



**Cornell Law School**  
Cornell Center on the Death Penalty Worldwide



**Trinidad and Tobago's Compliance with the Convention on the Elimination of All Forms of Discrimination against Women**  
**Suggested List of Issues Prior to Reporting Relating to the Death Penalty**

**Submitted by The Advocates for Human Rights**  
a non-governmental organization in special consultative status with ECOSOC since 1996

**The World Coalition Against the Death Penalty**  
**Greater Caribbean for Life**

and

**The Cornell Center on the Death Penalty Worldwide**

for the

**86th Session of the Committee on the Elimination of All Forms of Discrimination against Women (Pre-Sessional Working Group)**  
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**The Advocates for Human Rights** (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a death penalty project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition against the Death Penalty.

**The World Coalition Against the Death Penalty** is a volunteer-based non-government organization committed to strengthen the international dimension of the fight against the death penalty. Established in 2002, its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

**The Greater Caribbean for Life (GCL)** is an independent, not-for-profit civil society organisation, incorporated under the laws of the Commonwealth of Puerto Rico on January 31, 2014. GCL is the only regional entity in the Greater Caribbean that is devoted to working on the abolition of the Death Penalty. GCL was established in October 2013 following a Conference in Trinidad and Tobago, which was attended by abolitionists from 12 Greater Caribbean countries as well as abolitionists further afield. GCL's main objective is to campaign for and work towards the permanent abolition of the death penalty in the Greater Caribbean and to support Caribbean abolitionist activists and organisations in this region. GCL has been active in raising awareness of

the issues surrounding the DP since its establishment. While GCL condemns the rise of violent crime in our region and expresses solidarity with victims, it has continuously made it clear that it rejects the notion that capital punishment will act as a deterrent or foster respect for life in our communities. GCL is committed to promoting peace, respect for life, and good neighbourliness as appropriate methods of reducing crime in the Greater Caribbean region.

**The Cornell Center on the Death Penalty Worldwide** is a US-based research, advocacy, and training center focused on capital punishment and international law. It publishes reports and manuals on death penalty issues, provides transparent data on death penalty laws and practices around the world, trains capital lawyers in best practices, and engages in targeted advocacy and litigation. Its staff and faculty advisors have collectively spent more than eight decades representing hundreds of prisoners facing the death penalty. In 2019 it was awarded the World Justice Challenge Award in recognition for its work on behalf of death-sentenced prisoners in Malawi.

## EXECUTIVE SUMMARY

1. This report suggests questions the Committee on the Elimination of Discrimination Against Women should pose to the government of Trinidad and Tobago in its List of Issues, particularly with respect to the death penalty.
2. Trinidad and Tobago carried out its last execution in 1999.<sup>1</sup> Although a de facto moratorium is in place, the death penalty remains the mandatory sanction for murder and treason.<sup>2</sup> The Privy Council<sup>3</sup> recently declined to strike down Trinidad and Tobago's mandatory death penalty.<sup>4</sup>
3. Since the Committee's last review in 2016, the government of Trinidad and Tobago has been reviewing the Offences Against the Person Act<sup>5</sup> and has introduced several forward-looking initiatives in the criminal justice area, such as the establishment of a gender-based police unit.<sup>6</sup> The Government has also been considering the formation of a national human rights institution.<sup>7</sup> Nonetheless, women remain at risk of being sentenced to death and Trinidad and Tobago's retention of the death penalty and its practices regarding the death penalty present an ongoing risk of discrimination against women. Moreover, detention conditions for women violate international human rights standards, and authorities have not engaged the public in meaningful discourse concerning abolition of the death penalty.

### **Trinidad and Tobago fails to uphold its obligations under the Convention on the Elimination of All Forms of Discrimination against Women**

4. As a party to the Convention, the Government of Trinidad and Tobago has an obligation to "accord to women equality with men before the law"<sup>8</sup> and to "pursue by all appropriate means and without delay a policy of eliminating discrimination against women."<sup>9</sup>

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<sup>1</sup> Human Rights Council, *Summary of Stakeholders' submissions on Trinidad and Tobago: Report of the Office of the United Nations High Commissioner for Human Rights*, (Aug. 13, 2021), UN Doc A/HRC/WG.6/39/TTO/3, ¶14.

<sup>2</sup> Treason Act, Laws of Trinidad and Tobago (Ch. 11:03) (updated to Dec. 31, 2016), Section 2.

<sup>3</sup> The Privy Council is the last appellate court of several commonwealth countries, including Trinidad and Tobago.

<sup>4</sup> The Death Penalty Project, *Challenge to the constitutionality of the mandatory death penalty in Trinidad and Tobago dismissed by UK Privy Council* (May 16, 2022), <https://deathpenaltyproject.org/challenge-to-the-constitutionality-of-the-mandatory-death-penalty-in-trinidad-and-tobago-dismissed-by-uk-privy-council/>.

