

# DATA PROTECTION AUTHORITIES (DPAS) IN AFRICA:

A Report on the Establishment, Independence, Impartiality and Efficiency of Data Protection Supervisory Authorities in the Two Decades of their Existence on the Continent.



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A Report on the Establishment, Independence, Impartiality and Efficiency of Data Protection Supervisory Authorities in the Two Decades of their Existence on the Continent.

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# CONTENTS

1. Abbreviation and acronyms	4
2. Preface	5
3. Executive summary	6
4. Introduction	7
5. Country reports	8
• Algeria	9
• Angola	10
• Benin	12
• Botswana	14
• Burkina Faso	15
• Cape Verde	16
• Chad	18
• Congo Brazzaville	19
• Côte d'Ivoire	20
• Egypt	22
• Equatorial Guinea	23
• Gabon	24
• Ghana	25
• Kenya	26
• Lesotho	28
• Madagascar	29
• Mali	31
• Mauritania	33
• Mauritius	34
• Morocco	35
• Niger	36
• Nigeria	37
• Sao Tome and Principe	39
• Senegal	40
• Seychelles	42
• South Africa	43
• Togo	45
• Tunisia	47
• Uganda	49
• Zambia	50
6. African DPAs Facts sheet	51
7. Conclusion	54

## ABBREVIATION AND ACRONYMS

ANSICE	Agence Nationale de Sécurité Informatique et de Certification Électronique (Chad)
APD	Agência de Protecção de Dados (Angola)
APD	Autorité de Protection des Données à caractère personnel (Mauritania)
APDP	Autorité de Protection des Données à caractère Personnel (Benin)
APDP	Autorité de Protection des Données à Caractère Personnelles (Mali)
ARTCI	Autorité de Régulation des Télécommunications de (Côte d'Ivoire)
AU	African Union
CDP	Commission des Données Personnelles (Senegal)
CIL	Commission de l'Informatique et des Libertés (Burkina Faso)
CMIL	Commission for Informatics and Freedoms (Madagascar)
CNPD	Comissão Nacional de Protecção de Dados Pessoais (Cape Verde)
CNPD	National Commission for the Supervision Protection of Personal Data (Morocco)
CNPDCP	National Commission for the Protection of Personal Data (Gabon)
DPA	Data Protection Authority
DPC	Data Protection Commission (Ghana)
DPO	Data Protection Office (Mauritius)
EAC	East African Community
ECOWAS	Economic Community of West African States
EU	European Union
IDPC	Information and Data Protection Commission (Botswana)
INPDP	Instance Nationale de Protection des Données à Caractère Personnel (Tunisia)
IPDCP	Instance de Protection des données à caractère Personnels (Togo)
IR	Information Regulator (South Africa)
HAPDP	Haute Autorité de Protection des Données à caractère Personnel (Niger)
NAPPD	National Agency for the Protection of Personal Data (Sao Tome & Principe)
NAPP	National Authority for the Protection of Personal Data (Algeria)
NDPR	Nigeria Data Protection Regulation
NITDA	National Information Technology Development Agency (Nigeria)
ODPC	Office of Data Protection Commissioner (Kenya)
ODPC	Office of the Data Protection Commissioner (Zambia)
ORPDP	Organo Rector de Proteccion de Datos Personales (Equatorial Guinea)
PDPO	Personal Data Protection Office (Uganda)
SA	Supervisory Authority
SADC	Southern African Development Community

## PREFACE

Laws are only as good as their enforcement. ‘That part of the law which provides the means by which it shall be enforced is of much importance as the law itself.’<sup>1</sup> Judging from the enactment of the Cape Verdean Data Protection Act in 2001, it is conclusive that data protection law is twenty years old in Africa even though the first modern day data protection law in the world was enacted in 1970 by the German federal state of Hesse.

However, the first Data Protection Authority (DPA) in Africa was established by Burkina Faso in 2007 since Cape Verdean Act merely provided for a DPA but the same was not physically set up until 2015 when its first set of privacy commissioners were appointed. In African countries, experience has shown that while passage of data protection laws is one thing, commencement date is another and ultimately, their enforcement is the most difficult part of the work.

As at June 2021, 32 African countries had enacted fully dedicated data protection legislation but the DPAs responsible for compliance and enforcement had volunteered little or no information on their investigative and decision-making activities to the public. Unlike in some European countries where the public has access to the total sum of fines issued by DPAs over data subjects’ rights violations,<sup>2</sup> the same cannot be said of their African counterparts.

Owing to the necessity to open up academic and practical discussions on the efficiency and successes recorded by the African DPAs, this report predominantly captures the disclosed and verifiable investigative activities and sanctions imposed by the DPAs over the years without necessarily passing any verdicts on them.

It is however hoped that this report will provide constructive talking points on the nuances of the establishment, independence and impartiality of African DPAs on one hand, and also serve as a barometer for probing their efficiency and capacities on the other hand with the overall objective of improving compliance and enforcement of data protection laws on the continent.

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<sup>1</sup> Champe S. Andrews, ‘The Importance of the Enforcement of Law’ (1909) 34(10) “Annals of the American Academy of Political and Social Science”, 85.

<sup>2</sup> The Biggest GDPR Penalties for Non Compliance <<https://www.spirion.com/blog/gdpr-fines-increase/>> accessed 13 June 2021.

## EXECUTIVE SUMMARY

This report comes at an important time, especially following increased data collection during the COVID-19 pandemic and the major role that Data Protection Authorities play in ensuring protection of data rights. Paradigm Initiative's digital rights and inclusion in Africa report for 2020, Londa,<sup>3</sup> highlighted the need for this protection so it is important to have a report that focuses on the establishment, independence, impartiality and efficiency of data protection supervisory authorities.

As with every ecosystem, the data protection laws' observance and enforcement cycle in Africa is incomplete without the role played by the regulators that are assigned the responsibility of informing the stakeholders of their rights and obligations under the relevant laws on one hand, and ensuring compliance with the respective laws on the other.<sup>4</sup>

In many countries across the world, DPAs' investigative activities and attendant decisions are not shrouded in secrecy as the reports are publicly available and accessible. However, this cannot be said of DPAs in African countries, as most of them have made information about their activities elusive. Due to lack of independence and other factors, the prevailing perception is that DPAs in African countries do not stamp their anticipated authorities like their counterparts in Europe, for example. With the exception of a very few countries, DPAs in Africa are seen to have been technically subdued by their appointors or silenced by their innate infrastructural inhibitions, with the attendant effect of stunted growth of data protection laws and enforcement on the continent.

The report discusses the period when data protection laws were passed, including by early countries such as Cape Verde (22 January 2001), Seychelles (24 December 2003), Burkina Faso (20 April 2004), Mauritius (17 June 2004), Tunisia (27 July 2004), Senegal (15 January 2008), Morocco (18 February 2009), Benin (22 May 2009),<sup>5</sup> and follows actions taken by DPAs including the first set established by Burkina Faso (2007), Senegal/Tunisia (2008), Morocco (2009).

Noting that data protection laws have been around for two decades, and data protection regulators for at least fourteen years, this report examines a case-by-case description of the facts and figures surrounding the establishment of every existing DPA in Africa, their regulatory regimes, statutory powers, functions and ultimately, reported investigations and decisions.

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<sup>3</sup> Paradigm Initiative, 'Londa: Digital Rights and Inclusion in Africa Report,' <<http://paradigmhq.org/londa>> accessed 16 June 2021

<sup>4</sup> European Commission, 'What is the Role of Data Protection Authorities' <[https://ec.europa.eu/info/law/law-topic/data-protection/reform/rules-business-and-organisations/enforcement-and-sanctions/enforcement/what-role-data-protection-authority\\_en#:~:text=One%20of%20the%20roles%20of,Data%20Protection%20Regulation%20\(GDPR\).&text=Your%20company%20organisation%20does%20not,DPA%20that%20it%20process%20data.>](https://ec.europa.eu/info/law/law-topic/data-protection/reform/rules-business-and-organisations/enforcement-and-sanctions/enforcement/what-role-data-protection-authority_en#:~:text=One%20of%20the%20roles%20of,Data%20Protection%20Regulation%20(GDPR).&text=Your%20company%20organisation%20does%20not,DPA%20that%20it%20process%20data.>)> accessed 10 June 2021.

<sup>5</sup> Alex Boniface Makulilo, 'Privacy and data protection in Africa: a state of the art' in International Data Privacy Law, 2012, Vol. 2, No. 3. <<https://core.ac.uk/download/pdf/189619104.pdf>>



# INTRODUCTION

Since the creation of Africa's first Data Protection Authority (DPA) in Burkina Faso in 2007, neither academic nor statistical searchlight has been beamed on the activities and efficiency of these gatekeepers as far as data protection compliance and enforcement are concerned on the continent. Their regulatory activities have been somewhat shrouded in secrecy unlike their European counterparts that periodically publicize their investigative interventions and attendant decisions. For example, the Information Commissioner's Office (ICO) in the United Kingdom publishes accessible information on enforcement, decision notices, audits and monitoring reports on its website.<sup>6</sup>

Given that not so much has been made public on the activities of the African DPAs, in a descriptive method, this report presents an exposé on their establishment, constitution, statutory powers and functions, role playing and efficiency over the years. The report briefly looks at the main data protection laws of the respective countries vis-à-vis the scope of their applications, and with slight emphasis on their extraterritorial reach, and in some cases, exceptions. On their establishment, the report focuses on the statutory provisions and the verifiable events culminating into the physical establishment of the DPAs in their countries by outlining their powers and functions as donated by their respective data protection legislation.

The report describes the appointment of privacy commissioners, their terms of office, reporting systems, remuneration, removal from office, status as civil servants and effect on conflict of interest, without necessarily forming an opinion on their independence and impartiality.

As at the time of this report, 32 African countries had enacted a form of data protection legislation. This report covers Algeria, Angola, Benin, Botswana, Burkina Faso, Cape Verde, Chad, Congo Brazzaville, Côte d'Ivoire, Egypt, Equatorial Guinea, Gabon, Ghana, Kenya, Lesotho, Madagascar, Mali, Mauritania, Mauritius, Morocco, Niger, Nigeria, Sao Tome and Principe, Senegal, Seychelles, South Africa, Togo, Tunisia, Uganda, and Zambia.

It is important to, however, make certain clarifications here. First, this report is not an analytical examination of the various data protection laws contained herein, rather, it is a descriptive account of the regulatory, investigative and administrative enforcement by the DPAs concerned based on verifiable and easily accessible data. Secondly, the report does not necessarily pass any authoritative verdict on the DPAs' efficiency, independence and impartiality but it represents the authors' unassuming opinions as gleaned from the verifiable data at their disposal as at the time of publishing this report.<sup>7</sup> Countries like Malawi, Rwanda and Zimbabwe were left out because they all have pending data protection bills even though the bills provide for the creation of DPAs.

The legislation considered in this report are the main or general data protection enactments of the respective countries since the focus of this report are the DPAs as opposed to the sectoral laws on the subject. The style is descriptive rather than analytical of the subject matter thereby modestly creating a germinal report for subsequent academic or literary analysis on DPAs' activities in Africa. The report concludes with a scoresheet which is computed from verifiable data obtained on the DPAs' performances to date.

<sup>6</sup> Information Commissioner's Office, 'Actions We Have Taken' <<https://ico.org.uk/action-weve-taken/>> 11 June 2021. Other DPAs in Europe also regularly publish their activities on their respective websites. For such decisions, see generally <[https://gdprhub.eu/index.php?title=Category:DPA\\_Decisions](https://gdprhub.eu/index.php?title=Category:DPA_Decisions)>

<sup>7</sup> On independence and impartiality, resort is had to – International Conference of Data Protection & Privacy Commissioners 'Working Group on the Future of the Conference Interpretation of the Autonomy and Independence Criteria' (2019) <[https://globalprivacyassembly.org/wp-content/uploads/2019/12/ICDPPC-Background-document-on-independence-criteria\\_post-Coe-comment.pdf](https://globalprivacyassembly.org/wp-content/uploads/2019/12/ICDPPC-Background-document-on-independence-criteria_post-Coe-comment.pdf)> accessed 11 June 2021.



# COUNTRY REPORTS



# ALGERIA

Algeria is a north African country bordered by the Mediterranean Sea in the North. In terms of land mass, it is Africa's largest country, covering an area of nearly 2.4 km<sup>2</sup>. As of 2016, it has a population of 40.4 million people and an estimated GDP of \$183 billion USD.<sup>8</sup>

## Data Protection Law

Law 18-07 was enacted in June 2018 to govern data protection in Algeria.<sup>9</sup> It applies to the automated and non-automated processing of personal data contained or to be included in manual files and processing carried out by a natural or legal person established within or outside Algeria but uses means of processing in-country.<sup>10</sup> The law has not however entered into force since its commencement is dependent on the establishment of a DPA which is yet to be constituted.<sup>11</sup>

The NAPP is, among other functions, responsible for ensuring that the processing of personal data is done in accordance with the provisions of the law. There is no provision on removal of members in the legislation but they have a renewable term of five years.<sup>15</sup>

The NAPP is meant to draw its own budget<sup>16</sup> but salaries and emoluments for its members and their conditions of service are fixed by regulation.<sup>17</sup> It is also duty bound to submit its annual activity report to the President of the country.

## Investigations and decisions

The NAPP has not been established yet, consequently, there are no reports of its activities.

## The Data Protection Authority

Article 22 provides for the National Authority for the Protection of Personal Data (NAPP)<sup>12</sup> but the DPA has not been formally established.<sup>13</sup> Membership of the NAPP's board includes Magistrates, Members of Parliament, Senate, Human Rights Council; and Ministers of Defence, Business, Interior, Justice, ICT, Health, and Employment and Labour.<sup>14</sup>



<sup>8</sup> About Algeria

<sup>9</sup> Law No. 18-07 of June 10, 2018 on the protection of individuals in the processing of personal data (French version); Law No. 18-07 of June 10, 2018 on the protection of individuals in the processing of personal data. (Google translate version); see also Algeria's Personal Data Protection Law.

<sup>10</sup> Art. 4.

<sup>11</sup> See Data Protection and Cybersecurity Laws in Algeria; Overview of Algeria's Data Protection: Pratt's Privacy and Cybersecurity Law Report> accessed 30 May 2021.

<sup>12</sup> Article 22.

<sup>13</sup> Cynthia J. Rich, 'Out of Africa (and the Near East): Privacy Rules Come at Rapid Pace' 2021) 7(3) Pratt's Privacy and Cybersecurity Law Report, 72.

<sup>14</sup> Art. 23.

<sup>15</sup> Art. 23.

<sup>16</sup> Art. 25.

<sup>17</sup> Art. 26.

# ANGOLA

Bordered by Namibia, Democratic Republic of Congo and Zambia, Angola is the seventh largest country on the continent with an estimated population of 31million people and a GDP of \$89.4 billion<sup>18</sup> as of 2019. The South African Lusophone nation gained its independence from Portugal in 1975.<sup>19</sup>

## Data Protection Law

Angola peculiarly practices a dual legal system for data protection.<sup>20</sup> While the Personal Data Protection Law<sup>21</sup> makes copious procedural provisions for observance of data protection principles and enforcement of rights, the Presidential Decree 214/2016<sup>22</sup> effectively creates the office of the DPA to ensure compliance with the data protection law.

The Angolan data protection law generally and specifically regulates the processing of personal data by both the public and private bodies<sup>23</sup> and it is applicable to both manual and electronic processing of personal data by controllers and processors based in the country or processing activities by any means in the country irrespective of controllers' location.<sup>24</sup> The law effectively covers only processing done in-country.<sup>25</sup>

## Data Protection Authority

Five years after the enactment of the data protection law, the Angolan DPA - Agência de Protecção de Dados

(APD) was established<sup>26</sup> by the Angolan President by Decree 214 on 10 October 2016 with powers to monitor compliance with the data protection law, issue recommendations, instructions, opinions and guidelines on data protection best practices, register and publish personal data files, implement necessary technical and security measures, prepare annual reports, ensure compliance and sanction violations of the data protection law etc.<sup>27</sup>

## Independence and Impartiality

The APD is run by a management board of seven members headed by a chairman. In an appointment that appears like a distribution of powers, the President recommends three members of the board, the National Assembly recommends three while the judiciary recommends the last one of the seven members.<sup>28</sup> The board is appointed for a term of five years renewable for one or two periods,<sup>29</sup> however, the board may be dissolved at the will of the President if the board fails to fulfil the APD's mission.<sup>30</sup>

The APD draws its own budget but must submit an annual report to the Ministry of Economy by 31 December of every year.<sup>31</sup> It is also accountable to the Council of Audit which has the competence to supervise financial activities of state bodies and issue opinion on the public finances to the National Assembly.<sup>32</sup>



<sup>18</sup> The World Bank <<https://data.worldbank.org/country/angola>> accessed 19 July 2021

<sup>19</sup> Barrow Munslow, 'Angola: The Politics of Unsustainable Development' (1999) 20(3) Third World Quarterly, 551-568.

<sup>20</sup> [https://www.dlapiperdataprotection.com/system/modules/za.co.heliosdesign.dla.lotw.data\\_protection/functions/handbook.pdf?country=1=AO](https://www.dlapiperdataprotection.com/system/modules/za.co.heliosdesign.dla.lotw.data_protection/functions/handbook.pdf?country=1=AO)

<sup>21</sup> Law 22/11 of 17 June 2011. See <[https://apd.ao/fotos/frontend\\_7/editor2/110617\\_lei\\_22-11\\_de\\_17\\_junho-proteccao\\_dados\\_pessoais.pdf](https://apd.ao/fotos/frontend_7/editor2/110617_lei_22-11_de_17_junho-proteccao_dados_pessoais.pdf)> accessed 21 April 2021.

<sup>22</sup> Decree 214/2016 of 10 October 2016. <[https://apd.ao/fotos/frontend\\_7/editor2/161010\\_dp\\_214-16\\_de\\_10\\_outubro-estatuto\\_organico\\_apd.pdf](https://apd.ao/fotos/frontend_7/editor2/161010_dp_214-16_de_10_outubro-estatuto_organico_apd.pdf)> accessed 21 April 2021.

<sup>23</sup> Art. 3(a) –(d).

<sup>24</sup> Joao Luis Traca and Bernardo Embry, 'The Angolan Data Protection Act; First Impressions' (2012) 2(1) International Data Privacy Law, 40, 41.

<sup>25</sup> Gregory Voss, Katherine Woodcock, David Dumont, Nicholas D. Wells, Jonathan I. Exor, Joao Luis Traca, Bernardo Embry, and Fatima Khan, 'Privacy, E-Commerce, and Data Security' <<https://core.ac.uk/download/pdf/216910468.pdf>> accessed 27 April 2021.

<sup>26</sup> Agência de Protecção de Dados <<https://apd.ao/ao/>> accessed 23 April 2021. Members of the APD took office, 8 October 2019 – <https://opais.co.ao/index.php/2019/10/08/angola-conta-com-agencia-nacional-de-proteccao-de-dados/>; 9 October 2019 <https://vivenciaspressnews.com/agencia-angolana-de-proteccao-de-dados-admite-uso-indevido-de-dados-pessoais-em-instituicoes/>

<sup>27</sup> Decree 214/16, art.44.

