

# EFFECTIVE DATA PROTECTION IN NIGERIA: CHALLENGES

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## ABSTRACT

The importance of protecting data and privacy cannot be overemphasized in this day of technological and digital breakthroughs. Nigeria, a developing nation, is prone to suffering from the shortcomings of conventional methods of data protection as well as from the cost of insufficient legislation to secure the data or the privacy of the data users. This has brought up a number of issues, including the applicability and responsiveness of current laws and how it tends to handle or manage violations. It is imperative to address these issues and challenges faced by data and privacy protection in Nigeria, given the complexity of the emerging data technology and the privacy challenges posed by the use and retention of data. The paper identified the lack of a comprehensive data protection legislation as well as their non-enforcement as the main barrier to effective data protection in the country. In order to solve some of the issues affecting effective data privacy in Nigeria, this paper proffers cogent and practical recommendations.

**Keywords:** Data Protection, Privacy Challenges, Personal Data, NDPR, NDPB.

## INTRODUCTION

With the development of new technology, it is more crucial than ever to secure one's privacy. As a result of the development of information technology, anyone can now quickly access personal and business data if they are not well safeguarded. Additionally, data protection is becoming more important and moving to the heart of the political and institutional system due to the inescapable reality that people's lives are now becoming woven around the constant exchange of information and streams of data.

Nigeria still doesn't have a specific, primary data protection law, despite significant advances in recent years. In truth, data protection laws in general and sector-specific legislation were rare, weak, and dispersed until the National Information Technology Development Agency (NITDA) issued the Nigerian Data Protection Regulation (Hereinafter called the NDPR) in early 2019<sup>i</sup>. Additionally, Nigeria created the Nigeria Data Protection Bureau (NDPB) with the sole purpose of consolidating the NDPR's accomplishments and assisting in the process of creating a primary data protection and privacy law.<sup>ii</sup> The Nigeria Data Protection Bureau (NDPB) and the National Information Technology Development Agency (NITDA) are the main authority agencies on data protection in Nigeria. Prior to this the country had sector-specific laws with data protection measures prior to the subsidiary legislation on the subject. The Child Rights Act of 2003, the Consumer Code of Practice Regulations of 2007, the Nigerian Communications Commission (registration of telephone subscribers) Regulation of 2011, Federal Competition and Consumer Act of 2019, the Freedom of Information Act of 2011 and the Cybercrimes Act are a few of the sector-specific laws (Prohibition, Prevention Etc).

The Regulation (NDPR) aims to safeguard individuals' right to privacy, advance the security of transactions involving the exchange of personal data, prohibit the manipulation of personal data, and maintain the competitiveness of Nigerian businesses.<sup>iii</sup> There are regulations in place to manage data protection, and they are frequently built on the premise that compliance with them is both a right and an obligation.

The Nigerian Constitution<sup>iv</sup> guarantees the fundamental right to privacy to all citizens. Section 37 of the Constitution guarantees citizens' privacy in their homes, mail, phone calls, and telegraphic communications. The Constitution does not define "privacy" and does not contain any explicit privacy laws. The right to privacy guaranteed by the Constitution applies to

electronic media, including the Internet and mobile devices. If these rights are violated, there may be civil consequences.

The NITDA Regulations stipulate that a clear and conspicuous privacy statement that is easily understood by the targeted Data Subject class must be displayed on every platform where Personal Data is collected or processed.<sup>v</sup>

The Regulation is applicable to all actions concerning the handling of personal information pertaining to Nigerian citizens who are natural persons with addresses inside or outside of Nigeria. Provisions are established in the comprehensive legislation to accomplish its objectives because it establishes the legal basis for data processing and stipulates specific rules that anybody collecting, using, storing, or processing personal data must adhere to.

## CHALLENGES

In Nigeria, the development of data privacy and protection has been stifled for a number of reasons, notable among which are as follows:

### ***Absence of a Comprehensive data privacy and protection law and their non-enforcement:***

The main issue affecting the efficiency of data protection in Nigeria is primarily due to the lack of a comprehensive and all-encompassing data protection rules and regulations as well as their non-enforcement. Unfortunately, because paper-based data is not covered by the NDPR, there is no legal redress or protection for violations of paper-based data. However, when dealing with a narrow-minded court, as we have seen in the past, relying on section 37 of the Constitution has its own nuances. In those cases, unambiguous cases of privacy invasion were dismissed because the court chose to regard them as torts of nuisance.<sup>vi</sup> Marketers have typically relied heavily on personalized data gleaned from our internet usage and behaviours to reach target markets and build campaigns. In the future, they will have to be open about how they gather personal data and ask for express consent before using it. Due to the modifications and tighter regulations brought about by data privacy legislation, some in-house marketing teams and agencies may resume their outdated marketing strategies.

