

NANA AKUFO-ADDO'S DICTATORSHIP - ILLEGAL SIM CARD RE-REGISTRATION & SOLIDARITY IN BOYCOTTING THE USE OF MOBILE PHONES: BY MARTIN A. B. K. AMIDU

INTRODUCTION

President Nana Addo Dankwa Akufo-Addo and his Family and Friends' Government have no legal or constitutional basis for subjecting the people of Ghana to the on-going dehumanizing and undignified re-registration Subscriber Identity Module (SIM card) exercise. The SIM card re-registration exercise constitutes a bareface autocratic, indefensible and unwarranted abuse of the Constitution and the laws of Ghana for purely political surveillance of Ghanaians and political election rigging outside the framework approved by Parliament and enacted in the National Identity Register Act, 2008 (Act 750), the National Identity Register Regulations, 2012 (L.I. 2111), and the Subscriber Identity Module Regulations, 2011 (L. I. 2006) which make provision for the registration of national identity both for the National Identity Register on the one hand, and activation of Subscriber Identity Module by network operators or service providers for use by subscribers on the other hand. Patriotic Ghanaians across all political divides must appreciate the danger presented by Nana Akufo-Addo to the security of the biometric data of citizens unconstitutionally collected and fight all the way through the Supreme Court of Ghana to the United Nations Human Rights Committee to defend rights and freedoms under the 1992 Constitution and the International Convention on Civil and Political Rights.

THE NATIONAL IDENTITY REGISTER ACT, 2008 (ACT 750)

The National Identity Register Act establishes "a register of individuals known as the National Identity Register" to be maintained as an electronic database, for the purposes confined to matters of public interest, to be kept and maintained by the Executive Secretary of the National Identification Authority. The register contains personal information collected by the Authority in respect of (a) each citizen resident in the country or outside the country, and (b) each foreign national with a resident permit and a foreign national who is permanently resident in the country. The personal information to be recorded in the register when one applies for registration include, (a) 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, and employment status; (b) information on the individual's parentage; (c) where applicable, details of relevant data and processes related to the naturalization or registration obtained for the purposes of Ghanaian citizenship, the date a foreigner entered the country and the country of which that foreigner is a citizen; and (d) any other particulars that the Minister may by Regulations prescribe. The personal information is to include personal biometric information as (a) a recorded fingerprint or any other biometric information determined by the Board; and (b) a photograph.

The National Identification Authority established by the National Identification Authority Act, 2006 (Act 707) is enjoined by Act 750 to take the necessary steps to prevent the possibility of misuse of personal information to make decisions about the individual concerned. It is responsible for the protection of personal information in its custody or under its control including information that has been transferred to a third party for processing. The circumstances under which the National Identification Authority may disclose personal information of an individual recorded in the Register without his or her consent are when the

information is required, (a) by a public authority for national security reasons; (b) for a purpose connected with the prevention and detection of crime; (c) for a purpose related to the prevention, detection or investigation of conduct in respect of which a public authority has power to impose penalties; (d) for a matter related to national health insurance or immigration; (e) to correct inaccurate or incomplete personal information recorded in the Register; or (f) for a purpose relevant to the functions of the Authority.

The foregoing provisions in respect of national identity registration were made by the peoples elected representatives in Parliament under the separation of powers doctrine enshrined under the 1992 Constitution to ensure the safeguard of the fundamental human rights and freedoms of citizens against unwarranted executive overreach and dictatorial government. The Minister was empowered by the Act to make regulations for the effective implementation of Act 750 and consequentially made the National Identity Register Regulations, 2012 (L.I. 2111) after laying it in Parliament for the period mandated by the Constitution.

THE NATIONAL IDENTITY REGISTER REGULATIONS, 2012 (L. I. 2111) & SECURITY OF THE BIOMETRIC DATA

The National Identity Register Regulations, 2012 (L. I. 2111) made regulations dealing with mandatory uses of national identity card in sub-regulation 7 (1). The Ghana Card is prospectively a mandatory requirement for registration of SIM cards under the Regulations. But just as the National Identity Register Act operated prospectively and not retroactively, all SIM card registrations conducted by the network operators or service providers before the coming into force of Act 750 and the consequential regulations were lawful under the 1992 Constitution and the existing law.

The Regulations also provide circumstances under which one has an obligation to produce one's national identity card to an authorized person under the regulations. It stipulates that, the Authority, a user agency, a person authorized by law, or a law enforcement officer may request an individual who has been issued with a national identity card to produce the card for inspection but shall return the card to the individual immediately unless there is reasonable suspicion of the commission of an offence. Where the person does not have the identity card at the time of the request the person shall respond to the request within forty-eight hours after a request has been made.

