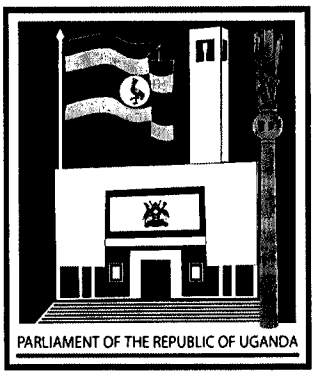


PARLIAMENT OF UGANDA

REPORT OF THE SECTORAL COMMITTEE ON INFORMATION, COMMUNICATION TECHNOLOGY AND NATIONAL GUIDANCE ON THE DATA PROTECTION AND PRIVACY BILL, 2015

OFFICE OF THE CLERK TO PARLIAMENT

November, 2018

1.0 INTRODUCTION

The Data Protection and Privacy Bill, 2015 was read for the first time on 20th April 2016 and referred to the Committee on Information, Communications, Technology and National Guidance in accordance with Rules 127 and 128 of the Rules of Procedure of Parliament. The Committee scrutinized the Bill and hereby presents its findings and recommendations.

2.0 BACKGROUND TO THE BILL

The Data Protection and Privacy Bill, 2015, is premised on Article 27 of the Constitution of Uganda that provides for the protection and promotion of the right to privacy of a person, home and other property. Whereas Article 27(2) of the Constitution provides that no person shall be subjected to the interference of the privacy of that person's home, correspondence, communication or other property, there is currently no comprehensive law to safeguard personal data by regulating how personal information is collected or to ensure that it is used only for the purposes for which it is collected.

Laws like the Regulation of Interception of Communications Act, 2010[1] and the Registration of Persons Act, 2015[2] among others have some provisions relating to regulation of collection and safeguarding of personal information. The frameworks provided under these laws are mere examples of the numerous scenarios of collecting personal information and how it may be safeguarded. In the absence of a comprehensive law regulating and safeguarding the collection and use of personal information, there is need to provide a comprehensive framework for data protection in Uganda.

3.0 OBJECT OF THE BILL

The Bill seeks to protect the privacy of the individual which also covers personal data by regulating the collection and processing of personal information; provide for the rights of the persons whose data is collected and the obligations of data collectors, data processors and data controllers; and to regulate the use or disclosure of personal information.

4.0 METHODOLOGY

During consideration of the Bill, the Committee, held consultative meetings and received memoranda from the following stakeholders;

[1] Act 18 of 2010
[2] Act 4 of 2015

1. The Ministry of Information, Communications Technology and National Guidance (MoICT)
2. National Information Technology Authority (NITA)
3. Ministry of Justice and Constitutional Affairs (MoJCA)
4. Uganda Law Society (ULS)
5. Human Rights Awareness and Promotion Forum
6. United Nations Pulse Lab
7. Uganda Human Rights Commission (UHRC)
8. Human Rights Center Uganda
9. The Unwanted Witness
10. Uganda Communications Commission (UCC
11. Telecommunication Companies (MTN, UTL, Africell)
12. The National Association of Broadcasters
13. Multichoice Uganda
14. Star Times Uganda
15. Vision Group of Companies
16. Uganda Manufacturers Association (UMA)
17. Uganda Chamber of Commerce
18. Uganda Hotel Owners Association
19. Uganda National Examinations Board (UNEB)
20. Uganda National Council for Science and Technology
21. The Uganda Business and Technical Examinations Board
22. Uganda Medical Doctors Association.
23. Allied Health Professionals Council
24. Uganda Bureau of Statistics (UBOS)
25. National Identification and Registration Authority (NIRA)
26. Uganda Registration Services Bureau (URSB)
27. Ministry of Public Service
28. Uganda Library and Information Association
29. Ministry of Lands Housing and Urban Development
30. Bank of Uganda (BOU)
31. Uganda Bankers Association (UBA)
32. Uganda Insurers Association
33. Uganda Prisons Service; and
34. Bytelex Advocates

b) The Committee benchmarked the Bill against the Data Protection Act, 2017 of the Republic of Mauritius and the Protection of Personal Information Act, 2013[3] of the Republic of South Africa where laws on data protection and privacy have been enacted and are being implemented.

c) In scrutinizing the Bill, the Committee put into consideration the Second National Development Plan 2015/16 –2019/20 whose objective is to improve the information systems to be secure, reliable and capable of responding to security threats, by developing and implementing strategies to protect consumers of ICT services. The Committee made reference to the Sustainable Development Goals and considered other cross cutting issues such as gender and equity.

d) The Committee also reviewed the Bill in the context of international practices embodied in several regional data protection instruments such as the General Data Protection Regulations (2018) of the European Union, the African Union Convention on Cyber Security and Personal Data Protection, (2014) as well as the guiding principles under the East African Community Legal Framework on Cyber laws.

