



# Redress at 10: An Analysis of Addressing HIV-related Discrimination in Jamaica

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## Background

Reporting and redress systems for HIV-related discrimination are an increasingly common tool to help people living with HIV access justice. In Jamaica, the Jamaican Network of Seropositives (JN+) has managed a redress system for people living with HIV since 2005. Through this system, known as the National HIV-Related Discrimination Reporting and Redress System (NHDRSS), JN+ collects cases of HIV-related discrimination and refers them to a redress partner to investigate, mediate, or provide damages to people who have experienced discrimination (known as complainants).

While over 300 people have submitted cases to JN+, the NHDRSS is now at a crossroads. Increased funding has improved the ability of JN+ to promote the system and conduct case intake, two new redress officers have been hired in the last six months, and new organizations have been recruited to support redress. Increased resources, however, have resulted in greater complexity and higher expectations among donors, international partners, and people living with HIV, which create challenges for JN+.

In September 2016, the USAID- and PEPFAR-funded Health Policy Plus (HP+) project conducted

13 in-depth interviews with Jamaican stakeholders involved with the JN+ redress system to examine the redress system’s performance after 10 years. Based on these stakeholder interviews, this brief describes challenges with the NHDRSS and compares the system against the World Bank’s framework for effective grievance redress mechanisms. The brief also proposes targeted activities to improve client satisfaction and internal systems at each stage of the grievance redress mechanism value chain (Figure 1).

## Situating the JN+ Redress System in International Experience

Literature suggests that successfully addressing the HIV epidemic requires a strong legal environment to protect key populations and people living with HIV (Williamson et al., 2014). Laws to protect confidentiality have encouraged people to learn their HIV status and access HIV prevention and treatment, while anti-discrimination laws have helped people living with HIV keep their jobs and lead full and dignified lives (Gray, 2013). Enforcement of these legal frameworks ensures non-discrimination and protection from violence in the context of HIV (Gray, 2013).

**Figure 1. Grievance Redress Mechanism Value Chain**



Source: Post and Agarwal, 2011

Despite efforts to combat HIV-related discrimination, around the globe people living with HIV are still denied basic human rights, such as housing, education, health services, livelihoods, and travel (Williamson et al., 2014). Often, this is because national legislation and policies do not prohibit discrimination based on health status. In Jamaica, there is no general anti-discrimination law and the constitutional guarantees of human rights do not extend to “health status” or “disability” (Gray, 2013). Furthermore, within the Jamaican context, the extent and form of discrimination experienced by people living with HIV is not well-documented, due in part to an environment in which discriminatory actions are culturally acceptable (Gray, 2013).

The NHDRSS assists the national response by helping people living with or affected by HIV access justice when discrimination occurs. The redress system was first conceived under a Global Fund grant to strengthen prevention, treatment, and policy efforts in Jamaica (Gray, 2013). While the principal recipient of the Global Fund grant is the Ministry of Health (MOH), JN+, as a sub-recipient, created and manages the NHDRSS.

Since the creation of the NHDRSS, there has been increasing recognition of and commitment to enabling legal environments in the HIV context. Jamaica signed and ratified the Political Declaration of Commitments on HIV/AIDS in 2001, 2006, and 2011, committing to protecting the humans rights of people living with HIV; women and girls; and key, high-risk populations (Gray, 2013). Although international law is not directly applicable and binding in Jamaica, the country has implemented several policy initiatives, including adoption of a *National HIV/AIDS Policy* and approval by the Jamaican Parliament of a *National HIV/AIDS Workplace Policy* and a *National Policy for the Management of HIV/AIDS in Schools* (Gray, 2013).

