requiring legislative amendments or infra-legal regulations like decrees — technical assistance could be structured as standalone initiatives, initiated upon government request to the World Bank, or integrated into existing or future lending operations with a dedicated technical assistance component.

⁵⁷ This section draws on World Bank 2021^a.

⁵⁸ ICTA. 2022. *Kenya National Digital Master Plan, 2022-2032*.

<https://www.icta.go.ke/page?q=12&type=business#:~:text=The%20Kenya%20National%20Digital%20Master,ICT%20to%20accelerate%20economic%20growth.&text=Under%20ICT%20Authority%20broad%20mandates,the%20uptake%20of%20ICT%20services.>

- The KDEAP program (USD 390m in the first phase) is assisting the Government in a number of ways relevant to this report, including:
 - Extending the availability of digital infrastructure with an additional 50,000 km of fibre optic networks in the backbone and last-mile networks, with a focus on rural areas.
 - Providing technical assistance to the Government in several ways, including by positioning Kenya as a regional hub for digital trade, supporting regional agreements on cross-border data flows and helping to operationalise the country's eCommerce strategy.
 - Supporting institutions involved in promoting digital trade, notably the ODPC, the Communications Authority, the State Department for Trade and the Ministry of Information and Communications and the Digital Economy (MICDE), all of whom are beneficiaries under KDEAP.
 - Providing targeted support in critical areas, such as digital signatures, data protection and cybersecurity.
 - Providing capacity-building and awareness-raising.

5.5 Potential future work

The WTO and the World Bank are committed to supporting Kenya's participation in digital trade. The two institutions can complement each other's assistance initiatives and offerings in a manner that strengthens Kenya's ability to leverage the promise of digital trade.

The World Bank is engaged with Kenya both through lending operations and advisory and analytical services, and WTO technical assistance (TA) can complement these efforts.

Implementing the World Bank's recommended policy and regulatory reforms would involve a continuation and expansion of existing assistance activities on trade as well as digital integration in the country. The World Bank's engagement would include proposing concrete regulatory changes through normative draft texts, facilitating extensive consultations with stakeholders, supporting the adoption of reforms and strengthening of government institutions. The WTO offers training and TA activities that could reinforce policymakers' awareness and understanding of the trade disciplines applicable to digital trade. This is an area which WTO TA recipients have indicated as a priority in a recent survey.⁵⁹

Technical assistance can be tailored to the specific needs of Kenya. Depending on the nature of the reforms envisaged – whether requiring legislative amendments or infra-legal regulations like decrees – World Bank technical assistance could be structured as standalone initiatives, initiated upon government request, or integrated into existing or future lending operations with a dedicated technical assistance component. WTO technical assistance activities can, for their part, provide a catalyst to engage a diverse range of domestic stakeholders in a dialogue centred on digital trade. They can also help foster greater domestic inter-agency coordination and may contribute to the development of a more encompassing and coherent approach to digital trade policymaking.

The WTO and the World Bank could also engage other international organizations, academics and donors to further focus technical assistance on the regulatory framework for digital trade. This would offer Kenya the opportunity to benchmark its regulatory framework against regional and global economic peers with a view to charting a possible course to strengthen it. If so requested, the WTO stands ready to provide tailored technical assistance focused on existing WTO rules, emerging disciplines, and their relation to the digital policy regime in Kenya.

⁵⁹ WBG/WTO (2023a). The most recent survey, which was conducted in the context of planning for WTO training activities in 2026-27, confirmed e-commerce as a priority TA area for African WTO Members.

Digital connectivity is also an established theme of the WTO-led Aid for Trade initiative and, together with digital trade, an area where financing is flourishing, including in the form of public-private partnerships. The WTO and the World Bank can play an important role in promoting coherence in the deployment of the resources mobilised to address the trade-related constraints identified by developing and least-developed countries. Under Aid for Trade, donors have already announced financing commitments of nearly USD 500 million over the 2023 to 2025 period to support Internet connectivity and the digital economy in various African countries, including Kenya.

ANNEXES

ANNEX 1 – WORLD BANK'S DIGITAL TRADE POLICY GAP ANALYSIS

The Digital Trade Policy Gap Analysis document outlines an analysis of Kenya's digital trade regulations. It is structured into several sections, each focusing on a specific aspect of digital trade regulation such as electronic transactions frameworks, electronic authentication, electronic signatures and electronic contracts, consumer protection, data protection and others (see Table A1).

Table A1. Data sources for desktop review of Gap Analysis

	STRI (WTO-WB)	DTRR	ECIPE DTRI	STRI (OECD)	UNCTAD Cyberlaw tracker	Data Guidance	UN Global Survey Digital & Sust. Trade	OECD Open Gov. Data	Global Open Data Index	Global Trade Alert	DE4A	E-Trade Readiness
Positive or facilitative obligations												
Electronic transactions frameworks	✓	✓		✓	✓						✓	✓
Electronic authentication		✓		✓	✓						✓	✓
Electronic signatures	✓	✓		✓	✓						✓	✓
Electronic contracts	✓	✓		✓	✓						✓	✓
Electronic invoicing	✓	✓									✓	✓
Paperless trading	✓	✓					✓				✓	✓
Single Windows							✓				✓	✓
Open government data								✓	✓	✓	✓	✓
Access to and Use of the Internet				✓								
Online consumer protection	✓	✓			✓						✓	✓
Unsolicited commercial electronic messages	✓	✓			✓	✓					✓	✓
Cybersecurity		✓			✓	✓					✓	✓
Personal information/data protection	✓	✓		✓	✓	✓						
Telecomm services-Reference paper	✓			✓								
Transparency											✓	
Cooperation and cooperation mechanisms											✓	
Cross-border data/information flows	✓	✓	✓	✓		✓					✓	✓
Location of computing facilities		✓		✓		✓						
Intermediary Liability	✓	✓		✓								

The Gap Analysis includes the following steps:

