



Protecting Children's Data within the Administration of Justice System in Nigeria

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Abstract

The global shift toward digital governance significantly transformed the administration of justice, intensifying the collection, processing, and storage of personal data, including that of children. In Nigeria, this transformation occurred in the absence of a comprehensive legal framework to protect the data privacy rights of minors engaged with the justice system as victims, witnesses, or alleged offenders. This Article examined the legal and institutional mechanisms that governed the treatment of children's data within Nigeria's law enforcement, judicial, and correctional systems. It situated the Nigerian context within the framework of international and regional human rights obligations, including the UN Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child, as well as domestic instruments such as the Child Rights Act 2003 and the Nigeria Data Protection Act 2023. The study identified significant legal and procedural gaps, particularly in the areas of consent, data minimization, accountability, and the absence of child-sensitive data governance protocols. Drawing on international best practices, the Article proposed a rights-based framework anchored in the principles of necessity, proportionality, and the best interests of the child. It concluded that the unregulated datafication of children within the justice system not only heightened their vulnerability but also risked violating both international data protection standards and fundamental child rights norms.

Keywords: Children's data, data privacy, administration of justice, Nigeria.

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1. Introduction

Daily living is increasingly reliant on technology and the use of digital devices. The COVID-19 pandemic forced the migration of many physical activities to cyberspace. Conducting virtual life during the COVID-19 pandemic opened new opportunities and the world didn't return to life as it was before the pandemic. Rather, it recognized and nurtured a new normal. The digital environment is becoming increasingly important across most aspects of children's lives as societal functions, including education, government services and commerce, progressively come to rely upon digital technologies. The digital world affords new opportunities for the realization of children's rights, but also poses the risks of their violation or abuse. It is not only children who do not read or understand terms and conditions, not only children who are prepared to trade their data for free services, and not only children who struggle in practice to exercise their right to protect or retrieve or delete their data.³

The administration of the criminal justice system in Nigeria, refers to the processes and procedures by which criminal laws are enforced and applied. It encompasses the roles of law enforcement agencies, the judiciary, and correctional authorities in investigating, prosecuting, and punishing offenders, while also ensuring the protection of rights and the promotion of fair trials. The components of the administration of the criminal justice system that this paper examines are the law enforcement agencies, the courts and the correctional services. For purposes of data protection in Nigeria, the definition of a child has the same meaning in the Data Protection Act (DPA) as under the Child Rights Act (CRA).⁴ Under the CRA and the Administration of Criminal Justice Act (ACJA)⁵, a person who has not attained the age of 18 years is a child. The personal data of a child is any information relating to an individual, who can be identified or is identifiable, directly or indirectly, by reference to an identifier such as a name, an identification number, location data, an online identifier or one or more factors specific to the physical, physiological, genetic, psychological, cultural, social, or economic identity of that individual.⁶ A child's personal data can be in the administration of the criminal justice system because the child is a victim, a witness, or an offender.

Daily encounters with digital technologies, surfing the internet, creating content for social media, taking lessons or playing online games, etc. leave traces and generate information about health, habits, life preferences, relationships, etc. The traces generated and deposited online could be tracked and harvested by individuals and economic surveillance operators. Violation of children's information privacy can occur with the collection, storage and processing of children's personal data, especially if this occurs without their understanding or consent. The law enforcement agencies, through investigation of the breaches, retrieve and handle the child's data. The prosecution of the offenders could necessitate the tendering of some of the child's data into evidence. Through surveillance of our communities, a child's personal data can be accessed, be in the possession of law enforcement agencies, or by the child merely present in the real and digital

³ Sonia Livingstone, *Children: a Special Case for Privacy?* (2018) 46(2) *Intermedia* 22. <http://eprints.lse.ac.uk/89706/> [Accessed on May 17, 2023].

⁴ Data Protection Act 2023, DPA s65; Child Rights Act 2003.

⁵ Administration of Criminal Justice Act 2015, ACJA s494; CRA s277.

⁶ DPA s65.

worlds. By just walking on streets with closed-circuit television (CCTV) cameras, entering public places such as airports, train stations, images and other data of children could be captured by law enforcement agencies. This category of data can be obtained and processed without consent, within limited and strict circumstances.⁷

This paper employs the doctrinal legal research methodology to examine the legal frameworks governing children's data privacy within the administration of justice system. It involves an analysis of statutes, international instruments, and policy documents to evaluate the adequacy of legal protections afforded to children's personal information in legal and judicial processes. Various definitions abound on the concept of privacy.⁸ We adopt Gavison's definition of privacy as a condition of limited accessibility consisting of "secrecy" ("the extent to which we are known to others"), "solitude" ("the extent to which others have physical access to us"), and "anonymity" ("the extent to which we are the subject of others' attention").⁹ These three elements of secrecy, anonymity, and solitude are distinct and independent, but interrelated. Because privacy is a limitation of others' access to an individual, a loss of privacy occurs as others obtain information about an individual, pay attention to him, or gain access to him. Law enforcement agencies, the courts and correctional authorities have a legal basis to access children's data in specified circumstances. Even in those circumstances, legal duties and obligations become operative. Privacy within the context of the system of administration of justice is a unique concern that should be given weight in balancing values.¹⁰

2. Children's Data Obtained by Law Enforcement Agencies

Digital practices, such as automated data processing, profiling, behavioural targeting, mandatory identity verification, information filtering and mass surveillance are becoming routine, and may result in arbitrary or unlawful interference with children's right to privacy; this may have adverse consequences on children, which can continue to affect them at later stages of their lives.¹¹ Risks relating to content, contact, conduct and contract encompass, among other things, violent and sexual content, cyber-aggression and harassment, gambling, exploitation and abuse, including sexual exploitation and abuse, and the promotion of or incitement to suicide or life-threatening activities, including by criminals or armed groups designated as terrorist or violent extremist.¹² Surveillance networks operated by commercial institutions, create, analyze, and sell data on millions of children.¹³ The improper obtaining and/or processing of a child's data makes the child

⁷ DPA s3 (2) (a) (c).

