

# The Malabo Convention

# The Malabo Convention Journey

- **2009** OR Tambo Declaration
- **2010** – AU Summit endorsement
  - Abuja Declaration (STC-CICT)
- **2011** First Draft: “AU Convention on the Confidence and Security in Cyberspace”
- **2012** – Khartoum Declaration
  - endorsement of draft by AU STC-CICT)
- **2012-2013** Stakeholder consultations
  - 2013 online petition against the Convention
- **2014** Legal Validation by STC on Justice
- **2014** Adoption: “AU Convention on Cybersecurity and Protection of Personal Data”
- **2014 – 2024-** Ratification by member states
- **2023 - Revisionists**
- **2024** - Entered into force

# Malabo Convention Strategic Orientation

- Options for an African Union wide cyber security policy;
- Foundation for an African Union wide cyber ethics and fundamental principles for cyber security;
- Foundation for legal framework for electronic commerce;
- Legal and institutional framework for protection of personal data;
- Foundation for a penal cyber law and a penal procedure for the treatment of cyber crime.

# Malabo Convention At-a-glance(1)

- **Objectives**

- ✓ *Harmonize e-legislation, protect personal data, promote cyber security, fight cybercrime*
- ✓ *Define key cyber terminologies in legislation*
- ✓ *Develop general principles and specific provisions related to cyber legislation*
- ✓ *Outline cyber legislative measures required at Member State level*
- ✓ *Develop general principles and specific provision on international cooperation*

# Malabo Convention At-a-glance (2)

## The Convention main parts

***PART I: ORGANIZATION OF ELECTRONIC COMMERCE***

***PART II: PROTECTION OF PERSONAL DATA***

***PART III: COMBATING CYBER CRIME***

***PART IV: COMMON AND FINAL PROVISIONS***

	SECTIONS	ARTICLES	DEFINITION/ TERMINOLOGIES
I. e-Transaction	3	Art. 2-7 (6 art.)	<b>43</b>
II. Protection données pers.	5	Art. 8-23 (16 art.)	
III. promotion Cybersécurité et lutte c. Cybercriminalité	2	Art. 24-31 (8 art.)	
IV. Dispositions finales	-	Art. 32-38 (7 art.)	
	<b>10 sections</b>	<b>38 articles</b>	<b>43 définitions</b>

# PDP in the Malabo Convention(1)

- Establish a mechanism which shall ensure that **any form of data processing respects the fundamental freedoms and rights of natural persons** while recognizing the prerogatives of the State.
- Each Member State shall **commit itself to develop a legal and institutional framework for the protection of personal data and establish the national protection authority**
- Establish mechanisms for **cooperation with the personal data protection authorities of third countries and participate in international negotiations on personal data protection**

# Preamble (1)

- Reaffirm:
  - commitment of Member States to fundamental freedoms and human and peoples' rights contained in the declarations, conventions and other instruments adopted within the framework of the African Union and the United Nations;
- Consider:
  - that the establishment of a regulatory framework on cyber-security and personal data protection that takes into account the requirements of respect for the rights of citizens, guaranteed under the fundamental texts of domestic law and protected by international human rights Conventions and Treaties, particularly the African Charter on Human and Peoples' Rights;

# Preamble (2)

- Bearing in mind that the major obstacles to the development of electronic commerce in Africa are linked to security issues, particularly:
  - The gaps affecting the regulation of legal recognition of data communications and electronic signature;
  - The absence of specific legal rules that protect consumers, intellectual property rights, personal data and information systems;
  - The absence of e-services and telecommuting legislations;
  - The application of electronic techniques to commercial and administrative acts;
  - The probative elements introduced by digital techniques (time stamping, certification, etc.);
  - The rules applicable to cryptology devices and services;
  - The oversight of on-line advertising;
  - The absence of appropriate fiscal and customs legislations for electronic commerce;



# PDP Provisions of the Malabo Convention(2)

- **Section 1: Personal Data Protection**
  - Objective of this Convention with respect to personal data
  - Scope of application of the Convention
  - Preliminary personal data processing formalities
- **Section 2: Institutional framework for the protection of personal data**
  - Status, composition and organization of National PDP Authorities
  - Duties and Powers of National PDP Authorities
- **Section 3: Obligations relating to conditions governing PD data processing**
  - Basic principles governing the processing of PD (**6 principles**)
  - Specific principles for the processing of sensitive data
  - Interconnection of personal data files

# PDP Provisions of the Malabo convention (3)

- **Section 4: The Data Subjects' Rights**

- Right to information
- Right to access
- Right to object
- Right to rectification and erasure

- **Section 5: Obligations of the Personal Data Controller**

- Confidentiality obligations
- Security obligations
- Storage obligations
- Sustainability obligations