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The Mandatory Use of the National Identification Number Regulation 2017: How Constitutional?

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Introduction:

The National Identity Management Commission ("the Commission") was established by the National Identity Management Commission Act [1] ("the Act"). The Commission is a body corporate with perpetual succession and a common seal and may sue and be sued. [2] The operation of the Commission is run by a governing board, with representatives from various offices, agencies and commissions. [3]

The Commission is charged with the following statutory functions, among others, to: [4]

(a) create, manage, maintain and operate the National Identity Database established under section 14 of the Act including the harmonisation and integration of existing identification databases in government agencies and integrating them into the National Identity Database;

(b) carry out the registration of citizens of Nigeria into the National Identity Database;

(c) issue a General Multi-purpose Identity Card to any person registered pursuant to paragraphs (b) and (c) of this section;

The Act empowers the Commission to make regulations for the effective operation of the Act and the due administration thereof. In the exercise of these powers [5], the Commission has recently issued the "Mandatory Use of the National Identity Number Regulations, 2017" [6] ("the Regulations"). This regulation has such broad and extensive reach, that in our view its scope exceeds the powers of the commission to legislate upon. We examine a few of these provisions and explain why we hold the view that the Commission has exceeded its authority under its enabling law and under the 1999 Constitution.

The Constitutionality of Some Provisions of the Regulations:

The Constitution is supreme and its provisions have binding force on all authorities and persons throughout the Federal Republic of Nigeria. [7] The legislative power of the Federal Republic of Nigeria is vested in the National Assembly which consists of the Senate and a House of Representatives. [8] The power of the National Assembly to enact laws for the peace, order and good government of the federation is with respect to the matters listed in the Exclusive Legislative List set out in Part 1 of the Second Schedule to the Constitution and the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to the Constitution. [9]

The legislative power of the National Assembly to enact laws for the peace, order and good government of the federation with respect to the matters contained in the Exclusive Legislative List is to the exclusion of the State Houses of Assembly. [10] The National Assembly is also empowered to enact laws with respect to any matter in the Concurrent Legislative List [11] and if any laws enacted by a State House of Assembly in respect of such matters is inconsistent with any law validly enacted by the National Assembly, the law made by the National Assembly shall prevail, and the State law shall to the extent of its inconsistency be void. [12]

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Footnotes

* LL.B., University of Benin), B.L. Nigeria), LL.M., University of Lagos): Senior Associate in the Dispute Resolution Department, SPA Ajibade & Co., Lagos, Nigeria.

1 Section 1 1 , Cap. N154, Laws of the Federation of Nigeria 2004.

2 Section 2 ibid.

34 Section 2 ibid: a part-time chairman and a representative each of - the Independent National Electoral Commission, the National Health Insurance Scheme, the Federal Road Safety Commission, the Federal Inland Revenue Service, the National Pension Commission, the Nigeria Police Force, the Nigeria Immigration Service, the Office of the National Security Adviser, the National Population Commission, the Central Bank of Nigeria, the State Security Service, the Economic and Financial Crimes Commission, the Chief of Defence Staff, the Corporate Affairs Commission; and three persons who are knowledgeable in Information Communication Technology or identity management to represent the public interest.

4 Sections 5 ibid.

5 Sections 27 and 31 ibid.
6 The Mandatory Use of the National Identity Number Regulations, 2017, Gazette No. 121, Vol. 104 of 13th November 2017.

7 Section 1 1 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

8 Section 4 1 ibid.

9 Section 4 2 ibid.

10 Section 4 3 ibid.

11 Section 4 4)(a) ibid.

12 Section 4 5 ibid.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.