

## THE RIGHT TO BE FORGOTTEN IN NIGERIA: EMERGING LEGAL NORM OR ILLUSION? A CRITICAL ANALYSIS UNDER THE NIGERIA DATA PROTECTION ACT 2023 AND COMPETING PUBLIC INTEREST

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### Abstract

*The belief that individuals have that legal entitlement to demand the deletion of their personal information is one that currently occupies a troubling space in contemporary legal systems. The practice of this entitlement in Nigeria, christened the right to be forgotten, has become a problem that is constitutional just as it is statutory. This study interrogates whether the right to be forgotten constitutes an enforceable legal right within the Nigerian legal framework or a chimera disguised as a right. To situate the inquiry, the study examines the doctrinal foundations of data protection law, drawing from the European Union's General Data Protection Regulation (GDPR), particularly Article 17, as well as the landmark decision of the Court of Justice of the European Union in *Google Spain SL v Agencia Española de Protección de Datos*. The analysis then turns to the Nigerian Data Protection Act 2023, assessing whether it provides an express or implied equivalent of the right to erasure. The study argues that although the NDPA 2023 contains fragmentary provisions from which a limited form of the right to be forgotten may be inferred, these provisions fall short of establishing a coherent and enforceable legal right. The absence of explicit constitutional recognition and the lack of doctrinal clarity render the right normatively present but legally underdeveloped. The study concludes that the right to be forgotten in Nigeria is neither illusory nor fully realized; rather, it exists within an uneasy normative space, pending the legislative and constitutional consolidation necessary to give it full juridical expression.*

**Keywords:** Data protection, Data erasure, Personal information, Legislation, the right to be forgotten, Nigeria.

### 1. Introduction

Every wave of technological transformation confronts the law with questions it was never enacted to answer.<sup>1</sup> The emergence of digital identity, digital safety, data permanence, and informational autonomy has brought this tension into sharp relief, particularly in the evolving discourse on the right to be forgotten. In recognition of this, the digital age is no exception for obvious reasons. While human beings have the ability to forgive and forget, over time, the digital age (internet, in the context) is notorious for an inexhaustible capacity to keep and process information, and the almost-permanent accessibility to that information immediately it is uploaded.<sup>2</sup> These features have challenged the positions of traditional legal systems around the world with a novel, yet ancient question: does an individual have the right to be released from his past?

In the European Union, this question was answered in the case of *Google Spain SL v Agencia Española de Protección de Datos*,<sup>3</sup> to wit: individuals can, in some circumstances, require that

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<sup>1</sup> Daniel Idibia, 'Law and Development in the Age of Disruptive Technologies: A Conceptual Discourse' *African Customary and Religious Law Review* (2025) 6 (1) 35-41.

<sup>2</sup> Himanshi Bhatia, Eepti Khubalkar, and Prateek Sikchi, 'Erasing the Archives: Right to be Forgotten in Cyber World' *Russian Law Journal* (2022) 10 (2) 49-62.

<sup>3</sup> [2014] ECLI:EU:C: 2014:317 (CJEU, Grand Chamber).

search engines delete their accurate information from the World Wide Web. Indisputably, the decision of this court was met with global conversations on the boundaries of digital memory.<sup>4</sup> In some other words, how far is too far? The conversation, thus, births different refinements across different jurisdictions. From the standpoint of the Nigerian municipal laws, the Nigerian Data Protection Act 2023, established in 2023, was a giant leap towards an attempt to enact a data protection framework in the country.<sup>5</sup> Be that as it may, the question as to whether this law, alongside its provisions, harbours a right akin to the right to be forgotten is undetermined. The reasons for this are not far-fetched and are listed below:

- i. The lack of express statutory language;
- ii. The novelty of judicial decisions and statutory interpretations on the subject matter; and
- iii. The countervailing pressures of competing constitutional rights.

All these render the answer far from being straightforward.

From this juncture, this study engages the following sequence. The next section is a conceptual definition of the right to be forgotten. The study thereafter engages the Nigerian legal framework for data protection, together with an assessment of its provisions and gaps. Whether or not the right to be forgotten exists under Nigerian law is the crux of the section that follows. In addition, the study maps a consideration of competing public interest vis-à-vis the subject matter. It will also propose a series of recommendations that seek to reconcile these tensions. The study gives a conclusion that returns to the foundational question with an answer.

