TERMS OF REFERENCE

Consultancy to Develop a Policy Brief on the Ratification and Adoption of the Malabo Convention

April 2025

About Mzalendo Trust

Mzalendo Trust was founded in 2013, with an endeavour to promote public participation, openness and inclusivity in the decision-making process. Mzalendo seeks to bridge the gap between policymaking and citizen participation. Mzalendo seeks to contribute to the implementation of digital rights and access to information legal regimes. The organization seeks to creatively and constructively inform the evolving digital rights and access to information discourse. It aims to boost civic awareness on digital rights and access to information and to increase civic engagement in improving corresponding regulation.

About Oxfam

Oxfam is an international confederation of 21 organizations working in over 60 countries worldwide seeking to find lasting solutions to poverty and injustice around the world. Oxfam is determined to change that world by mobilizing the power of people against poverty. Around the world, Oxfam works to find practical, innovative ways for people to lift themselves out of poverty and thrive. We save lives and help rebuild livelihoods when crisis strikes. And we campaign so that the voices of the poor influence the local and global decisions that affect them. In all we do, Oxfam works with partners, public and private sector institutions alongside vulnerable women and men to end the injustices that cause poverty.

About the project

ReCIPE (Recentering the Civic Internet through Partner Engagement) is an Oxfam-led multi-country and multi-annual project supported by the European Union (EU). Launched in mid-2024, the project is currently being implemented over a three-year period in ten countries across the world—namely Senegal, Tunisia, Kenya, Somalia, Occupied Palestinian Territories (OPT), Uganda, Cambodia, Vietnam, El Salvador, and Bolivia."The project aims to cultivate a rights-respecting digital ecosystem that is value-based, human- centric and safe for civil society actors and human rights defenders." ReCIPE's three specific objectives feeding into the overall goal are: 1) increase collaboration between the 'Global South' and 'Global North' to create vibrant and safe online civic spaces, 2) improve digital rights mechanisms and policies that make governments and corporate

actors accountable, and 3) foster equitable access to safe and secure online social and political activities.

In this regard, we would like to facilitate engagements around the African Union Convention on Cyber Security and Personal Data Protection (the Malabo Convention).

Contextual background

The Malabo Convention was adopted in June 2014 with the goal of establishing a unified legal framework for cybersecurity and data protection across the African continent. Its entry into force is contingent upon ratification by fifteen Adopted in June 2014, the African Union Convention on Cyber Security and Personal Data Protection (Malabo Convention) aims to establish a unified legal framework for cybersecurity and data protection across the continent. After securing the required 15 ratifications, the Convention officially entered into force on 8 June 2023. This ten-year delay since its adoption has impeded the harmonization of cybersecurity laws across member states, potentially leading to fragmented and conflicting national data regulations as some countries have independently advanced their ICT laws.

Arguments in favor of ratification highlight the Convention's potential as a strategic pathway for domesticating data protection and cybersecurity laws, especially in nations currently lacking such frameworks, thereby advancing fundamental rights and fostering economic development through the facilitation of cross-border data flows crucial for the African Continental Free Trade Area (AfCFTA). Furthermore, it could enhance policy coherence, encourage regional collaboration, and strengthen Africa's global digital sovereignty. Conversely, arguments against ratification raise concerns about the Convention's broad and potentially complex scope, vague or undefined provisions, notable omissions like data breach notifications and enforcement mechanisms, and inconsistent safeguards for digital and information rights, including potential for over-criminalization in its cybercrime provisions. Despite these criticisms, the increasing momentum towards ratification suggests a growing recognition of the need for a continental approach to these critical issues.

For Kenya, the Malabo Convention holds significant relevance. As one of the leading countries in Africa's digital transformation, Kenya is witnessing both the opportunities and risks associated with the rapid expansion of its digital economy. While the country has made significant strides in fostering innovation and digital connectivity, it also faces mounting challenges in several key areas. The increasing number of cyberattacks and data breaches poses a serious threat to both individuals and businesses. Kenya is still in the process of strengthening its cybersecurity infrastructure to effectively prevent and respond to these growing risks. While the country has made efforts to address these issues, gaps remain in its ability to manage emerging cyber threats and ensure robust data protection.

