

**INTERNATIONAL  
CONVENTION  
ON THE ELIMINATION  
OF ALL FORMS OF  
RACIAL DISCRIMINATION**



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COMMITTEE ON THE ELIMINATION  
OF RACIAL DISCRIMINATION  
Seventeenth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 9 OF THE CONVENTION

Third periodic reports of States Parties due in 1976

JAMAICA<sup>1/</sup>

[29 December 1977]

INTRODUCTION

The spirit and objectives of the Convention on the Elimination of all Forms of Racial Discrimination are observed in practice in Jamaica, being also fully reflected in the Jamaican Constitution which enshrines the fundamental rights and freedoms of the individual without distinction to race, place of origin, political opinion, colour, creed or sex.

The extent of the entrenchment of these freedoms in the life of every Jamaican is indicated by the fact that the rights and freedoms are not treated as being created by the Constitution, but rather, as already being in existence before the making of the Constitution which is therefore only declaratory of these rights. This point was made by the Privy Council in the case of Director of Public Prosecution v Nasralla (1967) 2 All England Reports p.101 at p.165, where Lord Devlin said, "This Chapter, as their Lordships have already noted, proceeds upon the presumption that the fundamental rights which it covers are already secured to the people of Jamaica by existing Law." (See Section 13 of the Constitution. A copy of Chapter III of the Constitution, which sets out the fundamental rights and freedoms, is annexed).

1/ The third periodic report of Jamaica was due on 5 July 1976.

For previous reports submitted by the Government of Jamaica and the summary records of meetings of the Committee at which such reports were considered, see:

- (1) Initial report - CERD/C/R.33/Add.9 (CERD/C/SR.178-179)
- (2) Second periodic report - CERD/C/R.65/Add.6 (CERD/C/SR.274)

Section 24 of the Constitution provides protection from discrimination on the grounds of race, place of origin, political opinions, colour or creed.

At its 13th Session, a member of the Committee on the Elimination of Racial Discrimination made reference to Jamaica's reservation and requested clarification on its scope. It is against this background that the following explanation of the Reservation is offered. The Reservation reads as follows:

"The Constitution of Jamaica entrenches and guarantees to every person in Jamaica the fundamental rights and freedoms of the individual irrespective of his race or place of origin. The Constitution prescribes judicial processes to be observed in the event of the violation of any of these rights whether by the State or by a private individual. Ratification of the Convention by Jamaica does not imply the acceptance of obligations going beyond the constitutional limits nor the acceptance of any obligation to introduce judicial processes beyond those prescribed under the Constitution".

The reference in the first sentence to fundamental rights is taken from section 13 of the Constitution which introduces in general terms the rights and freedoms set out in Chapter III, sections 13 to 26. Among these rights is the protection from discrimination on the grounds of race etc. set out in section 24.

The term "judicial processes" in the second sentence is a reference to section 25 of the Constitution, which gives a person, who alleges that any of the rights in Chapter III has been contravened, the right to apply to the Supreme Court for redress, and then to the Court of Appeal if he is aggrieved by the determination of the Supreme Court.

The term "ratification does not imply the acceptance of obligations going beyond the constitutional limits", means that, in a situation where the Convention grants a right which the Constitution does not guarantee, or which is wider in scope than a right guaranteed by the Constitution, Jamaica does not accept an obligation to grant such a right.

The second part of the third sentence "nor the acceptance of any obligation to introduce judicial processes beyond those prescribed under the Constitution" means that Jamaica does not accept an obligation to deal with breaches of the rights set out in Chapter III in any other manner than that which is prescribed by section 25. That section grants a right to an aggrieved person to apply to the Supreme Court and Court of Appeal for redress.

In stressing the paramountcy of the Constitution as the supreme law of the land, the Reservation is certainly not designed to weaken the Convention. Rather, it should be viewed against the background of a country in which the problem of racial discrimination does not exist, and where in the light of this as well as the fundamental provisions of the Constitution, a specific body of legislation against racial discrimination is unnecessary. As is borne out in this report, however, the Government of Jamaica has taken a number of appropriate measures in furtherance of the spirit and objectives of the Convention. The Government and people of Jamaica therefore remain fully and unequivocally committed to the total elimination of all forms of racial discrimination.

1. Information on the Legislative, Judicial, Administrative or other measures which have been adopted and which give effect to the Convention

(a) Condemnation of racial segregation and apartheid in accordance with Article 3

Jamaica has ratified the International Convention on the Suppression and Punishment of the Crime of Apartheid, and spearheaded the initiative at the 31st Session of the General Assembly of the United Nations for the drafting of an International Convention on Apartheid in Sports. Jamaica is a member of the Ad Hoc Committee established by the United Nations to draft a Declaration and Convention on Apartheid in Sports.

