CUTS Comments on the draft
National Data Governance Framework Policy 2022

Background

Consumer Unity & Trust Society (CUTS) expresses its gratitude to the Ministry of Electronics and Information Technology (MeitY) for inviting comments and suggestions on the draft National Data Governance Framework Policy 2022 (NDGFP).[1] This policy will be an important step toward the utilisation of data fairly and ethically.

About CUTS

In its 39 years of existence, CUTS has come a long way from being a grassroots consumer-centric organisation based in Jaipur to opening overseas Resource Centres in Africa,[2] Switzerland,[3] Vietnam,[4] and most recently in the United States of America.[5] It continues to remain an independent, nonpartisan, and non-profit economic policy think tank while opening various programme centres, namely: the Centre for International Trade, Economics & Environment (CITEE)[6]; Centre for Consumer Action, Research & Training (CART)[7]; Centre for Human Development (CHD)[8]; and Centre for Competition, Investment & Economic Regulation (CCIER)[9]. It has been working towards enhancing the regulatory environment through evidence-based policy and governance-related interventions across various sectors and national boundaries. Further details about CUTS are available here.

Having conducted various studies on issues about regulation of non-personal data[10] (NPD), data protection and data localisation,[11] and encryption,[12] CUTS has observed a few critical issues in the draft policy. These have been discussed in subsequent sections, and a few recommendations to address them.

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[1]   Draft National Data Governance Framework Policy, 2022, available at:
        https://www.meity.gov.in/content/draft-national-data-governance-framework-policy
[2]   http://www.cuts-international.org/ARC/
[3]   http://www.cuts-geneva.org/
[4]   http://www.cuts-hrc.org/
[5]   http://www.cuts-wdc.org/
[6]   https://cuts-citee.org/
[7]   https://cuts-cart.org/
[8]   https://cuts-chd.org/
[9]   https://cuts-ccier.org/
[10]   Examining the Rationale, Assumptions, and Approaches to Non-Personal Data Sharing, available at:
        https://cuts-ccier.org/npd/; Research-based Advocacy on Unintended Lacunae of including aspects of NPD
        in PDPB, available at: https://cuts-ccier.org/research-based-advocacy-on-unintended-lacunae-of-including-
        aspects-of-npd-in-pdpb/.
[11]   Consumer Impact Assessment of Data Localisation, available at: https://cuts-ccier.org/consumer-impact-
        assessment-on-cross-border-data-flow/;
        Understanding the Impact of Data Localization on Digital Trade, available at: https://cuts-
        ccier.org/understanding-impact-of-data-localization-on-digital-trade/
[12]   Understanding Consumers' Perspective on Encryption, available at: https://cuts-ccier.org/understanding-
        consumers-perspective-on-encryption/

CUTS Comments

1. Broad Objectives of the Policy

The policy's stated objectives include accelerating digital governance, boosting the digital economy, standardising data collection, management and security standards, and setting common standards for public digital platforms, amongst others. The policy states that this will help adopt a whole-of-government approach to enable better governance. This policy states that this shall be done while ensuring privacy, safety, and trust.

However, the draft policy seems to be long on ideas but short on details as it fails to highlight the ***manner*** in which it will achieve the intended goals without compromising on issues such as data protection, intellectual property, and data monopoly, among others. It also does not mention ***how*** it will ensure privacy, safety, and trust. The management of this seems to have been left for India Data Management Office (IDMO) to act upon, as the draft policy empowers it to prescribe future guidelines. Along with an excessive delegation of powers to the executive without appropriate statutory backing, these lacunas may lead to a *functional creep* where the IDMO may perform roles not which might exceed their role as outlined in the policy.

