

# **Trinidad and Tobago**

## **End police immunity for unlawful killings and deaths in custody**

In 2000 Amnesty International presented a summary of its concerns on human rights issues in Trinidad and Tobago to the United Nations Human Rights Committee for the consideration of Trinidad and Tobago's combined third and fourth periodic reports submitted under article 40 of the International Covenant on Civil and Political Rights (ICCPR).<sup>1</sup> Among the concerns highlighted by the organization was the use of excessive force by police officers, including possible extrajudicial executions and deaths in police custody, and the failure of the authorities to fully and impartially investigate the allegations to clarify the circumstances and bring those responsible to justice.

Amnesty International has continued to monitor reports of fatal shootings by police officers in disputed or suspicious circumstances, ill-treatment and some deaths in custody.<sup>2</sup> The organization notes with concern that there has been little significant improvement in investigations to clarify the circumstances surrounding these deaths and bring those responsible to justice. Amnesty International recognizes the difficulties faced by police officers in the course of their work to prevent and detect crime and to protect citizens from increasing levels of crime being reported in Trinidad and Tobago. The organization considers that a human rights approach to policing that includes making clear what actions (or omissions) by police are considered abuses, and which holds individual officers accountable for those actions or omissions, should be a primary goal of any strategy to identify and target the causes of violence as well as respond to its incidence and consequences. The organization believes that this approach, that should be at the heart of any reform process, represents the best means of ensuring that police practices recognize the human dignity and the rights of every person in Trinidad and Tobago, while providing them with effective protection from crime. It is in this light and in the context of the ongoing police reform process in Trinidad and Tobago that Amnesty International is publishing its latest report.

The report looks at several cases of apparently unlawful killings and deaths in police custody that have been reported since September 2003 and the failure of the authorities to conduct full, prompt and impartial investigations to clarify the circumstances and bring those responsible to justice. It considers some of the key problems in investigations into allegations of police abuse including serious shortcomings in the internal and external police complaints mechanisms. These deficiencies, coupled with lengthy delays in judicial inquiries into fatal shootings and other serious human rights violations, have denied relatives of the victims the right to an effective remedy and allowed a climate of impunity to flourish. The report discusses the need for a human rights approach to policing and includes a number of

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<sup>1</sup>The Government of Trinidad and Tobago acceded to the Covenant on 21 December 1978.

<sup>2</sup> See for example, "The killing of Anton Cooper: "What I saw was murder"", AI Index: AMR 49/003/2002 and other documents and actions against the death penalty.

recommendations that Amnesty International believes are essential components of any police reform process and for ensuring the delivery of truth and justice.

In 2004, 21 people were reported to have died after being shot by police or while in police custody; in 2005 14 people were reportedly killed. Police descriptions of these fatal shootings carried in media reports often referred to armed confrontations between police officers and criminals or gang-members or to police acting in self-defence after they had been attacked. However, such claims were frequently disputed by eye witnesses who said that the shootings were unprovoked. In several cases, the police announced that they were launching an investigation into the death but to Amnesty International's knowledge, information about the course of internal investigations, or their findings in relation to particular breaches of specific codes of procedure was not made public.

Amnesty International received reports about several irregularities in the handling of some of these cases including allegations that police officers suspected of involvement in fatal shootings in disputed circumstances remained on active duty. At the time of writing, for example, police officers suspected of involvement in the fatal shooting of 17-year-old Sherman Monsegue in October 2004, were said to be still on active duty in Carenage, where the teenager was killed.<sup>3</sup>

There have also been reports of police harassment of witnesses. During the investigation conducted by the police into the death in custody of Shaun McLeod in September 2003, a witness to the arrest made a statement in which he reportedly stated he had seen Shaun McLeod being beaten at the time of his arrest. The witness reportedly refused to sign the statement when it was read back to him as it failed to include a reference to the beating. The witness then alleged that the police officer squeezed the veins at the back of his neck and slapped him several times. When he continued to refuse to sign the statement, the officer was reported to have said, "next thing he faint away or dead too, and cause more trouble". The witness subsequently submitted another statement to the investigating officers via an attorney-in-law.

Under human rights standards ratified by Trinidad and Tobago, it is incumbent on the state to rigorously investigate allegations of human rights violations including the deprivation of life by unlawful lethal force. In addition to putting in place mechanisms to prevent human rights violations from occurring, the state is obliged to ensure that those that do occur are investigated promptly, thoroughly, independently and impartially, that those responsible are brought to justice and the victims and their relatives offered redress.

#### Increasing crime and government response

Recent years have witnessed a marked increase in levels of crime, particularly violent crime linked to the growth in the drugs trade and the proliferation of illegal weapons. Figures for

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<sup>3</sup> See page 6 for further details about the case.

the number of murders committed between 2000 and 2005 show yearly totals increasing from 120 in 2000, 260 in 2004 to 389 in 2005 among a population of 1.3 million. In 2005, at least 235 people were kidnapped, more than 54 of whom were reportedly held for ransom. Some believed that corrupt police officers were behind some of these kidnappings and in August 2005, two members of the special reserve police were arrested for their alleged involvement in the abduction of two sons of a prominent businessman. The increase in crime has elicited calls for tougher measures against offenders, including calls to resume executions.<sup>4</sup> In October 2005, public fear about rising crime and the government's apparent failure to bring the problem under control, led at least 10,000 people to take part in a protest through the streets of the capital city, Port of Spain.

The issue of crime dominates the political agenda and successive governments of the Peoples' National Movement (PNM) and United National Congress (UNC) have announced a range of measures to address the situation and improve police performance. However, legislative reform and administrative measures enacted to date appear to have had little impact on crime levels or the ability of the police and criminal justice system to effectively address the problem.

