



Submission by the Jamaican Bar Association for consideration by the Joint Select Committee of Parliament on the National Identification and Registration Act, 2020

OVERVIEW

1. By letter dated 31 December 2020, received on 4 January 2021, the Houses of Parliament extended to Jamaican Bar Association (“JAMBAR”) an invitation to provide written submissions on the National Identification and Registration Act, 2020 (“NIDS 2020”) to the Joint Select Committee of Parliament appointed to consider and report on same. JAMBAR gratefully accepted the invitation and, through its Constitutional Affairs and Human Rights Committee, reviewed NIDS 2020 and now provides comments.

Approach to Submission

2. For the purposes of this submission, NIDS 2020 was reviewed from 3 main perspectives:
 - I. Has there been observance of the Full Court ruling in Julian Robinson v The Attorney General of Jamaica [2019] JMSC Full 04 (“the Full Court Ruling”) striking down its predecessor the National Identification and Registration Act, 2017 (“NIDS 2017”)?
 - II. Are there aspects of NIDS 2020 that:
 - a. appear to be influenced by the Full Court Ruling; and





Submission by the Jamaican Bar Association for consideration
by the Joint Select Committee of Parliament on the National
Identification and Registration Act, 2020

- b. do not so appear, but are novel in approach and otherwise address concerns as to likely infringement of rights guaranteed under the Charter of Fundamental Rights and Freedoms (“the Charter”)?

III. Are there safeguards or sufficient safeguards for the protection of rights under the Charter?

Save for Part VII with which we took no issues, each Part of NIDS 2020 was viewed through these lenses and, while it was not necessary in the review of each Part to address each of the three questions above, the comments in these submissions are premised to a large extent on this approach.

3. The review also focused on matters having to do with Administrative Law (other than constitutional matters) such as:
 - a. the roles and responsibilities of the National Identification and Registration Authority (“the Authority”) and the Board of Management (“the Board”);
 - b. the framework within which the Appeal Tribunal (“the Tribunal”) and the National Databases Inspectorate (“the Inspectorate”) are expected to carry out their duties.

We take the view that clarity of purpose and properly established mechanisms are vital to the role and function of the bodies identified in this paragraph.



Submission by the Jamaican Bar Association for consideration
by the Joint Select Committee of Parliament on the National
Identification and Registration Act, 2020

4. Attached are 4 Appendices treating with the 7 Parts of NIDS 2020 as follows:
- Appendix 1:** Part I - Preliminary; Part II - National Identification and Registration Authority; Part V Appeal and Oversight
- Appendix 2:** Part III - National Identification Databases and the Civil Registration Databases
- Appendix 3:** Part IV - Use and Security of Information Stored in the National Databases
- Appendix 4:** Part VI - Offences and Enforcement
5. JAMBAR remains available for further consultation and dialogue as the Committee considers necessary and/or desirable.

Emile Leiba
President
Jamaican Bar Association

Carlene Larmond
Chairperson
Constitutional and Human Rights Committee
of the Jamaican Bar Association

28 January 2021



APPENDIX I – JAMBAR’S Review of Parts I, II and V of the National Identification and Registration Act, 2020

PART I – PRELIMINARY

Comments on Section 3

1. **Section 3** of Part I sets out the Objects of NIDS 2020 and, notably, there are significant departures from NIDS 2017. The long title of NIDS 2020 somewhat reflects this shift in focus and is perhaps even vague if not terse but when we treat with matters under Part III this point will be revisited.
2. An outstanding feature of NIDS 2020 is that in addition to having responsibility for the National Identification System that featured in NIDS 2017, the Authority also has responsibility for civil registration and the statutory functions of the Registrar-General are to be discharged under an office established within the Authority under the management and control of the Authority.
3. A Civil Registration Database (“the CRD”) is to be established, consisting of all information collected for civil registration by the Registrar-General.
4. We see no legal impediment or likely infringement of rights in the establishment of a CRD or steps to effectively subsume the offices of the Registrar-General within the Authority. It does not appear that the information required for civil registration has been widened, and NIDS 2020 expressly provides that the CRD shall be used only for the generation and issue of such certificates, and other forms of evidence, of civil registration as the Registrar-General may require for



APPENDIX I – JAMBAR’S Review of Parts I, II and V of the National Identification and Registration Act, 2020

the purposes of the functions under a number of Acts listed in Section 5(2) as she currently does.

Comments on Section 4

5. **Section 4** of NIDS 2020 is expanded significantly, owing perhaps to treatment of the provisions of Section 4 of NIDS 2017 the Full Court Ruling in NIDS 2017. It is our view, however, that language of subsections (2) and (3) is unclear and does not appear to clearly convey the drafter’s intent. Sections 4(1), 4(2) and 4(3) provide:

4.(1) The following individuals are eligible for enrolment for the purposes of this Act -

(a) citizens of Jamaica; and

(b) individuals ordinarily resident in Jamaica

(2) Eligibility under subsection (1) does not apply to any individual who is entitled to immunities and privileges under the Diplomatic Immunities and Privileges Act.

(3) For avoidance of doubt, an individual referred to in subsection (2) is entitled as described in section 25(6) to receive the information referred to in that section about that individual.



APPENDIX I – JAMBAR’S Review of Parts I, II and V of the National Identification and Registration Act, 2020

6. We understand Section 4(2) to mean that an individual who is entitled to immunities and privileges under the Diplomatic Immunities and Privileges Act (“the DIPA”) is not eligible for enrolment for the purposes of the Act. Implicit in this language is that, but for ineligibility to enroll, the Act may otherwise apply to such an individual; and Section 4(3) bears this out since it creates for such an individual an entitlement to be provided, on application under Section 25(6), with information stored on the National Databases.

7. Section 25(6) provides:

“An individual is entitled to be provided by the Authority, on application made to the Authority in such form and manner as may be prescribed, with the following information –

(a) a statement of all the information, stored in the National Databases, about that individual; and

(b) a record of all the requests for verification of identity information of that individual received from requesting entities, including in respect of each such request –

(i) the name of the requesting entity;

(ii) the date of the request;



APPENDIX I – JAMBAR’S Review of Parts I, II and V of the National Identification and Registration Act, 2020

- (iii) a statement as to whether or not the request was granted;
and
 - (iv) if the request was granted -
 - (A) the date on which the request was granted; and
 - (B) whether or not the identity information sought to be verified was verified.”

- 8. The oddity that appears to us, from the language of Section 4(3), is that the information of an individual not enrolled may be captured on the National Identification Database. Presumably, a person who does not enroll would not have information on that Database, since it consists of all identity information collected by the Authority in respect of enrolled individuals.

