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# HIPSSA Project

**Support for Harmonization of the ICT Policies  
in Sub-Sahara Africa,  
Meeting with the Rwandan ICT Ministry and Data Protection  
Stakeholders**

## **PRESENTATION DATA PROTECTION LAW/POLICY**

**Pria Chetty,**  
International Legal Expert on Data Protection



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# Purpose of Data Protection Law and Policy

- Harmonised approaches to data protection
- Give effect to right to privacy for information
- Respond to ICT technology developments impacts right to the protection of personal data in commercial activities
- Respond to electronic government (eGov) activities
- Address violations of information privacy

**Data protection regulation - ensure that the benefits of using information and communication technologies is not concurrent with weakened protection of personal data**



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# Objectives of enacting Data Protection Law

- Give effect to principles of data protection
- Place limitations on the processing of personal data
- Provide for the rights of the data subject
- Describe the responsibilities of the Data Controller
- Establishment of the Data Protection Authority
- Combat violations of privacy likely to arise from the collection, processing, transmission, storage and use of personal data activities



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# Overview of Methodology

Collaboration between international and national experts

Collection of best practices and review of existing legislation

Presentation of the draft legislation that includes the input from the stakeholders. In addition, Capacity Building Workshop

Review of the submitted national legislation and policies, drafting of a comparative law analysis

Based upon the input from the stakeholders and the comparative law analysis, draft policies and draft legislation will be developed

Input to the final report that is drafted by a national counterpart

Comparative Law Analysis

Stakeholder Consultation

Drafting Legislation and Policy

Validation and Capacity Building

Final Report

Week One (to Three)

Week Two (Four to Five)

Week Three (Six to Eight)

Week Four (Eight to Twelve)



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# DRAFT DATA PROTECTION LAW

Chapters: One, Three,  
Five, & Six



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# Chapter One



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# Key Definitions

- **data controller**” means a public or private body or any other person which or who, alone or together with others, determines the purpose of and means for processing personal information, regardless of whether or not such data is processed by that party or by a data processor on its behalf, where the purpose and means of processing are determined by or by virtue of an act, or law, the controller is the natural person, legal person or public body has been designated as such by or by virtue of that act, or law;
- **“data processor”** refers to a natural person, legal person, or public body which processes personal information for and on behalf of the controller and under the data controller’s instruction, except for the persons who, under the direct authority of the controller, are authorised to process the data;
- **“data subject”** refers to any individual who is the subject of the processing of personal information and who is identified or identifiable;



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# Key Definition - Personal Information

means information about an identifiable individual that is recorded in any form, including, without restricting the generality of the foregoing:

- information relating to the race, national or ethnic origin, religion, age or marital status of the individual;
- information relating to the education or the medical, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;
- any identifying number, symbol or other particular assigned to the individual;
- the address, fingerprints or blood type of the individual;
- the name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name itself would reveal information about the individual;
- correspondence sent to a data controller by the individual that is explicitly or implicitly of a private or confidential nature, and replies to such correspondence that would reveal the contents of the original correspondence; and
- the views or opinions of any other person about the individual.



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# Key Definition – Processing

“processing” means an operation or activity or any set of operations, whether or not by automatic means relating to –

- The collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use;
- Dissemination by means of transmission, distribution or making available in any other form; or
- Merging, linking, as well as blocking, degradation, erasure, or destruction, of information;



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# Key Definitions

- **“sensitive personal information”** (a) refers to genetic data, data related to children, data related to offences, criminal sentences or security measure, biometric data as well as, if they are processed for what they reveal, personal information revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, affiliation, trade-union membership, gender and data concerning health or sex life (b) refers also to any personal information otherwise considered by Rwanda law as presenting a major risk to the rights and interests of the data subject, in particular unlawful or arbitrary discrimination;
- **“transborder flow”** refers to any international, cross border flows of personal information by means of electronic transmission;



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# Scope and Application

## Art 3 - Application

This Act applies to a data controller – domiciled or having its principal place of business in Rwanda; or not domiciled or does not have its principal place of business in Rwanda and –

- The Act is applicable to any processing of personal information performed wholly or partly by automated means.