- 1) **Review and classification of relevant provisions:** The Gap Analysis addresses policies and regulations that are generally covered in trade negotiations, such as the plurilateral WTO Agreement on E-Commerce. The choice of such an instrument is based on its broad (potential) geographical coverage, and the fact that it generally reflects policies and rules on digital trade present in other RTAs already in force. For completeness, however, additional key regulations that were not included in the agreement are also addressed in the Gap Analysis, namely provisions on cross-border data transfers and intermediary liability. Individual provisions of each policy category are separated for individual review, resulting in a total of 66 individual provisions stemming from 19 policy categories.
- 2) **Assessment of policies with regard to individual provisions:** The analysis then focuses on the regulatory framework of the country concerned and assesses whether relevant regulations exist and align with the requirements or expected practices outlined in the trade agreement, such as enabling cross-border data flows or providing legal certainty for electronic transactions. The desktop review of the regulatory framework draws upon various standard databases and reports, such as the World Bank's DTRR database (forthcoming 2025), WB-WTO's Services Trade Policy Database, STRIs from OECD and from WB-WTO, and DTRI from the European Centre for International Political Economy (ECIPE), in addition to other available literature and country specific sources of information. For each category, the document lists provisions and assigns a rating ('Implemented', 'Not Implemented', 'Partially Implemented') based on the current state of the country's regulations.
- 3) **Assessment of gaps between current regulatory framework and best practices at the policy level:** Based on the assessment at the level of each provision, the analysis turns

into aggregating such assessment at the policy level, for each of 19 categories in the analysis. This expert assessment is not free from subjective considerations; however, the granular review of each provision provides a solid factual base that limits subjectivity.

- 4) **Based on such assessment, identification of recommendations at the provisional and policy level** that would support the development of an enabling regulatory framework for digital trade, in particular on the policy categories under review. This systematic approach aims to provide a comprehensive understanding of the country's regulatory "readiness" and eventual compliance with rules on digital trade featured in trade agreements.

Table A2 provides the assessment at the individual provision level, including the sources of information used in each case and the information taken therefrom.

Table A2. Digital Trade Policy Gap Analysis. Assessment of individual provisions/elements for Kenya

The following provisions/elements are based on several of the disciplines contained in the text of the plurilateral WTO AEC, as well as other agreements, such as the AfCFTA Digital Trade Protocol.

Provisions/elements	Rating	Source: World Bank Digital Trade Regulatory Readiness database (DTRR, forthcoming 2025)	Source: STRI (OECD)	Source: UNCTAD Cyberlaw tracker
Electronic transactions frameworks				
Adoption or maintenance of a legal framework governing e-transactions (in line with the principles of the UNCITRAL Model Law on Electronic Commerce 1996).	Implemented	Information and Communication Act of 1998, Art. 83K Information and Communication Act of 1998, Art. 83J Information and Communication Act of 1998, Art. 83H Information and Communication Act of 1998, Art. 83O Information and Communication Act of 1998, Art. 83P Evidence Act of 1963, Art. 106B		Information and Communication Act of 1998, rev. 2009
Avoidance of undue regulatory burden on e-transactions.	Not implemented		No provision was identified	
Facilitating inputs into the development of the legal framework for e-transactions	No data			
Adoption or maintenance of a legal framework for the use of electronic transferable records (taking into account the UNCITRAL Model Law on Electronic Transferable Records 2017).	Not implemented	No provision was identified		
Adoption of a national policy that either unduly restricts electronic commerce or treats it more restrictively than traditional forms of commerce.	Not implemented	No provision was identified	No provision was identified	

Provisions/elements	Rating	Source: DTRR	Source: E-Trade Readiness
Electronic authentication			
No denying the legal effect/validity/admissibility for e-seals, e-time stamps and e-registered delivery services, if any.	Implemented	Information and Communication Act of 1998, Art. 83J Information and Communication Act of 1998, Art. 83H Evidence Act of 1963, Art. 106B	
No prohibiting parties to an e-transaction from determining appropriate e-authentication/e-signature methods (with some exceptions) and from having the opportunity to demonstrate compliance with relevant legal requirements.	Not implemented	Kenya recognizes digital signatures (Information and Communication Act of 1998, Art. 83O, 83P), but it does not recognize simple electronic signatures.	Kenya Information and Communication Act (2009) permits electronic signatures but limits the recognition to advanced electronic signatures, based in the public key infrastructure.
Encouragement of use of interoperable e-authentication.	No data		

Provisions/elements	Rating	Source: DTRR	Source: STRI (OECD)	Source: UNCTAD Cyberlaw tracker	Source: UNCTAD E-Trade readiness assessment
Electronic signatures					
No denying the legal effect/validity/admissibility of an e-signature solely because electronic (except as provided for under domestic laws).	Partially implemented	Information and Communication Act of 1998, Art. 83O Information and Communication Act of 1998, Art. 83P Evidence Act of 1963, Art. 106B However, the law does not allow for simple electronic signatures.	Laws or regulations provide electronic signature with the equivalent legal validity with hand-written signature.	Information and Communication Act of 1998, Rev. 2009	E-signatures, under the Information and Communications (Amendment) Act of 2020, are legally valid and admissible in a court of law.
Electronic contracts					
No denying the legal effect, legal validity, or enforceability of an electronic contract solely on the basis that the contract has been made by electronic means.	Implemented	Information and Communication Act of 1998, Art. 83J		Information and Communication Act of 1998, Rev. 2009	The Information and Communications (Amendment) Act of 2020 recognizes electronic contracts.

Provisions/elements	Rating	Source: DTRR	Source: UN Global Survey Digital & Sust. Trade
Electronic invoicing			
No denying the legal effect/validity/admissibility of an e-invoices solely because electronic	Not implemented	No provision was identified	
Implementation of measures related to e-invoicing in its jurisdiction is designed to support cross-border interoperability. For that purpose, each [Party/Member] shall base its measures related to e-invoicing on international systems, guidelines or recommendations, where they exist.	Partially implemented		No provision was identified

Provisions/elements	Rating	Source: UN Global Survey Digital & Sust. Trade	Source: E-Trade Readiness
Paperless trading			
Encouragement to facilitate, as appropriate, the transition toward using forms and documents in data-based formats that can be processed electronically without human intervention.	Partially implemented	Automated Customs System established, however, as electronic submissions of manifests and certain applications are partially implemented or in the planning stage, the paperless trade system is not fully implemented.	In 2021, the Maritime Single Window System integrated with Kenya TradeNet to automate information flow out of Mombasa. Although started, the program and others require more support to move towards more developed automated systems.
Adoption of any form issued or controlled by customs for import, export, or transit of goods through its territory available to the public in an electronic format	Partially implemented	Not all customs forms are accepted in electronic format, although many are.	The single window website offers the public access to electronic forms.
Acceptance for processing electronically any form issued or controlled by customs and supporting documentation (such as invoices bills of lading packing lists, and money transfers) required by customs for import, export or transit of goods through its territory as the legal equivalent of the paper version of those documents.	Partially implemented	Customs declarations and forms have not been fully accepted in electronic format.	Although some forms have been accepted by the government for electronic submission, not all have been accepted.
Encouragement to cooperate, where appropriate, in international fora to promote the use of electronic forms and documents required for import, export and transit.	Implemented	No provision was identified.	

