

NIGERIA DATA PROTECTION REGULATION

Performance Report
2020 - 2021

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Muhammadu Buhari, *GCFR*
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President Buhari made history by redesignating the Ministry of Communications to the Ministry of Communications and Digital Economy. The Digital Economy sector made the largest contribution to the GDP, contributing 17.92% in Q2 2021. Nigeria is undergoing a digital revolution through the sustained support of Mr. President.

FOREWORD

In 2017, as the erstwhile Director General of National Information Technology Development Agency (NITDA), I had the honour of inaugurating a team to review our existing regulatory instruments and to propose fresh ones. None of us knew the far-reaching effect that decision would have on Nigeria’s Digital Economy. Thanks to the dedication and professionalism of the team, an excellent work was done; and of all the regulatory instruments considered, the Nigeria Data Protection Regulation (NDPR) elicited the most interest and debate. The Agency had a vision of creating not just another regulation, but one that would have far-reaching impact on all Nigerians and would become a model for the global Digital Economy.



I am very proud and happy with the great success that the Agency has achieved with the NDPR under the able leadership of Mr. Kashifu Inuwa Abdullahi, CCIE. In the last three years, the NDPR has become the cornerstone regulation of the Digital Economy. Many Nigerians have become aware of their privacy rights, and the courts have made a plethora of decisions based on the Regulation.

This second edition of the NDPR Performance Report is a marked improvement on the first. NITDA is implementing the NDPR in line with the strategic objectives of the National Digital Economy Policy and Strategy (NDEPS). Our objective as government is to issue regulations that catalyse the potentials of Nigerians, not to stifle it. Going by the number of jobs created, the revenue generated for stakeholders and the status of Nigeria in the comity of privacy savvy countries, it can be proudly said that the NDPR has become a national success story.

I encourage you as a stakeholder to study the report and give constructive feedbacks that would further improve data protection in Nigeria. I urge you to continue to work with us to build on the success of the NDPR as we hope to have a brand-new legislation on data protection soon. Nigeria’s aim at being the Digital Economy capital of Africa is right on course as we continue to work together to improve on the modest achievements contained in this report.

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**Prof. Isa Ali Ibrahim
Pantami, FNCS, FBCS, FIIM**

**Hon. Minister, Federal Ministry of
Communications and Digital Economy**

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FROM THE DIRECTOR GENERAL

The Journey Onward and Forward!



□ **Kashifu Inuwa Abdullahi, CCIE**
Director General/CEO, NITDA

When we embarked on the journey of issuing the Nigeria Data Protection Regulation in January 2019, little did we know that we were going on a transformational voyage of immense impact. Our objective was to ensure Nigerians remained competitive in the ever-evolving digital space. NITDA in the last six years has tried to reorganize its business model and strategic mandate to be Citizen Enablement. The concept of citizen enablement entails providing requisite tools, resources and support needed for Nigerians to become what they want to be in the digital industry. The NDPR is the first regulatory instrument to test the validity of our model. Expectedly, it is thriving beyond what was envisaged and the world is paying attention.

The most successful companies in the world today are behemoths of data. They have not only perfected the art of data

collection, but have also perfected the social, psychological and technological uses of such data thereby having immense power to engineer the world for good or otherwise. Europe took the lead in the regulation of personal data. The extra-territorial reach of the General Data Protection Regulation 2016, no doubt catalysed the flurry of new data protection laws and frameworks being issued across the world. America on the other hand, leads the digital innovation space. It needs massive volumes of data to feed its digital industrial complex. The Russians and Chinese have focused on national security as the pivot of their data regulation. The question for us in Nigeria and Africa is, Data Protection to what end?

Nigeria as a country with immense opportunities and challenges has made conscious efforts to develop pragmatic solutions to the cross-cutting issues in the global data industry. We as a nation cannot afford to be a pariah in the comity of progressive nations; we also cannot afford to be a dumping ground for every other nation. Our citizens are global, our diaspora is diverse and productive, hence our policies and strategies must be agile, practical and scalable. This is what we are striving to do with the NDPR.

Since NITDA issued the NDPR Performance report 2019-2020 in October 2020, Nigeria has gained more visibility and respect in the Data protection and digital economy space. Within the year, we were welcome to the Common Thread Network (a Network of Data Protection Authorities of Commonwealth countries). We also got

admitted as a full member of the Network of African Data Protection Authorities (NADPA). Our contribution at the Africa Union's Policy and Regulatory Initiative for Digital Africa (PRIDA) Data Protection Laws' Harmonisation Work Group led to Nigeria being considered for inclusion on the list of countries where a developed framework for data laws harmonisation was tested. We have made our submission, supported with requisite documents.

In the year under review, we conducted strategic trainings that sought to bridge the awareness gap on Data Protection. Our team trained 230 Central Bank of Nigeria staff in batches. We provided corporate trainings to StanbicIBTC, Dangote, Heineken Groups, Digital Transformation Technical Working Group (DTTWG) members from various Federal Ministries, Departments and Agencies. Beyond NITDA's direct training interventions, we have tracked over 1300 trainings conducted by Data Protection Compliance Organisations (DPCO) in the year under review. The implication of this is that the NDPR was the most taught regulatory subject in Nigeria. We provided legal and regulatory opinions in six complex data protection related issues for Nigerian and international entities. I must not forget to mention that we conducted the largest virtual class for secondary school students when we trained thousands of students from across the six geopolitical zones on Data Protection in January 2021. The interest of the students and their understanding as demonstrated by the keenly contested quiz competition that followed tell us that we are headed in the right direction.

My visit to His Excellency the Governor of Lagos State in May 2021 led to the initiation of our NDPR Toolkit for the Health sector project. The Lagos State Government offered to host the project. Our aim is to create a set of toolkits that would

enable the health value chain to easily comply with data protection laws, thereby increasing trust and use of personal data. We are reviewing every personal data touchpoint in the health system in Lagos to get requisite insights and learnings. The Toolkit project upon completion would be the first of its kind in the world. It would not only reduce the cost of compliance, but would also stimulate innovation on privacy laws compliance nationwide.

One of the watershed moments for us at NITDA was the decision of the Court of Appeal in the case of ***Incorporated Trustees of Digital Lawyers Initiative & Ors. V. National Identity Management Commission (NIMC) CA/IB/291/2020***, where the court validated the NDPR and ruled that the regulation remains the National Law on data privacy protection in Nigeria. It posited that the NDPR is an extension of Section 37 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). That pronouncement would go down as one of the most profound judicial interventions in



Nigeria as a country with immense opportunities and challenges has made conscious efforts to develop pragmatic solutions to the cross-cutting issues in the global data industry.

aid of the digital economy.

There is no doubting the fact that there remains a lot of work to be done. One of the issues we identified for resolution is the fact that Nigeria has no standardised Data Protection skill and knowledge certification mechanism. The country is one of the highest consumers of foreign

Data Protection certification in the world (going by our learning from International Association of Privacy Professionals IAPP). We are proud to have created this appetite through the Data Protection Compliance Organisations (DPCO) and our insistence that multinationals must retain a local Data Protection Officer in their Nigerian operation. Millions of dollars are spent annually on foreign certifications in the digital industry. We feel compelled to create a national certification process using international best practices to enable more Nigerians get certified in the data protection field. We have crafted an initiative to license an institution to

be able to support the institution to craft appropriate programs and curricula. They are also adept at delivering value-adding trainings to enable candidates write and pass the examinations. We also count on the highly trained Nigerians at home and in the diaspora to fill this gap and make Nigeria the African hub for data protection knowledge acquisition by 2024.

As part of the feedback received from the 2019-2020 report, we have prepared a draft code of conduct for DPCOs. The goal is to ensure DPCOs continue to maintain the highest ethical standards and retain the confidence of data controllers in the audit process. We shall engage deeply with DPCOs and other stakeholders to consummate this process. We recently drafted a table of data protection breaches and commensurate sanctions to give clarity to the process and aid enforcement. We hope to conclude the draft before the end of June, 2022. Another effort we are making is to develop Data Protection Impact Assessment (DPIA) template as demanded by many stakeholders. We are also actively engaging international partners and regulators to ensure the country remains competitive and compliant with international digital economy and data protection laws.

NITDA appreciates and continues to request the support of all our stakeholders in the data protection ecosystem. The modest successes achieved in such a short time is a product of our mutual vision and commitment to making a difference.



...we conducted the largest virtual class for secondary school students when we trained thousands of students from across the six geopolitical zones on data protection in January 2021.

research, prepare certification curriculum and set examinations for candidates. The institution would register Training Service Providers (TSP) within and outside Nigeria. This scheme is designed to generate over 3,000 new jobs and create an economic sector worth over 35 billion naira in three years. We are convinced of success in this venture because the groundwork for success is established. Our existing DPCOs have gained sufficient practical knowledge through the audit process to

DEFINITION OF TERMS

Data Controller: is a person who either alone, jointly or with other persons, or a statutory body, determines the purposes for and the way personal data is processed or is to be processed.

Data Processor: a natural or legal person, public authority, agency or other body who processes data on behalf of the controller.

Data Subject: means any person who can be identified directly or indirectly by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural, or social identity.

Data Protection Compliance Organisation (DPCO): any entity licensed by NITDA for the purpose of training, auditing, consulting and rendering services aimed at ensuring compliance with this Regulation or any foreign Data Protection law or regulation having effect in Nigeria.

Data Protection Impact Assessment (DPIA): is an assessment done to ascertain the possible implication of certain business decisions in relation to the provisions of the NDPR.

Data Protection Officer (DPO): a person who is employed by any data controlling/processing organisation to ensure adherence to the NDPR, relevant data privacy instruments and data protection directives.

General Data Protection Regulation (GDPR): means Regulation (EU) 2016/679 of The European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

MDA: Ministries, Departments and Agencies

Nigeria Data Protection Regulation (NDPR): was issued on 25th January 2019 pursuant to Section 6 (a) and (c) of the NITDA Act, 2007 to safeguard the rights of natural persons to data privacy amongst other things.

NITDA: National Information Technology Development Agency

PRIDA: Policy and Regulation Initiative for Digital Africa

ACHIEVEMENTS



AU Data Protection Framework

- Nigeria played active roles in the development of and review of the new African Union Data Protection Framework. The Framework is another step towards the data protection laws harmonization in Africa



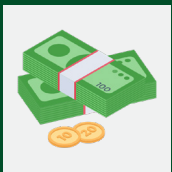
5,746 people trained

- NITDA, the DPCOs and other stakeholders trained the largest number of people on the NDPR. This makes the NDPR the regulation with the highest engagement in Nigeria for the year



Privacy Toolkits Project

- NITDA entered a strategic partnership with the Lagos State Government to develop a set of toolkits to enable the health sector comply easily with data protection requirements. This would drive down cost of compliance and increase privacy and trust.



N4,080,000,000

- cumulative earning for the Data Protection sector in 3 years.



N34,500,000

- earned by the Federal Government through audit filings and licensing fees.



135 Events facilitated

- NITDA honoured 98% of invitations to facilitate or participate in data protection related events.



Investigations

- 7 Investigations were concluded and sanctions imposed on 3 entities.



105

- Issuance of compliance and enforcement notices



7,680

- jobs and roles created.



2,080

- Mail issues resolved



17

- Ongoing Investigations



103

- DPCOs licensed



Issuance of WhatsApp Advisory



Twitter engagement & agreement to comply with the NDPR

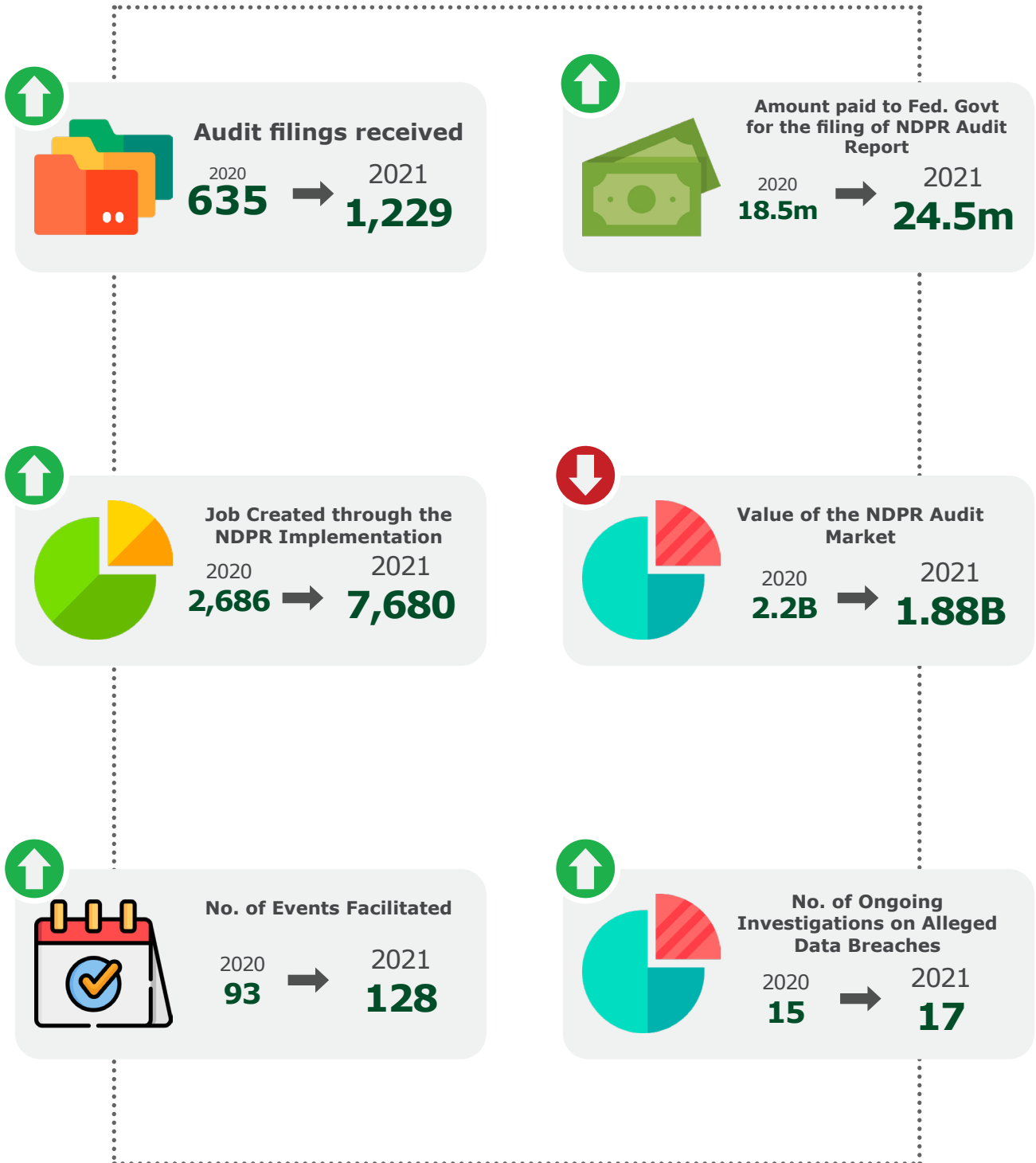


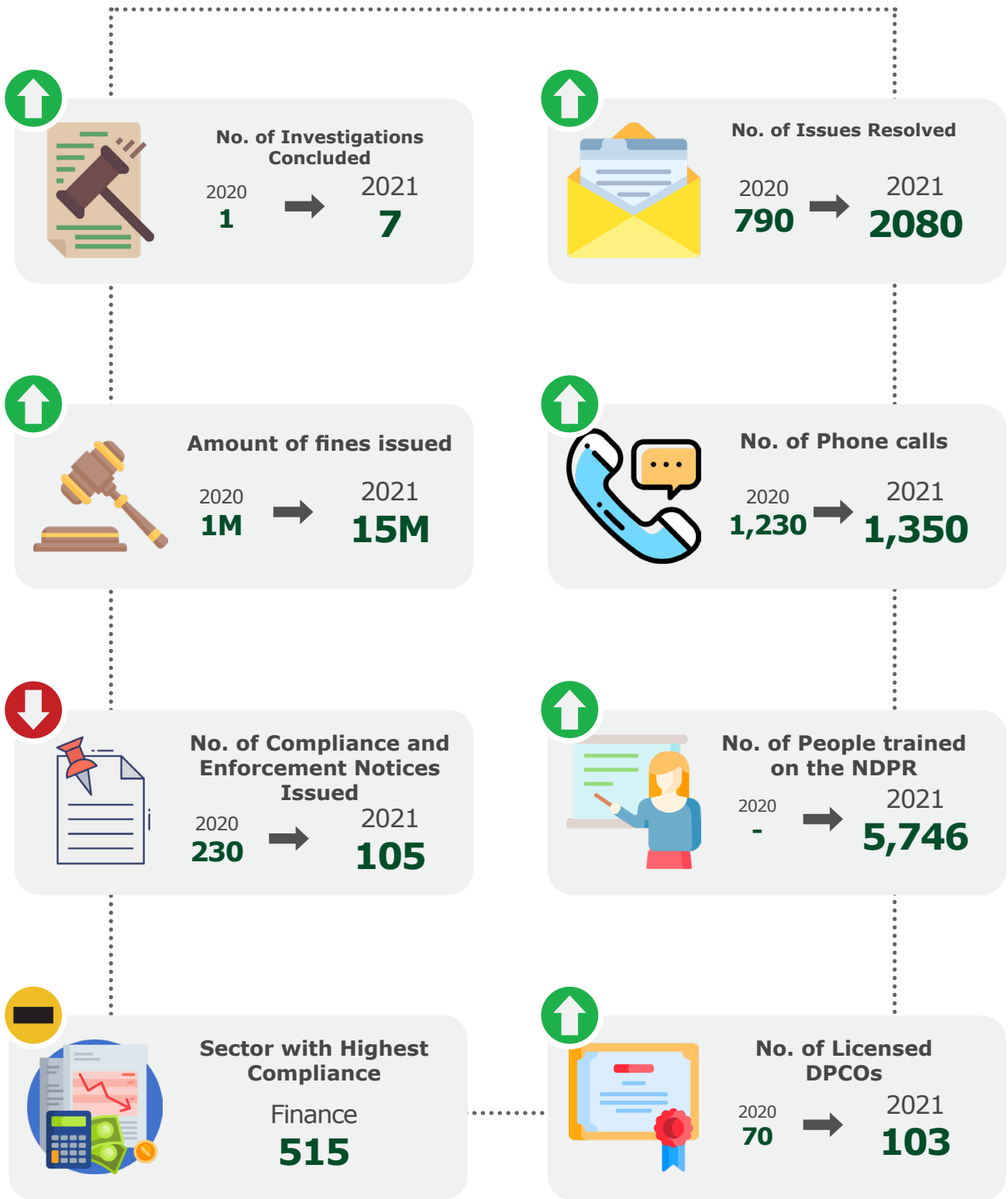
Nigeria joins Common Thread Network



Nigeria gains Full Membership of Network of African Data Protection Authorities (NADPA)

THE NUMBERS





NDPR INNOVATIONS



NDPR Audit COMPLIANT 2022

The NDPR Audit Compliance Mark is a special Mark usable by entities who have filed their NDPR audit in the year under review. A display of the Mark indicates that the entity has been listed among the audited organisations for the year. Compliant organisations can display the Mark on their websites, premises and other platforms to communicate their efforts at protecting privacy.

