

**FINAL REPORT**

**CONSULTANCY SERVICE FOR THE PROVISION OF A LEGAL  
FRAMEWORK FOR THE IMPLEMENTATION OF THE NATIONAL  
IDENTIFICATION SYSTEM WHICH WILL SUPPORT THE CIVIL  
REGISTRATION AND VITAL STATISTICS (CRVS) AND THE  
GOVERNMENT NETWORK INFRASTRUCTURE (GovNet)  
PROJECTS.**

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## **Background to the National Identification Systems Project**

The National Identification System (NIDS) project aims to develop a national identification system that will result from the creation of a database that will store personal identity information about all citizens and ordinarily resident persons. By so doing problems associated with criminal activities facilitated by fraudulent use of multiple identities are expected to be better tackled by law enforcement agencies while cardholders will be afforded a convenient and reliable means to verify their identification as required in the conduct of their daily lives.

The NIDS is also expected to assist in the furtherance of the 2030 Vision, specifically the empowerment of Jamaicans to achieve their fullest potential, ensuring that the society is secure, cohesive and just and contributing to the prosperity of the economy.

The objectives of the national registration and identification programme are as follows:

1. assist with governance and distribution of socio-economic benefits
2. identification of citizens and lawful residents;
3. assist in citizen security
4. assist in prevention of identity fraud
5. assist law enforcement

The stated policy goal and vision of the NIDS is that the National Identification System will become <sup>1</sup>“... the primary source of verifiable and authentic identity assurance for every citizen and persons ordinarily resident in Jamaica.” The NIDS policy document describes the key outputs for the implementation of the NIDS as:

- (1) issue each citizen or persons ordinarily resident in Jamaica, a lifetime unique national identification number (NIN);
- (2) establish a reliable database of Jamaican citizens and other individuals with a NIN as the primary identifier;
- (3) issue each registered person with a multi-purpose identification card;
- (4) provide an effective and convenient system of ID verification and authentication;
- (5) improve governance and management of national, social, economic and security programmes;
- (6) strengthen immigration and border control arrangements

### **The Legal and Regulatory Framework**

The need for an appropriate legal and regulatory framework to support the creation and operation of the NIDS has been identified as one of the critical components of the overall project. The framework will see the examination of existing legislation with a view to identifying the changes that may be required as well the proposal of new legislation.

Key focus areas are:

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<sup>1</sup> The National Identification System (NIDS) Policy Document, page 13; September 2014

- Registration of citizens and resident non-citizens
- Data storage and management
- Data sharing
- Sanctions for illegal use of information
- Creation of appropriate regulatory vehicle
- Creation of unique identification number (NIN)
- Identification cards
- Protection of individual right to privacy

### **The Existing Legislative Framework**

The Constitution, specifically Chapter III as amended, guarantees each citizen rights that are universally regarded as basic human rights that are necessary in a modern free society. The rights that are significant for the NIDS are:

- The right of everyone to-
  - (i) protection from search of the person and property;
  - (ii) respect for and protection of private and family life, and privacy of the home; and
  - (iii) protection of privacy of other property and of communication
- The protection of property rights

Any enactment by the Parliament has to be consistent with the Constitution and as such careful attention has to be given to ensuring that privacy and property rights are not infringed by the NIDS legislation save and except as is permitted.

The primary legislation that provides for the collection of personal, demographic, biometric or photographic information from citizens are:

- Registration (Births and Death) Act
- The Marriage Act
- Passport Act
- Representation of the People Act
- Statistics Act
- Revenue Administration Act

It is to be noted that only the Representation of the People Act provides for the collection of all categories of data for identification purposes. While the Revenue Administration Act permits the tax authority to collect the information about taxpayers that it deems necessary, the issued TRN number and card are intended to assist in the collection, storage and retrieval of tax compliance information rather than to verify the identity of the taxpayer when he presents himself at the tax collectorate.

Similarly, the Registrar-General of Births and Deaths operates a civil registry and as such personal information is collected and is available to the public. A member of the public may apply for the issue of a certificate as evidence of the registration of birth, marriage or death.

The Electoral Commission derives its authority from the Representation of the People Act and it collects personal information on electors for inclusion in the list of voters. In order to satisfy itself of the identity of persons who present themselves as being on the voter's list, an identification card is issued by the Commission. Significantly, the collection of biometric information by the Electoral Commission has not resulted in significant opposition from the public (although there was initially some expression of concern by the public), nor have



any reports been made that the writer has found that would reflect a lack of confidence in the integrity of the data storage and protection systems in use.

It is to be acknowledged that Jamaica has not yet enacted data protection and data sharing legislation. These are important safeguards against methods of collection, storage and retrieval that would infringe the rights of citizens and it is anticipated that their enactment will at least be contemporaneous with that of the establishment of the NIDS.

### **Focus Points for the NIDS legislation**

#### **1. Registration**

The registration of all citizens, whether naturalized or by birth and of non-citizens who are ordinarily resident in Jamaica as well as for the storage of the information obtained in a secure database to facilitate its subsequent retrieval is at the heart of the NIDS project.

The first challenge that presents itself is to determine the systems that are required and the sources from whence information required for registration may be acquired.

The NIDS will have to rely on existing Ministries, Departments and Agencies that are concerned with the collection of personal information, civil registration and vital statistics to data. This data is important to assist in the verification of information obtained directly from each person during the registration process.

While the system of civil registration operated and managed by the Registrar-General captures persons who are citizens by birth, there is no

such system for the registration of non-nationals who are 'ordinarily resident in Jamaica' or persons who acquire citizenship by naturalization save and except for the records maintained by the Passport, Immigration and Citizenship Agency.

The NIDS is seeking to capture all citizens and persons ordinarily resident in Jamaica and if successful it will for the first time establish a database containing the personal, demographic and biometric information ('the national identification database or the NID') of all the above-mentioned categories.

The Registrar-General ('the RGD') operates a significantly large database of persons born, deceased, married or adopted in Jamaica. It will be a vital resource for the NID and it is expected that a symbiotic relationship will be established between the RGD and the agency to be responsible for the NIDS (National registration Commission?) that will facilitate the flow of data between the two agencies.

It is to be noted that a large portion of the birth, death and marriage records kept in the RGD's registers are not yet part of their electronic database and as such information about citizens prior to the start date for the electronic database may not be easily acquired for entering into the NID.

There is also concern about the reporting of deaths. The RGD is reliant on family members of a deceased person or the registry of medical institutions to report deaths. It is often at the point when an attempt is made by the personal representative of a deceased to dispose of property belonging to the deceased's estate that the need for registration of the death is recognised and appreciated.

The Registration (Births and Deaths) Act explicitly prohibits the burial of any deceased person where a certificate or an order for burial has not been issued by the Registrar-General, and the Cremation Act provides that a Coroner or the relevant Constabulary officer is to report a cremation to the Registrar-General. Notwithstanding those provisions, it may be that the mechanism for ensuring that all such deaths are reported to the Registrar-General needs strengthening to ensure that under-reporting of burials and cremations is not occurring.

Data concerning the death of nationals who die overseas should also be collected for the NID however that category may pose a challenge particularly as there is no formal mechanism for the reporting of such deaths in Jamaica.

The NID requires, in addition to the report of a birth or a death, information on marriages and divorces. The Marriage Act places obligation to register marriages on the Registrar-General and the appointment and regulation of marriage officers is also done by the Registrar-General in conjunction with the Ministry of Health.

In the case of a female, the practice to adopt the surname of the spouse means that the NID needs to record the name change as well as the fact of the marital link between the two parties. In some cases, it may well be that a marriage has taken place in Jamaica but one or neither of the parties are citizens. In such a case the marriage is only of interest to the NID in as far as a citizen was a party.

In the case of divorces, it is the practice for some female divorcees to simply revert to using their maiden name without any registration of their name change. The fact of the divorce and the discontinuation of the legal relationship between the parties is also relevant information for the

NID. This is perhaps the greatest registrarial challenge for the NID because there is no statutory requirement for the Registrar-General to receive information about divorces. There is therefore no official register of divorces. The divorce proceedings are conducted by the Supreme Court and as such an official record of the divorce can only be acquired from the Registrar of that Court.

While STATIN acquires data on divorces, information shared with STATIN is statistical in nature and would be inadequate for NIDS purposes. The NIDS would need to enter into a data sharing agreement with the Chief Justice for the receipt of the information about divorces until a regime for registration by the Registrar-General of that information is put in place.

It is worthy of consideration for the Matrimonial Causes Act to be amended to provide for the registration of decrees absolute and the issue of a certificate of divorce by the Registrar-General accordingly.

## **2. Data Storage and Management**

Having registered relevant persons, the storage of the data collected during that process and on an on-going basis as changes occur as well as the retrieval mechanism is largely a technical matter. Legislative authority to store and share the data will be necessary as no existing law sufficiently authorises the data storage requirements of the NID.

The need to ensure that the fullest possible protection is implemented to protect the NID from unauthorised and unlawful use will be a statutory obligation and a registered person will have a legal remedy in the event that the obligation is breached. Particular authority to collect the fingerprints of registered persons will have to be given to the NIDS and

safe-guards implemented to ensure the restricted use of that information are also important. Notwithstanding the lack of data protection legislation, the NIDS legislation will include provisions to criminalize the misuse of the NIDS data.

The design for the ICT architecture for the NIDS is still being designed and as such a complete determination of what needs to be provided in legislation to ensure that all aspects of the conduct of the NID has been enabled will not be determined until that exercise is completed.

### 3. **Data Sharing**

The sharing of data between GOJ ministries, departments and agencies will be important for the NIDS project. This will be necessary to the NIDS achieving its policy objectives and making the contribution it is expected to make to the conduct of business and governance.

For example, in order for the NID to authenticate and verify data it receives from a registered person it must have a platform for accessing the registers kept by the RGD, and in turn it can assist the RGD in its efforts to verify the data in its registers. The same would be the case for the sharing of information stored in the Passport and Immigration Agency.

The agencies and departments with which it is going to seek to share information have been identified in the project design documents and the legislation will facilitate this by ensuring that the NIDS has the legal authority to request and receive as well as send out data.

### 4. **An appropriate regulatory Vehicle**

A regulatory vehicle on the level of the Electoral Commission is being recommended for the NIDS. The management of the functions to be carried out are of sufficient sensitivity and national importance that the regulatory body will require powers to not only conduct the day to day affairs of the NIDS but to also make regulations that will prescribe the manner of registering relevant persons, the protocols for data sharing, the procedures for storing and retrieving data, the screening of staff employed, procedures for making changes to data stored about a registered person.

There are two perspectives to examine:

- (a) the legal status of the entity to manage the NIDS is to be determined. Consideration may be given as to whether it should be made a Commission of Parliament. Placing the NIDS regulatory body on this level would ensure that on-going parliamentary scrutiny is exercised over its operations as well as guidance on issues that may arise concerning its operations can be provided in a non partisan manner;
- (b) the need to insulate the NIDS against any perception by the public of the likelihood of control by political interests has to be acknowledged. At the same time it may be argued that making the entity a commission of Parliament would be placing it too close to the party political interests. Public perception may be that decisions concerning its operations and by extension the use for which the information collected and stored in the NID ought to be as distant as possible from political influence.

Considering both perspectives and bearing in mind that the structure in place for the use of personal information by the Electoral Commission has not so far met any popular disapproval, the NIDS can secure the same measure of public confidence if its operations are conducted within a similar construct. Accordingly, the recommendation for the entity is that of an independent commission, preferably one that is answerable to the Parliament.

## 5. **The Numerical Identifier**

The NIDS policy document indicates that a numerical identifier (Unique Person Identifier) is to be created using an approved algorithm. This will be a sequence of numbers that will be assigned to one registered person for the duration of their lives. The national identification number or NIN will be one of the products to be used by the NIDS to carry out its mandate. The creation and assignment of this numerical identifier to all registered persons as well as its permitted use will be authorised in the legislation. The technical aspects of the creation and assignment of NIN are to be finalized and the final determination about the legislative provisions required to facilitate that activity will then be made. As such assumptions will be made at this stage subject to the finalization of the technical design.

