

**The Jamaica Coalition for a
Healthy Society**
Ministry ■ Advocacy ■ Education



9 Cecelio Ave
Kingston 10
(876) 779-6219

February 23, 2021

Clerk to the Houses
Gordon House
81 Duke Street
Kingston

Dear Madam,

Re: Written submission by the JCHS on the National Identification and Registration Act, 2020

The Jamaica Coalition for a Healthy Society (JCHS) welcomes the opportunity to comment on the captioned Bill. Below are our concerns in brief. This supercedes our submission of January 29, 2021.

1. **Is enrolment in fact voluntary?** An overarching concern for the JCHS is that Jamaican citizens must retain the freedom to participate in the economic and social activities of the country. The Government has repeatedly stated that enrolment in the NIDS will be voluntary not mandatory, yet, if enrolment becomes the basis for access to basic services that are currently serviced by existing forms of national identification, or even enhanced and necessary services that are not available to non-NIDS card holders, enrolment will be a requirement in practice, if not de jure. We posit that in a free and democratic society, legitimate involvement of citizens in economic and social activities of the country must not be curtailed by the Government. We therefore are of the view that citizens should not be excluded from economic and social activities if they do not want to participate in the NIDS. As such, if citizens do not wish to enroll in the NIDS, the other current Government issued IDs ought to remain in force and not be phased out.

2. **Impact of the NIDS bill on the Registrar General's Dept (RGD) - Clause 5(2)**

It is proposed that the Registrar-General be appointed by the NIRA with the RGD being under the management and control of NIRA. We are concerned as the remit of the RGD is different from the remit of the NIRA. Is there a way of preserving the

The remit of the RGD is the keeping of civil status registers whereas the NIRA matches a name with a number and a photograph. We are advising against a merger of these activities to ensure the continued independence of the RGD.

We note too that the **Registration (Births and Deaths) Act** currently prohibits doing business on Sundays, Christmas Day and Good Friday. This absolute prohibition will be replaced by the discretion of the NIRA Registrar-General to open in “such manner and at such times as the Registrar-General thinks appropriate”, (Clause 17- 5 of Schedule 4 of the NIDS Bill). We take objection to this change. This is a country which still holds to certain Christian tenets thus there should be no possibility of the RGD opening on Sundays, Good Friday or on Christmas Day.

Jamaica is not a secular country; our National Anthem and Pledge remind us of that. Even as we deal with a system of establishing a system for validating identities, we must not at the same time whittle away the country’s national identity. We posit that a nation must have its own identity otherwise such a nation will have no defence against those who wish to refashion or define its identity. It leaves us to wonder whether this proposal provide a glimpse of where the NIDS intends to take us as a nation?

3. Powers of NIRA- Clause 5(4) (f) - The NIRA has been given the power to “do anything or enter into any arrangement which, in the opinion of the Authority, is necessary to ensure the proper performance of its functions”. We consider this clause to be unnecessarily wide and thus capable of abuse. For example, could the information gathered under the NIDS be shared with foreign governments on a promise of funding to enable more efficient functioning? We recommend at the very least the insertion of the word “lawful” in this sentence.

4. Amendments to identity information after enrolment- Clause 9 (6)

This clause allows for changes after enrolment on the basis that the information is “incomplete, incorrect, misleading or otherwise in need of updating”. Could this clause be used to allow an individual who has changed his/her appearance to that of the opposite sex or allowing a grown man who has taken on the appearance and behaviour of a little girl, to register their acquired or preferred identities? We are strongly urging the insertion of a proviso to state as follows:

“provided that no change in the sex recorded on the individual’s birth certificate shall be permitted.”

