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# **Assessing the Potential for African Digital Governance to Facilitate Inclusive Development: Rights, Rules & Revenues**

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## Introduction

The increased digitalising of economic, political, and social areas of life (also commonly known as digital transformation) has been seen across the world and Africa is no exception. Although occurring at slower rates of penetration compared to the rest of the world, digital platforms and e-commerce are already sweeping across the African continent. The growing use of technology and the subsequent digitalisation of processes is an avenue to potentially boost economic growth, especially with the provision of digital jobs for the continent's sizeable youth demographic. In anticipation of these opportunities, some countries have formulated national digital strategies and legislation to facilitate digital transformation across different sectors. However, many African countries are lagging on this front. The United Nations Conference on Trade and Development (UNCTAD) reported that the average prevalence of e-commerce legislation among African countries is about 57%, the lowest compared to the Asia Pacific (65%), Americas (79%), and Europe (89%).<sup>1</sup>

Digital and data policies provide a coordinated and strategic approach towards implementing digital innovation in a country. Without clear initiatives to enable and drive digital innovation, these developments occur in industry silos, resulting in inconsistent, uncoordinated, and insufficient digital development. The growth of e-commerce and multinational 'tech' giants in some countries has shown that much is at stake for countries that do not create the legal and regulatory frameworks to ensure fairness, safety, and competitiveness in their economies. According to the United States Congressional Anti-trust Report on Big Tech in 2020, in digital industries, like in other industries, early adopters have the ability to monopolise and accumulate capacities that later stunt late adopters.<sup>2</sup> More specifically, stragglers could lose out from the estimated US\$6.8 trillion in direct investments that are expected to be generated between 2020-2030.<sup>3</sup> Digital transformation and innovation are clearly the biggest development drivers of the century.

In order to assess African countries' progress, or lack thereof, in preparing for and driving digital transformation, this discussion compares the digital policies and regulatory environment in four countries - Kenya, Morocco, Nigeria, and South Africa. These countries are considered to be the continent's digital economy leaders as they have the highest internet penetration<sup>4</sup>, well-developed e-commerce<sup>5</sup> activity, as well as data privacy legislations.<sup>6</sup> This discussion contributes to the existing readiness assessments for e-trade in Africa, and looks at the broader role of digital transformation in facilitating inclusive development rather than focusing narrowly on creating economic growth. The discussion focuses on three main themes: 1) the **Rules** or regulatory framework of a digital economy, 2) the **Rights** and protections of consumers',



workers’, and broader citizens’ freedoms in a digital economy; and 3) the policies to sustainably promote and increase **Revenues** from the digital economy. The aim is to highlight the best practices and policy considerations for African governments to ensure that digital transformation is geared towards economic growth and meeting broader development objectives.

## Key concepts

### Digital economies

The digital economy refers to the network of services, products, techniques, and skills that have become enabled and improved by digital technologies.<sup>7</sup> Digital economies have shown the ability to disrupt established industries and add value by improving technological efficiency, cutting costs and increasing the speed of services and broadening the reach of businesses beyond their traditional, immediate markets. To keep up with the fast-paced developments of digital economies globally, the United Nations Conference for Trade and Development (UNCTAD) emphasises the importance of investing in the foundational elements or pillars of digitalisation. These pillars include: digital government, digital business, infrastructure, innovation-driven entrepreneurship and digital skills and values, and they are essential because they represent the opportunities and constraints of digital transformation. <sup>8</sup>

### Digital governance

Digital governance expert, Lisa Welchman, defines digital governance as “a discipline that focuses on establishing clear accountability for digital strategy, policy, and standards”.<sup>9</sup> Moreover, when effectively designed and implemented, digital governance can streamline development with certainty and consistency, especially in key sectors of the digital economy.<sup>10</sup> Such a framework guards against piecemeal policies for digital products and services, and provides clear institutional coordination to ensure that all developments align with broader national goals and commitments. The most prominent framework for assessing best practices in Africa is the Digital Economy Blueprint which was developed by the Government of Kenya as part of the Smart Africa Alliance. The framework assesses countries’ digital policies by measuring progress in the following key elements (pillars): digital government, digital business, infrastructure, innovation-driven entrepreneurship and digital values and skills.<sup>11</sup>



## Inclusive development

Inclusive development focuses on ‘the distribution of social and material benefits across social groups and categories but also the structural factors that cause and sustain exclusion and marginalization of vulnerable groups in society’.<sup>12</sup> This framing highlights the fact that growth and development are often not evenly distributed across sectors and regions within a country – resulting in high inequality amidst high growth. The digital economy requires aptitudes in mathematics, science and technological skills that could potentially exclude many, especially in Africa, thus, digital governance frameworks that mitigate inequalities, and create fair, accessible and equal opportunities for all to participate, must be rooted in citizens’ rights and enhancing people’s capacities to participate. Only when whole populations can participate and share in the gains of a thriving digital economy will this development be inclusive.

