

PRIVACY, VOTER SURVEILLANCE AND DEMOCRATIC ENGAGEMENT: CHALLENGES FOR DATA PROTECTION AUTHORITIES IN AFRICA

Smith Oduro-Marfo
Department of Political Science
University of Victoria
British Columbia, Canada

marfo.oduro@gmail.com
Twitter: @KKmarfo



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OUTLINE

- Overview of our 2019 ICO study (co-authored with Dr. Colin Bennett)
 - How privacy serves democracy
 - Our conceptual framework / taxonomy
 - Recommendations
- The African contexts: Insights and challenges
- Concluding thoughts: The critical place of data protection

Privacy, Voter Surveillance and Democratic Engagement: Challenges for Data Protection Authorities

THE GREAT TENSION

- Democracy must be strengthened through enhanced voter participation. Information on voters can be used to deepen such participation. But the collection and use of such voter information could also be threatening to democracy. How do we find the balance?
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- Our task was to provide a framework for understanding where different jurisdictions place in terms of voter targeting. To do this, we looked at data protection law, electoral law and cultural dispositions to political canvassing.
 - We drew on a number of cases studies in showing the distinctions across various countries.

PRIVACY, DATA PROTECTION , DEMOCRACY

- IRONICALLY, surveillance of citizens has traditionally been deemed a feature of authoritarian and totalitarian regimes
 - Threatening personal privacy as well freedom of association, movement and expression
- TODAY, surveillance of citizens is increasingly deemed a key to success in DEMOCRATIC elections
 - The permanent campaign?
 - Knowing voters better and taking their individual concerns more seriously
 - More efficient use of campaign resources
 - The era of the TRANSPARENT voter?

NOT JUST ABOUT PRIVACY!!

- On the other hand, threat to the marketplace of place ideas
 - Voter Dis/misinformation
 - Voter dissuasion
 - Voter polarization
 - Discouraging political engagement

FACTORS THAT SHAPE POLITICAL TARGETING OF VOTERS

Legal

- Constitutional provisions on freedom of communication/speech
- Statutory: Data protection, election law, campaign financing law
- Telemarketing rules, anti-spam rules, election advertising codes

Political

- The party and electoral system /Mandatory or non-mandatory voting /Existence of primary elections / Frequency of referendums