## 6. **The Identification Card**

Each registered person who is at the specified age is to be issued an identification card that will exhibit the identification number (the Unique Person Identifier) assigned to them as well as other specified personal

information. The card is valid for a specified period of years after which it must be renewed in the same manner that a driver's licence is first issued and then renewed. The legislation is to specify the age at which a registered person is to be issued the card and the procedure for the distribution of the card. It should also provide for the card to be evidence of the registration of the person to whom it was issued and of the validity of the information printed thereon.

The policy intent is for the card to be used extensively for accessing public services and most importantly in all situations where verification of identity is required. The legislation will not stipulate the general use of the card except to make it lawful for it to be used. It is expected that the legislative recognition of the card as a public document will engender confidence in its validity and ultimately public confidence will result in the card being regarded as a conclusive identification document.

The legislation will not mandate the carrying of the card by a registered person. The carrying of the card will be completely voluntary and the issuer of the card is the only entity that can mandate that it be submitted to them. This is important to minimize public apprehension about unconstitutional monitoring of their personal affairs by the state. It is expected that as the card gains acceptance it will eventually become a requirement for accessing some public services. The need to present the card for these purposes should result in the voluntary carrying of the card as and when a registered person determines that it will be needed.

## 7. **Privacy**

Perhaps the most significant factor in the achievement of public confidence in the NIDS will be the effectiveness of its privacy protocols.



The protection of the privacy of each registered person is to be very strongly provided for in the legislation. The overriding obligation to keep the information in the database free from abuse and misuse will be legislatively assigned to the managing entity as well as any person directly or indirectly connected with the functions of the NIDS.

Notwithstanding the seal on the misuse and abuse of the information, the legislation will provide for limited permitted disclosure of the information in as far as it is required by a specified public entity.

Disclosure of information therefore is one of the most sensitive and difficult aspects of the legislation. Just how much should be allowed? Is there sufficient justification for allowing the disclosure to those it is allowed? In the answer to those questions Chapter III of the Constitution will be consulted. The public interest is permitted to be considered and determined in order to determine how far to go in permitting disclosures, as constitutional protection cannot be waived on any other basis. However, disclosure to a registered person of information stored in the database about himself/herself is to be permitted under the legislation.

Notwithstanding the limited disclosures to be permitted under the legislation, there are internationally accepted guidelines that should be followed so that the sanctity of the privacy of the registered person can be preserved. These guidelines are replicated below:

(a) **International Guidelines on Protection of Personal Information**

In 1980 the OECD published Guidelines on the Protection of Privacy and Transborder Flows of Personal Data and at the time was the first

internationally agreed upon statement of core information privacy principles that reflected the diverse views and perspectives of countries around the world. The Guidelines are described by the OECD as “...a carefully crafted compromise that reflects the differing views of the members of the Expert Group on these and other potentially contentious issues.” The guidelines are summarized in seven core principles that are regarded as a watermark in the protection of information privacy.

The OECD's seven principles<sup>2</sup> are as follows:

### **Collection Limitation Principle**

There should be limits to the collection of personal data and any such data should be obtained by lawful and fair means and, where appropriate, with the knowledge or consent of the data subject.

### **Data Quality Principle**

Personal data should be relevant to the purposes for which they are to be used, and, to the extent necessary for those purposes, should be accurate, complete and kept up-to-date.

### **Purpose Specification Principle**

The purposes for which personal data are collected should be specified not later than at the time of data collection and the subsequent use limited to the fulfilment of those purposes or such

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<sup>2</sup> <http://www.oecd.org/sti/ieconomy/2013-oecd-privacy-guidelines.pdf>

others as are not incompatible with those purposes and as are specified on each occasion of change of purpose.

### **Use Limitation Principle**

Personal data should not be disclosed, made available or otherwise used for purposes other than those specified in accordance with Paragraph 9 except:

- a) with the consent of the data subject; or
- b) by the authority of law.

### **Security Safeguards Principle**

Personal data should be protected by reasonable security safeguards against such risks as loss or unauthorised access, destruction, use, modification or disclosure of data.

### **Openness Principle**

There should be a general policy of openness about developments, practices and policies with respect to personal data. Means should be readily available of establishing the existence and nature of personal data, and the main purposes of their use, as well as the identity and usual residence of the data controller.

### **Individual Participation Principle**

Individuals should have the right:

- a) to obtain from a data controller, or otherwise, confirmation of whether or not the data controller has data relating to them;
- b) to have communicated to them, data relating to them
  - i. within a reasonable time;
  - ii. at a charge, if any, that is not excessive;
  - iii. in a reasonable manner; and
  - iv. in a form that is readily intelligible to them;
- c) to be given reasons if a request made under subparagraphs (a) and (b) is denied, and to be able to challenge such denial; and
- d) to challenge data relating to them and, if the challenge is successful
  - to have the data erased, rectified, completed or amended.

### **Accountability Principle**

A data controller should be accountable for complying with measures which give effect to the principles stated above.

- (b) In 1990 the United Nations published its Guidelines for the Regulation of Computerized Personal Data Files. The guidelines are consistent with the principles underpinning Article 12 of the Universal Declaration of Human Rights "... *No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.*

The guidelines are intended to be applied to personal data in the control of governmental organisations and the enshrining of the principles in national legislation is strongly recommended by the UN. The following are the UN principles<sup>3</sup> that should be guaranteed in national legislation:

### **“1. Principle of lawfulness and fairness**

Information about persons should not be collected or processed in unfair or unlawful ways, nor should it be used for ends contrary to the purposes and principles of the Charter of the United Nations.

### **2. Principle of accuracy**

Persons responsible for the compilation of files or those responsible for keeping them have an obligation to conduct regular checks on the accuracy and relevance of the data recorded and to ensure that they are kept as complete as possible in order to avoid errors of omission and that they are kept up to date regularly or when the information contained in a file is used, as long as they are being processed.

### **3. Principle of the purpose-specification**

The purpose which a file is to serve and its utilization in terms of that purpose should be specified, legitimate and, when it is established, receive a certain amount of publicity or be brought to the attention of the person concerned, in order to make it possible subsequently to ensure that:

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<sup>3</sup> <http://www.refworld.org/docid/3ddcafaac.html>

- (a) All the personal data collected and recorded remain relevant and adequate to the purposes so specified;
- (b) None of the said personal data is used or disclosed, except with the consent of the person concerned, for purposes incompatible with those specified;
- (c) The period for which the personal data are kept does not exceed that which would enable the achievement of the purposes so specified.

#### **4. Principle of interested-person access**

Everyone who offers proof of identity has the right to know whether information concerning him is being processed and to obtain it in an intelligible form, without undue delay or expense, and to have appropriate rectifications or erasures made in the case of unlawful, unnecessary or inaccurate entries and, when it is being communicated, to be informed of the addressees.

Provision should be made for a remedy, if need be with the supervisory authority specified in principle 8 below. The cost of any rectification shall be borne by the person responsible for the file. It is desirable that the provisions of this principle should apply to everyone, irrespective of nationality or place of residence.

#### **5. Principle of non-discrimination**

Subject to cases of exceptions restrictively envisaged under principle 6, data likely to give rise to unlawful or arbitrary discrimination, including information on racial or ethnic origin,

colour, sex life, political opinions, religious, philosophical and other beliefs as well as membership of an association or trade union, should not be compiled.

## **6. Power to make exceptions**

Departures from principles 1 to 4 may be authorized only if they are necessary to protect national security, public order, public health or morality, as well as, inter alia, the rights and freedoms of others, especially persons being persecuted (humanitarian clause) provided that such departures are expressly specified in a law or equivalent regulation promulgated in accordance with the internal legal system which expressly states their limits and sets forth appropriate safeguards.

Exceptions to principle 5 relating to the prohibition of discrimination, in addition to being subject to the same safeguards as those prescribed for exceptions to principles 1 and 4, may be authorized only within the limits prescribed by the International Bill of Human Rights and the other relevant instruments in the field of protection of human rights and the prevention of discrimination.

## **7. Principle of security**

Appropriate measures should be taken to protect the files against both natural dangers, such as accidental loss or destruction and human dangers, such as unauthorized access, fraudulent misuse of data or contamination by computer viruses."

## **8. Supervision and sanctions**

The law of every country shall designate the authority which, in accordance with its domestic legal system, is to be responsible for supervising observance of the principles set forth above.

This authority shall offer guarantees of impartiality, independence vis-à-vis persons or agencies responsible for processing and establishing data, and technical competence.

In the event of violation of the provisions of the national law implementing the aforementioned principles, criminal or other penalties should be envisaged together with the appropriate individual remedies.

## **9. Transborder data flows**

When the legislation of two or more countries concerned by a transborder data flow offers comparable safeguards for the protection of privacy, information should be able to circulate as freely as inside each of the territories concerned.

If there are no reciprocal safeguards, limitations on such circulation may not be imposed unduly and only in so far as the protection of privacy demands.

Based on the literature gleaned concerning the policy direction Jamaica intends to pursue, the above quoted principles are to be observed in the proposed Data Protection Act.



## **Public Policy Initiatives**

### The HIPCAR Project

Jamaica is part of project funded by the European Union that aims to harmonize ICT policy legislation regulatory procedures in the region. Other participating countries are Antigua, the Bahamas, Barbados, Belize, Dominica, the Dominican Republic, Grenada, Guyana, Haiti, St Kitts and Nevis, St. Lucia, St. Vincent, Suriname and Trinidad and Tobago.

The project has published Model policy guidelines and legislative texts in respect of privacy and data protection<sup>4</sup>. Under the acronym HIPCAR meaning Harmonization of ICT Policies, Legislation and Regulatory Procedures in the Caribbean. The following extract from the HIPCAR document illuminates the policy issues that must be considered for a project such as the NIDS:

*Privacy has been identified as a human right, as concretized in various provisions of the Universal Declaration of Human Rights, the International Covenant of Civil and Political Rights, as well as the American and European Convention on Human Rights. This right to privacy which protects the individual's private life against arbitrary, unlawful or abusive interference, by extension provides for the protection of the personal information of the individual, and the protection of the transmission of such information.*

The role of data protection therefore is to, as far as technology is able, put technical barriers in place to ensure that there is no misuse of information and that in the event of such misuse, there is a mechanism for criminal sanctions to be enforced against the misuse. The point is well made in the following extract from the HIPCAR report:

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<sup>4</sup> Privacy and Data Protection: Model Policy Guidelines & Legislative Texts  
<http://www.itu.int/en/ITU-D/Projects/ITU-EC-ACP/HIPCAR/Documents>

*Privacy and Data Protection laws are based on the premise that the individual must have some level of control of how the personal information collected from them by the government or businesses are utilised, processed or disclosed.*

*This control is primarily asserted at the point at which information is collected, at which time the collecting party must make a full disclosure of the intent for which the information is to be collected, and be commit to be so constrained in the use of the personal information after it is collected.*

*The other major facilitation of the individual's control is the obligation of the collecting party to provide the individual with the opportunity to review any information which is stored by the party about the individual.*

*Despite this, there should be exemptions to the general rules associated with the restriction of the use of personal information, with the application of specific, different guidelines in the fields of medical services and national security where gaining the assent of the individual is not practical.*

The countries participating in the HIPCAR initiative have committed to implementing 'clear and institutional frameworks to ensure the protection of personal and private information. Jamaica has taken significant steps towards enacting legislation. Workshops were held in May 2014 and the relevant issues were distilled. The framework to be put in place should provide for:

- Protection of privacy
- Individual rights to access information
- Data accuracy
- Security safeguards
- Regulation of disclosure or transfer of information

- Accountability
- Limitations in respect of collection, purpose and use of information
- Enforcement and compliance

It is anticipated that approval for the issue of drafting instructions to be sent to the Chief Parliamentary Counsel will be sought before the end of March 2015.

