



Aluko & Oyebode – Data Protection Outlook 2023



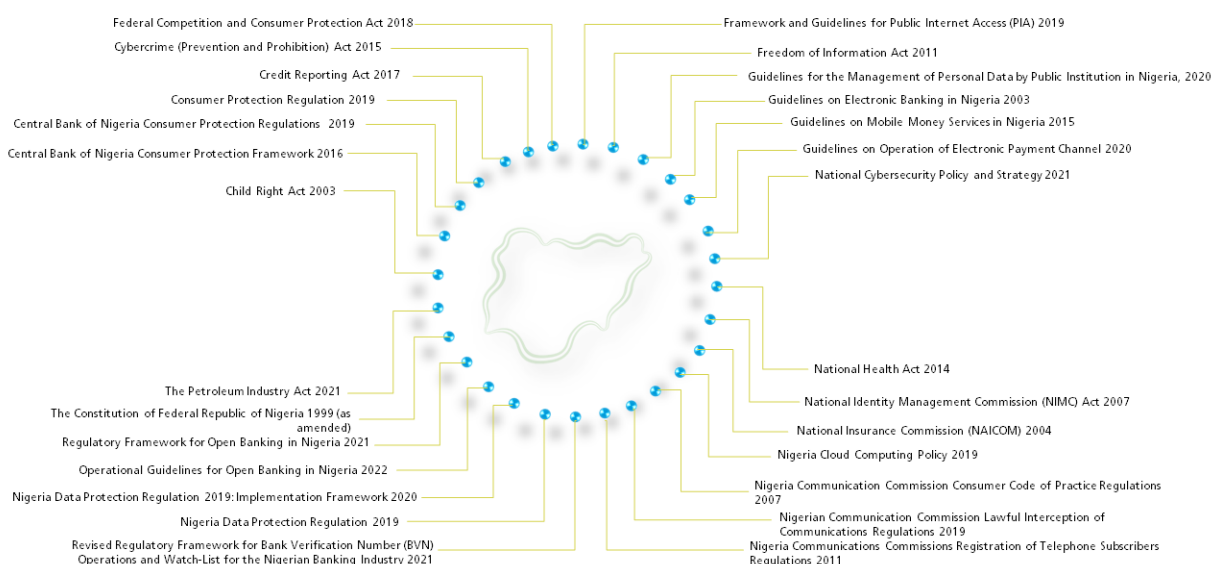
March 2023

Introduction

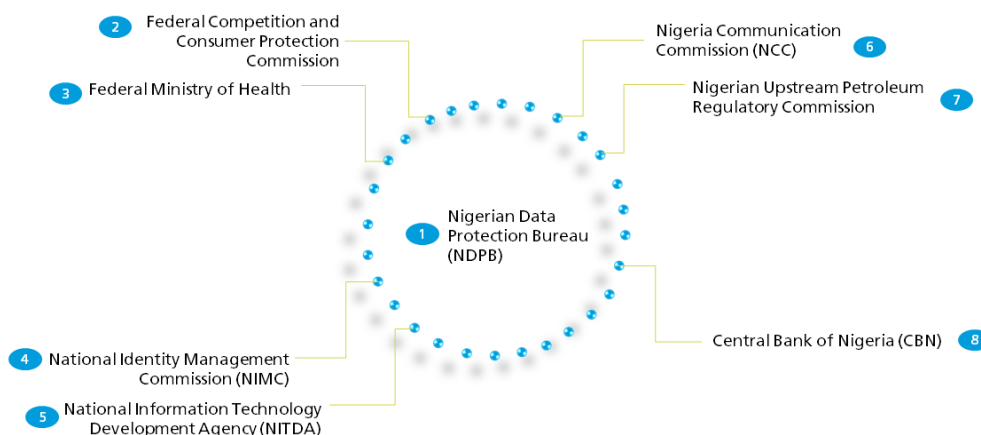
Data over the past decade has rightly gained significance and has been termed as the digital gold. It is now considered as one of the most important economic assets for any organization. One of the most important types of data that organizations process is personal data. Personal data means information relating to natural persons who can be identified or who are identifiable, directly from information provided or who can be indirectly identified from that information in combination with other information.

