

The following themes discussed during the annual data protection forum.

1. Data Protection Officers: whether, how they should be appointed, functions etc.
 - The establishment of the Office of the Data Protection Commissioner (ODPC) elicited concerns of increased costs of administration. There were suggestions to develop criteria for determining which organizations will be required to register. The discussion on this issue will focus on the appropriate criteria in selecting such organizations.
 - Concerns with registration included, potential costs, privacy concerns, and protection of trade secrets and intellectual property.
2. Independence of the Data Protection Commission: oversight mechanisms, financial independence.
 - The Senate and Ministry Bills differ over which body shall conduct oversight on data protection matters. The Senate Bill proposes the KNCHR, whereas the Ministry Bill moots a new Office of the Data Protection Commissioner (ODPC).
 - Some observers noted that the mandates of KNHCR and the Ombudsman (depending on the subject matter) can handle the issues contemplated by the Data Protection Policy. This is however complicated by the emerging proposal to merge all human rights-related entities. The discussion will therefore focus on the best way forward.
 - The Ministry Bill's provision for the appointment of the Data Protection Commissioner by the Cabinet Secretary in charge of Information Communications and Technology (ICT) may curtail the independence of the Commissioner.
3. Limitations: philosophy, scope & limitations
 - There are specific rights and duties contemplated in the Draft Data Protection Policy that expand the right to privacy as required by the Constitution. These rights are, the right to access to information, explanation, portability of data, being forgotten and the right to erasure.
 - Duties are placed on the data controller to ensure compliance with principles of data minimization, accuracy, adequacy, integrity and confidentiality.
 - It is necessary to elaborate the philosophy behind the limitations given that the blanket nature of limitations to the right to access to information is not in line with international best practice i.e. merely stating that due to national security concerns the right may be limited is too general a consideration that gives room for procedural abuse.
4. Cross-border transfers: sovereignty versus residence;
 - Cross-border transfers by data controllers are pegged on the existence of robust legal protections in the target jurisdictions. In case of weak data protection laws in a foreign state where a data controller chooses to store their data, the State is within its rights to prevent the transfer of data of its nationals to that jurisdiction. Discussion will center on the appropriate safeguards that should be put in place to facilitate such transfers.

5. Transition: allowance to migrate systems and compliance.

- Discussions on the transition period centered on the time periods that should be allocated in the bill for data controllers to be compliant. This should factor the time it will take to migrate IT systems, institute the appropriate oversight institution register data controllers. Discussion will therefore consider the best way forward in this regard taking into consideration the existing international best practice.
- There were also concerns over the cost of migration particularly among representatives of Small and Medium-sized Enterprises (SME's) attending the forum, it was clarified that the policy had not prescribed any cost in its current format.