Provisions/elements	Rating	Source: UN Global Survey Digital & Sust. Trade	Source: E-Trade Readiness
Adoption of the standards of, and/or methods agreed by relevant international organizations recognize in particular: Electronic phytosanitary certificate (e-Phyto), as defined in the International Standard for Phytosanitary Measures 12 of the Food and Agriculture Organization of the United Nations; Electronic CITES permit (eCITES), for the implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora; International Air Transport Association (IATA) Electronic Air Waybill (e-AWB) and Cargo XML; United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT) Data Interchange for Administration, Commerce and Transport (UN/EDIFACT), Electronic SPS Certificate (eCERT).]	Partially implemented	Measures on electronic exchange of Sanitary & Phyto-Sanitary Certificate are partially implemented.	
Single Windows			
Establishment of arrangements by which authorized private entities, such as port community systems, logistic service providers and e-commerce platforms, may exchange data with the single window system in lieu of traders and other trade stakeholders under an agreement to use this private solution.	Implemented	No provision was identified.	The National Electronic Single Window System, also known as Kenya TradeNet System, was established in 2014.

Provisions/elements	Rating	Source: Digital Economy Initiative for Africa (DE4A)
Open government data		
Making "government data" digitally available for public access and use	Implemented	Kenya made government datasets free and accessible with the Kenya Open Data Initiative.

Provisions/elements	Rating	Source: Digital Economy Initiative for Africa (DE4A)
- To the extent a Party chooses to make government data available for public access and use, ensure that such data is, to the extent practicable: (a) made available in a machine-readable and open format; (b) searchable and retrievable; (c) updated, as applicable, in a timely manner; (d) accompanied by metadata that is, to the extent possible, based on commonly used formats that allow the user to understand and utilise the data; and (e) made generally available at no or reasonable cost to the user.	Partially implemented	Progress on the Open Data Initiative remains slow, where updates are not regular and contributions are low. Further, data has not fully transitioned into machine-readable formats, which limits the data's searchability and use.
- To the extent a Party chooses to make government data available for public access and use, avoiding imposing conditions that unduly prevent or restrict the user of such data from: (a) reproducing, redistributing, or republishing the data; (b) regrouping the data; or (c) using the data for commercial and non-commercial purposes, including in the process of production of a new product or service.	No data	
Access to and use of the Internet		
"Access to Internet" shall not cover the services provided through network infrastructure by natural or juridical persons within their premises, which are used exclusively for individual or organisational needs without any commercial intention to provide any Internet access to third parties or to public	No data	
- Ensuring that end-users in their territory are able to: access/distribute/provide and use services and applications of their choice available on the Internet, subject to: - reasonable network management; - reasonable network management that does not discriminate between traffic of the same category; - reasonable network management which does not block or slow down traffic based on commercial reasons	Implemented	Interconnection is mandated on both fixed and mobile infrastructure and non-discriminatory internet traffic is mandated.

Provisions/elements	Rating	Source: Digital Economy Initiative for Africa (DE4A)
Recognising that an Internet access service supplier that offers its end-user certain content on an exclusive basis would not be acting contrary to this principle. (b) connect the end-user devices of their choice to the Internet, provided that such devices do not harm the network; and (c) access [transparent and clear] information on the network management [practices / policies] of their Internet access service supplier.	No data	

Provisions/elements	Rating	Source: DTRR	Source: DE4A	Source: UNCTAD E-trade readiness assessment
Online consumer protection				
Adoption of measures to proscribe misleading, fraudulent and deceptive commercial activities that cause harm, or potential harm, to consumers engaged in electronic commerce.	Partially implemented	Consumer Protection Act of 2012, rev. 2022, Art. 31 builds the foundation of online consumer protections, but the provisions do not cover protections against fraudulent activity fully.	More advanced practices concerning consumer protection are lacking and should be further developed.	A need exists to further bolster protections against fraud, specifically with misleading advertising, non-delivery of goods, and payment fraud. Although the Consumer Protection Act of 2012 begins protections for consumers, it overall fails to provide adequate protections.
Adoption of measures that aim to ensure: (a) that suppliers of goods and services deal fairly and honestly with consumers; (b) that suppliers provide complete, accurate, and transparent information on goods and services including any terms and conditions of purchase; and (c) the safety of goods and, where applicable, services during normal or reasonably foreseeable use.	Partially implemented	Consumer Protection Act of 2012, rev. 2022, Arts. 31 and 33. However, the law does not mandate information disclosure, nor does it provide protections over rights to redress for improper goods.	Many Kenyans have lost money from inadequate consumer protections, especially from small vendors. These difficulties stem from poor logistics and return policies.	The means to inspect or establish the quality of goods is absent, which leads to inadequate goods upon delivery and the inability to receive a refund. This issue is compounded outside of Kenyan borders because Kenya's consumer protection law does not apply extraterritorially.
Promote access to, and awareness of, consumer redress or recourse mechanisms, including for consumers transacting cross-border.	Not implemented	No provision was identified	Rights of redress are non-existent for online consumer protections.	Outside of the laws being absent for the right of redress, awareness on the subject is limited. Although the Director of Consumer Complaints receives and delivers judgment on inadequate goods, the complaint management process itself is inadequate for e-commerce.

Provisions/elements	Rating	Source: DTRR	Source: DE4A	Source: UNCTAD E-trade readiness assessment
Unsolicited commercial electronic messages (spam)				
Adoption of measures that: (a) require suppliers of commercial electronic messages to facilitate the ability of recipients to prevent ongoing reception of those messages; or (b) require the consent, as specified in the laws or regulations, of recipients to receive commercial electronic messages; (c) otherwise provide for the minimisation of unsolicited commercial electronic messages.	Not implemented	No provision was identified.		
Provision to access to either redress or recourse against suppliers of unsolicited commercial electronic messages	Not implemented	No provision was identified.		

