



## Trinidad and Tobago

### Amnesty International submission to the UN Universal Periodic Review 12<sup>th</sup> session of the UPR Working Group, October 2011

#### **B. Normative and institutional framework of the State**

##### **The death penalty**

Although there have been no executions in Trinidad and Tobago since 1999, death sentences continue to be handed down by the courts. By the end of 2010 there were at least 40 prisoners on death row. Trinidad and Tobago is one of only two English-speaking Caribbean nations where the death sentence is mandatory for convictions of murder.<sup>1</sup> Mandatory death sentences violate international standards on fair trials: individualised sentencing is required to prevent cruel, inhuman or degrading punishment and the arbitrary deprivation of life.

On 14 January 2011, the government submitted a Bill for approval by Parliament aimed at reforming the Constitution in relation to the implementation of the death penalty. The government presented the Bill as “a crucial step to overcoming the hindrances to the implementation of the death penalty arising from the Privy Council’s jurisprudence and, as a consequence, as a necessary measure to fight crime and, in particular, to respond to the high number of murders that each year are committed in Trinidad and Tobago.”<sup>2</sup> On 16 February, Amnesty International expressed concern that the proposed Bill would have declared violations of human rights as consistent with the Trinidadian Constitution and would have put dozen of peoples on death row at risk of being executed in violation of international human rights law and standards.<sup>3</sup> In particular, the Bill would have allowed death sentences to be carried out when appeals before international bodies were still pending. The Bill would have also permitted authorities to circumvent a 1993 ruling by the highest court of appeal for Trinidad and Tobago, the Judicial Committee of the Privy Council in London, stating that a delay of more than five years in implementing a death sentence is cruel and inhuman treatment and should be commuted to life imprisonment. If the Bill had been passed, people sentenced to death in future could have been executed even if they had been on death row for more than five years. Furthermore, because the Bill retained the mandatory imposition of the death penalty for certain categories of murder, death sentences would not have been the product of individualised determinations and would have been imposed without affording the convicted person the opportunity to present mitigating circumstances. The Bill was defeated in the Parliament on 28<sup>th</sup> February, as the opposition claimed that the proposed amendments were ineffective in facilitating the implementation of the death penalty. Amnesty

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<sup>1</sup> The other country retaining the mandatory death penalty for murder is Barbados. However, the government has pledged to remove the mandatory death sentence.

<sup>2</sup> Statement by the Honourable Prime Minister on the Constitution (Amendment) (Capital Offences) Bill, 2011 in the House of Representatives, 14 January 2011.

<sup>3</sup> Amnesty International, *Trinidad and Tobago: New bill would make the constitution inconsistent with human rights and pave the way to executions* (Index AMR 49/001/2011)

International is concerned that the evident contradiction with international human rights law and standards was not discussed in the parliamentary debate. The Bill can only be reintroduced in Parliament after six months. However, given that the need to resume executions is presented both by the ruling coalition and by the opposition as a crime-control measure, it is not unlikely that similar legislative proposals will be submitted to Parliament in future.

Trinidad and Tobago, along with all English-speaking Caribbean nations, voted against the 2007, 2008 and 2010 UN General Assembly resolutions calling for a moratorium on executions.

### **Discrimination against lesbian, gay, bisexual and transgender persons**

Homosexual activity is criminalized in Trinidad and Tobago. Sections 13 and 16 of the Sexual Offences Act criminalise “buggery” (punishable with 25 years’ imprisonment when committed by one adult on another) and same-sex sexual intercourse qualifies as “serious indecency” (punishable with 5 years’ imprisonment when committed by same-sex persons of sixteen years of age or more). Also, paragraph 8 (1) (e) of the Immigration Act prohibits entry into Trinidad and Tobago of “prostitutes, homosexuals or persons living on the earnings of prostitutes or homosexuals, or persons reasonably suspected as coming to Trinidad and Tobago for these or any other immoral purposes”. Although these provisions are not enforced, they contribute to creating a discriminatory environment against lesbian, gay, bisexual and transgender persons.

