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Data Protection Regime in Nigeria

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ABSTRACT

In layman's terms, the word "Privacy" means that keeping personal info and matters secret or inside oneself. In broad terms, 'Privacy' means that to own management over one's info, its method, and mode of assortment, and keeping it free from interference and intrusion. Earlier 'Privacy' was commonly utilized in philosophical, political, and in legal discussions. The thought of privacy was coined by Aristotle. He distinguished it into public and personal spheres that were related to political activities, family, and domestic life severally.

The word "Data protection" refers to the practices, safeguards, and binding rules place in situ to shield your info and make sure that you stay au fait of it. protective knowledge from compromise and making certain knowledge privacy area unit different key elements of information protection; but wherever there aren't any laws to enforce within the event of a breach, the worth of these rights is lost. to uphold the quality of those rights, sovereign nations of the planet place in situ laws and different mechanisms to ensure them. These all things also are called "PERSONALLY identifiable INFORMATION" (PII)

Governments even have an interest in making certain the protection of private knowledge. In 2015, criminals' scarf twenty-one.5 million records from the USA workplace of Personnel Management that contained the sensitive personal knowledge of federal workers and their members of the family. this kind of attack is occurring a lot of oft across the world, and countries should take action to raised shield individuals' info.

Keywords: *Privacy, Safeguards, Legal Framework, National Data Protection Regulation (NDPR)*

I. INTRODUCTION

Data has been delineated as individual units of knowledge, which can be measured; collected and reported; hold on, and analyzed. In computing, knowledge is info that has been translated into a kind that's economical for movement. knowledge is taken into account to be the 'oil' of the digital era. The world's most dear corporations embrace technical school giants like

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Google, Apple, Facebook, and Amazon and Baidu, Alibaba, and Tencent whose subscribers area unit habitually needed to supply their knowledge to facilitate access. the net and smartphones have contributed considerably to creating knowledge that lot valuable, out there, and luxuriant. nearly every human action generates a digital trace. for instance, our heartbeat, our pulse, a running event, navigating through traffic area unit all activities that manufacture knowledge once connected to the net.

In Nigeria, knowledge protection could be a constitutional right supported on Section 37th of the constitutional republic of an African country. The Nigerian country knowledge protection, 2019 is that the main knowledge protection regulation in the Nigerian country. The NDPR was issued by the National info technology development.

Although subsidiary legislation, the NDPR is presently Nigeria's most comprehensive law on knowledge protection. It contains numerous provisions regulation the gathering and process of information in Nigerian countries.

The NDPR expounded the thought of information protection beneath the constitution. The NDPR makes provision for the rights of information subjects, the obligations of knowledge controllers and data processors, transfer of information to an overseas territory amongst others. nonetheless, having laws is one thing; making certain compliance is another. The National info Technology Development Agency is statutorily mandated by the NITDA Act of 2007 to develop laws for electronic governance and watching of the employment of knowledge technology and electronic data. With regards to the latter, NITDA has been quite proactive, in later cathartic the African country knowledge Protection Regulation 2019: Implementation Framework in Gregorian calendar month 2019 to assist organizations befits the NDPR. Although different legislations, as mentioned below, created some provisions on knowledge protection, the NDPR is that the start line for understanding Nigeria's knowledge protection landscape.

II. COMPLIANCE BENEATH DRAFTING FRAMEWORK

Compliance with knowledge protection laws improves the trust between businesses and their customers. It conjointly prevents the corporate from acquisition high-priced prices in kinds of fines, legal proceeding expenses, public embarrassment, and a foul name. knowledge protection compliance involves understanding not solely a company's policies, contracts, and legal engagements, it conjointly needs associate degree understanding of the company's info technology, security, audit, and operational system.

The NDPR imposes many responsibilities on knowledge controllers and methods to alter

them lawfully to get and process knowledge. The draft framework any explicates the procedures to use for triple-crown compliance. For a knowledge controller or processor to with success befits the provisions of the NDPR, they need to take into cognizance the following:

1. Consent

A knowledge subject's consent is arguably the foremost integral demand to get and method data. To lawfully try this, knowledge controllers and processors should 1st request the consent of the info subject while not undue influence, fraud, and coercion.⁸ Usually, consent is obtained through clear, unambiguous knowledge privacy policies to that the info subject has consented. Consent ought to be given as understood consent isn't any consent. what is more, this knowledge was obtained subject to sure rights granted to the info subject.