Police officers of the Trinidad and Tobago Police Service undoubtedly face difficult situations in the struggle to prevent and combat crime for which they often appear inadequately trained and under resourced. A report issued by the Centre for Criminology and Criminal Justice of the University of the West Indies in 2002 detailed high levels of stress, lack of discipline, discontent and alcoholism among police officers and a lack of support of junior police officers by senior officers.<sup>5</sup> The report stated that a survey of some 550 officers indicated "a wounded police service in need of quick healing, repair and reconstruction. From the officers' responses, it appears that the human factor in the service is fractured." A number of recommendations were made including the urgent need for a human resource development plan to address the high levels of discontent within the service.

In 2005, the PNM government led by Patrick Manning announced that it had invited a team of academic experts in justice administration from the United States to improve "the

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<sup>4</sup> The death penalty is mandatory for murder in Trinidad and Tobago. The last executions took place in 1999. On 7 June 2005, the Attorney General John Jeremie announced to Parliament that: "Our sense of terror has increased all as a relatively small band of criminals have held us to ransom and sought to change our lives...Government intends that every person on death row will be hanged if the opportunity is available to the State. If the courts intervene, the State will, cognisant with the rule of law, do everything within its power to pursue the sentence of death in relation to every person on death row." On 8 June 2005, the authorities issued a warrant for the execution of Lester Pitman. Two days later, a stay of execution was granted by the High Court pending further legal hearings.

<sup>5</sup> The report, entitled, "A Human Resource Survey of Policing and Organisational Readiness in the Trinidad and Tobago Police Service" was submitted to the office of the Prime Minister, the Minister of National Security and the then Police Commissioner in August 2002.

management of the police service and its ability to effectively fight crime”<sup>6</sup>. Officers from the United States’ Federal Bureau of Investigations and the United Kingdom’s Scotland Yard were also reported to have been drafted in to assist in the transformation of the force. Other measures announced by the government included additional technical resources, the creation of a special anti-crime unit (SAUTT), the construction of new police stations and refurbishment of others<sup>7</sup>.

Fatal shootings and deaths in custody

**UN Code of Conduct for Law Enforcement Officials:**

***"Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty" (42) – Article 3***

International standards uphold the principle that the use of force is an exception, and to be used only when strictly necessary and to the extent required for the performance of duty. These standards are based on the balance between the right to life and security of the person and the need to prevent crime and bring criminals to justice. All rights emanate from the supreme right to life, and no state may derogate from the right to life, even at a time of public emergency. If a police officer kills a fleeing suspect who should be presumed innocent until proven guilty beyond reasonable doubt in a court of law, the determination of guilt or innocence of the suspect is circumvented. In addition, if there is no proper system of accountability, the guilt or innocence of the police officer responsible for the shooting will also never be established.

The following cases are among several reported to Amnesty International during 2004 and 2005. The organization wrote to the authorities in January 2006 requesting information about the current status of the investigations into these deaths but has received no substantive reply. Amnesty International is concerned that these shootings may have violated international standards concerning the use of force, which provide that the use of force must be proportionate to the threat faced; that firearms may only be used in self defence or to defend others against an imminent threat of death or serious injury<sup>8</sup> and Aonly when less extreme measures are insufficient to achieve these objectives<sup>9</sup>; and that, A in any event, intentional use of firearms may only be made when strictly unavoidable to protect life.<sup>10</sup> Principle 34 of the

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<sup>6</sup> The plan put forward by the team of experts headed by Dr. Stephen Mastrofski, Professor of Public and International Affairs at George Mason University is reported to include a diverse range of topics including training seminars in crime control, strengthening crime analysis and data, improving investigations of complaints against police officers, building more public support, improving performance, and the creation of a promotion system based on merit.

<sup>7</sup> In a visit to Trinidad and Tobago in 2003, Amnesty International delegates met with the president of the Police Service Social and Welfare Association and was told that conditions at the Carenage Police Station had become so bad that officers abandoned it. In January 2006, police officers were reported to have walked out of the St Joseph police station, saying they were no longer prepared to work in a dilapidated building infested with rodents and fleas.

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the United Nations General Assembly in 1988, states, *inter alia*, that whenever a death in custody occurs, “an inquiry into the cause of death...shall be held by a judicial or other authority”. It also states that the findings of any such inquiry should be made available upon request, “unless doing so would jeopardize an ongoing criminal investigation”.

Fatal shootings:

**Aldryn Alexander Noel**, 32, was reportedly shot and killed by police officers on 1 June 2003 at Bagatelle Extension, San Juan. Relatives who stated that they witnessed the incident alleged that two plainclothes police officers ran towards Aldryn Noel without identifying themselves and with guns drawn. The officers fired as Aldryn Noel fled and he was hit in the buttocks. The relatives further alleged that the police officers refused to allow Aldryn Noel to be taken to hospital or to call an ambulance and left him without medical attention for over 30 minutes before a local resident took him to hospital, where he later died.

On 7 January 2004, **Christopher Kanhai**, 32, was reportedly with a hunting party near the Lalaha Forest in Paria when they were stopped by police from the Northern Division. According to witnesses, Christopher Kanhai was killed by a single shot to the chest. The police reportedly stated that they had stopped the group and that Kanhai pointed a shotgun at them, forcing officers to fire in self defence.