### Investigations and decisions

The APD is empowered to issue administrative fines in the region of \$75,000 to \$150,000 where a controller or processor fails to notify the APD in the event of a data breach or violation of other provisions of the data protection law.<sup>33</sup> Some violations of the data protection law can also render controllers or processors liable to between three to eighteen months imprisonment.<sup>34</sup> Since its creation in 2019, the APD has received over 100 requests and invasion of privacy complaints on lack of legalization of personal data files, processing without consent, sites without privacy notices, etc.<sup>35</sup> However, there are no verifiable reports on the conclusion of such investigations leading to sanctions or exoneration. There is little public information about what the Agency has been doing since taking office.<sup>36</sup> On its own website, there is no information about decisions taken or

which are being investigated by the APD. In January 2020, the existence of an Agency strategic plan for 2020-2024 was reported, however, little is known of its implementation as it is not publicly available.<sup>37</sup> Earlier this year, on 28 February 2021, the APD stated that, by the end of 2020 they began inspecting several activities, finding numerous irregularities, such as the lack of legalization of personal data files of employees, collaborators, customers and public institutions.<sup>38</sup>

<sup>28</sup> Art. 9-13.

<sup>29</sup> Decree 214/2016, chapter 1, section 1, art. 13.

<sup>30</sup> Art. 12.

<sup>31</sup> Art. 39.

<sup>32</sup> <https://www.verangola.net/va/en/032021/Politics/24352/President-appoints-four-new-judges-to-the-Court-of-Auditors.htm> accessed 21 April 2021.

<sup>33</sup> Decree 214/2016, art. 46 and Law 22/11, art. 14.

<sup>34</sup> Law 22/11, art.51,55,56,58,60 and 61. For example, unauthorized access to personal information, false notification information, unauthorized erasure, alteration of data, refusal to restrict processing.

<sup>35</sup> Data Protection – Growing Reality in Angola < <https://www.angop.ao/noticias/tecnologia/proteccao-de-dados-realidade-crescente-em-angola/> accessed 13 June 2021.

<sup>36</sup> Angola 24 hours, 28 January 2020: Leak of personal data leads to fines of USD 60,000 – <https://angola24horas.com/sociedade/item/15946-angola-vazamento-de-dados-pessoais-da-multas-de-usd-60-mil>, access 29 April 2021.

<sup>37</sup> Although the document is not available on the APD's website. The strategic plan was adopted on 30 April 2020. It was prepared with the support of the Data Protection Agencies of Portugal and Brazil. The plan focuses five thematic areas including: internal organisation and operation, dissemination, registration and authorisation for processing, supervision and control, and national and international institutional cooperation. See <https://www.angop.ao/noticias/tecnologia/proteccao-de-dados-realidade-crescente-em-angola/> accessed 29 April 2021.

<sup>38</sup> Angola Press, 28 February 2021: Data protection, a growing reality in Angola – <https://www.angop.ao/noticias/tecnologia/proteccao-de-dados-realidade-crescente-em-angola/>, access 29 April 2021.

# THE REPUBLIC OF BENIN

The Republic of Benin gained independence from France in 1960. The francophone nation erstwhile known as Dahomey, is a relatively small country in West Africa with a population of about 12 million people. It borders Nigeria, Burkina Faso and Niger Republic with a GDP of \$12 billion as at 2019.<sup>39</sup>

## Data Protection Law

Two major laws regulate data protection in Benin Republic: while Law No. 2017-20 (which was initially enacted in 2009) regulates processing of personal data,<sup>40</sup> Law No. 2009-09 effectively creates the DPA.<sup>41</sup> The Law No. 2017-20 is applicable to natural persons in Benin regardless of their nationality or domicile<sup>42</sup> and it extends to extraterritorial processing activities governed by Beninese law.<sup>43</sup>

## The Data Protection Authority

In 2018, the Autorité de Protection des Données à caractère Personnel (APDP)<sup>44</sup> was established in Benin Republic to regulate processing of personal data<sup>45</sup> and ensure compliance with the data protection law as well as respect for privacy in the country. The APDP among other functions, investigates data breaches

and is competent to sanction erring controllers and processors.<sup>46</sup>

## Independence and Impartiality

The APDP is constituted by an 11-person privacy commissioners board<sup>47</sup>. The membership is made up of three of its members who are appointed by the National Assembly, one member elected by the Economic and Social Council<sup>48</sup>, two members appointed by the National Assembly, one member appointed by the President, three magistrates elected by their peers, one lawyer

<sup>39</sup> The World Bank in Benin < <https://www.worldbank.org/en/country/benin/overview> > accessed 1 June 2021.

<sup>40</sup> Book V of the Digital Code of the Republic of Benin Protection of Personal Data (Loi n° 2017-20 du 20 avril 2018 portant code du numérique en République du Bénin) [https://apdp.bj/wp-content/uploads/2019/04/CODE-DU-NUMERIQUE-DU-BENIN\\_2018-version-APDP.pdf](https://apdp.bj/wp-content/uploads/2019/04/CODE-DU-NUMERIQUE-DU-BENIN_2018-version-APDP.pdf) > accessed 2 June 2021.

<sup>41</sup> <http://apdp.bj/wp-content/uploads/2016/08/Loi-No-2009-du-22Mai-2009-Version-Anglaise.pdf> > accessed 3 June 2021.

<sup>42</sup> Art. 379

<sup>43</sup> Art. 380 and 381.

<sup>44</sup> Also known as Personal Data Protection Authority (APDP), see <https://apdp.bj/> > accessed 5 June 2021.

<sup>45</sup> The APDP was created pursuant to article 462 of the Law No. 2017-20 on digital code in April 2018 to replace Commission Nationale pour l'Informatique les Libertés of Benin (CNIL Bénin).

<sup>46</sup> Art. 483 is a very comprehensive provision on the functions of the APDP.

<sup>47</sup> Art. 464

<sup>48</sup> This is a constitutional consultative assembly of Benin's economic and social forces from the socio-professional organizations, associations and the civil society. < <http://www.aicesis.org/members/organization/28/> > accessed 26 April 2021.

<sup>49</sup> Art. 464.

<sup>50</sup> Art 469.

<sup>51</sup> Art. 474.

elected by their peers and the government commissioner appointed by the President.<sup>49</sup> The commissioners are appointed for a five-year term renewable for another term<sup>50</sup> but they are irremovable during the pendency of their term except for gross misconduct as noted by a member of the APDP's Board of Commissioners.<sup>51</sup> While serving on the board of the APDP, the members cannot occupy positions of government and other responsibilities within a company carrying out data processing and electronic communications.<sup>52</sup> The APDP members do not receive instructions from any administrative and political authority.<sup>53</sup> It draws its own budget which is funded from annual credit allocated to it in the state budget<sup>54</sup> and files an annual report.

## Investigations and decisions

The APDP is statutorily duty-bound to receive complaints and is empowered to investigate and issue fines to the tune of 100 million Francs CFA.<sup>55</sup> Very little verifiable information is available on the fines and sanctions already handed down by APDP since its establishment.

<sup>52</sup> Art. 473.

<sup>53</sup> Art. 463.

<sup>54</sup> Art. 477.

<sup>55</sup> Art. 455.

# BOTSWANA

Botswana is a landlocked country located in Southern Africa bordered by Namibia, South Africa and Zimbabwe.<sup>56</sup> With a population of around 2.2 million and an estimated GDP of \$17.9 billion, Botswana is rated as one of the world's fastest growing economies.<sup>57</sup>

## Data Protection Law

On 3 August 2018, the government of Botswana enacted the Data Protection Act<sup>58</sup> which regulates the protection of personal data and safeguards the privacy of individuals relating to their personal data. The Act has not however been enforced yet as it ought to come into operation upon the Minister's publication<sup>59</sup> of commencement date in a Gazette Notice.<sup>60</sup> The Act is currently on notice awaiting commencement.<sup>61</sup> The Act applies to processing of personal data entered in a file by a data controller in Botswana or where the data controller is not in Botswana, by using automated or non-automated means situated in Botswana, unless those means are only used to transmit personal data.<sup>62</sup>

## Data Protection Authority

The Act provides for the establishment of the Information and Data Protection Commission (IDPC)<sup>63</sup>, however, the Commission

has not been formed yet.<sup>64</sup> Under the Act, when the IDPC is established, its responsibility is to ensure compliance with the Act, among other functions.<sup>65</sup>

## Independence and Impartiality

The Commission is statutorily led by the Data Commissioner appointed by the Minister but the Act is silent on their term of office, removal, remuneration and annual report.<sup>66</sup>

## Investigations and Decisions

Since the IDPC has not been officially set up, it has neither conducted investigations nor made any decision.

<sup>56</sup> <https://www.nationsonline.org/oneworld/botswana.htm> > accessed 2 June 2021.

<sup>57</sup> <https://www.carleton.edu/president/lewis/speeches-writings/botswana-success/> > accessed 6 June 2021.

<sup>58</sup> Act 32 of 2018. <https://www.bocra.org.bw/sites/default/files/documents/DataProtectionAct.pdf> > accessed 5 May 2021.

<sup>59</sup> The Act neither defines the minister nor gives explanation on his designation but some stakeholders are torn between the Minister of Presidential Affairs and Public Administration judging from the previous gazettes issued and the Minister for Transportation and Communication but as it stands, neither has published a gazette signalling commencement of the Act.

<sup>60</sup> section 1.

<sup>61</sup> Brian Diagle, 'Data Protection Laws in Africa: A Pan African Survey and Noted Trends' (2021) Journal of International Commerce and Economics 1, 13; Graham Greenleaf & Bertil Cottier, '2020 Ends a Decade of 62 New Data Privacy Laws' [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3572611](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3572611); DLA Piper, Data Protection Laws of the World <https://www.dlapiperdataprotection.com/index.html?t=law&c=BW> > accessed 10 June 2021.

Section 3 (1) and (2).

<sup>62</sup> Section 4.

<sup>63</sup> Lexis Nexis, Pratts Privacy & Cybersecurity Law Report (April, 2021) pg.72

<sup>64</sup> <https://media2.mfo.com/documents/210111-africa-near-east-privacy-rules.pdf> ALTAdvisory, Factsheet: Botswana

<https://dataprotection.africa/wp-content/uploads/2020/03/Botswana-Factsheet-updated-20200331.pdf>

Tomiwa Ilori, Data Protection in Africa and the COVID 19 Pandemic: Old Problems, New Challenges, and Multi Stakeholder Solutions' <[https://africaninternetrights.org/sites/default/files/Tomiwa%20Ilori\\_AfDec\\_Data%20protection%20in%20Africa%20and%20the%20COVID-19%20pandemic\\_Final%20paper.pdf](https://africaninternetrights.org/sites/default/files/Tomiwa%20Ilori_AfDec_Data%20protection%20in%20Africa%20and%20the%20COVID-19%20pandemic_Final%20paper.pdf)> accessed 10 June 2021.

DLA Piper, Data Protection Laws of the World

<https://www.dlapiperdataprotection.com/index.html?t=authority&c=BW> > accessed 1 June 2021.

<sup>65</sup> Section 5 (1).

<sup>66</sup> Section 6.

# BURKINA-FASO

Burkina Faso is a country in West Africa without access to the sea but with a population of about 20 million people. It borders Mali, Niger, Benin, Togo, Ghana and the Republic of Côte d'Ivoire with a GDP of \$15.99 billion as at 2019.<sup>67</sup>

## Data Protection Law

Burkina Faso is one of the first countries to regulate data protection in Africa. As of April 2004, it had already enacted Law No. 01 0-2004/AN governing the processing and protection of personal data in the country.<sup>68</sup> The law is applicable to automated and non-automated processing of personal data by controllers established within or outside Burkina-Faso, provided the means of processing are within the territory.<sup>69</sup>

However, on 30 March 2021, the government attempted amending Law No. 010-2004/AN by changing its title to 'La loi portant protection des personnes à l'égard du traitement des données à caractère personnel'<sup>70</sup> as well as inclusion of the right to be forgotten, new sanctions regime, international cooperation and mutual aid between DPAs etc.

## Data Protection Authority

The Commission de l'Informatique et des Libertés (CIL)<sup>71</sup> is the country's DPA and it officially started its activities in 2007.<sup>72</sup> It is responsible for ensuring compliance with the provisions of the law concerning

the processing of personal data in Burkina Faso.<sup>73</sup> The CIL has regulatory powers to impose sanctions.<sup>74</sup>

## Independence and Impartiality

The nine members of the CIL are appointed by the President upon the nomination of the Court of causation and some other bodies.<sup>75</sup> After their nomination, the commissioners are appointed by Decree taken in the Council of Ministers<sup>76</sup> for a term of five years renewable once.<sup>77</sup> They are removable in the event of resignation, serious misconduct, or other factors as noted by the CIL itself.<sup>78</sup> They also enjoy full immunity in the performance of their duties and are subject to professional secrecy.<sup>80</sup>

Every year, the CIL is meant to submit to the political authorities of Burkina-Faso (President of Faso, President of the National Assembly and to the President of the Constitutional Council) a report.<sup>81</sup>

## Investigation and Decisions

The CIL receives complaints and is empowered to investigate and impose fines between 200,000 and 5 million CFA francs and imprisonment between three and five years.<sup>82</sup> There are, however, no reports on the CIL's investigations and decisions on its website or any other credible information platform.

<sup>67</sup> [https://www.sggcm.gov.bf/fileadmin/user\\_upload/constitution.pdf](https://www.sggcm.gov.bf/fileadmin/user_upload/constitution.pdf)

<sup>68</sup> Loi No 010-2004/AN Portant Protection Des Donnees A Caractère Personnel. Found at <https://www.afapdp.org/wp-content/uploads/2012/01/Burkina-Faso-Loi-portant-protection-des-donn%c3%a9es-%c3%a0-caract%c3%a8re-personnel-20042.pdf>> accessed 9 May 2021.

<sup>69</sup> Law No. 01 0-2004, art 8.

<sup>70</sup> La loi portant protection des personnes à l'égard du traitement des données à caractère personnel (Law awaiting promulgation)

<sup>71</sup> <http://www.cil.bf/>> accessed 12 May 2021.

<sup>72</sup> <https://www.cil.bf/index.php/la-cil/presentation> accessed 12 May 2021.

<sup>73</sup> Art.26 et 40 of Law No. 01 0-2004 / AN of 20 April 2004

<sup>74</sup> Law No. 01 0-2004, art. 26

<sup>75</sup> Art. 27.

<sup>76</sup> Art. 27

<sup>77</sup> Art. 28

<sup>78</sup> Art. 28 and art.31

<sup>79</sup> Art. 33.

<sup>80</sup> Art. 28.

<sup>81</sup> Art. 45.

<sup>82</sup> Art. 46 -55.



# CAPE VERDE

With an estimated population of 550,000 and a GDP of 4.323 billion as at 2019, Cabo Verde, also called Cape Verde, is a country comprising ten volcanic islands that lie 385 miles (620 km) off the west coast of Africa. Cabo Verde consists of nine inhabited islands, one uninhabited island, and various islets.<sup>83</sup>

## Data Protection Law

The Cape Verdean Data Protection Law is reputed as the first in Africa.<sup>84</sup> The country's legal framework on data protection consists of two distinct laws: the first is the Data Protection Act<sup>85</sup> which covers data processing through automated and non-automated means, by entities established in Cape Verde or that collects or transmits personal data through means located in the country. It also applies to controllers outside Cape Verde which process personal data within the territory by automated and non automated means.<sup>86</sup>

The second law (the Authority Law) establishes the DPA named – National Commission of Data Protection (CNPd) as well as procedural rules for ensuring compliance with the law.<sup>87</sup> Following the establishment of the CNPD, the Data Protection Act was amended in 2013, in order to align the regime with the powers granted to the newly created CNPD.<sup>88</sup>

Again, in 2021 the Law 42/VIII/2013 was amended<sup>89</sup> to accommodate provisions empowering the

CNPd to authorise processing of sensitive personal data based on public interest, among other new provisions.<sup>90</sup> While the Cape Verde's legal system is patterned after Portuguese law, being a former colony, its data protection legal regime draws inspiration from Europe.<sup>91</sup>

## Data Protection Authority

Article 22 of Law 133/V/2001 provides for the Comissão Nacional de Protecção de Dados Pessoais (CNPd)<sup>92</sup> as the Cape Verdean DPA but it was effectively established on 24 April 2015 when its members were appointed.<sup>93</sup> The CNPD is responsible for controlling and supervising compliance with the legal and regulatory provisions on personal data protection.<sup>94</sup>

It possesses investigative and administrative jurisdiction within the country's territory<sup>95</sup> but may perform extraterritorial regulatory functions where requested to exercise its powers by a DPA from another country under the terms of the international agreements and conventions to which Cape Verde is party.<sup>96</sup>

The CNPD may be allowed to create delegations in other parts of the country<sup>97</sup> and is composed of three members elected by the National Assembly, by a two-thirds majority of the Members of Parliament for a six years mandate which is renewable for another term.<sup>99</sup>

<sup>83</sup> Carling, Jørgen, and Luis Batalha 'Cape Verdean Migration and Diaspora' in Transnational Archipelago: Perspectives on Cape Verdean Migration and Diaspora, Carling Jørgen and Batalha Luis (eds) (Amsterdam University Press, 2008) 13-32.

<sup>84</sup> Joao Luis Traca and Bernardo Embry, 'An Overview of the Legal Regime for Data Protection in Cape Verde' (2011) International Data Privacy Law, 1.

<sup>85</sup> Law 41/VIII/2013 of 17 September 2013. <https://www.cnpd.cv/leis/DATA%20PROTECCAO%20LAW%20133.pdf> accessed 29 April 2021. This law amended the general legal regime for the protection of personal data of individuals, approved by Law 133/V/2001 of 22 January 2001 <https://www.cnpd.cv/leis/DATA%20PROTECCAO%20LAW%20133.pdf> accessed 2nd May 2021.

<sup>86</sup> Law No 120/IX/2021 of 17 March, Chapter I, General scope, art. 2.

<sup>87</sup> Law 42/VIII/2013 of 17 September 2013 (the Authority Law). [https://www.cnpd.cv/leis/Lei%20n%2042\\_VIII\\_2013%20Comiss%C3%A3o%20Nacional%20de%20Protec%C3%A7%C3%A3o%20de%20Dados%20\(CNPd\).pdf](https://www.cnpd.cv/leis/Lei%20n%2042_VIII_2013%20Comiss%C3%A3o%20Nacional%20de%20Protec%C3%A7%C3%A3o%20de%20Dados%20(CNPd).pdf) accessed 29 April 2021.

<sup>88</sup> Law no 121/IX/2021 of 17 March 2021 <https://www.cnpd.cv/leis/Lei%20120.IX.2021%20altera%C3%A7%C3%A3o%20Lei%2042.VIII.2013.pdf> accessed 2nd May 2021.

<sup>89</sup> <https://furtherafrica.com/2021/04/30/amendment-of-the-law-on-personal-data-protection-in-cape-verde/> accessed 29 April 2021.

<sup>90</sup> Law no 121/IX/2021 of 17 March 2021 but it entered force on 17th April 2021. <https://www.cnpd.cv/leis/Lei%20120.IX.2021%20altera%C3%A7%C3%A3o%20Lei%2042.VIII.2013.pdf> accessed 29 April 2021. The new Law aims to align the current normative framework with international standards and gives clarity on the scope of the powers and duties of the CNPD.

