

THE EVOLUTION OF THE NATIONAL IDENTIFICATION AND REGISTRATION ACT, 2020 (“NIDS BILL”)

The citizens of Jamaica observed the Government’s first attempt to pass the National Identification and Registration Act, 2017 (“Old NIDS”). This Act that was unanimously rejected, struck down by the Jamaica’s Supreme Court and found unconstitutional as it violated citizen’s rights. In September 2020, the Government announced their intention to implement a new NIDS Act by the year’s end. This did not materialize. Instead, the “new” NIDS Bill was tabled in December 2020, with an announcement that it would be put to a Joint Select Committee for discussion and the taking of public submissions.

This year 2021 opened with the Jamaican Government creating precedent by garnering the public’s input via means of a six (6) part virtual Town Hall and encouraging feedback from the public. The OPM also provided a clause-by-clause examination of the new NIDS bill. The Jamaica Accountability Meter Portal seeks to add value to the process of public consideration and debate by providing an examination of the elements of the new NIDS Bill relative to the Old NIDS. A comprehensive look at Old NIDS as well as the case of Robinson Julian v Attorney-General of Jamaica (“NIDS Case”) and the proposed New NIDS, will allow for greater understanding of the progress of this legislation.

CORE PROVISIONS AND/OR ISSUES	DIFFERENCES/CONTRAST	
	Old NIDS	New NIDS
Part I: Preliminary		
<p>Section 2- Interpretation: This section defines the key words contained within the NIDS statute/Bill and seeks to give them meaning beyond the ordinary definition of these words</p>	<p>Section 2 included words that were general in nature (e.g.) identity information was defined to only include biometric and biographic information of the individual</p>	<p>Section 2 expanded to include or introduce specific words such as Civil Registration; Civil Registration Database, Inspectorate and others (e.g.) “<i>identity information</i>” means the biographic, biometric or numerical information that may be collected under section 11 in respect of an individual</p>
<p>Section 3: Objects This section sets out the objects of the Act (i.e.) the underlying purposes of the legislation. It also explains several functions that should reasonably guide the interpretation of the provisions contained within the statute/Bill.</p>	<p>The section has three of the four objects that deals with identification and the establishment of both a NIDS Authority (“Authority”) and of a “<i>Database</i>” as per its section 15 while the other speaks to the compiling of statistical data for analysis from collecting information relating to commercial, industrial, social, economic and general activities</p>	<p>This section expands its database to more than one, that is, to establish Databases specifically the National Database and Civil Register Database as well as to incorporate the Registrar-General Department and its functions</p>
Part III—The National Identification Databases and The Civil Registration Databases		
<p>National Databases The purpose of the databases includes enrollment of individuals,</p>	<p>Section 15- Establishment of National Civil and Identification Database (“NCID”) Establishes one singular database</p>	<p>Section 9- National Databases Establishes more than one database or Databases</p>

<p>storage and verification of identity information, as well as generation of National Identification Card (“NIC”) and National Identification Number (“NIN”)</p>	<p>The database is named NCID</p> <p>Section 16: Expands purpose to include collecting identity information for statistical purposes and to reproduce this information also</p>	<p>These databases are named National Identification Databases (“NIDS”) and Civil Registration Databases (“CRD”)</p> <p>It also indicates the purpose of the CRD that is for civil registration to generate and issue certificates and proof documents</p>
<p>Enrollment Whether failure to enroll/register is criminalized?</p> <p>Whether enrollment is mandatory?</p>	<p>Section 20- Enrollment Section 20 not only compels registration, as Section 20(1) requires every registrable individual to apply to be enrolled in a database but also subsection (11), it criminalises (<i>among other things</i>) the refusal or failure to enrol in the database, as it compulsorily requires that Jamaican citizens and those ordinarily resident to enrol in the database</p>	<p>Section 10- Enrollment Section 10 expresses that enrollment is free and voluntary for those who are desirous to have it.</p>
<p>Section 11- Identity Information</p>	<p>According to Third Schedule to the Act, the identity info to be collected by Authority is either mandatory, optional or both. The Authority must (mandatorily) collect Part A, B1 and D and may (optionally) collect Part B2, C and D of this schedule. To clarify, these include:</p> <ol style="list-style-type: none"> (1) Part A- biographic information is mandatorily collected (2) Demographic information is optionally collected. (3) Part B (biometric information)- some are mandatory and others optional. <p>These data must be verified (see section 20)</p>	<p>Specifies that the info collected upon enrollment;</p> <p>There is a distinction between biographic and biometric data</p> <ol style="list-style-type: none"> (a) Biographic includes birth, gender, address, marital status, nationality occupation (b) Biometric data has a minimum standard and defines facial image, fingerprint, manual signature of persons 18 and over, reference number as found on TRN, driver’s license, passport, NIS, Path, voter’s Id <p>This information submitted will be vetted.</p>
<p>Cancellation of Enrolment There is no power in the either New or Old NIDS to revoke a NIN once issued</p>	<p>Section 21 The Authority is given wide discretion to cancel enrollment, and must notify the individual of this with a written notice.</p>	<p>Section 14 The Authority has the discretionary power to cancel where the individual who is not citizen or</p>