The power to verify identity by biometric match of a holder of a national identity card is permitted under the regulations only when the holder of the national identity card produces it to the authorized person and the authorized person has reason to believe that the National Identification Authority did not issue the national identity card. Then and only then may the person to whom an identity card is produced ascertain the authenticity of the national identity card by using a portable identity card reader, inter alia, to (a) view the information on the national identity card from the data stored in the storage medium embodied in the national identity card; and (b) scan the individual's fingerprints and match the template of the live print with the template that is stored in (i) the storage medium embodied in the national identity card; or (ii) the national database through a secured link.

Nana Akufo-Addo knows that when the law (in this case Regulation 9 of LI 2111) talks of the authorized person has reason to believe that the Authority did not issue the national identity card, it means the grounds for belief must be based on reasonable suspicion and not

mere conjecture or caprice. Nana Akufo-Addo knows that the verification of the biometric match of every national identity card holder using a portable identity card reader contravenes the National Identity Register Act and the National Identity Register Regulations. There is no defensible reason for believing that every citizen of Ghana holding a Ghana Card who goes to register for a SIM card either for the first time or in the re-registration exercise is holding a card not issued by the National Identification Authority.

Without unconstitutionally and illegally subjecting every Ghanaian to abuse of holding a suspicious Ghana Card, Nana Akufo-Addo and his Family and Friends cabal would not be able to have access to the additional biometric information they are unconstitutionally and illegally collecting through the Subscriber Identity Module re-registration. Thus, under the guise of authenticating every citizen's Ghana Card for purposes of SIM card re-registration, Nana Akufo-Addo is appropriating the citizen's additional biometric data in the form of fingerprint, palmprint, iris or facial pattern record or other biometric data or particulars without any legal or constitutional basis for purely political electioneering rigging and surveillance purposes.

THE SUBSCRIBER IDENTITY MODULE REGULATIONS, 2011 (L. I. 2006) & SECURITY OF BIOMETRIC DATA

Before the authoritarian directive for every citizen in possession of a Subscriber Identity Module card to re-register using the Ghana Card, every Ghanaian in possession of a Subscriber Identity Module card was lawfully registered and activated for use under Subscriber Identity Module Regulations, 2011 (L. I. 2006). The obligation was on the network operator or service provider to register and activate a Subscriber Identity Module for a subscriber who completes a registration in accordance with the Regulations. The network operator or the service provider is the custodian of the Subscriber Identity Module he registers for purposes of activating a subscriber's SIM and can only disclose the subscriber information on the recorded Register only with the consent of the subscriber, or if ordered by a court or authorized under any other law to do so.

The National Identity Register Act with its accompanying Regulations, on the one hand, and the Subscriber Identity Module Regulations, on the other hand, provide in law enacted with Parliamentary scrutiny clear systems and procedures under which the Government may interfere with the citizens fundamental rights and freedoms guaranteed under the 1992 Constitution. The Judiciary as a bulwark of the liberty of the citizen ensures respect for those guaranteed rights and freedoms. The laws and regulations expressly guaranteed the security of all biometric data collected by the Executive arm of Government and its agents from abuse by executive overreach. Parliamentary oversight of the Executive, and the judicial oversight of both Parliament and the Executive branches of Government were designed by the framers of the Constitution to be consistent with rights and freedoms "considered to be inherent in a democracy and intended to secure the freedom and dignity of man (Article 33(5) of the 1992 Constitution).

Consequently, the Executive arm of Government now reposed temporarily in Nana Akufo-Addo is bound to ensure that the biometric data of citizens collected for any form of identity registration, storage and retention meets the data security concerns of the citizen and "is accompanied by robust safeguards to protect the privacy of individuals." The National Identity Register Act, and the Subscriber Identity Module Regulations for the foregoing

reason provided in law some measure of security for citizen's biometric data and specifically named the custodian of each Register under the law.

The Executive Secretary under the National Identification Authority Act, 2006 (Act 707), Dr Ken Attafuah, is the custodian of the Register of Ghana Cards under Act 750 and circumscribed in his ability to disclose citizens' biometric data to third parties and is bound to ensure the security of such biometric data that it stores and retains for the approved purpose. A Network Operator or Service Provider under the Subscriber Identity Module Regulations is the custodian of biometric data collected, stored, and retained for purposes of registration and activation of a Subscriber Identity Module under L. I. 2006. And no agent or instrumentality of Nana Akufo-Addo's Family and Friends' Government has power under the Constitution to amend substantive and procedural legislation through mere administrative directives to either the National Identification Authority or to a Network Operator or Service Provider in the execution of any responsibilities placed on them by the law. Any law that permits the President or any of his Ministers or agents to amend existing legislation by mere administrative directives even in the nature of an Executive Instrument is clearly inconsistent with and in contravention of the Constitution.

