

# AFRICAN APPROACHES TO DATA PROTECTION LAW

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# OUTLINE

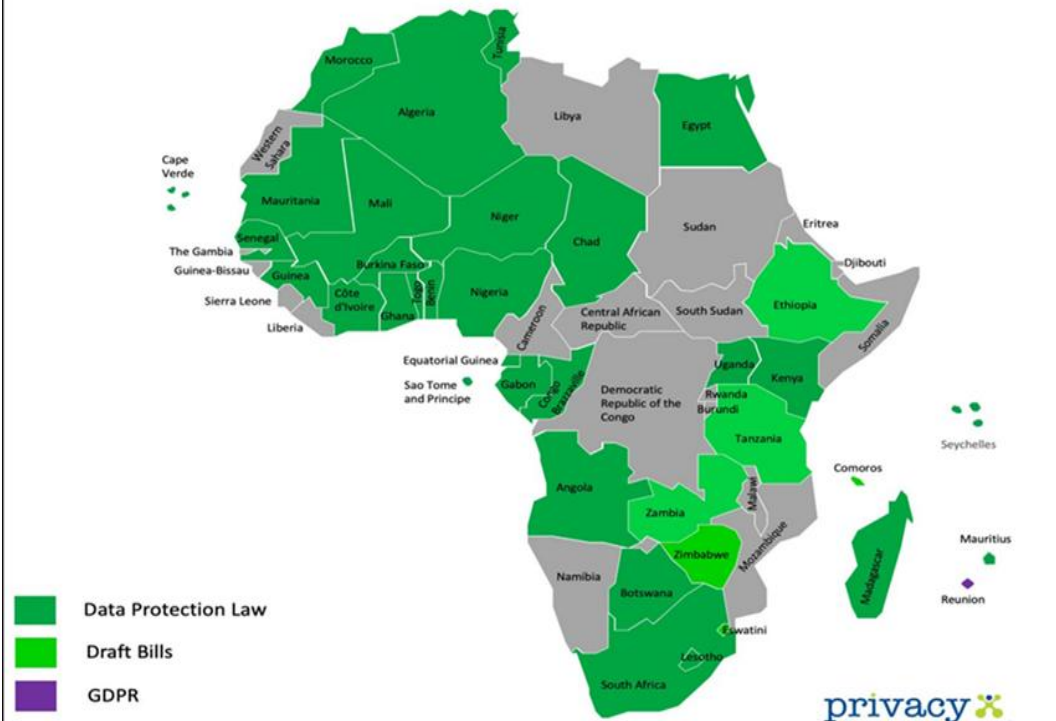
- Introduction
- Conceptual/philosophical basis
- International/Regional influences on African approaches
- Approaches in the law
- Approaches to Enforcement
- Some reflections
- Conclusion



# INTRODUCTION

- The context of approaches?
- Approaches to data protection
- Briefly on where we are today
  - [see the previous slide]

## Data Protection Laws and Bills - Africa



Key source: Graham Greenleaf  
Comparing African data privacy laws (2020)  
[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3582478](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3582478)

privacy  
matters

- 33 (or 32) laws of 55=60%
- 5 Draft Bills
- 15 Active Data Protection Authorities
- Massive progress (towards Africanization)?

# CONCEPTUAL/PHILOSOPHICAL BASIS

- The various approaches
  - European- Towards dignity and human rights
  - US-Towards fostering markets
  - China- towards protecting local contents
  - African- *ubuntu, ujamaa?*
- What are the values African Data Protection Laws Seek to foster? Any convergence?
  - Cross-border data flows
  - Human rights (the right to privacy)
  - Data protection (linked to dignity)
- Absence of a philosophical basis for privacy in Africa!

# INTERNATIONAL AND REGIONAL INFLUENCES ON AFRICAN APPROACHES

- Overwhelming European influence
  - All regional instruments
- Any *unique* African Approach in Regional and Subregional instruments
  - AU Convention?
    - Personal Data Protection Guidelines 2018
  - SADC Model Law and vulnerable groups?
- More Europeans than African influences
  - Adequacy: Article 45 GDPR
  - See South African POPIA
- Some recent African influences
  - The Kenya Data Protection Act
  - The Nigerian Data Protection Regulation
  - Zimbabwe Data Protection Act

# APPROACHES IN THE LAW

- Constitutionalizing data protection
  - Data protection as a *sui generis* right
  - 7 Countries (Algeria, Angola, Cape Verde, Gabon, Mozambique, Seychelles and Tunisia)
- The law-making process
  - Openness about the process
  - Access to discussion papers
  - The use of draft policy instruments
  - Largely transplants
    - South Africa as a unique example
- The law itself
  - Strictly European- EU Directive and GDPR Influence
    - To achieve adequacy – the extra-territorial effect
  - CoE's Influence
    - The Gambia Draft Data Protection Policy
    - Accession by African Countries



# APPROACHES IN THE LAW

- Almost all Laws are structured like the EU's
  - Scope/Application
    - Notable exemption for health research in Kenya
  - Data Protection Principles
  - Rights of data subjects
  - Latest innovations
    - Right to data portability
  - Enforcement



# APPROACHES TO ENFORCEMENT

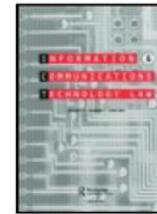
- Basically, an adaptation of the EU approach!
- Current structures
  - Any unique African approach?
- Elaborate laws but weak enforcement
  - There are progressive examples, though: Senegal, Mauritius,
- Issues of independence!
  - Nigeria
  - Uganda
  - Zimbabwe
- Powers to make subsidiary legislation? Ministries and Supervisory Authorities

# SOME REFLECTIONS

- *An African approach yet?*
- Lack of harmonization
  - Regional oversight/supervisory body
- Difference in historical background
- Conceptual differences
- The role of the AU
- AU and RECS (& RAPDP)
- Low level of awareness
- Relatively nascent field
  - Legal transplants
- Absences of a normative basis
- *“No one size fits all approach to data privacy”*

# CONCLUSION

- Is there a need for an African Approach?
  - Owning data privacy protection in Africa & countering the ‘Brussels effect’
- What are the implications
  - Greater cooperation and harmonization
  - Reflect our societal values and idiosyncrasies
- What would an African approach look like?
  - Promoting African values. Art. 8 (2) and Art. 10 (5) (d) Malabo Convention
  - Promoting community rights in personal data: e.g., genomic/genetic data
  - Promoting regional integration and cooperation
- What role can AU play?
  - Personal Data Protection Guidelines for Africa, 2018
  - Bringing stakeholder together under a better platform
  - Localize the debates and dialogue



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## Giving ‘teeth’ to the African Union towards advancing compliance with data privacy norms


Lukman Adebisi Abdulrauf

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