DIGITALIZATION, DATA AND THE DIGITAL ECONOMY IN AFRICA: POSITIONING AFRICAN TECH STARTUPS AS ENGINES OF DEVELOPMENT

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Stark & widening gulf between leading & lagging countries

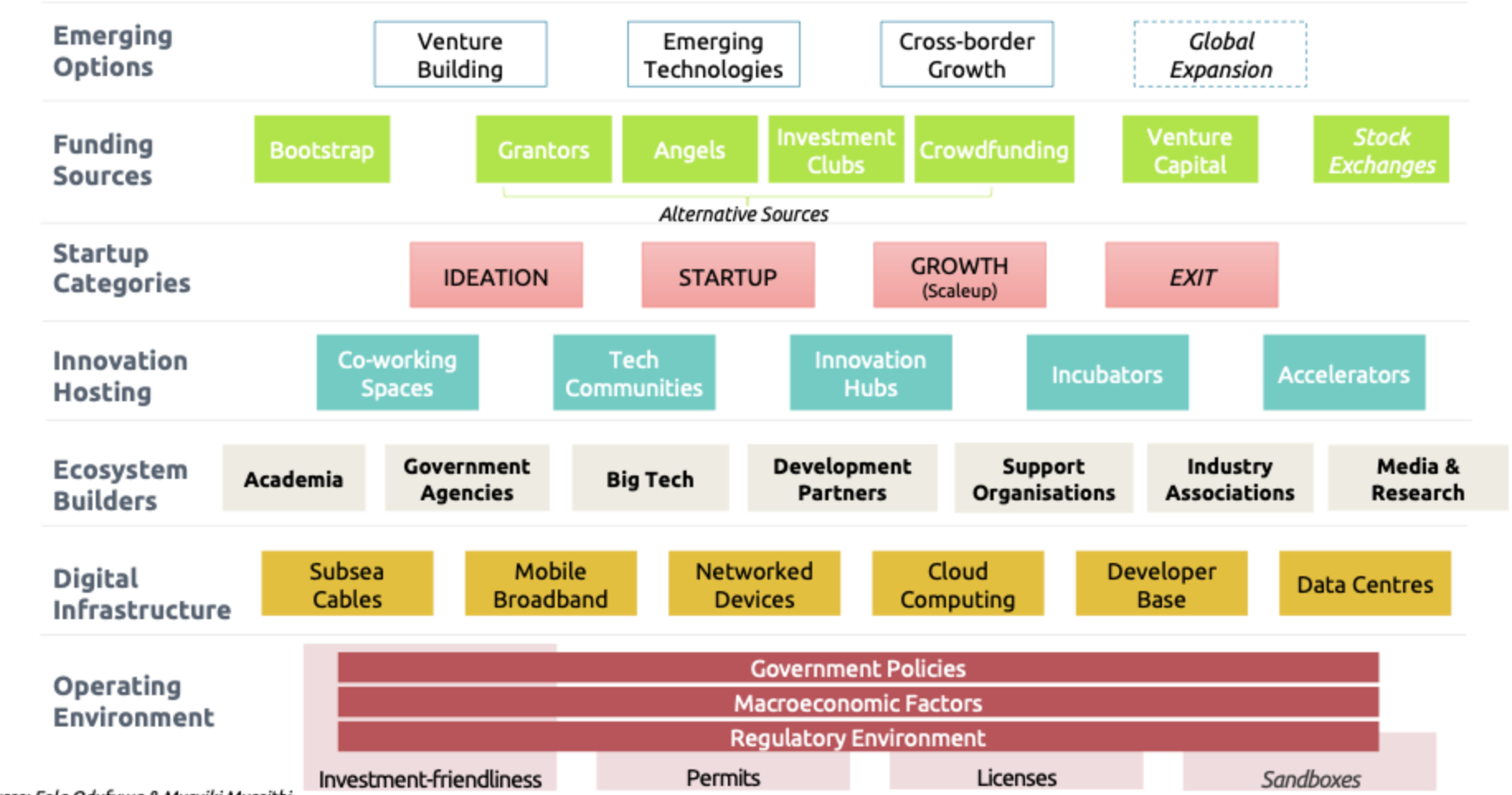
There is a huge digital inequality paradox in Africa!

- African startup ecosystems can be grouped into three categories based on the levels of publicly disclosed venture capital (VC) funding since 2015.

