

TRINIDAD AND TOBAGO COUNTRY REPORT

For the Quebec Plan of Action

Part A: Access to Justice

Section 1: Overview

1.1 Executive Summary

Access to Justice in Trinidad and Tobago is increasingly threatened by the nebulous position of the Constitution on such definitions as what constitutes, for example, discrimination, which is contradicted by other laws. In fact, the Constitution is believed to have discrimination built into its definition, which goes against its own basic principle that all citizens should enjoy free and equal rights.

The powers granted to the Prime Minister to approve such key appointments as the Chief Justice, Commissioner of Police, Commissioner of Prisons and the fact that the Attorney General is a political position, leave room for political manipulation of the judicial system, and there have been some not entirely unwarranted charges.

Additionally, that the so-called independent institutions must rely on Government for their funding and facilities leaves the door open for political influence to threaten and harm the delicate balance of power that the Constitution designates between the Executive and the Judiciary.

There are also claims that the system of appointment of senior officials and judicial authorities is too opaque for comfort.

Additionally, while the general public is increasingly losing faith in a police and prison system that more and more evidence is showing to be corrupt – with an alarming level of “rogue elements” – the judicial system itself suffers from inadequate to poor levels of funding, infrastructure, facilities, and even compensation.

Administration of justice to the poor and disadvantaged, including women and children, is also affected, because supporting legislation to several conventions has not been passed. Some existing laws also contradict one another, leaving many loopholes in the system to pervert justice.

Increasing levels of crime, especially crimes against persons, and the failure to effectively prosecute such crimes, point to a justice system that is seemingly more and more ineffective in serving the needs of the society.

1.2 Commitments under the Quebec Plan of Action

In the Quebec Plan of Action, governments declared that "equal access to an independent, impartial and expeditious justice system is a fundamental pillar of democracy and social and economic development." In recognition of this, they pledged to promote initiatives in two areas:

a) Access to Justice. "Supporting public and private initiatives and programs to educate people about their right of access to justice, and promoting measures to ensure expeditious, equitable and universal access to justice."

A commitment was also made to exchange experiences regarding alternative mechanisms for administering justice, such as those applied to indigenous peoples.

b) Independence of the Judicial Branch, "through initiatives related to transparency in the selection of judicial officials, judges' job security, appropriate codes of conduct and accountability mechanisms."

1.3 The Issue of Access to Justice

The societies of the Americas face numerous problems related to injustice, including:

- Insufficient reparations for human rights violations
- Excessive judicial bureaucracy
- Ineffectiveness in fighting ordinary and organized crime
- Legal discrimination against disadvantaged groups
- Judicial actions which systematically favor the interests of a privileged minority
- Judicial corruption
- Disregard of constitutional and legal rights supposedly guaranteed by the State

Confronting these problems as a whole and ensuring justice for the region's inhabitants will require judicial reforms, modifications to the legal framework on which the justice system is sustained, and the correction of inequities in political, economic and social institutions.

Due to our societies' profound aspiration to ensure justice for their populations, access to justice and the independence of the judicial branch were recognized as important topics by the governments in the Quebec Plan of Action.

Access to justice is the ability of individuals and groups to make use of the judicial system to effectively resolve their conflicts.

To ensure this access, and to achieve equality of opportunity in access to justice, far-reaching reforms will be required in our societies. According to voices arising from civil society, these reforms must dismantle many barriers which prevent the region's justice systems from being accessible, affordable, impartial, effective and sensitive to citizens' needs, especially the needs of the indigent, the disadvantaged and those suffering from discrimination. Equity in access to justice requires preferential action aimed at indigenous peoples, women, children, the handicapped, immigrants and other groups.

An independent judiciary must pronounce impartial decisions regarding the application of the law to citizens and the State, in the cases presented to it.

This is a prerequisite – although not the only one – for a judicial reform process that will establish an impartial, efficient and reliable justice system.

An emerging issue put forth by civil society is the failure of judicial institutions, as currently constituted, to facilitate the inclusion of the indigent, the disadvantaged, and those subject to discrimination; thus, they do not provide impartial justice with respect to all groups.

Section 2: The Justice System in Trinidad and Tobago

2.1 Facts related to the Justice System in Trinidad and Tobago

Population: 1.365 million: About 40 percent each Afro and Indo descendants. Very small group who identify themselves as descendants of the original Amerindian population of the country.

Prison Population: Approximately 5,000

Prison Population Rate Per 100,000 Population: Approx. 360

Prison Accommodation: 2,000

Death Row: There are approximately 100 persons on Death Row.

Case backlog at Courts: Approximately 5,000 undetermined.

Recidivism Rate: Some 20 percent first offenders go back to prison; 39 percent of those in prisons have been in prison three or more times.

No. of Officers in Police Service: 6,635

Crimes: Some 170 murdered in 2002; this number has almost doubled since 2002
Kidnappings have increased by more than 200 percent since 2002

Firearms: 51 percent of murders in 2000 were as a result of firearms use; 57 percent in 2001; some 70 percent in 2002; and some 80 percent in 2003.

Guns were used in 38 percent of robberies in 2000, 41 percent in 2001; some 50 percent in 2002; and more than 60 percent in 2003.

2.2 Treaties, Conventions, and Laws

Trinidad and Tobago subscribes to such general declarations as the Universal Declaration of Human Rights, the Declaration of Chapultepec and the OAS Declaration, along with specific documents such as Inter-American Convention on Human Rights and the International Covenant on Civil and Political Rights, which it signed on December 20, 1978, and came into force on March 20, 1979.

In 1998, Trinidad and Tobago withdrew its ratification of the American Convention on Human Rights.