## 2. What is the Right to Be Forgotten?

From inception, it needs to be acknowledged that “the right to be forgotten”, being a cluster of five words, rejects a universally settled definition.<sup>6</sup> The difficulty in giving a one-size-fits-all definition to this concept is owing to the fact that its content tilts differently to favour the context in which it is being used or the class of information to which it is directed.<sup>7</sup> However, for the sake of this study, the definition of Leta Jones<sup>8</sup> seems to be almost-encompassing, and it is hereby adopted, hereunder:

The right to be forgotten can be described as the legal entitlement of a person to demand the deletion of de-indexing of their personal information from digital platforms or search engines, many times, when the continued availability of that information is no longer necessary or justifiable in the light of the purposes for which it was initially collected.<sup>9</sup>

The genealogy of this right can be traced to the 1890 work of Warren and Brandeis,<sup>10</sup> where they explained privacy as a right of individuals to decide what information about themselves is shared with the world. This idea, it is argued, extends to the right to control one's past information, including the removal of once-public information from circulation.<sup>11</sup> The supreme court case of

<sup>4</sup> Eleni Frantziou, 'Further Developments in the Right to be Forgotten: The European Court of Justice's Judgment in Case C-131/12, Google Spain' *Human Rights Law Review* (2014) 14(4) 761-777.

<sup>5</sup> Patrick Aloamaka, 'Data Protection and Privacy Challenges in Nigeria: Lessons from Other Jurisdictions' *UCC Law Journal* 3 (1) 281-321 <<https://doi.org/10.47963/ucclj.v3i1.1259>> accessed 26 April 2026.

<sup>6</sup> Yann Padova, 'Is the Right to be Forgotten a Universal, Regional, or "Global" Right?' *International Data Privacy Law Journal* (2019) 9 (1) 15-29 <<https://doi.org/10.1093/idpl/ipy025>> accessed 26 April 2026.

<sup>7</sup> *Ibid.* P. 21.

<sup>8</sup> Meg Leta Jones, *Ctrl + Z: The Right to Be Forgotten* (NYU Press 2016).

<sup>9</sup> *Ibid.* P. 3.

<sup>10</sup> Agnieszka Czubik, "'The Right to Privacy' by S. Warren and L. Brandeis – The Story of a Scientific Study in the United States' *Ad American* (2016) 17 (17) 211-219 <<https://doi.org/10.12797/AdAmericam.17.2016.17.16>> accessed 22 April 2026.

<sup>11</sup> *Ibid.*, 216.

*M. D.P.D.T v Okonkwo*<sup>12</sup> in a way supported the principle of the right to be forgotten when it held that the sum total of the right to privacy and of freedom of thought which an individual possesses implies that an individual should be left alone to choose a course for their life (this by implication include the right to have information relating to them non-public) in so far it does not override public interest.

However, it is needful to resist the conflation of the right to be forgotten with a general entitlement to erase all information that seems uncomfortable or embarrassing from public discourse. In other words, the right to be forgotten is not absolute.<sup>13</sup> It is conditional and dependent on a balance that accommodates the legitimate interests of others, with the privacy of the data subject.<sup>14</sup> To foster this right, questions are asked as to whether the information is still relevant to any public interest. Does its continued availability serve an objective proportionate to its collection?

### 3. International Perspectives on the Right to Be Forgotten

Notably, the European Union provides the world's most developed legal framework for the right to be forgotten, as Article 17 of the GDPR speaks volumes of this. The Regulation provides for the right to erasure, colloquially regarded as the right to be forgotten. In its provisions, it spells out the requirements and conditions precedent to be maintained for data to be forgotten in the annals of history. In the introductory part of Article 17, being sub-article 1, it is plucked out and reproduced hereunder:

The data subject shall have the right to obtain from the controller the erasure of personal data concerning him or her without undue delay, and the controller shall have the obligation to erase personal data without undue delay where one of the (following) grounds applies.