2. Conduct Internal knowledge Protection coaching

To ensure knowledge protection compliance amongst their members of employees, organizations ought to guarantee their members of employees area unit professionally trained within the field of information privacy and protection. they will organize knowledge protection pieces of training for them, attractive DPCOs within the method. This way, their workers, particularly those specifically liable for process knowledge e.g., the H.R personnel would be enlightened on the way to forestall knowledge breaches.

3. Data Protection Compliance Organisations

DPCOs area unit a brand new crop of information protection professionals established by the NDPR. they're integral in making certain compliance to the NDPR amongst organizations. in line with the draft framework, DPCOs area unit authorized professionals to supply auditing and compliance services for knowledge controllers. excluding law corporations, skilled Service practice corporations, IT Service suppliers, and Audit corporations might apply to NITDA to be authorized as DPCOs once they'll show that they need knowledge Protection Certification or expertise in knowledge Science, knowledge Protection and privacy, info Privacy, info Audit, knowledge Management, info security, knowledge protection legal services, info Technology Due Diligence, EU GDPR implementation and compliance, Cyber Security/Cyber Security law, knowledge Analytics, and Knowledge Governance.

4. Inventory process of Activities

This is aimed toward achieving responsibility and compliance. it's counseled that knowledge controllers and processors keep a listing of all personal knowledge and state the process it

goes through or they will keep an inventory of process activities and therefore the knowledge concerned within the process.

5. knowledge Protection Impact Assessment

Although not mentioned within the NDPR, the DPIA is mentioned within the draft framework. it's a procedural import from the EU GDPR. DPIAs area unit used wherever the process of information is probably going to end in a high risk to the info subjects. it's typically ready by a DPCO for a knowledge controller to spot and minimize the seeming risks of process data. even though, in contrast to the EU GDPR, it's not obligatory, it's extremely counseled.

III. SCOPE OF THE REGULATION

- Regulation applies to any or all transactions meant for the process of private knowledge, to the process of private knowledge still the means that by that the info process is being conducted or meant to be conducted in respect of natural persons in an African country.
- Regulation shall not operate to deny any Nigerian or any natural person the privacy rights he's entitled to beneath any law, regulation, policy, contract for the present in effect in an African country or any foreign jurisdiction.
- Regulation applies to natural persons residing in Nigeria or residing outside Nigeria UN agency area unit voters of Nigeria.

IV. CHARACTERISTICS OF NIGERIAN DATA PROTECTION LAW

- **Lawful process**

Processing of information is lawful if, at least, one among the subsequent applies: consent has been given; the process is important for the performance of a contract; compliance with a legal obligation; to shield the very important interests of the info Subject or any public interests.

- **Prohibition of Improper Motives**

No consent shall be wanted, given, or accepted in any circumstance that will engender propagation of atrocities, hate, kid rights violation, criminal and anti-social acts.

- **Data Security**

Data controllers and processors ought to implement security measures (including firewalls, encryption technologies, etc.) to shield knowledge from stealing, cyber-attack, manipulations.

- **Data Integrity and Storage Limitation**

Personal knowledge ought to be:

- adequate, correct and while not prejudice to the dignity of the human person;
- hold on just for the amount inside that it's fairly required.

Importance of a knowledge Protection Regime

At the core of data protection legislation is that the ambition to shield individual's right to informational privacy and secure lives and property—this is achieved through a series of measures designed to curb unauthorized access to or revealing of private information and incidences of a cyber breach during a growing data atmosphere.

Asides from this, knowledge protection legislation provide a legal basis for difficult excessive assortment and unlawful use of information, negligent knowledge handling, incorrect documentation of sensitive info, and growing company and state-sponsored police investigation activities. currently that the dominant business model needs most knowledge assortment, behavior pursuit, and fostering of addiction, several countries area unit creating efforts to safeguards the worth of citizens' knowledge, then most knowledge protection regimes currently determine a white list of countries—that is, countries with basic knowledge protection law and that affords knowledge Subjects the privilege to enforce their rights, either in such country or within the international courts. associate degree adequate knowledge protection regime guarantees associate degree inclusion during this white list and primarily eases the inward transfer of information, which is crucial for nearly every variety of trade high-powered by technology.