## Background

### Current Trends in Digital Governance in Africa

The African Union’s (AU) Digital Transformation Strategy for Africa 2020-2030 highlights digitisation priorities and provides a roadmap to facilitate, and benefit from, digital transformations.<sup>13</sup> In addition, the AU Convention on Cyber Security and Personal Data Protection 2020 is a great example of how multilateral agreements can provide a blueprint for countries to develop their own national legislative and institutional frameworks. Yet, most African countries still lack some form of digital-related legislation - only 14 have signed the convention, 8 have ratified it, and less than 10 countries have data protection regulatory authorities. Ultimately, effective digital governance is essential for attracting investments and increasing digital participation by citizens.

In some African countries, digital governance is characterised by regulative measures that are inconsistent with broader national development and economic objectives. For example, the increases in internet blackouts and disruptions of telecommunications services across the continent have raised serious concerns for citizens and businesses alike. In Ethiopia, these blackouts led to disruptions in essential banking services and other technology-supported services such as online agricultural trading and affordable e-taxi services,<sup>14</sup> and losses of up to US\$66.97 million during the two-week shutdown in 2019.<sup>15</sup> Similar nationwide blackouts have been on the rise with 25 documented instances of partial or total internet shutdowns in 2019, compared to 20 in 2018 and 12 in 2017.<sup>16</sup> In a similar problematic, short-sighted policy move, Uganda introduced a 12%



data levy, also known as the ‘internet tax’ to boost revenues to meet public debt.<sup>17</sup> The move was heavily criticised by Ugandans and civil society, as it will keep the internet in Uganda unaffordable and inevitably slow.

There are fears among some policymakers about overregulation of the digital economy before they have even properly set off. Andile Ngcaba, the former Director General of Communications in South Africa, noted, “We need to move away from regulation to enabling growth and the future. Regulating too early may stunt the development of digital economies, especially in Africa. We need to rather think of models and systems to enable innovation and investment.” This raises an important question: how much regulation and interference is enabling, and how much is stunting? No regulation at all or unpredictable regulation are as harmful as very stringent regulations, hence, it is the goal of this paper to show that governance frameworks for African digital economies must balance three key perspectives: rights, rules and regulations, and revenues, without prioritising one aspect at the expense of the other.

## The ‘Rules, Rights, Revenues’ Comparative Framework to Digital

### Governance:

Sixty-five per cent of global gross domestic product (GDP) is expected to be digitalised by 2022.<sup>18</sup> What will set the winners apart from the losers will be the countries that develop appropriate policies, an adequate level of digital infrastructure, and sound governance to ensure that these potential gains can be realised and accrued to their populations. A comprehensive digital governance framework will allow countries to take advantage of the opportunities of digital transformation in a coordinated and strategic manner. A robust digital governance framework has the potential to address the structural and social challenges that hinder digital transformation, such as poor infrastructure, low broadband/internet penetration, unemployment and low economic participation, by setting clearer priorities and well-coordinated strategies to leverage digital opportunities to accelerate progress in these areas.

Sound policies and regulatory framework on the digital economy are expected to contribute to attracting foreign direct investment (FDI) flows in the upcoming years. While development experts have long praised the catalysing effect of FDI on economic growth and development, they caution that ‘the benefits of FDI do not accrue automatically and evenly across countries, sectors and local communities’.<sup>19</sup> As a result, the positive impact of FDI on economic growth will be limited in the absence of broader



policies on technological innovation, the diffusion of knowledge from developed countries, expanding existing human capital and improvement of education systems.<sup>20</sup>

In addition, Sub-Saharan Africa's internet usage is estimated to have increased from 7% in 2010 to 28% in 2019, indicating a greater willingness to engage with digital services as users. However, distrust and lack of understanding of the internet are still widespread. The slow but steady increase in cellphone ownership, which is the main vehicle for internet access on the continent, also distinguishes African internet penetration trends. For digital technologies and innovation to thrive, citizens need systems to demystify new technologies and protect their rights, privacy and interests. Digital businesses, similarly, need assurance of a stable, predictable policy framework regarding internet accessibility and protection from hostile, ad-hoc decisions from government. The rules, rights, and revenues lens of assessment is meant to unify these multistakeholder interests into broader considerations for an inclusive approach to digital development.

## Rules

### Data ownership, privacy and security laws, localisation, and cross-border flows

The most important elements of a national data governance strategy include digital infrastructure, legislation and regulations pertaining to ownership, access, use and sharing of data. Much of these considerations are determined by countries' policies on data centres and where they are located. Data centres are responsible for the storage and safekeeping of data for computer systems, security devices, telecommunications, and thus are critical to modern businesses who are extremely cautious about database and transactional security. Local data centres give countries full ownership over how their citizens' data is handled and processed, according to their own laws and regulations. This is called data localisation, and several highly developed countries have adopted this approach of restricting or prohibiting data flows to other countries' data centres to safeguard their 'digital sovereignty' (see FIGURE 1).