The country is also signatory to the:

- *International Covenant on Economic, Social and Cultural Rights*, signed December 20, 1978. Entry into force: March 7, 1979.
- *International Covenant on the Elimination of All Forms of Racial Discrimination*, signed October 3, 1973. Entry into force: November 2, 1973.
- *Convention on the Elimination of All Forms of Discrimination Against Women*, signed January 11, 1990. and enforced February 10, 1990.
- *Convention on the Rights of the Child*, signed December 5, 1991. Entry into force: February 10, 1990. Trinidad and Tobago has not ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, or the Optional Protocol on the sale of children, child prostitution and child pornography, or the International Convention on

the Protection of the Rights of all Migrant Workers and Members of Their Families.

- *Rome Statute of the International Criminal Court (ICC)*. Trinidad and Tobago was one of the first countries to ratify this statute.

The Constitution of Trinidad and Tobago, recognised as the supreme law of the land, affirms the belief in a democratic society that recognises the right to equality before the law and the protection of the law.

Laws and Ordinances of Trinidad and Tobago are made by a bi-cameral Parliament, which consists of the Senate of 31 members, and the House of Representatives of 36 members.

Tobago also has a unicameral House of Assembly, with 15 members.

The Legal System is based on English Common Law. It is administered by a Supreme Court of Justice, a Court of Appeal and by Magistrates Courts. The Supreme Court consists of a Chief Justice and 11 Puisne Judges.

Chapter 7 of The Constitution outlines the establishment of the Judiciary, with a Supreme Court, to consist of the High Court and Court of Appeal.

Both the High Court and the Court of Appeal are presided over by the Chief Justice, who is appointed by the President after consultation with the Prime Minister and the Leader of the Opposition.

The Constitution also establishes a ***Judicial and Legal Service Commission for Trinidad and Tobago***, the members of which are:

- a. the Chief Justice, who shall be Chairman;
- b. the Chairman of the Public Service Commission;
- c. other members, appointed by the President after consultation with the Prime Minister and the Leader of the Opposition including a High Court judge, and legal experts.

2.3 The Courts

2.3.1 Supreme Court of Judicature

The Supreme Court consists of the High Court of Justice and the Court of Appeal, which exercise all such jurisdiction and powers as are conferred on them respectively by the Supreme Court of Judicature Act, Chap. 4:01 and the Constitution of the Republic of Trinidad and Tobago Act, 1976. There are also Courts of Summary Jurisdiction and Petty Civil Courts.

Seven Justices of Appeal, with the Chief Justice as President, comprise the Court of Appeal.

2.3.2 Court of Appeal

The Court of Appeal is a superior court of record and, unless otherwise provided by Parliament, has all the powers of such a court. It is comprised of three Judges sitting together, except when the appeal is from a Summary Court or from the decision of a High Court in Chambers. In such cases, two judges comprise the Court.

2.3.3 Privy Council

Appeals from the Court of Appeal may be made under given circumstances, to the Privy Council, the highest Court of Appeal. It would require no less than two thirds of a parliamentary majority for relevant constitutional amendments to sever links established with the Privy Council since 1833.

Persons also have rights to take appeals of decisions by the Court of Appeal to the Judicial Committee.

2.3.4 Proposed Caribbean Court of Justice

In 2001, Trinidad and Tobago ratified an agreement to establish a Caribbean Court of Justice (CCJ). It is proposed that the CCJ will have jurisdiction on both civil and criminal matters as an appellate court of last resort and to terminate access to Britain's Privy Council.

The CCJ is also to decide on those matters arising out of the Treaty of Chaguaramas (1973), which established the Caribbean Single Market Economy.

It is proposed that judges on the CCJ will come from any Commonwealth territory and will be appointed by a new Regional Judicial and Legal Services Commission. The chair of the commission will be President of the Court, appointed by Heads of Government. Financial operations will be sustained by a special Trust fund initially administered by the Caribbean Development Bank and supported by member states. Non-payment of contributions to the budget of the Court would result in the denial of access to its services by defaulting Member Governments. It seems this denial of access would impact most on those appearing before the court and not necessarily the defaulting government.

Governments will not be mandated to follow the judgments of the court, a detail that makes the CCJ's anticipated impact questionable.

2.3.5 High Court of Justice

The High Court is a superior court of record and, unless otherwise provided by Parliament, has all the powers of such a court, including all power as vested in the Supreme Court of Trinidad and Tobago immediately before the 1976 Constitution. There is vested in the High Court all such original jurisdiction as is vested in and exercisable by the High Court of Justice in England under the provisions of the Supreme Court of Judicature (Consolidation) Act 1925 (U.K.).

There is also an *Industrial Court* and a *Tax Appeal Board*, which are both superior courts of record. Appeals from the Court and the Board lie with the Court of Appeal.

2.3.6 Magistrates Court

The Magistracy includes the summary courts and the petty civil courts.

All criminal proceedings begin with the filing of a complaint in the summary court. Minor offenses are tried before the magistrate. For more serious offenses, the magistrate must conduct a preliminary inquiry. If there is sufficient evidence to support the charge, the accused is committed to stand trial before a judge and jury of the High Court. All civil matters are heard by the High Court. Both civil and criminal appeals may be filed with the Local Court of Appeal and ultimately to the Privy Council in London.

2.3.7 Ombudsman

There are no Administrative Courts in Trinidad and Tobago, but there is provision for an Ombudsman under Section 91 of the Constitution of the Republic of Trinidad and Tobago Act, 1976. The Ombudsman has no legal powers.

2.4 Human Rights Unit

Cabinet approved the establishment of a Human Rights Unit within the Ministry of the Attorney General in 1998.

The Human Rights Unit was initially mandated to prepare all of the periodic reports due as part of the treaty obligations of Trinidad and Tobago under certain international human rights instruments. The Unit was not established to receive complaints or provide advice to members of the public about violations of their human rights. The Unit is headed by a director and deputy director appointed on contract for two years.

