PART 3

Trinidadian Law and YOU

Caribbean Vulnerable Communities Coalition

CONTENTS

OBJECTIVE AND INTENDED OUTCOMES

Part three of this manual builds on the information in Parts One and Two of the Legal Literacy Manual. It provides a specific case study on relevant aspects of the Trinidadian legal system and framework. It aims to provide a guideline for persons in Trinidad. Special emphasis is placed on members of vulnerable population.

GENERAL OBJECTIVE OF THIS PART

To provide a basic refresher on the Trinidadian legal and court system in a bid to ensure that you can provide basic useful advice on the way forward in relation to complaints made by your users to your organization. The purpose of these modules is to provide an avenue for internal discussions about possible options within and outside of Trinidad, to lobby for redress and changes in policy. This part is also intended to be a reference section in relation to certain material law and issues.

SPECIFIC OBJECTIVES OF THIS PART

At the end of this session you should be able to outline:

1. The construct of the court/legal structure in your country
2. Principles civilians should understand for basic police interaction
3. How to obtain criminal remedy for breaches of your right
4. How to seek civil remedy for breaches of your right
5. How to address/maneuver specific population specific problems by utilizing lessons learnt from other organizations faced with a similar situation
6. Different government and NGO entities that can provide redress
7. Possible avenues for legal options including appeals, judicial review, declarations in Guyana
8. How to engage the international institutions to seek redress or to document complaints in relation to problems engaged locally.

MODULE 15

LAWS AFFECTING SPECIFIC GROUPS IN TRINIDAD

POINTERS FOR KEY POPULATION

Every Trinidadian citizen has to interact with the police and other citizens on a daily basis. Based on this daily interaction some Trinidadians, especially vulnerable Trinidadians, face challenges that the general public will not face.

In this section we will seek to determine:

I. Who are vulnerable Trinidadians?
II. What challenges do they face?
III. How are these challenges compounded by the law?
IV. How can these be addressed?

Based on our discussions, it seems that Vulnerable Trinidadians include:

A. Sex Workers
B. Drug Users
C. Marginalized Youths
D. Lesbians, Men who have sex with Men & Bisexuals
E. Trans Persons
F. Migrant Population
G. Women
H. Persons with disabilities

Challenges faced by specific groups include:

1. Discrimination by members of the general population
2. Diminished job opportunities
3. Loss of family life/alienation from family
4. Harassment by law enforcers and the Court
5. Greater potential to being arrested, assaulted
6. Unequal access to justice and the legal system
7. Barriers to accessing health services.
8. Lack of protection from the Legal & Political systems

DISCUSSION POINTS

Please discuss the following amongst your group and try to find answers to the following questions:

A. Who are vulnerable Trinidadians?
B. What challenges do vulnerable persons face?
C. How can these challenges be addressed?

LAWS AFFECTING KEY POPULATIONS

LESBIANS, MEN WHO HAVE SEX WITH MEN & BISEXUALS (LGB)

Laws affecting LGB include the express provisions such as: Section 13 of the **Sexual Offences Act (SOA)**, which seeks to criminalize consensual sexual intimacy between adult men in private.

SOA is a law which states that it is a crime for any person to engage or to attempt to engage in the act of buggery. Buggery is anal intercourse. Anal intercourse is a popular form of sexual expression between same sex couples. This law prohibits this sexual expression. The SOA also makes it a crime for persons to indecently assault another male person. An assault is any unwanted physical touch.

Whilst the term, “Indecent Act” is not defined in the SOA, a police officer can arrest any person who he feels does what he believes to be an indecent act. This person will then be dragged before the court to enter a plea in relation to the act. If the person say he/she is not guilty, then it will be up to the court to make a determination as to whether the act complained of would amount to an indecent act. If the person says that he/she is guilt they can be sentenced to up to five years in prison for the ‘assault’.

The arrested individual would in the interim have to suffer the public embarrassment of being arrested for doing an indecent act. It is important to note that what would constitute an indecent act in 1986 may not be an indecent act in 2018. It would therefore be up to the court to interpret the matter and to determine what is an indecent act. Indecent assault but it is understood to be a sex crime and refers to sexual touching of sexual organs or orifices. The law prohibits this form of contact as well..

Trinidad and Tobago Sexual Offences Act 1986

> *S. 13. (1) A person who commits the offence of buggery is liable on conviction to imprisonment for twenty-five years.*
> *(2) In this section “buggery” means sexual intercourse per anum by a male person with a male person or by a male person with a female person.*
>
> *14. (1) A person who commits bestiality is guilty of an offence and is liable on conviction to imprisonment for fifteen years.*
> *(2) In this section “bestiality” means sexual intercourse per anum or per vaginam by a male or female person with an animal.*
>
> *S.15. (1) A person who indecently assaults another is guilty of an offence and is liable on conviction to imprisonment for five years for a first offence and to imprisonment for ten years for a subsequent offence.*
> *(2) A person under the age of sixteen years cannot, in law, give any consent which would prevent an act being an assault for purposes of this section.*
> *(3) In this section, “indecent assault” means an assault accompanied by words or circumstances indicating an indecent intention.*
>
> *S.16. (1) A person who commits an act of serious indecency on or towards another is liable on conviction to imprisonment for five years.*
> *(2) Subsection (1) does not apply to an act of serious indecency committed in private between— (a) a husband and his wife; (b) a male person and a female person each of whom is sixteen years of age or more, both of whom consent to the commission of the act; or (c) persons to whom section 20(1) and (2) and (3) of the Children Act apply.*
> *(3) An act of “serious indecency” is an act, other than sexual intercourse (whether natural or unnatural), by a person involving the use of the genital organ for the purpose of arousing or gratifying sexual desire.*

The law also affects LGB by its failure to expressly:

I. prohibit certain discriminatory behaviour by members of the public.
II. Include sexual orientation as protected groups in the Constitution under the Articles that deal with discrimination..

These laws may not be enforced, but their continued existence contributes to the creation of a discriminatory environment.

DISCUSSION POINTS

Divide yourselves into two groups:

A. One group is to pretend that you are politicians representing the Government. Explain to a group of Christian Lawyers why there is a continued need to have the discriminatory laws on the books.
B. The other group is to pretend to be the Executive Director of biggest gay right group in Trinidad. Explain to the same group why it is not in Trinidad's interest to have these discriminatory laws on the book

SEX WORKERS, PROSTITUTION

Laws affecting Sex Workers includes the Sexual Offences Act (SOA). This Act collectively seek to criminalize the action of sex workers and to ensure that it is difficult for them to enjoy the freedom of work and to determine how they utilize their own bodies.

The exact provisions of the TCA is included in this document to provide some guidance in relation to what would trigger an arrest.

Criminal Offence to engage in sex work

The SOA makes it an offence for a man or a woman to engage in the act of prostitution. The SOA does not define the term prostitution. Prostitution is usually used to define the practice of engaging in sexual activity with someone for payment. The person who engage in this activity as an occupation is often termed in law a 'prostitute'.

The SOA contains provisions which (wittingly or unwittingly) ban persons from:

A. Being a male or female prostitute
B. Knowingly living off the earnings of prostitution
C. Persistently soliciting for an immoral purpose

The text of the law is quoted below for your information:

Trinidad and Tobago Summary Offences Act 1921

46. a person who commits any of the offences mentioned below in this section, may be deemed a rogue and vagabond, and shall be liable to imprisonment for two months –
(d) any person found in any verandah, gallery, passage, gateway, dwelling house, warehouse, store, stable, outhouse, or other building, or in any yard, garden, or other enclosed land, for any unlawful purpose;
(e) any person found in or about any market, wharf, or jetty, or in or about any vessel, for any unlawful purpose;
…
(j) any woman loitering about and soliciting passers-by for the purpose of prostitution

53. Any owner or occupier, or any person in the employment of any owner or occupier, of any house, shop, room, or other place of public resort wherein provisions, liquors, or refreshments of any kind are sold or consumed (whether the same are kept or retailed therein or procured elsewhere), who knowingly permits drunkenness, gambling, or any other disorderly conduct therein, or knowingly permits or suffers known prostitutes, convicted offenders, rogues and vagabonds, or incorrigible rogues to meet together or remain therein, is liable to a fine of one thousand dollars or to imprisonment for three months.

57. Any owner or occupier of any house, building, yard, or other place who knowingly permits or suffers any convicted offenders, persons convicted of riot or affray, common prostitutes, rogues and vagabonds, or incorrigible rogues to meet together or remain therein to the number of ten or more, is liable on first or second conviction to a fine of four hundred dollars, and on any subsequent conviction to imprisonment for six months.

