

Jurisdiction	Mozambique
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## Questionnaire

### I. Law concerning protection of personal information

- i. Does your country have a general law concerning the protection of personal information in the private sector at the present or in the near future?

**JLA:** Currently there is no specific law governing data protection in force in Mozambique. Although the enactment of this law is being anticipated for many years now, it is still not possible to predict when it will be approved.

Nevertheless, there are provisions governing this matter spread-out in several legal diplomas, namely:

- (i) Constitution of the Republic of Mozambique:

Pursuant to articles 41 and 71 of the Mozambican Constitution, every citizen has the right to defend its honour, good name, reputation, public image and privacy and the use of electronic means for recording and processing individually identifiable data relating to political, philosophical or ideological beliefs, religious faith, party or trade union membership and private life shall be prohibited.

Access to archives, files and electronic records or data banks for the purpose of knowing personal data concerning third parties shall not be permitted, nor shall the transfer of personal data from one electronic file to another belonging to different services or institutions be permitted except in the cases established by law or by judicial decision.

- (ii) Labour law

As per article 6 of the Labour law regarding personal data protection, the employer may not request the employee to disclose information relating to his private life, except where particular requirements inherent to the nature of the professional activity so require, by virtue

of the law or the customs of each profession, and the respective grounds shall be given in writing in advance, and such information may not be disclosed to third parties without prior consent of the employee.

(iii) Telecommunications Regulation

Pursuant to articles 3 and 10 of the Telecommunications Service Consumer Protection Regulation, operators of television, mobile network, data, video and other operators providing telecommunications services for public use or selling telecommunications equipment telecommunications equipment for consumers, shall observe the right of privacy and data protection of consumers and ensure that (i) unauthorized unsolicited marketing material or information is sent on behalf of a third party; and (i) consumers' number or personal data is provided to third parties without their consent.

(iv) Electronic Transactions Law

Under article 64 of the Electronic transactions law, data processors have to ensure that the access to archives, files and computer records or data banks of personal data relating to third parties is not permitted, nor is the transfer of personal data from one computer file to another belonging to different services or institutions, except in cases established by law or judicial decision.

(v) Code of Conduct of Credit Institutions and Consumer Protection

In the financial sector, the latest developments have been registered on the newly enacted Code of Conduct for Credit institutions and Financial Companies and Financial Consumer Protection which imposes that credit institutions and financial companies shall have clear internal policies in place to ensure the data protection and privacy of its consumers.

Moreover, Mozambique has ratified the African Union Convention on Cybersecurity and Personal Data Protection, through Resolution no. 5/2019 of June 20<sup>th</sup>, which provides a general legal framework on data protection of personal information, whose rules are applied in the Mozambican territory and have the same legal value as infra-constitutional norms.

- ii. Does your country have a general law concerning protection of personal information in the public sector at the present or in the near future?

**JLA:** No. Please refer to our comments above.

- iii. Does your country have laws concerning protection of personal information which apply in individual (specific) sectors at the present or in the near future? (If yes, please describe outline.)

**JLA:** Yes as previously mentioned this matter is regulated in different pieces of legislation and we can particularly highlight two sectors: (i) the Financial Sector; and (ii) the Telecommunications Sector.

In the Financial Sector, a Code of Conduct for Credit institutions and Financial Companies and Financial Consumer Protection was approved in 2021 which establishes that credit institutions and financial companies have a data protection duty toward its consumers. Credit institutions and financial companies shall also ensure measures to protect the right to privacy, security and integrity of data against unauthorized, improper or fraudulent access, use, risk of loss, removal, modification, deletion or disclosure, as well as the correction of inaccurate or illegally collected or processed data.

In the Telecommunications Sector, network operators are also obliged to ensure the protection and privacy in the control and processing of personal data of users, under the Security Regulations for Telecommunications Networks.

**Where all of the answers to the question of I.(i), (ii) and (iii) is “no”, please skip to IV.**

**II. The basic information of the regulation concerning protection of personal information.**

- i. Please fill in the blanks below about all the law concerning personal information mentioned at I. (please add a reply column as necessary,)

<b>Constitution of the Republic of Mozambique</b>	
① The definition of “Personal Information”	N/A
② The scope in which the Constitution applies	Applies to all Mozambican citizens.
③ The territorial scope	Mozambique.

<b>Resolution no. 5/2019 of June 20 (Ratifies the African Union Convention on Cybersecurity and Personal Data Protection)</b>	
④ The definition of "Personal Information"	Any information relating to an identified or identifiable natural person whereby that person can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity.
⑤ The scope in which the resolution applies	Applies to each member state, in order to persuade in the creation of a legal framework, with the aim of strengthening fundamental rights and public freedoms, in particular the protection of physical data, and repressing any infringement of privacy, without prejudice to the principle of free movement of personal data.
⑥ The territorial scope	African Union Member States that have ratified the convention.

<b>Law no. 23/2007 of August 1<sup>st</sup> (Labour Law)</b>	
① The definition of "Personal Information"	N/A.
② The scope in which the law applies	Applies to labour relations established between employers and employees, national and foreign workers across all sectors of activity.
③ The territorial scope	Mozambique.

<b>Law no. 3/2017 of January 9<sup>th</sup> (Electronic Transactions Law)</b>	
④ The definition of "Personal Information"	Any information relating to a natural person who can be identified directly or indirectly by reference to an identification number or to one or more factors specific to that person.
⑤ The scope in which the law applies	Applies to individuals, public or private legal entities that apply information and communication technologies, in their activities, namely electronic or commercial transactions and e-government.
⑥ The territorial scope	Mozambique.