- 9. While it is anticipated that, by reason of the very functions of the Registrar-General, the information of many individuals (including those who fall within DIPA and who, for example, may be born in Jamaica or marry in Jamaica) will be captured in the Civil Registration Database, the entry of information into the National Identification Database would be by enrolment only.

- 10. Clarity is therefore required as to why an individual under DIPA ineligible to enroll would then be entitled to apply for and receive information stored in the National Databases (a term which includes both databases). If there is no other



APPENDIX I – JAMBAR’S Review of Parts I, II and V of the National Identification and Registration Act, 2020

means of an individual’s information being recorded in the National Identification Database other than by enrolment, then Section 4(3) should expressly limit the information accessible by an individual under DIPA to the Civil Registration Database.

PART II – NATIONAL IDENTIFICATION AND REGISTRATION AUTHORITY

Comments on Section 5

11. Section 5(3) set out the functions of the Authority and two of those functions at Sections 5(3)(d) and 5(3)(g), respectively, expressly make reference to the Data Protection Act. The former function imposes a duty to ensure conformity with that Act, while the latter imposes a duty to cooperate with other “ant-fraud organisations” as define by that Act.

12. This provides yet another example (and more are outlined in other Appendices to this submissions) as to why it is imperative that the Data Protection Act (DPA) be brought into operation, in our respectful view, before NIDS 2020. The provisions of the DPA, and the Regulations to be made under it, would seem to us to have the potential to impact the obligations under other legislation, including NIDS 2020, in terms of possible overlap and consistency (or for that matter inconsistency). The Regulations to the DPA, the exact terms of which we are not yet aware, may have the potential to tilt the borderline aspects of NIDS



APPENDIX I – JAMBAR’S Review of Parts I, II and V of the National Identification and Registration Act, 2020

2020 one way or the other and it is therefore imperative that these matters be addressed prior to the passage of NIDS 2020.

Administrative Law considerations

13. Care must be taken to have clear lines of authority and duties/obligations in the roles of the Board and Authority vis-à-vis the Minister and the Inspectorate. Each of these bodies/persons, statutorily created, is expected to operate within the framework of the legislation and overlap or potential for overlap in lines of authority may exist in the provisions as they now stand. Section 5(5) provides:

The Authority shall comply with directions issued to it by the Inspectorate in respect of any matter regarding the Authority’s operations, or regarding compliance with this Act or with any other law concerning the protection or confidentiality of identity information.

14. Section 7 provides:

The Minister may, after consultation with the Chairperson, give to the Board such directions of a general character, as to the policy to be followed by the Board and by the Authority in the performance of their functions, as appear to the Minister to be necessary in the public interest, and the Board shall give effect to those directions.

15. Section 27(2) sets out the functions of the Inspectorate and among them are:



APPENDIX I – JAMBAR’S Review of Parts I, II and V of the National Identification and Registration Act, 2020

(d) give to the Board such directions and advice as may be appropriate to ensure that identity information collected by the Authority and stored in the National identification Databases is subject to the highest practicable levels of security and confidentiality;

(e) make such recommendations to the Chief Executive Offices as the Inspectorate considers appropriate for the improvement of the Authority’s operational standards.

16. While there is clearly a thrust in NIDS 2020 to address issues of accountability, and perhaps this comes from a heightened focus on safeguarding information, the lines overlap in such a manner as to leave doubt as to who is to comply with what; or what comes in the nature of a recommendation or direction.
17. Two examples show the downside of this, and why the duty imposed on the Authority by Section 5(5) will, as a matter of law, be difficult to enforce:
 - i. The Authority must comply with directions from the Inspectorate under Section 5(5) regarding operations, **but** no function has expressly been created under Section 27(2) for the Inspectorate to issue such directions. What we see are directions and advice to the Board, not the Authority. Even if we are to assume (and one should be loathe to do so in legislation) that those directions may extend to the Authority, the direction have



APPENDIX I – JAMBAR’S Review of Parts I, II and V of the National Identification and Registration Act, 2020

- nothing to do with operations but rather on the security and confidentiality of identity information collected.
- ii. The Inspectorate’s functions under Section 27(2)(e) are limited to making **recommendations** to the Chief Executive Officer as the Inspectorate considers appropriate for the improvement of the Authority’s operational standards. There is no obligation on the CEO to implement those recommendations, and plainly this function does not connect to the Authority’s duty at Section 5(5).
18. The two examples show that Section 5(5) is meaningless because the source of the Inspectorate’s power to issue those directions is non-existent and certainly does not reside in Section 27(2).

Comments on Parts I and II of the First Schedule

19. Section 5(8) provide that the provisions of the First Schedule shall have effect with the respect to the constitution of the Authority and otherwise with respect thereto. We have a few observations of Parts I and II of the First Schedule:
- a. The fit and proper requirements are not consistent. There may be a particular policy position that guides this, but it does seem inconsistent for the fit and proper requirements for the members of the Board to be so much more rigorous than those required of the CEO and Deputy CEOs in



APPENDIX I – JAMBAR’S Review of Parts I, II and V of the National Identification and Registration Act, 2020

circumstances where the latter are discharging and carrying out day-to-day functions.

- b. Paragraph 2(4)(e) of Part I of the First Schedule sets out one of several circumstances in which a Deputy CEO may be terminated by the Board. The paragraph provides for termination if the Deputy CEO fails to carry out a function conferred or imposed on that Deputy CEO by or under this Act. It should be noted that nothing in the Act prescribes, even summarily, the functions of the Deputy CEO. Consideration should be given to express language as has been done for the CEO in Paragraph 1(7).
- c. Paragraph 5 of Part II deals with resignation of an appointed member of the Board. A Board Member (other than the Chairperson) resigns by notice addressed to the Governor-General and submitted to the Chairperson who shall transmit the notice to the Governor-General. The Chairperson resigns by notice addressed to the Governor-General and submitted to the Prime Minister who shall transmit the notice to the Governor General. The Notice takes effect from the date of receipt by the Governor-General. It is important to note, however, that the Paragraph makes no provision for a timeline within which the Notices are to be transmitted. In the interests of good administration, it is important to include a reasonable timeframe within which the notice is to be expected to be transmitted.



APPENDIX I – JAMBAR’S Review of Parts I, II and V of the National Identification and Registration Act, 2020

d. Finally, the purpose of Paragraph 6(2) is unclear and the provision itself unusual. A Board Member’s appointment may be revoked. The inclusion of provision for a hearing prior to revocation calls for some clarity as to the nature of the Board Member’s appointment as such an appointment is ordinarily at the will/discretion of the Government.