The grounds provided thereafter are regarded as condition precedents, among which are when personal data are no longer necessary in relation to the purposes for which they were collected; the data subject withdraws consent on which the processing is based; the data subject objects to the processing and there are no overriding legitimate grounds for the processing; the personal data have been unlawfully processed; the personal data have to be erased for compliance with a legal obligation in Member State law; and the personal data have been collected in relation to the offer of information society services referred to in Article 8(1).<sup>15</sup> Meanwhile, the judicial backing to this provision is given in the *Google Spain* case.<sup>16</sup> The facts of the case, thusly, Mr. Costeja González, a Spanish national, requested that Google remove from its search results links to a 1998 news study wherein it was announced that González's house was foreclosed. This information, he claimed, was lawful at the time of the publication, albeit it was no longer relevant to his present circumstances. The Court held that search engine operators like Google are data controllers in respect of the processing they carry out when indexing web content and that individuals are right holders and can require the de-listing of search results, notwithstanding that the content is still lawfully available at its source. Further, it is the position of the court that a right, as a general rule, overrides the economic interests of the search engine operator.<sup>17</sup> It also outweighs the interest of the public in having access to the information through a search, even though exceptions abound in the instances where access to the information is justified by the preponderance of public interest. For instance, the public profile of a Head of State.

<sup>12</sup> (2001) CLR 4(f) (SC), (2001) 7 NWLR Pt. 711, 206 SC.

<sup>13</sup> Anita Kilmas, 'The 'Right to be Forgotten' and the Right to Freedom of Expression and Information-Legal Problems on the Basis of the Judgment of the Supreme Administrative Court of 9 February 2023' *Central European Academy Law Review* (2024) 2 (1) 103-124.

<sup>14</sup> *Ibid*, P. 112.

<sup>15</sup> See also Recital 66.

<sup>16</sup> *Google Spain v AEPD and Mario Costeja González* ECLI:EU:C: 2014:317.

<sup>17</sup> *Ibid*.

In addition, the GDPR did not hesitate to specify the exceptions to the right to erasure. This is provided in Article 17(3). It provides that the right to erasure in Article (1) will not apply to the extent that processing is for exercising the right of freedom of expression and information; for compliance with a legal obligation; for reasons of public interest in the area of public health; for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes; and for the establishment, exercise or defence of legal claims.<sup>18</sup> These exceptions are not trump cards. They stress the recognition that the right to be forgotten must be weighed in a balancing exercise with the interests of the public.

Meanwhile, subsequent legal systems have refined the boundaries of this right. A number of them are the decision of the court in the case of *Google LLC v Commission nationale de l'informatique et des libertés (CNIL)*.<sup>19</sup> In this case, the court explicated that the geographical bounds of de-listing obligations are limited to the EU versions. This does not extend to all versions globally. Moreover, in England and Wales, the decision of *NT1 & NT2 v Google LLC*<sup>20</sup> is instructive. The Court held that the right to be forgotten must be balanced against the public interest in access to information. Warby J maintained that the rationale for delisting information must be justified, weighing factors like the nature of the information, the passage of time, the public role of the data subject, and the seriousness of the original conduct.<sup>21</sup>

#### 4. Legal Framework for Data Protection in Nigeria

While the Nigerian data protection adventure is yet incomplete, it has undergone a reasonable transformation.<sup>22</sup> For a larger part of the country's post-independence history (that is, 1960-2022), the protection of personal information in Nigeria was addressed via the implied provision of section 37 of the Nigerian Constitution, giving a one-size-fits-all approach to the protection of citizens' data. This is if and/or when it was addressed at all. Whereas, the common law torts of breach of confidence and defamation, and sectoral provisions in different legislation, also lend enforcement to the protection of personal information. This patchwork was inadequate when placed side by side with the demands of the digital age. In the meantime, and in a bid to catch up with this fast space, the National Information Technology Development Agency promulgated the Nigeria Data Protection Regulation 2019.<sup>23</sup> This was the first attempt to establish a bespoke regulation of personal data in the Nigerian digital space.<sup>24</sup> However, for the fact that it was a subsidiary legislation with little or no legal force, its status as a regulation issued by an agency and not enacted by the National Assembly<sup>25</sup> brought about questions surrounding its enforcement powers.

However, the enactment of the Nigerian Data Protection Act 2023 was indeed a quantum leap. For the very first time in Nigeria, a statutory framework for data protection was birthed.<sup>26</sup> The Act

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<sup>18</sup> See also Recitals 65 and 66.

