REQUEST FOR APPROVAL FOR ACCESSION OF GHANA TO
THE BUDAPEST CONVENTION ON CYBERCRIME

Cabinet at its Thirty-second meeting held on Thursday, 3rd May, 2018 discussed a report of the Cabinet Committee on Security on the above-mentioned Memorandum submitted by the Minister for Communications.

2. The Memorandum requested Cabinet to give approval for the accession of Ghana to the Budapest Convention on Cybercrime.

3. Cabinet approved the Memorandum and recommended same to Parliament for consideration.

4. In a related matter, Cabinet noted that in July 2017 the President signed the African Union Convention on Cyber Security and Personal Data Protection (also called the Malabo Convention) in Addis Ababa, Ethiopia. Since that Agreement has not been ratified, Cabinet directed the Minister for Communications to take the necessary steps to submit the Malabo Convention to Parliament for ratification.

5. I should be grateful if you could take requisite action on the decision by Cabinet.

MERCY DEBRAH–KARIKARI
SECRETARY TO THE CABINET

THE HON. MINISTER FOR COMMUNICATIONS

cc: Chief of Staff
    Secretary to the President
    Secretary to the Vice President
    Chairperson, Cabinet Committee on Security
RATIFICATION OF THE AFRICAN UNION CONVENTION ON CYBER SECURITY AND PERSONAL DATA PROTECTION

I have the honour to forward, herewith, for your kind attention, copy of a Note Verbale No. CIE/NV/01/252.18 dated 31st May, 2018 and its attachments, received from the African Union Commission (AUC), through our Mission in Addis Ababa, in connection with the above-mentioned subject.

2. The Note is informing Ghana of the Ratification of the African Union Convention on Cyber Security and Personal Data Protection by two (2) Member States namely Senegal and Mauritius. The Note is also requesting Ghana to speed up the ratification and implementation of the Malabo Convention as a source of harmonized cyber-legislation in Africa in order to secure our Common African Cyber space and boost the development of strong Digital Economy.

3. It would be appreciated if the content of the Note would be brought to the kind attention of the Hon. Minister.

4. Please accept, Hon. Minister, the assurances of my highest consideration.

for: MINISTER FOR FOREIGN AFFAIRS & REGIONAL INTEGRATION
SEBASTIAN BELIWINE
ACTING DIRECTOR
AFRICA & REGIONAL INTEGRATION BUREAU

THE HON. MINISTER
MINISTRY OF COMMUNICATION
ACCRA

ATTN: THE CHIEF DIRECTOR
The African Union Commission presents its compliments to the Ministries of Foreign Affairs/External Relations of the Member States and has the honour to draw the attention of the latter to the enclosed letter on the Ratification of the African Union Convention on Cyber Security and Personal Data Protection which has already been ratified by only two (2) member states namely Republic of Senegal and Mauritius.

The African Union Commission would, in that regard, wish to kindly request the Ministries of Foreign Affairs/External Relations of the Member States to deliver the attached letter to the Honourable Ministers in-charge of Information, Communication and Technology in order to call the attention of their respective government to speed up the ratification and implementation of the Malabo Convention as a source for harmonized cyber-legislation in Africa to secure our Common African Cyber space and boost the development of strong Digital economy.

The African Union Commission avails itself of this opportunity to renew to the Ministries of Foreign Affairs/External Relations of the Member States the assurance of its highest consideration.

Addis Ababa 31st May, 2018

To: Ministries of Foreign Affairs/External Relations of the AU Member States

Cc: Embassies of the AU Member States
Addis Ababa, Ethiopia

Encl.: Letter
Your Excellency Ministers Responsible for
Information, Communication and Technology:
AU Member States

SUBJECT: RATIFICATION OF THE AFRICAN UNION CONVENTION ON CYBER-
SECURITY AND PERSONAL DATA PROTECTION

Excellency,

The malicious use of Information and Communications Technology (ICTs) has become one of the greatest transnational threats of today digital and connected world. The global and very sophisticated cyber-attacks represent the new planetary emergency that amplifies traditional risks like organized crime or terrorism.

