



19<sup>th</sup> May 2021

The **Alliance for State Action to End Gender-based Violence (ASA)**<sup>1</sup> notes the suite of amendments before the Parliament which addresses sexual offences. They are intended to 1) create new offences; 2) add penal sanctions (corporal punishment); 3) prevent the likelihood of recidivism by keeping the public alert to the whereabouts of suspected sex offenders; and 4) create avenues of access for materials which can be used in self-defense (pepper spray).

We welcome this focus on sexual offences given the prevalence of all forms of sexual offences, including those which arise from the non-consensual use of technology.

We consider that while keeping the 'corpus juris' current is important, we repeat that the vast majority all forms of violence against women by men are caused by gender inequality. The social norms around masculinity give many men the sense and expectation of domination or superiority over women. While increasing penalties and punishment for sexual offences might be welcome by many, this does not address the root causes of violence, which are complex in our postcolonial society but solvable through state action.

We need a comprehensive approach that includes primary prevention by addressing the root cause of sexual offences -- gender inequality. This would include supporting and funding the inclusion of gender-based violence training and non-violent communication in teacher training programmes and in the school system along with comprehensive sex education that social science research has long shown prevents childhood sexual abuse, intimate partner violence, and teenage pregnancy and promotes healthier relationships and understandings of sex and sexuality.

Secondary prevention measures (those that effectively deter the use of violence and re-offending) must also be taken. Sexual offences, like other forms of gender-based violence, are largely unreported. When they are, prolonged investigations, failures in detection, and delays in prosecutions characterize the experience for victims/survivors. The resulting attrition of cases undermines access to justice and the fair trial rights of victims/survivors.

Prolonged prosecutions and pretrial detention on remand and other issues that generate lack of trust in the administration of justice have an impact particularly on poor and working-class communities. The issue of social injustice must be considered and incorporated into prevention measures. Sexual violence is part of larger and complex issues of structural violence. By this we mean that those proposals that

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<sup>1</sup> Coalition Against Domestic Violence, CAISO: Sex & Gender Justice; Institute for Gender and Development Studies; UWI; CEDAW Committee of Trinidad & Tobago; Caribbean Association for Feminist Research and Action (CAFRSA) TT; Caribbean Male Action Network (CARIMAN), Women's Institute for Alternative Development, Organisation for Abused and Battered Individuals, The Shelter for Battered Women and Children; WOMANTRA

only focus on punitive measures will not have efficacy and will have a disproportionately negative impact on the poor who already survive in conditions of greater violence, trauma and insecurity.

What do we know about sexual violence? First off, most sexual violence against women and girls goes unreported and undetected. A 2016 IDB study suggests that there is 6.6 times more sexual violence than is reported to police.<sup>2</sup>

Much sexual violence happens in the home and in the context of intimate or former intimate partnerships. Another IDB study<sup>3</sup> found that many women who reported experiencing domestic violence in relationships also experienced sexual violence. We also know from that study that 21% of women reported having experienced some form of sexual assault by strangers. In addition, 23% of the cases reported to the Children's Authority in 2018<sup>4</sup> related to sexual violence.<sup>5</sup> Much of the sexual violence against children (and mostly girls) is perpetrated by someone known to the child.

What do we know about offenders? Given that so many women experience sexual violence and so much of it is unreported and undetected, we can reasonably surmise sexual violence is being perpetrated by a cross-section of people in our society. Yet, there is ample data to show that those more likely to be arrested, prosecuted and incarcerated are men from low-income, insecure and marginalised communities.

A 2016 survey of incarcerated persons (and not only for sexual violence) found the following<sup>6</sup>:

- 45.6 percent said that their parents or guardians used alcohol frequently when they were a child and 25.6 percent said that their parents or guardians used illegal drugs such as marijuana or cocaine.
- 52.8 percent had family members who had been in prison at some point and 20.9 percent currently had a family member in prison.
- 43.6 percent grew up in neighbourhoods with gangs.
- 21.4 percent were previously incarcerated in a juvenile detention centre.
- 76.3 percent had used marijuana one or more times within their lifetime, with the average age of first use being 15, and 10.8 percent had used cocaine or crack cocaine within their lifetime.

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<sup>2</sup> Crime and Violence in Trinidad and Tobago IDB Series on Crime and Violence in the Caribbean Randy Seepersad Series Editor: Heather Sutton. IDB 2016

<sup>3</sup> National Women's Health Survey for Trinidad and Tobago: Final Report. IDB 2018

<sup>4</sup> In that year the Children's authority received 4,451 reports

<sup>5</sup> Children's Authority of Trinidad and Tobago 2018 Annual Report.