V. LAWS UNDERNEATH NDPR

1. Constitution of the Federal Republic of Nigeria 1999

The Nigerian Constitution provides Nigerian voters with a basic right to privacy. Section 37th of the NDPR Constitution guarantees privacy protections to voters in their homes, correspondence, phone conversations, and telegraphic communications. information privacy and protection are therefore extensions of a citizen's constitutional rights to privacy. The Constitution doesn't outline the scope of "privacy" or contain elaborate privacy provisions.

2. Kid Rights Act 2003

This kid Rights Act 2003 reiterates the constitutional right to privacy as relates to kids. Section eight of the NDPR guarantees a child's right to privacy subject to parent or guardian rights to exercise supervising and management of their child's conduct. Section three of half

II CRA incorporates by reference the provisions of Chapter IV of the Constitution, that upset the elemental rights of voters. Also, section eight of the CRA that covers a kid's rights to non-public and family life states that a child is entitled to his privacy, family life, home, correspondence, phone conversations, and telegraphic communication. Some Nigerian states have additionally enacted kid Rights Laws.

Section 2.4(a) of the NDPR provides that no consent shall be sought after, given, or accepted in any circumstance which will engender a toddler rights violation.

Section 3.1(1) of the NDPR needs data controller to require applicable measures to produce any information concerning process to the info subject in an exceedingly apothegmatic, clear, intelligible, and simply accessible type, mistreatment clear and plain language, and for any data concerning a toddler.

Clause 26(1)(a) of the Bill states that unless otherwise provided by the Bill or the other living legislation, someone shall not method personal information that relates to a toddler UN agency is underneath parental or guardian management following existing law.

Clause 26(2)(b) of the Bill states that an information method or information management might process sensitive personal data wherever the info subject consents or within the case of a toddler underneath parental control, the previous consent of the parent or guardian is obtained before the process.

3. Consumer Code of apply rules 2007

The Nigerian Communications Commission issued the NCC rules to want all licensees to require affordable steps to shield client data against improper or accidental revealing, and make sure that such data is firmly held on and not unbroken longer than necessary. The NCC rules more veto the transfer of client data to any party except to the extent in agreement with the client, as allowable or needed by the NCC or different applicable laws or rules.

4. Freedom of data act

The FOIA aims to create public records and data control by Government agencies additional freely accessible by the general public. However, it specifically makes an exception with relevance personal records and data and matters regarding personal privacy. In this regard, section fourteen of the FOIA limits Government agencies from revealing the private data of voters unless the individual's consent is obtained, or the data is in public on the market.

5. Consumer Protection Framework 2016

The patron Protection Framework 2016 was enacted consistent with the financial

organization of the Federal Republic of Nigeria Act 2007. The Framework contains provisions that veto money establishments from revealing customers' data. The Framework more needs those money establishments to have applicable information protection measures and employee coaching programs in situ to stop unauthorized access, alteration, disclosure, accidental loss, or destruction of client information. money services suppliers should acquire written consent from shoppers before personal information is shared with a 3rd party or used for promotional offers.

6. The Credit reporting Act 2017

The CRpA was enacted to rise access to credit data and standardizing risk management in credit transactions. It provides the framework for credit reportage, licensing, and credit bureaux. Section nine of the CRpA is to the impact that information Subjects i.e. persons whose information ar maintained by credit bureaux, shall be entitled to the privacy, confidentiality, and protection of their credit data subject to sure exceptions listed underneath **section 9(2) to 9(6) of the CRpA.**

VI. EFFECTS OF THE PROVISIONS

- **UPHOLDING AND GUARANTEEING the correct TO PRIVACY**

The adoption of knowledge privacy associate degreed protection legislation is an acknowledgment of the correct of persons to preserve those rights as bonded underneath the Nigerian constitution. This promotes data exchange and the development of our digital economy house.

