

Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Questionnaire

- 1. Please indicate if there are norms or regulations which protect those in the media from compelled disclosure of confidential sources of information. When these exist, what limitations on such protections may be accepted under the law?**

In Trinidad and Tobago, the protection of the media from being compelled to disclose confidential sources of information is protected under the Constitutional right to the freedom of the press. The following analysis details the meaning and the extent of the right as well as the application of the right through case law.

Constitutional Right

The Constitution of Trinidad and Tobago provides *inter alia* for the right to the freedom of the press. **Section 4 (k) of the Constitution of Trinidad and Tobago** states:

“It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist, without discrimination by reason of race, origin, colour, religion or sex, the following fundamental human rights and freedoms, namely: freedom of the press.”

Definition of Freedom of the Press

The definition of the right to the freedom of the press was expressed by Justice Edoe in the case, **Chokopub Ltd. v Attorney-General TT 1987 HC 158**:

“Freedom of the press protected by the Constitution is limited to freedom from censorship, freedom from restraint of publication and the right of dissemination except where such freedoms and rights have been curtailed or restricted by legislation currently in force.”

Extent of the Right

Master Paray-Durity discussed the extent of the right to the freedom of the press in the case of ***Sheppard, Keith v Bobb, Malcolm A.S.P.; Walcott, Victor A.S.P.; The Attorney General of Trinidad and Tobago (H.C.S.3078/1986; H.C.1965/1998. Reasons)***:

“The freedom of the press enshrined under section 4 of the entrenched provision of the Constitution must be guarded by the Court and any infringement of such right will attract the full measure of the Court’s protection of this right. The Court must remain forever vigilant and it must be seen by the public that the Court will protect the freedom of the press whenever it comes under attack from any quarter. The protection of such a right is a protection of the public interest. It is in the public interest that the press performs its duty free, independent and without fear and/or unwarranted interference and attack from anyone including the servants of the State.”

Case Law

In 2013, the decision of the Industrial Court between ***Banking, Insurance and General Workers Union and the Trinidad Express Newspapers TD 165/10***, a Senior Reporter of the Trinidad Express Newspapers; Darryl Heeralal was asked by the Managing Editor of the Company to reveal his source of information for an article which he wrote. He refused to reveal his sources, as he had serious concerns on confidentiality issues surrounding the matter, he requested that these concerns be investigated. He was subsequently dismissed by the Company for failure to comply with a legitimate instruction and loss of trust and confidence.

The Industrial Court held:

“We consider that while there is a convention for a Reporter to disclose his source to his Editor, in cases where the source has been afforded confidential cover, the Journalist is not at liberty to reveal that source even to his Editor unless the source agrees. We find this interpretation to be one which does not run counter to the OCM (“One Caribbean Media”) Guidelines under “Confidentiality”. We hold that while in the normal course the Worker was expected to disclose his source to Ms. Lyder, where anonymity was granted

to the source, as in this case, he was under no obligation to disclose that source unless the source agrees or the cover can be lifted under the conditions set out in the OCM Guidelines. The Editor retains the right to ask but the Reporter is not compelled to disclose. The Worker was well within his right to refuse."

In 2012 during the Commission of Enquiry into the collapse of CL Financial and the Hindu Credit Union (HCU), Express Political Editor Ria Taitt was summoned to appear before the Commissioner Sir Anthony Colman, as he attempted to determine her source for a story which was reported on the witness statement of Lawrence Duprey. She was eventually not compelled to reveal her source as her Attorney stated that, "*Miss Taitt will do as responsible journalists universally do, which is refuse to answer the pointed question 'who is your source'.*"

Limitations of the right to freedom of the press

As regards the limitations of the right, the case of ***Chokopub Ltd. v Attorney-General TT 1987 HC 158***, as referred to above elaborated on the limitation of the constitutional right to freedom of the press, i.e. it is limited to freedom from censorship, freedom from restraint of publication and the right of dissemination except in circumstances where such rights are restricted by legislation.

An example of such restriction is the ***Libel and Defamation Act, 1845*** that governs the law on defamation and actions against newspapers for defamation. Justice Stollmeyer in the case of ***Augustine Logie v National Broadcasting Network Ltd. And Ruskin Mark H.C.A. Cv 556 of 2001*** plainly stated, "*There is no unfettered right of the press, or any person, to defame."*

In addition, One Caribbean Media Limited (OCM), one of the largest media houses in Trinidad and Tobago, in its Statement of Editorial Principles and Operational Guidelines spoke directly to the use of anonymous sources. It states that, "Anonymity may be granted to a source only if the information provided is otherwise verifiable. Opinion must be attributed to an identified source."

2. Please indicate what protections are afforded to whistleblowers in national law. Please note that this report should focus on whistleblowing in the context of public sector and adopts the definition of a whistleblower as any person who reports or discloses information of a threat or harm to the public interest in the context of their work-based relationship.

The Integrity in Public Life Act 2000 was amended by the *Integrity in Public Life (Amendment) Act, 2010* to provide for the protection of employees from dismissal, suspension, demotion, discipline, harassment, or denial of a benefit, who in good faith report acts of corruption. The amendment states as follows:

“14. The Act is amended by inserting after section 42 the following section:

42A: An employee of the State, a public authority or any other body shall not be dismissed, suspended, demoted, disciplined, harassed, denied a benefit or otherwise negatively affected because—

(a) he, acting in good faith and on the basis of a reasonable belief, has—

(i) notified the Commission that his employer or any other person has contravened or is about to contravene this Act;

(ii) done or stated the intention of doing anything that is required to be done in order to avoid having any person contravene this Act; or

(iii) refused to do or stated the intention of refusing to do anything that is in contravention of this Act; or

(b) his employer or any other person believes that he will do something described in paragraph (a).”

The Government has noted the need for more comprehensive legislation in relation to the protection of whistleblowers. *The Public Procurement and Disposal of Public Property Act, 2015*, (awaiting proclamation) section 40 aims to prohibit victimisation. Section 40 states:

“A person shall not be dismissed, suspended, demoted, disciplined, harassed, denied a benefit or otherwise negatively affected because—

(a) he, acting in good faith and on the basis of a reasonable belief, has—

- (i) notified the Director of Public Prosecutions, the Police, the Integrity Commission or the Office that his employer or any other person has contravened or is about to contravene this Act;*
- (ii) done or stated the intention of doing anything that is required to be done in order to avoid having any person contravene this Act;*
or
- (iii) refused to do or stated the intention of refusing to do anything that is in contravention of this Act; or*

(b) his employer or any other person believes that he will do something described in paragraph (a).”

The subject of increased protection for whistleblowers remains a current issue raised by civil society, the public and private sector and continues to be considered a priority by the Government.

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