

**A CRITICAL ANALYSIS OF THE EFFICACY OF LAW AS A TOOL TO ACHIEVE GENDER
EQUALITY AND TO ADDRESS THE PROBLEM OF DOMESTIC VIOLENCE:
THE CASE OF TRINIDAD AND TOBAGO**

by

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ABSTRACT

Law is often perceived as an instrument that can effect social change. National law in Trinidad and Tobago, *prima facie* providing for gender equality, does not fully contemplate issues of particular concern to women, such as domestic violence. Gender equality and domestic violence are unwitting partners as women cannot achieve the former without first addressing the latter. Additionally, problems such as male dominance in politico-legal structures and lack of political will create practical obstacles to the realisation of gender equality and/or the full potential of the law. A case study of Trinidad and Tobago shows that the achievement of legal advances for women is particularly difficult where practical measures are not implemented domestically. Honouring international commitments subsequently becomes problematic as they do not guarantee change nationally and they, too, are sidelined. Gender equality and domestic violence are not given priority domestically and laws aimed towards protecting women and women's rights are ineffective, scant and/or not enforced. The only way to achieve gender equality is through a multilevel approach from above (the UN) and, perhaps, more importantly, from below, as women have the potential to effect real national and international legal and institutional change to ensure gender equality at both levels.

DEDICATION

For

B

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TABLE OF CONTENTS

LIST OF FIGURES	x
LIST OF TABLES.....	xi
LIST OF CASES.....	xii
LIST OF CONSTITUTIONAL PROVISIONS	xiv
LIST OF STATUTORY INSTRUMENTS.....	xv
LIST OF ABBREVIATIONS.....	xxi
CHAPTER ONE.....	1
1.0 Introduction	1
1.1 Thesis Statement.....	1
1.2 Rationale.....	1
1.2.1 Gender and Law: Women in the West.....	1
1.2.2 Gender Politics in Trinidad and Tobago	7
1.3 Theoretical Framework	13
1.4 Methodology	15
1.5 Contribution to Knowledge.....	18
1.6 Outline of Chapters.....	18
CHAPTER TWO	22
2.0 Laying the Theoretical Framework: Feminist Legal Theory and Feminist Critical Theory.....	22
2.1 Gender.....	23
2.1.1 What is Gender?	23
2.2 Feminism	25
2.2.1 What is Feminism?.....	25
2.2.2 The Historical Development of Feminism and Women’s Human Rights	26
2.2.2.1 First Wave Feminism	29
2.2.2.2 Second Wave Feminism.....	30
2.2.2.3 “Other” Feminisms.....	33
2.3 Feminist Legal Theory: Where do Women Figure?.....	35
2.3.1 Feminist Legal Theory: The Early Years	36
2.3.2 Feminist Legal Theory: The Public/Private Divide	38
2.3.3 Feminist Legal Theory: The Equality Project	40
2.4 Critical Theory and Feminism	49
2.5 Conclusion.....	56
CHAPTER THREE	59
3.0 The Androcentrism of International Law and Human Rights.....	59
3.1 The Development of International Law	60
3.2 The Male Nature of International Law	63
3.3 International Law and Rights.....	67
3.3.1 States, Sovereignty and International Law	67
3.3.2 ‘Universal’ Rights.....	69
3.3.3 Arguments against the Notion of ‘Universal’ Rights.....	76
3.4 Reinventing International Law: Women’s Rights as Human Rights in the International Community	79
3.4.1 The Public/Private Divide and Women’s Rights	81
3.4.2 State Culpability and CEDAW	83
3.4.3 Cultural / Religious Relativism and Women’s Rights.....	86

3.4.4 Gender Equality and The Male Standard	89
3.5 International Law and Women's Rights: The Struggle for Equal Treatment	91
3.5.1 The Politics of Rights	91
3.5.2 Women's Rights and the United Nations	92
3.5.3 Convention on the Elimination of All Forms of Discrimination Against Women	94
3.5.3.1 Declaration on the Elimination of Discrimination Against Women	94
3.5.3.2 Convention on the Elimination of Discrimination Against Women	95
3.5.3.3 The Beijing Declaration and the Platform for Action	101
3.5.3.4 The Optional Protocol	105
3.5.4 The Vienna Declaration	107
3.5.5 Declaration on the Elimination of Violence Against Women	108
3.6 Non Gender-Specific International Legal Instruments	111
3.7 Managing the Relationship Between States: International Relations and the Gender Bias	114
3.8 Conclusion	120
CHAPTER FOUR	123
4.0 The Institutional Framework: The United Nations and Non-Governmental Organisations Post-1945	123
4.1 Women and the United Nations	123
4.2 Institutional	124
4.2.1 Commission on the Status of Women	125
4.2.2 Division for the Advancement of Women	129
4.2.3 Committee on the Elimination of Discrimination Against Women	130
4.2.4 Gender Mainstreaming and the United Nations	134
4.3 Non-Governmental Organisations	136
4.3.1 NGOs at the International Level: The UN	140
4.3.2 NGOs at the National Level: The State	145
4.4 Conclusion	152
CHAPTER FIVE	154
5.0 Trinidad and Tobago's Domestic Gender Policy: The Legislative Response	154
5.1 Introduction	154
5.2 The Legal Tradition of Trinidad and Tobago	156
5.2.1 Background to Governance	156
5.2.2 Sources of Law	161
5.2.2.1 The Constitution	161
5.2.2.2 Common Law	162
5.2.2.3 Statutory Law	163
5.3 Assessing Gender Laws in the Framework of the Colonial Experience	163
5.3.1 The Shaping of the Law: The Role of Colonialism	164
5.3.1.1 Control	165
5.3.1.2 Benevolence	166
5.3.1.3 Inequality	167
5.3.1.3.1 Positive Inequality	167
5.3.1.3.2 Negative Inequality	168
5.3.1.4 Equality	169
5.3.1.4.1 False Equality	169
5.3.1.4.2 Inverse Equality	170
5.3.1.4.3 Restorative Equality	170
5.3.2 Law, Colonialism and Gender in the Post-Colonial Era	171
5.3.2.1 Control	176
5.3.2.2 Benevolence	177

5.3.2.3 Inequality	180
5.3.2.3.1 Positive Inequality	180
5.3.2.3.2 Negative Inequality	181
5.3.2.4 Equality.....	182
5.3.2.4.1 False Equality	182
5.3.2.4.2 Inverse Equality	182
5.3.2.4.3 Restorative Equality	183
i. General Equality.....	183
ii. Newly Conferred Rights.....	184
iii. Gender neutrality	184
iv. Non-gender distinctiveness	186
5.3.2.4.4 Constitutional Equality.....	186
5.3.3 Case Law and Gender in the Post-Colonial Era.....	189
5.4 Domestic Legislation: A Simple Case of Replacement of the Elite?.....	194
CHAPTER SIX.....	196
6.0 Trinidad and Tobago and Domestic Violence: The Specific Legislative Response ..	196
6.1 Introduction.....	196
6.2 Effectiveness of the Domestic Violence Act.....	196
6.2.1 The Prompt and Equitable Response.....	197
6.2.2 The Domestic Violence Act and Women’s Constitutional Right.....	198
6.2.3 Responsibility of Independent Parties to Seek Protection Orders On Behalf of Victims	199
6.2.4 Legislative Discretion to Grant Protection Orders.....	199
6.2.5 Counselling under the Domestic Violence Act.....	200
6.2.6 Duration of Protection Orders.....	201
6.2.7 Hardship under the Domestic Violence Act	202
6.2.8 The Preservation and Protection of the Institution of Marriage and Other Relationships.....	203
6.2.9 <i>In Camera</i> Proceedings.....	203
6.2.10 Date of Hearing of Application for Protection Orders.....	203
6.2.11 Non-Service of Summons	204
6.2.12 Dismissal of Application for Protection Order due to Non-Appearance of Applicant	204
6.2.13 Time of Effect of Protection Order	205
6.2.14 Variation or Revocation of Orders	207
6.2.15 Fines and Penalties.....	207
6.2.16 Police Intervention.....	208
6.2.17 Conditions of Bail	209
6.3 Conclusion.....	210
CHAPTER SEVEN	211
7.0 Trinidad and Tobago and Domestic Violence: The Institutional Response.....	211
7.1 Introduction.....	211
7.2 State Commitment	211
7.2.1 Financial Investment in Dealing with Domestic Violence	212
7.2.2 Gender Policy.....	217
7.2.3 Ministry of Community Development, Culture and Gender Affairs.....	219
7.2.4 Ministry of Social Services.....	225
7.2.5 Gender Affairs Division, Tobago House of Assembly.....	227
7.3 State Authorities.....	228
7.3.1 Magistracy.....	228
7.3.2 Family Court.....	234

7.3.3 Police Service	236
7.3.4 Legal Aid and Advisory Authority.....	244
7.4 Non-Governmental Organisations	245
7.4.1 Research and Advocacy Groups.....	245
7.4.2 Support Service Groups.....	248
7.4.3 Shelters.....	250
7.5 Conclusion.....	252
CHAPTER EIGHT.....	257
8.0 Trinidad and Tobago and Domestic Violence: The International Response	257
8.1 Introduction: International Context	257
8.2 International Law.....	257
8.2.1 Convention on the Elimination of All Forms of Discrimination Against Women	257
8.2.2 Declaration on the Elimination of Violence Against Women.....	259
8.2.3 The Beijing Declaration and Platform for Action	260
8.3 Regional Instruments.....	262
8.3.1 Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women.....	262
8.3.2 Charter of Civil Society for the Caribbean Community	264
8.4 Conclusion.....	265
CHAPTER NINE.....	266
9.0 Conclusion.....	266
9.1 Gender Equality and the Law in TT.....	266
9.2 The Role of NGOs in TT	267
9.3 The Colonial Legacy of Legal Elitism	269
9.4 The Institutional Response	270
9.5 Challenges at the Level of the UN	272
9.6 TT's Response to Its International Law Commitments.....	273
9.7 Limitations of International Law to Effect Change at the National Level: The Problem of Male Bias.....	274
9.9 Efficacy of Law as an Agent of Change	275
9.10 Effecting Change	278
APPENDIX A	280
Existing Legislative Framework Relating to Gender in Trinidad and Tobago	280
A.1 CONTROL.....	280
A.2 BENEVOLENCE	280
A.3 INEQUALITY	309
A.3.1 POSITIVE INEQUALITY (Rights vested in elite).....	309
A.3.2 NEGATIVE INEQUALITY (Liabilities in non-elite)	313
A.4 EQUALITY	314
A.4.1 FALSE EQUALITY.....	314
A.4.2 INVERSE EQUALITY (Conveying rights to non-elite that are not enjoyed by the elite)	314
A.4.3 RESTORATIVE EQUALITY (Conveying rights to achieve gender neutrality [eg. cohabitational relationships act] or non-gender distinctiveness [maternity benefits]).....	316
A.4.4 CONSTITUTION.....	342
A.5 MISCELLANEOUS.....	343
APPENDIX B	344
International Constitutional/Bill of Rights Provisions dealing with Equality and Specific Women's Rights.....	344

APPENDIX C	352
NGOs and Domestic Violence.....	352
C.1 Research and Advocacy Groups.....	352
C.1.1 Trinidad and Tobago Coalition Against Domestic Violence (“The Coalition”).....	352
C.1.2 Centre for Gender and Development Studies (“CGDS”).....	354
C.1.2.1 Women Development and Studies Group.....	356
C.1.3 Caribbean Association for Feminist Research and Action (“CAFRA”)	357
C.1.4 Network of NGOs of Trinidad and Tobago for the Advancement of Women (“The Network”)	357
C.1.5 Women Working for Social Progress	358
C.2 Support Service Groups.....	359
C.2.1 Lifeline	359
C.2.2 Families in Action.....	360
C.2.3 Rape Crisis Society of Trinidad and Tobago.....	361
C.2.4 Social Establishment for the Welfare of All (“SEWA”)	362
C.2.5 Flaming Word Ministry	363
C.2.6 Legal Aid Clinic.....	364
C.2.7 Men Against Violence Against Women (“MAVAW”)	364
C.2.8 Women Against Abuse and Violent Encounters (Women’s Support Group) (“WAAVE”)	366
C.3 Shelters	367
C.3.1 Goshen House.....	367
C.3.2 Vision of Hope	368
C.3.3 MIZPEH House.....	369
C.3.4 Halfway House	370
C.3.5 Madinah House	371
C.3.6 The Shelter	373
C.3.7 Hope Shelter for Battered Women and Children.....	374
C.3.8 National Home for Family Reconciliation	374
C.3.9 Our Lady of the Wayside Shelter	375
C.3.10 Tobago Women’s Enterprise for Empowerment and Rehabilitation Towards Self-Sufficiency (“TOWERS”)	376
APPENDIX D	378
NGO Questionnaire	378
BIBLIOGRAPHY	380
INTERNATIONAL CONVENTIONS, DECLARATIONS, PROTOCOLS.....	423

LIST OF FIGURES

Figure 2.1 “Knowledge is Paralysing”	49
Figure 3.1 Sources of International Law	61
Figure 4.1 Structure of the United Nations Human Rights Bodies and Mechanisms	124
Figure 5.1 Map of Central America and the Caribbean.....	158
Figure 5.2 Map of Trinidad and Tobago	158
Figure 5.3 Appointments to the Judicial and Legal Services Commission.....	159
Figure 5.4 List of Legislation relating to Gender in Trinidad and Tobago.....	172
Figure 5.4 List of Legislation relating to Gender in Trinidad and Tobago (continued)	173
Figure 5.4 List of Legislation relating to Gender in Trinidad and Tobago (continued)	174
Figure 5.4 List of Legislation relating to Gender in Trinidad and Tobago (continued)	175
Figure 5.5 International Constitutional/Bill of Rights Provisions relating to Equality and Specific Women’s Rights	187
Figure 7.1 Domestic Violence Statistics collected by the Magistrate’s Courts for the Period 1998-2006	230
Figure 7.2 Domestic Violence Statistics collected by the Trinidad and Tobago Police Service for the Period 1997-2006.....	239

LIST OF TABLES

Table 3.1 Number of Reservations and Declarations entered per article.....	98
Table 3.2 Reservations and Declarations entered by States Parties according to specific articles of the Convention on the Elimination of All Forms of Discrimination against Women	99
Table 3.2 Reservations and Declarations entered by States Parties continued.....	100
Table 4.1 NGOs in Consultative Status with ECOSOC	141
Table 5.1 Participation of Women in the Structures of Power and Decision-Making	155
Table 7.1. Domestic Violence Statistics collected by the Magistrate's Courts for the Period 1998- 2006	231
Table 7.2. Domestic Violence Statistics collected by the Trinidad and Tobago Police Service for the Period 1997-2006.....	240

LIST OF CASES

Cases

<i>Angela Ramdeen v The State</i> , CrA. No. 33 of 1997	190
<i>Ann Charles v Peter McMillan</i> , H.C.A. No. 141 of 1981.....	193
<i>Ashton Lee v The State</i> , CrA. No. 73 of 2001.....	191
<i>Balkissoon Roodal v The State</i> , Privy Council Appeal No. 18 of 2003	191
<i>Betty Dukes and ors v Wal-Mart Stores, Inc.</i> , No. C-01-2252 MJJ (2001).....	43
<i>Boodram v Attorney General of Trinidad and Tobago</i> , (1994) 47 WIR 459	164
<i>Brian Nicholson v Elizabeth Nicholson</i> , H.C.A. No. FH00712 of 2004.....	193
<i>Charles Matthew v The State</i> , Privy Council Appeal No. 12 of 2004	191
<i>Deokee Beharry v Anthony Beharry</i> , H.C.A. M-313 of 1998.....	193
<i>Director of Personnel Administration and the Police Service Commission v Eusebio Cooper and Others</i> , Civ. App. No. 10 of 2004 (TT)	160
<i>Edwards v Att.-Gen. of Canada</i> , [1930] A.C. 124	38
<i>Foster Serrette v The State</i> , CrA. No 40 of 2001	191
<i>Geduldig v Aiello</i> , 417 US 484 (1974)	89
<i>General Electric Company v Gilbert et al</i> , 429 US 125 (1976).....	89
<i>Giselle Stafford and Dave Carter v The State</i> , Cr. App. No. 88 & 91 of 1996	191
<i>Harksen v Lane</i> , 1997 (11) B.C.L.R. 1489 (C.C.)	46
<i>Indravani Ramjattan v The State</i> , CrA. No. 59 of 1995.....	190
<i>Irma Richards v Hamilton Riviears</i> , H.C.A. No. 2045 of 1992.....	193
<i>Jasmine Albert v Irwin Mohammed</i> , H.C.A. No. 1651 of 2003.....	193
<i>Jex-blake v Senatus of Edinburgh University</i> , (1873) 11 M. 784	37
<i>Josine Johnson and Yuclan Balwant v The Attorney General of Trinidad and Tobago</i> , H.C.A. No. S-2142 of 2004.....	193, 194
<i>Junior Colin Nicome v The State</i> , CrA. No. 83 of 1999.....	191
<i>Kenrick London and Chandrouti London v The State</i> , Cr. App. Nos. 31 & 32 of 2002.....	190
<i>Kodeeswaran v. Attorney-General of Ceylon</i> , [1970] A.C. 1111	162
<i>Marine Munroe v Gregory Munroe</i> , H.C.A. 20 of 2000	193
<i>Marjorie Gould v Lenore Bridgelal</i> , H.C.A. No. S-142 of 1982.....	192
<i>Nyali Ld. v Attorney-General</i> , [1956] 1 Q.B. 1	162
<i>President of the Republic of South Africa and another v Hugo</i> , 1997 (6) B.C.L.R. 708 (C.C.)....	46
<i>Prosecutor v Akayesu</i> , Case No. ICTR-96-4-T (Trial Chamber), 02 September 1998.....	112

<i>R. v S. (R.D.)</i> , [1997] 118 CCC (3d)	41
<i>Ramnath Harrilal v The State</i> , CrA. No. 46 of 1996	191
<i>Ramratie Harrinarine v Rasheed Aziz & Kadar Aziz</i> , H.C.A. No. S-1992 of 1982.....	192
<i>Sherma Harrington v Ermath Harrington</i> , H.C.A. M-1020 of 2002.....	193
<i>The Attorney General of Trinidad and Tobago (Appellant) v Angela Ramdeen (Respondent)</i> , Cv.A. No. 6 of 2004	191
<i>The Constituency Boundaries Commission and the Attorney-General of the Commonwealth of Dominica v Urban Baron</i> , Civil Appeal No. 12 of 1998 (DM).....	160
<i>Violet Bruce v David Chance</i> , H.C.A. No. 4873 of 1989	193

LIST OF CONSTITUTIONAL PROVISIONS

Constitutional Provisions

Constitution of the Republic of Trinidad and Tobago (Chap. 1:01) ... 45, 160, 161, 171, 172, 175,
181, 187, 188, 193, 198, 266, 313, 314, 344, 345

Police Service Commission Regulations, deemed to be made under section 129 of the
Constitution..... 172, 181, 314

Public Service Commission Regulations, deemed to be made under section 129 of the
Constitution..... 172, 181, 313

LIST OF STATUTORY INSTRUMENTS

Statutes

“MIZPEH” Half Way House (Incorporation) Act, No. 3 of 1990	173, 290, 369
Administration of Estates Ordinance (CAP.8/1), 1950 Rev., as amended by the Distribution of Estates Act, No. 28 of 2000	172, 185, 316
Airports Authority Act (Chap. 49:02)	172, 179, 280
Alien Missionaries and Teachers Ordinance, No. 22 of 1917	166
Assisted Secondary School Teachers’ Pensions Act (Chap. 39:03).....	172, 281
Assisted Secondary School Teachers’ Pensions Regulations, deemed to be made pursuant to section 15(1) of the Assisted Secondary School Teachers’ Pensions Act	172, 281
Auxiliary Fire Service Act (Chap. 35:54).....	172, 281
Bankruptcy Act (Chap. 9:70)	172, 309
Births and Deaths Registration Act (Chap. 44:01)	172, 180, 309
Caribbean Aviation Training Institute (Chap. 39:52)	172, 185, 316
Caribbean Community Act, No. 3 of 2005	172, 185, 316
Children Act (Chap. 46:01), as amended by Acts No. 19 of 1994 and 68 of 2000.....	172, 281
Children’s Authority Act, No. 64 of 2000	172, 317
Citizenship of the Republic of Trinidad and Tobago Act (Chap. 1:50)	172, 310
Civil Aviation Act, No. 11 of 2001.....	172, 282, 317
Civil Service (Amendment) Regulations, LN No. 217 of 1996, made pursuant to section 28 of the Civil Service Act	172, 282
Civil Service (External Affairs) Regulations, made pursuant to section 28 of the Civil Service Act	172, 317
Civil Service Act (Chap. 23:01).....	172, 282
Civil Service Regulations, made pursuant to section 28 of the Civil Service Act.....	172, 178, 282, 318
Cohabital Relationships Act, No. 30 of 1998.....	172, 183, 184, 192, 318
College of Science, Technology and Applied Arts of Trinidad and Tobago Act, No. 77 of 2000	172, 283, 320
Compensation for Injuries Act (Chap. 8:05).....	172, 320
Conveyancing and Law of Property Ordinance (CAP.27/12).....	172, 183, 310, 320
Corporal Punishment (Offenders not over 16) Act (Chap. 13:03)	172, 283

Corporal Punishment (Offenders Over 18) Act (Chap. 13:04), as amended by Acts No. 66 of 2000 and 18 of 2005.....	172, 283
Counting Unremunerated Work Act, No. 29 of 1996	172, 185, 320
Criminal Injuries Compensation Act, No. 21 of 1999	172, 283
Criminal Law Act (Chap. 10:04).....	172, 182, 208, 314, 323
Criminal Procedure (Plea Discussion and Plea Agreement) Act, No. 11 of 1999	172, 320
Criminal Procedure Act (Chap. 12:02).....	172, 182, 284, 314
Customs Act (Chap. 78:01)	172, 178, 284
Deceased Wife's Sister's Marriage Act (Chap. 45:54).....	172, 180, 310
Defence (Pensions, Terminal and Other Grants) Regulations, LN No. 38 of 1968.....	172, 284
Defence (Short Service Commissions) Regulations, LN No. 104 of 1987	172, 284
Defence Act (Chap. 14:01).....	172, 284
Deoxyribonucleic Acid (DNA) Identification Act, No. 27 of 2000.....	172, 284
Domestic Violence Act, No. 27 of 1999 ...	172, 176, 186, 194, 196, 197, 198, 199, 200, 202, 204, 209, 210, 216, 221, 228, 230, 231, 232, 234, 237, 241, 242, 243, 245, 246, 247, 251, 254, 259, 267, 269, 321, 352, 353, 359, 365
Education (Teaching Service) Regulations, as amended by LN No. 184 of 2000, made pursuant to section 85(11) of the Education Act (Chap. 39:01).....	172, 178, 285, 325
Education Ordinance, Ch. 14 No. 1	167, 169
Equal Opportunity Act, No. 69 of 2000	172, 183, 184, 285, 325
Extradition (Commonwealth and Foreign Territories) Act, No. 36 of 1985.....	173, 285
Family Law (Guardianship of Minors, Domicile and Maintenance) Act 1981 (Chap. 46:08) ...	173, 325
Financial Institution (Non-Banking) Act (Chap. 83:01)	173, 326
Fire Service (Terms and Conditions of Employment) Regulations, LN No. 267 of 1998 made pursuant to section 34 of the Fire Service Act.....	173, 178, 180, 285, 310, 326
Fire Service Act (Chap. 35:50)	173, 179, 285
Food and Drugs Regulations, made pursuant to section 25 of the Food and Drugs Act (Chap. 30:01)	173, 286
Friendly Societies Act (Chap. 32:50)	173, 314
Friendly Societies Housing Corporation Regulations, deemed to be made pursuant to section 66 of the Friendly Societies Housing Corporation Act (Chap. 33:05)	173, 326
Genocide Act (Chap. 11:20).....	173, 286
Guidelines for Contract Employment in the Tobago House of Assembly, LN No. 148 of 2000	173, 286, 326

Habitual Idlers Ordinance, No. 7 of 1918.....	168
Hindu Marriage Act (Chap. 45:03).....	173, 181, 313
Hindu Marriage Ordinance, No. 13 of 1945.....	170
Human Tissue Transplant Act, No. 13 of 2000.....	173, 327
Immigration (Caribbean Community Skilled Nationals) Act, No. 26 of 1996, as amended by Act No. 6 of 2001.....	173, 185, 327
Immigration Act (Chap. 18:01).....	173, 327
Income Tax Act (Chap. 75:01).....	173, 183, 287, 327
Indictable Offences (Preliminary Enquiry) Act (Chap. 12:01).....	173, 310
Industrial Training Act (Chap. 39:54).....	173, 180, 310
Infants Act (Chap. 46:02).....	173, 327
Insurance Act (Chap. 84:01).....	173, 327
Integrity in Public Life Act, No. 83 of 2000.....	173, 328
International Criminal Court Act, No. 4 of 2006.....	173, 286, 287
International War Crimes Tribunal Act, No. 24 of 1998.....	173, 288
Interpretation Act (Chap. 3:01).....	173, 179, 343
Judges Salaries and Pensions Act (Chap. 6:02).....	173, 185, 328
Judicial Review Act, No. 60 of 2000.....	173, 343
Justice Protection Act, No. 78 of 2000.....	173, 328
Land Law and Conveyancing Act, No 20 of 1981.....	173, 310
Land Registration Act, No. 24 of 1981.....	173, 312, 337
Legal Aid and Advice (Amendment) Act, No. 18 of 1999.....	244
Legal Aid and Advice Act (Chap. 7:07), as amended by Act No. 18 of 1999.....	173, 313
Legislative Council (Elections) Ordinance, Ch. 2 No. 2.....	167
Liquor Licences Act (Chap. 84:10).....	173, 315
Maintenance Orders (Facilities for Enforcement) Act, No. 12 of 2000.....	173, 328
Management Development Centre Act (Chap. 85:51).....	173, 179, 288
Married Persons Act (Chap. 45:50).....	173, 184, 290, 329
Maternity Protection Act, No. 4 of 1998.....	173, 178, 288, 329
Matrimonial Causes Rules, made pursuant to sections 77-81 of the Supreme Court of Judicature Act (Chap. 4:01).....	173, 290, 311
Matrimonial Proceedings and Property Act (Chap. 45:51).....	180, 183
Military Training (Prohibition) Act, No. 14 of 1996.....	173, 178, 290
Minimum Wages (Catering Industry) Order, LN No. 158 of 1991, made pursuant to section 3 of the Minimum Wages Act (Chap. 88:04).....	173, 178, 290, 331

