

Data governance and cross-border data flows in Africa.

Presented by Dr Sandra Makumbirofa

The logo for Research ICT Africa is located in the bottom right corner. It consists of a white silhouette of the African continent inside a green circle. Below the map, the words "RESEARCH" and "ICT AFRICA" are written in white, bold, uppercase letters.

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The state of data governance in Africa and the African Union Data Policy Framework.

- Sets common vision, principles, strategic priorities, and key recommendations to guide African countries in developing their national data
 - Streamlining power asymmetries through collaboration
 - Harmonising competition, trade, and taxation policies and laws
 - Preferential access to data

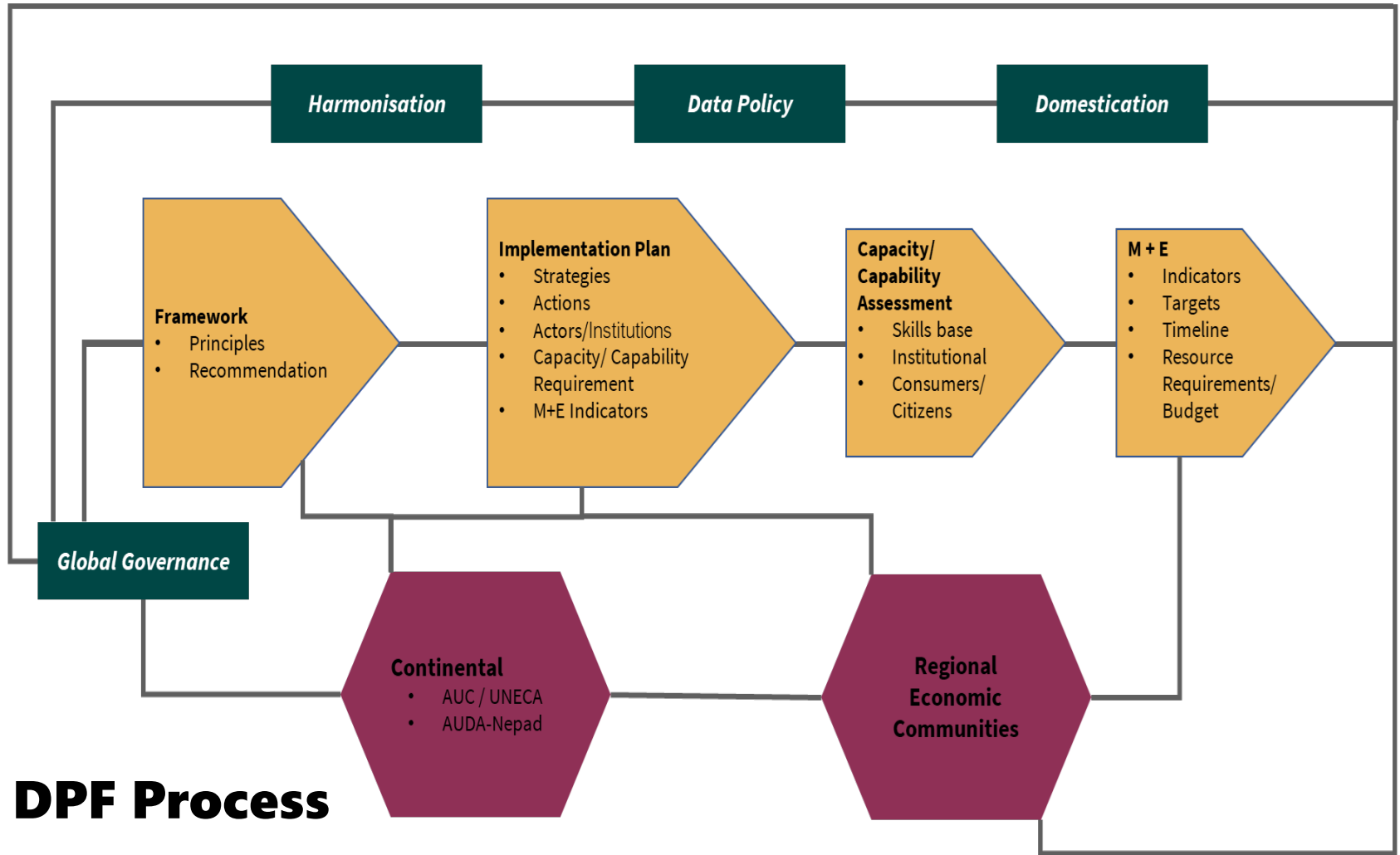