[https://www.ttchildren.org/images/CATT\\_2018\\_Annual\\_Report\\_Final\\_compressed.pdf](https://www.ttchildren.org/images/CATT_2018_Annual_Report_Final_compressed.pdf)

<sup>6</sup> Survey of Individuals Deprived of Liberty: Caribbean 2016-2019: Trinidad and Tobago Country Report. Prepared by Randy Seepersad. IDB 2020

With all this in mind, the IDB study on incarceration shows that Trinidad and Tobago has amongst the highest incarceration rates in the world - 258 per 100,000 whilst the global average is 145 per 100,000 inhabitants. Yet Trinidad and Tobago continues to have high levels of violence and crime.

In relation to the criminal justice system, we note the delay in the hearing and determination of cases. The *Annual Report of the Judiciary 2018-2019* illustrates this for all offences including sexual offences in High Court matters. In that year, 56% of sexual offences cases had been pending for over 10 years. Of the 48 cases which were disposed of in that year, 50% had been in the system for over 5 years. Whilst the non-capital cases in the Magistrates Court are not disaggregated by type of offence, the general data gives a similar picture of some delay.

Fixing these issues will more likely lead to deterrence and prevent re-offending than a focus on increasing punishment, which is at the very end of the justice chain. We therefore call for a review of the management of sexual offences cases as the foundation for a comprehensive reform of the justice system.

On the suite of amendments being pursued, we make the following points:

There is overwhelming consensus on the need for effective actions to end all forms of gender-based violence. Many women's and gender equality advocates and civil society organisations also agree that there must be a thoughtful, whole of government and society strategy to prevent GBV by addressing the root causes.

Similarly, there is consensus that the criminal justice system must be strengthened and be made more effective, in the sense of delivering due process on a timely basis. Many have called for infrastructural improvements such as better lighting in public spaces, safe public transportation and deployment of police in communities. And still others, frustrated by the state and societal inability to protect women and girls, are calling for access to instruments for self-defense, such as pepper spray and even Tasers. Given the delays in the hearing of cases and the fact that persons on bail can and have re-offended, there have also been calls for the elimination of bail for persons on sex offender charges.

How should we approach these problems?

The ASA is calling for policy coherence and for approaches that are evidence-based. As a fundamental principle, state action must be consistent with the fundamental rights and freedoms guaranteed in the constitution and with the state's international human rights obligations. We understand that human rights may have to be curtailed in furtherance of legitimate public interests such as public order, national security or public health. But these curtailments must be necessary, proportionate, legal and non-discriminatory in application.

We must learn from past limitations of state action (whether through inadequate policy, negligence or inefficacy or otherwise) in reducing the insecurity experienced by many women and girls in Trinidad and Tobago.

We say that solutions should be informed by a public health framework, a restorative and victim -and survivor- centred justice strategy; and gender analysis. We urge government to progress its agenda of collective action as we are all in this together.

It is on the basis of these principles that we comment on the proposed amendments.

### **1. Sexual Offences (Amendment) No. 2: New sexual offences**

The amendment creates new offences: voyeurism and the taking and sharing of an intimate image without consent.

These offences respond to the newer forms of harm being perpetrated because of the use of technology and dissemination of consequential materials without consent. We are in full agreement.

We only note that the amendment takes into account that videos may be generated in private homes for purposes of security. Such generation of materials would not constitute an offence without use or the intention to use for sexual gratification purposes or to humiliate others. Perhaps the legislation should provide that private homeowners must notify visitors of the use of cameras on the premises.

### **2. Firearms Amendment Bill 2021 Act: Access to pepper spray**

In 2021 many have called for access to the self-defense tool of pepper spray. These calls reflect the outrage, terror and sheer frustration over the levels of crime and violence.

The rationale for these calls is that pepper spray is a non-lethal deterrent that can increase the capacity of women and girls who are at risk of being victims of violence and, in particular sexual offences, to resist and avoid harm. Access to pepper spray will give a stronger sense of personal safety. It is an immediate solution whilst more long-term reforms are being formulated and implemented.

It is difficult to comment on the deterrence effect of pepper spray without research of its use in other countries with comparable socio-economic and security profiles as Trinidad and Tobago. However we note a number of concerns:

1. In the wrong hands, items such as pepper sprays can be dangerous and cause serious injury.
2. Private possession of firearms, including sprays, or other weapons for personal protection is likely to lead to an increase in levels of violence.
3. Pepper spray, intended for self-protection could itself be used against that person with serious consequences.
4. Such items, if widely available to everybody, could be used to incapacitate people in order to carry out criminal acts.