<sup>5</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Trinidad and Tobago*, (Dec. 20, 2021), U.N. Doc A/HRC/49/16, ¶ 71.

<sup>6</sup> Carisa Lee, *TTPS launches Gender-Based Violence Unit*, CNC3 News Trinidad and Tobago, Jan. 21, 2020, [<sup>7</sup> Human Rights Council, \*Report of the Working Group on the Universal Periodic Review: Trinidad and Tobago\*, \(Dec. 20, 2021\), UN Doc A/HRC/49/16, ¶ 72.](https://www.cnc3.co.tt/ttps-launches-gender-based-violence-unit/#:~:text=The%20Trinidad%20and%20Tobago%20Police%20Service%20%28TTPS%29%20launched,domestic%20violence%20cases%20and%20breaches%20of%20restraining%20orders; Human Rights Council, Report of the Working Group on the Universal Periodic Review: Trinidad and Tobago, ¶ 49, 51 (Dec. 20, 2021), U.N. Doc A/HRC/49/16 (other state parties commending Trinidad and Tobago for establishing a gender-based violence police unit).</a></p></div><div data-bbox=)

<sup>8</sup> UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 1979, Art. 15(1).

<sup>9</sup> UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 1979, Art. 2.

5. Although Trinidad and Tobago has refrained from using the death penalty since 1999,<sup>10</sup> it has voted against every UN General Assembly resolution calling for a worldwide moratorium on executions.<sup>11</sup> Further, a 2018 report by Amnesty International categorizes Trinidad and Tobago as “retentionist” with regard to the death penalty, meaning that it retains the death penalty for ordinary crimes and lacks “a policy or established practice of not carrying out executions.”<sup>12</sup> Moreover, Trinidad and Tobago is one of the only countries in the world<sup>13</sup>—and the only country in the Americas<sup>14</sup>—that retains a mandatory death penalty for murder.<sup>15</sup>
6. As of January 2023, there are 47 people on death row,<sup>16</sup> with approximately one third believed to have spent more than five years on death row.<sup>17</sup> Courts issued three new death sentences in 2021.<sup>18</sup> The Deputy Commissioner of Prisons has reported that there are no women on death row in Trinidad and Tobago, although there are currently three women “lifers” incarcerated.<sup>19</sup> Because the country has not formally abolished the death penalty, however, women remain at risk of being sentenced to death, particularly under the law’s mandatory death penalty provisions.

**I. Contrary to international norms, Trinidad and Tobago still imposes the death penalty, and the mandatory death penalty continues to place women at risk of being sentenced to death.**

7. Trinidad and Tobago’s criminal code imposes a mandatory death penalty for murder. Under the Offences Against the Person Act of 1925, “every person convicted of murder shall suffer

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<sup>10</sup> The Death Penalty Project, *Evidence in Support of Abolition of the Mandatory Death Penalty in Trinidad and Tobago*, (Dec. 2021), <https://deathpenaltyproject.org/knowledge/evidence-in-support-of-abolition-of-the-mandatory-death-penalty-in-trinidad-and-tobago/>.

<sup>11</sup> World Coalition Against the Death Penalty, “Helping the World Achieve a Moratorium on Executions,” <https://worldcoalition.org/campagne/helping-the-world-achieve-a-moratorium-on-executions/> (last visited Jan. 21, 2023); World Coalition Against the Death Penalty, “9<sup>th</sup> Resolution for a moratorium on the death penalty: the trend is growing,” <https://worldcoalition.org/2022/12/20/9th-resolution-for-a-moratorium-on-the-death-penalty-the-trend-is-growing/> (last visited Jan. 21, 2023); U.N. General Assembly, 67th Session, 60th Plenary Meeting, Dec. 20, 2012, U.N. Doc. A/67/PV.60, 16–17; U.N. General Assembly, 65th Session, 71st Plenary Meeting, Dec. 21, 2010, U.N. Doc. A/65/PV.71, 18–19; U.N. General Assembly, 63rd Session, 70th Plenary Meeting, Dec. 18, 2008, U.N. Doc. A/63/PV.70, 16–17; U.N. General Assembly, 62nd Session, 76th Plenary Meeting, Dec. 18, 2007, U.N. Doc. A/62/PV.76, 16–17.

<sup>12</sup> Amnesty International, *Death Sentences and Executions: 2021*, (May 24, 2022), 63. Also available online at <https://www.amnesty.org/en/documents/act50/5418/2022/en/>.

<sup>13</sup> The Death Penalty Project, *Evidence in Support of Abolition of the Mandatory Death Penalty in Trinidad and Tobago*, (Dec. 10, 2021), <https://deathpenaltyproject.org/knowledge/evidence-in-support-of-abolition-of-the-mandatory-death-penalty-in-trinidad-and-tobago/>.

