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# **DATA PROTECTION LAW**

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## **Data Protection Law**

A Preview of the New Personal Data Protection Act No.11, 2022, Alert on Commencement and the Prospects for the Future of Personal Data Protection in Tanzania.

# Introduction to Personal Data Protection Law in Tanzania



The Personal Data protection Act, No 11, 2022 was passed by parliament in November 2022; with a view to provide a framework for the collection, use and disclosure of personal data and to establish a minimum legal threshold for the processing of personal data .The Act therefore strictly controls both the collection and processing of personal data by data collectors and processors in Tanzania.

Data privacy is a Constitutional requirement with Article 16 of the Constitution R.E, 2005 demanding for the enactment of a law which stipulates for the protection and reasonable interference with personal data in Tanzania.

There has been an ongoing digitization of various national systems including the issuance of biometric Identity cards, biometric voter register and SIM card registration.

In early 2018 Tanzania Communication Regulatory Authority (TCRA) piloted the registration of subscribers of the various telcos in Tanzania and the piloting program was hailed as a success ever since there has been an ongoing registration which continues to date.

Alongside TCRA now, Section 6 of the Act establishes a Personal Data Protection Commission (the Commission) which is a body corporate with perpetual succession and a common seal whose key role is to continuously monitor compliance with the Act.

## Analysis of the Interpretations of the Personal Data Protection Act, No 11 of 2022

The Act was enacted in recognition of the right to privacy and personal security enshrined under Article 16 of the Constitution of the United Republic of Tanzania. Among her most salient provisions are on the following:

The Act applies to data collectors and data processors who are defined in the Act with data collectors being defined as , “ Data Collector” means a person , body corporate or a public institution which either alone or in conjunction with another institution determine the purpose or methodology of personal data procession and where such methods have been prescribed by law.

“Data processor” on the other hand is defined as a person, body corporate or public institution which processes personal for and on behalf of the data collector under the guidance of the data collector, except persons under the direct control of the data collector, and includes their agents.

“Data subject” is defined to mean a person whose data is being processed in accordance with the Act. Under the Act, Minister means the Minister responsible for communication.

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- a) Personal information concerning the colour, nationality or tribe, religion, age, or marital status of an individual;
- b) Personal information about education, medical history, crime, or employment;
- c) Any identification number or mark which identifies a person, address, fingerprint or blood group of an individual;
- d) A name of a person which appears on another person's personal data to whom they are not related or where disclosure of such name would reveal personal information;

## Key Provisions and Commencement of the Act, No 11, 2022



By Gazette Notice Number 326 of 2023 the Minister responsible for Information and Communication announced the 1st Day of May 2023 as the day of commencement of the Private Data Protection Act which among other things has the following provisions:

Under Part IV of the Act on Data Collection, Use, Disclosure and retention the Act directs that personal information be collected where necessary and for legitimate purpose only. In order to ensure correctness and accuracy of the information, the Act requires data collectors to take all the necessary steps to confirm that data collected is complete, correct and in line with the purpose for which it was collected. The steps from their simple wording in the statute precede the use of the collected of the data.

Disclosure of data is made conditional and for that matter, the data collected under the Act may only be disclosed under the following circumstances-

- a) Where data subject has been informed and has consented to such disclosure;
- b) Where disclosure is necessitated or required by a specific law;
- c) Where disclosure is directly related to the purpose for which the data was collected;
- d) Where such disclosure would preserve health or reduce harm to another person or the society and
- e) Where disclosure is necessary in compliance with the law.
- f) The data subject is not identified or
- g) For Statistical research purposes, where it is guaranteed that such data will not be published in a manner that will identify the data subject.
- h) In addition, data collectors are required to maintain and keep a proper security system dedicated to ensuring that the data collected is not destroyed, converted, accessed or in any way dealt with without authorization.



## Objectives of the Act and Prospects for the Future of Personal Data Protection

The Act primarily aims at controlling the collection and processing of personal data. Apart from establishing safeguards for data collection the law creates institutions to oversee the exercise and to hold data collectors and processors to account when they breach the set standards.



The overall impression is that the enactment of this law will facilitate the collection and dissemination of private data in a manner that is transparent, fair, and legally permissible and in a manner that equally meets international best practices for the same.

In June 2014, African Union (AU) member states adopted the African Union Convention on Cyber-security and Personal Data Protection (also referred to as the Malabo Convention), making it the first pan-African instrument on privacy and personal data protection., Article 8 of the Convention calls upon states parties to commit to establish a legal framework aimed at strengthening fundamental rights and public freedoms, particularly the protection of physical data, and punish any violation of privacy without prejudice to the principle of free flow of personal data. The convention also outlines internationally recognised principles in personal data collection, storage, and processing.

## **Registration of Data Processors and Collectors and Rights of Data Subjects in Compliance with the Act.**

Data processors and collectors are compulsorily registrable under the new law .Section 14 of the Act provides a strict requirement for any person (whether an individual or corporate body) who intends to collect or process data in Tanzania to be registered by the Commission.