Without a clause such as this the NIDS could become a system based on genuine imagination but not on reality. We in Jamaica cannot be complacent about safeguarding one’s identity by sex as we need to protect our sportswomen. There have been cases from overseas of men who changed their appearances to that of females and then entered women’s races and won! For example, according to a May 2019 news article in Let’s Run, Craig Telfer who was a mediocre 400M athlete in the male division suddenly declared he was a ‘she’ and now wins the races in

the female division under the name 'Cece' Telfer.¹ Another article in USA Today express the deep concern of "athletes, coaches and parents have been watching in disbelief as girls are being replaced on the winner's podium by boys who identify as girls at all levels of competition."²

If we want to protect our girls and women in the field of local sports, then we must make it clear that change in the sex recorded at birth will not be allowed.

5. **Clause 11 (1) (b) (i) - definition of "facial image"**. The clause states that the required biometric details include "facial image". What are the anticipated uses of "facial image"? If the rationale of the legislation is to provide for a system of identification why is it that more than a photograph is required? However, we note that Mr. Vernon, Programme Director, stated at a NIDS Town Hall meeting held on January 20, 2021 that "facial image" means "photograph". If this is so, we ask that the word 'photograph' be used instead of the words "facial image". Our concern is that 'facial recognition' beyond meaning photograph carries the connotation of a surveillance state. Is that what the Jamaican people want?

6. **Clause 14 (4)**. This clause states that the NIRA *may* restore enrollment in certain circumstances. Our recommendation is that the word "shall" be substituted for the word "may" in these circumstances.

7. **Clause 20- Cancellation of the card**

We note that the NIRA may cancel the card in certain circumstances and thereafter inform the enrollee of the cancellation. Our recommendation is that NIRA gives notice of intention to cancel within certain time period, for example 30 days, and during that time to allow for an appeal against that decision. Not only should notice be given but grounds for intended cancellation should also be stated.

8. **Composition of the Board of Management of NIRA - First Schedule, Clause 4 (1) (b) (vii)**

We note that there is provision for appointment of a representative from "a non-governmental organization concerned with human rights". This qualification is a rather narrow base from which to make a selection from among civil society groups. What makes this qualification of even greater concern is the there are no parameters given to judge which organisations will fit this description of "human rights" of an organization concerned with human rights. We strongly recommend a revision of this clause and that the qualification be widened. This clause could read "one member elected by a recognized local community group, church, citizens or service organization or NGO".

¹ *What No One Is Telling You: An Athlete Who Ran NCAA Track As A Man For 3 Years Just Won An NCAA Women's Title* - <https://www.letsrun.com/news/2019/05/what-no-one-is-telling-you-an-athlete-who-ran-ncaa-track-as-a-man-for-3-years-just-won-an-ncaa-womens-title/> [Accessed on February 22, 2021]

² *Transgender athletes don't belong in girls' sports. Let my daughter compete fairly* - <https://www.usatoday.com/story/opinion/2020/06/19/transgender-athletes-robbing-girls-chance-win-sports-column/4856486002/>. [Access February 20,2021]

9. **Duration of terms of office – NIRA Board and Appeals Tribunal (First Schedule, Clause 4 (4) and (Second Schedule, Clause 1(3)).**

We note that there is no limitation to the number of terms for which a NIRA Board member may be eligible for re-appointment nor the members of the Appeal Tribunal. We recommend that a person be eligible for a total of two consecutive terms of three years each (6 years), sitting out an intervening term before being re-eligible for a final three-years term.

10. **Amendments to the Marriage Act - Fourth Schedule, Clause 13**

We note that five (5) amendments to the Marriage Act are being proposed yet only one such amendment relates to the NIDS! The same applies to the amendment to the Matrimonial Clauses Act. What is the justification for such inclusion? We are concerned about inserting amendments to other pieces of legislation where such amendments are irrelevant to the focus of the primary legislation being debated.

Further we note under sub-clause 13 (4), a proposed amendment to Section 71 of the Marriage Act. Under the current section, the Minister is allowed to vary *the penalties* under the Act. However, the new sub-section being proposed, 71A, states that the Minister may make “*regulations prescribing any matter required to be prescribed under this Act.*” No rationale or justification has been given for this proposal neither does it bear any relationship to the NIDS. We therefore question the given justification of including this clause.

