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The Establishment of a National Human Rights Institution: The Case for Jamaica





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The Issue

In 2014 the Government of Jamaica (GOJ) stated its intention to establish a National Human Rights Institution (NHRI) based on the Paris Principles. NHRIs are “official independent legal institutions established by the State by law for the promotion and protection of human rights. They are established [either] by the constitution or an act of the legislature that guarantees their independence from political direction and political interference, both governmental and non-governmental”. They comply with the Paris Principles which are international minimum standards for NHRIs. Paris Principles are obligatory and not aspirational if NHRIs are to be “legitimate, credible and effective in the promotion and protection of human rights”. However, the Principles mix very broad and very specific provisions and are silent on some key issues including the structure of an NHRI. Nevertheless, the Paris Principles are essential for the establishment of NHRIs.

Text Box 1: THE PARIS PRINCIPLES

The Paris Principles are a set of core minimum recommendations which frame and guide the work of National Human Rights Institutions (NHRIs) for the protection and promotion of human rights. They were drafted at an international NHRIs workshop in Paris in 1991 and were later adopted by the United Nations General Assembly in 1993.

According to the Paris Principles, NHRIs must:

- Be independent of the Government, with such independence guaranteed either by statutory law or constitutional provisions
- Be pluralistic in their roles and membership;
- Have as broad a mandate as possible, capable of collectively promoting, protecting and monitoring existing and proposed laws and policies
- Have adequate powers of investigation, with the capacity to hear complaints and transmit them to the competent authorities
- Be characterised by regular and effective functioning
- Be adequately funded and not subject to financial control, which might affect their independence; and
- Be accessible to the general public

At that time (2014), the GOJ convened a discussion with the Commonwealth Secretariat on the establishment of an effective and sustainable NHRI in Jamaica and cited the dialogue as a useful opportunity to learn more about the features and roles of NHRIs in order to begin the process of considering the type of Institution that would best fit the country’s needs”. A national consultation where relevant stakeholders would voice their opinions regarding the NHRI was also planned. The Government cited its intention to establish a NHRI as affirmation of its commitment to the human rights treaties to which Jamaica is signatory. Jamaica has ratified seven (7) of the nine (9) core international human rights treaties, passed the Disabilities Act in 2014, established the Independent Commission of Investigations



(INDECOM) and has embarked on justice sector reform as part of steps taken to promote a culture of fulfilling its human rights obligations.

Text Box 2: Prospective functions of NHRIs

NHRIs should:

- Monitor the implementation of human rights obligations of the State party and report annually (at least);
- Report and make recommendations to the Government, either at the Government's request or on its own volition, on human rights matters, including on legislation and administrative provisions, the violation of human rights, the overall human rights situation in the country and initiatives to improve the human rights situation;
- Promote harmonisation of national law and practice with international human rights standards;
Encourage ratification of human rights treaties;
- Contribute to reports that States parties are required to submit to the United Nations treaty bodies on the implementation of human rights treaties;
- Cooperate with regional and United Nations human rights bodies as well as with human rights bodies of other States;
- Assist in the formulation of human rights education programmes; and
Raise public awareness about human rights and efforts to combat discrimination

Types of NHRIs

The Paris Principles do not offer a classification system of NHRIs. However, there are four (4) main types of NHRIs:

- 1) The **committee** type is characterised by its mission to provide advisory services to the government and to government leaders, in particular
- 2) The **institute** type are mainly concerned with education, research and political advocacy
- 3) The ombuds type focuses on aspects of individual legal protection and dealing with complaints
- 4) The commission type is characterised by its wide range of tasks, including investigations into human rights violations, educational work and public relations, as well as participation in legal proceedings

In most cases, the ombuds and commission types have extensive investigatory and information powers, whereas the committee type has only restricted, and the institute type no governmental powers

According to the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), as of 26 January 2016, 72 countries were accredited as fully compliant



with the Paris Principles (A Status), twenty-nine (29) as not fully compliant and ten (10) as not at all compliant. Antigua and Barbados are currently the only Caribbean countries represented on the ICC's list of accredited NHRIs, both with C ratings. Consequently, given its reputation as a leader in the region on many issues, Jamaica has the opportunity to become the first country in the English-speaking Caribbean to establish a NHRI that is fully compliant with the Paris Principles if it is prepared to implement same without compromise.