The Unit prepares all of the periodic reports due as part of the treaty obligations of Trinidad and Tobago under the:

- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- International Covenant on the Elimination of All Forms of Racial Discrimination
- Convention on the Elimination of All Forms of Discrimination Against Women
- Convention on the Rights of the Child

The Unit is also responsible for advising the State on responding to claims of violations of treaty obligations submitted to international human rights bodies; reviewing reservations entered by Trinidad and Tobago to international human rights treaties already ratified; reviewing the compatibility of the domestic law with obligations under international treaties; and promoting greater awareness of human rights instruments and Trinidad and Tobago's legal obligations.

Citizens can forward claims on human rights grounds:

- Through the local courts to the local Courts of Appeal and eventually the Judicial Committee of the Privy Council in the UK
- By petitioning the Inter-American Commission on Human Rights and the Inter-American Court
- By petitioning the United Nations Human Rights Committee

2.5 Administration of Justice

2.5.1 Judicial and Legal Service Commission

The Judicial and Legal Service Commission appoints the Solicitor General, Chief Parliamentary Counsel, Director of Public Prosecutions, Registrar General or Chief State Solicitor after consultation with the Prime Minister.

However, a person may not be appointed to one of these positions if the Prime Minister signifies to the Judicial and Legal Service Commission his objection to the appointment.

2.5.2 Chief Justice

The Chief Justice is the Head of the Judiciary, the third traditional branch of Government, which is responsible for administering justice. He is President of the Court of Appeal and Chairman of the Judicial and Legal Service Commission. He is also, *ex officio*, a judge of the High Court and can therefore sit in that Court.

2.5.3 Chief State Solicitor

The Chief State Solicitor heads a department that advises the Government on commercial law matters, real property matters and matters involving administration of estates, preparation of deeds and contracts for its commercial enterprises and for the engagement of consultants and other personnel. The office is also responsible for the drafting of all legal instruments required by the State in its real property matters and a wide range of commercial transactions.

The Chief State Solicitor instructs the Solicitor General in Civil litigation involving the State, and holds two posts of Corporation Sole – Administrator General and Public Trustee. As Administrator General, the Chief State Solicitor administers estates of persons who die and leave no one legally entitled to a Grant of Administration. As Public Trustee, the Chief State Solicitor acts as executor and trustee of estates of persons when so appointed by Will.

As Official Receiver, the Chief State Solicitor is an officer of the High Court and performs functions under the Bankruptcy Act and the Companies Act. The Chief State Solicitor also plays a role in the protection of minors and persons with mental disabilities, under various laws.

2.5.4 Solicitor General

The Solicitor General advises the State on all aspects of civil law, represents the State

in constitutional matters and other civil proceedings, and assists in the formulation and execution of government policy within the limits of the law.

2.5.5 Chief Parliamentary Counsel

The Chief Parliamentary Counsel heads the Legislative Drafting Department which helps implement Government policy by transforming Government's measures into Statutes and Statutory instruments thereby ensuring that the proposed action is legally enforceable.

2.5.6 Attorney General

The Attorney General is the central authority for Trinidad and Tobago for both mutual legal assistance and extradition. He is appointed by the Prime Minister and is a member of the Cabinet and a Member of Parliament, either elected (to the Lower House) or appointed (through the Senate). As such, his post is seen as coloured by his political ties that may influence the manner in which justice is administered.

The Attorney General functions as the Central Authority under the Extradition (Commonwealth and Foreign Territories) Act, 1985 and The Mutual Legal Assistance in Criminal Matters Act, 1997, which are carried out by counsel in the Central Authority Department within the Ministry of Attorney General. The department helps foreign domestic authorities obtain persons sought for prosecution or to serve sentence or to obtain evidence for use in criminal cases. The Central Authority Department only deals with requests for assistance in criminal cases.

The Attorney General also is responsible for the sharing of confiscated, forfeited or seized assets with other countries, and the negotiation of mutual legal assistance agreements, international co-operation agreements and treaties with other countries.

2.5.7 Director of Public Prosecutions

The Director of Public Prosecutions heads the Criminal Law Department, which is a post, created by the Constitution of Trinidad and Tobago. It is meant to be a constitutional post and independent of political and stakeholder involvement in matters of the prosecution of criminal matters. The independence of this post is constitutionally guaranteed, but, as a post that must receive the approval of the Prime Minister, it is open to political maneuverings.

The DPP also holds the power to appoint officers of the court to assist him in carrying out his constitutional roles and functions. This has led to the establishment of the Criminal Law Department, or the Office of the Director of Public Prosecutions. This office is comprised of professional legal staff, administrative and support staff. The staff of this department is paid by the State and facilities of the office are also paid for by the State, which leaves room for further political maneuverings.

Section 3: Law Enforcement and the Prison System

3.1 Ministry of National Security

The Ministry of National Security oversees the police service, prison service and the defense force.

3.1.1 Police Service Commission

The Police Service Commission is an independent body that makes all personnel decisions in the Police Service; the Ministry has little direct influence over changes in senior positions. There have been credible reports that police and prison guards have committed some human rights abuses.

3.2 The Police Service

3.2.1 Structure of the Police Service

The Police Service is headed by a Commissioner of Police, helped by two deputy commissioners, assistant commissioners, superintendents and assistant superintendents, inspectors, sergeants and corporals.

The Prime Minister must approve the appointment of the Commissioner of Police. This has given rise to criticism of the possibility that the top cop may feel pressured into thinking he owes his allegiance to the party in power.

The police service is severely hindered in resources, equipment, training and funding. As of December 31, 2003, the strength of the Police Service was 6,635, compared with the sanctioned strength of 7,244 officers. There were 22 vacancies in the service at management level.

3.2.2 Qualification and Training

In addition to a shortfall of 609 policemen, there were additional shortages owing to officers who were sick, on suspension, or on no-pay sick leave.

The qualification for entrance into the service is believed to be too low, which affects police literacy, knowledge and competence to execute the law.

3.2.3 Promotions and Management Skills

Promotion in the service is still performed largely according to seniority, which means the same ill-qualified officer may be promoted to senior positions, as opposed to persons who are more qualified but have less experience in the force.

