

**CONSULTANCY SERVICES FOR THE PROVISION OF
A LEGAL FRAMEWORK TO SUPPORT THE NATIONAL
IDENTIFICATION SYSTEM PROJECT**

PHASE II

**REPORT ON CONSULTATIONS WITH STAKEHOLDER
AGENCIES**

PREPARED BY: LENWORTH BURKE
LEGAL CONSULTANT
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Introduction

The examination of the legal implications of the establishment and operation of a national identification system involves an understanding of the remit as well as the operational issues attending the agencies of government that will be required to be both a contributor as well as a client of the system.

Accordingly, the legal consultant has had to ascertain the viewpoint of representatives of these stakeholders and it is intended that their views are manifested in the proposed legislation as well as the administrative and operational structure for the organisation.

The National Identification System (NIDS) as conceptualized assumes that a symbiotic relationship between all the government agencies and government departments either exists or will be put in place in order for it to be effective. A review of the legislation governing the operations of these agencies and departments has been undertaken and proposals for the reform of legislative provisions that are likely to bar or restrict this inter-agency relationship have been made.

This report summarizes the responses received from the relevant agencies and departments and indicates the follow-up discussions that will be conducted and incorporated into the consultancy report before the submission of the final report for Phase II of the project.

The Stakeholder Agencies

The Registrar General's Department

The Registrar-General's Department (RGD) is the primary civil registration agency of Jamaica and since 1879 it has been the official repository of births, deaths and marriages. The RGD's statutory obligations are contained in various statutes:

The Registration (Births and Deaths) Act

The Records Office Act

The Record of Deeds, Wills and Patent Act

The Marriage Act

The Hindu Marriage Act

The Muslim Marriage Act

Children (Adoption of) Act

The status of the department was changed from being a department in the Ministry of Health to that of an Executive Agency under the Executive Agencies Act 2002. This meant that the Agency was required to fund its operations from the income earned from the services it provides to the public. Such services are primarily, the issue of certificates of birth, death and marriage. In addition to its mandate as the island's civil registration agency, the department also carried out the functions of the Island Records Office (IRO). Several statutes require the registration of deeds and other kinds of instruments by the IRO.

The RGD is perhaps the single most important source of much of the data required for entry into the database to be established for the NIDS. Its registers are also a necessary reference point for the verification of information provided by each person who

participates in the registration process. At the same time, the NIDS database when established will include more than the vital statistics of an individual and as such will also be a useful resource for the RGD in its efforts to investigate the fraudulent replication of its records.

The RGD has participated in several consultation sessions and have provided critical feedback to the consultant. The concerns expressed by the RGD centre around the establishment of a NIDS operational office that will be frequently requesting data from the RGD's registers to be provided to it. In that context the following concerns were expressed:

- (a) the prospective use of the RGD's registers in this way will require adjustments to be made by the RGD to be able to provide the requested information in a timely way. These adjustments are likely to have financial and logistical implications for the RGD;
- (b) it is expected that the identification card to be issued by the NIDS will ultimately obviate the need for a person to present any of the certificates currently issued to the public by the RGD. Confidence in the safety and accuracy of the information stored in the NIDS database could result in the RGD losing a significant source of its income as fewer applications for certificates are received. At the same time, its statutory duty to register births deaths and marriages will remain with a significantly reduced income source to fund its registrarial functions;
- (c) the NIDS policy, sample legislation and proposed legislative amendments do not clearly set out the expected role of the RGD save and except for the grant of access to the information stored in its registers;

- (d) the need for the NIDS to store all the identity information of a person means that special consideration will have to be given to the inclusion of the birth records of an adopted person. The question of where to close off the biological records of birth parents and how the linking of the birth information with that of the adoption needs to be carefully examined;
- (e) the proposed assignment of an identification number for newborns needs careful examination. A detailed review should be done of the proposed legislative provisions and the protocols now being developed. Discussion with the RGD in that regard will be necessary given that it is the RGD that is being requested to assign the number to the birth records of the newborn;
- (f) the possibility exists that a child could be registered under one name by a parent going to a registration centre in one part of the island and also being registered under another name by the parent attending a registration centre in another part of the island. It is therefore recommended that careful consideration be given to whether the biometrics of the child should be taken at the point of registration rather than awaiting the attainment of their sixteenth year;
- (g) given that the RGD is required to fund its operations from its income, the question was posed whether the RGD could receive a portion of the fees to be charged by the NIDS for verification of identity services;
- (h) protocols will be required for the validation of a birth mother to ensure that she was not previously registered under another name or under another birth event.

