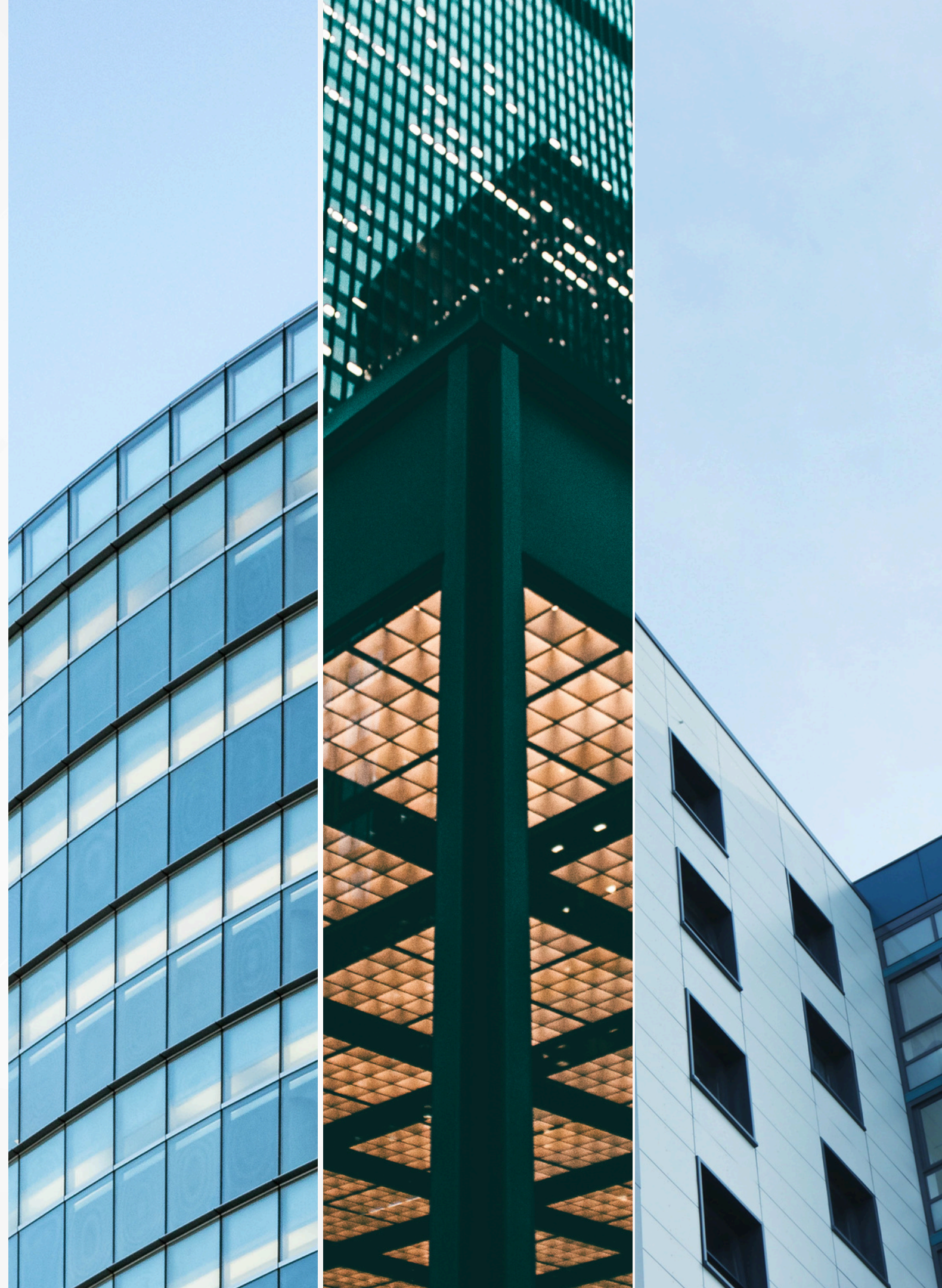


**VIRTUAL
ASSETS
CHAMBER**

**VIRTUAL ASSETS SERVICE
PROVIDERS BILL, 2025 REVIEW**

MISSION:

**CREATING SAFE
SPACES FOR
SENSITIVE
CONVERSATIONS:
WITHOUT THE FEAR OF
BEING PROFILED AND
TARGETED.**



PARTNERS:

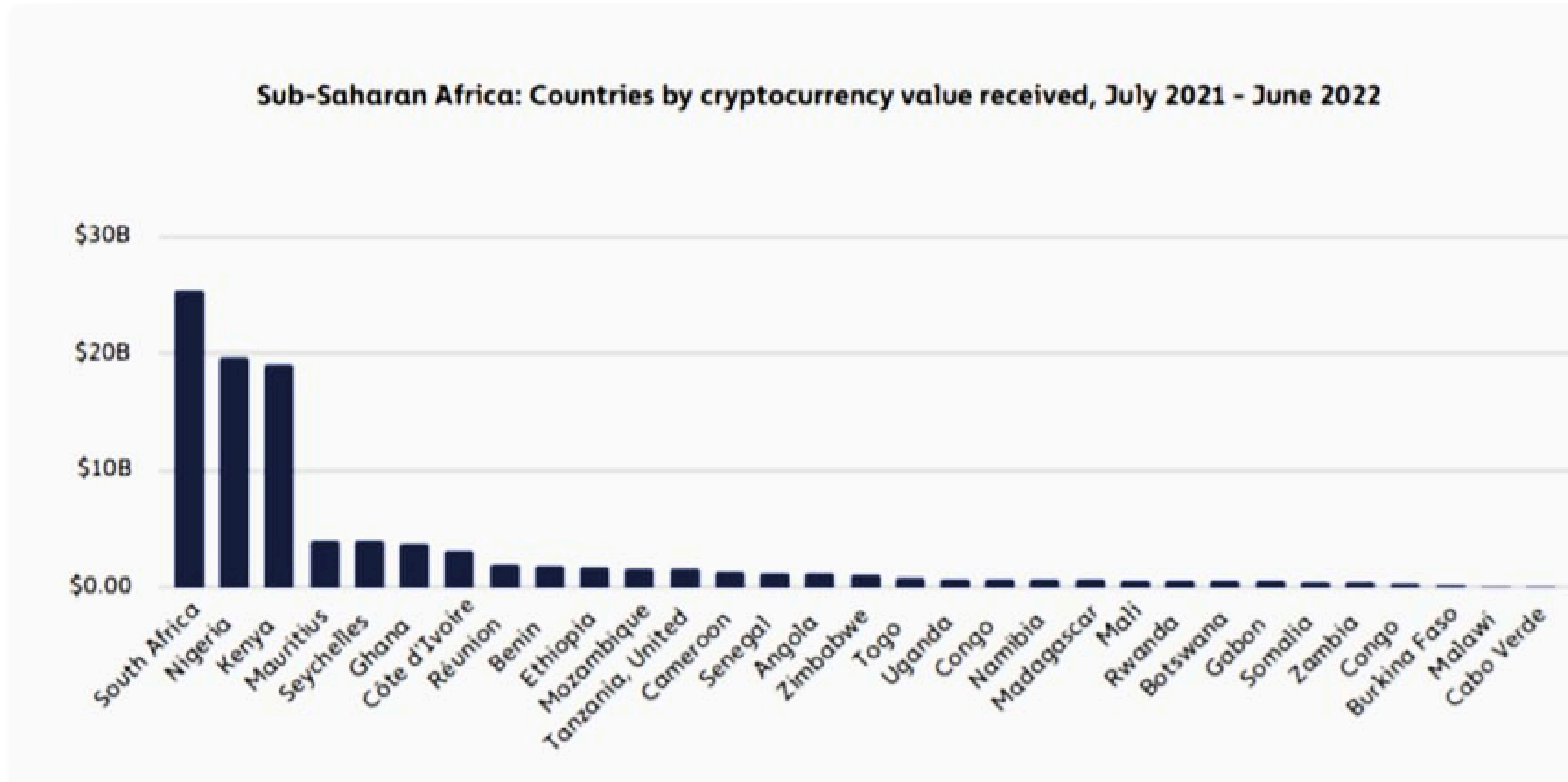


