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Beverley Hatcher-Mbu

Welcome to this mini series of “Data...for What?!” the Development Gateway Podcast. Over the course of four episodes, we will explore open data, data governance and privacy, as well as the many challenges and opportunities within these topics. I'm your host, Beverley Hatcher-Mbu. In this episode, our guests will walk us through laws and regulations, will be specifically talking about data protection in Kenya and India.

00:00;24:05 - 00:00;57:27

Beverley Hatcher-Mbu

We'll be discussing how to consider how much control citizens have over their data and the importance of implementation of laws to protect access. We'll talk through if countries, demographics and history can and should impact their approach to data governance and note that this podcast was recorded a little while ago. So some things have changed a bit. I still think that some of the themes that we discussed at that time are very timely because it's still not clear that many of the items that we got to address together through our conversation have shown up in this current version of the data privacy law in India as it stands.

00:00;57:27 - 00:01;21:14

Beverley Hatcher-Mbu

So I hope, even though you're hearing this in the future, that you'll find the conversation interesting in terms of some of the key trade offs that data protection laws not only in India but globally, some of the key considerations that countries need to be thinking about. Without further ado, let's get right to it.

00:01;21:16 - 00:01;45:18

Beverley Hatcher-Mbu

We've got two fabulous guests with us, but I'll let them introduce themselves. Dr. Melissa. Would you like to introduce some tell us a little bit about you and what brought you to our chat today.

Dr. Melissa Omino

Thank you so much, Beverly. Thank you for having me. As you have rightly stated, my name is Dr. Melissa Omino and I am the acting director at the Center of Intellectual Property and Information Technology Law at Chapman University.

00;01;45;18 - 00;02;07;16

Dr. Melissa Omino

Otherwise known as SIP It. We have several centers and a recipient. One of them is the Data Protection Data Governance Center, where we look at policy around data governance and data protection regulation and laws in the African region. And obviously within Kenya. We do have a podcast known as the Friendly Trial podcast at SIP It, where we discuss matters of data protection.

00;02;07;16 - 00;02;25;11

Dr. Melissa Omino

So it's great to be a guest and not hosting.

Beverley Hatcher-Mbu

Thanks so much, Melissa. I love the name friendly troll and I also love your content. So it's nice to be able to play trade. And certainly last but not least, we have three. And tell us why you're here. What brings you to this chair?

Shreeja Sen

Again, thank you so much for having me here.

00;02;25;11 - 00;02;47;19

Shreeja Sen

It's great to be able to talk to you and Melissa. I am Shreeja. I am a researcher with IT4Change. We are a Bangalore based civil society organization in Bangalore, India, of course, and I engage with issues of data governance and the digital economy, as well as ways of regulating corporate power within the larger ambit of all of and as well.

00;02;47;21 - 00;03;09;22

Beverley Hatcher-Mbu

Thanks so much, Shreeja. So, Dr. Minnow, in a few words, what do you mean in the Kenyan context, when you say data protection, what does it mean to protect and govern data in Kenya? I don't think many people see a distinction, but the clearly is one. So in Kenya, data protection is concerned with ensuring the privacy of Kenyan citizens and the data of Kenyan citizens in particular.

00;03;09;22 - 00;03;40;19

Dr. Melissa Omino

So this regime is anchored in the right to privacy as envisioned by the constitution of Kenya. To this end, there are different categories of data under the Data Protection Act, which was enacted in 2019 about data of an individual and how they can be handled by processes and controllers. Better governance, however, refers more towards setting standards through policies that would determine how data would be governed and the Data Protection Act forms and under the data governance landscape.

00;03;40;19 - 00;04;08;08

Dr. Melissa Omino

So data governance policies can be sectorial based. So for example, based around agriculture or health. And we do know that the Kenyan government is working on policies in those areas. And these are just taking strides towards identifying better structures for the protection of data.

Beverley Hatcher-Mbu

Sometimes data protection, data governance sort of get used a little bit into tangibly, but really data protection is a small piece of the larger governance hole.

00;04;08;08 - 00;04;32;05

Beverley Hatcher-Mbu

And I know that this resonates with you, Shreeja, because the work that you guys do at IT for change is very is broad in terms of bringing in different sectors. So what do data protection and data governance mean for you in India?

Shreeja Sen

I think in the Indian context at the present time, it's very interesting to talk about data protection because historically I would say data protection has been about safeguarding personal information.

