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Promoting a Culture of Data Privacy in Nigeria

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DEUTSCHE ZUSAMMENARBEIT

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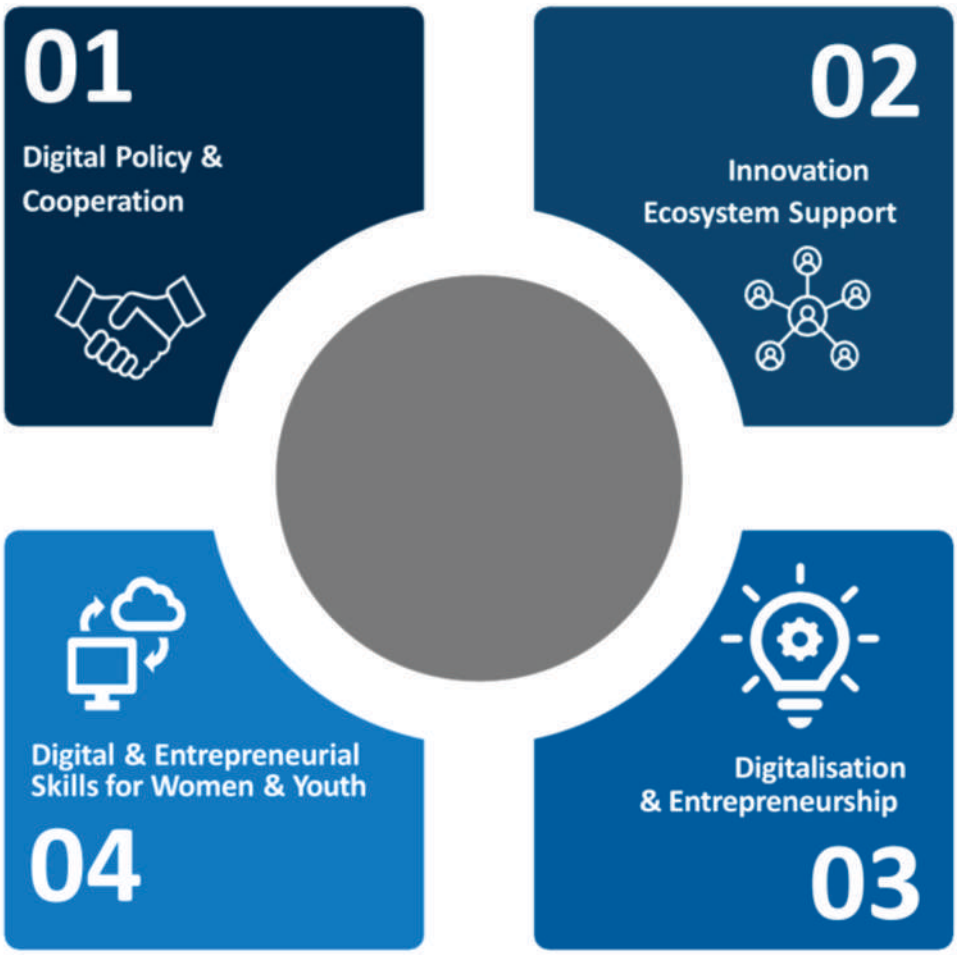
NITDA National Information Technology Development Agency
DIGITAL TRANSFORMATION CENTER NIGERIA
NDPC NIGERIA DATA PROTECTION COMMISSION

ABOUT US

The **Digital Transformation Center Nigeria (DTC Nigeria)** is jointly funded by the European Union (EU) and the German Federal Ministry for Economic Cooperation and Development (BMZ) and implemented by *Deutsche Gesellschaft fuer Internationale Zusammenarbeit (GIZ) GmbH*. The project focuses primarily on digitalisation, innovation, and entrepreneurship. It aims to improve the Nigerian Digital Innovation Ecosystem and the capacity of the economy to adopt digital innovations for growth, through the transformation of the economy and the society.

The project follows a holistic approach to digitalising the economy. It works with all stakeholders in the digital innovation ecosystem such as: National Information and Technology Development Agency (NITDA), research and academic institutions, innovation hubs, networks, start-ups, Micro Small and Medium Enterprises (MSMEs), women and youth to promote the supply of and demand for digital innovation. Innovation centers, public and private service providers and consultants are empowered to support MSMEs to adopt digital tools and processes. The project supports the government in executing its policies and strategies to advance the Nigerian digital ecosystem. In doing so, it promotes the long-term provision of digital services for MSMEs, while also contributing to the country's economic expansion.

The thematic areas covered by the project are depicted in the figure below:



EXECUTIVE SUMMARY

With the increasing digitisation of services and the global emphasis on privacy, the Nigeria Data Protection Act (NDPA) sets forth principles, rights, and obligations aimed at safeguarding personal data. While there are digital policies in place to support the digital economy, the NDPA guides organisations and businesses on how to align their operations by safeguarding personal data ensuring compliance and enhancing trust with clients.