Minimum Wages (Household Assistants) Order, LN No. 160 of 1991, made pursuant to section 3 of the Minimum Wages Act (Chap. 88:04)	173, 178, 290, 331
Minimum Wages (Security Industry Employees) Order, LN No. 231 of 1994, made pursuant to section 3 of the Minimum Wages Act (Chap. 88:04)	173, 178, 290, 331
Minimum Wages (Shop Assistants) Order, LN No. 159 of 1991, made pursuant to section 3 of the Minimum Wages Act (Chap. 88:04)	173, 178, 290, 331
Municipal Corporations (Pensions) Act (Chap. 25:05)	173, 291
Muslim Marriage and Divorce Act (Chap. 45:02)	174, 181, 311, 313
Muslim Marriage and Divorce Regulations, made pursuant to section 30 of the Muslim Marriage and Divorce Act (Chap. 45:02)	174, 311
National Carnival Commission of Trinidad and Tobago Act, No. 9 of 1991	174, 179, 291
National Insurance (Benefits) Regulations, made pursuant to section 55 of the National Insurance Act as amended by LN Nos. 73 of 1999 and 66 of 2004	174, 291, 333
National Insurance (Contributions) Regulations, made pursuant to section 44 of the National Insurance Act	174, 292, 334
National Insurance Act (Chap. 32:01), as amended by Act Nos. 9 of 1999 and 2004	174, 291, 311, 331
National Library and Information System Act, No. 18 of 1998	174, 292
National Museum and Art Gallery Act, No. 5 of 2000	174, 334
Occupational Health and Safety Act, No. 1 of 2004	174, 178, 292, 334
Offences Against the Person Act (Chap. 11:08), as amended by Act No. 11 of 2005	174, 177, 293
Old Age Pensions Act (Chap. 32:02)	174, 335
Orisa Marriage Act, No. 22 of 1999	174, 181, 313
Partnership Act (Chap. 81:02)	174, 296
Pensions Act (Chap. 23:52)	174, 179, 297
Pensions Regulations, deemed to be made pursuant to section 7(4) of the Pensions Act, as amended by the Law Reform (Pensions) Act, No. 20 of 1997	174, 297
Petty Civil Courts Rules made pursuant to section 53 of the Petty Civil Courts Act	174, 335
Police Service Act, No. 7 of 2006	174, 335
Post Office Savings Bank Regulations, deemed to be made pursuant to section 13 of the Post Office Savings Bank Act	174, 335
President's Emoluments Act (Chap. 2:50)	174, 335
Prevention of Corruption Act, No. 11 of 1987	174, 336
Prime Minister's Pension Act (Chap. 2:51)	174, 336

Private Hospital Regulations, made pursuant to section 21 of the Private Hospitals Act (Chap. 29:03)	174, 179, 336
Privileges and Immunities (Diplomatic, Consular and International Organisations) Act (Chap. 17:01)	174, 336
Proceeds of Crime Act, No. 55 of 2000	174, 336
Provident Fund Act (Chap. 23:57)	174, 299
Public Assistance Act (Chap. 32:03)	174
Public Health Ordinance (CAP.12/4)	174, 337
Public Service Transport Act (Chap. 48:02).....	174, 299
Purchase, Sweepstake, Departure and Airline Ticket Taxes Act (Chap. 77:01)	174, 311
Real Property Ordinance (CAP.27/11)	174, 183, 312, 337
Regional Health Authorities (Contracting for Goods and Services) Regulations, LN No. 225 of 1994 made pursuant to section 35(b) of the Regional Health Authorities Act	174, 337
Regional Health Authorities Act, No. 5 of 1994.....	174, 337
Registration of Clubs (Amendment) Act, No. 14 of 1997	174, 183, 337
Regulated Industries Commission Act, No. 26 of 1998.....	174, 337
Remedies of Creditors Act (Chap. 8:09).....	174, 184, 338
Retiring Allowances (Diplomatic Service) Act (Chap. 17:04)	174, 300
Retiring Allowances (Legislative Service) Act (Chap. 2:03)	174, 300
Secondary Education Ordinance, No. 13 of 1909.....	167
Securities Industries Act, No. 32 of 1995.....	174, 338
Sexual Offences Act, No. 27 of 1986, as amended by Act No. 31 of 2000.....	174, 177, 246, 247, 259, 300, 338, 353, 359
Slum Clearance and Housing Act (Chap. 33:02).....	174, 341
Socially Displaced Persons Act, No. 59 of 2000.....	175, 182, 314
Special Reserve Police Act (Chap. 15:03).....	175, 303
Statistics (Surveys of Industrial or Business Undertakings) Regulations, made pursuant to section 13 of the Statistics Act	175, 185, 341
Statutory Authorities' Service Commission Regulations, made pursuant to section 6 of the Statutory Authorities Act (Chap. 24:01).....	175, 181, 193, 314
Summary Courts Act (Chap. 4:20).....	175, 303
Summary Offences Act (Chap. 11:02).....	175, 303, 314
Supreme Court of Judicature Act, Ch. 4:01	162
Teachers' Pensions Regulations, deemed to be made pursuant to section 4 of the Teachers' Pensions Act (Chap. 39:02).....	175, 304

The Community Service Regulations, LN No. 138 of 2000, made pursuant to section 27(1) of the Community Service Orders Act, 1997.....	175, 304
The Defence (Rates of Pay and Allowances) Regulations, LN No. 84 of 1989, made pursuant to section 244 of the Defence Act	175, 312
The Judges (Conditions of Service and Allowances) Regulations (No. 1) made pursuant to section 16 of the Judges Salaries and Pensions Act	175, 304
The Judges (Conditions of Service and Allowances) Regulations (No. 2) made pursuant to section 16 of the Judges Salaries and Pensions Act, as amended by LN No. 190 of 1997	175, 304
The Police Service Regulations, made pursuant to section 65 of the Police Service Act as amended by LN No. 235 of 1999	175, 305, 312, 341
The Prison Service (Pension and Gratuity) Rules, as amended by Act No. 17 of 2000..	175, 305, 342
The Public Assistance Regulations, No. 182 of 1997 made pursuant to section 16 of the Public Assistance Act (Chap. 32:03)	175, 306
The State Land (Regularisation of Tenure) (Certificate of Comfort) Regulations, LN No. 36 of 2000, made pursuant to section 34(2) of the State Land (Regularisation of Tenure) Act, 1998	175, 342
Theatres and Dance Halls (Amendment) Act, No. 15 of 1997	175, 183, 341
Trinidad and Tobago Act 1887	156
Trinidad and Tobago Civil Aviation Authority Act, No. 33 of 2000.....	175, 307, 342
Trinidad and Tobago Housing Development Corporation Act, No. 24 of 2005	175, 307
Truck Ordinance, No. 34 of 1918.....	170
Water and Sewerage Act (Chap. 54:40).....	175, 307
Widows' and Orphans' Pensions Act (Chap. 23:54)	175, 179, 307, 312
Wills and Probate Ordinance (CAP.8/2)	175, 308
Workmen's Compensation Act (Chap. 88:05)	175, 178, 309, 315
Young Offenders Detention Act (Chap. 13:05)	175, 309

LIST OF ABBREVIATIONS

BPFA	Beijing Platform for Action
CAFRA	Caribbean Association for Feminist Research and Action
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CGDS	Centre for Gender and Development Studies
CIDA	Canadian International Development Agency
CIM	Inter-American Commission of Women
CSO	Civil Society Organisation
CSW	Commission on the Status of Women
DAW	Division for the Advancement of Women
DEDAW	Declaration on the Elimination of All Forms of Discrimination against Women
DEVAW	Declaration on the Elimination of Violence Against Women
DM	Dominica
ECOSOC	Economic and Social Council
GDI	Gender Development Index
GEM	Gender Empowerment Measure
INGO	International Non-Governmental Organisation
JLSC	Judicial and Legal Service Commission
MAVAW	Men Against Violence Against Women
NGO	Non-Governmental Organisation
PSC	Public Service Commission
PSIP	Public Sector Investment Programme
The Coalition	Trinidad and Tobago Coalition Against Domestic Violence
The Committee	Committee on the Elimination of Discrimination Against Women
The Network	The Network of NGOs of Trinidad and Tobago for the Advancement of Women
The Protocol	Optional Protocol to CEDAW
TT	Trinidad and Tobago
TTPS	Trinidad and Tobago Police Service
UN	United Nations
UNDP	United Nations Development Programme
UNICEF	United Nations Children Fund
WEDO	Women's Environment and Development Organization

CHAPTER ONE

1.0 Introduction

1.1 Thesis Statement

Gender equality and protection of the law with respect to domestic violence are enjoyed by very few women and relying on the State to promote and make such provisions is not enough. This thesis will argue that gender equality and protection of the law can only be obtained through combined efforts at the international level, by states which must create meaningful international obligations; the national level, by the same states to give effect to such international obligations; and the ground level, through individuals and non-governmental organisations that provide the impetus for governments to forge and implement international and national commitments.

1.2 Rationale

1.2.1 Gender and Law: Women in the West

Gender issues have made their appearance from as early as the seventh century when women sought to reinterpret the scriptures which deemed women intellectually inferior by nature and given to sin.¹ Women fought for universal suffrage in the early 1900's and have constantly battled for equality and are still struggling even three centuries after the fact. The basis of the struggle for gender equality is firmly rooted in the notion that gender equality is a fundamental human right and also that women's rights are human rights. What exactly does equality on the

¹ Gerda Lerner, *The Creation of Feminist Consciousness: From the Middle Ages to Eighteen-Seventy* (New York: Oxford University Press, 1993), p. 13.

basis of gender constitute?² For the purpose of this thesis, equality of opportunity (*de jure* or formal or abstract equality) and equality of outcome (*de facto* or substantive equality) are central to an understanding of gender equality.³ Even where ‘formal’ gender equality is guaranteed in national constitutions or legal systems which provide for *procedural* equality, there is a gap between this and *substantive* equality which takes into account the actual lived experiences, needs and interests of women.⁴ An individual’s right to equality should not include only notions of abstract equality but also substantive equality where he or she will necessarily have to be treated differently in order to protect his or her right to equality.⁵

At the national level in Trinidad and Tobago, women are confronted with the seemingly unending struggle to attain gender equality because of male elitism and its stronghold in the power/governance structure.⁶ National policies of even the developed world are generally

² The Department of Economic and Social Affairs of the United Nations defines gender equality as “equal opportunities, rights and responsibilities for women and men... It implies that the interests, needs and priorities of both women and men are taken into consideration”. United Nations, Department of Economic and Social Affairs, *The World’s Women 2005: Progress in Statistics* (New York: United Nations, 2006), p. 1.

³ See Hilary Charlesworth and Christine Chinkin, *The boundaries of international law: A feminist analysis* (Manchester: Manchester University Press, 2000), p. 217. UNICEF has produced a report that reveals startling global gender inequalities throughout a girl’s / woman’s life cycle. See UNICEF, *The State of the World’s Children. Women and Children: The Double Dividend of Gender Equality* (New York, UNICEF, 2006), pp. 4-5.

⁴ Charlesworth and Chinkin, *The boundaries of international law*, pp. 10 and 32.

⁵ See Karin Van Marle, “‘The Capabilities Approach’, ‘The Imaginary Domain’, and ‘Asymmetrical Reciprocity’: Feminist Perspectives on Equality and Justice”, *Feminist Legal Studies*, 11 (2003), pp. 266-272. Equal rights will not always be appropriate, as in the case of pregnancy where a gender-specific right would be more suitable.

⁶ Statistics for Trinidad and Tobago rank it at 48 out of 136 countries with a value of 0.8 for the Gender Development Index (GDI) and at 22 out of 75 countries with a value of 0.66 for the Gender Empowerment Measure (GEM). See United Nations Development Programme, *Human Development Report 2006. Beyond scarcity: Power, poverty and the global water crisis* (New York: UNDP, 2006), tables 24-25, pp. 364 and 368. The GDI is not a measure of *gender inequality*. Rather, it is a measure of *human development* that adjusts the human development index (HDI) to penalise for disparities between women and men in the three dimensions of the HDI: a long and healthy life, knowledge and a decent standard of living. The greater the gender disparity in basic human development, the lower is a country’s GDI relative to its HDI. Trinidad and Tobago’s GDI value, 0.805 should be compared to its HDI value of 0.809. Its GDI value is 99.5% of its HDI value. Out of the 136 countries with both HDI and GDI values, 60 countries have a better ratio than Trinidad and Tobago’s. The GEM was intended to measure women’s and men’s abilities to participate actively in economic and political life and their command over economic resources. In contrast to the GDI, which is concerned with well-being, the GEM focuses on agency. It measures three dimensions in this area: political participation and decision-making power, economic participation and decision-making power, and command over economic resources. These indicators are, of course, not

formulated by men, yet they are referred to as national policies despite the fact that women are under-represented in the policy making process. This is now extended to the international level, particularly in policymaking, where women are directly affected. At the international level, the problem persists as attempting to gain consensus on gender issues is even more difficult due to the varied cultural and religious backgrounds of the nations that comprise the international community.

The role of women in society is often defined within the context of cultural and religious parameters. Cultural and religious practices generally have negative impacts on women and girls but are integral to the social glue necessary for defining society, particularly for the shaping of the male cultural identity.⁷ This is not to say that specific conventions for the general protection of women and children or for the elimination of discrimination against women do not exist because they do, and these are apart from the general human rights conventions which already include these seemingly minority categories. Evidence would suggest that these conventions are not taken seriously by the state as they are not incorporated into domestic law and enforced, as seen for example, with the perpetuation of discriminatory practices against women.

As an integral subset of general equality, women are supposedly afforded equal protection of the law at the national level. They are the primary victims of domestic violence and rape; however, even when such issues are legislated, they are not adequately dealt with because the realm of family life is considered sacrosanct and outside the scope of state intervention and

without their limitations as they are, *inter alia*, generally skewed due to income figures, not always based on gender disaggregated data, or do not capture important dimensions of gender discrimination in human development, such as violence against women. See pp. 279-280. See also UNDP [online], "Human Development Report 2006: Human Development Indicators. Country Fact Sheets: Trinidad and Tobago". [cited 06 October 2007]. Available from Internet: http://hdr.undp.org/hdr2006/statistics/countries/country_fact_sheets/cty_fs_TTO.html.

⁷ See Jill Steans, *Gender and International Relations: An Introduction* (New Jersey: Rutgers University Press, 1998), pp. 124-125.

state bodies generally refuse to intervene. Trying to raise this as a human rights issue at the international level has faced many obstacles. In the same manner that the state will not intervene in so called “private” matters of the family, international law equally lacks the capacity to find individuals culpable of violations in private matters. The United Nations Charter guarantees non-intervention into the domestic affairs of a state, except in cases of gross domestic violations of human rights or genocide.⁸

Additionally, public international law only recognises the state as a subject and individuals wishing to have an audience at the level of international law must do so through the agency of their state. In the case of human rights conventions, however, individual agency may be allowed. Under the Convention on the Elimination of All Forms of Discrimination Against Women, one of six core human rights conventions,⁹ an optional protocol was adopted by the General Assembly in 1999 to afford individuals as well as groups and non-governmental organisations the right to report violations by the state of the main convention directly to the Committee on the Elimination of Discrimination Against Women.¹⁰ This right is, of course, circumscribed by the state’s willingness to accede to the protocol. In the absence of accession, it poses particular problems for women as abuses meted out in the home are strictly theoretically outside of the sphere of international law due to the public/private divide and the notion of the sanctity of the family. This is further aggravated yet by the fact that the political, legal, social, cultural and economic structures are dominated by men.

Essentially, this thesis seeks to assess the strengths and weaknesses of both domestic and international law instruments with respect to concrete issues of gender inequality and specific areas of concern to women such as domestic violence. An examination of the scourge of

⁸ See Chapter 1, Article 2: 7, United Nations Charter, 26 June 1945, entered into force 24 October 1945.

⁹ See Philip Alston, “Richard Lillich Memorial Lecture: Promoting the Accountability of Members of the New UN Human Rights Council”, *Journal of Transnational Law and Policy*, 15:1 (2006), p. 61.

¹⁰ For more on the Protocol, see section 3.5.1.4 below.

domestic violence and its treatment in law and by governmental (and non-governmental) institutions indicates the importance given at the national level in addressing the problem and provides a somewhat albeit intangible indicator of the distance to be covered in getting to gender equality. Tackling the issue of domestic violence is paramount to the issue of gender equality as the achievement of substantive equality by women requires that the status of women within the private sphere - the primary site of domestic abuses - be addressed. There is no way that women can consider themselves to have attained equality, in practice or in law, if they are still in unequal power relationships at home that end in abuse of any kind.

The efforts of NGOs and other members of civil society are perhaps key in effecting positive legislative and social change. Traditional level of analysis discussions focus on the state and the international system as the main levels of analysis.¹¹ At the same time, however, the analysis of the state as a level contemplates individuals and institutions, such as NGOs, as having the capacity to inform and influence domestic policy as well as national positions at international fora. Such power was clearly evidenced at Beijing in 1995. While NGOs are crucial to change, their ability to effect change depends on their degrees of political and financial independence and should therefore not be taken as given as NGOs are generally required to promote the agendas of their sponsors. Achievements may be limited in some cases but can provide entry into the male stronghold of legislative drafting, for example, by introducing clauses sensitive to women's needs. Enforcement, practical application of the law, and establishment of accompanying social infrastructure are, of course, entirely different issues.

Nations that resist gender equality in domestic practices can hardly be expected to fulfil international obligations seeking to accomplish gender parity. Ultimately, women must assume a greater role in the corridors of power and perhaps only then would there be greater

¹¹ See J. Singer, "The Level-of-Analysis Problem in International Relations", *World Politics*, 14:1 (October 1961), p. 88.

effectiveness with respect to the emerging international legal regime for gender equality.¹² Greater female participation in the formulation of international law on gender equality as well as the introduction of the gender perspective into the general international law making machinery where appropriate may just assist in making international law efforts more effective. This must of necessity be combined with the efforts of individuals and non-governmental organisations as their work in effecting change at all levels should in no way be underestimated.

Trinidad and Tobago is the country under review here. The study undertaken examines measures taken by the government of Trinidad and Tobago to introduce and implement laws geared towards the protection of women's interests at the domestic level, whether on its own initiative or as a result of its participation in international conventions or by lobbying from local NGOs. The examination of the national legal system assesses its effectiveness in promoting gender equality and demonstrates the level of importance attached to domestic violence. This analysis would perhaps explain why the emerging international legal regime that seeks to promote gender equality and deal with domestic violence is largely ineffective and certainly brings into question whether the state alone as agent can be left to effect (positive) legal change

¹² Studies have been conducted at the national level (in the UK) to assess whether the inclusion of women in politics makes a difference. MacKay, for example, makes the point that the political under-representation of women was reframed as a serious problem for democracy and human development which further brought into question the issue of distribution of power. It is further argued that women make a difference by their mere presence. She differentiates between numerical representation and substantive representation where the latter refers to the theoretical and practical expectations that once present (in sufficient numbers) women representatives will 'act for' women and ensure women's needs, interests and concerns are more fully represented in the policy process with consequent policy outcomes. Such representation will still vary in its degree, form and content according to different political parties, representative sites, issues and political context and is also dependent on the ability of the women not to adopt male standards. Fiona MacKay, "Gender and Political Representation in the UK: The State of 'Discipline'", *British Journal of Politics and International Relations*, 6 (2004), pp. 99-120. Childs makes the point that women practice politics differently to men – they are less combative and aggressive, more collaborative and speak in a different language (layman's terms). See Sarah Childs, "A Feminised Style of Politics? Women MPs in the House of Commons", *British Journal of Politics and International Relations*, 6 (2004), pp. 3-19. Puwar also refers to the 'politics of presence' but notes the greater burden placed on women to perform, be heard, and 'manage their femininity'. Nirmal Puwar, "Thinking About Making a Difference", *British Journal of Politics and International Relations*, 6 (2004), pp. 65-80.

or whether there needs to be a multilevel effort from below (individuals, non-governmental organisations and other social groups) as well as from above (United Nations).

1.2.2 Gender Politics in Trinidad and Tobago

Issues of equality and domestic violence against women are better understood, though still not fully or easily explainable, in the context of the evolution of gender in the country under study. As a subset of the colonised Caribbean islands, gender politics in Trinidad and Tobago evolved in a manner similar to the English-speaking Caribbean generally and has its roots in the colonial period. It has been stated by some writers exploring gender issues during colonialism that “slavery on Caribbean plantations gave effective equality to women and men; its levelling effect minimized gender differences”¹³ and that even though “[s]lavery had the effect of levelling the sexes”,¹⁴ “independence...sharpened the contradictions in gender relations”¹⁵ with specific reference to the slave population. Beckles asserts quite categorically, however, that “[c]hattel slavery, the dominant social institution, was thoroughly gendered in its design and function”¹⁶ with respect to the slave woman’s role in society. Interestingly, the socio-legal status of a child was in fact dependent on that of its mother and not its father. A child could therefore be born into slavery if his mother was a slave even if his father was a free black or white man.

These ideological differences notwithstanding, other studies focused on the “deviant” forms of family evolution among the slave population where the UK model of the nuclear family unit -

¹³ Bridget Brereton, “General Problems and Issues in Studying the History of Women”, in Patricia Mohammed and Catherine Shepherd (eds) *Gender in Caribbean Development* (Kingston, Jamaica: Canoe Press, 1999), p. 124.

¹⁴ Rosina Wiltshire-Brodber, “Gender, Race and Class in the Caribbean”, in Patricia Mohammed and Catherine Shepherd (eds) *Gender in Caribbean Development* (Kingston, Jamaica: Canoe Press, 1999), p. 137.

¹⁵ Wiltshire-Brodber, “Gender, Race and Class in the Caribbean”, p. 142.

¹⁶ Hilary McD. Beckles, “Taking liberties: enslaved women and anti-slavery in the Caribbean”, in Clare Midgley (ed) *Gender and Imperialism* (Manchester: Manchester University Press, 1998), p. 139.

comprised of father, mother, and children - was deemed “normal”. Families of lower class Afro-Caribbean lineage were deemed dysfunctional and disorganised as they tended to be casual, that is, without legal sanction, and matriarchal, as men tended to move between families and in search of work.¹⁷ Families of Indo-Caribbean descent tended to be more stable according to the criteria adopted.¹⁸ In both family types, representing the majority of the population (particularly in Trinidad¹⁹), large families and extended family households were, and continue to be, common. It is in these two broad family types that gender relations developed where women were the main caregivers and men the breadwinners.

Violence against women was rife during slavery as “[t]he white male bought, sold and degraded the black woman. In the process he placed her in a social position to be further degraded and exploited by the black male, who frequently targeted her as an object with which to act out a strategy for the restoration of his crippled and dysfunctional masculinity”.²⁰ The Indian indentured population of the post-emancipation period also brought with it cultural practices that included violence against women to express displeasure and ensure that they remained submissive. Whether these have had influence on today’s version of domestic violence is unclear, but what is certain is that domestic violence has survived and remains a very real problem.

Domestic violence in the Caribbean is a well known scourge and is specifically recognised by the legislature of Trinidad and Tobago as a “social ill” occurring with “alarming frequency and deadly consequences”.²¹ Trinidad and Tobago was among the first Commonwealth Caribbean

¹⁷ See Christine Barrow, “Men, Women and Family in the Caribbean: A Review”, in Patricia Mohammed and Catherine Shepherd (eds) *Gender in Caribbean Development* (Kingston, Jamaica: Canoe Press, 1999), pp.149-163.

¹⁸ See Mindie Lazarus-Black, “The Politics of Place: Practice, Process and Kinship in Domestic Violence Courts”, *Human Organization*, 65:2 (Summer 2006), p. 142

¹⁹ Tobago has a different demographic composition.

²⁰ Beckles, “Taking liberties”, p. 150.

²¹ See the preamble to the Domestic Violence Act, No. 27 of 1999.

countries to enact domestic violence legislation in 1991.²² Nevertheless, despite the existence of legislation and agencies to deal with domestic violence, the problem continues and there is handful of studies seeking to discover why this is so but they have not gone into very in-depth legal and institutional analyses. While domestic violence does not appear to be a class issue, it is largely the lower class that seems to make use of the legislation but with little effect. This work seeks in part to determine the effectiveness of the legislation in place to protect women against domestic violence and assess institutions, whether governmental or non-governmental, meant to provide relief to these victims.

