



Section 1. State under Review

The Trinidad and Tobago (TT) government was run by the People's Partnership coalition which won the parliamentary elections of 2010 and was headed by Mrs. Kamla Persad-Bissessar of the United National Congress. As of September 7th 2015 the ruling party is now the former opposition, the People's National Movement headed by the Honourable Dr. Keith Rowley.¹

Section 2- Challenges in Implementation of Human Rights Obligations and Recommendations

1. Protecting Migrant Rights

"Endeavour to sustain the maximum humane care for "illegal immigrants" and assist them to utilize, on a timely basis, the prevailing legal system in the country to address their situation" (Ghana 1st cycle)²

The *Immigration Act*³ is the primary legislative document relating to migrants and is enforced by the Immigration Division. Though there is involvement in migrant affairs by other ministries, it is limited and the system suffers from a lack of reliable data and coordination with other Ministries and departments on migration issues. Thus there remains a clear lack of oversight with regard to the protection of migrant rights. Lengthy administrative detention stays, costly deportation, accusations of discrimination against certain foreign nationalities, unfavorable detention center conditions,⁴ allegations of ill-treatment and abuse against detainees,⁵ migrants detainees held in prisons, including asylum seekers and refugees, lack of access to places of detention by NGOs and a substantial amount of undocumented migrants,⁶ all suggest that reform of the immigration system is imperative. The mixed migration context

¹ TT is a signatory to the following conventions that are of relevance to Migrant rights:

- 1951 Convention relating to the Status of Refugee and its 1967 Protocol (hereinafter referred to as the 'Refugee Convention')
- International Covenant on Civil and Political Rights
- Convention on the Elimination of All Forms of Discrimination against Women
- International Convention on the Elimination of All Forms of Racial Discrimination
- Convention on the Rights of the Child
- Convention on the Rights of Persons with Disabilities

² "Report of the Working Group on the Universal Periodic Review: Trinidad and Tobago," A/HRC/19/7, 14 December 2011, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/TTSession12.aspx>.

³ Chapter 18:01

⁴ 'IDC Detainees Cry Inhumane Treatment' <http://www.guardian.co.tt/columnist/2011/10/23/idc-detainees-cry-inhumane-treatment>

⁵ See articles- <http://www.trinidadexpress.com/news/Kambon-Illegal-immigrants-kept-extremely-long-at-detention-centre-269312541.html> and <http://www.kaieteurnews.com/2014/07/25/guyanese-others-beaten-by-police-at-tt-immigration-detention-centre/>

⁶ That have increased vulnerability to abuse and limited access to social services.

of TT, which is used as both a transit and destination country due to ample economic opportunity and porous borders, suggests the need for better migration management.⁷ The National Consultative Committee on Migration (NCC),⁸ which dissolved in 2014, presented a positive first step towards migration management in TT. The absence of a National Human Rights Institution also contributes to the lack of migrant protection.⁹ Additionally, there is need for a coordinated regional response to mixed migratory movements in the Caribbean region that ensures that persons in need of international protection can access it.

Recommendations:

- Undertake a comprehensive review of the Immigration Detention Centre (IDC) through independent monitoring in partnership with civil society along with the creation of a Working Group on Detention and Monitoring to ensure adherence to international standards and dignified treatment of detainees;
- Complete a National Plan of Action on Migration Detention in collaboration with all stakeholders¹⁰ prioritizing alternatives to detention such as community-based reception alternatives¹¹ as deliberated on during the UNHCR Global Roundtable on Reception and Alternatives to Detention;¹²
- Reform the Immigration Act to be compliant with International Human Rights Standards in the migration context such that all migrants, irrespective of status, are treated with dignity and

⁷ Some recommendations emanating from the non-published National Forum on Migration Development- Summary Report of September 23rd 2013 include engaging in the following:

- 1) *“Public awareness programming on labour rights and human rights of migrants*
- 2) *Data collection, mining, sharing and management relative to migration, including the development of a national migration profile*
- 3) *Brain gain approaches that foster entrepreneurship and more effective integration of immigrant skills and talent*
- 4) *Creation of disaster risk management and climate change plans that account for migration flows (including in event of emergencies)*
- 5) *Continuation of national consultative mechanisms on migration and development*
- 6) *Strengthening of bilateral agreements relating to migration, including deportation*
- 7) *Legislative Reform to extend social protection and prevent human trafficking*
- 8) *Civil society and private sector partnerships in mainstreaming migration and public awareness “*