(b) Prohibition and elimination of racial discrimination in all its forms, especially in the field of political, civil, economic, social and cultural rights and the right of access to any place or service intended for use by the general public

The undertaking to prohibit and eliminate racial discrimination in all its forms is implemented in Jamaica by the provisions of the Constitution, the common law, and international conventions, including the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights, to which Jamaica is a party.

The fundamental rights and freedoms set out in Chapter III of the Constitution are guaranteed to every person in Jamaica without distinction as to race, colour, national or ethnic origin, political opinions, creed or sex, vide section 13 of the Constitution.

The right to equal treatment before the tribunals and all other organs administering justice (Article 5(a)) is the very essence of the concept of the Rule of Law which is an integral part of the constitutional structure of Jamaica. Jamaica is fully committed in theory and in practice to the second meaning which Dicey gave to the Rule of Law, i.e. "equality before the law or the equal subjection of all classes to the ordinary law of the land administered by the ordinary courts. (Dicey's introduction to the study of the Law of the Constitution, 10th Edition, p.202).

Further, section 20 of the Constitution sets out provisions to secure protection of the law in respect of a fair hearing within a reasonable time by an independent and impartial court. These provisions are of course, made without distinction as to race, colour, national or ethnic origin.

The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution (Article 5(b)) is secured by sections 14 (protection of right to life) and 15 (protection from arbitrary arrest or detention) and the Offences Against the Person Act, which detail the instances when criminal offences are committed against the person, i.e. as distinct from property. These provisions are made without distinction as to race, colour, national or ethnic origin.

With regard to Article 5(c), universal adult suffrage has existed in Jamaica since 1944, and, provided the qualifications to vote and stand for elections are observed, everyone has the right to participate in the electoral process. The qualifications and disqualifications for election to Parliament are set out in Chapter V of the Constitution with particular reference to sections 37-40. The qualifications and disqualifications for voters are set out in the Representation

of the People Act. None of the abovementioned provisions make any distinction as to race, colour etc. The prescribed age for voting and election to Parliament is now eighteen years.

The civil rights listed in Article 5(d) are guaranteed either specifically in the Constitution (such as freedom of movement in section 16; freedom of conscience in section 21; freedom of expression in section 22; freedom of assembly and association in section 23) or in the Constitution and Statute (such as the right to nationality in section 3 of the Constitution and the Jamaican Nationality Act) or in Statute and Common Law (such as the right to marriage and choice of spouse in the Marriage Act and Common Law.)

The economic, social and cultural rights listed in Article 5(e) are for the most part, implemented in the Constitution, legislation and practice. The right to form and join a trade union is guaranteed by section 23 of the Constitution and the Labour Relations and Industrial Disputes Act.

The Employment (Equal Pay for Men and Women) Act provides equal pay for men and women doing the same work.

With regard to the other rights no restriction is placed on their enjoyment. In particular, there is absolutely no restriction of any kind on the right of access of any person to any place or service intended for use by the general public.

- (c) Measures assuring everyone effective protection and remedies through the competent tribunals against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to the Convention etc. in accordance with Article 6

Section 25 of the Constitution provides measures by which the rights in Chapter III may be enforced. Briefly, an application for redress may be made to the Supreme Court, and, in the event that the applicant is dissatisfied, an appeal may be made to the Court of Appeal.

2. Information on Measures to give effect to the Undertaking in Articles 2(1)(a), 2(1)(b) and 4(c) of the Convention

The Government of Jamaica has never engaged in any practice of racial discrimination against any individuals, organizations or institutions, and it would certainly not sanction any practice of racial discrimination by individuals, organizations or institutions.

3. Information on Measures to Give Effect to Articles 2(1)(c), 2(1)(d), 3, 4(a) and 4(b)

- (a) The undertaking to review Governmental, national and local policies, and to amend, rescind or nullify laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists, in accordance with Article 2

The provisions of section 24(1) and (2) of the Constitution prohibit racial discrimination, and there are no laws which have the effect of perpetuating racial discrimination.

- (b) The undertaking to prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization; in accordance with Article 2(1)(d)

Although section 26 of the Constitution does not expressly proscribe discrimination by groups or organizations, it has not been found necessary to provide specifically for this situation, since, as stated before, no problem of racial discrimination exists in Jamaica. In the unlikely event that there should arise a practice of racial discrimination by persons other than those mentioned in section 26(2), Government would immediately take steps to eradicate it and guard against its recurrence.

- (c) The undertaking to prevent, prohibit and eradicate, in territories under their jurisdiction all practices of racial segregation and apartheid in accordance with Article 3

This undertaking is inapplicable to Jamaica.

