

Trinidad and Tobago

1. Discrimination in the family

a) Overarching legal framework for marriage

The Miscellaneous Provisions (Marriage) Act, enacted in 2017, amends the present governing laws namely the Marriage (Amendment) Act 2013 (Chap. 45:01), the Orisa Marriage Act, 1999 (Chap. 45:04), the Muslim Marriage and Divorce Act 1961 (Chap. 45:02) and the Hindu Marriage Act 1945 (Chap. 45:03).

The Matrimonial Proceedings and Property Act, 1972 (Chap. 45:51) and the Married Person's Act, 1976 (Chap. 45:50) protect the rights of women who would have contributed monetarily to the acquisition of property (CEDAW Combined Report, 2015). There is no explicit legislation on the prohibition of forced marriage or a definition of such. However, under the Sexual Offences Act Chap. 11:28, s. 20, abduction of a female against her will, with the intent to marry her, have or cause her to marry, is an offence punishable with up to ten years imprisonment.

Anecdotal evidence suggests however, that there is a practice of arranged marriages, fuelled in particular by the trafficking of young girls from neighbouring Latin American countries (Trinidad and Tobago General OHCHR). Public measures to combat these practices include the legal requirement of registration of all religious and customary marriages (the Marriage Act 1923 (Amended 2013) s. 3). There are no provisions that prohibit harmful practices against widows.

Informal and de-facto unions are regulated by the Cohabital Relationships Act 1998 that, amongst other provisions, affords equal rights and obligations to common law spouses in relation to property and maintenance. The Act provides similar rights to those granted to formal unions, for persons living in a co-habitational relationship for a minimum of five years, or who have a child arising out of that relationship. Such provisions include the right to make a court application for maintenance and adjustment of shared property (CEDAW Combined Report, 2015).

b) Child marriage

In 2017, the government passed the Marriage Act, which raises the legal age of marriage to 18 for both women and men (Marriage Act, Sec. 23). Prior to this Act, various legislations governed the legal age of marriage: (the Muslim Marriage and Divorce Act Chap. 45:02 s.8), 14 for girls and 18 for boys (The Hindu Marriage Act Chap. 45:03 s 11 (1)); 16 for girls and 18 for boys under the Orisa Marriage Act Chap. 45:04, s.9. Under the 2017 amended Act, a person who solemnizes a marriage with under aged participants is liable upon conviction to a fine of USD 50 000 (US dollars) and up to seven years of imprisonment. Additionally, their license to solemnize marriages will be revoked and made public (Miscellaneous Provisions (Marriage) Act 2017, s. 4 (r).)

c) Household responsibilities

There is no existing legislation providing recognition as the head of household. The closest such provisions can be found in the Public Assistance Act Chap. 32:03, where a gender-neutral definition for the head of the family was mandated in the context of collecting census data. There is also no law requiring wives to obey their husbands.

The Family Law (Guardianship of Minors, Domicile and Maintenance) Act 1981 provides men and women equal rights to have custody of their children. The Family Proceedings Act of 2004 also provides equal rights in relation to family matters the use of probation officers and mediation. Men and women also have equal rights in determining where to live, irrespective of marital status.

In 1996, Trinidad and Tobago enacted the Counting Unremunerated Work Chap. 19:09, becoming the only Caribbean state to legislate women's unpaid work including, but not limited to, agricultural work, care-giving of the sick, the disabled, the elderly and very young; and work carried out in and around to household (Stuart, 2014). The Act mandates the Central Statistical Office and other public bodies, to produce and maintain statistics regarding the aforementioned work, as well as to quantify its monetary value. The 2002 population census is noted to have contained some questions on unpaid work. It is important to note however that time-use surveys have not yet been conducted, and consequently a significant data gap remains.

d) Divorce

Men and women are afforded equal rights to initiate and finalize divorce, with legislation stating that the petition for divorce may be presented to the Court by either party, on the sole grounds that the marriage has broken down irretrievably (The Matrimonial Proceedings and Property Act 1972, s. 3). The Act also strengthens the law related to the property of married, divorced and separated persons. Additionally, the Married Persons Act, 1976 provides further protection of a woman's rights to administer, and also enter into a contract in her own name and without her husband's permission (CEDAW Combined Report, 2015). There was no reported evidence to suggest de-facto discriminatory practices against women with regard to divorce.

Equal rights to custody and maintenance of children are provided through the Family Law (Guardianship of Minors, Domicile and Maintenance) Act, 1981. s. 4 &6. With respect to the administration of any property, a mother is provided the same rights and authority as a father.

e) Inheritance

Daughters and sons as well as female and male surviving spouses share equal rights to inheritance of both land and non-land assets (Administration Of Estates (Amendment) Act 2000, Chap. 9:01, s. 23 – 26), and the Succession (Amendment) Act 2000). It is also important to note that within the Act, the definition of spouses is inclusive of cohabitating partners. Women and men also share equal rights in administering a will, in accordance with the Wills and Probate (Amendment) Act 2000 (Chap. 9:03. Disinheritance and property dispossession are not legislated. Some reports further suggest that similar to global trends, women in Trinidad and Tobago experience discriminatory inheritance practices that are preferential towards men. As such, there is a disproportionate ownership of land (UWI St. Augustine Report).