## JN+ Reporting System Overview

JN+ is a network that advocates for human rights and improved services for people living

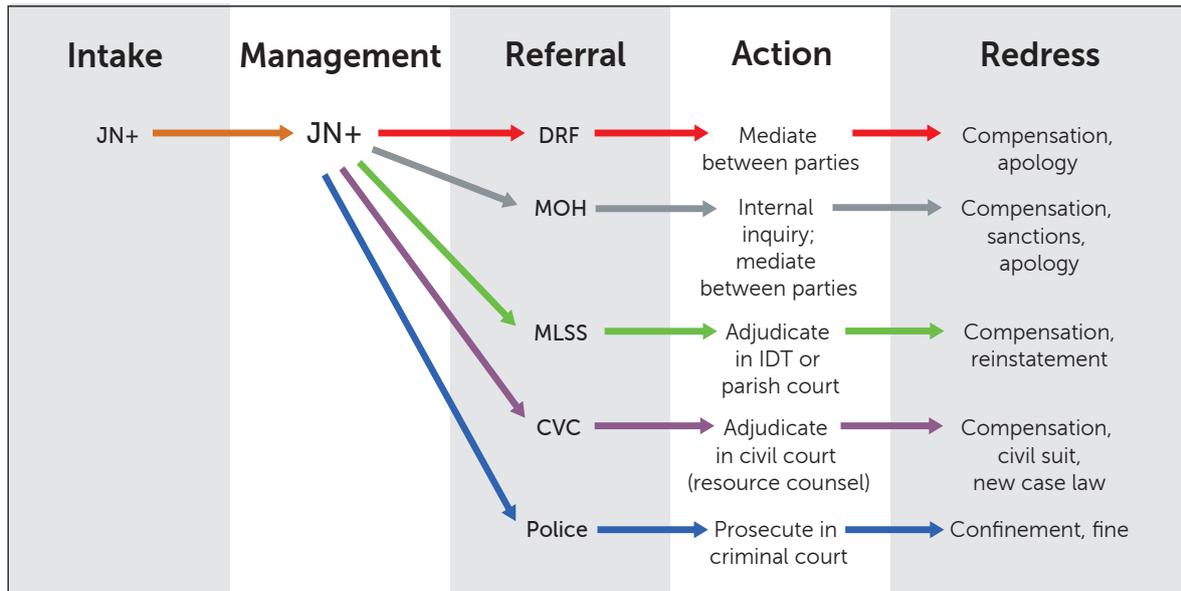
with HIV through partnership, empowerment, and resource mobilization. JN+ is responsible for collecting and managing cases of HIV-related discrimination. Complaints can be submitted to JN+ by either the complainant or a witness. There are multiple options for submitting complaints: in-person, by phone, or online through a complaint form on the JN+ website.

JN+ contacts the complainant for an interview within 30 days of receipt. Following the interview, the JN+ Case Review Panel examines the accusations and makes recommendations for redress. The nature of the case determines how it is referred to other organizations. Cases requiring mediation are referred to the Dispute Resolution Foundation, health-related cases go to the MOH, employment-related cases go to the Ministry of Labour and Social Security (MLSS), civil complaints go to the Caribbean Vulnerable Communities Coalition, criminal complaints go to the police, education-related cases go to the Ministry of Education, and cases where persons are aggrieved by other statutory bodies and for constitutional and administrative injustices are referred to the Office of the Public Defender. Figure 2 illustrates how some cases are processed through the NHDRSS.

The following demonstrates how health-related cases are processed through the NHDRSS. Once JN+ determines that a case is health-related, JN+ seeks permission from the complainant to notify the MOH and does so once permission is granted. Staff at the MOH facility (hospital, health centre, etc.) in question are responsible for investigating whether the facility is potentially liable for damages in the case. Based on the initial investigation, facility staff follows one of two protocols:

1. If the investigation does not identify a potential liability, working through the Complaints Management System (see Box 1), facility staff investigates the complaint and facilitates mediation at the facility level between the complainant and relevant staff. In a hospital, relevant staff include the chief executive officer, senior medical officer, director of nursing services, and the healthcare worker whom the complaint is filed against (known as the respondent). In a health centre, relevant staff include the parish manager, medical officer of health,