<sup>19</sup> [2018] 3 WLR 1165 (Warby J).

<sup>20</sup> [2018] EWHC 799 (QB).

<sup>21</sup> *Ibid.*

<sup>22</sup> Sandra Eke, Franklin Okoro, and Maryam Abdulsalam, 'A Review of the Nigeria Data Protection Act 2023' *SPA Ajibade* (Lagos, 12 November 2024) <<https://spaajibade.com/a-review-of-the-nigeria-data-protection-act-2023/>> accessed 23 April 2026.

<sup>23</sup> Ijeoma Uju and Adenike Oyeledun, 'Nigeria Data Protection Regulation 2019: A Safety Net for Personal Information or Just Band-Aid?' *Templars* (Lagos, 25 March 2019) <[https://www.templars-law.com/wp-content/uploads/2019/03/Templars-Thought-Leadership\\_nigeria-data-protection-regulation-2019\\_-a-safety-net-for-personal-information-or-just-band\\_aid.pdf](https://www.templars-law.com/wp-content/uploads/2019/03/Templars-Thought-Leadership_nigeria-data-protection-regulation-2019_-a-safety-net-for-personal-information-or-just-band_aid.pdf)> accessed 23 April 2026.

<sup>24</sup> *Ibid.*

<sup>25</sup> S. 4, CFRN 1999 (As amended).

<sup>26</sup> Olumide Osundolire And Toyin Bashir, 'Nigeria Data Protection Act: What Individuals, Businesses And Organizations Should Know' *Banwo & Ighodalo* (Lagos, 22 June 2023) <

established the Nigeria Data Protection Commission (NDPC) as the regulatory authority.<sup>27</sup> It also states some sets of data protection principles that govern the processing of personal data,<sup>28</sup> whereas it confers on the data subjects a catalogue of rights, among which are the right of access to their personal data<sup>29</sup> and the right to rectification of inaccurate data.<sup>30</sup> Others include the right to data erasure<sup>31</sup> (which is the subject matter of this study), the right to object to processing,<sup>32</sup> the right to data portability,<sup>33</sup> etc. Meanwhile, it also gives providence to the duties of data processors and data controllers.<sup>34</sup> Needful to note is the difference in the definition of the duo, which is provided for in section 65 of the Act. Accordingly, a data controller is an(y) individual, private entity, public commission, agency, or any other body that, alone or jointly with others, determines the purposes and means of processing of personal data. Meanwhile, a data processor means an(y) individual, private entity, public authority, or any other body that processes personal data on behalf of or at the direction of a data controller or another data processor.

Moreover, the NDPA also established a mechanism of enforcement that is worthy of being regarded as an improvement over the NDPR regime. These mechanisms include administrative sanctions<sup>35</sup> and criminal penalties for the most serious contraventions.<sup>36</sup> To this end, the Commission is empowered to investigate complaints, issue compliance orders, and impose administrative fines.<sup>37</sup>

However, for all its celebrated provisions, limitations abound. It must be acknowledged that the NDPA 2023 is not without lacunae. One of these is the fact that the provisions of the Act are drafted in aspirational terms. They are too broad and thus require more interpretative elaboration before they yield concrete outcomes. This is particularly in the instance of the interface between data subject rights, the freedom of expression, press freedom, and other competing constitutional provisions, which are in stark contrast with selected provisions of the Act. In addition, the NDPA is a nascent institution. Its independence and authority are yet to be rigorously tested, nor have they been subjected to intense judicial scrutiny. These limitations cannot be excused from the grand scheme of the question as to whether the right to be forgotten can exist in any meaningful sense under Nigerian law. On this premise, the next section will examine the reality or fiction of the right to be forgotten under Nigerian law.

## 5. The Right to Be Forgotten under Nigerian Law: Reality or Legal Fiction?

The pressing question this study intends to address is direct, albeit deceptively, does the right to be forgotten have its ground under Nigerian law? For an honest intellectual pursuit to be achieved, the answer to this question requires a distinction between an express statutory right, an implied right that is derived from the construction of existing legislation, and a principle, closely aspirational, lacking the institutional support to give it a justiciable flavour.