Data Privacy Manager

The NDPR Compliance Toolkit is an effective tool for any organisation on the NDPR Compliance journey. The NDPR Compliance Toolkit provides the Data Protection Officer (DPO) and the Data Protection Compliance Organisation (DPCO) with a practical framework for the collaboration, processing, and management of personal data across the organization.

For demo and further information, visit www.dataworks.ng



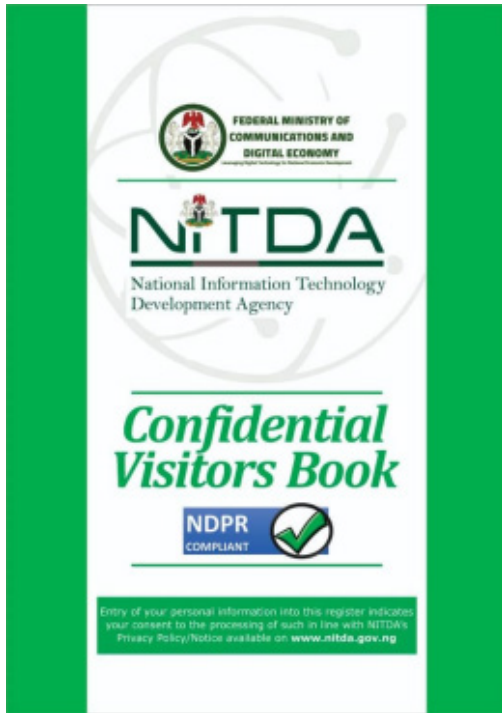
NDPR Roadblocks? Use #DPM to smoothen your journey to Compliance.

NDPR Compliant Visitor's Register

One of the easiest points of data breach is the visitors register at the entrance of many public and private organisations.

Data Services Protection Limited (DSPL) patented visitor's book was selected amongst the most innovative NDPR product at 2021 Privacy Week organised by NITDA. The visitor's book pages are in duplicates and works by making personal data points on the visitor's book invisible on the

first page while capturing the data on the duplicate page. This basic but ingenious visitor’s book is cheap in comparison with the expensive digital visitors’ management solutions. For further information please visit www.dspl.com.ng



NITDA VISITOR'S BOOK
 (Your filling of this form indicates your consent to the NITDA Privacy Policy available on www.nitda.gov.ng)

SN	NAME	ORGANISATION	ADDRESS	PHONE NUMBER	LAPTOP NUMBER	
1	WHEN TO SEE	DATE IN	TIME IN	DATE OUT	TIME OUT	SIGNATURE
2	WHEN TO SEE	DATE IN	TIME IN	DATE OUT	TIME OUT	SIGNATURE
3	WHEN TO SEE	DATE IN	TIME IN	DATE OUT	TIME OUT	SIGNATURE
4	WHEN TO SEE	DATE IN	TIME IN	DATE OUT	TIME OUT	SIGNATURE
5	WHEN TO SEE	DATE IN	TIME IN	DATE OUT	TIME OUT	SIGNATURE
6	WHEN TO SEE	DATE IN	TIME IN	DATE OUT	TIME OUT	SIGNATURE
7	WHEN TO SEE	DATE IN	TIME IN	DATE OUT	TIME OUT	SIGNATURE
8	WHEN TO SEE	DATE IN	TIME IN	DATE OUT	TIME OUT	SIGNATURE
9	WHEN TO SEE	DATE IN	TIME IN	DATE OUT	TIME OUT	SIGNATURE
10	WHEN TO SEE	DATE IN	TIME IN	DATE OUT	TIME OUT	SIGNATURE

NDPR365 SaaS

DAPT award winning and innovative **NDPR365** SaaS is a cloud-based software platform and a tool designed for implementing Nigerian data protection and privacy compliance assessment in line with the Nigeria Data Protection Regulation. The software has comprehensive features with the capability to generate automated reports highlighting the status of client’s organisation compliance with the requirements of the regulation. DAPT offers NDPR365 free trial account for potential clients or assessors for the back-end User Test Environment Assessment. For a full-service request, please send information to info@ndpr365.ng, info@dapt.com.ng, NDPR365 Access link and a password will be sent to the client. Please visit www.ndpr365.ng for more information about our NDPR365-SAAS.





CAPACITY BUILDING AND AWARENESS

- National Data Protection Officers' Symposium
- University of Lagos Data Protection project (8 months)
- Stanford University's workshop on digital content
- Security and Exchange Commission webinar on NDPR 2021
- Data Protection Bill Drafting Committee
- Member of the National Assembly
- CBN Series of Staff Training 2021
- Hogan Lovells Africa Summit 2021
- Member States of the African Union in partnership with the Council of Europe
- Select private companies and multinationals
- Privacy Week 2021 featured schools, media campaign, national symposium and press conference
- Mortgage Banking Association of Nigeria (MBAN)
- Health Federation of Nigeria (HFN)
- Trained 52 secondary schools on NDPR across Nigeria in Jan 2021
- Nigerian Medical Association (Bauchi Branch)
- DPCO stakeholder forum
- Nigeria Internet Registration Association (NiRA)
- Compliance Institute of Nigeria (CIN)
- Nigeria Data Protection Academy
- IoSafe Data Protection Conference and Workshop for public servants

ANALYSIS OF THE NDPR AUDITS FILED ON SECTORAL BASIS



TOTAL **1,229**

To view the list, please visit:
www.nitda.gov.ng

COOPERATION AND PARTNERSHIPS

Local

1. Training of over 200 CBN Staff on Data Protection.

NITDA facilitated a training session organised for CBN Staff on Data Protection at the CBN training Centre Kano.

2. NITDA facilitated a training session for the Mortgage Banking Association of Nigeria

NITDA facilitated a training session for members of MBAN for the purpose of deepening data protection compliance in Mortgage Banking sector.

3. NITDA-Lagos State Government Partnership

The Director General of NITDA and the Governor of Lagos agreed to cooperate in the development of the NDPR toolkit for the healthcare sector. The project would utilise the Lagos State health system development of pioneering privacy toolkit for the health sector.

4. Compliance Institute of Nigeria

NITDA is partnering with CIN to develop regulatory compliance capacity for NITDA.

5. Corporate Stanbic IBTC Group staff on NDPR training

NITDA conducted a corporate training for members of Stanbic IBTC Group. Trainees were drawn from all existing companies within the group.

6. Nigeria Data Expo and Conference: National Data Awareness/Training and Exhibition

NITDA facilitated the first data expo and conference 2021. An event for tech companies, startups and other

data controllers and processors.

International

7. Support and Advisory for the Gambia Data Protection Office

NITDA provided advisory and documentary support for the Gambian Ministry of Information Technology towards the establishment of a Data Protection office.

8. NITDA facilitated Council of Europe's webinar

On 7th April, 2021 NITDA facilitated a webinar for data protection authorities in Africa on cross-border data transfer.

9. Established contact with EU Data Protection board (EDPB)

In Jan 2021, NITDA established a high-level contact with the EDPB for the purpose of cross fertilisation of ideas training and enforcement.

10. African Network of Data Protection Authorities

Nigeria's application to join the ANDPA was finally approved. In its general meeting held in July 2021, the ANDPA considered Nigeria's implementation of the NDPR, the enforcement actions of NITDA, Nigeria's contribution to the data protection laws in Africa among others.

11. NITDA represents Nigeria in the Digital Cooperation Organisation of Arab Gulf countries. A peer review mechanism aimed at strengthening digital cooperation and partnership.

SAMPLES OF ORGANISATIONS ENGAGED



Stanbic IBTC
Pension Managers



Heineken
Group



Nigeria
Communications
Satellite Limited



Lagos State
Government



Guild of Medical
Directors



Securities
and Exchange
Commission



Mortgage Banking
Association of
Nigeria



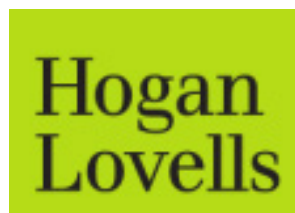
Nigerian Bar
Association



Schools



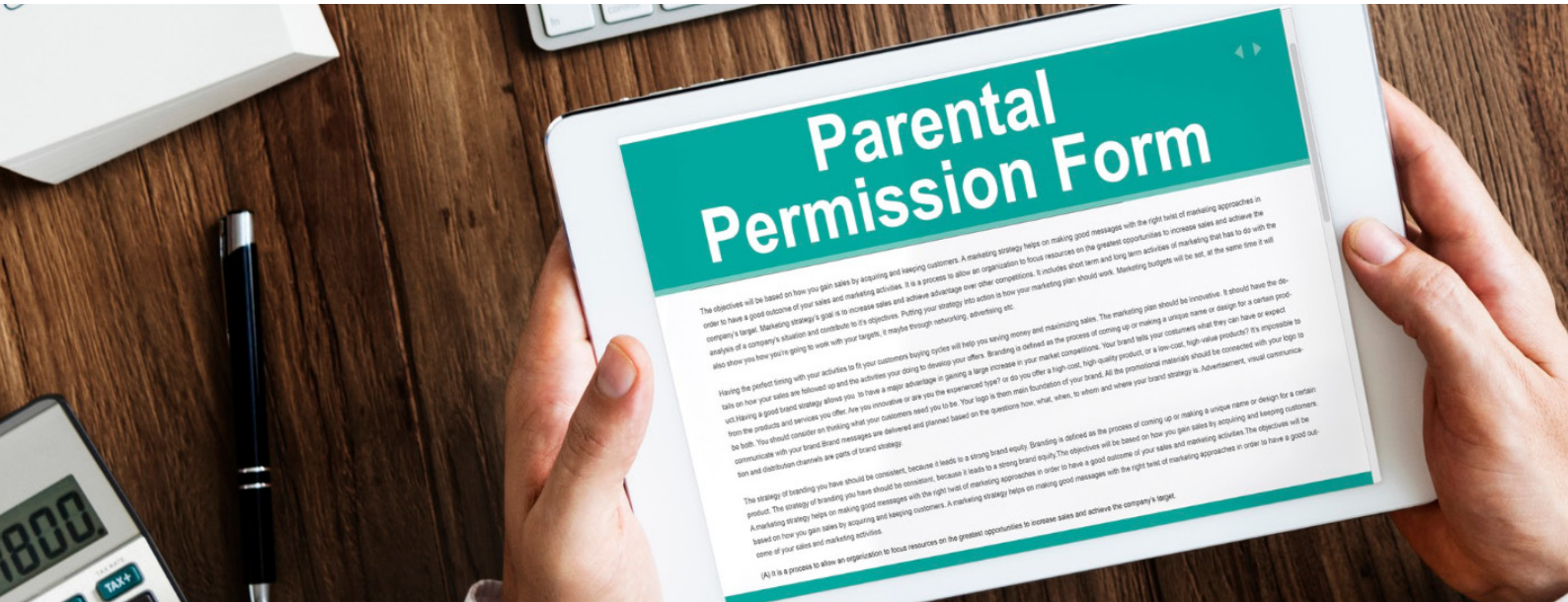
Central Bank of
Nigeria



Hogan
Lovells

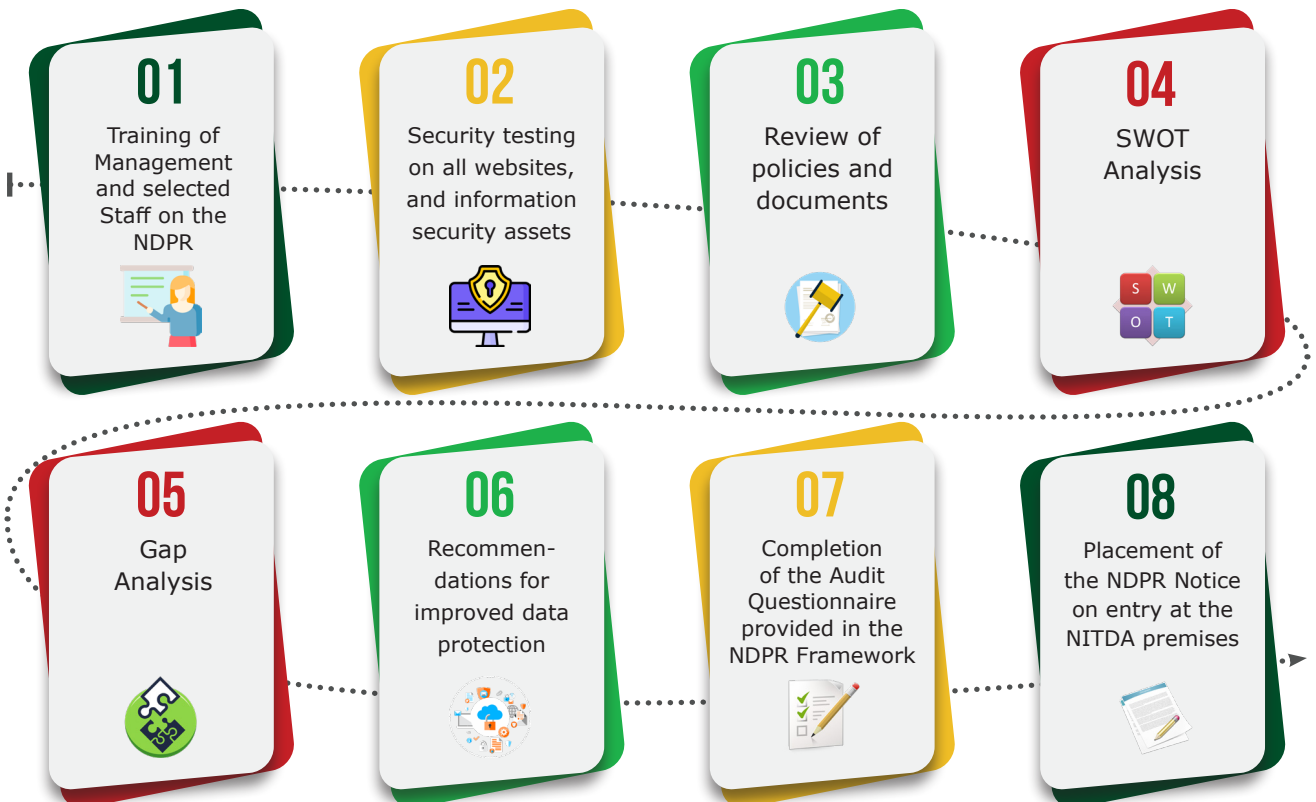


Dangote
Group



NITDA NDPR AUDIT IMPLEMENTATION 2021

NITDA, in compliance with the NDPR, embarked on its compliance audit. The audit covered all of the organisation’s processing activities. The following activities were carried out in the course of the audit:



SWOT Analysis of NITDA's Data Processing Activities (Audit Finding)



ONGOING WORK

NDPR Certification Body:

This is a scheme that licenses qualified institution(s) to develop standards to evaluate data protection knowledge and skills. The institution will register hundreds of Training Service Providers to prepare candidates for exams. This will generate new professional activities and opportunities for existing and new partners.