To address the challenges posed by criminal activities committed over ICT networks & Internet, the African Union Commission jointly with the United Nations Economic Commission for Africa developed a Convention on Cyber-legislation based on the Continent's needs and which adheres to the legal and regulatory requirements on electronic transactions, cyber security, and personal data protection.

After its adoption by the First Specialized Technical Committee (STC) on Justice and Legal Affairs in May 2014, the African Union Convention on Cyber security and personal data protection also known as ”Malabo Convention” was endorsed by the 23rd Assembly of Heads of State and Government in June 2014. This Convention seeks on the adoption of the essential security rules for establishing a credible digital environment within the Member States of the African Union.

The Malabo convention sets broad guidelines for incrimination and repression of cybercrime and related issues. With regard to personal data protection, the convention provision seeks at creating a uniform system of data processing through determining a common set of rules (legal and institutional frameworks) to govern cross-border transfer of personal data at continental level to avoid divergent regulatory approaches between the AU Member States and ensure protection of online privacy of African people.

Moreover, to build modern information society and establish Cyber-security, Cybercrime and Personal Data Protection Legal Frameworks, the Malabo convention embodies the existing commitments of African Union Member States at sub-regional,
In January 2018, the AU Summit the Heads of States and Governments adopted a declaration on Internet Governance where the African Leaders committed to ratify the Malabo Convention and adopted a resolution requesting the Commission to consider Cybersecurity as a key priority of the Agenda 2063.

However, four (4) years after the adoption of the Malabo convention by the Heads of State, only two (02) countries, Senegal and Mauritius have provided the AU Commission with ratification instruments while, as you know, its entry into force requires 15 ratifications. This makes Cybersecurity legislations very challenging in the continent.

To enable African countries to effectively fight against the increasing cyber-threats and in line with above. I would call on your government to speed up the ratification and implementation of the Malabo Convention as a source for harmonized cyber-legislation in Africa. This instrument will enable us to secure our Common African Cyber space and boost the development of strong and sustainable digital economy in the continent.

Please accept, Excellency, the assurance of my highest consideration.

Dr. Amani ABOU ZEID
Commissioner
Infrastructure and Energy
MEMORANDUM TO PARLIAMENT

BY:
HON. URSULA OWUSU-EKUFUL
MINISTER FOR COMMUNICATIONS

TITLE:
REQUEST FOR APPROVAL FOR ACCESSION OF GHANA TO THE AFRICAN UNION CONVENTION ON CYBER SECURITY AND PERSONAL DATA PROTECTION (MALABO CONVENTION)

DATE:
13th JUNE, 2018
REQUEST FOR APPROVAL FOR ACCESSION OF GHANA TO THE AFRICAN UNION CONVENTION ON CYBER SECURITY AND PERSONAL DATA PROTECTION (MALABO CONVENTION)

1.0 ACTION REQUIRED
Parliament is respectfully invited to consider and give approval for Ghana’s Accession to the African Union Convention on Cyber Security and Personal Data Protection (Malabo Convention).

2.0 BACKGROUND

2.2. The Convention desires to build effective international cooperation to mitigate the spate of cybercrime and cyber-attacks which can undermine Ghana’s developmental efforts, and the need to build confidence and trust in the deployment of ICT for national development is essential in Ghana’s quest to achieve the United Nations Sustainable Development Goals (SDGs).

2.3. With the increasing internet penetration and digitalization of most economies in the region, issues relating to cybercrime and cyber security are even more critical to ensure individuals, businesses and governments are protected from cyber related threats. Consequently, African Union member states need to adopt and adhere to common cyber security legal and technical frameworks and benchmarks to facilitate a robust response to cybercrime issues across the continent.

2.4. Cybercrime is borderless in nature and presents real challenges to all countries particularly to developing economies with relatively weak infrastructure. The global cyber security ecosystem promotes domestic, regional and international cooperation to facilitate transnational coordination, investigations and capacity building and ensure a secured cyber space for all. The United Nations has set up an Inter-Governmental Expert Group on Cybercrime to engage with member countries to adopt appropriate domestic, regional and international cooperation
frameworks to address cybercrime challenges.

2.5. In recognition of the need for greater cooperation and capacity building against cybercrime on the African continent, the African Union, at its Twenty-third Ordinary Session of the Assembly of Heads of State and Governments, held in Malabo, Equatorial Guinea, on the 27th June 2014, adopted the Convention on Cyber Security and Personal Data Protection.