### ***Increasing risk from advances in information technology***

It goes without saying that technology has been, and continues to succeed at, the role of putting the world at our fingertips, to the point that almost all information can be obtained at the convenience of our zones. The fact that abusers have taken advantage of these systems' weakness to further their actions shows that this is not without problems. Of course, the concerns posed by the advancement of information technology to further improve the circulation and retention of data are cause for concern as they extend to the absence of suitable laws to fully address existing issues relating to the data subject. One of the fundamental flaws in the current data legislation is that there are only measures for protecting digital data and none for offline data, in addition to the fact that there aren't many situations where the issue has been resolved.<sup>vii</sup>

### ***Inadequate regulation of the usage and storage of internet data***

Since many nations have not yet passed and put into effect data and privacy protection legislation, particularly in Nigeria, this issue is one that affects nations all over the world. The necessity for appropriate rules to recognize and then address concerns coming from data is evident as the world starts to realize the importance of data. The fact that several attempts have been made to reproduce every stage of numerous human activities<sup>viii</sup> and that this has led to the use and preservation of data, particularly on users on social media platforms, is no longer a surprise.<sup>ix</sup> As a result, it is even more important that users and prospective users read and comprehend the data and privacy protection policy before or during sign-up. This is because users' data may be compromised, made public, and subsequently exploited by hackers for malicious purposes. Given the lack of legislation in that area and the abundance of disclosed figures and gaps that reveal our susceptibility, the probability of data abuse becomes alarming. As the NITDA Regulation is largely responsible for Nigeria's historic success in protecting personal information, it must be given more authority to solve data issues. Making the dream a reality requires developing a workable method for carrying out the NITDA Regulations' requirements.<sup>x</sup>

### ***Hardware defects and failures in data technology***

Failures and data malfunctions are unquestionably fatal since they are expected to result in the loss of irretrievable data, which may be unintentional or due to system corruption or malfunction. Therefore, it is unnecessary to state that data loss can result from hardware

failures related to data. Data protection can include, among other things, protection from corruption or hacking.<sup>xi</sup> Fortunately, data recovery or retrieval is probably possible very quickly after the loss or corruption, according to data protection policy.<sup>xii</sup>

Sometimes the failure of data technology can be ascribed to invasion, undoubtedly because there is insufficient data security. Data protection and privacy should be given a lot of attention in order to ensure that the developing internet-world does not become vulnerable and to lessen the likelihood of hacking, especially since there are not enough regulations that cover the entire spectrum of data and privacy.<sup>xiii</sup>

Moreover, regulations to preserve and protect data on failed data tech hardware are a matter that requires an urgent response. A decentralized system of operation may put an end to this, meaning that people can be left to impose limitations on the usage of unencrypted private data rather than leaving that up to the tech companies to control.<sup>xiv</sup>

This demonstrates the need for legislation as well as other required measures to ensure that data protection and privacy are optimized in order to progress data protection and privacy.

## **RECOMMENDATIONS**

### ***A Comprehensive and Effective Data Privacy Law:***

As quickly as possible, Nigeria needs to enact a comprehensive Data privacy law like the United Kingdom General Data Protection Act and data legislations from otherdevelop countries, including the EU GDPR. A nation is seen as taking data privacy seriously when substantial legislation, rather than a supplementary regulation, is passed. Foreign investors increasingly heavily weigh a country's data privacy profiles when making investment decisions<sup>xv</sup>. For instance, the EU GDPR and other data privacy regulatory bodies of several nations have made it illegal for their private and corporate citizens to transfer or share data obtained within their borders with nations with weak or non-existent data privacy regulations.

### ***Public Awareness on Data Privacy and protection:***

The public should be educated about the requirements of the NDPR and the importance of upholding data privacy. Both data subjects and data processors should be the focus of the sensitization programs, who should inform them of their rights and the consequences of violations of the NDPR. This can be done through collaboration with the mainstream media or social media. This will improve the effectiveness data privacy protection.

***Response to hardware malfunctions and failures in data technology:***

Data must be safeguarded from physical threats such hardware malfunction and data technology failure. Users have a crucial role to play in preventing system failure since users may be the cause of system failure.<sup>xvi</sup> Testing the code as well as user guides that incorporate system specs are the best techniques for preventing system failure.<sup>xvii</sup>

## CONCLUSION

In Nigeria, data privacy and protection remain a serious legal issue that require sufficient legislative and juridical protection, study, and analysis. If not, our recent decision to do things differently would remain a dreadful illusion.

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