

WORKSHOP 3: LEGAL FRAMEWORKS AND GOVERNANCE OF IDENTITY MANAGEMENT SYSTEMS

Ghana's Legal Framework for an ID Regime: The multipurpose national ID card

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• **LEGAL FRAMEWORK**

- a) *The Ghana Constitution, 1992 (Article 18(2))*
- b) *The National Identification Authority Act, 2006 (Act 707)*
- c) *The National Identity Register Act, 2008 (Act 750)*
- c) *The National Identity Register Regulations, 2012 (L.I. 2111)*
- e) *The Data Protection Act, 2012 (Act 843)*

➤ **THE GHANA CONSTITUTION**

Article 18(2) of Ghana's Constitution states as follows:

*"18(2) No person shall be subjected to interference with the privacy of his home, property, correspondence or communication except in accordance with law and as may be necessary in a free and democratic society for public safety or the economic well-being of the country, for the protection of the rights or freedoms of others."* Article 18 is one of the provisions set out in chapter 5 of the constitution titled **Fundamental Human Right and Freedoms**. The provisions in chapter 5 form part of the entrenched provisions of Ghana's constitution.

Conclusion: Under democratic Ghana the privacy of the individual is accorded the needed respect and protection, subject to stated exceptions.

➤ **THE NIA**

Established by Act 707 of 2006. Its object is to **create, maintain, provide and promote the use of national ID cards in order to advance economic, political and social activities** in Ghana.

Has the statutory mandate to develop and implement a national identification infrastructure.

Mandated to develop record and update an identity management system, through enrolling citizens and legal residents, and issuing them with unique identification numbers and Ghanacards that are linked with their biographical and biometric details.

The personal information collected from citizens and eligible non-citizens aged 6 years and above are stored in the National Identity Register (NIR).

Under Act 750 NIA keeps and maintains the NIR) as an electronic database. The purpose for which the NIR is to be maintained is confined to matters of public interest.

The NIR includes the following: ***the individual's full name, sex, date of birth, place and country of birth, nationality, residential address, postal address, marital status and where applicable the name of the spouse, level of education, employment status, information on that individual's parentage; details of relevant dates and processes related to the naturalisation or registration obtained for the purpose of Ghanaian citizenship, the date a foreigner entered the country and the country of which that foreigner is a citizen, etc.***

Conclusion: This comprehensive, accurate, and highly secured population register is intended to help the country to develop and facilitate governmental service delivery by making the needed population demographical data available to support the decision-making process as well as strategic planning related to resource allocation in various vital areas and sectors.

- **THE NATIONAL ID CARD (GHANACARD)**

By Act 707, NIA is responsible for the issue of national identity cards to Ghanaians and eligible non-citizens after collecting data into the NIR mentioned above.

National identity cards issued under this Act, shall be used **in transactions which require identification** (My emphasis).

Act 707 defines national identity card as an *“an identity card with a personal identification number issued by the Authority for purposes of identification of a person to whom the card is issued.”*

Act 707 also makes it mandatory for the NIA to submit as part of an annual report to Parliament, a report of the status of implementation of the national identity issuance policy.

- Part two of Act 750 under the sub-heading PROTECTION OF PERSONAL INFORMATION HELD BY THE AUTHORITY makes elaborate provisions on such matters as the ***use, retention and disclosure of personal information by NIA, its duties with respect to records of personal information, access to personal information, the use, retention and disclosure of personal information by user agencies, grievance and investigation of complaints procedures as well as provisions for offences.***

- In 2012, after six of the passage of Act 707, and four years after Act 750 was enacted, L.I. 2111 was passed to make regulations for the effective administration of Acts 707 and 750.

Two key elements of LI 2111 are worth stressing for the purposes of this article:

It makes clear that national ID cards issued shall be used in transactions where Identification is required. It is a further obligation that any organization offers any services where identification is required shall demand the presentation of the national ID cards before providing the relevant service to the individual.