### **Ratification of international human rights treaties**

In May 1998 Trinidad and Tobago withdrew its ratification of the Inter-American Convention of Human Rights and of the first Optional Protocol to the International Covenant of Civil and Political Rights. On the same day that it had withdrawn its ratification of the first Optional Protocol to the International Covenant of Civil and Political Rights, Trinidad and Tobago attempted to re-accede to the Optional Protocol with a reservation that would have excluded all those on death row from taking up the right to individual petition. The Human Rights Committee concluded that to exclude a whole group of persons from this right was so discriminatory and contrary to the object and purpose of the ICCPR that the reservation was invalid. The withdrawal from the Optional Protocol has the effect of denying to all citizens the right to file individual petitions with the Human Rights Committee.

Trinidad and Tobago has yet to ratify the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; the International Convention for the Protection of All Persons from Enforced Disappearance; and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

## **C. Promotion and protection of human rights on the ground**

### **Excessive use of force by the security forces and lack of independent investigations**

Excessive use of force by the Trinidad and Tobago police service is widespread, as is evident from the large number of alleged unlawful killings and ill-treatment cases. At least 40 people were reported to have been killed by police during 2008, and at least 39 people in 2009. In most cases, police officers involved in the killings claimed they acted in self-defence. However, in some cases, witness testimonies and other evidence suggested the killings might have been unlawful. Many killings also sparked violent protests among the communities in which they took place.

One such case is that of Tristan Cobbler, who was allegedly shot dead by police on 3 January 2010. Tristan called his mother and told her that he had been shot in the leg by the police and was hiding in a

bushy area in Mentor Alley, Laventille. While on the phone, she heard him say: “Oh God, I can’t move. Don’t shoot me”. Tristan’s mother found her son’s body where he had indicated he was hiding. The autopsy revealed that he had died of multiple gunshot wounds to the legs, neck, back and chest. The police declared that a gun was found beside the body. The killing sparked protests by residents, who claimed that Tristan was murdered in cold blood.

Mechanisms to hold members of the police service accountable for alleged abuses are weak. On 1 January 2007 an amendment to the Police Complaints Authority Act entered into force, enabling the institution to investigate criminal offences involving police officers, corruption and serious misconduct. However, the law contains ambiguities about these powers, and in its 2008 annual report the Police Complaints Authority recommended a further amendment in order to clarify the scope of the Act. The Authority said that legislative provisions were necessary to clarify the competence of the Authority to investigate all cases of killings by the police, as “the present system whereby the police handle such investigations continues to be unsatisfactory and unacceptable”. The Authority’s work was also hampered by it having no director for almost three years, until December 2010. A backlog of 1000 complaints was reported in February 2011.

The professional conduct of the police service has been scrutinized on a number of occasions, especially in the light of the high incidence of violent crime and the failure to bring police officers responsible for abuses to justice. In July 2007, a Parliamentary Joint Select Committee issued a report which was highly critical of the police service. The report highlighted the persistent failure by police officers to appear in court as complainants or witnesses, leading to many cases being dismissed. The report also spoke of a disturbingly high number of disciplinary charges against officers, a need to combat the increased levels of indiscipline within the police service, and a “serious lack of accountability from top to bottom” in the police force. In July 2008, Acting Commissioner of Police, James Philbert, acknowledged that the Police Service owed the nation an apology for the poor quality of policing experienced by some sectors of society over the years. In October 2010, the Deputy Commissioner of Police acknowledged that it would be “a monumental task” to transform the Police Service.

### **Administration of justice**

Shortages of judges and lawyers translate into heavy backlogs in the courts and lengthy pre-trial detentions. Furthermore, the inadequate protection of witnesses is a serious concern. Several state witnesses have been killed, and many witnesses reportedly decline to give evidence at the last moment because of threats. For example, Gabriel Charles refused to testify against two men charged with murder when the case was called in the Point Fortin Magistrates’ Court in 2008, fearing that he would be killed. He was shot dead near his home three days later. Systematic intimidation and the frequent murder of witnesses, combined with a low detection rate for violent crime, mean a diminishing number of serious cases reach trial.

### **Violence against women and girls**

Gender-based discrimination and violence against women and girls, including sexual violence, is widespread in Trinidad and Tobago. In October 2009, the Leader of Government Business in the Senate announced that there had been a four-fold increase in deaths as a result of domestic violence between 2004 and 2008, and a 60 per cent increase in complaints of domestic violence over the same period. According to police statistics, 632 rapes, incest and other sexual offences were reported in 2010. The press reported that at least 260 of these were “violent rapes”. Women’s organizations believe that sexual and domestic crimes go under-reported mainly because the police is not adequately trained

in how to deal with cases of violence against women. It is also reported that multiple complaints from the same victim are recorded as separate incidents.