5.0 OBSERVATIONS

The Committee studied the Bill and considered the concerns raised by the various stake holders and came to the following observations:

5.1 GENERAL OBSERVATIONS

5.1.1 The Right to Privacy

Privacy is envisioned as a multidimensional concept which has been recognized both in law and common expression. The Constitution of the Republic of Uganda[4] guarantees the right to privacy which forms an integral part of fundamental human rights. Uganda is also party to a number of International Instruments that recognize the right. These include; the Universal Declaration of Human Rights[5] and the International Convention on Civil, and Political Rights.[6] It should however, be noted that this right is not absolute and thus should be regulated to ensure that its protection does not prejudice other Constitutional rights.

5.1.2 The Concept of Data Privacy and Protection

The Concept of Data Privacy requires that personal data should not be availed to other persons without consent. It encompasses an individual's right to control the collection, use, storage, processing and disclosure of his or her personal information. This information, which is usually of a personal nature may easily be abused or misused in

[4] Article 27 of the 1995 Constitution of the Republic of Uganda
[5] Article 12
[6] Article 17. General Comment No. 16 to the ICCPR, which refers to the obligations of States to enact measures deriving from data protection law (such as providing individuals with the right to request rectification or deletion of their personal data, see para. 10).

the absence of a comprehensive legal framework. The Bill therefore aims to safeguard persons against misuse of personal data by proposing administrative, technical and physical deterrents.

5.1.3 Convergence of Technologies

The rapid and ever dynamic technological advances have made personal data easily accessible which has increased concerns over privacy rights and hence the need for a law ensuring data protection. Over the years the amount of data collected by government and private institutions as well as individuals has become enormous. There is, however, no central register for the various data collectors, processors and controllers to facilitate appropriate regulation of the data collected. The Bill therefore provides solutions to these lacunas.

5.1.4 Challenges necessitating the law on data protection

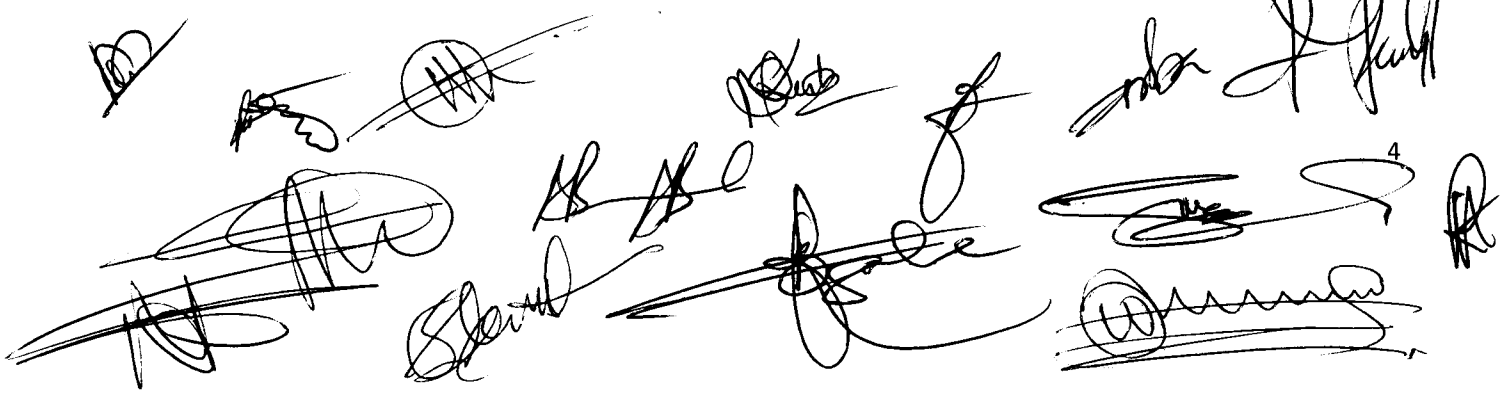
Uganda currently faces a number of challenges which necessitate a law on data protection and privacy. Some of these include; the fragmented regulatory framework on data protection and privacy, abuse and disclosure of personal data, use of personal data for direct marketing and high data illiteracy levels among others.