Text Box 3: Core International Human Rights Instruments/ Treaties ratified by Jamaica

- ❖ International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
- ❖ International Covenant on Civil and Political Rights (ICCPR)
- ❖ International Covenant on Economic, Social and Cultural Rights (ICESCR)
- ❖ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- ❖ Convention on the Rights of the Child (CRC)
- ❖ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)
- ❖ Convention on the Rights of Persons with Disabilities (CRPD)

Background

In the UNDP-commissioned HIV and AIDS Legal Assessment Report (2013), the lack of legal recognition of human rights was cited as a major hurdle in ensuring adequate and effective protection of human rights in Jamaica. The establishment of a NHRI was identified among the possible solutions. As outlined above, the GOJ signalled its intention to setup a NHRI in compliance with the Paris Principles in 2014. With its mandate to ensure a coordinated national response to reducing stigma and discrimination and promoting human rights for all Jamaicans irrespective of health status, race, class, sexual orientation and disabilities, the Enabling Environment and Human Rights (EEHR) Unit of the National Family Planning Board (NFPB) included in its scope of work for 2015 a series of human rights consultations (HRC) to solicit feedback from key stakeholders on the establishment of a NHRI in Jamaica. These consultations also provided the lens through which basic or general knowledge of human rights in Jamaica could be assessed. This report reflects the findings of fifteen (15) consultations conducted with a wide cross-section of Jamaicans including key population groups.

Findings and Recommendations

Reflected below are the seven (7) main findings and recommendations of the HRC series:

- i. The NHRI should educate the Jamaican population on human rights and their key principles as well as promote awareness and respect for human rights



- ii. A public education campaign focusing on the mandate and the benefits of the NHRI is necessary to ensure maximum and efficient usage
- iii. The NHRI must function to protect the human rights of all Jamaican citizens. It is therefore essential that the enforcement and protection of human rights are adequately maintained and that the infrastructure to receive, investigate and process complaints as well as facilitate redress, is available and operational
- iv. The rights of the most vulnerable must be given special consideration by the NHRI. Inclusion of members of the most vulnerable populations including the LGBT community in consultations and NHRI programmes and initiatives should be undertaken.
- v. The NHRI should undertake sensitisation and training of certain public sector and essential services groups such as the police and healthcare workers. Training should focus specifically on human rights and human rights violations, with an emphasis on privacy and confidentiality and freedom of expression
- vi. The NHRI should take the form of a Commission and should be instituted either in Jamaica's constitution or through strong legislation (Act of Parliament). A term limit of two to three years should be implemented along with a monitoring and evaluation and performance-based framework. The composition of the NHRI should include government agencies, Civil Society and Faith-Based Organisations et.al. The format for appointment of NHRI members should include a public selection process in addition to the ratification of candidates by the Governor General
- vii. The government should be the primary funder of the NHRI and allocated funding should increase progressively every year. External funders who declare their particular agenda or area of support should provide an agreed percentage of funding which should not exceed the government's contribution

Conclusion

Overall, the majority of participants were in agreement that the NHRI will go a long way in promoting and protecting the human rights of Jamaicans and therefore will be beneficial to the Jamaican society. It was clearly stated that the NHRI should be free from political interference and that its creation should result from a consultative process which results in a strategic plan of action for implementation rather than conforming to the easiest medium for creation. The mandate and the array of services to be provided by the NHRI dictate that its structure, framework and legalisation be carefully developed to set the stage for its success.



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