Kenya Blockchain &
Crypto Conference



DID YOU KNOW?

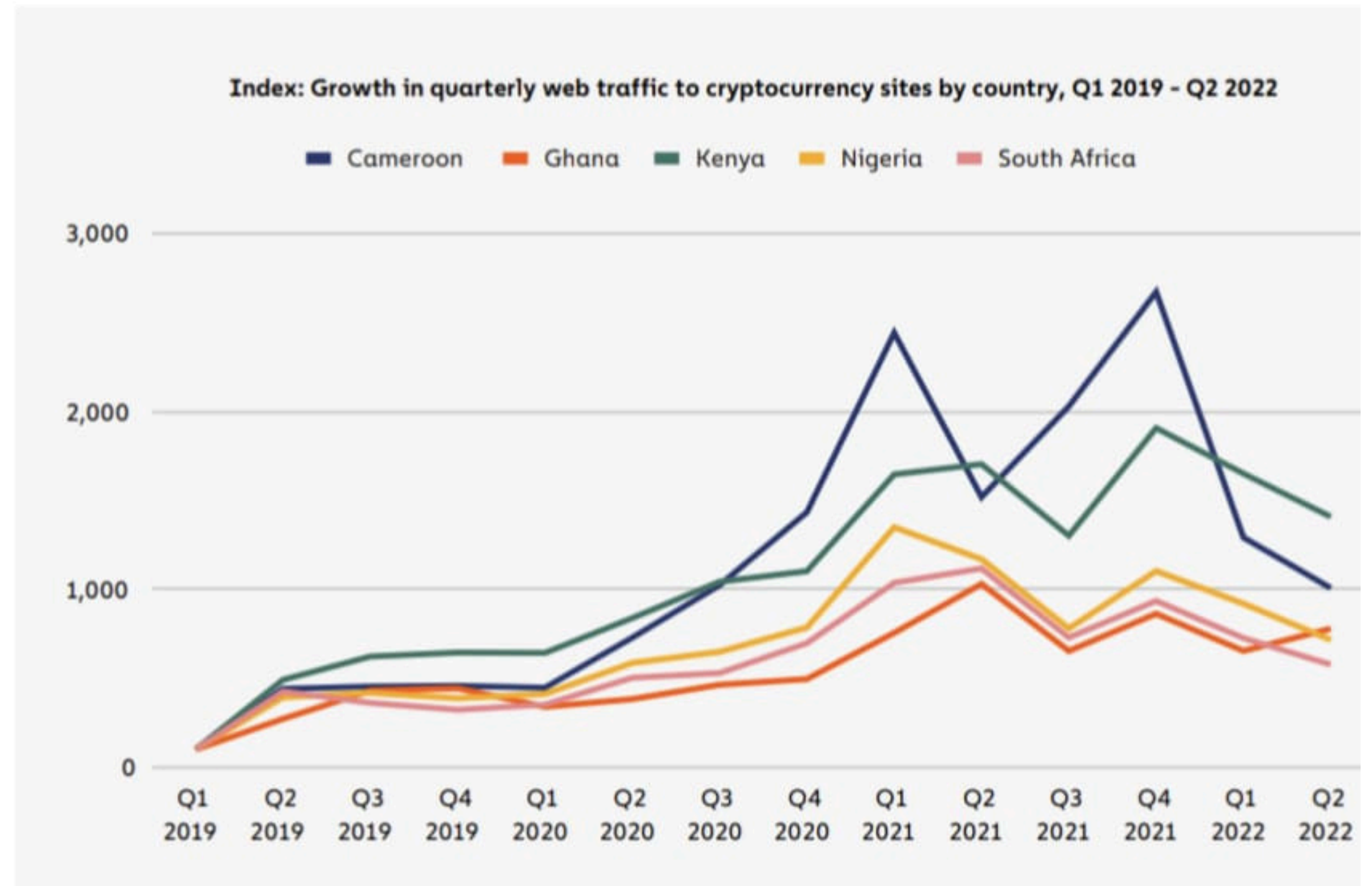
Close to [\\$2 Billion](#) has been transacted in Kenya between 2023 & 2024