- (d) The undertaking to declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provisions of any assistance to racist activities, including the financing thereof in accordance with Article 4(a)

While there is no specific legislation on these matters, the common law prohibits incitement to violence against any race or group of persons. In some cases too, the activities proscribed by these articles could be caught by the common law offence of sedition.

- (e) The undertaking to declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law in accordance with Article 4(b)

While there is no legislation in Jamaica prohibiting such activities by organizations, as stated before, there has not been a single such case of racial discrimination in the history of independent Jamaica.

Should any organization indulge in racial discrimination the governmental and public outcry would be such as to bring such a practice immediately to an end.

4. Information on measures to give effect to the undertaking given in Articles 2(1)(e), 2(2) and 7

- (a) The undertaking to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division, in accordance with Article 2(e)

The need to implement this undertaking in Jamaica does not arise.

- (b) The undertaking to take, when the circumstances so warrant in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms, in accordance with Article 2(2)

The need to implement this undertaking does not arise as there is no racial group of the kind contemplated in Jamaica.

- (c) The undertaking to adopt immediate and effective measures particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance, and friendship among nations and racial or ethnic groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention in accordance with Article 7

Jamaica commemorates the International Day for the Elimination of Racial Discrimination as well as other similar United Nations Special Observances. A statement by the Honourable Prime Minister and/or the Minister of Foreign Affairs is made. Religious bodies are invited to make note of these observances. Educational institutions are asked to hold special meetings to observe the occasions. Private organizations are also encouraged to participate in such observances.

In addition, the curricula established by the Ministry of Education includes studies on racism in the historic as well as the modern context and also studies of the culture of other countries, particularly those in this hemisphere and those from which Jamaica's population find their antecedents. Students also learn of the purposes and principles of the United Nations.

The Agency for Public Information which comes under the Office of the Prime Minister presents several television and radio programmes dealing with racism in southern Africa. There are also several discussion programmes on human rights which include interviews with leading freedom fighters and human rights activists. Publicity was particularly concentrated on the inhumane policy of apartheid during the Week of Solidarity with the Colonial Peoples of southern Africa. There is, in addition, a variety of media programmes aimed at promoting a better understanding between Jamaicans and the peoples of other nations.

Festival - a yearly cultural event, gives the Jamaican people an opportunity to appreciate the wide cultural panorama existing within Jamaica and the world. The Office of the Prime Minister is also very active in promoting international cultural exchange. In addition to the efforts of Government, several non-governmental organizations are actively engaged in promoting seminars and discussions focussing attention on the issue of racism and racial discrimination.

The Jamaican Government plays a positive role internationally in the struggle to combat racism, racial discrimination and apartheid. Jamaica provides various forms of assistance to the oppressed peoples of southern Africa and their liberation movements.

Finally, Jamaica has no economic, financial, cultural, diplomatic, consular or other relations with South Africa or the illegal Smith régime in Zimbabwe.

ANNEX

EXTRACTS FROM THE JAMAICA (CONSTITUTION)  
ORDER IN COUNCIL (1962)

CHAPTER III

Fundamental Rights and Freedoms

Fundamental  
rights and  
freedoms of  
individual.

13. - Whereas every person in Jamaica is entitled to the fundamental rights and freedoms of the individual, that is to say, has the right, whatever his race, place of origin, political opinions, colour creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely -

- (a) life, liberty, security of the person, the enjoyment of property and the protection of the law;
- (b) freedom of conscience of expression and of peaceful assembly and association; and
- (c) respect for his private and family life,

the subsequent provisions of this Chapter shall have effect for the purpose of affording protection to the aforesaid rights and freedoms, subject to such limitations of that protection as are contained in those provisions being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

Protection  
of rights  
to life.

14. - (1) No person shall intentionally be deprived of his life save in execution of the sentence of a court in respect of a criminal offence of which he has been convicted.

(2) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use of force to such extent as is reasonably justifiable in the circumstances of the case -

- (a) for the defence of any person from violence or for the defence of property;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) for the purpose of suppressing a riot, insurrection or mutiny; or

- (d) in order lawfully to prevent the commission by that person of a criminal offence,

or if he dies as the result of a lawful act of war.

Protection  
from arbitrary  
arrest or  
detention.

