

# ATTACKS ON JUSTICE – TRINIDAD AND TOBAGO

## *Highlights*

Judicial independence is entrenched in the Constitution, and safeguarded in law and in practice. The legality of the impeachment proceedings initiated by the Prime Minister against the Chief Justice, following an accusation of misconduct by the Director of Public Prosecutions and senior judges, is being challenged in the High Court. In 2004, the infrastructure of the courts was improved with new buildings and improved IT facilities. The areas of concern remain the heavy workload of judges, poor conditions of detention and lack of effective access to justice for the most impoverished sectors of the community. In February 2005, a law was passed conferring upon the newly-established Caribbean Court of Justice (CCJ) original jurisdiction to interpret Caribbean Community agreements. The CCJ was also meant to replace the Judicial Committee of the Privy Council as Trinidad and Tobago's highest court of appeal but the idea was shot down due to opposition in Parliament in early 2005. Trinidad and Tobago is currently the only CARICOM Member State to have expressly declined to grant appellate jurisdiction to the CCJ. The government unsuccessfully tried to introduce new legislation in 2004 to remedy the ineffective mechanisms for reviewing police misconduct.

## BACKGROUND

Trinidad and Tobago is a sovereign democratic state founded on the rule of law, as expressly stated in the preamble to its *Constitution*. After achieving full independence from the United Kingdom in 1962, Trinidad and Tobago became a republic in 1976 when its Independence Constitution was replaced by a republican Constitution. The present Constitution states that it is 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 is the separation of powers between the three branches of government - the executive, the legislature, and the judiciary.

The main political parties are the People's National Movement (PNM), the United National Congress (UNC) and the National Alliance for Reconstruction (NAR). The PNM is said to draw its support from Afro-Trinidadians while UNC voters tend to comprise Indo-Trinidadians. Of the 1.3 million inhabitants, 40 per cent are of African descent and 40.3 per cent of East Indian descent.

In **October 2002, Patrick Manning** was elected Prime Minister for a four-year term after his PNM party won 20 of the 36 parliamentary seats in the general election. President Robinson had previously appointed Patrick Manning as Prime Minister following a tied result in the general election of December 2001 – the PNM and UNC won 18 seats each. Article 76(2) of the Constitution empowers the President to appoint a Prime Minister in the event of electoral deadlock. However, the

appointment angered opposition leader Basdeo Panday of the UNC, and sparked demands for another vote. The October 2002 ballot produced a more conclusive result for the PNM.<sup>1</sup>

In **June 2004**, the Privy Council ruled that the legislation making the death penalty mandatory for murder in Trinidad and Tobago was constitutional. This was because of a ‘savings clause’ enshrined in **article 6** of the **1976 Constitution**, which precluded any law from being subsequently declared unconstitutional if it was in force when the Constitution came into being.

Impunity among the security forces remains a matter of concern.

## JUDICIARY

Judicial authority in Trinidad and Tobago is divided between a higher judiciary (Supreme Court of Judicature) and a lower judiciary (Magistracy), both of which exercise original jurisdiction in civil and criminal matters. Appeals from the Magistracy and Supreme Court of Judicature are heard by the Court of Appeal, while appeals from the Court of Appeal are heard by the Judicial Committee of the Privy Council in the United Kingdom. Under Article 109 of the Constitution of 1976<sup>2</sup>, the Judicial Committee of the Privy Council is the final court of appeal in the land for civil, criminal, constitutional and family cases.

