

# HIPSSA Project

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

## **PRESENTATION ON SADC DATA PROTECTION MODEL LAW**

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# Summary of the Content

- Purpose of Data Protection Law
- Objectives of Data Protection Model Law
- Provisions of the Data Protection Model Law
- Key Frames of Inquiry for Transposition of the Model Law
- **Questionnaire – Revisit research and analysis for new developments and deeper analysis**

# Purpose of Data Protection Law

- Harmonised approaches
- Give effect to right to privacy
- ICT technology developments impacts right to the protection of personal data in commercial activities as well as in electronic government (eGov) activities
- Illegitimate and unlawful monitoring of individuals
- Automated decision making
- 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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# Overview of the SADC Model Law



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# Objectives of Model 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 dataactivities

# Definitions

- Data
- Data subject
- Data Controller
- Data Protection Authority
- Personal data
- Sensitive Data
- Processing

# Scope

- = Processing of personal data perform **wholly or partly by automated means**, and to the processing of personal data otherwise than by automated means of personal data which forms part of a filing system or is intended to form part of a filing system
- $\neq$  Processing of personal data by a natural person in the course of purely personal or household activities
- **Cannot restrict: the ways of production of information which are available according to a national law or as permitted in the rules that govern legal proceedings; and the power of the judiciary to constrain a witness to testify or to produce evidence**



# Scope of Application

- Processing of personal data carried out in the context of the effective and actual activities of any controller permanently established on [given country] territory or in a place where [given country] law applies by virtue of international public law;
- Processing of personal data by a controller who is not permanently established on [given country] territory, if the means used, which can be automatic or other means located on [given country] territory, are not the same as the means used for processing personal data only for the purposes of transit of personal data through [given country] territory



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# Quality of the Data

- Adequate, relevant and not excessive to the purpose
- Accurate and up-to-date
- Etc.

# Lawfulness of Processing

- Generality - the processing of personal data is necessary and that the personal data is processed fairly and lawfully
- Purpose - specified, explicit and legitimate
- Sensitive data processing with consent
- Etc.

# Duties of the Data Controller:

- Inform the data subject of the purpose of collection
- Confidentiality
- Security safeguards
- Notification to the Protection Authority
- Transparency of the processing
- Accountability



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# Rights of the Data Subject:

- Right of access
- Right of rectification, deletion, temporary limitation of access
- Restrictions on automated decision making

# Protection Authority and Judicial Authority

- Independent and administrative authority
- Role, Status and composition
- Competencies
- Financing (Parliament Grant)
- Liability of the Data Controller
- Sanctions, Warnings, Notices, Fines
- Preserve Data subject's recourse through the judicial authority
- Preserve Data subject's access to the judicial authority



# Limitations:

- National Security
- Journalism

## Transborder Flows:

- Member States of SADC – Establish necessity of transfer
- Non member States of SADC - Personal data shall only be transferred to recipients, other than Member States of the SADC, which are not subject to national law adopted pursuant to this model law, if an adequate level of protection is ensured in the country of the recipient or within the recipient international organization and the data is transferred solely to allow tasks covered by the competence of the controller to be carried out



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# Transposition of the Model Law



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# 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. Prevalence of regulation that has a ***bearing on the right to privacy*** and protection of personal information in Zimbabwe.



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# Transposition Frames of Inquiry

**Definitions** of personal information and sensitive information,

**Principles** of data protection

Nature and functions of the **Data Protection Regulator**

Regulation of **Transborder** flows of personal information

Nature of the **Constitutional** right to privacy

Privacy in **Consumer Protection**

Privacy in **Electronic Communications**

Rights of **Access To Information** versus the right to privacy



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# Transposition Frames of Inquiry

## *Special Considerations:*

Whistleblowing information, Health Records, Labour Laws,  
Medical Ethics, Credit Information Regulations

Limitations on Privacy:

Criminal Procedure, national security legislation

## *Status and amendments:*

ICT Policy

Constitutional right to privacy

Communications regulation

Consumer Protection regulation



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# Thank You

*Questions?*

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