00;04;32;05 - 00;04;56;26

Shreeja Sen

But we would be remiss if we don't consider the now withdrawn data protection bill, which also included non personal data within its ambit. But I think within our limited construct at this point, without legislation to back it up, we have to look at data protection from the perspective of privacy. And for that we have the 2017 seminal Indian Supreme Court decision.

00;04;56;26 - 00;05;29;12

Shreeja Sen

All key is put to Swamy was is Union of India, which held that privacy is a fundamental right and not a narrowband right, but an expansive right of privacy, which includes information of privacy, physical privacy and decision of privacy. And also there are existing rules in place, rules that were laid down in 2011 within the ambit of the Information Technology Act that we have in place, and which sort of safeguards sensitive personal information, which includes financial information, medical records, biometric information and such.

00;05;29;12 - 00;05;50;13

Shreeja Sen

Given that the legal scenario for us is a little bit in flux. So we will see some movement in terms of what data protection is legally defined as for India in the next few months. Thanks.

Beverley Hatcher-Mbu

That's really helpful. And this is a good segue. Way to return to you, Dr. Meena in Kenya. You have a law as well as a newly formed Data Protection Commission.

00;05;50;18 - 00;06;18;10

Beverley Hatcher-Mbu

What features make both the law and the Commission tailored to ensure governance really works in the domestic Kenyan context? What features do you see as still missing from the regulatory environment?

Dr. Melissa Omino

This is really a controversial question, or the answer might change depending on who you talk to. For myself, I think that the fact that the data protection regime in Kenya is anchored in the right to privacy really does make for a solid foundation.

00;06;18;10 - 00;06;47;17

Dr. Melissa Omino

So we do have the Data Protection Act that was enacted in 2019, and it came in at quite an opportune time because then we all experienced COVID in 2020 and there was a lot of movement online and with that a lot of collection of data. So the ACT firmly identifies data protection principles and minimum standards that are to be adhered to in the business of processing and controlling of the data of the citizens of Kenya.

00;06;47;19 - 00;07;29;14

Dr. Melissa Omino

However, the Office of the Data Protection Commissioner only became upper operational rights in November of 2020 because that's when the commissioner, the data commissioner, was appointed and that was a step in the right direction. But the question really has been what happens towards implementation of the Act via the Office of the Data Protection Commissioner? And a lot has been said and is still being said about the CAP, the capacity of that office, the independence of that office, as well as questions around how well staffed it is in order to address the issues that the Data Protection Act is supposed to look over.

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Dr. Melissa Omino

So as much as the Office of the Commissioner has been part of bringing into place the flesh that builds up the DPA, which is basically the skeleton in regards to the data protection regime. They

were assisted by a task force in drafting the regulations that came out earlier this year, and that was another controversy in itself. And the task force was appointed by the Cabinet secretary in the ministry that oversees the Data Protection Commissioner's Office.

00;07;58;01 - 00;08;24;00

Dr. Melissa Omino

Now that in itself calls into question the independence of the commissioner, because the commissioner is meant to also not just regulate the private sector, but government as well. So these are some of the gaps that I would see currently exist, even though the framework really is a wonderful framework. Implement implementation is always a devil, right? The devil is in the details of getting this framework operationalized.

00;08;24;03 - 00;08;47;11

Dr. Melissa Omino

Some of the other gaps that have been mentioned are for what? What's the data subject meaning the citizen is meant to do in order to obtain relief through the provisions of the act. So, for example, there are a plethora of forms that a data subject must fill out to restrict processing of their personal data, to object, to processing of personal data, to request access even, or to request rectification.

00;08;47;11 - 00;09;09;09

Dr. Melissa Omino

Now, this means that most of the citizenry would need to be educated as to what these forms say and how to fill out the forms and where to get the forms. And that's a whole animal in itself. There is a belief that this process could have been simplified rather than expecting the data subject to fill in quite a number of forms.

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Dr. Melissa Omino

Thirdly, who's opposed to explain the forms to the data subject? Is a data processing controller supposed to do that When the data subject is asking to restrict the processing of their personal data? There's a conundrum there. There's also the feeling that the regulations are quite basic and do not adequately deal with current and future developments, especially when we talk about artificial intelligence.

00;09;29;12 - 00;09;53;26

Dr. Melissa Omino

The Metaverse or the digital economy. So that's something that would need to be developed as technology develops. I think we'll get to that later on. But there's also confusion with regards to what a data protection policy is. Is a V a privacy notice or a privacy policy? And the office would maybe have done well to explain the distinction in in these two.

