

**WHETHER OR NOT THE VIOLATION
OF THE PROVISION(S) OF NIGERIA
DATA PROTECTION REGULATION
RESULTS IN INTERFERENCE WITH
THE RIGHT TO PRIVACY
GUARANTEED BY SECTION 37 OF
THE CONSTITUTION OF THE
FEDERAL REPUBLIC OF NIGERIA,
1999 (AS AMENDED)**





INTRODUCTION

1. With the rise in the use of emerging technologies to facilitate the process of work. Increasingly, organizations are making use of Artificial Intelligence (AI) to help them make decisions, with many of them processing personal data to do this. Despite, the opportunities provided by these emerging technologies, we are faced with some challenges, with one of them being the misuse of personal data, and data theft. In rising to the challenges posed by these emerging technologies in the use of personal data, that the Nigeria Data Protection Regulation (NDPR) was enacted on the 25th day of January 2019 by the National Information Technology Development Agency (NITDA/The Agency). The NDPR was enacted to regulate individuals who have access to, and control the data of other people. The NITDA, through the Regulation, has investigated banks, telecommunications companies, True Caller, and so on. Its existence has guaranteed the protection of privacy provided in section 37 of the constitution (as amended) which can be firmly deduced from the Regulator (National Information Technology Development Agency (NITDA), who stated on their website <https://nitda.gov.ng/press-release-ncc-regulation-not-in-conflict-with-the-nigeria-data-protection-regulation/> on the 22nd October 2019 that:

“The right to privacy which the NDPR seeks to protect is established by section 37 of the 1999 Constitution (as amended)”

2. NITDA, the regulatory body for NDPR is saddled with the responsibility of ensuring that telecommunications companies, internet service providers and government agencies such as the Nigerian Communications Commission comply with the provisions of the NDPR.

“Preamble”

CONSCIOUS of the concerns and contributions of stakeholders on the issue of **privacy** and protection of **personal data** and the grave consequences of leaving **Personal Data** processing unregulated;

Article 1.1:

OBJECTIVES OF THE REGULATION

The objectives of this Regulation are as follows:

- (a) To safeguard the rights of natural person to data **privacy**.
- (b) To foster safe conduct of transaction involving the exchange of **personal data**;
- (c) To prevent manipulation of **personal data** and ...

Article 2.9:

ADVANCEMENT OF RIGHT TO PRIVACY Notwithstanding anything to the contrary in this Regulation, **the privacy right** of a Data Subject shall be interpreted for the purpose of advancing and never for the purpose of restricting the safeguards Data Subject is entitled to under any data protection instrument made in furtherance of **fundamental rights and the Nigerian laws.”**

“Fundamental rights and the Nigerian laws” explain it’s accordance with the provision guaranteed in Section 37 of the Constitution (as amended).

ISSUES

3. My Lord, counsel has raised a sole issue for determination of this honourable court: **“Whether or not the violation of the provision(s) of Nigeria Data Protection Regulation results in interference with the right to privacy guaranteed by Section 37 of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended)?”**





ARGUMENT/ SUBMISSION

Whether or not the violation of the provision(s) of Nigeria Data Protection Regulation results in interference with the right to privacy guaranteed by Section 37 of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended)?

4. My Lord, Section 37 of the 1999 Constitution of the Federal Republic of Nigeria (As Amended) provides that:

“The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected”
5. The literal interpretation of Article 2.9 of the NDPR is to the effect that the Regulation in its entirety seeks to advance (i.e. further protect or guaranty) the right to privacy as may be protected under Nigerian Law (which Section 37 clearly falls within the purview).
6. From the above provision of the NDPR, it is crystal clear that the drafters of the regulation intend that it complements the provision of “fundamental rights and the Nigerian law” that seeks to protect the Right to Privacy of individuals in which section 37 guarantees it is a Fundamental Human Right that guarantees the right to privacy of citizens under the Nigerian Laws.

7. The law is trite and well settled without any jurisprudential controversy as there have been pools of judicial authorities that where the wordings of a particular legislation is clear and unambiguous, their original, natural and dictionary meaning are to be given to them without any further effort to embark on voyage of discovery to import and input any wordings not included and manifest in the provision of that legislation. We refer your Lordships to the case of **ABUBAKAR V. YARADUA (2008)19 (NWLR)**, where your learned brother per **Per Niki Tobi JSC** held as follows;

“If a word is used in a statute in a clear and unambiguous way, the duty of the court is to give that word a literal interpretation to convey its dictionary and dictionary meaning. I must say also that most words are used in a statute to convey their ordinary meaning, and courts of law are bound to conform to such meanings”.