PART IV – APPEAL AND OVERSIGHT

The Appeal Tribunal

20. The provisions of **Section 26**, which treat with the establishment of the Appeal Tribunal and how it carries out its functions, appear unobjectionable. We do, however, believe there need to be further consideration of certain aspects of the Second Schedule.
21. The Second Schedule to the Act makes provision for the constitution of the Tribunal and we have identified one aspect of that Schedule that requires further consideration. This has to do with Leave of Absence under Paragraph 2. Provision is made for acting appointments ONLY in circumstances where the Chairperson is given leave of absence, in which event the Governor-General may appoint another member to act as chairperson during the period of that leave of absence.
22. In the other three instances where a leave of absence may arise (either by (i) application by a member to the Chairman (ii) direction to a member by the



APPENDIX I – JAMBAR’S Review of Parts I, II and V of the National Identification and Registration Act, 2020

Chairman to take leave where the member is charged with an offence under Paragraph 1(5)(a) or (iii) direction to the Chairperson by the Governor-General where the Chairperson is charged with such an offence), there is no provision for appointment in the place of the member or chairperson placed on leave.

23. Leave of Absence arguably does not create a vacancy, so Paragraph 8 which treats with vacancies in membership and how they are filled does not neatly apply here. Paragraph 2 ought to make clear provision for all 4 instances where a leave of absence arises and how appointments are to be made during the period of leave.

The National Databases Inspectorate

24. Section 27 of the Act establishes the Inspectorate and the provisions are unobjectionable, save for our comments at Paragraph 17 of these Submissions and in respect of Section 27(2)(f) on which we will now comment. Section 27(2)(f) creates a function of the Inspectorate to:

“investigate any issue or complaint regarding the conduct or operations of the Authority that comes to the attention of the Inspectorate”

25. Neither the Act nor the Third Schedule to the Act set out the complaint procedure, and how complaints are originated/laid. This is, in our opinion, quite a critical area in which the legislation should not be silent.



APPENDIX I – JAMBAR’S Review of Parts I, II and V of the National Identification and Registration Act, 2020

26. It must be remembered that Section 27(3)(f) of the Act gives the Inspectorate the power to refer any matter concerning any irregularity, misconduct or breach believed to be carried out by any officer of the Authority or any officer of the Board to the Director of Public Prosecutions, Integrity Commissioner, Auditor General, Commissioner of Police, Director-General of the Major Organized Crime and Anti-Corruption Agency as it considers appropriate. Plainly, the result of an investigation may carry implications for possible criminal prosecution. Any complaints process that leads to and/or initiates an investigation ought therefore to be expressly provided for in the legislation to promote fairness, transparency and the right to due process guaranteed under the Charter.

28 January 2021



APPENDIX 2 – JAMBAR’S Review of Part III of the National Identification and Registration Act, 2020

PART III – NATIONAL IDENTIFICATION DATABASES AND THE CIVIL REGISTRATION

DATABASES

Has there been observance of the Full Court ruling in Julian Robinson v The Attorney General of Jamaica [2019] JMSC Full 04 (“the Full Court Ruling”) striking down its predecessor the National Identification and Registration Act, 2017 (“NIDS 2017”)?

1. It is clear from Part III of NIDS 2020 that there has been a reduction in the biographic and biometric information required for enrolment in the database. Previously, the Third Schedule of NIDS 2017 was quite expansive in its provision for the information that the Authority must collect (Parts A, B1 and D) and may collect (Parts B2, C, and D) for enrolment in the database.
2. NIDS 2020 has reduced the biographic and biometric information which may be required for registration in the database, and provision in this regard is made in Section 11(1). The difference between the information required under NIDS 2017 and NIDS 2020 is summarized in the table below:

Item	NIDS, 2017			NIDS, 2020	
	Biographic Data	Biometric Data	Demographic Data ¹	Biographic Data	Biometric
1.	The full names, including any name by which the individual is or has been known and any	Photograph or other facial image (Compulsory)	The employment status of the individual	full name (including any names used prior to a change of name by deed poll or marriage);	Facial image

¹ All data included at the discretion of Authority



APPENDIX 2 – JAMBAR’S Review of Part III of the National Identification and Registration Act, 2020

Item	NIDS, 2017			NIDS, 2020	
	Biographic Data	Biometric Data	Demographic Data ¹	Biographic Data	Biometric
	name changed by deed poll.				
2.	Where available, the date and time of birth of the individual.	Finger Print (Compulsory)	The race of the individual	Date of birth;	Fingerprints, as defined by the Finger Prints Act
3.	The place of birth of the individual.	Manual Signature, if individual is over age 18 (Compulsory)	The religion of the individual	Country of birth	Manual signature, in the case of an individual who is eighteen years of age or older
4.	Where available, the full names of the mother and father of the individual	The retina or iris scan (Discretionary)	The education of the individual	Place of birth;	
5.	Whether the individual is male or female.	The vein pattern (Discretionary)	The profession of the individual	Names of mother and father	
6.	The height of the individual.	If it is not possible to take iris/retina scan or vein pattern then – (a) the foot print of the individual. (b) the toe print of the individual; and (c) the palm prints of the individual. (Discretionary)	The occupation of the individual	Whether the individual is male or female	
7.	The principal place of residence and any alternative places of residence of the individual.	Any distinguishing feature, including physical feature of the individual. (Discretionary)	The address of matrimonial home of the individual	Principal place of residence and any other places of residence.	



APPENDIX 2 – JAMBAR’S Review of Part III of the National Identification and Registration Act, 2020

Item	NIDS, 2017			NIDS, 2020	
	Biographic Data	Biometric Data	Demographic Data ¹	Biographic Data	Biometric
8.	The mailing address of the individual.	The blood type of the individual (Discretionary)	The telephone number at which the individual can be reached	Nationality	
9.	The nationality of the individual.		Whether the individual is male or female	Period of residence in Jamaica, in the case of an individual who is not a citizen of Jamaica	
10.	In the case of an individual who is not a citizen of Jamaica, the period of residence of the individual in Jamaica			Marital status	
11.	The marital status of the individual and the full names of the spouse of the individual within the meaning of the Property (Rights of Spouses) Act			Name of spouse (if applicable)	
12.	If the individual is married, the date and place of marriage of the individual.			Occupation	
13.	If the individual is divorced, the date of grant of decree absolute of the individual If the individual is deceased –				



APPENDIX 2 – JAMBAR’S Review of Part III of the National Identification and Registration Act, 2020

Item	NIDS, 2017			NIDS, 2020	
	Biographic Data	Biometric Data	Demographic Data ¹	Biographic Data	Biometric
	(a) the date of death and age of the individual at the date of death; and (b) the place of death of the individual.				
14.	Email Address of the individual (Discretionary)				

3. Although on the face of the legislation, there has been a reduction in the biographic and biometric information required, it is our view that this does not make the legislation immune from constitutional challenge as the State still has not shown that the amount of information required is proportionate to its objectives.