#### The Civil Registration and Vital Statistics Systems Modernization Programme (CR & VS)

The CR&VS project is the result of efforts by the Vital Statistics Commission to seek to improve the accuracy and reliability of the civil registration and the vital statistics produced by the relevant GOJ entities.

The Project under funding from the Inter-American Development Bank, is aimed at:

- (a) improving inter-agency communication and coordination; and
- (b) modernizing the civil registration and vital statistics systems.

Both objectives are to achieve the ultimate aim of having timely and reliable data being made available to guide the Government's developmental initiatives in order to achieve the Vision 2030 goals.

The NIDS will become one of the programmes that are central to the achievement of the CR&VS goals as it is expected to become the main source of information the required to provide the timely and reliable statistics required. The CR&VS initiatives to improve the collection of vital statistics will also serve to ensure that the NIDS can receive civil registration data that will be timely and

accurate. The NIDS concerns about data duplication and errors that could result in unsafe identity information entering the database will be significantly alleviated if the improvements to be implemented by the CR&VS project are achieved.

The project includes an ICT component that is expected to significantly improve the volume, completeness and accuracy of civil registration data that is accessible electronically. The completion of this component will also be of significance to the NIDS as the NIDS will be able to more efficiently receive data from agencies such as the RGD and the STATIN.

A component of the CR&VS project is the creation of coordinated policies to facilitate data sharing. The legal framework of the governing legislation of relevant agencies is to be examined and draft inter-agency sharing guidelines and agreements are to be developed. Given that data sharing protocols and agreements are to be developed between the NIDS and related agencies, the framework for data sharing developed by the CR&VS can form the basis for the NIDS data sharing relationships.

### **Public Sector Data Sharing Initiatives**

Considerable personal data is collected and stored by government agencies in Jamaica annually. At present there is no published policy concerning the safe and secure storage and permitted dissemination of such information. In some cases legislation stipulates the parameters for the use of the information and sanctions are provided for unauthorised use.

The government has begun the process of addressing the need for a data sharing policy to guide public sector entities and in that regard a Data Sharing Policy Steering Committee has been established and the intended outcome of the initiative is said to be provision for public sector data sharing in legislation. Included in the remit for the Committee is consideration of the issues involved in the transferability of data across the public sector in keeping with requirements for privacy and confidentiality.

This initiative is of much significance for the NIDS given that agencies that currently collect personal data, agencies with which the NIDS must interact and collaborate, are either expressly barred from using the information for purposes other than those for which its enabling law prescribes, or the agency often chooses to err on the side of caution and refuse to disclose information.

From information gleaned by the writer, it seems very likely that the completion of the policy and by extension the legislation to guide public sector entities in the permitted sharing of information will not keep pace with the progress of the NIDS. It is of critical importance to the attainment of the objectives of the NIDS that information required for the database can be obtained from the relevant public sector entities. In the absence of policy guidance through legislation, the NIDS may meet with resistance from some agencies, particularly where governing laws do not permit the sharing of the information sought by the NIDS.

A workable solution could be for the amendment to laws barring or restricting the sharing of information required for the NIDS to be included in the transitional provisions to be drafted for the NIDS legislation. Additionally, the authorisation for relevant data sharing between public sector entities can be inserted into the NIDS legislation and as such would serve to remove any doubts and concerns

that Ministries, Department and Agencies could have when asked to provide information to the NIDS database.

### **The Govnet Project**

The Govnet as conceptualized is to be a "...Government wide communications infrastructure for the seamless transfer of information between government/state agencies and other stakeholders and for the provision of on-line services to the public".

A contract to conduct an assessment of the existing connectivity programmes and to make recommendations for the technical design of the Govnet was awarded to PriceWaterhouseCoopers in 2011. On completion of the deliverables under the contract in 2012 it is expected that the steps to achieving an operational Govnet will take place. The data sharing policy being developed for GOJ entities will rely on a functioning Govnet to achieve its objectives as the Govnet will assist in ensuring that shared data is efficiently transferred with minimal duplication or distortion of information.

The Govnet has immense implications for the NIDS because the Govnet will have capability to facilitate the transfer of data between the NIDS and other data gathering GOJ entities. Information concerning the current status of the Govnet was not available when sought by the writer. Further the department that had been expected to pilot the project, the CITO, has been closed and its replacement has not yet been established. It is intended that further reporting on the status of the Govnet will be provided in subsequent reports.

## **Review of Relevant Legislation**

### **The Jamaica Constitution**

1. Sections 3-8 of Chapter II of the Constitution set out the basis on which Jamaican citizenship is acquired. The NIDS will capture data on all persons who are citizens whether by birth or naturalization. Evidence of citizenship based on the criteria in the Constitution is a requirement for an application to be made to the PICA for the grant of citizenship for those did not acquire citizenship by having been born in Jamaica.

The Constitutional provisions are followed in the Jamaican Nationality Act which will be discussed below.

2. In 2011 the Parliament passed the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011 ("the Charter") and by so doing, inserted principles of human rights and freedoms into the Constitution.

Significantly, the Charter includes at Section 13(3)(j), the right of everyone to:

- (i) protection from search of the person and property;
- (ii) respect for and protection of private and family life, and privacy of the home; and
- (iii) protection of privacy of other property and of communication;

The Charter also explicitly states that the rights conferred on citizens of Jamaica cannot be exempted "...save only as may be demonstrably justified in a free and democratic society". Additionally, any law passed

by Parliament or the grant power to any organ of the state to take any action which abrogates or infringes the rights conferred by the Charter, can be struck down as unconstitutional by the court.

The proposal to compulsorily require citizens to provide personal information as well biometrics for storage on a national database raises privacy issues that can be regarded as being in violation of the protection of personal privacy enshrined in the constitution. The question to be answered is whether the compulsory taking of personal information including biometrics for storage on a national database is justified in a free and democratic society.

### **The Evidence Act**

The Evidence Act sets out the basis for the admission of documents in evidence in a court proceeding. While the statute does not specifically define an identification card as a document, Section 22 and Section 31 bears examination.

The combined effect of Sections 31 and 22 is that an identification card issued by a public entity, such as the card to be issued by the NIDS, can be treated as a public document and as such can be admitted in evidence in the same way that other such documents are admitted.

Section 22:

*Whenever by any enactment now in force or hereafter to be in force any certificate, official or public document or documents, or proceeding of any corporation, or joint stock or other company, or any certified copy of any document, by-law, entry in any register or other book, or of any other*



*proceeding, shall be receivable in evidence of any particular in any court of justice, or before any legal tribunal, or the Senate or House of Representatives of this Island, or any Committee of the Senate or House of Representatives or in any judicial proceeding, the same shall respectively be admitted in evidence provided they respectively purport to be sealed or impressed with a stamp, or sealed and signed, or signed alone, as required, or impressed with a stamp and signed, as directed by the respective enactments made or to be hereafter made, without any proof of the seal or stamp where a seal or stamp is necessary, or of the signature, or of the official character of the person appearing to have signed the same, and without any further proof thereof, in every case in which the original record could have been received in evidence*

### **The Aliens Act**

The Aliens Act provides for the identification and registration of non-nationals. The Constitution specifies the basis on which a person is to be classified as a citizen and correspondingly, the Act sets out the regime for treating with persons who do not fall within the categories outlined in the Constitution.

The determination of whether a person is lawfully resident in the island is based on the provisions of the Act. The Act treats persons entering the island who are not citizens as aliens. The PICA maintain a register of aliens

Aliens who are deemed to be ordinarily resident will be registered in the NIDS. The Act does not define ordinarily resident but it defines 'residence' as *ordinary dwelling-place and, where an alien has more than one dwelling-place, each of such dwelling-places; and "resident" shall have a corresponding meaning;*

### **Passport Act**

The Passport Act provides for the issue of passports and other categories of travel documents to citizens of Jamaica. For the NIDS the presentation of a passport issued under the Act is to be regarded as evidence that the presenter is a citizen and as such is to be included in the national database.

At present the application for the issue of a passport is required to be accompanied by one's birth certificate and the birth certificate is accepted by the Passport and Immigration Agency (PICA) as *prima facie* evidence of the status of citizenship by birth. It is not proposed however to amend the Passport Act to require that the national identification card be presented by passport applicants.

### **Immigration Restriction (Commonwealth Citizens) Act**

The Immigration Restriction (Commonwealth Citizens) Act provides a mechanism for citizens of Commonwealth countries to reside in the island if they are able to find employment.

Section 9 of the Constitution lists the countries that apply in the determination of whether a person is a Commonwealth citizen. This list was further expanded by Section 15 of the Jamaican Nationality Act. The Act defines 'domicile' thus:

*“domicile” means the place in which a person has his present home or in which he resides or to which he returns as his place of present permanent abode and not for a mere special or temporary purpose; and a Commonwealth citizen shall not be*

*deemed to have a domicile within the Island for the purposes of this Act unless he has resided therein for at least two years otherwise than under terms of conditional or temporary residence permitted by this Act or any other enactment in force in the Island or as a person under detention in a prison, reformatory, orphanage, mental hospital or leper asylum; and a Commonwealth citizen shall be deemed for the purposes of this Act to have lost his domicile within the Island if he voluntarily go and reside outside the Island (except for a special or temporary purpose) with the intention of making his home outside the Island; and "domiciled" shall have a corresponding meaning;*

This definition clarifies the period after which a Commonwealth citizen can be regarded as domiciled in Jamaica. Additionally the Act provides at Section 2(2) and section 2(3) that a Commonwealth citizen is deemed to belong to the island if:

- (a) he was born in Jamaica to parents who were domiciled or ordinarily resident in Jamaica at the time of his birth;
- (b) he is domiciled in Jamaica;
- (c) he has been ordinarily resident in Jamaica continuously for seven years or more and even if he leaves Jamaica after seven years, he retains his status as long as he has not been ordinarily resident in another Commonwealth country continuously for seven years after leaving Jamaica;
- (d) he became a citizen of Jamaica by registration or naturalization;
- (e) he is a dependant of a person to whom any of (a)-(d) above applies.

Based on the provisions of this Act, the category of persons to be included in the database will be expanded to include the category of residents who are Commonwealth citizens domiciled in Jamaica.

The PICA under Section 7 of the Act is empowered to issue a Certificate of Identity to Commonwealth citizens who belong to the island and who intend to leave the island to travel overseas and return to continue their domicile here. Additionally, under Schedules 1 and 2 of the Regulations to the Act, a Government of Jamaica Identity card is issued to persons leaving the island to take up posts as temporary agricultural workers and recruited workers.

The card includes the right thumb print of the worker in addition to his personal information. It is the view of the writer that the identification card to be issued by the NIDS can satisfy the requirements of the Act for the issue of identity card to such workers and can replace the card now being issued by PICA.

### **Jamaican Nationality Act**

The Jamaican Nationality Act, in keeping with Section 3-9 of the Constitution, sets out the parameters for the acquisition of Jamaican citizenship. Under the Act citizenship may be acquired by registration in the case of Commonwealth citizens and by naturalization for citizens of other countries.

The jurisdiction to confer citizenship on an applicant rests solely with the Passport, Immigration and Citizenship Agency (PICA) and in the context of the NIDS, evidence of citizenship status provided by PICA should be sufficient for qualification for inclusion in the national identity database.

### **Foreign Nationals and Commonwealth Citizens (Employment) Act**

The Foreign Nationals and Commonwealth Citizens (Employment) Act unlike the Immigration Restriction (Commonwealth Citizens) Act was enacted after independence. The Act defines 'foreign national' as a person who is not a citizen of Jamaica, a Commonwealth citizen or a CARICOM national. Foreign National can be considered to be an alien for the purposes of the Aliens Act.