There are quite a few studies on gender in the Caribbean but they tend to be cursory, very general in nature and/or deal with the Caribbean as a unit or engage in comparative analyses of the islands in varying degrees. That said, Trinidad and Tobago-specific studies on gender deal with health (mental,²³ metabolic,²⁴ sexual,²⁵ pharmacological²⁶); development;²⁷

²² This Act was subsequently repealed and replaced by the 1999 legislation.

²³ See for example, H.D. Maharajh *et al*, "Gender and Ethnic Differences in Urban and Rural First-Contact Schizophrenia Outpatients in Trinidad", *Reviews on Environmental Health*, 21:1 (Jan-Mar 2006), pp. 69-79; H.D. Maharajh and A. Ali, "Social and Cultural Aspects of Gender Differences in Depression among Secondary School Students in Trinidad and Tobago", *Journal of Affective Disorders*, 78 (March 2004), pp. 558-559; G. Hutchinson *et al*, "Gender and Ethnicity in First Admissions to a Psychiatric Unit in Trinidad", *West Indian Medical Journal*, 52:4 (December 2003), pp. 300-3; H.D. Maharajh and P.S. Abdool, "Cultural Aspects of Suicide", *The Scientific World Journal*, 5 (September 2005), pp. 736-746; A. Ali and H.D. Maharajh, "Social Predictors of Suicidal Behaviour in Adolescents in Trinidad and Tobago", *Social Psychiatry & Psychiatric Epidemiology*, 40:3 (March 2005), pp. 186-191.

²⁴ See for example, F. Babwah *et al*, "The Role of Gender in Compliance and Attendance at an Outpatient Clinic for Type 2 Diabetes Mellitus in Trinidad", *Pan American Journal of Public Health*, 19:2 (February 2006), pp. 79-84.

²⁵ See for example, N. Francis *et al*, "AIDS-Related Knowledge, Attitudes, Beliefs, and Behavioural Intentions of Adolescents in Trinidad: A Pilot Study", *International Quarterly of Community Health Education*, 14:3 (1993), pp. 273-281; D. Castor *et al*, "Determinants of Gonorrhoea Infection among STD Clinic Attenders in Trinidad – II: Sexual Behavioural Factors", *International Journal of STD & AIDS*, 13:1 (January 2002), pp. 46-51; L.R. Norman, "Predictors of Consistent Condom Use: a Hierarchical Analysis of Adults from Kenya, Tanzania and Trinidad", *International Journal of STD & AIDS*, 14:9 (September 2003), pp. 584-590; E. Assing-Murray, "The Feminization of HIV/AIDS: An Analysis of its Impact on Women in Trinidad and Tobago", *Dissertation Abstracts International, A: The Humanities and Social Sciences*, 67:3 (September 2006), p. 1108.

²⁶ See for example, M. Day and L.R. Norman, "An Exploration of Gender Differences in the Initiation of and Attitudes toward [sic] Crack Cocaine Use in the English-Speaking Caribbean", *Addiction Research & Theory*, 15:3 (2007), pp. 285-297; H.D. Maharajh and M. Konings, "Cannabis and Suicidal Behaviour among Adolescents: A Pilot Study from Trinidad", *The Scientific World Journal*, 5 (August 2005), pp. 576-585.

culture/discursive representations,²⁸ economics/business,²⁹ colonialism/slavery,³⁰ and education.³¹ This is certainly not an exhaustive list but covers a wide range of writings on gender.

Gender equality and gender-based violence are equally important issues that are dealt with in the literature. As with the issues mentioned above, these topics are also dealt with in a Caribbean-wide context.³² Boxill has done a review of family law, including sexual marital

²⁷ See for example, D. Ramsaran, "The Interaction of Race and Gender in Development Policy Implementation: the Case of a Small Developing Third World Society", *International Journal of Contemporary Sociology*, 36:1 (April 1999), pp. 32-55.

²⁸ See for example, R. Reddock, "Contestations over Culture, Class, Gender and Identity in Trinidad and Tobago: 'The Little Tradition'", *Caribbean Quarterly*, 44:1-2 (March-June 1998), pp. 62-80; P. Mohammed, "Reflections on the Women's Movement in Trinidad: Calypsos, Changes and Sexual Violence", *Feminist Review*, 38 (Summer 1991), pp. 33-47; P. Mohammed, "Gender as a Primary Signifier in the Construction of Community and State among Indians in Trinidad", *Caribbean Quarterly*, 40:3-4 (September-December 1994), pp. 32-43; P. Mohammed, "Towards Indigenous Feminist Theorizing in the Caribbean", *Feminist Review*, 59 (Summer 1998), pp. 6-33; D. Hughes-Tafen, "Women, Theatre and Calypso in the English-Speaking Caribbean", *Feminist Review*, 84 (2006), pp. 48-66; J. Rahim, "Trinidad and Tobago Women's Writing, 1929-69", in Elsa Leo-Rhynie *et al* (eds), *Gender: A Caribbean Multi-Disciplinary Perspective* (Kingston, Jamaica: Ian Randle Publishers, 1997).

²⁹ See for example, A. Bissessar, "Determinants of Gender Mobility in the Public Service of Trinidad and Tobago", *Public Personnel Management*, 28:3 (Fall 1999), pp. 409-422; R.N. Olsen and A. Coppin, "The Determinants of Gender Differentials in Income in Trinidad and Tobago", *Journal of Development Studies*, 37:5 (June 2001), pp. 31-56; A. Coppin, "A Comparison of Male-Female Earnings Differences across Two Caribbean Economies", *Journal of Developing Areas*, 32:3 (Spring 1998), pp. 375-393; A. Coppin, "Women's Earnings in Trinidad & Tobago: An Analysis by Household Status and Ethnicity", *Social and Economic Studies*, 46:4 (December 1997), pp. 61-82; S. Seguino, "Why are women in the Caribbean so much more likely than men to be unemployed?", *Social and Economic Studies*, 52:4 (December 2003), pp. 83-120; P. Wharfe, "How Women Manage Their Professional and Personal Lives in a Time of Profound and Rapid Social Change: A Study of Six Trinidadian Women in Midlife", *Dissertation Abstracts International, A: The Humanities and Social Sciences*, 65:12 (June 2005), p. 4723-A; L. Tanikella, "The Politics of Hybridity: Race, Gender, and Nationalism in Trinidad", *Cultural Dynamics*, 15:2 (2003), pp. 153-181.

³⁰ See for example, R. Reddock, *Women and the Slave Plantation Economy in the Caribbean (with special reference to Trinidad and Tobago: Theoretical and Methodological Perspectives* (St. Augustine, Trinidad, n.d.).

³¹ See for example, E. Taylor, "Women in School Administration: Exclusion and Isolation", in Elsa Leo-Rhynie *et al* (eds), *Gender: A Caribbean Multi-Disciplinary Perspective* (Kingston, Jamaica: Ian Randle Publishers, 1997).

³² See for example G.T. Nain and B. Bailey (eds), *Gender Equality in the Caribbean: Reality or Illusion* (Kingston, Jamaica: Ian Randle Publishers, 2003); D. Luciano *et al*, "How to make the law work? Budgetary implications of domestic violence law in Latin America, Central America, and the Caribbean", *Journal of Women Politics and Policy*, 27:1-2 (2005), pp. 123-133; J. Henriques *et al*, "The Legal Response to Domestic Violence in the English-Speaking Caribbean Countries", *Caribbean Journal of Criminology and Social Psychology*, 3:1-2 (January-July 1998), pp. 174-187; P. Hartigan, "La OPS enfoca el problema de la violencia contra la mujer", *Pan American Journal of Public Health*, 2:4 (October 1997), pp. 290-294; UNIFEM/ECLAC, *Eliminating Gender-Based Violence, Ensuring Equality: UNIFEM/ECLAC Regional Assessment of Actions to End Violence Against Women in the*

offences, as it affects women in Jamaica which briefly compares what obtains in the Commonwealth Caribbean.³³ Ffolkes treats more specifically with the legal response across the Commonwealth Caribbean to violence against women and notes that medical and sociological issues also need to be taken into account in domestic violence legal reform initiatives.³⁴

In the case of Trinidad and Tobago, there are a few studies on domestic violence which revolve largely around health/psychology, culture and law. Domestic violence has been recognised as a serious health issue³⁵ as well as having psychological foundations.³⁶ The root of domestic violence is certainly not singular and studies with a historico-cultural focus have also been done.³⁷ Data collection is also undertaken.³⁸ Law and policy have been the focus of other

Caribbean (Christchurch, Barbados: UNIFEM, 2005); Vivienne Chin and Yvon Dandurand, *Violence in the Americas: A Regional Analysis. National Programs to Prevent, Punish and Eradicate Violence Against Women in Ten Caribbean Countries*, (San Jose: ILANUD, 2001).

³³ Eileen Boxill, "The Reform of Family Law as it affects Women", in Elsa Leo-Rhynie *et al* (eds), *Gender: A Caribbean Multi-Disciplinary Perspective* (Kingston, Jamaica: Ian Randle Publishers, 1997).

³⁴ Suzanne Ffolkes, "Violence against Women: Some Legal Responses", in Elsa Leo-Rhynie *et al* (eds), *Gender: A Caribbean Multi-Disciplinary Perspective* (Kingston, Jamaica: Ian Randle Publishers, 1997), p. 119.

³⁵ See for example, J. Rawlins, "Domestic Violence in Trinidad: A Family and Public Health Problem", *Caribbean Journal of Criminology and Social Psychology*, 5:1-2 (January-July 2000), pp. 165-180.

³⁶ See for example, L. Hadeed, "Domestic Violence in Trinidad and Tobago: Why Women Stay in Abusive Relationships", *Dissertation Abstracts International, A: The Humanities and Social Sciences*, 64:4 (October 2003), pp. 1407-A which examines the typologies of abusive behaviours among Afro-Trinidadian women and the reason they stay in abusive relationships. She also examines social support systems among the same group: L. Hadeed and N. El-Bassel, "Social Support among Afro-Trinidadian Women Experiencing Intimate Partner Violence", *Violence Against Women*, 12:8 (August 2006), pp. 740-760.

³⁷ See for example, R. Gopaul *et al*, *Women, Family and Family Violence in the Caribbean: the Historical and Contemporary Experience, with special reference to Trinidad and Tobago* (St. Augustine, Trinidad: Center for Gender and Development Studies, UWI, 1996); R. Reddock, *Women and Family in the Caribbean: Historical and Contemporary considerations, with special reference to Jamaica and Trinidad and Tobago* (Georgetown, Guyana: Caricom, 1999); S. Griffith and D. Chadee, "Trinidadian and U.S. Citizens' Attitudes Toward Domestic Violence and their Willingness to Intervene: Does Culture Make a Difference?", *Journal of Cross-Cultural Psychology*, 37:6 (November 2006), pp. 761-778; R. Gopaul and M. Cain, "Violence between spouses in Trinidad and Tobago: A research note", *Caribbean Quarterly*, 42:2-3 (June-September 1996), pp. 28-40; E. Zellerer, "Domestic Violence in Trinidad and Tobago: Some Comments", *Caribbean Journal of Criminology and Social Psychology*, 5:1-2 (January-July 2000), pp. 209-227; R. Sukhu, "Domestic Violence and Power: A War of Words and Fists", *Caribbean Journal of Criminology and Social Psychology*, 5:1-2 (January-July 2000), pp. 228-236 which looks briefly at domestic violence against men. A study on the effect of structural adjustment programmes on domestic situations was also undertaken: see Charmaine Crawford, *The Intensification of Violence Against Women in Trinidad and Tobago During the Period of Structural Adjustment* (Toronto: York University, 1996).

³⁸ See CAFRA, "A Pilot Survey on the Incidences of Violence and Responses to such Violence among 200 randomly selected Women in Trinidad", St. Augustine, Trinidad, 1998. Data is also collected and

domestic violence studies in Trinidad and Tobago. There have been brief discussions of government's policy approach to dealing with domestic violence.³⁹ More detailed studies include Bissessar's examination of domestic violence policy and the fact that even though a legislative framework was provided sufficient account was not taken of the domestic situation such as the factors that gave rise to crimes of violence, the need to provide economic security for the victims, and the need for the State to provide shelters for the victims.⁴⁰ There is a little known study that was done by Creque which examines abuse to wives, children, elderly and the handicapped through interviews with various institutions and treats briefly with an examination of the 1991 Domestic Violence Act of Trinidad and Tobago with respect to the number of applications made under the act.⁴¹ Interestingly, a foreigner, Lazarus-Black, has done, and continues to conduct, extensive research on domestic violence in Trinidad and Tobago (as well as Antigua and Barbuda and the United States) which focuses on the actual implementation of the Domestic Violence Act in the courts and the structural, cultural and ideological resistances that women face there when they attempt to pursue the judicial route to dealing with abusive domestic situation.⁴²

collated by various governmental and non-governmental agencies with respect to the number of applications made under the Act, phone calls made to the domestic violence hotline, and women who seek assistance at shelters or government agencies. This data, however, is not gender-disaggregated and affected by multiple reporting.

³⁹ See for example, D. Phillips, "Domestic Violence and Public Policy in Trinidad and Tobago", *Caribbean Journal of Criminology and Social Psychology*, 5:1-2 (January-July 2000), pp. 181-188; J. Theodore, "Domestic Violence, National Security and Public Policy", *Caribbean Journal of Criminology and Social Psychology*, 5:1-2 (January-July 2000), pp. 189-192; M. Williams, "Domestic Violence and Family Relationships: Policy Recommendations", *Caribbean Journal of Criminology and Social Psychology*, 5:1-2 (January-July 2000), pp. 193-201.

⁴⁰ A. Bissessar, "Policy Transfer and Implementation Failure: A Review of the Policy of Domestic Violence in Trinidad and Tobago", *Caribbean Journal of Criminology and Social Psychology*, 5:1-2 (January-July 2000), pp. 57-80.

⁴¹ See Merri Creque, *A Study of the Incidence of Domestic Violence in Trinidad and Tobago from 1991 to 1993* (Port of Spain, Trinidad: Trinidad and Tobago Coalition Against Domestic Violence, 1995).

⁴² See Lazarus-Black, "The Politics of Place", pp. 140-155; "Law and the pragmatics of inclusion: Governing domestic violence in Trinidad and Tobago", *American Ethnologist*, 28:2 (May 2001), pp. 388-416; "The Rite of Domination: Tales from Domestic Violence Court", Working Paper No. 7, Centre for Gender and Development Studies, The University of the West Indies: St. Augustine, Trinidad, 2002; "The (heterosexual) regendering of a modern state: Criminalizing and implementing domestic violence law in Trinidad", *Law and Social Inquiry – Journal of the American Bar Foundation*, 28:4 (Fall 2003); pp. 979-1008; "Domestic Violence in Trinidad and Tobago", in Nicky Jackson (ed) *Encyclopedia of Domestic Violence* (New York: Routledge, 2007).

1.3 Theoretical Framework

Feminism provides the backdrop against which the issues of gender inequality and inadequate protection of the law for women against violence will be assessed. The development of feminist thought explicitly questions women's exclusion and marginalisation which is part of the wider struggle by women to achieve gender equality. Liberal feminism, in particular, advocates equal rights for women and examines why women are treated as "less than", where men provide the gauge against which they are measured. While liberal feminism addresses the issue of women's formal equality under the law, it has not fully considered issues of social power and women's social, legal and political under-representation in assessing the effectiveness of law as an instrument to advance the status of women or achieve social change more widely. Consequently, a combined theoretical approach is required. Liberal feminist thought, feminist legal theory and feminist critical theory provide the necessary theoretical bases to address not only gender inequality, but also illustrate the ways in which law may be implicated in the subordination of women as well as empower women out of such positions of inferiority. Critical theory further allows for not simply the examination of formal institutions but the placement of law, legal instruments and associated institutional framework into a broader social context of male power and dominance and lack of political will in the assessment of law as an agent of change for women.

This thesis contemplates a critical assessment of law as an instrument to assist women in their fight for equality and protection of the law against domestic violence. Feminist legal theory, therefore, is necessary to expose the masculine nature of jurisprudential theory and practice which will in itself illustrate the difficulty in achieving gender justice in the absence of legal and institutional reform. This notwithstanding, the Convention on the Elimination of All Forms of Discrimination Against Women has been significant in transforming law to recognise and

incorporate the specificity of the female subject.⁴³ Nevertheless, this is still not enough. Combining feminist legal theory, which exposes the male bias of law, with feminist critical theory, which offers a space from which women can “emancipate” themselves, allows a comprehensive process of reflection *and* emancipation. It will be shown that the very idea of rights, as currently obtains, is fundamentally conceptually flawed, as the concept of rights presupposes ‘man’ as its subject, thereby completely bypassing women and other marginalised groups and perpetuating violence, discrimination and subordination of these ‘others’. Critical feminist theory, together with feminist legal theory, is useful in the examination of these issues, as it can be used as a means of critiquing and then ‘rescuing’ the idea of rights in favour of women by exposing its biased normative assumptions and politicised knowledge claims.

The emancipatory project offered by feminist critical theory envisages independent and critical thinking by individuals (in this case, women) to understand hegemonic discourses, criticise them and eventually overcome them in their struggle to free themselves from the oppressive and subordinating nature of such discourses. As Benhabib states, “The goal of reflection is emancipation from self-incurred bondage”.⁴⁴ This is important, as emancipation must have the effect of both freeing *and* enfranchising its former prisoners. The goal here reflects the emancipatory intent of feminism. It is not simply about critiquing rights and remaining content with the menu of rights currently available to women (such as the right to vote), but expanding the content of substantive rights to address areas that were previously invisible, such as domestic violence. Domestic violence has been legislated in Trinidad and Tobago and is therefore illegal, but it is not enough to outlaw the problem. Women must be able to recognise

⁴³ See for example Hilary Charlesworth, “Human Rights as Men’s Rights”, in J. Peters and A. Wolper (eds) *Women’s Rights, Human Rights: International Feminist Perspectives* (London: Routledge, 1995), Hilary Charlesworth, “What are “Women’s International Human Rights”?”, in R. Cook (ed) *Human Rights of Women: National and International Perspectives* (Philadelphia: University of Pennsylvania Press, 1994), Charlesworth and Chinkin, *The boundaries of international law* and Anne Bottomley (ed), *Feminist Perspectives on the Foundational Subjects of Law* (London: Cavendish Publishing Limited, 1996).

⁴⁴ Seyla Benhabib, “Feminism and the Question of Postmodernism”, in Seyla Benhabib, *Situating the Self: Gender, Community and Postmodernism in Contemporary Ethics* (Oxford: Polity Press, 1992), p. 207.

the problem, seek to free themselves from the situation in which they sometimes find themselves and let their voices be heard.

1.4 Methodology

This thesis involved extensive fieldwork in order to establish the attitude of Trinidad and Tobago to gender equality and the quality of protection of the law provided for women. The case analysis focuses on the legal and institutional response of Trinidad and Tobago to illustrate its commitment to the implementation of gender equality with specific reference to its treatment of domestic violence as a primarily female issue. The extensive fieldwork involved a comprehensive and critical review of the legal instruments at the international, regional and national levels to determine their effectiveness with regard to gender equality and the outlawing of domestic violence. More specifically, at the domestic level, an analysis of case law provides an insight as to how women and issues of greatest concern to them are treated within the judiciary and magistracy. The institutional analysis involved the review of governmental and non-governmental agencies to determine whether and in what manner the law was being effected. This information gathered during this process was both refuted and corroborated as applicable by a few women experiencing domestic violence.

With respect to statute law, a colonial legislative framework was created to establish the existence of class elitism as the colonial legal system was characterised by attributes that seemed to favour the ruling elite. Laws made relating to gender in the post-colonial era are very much shaped by what obtained in the colonial period. To determine Trinidad and Tobago's legal response to gender equality within this framework, a review of all legislative provisions having any significant bearing on gender - existing statutes and ordinances still in force in the post-independence era - was undertaken to illustrate how the law deals with the issue using the

same categories of analysis that revealed class bias in the colonial legal framework. The post-colonial legal response to gender offers a reflection of the colonial structure where the issues of gender replace issues of class, illustrating patent male bias. This is not to say that there are no class differentiations within gender as a category currently or that class in the colonial setting did not implicitly have gender implications; however, in reviewing the legislation in the colonial framework gender did not appear and similarly, in reviewing the legislative framework in the post-colonial context, there were absolutely no references to class distinctions within gender while the reverse is true in both instances. It is for this reason that gender is being used as substitutable for class in the post-colonial context. Moreover, legislative provisions with gender inferences affect women regardless of class.⁴⁵ Further still, gender inequality and domestic violence know no class. In addition to this general legal framework, a specific study of one piece of legislation designed to provide protection against domestic violence exposes various deficiencies.

A review of case law for the period 1983 to 2007 reveals how the judiciary deals with women before the court in domestic matters, such as maintenance, custody, division of property, and murder as a defence to provocation and domestic violence. Given that one of the primary focuses here is domestic violence which is, narrowly speaking, a family issue, only cases with adult male/female parties having direct relevance to family issues were chosen. Bias in case law was determined by examining the reasons for judgements and reviewing the facts of the individual cases to see whether the judgements appeared to favour either party. Where relevant, the categories of analysis used in the colonial and post-colonial legal frameworks were used to classify bias in case law. It would appear, however, that case law generally tends to be fairly objective except in cases dealing with the murder of the significant other where women seem to have a greater burden of proof in pleading their cases than men.

⁴⁵ Save and except the three pieces of legislation concerning marriage in particular cultural/religious contexts in Trinidad and Tobago.

Legal analysis aside, the fieldwork also assessed the major state and non-state agencies designed to provide assistance to women with particular reference to domestic violence to assess the system's capacity to provide real assistance and measure the gap between alleged and actual support. An examination of the various NGOs involved in dealing with domestic violence illustrates three main types of women's NGOs (lobbying, support services and shelters) that give practical expression to the issue of gender equality and support for victims of domestic violence and also reveals deficiencies, whether internal or external, to their optimal operation.

Assessment of both governmental and non-governmental resources available to women was achieved primarily through interviews. These interviews were conducted with state authorities as well as non-governmental organisations to get perspectives from either end of the spectrum of institutions that provide assistance to women in situations of domestic violence. Interviews were also conducted with a few women who were experiencing domestic violence. The research by interviews gathered information from these primary sources and helped to establish bias in the operation of the domestic violence regime. The interviews were guided by a semi-structured questionnaire⁴⁶ which allowed for data gathering by combining the structured aspect (the actual questionnaire) with the flexibility to ask subsequent questions. The various interviewees unwittingly revealed the (perceived) biases via their responses and this substantiated the position taken at the outset that bias is prevalent and does affect the proper functioning of the system established to protect and assist women experiencing domestic violence. Information was supplemented with published materials where available and especially where interviews were not possible. The interviews with those experiencing domestic violence offered a more comprehensive idea as to the effectiveness of the state and non-state machinery designed to assist them and identified gaps in the services provided.

⁴⁶ See Appendix D at page 378.

1.5 Contribution to Knowledge

This principal focus of this thesis is an assessment of the effectiveness of laws and associated institutions of Trinidad and Tobago in the context generally of gender equality and specifically of the protection of women by the law against domestic violence. The detailed and comprehensive analysis of some 150 statutes; judicial decisions; and operation of thirty institutions, both governmental and non-governmental, has never been attempted before in Trinidad and Tobago. In addition, the unprecedented analytical framework used in the assessment of the response of the legal system of Trinidad and Tobago to the challenges of achieving gender equality and protection of women against domestic violence had as its basis categories of analysis pertaining to the colonial era where the white colonial elite and slaves/indentures have been replaced in post-colonial society by the male elite and women respectively. The post-colonial legal response to gender offers a reflection of the colonial structure where the issues of gender replace issues of class. This unique approach to assessing laws pertaining to gender and protection of women against domestic violence contributed significantly to the conclusion that laws and associated institutions in Trinidad and Tobago are inadequate to meet the challenges posed by gender inequality and domestic violence and helps to establish the foundation for the consideration of a different approach to dealing with these issues, such as the bottom-up approach predicated largely on the efforts of civil society.

1.6 Outline of Chapters

Chapter two introduces certain key concepts and theoretical perspectives that underlie the development of this thesis. It is important to understand what is meant by “gender” and “feminism” as gender is a key concept and a feminist approach informs the analysis throughout

the thesis. In addition, this thesis proposes to examine domestic and international law through the prism of feminist legal theory so as to provide a more accurate understanding of the struggle facing women who are often forced to rely on the law to achieve their fundamental human right of gender equality. Moreover, this reliance illustrates the limitation of the law to effect the necessary transformation and points to the need for women to take control of the situation so as to ensure that the required changes ensue.

Chapter three examines the areas of international law and gender and will provide the basis for the argument that international law on many occasions fails to contemplate a gender perspective and, even when this is done, the effectiveness of the legal regime is called into question. With sovereignty as the cornerstone of the international system, it is not surprising that international law dealing with women's rights, gender equality and domestic violence is not incorporated into domestic law with any kind of alacrity. Nevertheless, the plight of women with respect to their fundamental rights is almost universal in nature and it is therefore understandable that requests are made for the issue to be addressed at the international level. This approach has many supporters as it is commonly felt that the near global phenomenon of gender inequality can only be resolved by a common approach implemented across state borders. Additionally, the changing nature of sovereignty lends credence to the hope that action at the international level can have effect domestically. The development of international law with respect to rights and gender equality is also examined. In this context, the main international legal instruments dealing with gender equality and violence against women as a subset of equality of treatment before the law of women are studied. This latter comprises the 'legal' response of the international community to the issues in question.