On 24 January 2004, **Kevin Cato**, 18, was shot dead by police officer Dave Burnett at a Carnival dance in Chaguaramas. Ryan Soloman, 22, was also shot by the same officer but survived. According to eyewitnesses, an argument arose between the two men and the police officer, who was not in uniform. According to Ryan Solomon, the police officer slapped him after he had bumped into him while dancing to music playing at the time. Solomon said he slapped the officer back who then took out his gun and shot him and Kevin Cato. The police officer claimed he shot the men in self-defence but this was refuted by other eye witnesses. A few days after the killing, the officer from the Western Division was reportedly charged with murder. In February 2006, the case went to trial in the Fourth Criminal Court in Port of Spain. On 22 March 2006, PC Dave Burnett was convicted of murder and sentenced to death. Amnesty International welcomed the conviction but called for the death sentence to be commuted.

On 2 April 2004, **Galene Bonadie**, 41, was killed by a police officer in Morvant. According to reports, Galene Bonadie was shot at close range with a rifle after she intervened to stop the police beating a man. Eyewitnesses claimed the officer, when challenged by Bonadie, aimed his rifle and fired without warning. The Senior Superintendent of the area is reported to have said that a crowd of on-lookers had tried to stop the police making an arrest and had attempted to take a weapon from an officer. When the officer tried to secure the weapon, it accidentally went off. The Superintendent also claimed that two shots had been fired at the officers earlier and that one policeman had been severely beaten. In June 2004, it was

reported that the Director of Public Prosecutions ordered an inquest. The inquest has been subject to delays and has been adjourned since the beginning of 2005.

In January 2005, an arrest warrant was issued against a witness to the police shooting of Galene Bonadie, for failing to appear at the inquest. A lawyer representing the Bonadie family is reported to have said that the failure of the witness to appear was because of police harassment and reportedly indicated that another witness in the same case, who had allegedly been followed by police officers from the North Eastern Division Task Force, had been kicked and threatened.

On 13 October, 17-year-old **Sherman Monsegue** was shot and killed by police of the Western Division. Reports indicate that Sherman Monsegue, who lived in Carenage, was in the street with a friend when a jeepload of police arrived. The two are reported to have run off but the police opened fire and the injured teenager was allegedly dragged out of some bushes, before being taken to hospital where he died. According to the police, it was Sherman Monsegue who opened fire first but this was denied by a number of witnesses to the incident. A police investigation was reportedly opened into his death. It was nearly a year before the inquest began in September 2005. Police officers called to appear as witnesses have so far failed to turn up. In addition, attorneys representing the interests of the family of the victim have not been given access to all relevant documentation, including witness statements. The inquest was due to resume on 25 April 2006.

On 3 January 2005, **Kevin Wallace**, 37, was shot dead by police, reportedly while he was having a drink with friends on Ethel Street, La Romain. The police alleged that they were attacked first and that a single shot was fired which struck Wallace in the chest. Eyewitnesses claim he was shot in the back as he tried to run away.

Twenty-year-old **Kendell Hamilton** was shot dead by a member of the Inter-Agency Task Force in Laventille on 9 August 2005. Police alleged that they fired in self-defence but relatives claimed Kendell Hamilton was unarmed when the shooting took place. The police reportedly removed the body without waiting for independent investigators to examine the crime-scene. An investigation was reportedly carried out by the police but it is not known if the findings were submitted to the Director of Public Prosecution nor whether criminal proceedings have been initiated against police officers involved.

#### Deaths in custody:

Amnesty International is also concerned about the deaths in custody of **Shaun McLeod** in September 2003, **Noel Stanley** in June 2004, **Irvin Fritzwilliams Davis** in February 2005 and **Fitzgerald Edwards** in July 2005.

**Shaun McLeod** was taken into custody by police officers on 5 September 2003, after he allegedly verbally abused them. He died shortly after arrest. According to the autopsy, the cause of death was “cerebral haemorrhage and blunt force trauma to the head”, which was

consistent with the allegations of witnesses to his arrest that he was beaten by police officers. According to media reports, the police initially stated that “senior police officers who viewed the body at the mortuary said that there were no marks of violence”. A police officer was reportedly charged with manslaughter in connection with Shaun McLeod's death but Amnesty International is unaware of the outcome of any criminal proceedings.

On 13 June 2004, **Noel Stanley** died in hospital. According to media reports, he had been arrested just over three hours previously after allegedly throwing a bag of marijuana over the wall of Port of Spain prison. The first autopsy on the body initially concluded that death had been caused by a build-up of body fluids in the lungs and heart failure, conditions that can be brought about by a number of causes, and that the body showed no marks of violence. The police claimed Noel Stanley had complained of chest pains, collapsed and gone into a seizure. A second autopsy, conducted at the request of Noel Stanley's family and the Director of Public Prosecutions, concluded that the cause of death was asphyxia caused by strangulation, that Noel Stanley's testicles were swollen having been squeezed and that there were blood stains on the stomach wall, suggestive of blows to the area. Media reports also indicated that the police were investigating the possibility that Noel Stanley was taken into the prison and that prison guards were involved in his death.

**Irvin Fritzwilliams Davis** was reportedly beaten with the butt of a gun when he was arrested by police in Ste Madeleine on 27 February 2005. He died in hospital four days later. According to press reports an autopsy carried out at the Forensic Science Centre revealed that he had died as a result of “blows to the head with a blunt object”.<sup>8</sup>

**Fitzgerald Edwards**, 45, was reportedly arrested on 23 July 2005 for possession of cocaine. Witnesses alleged that police beat him at the time of arrest. He was taken to Guapo Police Station and was subsequently transferred to Point Fortin Police Station where he was reportedly found dead at around 6.30am on 25 July. Police were initially reported to have said that he died after suffering an epileptic seizure but an autopsy reportedly revealed that he died from multiple blunt force trauma to the body and head and a punctured lung caused by a broken rib. Press reports indicate that a police investigation was conducted into his death but the outcome of these investigations is unknown.

