

# PERSONAL DATA PROTECTION IN NIGERIA

In Nigeria, privacy is a fundamental human right guaranteed by the Constitution. However, comprehensive data protection legislation has yet to be enacted, even as several government and private organisations routinely collect and process personal data. Instead, the existing regulatory frameworks that apply to personal data protection are from the broadly phrased Section 37 of the Constitution, which provides that: “The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected”, as well as a hodgepodge of other industry (or situational specific) frameworks<sup>1</sup>.

However, these frameworks fall short of providing Nigerians with an adequate level of personal data protection. Existing frameworks do not clearly define the level of protection afforded to the personal data collected, nor do they clearly state the obligations relating to how personal data should be handled. The survey conducted as part of this study reflects this problem — 97% of survey respondents indicated that their major concern is the security of their personal data<sup>2</sup>.

- <sup>1</sup> These include the National Health Act applicable to health records, the Nigerian Communications Commission (Registration of Telephone Subscribers) Regulations applicable to the communications sector and the Bank Verification Number (BVN) policy applicable within the financial services sector.
- <sup>2</sup> An online survey was created for individuals interested in and/or concerned about the topic, to answer a series of important questions, either multiple choice or short-answer. A total of 106 respondents participated in this online survey from 30 August to 13 September 2017.



### How well is personal data protected in Nigeria?

The Web Foundation and Paradigm Initiative commissioned a review of the data collection practices in Nigeria, as well as the policies and regulations in place to govern the collection, protection and use of this data. The findings<sup>1</sup> show that there are five primary concerns around the collection and use of personal data — both online and offline — in Nigeria:

- The use of personal data may be incompatible with the purpose for which it was collected;
- Individuals have no rights in relation to the collection, use, and storage of their personal information;
- Nigerians are not offered adequate opportunities to consent to or opt out of data collection;
- There is limited-to-no transparency around the processing of personal data, and there is limited information available around how this personal data is used and stored, leading to greater risk of a personal data breach;
- Children are exposed to privacy risks online and often lack the legal capacity to give valid consent, and may unknowingly disclose personal information to online platforms due to the appealing nature of their visual content.

<sup>1</sup> [bit.ly/nigeriadataprotection](https://bit.ly/nigeriadataprotection)

### Policy Recommendations

Given these findings, we recommend the National Assembly insert the following elements in a data protection framework or bill:

1. Use of personal data must be in accordance with the purpose for which it was collected (purpose specification);
2. Consent of the individual must be obtained prior to collecting his/her personal data;
3. Rights of the individual to seek legal remedies for misuse and/or unauthorised access to his/her personal data must be guaranteed.

These three areas can be addressed through a variety of measures and channels:

#### Legislative measures by the National Assembly

Enact a Data Protection Act: Enact into law a Data Protection Act that contains data protection principles consistent with those contained in the African Union Convention on Cyber Security and Personal Data Protection and/or the EU's General Data Protection Regulation (GDPR).

Amend the National Identity Management Commission (NIMC) Act: Amend the NIMC Act to incorporate robust data protection principles and expand the powers of NIMC to function as a data protection authority to ensure that public and private institutions in Nigeria comply with the data protection principles when processing personal data.

Enact a Child Online Privacy Protection Act: Enact an Act that includes basic standards of practice by online platforms in the online collection and use of information from children.

#### Non-legislative (soft law) measures

Undertake administrative rulemaking by the NIMC: NIMC would exercise its Section 31 (b) power under the NIMC Act, which authorises it to make regulations for the collection and processing of personal data.

#### Judicial measures

Encourage superior courts of records in Nigeria to engage in judicial activism: Nigerian courts would engage in judicial activism by interpreting Section 37 of the Constitution, which guarantees a Nigerian citizen's right to privacy to include the protection of his personal information.

### Enforcement measures

Engage the National Human Rights Commission (NHRC) to enforce data protection cases: The NHRC should enforce cases of personal data protection breaches by exercising its Section 5 (a) and (b) functions, which respectively authorise it to deal with human rights matters and their breaches, under the NHRC Act. The basis for this recommendation is that data protection is a substantive legal issue grounded in the right to privacy, as guaranteed by the Constitution.

Engage the Consumer Protection Council (CPC) to provide redress: Exercise its Section 2 (i) function under the CPC Act to provide redress to obnoxious practices or the unscrupulous exploitation of consumers. This study argues that the "obnoxious practices" or "unscrupulous exploitation" of consumers contemplated by Section 2 (i) also includes matters of data protection.

Ensure that the NIMC and sector-specific regulators (including the CPC and NCC) with consumer protection authority take action: Mandate data protection by design and transparency obligations by specifying that Ministries, Departments or Agencies, and regulated organisations (including online platforms) acting as data controllers implement data protection by design in systems, processes and technologies that process personal information.

### Executive measures

Call on the Federal Government of Nigeria (FGN) to harmonise institutional efforts and remits. The FGN should issue a policy instrument directing that all identity databases in the custody of government authorities be harmonised and managed by the NMIC. This should allow Nigerians to register once, in a single database which can be accessed by any relevant government authority.

### Social measures

Encourage civil society organisations (CSOs) to advocate for change: CSOs should lobby for a data protection framework, condemn a breach of privacy, engage in public interest litigation to protect privacy, raise consumer awareness about protecting their personal information and advocate for the use of Privacy Enhancing Technologies (e.g. parental control programmes).



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Paradigm Initiative is a social enterprise that builds an ICT-enabled support system and advocates digital rights in order to improve livelihoods for under-served youth. Our programs include digital inclusion programs — such as the LIFE Training Program (Life Skills. ICT. Financial Readiness. Entrepreneurship), the Techtiary Program, and a digital rights program, 'Magoyi.' Across our offices in Nigeria and beyond, we work to connect under-served youth with improved livelihoods through our digital inclusion and digital rights programs.



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