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LEGAL AND INSTITUTIONAL CHALLENGES TO THE ENFORCEMENT OF THE NIGERIAN DATA PROTECTION ACT

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Abstract

The importance of data privacy and protection cannot be overemphasized, as Data leak is a major source of identity theft. The constant breach of data privacy in Nigeria raises the question as to how the law has guaranteed privacy and protection of the data subject's personal information in Nigeria. The widespread breaches of data, both globally as well as domestically on a daily basis are of rising concern, especially in this era of internet of things. The Nigerian Data Protection Regulation 2019 (NDPR) and the Data Protection Act 2023 actualize protection measures for the data and privacy of Nigerians; and this paper examines Nigerian Data Protection Laws in relation to online protection and also suggests ways in which enforcement efforts can be strengthened. Additionally, the research which is done by using the doctrinal method of legal research, finds that some loopholes still persist in spite of the enactment of the Nigerian Data Protection Act, 2023; and the paper recommends that the general public in Nigeria be made more aware of their right to privacy as well as creation of awareness and orientation on available legal protection.

Keywords: Data, Protection, Privacy, Internet, Online and Nigeria

1.0 Introduction

Privacy forms one of the essential barriers preventing absolute state control and dominance. According to Olomojobi, the constitutional right to privacy places a check on the government's authority.[1] The legislation on data protection, such as the recent Data Protection Act 2023, specifies basic standards governing the gathering, use, as well as disclosure of individuals' personal data in order to safeguard their human rights including rights to privacy and freedom of speech. The goal is to ensure that personal data is used appropriately rather than to outright forbid its processing which may be virtually unachievable in today's globalised society, especially considering the ubiquitous nature of the internet.

Data privacy helps to ensure that sensitive data is accessible only to approved parties. As such, privacy measures are designed to prevent third parties and criminals from being able to maliciously use data for fraud as well as cybercrimes to cause serious harm or damage to the reputation of data subjects.

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[1]Olomojobi, Yinka. "Right to Privacy in Nigeria" available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3062603 accessed, September 1, 2025.

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Personal data security has become very topical in Nigeria due to digitization and different identification capture processes for personal information or data.[2] Furthermore, personal data protection is another topical issue all over the world, and with the imperatives to protect personal information, multiple data protection laws have been enacted in the European Union (EU), the United States of America (USA), Canada, Australia, South Africa and even Ghana.[3] Nigeria on its own part has evolved in the efforts for personal data protection, for instance with the Data Protection Regulation (NDPR) in 2019, the eventual establishment of the Nigeria Data Protection Bureau (NDPB) in 2022; as well as the enactment of the Nigeria Data Protection Act, 2023 which came into effect on the 12th day of June, 2023.

1.1 Conceptualization of Terms

(i) Data: data encompasses wide spectrum of particulars encompassing nomenclature, chronological age, gender, residential domicile, precise banking particulars, comprehensive medical histories, stature, family, contact number, electronic mail addresses, as well as other information.[4]

(ii) Data Subject: the Data Protection Act (DPA) simply refers to 'data subject' as an individual to whom personal data relates.[5]

(iii) Personal Data: Under the Data Protection Act, any information relating to a person who can be identified or is identifiable, either directly or indirectly, by reference to an identifier like a name, an identification number, location information, an online identifier, or one or more factors particular to that person's physical, physiological, genetic, psychological, cultural, social, or economic identity is considered personal data.[6]

(iv) Rights to Privacy and freedom of expression: The rights to privacy and freedom of expression are fundamental rights protected by sections 39 and 37 of the Nigerian constitution, 1999, respectively.

1.2 Key Provisions of the New Data Protecton Act 2023

The Data Protection Act 2023 provides a legal framework for safeguarding personal information as well as implementing data protection in Nigeria. Section 2 of the Act provides that data controllers or data processors resident in, operating in or processing personal data in Nigeria are bound by the provisions of the Act. However, data processing carried out by competent authorities for the purposes of prevention or detection of crime, control of national public health emergency or national security are exempt from the applicability of the Act.

1.2.1 The Data Protection Commission: The Act establishes the Nigeria Data Protection Commission as well as the appointment of a governing council.[7] The commission replaces the Nigeria Data Protection Bureau (NDPB). The Commission headed by a National Commissioner, is saddled with the responsibility of overseeing the safe practices of data protection in Nigeria.

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[2] Through Birth Registration, Bank Verification Number (BVN), Nigerian Immigration International Passport details, Driving Licence, Voters Card, National Identification Number (NIN), etc.

[3] Nlerum F, Nwadukwe A. and Omodanisi K., 'Rethinking the Legal Framework for the Protection of Personal Information: The Nigerian Data Protection Act, 2023', in *NIALS Journal of Business Law*, Vol. VI, (2024) p. 79.

[4] Olawunmi, I. and Emejuo, C.C., 'An examination of the Legal Framework for Data Privacy and Protection in Nigeria' (2021) University of Illinois College of Law Legal Studies Research Paper, (22-21)

[5] Data Protection Act 2023, s. 65.

[6] DPA 2023, s. 65.

[7] Ibid, s. 4.

