

Human Rights Council Resolution 24/16 on the role of prevention in the promotion and protection of Human Rights.

Questionnaire

- 1. a) Please describe the legislative, judicial, administrative and other measures aimed at prevention of human rights violations and abuses in place at the domestic level, both with regard to direct prevention (aiming to prevent violations from occurring by reducing the risk factors that cause violations) and indirect prevention (aimed at ensuring non-recurrence through investigation and addressing causes of violations as well as accountability)**

Legislative measures

There are many pieces of legislation that protect the human rights of individuals in Trinidad and Tobago. The most important piece of human rights legislation is the Constitution. All other pieces of legislation relating to human rights are addressed according to the particular issue. The Constitution as well as some of the most important pieces of legislation that protect human rights is outlined as follows:

- The Constitution of the Republic of Trinidad and Tobago, 1976**

The Constitution is the supreme law of Trinidad and Tobago and all other pieces of legislation must be in conformity with it. The fundamental human rights and freedoms of all citizens, adults and children, resident or alien within the jurisdiction of Trinidad and Tobago, are protected under the Constitution. Section 4 of the Constitution guarantees fundamental rights and freedoms to be protected and enjoyed without discrimination by reason of race, origin, colour, religion or sex. These fundamental rights and freedoms include inter alia: the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law; the right of the individual to equality before the law and the protection of the law; the right of the individual to respect for his private and family life; freedom of movement; freedom of conscience and religious belief and observance; and freedom of thought and expression.

Section 5 of the Constitution further states inter alia, that Parliament may not authorize or effect arbitrary detention, imprisonment or exile of any person; impose or authorize the imposition of cruel and unusual treatment or punishment; deprive a person who has been arrested or detained (i) of the right to be informed promptly and with sufficient particularity of

the reason for his arrest or detention; (ii) of the right to retain and instruct without delay a legal advisor of his own choice and to hold communication with him; (iii) of the right to be brought promptly before an appropriate judicial authority; (iv) of the remedy by way of habeas corpus for the determination of the validity of his detention and for his release if the detention is not lawful, among other rights.

- **The Equal Opportunity Act, 2000**

The Equal Opportunity Act, 2000 seeks to protect persons against discrimination as it relates to employment, education, the provision of goods and services and the provision of accommodation. Under the Act, citizens are entitled to equality and fair treatment regardless of differing status such as sex, race, ethnicity, origin, religion, marital status or disability. The Equal Opportunity Act, 2000 establishes the Equal Opportunity Commission with responsibility for receiving complaints and providing redress for persons whose rights have been infringed in contravention of the Act.

- **The Domestic Violence Act, 1999**

The Domestic Violence Act, 1999 makes provisions for the application and issue of Protection Orders for the protection of victims of domestic violence. The Act defines “domestic violence” to include physical, sexual, emotional or psychological or financial abuse committed by a person against a spouse, child, any other person who is a member of the household or dependant.

- **The Offences Against the Persons Act, 1925**

This Act relates to the punishment of all kinds of offences against the person such as inter alia homicide, assaults and acts causing or tending to cause danger to life or bodily harm.

- **The Children’s Act, 2012**

This Act relates to criminal offences against children and child offenders. It was assented to by the President in 2012, and seeks to repeal and replace the **Children Act, 1925**. This new regime makes provision for offences against children that were previously not included in the old regime and strengthens the existing child protection regime. New crimes include, inter alia, offences relating to firearms; female genital mutilation; abuse of children through prostitution; sexual offences generally; dangerous drugs, tobacco and alcohol and offences relating to child pornography.