High Startup Activity - TIER 1	*Modest Startup Activity* - TIER 2	*Negligible Startup Activity* - TIER 3
Nigeria South Africa Kenya Egypt	Ghana Tunisia Senegal Morocco Uganda Tanzania Algeria Zambia Cote d'Ivoire DR Congo Rwanda	Rest of Africa (40 countries)

Source: Fola Odufuwa & Muriuki Mureithi.

Mapping the African Startup Ecosystem



Source: Fola Odufuwa & Muruiki Mureithi

Trade, secrecy and loss: the Protocol on Digital Trade and the implications for data justice

Presented by Dr Sandra Makumbirofa

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Analysis of the Protocol on Digital Trade

- Data governance emerges as a critical enabler for inclusive development, particularly within the AfCFTA
- Policy and legal incoherence in the Protocol
  - Data and data flows
  - Most Favoured Nation
  - Protection of personal data
  - Algorithmic transparency and source code disclosure
- Negotiating in secret

Data and data flow: Article 20 (1) of the Digital Trade Protocol

Article 20
Cross-Border Data Transfers

1. State Parties shall, subject to an Annex on Cross-Border Data Transfers, allow the cross-border transfer of data, including personal data, by electronic means, provided the activity is for the conduct of digital trade by a person of a State Party.

Data and data flow: Article 20 (2) of the Digital Trade Protocol

Article 20 (2)

2. For greater certainty, a State Party may adopt or maintain measures inconsistent with Paragraph 1 to achieve a legitimate public policy objective or protect essential security interests, provided that the measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination, or a disguised restriction on digital trade, and do not impose restrictions on transfers of data greater than are required to achieve the objective.

Most Favoured Nation

“Most-Favoured-Nation” (“MFN”) treatment — requires Members to accord the most favourable tariff and regulatory treatment given to the product of any one Member at the time of import or export of “like products” to all other Members. This is a bedrock principle of the WTO. Under the MFN rule, if WTO Member A agrees in negotiations with country B, which need not be a WTO Member, to reduce the tariff on product X to five percent, this same “tariff rate” must also apply to all other WTO Members as well. In other words, if a country gives favourable treatment to one country regarding a particular issue, it must treat all Members equally with respect to the same issue.

https://www.meti.go.jp/english/report/downloadfiles/gCT0212e.pdf

Protection of personal data: Article 12 (2) (l) of the Malabo Convention

Article 12: Duties and Powers of National Protection Authorities

2. The national protection authorities shall ensure that Information and Communication Technologies do not constitute a threat to public freedoms and the private life of citizens. To this end, they are responsible for:

(l) Updating a processed personal data directory that is accessible to the public;

(k) Authorizing trans-border transfer of personal data;

(n) Participating in international negotiations on personal data protection;

Algorithmic Transparency and Source Code: Article 24 (1) of the Digital Trade Protocol

Article 24

Source Code

1. State Parties shall not require the transfer of, or access to, a source code of software owned by a person of another State Party as a condition for the import, distribution, sale or use of that software, or of products containing that software in its territory.

Comparison of Article 24(1) with the Joint initiative

Article 24(1)

1) State Parties shall not *require the transfer of, or access to, a source code of software owned by a person of another* State Party *as a condition for the import, distribution, sale or use of that software, or of products containing that software in its territory*.

WTO Joint Initiative on E-Commerce

"No [Party/Member] [shall] [to the extent practicable] *require the transfer of or access to, source code of software owned by a person of another* [Party/Member], [or the transfer of, or access to, an algorithm expressed in that source code,] *as a condition for the import, distribution, sale, or use of that software, or of products containing that software, in its territory*"


Negotiating in secret: Democratic Deficit

There is still potential to enable just economic outcomes under the AfCFTA

- All future AfCFTA protocols should be created through broad consultative and transparent processes.
- All future AfCFTA protocols should be vetted by the AU bodies with the expertise to ensure that broad rules do not negatively impact specific areas.
- The developmental measures on data set out in the AUDFP may not be wholly realised if certain data uses are not adequately dealt with in the Annex on Cross-Border Data Transfer.

There is still potential to enable just economic outcomes under the AfCFTA (cont.)

- The Annex on Source Code Disclosure could adequately, albeit not optimally, address the prohibition on software disclosure.
- The AU should establish a dedicated task force to align emerging AI blueprints, to optimise efforts, minimise overlap, and foster a collective strategy to harness digital transformation for broad-based and enduring socio-economic growth throughout Africa.

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