For example, promotion to an executive requires only a pass in Ordinary Level English or a Police English Exam. As a result, it is believed that senior police management lack management training, competence, and new technologies to fight crime. It is believed the basic minimum qualification should include a diploma in police science or management studies related to police work, or a first degree in law, police science or management studies.

The lack of adequate training and education of officers also affects performance evaluations, which are sometimes left in the hands of incompetent officers. The

police service also has no supervisor qualified to identify exceptional skills and leadership qualities in the Service.

The report (which report?) noted that during the hours of 8 a.m. to 4 p.m., the management of the police service was partially dysfunctional, and top managers and supervisors were available for only 40 hours per week. And in the 40 hours that supervisors were available, many of them had to attend to matters away from their stations, further reducing the hours of supervision to an average of 20 hours per week. This left police constables and corporals unsupervised for 128 hours per week.

In some cases, the supervisor position was unfilled, or, in cases where there were supervisors, they did not know how to supervise. These situations leave room for corruption to fester within the service.

It is believed that the ideal situation would be the availability of supervision for 168 hours a week at the levels of inspectors, sergeants and corporals. At no time should there be a missing link in the chain of supervision from inspector to corporal.

Promotion by seniority causes disorder in the distribution of ranks; vacancies exist because only junior officers possess the skills. Senior police officers are promoted because their seniority is the only criterion available.

In one instance, several junior corporals were promoted to the rank of sergeant because there were insufficient qualified senior corporals to fill the existing vacancies, according to a police report in January 2003.

This also affected the access to justice for policemen and the length of time it took for matters to be adjudicated. For instance, despite their poor performance in respect to conducting disciplinary tribunals, some heads of departments were given appraisals for promotion.

Because of promotions by seniority, heads of divisions, branches and sections are not judged on total responsibility and the Commissioner of Police does not adequately deal with deficiencies in the performance of their duties.

Managers at the various levels fail to prepare performance appraisals for second division officers (SDOs) to be promoted. There is a backlog of performance appraisal reports for SDOs to be promoted in the Service.

3.2.4 Infrastructure, facilities and working conditions

The infrastructure, facilities, and working conditions of district police stations is in serious need of redress. In particular, these stations suffer from limited computerisation and general technological equipment and competence.

District police stations like Gasparillo, Brasso Seco, Arima, Belmont, Matura, Besson Street, Matelot, Manzanilla, Piarco, Oropouche, Couva, Chaguanas, Carenage, St. Clair, Siparia, Maloney, St. Joseph, Tunapuna, Arouca, Mayaro, and Cumuto in Trinidad; and Old Grange, Roxborough, and Scarborough in Tobago; the Headquarters of the Guard and Emergency Branch and the Mounted Branch; are all in

dire need of repair and refurbishment, a fact that affects the ability of the police service to respond to crime.

3.2.5 Reports of abuse among police service personnel

Reports of Amnesty International support claims of increasing police brutality in Trinidad and Tobago.

There have been several allegations of police unfairly holding citizens. In February 2003, the Government launched Operation Anaconda, a police action that promised to address the problem of crime through a new zero-tolerance policy. Press reports indicated the program had led to the arrests of more than 500 people by June 2003. That month, laborer Andy Anderson Ashby brought suit against the Attorney General, alleging that he had been arrested in connection with the Anaconda exercise and was detained for almost 36 hours without being charged. At year's end, the Police Complaints Authority was still investigating Ashby's claim.

A 2002 Human Rights Report noted: "Police corruption continued to be a problem. An independent body, the Police Complaints Authority, received complaints about the conduct of any police officer, monitored the investigation of complaints, and determined disciplinary measures where appropriate, including dismissal. However, Public Service Commission restrictions limited the authority to impose final discipline through dismissals."

There is a general belief that the police lack education in areas of human rights and respectful treatment of victims, complainants and anyone else that contacts the police. Only recently has there been an attempt to lift the entry-level educational requirement into the police force. The level of literacy among police officers has also been cause for serious concerns, as more than 70 percent of officers recently failed a basic in-house examination.

There is a perception that often the police make all citizens, including victims, feel like criminals. For instance, the Human Rights Report noted that a man named Sudesh Samaroo claimed that police officers beat him, abducted him from his home, taunted him, and threw him from a cliff before he managed to escape. The Police Complaints Authority opened an investigation into the charges, and the investigation continued at year's end.

In June (of what year?), residents of the town of Los Bajos appealed to the Commissioner of Police to protect them from three "rogue" police officers who allegedly made a practice of planting drugs on young men in order to arrest them.

In November (of what year?), Keyon Anthony charged that police officers severely beat him during a search for an illegal firearm; he was never charged with a crime. Anthony brought his allegations to the Police Complaints Authority.

In December (of what year?), Allan Saran confessed to involvement in the kidnapping for ransom of a Port-of-Spain resident (subsequently freed) and identified two police.

The Commissioner of Police admitted that there were frequent citizen allegations of

police brutality, but he asserted that such claims often were "counter-claims" by citizens who had been arrested for crimes.

3.3 The Prison Service

3.3.1 Structure of the Prison Service

Similarly in structure to the Police Service, the Prison Service is headed by a Prisons' Commissioner.

The Commissioner of Prisons reported that the prison system held 4,090 inmates at the end of December 2003. Overcrowding was a problem in four of eight facilities, where 2,290 inmates were housed in prisons built for 980. A new maximum-security prison, opened in late 1998, has a capacity of 2,450. However, it is not fully operational, holding approximately 800 inmates, and has done little to relieve the overcrowding in the system.

3.3.2 Conditions in Prisons

Amnesty International has condemned the prison conditions in Trinidad and Tobago, which they believe not only violate human rights of prisoners but also affect the ability of prison officers to competently execute their duties.