The Committee was informed that various institutions collect information which requires disclosure of personal data such as biometric details, place of birth, place of origin, names of parents, spouses or dependents, health status of individuals to mention but a few. This information often ends up with business for example telecommunication companies, food stores, advertising agencies among others which send unsolicited messages or publish this data in print media hence infringing on the privacy of the data subjects. The Data Protection and Privacy Bill once passed into law will mitigate such challenges.

5.1.4 Study visits to the Republic of Mauritius and The Republic of South Africa

During consideration of the Bill, two delegations from the Committee undertook study visits to the Republic of Mauritius and South Africa to benchmark on Data Protection and Privacy.

The delegations interacted with several stakeholders. These included Officials from the respective Data Protection Regulators, Telecommunication Operators, Communication Regulators and Data Protection Advocates. The information acquired guided the Committee during the consideration of the Bill.



5.1.5.1 Lessons learnt from the study visits

a) The delegations from both Mauritius and South Africa found that the Laws regulating data protection are based on the need to protect the right to Privacy of a person, both natural and artificial. This is indeed the same policy behind the proposed law in Uganda since it intends to enhance Article 27 of the Constitution[7].

b) The delegation to Mauritius was informed that alongside the policy to protect the right to privacy, the other motivating factor was the need to enhance the country niche into a Business Process Outsourcing Hub for its business partners in Europe and Asia. Consequently, the Mauritius Data Protection Act 2017 was to a large extent influenced by the General Data Protection Regulations of the European Union.

c) In South Africa, the motivation for the law was due to discussions that followed the enactment of their Access to Information Act. In this regard South Africa decided to establish the Information Regulator to oversee the operation of both the Access to Information Act and the Protection of Personal Information Act 2017.

d) Transition to compliance with the new laws on data protection and privacy has been relatively smooth, However, from the regulatory and compliance point of view, the two countries are still faced with the following challenges;
   - Absence of Regulations to clarify on interpretation of the Mauritius Data Protection Act, 2017 which has affected it's operationalization;
   - Inadequate funding and understaffing of their respective Data Protection Offices.

e) One of the key international standards for data protection laws is the requirement to have data protection officers in both private and public institutions that collect, control and process personal data.

5.1.5 The Sustainable Development Goals and Data Protection (SDGs)

Goal 17: *Strengthen the means of implementation and revitalize the global partnerships for sustainable development.*

Indicator 17.18 requires that by 2020, developed countries should enhance capacity building to developing countries to increase significantly the availability of high- quality, timely and reliable data disaggregated by income, gender, age, race, ethnicity, migratory status, disability, geographic location and other characteristics relevant in national contexts.

[7] Providing for the Right to privacy

In order to achieve this goal, tracking progress on the SDGs requires the collection, processing, analysis and dissemination of an unprecedented amounts of data and statistics at a sub-national, national, regional and global level[8]. However the absence of a common set of principles on data protection, privacy and ethics in several countries around the world makes it harder to use big data for development and humanitarian goals. These gaps also complicate efforts to develop standardized, scalable approaches to risk management and data access[9]. Subsequently, a coordinated approach is required by developing countries, Uganda inclusive, to ensure the enactment of regulatory frameworks for safe and responsible use of big data.

5.2 SPECIFIC OBSERVATIONS

5.2.1 REGULATION OF DATA PROTECTION AND PRIVACY

The Bill, under its memorandum proposes the National Information Technology Authority (NITA- U) to monitor persons and bodies collecting data and ensure that personal information is collected, processed, stored and used in accordance with Article 27(2) of the Constitution. This position is restated under Clause 2 that defines the Authority under the Bill to be the National Information Technology Authority.

The Committee received concerns about the mandate of NITA- U in respect of Data Protection and Privacy. Furthermore, concerns were raised on the capacity and independence of NITA- U to ably oversee the implementation of the law and ensure safety of personal data.

Consequently, proposals were made from entities such as the Human Rights Awareness and Promotion Forum, Uganda Law Society and Bank of Uganda to the effect that a new body should be established under the law to handle matters of data protection.

The Committee however observed that there is need for the government to reduce on the fragmentation of entities providing similar public services. The Committee further observed that the creation of a new entity would bear a financial implication on the sector which was not envisioned upon the award of a Certificate of Financial Implication.