- **The Sexual Offences Act, 1986**

The Sexual Offences Act, 1986 deals with the punishment of all kinds of sexual crimes including procurement, abduction and prostitution of persons. In this Act, the offence of rape is broadly

defined. Section 4 states: “A person (“the accused”) commits the offence of rape when he has sexual intercourse with another person (“the complainant”) –

- (a) Without the consent of the complainant where he knows that the complainant does not consent to the intercourse or he is reckless as to whether the complainant consents; or
- (b) With the consent of the complainant where the consent (i) is extorted by threat of fear of bodily harm to the complainant or to another; (ii) is obtained by personating someone else; (iii) is obtained by false or fraudulent representations as to the nature of the intercourse; or (iv) is obtained by unlawfully detaining the complainant.”

- **The Trafficking in Persons Act, 2011**

This Act gives effect to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. It criminalises the offence of human trafficking for the first time in Trinidad and Tobago and creates specific protection for women and children. The measures prescribed in the Act to prevent and combat human trafficking include: protecting and assisting victims of trafficking; facilitating the efficient investigation of cases of trafficking in persons; facilitating the prosecution of individuals and organisations involved in trafficking in persons; and promoting cooperation between Trinidad and Tobago and other States in order to prevent and suppress trafficking in persons to punish offenders. A Counter-Trafficking Unit is also established under the Act to, inter alia, investigate cases, screen, identify, protect and assist victims and raise public awareness about the crime.

- **The Freedom of Information Act, 1999**

The Freedom of Information Act, 1999 seeks to protect the right to freedom of information by giving members of the public a general right (with exceptions) of access to official documents of public authorities. Some exceptions include: Cabinet documents, defence and security documents, international relations documents, internal working documents; law enforcement documents, documents affecting legal proceedings or subject to legal professional privilege, documents affecting personal privacy and documents relating to trade secrets.

Judicial measures

An individual whose Constitutional rights are violated or are likely to be violated by any branch of Government, or any servant or agent of the State, may apply to the High Court for redress. The High Court has original jurisdiction in Constitutional matters, with the provision to appeal to the Court of Appeal and further right of appeal to the Judicial Committee of the Privy

Council. Section 14 of the Constitution states that where any person alleges that such rights have been, are being or are likely to be contravened in relation to him, that person may apply to the High Court for redress by way of originating motion. Thus, the High Court has the power of enforcement in relation to the violation of constitutional rights.

Another judicial measure is that of judicial review. The *Judicial Review Act, 2000* provides for an application to the High Court for relief by way of judicial review. The High Court must give leave or permission before proceedings are brought under judicial review. The High Court can then conduct a review of the decision or conduct of the public authority or person exercising the public function, to determine whether or not the individual or the authority acted within its powers and in accordance with the principles of natural justice. The Court can also award damages on an application of judicial review, if such damages would have been recoverable in an ordinary action begun by claim form or Constitutional motion.

Administrative measures

The Ombudsman

Section 91 of the Constitution establishes the Office of the Ombudsman which is an administrative authority with jurisdiction for investigating alleged infringements of human rights or injustice. The Ombudsman Act, 1977 also governs the functions and procedures of Office. The Ombudsman investigates complaints made by individuals concerning administrative acts or decisions of Government agencies. He holds office for a period of five years and is appointed by the President acting in consultation with the Prime Minister and the Leader of the Opposition. The Ombudsman may refer matters to the authority competent to take disciplinary action or other proceedings where there is evidence of any breach of duty, misconduct or criminal offence on the part of any officer or employee of any government department or authority.

The Police Complaints Authority

The Police Complaints Authority is an independent statutory authority investigating complaints against police officers, including municipal and special reserve police officers. The functions of the Authority include: investigating criminal offences involving police officers, police corruption and serious police conduct; undertaking enquiries into, or audits of, any aspect of police activities for the purpose of ascertaining whether there is police corruption or serious police misconduct or circumstances that may be conducive to both; and gathering evidence that may be admissible in the prosecution of a person who is not a police officer for a criminal offence in

relation to the Police Service and to furnish that evidence to the Director of Public Prosecutions, or where an authority outside the State is concerned, the Attorney General, among other functions.