Chapter four reviews the institutional framework established by the United Nations, including women's groups, for the promotion of women's human rights through an examination of institutions such as the Commission on the Status of Women, the Division for the Advancement

of Women and the Committee on the Elimination of Discrimination Against Women. The chapter also examines the role of NGOs in influencing the international response to the struggle for women's rights.⁴⁷

Chapters five to eight examine Trinidad and Tobago's response to gender equality and, specifically, domestic violence. Chapter five involves a review of the legal system and laws (constitutional, statute, and common) of Trinidad and Tobago from a feminist legal perspective to observe how the issue of gender is treated domestically. Of importance to the legal analysis is Trinidad and Tobago's colonial history. Its colonial legal legacy is extremely relevant to understanding how particular kinds of elitism and male privilege have become an intrinsic characteristic of post-independence national law-making and is in itself an obstacle to using law to promote gender equality and protect women from domestic violence. Chapter six provides a more in-depth analysis of one area of gender equality, namely, the protection of women by the law with specific reference to domestic violence. It is undoubtedly the case that protection of women from the scourge of domestic violence is often a barometer of how women fare in a society with respect to their fundamental human rights.

Following the specific analysis of the legal regime for protection of women from domestic violence, chapter seven analyzes the institutional response of Trinidad and Tobago to domestic violence as this reinforces the domestic attitude. This chapter examines the institutional framework, governmental and non-governmental, focussing on the executive and state authorities which illustrate government's commitment to dealing with domestic violence as a reflection of the more general treatment of the gender agenda.

⁴⁷ See Thomas Risse, Stephen Ropp and Kathryn Sikkink (eds), *The Power of Human Rights: International Norms and Domestic Change* (Cambridge: Cambridge University Press, 1999 [2002]) which draws on the work of social constructivists to examine how the power of international norms can alter the domestic behaviour of states and Margaret Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (New York: Cornell University Press, 1998) which examines with work of activists across borders in effecting change at the national level. This is dealt with in greater detail in chapter four.

Building on the domestic attitude of Trinidad and Tobago to gender equality as manifested in its general approach to gender and the law and its specific legal and institutional approach to domestic violence, chapter eight reviews the attitude of Trinidad and Tobago to its international legal obligations pertaining to gender equality. It explores the various relevant legal instruments that Trinidad and Tobago has committed to internationally to gauge the consistency of its international attitude with its domestic agenda.

Chapter nine presents the findings of the thesis which show that law as an agent of change has not proved quite effective in promoting gender equality or in protecting women against domestic violence in Trinidad and Tobago, either from efforts at the level of the state or from the regional and international levels. While legislation seems to have been passed and amended largely through the unwavering efforts of NGOs, the concomitant institutional capacity building and/or strengthening was not forthcoming, thereby nullifying the positive potential of the law; nevertheless, the role of NGOs in effecting change and in providing support should in no way be understated, despite the constraints they face. Trinidad and Tobago's colonial heritage, however, further exacerbated the problem, as it bequeathed a legal legacy of entrenched class elitism which provided a ready framework in the post-independence era for the perpetuation of this elitism, this time with a gender slant, where laws tend to be written by and for the elite with little real reference to a gender perspective. This reflects unequal power relationships at various levels and has translated into a patent lack of political will, creating even more obstacles in women's struggle for gender equality and protection against domestic violence.

CHAPTER TWO

2.0 Laying the Theoretical Framework: Feminist Legal Theory and Feminist Critical Theory

There are two main theoretical threads from which the fabric of this thesis is woven. These are feminist legal theory and feminist critical theory. Feminism provides the backdrop against which the issues of gender inequality and inadequate protection of the law for women against violence will be treated. Liberal feminism, in particular, advocates equal rights for women and examines why women are treated as “less than”, where men provide the gauge against which they are measured. While liberal feminism addresses the issue of women’s formal equality under the law, it has not fully considered issues of social power and women’s social, legal and political under-representation in assessing the effectiveness of law as an instrument to advance the status of women or achieve social change more widely. Consequently, a combined theoretical approach is required. Liberal feminist thought, feminist legal theory and feminist critical theory provide the necessary theoretical bases to address not only gender inequality, but also illustrate the ways in which law may be implicated in the subordination of women as well as empower women out of such positions of inferiority.

This thesis contemplates a critical assessment of law as an instrument to assist women in their fight for equality and protection of the law against domestic violence. Feminist legal theory, therefore, is necessary to expose the masculine nature of jurisprudential theory and practice which will in itself illustrate the difficulty of achieving gender justice in the absence of legal and institutional reform. This is still, however, not enough. Combining feminist legal theory, which exposes the male bias of law, with feminist critical theory, which offers a space from which women can “emancipate” themselves, allows a comprehensive process of reflection *and* emancipation. This framework illustrates that the very idea of rights, as currently obtains, is fundamentally conceptually flawed, as the concept of rights presupposes ‘man’ as its subject,

thereby completely bypassing women and other marginalised groups and perpetuating violence, discrimination and subordination of these 'others'. Feminist critical theory, together with feminist legal theory, is useful in the examination of these issues, as it can be used as a means of critiquing and then 'rescuing' the idea of rights in favour of women by exposing its biased normative assumptions and politicised knowledge claims.

This combined theoretical framework, therefore, provides the setting against which legal and institutional structures in place for promoting gender equality and protection for women against domestic violence are examined. Moreover, such an analysis will ultimately reveal that these very structures continue to reinforce problems of gender inequality and inadequate protection against domestic violence.

2.1 Gender

2.1.1 What is Gender?

"One is not born, but rather becomes, a woman."⁴⁸

The key concept in feminist thought is gender. It is therefore appropriate to first interrogate this concept. As elucidated by de Beauvoir's ever popular statement, feminist theorists understand the term gender not simply as physical, biological differences between males and females, but as "a set of culturally shaped and defined characteristics associated with masculinity and femininity".⁴⁹ This is in accordance with the definition set out in the United Nations' Implementation of the Outcome of the Fourth World Conference on Women,

⁴⁸ Simone de Beauvoir, *The Second Sex*, trans. and ed. H. M. Parshley (London: Vintage, 1997), p. 295.

⁴⁹ J. Ann Tickner, *Gender in International Relations: Feminist Perspectives on Achieving Global Security* (New York: Columbia University Press, 1992), p. 7.

...gender refers to the socially constructed roles played by women and men that are ascribed to them on the basis of their sex. Gender analysis is done in order to examine similarities and differences in roles and responsibilities between women and men without direct reference to biology, but rather to the behaviour patterns expected from women and men and their cultural reinforcement. These roles are usually specific to a given area and time, that is, since gender roles are contingent on the social and economic context, they can vary according to the specific context and can change over time. In terms of the use of language, the word "sex" is used to refer to physical and biological characteristics of women and men, while gender is used to refer to the explanations for observed differences between women and men based on socially assigned roles.⁵⁰

One writer correctly reflected that "sex is biological, gender psychological, and therefore cultural".⁵¹ Butler states that the original distinction between sex and gender was conceptualised with a view to disputing Freud's "biology-is-destiny formulation" and that the distinction "serves the argument that whatever biological intractability sex appears to have, gender is culturally constructed..."⁵² Socio-cultural constructions of gender are reinforced by both sexes as they tend to deliver what they perceive as expected of them.⁵³ Critics claim, however, that *gender* is simply synonymous with *women/femininity*,⁵⁴ which is a terribly simplistic and uninformed viewpoint, as 'gender' examines the social construction of gendered

⁵⁰ United Nations, General Assembly [online], "Implementation of the Outcome of the Fourth World Conference on Women: Report of the Secretary General", A/51/322, 03 September 1996. [cited 08 June 2004]. Available from Internet: <http://www.un.org/documents/ga/docs/51/plenary/a51-322.htm>. The definition of gender as a purely social construction can present somewhat of a problem. Alcoff points out that "[i]f gender is simply a social construct, the need and even the possibility of a feminist politics becomes immediately problematic. What can we demand in the name of women if 'women' do not exist and demands in their name simply reinforce the myth that they do? How can we speak out against sexism as detrimental to the interests of women if the category is a fiction? How can we demand legal abortions, adequate child care, or wages based on comparable worth without invoking the concept of "woman"?" Linda Alcoff, "Cultural Feminism versus Post-Structuralism: The Identity Crisis in Feminist Theory", in Micheline Malson *et al* (eds), *Feminist Theory in Practice and Process* (Chicago: University of Chicago Press, 1989), p. 310. It should, however, be noted that while Alcoff accepts the notion of gender as a socio-cultural construct, what she does take issue with is the poststructuralist approach that argues that gendered subjects are produced through discursive practices and so there is no 'essence' or 'being' that is woman.

⁵¹ Millett, quoted in David Glover and Cora Kaplan, *Genders* (London: Routledge, 2000), p. xxiii.

⁵² Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (New York: Routledge, 1999), p. 9.

⁵³ See Anne Phillips, "Introduction", in Anne Phillips (ed), *Feminism and Politics* (Oxford: Oxford University Press, 1998), p. 12.

⁵⁴ Adam Jones, "Does 'Gender' Make the World Go Round? Feminist Critiques of International Relations", *Review of International Studies*, 22:4 (1996), pp. 406-407. This article has 'engendered' an interesting debate between the author and three scholars from the University of Bristol. See *Review of International Studies*, 24 (1998), pp. 283-303.

identities which includes both men and women while 'women/femininity' deals with the latter to the exclusion of the former and does not necessarily examine the latter's construction. Gender, then, is the result of a process of cultural socialisation and therefore varies across cultures. It refers to the "asymmetrical social constructs of masculinity and femininity as opposed to ostensibly 'biological' male-female differences".⁵⁵

2.2 Feminism

2.2.1 What is Feminism?

"...the male is by nature superior, and the female inferior; and the one rules, and the other is ruled; this principle, of necessity, extends to all mankind. Where there is such a difference as that between soul and body, or between man and animals..., the lower sort are by nature slaves, and it is better for them as for all inferiors that they should be under the rule of a master."⁵⁶ Aristotle (350 BCE).

"there is no pursuit of the administrators of a state that belongs to a woman because she is a woman or to a man because he is a man. But the natural capacities are distributed alike among both creatures, and women naturally have a share in all pursuits and men in all..."⁵⁷ Plato (427-347 BCE).

Broadly speaking, feminism can be simultaneously understood as theory and social movement, which can be aided by the theoretical component.⁵⁸ As theory, feminism may consist of "systems of concepts, propositions and analysis that describe and explain women's situations and experiences and support recommendations about how to improve them".⁵⁹ According to Randall, however, the best approach to defining feminism is a historical one. She states that, "Feminism emerged as a movement and body of ideas that aimed to enhance women's status

⁵⁵ Jacqui True, "Feminism", in Scott Burchill *et al*, *Theories of International Relations* (Hampshire: Palgrave, 2001), p. 236.

⁵⁶ The Internet Classics Archive [online], "Politics by Aristotle". Translated by Benjamin Jowett. [cited 09 August 2007]. Available from Internet: <http://classics.mit.edu/Aristotle/politics.1.one.html>.

⁵⁷ Plato, quoted in Lorraine Code, "Introduction", in Lorraine Code (ed), *Encyclopedia of Feminist Theories* (London: Routledge, 2003), p. xxi.

⁵⁸ I have purposely decided against referring here to "a" theory or "a" social movement as explained in the paragraph that follows.

⁵⁹ Marilyn Frye, "Feminism", in Lorraine Code (ed), *Encyclopedia of Feminist Theories* (London: Routledge, 2003), p. 195.

and power. It called into question power relations between men and women that were conventionally defended as ‘natural’.⁶⁰ The whole nature/nurture debate has persisted for centuries, as illustrated in the above arguments, but it is now accepted (by feminists, at least) that the concept of gender is largely, if not, wholly, a socio-cultural phenomenon.⁶¹ In other words, feminism called for equality between the sexes in economic, social, political, cultural, linguistic and legal spheres which was theorised on a notion of rights.⁶²

Feminism should in no way, however, be understood as a monolithic ideology. As Chapman accurately notes, “differences in social and political context produce distinctly different forms of feminism”⁶³ such as reflected in Nordic feminism, which is based on notions of social democracy; French feminism, which is rather philosophical (existential) in nature; and liberal and radical forms of feminism popular in the United States. On a micro level, the vast amount of theorising and debate has led feminism in myriad diverse directions,⁶⁴ so that even within each feminist school of thought there are conspicuous differences.⁶⁵

2.2.2 The Historical Development of Feminism and Women’s Human Rights

The development of feminist thought explicitly questions women’s exclusion and marginalisation. The term ‘feminist’ first came into use in English during the 1880’s, indicating

⁶⁰ Vicky Randall, “Feminism”, in David Marsh and Gerry Stoker (eds), *Theory and Methods in Political Science* (Basingstoke: Palgrave MacMillan, 2002), p. 110.

⁶¹ The debate continues, however, as to whether gender is natural and essential or cultural and constructed. See Claire Colebrook, *Gender* (Basingstoke: Palgrave MacMillan, 2004), pp. 9-17.

⁶² Connell describes “equal rights” as a “wholly logical doctrine that is as effective against the “aristocracy of sex” as the doctrine of the “rights of man” was against the aristocracy of property. Robert Connell, “The State, Gender and Sexual Politics: Theory and Appraisal”, *Theory and Society*, 19:5 (October 1990), p. 512.

⁶³ Jenny Chapman, “The Feminist Perspective”, in David Marsh and Gerry Stoker (eds), *Theory and Methods in Political Science* (Basingstoke: Palgrave MacMillan, 1995), p. 95.

⁶⁴ Chapman, “The Feminist Perspective”, p. 94.

⁶⁵ One such example is illustrated in Rosemarie Tong’s distinction between radical-libertarian feminists and radical-cultural feminists. While they are both premised on the notion that the sex/gender dichotomy is the fundamental cause of women’s oppression, they differ on issues of sexuality and reproduction and how to eliminate women’s oppression. See Rosemarie Tong, “Radical Feminism”, in Lorraine Code (ed), *Encyclopedia of Feminist Theories* (London: Routledge, 2003), pp. 419-421.

support for women's equal legal and political rights with men.⁶⁶ Feminism, the concept, is widely thought to have its roots in the Age of Enlightenment; however, Lerner has traced the earliest written expression of feminist consciousness all the way back to seventh century Europe, when women sought to reinterpret the scriptures which deemed women intellectually inferior by nature and given to sin.⁶⁷ By the beginning of the fifteenth century, feminism took root in liberalist thought. This era witnessed a European-wide public debate led by Christine de Pizan, known as the *Querrelle des femmes* and which endured for some 300 years,⁶⁸ concerning the misogynistic portrayal of women in literature.

There were many influential writers during this period who believed that both men and women possessed a capacity for reason and true knowledge based on individual experience and self-discovery.⁶⁹ Descartes, François Poullain de la Barre, John Stuart Mill, Mary Astell, Catherine Macaulay⁷⁰ and Mary Wollstonecraft all believed that women were necessarily capable of reason and could participate equally in all spheres of life – social, economic, political, academic and that their shortcomings were based entirely on the type of education they received.⁷¹ Astell, however, was politically quite conservative and did not believe in the liberal idea of extending political rights to women, as she strongly believed in patriarchy and that women should be subject to the authority of her husband.⁷² Mill, too, believed that women could equally partake in professional and political life, but there was one integral caveat: she must be able to successfully juggle her domestic responsibilities with any other she may choose to

⁶⁶ Valerie Bryson, *Feminist Political Theory: An Introduction* (Basingstoke: Palgrave MacMillan, 2003), p. 1.

⁶⁷ Bryson, *Feminist Political Theory*, p. 5 and Lerner, *The Creation of Feminist Consciousness*, p. 13.

⁶⁸ Lerner, *The Creation of Feminist Consciousness*, p. 144.

⁶⁹ Feminist critiques of Cartesian philosophy today, however, see this very duality as contributing to a gender dichotomy which supports “an ideology that privileges an autonomous rational masculinity over a relational, emotional, corporeal femininity”. Margaret Atherton, “Feminist Critiques of Cartesianism”, in Lorraine Code (ed), *Encyclopedia of Feminist Theories* (London: Routledge, 2003), p. 72.

⁷⁰ Catherine Macaulay's writings, however, were eclipsed by the fame of her close contemporary, Mary Wollstonecraft.

⁷¹ François Poullain de la Barre, *De L'Egalité des Deux Sexes: Discours Physique et Moral (Où l'on voit l'importance de se défaire des Préjugés)* (Paris: Jean Du Puis, 1673, p. vii.

⁷² Bryson, *Feminist Political Theory*, pp. 9-10.

undertake.⁷³ While Mill obviously did not problematise the sexual division of labour and believed that only *exceptional* women would choose to compete in the work place,⁷⁴ he “implicitly challenges the liberal concept of the public/private divide and the masculinist notions of politics upon which this divide rests”.⁷⁵

This period also saw the onset of the Industrial Revolution which brought with it changes in the traditional division of labour, which now became more complex and, according to Bryson, the creation of the distinction between the public and the private. During this change, women of the working class were progressively excluded from trades and professions they previously partook in and aristocratic women became restricted to the domestic sphere as they were no longer needed in the running of their husbands’ estates. It was at this point that marriage became an economic necessity as women became increasingly dependent on their husbands for financial support. Issues of unbalanced demography and religious reformation further complicated the situation and the role of women, now so profoundly altered, came into question.⁷⁶ Concurring with the emergence of a clearly delineated public/private realm was the increasing importance of the ancient concept of patriarchy. Historically, the rule of the king over his people was thought to be divinely sanctioned just as a father ruled over his family. Bryson states that patriarchy in the home was used as justification for a parallel power at the state level.⁷⁷ This emergence of the modern secular state embeds, from its very inception, gendered beliefs

⁷³ According to Mill, “...the common arrangement, by which the man earns the income and the wife superintends the domestic expenditure, seems to me in general the most suitable division of labour between the two persons. ...If she undertakes any additional portion, it seldom relieves her from this [her domestic/maternal duties], but only prevents her from performing it properly. The care which she is herself disabled from taking of the children and the household, nobody else takes; those of the children who do not die, grow up as they best can, and the management of the household is likely to be so bad, as even in point of economy to be a great drawback from the value of the wife's earnings”. John Stuart Mill, *The Subjection of Women* (1869) (New York: Prometheus Books, 1986), p. 53.

⁷⁴ Kate Nash, “Liberal Feminism”, in Lorraine Code (ed), *Encyclopedia of Feminist Theories* (London: Routledge, 2003), p. 303.

⁷⁵ John Hoffman, “Blind Alley: Defining Feminism”, *Politics*, 21:3 (2001), p. 194.

⁷⁶ See Bryson, *Feminist Political Theory*, p. 7.

⁷⁷ Bryson, *Feminist Political Theory*, p. 8.

privileging men and which were accepted as the natural order of things. The subordination of women within this arrangement continues to be of significance today.

1848 was the year of the very first women's rights convention, the Seneca Falls Convention, and was spurred on by the movement for the abolition of slavery across the Atlantic in the United States. A Declaration was issued at the end of the convention and was modelled on the 1776 United States Declaration of Independence. Participants of this convention demanded that the rights of women as bearers of rights in all spheres of life be acknowledged and respected by society. According to Bryson, the declaration laid the foundation for the structured emergence of feminism as a political movement and an ideology.⁷⁸

2.2.2.1 First Wave Feminism

Spurred on by their disadvantaged social, economic and legal position, women formally sought redress. Thus began in the mid-late 19th century was what is known as the first wave of feminism with women seeking formal equality in all spheres of life, including education and legal rights. By 1900, ideological differences in the movement (liberal, socialist, maternal) were overpowered by the growing agreement among those in the movement that the "success on key legal, educational and economic issues could not be gained without greater political leverage"⁷⁹ and it was at this point that the focus of the movement shifted and coalesced to that of achieving suffrage and political enfranchisement of women. Several achievements were gained when the vote was won in many countries by the 1920's. Educational opportunities expanded for English women, both married and unmarried women gained rights and improved maternity and child welfare in both England and the United States, and most importantly, winning the vote helped in

⁷⁸ Bryson, *Feminist Political Theory*, p. 32.

⁷⁹ Kathryn McPherson, "First-Wave/Second-Wave Feminism", in Lorraine Code (ed), *Encyclopedia of Feminist Theories* (London: Routledge, 2003), pp. 208-209.

establishing the legitimacy of women's claim to equal treatment.⁸⁰ Notwithstanding these achievements, the patriarchal structures remained largely unchanged and "the ideas and the economic and political realities underpinning them retained their viability".⁸¹ In any event, the energy required to fuel the drive for enfranchisement left the movement drained and the first wave of feminism receded.

2.2.2.2 Second Wave Feminism

Feminism regained its vigour and returned in the 1960's in its second wave.⁸² Four main types of feminism emerged here: liberal, radical and Marxist/socialist, psychoanalytic.⁸³ Second wave liberal feminism, too, saw women questioning their role in society, given the increased production of labour-saving devices for the home and advances in contraceptive technology which bestowed upon women a sense of freedom, sexual, reproductive and otherwise.⁸⁴ This new wave was characterised by de Beauvoir's *The Second Sex*, Betty Friedan's *The Feminine Mystique*, Germaine Greer's *The Female Eunuch* and Juliet Mitchell's *Psychoanalysis and Feminism*, three of which focus on the psychological aspects of sex and gender. Women

⁸⁰ Vicky Randall, *Women and Politics: An International Perspective* (Basingstoke: MacMillan, 1987), p. 218.

⁸¹ Jean Bethke Elshtain, *Public Man, Private Woman: Women in Social and Political Thought* (Oxford: Princeton University Press, 1981), p. 238.

⁸² According to Randall, however, the movement was not fully dormant in the intervening years and states that the reason for the ebb in the movement was a lot more complex than has otherwise been suggested. See Randall, *Women and Politics*, pp. 218-224.

⁸³ For the purposes of this thesis, though, I shall only be looking at liberal feminism, as the feminist issues raised here are the most pertinent to my discussion on law and gender equality. While radical feminism, particularly MacKinnon's offering on radical feminism, explores women's inequality as a product of sexual domination by men, her focus remains too essentialist as she develops "a monolithic, "grand" feminist jurisprudence which seeks to reduce all aspects of women's oppression to one dimension, and which treads dangerously close to biologicistic essentialism". Nicola Lacey, "Closure and Critique in Feminist Jurisprudence: Transcending the Dichotomy or a Foot in Both Camps?", in Nicola Lacey, *Unspeakable Subjects: Feminist Essays in Legal and Social Theory* (Oxford: Hart Publishing, 1998), p. 179. It does not take into account factors such as race or class. Liberal feminism, however, does not regard the legal system itself as contributing to the inferior position of women, while MacKinnon does. See Charlesworth and Chinkin, *The boundaries of international law*, pp. 38-44. This is not to decry MacKinnon's campaign to have sexual harassment recognised as a legal wrong as it has been an effective feminist strategy in many ways. See Lacey, "Closure and Critique in Feminist Jurisprudence", p. 180.

⁸⁴ Randall, *Women and Politics*, p. 222.

understood female subordination to be more than simply the effect of dominant political forces, but as endemic in all social relations with men.⁸⁵ The (initially) radical feminist slogan “the personal is political” was born in this period and brought to the fore the public/private divide, which, as noted earlier, has persisted since the onset of the Industrial Revolution. “The personal is political” “involves a recognition that private and public life interpenetrate in complex ways” and is certainly not immune from the dynamic of power.⁸⁶ As Green notes, “[p]ersonal problems are not only private idiosyncratic experiences but part of a social phenomenon amenable to political analysis” and cites the example of both child and spousal abuse which require social and political action for their elimination.⁸⁷

A liberalist notion, the public/private dichotomy refers to both the distinction between state and society as well as between non-domestic and domestic life. Okin goes on to make the point that in both dichotomies, the “state is (paradigmatically) public, and the family, domestic, and intimate life are (again paradigmatically) private”.⁸⁸ The importance of this binary⁸⁹ relation to feminist theory is that the notion of privacy has always been bestowed upon *man* as the holder of rights to be free from any state (or church) intervention in the running of his household and in controlling the members of his private sphere.⁹⁰ According to MacKinnon, “The liberal state coercively and authoritatively constitutes the social order in the interest of men as a gender –

⁸⁵ Imelda Whelehan, *Modern Feminist Thought: From the Second Wave to 'Post-Feminism'* (Edinburgh: Edinburgh University Press, 1995), p. 5

⁸⁶ Don Slater, “Public/Private”, in C. Jenks (ed), *Core Sociological Dichotomies* (London: Sage Publications, 1998), p. 149.

⁸⁷ Joyce Green, “Public/Private”, in Lorraine Code (ed), *Encyclopedia of Feminist Theories* (London: Routledge, 2003), p. 412.

⁸⁸ Susan Moller Okin, “Gender, the Public, and the Private”, in Anne Phillips (ed), *Feminism and Politics* (Oxford: Oxford University Press, 1998 [2003]), p. 117.