**Figure 2. National HIV-Related Discrimination Reporting and Redress System (NHDRSS)**



**CVC** = Caribbean Vulnerable Communities Coalition, **DRF** = Dispute Resolution Foundation, **IDT** = Industrial Dispute Tribunal, **JN+** = Jamaican Network of Seropositives, **MOH** = Ministry of Health, **MLSS** = Ministry of Labour and Social Security

and respondent. Mediation is organized by an officer designated as the complaint handling officer—the director of patient services in a hospital or a customer service representative in a health centre. The complainant can bring someone with them to the mediation, but attorneys are discouraged. During the mediation session, the findings of the facility’s investigation are discussed with the complainant and facility staff explain what happened, why, and what they will do to address the complaint. If the complainant is not satisfied with the outcome of mediation, the health facility refers the case to the relevant authority—the Parish Health Department, Regional Health Authority (RHA) or the MOH. Complainants can opt to take their case to court if the relevant authority is unable to provide the redress they are seeking. Roughly two-thirds of cases end with mediation, while one-third go to court.

2. In the case that the facility investigation identifies a potential liability, the complaint is immediately escalated to the MOH, through the RHA, and the complainant is informed. Once at the MOH, serious clinical complaints are sent to the Medical Review Panel for an expert medical opinion, which is forwarded

### BOX 1. COMPLAINTS MANAGEMENT SYSTEM

The Complaints Management System is the MOH’s system for all clients—not just people living with HIV—of public hospitals, health centres, clinics, and other health-related institutions, to report dissatisfaction with services received. The system seeks to:

- Collect feedback from dissatisfied clients, patients, relatives, visitors, health care workers, and all users of MOH health-related facilities
- Provide a means for failure/complaint investigations
- Facilitate redress and closure of cases
- Support corrective and preventative actions
- Track trend data on complaints as part of quality improvement activities and to inform programme and policy development

to the Attorney Generals Chambers, the government organization that represents the MOH in potential legal matters and is authorized to recommend monetary compensation, if necessary.

At the end of each of the two scenarios, findings are reported back to JN+ by each redress partner at the Case Review Panel meeting.

For employment-related cases, the MLSS investigates by discussing the issue with the employer and issuing a recommendation. Though the employer typically adheres to the recommendation, the MLSS has two options if they do not.

1. If the complaint is related to an “industrial dispute” (e.g., unjustified dismissal or employment conditions), the case goes to the Industrial Dispute Tribunal. These cases are typically procedure- or rationale-based, meaning employers must follow specific provisions in the labor law that concern conditions of employment, benefits, and termination.
2. If the complaint is deemed “not related to an industrial dispute,” the case can be sent to a parish court. Given that there is no specific law that protects people living with HIV from employment discrimination, the MLSS relies on labor laws, which prohibit termination based on discrimination or termination without good cause. Though dismissal based on HIV status may be unjustified, no case has tested this interpretation of the law (Gray, 2013).

## Organizing Principles for Redress Systems

To assess how the NHDRSS operates, HP+ examined a framework developed by Post and Agarwal (2011) for the World Bank. The framework highlights six core principles for redress (see Box 2) that ensure any redress system can achieve its goals. The principles focus on the types of systems needed to build trust among potential complainants. According to the framework, effective redress systems typically make complaints easy to submit, provide fixed service standards for complaint resolution, and have clear processing guidelines and effective

### BOX 2. CORE PRINCIPLES FOR REDRESS

**Speed and proportionality.** All complaints, simple or complex, are addressed and resolved as quickly and constructively as possible.

**Fairness.** Complaints are treated confidentially, assessed impartially, and handled transparently.

**Objectivity and independence.** The redress system operates independently of all interested parties in order to guarantee fair, objective, and impartial treatment to each case.

**Simplicity and accessibility.** Procedures to file complaints and seek action are simple enough that beneficiaries can easily understand them. The redress system is accessible to all stakeholders.

**Responsiveness and efficiency.** The redress system is designed to be responsive to the needs of all complainants.

**Participation and social inclusion.** A wide range of people are encouraged to bring complaints to the attention of authorities, including marginalized groups.