Scope and Objectives

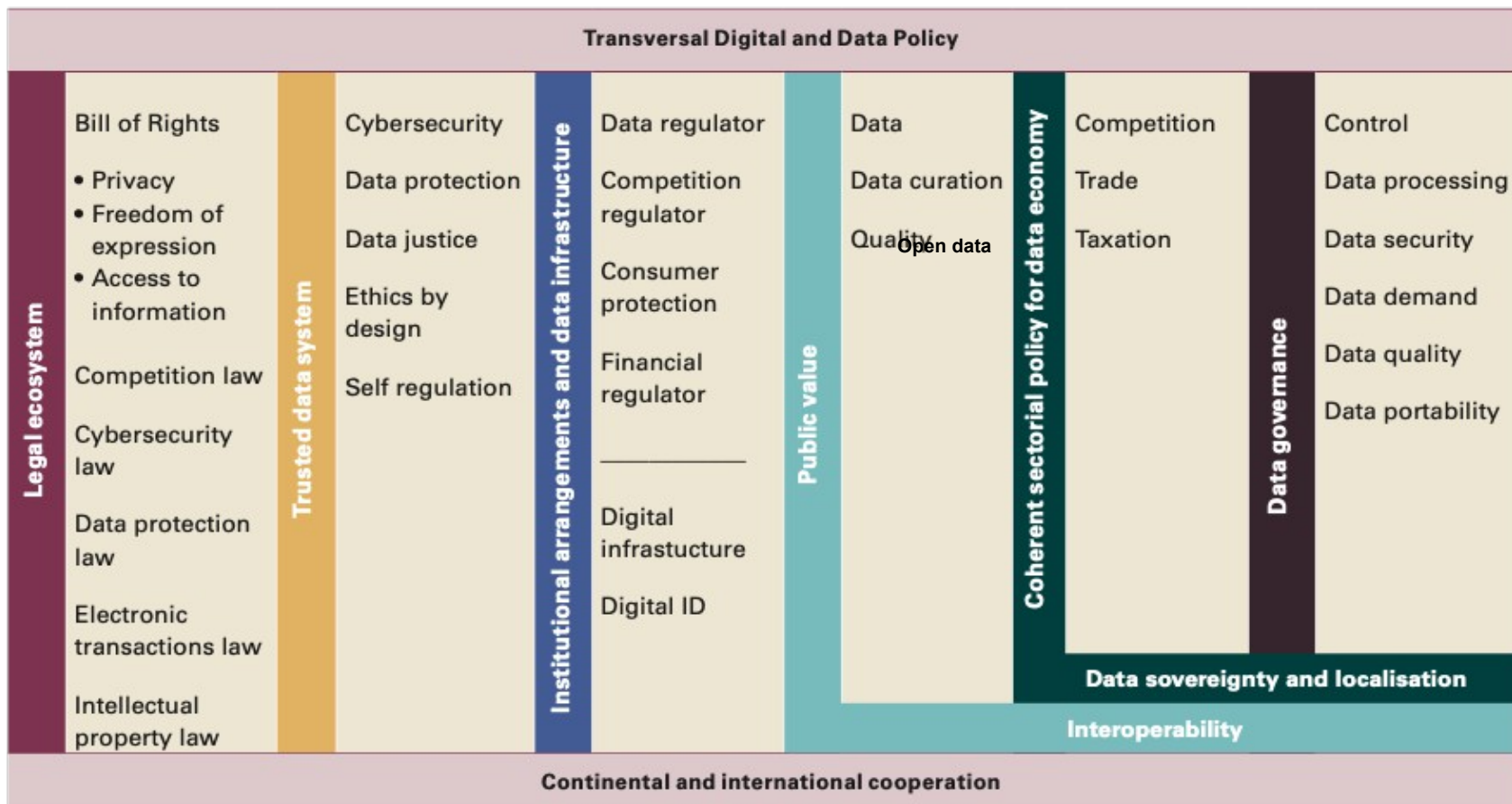


- Collaborate on data governance issues in order to achieve the common goals of sustainable development across the continent.
- Inform and assist AU member states in domesticating continental policy.
- Enable free data flow across borders while considering fairness, risks, and member-state interests.
- Create trust mechanisms for data sharing among member states while respecting sovereignty.
- Maximise the benefits of datafication of the economy and society, including a single digital market.
- Ensure that data is used for the benefit of society in a sustainable manner
- Utilize data in novel ways to promote public benefits, particularly for decision making, planning, monitoring, and evaluation in the public sector.