00;09;53;26 - 00;10;20;11

Dr. Melissa Omino

So, yeah, there's a real need for more guidelines and issues of compliance guidelines as well, and a demonstration from the Data Protection Commissioner's Office that they are truly independent from the mother ministry.

Beverley Hatcher-Mbu

Now shifting a little bit deeper into the regulatory environment, I think you both touched on really the impact to people, the impacts to the data owners and end users in India and in Kenya.

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Beverley Hatcher-Mbu

It's hard to talk about data governance without touching on the impact of data collection, and particularly this part of digital ID systems. In Kenya, you have the number, while in India you have the other system. And these are this is a very specific example. The data collection, mass data collection is an only around digital ID, So can you both touch on the impact or not of both your various legal and regulatory environments on these drivers of citizen data collection?

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Beverley Hatcher-Mbu

And feel free to use a non digital ID example if that makes sense for you.

Shreeja Sen

The regulation of data collected from under the RBI project is regulated with the ad hoc act of 2016. While it is a law which sort of regulates how targeted delivery of financial and other subsidies, benefits, etc. happens, and that's what the RBI project seeks to do.

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Shreeja Sen

The regulation of the data within it aims to have what we understand as the regular understanding of the data protection lifecycle. So within the governance of the data, which is largely biometric information that is regulated through the 2011 sensitive personal information rules, the data is also stored in a central identities repository, and the law restricts sharing of core biometric information, which includes like fingerprint, the right to scan at all times.

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Shreeja Sen

Citizens are able to see changes in their demographic information, which includes their name, date of birth, phone number, address, and so on. But the key issue, of course, that we continue to grapple with and I think this sort of is an issue of the digital identity system or the the move towards digital or further digitalization is that for us the issue is often infrastructure.

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Shreeja Sen

A lot happens through a one time password or an OTP, which is generated and sent to the data principal's phone number that is in order to like authenticate your identity and so on. But sometimes these OTP don't arrive in time because of low connectivity, especially in peri urban or rural conditions. There's also the critique on the central data repository as well, which is like if it's a single point of failure for all of the data that they hold of all of the citizens, then it's very easy to sort of breach that single barrier.

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Shreeja Sen

However, I think from a data protection perspective, it will, once we do have a law, we can expect some clarifications on who will be the governing authority in case of all of this data. So currently, because the Ad Hoc Act governs all of this, the governing authority is the unique identification authority of India or the ID as it's called, and that authority deals with any potential breach or illegal publication of all of this data.

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Shreeja Sen

But in case a data protection authority is put in place, would citizens be able to reach this authority under the data Protection Bill, or would they have to be still regulated under the product? So these are questions that I think will be resolved once we have a law and question that we need to engage with at that point.

00;13;24;16 - 00;13;50;08

Shreeja Sen

The other issue of this large scale data collection is that we don't know we're using it and for whose benefit, and if that is monetization of data and especially if they are anonymized and then the aggregate non-personal data, who is using it for whose benefit that kind of those kind of questions are still not being asked, or even if they are being asked, they're not being answered.

00;13;50;08 - 00;14;18;03

Shreeja Sen

So yeah, those those are issues I think we generally see with this kind of large data collection.

Beverley Hatcher-Mbu

Then. Dr. Minow, on your side, how is the conversation evolving around who to my number?

Dr. Melissa Omino

Well, with a lot of controversy, I would say that seems to be a theme in the Duma number, which is actually a unique identification number, but would be a result of the National Integrated Identity Management system.

00;14;18;07 - 00;14;42;09

Dr. Melissa Omino

And that was basically similar, very similar to other, which was it's meant to integrate all forms of identification of citizens into this one unique system. And so you don't have to have a national ID like we currently have. And then later on you get your PIN number and then later on you get all sorts of different numbers for different government services to supposed to centralize this.

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Dr. Melissa Omino

And it's quite interesting to see the reaction around who do my number within, for example, civil society and the fintech sector. So civil society has from the jump, been up in arms about who do my number because of its introduction. I would say this is my opinion. I think its introduction was more of this is mandatory and as citizens you don't have a say.

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Dr. Melissa Omino

Government sort of said, this is what we are doing and you have to do it within this time. And we are collecting all this data. Now, the key point is that this was happening even before the Data Protection Act came into being, although there was several bills about data protection that had been floating about but had not yet been assented to.

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Dr. Melissa Omino

So the question was, with all this data that's being collected under this one system, what are the measures that government is taking to ensure that the data will not be breached and to ensure that there will not be any discriminatory practices? Because there's so much that was being collected? And the answer was if you do not participate in this, then you will not be able to vote or you will not be able to receive government services.