### The Caribbean Court of Justice (CCJ)

There was recent acrimony in Parliament over the introduction of legislation to incorporate into domestic law the *Agreement establishing the Caribbean Court Of Justice (CCJ)* which was signed on **14 February 2001** by the then UNC government and has been in force since **13 July 2002**. The Agreement provides for the establishment of a court of justice for member States of the Caribbean Community (CARICOM). The court serves a dual function. On the one hand, it exercises original jurisdiction in the interpretation and application of the 2001 *Revised Treaty establishing the CARICOM, Single Market and Economy* (Revised CCJ Treaty). It was also intended to replace the UK-based Judicial Committee of the Privy Council as the final Court of Appeal for Commonwealth Caribbean States. In February 2005, it was agreed that the headquarters of the CCJ will be in Trinidad and Tobago although, in order to enhance access to justice, the court may hear cases in other jurisdictions on an *ad hoc* basis.<sup>3</sup>

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<sup>1</sup> See BBC News Country Profile: Trinidad & Tobago, [http://news.bbc.co.uk/1/hi/world/americas/country\\_profiles/1209827.stm](http://news.bbc.co.uk/1/hi/world/americas/country_profiles/1209827.stm); Constitution of Trinidad and Tobago of 1976, as amended by Act N.89 of 2000, <http://www.georgetown.edu/pdba/Constitutions/Trinidad/trinidad76.html>; and CNN, “*New Trinidad Prime Minister sworn in*”, 24 December 2001, <http://www.latinamericanstudies.org/caribbean/trinidad-manning.htm>

<sup>2</sup> See Constitution of Trinidad and Tobago, updated in 2000, <http://www.georgetown.edu/pdba/Constitutions/Trinidad/trinidad-tobago.html>

<sup>3</sup> See Agreement establishing the Caribbean Court Of Justice, St. Michael Barbados, 14 February 2001.; Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy 2001; Caribbean Court of Justice headquarters agreement signed on 21 February 2005, <http://www.caribbeannews.com/2005/02/21/agreement.shtml>; and Project on International Courts and Tribunals, Caribbean Court of Justice, <http://www.pict-pcti.org/courts/CCJ.html>

The Privy Council's jurisdiction over the post-colonial Commonwealth Caribbean is contentious. Caribbean legislators often label the Privy Council a colonial relic and an impediment to full independence. Since the 1970s, many politicians have advocated its replacement with a regional judicial body. One of the most salient points of the controversy concerns the death penalty which most countries of the region, including Trinidad and Tobago, still retain and apply. Since 1994, 85 per cent of the capital punishment cases which have gone to the Privy Council from the Commonwealth Caribbean states have resulted in the sentences being quashed because they were imposed without regard for due process guarantees or because the conditions of detention of the accused contravened international human rights standards. These decisions provoked a backlash from legislators who called for the replacement of the Privy Council with a regional court. Civil society groups, however, expressed fears that the CCJ would not be as proactive as the Privy Council in dealing with the way death sentences are handed down and carried out.<sup>4</sup>

The Parliamentary debates in January and February 2005 on the incorporation of the CCJ Agreement into domestic law reflected these conflicting views towards the regional body. The Parliament had to consider two draft laws - *The Caribbean Court of Justice (CCJ) Bill* (first introduced in November 2003) accepting the CCJ's jurisdiction and the *Constitution (Amendment)(No.2) Bill 2004* making the necessary amendments to the Constitution for the Privy Council to be replaced by the CCJ.

**On 2 February 2005**, the government withdrew the *Constitution Amendment Bill* and introduced substantial changes to the CCJ Bill, notably an amendment recognizing the CCJ's original jurisdiction over the *Revised CCJ Treaty* but not its appellate jurisdiction. The amendments appeased critics in Parliament and allowed the adoption of the Bill by a simple majority on the **4 February 2005**. Trinidad and Tobago is the only Commonwealth Caribbean country which is not likely to replace the Privy Council with the CCJ. The CCJ was inaugurated in the Trinidadian capital, Port of Spain, on **16 April 2005**.<sup>5</sup>

## Independence of the Judiciary

Through its provisions on judicial appointments and security of tenure, the 1976 Constitution clearly indicated its intention to safeguard the judicial system from executive and legislative interference. The Chief Justice is appointed by the President after consultation with – but not on the advice of – both the Prime Minister and the leader of the main opposition party. Rank and file judges are appointed by the President acting on the advice of the Judicial and Legal Service Commission (the Commission) which acts as a high judicial council whose advice must be accepted.