⁸ D Solove, *Understanding Privacy*, (Harvard University Press, 2008), chapters 1–2; Inness, J.C., *Privacy, Intimacy, and Isolation*, (Oxford University Press, 1992), chapter 2; DeCew, J.W., In Pursuit of Privacy: Law, Ethics, and the Rise of Technology, (Cornell University Press, 1997), chapters 2–3.

⁹ R Gavison, 'Privacy and the Limits of Law', Yale Law Journal 1980, vol. 89, p. 421, 428–436

¹⁰ Ibid. p. 424.

¹¹ *Children's Right to Privacy in the Digital Sphere in the African Region*, Centre for Human Rights and Raoul Wallenberg Foundation University of Pretoria, 2022.

¹² General comment No. 25 (2021) on children's rights in relation to the digital environment. UN Convention on the Rights of the Child. Committee on the Rights of the Child CRC/C/GC/25 2nd March 2021 pp. 1 & 3

¹³ C Burke, Digital Sousveillance: A Network Analysis of the US Surveillant Assemblage' (2020) 18(1) Surveillance & Society 74. <https://ojs.library.queensu.ca/index.php/surveillance-and-society/article/view/12714> doi: 10.24908/ss.v18i1.12714 [Accessed on May 17, 2025].

a victim of personal data breach. In certain circumstances, the child could be the instigator or perpetrator of the breach. Sexting (distribution of sexually explicit messages or images) can render children liable to prosecution and sanctions.¹⁴

Children's data in arrest databases

The Police Act (PA) and the Administration of Criminal Justice Act (ACJA)¹⁵ prescribe record-keeping protocols for all arrests made by law enforcement agencies in the country. The arresting agencies are required to enter arrests in the Record of Arrest Book within forty-eight hours of each arrest.¹⁶ The record of arrest contains personal information, including the photograph and full fingerprint impressions of the suspect.¹⁷ In some states, law enforcement agencies are permitted to obtain the DNA and the National Identity Number (NIN)¹⁸ and the Bank Verification Number (BVN)¹⁹ of the suspects. These pieces of information are not just personal data, they are sensitive personal data.²⁰ These fall within the category of data collection carried out by a competent authority for the purposes of the prevention, investigation, detection, prosecution, or adjudication of a criminal offence, in accordance with any applicable law; or necessary for the establishment, exercise, or defense of legal claims in court proceedings.²¹ The data gathered at the point of arrest will be shared with other Commands and agencies. The State ACJLs provide for the establishment of Area Command Registries.²² The record of all arrests is transmitted to the State Command Arrest Registry and the National Arrest database.²³ The State Command shares arrest records with the State Attorney General (AG) quarterly. The ACJLs require the AG to establish the manual and electronic database.²⁴ The Police station periodically shares reports of arrests without warrant with the Magistrate having jurisdiction in the area.²⁵ Arrest records are also shared with the institution monitoring compliance with the administration of criminal justice law.²⁶ The law requires that the arrest database be updated by the State Registries reflecting the outcomes of criminal court judgements within 30 days of the judgment.²⁷ This update is critical for data protection purposes. Section 24 (1) (e) of the DPA stipulates that a data controller or data processor shall ensure that personal data is accurate, complete, not misleading, and, where necessary, kept

¹⁴ African Committee of Experts on the Rights and Welfare of the Child. Study on Children's Rights and Business in Africa 2023. https://www.acerwc.africa/sites/default/files/2023-08/Study_Children%27s%20Rights%20and%20Business_English.pdf [Accessed on May 10, 2025]

¹⁵ The Administration of Criminal Justice Laws of all the States have the same protocols.

¹⁶ ACJA s15 (2) ACJA 2015; section 44 (2) Police Act 2020.

¹⁷ ACJA s15(1).

¹⁸ Kaduna ACJL s37.

¹⁹ Plateau ACJL s36(1).

²⁰ "Sensitive personal data" means personal data relating to an individual's- (a) genetic and biometric data, for the purpose of uniquely identifying a natural person; (b) race or ethnic origin; (c) religious or similar beliefs, such as those reflecting conscience philosophy; (d) health status; (e) sex life; (f) political opinions or affiliations; (g) trade union memberships; or (h) other information prescribed by the Commission, as sensitive personal data under section DPA s30 (2), 65.

²¹ DPA s3 (2) (a) (e).

²² See for example, Plateau ACJL s37(3) and Kaduna ACJL s38(3).

²³ ACJA s16 (2); PA s47 (1) (2).

²⁴ ACJA s29 (56); see for example, Plateau ACJL s46(4).

²⁵ ACJA s33(1); Plateau ACJL s50(1).

²⁶ ACJA s33 (3); Plateau ACJL s50(3).

²⁷ ACJA s16 (3); Plateau ACJL s37(4).

up to date having regard to the purposes for which the personal data is collected or is further processed. The failure of the respective Commands and Agencies to accurately update the Registries could be problematic in terms of data protection obligations. The personal information of child offenders should not be mainstreamed in the police arrest record system. The Child Rights Act envisages the Specialised Children Police Unit as the special mechanism for children's interaction with the police, . This is a specialised unit of the Force, which shall consist of police officers who (a) frequently or exclusively deal with children; or (b) are primarily engaged in the prevention of child offences. The Unit shall be charged with (a) the prevention and control of child offences; (b) the apprehension of child offenders; and (c) the investigation of child offences.²⁸ Children's arrest record should ordinarily not be found in the regular Police station Arrest Record book. It should be generated and kept with the Specialised Children Police Unit.

