

Data Protection Enforcement in Africa – What is the way forward.

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Scope

- Concept & Notion of Laws
- Enforcement of Laws
- Agents of Enforcement
- Enforcement of Data protection Laws
- Who is responsible?
- How enforcement is done.
- Elements of effective enforcement.
- Data Protection Enforcement in Africa.
- The Way forward.



The Concept and the Notion of Laws

Laws are a set of rules that are created and are enforceable by social or governmental institutions to regulate behavior.

Described as a science and as the art of justice.

State-enforced laws statutes, regulations, directives and other instruments.

Private individuals may create legally binding contracts, including arbitration agreements that adopt alternative ways of resolving disputes to standard court litigation.

The creation of laws themselves may be influenced by a constitution, written or tacit, and the rights encoded therein.

The law shapes politics, economics, history and society in various ways and serves as a mediator of relations between people.

Jurisdictionally bound.

Enforcement of Laws

- Enforcement is the proper execution of the process of ensuring compliance with laws, regulations, rules, standards.
- Enforcement is meant to ensure appropriate behavior by punishing people who violate the rules and norms governing that society.
- It is meant to **deter, discover, rehabilitate** and **punish**.
- Enforcement of the law seeks to protect the people belonging to the weaker sections from those who are strong and powerful.
- Enforcement extremely important power dynamic situations to protect the weak from strong.



Agents of Enforcement

- Governmental Agencies
- Judiciary
- Private Sector
- Individuals




Enforcement of Data Protection Laws.

Imbalance of power when it comes to the control over the processing of personal information.

Enforcements of data protection laws help maximize social benefits.

Enforcements of data protection laws protect the public interest.

Also serves the interest of the regulators.



Who is responsible for the enforcement of data protection laws?

Government/Regulators
(including police, etc.)

Courts

Private Sector/Individuals

How is Enforcement of Done?

Enforcement Notices, etc.

Investigation of Complaints, etc.

Administrative Sanctions including fines.

Criminal Sanctions

Court Actions

Elements of Effective Enforcement

ADMINISTRATIVE /
STRUCTURAL COMPETENCE

INDEPENDENCE FROM POLITICAL INFLUENCE

FINANCIAL INDEPENDENCE

OPERATIONAL INDEPENDENCE

TECHNICAL COMPETENCE

SELECTIVE ENFORCEMENT

AWARENESS

TRANSPARENCY

COST

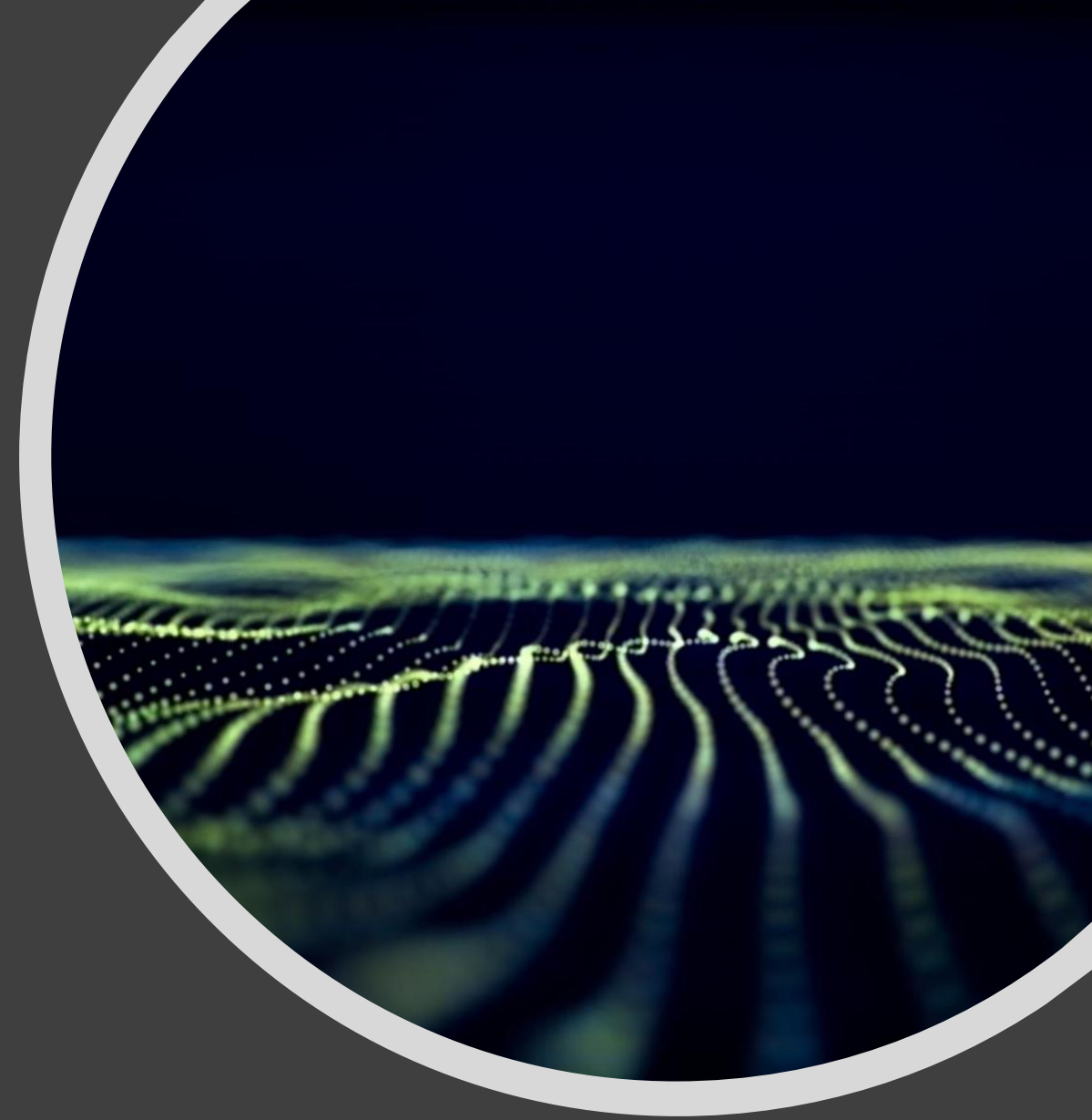
Data Protection Enforcement in Africa

Almost Non-existent (infant stages of development)

Handful of court related cases – Kenya, Mauritius, Ghana, etc.

Europe since GDPR Over 800 fines issued, several court actions, a number of enforcement actions published, etc.

Corruption/Conflict in data protection enforcement.



The Way Forward

- Awareness & Capacity Building
- Agents of Enforcement especially Regulators must be properly resourced.
- Transparency & Publications of enforcement actions.
- Atmosphere of Compliance – open door policy, mechanisms for easy and effective compliance.
- Encouraging Complaints – awareness, etc.
- Civil society must be involved – Shrems cases, etc.

Thank you

