

TRINIDAD AND TOBAGO

The judiciary acts confidently and independently. However, judicial independence is threatened through public attacks and non-provision of resources by the executive. These hindrances to the dispensation of justice are exacerbated by a security force that ignores the rule of law in the exercise of its duties. The government severely weakened the domestic application of international human rights protections by withdrawing from two key instruments: the American Convention on Human Rights, and the Optional Protocol of the International Covenant on Civil and Political Rights.

Trinidad and Tobago is a sovereign democratic state founded on the rule of law, a principle expressly stated in the Preamble to the Constitution. The country achieved full independence from the United Kingdom in 1962 and became a Republic in 1976 when its Independence Constitution, was replaced with a republican Constitution. The present Constitution declares itself to be the supreme law of the land, and any other law that is inconsistent with it is void to the extent of the inconsistency. At its heart, the Constitution secures a separation of powers among the executive, the legislature and the judiciary.

Executive authority is vested in the President who, subject to Constitutional restrictions, may exercise power either directly or through subordinate officers. Although elected by all members of the bicameral Parliament, regardless of political affiliation, this political officer must act in accordance with the advice of the Cabinet. The Cabinet consists of the Prime Minister, who is the head of government, the Attorney General and other ministers of the Government as appointed by the Prime Minister from the members of Parliament.

Legislative power in Trinidad and Tobago resides in a bicameral Parliament, which is composed of the President, an upper house called the Senate and a lower house called the House of Representatives. The Senate consists of 31 appointed members and the House of Representatives consists of 36 members elected every five years under a regime of universal adult suffrage.

Politically, racial divisions and race-based political allegiances play an important socio-political role among the island's 1.3 million inhabitants, 40 percent of whom are of African decent and 40.3 percent of East Indian decent. The most prominent political parties in Trinidad and Tobago are the United National Congress, (hereinafter UNC), the People's National Movement, (hereinafter PNM), and the National Alliance for Reconstruction, (hereinafter NAR). On December 11, 2000, voters returned the ruling UNC party, under Prime Minister Basdeo Panday, to power with 19 seats in the 36-member Parliament. The main opposition PNM party won 16 seats, while the NAR won a single seat in Tobago.

HUMAN RIGHTS BACKGROUND

With conspicuous exceptions, the Government generally respected the human rights of its citizens and allowed the legal and judicial systems to provide redress with regard to individual instances of abuse. Nonetheless, police and prison guard abuse of prisoners, the use of lethal force by police in unjustifiable circumstances and long delays in trials remain significant problems. Here, the

government has consistently failed to investigate promptly and prosecute security officials responsible for incidents of brutality, including numerous killings and negligent deaths of those held in custody. Conditions in prisons were extremely poor, amounting in many instances to cruel, inhuman and degrading treatment in contravention of international standards. For example, some 1,300 inmates are confined in one prison which was built for 175 prisoners, where cells lack ventilation, sanitation is poor, the food is unpalatable, access to healthcare is restricted and infectious diseases are rampant.

Death Penalty

During 2000, Trinidad and Tobago held the dubious global distinction of executing and holding the highest number of prisoners on death row, per capita. The death penalty is frequently imposed after proceedings during which defendants are not capable of securing legal protections guaranteed by domestically mandated and internationally ratified rights instruments. Indeed, the Government has made efforts to accelerate executions by speeding up the domestic legal process in capital cases and by enforcing strict time limits on applications for redress under international law. To effectuate the implementation of capital punishment, the Government has also severely weakened human rights protections available to the general population and those on death row by withdrawing from two key international human rights instruments: the American Convention on Human Rights (American Convention), and the Optional Protocol of the International Covenant on Civil and Political Rights (ICCPR).

On 26 May 1999, Trinidad and Tobago withdrew from the American Convention, thereby precluding the Inter-American Court on Human Rights from considering whether, in the death penalty cases, the state violated various human rights provisions of the American Convention. It is of particular concern that as a pretext to their withdrawal, the Government stated that "[t]he denunciation, (of the American Convention), was the result of the total dissatisfaction and frustration felt by Trinidad and Tobago with the performance of the Inter-American Commission on Human Rights and the way in which the Commission... allowed itself to become the tool of those who seek the abolition of the death penalty...." The Government also took the unprecedented step of withdrawing from the ICCPR Optional Protocol, effective June 27, 2000, apparently also in relation to concerns over its perceived constraints on the application of capital punishment. This second withdrawal from a previously ratified international human rights instrument denied prisoners under sentence of death from petitioning the United Nations Human Rights Commission, the expert body that monitored state implementation of the Optional Protocol, for relief.

In opting out of the Optional Protocol and the American Convention, Trinidad and Tobago effectively deprived its citizenry, especially those most in need of human rights protections, the rights guaranteed to them under the aforesaid internationally ratified instruments. Indeed, in its attempt to exclude those under sentence of death from said protections, Trinidad and Tobago is undertaking a course that borders on arbitrarily imposed capital punishment.