3.0 THE AFRICAN UNION CONVENTION ON CYBER SECURITY AND PERSONAL DATA PROTECTION

3.1. In 2009, African ministers responsible for Information and Communications Technology (ICT) adopted a declaration [EXT/CITMC/MIN/Decl. (I)] (Olivier Tambo Declaration) in which they requested the African Union Commission to develop jointly with the United Nations Economic Commission for Africa, a convention on cyber legislation based on the Continent’s needs and which adheres to the legal requirements on electronic transactions, cyber security, and personal data protection. This Declaration was subsequently endorsed by the 14th AU Summit of Heads of State and Government in 2010 [Assembly/AU/11(XIV)].

3.2. The African Union Commission (AUC) and the United Nations Economic Commission for Africa (ECA) spearheaded the development of the Convention through the work of a technical working group and various stakeholder workshops organized across the continent. The Convention was finally adopted by the AU’s Heads of State and Government in June 2014 in Malabo, Equatorial Guinea.

3.3. The objective of the Convention is to provide a common approach to the security of cyberspace in Africa and establish the minimum standards and procedures to define a credible digital environment for developing electronic communications and transactions which also guarantee the protection of citizens’ data.

3.4. As at May 2018, twelve (12) member states had signed the Convention. These member states are Ghana, Benin, Chad, Comoros, Congo, Guinea-Bissau, Mauritania, Mauritius, Senegal, Sierra Leone, Sao Tome & Principe and Zambia. Out of the twelve (12) signatories, two (2) countries -
Mauritius and Senegal have already ratified the Convention. Article 36 of the Convention requires ratification of at least fifteen (15) AU member countries before the treaty enters into force.

3.5. The Malabo Convention is organized into four main pillars, namely;

1. *Organization of Electronic Commerce (Covering Articles 2 – 7)* – This constitutes the first pillar of the treaty and addresses issues of electronic commerce, contractual obligation of service providers in electronic commerce and security of electronic transactions.

2. *Protection of Personal Data (Covering Articles 8 – 23)* – Part 2 of the Convention provides for the privacy and protection of personal data. The section entreats member countries to adopt appropriate institutional framework for the protection of personal data. The treaty, under this chapter, also outlines the principles and conditions governing processing of personal data, the rights of data subjects and obligations of data controllers.

3. *Promoting Cyber Security and Combating Cyber Crime (Covering Articles 24 - 31)* – Pillar 3 of the convention focuses on cyber security and criminalization of cyber offences. The treaty requires member countries to adopt appropriate national cyber security framework, legislative measures, national cyber security system and national cyber security monitoring structures to enhance cyber security response of AU states. The treaty also entreats member countries to adopt relevant international cooperation frameworks through harmonization of cyber legislations and mutual legal assistance on cybercrimes. The treaty criminalizes offences against computer systems and data as well as online offences against children.

4. *Common and Final Provisions (Covering Articles 32 - 38)* – This pillar deals with other auxiliary provisions such as measures to be implemented at the African Union level to ensure adoption and compliance of the provisions of the treaty. This pillar also provides legal safeguards for the adoption of the treaty by African countries. Provisions for ratification, dispute resolution, depository of the accession instruments and withdrawals from the treaty are covered in this pillar.

4.0 COMPATIBILITY OF THE MALABO CONVENTION WITH DOMESTIC, REGIONAL AND INTERNATIONAL LEGISLATIONS ON CYBERCRIME

4.1. Ghana has two principal legislations covering cyber security and personal data protection. The
Electronic Transactions Act, 2008 (Act 772) provides for offences against the Confidentiality, Integrity and Availability (CIA) of computer data and systems. The Data Protection Act, 2012 (Act 842) addresses issues of privacy in the processing of personal information of citizens. These two primary legislations are in harmony with the provisions of the Malabo Convention.

4.2. Ghana is a signatory to the ECOWAS Directive on Cybercrimes *(ECOWAS Directive C/DIR. 1/08/11 on Fighting Cyber Crime within ECOWAS)* which provides for cross-border investigations and prosecutions of cybercrime cases within the ECOWAS region and the *ECOWAS Supplementary Act A1SA.1f01f10 on Personal Data Protection*. The Malabo Convention is compatible with these ECOWAS Directives.