And also the creation of a Department for Migration Management with either the Ministry of Planning and Sustainable Development or the Ministry of National Security

⁸ Created through an ACP project on Migration and Development 2012-2014

⁹ *“Act on its commitment to enhance the promotion and protection of Human Rights by establishing a National Human Rights Body in conformity with the Paris Principles, as well as by ratifying and implementing outstanding core international human rights treaties” (Hungary 1st cycle)* Supported in varying measures by – South Africa, Argentina, Algeria, Malaysia and Indonesia. Trinidad and Tobago does not have a dedicated National Human Rights Institution that is compliant with the Paris Principles. See, UNGA Res 48/132 (20 December 1993) UN Doc A/RES/48/132.

The Office of the Ombudsman which is enshrined in the Constitution, is a quasi-autonomous body. Its remit encompasses the power to investigate citizens’ complaints over government agencies and to refer the matter to the appropriate authority. However, the Office of the Ombudsman does not have the express authority to promote and protect human rights, and as described on the website of the Office of the Ombudsman, the office is merely of a ‘grievance person.’

¹⁰ This should ensure fluid communication amongst all migration stakeholders and unhindered access to the detention centre for civil society stakeholders

¹¹ In line with UNHCR’s Beyond Detention Global Strategy to support governments to end the detention of asylum seekers and refugees 2014 document. Available at www.refworld.org/detention.html. Should involve research on good practices in alternatives to detention.

¹² UNHCR Second Global Roundtable on Reception and Alternatives to Detention, Toronto, Canada, 20-22 April 2015, Summary of Deliberations. Available at <http://www.unhcr.org/55e99ee26.html>

respect with particular emphasis on more vulnerable groups such as LGBT migrants, children and the family unit, pregnant, lactating and single women, the elderly and the disabled;¹³

- Reconvene the National Consultative Committee on Migration¹⁴ to facilitate the creation of a Migration Management Unit as the overarching, coordinating body to gather relevant data on migration, report, monitor and enforce migrant rights and liaise with stakeholders;
- Utilise CARICOM to realise a task force on mixed migration to implement the commitments made during the Cartagena +30 process, with TT taking the lead on migration issues in the region, in addition to its role as Lead Head for Security.

2. Protecting Asylum Seeker and Refugee Rights¹⁵

“Strengthen the protection safeguards, in particular the control mechanisms that allow the detection of cases of migrants with special needs for international protection” (Chile 1st cycle)¹⁶

The *National Policy to Address Refugee and Asylum Matters in the Republic of Trinidad and Tobago (Refugee Policy)* was approved by cabinet in June 2014. This allows for the transfer of responsibility for refugee status determination (RSD) from UNHCR to the Government in three phases.¹⁷ This policy approval follows a close collaboration between the UNHCR, LWC and the Ministry of National Security (MNS) with an increasingly cooperative working relationship amongst all parties and periodic stakeholder meetings headed by the MNS. With the first phase already in progress, involving capacity building for the Immigration Division, the early creation of an ad hoc Refugee Unit in 2015 before the end of phase 1 within the Immigration Division, and the continued close collaboration with LWC and UNHCR is laudable.

TT acceded to the Refugee Convention in 2001 and committed to implementing the *Brazil Plan of Action of December 2014*.¹⁸ However, with no domestic legislation, even when recognized, refugees still lack basic rights as guaranteed under the Refugee Convention and domestic legal status.¹⁹

There remain concerns with regard to the identification of asylum seekers, particularly those in detention, access to asylum procedures, imposition of criminal sanctions for illegal entry, sometimes even after they have been granted refugee status or have indicated a desire to seek asylum.²⁰

¹³ And ensure that officials are appropriately trained

¹⁴ To take the lead on all related migration issues and which is representative of all actors, government, civil society and private sector

¹⁵ Linked to Human Rights issues of

Migrants, Refugees and Asylum Seekers

Right to work and to just and favorable conditions of work

Right to life, liberty and security of person

Freedom of religion or belief, association, and peaceful assembly and the right to participate in public and political life

Equality and Non-Discrimination

¹⁶ “Report of the Working Group on the Universal Periodic Review: Trinidad and Tobago,” A/HRC/19/7, 14 December 2011, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/TTSession12.aspx>.