Government surveillance

Teenagers today are coming of age under unprecedented, pervasive networks of institutional mass surveillance technologies. The attacks on the United States on September 11, 2001 heightened the perceived need for surveillance and other intelligence-gathering operations. Surveillance technologies spreading in youth spaces are impacting young people's prospects today and are expected to continue in the future. Concerns that young people are being normalized to the surveillance culture carry serious political implications for just and democratic futures with technology.²⁹ A child's personal data can be in the possession of law enforcement agencies by merely being present in the real and digital worlds. By just walking on streets with closed-circuit television (CCTV) cameras, entering public places such as airports, train stations, images and other data of children could be captured by law enforcement agencies. This data is captured and processed by a competent authority³⁰ for the purposes of the prevention or detection of a criminal offence, in accordance with an applicable law or carried out as is necessary for national security. This category of data can be obtained and processed without consent, within limited and strict circumstances.³¹

3. Children's Data in the Courts

The law envisages that there will be data collection and processing carried out by a competent authority for the adjudication of a criminal offence in accordance with any applicable law or necessary for the establishment, exercise, or defense of legal claims in court proceedings.³² Under the Child Rights Act, the Family Court is the children's court. The Family Court has exclusive

²⁸ CRA s207.

²⁹ Janet Ruppert Justice-Centered Pathways to Combat Surveillance Realism in Informal Cs Learning, A Doctor of Philosophy thesis submitted to the Faculty of the Graduate School of the University of Colorado 2023. <https://www.proquest.com/openview/ec0bc759a3955b3982d045f51290f8ba/1?cbl=18750&diss=y&pq-origsite=gscholar> [Accessed on May 17, 2025].

³⁰ "Competent authority" includes (a) the Government of the Federal Republic of Nigeria or any foreign government; or (b) any state government, statutory authority, government authority, institution, agency, department, board, commission, or organisation within or outside Nigeria, exercising executive, legislative, judicial, investigative, regulatory, or administrative functions. Section 65 of the Data Protection Act, 2023.

³¹ DPA s3 (2) (a) (c).

³² DPA s3 (2) (a) (e).

jurisdiction over children's matters. Section 151 (1) of the Child Rights Act provides that the Family Court shall have unlimited jurisdiction to hear and determine (a) any civil proceedings where the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim in respect of a child is in issue; and (b) any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by a child, against a child or against the interest of a child. The Family Court can be a division of the High Court or the equivalent of a Magistrate Court.³³ No other court shall exercise jurisdiction in any matter relating to children.³⁴ No child shall be subjected to the criminal justice process or to criminal sanctions, but a child alleged to have committed an act which would constitute a criminal offence if he were an adult shall be subjected only to the child justice system and processes set out in this Act.³⁵ As a general rule, court hearings are to be held in public.³⁶ Proceedings involving children fall within the recognized exceptions. No person, other than (a) the members and officers of the Court; (b) the parties to the case, their solicitors and counsel; (c) parents or guardian of the child and (d) other persons directly concerned in the case, shall be allowed to attend the court, and, accordingly, members of the press are excluded from attending a court.³⁷ There are several situations that could cause a child's legal issues to be situated outside the Family Court. First, when the matter goes on appeal from the Family Court³⁸ and second, when an adult offender violates laws protecting children.³⁹ The provisions of any written law relating to the practice and procedure in Magistrate Courts or, High Courts, as the case may be, not inconsistent with the provisions of the Child Rights Act shall have effect concerning proceedings in the court.⁴⁰

Children testimony

The Family Court has the power to obtain such information as to a child's general conduct, home surroundings, school record, including social inquiry reports and medical history, as may enable it deal with the case in the best interests of the child.⁴¹ There are numerous occasions when the testimony of a child will be required by the court in the determination of the legal rights and obligations before it. Section 160 (1) CRA provides that the evidence of a child may be given unsworn in any proceedings, whether civil or criminal. This section has to be read in conjunction with section 209(1) of the Evidence Act which stipulates that the court is duty bound to conduct a preliminary enquiry to ascertain whether or not the minor possesses sufficient intelligence to answer the questions that will be put to her, also that she understands the duty of speaking the truth. If the child is unable to understand the questions or to answer them intelligently, the child is not a competent witness within the meaning of section 155(1) of the Evidence Act. However a

³³ CRA s39 empowers the Magistrate to impose up to the maximum penalties prescribed for the offences created for protection of the rights of a child, Part III of the Act.

³⁴ CRA s162 (1) CRA; this section shall not affect the jurisdiction of regular criminal courts to try adult offenders who violate laws protecting children. CRA s162 (2).

³⁵ CRA s204.

³⁶ CFRN s36 (3).

³⁷ CRA s156.

³⁸ CRA s138 (3) requires that an appeal on an adoption order be heard in Chambers.

³⁹ CRA s162 (2).

⁴⁰ CRA s161 (2).

⁴¹ CRA s217 (6) (a).

deposition of a child's sworn evidence shall be taken for any proceedings, whether civil or criminal, as if that evidence had been given on oath.⁴² Where a child's data is in the justice system as a result of being a witness, the child has entitlements to consent, parental consent and information as to how the data will be used. Consent of the data subject legitimizes the processing so long as it occurs within the boundaries of the agreement. No public institution shall change or expand the purpose for which the data was originally collected or used without an express instrument from a statutory authority or the consent of the data subject first sought and had.⁴³

Child victim's data

The National Minimum Standards (NMS) on the Implementation of the Administration of Criminal Justice Act/Laws (ACJA/ACJLs) enjoins each jurisdiction to establish a Witness Support Unit either at the office of the Chief Judge or the Ministry of Justice or both and to make regulation to ensure the safety, support, and protection of witnesses.⁴⁴ It is good practice to treat every child victim as a vulnerable witness that should be accorded full protection. This applies whether the child victim is testifying in a Family Court and more especially if the trial of the adult offender is in the regular court. States Parties shall adopt appropriate measures to protect the rights and interests of child victims at all stages of the criminal justice process, in particular by protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims.⁴⁵ Where the offence borders on rape, defilement, incest, unnatural or indecent offences against a person, indecent assault, terrorism, trafficking in persons and related matters⁴⁶, the prosecutor and/or the child's lawyer⁴⁷ should apply to the court for full witness protection of the child. The names, addresses, telephone numbers and identity of the victims of such offences or witnesses shall not be disclosed in any record or report of the proceedings and it shall be sufficient to designate the names of the victims or witnesses with a combination of alphabets. Further, with order of court, the trial would not be held in open court, the witness could be permitted to be screened or masked and/or give evidence by audio-video links.⁴⁸ For paternity or maternity testing, the consent of a child who has attained the age of sixteen years to the taking from himself of a scientific sample shall be as effective as it would be if he had attained the age of majority and where a child has by a virtue of this subsection given an effective consent to the taking of scientific sample, it shall not be necessary to obtain any consent for it from any other person.⁴⁹

⁴² CRA s160 (2).

