



## Concept Note

### Validation Meeting for Report on Balancing free expression and data protection: The journalistic exemption in Kenya

**Date: 23<sup>rd</sup> January 2025**

**Time: 4:00 PM – 6:00 PM**

**Venue: Microsoft Teams**

#### Background

The intricate balance between the right to privacy and freedom of expression cannot be denied. This balance becomes even more challenging for journalists whose work may collide with data protection principles. It is based on the public interest nature of the media that section 52 (1)(b) exempts personal data processed for public interest. The Office of the Data Protection Commissioner is yet to issue Guidelines on how the exemption under section 52 (1)(b) will operate. Therefore, ARTICLE 19 Eastern Africa with support from GIZ developed this [report](#) to consider the scope of the data protection exemption accorded to journalists under the Data Protection Act 2019.

This report provides an overview of the legal and policy frameworks relating to privacy, freedom of expression, data protection, and the journalistic exemption in Kenya and beyond. It explores the scope of, and justifications for, the journalistic exemption from data subjects' data protection and privacy rights. It examines the need for greater specificity on the scope of the exemption, including by contrasting it with the European Union and United Kingdom's comparable legislation.

The second section goes on to consider the media's obligations to comply with areas of the Data Protection Act, even when relying on the journalistic exemption from certain provisions. Section 2 therefore first lays out the media's responsibility and obligation to comply with data protection principles of data security and accountability. Section 2 then goes on to detail the findings of a survey ARTICLE 19 conducted of Kenyan media practitioners' awareness and practices regarding data protection issues in relation to journalism. The findings of this survey can inform media leaders of the need for increased training and support on the issues covered in this report.

#### Research Methodology

To achieve this, we conducted desk research and a survey, to among other things:

- a. To provide a detailed analysis of the right to privacy and international human rights standards on freedom of expression;
- b. To highlight a detailed analysis of journalistic data protection exemption under the Data Protection Act;
- c. To conduct a comparative analysis on how the journalistic exemption has been applied in other jurisdictions namely the United Kingdom and the European Union;
- d. To understand the practice in the media sector on the right to privacy; and
- e. To give detailed recommendations on how this exemption should be applied against international human rights standards.

### **Summary of Research Findings**

In light of the glaring lack of clarity on the scope of this exemption the report makes the following key recommendations

- ✓ Kenya's Office of the Data Protection Commissioner should give effect to both freedom of expression and the right to privacy, and not unduly limit the right to free expression and access to information in the context of journalism.

Specifically, the ODPC should:

- a. Clarify and define the scope of the journalistic exemption under the Data Protection Act 2019 including which derogations are permissible under the exemption.
- b. Clarify that the journalistic exemption extends to work that involves material that is newsworthy and in the public interest.
- c. Require media organisations to publish and review their editorial policies relating to personal data protection and privacy, and to train staff on their policy.

The report also calls upon media houses to train journalists on the balance between freedom of expression and the right to privacy and to regularly publish their data privacy policies.

### **Targeted Participants**

The engagement targets actors from civil society, open data actors, Media Council of Kenya, media houses, privacy professionals, bloggers, photographers and independent journalists. To attend please register [here](#).

### **Objectives of the Meeting**

1. To discuss the findings of the report.
2. To find out gaps that have not been covered in the report.
3. To raise concerns regarding the content of the report.

### **Format of the Event**

The validation meeting will be done through presentation and an open plenary session to receive feedback from participants.

**Draft Program**

2.00pm – 2:30pm	Introductions and Agenda Setting	ARTICLE 19 EA
2:30 pm – 3:00 pm	Presentation of the key findings of the report	ARTICLE 19 EA
3:00 pm – 3:15 pm	HEALTH BREAK	
3:15 pm – 3:50 pm	Plenary Session for Participants to give Feedback	ARTICLE 19 EA
3:50 pm – 4:00 pm	Closing Remarks and Way Forward	ARTICLE 19 EA