

Article on Data Protection

The Institute for Judicial and Legal Studies (IJLS) recently organised a ‘Data Protection’ week as part of its mandate to promote proficiency and to ensure the maintenance of standards in the Judiciary along with fostering continuing judicial and legal education through lectures, workshops and seminars for each of the three branches of the legal profession. Data Protection is the fight of ethics and human rights against technology. In addition, the lack of jurisprudence poses a real challenge to fully assess the sustainability and survival of data protection laws in Mauritius. This is the main reason why the IJLS has identified this area as a key theme for its academic year. The resource persons comprised of Mr. Oliver Butler, Fellow in Law, Wadham College, University of Oxford and Associate Research Fellow, Bonavero Institute of Human Rights and Ms. Drudeisha Madhub, Data Commissioner (DPO Mauritius).

The Data Commissioner assessed whether the notion of privacy is adequately protected in today’s world. She stressed on the importance of sustainable data protection laws along with ensuring compliance through proper interpretation of the Data Protection Act 2017 and the General Data Protection Regulations (GDPR). She stated that data protection relates to a futuristic area of the law which is unique in its kind as it relates to the survival of human race against machines. According to her, we are fast approaching an era where the design, deployment and control of revolutionary robotism through artificial intelligence is taking place.

She provided certain examples in order to illustrate what the new amendments in the Data Protection Act are trying to address in this modern day. They include killer drones which basically translate to automated machines without human agency- the likes of which the UN is currently debating on their legal parametres. Another example referred to concerns to algorithmic decision making in criminal sentencing based on opaque criteria with little or no human process. A third example quoted relates to social media whose unaccountable algorithmic decision making has been weaponised by criminals in ethnic conflict zones such as Myanmar. Furthermore, the Data Commissioner reiterated the importance of the resilience capability of Mauritian data protection laws over compliance with international standards. The real test relates to how far will the GDPR and the Data Protection Act 2017 resist the influxes of technological deviations. She laid emphasis on the roles of the judiciary and law professionals who should adopt a futuristic mind-set in the

interpretation of these laws in order to be able to live parallel with technological advancements.

Mr. Butler for his part addressed the concept of ‘adequacy decision’ for Mauritian law, enforcement of the Data Protection Act 2017 and the interpretation of the Data Protection Act 2017 in light of the GDPR. He commended the Mauritius for enacting laws in line with the GDPR and highlighted potential future benefits such as reduced transaction costs for sending personal data along with the facilitation of international data flows in case Mauritius obtains ‘adequacy’ from the European Union. However, he also stated that certain complications might arise during the interpretation of the data protection laws under the DPA 2017 which adopts a rather criminal approach resulting in a narrower interpretation of the principles. This as such, defeats the aim of the GDPR which calls for a broader interpretation and targets administrative fines as an enforcement tool for serious breaches unlike the Mauritian DPA 2017 which lacks the power to impose such fines.

I really believe that we don’t have to make a trade-off between security and privacy. I think technology gives us the ability to have both.

– John Poindexter