**Art 4 - Certain Exemptions** (household activity, national security processing etc.)

## Art 5 - Sector specific legislation

This Act does not affect the operation of any other sector specific legislation which regulates the processing of personal information and is capable of operating concurrently with this Act.

Where the sector specific legislation provides for the protection of personal information and such safeguards are more extensive than those set out under this Act, the extensive safeguards shall prevail.



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# Chapter Three



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# Chapter Three – Principles

*Art 24 – (Conditions of Processing) - Personal information shall be processed if –*

- The data subject provides explicit consent to the processing;
- Processing is necessary for the conclusion or performance of a contract to which the data subject is a party;
- Processing is necessary for compliance with a legal obligation to which the data controller is subject;
- Processing is necessary to protect the legitimate interests of the data subject;
- ...etc.



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# Chapter Three – Principles

**Art26 - Minimality** Personal information may only be processed if, given the purpose for which it is processed, it is adequate, relevant and not excessive.

## **Article 27: Collection directly from the data subject**

A person shall collect personal information directly from the data subject with certain specified exemptions

## **Art 28 - Purpose specification/ further processing limitation**

Personal data shall be collected for specified, explicit and legitimate purposes and shall not be further processed in a way incompatible with those purposes. The further processing of personal information is prohibited with certain exceptions.



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# Chapter Three – Principles

**Art 29 - Retention of records** Records of personal information shall not be retained any longer than a prescribed period, subject to exceptions e.g. record needed for lawful purposes

**Art 30 - Security measures for integrity** A data controller shall secure the integrity of personal information in its possession or under its control by taking appropriate, reasonable technical and authorised measures to prevent - loss of, damage to or unauthorised destruction of personal information; and unlawful access to or processing of personal information.



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# Chapter Three – Principles

**Art 31 - Information processed by a data processor of the data controller** anyone processing personal information on behalf of a data controller shall - process such information only with the knowledge or authorisation of the data controller; and treat personal information which comes to their knowledge as confidential and shall not disclose it, unless required by law or in the course of the performance of their duties.

**Art 32 - Security measures for information processed by a data processor** A data controller shall ensure that a data processor which processes personal information for or on behalf of the data controller establishes and maintains the security measures in Act.

**Art 33 - Notification of security compromises** On reasonable grounds to believe that the personal information of a data subject has been accessed or acquired by an authorised person, the data controller, or any other third party processing personal information under the authority of a data controller, shall notify - the commission; and the data subject, unless the identity of such data subject cannot be established.



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# Chapter Three – Principles

**Art 34: Quality of information** Person collecting to take reasonably practicable steps to ensure that the personal information is complete, accurate, not misleading and kept up to date where necessary.

**Art 35: Notification to the Commission and to the data subject** The data controller shall take reasonable practicable steps to ensure that the data subject is aware of - the information being collected; the purpose for which the information is being collected (etc.)

**Art 36: Access to and challenges of personal information**

A data subject shall have a right to request - whether or not the data controller holds personal information about the data subject; and from a data controller, personal information about the data subject held by the data controller, including information about the identity of all third parties who have or have had, access to the information

**Art 37 - Correction of personal information** A data subject shall have a right to challenge the correctness of information

**Article 38: Accountability** The data controller shall ensure that the principles set out under this Act and all the measures that give effect to the principles are complied with...



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# Chapter Three – Principles

## Art 39: Prohibition on processing of sensitive personal information

Unless specifically permitted under this Act, a data controller shall not process sensitive personal information.