The Equal Opportunity Commission

The Equal Opportunity Act, 2000, section 26 establishes the Equal Opportunity Commission which seeks to promote equality of opportunity and good relations between persons of different status generally. The Commission is responsible, among other things, for receiving and investigating allegations of discrimination within the scope of the Act, and as far as possible, facilitating the conciliation of those allegations. Where conciliation has failed or where it may be inappropriate in the circumstances, the Commission may refer the matter to the Equal Opportunity Tribunal. The Tribunal is also established under the Act with a view to adjudicating matters referred to it by the Commission.

The Legal Aid and Advisory Authority

The Legal Aid and Advisory Authority was established by the Legal Aid and Advice Act, 1976. The Legal and Advisory Authority provides affordable legal advice and assistance on general areas of law to members of the public who are eligible. Legal aid, advice and representation in court are provided by in-house Legal Officers and Attorneys-at-Law. Legal aid and advice may be attained in a variety of criminal and civil matters.

b) Please describe any good practices in the implementation of these measures, as well as any challenges which have been faced.

Good Practices

Section 14 of the Constitution provides for the enforcement of the provisions protecting fundamental rights and freedoms. In Trinidad and Tobago, there have been an increasing number of persons seeking redress against the State. As such, more persons are becoming aware of their constitutional rights and their right to seek redress from the High Court.

The Equal Opportunity Commission (EOC) in keeping with its mandate to promote equality of opportunity, facilitates various awareness campaigns relating to combating discrimination and the role of the EOC in addressing issues of discrimination. In December 2014, the EOC hosted a breakfast seminar which introduced the Commission as a participant and activist in the gender

conversation in keeping with their statutory mandate to work towards the elimination of discrimination and promote equality of opportunity and good relations between persons and groups of different status generally. The seminar was held to commemorate, the end of the 16 Days of Activism from November 25, 2014, against Gender-Based Violence against women and girls around the world together with Human Rights Day, on December 10, 2014.

The Police Complaints Authority (PCA) has had significant progress in bringing rogue police officers to justice:

- For the period 2011-2012, the PCA was able to record an impressive 103 per cent increase in completed investigations.
- The PCA has also been raising public awareness of its mission and mandate through a series of community outreaches through its Community Outreach Programme which commenced in 2012. As a result, not only are citizens now more aware of the roles and functions of the agency, but the PCA has also heard directly from the public at these sessions about matters they need to address.
- The PCA was given more teeth with the proclamation of the Police Complaints Authority Act 2006. This new Act, which replaced the Police Complaints Authority Act, 1993, established the PCA as an independent corporate body with the power to investigate complaints within its remit without the involvement of the police.
- Under the former authority all complaints were submitted to the Police Complaints Division (PCD) of the Trinidad and Tobago Police Service for investigation. Now an independent team of investigators looks into all matters, ensuring that police are not investigating police.

Another example of a good practice is the implementation of the new Civil Procedure Rules 1998 in civil litigation. The overriding objective of the new rules is to enable the Court to deal with cases justly and expeditiously as the Court now exercises greater control over the litigation process and from an earlier stage. Since the implementation of the new rules, civil litigation matters are now able to go through the entire court process from filing to completion at a much faster rate than before. Further, claimants and defendants are also encouraged to engage in “out of court” resolutions such as “out of court” settlements or mediation.

In 2013, the Judiciary engaged in an Alternative Dispute Resolution Pilot Project to provide for the use of alternative dispute resolution (particularly mediation) in certain civil disputes with a view to: improving the pace of litigation; promoting early and fair resolution of disputes;

reducing the cost of litigation to the parties and the court system; improving access to the Court; enhancing the participants' satisfaction with dispute resolution in the justice system; and providing litigation outcomes that meet the needs of the parties.