### **Registration (Births and Deaths) Act**

The Registration (Births and Deaths) Act provides the authority and framework for the collection of data in respect of the birth and death of persons in Jamaica. The Registrar-General, after collecting the information, registers and stores it in a form that facilitates retrieval. The database maintained by the RGD is the largest database of Jamaicans who are citizens by birth.

The NID will be seeking to have the Registrar-General share data contained in the births and death registers. There are no express provisions in the Act that bar the sharing of information in the births and deaths registers with another GOJ entity.

Depending on the role that is to be assigned to the Registrar-General in the collection and registration of data to be entered into the national identity database, it would be recommended that enabling provisions be inserted into the Act to make it beyond doubt that the Registrar-General is empowered to carry out those functions.

The Act will also require amendment to empower the Registrar-General to collect and submit the information required for the NID to the Registrar of the national identity database.

In the case of reported deaths, the Registrar-General also has to be empowered to submit information NIDS to facilitate the cancellation of the identification card that may have been issued to the deceased.

Another possible amendment to the Act would be for the establishment and maintenance of a register of divorces and registration would be based on the filing by a divorced person of the decree absolute granted by the Supreme Court. This would be useful for the NIDS as it is desirable for that information to be collected.

### **Representation of the People Act**

The Representation of People Act governs the enumeration of voters and the conduct of general elections. The Act at Part III of the First Schedule sets out in detail the procedure for the registration of voters and the taking of fingerprints and demographic information. The functions provided for in the Act are carried out under the direction and control of the Electoral Commission.

The Electoral Office that is operated by the Commission is the only public agency that collects personal, photographic, demographic and biometric data however the criteria for collection is that the citizen voluntarily supplies the information as they wish to comply with the eligibility criteria for casting their vote during parochial and general elections.

Given the significant expertise of the Electoral office in the mass registration of citizens, Commonwealth citizens and persons ordinarily resident in Jamaica, the NIDS would benefit from close collaboration.

There are two approaches that can be taken:

- (a) the Electoral Office can be retained on a consultancy basis to use its network of registration centres and staff to register persons for entry into the NID and assign a national identification number automatically generated by the NID to each person so registered. This means that the database of electors maintained by the Electoral Office will not be shared with the NID and as such no amendment to the Representation of the People Act will be required;
- (b) the Electoral Office can share the information it has collected and stored on its database on electors with the NID and by that data sharing, the NID will have uploaded the data and assigned a national identification number to each person.

To facilitate this data sharing, it will be necessary to amend the Act to authorise the Chief Electoral Officer to share the information in that database as well as to carry out some of the functions of the Registrar to collect information required for the national identity database.

Specifically, Section 114 of the Act provides that fingerprints taken can only be used for the purposes of registering voters or to facilitate voting. This means that the Director of Elections would not be able to share biometric information stored in his register and as such if delegated to take biometric information for the national identity database.

The Act does not expressly prohibit the disclosure of some categories of personal information similarly collected for registration for the purposes of voting. Notwithstanding it is recommended that enabling provisions be inserted to out it beyond doubt that the information collected on electors can be shared.

It is also important for the national identification card and national identification number to become part of the process for establishing identity under the Act. An amendment therefore needs to be made to the Act to provide for the presentation of the card to be issued by the NIDS as evidence of the identity of a person registered to vote.

### **Electoral Commission (Interim) Act**

The Electoral Commission (Interim) Act provides for the establishment and functions of the Electoral Commission. The Commission is responsible for the management of the Electoral Office and the Commissioners are answerable to Parliament in respect of the functions and duties set out in the Act and as provided in the Representation of the People Act.

Among the functions of the Commission is the compilation and maintenance of a register of voters as well as the verification of the identity of each person included in the register. The significance of this register in respect of the NIDS was outlined above.

### **The Fingerprints Act**

The Fingerprints Act provides for the manner and circumstances in which the fingerprints and photograph of a person may be taken by order of the court.



Importantly the Act defines fingerprint to include palm print and foot print. The Act does not anticipate the use of the fingerprints for any purpose other than for the identification of an accused or the investigation of crime.

### **Forgery Act**

The Forgery Act provides for the prosecution and conviction of the fraudulent manufacture of false documents with the intent to deceive. The Act importantly clarifies what constitutes a false document and the punishment for the offences specified are based on specific categories of documents.

Section 6 provides for a misdemeanour punishable by imprisonment for a term not exceeding two years with hard labour for forgery committed by making a statement that the maker knows to be untrue with the intention of procuring a passport while Section 7 is very general and can be used to prosecute forgery of documents not specified in the Act. Section 7 provides:

*Forgery of any document which is not made felony under this or any other enactment for the time being in force, if committed with intent to defraud or deceive, shall be a misdemeanour, and punishable with imprisonment with hard labour for any term not exceeding two years.*

The national identification card and any other document that may be issued by the national identity database can be considered to be on the level of the documents that are specified in the Act. It is proposed that the Forgery Act be amended to establish the offences of making a false identification card or uttering a false identification card and to provide that those offences are to be punishable in the same manner as mentioned above in respect of a passport.

### **The Child Care and Protection Act**

The provisions of the Child Care and Protection Act reflect the broad principles enunciated in the UN Convention on the Rights of the Child. It provides guiding principles for the care of children by parents and caregivers as well as by public agencies.

The Act provides for steps to be taken to provide care and protection for a child found to be in vulnerable circumstances and to pursue criminal sanctions against any person found to have caused injury to the child or caused the child to suffer neglect. The Act also provides for how a child is to be treated by agents of the state when a child has been charged with an offence.

The Act also establishes a children's registry and a children's register which is to contain information submitted by prescribed persons about neglect and abuse of children.

An issue pertinent to the NIDS arising from the Act would be whether the Act bars the collecting of information, particularly biometric information from a child. The matter is one of ability to consent and whether the parent or guardian can authorise the collecting of information for inclusion in the national identity database.

On examination of some Commonwealth jurisdictions, the biometric information is not collected from a child, a person who has mental limitations as well as the mentally ill. A photograph is taken and on the attainment of the prescribed age, the biometrics is collected and an identification card issued.

Depending on the arrangements to be made to collaborate with the Registrar-General of Births and Deaths, the information collected from a parent or guardian for registration purposes can be supplied to the registrar of the

national identity database save and except for the fact that the Registrar-General does not require a photograph to be submitted with the application for registration.

### **Marriage Act**

The Marriage Act provides the requirements for a marriage to be recognised in law and for a record of that marriage to be registered by the Registrar-General and for an index to the register to be available to the public for inspection. The Act provides for the appointment of marriage officers and for them to be registrars with responsibility to register the particulars of the parties to the marriage as well as the date and time of the marriage.

Information in respect of marriages will be very important for the NIDS in two respects;

- (a) firstly, the marital status of a citizen, Commonwealth citizen or ordinarily resident person is information that would be included in the national identity database, and
- (b) secondly, where there is a change in surname resulting from the marriage, the database would need to note the change and amend the relevant national identification card accordingly.

The Act does not provide for the information collected in order to register marriages to be confidential however it is recommended that enabling provisions be inserted into the Act to empower the Registrar-General provide information on marriages to the NID.

An amendment will also be necessary for the insertion of the national identification number (NIN) on the registration form used by marriage officers and for display on a marriage certificate.

### **Mental Health Act**

The Mental Health Act provides for the conduct of the affairs of a person who has been certified by a medical professional as mentally ill and for medical treatment to be dispensed to them.

In respect of the NIDS, the inclusion of data concerning a mentally ill will be governed by the Act. The Act grants jurisdiction to the Court to make orders for the management of the affairs of mentally ill. The likely implication of this provision is that an order of the Court may be required in order for the required information about a mentally ill person to be collected and stored in the NID.

### **Revenue Administration Act**

The Revenue Administration Act provides for the powers and duties of the divisions of the tax department in respect of the collection of taxes and the enforcement of the tax laws. It also provides at Section 17D for the taxpayer being registered and issued a taxpayer registration number (TRN) which must be used in order to conduct business with tax collection departments.

On the assignment of the taxpayer registration number, the taxpayer is issued a card bearing the assigned number. It should be noted that no personal information is printed on the card and that the card is merely a convenient way to convey the TRN number to the taxpayer. Although the card does not show

any personal information, the application form required to be submitted by the taxpayer collects an extensive range of personal data. As the assignment of the TRN is intended to assist the tax department to track the compliance of taxpayers no photographic or biometric information is collected.

It is also to be noted that registration by a taxpayer is mandatory in order for the taxpayer to make payments. Accordingly, the tax department is empowered to independently register a taxpayer, assign the number and then formally advise the taxpayer of the registration and assigned number.

Failure to apply for registration or provide required information is an offence under the Act for which the offender is liable on summary conviction for a fine of one thousand dollars for individuals and five thousand for an incorporated entity or imprisonment for thirty days.

Section 17D(1) defines the registration authority as Tax Administration Jamaica or any other body that the Minister may by order, designate. It is recommended that the National Registration Commission (if that entity is created) be designated as a registration authority to facilitate the card issued by the NIDS being acceptable by tax authorities for the purpose of identifying a taxpayer. For that to be effected an order must be made by the Minister and published in the Gazette.

While the Act requires the information concerning a taxpayer's financial affairs to be kept secret, Section 17H(2)(a) makes allowance for the Minister of Finance to authorise the disclosure of information where the disclosure is required under any other law. The effect of this provision is that the NIDS legislation should contain enabling provisions for the collection of information stored in the

taxpayer database through an inter-agency agreement if the authority of the Minister is obtained .

### **Access to Information Act**

The Access to Information Act states as its object that it seeks to give effect to principles of public accountability and transparency by “by granting to the public a general right of access to official documents held by public authorities, subject to exemptions which balance that right against the public interest in exempting from disclosure governmental, commercial or personal information of a sensitive nature.”

Accordingly, the Act provides a procedure for the public to request access to information from a public agency and the public agency is obliged to provide the information sought unless the information sought falls within the exempted category of information. Section 5(7) states that the Act applies to “...official documents held in a registry or other office of a court, being documents that relate only to matters of an administrative nature”.

The Act at Section 22 bars the disclosure of an official document “...if it would involve the unreasonable disclosure of information relating to the personal affairs of any person, whether living or dead”. This prohibition can only be lifted if access to the official document is requested by the person referred to in the document.

Further protection is afforded to a person whose personal information is contained in an official document in Section 24 where the information is claimed to be incomplete, out of date or misleading, and the information has been used or is being used by a public authority for administrative purposes, the

person concerned may apply to the relevant public authority for an amendment to the information.

Section 24 is relevant to the NIDS in that a person can use that provision to seek to compel the Commission to amend information about themselves provided that they comply with Regulation 19 and submit evidence to the satisfaction of the Commission to support the application for the amendment to the information that they consider to be incomplete, out of date or misleading.

It is recommended that the act be amended to insert a provision that will absolutely bar the disclosure of information contained in the NID. The NID legislation is to have provisions regulating the disclosure of information in the NID.

### **Cybercrimes Act**

The Cybercrimes Act provides for the prosecution of offences arising out of the unlawful use of computer data and programs. It is an offence to access, modify, or use computer data without authorisation. The offences under the Act can be committed partly or wholly in Jamaica or entirely outside of Jamaica if it affects a computer, computer data or programs in Jamaica or if it is committed by a Jamaican national.

The Act is of particular significance to the NIDS given that it will operate an electronic database. Misuse or abuse of data stored in the database can be prosecuted under the Act particularly as the NIDS will be seeking to ensure that the information it collects is securely and safely stored and that unauthorised persons are not able to access the information.

### **Electronics Transactions Act**

The Electronic Transactions Act provides for legal recognition and validity of transactions conducted by the electronic exchange of contract documents. It also provides for the electronic filing of applications as may be facilitated by a government agency. The encrypted signature on an electronic document is also given validity and is deemed to satisfy the statutory requirements where a document is to be made, attested, acknowledged or authenticated.