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Dr. Melissa Omino

And that's why civil the civil society were really up in arms. And not only were they up in arms, they did something about it such that they went to court about to do my number, but mostly they went to court to see that there was a question around its compliance with the Data Protection Act that came into play after the NIMS system was put in place.

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Dr. Melissa Omino

Now the court found that a data protection impact assessment with regard to that system ought to be carried out retrospectively. It found that the act, because it's based on the Constitution, can be seen to have existed before its enactment, which is an interest in argument and maybe also interesting interpretation depending on who you speak to. So that was quite controversial, but in a positive light, if you look at it through the lens of data protection and a DPA was indeed carried out over who do my number.

00;16;47;19 - 00;17;11;03

Dr. Melissa Omino

But even the quality of the DPA is a controversial issue, and there there were so many questions that then came up about the role of courts in dissolving disputes arising out of the data protection themed complaints vis a vis the role of the Office of the Data Protection Commissioner, and also the question around how the definition of a data subject may affect the adjudication of such complaints.

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Dr. Melissa Omino

Because it was a civil society body, together with one of the most prominent mine legal scholars who brought this case to the High Court, and the court said it has jurisdiction over the matter. And it said that even though the civil society body did not have was not necessarily a data subject as envisioned by the Data Protection Act, they could still bring in such a complaint.

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Dr. Melissa Omino

And the data subject who brought it to the court could still seek records from the courts, even though that could have been the first complained to the Office of the Data Protection Commissioner. So we are finding ourselves in a space so somewhat confused then when we first began. But sentiments around who do my number are different within the fintech space.

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Dr. Melissa Omino

I recently there was a conversation about the plethora of apps that allow services to consumers who are data subjects and how it would be so easy for them to provide the services without feeling exposed. Because if they had a digital IDC system, it would be easy to follow up with the consumers who are making use of that service.

00;18;15;05 - 00;18;37;19

Dr. Melissa Omino

And that was quite interesting to hear. But obviously knowing where the interests of that sector lies, it might not be surprising. But on the general scale there was a lot of resistance towards the digital ID and even the fintech space acknowledged that there was resistance, and their answer to this was probably there should be more positives about digital.

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Dr. Melissa Omino

I'd explain. And also how controllers and processes would work towards safeguarding the data that is held within the digital ID system. It's a bridge we have not yet crossed in terms of this controversy, but it really makes great jurisprudence around the interaction between data protection and digital ID, which I think makes the field richer.

Beverley Hatcher-Mbu

And we can refine details in both India and Kenya respectively.

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Beverley Hatcher-Mbu

What do you see as the alternatives for for genuine engagement of citizens with their data during all of these digital processes?

Shreeja Sen

I don't know if there is a genuine engagement with the citizenry about control of their own data. I feel like in the existing framework of IDN, especially like the ad hoc act, I mean there is scope for citizens to see changes in the demographic information, but the law sort of termed it as requests to make changes, and then the authority will make those changes if it's satisfied with the request.

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Shreeja Sen

So the language is framed in a way where the authority sort of is already placed at a higher level. The onus is on citizens to make it. That seems to be a theme that I'm hearing from both of you. Yes, and they can seek a record of the data updation history as well as that authentication history. But there isn't scope to delete the data if there's a one, which usually is a very intrinsic part of this data lifecycle that we speak of, that is collection, that is storage, there's retention that is deletion or archival wherever it goes, but there isn't really a scope for deletion bodies, ad hoc system.

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Shreeja Sen

And in any case, in a sense, till we have a data protection law which sort of addresses this, B, this data is held in perpetuity. And even in like earlier draft, I would say certain data is held with the government in perpetuity. So I don't know if that will be resolved with a law coming in. But again, remains to be seen.

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Shreeja Sen

Like you said, the onus ends up being on the citizen in a place where we have so much asymmetry in the digital access and literacy, it really affects how one can assert one's right so that I can go to a bank and ask for my data to be updated. Someone else may not have those two words to do that.

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Shreeja Sen

And when you know you've collected data to the tune of a billion citizens, it really is a question as to how you are resolving any further issues that come up with that data. Because again, exclusions have always been an issue and because that is linked to basic services, off ration like rights and things like that. These are questions that need to be engaged with continuously.

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Shreeja Sen

And you know, there are several activists who continue to do that.

