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THE ROLE OF DATA PROTECTION LAWS IN PROMOTING RESEARCH IN AFRICA : AN EAST AFRICAN CASE STUDY.



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WHY DATA PROTECTION LAW IS VITAL IN RESEARCH.

- Data Protection is an integral part of research ethics (Confidentiality of personal information provided by research participants)
- The right to privacy is enshrined in various Constitutions and is applicable to data in the research process.
- Burundi – Article 28, DRC – Article 31, Kenya –Article 31, South Sudan –Article 22, Tanzania – Article 16, Uganda – Article 27.
- Data protection is a vital concern because it affects the process of consequently sharing data.

- It imposes obligations on researchers to provide research subjects with detailed information about the collection, storage and use of their personal data.
- It places an obligation on organizations and individuals processing the data to ensure that the data is properly protected, minimized, and destroyed when no longer needed.
- In policy terms, data protection law aims to strike a balance between:
 - (a) the privacy interests of individuals, and,
 - (b) the needs of organizations to make fair and reasonable use of information relating to those individuals in their operations. [University of Oxford](#)

THE AU DATA PROTECTION POLICY FRAMEWORK

- The AU Data Policy Framework represents a significant step toward creating a consolidated data environment and harmonized digital data governance systems to enable the free and secure flow of data across the continent while safeguarding human rights, upholding security and ensuring equitable access and sharing of benefits.
- The Framework presents a set of detailed recommendations and arising actions to guide member states through the formulations of policy in their domestic context, as well as recommendations to strengthen cooperation among countries and promote intra-Africa flows of data.
- Some of its recommendations include : promote research, development and innovation in various data-based areas, including Big Data Analytics, Artificial Intelligence, Quantum Computing, and Block chain.
- Promote interoperability, data sharing, and responsiveness to data demand through the setting of open data standards in data creation conform to the general principles of anonymity, privacy, security and any sector-specific data considerations to facilitate non-personal data, and certain categories of personal data are accessible to African researchers, innovators and entrepreneurs;

- Promote and facilitate data flows within and among AU Member States by developing Cross Border Data Flows Mechanism that takes into account the different levels of digital readiness, data maturity as well as the legal and regulatory environments of countries.
- Facilitate data circulation across sectors and cross borders by developing a Common Data Categorization and Sharing Framework that takes into account the broad types of data and the associated levels of privacy and security;
- Work in close collaboration with national authorities in charge of personal data protection of AU members, to establish a coordination mechanism and body that oversees the transfer of personal data within the continent and ensures compliance with existing laws and rules governing data and information security at national level;
- Establish mechanisms and institutions , or empower existing ones, within the African Union to build capacity and render technical assistance to AU Member States for the domestication of this data policy framework among other recommendations.

THE MALABO CONVENTION

- The African Union Convention on Cyber Security and Personal Data Protection also known as [The Malabo Convention](#) is the sole binding regional treaty on data protection in Africa. It introduces specific requirements for signatories Including:
- Requirements and principles associated with data processing (Article 13) Consent and legitimacy of processing of personal data, lawfulness and fairness of data processing, purpose, relevance and storage of processed personal data, accuracy of personal data, confidentiality and security of personal data processing,
- Specific restrictions on the processing of sensitive personal information;
- Data security obligations (Article 21)
- Restrictions On Data Transfers To Non-AU Member States
- Establishing an institutional framework for the protection of personal data.

DATA PROTECTION ACTS IN EAST AFRICA.

Country	Data Protection Act
BURUNDI	No specific Act addressing Data Protection
DRC	<u>Law No. 29-2019 on the Protection of Personal Data</u>
KENYA	<u>Data Protection Act, 2019</u>
RWANDA	<u>Law N° 058/2021 Of 13/10/2021 Relating To The Protection Of Personal Data And Privacy.</u>
SOMALIA	<u>Data Protection Act, Law No. [005] of [2003].</u>
SOUTH SUDAN	No specific Act addressing Data Protection
TANZANIA	<u>Data Protection Act, 2022.</u>
UGANDA	<u>Data Protection and Privacy Act, 2019.</u>

BARRIERS TO DATA PROTECTION IN RESEARCH

- **Lack of understanding of data protection regulation:** Some researchers are not aware of the implications of collection of personal data for research.
- **Lack of existing laws and regulations on data protection:** E.g. Burundi, this exposes data subjects to violations of their right to privacy. This also hinders the cross –border transfer of data between jurisdictions for sensitive data for research for instance health research.
- **Fragmentation of laws:** Where there are no laws that directly address the data protection various legislation is referred to and this is a challenge to researchers in terms of attaining legal compliance.
- **Lack of a favorable legislative environment:** There is a challenge in regulating data protection in some countries. Bills can be drafted but the transition into law is a process that is not easy to attain fully.
- **Rapid technological advancements :** Technology is advancing very rapidly and this creates some unregulated areas that require regulatory attention in order to safeguard the rights of data subjects e.g. Artificial Intelligence (AI) and its impact on research Integrity.
- **Language :** Lack of official language translations of texts in some countries makes it difficult for global researchers to understand the legal provisions.

WAY FORWARD

- Formulate laws and policies that foster data protection for research.
- Use the multi-stakeholder approach to foster multi – sectoral input towards evidence based regulation and policies in regard to the use of data in research.
- Sensitize the data subjects on their rights especially on consent related issues.
- Address the impact of rapid technological advancements such as AI on research integrity in East Africa.
- Where Acts are in other languages, official translations to main languages should be publicly available to support researchers in other jurisdictions in understanding the legal provisions on data protection.

In a nutshell, Data Protection is vital in the research processes because it aims at ensuring that data is accurate and available for research while simultaneously safeguarding the rights of the research processes.

THANK YOU FOR LISTENING.