⁸⁹ Squires contests the notion of the binary distinction as she believes that it should be a tripartite division. Public/private refers to state and civil society respectively, where civil society does *not* include domestic or personal life. Civil society is private in the sense that it is not governed by the state. The concept of personal life, however, while indeed private, is private in reference to civil society and not to the state. According to her, “civil society is cast as private when opposed to the state and public when opposed to the personal. This makes any discussion of a single public/private dichotomy either partial or confused, or both”. The three spheres of social relations, therefore, are the state, civil society and the personal. Judith Squires, *Gender in Political Theory* (Cambridge: Polity Press, 2000), p. 25.

⁹⁰ Okin, “Gender, the Public, and the Private”, pp. 118-119.

through its legitimating norms... and substantive policies".⁹¹ She also asserts that "[t]he state is jurisprudentially male, meaning that it adopts the standpoint of male power on the relation between law and society...[as] the state, through law, institutionalizes male power over women through institutionalizing the male point of view in law".⁹² This point is clearly illustrated in Blackstone's infamous legal interpretation of the status of married women where they were denied legal and civil rights, deemed to be incapable of political activity, and could only be represented by their husband or father.⁹³ Moreover, the state continues to maintain the distinction between the private and the public as the legal right to privacy depends on government support.⁹⁴ Man's right to privacy, therefore, has justified the state's inaction (deemed to be a reflection of male interests) in the face of abuses that are perpetrated within the home, as it is not the state's place to interfere with what takes place in *his* private realm.⁹⁵

Equality has always been a cornerstone of liberalist thought and it is therefore no surprise that liberal feminists also stress the importance of sexual equality, or as it is contemporarily known, gender justice, which is perhaps the single most important goal of women's liberation.⁹⁶ But

⁹¹ Catharine MacKinnon, "The Liberal State", in Catharine MacKinnon, *Toward A Feminist Theory of the State* (Cambridge, MA.: Harvard University Press, 1991), p. 162.

⁹² MacKinnon, "The Liberal State", pp. 163 and 169.

⁹³ Blackstone's interpretation: "By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband: under whose wing, protection, and cover, she performs everything...". Sir William Blackstone [online], "Commentaries on the Laws of England (1765-1769)". [cited 05 February 2008]. Available from Internet: <http://www.lonang.com/exlibris/blackstone/bla-115.htm>. See Terri Collier's study on mid-seventeenth century political activities by women in England, where women are still currently seen as incapable of holding serious political identity. "Women at the Edge of Politics: Past and Present", *Political Studies Association*, Conference Proceedings (University of Nottingham, 1999). See also Teresa Brennan and Carole Pateman, "Mere Auxiliaries to the Commonwealth: Women and the Origins of Liberalism", in Anne Phillips (ed), *Feminism and Politics* (Oxford: Oxford University Press, 1998 [2003]), p. 109.

⁹⁴ Annabelle Lever, "Must Privacy and Sexual Equality Conflict? A Philosophical Examination of Some Legal Evidence", *Social Research*, 67:4 (Winter 2000), p. 1144.

⁹⁵ This holds despite the fact that the state does regulate 'private' sphere issues such as marriage, divorce and child custody. See Nicola Lacey, "Theory into Practice? Pornography and the Public/Private Dichotomy", *Journal of Law and Society*, 20:1 (Spring 1993), p. 95. This will be explored further in a later chapter concerning the state's role as an effective agent and enforcer of legislative change in the protection of women's rights.

⁹⁶ Rosemarie Tong, *Feminist Thought: A More Comprehensive Introduction* (Boulder: Westview Press, 1998), p. 32. Participants at a seminar organised by AAWORD/AFARD agreed that "Feminism is international in defining as its aim the liberation of women from all types of oppression and in providing

what exactly does sexual equality mean? Since the beginning of liberal feminist discourse, women have advocated equality on the basis that women possess the same capabilities as men but simply need to have similar access to opportunities in order to realise these capabilities. Equality in liberal feminist terms, according to Evans, means equality in the sense of sameness of attainment, and therefore treatment, and justifies it via sameness or androgyny.⁹⁷ Paradoxically, as Scott correctly notes, “in order to protest women’s exclusion, they [feminists] had to act on behalf of women and so invoked the very difference they sought to deny”.⁹⁸ This issue of equality will be dealt with in greater detail in the section below on feminist legal theory.

2.2.2.3 “Other” Feminisms

Critiques levelled against liberal feminism (as well as the others) were based largely on their exclusionary nature. They were all charged as being inadvertently classist, racist and (hetero)sexist, assuming middle-upper class college-educated married white women to be the only affected groups.⁹⁹ While deemed a useful exercise in the study of sex discrimination against one group, it may also be seen as a “case study of narcissism, insensitivity, sentimentality, and self-indulgence”.¹⁰⁰ It had the inevitable effect of producing feminist

solidarity among women of all countries; it is national in stating its priorities and strategies in accordance with particular cultural and socioeconomic conditions”. AAWORD/AFARD Seminar Participants, “The Dakar Declaration on Another Development with Women”, *Development Dialogue*, 1-2 (1982), p. 15.

⁹⁷ Judith Evans, *Feminist Theory Today: An Introduction to Second-Wave Feminism* (London: Sage Publications, 1995), p. 13.

⁹⁸ Joan Wallach Scott, *Only Paradoxes to Offer: French Feminists and the Rights of Man* (Cambridge: Harvard University Press, 1996), p. x.

⁹⁹ It is also interesting to note that while feminist discourse defines its problematic as “women”, it unwittingly and ironically forgets that it should problematise the subject “man”. See Jane Flax, “Postmodernism and Gender Relations in Feminist Theory”, in Linda Nicholson (ed), *Feminism/Postmodernism* (New York: Routledge, 1990), p. 45. She states, though, “The single most important advance in feminist theory is that the existence of gender relations has been problematized”. See pp. 43-44.

¹⁰⁰ bell hooks, “Black Women: Shaping Feminist Theory”, in Joy James and T. Denean Sharpley-Whiting (eds), *The Black Feminist Reader* (Malden: Blackwell Publishers Limited, 2000), p. 132. She refers particularly to Betty Friedan’s *The Feminine Mystique*.

scholarship from the margins to refute the universalising claims made by white feminists who spoke as if for all women,¹⁰¹ reflecting the divergent historical-political circumstances of each type.¹⁰² While the various criticisms are acknowledged, liberal feminism makes a clarion call for gender equality regardless of individual contexts and provides a useful starting point, together with feminist legal theory and feminist critical theory, to examine law as a potentially valuable, though not unproblematic, instrument to promote gender equality.

While liberal feminists can be criticised for not questioning the male bias in rights discourse and practice, but have merely sought to extend 'male rights' to women, this does not invalidate a rights agenda as a tool that can be used to promote the status of women, or even achieve an emancipatory end. Feminist theorists, such as Benhabib, have embraced critical theory because it holds out the possibility of rescuing a universal and emancipatory project for feminism. What is universal, however, is determined not by reference to a posited transcendental subject/subjectivity, as in liberalism, but is inter-subjectively constituted through dialogue. For example, the NGO forum at Beijing can be presented as one such forum for debate and dialogue on women's rights. Here, activists question the meaning and limitation of rights and which rights are women's rights. In this way, the substantive meaning of rights has been transformed to better fit the needs of women. Of course, NGO forums are far from 'ideal speech situations' but, nevertheless, represent a 'best practice' subject to further improvement vis-à-vis access and inclusion.¹⁰³

¹⁰¹ See for example Reina Lewis and Sara Mills, "Introduction", in Reina Lewis and Sara Mills (eds), *Feminist Postcolonial Theory: A Reader* (Edinburgh: Edinburgh University Press, 2003), p. 4.

¹⁰² Among these included African Feminism, Asian Feminism, Black Feminism, Chicana Feminism, Latin American Feminism, Lesbian Feminism, Postcolonial Feminism, Postmodern Feminism and Poststructural Feminism. For more on these and others, see generally Lorraine Code (ed), *Encyclopedia of Feminist Thought* (London: Routledge, 2003).

¹⁰³ See Brooke Ackerly, "Women's Human Rights Activists as Cross Cultural Theorists", *International Feminist Journal of Politics*, 3:3 (Autumn 2001), pp. 324-325.

Critical (and other) theorists claim that legal scholarship is elitist. For them, the production of knowledge “is in itself a historical process which is conditioned by the socio-political, economic and cultural context in which it is constructed”.¹⁰⁴ Critical theorists argue that the production of knowledge is integrally related to power and serves particular interests,¹⁰⁵ where power is associated with the male and masculinity. The power associated with the male and masculinity is underpinned by many factors one of which is the legal system. It is important therefore to develop an understanding of how the law functions to support the power of the male elite and to determine how the assessment of the law can be used to both expose its male bias and posit the gender equality sought by women as part of their fundamental rights. The notion of the relationship between knowledge and power is also a critical component of feminist legal theory.

2.3 Feminist Legal Theory: Where do Women Figure?

Feminist legal theory, or feminist jurisprudence, came about in the 1980’s “out of a political concern for the ways in which law may be implicated in women’s subordination”.¹⁰⁶ It may be defined very broadly as “the study of the relationship between women and the law”¹⁰⁷ which exposes the male bias of law.¹⁰⁸ West makes the point that

“[j]urisprudence is “masculine” because jurisprudence is about the relationship between human beings and the laws we actually have, and the laws we actually have are “masculine” both in terms of their intended beneficiary and in authorship”.¹⁰⁹

¹⁰⁴ Jill Krause, “Gender Inequalities and Feminist Politics in a Global Perspective”, in Eleonore Kofman and Gillian Youngs (eds), *Globalization: Theory and Practice* (London: Pinter, 1996), p. 226.

¹⁰⁵ Chris Weedon, “Poststructuralism/Postmodernism”, in Lorraine Code (ed), *Encyclopedia of Feminist Thought* (London: Routledge, 2003), p. 398.

¹⁰⁶ Reg Graycar, “Feminist Legal Theory”, in Lorraine Code (ed), *Encyclopedia of Feminist Thought* (London: Routledge, 2003), p. 198.

¹⁰⁷ Gary Lawson, “Feminist Legal Theories”, *Harvard Journal of Law and Public Policy*, 18:2 (Spring 1995).

¹⁰⁸ Patricia A. Cain, “Feminist Jurisprudence: Grounding the Theories”, in Katharine Bartlett and Rosanne Kennedy (eds), *Feminist Legal Theory: Readings in Law and Gender* (Boulder: Westview Press, 1991), p. 264.

¹⁰⁹ Robin West, “Jurisprudence and Gender”, in Katharine Bartlett and Rosanne Kennedy (eds), *Feminist Legal Theory: Readings in Law and Gender* (Boulder: Westview Press, 1991), p. 231. West writes an instructive article on how the different values that men and women identify with affect the

West identifies two main projects of feminist legal theory, the first of which is the “unmasking and critiquing of the patriarchy behind purportedly ungendered law and theory”, or uncovering “patriarchal jurisprudence”.¹¹⁰ The second project entails “reconstructive jurisprudence”, or feminist law reform in areas such as rape, sexual harassment, discriminatory employment practices and reproductive freedom.

Feminist legal theory is multidisciplinary in its approach and draws upon the lived experiences of women. The critical perspectives developed from the other disciplines help to offer “powerful analyses of the relationship between law and gender and new understandings of the limits of, and opportunities for, legal reform”.¹¹¹ As such, “Feminist legal theory does not constitute a unified body of knowledge or a set of universal concerns or perspectives, but is shaped by different political agendas and institutional frameworks occurring within particular societies”.¹¹²

2.3.1 Feminist Legal Theory: The Early Years

As seen in the above section on the historical development of feminism, women were denied legal subjectivity for centuries, especially when Blackstone conferred “civil and legal death” on (married) women. It is not surprising, therefore, that the feminist critique on legal subjectivity

character of law (which is inherently masculine) and its effectiveness (or lack thereof) in affording protection and security of self to individuals.

¹¹⁰ Even if women were able to conquer patriarchy (on one level) and obtain equal pay for equal work, would that make them immune to the effects of patriarchy elsewhere, such as, say, male violence at home? See Mark Cowling's interesting insights on patriarchy and feminism, based on the work of Sylvia Walby who identifies six patriarchal social structures, in his draft paper, “Socialism, Feminism and Patriarchy: Does the Concept of Femininities Provide a Useful Link?”, *Political Studies Association, Conference Proceedings* (University of Nottingham, 1999), pp. 1-24.

¹¹¹ Katharine Bartlett and Rosanne Kennedy, “Introduction”, in Katharine Bartlett and Rosanne Kennedy (eds), *Feminist Legal Theory: Readings in Law and Gender* (Boulder: Westview Press, 1991), p. 1.

¹¹² Sharyn L. Roach Anleu, “Critiquing the Law: Themes and Dilemmas in Anglo-American Feminist Legal Theory”, *Journal of Law and Society*, 19 (Winter 1992), p. 423.

suggests that it “is a site of violent sexual exclusion”.¹¹³ In their quest for legal rights, then, recognition as a juridical person was the first step to be taken.¹¹⁴ In the (in)famous 1873 case of *Jex-blake v Senatus of Edinburgh University*¹¹⁵ a group of female medical students was denied the possibility of graduating upon successful completion of their examinations on the basis of “strict legal grounds”.¹¹⁶ Lord Neaves stated in his opinion that the founding of (Scottish) Universities was for the education of young men and that “while males have a right to University education, females have none...”¹¹⁷ While the University regulations were amended four years earlier to allow admission to women to the study of medicine the court held that these regulations were “wholly illegal, and palpably beyond the statutory power conferred upon the University Courts”.¹¹⁸ Unfortunately, the Court was of the belief that granting a decision in favour of the pursuers “would incur the risk of lowering the standard”¹¹⁹ which the medical profession enjoyed at the time. An immediate problem that stems from such a judgement is that not only are women deemed to be physically and intellectually inferior to men, but as a judicial pronouncement, such stereotyping gains legal authority.¹²⁰

The legal fight for women included their wish to be understood as legal persons, as “persons” or “man” did not include “woman” in its interpretation. In a 1930 Privy Council judgement, the interpretation of “persons” was expanded to include “woman” on the basis of changing legal customs. In Lord Sankey’s judgement, he ascribed the prior exclusion of women from the interpretation of “person” to the fact that women were formerly deemed legally incapable at common law of serving in public office. He dismissed this practice as a “relic of days more

¹¹³ Nicola Lacey, “Violence, Ethics and Law: Feminist Reflections in a Familiar Dilemma”, in Susan James and Stephanie Palmer (eds), *Visible Women: Essays on Feminist Legal Theory and Political Philosophy* (Oxford: Hart Publishing, 2002), p. 123.

¹¹⁴ Jo Bridgeman and Susan Millns, *Feminist Perspectives on Law: Law’s Engagement with the Female Body* (London: Sweet and Maxwell, 1998), p. 11.

¹¹⁵ (1873) 11 M. 784.

¹¹⁶ Per Lord Neaves at 837.

¹¹⁷ Per Lord Neaves at 832.

¹¹⁸ Per Lord Neaves at 835.

¹¹⁹ Per Lord Neaves at 837.

¹²⁰ See Bridgeman and Millns, *Feminist Perspectives on Law*, p. 20.

barbarous than ours”.¹²¹ Should any subsequent interpretation of “person” in fact exclude women, it should be stated expressly by Parliament that such is the intention.

Interestingly, the earliest use of the word “person” has been traced to Greek and Roman times in its use in drama. *Persona* originally referred to the mask that actors wore on stage and later meant the part played by a man in life. Later still, the meaning was refined to refer to man himself and then to its contemporary use in law, to mean a right-bearing being.¹²² It is instructive to note that early Greek and Roman theatre expressly banned women from performing; therefore only men could have been referred to as “persons” in this context.¹²³ Perhaps this meaning persisted in denying women legal capacity as the term gained currency in legal jargon.

2.3.2 Feminist Legal Theory: The Public/Private Divide

Overcoming the public/private divide remains of very high importance to women.¹²⁴ As mentioned above, this divide holds great implications for women as the private, in this case, the sphere of domesticity, which encompasses the site of the family, reproduction and sexuality, is deemed to be outside the scope of legal regulation and State intervention.¹²⁵ This means that the site of the family is a site of tremendous near-unregulated violence against women and children, as the law affords women little, if any, legal protection against such abuses. It is for

¹²¹ Per Lord Sankey L.C. in *Edwards v Att.-Gen. of Canada*, [1930] A.C. 124 at 128. See also p. 134.

¹²² See Ngaire Naffine, “Can Women be Legal Persons?”, in Susan James and Stephanie Palmer (eds), *Visible Women: Essays on Feminist Legal Theory and Political Philosophy* (Oxford: Hart Publishing, 2002), p. 75.

¹²³ See for example, K. Phillips [online], “Ancient Greek Theatre”, 29 March 2000. [cited 03 November 2004]. Available from Internet: <http://www.richeast.org/htwm/Greeks/theatre/actors.html> and Edward R. Mergenthal Jr. [online], “Greek & Roman Theatre”, 01 December 1998. [cited 03 November 2004]. Available from Internet:

http://www.geocities.com/Broadway/Balcony/7634/greek_and_roman_theatre.htm.

¹²⁴ This divide has been used historically to justify the exclusion of women from the political/public sphere. See Diemut Bubeck, “Thin, Thick and Feminist Conceptions of Citizenship”, *Political Studies Association*, Conference Proceedings (University of York, 1995), p. 466.

¹²⁵ Bridgeman and Millns, *Feminist Perspectives on Law*, pp. 24-25.

this reason that “feminism has had to explode the private” and sees the personal as political.¹²⁶ While there has been legal reform to accommodate sexual reproductive freedom and violence-free homes, there also needs to be greater understanding and compassion on the part of those in authority in order to help make these reforms effective. Bridgeman and Millns correctly state that “[c]ontraception has to be safe, effective and acceptable; abortion services free [and legalised] and non-judgmental; and violence within the home has to be treated as a serious crime by law enforcement agencies”.¹²⁷ They also note that an issue may go unregulated if the law does not recognise a particular wrong against women as actual harm, such as certain types of cosmetic surgery,¹²⁸ or if it simply privatises the issue, as is common in cases of domestic violence. The enactment of legislation in such areas has caused the line between the public and the private to blur somewhat, although, sadly, such enactment does not necessarily afford women the protection stated in the legislation as they tend to remain unimplemented for a variety of reasons.

Beveridge and Mullally argue that the exclusion of the private sphere from the application of rights is based on a pre-liberal notion of the ‘naturalness’ of the traditional family.¹²⁹ According to these authors, the traditional family is seen as a bastion of civilisation and a precondition for social stability and is thus immune to judicial reform. It would appear that rights has been unable to contemplate the notion of separate spheres of justice and, consequently, only deals with issues stemming from the public sphere. Legal recognition of the right to privacy has only aggravated the situation, as mentioned above. Unfortunately, this dichotomy exists at the international level as well. International human rights law reflects this gendered approach by

¹²⁶ Catharine A. MacKinnon, “Privacy v. Equality”, in Catharine A. MacKinnon, *Feminism Unmodified: Discourses on Life and Law* (Cambridge: Harvard University Press, 1987), p. 100.

¹²⁷ Bridgeman and Millns, *Feminist Perspectives on Law*, p. 25.

¹²⁸ There is an argument that this constitutes a form of voluntary mutilation as compared to forced female genital mutilation in certain cultures.

¹²⁹ F. Beveridge and S. Mullally, “International Human Rights and Body Politics”, in J. Bridgeman and S. Millns (eds), *Law and Body Politics: Regulating the Female Body* (Aldershot: Dartmouth, 1995), pp. 248-251. (Text of which is partially reproduced in Bridgeman and Millns, *Feminist Perspectives on Law*, pp. 31-33.)

focusing on direct State violations of individual rights;¹³⁰ therefore, the harms suffered by women from private individuals or within the family lie outside of the conceptual framework of international human rights in the same manner as they do within the State apparatus.

2.3.3 Feminist Legal Theory: The Equality Project

“[T]he master’s tools will never dismantle the master’s house”.¹³¹

- Audre Lorde

Feminist legal theory as a means of improving the status of women is certainly not without its criticisms. The very fact of using law as a means to emancipate women causes concern. Lacey asks: “Is there a certain paradox to finding this apparent germ of emancipation of gender justice in the very body [law] which has been the object of the denigration of women?”¹³² The very androcentric nature of law makes it difficult for some to understand the use of law by feminists as the conceptual (legal) framework for promoting women’s interests. Smart observes “that law is so deaf to core concerns of feminism that feminists should be extremely cautious of how and whether they resort to law” and that generally we “need to be far more aware of the ‘malevolence’ of law and the depth of its resistance to women’s concerns”.¹³³ This notwithstanding there must be some framework from which to work. To completely reconstruct law to highlight feminist concerns may not be a feasible approach. Given the fact that law in itself has marginalised and penalised women on the basis of their gender and the fact that law’s creators are male and seek their own interests, why not begin from there?

¹³⁰ It has been argued that the State’s inaction against harms suffered by women may be construed as a direct State violation as part of its positive obligation to control the behaviour of private individuals. See Stephanie Palmer, “Feminism and the Promise of Human Rights: Possibilities and Paradoxes”, in Susan James and Stephanie Palmer (eds), *Visible Women: Essays on Feminist Legal Theory and Political Philosophy* (Oxford: Hart Publishing, 2002), p. 106 and chapter three below.

¹³¹ Quoted in Isabelle R. Gunning, “Uneasy Alliances and Solid Sisterhood: A Response to Professor Obiora’s “Bridges and Barricades””, in Adrien Wing (ed), *Global Critical Race Feminism: An International Reader* (New York: New York University Press, 2000), p. 276

¹³² Lacey, “Violence, Ethics and Law”, p. 128.

¹³³ Carol Smart, *Feminism and the Power of Law* (London: Routledge, 1989), p. 2.

There are those who think that diversifying the male character of the judiciary will necessarily improve the quality of justice dispensed, as women will bring different perceptions to the adjudication table. It is also argued that women's absence from the process of decision-making in public bodies undermines the democratic legitimacy of those institutions.¹³⁴ The Courts also seem to be of this opinion.¹³⁵ There seems to be a misguided presumption that securing a greater presence of female lawyers and judges will help to transform the legal system away from formalism, objectivity, universalism and adversarial methods of conflict resolution towards "the subjective needs of individuals and a greater use of alternative dispute resolution such as mediation".¹³⁶ While this may be true in some cases,¹³⁷ this will not necessarily hold for all. It has been consistently argued that the legal tradition is masculine in nature.¹³⁸ Could it not be true to an extent to say that female lawyers/judges would be socialised to think and behave in a masculine manner and adopt masculine logic as well?¹³⁹ This is of course not to say that all women would do so; however, "the type of women who currently succeed in the male-dominated legal world are, by definition, atypical of most women".¹⁴⁰

¹³⁴ See Kate Malleon, "Justifying Gender Equality on the Bench: Why Difference Won't Do", *Feminist Legal Studies*, 11 (2003), pp. 1-2.

¹³⁵ See for example *R. v S. (R.D.)*, [1997] 118 CCC (3d) para 119.

¹³⁶ Malleon, "Justifying Gender Equality on the Bench", pp. 3-4. These presumptions draw largely from Carol Gilligan's "ethic of care" articulated in her *In a Different Voice: Psychological Theory and Women's Development* (Cambridge: Harvard University Press, 1982). See also, for example, pp. 73-74 and West, "Jurisprudence and Gender".

¹³⁷ A quick look at lawyers who practice family law, viewed perhaps as less formal [masculine] than other areas of law, in Trinidad and Tobago will show that many of them are in fact women.

¹³⁸ A study on women and tokenism in the legal profession in southern Arizona produced interesting results reflecting the fact that gender makes a huge difference, regardless of qualifications, and that such bias is recognised by both males and females. See Patricia MacCorquodale and Gary Jensen, "Women in the Law: Partners or Tokens?", *Gender and Society*, 7:4 (Dec., 1993), pp. 582-593. Another study undertaken in Florida on the differential treatment of women and men in the state legal system shows that "compared with men judges and attorneys, women judges and attorneys are more conscious of gender inequality, observe more gender bias in legal settings, and show a stronger connection between experiences with gender bias and feminist consciousness". Patricia Martin, John Reynolds, Shelley Keith, "Gender Bias and Feminist Consciousness among Judges and Attorneys: A Standpoint Theory Analysis", *Signs*, 27:3 (Spring, 2002), p. 669.

¹³⁹ The Martin, Reynolds, Keith study would suggest that this is in fact not so, especially with reference to women judges. See p. 689.

¹⁴⁰ Malleon, "Justifying Gender Equality on the Bench", p. 8.

Feminist legal theory has also been accused of uncritically accepting the masculine nature of law as the standard by which feminist issues must be measured.¹⁴¹ Law's masculinity is not problematised but accepted as universal and transhistorical and applied as is to women. This is particularly the case in the rights debate concerning equal/special treatment. With one foot inside, having been accepted as "persons", the next step for women was a fight for equality. As mentioned above, women's struggle for equality meant that there was some measure against which women were gauging themselves. Difference in the equality debate refers to women's differences from men, "with a clear, implicit acceptance of men as the norm and women as the deviators therefrom".¹⁴² Equality in this sense meant that women were to be treated as identical to men and denied their natural, biological differences and complexities.