NDPR Audit Compliance Trust Mark

Every audit filing compliant entity will have the right to place a Trust Mark on its website and other channels to showcase its compliance with the audit compliance requirement of the NDPR.

DPCO Code of Practice

As part of standards improvement, a draft of a Code of Practice for Data Protection Compliance Organisations (DPCOs) is undergoing consultation process and refinement.

DPIA Framework Development

A Data Protection Impact Assessment (DPIA) Framework is being developed to be used by Data Controllers and Processors.

NDPR Breach and Offences Sanctions Framework

NITDA is partnering with stakeholders to determine administrative sanctions for identified categories of the NDPR breaches. This would provide clarity and predictability to the NDPR enforcement efforts and serve as a good foundation for any future data protection law.

FUTURE OF THE NDPR

● **Data Protection Bill 2020**

The Federal Ministry of Communications and Digital Economy has been saddled with the responsibility of coordinating the passage of the Bill. The Ministry has published a call for legal experts to review and update digital economy impacting laws and advise on the draft data protection bill. These efforts will lead to producing a definitive Data Protection Act Nigerians would be proud of.

● **Creation of the Data Protection Commission**

The Data Protection Bill has made provision for the creation of a Data Protection Commission. The current draft seeks to resolve the questions of financial, legal autonomy that affects most similar Commissions. The Commission when established will be starting on a strong footing, considering the trove of experience to be bequeathed to it by NITDA through the implementation of the NDPR.

PRESS GALLERY

Publications

Demystifying Data Privacy, Protection and Data Governance

Dr. Vincent Olatunji and Olufemi Daniel Esq (GH Magazine, September 2021)

Videos

How the DPO role can be more effective beyond the NDPR audit? Insights from the Nigerian and EU DPOs

<https://www.youtube.com/watch?v=TZpvygVis8Q>

NDPR: A Government Overview

<https://www.youtube.com/watch?v=-hTslvWxueg>

Privacy Bar & Bants: Review of NDPR Implementation Framework 2020

<https://www.youtube.com/watch?v=rleVDitkpUw>

Nigeria Data Protection Regulation (NDPR): What you need to know

https://www.youtube.com/watch?v=J_t6OX1HRKg

Press

NITDA Issues New Licenses for Data Protection Compliance Organisations

<https://itedgenews.ng/2021/03/22/nitda-issues-new-licenses-for-data-protection-compliance-organisations/>

NITDA Signals Zero Tolerance for Data Protection Breaches, Fines Electronic Settlement Limited N5M

<https://itedgenews.ng/2021/03/16/nitda-signals-zero-tolerance-for-data-protection-breach-fines-electronic-settlement-limited-n5m/>

Pantami Wants Tougher Enforcement Against Data Protection Defaulters, Stricter Regulatory Focus on DPCOs

<https://itedgenews.ng/2020/10/09/pantami-wants-tougher-enforcement-against-data-protection-defaulters-stricter-regulatory-focus-on-dpcos/>

NITDA Resolves 790 Data Protection Issues

<https://itedgenews.ng/2020/08/30/nitda-resolves-790-data-protection-issues/>

Nigerian Government Seeks Your Input on Draft Bill On Data Protection

<https://itedgenews.ng/2020/08/26/nigerian-government-seeks-your-input-on-draft-bill-on-data-protection/>

Pantami Commends NITDA On Data Protection as Agency Unveils NDPR Performance Report

<https://itedgenews.ng/2020/10/09/pantami-commends-nitda-on-data-protection-as-agency-unveils-ndpr-performance-report/>

NITDA's Boss, Abdullahi, Assures DPCOs Of Support To Drive Data Protection Compliance

<https://itedgenews.ng/2020/08/14/nitdas-boss-abdullahi-assures-dcpos-of-support-to-drive-compliance-to-data-protection/>

Over 588 Database Audit Reports Filed As Nigeria Leads African Countries In Data Protection – NITDA's Boss

<https://itedgenews.ng/2020/08/10/over-588-database-audit-reports-filed-as-nigeria-leads-african-countries-in-data-protection-nitdas-boss/>

SEC, NITDA Discuss Synergy To Ensure Data Protection At Capital Market

<https://itedgenews.ng/2020/07/13/sec-nitda-discuss-synergy-to-ensure-data-protection-at-capital-market/>

Domineum, NITDA Hold NDPR Webinar For Start-Ups

<https://itedgenews.ng/2021/05/27/domineum-nitda-hold-ndpr-webinar-for-start-ups/>

NDPR: Nigerian Government Engages Facebook Over Concerns on Whatsapp Updated Privacy Policy

<https://itedgenews.ng/2021/05/22/ndpr-nigerian-government-engages-facebook-over-concerns-on-whatsapp-updated-privacy-policy/>

NITDA's Boss Charges Lagos Health Ministry On Adoption Of NDPR

<https://itedgenews.ng/2021/05/20/nitdas-boss-charges-lagos-health-ministry-on-adoption-of-ndpr/>

Minister Tasks NITDA on Strengthening NDPR, IT Project Clearance

<https://itedgenews.ng/2021/04/30/minister-tasks-nitda-on-strengthening-ndpr-it-project-clearance/>

Oyo Commences NDPR Implementation for Eight MDAs

<https://itedgenews.ng/2021/02/22/oyo-commences-ndpr-implementation-for-eight-mdas/>

Abdullahi Lists Achievements of NDPR in One Year as Unprecedented

<https://itedgenews.ng/2020/10/16/abdullahi-lists-achievements-of-ndpr-in-one-year-as-unprecedented/>

CASE STUDY

Digital Lending and Data Protection in Nigeria

- *Oluwagbeminiyi Ojedokun (CIPP/E) and Ridwan Oloyede (FIP, CIPP/E, CIPM, Research Fellow) Tech Hive Advisory*

Introduction

There has been an increased move from traditional forms of lending towards digital lending. Some people are now more inclined to request loans via lending applications than traditional banks and other orthodox lending institutions. Digital lending, which is fast becoming a prevalent form of lending today, offers many advantages. This move from traditional lending to digital lending results from various reasons such as stringent conditions to access credit from orthodox financial institutions (banks), less formal documentation and seemingly flexible credit terms.¹ While digital lending offers numerous benefits, this article highlights digital lending privacy and data protection challenges. It also presents recommendations to possibly address these challenges.

Explaining Digital Lending and its Benefits

Digital lending is defined as the process of offering loans that are applied for, disbursed, and managed through digital channels, in which lenders use digitised data to inform credit decisions and build intelligent customer engagement.² Digital

lending can also be explained as the use of online technology to originate and renew loans.³ Digital lending can start as basic as an online loan application offered by a bank or credit union on its website. It can also be as comprehensive as an entirely automated platform that includes a full software suite, such as an online loan application, document capture, electronic signatures, credit analysis, loan pricing, loan decisions, and loan administration.⁴

As previously mentioned, the shift to digital means to access loans can be attributed to the preference for lenders with less stringent conditions and flexible credit terms. The benefits of digital lending can be viewed from different perspectives, including benefits to the consumer and the lender. To the consumer, digital lending is beneficial as it encourages easy submission of applications with minimal documentation required, quicker approvals and comfort across various devices (loans may be obtained without having to step into a banking hall).⁵ On the other hand, the lender enjoys enhanced business performance, quicker decision-making, consistency,⁶ and cost saving.

1 ['Digital Lending: Inside the Pervasive Practice of LendTechs in Nigeria <<https://ikigaination.org/wp-content/uploads/2021/08/lendtech.pdf>> accessed 10 August 2021.]

2 [Amy Stewart, Kathleen Yaworsky, Paul Lamont: "Demystifying Digital Lending: How Digital Transformation Can Help Financial Service Providers Reach New Customers, Drive Engagement, and Promote Financial Inclusion" Accion. Cambridge, MA: April, 2018. Available at: <https://www.findevgateway.org/sites/default/files/publications/files/1123_digital_lending_r10_print_ready.pdf> accessed 10 August 2021]

3 ['What Is Digital Lending and How Can Community Banks, Credit Unions Benefit?' (Abrigo, 26 July 2018) <<https://www.abrigo.com/blog/what-is-digital-lending-and-how-can-community-banks-credit-unions-benefit/>> accessed 10 August 2021.]

4 [Ibid.]

5 ['Benefits of Using Digital Lending Platform' (Celusion, 18 December 2020) <<https://www.celusion.com/2020/12/18/benefits-of-using-digital-lending-platform/>> accessed 12 August 2021.]

6 [Ibid.]

Privacy Challenges associated with Digital Lending

The use of digital lending applications has presented some privacy concerns over time in Nigeria. This may be due to a lack of regulatory oversight and close monitoring of the digital lending industry.⁷ In Nigeria, primarily, the Nigeria Data Protection Regulation (NDPR) 2019 governs the protection of the personal data of individuals.⁸ This would mean that lending platforms must operate in compliance with its provisions as they leverage personal data, for example, information about location and contacts obtained from the devices used. However, in a recent report released by Tech Hive Advisory, the research revealed that many lending applications violate one or more of the provisions of the NDPR.⁹ Beyond the violation of the data protection law, there are also violations of consumer protection law. Although, while the report found prevalent instances of disregard for privacy, not all the mobile applications examined have poor practices.

Observations from research into the practices of some lending providers have shown improperly drafted privacy notices which also do not adequately reflect the nature of the processing. In an instance, we found four different applications using the same privacy notice.¹⁰ Some did not have a privacy notice, and some had their privacy notice bundled with their terms of use, violating the transparency principle.

Similarly, the privacy notices of some applications do not state the purpose of collecting the large volume of data they demand. Lenders use personal data to verify identity, determine the borrower's creditworthiness, among other relevant functions. However, they often are guilty of collecting and processing more data than is needed, leaving such data prone to abuse. We also found the use of dark patterns to manipulate users into making decisions favourable to the digital lending companies.¹¹

Another concern is advertisement trackers embedded in mobile applications that share data with third parties without disclosing to the user or obtaining the appropriate lawful basis. Trackers monitor behavioural patterns of consumers, and in many instances, these data are shared with advertisers without the knowledge of the users.¹² The excessive collection and use of data are also worrisome as it violates the NDPR's principle of data minimisation. There are also instances of Apps openly admitting to leveraging Artificial Intelligence or Machine Learning yet failing to disclose this information in their privacy notice, contrary to the NDPR.

The use of excessive permissions on mobile applications raises genuine concern. Our Report found the use of permissions considered dangerous by Google Protection Rules, often above what is required for the App to work. For example, some lending companies use permissions to listen in on a phone call, read text messages, and

7 [Primarily, some of these companies use state government issued money lenders or cooperative license, which the supervising Ministries or government agencies exercise minimal oversight. This is different for those offering services under the Central Bank of Nigeria's issued license where there is close scrutiny of their operations. The State agencies do not exercise oversight functions concerning their operations.]

8 [There are some other sector-specific regulations, framework and guidelines made by the Central Bank of Nigeria that apply to those under its regulatory purview.]

9 [Digital Lending: Inside the Pervasive Practice of LendTechs in Nigeria <<https://techhiveadvisory.org.ng/wp-content/uploads/2021/11/lendtech.pdf>> accessed 12 August, 2021.]

10 [Ibid.]

11 [Ibid.]

12 [Sara Morrison, "How SDKs, Hidden Trackers in Your Phone, Work" (VoxJuly 8, 2020) <<https://www.vox.com/decode/2020/7/8/21311533/sdks-tracking-data-location>> accessed 12 August, 2021.]

access contact lists. This information is often used to contact acquaintances of the user where there is a default. The most prominent problem confronting many digital lenders today is the use of blackmail and the phone call or sending unsolicited messages to non-users to recover debt, often wrapped in the threat of social disgrace, criminal accusation and defamatory tone.¹³ Although debt recovery could prove difficult and default on repayment impact businesses,¹⁴ resorting to illegality to recover a debt is wrong.

What is Being Done

In August 2021, NITDA announced the sanction of Sokoloan, a digital loan company, for violating the NDPR.¹⁵ The fine is the highest so far imposed by the Agency. Some of the violations cited were non-compliant privacy notice, use of trackers without appropriate lawful basis and sending messages to contacts who are not privy to the loan arrangement. In addition, the Ikigai Innovation Initiative, a non-profit organisation based on our Report, filed a complaint with NITDA, the Central Bank of Nigeria and the Federal Competition and Consumer Protection Commission to investigate the pervasive practices of some of the companies.¹⁶ Finally, NITDA and the Federal Competition and Consumer Protection announced the establishment of a task force made up of

four other agencies¹⁷ to investigate such unlawful practices.¹⁸

Recommendations and Way Forward

In our Report, we offered recommendations to address some of the challenges highlighted above.

First, the lending companies should implement data protection by design and default into the product architecture and development process. Lending applications should be less intrusive, allowing the processing of strictly necessary data to provide services in compliance with the NDPR's data minimisation principle.

Privacy notices of lending applications should genuinely reflect their processing activities, such as the lawful basis and purpose for data processing. Information about the use of trackers and the disclosure of data to third parties should be made available to the data subject. They should also be made available in an understandable format, language, and conspicuously. The privacy notice should address the specific processing activities on their web and application, including the existence of permissions, trackers and third-party requests.

For lending applications using Artificial

13 [Lesi Nwisagbo, "Season of Shylock Lenders: Micro-Loan Companies Launch Attacks on Borrowers' Reputation to Recover Debts as More Cash-Trapped Nigerians Take Advantage of Lending Firms - Punch Newspapers" (Punch Newspapers October 13, 2021) <<https://punchng.com/season-of-shylock-lenders-micro-loan-companies-launch-attacks-on-borrowers-reputation-to-recover-debts-as-more-cash-trapped-nigerians-take-advantage-of-lending-firms/>> accessed 13 October, 2021.]

14 ["Loan Defaults Hit Hard on Fintech Companies" (The Guardian Nigeria News - Nigeria and World News October 6, 2020) <<https://guardian.ng/news/loan-defaults-hit-hard-on-fintech-companies/>> accessed 12 August, 2021.]

15 [Janet John, NITDA Fines Online Lending Platform Sokoloan N10 Million for Privacy Invasion (Nairametrics August 19, 2021) <> accessed 25 August, 2021.]

16 ["Digital Lending: Inside the Pervasive Practice of LendTechs in Nigeria - Ikigaination.org" (ikigaination.org August 5, 2021) <<https://ikigaination.org/digital-lending-inside-the-pervasive-practice-of-lendtechs-in-nigeria/>> accessed 25 August, 2021.]

17 [It include National Human Rights Commission, Economic and Financial Crimes Commission, Independent Corrupt Practices Commission and Central Bank of Nigeria.]

18 [Chike Olisah, "FCCPC to Investigate Illegal Practices, Rights Violation in Money Lending Industry" (Nairametrics November 16, 2021) <<https://nairametrics.com/2021/11/16/fccpc-to-investigate-illegal-practices-rights-violation-in-money-lending-industry/>> accessed 18 November, 2021.]

Intelligence (AI) or Machine Learning (ML) to profile and determine credit worthiness, a Data Protection Impact Assessment (DPIA) should be conducted before deploying the solution or feature because of the high-risk nature of the processing activities. Further, information about automated processing should also be provided to the data subject in the privacy notice.

They should also consider a less intrusive and right-respecting debt recovery strategy. Furthermore, the lenders should consider leveraging the Global Standing Instruction introduced by the Central Bank of Nigeria.¹⁹ In addition, a more thorough risk-based approach like an assessment of creditworthiness and the lowering of the amount that can be accessed could be helpful.

Lastly, the appointment of a data protection officer (DPO) to ensure compliance with the data protection law should be considered. The DPO is expected to develop and implement a privacy program, including managing data subject rights.

19 ["CENTRAL BANK of NIGERIA GUIDELINES on GLOBAL STANDING INSTRUCTION (GSI) (INDIVIDUALS)" (2020) <<https://www.cbn.gov.ng/out/2020/ccd/cbn%20-%20operational%20guidelines%20on%20global%20standing%20instructions%20gsi%20-%20individuals.pdf>> accessed 12 August, 2021.]

FREQUENTLY ASKED QUESTIONS

Frequently Asked Questions On The Nigeria Data Protection Regulation 2019

1. What specific objectives is the Regulation meant to achieve?

The objectives of the NDPR are: data privacy protection; secured data exchange; improve business environment and the creation of sustainable jobs.