The issue stated at (b) above was expressed repeatedly by the RGD representatives culminating in a proposal being submitted by

recommending that the RGD to be the agency appointed to carry out much of the registrarial operations of the NIDS (attached as Appendix A). The proposal indicated that the RGD:

- (a) has the capacity at present to assume the responsibility for the assignment of the National Identification Number (NIN) given their many years of experience in assigning unique numbers to each person whose birth is registered;
- (b) is presently the hub of civil registration and national identification and as such they are best placed to manage the authentication and verification of the NIN; this will be achieved by establishing a 24 hour operation;
- (c) will collaborate with the Electoral Office of Jamaica as that office will take the biometric data for registered persons and the Passport Immigration and Citizenship Agency as that Agency is the primary source of data about naturalized citizens.

The proposal recited previously aired concerns about the threat to the viability of the RGD presented by the NIDS and requested those concerns are addressed in the design for the NIDS and are reflected in the legal consultant's recommendations for the NIDS' governance structure.

The solution proposed by the RGD that will remove the perceived imminent threat to its viability and ensure that the functions of the NIDS are carried out effectively, is for the NIDS to be designed as being effectively a part of or under the RGD.

Discussions with the RGD in a meeting held on March 19, 2015 concerning the proposal resulted in another proposal being put forward, that is, for the National Registration Commission being proposed to be established to govern the NIDS, to also govern the

RGD resulting in the Commission consisting of two arms, the RGD responsible for civil registration and vital statistics as one arm and the other being the NIDS being responsible for national registration and identification.

From the perspective of the legal consultancy, that proposal will require a re-examination of the previously proposed governance structure as well as of the legislation relevant to the RGD. The fact that the RGD is presently an Executive Agency under the Ministry of Health will also require consideration, particularly as to whether its governance being removed from the Ministry of Health to the National Registration Commission can be accommodated in light of the provisions of the Executive Agencies Act.

That examination and the outline of an amendment to the proposed governance structure for both agencies will be set out in the consultant's next report.

The Electoral Commission

The Electoral Commission of Jamaica ('the Commission') is established as a Commission of the Parliament under the Electoral Commission (Interim) Act and the Commission conducts its operational activities through the Electoral Office of Jamaica. The mandate of the Commission requires that it conducts national elections, register of electors, verify the identity of electors as well as public a list of registered voters. The conduct of the electoral exercise us provided for under the Representation of the People Act.

The Commission has engendered the confidence of the general public in its ability to safely and securely gather and store personal information including identity information, particularly biometric information, as well as issue identification cards to each registered

elector. In discussions with the Commission about the NIDS, the desire for the NIDS to seek to benefit from the considerable experience was expressed. Specifically, the NIDS contracting with the Commission for the Commission's staff and resources to be used for the registration of persons for the NIDS database. It was agreed that the Representation of the People Act does not permit the sharing of any personal information stored in the Commission's database. Legislative amendment will therefore be required for that information to be entered into the NIDS database. The alternative is for the NIDS to collect the information for its own purposes. This led to the conclusion that contracting with the Commission for the registration to be carried out would be a more workable solution.

A suggestion was also made for examination of the possibility of the Commission also being designated the Commission for the NIDS rather than establish a new Commission exclusively for the NIDS. That suggestion would require careful examination of the legislation referred to above to determine whether amendments would be necessary for it to be put forward.

