



Annex 1

OVERVIEW OF THE NIGERIA DATA PROTECTION ACT, 2023 AND IMPLEMENTATION BY THE NIGERIA DATA PROTECTION COMMISSION

1) Background

Nigeria Data Protection Commission was established as an independent data protection authority for Nigeria established the under the Nigeria Data Protection Act 2023. Prior to this time, Nigeria had signed the ECOWAS Supplementary Act on Personal Data Protection, 2010. The Data Protection framework in Nigeria rests on section 37 of the Constitution of the Federal Republic of Nigeria 1999. This section provides as follows: *"The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected."* The relation between this provision and data protection have been affirmed within the Nigerian human rights jurisprudence.

It is remarkable to note that the regulatory work of data protection started from a unit of E-Government and Regulation Department of National Information Technology Development Agency (NITDA). Hitherto, there were growing concerns on independence of data protection regulation and there was an urgent need to build global trust in Nigeria's Digital Identity for Development project (National Identification Number enrolment), thus, the Nigeria Data Protection Bureau (the Bureau) was created out of NITDA in 2022.

2) The Foundational Mandate

The primary mandate of the Bureau involves: (1) Implementation of Nigeria Data Protection Regulation (**NDPR** which was a developmental Regulation under **National Digital Economic Policy and Development**) and (2) the enactment of a data protection law. These are essential in trust-building as well as in data-driven trade and development. The Bureau developed a Roadmap with the following Pillars:

- a) Governance
- b) Ecosystem and Technology
- c) Capacity Development

- d) Cooperation and Collaboration
- e) Funding and Sustainability

3.1 Objectives: Section 1

The objectives of the NDP Act are to, inter alia:

- a) Safeguard the fundamental rights and freedoms, and the interests of data subjects, as guaranteed under the Constitution of the Federal Republic of Nigeria, 1999;
- b) Promote data processing practices that safeguard the security of personal data and privacy of data subjects;
- c) Establish an impartial, independent, and effective regulator Commission to superintend over data protection and privacy issues, and supervise data controllers and data processors; and
- d) Strengthen the legal foundations of the national digital economy and guarantee the participation of Nigeria in the regional and global economies through the beneficial and trusted use of personal data.

3.2 Functions - Section 5

It is the responsibility of the Commission to, among others:

- a) Regulate the deployment of technological and organisational measures to enhance personal data protection;
- b) Where necessary, accredit, license, and register suitable persons to provide data protection compliance services;
- c) register data controllers and data processors of major importance;
- d) promote awareness on the obligation of data controllers and data processors under the Act;
- e) Collaborate with any relevant ministry, department, agency, body,
- f) Participate in international fora and engage with national and regional authorities responsible for data protection with a view to developing efficient strategies for the regulation of cross-border transfers of personal data;

3.3 Powers of the Commission – Section 6

The Commission is vested with the power to, inter alia:

- a) Issue regulations, rules, directives and guidance under this Act;

- b) Prescribe the manner and frequency of filing, and content of compliance returns by data controllers and data processors of major importance to the Commission;
- c) Call for information from a person, or inspect any documents with respect to anything done under this Act;
- d) Conduct investigations into any violation of a requirement under the Act or subsidiary legislation made under this Act by a data controller or a data processor; impose penalties in respect of any violation of the provisions of this Act or subsidiary legislation made under this Act;

3.4 The Commission's Governing Council - Section 8

The NDP Act made provision for a Governing Council which shall provide overall policy for the operation of the Commission. This provision has not been activated by the Federal Government. The Council when constituted is expected to have.

- a. a retired Judge as the Chair,
- b. the National Commissioner as the Secretary,
- c. a representative each from
 - i. the Federal Ministry of Justice,
 - ii. the Federal Ministry for and digital economy,
 - iii. the Central Bank of Nigeria,
 - iv. law enforcement, and
 - v. the private sector.

The Council is mandated under the Act to among others:

- a) formulate and provide overall policy direction of the affairs of the Commission;
- b) approve strategic plans, action plans and budget support programmes submitted by the National Commissioner;
- c) approve annual reports and financial reports submitted by the National Commissioner;
- d) approve the terms and conditions of service of the employees of the Commission, including remuneration, allowances and pension benefits in accordance with the Pension Reform Act;

3.5 Major Technical and Jurisdictional Parameters of NDPC's Regulatory Oversight

The major technical and jurisdictional parameters of NDPC regulatory oversight cover the following:

- a) Principles of Data Protection (Section 24):** These ensure, among others that personal data is processed lawfully, fairly and transparently; processing is safe, minimal, accurate and limited to the legitimate purpose consented to or anticipated by the data subject; data controller and processor are accountable and they owe data subject a duty of care.
- b) Lawful Bases of Processing (Section 25):** The Act recognises only 6 lawful bases upon which data may be processed. These are: consent of the data subject, contract with the data subject, legal obligation, vital interest, public interest and the legitimate interest of a data controller or of a third party to who data is disclosed. For an interest to be legitimate, it must not override the rights of the data subject, it must be reasonably expected by the data subject and it must be compatible with other lawful bases. It need not be compatible with the consent of the data subject.
- c) Data Privacy Impact Assessment (DPIA): (Section 28).** Where a data processing may result in a high risk to the privacy of a data subject, due to its nature, scope and context, the data controller or processor is expected to carry out a DPIA. The DPIA will identify the risks and put forward appropriate technical and organisational measures for the mitigation of the risk.
- d) Data Subjects Rights (Sections 34-38):** Data subjects' rights are the statutory liberties, expectations and interest that a data subject may have based on the data processing activities of a data controller or a data processing. The rights include the following:
 - i. Right to be informed;
 - ii. Right of access;
 - iii. Right to rectification,
 - iv. Right to erasure
 - v. Right to object to processing,
 - vi. Right to restrict processing,
 - vii. Right not to be subject to a decision solely based on automated processing.
 - viii. Right to data portabilityThese rights must be stated in a privacy policy among other information that are necessary for a data subject in order to make informed decisions about their personal data.
- e) Cross Border Data Transfer (Section 41-43).** Regulation of cross border data transfer are important for 3 major reasons, namely:

- a) To protect the rights of the data subject even when her data is being processed outside Nigeria's jurisdiction;
- b) To ensure that Government is able to provide essential service through data.
- c) To safeguard national heritage and values.

In order to achieve the foregoing, the Commission may determine that data protection in a jurisdiction is adequate. This means essentially that the legal system, including, data protection law, data protection authority, enforcement of human rights, rule of law are similar to what are obtainable in Nigeria. Where the country is not adequate, the Commission may approve Cross Border Data Transfer Instrument for the data controller. These include:

- a. Standard Contractual Clauses
- b. Binding Corporate Rules
- c. Codes of Conduct, and
- d. Certification Mechanisms.

f) Remediation of Contraventions – Part 10 of the NDP Act

Whenever the Commission is satisfied that a violation of the Act has taken place, it may make enforcement orders against the defaulting party. The order may involve:

- i. Requiring the data controller or data processor to remedy the violation;
- ii. Ordering the data controller or data processor to pay compensation to a data subject, who has suffered injury, loss, or harm as a result of a violation;
- iii. Ordering the data controller or data processor to account for the profits realized from the violation; or
- iv. Ordering the data controller or data processor to pay a penalty or remedial fee

The penalty may be as high as 2% of the defaulter's gross revenue in the preceding year.

4. The NDPC's Core Achievements

Within just two years of its establishment, the NDPC has achieved significant milestones, underscoring its rapid impact and commitment to data protection:

- a. Enactment of the NDP Act, 2023, a foundational legislative achievement.
- b. Joining the Network of African Data Protection Authorities ("**NADPA-RAPDP**").
- c. Becoming a member of the Global Privacy Assembly.

- d. Pioneering Data Protection as a service through a Public-Private Partnership ("**PPP**") approach, licensing over 267 Data Protection Compliance Organizations (DPCOs) to offer compliance services across Nigeria.
- e. Overseeing the filing of over 4,000 Data Protection Compliance Audit Returns.
- f. Issuance of the Nigeria Data Protection Act - General Application and Implementation Directive ("**NDP Act - GAID**"), covering crucial areas such as data subject rights, cross-border data flows, data privacy impact assessments, data ethics, and artificial intelligence.
- g. Registering over 33,000 Data Controllers and Data Processors of Major Importance and automating the registration process for efficiency.
- h. Developing and issuing the National Data Protection Strategic Roadmap and Action Plan (NDP SRAP) 2023 - 2027.
- i. Conducting over 149 training programs and organizing extensive publicity initiatives across radio, television, print, and online platforms.
- j. Chairing the Privacy Harmonization Group of the Network of African Data Protection Authorities.
- k. Successfully hosting the 8th NADPA-RAPDP Conference and Annual General Meeting ("**AGM**") in May 2025.

5. Conclusion

In summary, the NDP Act meticulously outlines the technical and organisational requirements for organisations (both businesses and government entities) that process personal information (also known as "**personal data**") within Nigeria. It also defines the rights individuals have concerning how their personal information is used and shared. While organisations initiate data processing value chains, the NDP Act ensures that such processing respects the privacy and the dignity of the human person.