

Proposals- Data Protection Bill 2018

Issue	Legislation	Proposal	Implication
Definitions Third party	a)Third party is not defined though there is reference to third party in section 4 (c), 12 and 31	third party' means a person other than the data subject or the agency who, under the direct authority of the agency is authorized to process personal data;	This will provide clarity
Profiling	b) Profiling, this is used in section 13	profiling' means any form of automated processing of personal data without human intervention to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements.	This will provide clarity. It is important with advancement in technology
Processing		The definition of "processing" must be in line with the object of the bill which is to protect personal data thus should be restricted to "personal data or sets of personal data" and not other data as currently	

Consent		<p>drafted “data or personal data”</p> <p>The definition of consent should be included. Consent can be given orally, in writing and or by implications</p>	
Data held by Third party	<p>Section 4 (c) provides that where information relating to the data subject is held by a <i>third party</i>, the information may only be released to another person or put to a different use with the consent of the data subject; Section 12 and 31 also refers to third party.</p>	<p>This should be deleted and replaced with Agency</p>	<p>This will remove ambiguity.</p>
Collection of data	<p>Section 12 (b)the data subject authorised the collection of the data from a third party;</p>	<p>Should me amended to add agency to read “)the data subject authorised the collection of the data from a third party or the agency;</p>	<p>This will allow sharing of data from one agency to another with the data subject consent</p>
Profiling	<p>Section 13 prohibits profiling without human intervention with the exception of the stipulation in section 13(2) “An agency shall not</p>	<p>Section 13(3) should be added to provide that is necessary for entering into, or performance of, a contract between the data subject and the agency;</p>	<p>With advancement in technology, there is need to allow for profiling and more specific data sets emerging with technological developments should be anticipated such as biometric, genetic and such similar categories of data.</p>

	<p>be deemed to have profiled a data subject if the processing of data was necessary to avoid a threat to the maintenance of law and order by any public entity, including the prevention, detection, investigation, prosecution and punishment of a crime.”</p>	<p>The right to obtain human intervention (within reason) should be extended at the subjects request.</p>	
<p>Collection information directly from a data subject</p>	<p>Section 7 (1)An agency shall, subject to subsection (2), where it requires personal data from a person, collect such information <i>directly</i> from the data subject for a purpose which is specific, explicitly defined and lawful.</p>	<p>The Act should add a clause on joint data agency hence a data agency can collect information from the other agency and only one of the agency will obtain consent.</p> <p>In situations where the data subject relationship is with an intermediary, a certain level of alignment with other laws and regulations requiring personal data collection is necessary - e.g. AML personal information obligations should remain with the intermediary. Intermediate relationships may also hinder compliance with s. 7 on direct collection and consent.</p>	<p>This is important for insurance business especially where the business is intermediated. The intermediary should be a joint data agency and should collect the consent from the data subject and share the information with the insurer. The insurer in such instances is not in a position to collect data directly from the data subject.</p> <p>This will also make the intermediaries more also liable under the act.</p>

Recent Past	Section 11(1) provides that (1) An agency shall not be required to take the steps specified under section 10 if that agency has, prior to collecting the information, taken those steps in the <i>recent past ...</i>	Recent past should be defined and or limited to a period in year and the proposal is two years.	This will provide clarity.
Cross Boarder Transfer	Section 31 provides that “An agency shall not transfer personal data of a data subject outside the territory of the Republic of Kenya unless- (a) the third party is subject to a law or agreement that requires the putting in place of adequate measures for the protection of personal data”	This should be extended to include transfer to Agency or co- agency and to various third parties	The Act should anticipate the existence of cross-border group entities and their designated service centers for clarity. The case may be that the collector and part processor are in different countries or agency may have various locations in different countries.