8. A clear understanding of the right to privacy is linked to the dignity and autonomy of human beings, values that are at the core of the protection of fundamental human rights. In this regard, section 34(1) provides that every person is entitled to respect for the dignity of his person.” It is not in doubt that privacy ranks very high in the indices of the respect for the dignity of an individual.

9. A well explanatory case can be proved in the case of **K.S. PUTTASWANY V. UNION OF INDIA (SC,2017)** this case can also be referred to as **AADHAAR** case. Based on the issue “weather right to privacy is a Fundamental Right under Article 21 of the constitution of India.” The 9-judge bench unanimously held that Right to Privacy is a part of an individual’s dignity and satisfies itself to as a natural right. The Supreme Court overruled all the previous court’s rulings and declared that right to privacy is a fundamental right. The court had multiple views on privacy;

“**JUSTICE CHANDRACHUD**; there are positive and negative elements of privacy; the former restricts the state from unfairly interfering in the privacy of individual, while the later oblige it to put in place legislative framework to restrict other from doing so.

JUSTICE CHELAMESWAR, right to privacy comprises of three facets, namely repose (freedom from unwanted stimuli), sanctuary (protection from intrusive observation) and intimate decision (autonomy to make personal life decisions).

JUSTICE NARIMAN, ...right is divided into three categories . namely 1) that which involves trespass to person by state’s invasion; 2) unauthorized uses of information and 3) individual autonomy over fundamental personal choices...”

”

10. Dignitary interests is an aspect of right to privacy, on one hand recognise the individual autonomy of person and the need to respect that autonomy flowing from the dignity of a person, allowing an individual to lead his life without interference. An idea of the key issues in the right to privacy can be found in the classification of the jurist Prosser of the four torts which had then emerged from the American protection of privacy. These four torts are: (i) publicity which places plaintiff in a false light; (ii) appropriation of the plaintiffs name or likeness; (iii) intrusion upon plaintiff's seclusion or solitude and (iv) public disclosure of private facts about the plaintiff as cited in "Privacy" 48 California Law Review 383, 389. This definition has been adopted by the Restatement (Second) of Torts.

11. In the Nigeria case of **PETER NWALI V. EBONYI STATE INDEPENDENT ELECTORAL COMMISSION (EBSIEC) & ORS (2014) LPELR-23682**, the Court of Appeal held that:

"The meaning of the term "privacy of citizens" is not directly obvious on its face. It is obviously very wide as it does not define the specific aspects of the privacy of citizen it protects. A citizen is ordinarily a human being constituting of his body, his life, his person, thought, conscience, belief, decisions (including his plans and choices), desires, his health, his relationships, character, possessions, family etc. So, how should the term, privacy of the citizen be understood? Should it be understood to exclude the privacy of some parts of his life? ...

11. “This can be seen from its holding that the right includes ”privacy in private family life and incidental matters” when this aspect is not expressly provided for in that section and that meaning is not patently obvious from the text of that section. ... It is glaring that there is nothing in the phrase ”Privacy of Citizens” or in the entire text of S.37 of the Constitution, and the Constitution as a whole suggesting or compelling a restricted interpretation of the phrase. As couched in such general terms, unless interpreted literally, extensively, and expansively, providing the details of the citizen’s privacy that is protected therein, the phrase will be meaningless and sterile. ... If there are no other provisions of the Constitution requiring or suggesting the contrary, the Court must apply the word or phrase generally, and will have no power to restrict its application to specific situations. For the above reasons, I interpret the phrase ”privacy of citizens” generally, liberally, and expansively to include privacy of citizens’ body, life, person, thought, belief, conscience, feelings, views, decisions (including his plans and choices), desires, health, relationships, character, material possessions, family life, activities et cetera.”

12. It can be deduced from the foregoing decision, that, the **right to privacy** of citizens is broad and expansive as it is related to any information affecting the personal life, body, his person and his private phenomenon.

13. Also, **Article 8 of the European Convention on Human Rights** defines privacy as a right to respect for one's "private and family life, his home and his correspondence.

14. In **ROTARU V. ROMANIA [2000] ECHR 192**, the European Court held that:
"Public information that is systematically collected and stored in files held by the state or its agents falls within the scope of private life..."

15. In the case of **ZXC V. BLOOMBERG LP [2019] EWHC 970** the European Court held that:
"the case brought in the ground that those investigated by law enforcement have the right to privacy.
The media organization Bloomberg cited some confidential information of the claimant obtained from a UK law enforcement agency in its published article. The Court awarded the claimant 25,000 Euro for damages."