58. Any owner or occupier of any house, building, yard, or other place who knowingly permits or suffers any convicted offenders, persons convicted of riot or affray, common prostitutes, rogues and vagabonds, or incorrigible rogues to meet together and remain therein, and to play or sing or dance therein, or to play or bet therein at any game or pretended game of chance with any instrument of gaming or with any coin, card, or token, is liable to the same fines and punishments as mentioned in section 57.

59. Where any convicted offenders, persons convicted of riot or affray, common prostitutes, rogues and vagabonds, and incorrigible rogues, to the number of ten or more, meet together or remain in any house, building, yard, or other place, or are found playing or singing or dancing therein, or playing, gaming, or betting therein with any instrument of gaming or with any coin, card, or token, all such persons are liable on first or second conviction to a fine of one hundred dollars and on any subsequent conviction, to imprisonment with hard labour for three months.

61. On the trial or hearing of any information or proceeding under this Act, proof of the meeting together of any convicted offenders, persons convicted of riot or affray, common prostitutes, rogues and vagabonds, or incorrigible rogues in any house, building, yard, or other place, or of such persons playing or singing or dancing or gaming or betting therein, shall be prima facie evidence that such person or persons had there met together, or were remaining there, or were there playing or singing or dancing or gaming or betting, with the knowledge of the occupier of such house, building, yard, or other place.

Trinidad Sexual Offences Act 1986

Procuration

17. A person who—

(a) (Deleted by Act No. 12 of 2012);

(b) procures another for prostitution, whether or not the person procured is already a prostitute, either in Trinidad and Tobago or elsewhere; or

(c) procures another to become an inmate, whether or not the person procured is already an inmate elsewhere, of or to frequent a brothel either in Trinidad and Tobago or elsewhere, is guilty of an offence and is liable on conviction to imprisonment for fifteen years.

Suppression of brothels

S. 22. A person who—

(a) keeps or manages or acts or assists in the management of a brothel; or

(b) being the tenant, lessee, occupier or person in charge of any premises, knowingly permits the premises or any part thereof to be used as a brothel or for the purposes of prostitution; or (c) being the lessor or landlord of any premises, or the agent of the lessor or landlord, lets the same or any part thereof with the knowledge that the premises or some part thereof are or is to be used as a brothel, or is wilfully a party to the continued use of the premises or any part thereof as a brothel, is guilty of an offence and is liable on conviction to imprisonment for five years.

Lives off earning of prostitutes

S. 23. (1) A person who—

(a) knowingly lives wholly or in part on the earnings of prostitution; or

(b) in any place solicits for immoral purposes, is guilty of an offence and is liable on conviction to imprisonment for five years.

(2) If it appears to any Magistrate or Justice, by complaint on oath, that there is reason to suspect that any premises is used for purposes of prostitution and that any person residing in or frequenting the premises is living wholly or in part on the earnings of prostitution, the Magistrate or Justice may issue a warrant authorising any constable to enter (if need be by force) and search the premises and to arrest that person.

(3) Where a person is proved to live with or to be habitually in the company of a prostitute, or is proved to have exercised control, direction, or influence over the movements of a prostitute in such a manner as to show that the person is aiding, abetting or compelling the prostitution with any other person or generally that person shall be deemed to be knowingly living on the earnings of prostitution unless the person proves the contrary.

S. 24. A person who for purposes of gain, exercises control, direction or influence over the movements of a prostitute in a way which shows that the person is aiding, abetting or compelling the prostitution is guilty of an offence and is liable on conviction to imprisonment for five years.

Sex Workers are Prohibited Immigrants

The Immigration Act also clearly states that sex workers are prohibited immigrants. This means that they can be prevented from visiting Trinidad

If a sex worker tries to come to Trinidad and declare their occupation as a 'prostitute' they may be ordered to leave the Island or prevented from evening leaving the plane or vessel in which they arrive. They may also be arrest and brought before a court for a Judge to order them deported to their home country.

This law is still on our law books and can be enforced by immigration officers. It provides opportunity for immigration officers to 'probe' persons whom they may believe are sex workers. It provided the avenue for abuse of Shanique Myrie's right. If the immigration officer believes that someone is a sex worker, this person may be arrested and placed in a cell like a common criminal. The perceived sex worker could also be prevented from entering or leaving the island..

The text of the law is quoted below for your information and record:

Immigration Act - Prohibited Classes

> *8. (1) Except as provided in subsection (2), entry into Trinidad and Tobago of the persons described in this subsection, other than citizens and, subject to section 7(2), residents, is prohibited, namely-*
>
> > *(e) prostitutes, homosexuals or persons living on the earnings of prostitutes or homosexuals, or persons reasonably suspected as coming to Trinidad and Tobago for these or any other immoral purposes;*
> >
> > *(f) persons who are reasonably suspected of attempting to bring into Trinidad and Tobago or of procuring prostitutes or other persons for the purpose of prostitution or homosexual or other immoral purposes;*

The said sections seek to prevent a sex worker from engaging in the sex trade. It legislates against the customers soliciting or importuning for immoral purposes and prevents the prospective worker from loitering about or importuning any person in the street or other public place for the purpose of prostitution. The said sections also prevent children of sex workers from living off the earning of 'sex work'.

The said sections seek to ostracize sex workers by criminalizing the renting of any premises to sex workers.

The aforementioned sections are self-explanatory.

ADVISE

Ms. Cherry, the president of the Sex Workers Association visits your office to find out what are your views on the issue of whether the above laws unconstitutionally target sex workers. Using your knowledge of the above laws, express your views on whether the above laws are unconstitutional?

Do you think that the laws should be changed to protect the health and human rights of sex workers? Give reasons for your view.

PEOPLE WHO USE DRUGS

Dangerous Drugs Act in Sections 3 – 14 specifically, makes provisions which prohibits possessions of and trafficking in narcotics and cultivation of certain plants.

> *S. 5. (1) Subject to subsection (2), a person who has in his possession any dangerous drug is guilty of an offence and is liable—*
>
> *(a) upon summary conviction to a fine of twenty five thousand dollars and to imprisonment for five years;*
>
> *(b) upon conviction on indictment to a fine of fifty thousand dollars and to imprisonment for a term which shall not exceed ten years but which shall not be less than five years.*
>
> *(2) Subsection (1) does not apply to—*
>
> *(a) a person who has the possession of a dangerous drug under a licence issued pursuant to section 4 permitting him to have possession of that dangerous drug;*
>
> *(b) a medical practitioner, dentist, veterinary surgeon or pharmacist who is in possession of a dangerous drug for any medicinal purpose;*
>
> *(c) a person who obtains a dangerous drug for medicinal purposes from or pursuant to a prescription of a medical practitioner, dentist or veterinary surgeon;*
>
> *(d) a person authorised under the Regulations to be in possession of a dangerous drug; (e) a person who is acting for and under the supervision of a person mentioned in paragraph (a), (b), (c) or (d).*
>
> *(3) A person who cultivates, gathers or produces any marijuana, except where he does so under a licence granted under section 4 or where he is acting under the supervision of a person having such a licence, commits an offence and is liable—*
>
> *(a) upon summary conviction to a fine of fifty thousand dollars and to imprisonment for ten years; or*
>
> *(b) upon conviction on indictment to a fine of one hundred thousand dollars or where there is evidence of the street value of the marijuana, ten times the street value of the marijuana, whichever is greater or to imprisonment for twenty-five years to life.*

(4) A person who trafficks in any dangerous drug or in any substance represented or held out by him to be a dangerous drug or who has in his possession any dangerous drug for the purpose of trafficking is guilty of an offence.

(5) Subject to subsection (7), a person who commits the offence of trafficking in a dangerous drug or of being in possession of a dangerous drug for the purpose of trafficking is liable upon conviction on indictment to a fine of one hundred thousand dollars or, where there is evidence of the street value of the dangerous drug, three times the street value of the dangerous drug, whichever is greater, and to imprisonment for a term of twenty-five years to life.

(6) A person who commits the offence of trafficking in a substance other than a dangerous drug, which he represents or holds out to be a dangerous drug is liable upon conviction on indictment to a fine of one hundred thousand dollars or, where there is evidence of the street value of the dangerous drug, three times the street value of the dangerous drug, whichever is greater, and to imprisonment for a term of twenty-five years to life.

(7) A person other than a person referred to in subsection (2) found in possession of a dangerous drug or a substance other than a dangerous drug which he represents or holds out to be a dangerous drug, on any school premises or within five hundred metres thereof is deemed to have the dangerous drug or substance for the purpose of trafficking, unless the contrary is proved, the burden of proof being on the accused, and such person commits an offence and is liable upon conviction on indictment to a fine of one hundred and fifty thousand dollars or, where there is evidence of the street value of the dangerous drug, three times the street value of the dangerous drug, whichever is greater, and to imprisonment for a term of thirty-five years to life.