### **Official Secrets Act**

The Official Secrets Act 1911 of the United Kingdom was brought into Jamaican law but is not included in the published laws of Jamaica. While the Access to Information Act was being considered for enactment, it seems to have been intended that a review of the Official Secrets Act was to have been done. As it has up to now not been repealed, it is still in force in Jamaica.

Given that there is uncertainty whether the Act is to be repealed, although it is at this point a part of the laws of Jamaica, it is recommended that provisions for the protection of information and prosecution of unlawful disclosure be inserted into the NIDS legislation.

### **The Statistics Act**

The Statistics Act established the Statistical Institute of Jamaica (STATIN) and its functions are set out in the Act to be to conduct population censuses, and collect statistical information on commercial, academic, industrial socio-economic and general information for compilation and publication.



Given that no personal information is collected by STATIN it is not likely that the NID will require access to its database, however the NIDS legislation should authorise the disclosure of statistical information based on entries in the NID, to be made to STATIN.

### **Justice Protection Act**

The Justice Protection Act provides a scheme for the relocation and change of identity of a person who has been deemed to be vulnerable based on any assistance that person may have provided in the prosecution of an offender. The scheme facilitates such a person being given a new identity and where necessary relocation to another jurisdiction.

Where a person has been given a new identity, they are barred from disclosing their former identity and may permanently keep their new identity. The person may in the alternative be restored to their former identity.

The Act confers Top Secret status on information stored in the register of participants in the programme and limited authority is given to share information in the register under Section 12 on the sole ground where it is in the interest of the administration of justice.

The Act provides strong penalties for the unauthorised disclosure of information about a participant.

This Act has implications for the NIDS in that the NID would wish to receive information about the change of identity information.

*12(2) The Centre may, if it is of the opinion that it is in the interest of the due administration of justice to do so, allow another approved authority to have access to information contained in the register and the ancillary documents in relation to a particular participant*

Section 12(2) does facilitate limited access to the register. The fact that the disclosure can only be made if it is in the interest of the due administration of justice, it is submitted that disclosure to the NID would not fall within the permitted criterion.

The NID would however wish to have information about a change of name in such circumstances. The database can block access to that person's information altogether until further notification is received from the administration centre for the relocation programme that the person's former identity is being restored or that the person is keeping their new identity.

Given the sensitive nature of such information specific provision would have to be made in the Act authorising the disclosure of the information to the NID and providing limitations on the nature of the information that may be so disclosed.

### **Children (Adoption of) Act**

The Child (Adoption of) Act provides for the establishment of an Adoption Board that has responsibility for receiving applications for the adoption of children and for conducting investigations and consultations with the relevant parties to determine whether to advise the Court that the circumstances are suitable for the applicants to adopt the child.

The Act empowers the Court to make an adoption order where it is satisfied that the requirements of the Act for the qualifications to be adopters have been met. The order made by the Court is then sent to the Registrar-General.

Under Section 25 of the Act the Registrar-General is to establish an adopted children's register in which the information in the adoption order is to be entered. At the same time, a notation is to be made in the Register of Births that the child has been adopted and is now registered in the adopted children's register.

The implication for the NIDS of the scheme for the registration of adopted children is that the Act permits the name of the child to be changed from the name given at birth.

Additionally, where the Court has not determined the date of birth, an estimation may be made by the judge based on the facts known about the child, similarly the place of birth can be deemed to be the district that the registration of the birth took place or where that place is not known, the place where the Court granting the adoption order is situated.

If the intention is for the Registrar-General to assign the identification number to all reported births there may be a difficulty ensuring that on the adoption of a child, the same identification number is entered into the adoption register. This may result in the possibility of duplication where a number was assigned to a child at birth registration and another number is assigned when the child is being registered in the adoption register.

In the situations where the information coming to the Registrar-General from the Court consists of the estimation of the birth data, the Registrar-General may not

be able to find the entry in the Register of Births to make the necessary cross-reference between the adoption register and the Register of Births. The cross-referencing will be very important for the NIDS so that the same identification number can be assigned to the child in both registers and the risk of the entry into the national identification database of differing identification information about the same person is minimized.

## **EXAMPLE OF POLICY EXPRESSED IN LEGISLATIVE FORMAT**

### **THE NATIONAL REGISTRATION AND IDENTIFICATION BILL<sup>5</sup>**

These example provisions are set out to guide the drafting of legislation that will empower the NIDS to achieve its policy objectives.

1. The proposed short title of the legislation is the National Identification Act.

The proposed long title is “An act to provide for the establishment of the National Identity Database and the National Registration Commission to oversee the system of identification of Jamaican citizens and the issuance of national identification cards and for connected matters”

2. Interpretation of terms used

The following terms are used in the legislation and are required to be defined as follows:

“biometric information”, in relation to an individual, means data about his external characteristics including in particular the features of an iris or of other part of the eye<sup>6</sup>;

“citizen” to have the meaning set out in Section 3 of the Constitution

“Commissioner” means a member of the National Registration Commission established under Section ..... of this Act;

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<sup>5</sup> Title of the legislation is to be determined by the NIDS, this title is a suggested one

<sup>6</sup> Section 42(1) of The Identity Card Act 2006 (United Kingdom)

“computer contaminant” means a computer instruction that damages, alters or destroys information within a computer, computer system or computer network without the consent of the owner of the information;

“database” means the national identity database established pursuant to section .... of this act;

"demographic information" means an individual's name, place of ordinary residence, telephone number and e-mail address;

“fingerprint” in relation to an individual, means a record (in any form and produced by any method) of the skin pattern and other physical characteristics or features of his fingers<sup>7</sup>;

“identity information” means the biometric, demographic information and national identification number of a registered person.

“national identification number” means an identification number issued to a registered person under the legislation;

“national identity database” means the database established under section ..... of this act;

“national identification card” means the card issued to registered persons on which information is or may be recorded pursuant to section ..... of this act;

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<sup>7</sup> ibid

“ordinarily resident” is to be defined within the meaning of ordinarily resident in Jamaica from paragraph 3-6 of Part of the First Schedule to the Representation of the People Act<sup>8</sup>

“registered person” means any person in respect of whom an entry has been made in the national identity database;

### 3. Scope of the Act

The Act applies to all citizens of Jamaica and persons ordinarily resident in Jamaica.

## **PART I**

### 4. The Establishment of the National Registration Commission<sup>9</sup>

The legislation will create the National Registration Commission as the body responsible for implementing the registration and identification requirements as follows:

4.1 The Act establishes the National Registration Commission which is to be a body corporate to which the provisions of Section 28 of the Interpretation Act is to apply;

4.2 Membership of the Commission:

The membership of the Commission is to consist of seven commissioners of which three are to be *ex officio* and the four to be appointed by the

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<sup>8</sup> This may require further consideration. The term is not satisfactorily defined in the ROPA and a more fulsome definition may need to be developed.

<sup>9</sup> The Delaware Report at Paragraph 7.2.2 recommended the establishment of the Commission

Governor General after consultation with the Prime Minister and the Leader of the Opposition as follows<sup>10</sup>:

- (a) the Chairman of the Electoral Commission of Jamaica to be an *ex officio* member
- (b) the *CEO of the Registrar-General's Department* to be an *ex officio* member
- (c) the Director General of the Statistical Institute of Jamaica to be an *ex officio* member
- (d) a representative from the Jamaica Council of Churches
- (e) a representative of the Minister of Health
- (f) a representative of eGov Jamaica Limited
- (g) a representative of the Minister of National Security

Where there is provision for a representative to be appointed, the Act should provide that only a public officer or an officer of a portfolio agency is eligible for selection.

A person is not qualified to be a member of the Commission who:

- (a) is not a citizen of Jamaica
- (b) is under eighteen years of age
- (c) has been adjudged to be of unsound mind
- (d) has been adjudged a bankrupt
- (e) has been convicted of an offence that is a felony or involving corruption
- (f) is a Member of Parliament

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<sup>10</sup> The principle guiding the proposed composition of the Commission is the need to include the departments of Government concerned with civil registration and vital statistics as well as civil society organisations. The membership proposed above can be adjusted to include a representative from entities such as the Planning Institute of Jamaica or the Council of Voluntary Social Services.



- 4.3 The members of the Commission are to nominate a member to be appointed by the Governor General to act as Chairman within two weeks of the Constitution of the Commission. If the members do not nominate a Chairman within the time specified, the Governor-General may appoint a Chairman from among the members after consultation with the Prime Minister and the Leader of the Opposition.<sup>11</sup>
- 4.4 The Chairman and other members except for the *ex officio* members are to hold office for a period of seven years and shall be eligible for re-appointment.<sup>12</sup>
- 4.5 The Governor General may appoint any person to act temporarily where a member is unable to act for a period of time.
- 4.6 A member will cease to hold office if:
- (i) he resigns from office
  - (ii) he becomes of unsound mind
  - (iii) he is convicted of a felony or an offence involving dishonesty or corruption
  - (iv) he is deemed to be incapable of carrying out his duties due to protracted illness
  - (v) he has been adjudged a bankrupt
  - (v) if his appointment is revoked by the Governor-General after consultation with the Prime Minister and the Leader of the Opposition<sup>13</sup>
- 4.7 A member (except for an *ex officio* member) is to be permitted to resign at any time by instrument in writing addressed to the Governor-General

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<sup>11</sup> Taken from the National Registration Bill, 2000

<sup>12</sup> *ibid*

<sup>13</sup> From the National Identity Management Commission Act, Nigeria

and transmitted to the Governor-General through the Chairman. The resignation is to take effect on receipt of the instrument of resignation by the Governor-General.<sup>14</sup>

Where a member dies, resigns or is removed before the expiration of the term for which he was appointed, the Governor-General shall appoint any other person who is qualified to be appointed, for the unexpired period of the term of the departed member.

#### 4.8 Remuneration of Commissioners

The members are to be paid such emoluments, allowances, honoraria or incidental expenses as may be approved by the House of Representatives.

#### 4.9 Meetings of the Commission

- (i) The Commission is to meet as often as may be necessary or expedient for the performance of its functions.
- (ii) The Chairman is to preside at all meetings of the Commission save and except that where the Chairman is absent from a meeting the members present may elect a member to preside as Chairman.
- (iv) The quorum for the meetings of the Commission is to be three excluding the Chairman.
- (v) The Commission may regulate its own proceedings
- (vi) decisions of the Commission are to be taken by a majority of votes and the Chairman is to have a casting vote

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<sup>14</sup> National Registration Bill, 2000

- (vii) the validity of the proceedings of the Commission is not to be affected by a vacancy among the members or a defect in the appointment of a member.

#### 4.10 Indemnification of Members

Members of the Commission are to be immune from any action, suit, prosecution or other proceedings for acts done or default omitted to be done in good faith in pursuance of the functions of the Commission.

The office of Commissioner is not to be a public office for the purposes of Chapter V of the Constitution

### 5. Functions of the Commission

The Commission is to carry out the following functions:

- (i) establish policies in respect of the NIDS, for the registration and identification of citizens and persons ordinarily resident in Jamaica in accordance with the provisions of the legislation;
- (ii) give directions to the Registrar of the NID in the performance of his functions;
- (iii) establish, maintain and operate a national identity database of registered persons;
- (iv) establish policies and procedures for the verification of the identity of registered persons;

- (v) specify personal, demographic and biometric information required for registration of persons required to be registered under the legislation;
- (vi) establish policies for the generation and assignment of a unique identification number to each registered person and for the incorporation of the identification number into other existing identity databases or registers in Government agencies in respect of which identity information relating to the registered person has been registered and stored;
- (vii) establish policies for the manufacture and distribution of identification cards and the information required to be printed on such cards;
- (viii) establish policies for the permitted access to the information stored in the database in keeping with prescribed restrictions;
- (ix) implement and maintain technically appropriate programmes and systems for the safe and secure storage and retrieval of information stored in the national identity database;
- (x) establish standards and technical specifications for Information Communication Technology links and other forms of collaboration between the Commission and other Government agencies;
- (xi) establish programmes for the conduct of research and monitoring of technological developments in identity management;

- (xii) ensure the preservation, protection, sanctity and security of any information or data collected, obtained, maintained or stored in respect of the NID;
- (xiii) establish and maintain secured communication links with any existing relevant identity related database or agency;
- (xiv) maintain secure communication links with end-users in any public or private organisation, agency or body including card acceptance devices or Government service centres;
- (xv) collaborate with relevant bodies and agencies in the setting of standards and technical specifications for telecommunication links between organisations and for the devices utilised for such communications;
- (xvi) perform such other duties which, in the opinion of the Commission are necessary or expedient for the discharge of its functions under the legislation.

