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INFORMATION ABOUT NAMIBIA'S LAW

REGISTRATION OF SIM CARDS

The Communications Regulatory Authority of Namibia (CRAN) introduced mandatory SIM card registration in Namibia in January 2023 in line with the provisions of Section 77 of the Communications Act 8 of 2009 (the “Act”) and its corresponding regulations.

Namibians will for the first time experience the registration of SIM cards with their telecommunications service provider. The deadline for such registration is 31 December 2023. There is division among the public because of the significant nature of the issue i.e. without registration your SIM card will be blocked. Some don't have a problem with registration while others are concerned about the information required during such registration and, more importantly, what will be done with this information.

The most important questions therefor are: what information is required, what is retained and how can this information be used?

The relevant section of the Act - Part 6 of Chapter V - deals with the interception of telecommunications. The Oxford Dictionary describes “interception” as “the action or fact of receiving electronic transmissions before they reach the intended recipient”. Some synonyms of interception include interference, stopping, interfering with, and interposing. This alone should give us a moment's pause.

If you own a mobile or any other electronic device that uses a SIM card, you will need to visit your service provider and register this SIM card before 31 December 2023. You will not be able to purchase a SIM card in the future without providing the information requested.

CRAN has been conducting a sensitisation and information campaign explaining what users of mobile telephones, or customers, must provide to their service provider. The service provider must collect the full name, address and some form of identification of which a copy must be provided, from each customer. Information obtained from juristic persons, such as companies, will follow similar requirements of proof. This sounds fairly straightforward.

However, once a SIM card has been registered, the following information, amongst others, can be accessed without further notice:

- Telephone number and identification document of the customer;
- The internet protocol address allocated to a specific customer;
- The number called if generated by the customer and the calling number if another party initiated the call;
- The date, time and duration of the telecommunication.

This information must be stored by the service provider for a period of at least 5 years following the cancellation of the contract. The question and concern is, why? The response is that this information can be used to combat crime, with a focus on child pornography, organised crime or terrorism.

So, who gets to access this information?

The short answer is only Government. A police officer or a member of the Namibia Central Intelligence Services requiring information must submit a written request to a judge or a magistrate for authorisation to obtain same from the service provider. In both cases, whether for investigation by the police or use by the Namibia Central Intelligence Service, the request must state the nature of the offence, the name of the party and the description of the required information. The request is to be made under a statement of oath.

The judicial officer will then consider whether the information requested is: “necessary or relevant, that there is no more expedient manner to obtain the information and that the obtaining of the information is authorised by the law of Namibia” and may then issue an order approving the request if so satisfied.

While this may not sit well with many, it is even more concerning that should a member of the Namibian Police Force decide that it would be counter-productive to wait for a Court Order, the information can be requested from a designated staff member of the telecommunications service provider. If this staff member on “reasonable grounds” believes that such information is urgently required and that any delay would defeat the purpose for which the request was received, and further that a request to Court for authority would have been granted, he or she can provide the information requested. While the names of such delegated staff members must be provided to CRAN there are no requirements concerning qualifications or training and those delegated are most likely not to have training in legal matters. While the police officer can be disciplined for not first obtaining judicial authorisation, this is not so in the case of the staff member.

The result is that a person, without a Court Order, can ostensibly provide information to the requesting party which would include your name, your identity document, whom you called, who called you and when and how long the call lasted. The decision to provide this private information is placed in the hands of an authorised employee of the telecommunications service provider who would carry a very heavy responsibility. Furthermore, there is no duty to inform the customer either before, during or after the interception. This might easily lead to system abuse and the exposure of the customers’ private information. The big question is therefore – Is the practice constitutional? Article 13 of the Namibian Constitution protects the right to privacy confirming that no person shall be subject to interference within the privacy of their homes, correspondence or communication save as is “necessary in a democratic society in the interest of national security, for the prevention of disorder or crime.....”. There are further provisions, but these mentioned above most closely relate to the justification of the registration of SIM cards.

A major concern is that this will allow the authorities to know who is phoning whom. For example, the possibility to publish a damning exposé that references confidential informants, may be hampered due to the concern that informants will be identified. The telephone history of the reporter will show the date and length of conversation as well as who the parties to the conversations were. This interference may also affect attorney/client privilege.

Since the information is readily available, unauthorised persons may be able to hack into the data of the service provider and use information obtained for their own devices. Identity theft is also a major concern. Similar legislation has been declared unconstitutional in South Africa on the basis that it offends against the right to privacy.

Major concerns:

- Interception can take place in respect of every customer and not just those reasonably suspected to be connected to a crime or terrorist activities;
- There is no duty to inform a customer that this information was provided to a government authority;
- A designated staff member of the telecommunications service provider is charged with the decision as to whether to provide sensitive information without a Court Order.

While there is currently no requirement that SIM cards must be registered, the alternative is that you will no longer be able to communicate as you do now. If you do register, you will have to accept that the information referred to above, will be available to government authorities at any time, with or without a Court Order.

This concerning change can well remind one of the activities of the security forces under the apartheid government.

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