

# 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 ZIMBABWE DATA PROTECTION BILL**

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# Summary of the Content

- Purpose of Data Protection Law
- Transposition Approach
- Provisions of the Data Protection Model Law
  - Key Definitions
  - Principles of Data Protection
  - Rights of Data Subjects
  - Obligations of Data Controllers
  - Transborder Flow



# 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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# Methodology for Transposition of the SADC Model Law



# Transposition Approach

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

SADC Model Law was drafted and represents the best practices discovered in the Assessments.

To transpose for Zimbabwe, within Zimbabwe, needed to enquire, through National Assessment.

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.



# Transposition Approach

Continued...

*3. Outcomes of the National Assessment Report* (to be presented by National Expert) provided an overview of laws that needed to be taken into account when drafting the Bill.

*4. Cross-walk Table* that compares the Model Law with existing provisions in law was used to define the actual content of the Bill



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# DATA PROTECTION BILL IN ZIMBABWE



# Why enact Data Protection law in Zimbabwe

- Give effect to internationally accepted principles of data protection – to promote trade and investment
- Place limitations on the processing of personal data - which may lead to abuses of personal information
- 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





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# Key Definitions in Bill

- Data subject
- Data Controller
- Personal information
- Sensitive information
- Data Protection Authority
- Processing
- Transborder Flow



# Data Subject

(9) Data subject: refers to an individual who is an identifiable person and the subject of personal data.

(10) Identifiable person:

- (a) is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his/her physical, physiological, mental, economic, cultural or social identity.
- (b) To determine whether a person is identifiable, account should be taken of all the means reasonably likely to be used either by the controller or by any other person to identify the said person.



# Data Controller

5) **Data controller or controller:** refers to any natural person and legal person excluding a public body which alone or jointly with others determines the purpose and means of processing of personal data. Where the purpose and means of processing are determined by or by virtue of an act, decree or ordinance, the controller is the natural person, legal person or public body designated as such by virtue of that act, decree or ordinance.



# Personal Information

(13) **Personal information:** information relating to a data subject, and includes—

- (a) the person's name, address or telephone number;
- (b) the person's race, national or ethnic origin, colour, religious or political beliefs or associations;
- (c) the person's age, sex, sexual orientation, marital status or family status;
- (d) an identifying number, symbol or other particulars assigned to that person;
- (e) fingerprints, blood type or inheritable characteristics;
- (f) information about a person's health care history, including a physical or mental disability;
- (g) information about educational, financial, criminal or employment history;
- (h) opinions expressed about an identifiable person;
- (i) the individual's personal views or opinions, except if they are about someone else; and
- (j) personal correspondence pertaining to home and family life.



# Sensitive information

## (19) Sensitive data (information):

refers to (a) information or an opinion about an individual which reveals or contains the following

- (i) racial or ethnic origin;
  - (ii) political opinions;
  - (iii) membership of a political association;
  - (iv) religious beliefs or affiliations; (v) philosophical beliefs;
  - (vi) membership of a professional or trade association;
  - (vii) membership of a trade union; (viii) sex life;
  - (ix) criminal, educational, financial or employment history;
  - (x) gender, age, marital status or family status,
- (b) health information about an individual;
- (c) genetic information about an individual; or
- (d) information which may be considered as presenting a major risk to the rights of the data subject.



# Processing

(14) Processing: refers to any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as obtaining, recording or holding the data or carrying out any operation or set of operations on data, including –.

- (a) organization, adaptation or alteration of the data;
- (b) retrieval, consultation or use of the data; or
- (c) alignment, combination, blocking, erasure or destruction of the data.

*The definition of processing is important because it informs which activities the principles of protection must be applied to*

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# Data Protection Authority

(15) Protection Authority or Authority: refers to an independent authority established by Part II of this Act.



# Transborder flow

(21) **Transborder flow:** refers to international flows of personal data by the means of transmission including data transmission electronically or by satellite.

The Act places restrictions on international flows of personal information (discussed later).





# Scope of Application

(1) This Act shall apply to matters relating to access to information, protection of privacy of information and processing of personal data wholly or partly by automated means; and shall be interpreted as being in addition to and not in substitution for any other law which is not in conflict or inconsistent with this Act.

(2) This Act is applicable:

(a) to the processing of personal data of controller permanently established in Zimbabwe or in a place where Zimbabwean law applies by virtue of international public law; & (b) to the processing of personal data by a controller who is not permanently established in Zimbabwe, if the means used, electronic or otherwise is located in Zimbabwe, (not) mere transit of personal data through Zimbabwe.

(4) This Act cannot restrict: (a) 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 (b) the power of the judiciary to constrain a witness to testify produce evidence.



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# PRINCIPLES OF DATA PROTECTION IN BILL



# Quality of the Data

- Processing of personal information must be adequate, relevant and not excessive to the purpose
- Personal information must be kept accurate and up-to-date
- Personal information retained in a form that allows for the identification of data subjects, for no longer than necessary with a view to the purposes for which the data is collected or further processed
- Personal information shall be accessible regardless of the technology used i.e. ensure that the evolution of technology will not be an obstacle to the future access or processing of such personal data

# Lawfulness of Processing

- Principle of Generality - the processing of personal data must be necessary and that the personal data is processed fairly and lawfully
- Purpose Specification – personal information to be processed for a specified, explicit and legitimate purpose
- Sensitive data processing is limited in Bill – in majority of cases with consent of the data subject
- Etc.



# DUTIES OF DATA CONTROLLER



# Duties of the Data Controller:

- Inform the data subject of the purpose of collection
- Confidentiality of personal information being processed
- Security safeguards to ensure integrity and prevent loss or damage to the personal information
- Notification to the Protection Authority of the processing activities
- Transparency of the processing – the personal information being processed must be notified to the data subject who shall have access to their personal information
- Accountability – demonstrate compliance with the Bill and the principles of data protection



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# RIGHTS OF DATA SUBJECTS



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# Rights of the Data Subject:

- Right of access to personal information being held by a data controller about the data subject
- Right(s) to request rectification, deletion, temporary limitation of access to personal information
- Restrictions on automated decision making – where personal profiles based on personal information are used to make decisions about the data subject





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# DATA PROTECTION AUTHORITY



# Protection Authority and Judicial Authority

Presentation by National Expert to expand on the Authority

- Independent and administrative authority
- Role, Status and composition
- Competencies
- Financing
- Deals with the Liability of the Data Controller
- Sanctions, Warnings, Notices, Fines
- Important to preserve Data subject's recourse through the judicial authority



# Limitations/ The Bill has restricted application in certain instances:

- E.g.. Processing necessitated by National Security
- E.g. Processing necessitated by Journalism
- E.g. Access to information requirements for public bodies in Zimbabwe
- E.g. Prohibition on processing of sensitive information has limitations



# Conclusion

- The Bill places conditions on the processing of personal information
- The Bill provides data subjects with certain rights and data controllers with certain obligations
- The Bill distinguishes between personal and sensitive information
- The Bill establishes an Authority for oversight and administrative enforcement

*Training will expand on key concepts and provide practical explanations*



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# Thank You

*Questions?*

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