*Source: Adapted from Post and Agarwal, 2011*

and timely response to inform complainants of the action taken (Post and Agarwal, 2011).

### Speed and proportionality

According to stakeholder interviews, complaints are not always resolved quickly in the NHDRSS. Stakeholders noted that complainants lose trust in the system and stop reporting cases when redress options are not timely or do not occur.

As JN+ does not have any in-house capacity to provide redress, they must refer cases to other organizations. For this to happen, the NHDRSS Case Review Panel reviews the cases and refers them to other organizations as appropriate. As this panel only meets quarterly, it is a major roadblock to quick redress. Additionally, JN+ relinquishes control over a case once they refer it to a partner.

Redress officers reported that complainants will often give incorrect phone numbers or change phone numbers often. In these cases, JN+ cannot find the complainant and is unable to provide redress. Some stakeholders expressed concern about the referral process, noting that JN+ refers very few cases. For instance, they have only referred five to six to the MOH in the last two years.

The Office of the Public Defender of Jamaica is an important partner in the redress process. The office investigates complaints against the state and seeks redress for constitutional and administrative injustice (including those protected in the *Charter of Fundamental Rights and Freedoms*) and seeks appropriate redress. However, to date, they have not been able to close an HIV-related case due to the lack of evidence to facilitate continuity to a resolution and fear of breaches of confidentiality.

## Fairness

Stakeholders named weak confidentiality protections as a key reason that people living with HIV do not report discrimination. A previous examination by Gray (2013) showed that many people living with HIV believed that reporting would put them at further risk for victimization at health facilities. Confidentiality challenges also exist outside of the health system. JN+ does not have a confidentiality policy, nor do the partners involved in the redress system. Such a statement could outline the roles and responsibilities of partners, provide assurances for complainants, and describe sanctions for privacy breaches.

While it is outside the scope of this brief to identify whether or not confidentiality has been breached by JN+ or its partners, the perception that confidentiality can be breached without consequence undermines trust in the system.

## Objectiveness and independence

Interviews revealed that JN+ has well-defined referral processes, strong redress partners, and case management systems that are improving. People living with HIV, however, do not trust them. HP+ found that stakeholders named MOH co-option of JN+ and a focus on reporting over redress as reasons for reduced trust in the system among people living with HIV.

As noted earlier, the MOH is the Global Fund principal recipient, while JN+ is a sub-recipient. Additionally, JN+ has offices in the MOH and is completely dependent on the MOH for funding. Some JN+ staff are seconded from the MOH, further reducing the independence of JN+ vis-à-vis the MOH. Potential complainants recognize that JN+ is close to the MOH and, as a result, do not think that JN+ is able to represent their interests if they are bringing complaints against the health system. According to stakeholders, the MOH system is viewed as even more suspect; the nature of the mediation process, which asks complainants to meet face-to-face with respondents (see previous section on *JN+ Reporting System Overview*), and the focus on MOH financial liability, gives the impression that the MOH system is not a neutral arbiter between the complainant and the respondent.

Monitoring redress outcomes is critical to the success of a redress system (Post and Agarwal, 2011). Current indicators for success of the NHDRSS focus on the number of reported cases. Redress systems, however, have more measures of success that are just as critical (see Box 3). These indicators measure not only the cases reported, but also how cases move through the system, client satisfaction, and system access.

Stakeholders indicated a pervasive distrust of the NHDRSS as a whole. For instance, although the MOH asks complainants to report complaints to health facilities and hospitals for redress, civil society organizations encourage people living with HIV to bypass this protocol

### BOX 3. SUGGESTED REDRESS SYSTEM INDICATORS

- Percentage of complaints resolved
- Percentage of complaints redressed within a stipulated time period
- Time required to resolve complaints (disaggregated by different types of complaints)
- Percentage of complainants satisfied with redress process
- Percentage of people living with HIV that have access to the grievance redress mechanism

Source: Adapted from Post and Agarwal, 2011

and take cases directly to the RHA. According to civil society, the RHA is more trusted than health facilities because discrimination often occurs in the health facilities.