Dr. Ken Attafuah as the Executive Secretary of the National Identification Authority owes Ghanaians an explanation for violating and compromising the confidentiality and privacy of each citizen's biometric data in the Register, for which he is the custodian, by making available several portable identity card readers for the SIM re-registration exercise being carried out by the Ministry of Communications and Digitalization to the numerous agents of each of the network operators or service providers to verify the biodata on every Ghana Card that the citizen presents for a SIM card re-registration. The Executive Secretary and the Government know that by assigning responsibility to numerous agents (throughout the whole country) of the Ministry of Communications and Digitalization to use the NIA's portable identity card readers to aid in the further collection of additional biometric data for the SIM card registration carries with it the risk of loss and theft of biometric data, given the ease with which they could be copied onto falsified cards.

THE UNCONSTITUTIONAL MAKING OF THE ESTABLISHMENT OF EMERGENCY COMMUNICATIONS SYSTEM INSTRUMENT, 2020 (E. I. 63)

Nana Akufo-Addo knows the injunctions of the Constitution. He nonetheless, purports to direct the collection of citizens' biometric data, storage and retention, and further specifies the custodian of such unconstitutionally collected biometric data as the National Information Technology Agency (NITA) by letter with reference number HA/28/1343/01 dated 18 June 2021 under the signature of his Minister of Communications and Digitalization, Mrs. Ursula Owusu-Ekuful (MP) and addressed to the Director-General of the National Communications Authority, Mr. Joseph Anokye. The capriciousness and arbitrariness of Nana Akufo-Addo's unconstitutional conduct is demonstrated by the fact that the letter sought to amend the provisions of the Subscriber Identity Module Regulations, 2011 (LI 2006) by purporting to assign the statutory mandate of the network operator or service provider to NITA without the statutory safeguards. NITA's substantive statutes and regulations spell out expressly what types of Registers it shall keep.

The National Information Technology Agency Act, 2008 (Act 711) which establishes the National Information Technology Agency specifically mandates it under section 19 thereof to

keep a register in which to record details of (a) licences, (b) licence applications, and (c) equipment approvals, (d) any shareholding and debenture owned by a member of the Board, (e) other financial interest a member of the Board has in a corporate body, (f) the public and charitable appointments and directorships of a member, and (g) any other matter required to be registered. Under the Electronic Transactions Act, 2008 (Act 772) the National Information Technology Agency has the mandate to facilitate the establishment of the Certifying Agency and a Register of licence holders under Act 772. The storage and retention of biometric data of citizens already provided for under LI 2006 is not a critical database whose custodian the Minister may determine by notice in the Gazette or letter under her hand.

The Minister of Communications and Digitalization's letter also designated the National Information Technology Agency to host the Central Equipment Identity Register which the President without Constitutional authority purported to establish under the so-called Establishment of Emergency Communications System Instrument, 2020 (E.I. 63). Nana Akufo-Addo, his Ministers, and statutory agents know that E.I. 63 as an Executive Instrument purports to amend the Subscriber Identity Module Regulations which is a Legislative Instrument passed under Parliamentary oversight and supervision. The Family and Friends' Government knows that without declaring a State of Emergency under Article 33 of the Constitution which is subject to Parliamentary oversight it cannot collect, store, and retain citizens' biometric data which he can use for purely political surveillance of Ghanaians and political electioneering rigging to protect the crimes committed by his Government against Ghanaians after he ceases to be President on 7 January 2025.

As most African dictators do, Nana Akufo-Addo's Family and Friends' Government used the fear by citizens of the Covid -19 pandemic as an excuse to bypass the mandatory constitutional requirement of declaring a State of Emergency that protects the rights and freedoms of citizens as an excuse first to get Parliament to unconstitutionally enact the Imposition of Restrictions Act, 2020 (Act 1012). Secondly, he then purports to make an Executive Instrument under section 100 of the Electronic Communications Act, 2008 (Act 775) which only gives him power to "make written request and issue orders to operators or providers of electronic communications networks or services requiring them to provide user information or otherwise in aid of law enforcement or national security" to act in a manner in consistent with and in contravention of the 1992 Constitution.

