

HIPSSA PROJECT

Support for Harmonization of the ICT Policies in Sub-Saharan Africa

National Assessment Report,
Data Protection Law
Zimbabwe, July 2013

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Summary of Content

- Overview of National Assessment
 - Frames of Inquiry
 - Findings
- Conclusion & Recommendations



Overview of National Assessment Report

Which National laws of Zimbabwe deal with Data Protection and as recommendations, to what extent can the Model Law be incorporated into our national laws.



Transposition Frames of Inquiry

International and regional frameworks establish the primary themes, intent and functional requirements for data protection regulation.

Within Zimbabwe, enquire:

- 1) *Designated* national data protection legislation**
- 2) Laws that have a bearing on the right to privacy and protection of personal information in Zimbabwe.**



Existing Data Protection Laws

- ✧ Constitution of Zimbabwe,
- ✧ The New Constitution May 2013,
- ✧ Courts and Adjudicating Authorities (Publicity Restrictions) Act Chapter 7:04,
 - ✧ Census and Statistics Act Chapter 10:05,
 - ✧ Banking Act Chapter 24:20,
 - ✧ National Registration Act Chapter 10:17,
 - ✧ Interception of Communications Act Chapter 11:20,
- ✧ Access to Information and Protection of Privacy Act Chapter 10:27



The New Constitution, May 2013

- ✧ S57: Provides for the right to privacy which applies to everyone.
- ✧ S62: Access to information is provided for and applies to everyone, and for information held by the State or by any person and for the latter to the extent that the information is required for the exercise or protection of a right.
- ✧ S86 : Limitations of the rights to the extent that the limitation is reasonable, fair and justifiable in an open and democratic society.



Courts and Adjudicating Authorities (Publicity Restrictions) Act Chapter 7:04

- ✧ Regulates and restricts attendance at and publication of proceedings of courts and adjudicating authorities.
- ✧ Section 3: restriction of disclosure of proceedings where the court or adjudicating authority considers it necessary or expedient to do so either at its instance or that of the party involved.
- ✧ Publication of the name, address or other information likely to reveal the identity of any person concerned or mentioned can be withheld if it would cause prejudice or is likely to cause prejudice to the party or if it's in the interest of justice.



Census and Statistics Act, Chapter 10:05

- ✧ Provides for a census to be held on such other particulars whatsoever; as shall be prescribed, which involves the collection of data,
- ✧ Section 10: restricts disclosure of information collected which enables the identification of the person taking part in the census unless they are employed in carrying out the provisions of the Act
- ✧ Section 13 also creates offences and penalties for unlawful use and disclosure of any information collected.



Banking Act, Chapter 24:20

- ✧ Sections 76 & 77 restrict the disclosure and use of collected information by the Registrar of the Reserve Bank, his representatives or employees, a curator or an auditor of the Banking Institution, but does not however deal with the Banking Institutions specifically.
- ✧ Regulations i.t.o section 81 may provide for the disclosure by banking institutions of information concerning transactions, deposits and funds held or dealt with by them, where such information is required for the purposes of detecting, investigating or preventing an offence, This section does not however deal with the full protection of data collected by Banking Institutions in the exercise of their duties.



National Registration Act, Chapter 10:17

- ✧ s8: The Registrar-General must keep in safe custody any information acquired in the performance of his duties. All persons who are employed in carrying out the provisions of the Act are required to keep secret and aid in keeping secret all information coming to their knowledge in the exercise of their duties.
- ✧ No person shall communicate such information to any unauthorized person and failure to adhere attracts penalties.



Interception of Communications Act, Chapter 11:20

- ✧ No person is allowed to intercept any communication in the course of its transmission unless, he or she is a party to the communication; or he or she has the consent of the person to whom, or the person by whom, the communication is sent; or he or she is authorised by a warrant.
- ✧ Unlawful Interception attracts a penalty of a fine of up to US\$5000 or imprisonment of up to 5years



Access to Information and Protection of Privacy Act, Chapter 10:27

- ✧ Provides members of the public with a right of access to records and information held by public bodies; and makes public bodies accountable by giving the public a right to request correction of misrepresented personal information; to prevent the unauthorised collection, use or disclosure of personal information by public bodies; to protect personal privacy;
- ✧ Provides for the establishment of a Media and Information Commission



Access to Information and Protection of Privacy Act, Chapter 10:27

- ✧ Only applies to information held by public authorities.
- ✧ Data Subjects have a right of access to any record containing personal information that is in the custody or under the control of a public body. A fee is payable to access such a record
- ✧ Section 25 denies the Data Subject the opportunity to access a record if such a disclosure will result in the unreasonable invasion of a third party's personal privacy and lists factors to be considered in such circumstances.