#### Investigations into allegations of human rights violations

Complaints of human rights violations by the police including allegations of torture and ill-treatment, unlawful killings or deaths in custody have rarely been fully investigated in Trinidad and Tobago. There have been a number of awards of compensation by the courts to individuals who have been beaten or shot by police officers but these have rarely been accompanied by criminal or disciplinary action. Amnesty International notes that the failure to bring to justice those responsible denies the individual and their relatives the right to an

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<sup>8</sup> “*Man dies after pistol-whipping by cops*” Trinidad and Tobago Mirror, 11 March 2005

effective remedy and violates international human rights standards ratified by the Government of Trinidad and Tobago.

The lack of recent, reliable or comprehensive data on reports of excessive use of force by police officers, including the number of people killed or injured through police shootings or other types of force and information about progress in investigations, makes it difficult to monitor police conduct in Trinidad and Tobago. However, an indication of the scant number of criminal prosecutions of police officers accused of unlawful killing is provided in an article that appeared in the daily newspaper *Trinidad Express* under the heading, "*Witnesses: He was beaten – death in a police cell*". The article observes that, "*Should the Director of Public Prosecutions find sufficient evidence to charge a police officer with the killing, it will be only the fourth time in the past five years that a murder charge has been laid against a police officer. During that time, 54 people have been reported killed by the police. And between 2000 and 2004, there has been a steady increase in the number of such deaths*".<sup>9</sup>

To Amnesty International's knowledge, in recent years only two police officers have been convicted of unlawfully killing a civilian while on duty.<sup>10</sup> In March 2006, Police Constable Dave Burnett was found guilty of murdering Kevin Cato on 25 January 2004 and sentenced to death. This was the first time a police officer had been convicted of murder while on duty. In a public statement, Amnesty International welcomed the conviction but expressed concern about the death sentence which Amnesty International opposes unconditionally and in all circumstances and called for the sentence to be commuted.<sup>11</sup> In April 2004, Police Constable Mihiset Greene was convicted of manslaughter for killing Neil Sutherland in April 1995. The officer had claimed that he shot Sutherland in self defence but this claim was rejected. Despite the conviction, he was granted bail in May 2004 after his lawyers argued that he would successfully appeal the conviction. His appeal was rejected and he returned to prison in January 2006 to serve a 10-year sentence.

Complaints against police officers are subject to internal investigations by the Complaints Division of the Police Service (PCD). Investigations into alleged abuses by police officers conducted by this division have been widely criticised as inadequate. In the briefing paper submitted by Amnesty International to the UN Human Rights Committee in 2000, the organization noted that "Independent inquiries have concluded that investigations lacked thoroughness and that officers have been given the benefit of the doubt, even if there was

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<sup>9</sup> *Trinidad Express* 3 August 2005.

<sup>10</sup> Krishna Jadoosingh was convicted of manslaughter in May 2002 but was freed on bail after a judge reportedly ruled that the loss of his police pension constituted a punishment and his lack of threat to the community meant imprisonment was inappropriate. *Trinidad Express*, 8 May 2002. In July 2002, police constable Ravi Lutchman was sentenced to two and half years' imprisonment for the 1997 fatal shooting of Ramchan Sookdeo in a game of "Russian roulette".

<sup>11</sup> For further information see public statement *Trinidad and Tobago: Death sentence for police officer convicted of murder* AI Index: 49/002/2006 issued on 30 March 2006.



corroborative evidence of misconduct. Disciplinary procedures have been criticised as ineffective and inadequate”.<sup>12</sup>

Since 1958 there have been at least six government-appointed inquiries into the Police Service in Trinidad and Tobago which have included findings on police accountability with regard to Covenant violations under articles 6, 7 and 10 of the International Covenant on Civil and Political Rights (ICCPR). Amnesty International notes with concern that the recommendations made in the course of such inquiries have not been implemented. Recommendations have included the instigation of disciplinary or criminal proceedings against individual police officers; and the revision of policies, practice and training provision relating to the use of lethal force.<sup>13</sup>

Amnesty International remains concerned about the lack of transparency in police investigations into alleged violations and believes the secrecy of police internal investigations undermines public confidence in the complaints and disciplinary process as well as the investigative process itself. Amnesty International believes that a human rights-based police Code of Conduct, a clearly defined duty to report abuses and a transparent and effective chain of command, responsive to and supportive of human rights, are essential to ensure operational accountability. Officers who report possible breaches should be protected from potential repercussions.

The Police Complaints Authority (PCA), a civilian oversight body, was set up in 1993 to monitor the investigation of complaints by the Complaints Division but to date has not had the power to initiate independent investigations. Since it cannot initiate its own investigations, it has been dependent on investigations carried out by the police and has frequently complained that the information provided has been inadequate and subject to lengthy delays. Although it can order the PCD to continue investigating a complaint, it can only review the disposition of a complaint itself at the request of the complainant.

In its Eighth Report covering the period 1 October 2003 – 30 September 2004, the PCA said it had received a total of 2562 complaints, including complaints of battery, harassment and criminal damage. According to the report, between 1999 and September 2004, the PCA received 12,919 complaints only 20% of which were investigated by the Complaints Division of the Police Service. In its Seventh Report, the previous Chairman noted that the PCA had sometimes had to wait “for as long as 5 to 6 years to receive the Division’s initial reports” and

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<sup>12</sup> Trinidad and Tobago: A Summary of Concerns. Briefing for the Human Rights Committee, UNCHR, 70<sup>th</sup> Session, October 2000, Geneva. AI Index: AMR 49/006/2000.