<sup>14</sup> Amnesty International, *Death Sentences and Executions: 2021*, (May 24, 2022), 19. Also available online at <https://www.amnesty.org/en/documents/act50/5418/2022/en/>.

<sup>15</sup> Offences Against the Person Act, Laws of Trinidad and Tobago (Ch. 11:08) (updated to 31 August 2021), Section 4.

<sup>16</sup> Information received by The Advocates for Human Rights, on file with The Advocates for Human Rights.

<sup>17</sup> Amnesty International, *Death Sentences and Executions: 2021*, (May 24, 2022), 20. Also available online at <https://www.amnesty.org/en/documents/act50/5418/2022/en/>.

<sup>18</sup> Amnesty International, *Death Sentences and Executions: 2021*, (May 24, 2022), 16. Also available online at <https://www.amnesty.org/en/documents/act50/5418/2022/en/>.

<sup>19</sup> Email correspondence from the Office of the Deputy Commissioner of Prisons, Jan. 4 2023, on file with The Advocates for Human Rights.

death,”<sup>20</sup> although the law allows for certain exceptions.<sup>21</sup> The law also imposes a mandatory death penalty for treason.<sup>22</sup> Executions are carried out by hanging.<sup>23</sup>

8. The laws permit a total affirmative defense for murder in cases of self-defense.<sup>24</sup> However, it does not specify immediacy or intensity thresholds for which self-defense may apply. In addition, the laws allows the Director of Public Prosecutions to exercise discretion as to the category of homicide, considering “the nature of the circumstances in which the killing took place” and “where he considers the interest of justice so requires.”<sup>25</sup>
9. A pregnant woman who is convicted of a death-eligible offense will instead be sentenced to life imprisonment upon a factual determination by the jury that she is pregnant.<sup>26</sup> Also excepted from the death penalty are persons with intellectual disabilities.<sup>27</sup>
10. Finally, a convicted person may have the opportunity to be granted a presidential pardon,<sup>28</sup> and a person who has been sentenced to death may appeal to the Advisory Committee on the Power of Pardon (also known as the Mercy Committee).<sup>29</sup> As of December 2022, no incarcerated woman has been released as a result of a submission to the Mercy Committee.<sup>30</sup> There are reports that the Mercy Committee has not even met in many years.<sup>31</sup>
11. A 2006 study from Oxford University found that authorities impose the death penalty in Trinidad and Tobago most often on certain types of homicide: killings committed between intimates, often in domestic situations, and killings committed during commission of another

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<sup>20</sup> Offences Against the Person Act, Laws of Trinidad and Tobago (Ch. 11:08) (updated to Aug. 31, 2021), Section 4. Also available online at [https://rgd.legalaffairs.gov.tt/laws2/Alphabetical\\_List/lawspdfs/11.08.pdf](https://rgd.legalaffairs.gov.tt/laws2/Alphabetical_List/lawspdfs/11.08.pdf) (“4. Every person convicted of murder shall suffer death”).

<sup>21</sup> Offences Against the Person Act, Laws of Trinidad and Tobago (Ch. 11:08) (updated to Aug. 31, 2021), Section 4.

<sup>22</sup> Treason Act, Laws of Trinidad and Tobago (Ch. 11:03) (updated to Dec. 31, 2016), Section 2.

<sup>23</sup> Criminal Procedure Act, Laws of Trinidad and Tobago (Ch. 12:02) (updated to Dec. 31 2016), Section 57 (directing the warrant for execution to be in the form as set out in Form A) and Second Schedule, Form A (Warrant of Execution) (“be hanged by the neck until he be dead”); Treason Act, Laws of Trinidad and Tobago (Ch. 11:03) (updated to Dec. 31, 2016), Section 2.

<sup>24</sup> Offences Against the Person Act, Laws of Trinidad and Tobago (Ch. 11:08) (updated to Aug. 31, 2021), Section 7 (“No punishment shall be incurred by any person who kills another person by misfortune or in his own defence, or in any other manner without criminality.”).

<sup>25</sup> Offences Against the Person Act, Laws of Trinidad and Tobago (Ch. 11:08) (updated to Aug. 31, 2021), Section 4(J).

<sup>26</sup> Criminal Procedure Act, Laws of Trinidad and Tobago (Ch. 12:02) (updated to Dec. 31, 2016), Section 62.

<sup>27</sup> Offences Against the Person Act, Laws of Trinidad and Tobago (Ch. 11:08) (updated to Aug. 31 2021), Section 4(A) (“Where a person kills or is a party to the killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions in doing or being a party to the killing”).

<sup>28</sup> The Constitution of the Republic of Trinidad and Tobago (updated to Dec. 31, 2016), Section 87. Also available online at <https://rgd.legalaffairs.gov.tt/laws2/Constitution.pdf>.