Provisions/elements	Rating	DTRR	UNCTAD Cyberlaw tracker	DE4A
Cybersecurity				
Adoption of provisions for (a) building the capabilities of their respective national entities responsible for cybersecurity incident response; (b) strengthening existing collaboration mechanisms to identify and mitigate malicious intrusions or dissemination of malicious code that affect a Party's electronic networks, to address cybersecurity incidents in a timely manner, as well as for the sharing of information for awareness and best practices.	Implemented	National KE-CIRT-CC National Cybersecurity Strategy 2022-2027 Data Protection Act of 2019	Information and Communication Act of 1998 Computer Misuse and Cybercrimes Act of 2018	Although established, more can be done to bolster the existing frameworks.
Use and encourage enterprises within its jurisdiction to use risk-based approaches that rely on risk management best practices and on standards developed in a consensus-based, transparent and open manner when identifying and protecting against cybersecurity risks, detect cybersecurity events and respond to and recover from cybersecurity incidents.	Partially implemented	No provision was identified		Encouraging and strengthening the existing frameworks is necessary to improve monitoring, detection, and prevention capabilities.

Provisions/elements	Rating	DTRR	Data Guidance
Personal data protection			
Adoption measures that provides for the protection of the personal data of users of electronic commerce.	Implemented	Data Protection Act of 2019	Data Protection Act of 2019

Provisions/elements	Rating	DTRR	Data Guidance
Adoption the safeguards appropriate to ensure the protection of personal data and privacy, including through the adoption and application of rules for the cross-border transfer of personal data.	Implemented	Data Protection (General) Regulations of 2021 Art. 44	Data Protection Act of 2019 Sec. 25
Adoption measures that ensure the protection of personal data, including the cross-border transfer and processing of personal data and the conditions and requirements relating to it to promote the fundamental values of respect for privacy and protection of personal data	Implemented	Data Protection Act of 2019 Art. 30 Data Protection (General) Regulations of 2021 Art. 44	Data Protection Act of 2019 Sec. 25
Applying principles and guidelines/international standards of relevant international organisations [such as the OECD Recommendation of the Council concerning Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data (2013)]	Partially implemented	Data Protection Act of 2019 Arts. 28 & 30	General protections exist within the law but not as many as are listed in the OECD Recommendation.
Ensure that its legal framework adopted or maintained provides for the non-discriminatory protections of the personal data of natural persons..	Implemented	Computer Misuse and Cybercrimes Act of 2018 Art. 14 Computer Misuse and Cybercrimes Act of 2018 Art. 16 Computer Misuse and Cybercrimes Act of 2018 Art. 17	Various laws have provisions to protect users' data in various cases.
Adoption non-discriminatory practices in protecting citizens, consumers and medical patients from personal information protection violations occurring within its jurisdiction.	Implemented	Data Protection Act of 2019 Part V	Beyond its other basic data protections, Kenya has strong protections over health data and does not allow health data to be stored abroad.
Obtaining the directly expressed individual's consent for cross-border transfer and processing of his personal data.	Implemented	Data Protection Act of 2019 Art. 25(h)	Transfer of personal data may be based on consent.
Publishing information on the personal data protections it provides to users of electronic commerce, including guidance on how: (a) a natural person can pursue remedies; and (b) enterprise can comply with legal requirements.	No data		
Development of mechanisms to promote interoperability between different regimes.	Implemented	Data Protection Act of 2019 Art. 38(3)	
Prohibition using the personal information of natural persons obtained from enterprises operating within their jurisdiction in a manner which constitutes targeted discrimination on manifestly wrongful grounds such as race, colour, sex, sexual orientation, gender, language, religion, political or other opinion, national or social origin, property,	Implemented	Data Protection Act of 2019 Part V	Protective measures must be taken over sensitive data at all times.

Provisions/elements	Rating	DTRR	Data Guidance
medical, birth, or other status, genetic identity, age, ethnicity, or disability.			
Any personal information disclosed to a government authority by an enterprise is protected against loss or theft, as well as unauthorized access, disclosure, copying, use or modification. Exchange information on the mechanisms referred to (regarding compatibility) that are applied in their respective jurisdictions.	No data		
Any personal information disclosed to a government authority by an enterprise is not accessed, disclosed, used or modified by a government authority in a manner that can reasonably be expected to cause significant harm to a natural person.	No data		

Provisions/elements	Rating	Source: DTRR
Cross-border data / information flows		
Not restricting the cross-border transfer of information, including personal information, by electronic means.	Partially implemented	Data Protection Act of 2019 Art. 48
Cross-border data flows shall not be restricted by: (a) requiring the use of computing facilities or network elements in the country's territory for processing, including by imposing the use of computing facilities or network elements that are certified or approved in the territory of the Party; (b) requiring the localisation of data in the country's territory for storage or processing; (c) prohibiting storage or processing in the territory of other country; (d) making the cross-border transfer of data contingent upon use of computing facilities or network elements in the country's territory or upon localisation requirements in the country's territory.	Partially implemented	Data Protection Act of 2019 Art. 48 Data Protection Act of 2019 Art. 50 Data Protection (General) Regulations Art. 26

Note:

 Green – Implemented

The provision is fully addressed in the country's legal or regulatory framework.

 Yellow – Partially Implemented

The provision is addressed in part, but gaps remain in coverage, enforcement, or implementation.

 Red – Not Implemented

No relevant legal or regulatory measure has been identified for this provision.

 Grey – No Data

The provision could not be assessed due to a lack of available information.