Amnesty International has defined conditions in the majority of prisons as falling below minimum standards that constitute cruel, inhumane and degrading treatment. Excessive overcrowding, with inmates being kept in small cells with other prisoners, rats, lice and cockroaches, and lack of sleeping, bathing and sanitation facilities are commonplace. Medical care is also often inadequate.

According to a report on the prison system in Trinidad and Tobago, prison conditions at two of the three largest men's prisons generally met international standards. However, conditions were worse at the Frederick Street Prison in Port-of-Spain, which dates from the 1830s. It was designed for 250 inmates but houses approximately 800 prisoners in December 2003. Diseases such as chicken pox, tuberculosis, HIV/AIDS, and viruses spread easily, and prisoners have to purchase their own medication.

Conditions in prisons are extremely poor, amounting in many instances to cruel, inhuman and degrading treatment in contravention of international standards. One facility built for 175 prisoners was at one time holding some 1,300 inmates, in cells that lack ventilation and sanitation, and with unpalatable food. Access to healthcare is restricted, and infectious diseases are rampant.

On November 11, 2003, overcrowding caused a riot in the detention facility at the Port-of-Spain Magistrate's Court when officers attempted to house 80 detainees in cells built for 40 persons.

Pre-trial detainees are held separately from convicted prisoners, although they could be in the same section of the same facilities as convicted prisoners.

Conditions at the women's prison generally met international standards. Children between the ages of 15 and 19 were held at the Youth Training Center. Younger children were sent to the Boys' Industrial School.

Amnesty International has long-term concerns about prison conditions in Trinidad and Tobago, though a new prison has recently been opened, which Amnesty International hopes will relieve some of the overcrowding.

3.3.3 Detention and Prison Officers

While the Constitution prohibits torture and other cruel, inhumane and degrading treatment or punishment, there have been credible reports of police and prison personnel abusing prisoners in incidents that involved beating, pushing, and verbal insults.

On August 27, 2003, police arrested three prison guards in connection with the June 2001 death of prisoner Anton Cooper. The circumstances surrounding the death, and the slow pace of the investigation, provoked widespread criticism. At year's end, the three guards were charged with murder, and a preliminary inquiry was underway in Magistrate's Court.

In September 2003, prison authorities opened an investigation into claims by death row inmate Damian Ramiah that he had been severely beaten by prison officers on July 30 of that year.

Amnesty International believes that the appalling prison conditions in Trinidad and Tobago exacerbate the pressures on prison officers and provide fertile ground for discontentment and frustration. Such emotions are more likely to lead to an atmosphere in which prisoners' human rights are violated.

The Prison Officers' Association, meanwhile, has claimed that staff at the Golden Grove Prison dormitory have to put up with leaking roofs, a single functioning toilet, cockroaches, rats and leaking pipelines.

Prison officers also lack the tools, training and competence to conduct adequate investigations.

By failing to adequately investigate prison brutality, Trinidad and Tobago is in violation of a number of its obligations under international human rights laws and standards. For example, the UN Principles on Extra-legal Executions, paragraph 9, states:

"There shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances. Governments shall maintain investigative offices and procedures to undertake such inquiries. The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice, which may have brought about that death. It shall include an adequate autopsy, collection and analysis of all physical and documentary evidence and statements from witnesses. The investigation shall distinguish between natural death, accidental

death, suicide and homicide."

Section 4: Access to Justice and hindrances thereof in Trinidad and Tobago

4.1 Education of individuals about their right of Access to Justice

Educational efforts on justice-related topics by the judicial branch and other government bodies are scattered or occasional, and restricted in coverage. Education of individuals about their rights to access of justice is largely left to civil society organizations, which are limited by funding and facilities.

The level of citizens' knowledge or education regarding their right of access to justice is moderate to low, depending on whether one lives in urban or rural areas (with lower levels in rural areas); on individuals' level of education; on individuals' level of functional literacy; and on access to information through new technologies. With functional illiteracy estimated to be as high as 50 percent, it is evident the difficulties persons will have in accessing and understanding legal documents.

Furthermore, the level of functional illiteracy among police officers is estimated to be above 50 percent, which raises questions of their ability to interpret and execute laws.

4.2 Expeditious, equitable and universal access to justice

Trinidad and Tobago is not served by the office of a public defender, but the State offers free legal aid, limited to those who cannot afford it. Some 90 percent of criminal cases involve legal aid.

The Constitution provides for an Ombudsman, who submits a report to Parliament each year but who has no legal powers. It allows for oral trial proceedings.

4.2.1 Backlogs and Time Delays

In recent years, time delays for the pronouncement of judicial sentences have been excessive from time of arrest to time of conviction. The waiting list in the magistrates' court is also excessive, often delayed by deficiencies in the facilities at the courts, but less so in the High Courts. In some cases, a murder or manslaughter trial can stretch to nine to 12 years.

The backlog of the number and percentage of persons detained or brought to trial but still awaiting a judicial decision is high, but has been reducing in recent years as the time lapse for trials in the High Court has sped up.

Trial delays, while not as extensive as in past years, remain a problem: adults prosecuted for serious offenses are committed for trial or discharged in two to three years in capital cases or within five years in non-capital cases; minors are tried or discharged within one year.

The High Court has shown improvement in reducing trial backlogs, but they remain significant at the magistrate court level. To help improve efficiency, the courts have introduced computer-aided transcription to more speedily and efficiently create a

record.

The death penalty is mandatory in all murder convictions for persons 18 years of age or older; convicted minors are jailed pending a presidential pardon. In July, Caribbean Justice, a nongovernmental organization (NGO), issued a statement that the law did not allow for consideration of mitigating factors in murder cases that might warrant a lesser sentence.

The State also has had difficulty in attracting State Prosecutors because of lower salary and compensation packages and working conditions relative to the private sector.