The demand for local (public) data centres is driven by businesses' increasing requirements for data storage capacity and the shift away from the costliness of enterprises owning their own data centres.<sup>21</sup> For African countries, in particular, easier access to local data centres can eradicate barriers into the digital economy for small, medium and micro-enterprises (SMMEs), start-ups and multinational businesses by providing more efficient storage and access to their clients' data, especially where





internet data volumes are expected to increase due to growing penetration rates, and greater uptake of electronic transactions and payments. Among the countries assessed in this paper, there are 50 data centres: Kenya-5, Nigeria-11, Morocco-5, South Africa-25, and collectively represent over 60% of all data centres on the continent.<sup>22</sup>

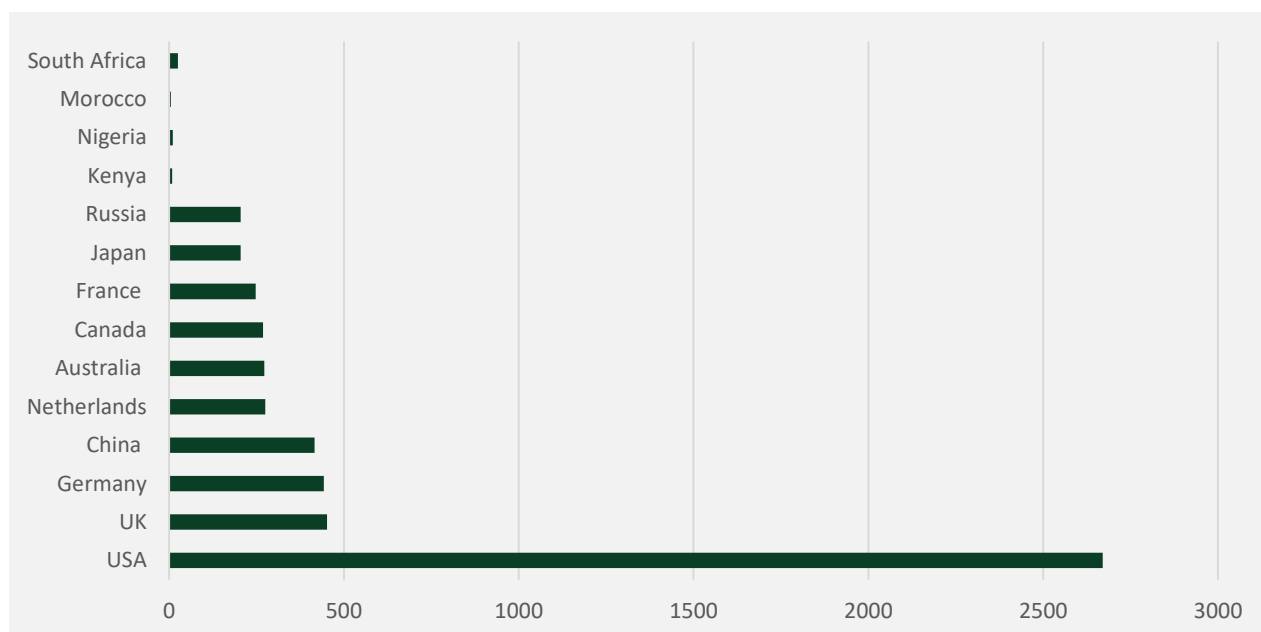
Data ownership and localisation is a significant policy area because of businesses' increasingly transnational nature of data flows across countries – which is inhibited by strong localisation policies. According to a McKinsey Report, data flows accounted for US\$2.8 trillion of global GDP in 2014 and “cross-border data flows now generate more economic value than traditional flows of traded goods,”. They also bring huge value-addition to businesses that operate globally — such as hotels, car manufacturers, freight and logistics enterprises and restaurant chains which rely on large amounts of data from their centres around the world.<sup>23</sup>

For some countries, the strategic importance of cloud storage and computing is also driven by concerns about national security. These countries, like South Africa, Kenya and Nigeria, believe they should own their own data centres and other computing technologies that enable the collection, analysis and synthesising of massive amounts of digital data.<sup>24</sup> However, the merits of local data centres and cloud computing capacity must be interrogated beyond the popular American- and Chinese-styled rhetoric about national security, albeit valid given the African continent's susceptibility to cyber-attacks. South Africa, Nigeria and Kenya, especially, have shown to be increasing targets of cybercrimes. The protectionist view towards data policy and infrastructure aims to self-insulate against espionage, cyber-attacks and the sabotage of critical infrastructure. Moreover, some countries are concerned about the economic exposure of hosting their data in foreign data servers. In the event of soured diplomatic relations with a government that hosts huge quantities of its data, a retaliatory data flow embargo could cripple the local businesses that rely on that access.