Table A3. Reference of sources for Kenya Gap Analysis

Source name:	Link:
Information and Communications Act of 1998, rev. 2011	https://infotradekenya.go.ke/media/Kenya%20Information%20Communications%20ACT.pdf
Evidence Act of 1963, rev. 2012	https://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/EvidenceAct_Cap80.pdf
Consumer Protection Act, Act No. 46 of 2012, rev. 2022	http://kenyalaw.org:8181/exist/rest//db/kenyalex/Kenya/Legislation/English/Acts%20and%20Regulations/C/Consumer%20Protection%20Act%20-%20No.%2046%20of%202012/docs/ConsumerProtectionAct46of2012.pdf
Data Protection Act, No. 24 of 2019	https://www.kentrade.go.ke/wp-content/uploads/2022/09/Data-Protection-Act-1.pdf
Data Protection (General) Regulations, Legal Notice No. 263 of Dec. 31, 2021	https://www.odpc.go.ke/wp-content/uploads/2024/03/THE-DATA-PROTECTION-GENERAL-REGULATIONS-2021-1.pdf
Computer Misuse and Cybercrimes Act, No. 5 of 2018	https://nc4.go.ke/the-computer-misuse-and-cybercrimes-act-2018/
KE-CIRT/CC	https://ke-cirt.go.ke/
National Cybersecurity Strategy 2022-2027	https://nc4.go.ke/national-cybersecurity-strategy-2022-2027/
World Bank Digital Trade Regulatory Readiness (DTRR) Database	File available upon request
UNCTAD Cyberlaw tracker	https://unctad.org/page/cyberlaw-tracker-country-detail?country=ke
Digital Economy Assessment Country Report: Kenya – DE4A	https://thedocs.worldbank.org/en/doc/345341601590631958-0090022020/original/DE4AKenyasummarypaperfinal.pdf
Data Guidance	https://www.dataguidance.com/notes/kenya-data-protection-overview
UN Global Survey Digital & Sust. Trade	https://www.untsurvey.org/economy?id=KEN
UNCTAD Kenya E-Trade Readiness Assessment Report	https://unctad.org/publication/kenya-etradereadiness-assessment
OECD's Services Trade Restrictiveness Index (STRI)	https://sim.oecd.org/Simulator.ashx?lang=En&ds=DGSTRI&d1c=af&d2c=ken

ANNEX 2 - WORLD BANK-WTO STRI, SELECTED SECTORS

Figure A1. STRI – Mobile Telecommunication Services (Kenya and other African countries)

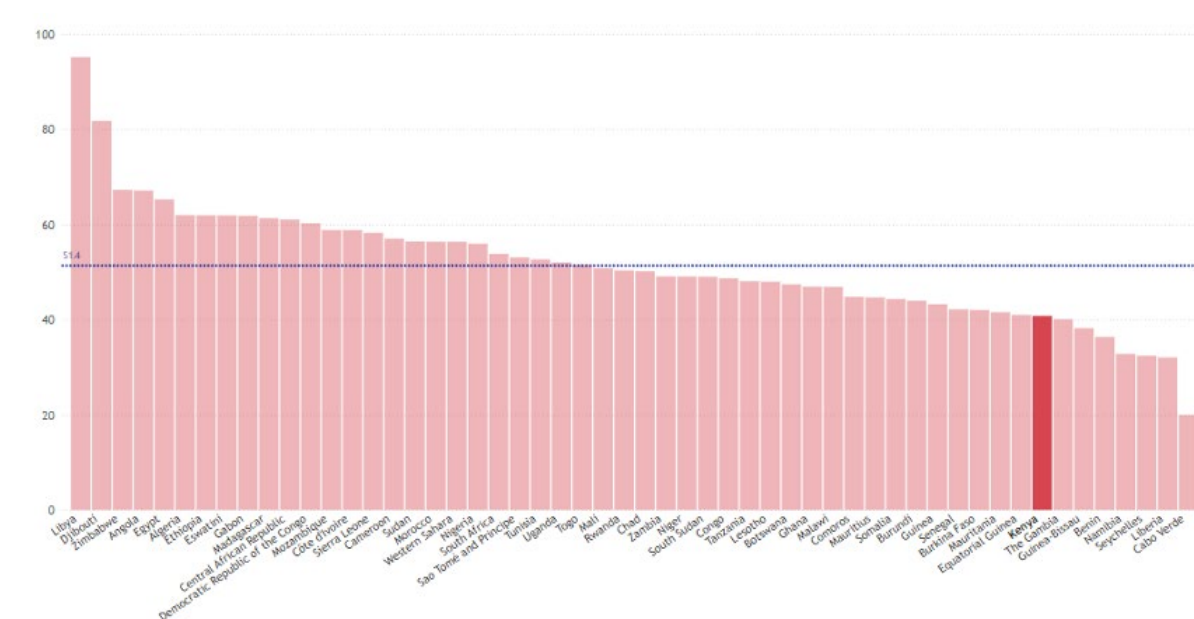


Figure A2. STRI – Fixed-Line Telecommunication Services (Kenya and other African countries)

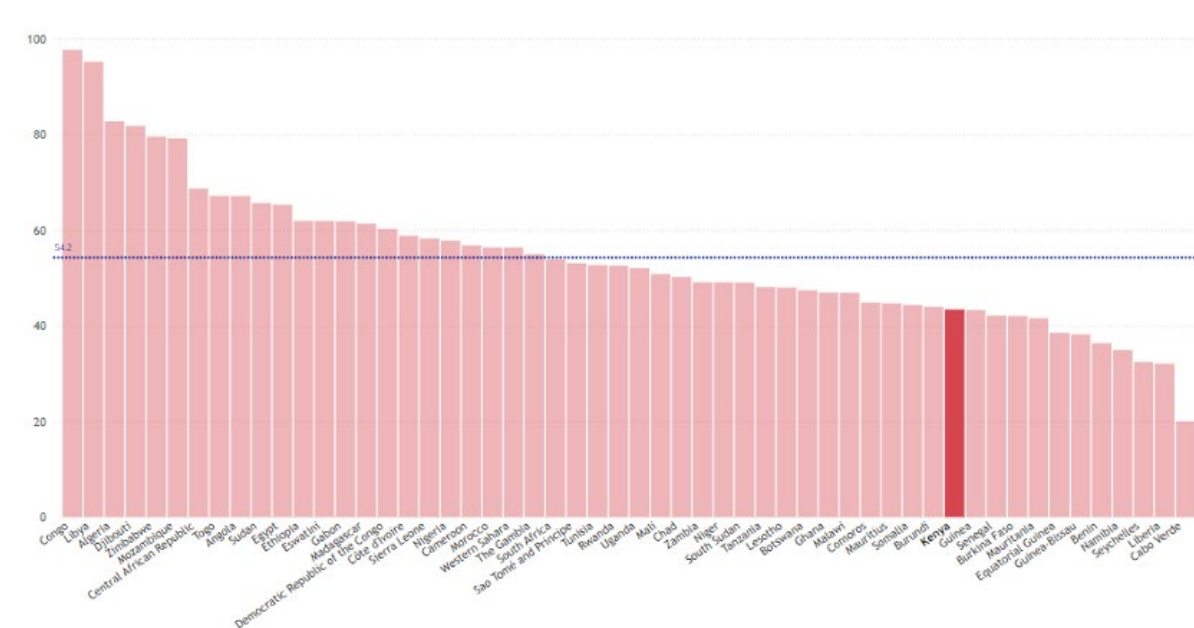


Figure A3. STRI – Computer services (Kenya and other African countries)

