

# A Look at Economic, Social and Cultural Rights (ESCRs) in Jamaica



## Introduction

Economic, social and cultural rights (ESCRs) concern basic human needs and include the right to adequate food, adequate housing, education, health, social security, protection of the family, take part in cultural life, water and sanitation, and work. But what do these rights really mean? For example, the right to work is, among other things, concerned with just and favourable conditions of work, some of which include fair wages, equal pay for equal work, and equal remuneration for work of equal value. Examine also the right to adequate standard of living; this right requires, at a minimum, that everyone shall enjoy the necessary subsistence rights: adequate food and nutrition, clothing, housing and the necessary conditions of care when required.

These and other rights can be found in The United Nations International Covenant on Economic, Social and Cultural Rights (ICESCR), which commits state parties to protecting ESCRs of all individuals. The ICESCR, which Jamaica ratified in 1975, also outlines the full gamut of rights to be protected. Under this covenant, Jamaica, like other state parties, is expected to take steps to achieve full realisation of these rights for its citizens.

Unfortunately, Jamaica's legislative framework fails to offer protection of ESCRs for all its citizens. This policy brief will outline the ESCRs recognised in Chapter Three of Jamaica's Constitution, the gaps and actions that ought to be taken by the State to ensure the fulfilment of ESCRs in accordance with the International Covenant.

## ESCRs within the Constitution of Jamaica

In 2011, the Parliament of Jamaica replaced the 1962 Bill of Rights (Chapter Three of the Constitution) with the Charter of Fundamental Rights and Freedoms which expanded the rights afforded to Jamaican citizens. These rights included the "right to enjoy a healthy and productive environment and the right to publicly funded pre-primary and primary school level education arguably consistent with international conventions to which Jamaica has ratified" Coming out of the deliberations of the Joint Select Committee reviewing the Charter, those were the only ESCRs included in the list of fundamental rights.

# A Look at Economic, Social and Cultural Rights (ESCRs) in Jamaica



Jamaicans are not guaranteed the rights to work, health, social security, food, water, housing among others under the Charter. It was believed that the inclusion of other ESCRs would be too expensive.

Despite the exclusion of several ESCRs, there exists a possibility for redress in Section 13(3)(g), which provides for the general right of equality before the law and section 13(3)(h) which provides for the general right to equitable and humane treatment by any public authority in the exercise of any function. However, there are gaps in this approach as equality provisions only cover action by the state and the one likely to cover the private sector is inadequate.

ESCRs are also addressed by a few pieces of legislation, however, there are still gaps, which leave vulnerable groups such as the LGBT community with little to no protection. Some of these gaps can be traced back to the section of the Constitution which bars the recognition of any union, married or unmarried, outside of a man and woman. This prevents laws from being passed that can recognize and equally protect same-sex relationships in the same way unmarried heterosexual unions are protected.

## Conclusion and Recommendations

Jamaica's current legal framework is inadequate in addressing issues relating to ESCR. The exclusion of most ESCRs from the 2011 Charter and limitations in current legislation give little protection. The LGBT community, in particular, is more affected given their non-recognition in the Constitution. Given the current situation, the following recommendations are being made:



1. Amend the 2011 Charter of Fundamental Rights and Freedoms to constitutionally protect and guarantee ALL the rights enumerated in the ICESCR;



2. Repeal Section 18 of the Charter which discriminates against and fails to recognize unmarried same-sex unions.