<b>Law no. 34/2014 of December 31<sup>st</sup> (Information Law)</b>	
① The definition of "Personal Information"	Information relating to identified or identifiable natural persons recorded manually or by a computer.
② The scope in which the	Applies to the bodies and institutions of the State, the

law applies	direct and indirect administration, representation abroad and local authorities, as well as private entities that, under the law or contract, carry out activities of public interest or that, in their activity, benefit from public resources of any origin and have in their possession information of public interest.
③ The territorial scope	Mozambique.

<b>Law no. 20/2020 of December 31<sup>st</sup> (Credit Institutions and Financial Companies Law)</b>	
① The definition of "Personal Information"	N/A
② The scope in which the law applies	Applies to credit institutions and financial companies.
③ The territorial scope	Mozambique.

<b>Notice no. 8/GBM/2021 of December 22<sup>nd</sup> (Code of Conduct for Credit Institutions and Financial Companies and Financial Consumer Protection)</b>	
① The definition of "Personal Information"	N/A
② The scope in which the notice applies	Applies to credit institutions, financial companies and other entities subject to supervision or monitoring by Bank of Mozambique.
③ The territorial scope	Mozambique.

<b>Law no. 6/2015 of October 6<sup>th</sup> (Private Management Credit Information System)</b>	
① The definition of "Personal Information"	N/A
② The scope in which the law applies	Applies to credit reporting centres, data providers, subscribers and customers.
③ The territorial scope	Mozambique.

<b>Decree no. 66/2019 of August 1<sup>st</sup> (Telecommunications Network Security Regulation)</b>	
① The definition of "Personal Information"	N/A
② The scope in which the decree applies	Applies to operators of public telecommunications networks and services in the component of network and service security and integrity operation.
③ The territorial scope	Mozambique.

<b>Decree no. 44/2019 of May 22<sup>nd</sup> (Telecommunications Service Consumer Protection Regulation)</b>	
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① The definition of “Personal Information”	N/A
② The scope in which the decree applies	Applies to television, telephone, data, video, and other operators that provide telecommunications services for public use and/or sell telecommunications equipment, as well as to consumers.
③ The territorial scope	Mozambique.

ii. If there are any special instructions about the laws, please describe them.

**JLA:** There are no special instructions other than those highlighted in this survey.

### III. OECD Privacy Principles

i. If there are any provision of law which embody each OECD Privacy Principle in your country, please describe the outlines.

<https://www.oecd.org/sti/ieconomy/oecdguidelinesontheProtectionofPrivacyandTransborderFlowsOfPersonalData.htm>

#### (a) Collection Limitation Principle

**JLA:** Under principle 2 of article13 of the African Union Convention on Cybersecurity and Personal Data Protection – the collection, recording, processing, storage and transmission of personal data shall be undertaken lawfully, fairly and non-fraudulently.

This principle is also enshrined on the Mozambican Constitution (article 71), the Electronic transactions law (articles 63 and 64) and the Information law (article 25), where it is established that the collection, processing or disclosure of personal data by a data controller must be accurate, complete and up-to-date, without prejudice to its confidentiality.

#### (b) Data Quality Principle

**JLA:** Under principle 4 of article13 of the African Union Convention on Cybersecurity and Personal Data Protection, combined with article 63 of the Electronic transactions law– data collected shall be accurate and where necessary kept up to date.

#### (c) Purpose Specification Principle

**JLA:** Under article 63 (2) of the Electronic Transactions Law – the purposes for which personal data are collected and the identity of the data processor must be specified prior to

their collection, and their use shall be limited to those purposes.

(d) Use Limitation Principle

**JLA:** Under article 71 of the Mozambican Constitution, combined with article 25 of the Information Law and article 64 of the Electronic transactions law – information relating to the privacy of an identified or identifiable natural person in the possession of authorities may not be disclosed except with the express consent of the owner of by a judicial decision.

(e) Security Safeguards Principle

**JLA:** Under article 63(5) of the Electronic Transactions Law – the data processor must protect personal data from any risks, loss, unauthorized access, destruction, use, modification or disclosure.

(f) Openness Principle

**JLA:** N/A.

(g) Individual Participation Principle

**JLA:** Under article 63(6) of the Electronic Transactions Law – everyone has the right:

- (i) to obtain from a data controller, or confirmation about whether or not the data controller has data about him or her, or knowledge concerning the controller of his or her data;
- (ii) to be informed about his/her data within a reasonable time, upon payment of a fee;
- (iii) to obtain in the event of a refusal of a request made pursuant to subparagraphs i) and ii) above, due justification; and
- (iv) to object to the data concerning him/her and, in case of acceptance, to be able to remove, rectify, supplement or modify such data.

(h) Accountability Principle

**JLA:** article 65 (1) of the Electronic Transactions Law – the data processor is responsible for personal information in its possession or custody, including information which has been transferred to third parties for processing.

- ii. If there are any sectors in which any laws exclude the application of each OECD Privacy Principle, please describe the outline.

**JLA:** N/A.

- (a) Collection Limitation Principle
- (b) Data Quality Principle
- (c) Purpose Specification Principle
- (d) Use Limitation Principle
- (e) Security Safeguards Principle
- (f) Openness Principle
- (g) Individual Participation Principle
- (h) Accountability Principle

#### **IV. Data Localization and Government Access**

In your country, are there any systems having an impact on the rights of data subjects such as comprehensive government access to personal data or Data Localization? If yes, please describe them.

**JLA:** N/A.

#### **V. The Data Protection Authority**

If there is the data protection authority, please write down the name and address of the authority.

**JLA:** The National Information Technology Institute (*Instituto Nacional de Tecnologias de Informação* -"INTIC") is currently the government authority with the mandate to enforce privacy and data protection and laws related to information and communication technologies in the jurisdiction. It is expected that a new and more specific authority will be created to deal



with these matters upon approval of a Data Protection Law in Mozambique.