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CONSIDERING THE LEGAL TENABILITY OF THE IMPLEMENTATION OF NEW SIM REGISTRATION RULES¹

On November 7, 2011, the Federal Government of Nigeria passed the Communications Commission (“Registration of Telephone Subscribers”) Regulations² which required mobile phone subscribers to allow their finger prints and a biometric map of their faces to be collected and registered to their SIM cards, which are then stored in a central government database. Subsequently, on December 9, 2020, the Nigerian Communications Commission (“NCC”) issued a directive for the suspension of new SIM registration by network operators.³ The dust had barely settled when on the 15th of December 2020, the NCC issued a fresh directive titled “Implementation of New SIM Registration Rules”.⁴ As expected, the newly issued directive caused an uproar amongst enraged Nigerian citizens, as many took to various social media platforms to express their concerns over the looming logistics nightmare presented by the directive.

Many Nigerians bemoaned the insensitivity as well as impracticability of a directive with such a short implementation period while others expressed concern over the dangerous health implications of massive public gatherings in light of the ongoing COVID-19 pandemic.

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² Nigerian Communications Commission (Registration of Telephone Subscribers) Regulations, 2011 available at <https://www.ncc.gov.ng/accessible/documents/201-regulations-on-the-registration-of-telecoms-subscribers/file> accessed on 16/12/2020.

³ Press statement: *Suspension of New SIM card registration by network operators*, available at <https://www.ncc.gov.ng/media-centre/news-headlines/922-press-statement-suspension-of-new-sim-card-registration-by-network-operators> accessed on 16/12/2020.

⁴ Press Statement: *Implementation of New SIM Registration Rules*, available at <https://www.ncc.gov.ng/media-centre/news-headlines/928-press-statement-implementation-of-new-sim-registration-rules> accessed on 16/12/2020.

At a meeting of key stakeholders in the communications industry including the Chief Executive Officers (“CEOs”) and Management of the Nigerian Communications Commission (“NCC”), the National Information Technology Development Agency (“NITDA”), the National Identity Management Commission (“NIMC”) etc., the following decisions were taken for immediate implementation by all Network Operators:

- i. Affirmation of the earlier directive to totally suspend registration of NEW SIMs by all operators.
- ii. Operators to require ALL their subscribers to provide valid National Identification Number (“NIN”) to update SIM registration records.
- iii. The submission of NIN by subscribers to take place within two weeks (December 16, 2020 - December 30, 2020).
- iv. After the deadline, ALL SIMs without NINs are to be blocked from the networks.
- v. A Ministerial Task Force comprising the Minister and all the CEOs (among others) as members is to monitor compliance by all networks.
- vi. Violations of this directive will be met by stiff sanctions, including the possibility of withdrawal of operating license.⁵

These decisions were subsequently encapsulated in the infamous directive of December 15, 2020. By this directive, all Nigerian citizens with active mobile numbers were instructed to undergo a second layer of SIM registration.

MANDATORY SIM REGISTRATION

Mandatory SIM registration is a policy requiring users to provide personal information such as their names, national identification numbers, addresses and proof of identity credentials in order to register for or activate a prepaid SIM card. As a standard practice, existing users who fail to register their SIM cards within a government-mandated time period face network disconnection, resulting in loss of access to mobile services. In some circumstances, governments require Mobile Network Operators (“MNOs”) to capture a photograph, fingerprints, and other biometric attributes of users in order to complete SIM registration.⁶

As of March 2020, over 150 countries in the world including Algeria, Angola, Brazil, Cameroon, Chad, China, Ghana, Niger, Nigeria, Russia, South Africa, Switzerland, Togo, etc., had mandatory SIM card registration laws. Some countries took the extra steps of enacting mandatory biometric SIM registration laws. These countries include Bahrain,

⁵ Kindly access the rules [here](#) for more information.

⁶ Erdoog Yongo & Yiannis Theodorou “Access to Mobile Services and Proof of Identity 2020: The Undisputed Linkages” available at https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2020/03/Access_to_mobile_services_2020_Singles.pdf accessed on 16/12/2020 at p. 7 (accessed on 16/12/2020).