15. - (1) No person shall be deprived of his personal liberty save as may in any of the following cases be authorized by law -

- (a) in consequence of his unfitness to plead to a criminal charge; or
- (b) in execution of the sentence or order of a court, whether in Jamaica or elsewhere, in respect of a criminal offence of which he has been convicted; or
- (c) in execution of an order of the Supreme Court or of the Court of Appeal or such other court as may be prescribed by Parliament on the grounds of his contempt of any such court or of another court or tribunal; or
- (d) in execution of the order of a court made in order to secure the fulfilment of any obligation imposed on him by law; or
- (e) for the purpose of bringing him before a court in execution of the order of a court; or
- (f) upon reasonable suspicion of his having committed or of being about to commit a criminal offence; or
- (g) in the case of a person who has not attained the age of twenty-one years, for the purpose of his education or welfare; or
- (h) for the purpose of preventing the spread of an infectious or contagious disease; or
- (i) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community; or
- (j) for the purpose of preventing the unlawful entry of that person into Jamaica, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Jamaica or the taking of proceedings relating thereto; or

(k) to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area, within Jamaica or prohibiting him from being within such an area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person relating to the making of any such order, or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Jamaica in which, in consequence of any such order, his presence would otherwise be unlawful.

(2) Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language which he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained -

(a) for the purpose of bringing him before a court in execution of the order of a court; or

(b) upon reasonable suspicion of his having committed or being about to commit a criminal offence,

and who is not released, shall be brought without delay before a court; and if any person arrested or detained upon reasonable suspicion of his having committed or being about to commit a criminal offence is not tried within a reasonable time, then, without prejudice to any further proceedings which may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(4) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that person.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorizes the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists during that period of public emergency.

(6) If any person who is lawfully detained by virtue only of such a law as is referred to in subsection (5) of this section so requests at any time during the period of that detention not earlier than six months after he last made such a request during that period, his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice of Jamaica from among the persons entitled to practise or to be admitted to practise in Jamaica as barristers or solicitors.

(7) On any review by a tribunal in pursuance of subsection (6) of this section of the case of any detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by whom it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

Protection  
of Freedom  
of Movement.

16. - (1) No person shall be deprived of his freedom of movement, and for the purposes of this section the said freedom means the right to move freely throughout Jamaica, the right to reside in any part of Jamaica, the right to enter Jamaica and immunity from expulsion from Jamaica.

(2) Any restriction on a person's freedom of movement which is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -

- (a) which is reasonably required in the interests of defence, public safety, public order, public morality or public health; or
- (b) for the imposition of restrictions on the movement or residence within Jamaica of any person who is not a citizen thereof or the exclusion or expulsion from Jamaica of any such person; or
- (c) for the imposition of restrictions on the acquisition or use by any person of land or other property in Jamaica; or
- (d) for the imposition of restrictions upon the movement or residence within Jamaica of public officers, police officers or members of a defence force; or
- (e) for the removal of a person from Jamaica to be tried outside Jamaica for a criminal offence or to undergo imprisonment outside Jamaica in execution of which he has been convicted.

(4) If any person whose freedom of movement has been restricted by virtue only of such a provision as is referred to in paragraph (a) of subsection (3) of this section so requests at any time during the period of that restriction not earlier than six months after he last made such a request during that period, his case shall be reviewed by an independent and

impartial tribunal established by law and presided over by a person appointed by the Chief Justice of Jamaica from among the persons entitled to practise or to be admitted to practise in Jamaica as barristers or solicitors.

(5) On any review by a tribunal in pursuance of subsection (4) of this section of the case of any person whose freedom of movement has been restricted, the tribunal may make recommendations concerning the necessity or expediency of continuing that restriction to the authority by whom it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

Protection  
from inhuman  
treatment.

17. - (1) No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorizes the infliction of any description of punishment which was lawful in Jamaica immediately before the appointed day.

Compulsory  
of property.

18. - (1) No property of any description shall be compulsorily taken possession of and no interest in or right over property of any description shall be compulsorily acquired except by or under the provisions of a law that -

(a) prescribes the principles on which and the manner in which compensation therefor is to be determined and given; and

(b) secures to any person claiming an interest in or right over such property a right of access to a court for the purpose of -

(i) establishing such interest or right (if any);

(ii) determining the amount of such compensation (if any) to which he is entitled; and

(iii) enforcing his right to any such compensation.

(2) Nothing in this section shall be construed as affecting the making or operation of any law so far as it provides for the taking of possession or acquisition of property -

(a) in satisfaction of any tax, rate or due;

(b) by way of penalty for breach of the law, whether under civil process or after conviction of a criminal offence;

- (c) upon the attempted removal of the property in question out of or into Jamaica in contravention of any law;
- (d) by way of the taking of a sample for the purposes of any law;
- (e) where the property consists of any animal upon its being found trespassing or straying;
- (f) as an incident of a lease, tenancy, licence, mortgage, charge, bill of sale, pledge or contract;
- (g) by way of the vesting or administration of trust property, enemy property, or the property of persons adjudged or otherwise declared bankrupt or insolvent, persons of unsound mind, deceased persons, or bodies corporate or unincorporate in the course of being wound up;
- (h) in the execution of judgments or orders of courts;
- (i) by reason of its being in a dangerous state or injurious to the health of human beings, animals or plants;
- (j) in consequence of any law with respect to the limitation of actions;
- (k) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, the carrying out thereon -
  - (i) of work of soil conservation or the conservation of other natural resources;  
or
  - (ii) of agricultural development or improvement which the owner or occupier of the land has been required, and has without reasonable and lawful excuse refused or failed, to carry out.