On the first level, it must be expressed, on a candid note, that the Nigerian Data Protection Act 2023 does not recognize a right to be forgotten by name. Neither does any primary legislation in

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matter/nigeria-data-protection-act-what-individuals-businesses-and-organizations-should-know/> accessed 23 April 2026.

<sup>27</sup> S. 4, NDPA 2023.

<sup>28</sup> Part V, NDPA 2023.

<sup>29</sup> S. 34 (1)(b), NDPA 2023.

<sup>30</sup> S. 34 (1)(c), NDPA 2023.

<sup>31</sup> S. 34 (1)(d), NDPA 2023.

<sup>32</sup> S. 36, NDPA 2023.

<sup>33</sup> S. 38, NDPA 2023.

<sup>34</sup> S. 29, NDPA 2023.

<sup>35</sup> S. 48, NDPA 2023.

<sup>36</sup> S. 49, NDPA 2023.

<sup>37</sup> S. 48, NDPA 2023.

Nigeria. The NDPA is bereft of a provision equivalent to its sister legislation (the GDPR, by virtue of Article 17). For emphasis's sake, though at the expense of repetition, recourse is made again to section 3 of this study, which considers the GDPR in perspective. It was expressed in Article 17 of the GDPR that the data subject shall have the right to obtain from the controller the erasure of personal data concerning him or her without undue delay, and the controller shall have the obligation to erase personal data without undue delay where certain conditions are met and applied. It is needful to advert to the very caption in Article 17. It proclaims: Right to erasure ('right to be forgotten'). It is the strong contention of the writer that this linguistic attempt is far from inadvertent; it is a calculated choice on the part of the drafters to inscribe the provisions in its unqualified form. This lexicographical provision is lacking in the NDPA. The closest to the provision is section 34 (1) (d), and it provides that the data subject has the right to obtain from a data controller, without constraint or undue delay, the erasure of personal data concerning the data subject. The absence of such express provision insinuates that any claim to the right will have to be constructed in consonance with this sub-section, the Constitution, and the general principles of law, not without the interpretive uncertainty that these constructions may entail.

From another perspective, a constructive interpretation can be read into the provisions of the NDPA. Section 34 of the NDPA 2023 confers on the data controller the duty to erase personal data without undue delay where the personal data is no longer necessary in relation to the purposes for which it was collected or processed in the first place,<sup>38</sup> and the instance of which the data controller has no other lawful basis to retain the personal data.<sup>39</sup> While these provisions are expressed in the grammatical terms of "data erasure" and not in the language of "being forgotten", they contain the seed for which the right to be forgotten could be cultivated in principle, if properly interpreted in judicial terrain. To this end, the right to have one's personal data deleted at a time when it is no longer necessary or lawfully processed is a species of the genus of forgetting.

Moreover, section 37 of the Constitution guarantees the right to the privacy of citizens, their correspondence, and other private communications. While this was drafted in 1999, an era notorious for the physical privacy of the home, the telephone, and correspondence, its extension to the digital environment is not a stretch that Nigerian courts would be incapable of. This constitutional right to privacy, when read in an expansive tone and in conjunction with the provisions of the NDPA 2023, would, in no doubt, provide a backing for the judicial recognition of a right to be forgotten where and when necessary.

It will also be acknowledged that the NDPA 2023, unlike the GDPR, does not address the problem of search engine indexing and de-listing. Whereas this is the context in which the right to be forgotten has achieved a far-reaching expression in the *Google Spain* case.<sup>40</sup> The obligations imposed by the NDPA on data controllers are calibrated to the direct processors of personal data. Whether these obligations extend to search engine operators who aggregate information originally published by others is yet unresolved under Nigerian law.

## 6. Competing Public Interest and Considerations

The right to be forgotten does not exist in a vacuum but operates in tension with fundamental democratic values. Opponents of the right to be forgotten maintain that the right could lead to the widespread removal of online content thereby occasioning restriction on freedom of expression and other human rights. However, proponents of the right to be forgotten expound that the

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<sup>38</sup> S. 34 (2)(a), NDPA 2023.

<sup>39</sup> S. 34 (2)(b), NDPA 2023.