<p>but there is power to cancel a NIC</p>	<p>The Authority can also forego the decision to cancel and enroll and individual previously cancelled The only recourse for cancellation is found in section 47 via appeal</p>	<p>ordinarily resident, via a written request of the enrolled individual accompanied by NIC as well as detection of inaccurate data in NIDS; The authority also has power to re-enroll after cancellation.</p>
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Part IV-Use and Security of Information Stored in the National Databases

<p>Security of Information This provision ensures protection of data collected from abuse by the Authority and its staff, as well as re procedures and protocol security measures</p>	<p>Section 42 General in nature</p>	<p>Section 23 Further specifies security to be incorporated such as technological security (e.g.) encryption and physical security</p>
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<p>Disclosure Regime</p>	<p>Section 43 (1) facilitates non-disclosure of identity information stored in the database); Section 43 (1)(e) shows that the Authority is authorised to disclose identity information stored in the database ‘where the Act authorises disclosure.’ Section 43 (2) makes provision for the Court to grant orders for disclosure of identity information on an ex parte application by the Authority. An order may be granted on the ground that the disclosure is necessary- <i>a) “For the prevention or detection of crime</i> <i>b) In the interest of national security</i> <i>c) Where there is a public emergency; or</i> <i>d) To facilitate an investigation under the Proceeds of Crime Act.”</i></p>	<p>Section 24-Disclosure of identity Information Identity Information info can only be verified, therefore disclosed with the request of the Identification owner and this owner must be notified once when any disclosure occurs. Two other exceptions re disclosure involves via a court order issued by a Judge or by Statute or law. Additional disclosure can occur for law enforcement via an application by the Police Commissioner to Supreme Court for an order of disclosure due to crime and other prescribed conditions</p>
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Part VII—General

<p>Review of Act This provision explains that Parliament will review the Act within a certain time period</p>	<p>Section 59 Specifies that the review will occur after the expiration of eighteen months from the first appointed day</p>	<p>Section 35 Specifies that the review will occur after the expiration of three years from the first date appointed under section 1.</p>
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CONCLUSION:

Throughout the process, the Government has maintained that their main intention is to establish a National Identification and Registration Authority having responsibility for civil registration and national identification. For various reasons, the Government has lauded the NIDS Bill as beneficial to society. One should note that, whether the NIDS Bill is a benefit has never been in moot. The NIDS case dissected their first attempt to pass the Law and found it not only wanting but unconstitutional. The Table above, shows that the new NIDS Bill is a far better Bill than its predecessor. The learned Justices in the NIDS case paved the way for thorough examination of not only current issues, at the time of their deliberations, but also sufficiently posited potential detriments in NID's legislative journey. The Honourable Chief Justice Sykes and his fellow Justices also enlightened Jamaica to other concerns and/or questions:

1. Costly/ Expensive to administer:

In light of the dynamic technological age, implementation of NIDS and other identity management programs, reprint and manufacture of "free" NIC are costly ventures and begs the question: How will the Government fund this? Will taxpayers have to deal with this cost?

2. Encroachment of privacy:

There are inherent dangers of storing the personal data of citizens in one single place. This can lead to not just a breach of privacy but other infringement of civil liberties and graduate towards human right violations as well. The ability and exercise of a national ID system, can facilitate state control and deepen Government access to a huge cache of its citizens' personal data.

3. Increased threat for Criminals to Acquire Identity Information:

The Government has touted that all residents with NIC will have a unique NIN, so this will prevent holders from defrauding others re their identity. However, this same benefit might create circumstances where this unique identifier, which will become universally accepted and used by all citizens will be targeted by criminals who would try to obtain the information without their consent.

4. Potential abuses of NIC:

Can a state agency or the police upon their checks of our NIC acquire personal data and abuse their authority. What information is uploaded when my NIC is scanned by a police upon a traffic violation?

5. Centralization of Database Storage:

Storing data in one place provides a clear target for a criminal hacker's attempts to access and decrypt this information.

6. Doubts over Its Effectiveness Against Crime:

One of the main benefits of this national ID system touted by the Government, is that it will help to combat crime and other threats. This benefit needs clearer articulation. In addition, what happens if the Database is hacked or my NIC is stolen?

7. Data Security.

Does the Government have the ability to protect data under its custody? What are the legislative frameworks? What are the security measures undertaken to ensure safety of identity information? And in implementation of this, who then monitors the monitors?

What is clear is that their serious unanswered questions, and until we can sufficiently resolve these, conduct some feasibility planning; then implementation is far from ready.