Access to Information and Protection of Privacy Act, Chapter 10:27

- ✧ A Zimbabwe Media Commission was established in terms of section 38 and of importance to this exercise is its mandate to ensure that the people of Zimbabwe have equitable and wide access to information, to comment on the implications of proposed legislation or programmes of public bodies on access to information and protection of privacy and to comment on the implications of automated systems for collection, storage, analysis or transfer of information or for the access to information or protection of privacy amongst other functions.



Questionnaire Feedback

Generally, there is no designated legislation for data protection perhaps due to the fact that there are not many reported concerns on data intrusion or theft. Access to Information and Protection of Privacy Act protects data held by public institutions and also concentrates on journalism.

One of the challenges faced in developing the legal framework has been the fragmented and less coordinated approach in dealing with such matters.



Recommendations

- ❖ The Data Protection Model Law be incorporated into Zimbabwean Law with the necessary amendments, i.e. The Bill can be made to be applicable to non-public institutions due to the fact that the AIPPA applies to public institutions.
- ❖ The above would also create uniformity because data protection laws are fragmented and offer less protection to data subjects. AIPPA however has the final say on protection of privacy matters and access to information therefore the two Acts may have to work together.



Recommendations

✧ The Bill should not apply to information collected, processed or held by the intelligence or security Services. Information whose disclosure would be detrimental to the Public Order, interest of Defence and/or National Security should not be amendable by the Bill too



Conclusion

- ✧ Data intrusion is either hardly talked of or is just rare in Zimbabwe,
- ✧ Data Protection might seem like a futuristic aspect in Zimbabwe at the moment due to the almost to non-existent cases of personal data abuse, but with the increased use of electronics for almost every transaction comes the risk of abuse of what is being stored in cyberspace.
- ✧ Factors to consider in the transposition include:-
 1. Effectiveness of current legislation in addressing data protection,
 2. The degree to which Authority's duties will interfere with the operations of the Institutions they will interact with.



DATA PROTECTION AUTHORITY: Establishment, Composition , Functions & Penalties



DATA PROTECTION AUTHORITY:

Establishment, Composition , Functions & Penalties

The Bill may be better viewed as not only a codifying document but also of a transformative instrument.



DATA PROTECTION AUTHORITY:

Establishment, Composition , Functions & Penalties

- ✧ Draft Bill: DPAZ is an independent authority and has a Board, same set up as CAAZ/ POTRAZ. Funded by Treasury and through monetary penalties. The Commissioner may be appointed for a term of 5 years as is the trend in the Data Protection circles
- ✧ Role of the data protection commissioner or supervisor is for protection of citizens' privacy at the national level , the Authority may be classified as being there for complaint management and enforcement



DATA PROTECTION AUTHORITY:

Establishment, **Composition** , Functions & Penalties

- ✧ Persons appointed to work at DPAZ and also the Board must be chosen for knowledge in law, data protection and information technology, communications.



DATA PROTECTION AUTHORITY:

Establishment, Composition , **Functions** & Penalties

- ✧ Listed in section 5 which include;
 - ✓ Conducting inquiries/ investigations
 - ✓ Receiving complaints
 - ✓ Promote and enforce fair processing of personal data
 - ✓ Advise the Minister e.t.c
- ✧ The duties in the model law could be put in the Regulations.



DATA PROTECTION AUTHORITY:

Establishment, Composition , Functions & **Penalties**

- ✧ Penalties in terms of section 13 are progressive:-
- ✧ Issue warnings to a data controller to comply with obligations,
 - ✧ Failure of the above, a formal notice issued,
- ✧ Should notice and warning fail, a financial penalty of an amount not more than US\$5000 may be imposed- standard scale of fines.
- ✧ Sanctions and decisions may be subject to appeal through judicial authorities.



SECTION 40: PENALTIES

- ✧ For the contravention of offences listed, one is liable to a fine not exceeding level eleven being US\$1000.00 or imprisonment not exceeding 7 years.
- ✧ Seizure or deletion can also be ordered.
- ✧ Objects seized will be destroyed when judgment has become final.



Limitations

- ✧ The Bill does not apply to the processing of personal data by a natural person in the course of personal or household activities.
- ✧ For the processing of personal data carried out for the sole purpose of literary and artistic expression, sections dealing with sensitive data, data collected for litigation, transborder flow, right of access of the data subject will not apply.
- ✧ The Bill does not apply to information collected, processed or held by the intelligence or security services and also Information whose disclosure would be detrimental to the Public Order, interest of Defence and/ or National Security.



THANK YOU

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