Another concern is that the (data centre) infrastructure that is required by such protectionist policies would cost significant public funds to set up, operate and maintain. The yearly cost to operate a large data centre is estimated between US\$10 million - US\$25 million – with a large portion spent on ongoing maintenance of applications and infrastructure, and the rest, on operational expenses, taxes, and labour costs.<sup>25</sup> This is a hard sell for government spending in low-income countries. Secondly, the energy consumption of global data centres is more than the national energy consumption of some countries. Given the poor energy supplies and lack of access in African countries, there may be ethical and environmental opposition to financing such infrastructure at large scale.



**Figure 1: Number of data centres**



Source: Analytics India (2021). 10 Largest Data Centres In The World. Available: <https://analyticsindiamag.com/10-largest-data-centres-in-the-world/> and Data Centre Map (2021). Data Centre Statistics Africa.

Kenya, Nigeria, Morocco, and South Africa each have varying policy provisions for the establishment of local data centres and broader digital connectivity infrastructure, as seen below:

**Kenya's** Ministry of ICT, Innovation and Youth Affairs published the **National ICT Policy Guidelines (2020)**, known as the Sector Policy, to drive ICT capacity, innovation and enterprise. The Sector Policy supports the growth of data centres as it views infrastructure sharing and co-location as fundamental to fostering efficiency of use, and a secure innovation ecosystem, especially for businesses and public administration.<sup>26</sup> However, a major criticism of the policy is the uncertainty about whether the government's emphasis on increasing oversight over access, licensing, regulating and pricing commercial access to data centres that are built by the state, will deter inefficient public and ad hoc private investments.<sup>27</sup> While it may be more efficient on power consumption to build more public data centres for different enterprises to share, the Kenyan policy has alarmed multinational cloud storage providers and prospectives who were looking to invest for fear of stricter regulations for them.

**South Africa's Draft Data and Cloud Policy (2021)** aims to harness the economic and social potential by developing a state digital infrastructure company and high-performance computing and data processing centre. It acknowledges, 'without universal, secure electronic communication networks and mobile communication



networks and connectivity, many of the promised benefits of digital transformation may not be realised'.<sup>28</sup> However, experts raised that the policy needs to address its short-sighted stance on cross-border data flows, mainly that any data generated in South Africa is the property of South Africa.<sup>29</sup> Cross border data flows are critical for services that sustain global commerce as they allow vendors to maintain and transfer personal and commercial data across borders to keep track of their customers' orders and product supplies.<sup>30</sup> Such a restricted outlook may create more friction for businesses rather than enable them.

**Morocco** does not have any national policy or uniform regulation that directly stipulates a preference for localised or offshore cloud storage and ownership of data generated within its borders. However, in 2017 it launched the public-private partnership of the MAROC DATACENTER, the first Cloud Computing platform in francophone Africa, on a state-owned site. The project is supported in principle by **Digital Morocco 2013: The National Strategy for Information Society and Digital Economy**. The data centre's objective is to serve as a 'production platform for cross-functional managed services aimed at small and medium-sized enterprises, large companies, public administrations and self-entrepreneurs'.<sup>31</sup> It is unclear whether Morocco aims to increase state-owned data centres and localise the ownership of its data, but the position may provide the flexibility that the other countries lack in terms of attracting foreign providers while the state is short on the capacity to establish its own.

**Nigeria** has a robust data localisation mandate stipulated in the **Guidelines for Nigerian Content Development in Information and Communication Technology (ICT) (2019)** and the **Nigeria Cloud Computing Policy (2019)** that were issued by the National Technology Development Agency (NITDA). Galaxy Backbone Limited is the main state-owned data centre operating in the public sector, while the rest are a mixture of commercial multi-tenant providers. Surprisingly, despite the NITDA Guidelines, which require all telecommunications companies, networks service providers, information management companies, and federal government ministries, departments, and agencies (MDAs) to host all sovereign data in Nigeria, 70% of MDAs host their data abroad.<sup>32</sup> Nigeria has 11 local data centres with infrastructure worth US\$220 million that is currently operating at 30% capacity utilisation.<sup>33</sup> While NITDA has raised concerns over this inconsistency with its policy, data providers continue to ignore them which indicates a weak compliance enforcement and lack of buy-in from state institutions. In order to seriously boost the localisation of data ownership, Nigerian data centres must improve their reliability, affordability, and adherence to global standards, as well as work harder to enforce policies on data storage and demonstrate competitiveness with foreign owned providers.



