Still Unaware: The State of Awareness on Data Protection in Kenya

#DataProtectionKE
ACKNOWLEDGMENTS

@Amnesty International Kenya

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We acknowledge leading opinion polling agency Infotrak and Research Consulting Limited for independently polling Kenyans on their views. We thank those interviewed for their insights and our staff for interpreting, writing, and editing this report. We retain responsibility for the conclusions reached and invite readers to draw their own conclusions. Engage us and the rest of the country on our insights and call to action.

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Article 31 of the Constitution of Kenya provides for the right to privacy which includes the right not to have information relating to their family or private affairs revealed and the privacy of their communications infringed. The Data Protection Act, 2019 was enacted to give effect to Article 31(c) and (d) and establish the Office of the Data Commissioner to oversee the implementation and enforcement of the right to privacy.

Almost one and half years since the commencement of the Data Protection Act, 2019 and 5 months since the appointment of the Data Commissioner, we findings of an opinion poll of Kenyans concerns, views, and aspirations on the right to privacy. The opinion poll findings give us insights into Kenyans’ awareness of the right to privacy, the Data Protection Act 2019, the Office of the Data Protection Commissioner as well as fears on the implementation of the Right to privacy.

The report further reveals key insights into barriers to enjoyment of privacy rights, perceptions on greatest violators of privacy, perceptions on Huduma Namba and COVID-19 data capture activities in Kenya. The findings of this survey point the country towards what needs to be done to ensure the Data Protection Act, 2019 is fully operationalized.
METHODOLOGY & DEMOGRAPHICS

Infotrak and Research Consulting Limited interviewed 1,521 diverse respondents across 30 counties from all the 8 regions of Kenya through Computer Assisted Telephone Interviews (CATI) research methodology. A series of qualitative expert informant interviews were also conducted between 22nd February 2021 and 3rd March 2021. The margin of error is ±2.53% at 95% degree of confidence. The response rate of the survey was 97%.

51% of the respondents were male and 25% were aged between 18-24, 15% aged between 25-29 and 14% between aged 56+. Majority of the respondents (64%) were based in the rural areas while 36% were based in the urban areas. Majority of the respondents (44%) had only attained secondary school education.
10 INSIGHTS ON THE STATE OF AWARENESS ON DATA PROTECTION AND RIGHT TO PRIVACY IN KENYA.

1. 54% of Kenyans aware of the Right to Privacy

2. 67% of Kenyans are unaware of the Data Protection Act, 2019

3. Only 18% of Kenyans who are aware of the establishment of the Office of the Data Protection Commissioner

4. 90% of Kenyans who are unaware about the establishment of the Office of the Data Protection Commissioner want more information about it

5. 47% of Kenyans perceive the lack of adequate funding as the greatest threat to the Office of the Data Protection Commissioner.

6. 61% of Kenyans are of the opinion that the Office of the Data Commissioner will be independent.

7. 53% of Kenyans believe that the lack of awareness on rights is the greatest barrier to enjoyment of data privacy rights.

8. 53% of Kenyans unaware of where to report data privacy violations.

9. 70% of Kenyans did not hear or participate in public events before launch of Huduma Namba.

10. 50% of Kenyans believe data collected during the COVID-19 pandemic has not been properly managed.
1. PUBLIC AWARENESS OF THE RIGHT TO PRIVACY

Fifty-four percent of Kenyans are unaware of the right to privacy. 90% of those who are aware of the right to privacy are of the opinion that it is an important human right. Awareness of the right to privacy is higher in urban areas (56%) than it is in rural areas (41%). Unawareness of the right to privacy is lowest in Western (65%) and Rift Valley (58%).

“…I personally didn't know we have a right to privacy…”
- FGD Participant, Kisumu, Female, 36+ yrs

“…I know that every citizen is entitled to it, I don't expect my home to be searched without a court order…”
- FGD Participant, Mombasa, Male, 36+ yrs
2. PUBLIC AWARENESS OF THE RIGHT TO PRIVACY

About 70% of Kenyans are unaware of the Data Protection Act, 2019. Unawareness of the Data Protection, 2019 is highest in North Eastern (79%), Central (72%) and Rift Valley (72%). Unawareness of the Data Protection Act, 2019 is highest among Kenyans aged 56+ at (72%) and those aged 50-55 (70%).

Have you ever heard of the Data Protection Act, 2019?  

- Yes, 33%  
- No, 67%

n=1521

“…I have heard of it. It talks about a filing system for the personal information of a person and security. The data is secured by the data commissioner. It's establishment of protection by trying to control access to information. Not all information should be given to anyone, only privileged people with access…” - FGD Participant, Mombasa, Male, 36+ yrs

“…No I haven't heard about it….” - FGD Participant, Mombasa, Male, 36+ yrs
3. AWARENESS OF ESTABLISHMENT OF THE OFFICE OF THE DATA COMMISSIONER

Only 2 in 10 Kenyans are aware of the establishment of the Office of the Data Commissioner. 90% of Kenyans who are unaware about the establishment of the Office of the Data Commissioner want more information about it.

Are you aware of the establishment of the Office of the Data Commissioner?  

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“…I know it is mentioned in the Act but I am not sure it is set up yet…” - FGD Participant, Nairobi, Female, 25 - 35 yrs

“…I am not aware…” - FGD Participant, Nakuru, Female, 36+ yrs
4. GREATEST THREATS TO OFFICE OF THE DATA COMMISSIONER

Forty-seven per cent of Kenyans who are aware of the establishment of the Office of the Data Commissioner believe that lack of adequate funding is the greatest threat to the ODPC. A further 35% of Kenyans believe that interference from government agencies is the greatest threat.