(7A) Notwithstanding subsections (3A), (5), (6) and (7), where a person is charged for a drug trafficking offence under this Act, the Director of Public Prosecutions may, at the preliminary enquiry, elect to proceed with the matter summarily and if the accused so consents, the Court may adjourn the matter to be dealt with accordingly.

(7B) A person who pleads guilty to, or is found guilty of an offence tried pursuant to subsection (7A) is liable to a fine of fifty thousand dollars or, where there is evidence of the street value of the dangerous drug, three times the street value of the dangerous drug, whichever is greater, and to imprisonment for a term of ten years.

Section 6 – Court may order admission to Psychiatric hospital

6. (1) The Court before which a person is convicted under section 5, may, before imposing a sentence, order the Psychiatric Hospital Director to admit the person convicted to the psychiatric hospital named in the Order.
(2) Subject to subsection (4)(b) a person who has been admitted under subsection (1) shall not be kept in a hospital for more than fourteen days.

(3) The Psychiatric Hospital Director shall, as soon as practicable after admitting a person under subsection (1), make or cause to be made such psychiatric examination as he considers necessary for determining whether or not the person is in need of psychiatric care and treatment, and shall, within fourteen days of the date of admission submit a report in writing to the Court relative to the condition of the person.

(4) On receipt of the report, the Court shall forthwith—

(a) rescind the Order made under subsection (1), if the Psychiatric Hospital Director is satisfied that the person named in the Order is not in need of care and treatment; or

(b) make another Order authorising the Psychiatric Hospital Director to admit the person named therein to a hospital for such further care and treatment as the Psychiatric Hospital Director may consider necessary.

(5) Where an Order is made under subsection (4)(b), the Psychiatric Hospital Director shall, when he is satisfied that the patient is no longer in need of care and treatment, report this fact to the Court which shall forthwith rescind the Order. (6) The Court shall, where it rescinds an Order under subsection (4)(a) or subsection (5), deal with the person in such manner as it deems necessary. (7) In this section "Psychiatric Hospital Director", "psychiatric hospital" and "hospital" have the same meaning as in the Mental Health Act.

ADVISE

Paul, a person who is addicted to drugs, is arrested and charged for the offence of possession a very small spliff of ganja in your capital city. He states that he uses the drugs for his own use. His next court date is two weeks from the date he sees you. He wants advice on what he should do in court. He cannot afford a lawyer.

Advise Paul

PERSONS WITH DISABILITIES

A person with a disability will be able to rely on the anti-discriminatory clause in the **Equal Opportunity Act** if they are the victims of discrimination.

Equality Opportunity Act

5. For the purposes of this Act, a person ("the discriminator") discriminates against another person ("the aggrieved person") on the grounds of status if, by reason of—

(a) the status of the aggrieved person;

(b) a characteristic that appertains generally to persons of the status of the aggrieved person; or

(c) a characteristic that is generally imputed to persons of the status of the aggrieved person,

the discriminator treats the aggrieved person, in circumstances that are the same or are not materially different, less favourably than the discriminator treats another person of a different status.

6. (1) A person ("the discriminator") discriminates by victimisation against another person ("the person victimised") in any circumstances relevant for the purposes of any provision of this Act if he treats the person victimised less favourably than in those circumstances he treats or would treat other persons, and does so by reason that the person victimised has—

(a) brought proceedings against the discriminator or any other person under this Act, or any relevant law;

(b) given evidence or information in connection with proceedings brought by any person against the discriminator or any other person under this Act, or any relevant law;

(c) otherwise done anything under or by reference to this Act, or any relevant law, in relation to the discriminator or any other person; or

(d) alleged that the discriminator or any other person has committed an act, which (whether or not the allegation so states) would amount to a contravention of this Act, or any relevant law, or by reason that the discriminator knows the person victimised intends to do any of those things referred to in paragraphs (a) to (d), or suspects the person victimised has done, or intends to do, any of them

7. (1) A person shall not otherwise than in private, do any act which— (a) is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of persons; (b) is done because of the gender, race, ethnicity, origin or religion of the other person or of some or all of the persons in the group; and (c) which is done with the intention of inciting gender, racial or religious hatred.

(2) For the purposes of subsection (1), an act is taken not to be done in private if it— (a) causes words, sounds, images or writing to be communicated to the public; (b) is done in a public place; (c) is done in the sight and hearing of persons who are in a public place.

(3) This section does not apply to acts committed in a place of public worship.

(4) In this section— "public place" includes any place to which the public have access as of right or by invitation, whether express or implied and whether or not a charge is made for admission to the place.

ACTIVITY

1. Please state specifically the different laws affecting the following groups:
    a. MSM
    b. Transexuals
    c. People who use drugs
    d. Sex Workers
    e. Persons with disabilities

2. Divide yourselves into two groups:
    a. One group is to pretend that you are politicians representing the Government. Explain to a group of Christian Lawyers why there is a continued need to have the discriminatory laws on the books.
    b. The other group is to pretend to be the president of Trinidad Equality Forum. Explain to the said group why it is not in Trinidad's interest to have these discriminatory laws on the book.

3. Provide three top policy reasons for government inclusion of proper laws to protect the disabled Trinidadians.

4. Provide three top policy reasons for government exclusion of proper laws to protect other vulnerable group of Trinidadians.

5. Please discuss the following amongst your group and try to find answers to this questions:
    a. Who are vulnerable Trinidadians?
    a. What challenges do vulnerable Trinidadians face?
    a. How can these be addressed?

6. David Smith a person with disability applied for a job as a receptionist at Free For All Institute. He was the top student in his receptionist class. His best friend Ruddy Manners also applied for the job. Ruddy came 20th in the class of 20 students. They were both given phone interviews. David was advised that he would be offered a job if he brings proof of his certification and they can agree on salary. He wanted $46,000 a month. They were only prepared to offer him $42,000. He was told to come and speak with the chairperson of the Institute Ms. Volda Manners. Once he arrived for the interview in his wheelchair he was told that they cannot employ him since the institute cannot accommodate a cripple. He was told to go home. Whilst he was at home mulling his next actions, he received an elated call from Ruddy Manners who called to advise that he was the new receptionist at Free For All Institute and that he would be getting the whopping salary of $60,000.00

    David Smith approaches you for advice. Advise David Smith of his options.

MODULE 16

TIPS FOR INTERACTION WITH THE TRINIDADIAN LAW ENFORCEMENT OFFICIALS

INTERACTION WITH THE POLICE

I. Being approached by the Police
II. Being questioned by the Police
III. Stopped by the police when driving
IV. What to do when being searched by the police
V. What to do if mistreated by the police
VI. What to do when receive unjust traffic ticket/charge

WHAT DO I DO WHEN I AM APPROACHED BY THE POLICE?

1. **Stay calm and do not run away.** It may be best to stand/sit exactly in the same position you were when the officer starts to approach you. If you run away, it may make you appear guilty and may also provide the officer with a lawful reason to arrest or shoot you.
2. **Be polite as possible.** It may be best to greet the officer with a greeting. This would be helpful in diffusing any potentially explosive scenario. It is important to ensure that you show no hostility towards the officers. The showing of hostility may escalate a situation.
3. **Tell the officer your name and try to get his name, identity or any reference number** that you can use to identify him if the situation escalates.
4. You should also seek to **record the licence plate number or any special number or reference number being worn by the officer**. Examine your surroundings and record the name and faces of any witnesses in the event you may need it.
5. You could also **ask the officer to produce their identification card or to indicate their name and the police station/department that they are attached or assigned to.** This information is particularly necessary if the officer is in plain cloths and has no other visible identifying or reference information.
6. **Listen carefully to every word spoken by the officer**. If the situation becomes tenuous you may be requested to repeat EXACTLY what you were told.
7. If you have a reason to feel mistreated, you should **make a note of everything that occurred and was said to you by the officer.** This note may take the form of a written statement, a voice note sent to a dear friend which is saved for future reference.
8. Please note that **you have the right not to answer any self-incriminating questions and to seek legal assistance before you are questioned by the police.**

WHAT SHOULD I DO IF I AM BEING QUESTIONED?

1. If the officer is asking you basic questions in relation to your identity and address,It may be best to answer these questions.
2. If the questions are in relation to a specific offence,You may clearly but in a respectful tone, ask the officer to indicate whether you are a suspect in the commission of a specific crime.
3. If the Officer indicates you are a suspect, you may ask him to allow you to call a lawyer or a friend to indicate where you are at the material time.
4. You may then ask if he intends to charge you with the relevant offence or if he intends to gather evidence from you to charge you.
5. If you feel your actions have been misunderstood, you may clarify any ambiguity and seek to diffuse the situation.