Beverley Hatcher-Mbu

Melissa, what alternatives are you seeing in terms of really opening the door or widening the door for citizens to be able to manage and own their own data alternatives?

Dr. Melissa Omino

I think especially when you're talking about the implementation of digital I.D. or when you're talking about a citizen versus government and protection of of personal data against a government entity is quite a huge question, but I'm not quite sure how to answer.

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Dr. Melissa Omino

I do know, for example, in Kenya we do have the right to erasure or the right to be forgotten is within the Data Protection Act, but it's not an absolute right. It's a limited right and it's limited to certain circumstances, for example, where data is inaccurate or outdated or incomplete. Also where there's no longer authorization to retain the data according to the the various principles that are within the act.

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Dr. Melissa Omino

And whether it's excessive data or obtained unlawfully. But implementing that right again has, as has really been stated, means that the onus is on the data subject and the subject has to request that any of these is done or the data is rectified or removed because of any of these reasons and the ability of a data subject to understand these looking at the demographics of Kenya is questionable.

00;22;50;21 - 00;23;15;27

Dr. Melissa Omino

And at the same time, even the political climate or the temperature in terms of how men and boys rolled out didn't really give people the confidence that even as this data is being collected,

there could be in the future the ability to rectify or say what is excessive against government. And that's that's a question about politics and power that maybe we will have later on.

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Dr. Melissa Omino

Now, there are regulations that deal with civil registration under the Data Protection Act, and it talks about lawful processing of personal data or other the data protection principles that are there. It also talks about the rights of registered subject, for example, the right to access personal data, rectify data portability requests, and the obligation that civil registration entities have towards data subjects.

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Dr. Melissa Omino

But it's, as I said, the crux of the matter always falls within implementing. You can have a wonderful skeleton skeleton of framework, but how is it implemented? And I don't know about alternatives because especially with regards to governments services, it's it's something that in the history of this country has been you endure because you need the service, especially if you don't have the monetary means to probably seek a different service.

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Dr. Melissa Omino

If we're talking about healthcare, for example, and sometimes there is no other alternative service. So that's where civil society comes in and they have so far done a wonderful job. And hopefully the litigious nature of these civil society practitioners will help to further refine. But looking at the data subject of the citizen as an individual, that's a really, really tall hill to climb.

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Beverley Hatcher-Mbu

These challenges that we're discussing and not just in the digital ID space. And, you know, authorities will need to look at enforcing data governance across sectors, particularly in health and agriculture. ADG We've seen in our own work the health sector tends to have more data governance because there's a lot more primary data collection involved versus agriculture, which has next to nothing around governance structures.

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Beverley Hatcher-Mbu

But there is a clear need. The more and more you see data being collected from farmers for all of these new digital agriculture apps. So what do you think are the critical issues in your view? Authorities need to grapple with in order for the data protection Bill or really any other framework of laws to enforce a privacy for data governance culture across sectors.

00;25;15;16 - 00;25;49;04

Shreeja Sen

I want to start off by saying that just looking at it from a privacy lens can be limiting. This is never too distant from the fact that we do need a law in India. But like the economic value of data is slowly being recognized globally and even global. North countries or regions like the EU have sort of recognized the value in this and have come up with things like the common databases to ensure data collection and using it across the board.

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Shreeja Sen

In India, we've seen similar structures created throughout, across sectors. In health, we have the Irishman part of digital mission, which set up the digital health infrastructure in the country. And similarly for agriculture, we also have something which is the Indian digital system of agriculture or the agri stack to enhance digitalization in agriculture. These do have varied levels of regulatory structures.

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Shreeja Sen

We've also seen vast leaps in the financial sector with the establishment of the unique payments interface, which has enabled payments to one's phone. So more or less, like a lot of payments across the board and across services have become digitalized. And that seems to be something that India has done before. A lot of other countries in terms of the health, the digital health infrastructure, they've come up with their own set of regulations and these are in the developing pages, data retention, data management, who will be the governing authority.

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Shreeja Sen

There is a digital health I.T. that has been associated with this, which is separate from the other, but similar in that it has it is a number which will be the portal to all of your health data history and can be used across different hospitals and health facilities and so on. On the agriculture side, there's the push towards a farmers database creating digitalized land records and things like that.

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Shreeja Sen

So I think the questions that we have to consider for data governance across all of these areas is what happens to the vast amounts of transactions data, for example, that are collected through a UPI gateway, UPI gateway, we have a bunch of them, a large number of them are owned by private companies. Google has one, which is called Google Pay.