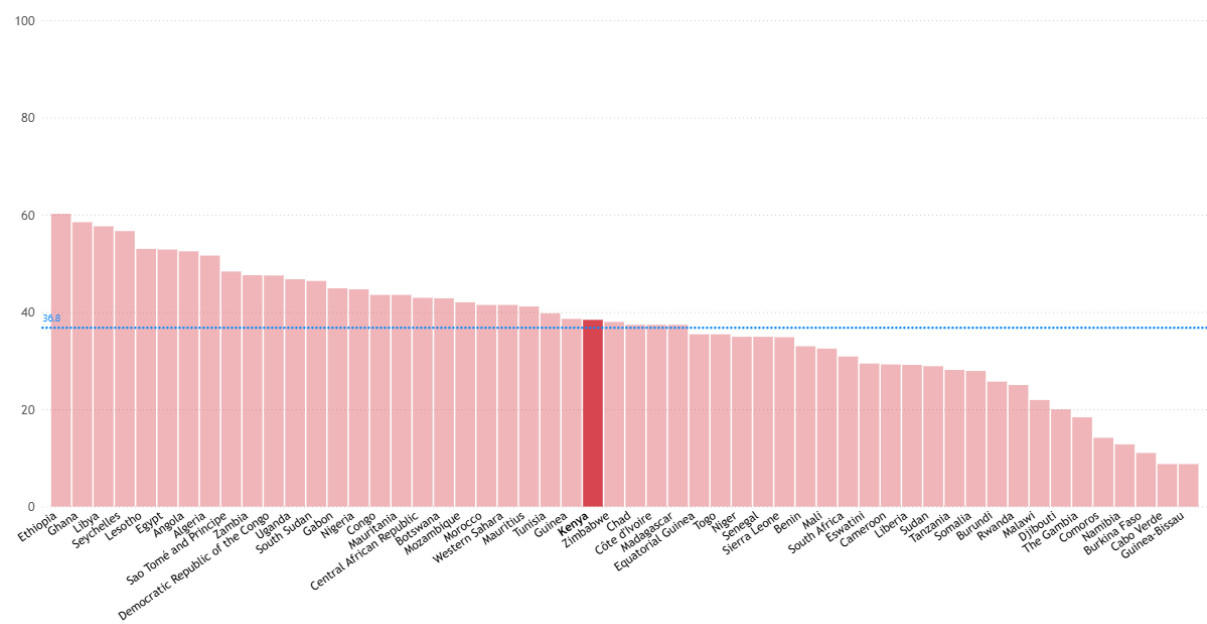


Figure A4. STRI – Retail distribution services (Kenya and other African countries)

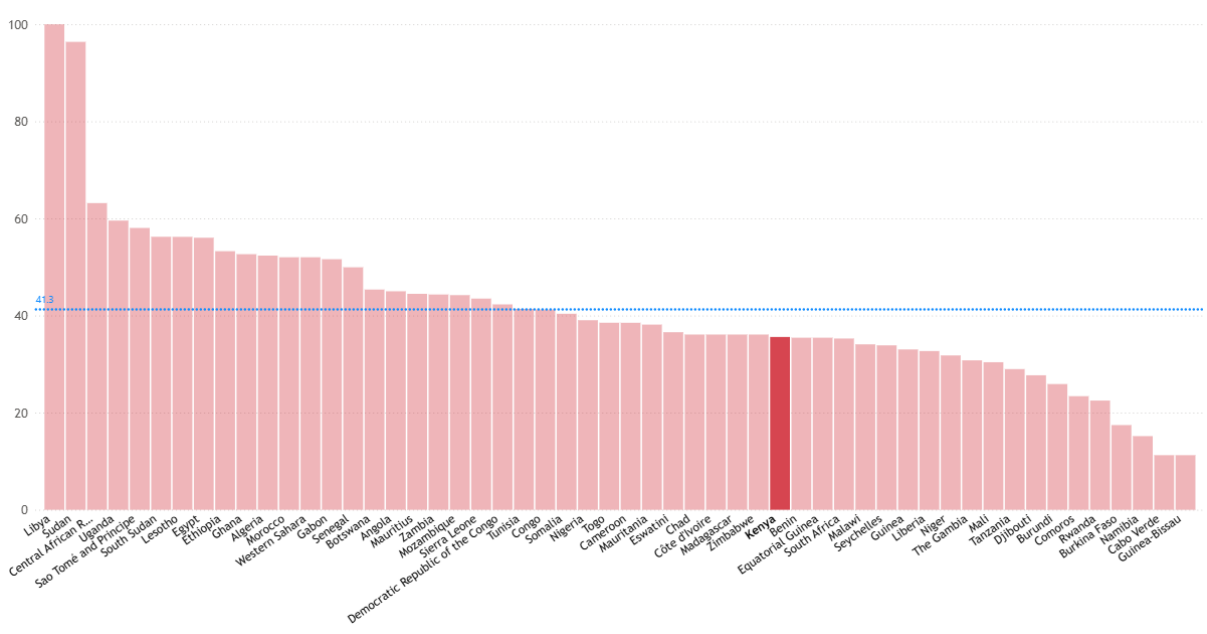


Figure A5. STRI – Wholesale distribution services (Kenya and other African countries)