This particular sense of equality has led to what can only be referred to as legal absurdities as the law sought to treat men and women on an equal basis. Nash makes the point that equality is problematic as it reproduces a male norm, both in terms of the content of the law and its form.¹⁴³ Sex discrimination legislation uses a 'male comparator' test, which, by the very name, affirms Nash's statement.¹⁴⁴ This test requires a woman to prove discrimination by showing that she has been treated less favourably than a man would have been had he been in a comparable situation. Pregnant women have found it necessary to liken female pregnancy, a natural process, to male sickness in order to draw a parallel. How can this be, given that *only* women can possibly become pregnant? Pregnancy is specific to women and to describe it in gender-neutral terms is to capitulate to the male norm.¹⁴⁵

¹⁴¹ See Catharine A. MacKinnon, "Difference and Dominance: On Sex Discrimination", in Catharine A. MacKinnon, *Feminism Unmodified: Discourses on Life and Law* (Cambridge: Harvard University Press, 1987), p. 43.

¹⁴² Diana Majury, "Strategizing in Equality", in M.A. Fineman and N.S. Thomadsen (eds), *At the Boundaries of Law: Feminism and Legal Theory* (London: Routledge, 1991), p. 321.

¹⁴³ Kate Nash, "Equality and Difference", in Lorraine Code (ed), *Encyclopedia of Feminist Thought* (London: Routledge, 2003), p. 174.

¹⁴⁴ See discussions on *General Electric Company v Gilbert et al* and *Geduldig v Aiello* in chapter three below.

¹⁴⁵ Kate Nash, *Contemporary Political Sociology: Globalization, Politics, and Power* (Malden: Blackwell Publishers Limited, 2000), p. 166.

Such occurrences have led to a division in the equality camp, with some feminists advocating equal rights based on the male comparator test to afford them the ability to compete on equal terms with men, which, of course, completely denies their differences; while on the other side are the difference feminists who embrace women's difference and simply want the right to be as *free* as men, yet to be themselves.¹⁴⁶ Nash asks whether the women's movement should focus on rights for women to be treated the same as men or on gender-specific rights, enabling women's differences from men to be valued and taken into account as the means of gaining genuine equality between the sexes.¹⁴⁷ While the latter may appear to be the more desirable option, Sohrab articulates quite clearly the fallacy of having to choose one or the other. She advocates an integrated approach and says,

“The perceived necessity of making a choice between equal or special treatment is a false choice. In some areas equal rights are necessary, while in others it is gender-specific rights that are necessary, for instance in pregnancy. Neither approach is, nor should be, the exclusive ‘answer’ or strategy or claim, and arguing over substantive equality by opposing equal with special and vice-versa is at best redundant and at worst a costly distraction.”¹⁴⁸

This is complicated by issues of race, nationality and class¹⁴⁹ and is clearly illustrated in the case of *Betty Dukes and ors v Wal-Mart Stores, Inc.* It is interesting to note that sexual equality is still not to be had and worse, complicated by such issues, not even in a country based on a natural rights tradition and that prides itself on the feminist notion of “equality of opportunity” and has anti-discrimination, equal rights and equal pay legislation. In what is described as the

¹⁴⁶ Tong, *Feminist Thought*, p. 208.

¹⁴⁷ Nash, *Contemporary Political Sociology*, p. 165.

¹⁴⁸ Julie A. Sohrab, “Avoiding the ‘Exquisite Trap’: A Critical look at the Equal Treatment/Special Treatment Debate in Law”, *Feminist Legal Studies*, 1 (1993), p. 141. (Text of which is partially reproduced in Bridgeman and Millns, *Feminist Perspectives on Law*, pp. 51-52.)

¹⁴⁹ Smith makes the point that inequality has been consistently justified throughout history based on “relevant difference”. As an example, while “the American revolutionaries declared all men to be created equally, their Constitution recognized slavery as a legitimate practice, because blacks were different”. See Patricia Smith, “On Equality: Justice, Discrimination, and Equal Treatment”, in Patricia Smith (ed), *Feminist Jurisprudence* (Oxford: Oxford University Press, 1993), pp. 17-20. (Text of which is partially reproduced in Bridgeman and Millns, *Feminist Perspectives on Law*, pp. 37-39.)

“biggest civil rights lawsuit in US history”¹⁵⁰ Wal-Mart is being sued for sexual discrimination despite investing heavily in branding itself “a haven for women”.¹⁵¹ According to the plaintiffs, the discriminatory practices are “the result of an on-going and continuous pattern and practice of intentional sex discrimination in assignments, pay, training and promotions, and reliance on policies and practices that have an adverse impact on female employees that cannot be justified by business necessity...”.¹⁵² The fact that the main plaintiff is of African American descent necessarily adds a racial slant to the case.

Many feminists argue for a politics of difference, as denying differences between the sexes can have perverse effects. Phillips makes the point that in the absence of sex-specific legislation to deal with pregnancy and maternity leave women enter the labour market at a disadvantage. “The refusal to recognise difference,” she says, “can become a covert way of elevating one group alone as the norm. Men then stand in for humanity, and humanity adopts a masculine form”.¹⁵³ Palmer concurs on this point and, in her critique on equal rights, adds that even though women may have a claim to formal rights that the structural inequalities of power are likely to remain unchanged. She raises as a primary concern the possibility that “rights may be appropriated by the powerful and women’s concerns will continue to be marginalized”.¹⁵⁴ She also states that formal equality for women affect their ability to claim for substantive rights, as gender can no longer be problematised. “Formal equality in the law means that gender as an explicit category of political decision and

¹⁵⁰ Lawrence Donegan [online], “The Woman who is taking on Wal-Mart,” *The Observer*, 27 June 2004. [cited 28 June 2004]. Available from Internet: <http://observer.guardian.co.uk/international/story/0,6903,1248204,00.html>.

¹⁵¹ Sharon Krum [online], “Store Wars,” *The Observer*, 02 July 2001. [cited 28 June 2004]. Available from Internet: <http://www.guardian.co.uk/women/story/0,3604,515455,00.html>.

¹⁵² *Betty Dukes and ors v. Wal-Mart Stores, Inc*, No. C-01-2252 MJJ (2001), p. 7. [cited 28 June 2004]. Available from Internet: <http://news.findlaw.com/hdocs/docs/walmart/dukeswalmart61901.pdf>.

¹⁵³ Anne Phillips, “Feminism and the Politics of Difference. Or, Where Have All the Women Gone?”, in Susan James and Stephanie Palmer (eds), *Visible Women: Essays on Feminist Legal Theory and Political Philosophy* (Oxford: Hart Publishing, 2002), p. 16.

¹⁵⁴ Palmer, “Feminism and the Promise of Human Rights”, pp. 96-97.

distribution has been dismantled with the subsequent loss of its critical foothold".¹⁵⁵ Equality in this guise only benefits women who adopt male norms.

Rhode observes that the issue at hand is not difference *per se* "but the difference difference makes",¹⁵⁶ if it does in fact make one. She states, that "analysis should turn on whether legal recognition of gender distinctions is likely to reduce or reinforce gender disparities in power, status, and economic security".¹⁵⁷ Scales observes that "[i]njustice does not flow directly from recognizing differences; injustice results when those differences are transformed into social and economic deprivation".¹⁵⁸ For Littleton, the difference that difference makes should not be such that it adversely affects the unprivileged group. In her "equality as acceptance" model, she proposes that "[t]he difference between human beings, whether perceived or real, and whether biologically or socially based, should not be permitted to make a difference in the lived-out equality of those persons".¹⁵⁹ In other words, differences, real or perceived, should not be penalised on any basis.

The South African Courts have adopted an interesting model of equality jurisprudence, which could perhaps serve as a model to be emulated and improved. Based on section 9 of the Constitution of South Africa, which protects an individual's right to equality, the Courts understand this to include not just notions of abstract equality but also substantive equality.¹⁶⁰ A court will hold that there are instances in which an individual must be treated differently in order to protect his or her right to equality. Van Marle states, "An approach based on substantive

¹⁵⁵ Stephanie Palmer, "Critical Perspectives on Women's Rights: The European Convention on Human Rights and Fundamental Freedoms", in Anne Bottomley (ed), *Feminist Perspectives on the Foundational Subjects of Law* (London: Cavendish Publishing Limited, 1996), p. 228.

¹⁵⁶ Deborah L. Rhode, "Feminist Critical Theories", in Katharine Bartlett and Rosanne Kennedy (eds), *Feminist Legal Theory: Readings in Law and Gender* (Boulder: Westview Press, 1991), p. 336.

¹⁵⁷ Rhode, "Feminist Critical Theories", p. 336.

¹⁵⁸ Ann C. Scales, "The Emergence of Feminist Jurisprudence: An Essay", in Patricia Smith (ed), *Feminist Jurisprudence* (Oxford: Oxford University Press, 1993), pp. 101-104. (Text of which is partially reproduced in Bridgeman and Millns, *Feminist Perspectives on Law*, pp. 80-82.)

¹⁵⁹ Christine A. Littleton, "Reconstructing Sexual Equality", *California Law Review*, 79 (1987), pp. 1284-1285. Emphasis in the original.

¹⁶⁰ See Van Marle, "Feminist Perspectives on Equality and Justice", pp. 266-272.

equality takes the concrete circumstances of an individual into account in contrast to a formal abstract approach based on sameness".¹⁶¹ In the case of *President of the Republic of South Africa and another v Hugo*,¹⁶² Hugo was imprisoned when the President at the time, Nelson Mandela, pardoned certain categories of prisoners by the Presidential Act 17 of 1994, one of which was all women in prison on 10 May 1994 who were single mothers of children below the age of twelve. Hugo applied for an order to have the act declared unconstitutional on the basis of reverse discrimination on the basis of gender. While the court held that Hugo was in fact discriminated against, said discrimination was not unfair because "he, as a man, was not a member of a group that had previously suffered from discrimination" and that the reality of that time and foreseeable future was that mothers would bear primary child-rearing responsibility. Admittedly, this reinforces certain stereotypes but simultaneously benefited a particular group in a very material way.¹⁶³

In postmodernist terms, feminist legal theorists, in exposing the androcentrism of law,¹⁶⁴ are accused of seeking simply to substitute their truth claims as preferable and better than other truths¹⁶⁵ which still fails to deal with the issue of gender bias. The difference, though, is that the masculine truth claims have greater effect as they are deeply embedded in the system as truth and have the advantage of exercising power in a society that values this particular notion of truth. The value placed on certain notions of truth by a society is such that it can deny the

¹⁶¹ Van Marle, "Feminist Perspectives on Equality and Justice", p. 267.

¹⁶² 1997(6) B.C.L.R. 708 (C.C.).

¹⁶³ The court refined its "test" to determine unfair discrimination by the government in law or executive conduct in *Harksen v Lane*, 1997 (11) B.C.L.R. 1489 (C.C.). First the Court will decide whether there was in fact discrimination/differentiation and then decide whether it was unfair. If unfair, it must then decide whether there was a rational connection between the differentiation and a legitimate government purpose. If the purpose is proved rational, then the differentiation will not have amounted to a breach of the guarantee of equality before the law. Where the purpose is proved irrational, then it will amount to a violation of the guarantee. There are several other subsequent permutations to this test: see Van Marle, "Feminist Perspectives on Equality and Justice", pp. 269-270.

¹⁶⁴ See Nicola Lacey, "An Introduction to the Essays", in Nicola Lacey, *Unspeakable Subjects: Feminist Essays in Legal and Social Theory* (Oxford: Hart Publishing, 1998), p. 7.

¹⁶⁵ See Smart, *The Power of Law*, p. 71. See also Samantha Ashenden, "At the Boundaries of the Political: Feminist Beyond Identity Politics?", *Political Studies Association, Conference Proceedings* (University of Glasgow, 1996), esp. pp. 1856-1857.

possibility of other truth claims¹⁶⁶ and in this case, it is feminist truth claims that are being denied.

Another postmodern critique is the use by some feminists of universalising, totalising theorising thereby reducing all aspects of women's oppression to one or two main factors. This is one of the main criticisms laid against MacKinnon's radical offering on feminist legal theory. She claims that "the fatal error of the legal arm of feminism had been its failure to understand that the mainspring of sex inequality is misogyny and the mainspring of misogyny is sexual sadism".¹⁶⁷ Nevertheless, while her theoretical analysis may appear myopic in reducing women's oppression solely to their sexual objectification by men, her legal strategies for fighting pornography and sexual harassment have had the effect of empowering women (and men).¹⁶⁸ Lacey also notes that "MacKinnon's campaign to have sexual harassment recognised as a legal wrong has been an important and in many ways effective feminist strategy".¹⁶⁹

While closing the gap between formal rights and substantive rights within such a conceptual framework poses a problem many feminists believe that formal legal equality is no longer much of an issue. These feminists remain concerned that it does not give rise to the substantive equality that women need to reflect the reality of their life experiences. However, Kingdom makes a fourfold argument on the issue of rights for women.¹⁷⁰ Firstly, despite the disenchantment and scepticism born out of equality legislation, equal rights must be sustained. Poor legislative drafting or sexist judiciaries need to be continuously battled against with pressure for legislative reform, better enforcement and public awareness campaigns. Secondly, there are those feminists who believe in putting their efforts into extra-legal strategies which they

¹⁶⁶ See Smart, *The Power of Law*, pp. 9 and 11 borrowing from Foucault's notion of truth.

¹⁶⁷ Catharine A. MacKinnon, "Introduction: The Art of the Impossible", in Catharine A. MacKinnon, *Feminism Unmodified: Discourses on Life and Law* (Cambridge: Harvard University Press, 1987), p. 5.

¹⁶⁸ Lacey, "Closure and Critique in Feminist Jurisprudence", p. 180.

¹⁶⁹ Lacey, "Closure and Critique in Feminist Jurisprudence", p. 180.

¹⁷⁰ See Elizabeth Kingdom, *What's Wrong With Rights? Problems for Feminist Politics of Law* (Edinburgh: Edinburgh University Press, 1991), pp. 120-121.

believe are not tainted by male power, such as the establishment of rape crisis centers. Thirdly, while the gap between formal legal equality and substantive equality is not disputed, law should not be read as gender neutral; however, "it is important to distinguish between the law and the effects of law and legal processes in order to identify the contradictions which allow space for change".¹⁷¹ Fourthly, supporters of special rights see the answer in the redefinition of the moral principle of gender equality in a manner which combines equal rights and special rights and which must be translated into law.

Notwithstanding criticisms of feminist legal theory (and there are more), feminist legal theory offers a glimmer of hope yet. To quote Smart,

"The idea of a feminist jurisprudence is tantalizing in that it appears to hold out the promise of a fully integrated theoretical framework and political practice which will be transformative, unlike the partial or liberal measures of the past which have merely ameliorated or mollified women's oppression (e.g. equal pay legislation). It promises a general theory of law which has practical applications. Because it appears to offer the combination of theory and practice, and because it will be grounded in women's experience, the ideal of a feminist jurisprudence appears to be a way out of the impasse of liberal feminist theories of law reform... While it is the case that law does not hold the key to unlock patriarchy, it provides a forum for articulating alternative visions and accounts."¹⁷²

Having acknowledged that the law is part of the structure that maintains the power of men and restricts women from fully enjoying their fundamental rights including that of gender equality, it is important for women not only to expose the male bias in the law but also to use that exposure to ensure the reconstruction of the law in a manner that will lead to gender equality. It is important therefore to use a combined theoretical approach, relying on both feminist legal theory as well as critical theory to uncover inherent biases as a means of offering hope to women in accessing and securing rights. Feminist legal theory is very much aligned with the goal of critical theory, which is to question historically given truths and to expose the inherent biases lying therein as a

¹⁷¹ Quoting Smart and Brophy in Kingdom, *What's Wrong With Rights?* p. 120.

¹⁷² Smart, *The Power of Law*, pp. 66 and 88.

means for self-advancement; it is for this reason important that the theoretical approach be combined to discuss the possibility of women gaining greater access to the rights that are theirs.

2.4 Critical Theory and Feminism

Figure 2.1 “Knowledge is Paralyzing”¹⁷³



The underlying purpose of this thesis is to critically assess the efficacy of law as a tool to achieve gender equality and to address the problem of domestic violence. This necessarily requires that the male centred nature of law, with reference to the human rights of women and in particular those just mentioned, be interrogated. Critical theory, together with feminist legal theory, is useful in the examination of these issues, as it can be used as a means of critiquing and then ‘rescuing’ the idea of human rights in favour of women by exposing its biased normative assumptions and politicised knowledge claims. Benhabib very nicely states the key role of the feminist critical theorist by acknowledging that,

the historically known gender-sex systems have contributed to the oppression and exploitation of women. The task of the feminist critical theorist is to uncover this fact, and to develop a theory that is emancipatory and reflective, and which can aid women in their struggles to overcome oppression and exploitation.¹⁷⁴

¹⁷³ Musings of a wise-beyond-his-years six year old fictional character, Calvin, to his stuffed toy and constant companion, Hobbes. Reproduced from Bill Watterson, *There's Treasure Everywhere* (London: Time Warner Paperbacks, 1996; reprinted 2002), p. 17. Emphasis added.

¹⁷⁴ Seyla Benhabib, “The Generalized and the Concrete Other”, in Seyla Benhabib, *Situating the Self: Gender, Community and Postmodernism in Contemporary Ethics* (Oxford: Polity Press, 1992), p. 152.

Theorising, however, is not enough. Feminist theory must translate into feminist politics/practice/activism for it to positively affect women's lives. Naples cites, as an example, the "development and expansion of battered women's shelters and rape crisis centers" as testimony to the success of feminist political activism.¹⁷⁵ This holds true for Trinidad and Tobago as well, as shelters were established and many groups dedicated to dealing with the problem of domestic violence became operational during the 1980s and 1990s when feminist political activism gained currency. According to Naples, battered women's shelters and rape crisis centres provide a site for organised public advocacy, community education, and crisis intervention on behalf of battered women. They also provide a place where incest survivors, rape victims and children, and other abuse survivors find political allies and support services. Without feminist activism, therefore, these services would not be available to those in need.

In a study on the women's movement in India, Menon makes the point that "there is no alternative to political activism, *equality cannot be legislated into existence*".¹⁷⁶ A case study of Trinidad and Tobago illustrates exactly this point: without feminist intervention, changes cannot be effected. Even with legislative victories, enforcement and implementation require further effort from the ground level. Clauses promoting equality do not always have the intended automatic effect. The struggle, unfortunately, does not end at legislative reform, but must continue on to ensure that such changes are made effective taking into account the situated and lived realities for those whom such changes are meant to benefit. Feminist activism is crucial in this regard to ensure real change at all levels.

Critical theorists emphasise the intimate relationship between theory and practice/praxis. This is appealing to feminists who seek to employ feminist theory in the service of advancing feminist

¹⁷⁵ Nancy Naples, "The Challenges and Possibilities of Transnational Feminist Praxis", in N. Naples and M. Desai (eds), *Women's Activism and Globalization: Linking Local Struggles and Transnational Politics* (New York: Routledge, 2002), p. 274.

¹⁷⁶ Nivedita Menon, "Introduction", in Nivedita Menon (ed), *Gender and Politics in India* (New Delhi: Oxford University Press, 1999), p. 29. Emphasis added.

political goals 'on the ground' so to speak. Theory is more than critique; it serves specific interests in concrete political struggles. Moreover, theory is not merely an abstract activity carried out by 'ivory tower' academics, but is forged in and through practice. Thus, in understanding the emancipatory potential of law, one has to look at what activists have done with it. That is to say, it is necessary to interrogate the way in which activists at the UN, or on the ground in Trinidad and Tobago, have used legal discourse and legal instruments to effect political and social change. There might be emancipatory potential in legal discourses and instruments even if they were indeed originally the 'tools of the master'.¹⁷⁷

Linklater identifies what he considers to be the achievements of critical theory. The first, and most important, deals with the political nature of knowledge claims given that "knowledge does not arise from the subject's neutral engagement with an objective reality but reflects pre-existing social purposes and interests".¹⁷⁸ Critical theory further refutes the positivist claim that statements of fact are only valid when grounded in experience; however, the perspective of the researcher contains "blind spots, tacit presuppositions, and prejudgements of which the [researcher] is unaware".¹⁷⁹ "Because cognition is always theoretically mediated," says Hawkesworth, "the world captured in human knowledge and designated "empirical" is itself theoretically constituted".¹⁸⁰ It is within this framework that legal and human rights discourses have been conceptualised not acknowledging the inherently androcentric claims purporting to be universal.

¹⁷⁷ See Ackerly, "Women's Human Rights Activists as Cross Cultural Theorists". The crucial role of feminist practice at both the international and national levels will be further explored later in the thesis.

¹⁷⁸ Andrew Linklater, "The Achievements of Critical Theory", in Steve Smith *et al* (eds), *International Theory: Positivism and Beyond* (Cambridge: Cambridge University Press, 2002), p. 279

¹⁷⁹ Mary Hawkesworth, "Knowers, Knowing, Known: Feminist Theory and Claims of Truth", in Micheline Malson *et al* (eds), *Feminist Theory in Practice and Process* (Chicago: University of Chicago Press, 1989), p. 348.

¹⁸⁰ Hawkesworth, "Knowers, Knowing, Known", p. 343.

This critique of knowledge holds great implications for the notion of rights. The traditional representation of rights in the various discourses, most notably liberalism, is identified with rights applicable to men as 'citizens', as only 'citizens' could be the valid holder of rights. Rights as applied to men then become unproblematically 'human' with no regard given to women's specificities or their original exclusion. While there have been Marxist and cultural relativist critiques of the liberal notion of rights, for example, this was still done from the perspectives of men. It was only with feminist intervention that the male biases in knowledge construction, such as the construction of human rights discourses, have been exposed and illustrated women's exclusion. According to Benhabib's definition above, task number one - uncovering biases - is complete.

Critical theory, like other theories, does not present one unified position but has certain common ideological assumptions, among which include the ideas of reflection, societal transformation and emancipation of the individual. It is not simply about reproducing society, but understanding the oppressive nature of social structures and seeking to overcome and transform them. According to Hoffman, critical theory is "not merely an expression of the concrete realities of the historical situation, but also a force for change within those conditions".¹⁸¹ Given that critical theory is politically and ethically driven by an interest in social and political transformation, critical theory is most certainly not neutral.¹⁸² Devetak asserts that "[i]t criticizes and debunks theories that legitimise the prevailing order and affirms progressive alternatives that promote emancipation".¹⁸³ Linklater notes that the concept of emancipation distinguishes Marxist critical theory from postmodernist critical theory.¹⁸⁴

¹⁸¹ Mark Hoffman, "Critical Theory and the Inter-Paradigm Debate", *Millennium: Journal of International Studies*, 16:2 (1987), p. 233. Emphasis in the original.

¹⁸² Richard Devetak, "Critical Theory", in Scott Burchill *et al*, *Theories of International Relations* (Hampshire: Palgrave, 2001), p. 161.

¹⁸³ Devetak, "Critical Theory", pp. 161-162.

¹⁸⁴ Linklater, "The Achievements of Critical Theory", p. 279.

While knowledge can indeed have a paralytic and overwhelming effect for some as noted above, critical theorists view knowledge as a means of empowerment and ultimately as a means of liberation. Critical theorists believe that knowledge is historically rooted and interest bound but its emancipatory project envisages independent and critical thinking by individuals to understand hegemonic discourses, criticise them and eventually overcome them in their struggle to free themselves from the oppressive and subordinating nature of such discourses. This is important, as emancipation must have the effect of both freeing *and* enfranchising its former prisoners.¹⁸⁵ The goal here reflects the emancipatory intent of feminism. It is not simply about critiquing rights and remaining content with the menu of rights currently available to women (such as the right to vote), but expanding the content of substantive rights to address areas that were previously invisible, such as domestic violence. This is recognised at the international level as well, as evidenced by Recommendation 19 of 1992 on the UN Convention on the Elimination of All Forms of Discrimination Against Women. However, implementation of measures geared towards the expansion of the content of substantive rights, such as dealing with domestic violence, is met with difficulty, particularly in the national environment. Trinidad and Tobago is a case in point, the main issue being deeply culturally entrenched notions of masculinity and the difficulties of overcoming the need to exhibit machismo, one such exhibition being spousal abuse despite laws criminalising such behaviour.

Can rights as an issue then ever be deemed objective? Popper says that “the *objectivity* of scientific statements lies in the fact that they can be *inter-subjectively* tested.”¹⁸⁶ The problem with objectivity borne of an intersubjectively achieved consensus is that the ‘intersubjectivity’ is

¹⁸⁵ See Christopher Broniak, “What is Emancipation for Habermas?”, *Philosophy Today*, 32:3 (Fall 1988), pp. 195 and 200. According to Broniak, Kant’s revolutionary theory frees the self, but leaves it disenfranchised, “deprived of something worthwhile about the previously submissive relationship”, therefore falling short of the Habermasian concept of emancipation. See p. 200.

¹⁸⁶ Karl Popper, *The Logic of Scientific Discovery* (London: Routledge, 2002), p. 22. Emphasis in the original. He defines inter-subjective testing as the “idea of mutual rational control by critical discussion”.

often exclusionary.¹⁸⁷ Take human rights discourses for example. These discourses are espoused by men for men which then parade as ‘human’; there is no input by those who are most adversely affected, thereby taking away from the truly intersubjective nature of the discourse. Women have historically been excluded on the basis intellectual inferiority and relegation to the “private” sphere. Their relegation to the private side of the divide has meant that their concerns have had no place in discourses that take place in the public sphere. Women’s inability to access spaces where debates take place, such as at the UN, further compounds their exclusion. Even though in Trinidad and Tobago women may have some government representatives in the form of Members of Parliament, this does not guarantee that their concerns will be given priority, as economic development is at the top of the government agenda and government is overwhelmingly masculine in number and in the concerns that receive greatest attention. Unsurprisingly, female Ministers of Parliament have been relegated to ministries dealing with what are perceived to be non-economic aspects of development, such as women’s affairs, culture, education and the environment.¹⁸⁸ Unfortunately, as long as the majority, or a powerful elite (in this case, men), holds an idea to be true,¹⁸⁹ then it must be so as the powerless (in this case, women) are generally voiceless and/or lack the intellectual means to know otherwise – this is how hegemonic discourses gain currency and maintain their grip as objective and as “the truth”.