AU DPF Process



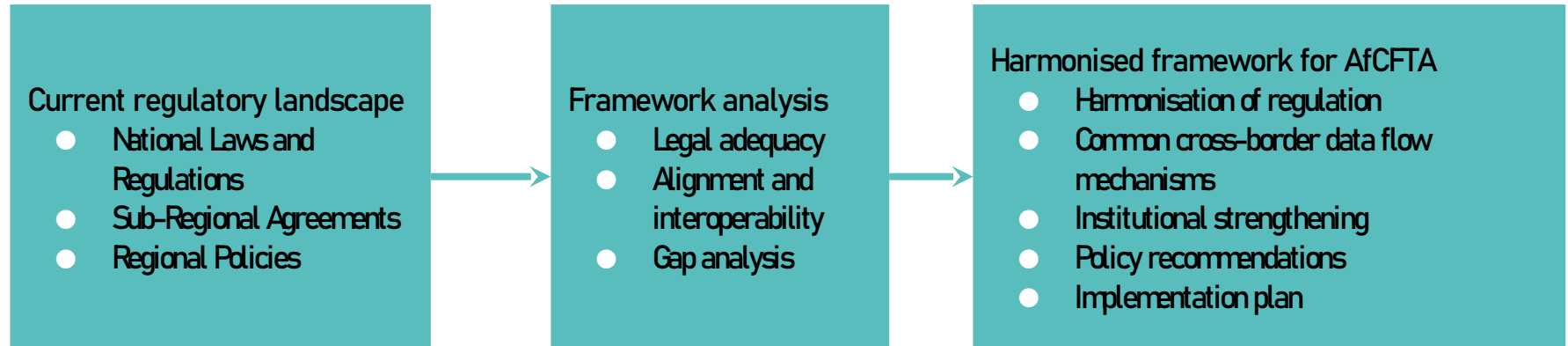
Enabling Data Policy Framework



Cross border data flows

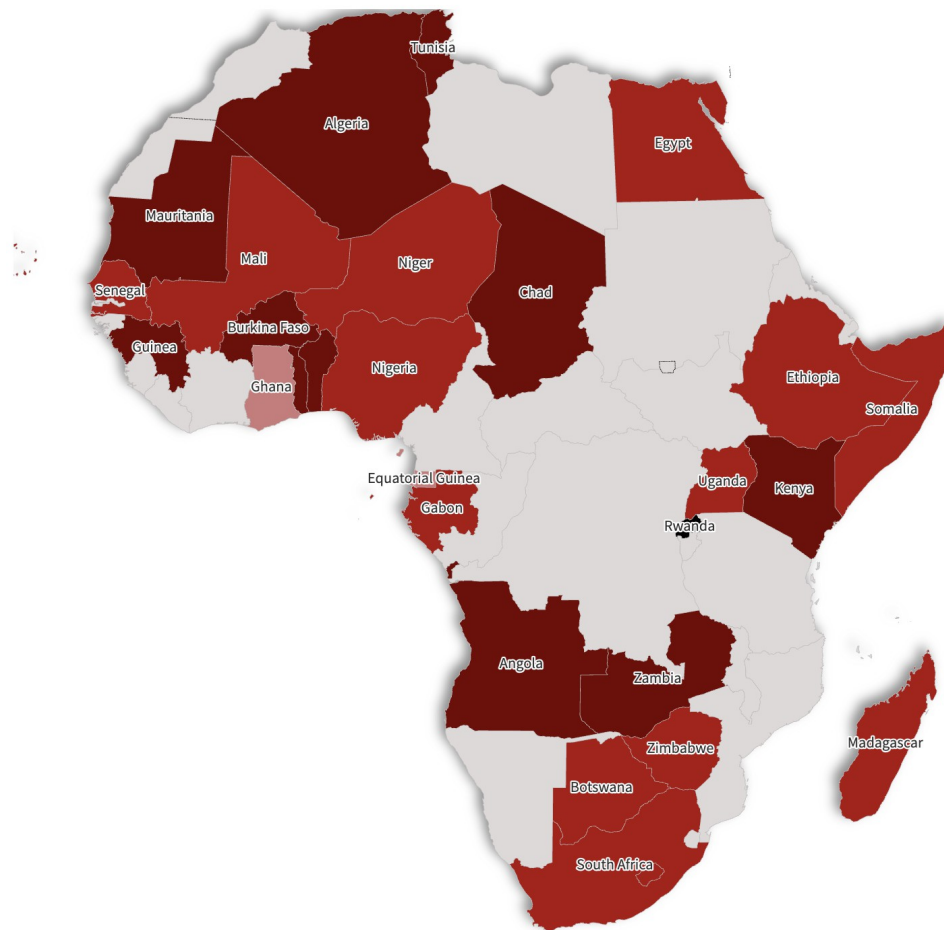
Proliferation of digital technologies and increased cross border data flows has led to patchy, fragmented and insufficient regulatory landscape. To enable a just digital single market under the AfCFTA, harmonising regulations is **important**.