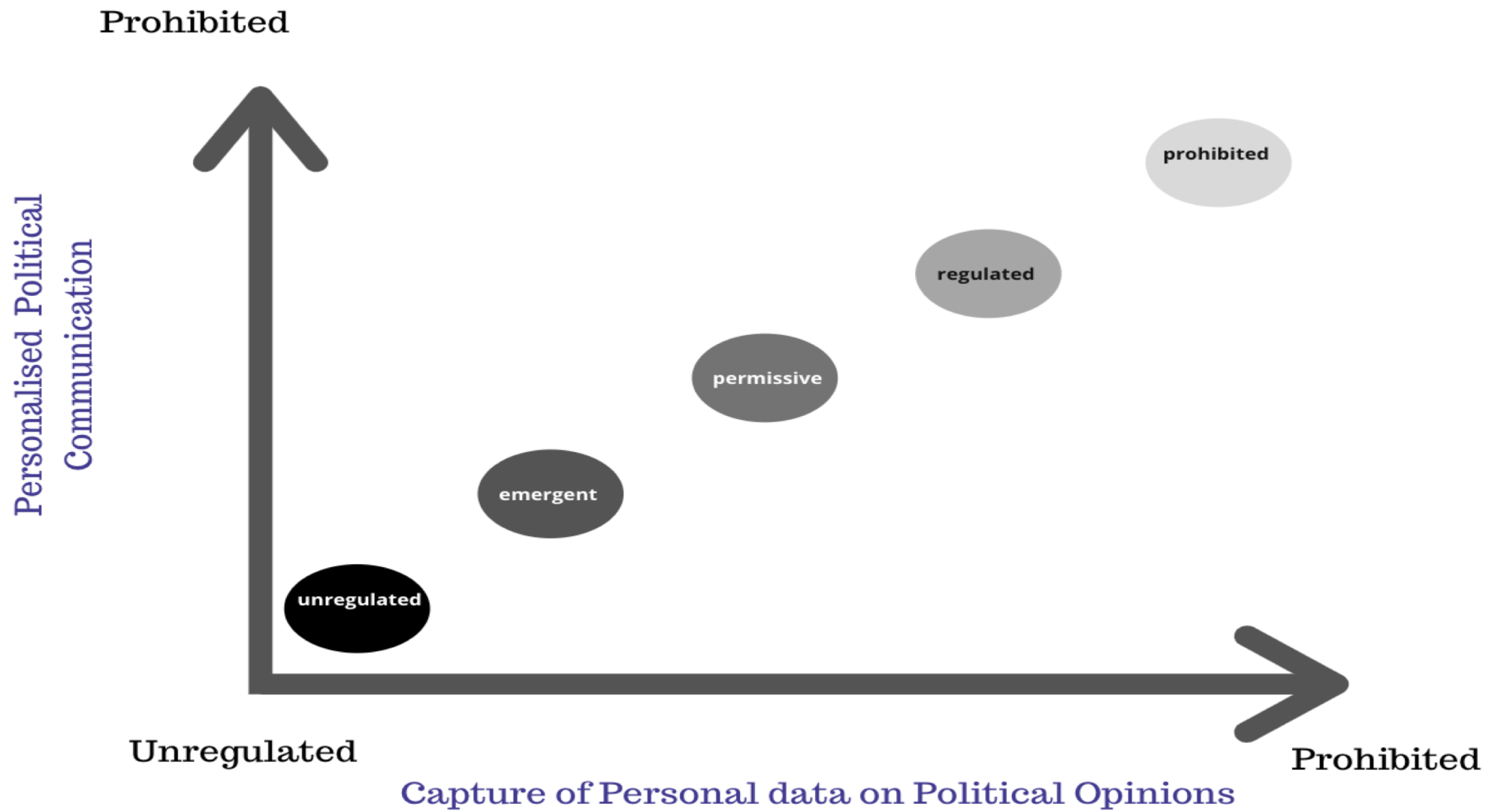
Cultural

- General acceptability of direct candidate to voter campaigning
 - Legacies of authoritarian rule
 - Trust in political elites

CONCEPTUAL FRAMEWORK / TAXONOMY

- The framework compares the various rules and practices governing:
 - the capture and processing of personal data on political opinions
 - the conditions under which personalised political communication can occur.
- Based on this framework, we see 5 patterns:

Permissive, Exempted, Regulated, Prohibited and Emerging.

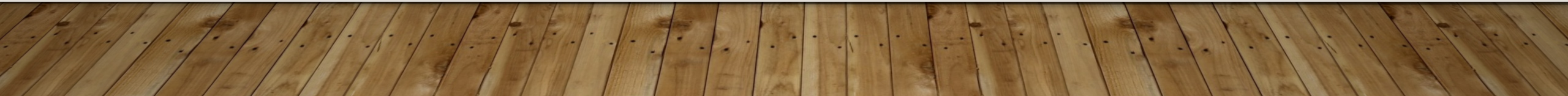


RECOMMENDATIONS FOR DPAS

- Understand the increasingly complex **political campaigning network** in their respective societies
- Grasp of the **regulatory conditions** that permit, or prohibit, the processing of personal data for purposes of democratic engagement, including the rules for campaign financing
- **Cooperate with other relevant regulators** including elections and telecommunications regulators
- **Leverage** particularly through global initiatives against fake news and **proposals for ad transparency**

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- **Assist political parties** in the detailed and practical work of data protection implementation and privacy management
 - The need for **international collaboration** through your international and regional associations, as well as from the wider network of international privacy advocates and experts.

THE AFRICAN CONTEXTS



Somaliland election saw Iris ID technology deployed

🕒 Jan 4, 2018 | [Chris Burt](#)

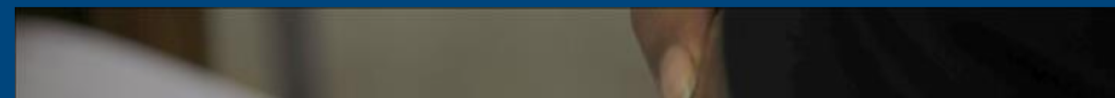
CATEGORIES [Biometrics News](#) | [Elections](#) | [Iris / Eye Recognition](#)

Somaliland's presidential election in November was the world's first national election to use iris recognition to register and identify voters.