4. The objectives of NIDS 2017 were outlined in the body of the legislation itself and in the White Paper. The primary objective of the legislation was to provide a unique identification number and card which all citizens and persons ordinarily resident in Jamaica would be required to produce in order to access government services. Other objectives included providing a primary source of verification of identity information, preventing identity theft and correcting official records. The



APPENDIX 2 – JAMBAR’S Review of Part III of the National Identification and Registration Act, 2020

Full Court found that the amount of data which was required to be collected and stored was not proportionate to the State’s objectives.

5. While it lists objects in Section 3, the primary objective of NIDS 2020 is not clear from the Act itself. To begin with, and by way of comparison, the requirement in NIDS 2017 that the identification card and number must be produced to access goods and services has now been removed and section 3 of the Act merely lists its objects as, to:
 - a. Establish a National Identification and Registration Authority having responsibility for civil registration and the National Identification System;
 - b. Provide for the enrolment of citizens of, and individuals who are ordinarily resident in, Jamaica, in the National Identification Databases;
 - c. Establish databases, to be known as the National Identification Databases, consisting of all identity information collected by the National Identification and Registration Authority in respect of enrolled individuals;
 - d. Establish databases, to be known as the Civil Registration Databases, consisting of all information collected for the civil registration by the Registrar - General;
 - e. Provide for the characteristics, assignment and use of a unique National Identification Number to be assigned to each enrolled individual;



APPENDIX 2 – JAMBAR’S Review of Part III of the National Identification and Registration Act, 2020

- f. Provide for the issue of a National Identification Card to each enrolled individual;
 - g. Prevent identity theft and other instances of fraud with respect to identity information; and
 - h. Provide for the discharge of the statutory functions of the Registrar-General by an office established within the Authority, under the management and control of the Authority.
6. The objects of NIDS 2020 are therefore by and large concentrated on the establishment of databases and the legislation is noticeably silent on the purpose for which the databases are to be established.
7. While it is appreciated that enrolment in the National Identification Databases is voluntary, it is unclear whether it will become a *de facto* requirement for individuals to present their National Identification Card and Number when doing business with government or private entities. We also note that section 17 of NIDS 2020 states that an enrolled individual may use the card as a means of proving that individual’s identity or as a means of facilitating transactions between that individual and any other party where agreed between that individual and the other party. However, we are of the view that there should be a provision in the legislation which expressly states that government entities



APPENDIX 2 – JAMBAR’S Review of Part III of the National Identification and Registration Act, 2020

should not require the production of the identification card or number to access goods or services but may accept it as a form of identification if an individual voluntarily produces same. This would help to protect citizens’ right to privacy.

8. Additionally, the data minimization principle has also been considered in the new listing of information displayed on the National Identification Card itself as encapsulated in section 19 of NIDS 2020. Under this section, the card will display:
 - a. the National Identification Number assigned to that individual
 - b. the name of the authority that issued the card;
 - c. the name, date of birth, facial image and manual signature of the individual;
 - d. the nationality of the individual;
 - e. the parish or place of enrolment of the individual;
 - f. the date of issue of the Card;
 - g. the date of expiry of the Card;
 - h. the card control number;
 - i. the category of enrolment (that is, whether as a citizen or individual ordinarily resident in Jamaica



APPENDIX 2 – JAMBAR’S Review of Part III of the National Identification and Registration Act, 2020

9. Under the equivalent section 27 of NIDS 2017, the legislation was silent regarding these details and accordingly, the Full Court was unable to pronounce on the constitutionality of the section. Therefore, it is notable that the National Identification Card under NIDS 2020 will seemingly display information that is typically found on most identification cards and does not exhibit more information than is required for the purpose of basic identification.

10. Notwithstanding the new legislation’s observance of the Full Court Ruling regarding the reduction of information for enrolment and the curtailed selection of data to be display on the National Identification Card, it is our view that this does not make the legislation immune from constitutional challenge as there still remains an onus on the state to show that the amount of information required, albeit reduced, is proportionate to its objectives.

11. We also note that, quite interestingly, section 11 (2), (3) and (4) of NIDS 2020 states :-

“(2) In any case where an individual is unable to supply one or more items of identity information listed in subsection (1), the Authority may determine whether the information supplied with the application for enrolment is sufficient to effect the enrolment and if the Authority determines that the information -



APPENDIX 2 – JAMBAR’S Review of Part III of the National Identification and Registration Act, 2020

(a) is sufficient, shall proceed to effect the enrolment; or

(b) is insufficient, shall deny the application for enrolment and shall advise the applicant of the reason for denial.

(3) A person commits an offence if, without lawful authorisation, the person collects identity information from an individual.

(4) A person who commits an offence under subsection (3) shall be liable on conviction therefor before a Parish Court, to a fine not exceeding two million dollars.” [Emphasis supplied]

12. The section does not go on say that the Authority can require other information from the applicant if the information they produced is deemed insufficient. There is no objective standard by which sufficiency is tested. This begs the question: if the system is voluntary and not linked to the access of goods and service, should the Authority be permitted to deny an application on the basis that insufficient identity information has been provided by the applicant? Accordingly, this section may also be open to constitutional challenge.

Comments on new elements in NIDS 2020

13. As observed in the review of Part I in Appendix I to these submissions, NIDS 2020 proposes to establish two databases: The National Identification Databases in which all the identity information collected by the Authority under the Act in



APPENDIX 2 – JAMBAR’S Review of Part III of the National Identification and Registration Act, 2020

respect of enrolment is stored and the Civil Registration Databases, in which all the information kept by the Registrar-General for the purposes of civil registration is stored.²

14. The National Identification Databases will only be used for the enrolment of individuals, the storage of the identity information of enrolled individuals, the generation of a National Identification Number and Card to each enrolled individual and the verification of the identity information of enrolled individuals and authentication of the their Number and Card.³ On the other hand, the Civil Registration Databases will be used only for the generation and issue of such certificates, and other forms of evidence, of civil registration as the Registrar-General may require for its functions.⁴

15. The establishment of two (2) distinct databases is a new concept. Under NIDS 2017 only one (1) database was established, the National Civil and Identification Database which was to be a consolidation national database that included the identity and demographic information of all registrable individuals⁵. Since enrolment under the new legislation is voluntary and not mandatory, this new

² Section 9 of NIDS 2020

³ Section 9 (2) of NIDS 2020

⁴ Section 9 (3) of NIDS 2020

⁵ Section 15 of NIDS 2017



APPENDIX 2 – JAMBAR’S Review of Part III of the National Identification and Registration Act, 2020

provision was perhaps included to ensure that the identity information is stored separately from the information which the Registrar-General requires.