Despite the enactment of the Data Protection Act in 2019, Kenya's legal and regulatory frameworks

are still evolving. There are significant gaps in the enforcement of data protection laws, leaving citizens vulnerable to the misuse of their personal information. These gaps undermine the trust that is essential for fostering a secure and open digital economy.

Furthermore, laws like the Computer Misuse and Cybercrimes Act of 2018 have been criticized for being used to restrict freedom of expression and digital rights. While the intention behind these laws is to curb cybercrime, they have, at times, been used to silence dissent, particularly among activists and human rights defenders. This has led to growing concerns about the potential for digital authoritarianism and the erosion of civil liberties.

These challenges are not unique to Kenya but reflect a broader trend across the continent, highlighting the urgent need for stronger frameworks to safeguard cybersecurity, privacy protection, and digital freedoms. A **unifying regional framework like the Malabo Convention is significant as it promotes harmonization and interoperability of cybersecurity and data protection laws**, crucial for cross-border data flows and the success of the AfCFTA. It fosters enhanced cooperation in combating cybercrime, strengthens Africa's voice in global digital governance, improves the protection of digital rights continent-wide, and addresses transboundary issues more effectively than national laws alone. While there are **arguments for ratification highlighting its potential for rights protection, economic development, and policy coherence**, **concerns exist regarding its broad scope, potentially vague provisions, and implications for digital rights**. Overcoming these challenges while leveraging the momentum towards ratification is key to establishing a secure and harmonized digital space in Africa.

Considering these challenges, Mzalendo Trust, in collaboration with Oxfam Kenya and as part of the ReCIPE Project, is committed to promoting a better understanding of the Malabo Convention and its potential impact on Kenya's digital governance. Through the development of this policy brief, we aim to inform advocacy efforts for the ratification and adoption of the Malabo Convention by Kenya and other African Union Member States, particularly its provisions on cybersecurity, data protection, and digital freedoms, with the goal of strengthening legal and institutional frameworks across the continent. This aligns with the broader objectives of the ReCIPE Project, which focuses on fostering a rights-respecting digital ecosystem and supporting the resilience of civil society in addressing the emerging digital challenges faced in Kenya and beyond.

Purpose and Objective of the Consultancy

In line with the ReCIPE project's objectives, seeks the consultant will develop a policy brief on the ratification and adoption of the Malabo Convention. The policy brief will serve as a key advocacy tool to promote the ratification of the Malabo Convention and encourage greater alignment with the Convention's goals. It will also provide recommendations to governments, civil society, and other stakeholders on how to integrate the Convention's provisions into national and regional digital

governance frameworks. Additionally, the brief will support the ReCIPE project by informing advocacy activities and offering strategic insights that could shape or reorient ongoing project efforts to enhance digital rights and governance across the continent.

This policy brief is intended for a broad range of stakeholders, including government policymakers and legislators, civil society organizations (CSOs), human rights defenders (HRDs), digital rights advocates, academia, and the general public. Each of these groups play a critical role in promoting, implementing, and contextualizing the Malabo Convention within national and regional digital governance frameworks.

This Policy Brief will:

- Raise awareness of the Malabo Convention, its principles, and its importance in enhancing cybersecurity and data protection across Africa.
- Highlight the status of the Convention's adoption by Kenya and other African countries including those implementing the ReCIPE project.
- Identify challenges and barriers to the ratification and full implementation of the Convention, using Kenya as a case study to provide context-specific insights, and suggest practical policy recommendations to overcome these challenges. While the primary focus will be on Kenya, findings may also inform broader continental advocacy efforts.
- Highlight the implications of other regional frameworks on the relevance of the Convention.