These services include: ***application for and issuance of a passport; application for and issuance of a driver's license; opening of individual and or personal bank accounts; purchase of insurance policies; purchase, transfer, and registration of land by any individual or a connected transaction subject to the provision of other enactments; transactions pertaining to individuals in respect of pensions; transactions specified under the National Health Insurance Scheme; transactions that have social security implications; consumer credit transactions; registration of voters; payment of taxes; registration of SIM cards; applications for public or government services, facilities, approvals, permissions or benefits; and any other transaction which the Authority may determine and publish in the Gazette (My emphasis).***

- **THE DATA PROTECTION ACT**

Ghana took its data protection and privacy duty to new levels with the passage of the Data Protection Act, 2012, (Act 843).

Act 843 established a state regulator, the Data Protection Commission (DPC). The DPC's statutory duties include the protection of the privacy of the individual and personal data by regulating the processing of personal information. The DPC has oversight for all data controllers, data processors and data subjects.

The Act is premised on the fundamental rule that all who process personal data must take into consideration the right of that individual to the privacy of his or her communications.

This recognition by a data controller or processor should lead to the application of the following Eight (8) Basic Principles whiles processing such information: ***Accountability, Lawfulness Of Processing, Specification Of Purpose, Compatibility Of Further Processing With Purpose Of Collection, Quality Of Information, Openness, Data Security Safeguards, and, Data Subject Participation.***

Some rights guaranteed under Act 843 include the ***right to access your personal information, right to amend your personal information, right to prevent processing of your personal information, rights to freedom from automated decision making, right to prevent processing of personal data for direct marketing purpose, right to seek compensation through the courts and the right to complain to the DPC.***

As the regulator, the DPC has since May 2015 begun the registration of existing Data Controllers and Data Processors (including NIA) who process (collect, hold, use, etc) personal information of persons living in Ghana whether they are in Ghana or outside Ghana.

**Conclusion:** Ghana has the necessary legal regime for the issuance of the national ID card as well as ensure the accuracy, integrity, confidentiality and security of data (personal information) collected from individuals.

- **THE MULTIPURPOSE NATIONAL ID CARD**

The Ghana Government is committed to the enforcement of NIA mandate. By a recent policy directive the NIA will be implementing an integrated population registration system (IPRS) which will culminate in the issuance of a multipurpose national ID smart card to cater for all the segments of the society.

There are two main benefits to be derived from this legal framework:

- a) The collection of biometric data by multiple institutions raises serious security concerns. Assigning the collection and custody of biometric traits to a single institution is safer and in line with current trends. By statute, the NIA is under obligation to ensure the accuracy, integrity, confidentiality and security of data it collects.
- b) There is also the rather needless pressure on the national kitty by Ministries, Departments and Agencies (MDAs) purchasing and creating their own biometric databases when NIA as the national identification entity can adequately serve their biometric needs through the NIR.
- c) Crucially, it eliminates the current situation where people carry several ID documents for ID transactions when just one ID can serve the same purpose.

The Government has already placed a **moratorium** on MDAs purchasing their AFIS and reinforcing the primary role of NIA as the state entity entrusted with managing the ID ecosystem in Ghana.

- **CONCLUSION**

Even the Ghanaian judiciary has had occasion to pronounce on the importance of a national ID system. In a recent ruling in which it struck out the NHIS card as a basis for registration as a voter in Ghana( the current card does not distinguish a citizen from a non-citizen holder of the card) Ghana's Supreme Court unanimously spoke through the Chief Justice as follows:

***"The need for a credible and reliable multipurpose national identification system comprising the relevant data and communication infrastructure that would answer to most of our national needs, whether for electoral, planning or developmental, or other purposes, is greater than ever before.***

***We think the time has come for the appropriate authorities to respond to this need.”***

The Ghana government through the NIA is seeking to do just that in accordance with existing legal framework.