⁴³ Para 2.2 h. of the Guideline

⁴⁴ The National Minimum Standards (NMS) on the Implementation of the Administration of Criminal Justice Act/Laws (ACJA/ACJLs). Paragraph 2. <https://www.nms.ng/files/National%20Minimum%20Standards-%20Towards%20Uniformity%20in%20the%20Implementation%20of%20ACJA%20&%20ACJLs.pdf>

⁴⁵ Article 8 (1) (e) of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography 2000 A/RES/54/263 <https://www.ohchr.org/sites/default/files/crc-sale.pdf>

⁴⁶ ACJA s232(4).

⁴⁷ A child has the right to be represented by a legal practitioner and to free legal aid in the hearing and determination of any matter concerning the child in the Court: CRA s155.

⁴⁸ ACJA s232 (2) (3).

⁴⁹ CRA s64 (2).

Courtroom technology

With the expansive use of technology in court processes, greater care must be taken to secure and protect children's data. Attention must be given to the protection of children data from the filing of charges with proof of evidence to the digital recording of court proceedings, to custody of exhibits to the printing and distribution of court judgement and preservation of court records. Some jurisdictions are instituting e-filing systems. There are also some ministries of justice that have established case management systems that enable them track the progress of the cases being prosecuted across the state. An Information filed in the registry of the High Court shall contain the particulars of offence, and shall include: (a) the proof of evidence, consisting of: (i) the list of witnesses, (ii) the list of exhibits to be tendered, (iii) summary of statements of the witnesses, (iv) copies of statement of the defendant, (v) any other document, report, or material that the prosecution intends to use in support of its case at the trial, and (vi) any other relevant document as may be directed by the court.⁵⁰ Where the alleged offence is rape, defilement, incest, unnatural or indecent offences against a minor, indecent assault or trafficking in minors, then of necessity, the Information and proof of evidence will contain sensitive personal information of the minor. The proof of evidence could consist of the interview of the child victim, child witnesses, digital clips of the child, and forensic medical reports on the child. Court documents are public documents. However, the personal information of children are deserving of special treatment.

Model statement taking rooms are being constructed in several police stations across Nigeria in an effort to help the investigating agencies comply with national minimum standards on statement taking and especially confessions. The statement rooms are equipped with audio-visual facilities. The digital products will sometime relate to children and it is important that the investigator, the prosecutor and the courts properly understand the protocols of data privacy and data protection. How court registries honour the right of the public to access public information and also respect the rights of children to privacy as required by the Freedom of Information Act, becomes a critical issue. More judges are being relieved of the burden of long-handwriting of court proceedings by the introduction of speech-to-text technology and more courtrooms are having their proceedings recorded by audio-visual technology. More courthouses are having closed circuit television (CCTV) gadgets. The deployment of these and other technology have data protection implications for adults and children. Care should be taken that where the technologies are installed by external bodies, the software and data pool are not linked outside the country.

4. Children's data in Correctional facilities

Many national initiatives on the treatment of offenders have been inspired by international agreements. At the time most of these international agreements were made, data protection and privacy were not mainstreamed into the conversation. With the growing knowledge of datafication of our world, it is incumbent to interrogate the options available for data privacy in the midst of the wide latitude given for data collection and processing.

⁵⁰ ACJA s378 (1)(d); 379 (1).

Age for admission into correctional facilities

The rule of international practice that young prisoners shall be kept separate from adults is codified in Nigerian law.⁵¹ Borstal Institutions are designated for the detention and treatment of juvenile offenders.⁵² There should be no children in adult correctional facilities in Nigeria. Offenders below the age of 18 are classified as "juvenile offenders".⁵³ Young offenders shall not be kept in adult custodial facilities.⁵⁴ Where an apprehended child has attained the age of the fifteen years and no secure accommodation is available and keeping in some other authority's accommodation would not be adequate to protect the public from serious harm from the child, the apprehended child has to be moved to a State Government accommodation.⁵⁵ Unfortunately, many children are detained in prisons. The majority of these children are not housed in special youth or juvenile detention centres, but are incarcerated together with adults, often under very unfavourable conditions.⁵⁶ The presence of any child in an adult Correctional Center is illegal. This partly accounts for the great public outcry when law enforcement agencies embarked on indiscriminate raids during the 2024 anti-government protests that led to incarceration of children in the Kuje prisons. The Correctional Service Act mandates that a Superintendent refuse to admit any person brought in who is underage.⁵⁷ The rejection of an underage is a legal obligation. When this is added to section 248 of the CRA, that established a panoply of Children's Centres which can properly take care of child truancy and deviancy, there is no reason why any child should be held in an adult facility to be contaminated.⁵⁸ Section 21 of the Correctional Service Act designates thirteen classes of persons as Official Visitors of Custodial Centers. If their functions are properly discharged, there should be quick detection of underage inmates.