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<sup>4</sup> See Amnesty International, *State killing in the English-speaking Caribbean: A legacy of colonial times*, <http://web.amnesty.org/library/index/engAMR050032002>; *Jamaicans For Justice, The Caribbean Court Of Justice: A 21st Century Trojan Horse*; William Schabas, *The Abolition of Capital Punishment from an International Law Perspective*, March 2003, [www.isrcl.org/Papers/Schabas.pdf](http://www.isrcl.org/Papers/Schabas.pdf); and BBC Newsletter: *Colonial power over death penalty*, 19 January 2005, <http://news.bbc.co.uk/1/hi/world/americas/4185745.stm>

<sup>5</sup> See Trinidad Guardian, 3 February 2005 *Kamla: Court Of Injustice*, <http://www.guardian.co.tt/archives/2005-02-03/news9.html>; Gail Alexander, *No politics in CCJ*, Trinidad Guardian, 3 February 2005, <http://www.guardian.co.tt/archives/2005-02-03/news10.html>; *Trinidad & Tobago Parliament approves CCJ Bill*, 4 February 2005, [http://news.caribseek.com/Trinidad\\_and\\_Tobago/article\\_9689.shtml](http://news.caribseek.com/Trinidad_and_Tobago/article_9689.shtml); Trinidad Guardian, *Kamla Trying it both Ways*, 6 February 2005, <http://www.guardian.co.tt/archives/2005-02-06/presstable.html>; [www.nationbynation.com/Trinidad/Population.html](http://www.nationbynation.com/Trinidad/Population.html); *CCJ Inaugurated with Pomp and Ceremony*, 16 April 2005, [http://news.caribseek.com/Trinidad\\_and\\_Tobago/article\\_13467.shtml](http://news.caribseek.com/Trinidad_and_Tobago/article_13467.shtml)

The Commission is an independent body established by the Constitution, comprising the Chief Justice as chairman, the chairman of the Public Service Commission and three other members including one retired or sitting Justice of the Commonwealth and two other people with legal qualifications. To further protect judicial independence, the Constitution provides that a judge can only be removed if he or she is unable to perform the duties of office or for misbehaviour. Such dismissals may only occur after adjudication by the Privy Council. Judges retire at 65, and their salaries and conditions of service cannot be altered to their disadvantage.

In practice, the judiciary fiercely safeguards its independence even when judicial vigilance leads it into direct conflict with the authoritarian executive and legislative tendencies. Conflicts arise as the judiciary often attempts to give full effect to the constitutional rights of accused persons in civil and criminal proceedings.

The courts continue to benefit from infrastructural improvements, as well as assistance that has been provided to improve technological and human resource capacities. In 2004, there were reported improvements in areas such as the repair and construction of buildings to serve as magistrates' courts, plans to modernize the court reporting system and, most importantly, the creation of a special family court which was inaugurated in May 2004.

Nevertheless, the Magistracy still seriously lacks technological and infrastructural support. Reported problems include the heavy workload of judges, a lack of adequate access to justice for the most deprived sectors of society and reportedly poor prison conditions.<sup>6</sup>

## **Impunity**

There are still significant problems with the abuse of prisoners by police and prison guards, the use of lethal force by police in unjustifiable circumstances, lengthy delays in trial proceedings and poor prison conditions compounded by degrading treatment. Although the government has increased its efforts to enhance the accountability of security officials responsible for incidents of brutality, including numerous killings and deaths in custody caused by negligence, impunity remains a concern.<sup>7</sup>

In 2004, there were numerous allegations of the use of excessive force and physical and sexual abuses by the police, as well as 21 reported deaths in custody or at the hands of police officers. Some of these alleged abuses gave rise to criminal prosecutions. One police officer was found guilty of manslaughter for shooting two unarmed men, killing one of them, during an altercation at the January 2004 carnival.