Are there sufficient safeguards against the misuse and abuse of the data?

16. There is greater effort under NIDS 2020 to include safeguards against the misuse and abuse of data in the body of the legislation itself. For instance, section 9 (4) of NIDS 2020 states that the identity information in the National Identification Databases shall be in encrypted form, that is not legible without decryption, and that is capable of being converted into legible form when required for the purposes of the Act. There are, however, some provisions which are vague and require some clarification.

Alteration of information stored in National Databases

17. Section 9 (5) states that information stored in the National Databases shall not be altered except in the manner provided by the Act or regulations made thereunder. The circumstances under which an enrolled individual’s identity information may be altered is therefore unclear and as such, it does not provide a sufficient safeguard against the potential misuse of the information.

Recommendation: We would recommend that the regulation regarding altering identity information be tabled along with the Act and that a provision be



APPENDIX 2 – JAMBAR’S Review of Part III of the National Identification and Registration Act, 2020

included to provide that any such alteration can only be made at the request of the enrolled individual. We note that section 9(6) provides that the enrolled individual may request the alteration, but it does not expressly preclude any other person from applying to alter same.

Misuse of mishandling of data

18. We also note that Act proposes strict penalties for the misuse or mishandling of data. Section 9(9) creates an offence where a person, without lawful authority, willfully degrades or caused the failure of the National Databases or interrupts or obstructs the operation of any program or data in the National Databases or causes denial of access to, or impairment of, the function of any programme or data in the National Databases. A person who commits such an offence shall be liable on conviction to a fine not exceeding three million dollars in the Parish Court and to a fine or imprisonment for a term not exceeding twenty-five (25) years in the Circuit Court.⁶

19. Section 10(2) provides that at the time of an individual’s enrolment, the Authority shall inform that individual that the enrolment is voluntary and that the individual may cancel the enrolment and in respect of the information

⁶ Section 9 (10) of NIDS 2020



APPENDIX 2 – JAMBAR’S Review of Part III of the National Identification and Registration Act, 2020

collected from that individual for the enrolment, of the reason for the collection of the information and the purpose for which the information will be used.

20. Interestingly, section 10 (4) (b) provides that in the case of an individual with a “mental disorder” as defined in the Mental Health Act, the application for that person’s enrolment in the Databases can be made by the nearest relative of the person, determined in accordance with section 3 of the Mental Health Act, and the information required to be provided under subsection (2) shall be treated as having been provided to the individual if it is provided to that applicant. As currently worded, this section does not provide a mechanism by which the Authority should verify that the individual in question is in fact suffering from a mental disorder. Specifically, it does not specify that medical evidence is required before this determination is made. This allows for the potential misuse or abuse of an individual’s information or identity theft.

Recommendation: We would therefore recommend that such an application should only be permitted by persons who have been appointed to manage and administer the individual’s affairs by virtue of a Court Order made pursuant to section 29 of the Mental Health Act.

Cancellation of enrolment



APPENDIX 2 – JAMBAR’S Review of Part III of the National Identification and Registration Act, 2020

21. Section 14 (2) states that the Authority may cancel the enrolment of an enrolled individual if the identity information stored in the National Identification Databases is inaccurate.

Recommendation: We would recommend that the provision should be amended to provide that if the information is inaccurate, the Authority shall first notify the individual of this and give that individual a specific timeframe within which to correct the inaccurate information failing which their enrolment may then be cancelled. This will give the enrolled individual the opportunity to rectify any inaccurate information which they may not have been aware of without having to go through the appeal process outlined under section 26. A similar amended should also be made to section 20 (2) which deals with the cancellation of the National Identification Card. This is supported by the fact that the Authority is given the power to re-issue the Card if it is satisfied that the conditions that required the cancellation have been rectified or no longer exist.⁷

22. In addition, section 14 (5) provides that if an individual’s enrolment is cancelled on the basis that (a) the individual was ineligible for enrolment or (b) the information provided was inaccurate, the Authority shall cancel the National Identification Card issued to that individual and ensure that the identity information pertaining to the individual is purged from the National

⁷ Section 21 of NIDS 2020



APPENDIX 2 – JAMBAR’S Review of Part III of the National Identification and Registration Act, 2020

Identification Databases; however, if an individual requests that their enrolment be cancelled, there is no provision which states that their identity information will be purged from the databases. Instead, section 14 (6) simply states that in those cases, the individual must surrender their National Identification Card issued to the individual and no longer use a National Identification Number. This raises concerns about what happens to an individual’s data if they request that their enrolment be cancelled and whether it will be retained indefinitely.

Recommendation: We would therefore recommend that section 14 be amended to provide that in all instances where an individual’s enrolment is cancelled (whether on their request or not), their data shall be purged from the National Identification Databases.

Tampering with National Identification Card

23. Section 16 (10) of NIDS 2020 creates an offence where a person willfully tampers with a National Identification Card and shall be liable on conviction therefor before a Parish Court and subsection (11) also creates an offence where a person willfully takes possession of or retains a National Identification Card, knowing that the Card was improperly obtained or a card, knowing that the card is a counterfeit National Identification Card. It is also an offence if a person fails to notify the Authority of the loss, theft, damage, mutilation or destruction of a National Identification Card. We would recommend that it only be an offence to



APPENDIX 2 – JAMBAR’S Review of Part III of the National Identification and Registration Act, 2020

fail to report the loss or theft of an Identification Card since in those instances there is a likelihood that the card may be obtained and used by a person who is not an enrolled individual.

Recommendation: In the circumstances where the card is damaged or destroyed, we would recommend that instead of making it an offence to fail to report this, there should be a provision which states that the card is ineffective and cannot be used by the enrolled individual and must be replaced. This is supported by the fact that section 22 (c) states that an individual shall surrender their National Identification Card to the Authority if it has been mutilated or is otherwise unusable.

