

November 28, 2021

NIA Strongly Endorses Recommendation to Repeal Section 53(3) of the ICA

National Integrity Action urges the Parliamentary Oversight Committee of the Integrity Commission to recommend to the Parliament, the deletion of Clause 53(3) of the Integrity Commission Act (ICA), which places an absolute ban on the Integrity Commission indicating to the people of Jamaica when they are investigating a corruption matter. The deletion of this “gag order” would accomplish a number of positive goals.

In the **first** place, it would remove a glaring inconsistency which is damaging to Jamaica’s fight against corruption. Every other law enforcement agency has a discretion to indicate when it is undertaking an investigation of serious crime – in particular if that disclosure is helpful to the investigation. For example, the **Gleaner** of May 10, 2019 reports the Commissioner of Police disclosing that former Minister Ruel Reid was being investigated by the police along with the Financial Investigations Division, fully five (5) months before former Minister Reid was arrested. Section 53(3) would have banned the Integrity Commission from indicating this investigation to the public, thereby depriving citizens of the possibility of giving information relevant to this investigation.

Secondly, the deletion of this “gag order” would correct an anomaly, whereby the Integrity Commission Act itself authorises the police or any other investigative body to request the Integrity Commission to investigate a particular matter. Hence the requesting body has the discretion to announce the request publicly, but the Integrity Commission itself is muzzled from indicating whether it is accepting or rejecting the request.

Thirdly, there is no conclusive evidence that reputational damage is a necessary consequence where an investigating body discloses that it is investigating a particular individual. Clearly, such an announcement in no way contradicts the presumption of innocence until proven guilty in a court of law. Additionally, there is no reason to believe that providing the Commissioners of the Integrity Commission with the discretion - which every other law enforcement entity has - would encourage them to utilise the discretion in a manner which would result in reputational damage.

Beyond these considerations, deleting this “gag order” would enhance Jamaica’s compliance with the United Nations Convention Against Corruption (UNCAC), to which we are a signatory. Article 13 of that convention, imposes on each Signatory State the obligation to “**promote the active participation of individuals.... in the fight against corruption... by ensuring the public has effective access to information.**” Section 53(3) of the ICA, denies the Jamaican Public any access whatsoever to information that our Integrity Commission is investigating a particular matter of corruption.

Moreover, this principle of disclosure is an accepted norm for anti-corruption agencies around the world, as set out in the **Jakarta Statement on Principles for Anti-Corruption Agencies**. One such principle, set out in that statement – developed at the conference of anti-corruption agencies (ACAs) from across the world, states “**ACAs shall communicate and engage with the public regularly in order to ensure public confidence in its independence, fairness and effectiveness.**” Section 53(3) of Jamaica’s Integrity Commission Act undermines this principle of transparency, reinforces the public’s lack of confidence that our Anti-Corruption Agencies are effective in the combat of corruption, and contributes to the view - reflected in international assessments, notably the Corruption Perceptions Index (CPI) - that Jamaica is failing in the fight against corruption.

NIA therefore urges the Oversight Committee and the Parliament to accept the recommendation made in the three (3) successive Annual Reports of the Integrity Commission, that this “gag order” should be repealed.

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