<sup>40</sup> *ibid.*

availability of certain personal information can occasion severe injustice to individuals without any public interest in having such information available.<sup>41</sup>

In Nigeria, rights such as freedom of expression, access to information, and public accountability are firmly entrenched. Any recognition of this right must therefore be carefully balanced against these competing interests. This section interrogates these tensions and their implications for legal enforcement. It highlights the absence of clear legislative guidance within the current framework.

### 6.1 Freedom of Expression and Access to Information

There is no analysis of the right to be forgotten that will reach a defensible conclusion without first considering the competing values and right that the principle may potentially undermine or contradict. In any democratic society, the most obvious of these values is the right to freedom of expression and access to information. The Nigerian Constitution provides for the right to freedom of expression.<sup>42</sup> This right accommodates the right to receive and impart information without interference.<sup>43</sup> In like manner, the Freedom of Information Act 2011 further provides for the public right of access to information held by public institutions. By the provisions of section 1(1) of the Act, it established the right of any person to access or request information in the custody of any public official, agency, or institution, regardless of whether it is in written form. This constitutional right, coupled with the statutory entitlement, is constitutive of any democratic order. The extent to which any citizenry is informed depends largely on the availability and accessibility of accurate information.<sup>44</sup> A vivid illustration presents a civic organization, concerned about the fluctuations in oil prices, submits a request to the NNPC by virtue of section 1 of the Freedom of Information Act, seeking the detailed records of subsidy disbursements and importation volumes. Notwithstanding the commercial orientation of the oil and gas industry, the NNPC is compelled to disclose such information, subject, of course, to selected exemptions. Taking cognizance of this, the implementation of the right to be forgotten without due regard for competing values may create an avenue for the powerful to suppress or erase inconvenient truths about their past.

### 6.2 Public Interest in Historical and Criminal Records

Another cluster of interest worthy of cursory note is the public value of history and criminal records. The society is one that has a legitimate interest in the preservation of accurate criminal records.<sup>45</sup> Criminal acts are intrinsically 'public.' This is owing to the fact that criminal law falls under the tentacle of public law jurisprudence.<sup>46</sup> Thus, interest serves several purposes, amongst which are the deterrent function of criminal law, which depends in part on the reputational consequences of conviction, and also, for potential victims to be assured of security, information about the past conduct of offenders needs to be accessible in necessary circumstances.<sup>47</sup> Not only that, the integrity of the criminal justice system risks being undermined if offenders can easily expunge their criminal records from the public view under the guise of the "right to be forgotten."<sup>48</sup>

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<sup>41</sup> Abiodun Ashiru, 'Right to be Forgotten in the Digital Age: Is Nigeria Following the World Order?' *Uniport Law Journal* (2024) 17 – 35.

<sup>42</sup> S. 39, CFRN (As amended).

<sup>43</sup> *Ibid.*

<sup>44</sup> Ruben Marciel, 'On Citizens' Right to Information: Justification and Analysis of the Democratic Right to be Well Informed' *The Journal of Political Philosophy* (2023) 31 (3) 358-384.

<sup>45</sup> Elena Larruri, 'Criminal Record Disclosure and The Right to Privacy' *Criminal Law Review* (2014) 1 (1) 723-737.

<sup>46</sup> *Ibid.*, P. 726.

<sup>47</sup> Marcos Souto and Leonardo Monteiro, 'The Extinction of Punishment and the Right to Be Forgotten: Stigmatization in the Digital Age' *Brazilian Journal of Criminal Procedure* (2025) 11 (2) 1-19.

<sup>48</sup> *Ibid.*, P. 4.