(3) Nothing in this section shall be construed as affecting the making or operation of any law so far as it provides for the orderly marketing or production or growth or extraction of any agricultural product or mineral or any article or thing prepared for market or manufactured therefor or for the reasonable restriction of the use of any property in the interests of safeguarding the interests of others or the protection of tenants, licensees or others having rights in or over such property.

(4) Nothing in this section shall be construed as affecting the making or operation of any law for the compulsory taking of possession in the public interest of any property, or the compulsory acquisition in the public interest of any interest in or right over property, where that property, interest or right is held by a body corporate which is established for public purposes by any law and in which no monies have been invested other than monies provided by Parliament or by the Legislature of the former Colony of Jamaica.

(5) In this section "compensation" means the consideration to be given to a person for any interest or right which he may have in or over property which has been compulsorily taken possession of or compulsorily acquired as prescribed and determined in accordance with the provisions of the law by or under which the property has been compulsorily taken possession of or compulsorily acquired.

Protection  
for privacy  
of home and  
other property.

19. - (1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision which is reasonably required -

- (a) in the interests of defence, public safety, public order, public morality, public health, public revenue, town and country planning or the development and utilization of any property in such a manner as to promote the public benefit; or
- (b) to enable any body corporate established by any law for public purposes or any department of the Government of Jamaica or any local government authority to enter on the premises of any person in order to carry out work connected with any property or installation which is lawfully on such premises and which belongs to that body corporate or that Government or that authority, as the case may be; or
- (c) for the purpose of preventing or detecting crime; or
- (d) for the purpose of protecting the rights or freedoms of other persons.

Provisions to  
secure  
protection  
of law.

20. - (1) Whenever any person is charged with a criminal offence he shall, unless the charge is withdrawn, be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Any court or other authority prescribed by law for the determination of the existence or the extent of civil rights or obligations shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other authority, the case shall be given a fair hearing within a reasonable time.

(3) All proceedings of every court and proceedings relating to the determination of the existence or the extent of a person's civil rights or obligations before any court or other authority, including the announcement of the decision of the court or other authority, shall be held in public.

(4) Nothing in subsection (3) of this section shall prevent any court or any authority such as is mentioned in that subsection from excluding from the proceedings persons other than the parties thereto and their legal representatives -

- (a) in interlocutory civil proceedings; or
- (b) in appeal proceedings under any law relating to income tax; or
- (c) to such extent as the court or other authority -
  - (i) may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice; or
  - (ii) may be empowered or required by law to do so in the interests of defence, public safety, public order, public morality, the welfare of persons under the age of twenty-one years or the protection of the private lives of persons concerned in the proceedings.

(5) Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty:

Provided that nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this subsection to the extent that the law in question imposes upon any person charged as aforesaid the burden of proving particular facts.

- (6) Every person who is charged with a criminal offence -
- (a) shall be informed as soon as reasonably practicable, in a language which he understands, of the nature of the offence charged;
  - (b) shall be given adequate time and facilities for the preparation of his defence;

- (c) shall be permitted to defend himself in person or by a legal representative of his own choice;
- (d) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before any court and to obtain the attendance of witnesses, subject to the payment of their reasonable expenses, and carry out the examination of such witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and
- (e) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the English language.

(7) No person shall be held to be guilty of a criminal offence on account of any act or omission which did not, at the time it took place, constitute such an offence, and no penalty, shall be imposed for any criminal offence which is severer in degree or description than the maximum penalty which might have been imposed for that offence at the time when it was committed.

(8) No person who shows that he has been tried by any competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence save upon the order of a superior court made in the course of appeal proceedings relating to the conviction or acquittal; and no person shall be tried for a criminal offence if he shows that he has been pardoned for that offence:

Provided that nothing in any law shall be held to be inconsistent with or in contravention of this subsection by reason only that it authorizes any court to try a member of a defence force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under service law; but any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under service law.

(9) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of any provision of this section other than subsection (7) thereof to the extent that the law in question authorizes the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists during that period of public emergency.

(10) In paragraph (c) and (d) of subsection (6) of this section "legal representative" means a barrister entitled to practise as such in Jamaica or, except in relation to proceedings before a court in which a solicitor has no right of audience, a solicitor who is so entitled.

Protection  
of freedom  
of conscience.

21. - (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this section the said freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in community with others, and both in public, and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) Except with his own consent (or, if he is a minor, the consent of his parent or guardian), no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion or a religious body or denomination other than his own.