2. What is the scope of the NDPR? Who does it apply to?

The NDPR applies to all residents of Nigeria; all Nigerians within and outside Nigeria.

3. What is data processing?

Processing is defined in Article 1.3(r) as follows:
"Processing" means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

4. Is NITDA legally competent to issue Data Protection regulation?

NITDA is empowered to regulate electronic data use in Nigeria. Section 6(a and c) of the NITDA Act 2007 makes this clear as follows:

The Agency Shall-

- (a) Create a framework for the planning, research, development, standardisation, application, coordination, monitoring, evaluation and regulation of Information Technology practices, activities and systems in Nigeria and all matters related thereto
- (b) Develop guidelines for electronic governance and monitor the use of electronic data interchange and other forms of electronic communication transactions as an alternative to paper-based methods in governance, commerce, education, the private and public sectors, labour, and other fields, where the use of

electronic communication may improve the exchange of data and information.

This provision makes it clear that NITDA has the authority to regulate data from any electronic or digital platform.

A breach of NITDA Regulation is a breach of the NITDA Act as provided by Sections 17 and 18 of the Act. Therefore, a breach of the NDPR is enforceable in Nigerian courts.

The authority of NITDA to issue the NDPR has been affirmed by the Court of Appeal in the case of *Incorporated Trustees of Digital Lawyers Initiative & Ors. V. National Identity Management Commission (NIMC) CA/IB/291/2020*.

5. Our business operates an international model, wherein customer's data are transferred across borders often, how does the NDPR impact on this model?

The NDPR recognises the need for cross-border transfer of data in an era of globalised and high-speed business transactions. Article 2.11 of the Regulation, which relates to transfer to a foreign country, addresses this concern. To comply with the provision and other aspects of the Regulation, the Data Controller would provide the following:

- i. A list of Countries where personally identifiable information of Nigerian citizens are transferred on a regular course of business.
- ii. The Data Protection Laws and contact of National Data Protection Office/Administration of such countries listed in i) above.
- iii. The Privacy Policy of the Data Controller, compliant with the provisions of the NDPR.
- iv. An overview of encryption method and data security standard.
- v. Any other detail that assures the privacy of personal data is adequately protected in the target country.

These information may be captured in the annual data audit report where the transfer is done on a regular course of business.

6. Does the NDPR mandate businesses to host data only on local servers?

The NDPR does not mandate private businesses to host data only on local servers, although this is highly encouraged. Government data as well as critical national data in the custody of private organisations must however be hosted in-country. Where hosted abroad, the Data Controller, should however, provide NITDA with the countries where such servers are located and their data protection policies.

7. Would data privacy audits conducted by private auditors be compliant to the NDPR?

NITDA does not accept audit report by non-licensed third-party auditors. The Data Controller may encourage its auditors to obtain the Data Protection Compliance Organisation (DPCO) license or alternatively deal with NITDA licensed DPCOs. Every audit report required under the Regulation must be accompanied by a verification statement by a licensed DPCO.

8. When are Data Controllers expected to file data protection audit report?

Except for other specified purposes or a request by NITDA, Data Controllers are expected to file their data audit report annually before the 15th of March of a new year.

9. What is the role of a Data Protection Compliance Organisation (DPCO)?

A "Data Protection Compliance Organisation (DPCO)" means any entity duly licensed by NITDA for the purpose of training, auditing, consulting and rendering services and products for the purpose of compliance with the NDPR or any foreign Data Protection Law or Regulation having effect in Nigeria. In essence, any organisation that wishes to provide any form of data privacy protection service to Nigerian companies must acquire this license.

10. Do Data Controllers wishing to transfer data abroad need to obtain permission of the Attorney-General of the Federation before doing so?

Article 2.11 of the NDPR provides: any transfer of Personal Data which is undergoing processing or is intended for processing after transfer to a foreign country or to an international organisation shall take place subject to the other provisions of this Regulation and the supervision of the Honourable Attorney General of the Federation (HAGF).

Data Controllers do not require permission of the Attorney-General for every transfer of Data outside Nigeria. In transferring data abroad, Data Controllers shall provide the following information to NITDA through their annual audit report or where specifically requested by NITDA:

- i. The list of countries where personally identifiable information of Nigerian citizens are transferred on a regular course of business.
- ii. The Data Protection Laws and contact of National Data Protection Office/ Administration of such countries listed in i) above.
- iii. The Privacy Policy of the Data Controller, compliant with the provisions of the NDPR.

- iv. General overview of the data protection mechanism to protect Nigerian citizens' data.

NITDA shall relate with the Office of the Attorney General of the Federation to seek guidance on Nigerian legal position on any aspect of the Regulation or where there is a breach of private data in a foreign jurisdiction.

11. We have engaged a Data Protection Compliance Organisation (DPCO) but our audit process is not concluded, what should we do?

The Controller may through its appointed DPCO file a request for extension, stating the processes already initiated, reasons for the delay and other information to show commitment to compliance.

12. We process less than 2000 data subjects, do we need to file data Audit Report?

All data controllers and processors are required to comply with the NDPR. However entities processing less than 2000 data subjects per annum do not need to file audit report with NITDA, but it is essential to conduct the audit for internal record purposes and possible future reference.

13. How do we submit the audit report?

The report, accompanied with requisite payment, is to be submitted through a DPCO to NITDA.

14. Our sector regulator has issued a data protection Regulation for our sector, are we still expected to comply with the NDPR?

Yes, the NDPR applies to all sectors and every data controller and processor.

15. What are the possible consequences of non-compliance with the NDPR?

- Breach of personal data by a non-compliant Controller or Processor attracts

- administrative and criminal sanctions.
- Data Subjects have the right to take civil actions against the Controller on the basis of the NDPR.
- The business implication of non-compliance includes brand image damage, loss of customers, restriction from international market opportunity, lack of support from national Supervisory Authority against foreign investigation of breach by an international authority.
- Negative perception/reputation of the organisation.

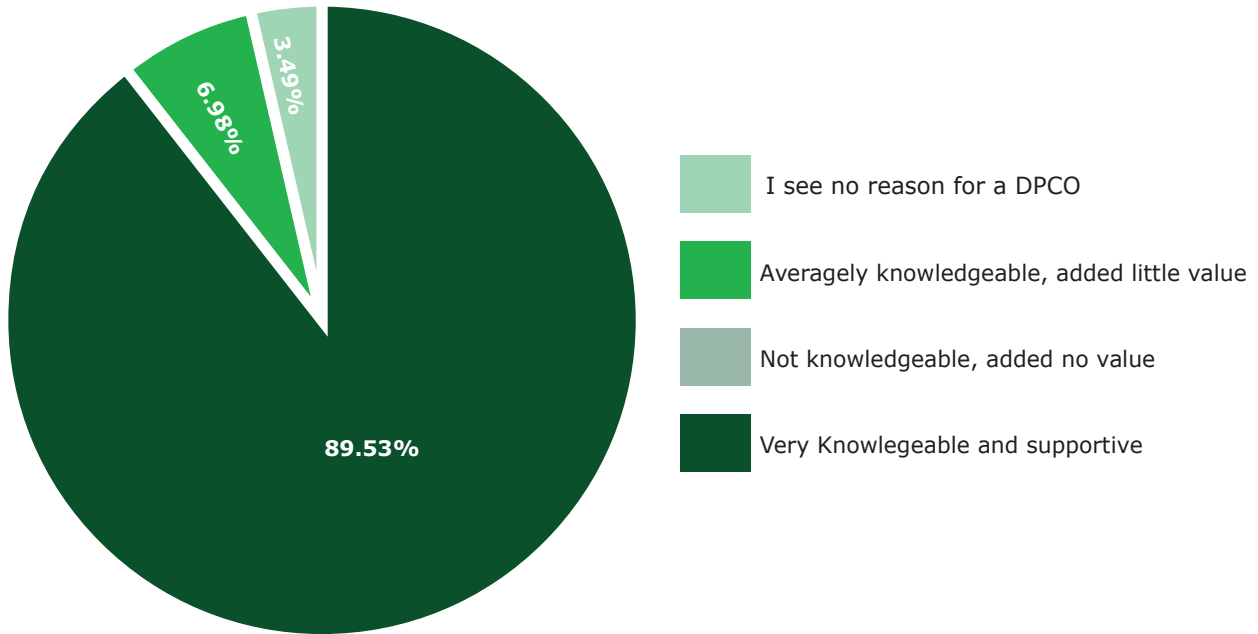
16. Does the NDPR limit my right as a professional to advise clients on Data Protection?

NO! Professionals are not restricted from performing their professional duties; however, only licensed DPCOs can provide verification statement on an audit report. Also, request for recognition of data protection training, services or products is predicated on licensing as a DPCO except management deems otherwise.

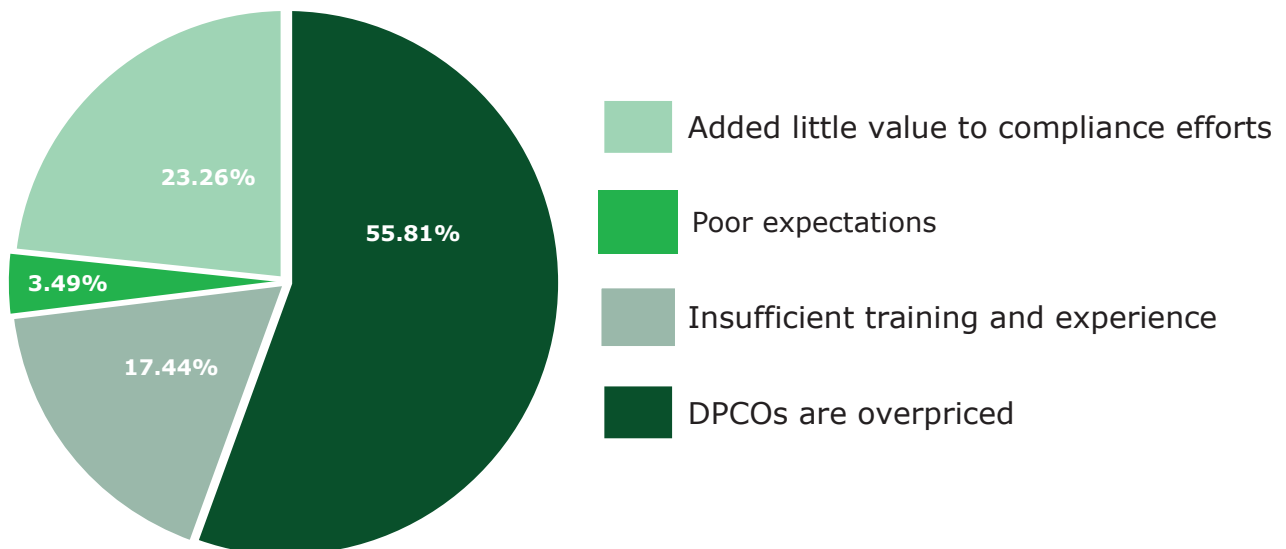
SURVEY RESPONSES

A. Data Protection Officers

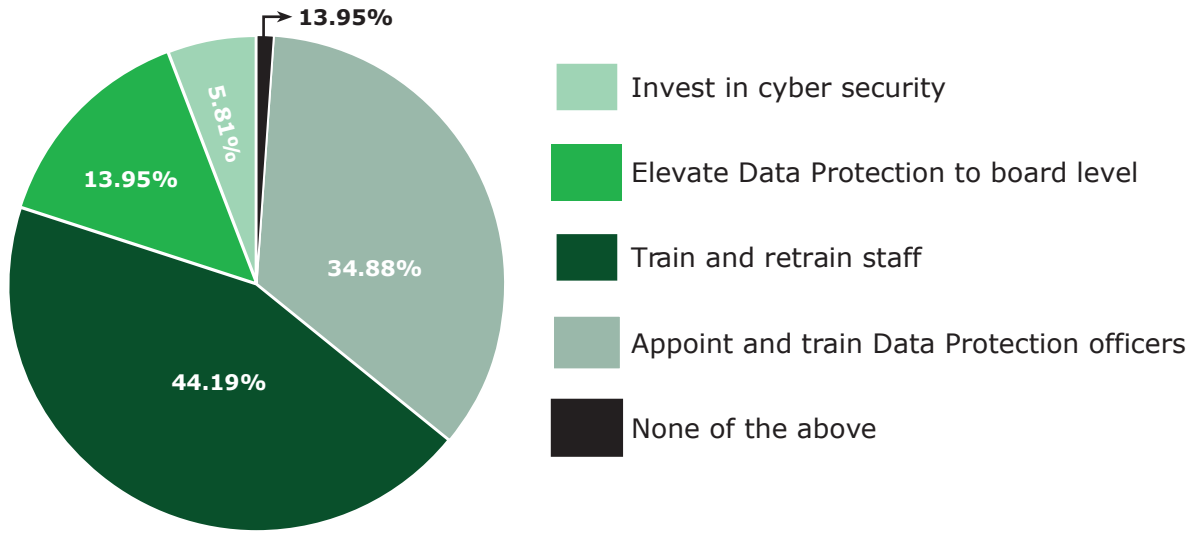
Q1: What is your impression of your DPCO?



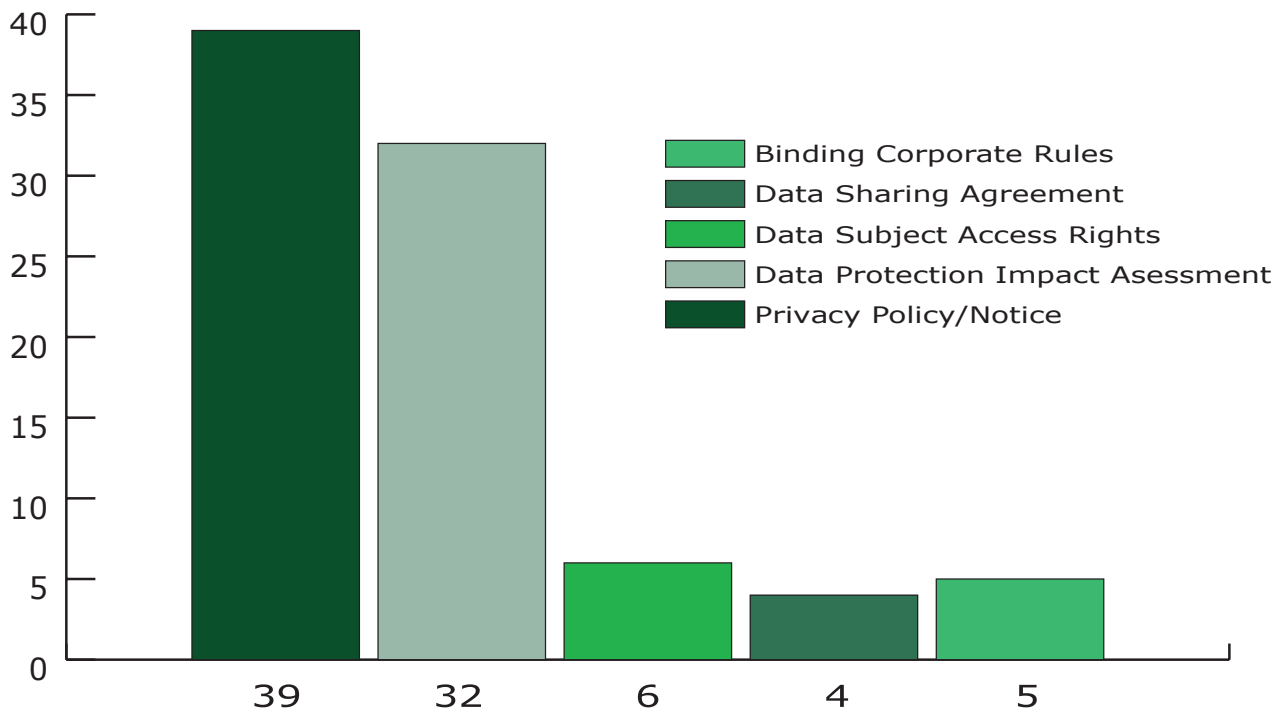
Q2: What are the key challenges you face with your DPCO?