SEARCH

1. The police do not have an automatic right to stop and search citizens. Generally, there must be some action, activity or information that caused them to form a reasonable suspicion that a crime has been committed, is being committed or is about to be committed that will trigger their right to search citizens.
2. You may ask the officer to state what is the reason for the search BEFORE he commences searching your property or person.
3. If the officer refuses to state the reason, you may in a firm and polite voice indicate to them that you would require the reason for the search to determine whether you can consent to same.
4. If they still refuse to provide the reason, you may indicate to them that you will not consent to the search. If they provide the reason and you do not think that they have a right to search you, you can in a firm and polite voice refuse any request for a search. You should record the names of any witnesses who see and hear your refusal in relation to the search.
5. If they still proceed to search you, remain calm. Do not give them a reason to arrest you. Be careful that you do not twitch or 'box off' their hand as this may be construed as 'assaulting the police' and may provide a basis to arrest you for resisting arrest.

SEARCH WARRANT

1. If the officers state that they are searching your premises pursuant to a warrant, you have the right to see and read the search warrant.
2. Demand to see it and ask for a copy of it. If they don't have a copy available ask for permission to take a picture of the warrant.
3. Once the officers have a search warrant, you could enquire what their powers pursuant to the warrant are. Even if they refuse to answer this, once they have a warrant they should be allowed to enter the premises to conduct the search. If you refuse permission, they can simply use force to gain entry to the premises.
4. It may be wise to remain in the presence of the officers conducting the search at all times.
5. Do not answer any police questions while they are searching your premises. Your answer may provide the basis for an arrest.
6. If the officer finds any illegal or suspicious items on the premises, they may use it as a basis to arrest you.

WHAT TO DO WHEN YOU ARE BEING ARRESTED

1. If you are arrested or about to be arrested asked the officer to indicate the basis for the arrest.
2. You should co-operate. Do not resist arrest. Do not become violent or aggressive. Remain calm, polite and show self-control. Even if you think you have been wrongfully detained and the officer does not show you the respect that is due to you as a citizen, keep calm and continue to show restraint and self-control. Keep a mental note of everything that happens. You may take action against the officer later.
3. Do not 'twitch' nor make any physical contact with the police. Please note that officers often seek to trigger a lawful basis for arrest by the virtue of 'apprehending you'. The officers may then charge you for resisting arrest or any of the related offences.
4. Ask the officer to indicate the reason for the arrest either before, during or after the arrest. He **MAY** also indicate that you are entitled to legal representation.

5. You may ask for a moment to call a friend or a lawyer. This may be helpful in securing your early release.
6. Record everything that takes place after your arrest.
7. You have the right to refuse to answer questions until your legal representative is present. If you cannot afford a lawyer, you can apply for legal aid.
8. If you are carried away from where you were in a police vehicle, ask a friend or bystander to take down the licence number of the vehicle and tell your family.
9. Obtain the name and rank of at least one of the officer who is arresting you.
10. Ask for a phone call or ask to send a message or a note right away and keep asking until you can reach someone. Let them know what has happened and where you are.
11. You should be taken to a station or police lock-up or, if injured, to the hospital
12. Whilst you are at the station, you may be granted station bail.
13. If you are not granted station bail, you are taken into custody and put in police lock-up until you appear in court
14. The final decision about granting or denying you bail lies with the Court
15. You should note the time of your arrest and the time of your release.
16. As soon as you are released make written notes in relation to the reasons for your release and the length of your detention.

WHAT TO DO AFTER YOU ARE ARRESTED?

1. Verify that you are under arrest by confirming that you are NOT free to leave the police compound/presence. The police have the right to hold you for **up to 72 hours** before they charge you.
2. Ensure that you are advised of the charge/reason for your detention. If the police fail to provide same, please ensure that you request the reason for your detention.
3. Ensure that you ask for phone call or to make phone call. You should then call either a family member or trusted friend or lawyer to advise them of your location and to request that they visit you.
4. Ensure that you ask to see a doctor if you are in problem. This request should be noted by the police. If you do not receive medical attention, your family/friends may seek to engage a medical doctor who may visit you at the holding area. This Doctor may be required to carry proof of his accreditation and an official ID from the relevant accreditation entity.
5. Ensure that you ask if bail would be offered to you. If bail will not be offered ensure that you find out the basis for the refusal of bail.
6. If you are of the view that you are being wrongfully denied bail, ask to see a Justice of the Peace.

GETTING BAIL

1. If you are arrested, you may be granted bail by the police. Section 18 of the Police Act makes it lawful for any superior officer or any non-commissioned officer or constable in charge of a police station, when any person is in custody without warrant for any offence punishable upon summary conviction to take bail for the appearance of such persons before the nearest court of summary jurisdiction at a day, time and place to be named in the recognisance.
2. Bail is a temporary release on the condition that you will attend court on your court date. This risk may be secured by certain conditions such as the requirement that you produce a sum of money or travelling document to secure your appearance in court.

3. Bail - on your own recognizance (that means you are known by the officer and can be trusted to appear in court) or someone will have to agree to swear that you will not run away and you will appear in court as scheduled. This means that the person stands 'surety' for you. Under the Bail Reform Act, you could seek the services of an official bondsman to assist you to meet the bail amount.

STOPPED BY THE POLICE WHILST DRIVING?

1. You must stop when requested by a police officer to stop.
2. Show restraint and remain calm, even if you believe the police have stopped you unnecessarily.
3. Apart from giving your name and address and showing your licence, you can refuse to answer other questions from the Officer. Please note that failure to give your name and address is an offence in Trinidad pursuant to section 105 (2) of the Motor Vehicles and Road Traffic Act.
4. If the police officer behaves in an unprofessional manner, write down or try to remember his/her badge number, name, vehicle registration plate or other identifying marks, should you need to make a complaint
5. In the event that you are not in possession of your driver's licence, offer to provide some other form of identification.
6. The officer is also empowered by law to take a specimen of breath for a breath test where he has reasonable cause to suspect that your alcohol level is higher than the prescribed level.
7. If police ask to search your vehicle, you can refuse consent if they fail to provide a reasonable basis for the search. The police do not have the right to search your vehicle as a matter of routine.
8. If you refuse consent to the search, you must ensure that you avoid engaging in physical resistance against the police.

REPORTING CRIME TO THE POLICE

1. Simply visit a police station. It may be best to call in before visits – and to give idea of the nature of the complaint to the officer who answers the call.
2. Ask for written confirmation of statement, some officers will photocopy same and others will allow you to take picture of same.
3. Ask what is the next step and who is responsible for your case.
4. Ask when can you call the respective officer to check up on progress of case or to provide additional information.
5. Remember to be polite and firm.

ACTIVITY

Divide the group into four separate units. Each unit is asked to review the following scenario and present to the entire group.

You are an upright citizen of your country. You are driving a car when the police officers stop you and tells you that they want to randomly search the car. You ask them to produce their ID. They refuse and instead demand that you produce your ID. You do not have a copy of your identity on you and remark that you can produce it within 24 hours at the nearest police station. The police then order you out of the car and say that they will randomly search your car. You refuse the search after you came out of the car. They then demand a search of your person and then start to search you. You resist and you are arrested for assaulting a police officer. You are released within 4 hours of your arrest without charge.

Please consult with your group on the best way that you should deal with this problem. Please then explain to us how you will deal with the problem.

MODULE 17

LEGAL REMEDIES IN TRINIDAD

BRIEF CONTENTS OF MODULE

I. What to do if you are being mistreated.
II. Legal Remedies
III. Court structure and framework in Trinidad

WHAT TO DO IF YOU ARE BEING MISTREATED?

It is important to know the possible options that you can take if you are being mistreated or abused by Police Officers. The most important thing is to keep calm and to try your best to not assist the police in escalating the situation. It is best to ensure that you try your best to comply first and then complain later.

Please ensure that you try to document the name of the relevant offending officers or any other information that can be used to identify them later.

CALL THE FOLLOWING ENTITIES TO CONTACT FOR HELP:

Office of the Ombudsman of Trinidad and Tobago

The Ombudsman's Office was established solely for the purpose of giving assistance to persons who believe that they suffered injustices at the hands of public officers employed by Government agencies and departments. If you believe that any Government department or authority has treated you unfairly, you can take your COMPLAINT to the Ombudsman.

Equal Opportunity Commission

The Mandate of the Commission is:

a. to work towards the elimination of discrimination;
b. to promote equality of opportunity and good relations between persons of different status generally;
c. to keep under review the working of this Act and any relevant law and, when so required by the Minister, or otherwise thinks it necessary, draw up and submit to the Minister proposals for amending them;
d. to receive, investigate and, as far as possible, conciliate allegations of discrimination;
e. to develop, conduct and foster research and educational programmes and other programmes for the purpose of eliminating discrimination and promoting equality of opportunity and good relations between persons of different status;
f. to prepare and to publish appropriate guidelines for the avoidance of discrimination;
g. to do any other thing conducive or incidental to the carrying out of its functions.