(3) The constitution of a religious body or denomination shall not be altered except with the consent of the governing authority of that body or denomination.

(4) No religious body or denomination shall be prevented from providing religious instruction for persons of that body or denomination in the course of any education provided by that body or denomination whether or not that body or denomination is in receipt of any government subsidy, grant or other form of financial assistance designed to meet, in whole or in part, the cost of such course of education.

(5) No person shall be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.

(6) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision which is reasonably required -

(a) in the interests of defence, public safety, public order, public morality or public health; or

(b) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion without the unsolicited intervention of members of any other religion.

Protection  
of freedom  
of expression

22. - (1) 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 impart ideas and information without interference, and freedom from interference with his correspondence and other means of communication.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -

(a) which is reasonably required -

(i) in the interests of defence, public safety, public order, public morality or public health; or

(ii) for the purpose of protecting the reputations, rights and freedoms of other persons, or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating telephony, telegraphy, posts, wireless broadcasting, television or other means of communication, public exhibitions or public entertainments; or

(b) which imposes restrictions upon public officers, police officers, or upon members of a defence force.

Protection  
of freedom  
of assembly  
and  
association.

23. - (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of peaceful assembly and association, that is to say, his right peacefully to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -

(a) which is reasonably required -

(i) in the interests of defence, public safety, public order, public morality or public health; or

(ii) for the purpose of protecting the rights of freedoms of other persons;  
or

(b) which imposes restrictions upon public officers, police officers or upon members of a defence force.

Protection  
from  
discrimination  
on the grounds  
of race, etc.

24. - (1) Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision which is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this section, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

(4) Subsection (1) of this section shall not apply to any law so far as that law makes provision -

- (a) with respect to persons who are not citizens of Jamaica; or
- (b) with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law; or
- (c) for authorizing the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists during that period of public emergency; or
- (d) for the imposition of taxation or appropriation of revenue by the Government of Jamaica or any local authority or body for local purposes.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it makes provision with respect to qualifications for service as a public officer, police officer or as a member of a defence force or for the service of a local government authority or a body corporate established by any law for public purposes.

(6) Subsection (2) of this section shall not apply to anything which is expressly or by necessary implication authorized to be done by any such provision of law as is referred to in subsection (4) or (5) of this section.

(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 16, 19, 21, 22 and 23 of this Constitution being such a restriction as is authorized by paragraph (a) of subsection (3) of section 16, subsection (2) of section 19, subsection (6) of section 21, subsection (2) of section 22 or subsection (2) of section 23, as the case may be.

(8) Nothing in subsection (2) of this section shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

Enforcement  
of protective  
provisions.

25. - (1) Subject to the provisions of subsection (4) of this section, if any person alleges that any of the provisions of sections 14 to 24 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction to hear and determine any application made by any person in pursuance of subsection (1) of this section and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of the said sections 14 to 24 (inclusive) to the protection of which the person concerned is entitled:

Provided that the Supreme Court shall not exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

(3) Any person aggrieved by any determination of the Supreme Court under this section may appeal therefrom to the Court of Appeal.

(4) Parliament may make provision, or may authorize the making of provision, with respect to the practice and procedure of any court for the purposes of this section and may confer upon that court such powers, or may authorize the conferment thereon of such powers, in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling that court more effectively to exercise the jurisdiction conferred upon it by this section.

Interpretation  
of Chapter III.

26. - (1) In this Chapter, save where the context otherwise requires, the following expressions have the following meanings respectively, that is to say -

"contravention", in relation to any requirement, includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;

"court" means any court of law in Jamaica other than a court constituted by or under service law and -

- (i) in section 14, section 15, section 16, subsections (3), (4), (6), (8) (but not the proviso thereto) and (10) of section 20, and subsection (8) of section 24 of this Constitution includes, in relation to an offence against service law, a court so constituted; and

(ii) in section 15 and subsection (8) of section 24 of this Constitution includes, in relation to an offence against service law, an officer of a defence force, or the Police Service Commission or any person or authority to whom the disciplinary powers of that Commission have been lawfully delegated;

"member", in relation to a defence force or other armed force, includes any person who, under the law regulating the discipline of that force, is subject to that discipline;

"service law" means the law regulating the discipline of a defence force or of police officers.

(2) References in sections 14, 15, 16 and 18 of this Constitution to a "criminal offence" shall be construed as including references to an offence against service law and such references in subsections (5) to (9) (inclusive) of section 20 of this Constitution shall, in relation to proceedings before a court constituted by or under service law, be similarly construed.

(3) Nothing done by or under the authority of the law of any country other than Jamaica to a member of an armed force raised under that law and lawfully present in Jamaica shall be held to be in contravention of this Chapter.