**Table 1: Indicators to assess the data governance frameworks (privacy laws, regulations, institutions) for digital economies in Africa**

Country	Data Ownership & Localisation Policy	Data privacy protection laws	Enforcement & Regulation of data protection law	Membership in multilateral group	Independent Regulator or Authority
Kenya	National ICT Policy Guidelines (2020) “Sector Policy”	Data Protection Act, 2019	Limited	International Conference of Information Commissioners (ICIC)	Office of the Data Protection Commissioner (DPC)
Morocco	Digital Morocco 2013: The National Strategy for Information Society and Digital Economy	Law No 09-08, dated February 18, 2009; and Decree n° 2-09-165 of May 21, 2009 (together with the DP Law)	Robust	Association of Personal Data Protection Authorities (AFAPDP)	Right to Information Access Commission (CDAI)
Nigeria	Nigeria Cloud Computing Policy (2019)	<i>Nigeria Data Protection Regulation 2019</i>	Moderate	None	National Information Technology Development Agency (NITDA)
South Africa	Draft National Policy on Data and Cloud 2021	The Protection of Personal Information Act, 2013 (Act 4 of 2013)	Moderate	ICIC	Information Regulator

## Regulation of fair competition in digital economies

Economic regulation is intended to ensure the efficiency of markets, partly through promoting adequate competition among actors in the marketplace.<sup>34</sup> The fast-paced, innovation-driven nature of digital economies means traditional sectoral regulation is quickly becoming obsolete and policymakers must ensure that their existing legislative and regulatory frameworks keep up with the unfamiliar terrains of new technologies, business models and new threats. A 2016 Report on Competition in the Digital Age described the key priorities for competition regulation across Sub-Saharan African and Asia as ensuring that the regulation of significant market power, that mergers do not result in the significant impediment of effective competition, and providing structural and behavioural remedies for the abuse of dominance by any market actors.<sup>35</sup> More



importantly, it emphasises the need for regulators to understand a marketplace before engaging in its regulation for these factors to be effectively implemented without over-regulation.

The EU Commission has repeatedly noted that recent data and competition-related reports show that monopolistic behaviour occurs mainly in very large online platforms that have become gatekeepers to online markets. Similarly, in its objective, the Competition Commission of South Africa (CCSA) recognises the “tendency toward concentration arising from first-mover advantages, data accumulation, network effects and exclusionary conduct”.<sup>36</sup> As a result, countries’ competition authorities need to include substantial, market-informed regulations that reduce the prevalence of this harmful behaviour without impairing the digital economy and its unique features.

As digital economies are still in early development stages in most parts of Africa we will likely witness more regulatory reforms over the next few years. Regulatory reforms must ensure that regulations remain fully responsive to changes in the economic, social and technical conditions surrounding them.<sup>37</sup> African countries can benefit from heeding the lessons from global trends in digitalisation and regulation as they develop and reform their policies coherently and sustainably. Through shared learning, countries can better build sustainable ecosystems of institutions, policies and practices to guide digital transformation strategically.

This section assesses the prevalence of competition policies and corresponding authorities that address three critical areas for ensuring fair competition in the digital economy. These areas include appropriate data use and practices for marketing and sales, effective merger controls.

**Table 2: Indicators to assess regulatory frameworks for fair competition with e-commerce practices in Africa**

Country	Competition Regulation Policy	Independent Regulator or Authority	Provisions for competitive (fair) e-marketing & sales practices	Provisions for effective merger controls & collusion
Kenya	Retail Trade Code of Practice (Code) – Gazetted: 11 June 2021 ; Competition Act, No. 12 of 2010 (the “Act”)	Competition Authority of Kenya	Yes	Yes, but not specific to online businesses
Morocco	Law No. 104-12 of 30 June 2014 on free pricing and competition (Competition Law)	Competition Council (CC)	Somewhat*	Yes
Nigeria	Federal Competition and Consumer Protection Act (FCCPA), 2018	Federal Competition and Consumer Protection Commission (FCCPC)	Yes	Yes
South Africa	Competition in the Digital Economy (Version 2); Competition Act 89 of 1998 (Act)	Competition Commission of South Africa; Competition Tribunal ; Competition Appeal Court	Yes	Yes

## Rights

### Protections for citizens, platform workers, consumers

The economic and social benefits of the digital economy rest on the ability of governments to facilitate widespread, if not universal, access to the internet and digital services. Various studies showing the growing disparities in digital access along rural-urban, gender and socio-economic lines provide a cautionary tale of the concentrated, exclusionary development that can occur if not guided by responsive, remedial policies.

Research ICT Africa found that digital inequality is also fuelled by youth-specific challenges to internet access, highlighting the multidimensional nature of barriers to



digital participation<sup>38</sup> South Africa’s Competition in the Digital Economy draft policy highlights the importance of making sure that the digital revolution contributes to inclusive growth and transformation”, which shows a recognition of the broader developmental potential of the digital economy. Some early progress has been made on this as seen through the gradual integration of ICT into learning curricula in schools, the creation of public wi-fi hotspots in public spaces such as malls, taxi ranks and schools. Furthermore, the World Economic Forum, among others, have declared that digital rights are basically human rights in the internet era – as they are extensions of existing rights such as freedom of expression, privacy and the right to work.<sup>39</sup> Digital products can improve access to important services such as access to healthcare, educational resources, and employment opportunities, which brings digital transformation to the fore of developmental priorities as an accelerator of access to essential services, rather than a luxury.