This policy brief crafted through a participatory and inclusive approach, summarises key findings and recommendations emerging from the participatory breakout sessions at the 'Policy Dialogue on the Nigeria Data Protection Act.' held on 1st of February 2024 at Abuja. This process included engaging a diverse range of stakeholders, ensuring a comprehensive perspective and actionable recommendations for the successful implementation of the NDPA.

(L-R) The National Commissioner NDPC, Dr. Vincent Olatunji and SEDEC Coordinator GIZ Nigeria, Mr. Markus Wauschkuhn

INTRODUCTION

Nigeria's journey towards establishing a comprehensive data protection framework has been marked by significant milestones. The Nigeria Data Protection Regulation (NDPR), introduced in January 2019, and the establishment of the Nigeria Data Protection Bureau (NDPB) in February 2022, represent pivotal strides towards safeguarding personal data within the nation. These developments underscore the growing recognition of data protection's criticality amidst the evolving privacy landscapes and the clamour for more rigorous and enforceable legislation by stakeholders.

On June 12, 2023, President Bola Ahmed Tinubu enacted the Data Protection Act, 2023[1], thereby inaugurating a new era in the protection of personal data in Nigeria. The Act is designed to protect fundamental human rights and freedoms, particularly concerning the privacy and interests of data subjects, as enshrined in the 1999 Constitution of Nigeria. It marks the transition from the Nigeria Data Protection Bureau (NDPB), established under the tenure of former President Muhammadu Buhari, to the newly constituted Nigeria Data Protection Commission (NDPC), also known as the ***"Commission."***

Participant making a contribution during the policy dialogue

Cross-section of participants at the policy dialogue

The Act is structured into twelve parts, from Part I to Part XII. The initial Parts (I to IV) speaks on the Commission's formation and organisational framework. Subsequently, Parts V to VIII focus on Data Protection Principles and the requisite implementation modalities. Part IX addresses the Registration of Data Controllers and Data Processors, highlighting the Act's emphasis on accountability and oversight. Enforcement mechanisms and Legal Proceedings are covered in Parts X and XI, demonstrating the Act's commitment to compliance and rectitude. Part XII encapsulates various miscellaneous provisions, rounding off the Act's scope and applicability.

This policy brief examines the Act's key focus areas as well as recommendations on how to foster the implementation of the Act.

[1] *(Policy and Legal Advocacy Centre), 2023,Nigeria Data Protection Act (NDPA)*
https://placng.org/i/wp-content/uploads/2023/06/Nigeria-Data-Protection-Act-2023 .pdf

NIGERIA DATA PROTECTION ACT 2023 (NDPA)

The Nigeria Data Protection Act (NDPA) represents a significant legislative milestone in the protection of personal data within Nigeria. Enacted to align with global data protection standards, the NDPA seeks to ensure that the handling of personal data by entities within the country is conducted in a secure, lawful, and transparent manner. The Act embodies Nigeria's commitment to safeguarding individuals' privacy rights while fostering trust and innovation in the digital economy.

A· OBJECTIVES OF THE NDPA

The primary objective of the NDPA is to protect individuals' privacy rights and to establish clear rules for the processing of personal data. It aims to:

- Protect the rights of data subjects by ensuring that personal data is processed in a fair, lawful and accountable manner.
- Promote data processing practices in Nigeria that guarantee the security of personal data and ensure the privacy of data subjects.
- Provide the legal framework for regulating and safeguarding personal data, and the means of recourse and remedies where the rights of data subjects have been breached.
- Ensure that data controllers and data processors fulfil their obligations to data subjects.
- Safeguard data subjects' fundamental and constitutional rights, freedom, and interests, and establish an impartial, independent and effective regulatory body to supervise data controllers and data processors and superintend over data protection and privacy issues; and
- Strengthen the legal foundations of the national digital economy and guarantee the participation of Nigeria in the regional and global economies through beneficial and trusted use of personal data.

B· KEY PROVISIONS

The NDPA includes several critical provisions that outline the responsibilities of data controllers and processors, the rights of data subjects, and the mechanisms for enforcement and compliance. These provisions include:

- Data Protection Principles: The Act introduces principles that must be adhered to when processing personal data, such as lawfulness, fairness, transparency, accuracy, purpose limitation, data minimisation, accountability, duty of care, and confidentiality[2].
- Rights of Data Subjects: Individuals have rights under the NDPA, including the right to access their data, the right to rectification, the right to erasure, and the right to restrict processing, right to portability, right to object, right to be informed, right to lodge a complaint and right not to be subject to automated decision-making[3].
- Obligations of Data Controllers and Processors: Entities that control or process data are required to implement measures to ensure compliance with the Act, including appointing a Data Protection Officer (DPO) where necessary, maintaining a record of processing activities, and ensuring data security[4].