Lodging a Complaint

The Equal Opportunity Act No. 69 of 2000 as amended by Act No 5 of 2001 provides for the prohibition and prevention of certain kinds of discrimination. It also seeks to promote equal opportunity between persons of different status.

Why lodge a complaint?

The Equal Opportunity Act No. 69 of 2000 as amended by Act No 5 of 2001 provides for the prohibition and prevention of certain kinds of discrimination. It also seeks to promote equal opportunity between persons of different status. Pursuant to this Act, the Equal Opportunity Commission (EOC) and Equal Opportunity Tribunal (EOT) were established. The function of the EOC is to work towards the elimination of discrimination and to promote equality of opportunity and good relations.

Who can lodge a complaint?

- Any individual who believes that some other body or person has discriminated against him or her.
- Any individual who believes that some other body or person is victimizing or guilty of victimization against him or her.
- Any individual who believes that some other body or person is victimizing or guilty of victimization against him or her.
- Any individual, who believes that some other body or person has offended, insulted, humiliated or intimidated him or her in public.

What are the Categories of Discrimination?

In order for a person to be eligible to lodge a complaint to the Commission, the acts of discrimination, victimization and offensive behaviour in public should fall within any of the following categories:

a. Employment
b. Provision of Education
c. Provision of Goods and/or Services
d. Provision of Accommodation

How is a complaint lodged?

When lodging a complaint with the Equal Opportunity Commission (EOC), you are required to fill out a complaint form completely which must be submitted by mail or in person at the EOC office. A complaint is deemed to be made when this form is completed and received at the EOC. Please note that a complaint can only be processed if the form is completed in its entirety and contains all the information required and signed for the EOC to be able to act on your complaint.

Individuals who need an accommodation in order to lodge a complaint (e.g., sign language interpreter, print materials in an accessible format) should inform the EOC office so appropriate arrangements can be made.

Complaint Forms are available electronically at the link set out below or can be collected at any of the following locations:

- The Regional Corporation in your area
- The Wardens Office and District Revenue Office in your area
- The EOC's Office

What information must be provided to lodge a complaint?

- Your contact details;
- The contact details of the person you are complaining against.
- A short description of the alleged discrimination (the event that caused the complaining party to believe that his or her rights were infringed); and
- The date(s) of the alleged act(s) of discrimination.
- Supporting Evidence (this can be attached to the complaint form)

What are the limits for filing a Charge of Discrimination?

- A complaint must be lodged with the EOC within six (6) months from the date of the alleged discrimination.
- Complaints made after the six (6) month period will only be processed if exceptional circumstances caused a delay which resulted in the complaint being made outside the stipulated time period. The decision as to whether exceptional circumstances exist will be made by the Commissioners of the EOC.
- When a complaint is received at the EOC you will be notified in writing the date the complaint was received at the EOC's office.

Where can a complaint be lodged?

All complaints can be submitted in person or by post to:

The Equal Opportunity Commission
#55-57 ManicStreet
Chaguanas500621
Trinidad and Tobago, West Indies

Contact Information:
Tel: (868)672-0928
Fax: (868)671-8826
E-mail: eoc@gov.tt
Website: www.equalopportunity.gov.tt

What happens next?

After receiving your complaint, an Investigation Officer will be allocated to investigate your complaint. The Officer will then contact you to discuss the progression of your matter.

Legal Aid Clinic

Legal Aid services are meant for persons who cannot afford an attorney. Most legal aid services conduct a 'means' test to find out whether or not the persons applying for a legal aid lawyer is able to afford the services of a lawyer. To determine this issue, the legal aid authority would often examine the applicant's financial means and other criteria. It is necessary for you to contact the closest legal aid provider to get further information. Many non governmental organizations are also able to provide either legal services or some directives as to how you can get legal assistance.

Police Complaint 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 & Tobago. No member of the Police Complaints Authority's staff is attached to the Trinidad and Tobago Police Service, Special Reserve Police or Municipal Police Force. The body is empowered to conduct an investigation on its own initiative or on the basis of a complaint made by a members of the public, a police officer, a public body or authority or the appropriate unit or disciplinary tribunal of the police service.
Website: http://www.pca.org.tt

LEGAL REMEDIES

The appropriate remedy for each case is dependent on the duty the person owed to the injured party as well as the nature of the said breach of the duty. For example, if Tom Strokes is wrongfully detained by Officer Big Stick for 14 days without being advised of his remedies. This would clearly be in breach of the law.

What are the Possible Remedies

There are numerous remedies available for breach of citizen's rights in Trinidad. These remedies include:

a. Declarations,
b. Damages (monetary compensation),
c. Judicial Review Remedies
d. Protection orders,
e. Occupation orders and
f. Other Court Orders.

These orders are available after the aggrieved party or their representative petitions the respective court to seek these orders.

S. 14 of the Constitution of Trinidad and Tobago which concerns enforcement of protective provisions states clearly that an individual has recourse through the High Court of the country.

> S.14. (1) For the removal of doubts it is hereby declared that if any person alleges that any of the provisions of this Chapter has been, is being, or is likely to be contravened in relation to him, then without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress by way of originating motion.
> (2) The High Court shall have original jurisdiction—
> (a) to hear and determine any application made by any person in pursuance of subsection (1); and
> (b) to determine any question arising in the case of any person which is referred to it in pursuance of subsection (4), and may, subject to subsection (3), make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of this Chapter to the protection of which the person concerned is entitled.
>
> (3) The State Liability and Proceedings Act shall have effect for the purpose of any proceedings under this section.
>
> (4) Where in any proceedings in any Court other than the High Court or the Court of Appeal any question arises as to the contravention of any of the provisions of this Chapter the person presiding in that Court may, and shall if any party to the proceedings so requests, refer the question to the High Court unless in his opinion the raising of the question is merely frivolous or vexatious.
>
> (5) Any person aggrieved by any determination of the High Court under this section may appeal therefrom to the Court of Appeal and shall be entitled as of right to a stay of execution of the order and may in the discretion of the Court be granted bail.
>
> (6) Nothing in this section shall limit the power of Parliament to confer on the High Court or the Court of Appeal such powers as Parliament may think fit in relation to the exercise by the High Court or the Court of Appeal, as the case may be, of its jurisdiction in respect of the matters arising under this Chapter.

COURT STRUCTURE AND FRAMEWORK IN TRINIDAD

Trinidad's legal system is represented in the executive by the Ministry of Legal Affairs. Trinidad's court structure is as follows:

a. Privy Council
b. Court of Appeal
c. Supreme Court
d. Magistrates' Court

Magistrates' Court

The magistrates' courts are the largest courts in Trinidad in relation to the volumes of cases it would hear on any given day. The Section 3 (1) of the Summary Courts Act provides for the appointment of the Magistrates to the parish Court.

Magistrates have the jurisdiction to hear criminal and civil matters where the possible remedy/fine would be below a certain sum. For example, the magistrates are empowered to hear cases of minor assault, petty theft, abusive language, landlord and tenant claims and claims for debts under $15,000.00. A claim for more than this sum should be brought to the high court.

This court also conducts hearings into the merits of charges for indictable offences such as rape, manslaughter, murder and treason. The Magistrate, after hearing and assessing the evidence led before him, may commit the accused to stand trial in the High Court. If insufficient evidence was found to have been led, then the accused would be discharged. This discharge is not an acquittal. Charges may again be brought against a person for the same alleged offence.

Supreme Court of Trinidad and Tobago

Section 99 of the Constitution mandates that there shall be a Supreme Court of Judicature of Trinidad and Tobago consisting of both the High Court of Justice and a Court of Appeal.

A. The High Court is duly constituted under section 100 of the Constitution of Trinidad. The Court has jurisdiction to hear civil and criminal matters as well as certain appeals from the lower Courts.
B. The Court of Appeal of Trinidad and Tobago was established under section 101 - 103 of the Constitution of Trinidad. It exercises an appellate jurisdiction with power to hear and determine appeals in both civil and criminal matters. The Chief Justice is mandate to come from the Court of Appeal.

Caribbean Court of Justice

This is the final appeal Court in Trinidad. It hears both civil and criminal appeals which emanates from the Court of Appeal.