<sup>91</sup> Santa Slokenberga, 'Biobanking and Data Transfer Between the EU and Cape Verde, Mauritius, Morocco, Senegal, and Tunisia: Adequacy Considerations and Convention 108' (2020) 10(2) International Data Privacy Law, 132-145.

<sup>92</sup> <http://www.cnpd.cv> accessed 23 April 2021.

<sup>93</sup> CNPD History <https://www.cnpd.cv/historia.html> accessed 13 June 2021.

<sup>94</sup> Law No 120/IX/2021 of 17 March 2021, Chapter II, article 8.

<sup>95</sup> Law No 120/IX/2021 of 17 March 2021, Chapter I, General scope, article 1 and 2.

### Independence and Impartiality

The CNPD operates within the National Assembly.<sup>100</sup> It has a Steering Committee and is composed of three persons selected by the National Assembly.<sup>101</sup> The Country's President does not play a role in such appointments.

The CNPD members take office before the President of the National Assembly, within 15 days after the publication of its resolution approving their appointment.<sup>102</sup>

The CNPD members are removable<sup>103</sup> before the end of their term of office in the event of death or permanent physical incapacity or with a duration that is expected to exceed the term of office; resignation from office and loss of office. The CNPD prepares its budget but is subject to the control of the Court of Auditors.<sup>104</sup> It submits its annual reports<sup>105</sup> to the National Assembly on the anniversary of its establishment and such reports are normally published.<sup>106</sup>

### Investigations and decisions

The CNPD is empowered to receive complaints.<sup>107</sup> It can issue administrative fines for varying offences<sup>108</sup> ranging from CVE five thousand<sup>109</sup> when the offence is committed by a natural person to CVE

ten thousand<sup>110</sup> when committed by a legal person. Since its inception, the CNPD has published on their website 1299 authorisations, 8 deliberations, 86 opinions, 21 registrations and one directive.<sup>111</sup> In 2017, the CNPD investigated<sup>112</sup> a private bank's handling of personal data because the bank published a list of debtors in the newspaper without authorization.<sup>113</sup> Outcome of the investigation made all banks subsequently ask the Commission for permission before publishing their debtors' list. As of 2019, the CNPD had issued 33 opinions on draft legislative texts, processing of personal data, interpretation of rules as well as the creation of databases.<sup>114</sup> In 2020, the CNPD published the guidelines on processing of personal data on national elections.<sup>115</sup> In one of the decisions issued in 2020, the CNPD refused to authorise the use of electoral data via electronic platforms because it considered there were risks of insecurity of personal data and against electoral confidentiality.<sup>116</sup>

There are however no reports of fines imposed by the CNPD on any data controller since its creation.

<sup>96</sup> Art. 4.

<sup>97</sup> Art. 5.

<sup>98</sup> Art. 13.

<sup>99</sup> Art. 14.

<sup>100</sup> Art. 2.

<sup>101</sup> Art. 13.

<sup>102</sup> Art. 15.

<sup>103</sup> Art. 17.

<sup>104</sup> Art. 35 (1,2,3,4).

<sup>105</sup> Annual report: 2016 – 2018, available on the website <https://www.cnpd.cv/relatorios.php?page=1> > accessed 29 April 2021.

<sup>106</sup> The Commission members sent me the 2019 report, before publishing on their website.

<sup>107</sup> Law no 121, IX, 2021 of 17 March, Chapter II, art. 11.

<sup>108</sup> Controller's failure to notify CNPD for processing data, provision of false information, unauthorized processing etc.

<sup>109</sup> Approximately \$55.

<sup>110</sup> Approximately \$109.

<sup>111</sup> See all decisions and press releases <https://www.cnpd.cv/comunicados.php?page=1> > accessed 29 April 2021.

<sup>112</sup> News report, 13 July 2017, source: <https://www.voaportugues.com/a/banco-de-cabo-verde-e-novo-banco-multados-violar-lei-proteccao-de-dados/3898368.html> > accessed 2nd May 2021. The members of the Commission commented about this case during our interview.

<sup>113</sup> Banco de Cabo Verde and Novo Banco convicted of violating data protection law <https://www.voaportugues.com/a/banco-de-cabo-verde-e-novo-banco-multados-violar-lei-proteccao-de-dados/3898368.html> > accessed July 26, 2021

<sup>114</sup> It is not yet available, the Commission members sent me the report after the interview.

<sup>115</sup> News report <http://www.faapa.info/blog/cnpd-apresenta-directrizes-de-tratamento-de-dados-pessoais-durante-periodo-de-campanha-eleitoral/> > accessed 27 April 2021.

<sup>116</sup> Decision/investigation <https://www.cnpd.cv/doc.php?id=1435> > accessed 2 May 2021.

# CHAD

Chad is located in north-central Africa. The country has a population of over 16 million (2021) and a GDP of \$11.315 billion (2019).<sup>117</sup> It currently runs a unitary presidential constitutional republic under a military arrangement.<sup>118</sup>

## Data Protection Law

Law No. 007/PR/2015 regulates data protection in Chad.<sup>119</sup> The law puts in place a mechanism to protect data subjects over the collection, processing, transmission, storage, and use of their personal data.<sup>120</sup> It applies to every entity (natural or artificial) under public or private law and any state or local authority that collects, processes, transmits, stores, and uses personal data. The law also applies to automated or non-automated processing of data contained or intended to be included in a file, but excludes processing for personal or domestic activities, provided that the data is not intended for systematic communication to third parties or for dissemination.<sup>121</sup>

## Data Protection Authority

The Chadian DPA is the Agence Nationale de Sécurité Informatique et de Certification Électronique (ANSICE).<sup>122</sup> It was created by Law No. 006/PR/2015<sup>123</sup> to be responsible for ensuring compliance with the provisions of the same law under which it was created. The ANSICE is empowered to sanction any violation of that law, issue notices and give authorisations etc.<sup>124</sup>

## Independence and Impartiality

Although Law No. 006/PR/2015 provides that the ANSICE is an entity with financial autonomy,<sup>125</sup> it operates under the supervision of the Prime Minister's Office<sup>126</sup> to which it submits an activity report.<sup>127</sup> The ANSICE is run by a Board of Directors composed of 11 members appointed<sup>128</sup> by the Council of Ministers (led by the President of the Republic)<sup>129</sup> from the private sector.<sup>130</sup>

These board members are appointed by a Decree for a four-year irrevocable term, renewable once.<sup>131</sup> The Agency's budget comes from the State and from special allocations.<sup>132</sup>

## Investigations and decisions

The ANSICE is empowered to issue administrative sanctions<sup>133</sup> and formal contravention notices etc.<sup>134</sup> In 2020, it investigated Facebook following the closure of suspicious social media accounts but there is no verifiable report on the outcome of the investigation.<sup>135</sup> The agency's website is devoid of information and its investigations and decisions.

<sup>117</sup> Population data <https://www.populationdata.net/pays/tchad/> > access on 21 May 2021.

<sup>118</sup> News report France 24 <https://www.france24.com/en/africa/20210502-chad-junta-names-transition-government> > access on 20 May 2021.

<sup>119</sup> Law No. 007/PR/2015 of 10 February 2015 <https://arcep.td/sites/default/files/Loi-N%C2%B007-PR-2015.pdf> > access on 18 May 2021.

<sup>120</sup> Title I, Chapter I, General Provisions.

<sup>121</sup> Art. 2.

<sup>122</sup> The National Agency for Computer Security and Electronic Certification. <https://www.ansice.td/> > access on 17 May 2021.

<sup>123</sup> Chapter I, Art. 1.

<sup>124</sup> Chapter II, Section I, Art. 4.

<sup>125</sup> Art. 3.

<sup>126</sup> The Chapter VI, art. 16 of the Law No. 006/PR/2015 of 10 February 2015 provides "independence" thus: "ANSICE is independent of the political authorities, of the companies providing electronic security services for information systems and electronic communications networks, and of the structures responsible for monitoring networks and systems and detecting intrusion."

<sup>127</sup> Law No. 006/PR/2015 of 10 February 2015, art. 6, o).

<sup>128</sup> News report: Appointment January 2020 <https://tchadmedia.com/?p=4630> > access on 21 May 2021.

<sup>129</sup> Law No. 006/PR/2015 of 10 February 2015, art. 12.

<sup>130</sup> Law No. 006/PR/2015 of 10 February 2015, art. 14.

<sup>131</sup> News report: In June 2018, the President of the Republic, by Decree No. 1392, appointed Mr. Mahamat Aware Neissa as Director General of the National Agency for Computer Security and Electronic Certification (ANSICE) [https://www.alwihdainfo.com/Tchad-nomination-a-l-ANSICE\\_a64630.html](https://www.alwihdainfo.com/Tchad-nomination-a-l-ANSICE_a64630.html) > access on 18 May 2021.

<sup>132</sup> Law No. 006/PR/2015 of 10 February 2015, Chapter V, art. 24.

<sup>133</sup> Art. 80

<sup>134</sup> Art. 82 of the Law No. 007/PR/2015 of 10 February 2015.

<sup>135</sup> News report <https://www.tellerreport.com/news/2020-12-17-%0A---false-accounts-closed-by-facebook--chadian-justice-seized---france-24%0A---H14fofMY2D.html> > access on 20 May 2021.

# CONGO BRAZZAVILLE

The Republic of Congo or Congo-Brazzaville is a francophone country in Central Africa, located on either side of the equator. With a population of more than 5 million, it is bordered by Gabon, Cameroon, Central African Republic, Republic of Congo and Angola and it had a GDP of \$12.27 billion in 2019.<sup>136</sup>

## Data Protection Law

Law No. 29-2019 regulating data protection in Congo-Brazzaville was promulgated on 10 October 2019.<sup>137</sup> The said law provides for specific modalities for the compliance of data controllers with their data processing obligations.<sup>138</sup> It applies to any processing, whether automated or not carried out on the territory of the Republic of the Congo or in any place where the law of that country applies.<sup>139</sup> It is also applicable to any processing carried out by a controller established within or outside Congo but with means of processing located in the Congolese territory.<sup>140</sup>

## Data Protection Authority

Article 4(2) of Law No. 29-2019 provides for the creation of a DPA<sup>141</sup>

to be responsible for the protection of personal data and ensure compliance with the law relating to data protection. The law however does not make elaborate provision on appointment of the privacy commissioners, hence up till the time of this report, the said commission has not been officially established or its commissioners appointed.

## Independence and Impartiality

There are no provisions on the appointment of the DPA's members, its budgeting or reporting in Law No. 29-2019.

## Investigations and Decisions

Since the DPA has not been created, there are no reports on its activities.

<sup>136</sup> [https://datacommons.org/place/country/COG?utm\\_medium=explore&mprop=amount&popt=EconomicActivity&cpv=activitySource%2CGrossDomesticProduction&hl=fr](https://datacommons.org/place/country/COG?utm_medium=explore&mprop=amount&popt=EconomicActivity&cpv=activitySource%2CGrossDomesticProduction&hl=fr) accessed 23 May 2021.

<sup>137</sup> Loi n° 29-2019 portant protection des données à caractère personnel. <<http://www.sgg.cg/JO/2019/congo-jo-2019-45.pdf>> accessed 53 May 2021.

<sup>138</sup> Art.100.

<sup>139</sup> Art. 2(2).

<sup>140</sup> Art. 2(3).

<sup>141</sup> The Data Protection Commission.

# CÔTE D'IVOIRE

The Republic of Côte d'Ivoire, is a French speaking country in West Africa with an estimated population of over 26 million inhabitants in 2020.<sup>142</sup> It is bordered by Mali, Burkina-Faso, Ghana, Liberia and Guinea. Representing 40% of the economy of the West African Economic and Monetary Union (UEMOA), its GDP is estimated at \$58.54 billion and it operates a presidential system of government.<sup>143</sup>

## Data Protection Law

The protection of personal data in Côte d'Ivoire is governed by Law No. 2003-450.<sup>144</sup> The law is applicable to any automated or manual processing carried out in the territory of the Ivory Coast.<sup>145</sup> For processing carried out by data controllers outside the law, no details are given by said law. However, it excludes from its scope, personal data processed by its owners and not shared and data in transit.<sup>146</sup>

## The Data Protection Authority

The Autorité de Régulation des Télécommunications de Côte d'Ivoire (ARTCI) is Côte d'Ivoire's national DPA. It was created by Ordinance No. 2012-293 of 21 March 2012 but entrusted with the role of regulating personal data processing by Law No. 2003-450 of 16 June 2013.<sup>147</sup> It is

responsible for ensuring compliance with the legal provisions concerning the processing of personal data<sup>148</sup> and ensures that the various processing operations do not interfere with freedoms and privacy<sup>149</sup> in Côte d'Ivoire.<sup>150</sup>

## Independence and Impartiality

The organization and appointment of the members of the ARTCI are governed by Ordinance No. 2012-293 and by decrees issued by the Council of Ministers in accordance with the said ordinance.<sup>151</sup> The ARTCI is run by a regulatory council<sup>152</sup> constituted by seven members appointed by the Council of Ministers for a non-renewable six-year term.<sup>153</sup> The members of this regulatory council cannot be dismissed before the end of their mandate except for gross negligence duly justified and their remuneration and benefits are fixed by decree.<sup>155</sup> The ARTCI has its own budget<sup>156</sup> as an independent authority whose sources of funding are defined by decree No. 2014-726. It submits an annual report to both the President of the Republic and President of the National Assembly.<sup>157</sup>

## Investigations and decisions

The ARTCI receives complaints and

<sup>142</sup> Source Ivory Coast Country Sheet produced by the Atlas of the Countries and Populations of the World and available at the following link: <https://www.populationdata.net/pays/cote-divoire/>

<sup>143</sup> <https://www.afdb.org/en/countries/west-africa/cote-d%E2%80%99ivoire/cote-divoire-economic-outlook> accessed 1 June 2021.

<sup>144</sup> Law n° 2003-450 of June 16, 2013 on the protection of personal data in Côte d'Ivoire. < [https://www.artci.ci/images/stories/pdf/lois/loi\\_2013\\_450.pdf](https://www.artci.ci/images/stories/pdf/lois/loi_2013_450.pdf) > accessed 7 May 2021.

<sup>145</sup> Article 3 of Law n° 2003-450.

<sup>146</sup> Article 3 of Law n° 2003-450.

<sup>147</sup> Article 46 of Law n° 2003-450.

<sup>148</sup> Article 46 of Law n° 2003-450.

<sup>149</sup> Article 47 of Law n° 2003-450.

<sup>150</sup> Article 47 of Law n° 2003-450.

<sup>151</sup> Art. 73 of Ordinance No. 2012-293.

<sup>152</sup> Art. 74 of Ordinance No. 2012-293.

<sup>153</sup> Art. 74 of Ordinance No. 2012-293.

is empowered to investigate and issue fines to the tune of between 10 and 500 million Francs CFA.<sup>158</sup> Over the past few years, ARTCI's personal data protection decisions have focused on compliance audit assignments. For the current year 2021, ARTCI has authorised a number of decisions concerning the protection of personal data<sup>159</sup> (see the authorization of transfer of personal data of Orange Bank Africa (OBA)<sup>160</sup> to its parent company in France and many others).<sup>161</sup>

In 2020, with regard to personal data protection violations, ARTCI responded to a complaint lodged by an Ivorian citizen about the publication of his personal data on social networks by the Sunset Hotel in Yopougon. After verifying the facts, ARTCI made a decision dated May 13, 2020<sup>162</sup> issuing a warning and a formal notice to Sunset Hotel to delete the subject's personal data from its website and that of its subcontractors within one month.<sup>163</sup>

<sup>154</sup> Art. 74 of Ordinance No. 2012-293.

<sup>155</sup> Art. 79 of Ordinance No. 2012-293.

<sup>156</sup> Art. 81 of Ordinance No. 2012-293.

<sup>157</sup> Art. 47(10) and (1) of Law No. 2003- 450. Activity reports since its creation are available at the : // <https://www.artci.ci/index.php/publications/reports-d-activites.html>> accessed 17 May 2021.

<sup>158</sup> Article 51 of Law n ° 2003-450.

<sup>159</sup> <https://www.artci.ci/index.php/decisions-129/485-decisions-2021-page-1.html>

<sup>160</sup> Decision No. 2020-062. <[https://www.artci.ci/images/stories/pdf/decisions\\_conseil\\_reg/decision\\_2020\\_0622\\_conseil\\_regulation.pdf](https://www.artci.ci/images/stories/pdf/decisions_conseil_reg/decision_2020_0622_conseil_regulation.pdf)> accessed 2 June 2021.

<sup>161</sup> Decision No. 2021-0629< [https://www.artci.ci/images/stories/pdf/decisions\\_conseil\\_reg/decision\\_2021\\_0629\\_conseil\\_regulation.pdf](https://www.artci.ci/images/stories/pdf/decisions_conseil_reg/decision_2021_0629_conseil_regulation.pdf)> accessed 2 June 2021; Decision No. 2021-0628< [https://www.artci.ci/images/stories/pdf/decisions\\_conseil\\_reg/decision\\_2021\\_0628\\_conseil\\_regulation.pdf](https://www.artci.ci/images/stories/pdf/decisions_conseil_reg/decision_2021_0628_conseil_regulation.pdf)> accessed 2 June 2021.

<sup>162</sup> Decision No. 2020-0564<[https://www.artci.ci/images/stories/pdf/decisions\\_conseil\\_reg/decision\\_2020\\_0564\\_conseil\\_regulation.pdf](https://www.artci.ci/images/stories/pdf/decisions_conseil_reg/decision_2020_0564_conseil_regulation.pdf)> accessed 2 June 2021.

<sup>163</sup> Decision No. 2020-0564> [https://www.artci.ci/images/stories/pdf/decisions\\_conseil\\_reg/decision\\_2020\\_0564\\_conseil\\_regulation.pdf](https://www.artci.ci/images/stories/pdf/decisions_conseil_reg/decision_2020_0564_conseil_regulation.pdf)> accessed 2 June 2021.

# EGYPT

Egypt is a country located in the north-eastern corner of Africa.<sup>164</sup> The Information and Communications Technology (ICT) sector in Egypt is very robust, with a growth rate higher than Egypt's level of GDP growth. Its contribution to the GDP increased to 4% in 2019 compared to 3.5% in 2018.<sup>165</sup>

## Data Protection Law

On 15 July 2020, the Egyptian President assented to the Data Protection Act.<sup>166</sup> The Act is modelled after the EU General Data Protection Regulation (GDPR) and it applies to the protection of personal data processed electronically, in part or in whole, by any holder, controller, or processor in relation to natural persons.<sup>167</sup> The Act applies to data handlers residing inside or outside the Republic of Egypt.<sup>168</sup>

protection, enforce compliance with the law, create further regulations for implementation, and to receive and investigate complaints.

The centre has a Board of Directors constituted by a Minister, other members who are representatives of Ministries and public bodies, and three experts appointed by the Minister.<sup>170</sup> The members occupy office for a term of three years renewable.<sup>171</sup> The Prime Minister issues a decree regarding the formation of the Board and determination of the remunerations of its members.

## Investigations and decisions

There are no reports on the investigations and decisions of the PDPC since its establishment.