Harmonised cross-border data flows in Africa



Classification of cross-border data regulations

■ Conditional data transfer and Limited data transfer. ■ Conditional data transfer. ■ Open Transfer. ■ Limited data transfer.



Classification of cross-border data regulations

- **Continental level:** African Union Data Policy Framework, Malabo Convention, AfCFTA Protocol on Digital Trade
- **Sub-regional level:** IGAD Regional Health Data Sharing and Protection Policy Framework, Framework on COVID-19 Information Sharing within East and Southern Africa (ESA), ECOWAS Supplementary Act A/SA.1/01/10 on Personal Data Protection 2010, SADC Model Law on Data Protection (2012), East African Community (EAC) Legal Framework for Cyber Laws 2008



Commonalities and Differences

- The design and implementation of existing legislation, quite often, differs:
 - Zimbabwe, Angola, Zambia, Madagascar, Somalia require that the receiving country provides an adequate level of protection.
 - Botswana relies on a pre-approved list of countries with adequate protection.
 - Mauritius has established detailed mechanisms and conditions for authorisation.
 - Several countries e.g Sao Tome and Principe requires authorisation from relevant authorities
 - Mauritania requires prior notification and specific conditions for transfers to non-approved countries
 - Ethiopia requires prior written consent for data transfers rather than standardised adequacy criteria, which might not fully align with the AU Data Policy Framework's broader requirements.

The resulting bottlenecks

- Non-operational status of regulatory authorities which limits effective enforcement and compliance.
- Lack of detailed provisions for cybersecurity and non-personal data introduces uncertainties.
- Strict data localisation rules.
- Regulatory Capacity constraints.
- Inconsistent implementation of AUDPF and the Malabo Convention across different countries creates inconsistencies and gaps in data protection.



Recommendations

Promote Regional Harmonisation

- Align national data protection laws with the African Union Data Policy Framework (AUDPF) and the Malabo Convention to ensure a consistent baseline for data protection across Africa. Simplify regulatory processes to facilitate cross-border data transfers while maintaining robust protection.
- Facilitate cross-border data flow agreements that recognise mutual adequacy and reciprocity.



Recommendations

Strengthen Institutional Capacity

- Operationalise DPAs in countries that are deficient. AUDPF prescribes minimum requirements for a capacitated DPA.
- Invest in technical interoperability and build resources for effective data management.

Develop Technical Standards and Guidelines

- Create comprehensive technical standards for data protection and cybersecurity.
- Invest in technical infrastructure to support data sharing and system interoperability.



Recommendations

Harmonise Conditions on Data Transfers

- Reassess stringent data transfer conditions.
- Address data localisation issues to reduce compliance costs and encourage foreign investment.
- Foster competition and innovation by avoiding protectionist data policies.

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