



PINHEIRO LP



DATA PROTECTION AND DEBT RECOVERY:

**Understanding The Legal Boundaries
Of Publicity In Loan Collection**

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The rapid growth of online loan applications has witnessed a surge in popularity, particularly in Nigeria. By September 2024, the number of approved loan applications had reached 269, reflecting a staggering 79.77% increase compared to the previous year. However, the rise of these digital lending platforms has brought with it an unsettling trend: the public shaming of borrowers. Many loan apps, in their quest for repayment, have resorted to unethical tactics, including sending defamatory and intrusive messages to debtors' contacts or as we saw in the first week of the year, posting the pictures of the debtors on social media. These actions, while effective in some cases, raise critical questions about the balance between debt recovery and the right to privacy. With data protection laws like Nigeria's NDPA and global standards such as the GDPR, the boundaries of lawful debt collection are becoming increasingly scrutinized. This article explores the legal boundaries surrounding the publicity of loan collection actions by these companies, focusing on the operation of consumer finance companies, legal boundaries of publicity in loan collections and the effect of breach.

Operation of Consumer Finance Companies in Nigeria

In Nigeria, various finance companies operate across a wide range of services, including asset financing, investment advisory, and personal loans. However, the focus of this article is on the digital consumer finance companies which offer short-term loans to individuals via mobile applications.

A digital consumer finance company engages in providing personal loans to individuals. A characteristic feature of these companies is that the loans they offer are usually unsecured. In other words, borrowers are not required to provide collateral to secure the loan, which often introduces a higher risk for the lenders. This unsecured nature of the



¹ <https://businessday.ng/business-economy/article/loan-apps-surge-80-amid-n7-5tn-debt-appetite/>
accessed 15th of January 2025.

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loans often leads to higher interest rates charged to borrowers. Another notable characteristic of these companies is their primary target demographic: the underbanked or unbanked population, which makes it easier for individuals to access loans through their mobile applications without the need for traditional banking infrastructure.

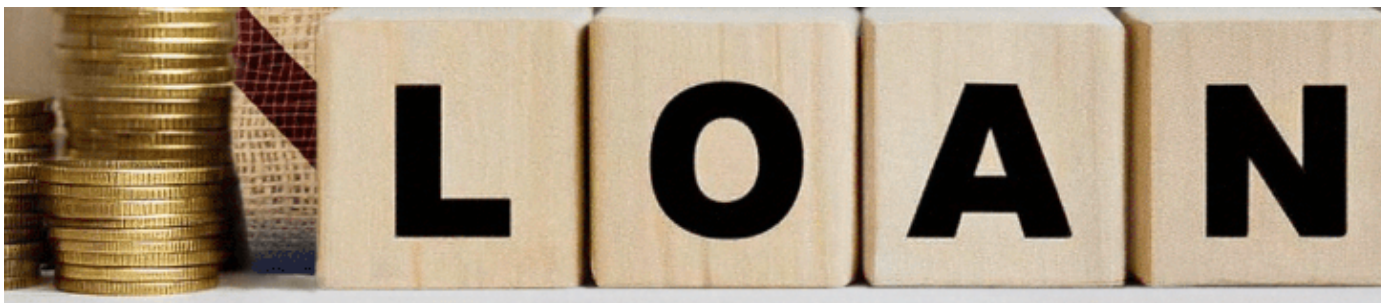
An article from the Consumer Protection Department of the Central Bank of Nigeria (CBN) outlines the consequences of defaulting on loans, which include the loss of collateral, poor credit ratings, legal prosecution, and potential damage to business operations. In recent times, however, many digital lenders have resorted to increasingly aggressive debt recovery tactics, including constant insults and public humiliation of defaulters, which has raised significant concerns regarding the ethical and legal implications of such practices. This practice, often referred to as "naming and shaming," may violate both the privacy rights of debtors and the consumer protection laws in place.

Legal Boundaries of Publicity in Loan Collection

The practice of publicly shaming debtors during the loan recovery process in Nigeria has

sparked considerable debate. While there is no specific legislation that directly addresses the act of publicly humiliating borrowers, several existing laws and regulations indirectly govern the manner in which debt recovery should be conducted. Public humiliation, as a tactic in debt recovery, is generally deemed unethical and is prohibited under several consumer protection laws in Nigeria. These include:

1. **The Constitution of the Federal Republic of Nigeria (1999):** As the supreme law of the land, the Nigerian Constitution guarantees the protection of individuals' fundamental rights. Specifically, **Section 34 of the Constitution** protects citizens from inhuman and degrading treatment. Public humiliation of borrowers, in the context of debt recovery, is a degrading treatment to defaulters. The Constitution safeguards the dignity of every individual, and any law or practice that contradicts this provision would be considered unconstitutional. Therefore, any financial institution that engages in public humiliation as a means of recovering debt is in violation of the constitutional right of the debtor.