The nature and track record of the system established by the *Police Complaints Authority Act (PCA)* – which allows the police to investigate themselves – has not inspired confidence. The independence of this body has been hampered by a lack of staff, funding and effective enforcement mechanisms, as well as questionable investigations. The 2002-2003 PCA report shows that only a small number of

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<sup>6</sup> See *Dealing with Families in Conflict*, [http://www.trinidadandtobagonews.com/forum/webbbs\\_config.pl/noframes/read/2155](http://www.trinidadandtobagonews.com/forum/webbbs_config.pl/noframes/read/2155); and The Honourable Chief Justice's Speech on the Opening of the 2004-2005 Law Term, [http://www.ttlawcourts.org/cj\\_law\\_speech.htm](http://www.ttlawcourts.org/cj_law_speech.htm)

<sup>7</sup> See *Amnesty international 2004 Annual Report: Trinidad & Tobago*.

complaints of attacks, threats, harassment and other forms of police misconduct were investigated.<sup>8</sup>

Legislation was recently introduced to strengthen the Police Complaints Authority, in the form of the *Police Complaints Authority Bill 2003*, later reintroduced as the *Police Complaints Authority Bill 2004* (PCA Bill). The proposed legislation sought to establish an independent body which would investigate complaints of police misconduct, corruption and criminal offences and refer its findings to the Director of Public Prosecutions, the Police Management Authority or the Commissioner of Police. The PCA bill, however, has not been adopted as it first requires an amendment to the Constitution to abolish the Police Service Commission and replace it with the Police Management Authority. The *Constitution Amendment Bill* failed to secure the required two-thirds majority vote in Parliament in July 2004.<sup>9</sup>

### Cases

Between February and April 2005, Prime Minister Manning tried to initiate impeachment proceedings against **Chief Justice Sat Sharma**, following official complaints by the Attorney General, John Jeremie, and the Director of Public Prosecutions (DPP), Geoffrey Henderson, in **January 2005**. Chief Justice Sharma, the highest-ranking judge in the criminal justice system, was accused to trying to influence the outcome of a high-profile murder inquiry involving a renowned physician Dr Naraysingh, his wife and a well-known businessman. They were accused by a contract killer of hiring him to murder the doctor's ex-wife. At a meeting in **December 2004**, after the murder inquiry had started, CJ Sharma reportedly reprimanded DPP Henderson for charging a man of Dr Naraysingh's reputation and social standing on the word of a criminal, and ten years after the event. Furthermore, CJ Sharma also reportedly enquired about a supposed letter sent by lawyer Krishendath Neebar to former DPP Mark Mohammed which could allegedly exonerate Dr Naraysingh.

In a series of letters sent in **January 2005**, DPP Henderson complained to the Prime Minister about the undue pressure and expressed his fear that he would be removed if the murder inquiry against Dr Naraysingh continued. He also alleged that Dr Naraysingh's conditions of detention were more comfortable than usual on account of his position. There had also been previous complaints by judges that Chief Justice Sharma had shown bias in selecting judges to deal with certain cases ("forum-shopping"). He had earlier removed Judge David-Myers from a high-profile civil case.

Under article 137(3) of the Constitution, the power to initiate impeachment proceedings against the Chief Justice is vested in the Prime Minister. It empowers the Prime Minister to establish an *ad hoc* tribunal to investigate allegations against the Chief Justice but he has no power to decide whether a Chief Justice should be

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<sup>8</sup> See *Police Complaints Authority: Annual 2002-2003 Report*, [http://www.pca.gov.tt/pca/about/annual\\_reports.asp](http://www.pca.gov.tt/pca/about/annual_reports.asp)