## Data Protection Authority

The Act provides for a DPA, which will be called the Personal Data Protection Center (PDPC) under the Minister of ICT.<sup>169</sup> The PDPC mandate is to regulate data



<sup>164</sup> <https://www.britannica.com/place/Egypt>

<sup>165</sup> <https://www.trade.gov/country-commercial-guides/egypt-information-and-communications-technology-and-digital-economy>

<sup>166</sup> Law No. 151 of 2020 found at <https://www.acc.com/sites/default/files/program-materials/upload/Data%20Protection%20Law%20-%20Egypt%20-%20EN%20-%20MBH.PDF>

<sup>167</sup> Article 1 of Data Protection Act, Law No. 151 of 2020

<sup>168</sup> Article 2 of the Data Protection Act, Law No. 151 of 2020

<sup>169</sup> Chapter 9 Article 19 of Data Protection Act, Law No. 151 of 2020

<sup>170</sup> Chapter 9 Article 20 of Data Protection Act, Law No. 151 of 2020

<sup>171</sup> Chapter 9 Article 20 of Data Protection Act Law No. 151 of 2020



# EQUATORIAL GUINEA

Equatorial Guinea is a small country on the west coast of central Africa bordered by Cameroon on the north and Gabon on the south and east.<sup>172</sup> Malabo, its capital city, is significant to data protection in Africa since the AU Convention on Cybersecurity and Personal Data Protection was adopted there in 2014. The country has a population of about 1,500,000<sup>173</sup> and its GDP is projected around \$10.5 billion USD.<sup>174</sup>

## Data Protection Law

Law No. 1/2016 of 22 July 2016<sup>175</sup> ('Data Protection Law') regulates data protection in Equatorial Guinea. It aims to protect fundamental rights and liberties of natural persons that may be jeopardised during all operations of data processing by natural or legal persons.<sup>176</sup> The law is applicable to the processing activities concerning "registered" citizens by any means, both in the public or private sectors within the country or where a data controller has its headquarters in the country.<sup>177</sup> However, it is not clear how the concept of 'registered citizens' should be interpreted, as it could mean that the Data Protection Law is only applicable to the processing of data related to data subjects that are registered with local authorities.

## Data Protection Authority

The Law No. 1/2016 recognises Organo Rector de Protección de Datos Personales (ORPDP)<sup>178</sup> as the country's national DPA but the regulator has not been effectively set up since enactment of the law in 2016.

## Independence and Impartiality

The organization and operational structure of the ORPDP ought to be provided by a decree, which has not yet been made. Upon its establishment, its officers will be appointed from the civil service.<sup>179</sup> Among other regulatory functions, ORPDP will run a general data protection registry for the purpose of keeping public and private files containing personal data.

## Investigations and decisions

Although the ORPDP is statutorily mandated to investigate infractions of data protection rights and issue fines up to CAF 15,000,000,<sup>180</sup> the agency has not been set up since 2016, hence there are no records of its activities.



<sup>172</sup> The World Factbook – CIA <https://www.cia.gov/the-world-factbook/countries/equatorial-guinea/> > accessed 25 May 2021.

<sup>173</sup> As of Thursday, May 27, 2021, based on Worldometer elaboration of the latest United Nations data <https://www.worldometers.info/world-population/equatorial-guinea-population/> > accessed 27 May 2021.

<sup>174</sup> Econometric models – Trading economics <https://tradingeconomics.com/equatorial-guinea/gdp> > accessed 24 May 2021.

<sup>175</sup> Data Protection Law (No. 1/2016 of 22 July 2016) – <https://www.africadataprotection.com/guinee-equatoriale.pdf> > accessed 28 May 2021.

<sup>176</sup> Art. 1.

<sup>177</sup> Art. 2.

<sup>178</sup> Art. 15.

<sup>179</sup> Art. 29.

<sup>180</sup> Approximately \$28,000.

# GABON

Gabon is a central African state bordered by the Atlantic Ocean to the west, Congo to the south and east, Cameroon to the north and Equatorial Guinea to the northwest. With a population of 2,273,440 (2021)<sup>181</sup> and a GDP of 16.658 billion USD (2019)<sup>182</sup> Gabon is the 29th smallest country in Africa.

## Data Protection Law

Law No. 001/2011 governs data protection in Gabon.<sup>183</sup> The law applies to processing by automated or non-automated means by a data controller on Gabonese territory or in any place where Gabonese law applies as well as any processing operation carried out by a data controller which uses processing means located within or outside the territory of Gabon.

## Data Protection Authority

The role of DPA in Gabon is played by the National Commission for the Protection of Personal Data (CNPDCP).<sup>184</sup> It has powers to receive notifications from data controllers with respect to their processing activities, authorize processing operations that involve a high risk to rights and liberties of individuals, receiving complaints, petitions, and claims relating to the processing of personal data of individuals etc.

## Independence and Impartiality

Law No. 001/2011 provides that the CNPDCP is an independent administrative authority<sup>186</sup> whose main duty is to ensure that any processing of personal data is carried out in accordance with the provisions of the relevant data protection law(s) and to inform all data subjects, data controllers, and others involved of their rights and obligations. The members of the CNPDCP are appointed by decree issued by the Council of Ministers<sup>187</sup> but it submits an annual report to Parliament and Prime Minister.<sup>188</sup> It has nine permanent and four non-permanent commissioner<sup>189</sup> who are appointed for a term of five years<sup>190</sup> renewable once.<sup>191</sup> The CNPDCP's staff are employed by the State and they may in turn, recruit their own public agents.<sup>192</sup>

## Investigations and decisions

Under Law No. 001/2011, the CNPDCP is empowered to impose sanctions and issues fines for violation of data subjects rights, however, it has not published reports on its investigations and decisions since its creation. So far there are only published reports on the authorisations for transfer of personal data granted.<sup>193</sup>

<sup>181</sup> <https://www.worldometers.info/world-population/gabon-population/> > accessed 1st June 2021.

<sup>182</sup> The World Bank <<https://data.worldbank.org/country/GA>> accessed 1st June 2021.

<sup>183</sup> Law No. 001/2011 of 25 September 2011. <https://www.cnpdcp.ga/wp-content/uploads/2018/10/Gabon-Loi-relative-a-la-protection-des-donnees-personnelles-du-4-mai-2011.pdf> > accessed 31 May 2021.

<sup>184</sup> Commission Nationale Pour La Protection Des Donnees A Caractere Personnel <<https://www.cnpdcp.ga/>> accessed 30 May 2021.

<sup>185</sup> Art. 33.

<sup>186</sup> Art. 15.

<sup>187</sup> Art. 16.

<sup>188</sup> <http://news.alibreville.com/h/91392.html>; <https://www.cnpdcp.ga/audience-de-remise-du-rapport-public-n001-2018-2019-de-la-cnpdcp-au-premier-ministre-chef-du-gouvernement/> > accessed 2 June 2021.

<sup>189</sup> Art. 17-18.

<sup>190</sup> <https://www.cnpdcp.ga/cnpdcp-prestation-de-serment/>; Formal taking office and inauguration ceremony <https://www.cnpdcp.ga/cnpdcp-passation-de-charge/> > accessed 2 June 2021.

<sup>191</sup> Art. 25.

<sup>192</sup> Art. 36.

<sup>193</sup> For the deliberations and authorizations, see <https://www.cnpdcp.ga/avis-et-decisions/> > accessed 3 June 2021.

# GHANA

The Republic of Ghana is a country in West Africa located along the Gulf of Guinea and it borders Côte d'Ivoire (Ivory Coast) to the west, Burkina Faso to the north, Togo to the east, and the Gulf of Guinea to the south. Ghana has an estimated GDP of 73 billion USD and a population of 32 million.<sup>194</sup>

## Data Protection Law

Data protection in Ghana is governed by the Data Protection Act.<sup>195</sup> The Act sets out the rules and principles governing the collection, use, disclosure and care for your personal data or information by a data controller or processor. The Act applies to processing carried out in Ghana whether or not the controller is established therein.<sup>196</sup>

## Data Protection Authority

Ghana's DPA named Data Protection Commission (DPC) was established<sup>197</sup> to ensure compliance with the Ghanaian Data Protection Act. It is led by a board whose members are appointed by the President for a fixed term of three years renewable not more than twice.<sup>198</sup> The DPC is

statutorily empowered to investigate complaints, investigate any data breach complaints, and keep and maintain the data protection register, etc.<sup>199</sup>

## Independence and impartiality

A cabinet minister gives directives to the DPC on matters of policy.<sup>200</sup> and it submits an annual report to the same minister covering its activities.<sup>201</sup> Its board can be hired and fired by the President who also appoints its staff.<sup>202</sup> Its funds are however approved by the Parliament but a board member's remuneration<sup>203</sup> is fixed by a Cabinet Minister and they may be removed by the President at will.<sup>204</sup>

## Investigations and decisions

There are no verifiable reports on the DPC's investigations and decisions.

<sup>194</sup> <https://tradingeconomics.com/ghana/gdp#:~:text=GDP%20in%20Ghana%20is%20expected,according%20to%20our%20econometric%20models.>> accessed 3 June 2021.

<sup>195</sup> Act 843 was assented to in 2012 (Act 843) was assented to in May 2012 and came into force on 16th October 2012. See <https://nita.gov.gh/shipsegi/2017/12/Data-Protection-Act-2012-Act-843.pdf> accessed 9 May 2021.

<sup>196</sup> Section 45.

<sup>197</sup> DPA, section 1.

<sup>198</sup> Section 5(1).

<sup>199</sup> Section 3 and 46.

<sup>200</sup> Section 10.

<sup>201</sup> Section 16.

<sup>202</sup> Section 13.

<sup>203</sup> Section 9.

<sup>204</sup> Section 5(5).

# KENYA

Kenya, the world's 28th largest country, is a lower middle-income economy and home to tourism. With a GDP of 109.116 billion USD and a population of 54.772 million as of the 2019 census, data processing activities rose in the country in the 21st century.<sup>205</sup>

## Data Protection Law

The Kenyan Data Protection Act<sup>206</sup> was enacted in 2019 to, among other objectives, regulate personal data processing, ensure processing aligns with principles, protect privacy of individuals, provide data subjects rights and spell out data controllers and processors' obligations.<sup>207</sup> The Act governs automated and non-automated processing by data controllers, processing activities by resident controllers or processing of resident data subjects.<sup>208</sup> The Act applies to personal data entered in a record either by automated or non-automated means, data controller or processor resident in Kenya and controllers or processors not resident but processing personal data of Kenya residents.<sup>209</sup>

## The Data Protection Authority

The Office of Data Protection Commissioner (ODPC)<sup>210</sup> is a

government agency established under section 5 of the Data Protection Act as Kenya's DPA. It is statutorily saddled with the duty of overseeing the implementation of the country's DPA, establishing and maintaining a register of data controllers and processors, performing oversight functions on data processing activities, promoting self-regulation among data controllers and processors, receiving and investigating complaints, issuing witness summons, imposing administrative focus etc.<sup>211</sup>

The ODPC is headed by a Data Commissioner (DC) who oversees the affairs of the body alongside other support staff appointed by it.<sup>212</sup> Kenya's first DC<sup>213</sup> was appointed on 17 November 2020 by the Federal Government.<sup>214</sup>

## Independence and Impartiality

The ODPC is statutorily designated as a state office<sup>215</sup> but required under the law to act independently in the exercise of its powers.<sup>216</sup> The DC that directs the affairs of the ODPC is nominated and appointed by the president but with approval of the National Assembly<sup>217</sup> for a single non-renewable term of six years.<sup>218</sup> The DC may be removed by the Cabinet



<sup>205</sup> <https://theconversation.com/how-kenyas-new-personal-data-protection-law-could-affect-researchers-153558>.> accessed 23 April 2021.

<sup>206</sup> [http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/2019/TheDataProtectionAct\\_\\_No24of2019.pdf](http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/2019/TheDataProtectionAct__No24of2019.pdf)> accessed 20 April 2021.

<sup>207</sup> Data Protection Act, s. 3(a)-(e).

<sup>208</sup> Mahesh Acharya, 'https://www.mondaq.com/data-protection/867010/data-protection-in-kenya-what-you-need-to-know'> accessed 23 April 2021.

<sup>209</sup> S. 4(a), b(i) and b(ii).

<sup>210</sup> <https://ict.go.ke/wp-content/uploads/2020/03/Data-commissioner..pdf>> accessed 22 April 2021.

<sup>211</sup> S. 8(1), and 9(1)

<sup>212</sup> S.5(3). The DC is also empowered to establish such directorates as may be necessary in the performance of its statutory duties. See s. 5(5).

<sup>213</sup> Prior to her appointment, she was Director, Voter Education Partnership and Communication at Independent Electoral and Boundaries Commission (IEBC) from December 2019- November 2020, she was also Director, Voter Registration and Electoral Operation from January 2010 to 2019).

<sup>214</sup> <https://iapp.org/news/a/kenya-appoints-its-first-ever-data-protection-commissioner/#:~:text=On%20Nov.,the%20Data%20Protection%20Act%202019.>> accessed 21 April 2021, <https://www.mondaq.com/data-protection/1010162/welcoming-the-appointment-of-kenya39s-first-data-commissioner>> accessed 21 April 2021.

Secretary upon the recommendation of the Public Service Commission for inability to perform, among other grounds.<sup>219</sup> The DC and staff's remuneration is determined subject to the advice of the Salaries and Remuneration Commission.<sup>220</sup> The DC is immune from liability with respect to actions taken in good faith in the course of performing his statutory duties but it is duty-bound to file annual reports to the Cabinet Secretary which shall in turn submit the same to the National Assembly.

<sup>222</sup>

decision but it is still engaging in wide consultations and it has also issued draft guidelines.<sup>224</sup> The draft regulations issued on 13 April 2021 by the Data Protection Commissioner, include: Data Protection (General) Regulations, 2021<sup>225</sup> Data Protection (Compliance and Enforcement) Regulations, 2021<sup>226</sup> and the Data Protection (Registration of Data Controllers and Registration of Data Processors) Regulations, 2021.<sup>227</sup>

### Investigations and Decisions

The ODPC is competent to issue fines, after issuing penalty notice, up to five million Kenyan Shillings or up to 1% of the offender's annual turnover.<sup>223</sup> Since it took off in November 2020, the ODPC has not reported any investigation or

<sup>215</sup> A state office is an office established by the Kenyan national legislation pursuant to article 260(a) of the Kenyan Constitution.

<sup>216</sup> S.8(3).

<sup>217</sup> S. 6(4).

<sup>218</sup> s. 7(2).

<sup>219</sup> s. 11 and 12.

<sup>220</sup> S.14.

<sup>221</sup> S. 17.

<sup>222</sup> S. 70(1) and (2).

<sup>223</sup> S.63.

<sup>224</sup> [https://twitter.com/ODPC\\_KE/status/1382591597074911236](https://twitter.com/ODPC_KE/status/1382591597074911236)

<sup>225</sup> <https://www.odpc.go.ke/wp-content/uploads/2021/04/Data-Protection-General-regulations.pdf> > accessed 29 April 2021.

<sup>226</sup> <https://www.odpc.go.ke/wp-content/uploads/2021/04/THE-DATA-PROTECTION-COMPLIANCE-AND-ENFORCEMENT-REGULATIONS-2021.pdf> > accessed on 29 April 2021.

<sup>227</sup> <https://www.odpc.go.ke/wp-content/uploads/2021/04/Data-Protection-Registration-of-data-controllers-and-data-processor-Regulations.pdf> > accessed on 29 April 2021.

# LESOTHO

Lesotho is a relatively small landlocked country surrounded by South Africa.<sup>228</sup> It has a GDP of \$2.7 billion and a population of about 2 million people living on a highland plateau earning it the reputation of a 'Kingdom of the Sky.'

## Data Protection Law

Lesotho's Data Protection Act<sup>229</sup> applies to data controllers domiciled or having their principal place(s) of business in Lesotho<sup>230</sup> or where not domiciled in Lesotho but uses automated or non-automated means in Lesotho. The Act prohibits the transfer of personal data of data subjects to a third party in another country unless certain conditions are met.<sup>231</sup>

## Data Protection Authority

The Act provides for a Data Protection Commission (DPC)<sup>232</sup> which is to be run by a board of six members with expertise in social sector, business, information technology, finance and statistics.<sup>233</sup> The DPC is empowered to promote education and public awareness on data protection, monitor and enforce compliance

with the relevant data protection laws.<sup>234</sup> The Commission has not however been established.<sup>235</sup>

## Independence and impartiality

The members of the Commission are appointed by the Prime Minister on the advice of one of the Cabinet Ministers<sup>236</sup> for a fixed term of five years but the appointment is terminable by the Prime Minister.<sup>237</sup> The funds of the Commission are appropriated by Parliament from the Consolidated Fund.<sup>238</sup> The DPC submits its budget to the Minister<sup>239</sup> but utilizes funds directly appropriated by Parliament from the consolidated fund to perform its functions.<sup>240</sup>

## Investigations and decisions

The DPC has not been established, hence there are no reports of its activities.



<sup>228</sup> <https://www.worldbank.org/en/country/lesotho/overview>

<sup>229</sup> Data Protection Act, No. 5 of 2011 published in office Gazette Vol. 57 No. 9 of 22nd February 2012. <[http://www.nic.ls/lsnic/community/policies/Data\\_Protection\\_Act\\_2011\\_Lesotho.pdf](http://www.nic.ls/lsnic/community/policies/Data_Protection_Act_2011_Lesotho.pdf) accessed 4 June 2021.

<sup>230</sup> Section 3.

<sup>231</sup> Section 52.

<sup>232</sup> The Commission has not been established.

<sup>233</sup> Section 6.

<sup>234</sup> Section 8(1).

<sup>235</sup> <https://www.dataguidance.com/jurisdiction/lesotho> accessed 10 June 2021.

<sup>236</sup> Ibid.

<sup>237</sup> Section 9.

<sup>238</sup> Section 11(1).

<sup>239</sup> Section 12(1).

<sup>240</sup> Section 11 (2).

# MADAGASCAR

Madagascar is an island state located in the Indian Ocean off the coast of East Africa across the Mozambique Channel. With a GDP of \$14.11 billion USD (2019) and a population of 26,969,307 (2020), Madagascar is the fourth largest island in the world.<sup>241</sup>

## Data Protection Law

The protection of personal data in Madagascar is governed by Law No. 2014 - 038 of 9 January 2015.<sup>242</sup> It applies to any automated or non-automatic processing of personal data operated within the Malagasy territory<sup>243</sup> and carried out by a data controller established or not on its territory.<sup>244</sup> However, it does not apply to data processing used for the exercise of exclusively personal activities and or only for the purposes of journalism or literary or artistic expression.<sup>245</sup>

## Data Protection Authority

The Authority responsible for the protection of personal data in Madagascar is named Commission for Informatics and Freedoms (CMIL).<sup>246</sup> It is responsible for ensuring that the processing of personal data in Madagascar

complies with the provision of the data protection law.<sup>247</sup> However, despite the provision of the law, the CMIL has not been officially established.<sup>248</sup>

## Independence and Impartiality

The Malagasy DPA is run by a board of nine members respectively by the National Assembly, the Permanent Bureau of the Senate, the Court of Cassation, the Council of State, the Court of Accounts, the Federation of Chambers of Commerce and Industry, the National Federation of the Order of Engineers and the Independent National Commission for Human Rights.<sup>249</sup>

The designation of members is recorded by decree taken in the Council of Ministers<sup>250</sup> which confirms their appointment for a term of four years renewable once.<sup>251</sup> Except upon resignation, a member's term can only be terminated in the event of an impediment noted by the Malagasy Commission for Information Technology and Freedoms under conditions contained in a decree issued by the Council of Ministers.<sup>252</sup> These members constitute the collegial deliberative body of

<sup>241</sup> [https://fr.wikipedia.org/wiki/Politique\\_%C3%A0\\_Madagascar](https://fr.wikipedia.org/wiki/Politique_%C3%A0_Madagascar) > accessed 28 May 2021.

