

NATIONAL IDENTITY MANAGEMENT IN NIGERIA: MATTERS ARISING



Recently, the applicability of the provisions of the law and regulations governing national identity management in Nigeria was tested in two separate and interesting law suits. This article reviews the extant legal and regulatory framework for national identity management in Nigeria vis-à-vis the decisions of the various courts and analyses their implications on the activities and business transactions carried out by individuals and corporate entities in Nigeria.

Introduction

An effective national identity management system is critical to the development of any economy. It provides a universal identification infrastructure for a country that enables access and means to confirming the identity of individuals residing in a country. Thus, proper economic planning, adequate intelligence gathering and a functioning internal and external security architecture will be difficult to achieve in the absence of a robust national identity system (which is usually comprised in a central identity repository or database).

In recognition of the foregoing, the National Identity Management Commission (“NIMC”) was established in 2007 pursuant to the NIMC Act¹ to create, manage, maintain and operate a unified National Identity Database for Nigeria². To this end, the NIMC, which replaced the defunct Department of National Civic Registration, is required to carry out the registration of all registrable persons in Nigeria and thereafter issue a General Multipurpose Identity Card (“**National Identity Card**”) to each registered person³.

¹ National Identity Management Commission Act No. 23 of 2007

² Ibid, Section 5(a)

³ Ibid, Section 5(d)

In terms of the NIMC Act, registrable persons⁴ comprise the following:

- i. Any person who is a citizen of Nigeria;
- ii. Any person who is lawfully and permanently resident in Nigeria, whether or not he is a citizen of Nigeria;
- iii. Any non-citizen of Nigeria who is lawfully resident in Nigeria for a period of two (2) years or more.

The information⁵ that may be obtained and stored in the National Identity Database about a registrable person include: full names; other names by which the person is or has been known; date of birth; place of birth; gender; address of the person's principal place of residence in Nigeria; address of every other place in Nigeria where the person has a place of residence; passport photograph; signature; fingerprints and other biometric information of the person. In addition to the foregoing, information in respect of a registrable person relating to nationality; entitlement to remain in Nigeria together with the attached terms and conditions (if any) may also be recorded in a registered person's entry in the Database.

The National Identity Card issued upon completion of the registration process bears a unique **National Identification Number** ("NIN"), which is assigned by the NIMC to each registered person in the National Identity Database. The unique NIN is required to be incorporated into or made compatible with other existing identity-related databases/registers containing information/data relating to the registered person⁶.

In order to ensure efficiency in the task of covering the whole country, the NIMC operates administrative and monitoring offices in all the States, Local Government Areas and Area Councils of the Federation.

Legal Significance of the National Identity Card

As provided in the NIMC Act, registration and procurement of a National Identity Card is compulsory for all registrable persons in Nigeria. In this regard, there are no age restrictions for registration and possession of the National Identity Card. Hence, any person born in Nigeria since the introduction of the NIN is required to be registered within sixty (60) days of his/her birth, or at any time after this period not exceeding one hundred and eighty (180) days, or any other period as the NIMC may specify from time to time by regulation⁷. For Nigerian citizens born outside the country, the NIMC Act does not specify a time frame within which they are to register and obtain the NIN but it should be noted that registration is also compulsory for this class. Hence, the NIMC has initiated the *Diaspora Enrolment Programme* and licenced some InfoTech companies who, working with foreign partners, are to carry out the enrolment of Nigerian adults and children in the Diaspora into the National Identity Database⁸.

⁴ Ibid, Section 16

⁵ Second Schedule to the NIMC Act

⁶ Ibid, section 5(f)

⁷ Ibid, Section 18

⁸ "NIMC Extends Diaspora Enrolment to United Arab Emirates and United Kingdom", NIMC Press Release, 25 March, 2019 – <https://www.nimc.gov.ng/nimc-extends-diaspora-enrolment-to-united-arab-emirates-and-united-kingdom/>



The NIN is required to be presented by registrable persons, before several basic transactions can be undertaken in Nigeria. Specifically, all registrable persons are required to state their NIN while engaging in transactions⁹ including the following:

- Application for, and issuance of a passport;
- Opening of individual and/or personal bank accounts;
- Purchase of insurance policies;
- Purchase, transfer, and registration of interest in land (subject to the Land Use Act);
- Transactions relating to pensions and Health Insurance Schemes;
- Consumer credit transactions,
- Payment of taxes;
- Registration of voters; and
- Transactions having social security implications.
- Registration for, and provision and use of hospitality services;
- Registration and licensing for, and use of health or medical services;
- Application for the adoption of an infant, child or person under applicable laws;
- Purchase and registration of aircrafts, ships, boats, motor vehicles and motorcycles;
- Registration and use of aviation services by airline operators and customers;
- Boarding of aircrafts, trains, commercial vehicles, ships and boats;
- Purchase of travel tickets or tokens for air, rail, road and water transportation;
- Acquisition, sale or transfer or transmission of shares or equities and other financial instruments;
- Enrolment into primary, secondary and tertiary schools and continuous professional studies in Nigeria.
- Registration of companies, sole proprietorships, partnerships and non-profit organisations and other post-incorporation documentation with the Corporate Affairs Commission; and
- Filing and registration of criminal and civil actions in courts or other arbitration processes.

Specifically, Section 27(2) of the NIMC Act provides that any authority or organization to which a person applies to carry out any of the above listed transactions (or any other transaction as may be prescribed by the NIMC in a Federal Government Gazette), shall request such person to produce his National Identity Card or NIN. Thus, a person (individual or corporate) who violates any of the provisions of the NIMC Act or permits the carrying out of any transaction covered by the NIMC Act without a NIN, commits an offence punishable with various fines and terms of imprisonment (as appropriate) in line with the provisions of Sections 28, 29 and 30 of the NIMC Act.

Regulatory & Compliance Framework

The framework for the enforcement of compliance with the requirement of the NIN was first developed in 2015. The framework was reviewed by the NIMC in 2017, culminating in the release of the *Mandatory Use of the National Identity Number Regulations, 2017 (the “NIN Mandatory Use Regulations”)*, published in the official gazette of the Federal Republic of Nigeria¹⁰.

⁹ Ibid, Section 27. See also Section 1(1), Mandatory Use of the National Identity Number Regulations, 2017

¹⁰ Government Notice No. 123 (Vol. 104, No. 121, Lagos, 13th November, 2017)



As provided in Section 4(1) of the *NIN Mandatory Use Regulations*, the NIMC is required to ensure strict compliance with the NIN requirement under the NIMC Act, *NIN Mandatory Use Regulations* and other regulations made pursuant to the NIMC Act, as well as Nigeria Biometrics Standards Regulations, 2017.

In furtherance of its resolve to emplace a formidable identity management system, the Federal Government of Nigeria (“FGN”), at the Federal Executive Council meeting of September 12, 2018, approved the immediate commencement of the implementation of a strategic roadmap for Digital Identity Ecosystem in Nigeria; necessitating full compliance with the *NIN Mandatory Use Regulations*.

In this regard, the NIMC issued a public notice specifying January 1, 2019, as the FGN-approved commencement date for the enforcement of the *NIN Mandatory Use Regulations* and the consequent application of appropriate sanctions and penalties for non-compliance. Consequently, all registrable persons are required to provide their NIN to be able to carry out the above-listed transactions (and any other transactions that the NIMC may determine by regulation) as from the stated date.

In accordance with the provisions of Sections 6 and 7 of the *NIN Mandatory Use Regulations*, the NIMC in exercise of its regulatory and enforcement powers, may:

- a) Upon giving written notice of not less than 24 hours, have the right to conduct an audit on the state of affairs and operations of transactions or services carried out by applicable persons and entities;
- b) Obtain an order of the Federal High Court to seal-off the premises or business place or shut down the identity database or stop further services by the defaulting person or entity;
- c) Demand payment of a penalty as provided in the NIMC Act; and
- d) Request the assistance of any law enforcement agency to enforce compliance with any directives issued under the *NIN Mandatory Use Regulations*.

Furthermore, the NIMC is empowered to impose administrative fines and sanctions, in addition to the penalties provided in the NIMC Act, on any person or entity who fails to comply with the provisions of the *NIN Mandatory Use Regulations* and other relevant regulations made pursuant to the NIMC Act.

Testing the Law

Pursuant to the objectives of the NIMC Act and the *NIN Mandatory Use Regulations*, the NIMC has commenced collection of the data and biometric information of registrable persons into the National Identity Database. Upon completion of registration, a transaction slip known as the National Identification Number Slip (“**NIN Slip**”) is first issued to a registered person pending release of the National Identity Card. The NIN Slip serves as evidence of registration and bears the unique NIN of the registered person.