28 January 2021



APPENDIX 3 – JAMBAR’S Review of Part IV of the National Identification and Registration Act, 2020

PART IV– USE AND SECURITY OF INFORMATION

STORED IN THE NATIONAL DATABASES

1. At Paragraph 50 of the Full Court Ruling, the court comments on the importance of data protection:

“[50] Immediately from this the question of access and protection looms large which explains why the issue of whether there is sufficient protection for that kind of data is so important and why it is an inescapable component of privacy. When such vast amounts of data are collected and placed either in one place or several places, the consequences of a data breach are far reaching. In the digital age, once there is a breach, the proverbial genie is out of the bottle and can never ever be put back in.”

2. Further, and at Para 56, the court observes:

“[56] When data bases held by the Authority are linked through a unique identifier, in this case the NIN, it is not hard to see why persons are anxious about this type of data collection process. It is also not hard to see why the tendency is to insist on a strong, robust, safe collection and storage system. All a determined hacker needs is one successful breach out of one million attempts. Thus the stakes are very high and failure to properly secure the data is not an option. In this type of scenario it is not how many attempts were detected and deterred but



APPENDIX 3 – JAMBAR’S Review of Part IV of the National Identification and Registration Act, 2020

whether the risk of a successful attack has been reduced to no possibility of a successful hack.”

3. It is therefore clear, given this close judicial consideration by our Constitutional Court, that security and protection of the information collected and stored in the database is of utmost importance.
4. Section 23 of NIDS 2020 deals with the use and security of information stored in the database. It requires that the information stored in the database be kept in a secure and confidential manner. This is an improvement on Part VIII - Protection of Information of NIDS 2017, as NIDS 2020 outlines detailed steps and methods to be employed in protecting the security and confidentiality of information stored in the database.
5. Some additional safeguards in NIDS 2020 (Section 23(d)) are:
 - i. Controls to detect unauthorised access and use of information; this includes protection against internet-based malware and other vulnerabilities
 - ii. Implementation of of monitoring processes to detect unusual events and patterns that could negatively affect the security of the Databases
 - iii. Encryption of all biometrics and other identity information



APPENDIX 3 – JAMBAR’S Review of Part IV of the National Identification and Registration Act, 2020

- iv. Restriction on certain categories of staff and agents having access to the database
 - v. Physical security of the servers of the database to include back-up measures to protect against theft, natural disasters and equipment failure.
6. While there are a number of safeguards for the protection of information in the National Databases, issues arise with the scope of this protection and there remain concerns about the capacity of this protection to be enforced without a clear legislative and regulatory framework yet to be established as the Data Protection Act has not yet been given legislative effect.

Parameters for Disclosure of Identity Information

7. Section 24(1) permits disclosure in three cases:
- i. On request of the individual concerned
 - ii. On an order of the court
 - iii. As otherwise prescribed by this or another law
8. Section 24(2) of the new Bill allows for the Commissioner of Police to request that information be disclosed to a constable not below the rank of Superintendent. Section 24 (2) states:



APPENDIX 3 – JAMBAR’S Review of Part IV of the National Identification and Registration Act, 2020

24 (2) The Commissioner of Police may, without notice, make an application to a Judge of the Supreme Court, in Chambers, for an order authorising the Authority to disclose to an individual specified in the order, being a constable not below the rank of Superintendent, identity information in any case where the disclosure is necessary –

- (a) for the prevention, detection or investigation of crime; or
- (b) in the interest of national security.

9. Notably, Section 45(1) under NIDS 2017 provided that core biometric information which was reasonably required for the purpose of a criminal investigation or criminal proceedings could have been disclosed to **“an officer not below the rank of Senior Superintendent of Police”** on an Order from the Supreme Court for such disclosure.
10. In this regard, concerns arise as NIDS 2020 seems to allow a wider range of members of the Jamaica Constabulary Force to qualify to receive information under the Act. NIDS 2020 limited the members of the Constabulary to whom disclosure of biometric information could be made, to those **“not below the rank of Senior Superintendent”**, which was seemingly a safeguard to ensure that only high-ranking police officials would have access to sensitive information.



APPENDIX 3 – JAMBAR’S Review of Part IV of the National Identification and Registration Act, 2020

11. NIDS 2020 has reduced this level of security by simply saying “**a constable not below the rank of Superintendent**”. This allows officers between Superintendent and Senior Superintendent to access the information, a wider range which has the potential of weakening the protections which should be duly afforded to information stored in the National Identification Databases. It is our view that the previous provision allowing for information to only be released to those “not lower than Senior Superintendent” is a standard that more reasonably protects the information in a manner consistent with the importance to which the fundamental right to privacy is regarded.
12. Additionally, while NIDS 2017 restricted the disclosure of biometric data except pursuant to a court order or on authorization of the individual, the new version is silent as it relates to biometric data. This creates ambiguity around whether biometric information can be disclosed.
13. Two scenarios may arise from this reading of the Act. In the first, biometric data can no longer be disclosed and accordingly the Act has taken considerable steps to ensure the protection of an individual’s information, which is commendable.
14. In the second scenario, the general provision for disclosure also applied to biometric data which means that NIDS 2020 is weaker than NIDS 2017 in so far



APPENDIX 3 – JAMBAR’S Review of Part IV of the National Identification and Registration Act, 2020

as it relates to the protection and security of biometric data. This means that biometric, and other, data may be accessed pursuant to Section 24(1)(c) - “as may be provided by this Act or any other law”. The vagueness of “any other law” leaves open the possibility of the creation of some future law which provides for the disclosure of biometric data. In the absence of clear provisions in this Bill and the absence of the Data Protection Act, biometric data collected and stored in the database is left vulnerable.

Disclosure and Destruction of Information

15. Neither NIDS 2017 nor NIDS 2020 sets out the format of disclosure. While Section 25(7) of NIDS 2020 indicates that a fee will be applicable where an application for disclosure requests that the information be provided in printed rather than electronic form, there remains no provision that clearly itemizes the standard methodology for disclosure. This lack of specification impacts how the issue of destruction is addressed.

16. Accordingly, section 24(7) merely addresses an individual’s right to witness this destruction, with an attorney-at-law present, and cannot, due to the lack of specificity regarding disclosure, detail a particular method for the destruction to take place. Individuals will not be able to determine whether destruction was



APPENDIX 3 – JAMBAR’S Review of Part IV of the National Identification and Registration Act, 2020

properly executed, simply because no parameters exist upon which they can judge the destruction process.