<sup>242</sup> La loi N° 2014 – 038 du 9 janvier 2015 sur la protection des données à caractère personnel: <https://www.afapdp.org/wp-content/uploads/2015/01/Madagascar-L-2014-038-du-09-01-15-on-data-protection%20a%20a%20personnel.pdf> > accessed 29 May 2021.

<sup>243</sup> Article 5.

<sup>244</sup> Article 6.

<sup>245</sup> Article 5.

<sup>246</sup> Article 4.

<sup>247</sup> Article 28.

<sup>248</sup> <https://dataprotection.africa/madagascar/#:~:text=Despite%20the%20fact%20that%20the,has%20not%20yet%20been%20established.&text=the%20right%20to%20get%20information,data%20relating%20to%20a%20person.>> accessed 1 June 2021.

<sup>250</sup> Article 29.1.

<sup>251</sup> Article 29.2.

<sup>252</sup> Article 29.3.

<sup>253</sup> Article 29.3.



the CMIL in charge of opinions, decisions and deliberations<sup>253</sup> and they are bound by an oath of professional secrecy.<sup>254</sup> They cannot be prosecuted, investigated, arrested, detained or tried on the occasion of opinions expressed or acts accomplished in the exercise of his mandate and linked to his mission.<sup>255</sup> By law, membership of the CMIL is incompatible with that of a member of the Government and or any other with any managerial function in a public or private institution.<sup>256</sup>

The CMIL is meant to receive funding from the budget of the State of Madagascar for its operations<sup>257</sup> and also collect a share of the discounts on recovery, on the pecuniary

penalties and the criminal fines that it pronounces.<sup>258</sup> It ought to present an annual report of its activities to the political authorities of Madagascar (President of the Republic, Prime Minister, President of Parliament, and Minister of Justice) which ought to also be made public.<sup>259</sup> The CMIL is however not operational.

### Investigations and decisions

The CMIL is empowered under the law No. 2014 - 038 to receive, investigate complaints and issue fines to the tune of between 200,000 Ariary to 10,000,000 Ariary<sup>260</sup> (as well as administrative sanctions).<sup>261</sup> Since the CMIL is not yet operational, there are no reports on its activities.

<sup>253</sup> Article 30.1.

<sup>254</sup> Article 31.

<sup>255</sup> Article 32.

<sup>256</sup> Article 35.

<sup>257</sup> Article 29.4 and 74.

<sup>258</sup> Article 29.4.

<sup>259</sup> Article 34 and 38.

<sup>260</sup> Article 61,62,63,64,65,66,67,68, 69,70,71 and 72.

<sup>261</sup> Article 55, 56, 57, 58,59 and 60.

# MALI

A francophone landlocked country in West Africa, the Republic of Mali borders Mauritania, Algeria, Niger, Burkina-Faso, Côte d'Ivoire, Guinea and Senegal. With more than 19 million habitants, it has a GDP of \$17.28 billion (2019) and is supported by a semi-presidential system of government.<sup>262</sup>

## Data Protection Law

In May 2013, the Malian government enacted Law No. 2013-015 on the protection of personal data in the Republic of Mali.<sup>263</sup> The law is applicable to automated or non-automated processing carried out in whole or in part on the territory of Mali.<sup>264</sup>

However, it excludes processing carried out for personal purposes and not intended for dissemination and data in transit.<sup>265</sup> The Law No. 2013-015 was subsequently amended in 2018 by the Law No. 2017-070<sup>266</sup> in relation to the qualification and removal of privacy commissioners.<sup>267</sup>

## Data Protection Authority

Mali's DPA is known as The Autorité de Protection des Données à Caractère Personnelles (APDP).<sup>268</sup> It is a

creation of Law No. 2013-015 of 21 May 2013<sup>269</sup> but officially established on 19 August 2015<sup>270</sup> - two years after the promulgation of the said law. Its main function is to ensure the protection of personal data and to regulate the sector in Mali.<sup>271</sup> It sets the standards and purposes for the collection, processing or storage of personal data and performs many other functions related to its functions and powers.<sup>272</sup>

## Independence and Impartiality

The APDP is run by a collegial deliberative body made up of 15 privacy commissioners appointed for a non-renewable seven-year mandate. Although the President appoints them by a Decree, the members are nominated by the National Assembly; the High Council of Local Authorities; Minister responsible for civil status; Minister in charge of Internal Security; Minister in charge of IT; the Supreme Court; the National Human Rights Commission; Women's Associations and NGOs; and the National Council of Civil Society.<sup>273</sup>

The privacy commissioners who do not receive directives from anybody can be dismissed during their term of office only in the event of death,

<sup>262</sup> <https://www.cia.gov/the-world-factbook/countries/mali/> accessed 23 May 2021.

<sup>263</sup> Loi n° 2013-015 du 21 mai 2013 relative à la protection des données personnelles (Law No. 2013-015 of 21 May 2013 on the protection of personal data) <<https://apdp.ml/wp-content/uploads/pdf/Loi-sur-la-protection-des-donnees-personnelles-du-21-mai-2013.pdf>> 2 May 2021.

<sup>264</sup> Article 4 of Law no. 2013-015.

<sup>265</sup> Article 6 of Law no. 2013-015.

<sup>266</sup> La loi n°2017-070 du 18 Décembre 2017 portant modification de la loi n°2013-015 du 21 Mai 2013 portant protection des données à caractère personnel de la République du Mali; Law No. 2017-070 of December 18, 2017 <<https://apdp.ml/wp-content/uploads/2020/02/LOI-MODIFIEE.pdf>> accessed 2 May 2021.

<sup>267</sup> Article 2, 21, 25, 36, 42.

<sup>268</sup> Website: <https://apdp.ml/>

<sup>269</sup> Art 20 of Law no. 2013-015

<sup>270</sup> The APDP's activities began with the election of its Bureau meeting on August 19, 2015. See <https://apdp.ml/rapport-annuel-dactivites-de-lapdp-octobre-2015-mars-2016/>

<sup>271</sup> Art. 31

<sup>272</sup> Art. 31,32,33,34 and 35.

<sup>273</sup> Art.21.

resignation or serious impediment noted and proven.<sup>275</sup>

The APDP draws its own budget which is funded from annual credit allocated to it in the State budget<sup>276</sup> and submits annual activity reports to the President de la République, Prime Minister and President of the National Assembly.<sup>277</sup>

### Investigation and decisions

The APDP receives complaints and is empowered to investigate and issue fines to the tune of between 2.5 and 20 million FCFA<sup>278</sup> as well as administrative sanctions.<sup>279</sup> Since its creation, the APDP has issued and published on its website several decisions including six sanctions against companies for violation of the law on the protection of personal data in Mali.<sup>280</sup>

For the year 2012, the APDP fined a company named Escort Privé to the tune of 20 million FCFA for violations of personal data.<sup>281</sup> At the end of 2020, it issued a one month cease

and desist notice to Shopreate Supermarket concerning the violation of personal data relating to the use of its video surveillance system.<sup>282</sup>

The Caisse Nationale d'Assurance du Mali (CANAM) was also put on formal notice for one month for non-compliance of its data processing system concerning Compulsory Health Insurance with the law in force.<sup>284</sup> The Baobab Mali Company, a subsidiary of the Baobab Group formerly Microcred, was fined 18 million FCFA for unlawful access and collection of personal data of others. In 2016, the APDP fined the company Orange Mali SA in the sum of 15 million FCFA for violating the article of the law No. 2013-015 of 21 May 2013 relating to the protection of personal data in the Republic of Mali.<sup>285</sup> On 20 June 2016, the APDP fined SOMAGEP-SA and EDM-SA 5 million FCFA for unlawful communication of their customer's personal data.<sup>286</sup>

<sup>274</sup> Art. 27.

<sup>275</sup> Art. 21.

<sup>276</sup> Art. 31.

<sup>277</sup> Art. 25.

<sup>278</sup> Art. 65 and 66.

<sup>279</sup> Art. 59, 60, 61.

<sup>280</sup> <https://apdp.ml/cat%C3%A9gorie/deliberations/autres/> > accessed 27 March 2021.

<sup>281</sup> <https://apdp.ml/wp-content/uploads/2021/03/DELIBERATION-N%C2%B02021-015-APDP-du-09-FEVRIER-2021-PORTANT-SANCTION-DE-LA-SOCIETE-ESCORT-SECURITE-PRIVEE.pdf> > accessed 27 March 2021.

<sup>282</sup> <https://apdp.ml/wp-content/uploads/2021/03/DELIBERATION-N%C2%B02020-173-APDP-du-04-DECEMBRE-2020-PORTANT-MISE-EN-DEMEURE-DE-SHOPREATE-LIBRE-SERVICE.pdf> > accessed 27 March 2021.

<sup>283</sup> <https://apdp.ml/wp-content/uploads/2021/03/DELIBERATION-N%C2%B02020-157-APDP-du-04-DECEMBRE-2020-PORTANT-MISE-EN-DEMEURE-DE-LA-CANAM.pdf> > accessed 27 March 2021.

<sup>284</sup> <https://apdp.ml/wp-content/uploads/2021/03/DELIBERATION-N%C2%B02020-156-APDP-du-04-DECEMBRE-2020-PORTANT-SANCTION-DE-LA-SOCIETE-BAOBAB-MALI.pdf> > accessed 27 March 2021.

<sup>285</sup> <https://apdp.ml/wp-content/uploads/2021/03/DELIBERATION-N%C2%B02017-001-APDP-RELATIVE-A-LA-PLAINT-POUR-VIOLATION-DE-DONNEES-PERSONNELLES-CONTRE-ORANGE-MALI-SA.pdf> > accessed 27 March 2021.

<sup>286</sup> <https://apdp.ml/wp-content/uploads/2021/03/DELIBERATION-N%C2%B02016-005-APDP-RELATIVE-A-LA-PLAINT-POUR-ATTEINTE-A-SA-VIE-PRIVEE-A-SON-HONNEUR-ET-A-SA-CONSIDERATION-CONTRE-EDM-SA-ET-SOMAGEP-SA.pdf> > accessed 27 March 2021.

# MAURITANIA

The Republic of Mauritania or Mauritania is an Islamic state in North West Africa. It is bordered by the Atlantic Ocean, Algeria, Mali and Senegal. With a population of over 4 million and a GDP of \$7.601 billion, Mauritania is the 28th largest country in Africa.<sup>287</sup>

## Data Protection Law

The protection of personal data in Mauritania is governed by Law No. 2017-020 of 22 July 2017<sup>288</sup> but the law has not yet come into force. Under Mauritanian law, an implementation decree must be issued pursuant to a new law before it can come into force.<sup>289</sup> Pending its entry into force, the law seeks to apply to any processing of personal data on Mauritanian territory or in any place where Mauritanian law applies.<sup>290</sup> However, it excludes processing carried out for personal purposes and not intended for dissemination and data in transit.<sup>291</sup>

## The Data Protection Authority

Law No. 2017-020 provides for the establishment of Autorité de Protection des Données à caractère personnel (APD)<sup>292</sup> in Mauritania,<sup>293</sup> however it is not yet operational. Its main function is to ensure that any processing of personal data does

not pose a threat to public freedoms and privacy in the Republic of Mauritania.<sup>294</sup>

## Independence and Impartiality

The APD has not yet been set up and is not operational. Its composition, the terms and conditions of appointment of its members and the start of its activities will be formalized by decree in the Council of Ministers.<sup>295</sup> It will be placed under the authority of its President<sup>296</sup> but the terms of designation and appointment are not yet specified.<sup>297</sup>

The composition of the APD board has not yet been specified, however, the mandate of its members is scheduled for four years, renewable only once.<sup>298</sup> They are irremovable and can only be revoked during their mandate in the event of resignation or incapacity.<sup>299</sup> Also, they are bound by professional secrecy<sup>300</sup> and cannot exercise functions as members of the government, company directors and hold a stake in companies in the IT or electronic communications sector.<sup>301</sup>

## Investigations and decisions

The APD is yet to be set up, hence there are no reports on its activities.

<sup>287</sup> <https://www.newworldencyclopedia.org/entry/Mauritania> accessed 3 March 2021.

<sup>288</sup> The Law No. 2017-020 of July 22, 2017 on the protection of personal data in the Republic of Mauritania <<http://www.tic.gov.mr/IMG/pdf/imp1fr-2.pdf>> accessed 10 May 2021.

<sup>289</sup> <https://www.mofo.com/resources/insights/210111-africa-near-east-privacy-rules.html> accessed 9 May 2021.

<sup>290</sup> Art. 3.

<sup>291</sup> Art. 4.

<sup>292</sup> Art. 64.

<sup>293</sup> Graham Greenleaf and Bertil Cottier, 'Data Privacy Laws and Bills: Growth In Africa, GDPR Influence' (2018) 152 Privacy Laws & Business International Report 11 [2018] UNSWLRS 52.

<sup>294</sup> Art 64 and 73.

<sup>295</sup> Art 65.

<sup>296</sup> Art 66.

<sup>297</sup> Art 65.

<sup>298</sup> Art 67.

<sup>299</sup> Art 67 and 69.

<sup>300</sup> Art 67.

<sup>301</sup> Art 68.

# MAURITIUS

Mauritius is an island state located off the southeast coast of Africa and neighboring the French island of La Reunion.<sup>302</sup> Mauritius has emerged as an international and competitive ICT destination and is steadily positioning itself as a regional ICT Hub. Mauritius was the sixth country after Bulgaria, Croatia, Lithuania, Poland and Serbia as well as the first country in Africa to sign and ratify the Protocol amending Convention for the Protection of individuals with regard to automatic processing of personal data.<sup>303</sup>

## Data Protection Law

Mauritius enacted its Data Protection Act<sup>304</sup> on the 15 January 2018 with the objective of providing for the protection of the privacy rights of individuals.

The Act applies to a controller or processor established in Mauritius and processes personal data in the context of that establishment or a controller not established in the country but uses equipment within its territory for processing personal data, other than for the purpose of transit through Mauritius.<sup>305</sup>

## Data Protection Authority

The Act establishes a Data Protection Office (DPO)<sup>306</sup> headed

by a Data Protection Commissioner who is a lawyer of not less than five years' standing.<sup>307</sup> The DPO principally ensures compliance with the data protection law and any regulations made pursuant to it, maintains a register of controllers and processors; investigates any complaint or information, etc.<sup>308</sup> The DPO submits an annual report to the National Assembly.<sup>309</sup>

## Independence and impartiality

The Data Protection Commissioner is appointed/removed by the Public Service Commission, a commission created under the Constitution.<sup>310</sup> The members remuneration is fixed by the Public Service Commission and they are duty-bound to submit an annual report to the National Assembly.<sup>311</sup>

## Investigations and decisions

There are no reported cases to date.

<sup>302</sup> <https://www.worldbank.org/en/country/mauritius>

<sup>303</sup> <https://dataprotection.govmu.org/SitePages/ReadMore.aspx?IDR=22>

<sup>304</sup> <https://dataprotection.govmu.org/Pages/The%20Law/Data-Protection-Act-2017.aspx>

<sup>305</sup> Section 44 of the Data Protection Act, 2017

<sup>306</sup> <https://dataprotection.govmu.org/SitePages/Index.aspx> accessed 25 May 2021.

<sup>307</sup> Section 4 (1) and (3).

<sup>308</sup> Section 5.

<sup>309</sup> Section 45.

<sup>310</sup> 1. Satyanraj Ramdoo, Associate, BLC Robert & Associates. 2. Inza Dauharry, Senior Legal Executive, BLC Robert & Associates

<sup>311</sup> Section 45.

# MOROCCO

The Kingdom of Morocco is located in northwest Africa and has a population of more than 37 million<sup>312</sup> with an estimated GDP of \$117 billion in 2021.<sup>313</sup> The country practices a unitary monarchical system of government with an elected parliament.

## Data Protection Law

Morocco's law on data protection was enacted on 18 February 2009.<sup>314</sup> The law applies to the processing of personal data wholly or partly by automatic means, as well as to the non-automatic processing of personal data contained or intended to be contained in manual files.<sup>315</sup>

## Data Protection Authority

The National Commission for the Supervision of Personal Data Protection (CNPDP)<sup>316</sup> is provided for by Decree issued on 21 May 2009.<sup>317</sup> The CNPD is empowered to investigate and inquire about personal data processing in Morocco.<sup>318</sup>

In March 2011, a regulation governing the activities of the CNPD was issued by the Prime Minister.<sup>319</sup> The regulation contains guidelines for the organisation and functioning of the Commission. It indicates how the meetings of the CNPD should be organised, as well as the rules for decision-making.<sup>320</sup>

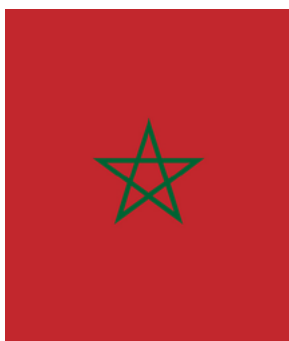
## Independence and Impartiality

The CNPD is established under the office of the Prime Minister. The King appoints its members for a term of five years, renewable only once.<sup>321</sup> The modalities and conditions of appointment of the members of the National Commission are determinable by decree.<sup>322</sup> The CNPD budget and employment contracts are presented to the Prime Minister for approval.<sup>323</sup>

## Investigations and decisions

CNPD has the competence to issue fines between 10,000 DH<sup>324</sup> and 100,000 DH. In 2013, it launched a campaign to verify the installation of surveillance cameras in some hotels.<sup>325</sup> In December 2020,<sup>326</sup> the CNPD investigated the use of facial recognition technologies by social security institutions for the proof of life of the beneficiaries. In its verdict, the CNPD made strong reservations about each service provider building its own biometric database hosted outside the national territory. The Commission recommended the use of a national trusted third-party system, in terms of authentication, without multiplication of authentication databases or registers, whether in the private or public sector.<sup>327</sup>

On its website, CNPD only published its 2016 activity report in May 2018 but it does not contain specific information about the fines and decisions taken by the commission.<sup>328</sup>



<sup>312</sup> Atlas monde <https://www.atlas-monde.net/afrique/maroc/> > accessed on 11 May 2021.

<sup>313</sup> Trading economics <https://tradingeconomics.com/morocco/gdp> > accessed on 11 May 2021.

<sup>314</sup> Law 09-08 of 18 February 2009 <https://www.cndp.ma/images/lois/Loi-09-08-Fr.pdf> > accessed on 10 May 2021.