- **REFORMS IN selling**

Marketers have, typically, relied heavily on the personal information gathered from our web practices and tendencies to achieve target markets and form their campaigns. they'll get specific permission to use personal information and be clear regarding however they gather that data, going forward. The changes and augmented barriers caused by information privacy laws might flip some in-house selling groups and agencies back to ancient selling ways. Also, several websites charge their users nothing to use their site however pay to stay everything running by commerce information regarding their users to advertisers. Some speculate that there could also be a rise in sites charging for memberships and subscriptions to take care of their sites while not the free information.

- **UNIFORMITY of knowledge PROTECTION**

Before the institution of the NITDA Regulation, it was safe to claim that the Federal Republic

of Nigeria had no uniform or comprehensive body of rules control information privacy and protection. The NITDA Regulation has, therefore, caused a way of saneness and standardization during this house that satisfies international expectations.

Implementation Framework for the Federal Republic of Nigeria information Protection Regulation

The National data Technology Development Agency recently approved and issued its Implementation Framework for the Federal Republic of Nigeria information Protection regulation (“the Framework”). The Framework builds on the Nigeria information Protection Regulation 2019 (NDPR) to make sure a tailored implementation of the info protection regime in Nigeria. It is a guide to information controllers and administrators/processors to know the standards needed for compliance among their organizations. The Framework is to browse in conjunction with the NDPR and doesn't succeed the NDPR.

The Data Protection Bill 2019

The main objective of the Bill is to produce a structure for the protection of non-public information and to control the process of data concerning all people, no matter their position. It additionally seeks to shield the elemental rights to privacy and freedoms as enshrined within the constitution. The Bill continues to be undergoing review and before promulgation into law, could also be more amended. a number of the potential key changes within the Bill are:

- **Annual information Audit:**

The Filing of an annual information audit report is currently obligatory no matter the number of knowledge subjects processed. this position needs the filing of associate degree annual report given that the quantity of information subjects personal data processed is 2000 or additional. The point in time for annual filings has been modified from fifteen March of each year to thirtieth

- **Sensitive personal data:**

Sensitive personal information currently includes philosophical beliefs; genetic information; biometric data, a natural person's sex life, and therefore the personal information of a toddler UN agency is underneath the age of sixteen years.

- **The information Protection Commission:**

The creation of a commission to control and superintend information protection problems in the Federal Republic of Nigeria.

- **Transfer of Data:**

A transfer is supervised by the info Protection Commission and its consent can still be needed even once the info Subject has consented to the transfer.

- **Data Breach Requirements:**

Data controllers are mandated to appraise information subjects of a knowledge breach among forty-eight hours of such prevalence. The NDPR is that the current principal legislation wherever information protection in the Federal Republic of Nigeria cares and it remains to be seen whether or not it'll be repealed or have a restricted scope.

VII. PUNISHMENTS

Section 2.10 of the NDPR provides that anyone subject to the NDPR UN agency is found to be in breach of the information privacy rights of any data subject shall be liable, additionally to the other criminal liability, to the following:

in the case of a knowledge controller managing over ten,000 information subjects, payment of a fine of twenty-two of annual gross sales of the preceding year or payment of the total of NGN ten million, whichever is bigger; or

in the case of a knowledge controller managing but ten,000 information subjects, payment of a fine of I Chronicles of the annual gross sales of the preceding year or payment of the total of NGN a pair of million, whichever is greater.

The Bill provides for numerous offenses and sanctions underneath half XI, as well as fines of probably NGN ten million or imprisonment for up to 2 years.

VIII. CONCLUSION

The value and name of the organization are equally at stake in the event of a knowledge breach. Therefore, it's pertinent organizations take information protection compliance seriously. In terms of economic implications, the existence of an exact information protection regime fosters the integrity and growth of commerce, typically improves the convenience of doing business. and forms the backbone of a thriving digital economy: while not it, it'd be much not possible to conduct economic activities in an exceeding world wherever information is quickly turning into the foremost valuable economic resource. More so, except for preventing customers' information from falling into the incorrect hands, compliance helps to take care of the investors' and public's trust within the organization.