The Nelson Mandela Rules prescribe that a standardized prisoner file management system should be in every place where persons are imprisoned. Such a system may be an electronic database of records or a registration book with numbered and signed pages.⁵⁹ Upon admission of every prisoner, personal information shall be entered in the prisoner file management system, including precise information enabling determination of his or her unique identity, respecting his

⁵¹ Rule 11 (d), The Nelson Mandela Rules

⁵² First Schedule to Nigerian Correctional Services Act 2019.

⁵³ NCS s46.

⁵⁴ NCS s35(1). S. 35 (2) provides that (2) The Correctional Service shall establish separate male and female borstal training for juvenile offenders in all the States of the Federation and their treatment, including rehabilitation, shall be the underlying principle for the custody.

⁵⁵ CRA s212 (3) (b).

⁵⁶ Africa's Agenda for Children 2040 Fostering an Africa Fit for Children. P. 17

https://au.int/sites/default/files/newsevents/agendas/africas_agenda_for_children-english.pdf [May 18, 2025]

⁵⁷ NCS s13 (3) (b) (ii). Section 13 (4) provides that the Superintendent for the purpose of subsection (3): (a) shall ensure due documentation of the name, date, and other particulars relating to the person that was refused admission and the officer and agency that presented the person for admission into custody; (b) shall render immediate returns on documentation made under paragraph (a) to the State Controller of Correctional Service; and (c) may rely on relevant professionals in the determination of the state of mind, age or physical bodily conditions as presented.

⁵⁸ Vearumun Vitalis Tarhule, Synoptic Appraisal of the Nigerian Correctional Service ACT, 2019.

<https://www.bsum.edu.ng/journals/files/law/vol9/article1.pdf> [Accessed on May 20, 2025]

⁵⁹ United Nations Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules). General Assembly Resolution 70/175, annex, adopted on 17 December 2015. Rule 6. Procedures shall be in place to ensure a secure audit trail and to prevent unauthorized access to or modification of any information contained in the system.

or her self-perceived gender; the names of his or her family members, including, where applicable, his or her children, the children's ages, location and custody or guardianship status.⁶⁰ In line with international best practices, the Correctional Service maintains a centralised database management system.⁶¹ The Data Protection Act makes provision for data collection and processing carried out by a competent authority for the purposes of the execution of a criminal penalty, in accordance with any applicable law.⁶² The offender's personal records shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the offender's case or to other duly authorized persons.⁶³ The health-care service shall prepare and maintain accurate, up-to-date and confidential individual medical files on all prisoners, and all prisoners should be granted access to their files upon request. A prisoner may appoint a third party to access his or her medical file.⁶⁴ All records shall be kept confidential and made available only to those whose professional responsibilities require access to such records. Every prisoner shall be granted access to the records pertaining to him or her, subject to redactions authorized under domestic legislation, and shall be entitled to receive an official copy of such records upon his or her release.⁶⁵ Prisoner file management systems shall also be used to generate reliable data about trends relating to and characteristics of the prison population, including occupancy rates, in order to create a basis for evidence-based decision-making.⁶⁶ Every 90 days the Comptroller-General of Prisons shall make returns to the Attorney-General and designated heads of courts on persons awaiting trial held in custody in Nigerian prisons for a period beyond 180 days from the date of arraignment. The report contains personal information about awaiting trial inmates.⁶⁷

Children of Correctional in-mates

The number and personal details of the children of a woman being admitted to prison shall be recorded at the time of admission. The records shall include, without prejudicing the rights of the mother, at least the names of the children, their ages and, if not accompanying the mother, their location and custody or guardianship status. All information relating to the children's identity shall be kept confidential, and the use of such information shall always comply with the requirement to take into account the best interests of the children.⁶⁸ States Parties should undertake arrangement for temporary release, parole or suspended sentence (for minor or casual offences) to enable expectant accused or prisoners to deliver outside the remand or prison facilities; (b) where birth

⁶⁰ The Nelson Mandela Rules Rule 7 (a) (f).

⁶¹ NCS s18 (3).

⁶² DPA s3 (2) (a).

⁶³ Rule 3.12 of the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) Adopted by General Assembly resolution 45/110 of 14 December 1990. <https://www.ohchr.org/sites/default/files/tokyorules.pdf>

⁶⁴ R26, The Nelson Mandela Rules.

⁶⁵ R9, The Nelson Mandela Rules.

⁶⁶ R10, The Nelson Mandela Rules.

⁶⁷ ACJA s111 (1) (2).

⁶⁸ United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders with their Commentary. (The Bangkok Rules). Rule 3. A/RES/65/229 Resolution adopted by the General Assembly on 21 December 2010. https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf [Accessed on May 21, 2025].

occurs in remand or prison facilities, States Parties should ensure that they shall be registered in the local birth registration office; and (c) there should be no mention of remand or prison as place of birth on a child's birth records. Only the locality shall be mentioned in the child's birth records.⁶⁹

Children born in Correctional Centers

The continental requirement is that on admission to prison the number and personal details of children accompanying their mothers should be recorded. 'If a baby is born whilst his or her mother is in prison then their birth must be registered in accordance with Article 6 of the African Children's Charter.'⁷⁰ The Correctional Service shall provide all necessary facilities to address the special needs such as medical and nutritional needs of female inmates, including pregnant women, nursing mothers and babies in custody. However, babies shall not remain in custodial facilities beyond 18 months, after which such babies shall be handed over to the families of inmates in the absence of which they shall be taken to designated welfare centers.⁷¹ In women's prisons, there shall be special accommodation for all necessary prenatal and postnatal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the prison. If a child is born in prison, this fact shall not be mentioned in the birth certificate.⁷² Every child shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in this Charter **irrespective of the child's** or his/her **parents'** or legal guardians' race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other **status**.⁷³

Children's Data with Non-Custodial Authorities

The Nigerian Non-Custodial Services is saddled with the responsibility of administering non-custodial services including community service, probation, parole, restorative justice measures and any other non-custodial measure assigned to the correctional service by the court. Academic writers acknowledge contradictions between the Correctional Service Act and the ACJA and agree that they should be resolved in favour of the Correctional Services.⁷⁴ The data