CASE STUDY:

Caleb Orozco *v* The Attorney General of Belize and Ors, Claim No. 668 of 2010

Caleb Orozco is a gay Belizean that successfully challenged the constitutionality of Section 53 of the Criminal Code 1981 of Belize that essentially criminalized consensual sex between two consenting adults. Section 53 states that 'every person who has carnal intercourse against the order of nature with any person or animal shall be liable to imprisonment for ten years.' The claim is a challenge to the constitutional validity of section 53 of the Belize Criminal Code to the extent that it operates to criminalize anal sex between two consenting male adults in private.

The grounds of the claim as set out in the Fixed Dale Claim are as follows:

1. The accepted statutory interpretation of 'carnal intercourse against the order of nature' is that Section 53 of the Criminal Code criminalises anal sex between two consenting male adults in private.
2. In the premises, and in the light of the preamble to the Constitution of Belize which recognises "the dignity of the human person and the equal and inalienable rights with which all members of the human family are endowed by their Creator", section 53 violates
    i. The right to the recognition of human dignity guaranteed by section 3 (c) of the Belize Constitution;
    ii. The right to the protection for personal privacy guaranteed by section 3 (c)
    iii. The right to the protection of the privacy of the home guaranteed by section 3 (c)
    iv. The right not to be subjected to arbitrary or unlawful interference with privacy or unlawful interference with privacy guaranteed by section 14 (1)
    v. The right to respect for private life guaranteed by section 14 (1); and
    vi. The right to the equal protection of the law without discrimination guaranteed by section 6 (1)

The Claimant noted in his affidavit in support of Fixed Date Claim Form that the criminalization of sex between consenting adult men causes many men who have sex with men to shun testing and treatment of HIV/AIDS because of the stigma and discrimination against gay men in the society. This was supported by numerous expert evidence which showed the social impact of criminalization of anal sex.

The Court held that in breach of Section 6 (1) and 16 (1) and (3) of the constitution, the Claimant was discriminated against on the basis of his sexual orientation and that no evidence has been led to show that such discrimination is justifiable.

The Court also declared that Section 53 of the Criminal Code, contravenes sections 3, 6, 12 and 16 of the Belize Constitution to the extent that it applies to carnal intercourse against the order of nature between persons. The Court exercised its power to revise the section to bring it into conformity with the constitution and added a clause which states that 'This sections shall not apply to consensual sexual acts between adults in private'.

Chief Justice Kenneth Benjamin also clarified that "sex" as mentioned in Section 16(3) of the Constitution, includes sexual orientation. Therefore, the Constitution of Belize prohibits discrimination on the basis of sexual orientation

How would this case have been decided in Trinidad in light of the Equal Opportunity Act?

ACTIVITY

Divide the group into four separate units. Each unit is asked to review the following questions and present to the entire group.

> Whilst at your office, Ms. Tom Strokes attends stating that she was arrested by the Police for wearing a dress in the middle of the town. She wore the dress simply because it her best way to express how she feels inside. She has always worn dresses whilst inside her house because she prefers to wear female attire despite being born a male. She simply took a stroll down Georgetown and was seen by Officer Nuffy who decides to arrest her as part of his personal bid to crack down on cross dressers.
>
> Ms. Tom Strokes is kept in custody for more than six days without being charged or advised as to the reason for her arrest. She tells you that she asked numerous times to be advised of the reason for her arrest but was never told the reason for the arrest until she was being released and told she needs to come and explain to the Chief Magistrate why she is wearing woman's clothes.
>
> Her matter is before the court. She is to appear in the Magistrate Court within 14 days. Ms. Tom Strokes attends your office. She wants to know what she should do in court. She also wants advice on how she can assist to ensure that this type of police action does not continue to occur without being noted.

Advise her.

MODULE 18

LEGAL OPTIONS OUTSIDE OF TRINIDAD

Persons aggrieved by decisions of Trinidadian authority or state may also take up their grievances with international bodies which monitors any of the rights conventions to which Trinidad is a party.

Aggrieved persons may not be able to present their individual complaints to every institution but at a minimum they could engage local NGOs who could document the specific problem and report them by meeting with or submitting information to a rapporteur/commission/committee.

They can use the Committee report/concluding observations to educate the public/press. This can raise awareness of a human rights problem and increase pressure for action.

See the following Ratification, Reporting & Documentation for Trinidad

Treaty	Signature Date	Ratification Date, Accession(a), Succession (s) Date
CAT - Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment		
CAT-OP - Optional Protocol of the Convention against Torture		
CCPR - International Covenant on Civil and Political Rights		21 Dec 1978(a)
NCCPR-OP2-DP - Second Optional Protocol to the International Convenant on Civil and Political Rights aiming to the abolition of the death penalty		
CED - Convention for the Protection of All Persons from Enforced Disappearance		
CEDAW - Convention on the Elimination of All Forms of Discrimination against Women	27 Jun 1985	12 Jan 1990
CERD - International Convention on the Elimination of All Forms of Racial Discrimination	09 Jun 1967	04 Oct 1973
CESCR - International Covenant on Economic, Social and Cultural Rights		08 Dec 1978 (a)
CMW - International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families		
CRC - Convention on the Rights of the Child	30 Sep 1990	05 Dec 1991
CRC-OP-AC - Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict		
CRC-OP-SC - Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography		
CRPD - Convention on the Rights of Persons with Disabilities	27 Sep 2007	25 Jun 2015

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR, 1966)

The ICCPR is a multilateral treaty adopted by the United Nations and it commits its State Parties to respect the civil and political rights of individuals including the right to life, freedom of religion, freedom of expression, freedom of assembly, electoral rights, rights of due process and to a fair trial, and the right not to be subjected to cruel, inhuman or degrading treatment or punishment. The Human Rights Committee (HRC) monitors implementation of the International Covenant on Civil and Political Rights and its optional protocols.

The Universal Periodic Review (UPR) is a unique mechanism of the Human Rights Council (HRC) aimed at improving the human rights situation on the ground of each of the 193 United Nations (UN) Member States. (see Upr-info.org for further info.) Under this mechanism, the human rights situation of all UN Member States is reviewed every 5 years. These three sessions are usually held in January/February, May/June and October/November.

The result of each review is reflected in an "outcome report" listing the recommendations the State under review (SuR) will have to implement before the next review.

The UPR is a full-circle process comprised of 3 key stages:

1. Review of the human rights situation of the state under review;
2. Implementation between two reviews (5 years) by the State Under Review of the recommendations received and the voluntary pledges made;
3. Reporting at the next review on the implementation of those recommendations and pledges and on the human rights situation in the country since the previous review.

Trinidad's next review session is May 2021.

Trinidad's last session was on the May 10, 2013. Mid-term reporting will occur in Novermber 2018. Stakeholder's deadline for submission is September 24, 2020. The recommended drafting period is July 2020 – September 24, 2020. This would ensure that there is sufficient time for advocacy before the next UPR in April 2021.

See website: ***https://www.upr-info.org/en/review/Trinidad-and-Tobago***

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR)

The ICESCR calls on its State Parties to undertake and to work towards the granting of economic, social, and cultural rights to individuals, including labour rights and the right to health, the right to education, and the right to an adequate standard of living. The UN Committee on Economic, Social and Cultural Rights (CESCR) monitors implementation of the International Covenant on Economic, Social and Cultural Rights (1966)

Trinidad ratified the ICESCR on the 08 December 1978.

CONVENTION ON THE RIGHTS OF THE CHILD (CRC)

This Convention deals specifically with the protection of the rights of children, setting out the civil, political, social, health and cultural rights of children. Under the CRC, a child is defined as a person under the age of eighteen years, unless the domestic legislation in a particular State declares that the age of majority is attained earlier. The Committee on the Rights of the Child (CRC) monitors implementation of the Convention on the Rights of the Child (1989) and its optional protocols (2000).

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

CEDAW is described by the United Nations as an international bill of rights for women. The Convention reaffirms its faith in fundamental human rights, in the dignity, and worth of the human person, and in the equal rights of men and women. It details the meaning of equality and how it can be achieved. Several dimensions of discrimination of women are addressed. These include the civil and legal status of women, reproductive rights, equality in relation to men on issues such as public and political life, education, cultural life and economic rights.

Committee on the Elimination of Discrimination against Women (CEDAW) monitors implementation of the Convention on the Elimination of All Forms of Discrimination against Women (1979) and its optional protocol (1999)

CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (CERD)

CERD commits its members to the elimination of racial discrimination and the promotion of understanding among all races. As such State Parties are obligated to ensure the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law and to the enjoyment of the rights and freedoms outlined in the Convention. Committee on the Elimination of Racial Discrimination (CERD) monitors implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (1965)

INTERNATIONAL CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (CRPD)

CRPD commits its members to protect the rights and dinity of persons with disabilities. Parties to the convention are required to promote, protect, and ensure the full enjoyment of human rights by persons with disabilities and ensure that they enjoy full equality under the law. It came into force on 3 May 2008. Committee on the Rights of Persons with Disabilities (CRPD) monitors implementation of the International Convention on the Rights of Persons with Disabilities (2006).

