m17m (multistakeholderism[1]) - Practicum[2]

Practicum: ***noun*****:** a period of practical experience undertaken as part of an academic course

Purpose:

Give fellows a chance to experience multi-stakeholder decision making in a realistic simulated environment using available methods and processes, while discussing a topical issue of importance to Internet governance.

Issue under discussion:

On 25 May 2018, the General Data Protection Regulation (GDPR) entered into force in the EU's 28 member states.

The regulation focuses on:

- Reinforcing individuals' rights;
- Strengthening the EU internal market;
- Ensuring stronger enforcement of the rules that have been in place for over a decade;
- Streamlining standards for international transfers of personal data and;
- De-facto level setting for global data protection standards.

The last point is especially pertinent to Africa, as the GDPR rules are extraterritorial in that they affect interactions with European citizens, businesses and NGOs wherever those interactions take place. The issue for discussion is how the GDPR impacts African states, organizations, businesses of all sizes and individuals and what should be done about it?

The African Union Convention on Cyber Security and Personal Data Protection (AUC), Article 10 defines a set of recommendations for data protection for Africa, whereas the GDPR Article 6 defines the legal basis for data collection and use of information collected from European subjects.WIthin Africa the AUC is not binding on the nation states, the GDPR, while the GDPR directives are binding on the EU member states, requiring the implementation and enforcement of laws corresponding to the directives. Since African companies and NGOs are liable for adhering to the GDPR when collecting or processing the personally identifiable information of European individuals (natural persons), institutions throughout Africa risk severe fines for non compliance:

- The lower level of which is up to €10 million, or 2% of the worldwide annual revenue of the prior financial year, whichever is higher
- The higher level of which is up to €20 million, or 4% of the worldwide annual revenue of the prior financial year, whichever is higher.[3]

1 This is a numeronym. There are 17 letters between the first and last m. In multistakeholder (m14r) there are 14 letters between the leading m and the final r.
2 This document can be found here. It may be updated during the course of the program with additional information. <https://docs.google.com/document/d/1oM0ooa-SwkFH6tUDemYSePLQVFDOqkAutzNSIUznH-0/edit?usp=sharing>
3 https://www.gdpreu.org/compliance/fines-and-penalties/

Additionally, according to the GDPR, data can only be transferred to countries where there are equivalent safeguards and standards through what are known as "adequacy decisions."[4] Doing so could incur fines in the higher level.

African GDPR preparedness and compliance are a new problem for most African nations. Though not a major issue in African Internet Governance until recently, privacy and data protection have now become a priority as much of the world moves to assess their data and privacy legal adequacy against the GDPR requirements. While countries throughout Africa[5] have been working on data and privacy protection regulations and legislation, these are not necessarily aligned with each other in content or enforcement conditions and are at differing stages of enactment, implementation and enforcement.

This issue is especially important to African businesses and NGOs that interact with their communities and customers online. There would be costs involved in developing policy and in making changes in their data policies. There are also liabilities, including the GDPR fines, for any business either not developing a data protection policy or of developing one that is inadequate.

Situation of the practicum:

You are members of a special multistakeholder commission established by the AU to use the AU Convention on Cyber Security and Personal Data Protection and the Personal Data Protection Guidelines for Africa (which were collaboratively created by the AU Commission and the Internet Society[6]) to come up with a recommendation for the AU and for African society in general. Recommendations could include:

- A framework for an AU model law on personal data protection, in line with the GDPR.
- Guidance to governments on developing laws on privacy and regulations on data protection

4 See 1) David Souter blog on GDPR https://www.apc.org/en/blog/inside-information-society-does-europe%E2%80%99s-gdpr-change-privacy-and-data-protection and 2) APC statement https://www.apc.org/en/pubs/apc-welcomes-eus-general-data-protection-regulation-calls-stronger-privacy-protections-globally

5 Cape Verde was the first African State to adopt a data protection legislation in 2001. 14 other countries have adopted data protection laws: Angola, Benin, Burkina Faso, Cape Verde, Cote, d' ivoire, Gabon, Ghana, Madagascar, Mali, Mauritius, Morocco, Senegal, Seychelles, South Africa, and Tunisia.
Countries with draft bills at various legislative stages (number might be higher now post GDPR) include: Botswana, Burundi, Cameroon, Central African Republic, Chad, Equatorial Guinea, Ethiopia, Eritrea, Guinea, Guinea Bissau, Kenya, Lesotho, Liberia, Malawi, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sierra Leone, Swaziland, Tanzania, Togo, Uganda, Zambia and Zimbabwe.

6 https://www.internetsociety.org/wp-content/uploads/2018/05/AUCPrivacyGuidelines_2018508_EN.pdf

- Guidance to businesses on adhering to extra-territorial privacy and data protection regulations.
- An action plan for Africa on privacy and data protection.

Initial questions that can be explored include:

- Is the AU Convention still adequate for purpose? Does the AU Convention need to be updated, and if so, how?
- Does Africa need a privacy and data protection convention beyond the current AU Convention?
    - If it does, why and what elements should it include?
    - If not, why not and what would be the advantages and the risks of not creating one.