DID YOU KNOW?

Kenya has the **2nd highest web traffic** to crypto sites in Africa

Kenya ranks **No.19** in the Global Crypto Adoption Index



BACKGROUND:

2015:

CBK issued a further **cautionary notice** to financial institutions against dealing in virtual currencies or transacting with entities engaged in virtual currencies.

FEB 2018:

CMA issued a public notice on **21 February 2018** warning Kenyans against participating in **initial coin offerings (ICOs)** stating that it had not approved any ICOs, that they were **unregulated** and that speculative investments posed considerable risks to investors.

MARCH 2018:

Distributed Ledgers and Artificial Intelligence Taskforce (Taskforce), tasked with developing a road map for emerging technologies such as blockchain and artificial intelligence.

REGULATORY ROADMAP

MARCH 2019:

Establishment of CMA Regulatory Sandbox.

JULY 2019:

The Taskforce issued a report recommending, among other things, that:

- a passive approach to digital currency is not advisable given the current advancements in technology.
- the provisions of the National Payment Systems Act, which mandate the CBK to designate a payment system for purposes of the Act, may be relied on to license and regulate cryptocurrencies and other alternative payment systems.
- the leveraging of the current CMA legal framework, which could be a game changer for small- and medium-sized players.
- creation of a Central Bank Digital Currency (CBDC), which would allow for a costless medium of exchange, a secure store of value and a stable unit of

REGULATORY ROADMAP

SEPTEMBER 2019:

High Court Decision in *Wiseman Talent Ventures v Capital Markets Authority [2019] eKLR* classifying crypto as securities thus subject to CMA's statutory supervision.

2020:

Banking Supervisions Report, the **CBK** noted that *“There is no clear evidence that cryptocurrencies present material risks to financial stability and monetary policy at this stage. However, continuous monitoring of the size and growth of cryptocurrencies is prudent to ensure that their material risks are identified as well as their transmission channels to financial stability risk. The CBK, in tandem with other financial sector regulators, will continue to sensitize the public on the potential risks posed by cryptocurrencies.”*

REGULATORY ROADMAP

APRIL 2021:

CMA Milestones Report indicating the **CMA** has been facing challenges when considering applications by entities providing cryptocurrency services to be admitted to the Regulatory Sandbox, including:

- novelty and complexity of the concept;
- insufficient information regarding the risk universe in this area;
- lack of internal capacity to review these types of applications;
- objections by banks to the issuing of cryptocurrencies; and
- fears around volatility affecting local currency.

FEBRUARY 2022:

CBK— recognising the growing interest in cryptocurrencies—issued its **Discussion Paper on Central Bank Digital Currency** (CBDC Paper) in which it proposes to issue a digital currency in Kenya and inviting comments from the public on its use case.

REGULATORY ROADMAP

DECEMBER 2022:

The **Joint Financial Sector Regulators Forum (JFSRF)** formed a **Technical Working Group** that will make recommendations to the National Treasury on how to regulate the crypto industry.

2023: CAPITAL MARKETS AMENDMENT BILL, 2023

- Tax: Income Tax on income or trade profits generated & Capital Gains Tax.
- Licensing: Persons who intend to introduce a new cryptocurrency product.