Recommendation: *The policy should clearly outline the manner in which IDMO will achieve its intended goals and state the principles which should be followed by the IDMO while performing its duties.*

2. Community Rights and Risk of Identification

It should be noted that the present-day anonymisation techniques are not perfect. The same has been previously highlighted in the *Report by the Committee of Experts on Non-Personal Data Governance Framework,* which is yet to be adopted.[13] Moreover, if multiple non-personal datasets are combined, it may also lead to the profiling of a group of people, which may impact group privacy.[14] For non-personal governance, there are multiple policy drafts, including *Non-Personal Data Governance Framework* and *Data Accessibility and Use Policy, 2022* in circulation without final enactment, leading to an uncertain regulatory environment around it.

NDGFP states that it will ensure privacy; it remains silent on ***how*** it will do so except by stating that standards and rules will ensure data security and informational privacy (4.1). Regarding sharing non-personal datasets, the policy further states in provision 6.8, "the IDMO shall notify protocols for sharing of non-personal datasets while

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[13] Report by the Committee of Experts on Non-Personal Data Governance Framework, available at: https://ourgovdotin.files.wordpress.com/2020/07/kris-gopalakrishnan-committee-report-on-non-personal-data-governance-framework.pdf

[14] Linnet Taylor, Luciano Floridi, Bart van der SlootGroup Privacy New Challenges of Data Technologies, available at: https://link.springer.com/book/10.1007/978-3-319-46608-8; Divij Joshi, Centre for Law and Policy Research, available at: https://clpr.org.in/blog/non-personal-data-regulation-interrogating-group-privacy/

ensuring privacy, security, and trust." In provision 5 7, the policy states that "the IDMO shall be staffed at DIC by a dedicated government data management and analytics unit." Since IDMO will be constituted under MeitY, this provision might provide unfettered access to non-personal data to the governmental agencies. This further aggravates the privacy issue in the country's absence of data protection mandates and surveillance frameworks.

The policy states that IDMO may ensure that data usage rights along with permissioned purposes to be with the data principal. Such discretionary and conditional authority to data principals appears to be in conflict with the rights provided to data principals under the proposed Data Protection Bill, 2021. Data principals should be the pivot of the data governance framework, and making their rights subject to permissions by the executive, may also go against the principle of empowering citizens through a responsible data governance framework.

There are several risks without defining comprehensive data protection measures that IDMO will have to take. For instance, such data could be used for profiling and identification for market surveillance purposes, among others. Further, provision 5.2, which talks about the consultation process, has left out consumer representatives/organisations, which needs to be incorporated as the ultimate aim of the policy is to protect consumers' interests.

Recommendation: *The policy should clearly define adequate measures which the IDMO will have to take for data protection and to ensure privacy, including group privacy. Furthermore, to avoid the creation of a parallel framework, the policy should be harmonised with the proposed Data Protection Bill, 2021, which is yet to be mandated with appropriate application to government data.*

The rights of data principal should be a point of convergence between the data governance and data protection frameworks. In this regard, policy should ensure that the rights of a data principal, though subject to reasonable restrictions, are not subject to executive actions. Further, consumer organisations should be included in the consultation process for protecting community data rights.

3. Harmonisation of Different Non-Personal Datasets

Provision 5.2 states, *"IDMO shall formulate all data/datasets/metadata rules, standards, and guidelines in consultation with Ministries, State Governments, and industry."* However, seamlessly harmonising, standardising, and integrating non-personal data would not be easy as different ministries and departments have their own set of priorities, and the framework has neither laid down the principles nor the process.

Seamless integration of non-personal data seems particularly complex when provision 6.1 states that ministries/ departments will define their own data storage and retention framework. This might conflict with the scope of IDMO, which will be responsible for

formulating rules, standards and guidelines; if not, the policy document should clearly outline it. Along with IDMO, Chief Data Officers (CDOs) will be the powerful actors in this framework. CDOs will head the Data Management Units (DMUs) that will be created in different ministries/departments and work closely with IDMO.