2. Restricted Physical integrity

a) Violence against women

Trinidad and Tobago has ratified the Convention of Belem do Para, however, the country subscribes to the dualist doctrine of international law, whereby international conventions only gain legal authority once incorporated into domestic legislation through Parliament (CEDAW Combined Report, 2015). Additionally, Trinidad and Tobago does not recognize the jurisdiction of the Inter-American Court of Human Rights, with respect to individual petitions (UPR Report, 2016).

The Office of the Prime Minister (Gender and Child Affairs) is the national focal for gender and development, including the process of gender mainstreaming and oversight throughout all Government programmes and policies. The CEDAW raised its concerns regarding coordination and allocation of responsibility (CEDAW Report 2015). There was also concern expressed at the limited availability of human and financial resources (CEDAW Report 2015). In its response, the Government noted an increase in budgetary allocation for gender-related activities, as one example of its commitment to addressing this challenge.

Presently, the Republic does not have an operational national Gender Policy or Plan. A draft policy exists but has been pending for several years. It has been reported that the Cabinet has withheld approval due to issues pertaining to sexual orientation and abortion (Trinidad and Tobago UPR Report, 2016). Additionally, the 2012 draft plan has also yet to be adopted. There is no evidence to suggest reduced penalties for offenders of violence against women.

There are other mechanisms that exist in absence of an approved plan and policy. This includes the Government financed State Accountability Framework Initiative which in collaboration with UN Women Caribbean, UNFPA and other UN agencies, involves the mapping of programmes and policies. It also seeks to develop a strategic framework that addresses sexual and gender-based violence. They note that several programmes and policies to support ending violence against women have been implemented as a direct result. Additionally, a multi-sectoral Committee on Domestic Violence has produced a Procedural Manual for Police Officers, which has already been approved by Cabinet (Trinidad and Tobago UPR Report, 2016). There is also an active women's movement comprised of hundreds of women's NGOs and community-based organizations (CBOs) that remain at the forefront of the work for the advancement of women and gender equality (CEDAW Combined Report 2015).

b) Domestic violence

The key related legislation is the Domestic Violence Act, 1999 (Chap. 45:56), which amended previous legislation with widened definitions of abuse, extended coverage of relationships, and strengthening of police protection. Under section 3 of the Act, the definitions of abuse include physical, sexual, emotional or psychological and/or financial abuse committed by a person against a spouse, child, any other household member or dependant. However, the law has been critiqued for its emphasis on protection and deficit on provisions relating to investigation and punishment. For example, it does not give the police powers of arrest without a warrant upon receipt of a complaint of a domestic violence offence. Also, the process of obtaining a protection order has reportedly been

difficult for many women (Trinidad and Tobago UPR report, 2016). Civil society actors working in the area of gender-based violence further report that the legislative framework addressing domestic and sexual violence is not adequately implemented or enforced (Trinidad and Tobago UPR report 2016).

According to the most recent UPR report, domestic violence is an endemic problem and is cited almost daily in the local newspapers, along with reported incidences of related crimes. The report also notes that the associated crimes have increased over the years (Trinidad and Tobago UPR Report, 2016). Though not provided through legislation, the Ministry of Gender Affairs operates a toll free 24-hour Hotline for matters relating to domestic violence (Trinidad and Tobago UPR Report 2016). There are also a number of government-supported NGOs that operate shelters for female victims, and also a rape crisis centre. Counselling services, support groups and resource facilities are also available.

c) Rape

The Sexual Offences (Amendment) Act, 2000 criminalizes the offence of rape, with offenders punished with life imprisonment, and additional punishments for aggravated cases that include assault against minors or colluding with one or more persons to perform the act. The amended law also now includes recognition of marital rape, with the offence applicable to a husband who has committed the act against his wife (Sexual Offences Act Chap 11:28, s. 4, sub. S. 2, 5 & 6). It is important to note that law also extends to informal unions, where a “husband” or “wife” includes a cohabitant within the definitions provided in the Cohabital Relationships Act 1998. The definition of rape itself includes both lack of consent and also consent that is obtained through threats, fear, impersonation of another person, fraudulent means or unlawful detention.