¹⁸⁷ See Nancy Fraser, “What’s Critical About Critical Theory? The Case of Habermas and Gender”, in Nancy Tuana and Rosemarie Tong (eds), *Feminism and Philosophy: Essential Reading in Theory, Reinterpretation, and Application* (Colorado: Westview Press, 1995), p. 275.

¹⁸⁸ On the issue of structural and cultural impediments to upward mobility in the public service for women in a postcolonial society, see, for example, Ann Marie Bissessar, “Determinants of Gender Mobility in the Public Service of Trinidad and Tobago”, *Public Personnel Management*, 28:3 (Fall 1999), pp. 409-422.

¹⁸⁹ See M. Korthals, “The Philosophical Foundation of the Social Sciences in the Theory of Jürgen Habermas”, *Philosophy of the Social Sciences*, 18:1 (March 1988), p. 69. Korthals makes the point that under Habermasian conditions, actors “claim that their propositions about the objective world of things and events are true; ...that their normative statements belonging to the social world of norms are right, and ...that their expressions, which belong to their own subjective world of feelings, are authentic”. Couple this with the ability of powerful groups to espouse this as the truth and the difficulties of seeing beyond this become evident.

A similar position is held concerning legal scholarship. It is said that critical theory, in particular the Frankfurt School, has had little influence on legal scholarship;¹⁹⁰ however, it is agreed that legal discourse, as with all other discourses, is the result of power relationships in society. "Law exists to support the interests of the party or class that forms it and is merely a collection of beliefs and prejudices that legitimise the injustices of society. The wealthy and the powerful use law as an instrument for oppression in order to maintain their place in hierarchy."¹⁹¹ The exclusionary and biased character of law cannot be denied and is pertinent to both domestic law as well as international law. This has implications for all minority, voiceless groups and it will be shown later on, with particular reference to women, how human rights legal discourse privileges men as the advocates of said discourse and take into very little consideration the needs of women. For human rights discourses, a critical reflection on the subject of human rights would include women and examine their marginalisation from the discourse as it currently obtains. It can very easily be argued that human rights discourse is an exemplary case of a skewed power relationship - espoused by men, for men. This is not surprising, as discourses are merely "efforts to provide reasons or justifications for any kinds of knowledge claims"¹⁹² and generally tend to be biased.¹⁹³

On a more general level, post-modernists attack critical theory's project of emancipation as being "logocentric"¹⁹⁴ and humanist, [they] criticize its emphasis on the societal totality at the expense of *le quotidien* (the local or daily life), and consider the critical theorist's search for truth

¹⁹⁰ See David Kennedy, "Critical Theory, Structuralism and Contemporary Legal Scholarship", *New England Law Review*, 21:2 (1985-1986), p. 244-248.

¹⁹¹ Legal Information Institute [online], "Critical Legal Studies: An Overview". [cited 08 February 2005]. Available from Internet: http://www.law.cornell.edu/topics/critical_theory.html.

¹⁹² Fred R. Dallmayr, "Critical Theory Criticized: Habermas's *Knowledge and Human Interests* and its Aftermath", *Philosophy of the Social Sciences*, 2:3 (Sept 1972), p. 212.

¹⁹³ See Chapter three below on Grotius' contribution to the development of international maritime law and the conditions under which this was born.

¹⁹⁴ An adjective used to describe systems of thought that claim legitimacy by reference to external, universally truthful propositions. Pauline Rosenau, *Post-Modernism and the Social Sciences: Insights, Inroads and Intrusions* (Princeton: Princeton University Press, 1992), p. xii.

to be naïve".¹⁹⁵ Critical theorists' immediate rebuttal is that post-modernism's need for deconstruction¹⁹⁶ is *destructive*, as it does not *construct* knowledge, to which post-modernists argue that they never made any pretence to theory building.¹⁹⁷ Nevertheless, it must be borne in mind that theories produced in the social sciences will always be less than perfect compared to theories of the natural sciences which can be tested.¹⁹⁸ In any event, critical theory offers a space to feminists to explore male biases in the law and then rescue the notion of rights to include women as well.

2.5 Conclusion

A common link in the different manifestations of feminist theorising is that of gender equality and reasons for women's subordination. Feminist legal theory, one such manifestation, is significant because the law represents a major component of the social fabric and an underlying mechanism for attaining gender equality. Not only is the law important at the national level, but also at the international level, as international law is seen as the primary mechanism for ensuring that States comply with their global pronouncements. The application of feminist legal theory, therefore, to the domestic legal regime of Trinidad and Tobago exposes the gender bias

¹⁹⁵ Rosenau, *Post-Modernism and the Social Sciences*, p. 14.

¹⁹⁶ A post-modern method of analysis. Deconstruction tears apart a text, reveals its contradictions and assumptions but is never meant to provide an alternative. See Rosenau, *Post-Modernism and the Social Sciences*, p. xi. Deconstructionism is directed to the interrogation of texts. It involves the attempt to take apart and expose the underlying meanings, biases, and preconceptions that structure the way a text conceptualizes its relation to what it describes. This requires that traditional concepts, theory, and understanding surrounding a text be unraveled... Norman Denzin, "Postmodernism and Deconstructionism", in David Dickens and Andrea Fontana (eds), *Postmodernism and Social Inquiry* (London: University College of London Press, 1994), p. 185.

¹⁹⁷ Rosenau, *Post-Modernism and the Social Sciences*, p. 123.

¹⁹⁸ Although, even Einstein's theory of relatively is under threat of being falsified. A group of Australian scientists have discovered that one of the constants in the ever famous formula $E = mc^2$ is no longer constant and therefore affects the accuracy of the formula. They contend that the speed of light - c - is in fact slowing down, which undermines Einstein's theory. Imagine the consequences for the natural sciences should it be falsified... See Reuters [online], "Einstein's Theory May Be Relatively Wrong", 08 August 2002. [cited 13 September 2004]. Available from the Internet: <http://edition.cnn.com/2002/WORLD/asiapcf/auspac/08/07/australia.lightsspeed/>

in the law while illustrating how legal principles might be employed towards the attainment of gender equality.

Critical theory provides a space for women to understand and overcome the oppression they face through their own struggles. The difficulties experienced by the international community to forge effective legal instruments that promote gender equality, where such legal instruments are negotiated to have States accept the obligations contained therein, and to introduce same in domestic legal systems, continue to resonate in debates at the international level. Even when nations accept certain international instruments that promote gender equality, such states have to be constantly reminded to meet their international legal obligations.

It is within this combined feminist, legal and critical theoretical framework that the information presented in the rest of this thesis will be couched. The analysis above clearly illustrates the male bias intrinsic to legal discourses generally as well as specifically as applied to women in the rights debate. This is further exacerbated by the ability of the powerful to espouse their truth claims as knowledge and Truth, making it difficult for alternative versions to gain currency.

Chapter three will examine the machinations of male bias at the international level, with particular reference to international law, international relations and international human rights discourses and the consequent marginalisation of women. This is important as the effectiveness of the “top-down”¹⁹⁹ approach in dealing with human rights for women must be properly scrutinised. The real issue to be determined is the effectiveness of the international community as an agent of change with respect to gender equality, particularly in the context of developing countries that dominate the international stage from a numerical standpoint and where gender equality is largely subjected to the whims and fancies of the male elite. Power and knowledge

¹⁹⁹ The “top-down” approach refers to the method of changing behaviour at the national level through international persuasion either by law, policy or custom.

reside in the male elite and therefore it is not in its interest to voluntarily subscribe to a view that would promote the interest of the non-elite, women.

CHAPTER THREE

3.0 The Androcentrism of International Law and Human Rights

Law is a social phenomenon. It has grown into an essential principle of social organisation in Western civilisations as a result of the historicity of those societies.²⁰⁰ Law functions as the formal machinery for creating and maintaining social order, as seen in the Western world and is often perceived as an instrument to effect change. The plight of women with respect to their fundamental rights is almost universal in nature and therefore it is hardly surprising that there are calls for the issue to be addressed at the international level. This “top-down” approach has many supporters as it is commonly felt that the near global phenomenon of gender inequality can only be resolved by a common approach implemented across state borders. Important, therefore, is an assessment of the effectiveness of international law as an instrument to effect change in the context of women’s rights.

An examination of the relationship between international law and gender will provide the basis for the argument that international law on many occasions fails to contemplate a gender perspective and, even when this is done, the effectiveness of the legal regime is called into question. This aside, issues of sovereignty would suggest that exclusive reliance on international law to effect change is perhaps ill-advised and would explain why women’s issues in particular are not universally or fully implemented with alacrity, or even at all. This chapter, therefore, will analyse the development of international law, expose its male nature and discuss the manner in which the international rights discourse has developed in this regard fundamentally privileging men. The chapter goes on to examine the ‘reinvention’ of international

²⁰⁰ Surya Prakash Sinha, *What is Law?: The Differing Theories of Jurisprudence* (New York: Paragon House, 1989), p. 218.

law by feminists in an attempt to carve a place for women's rights as a real issue at this level. Legal initiatives designed specifically for the promotion of gender equality and protection for women against domestic violence at the level of the United Nations are assessed and so too are a couple of non-gender specific conventions with the potential to enhance women's rights. An examination of the feminist work in international relations towards the end of the chapter further points to the heavily gendered nature of international relations, and consequently, international law.

3.1 The Development of International Law

International law seeks to maintain order and facilitate relations between states, as well as non-state actors, in areas, *inter alia*, such as trade, travel and communication. International law may be defined as that body of law which is composed for its greater part of the principles and rules of conduct which states feel themselves bound to observe, and therefore, do commonly observe in their relations with each other and includes international organisations and other non-state actors.²⁰¹ Bentham has been attributed with having coined the term "international law" in the 1780s.²⁰² In the absence of an international legislative body for creating laws, international law is drawn from a variety of sources. Article 38(1) of the Statute of the International Court of Justice states that the sources of international law are:

- a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
- b) international custom, as evidence of a general practice accepted as law;
- c) the general principles of law recognized by civilized nations;
- d) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.²⁰³

²⁰¹ I. Shearer, *Starke's International Law* (London: Butterworths, 1994), p. 3.

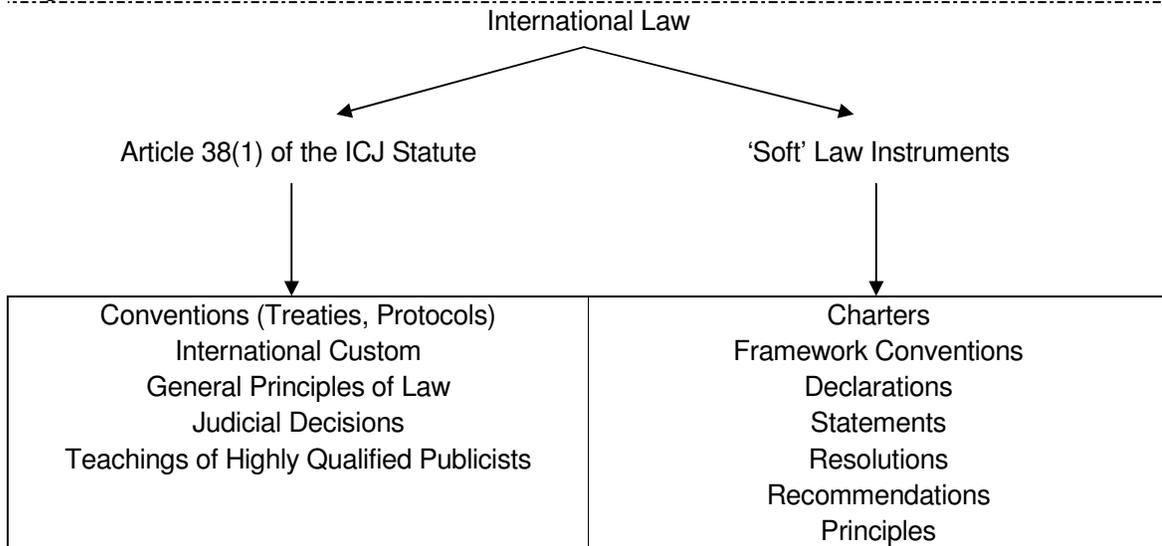
²⁰² See Malcolm Shaw, *International Law* (Cambridge: Cambridge University Press, 1997), p. 1.

²⁰³ International Court of Justice [online], "Statute of the International Court of Justice". [cited 18 October 2004].

Available from Internet: <http://www.icj-cij.org/icjwww/ibasicdocuments/Basetext/istatute.htm>

Other sources include United Nations General Assembly Resolutions, the International Law Commission, other United Nations bodies and “soft law” which consists of non-legally binding instruments.

Figure 3.1 Sources of International Law



It follows that, unlike domestic law, international law does not embrace such a formal organisational structure for the regulation of international affairs and it has taken on a largely “soft law” approach,²⁰⁴ even more so on “softer” issues such as international trade, protection of the environment and the promotion of human rights, within which are to be found issues affecting women and children, highlighting their marginalisation and exclusion from issues deemed worthy of regulation. Given the economic, political, social and cultural differences of international society, it is difficult to secure consensus on new rules. What soft law does is to provide a type of half-measure in the law-making process on the international level. It can be described as “law in the process of making. It is nascent, incipient, or potential law.”²⁰⁵

According to Birnie and Boyle, it may take the form of “codes of practice, recommendations,

²⁰⁴ For an exposition on the differences of “hard law” and “soft law” in international law, see W. Abbott and D. Snidal, “Hard and Soft Law in International Governance”, *International Organization*, 54:3 (Summer 2000), pp. 421-456.

²⁰⁵ Foo Kim Boon, “The Rio Declaration and its Influence on International Environmental Law”, *Singapore Journal of Legal Studies*, (1992), p. 350.

guidelines, resolutions, declarations of principles, standards, and so called 'framework' or 'umbrella' treaties which do not fit neatly into the categories of legal sources referred to in Article 38(1)(c) of the ICJ Statute".²⁰⁶ While critics may argue that the term is inadequate and misleading, its flexibility allows for overcoming deadlocks thereby facilitating consensus among states pursuing conflicting goals.²⁰⁷

The very legality of international law is constantly questioned, as it is near impossible to enforce laws in a realist anarchic framework and was dubbed a "positive morality" by John Austin.²⁰⁸ This is compounded by the fact that international law is not structured in the same manner as domestic law as it does not have a legislative body to enact laws, no judges to apply them in particular disputes and limited power to compel obedience.²⁰⁹ Akashi states that from a Hobbesian theoretical perspective, because there is "no common sovereign, nor legislative body, [that] exists among nations, there is no law in this sense applied to international relations".²¹⁰

Despite these difficulties, and the view of international law as merely "an aesthetic achievement",²¹¹ international law continues to grow in importance in international relations. The reasons for its importance are threefold, according to Savage.²¹² International law has grown in practice through the creation of new agreements and conventions for the prosecution of 'war criminals'; developments in international relations have led to a renewal of interest in

²⁰⁶ See Patricia Birnie and Alan Boyle, *International Law and the Environment* (Oxford: Clarendon Press, 1992), pp. 27-30.

²⁰⁷ See D.J. Harris, *Cases and Materials on International Law* (London: Sweet & Maxwell, 1998), p. 65.

²⁰⁸ Shaw, *International Law*, p. 3.

²⁰⁹ Terry Nardin, "International pluralism and the rule of law", *Review of International Studies*, 26 (2000), p. 103 and see Shaw, *International Law*, p. 3.

²¹⁰ Kinji Akashi, "Hobbes' Relevance to the Modern Law of Nations", *Journal of the History of International Law*, 2 (2000), p. 200.

²¹¹ Anthony Carty, "Critical International Law: Recent Trends in the Theory of International Law", *European Journal of International Law*, 2 (1999), p. 1.

²¹² See Michael Savage, "The Juridification of International Law: Sovereignty and International Legal Theory", *Political Studies Association*, Conference Proceedings, (University of Nottingham, 1999), p. 2.

normative issues (such as sovereignty, statehood, human rights practices) and international law is regarded as a mechanism for the incorporation of these concerns in the practices of international politics; and, international law is gaining currency as it is linked to wider developments in legal thinking which includes, very broadly, jurisprudence and discussions of law at a national and political level. Its mounting value is also derived from the fact that “actors” in international law are no longer restricted to “the state”, but include other actors such as NGOs. A tool for promoting progressive social policies,²¹³ international law can be used in reliance on the persuasive nature of norms to promote better state practices, such as human rights practices.²¹⁴

Having defined international law and reviewed its growing importance, it is useful to examine the development of international law to illustrate the inherent gender bias contained therein as a subject of international relations.

3.2 The Male Nature of International Law

International law as is known today was born in the era of Enlightenment, the age of reason, which emphasised positivist philosophy. It highlighted the importance of scientific inquiry, reason, empiricism and value-neutral research, allegedly objective traits associated with men and masculinity.²¹⁵ International law, then, was based on observable phenomena of what actually took place between states and their relations with one another. However, in its earliest

²¹³ Savage, “The Juridification of International Law”, p. 4.

²¹⁴ The work by Risse, Ropp and Sikkink (eds), *The Power of Human Rights: International Norms and Domestic Change* is important in understanding the way in which the power of international norms can alter the domestic behaviour of states, especially when reinforced by NGO activism. See also Risse and Sikkink, “The Socialization of International Human Rights Norms”.

²¹⁵ Theorists of this era were concerned with men being able to control and dominate nature, which, not surprisingly, was given female characteristics.

formulations, international law adopted a somewhat more natural law approach which emphasised the importance of morality, justice and reason.

Modern international law, nevertheless, emerged within the philosophical framework of early Christian principles which would explain the emphasis on morality. The leading thinkers of modern international law were either theologians or Western scholars coming from civilisations dominated by Christian principles. Christianity, as contained in the teachings of Christ and his disciples, contained clear elements of male supremacy. While it is acknowledged that Christ had strong female support from followers such as Mary Magdalene, the traditionalists note that there were no female disciples. Indeed, Paul, who has been associated with the phenomenal growth of the early Christian movement, said “[l]et your women keep silent in the churches, for they are not permitted to speak; but they are to be *submissive*, as the *law* also says”.²¹⁶

Hugo Grotius, Dutch theologian and lawyer, is hailed as the father of modern public international law, although this is disputed by some, including those loyal to jurists such as Gentili.²¹⁷ His writings in the early seventeenth century on the law of nations as he understood it is very heavily reliant on his theosophical beliefs and consequently, of a highly moral nature. Grotius was committed to the pursuit of peace and felt that this was only attainable through consensus. In order to achieve consensus, Grotius believed that Christian doctrine would have to be reduced to its barest minimum so as to minimise the potential for conflict.²¹⁸ Once there is nothing over which Christians could argue about, there would be consensus, which would lead to peace. Despite Grotius’ heavy leaning on theology and his belief that high levels of individual morality and reason could function to keep society regulated, (and by extension states, as states are made up of individuals), it is claimed by many writers that he removed the concept of

²¹⁶ 1 Corinthians 14:34. Emphasis added.

²¹⁷ See Gesina van der Molen, *Alberico Gentili and the Development of International Law: His Life, Work and Times* (Leyden: A. W. Sijthoff Uitgeversmaatschappij, 1968), p. 197.

²¹⁸ See Jeremy Thomas, “The Intertwining of Law and Theology in the Writings of Grotius”, *Journal of the History of International Law* 1, (1999), pp. 63-64.

natural law, or divine law,²¹⁹ from theology making the idea of international law a purely positivist conception.

Grotius' contribution to the development of international law is best reflected in his first major work, *Mare liberum*, which advocated the freedom of the high seas.²²⁰ He was writing at a time when, according to Shaw, "this theory happened to accord rather nicely with prevailing Dutch ideas as to free trade and the needs of an expanding commercial empire".²²¹ This immediately brings to mind Cox's famous statement that "theory is always *for* someone and *for* some purpose"²²² and always rooted in socio-political spatial and temporal contexts.²²³ In this work, Grotius espouses the complete free use of the high seas for the benefit of mankind; he explains the relationship between natural, divine and international law; he states that natural law forms part of a higher law and that international law was subject to it; and claims that international law applied to all nations, even the nations of the East despite the fact that East Indians were "sunk in grievous sin" because they practised idolatry.²²⁴

Like many juristic writers of this era, Vattel saw one of the primary functions of the Law of Nations as promoting peace and limiting wartime hostilities without prejudice to a nation's own real interests.²²⁵ An 18th century Swiss lawyer, his work on the law of nations practically

²¹⁹ See Shaw, *International Law*, pp. 20-21.

²²⁰ This is also claimed to be based primarily on the work of Gentili. See van der Molen, *Alberico Gentili and the Development of International Law*.

²²¹ Shaw, *International Law*, 21.

²²² Robert Cox, "Social forces, state and world orders: beyond international relations theory", in Richard Little and Michael Smith (eds), *Perspectives on World Politics: A Reader* (London: Routledge, 1981), p. 444.

²²³ Foucault also makes the point that "Discourse and system produce each other...". Michel Foucault, *The Archaeology of Knowledge* (London: Routledge, 2002), p. 85. Once the discourse is espoused and accepted as true, it becomes institutionalised and they continue to produce and reinforce each other.

²²⁴ See Thomas, "The Intertwining of Law and Theology in the Writings of Grotius", pp. 97-98.

²²⁵ Emmerich de Vattel, *The Law of Nations or Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns*, translated and edited Joseph Chitty (London: Law Booksellers and Publishers, 1834), p. lv.

combined aspects of both positivism and naturalism.²²⁶ He defined the Law of Nations as “the science which teaches the rights subsisting between nations or states, and the obligations correspondent to those rights”.²²⁷ Vattel was able to clearly delineate two integral aspects of international law. These are natural or necessary law and positive or secondary law. It may be said that natural law provides the standard for measuring the moral rightness of positive law.²²⁸ According to Vattel, “the necessary law of nations consists in the application of the law of nature [derived from God and conscience] to states, - which law is immutable, as being founded on the nature of things, and particularly on the nature of man...”.²²⁹ Like Grotius, he believed that the “law [of nations] is not less obligatory [to states] than on individuals, since states are composed of men...”²³⁰ Positive law comprised three features: voluntary, conventional and customary, features which have persisted in contemporary international law. According to Vattel, they all stem from the will of nations – the voluntary from their presumed consent; the conventional, or treaty law, from their express consent and the customary from their tacit consent,²³¹ important features of current day international law. He also advocated for the equality of nations. “A dwarf is as much a man as a giant; a small republic is no less a sovereign state than the most powerful kingdom”.²³²

Having demonstrated the male bias in the emerging field of international law as predicated on Christian dogma, the next section explores the subsequent transformation of international law in the Renaissance period with respect to discussions on the notion of rights. It is therefore critical to understand whether the examination of rights as part of the development of international law also contemplated the specific issue of women’s rights and, in particular, the right to equality.

²²⁶ Shaw, *International Law*, p. 23.

²²⁷ de Vattel, *The Law of Nations*, p. lv.

²²⁸ Nardin, “International pluralism and the rule of law”, p. 98.

²²⁹ de Vattel, *The Law of Nations*, p. lviii.

²³⁰ de Vattel, *The Law of Nations*, p. lviii.

²³¹ See de Vattel, *The Law of Nations*, pp. lxii-lxvi.

²³² de Vattel, *The Law of Nations*, p. lxii.

3.3 International Law and Rights

Rights as a concept has existed for millennia. Interestingly, from its earliest inception, the right of the citizen, which assumed a set of universal ideals such as freedom, equality and liberty,²³³ has always referred to the rights of man and not of women. The notion of citizenship emerged in the classical Greek era in the time of Aristotle. According to Aristotle, citizenship can only be bestowed on a property-owning individual very active in political life. This necessarily excluded women, children and slaves.²³⁴

3.3.1 States, Sovereignty and International Law

With the Renaissance movement, law took on a more secular character. Positivist thought coincided with the emergence of the modern nation state, the Bodinian and Hobbesian notion of sovereignty and the Peace of Westphalia of 1648, which is held to be a watershed in the history of state relations. Beaulac states that it is portrayed as a historical fact that Westphalia represented a new diplomatic arrangement – an order created by states, for states and that it consecrated the principle of sovereign equality of states which, since then, has been at the core of international law.²³⁵

Autonomy of the nation state is the defining characteristic of realist thought and means that the state has supreme authority. In its relations with other states, a sovereign state is said to exist in an anarchic system, meaning simply that there is no common power over and above the state

²³³ Davina Bhandar, "Citizenship", in Lorraine Code (ed), *Encyclopedia of Feminist Theories* (London: Routledge, 2003), p. 89.

²³⁴ See Code, "Introduction", p. xx.