[2] *Nigeria Data Protection Act (NDPA), 2023, Section 24*
[3] *Nigeria Data Protection Act (NDPA), 2023, Section 34-38*
[4] *NDPA Nigeria Data Protection Act (NDPA), 2023, Section 29*

- Cross-border Data Transfer: The NDPA sets out requirements or mechanism for the transfer of personal data outside of Nigeria, ensuring that such transfers are only made subject to its Adequacy Protection rule which includes Binding Corporate Rules (BCRs), Contractual Clauses, Code of Conduct, and Certification Mechanism and in the absence of the adequacy rule such transfer can happen under the provided derogations[5].
- Enforcement and Penalties: The Act establishes the Nigeria Data Protection Commission (NDPC) as the regulatory authority responsible for enforcing the law, with powers to impose sanctions, fines and administrative fees, investigate entities that violate provisions of the Act[6].
- Children's Right: The Act specifies that for data subjects who are children or individuals lacking the legal capacity to consent, Data Controllers are obligated to obtain consent from the parent or legal guardian, as appropriate. Additionally, the Act compels Data Controllers to implement suitable methods for verifying the age of the data subject and obtaining consent when necessary[7].

Participant making a contribution during the policy dialogue

Mr. Babatunde Bamigboye, Head of Legal, Enforcement, and Regulation NDPC, presenting the Act to participants

C· IMPACT AND IMPLEMENTATION

The NDPA has a broad scope[8], affecting a wide range of entities, including public and private sector organisations that process personal data within Nigeria. Essentially the NDPA applies to companies or entities incorporated and established under Nigerian law to carry on business in Nigeria, and those which, though not incorporated under Nigerian law or established in the country, have operations that extensively utilise the personal data of Nigerian residents and citizens in their day-to-day business. In addition, the Act provides the boundaries of applicability by exempting activities carried out solely for personal or household purposes and various activities carried out by competent authorities. The Act also empowers the Commission to create further exemptions by regulation.

The NDPA necessitates significant changes in how organisations collect, use, and manage personal data, requiring them to implement comprehensive data protection and privacy measures.

[5] *Nigeria Data Protection Act (NDPA), 2023, Section 41-43*
[6] *Nigeria Data Protection Act (NDPA), 2023, Section 46-53*
[7] *Nigeria Data Protection Act (NDPA), 2023, Section 31*
[8] *Nigeria Data Protection Act (NDPA), 2023, Section 2*

Organisations are encouraged to conduct data protection impact assessments, regularly review their data protection policies, and ensure that staff are trained on data protection best practices. Compliance with the NDPA not only mitigates the risk of legal penalties but also enhances trust with customers and stakeholders, contributing to a safer and more reliable digital environment.

In alignment with the goal of creating an inclusive and participatory framework for implementation, the policy dialogue on the NDPA served as a critical platform for stakeholders and policy actors to gain a comprehensive understanding of the Act, offering them the opportunity to contribute to the development of its implementation framework.

Participant facilitating a breakout session

PROBLEM STATEMENT AND APPROACH

The implementation of the Nigeria Data Protection Act (NDPA) poses significant challenges for various stakeholders, including businesses, government entities, and individuals. These challenges stem from a lack of awareness and understanding of the Act's provisions, difficulties in operationalising the principles governing data processing, and the complexities associated with compliance, especially concerning data security and cross-border data transfer. Additionally, the enforcement mechanisms and the legal proceedings outlined in the NDPA require clarity and effective communication to ensure widespread compliance and to empower data subjects with their rights.

To address these challenges, the policy dialogue on the Nigeria Data Protection Act provided practical, actionable insights for its implementation. The primary objective of this dialogue was to deepen the understanding of the NDPA's goals among stakeholders and to facilitate its effective application. Below is an overview of the strategies and approaches developed to enable actionable steps for the implementation of the NDPA:

A· PRINCIPLES GOVERNING PROCESSING OF PERSONAL DATA:

To implement the principles effectively, organisations are encouraged to develop and integrate comprehensive data protection policies that adhere to NDPA guidelines. This includes establishing clear procedures for data collection, processing, and storage that ensure transparency, accountability, and data subject consent. Regular training for employees on these principles is also essential to foster a culture of data protection within the organisation.

B· YOUR DATA, YOUR POWER: RIGHTS OF A DATA SUBJECT:

Empowering data subjects requires organisations to set up accessible and user-friendly mechanisms for individuals to exercise their rights, including requests for data access, correction, and deletion. Awareness campaigns aimed at educating the public about their rights under the NDPA will enhance individuals' understanding and ability to control their personal data.