<sup>315</sup> Law 09-08 of 18 February 2009, chapter I, section 1, art.2.

<sup>316</sup> Commission Nationale de contrôle de la protection des Données à caractère Personnel <https://www.cndp.ma/fr/> > accessed on 6 May 2021.

<sup>317</sup> Decree 2-09-165 of 21 May 2009 <https://www.cndp.ma/images/lois/Decret-2-09-165-Fr.pdf> > accessed on 10 May 2021; See also [https://lematin.ma/journal/2009/Protection-des-donnees-a-caractere-personnel\\_Le-rattachement-de-la-CNPD-a-la-Primature-compromettrait-son-independance/118173.html](https://lematin.ma/journal/2009/Protection-des-donnees-a-caractere-personnel_Le-rattachement-de-la-CNPD-a-la-Primature-compromettrait-son-independance/118173.html) > accessed on 13 May 2021.

<sup>318</sup> Art. 30.

<sup>319</sup> CNPD Internal regulation No. 3-33-11 of 28 March 2011. <https://www.cndp.ma/images/lois/Reglement-Interieur-CNDP-Fr.pdf> > accessed on 10 May 2021.

<sup>320</sup> CNPD Internal regulation No. 3-33-11 of 28 March 2011, art.2 -13.

<sup>321</sup> Art. 3.

<sup>322</sup> Decree 2-09-165 of 21 May 2009.

<sup>323</sup> CNPD Internal regulation No. 3-33-11 of 28 March 2011, art. 19; see also Decree 2-09-165, art. 9-15.

<sup>324</sup> Law 09-08, art. 52. Approx. \$1132 - \$11 327.

<sup>325</sup> Deliberation n°350-2013 of 31 May 2013 <https://www.cndp.ma/fr/dossiers/videosurveillance.html> > accessed on 18 May 2021.

<sup>326</sup> Deliberation n°D-195-EUS/2020 of 30/12/2020 [https://www.cndp-maroc.org/images/deliberations/CNDP-Dlibration\\_D-195-EUS-2020-Usage\\_de\\_la\\_reconnaissance\\_faciale-\\_20210421.pdf](https://www.cndp-maroc.org/images/deliberations/CNDP-Dlibration_D-195-EUS-2020-Usage_de_la_reconnaissance_faciale-_20210421.pdf) > accessed on 18 May 2021.

<sup>327</sup> See all the decisions and deliberations <https://www.cndp-maroc.org/fr/avis-et-decisions/m-deliberations.html> > accessed on 11 May 2021.

<sup>328</sup> CNPD 2016 Report <http://www.cndp.ma/images/documents/Rapport-activite-CNDP-2016-fr.pdf> > accessed on 11 May 2021.

# NIGER

Niger or the Republic of Niger is a landlocked country in West Africa located between Algeria, Libya, Chad, Nigeria, Benin, Burkina-Faso and Mali. With a population of over 23 million and an estimated GDP of \$12.91 billion in 2019, its political system is a semi-presidential regime.<sup>329</sup>

## Data Protection Law

Data protection in the Republic of Niger is principally regulated by Law No. 2017-28<sup>330</sup> enacted in May 2017 which governs automated and non-automated processing of personal data within and outside the country provided the processing takes place therein.<sup>331</sup> It officially entered into force on 30 April 2020 with the promulgation of Decree No. 2020-309 / PRN / MJ<sup>332</sup> which lays down the terms for application of Law No. 2017-28 relating to the protection of personal data. Law No. 2017-28 was however amended in December 2019 by Law No. 2019-71<sup>333</sup> which creates the legal framework<sup>334</sup> for the protection of personal data in Niger.<sup>335</sup>

## The Data Protection Authority

The Haute Autorité de Protection des Données à caractère Personnel (HAPDP)<sup>336</sup> serves as DPA for Niger pursuant to the provision of Article 43 of Law No. 2019-71 (as amended). It was established on 5 July 2020 and resumed operations on July 20, 2020.

It is responsible for ensuring that the processing and use of personal data does not infringe public freedoms or pose a threat to the privacy of citizens.<sup>337</sup>

## Independence and Impartiality

HAPDP is run by a nine-member board: appointees of the President of the Republic; National Assembly; the Prime Minister; Court of Cassation; Council of State; Bar Association; Medical Council; human rights organizations; and an IT expert.<sup>338</sup>

Its members are appointed by decree<sup>339</sup> issued by the Council of Ministers for a term of five years renewable once and their membership is incompatible<sup>340</sup> with all government activities. The members cannot be dismissed during their term except in the event of death, resignation or definitive incapacity noted by the HAPDP itself.<sup>341</sup>

## Investigations and decisions

On February 21, 2021, the HAPDP published a list of data controllers which have complied with the law on the protection of personal data in Niger.<sup>342</sup> It has granted 16 processing authorizations, 11 transfer authorizations and responded to two requests for advice. However, no information is publicly available on the HAPDP's decisions, especially on the fines imposed since inception.

<sup>329</sup> <https://www.nationsonline.org/oneworld/niger.htm> accessed 7 June 2021.

<sup>330</sup> Loi no. 2017-28 du 03 mai 2017 relative à la protection des données à caractère personnel <[http://www.hapdp.ne/uploads/documents/Loi\\_relative%CC%80laprotectiondesdonnees%CC%81esa%CC%80caracte%CC%80repersonnel.pdf](http://www.hapdp.ne/uploads/documents/Loi_relative%CC%80laprotectiondesdonnees%CC%81esa%CC%80caracte%CC%80repersonnel.pdf)> accessed 14 June 2021.

<sup>331</sup> Article 3 of Law No. 2017-28 of May 3, 2017.

<sup>332</sup> Normally scheduled to come into force 6 months after its vote in the National Assembly of Niger in 2017, Law No. 2017-28 had to wait for its implementing decree which was not made until April 30, 2020.

<sup>333</sup> [http://www.hapdp.ne/uploads/documents/Loi-2019-71\\_modifloirelative%CC%80laprotectiondesdonnees%CC%81esa%CC%80caracte%CC%80repersonnel\\_.pdf](http://www.hapdp.ne/uploads/documents/Loi-2019-71_modifloirelative%CC%80laprotectiondesdonnees%CC%81esa%CC%80caracte%CC%80repersonnel_.pdf) accessed 24 June 2021.

<sup>334</sup> Art.2 of Law n ° 2017-28 of May 03, 2017.

<sup>335</sup> Art.2 of Law n ° 2017-28 of May 03, 2017.

<sup>336</sup> High Authority for the Protection of Personal Data of Niger (HAPDP) <http://www.hapdp.ne/> accessed 15 June 2021.

<sup>337</sup> Art.43(1).

<sup>338</sup> Art. 43.2.

<sup>339</sup> Art. 43.2.

<sup>340</sup> Art.47.

<sup>341</sup> Art. 43.2.

<sup>342</sup> <http://www.hapdp.ne/uploads/documents/LISTEDESRTAYANTDESIGNEDESCORRESPONDANTS.pdf> accessed 20 May 2021.



# NIGERIA

Nigeria, the country with the world's largest black population, is located on the western coast of Africa. A multinational state with over 250 ethnic groups, it has an estimated GDP of \$500 billion with a population of 206 million people.<sup>343</sup>

## Data Protection Law

Nigeria does not have a data protection law but a Nigeria Data Protection Regulation 2019 (NDPR) predominantly governs data protection in Nigeria.<sup>344</sup> The regulation was issued pursuant to section 6(c) of the National Information Technology Development Agency Act<sup>345</sup> and it covers manual and electronic processing of data belonging to natural persons resident or outside Nigeria who are Nigerian citizens.<sup>346</sup>

## Data Protection Authority

Although the NDPR contemplates multiple DPAs<sup>347</sup>, the role of DPA in Nigeria is predominantly played by the National Information Technology Development Agency (NITDA). NITDA was initially set up in 2001<sup>348</sup> as a government department to implement Nigeria's National Information Technology Policy<sup>349</sup> but later metamorphosed into a statutory body with juristic personality under the NITDA Act 2007.

When NITDA's service charter<sup>351</sup> is

considered vis-a-vis the provision of section 6(c) of its enabling Act<sup>352</sup>, it becomes doubtful whether NITDA derives its powers to act as a DPA from its enabling Act or from the NDPR which it issued.<sup>353</sup>

NDPR does not specifically list the functions of NITDA but an aggregate of the text of the regulation reveals that, the agency makes decisions on adequacy level of countries and international organisations for cross border transfer of data<sup>354</sup>, receive reasons from controllers on their refusal to honour data subject's access request,<sup>355</sup> licence Data Protection Compliance Organisations (DPCOs) to monitor and ensure compliance on behalf of NITDA<sup>356</sup> etc.

## Independence and impartiality

NITDA is an agency under the Ministry of Communications and Digital Economy.<sup>357</sup> Its board members are appointed by the President on the recommendation of a Cabinet Minister<sup>358</sup> to whom the board reports annually.<sup>359</sup> The board members are appointed for a four-year renewable term<sup>360</sup> and can be removed at the pleasure of the President or on the recommendation of the Minister<sup>361</sup> and their remuneration is determined by the President from time to time.<sup>362</sup> Ultimately though, NITDA is subject to the directives of the Minister

<sup>343</sup> About Nigeria.

<sup>344</sup> Nigeria Data Protection Regulation (NDPR), 2019 was issued on 25th January 2019 by the National Information Technology Development Agency (NITDA).

<sup>345</sup> National Information Technology Development Agency (NITDA) Act of 2007 (Act No. 28) Published in Gazette No. 99 Vol.94, 5th October, 2007. Some stakeholders have actually argued that NITDA lacks the statutory powers to issue a data protection regulation. See Olumide Babalola, 'A Bird's Eye Rundown on Nigeria's Data Protection Legal and Institutional Model' (2021) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3808570](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3808570) accessed 9 May 2021.

<sup>346</sup> NDPR, reg. 1.2.

<sup>347</sup> The NDPR references 'Agency' which exclusively refers to NITDA, 'Regulatory Authorities,' 'Supervisory Authority' and 'Relevant Authorities' which refer to all other agencies that deal partly or solely with personal data. See reg. 1.3(xxiv), 2.4(a), 3.1(2) and 3.1(7).

<sup>348</sup> <https://nitda.gov.ng/>

<sup>349</sup> 18th day of April 2001. <http://we-gov.org/members-at-a-glance/?mod=document&uid=705>.

<sup>350</sup> Tega Rexwhite Enakrire, 'The Nigerian National Information Technology (IT) Policy' < [https://www.researchgate.net/publication/293308489\\_The\\_Nigerian\\_national\\_information\\_technology\\_IT\\_policy](https://www.researchgate.net/publication/293308489_The_Nigerian_national_information_technology_IT_policy) > accessed 9 May 2021.

<sup>351</sup> The charter lists the agency's priority areas but data protection is conspicuously absent. See <https://nitda.gov.ng/wp-content/uploads/2020/11/Charter.pdf> > accessed 9 May 2021.

<sup>352</sup> This empowers NITDA to regulate e-governance and monitor the use of a technological device known as 'Electronic Data Interchange (EDIs)' See Sriram Narayanan and Ann S. Maruchek, 'Electronic Data Interchange: Research Review and Future Directions' (2009) 40(1) Decision Sciences, 121.

<sup>353</sup> The NDPR specifically saddles NITDA with some functions of a DPA.

with regards to the exercise of its function.<sup>363</sup>

### Investigations and decisions

NITDA's 2019-2020 Implementation Report<sup>364</sup> notes that it conducted 15 investigations and resolved 790 issues but these are not verifiable by empirical evidence. In 2020, NITDA fined Lagos Internal Revenue Service (LIRS) to the tune of 1 million for breaching the personal data of thousands of taxpayers on its portal<sup>365</sup> and on 16 March 2021, NITDA announced that it

had imposed a fine of 5 million on Electronic Settlement Limited (ESL) for personal data breach following a 16-month investigative process.<sup>366</sup> The agency has however issued three guidance notes since 2019. On 11 July 2019,<sup>367</sup> the NITDA issued a draft version of the Nigeria Data Protection Regulation 2019: Implementation Framework.

<sup>354</sup> Reg. 2.11(a)

<sup>355</sup> Reg 3.1(3)(b).

<sup>356</sup> Reg. 4.1(4).

<sup>357</sup> <https://nitda.gov.ng/mandate/>

<sup>358</sup> NITDA Act, section 2(3).

<sup>359</sup> Section 23.

<sup>360</sup> Section 3.

<sup>361</sup> Section 4(1)(f) and 11.

<sup>362</sup> Section 5.

<sup>363</sup> Section 31. However due to some political arrangement, NITDA has been moved under the ministry of communications and digital economy.< <https://media.premiumtimesng.com/wp-content/files/2020/09/NITDA-ACHIEVEMENT.pdf>> accessed 9 May 2021.

<sup>364</sup> <https://technologytimes.ng/wp-content/uploads/2020/10/FINAL-NDPR-Performance-Report-2019-2020.pdf>> accessed 7 May 2021.

<sup>365</sup> [https://techeconomy.ng/2020/10/nitda-fines-lirs-n1million-for-alleged-breach-of-data-protection-regulation/#:~:text=Lagos%20Internal%20Revenue%20Service%20\(LIRS,Annual%20Performance%20Report%202019%2D2020](https://techeconomy.ng/2020/10/nitda-fines-lirs-n1million-for-alleged-breach-of-data-protection-regulation/#:~:text=Lagos%20Internal%20Revenue%20Service%20(LIRS,Annual%20Performance%20Report%202019%2D2020)

<sup>366</sup> NITDA fines company for data breach.

<sup>367</sup> Guidelines for the Management of Personal Data by Public Institutions in Nigeria, 2020 (May 2020); Nigeria Data Protection Regulation 2019: Implementation Framework (November 2020).

## SAO TOME & PRINCIPE

São Tomé and Príncipe is an island country in the Gulf of Guinea off the western equatorial coast of Central Africa. With an estimated GDP of \$355 billion<sup>368</sup> and population of about 222,000 inhabitants,<sup>369</sup> Sao Tome and Principe is the second smallest country in Africa after Seychelles.

### Data Protection Law

Sao Tome and Principe enacted her law<sup>370</sup> on data protection on 10 May 2016. The law guarantees and protects the personal data of residents. The Law applies to the processing of personal data carried out within the scope of the activities of the controller established in São Tomé and Príncipe, even if the person is not living in the national territory; outside of the national territory, where the legislation of Sao Tome and Principe is applicable under public or private international law, and for those responsible for the treatment that is not established in São Tomé and Príncipe, but processed with means located in the national territory.<sup>371</sup>

### Data Protection Authority

Law No. 07/2017<sup>372</sup> provides for the creation of a DPA called the National Agency for the Protection

of Personal Data (NAPPD)<sup>373</sup> which is statutorily empowered to authorize the interconnection of automated processing of personal data and authorize the transfer of personal data and generally ensure compliance with the data protection law.

### Independence and Impartiality

The NAPPD is designated as an independent administrative entity working directly with the National Assembly.<sup>374</sup> NAPPD draws its own budget.<sup>375</sup> and it is composed of three members elected by a two-thirds majority of the National Assembly.<sup>376</sup> The members are appointed for a fixed term of five years renewable only once<sup>377</sup> and they are not removable from office before the end of their term of office.<sup>378</sup> The members of NAPPD receive remuneration as approved by the National Assembly.<sup>379</sup>

### Investigations and decisions

The NAPPD can impose a maximum fine of 200,000,000 Dobras for violation of data subjects rights but there are no verifiable reports of the investigations or sanctions imposed since its establishment.



<sup>368</sup> Trading Economics – <https://tradingeconomics.com/sao-tome-and-principe/gdp>, accessed on 11 June 2021.

<sup>369</sup> Worldometers – <https://www.worldometers.info/world-population/sao-tome-and-principe-population/>, accessed on 11 June 2021.

<sup>370</sup> Law No. 03/2016 of 10th May 2016 .[https://www.anpdp.st/docs\\_comprimidos/legislacao\\_nacional/dr39\\_lei3\\_2016\\_proteccao\\_de\\_dados\\_pessoais.pdf](https://www.anpdp.st/docs_comprimidos/legislacao_nacional/dr39_lei3_2016_proteccao_de_dados_pessoais.pdf), accessed 8 June 2021.

<sup>371</sup> Scope of the legislation, art. 3.

<sup>372</sup> Preamble, Law 07/2017 of 22 March 2017.

<sup>373</sup> <https://www.anpdp.st>, accessed on 9 June 2021.

<sup>374</sup> Art. 2, Nature, Law 07/2017 of 22 March 2017.

<sup>375</sup> Chapter IV, Financial arrangements, art. 22, Income and expenditure scheme.

<sup>376</sup> Chapter II, Members of ANPDP, Art. 5, Designation and mandate, Law 07/2017 of 22 March 2017.

<sup>377</sup> Idem.

<sup>378</sup> Art. 7, Immovability, Law 07/2017 of 22 March 2017.

<sup>379</sup> Art. 11, Remuneration status.

# SENEGAL

Senegal or the Republic of Senegal, is a country in West Africa. It is bordered by the Atlantic Ocean, Mauritania, Mali, Guinea and Guinea-Bissau. Its population is estimated at 17,223,497 inhabitants<sup>380</sup> with a GDP of \$23.58 billion USD in 2019.

## Data Protection Law

Data protection in Senegal is principally governed by Law No. 2008-12<sup>381</sup> relating to the protection of personal data in Senegal.<sup>382</sup> The law applies to automated or non-automated processing of data implemented by a controller established within or outside Senegal provided processing activities take place in the country.<sup>383</sup> It officially entered into force on 30 June 2008, when Decree No. 2008-721 was promulgated.<sup>384</sup> While Law No. 2008-12 makes provisions for data protection principles and rights, the Decree provides details on the organization, operating methods and powers of the DPA.

## The Data Protection Authority

Law No. 2008-12 of 25 January 2008 provides for the establishment of the Commission des Données Personnelles (CDP)<sup>385</sup> as the authority in charge of the protection of personal data in Senegal.<sup>386</sup> It is

responsible for ensuring that the processing of personal data does not pose a threat to public freedoms and privacy and it also informs data subjects and data controllers of their rights and obligations.<sup>387</sup> It officially started its activities in 2013, five years after the entry into force of the law that created it.<sup>388</sup>

## Independence and Impartiality

The CDP is constituted by 11 members<sup>389</sup> nominated by: the President of the Republic; President of the National Assembly; the President of the Senate; employers' organizations, the Magistracy, Court of Cassation, the Senegalese Bar Association, etc.<sup>390</sup> After their nomination, they are appointed by decree issued by the Council of Ministers.<sup>391</sup>

The members are appointed for a term of four years renewable once<sup>392</sup> and they are irremovable during their term of office<sup>393</sup> except in the event of resignation or incapacity noted by the CPC under the conditions provided for by decree.<sup>394</sup> They are subject to professional secrecy<sup>395</sup> and they enjoy total immunity for opinions expressed in the exercise or on the occasion of the exercise of their function.<sup>396</sup>

<sup>380</sup> Statistics and projections on the population of Senegal published by the National Statistics Agency of Senegal (ANSD) <https://satisfaction.ansd.sn/> > accessed 21 May 2021.

<sup>381</sup> Enacted in January 25, 2008.