4.2.2 Fair treatment

The Constitution provides for the right to a fair trial. There has been increasing perception of unfair treatment by the justice system, and the rural poor are at a particular disadvantage because of the poor conditions of the district courts. Pervasive corruption and criminal elements within the Police Service have contributed to low faith and distrust of the service.

4.2.3 Mediation and Probation Services

The Probation of Offenders Act, Chapter 13:51 of the Laws of Trinidad & Tobago, empowers the court to release an offender on probation, instead of sentencing to punishment, in cases in which it considers appropriate to do so. The probation order is for a period of one to three years, during which time the offender is under the supervision of a probation officer. The order for probation may contain provisions designed to ensure that the offender is properly supervised, maintains good conduct, does not repeat the offence and commits no further offences.

A 1994 report of the Committee on Juvenile and Youth Crime also recommended that first offenders under the age of 25, and all offenders under the age of 18 years, be referred to a Probation Officer's Report. The report would guide the Court in sentencing.

The Community Service Orders Act 1997, Act No.19 of 1997 and the Community Mediation Act, Act No.13 of 1998, are laws of alternatives to imprisonment. They represent a form of Alternative Dispute Resolution. The success of these acts lies in the inclusion of grassroots efforts to see their promotion according to the rule of law.

The Community Service Act, which was promulgated on June 1, 1998, has been limited in execution and success by over-worked probation officers and staffing deficiencies.

Community Mediation Centres came into being under the Community Mediation Act, 1998. However, those centres have recently been abolished, putting further pressure on an already overcrowded prison system. Civil society groups have been instrumental in increasing public awareness and in pressuring the authorities for support services.

A Community Police Division also has been largely decimated and absorbed within the general police force.

4.2.4 Fair treatment of the poor and disadvantaged and those subject to discrimination

It is generally believed that the actions of the police in Trinidad and Tobago oftentimes are incompatible with the requirements of a democratic State regarding inappropriate treatment of detainees by the police; inadequate police-training in the area of human rights; and disrespectful treatment of victims, complainants and anyone else who contacts the police.

However, there have been improvements in informing detainees of their rights and duties; in informing detainees in a timely manner about the accusations against them; and in respecting detainees' right to contact an attorney

Among lower-income social groups, the proportion of problems reported to and brought before the formal judicial system was high. The quality of free legal aid is believed to be average. There are no support services such as transport to court, some psychological support, but low support for victims and accusers, and little or no provision of translation services for those who need them.

The quality of free or low-cost legal aid services for the poor, disadvantaged or those subject to discrimination is high for criminal matters, but support services, counseling, protection of victims and accusers and translation services on request leave much to be desired.

There have been changes to criminal trial laws in favour of those affected by domestic violence, but not necessarily for low-income plaintiffs.

A separately housed family court is being created, and will be staffed with specialist support personnel and with a philosophy of mediation and conciliation in the resolution of family disputes.

4.2.5 Children's Rights

The minimum legal age for workers is 12 years. Children from 12 to 14 years of age may work only in family businesses. Children under the age of 18 legally may work only during daylight hours, with the exception of 16- to 18-year-olds, who may work at night in sugar factories. The Ministry of Labor and Small and Micro-Enterprises is responsible for enforcing child labor provisions, but enforcement is lax because there are no established mechanisms for receiving, investigating, and addressing child labor complaints.

A UNICEF study estimated that 1.2 percent of children from 5 to 14 years of age were engaged in paid work, and that 0.3 percent were engaged in unpaid work for someone other than a family member. An ILO study reported that children engaged in several types of work, including scavenging, agriculture, domestic work, street vending, and commercial sexual activity.

The Government of Trinidad and Tobago has not ratified ILO Convention 182 on elimination of the worst forms of child labor.

4.2.6 Women's Rights

While there have been adjustments to the laws favoring domestic abuse, special support for victims of domestic violence leaves much to be desired.

In fact, as stated in detail in a critique of Government's CEDAW report (see attached), the legal framework of Trinidad and Tobago fails to protect the human rights of women, as existing legislation is either inadequate in scope, poorly drafted, or non-existent.

The Constitution neither contains a provision that specifically targets discrimination against women, nor does it provide a definition of discrimination; the Constitution merely states that discrimination on the basis of sex is forbidden. Gender-based violence is not commonly seen as a form of discrimination, leaving it open for individual Ministries to set their own standards and definitions of discrimination which may create legal loopholes that can be exploited by public authorities, to the detriment of aggrieved individuals.

The lack of provision for a clear definition of discrimination clearly breaches the standards set under Article 1 of the CEDAW Convention, and failure to embody a clear provision for discrimination within the Constitution violates Article 2(a). Furthermore, failing to account for the acts of private individuals violates Article 2(e), and any discrimination by public authorities, as a result of the exploitation of narrow definitions they have created, breaches Article 2(d).

There are 'structural constraints' which limit the potential of the aggrieved individual to freely exercise autonomy – the police may be unwilling to interfere in domestic matters, a summons may not be served due to inadequate financial resources, the victim may fear losing her job through taking time off to appear in court, or she may feel embarrassed about the openness of a court action. Few applications result in the grant of a protection order.

The Maternity Protection Act No. 4 of 1998 is discriminatory in that it does not provide for a minimum level of maternity leave benefits for women who are Members of Parliament. Furthermore, despite the provisions of the Act with regard to other women, there is still evidence that many women are unfairly dismissed from employment as a result of being pregnant.