17. This subsection also misses an opportunity to definitively indicate whether copies, both printed and electronic can be made of the disclosed information and to ensure that clear records are kept of the creation of multiple versions of the information. Additionally, it does not state that all versions and copies of the information must be destroyed. This may allow a destruction ceremony to take place in view of the individual and their Attorney in accordance with section 24(7), without all versions of the information actually being destroyed.
18. Currently, the GOJ Records and Information Management Policy, which was prepared by the Ministry of Education Youth and Information in July 2018 offers more clarity on the methods of destroying official records than NIDS 2020. The Policy addresses the disposal of records and documents and goes further to define destruction as **“The action of eliminating or removal of records or documents from the record keeping system through deletion, formatting of media, shredding, burning, pulping.”**
19. The Act must clarify the format for disclosure of information, it must specify whether copies can be made of the information and the format for recording the



APPENDIX 3 – JAMBAR’S Review of Part IV of the National Identification and Registration Act, 2020

existence of these copies, and it must specify the means through which all the information in the JCFs possession must be destroyed.

Length of time information is shared

20. Section 24(5) of the Bill specifies the length of time which the Constabulary may retain information was disclosed by the Authority under the Act. Section 24(5) provides:

“Subject to subsection (6) identity information disclosed pursuant to an order under this section shall be destroyed within three months after the date on which –

- (a) the individual concerned is convicted or acquitted of an offence in respect of the matter for which the information was disclosed pursuant to the order;**
- (b) the date on which proceedings are discontinued, in any case where the individual concerned is charged with an offence in respect of the matter for which the information was disclosed pursuant to the order; or**
- (c) eight years have elapsed without the individual concerned having been charged in respect of the matter for which the information was disclosed pursuant to the order, as the case may be.”**



APPENDIX 3 – JAMBAR’S Review of Part IV of the National Identification and Registration Act, 2020

21. Section 24(6) adds that where the conviction, acquittal or other proceedings that arise under subsection (5) may be subject to an appeal, the information will not be destroyed until the appeal proceedings are concluded.

22. Subsection (9) notes that where the Commissioner of Police is of the opinion that the identity information which was requested and received under subsection (5) should not be destroyed, he may make an ex parte application to the Supreme Court for the information to be retained beyond the timeline noted in subsection(5). This raises the question of the integrity and efficiency of our investigation process that would require an extension to be in possession of an individual’s data for 8 years without either making a charge or concluding the investigation. The Bill is silent on what happens to the information throughout this time.

23. The effect of this subsection leaves it to a Judge’s discretion whether the Constabulary Force may continue to retain an individual’s identity information beyond an eight-year span without having charged the individual for the offence for which the information was disclosed.

24. In respect to Section 24(5)(A) and (b), the uncertainty of the length of time it takes a trial to conclude, whether by acquittal; conviction or discontinuance, there is no



APPENDIX 3 – JAMBAR’S Review of Part IV of the National Identification and Registration Act, 2020

maximum period for which disclosed information will be in the hands of the police.

25. Comparatively, sections 3 and 5 of the Criminal Records (Rehabilitation of Offenders) Act, 1988 establish that where an adult was convicted for any offence and the sentence imposed by the court does not include a term of imprisonment, his rehabilitation period is three years. It also provides that where the conviction includes a term of imprisonment that does not exceed 6 months, his rehabilitation period would be five years.
26. In this scenario, an individual could have been charged, convicted, paid a fine or imprisoned for up to 6 months, completed a three to five year rehabilitation period and had their criminal record expunged, and they still would have gone through this multilayered process in significantly less time than in NIDS 2020 which allows the Constabulary Force to retain an individual’s information in the system for the purposes of possibly charging them with an offence.
27. It is our view that the uncertainty of the conclusion of trials, and the arbitrary 8 year without charge period, with the possibility of extension, allow for the possible misuse of the information or fulfilling another agenda, other than the original reason for its disclosure.



APPENDIX 3 – JAMBAR’S Review of Part IV of the National Identification and Registration Act, 2020

Protection and Storage of Disclosed Information

28. NIDS 2020 is silent on the protections which will be afforded to information which has been disclosed in accordance with the provisions of the Bill. It does not specify who will have access to the data once disclosed. It is not clear whether the information will only be accessible to the individual to whom it was disclosed, or whether it will become part of a file which will ultimately pass through the hands of all persons involved in the investigation process. There is no clarity on mechanisms to manage instances where the individual to whom disclosure was made dies or no longer works for the JCF. Nothing in the Bill addresses the chain of custody of the information.

29. It is essential that these issues are contemplated and answered by the legislation prior to it being passed. The absence of specific provisions regarding the management of this information creates a reality in which, once information is disclosed, it can easily get into the hands of persons who are not authorised to have access to it. As it currently stands, the information could land in the wrong hands, without any repercussion.

30. Additionally, while the NIDS 2020 outlines the range of protections afforded to information managed by the Authority and stored within the National Identification Databases, a significant gap arises in relation to the protection



APPENDIX 3 – JAMBAR’S Review of Part IV of the National Identification and Registration Act, 2020

which exists once this information is disclosed to individuals and entities external to the Authority, including the JCF in accordance with section 24(2). Nothing in the Act indicates how the information which is disclosed will be stored or used. The Act is also silent as to whether the information, while in the possession of the JCF, will be afforded protection against internet-based malware, whether it will be encrypted, and whether printed information will be protected against misuse, theft and natural disasters.

31. All information which is collected in accordance with NIDS 2020 must be protected at all stages of its use and by all individuals and agencies to which it is disclosed.

Transparency in Disclosure Process

32. An important part of NIDS 2020 is a recognition of the voluntary nature of the enrollment and engagement process with the NIDS machinery. Individuals who opt to have their information input into the National Identification Databases and to receive a National Identification Card, do so with the belief that their information will be safely stored and will not be used for nefarious purposes.



APPENDIX 3 – JAMBAR’S Review of Part IV of the National Identification and Registration Act, 2020

33. In line with this is the understanding that their information may be used to allow for ease with certain government and private transactions, and an appreciation that their information may assist in crime fighting.

34. While section 25(6) allows an individual to make an application for a record of all requests for verification of identity information from requesting entities, including the name of the entity, the date of the request and a statement as to whether or not the request was granted, no similar provision exists in relation to the disclosure process.

35. Accordingly, the Act does not specify that an individual can make an application or that they can otherwise be informed by the Authority that the JCF has made an ex parte application in relation to their information and whether that information has been shared with them and the format in which it has been shared.