⁶⁹ African Committee of Experts on the Rights and Welfare of the Child (ACERWC) General Comment No. 1 (Article 30 of the African Charter on the Rights and Welfare of the Child) on "Children of Incarcerated and Imprisoned Parents and Primary Caregivers" 2013 p. 10. https://www.acerwc.africa/sites/default/files/2022-09/General_Comment_Article_30_ACRWC_English.pdf [Accessed on May 20, 2025]

⁷⁰ African Committee of Experts on the Rights and Welfare of the Child (ACERWC). General Comment No. 1 (Article 30 of the African Charter on the Rights and Welfare of the Child) on "Children of Incarcerated and Imprisoned Parents and Primary Caregivers" 2013. P. 14. https://www.acerwc.africa/sites/default/files/2022-09/General_Comment_Article_30_ACRWC_English.pdf [Accessed on May 16, 2025].

⁷¹ NCS s34. (2) (6).

⁷² The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) Rule 28. https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-book.pdf [Accessed on May 20, 2025].

⁷³ The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) Articles 3, 30. https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-book.pdf [Accessed on May 20, 2025].

⁷⁴ Vera Monehin A Review of the Nigerian Correctional Service Act 2019: Prospects and Challenges. <https://www.researchgate.net/publication/387998217> [Accessed on May 20, 2025].

Vearumun Vitalis Tarhule, Synoptic Appraisal of the Nigerian Correctional Service ACT, 2019. <https://www.bsum.edu.ng/journals/files/law/vol9/article1.pdf> [Accessed on May 20, 2025].

implication is that as the laws presently are, there are multiplicities of children data controllers and processors in the non-custodial arena. There will be interaction with children data in the course of the performance of their duties. Rule 8 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice stresses the importance of the protection of the juvenile's right to privacy. Young persons are particularly susceptible to stigmatization. Criminological research into labelling processes has provided evidence of the detrimental effects (of different kinds) resulting from the permanent identification of young persons as "delinquent" or "criminal". In principle, no information that may lead to the identification of a juvenile offender shall be published.⁷⁵ These obligations apply to Ministry of Women Affairs, Child Welfare Departments and NGOs that assist children in serving punishment, counselling, etc.

5. Law reporting

Data collection and processing occur in respect of publication in the public interest, for journalism, educational, artistic and literary purposes.⁷⁶ Court judgments are public records and law reporters have access to them. Most of the law reporting is a verbatim publication of the court judgments and as such it is critical that judges, Magistrates and Arbitrators be guided on the extent to which their rulings and judgements will contain personal information especially of children. The Child Rights Act requires the personnel of the court to be afforded professional education, in-service training, refresher courses and other modes of instruction to promote and enhance the necessary professional competence they require.⁷⁷ The rules and practice of courts accommodate the use of aliases, acronyms and anonymizations and these can be utilized in court records. It has been contended that law reporters are largely unregulated in Nigeria but as data controllers who particularly process sensitive personal data, they are subject to the provisions of the DPA. By section 24(1)(a), law reporting companies are meant to be fair in their handling of personal data especially as reflected in the judgments they publish and only the minimum personal data necessary for the purpose of collection.⁷⁸ Section 157 of the Child Rights Act, is very categorical on the privacy of children's information in the justice system. No person shall publish the name, address, school, photograph, or anything likely to lead to the identification of a child whose matter

The ACJA 2015 and the Nigerian Correctional Service Act 2019: Resolving Conflicts, Harmonizing Similarities. <https://juritrustcentre.org/index.php/reports-and-publications/in-brief/95-the-acja-2015-and-the-nigerian-correctional-service-act-2019-resolving-conflicts-harmonizing-similarities> [Accessed on May 20, 2025].

⁷⁵ United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") Adopted by General Assembly resolution 40/33 of 29 November 1985.

<https://www.ohchr.org/sites/default/files/beijingrules.pdf> [Accessed on May 20, 2025].

⁷⁶ DPA s3 (2) (d).

⁷⁷ CRA s154 (1).

⁷⁸ Olumide Babalola The Avoidable Privacy Breach in Dr Abalaka's Defamation Judgment and the Urgent Need to Regulate Law Reporting in Nigeria. <https://thenigerialawyer.com/the-avoidable-privacy-breach-in-dr-abalakas-defamation-judgment-and-the-urgent-need-to-regulate-law-reporting-in-nigeria/> [Accessed on May 15, 2025]. Data minimization requires that only the personal data that is absolutely necessary to achieve a specific purpose should be collected. Any data that is not needed for the defined purpose should not be collected or stored. In reporting judgments, some highly sensitive personal data ought not be published in the report. By this principle, data processing must be carried out in a way that does not harm or disadvantage the data subject.

is before the court, except in so far as is required by the provisions of this Act.⁷⁹ Section 108 of the Matrimonial Causes Act also places restriction on publication of evidence and court proceedings and empowers the court to disallow any publication. Even though court documents are public documents, section 12 of the Freedom of Information Act validates the non-disclosure of information in a public record where disclosure will infringe on the data subject's privacy.