As a multistakeholder commision, you should feel free to make other related recommendations to the AU, or others, on ways to move forward on the issue of privacy and data protection on the continent.[7]

In determining your responses, please take into consideration not only the pressures of extra-jurisdictional regulations, but also the social and cultural sensitivities within Africa.

Stakeholders:

Each of the participants is assigned one of the standard Tunis Agenda stakeholder categories[8], Participants will also be assigned a skill area (e.g. economics, technology, law, cyber technology, communications, &c.).

- 15-17 governments, with an observer each from the AU, EU and China.
- 5 Business:
- 5 Civil society:
- 5 Technical community:
- 2-3 Other
    - Mainstream Press
    - Blogger

The number of government stakeholders and the total number of other stakeholders will be approximately equal and will be adjusted based on the number of fellows present. While stakeholder groups are predefined, each individual stakeholder representative is free to negotiate positions and create ‘alliances’ (especially concerning negotiating positions between regional groups of governments) – one of the goals is to play with the issues of privacy, security and stakeholder trade offs.

7 On occasion, a final outcome can be presented at the African IGF by participating fellows.
8 Civil Society, Business Community, National governments, Technical Community. Academia can be included within any of the four TA stakeholder types.

Fellows are free to form groups, dissolve groups, or avoid grouping. They can self-form the groups along any lines they wish – stakeholder type, sub-region[9], skill area, or position taken on the issue.

Fellows Role Assignment

Fellows are assigned stakeholder identities including Tunis Agenda category, country, and skill area. The roles will be randomly-assigned by secretariat. Fellows will be free to trade identities among themselves at the beginning of the exercise before the first plenary session on Tuesday evening.

Whatever role the fellows are assigned, the only requirement is that they do their best to represent the interests of their stakeholder types, based on the background materials and research they do, and as they understand them. Any backstory a fellow wishes to create for their character is up to them. Just find a probable narrative and use it to motivate the role.

If any other faculty members from among those staying the entire week wish to participate in the exercise they can be assigned roles ad-hoc, while keeping stakeholder/ regional balance.

This is an exercise. So both fellows and faculty should stretch and have fun with it.

Faculty Role Assignment

Chair of Conference (CS): Anriette Esterhuysen
Co-chair Conference (Bus)): Titi Akinsanni
Co-Chair Conference (Gov): James Madya
Co-Chair Conference (Tech): Bob Ochieng

The Chair and Co-chairs will also act as advisors to the project and can help facilitate the stakeholder group discussions. Other faculty will be available for consultation as needed. Many of them are subject matter experts in the issues being discussed in the practicum.

Secretariat:

- Avri Doria
- Koliwe Majama
- Frederico Links

9 Sub-regional bodies are often more effective or efficient in implementation/having agreed laws adopted/adapted/ratified. Examples include: the ECOWAS Supplementary Act on Personal Data Protection and The Southern African Development Community Model Law on Data Protection.

Methods

- Breakfast/lunch: 3 “stakeholder categories” tables will be set aside for project work. Fellows can use these tables either for general discussion on the project issues or can self organise them along stakeholder groups or alliances as they wish.
- Fellows to meet as necessary during off meeting times.
- Advisors & other faculty available to assist and advise but not direct the effort.
- Stakeholder groups and any other group that is formed can self organize to do its own work as it sees fit.

Session Schedule

- Day 0 Thursday 19 - 19:30: introduction: setting the scene, assignment of roles. Presentation by Avri about the role play and a short presentation of the case by Frederico.

- Day 1 Friday 12 - 12:30 detailed presentation of the methods and the issue by Avri and Frederico.
    - After session
        - End of role trading period
        - Fellows can already start forming alliances and develop their positions during lunch, right after the case presentation. Tables will be prepared for stakeholder groups, however, all fellows have to figure out their potential political positions and groups of support, can ally and consult with other stakeholders.

- Day 1 After Dinner: Stakeholder groups meet to organize, discuss the issues and start planning. Chairs initiate stakeholder group meetings.

- Day 2 Related Sessions
    - 14:00-15:30 Session 10 Deep dive into data protections
    - 16:00-17:30 Session 11: Data protection and privacy challenges in Africa

- Day 2 Saturday 20:00 First practicum plenary - Led by Chairs
    - Initial Statement of positions.
    - Start of multi-stakeholder discussions.

- Day 3 Sunday 20:00 Second practicum plenary - Led by Secretariat
    - Work on the consensus process
    - Identify outcome document(s) and process for completing.

- Day 4 Monday 20:00 Final Plenary - Led by Chairs
    - Reach consensus, if possible, on outcome document produced by fellows

References

- Working list in https://docs.google.com/document/d/14atGc41oqrlbxfokBzGyc2Vj_HU1Wn-tNcKhp0f7z7k/edit?usp=sharing

Dot Color Coding

Black	Secretariat
Blue	Assorted
Green	Civil Society
Orange	Government
Purple	Co-chair
Red	Business
Yellow	Technical community