There are still pieces of legislation that date from colonial times and violate the provisions of CEDAW, and that need to be repealed or amended:

- Section 2 of the Widows' and Orphans' Pension Act, Chap.23:54 of 1934 excludes women from the definition of "Public Officer," creating problems for single mothers who are prevented from benefiting from the Act
- Section 24 of the Minimum wages Act, Chap.88:04 does not provide a remedy for workers who have been paid less than the statutory minimum wage
- Section 5 of the Employment of Women (Night Work) Act, Chapter 88:12 discriminates against women in that it prohibits the employment of women at

- night except in certain instances under Article 6 of the Act.
- Section 2(3) of the Industrial Relations Act, Chap:88:01 excludes domestic workers from the definition of “worker;” this affects women disproportionately, as the majority of domestic workers are female
- The inadequate provision for marital rape in the Sexual Offences (Amendment) Act, No. 31 of 2000, and the fact that sexual harassment at work does not constitute an offence violates Articles in CEDAW
- The Industrial Relations Act specifically states the exclusion of Domestic Workers; as a consequence, the National Union of Domestic Employees (NUDE) is deprived of the right to have bargaining status on behalf of Domestic workers; NUDE is also deprived the opportunity to represent Domestic Workers on the Minimum Wages Board
- The Health and Safety Bill that government has been formulating specifically states the exclusion of Domestic Workers

There is no sexual harassment legislation to prohibit this type of behaviour. Because there is no legislation, the Court has no guidelines or remedies for dealing with this. Not all workers are covered under the Minimum Wages Order with respect to terms and conditions of work.

Discrimination against Women is inherent within the guidelines for the provision of social welfare benefits. This discrimination is embodied within the definition of household head and, as such, excludes women who are the primary caregivers to children in families from accessing social welfare benefits.

In the event that a husband and wife are separated or divorced, legislation is in place that allows either party to take the other to court for the purpose of having an order granted for child maintenance.

The experiences of women in Trinidad and Tobago with regard to the receipt of maintenance money, which their former partners are ordered by the courts to pay, highlight the need for stronger enforcement of the payment of maintenance money on time and for more careful evaluation by magistrates of the amount of maintenance that former partners should be ordered to pay. Oftentimes, women travel long distances (and as such incur high travel costs) to collect money at the courthouse. In many instances, the money has not been brought to the courthouse on time and the trip is wasted. In small communities, when warrants are issued for delinquent payments, oftentimes the officer responsible for serving the warrant may know the person to whom a maintenance order was issued and warn him. As a result, persons who are delinquent with maintenance payments are not disciplined

Domestic violence has been a major contributor to the overall increase in crime. Violence in the home is generally directed at children, the elderly and women. Although statistics do not adequately reflect the extent to which domestic violence is taking place within the society due to under-reporting, the number of murders of women, which cannot go unreported, is alarming.

Since the passing into law of the Domestic Violence Act in 1991, there have been almost 20,000 applications for protection orders, but only about 40 percent have been granted by the magistrates.

The Ministry of Social and Community Development has established a Domestic Violence Unit, which operates a Domestic Violence Hotline and has constructed 15 'safe-houses' (although only one is located in Tobago). The Ministry's Family Services Division has set up 16 counseling centers and has undertaken gender-sensitive training for public officials.

The absorption of the Police Counseling and Juvenile Bureau within the Community Policing Section within the wider Police Service has exacerbated problems of reduced response to reports and follow-up action on domestic violence.

The number of murders of women by spouses and partners also has been escalating alarmingly.

A study by the Shelter for Battered Women and the Trinidad and Tobago Coalition Against Domestic Violence, which analysed the incidence of wife abuse by type of abuse, shows that physical abuse is the most prevalent, followed by verbal and emotional abuse. The statistics of physical abuse of women does not tell the stories of women beaten constantly; of women battered and bruised and therefore having to seek medical treatment; and of women beaten nearly to death.

There are also some concerns on the contracting age of marriage, under the Muslim Marriage and Divorce Act, the Hindu Marriage Act and the Orisa Marriage Act, which remain different for men and women.

Section 23 of the Marriage Act, Chap 45:01 also needs to be reviewed, as this section states that it is permissible for children who are minors to marry once the consent of both parents is given. In the event that the child is not in favor of the marriage despite of consent given by both parents, this section leaves room for coercion of children into marriage. In a society and culture where women are still viewed as men's property and subject to their control, this section of the Marriage Act leaves room for the exploitation of young women in particular and also potentially contributes to violations of the Rights of the Child, a convention which Trinidad and Tobago has also ratified.

Similarly Paragraph 464 of the Sexual Offences Act No.27 of 1986 (as amended) states that the age of consent to sexual intercourse is different for males and females, with females being able to consent at a younger age; this fact complements the Marriage Act, in which different regulations apply to young men and women. With regard to the Hindu Marriage Act, the age of marriage for females and age of consent to sexual intercourse are conflicting.

4.2.7 Workers' Rights

The 1972 Industrial Relations Act (IRA) provides that all workers, including those in state-owned enterprises, may form or join unions of their own choosing without prior authorization.

A union may bring a request for enforcement to the Industrial Court, which may order employers who are found guilty of antiunion activities to reinstate workers and pay

compensation or impose other penalties, including imprisonment.

The IRA establishes the right of workers to collective bargaining.

All employees, except those in "essential services" including the police and other government employees, have the right to strike. The International Labor Organization (ILO) has criticized the Government's definition of essential services as being overly broad and has requested that the legislation be amended.

There were significant strikes during 2003, including a nine-day work stoppage by physicians employed by the Ministry of Health. The Industrial Court found that the action violated the prohibition against denying essential services. The doctors denied that their work stoppage constituted a strike but returned to work after a court injunction.

4.2.8 Right to a fair public trial

The law prohibits arbitrary interference with privacy, family, home, or correspondence, and the Government generally respects these prohibitions in practice. However, citizens and members of the Opposition periodically complain of abuse of power by the state. In August, Margaret Rowley of the town of Moruga claimed that local police forcibly entered her home to execute a search warrant and broke doors, a window, and furniture in the home.

On July 31, 2002 a court struck down as unconstitutional a section of the Proceeds of Crime Act of 2000, which gave police the power to inspect bank records of any individual upon the authority of a judge.