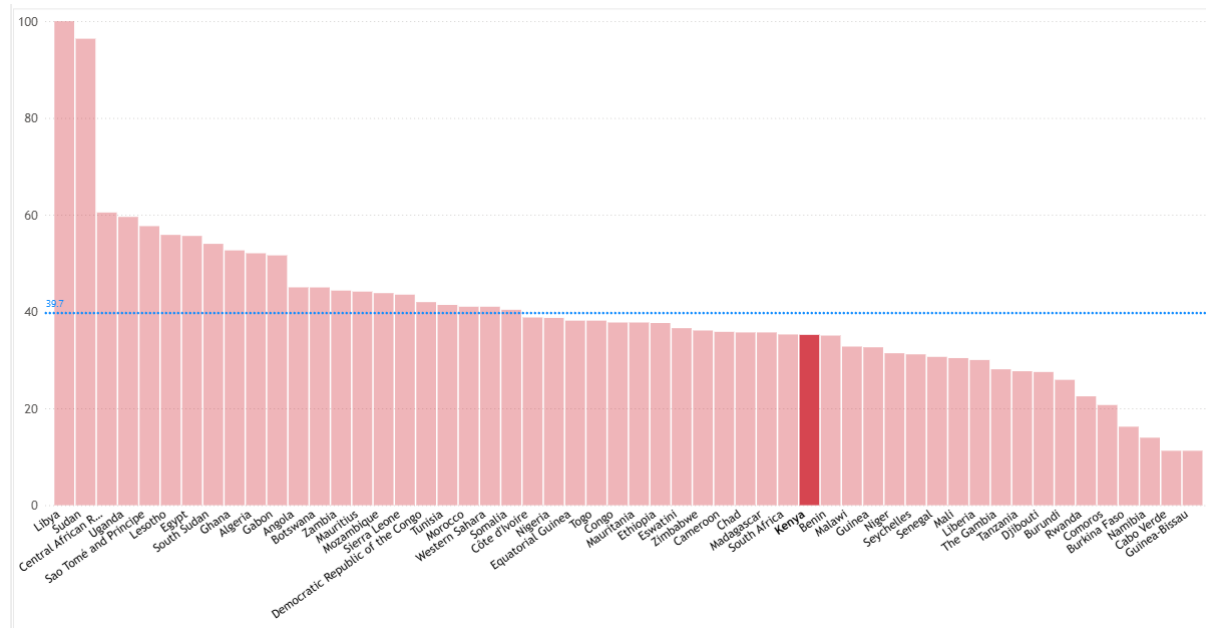


Figure A6. STRI – Commercial banking services (Kenya and other African countries)

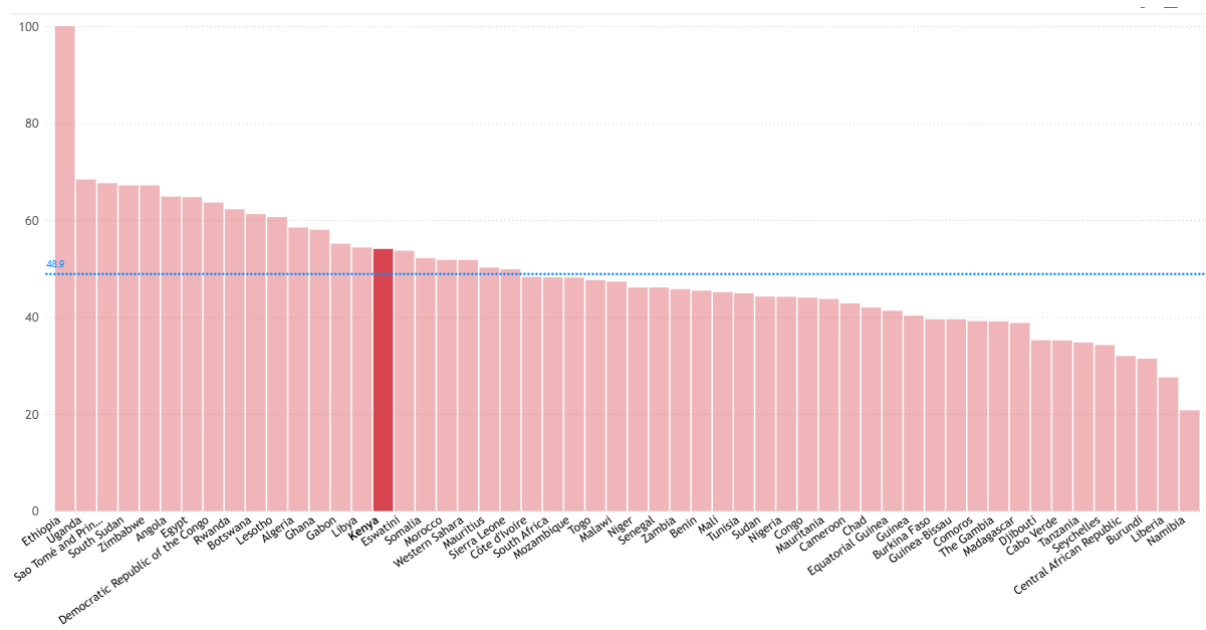


Figure A7. STRI – Maritime transport services (Kenya and other African countries)

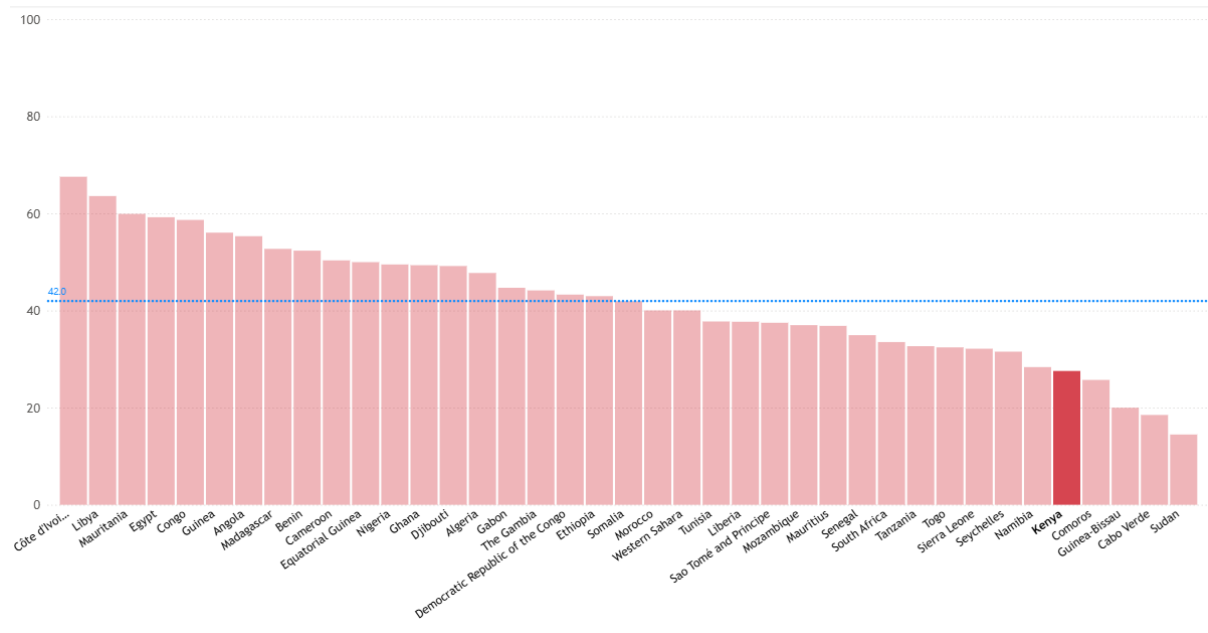


Figure A8. STRI – Road transport services (Kenya and other African countries)