<sup>13</sup> An investigation conducted by a team from the United Kingdom’s Scotland Yard found evidence of the failure to adequately investigate killings by police officers and to pursue criminal allegations made against such officers, a breakdown in effective internal disciplinary procedures and a lack of accountability and supervision. Recommendations were made for the review of discipline and transfer procedures, administrative and record-keeping procedures, internal investigations and Coroner’s inquests. Final report published by Metropolitan Police, 20 July 1993. Reporting Officer Graham Seaby, LLB., M.Phil, Detective Superintendent, New Scotland Yard.

expressed concern over the quality of reports stating, “In many instances, the Division failed to address all aspects of the complaint.” He added, “All these shortcomings in the system contribute to the public’s demonstration of a lack of confidence in the police and its scepticism about the practice of ‘police investigating police’”.

Legislation that could potentially enhance the PCA’s ability to effectively monitor complaints against the police has been before parliament for several years. Proposals in the bill would empower the PCA to initiate complaints independently, removing the initial investigative role of the Complaints Division. At the time of writing, an agreement was reported to have been reached between the government and the opposition on the bill. It remains unclear however, whether recommendations made by the PCA would be binding on the authorities it addresses and whether it would have any ability to follow up on compliance with its recommendations, both essential components of an effective oversight mechanism.

The Police Complaints Authority Bill, along with the Police Service Bill and the Constitution Amendment Bill, - known collectively as the Police Reforms Bills - were first introduced in 2000. To date, the bills, which have undergone various amendments, have failed to gain passage. The Constitution Amendment Bill seeks to abolish the Police Service Commission<sup>14</sup> and replace it with a Police Management Authority and requires a two thirds majority in both chambers of Parliament. At the time of writing, it appeared that discussions in parliament were making some progress. Amnesty International hopes that a future Police Management Authority will play a more active role in promoting accountability to the community as a whole through, among other things, the inclusion of civil society representatives with appropriate experience, the agreement and public dissemination of human-rights based codes of conduct, and the monitoring of overall police performance and of public responses to it.

Coroner’s inquests to establish the cause and circumstances of death are not mandatory and when initiated, are often subject to frequent adjournments and delays, aggravating the uncertainty and suffering of the victim’s family. For example, an inquest into the case of

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<sup>14</sup> The Police Service Commission is responsible for appointments, promotion, transfer, removal, disciplinary control and the enforcement of standards of conduct and can act on allegations of corruption that are brought to its attention. It is also responsible for the appointment of the Commissioner or Deputy Commissioner of Police. In its March 2005 report on Trinidad and Tobago on the Follow-up Mechanism for the Implementation of the Inter-American Convention against Corruption, the Committee of Experts expressed concern about the “excessive amount of time” that the investigative and disciplinary rules for Service Commissions took in practice. It noted that the system used by the Police Service Commission of delegating to individuals the power of a tribunal over “minor acts of misconduct” had resulted in “problems with individuals not following the proper procedure or failing to ensure a fair hearing for officers. Often witnesses do not show up, or an excessive number of adjournments are called for by police officers, and allegations of misconduct are not thoroughly investigated by Investigating Officers of the Police Service Commission, 2002, section 10 cited in the report by the Committee of Experts on the Follow-up Mechanism for the Implementation of the Inter-American Convention against Corruption. 11 March 2005. SG/MESICIC/doc.136/04.rev.4.

Galene Bonadie who was shot dead by police on 2 April 2004 was interrupted last year by judicial review proceedings and at the time of writing, more than two years after her death, no date has reportedly been set for the inquest to recommence.<sup>15</sup> It was nearly a year before the inquest into the killing of Sherman Monsegue began. Delays during the preliminary inquiry mean that it can be years before a case goes to trial.<sup>16</sup>

An essential component of an effective remedy is the promptness with which a full and impartial investigation is conducted. Failure to act expeditiously puts intolerable strain on those concerned, and can lead to the loss or deterioration of physical evidence, reducing the chances of a successful prosecution. At the same time, witnesses' memories will fade over time or they can even become untraceable. In May 2000, 16-year-old Aneisha Neptune was shot dead by a police officer. An inquest was held and the officer was charged with murder. In August 2002, the charge was reduced to manslaughter. The case finally went to trial in March 2004 when the charges were dismissed by the judge on the grounds that the prosecution had provided different versions of the events that had lead up to the shooting.

While in recent years, the court system has benefited from some improvements in technological and human resources, the administration of justice remains slow and the backlog of criminal cases continues to grow.<sup>17</sup>

The failure by the authorities to ensure the implementation of effective codes of conduct, and supervisory mechanisms and, when necessary, criminal prosecutions, has resulted in a serious deterioration in relations with local neighbourhoods. In turn, this has deprived the police of the community support and assistance that are essential for preventing and combating crime.

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<sup>15</sup> See information about the case on page 5.

<sup>16</sup> Problems at the inquest phase are compounded by the frequent failure of police officers called as witnesses to appear before the coroner and failure to disclose all documentation to those representing the family of the deceased.