## 5.1 Powers of the Commission

The Commission is to be empowered to:

- (i) request for any information or data from any person on matters relating to its functions;

- (ii) impose and collect fees for services provided as prescribed by regulation;
- (iii) enter into any form of agreement with any private or public sector entity as it deems necessary for the better carrying out of its functions;
- (iv) employ such staff as it deems necessary and fix the terms and conditions of employment of employees;
- (v) do anything and enter into any transaction which in the opinion of the Commission is necessary to ensure the performance of its functions;
- (vi) delegate its functions as it deems necessary to agencies of Government concerned with registration and identification;

## 6. Staff of the Commission

- 6.1 A director-general is to be appointed by the Governor-General on the advice of the Commission who is to be the responsible for:
- (a) the day to day operations and administration of the offices of the Commission;
  - (b) the carrying out of the policies and decisions of the Commission;
  - (c) keep proper records of the proceedings of the Commission
  - (d) preparing revenue and expenditure statements and the management of the annual approved budget.

- 6.2 The Commission is to appoint a Registrar who is to be answerable to the Director-General and who is to be responsible for the all aspects of the registration of registrable persons and the collection of related information that is to be contained in the National Identity Database. The Commission may also appoint district and deputy registrars as it deems necessary for ensuring that the purposes of the legislation are carried out.
- 6.3 The Commission is to be empowered to appoint and employ at such remuneration and on such terms as it deems fit, officers, district registrars, agents and other employees as it thinks necessary to assist the director-general to carry out his duties. The remuneration offered to employees must not be in excess of the prescribed rates that are approved by the Minister of Finance from time to time.
- 6.3 The Commission may delegate to the director-general power to appoint such categories of staff as the Commission may from time to time specify.
- 6.4 Every person having any duty or is employed to carry out any function under the legislation is to regard as secret and confidential all documents, data stored in any database, information and records belonging to the Commission and the national identity database.
- 6.4 Every member of the Commission and every person employed by the Commission must, before assuming duties, take and subscribe an oath of secrecy as follows:

*Oath to be taken<sup>15</sup>*

*I... .. do solemnly and sincerely  
declare and affirm that I understand and am aware that I*

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<sup>15</sup> Adapted from the Second Schedule to the National Registration Bill, 2000

*must not divulge any information gained by me as a result of my office/employment with the National registration and Identification Commission to any unauthorized person, whether orally, in writing, or by any other means without the previous sanction of the Chairman of the Commission or other appropriate authority. I understand also that this undertaking shall apply not only during the period of my office/employment but also after my office/employment with the Commission has ceased.*

- 6.5 Any person who breaches the obligation for secrecy commits an offence for which the maximum penalty is to be One Million dollars [\$1,000,000] or in default of payment, a term of imprisonment for a term not exceeding two years.

## 7. Resources of the Commission

- 7.1 The funds and resources of the Commission is to consist of:
- (a) such sums that may be placed at its disposal by Parliament by time to time;
  - (b) fees imposed by the Commission for the provision of services
  - (c) any other sums or property that may be paid to or be vested in the Commission.

## 8. Ministerial Oversight

The Commission is to be answerable to the Minister and must keep the Minister fully informed of all the activities of the Commission. The Minister is answerable to the Parliament for matters concerning the activities of the Commission.



## **PART II**

### 9. The National Identity Database

- 9.1 The legislation establishes a National Identity Database ( the NID) which is to contain registered information and personal data relating to nationals of Jamaica and ordinarily resident Commonwealth citizens and other non-nationals in Jamaica.

The objectives of the database are to:

- (a) provide a secure and reliable facility for obtaining, maintaining and preserving identification information;
- (b) store all information and data collected about nationals and persons ordinarily resident in Jamaica;
- (c) enable the Commission to generate identification cards with relevant information from the database printed thereon;
- (d) enable the harmonisation of existing identification repositories with the NID;
- (e) enable the identification verification and authentication of nationals of Jamaica and persons ordinarily resident in Jamaica;

### 9.2 Contents of the Database

The information that may be stored in the NID in respect of a registered person are:

Personal information:

- (a) full names (including any name by which the person is or has been known)
- (b) date of birth/ name of parents
- (c) place of birth
- (d) gender
- (e) principal place of residence and any other occasional place of residence
- (f) occupation
- (g) nationality
- (h) length of time that person has been resident in Jamaica (if a non-national)
- (i) employer
- (j) marital status/full name of spouse
- (j) date of death
- (k) place of death

Identifying Information:

- (a) photograph of head and shoulders<sup>16</sup>
- (b) signature (for adults)
- (c) fingerprints or other biometric data

Reference numbers:

- (a) Taxpayer Registration number
- (b) driver's licence number
- (c) passport number

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<sup>16</sup> To be consistent with Regulation 18 of the Passport Regulations made under Section 10 of the Passport Act: Wherever in these Regulations any photographs are required to be attached to any application such photographs shall not be accepted unless-

(a) they represent the applicant full-face and without a hat except where the applicant wears a head dress on the basis of his religious belief and his forehead, eyes and ears are clearly visible; and (6) they are not more than 6.25 cm x 5 cm and not less than 5 cm x 3.75 cm.

- (d) National insurance number
- (e) birth entry number (where appropriate)
- (f) the national identity number
- (g) electoral office identification card number

#### Registrarial history

- (a) particulars of every card issued
- (b) particulars of cancelled cards
- (c) particulars of recalled cards due to deprivation of citizenship
- (d) record of any information about a registered person that has been disclosed to a third party and the purpose for which it was requested.

9.3 The Commission may engage one or more entities to assist in the establishment and maintenance of the NID and to perform any other functions incidental thereto.

9.4 The information stored in the NID may be only be used for the following purposes:

- (a) the provision of the national identification card to a registered person
- (b) to verify the identity of a registered person
- (c) to provide such demographic, quantitative or statistical data as may be requested by a public agency for compiling population statistics or for socio-economic planning and development.

### **PART III**

#### 10. Registration

The prescribed personal, biometric and demographic information ('relevant information') of all citizens and persons ordinarily resident in Jamaica, including Commonwealth citizens is to be collected using a registration process.

The registration of persons whose relevant information is to be entered and stored in the NID is to be conducted under the direction of the Registrar.

Registration may be effected by:

- (a) a person making an application for registration in the form to be specified and by so doing, providing the information required; and
- (b) information provided to the NID Registrar by Registrars of the identification registers and databases of other public entities;

For the purposes of carrying out the registration of all relevant persons, the Registrar may divide the Island into such districts as may be specified and delegate such registrarial functions and powers as may be necessary to the staff of each district.

#### 10.1 Categories of Persons Required to Register

- (a) citizens of Jamaica (naturalized citizens are required to register within 90 days of acquiring citizenship)
- (b) non-citizens who are ordinarily resident in Jamaica<sup>17</sup>

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<sup>17</sup><sup>17</sup> There is no statutory definition of ordinarily resident. The tax laws use the term but it is not defined in any tax law. The Representation of the People Act paragraph 3-6 of Part 1 of the First Schedule is the best statutory explanation of the term. The provision is as follows:

"...the question as to whether a person is or was ordinarily resident at any material period shall be determined by reference to all the facts of the case.

## 10.2 Application to be registered

- (a) citizens aged 18 or over must apply on their own behalf;
- (b) citizens under the age of 18, application by a parent or legal guardian;
- (c) adult citizens incapacitated by disability, application by person legally responsible for the disabled person's affairs;
- (d) adult citizens incarcerated in penal institutions, infirmaries, mental hospital or almshouse, application by the person in charge of the administration of the institution.
- (e) a person who acquires citizenship other than by birth is required to apply to be registered within [90] days of acquiring citizenship.

## 10.3 Registration Procedure

- (a) An application to be registered is made by a person by providing the information required on the specified application form to the Registrar as directed by the Registrar;

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4. The place of ordinary residence of a person is, generally, that place which has always been, or which he has adopted as, the place of his habitation or home, whereof when away from there he intends to return. Specifically, when a person usually sleeps in one place and has his meals or is employed in another place, the place of his ordinary residence is where the person sleeps.

5. Generally, a person's place of ordinary residence is where his family is; if he is living apart from it in another place, the place of ordinary residence of such person is such other place. Temporary absence from a place of ordinary residence does not cause the loss or change of place of ordinary residence: Provided that any person who has more than one place of ordinary residence may elect in respect of which place he desires to be registered and inform the enumerator accordingly in the form set out in the Schedule to these Rules.

6. Any person on actual service with or embodied in any unit of the regular Force in the Jamaica Defence Force shall be deemed to continue to ordinarily reside in the polling division in which he was ordinarily resident at the time that he entered upon such actual service or was embodied as the case may be, unless he has thereafter established some other ordinary residence in the Island. "

The ROPA definition is consistent with the common law definition found in the case of *Shah v London Borough of Barnet* as follows: "...Ordinary residence is established if there is a regular habitual mode of life in a particular place "for the time being", "whether of short or short or long duration", the continuity of which has persisted apart from temporary or occasional absences. The only provisos are that the residence must be voluntary and adopted for "a settled purpose"...

The application form is to ask for:

- (a) full names (including any name by which the person is or has been known: to specify maiden name and name after marriage in the case of females; and name given at birth registration and name acquired in the case of a name change by deed poll)
- (b) date of birth
- (c) place of birth/country of birth
- (d) gender
- (e) place of residence and any other occasional place of residence
- (f) occupation
- (g) nationality (if not citizen by birth, how was citizenship acquired)
- (h) length of time that person has been resident in Jamaica (if a non-citizen)
- (i) employer
- (j) marital status/full name of spouse
- (k) street address/mailling address (to include email address)
- (l) name of parent(s)
- (m) occupation/place of employment/employer
- (n) Taxpayer Registration number
- (o) driver's licence number
- (p) passport number
- (q) National insurance number
- (r) birth entry number (where appropriate)
- (s) the national identity number
- (t) electoral office identification card number

#### 10.4 Taking of Biometric Information

In addition to collecting the specified information, the Registrar is also required to capture the fingerprint of each person. The procedure for the capture of fingerprints is to be as provided for the taking of fingerprints for electors under the Representation of People Act.

#### 10.5 Authentication of Information

The Registrar is to be empowered to require such documentary or other verification of the information provided by a person during the registration process. The Registrar is required to accept the following documents as evidence of the information contained therein:

- (a) birth certificate
- (b) marriage certificate
- (c) deed poll
- (d) an unexpired Passport
- (e) Driver's Licence
- (f) Taxpayer Registration Card
- (g) Duplicate Certificate of Title/Certified Copy of Tax Roll
- (h) Certification from Educational Institution (where relevant)
- (i) National Insurance Card

10.6 The Registrar must require a registered person to inform him of changes to their demographic or biometric information as they may occur from time to time in such manner as specified by regulations and the Registrar shall take such steps as necessary to register such changes to that person's identity information as deemed necessary after the Registrar has authenticated the information provided by the registered person.