¹⁷ The first phase involves UNHCR leading the RSD procedure and providing capacity building for the government. The second phase envisions the establishment of an eligibility committee and a Refugee Unit as well as enacting legislation as necessary, with the government taking the lead in RSD with guidance from UNHCR, and the third sees the government taking responsibility for RSD and refugee matters with a functioning eligibility committee.

¹⁸ Regional Refugee Instruments & Related, *Brazil Declaration and Plan of Action*, 3 December 2014, available at: <http://www.refworld.org/docid/5487065b4.html>.

¹⁹ As of August 2015 there were 117 refugees and 92 asylum seekers hailing mainly from Cuba, Colombia, Syria, Nigeria and Bangladesh along with 11 other countries. Approximately 75% of them are male and less than 15% of them are children. Statistics are derived from the LWC’s active case list of persons of concern and are prepared on the third week of every month

²⁰ In one instance, an appeal for an illegal entry charge for a case over six years old is still pending and has hindered

Furthermore, asylum seekers and refugees face limited local integration prospects and continue to lack basic rights to an identification document. As a result, even recognized refugees are unable to acquire a bank account and lack access to employment and guaranteed access to public social services such as education for children and health care. In addition, refugees who may otherwise qualify for employment or family based residency can often be denied this by having to choose one status within the immigration system.²¹

Recommendations:

- Using a participatory approach, draft and enact legislation that ensures full protection for refugees and asylum seekers and is consistent with international standards and good practices;
- Implement the Refugee Policy to provide identity documents to recognised refugees so that in accordance with their rights, refugees may access social services, obtain work and/or ministers permits to increase self-reliance²² and to pursue naturalisation options;
- Strengthen the existing Refugee Unit (Immigration Division) through access to training opportunities, collaboration with LWC and UNHCR, and allocating resources to ensure appropriate facilities and staffing for its effective functioning and respect for confidentiality;²³
- Actively engage in public education with stakeholders to ensure a wider support group for refugees to increase social acceptance and achieve better local integration prospects
- Convene and define the role of the eligibility committee and ensure that capacity building remains a priority for all members including civil society of which there should be up to at least four members including academia, and reform the Refugee Policy to provide full membership to UNHCR and LWC in the eligibility committee;²⁴
- Ensure that border and other procedures are protection sensitive with immigration and police officers trained in the detection of persons in need of international protection and in the appropriate referral pathway to assistance;
- Per Article 31 of the Refugee Convention, ensure that all persons with a good faith claim for refugee status that enter irregularly are not penalised.

3. Countering Statelessness

“Ratify the 1961 Convention on the Reduction of Statelessness” (Slovakia 1st cycle)²⁵

TT is not yet a State party to the *1961 Convention on the Reduction of Statelessness*²⁶ though it has indicated that it is considering doing so.²⁷ As statelessness is a regional issue, TT is in a position to

resettlement efforts for the refugee whose wife gained refugee status in Europe and currently lives there. LWC has applied for a presidential pardon and is awaiting notice.

²¹ For eg, either they have a work permit or they are documented within the system as a refugee, there is apparently no opportunity for them to have both of those statuses within the immigration system.

²² Note that allowing refugees to work legally reduces their exposure to abuse, exploitation and discrimination and also contributes to the development of the country. See also http://asylumaccess.org/wp-content/uploads/2014/09/FINAL_Global-Refugee-Work-Rights-Report-2014_Interactive.pdf

²³ The current unit is housed within the Investigations Division and does not have a self-contained space/office and appropriate file storage facilities

²⁴ Policy only allows for observer status.

²⁵ Also supported by Brazil, Argentina, Morocco, Nigeria, Ecuador, Spain, Indonesia, France, Australia, Costa Rica, Hungary, New Zealand, Maldives, United Kingdom, Guatemala

²⁶ TT acceded to the *1954 Convention relating to the Status of Stateless Persons*, with reservations in April 1966

²⁷ Para. 6 of the Addendum, A/HRC/19/7/Add.1, 1 March 2012, “While Trinidad and Tobago is not seriously challenged by the human rights issues of enforced disappearance dealt with under CED, and statelessness as addressed by the 1961 Convention

preventatively address it by acceding to said convention and creating implementable frameworks and legislation.²⁸

