

Support for Harmonization of the ICT Policies in Sub-Sahara Africa (HIPSSA)

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Preamble

- Data protection fundamental to the development of the individual in a democratic society;
- In data protection comes several human rights including freedom of expression, freedom of association, etc;
- Data protection prevents the reliance on personal data for the differentiation between individuals based on, among other elements, religious beliefs, union affiliation, sex, race, filiation, and health-related data;
- The development of information technologies is critical for 21st century;
- Data protection regulation should seek to ensure an equilibrium between the benefits of using information and communication technologies and protection of personal data;
- Establishment of protection authority



Presentation Outline

- Introduction;
- Table of contents and arrangement of chapters;
- Navigating the Model law;
- Salient features of the Model law;
- Minimum requirements;
- Discretionary matters; and
- Harmonisation and trans boundary matter.



Definitions

- Data: refers to all representation of information notwithstanding format or medium;
- Data controller:...; who determines the purpose and means of processing of personal data
- Data processing officer: an individual appointed by the data controller charged with ensuring in an independent way compliance with obligations of the Model law;
- Data subject: any person who is the subject of the processing of personal data and who is identified or identifiable



General Principles

- Openness:
 - Most important principle;
 - Openness towards the data subject;
 - Other principles stem from this one;
- Legitimacy:
 - Must be in accordance with the expectation of the individuals;
 - In accordance with the law
- Necessity and proportionality:
 - Processing necessary to the specified purpose (choice of the less invasive way);
 - Data which is necessary for the processing



General Principles Continued

- Accountability:
- Information must be correct, relevant and updated;
- Not disclosed without permission;



Duties of Data Controller

- Observing and complying with the principles above;
- Accountability;
- Answerable to the DPA (obligation for notifications to the DPA);
- Security of data (technical and organizational measures);
- Assessing the capacity and competence of trans boundary operators;
- Implementation of measures ensuring the safety and treatment of;
 - non sensitive data;
 - Sensitive data



Rights of Data Subject

- Transparency;
- Right of access;
- Individual control of data ;
- Right of rectification and opposition;
- Right of deletion;
- Security and confidentiality;
- Recourse to the DPA and courts



Sensitive and Non Sensitive Information

- Two categories of data exist:
- sensitive data which is data that can affect in itself an individual's privacy and
- data that is not sensitive.
- The first category may reveal a person's religious affiliation, ethnic origin or health. It can also relate to genetic data.



Recourse to Judicial Authority

- Individual's rights to approach courts on infringements of rights preserved
- Appeal system set up under law to be exhausted;
- Thereafter appeal to the judicial system



Protection Authority

- Establishment of a Protection Authority in order to foster compliance with the law and protection of the principles discussed;
- Independent;
- Composition;
- Status;
- Protection Authority endowed with regulatory powers;
- Powers to sanction;
- Powers to interpret the law;
- Protection regime to meet the particularities of each country;
- Financing arrangements



Sanctions

- Need to set up a system of sanctions to make the law fully effective;
- A law without sanctions is subject to violation;
- The DPA's role;
- Civil and criminal sanctions



Limitations

- Personal data protections not absolute rights;
- Country may impose limitations on the protections offered for various reasons including:
 - State security
 - Defence;
 - Health;
 - Public safety;
 - criminal offences; and
 - Any other justifiable reasons



Trans boundary Flow

- With globalization, traditional borders between territories regions and countries are becoming increasingly permeable;
- Personal data is subject to cross-border treatments more and more often;
- States need to determine the rules that govern such transfers in order to only allow them under conditions that ensure personal data is protected;
- Rules of data protection will be more easily applicable if many countries adopt equivalent ones;
- Assurance of equivalent protection;
- Treatment of transfers to member states who have transposed;
- To non members or those who have not transposed
- Creation of a uniform system in order to create a safe environment for citizens;



Codes of Conduct

- DPA to set up system of codes of conduct;
- Codes to comply with the Model law



Whistle blowing

- DPA to establish rules governing whistle blowing;
- Such rules to preserve;
 - principles of fairness;
 - Principles of proportionality;
 - Rules concerning rights of the data subject;
 - Rules of notification to the DPA; and
 - Others.



Conclusion

- Provision of information for transposition critical;
- Ground work guiding the transposition strategy;
- Model law not to operate in isolation of other laws;
- Model law sets out the Minimum requirements;
- Countries may impose limitations;
- Countries have discretionary powers on certain matters;
- Balance between the discretionary powers and harmonisation;
- Trans boundary issues important for better protection;



Thank you

For more information:

http://www.itu.int/ITU-D/projects/ITU_EC_ACP/index.html

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