C· DATA SECURITY AND CROSS-BORDER TRANSFER OF PERSONAL DATA:

For data security and safe cross-border data transfer, organisations need to implement robust security measures, including encryption and secure data transfer protocols. Compliance with international data protection agreements and ensuring that overseas partners meet NDPA standards is crucial. Organisations should conduct regular data protection impact assessments for cross-border data activities. Organisations should conduct regular data protection impact assessments for cross-border data activities.

D· UNDERSTANDING REGULATIONS AND FEES:

Organisations must stay informed about the NDPA's regulatory requirements and any associated fees. This involves regularly consulting NDPA resources, expert advisories, and participating in data protection forums and workshops. Establishing a compliance team within the organisation can help navigate these regulations and ensure that all data processing activities are registered and up to date.

E· ENFORCEMENT AND LEGAL PROCEEDINGS:

To prepare for enforcement and legal proceedings, organisations should conduct regular compliance audits and risk assessments to identify and mitigate potential violations of the NDPA. Developing an incident response plan for data breaches and establishing clear channels of communication with the Nigeria Data Protection Commission (NDPC) will ensure prompt reporting and resolution of issues. Legal counsel specialising in data protection law can provide guidance on legal proceedings and enforcement actions.

Participant at the Policy Dialogue

RECOMMENDATION / ADOPTION STRATEGY

To ensure an effective implementation of the NDPA the following are the recommended adoption strategy.

1· IMPLEMENT ROBUST DATA SECURITY FRAMEWORKS

- Adopt cutting-edge encryption methods and stringent access control measures tailored to the organisation's specific data handling needs. Regularly update and reinforce IT policies to combat emerging cyber threats effectively.
- Conduct vulnerability assessments bi-annually to adapt security measures to new threats.
- Train employees on the latest cybersecurity practices and the importance of secure data handling.

2· TAILOR COMPREHENSIVE DATA PROTECTION TRAINING

- Design a dynamic NDPA-centric training program that caters to the varying roles within the organisation, incorporating interactive simulations to mimic real-life data protection scenarios.
- Schedule annual training refreshers and updates to ensure ongoing compliance with NDPA regulations.
- Evaluate training effectiveness through post-training assessments to identify areas for improvement.

3· STRENGTHEN THE ROLE OF DATA PROTECTION OFFICERS

- Clearly define DPO responsibilities, ensuring they have the autonomy to influence data protection policies and practices effectively. Provide ongoing training and resources to keep DPOs abreast of developments in data protection legislation and best practices.
- Include DPOs in strategic planning sessions to ensure data protection is integrated into all business processes.

4· STANDARDISE REGULAR COMPLIANCE AUDITS

- Establish a systematic approach to conducting comprehensive internal and third-party compliance audits, focusing on identifying gaps in NDPA adherence.
- Develop a corrective action plan based on audit outcomes, with clear timelines and accountability for addressing compliance gaps.
- Share audit findings with relevant stakeholders to promote transparency and collective responsibility for data protection.

5· CULTIVATE A DATA-SECURITY CONSCIOUS CULTURE

- Develop clear, accessible IT and data usage policies that articulate the organisation's commitment to data protection and the individual's role in maintaining it.
- Foster a culture of data security awareness through regular communications, highlighting the importance of protecting personal data.
- Encourage feedback and suggestions from employees on improving data protection practices.

6· PROMOTE AWARENESS OF DATA SUBJECT RIGHTS

- Launch educational initiatives to inform data subjects of their rights under the NDPA, using straightforward language and diverse formats to ensure widespread understanding.
- Implement user-friendly mechanisms for data subjects to exercise their rights, such as easy-to-navigate online portals and responsive help desks.
- Regularly review and update awareness materials to reflect any changes in data protection laws or organisational policies.

7· SECURE CROSS-BORDER DATA TRANSFERS

- Establish compliance checks for international data transfers, ensuring they meet NDPA standards and international data protection laws.
- Regularly assess the data protection regimes of partner countries and adjust data transfer practices as necessary.
- Incorporate data protection considerations into international agreements and partnerships from the outset.

8· ALIGN WITH REGULATORY REQUIREMENTS

- Stay informed about NDPA regulatory updates, integrating new requirements into organisational practices promptly.
- Allocate resources effectively to cover compliance-related expenses, including training, certifications, and technology investments.
- Engage proactively with NDPA regulators to gain insights into compliance expectations and best practices.

9· DEVELOP A PROACTIVE LEGAL AND COMPLIANCE FRAMEWORK

- Prepare for potential legal challenges by establishing a comprehensive legal readiness plan, including detailed documentation of data protection practices and compliance efforts.
- Form a specialised legal response team to address data breaches and regulatory inquiries swiftly.
- Maintain detailed records of data processing activities, consent documentation, and compliance measures as evidence of NDPA adherence.

Implementing these actions will enable organisations to navigate data protection challenges effectively, ensuring compliance, enhancing trust, and fostering a secure data environment.

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