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THE IMPLICATIONS OF KENYA'S DATA PROTECTION ACT ON URBAN PLANNING

Introduction

Urban planning is essential for the structured development of cities and regions, guiding the use of land, resources, and infrastructure. In Kenya, the urban planning process includes the preparation and enforcement of various plans—such as strategic, local, and detailed plans—that dictate the spatial arrangement of urban areas. This process is often collaborative, involving government entities, planners, and the public to ensure that urban growth aligns with sustainable development goals. The planning process requires the collection and processing of various data sets including spatial and socio economic data. The increasing digitization of urban planning activities, such as the use of Geographic Information Systems (GIS), digital platforms for public participation, and online submissions of planning applications, presents new challenges and opportunities. However, it also raises significant concerns regarding the protection of personal data, especially in light of Kenya's Data Protection Act.

Overview of Kenya's Data Protection Act

The Data Protection Act, enacted in November 2019, provides a comprehensive framework designed to safeguard the collection, processing and storage of personal data in Kenya. The Act outlines the principles for processing personal data while upholding the rights of data subjects. The key provisions of the Act include:

Consent for Data Processing:

Section 30 mandates that personal data must be collected and processed with the explicit consent of the data subject.

Data Minimization: Section 25(d) requires that only data relevant and necessary for the intended purpose should be collected.

Data Security: Sections 41 and 42 obligate data controllers and processors to implement security measures to protect personal data from unauthorized access or loss.

Right to Access and Correction: Sections 26 and 28 give data subjects the right to access and correct their data, ensuring transparency and accountability in data processing activities.

Salient Features of the Act and Their Implications for Urban Planning

1. Consent and Data Collection: According to Section 30, "A data controller or data processor shall only process personal data with the consent of the data subject." In urban planning, this means that during activities such as public consultations or surveys, planners must ensure that individuals are fully informed about how their data will be used and obtain explicit consent before collecting any personal information. This could complicate the data collection process but ensures that citizens' rights are respected.

2. Data Minimization: Section 25(d) of the Act states that data should be "adequate, relevant and limited to what is necessary in relation to the purposes for which it is processed." For urban planning, this necessitates a careful review of the type and amount of data collected, ensuring that only essential information is gathered. This minimizes the risk of data breaches and misuse, fostering trust between planning authorities and the public.

3. Data Security and Storage: The Act's Sections 41 and 42 emphasize the importance of implementing "appropriate security measures to protect personal data against accidental or unlawful destruction, loss, alteration, unauthorized disclosure, or access." Urban planning departments, which handle vast amounts of spatial and demographic data, must adopt robust cybersecurity practices. This includes encrypting data, using secure servers, and limiting access to sensitive information to authorized personnel only. What does this mean for planners who have been using open source and publicly hosted services for data collection



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4. Transparency and Data Access: Sections 26 and 28 empower data subjects to access their data and understand how it is being used. In urban planning, this implies that any personal data collected must be managed transparently. Planners need to ensure that individuals can easily request and access their data and are aware of their data rights. This is crucial for maintaining public confidence in planning processes.

5. Impact on Public Participation: Public participation is a vital component of urban planning, allowing communities to engage in the development process. The Act necessitates that personal data collected during public participation exercises be handled in a manner that complies with the law. This includes anonymizing data where possible, obtaining consent, and ensuring that data collection practices are transparent and lawful.

6. Registration as Data Controllers or Data Processors: Under the Act, urban planners who handle personal data must register as either data controllers or data processors with the Office of the Data Protection Commissioner (ODPC). A data controller is an entity that determines the purpose and means of processing personal data, while a data processor processes data on behalf of a controller. For instance, if a planning agency decides how public data will be used in a development plan, it acts as a data controller and must register accordingly. Registration is a legal requirement and essential for ensuring that personal data is managed in compliance with the Act.

roles in handling personal data and register as data controllers or data processors with the ODPC. This registration is a critical step in legal compliance and demonstrates a commitment to protecting personal data.

4. Invest in Secure Data Management Systems:

➤ Implement encrypted databases and secure servers to collect and store personal data collected during planning processes. Ensure that access to this data is restricted to authorized personnel only and used only for the intended purposes.

➤ Regularly audit these systems to detect and address any vulnerabilities.

5. Ensure Informed Consent:

➤ Design clear, concise consent forms that explain how personal data will be used, who will have access to it, and for how long it will be stored.

➤ Provide individuals with easy access to these forms and obtain their explicit consent before collecting any data.

6. Enhance Public Awareness:

➤ Educate the public on their rights under the Data Protection Act and how their personal data will be handled during urban planning processes. This can be done through public forums, online platforms, and informational materials.

➤ Encourage open communication channels where the public can ask questions and receive clear answers regarding their data rights.

7. Regular Training and Audits:

➤ Provide continuous training for urban planning staff on data protection best practices and legal obligations under the Act.

➤ Conduct regular internal audits to ensure ongoing compliance and address any issues that arise promptly.

Recommendations

“Staff involved in planning processes should clearly understand their role in the protection of personal data.”

To ensure compliance with the Data Protection Act, urban planning authorities and professionals in Kenya should:

1. Develop and Implement Data Protection Policies:

➤ Urban planning agencies should create comprehensive data protection policies that align with the Act's requirements. These policies should outline procedures for obtaining consent, data collection, storage, and sharing practices.

➤ Ensure that all staff involved in planning processes are trained on these policies and understand their responsibilities in protecting personal data.

2. Conduct Data Protection Impact Assessments (DPIAs):

➤ Before initiating any urban planning project that involves the processing of personal data, conduct DPIAs to identify and mitigate potential data protection risks.

➤ Use the DPIA findings to adjust data collection methods, ensuring they comply with the principles of data minimization and purpose limitation.

3. Register with the Office of the Data Protection Commissioner (ODPC):

➤ Urban planners and planning agencies must assess their

Conclusion

The Data Protection Act marks a significant advancement in safeguarding personal data in Kenya. For the urban planning sector, the Act introduces new obligations and challenges, particularly in how personal data is collected, stored, and used. By adopting clear policies, investing in secure systems, and promoting transparency, urban planners can ensure compliance with the law while maintaining public trust. Integrating data protection principles into urban planning practices is not only a legal requirement but also a crucial step towards achieving sustainable and responsible urban development in Kenya.