2023: VALUE ADDED TAX (ELECTRONIC, INTERNET AND DIGITAL MARKETPLACE SUPPLY) REGULATIONS, 2023

The Value Added Tax (Electronic, Internet and Digital Marketplace Supply) Regulations, 2023

REGULATORY ROADMAP

MARCH 2023: THE FINANCE BILL 2023

The Finance Bill 2023 proposes to introduce a new **Digital Asset Tax** at the rate of 3% on income derived from the transfer or exchange of digital assets.

OCTOBER 2023: VASP Bill

Parliament directs BAK to draft the VASP Bill.

NOVEMBER 2023: Joint Financial Sector Regulators Forum (JFSRF)

The Joint Financial Sector Regulators Forum (JFSRF) formed a technical working group that will make recommendations to the National Treasury on how to regulate the crypto industry

JANUARY 2025:

- The final version of the VASP Bill 2025.
- The Virtual Assets and Virtual Asset Service Providers (VASPs) Money Laundering (ML) and Terrorism Financing (TF) Risk Assessment Report, 2023.
- The IMF Technical Assistance Report on Crypto Regulation and Legislation, December 2024.

GENERAL REGULATORY CONCERNS:

Concerns	Proposal
Licensing	<ul style="list-style-type: none">• Virtual Assets Service Providers Bill.
Tax	<ul style="list-style-type: none">• 3% DAT• CIT• DST
Consumer Protection	<ul style="list-style-type: none">• Virtual Assets Consumer Protection Guidelines.
Anti-Money Laundering & Counter Terrorism Financing	<ul style="list-style-type: none">• National AML & CTF Guidelines for Virtual Assets Service Providers.
Regulatory Sandbox	<ul style="list-style-type: none">• Virtual Assets Regulatory Sandbox Guidelines

LICENSING: PROPOSED VIRTUAL ASSETS SERVICE PROVIDER BILL

Item	Mandate
Objective	<ul style="list-style-type: none">• Licensing Virtual Assets Service Providers• Classification of Virtual Assets• Setting up VASPs Licensing Committee within CMA.• Dispute Resolution.
Regulatory Oversight	<ul style="list-style-type: none">• Capital Markets Authority• CBK
Consumer Protection	<ul style="list-style-type: none">• Consumer Protection Guidelines.
Anti-Money Laundering & Counter Terrorism Financing	<ul style="list-style-type: none">• AML & CTF Guidelines for Virtual Assets Service Providers.
Regulatory Sandbox	<ul style="list-style-type: none">• Joint Virtual Assets Regulatory Sandbox Guidelines.

PROPOSED VIRTUAL ASSETS SERVICE PROVIDER BILL:

WHO IS REGULATED?

Service Type	Description	Regulator
Virtual Asset Wallet Provider	Custodial services for virtual assets for corporate or retail and facilitating exchanges or transfers between one or more virtual assets, or between virtual assets and fiat currency	• CBK & CMA
Virtual Asset Exchange	Transfer and exchange virtual assets for other virtual assets or fiat	• CBK & CMA
	Matching of buyers and sellers for trading of virtual assets, while holding virtual assets on behalf of their clients.	• CMA
Virtual Asset Payment Processor	Payment gateways that arrange payments using virtual assets	• CBK
Virtual Asset Broker	Facilitate exchange between one or more forms of virtual assets through an virtual exchange and virtual wallet providers for and on behalf of retail and institutional clients.	• CMA
Virtual Assets Investment Advisor	Provision of investment advice on virtual asset, initial virtual asset offering and NFT for and on behalf of retail and institutional investors	• CMA
Virtual Asset Manager	Managing portfolios with virtual assets for clients	• CMA
Initial Virtual Asset Offering Provider	Issuing and selling virtual assets to the public.	• CBK & CMA
Virtual Asset Tokenization	Digitizes real-world assets like real estate into blockchain tokens.	• CMA
Virtual Asset Escrow Service Provider	Holds virtual assets in trust until transaction conditions are fulfilled.	• CBK & CMA
Virtual Asset Validator/ Miner	Validates and confirms blockchain transactions.	• CA

PROPOSED VIRTUAL ASSETS SERVICE PROVIDER BILL: ANY REGULATORY REQUIREMENTS?