<sup>29</sup> The Constitution of the Republic of Trinidad and Tobago (updated to Dec. 31, 2016), Section 88. Also available online at <https://rgd.legalaffairs.gov.tt/laws2/Constitution.pdf>.

<sup>30</sup> Email correspondence from the Office of the Deputy Commissioner of Prisons, Jan. 4, 2023, on file with The Advocates for Human Rights.

<sup>31</sup> Nisha John-Mohammed, *Launch of Joint Force Crime Initiatives of Change*, TV6 News, Dec. 29, 2018, [https://www.tv6tnt.com/news/7pmnews/launch-of-joint-force-crime-initiatives-of-change/article\\_9b9a5a48-0bbd-11e9-b7eb-afcf0f1d488.html](https://www.tv6tnt.com/news/7pmnews/launch-of-joint-force-crime-initiatives-of-change/article_9b9a5a48-0bbd-11e9-b7eb-afcf0f1d488.html).

crime. They are less likely to sentence people to death for gang- or drug-related crimes or homicides arising from quarrels between unrelated individuals.<sup>32</sup> Of the 58 convictions for murder between 1998 and 2002, four of the defendants were female.<sup>33</sup>

12. In a groundbreaking 2018 study, the Cornell Center on the Death Penalty Worldwide found that, in the global context, women are more vulnerable and most likely to be sentenced to death for criminal offenses committed within the context of gender-based violence<sup>34</sup> and manipulative or coercive relationships with male co-defendants.<sup>35</sup> Cornell's data indicate that most women under sentence of death have been sentenced to death for the crime of murder.<sup>36</sup> These women have overwhelmingly experienced prolonged domestic violence at the hands of a partner, spouse, or another family member.<sup>37</sup> In many cases, the abuse has occurred repeatedly. Many women under sentence of death are survivors of gender-based violence and come from disadvantaged socio-economic backgrounds.<sup>38</sup> At a global level, sentencing courts typically fail to take into account a defendant's experience as a survivor of gender-based violence or a victim of a manipulative or coercive relationship (for example in cases where women are pressured or tricked into transporting drugs) as mitigating factors during sentencing.<sup>39</sup> Research also indicates that courts also fail to account for power dynamics and tactics of coercive control that may affect a woman's involvement in and culpability for a crime.
13. Cases documented by the Cornell Center on the Death Penalty Worldwide have shown violations of women's right to a fair trial. A 2021 follow-up study demonstrated that "fair trial principles dictate that courts should consider all relevant mitigating circumstances before imposing a sentence. In practice, however, many courts neglect gender-specific mitigation, and in states that impose a mandatory death penalty," such as Trinidad and Tobago, "courts may not consider any

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<sup>32</sup> The Death Penalty Project, *A Rare and Arbitrary Fate: Conviction for Murder, the Mandatory Death Penalty and the Reality of Homicide in Trinidad and Tobago*, by Roger Hood and Florence Seemungal (2006), 61–62. Available online at <https://dppproject.wpengine.com/wp-content/uploads/2018/02/rep-2006-rare-and-arbitrary-en-1.pdf>.

<sup>33</sup> The Death Penalty Project, *A Rare and Arbitrary Fate: Conviction for Murder, the Mandatory Death Penalty and the Reality of Homicide in Trinidad and Tobago*, by Roger Hood and Florence Seemungal (2006), 39. Available online at <https://dppproject.wpengine.com/wp-content/uploads/2018/02/rep-2006-rare-and-arbitrary-en-1.pdf>.

<sup>34</sup> Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty* (Sept. 4, 2018). Available online at <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

<sup>35</sup> Cornell Center on the Death Penalty Worldwide, "No One Believed Me": *A Global Overview of Women Facing the Death Penalty for Drug Offenses* (Sept. 6, 2021), 6. Available online at <https://deathpenaltyworldwide.org/wp-content/uploads/2021/10/No-One-Believed-Me-A-Global-Overview-of-Women-Facing-the-Death-Penalty-for-Drug-Offenses.pdf>.

<sup>36</sup> Cornell Center on the Death Penalty Worldwide, "No One Believed Me": *A Global Overview of Women Facing the Death Penalty for Drug Offenses* (Sept. 6, 2021), 11. Available online at <https://deathpenaltyworldwide.org/wp-content/uploads/2021/10/No-One-Believed-Me-A-Global-Overview-of-Women-Facing-the-Death-Penalty-for-Drug-Offenses.pdf>.

<sup>37</sup> Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty* (Sept. 4, 2018), 4. Available online at <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

<sup>38</sup> Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty* (Sept. 4, 2018), 4. Available online at <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

<sup>39</sup> Cornell Center on the Death Penalty Worldwide, "No One Believed Me": *A Global Overview of Women Facing the Death Penalty for Drug Offenses* (Sept. 6, 2021). Available online at <https://deathpenaltyworldwide.org/publication/no-one-believed-me-a-global-overview-of-women-facing-the-death-penalty-for-drug-offenses/>.

mitigating circumstances at all.”<sup>40</sup> Although Trinidad and Tobago has made some progress since the Committee’s previous review, levels of gender-based violence in the country remain high,<sup>41</sup> and therefore women are at an elevated risk of being sentenced to death without consideration of gender-based violence as a mitigating factor.