INTER-AMERICAN SYSTEM

The Inter-American System for the protection of human rights is one of the world's three regional human rights systems, and is responsible for monitoring and ensuring implementation of human rights guarantees in the 35 independent countries of the Americas that are members of the Organization of American States (OAS).

The Inter-American System is composed of two entities: a Commission and a Court. Both bodies can decide individual complaints concerning alleged human rights violations and may issue emergency protective measures when an individual or the subject of a complaint is in immediate risk of irreparable harm. Trinidad is not a signatory to the Inter-American Court.

Mandate and Functions of the Commission

The principal function of the IACHR is to promote the observance and protection of human rights in the Americas. As Article 106 of the Charter of the Organization provides,

[t]here shall be an Inter-American Commission on Human Rights, whose principal function shall be to promote the observance and protection of human rights and to serve as a consultative organ of the Organization in these matters.

An inter-American convention on human rights shall determine the structure, competence, and procedure of this Commission, as well as those of other organs responsible for these matters.

In furtherance of its mandate, the Commission:

1. Receives, analyzes and investigates individual petitions in which violations of human rights are alleged to have been committed either by a Member State of the OAS that has ratified the American Convention or by one that has not.
2. Observes the general situation of human rights in the Member States and publishes, when it deems appropriate, reports on the situation in a given Member State.
3. Conducts in loco visits to countries to conduct an in-depth analysis of the general situation and/or to investigate a specific situation. In general, these visits lead to the preparation of a report on the human rights situation observed, which is published and presented to the Permanent Council and to the General Assembly of the OAS.
4. Develops an awareness of human rights among the peoples of the Americas. To that end, the Commission prepares and publishes reports on specific issues, such as: the measures that must be taken to ensure greater access to justice; the effects that internal armed conflicts have on certain groups; the human rights situation of children, women, and migrant workers and their families, persons deprived of liberty, human rights defenders, indigenous persons, persons of African descent; freedom of expression; citizen security and terrorism, and how they relate to human rights, and so on.
5. Organizes and holds visits, lectures, seminars and meetings with government representatives, academic institutions, nongovernmental organizations and others for the purpose of communicating information and promoting a broad understanding of the work of the inter-American human rights system.
6. Recommends to the OAS Member States the measures they should take the better to protect human rights in the countries of the hemisphere.
7. In serious and urgent cases, requests Member States to adopt precautionary measures, in keeping with Article 25 of its Rules of Procedure, in order to prevent irreparable harm to persons or to the subject matter

of the proceedings in connection with a pending petition or case. Furthermore, under Article 63(2) of the American Convention, in cases of extreme gravity and urgency the Commission may request that the Inter-American Court order the adoption of "provisional measures" to prevent irreparable harm to persons, even when the case has not yet been submitted to the Court.

8. Presents cases to the Inter-American Court and appears before the Court during the processing and consideration of cases.
9. Requests advisory opinions of the Inter-American Court, pursuant to Article 64 of the American Convention.
10. Receives and examines communications in which a State party alleges that another State party has committed a violation of a human right protected under the American Convention, pursuant to Article 45 thereof.

The following is an extract from the IACHR brochure which is found on their website at ***http://www.oas.org/en/iachr/docs/pdf/HowTo.pdf***

WHAT IS THE COMMISSION'S FUNCTION?

The Commission's function is to promote the observance and defense of human rights in the Americas. The Commission performs this function by making visits to the countries, carrying out thematic activities and initiatives, preparing reports on the human rights situation in a certain country or on a particular thematic issue, adopting precautionary measures or requesting provisional measures before the Inter-American Court, and processing and analyzing individual petitions with a view to determining the international responsibility of the States for human rights violations, and issuing the recommendations it deems necessary. The individual petitions that the Commission examines may be submitted by individuals, groups of individuals, or organizations that allege violations of the human rights guaranteed in the American Declaration of the Rights and Duties of Man ("the American Declaration"), the American Convention on Human Rights ("the American Convention"), and other inter-American human rights treaties.

Against whom can I file a petition alleging a violation of human rights?

The complaint must be filed against one or more Member States of the OAS considered to have violated the human rights contained in the American Declaration, the American Convention, and other inter-American human rights treaties.

The State may be responsible for violating human rights by:

- action (as a result of an act by the State or its agents),
- acquiescence (as a result of the tacit consent of the State or its agents), or
- comission (as a result of the State or its agents failing to take action when they should have done so)

Can the Commission determine the liability of an individual person?

No. The Commission is not competent to attribute individual liability, that is, it cannot determine whether an individual person is or is not guilty. The Commission can only determine the international responsibility of a Member State of the OAS.

What results can I expect if I file a petition alleging a violation of human rights against a Member State of the OAS?

If the Commission determines that a State is responsible for having violated the human rights of a person or group of persons, it will issue a report that may include the following recommendations to the State:

- suspend the acts in violation of human rights;
- investigate and punish the persons responsible;
- make reparation for the damages caused;
- make changes to legislation; and/or
- require that the State adopt other measures or actions. In addition, a friendly settlement of the matter may be pursued with the State.

In which cases will the Commission not be able to help me?

The Commission cannot:

- issue a ruling with respect to a State that is not a member of the OAS;
- provide attorneys to assist in domestic judicial proceedings or to submit a petition or request for precautionary measures to the Commission;
- provide economic assistance or materials and supplies to persons;
- undertake immigration procedures, or process the granting of visas or political asylum.

Petition

By filing a petition before the Inter-American Commission on Human Rights, victims of human rights violations can obtain help. The Commission investigates the situation and can make recommendations to the State responsible to restore the enjoyment of rights whenever possible, to prevent a recurrence of similar events, to investigate the facts and to make reparations.

CASE STUDY:

Kevin Dial Case – Report No. 83/11

Petition was presented to the Inter-American Commission on Human Rights ("the Commission") on April 29, 1999, by Herbert-Smitt LLP ("the petitioner") against the State of Trinidad and Tobago ("the State" or "Trinidad"), on behalf of Kevin Dial and Andrew Ditton (" Kevin Dial").

The petitioner alleges that the State has violated the rights of Kevin Dial as set forth in the American Declaration on the Rights and Duties of Man ("the Declaration").

The petitioners indicated that the alleged victims were tried and convicted as co-defendants for the murder of Junior Baptiste and sentenced to death on January 21, 1997 by the High Court of Justice of Trinidad & Tobago, pursuant to the country's mandatory death penalty. The petitioners subsequently informed the IACHR that, pursuant to constitutional proceedings in the High Court of Trinidad & Tobago, the alleged victims' death sentences were commuted to life imprisonment on August 15, 2008. The petitioners underscore that the late commutation of the death sentences does not alter the substance of the alleged due process violations during the alleged victims' pre-trial detention and trial, nor does it resolve the alleged violations for the period the alleged victims were on death row. In that regard, the petitioners mainly complain of three related issues: violations of due process in the course of their arrest, pre-trial detention, trial, conviction and sentencing; conditions of post and pre-trial detention; and the delay in commutation of the alleged victims' death sentences despite jurisprudence from the Judicial Committee of the Privy Council ("the JCPC") requiring such action.

The petitioners note that Trinidad & Tobago's denunciation of the American Convention on Human Rights ("the American Convention") took effect on May 26, 1999. Therefore, they maintain that the State is responsible for violations of the American Convention with respect to those facts which took place before that date; as well as for violations of the American Declaration of the Rights and Duties of Men ("the American Declaration") that allegedly occurred after that date: Article I of the American Declaration and Article 4 of the American Convention; Article II of the American Declaration and Article 24 of the American Convention; Article XXV of the American Declaration and Articles 5 and 7 of the American Convention; Articles XVIII and XXVI of the American Declaration and Articles 8 and 25 of the American Convention; and Articles 10 and 11 of the American Convention. With regard to Mr. Dial, the petition also alleges a violation of Articles 17 and 19 of the American Convention.

The State argues that the petition is inadmissible because the petitioners failed to exhaust domestic remedies. Moreover, the State denies all allegations related to the merits, principally because it considers that the petitioners failed to produce substantive evidence of violations of the American Convention. More specifically, the State contends that the existence of the mandatory sentence of death for murder is in accordance with international law; the United Nations Human Rights Committee ("the HRC") found no breach to the right to humane treatment arising from prison conditions in Trinidad & Tobago; the IACHR has no competence to challenge the sentences imposed by the State in accordance with its domestic law; and the period between the completion of the committal proceedings and the trial was not unreasonable. Finally, the State concludes that the petitioners are merely seeking to use the Inter-American Commission as a court of appeal, since no denial of justice can be said to arise in this case. Accordingly, the State submits that the alleged victims are not entitled to compensation, because their convictions were the result of criminal procedures which respected all fair trial guarantees.