Biometric voter registration kicks off in Tanzania

Registration starts today at Njombe region and we are going to carry the activity for seven days before moving to another region

23.02.2015



Smartmatic wins Uganda biometric voter registration kit contract with \$22.4M bid

Ghana Electoral Commission proposes facial biometrics as part of voter register changes

🕒 Dec 19, 2019 | [Chris Burt](#)

CATEGORIES [Biometrics News](#) | [Elections](#) | [Facial Recognition](#) | [ID for All](#)



Thika Town Today - 3T @ThikaTowntoday · Sep 10, 2016
SMS your ID number followed by your names to 30553 to be a **Jubilee** Party member.

This SMS is FREE

#TukoPamoja



Alleged sale of Ghanaian voters data: Data Protection Commission demands information from Electoral Commission



By www.abcnewsgh.com July 4, 2019



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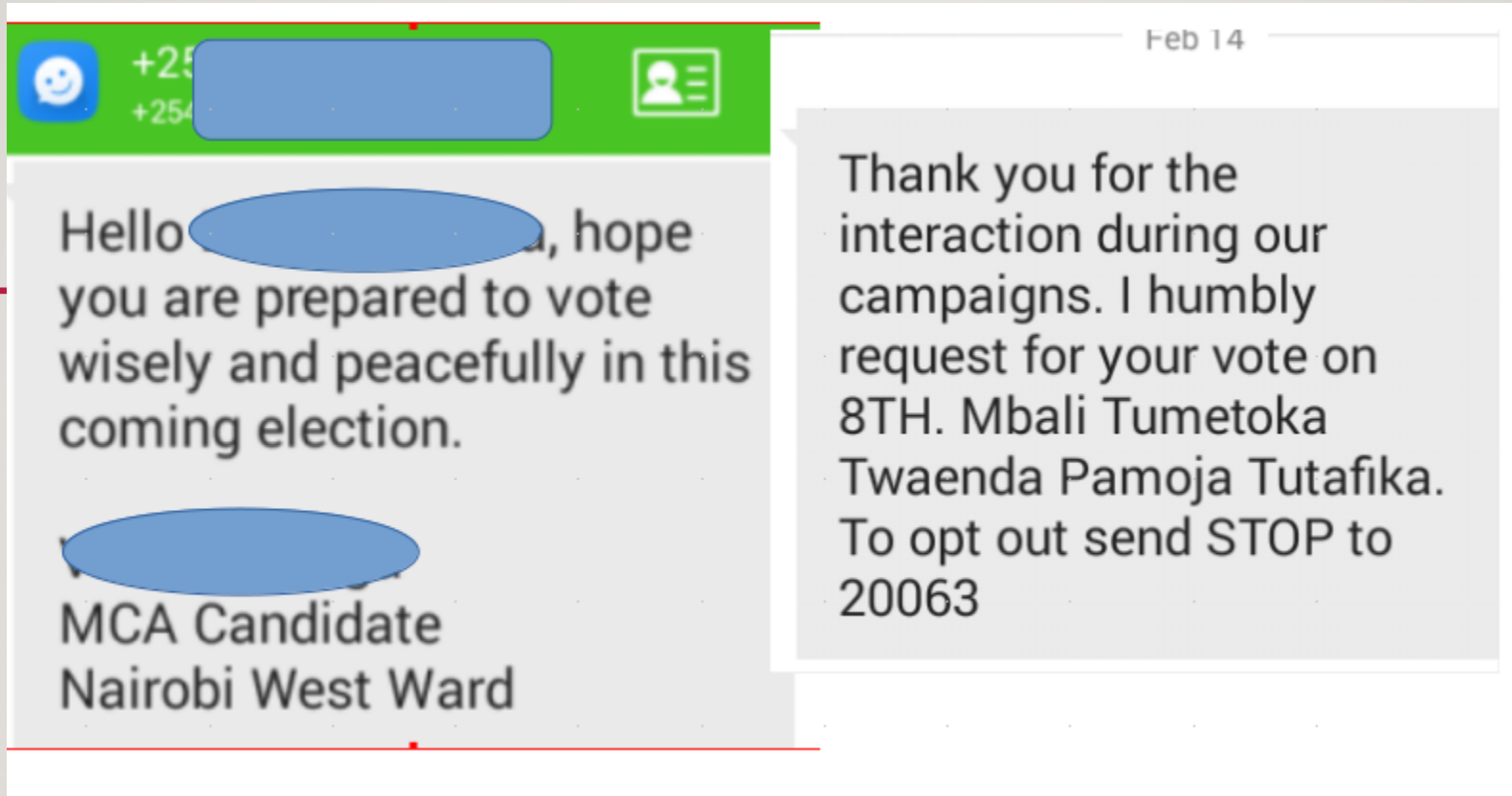
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Jubilee Party launch a smart card to prevent fraud in registration