<sup>17</sup> On 31 January 2006 the *Trinidad Express* reported that a High Court Judge, Justice Rajendra Narine had complained about the lack of resources allocated to the judiciary and prison authorities. His complaints were connected to a ruling over the failure of police and prison authorities to "put adequate security measures in place to protect Rajesh Mathura while he was in a cell at the San Fernando Magistrates Courts in 1998 with close to 25 prisoners". Ordering compensation for the man who had been beaten and stripped during a riot, he highlighted a number of areas of concern – "*Legal departments of the State are understaffed because of poor remuneration; magistrates at the San Fernando courts have complained that as many as 80 prisoners are kept in the holding cells; police officers seem to be ill-equipped to deal with increased criminal activity; the Director of Public Prosecutions does not have enough staff and so has to rely on police officers to prosecute certain cases; the Forensic Sciences Centre is understaffed*".

International standards relating to human-rights based policing

**UN Code of Conduct for Law Enforcement Officials:**

*"Law enforcement officials shall at all times fulfil the duties imposed on them by law, by serving the community and protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession"- Article 1*

*"In the performance of their duty all law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons" - Article 2*

Trinidad and Tobago has ratified a number of key legally-binding international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR)<sup>18</sup>, and as with all other UN member states, has a responsibility under the 1945 UN Charter to promote respect for, and observance of, human rights and fundamental freedoms.

The 1948 Universal Declaration of Human Rights (UDHR) representing "a common standard of achievement for all peoples and all nations" for which "every individual and every organ of society" is required to strive sets out and enshrines these rights and freedoms.<sup>(1)</sup> In the 1993 Vienna Declaration, Trinidad and Tobago alongside the international community, affirmed that these rights and freedoms are the inalienable birthright of all human beings, that their protection and promotion is the first responsibility of governments, and that all human rights are "universal, indivisible, interdependent and interrelated."

While everyone shares a responsibility to uphold the UDHR in its entirety, a number of its provisions have a particular relevance to policing. These include:

- Everyone has the right to life, liberty and security of the person (Article 3);  
No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 5);
- All are equal before the law and entitled without any discrimination to equal protection of the law (Article 7);
- No one shall be subjected to arbitrary arrest and detention (Article 9);
- Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to a law in a public trial at which they have had all the guarantees necessary for their defence (Article 11(1));
- No one shall be subjected to arbitrary interference with their privacy (Article 12);
- Everyone has the rights to freedom of opinion and expression (Article 19);
- Everyone has the right to freedom of peaceful assembly and association (Article 20)

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<sup>18</sup> Regrettably, Trinidad and Tobago has yet to become party to the United Nations Convention against Torture or the Inter-American Convention to Prevent and Punish Torture. In addition, the government has withdrawn from two key international human rights instruments. In May 1999, the government withdrew from the American Convention on Human Rights and in 2000 from the Optional Protocol of the ICCPR, thereby denying citizens of Trinidad and Tobago access to lodge petitions with international bodies.

Police personnel, as officers of the state (where primary responsibility for the protection and promotion of human rights resides) are, with all other individuals and organs in society, obliged to know and to apply international standards for human rights. Moreover, Article 28(2) of the UDHR recognizes that a "social order" is a necessary condition for the realization of the above and all other rights. Within the context of ensuring "social order", the effective deployment of a policing service in a manner that respects human rights is one of the key means which a sovereign state can fulfil both its international obligations and its obligations to its own citizens.(3)

This overarching purpose is reflected in core police functions recognized and carried out by police services around the world, notably:

- The prevention and detection of crime;
- The maintenance and, where necessary, the restoration of public order;
- The protection of individuals, including provision of aid and assistance in emergencies of all kinds affecting the individual or the wider community.

It is clear that police officers can and should be regarded as protectors of human rights. Not only are they instrumental in the maintenance of "social order" generally, but they are also directly involved in ensuring a range of specific rights set out within the UDHR. Protection of the right to life, for example, requires enforcement of laws which create offences of murder and other forms of unlawful killing, and entails a continuous police process of crime prevention and detection.

In addition, police in many jurisdictions are playing a greater role in, for example, the protection of women from violence in the home, as governments increasingly implement their obligation not only to respect rights by refraining from violating human rights themselves through their state agents and apparatus, but also to protect individuals from abuse by others (i.e., non-state actors) and to promote enjoyment of human rights in a wider sense.

However, it is also true that police are often the perpetrators of violations of human rights, and in certain circumstances serve to maintain repressive social orders that undermine or deny a broad array of fundamental rights. In such cases legitimate limitations on the enjoyment of rights, which are recognized in Article 29 of the UDHR,(4) are exceeded. This Article, by stipulating the only purposes for which rights and freedoms may be restricted, sets limits on police powers. In short, police may legitimately be given powers that restrict human rights *only* for the purposes of securing the human rights of others and of meeting the requirements of morality, public order and the general welfare in a democratic society. In addition, police must not *exceed* the powers given by law to them.

While the above human rights principles underpinning both the purpose and the implementation of policing may appear clear, their breach within day to day police practice around the world points to persistent obstacles to the achievement of genuine human rights-based policing.

Among such obstacles is a belief held by many police officers, and often shared by ordinary members of the public, that human rights can be an impediment to "effective" policing. According to this perspective, a human rights approach to policing tends to be overly concerned with the rights of criminals rather than the victims of crime, who also have a right to protection. Such attitudes are likely to become increasingly entrenched among police officers if the community which they serve perceives that the threat from crime, especially violent crime, is real and rising.

In the course of their everyday work in their communities, individual police officers often act with a degree of autonomy and independent judgement, exercising discretion in the discharge of their duties and the enforcement of particular laws. If the prevailing police culture is one within which officers view their anti-crime "law enforcement" function as trumping human rights principles there is a risk that, over time, police practice will become seriously tainted by unethical or unlawful conduct.