14. Moreover, according to a study by the Cornell Center on the Death Penalty Worldwide, women are more likely to receive a death sentence when the adjudicating authority perceives that they are violating entrenched gender norms, being cast as the “female fatale” or the “witch.” Women are often put on trial not only for acts they performed but also for allegedly being “a bad wife, a bad mother, and a bad woman.”<sup>42</sup>
15. Global trends show that women sentenced to death face intersectional discrimination. According to Cornell’s 2018 report, most women on death row come from backgrounds of severe socio-economic deprivation and many are illiterate, which can reinforce unequal access to effective legal representation.<sup>43</sup> These women are more likely to be illiterate and unaware of their legal rights.<sup>44</sup> Illiteracy and lack of education among poor women leave them more vulnerable to discrimination, coercion, and exploitation.<sup>45</sup> This intersectional discrimination exacerbates the risk that a woman charged with a capital crime will be subjected to an unfair trial.
16. The Committee, in its most recent 2016 Concluding Observations and Recommendations, encouraged Trinidad and Tobago to consider ratifying other core human rights treaties, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>46</sup> As of January 2023, Trinidad and Tobago remains in the minority group of states that has neither signed nor ratified the Convention Against Torture.<sup>47</sup>

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<sup>40</sup> Cornell Center on the Death Penalty Worldwide, “*No One Believed Me*”: A Global Overview of Women Facing the Death Penalty for Drug Offenses (Sept. 6, 2021). Available online at <https://deathpenaltyworldwide.org/publication/no-one-believed-me-a-global-overview-of-women-facing-the-death-penalty-for-drug-offenses/>.

<sup>41</sup> Human Rights Council, *Summary of Stakeholders’ submissions on Trinidad and Tobago: Report of the Office of the United Nations High Commissioner for Human Rights*, (Aug. 13, 2021), UN Doc A/HRC/WG.6/39/TTO/3, ¶80.

<sup>42</sup> Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty* (Sept. 4, 2018), 4. Available online at <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

<sup>43</sup> Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty* (Sept. 4, 2018), 3. Available online at <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

<sup>44</sup> Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty* (Sept. 4, 2018), 18. Available online at <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

<sup>45</sup> Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty* (Sept. 4, 2018), 18. Available at <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

<sup>46</sup> Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined fourth to seventh periodic reports of Trinidad and Tobago, adopted by the Committee at its 64th session* (July 15, 2016), U.N. Doc CEDAW/C/TTO/CO/4-7, ¶ 46.

<sup>47</sup> As of January 18, 2023, CAT has been ratified by 173 State Parties, signed by an additional 4 State Parties, while 20 State Parties have taken no action. UNHR Office of the High Commissioner, “Status of Ratification,” (last accessed January 18, 2023), <https://indicators.ohchr.org/>.

17. The Constitution of Trinidad and Tobago prohibits “cruel and unusual treatment or punishment.”<sup>48</sup> Even so, in 2022 the Judicial Committee of the Privy Council<sup>49</sup> declined to strike down Trinidad and Tobago’s mandatory death penalty, concluding that only the Trinidad and Tobago parliament, not the Privy Council, has the power to abolish or revise the mandatory death penalty for murder.<sup>50</sup>

## **II. The Government of Trinidad and Tobago has failed to improve prison conditions for women “lifers.”**

18. Trinidad and Tobago’s prison does not comply with international human rights standards regarding personal hygiene for women. In response to a request for information, the Office of the Deputy Commissioner of Prisons asserted in an email dated 4 January 2023, that “Women Lifers have access to toilets” and receive hygiene products fortnightly.<sup>51</sup> Despite these assertions, sources familiar with prison conditions at the women’s prison in Trinidad and Tobago, who do not want to reveal their identities for fear of reprisals, have said that to date female inmates do not have access to toilets but have to use buckets instead. According to one news report, people living in the prison “who don’t have the support of family or friends to provide their most basic needs must ration the limited personal hygiene supplies provided by the State. When bath soap, laundry detergent and sanitary pads run out, thousands of male and female prisoners are left lacking a sense of dignity.”<sup>52</sup> Several civil society organizations have coordinated occasional efforts to supply women in prison with toiletries, including feminine hygiene products,<sup>53</sup> but even when “the public’s response [is] generous, the supplies inevitably dried up.”<sup>54</sup> Debbie Jacob, the founder of the Wishing for Wings Foundation, reported that women face particular hygiene challenges: “There are women who cannot afford sanitary pads. (They) use rags or whatever, but that is now 19<sup>th</sup>-century stuff.”<sup>55</sup> In a November 2022 interview, she emphasized that “it will be difficult to access a consistent donation of pads,”

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<sup>48</sup> The Constitution of the Republic of Trinidad and Tobago (updated to Dec. 31 2016), Section 5(2)(b). Available online at <https://rgd.legalaffairs.gov.tt/laws2/Constitution.pdf>.