We consider that these are all risks relevant to Trinidad and Tobago where the people involved in criminal activities seem to have access to weapons, regardless of the existence of a regulatory framework.

Whilst, therefore, we understand the widespread popular call for legalised availability of pepper spray, we caution against the take up of responses to violence against women that increases women's individual responsibility for their own protection.

We call for an evidence-based justification for this amendment. And we are very concerned about the increased risk to women should this non-lethal weapon become more widely available. What must be considered is whether pepper spray will be really an effective tool and the degree of risk(s) associated with more widely available pepper spray in the community.

Once it is in the community, there will be no way to prevent those with criminal intentions from accessing it. In addition, we need to think carefully whether the anticipation of a victim's having pepper spray may not result in more aggressive and violent crime perpetration. We additionally hope it does not result in further victim-blaming when women are unable to adequately defend themselves, with or without pepper spray. It is worth noting the finding of the IDB study of incarcerated persons that nearly one third (31.7%) of the inmates carried unlicensed firearms while committing the crime for which they were incarcerated.

In this regard, it would be helpful for government to provide the justification for these amendments and give the population some assurance about the expected turnaround as a result of its introduction.

### **3. Sexual Offences Amendment (No.3) Registration of persons charged with sex offences and dissemination on public website**

There are studies that call into question the deterrent effects of a sex offender register. Be that as it may, we consider that a sex offender register, well-managed and maintained, on the balance can improve a community's capacity to self-protect.

In relation to the sexual offences amendment process which resulted in the establishment of a register in 2019, the ASA made a number of points. These included that entry onto the register and onto a website accessible to the public should be determined through a judicial process and not automatically upon conviction. We asked for limited access to a public website because of the likelihood of harm to innocent third parties - families, and in particular, children of convicted sex offenders - through vigilantism and stigmatisation.

These concerns have been repeated in relation to current additional amendments being advanced to make entry onto a register and public website automatic upon conviction, though subject to an application to a court for exemption.

This additional proposal for amendment to the Sexual Offences Act to allow automatic entry onto a register and accessible public website for those charged with serious sexual offences affects constitutional rights.

There is indeed a serious problem of persons reoffending whilst out on bail. The IDB study<sup>7</sup> also found that many incarcerated men had previously engaged in other crimes, though, were not necessarily arrested in the six-month period before they were incarcerated. The main and immediate response must be expedited trials.

The proposal to place persons charged with sex offences on a register of charges accessible to the public should not be pursued. This proposal:

- a. It is likely to jeopardize the safety of third parties- families of persons charged.
- b. Undermines the presumption of innocence and therefore is in violation of the constitutional guarantees on due process.
- c. It amounts to pretrial punishment.
- d. It constitutes an illegitimate interference by legislators with the judiciary's authority to judge and sentence.

Given that an application may be made to be exempt from the register and website by persons charged, it is very likely that this provision will also increase the work-load of the courts and contribute to delay and backlog in an already over-burdened court system.

This is not a case of the rights of victims (actual and potential) and of accused persons in contention. We all have an equal interest in ensuring due process, including that the presumption of innocence is maintained.

If the purpose of the amendment is to deter predators, which is so important, there are other effective and immediate ways of limiting the capacity for persons on bail to re-offend. These include expedited trials, the use of electronic surveillance for those charged with and on bail for sexual offences, and increased police patrols.

#### **4. The Corporal Punishment (Offenders Over Eighteen) (Amendment) Bill, 2021: Corporal punishment for persons convicted of certain offences, including sexual offences**

The amendment to the Corporal Punishment Act seeks to add a number of offences under the Larceny Act, Offences against the Person, Children Act, Kidnapping Act, Trafficking in Persons Act and Sexual Offences Act, for which corporal punishment would be part of the sentencing option.

In our inputs into the amendments of the Sexual Offences Act(which established the sex offender register and website), the Alliance argued for appropriate approach to offenders which secured community safety, but also included a focus on rehabilitation through interventions that encouraged offender accountability.

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<sup>7</sup> Survey of Individuals Deprived of Liberty: Caribbean 2016-2019: Trinidad and Tobago Country Report. Prepared by Randy Seepersad. IDB 2020

We consider that corporal punishment should be eradicated, whether in the home, the school or in the criminal justice system. It is by definition cruel, degrading treatment, regardless of the nature and criminal conduct of the recipient. The State, as the distillation of the collective, must not be a messenger and advocate of violence, particularly when there are other ways to secure the safety of the public and punish sex offenders. The promotion of corporal punishment undermines the desired taboo on violence in society.

