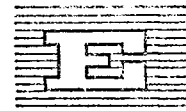
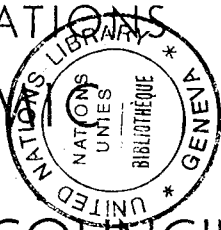


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COMMISSION ON HUMAN RIGHTS
Thirty-third session

PERIODIC REPORTS ON HUMAN RIGHTS

Reports on freedom of information, for the period
1 July 1970-30 June 1975, received from Governments
under Economic and Social Council resolution 1074 C (XXXIX)

JAMAICA

[Original: English]

[2 November 1976]

I. General policies and significant developments with regard to the freedom to seek, receive and impart information and ideas through any media and regardless of frontiers

Freedom of expression and information is guaranteed in section XXII (1) of the Jamaican Constitution which states that

"except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression and for the purposes of this section, the said freedom includes the freedom to hold opinions and to receive and import ideas and information without interference and freedom from interference with his correspondence and other means of communication."

In practice also, government policy favours press freedom. In the view of the Jamaican Government, the concept of freedom of the press is regarded "as a fundamental and almost sacrosanct cornerstone of (its) basic philosophy." The press is seen as a "multidirectional channel of communication between all the elements of the society", thus providing scope for all the significant views and opinions current in the society.

It was as a result of this need to "provide scope for all the significant views and opinions" that a second daily newspaper began publication in May 1973, since it was believed that the long established (since 1834) daily newspaper and its

afternoon publication gave inadequate representation to the spectrum of opinion in the society. Daily papers are privately owned. In addition to these, there are two weekly publications issued by the island's two major political parties and various irregular bulletins from several **religious** and other interest groups. The Agency for Public Information is the official body through which data on Government's policies and projects are disseminated. There are two radio stations, one of which is privately owned. The government-owned television station is guided by a basic policy which upholds the constituted freedom of information.

In 1972, the Undesirable Publications (Prohibition of Importation) Act was amended, thereby allowing the entry into the island of a number of previously banned books. Since that amendment, no book has been banned. The Jamaican Customs and Tariffs regulations allow exemption from taxes for all educational material.

II. Influence of the United Nations instruments

Jamaica is party to the United Nations Convention on the International Right of Correction, the International Convention on the Elimination of All Forms of Racial Discrimination, the Universal Postal Convention, the International Telecommunication Convention and the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights. The provisions of these international instruments, which relate to the freedom of information are reflected in Jamaican regulations governing the operation of communications media. They are also consistent with the liberties of the individual, which are entrenched in the constitution. No new legislation has therefore been found necessary to give effect to provisions of United Nations instruments relative to the recognition, enjoyment and protection of freedom and information. There were no Court decisions on this subject, during the period.

III. Legislative and other measures adopted during the period

No new legislative measures were adopted during the period. A daily paper, privately owned, began publication on 30 May 1973, thus ending the 139-year monopoly on daily newspaper publication by the "Gleaner Company Limited," also privately owned. The Agency for Public Information (API), was established in April 1974. Also in 1974, one year mass communications diploma courses were offered for the first time by the University of the West Indies, Jamaica. No amendments were made to the Code of Ethics of the Press Association of Jamaica which was adopted in 1943.

IV. Limitation upon the exercise of freedom of information

- (a) The protection of the reputation, rights and freedoms of others, including protection against interference with privacy;

Limitations in this sub-section are governed by the laws related to copyright defamation and the Income Tax Act.

- i) The Copyright Act, section 2(1), provides as under:

"If any person knowingly -

- (a) makes for sale or hire any infringing copy of a work in which copyright subsists; or
- (b) sells or lets for hire, or by way of trade exposes or offers for sale or hire any infringing copy of any such work; or
- (c) distributes infringing copies of any such work either for the purposes of trade or to such an extent as to affect prejudicially the owner of the copyright; or
- (d) by way of trade exhibits in public any infringing copy of any such work; or
- (e) imports for sale or hire into this Island any infringing copy of any such work,

he shall be guilty of an offence under this Act".