Further, the policy states that it will accelerate the inclusion of non-personal datasets with ministries and private companies in the India datasets programme. The scope and nature of such datasets could be vastly different. The Committee of Experts on Non-Personal Data Governance Framework (Second Report) segregated the non-personal data collected by public and private entities into four types, based on data collection mechanisms and subject of data (see pages 8 and 9).[15] Different NPDs, such as health and financial data, can have different sensitivities. Thus a 'one size fits all' treatment of different data sets, with the objective of integrating them in a consolidated datasets program, may result in unintended consequences of digital nagriks.

Recommendation: The policy should lay down guiding principles for harmonising different non-personal data sets by considering their specificities and context.

4. Interaction with other Similar Initiatives

With the India Datasets Programme, the government aims to form a single platform for accessing all government data. The platform will potentially consolidate non-personal data held with the government at the Centre and state levels. In this regard, the IDMO will also issue guidelines for government ministries and departments to share "searchable data inventories, with clear metadata and data dictionaries for government-to-government access."[16] The initiative can eventually create a non-monopolistic data marketplace where researchers and start-ups can gain access to useful data and utilise it for economic gains.

However, it should be noted that the government already has many similar initiatives. The National Informatics Centre (NIC) under MeitY already maintains the Open Government Data (OGP) Portal.[17] The Portal already mentions Chief Data Officers.[18] Further, NITI Aayog's National Data and Analytics Platform (NDAP)[19] also provides a portal to access such data. It is unclear whether these initiatives have been considered while drafting the policy. The policy does not mention these initiatives or the interaction of IDMO with these initiatives.

Further, though the policy mentions that state governments will be encouraged to adopt provisions of the policy, rules, and standards, states may already have similar

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[15] Report by the Committee of Experts on Non-Personal Data Governance Framework, available at: https://static.mygov.in/rest/s3fs-public/mygov_160922880751553221.pdf

[16] Monisha Purwar, Live Law, May 29, 2022, available at: https://www.livelaw.in/news-updates/revised-draft-national-data-governance-framework-policy-meity-200382

[17] Open Government Data Platform, available at: https://data.gov.in/

[18] Chief Data Officers, Open Government Data Platform, available at: https://data.gov.in/cdo

[19] NITI Aayog National Data and Analytics Platform (NDAP), available at: https://ndap.niti.gov.in/

initiatives, which may create inconsistencies and overlap. For instance, Rajasthan maintains a portal called the *Jan Soochna portal*[20] and Karnataka has the *Mahiti Kanaja portal*.[21] There is no clarity on how such portals will be integrated into the India Datasets Program framework.

Furthermore, it should also be noted that the Preamble mentions that data is currently managed, stored, and accessed in differing and inconsistent ways across different government entities. While the policy suggests measures in which data collection practices will be streamlined, it does not suggest ways to correct this problem in existing datasets.

Recommendation: Duplicity of efforts should be avoided. In this regard, the policy should mention whether such previous initiatives will be continued or discontinued. If these Central Government initiatives continue, the policy should state the rationale for the manner in which they will be integrated without friction. Further, how such initiatives by state governments will be incorporated needs to be highlighted within the policy so that it provides some clarity to them. This will be, in extension, the realisation of the whole-of-government approach.

5. **Data as Public Resource and Discretionary Power of IDMO**

As the data being brought under the ambit of the policy is collected and maintained by state agencies using taxpayers' money, it must be noted that such data should be categorised as a public resource with adequate protection against breach and misuse. There should be equitable access to this data for everyone. However, the draft policy provides discretionary powers to IDMO to judge the genuineness and validity of data usage requests for datasets other than those already made available on the Open Data portal.

The draft policy seems to heavily rely on ethical data exchanges with no conflict of interest. However, this hope may fall short as IDMO has been given discretionary power, which might obfuscate transparency in the process. For instance, provision 6.9 states, "the IDMO will retain the rights to decide whether requesting entities may be allowed access to full databases/ datasets or combinations thereof, for their use cases."

The draft policy envisions the creation of datasets that will be accessible to researchers and start-ups in India. However, the decision regarding the genuineness and validity of data usage requests will be made by IDMO. Theoretically, this is being done to provide a level playing field and advantages to international digital platforms to the domestic players in the digital ecosystem and foster confidence among stakeholders.