- 10.7 The Registrar may require a registered person to bring to his attention any inaccuracy in the information stored about that person in such manner as may be specified by regulations and the Registrar shall take such steps as necessary to correct the inaccurate information after the Registrar has authenticated the information provided by the registered person.

11. The National Identification Number

- 11.1 The Registrar must, on receipt of the required information, as part of the registration process, assign to every person a unique identification number.
- 11.2 The identification number shall be a computer generated random number and shall bear no attributes or identity of the person to whom the number is assigned.
- 11.3 An identification number, once issued to a person, shall not be re-issued to any other person.
- 11.4 The identification number so issued shall be displayed on the national identification card issued by the Commission to the registered person to whom the number has been assigned.
- 11.5 The identification number assigned to a registered person is required to be provided by the registered person when conducting business with a GOJ agency at the request of an officer.



## 12. National Identification Card<sup>18</sup>

A National Identification Card shall be deemed to be a public document for the purposes of the Section 22 of the Evidence Act.

12.1 A national identification card (NIC) must be issued by the Commission to a registered person on completion of the registrarial process for persons above the age stipulated below and on the application of a registered person who has attained the age of [16 years].

12.2 Identification cards issued to registered persons are valid for five year periods and a registered person is required to apply for the renewal of the NIC in the prescribed manner and on payment of the prescribed fees<sup>19</sup>.

12.3 Identification cards must have the following information about the cardholder:

- (a) name
- (b) gender
- (c) residential address
- (d) nationality/
- (e) national identification number
- (f) photographic image
- (g) signature

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<sup>18</sup> By deeming the card to be a document under the Forgery Act, the provisions of the Act will apply to the card and the offences and penalties will also apply.

<sup>19</sup> The five year validity period was recommended at paragraph 7.2.4 of the Delaware Report. Consideration could be given to using a person's birth date as the renewal date as is done for driver's licences.

- (h) date/place of issue
- (i) expiry date
- (j) date of birth

12.4 A card issued to a registered person remains the property of the Commission and the Commission or any other person authorised by the Commission may at any time require that the cardholder produce the card.

12.5 A registered person must report to the Commission the loss, mutilation or destruction of a card issued to them and where possible return a mutilated card to the Commission promptly.

12.6 A person who finds or comes into possession of a card that was not issued to him must promptly return the card to the Commission.

12.7 Nothing in the legislation is to be interpreted to mean that a registered person is required to carry the card on their person at all times.

12.8 The Commission must cancel a card where:

- (a) the card was issued in reliance on information whether provided by the registered person or not that later shown to be:
  - (i) a misrepresentation or concealment of material facts
  - (ii) inaccurate or incomplete information was provided
  - (iii) fraudulent
  - (iv) multiple registrations by the same person resulted in more than one card being issued to that person

- (v) based on forged documents submitted in verification of information provided by a registered person
- (b) the registered person to whom the card was issued has reported that the card have been lost, stolen, tampered with, damaged or destroyed
- (c) there has been a change to the information about the registered person displayed on the card
- (d) the registered person has been deprived of citizenship under Section 8 of the Jamaica Nationality Act

“tampered with” means the information on the card has been modified for an unlawful purpose

“damaged” means that anything in or on the card has become unreadable or otherwise unusable.

12.9 The Commission shall require a registered person to surrender a card where:

- (a) the card was issued in error
- (b) the card has expired or is otherwise invalid
- (c) the Commission requests the card be returned to facilitate changes to the card design and for the re-issue of a new card
- (d) being a citizen of Jamaica by registration or naturalisation under the Jamaican Nationality Act and such citizenship has been cancelled or renounced the validity of the national identification

card issued has expired as at the effective date of such cancellation or renunciation

A person who is knowingly in possession of an identification card that was not issued to him and without the authority of the person to whom it was issued must surrender the card as soon as it is practicable to do so.

Failure to surrender an identification card when requested by the Commission to do is an offence

### 13. Protection of Information<sup>20</sup>

- 13.1 The Commission is obliged to ensure the security and confidentiality of the identity information of registered persons and shall implement the security safeguards as are appropriate to ensure that information stored in the NID is secured against loss, damage, unauthorised use, unauthorised disclosure and unauthorised access.
- 13.2 The Commission shall only collect the information specified in the legislation and even if personal information not specified is received unsolicited such information shall not be retained and stored in the NID.
- 13.3 The Commission shall provide access to the identity information of a registered person on the application of that registered person in such manner as may be specified by regulations.

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<sup>20</sup> The Delaware Report at paragraph 7.3.6 states that “In an analysis of the comparative experience of other countries (notably the United Kingdom) it has been shown that the issue of the invasion of right to privacy has been a critical factor in the introduction, acceptance and survival of a national identification scheme.” While the preparatory work for data protection legislation is being carried out, data protection provisions are being proposed for the NIDS legislation so that regardless of whether the data protection law is in place the NIDS law will have adequate data protection provisions.

- 13.3 The Commission must not disclose information contained in the NID about a registered person to a third party or public agency except as specified under the legislation and where an application for the provision of the information is made:
- (a) at the request of or with the authority of the registered person
  - (b) pursuant to an order of the Court
- 13.4 The Commission may disclose demographic information about a registered person to the National Planning Institute of Jamaica, and the Statistical Institute of Jamaica solely for the purpose of assisting those agencies to carry out its functions provided that no personal identity information may be disclosed.
- 13.5 The Commission may disclose identity information about a registered person without the consent of the registered person to a public office or agency to which the Commission has delegated any of its registrarial functions, specifically, the Registrar General and the Electoral Commission of Jamaica. Such disclosure shall be solely for facilitating the authentication or verification of identity information about that registered person.
- 13.6 The Commission may disclose identity information about a registered person without the consent of the registered person where the disclosure is made:
- (a) to the Passport Officer in charge of the Passport Immigration and Citizenship Agency;

- (b) to the Minister of National Security where such disclosure is deemed necessary for the prevention or detection of crime and national security.

13.7 The Commission may disclose personal, demographic and biometric information concerning registered persons to a company or public agency that provides services of information storage, information management and security and such other services as may be necessary solely for the purpose of facilitating the Commission carrying out its functions.

In the event of such disclosure, the entity to which such information has been disclosed shall be required to execute a confidentiality agreement barring any disclosure of information to which the entity may have had access to a third party.

13.8 the Commission may disclose identity information about a registered person without the consent of the registered person where the disclosure is made to the Commissioner-General of Tax Administration provided that only information strictly necessary to assist the Commissioner-General to identify the registered person as a taxpayer may be disclosed. No demographic or biometric information may be disclosed.

13.9 The Commission and any person carrying out any duties on its behalf shall take the appropriate steps to ensure that the permitted disclosure of information is carried out with the strictest observance of the principles of protection of personal information as enunciated by the OECD in its Guidelines for the Protection of Privacy and Transborder Flow of Personal

Data<sup>21</sup> and the United Nations Guidelines for the Regulation of Computerized Personal Data Files<sup>22</sup>

13.8 The Commission may impose such fees and it deems necessary for the provision of information.

13.9 Permitted use of the NID by the Registered Person

The NID may be used by the registered person to whom the card has been issued for the purposes of verifying their identity as may be necessary in the conduct of their daily lives.

The national identification number displayed on the card may be used by the registered person to whom the number has been assigned, for the conduct of business generally as may be required and specifically when conducting business, carrying out a transaction or when accessing the services of any public agency.

14. Evidential Status of National Identification Card and National Identification number

A provision similar to Section 12 of the Jamaican Nationality Act is to be inserted to ensure the evidential status of the NIDS documents as follows:

*Every document purporting to be a notice, certificate, order or declaration, or an entry in a database made under this Act or under the*

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<sup>21</sup> <http://www.oecd.org/sti/ieconomy/2013-oecd-privacy-guidelines.pdf>

<sup>22</sup> <http://www.refworld.org/docid/3ddcfaac.html>

*provisions of Chapter 11 of the Constitution shall be received in evidence and shall, unless the contrary is proved, be deemed to have been given, granted or made by or on behalf of the person by whom or on whose behalf it purports to have been given, granted or made.*

*(2) Prima facie evidence of any such document as aforesaid may be given by production of a document purporting to be certified as a true copy thereof by such person and in such manner as may be prescribed.*

*(3) Any entry in a database made under this Act or under the provisions of Chapter 11 of the Constitution shall be received as evidence of the matters stated in the entry*

#### 14. Fees

The Commission may impose fees for the provision of its services by regulations approved by the Minister subject to affirmative resolution provided that no fees are to be imposed for the submission of an application to be registered and no fees are to be imposed for the issue of the first national identification card to a registered person.

#### 15. Offences and Penalties<sup>23</sup>

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<sup>23</sup> The language of Section 87 of the Representation of the People Act will include the NIC and persons could be prosecuted using that provision. The text of the provision is as follows:

87(1) Every person who-

Unlawfully (a) obtains without lawful or reasonable cause (the proof of which shall be established by such person), the identification card of any other person or any other prescribed document establishing identity; (b) wilfully damages or destroys any identification card **or any other prescribed document establishing identity**, shall be guilty of an offence and on summary conviction before a Resident Magistrate shall be liable to imprisonment with or without hard labour for a term not exceeding two years and in addition thereto to a fine not exceeding twenty thousand dollars or on conviction before a Court shall be liable to imprisonment with hard labour.

(2) Any person who by means of any statement which he either knows to be false or has no reasonable cause to believe to be true obtains or attempts to obtain any identification card **or any other prescribed document**



15.1 The offences related unlawful access, modification manipulation, misuse, distortion or other acts of contamination of a computer database and the information stored therein under the Cybercrimes Act shall be applicable to this legislation.

15.1 It is an offence for a person to:

- (a) knowingly be in possession of or have under his control a national identification card that was issued to another person without the knowledge or consent of the person to whom the card was issued. The offence is aggravated by the intention of using the identification card for impersonating or attempting to impersonate a registered person or for allowing or inducing another to use the card for impersonating a registered person
- (b) obtain or facilitate another to obtain identity information about a person purporting to be with the authority of the Commission
- (c) wilfully introduce or cause to be introduced into the NID any virus or other computer contaminant or otherwise disrupt the operations of the NID
- (d) falsely present himself as not having previously been registered with a view to obtaining an identification card
- (e) wilfully deceive the Registrar by providing false personal identity information with a view to obtaining an identification card
- (f) wilfully obstruct or impede the Registrar in the exercise of the Registrar's functions

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***establishing identity*** shall be guilty of an offence and on summary conviction before a Resident Magistrate shall be liable to imprisonment with or without hard labour for a term not exceeding two years and in addition thereto, to a fine not exceeding twenty thousand dollars, or on conviction before a Circuit Court shall be liable to imprisonment with hard labour for a term not exceeding five years.

- (g) part with possession of an identification card issued to him for an unlawful purpose
- (h) be in possession of any machinery, implement, utensil or material capable of being used or intended to be used for the manufacture and forgery of a national identification card
- (i) knowingly be in possession of and use for the purpose of falsely establishing identity an identification card that is a forgery<sup>24</sup> purporting it to be a national identification card

15.2 The offences quoted above should attract on conviction before a Resident Magistrate, a fine not exceeding one million dollars and/or imprisonment for a term not exceeding two years. Offences involving forgery will be as provided under the Forgery Act.

15.3 The Resident Magistrate is to be empowered to grant a warrant authorizing the entering and search of premises where it is reasonably suspected that implements or apparatus used for the unlawful manufacture of identification cards are kept and for the seizure of such material. Implements and apparatus so seized are forfeited to the Crown.

## 16. Regulations

The Minister may, on the recommendations of the Commission make regulations for the better carrying out of the purposes of the Act and such regulations are to be subject to affirmative resolution.