Scope of Work

The consultant will conduct a comprehensive review and analysis, which will inform the development of a clear and accessible policy brief. This will include:

- A thorough review of the Malabo Convention, its key provisions, and its relevance to Kenya and other African countries.
- An analysis of the status of the Convention's ratification and implementation in African countries.
- A comparative assessment of the Malabo Convention and Kenya's existing legislative framework on cybersecurity, personal data protection, and digital freedoms. This will identify gaps, overlaps, and areas of complementarity between the Convention and national frameworks, particularly for policy engagement with parliamentarians.
- Identification of challenges, barriers, and opportunities to ratification and aligning the Convention with national digital governance frameworks.
- Offers practical policy recommendations for governments, civil society organizations (CSOs), human rights defenders (HRDs), and other stakeholders.

The policy brief will also highlight best practices from countries that have successfully ratified and implemented the Convention.

Methodology

The consultant will apply a qualitative research methodology, which will include:

- A literature review to assess existing frameworks and literature related to the Malabo Convention and digital governance.

- Highlight best practices and case studies from countries that have successfully ratified and implemented the Malabo Convention(The case studies will be determined during the inception).

- Key informant interviews with selected stakeholders, such as policymakers, Law Society of Kenya, legal experts, and CSO representatives.

- Comparative legal and policy analysis to assess the alignment and gaps between the Malabo Convention and Kenya's national legislative frameworks.

- Engagement with relevant stakeholders, including government officials, CSOs, HRDs, LSK, digital rights advocates to gather feedback and insights for the policy brief.

Ethical Considerations

Mzalendo and its' partners will put in place measures to ensure data collection and storage adheres to all necessary ethics and guidelines provided by local laws on data protection and 'Do no Harm' standards, Oxfam safe programming and feminist principles.

Timeline

The consultancy is expected to be completed within 30 days. Key milestones include:

- Inception Report: 5 days.
- First Draft Submission: 15 days.
- Final Publication Submission: 10 days.

Expected Deliverables

The consultant will deliver the following:

a) Inception Report:

A detailed report outlining the methodology, research plan, and timeline for the development of the publication.

b) First Draft of the Policy Brief:

A draft of the publication of 25 – 30 pages for review and feedback from Mzalendo and Oxfam.

c) Final Policy Brief:

A comprehensive final version of the publication, ready for dissemination.

d)One-Page Summary:

A concise summary of the policy brief's 's key findings and policy recommendations.

Consultant Qualifications and Experience

The consultant should have:

1.   Educational background in political science, law, international relations, digital governance, Public Policy or a related field.
2.   At least 7-10 years of experience in research and publication development, especially in cybersecurity and digital governance.
3.   Familiarity with Africa's regional digital governance landscape, approaches and current trends.
4.   Familiarity with the Malabo Convention and its impact on digital rights, cybersecurity, and data protection in Africa.
5.   Strong writing and communication skills with experience creating accessible and compelling content.
6.   Experience engaging with stakeholders such as government, civil society, and human rights defenders.
7.   Experience working in an international context, particularly in African governance frameworks and digital rights.
8.   Knowledge of digital tools for research, project management, and policy development.
9.   Strong analytical skills in reviewing international frameworks.

Tax and VAT arrangements.

Mzalendo Trust will deduct withholding tax from the professional fees which will conform to the prevailing government rates and remit the same to the Government of Kenya.

How to apply

The Consultant is required to submit a technical and financial proposal.

1. The technical proposal should include a summary of the applicant's qualifications, and experience and a detailed methodology, outlining how they will approach the development of the training manual within the timeframe outlined.

2. The technical proposal should also contain the CVs of key team members (if any) and professional references.

3. The financial proposal should indicate the all-inclusive fixed total contract price and be supported by a breakdown of costs by activities.

4. The proposal should be sent to **community@mzalendo.com** by 6th May, 2025.

5. The application subject line should clearly indicate 'Development of a Policy Brief on the Ratification and Adoption of the Malabo Convention'

6. Any clarification should be emailed to community@mzalendo.com before 5th May, 2025.