4.2.9 Independence of the Judicial Branch

The Constitution dictates a separation of powers among the Executive, the Legislature and the Judiciary by providing for an independent Judiciary, but the process of selection and appointment to the Judiciary has been questioned time and again, given that appointments to the senior positions must be approved by politicians. This favors the ruling Executive, blurring the lines of the principle of separation of powers.

Opposition politician have complained of State manipulation of the police and justice service. There were some searches of Opposition Members' homes and offices.

It is believed, and there is evidence, that the Police Commissioner, because he is appointed with the approval of the Prime Minister, may feel obligated or pressured into thinking he owes allegiance to the party in power. Hence, the office is somewhat emasculated in pursuit of party politics (*Acting Insp Christopher Holder, president of Police Service Social and Welfare Association, in "Revolutionary and Evolutionary Modes of Transformation for the Police Service," 2003 year-end report.*)

Holder added that Government officials feel they can give the Commissioner certain directions in the operations of the Police Service.

Additionally, the Executive's role in allocating funding to the legal system has been

exercised as a means to manipulate and pressure the system.

The government also severely weakened the domestic application of international human rights protections by withdrawing from two key instruments: the American Convention on Human Rights and the Optional Protocol of the International Covenant on Civil and Political Rights.

The International Commission of Jurists has noted that judicial independence in Trinidad and Tobago is threatened through public attacks and non-provision of resources by the Executive. This is exacerbated by a security force – police and prison officers, as noted above – that ignores the rule of law in the exercise of its duties.

4.2.10 Access to redress

While the Government generally respects the human rights of its citizens and allows the legal and judicial systems to provide redress with regard to individual instances of abuse, there have been exceptions. Additionally, police and prison guard abuse of prisoners, the use of lethal force by police in unjustifiable circumstances, and long delays in trials remain significant markers affecting access to justice.

The government also has consistently failed to investigate promptly and prosecute security officials responsible for incidents of brutality, including numerous killings and negligent deaths of those held in custody.

Once appointed, a Justice may only be removed for inability to perform the functions of his or her office or for misbehaviour. However, such dismissals may only occur after adjudication by the Privy Council.

From the supervision of the police to the punishment of criminal offenders and the administration of prisons, the Government has repeatedly failed to meet its international obligations to protect the human rights of its citizenry. As a result, crime is soaring, citizens live in fear and police impunity has become the norm. Standards for fair trial have been undermined by the failure of the government to institute an effective system of witness protection, to provide legal aid, to exclude coerced confessions from court evidence and, in many instances, to ensure that suspects are informed of their right to counsel.

4.2.11 Transparency in the selection of judicial authorities

There is little faith in the impartiality of the justice system in its present state, given the small population and a society that causes impartiality to be questioned.

Executive influence and harrowing conditions of courtrooms, and antiquated forms of procedure and recording all negatively affect the delivery of justice.

There have been little changes or advances in relation to transparency and independence in the selection of Supreme Court justices in terms of broadening of the entities involved in the selection of justices; establishment of further objective criteria for the selection of justices by merit; publication of information about candidates; or

open and public mechanisms for objection to candidates. Furthermore, it is widely believed that the selection process is cloaked in secrecy.

4.2.12 Transparency in the performance of judicial duties

Judicial officers are guided by their own codes of ethics, though these codes have been known not to be applied and are not necessarily effective in staving off manipulation by the political or judicial executive or in ensuring transparency in the system.

Accountability to society is believed to be broad in cases of judicial proceedings or judicial cases, and decisions are partial or non-existent in terms of availability of information, facilities to access information, remuneration and personal assets of judges, users of the system, detainees and defendants awaiting judicial decisions, accusations of torture and police abuse.

The level or quality of information available on the Internet is sparse, limited and basic.

There is no compilation of reports on police or prison officers' brutality; information on laws and methods of redress comes mainly from the Government's official Web site, not from a Web site for the justice system itself.

The general perception is that there are insufficient or ineffective response mechanisms for complaints against individual judicial officers, and investigations may only be launched with public mobilisation and help from media pressure on breaches to the system.

4.2.13 Job security for judicial authorities

The Constitution protects judicial independence by securing tenure until age 65 and by safeguarding judicial salaries and conditions of service through a prohibition on their alteration to the disadvantage of judicial members.

There is evidence from the previous year of cases that judges have been removed or suspended from their jobs, not only in reaction to their previous judicial decisions, but also due to political pressure or other arbitrary influences. Industrial Court judges, in particular, do not have security of tenure, and, with a change in political regime, several who were perceived to be unfriendly to the Government have been replaced by others. In the High Court, such manipulations are said to be subtler.

Section 5: Policy Recommendations

Based on the above analysis of access to justice in Trinidad and Tobago, this country report recommends the following action:

- Implementation of the recommendations in the critique of the 2002 CEDAW Report
- Constitutional reform that takes a revisionary look at areas of the Constitution that are innately discriminatory against various segments of

the society; and that rethinks the areas of influence of the Executive on the Judiciary

- Upgrades to all necessary laws to bring them in line with requirements of Treaties and Conventions, as recommended by Amnesty International, the critique to the CEDAW report, and the Human Rights Report of 2002
- Implementation of reform of the police and prison services that would address such issues as structure, appointments, training and development, and upgrade of infrastructure, technology and services
- Investigation into the effectiveness and efficiency of the procedures on legal redress, and into the issue of whether such procedures can ever be truly effective if there are inherent contradictions in existing legislation
- Increased availability of finances for Government and Non-Governmental Organisations, to ensure that more training programmes, shelters, legal aid clinics and crisis centers are made available as support services that help improve access to justice
- Review of labour laws to bring them in line with the requirements of international treaties and conventions, including establishment of national basic conditions of work legislation
- Revision of marriage laws to accommodate a human rights dimension that protects young girls from exploitation
- Governmental action to address the issue of transparency and develop faith in the court system
- Provision of Assurances to the international community that the institutions are prepared to secure fundamental rights of their peoples to a level that is on par with established standards of the Western world

Appendices

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