Regulations may provide for:

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<sup>24</sup> Forgery is within the meaning of Section 3 of the forgery Act

- (a) the procedures and practices of be followed by the staff of the Commission in the collection and verification of information required for the registration of relevant persons;
- (b) the procedures and processes for the data storage, data management, security protocols and technological safeguards for information stored in the database;
- (c) the procedure for the generation of the unique identification number for each registered person;
- (d) procedures and processes for the manufacture and issue of identification cards;
- (e) processes for the verification and authentication of information and for the permitted access to such information;
- (f) the procedures for the receipt and processing of applications for the issue of identification cards as well as the surrender, cancellation and replacement of a card where the card has been lost, mutilated or destroyed;
- (g) procedures for the collection and registration of changes to the personal information of a registered person, the entry of such changed information into the national database and for the cancellation of the card previously issued and for the issue of a new card accordingly;

- (h) a tariff of fees for the delivery of services
- (i) any other matter required to be specified

## **PROPOSED AMENDMENTS TO STATUTES**

The following amendments to laws and related regulations are being proposed in order to facilitate:

- (1) The recognition and use of the national identification card and the national identification number alongside existing identification programmes;
- (2) The lawful sharing of personal, biometric and demographic information between relevant public entities.

### 1. Registration (Births and Deaths) Act<sup>25</sup>

- 1.1 Section 2 of the Act should define National Identification Number within the meaning of the NIDS legislation.
- 1.2 Amend by adding a new part to the Act that provides for:
  - (a) the Registrar-General being empowered to collect information for the purposes of the registration of births and deaths reported to that office being entered into the national identification database<sup>26</sup>;
  - (b) the data to be collected for the purposes of that registration is to be outlined and a corresponding schedule inserted;

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<sup>25</sup> The amendment to the Registration (births and Deaths) Act is to provide for the Registrar General being empowered to assign the national identification number to birth records.

<sup>26</sup> The assumption is that the Registrar-General will be given data entry and data search access to the NID in order for her to carry out this function.

- 1.3 Amend the regulations to insert National Identification Number in addition to Birth or Death Entry Number on a birth or death certificate issued under the Act.

2. Marriage Act

Section 38 empowers the Registrar-General to make rules for the registration of marriages so the amendments to the Schedules can be made under that power.

**38.** The Registrar-General may from time to time make, and when made revoke, add to and alter, rules for the carrying out of the registration provisions of this Act, and for the direction of officers connected with registration in the performance of duties under this Act. Such rules shall be subject to the approval of the Minister, who may allow, disallow, alter and add to, such rules or any of them

Section 31 provides that the information required to be collected for the registration of a marriage is at Schedule L. Accordingly, an amendment is to be made to Schedule L to insert a column for the insertion of the national identification number of the parties of the marriage. A similar amendment is to be made to Schedule M in the case of a marriage under Section 37 where one of the parties anticipates impending death.

No statutory form of the marriage certificate has been found in the schedules to the Act or the Regulations however it will be necessary for the marriage certificate issued by the Registrar General to show the national identification number of the parties to the marriage on the certificate.

3. Forgery Act

Amend the Act to insert a provision similar to Section 6 as follows:

*The Forgery of any national identification card or the making by any person of a statement which is to his knowledge untrue for the purpose of procuring a national identification card, whether for himself or any other person, shall be a misdemeanour and punishable with imprisonment with hard labour for any term not exceeding two years.*

4. Passport Act

Given that the policy for the widest use of the NIDS it will be necessary for the applicants for passports and seaman's certificate of nationality and identity to provide the national identification number to the passport office. Paragraph 9 of the Regulations made pursuant to Section 10 of the Passport Act empower an authorized officer to request the documents of identity that he requires to support an application for a passport. No amendment to the law or the regulations is necessary therefore for the national identification card to be included in the list of documents of identity required.

However, the prescribed form used as the application form for a passport will require amendment to reflect the requirement that an applicant produce the national identification card as well as the national identification number being written on the application form.

Paragraph 14 of the Regulations will require amendment in the case of the seaman's certificate of nationality and identity to require that among the facts required to be disclosed is the national identification number and also that the national identification card is required to be shown as a prerequisite to the application being accepted.

5. Immigration (Commonwealth Citizens) Act

In order to place the National Identification card on the level of the Certificate of Identity and the Government of Jamaica Identification Cards issued by PICA under this Act the following amendments are proposed:

- (a) amend Section 7 to insert a proviso as follows:

Provided that the Chief Immigration officer need not issue a Certificate of Identity to a Commonwealth Citizen who belongs to Jamaica and to whom a National Identification card has been issued after the Chief Immigration Officer satisfies himself of the authenticity and validity of the said National Identification Card.

- (b) amend Section 24(3) of the Act to insert a provision for a Commonwealth citizen to present a national identification card as follows:

A person having in his possession a passport appearing to have been endorsed by an immigration officer under this Act or a certificate appearing to have been granted under this Act **[or a national identification card issued under the National Registration and Identification Act]** shall answer all questions put to him by an immigration officer or constable for the purpose of establishing his identity with the



person named in the passport or certificate, **[or national identification card]** and shall, if so required by an immigration officer or constable, submit to his finger prints being taken for that purpose .

- (c) Amend Form E (Certificate of Identity) in respect of Regulation 8(1) as follows:

THE IMMIGRATION RESTRICTION (COMMONWEALTH CITIZENS) ACT

*Certificate of Identity*

It is certified that .....holding

passport No.. .....issued by.. .....

**[and where relevant, a national identification card issued under the National Registration and Identification Act] ]**having appeared before

..... for

the purpose of supplying the means of identification which are now specified herein, and having intimated that he/she is about to absent himself/herself from the Island of Jamaica for a period of ..... on a visit to

..... this document is issued to

.....and, subject to the conditions specified

hereunder or endorsed hereon and to the verification of the marks of identification, will be accepted by the examining immigration officer without further evidence as proof of the identity of the said

..... on his/her return within a period of two years.

## 6. Jamaican Nationality Act

It is under this Act that citizenship by registration may be conferred on persons not born in Jamaica and who is:

- “(a) ordinarily resident in Jamaica; or
- (b) in Crown service under the Government of Jamaica; or
- (c) partly the one and partly the other,

throughout the period of five years ending with the date of his application, or such shorter period so ending as the Minister may in the special circumstances of any particular case accept”.

It is desirable for the NIDS database to be updated with the particulars of all persons who acquire citizenship by registration. It is therefore proposed to amend the Act as follows:

- (a) Insert a new section to provide that on the attainment of citizenship by registration, or by naturalization, a person shall take the necessary steps to comply with the registration procedure and provide the personal and biometric information prescribed under the National Registration and Identification Act. Failure to register as provided may result in the cancellation of the grant of citizenship in the manner set out in Section 8;
- (b) Amend Part III of the Regulations made under Section 13.
  - (i) Add a provision to paragraph 12 to provide that where an order has been made depriving a person who is a citizen of Jamaica by registration of that citizenship, his name shall be removed from the register of citizens of Jamaica in which it is entered [***and a notice shall be sent to the National Identification Commission by the Chief Immigration officer advising of such removal from the register of citizens of Jamaica***].
  - (ii) In the Third Schedule in Regulation 10 and Regulation 13A concerning the application and declaration of renunciation of citizenship insert in the form of application and order of

renunciation a requirement that the national registration number be stated on the application and the order where the person concerned had been registered under the NIDS.

## 7. Representation of the People Act

In order to facilitate the recognition of the National Identification Card and the National Identification Number as part of the process for establishing identity under this Act it is proposed to amend as follows:

- (a) amend Section 34 to provide in sub-section 7 to provide that an elector who has not produced his identification card issued by the Electoral Commission may submit his national identification card and the card will be accepted by the Chief Electoral Officer as evidence of that elector's identity without prejudice to the power to the Chief Electoral Office to make enquiries to satisfy himself of the validity of the identification information being provided by an elector under sub-section 8.
- (b) amend Section 36(1) to permit an elector in whose name a person has already voted purporting to be that elector to submit a national identification card in addition to taking the oath of identity also to add in sub-section (2) that the national identification card was presented by the elector. Similar amendments are required to be made to the Third, Fourth and Fifth Schedules in respect of voting procedures for the police, military and Election Worker voters. The intention is that such an elector may submit his national identification card and it be accepted as evidence of the identity of the elector.

- (c) In order to permit the sharing of data between the NIDS and the Electoral Office, a provision varying the provisions of Section 114 is required:

*114.-(1) Any fingerprint recorded on a fingerprint card shall not be used for any purpose except in relation to the registration of any person enumerated under this Act or for the purpose of that person voting at a polling station.*

Insert a provision in the Act that provides that notwithstanding the provisions of Section 114 of the Act the information obtained by the Chief Electoral Officer in respect of an enumerated elector may be entered into the National Identification Database established under the National Registration and Identification Act provided that any information so entered shall be used for the purpose of establishing identity for the carrying out of the purposes of the Representation of the Peoples Act and the National Registration and Identification Act.

8. Revenue Administration Act

The application Form for registration as a taxpayer FORM 1 should be amended to insert a requirement for the national identification number to be included in the information to be provided by a taxpayer in order to be registered in the TRN register.

9. Access to Information Act

In order to protect the security of the personal information stored by the NIDS, the exclusion of all such information needs to be inserted into this Act. At Section 22 :

22.-(1) Subject to the provisions of this section, a public authority shall not grant access to an official document if it would involve the **unreasonable disclosure** of information relating to the personal affairs of any person, whether living or dead.

This is supplemented by Regulation 18:

18.-(1) In any case where the personal privacy of a person may be affected by the grant of access to an official document\_ the responsible officer shall consult, if possible with that person or his representative to determine whether access would involve unreasonable disclosure of information relating to that person.

(2) Where it is determined that access is to be granted to an official document. in circumstances where the personal privacy of a person may be affected by the grant of access such person, or his representative is to be entitled to a copy of the document to which access has been granted.

It is not clear what circumstances would be regarded as an unreasonable disclosure. It is therefore necessary for a sub-section to be inserted that makes it certain and clear that in the case of the NIDS there is an absolute bar to the disclosure of the personal information of any registered person by a public entity save and except as public entities concerned with the registration of persons for the NIDS may share information between them solely for the carrying out of the purposes of the NIDS.



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**APPENDIX A**  
**STAKEHOLDER COMMENTS: LEGAL FRAMEWORK WORKSHOP**  
**HELD JANUARY 28, 2015**

1. The vehicle to operate the NIDS

The main issue is whether a new entity should be created to operate the NIDS or whether an existing entity should assume responsibility for it.

The arguments in favour of the NIDS being operated by an existing agency were:

- the agency already specialist in operating national civil registry should be considered;
- in comparative jurisdictions, the national identification system operated out of the national registry responsible for the maintenance of civil data- records from birth to death;
- The cost benefit analysis of a new entity vis-a- vis establishing NIDS within an existing entity, such as the RGD, was looked at. RGD has the legacy documents; it does not suffer from a bad reputation, particularly internationally; and,
- NIDS could benefit from the RGD's good will.

The arguments against the RGD operating the NIDS were:

- NIDS will have to meet a number of requirements- registration of nationals and certain non-nationals; the expected pervasive use of the identity card that will require NIDS to have a presence beyond registration.

- Operationally, NIDS can reside anywhere, with its governance mechanism being a separate entity.
- To have the RGD meet such a demand would require a redefinition and a restructuring of the RGD. RGD would lose its core focus and become in essence the Commission!

2. Will the NID have information about adopted children?

It was pointed out that after a child has been adopted all records of their birth parents and place of birth are sealed and the adoption register contains only information about the person(s) who adopted the child. It is common for a child's name to be completely changed on adoption and the adoption register will only contain the new name.

The issue is that the NID should have information about the name given to the child by the birth parents. The birth parents and the names given at birth are important aspects of a person's identity and as such, should be included in the NIDS database.

3. The sensitive nature of information about protected witnesses

Further examination is needed about the disclosure of identification information of persons in the witness protection programme. Particularly those persons who are given a new identity.

The information is highly sensitive and disclosure may pose a danger to such persons.