The Committee reviewed the National Information Technology Authority Act[10] and found that Section 5 establishes NITA- U as an autonomous body corporate with perpetual succession which guarantees its independence and autonomy. Further, under Section 5 of the Act, NITA- U's core functions are to set, monitor and regulate standards of Information Technology, and ensure data protection among others. Its role as an information security advisor is complementary to the implementation of the data protection legislation.

[8] The Sustainable Development Goals Report, 2018 United Nations, New York.
[9] Finding the balance: Right to privacy and the drive to innovate in the UN, Robert Kirkpatrick, Mila Romanoff, Gina Lucarelli, Jens Wandel May 3, 2017
[10] Act No. 4 of 2009

The Committee is therefore in agreement with the provision under the memorandum of the Bill that NITA - U be the Authority to oversee the Act. However, the Committee notes that it is necessary to strengthen the regulatory role of NITA - U under the Bill by creation of an Independent Data Protection Office that reports to the Board.

Recommendation

The Committee recommends that;

a) ***NITA - U creates an Independent Data Protection Office which should report directly to the Board.***

b) ***The functions of the Data Protection Office be clearly specified under the Bill to give clarity to the responsibilities of the office in regard to data protection and privacy.***

c) ***All institutions that collect, control and process personal data designate a data protection officer who shall be responsible for ensuring compliance with this Act.***

5.2.2 APPLICATION OF THE BILL

Clause 1 proposes that the Bill should apply to any person, institution or public body collecting, processing, holding or using personal data.

The Committee observed that the Bill limits its application to the territorial boundaries of Uganda and does not provide for extra-territorial application. The Committee further observed that there has been an evolution to an inter-connected global digital society, where the services of different operating systems are universal in nature and the concept of cross-border data transfers has become the norm. However, there is no universal law that safeguards data protection apart from few international and regional legal instruments for example; the European Union General Data Protection Regulation (GDPR), 2018.

At the regional level, the African Union Convention on Cyber Security and Personal Data Protection and the East African Community Legal Framework on Cyber laws only provides guidelines and direct partner states to enact legislation providing for protection of personal data. Consequently, countries like Kenya, Tanzania and Uganda have draft laws on data protection and privacy, hence data protection and privacy is regulated by general privacy policies, end-user licenses and agreements for applications and operating systems.

The Committee also found that most of the servers on which personal data is collected and processed are not resident in Uganda but rather stored in the countries of residence of the data collectors or processors. This greatly increases the vulnerability of such data hence necessitating the expansion of the application of the Bill to ensure protection of the citizens' data.

Recommendation

The Committee therefore recommends that Clause 1 of the Bill be amended to widen the scope of application of the law to apply to all data collectors, processors and controllers handling data belonging to Ugandans outside the territorial boundaries of the country.

5.2.3 PROTECTION OF PERSONAL DATA RELATING TO CHILDREN.

Article 34 (1) of the Constitution of the Republic of Uganda[11] provides that laws shall be enacted in the best interest of children. Despite the fact that children have the same rights as adults over their personal data, they need particular protection when their data is being processed because they may be less aware of the risks involved.

The Committee noted that the Bill does not have clear provisions that guarantee the privacy of children as far as consent is concerned. The law should be strengthened to ensure that parental or guardian consent is sought when collecting or processing personal data of children.

Recommendation

The Committee recommends that a clause be inserted in the Bill to provide for protection of personal data relating to children to ensure that their right to privacy is equally upheld.

5.2.4 PRINCIPLES OF DATA COLLECTION AND PROCESSING

The internationally recognised principles of data protection are;

i) **Consent and legitimacy of personal data processing-** This principle is to the effect that processing of personal data is deemed to be legitimate where the data subject has given his/her consent. This requirement of consent may however be waived under exceptional lawful circumstances and for the protection of fundamental rights and freedoms of the data subject.

[11] 1995 (as amended)

ii) **Lawfulness and fairness of personal data processing-** This principle ensures that that the collection, recording, processing, storage and transmission of personal data shall be undertaken lawfully, fairly and non-fraudulently.

iii) **Purpose, relevance and storage of processed personal data:-** this principle ensures that;

a) Data collection shall be undertaken for specific, explicit and legitimate purposes, and not further processed in a way that is incompatible with the purpose;

b) Data collection shall be adequate, relevant and not excessive in relation to the purpose for it is are collected and further processed;

c) Data shall be kept for no longer than is necessary for the purpose for which the data was collected or further processed;

d) Beyond the required period, data may be stored only for the specific needs of data processing undertaken for historical, statistical or research purposes under the law.