Challenges

According to section 93 of the Constitution, the principal function of the Ombudsman is to investigate any decision or recommendation made, including any advice given or recommendation made to a Minister, or any act done or omitted by any department of Government or any other authority to which this section applies, or by officers or members of such a department or authority, being action taken in exercise of the administrative functions of that department or authority. However, the Ombudsman also operates within a certain restriction. Section 94 states that, "In investigating any matter leading to, resulting from or connected with the decision of a Minister, the Ombudsman shall not inquire into or question the policy of the Minister in accordance with which the decision was made."

Further, the Ombudsman has limited power to act in relation to where it is discovered after investigation that an injustice has occurred. Section 96 (2) states that where the Ombudsman is of the opinion that an injustice has occurred he shall inform the department of government or the authority of the reasons for his opinion and make recommendations. He may also specify in his recommendations the time in which the injustice should be remedied. If no sufficient action is taken to remedy the injustice, the Ombudsman shall lay a special report on the case before Parliament. As such, the Ombudsman cannot compel a government department or authority to take action or apply sanctions. He can only make recommendations and report to Parliament.

Another challenge is that of the process of investigations in the Police Complaints Authority. Although the investigating staff of the PCA is completely independent from the Trinidad and Tobago Police Service, the Special Reserve Police or the Municipal Police Force, there has been concerns raised about the pace of investigations, that is, the time it takes for an investigation to be completed and referred to the Director of Public Prosecutions (DPP). One contributing factor is the fact that the Office of the DPP as well as the Judiciary continues to be burdened by a backlog of cases in the Criminal Courts. In that regard, the Government has sought to reform the criminal justice system to address these issues (e.g. abolishment of preliminary inquiries).

A third challenge is that of the cost of litigation. Although the new Civil Procedure Rules 1998 has allowed for civil litigation to be more expedient which has led to reductions in costs for clients, litigation remains generally an expensive undertaking and even prohibitive for certain persons. However, the option of legal aid has increased access to justice for those who fit the criteria.

c) Please describe how such measures encompass all branches of the State (executive, legislative and judicial), and other public or governmental authorities, at whatever level – national, regional or local.

To illustrate this point the creation of the Police Complaints Authority will be examined, where all branches of the State, that is, the executive, legislative and judicature are engaged in this human rights protective mechanism.

The Police Complaints Authority (PCA) is an independent statutory body which was created by the Police Complaints Authority Act 2006 (legislative). Section 5 of the Act establishes the PCA. The Parliament saw it necessary to create such an authority and passed the legislation in 2006. Section 6 of the Act demonstrates the role of the Executive in the establishment of the PCA. Section 6 states, “the Authority shall comprise a Director and a Deputy Director to be appointed by the President on the joint advice of the Prime Minister and the Leader of the Opposition.” The appointment of the Director and the Deputy Director by the President is essential in ensuring the independence of the PCA as an institution. Further, the role of the Judiciary in this mechanism is to enforce the law in relation to the functions of the PCA. Section 33 of the Act gives the PCA the authority to apply to the High Court to make any order, issue such writs, and give directions as it may consider appropriate for the purpose of enforcing the Act.

2. a) What action-based policies, practices and strategies to prevent human rights violations and abuses have been put in place at the national level, including the establishment of the independent national institutions, national human rights action plans and any early warning mechanisms?

In Trinidad and Tobago there are a number of independent national institutions such as:

The Ombudsman

The principal function of the Office of the Ombudsman is the investigation of complaints of maladministration against government departments and agencies by members of the public. The role and functions of the Ombudsman are set out in section 93(1) of the Constitution, which reads as follows:

“The principal function of the Ombudsman is to investigate any decision or recommendation made, including any advice given or recommendation made to a Minister, or any act done or omitted by any department of Government or any other authority to which this section applies, or by officers or members of such a department or authority, being action taken in exercise of the administrative functions of that department or authority.”