Bangladesh, China, Nigeria, Pakistan, Peru, Saudi Arabia, Tanzania, Uganda, United Arab Emirates, Zambia, etc. It is noteworthy that countries including Andorra, Bahamas, Bosnia and Herzegovina, Cabo Verde, Canada, Colombia, Comoros, Croatia, Czech Republic, Denmark, Estonia, Finland, Georgia, Hong Kong, Iceland, Ireland, Israel, Kiribati, Latvia, Liechtenstein, Lithuania, Marshall Islands, Mexico, Micronesia, Moldova, New Zealand, Nicaragua, Portugal, Romania, Slovenia, Solomon Islands, Sweden, United Kingdom, United States of America, do not have mandatory SIM card registration laws.⁷ In November 2015, Zimbabwe's largest mobile service provider disconnected at least one million SIM cards because they were unregistered.⁸ Rather unfairly, the Nigerian government has decided to take the same steps in respect of mobile phone users unable to sync their NIN with their mobile numbers within the two- week deadline given. This is an obviously harmful and inconvenient step which if taken, will be detrimental to interpersonal relationships, businesses and the general wellbeing of most of the populace.

CONCERNS OVER THE IMPLEMENTATION OF THE NEW SIM REGISTRATION RULES

Nigeria is a country with a population of over two hundred and six million (206,000,000) inhabitants,⁹ having over two hundred million (200,000,000) active mobile phone lines.¹⁰ A directive which compels citizens to get their NINs and sync it with their mobile numbers is one which will definitely occasion hardship to the citizenry. Getting a NIN in a country with this population is ordinarily a daunting task, particularly because the registration process requires the physical presence of the citizen at the National Identity Management Commission ("NIMC") Centres. It follows that obtaining an NIN within a two-week timeframe is bound to be herculean, and definitely impossible for every Nigerian mobile phone user.

Additionally, citizens who lose their lines during this period might not be able to retrieve them until the ban on the suspension of registration of new SIM cards is lifted.

Another concern is the massive influx of people sure to flood the NIMC and SIM registration centres, increasing the risk of the spread of the COVID-19 virus. For a country battling its second wave of the deadly virus without any vaccine in sight, this is a very dangerous trend. Although, the MNOs have implemented some online alternatives to facilitate the process and address the health risk, such as the use of the Unstructured Supplementary Service Data (USSD) codes to link the NIN with the mobile numbers, it suffices to say that these

⁷ 'Timeline of SIM Card Registration Laws', available at <https://privacyinternational.org/long-read/3018/timeline-sim-card-registration-laws> (accessed on 16/12/2020).

⁸ 'The Right to Privacy in Zimbabwe', available at https://privacyinternational.org/sites/default/files/2017-12/zimbabwe_upr2016.pdf (accessed on 16/12/2020).

⁹ Statista "Population of Nigeria 1950-2020" available at <https://www.statista.com/statistics/1122838/population-of-nigeria/>(accessed on 16/12/2020).

¹⁰ Technext "NCC Stats: Nigeria now has over 200 Million Mobile Subscribers", available at <https://technext.ng/2020/10/05/ncc-stats-nigeria-now-has-over-200-million-mobile-subscribers/> (accessed on 17/12/2020).

alternatives may not be sufficient due to the limited period for compliance and the limited scope of the electronic alternatives.

PRIVACY CONCERNS

The mandatory SIM card registration has sparked privacy concerns amongst many citizens, as there are speculations that it may undermine the ability of citizens to communicate anonymously and associate with others, thus infringing upon their rights to privacy,¹¹ freedom of association¹² and freedom of expression.¹³ Another fear is that these rules through the instrument of the Lawful Interception of Communications Regulations, 2019¹⁴ may make it easier for law enforcement authorities to track and monitor people, creating an avenue for possibly threatening vulnerable groups and facilitating generalised surveillance. Already the Lawful Interception of Communications Regulations, 2019 empowers authorised agencies including the Office of the National Security Adviser and the State Security Services to intercept any communication, where the interception relates to the use of a communications service provided by a licensee to persons in Nigeria or to the use of a communications service provided by a licensee to a person outside Nigeria.¹⁵