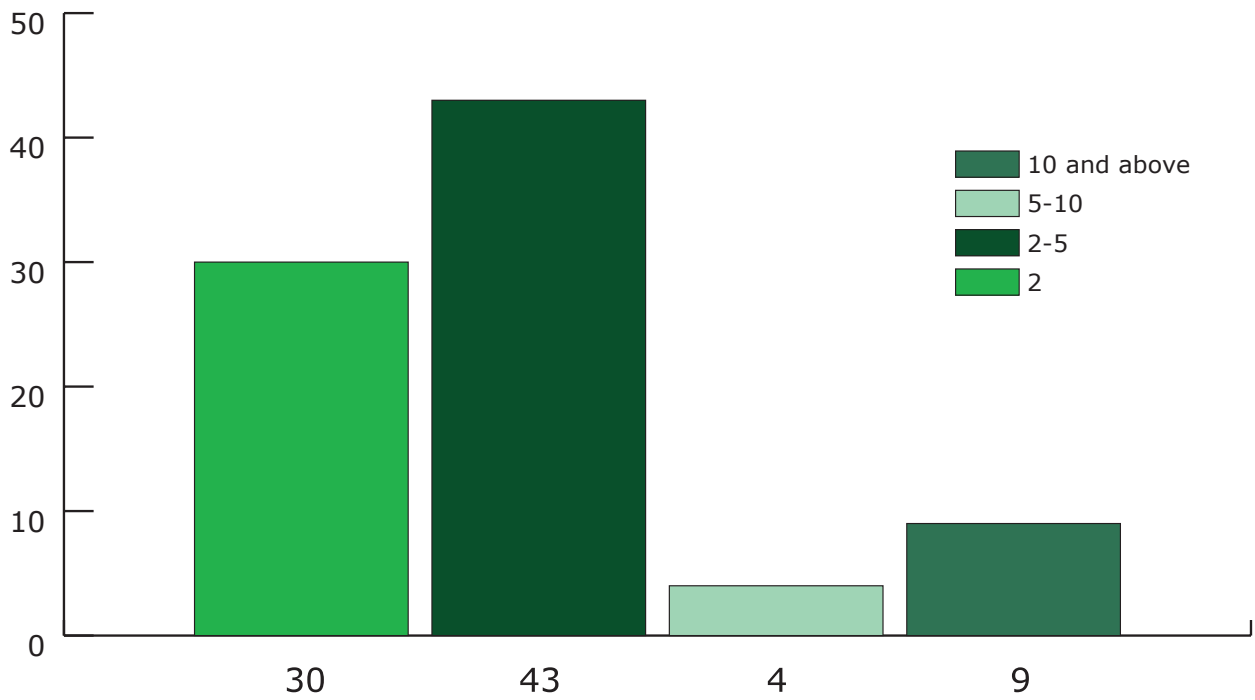
Q3: What should organisations do to improve compliance?



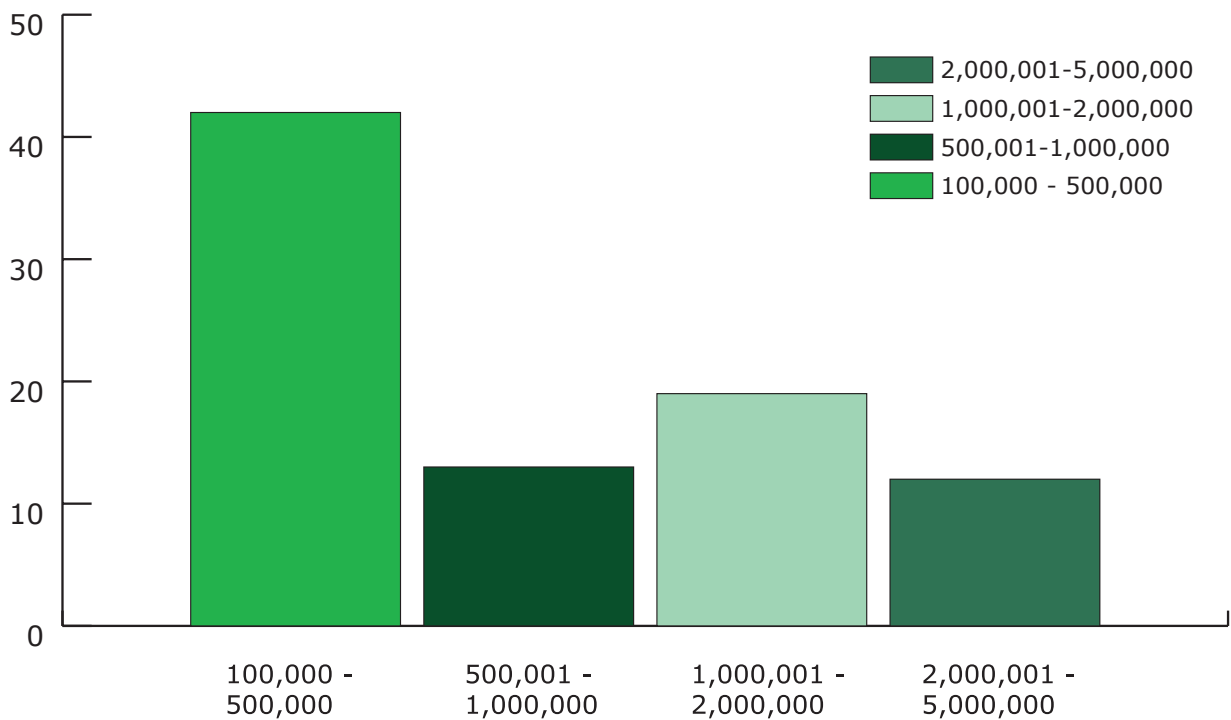
Q4: Which of these documents are most relevant to your work?



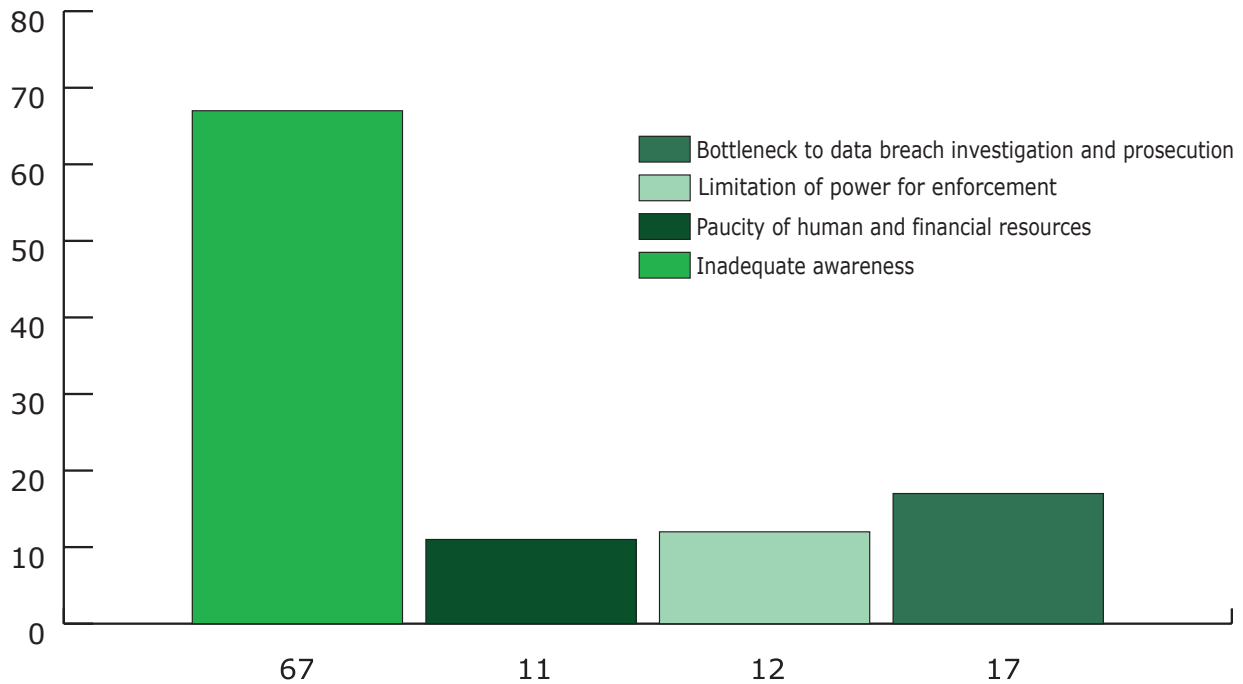
Q5: Our Data Protection function involves the following number of staff



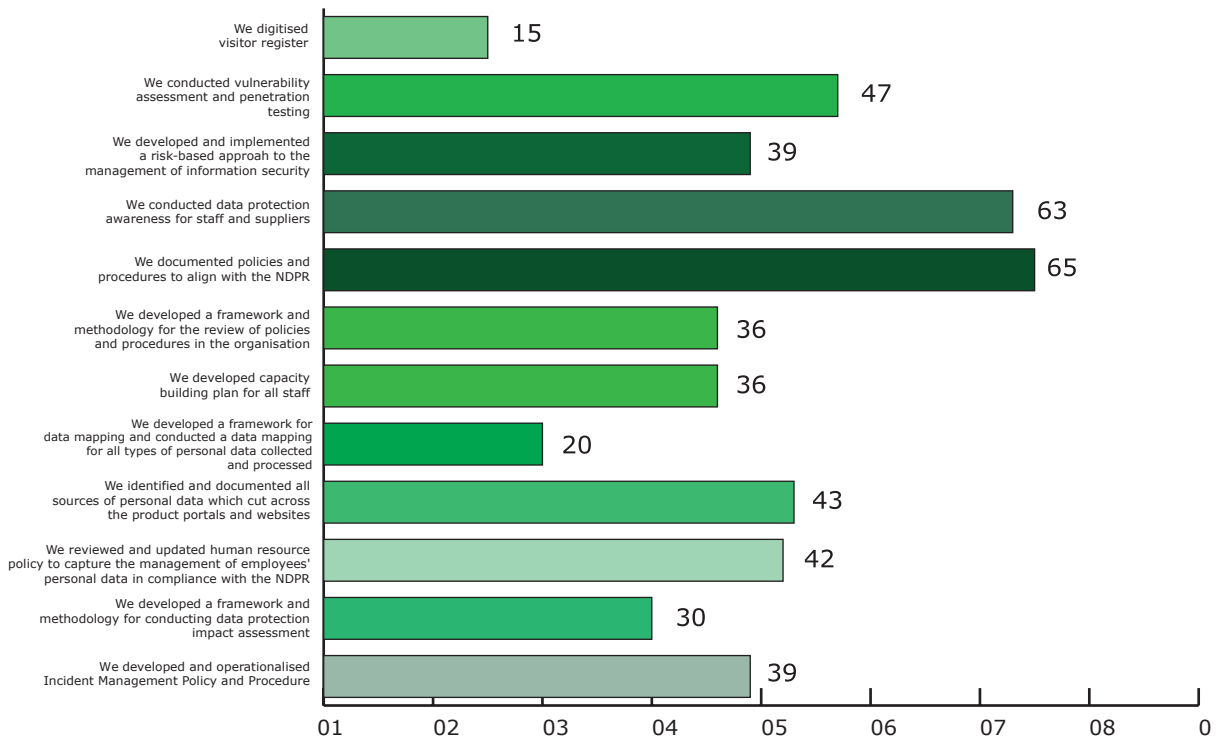
Q6: As a company, how much do you pay for NDPR audit implementation?



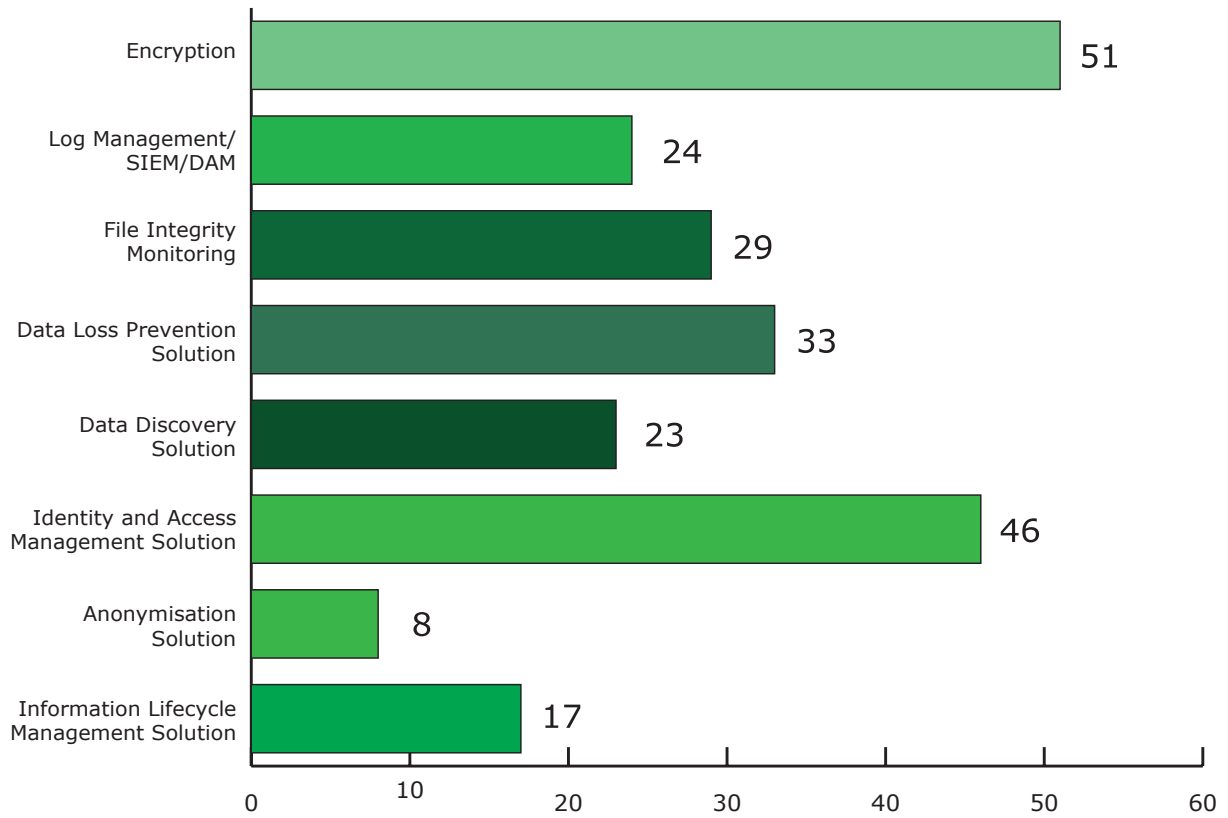
Q7: Which of the following areas has significantly improved in the past year?



Q8: Which of the following was your company able to implement in the past year?

