

APPENDIX 2

DETAILED COMMENTS ON THE DRAFT BILL

No.	Section reference	Comment	Recommendation
1.	Preamble	<p>We believe that “...and to certain other classes of individuals...” is too broad a generalization that allows for potential misuse of the bill. . Narrowing the term to “individuals residing in India” aligns the bill with its stated objectives as well as its commitment not to mix citizenship and other concerns with those of residence under the UID.</p> <p>And, more importantly, we believe the term “ for matters connected therewith or incidental thereto.” is too broad. The ambiguity of the term creates space in which the bill can move away from its purposes as a social welfare measure to achieve inclusiveness of the poor and marginalized and to ensure delivery of benefits. Because this is the purpose, this is what the bill should be restricted to</p>	<p>Delete</p> <p>Delete</p>
2.	2(d)	<p>Authentication, as explained by the UIDAI so far in its various documents and statements, is intended to be a real time yes/no verification based on a simple matching exercise – the reference to verification “...on the basis of information or data or documents available with it...” seems to contemplate something other than a purely mechanical exercise where the CIDR is queried and returns a Y/N answer. The possibility of offline verification as opposed to mere biometric matching poses some concerns. It would also be better if the real time nature of the</p>	Redraft

		authentication process was referred to here, to ensure that it is truly an automatic exercise, not an offline referral to documentation, etc..	
No.	Section reference	Comment	Recommendation
3.	2(f)	We believe the inclusion of “ ...and other information related thereto ” is not needed in the definition of what the CIDR will contain. The UIDAI is clear about the minimal nature of information held in the CIDR.	Redraft – perhaps use the defined term “identity information” instead?
4.	2(h)	<p>a) The number of fields that will be collected has already been narrowed down from those originally proposed, and seems now to be frozen. As such, it is important that vague language that permits a greater amount of information to be collected is not used. As drafted, there is a reference to information relating to “...name, age, gender, etc...”. The section would work better if the text was restricted to the fields themselves and not to ancillary information around those areas, and if no delegation to rules and regulations was necessary.</p> <p>b) Though many exceptions are listed, we believe that including sexuality/sexual orientation and marital status/history perhaps will make the provision more thorough.</p> <p>c) It is not just the barring of information categories from collection that is necessary; there is also a concern around</p>	<p>Delete the phrases “...includes such information relating to the...”, and “... as may be specified in the regulations for the purpose of issuing an Aadhaar number.”</p> <p>Add as necessary</p> <p>Perhaps it would be more appropriate to address this aspect</p>

		<p>the combination of legitimate categories with other information in order to create a larger profile that can be misused. It would be helpful for the Bill to deal with this aspect as well. Merely barring collection of certain data, while very laudable and one of the better features of the Bill, is insufficient.</p>	<p>of drafting in Section 9, rather than in the Definitions, but this is a placeholder as the definition raises this issue.</p>
5.	2(i)	<p>a) We believe that a more concise definition will make it clear how enrolling agencies may be appointed by the Authority or Registrars. Presently the definition is not clear because it makes no reference to qualification procedures or other criteria (whether contained within the Bill or to be spelt out in rules or regulations).</p> <p>b) We believe that it would be better if the term “... information under this Act” was replaced with “... <i>demographic information and/or biometric information...</i>” as those are defined terms and should really be the only information collected by an enrolling agency.</p>	<p>Add</p> <p>Redraft as indicated</p>
6.	2(j)	<p>Perhaps this definition should also reference collection of information by Registrars and not just enrolling agencies. We are led to believe that the role of a Registrar is to have delegated authority to enroll, as UIDAI does not itself wish to enroll or to create a <i>de novo</i> database (<i>i.e.</i>, from scratch). If this activity is not specifically entrusted to Registrars, it is</p>	<p>Redraft</p>