6. Processing of children's data for law enforcement

The consent of the data subject for a specific, legitimate and lawful purpose is the fundamental principle that undergirds the processing of personal data in Nigeria.⁸⁰ However, one of the ways by which personal data can be accessed and processed in Nigeria is by the legitimate authority of the State. Sections 3 (2) and 32 (4) of the DPA restrict the rights of parental consent for the collection and processing of children's data in law enforcement related matters. Section 26 (b) (ii) – (v) of the DPA provides the lawful basis for data processing:

if the processing is necessary for compliance with a legal obligation to which the data controller or data processor is subject; is to protect the vital interest of the data subject or another individual; is for the performance of a task carried out in the public interest or in the exercise of official authority vested in the data controller or data processor, or for the purposes of the legitimate interests pursued by the data controller or data processor or by a third party to whom the data is disclosed.⁸¹

The provisions of the DPA regulating principles and lawful basis governing processing of personal data, data security, cross-border transfers of personal data, registration and fees do not apply to a data controller or data processor when processing of personal data is carried out by competent authorities for the purposes of the prevention, investigation, detection, prosecution or adjudication of criminal offences or the execution of criminal penalties in accordance with any applicable law; or carried out by competent authorities as necessary for national security. The recognition given to data collection and processing by Law Enforcement Agencies, Correctional Service, Courts and Law Reporters in section 3 (2) (a – e) of the Data Protection Act does not exempt them for all the obligation imposed on data controllers and processors under the DPA. These agencies have itemized privileges subject to the rights and freedoms under the Constitution. The central rules that are applied to the processing of data embody a set of largely procedural, “fair information” principles stipulating, inter alia, the manner and purposes of data processing, measures to ensure adequate quality of the data, and measures to ensure that the processing is transparent to, and capable of being influenced by, the person to whom the data relate (“data

⁷⁹ A person who acts in contravention of the provisions of this section commits an offence and is liable on conviction to a fine of fifty thousand naira or imprisonment for a term of five years or to both such fine and imprisonment. CRA s157 (2).

⁸⁰ Article 2(1)(a)(ii) of the Regulation provides that Personal Data shall be collected and processed in accordance with specific, legitimate and lawful purpose consented to by the Data Subject.

⁸¹ Interests shall not be legitimate where they are overridden by the fundamental rights and freedoms and the interests of the data subject; they are incompatible with other lawful basis of processing under section 26 (1)(b); or the data subject would not have a reasonable expectation that the personal data would be processed in the manner envisaged, DPA s26 (2).

subject”).⁸² These principles function as standards which guide the balancing of interests between the need for law enforcement access to the data and the liberty and privacy of the children who owns the data.

When a lawful basis has been established for data processing in the administration of justice sector, there must be strict adherence to the provisions of section 25 of the DPA. Every public institution seeking to process personal data in public, legal or for vital interest of a data subject must provide an undertaking to avoid any attempt to deanonymize the information shared.⁸³ Section 25 (1) of the DPA provides that:

a data controller or data processor shall ensure that personal data is (a) processed fairly, lawfully and in a transparent manner; (b) collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes;⁸⁴ (c) adequate, relevant and limited to the minimum necessary for the purposes for which the personal data was collected or further processed; (d) retained for no longer than is necessary to achieve the lawful bases for which the personal data was collected or further processed; (e) accurate, complete, not misleading and, where necessary, kept up to date having regard to the purposes for which the personal data was collected or is further processed; and (f) processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and access against loss, destruction or damage and the data controller and data processor shall use appropriate technical and organisational measures to ensure the confidentiality, integrity and availability of the personal data.

Section 25 of the DPA will be read conjunctively with the Nigerian Data Protections Regulations (NDPR). Article 2 of the NDPR outlines nine principles that govern data processing in Nigeria. The provisions of Article 2 of the NDPR are not subject to provisions in other laws, rather they are in addition to the procedures laid down in the Regulation or any other instrument for the time being in force. This drafting affirms the primacy of the principles established in Article 2 of the Regulations. In addition to the bases for processing data outlined in the NDPR, the Guideline provides clarity to public institutions on the components of vital and public interest. Processing of personal data by a public institution must be founded on public, legal and vital interest and the determination of these bases shall be subject to the following: i. the processing is directly or collaterally linked to the performance of a mandate stipulated by an Act of the National Assembly; ii. the processing is necessary for the promotion of the security or welfare of the citizens, justifiable in a democratic and free society; and iii. a directive of the President in

⁸² Lee A. Bygrave, *Privacy and Data Protection in an International Perspective*. Scandinavian Studies in Law. (Stockholm Institute for Scandinavian Law, 2010) p.166.

⁸³ Paragraph 6.0 (e) (ii) of the Guideline

⁸⁴ Compatibility of further processing shall be assessed in light of: (i) the relationship between the original purpose and the purpose of the intended further processing, (ii) the nature of the personal data concerned, (iii) the consequences of the further processing, (iv) how the personal data has been collected, and (v) the existence of appropriate safeguards; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall not be considered to be incompatible with the initial purposes. DPA s25 (3).

furtherance of the powers vested on that office by the Constitution or a legal instrument.⁸⁵ Paragraph 2.3 of the Guideline expressly stipulates that even where there is another legal basis for processing personal data, a public institution must seek and obtain consent if the purpose of processing is:

- a. for any direct marketing or communication activity, except to existing customers of the Institution who have accessed a good or a service and given consent earlier;
- b. for the processing of sensitive personal data such as health, ethnic, political affiliation, religious beliefs, trade union membership, biometric, genetic and sexual orientation;
- c. where personal data is used for purposes other than those initially specified to the data subject;
- d. where personal data relating to a child is processed, in which case, consent is given by the parent or guardian;
- e. before personal data is processed outside Nigeria; and
- f. before the data controller makes a decision based solely on automated processing which produces legal effects concerning or significantly affecting the data subject.

Section 205 of the Child Rights Act is explicit on the rights of the child to privacy in the context of the administration of justice in Nigeria. It provides that:

the right of the child to privacy shall be respected at all stages of child justice administration in order to avoid harm being caused to the child by undue publicity or by the process of labeling. No information that may lead to the identification of a child offender shall be published. Records of a child offender shall (a) be kept strictly confidential and closed to third parties; (b) made accessible only to persons directly concerned with the disposition of the case at hand or other duly authorised persons; and (c) not be used in adult proceedings in subsequent cases involving the same child offender.