Recommendations:

- Accede to the *1961 Convention on the Reduction of Statelessness per Action 9 of the Global Action Plan*;²⁹
- Conduct an analysis of domestic laws relevant to statelessness to identify gaps in protection;³⁰
- Ensure that all persons born in TT's jurisdiction, irrespective of their parents' status, are guaranteed access to birth registration procedures without reprisal to parents for doing so.³¹

4: Preventing and Prosecuting all Inhumane Acts including that of Trafficking in Persons and Torture

*"Become a party to and implement the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment"*³² (Australia 1st cycle)³³

TT has not acceded to the *Convention Against Torture (CAT)*.³⁴ Doing so would supplement the *Trafficking in Persons Act*³⁵ whereby rogue government officials may be implicated both domestically and abroad.³⁶ In addition, there have been numerous reports of harsh/violent treatment of prisoners in places of detention.³⁷

The *Trafficking in Persons Act*³⁸ was proclaimed in January 2013 and a Counter Trafficking Unit (CTU) established. With intense training and support from the U. S. Government and the International Organisation for Migration (IOM), TT commendably proved willing to protect this particularly vulnerable population in a comprehensive manner with continued capacity building and technical support.

on the Reduction of Statelessness, consideration is still being given to acceding to these core pieces of international human rights protection law." Available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/TTSession12.aspx>

²⁸ In fact, the stance of CARICOM, at the time chaired by the former PM Kamla Persad-Bisessar, on the September 23rd 2014 ruling of the Constitutional Court of the Dominican Republic to strip thousands of descendants of Haitian immigrants of their citizenship was quite commendable. See <http://www.trinidadexpress.com/news/Kamla-to-consult-Caricom-on-court-ruling-228115421.html?m=y&smobile=y>

²⁹ UNHCR, *Global Action Plan to End Statelessness: 2014 – 2024*, November 2014, available at: <http://www.unhcr.org/statelesscampaign2014/Global-Action-Plan-eng.pdf>

³⁰ In collaboration the UNHCR

³¹ LWC has recently been aware of persons with an irregular status that have not registered the birth of their children for fear of being detained and deported. Passports and birth certificates of foreign nationals are required to acquire the birth certificate of a newborn.

³² Hereinafter referred to as the Convention against Torture (CAT)

³³ See: "Report of the Working Group on the Universal Periodic Review: Trinidad and Tobago," A/HRC/19/7, 14 December 2011, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/TTSession12.aspx>. In the Addendum A/HRC/19/7/Add.1 of 1 March 2012 the Government states that: "*While Trinidad and Tobago is not seriously challenged by (...) statelessness as addressed by the 1961 Convention on the Reduction of Statelessness, consideration is still being given to acceding to these core pieces of international human rights protection law.*"

³⁴ Note that the prohibition against torture is considered jus cogens and as such is subject to universal jurisdiction regardless of nationality of perpetrator or victim and geographical location of the crime. It is also a non-derogable right.

³⁵ Chapter 12:10

³⁶ Arbitrary detention and violent or harmful detention conditions may constitute torture or degrading treatment. The CAT enshrines a core principle of non refoulement and offers another layer of protection for victims of trafficking and asylum seekers and refugees.

³⁷ See <http://www.trinidadexpress.com/news/Prison-abuse-must-stop-258216731.html> and <http://www.newsday.co.tt/news/0,17655.html>

³⁸ Chapter 12:10

However, there remain inefficiencies in meeting minimum international standards and low prosecutions rates.³⁹ In addition, many cases reported to LWC refuse to allow LWC to refer them to the CTU due to intense mistrust in the unit due to allegations of law enforcement officials' involvement in corruption and trafficking rings.

Recommendations:

- Improve on civil society partnership with the CTU and conduct public awareness campaigns to improve public perception and increase public confidence in the CTU to increase number of reported cases and better identify victims;
- Develop a National Plan of Action in collaboration with all stakeholders and allow for funding for civil society organisations to complement the CTU's effort and ensure appropriate victim care and assistance;
- Ensure closer collaboration between Trafficking in Persons stakeholders and Refugee stakeholders to ensure that both categories of persons can access the rights and services they are entitled to.

End.

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³⁹ United States Department of State, *2014 Trafficking in Persons Report – Trinidad and Tobago* (20 June 2014)