		not clear what their role in the scheme is. Given the definition of Registrar in s 2(o), this may be a drafting error or oversight, but please confirm.	
No.	Section reference	Comment	Recommendation
7.	2(o)	See comment 5 relating to s 2(i)	Redraft
8.	2(q)	The Bill defines "resident" as " ...an individual usually residing within the territory of India ". We find this too ambiguous. For tax purposes the phrase "ordinarily resident" is typically used and presumably other statutes (such as those relating to immigration, visas, citizenship, etc) either have their own definitions of what constitutes residence for their purposes or cross-reference definitions in the IT Act or other acts. To the best of our knowledge, the term " usually " resident has no legal meaning.	Redraft using a more legally acceptable and commonly established definition
9.	Missing definitions	It would be useful to have a definition of verification – being the process between collection of identity information and enrollment in the CIDR -- which ensures de-duplication and otherwise ratifies that X is truly X before including him officially within the CIDR. Currently, there is no definition for this process despite verification being referenced in s 3(2). Note - Other definitions may need to be inserted, to the extent that redrafting based on our recommendations warrants it.	Add

10.	3(1)	<p>a) The basic premise of the bill has been that the Aadhaar number is voluntary. This section should make this principle unambiguously clear and effective – perhaps by including language so it reads along the lines of: “... shall be entitled, but shall not be required or mandated to (under this Act, under any other statute, regulation, rule or law or by any enrolling agency, Registrar, service provider, company, employer or other entity or person),...”</p> <p>b) The section talks of demographic and biometric information being provided to the Authority alone – not to enrolling agencies or Registrars. As we understand it, the Authority will not itself collect data; to make this clear it would be useful to refer to Registrars and Enrolling Agencies here as well.</p> <p>c) Following the previous point, there is no remedy for individuals who seek to get an Aadhaar number but are refused one due to clerical or other errors, etc. It seems logical to capture this here rather than in the rules/regulations.</p>	<p>Redraft</p> <p>Redraft</p> <p>Add</p> <p>Delete provision</p>
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		<p>d) See comment 1 about the scope of the UID and its intended coverage.</p> <p>e) Not everyone will be able to provide the demographic or biometric information necessary (villagers without date of birth, homeless persons with no address, physically or visually impaired persons who cannot give valid fingerprints or iris scans, etc). The UIDAI has provided assurance that it is aware of this issue and knows how to handle such classes of exceptions – some mention of this aspect in this section would be an effective measure towards inclusiveness of those people whom Aadhaar claims it wants particularly to facilitate.</p> <p>In this section we believe it would be appropriate to insert a very critical prohibition on anyone – government agency, private service provider, etc. – denying an individual goods, services, entitlements, remedies, etc. on grounds of not having an Aadhaar number. If the number is truly voluntary, as it is allegedly intended to be, this sort of prohibition is a <i>de minimis</i> requirement. A bar on discriminating or denying goods, services, benefits, entitlements, requests, etc. based on the having or not having of the number is imperative to protecting the citizen.</p>	<p>Add new sub-section or provision here or at the very least, make a cross-reference to s 10 which talks of special measures</p> <p>Add</p>
11.	3(2)	We believe that the purpose of verification should be clarified here	Redraft

		-unless a suitably meaningful definition of "verification" is added as suggested in comment 9. Leaving not just the manner but also the purpose/intent of verification to the regulations allows for the potential of abuse.	
12.	4(3)	<p>By whom the number will be accepted as proof of identity needs to be defined. There are circumstances where it should not be requested as proof of ID, and these need to be made clear. Furthermore, this field should be narrowed to refer to agencies registered to accept Aadhaar, etc.</p> <p>(Note - The Australian data protection law has a very specific provision prohibiting any government-issued identification number to be used for any other purpose. For example, a person's tax ID number cannot be given as proof of ID to any other agency or department. This is one of the safeguards that they felt was necessary to prevent excessive surveillance and the facilitating of intrusive "police state" practices. This kind of a bar on the use of the Aadhaar number in certain contexts can ensure that harassment by persons in authority is minimized, if not entirely avoided.</p>	Redraft – add clarifying language about the uses to which aadhaar can be put (and, more importantly, not put)
No.	Section reference	Comment	Recommendation
13.	5(1)	a) That an individual needs to pay to be authenticated is itself troublesome; the fact that the difference in cost between what the Authority charges the agency that is using Aadhaar to deliver goods or services to end-users and what that	Ideally delete reference to fees, but at a minimum, include safeguards/caps to minimize their imposition or to provide exceptions