7. Sanctions for breach of children's data

The protection of data in Nigeria is primarily constitutional and secondarily legislative. There would be other claims for data breaches that are not privacy-based. Such claims, civil or criminal, will be advanced under the relevant pieces of legislation. Sections 47 - 49 of the DPA create administrative remedies in the event of a data breach. The administrative action taken by the Data Protection Commission could lead to remedial action, payment of a fine or payment of compensation to the data subject. The Data Controller or Processor has thirty days to seek judicial review of the Commission's decision. Failure to comply with the Commission's enforcement order attracts criminal sanctions.⁸⁶

Constitutional remedies

The infringement of the right to personal data could be a violation of constitutional guaranteed rights provided in Chapter IV, CFRN 1999. Furthermore, such an infringement could result in a criminal offence as well as civil litigation. When privacy questions arise on the collection, processing and storage of data, section 37 of the Constitution can be invoked,

⁸⁵ Para 2.2 (g) of the Guideline

⁸⁶ DPA ss50 and 53.

notwithstanding that the processors are law enforcement agencies. In *Digital Right Lawyers Initiative v. Minister of Industry, Trade and Investment & 2 Ors.*⁸⁷ the Applicant instituted an action to enforce its members' fundamental rights on the grounds that the respondents operated a Micro Small and Medium Enterprise (MSME) Survival Fund online portal that was receiving personal information of individuals including sensitive information such as BVN without a published Privacy Policy and security measures to protect personal data. The court found no difficulty in holding that the non-compliance with NDPR constituted violations of the fundamental right to privacy as enshrined in section 37 of the Constitution.

Civil remedies

Section 52 of the DPA, provides that a data subject who suffers injury, loss or harm as a result of a violation of this Act by a data controller or data processor, or a recognized consumer organization acting on behalf of such a data subject, may recover damages by way of civil proceedings in the appropriate court from such data controller or data processor. A data controller or data processor owes a duty of care in respect of data processing.⁸⁸ Article 2 (2) of the Regulation also provides that anyone who is entrusted with Personal Data of a Data Subject or who is in possession of the Personal Data of a Data Subject, owes a duty of care to the said Data Subject. A data subject has a cause of action in negligence against a data controller that mishandles personal data under the duty of care imposed in Article 2.2 of NDPR. The concept of trust is most appropriate with data in the custody of administrators of justice. The access, processing and storage of the personal data is as a result of the operation of law, vital interest of a natural person or of public interest. For most parts, the data is accessed without the legal obligation to obtain the consent of the data subject. A breach of trust should attract such penalties as to serve as deterrence.

Criminal remedies

Data collection, processing, and storage in contemporary Nigeria are driven both by security from the State and commercial motives of local and foreign corporations. Implementation of e-governance as a means of improving governance and deepening democracy heightens the need for citizens' personal information, including children, to be safeguarded, regulated, and protected against breaches.⁸⁹ Several laws proscribe the unlawful use of personal data even though most of them were enacted before the Data Protection Act. One of the more serious offences in the field of data privacy and data protection in Nigeria is for a person to access data or information in the national identity database without lawful authorization. Such unlawful and unauthorized access, attracts on conviction, an imprisonment of not less than ten years without the option of a fine.⁹⁰ A person who publishes the name, address, school, photograph, or anything likely to lead to the identification of a child whose matter is before the court commits an offence and is liable on conviction to a fine of fifty thousand naira or imprisonment for a term of five years or to both such

⁸⁷ Suit No: FHC/AWK/CS/116/2020 delivered on 2nd November 2021 per Hon. Justice N.O. Dimgba

⁸⁸ DPA s25 (2).

⁸⁹ The National Digital Economy Policy and Strategy (NDEPS) was launched in November 2019.

⁹⁰ NIMC s28.

fine and imprisonment.⁹¹ ACJA also prescribes punishment for breach of confidentiality of a protected witness.⁹²

8. Conclusion

Vital statistics are important indices for social and economic planning. There is a momentum building within the global development community towards the strengthening of civil registration and vital statistics (CRVS) systems.⁹³ Sections 202 and 238 of the CRA permit the conduct of research by the government for effective planning and policy formulation on child justice administration. Section 261 enables National and State Committees to collect and document information on all matters relating to the rights and welfare of a child. The government also supports organizations conducting research. International agreements on various aspects of the administration of justice encouraged data collection. Many crimes are being committed that require cooperation between law enforcement agencies of multiple countries. The effectiveness of the collaboration is rooted in the cross-border transfer of data. The global community has now come into an awareness of the unintended consequences of the massive data accumulation. Governments are trying to catch up with technology and rein in the rampant breaches of personal data. There should be a deliberate and systematic implementation of section 154 (1) of the Child rights Act that requires the personnel of the court to be afforded professional education, in-service training, refresher courses and other modes of instruction to promote and enhance the necessary professional competence they require. This should be extended to every segment of the administration of justice system. There should be Practice Directions on the handling of data in the court system. We agree that a governance regime that treats children fairly will be one that works for everyone, and it may also prove more efficient and effective than one that addresses (some) adults' needs first and then tacks on children's as an afterthought.⁹⁴ The importance of incorporating privacy principles within the design, operating and management processes⁹⁵ of the administration of justice system in order to attain a frame of integral protection regarding data protection cannot be overstated.

⁹¹ CRA s157 (2).

⁹² ACJA s232(5).

⁹³ Chiemezie Atama & others, Challenges to Vital Registration in Nigeria. *International Journal of Sociology and Anthropology* Vol. 13 (1), pp. 1-8, January-March 2021 DOI: 10.5897/IJSA2020.0846

⁹⁴ Sonia Livingstone and Amanda Third, 'Children and Young People's Rights in the Digital Age: An Emerging Agenda' (2017) *New Media & Society* <http://eprints.lse.ac.uk/68759/>

⁹⁵ Resolution on Privacy by Design. 32nd International Conference of Data Protection and Privacy Commissioners. Jerusalem (Israel) 27-29/10/2010. https://edps.europa.eu/sites/edp/files/publication/10-10-27_jerusalem_resolutionon_privacybydesign_en.pdf