Unless checked by well-conceived procedural codes of conduct, effective supervisory mechanisms and, if necessary, criminal prosecutions, police misconduct including unlawful behaviour and patterns of corruption, risk resulting in a serious deterioration in relations with local neighbourhoods. This risks depriving the police of the community support and assistance which are an essential context for preventing and combating crime. In addition, if human rights abuses by police result in miscarriages of justice leading to the punishment of the innocent, there is a danger of a collapse of public trust and confidence in the police.

Such policing cannot be described as either professional or effective. It is widely acknowledged in studies of police that they cannot be effective unless they have the consent of the people being policed. This is achieved when society believes that policing is impartial and carried out on behalf of all the community, rather than favouring certain groups within it. Further, a police service will be most effective, and will maintain the confidence, trust and respect of the public, when it is representative of the community.

A central challenge confronting policing reform processes around the world is how best to guarantee that police agencies are representative of the communities they serve and ensure their practices recognize the human dignity and the rights of all individuals, while providing them with effective protection from wrongdoing. The UN, in a continuing effort to assist member states in the development of national police practice consistent with the human rights framework, has developed a series of Principles, Codes and Guidelines related to policing.

The Resolution that adopted the UN Code of Conduct for Law Enforcement Officials states that "every law enforcement agency should be representative of and responsive and accountable to the community as a whole".<sup>19</sup> It establishes a fundamental standard on the

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<sup>19</sup> See resolution 34/169 Code of Conduct for Law Enforcement Officials, adopted by the UN General Assembly on 17 December 1979.

nature of human rights-based policing, and the relationship police should have with the communities they serve and political system within which they function.

The commentaries that accompany the eight articles of the Code of Conduct for Law Enforcement Officials, and other international standards, help interpret these core principles and should inform national processes of reform towards police agencies that are representative, responsive and accountable.

**a) Representative**

For a police agency to be representative of a community as a whole, its membership should be representative of the community according to key criteria, including race or ethnic group, gender, language and religion. Minority communities must be adequately represented, and individuals from these groups must be able to pursue their careers fairly and without discrimination. At a minimum, an internal police culture should be established that is sensitive to the needs and concerns of minority communities.

**b) Responsive**

While democratic systems allow for public concerns to be reflected through an elected legislature and other political institutions that direct and guide the police, a police service striving to be genuinely responsive to the community as a whole requires a leadership and internal culture that is committed to strengthening the consent and cooperation of the community they serve. There must be an awareness of and a willingness to respond to

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See also the UN Office of the High Commissioner on Human Rights' training materials on human rights for police which describe democratic policing principles in the following way:

***Representative policing*** ensures that:

- Police personnel sufficiently represent the community they serve;
- Minority groups and women are adequately represented through fair and non-discriminatory recruitment policies in police services; and
- The human rights of all people are protected, promoted and respected.

***Responsive policing*** ensures that:

- Police are responsive to public needs and expectations, especially in preventing and detecting crime and maintaining public order;
- Policing objectives are attained both lawfully and humanely;
- Police understand the needs and expectations of the public they serve; and

***Accountable policing*** is achieved in three ways:

- Legally: police are accountable to the law, as are all individuals and institutions in States;
- Politically: police are accountable to the public through the democratic and political institutions of government as well as through the police and citizen liaison groups; and
- Economically: police are accountable for the way they use resources allocated to them.

OHCHR Professional Training Series No. 5: Human Rights and Law Enforcement: A Manual on Human Rights Training for the Police, 1997.

community concerns and expectations of police methods and performance, especially in relation to new dimensions of crime and criminality.<sup>20</sup>

**c) Accountable**

The principle of public accountability, as in accountability to the community as a whole, encompasses both legal accountability and concepts of “democratic accountability”.

**Legal accountability** requires a transparent legal framework for policing, consistent with international human rights standards, which makes clear what actions (or omissions) by police are considered abuses, and which holds individual officers accountable for those actions or omissions.

Ensuring effective legal accountability requires a framework of independent, yet interlocking oversight mechanisms. They include:

- An independent prosecution service that actively pursues cases involving members of the police.
- An independent and proactive judiciary that takes action against reports of police abuses that come to light in the course of criminal proceedings or other legal processes, including judicial inquiries into deaths.
- An internal police accountability mechanism that fairly and impartially addresses breaches of police procedures, imposes disciplinary measures or proposes the initiation of criminal proceedings, and that thereby inculcates a culture of professionalism, ethical conduct and respect for human rights throughout the police service.
- An external police oversight mechanism (ombudsman or complaints investigation body) that is empowered to effectively and independently investigate complaints of abuses lodged against police officers and, that if necessary, recommends prosecution and remedial action.

Based on the core principles of representation, responsiveness and accountability, the UN Code of Conduct comprises eight articles safeguarding the rights of all persons and stipulating that these should be incorporated into national law and police practice.

These principles are reflected and reinforced in international human rights treaties (Conventions or Covenants),(7) and a body of Guidelines, Principles and Rules elaborated by the UN that are related to policing.(8) While international human rights treaties impose binding obligations on States’ Parties to prevent and investigate human rights violations, the non-treaty standards represent the consensus of the international community about the manner in which states should carry out their policing functions. These standards have the persuasive

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<sup>20</sup> Caracas Declaration, of the 6th UN Congress on the Prevention of Crime and the Treatment of Offenders, Caracas, 1980, and Milan Plan of Action, Article 5(h), of the 7th UN Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 1985.



force of having been negotiated by governments over many years, and of having been adopted by political bodies such as the UN General Assembly. They include the:

- UN Guidelines for the effective implementation of the Code of Conduct for Law Enforcement Officials;
- UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions;
- UN Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- UN Standard Minimum Rules for the Treatment of Prisoners (hereafter referred to as Standard Minimum Rules);
- UN Body of Principles for the Protection of All Persons under Any Form of Detention and Imprisonment (hereafter referred to as Body of Principles);
- UN Rules for the Protection of Juveniles Deprived of their Liberty;
- UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

### Conclusion

In January 2006, Amnesty International wrote to the authorities of Trinidad and Tobago setting out its concerns about allegations of human rights violations involving police officers and requesting information about the cases raised in this report. To date it has not received any substantive response to the questions raised.