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Shreeja Sen

That is one Google phone pay. All of these companies are collecting vast amounts of transactions data across citizens. So what happens to that? How does one safeguard against exclusions that can arise from creating a farmer's database which is based on these digitalized land records or the requirement of a digital health ID for accessing healthcare records through the Irish Man pilot program?

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Shreeja Sen

How do we fix asymmetries in digital access and basic infrastructural concerns? What kind of consent frameworks can be instituted in these sectors, and what does informed consent mean for a farmer or a patient using government services? Like Melissa said, who is going to explain a long privacy policy of a company to them or if they're using an app?

00;28;24;04 - 00;28;51;12

Shreeja Sen

Or will it be in a language that they understand because a large number of these policies are in English, not in their regional language. So then that creates an automatic barrier to accessing that information. I mean, and also questions like if that if aggregate data is being monetized,

who who benefits? Like, are we ending up giving all of this data to big tech companies who anyway are now the size of countries rather than anything else?

00;28;51;12 - 00;29;18;29

Shreeja Sen

So these are questions that we have to continue to engage with now.

Beverley Hatcher-Mbu

I think you've really pulled out some of the key challenges and also the key opportunities to make these more robust governance systems. The building blocks are there. I'm going to pivot a little bit to Melissa. You touched on this earlier on, and I wanted to come back to it that one of the gaps you see in Kenya's current regulatory environment is the lack of adaptability facing new trends and technologies.

00;29;19;02 - 00;29;57;14

Beverley Hatcher-Mbu

What are some of the things that you're seeing may be among civil society or others in terms of preparing for new technologies like artificial intelligence and others, in terms of what that means for governance and protection of data?

Dr. Melissa Omino

While I had this conversation with a friend who's an expert in the field about if they feel that the data protection Act in Kenya would be easily or would easily cope with, for example, a new breaking technology appearing and then the next one or two years and his sentiments were that that would take a lot of build up in capacity in the Office of the Data Protection Commissioner.

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Dr. Melissa Omino

And it would also need a little bit of revamping of the Data Protection Act. And his gripe especially was with the categories of data within the Act. And he felt that this was limiting because how we categorize data now is based on the technology that we know of and understand Now. This means that with new technology and new ways of collecting data and processing and doing all these things would mean new categories of data that would need to be added on to the Data Protection Act for compliance by data protection processes and controls.

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Dr. Melissa Omino

Now, what is happening in this space, I think it really points towards the work that it does. We look at the cross section of AI, intellectual property and data protection. So we are really trying to look at the forecast to look at do a horizon scan and determine what would be the emerging areas that we need to be addressed.

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Dr. Melissa Omino

We are also looking at the AI ecosystem in the African context and what that means because there's this idea that open data, these are the data protection and the stifling of innovation and we are trying to dismantle that type of thinking. Of course, that there's this element of open data. And even the Kenyan government is a proponent of open data.

00;31;19;08 - 00;32;08;27

Dr. Melissa Omino

But there's also the issue of the protection of personal data and how these two can coexist together. Also, the fact that certain areas have not been regulated doesn't automatically mean that that is the advantage of open data. It just means that the legal and regulatory framework

was working to catch up to it. And that means that we have to go take a step back and look at even basic education that's happening where we can not only push for the development of STEM within our education system, but also push for the development of legal education to move too far beyond the traditional confines that it is, and have somebody who studies STEM and who who studies

00;32;09;00 - 00;32;35;28

Dr. Melissa Omino

the law and who studies on sea at the same time so that we can have this crop of individuals who would be better equipped to deal with the fast paced, moving world. It's really interesting to also witness how trade is playing quite a big role in pushing innovations and pushing into operability, for example, but could also be said to be stifling the regulations around what trade is pushing.

00;32;36;00 - 00;33;17;07

Dr. Melissa Omino

If you look at many data protection regulation and frameworks, they often have an exception that says that any of these protections should not impede trade. And then it becomes quite an interesting conversation. So I would say that all this boils down to a capacity building within the offices of those who regulate data protection, but also capacity building in the minds of innovators to really understand what data protection is, the grounding of privacy, the like is really a good thing, but also to educate them that the existence of data protection does not mean the absence of open data, that there is a balance there.

00;33;17;09 - 00;33;50;07

Beverley Hatcher-Mbu

This is one of the questions that I am the most curious about because I come from a country that is diverse in religion, ethnicity and geographic spread, and that is very much how I think many people would define Kenya and India respectively. You have populations that often hold strong, often competing group identities. To put it diplomatically, this to me is distinct from some of the other countries who are discussing governance and data protection from a very individual focused approach to the law and its enforcement, because they don't have that layer of context necessarily to contend with.