<sup>382</sup> La Loi n° 2008-12 du 25 janvier 2008 portant sur la Protection des données à caractère personnel: <https://www.cdp.sn/sites/default/files/protection.pdf>

<sup>383</sup> Article 2 of Law n° 2008-12 of January 25, 2008

<sup>384</sup> Le Décret n°2018-12 du 30 juin 2008 portant application de la loi n° 2008-12 du 25 janvier 2008: [https://www.cdp.sn/sites/default/files/Journal\\_Officiel\\_n6443\\_samedi\\_20\\_decembre\\_2008.pdf](https://www.cdp.sn/sites/default/files/Journal_Officiel_n6443_samedi_20_decembre_2008.pdf)

<sup>385</sup> <https://www.cdp.sn/> > accessed 23 May 2021.

<sup>386</sup> Article 5 of law n° 2008-12 of January 25, 2008

<sup>387</sup> Articles 5 and 16 of law n° 2008-12 of January 25, 2008.

<sup>388</sup> <https://www.cdp.sn/sites/default/files/demarrage.pdf> > accessed 22 May 2021.

<sup>389</sup> Article 6 of law n° 2008-12 of January 25, 2008

<sup>390</sup> Article 6 of law n° 2008-12 of January 25, 2008

<sup>391</sup> Article 6 of law n° 2008-12 of January 25, 2008

<sup>392</sup> Article 8 of law n° 2008-12 of January 25, 2008

<sup>393</sup> Article 8 of law n° 2008-12 of January 25, 2008

<sup>394</sup> Article 8 of law n° 2008-12 of January 25, 2008

The CDP is predominantly funded by a budgetary allocation from the State<sup>397</sup> and submits an annual report to the country's President and the President of the National Assembly.<sup>398</sup>

### Investigations and decisions

Since its creation, the CDP has mainly issued administrative decisions: six wagers and five warnings against several companies for breach of the legislation on personal data.<sup>399</sup> For the first quarter of 2021, it issued 32 declaration receipts and 12 processing authorizations.

The CDP has also issued five deliberations on transitional provisions concerning the protection of personal data, in particular on the operation of video surveillance systems and geolocation.<sup>400</sup> It also

has a public repository containing all the processing operations it has authorized.<sup>401</sup> Between 2014 and 2015, the CDP issued warnings to several companies including: Digital Virgo,<sup>402</sup> Hello Food Senegal,<sup>403</sup> AK-Project<sup>404</sup> and Ceginus<sup>405</sup> for breaches of the legal conditions of direct prospecting and the telecommunications company Expresso<sup>406</sup> for sending unsolicited advertising SMS. The CDP has issued formal notices to a number of companies for breach of data protection legislation but it however does not have a verifiable database of financial penalties imposed for data breach or other infractions.

<sup>395</sup> Articles 8 of law n ° 2008-12 of January 25, 2008

<sup>396</sup> Article 12 of law n ° 2008-12 of January 25, 2008

<sup>397</sup> Articles 15 and 14 of law n ° 2008-12 of January 25, 2008

<sup>398</sup> Article 16 of law n ° 2008-12 of January 25, 2008.

<sup>399</sup> <https://www.cdp.sn/sanctions>

<sup>400</sup> <https://www.cdp.sn/autres-deliberations>

<sup>401</sup> <https://www.cdp.sn/repertoire-public>

<sup>402</sup> [https://www.cdp.sn/sites/default/files/DELIBERATION\\_AVERTISSEMENT\\_DIGITAL\\_VIRGO.pdf](https://www.cdp.sn/sites/default/files/DELIBERATION_AVERTISSEMENT_DIGITAL_VIRGO.pdf) accessed 29 May 2021.

<sup>403</sup> [https://www.cdp.sn/sites/default/files/DELIBERATION\\_2015-100-CDP\\_HELLO\\_FOOD\\_du\\_15\\_mai\\_2015.pdf](https://www.cdp.sn/sites/default/files/DELIBERATION_2015-100-CDP_HELLO_FOOD_du_15_mai_2015.pdf) accessed 29 May 2021.

<sup>404</sup> <https://www.cdp.sn/sites/default/files/Avertissement%20AK-PROJECT.pdf> accessed 29 May 2021.

<sup>405</sup> <https://www.cdp.sn/sites/default/files/Avertissement%20CEGINUS.pdf> accessed 29 May 2021.

<sup>406</sup> [https://www.cdp.sn/sites/default/files/Deliberation\\_av\\_Warning\\_EXPRESSO.pdf](https://www.cdp.sn/sites/default/files/Deliberation_av_Warning_EXPRESSO.pdf) accessed 29 May 2021.

## SEYCHELLES

Seychelles is an island country located at the edge of the Somali sea but in the Indian ocean. It is one of the world's smallest countries. It is the smallest country in Africa with a population of less than 95,000 people with a GDP of \$1.5 billion.<sup>407</sup>

### Data Protection Law

The law regulating data protection in Seychelles is the Data Protection Act, 2002<sup>408</sup> which was enacted to provide individuals with privacy rights regarding the processing of personal data. The Act has been in existence for virtually more than 15 years but has not entered into force. Its enforcement will commence on a date as notified by the Minister in the Official Gazette.<sup>409</sup> The law applies to residents of Seychelles and processing activities within the territory but its provision is not applicable to processing done outside the country.<sup>410</sup>

### Data Protection Authority

Seychelles does not currently have a Data Protection Authority but the Act

however recognizes the Office of the Data Protection Commissioner.<sup>411</sup> Under the Act, the Commissioner ought to be appointed by the President and hold office for a term of five years, but on expiry of such term, shall still be eligible for re-appointment. The Commissioner is empowered to promote data protection principles and generally ensure compliance with the country's data protection laws but he may however be removed by the President.<sup>412</sup> The Act is silent on the remuneration of the Commissioner. However, Section 6(2) indicates that the Commissioner's expenses shall be paid out of the monies provided by an Appropriation Act<sup>413</sup> and the office is required to annually submit a general report on the performance of the Commissioner's functions to the Minister.<sup>414</sup>

### Investigations and Decisions

The DPA has not been established, therefore no investigations and decisions have been made by the Office.

<sup>407</sup> <https://www.britannica.com/place/Seychelles> accessed 9 June 2021.

<sup>408</sup> Data Protection Act, 2002

<sup>409</sup> DLA Piper, 'Data Protection Laws of the World' <

[https://www.dlapiperdataprotection.com/index.html?l=law&c=SC#:~:text=As%20of%20January%202020%2C%20the,not%20yet%20come%20into%20operation.&text=Zimbabwe%20Change%20country-,The%20Data%20Protection%20Act%20\(the%20'Act'\)%20was%20enacted%20in,them%20without%20their%20informed%20consent.>](https://www.dlapiperdataprotection.com/index.html?l=law&c=SC#:~:text=As%20of%20January%202020%2C%20the,not%20yet%20come%20into%20operation.&text=Zimbabwe%20Change%20country-,The%20Data%20Protection%20Act%20(the%20'Act')%20was%20enacted%20in,them%20without%20their%20informed%20consent.>) accessed 13 June 2021.

<sup>410</sup> Section 45(5).

<sup>411</sup> Section 4, Data Protection Act, 2002

<sup>412</sup> Section 45.

<sup>413</sup> Section 6(2), Data Protection Act (Act No.9 of 2003)

<sup>414</sup> Section 43(5), Data Protection Act (Act No.9 of 2003)

# SOUTH AFRICA

South Africa, a nation of approximately 55.9 million people, got its name from its geographical location in the southern region of Africa.<sup>415</sup> The country covers an area of 1,221,000 km<sup>2</sup> and is surrounded by Botswana, Mozambique, Namibia, Swaziland and Zimbabwe<sup>416</sup> with a GDP of \$317 billion.

## Data Protection Law

Data protection in South Africa is governed by the Protection of Personal Information Act (POPIA)<sup>417</sup> signed into law by the country's President on 19 November 2013 and published in the Government Gazette seven days later.<sup>418</sup> However, the POPIA came into force in bits when in 2014, the President signed a proclamation<sup>419</sup> signaling the commencement of section 1<sup>420</sup> part A of chapter five,<sup>421</sup> section 112<sup>422</sup> and section 113<sup>423</sup> and then in 2020, he signed another proclamation declaring 1 July 2020 as the commencement date for its remaining part but giving a moratorium of one year for controllers and processors to comply.<sup>424</sup> Enforcement of POPIA was planned to commence 30 June 2021.<sup>425</sup> The POPIA applies to the processing of personal information by automated and non-automated means, whether controller is domiciled or not in the country so far processing activities take place therein.<sup>426</sup>

## Data Protection Authority

The South African DPA is known as the Information Regulator (IR)<sup>427</sup> and was established in 2016 pursuant to section 39(1) of POPIA.<sup>428</sup> It is empowered to educate citizens on data protection principles, monitor and enforce compliance with POPIA, receive, investigate and resolve complaints, report to the national assembly, etc.<sup>429</sup> They are also saddled with the responsibility of performing certain functions under the Promotion of Access to Information Act.<sup>430</sup> The IR is a juristic person with jurisdiction to act throughout the country.<sup>431</sup>

## Independence and Impartiality

In demonstrating some separation of powers in the appointment of members of IR, the Parliament<sup>432</sup> nominates the chairperson and four other persons who are then appointed by the President.<sup>433</sup> POPIA guarantees the independence of IR in the performance of its duties<sup>434</sup> however, its members can be removed for misconduct by a majority vote of the Parliament.<sup>435</sup> The Minister of Justice,<sup>436</sup> in consultation with the Minister of Finance determines the remuneration<sup>437</sup> of IR members who are not subject to public service rules and their appointment is for a fixed but renewable term of five years.<sup>438</sup> The IR submits its annual report<sup>439</sup> to the Parliament<sup>440</sup> but also reports to the Minister for Administration of Justice especially on the result of research and monitoring,<sup>441</sup>

<sup>415</sup> Elizabeth Eldredge, *A South African Kingdom*, (Cambridge: Cambridge University Press, 1993) 48.

<sup>416</sup> [https://www.nationsonline.org/one-world/south\\_africa.htm](https://www.nationsonline.org/one-world/south_africa.htm) accessed 2 May 2021.

<sup>417</sup> Protection of Personal Information Act, 2013 (Act 4, of 2013) < [https://www.gov.za/sites/default/files/gcis\\_document/201409/3706726-11act4of2013protectionofpersonalinformationcorrect.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/3706726-11act4of2013protectionofpersonalinformationcorrect.pdf) accessed 1 May 2021.

<sup>418</sup> Notice 37067 on 26th November 2013

<sup>419</sup> Proclamation No. R. 25, 2014 of 11 April 2014.

<sup>420</sup> Definition section.

<sup>421</sup> Establishment of information regulator (DPA) etc.

<sup>422</sup> Power to make regulations

<sup>423</sup> Procedure for regulations.

<sup>424</sup> Protection of Personal Information Act: Commencement of Certain Sections (Proclamation No. R.21 of 2020), 22nd June 2020

<sup>425</sup> Michalsons, 'POPI Commencement Data or POPI Effective Date Starts the Clock'

<https://www.michalsons.com/blog/popii-commencement-date-popii-effective-date/13109> accessed 15 June 2021.

<sup>426</sup> POPIA, s. 3(1)(a).

<sup>427</sup> <https://www.informationcommissioners.org/south-africa/> accessed 2 May 2021.

<sup>428</sup> Section 114(4) also requires the South African Human Rights Commission (SAHRC) to consult the IR, in performance of its functions under its enabling Act in alignment with the POPIA.

<sup>429</sup> Sections 40 and 43.



examination of proposed policies and legislation on data protection, report of investigations,<sup>442</sup> consent for performance of any other remunerative work by the chairperson.<sup>443</sup> To establish an enforcement committee, the IR must consult the Chief Justice and Minister of Justice<sup>444</sup> whose office can from time to time, by official gazette, adjust the administrative fines imposed by the IR.<sup>445</sup>

### Investigations and decisions

The IR was established in 2016 but the POPIA has not taken effect at the time of this report, hence not so much has been done in terms of investigations and sanctions.

However, in its previous annual reports, the IR alluded to the handling of 32 cases of data breaches. Similarly, in its 2019 report, the IR received a total of 238 complaints of data breaches but gave no reports on the identities of the violators or the verdicts. To date, there have been no fines issued by the IR. The Office has been established but has only recently been allocated budget to expand its operation (which to date has been mostly preparatory). The IR has however issued some guidance notes and other notices while it awaits the full commencement of its enabling Act.<sup>446</sup>

<sup>430</sup> Section 43 (2)(b). The The Promotion of Access to Information Act, 2000 (Act 2, 2000) (PAIA) was enacted to facilitate access to information held by public and private bodies for the enforcement of citizens' rights and freedoms.

<sup>431</sup> Section 39.

<sup>432</sup> Section 41 (2)(a).. A committee of the parliament nominates the members and approved by a vote by the majority members after which the President appoints the members. S. 42(2)(b). See also < <https://www.michalsons.com/blog/candidates-for-information-regulator/19350>> accessed 3 May 2021.

<sup>433</sup> In 2016, the President appointed the following persons as Chairperson and members of the IR with effect from 1 December 2016, for a period of five years: Adv Pansy Tlakula (Chairperson); Adv Lebogang Cordelia Stroom-Nzama (full-time); Adv Johannes Collen Weapond (full-time); Prof. Tana Pistorious (part-time); and Mr Sizwe Lindelo Snail ka Mtutze (part-time).

<sup>434</sup> S. 39(b)

<sup>435</sup> S. 41(6)(b)

<sup>436</sup> S. 46(1) and (2). The remuneration varies based on the position of members.

<sup>437</sup> In setting up administrative departments, recruitment and their remuneration, the IR must consult the minister of finance. S. 47(5) and 47(7).

<sup>438</sup> S. 41(3).

<sup>439</sup> See Annual Report for 2018/19 Financial Year); Annual Report for 2019/20 Financial Year; Presentation of the 2018/19 Annual Report for the Information Regulator Portfolio Committee on Justice and Correctional Services

<sup>440</sup> S.40(1)(b)(v).

<sup>441</sup> S. 40(1)(b)(ii).

<sup>442</sup> S. 40(2).

<sup>443</sup> S. 41(4).

<sup>444</sup> S.50(2).

<sup>445</sup> S. 109(1)

<sup>446</sup> Guidance Note on the Processing of Personal Information of a Voter by a Political Party in terms of the Protection of Personal Information Act, 4 of 2013, 28th January 2019; Guidance Note on the Processing of Personal Information in the Management and Containment of COVID-19 Pandemic in terms of the Protection of Personal Information Act of 2013 (POPI Act) 03 April 2020; Guidance Note on Applications for Prior Authorization, 11th March 2021; Guidance Note on Information Officers and Deputy Information Officers, 01 April 2021; Notice Relating to Codes of Conduct issued in accordance to Section 63(2)(a)(ii) of POPI; Notice in Terms of Section 61(2) of POPI Act: Credit Bureau Association (CBA), Code of Conduct: Lawful Processing of Personal Information in credit sector, 14 April 2021; Policy on Formulation of Policies, signed 18th April 2017; Policy on Disclosure of Interest, signed 21 September 2017; Policy on Website Privacy, signed 20th June 2018.

# TOGO

Togo, or the Togolese Republic, is a country in West Africa bordered by Burkina Faso, Benin, Ghana and the Gulf of Guinea. With a population estimated at 8.6 million in 2020, and a GDP of \$6.4 billion, it is governed by a presidential regime.<sup>447</sup>

## Data Protection Law

Data protection in Togo is governed by Law No. 2019-014 of 29 October 2019 relating to the protection of personal data.<sup>448</sup> It applies to any automated or non-automated processing by a data controller, whether or not established on the territory of the Togolese Republic, which uses processing facilities located on Togolese territory.<sup>449</sup>

## Data Protection Authority

Under Law No. 2019-014, a body responsible for the protection of personal data called “Instance de Protection des données à caractère Personnels (IPDCP)”<sup>450</sup> is recognised.<sup>451</sup> It was established to ensure that processing of personal data does not infringe individual or public freedoms, in particular privacy in Togo.<sup>452</sup> Decree No. 2020-111 was also enacted to make provision for

IPDCP’s organization, operation<sup>453</sup> and supervisory powers.<sup>454</sup> However, the IPDCP has not been formally established by the government.

## Independence and Impartiality

Although the IPDCP has not been formally set up, its enabling laws provide for two bodies in charge of its administration: a management committee and an operational committee. While the management committee is in charge of policy making, the operational committee ensures the execution of such policies and overall management of IPDCP.<sup>456</sup>

The members of the IPDCP are meant to be nominated by the President of the Republic; the President of the National Assembly; the Senate; the National Employers’ Council; the Superior Council of the Judiciary; the President of the Bar Association; the President of the CNDH; and the Director of the National Cybersecurity Agency (ANCY).<sup>457</sup> After their nominations, they are then appointed by a decree<sup>458</sup> for a term of three years renewable once. The appointment of a member of the management committee can however be terminated in the event



<sup>447</sup> <https://www.doc-du-juriste.com/droit-public-et-international/droit-constitutionnel/dissertation/constitution-togolaise-regime-presidential-derives-presidentialistes-489268.html>

<sup>448</sup> La Loi n° 2019-014 du 29 octobre 2019 relative à la protection des données personnelles: [https://jo.gouv.tg/sites/default/files/JO/JOS\\_29\\_10\\_2019-64E%20ANNEE-N%C2%B026%20TER.pdf#page=1](https://jo.gouv.tg/sites/default/files/JO/JOS_29_10_2019-64E%20ANNEE-N%C2%B026%20TER.pdf#page=1) > accessed 29 May 2021.

<sup>449</sup> Article 2 of Law N° 2019-014

<sup>450</sup> National Body for the Protection of Personal Data <

<sup>451</sup> <https://www.togofirst.com/fr/tic/1012-6954-togo-mise-en-place-de-l'instance-de-protection-des-donnees-a-caractere-personnel> > accessed 1 June 2021.

<sup>452</sup> Articles 1, 55 and 56.

<sup>453</sup> Le décret n° 2020-111 / PR du 12/09/2020 portant organisation et fonctionnement de l'Instance de Protection des données à caractère Personnels: [https://jo.gouv.tg/sites/default/files/JO/JOS\\_24\\_12\\_2020%20-%2065%20E%20ANNEE%20N%C2%B047%20BIS.pdf#page=24](https://jo.gouv.tg/sites/default/files/JO/JOS_24_12_2020%20-%2065%20E%20ANNEE%20N%C2%B047%20BIS.pdf#page=24)

<sup>454</sup> Article 19 of Decree No. 2020-111 / PR of 09/12/2020 on the organization and functioning of the Instance de Protection des données à caractère Personnels.

<sup>455</sup> Article 57 of Law No. 2019-014 and Article 21 of Decree No. 2020-111.