<sup>49</sup> This body sometimes hears legal questions from former British colonies.

<sup>50</sup> Dominic Casciani, *UK judges refuse to ban death penalty in Trinidad and Tobago*, BBC News, May 16, 2022, <https://www.bbc.com/news/uk-61468346> (last visited Jan. 21, 2023); The Constitution of the Republic of Trinidad and Tobago (updated to Dec. 31, 2016), Section 6(1)(a) (“Nothing in Sections 4 and 5 [which prohibits cruel and unusual punishment] shall invalidate an existing law.”). Available online at <https://rgd.legalaffairs.gov.tt/laws2/Constitution.pdf>.

<sup>51</sup> Email correspondence from the Office of the Deputy Commissioner of Prisons, Jan. 4, 2023, on file with The Advocates for Human Rights.

<sup>52</sup> Andrew Gioannetti, *Needy prisoners left without soap, sanitary products*, Trinidad & Tobago Newsday, Nov. 20, 2022, <https://newsday.co.tt/2022/11/20/needy-prisoners-left-without-soap-sanitary-supplies/> (last visited Jan. 21, 2023).

<sup>53</sup> Prison Fellowship Trinidad & Tobago, “Prison Fellowship Trinidad and Tobago,” accessed Jan. 21, 2023, <https://www.facebook.com/pftt2009/posts/231973949022788/>; Andrew Gioannetti, *Needy prisoners left without soap, sanitary products*, Trinidad & Tobago Newsday, Nov. 20, 2022, <https://newsday.co.tt/2022/11/20/needy-prisoners-left-without-soap-sanitary-supplies/> (last visited Jan. 21, 2023); *Donation of Feminine Hygiene Products to the Women’s Prison*, <https://portal.clubrunner.ca/4795/Stories/donation-of-feminine-hygiene-products-to-the-women-s-prison> (last visited Jan. 21, 2023).

<sup>54</sup> Andrew Gioannetti, *Needy prisoners left without soap, sanitary products*, Trinidad & Tobago Newsday, Nov. 20, 2022, <https://newsday.co.tt/2022/11/20/needy-prisoners-left-without-soap-sanitary-supplies/> (last visited Jan. 21, 2023).

<sup>55</sup> Andrew Gioannetti, *Needy prisoners left without soap, sanitary products*, Trinidad & Tobago Newsday, Nov. 20, 2022, <https://newsday.co.tt/2022/11/20/needy-prisoners-left-without-soap-sanitary-supplies/> (last visited Jan. 21, 2023).



and added, “I don’t think anyone should go through the indignity of not having sanitary support during their period.”<sup>56</sup>

19. The Office of the Deputy Commissioner of Prisons also reported that the woman who has been incarcerated the longest has spent 29 years in the prison, 13 of which were on death row. In *Pratt and Morgan v. The Attorney General of Jamaica (Pratt and Morgan)*, the Privy Council held that any delay of more than five years between sentencing and execution was *prima facie* evidence that carrying out the sentence would constitute inhuman or degrading punishment.<sup>57</sup>

### **III. The Government of Trinidad and Tobago has failed to engage the public in discourse concerning abolition of the death penalty.**

20. The Government of Trinidad and Tobago often asserts that the public supports the death penalty<sup>58</sup> and that the death penalty is important because of its purported deterrent effect on crime.<sup>59</sup> On November 12, 2021, during the interactive dialogue at the Human Rights Council, the Government of Trinidad and Tobago asserted that “[t]he country intended to embark on a national discussion on the outcome of the decision” that was, at the time, pending before the Privy Council concerning the mandatory death penalty.<sup>60</sup>
21. Yet there is little evidence of any government efforts to initiate public discourse, informed by international human rights standards and available evidence, about the death penalty or to promulgate relevant information on the death penalty. It appears that the government has done little to engage the public on such topics. Additionally, no recent surveys have been conducted to gauge the public’s opinion on the continued use of the death penalty in comparison with alternative punishments. Moreover, on the subject of deterrence, one of the conclusions of the Oxford University study mentioned above was that the low conviction rate for murder (that is to say, the low certainty of punishment), leads to a poor deterrence environment for murder, and that “[t]he occasional and long delayed mandatory sentence to death is very unlikely to add weight to the deterrent effectiveness of a poorly enforced criminal law.”<sup>61</sup>

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<sup>56</sup> Andrew Gioannetti, *Needy prisoners left without soap, sanitary products*, Trinidad & Tobago Newsday, Nov. 20, 2022, <https://newsday.co.tt/2022/11/20/needy-prisoners-left-without-soap-sanitary-supplies/> (last visited Jan. 21, 2023).