Registration is done by sending an application to the Commission, which will either accept or reject the application. Upon acceptance, the Commission will issue a certificate of registration and where the application is rejected,

the Commission will provide its reasons for the decision in writing. A certificate of registration shall be valid for a period of five (5) years from the date of issuance by the commission and is capable of renewal.

Part IV of the Act is an assurance to the protection of personal data and it vests the several rights upon a data subject including:

- i) Right to be informed of data collection and processing as well as the purpose involved;
- ii) Right to access the data collected and processed;  
Right to object to the processing of personal data collected where such processing will lead to adverse impacts on the data subject ;
- iii) Right to rectify personal data to ensure its accuracy;
- iv) Right not to be subject to automated decision-making.
- v) The right to instruct that decisions made by data collectors and processors on their behalf should not be arrived at, solely based on automated processing;
- vi) Right to compensation.

## Modes of Filing Complaints and the Specified Penalties under the Act.



Pursuant to Section 39 of the Personal Data Protection Act, a person may file a complaint against a data collector or processor who has violated the principles of personal data protection as stipulated.

The mode of filing complaints is specified under the law and includes a submission to the Commission of a written complaint. The Commission will then initiate a confidential investigation where satisfied that there are valid reasons to investigate the complaints. Such investigation will be conducted and concluded within 90 days subject to an extension at the discretion of the commission. Where it is determined that there has been a violation in the provisions of the Act, the Commission may issue an enforcement notice

directing the subject against whom the complaint was made to remedy such violation within a specified timeline.

Furthermore, the Commission may issue a notice of penalty, where the respective party has failed to remedy the violation within the given period of time. According to the Act, unconsented disclosure of personal data by an individual shall constitute an offence punishable by a fine of not less than TZS 100,000 and not more than TZS 20,000,000 or to imprisonment for a term not exceeding ten years. In some instances, both a fine and imprisonment may be handed out to the violator(s).

With regard to corporate bodies, the Act imposes a direct liability on all officers who intentionally authorised the commission of such an offence. Moreover, where the Act has no specific provision on an offence it stipulates a general fine of not less than TZS 100,000 and not more than TZS 5,000,000 or imprisonment for a term not exceeding five years, or to both, a fine and imprisonment.

Finally, the Act creates other offences such as destruction of data, unauthorized deletion and equally sets out sanctions for the same offences.

## The Data Protection (Complaints Handling Procedure) Regulations, GN No 350.

The Data Protection (Complaints Handling Procedure) Regulations, GN No 449B (hereinafter the Complaints Regulations) principally deals with the procedure on how data subjects can lodge complaints or seek redress for violation of their personal data. The Complaint Regulations allow a data subject to lodge a complaint in English or Swahili to the Commission either orally or in writing in relation to violation of personal data or if aggrieved by decision of data collector or processor in processing of their personal data. After receiving the complaint, the Commission shall screen the complaint received and proceed to either reject or accept it. Within 7 days of the complaint being accepted, the Commission shall issue a summon to defend to the Respondent under form 2 provided under the First Schedule to the Complaint Regulations.

The Regulations also provide for procedures on how to join another respondent who is a third party to the complaint and amendments of complaints or defenses. As part of the investigation procedure, the Commission is authorized to appoint an officer within the Commission to mediate the dispute between the parties for amicable settlement of the matter within 30 days.

If a settlement is reached, the same shall be adopted by the Commission to become an award of the Commission. If the settlement is not reached the matter shall be returned back to the Commission for appointment of the Committee to hear and determine the dispute. The Committee to be formed shall be composed of 3 members who are experts in law, data protection and IT within the Commission. The Committee shall hear the parties and make findings on the dispute that shall be delivered to the Commission for determination of the matter.

If the complaint is determined to have merit, the Commission shall issue an enforcement notice and if the notice is not implemented, the Commission is authorized to issue a penalty notice which shall become part of the award issued by the Commission and capable of enforcement as a decree of the High court. Any party aggrieved by decision of the Commission can within 21 days make an application to the Commission for revision of the award. In exercising the revisionary powers, the Complaint Regulations have empowered the Commission to amend, dismiss or strike any part of the award. Any person who is not satisfied by the decision of the Commission can lodge an appeal to the High Court within 21 days from delivery of the award.

## Conclusion

The media should be the biggest friend to the public in data protection by regularly reporting cases of personal data breaches and enlightening the public on the same. This is the fastest way of knowledge sharing and dissemination of information across the country. Going forward therefore data collectors including banks, law firms, telcos among others must take note of this new dawn in terms of privacy of personal data and the advent of the new legal regime safeguarding personal data in their custody.

The Act discernibly applies to any information an organisation keeps on clients, staff or account holders, visitors to premises of business, product purchasers and aspects of business operation and as part of compliance organizations will likely need to retrain staff handling personal data on what the law obliges them to do or not to do as part and parcel of personal data protection mechanisms.

## REFERENCES

- African Union Convention on Cyber-security and Personal Data Protection, June 2014 (Malabo Convention)
- Data Protection Act, No 11 of 2022
- The Personal data Protection (Complaints Settlement Procedure) Regulation GN, No 449B, 2023
- G.N No. 326, 2023
- The Constitution of the United Republic of Tanzania, Cap 2 R.E, 2005





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