Rights concerns have also emerged in the digital economy regarding work-related protections for workers who engage in micro-work through digital platforms. Platform-based work has been hailed for its potential to alleviate Africa’s unemployment challenges. For instance, platforms that provide online shopping, freelance work and e-hailing activities represented the majority of platforms on the continent in a 2019 study – with 4.8 million individuals who earned an income through such transactional platforms across eight countries.<sup>40</sup> Digital platforms impact livelihoods through matching supply and demand for goods and services, opening new channels for employment and distributing additional value-added services to small businesses, self-employed individuals and customers through online or mobile channels. Platforms bring significant value-addition as they lower starting capital, operating and marketing costs while increasing access to markets.

However, labour rights disputes and frequent strikes like those faced by Uber, Bolt and MrD Food platforms in **South Africa**, for instance, raise serious issues about decent pay, safe working conditions and protections of platform workers. The ambiguity on whether such workers are contractors or employees for their respective platforms was a highly contested issue which went up to the Supreme Court and ongoing – as it had a significant bearing on the obligations of platform host companies and the freedoms/benefits of workers. The key policy concern in this area is how to leverage platform-based work without sacrificing hard-won labour rights and allowing new forms of labour exploitation.<sup>41</sup> In 2020, Fairwork Foundation, which works towards improving the welfare and quality of platform-based work globally, published the ‘Code of Good



Practice for the Regulation of Platform Work in South Africa’ which outlined the following policy principles of decent work and the scope of their application<sup>42</sup>:

- minimum wages
- protection under the Occupational Health and Safety Act 85 of 1993
- written contracts defining working conditions
- fair management
- freedom of organisation

These principles and recommendations are informed by substantial research into how platforms work in South Africa and where they fall short, and set a powerful precedent for the reforms that grant platform workers the protection that they are constitutionally entitled to.

While platform-based work is crucial to addressing the continent’s high unemployment, the jobs they bring must not create even worse circumstances by exploiting workers, for instance. Although the numbers of platform workers are still very low across African countries, data shows that the income from these jobs is essential to participants’ welfare – with only 15% reporting that they can live comfortably without income from their platform-based jobs.<sup>43</sup> Thus, new legal developments are expected to emerge in gig/platform economies around the world regarding the status of workers as contractors vs. employees, the provision of medical and unemployment insurance as has been seen by similar court cases in other countries.<sup>44</sup> South Africa has also indicated plans to create a ‘third worker classification’ which will support access to certain benefits while preserving the flexibility of workers, such as deciding their working hours and working for more than one company.<sup>45</sup>

Other serious digital rights considerations include consumer protections. As the internet becomes the marketplace for e-commerce and platform-based activities, governments must ensure adequate consumer protections for e-transactions under existing laws or newly established ones. Digital marketplaces and transactions come with unique risks and undesirable practices that exploit existing legal loopholes. Specifically, consumers need protection from predatory pricing and advertising, opaque billed subscriptions and unethical conditions and terms of use – most of which are enabled by unscrupulous digital marketing strategies. Consumers also need accountability and recourse measures for security breaches, risks and harms arising from the negligence of digital companies when handling their personal data.





In **Kenya**, online trade platforms are not regulated under the Kenya Information and Communications Act (KICA) as they do not constitute electronic services as envisaged under the Act and are therefore not licensable.<sup>46</sup> This has resulted in a huge gap in the types of consumer protections that are available to preventing consumer protection-related disputes, and left many consumers engaging directly with institutions – mainly financial institutions – on public social media platforms like Twitter.<sup>47</sup> Similarly, **Nigeria’s** consumer protections in e-commerce have also been the subject of criticism. Despite recording US\$2 million worth of internet transactions per week and close to US\$ 1.3 billion monthly with an estimated growth rate of 25% annually, Nigeria still relies on obsolete legislation such as the Sale of Goods Act (1893) and the Federal Consumer and Competition Protection Act (2018) which excludes the entire concept of e-commerce, making no mention/provisions of online commercial transactions in the new law.<sup>48</sup> This leaves consumers vulnerable to serious risks – such as not sufficiently protecting one’s personal data, the likelihood of unauthorised payments or debits, predatory pricing and advertising - and weakens consumer confidence in online transactions, which is crucial for the further development of e-commerce.

**Table 3: Comparison of African countries’ workers’ & consumers’ rights protection in e-commerce and platforms**

Country	Access to universal/broader internet connectivity or restrictive policy	Digital platform workers labour protections (working hours, minimum wages, social protection)	Consumer protections on e-transactions (cybersecurity, pricing, ethical marketing)
<b>Kenya</b>	National Broadband Strategy 2018-2023	Employment Act (2012) does not cover benefits and employee protections for platform workers as they are seen as contractors. Provisions may be offered under fixed term contracts. <sup>49</sup>	Limited provisions under the Kenya Information and Communications Act but <u>none</u> under Consumer Protection Regulations (2010).
<b>Morocco</b>	Morocco in the global information society: National strategy, E-Morocco (2001) <sup>50</sup>	Auto-entrepreneur Status provides advantages incl. tax reductions, work from home permission, income tax exemption if there’s no turnover & social security etc. <sup>51</sup>	Bill N ° 31-08  Educating Measures of Consumer Protection – including provisions for remote sales and online advertising.