In a suit instituted in 2018 at the High Court of Anambra State of Nigeria (**SUIT NO: 0/103/2018**), the validity of the NIN Slip as a means of identification was tested. The plaintiff in the suit, a mobile telephone subscriber, had tendered her NIN Slip as a means of identification to the defendant, a mobile telecom operator in Nigeria, for the purposes of SIM-Swap/SIM replacement. The NIN Slip was rejected by the defendant on the ground that it is not a valid means of identification. Aggrieved by this decision, the plaintiff filed the suit and prayed the court to determine the issue of “whether in view of the extant laws/regulations the NIN Slip is a valid and sufficient means of identification in Nigeria for the purposes of transactions including SIM-Swap or replacement?”

In its response, the defendant contended that the NIN Slip is not a valid means of identification in Nigeria, having regards to relevant laws and regulations. In particular, it was argued that a subscriber is required to submit a “valid photo identification” for SIM replacement, as provided under the Nigerian Communications Commission’s Guidelines on SIM Replacement (“**NCC Guidelines**”) and that the NIN Slip is not included in the interpretation of “photo identification” in the NCC Guidelines.

In resolving the issue in favour of the plaintiff, the court on December 4, 2018, held that the NCC Guidelines do not contain an exhaustive list of items qualified as photo identification and is also inferior to the NIMC Act being a subsidiary legislation. Further, it was held that by the provisions of Section 27 and other relevant sections of the NIMC Act, what is required to be provided by a person to any authority or organization for the purposes of carrying out any transaction is the National Identity Card or the NIN. Thus, the production of the unique NIN is sufficient identification of an individual for the purposes of any transaction in Nigeria and consequently, the NIN Slip issued temporarily in lieu of the National Identity Card is a valid photo identification.

Meanwhile, in an appeal recently filed before the Supreme Court in the case of **APC & Anor. v Marafa & 17 Ors. (SC. 377/2019)**, a preliminary objection was raised on the ground that, by the provisions of Section 1(1)(u) of the *NIN Mandatory Use Regulations* and the NIMC Act; the use of the NIN is a precondition for filing and registering criminal and civil actions in courts or other arbitration processes in Nigeria. In overruling the preliminary objection, the Supreme Court on May 24, 2019, held that Section 27 of the NIMC Act and its regulations are not part of the rules of the court and can therefore not apply to the processes filed there-in.

Comments

It is widely acknowledged that data is the new “oil” and Nigeria needs to take implementation of its Digital Identity Ecosystem seriously, in order to be at pace with the advanced and other emerging economies around the globe and be positioned to harness information technology for security and development purposes. It is our firm belief that the success of the policy of the FGN on mandatory use of the NIN will enhance the current administration’s focus on economic development, adequate security and anti-corruption crusade.

However, the law is yet to settle and the processes fully institutionalized. For instance, whilst the decision of the High Court of Anambra State means that the NIN Slip is valid for use in lieu of the National Identity Card and thus enhances the powers of the NIMC to enforce compliance with relevant statutory provisions; we are aware that the defendant is currently on appeal. Whilst the NIMC has issued a press release supporting the decision of the High Court¹¹, we note that except the decision is reaffirmed by higher courts in the land, it will be difficult to enforce the law as there are many unregistered persons and registered persons with only the NIN Slip than those who have obtained the National Identity Card.

Again, the recent ruling of the Supreme Court on the mandatory use of the NIN for registering and filing court processes potentially undermines the ability of the NIMC to enforce the *NIN Mandatory Use Regulations* in that regard. It is most likely other authorities and organizations will make the ruling a reference point for discountenancing the mandatory requirement of the NIN, as a precondition for providing services to registrable persons. As a way forward, it is recommended that the Federal Government intensifies efforts to create awareness on the importance of the NIN to the country and procure the endorsement of relevant stakeholders, government agencies and relevant industries. It is also advisable to procure relevant amendments to the NIMC Act, incorporating the salient provisions of the *NIN Mandatory Use Regulations*.

The Grey Matter Concept is an initiative of the law firm, Banwo & Ighodalo

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¹¹ “NIN Slip is An Acceptable Means of Identification”, NIMC Press Release, 15 November, 2018 – <https://www.nimc.gov.ng/nin-slip-is-an-acceptable-means-of-identification/>