The IACHR concluded that it was competent to hear this case and that the petition is admissible according to Articles 46 and 47 of the American Convention and Article 34 of its Rules of Procedure, with the exception of the allegations regarding Article 11 of the American Convention.

The main issue was whether or not the petitioners should have filed a constitutional motion. There is a requirement that the petitioners exhaust domestic remedies before they seek to petition the court.

The IACHR found ....that the legal complexity of a constitutional motion, combined with an alleged victim's indigence, makes it unrealistic and unfair to expect him or her to present such a motion without professional legal assistance, thus rendering this recourse illusory. The IACHR held that 'Indeed, though technically still an available option, such a motion bears a sufficient level of complexity that it requires legal assistance which was supposedly not provided by Trinidad & Tobago to the alleged victims.'

The IACHR decided that the applicants cannot be required to file a constitutional motion as a condition of admissibility. It also decided to 'continue with the analysis of the merits of the case'.

Precautionary Measures

In certain serious and urgent situations, and provided that certain requirements are met, the Commission may adopt precautionary measures.

Precautionary measures calls on the state to take steps to protect a person(s) who is in imminent peril. A person needs a precautionary measure when there is reason to believe that they are at risk of injury to their basic human rights. The precautionary measure would normally be given where money would not be an adequate compensation to the injured person. The IACHR's authority to request urgent measures is reflective of a common practice in international human rights law.

You do not need a lawyer to file a request for precautionary measure. You can file your request for precautionary measure yourself without the assistance of a lawyer. There is no fee for submitting a request for precautionary measures.

The request for a precautionary measure can be sent in the form of a letter.

It should include the following information, listed as A – F. Once you have included the material information you should send off the precautionary measure or petition.

Material Information

A. Personal Information

i. the applicant's name, telephone, mailing address, fax, email, contact number.
ii. Whether the applicant wishes to keep his identity secret.
iii. The name of class of proposed beneficiary and contact number of the beneficiary. This information should be clear enough for the state to know which beneficiary should be protected.

B. Facts Alleged

i. A detailed and chronological description of the facts that shows the existence of a serious and urgent situation and irreparable harm.
ii. The current situation of the persons proposed as beneficiaries and their degree of risk.
iii. If possible, legible, uncertified copies should be sent of the documents needed to understand the situation of the proposed beneficiary, such as copies of complaints presented to the authorities, medical certificates in situations involving health, and any other relevant legal motions that have been presented. If it is not possible to send these documents, the reasons should be provided. Photocopies of documents do not require any formality, that is, it is not necessary that they be certified, notarized or legally authenticated. One need not send several copies of the same document. If the request and its annexes are sent by mail, it is preferable that the documentation not be bound or laminated in any way.

C. Complaints to State Authorities

i. An explanation of whether the facts alleged have been reported to the authorities or whether the State has been asked to provide protection, and a description of the response, if any; or an explanation of why it has not been possible to put such protection in place.

ii. An indication as to whether the person or group or persons proposed as beneficiaries already has any measures of protection domestically. If so, provide an explanation of how effective those measures have been.

D. Measures requested – A description of the measures of protection or others measures that have been requested.

E. Information as to whether you filed a petition/case before commission

i. Indicate whether the applicant/beneficiary has already filed a petition or has a case pending before the Commission.

ii. if so, the date of submission of the petition and the reference number assigned to the petition or case should be included

Requests for precautionary measures may be sent

A. via email to cidhdenuncias@oas.org
B. via Fax: +1 (202) 458-3992 or 6215 or
C. via Mail to

Inter-American Commission on Human Rights
1889 F Street N.W.
Washington, D.C. 20006
United States

Article 25. Precautionary Measures

1. *In serious and urgent situations, the Commission may, on its own initiative or at the request of a party, request that a State adopt precautionary measures to prevent irreparable harm to persons or to the subject matter of the proceedings in connection with a pending petition or case.*

2. *In serious and urgent situations, the Commission may, on its own initiative or at the request of a party, request that a State adopt precautionary measures to prevent irreparable harm to persons under the jurisdiction of the State concerned, independently of any pending petition or case*

3. *The measures referred to in paragraphs 1 and 2 above may be of a collective nature to prevent irreparable harm to persons due to their association with an organization, a group, or a community with identified or identifiable members.*

4. *The Commission shall consider the gravity and urgency of the situation, its context and the imminence of the harm in question when deciding whether to request that a State adopt precautionary measures. The Commission shall also take into account:*
   a. *whether the situation of risk has been brought to the attention of the pertinent authorities or the reasons why it might not have been possible to do so;*
   b. *the individual identification of the potential beneficiaries of the precautionary measures or the identification of the group to which they belong; and*
   c. *the express consent of the potential beneficiaries whenever the request is filed before the Commission by a third party unless the absence of consent is duly justified.*

CASE STUDY:

PM No. 440/16 – Zaheer Seepersad

On August 4, 2017, the IACHR decided to request that precautionary measures be adopted for Zaheer Seepersad, in Trinidad and Tobago. The application for precautionary measures alleges that the beneficiary suffers from "dystonia" and is at risk due to his medical condition and the threat of being hospitalized in a psychiatric institution, which could aggravate his condition. Having analyzed the allegations of fact and law, the IACHR considers that the information submitted shows, prima facie, that the beneficiary's situation is serious and urgent because of his state of health and the alleged lack of adequate medical care. Consequently, in accordance with Article 25 of the IACHR Rules of Procedure, the Commission requested that Trinidad and Tobago adopt the necessary measures to protect the life and personal integrity of the proposed beneficiary, taking into consideration his medical condition and his condition as a person with disability, and in particular ensuring him access to adequate medical treatment and therapies. The Commission also requested that the State consult the measures to be implemented with the proposed beneficiary and his representatives to ensure their agreement and that it report on the actions taken to investigate the allegations that gave rise to the adoption of this precautionary measure, so as to avoid a recurrence.

Precautionary measures can be helpful in bringing attention to a particular problem and in getting the state to actually take notice of potential human rights violation. It is reported to have worked for member of Zaheer Seeprsad in Trinidad.

Hearings

Hearings are helpful since they allow the IACHR to 'Observes the general situation of human rights in the Member States and publishes, when it deems appropriate, reports on the situation in a given Member State.'

IACHR hearing can be held either in private or in public. Public hearing brings international attention to many thematic issues. Civil Society actors and government can request thematic hearings. The request for a thematic hearing can be made by simply writing a letter to the IACHR thorough its online system. This is normally done at least fifty (50) days before the beginning of the Commission session. A request must include the purpose of the hearing and the names of the proposed civil society witnesses and experts, as well as a point of contact.

The purpose of the hearing could be to present issues before an international body. The presentation of the issues could very well ensure that they are addressed by the state party. The state party is normally present at these hearings. The State party is invited to present information on behalf of the state. This is often a very useful process for getting state parties to address long standing problems. The IACHR will also be aware of the relevant issue and may also on its own initiative conduct further activities including a country visit which can assist in remedying the problem.

CONCLUSION

Victims of rights violation and civil society organisations can seek assistance from various international bodies to address these breaches. The IACHR can be contacted to seek either (1) precautionary measure, (2) to file a petition, (3) for a hearing. As displayed above, these tools have been used to good effect to address rights violation. Civil Society Organisation can also take special notes of the various international bodies which monitors adherence to various treaties. CSO can share their properly databases with these bodies to demonstrate areas of rights violation that need special attention from state actors.

ACTIVITY

Advise Mary Strokes on the different international bodies to which complaints can be made.

REFERENCES AND MATERIALS CONSULTED

A. DOMESTIC LAWS AND POLICIES

1. Trinidad and Tobago Constitution
2. Motor Vehicles and Road Traffic Act
3. Police Complaint Authority Act
4. Summary Offences Act
5. Sexual Offences Act
6. Magistrates Protection Act
7. Equal Opportunity Act
8. Criminal Procedure Act
9. Criminal Procedure Rules 2016
10. District Court Act
11. Bail Act
12. National Policy on Persons with Disabilities
13. Students Guide to the Trinidad and Tobago Judiciary

B. POLICY AND WEBSITES

1. National Workplace Policy on HIV/AIDs
2. National Drugs Policy of Trinidad and Tobago
3. National Gender Policy
4. Advocacy before the Inter-American System: Manual for Attorneys and Advocates (2014)
5. *https://www.upr-info.org/en/review/Trinidad-and-Tobago*
6. *http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=177&Lang=EN*

NOTES

Caribbean
Vulnerable
Communities
Coalition

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