This comes down to having clarity on the values and objectives of the criminal justice system. Whilst corporal punishment is retributive (and that retribution is a legitimate objective) we need to have a scheme of punishment where means and ends are aligned. The primary end must be deterrence and community safety.

We also note that beating of humans is very much part of our oppressive and unequal history and rooted in colonial legacies. The public is better kept safe through the appropriate interventions, which lead to convicts less likely to re-offend. What we know already is that the prisons are overcrowded, violent and not widely conducive to rehabilitation. Further, that those in prison tend to be from poor, violent and traumatised communities and families (created through class and economic injustice). People from privileged backgrounds with access and resources rarely experience this kind of marginalisation or incarceration rates. Any proposals for punishment should be empirically supported and reflect best practices in preventing sex offender recidivism, globally.

In addition, the promotion of beating requires that someone be engaged to undertake the act against another human being. That, by definition, is degrading of the dignity and humanity of anyone who is employed to deliver licks. This should not be asked of anyone.

We should not in 2021 harken back to behaviour that diminishes us all.

### **What can be done to keep women and girls safe in the public space:**

We must guard against being one-dimensional in our approach as a country and fashion a more comprehensive strategy to ensure that the measures we adopt and the laws we enact are not superficially responding to public anxiety that “something must be done” or seen to have been done. We cannot merely be reactive, but must seek to address the root causes whilst delivering the type of sustained relief that the population legitimately and reasonably expects.

We offer the following specific recommendations for a whole of society and state response to prevent gender-based violence.

- Recognition that **gender-based violence is a national emergency** requiring a mix of immediate, medium and long term policies and actions.
- Adoption of a resourced, multi-sectoral, national strategy to end gender-based violence.
- Review and strengthening of the social development system to address the drivers of crime, violence and insecurity, in a way which centres gender and social inequalities analysis. A law and

order response disconnected from social justice is very unlikely to result in significant crime reduction.

- Improvement that addresses the deficits in the criminal justice system, through a review of the treatment of sexual offence cases, looking at how every stage of the criminal justice system handles cases, from police report to final outcome at court. Reducing the delay in the hearing and determination of sexual offences cases is critical for preventing re-offending.
- Establishment of a specialized court for sexual offences.
- Institution of a system of information, contact and surveillance for persons on charges of sex offences.
- Institution and availability of **psycho-educational interventions** for persons charged with or convicted of sex offences based on the principles of accountability and victim safety. For the former category this engagement can be compulsory as a condition of bail.
- Social development and care approaches should also give priority to alcohol and substance addiction.

As well, we re-emphasize proposals made in earlier submissions which recommend:

- **Immediate changes to the public transportation system.** Work with public transportation associations and unions to develop an “Urgent Response and System of Safety” for women and girls. Implement mandatory GBV Training and background checks for registered drivers and a complaint system for patrons. Ensure all taxis and drivers are registered. Install cameras at taxi stands and priority bus route.
- Improve neighborhood infrastructural measures such as better lighting and CCTV.
- **Increased Effectiveness, Accountability and Transparency of the State.** To achieve this, we recommend the establishment of a process of structured engagement with relevant stakeholders for the review of monitoring and evaluation mechanisms based on data collection, analysis, and dissemination protocols and within responsible state agencies, such as the police service, courts, and social services.
- **Sufficient financial and organisational support and resources** for national support systems that provide services to survivors and victims, including : Shelters, Victim and Witness Support Unit, Gender and Child Affairs Division, the emergency hotline 800-SAVE, and the newly established TTPS Gender-Based Violence Unit and women’s organizations that provide other services for women and girls and promote gender equality.
- **Establishment of a Social Fund** as a national budgetary priority to support NGO-led shelters and civil society members providing services to persons affected by gender-based violence.
- **Establishment of a multi-stakeholder coordination mechanism that includes civil society, academics and ministries, working together to end gender-based violence.** This committee will advise Government on the adoption, resourcing, implementation and monitoring of the National Strategy against Gender-Based and Sexual Violence and the National Policy on Gender and Development.

- **Investment in social reformation programmes** endorsed and championed by high level officials to facilitate cultural change by embedding and teaching nonviolent communication approaches and methodologies in school curricula, social service provision, and public education campaigns.

**We urge the legislature to place critical focus on eliminating violence against women and girls in Trinidad and Tobago, on the basis of evidence, best practice, and principles of justice, non-violence and human rights.**