THE JUDICIARY

Judicial authority is subdivided between a higher judiciary, the Supreme Court of Judicature, and a lower judiciary, the Magistracy, both of which exercise original jurisdiction in civil and criminal matters. Appeals from first instance Magistracy and Supreme Court of Judicature decisions lie with the Court of Appeal, while appeals from the Court of Appeal proceed from Trinidad and Tobago to

the Judicial Committee of the Privy Council in the United Kingdom. The Privy Council is the highest appellate authority.

Through provisions concerning judicial appointments and security of tenure, the Constitution clearly evidences an intention to safeguard the judicial system against outside executive and legislative influences. Within this system of organization, a Chief Justice for Trinidad and Tobago is appointed by the President after consultation with the Prime Minister and the leader of the main opposition party. Further, rank and file Justices are appointed by the President acting on the advice of the Judicial and Legal Service Commission, (hereinafter the Commission), whose advice he or she is bound to accept. The Commission is an independent body established by the Constitution and composed of the Chief Justice as chairman, the Chairman of the Public Service Commission and three other members that include one retired or sitting Justice of the Commonwealth and two other persons with legal qualifications. Once appointed, a Justice may only be removed for inability to perform the functions of his or her office or for misbehaviour. However, such dismissals may only occur after adjudication by the Privy Council. Finally, the Constitution protects judicial independence by securing tenure until age 65 and by safeguarding judicial salaries and conditions of service through a prohibition on their alteration to the disadvantage of judicial members.

Conflicts between the Government and the judiciary

In practice, the Trinidadian judiciary fiercely safeguards its independence and attempts to give full effect to the constitutional rights of accused persons in both civil and criminal proceedings. Unfortunately, judicial vigilance often leads the courts into direct conflict with authoritarian executive and legislative tendencies. By way of example, at an opening address of the 1999 Law Term, Chief Justice Michael de la Bastide accused the Attorney General, Ramesh L. Maharaj, of seeking to reduce judicial independence through an effort to control funds disbursed for judicial travel expenses. This conflict was situated within a larger debate concerning the proposed creation of a judicial Chancellor's office that, under the direction of the Attorney General, would perform a judicial administrative function. Here, the Chancellor was to gain his or her powers, the most important of which was the authority to set the trial lists, at the expense of the Chief Justice's office. Chief Justice Bastide perceived the initiative as an attack on judicial independence through a stratagem to emasculate the Chief Justice's powers without abolishing his office. Receiving the support of all but one of the Trinidadian judiciary, this conflict continued through two Commissions established to mediate the dispute. In February 2001, when welcoming a new Judge to the bench, Justice Wendell Kangaloo warned that "when a Head of State hints at signs of creeping dictatorship, alarm bells should ring out loudly to the population."

The political ramifications emanating from the judicial independence conflict became all the more serious in March 2001 when Attorney General Maharaj threatened legislation to fire judges for not delivering judgements with sufficient dispatch, stating that "if a judicial officer cannot give a judgement within a given time frame he must be considered incompetent and the Constitution should provide for his removal, as the justice system must not accommodate incompetent and inefficient judicial officers". Further undermining public confidence in Trinidadian judicial institutions, the strongest warning for the judiciary to bow at the feet of the executive was delivered by Prime Minister Panday, when he assured UNC supporters that his government would defend itself "with full force" against judicial meddling in governmental affairs. This concerted effort by the government to erode judicial independence and de-legitimise and stigmatise the judiciary, seems to stem from allegations by the UNC that the judiciary is biased in its treatment of the Indian-supported political party. Unfortunately, in calling into question the legitimacy of the judiciary's work, the Trinidadian executive has effectively pitted authoritarian political party and

racial group interests against the activities of an independent adjudicative system, which hinders the latter's ability to render substantive justice.

Trinidadian courts have recently benefited from government-sponsored infrastructural improvements, and this effort has been encouraged by international state donors having invested substantial resources in various judicial reform projects throughout the nation. Here, assistance has been provided to improve technological and human resource capacities in delivering more effective justice. During 2001, improvements in resource allocations to the judicial system were recognised by Chief Justice Bastide when, at the opening of Law Term, he spoke of an improvement in funding. However, he went on to warn that the situation remained far from ideal. Indeed, despite improvements in the judicial system, over the past three years increasing alarm has been raised over the failure of the Government to administer properly the criminal justice system. From the supervision of the police to the punishment of criminal offenders and the administration of prisons, the Government has repeatedly failed to meet its international obligations to protect the human rights of its citizenry. As a result, crime is soaring, citizens live in fear and police impunity has become the norm. Standards for fair trial have been undermined by the failure of the government to institute an effective system of witness protection, to provide legal aid, to exclude coerced confessions from court evidence and, in many instances, to ensure that suspects are informed of their right to counsel.