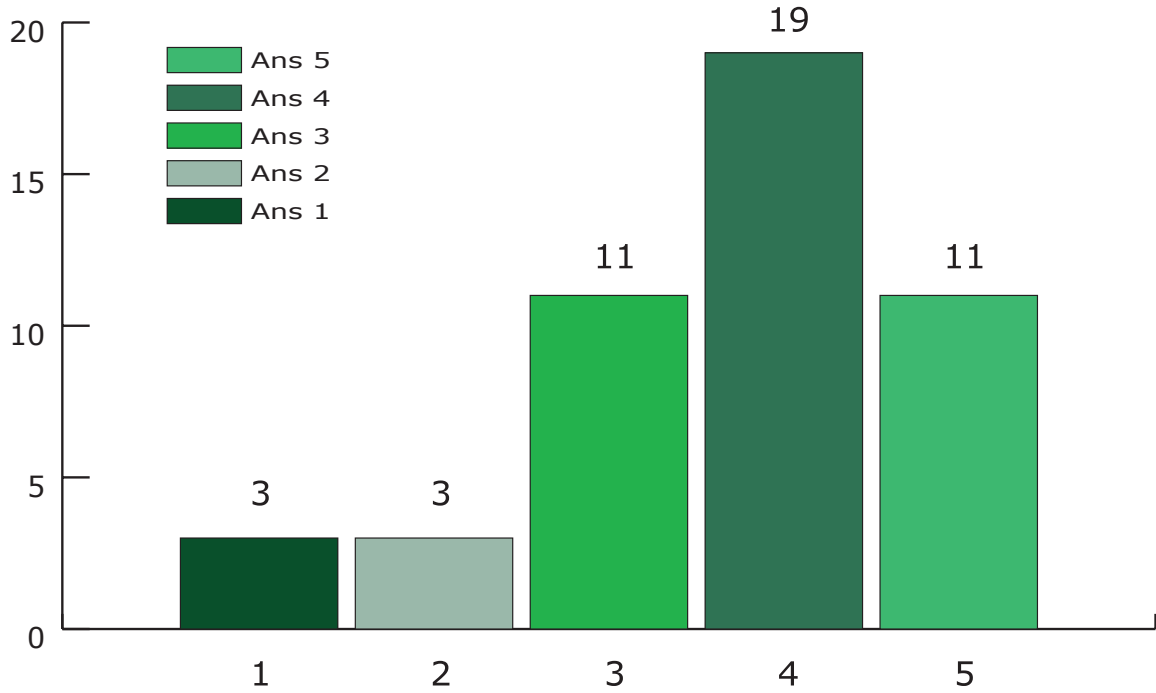


Q9: Kindly identify the security tools you use

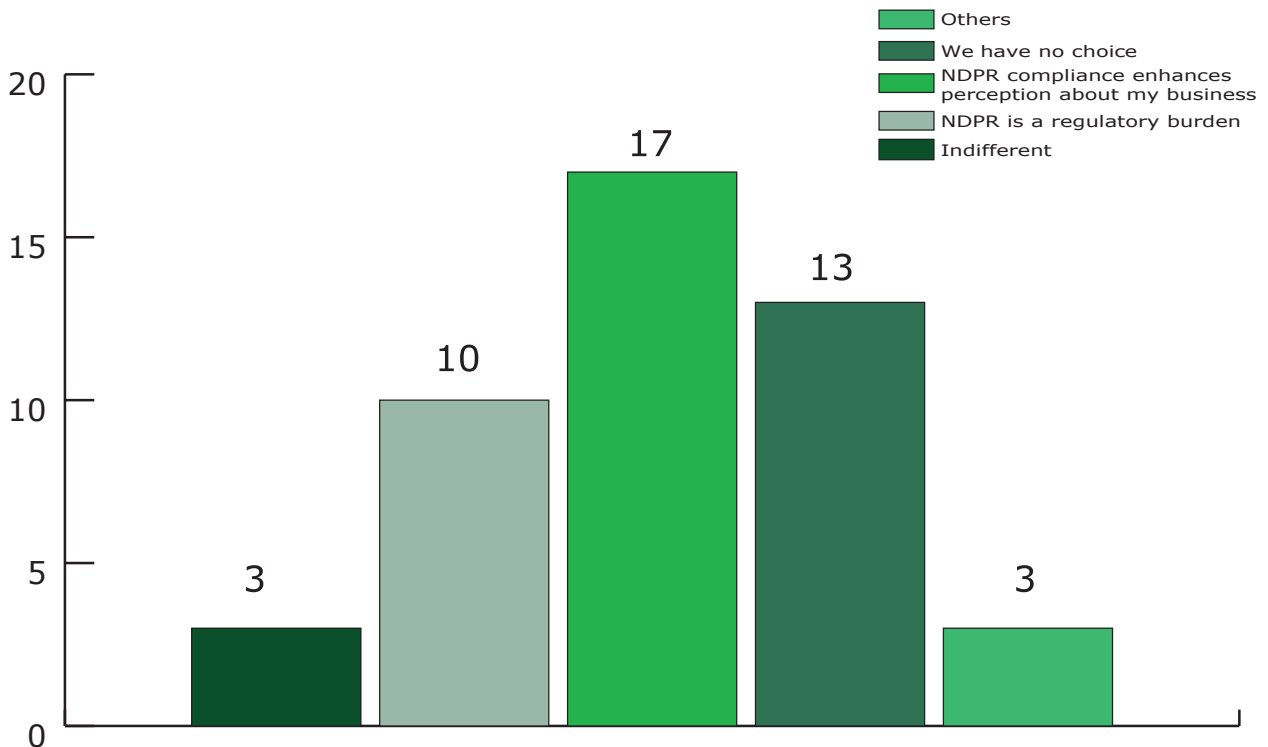


B. Data Protection Compliance Officers

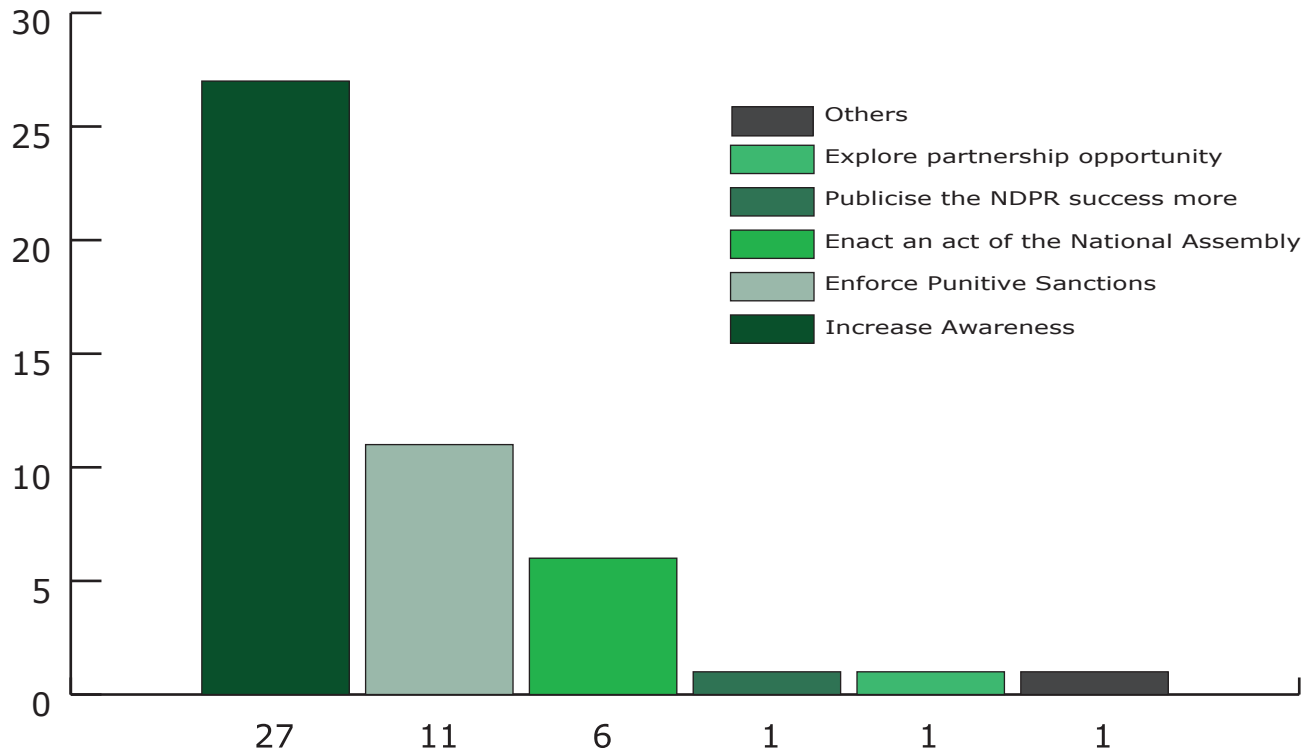
Q1: Does the NDPR meet the need of the Nigerian environment?(Where 1 is the lowest, 5 is the highest)



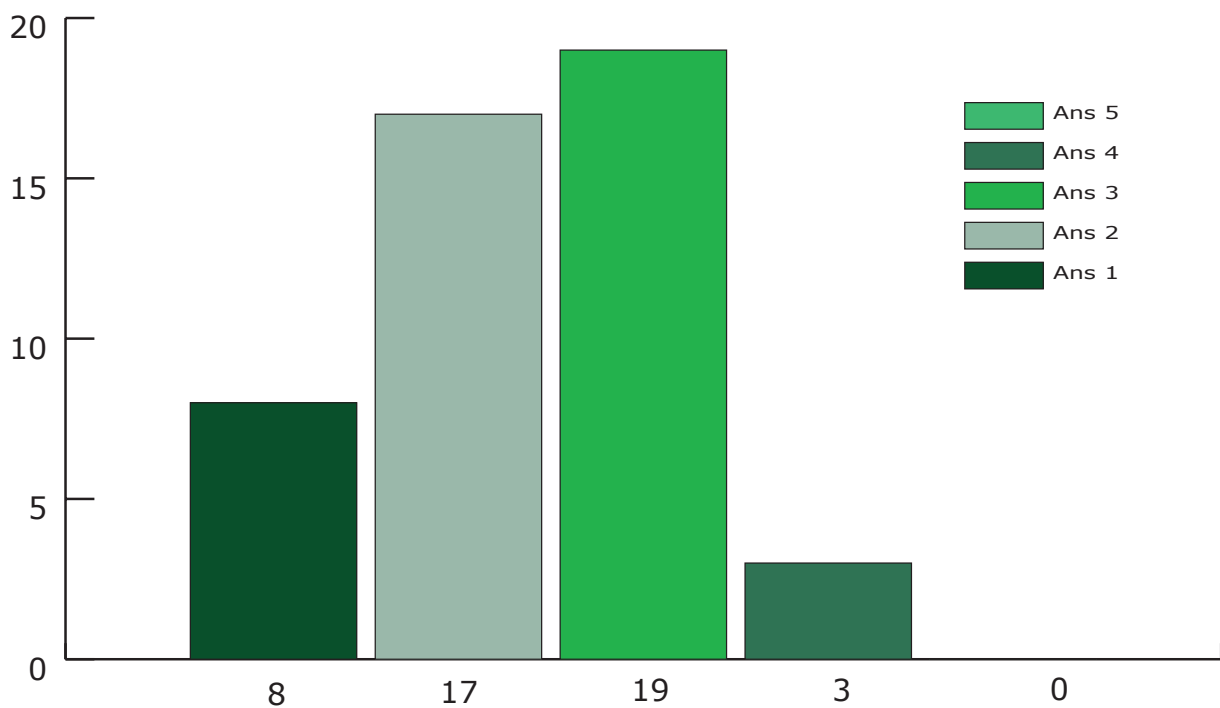
Q2: Rate the perception of data controllers on the implementation of the NDPR



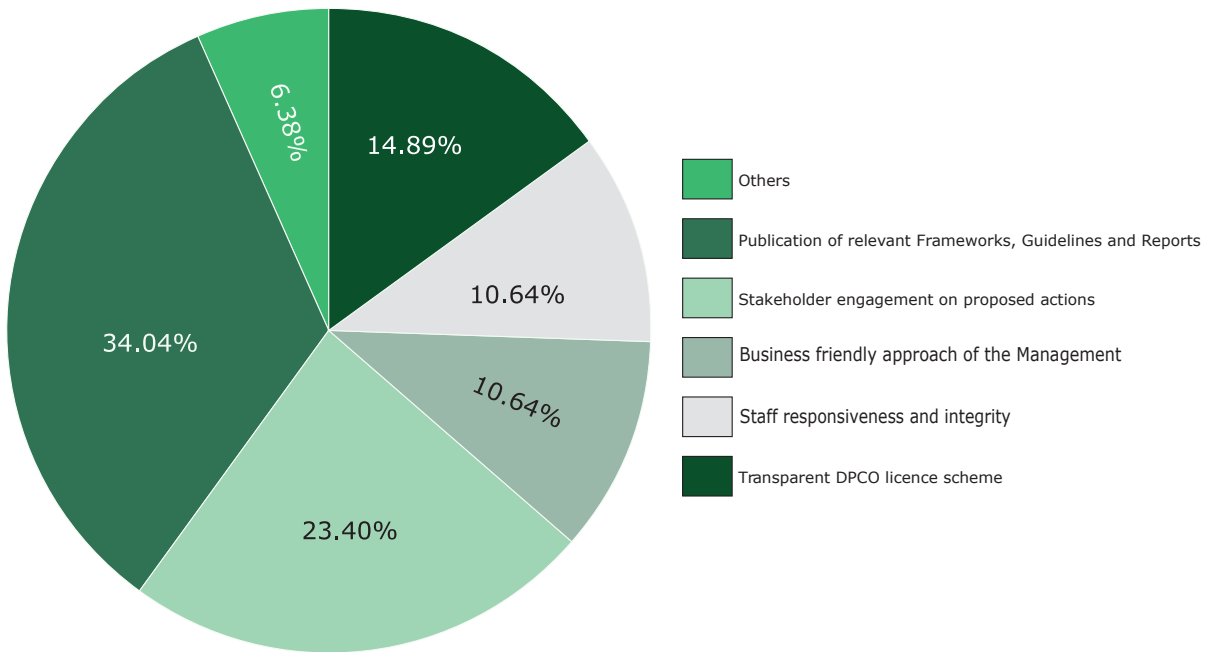
Q3: List 3 top actions the Regulator should implement to improve the NDPR outcomes



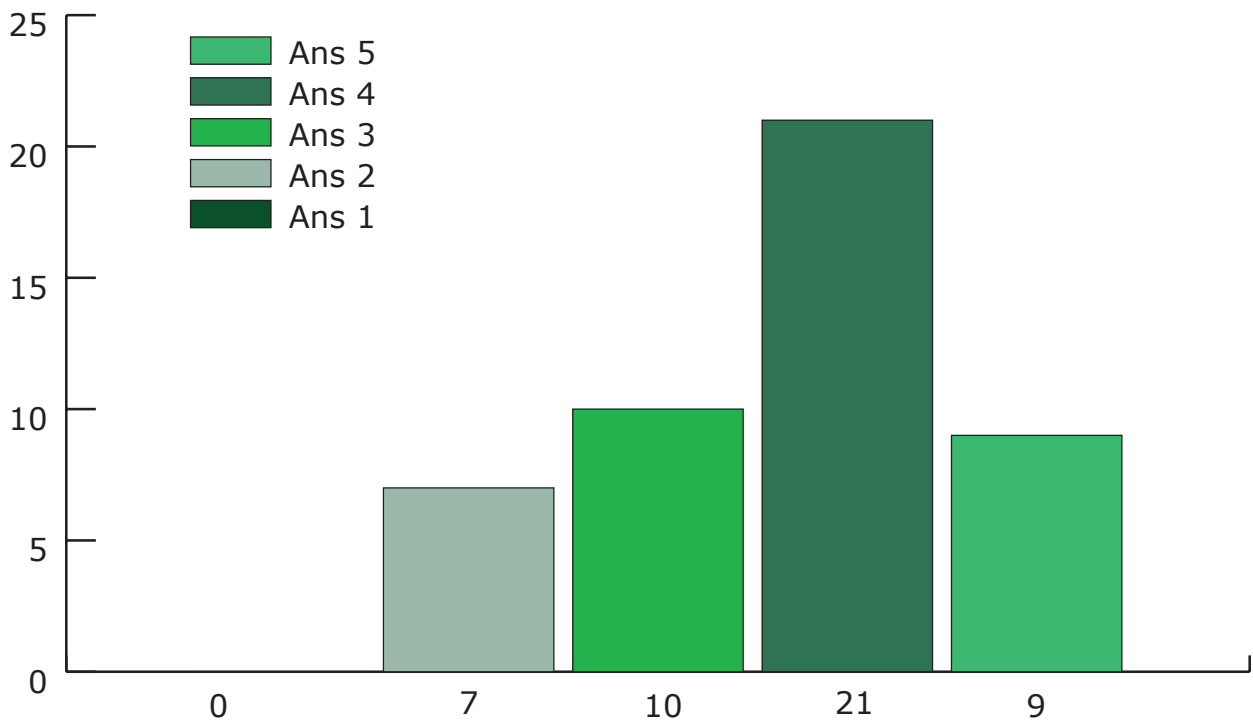
Q4: Rate the state of public awareness on the NDPR as at August, 2021(Where 1 is the lowest, 5 is the highest)



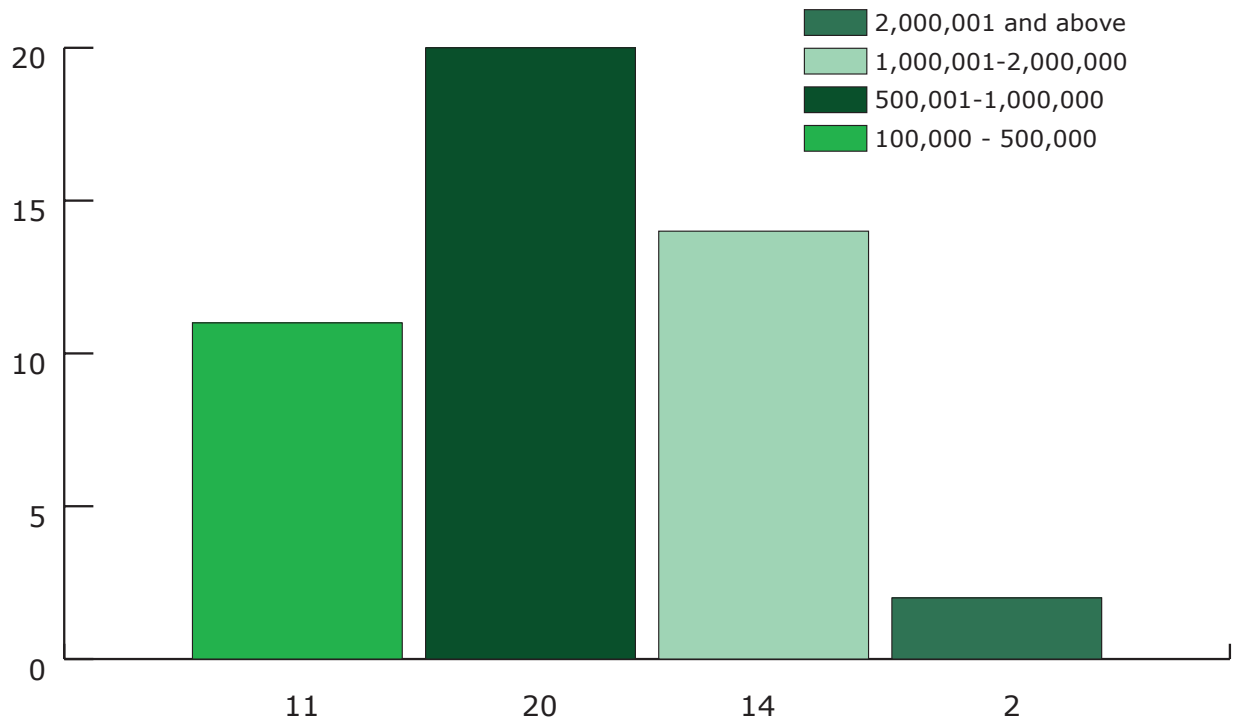
Q5: Highlight key actions taken by NITDA that you appreciate