THE PLIGHT OF REFUGEES AND OTHER FORCIBLY DISPLACED PEOPLE

A large number of refugees immigrate to Nigeria yearly. In 2019, Nigeria hosted over 51,700 Cameroonian refugees (of which over 14,800 arrived in 2019, an increase of 35% compared to 2018).¹⁶ Article 14 of the Universal Declaration of Human Rights guarantees the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions. Refugees are entitled to rights which should be protected as basic human rights, these rights include non-refoulement,¹⁷ freedom of movement,¹⁸ right to moveable and immoveable property as foreign nationals.¹⁹ A significant barrier that remains for forcibly displaced persons is their inability to meet the proof of identity requirements to legally register a mobile SIM card or to open a mobile money account in their own name.²⁰ It is clear that the government has not adverted its mind to the challenges that these laws will have on people in this category.

¹¹ Section 37 of the Constitution of the Federal Republic of Nigeria, 1999.

¹² Section 40 of the Constitution of the Federal Republic of Nigeria, 1999.

¹³ Section 39(1) of the CFRN, 1999.

¹⁴ Lawful Interception of Communications Regulations, 2019, available at <https://www.ncc.gov.ng/accessible/documents/839-lawful-interception-of-communications-regulations-1/file> (accessed on 16/12/2020).

¹⁵ Section 4(a) and (b) of the Lawful Interception of Communications Regulations, 2019.

¹⁶ The UN Refugee Agency (UNHCR) *Global Focus UNHCR Operations Worldwide: Nigeria*, available at <https://reporting.unhcr.org/nigeria#:~:text=Nigeria%20hosted%20over%2051%2C700%20Cameroonian,%2C%20Oyo%2C%20Kano%20and%20Abuja>. (accessed on 16/12/2020).

¹⁷ Article 33(1) of the 1951 Convention relating to the Status of Refugees.

¹⁸ Article 26 of the 1951 Convention relating to the Status of Refugees.

¹⁹ Article 13 of the 1951 Convention relating to the Status of Refugees.

²⁰ Ibid n. 5 at p. 18.

CONCLUSION

In 2012, the European Commission directed that EU states provide evidence of actual or potential benefits from mandatory SIM card registration measures and, after examining the responses it received, concluded there was no benefit either to assisting criminal investigations or to the common market to having a single EU approach.²¹ The Mexican government after much consideration, repealed the mandatory SIM card registration and the Federal Institute for Access to Information and Data Protection (“IFAI”) was required to destroy all personal data of Mexicans contained in the registry.²²

Whilst improvement of the integrity and transparency of the SIM registration process, building a widespread digital identity database and improvement of national security could be cited as possible reasons for Nigeria’s mandatory registration rules, it must be noted that the Nigerian government has failed to provide these reasons or indeed any justifiable reason at all, for the mandatory registration of SIM cards within such a short time frame. Moreover, the data of Nigerians being sought already exist in several platforms, including the bank verification number (“BVN”), driver’s license, international passport, and voters’ card.²³ The directive issued by the government thus reflects a lack of proper coordination amongst the governmental agencies, an unnecessary duplication of efforts and a waste of limited resources.

It is a trite rule of legal jurisprudence that a law or legal directive must be reasonable, just and universally acceptable by the inhabitants of the society it seeks to govern. A law must also not occasion any form of mischief or cause untold hardship on the populace.

The NCC’s new directive when considered under this jurisprudential microscope, is an exercise in impracticability and unreasonableness. It lacks empathy and consideration and is the absolute opposite of what good law should portray.

In conclusion, it is proposed that this untenable directive be discarded, for the general good of all Nigerian citizens.

²¹ ‘The Mandatory Registration of Prepaid SIM Card Users’, available at https://www.gsma.com/publicpolicy/wp-content/uploads/2013/11/GSMA_White-Paper_Mandatory-Registration-of-Prepaid-SIM-Users_32pgWEBv3.pdf at p. 10 (accessed on 18/12/2020).

²² El IFAI pide destruir datos en registro de celulares, available at <https://www.informador.mx/Mexico/El-IFAI-pide-destruir-datos-en-registro-de-celulares-20120302-0070.html>. (accessed on 16/12/2020).

²³ Channels Television Online News available at https://stories.6chcdn.feednews.com/news/detail/62c8f389f5742340e450f2ac289af1c9?client=iosnews&features=28125953821&ac=wifi&picture_less=auto (accessed on 20/12/2020).

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