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[20]   Jan Soochna Portal, available at: https://jansoochna.rajasthan.gov.in/
[21]   Mahiti Kanaja Portal, available at: https://mahitikanaja.karnataka.gov.in/

However, it does not provide any principles based on which such requests will be processed and/or decisions will be made. The regulator can explore practices similar to General Data Protection Regulation (GDPR) principles of Right to Access. Though it is relevant for personal data more than NPD, it can be adopted for NPD as a good practice.[22] It also does not prescribe any operational, transparency, or accountability standards to be followed by the IDMO. This will obfuscate transparency around the operationalisation of IDMO, including providing reasons for accepting or rejecting requests, which subsequently might negatively impact the confidence of stakeholders.

Recommendation: The draft policy should lay down the principles based on which the IDMO can decide to share non-personal data with transparency and accountability to protect the stakeholders' interests. To foster transparency and confidence, IDMO should periodically publish reports regarding requests received and processed and broad reasons for the same. Additionally, it should provide the opportunity for hearing to parties, and there should be a grievance redress mechanism for parties aggrieved by IDMOs decisions.

6. Independence and Composition of the IDMO

Given the vast responsibilities to the IDMO, it must be able to function independently, without any pressure from any external agency, including the government and private bodies. Moreover, as IDMO is expected to interact with the larger public for data sharing, government discretion may restrict its independent functionality. The draft policy states that the IDMO will be staffed within the government, and a "dedicated government data management and analytics unit" will staff IDMO.

Without any legislative backing, it would be difficult for IDMO to function independently. In this regard, the constitution of a governance board of the IDMO must be fair and transparent so that it can act independently. It should also be financially independent by setting up a consolidated funds account at the government exchequer office. In addition, the governance board may be represented by relevant stakeholders left out in the draft policy, such as consumer organisations, researchers, and start-ups. This will be necessary to protect the interests of stakeholders operating within the digital ecosystem.

Recommendation: The IDMO should be empowered as an independent body. For this purpose, the parliament must enact a law with appropriate safeguarding principles of accountability and transparency so that IDMO can have functional and financial independence. The appointment of the governance board of IDMO should be made fair and transparent, and guidelines should be laid down within the policy for this purpose. Regarding this, the IDMO should be governed by technical experts in the area, with

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[22] Article 12, Right of Access - General Data Protection Regulation, available at: https://gdpr-info.eu/issues/right-of-access/

representatives from consumer organisations, judiciary, social sciences, and bureaucracy, among other areas, to minimise unforeseen implications.

7. **Incentives for the Private Players to Share Data**

   The draft policy only mentions a framework for the voluntary sharing of data. However, the policy failed to understand that expecting big firms holding huge amounts of data to voluntarily share it is a long-shot dream. Without any incentives, it is unlikely that the firms will share data they have invested in collecting, processing, and deriving value. It has been one of the significant components of their successful business models, and they would be hard-pressed to share it unless mandated.

   Further, there may be issues with intellectual property rights and trade. Without having access to the data collected by big firms, it would not be easy to achieve the intended aims of boosting the digital economy and effective technology-led governance.

   Recommendation: *The policy should recognise that big firms without incentives may not be encouraged to share non-personal data with the government in which they have invested huge resources.*

Conclusion

Based on the above recommendations, CUTS hopes that the new draft of NDGFP will incorporate the principles of transparency, privacy, and accountability while retaining its whole-of-government approach and aiming to boost the start-up ecosystem in India.

CUTS looks forward to the MeitY considering the suggestions given above and assisting the government in its endeavours of empowering stakeholders operating in the digital ecosystem, including consumers, start-ups, and researchers.

For any clarifications/further details, please feel free to contact Asheef Iqubbal (aql@cuts.org), Prince Gupta (prg@cuts.org), Senior Research Associates, CUTS. We will be happy to make in-person representation to the government.