Amnesty International recognizes that policing is frequently a difficult and dangerous task requiring expert training and skills. However, the pattern of impunity that has been the hallmark of investigations into allegations of human rights violations committed by police officers has further served to undermine public faith in the institution. In a number of instances it has been impossible to establish whether investigations to establish the circumstances surrounding the deaths of individuals whose cases are raised in this report have made any progress at all. In the few instances where allegations of human rights violations by police officers have been investigated by the authorities, progress has been so slow as to have seriously impeded any chance of a successful prosecution.

Amnesty International has identified a serious problem of police killings and lack of proper investigations which it believes requires the immediate and urgent attention of the authorities. The government of Trinidad and Tobago must send a clear message to society that human rights violations by police officers will not be tolerated and must act now to ensure that all cases of deaths in suspicious circumstances involving police officers are immediately, fully and impartially investigated and that those responsible are brought to justice. With this in mind, Amnesty International submits the following recommendations.

### Recommendations

The cases in this report should be investigated fully, promptly and impartially by a body which is independent of those allegedly responsible and which has the necessary powers and resources to carry out the investigation. Amnesty International hopes that the changes contemplated in the Police Complaints Authority Bill will be instituted as soon as possible.

Where the alleged offence amounts to a criminal act, individual officers should be brought to justice in processes which meet international standards for fair trial. Police officers suspected of involvement in human rights violations should be immediately suspended pending the outcome of the investigations.

Witnesses and/or relatives should be protected from intimidation or violence and any allegations of harassment should be thoroughly investigated and those responsible brought to justice.

The role played by coroner's inquests in establishing the facts behind cases of deaths in custody or fatal shootings and combating any perception of police impunity should be strengthened and should comply with international human rights standards. Coroner's inquests should therefore be made mandatory for all deaths in custody and deaths by police shooting and should be carried out without unreasonable delay. They should have the power to obtain all information necessary including the authority to oblige relevant officials and other witnesses to appear and testify and to compel the production of evidence. Families of the deceased and their legal representatives should be entitled to have access to all information relevant to the case, to present evidence and to examine witnesses.

Guidelines for the use of force and firearms should conform to the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. The standards should be reflected in written policies, training manuals and courses, and in operational briefings.

All incidence of use of weapons or firearms, whether intentional or not and whether or not they result in injury, should be immediately recorded and should be subject to scrutiny by an internal and/or an external oversight body.

All allegations of misuse of force or firearms should be investigated promptly, thoroughly, impartially and independently, in accordance with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and other international standards for such investigations. Such investigations should be conducted by an impartial internal investigation unit and/or an external investigation unit, according to the seriousness of the incident.

Ongoing analysis of incidents of use of force and firearms should be conducted by internal and external police oversight bodies to ensure that international human rights standards are being adhered to and, if they are not, to identify why and on the basis of the findings to

implement any necessary reform.

Participate in the international process to promote the principles of an Arms Trade Treaty based on international human rights and humanitarian law, in accordance with the recommendations of Oxfam, IANSA and Amnesty International's Control Arms campaign.

Illegal and surplus arms that could contribute to violations of international human rights and humanitarian law should be removed and destroyed and efforts to curb the illegal trade and transfer in arms should be reinforced.

The rules and procedures governing the conduct and reporting of medical examinations and post-mortems should be consistent with UN principles for the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, the UN Istanbul Protocol on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and other international standards.

Information about the forms of redress available and about the outcomes of investigations into police abuses should be publicly disseminated nationwide to ensure transparency and improve accessibility.

All police officers should be made aware through the chain of command that failures to protect human rights, or the violation of human rights, will result in investigation and corresponding sanctions.

Clear guidelines requiring officers to report abuses should be issued, and officers with chain of command control should be held responsible for enforcing such guidelines, with penalties imposed for failing to report, or covering up, police abuses.

Internal disciplinary procedures should be thorough, prompt and ensure fairness and due process both for complainant and police personnel.

All training and reform initiatives should be linked to the creation of effective accountability mechanisms. Training in human rights should be practical and reflect the reality of policing in the field, should be compulsory for new recruits and existing officers and should continue throughout the careers of police officers.

The United Nations Convention against Torture and the Inter-American Convention to Prevent and Punish Torture should be ratified and the withdrawal from the American Convention on Human Rights and the Optional Protocol to the ICCPR should be revoked. National legislation should be brought into line with international standards and implemented and enforced.

UN standards for law enforcement officials including the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials should be promoted, published and incorporated in law and practice.

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# **Trinidad and Tobago**

## **End police immunity for unlawful killings and deaths in custody**

### **RECOMMENDED ACTIONS**

Please ensure that all relevant people in the section have received copies for their attention, and that the document is centrally filed for future reference. Please refer to action circular AMR ../../.. for further suggestions for action.

### **DISTRIBUTION BY THE IS**

This document has been sent direct by the IS to: All Sections and CARRAN coordinators for distribution to groups.