The Equal Opportunity Commission

The Equal Opportunity Commission (EOC) was established in 2000. The EOC seeks to achieve mutual respect among groups based on understanding and appreciation of diversity and on shared respect for equality and human rights. The Commission aims to work towards the elimination of discrimination; promote equality of opportunity and good relations between persons of different ethnic and religious backgrounds; perceive, investigate and as far as possible, conciliate allegations of discrimination; develop, conduct and foster research and education programmes and other programmes for the purpose of eliminating discrimination and promoting equality of opportunity and good relations between persons of different races, ethnicities, religions, geographical origins, marital status, gender or physical disabilities; prepare and publish appropriate guidelines for the avoidance of discrimination.

The Police Complaints Authority

The Police Complaints Authority (PCA) is an independent corporate body mandated, among other things, to independently investigate complaints against police officers involved in criminal offences, police corruption and serious police misconduct. The PCA was established by the Police Complaints Authority Act, 2006 to provide civilian oversight of law enforcement in Trinidad and Tobago.

b) Please describe how national Human rights institutions contribute to prevention of human rights violations.

Trinidad and Tobago does not have a National Human Rights Institution.

c) In those States that have established a national preventative mechanism under the Optional Protocol to the Convention against Torture, please provide information on any lessons learnt regarding prevention of torture that may also apply to prevention of other human rights violations.

Trinidad and Tobago is not a party to the Convention against Torture and other cruel, inhuman or degrading punishment or the Optional Protocol.

3. a) Please describe what policies and processes are in place at the national level to collect, maintain and analyse statistical records on the situation of human rights in the country, in order to monitor the human rights situation and inform the formulation of prevention strategies and programmes; and please describe any good practices and the main challenges in this regard.

The Central Statistical Office (CSO) is a Division of the Ministry of Planning and Sustainable Development charged with the responsibility of taking censuses in the Republic of Trinidad and Tobago and collecting, compiling, analyzing and publishing statistical information relating to all social and economic activities of the people of the Republic of Trinidad and Tobago.

The International Law and Human Rights Unit (ILHRU) was established within the Ministry of the Attorney General with responsibility for drafting Trinidad and Tobago international human rights reports. As such, the ILHRU collects data relating to the implementation of human rights conventions and the advancement of human rights initiatives. This data is collected from Government Ministries, other Government institutions and civil society.

Statutory bodies and other Government institutions also collect data in relation to their scope of responsibility. For example, the Equal Opportunity Commission records data in relation to the complaints of discrimination filed with the Commission. A Central Registry on Domestic Violence and Child Abuse was also piloted by the Gender Affairs Division in the Ministry of Gender, Youth and Child Development which aims to collect, collate and analyse data on gender-based violence as a basis for informing policy and programmes aimed at reducing such violence.

Good practices

In the last census for Trinidad and Tobago 2011, the CSO introduced the option for online submission of information. That is, close to the end of the census period, households who were not visited were given the option to complete the questionnaire on line. Additionally, a few respondents opted to download the census questionnaire available on the CSO website or requested a copy of the questionnaire from the Census Unit. These completed questionnaires were hand delivered to the Office. This method of collection allowed for a larger number of persons to participate in the census.

Another good practice is the formation of an ad-hoc inter-ministerial committee instituted by the International Law and Human Rights Unit as a means of networking with Government Ministries and collecting data needed for the drafting of human rights reports.

Challenges

A major challenge for Trinidad and Tobago is the collection of data that is analysed and disaggregated for the purpose of analyzing the human rights record of the country. Currently, government institutions often work separately and collect data separately. As such, there is no centralized mechanism that collects data and information relating to the work being done by all government institutions.

b) Please describe how statistical collection ensures the inclusion of all persons and groups

Information not available

4. What measures have been taken to promote a human rights culture among the population and increase the level of human rights awareness in your country, including among public officials?