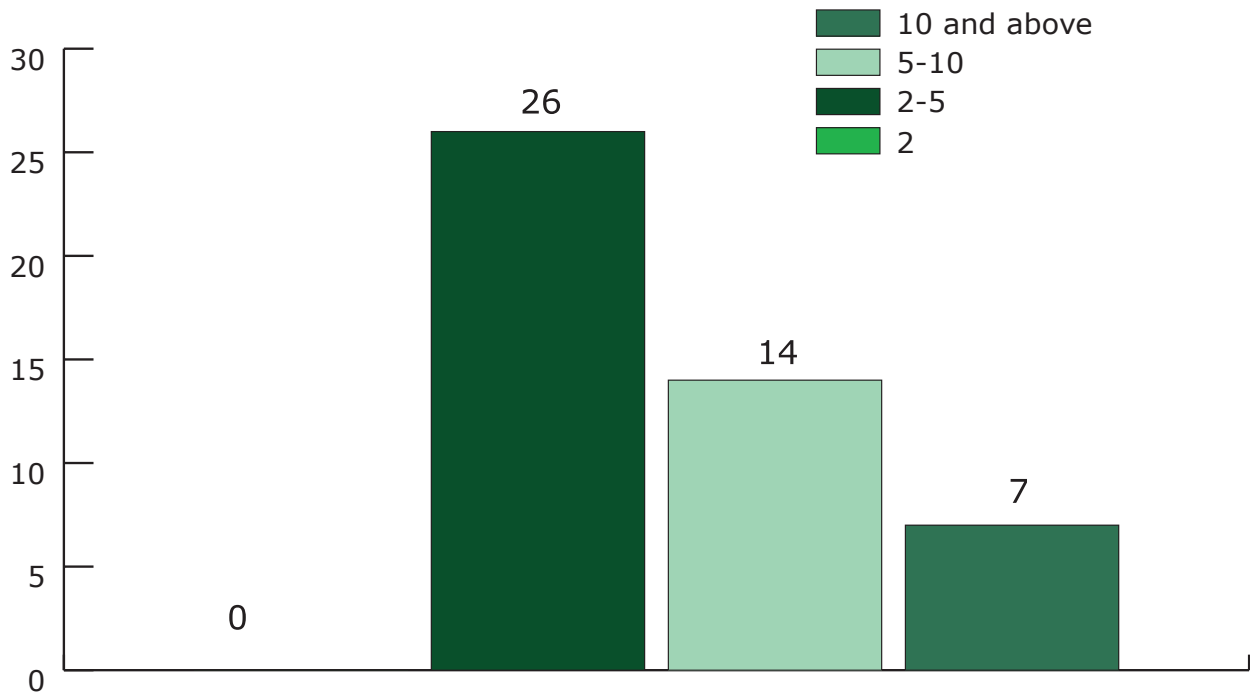
Q6: Rate NITDA’s support performance for your operations(Where 1 is the lowest, 5 is the highest)



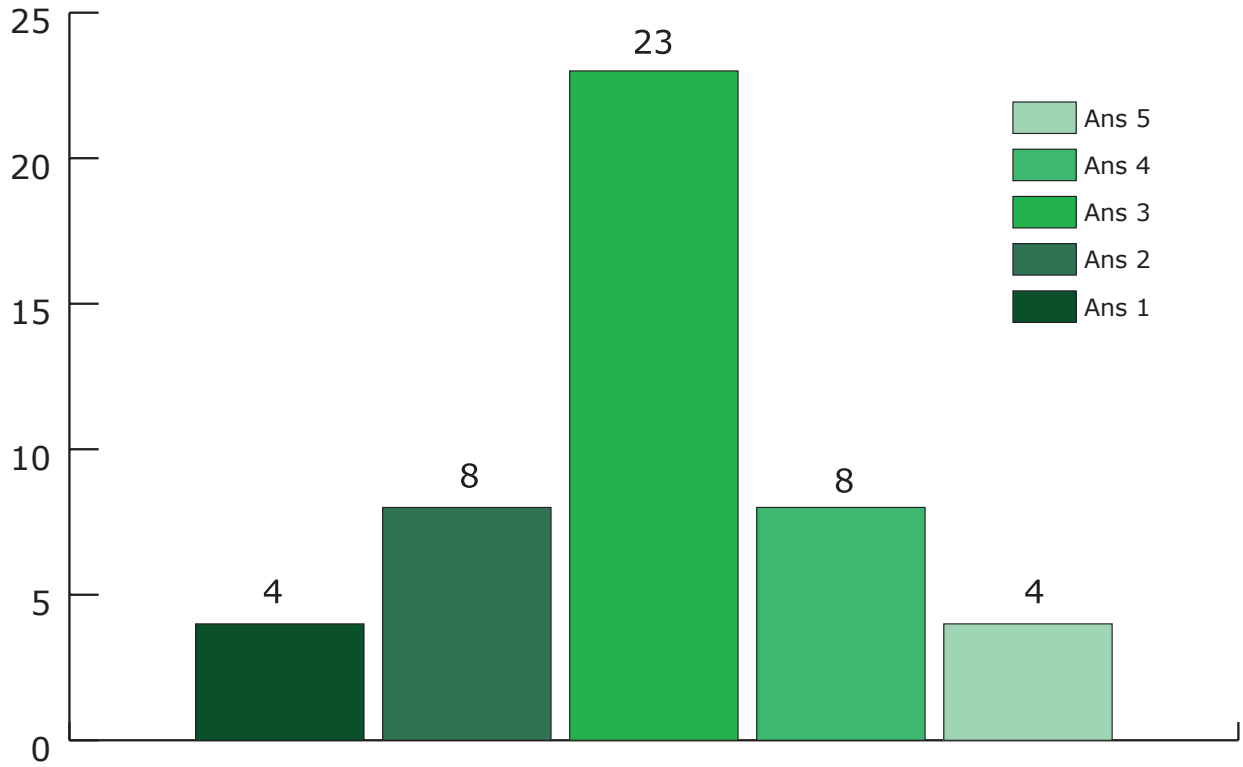
Q7: As a DPCO my fee for compliance audit ranges from (in Naira)



Q8: Our Data Protection function involves the following number of staff

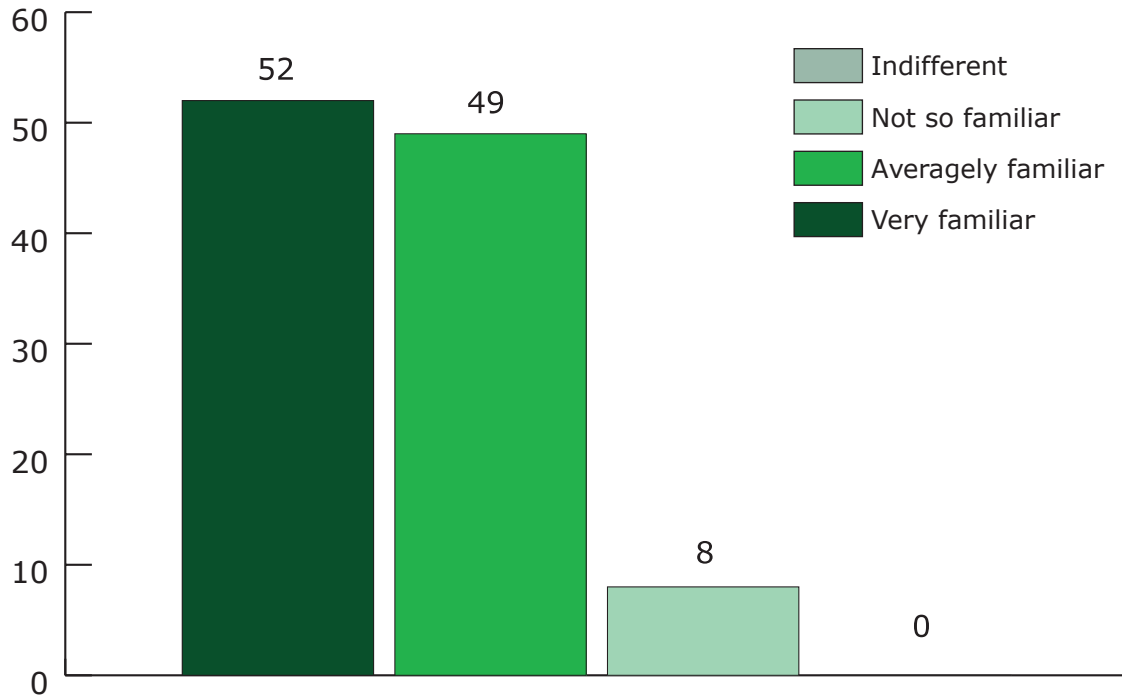


Q9: Give your overall impression of the NDPR implementation thus far(Where 1 is the lowest, 5 is the highest)

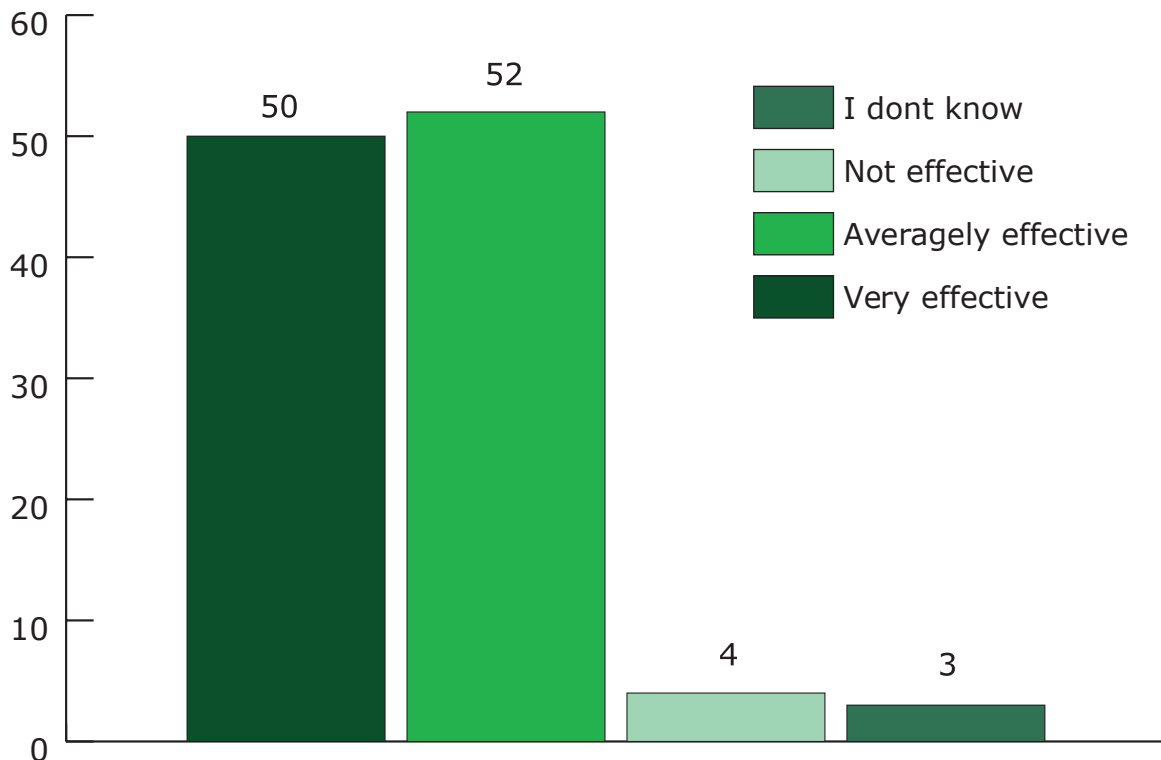


C. Data Subjects

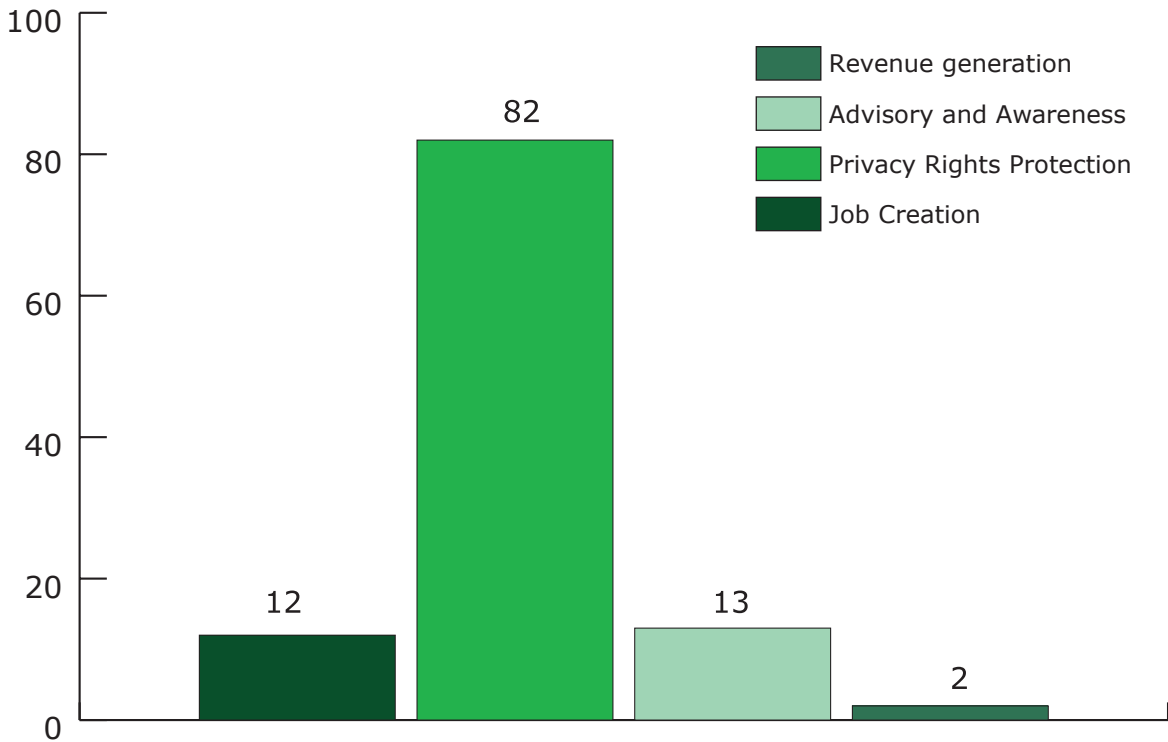
Q1: How familiar are you with Nigeria Data Protection Regulation 2019?



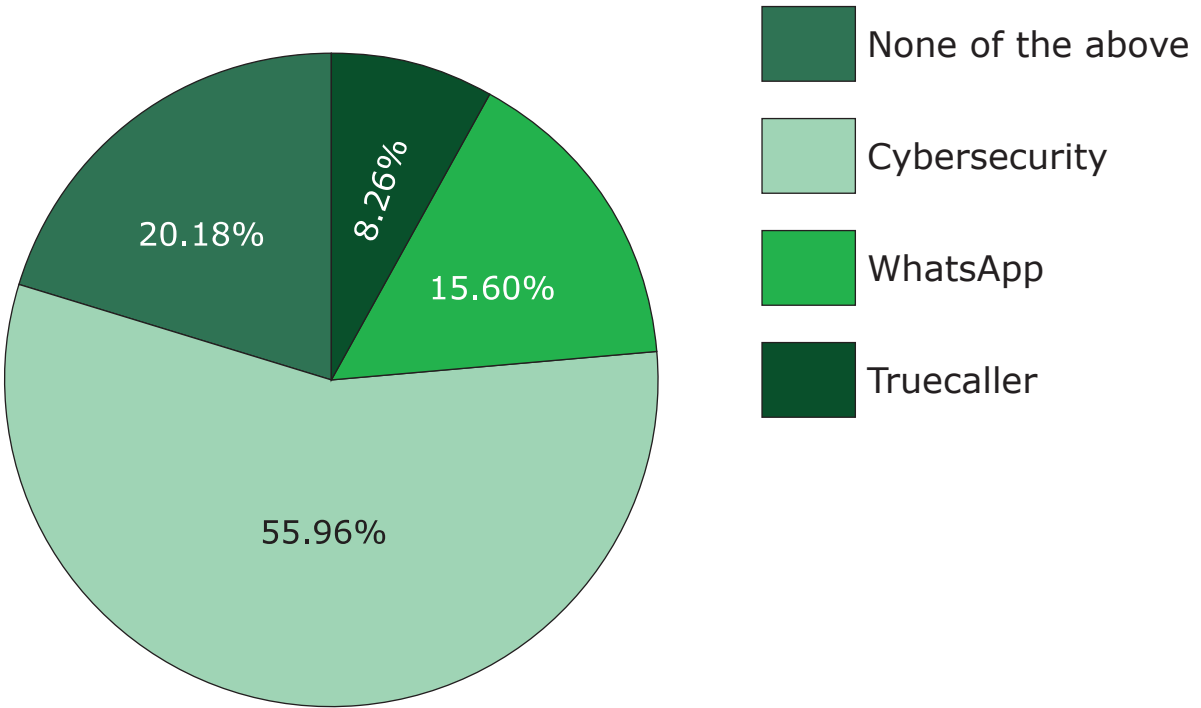
Q2: How effective do you think the NDPR has been since its inception?