36. While provisions speak to the destruction of information and individuals being contacted to observe said destruction, it is unclear at what point an individual becomes notified that the JCF has requested, or is in possession of their information.



APPENDIX 3 – JAMBAR’S Review of Part IV of the National Identification and Registration Act, 2020

37. Additionally, the Act is silent as to whether an individual can make an application to request that the order made under section 24(2), which allows their information to be disclosed to the JCF, to be set aside or to otherwise appeal the length of time which the JCF will be able to retain this information.

38. The disclosure process must be transparent and individuals must be able to receive information regarding the disclosure and use of their information.

28 January 2021



APPENDIX 4 – JAMBAR’S Review of Part VI of the National Identification and Registration Act, 2020

PART VI – OFFENCES AND ENFORCEMENT

Special provisions in respect of offences

1. Section 28 (1) makes provision for a penalty of a fine not exceeding one million dollars for persons who commit an offence under the Act which has no specific penalty. Accordingly, this would apply to Section 16(12) and Section 20 (4) which, respectively, state:

“16(12) A person who, without reasonable excuse, fails to notify the Authority as required under subsection (7)(c), of the loss, theft, damage, mutilation or destruction of a National Identification Card commits an offence.”

“20(4) An individual who, without reasonable excuse, fails to surrender a National Identification Card as required under subsection (3) commits an offence.”

2. While the inclusion of Section 28 seeks to ensure that there is clarity in the Act, and that all offences identified within the Act have clear penalties ascribed to them, there is question as to the suitability of the \$1,000,000.00 fine in Section 28 for the offences under Sections 16(12) and 20(4).
3. The proposed fine is not commensurate to the offences which have been identified and is concerningly more punitive than is necessary for the mere failure to notify the Authority of any damage or loss of the National



APPENDIX 4 – JAMBAR’S Review of Part VI of the National Identification and Registration Act, 2020

Identification Card (NIC) or failure to surrender a Card within 30 days after being notified of its cancellation. This fine can potentially result in the unjust imposition of a large fine on an individual without the means to pay it, for minor offences.

4. Notably, Section 20(3) of the Act allows that where the penalty for offences being tried by a Parish Court Judge only consist of a fine, the Court may substitute that fine with an order for community service in accordance with section 10 of Criminal Justice (Reform) Act. Accordingly, the removal of this fine, a reduction in the fine, or the use of community service in lieu of a fine, are more fitting penalties for these offences.

Powers of search and seizure

5. Section 29 of NIDS 2020 addresses powers of search and seizure and is almost identical to Section 58 of NIDS 2017.
6. A notable distinction with NIDS 2020 arises where section 29 broadens the scope of items which can be seized where a constable has reasonable grounds to suspect that this item may be of substantial value to an investigation. While the Section 58(1) of NIDS 2017 allowed for the seizure of “any document, cash or specified equipment” which are found during a search and deemed to be of



APPENDIX 4 – JAMBAR’S Review of Part VI of the National Identification and Registration Act, 2020

substantial value to the investigation, Section 29(1) of NIDS 2020 allows for the seizure of “any item at the premises” which meets that standard.

7. The lack of specification regarding what may be seized by the constable in line with his search does not provide sufficient parameters to adequately regulate the search.
8. Similar to section 58(3) in NIDS 2017, sections 29(2)(c) and 29(3) in NIDS 2020 directly address the issue of legal professional privilege. While a determination by a Justice of the Peace of such directions as may be appropriate for the handling of such items may be helpful to constables in the execution of their duties, concerns remain as the Act does not appear to fully appreciate the sanctity of this privilege and makes no clear provision to adequately and effectively protect this privilege.
9. Importantly, in the recent decision of the Court of Appeal in The Jamaican Bar Association v The Attorney General and The General Legal Council [2020] JMCA Civ 37 the Court, per McDonald-Bishop, JA, observed:

[184] The Full Court gave clear recognition to the importance of LPP in a free and democratic society. Having had regard to various authorities between paragraphs [57] to [99] of its judgment, it accepted that LPP is a



APPENDIX 4 – JAMBAR’S Review of Part VI of the National Identification and Registration Act, 2020

fundamental right that is enjoyed by all citizens and that, although it is not expressly stated in the Charter, it is implicitly enshrined in the provisions which guarantee the right to legal representation and the right to privacy. [Emphasis supplied]

10. In that case, in examining the appellant’s contentions regarding legal professional privilege, the Court identified what, in our respectful view, is a central question applicable to any examination of a statutory framework that contains provisions relating to the power of seizure and the likelihood of items subject to legal professional privilege being among those exposed to seizure:

[216] Despite the comprehensive analysis undertaken by the Full Court, and the many complaints against its reasoning by the appellant, the simple question for this court is whether LPP has been sufficiently safeguarded or protected by the Regime as found by the Full Court. [Emphasis supplied]

11. The Court of Appeal reviewed the Regime in that case and observed that “The protection of LPP should not be left to chance or the whim and fancy of a competent authority, whoever that may be. concluded a proper mechanism for the greater protection of LPP must be designed so that it can be insulated from overreach by whoever is the competent authority.”¹

¹ Paragraph [266] of the Judgment



APPENDIX 4 – JAMBAR’S Review of Part VI of the National Identification and Registration Act, 2020

12. In a review of NIDS 2020, it would be our recommendation that consideration be given to that question. The Court of Appeal decision above-referenced, in examining LPP, emphasized the importance of “clear statutory guidelines”.²
13. Section 58(3) of NIDS 2017 provided: “A constable shall not seize or make any copy of any document which is subject to legal professional privilege.” However, Section 29(3) of NIDS 2020 provides nothing in the section shall be construed as authorising the seizure of anything that is subject to legal professional privilege. The clear prohibition of the seizure and copying of documents which are subjected to legal professional privilege is notably missing from NIDS 2020 and has the potential to allow room for the violation of this privilege.
14. It is extremely critical that there is a statutory mechanism that governs the handling of items that are subject to legal professional privilege. It is our recommendation that NIDS 2020 ought properly to:
- a. include clear language which prohibits both the copying and seizure of these items;

² Note 1 *supra*



APPENDIX 4 – JAMBAR’S Review of Part VI of the National Identification and Registration Act, 2020

- b. make clear provision whether in the Principal Act and/or Regulations to adequately and effectively protect the privilege, including judicial intervention by a Parish Court Judge or Judge of the Supreme Court; and
- c. make clear provision for the privilege to be claimed. In its current state, NIDS 2020 is silent as to any procedure that allows for the person subject to the warrant to claim the privilege.

28 January 2021