<sup>456</sup> Article 57 of Law No. 2019-014 and Article 21 of Decree No. 2020-111

of resignation or impediment noted by the IPDCP itself.<sup>460</sup> They are subject to an oath of professional secrecy.<sup>461</sup> The Commission draws its own budget which is funded from annual credit allocated to it in the State budget<sup>462</sup> and it is by law, required to give an activity report addressed to the political authorities of Togo (President of the Republic, the Prime Minister, the President of the National Assembly and the President of the Senate).<sup>463</sup>

complaints and issue fines to the tune of between 100,000 and 100,000,000 million FCFA<sup>464</sup> as well as administrative sanctions.<sup>465</sup> Since the IPDCP is not yet operational, there are no reports on its activities. A draft Decree setting up the IPDCP is however in the offing.<sup>466</sup>

### Investigations and decisions

The IPDCP is empowered under Law No. 2019-014 to receive, investigate

<sup>457</sup> Article 57 of Law No. 2019-014 and Article 21 of Decree No. 2020-111

<sup>458</sup> Article 57 of Law No. 2019-014 and Article 21 of Decree No. 2020-111

<sup>459</sup> Article 59 of Law No. 2019-014 and Article 23 of Decree No. 2020-111

<sup>460</sup> Articles 59 and 61 of Law N ° 2019-014

<sup>461</sup> Articles 59 and 61 of Law N ° 2019-014

<sup>462</sup> Article 63,64,65 of Law No. 2019-014 and Article 32 of Decree No. 2020-111

<sup>463</sup> Article 56 of Law N ° 2019-014

<sup>464</sup> Article 71,72,79,80,81,82,83,84,85,86,87,88,89,90,91,92, and 93 of Law No. 2019-014

<sup>465</sup> Article 71,73 of Law N ° 2019-014

<sup>466</sup> See 'Togo to set up a personal data protection authority' <<https://www.togofirst.com/en/itc/1112-6968-togo-to-set-up-a-personal-data-protection-authority>> accessed 30 May 2021; see also <<https://dig.watch/updates/togo-set-data-protection-agency-and-roll-out-digital-id>> accessed 30 May 2021.

# TUNISIA

Tunisia is a part of the Maghreb region of North Africa. The country is bordered by Algeria to the west and southwest, Libya to the southeast, and the Mediterranean Sea to the north and east. Tunisia has a population of 11.8 million people (2021) and the capital and largest city is Tunis.<sup>467</sup> Tunisia's spoken languages are Arabic (official) and French with an estimated GDP of \$44 billion.<sup>468</sup>

## Data Protection Law

The legal framework for enforcement of data protection in Tunisia is found in two legislative instruments. The first is the Organic Act No. 2004-63<sup>469</sup> on the protection of personal data and the second is the Decree No. 2007-3003<sup>470</sup> which provides the operating methods of the national instance for protection of personal data. The Decree No. 2007-3003 sets the operating methods of the national instance for protection of personal data.<sup>471</sup>

## Data Protection Authority

The Tunisian DPA is known as Instance Nationale de Protection des Données à Caractère Personnel (INPDP),<sup>472</sup> a legal entity recognised under Article 75 of the Organic Act but effectively established by

the Tunisian government in 2008 when the first set of 15 privacy commissioners was appointed.

The INPDP is empowered to authorize and receive notification relating to personal data processing. It receives and investigates complaints of violation of data protection rights<sup>473</sup> and can issue up to 50,000 Dinars in a fine and five years imprisonment.<sup>474</sup>

## Independence and Impartiality

The INPDP's budget is attached to the budget of the Ministry of Human Rights.<sup>475</sup> Its members are appointed on a proposal from the Minister for Human Rights for a three-year renewable term<sup>476</sup> but Parliament can appoint one member. The INPDP's staff remuneration is fixed by decree.<sup>477</sup> Its personnel are governed by the general civil service rules and it files an annual report to the country's President.<sup>479</sup>

## Investigations and decisions

The INPDP appears to have been fairly active since its creation, in terms of investigations and decisions, however, its report of activities between 2009 and 2019 are in Arabic and there are no translations made available as yet.<sup>480</sup> In 2019, the INPDP urged



<sup>467</sup> Factbook Tunisia <https://www.cia.gov/the-world-factbook/countries/tunisia/> > accessed 4 May 2021.

<sup>468</sup> IMF Tunisia <https://www.imf.org/en/Countries/TUN> > accessed 6 May 2021.

<sup>469</sup> Organic Act n°2004-63 of 27 July 2004: [http://www.inpdp.nat.tn/ressources/loi\\_2004.pdf](http://www.inpdp.nat.tn/ressources/loi_2004.pdf) > accessed 3 May 2021.

<sup>470</sup> Decree n° 2007-3003 of 27 November 2007: [http://www.inpdp.nat.tn/ressources/decret\\_3003.pdf](http://www.inpdp.nat.tn/ressources/decret_3003.pdf) > accessed 3 May 2021.

<sup>471</sup> Art. 1.

<sup>472</sup> The National Authority for Protection of Personal Data. See <http://www.inpdp.nat.tn/> > accessed 8 May 2021.

<sup>473</sup> Art. 77.

<sup>474</sup> Organic Act, n°2004-63.

<sup>475</sup> Decree n° 2007-3003 of 27 November 2007, Art. 13.

<sup>476</sup> Art. 2.

voters to make complaints against the misuse of their contacts during elections<sup>481</sup> and in 2020, the INDPD reportedly made 269 declarations and imposed 117 fines<sup>482</sup> while in 2021, it has made 68 declarations, issued 16 notices and imposed 34 fines.<sup>483</sup>

In 2020, the INPDP filed a complaint

against the Mayor of Bannane for the publication of a list of names of citizens who tested positive for the Coronavirus on the Mayor's page. It consequently ordered the Mayor to withdraw the said list for violating data subjects' rights.<sup>484</sup>

<sup>477</sup> Art. 8.

<sup>478</sup> Art. 14.

<sup>479</sup> Organic Act, n°2004-63, of 27 July 2004, Chapter VI, Section IV, Art. 85. The last ceremony of the presentation of the report was shared in a video published by INDPD on its YouTube page in 2019 <https://www.youtube.com/watch?v=WgnDDL7DXwI> > accessed on 4 May 2021.

<sup>480</sup> Report 2009-2009 [http://www.inpdp.nat.tn/Rapport\\_2009-2017.pdf](http://www.inpdp.nat.tn/Rapport_2009-2017.pdf) > accessed 4 May 2021.

<sup>481</sup> News report <https://tn24.tn/fr/article/tunisie-inpdp-toute-personne-ayant-involontairement-parraine-un-candidat-pourrait-porter-plainte-168741> > accessed 9 May 2021.

<sup>482</sup> Overview decisions 2009-2021 [http://www.inpdp.nat.tn/Dossiers\\_INPDP.jpg](http://www.inpdp.nat.tn/Dossiers_INPDP.jpg) > accessed 4 May 2021.

<sup>483</sup> Deliberations in Arabic <http://www.inpdp.nat.tn/ressources.html> > accessed 6 May 2021.

<sup>484</sup> News report <https://www.tunisienumerique.com/tunisie-linpdp-porte-plainte-contre-le-maire-de-bannane-monastir/> > accessed 9 May 2021.

# UGANDA

Uganda is a landlocked country across the equator in Eastern Africa bordering Lake Victoria in the south east, South Sudan in the north, Democratic Republic of the Congo in the west, Kenya in the east, and Rwanda and Tanzania in the south.<sup>485</sup> With a GDP of \$102 billion and 24 million inhabitants, Uganda is the second most populous landlocked country after Ethiopia.

## Data Protection Law

Uganda's Data Protection and Privacy Act <sup>486</sup> was assented to on 25 February 2019 but came into effect on 3 May 2019.<sup>487</sup> The Act regulates collection and processing of personal information and it applies to any person, institution or public body which collects, processes, stores or uses personal data within Uganda or outside Uganda. For entities domiciled outside Uganda, the Act is restricted to personal data relating to Ugandan citizens.

## Data Protection Authority

The Ugandan DPA, the Personal Data Protection Office (PDPO), established under the National Information Technology Authority – Uganda (NITA –U) reports directly to the board of the authority.<sup>488</sup> The PDPO is established pursuant to Section 4(1) of the Act and it is

headed by a national director<sup>489</sup> appointed by a Minister of Cabinet for a term of five years renewable for a single term.<sup>490</sup> The appointment is terminable by the Minister upon the recommendation of the board.<sup>491</sup> The PDPO is generally mandated to oversee the implementation and enforcement of the Act; receive and investigate complaints from data subjects; establish and maintain a data protection and privacy register etc.<sup>492</sup>

## Investigations and decisions

In January 2021, an investigation was conducted on SafeBoda – a ride hailing App – which unlawfully shared clients' data with CleverTap, a US based data processor. The investigation revealed that the ride hailing App company failed to disclose third party recipients of its customer information but found no evidence to prove that SafeBoda was selling users' data. At the end of the investigation, certain recommendations were made but no fines were imposed.<sup>493</sup>



48

<sup>485</sup> <https://www.nationsonline.org/oneworld/uganda.htm>

<sup>486</sup> Data Protection and Privacy Act <<https://www.nita.go.ug/sites/default/files/publications/Data%20Protection%20and%20Privacy%20Act%20No.%209%20of%202019.pdf>> accessed 12 May 2021.

<sup>487</sup> DLA Piper, Data Protection Laws of the World <<https://www.dlapiperdataprotection.com/index.html?t=authority&c=BW>> accessed 10 June 2021.

<sup>488</sup> Section 4.

<sup>489</sup> The National Personal Data Protection Director. See section 7(1).

<sup>490</sup> Section 7(3) of the Statutory Instruments 2021 No. 21.

<sup>491</sup> Section 7(5).

<sup>492</sup> Section 5.

<sup>493</sup> <https://www.unwantedwitness.org/download/uploads/NITA-U-FINAL-REPORT.pdf>

# ZAMBIA

Zambia is a sparsely populated landlocked country in the center of Southern Africa. It shares its borders with eight countries - Angola, Botswana, Democratic Republic of Congo, Malawi, Mozambique, Namibia, Tanzania, and Zimbabwe.<sup>494</sup> Zambia's ICT sector saw growth following the establishment of a National ICT Policy for the regulation of the telecom sector in 2006.<sup>495</sup>

## Data Protection Law

Zambia's Data Protection Act<sup>496</sup> was assented to on 23 March 2021 and came into effect on 1 April 2021.<sup>497</sup> The Act provides an effective system for the use and protection of personal data; regulation of the collection, use, transmission, storage and otherwise processing of personal data.<sup>498</sup> It applies to the processing of personal data performed wholly or partly by automated means and to any processing otherwise than by electronic means<sup>499</sup> but it does not apply to the processing of personal data by an individual for personal use.

## Data Protection Authority

The Zambian DPA is called the Office of the Data Protection Commissioner (ODPC)<sup>500</sup> and is statutorily empowered to register data controllers and data processors; license data auditors; disseminate

information and promote the participation of stakeholders in the process of data protection in the country; advise the government on matters relating to data protection and ultimately ensure compliance with the country's data protection laws.<sup>501</sup>

The President, through the Civil Service Commission, appoints the Data Protection Commissioner who heads the DPA.<sup>502</sup> The Data Protection Act is however silent on the procedure and instances under which the Data Protection Commissioner can be removed from office. The Civil Service Commission on the recommendation of the ODPC appoints as public officers two Deputy Data Protection Commissioners and other staff as may be necessary to aid the Commission's performance of its functions.<sup>503</sup> The Data Protection Commissioner's term of office is not expressly provided in the Act since he/she is appointed from the civil service and subject to the civil service rules.

## Investigations and decisions

The Act is a recent one and there are no reports of investigations or decisions yet.



<sup>494</sup> <https://www.worldbank.org/en/country/zambia/overview>

<sup>495</sup> <https://www.trade.gov/country-commercial-guides/zambia-information-and-communication-technology>

<sup>496</sup> Data Protection Act No. 3 of 2021 <[https://www.parliament.gov.zm/sites/default/files/documents/acts/Act%20No.%203%20The%20Data%20Protection%20Act%202021\\_0.pdf](https://www.parliament.gov.zm/sites/default/files/documents/acts/Act%20No.%203%20The%20Data%20Protection%20Act%202021_0.pdf)> accessed 10 June 2021.

<sup>497</sup> <https://zambiareports.com/2021/03/29/president-lungu-assents-20-bills/>

<sup>498</sup> See the short title.

<sup>499</sup> Section 3.

<sup>500</sup> Section 4 (1).

<sup>501</sup> Section 4 (2).

<sup>502</sup> Section 5 (1).

<sup>503</sup> Section 6.



## AFRICAN

## DPAs' DATA SHEET

	Country	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V
1	Algeria	Not yet established	-	N	N	Y	N	Y	N	N	N	N	N	Y	Y	Y	N	0	0	0	N	Y	Y
2	Angola	Agência de Protecção de Dados (APD)	<a href="#">10 October 2016</a>	Y	N	Y	Y	N	Y	Y	N	Y	N	Y	Y	Y	N	0	0	0	N	N	N
3	Benin	Autorité de Protection des Données à caractère Personnel (APDP)	<a href="#">20 April 2018</a>	N	N	Y	N	Y	N	N	N	N	N	Y	Y	Y	Y	0		2	Y	Y	Y
4	Botswana	Not yet established	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
5	Burkina Faso	Commission de l'Informatique et des Libertés (CIL)	<a href="#">December 2007</a>	N	N	Y	N	Y	N	N	N	N	N	Y	Y	Y	Y	0	0	3	N	Y	Y
6	Cape Verde	Agência de Protecção de Dados (APD)	<a href="#">April 24, 2015</a>	Y	N	Y	N	Y	N	N	Y	Y	N	Y	Y	N	Y	8	86	1	Y	N	N
7	Chad	Agence Nationale de Sécurité Informatique et de Certification Électronique (ANSICE)	<a href="#">10 February 2015</a>	Y	Y	Y	Y	Y	Y	N	Y	N	N	Y	Y	Y	N	0	0	0	N	N	N
8	Congo-Brazzaville	Not yet established	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
9	Côte d'Ivoire	Autorité de Régulation des	<a href="#">25 June 2013</a>	N	Y	N	N	Y	N	N	N	Y	N	Y	Y	Y	Y	0	114	2	Y	Y	Y
10	Egypt	Personal Data Protection Centre (PDPC)	<a href="#">April 2021</a>	Y	Y	Y	Y	N	Y	Y	N	N	Y	Y	N	Y	N	0	0	0	N	N	N
11	Equatorial Guinea	Organo Rector de Proteccion de Datos Personales (ORPDP) – to be created	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
12	Gabon	Commission nationale pour la protection des données à caractère personnel (CNPDCP)	<a href="#">25 September 2011</a>	Y	Y	Y	Y	Y	Y	Y	N	Y	N	Y	Y	Y	N	0	0	0	N	N	Y
13	Ghana	Data Protection Commission (DPC)	<a href="#">10 May 2012</a>	Y	Y	N	Y	N	Y	Y	N	Y	Y	Y	N	Y	N	0	0	0	N	N	N

	Country	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V
14	Kenya	Office of Data Protection Commissioner (ODPC)	<a href="#">12 November 2020</a>	Y	N	N	Y	N	Y	N	N	N	Y	Y	Y	N	N	0	0	1	N	Y	Y
15	Lesotho	Data Protection Commission (DPC)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
16	Madagascar	Commission Malagasy de l'Informatique et des libertés (CMIL)	Not yet	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
17	Mali	Autorité de Protection des Données à Caractère Personnelles (APDP)	<a href="#">27 July 2015</a>	N	N	Y	Y	Y	N	N	N	N	N	Y	Y	Y	Y	6	10	7	Y	Y	Y
18	Mauritania	Autorité de Protection des Données à caractère personnel (APD)	Not yet	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
19	Mauritius	Data Protection Office (DPO)	<a href="#">15 January 2018</a>	Y	N	N	N	Y	N	N	N	Y	Y	N	N	N	N	0	<a href="#">72</a>	<a href="#">1</a>	N	Y	Y
20	Morocco	Commission Nationale de Contrôle de la Protection des Données à Caractère Personnel (CNDP)	<a href="#">21 May 2009</a>	Y	Y	Y	Y	Y	Y	Y	N	N	N	Y	N	Y	N	0	0	0	N	N	Y
21	Niger	Haute Autorité de Protection des Données à caractère Personnel (HAPDP)	<a href="#">20 July 2020</a>	N	N	Y	N	Y	N	N	N	N	N	Y	Y	Y	Y	1	33	1	Y	Y	Y
22	Nigeria	-	Not provided by law	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
23	Sao Tome and Principe	Agência Nacional de Protecção de Dados Pessoais (ANPDP)	<a href="#">22 March 2017</a>	Y	N	Y	N	Y	N	N	Y	Y	N	Y	Y	N	N	0	0	0	N	Y	N
24	Senegal	Commission des Données Personnelles (CDP)	<a href="#">February 2013</a>	N	N	Y	N	Y	N	N	N	N	N	Y	Y	Y	Y	11		5	Y	Y	Y

	Country	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V
25	Seychelles	Not yet established	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
26	South Africa	Information Regulator (IR)	<a href="#">1 December 2016</a>	Y	N	N	N	Y	N	N	Y	N	N	Y	Y	Y	Y	0	0	5	N	Y	Y
27	Togo	Instance de Protection des données à caractère Personnels (IPDCP)	Not yet	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
28	Tunisia	Instance nationale de protection des données personnelles (INPDP)	<a href="#">2009</a>	Y	N	Y	Y	Y	Y	N	Y	Y	N	Y	Y	N	N	0	0	0	Y	N	Y
29	Uganda	Data Protection Office (DPO)	Not yet	Y	N	N	Y	N	Y	-	N	N	Y	Y	N	Y	Y	N	1	1	1	N	N
30	Zambia	of Data Protection Commissioner (ODPC)	Not yet	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

## Key

Y:	Yes	J.	Board can be removed only with National Assembly's input
N:	No	K.	Independent Budget
-:	Not applicable	L.	Salaries fixed by special agency
A.	Name of DPA	M.	Fixed term of office
B.	Date established	N.	Statutory provision on independence exists in law
C.	DPA is headed by a civil servant	O.	Likely conflict of interest in performance of duty
D.	DPA's Board is solely appointed and/or nominated by the president	P.	Reports of investigations are published publicly
E.	Board members are nominated by multiple arms of government	Q.	Number of published report of investigation
F.	Reports to a ministry/cabinet member in government	R.	Number of published decisions
G.	Reports directly to the Parliament/President	S.	Number of published guidance notes/regulations
H.	Takes directive from ministers	T.	Transparency of investigations and decisions
I.	Board can be removed by the President without National Assembly's input	U.	Immunity for privacy Commissioners?
		V.	Oath of secrecy for privacy Commissioners?

# CONCLUSION

Admittedly, the objectives and purpose of this report do not contemplate drawing conclusions or verdicts on the DPAs' efficiency or strengths, however, in the course of the exercise, we discovered certain patterns which ought to be addressed for data protection enforcement and compliance to grow on the continent.

For example, it is desirable for the various laws to be revamped to meet the current realities of various African countries; comatose laws should be revived, activated or enforced where they are yet to commence; privacy commissioners' appointment process should be reviewed to enhance their independence and neutrality; and African DPAs need to be more transparent with their investigations and decisions-making which ought to be published on their websites.

We hope that this report will inspire proactivity among the DPAs and propel them to be more vocal in the exercise of their statutory functions in order to promote some measure of trust in data subjects, especially where remedies are sought for violation of their rights and freedoms by data controllers or processors in their respective countries.