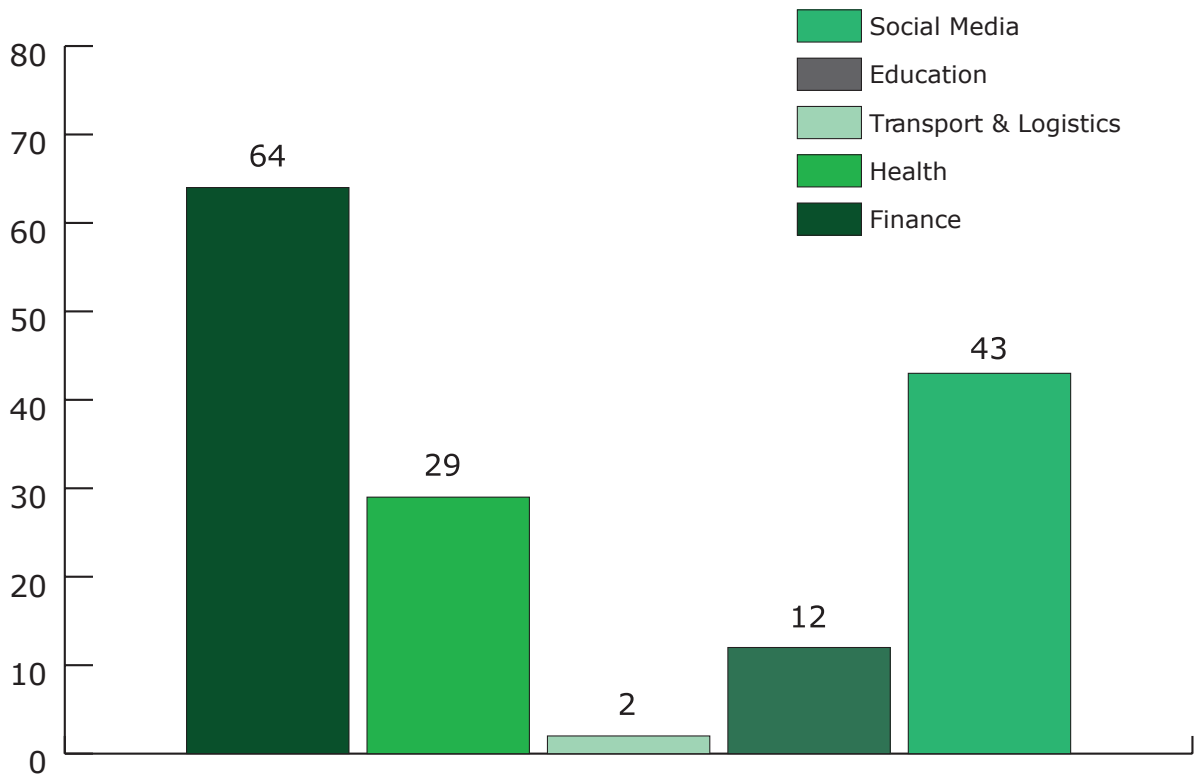
Q3: In your opinion, what is the most impactful benefit of the NDPR?



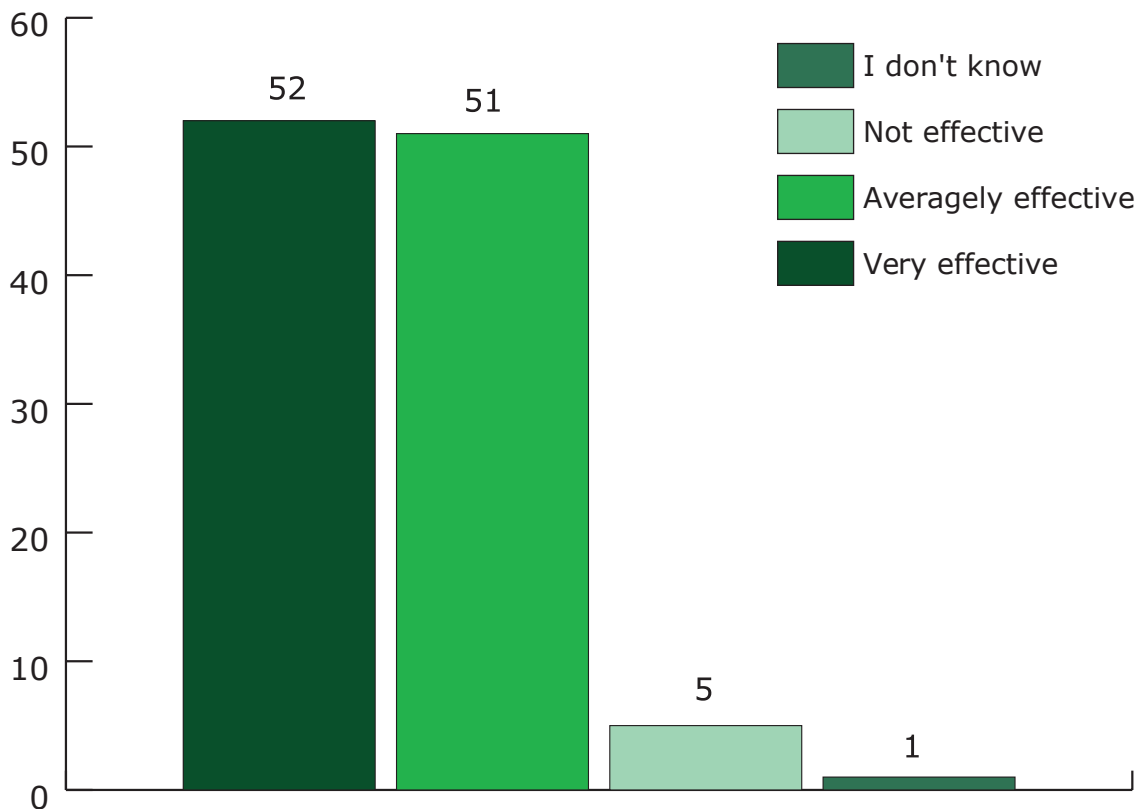
Q4: Which NITDA advisory impacted your decision the most?



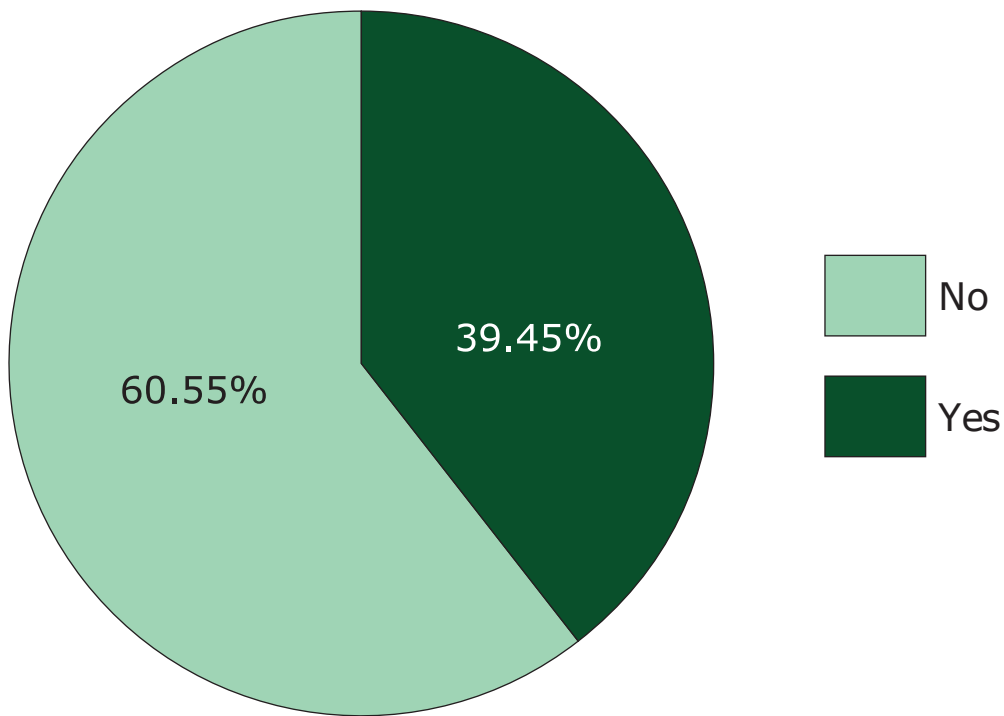
Q5: Choose top 1 sector that should be prioritised for Data Protection toolkits?



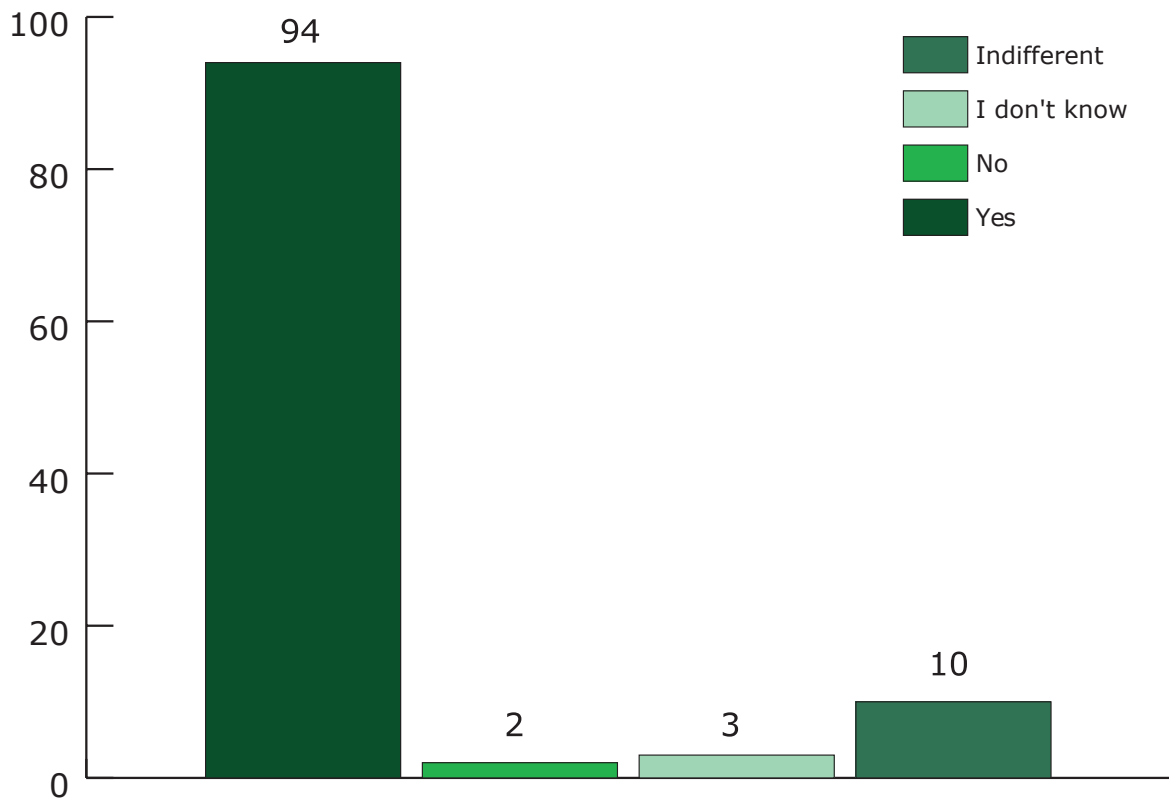
Q6: What is your overall impression of data protection awareness in your industry?



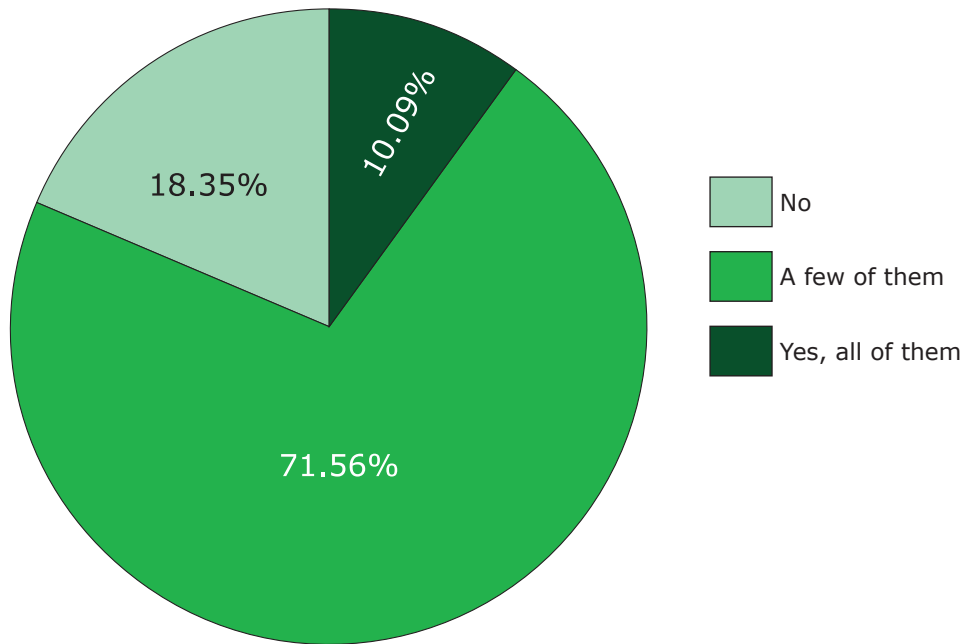
Q7: Have you attended any NITDA facilitated NDPR training?



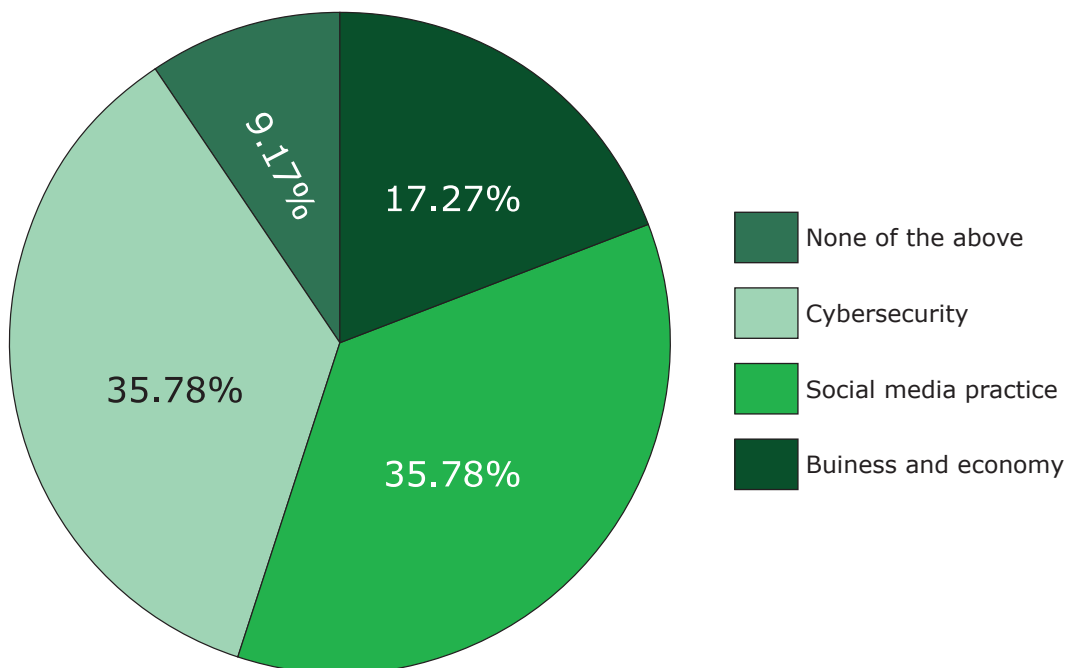
Q8: Does the existence of the NDPR provide a more comfortable environment for you to carry out your daily business?



Q9: Have you ever read the Privacy Policy of any mobile application you have on your phone?



Q10: The NDPR has affected me as an individual in this regard



Q11: If a business organisation gave you more options on how to manage how your personal data is shared, viewed and processed, would it improve your customer experience?