The content of the Establishment of Emergency Communications System Instrument, 2020 (E.I. 63) that sidestepped Parliamentary oversight and scrutiny is inconsistent with the purpose for which the President was empowered under section 100 of Act 775 to make written requests and issue orders thereunder. Section 100 of Act 775 does not permit or give the President the power by Executive Instrument to contravene the 1992 Constitution and purport to take away powers entrusted to the Network Operators and Service Providers under a Legislative Instrument which has been subject to Parliamentary oversight and supervision before being passed into law. The establishment of a Central Subscriber Identity Module to be the centralized database for validly registered Subscriber Identity Module cards and subscriber numbers on all networks of mobile and service providers in the country, for example, is not only inconsistent with Section 100 of Act 775 under which he knowingly purported to make E. I. 63 but unconstitutional in as far as it collects the citizens' biometric data without any robust safeguards to protect the right to privacy of citizens under the 1992 Constitution.

The Subscriber Identity Module Regulations, 2011 (L. I. 2006) was made under Parliamentary supervision. The Establishment of Emergency Communications System Instrument, 2020 (E. I. 63), was capriciously and arbitrarily made without Parliamentary oversight. Consequently, giving the nature and scale of the interference arising out of the mandatory processing and recording of fingerprints, and other biometric data it is essential “to have clear, detailed rules governing the scope and application of measures, as well as minimum safeguards concerning, inter alia, duration, storage, access of third parties, procedures for preserving the integrity and confidentiality of the data and procedure for its destruction, thus providing sufficient guarantees against the risk of abuse and arbitrariness.” (See *S. and Marper v The United Kingdom* App No. 30562/04 and 350566/04 (ECtHR 4 December 2008)). The unconstitutional E. I. 63 does not have any such safeguards against abuse and arbitrariness.

The Dictator, Nana Akufo-Addo, is deliberately acting unconstitutionally for reasons of pure political surveillance of Ghanaians and future political election rigging to protect himself and his Family and Friends’ Government from public scrutiny after the 2024 elections. More seriously, the security of citizens’ biometric data from unauthorized access such as domestic and international state and non-state actors hacking and accessing them places every citizen’s privacy under serious jeopardy contrary to the requirements of the 1992 Constitution.

CONCLUSIONS

Those who doubt the ability of constitutionally reprobate Presidents such as Nana Akufo-Addo or Prime Ministers in the current world to covertly abuse constitutional power should read up on how such rogue governments and rogue state actors have used the Israeli NSO Group made Pegasus spyware to hack the phones of their domestics and external adversaries – the latest is contained in a BBC report of 7 February 2022 titled: “NSO Group: Israel launches inquiry into police hacking claims.” One paragraph in this report states that: “Pegasus infects phones, allowing operators to extract messages, photos and emails, record calls and secretly activate microphones and camera.”

Nana Akufo-Addo will surely use the biometric data and SIM card registration particulars unconstitutionally collected against perceived adversaries within the New Patriotic Party during its internal elections, public officers including judges, members of other Political Parties and other citizens he sees as adversaries. He will use them to collect intelligence for election rigging and for eavesdropping purposes that will enable him to “break the 8” and crown his chosen successor as winner of the 2024 presidential elections to hold his back after 7 January 2025. This is the only reasonable explanation for his consistent unconstitutional behaviour in this matter.

The patriotic protest over the illegal SIM card re-registration exercise must, therefore, be non-partisan as we know from Nana Akufo-Addo’s antecedents that his Family and Friends’ Government can target any perceived adversary and may take away copies of the biometric database when leaving office for the future use of the Family and Friends’ continued state capture. We never knew that the National Democratic Congress (NDC) Government had covertly ordered a Pegasus spyware from Israel until it was defeated at the 2016 elections and there cannot be any guarantee as to what the innocent looking mother serpent of corruption in Ghana is planning against citizens of Ghana under the 1992 Constitution. And remember that the NDC Government in June 2016 was compelled to withdraw the Interception of Postal

Packets and Telecommunications Messages Bill, 2015 (Spy Bill) from Parliament when Nana Akufo-Addo as the then flagbearer of the opposition New Patriotic Party (NPP) joined other non-partisan patriots to kick against the enactment of the Bill into law on grounds that government will exploit it to spy on Ghanaians in contravention of the 1992 Constitution only for Nana Akufo-Addo to turn round on 23 March 2020 as President of Ghana to quietly and unconstitutionally make E. I. 63 almost on a similar subject matter without an iota of parliamentary oversight.

The decision, therefore, by a bi-partisan group of patriotic citizens calling upon Ghanaians to stand up for their rights by boycotting the use of their telephones on specified days and periods is not only a breath of fresh air under the oppressive Nana Akufo-Addo regime but also welcomed as the beginning of popular action to defend the fundamental rights and freedoms guaranteed to citizens under the 1992 Constitution.

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