		<p>agency may charge end-users might not be trivial. It might be of an order of magnitude that results in profits for such agencies (because the increased fee charged an end-user will be justified on grounds of overheads and administration/ transaction costs), which seems at odds with an allegedly welfare oriented measure.¹</p> <p>b) We believe that clarification is needed for what the other “conditions” are that authentication under 5(1) is subject to.</p> <p>c) As the Authority has stated in 5 (2), it will perform authentication by providing a Y/N response. We believe that the regulations have not gone into technical details of how “and in such manner” will be effected, and unless they do so, this phrase is unnecessary.</p>	<p>(but they will prove impossible or at least costly to implement).</p> <p>Delete or provide clarification for both b) and c) – these cannot just be dealt with in the regulations without treating them at a high level within the sections</p>
14.	5(2)	<p>We have been assured by the UIDAI that the ultimate safeguard in the system is that it only provides a binary Y/N response and no data or other information in response to an authentication request. As such, deleting the words “...or with any other appropriate response...” will help the bill adhere to its stated safeguard.</p>	Delete
15.	7	<p>a) While data collection and enrollment was stated to be outsourced to Registrars and Agencies, the one thing the</p>	Redraft

¹ Perhaps the approach taken with the mobile number portability fees, which have been capped, would be instructive.

		<p>UIDAI was quite sure of handling internally was the CIDR. The loose drafting of this section may pose some risks in terms of security, confidentiality, sovereignty, etc. Some safeguards around who those entities might be and what checks are done on them, what procedures they are required to follow, etc. are critical to ensuring data protection (assuming that there is no option but to have this activity outsourced in the first place).</p> <p>b) We find that the drafting of this section is such that the qualifier “...as may be specified by regulations” only applies to the performing of other functions, and not to the engaging of entities to establish and maintain the CIDR, and this seems remiss.</p> <p>c) While there are offenses relating to misuse of data or tampering with the CIDR by other parties, stronger remedies for negligence and bad performance by the agencies maintaining the CIDR on behalf of the Authority as per this section are needed to make the liabilities and standards stringent enough.</p>	<p>Redraft</p> <p>Add</p>
No.	Section reference	Comment	Recommendation
16.	8	The Authority is assigning the responsibility for updating and	Add

		keeping data accurate to the Aadhaar number holders. This might be acceptable provided adequate procedures, frequency, accessibility, ease of updating, etc are all covered in the regulations, as seems to be intended. However, there seems to be no remedy for failure to update, nor any proactive measures taken by the Authority itself towards continued accuracy. We are concerned with the continued accuracy of the database if so much relies on the holders themselves.	
17.	9	<p>a) “...shall not require...” is too mild. A prohibition is more stringent and appropriate.</p> <p>b) Presently we believe this section catches only the Authority – not the Registrars, enrolling agencies, or other entities. The prohibition/restriction should extend throughout the proposed ecosystem, and not just apply to the Authority, which as we understand is not in itself even collecting data or enrolling users.</p>	<p>Redraft</p> <p>Redraft</p>
18.	10	Please clarify what these special measures are. The reference to regulations again does not cover this part of the section. Also, the preference would be to use enabling/facilitating language – for example “...to facilitate the issue of Aadhaar numbers...” instead of the term “...to issue Aadhaar numbers...”.	Redraft
19.	12	We are not aware of any other legislation that specifically requires “ part-time members ”. Please clarify why an Authority entrusted with such a serious task is comprised of 3	Please clarify

		members of whom 2 are part-time.	
20.	16(a)	We find the use of the word " person " here confusing. Perhaps it could be replaced with "company" or "entity" or "entity or person".	Edit
21.	18(1)	The word " regulations " need not be in boldface.	Edit
22.	18(5)	The Authority has 3 members. If one member may abstain in circumstances where he/she has disclosed an interest, there may be a resulting deadlock when the remaining two members make a decision. Given the potential for this to occur, it is important that this section should provide a mechanism for the avoidance/resolution of deadlock situations.	Add
No.	Section reference	Comment	Recommendation
23.	20(1)	In the same way that qualifications have been prescribed for other members and for the review committee, it would be good to include some for the CEO role as well. Although it will be a government official, it would be useful to specify skill sets and background knowledge that will be relevant expertise for the running of this Authority.	Consider adding
24.	20(2)	There is a typo here – it should be "required by" and not "required to " the Authority.	Edit
25.	21(1)(c)	This should say "proposals" <i>i.e.</i> , the plural and not the singular should be used.	Edit
26.	23(1)	It would be preferable for the policy to be developed by the Central Government through Rules, and the	Redraft