(4) In this Chapter "period of public emergency" means any period during which -

- (a) Jamaica is engaged in any war; or
- (b) there is in force a Proclamation by the Governor-General declaring that a state of public emergency exists; or
- (c) there is in force a resolution of each House supported by the votes of a majority of all the members of that House declaring that democratic institutions in Jamaica are threatened by subversion.

(5) A Proclamation made by the Governor-General shall not be effective for the purposes of subsection (4) of this section unless it is declared therein that the Governor-General is satisfied -

- (a) that a public emergency has arisen as a result of the imminence of a state of war between Jamaica and a foreign State or as a result of the occurrence of any earthquake, hurricane, flood, fire, outbreak of pestilence, outbreak of infectious disease or other calamity whether similar to the foregoing or not; or

- (b) that action has been taken or is immediately threatened by any person or body of persons of such a nature and on so extensive a scale as to be likely to endanger the public safety or to deprive the community; or any substantial portion of the community, of supplies or services essential to life.
- (6) A Proclamation made by the Governor-General for the purposes of and in accordance with this section -
- (a) shall unless previously revoked, remain in force for one month or for such longer period, not exceeding twelve months, as the House of Representatives may determine by a resolution supported by the votes of a majority of all the members of the House;
- (b) may be extended from time to time by a resolution passed in like manner as is prescribed in paragraph (a) of this subsection for further periods, not exceeding in respect of each such extension a period of twelve months; and
- (c) may be revoked at any time by a resolution supported by the votes of a majority of all the members of the House of Representatives.
- (7) A resolution passed by a House for the purposes of subsection (4) of this section may be revoked at any time by a resolution of that House supported by the votes of a majority of all the members thereof.
- (8) Nothing contained in any law in force immediately before the appointed day shall be held to be inconsistent with any of the provisions of this Chapter; and nothing done under the authority of any such law shall be held to be done in contravention of any of these provisions.
- (9) For the purposes of subsection (8) of this section a law in force immediately before the appointed day shall be deemed not to have ceased to be such a law by reason only of -
- (a) any adaptations or modifications made thereto by or under section 4 of the Jamaica (Constitution) Order in Council, 1962, or
- (b) its reproduction in identical form in any consolidation or revision of laws with only such adaptations or modifications as are necessary or expedient by reason of its inclusion in such consolidation or revision.
- (2) Where the Governor-General is directed to exercise any function on the recommendation of any person or authority, he shall exercise that function in accordance with such recommendation:

Provided that -

- (a) before he acts in accordance therewith, he may, in his discretion, once refer that recommendation back for reconsideration by the person or authority concerned; and
  - (b) if that person or authority, having reconsidered the original recommendation under the preceding paragraph, substitutes therefor a different recommendation, the provisions of this subsection shall apply to that different recommendation as they apply to the original recommendation.
- (3) Where the Governor-General is directed to exercise any function after consultation with any person or authority he shall not be obliged to exercise that function in accordance with the advice of that person or authority.
- (4) Where the Governor-General is directed to exercise any function in accordance with the recommendation or advice of, or with the concurrence of, or after consultation with, or on the representation of, any person or authority, the question whether he has so exercised that function shall not be enquired into in any court.
- (5) Where the Governor-General is directed to exercise any function on the recommendation of the Prime Minister after consultation with the Leader of the Opposition the following steps shall be taken:
- (a) the Prime Minister shall first consult the Leader of the Opposition and thereafter tender his recommendation to the Governor-General;
  - (b) the Governor-General shall then inform the Leader of the Opposition of this recommendation and if the Leader of the Opposition concur therein the Governor-General shall act in accordance with such recommendation;
  - (c) if the Leader of the Opposition does not concur in the recommendation the Governor-General shall so inform the Prime Minister and refer the recommendation back to him;
  - (d) the Prime Minister shall then advise the Governor-General and the Governor-General shall act in accordance with that advice.
- (6) Any reference in this Constitution to the functions of the Governor-General shall be construed as a reference to his powers and duties in the exercise of the executive authority of Jamaica and to any other powers and duties conferred or imposed on him as Governor-General by or under this Constitution or any other law.

Broad Seal. 33. - The Governor-General shall keep and use the Broad Seal for sealing all things whatsoever that shall pass under the said Seal.

CHAPTER V

Qualifications and qualifications for electors. 37. - (1) Subject to the provisions of subsection (2) of this section a person shall be qualified to be registered as an elector for elections to the House of Representatives if, and shall not be so qualified unless, he is -

- (a) a citizen of Jamaica resident in Jamaica at the date of registration or
- (b) a Commonwealth citizen (other than a citizen of Jamaica) who is resident in Jamaica at the date of registration and who has been so resident for at least twelve months immediately preceding that date,

and has attained the prescribed age.