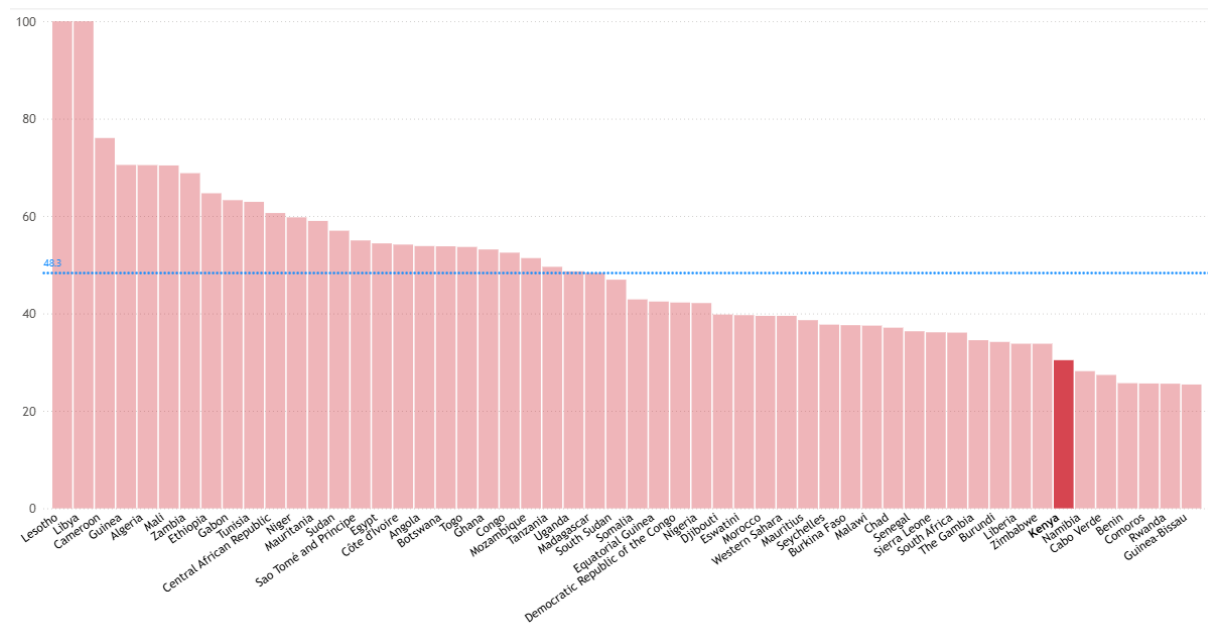
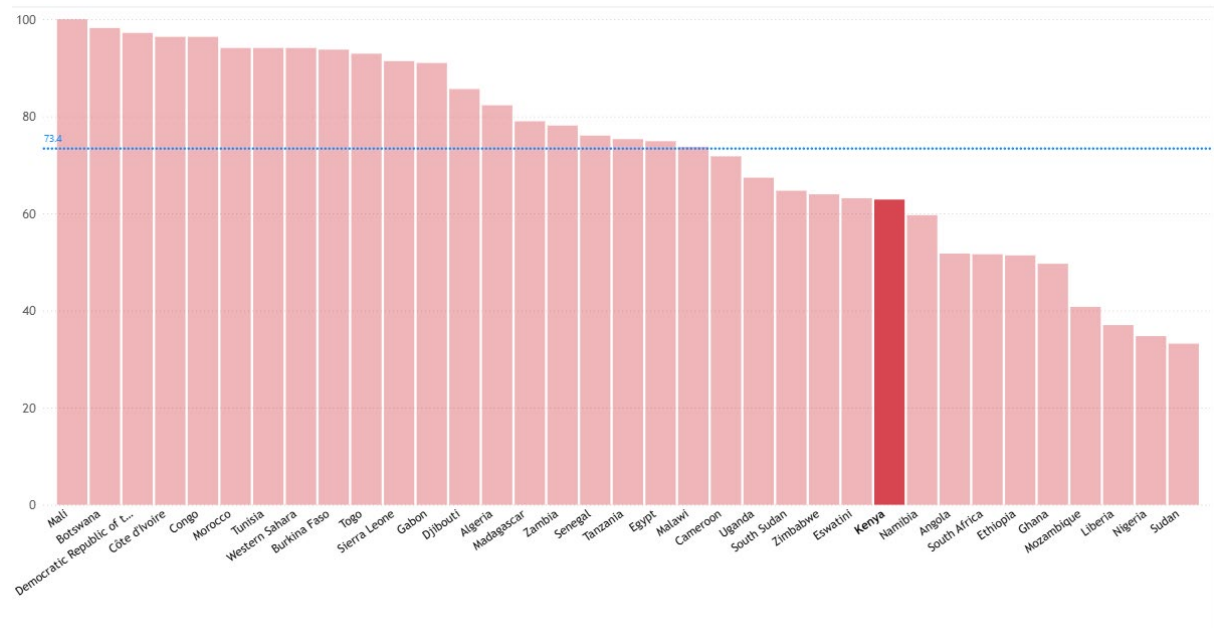


Figure A9. STRI – Rail transport services (Kenya and other African countries)



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ABBREVIATIONS

AfCFTA	Agreement Establishing the African Continental Free Trade Area
AEC	Agreement on Electronic Commerce
DE4A	Digital Economy Initiative for Africa
DTA	Digital Trade for Africa
DTRR	Digital Trade Regulatory Readiness
EAC	East African Community
GATS	General Agreement on Trade in Services
ICT	Information and Communication Technology
IFD	Investment Facilitation for Development
IMF	International Monetary Fund
ITA	Information Technology Agreement
ITU	International Telecommunication Union
KDEAP	Kenya Digital Economy Acceleration Program
ODPC	Office of the Data Protection Commissioner
OECD	Organisation for Economic Co-operation and Development
RTA	Regional Trade Agreement
STRI	Services Trade Restrictions Index
TFA	Trade Facilitation Agreement
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
WB-WBG	World Bank – World Bank Group
WTO	World Trade Organization