<sup>9</sup> See *Police Complaints Authority Bill 2004*, <http://www.tparliament.org/bills/house/2004/b2004h16.htm>; *The Constitution (Amendment) Bill 2004*, [www.tparliament.org/bills/house/2004/b2004h15p.pdf](http://www.tparliament.org/bills/house/2004/b2004h15p.pdf); *Trinidad Guardian, Give PCA effective tools*, 28 May 2004, <http://www.guardian.co.tt/archives/2004-05-28/Clevon-Raphael.html>; and *Trinidad & Tobago Express, Defeated! Constitution (Amendment) Bill fails to raise 23 votes in House*, 3 July 2004.

removed. At the end of the investigations, the *ad hoc* tribunal must decide whether the matter should be referred to the Judicial Committee of the Privy Council. Only the Privy Council, as the highest judicial body in the land, has the authority to remove the Chief Justice.

On **1 April 2005**, the Prime Minister announced his decision to establish a tribunal to investigate the allegations. On **13 April 2005**, CJ Sharma applied to the High Court for judicial review of the Prime Minister's decision, claiming that it was prompted by the Prime Minister's bias against him, and not the DPP's allegations. On **14 April 2005**, the Port of Spain High Court granted an injunction suspending the appointment of the impeachment tribunal until the legality of the Prime Minister's decision is reviewed by the Court. This is expected to take place on 28 April 2005. The injunction was reportedly described as "*one of the most controversial cases ever tested in the local courts*".

The conflict between the Prime Minister and CJ Sharma has prompted discussion on whether the Constitution ought to be amended to preclude Prime Ministers from initiating such actions in the future. Former President Sir Ellis Clarke has argued that it should be for the President, and not the Prime Minister, to decide whether to initiate impeachment proceedings as it was the former who appointed the CJ. In February 2005, ex-President Clarke and UNC leader Basdeo Panday called for an amendment to article 137 of the Constitution to be introduced to this effect as they consider the present system to be unfair.<sup>10</sup>

### ACCESS TO JUSTICE

The standards required for a fair trial have been undermined by the failure of the government to institute an effective system of witness protection, provide legal aid, exclude coerced confessions from court evidence and, in many instances, ensure that suspects are informed of their right to counsel.

The application of capital punishment continues to be of international concern. In 2003, six death sentences were handed down although no executions took place. The death penalty is imposed following proceedings in which defendants do not have the required legal defence due to the failure to guarantee due process rights. This is often pointed out by the Privy Council (see **Judiciary**).

The backlog in criminal cases and resultant overcrowding of prisons remain of concern. As of **July 2004**, there were 17,000 outstanding criminal cases. Defendants

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<sup>10</sup> See Trinidad Guardian, "State still not ready to start matter", 14 December 2004, <http://www.guardian.co.tt/archives/2004-12-14/news7.html>; Guyana Chronicle, "Danger On Judicial Front", 18 February 2005, <http://www.guyanachronicle.com/ARCHIVES/archive%2018-02-05.html>; Trinidad & Tobago Express, "Keep Away From CJ", 24 February 2005, [www.trinidadexpress.com/index.pl/print?id=63517929](http://www.trinidadexpress.com/index.pl/print?id=63517929); Trinidad & Tobago Express, "Doctor's wife to stand trial", 15 March 2005, [http://www.trinidadexpress.com/index.pl/article\\_news?id=67037405](http://www.trinidadexpress.com/index.pl/article_news?id=67037405); Caribbean Net News, "Trinidad & Tobago CJ says charges are not true", 15 March 2005, <http://www.caribbeannetnews.com/2005/02/21/charges.shtml>; Caribbean Net News, "Constitutional reform may be necessary in Trinidad & Tobago, says Panday", 16 February 2005, <http://www.caribbeannetnews.com/2005/02/16/reform.shtml>; Trinidad Guardian, "Sharma strikes back - CJ moves to block probe", 13 April 2005, <http://www.guardian.co.tt/archives/2005-04-13/news1.html>; and Trinidad Express, "CJ Blocks PM, High Court puts tribunal on hold", 14 April 2005, [http://www.trinidadexpress.com/index.pl/article\\_news?id=72363653](http://www.trinidadexpress.com/index.pl/article_news?id=72363653)

reportedly spend an average of 19 months in pre-trial detention and there were recorded instances of pre-trial detainees who had not seen a lawyer in three years.<sup>11</sup>

To ease prison overcrowding, the junior Minister of National Security, Fitzgerald Hind, said in **March 2005** that petty offences and obscene language would no longer land people in jail. About 75 per cent of Trinidad and Tobago's prison population are reportedly in jail for minor offences.