As previously mentioned, crimes related to sexual assault have increased in Trinidad and Tobago over the past several years, according to the 2016 UPR Report. Also, as child marriage is presently still permitted, The Children Act provides exemptions from criminalization for sexual offences against minors by the spouses of minors. The act decriminalizes non-coercive sexual activity between minors close in age in non-familial or custodial relationships. There is an exception however, noting the absence of provisions for children of the same sex. As such, rape between same-sex minors is subject upon conviction, to life imprisonment, irrespective of the age of those involved (Trinidad and Tobago UPR Report, 2016).

d) Sexual harassment

Trinidad and Tobago does not presently have legislation or a policy specifically relating to sexual harassment. There is however the Offences against the Person (Amendment) (Harassment) Act 2005 which makes harassment a criminal offence. It also reported that private agencies and trade unions do in fact incorporate anti-harassment provisions in their collective agreements. Additionally, there is evidence of the industrial court having made several rulings on the matter in relation to work place claims (CEDAW Combined Report, 2015). Notwithstanding this, the Government as well as NGOs have suggested that many incidents of sexual harassment go unreported (Trinidad and Tobago UPR Report, 2016).

e) Female genital mutilation

There is no evidence to suggest that female genital mutilation is widely practiced in Trinidad and Tobago.

f) Abortion

Abortion in Trinidad and Tobago is illegal, as prescribed by the Offences Against the Person Act (Amendment) 2005, s. 56 and 57. A persons who provides assistance or provision of an abortion is liable to imprisonment for two years. A pregnant woman who procures such a termination is liable to imprisonment for four years.

There are a few exceptions in which an abortion of pregnancy is permissible, notably: to save the life of the woman, to preserve her physical health, or to preserve her mental health. Although these terms of exemption exist, it is reported that many women are uninformed and there is widespread perception that the termination is absolutely prohibited. This may lead women to seek alternative and unsafe solutions to terminate a pregnancy (Trinidad and Tobago UPR Report, 2016). In addition to the advocacy for the revision of this legislation therefore, the most recent UPR report also advocates the performance of a study on the incidence and causes of abortion related deaths. This remains an area of concern and one that still requires sufficient documentation and data gathering and analysis.

More

The US Department of State's 2015 Trafficking in Persons (TIP) Report lists Trinidad and Tobago as a destination, transit, and possible source country for adults and children subjected to sex trafficking and forced labour. According to the report, the country has not fully complied with the recommended minimum standards to address and eliminate this practice. In addition to the issue of arranged marriages as previously highlighted in the most recent UPR, their evidence further corroborates the prevalence of trafficking specifically as it relates to the sex industry, with direct reference to Latin America as a key source (Trinidad and Tobago UPR Report, 2016).

The Government has however noted several efforts and initiatives to combat trafficking. This includes the provisions of the Trafficking in Persons Act (Chap. 12:10) that was legislated in 2011 and became operational in January 2013. The act criminalizes human trafficking and also offers specific protection for victims. A Counter-Trafficking Unit was also established thereafter to investigate cases, screen, identify, protect and assist victims, as well as raise public awareness about the crime (CEDAW Combined Report 2015). The unit has also partnered with the IOM to provide training and sensitizations on human trafficking to government ministries and public bodies.

3. Restricted Access to productive and financial resources

a) Secure access to land and assets

Women face no legal restrictions regarding ownership, use, decision-making power, and use as collateral over land and non-land assets, irrespective of marital status. They are also ensured the right to property. Furthermore, the respective land and property legislation do not provide

distinctions on the basis of sex (Trinidad and Tobago Constitution 1976, Chap.1 s. 4 and the Land Acquisition (Amendment) Act 2000, Chap. 58:01). The Matrimonial Proceedings and Property Act, Chap. 45:51. s. 54 and 55, also provides recognition of joint ownership.

The Network of Rural Women Producers of Trinidad and Tobago is an example of a programme aimed at increasing women's participation. The main goals of the Network are to provide rural women with access to credit for micro-business projects; to contribute to government policies that are sensitive to and supportive of the special needs of rural women producers. The network also manages a revolving credit scheme which offers loans to its members (FAO, Gender and Land Rights Database).

b) Secure access to formal financial resources

Women and men enjoy equal legal rights and access to financial services though not explicitly subject in legislation. A World Bank report further suggests evidence of gender equality in this regard. Referencing a Trinidad and Tobago study they conclude that with all other factors remaining equal, such as credit-worthiness, educational background, employment record and location, there is no evidence of substantial difference in neither application or denial rates between women and men (S. Narain, 2009).

c) Workplace rights

The Equal Opportunity Act 2000 (Chap. 22:03) prohibits various forms of discrimination including sex discrimination in relation to employment, provision of goods and services, education and accommodation (CEDAW 2015). However, there are no provisions regarding equal remuneration for equal work between men and women. Additionally, though it does not explicitly prohibit certain professions, s. 11. (1) states that discrimination on the grounds of sex will not apply if being of a particular sex is a genuine occupational qualification for employment, promotion, transfer or training, noting only the exclusion of physical strength or stamina. Women also continue to experience inequality in the labour market, with higher unemployment levels than men despite educational advancements, suffer substantial pay inequity for equivalently qualified men and women in the same job and industry categories of work and are segmented in the lowest paying jobs (Trinidad and Tobago UPR report, 2016).

