

Personal Data Protection in Nigeria 2017

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Colloquium on Data Protection

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Background to the Data Protection Study

The Study is;

- i. A comprehensive review and analysis of the existing and proposed regulatory frameworks that applies to the collection and/or protection of personal data in Nigeria;
- ii. Identification of the main data protection risks in Nigeria; and
- iii. Recommended policy options for reforming the data protection ecosystem.

Statements of facts

- Nigeria has no (personal) data protection law of general application!

But there exist in Nigeria

- Section 37 of the Constitution which provides “*The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected*”;
- And other section specific statutes and regulations that touch on different aspects of data protection

What is personal data?

- Personal data is the subject matter of all personal data protection statutes
- Not defined in Nigeria due to absence of a personal data protection statute
- Under EU data protection law, personal data is defined as;
 - ❑ any information;
 - ❑ relating to;
 - ❑ an identified or identifiable;
 - ❑ natural person

Some examples of personal data

- Personal name
- Facial photograph
- Biometric information
- IP address
- GPS position
- Sexual orientation
- Religious beliefs
- Bank account statement

Personal data protection ecosystem in Nigeria: Actors

- The data subject
Provides their personal data for processing
- The data controllers
Determines the purpose and means of processing the personal data
- The data processors
Processes personal data on behalf of the data controller
- Third parties
Receives personal data from a data controller or data processor

Personal data protection ecosystem in Nigeria: Interactions

- Data subject provides personal data to the data controller
- Data controller provides personal data to the data processor
- Data subject provides personal data to the data processor for processing on behalf of the data controller
- Data controller provides the data subject upon request made by the data subject
- Data processor provides personal data to the data subject as directed by data controller
- Data controller provides personal data to a third-party

What is personal data protection?

- It is related to privacy, that is the right
to be left alone (free from disturbance);
and to have your private affairs free from intrusion.
- Personal data protection is the legal mechanism that ensures privacy.
- Personal data protection is the regulatory framework that sets out the rules guiding the collection, retention, protection, use, storage, disclosure and/or transfer of personal data.

Examples of data protection regulatory frameworks

- Organisation for Economic Co-operation and Development (OECD) Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data 2013 (International)
- African Union Convention on Cyber Security and Personal Data Protection 2014 (International)
- The ECOWAS Data Protection Act 2010 (International)
- Protection of Personal Information Act 2013 (South Africa)
- Data Protection Act 2012 2012 (Ghana)
- The General Data Protection Regulations (European Union wide)

Main elements of a data protection regulatory framework

- Fair and lawful processing
- Purpose specification
- Relevant (or data minimization)
- Accurate
- Retention
- Data subject rights (including the right to be forgotten/erasure)
- Data security
- Accountability

Data protection related initiatives in Nigeria

- The Constitution

Section 37 *“The privacy of citizens, their homes, correspondence, telephone conversation and telegraphic communications is hereby guaranteed and protected”* . See also *MTN v. Barr. Godfrey Nya Eneye*.

- Credit Reporting Act 2017

Section 5 *“A Credit Bureau shall maintain credit information for not less than 6 years from the date on which such credit information was provided to it, or if later, on the date on which it last provided such information to a credit information user”*

Data protection related initiatives in Nigeria (Continued)

- Cybercrime Act 2015

Section 38 (4) “Any data retained, processed or retrieved by the service provider at the request of any law enforcement agency under this Act shall not be utilized except for legitimate purposes as may be provided for under this Act, any other legislation, regulation or by an order of a court of competent jurisdiction”.

- Nigerian Communications Commission (Registration of Telephone Subscribers Regulations 2011

Regulation 9 (4) “Licensees, Independent Registration Agents, Subscriber Registration Solution Providers and the Commission shall each take all reasonable precautions in accordance with international practises to preserve the integrity and prevent any corruption, loss or unauthorised disclosure of subscriber information obtained pursuant to these Regulations and shall take steps to restrict unauthorized use of the Subscriber Information by their employees who may be involved in the capturing or processing of such subscriber information”

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Examples of the type of personal data collected in Nigeria

➤ Offline

- ❑ Name
- ❑ Fingerprints
- ❑ Facial photographs
- ❑ Residential address
- ❑ Telephone number
- ❑ Health information

➤ Online

- ❑ Name
- ❑ Email address
- ❑ IP address
- ❑ Clickstream data
- ❑ Telephone number
- ❑ Location information
- ❑ Sexual preferences

Some organizations that collect personal data in Nigeria

➤ Offline

- ❑ NIMC
- ❑ INEC
- ❑ NIS
- ❑ VIO
- ❑ Banks and financial institutions
- ❑ Hospitals/HMOs

➤ Online

- ❑ Google
- ❑ Youtube
- ❑ Facebook
- ❑ Twitter
- ❑ Whatsapp
- ❑ Xvideos
- ❑ Trucaller
- ❑ ISPs

Data protection risks in Nigeria: Offline

- Incompatibility of purpose
- Data subjects have no rights in relation to their personal data

Data protection risks in Nigeria: Online

- Lack of adequate consent
Consent must be informed, freely given and specific
- Lack of transparency in the processing of personal data
The data subject is in a fog of data ignorance
- Lack of security and risk of a personal data breach
- Incompatibility of purpose
- Children are exposed to privacy risks online

Policy recommendations

- Legislative measure
 - ❑ Enact a data protection statute
 - ❑ Amend the National Identity Management Commission Act
 - ❑ Enact a Child Online Protection Act
- Non-legislative measure
- Judicial measure
- Enforcement measure
 - ❑ Enforcement by the National Human Rights Commission
 - ❑ Enforcement by the Consumer Protection Council
 - ❑ Regulators to mandate data protection by design and transparency
- Executive measure
- Social measure

**THANKS
FOR
LISTENING**

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Any questions?