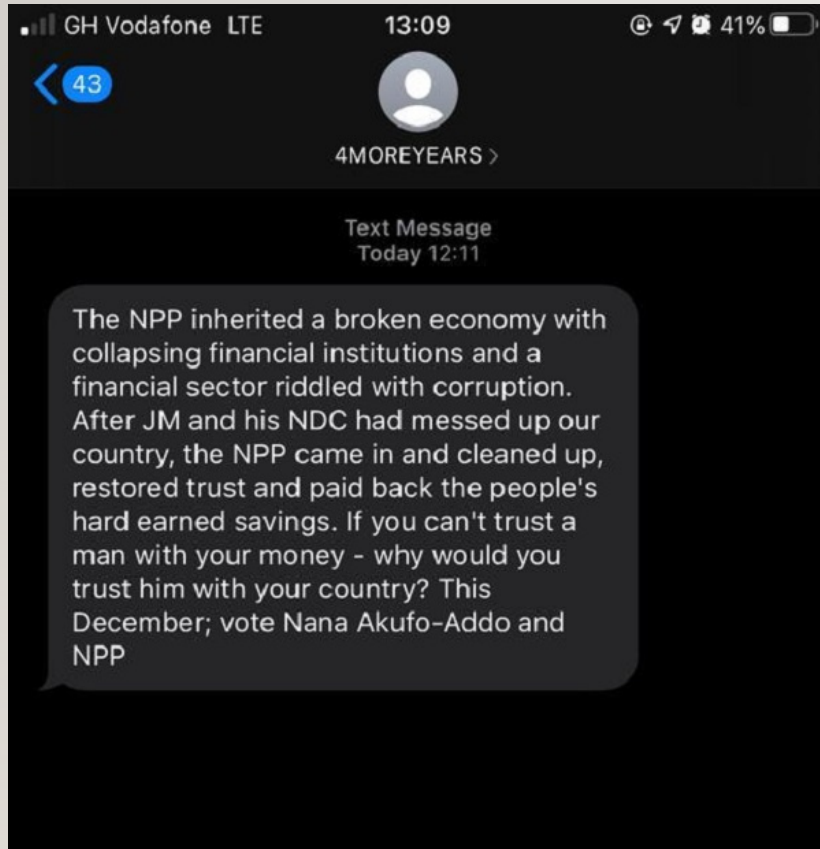
Jan 14, 2017 — President Uhuru Kenyatta (right) deputy President William Ruto (centre) and Jubilee party secretariat Raphael Tuju during the launch of Jubilee ...



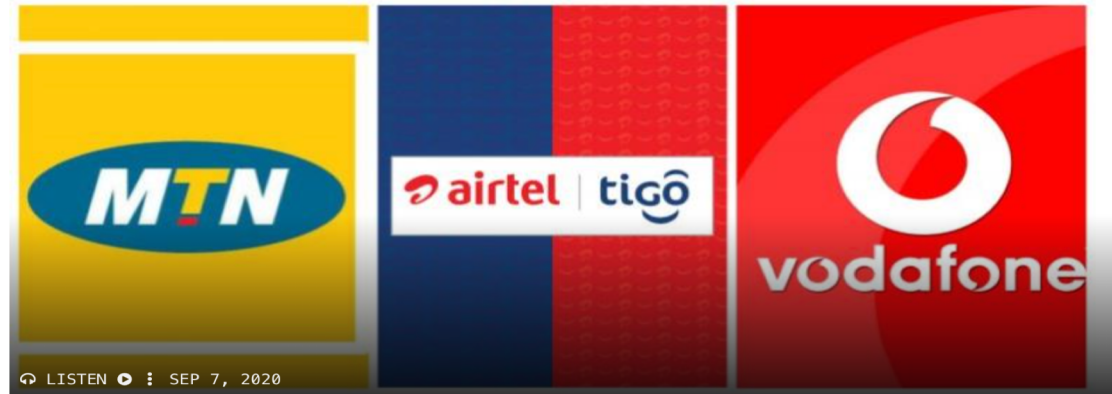
Hello [redacted], hope you are prepared to vote wisely and peacefully in this coming election.