<sup>57</sup> The Death Penalty Project, “Earl Pratt and Ivan Morgan,” accessed Jan. 21, 2023, <https://www.deathpenaltyproject.org/story/earl-pratt-and-ivan-morgan/>

<sup>58</sup> See, e.g., Human Rights Committee, *Fifth periodic report submitted by Trinidad and Tobago under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2019*, (Nov. 10, 2021), UN Doc. CCPR/C/TTO/5, ¶ 54 (“Trinidad and Tobago maintains the death penalty in its law. These circumstances will change when as a society a collective view is expressed that there is need to change the law. This can only occur through significant public consultation.”).

<sup>59</sup> See, e.g., Kevon Felmine, *Maharaj: Death penalty is an established crime deterrent*, Trinidad & Tobago Guardian, May 17, 2022, <https://www.guardian.co.tt/news/maharaj-death-penalty-is-an-established-crime-deterrent-6.2.1494202.25b36873f5> (last visited Jan. 21, 2023).

<sup>60</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Trinidad & Tobago*, (Dec. 20 2021), UN Doc. A/HRC/49/16, ¶ 41.

<sup>61</sup> The Death Penalty Project, *A Rare and Arbitrary Fate: Conviction for Murder, the Mandatory Death Penalty and the Reality of Homicide in Trinidad and Tobago*, by Roger Hood and Florence Seemungal (2006), 60. Available online at <https://dpproject.wpengine.com/wp-content/uploads/2018/02/rep-2006-rare-and-arbitrary-en-1.pdf>.

22. As reported by the *Trinidad Guardian* in February 2021, calls for resumption of executions reportedly intensified following the death of Andrea Bharatt.<sup>62</sup> A recent survey of other Caribbean countries, however, found that two-thirds of respondents believed the majority of the public in those countries would come to accept a law abolishing the death penalty once such a law was passed and that a majority of the public would immediately accept it.<sup>63</sup> In a survey conducted in Trinidad and Tobago, respondents ranked “greater number of executions” as the least effective policy in reducing the incidence of serious violent crime resulting in death, indicating that support for the death penalty is not strongly entrenched.<sup>64</sup>

#### **IV. Suggested questions for the Government of Trinidad and Tobago**

23. The authors of this report suggest the following questions for the Government of Trinidad and Tobago:

- What steps has Trinidad and Tobago taken to abolish the death penalty and replace it with a penalty that is fair, proportionate, and consistent with international human rights standards?
- What steps has the State Party taken to eliminate the mandatory death penalty?
- Please provide data about the number of women charged with capital crimes, sentenced to death, or under sentence of death in Trinidad and Tobago since 2016, disaggregated by age, race, nationality, crime of conviction, date of conviction, relationship to the victim (if any), number and age of minor children (if any), status of any appeals or requests for mercy, current sentence, and current location.
- What standards do courts apply regarding the immediacy and intensity of the threat in order for a defendant charged with murder to successfully plead self-defense? Are those standards subjective (belief of the defendant at that point in time) or objective (belief of a reasonable person in similar circumstances)?
- To what extent do law enforcement, prosecutors, or defense counsel in capital cases receive training on gender sensitivity as it relates to criminal procedure and sentencing outcomes?
- How do authorities ensure that all women accused of capital crimes have access to free and effective legal representation by attorneys who specialize in death penalty cases, ensure access to counsel at all times, from the start of the investigation through any appeals, and ensure that the defense team has sufficient funding to

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<sup>62</sup> Bavita Gopaulchan, *AG: Govt not opposed to death penalty*, *Trinidad and Tobago Guardian* (Feb. 17, 2021). Also available online at <https://www.guardian.co.tt/news/ag-govt-not-opposed-to-death-penalty-6.2.1290508.801a97746e>.

<sup>63</sup> The Death Penalty Project, *Sentenced to death without execution: Why capital punishment has not yet been abolished in the Eastern Caribbean and Barbados*, by Roger Hood and Florence Seemungal (2020), 43. Also available online at <https://www.deathpenaltyproject.org/knowledge/sentenced-to-death-without-execution-why-capital-punishment-has-not-yet-been-abolished-in-the-eastern-caribbean-and-barbados/>.

<sup>64</sup> The Death Penalty Project, *Sentenced to death without execution: Why capital punishment has not yet been abolished in the Eastern Caribbean and Barbados*, by Roger Hood and Florence Seemungal (2020), 43. Also available online at <https://www.deathpenaltyproject.org/knowledge/sentenced-to-death-without-execution-why-capital-punishment-has-not-yet-been-abolished-in-the-eastern-caribbean-and-barbados/>.

conduct a thorough investigation and to secure relevant expert witnesses, particularly regarding gender-specific defenses?