LICENSING	DESCRIPTION
Licensing Requirements and Applicability	<ul style="list-style-type: none"> • Prohibitions. No person or entity may operate as a Virtual Asset Service Provider (VASP) in or from Kenya unless licensed by the relevant regulatory authority. Natural persons are explicitly prohibited from engaging in VASP activities. Licensing applies only to local companies incorporated under the Companies Act and Foreign companies with a certificate of compliance under the Companies Act. • Eligibility for license: Section 11 and 12.
Penalties for Operating Without a License	<ul style="list-style-type: none"> • Section 41(1). For an individual: Fine up to KES 10 million or imprisonment for up to 10 years, or both. For a company: Fine up to KES 20 million. • Section 41(2): Continuing violations attract daily penalties of up to KES 3.75 million after the first day.
Additional Compliance Requirements	<ul style="list-style-type: none"> • Fit and Proper Test (Section 19(2)): Assesses whether individuals in key positions are suitable. • Capital Requirements (Section 12(f)): Sufficient net worth and capital reserves to ensure financial stability, with specific thresholds prescribed by the regulatory authority. • Regulatory and Operational Standards. Establish procedures for combating money laundering and terrorism financing (Section 12(c)). Maintain internal data protection safeguards (Section 12(d)). Notify authorities of any changes in application information within 14 days (Section 11(7)). • Conditions of License (Section 13) : Display, Modifications, Cooperation. • Section 25 (f) and Section 25(g): Annual financial statements to be audited, Open and operate a bank account in Kenya. • Section 31: Appointment of a CEO. • Section 21: A board of directors consisting of at least two directors. They cannot serve in another board.
Key Considerations for Licensing Decisions	<ul style="list-style-type: none"> • Largely Section 12: Risks, Competence, Internal Safeguards, Contributions to Innovation ,Complexity, Size, Minimum Net Worth etc.
Enforcement Actions	<ul style="list-style-type: none"> • Section 40. Formal written warnings, Directions to rectify non-compliance, Restrictions on entering new business contracts, Suspension or revocation of licenses, Replacement of senior officers by individuals deemed acceptable by regulators.

LICENSING COMPARATIVE ANALYSIS:

Jurisdiction	Regulation
European Union	Markets in Crypto Assets (MiCA)
Singapore	Payment Services Act (PSA) 2019
Dubai	Virtual Assets & Related Activities Regulation 2023
South Africa	Financial Sector Conduct Authority (FSCA)
Japan	Virtual Currency Exchange Provider (Japan Financial Services Authority)
Nigeria	Finance Act 2023, SEC Regulations on Digital Assets
Mauritius	Virtual Asset and Initial Token Offering Services Act 2021
Botswana	Virtual Assets Act 3 of 2022

TAX:

PROPOSED VIRTUAL ASSETS TAX GUIDELINES:

Recommendation	Comments
Scrap off Current Digital Assets Tax	The DAT is unconstitutional on the Grounds that: -Levying tax on Gross Fair Market Value means potentially taxing loss making entities (income tax should be on gains. Taxation of Capital is unconstitutional <u>Kenya Revenue Authority v Stanley Waweru and Six Others</u> (Article 201(b)1 of the Constitution of Kenya)
Corporate Income Tax (CIT) Tax Guidelines for VASPs	Corporate Income Tax on Domestic entities
Digital Service Tax (DST) - Non-Resident VASP Entities	Percentage (1.5%) on non-resident entities.
Income Tax on individuals	Personal Income tax on gains