(2) No person shall be qualified, to be registered as an elector for elections to the House of Representatives who -

- (a) is under sentence of death imposed on him by a court in any part of the Commonwealth, or is serving a sentence of imprisonment (by whatever name called) of or exceeding six months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court or is under such a sentence of imprisonment the execution of which is suspended; or
- (b) is disqualified for such registration by or under any law for the time being in force in Jamaica because he has been convicted of any offence connected with the election of members of the House of Representatives or of any local authority or body for local purposes; or
- (c) is, under any law for the time being in force in Jamaica, certified to be insane or otherwise adjudged to be of unsound mind or detained as a criminal lunatic; or
- (d) is disqualified for such registration by any law for the time being in force in Jamaica, by reason of his holding, or acting in any office the functions of which involve responsibility for, or in connexion with the election in the constituency in which such person would otherwise be entitled to vote.

(3) In this section -

"the prescribed age" means -

- (a) the age of twenty-one years, or
- (b) such other age being less than the age of twenty-one years but not less than the age of eighteen years that may from time to time be prescribed by a special Act; and "a special Act" means an Act of Parliament the Bill for which has been passed by both Houses and at the final vote thereon in each House has been supported by the votes of a majority of all the members of that House.

(4) A special Act may be repealed or amended by another special Act and in no other manner.

Electoral  
Law.

38. - (1) Any law for the time being providing for the election of members of the House of Representatives shall -

- (a) contain provisions designed to ensure that so far as is practicable any person entitled to vote at an election of members of the House of Representatives shall have a reasonable opportunity of so voting; and
- (b) contain provisions relating to the conduct of elections of members of the House of Representatives, including provisions relating to the identification of electors, designed to ensure that as far as is practicable no person shall vote at an election of a member of the House of Representatives -
  - (i) who is not entitled to vote; or
  - (ii) when he is not entitled to vote; or
  - (iii) where he is not entitled to vote.

Provided that this paragraph shall not come into operation until the first day of January 1964.

(2) No election of a member of the House of Representatives shall be called in question on the ground that the law under which that election was conducted was inconsistent with this section.

Qualifications  
for membership  
of Senate and  
House of  
Representatives.

39. - Subject to the provisions of section 40 of this Constitution, any person, who at the date of his appointment or nomination for election -

(a) is a Commonwealth citizen of the age of twenty-one years or upwards; and

(b) has been ordinarily resident in Jamaica for the immediately preceding twelve months,

shall be qualified to be appointed as a Senator or elected as a member of the House of Representatives and no other person shall be so qualified.

40. - (1) No person shall be qualified for election as a member of the House of Representatives who -

(a) is a member of the Senate;

(b) is disqualified for election by any law for the time being in force in Jamaica by reason of his holding, or acting in, any office the functions of which involve any responsibility for, or in connexion with the conduct of any election or any responsibility for the compilation or revision of any electoral register.

(2) No person shall be qualified to be appointed as a Senator or elected as a member of the House of Representatives who -

(a) is, by virtue of his own act, under any acknowledgment allegiance, obedience or adherence to a foreign Power or State;

(b) holds or is acting in any public office or the office of Judge of the Supreme Court or Judge of the Court of Appeal or, save as is otherwise provided by Parliament, is a member of a defence force.

(c) is a party to, or a partner in a firm or a director or manager of a company which to his knowledge is a party to, any contract with the Government of Jamaica for or on account of the public service, and has not -

(i) in the case of appointment as a Senator, by informing Governor-General;  
or

(ii) in the case of election as a member of the House of Representatives, by publishing a notice in the Gazette within one month before the day of election,

previously disclosed the nature of such contract and his interest or the interest of such firm or company therein;

- (d) subject to the provisions of subsection (3) of this section, is under sentence of death imposed on him by a court in any part of the Commonwealth, or is serving a sentence of imprisonment (by whatever name called) of or exceeding six months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court or is under such a sentence of imprisonment the execution of which is suspended;
- (e) has been adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth and has not been discharged;
- (f) is, under any law for the time being in force in Jamaica, certified to be insane or otherwise adjudged to be of unsound mind or detained as a criminal lunatic; or
- (g) is disqualified for membership of the House of Representatives by or under any law for the time being in force in Jamaica because he has been convicted of any offence connected with the election of members of that House or of any local authority or body for local purposes.

(3) For the purposes of paragraph (d) of subsection (2) of this section -

- (a) where a person is serving two or more sentences of imprisonment that are required to be served consecutively he shall, throughout the whole time during which he so serves, be regarded as serving a sentence of or exceeding six months if (but not unless) any one of these sentences amounts to or exceeds that term; and
- (b) no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.