		procedures and systems by the Authority through Regulations.	
27.	23(2)	<p>Several of the sub-sections pose concerns. They are described in the list below:</p> <p>(a) - Demographic and biometric information should be enshrined within the Act – not left to either rules or regulations – as they are critical to the nature of the Aadhaar system.</p> <p>(c) – It would be safer for the UIDAI to operate and control the CIDR, not outsource this key function.</p> <p>(g) – It is not clear what “omitting” an Aadhaar number means – please clarify. Also, please provide clarity on circumstances in which deactivating is needed.</p> <p>(h) - This is not something that should be left to regulations – the usage and applicability of Aadhaar numbers is too significant for it to be dealt with only at the level of regulations. The Act should specify high-level principles – both affirmative and negative.</p> <p>(k) – it would also be safer for the Act to enshrine at a high level some principles around the use and sharing of information and the necessary prohibitions in this regard – this too should not be handled only at the level of regulations. Moreover, please consider how enforceable or realistic the written consent that this sub-section envisages is, given the lack of literacy in this country. Consent must be informed, and it is not clear how this will be achieved. Sharing of information must be very carefully dealt with, to prevent misuse, fraud</p>	Redraft

		<p>and loss of privacy.</p> <p>(l) – We find that the reference to calling for information and records is overly broad – this should be better defined.</p> <p>(n) – Please clarify the situations where the issuing of a new number to existing holders will be necessary.</p> <p>(s) – It would be preferable for there to be some high-level attention within the Act itself addressing grievance redressal mechanisms, even if the detailed procedures will be set out in regulations.</p>	
No.	Section reference	Comment	Recommendation
28.	23(3)	We would recommend that this section make it very clear that, while delegating, contracting with, outsourcing, etc. to third parties, the Authority must ensure that all the relevant MOUs, appointment letters, contracts, tender awards, etc. commit those third parties to preserving and ensuring the safety, integrity, and privacy of the data. A breach of data will have serious consequences as set out in these established legal documents.	Add
29.	25(2)	Typo – the first sentence should read “The Fund may be applied for meeting <u>of</u> ...” and not “ for ” the salaries, etc.	Edit
30.	26(1)	The word “ prescribed ” need not be in boldface.	Edit
31.	26(2)	If accounts are audited annually, “at such intervals as may be specified by him” seems redundant.	Edit

32.	26(3)	The audit should rightfully extend not just to the Authority but also to Registrars, Enrolling Agencies, and other service providers.	Redraft
33.	28(4)	The first word should be " <u>A</u> ", not " The ".	Edit
34.	29(1)	It seems very narrow that ascertaining extent and pattern of usage is the only role of the Review Committee. We would expect that, fundamentally, it will also have oversight of the functioning of the Authority, as well as responsibility to resolve problems arising out use of the Aadhaar number, issues with technology, concerns with security, performance of service providers, etc.	Expand
No.	Section reference	Comment	Recommendation
35.	30(1)	We believe that this section would work better if it explicitly brought Registrars, enrolling agencies, and other third-party service providers within its ambit.	Redraft
36.	30(2)	<p>a) We believe this section should explicitly cover all information, and anyone who handles the information. The phrase "...in the possession or control of the Authority...". does not extend to whomever is in control of the data or wherever it is being stored.</p> <p>a) Furthermore, it is not only loss or unauthorized access/disclosure or use that might occur; there are other concerns around the data being sold to third parties for marketing purposes, for</p>	<p>Redraft</p> <p>Redraft</p>