In 2004, there were two instances of judges declining to sentence elderly convicts to prison on the grounds that the conditions of detention would pose a health risk to them. Prison conditions continue to violate *United Nations Minimum Standards for the Treatment of Prisoners*. For example, Port of Spain Prison currently holds 900 prisoners although it has a capacity of only 250. Furthermore there are allegations that the conditions in this prison, which was built in 1812, are extremely unsanitary and conducive to the rapid spread of infectious diseases. However, the maximum-security prison in Golden Grove, Arouca, only had 800 prisoners – which increased to 1,200 prisoners in 2004 – despite having the capacity for 2,400 detainees.<sup>12</sup> This is due to faulty sewerage and failures in electronic security. The prison still has poor sanitary conditions. Conditions in women's prisons and juvenile correction centres are deemed to comply with international standards.<sup>13</sup>

## Cases

In an individual communication adjudicated by the UN Human Rights Committee in **August 2004**, Trinidad and Tobago was found to be in violation of article 9(3) of the *International Covenant on Civil and Political Rights* (ICCPR) on the right to liberty and security of person, for holding three people in pre-trial detention for 34 months. In **July 2004**, two men accused of murder were acquitted after they had spent seven years in prison awaiting trial.<sup>14</sup>

## LEGAL REFORMS DURING THE PERIOD

### *Laws Enacted*

**February 2004:** *The Caribbean Court of Justice (CCJ) Act 2004.*

### *Bills not adopted by Parliament*

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<sup>11</sup> See *US State Department's report on Trinidad & Tobago 2004*, <http://www.state.gov/g/drl/rls/hrrpt/2004/41776.htm>; and Trinidad Guardian, *Abu Grahib and us*, 21 June 2004, <http://www.guardian.co.tt/archives/2004-06-21/henrycharles.html>

<sup>12</sup> See Trinidad Guardian, *No jail for petty crimes to ease overcrowding*, 5 March 2005, [www.guardian.co.tt/archives/2005-03-05/news5.html](http://www.guardian.co.tt/archives/2005-03-05/news5.html)

<sup>13</sup> *Ibidem*.

<sup>14</sup> See ICCPR, 16 December 1966, [http://www.unhchr.ch/html/menu3/b/a\\_ccpr.htm](http://www.unhchr.ch/html/menu3/b/a_ccpr.htm); Human Rights Committee, *General Comment 8, Article 9 (Sixteenth session, 1982)*, *Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies*, UN Doc. HRI/GEN/1/Rev.1 at 8 (1994), <http://www1.umn.edu/humanrts/gencomm/hrcom8.htm>; UN Human Rights Committee Communication No. 938/2000: Trinidad & Tobago, 19 August 2004, CCPR/C/81/D/938/2000. 19/08/2004, <http://www.unhchr.ch/tbs/doc.nsf/MasterFrameView/2878a112dcd287cfc1256efb005280ae?Opendocument>; and *US State Department's report on Trinidad & Tobago 2004*, <http://www.state.gov/g/drl/rls/hrrpt/2004/41776.htm>

- June 2004:** *The Constitution Amendment Bill (No.1) 2004* to reform the Police Complaints Authority.
- June 2004:** *The Police Complaints Authority Bill 2003* and *Police Complaints Authority Bill 2004*.
- February 2005:** *The Constitution (Amendment) (No.2) Bill 2004* to replace the Privy Council with the CCJ.