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The duties and responsibilities of the Commission includes fostering the development of data protection technologies, promoting public awareness of data protection, accrediting data protection compliance services, registering data controllers, registering data processors of major importance and receiving complaints of violations.[8]

1.2.2 Compliance, Infringements, Penalties and Dispute Resolution: The Commission is empowered to issue compliance orders in specific cases of violations; and to impose sanctions.[9] Additionally, failure to comply with the Commission's orders constitutes an offense; with major controllers/processors facing fines of up to ten million naira or 2 percent of annual revenue, while others might incur fines up to two million naira or 2 percent of revenue. Courts can also order forfeiture as per the Proceeds of Crime Act. Injuries from violations of the Act can lead to civil damages, and companies/officers may be culpable for offences.[10]

1.2.3 Cross-Border Data Transfers: As per the provisions of the Act, the transmission of personal information from Nigeria to another nation is permissible solely when the recipient of said personal data is governed by a statute, enforceable corporate regulations, contractual stipulations, ethical guidelines, or accreditation systems that provide a satisfactory degree of safeguarding such personal data.[11]

1.2.4 Processing Personal Data: Under section 24, certain principles are stipulated as necessary considerations to be applied in data processing in Nigeria. A data controller or data processor shall ensure that personal data is processed in a fair, lawful and transparent manner. Personal data must be collected for specified, explicit, and legitimate purposes only. Additionally, such data must be secured and protected against unauthorised or unlawful processing, access, loss, destruction, damage, or any form of data breach.[12]

1.2.5 Data Breaches: Section 6 of the Act obliges notifying the Commission within 72 hours of breaches, offering a comprehensive breach management procedure, and mandating the retention of breach records.

1.2.6 Data Controllers and Processors: According to section 5 of the Act, a novel classification known as "data controllers and data processors of major importance" is introduced; thereby necessitating registration, as expert Data Protection Officers.

1.2.7 Rights of a Data Subject: Section 4 of the Act confers data subjects with rights, encompassing being informed, accessing, correcting, as well as objecting to their personal data's processing, with exceptions under section 3 including where such data processing carried out by a competent authority as is necessary for national security.

1.2.8 Third Party Processing Agreement, Indirect Notification Of Data And Digital Age Of Consent For Children

[8] Ibid, s. 5.
[9] Ibid, *ss.* 46-53.
[10] Ibid, 46-53.
[11] Ibid, 41-43.
[12] Ibid, 24 (1) (f).

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The Data Protection Act strengthens the need for a data processing agreement between the data controller and third parties processing data under the NDPR Implementation Framework, maintaining the existing requirement.[13] Addressing the digital age of consent for children elaborately, the Act incorporates the European Union's digital age of consent for children aged 13 and above. Additionally, provisions are made for individuals lacking legal capacity to provide consent.[14]

[13] Ibid, 27 (2).
[14] Ibid, s. 31.

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1.3 Challenges

In the case of *Emerging Markets Telecommunications Services vs. Eneye*,[15] the Court of Appeal ruled that the appellant's continuous sending of unsolicited text messages to the respondent amounted to a violation of the respondent's constitutional privacy rights. In light of this case, it becomes necessary that individuals should have privacy and enjoy adequate data protection as envisaged by the Data Protection Act 2023. However some challenges persist to the effective implementation of the Act.

These challenges include but not limited to:

a. ***Shortage of Competent Professionals in the Country***: The emergence of new roles under novel legislation, such as the Data Protection Act and the NDPR, pose one of the major challenges facing data privacy and compliance in Nigeria. Such role include data protection officers (DPOs) which requires expert knowledge and certain skill sets. Nigerians and citizens of other third-world countries are not familiar with such role, in contrast to citizens of western countries.

b. ***Weak enforcement***: unfortunately, both public and private organisations in Nigeria frequently disregard the requirement of consent before collection of data, causing countless people and even business entities to suffer difficulties. Consent indicates that informed consent must be sought before any personal data is collected. This is especially true when the goal of the data collection is clearly stated and further consent is required for sharing personal information with other parties.[16] However, in Nigeria, there are several occasions where businesses and organisations with which data subjects are likely to have never consciously interacted are generating and capturing data and information about them without their awareness.

c. ***Apathy and Low Level of Awareness:*** There is a general lack of awareness on the General Application and Implementation Directive (GAID), issued this year, 2025, which now guides implementation of the NDPA. As such, the majority of data subjects are un-informed of their data property rights and data administrators as well as data collectors are unaware of their responsibility to preserve the privacy of the data entrusted to them. Nigerians have never actually cared about what happens to their information, as long as their other financial and physical rights remain unaffected; not until recently when a tiny number of civil organisations have made data privacy and data protection their top priorities.

1.4 Recommendations

Based on the issues discussed the following recommendations are proffered:

a. It is highly recommended that the relevant agencies should organize orientation exercises across the country. This ensures citizens are intimated of their rights, duties and responsibilities under the Data Protection Act and the NDPR. This will foster compliance and protection of citizens' data in line with their fundamental rights.

b. Weak enforcement by the Nigeria Data Protection Commission appears to be a challenge, in this regard it is hereby recommended that the Nigeria Data Protection Commission is equipped with the necessary resources, manpower and machinery to enforce the provisions of the Act effectively.

[15] (2018) LPELR-46193 (CA) at 25 – 29 para c.
[16] European Data Protection Board, 2016.

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c. There is need for an orientation campaign and public awareness by the Nigeria Data Protection Commission on the General Application and Implementation Directive (GAID), issued this year, 2025, which now guides implementation of the NDPA.

1.5 Conclusion

Massive data collection and analysis is on the rise daily. Governments, online vendors, internet applications, even online scammers perpetrate daily analysis of personal data without the permission or seeking consent of individuals involved.

In this regard, it is necessary to note that the enactment of the Data Protection Act 2023 now provides an unmistakable statutory basis for privacy law and practice in Nigeria. Prior to the enactment of this law, stakeholders had queried the legitimacy of the NDPR on the basis of the absence of a clear statutory provision or enabling Act.

The enactment of the Data Protection Act is a key advantage in an emerging society like Nigeria which needs to catch up with the global community in terms of the regular transformation on the internet as well as evolving technologies.