² <https://www.cbn.gov.ng/OUT/2018/CPD/LOANS.PDF> accessed 14 January 2025

³ <https://www.theafricareport.com/327444/how-nigerias-digital-money-lenders-harass-customers-to-recover-funds/> accessed 13 January 2025

⁴ The Constitution of the Federal Republic of Nigeria, 1999

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2. **The Central Bank of Nigeria (CBN) Consumer Protection Regulations, 2019:** The CBN has established clear guidelines to ensure ethical lending practices. Under **Article 3.2.1 of the Regulation**, financial institutions are required to treat their customers with respect, courtesy, and fairness. Practices such as threats, intimidation, humiliation, and unfair inducements are explicitly prohibited. Additionally, **Article 3.3.1 of the Regulation**, particularly **paragraph (h)**, states that any terms in contracts that purport to waive consumer protections provided by applicable laws, regulations, or guidelines are void and unenforceable. These regulations reinforce the need for financial institutions to adhere to ethical standards and reject any practices that infringe upon the rights and dignity of their customers.
 - a) When it overrides the fundamental rights and freedoms of the data subject, including the right to privacy.
 - b) When the data subject does not reasonably expect their personal information to be processed in the manner being proposed, particularly in cases where such processing involves public exposure or humiliation.
3. **The Nigeria Data Protection Act (NDPA), 2023:** The NDPA regulates the collection, processing, and sharing of personal data in Nigeria, including data related to loan defaulters. **Section 25(1) of the NDPA** specifies the conditions under which personal data processing is lawful. **Subsection 2** highlights two (2) critical circumstances under which data processing becomes unlawful:

As such, the use of personal data to publicly shame debtors—especially if it involves disclosing sensitive financial information or details about the individual's repayment history—would likely contravene the provisions of the NDPA, exposing the offending companies to potential legal sanctions.



⁵ The Central Bank of Nigeria (CBN) Consumer Protection Regulations, 2019

⁶ Ibid.

⁷ The Nigeria Data Protection Act (NDPA), 2023

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Effect of Breach of the Laws

Failure to comply with these legal frameworks can have significant consequences for consumer finance companies. Violations of constitutional rights, consumer protection regulations, or data protection laws could lead to legal action from both regulatory bodies and individual consumers. Potential consequences include:

1. **Legal liabilities and penalties:** Flagrant breach of the laws may result in penalties and sanctions from the regulatory bodies. For instance, **Article 7 of the Regulation** outlines the penalties for violation of the guidelines which includes monetary sanctions and administrative sanctions of the institutions. In the same vein, **Section 46 of the NDPA** allows the Nigerian Data Privacy Commission (NDPC) to investigate allegations of data breaches and sanction the institution where necessary.
2. **Civil suit:** Consumers whose rights are violated may seek redress through the courts as this is supported by various laws specifically **Section 46 of the Nigerian Constitution**. This suit may lead to lengthy legal proceedings and potential compensation for damages caused as a result of reputational damage. The recourse to civil suits is also supported by the provision of **Section 51 of the NDPA**.
3. **Reputational Damage:** Publicly humiliating debtors or mishandling personal data can severely damage a company's reputation. This, in turn, can lead to a loss of consumer trust and reduced business patronage.

Alternatives to Public Shaming for the Recovery of Loans in Nigeria

While the practice of public humiliation is legally questionable, financial institutions can adopt more ethical and legally compliant methods for debt recovery. The lender may first resort to negotiation and mediation as the first attempt to reach a mutually agreeable repayment plan with the borrower, rather than resorting to punitive measures. If this fails, the lenders may seek redress through the legal system by pursuing a civil suit for recovery of the debt, in accordance with established laws. Where the lender requires an alternative, he may engage debt recovery agencies to recover the debt. If the finance companies adopt either of these fair and transparent debt recovery practices, they can minimize the risk of violating debtors' rights while still ensuring they recover owed funds.

Conclusion

In the pursuit of debt recovery, loan providers must tread carefully to avoid infringing on borrowers' rights to privacy and dignity. While the need to recover loans is legitimate, the use of harassment or public shaming undermines legal and ethical standards. Adhering to data protection laws like those enumerated above not only protects debtors but also builds trust and credibility for lenders in the long run. Striking a balance between effective debt recovery and respect for privacy is not just a legal obligation but a business imperative in today's digital economy. It is therefore essential for financial institutions to align their debt recovery strategies with the provisions of Nigerian law to ensure ethical, transparent, and legally compliant practices. Such responsible practices will ensure a fair and sustainable financial ecosystem for all stakeholders.

⁸ The Central Bank of Nigeria (CBN) Consumer Protection Regulations, 2019.

⁹ The Nigeria Data Protection Act (NDPA), 2023

¹⁰ The Constitution of the Federal Republic of Nigeria, 1999

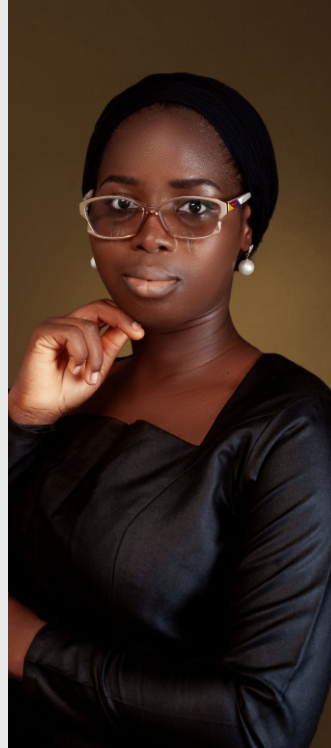
¹¹ The Nigeria Data Protection Act (NDPA), 2023



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