Ekiti State in Nigeria is cited as a candid example. Ekiti state maintains an active register for sex offenders under the state Ministry of Justice.<sup>49</sup> The list regularly publishes the names and photos of convicted rapists as part of the “name and shame” policy launched in 2013 to combat gender-based violence.<sup>50</sup> Anchored on this significance, the question asked is this: can Jayeoba Oluwafemi, whose name and picture have been published in the Ekiti State Ministry of Justice Sex Offenders’ Register in 2025,<sup>51</sup> invoke the right to be forgotten by seeking the delisting of his name and profile therefrom? For obvious reasons, the answer will most likely tilt in favour of the public interest. A similar example subsists in Lagos. Lagos state took the bull by the horns in 2014 when Governor Babatunde Fashola launched a public sex offenders register under the State Ministry of Justice to document data of sex offenders and make the same available to the public.<sup>52</sup> The register has since been given a statutory footing via Section 42 of the Act, which expressly mandates the periodic publication of the details of persons convicted of sexual offences in the state, with such details including names and photographs. In the span of April 2020 and April 2021 alone, the Lagos State Ministry of Justice added the details of 206 persons convicted of sexual offences to the register.<sup>53</sup> The same question then presents itself: can a person whose name has been published on the Lagos State Sex Offenders Register, by virtue of a statutory provision, invoke the right to be forgotten to compel the removal of that entry? The answer, once again, would almost certainly be resolved in favour of the public. These, amongst others, are questions the NDPA does not adequately address and they cannot be left to the unguided discretion of the NDPC or the courts.

### 6.3 National Security and Accountability

Another dimension of the competing interests that must be examined is the demand of national security and the accountability required of public officials. In matters touching on national security, it is required of the state to have a legitimate interest in preserving access to information that may be of high relevance to the prevention of crimes or threats to public order.<sup>54</sup> A right to be forgotten tends to permit individuals to demand the erasure of data retained by security agencies while also stifling information that may foster investigations. This would materially impair the ability of the state to fulfill its mandate to secure lives and properties.<sup>55</sup>

In the same vein, the accountability dimension is just as important as the security mandate. Public officials owe a duty of transparency to their citizens.<sup>56</sup> It is not uncommon for public officials to accept a reduced sphere of privacy in respect of the exercise of their public functions.<sup>57</sup> This

<sup>49</sup> Ekiti State Government, ‘Ekiti Opens Sexual Offenders Register’ *Ekiti State Government* (Ado Ekiti, 2 July 2013) <<https://www.ekitistate.gov.ng/archives/8138>> accessed 24 April 2026.

<sup>50</sup> *Ibid.*

<sup>51</sup> Abiodun Nejo, ‘Rape: Seven Convicts Added to Ekiti Sex Offenders’ Register’ *The Punch* (Ado Ekiti, 11 August 2025) <<https://punchng.com/rape-seven-convicts-added-to-ekiti-sex-offenders-register/>> accessed 24 April 2026.

<sup>52</sup> The Nation, ‘Fashola Opens Register for Sex Offenders’ *The Nation* (Lagos, 2 December 2014) <<https://thenationonlineng.net/fashola-opens-register-sex-offenders/>> accessed 11 May 2026.

<sup>53</sup> The News Editor, ‘Lagos Adds 206 Convicts to Sexual Offenders Register’ *The Interview* (Lagos, 19 May 2021) <<https://theinterview.ng/2021/05/19/lagos-adds-206-convicts-to-sexual-offenders-register/>> accessed 11 May 2026.

<sup>54</sup> Olumide Osundolire, ‘Legitimate Interest as a New Basis for Processing Personal Data in Nigeria: Evaluating its Distinctions from Existing Lawful Bases and its Impact on Data Subject Rights’ *Banwo & Ighodalo* (Lagos, 13 November 2023) <<https://www.banwo-ighodalo.com/grey-matter/legitimate-interest-as-a-new-basis-for-processing-personal-data-in-nigeria-evaluating-its-distinctions-from-existing-lawful-bases-and-its-impact-on-data-subject-rights/>> accessed 24 April 2026.

<sup>55</sup> S. 14 (2)(b), CFRN 1999 (As amended).

<sup>56</sup> Olumide Adeoye and Bing Ran, ‘Government Transparency: Paradoxes and Dilemmas’ *Public Management Review* (2023) 26 (6) 1-19

<sup>57</sup> *Ibid.*, P. 21.

position applies in all contexts where corruption and abuse of public office hold sway. If a right to be forgotten were mobilized in this setting, corrupt officials would suppress information about past misconduct, and in Nigeria, such a development tends to be more regressive than progressive. On this premise, any right to be forgotten must be weighed and juxtaposed vis-à-vis these emerging interests, and the juxtaposition requires some levels of legislative certainty that are yet absent from the Nigerian legal system.