iv) **Accuracy of personal data-** This principle provides that Data collected should be accurate and, where necessary, kept up to date. Every reasonable step must be taken to ensure that data which is inaccurate or incomplete, having regard to the purposes for which it was collected or for which it was further processed, is erased or rectified.

v) **Transparency of personal data processing-** This requires mandatory disclosure of information on personal data by the data controller.

vi) **Confidentiality and security of personal data processing-** This ensures that personal data is processed confidentially and protected. Where processing is undertaken on behalf of a controller, the latter shall choose a processor providing sufficient guarantees. It is incumbent on the controller and processor to ensure compliance with security measures.

Observations

a) The Committee observed that the principles enlisted under Part II of the Bill are in tandem with the international and regional principles and the guidelines provided under General Data Protection Regulations (2018) of the European Union, the African Union Convention on Cyber Security and Personal Data Protection (2014) as well as the East African Community Legal Framework on Cyber laws.

b) The Committee observed that the principle of consent is a core condition of data protection which allows the data subject to be in control of when their personal data is collected and processed. This in turn promotes the exercise of the fundamental rights of autonomy and self-determination. The Committee however noted that the Bill does not make mention of the type of consent required from the data subject.

c) The Bill under Clause (5) (1) provides for several categories of personal data, thereunder referred to as *"special personal data"* that should not be collected by any person other than the Uganda Bureau of Statistics. The Committee however observed that there are other categories of data such as health status of individuals as well as financial information of an individual that should be included under *"special personal data"* due to the nature of their sensitivity.

Recommendations

i) The Committee recommends that the term consent be defined under Clause 2 of the Bill.

ii) The Committee recommends that Clause 5(1) of the Bill providing for special personal data be amended to include health status and financial information of the data subject.

5.2.5 DATA PORTABILITY; THE RIGHT TO TRANSFER AND SHARE PERSONAL DATA

The concept of data portability connotes transmission of personal data from one data collector, controller and processor to another without hindrance from the controller to which the personal data has been provided. It allows data subjects to move, copy or transfer personal data easily from one controller to another in a safe and secure way without affecting its usability.

The Committee noted that the Bill allows individuals to access their personal data, however, this is limited to ensuring accuracy and correction. The Bill does not provide for free portability of personal data from one controller to another which in turn limits the data subject's control over their personal data. The Committee is of the considered view that the Bill be reconciled with policies already in place that provide for this concept for example the Regulation on Credit Reference Bureau Service.

Recommendation

The Committee therefore recommends that the concept of data portability be provided for within the Bill in order to ensure full maximization of data collected to reduce duplication of similar information collected by different data collectors and processors.

5.2.6 PENALTIES

The Committee observed that the Bill under Part VIII provides for penalties for the offences there under. The Committee however observed that the fines levied therein are not deterrent enough for corporations and thus there is need to provide for additional penalties.

Recommendation

The Committee therefore recommends that a fine of not more than 4% of the corporation's annual gross turnover be imposed in addition to any other penalties imposed under the Bill in case of breach.

5.2.7 OFFENCES

The Committee noted that the Bill emphasizes criminal liability of persons who breach the law by providing for the offences of; unlawful obtaining and disclosure of personal data, and sale of personal data. The Bill however does not provide for the offences of unlawfully destroying, deleting, misleading, concealing or altering personal data despite being prevalent breaches.

Recommendation

The Committee recommends that the Bill should extend criminal liability to persons who unlawfully destroy, delete, mislead, conceal or alter personal data by providing for an offence and prescribe penalties for the same.

5.2.8 TRANSITIONAL CLAUSE

The Committee noted that the Bill does not provide for a transitional clause despite introducing new obligations thereunder. Compliance with its provisions will require the different stakeholders to review their internal systems and processes. Furthermore, it is a generally acknowledged principle that when a new law is introduced, the affected organisations and individuals need a reasonable period of time to consider and adapt to the new legislation.

Recommendation

The Committee recommends that a transitional provision be included in the Bill to allow data collectors, controllers, and processors and the other stakeholders sufficient time to align their mandates and processes with the new law.

6.0 CONCLUSION

The Committee urges that massive sensitization be undertaken by the Ministry of ICT and National Guidance to raise awareness among the different government ministries, departments and agencies, private entities and the general public of the new law in order to ensure compliance.

The Committee recommends that the Bill be passed into law subject to the proposed amendments.

I beg to move.