The representatives of the Electoral Office who attended group consultation sessions, also voiced the view that when public confidence is earned for the NIDS and the National Identification Card is seen as the definitive identifier of a person, the need for the Commission to issue its own identification card may then be re-examined.

eGov Jamaica Limited

eGov Jamaica Limited (eGov) is essentially the successor to the former Fiscal Services Limited and it provides extensive ICT support to GOJ entities. As such it is expected to be one of the critical sources of ICT support to the NIDS.

eGov has detailed in documents provided to the legal consultant, its proposed ICT schematics for the NIDS database and its operations. Specifically it is proposed that eGov be responsible for the generation of the unique identification number to be assigned to each registered person and to newborns. Connectivity between the agencies concerned with the implementation of the NIDS will also be managed by eGov. As such the need for an examination of the compatibility and connectivity issues that may arise was expressed.

The need for guidelines to be developed for the connectivity between multiple secured databases particularly to ensure consistency with the National ICT Policy was pointed out. The fact of legislative limitations on the sharing of some categories of information may also mean that particular attention will be required to be paid to ensuring only the information cleared for transmission from a database is actually shared with that of the NIDS.

Other Agencies Participating in Group Consultation Sessions

Several group consultations were held and the following Ministries, departments and agencies participated:

The Ministry of Finance

The Passport, Immigration and Citizenship Agency

The Ministry of Science technology Energy and Mining

Statistical Institute of Jamaica

Jamaica Constabulary Force

National Housing Trust

Ministry of Agriculture & Fisheries

Ministry of Education

Ministry of Foreign Affairs and Foreign Trade

Ministry of Health

Ministry of Industry Investment and Commerce

Ministry of Justice – Legal Reform Department

Ministry of Labour and Social Security

Ministry of Local Government and Community Development

Ministry of National Security

Office of the Prime Minister

Ministry of Tourism and Entertainment

Summary of Responses

The comments, questions and arguments made by representatives of the above listed entities are summarized as follows:

1. consideration should be given to excluding diplomats and employees of international organisations from the persons to be registered under the category of persons ordinarily resident in Jamaica;
2. it is recommended that a definition of Jamaican national be inserted into the Nationality Act;
3. the Fingerprint Act should be reviewed with a view to incorporating the taking of fingerprints for the NIDS;
4. A Data Protection Act and a Data Sharing Policy will be required;

5. Further development of the proposed National registration Commission is required, specifically, the qualification of the Commissioners, the conditions required for the removal of a Commissioner for misconduct by the Governor-General and the power of the Commission to charge fees;
6. strong provisions for: capture, storage, use and disclosure of a minor's information;
7. the adequacy of the legal safeguards for governance of and access to the personal information collected by the NIDS needs to be examined;
8. the scheme for the management of the National Identification Number needs to be documented;
9. the basis for the proposal for mandatory registration of persons over eighteen years needs to be explained;
10. clarification is needed as to what, if any, identity information is to be disclosed to the private sector;
11. the roles and responsibilities for partners and key stakeholder entities needs to be outlined;
12. the proposed legislation should stipulate that the NIDS is to be the primary source for identity authentication and acceptance;
13. the penalty for giving false information under the Forgery Act needs to be examined for its adequacy and it should be considered with Section 87 of the Representation of the People Act;
14. consequential amendments to the Evidence act needs to be examined and set out;

15. the proposed legal provisions for the sharing of personal information with law enforcement agencies as well as Immigration officers needs to be reviewed and strengthened;
16. The proposed amendments to the Cybercrimes Act need to be examined as the existing provisions need to be strengthened and more reflective of the continued emergence of crimes being committed with the use of ICT facilities;
17. data sharing and the disclosure of personal, demographic and biometric information needs to be set out in the proposed legislation for each agency involved in the process;

Follow-up Actions

It is clear from the range of responses given by representatives of the numerous Ministries, Departments and Agencies of government consulted that there are very important issues to be examined and policy positions clarified. This will enable the legal consultant to make amendments to the proposed sample legislation for the NIDS as well as the proposed amendments to existing laws that are reflective of the policy decisions that have been taken.

To further that process, the legal consultant intends to have follow-up dialogue with relevant persons and conduct further research into the adequacy of existing legislative provisions such as the Forgery Act and the Cybercrime Act.

Specific attention will be paid to the responses from the RGD and further discussion will be held with that Agency and a proposed governance structure and inter-linking of relevant operational activities will be prepared for inclusion in the next report.