MCA Candidate
Nairobi West Ward

Thank you for the interaction during our campaigns. I humbly request for your vote on 8TH. Mbali Tumetoka Twaenda Pamoja Tutafika. To opt out send STOP to 20063



We've Not Sent Out Messages On Behalf Of Any Political Party – Telcos



Telecommunication companies in Ghana say they are not responsible for Unsolicited Electronic Communications (UEC) received by their clients.

NEWS

Nigeria to launch probe into 2007, 2015 elections over SCL-Cambridge Analytica

Cambridge Analytica affiliate SCL Elections is to be investigated for improper involvement in elections and personal data-hacking of Nigerian President Muhammadu Buhari. Charges may follow, a government spokesman said.

[@MTNGhana](#) I just got an SMS from the NPP's 4MoreYears campaign team that I did not sign up for. How is it possible you are giving out your users numbers without any permission? Pls no political campaign msgs to my phone.

6:25 AM · Aug 30, 2020 · Twitter for iPad

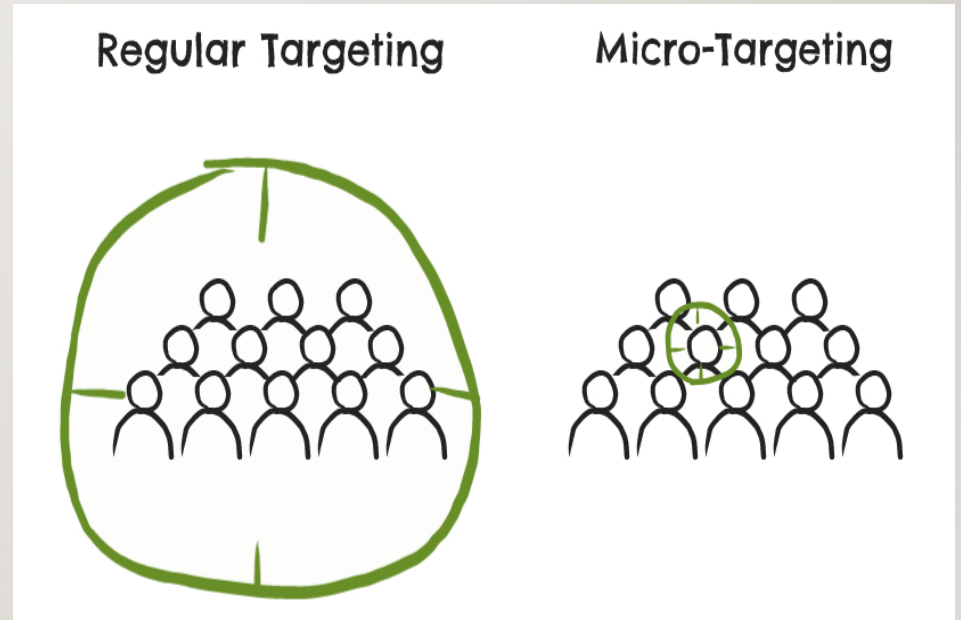
This is a warning to [@MTNGhana](#) please respect your clients privacy ok. Who gave you guys the right to share my contact with any political party to be sending me message to vote for them come December 7. [#NPP](#) do u know you just violated one right now. Is it cos u are in power?

[@MTNGhana](#) [@AskMTNGhana](#) I've received a nuisance sms from the NPP on my MTN line. How do I stop receiving these texts from them. I'm not voting again and can't continue receiving these texts

1:16 PM · Aug 30, 2020 · Twitter for iPhone

INSIGHTS

- Microtargeting not as prevalent but mass messaging must engage us equally
- Not unregulated – A number of African countries have some form of relevant law
- But how regulated if laws are mainly modelled on the GDPR provision on the processing of special/sensitive personal information (here, political opinions)



Reflections on Enforcement gaps

De jure regulation = de facto enforcement?

- Cultural dispositions towards person to person political canvassing
- Institutional bottlenecks
 - Nascent data protection structures
 - Political pressures
 - Who appoints Commissioner / Ombudsman?
 - Who appoints Commission or Authority's board members?
 - How autonomous have similar ombudsman offices been in the past?
 - How do you navigate a very polarized political environment?

CONCLUSION

The increasing embrace of digital technology in African elections is increasingly going to influence the place and role of data protection authorities on the continent.

- Data protection must be seen as an increasingly key dimension of elections
- Considering the fact that most African countries have very polarized politics, the centrality of personal data in elections could further deepen and complicate the work of the data protection commission.

THANK YOU