		number holders can access their information will be straightforward and simple and carry penalties for non-compliance by the Authority. The regulations should be drafted in such a way that the process is efficient and does not work so as to prevent people from accessing their data.	placeholder for the regulations
39.	31	<p>From this provision it is not evident how demographic information will “...be found incorrect...”. At the time that the number is initially issued and a letter sent out to people, recipients might have an opportunity to request alterations if they notice errors. However, to the extent that the data in the letters and the data actually entered into the CIDR differ, the number holder will never know and cannot request a change. Further, to the extent that errors creep in at a later stage while updating the CIDR or through backup/maintenance or through IT glitches, nobody will know. Please clarify the intent here.</p> <p>We believe it would be helpful to know if the Authority or other agencies will carry out any verification at the time of permitting changes in records, to ensure that no fraud is perpetrated at this level, under the guise of altering information. The section should also set out what happens if the Authority does not alter the information correctly, and what recourse the number holder will have.</p>	<p>Please clarify – without satisfactory responses, the section is problematic and should be redrafted appropriately</p> <p>Please clarify and redraft as necessary</p>
40.	31(2)	It is not clear how someone will know if their biometric information is “ lost ”. There are concerns as to how the Authority will verify biometric information that “ changes subsequently ” to ensure it is still	Please clarify – without satisfactory responses, the section is problematic and should be

		connected to the same person (and thereby avoid fraud), how new biometrics will be collected (by the Authority alone or by other agencies?), and what makes this a secure/risk-free process. It would be helpful for the section to address these concerns.	redrafted appropriately
41.	31(3)	It is not clear on what basis the Authority will be " satisfied " before it makes alterations <i>i.e.</i> , whether it will carry out any independent verification, require any further documentation from the Aadhaar number holder, etc. All of these are tied to the prevention of fraud and impersonation. If the alteration process is also delegated to third parties, that in itself may also pose further risks.	Please clarify – without satisfactory responses, the section is problematic and should be redrafted appropriately
No.	Section reference	Comment	Recommendation
42.	32(1)	In order to ensure the protection of data, this section should include a prohibition on: <ul style="list-style-type: none"> a) the Authority sharing this data with anyone else; and b) the Authority itself carrying out any sort of profiling or data mining using this sort of transaction data, which it then shares with other agencies or sells on to third parties. 	Add
43.	33(b)	We believe the "national security" exemption is far too wide – it provides a very loose, undefined, and ambiguous basis on which disclosure may be made. Also, the officer is of a lower rank than that required in similar legislation – such as the IT Act, etc.	Delete
44.	33 (a) and	In any scenario it is important that the	Add

	(b)	aadhaar number holder should have a right to be notified of disclosure in advance of its being made. The number holder should also have an opportunity to resist disclosure through appropriate action if necessary, except perhaps in very exceptional situations. The disclosure of information without the person's consent, or at the very least knowledge, is a grave risk and infringement of privacy.	
45.	34.	The section title refers to impersonation " at the time of enrollment ", whereas the body of the section does not. A literal reading of the section, without going on to the rest of the sections that follow and working backwards, could be that it applies at any stage. This ambiguity should be removed; otherwise section 34 can also theoretically include some of the offenses under section 35.	Redraft
No.	Section reference	Comment	Recommendation
46.	35	The use of the qualifiers "...with the intention of causing harm or mischief..." and "...with the intention of appropriating the identity of a Aadhaar number holder..." seems unnecessary. Intention is irrelevant. If someone impersonates or attempts to change data, he or she should be liable regardless of why.	Redraft by deleting the phrases highlighted
47.	36	" Penalty for impersonation " seems incorrect (or at least incomplete) as a section heading, given the ambit of sections 34 and 35. (A more appropriate title might be "Penalty for impersonation of authority", for example).	Redraft

48.	37	Dissemination to anyone “...not authorized under this Act...” is very ambiguous, given that the Act does not specifically authorize persons who can “...disclose, transmit, copy or otherwise disseminate any identity information...”.	Redraft
49.	38.	<p>We believe that it would be safer to leave out the word “intentionally” in the first sentence as it places an immediate barrier on the offenses below.</p> <p>The focus is again on the CIDR – to the extent that exactly the same data are stored and retained by Registrars, enrolling agencies and third-party service providers (unless prohibited as per our recommendation in this regard), the offenses should extend to them and their databases too. Whether biometric data are copied from the CIDR or from the LIC database or an ICICI database that collected it in the first place should not matter.</p> <p>It would appear the word “effects” in 38(h) should correctly read as “<u>affects</u>”.</p> <p>In (i), it would be better to replace the phrase “...with an intention to cause damage” with “...other than with the purpose of legitimate maintenance or upgrading of such computer source code”. This would be more effective than pegging it to intention to cause damage. (Please also consider whether this should even be restricted to source code, or whether a broader term like software is more appropriate.)</p> <p>Sub-section (g) should actually be pushed down to the bottom of the</p>	<p>Delete</p> <p>Redraft throughout, as necessary</p> <p>Edit</p> <p>Redraft</p> <p>(g) should become</p>