Several initiatives have been undertaken by Government ministries in an effort to promote a human rights culture. Some of these initiatives include:

- **International Day Observances**

Various ministries engage in the commemoration of international days of observance. For example, the Ministry of Gender, Youth and Child Development celebrate annually International Women Rights Day as well as International Children's Day. The Ministry of the Attorney General also recognizes Human Rights Day. In 2013, the Ministry of the People and Social Development held a march commemorating the United Nations International Day for the Eradication of Poverty.

- **Gender Focal Points project**

The Ministry of Gender, Youth and Child Development facilitated several workshops aimed at introducing persons from various Government ministries and public agencies to the basic concepts of gender and approaches to gender analysis and planning. This training was to allow for the setting up of Gender Focal Points in Government ministries and institutions with a view to managing and monitoring gender mainstreaming in their respective ministries or agencies.

- **Community Policing**

The Trinidad and Tobago Police Service (TTPS) has also taken on a human rights approach in dealing with crime and maintaining law and order through its Community Policing Secretariat. This is a collaborative effort between law enforcement and the community, which identifies problems of concerns to communities and work toward finding solutions to those problems. It is the community police officers and the community working together to help solve mutually defined problems through a deliberate effort aimed at reducing crime, violence, fear, insecurity and community decay. The TTPS role in the community is as follows: Lectures in schools (elementary,

secondary, vocational), Parent Teacher's Association, Youth Groups, Neighbourhood Watch Groups and Public and Private Sector Organisations on Crime Prevention with matters incidental to the Domestic Violence Act, Display Booths-Career Guidance, Youth Club Counseling, mediation, Annual Church Services, Military Funerals, Town Meetings, Sport and Culture.

5. a) How have partnerships with civil societies been strengthened to harness their experiences and expertise to promote and protect human rights?

The International Law and Human Rights Unit of the Ministry of the Attorney General has sought to network with civil society in an effort to obtain information and expertise in order to assist the Government in forming policy as well as in fulfilling its international human rights reporting obligations.

In 2011, the Ministry of the Attorney General facilitated a National Civil Society Consultation whereby fifty NGOs had the opportunity to make contributions to the drafting of the country's national human rights reports.

In addition, in 2013, the Ministry National Security obtained the assistance of the Living Waters Community, the leading NGO in dealing with asylum seekers and refugees, in order to formulate a national policy for refugee status determination in Trinidad and Tobago. In 2014, this national policy was approved by Cabinet.

b) What roles and actions can and do civil society and NGOs take to prevent human rights violations?

In Trinidad and Tobago, civil society and NGOs play a vital role in the prevention of human rights violations. They engage in shadow reporting to international bodies as well as engage in extensive field work and research. Many NGOs operate in areas where Government facilities may be inadequate. For example, many NGOs operate orphanages, shelters and safe-houses for victims of domestic violence and shelters for asylum seekers.

Civil society also engages in the collection of statistical data in relation to the field of work that they are involved in.

6. What measures and procedures have been put in place to ensure effective follow-up to recommendations regarding your country issued by international or regional human rights mechanisms and which may contribute to prevention human rights violations?

The International Law and Human Rights Unit of the Ministry of the Attorney General is responsible for monitoring the implementation of recommendations and for reporting to international bodies on the progress of the advancement of human rights protection in Trinidad and Tobago.

7. a) What measures Legislative, Judicial, Administrative and other measures are in place to provide victims of human rights violations by state actors and abuses by non-state actors with an effective remedy?

b) What measures are in place to ensure that all can access such remedies in practice?

See above – 1) a, b and c as these points are discussed.

8. What contribution do international and regional organisations make to the prevention of human rights violations? What additional role could they play?

International and regional organisations contribute significantly to the provision of technical assistance in new areas of development in human rights protection. For example, technical assistance was received from the Office of the High Commissioner for Human Rights (OHCHR) and the Commonwealth Secretariat in relation to the preparation for Universal Periodic Review.

In addition, international and regional organisations also assist States in keeping track of their own human rights record through the issuing of recommendations and follow-up.

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