On the brighter side, 60% of Kenyans are of the opinion that the Office of the Data Commissioner will be an independent office.

In your view, what are the greatest threats to the newly created Office of the Data Commissioner?  

<table>
<thead>
<tr>
<th>Threat</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>Lack of adequate funding</td>
<td>47%</td>
</tr>
<tr>
<td>Interference from other agencies</td>
<td>35%</td>
</tr>
<tr>
<td>Lack of adequate human resources</td>
<td>8%</td>
</tr>
<tr>
<td>Disregard/disobedience of regulations</td>
<td>5%</td>
</tr>
<tr>
<td>Political interference</td>
<td>1%</td>
</tr>
<tr>
<td>Corruption</td>
<td>1%</td>
</tr>
<tr>
<td>Lack of confidentiality</td>
<td>1%</td>
</tr>
<tr>
<td>Conflict of interest</td>
<td>0.3%</td>
</tr>
<tr>
<td>Information could be hacked</td>
<td>0.3%</td>
</tr>
<tr>
<td>None</td>
<td>1%</td>
</tr>
<tr>
<td>Not sure/Don’t Know</td>
<td>1%</td>
</tr>
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</table>

n=1521
Telecommunications companies (14%), Mobile Money Agents (13%), police officers (9%), social media platforms (8%) and Mobile Loan Applications (8%) are perceived by Kenyans as the greatest violators of the right to data privacy.

In your view, which institutions/organisations/companies/individuals violate data privacy rights the most in Kenya? n=1521
6. GREATEST BARRIER TO THE ENJOYMENT OF DATA PRIVACY RIGHTS

53% of Kenyans hold the view that lack of awareness on privacy rights is the greatest barrier towards enjoyment of data privacy rights. A further 15% of Kenyans believe that the high cost of accessing justice in Kenya is another barrier to the enjoyment of data privacy rights.

In your opinion, what are the greatest barriers to enjoyment of data privacy rights in Kenya?  

n=1521
Seventy-four percent (74%) of Kenyans would report a general or personal data breach or violation. However, only 5 in 10 Kenyans are aware of where to report a data privacy/breach or violation. Interestingly, 60% of Kenyans would report a data privacy violation to the police. Only 8% of Kenyans would report a data privacy breach to the Office of the Data Commissioner.

If yes, where would you report a data privacy breach/violation?

<table>
<thead>
<tr>
<th>Option</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>The Police</td>
<td>64%</td>
</tr>
<tr>
<td>Provincial Administration</td>
<td>10%</td>
</tr>
<tr>
<td>Office of the Data Commissioner</td>
<td>8%</td>
</tr>
<tr>
<td>Superior authority in the...</td>
<td>6%</td>
</tr>
<tr>
<td>Communications Authority of...</td>
<td>4%</td>
</tr>
<tr>
<td>The Courts</td>
<td>3%</td>
</tr>
<tr>
<td>Village Elder</td>
<td>2%</td>
</tr>
<tr>
<td>The Media</td>
<td>1%</td>
</tr>
<tr>
<td>Local NGO/Community Based</td>
<td>1%</td>
</tr>
<tr>
<td>Ombudsman</td>
<td>1%</td>
</tr>
<tr>
<td>CID Headquarters</td>
<td>0.2%</td>
</tr>
<tr>
<td>Huduma Centre</td>
<td>0.2%</td>
</tr>
<tr>
<td>DCI</td>
<td>0.2%</td>
</tr>
<tr>
<td>Human Rights Office</td>
<td>0.2%</td>
</tr>
<tr>
<td>Don't Know</td>
<td>0.5%</td>
</tr>
</tbody>
</table>

Would you report a personal or general data privacy breach or violation? n=1521
8. HUDEMA NAMBA

7 in 10 Kenyans did not hear or participate in public events before the launch of Huduma Namba. 41% of Kenyans are of the opinion that the law sufficiently protects data collected through the Huduma Namba initiative while 39% hold a contrary view.

On the mandatory use of Huduma Namba to access government services, 39% of Kenyans disagree while 38% of Kenyans agree with 22% remaining unsure.

Did you hear or participate in any public events before the launch of the Huduma Namba?  
n=1521

“…No I did not but I enrolled for the number….” - FGD Participant, Mombasa, Male, 36+ yrs
Forty-nine percent (49%) of Kenyans are of the opinion that personal data collected during the COVID-19 pandemic has not been properly managed. Most Kenyans (70%) believe that the digital technology helped better manage the COVID-19 pandemic.

80% of Kenyans are unaware of contact-tracing and other bio-surveillance apps on their mobile phone devices. About 7 in 10 Kenyans who are aware of the contact-tracing apps on their mobile phone devices are uncomfortable with them.

Do you think the government has managed personal data collected during the COVID-19 pandemic properly?

"…I would like to believe the government has used that information well…" - FGD Participant, Mombasa, Male, 36+ yrs
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It is apparent from the findings that the awareness on the right to privacy, the Data Protection Act, 2019 and the Office of the Data Commissioner is low despite having the legislation in place. The findings show that majority of Kenyans would like more information about the Data Protection Commissioner.
There is need for the ODPC and all stakeholders to engage in a robust public sensitization programme on the right to privacy and data protection legislation to give citizens the agency to claim their rights.

These findings ultimately point the country and all stakeholders towards what needs to be done to ensure the full operationalization of the Data Protection Act, 2019.
GET IN TOUCH

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