## Simplicity and accessibility

According to interviewees, the process for obtaining redress through the NHDRSS is complex and time-consuming. Much of this complexity is unavoidable, as JN+ must refer cases to other organizations to support redress procedures (see Figure 2, previously). For more information on this issue refer to the section on *Speed and proportionality*.

Case intake, however, is also quite complex and is controlled by JN+. In-person reporting can be done through JN+ redress officers, as well as adherence counsellors and social workers at health facilities, each of whom have hard copies of the intake form. According to interviewees, the complex and redundant nature of the JN+ complaint form deters people from submitting complaints. For example, the form asks for the location and nature of the incident and later asks for a description of the incident.

The online form also has challenges. Interviewees said that they had difficulty finding the online form on the JN+ website; the form is three pages into the website and it takes some knowledge of the system to find it. Form submission instructions suggest the form should be printed and submitted by post or fax. However, a submit button on the form generates a thank you message when it is clicked that states the complainant will be contacted by JN+ within two weeks. These complaints go to an email address that is rarely checked. Clarifying how cases can be submitted is a critical part of simplifying complaint submission.

Interviewees also noted that the name, “National HIV-related Discrimination Reporting and Redress System,” is clunky and difficult to say. The brand has low usage among partners and lower visibility among people living with HIV; many interviewees would like to see a new name.

## Responsiveness and efficiency

Complainant expectations are high, putting extraordinary strain on the redress system to

respond to them. The JN+ online complaint form may contribute to these expectations. Question 12 on the form reads, “What further action, beyond documenting this incident, does the person experiencing discrimination want?” The following choices are listed: “(a) no additional action; (b) referral for counselling or social assistance; (c) sensitization session with alleged offender and/or community; and (d) legal or other redress.” These options may lead complainants to believe that legal action is always an option. Even within these options, there is room for interpretation of “legal action.” For example, legal action could mean anything from a letter from an attorney to mediation or a court case. Finally, the term “redress” itself can create unreasonable expectations because it implies that some action will be taken, when that is not always the case.

Interviewees had mixed views on what complainants expect from the redress system. They claimed that complainants often want money, which requires going to court. Some complainants, however, may prefer not to go to court due to confidentiality issues. Complainants may also have expectations beyond what redress partners can possibly provide. One complainant, for example, wanted to subpoena someone who was overseas.

According to interviewees, case follow-up is poor, especially with cases referred to the MOH. Interviewees recognized that this is due, in part, to the failure of complainants to provide accurate contact information for follow-up. However, they also noted that there are issues with how the MOH handles complaints. Complainants think that sanctions, such as verbal and subsequent warnings, are weakly enforced, though they recognized that actually suspending a health provider is difficult because it reduces the number of providers. Interviewees also noted that redress from the MOH tends to focus on paying complainants and staff training.

To improve responsiveness and efficiency of the system as a whole, the Caribbean Vulnerable Communities Coalition is partnering with JN+, Jamaica AIDS Support for Life, and the Jamaica Forum of Lesbians, All-Sexuals, and Gays to develop a database called SID-ney. The vision for the database is to document cases from around the Caribbean and review trends (e.g., types of

discrimination, timing, sector, and location). Each of the partner organizations is responsible for entering their data into the database. Each organization has access to their own data, but not to other organizations' data. Given Global Fund support for the database ends in December 2019, the Caribbean Vulnerable Communities Coalition plans to develop a sustainability plan to pass the database on to one of the other partner organizations.

Unfortunately, the Caribbean Vulnerable Communities Coalition's SID-ney system does not allow JN+ to directly manage or edit cases once they are submitted, nor will it take cases directly from the web-based form on JN+'s website, so a separate case management solution is needed. As a result, it does not provide the integrated case management system that JN+ needs.