16. **ZYT & ANOR v ASSOCIATED NEWSPAPERS LTD [2015] EWHC 1162:** The European Court granted the plaintiffs a temporary injunction, prohibiting the newspaper from publishing articles that infringed the privacy right of the plaintiffs. It could be noted that the case at hand arrived at the court to deliver a judgment of temporary injunction which happens to be the third time the UK court has granted such judgment against the media for the past two and a half years.
17. In the case **suit No C-293/12 AND C-594-12 DIGITAL RIGHTS IRELAND LTD v MINISTER FOR COMMUNICATIONS, MARINE AND NATURAL RESOURCES, 8.4.2014 (“Digital Rights Ireland”)**: The European Court of Justice (ECJ) held that “a European Union directive requiring Internet Service Providers (ISPs) to store telecommunication data in order to facilitate the prevention and prosecution of crime was found to be invalid under ... Article 8 of the Charter of Fundamental Rights of the European Union”
18. My Lord, it is Counsel's submission that a plethora of cases abound to buttress the fact that a violation of any of the provisions of the Nigeria Data Protection Regulation results to an interference with the right to privacy guaranteed and protected under section 37 of the Constitution.
“The **privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications** is hereby guaranteed and protected”

19. Even if this interpretation is correct it in no way answers a deeper and perhaps more fundamental question as to what is meant by a **citizen's privacy**. Informational privacy as a defining feature would then contextualise homes correspondence, telephone conversations and telegraphic communications. On the other hand the nature of interests that these specific words connote is predominantly that of information in which NDPR seeks to protect. Even though "homes" could be ambiguous, "correspondence, telephone conversations and telegraphic communications" clearly refer to information. In sum therefore a good starting point would be that privacy relates to information about a citizen. Since no reference is made to the manner in which the information is obtained, the Constitution concentrates on the information and therefore the acquaintance and public disclosure of the information is actionable. This makes no difference that a person only listened to a telephone conversation and did not publicise it to the public.
20. The use of the word "*home*" could be interpreted to mean that the privacy that is contemplated is well beyond information. It is possible that it is privacy that deals with an individual's autonomy that is also protected. Thus while information about a person's home will certainly qualify, the word home could also refer to a condition where an individual is not harassed, and the manner in which he lives in his *home* is not interfered with. Under which his personal life, his sexual life and other aspects of his family life is categorized.

21. From the above decisions, it is our submission that the right to privacy of citizens, their homes and correspondences also includes their personal data or anything private to such individual including their phones and medical records.
22. In the Nigerian case of **INCORPORATED TRUSTEES OF DIGITAL RIGHTS LAWYERS INITIATIVE & ORS V. NATIONAL IDENTITY MANAGEMENT COMMISSION (UNREPORTED) SUIT NO. AB/83/2020** delivered on the 15th day of July 2020, the High Court of Ogun State, per A.A. Akinyemi, J. held that:

“The kernel of both the provision of section 37 of the Constitution and these illuminating decision is, to my mind, that privacy of a citizen of Nigeria shall not be violated. From these decisions, privacy to my mind, can be said to mean the right to be free from public attention or the right not to have others intrude into one’s private space uninvited or without one’s approval. It means to be able to stay away or apart from others without observation or intrusion. It also include the protection of personal information from others. This right to privacy is not limited to his home but extends to anything that is private and personal to him including communication and **personal data.**”
23. Also, in **Suit No. HCT/262/2020 between INCORPORATED TRUSTEES OF DIGITAL RIGHTS LAWYERS INITIATIVE AND LT SOLUTION & MULTIMEDIA LIMITED**, the High Court of Ogun State, per Ogunfowora, J. rightly held that:


“Now, as regards data protection, the National Information Technology Development Agency (NITDA) set up under the NITDA Act 2007, is the government agency responsible for the regulation of the use and exchange of information and this agency issued the Nigeria Data Protection Regulation 2019 (The Regulation) which became operational from 25th January 2019. The Regulation contains the Nigeria government’s definitive policy statement on data protection...

In the light of the above, I thus also have no hesitation in holding that, the right to privacy extends to protection of a citizen’s personal data...”

24. My Lord, with respect to the above judicial decisions, it is our humble submission that the violation of the Nigeria Data Protection Regulation 2019 amounts to total interference with the Right to Privacy enshrined in our Constitution, and its violations will be enforceable before a court of law.



CONCLUSION



25. We respectfully pray to the court to grant the prayers sought by counsel before this honourable court.

26. We thank this honourable Court!

CONCLUSION



DATED THIS 11TH DAY OF DECEMBER, 2020

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CONCLUSION

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