Further in a time when the definition of marriage is under threat in Western nations by worldviews contrary to the worldview on which Jamaican law is and has been based, we would strongly recommend to the Parliament that every care be taken in what is allowed as amendments to the Marriage Act and other connected pieces of legislation.

11. **Fourth Schedule, Clause 17 (6) and (7) - Section 55 (1) and (2) of Registration (Births and Deaths) Act.** We query the proposal to delete which particulars are to be provided upon application for a certified copy of an entry in the “registers of births and deaths or in the civil status registers kept by the Registrar-General”. Currently, by virtue of sections 55 (1) and (2) of the Registration (Births and Deaths) Act, the certified copy of a certificate would show all particulars and/or corrections to original entries, and for the birth certificate in particular, the “name, surname, sex and date and place of birth.” The NIDS Bill proposes to give the Registrar- General discretion as to which details may be released, namely “such particulars of the entry as may be determined by the Registrar-General.” This proposal will place the Registrar-General at the mercy of those who would rather for certain details example “sex” not to be included on a certified copy from a particular register. It is far better for the law to state, as it currently does, which details are to be included in a certified copy of a certificate.

We are therefore urging the Joint Select Committee to reject this proposal.

12. **Use of data** - We note that there is no specific prohibition against the sale of data or other abuse of the data collected under the NIDS. The Data Protection Act is not yet in force, and even when in force a data controller will be allowed 2 years after date of enforcement within which to comply (Section 76(1), Data Protection Act).

13. Other Concerns

a. *Safeguarding other current forms of identification*

We note that NIRA can “retain for such period as may be prescribed a record of each request for authentication or verification under this section”, s 25(4). This period has not been specified which is cause for unease. In effect it means that the Authority will be in possession of data *other* than the basic identification details at least for a period of time, thus enabling electronic profiling.

Not all citizens may want to be a part of such a system particularly with the recent mishaps with the JAMCOVID system. The mishap with the JAMCOVID data is an example of what can happen even with the best of intentions. This underscores our point that as a safeguard, persons should be allowed to rely on current forms of identification if they desire so to do as distinct from being enrolled in the NIDS.

We re-iterate our primary statement that for the NIDS to be truly voluntary, citizens must in effect have the freedom to choose whether to enroll or not. If this is not done, then the Government will simply over time use its forceful powers of “persuasion” to enforce the acceptance of the NIDS as the only acceptable form of identification. We therefore strongly recommend the inclusion of a clause as a safeguard stating to the effect that “nothing in this Act shall affect other forms of identification issued under other legislation.”

b. *The projected implementation of NIDS will cost \$1.33B.* At such a high price tag we urge the Government take the time now to ensure that our rights and freedoms will not be disturbed.

c. One of the criteria for disqualification for appointment to the NIRA Board or to the National Databases Inspectorate, or as a Chief Executive Officer should be where the individual is “under any acknowledgement of allegiance, obedience or adherence” *to any other nation or state*. These positions are so sensitive that no one who is a citizen of any other country should be allowed to serve in said positions.

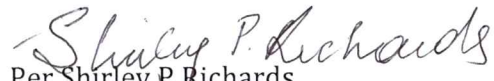
Having gone through the proposed NIDS Act, it is the conclusion of the JCHS that while it may not be the expressed current intention of the Government to make enrolment mandatory, in the absence of provisions which would ensure that the other existing forms of identification continue to be equally accepted alongside the NIDS, this Bill paves the way for mandatory registration.

Mandatory registration with the attendant denial of participation in the economy will easily turn Jamaica from being a democracy into a totalitarian state.

The JCHS thanks the Joint Select Committee for the opportunity to submit its initial comments on the draft NIDS legislation and looks forward to further occasions to comment as the debate continues.

Yours sincerely,

THE JAMAICA COALITION FOR A HEALTHY SOCIETY


Per Shirley P Richards
Legal Counsel