## Participation and social inclusion

JN+ has worked hard to ensure that people living with HIV, from all walks of life, have the ability to provide oversight of, and input into, the JN+ redress system. They have also encouraged all people living with HIV to report cases of discrimination. For example, the steering committee includes people living with HIV and allows for participation in how the system is managed. Additionally, hiring two new redress officers has allowed JN+ to reach out to people living with HIV who may not have access to the online form or do not live in Kingston, where JN+ is located. The MOH has also tried to improve participation in the redress system by training health workers on customer service and processing cases directly through the Complaints Management System.

Interviewees, however, did note some challenges. Peer educators from Jamaica AIDS Support for Life and the Red Cross are not currently familiar with the system. Interviewees thought that training peer educators on how the system works and providing them with materials could increase the participation of people living with HIV in the redress system. They also noted that broader awareness raising is necessary to increase the visibility of the redress system among people living with HIV. They suggested using existing community meetings and large print flyers.

Interviewees also noted that social differences affected who submitted reports. Wealthier people were more likely to report cases of discrimination because they are shielded from potential backlash and have more social capital to file reports. People who are already in social networks of people living with HIV are much more likely to know about the system. Reaching people who are less open about their HIV status, more geographically isolated, or who face a great deal of internalized stigma is a difficult proposition. JN+ has attempted to remedy this challenge by hiring more redress officers and asking them to go into the community to promote the system. Ministry of Health social workers and adherence counselors and JN+ redress officers play an important role in connecting people living with HIV to redress options, especially outside Kingston.

## Conclusion and Recommendations

HP+'s recommendations for improving the redress system center on improving trust in the system and between partners, specifically improving client satisfaction and strengthening internal systems and structures.

### Improve client satisfaction

Client satisfaction rests on the simplicity, confidentiality, and objectivity of the redress system. While there are a number of systemic issues that could be addressed in the long term, such as creating operational separation between the MOH and JN+, this brief focuses on short-term ideas to jumpstart reform.

This brief recommends that JN+, HP+, the MOH, and other redress partners take the following steps:

- Identify a new name for the redress system. The name should be short and distinctive, but still have symbolic or referential value.
- Develop a short guide that clarifies the range of redress options available to people who experience discrimination. This short guide should be available to redress officers and other staff who interact with potential complainants.

- Develop a privacy and confidentiality policy for the redress system. This statement would be approved by the redress committee and agreed to by all partners. It should be made widely available to build trust in the confidentiality of the redress system.
- Improve client communication during case intake and management. Systems, such as a JN+ specific database that allows JN+ to send text messages to complainants, could be an option. Soft skills, such as how to professionally handle cases, process and route cases, conduct outreach, and clarify the range of redress options could also be important for improving the user experience.

## Strengthen internal systems and structures

Internal case management is quite well-defined. Clients, however, are not aware of what happens to their cases when they are submitted, systems are mostly paper based, and redress partners cannot monitor case progress or aggregated data in real time. To solve these challenges, HP+ proposes that JN+, along with its redress partners, better define and streamline processes, while making data as transparent as possible.

- Simplify the web-based intake form to focus only on critical information.
- Define the case routing process in an easy-to-read format, such as a brochure or poster; Figure 2 is a start, but any document will need review and approval from JN+ and its redress partners.
- Direct health system cases involving people living with HIV directly to Regional Health Authority staff, rather than specific facilities, to improve privacy. This routing

is already happening informally; HP+ proposes formalizing that system.

- Create a “cheat sheet” for redress officers to identify how to route simple cases directly to the appropriate redress partner.
- Connect the simplified web form to a backend database, potentially powered by the open source human-rights-specific Martus Human Rights Bulletin System, to support JN+ collection, management, and monitoring of case progress.
- Continue communication with the Caribbean Vulnerable Communities Coalition about SID-ney, especially regarding how to connect cases between JN+ and the coalition.
- Conduct short exit interviews with clients, regardless of if they have received redress, to learn how to improve the redress system.
- Support public-relations and demand-generation efforts, including outreach to people living with HIV and social media campaigns.

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