<p><b>Nigeria</b></p>	<p>Nigerian National Broadband Plan 2020-2025; NCC reduced data prices by 50% in 2020</p>	<p>Limited protections – national Health Insurance Fund (NHF), work injury compensation/employer’s liability, pension fund and minimum wage but no unemployment insurance.</p>	<p><i>Federal Competition and Consumer Act</i> – provides compensation requisite for cybersecurity breaches due to entity negligence<sup>52</sup>  Cybercrimes (Prohibition, Prevention, Etc.) Act 2015</p>
<p><b>South Africa</b></p>	<p>Inquiry by Competition Commission settlement agreements to reduce data pricing</p>	<p>Section 23 of the Constitution – provides for the right to organise &amp; collective bargaining; additional provisions for Basic Conditions of Employment Act in consideration</p>	<p>Competition Commission – Competition in the Digital Economy addresses data privacy and sovereignty as key priorities for consumer protections</p>

## Revenues

### Leveraging digital economies to boost economic growth and job creation

Digital transformation presents more significant opportunities, including creating digital economies of scale, stimulating job creation, breaking digital and social divides and generating inclusive economic growth.<sup>53</sup> Consequently, African countries must develop forward-looking revenue-mobilising strategies for their digital economies. This includes adopting appropriate tax systems while supporting increased participation in digital value chains, investing in research and development, and embracing emerging financial technologies and platforms that respond to their domestic needs. African countries need not miss the train to participate in value-added activities that create higher incomes and support better livelihoods.

Digital policies need to balance their country’ social and fiscal objectives, such as raising revenues and increasing internet affordability, while taking care to not compromise the growth and future gains of the sector. For instance, **South Africa’s** Competition Commission led an Inquiry that concluded settlement agreements with the largest mobile network providers to reduce data pricing with a specific focus on lower-income segments of the market to increase internet access. **Kenya’s** National Broadband Strategy lays out a plan to deliver broadband through an investment-driven approach which offers incentives to investments in ICT such as tax holidays, protection of new investments in the sector and promoting market-based competition. Additionally, some countries have implemented industrial policy instruments to enable their growth and development in the digital economy including investment incentives including tax breaks, supporting strategic sectors, public procurement deals, trade instruments



(tariffs and duties), education and skills development, as well as research and development (R&D).<sup>54</sup> This suggests an inclination towards increasing access at affordable rates to promote the take-up of new digital products, and postponing the revenue-raising priority for the medium and long-term when demand has been created and maintained.

## Balancing regulation & business freedom for economic growth

Globalisation has highlighted the challenge of balancing regulation and business freedom and has made multinational economic cooperation a necessity rather than optional. This is seen in the challenges of restricting cross-border data flows, competing for tax incentives to attract large ‘tech’ businesses, and the legislative loopholes that emerge from different countries’ digital and data standards for multinational companies.

Multilateral instruments such as free trade agreements can be valuable in setting guidelines for cooperative data and digital governance - as with the United States-Mexico-Canada Agreement and several others in the Asia-Pacific region. Some countries have outright prohibited data localisation requirements and restrictions on cross-border data flows to maintain the economic benefits of free-flowing data.<sup>55</sup> Continental data standards like the European Union’s General Data Protection Regulation (GDPR) are helpful to address many of the risks associated with the increased digitalisation of commerce, including problems of competition, theft of intellectual property, the vulnerability of sensitive personal data, and weak breach protocols.

Most African countries still do not have any data protection laws, and those who do are mostly deemed limited and moderate in their regulation and enforcement.<sup>56</sup> The continent could benefit from harmonised data and digital governance standards and economic cooperation using the African Continental Free Trade Agreement (AfCFTA). It remains unclear whether the current approach of bilateral agreements will continue as the preferred means of coordinating ICT cooperation in Africa or whether countries will adopt more systematic, continental approaches to maximise the gains of digital infrastructure and economies. The continental approach may also be effective at reducing red tape and inconsistencies and thus be more appropriate than bilateralism.

More importantly, the ever-increasing capacities of new technologies such as predictive algorithms and data mining to maximise profits for online businesses have facilitated significant market dominance by a few market players which negatively impacts smaller less capacitated businesses and consequently, limit inclusive growth.<sup>57</sup> African policymakers must anticipate this growing concentration of global ‘tech’ businesses and



their impact on small, micro and medium enterprises (SMMEs) – which are central to African economies – and ensure that new regulations do not stifle them or distort the market.<sup>58</sup> Accordingly, countries need to prioritise regulations that will level the playing field, reduce regulatory barriers to entry and expansion, and address both consumer- and competition-related concerns to facilitate a conducive, competitive environment for all participants to thrive.