		list, as it applies to all of the other offenses.	(i) and the others should be renumbered accordingly.
50.	39	The section should more clearly apply to data held by all Registrars, enrolling agencies, service providers, etc.	Redraft
51.	40	The section title is incorrect/misleading in that the section does not deal with the manipulation of biometric information as such. It is more a case of giving false or fake biometrics.	Redraft
52.	34 – 41	The financial penalties given in this section are very low – please clarify the financial basis for these figures. It appears as though more or less the same numbers have been adopted for all of the offenses, and this seems arbitrary and disproportionate to the nature of the offenses themselves. We believe a more nuanced and effective range of penalties needs to be considered.	Revise
No.	Section reference	Comment	Recommendation
53.	Proviso to 42	The proviso makes a huge dent in the offense set out in 42(1) – it provides incentives for people not to know what goes on in a company, and it also allows people to escape liability if they have exercised due diligence.	Delete
54.	42(2)	We believe that this may conflict with principles of company law that protect certain categories of people from personal liability. Perhaps this section should therefore state “Notwithstanding anything contained in sub-section (1) and any other law for the time being in force...”?	Redraft
55.	46(1)	While some statutes require that the	Delete

		<p>permission of the central government is to be sought before taking cognizance of offenses, and while it may be appropriate in certain contexts, this section provides that only the Authority and its authorized officers may make a complaint, which is entirely different. This makes it practically impossible for an individual to receive redressal for violations under this law, which is an unreasonable bar. It practically nullifies all the offenses created under this statute. It also makes the Authority the sole judge of when it may be proceeded against or when other complaints may be taken up.</p>	
56.	48(a).	<p>In this provision it is not clear what “... on account of circumstances beyond the control of the Authority...” might be. We should actually be more concerned with circumstances of bad performance, negligence, ineffectiveness, etc. Perhaps it would be better to delete the highlighted phrase and leave the rest of the sentence as drafted.</p>	Redraft
No.	Section reference	Comment	Recommendation
57.	48(b)	<p>The phrase “...and as a result of such default the financial position of the Authority...” should be deleted.</p>	Delete
58.	53 and 54	<p>Certain sub-sections of 54 are important enough that they should be part of the Central Government's rule-making function under 53, rather than matters left to the Authority to handle under Regulations. The key ones are:</p> <ol style="list-style-type: none"> 1. 54(a) – biometric and demographic information 2. 54(f) – other functions of the 	

		<p>CIDR</p> <ol style="list-style-type: none"> 3. 54(h) – categories of individuals for special measures 4. 54(k) – the demographic and biometric information under 23(2)(a) 5. 54(m) – omitting and deactivating an Aadhaar number (it is not clear what omitting even means, so please clarify that too) 6. 54(n) – usage of Aadhaar number for service and benefits delivery under 23(2)(h) 7. 54(p) – manner of sharing information under 23(2)(k) 	
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NOTE: THE ABOVE LIST OF DETAILED COMMENTS IS BASED ON THE TEXT OF THE DRAFT BILL. OUR BROADER RECOMMENDATIONS ARE ALREADY CONTAINED WITHIN THE HIGH LEVEL SUMMARY OF CONCERNS THAT WE HAD SUBMITTED EARLIER, WHICH SHOULD ALSO BE GIVEN EFFECT WITHIN THE DRAFT BILL. WE HAVE NOT REPEATED ALL OF THOSE ISSUES AGAIN WITHIN THE LIST OF DETAILED COMMENTS, UNLESS THEY ARISE IN THE CONTEXT OF SPECIFIC SECTIONS OF THE BILL.