4.3. There is a complementary relationship between the Malabo Convention and the Budapest Convention. While the Budapest Convention provides a broader criminal justice instrument on cybercrime and electronic evidence, the Malabo Convention provides the framework to address non-criminal cyber-related issues, including a framework for electronic transactions, cyber security development and privacy of personal data.

5.0 STAKEHOLDER CONSULTATIONS


5.2. The Ministry of Communications consulted other relevant institutions including the Data Protection Commission, the Criminal Investigation Department (CID), the Ministry of Foreign Affairs as well as members of the National Cyber Security Technical Working Group (NCSTWG) for their views on the Convention. The Ministry has also engaged with other non-governmental stakeholders including civil society groups on Ghana’s accession to the Convention. They all unanimously support this initiative.

5.3. Ghana’s international partners on cybercrime and cyber security including the Council of Europe,
the Security Governance Initiative (SGI), and the World Bank have all expressed their support for Ghana’s accession to the Malabo Convention.

5.4. Ghana’s legislative environment is in agreement with the Malabo Convention. As a result, there will be no requirement for new legislation to be adopted by Ghana before a formal ratification of the Convention. Ghana is not envisaged to make any legal reservations.

6.0 JUSTIFICATION FOR GOVERNMENT ACTION

6.1. The accession of Ghana to the Malabo Convention will further enhance Ghana’s regional standing, and demonstrate government’s commitment to greater integration on the continent. This will provide a further boost to Ghana’s credentials as a country committed to the rule of law in cyberspace, consistent with international norms.

6.2. Accession to the Malabo Convention will safeguard the privacy of our citizens as Ghana opens up to the rest of Africa through the Inter-Continental Trade Agreement adopted by African Union member states in March 2018 in Kigali, Rwanda.

6.3. According a joint report by the African Union and Symantec – Cybercrime & Cyber Security Trends in Africa 2016, there were a total of 1,230,038 incidents over 363 different attack signatures originating from Africa. During the same period, cyber criminals in Africa used encryption technology as a weapon to hold individuals, companies and governments’ critical data hostage. Analysis suggests these trends are expected to continue as African countries make strides in digitalization. The need for a collective regional response to tackle the menace is therefore imperative for the government.

6.4. Adoption of the Malabo Convention will ensure that Ghana meets the requirements of the European Union’s General Data Protection Regulations (GDPR) which requires Ghana to adopt specific data protection standards and practices to facilitate cross-border processing of personal data, with citizens and organizations based in the European Union. Ghana’s Data Protection Act, 2012 adequately responds to these requirements.
6.5. Considering the complementarity and to some extent, the interoperability of the Malabo Convention with the Budapest Convention, Ghana’s accession to the African Union Convention on Cyber Security & Personal Data Protection will facilitate a coordinated response to cyber security issues both at the international and regional levels. Cabinet considers that the relevance the Budapest Convention is vital for international cooperation on cybercrime and has already given approval for Ghana’s accession. It is currently before the Parliament.

6.6. Ghana will engage with the African Union on joint initiatives aimed at enhancing the rule of law in cyberspace and utilize best practices to ensure a secured digital future on the continent.

5.7. International cooperation is one of the key pillars of our National Cyber Security Policy & Strategy (NCSPS) because of the borderless nature of cybercrimes. Ghana’s accession to the Malabo Convention will give meaning to this policy which is driven by government’s vision to formalize Ghana’s economy through digitalization.

7.0. FINANCIAL IMPLICATIONS

7.1. There is no financial commitment by government for the ratification of the Convention.

8.0. RECOMMENDATIONS

8.1. Considering the mandate and the urgency for Government to protect Ghana’s emerging ICT ecosystem and to protect our country’s investment in digitalization; considering the relevance of regional cooperation in the fight against cybercrimes and to ensure a secured cyberspace for Ghana’s socio-economic development, Parliament is respectfully invited to consider and give approval for Ghana’s Accession to the African Union Convention on Cyber Security and Personal Data Protection.

[Signature]

MRS ÚRSULA OWUSU-EKUFUL (MP)
MINISTER