Legal Professional Privilege

In civil and criminal cases communications passing between a client and his legal adviser, together in some case with communications passing between these persons and their parties, may not be given in evidence in court without the consent of the client provided that they were made either (i) with reference to litigation that was actually taking place or was in the contemplation of the client, or (ii) to enable the client to obtain, or the adviser to give legal advice.

Law Relating to Defamation

Defamation is a tort and is "the publication of a statement which tends to lower a person in the estimation of right-thinking members of society generally; or which tends to make them shun or avoid that person."

The principle of liability in respect of publication is strict. But the law recognizes that if this rule were applied universally, great injustice would be occasioned; for there are many people who are constantly concerned in the circulation of defamatory material who play only on incidental part and cannot reasonably be expected to know the exact nature of the material with which they are dealing. Such persons include, for example, news-vendors, book-sellers and librarians. Although such persons as these are at least in theory prima facie as liable as others for the libels they circulated they are permitted to plead "innocent dissemination" as a defence.

The law recognizes that there are occasions on which in the public interest it is more important that there should be freedom of communication without the fear of an action for defamation than that a person's reputation should be protected. Such occasions are said to be privileged. Privilege may be either absolute or qualified. Absolute privilege covers cases in which complete freedom of communication is regarded of such paramount importance that actions for defamation cannot be entertained at all. A person defamed on an occasion of

absolute privilege has no legal redress, however outrageous the untrue statement about him may be and however malicious may be the motive of the maker of it. On the other hand, qualified privilege, although it protects the maker of an untrue defamatory statement, does so only if the maker of the statement acted honestly and without malice.

The Income Tax Act provides (section 4(1)):

"Every person having any official duty or being employed in the administration of this Law shall regard and deal with all documents, information, returns, assessment lists and copies of such lists relating to the income or items of the income of any person, as secret and confidential, and shall make and subscribe a declaration to the effect before a Justice of the Peace.

(2) Every such person having possession of or control over any documents, information, returns or assessment lists, or copies of such lists relating to the income or items of income of any person, who at any time communicates or attempts to communicate such information or anything contained in such documents, returns, lists or copies to any person -

- (a) other than a person to whom he is authorized by the Minister to communicate it; or
- (b) otherwise than for the purposes of this Law, shall be guilty of an offence against this Law".
- (b) The protection of national security or of public order, or of public health or morals, including suspension of freedom of information in situations of emergency;

Relevant laws in this sub-section are contained in: the Official Secret Acts of 1911 and 1920; the Treason Felony Act; the Emergency Powers Act; the Venereal Disease Act; Obscene Publication (Suppression of) Act; Criminal Justice (Administration) Act. 1/

- (c) Advocacy of and propaganda for national, racial or religious hatred or racial and religious discrimination;

The right of the individual to protection against discrimination is entrenched in the Constitution of Jamaica. (Note Jamaica's 1976 Report under article 9 of the Convention on the Elimination of All Forms of Racial Discrimination.)

- (d) Propaganda for war; No comment

1/ Excerpts from these acts, as received from the Government, are available for consultation in the files of the Secretariat.

(e) Coverage by the press and other media of court proceedings

Relevant acts are: the Juveniles Act; Criminal Justice (Administration) Act; Gun Court Act. 1/

VI. Difficulties experienced in ensuring the enjoyment of freedom of information and access to information and methods and measures utilized to overcome these difficulties

The fact that approximately 20 per cent of the adult population in 1970 was functionally illiterate provided the basic impediment to the enjoyment of the freedom of information and access to information. To combat this problem, a major literacy drive was started in 1972. This was developed, in 1974, to the Jamaican Movement for the Advancement of Literacy (JAMAL) Foundation which by 1975, had aided 55,000 adults to achieve functional literacy. Education beyond that level is also provided by JAMAL. The Agency for Public Information also produces films and radio programmes geared to inform illiterates and semi-literates on a variety of topics.

1/ Excerpts from these acts, as received from the Government, are available for consultation in the files of the Secretariat.