The Maternity Protection Act (Chap. 45:55) and the National Insurance Act (Chap. 32:01) are the key legislative instruments as it relates to maternity protection and benefits. Women are entitled to 61% of their salaries for a period of leave not exceeding 14 weeks. There is an increase from the previous 13 weeks granted, an amendment through the Miscellaneous Provisions (Maternity Protection and the Masters and Servants Ordinance) Act, 2012. However, there are reports of discriminatory practices against women. According to the most recent UPR report, there were cases of married female employees being threatened with termination should family obligations affect their job performance. Paternity and parental leave are not provided through law.

There is no evidence to suggest that women are required the permission of their husbands to enter a profession or to register a business. There is a noted under representation of women in political leadership however, which is reportedly attributed to disproportionate responsibility for

unremunerated work, and absence of maternity leave for parliamentarians (CEDAW Combined Report 2015).

4. Restricted Civil liberties

a) Citizenship rights

The Constitution of 1976 prohibits discrimination on the basis of sex and speaks specifically to the right of the individual to equal treatment and protection by the law. However, the Constitution does not reference multiple and intersectional discrimination nor discrimination based on gender. The Equality Opportunity Act, 2000, prohibits discrimination on the basis of status, which includes sex and marital status as one of among seven areas in which discrimination is prohibited. However there are no provisions for gendered discrimination within the Act (Trinidad and Tobago UPR Report, 2016).

The Constitution 1976 (s. 4) explicitly states the freedom of movement as fundamental right, including the right to travel abroad.

The Citizenship (Amendment) Act, 2000, sections 5 &6, provides equal rights for men and women to acquire, change, or retain nationality. The Family Law (Guardianship of Minors, Domicile and Maintenance) Act, 1981 provides equal the rights of women and men to have custody of their children, and also allowed women, regardless of marital status, to be equally entitled as men to pass their nationality onto their children born outside of Trinidad and Tobago (CEDAW Combined Report, 2015).

Regarding the registration of births, women and men are provided equal rights in accordance with the Births and Deaths Registration Act, Chap. 44:01. All citizens are entitled to passports and national identity cards, with neither marital status or gender being a pre-requisite (Representation of the People (Amendment) Act 2000, (Chap 2:01), s. 11 (1A)). However, married women are required to provide information on their husband and their marriage, while the same stipulation is not applied to married men (Ministry of National Security, n.d.). There is no reported evidence to suggest de-facto discrimination against women with respect to citizenship rights.

b) Voting

Women enjoy full participation in the voting process (The Constitution of the Republic of Trinidad and Tobago 1976, s. 51).

c) Political voice

Women and men have the equal right to hold public and political office at the legislature, executive and judiciary level (The Constitution of the Republic of Trinidad and Tobago 1976). However, while there are no legal barriers to women's participation, there remains an under representation in positions of leadership. The unbalanced share of household and family responsibilities was cited as a contributing factor in this regard. The absence of provisions of maternity leave and benefits for parliamentarians also serves as an impediment (CEDAW Combined Report, 2015).

Furthermore, there are no quotas or special temporary measures in place to address this issue. The Government notes however, an increase in women's overall participation in national leadership and decision-making. In responding to the most recent CEDAW observations, it also highlights the election of Trinidad and Tobago's first female Prime Minister in 2010, and her subsequent role as female Chair-in-Office of the Commonwealth. The Government also made mention of the Republic's rank of 33rd in the 2013 Inter-Parliamentary Union World Classification of Women Elected to Parliament (CEDAW Combined Report, 2015).

d) Access to justice

The Legal Aid and Advice (Amendment) Act, 2012 provides as an absolute right, access to legal aid services, including summary, civil and criminal proceedings. Also, access by indigent persons and those who cannot afford private legal fees or representation is noted as priority (Trinidad and Tobago UPR Report, 2016). Special effort is also made to extend these services to rural communities, not only through this act, but also through policy and programmes implemented by the Ministry of the People and Social Development (CEDAW Combined Report, 2015).

The Gender Affairs Division within the Office of the Prime Minister, Gender and Child Affairs, is tasked with monitoring gender equality. However, some legal gaps and challenges do remain regarding operationalization of the laws and barriers to women's ability to access justice, as evidenced in the previous examples of limitations of Domestic Violence Act 1999 (Trinidad and Tobago UPR Report 2016).

Generally speaking, there are no legal impediments or customary, religious or traditional practices that discriminate a woman's right to sue or be sued. Additionally, there is no evidence to suggest that a woman's testimony in court is weighted differently than a man's.

Sources

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