- What training does the Government provide to defense counsel who take on capital cases regarding gender-specific mitigation and how to raise discrimination against clients on the basis of their gender, when appropriate?
- What steps, if any, has the State Party taken to codify gender-specific defenses and mitigation in capital cases, encompassing women’s experiences of trauma, poverty, and gender-based violence?
- What measures has the government implemented to ensure that all judicial officers responsible for sentencing in capital cases receive comprehensive training on gender-based discrimination, domestic violence, and tactics of coercive control that may influence or prompt a woman to commit a death-eligible offense?
- Since 2016, how many applications for pardon or commutation of death sentences has the Mercy Committee considered, both in total and from women specifically, and what was the resolution of each application?
- Please describe the safeguards in place to ensure the safety, privacy, and health of women who are in detention, including access to adequate toilets and sanitation and feminine hygiene products. How has prison infrastructure design accommodated women’s specific needs, including their need for privacy?
- How do authorities ensure that all detention facilities fully comply with Rule 5 of the Bangkok Rules and Rule 15 of the Nelson Mandela Rules, regarding personal hygiene?
- What measures has the State Party implemented to ensure that all prison authorities adopt gender-sensitive policies in relation to women’s detention, based on the Bangkok Rules and the Nelson Mandela Rules, ensuring women’s safety and security pre-trial, during admission to any detention facility, and while incarcerated?
- Do civil society organizations have the opportunity to conduct unannounced, independent visits to all detention facilities where women are held to monitor conditions of detention, including whether facilities comply with the Bangkok Rules and the Nelson Mandela Rules regarding hygiene and sanitation?
- What steps has the government taken to review the Offences against the Persons act, as promised during the interactive dialogue of the Universal Periodic Review in November 2021?<sup>65</sup>
- What measures has the government undertaken to “embark on a national discussion on the outcome” of the Privy Council’s decision concerning the mandatory death

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<sup>65</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Trinidad and Tobago*, (Dec. 20, 2021), U.N. Doc A/HRC/49/16, ¶ 71.

penalty, as promised during the interactive dialogue of the Universal Periodic Review in November 2021?<sup>66</sup>

- What efforts has the State Party undertaken to engage civil society in discussions around abolition of the death penalty and alternatives to the death penalty?
- How have initiatives including passage the Domestic Violence (Amendment) Act, 2020,<sup>67</sup> establishment of a gender-based violence police unit,<sup>68</sup> and establishment of a specialist sexual offences court<sup>69</sup> influenced the frequency and/or severity of women's punishment for crimes, including murder, that take place in a context of gender-based violence?
- What progress has been made to establish a National Human Rights Institution?
- How does the State Party publish and promulgate information about its use of the death penalty?
- Please describe any measures taken to eliminate intersecting forms of discrimination in the criminal legal system against women with disabilities, migrant and refugee women, women from disadvantaged socio-economic backgrounds, and women belonging to minority groups.

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<sup>66</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Trinidad & Tobago*, (Dec. 20 2021), UN Doc. A/HRC/49/16, ¶ 41.

<sup>67</sup> Fifth Session Eleventh Parliament Republic of Trinidad and Tobago, Domestic Violence (Amendment) Act, 2020. Available online at <https://www.ttparliament.org/wp-content/uploads/2022/01/a2020-18g.pdf>; Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Trinidad and Tobago*, (Dec. 20, 2021), U.N. Doc A/HRC/49/16, ¶ 49, 51, 55, 56, 79 (other state parties commending Trinidad and Tobago for adopting the amended Domestic Violence Act).

<sup>68</sup> Carisa Lee, *TTPS launches Gender-Based Violence Unit*, CNC3 News Trinidad and Tobago, Jan. 21, 2020, [<sup>69</sup> Jada Loutoo, \*Chief Justice announces new sexual offences court\*, Trinidad and Tobago Newsday \(Nov. 9, 2021\), <https://newsday.co.tt/2021/11/09/chief-justice-announces-new-sexual-offences-court/>; Human Rights Council, \*Report of the Working Group on the Universal Periodic Review: Trinidad and Tobago\*, \(Dec. 20, 2021\), U.N. Doc A/HRC/49/16, ¶ 15 \(the sexual offences court became operational in January 2022\).](https://www.cnc3.co.tt/ttps-launches-gender-based-violence-unit/#:~:text=The%20Trinidad%20and%20Tobago%20Police%20Service%20%28TTPS%29%20launched,domestic%20violence%20cases%20and%20breaches%20of%20restraining%20orders; Human Rights Council, <i>Report of the Working Group on the Universal Periodic Review: Trinidad and Tobago</i>, (Dec. 20, 2021), U.N. Doc A/HRC/49/16, ¶ 49, 51 (other state parties commending Trinidad and Tobago for establishing a gender-based violence police unit).</a></p></div><div data-bbox=)