00;33;50;07 - 00;34;13;08

Beverley Hatcher-Mbu

Do you think that these features of how your nations are thrown together are colonialism and could or should have an impact on how your countries approach data governance?

Shreeja Sen

Colonialism? I don't know if I am qualified to catch that beast, but I will keep to the sort of contextual understanding of data protection that sort of India has engaged with.

00;34;13;11 - 00;34;49;03

Shreeja Sen

And I think it is key to move beyond the individualized form of data protection that is the standard at present and is a very, I would say, global not creation, depending on the type of data governance frameworks have to evolve. And as such, considering the vast amounts of data collected by digital platforms and the kind of tailored advertisements and services they are able to provide, I mean, digital platforms have access to the social and economic behavior of several different groups of people, whether you got it age wise or by gender or through any other MOCA like you mentioned.

00;34;49;03 - 00;35;19;15

Shreeja Sen

I mean, India has a report on non-personal data from the Committee of Experts was set up by the government where one of our directors was a member, has devised a community data standard or community data protection regime, which is more of a sui generis regime which seeks to provide data rights for these groups where you can't identify one data principle, but there are rights that you need to protect for and the benefits that you derive out of those data need to be shared.

00;35;19;15 - 00;35;46;18

Shreeja Sen

So in a sense, this framework talks about how this is similar to the Nagoya Protocol over traditional knowledge and things like that. A community is all the resources associated with it. The communities consent to use of such resources, which in this case is data benefit sharing from those resources that companies end up using and community participation in governance of these resources.

00;35;46;20 - 00;36;10;20

Shreeja Sen

So I feel like the issue of non-personal data or aggregate data has not really been addressed as much. While we talk a lot about personal data in terms of like when we talk about data governance and we talk about personal data as being sacrosanct, there is a lot that can be derived simply out of even anonymized and aggregate data.

00;36;10;22 - 00;36;36;16

Shreeja Sen

If you take a group of 20 to 25 year old women in, say, Bangalore, you can tell a lot about that group because of the kinds of services they are using online, because of the kinds of associations they have across not political lines, but their personal groups and things like that. So this is data that digital platforms are constantly collecting and they need to be addressed in some way.

00;36;36;16 - 00;37;03;04

Shreeja Sen

And the non-personal data governance regime is one such way and we need to move towards a place where we can consider data as some sort of a commons which is available for everyone to use and benefit from, rather than being siloed and walled by these private companies.

Beverley Hatcher-Mbu

Melissa, over to you.

Dr. Melissa Omino

I really love what Shreeja has said, even calling upon the Nagoya Protocol.

00;37;03;04 - 00;37;34;10

Dr. Melissa Omino

I think that's really, But I'm probably going to put a little spin on your question. If I look at Kenya and I studied well Kenya Africa in the study that we did recently had a separate looking at data governance on the continent, there was this particular place we had to take a pause and ask ourselves especially about digital I.D. and the construction of what data means and the ID or the categories of what personal data is.

00;37;34;10 - 00;38;08;29

Dr. Melissa Omino

And looking at it at the context of the indigenous communities. First of all, it was glaringly obvious that these are very much Eurocentric concepts. And looking at the Nubians, for example, in Kenya, who have taken the government to task on issues of who do my number, for example, it's clear that they are excluded from the word go to this regime of protection because they were historically excluded from even national identity cards, for example.

00;38;09;01 - 00;38;34;02

Dr. Melissa Omino

They don't have that. They don't have access to that. There are questions around who is a Kenyan and what makes you Kenyan, if not birth certificate or national I.D. when that conflicts greatly with traditional communities and how they identify each other and claim each other through more oral traditions rather than written materials that say when and where you are born and who your mother and father are.

00;38;34;02 - 00;39;04;23

Dr. Melissa Omino

And yet that is the very essence of where data protection as we know it begins. So then it really upends this whole idea of data protection in the African context. Does it make sense in the African context? And when I think, Father, we talk about harmonization for interoperability between different countries for the sake of trade, and here I am hinting towards the African Continental Free Trade Agreement where there will be a protocol on digital trade and would have provisions of data protection.