The need to protect the personal data of individuals has grown exponentially over the past few years, which has led to the development of different data protection regimes all over the World. Nigeria currently has several laws, regulations, and guidelines, (sector specific and general), which together form one of the most comprehensive data protection regimes in Africa.

Nigerian Data Protection Legal Landscape



Regulators



Overview

The Nigerian Data Protection Regulation, 2019 ('NDPR') is the main data protection regulation in Nigeria on personal data. The NDPR was issued by the National Information Technology Development Agency ('NITDA') and expounded the general concept of personal data protection under the constitution of the Federal Republic of Nigeria. The NDPR makes provisions for:

- The rights of data subjects;
- The obligations of data controllers and data processors;
- Transfer of data to a foreign territory amongst others;
- Penalties and administration; etc.

Although, other industry specific legislations have provisions on personal data protection, the NDPR is presently the most important contribution to Nigeria's data protection landscape.

When it comes to the regulatory body, the Nigeria Data Protection Bureau (NDPB) replaced the NITDA as the key regulator in this space recently. Created by the Federal Government of Nigeria in February 2022, the NDPB has the following functionalities;

- Safeguarding the rights of natural persons to data privacy in line with global best practices;
- Overseeing the implementation and enforcement of the NDPR;
- issuing guidance notes and framework and developing a principal instrument for data protection in Nigeria; etc.

Recent Activities in the Nigeria Data Protection Sector

Other than the creation of the NDPB, mentioned above other recent notable activities include the following:

1. The National Data Protection Adequacy Programme (NaDPAP) Whitelist

The NDPB issued a notice of its intention to establish the National Data Protection Adequacy Programme ("NaDPAP") Whitelist last year. The ultimate aim is to drive compliance by organisations with the standards prescribed under the NDPR and its Implementation Framework and publish a whitelist of organisations that have met the standards.

It required all organisations that process personal data of natural persons resident in Nigeria to:

- a) Develop and implement a Privacy Policy that is consistent with the NDPR;
- b) Notify employees, vendors, service providers, customers, and online visitors of their Privacy Policy; and
- c) Designate at least one or two members of staff as Data Protection Contacts.

2. Ministries, Departments and Agencies (MDAs) to comply with NDPR

The Federal Government of Nigeria issued a service-wide circular directing all ministries, departments, and agencies (MDAs) of government to comply with the provisions of the NDPR. The circular directed MDAs to:

- a) Designate appropriate officers as their Data Protection Officers (DPOs) who will on regular basis advise management on data processing activities of their organization and ensure compliance with the provisions of the NDPR and all matters relating to protection of the privacy, rights and freedom of data subjects;
- b) Forward the name and contact details of the DPOs to the NDPB for documentation and requisite induction training;
- c) Appoint licensed Data Protection Compliance Organizations (DPCOs) who will guide the MDAs through compliance framework and file their annual reports with the NDPB;
- d) Make appropriate budgetary provision for annual Data Protection Audit compliance process and capacity building of Data Protection Officers as well as other staff; and
- e) On annual basis, file the report of their Data Protection Audit to the NDPB not later than the 30th day of March of every year.

3. Joint Mutual Enforcement Desk for Data Protection

Sometime last year, the Federal Competition and Consumer Protection Commission (FCCPC) and the NDPB established a Joint Mutual Enforcement Desk to address crucial data protection matters to ensure consumers and businesses get protection.

4. Memorandum of Understanding with The Federal Competition and Consumer Protection Commission

The NDPB and the FCCPC entered into a Memorandum of Understanding (MoU) for the purposes of protecting consumer rights and personal data as well as fostering healthy trade competition within the Nigerian economic space. The MoU is intended to foster; prompt resolution of complaints, capacity building, awareness among consumers/data subjects, and information sharing between the two agencies. This is part of the national effort towards ensuring that no one is left behind in the implementation of the National Digital Economy Policy and Strategy (NDEPS) 2020-2030.