## 7. Conclusion

From the foregoing, it is conspicuous that the question presented in this study does not succumb to a binary response. The right to be forgotten in Nigeria is yet to be bestowed with a legal entitlement feature since there is no express statutory provision to that effect. As much as the NDPA is a giant stride in the Nigerian data protection journey, its provisions are partial from which the right could be construed. Be that as it may; to dismiss the right as purely a matter of illusion would also misconceive the legal landscape. The constitutional provision of section 37 of the CFRN, read together with the data subject rights as enshrined in section 34 of the NDPA 2023, at the least, furnishes the material from which a right to be forgotten could be synthesized by the court. Whereas, a close perusal of the global momentum, from the GDPR provisions of Article 17, vis-à-vis contemporary jurisdictions, provides a comparative framework worthy of attention to Nigerian jurists.

Therefore, should there be a characterization of the current stance of the right to be forgotten in Nigeria, it will go as follows: it is emerging, yet constrained by norms. Emerging because its foundations are traceable to the constitutional and statutory provisions, and for the fact that the global arc of data protection law tilts towards its direction, constrained, however, because these foundations are not enough (that is, the constitutional and statutory frameworks), and the competing public interests are yet to be integrated into its system. On this note, for the right to be transformed from the realm of aspiration to enforceable legal rights, the recommendations proposed in this study must be adopted.

In the grand scheme of things, the right to be forgotten in Nigeria cannot be said to have been established already. It is also neither an illusion. Nonetheless, it is a legal possibility that is still expecting the statutory will to bring its reality into being. The question brought to the fore is not whether Nigeria can have a practical right to be forgotten, after all, the legal materials for this are already in place. The question, rather, is whether the legislature and the courts will construct it in a workable commitment, such that it will respect privacy as a fundamental right without sacrificing the competing claims of freedom of expression and the broader interest of the public. For now, this is still an open question, and its answer will depend largely on the kind of data governance Nigeria aspires to build.

## 8. Towards a Balanced Framework: Reconciling Privacy and Public Interest

It is not enough for any academic research to rely on the identification of legal concerns without advancing recommendations for their effects. An approach of such, falls short of any research. Accordingly, this section devotes itself to proposing recommendations to the issues raised in this study. They are examined hereunder.

### 8.1 The Need for a Clear Legislative Recognition

This proposal is the most urgent of all. As the NDPA is currently drafted, it lacks a sufficient foundation for a right to be forgotten. What is therefore required is a legislative recognition of this right in clear terms. It is recommended that this provision should be modeled on Article 17 of the GDPR with explanatory recitals. This provision should be able to specify on what grounds the rights arise and the categories of information to which it applies. Whereas, attention must be given

to the exceptions that will preserve public interests and emerging rights to freedom of expression and the press. In addition, the reform should also address the question of search engine delisting, given that matters of digital anticipations ought not to remain solely contingent upon judicial discretion.

## 8.2 Development of Judicial Tests or Guidelines

In the meantime, and in the absence of legislative reform, the courts can play valuable roles in explicating emerging matters that surround the right to be forgotten. Drawing inference from the *NT1 & NT2 v Google LLC*<sup>58</sup> case, the Nigerian judiciary can develop a set of criteria that will determine when the right arises and against whom it may be enforced. Certain factors may help in the curation of these criteria. They are: the currency of the information and how accurate it is; the status of the data subject in the public, how far the information relates to the exercise of public function; the degree of harm occasioned by the continued accessibility of the information; the passage of time since the inception of the first publication; and lastly, the public interest in access.

## 8.3 Defining the Scope and Limits of the Right to be Forgotten

Perhaps the most important of the recommendations for establishing and enforcing the right to be forgotten in Nigeria is the context-sensitivity principle. As has been reiterated in the course of the study, the right to be forgotten is, by nature, dependent on the context from which it is examined. A one-size-fits-all approach is untenable; it will fall like a pack of cards. It cannot be applied uniformly to all categories of information, all classes of data subjects, and all types of data controllers. On the whole, the scope of the right varies, depending on factors such as whether the information relates to a public figure or a common citizen, and whether it concerns criminal conduct. Does it pertain to the exercise of public function? Or predominantly private? Also, was it published in the interest of the public or an unwholesome curiosity? The National Assembly must put these into perspective in the course of legalizing the right to be forgotten.

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<sup>58</sup> *ibid.*