00;39;04;23 - 00;39;28;29

Dr. Melissa Omino

Does it make sense for us to build this up other than to ensure that we continue participating in a very Eurocentric system to make money? Etsy So when they look at it that way, maybe data protection and data governance might not make sense to Ides. What would be truly the African context on the Kenyan context do these communities that we're talking about?

00;39;28;29 - 00;40;11;19

Dr. Melissa Omino

But it starts to make sense when we talk about accessibility to services and we start to talk about the ability to to be part of society in terms of how they make money, how they get education, how how they take care of their bodies, then we need to deconstruct where the root of data protection begins and really think about the person as inherently having having an identity, but

doesn't have to be identified by a Eurocentric system and then be have also the autonomy to see how that identity and whatever is connected to it will be monetized or utilized as long as it is for their benefit.

00;40;11;19 - 00;40;39;16

Dr. Melissa Omino

But even putting this idea out there to those who might not have interrogated this question seems very outlandish. But I'm really glad that we got to ask ourselves like what data justice is in the context of data governance. Because if we are seeing that we are reaching all this in the right to privacy or a human right, then we have to look at the injustices that have occurred.

00;40;39;16 - 00;41;02;13

Dr. Melissa Omino

But that really splits open discussion position outside the confines of just a legal regulatory framework, outside the confines of a conversation, but towards looking at social issues that maybe we have not been taking cognizance of.

Beverley Hatcher-Mbu

There's so much to love in both of your answers. I think they framed this conversation so well. You both have been incredible guests.

00;41;02;13 - 00;41;20;02

Beverley Hatcher-Mbu

Thank you so much for sharing your expertise, what you're grappling with, why you're seeing strengths, where you're seeing opportunities for growth. Before you leave today, I have one last question that I like to ask, because I always get great answers on this. What are you both reading, watching or listening to that's helping you dive further into some of the stuff we've talked about today?

00;41;20;06 - 00;41;42;14

Dr. Melissa Omino

I love to read. I really, really love to read, but I try to stay away from reading about what I do in my day job because I do so much reading. So I just finished reading about Love by Bell Hook New.

Beverley Hatcher-Mbu

That's a favorite. I love that book.

Dr. Melissa Omino

I love it at home. I am buying it for everybody I know who hasn't read it.

00;41;42;17 - 00;42;03;19

Dr. Melissa Omino

You would be deceived by the title, but you know, it's about like, you know, mushy, romantic love. But the way the book is structured really does help me when I'm thinking about my 9 to 5 work because it talks about community, he talks about justice, he talks about work and your love for work and how you should navigate that while also having a work life balance.

00;42;03;20 - 00;42;41;10

Dr. Melissa Omino

I have been listening to For Colored Nerds. I love that podcast. It's really interesting and I've also been listening to the Spotify playlist on the top hits in Kenya.

Beverley Hatcher-Mbu

I love all of this. Shreeja, how about you?

Shreeja Sen

I think after Melissa's answer, I will sound extremely boring.

Beverley Hatcher-Mbu

No, no way.

Shreeja Sen

But I wanted to talk about this paper that I was reading or you started reading, which is the case for establishing a collective perspective to address harms of platform personalization.

00;42;41;11 - 00;43;04;01

Shreeja Sen

It talks to something we already discussed, which is the individualistic notions of personal data and how they are insufficient to address harms and the ecosystem. And I've also started to sort of engage with worker data, right? I was reading a little bit to understand a little more about how algorithmic management and that kind of stuff affect workers data, right?

00;43;04;01 - 00;43;25;14

Shreeja Sen

So there's a paper on algorithm that was the new contested Division of Control. So that seems to be something that I think will help me understand a little more about how this works. I binge watch a lot, so I have been catching up on it a good while, and yes, that's what I've been up to.

Beverley Hatcher-Mbu

I love both of your recommendations.

00;43;25;14 - 00;43;47;13

Beverley Hatcher-Mbu

All of the things I'm like, I love bell hooks. I love love, love the Good wife. I love the things that more broadly, both of their academic papers, but then also the pop culture items that help you think about not only the issues that we're working on, but sort of our positioning in the world. On my side, my answer is a little bit nerdy this particular week, but I just started reading AI 2041.

00;43;47;13 - 00;44;06;00

Beverley Hatcher-Mbu

So there are fictional stories. I'm set in different countries and contacts looking at some of the ways in which I could be used in future and then followed up by essays contextualizing what the fictional stories present. And it's nice. It's a happy medium between fiction, my love of fiction, and then also like grappling with some of these larger issues.

00;44;06;00 - 00;45;03;19

Beverley Hatcher-Mbu

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