Enforcement and Regulatory Activities

Raid on Digital Lending Platforms

The Federal Competition and Consumer Protection Commission ("FCCPC"), in a joint operation with the Independent Corrupt Practices and Other Related Offences Commission ("ICPC"), the NITDA and the Nigeria Police Force (NPF) raided and shut down the business premises of some digital lending platforms whose business practices breached the privacy of their users/customers. This led to the creation of the Limited Interim Regulatory/Registration Framework and Guidelines for Digital Lending 2022 to mandate compliance with data privacy laws amongst others in the digital lending space.

FG Probes Banks and Gaming Networks over Breach

The NDPB has opened investigations into allegations of data breach by a number of Nigerian banks and gaming companies such as Zenith, Wema, Guaranty Trust Bank and Betway Naija. The investigations were triggered by allegations of unlawful disclosure of banking records to a third-party, opening accounts for customers without their requests, unlawful access and processing of personal data and also external data attacks. The investigation covers the data governance practice of the affected organisations and to determine the impact of the breaches on the affected data subjects as well as the corrective actions taken by the data controllers in question.

NDPB Delist 19 Data Protection Compliance Organizations (DPCO's)

The NDPB revoked the operating licence of 19 DPCOs. The licenses according to the NDPB were revoked for failing to meet (a) the NDPR's minimum requirements, (b) lack of professionalism and (c) capacity to carry out the tasks required of licensees including haphazard filing of annual compliance audit returns on behalf of their clients.

Proposed Legislations

Data Protection Bill



The NDPB released the new Nigeria Data Protection Bill in October 2022. The Bill outlines principles and lawful bases for the processing of personal information, including the conducting of data protection impact assessments, the appointment of a data protection officer, data subject rights and obligations for data controllers. It is pertinent to note that there have been previous attempts to pass a federal data protection legislation, however, this current bill seems to be the most likely to be passed into law. Although the impact of the elections in the legislative houses is a key point to consider.

Lagos State Data Protection Bill, 2021 (LDPB)

The bill seeks to promote the protection of personal information processed by public and private bodies, establish minimum requirements for the processing and protection of personal information, establish the data protection commission and for connected purposes. The aim of the Bill is to set out standards, rules, and salient overarching principles for the processing of personal data within the State.

Outlook for 2023

The introduction of the Lagos State Data Protection Bill remains one to monitor closely, if successful the bill will introduce another layer in the Nigerian data protection regime. Organisations may then be required to comply with both state and federal laws. Without an apparent synergy between the state and federal regulators, it is expected that this would be burdensome for most organizations. Another highlight is that other states in the country may likely follow Lagos state in establishing its own data protection regime. It is therefore pertinent for stakeholders to participate in this entire process.

Another thing to look forward to is whether or not the Nigeria Data Protection Bill will be passed into law within this year. With the recently concluded presidential and legislative elections, there have been significant changes in the legislative house and if this pattern continues similar changes are expected for the governorship election. The impact of this likely change in administration is that both the Nigeria Data Protection Bill and the Lagos State Data Protection Bill may suffer delay, changes and ultimately not be passed into law.

As narrated above the enforcement activities of the NDPB and the creation of the NaDPAP whitelist is demonstrative of an NDPB that is keen on ensuring compliance in the sector. We have seen an NDPB that is collaborating with various organizations to educate and create awareness in the sector.

Conclusion

The past year has brought several advancements in the data protection space. We continue to see a number of regulatory involvement and enforcement activities. Consequently, there is an increasing need for organizations to have adequate data governance and compliance procedures in place. Aluko & Oyeboode is a licensed Data Protection and Compliance Organization (DPCO) with experience in advising both local and international companies in the sector, as industry experts we predict that there will be more enforcement activities by the regulator, and we encourage all organizations that process personal data to pay close attention to the space and brush up their data governance processes.

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