(Articles 40 – 47 sets out exemptions to section 39 for stakeholders to consider)



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# Chapter Five



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# Chapter Five – Transfer of Personal Information out of Rwanda

## *Prohibited unless:*

- (a) the recipient of the information is subject to a law, binding code of conduct or contract which— effectively upholds principles for reasonable processing of the information that are substantially similar to the information protection principles; and includes provisions, that are substantially similar to this section, relating to the further transfer of personal information from the recipient to third parties who are in a foreign country;
- (b) the data subject consents to the transfer;
- (c) the transfer is necessary for the performance of a contract between the data subject and the data controller, or for the implementation of pre-contractual measures taken in response to the data subject's request;



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(continues)

# Chapter Five – Transfer of Personal Information out of Rwanda

*Prohibited unless:*

(continued)

(d) the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the data subject between the data controller and a third party; or

(e) the transfer is for the benefit of the data subject, and—  
it is not reasonably practicable to obtain the consent of the data subject to that transfer; and if it were reasonably practicable to obtain such consent, the data subject would be likely to give it.



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# Chapter Six



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# Chapter Six – General Provisions

**Art 60** – Data Controller to appoint Data Protection Officer to assist with the Controller’s compliance and obligations under the Act

**Art 61** - Data subject shall be entitled to pursue legal appeals with the relevant judicial authorities

**Art 62** – Establish class action system for data subjects to further exercise rights under the Act

**Art 63** - The Commission shall establish rules giving the authorization for and governing the whistleblowing system

**Art 65** – (Unsolicited communications) - A data subject is entitled any time by notice to a data controller to require the data controller to cease, or not to begin, processing of personal data in respect of which he is the data subject for the purposes of direct marketing



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# Chapter Six – General Provisions

**Art 66** - A person may not be subjected to a decision which has legal effect on him, or which affects him significantly, based solely on the **automated processing of personal information** intended to provide a profile of certain aspects of his personality or personal habits.

**Art 67** - A data controller shall **notify the Commission of the processing** of personal information to which the Act applies.

**Art 68** - The Commission may, from time to time, issue, approve, amend or revoke a code of conduct. A **code of conduct shall incorporate measures that give effect to all information protection principles, given the particular features of the sector or sectors of society in which the relevant data controller is operating.**



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# Chapter Six – General Provisions

## **Art 64: Other sanctions**

1) The Commission may impose a warning

(2) In case of serious and immediate violation of the individual rights and liberties, the Commission may rule, in summary proceedings:

the limitation or ceasing of the personal data processing;

Or the temporary or definitive access to some personal data processed; or the temporary or definitive processing (as being) not compliant with the provisions of this law.

## **Art 69: Offences and penalties**

A person who hinders, obstructs or unlawfully influences the Commission or person acting on behalf/under direction of the Commission; breaches rules of confidentiality made under this Act; intentionally and unlawfully obstructs a person in the execution of a warrant issued under this Act; fails, without reasonable cause, to give a person executing a warrant assistance; or violates, without reasonable cause, its obligations under this Act = offence and person is liable, on conviction to a fine not exceeding ... or to imprisonment for a period not exceeding 5 years or to both and if the offender is a juristic person the sentence shall be served by the head of the data controller.



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# Chapter Six – General Provisions

**Regulations** The Minister may, on the recommendations of the Commission or otherwise, make regulations generally for the purpose of giving effect to this Act.

**Transitional arrangements** Any person, who at the commencement date of this Act, is processing any personal information, shall, within two years of such date, bring such processing into conformity with this Act and notify the Commission in terms of article ....

The period of two years referred to may be extended by the Minister by notice published in the Gazette to a maximum of three years.

**Repeal of sections of the ICT Act** Any other provision that is not in accordance with provisions of the present Act are hereby repealed.

**Preparation, review and adoption** This law has been drafted in English, examined and adopted in French and Kinyarwanda.

**Commencement** This law comes into force on the day of its publication in the official gazette of the Republic of Rwanda.



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# Thank You

*Questions/ Discussion?*

Pria Chetty

ITU International Expert: Data Protection



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