In addition, countries need to ensure that their tax administrations and systems are well-prepared to tax digital businesses effectively and in ways that do not allow them to shift their tax burden onto smaller enterprises through sophisticated tax planning arrangements – which is currently a challenge for countries globally. Countries’ conventional claims to taxing businesses such as value-added tax, corporate and withholding tax, excise duties etc. are complicated by the multinational nature of some digital businesses. Anti-double taxation provisions are put in place to prevent businesses from having to pay the same taxes twice in all the countries they operate in, and rather where their headquarters are located. However, multinational businesses may conduct the bulk of their operational activities outside their headquartered jurisdiction, and some companies use anti-double taxation provisions to avoid paying taxes altogether.<sup>59</sup> Some African countries have introduced direct taxes on digital services to make up for these losses in the absence of globally accepted standards for taxing digital businesses.

Another challenge is that African countries’ digital tax options must be weighed against domestic incentives and the global agreement on ‘Tax Challenges Arising from the Digital Economy’ that is currently being negotiated at the global level by the OECD/G20 Inclusive Framework – a multilateral platform of 136 countries.<sup>60</sup> Notably, Nigeria and Kenya have not signed onto The preliminary agreement on the grounds that the new agreement would drastically shrink the tax revenues from their existing tax laws. However, the participation of these two countries is essential for digital and tax cooperation of countries on the continent and beyond as they are the some of the continent’s leaders in digital penetration, ‘tech’ start-ups and market size.<sup>61</sup>



**Table 4: Indicators to assess regulatory frameworks for fair competition for e-commerce practices in Africa**

Country	e-Commerce/Digital Taxation Framework	Digital business investment incentives
Kenya	1% - on Income accruing through a “digital marketplace”, being a platform that enables the direct interaction between buyers and sellers of goods and services through electronic means (2021) - Finance Act 2020	Konza Technopolis Development Authority (KoTDA) in development  Intentions for incentives for smaller businesses
Morocco	Same as non-digital businesses (Value added tax: 20%)	Moroccan Digital Fund (Maroc Numeric Fund, MNF) - supplying seed funding, with a special focus on smaller firms  Technology Parks – tax incentives for supporting ICT services <sup>62</sup>
Nigeria	30% - Taxable income where a foreign or local company engages in commercial electronic activities to the extent that the company has a significant economic presence in Nigeria and profit can be attributable to such activity. <sup>63</sup>	Digital Innovation and Scale-up Centres (DISC), Funding for the Innovation and Start-Up ecosystem - (National Digital Economy Policy and Strategy 2020-2030)
South Africa	Same as non-digital businesses; first to bring digital services within its value-added tax; but no direct digital tax plans	Grant funding for innovation and R&D activities; Proposal for Digital Industrial Policy Framework <sup>64</sup>

### Conclusion: Call to Action

The key contribution of this paper is the importance of an inclusive development approach to the growth of African digital economies. It highlights the policy considerations currently being made, considered and avoided in four countries with the largest e-commerce presence, digital platforms, internet penetration and growing economies – the continent’s leaders on digital governance. Drawing from the policy decisions of these key players and literature from experts in digital transformation, the following is a set of identified priorities for African governments to assess and build their digital governance in a manner that is sustainable, inclusive, and rights-based without compromising economic growth driven by digitalisation:



Priority	Recommended Actions
<b>Promote universal access to internet</b>	Incorporate digital rights in national policies and rights framework; ensure data pricing is affordable; introduce digital skills in schools; invest in broadband infrastructure; make internet shutdowns illegal <sup>65</sup>
<b>Provide secure, flexible data ownership policy</b>	Promote data ownership policy that allows both localised ownership and storage of data (local data centres) and co-location (overseas) data centres
<b>Promote shared-learning &amp; cooperation in digital governance</b>	Sign and ratify AU Convention on Cyber Security and Personal Data Protection 2020 and localise to domestic needs and circumstances; Lead multi-actor inclusive approach to develop standards of local digital governance (government, civil society, private sector)
<b>Secure consumer and workers’ protections on digital platforms</b>	Introduce consumer protections for harmful digital marketing and sales practices; Incorporate digital/platform-based workers in existing labour laws
<b>Improve personal data security</b>	Develop data privacy and personal information policy; Establish information regulatory authority to enforce compliance
<b>Ensure digital economy is fair and competitive</b>	Update competition commission or authority regulations to curb digital business practices that allow abuse of dominance & significant impediment of effective competition
<b>Scale-up digital economy</b>	Establish public-private partnerships to improve digital infrastructure (broadband, reliable energy, data centers); provide funding for local R&D and innovative entrepreneurs; promote informal sector participation through digital payment



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