Access to justice for victims of sexual offences is unsatisfactory. In 2009 the conviction rate for sexual offences was only 3%. There are a number of reasons why the conviction rate is so low, including reluctance on the part of victims to go to court for fear of victimization; delays in the investigation and judicial processes; lack of confidence in the judicial process; and a lack of support services. Also significant is the inadequacy of evidence produced by the police, which leads prosecutors to drop charges in many cases. Women's organizations believe that more support is needed for survivors of domestic violence, including an increase in the number of shelters and enhanced training for health care and other relevant services.

A draft National Policy on Gender and Development from 2009 acknowledged that gender based violence is an obstacle to national development, and indicated a number of policy measures to be implemented in order to "alleviate, prevent and treat with [respect] the issue of gender based violence".<sup>4</sup> These included the adoption of legislation on sexual harassment; the revision of existing legislation with a view to improve legal remedies for all forms of gender based violence; the creation of centralized system for data collection; the establishment of specialized Rape and Sexual Offences Units within police stations; and strengthening the capacities and the effectiveness of shelters for victims and their children. The policy has not been adopted yet.

## **D. Recommendations for action for the State under review**

### **Amnesty International calls on the government:**

#### *The death penalty*

- To immediately establish a moratorium on executions with a view to abolishing the death penalty, and to commute without delay all death sentences to terms of imprisonment.
- To immediately remove all provisions in national law which are in breach of international human rights law, in particular by abolishing all provisions which provide for mandatory death sentences.
- To ensure rigorous compliance in all death penalty cases with international standards for fair trial.
- To refrain from proposing and adopting legislative and constitutional amendments which could result in the resumption of executions in violation of international human rights law and standards.
- To ratify without reservations the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at abolition of the death penalty.

#### *Discrimination against lesbian, gay, bisexual and transgender persons*

- To repeal all provisions that criminalize same sex relations, including in the Sexual Offences Act.
- To repeal provisions in the Immigration Act that are discriminatory against lesbian, gay, bisexual and transgender persons.

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<sup>4</sup> Draft National Policy on Gender and Development of the Republic of Trinidad and Tobago, June 2009, page 35.

#### *Excessive use of force by the security forces/ lack of independent investigations*

- To ensure that all complaints of human rights violations by the security forces are subject to immediate, thorough and independent investigation, and that those found responsible are brought to trial in an expeditious manner.
- To amend the Police Complaint Authority Act in order to ensure that the Police Complaint Authority has the necessary powers to investigate all alleged misconduct and allegations of human rights violations by members of the police force, including killings and torture and other cruel, inhuman or degrading treatment.
- To ensure that the Police Complaint Authority has the power to refer cases for criminal prosecution to the public prosecutor and to suggest disciplinary measures to police departments.
- To ensure that adequate resources are allocated to the Police Complaint Authority in order for it to effectively perform its investigative tasks, including funds to hire and train independent skilled investigators.
- To ensure that members of the Trinidad and Tobago Police Service are adequately trained on the appropriate use of force and firearms in accordance with international standards, including the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- To reform the Trinidad and Tobago Police Service in order to ensure that it is a representative of and responsive and accountable to the community as a whole.
- To ratify and implement the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, and the International Convention for the Protection of All Persons from Enforced Disappearance.

#### *Administration of justice*

- To take adequate measures aimed at reducing court backlogs, expedite trials and reduce the length of pre-trial detentions, in line with international standards for fair trial.
- To increase the number of attorneys-at-law in the Department of Public Prosecutions.
- To provide adequate protection to all state witnesses in criminal trials, including by enhancing the Witness Protection Programme.

#### *Violence against women and girls*

- To establish specialized rape and sexual offences units within the police stations and to train police officers in adequately dealing with complaints of domestic violence.
- To ensure satisfactory investigation and prosecution of cases of gender-based violence.
- To increase the number - as well as strengthen the capacities and effectiveness - of shelters for victims of gender-based violence and their children.
- To ensure the adoption and the co-ordinated implementation of the National Policy on Gender and Development.

#### *Ratification of international human rights instruments*

- To ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.
- To re-accede without reservations to the first Optional Protocol to the International Covenant of Civil and Political Rights and to the American Convention on Human Rights.