²³⁵ Stéphane Beaulac, "The Westphalian Legal Orthodoxy – Myth or Reality?", *Journal of the History of International Law*, 2 (2000), pp. 148-149. He goes on to argue, however, that the Peace of Westphalia simply formally institutionalised that which was taking place for over half a century.

to regulate its behaviour and enforce laws.²³⁶ In this state of affairs, power assumed great importance, and by extension, issues of security, and was traditionally measured in terms of military capability. Realists described the situation in existence during the nineteenth century as a balance of power which prevented the dominance of any one state in the international system. The primary aim of the balance of power was not to preserve peace but to preserve the security of states, and if necessary, by means of war.²³⁷ Despite the move towards a more positivistic approach, natural law has re-emerged and plays a very important part of international law, particularly with reference to the idea of natural rights and, by extension, human rights.

Reliance on the realist, reified notion of sovereignty, however, poses great difficulty to the effective implementation and practicality of international human rights law. In this particular regard, Reisman makes a distinction between territorial sovereignty and popular sovereignty where the former term “is used in the jurisprudentially bizarre sense to mean that inanimate territory has political rights that preempt [*sic*] those of its inhabitants”,²³⁸ while the latter puts the needs of the population first.²³⁹ Sikkink correctly notes that “human rights issues offer particularly potent challenges to the central logic of a [realist] system of sovereign states”²⁴⁰ and one of the most powerful critiques of sovereignty.

Social constructivists offer a more accommodating, fluid version of sovereignty which is perhaps better suited to explaining the adoption of better human rights practices in some countries and the possibility of promoting change in the more authoritarian states. In emphasising the

²³⁶ Timothy Dunne, “Realism”, in John Baylis and Steve Smith (eds), *The Globalization of World Politics: An Introduction to International Relations* (New York: Oxford University Press, 1997), p. 115.

²³⁷ Jill Steans and Lloyd Pettiford, *International Relations: Perspectives and Themes* (London: Longman, 2001), pp. 30-31.

²³⁸ W. Michael Reisman, “Sovereignty and Human Rights in Contemporary International Law”, *The American Journal of International Law*, 84:4 (October 1990), p. 871.

²³⁹ Reisman, “Sovereignty and Human Rights”, p. 872.

²⁴⁰ Kathryn Sikkink, “Transnational Politics, International Relations Theory, and Human Rights”, *Political Science and Politics*, 31:3 (Sept. 1998), p. 517. She refers to the classic work of Hedley Bull who speaks of the subversion of the society of sovereign states by the doctrine of human rights and their duties under international law. See Hedley Bull, *The Anarchical Society: A Study of Order in World Politics* (New York: Columbia University Press, 1977), p. 146.

ideational factors that propel change, this view is also helpful in explaining the influences at the state level from above (United Nations), laterally (other states) and below (NGOs) and how international norms, in particular, human rights, impact on domestic politics. Wendt describes sovereignty as “an institution” which “exists only in virtue of certain intersubjective understanding and expectations; there is no sovereignty without an other”.²⁴¹ Sikkink builds on Wendt’s notion of sovereignty and explains it as subject to change according to sociocultural context, a representation of “shared understandings and expectations that are constantly reinforced both through the practices of states and the practices of nonstate actors”.²⁴² The effects of such a fluid perspective of sovereignty means that where there is a change in the intersubjective understandings and practices by states, or what Legro refers to as concordance,²⁴³ that the notion of sovereignty will be subject to change as well. Reisman notes that these shifting boundaries of sovereignty also “change[s] the cast of characters who can violate that sovereignty”²⁴⁴ which is integral to an understanding of human rights issues. This notion of a shifting sovereignty and its implications for international human rights law will be revisited in a later chapter which examines the influences of the UN and NGOs on state practices.²⁴⁵

3.3.2 ‘Universal’ Rights

As noted above, rights discourse has its foundations in natural law concepts which take on a moral rather than positivistic character. It is said that the concept of natural rights in the

²⁴¹ Alexander Wendt, “Anarchy is What States Make of It: The Social Construction of Power Politics”, *International Organization*, 46:2 (Spring 1992), p. 412.

²⁴² Kathryn Sikkink, “Human Rights, Principled Issue-Networks, and Sovereignty in Latin America”, *International Organization*, 47:3 (Summer 1993), p. 412.

²⁴³ See Jeffrey Legro, “Which Norms Matter? Revisiting the “Failure” of Internationalism”, *International Organization*, 51:1 (Winter 1997), p. 35 where he describes ‘concordance’ as how widely accepted the rules are in diplomatic discussions and treaties, or the degree of intersubjective agreement attained.

²⁴⁴ Reisman, “Sovereignty and Human Rights”, p. 869.

²⁴⁵ This still does not deal with the issues of women’s exclusion in international relations or human rights issues.

seventeenth century embodies rights to life, liberty and property and is attributed to Locke.

According to Locke,

“Man [is] born with a title to perfect freedom and an uncontrolled enjoyment of all the rights and privileges of the law of nature, equally with any other man... [and] hath by nature a power...to preserve his property, that is his life, liberty, and estate, against the injuries and attempts of other men...”²⁴⁶

It is, of course, significant to note that Locke talks of “man”, as he is not using the word generically but to denote that any rights holder can only be white European property-owning males, again excluding women, children and non-whites, very similar to the Greek conception of a citizen.

Notions of rights and equality can be found in the Bible. Rights seem to be grounded in the notion of equity such that one could “take life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, bruise for bruise”²⁴⁷ in the event of having been wronged. Locke reflects this sentiment when he says that man has a right to be “judge of and punish the breaches of that law in others, as he is persuaded the offence deserves, even with death itself, in crimes where the heinousness of the fact, in his opinion, requires it”.²⁴⁸ It would also appear that despite the existence and allowance of slavery, there were notions of equality. “There is neither Jew nor Greek, slave nor free, male nor female...”.²⁴⁹ This implies a universality, that as Vincent notes, applies to the kingdom of God, not in that of man.²⁵⁰

Human rights are said to belong to all human beings simply by virtue of their very humanity.

Booth makes a very interesting argument on this definition. He argues that this is an essentialist

²⁴⁶ John Locke, “Second Treatise on Civil Government: An Essay Concerning the True Original, Extent and End of Civil Government” (1690), in Ernest Barker (ed), *Social Contract: Essays by Locke, Hume and Rousseau* (London: Oxford University Press, 1947), p. 71.

²⁴⁷ Exodus 21: 23-25.

²⁴⁸ Locke, “Second Treatise on Civil Government”, p. 71.

²⁴⁹ Galatians 3: 28.

²⁵⁰ R.J. Vincent, *Human Rights and International Relations* (Cambridge: Cambridge University Press, 1986), p. 35.

and tautological construction.²⁵¹ According to him, we have human rights in order to make the species human and not by virtue of our humanity.²⁵² The issue of human rights was officially instituted as an area of international concern following the atrocities of the Second World War when Germany had been able to commit acts of genocide against millions of its own people with little interference by other nations. This prompted the formulation of the United Nations Charter and the establishment of the United Nations Commission on Human Rights as part of the United Nations Economic and Social Council in 1946.²⁵³

The United Nations Declaration of Human Rights was adopted on 10 December 1948 in the form of United Nations General Assembly Resolution 2174 (III), UN Doc A/810.²⁵⁴ It was drafted by the first Director of the United Nations Human Rights Division, a Canadian, John Peters Humphrey, whose main objective was to make the document universal in its application by drawing on sources from many different legal cultures.²⁵⁵ According to Article 1 of the Declaration, "All human beings are born free and equal in dignity and rights...".²⁵⁶ Article 2 goes on to state that everyone is entitled to the rights and freedom as set out in the Declaration without fear or favour. Importantly, article 4 states that everyone has the right to life, liberty and security of person. The work of Eleanor Roosevelt as Chair of the Commission of Human Rights was pivotal not only in the formulation of the Declaration but in ensuring that the gains made on the basis of sex equality were not lost.²⁵⁷ Noteworthy too, with respect to the UN

²⁵¹ Ken Booth, "Three Tyrannies", in Tim Dunne and Nicholas Wheeler (eds), *Human Rights in Global Politics* (Cambridge: Cambridge University Press, 1999), pp. 51-52.

²⁵² Booth, "Three Tyrannies", p. 52.

²⁵³ Vincent, *Human Rights and International Law*, p. 93.

²⁵⁴ Peter Cumper, "Human Rights: History, Development and Classification", in Angela Hegarty and Siobhan Leonard (eds), *Human Rights: An Agenda for the 21st Century* (London: Cavendish Publishing Limited, 1999), p. 5 and footnote 29.

²⁵⁵ Mary Ann Glendon, "John P. Humphrey and the Drafting of the Universal Declaration of Human Rights", *Journal of the History of International Law*, 2 (2000), p. 250. Humphrey's success in making the Declaration a universally applicable document is a source of contention, particularly by non-Western cultures which, *inter alia*, place emphasis on group rights rather than individual rights.

²⁵⁶ United Nations, "United Nations Declaration of Human Rights", in Ian Brownlie (ed), *Basic Documents on Human Rights* (Oxford: Oxford University Press, 1992), p. 22.

²⁵⁷ Much of the conceptual groundwork for the Charter's language on women's rights grew out of the pioneering efforts of the Organisation of American States and its Inter-American Commission on the

Charter, is the fact that women, again, were the driving force behind the inclusion of the sex equality principle. NGOs working under the umbrella of the Inter-American Commission on the Status of Women,²⁵⁸ in particular, Latin American activists from Brazil, the Dominican Republic, and Mexico,²⁵⁹ insisted that the application of human rights and fundamental freedoms be “without distinction as to...sex...”.²⁶⁰ The UN Charter made the first concrete step in moving the issue of rights and human rights into the specific realm of equality of men and women. This is a key moment in history as this represented the first time that women and equality were treated in a gender neutral international legal document.

However, the issue of gender parity creates a problem in dealing with the international law concept of the “subject” of international law. In as much as gender equality is a concern of human rights law, it faces the obstacle posed by the principle that obligations created by international human rights instruments are directed towards the state and it is the state that has obligations towards its nationals and foreign nationals within their territory and under their jurisdiction.²⁶¹ The enforcement and application of human rights instruments by the state is like a double-edged sword, as “the modern state has emerged as both the principal threat to the enjoyment of human rights and the essential institution for their effective implementation and enforcement”.²⁶² In some common law countries (like Trinidad and Tobago), international law instruments are not automatically applicable in its domestic law as they must first be enacted by Parliament and there exists no real mandate to force countries to enact such legislation, in effect

Status of Women. United Nations, *The United Nations and the Advancement of Women 1945-1996* (New York: Department of Public Information, 1996), p. 9.

²⁵⁸ Jane Connors, “NGOs and the Human Rights of Women at the United Nations”, in Peter Willetts (ed), *“The Conscience of the World”: The Influence of Non-Governmental Organisations in the U.N. System* (London: Hurst & Company, 1996), p. 151.

²⁵⁹ Margaret Galey, “Forerunners in Women’s Quest for Partnership”, in Anne Winslow (ed), *Women, Politics and the United Nations* (Westport, Connecticut: Greenwood Press, 1995), p. 7.

²⁶⁰ See Chapter 1, Article 1:3, United Nations Charter, 26 June 1945, entered into force 24 October 1945

²⁶¹ Jack Donnelly, “The Social Construction of International Human Rights”, in Tim Dunne and Nicholas Wheeler (eds), *Human Rights in Global Politics* (Cambridge: Cambridge University Press, 1999), p. 85.

²⁶² Donnelly, “The Social Construction of International Human Rights”, p. 86.

removing the state's obligations towards nationals in its territory and under its jurisdiction.²⁶³ As the Honourable Madame Justice Désirée Bernard, Judge of the Caribbean Court of Justice notes, convention implementation and enforceability present difficulties depending on the relationship between a state's international obligations and its domestic laws.²⁶⁴ She goes on to explain that,

“According to monist theory in international law treaties ratified by a state for the protection of the human person automatically become part of the municipal law of that state. The dualist theory, on the other hand, advocates separation of international law from municipal law, and international obligations of a state are not automatically incorporated into its municipal law which is supreme. For international treaties to be enforceable in the domestic court system of a state they have to be specifically legislated or adopted into the municipal law... In countries where a treaty or convention is not incorporated into the domestic law its enforceability depends in large measure on the integrity and commitment of the particular state in honouring its international obligations and undertakings by enacting the necessary legislation to ensure enforceability in its municipal courts. Most of the countries within the English-speaking Caribbean and which inherited the English common law and systems of government adopted the practice of the United Kingdom which followed the dualist theory; hence in our Region international treaties are not automatically incorporated into domestic law upon ratification, and separate legislation and enactment of statutes are required to ensure enforceability in the municipal courts of the state”.²⁶⁵

²⁶³ See discussions on monism and dualism where monists assert that international law automatically becomes part of domestic law while dualists assert that international law and domestic law are two discrete systems of law. It would appear that dualism is more widespread in countries of the common law tradition. See for example, Alpha Connelly, “Ireland and the European Convention”, in Brice Dickson (ed), *Human Rights and the European Convention: The Effects of the Convention on the United Kingdom and Ireland* (London: Sweet and Maxwell, 1997), pp. 196-197; Justice Michael Kirby [online], “The Growing Rapprochement Between International and National Law”, Essays to honour His Excellency Judge C.J. Weeramantry, 1998. [cited 15 January 2005]. Available from Internet: http://www.hcourt.gov.au/speeches/kirbyj/kirbyj_weeram.htm; Pierre-Marie Dupuy, “Dionisio Anzilotti and the Law of International Responsibility of States”, *European Journal of International Law*, 3 (1992), p. 140; Stephen J. Toope [online], “Inside and Out: The Stories of International Law and Domestic Law”, (n.d.) [cited 15 January 2005]. Available from Internet: http://www.lawsite.ca/LAWJ/CRTToope_e.htm. See also summary of the Convener on Article 4 of the Bangalore Principles which deals with the domestic application of human rights norms in common law jurisdictions. “In most countries whose legal systems are based upon common law, international conventions are not directly enforceable in national courts unless their provisions have been incorporated by legislation into domestic law”. [cited 15 January 2005]. Available from Internet: <http://www.nji.ca/cciaji/Bangalore%20Principles.doc>.

²⁶⁴ Désirée Bernard, “The Promotion and Enforcement of Women’s Human Rights within the Judicial Systems of the Caribbean”, p. 2. Paper presented at the University of the West Indies, Cave Hill, Barbados, 18 November 2005. Also available from http://www.caribbeancourtofjustice.org/papers_addresses.html.

²⁶⁵ Bernard, “The Promotion and Enforcement of Women’s Human Rights within the Judicial Systems of the Caribbean”, pp. 2-3. Guyana, however, provides a conditional exception to the rule as a 2003

This situation creates obvious difficulties, but nevertheless reflects what actually currently obtains in such countries, Trinidad and Tobago included, and the problems inherent in relying exclusively on international law to effect change in such jurisdictions.

Many say that international law has broadened its scope to capture non-state actors and even individuals as subjects of international law. While human rights abuses that take place within a state's borders are directed towards individuals or groups based on ethnicity, religious beliefs or any other status, international law, in a legal positivist sense, cannot treat with such abuses. The reasons for this are twofold. The first is that positivist public international law holds the state as the subject of international law where "the individual was not a proper subject of international law...public international law went to matters affecting states, while private international law²⁶⁶ concerned matters between individuals".²⁶⁷ Vincent puts it quite succinctly, "Individuals and groups other than states have access to this society [the international society] only through the agency of their states; they are objects not subjects of international law".²⁶⁸ This is compounded by the assurance in the United Nations Charter of non-intervention in the domestic affairs of a state.²⁶⁹ Dunne and Wheeler, however, believe that in the post-Cold War era, the United Nations Security Council has found a way around this assurance. The United

constitutional amendment allows for automatic incorporation of human rights provisions of international legal instruments upon ratification.

²⁶⁶ Private international law deals with controversies between private persons, natural or juridical, arising out of situations having significant relationship to more than one nation. Such issues include international judicial and administrative co-operation; conflict of laws for contracts, torts, maintenance obligations, status and protection of children, relations between spouses, wills and estates or trusts; jurisdiction and enforcement of foreign judgments. Recently, the line between public and private international law has become increasingly uncertain, as issues of private international law may also implicate issues of public international law, and many matters of private international law have substantial significance for the international community of nations. See Rajendra Ramlogan and Natalie Persadie, *Commonwealth Caribbean Business Law* (London: Cavendish Publishing Limited, 2004), pp. 22-23 and accompanying notes.

²⁶⁷ A. Claire Cutler, "Critical reflections on the Westphalian assumptions of international law and organization: a crisis of legitimacy", *Review of International Studies*, 27 (2001), p. 140. Quoting Mark Janis.

²⁶⁸ Vincent, *Human Rights and International Relations*, p. 113.

²⁶⁹ See Chapter 1, Article 2:7, United Nations Charter.

Nation Security Council has revised its definition of human rights abuses and humanitarian concerns which are now viewed “as a threat to ‘international peace and security’ thereby legitimising coercive intervention under Chapter VII of the UN Charter”.²⁷⁰

This strict interpretation notwithstanding, optional protocols to some human rights conventions do allow for sub-state agency (individuals, groups). Under the Convention on the Elimination of All Forms of Discrimination Against Women, for example, an optional protocol was adopted by the General Assembly in 1999 to afford individuals as well as groups and non-governmental organisations the right to report violations by the state of the main convention directly to the Committee on the Elimination of Discrimination Against Women.²⁷¹ This right is, of course, circumscribed by the state’s willingness to accede to the protocol. In the absence of accession, it poses particular problems for women as abuses meted out in the home are strictly theoretically outside of the sphere of international law due to the public/private divide and the notion of the sanctity of the family.²⁷²

The universal applicability of human rights discourses confronts several barriers. As Dunne and Wheeler observe, the authors of human rights documents such as the United Nations Charter and the Universal Declaration of Human Rights with a view to universal application assumed that “there was no necessary conflict between the principles of sovereignty and non-intervention and respect for human rights”.²⁷³ While there are advocates for conceding sovereignty in the name of promoting human rights, there are those who are against it. A case in point is the establishment of the International Criminal Court. The establishment of this Court has not benefited from the support of one of the most powerful nations of the world simply because it

²⁷⁰ Tim Dunne and Nicholas Wheeler, “Introduction: Human Rights and the Fifty Years’ Crisis”, in Tim Dunne and Nicholas Wheeler (eds), *Human Rights in Global Politics* (Cambridge: Cambridge University Press, 1999), p. 23.

²⁷¹ For more on the Protocol, see section 3.5.1.4 below.

²⁷² Nevertheless, it provides fertile ground for activist struggle and political pressure. This is dealt with in greater detail in chapter four.

²⁷³ Dunne and Wheeler, “Introduction”, p. 1.

requires the concession of that which realists hold so dear – sovereignty. In a newspaper article, a former President of the Republic of Trinidad and Tobago, who was also instrumental in the establishment of the Court, was quoted as saying that national sovereignty should give way to humanitarian issues with respect to the International Criminal Court.²⁷⁴ He also stated that “sovereignty will more and more become subordinated to the importance of the individual, to our humanity”.²⁷⁵ This is significant coming from a former President of a fairly new independent republic. In addition to issues presented by sovereignty, the formulation of human rights documents were executed by those influenced by Western, liberal, political thought which means that any claim to universality would imply an imposition of these ideas on societies and cultures with their own conception of rights and morality.

3.3.3 Arguments against the Notion of ‘Universal’ Rights

Human rights discourse as advocated by the United Nations assumes the individual to be the holder of human rights. Eastern and African cultures have very different notions of human rights in this regard. They privilege communal rights over individual rights. On the African continent collective rights reign supreme above economic and social rights, and civil and political rights rank third in the hierarchy of importance.²⁷⁶ In China, the importance of communal rights emphasises hierarchy, deference and interdependence, which according to Dunne and Wheeler, is completely at odds with the West’s understanding of what it is to be human.²⁷⁷ According to Ames, in China, “an individual can only become a human being in community”.²⁷⁸ Brown observed that restrictions on individual liberties become a necessary pre-requisite for

²⁷⁴ Richard Lord [online], “Humanity over sovereignty,” *Trinidad Express*, 11 December 2003. [cited 11 December 2003]. Available from the Internet: <http://www.trinidadexpress.com/politics.asp?mylink=2003-12-11%2Fpolitics%2FHumanity%20over%20sovereignty.htm&mydate=2003-12-11&mypage=politics>

²⁷⁵ Lord, “Humanity over sovereignty”.

²⁷⁶ See Vincent, *Human Rights and International Relations*, p. 40.

²⁷⁷ Dunne and Wheeler, “Introduction”, p. 13.

²⁷⁸ Roger T. Ames, “Continuing the Conversation on Chinese Human Rights”, *Ethics and International Affairs*, 11 (1997), p. 193.

economic development in East Asian authoritarian regimes which also coincides with local custom.²⁷⁹ He seems to be unable to comprehend human equality premised on a caste system or on social arrangements that privilege family over individual,²⁸⁰ but then again, he is writing from the Western tradition. Booth may have a point when he says, "The universality of human rights is an ideology which is a cover for the imposition of Western values".²⁸¹ While western human rights discourse presumes a certain hegemony and universality, there are indeed positive aspects to it but it needs to be able to accommodate cultural variety.

Cultural relativism, which may be said to have a somewhat postmodernist foundation, provides perhaps one of the most pervasive arguments against a universal conception of international human rights. The doctrine of cultural relativism takes a three-pronged approach. It states firstly that ideas and conceptions of morality differ from place to place and (secondly) that they can only be understood within their particular cultural contexts. In the third place, moral claims are necessarily an integral part of the cultural context which is itself the source of their validity.²⁸² As a result, any human rights discourse purporting a universal character must take these differences into consideration. This is, of course, easier said than done. There have been writers advocating the use of a range of minimalist to maximalist understandings of universal values. Parekh gives the example that respect for human dignity can be understood in minimalist terms to mean that no human being should be traded as a commodity, subject to torture or genocidal policies and in maximalist terms to mean that all human beings should be ensured all "the desirable conditions of the good life",²⁸³ which in itself is relative. While it is all well and good to promote harmony in diversity, Booth talks of the tyranny of cultures where culturalism reinforces traditionalism which "can have several regressive consequences for the

²⁷⁹ Chris Brown, "Universal Human Rights: A Critique", in Tim Dunne and Nicholas Wheeler (eds), *Human Rights in Global Politics* (Cambridge: Cambridge University Press, 1999), p. 116.

²⁸⁰ Brown, "Universal Human Rights", p. 117.

²⁸¹ Booth, "Three Tyrannies", p. 52.

²⁸² See Vincent, *Human Rights and International Relations*, p. 37.

²⁸³ Bhikhu Parekh, "Non-Ethnocentric Universalism", in Tim Dunne and Nicholas Wheeler (eds), *Human Rights in Global Politics* (Cambridge: Cambridge University Press, 1999), pp. 151-152.

theory and practice of human rights”.²⁸⁴ Traditionalism, it should be noted, is not to be confused with traditions as these are very important in holding societies together. As with all other practices, traditionalism has both positive and negative aspects. For Booth, the negative aspects can be profoundly threatening as traditionalist practices, for example, invariably translate into masculinist values hostile to women and this legitimises domestic violence, the Hindu practice of *sati* and all other practices of patriarchal society²⁸⁵ which seek to continue to disempower and marginalise women.

One of the problems with the defence of cultural relativism in not adhering to positive human rights practices is that it is generally a claim made by an elite of the group claiming to speak and act on behalf of the group and therefore the reality of the situation is mediated through this self appointed group.²⁸⁶ This elite, therefore, speaks on behalf of culture as its ‘authentic’ voice. Culture, however, is heterogeneous and cultural claims are contested from within as well as without. An example of culture’s inherently politically and socially contested terrain is exemplified in Islamic fundamentalist states where the voices of women’s activists are suppressed. It is curious that those who completely oppose the universality of human rights law on the basis of its Eurocentricity or Western nature and its inability to accommodate cultural difference gladly retain certain aspects of Western ideologies, in this case, the right to privacy, as it helps maintain their physically and intellectually elitist position in society.

Booth has an inverse understanding of the universalist approach to human rights which may provide a more appropriate means of dealing with the issue. He believes that the only universal aspect to human rights is the universality of human wrongs. This is because they are easier to recognise than human rights, they are ubiquitous and by inverting the approach, “concentration

²⁸⁴ Booth, “Three Tyrannies”, p. 39.

²⁸⁵ Booth, “Three Tyrannies”, p. 39.

²⁸⁶ See Michael Singer, “Relativism, Culture, Religion and Identity”, in Courtney Howland (ed), *Religious Fundamentalisms and the Human Rights of Women* (New York: Palgrave, 1999), pp. 46-47.

on wrongs shifts subjectivity to the victims by emphasising a “bottom-up” conception of world politics. This has the crucial effect of humanising the powerless”.²⁸⁷ While human rights discourse as currently proposed in the international arena is quite contentious, the very fact that it exists and continues to play an important role in international relations signifies some hope that perhaps, one day, there will be consensus on the issue. What of women’s rights?

3.4 Reinventing International Law: Women’s Rights as Human Rights in the International Community²⁸⁸

A child of the inherently patriarchal and androcentric structures of both international law and international relations, international human rights law is inevitably a profoundly gendered discourse privileging men. It has been accused of belonging to “the masculine world of rights, masquerading as “human””²⁸⁹ as it completely ignores concepts of gender.

Due to the fact that Enlightenment man is both the creator and subject of international law and human rights discourse, issues dealing with human rights abuses of women have been largely ignored or seen to be a natural part of the status quo. The fact that political entities at both the national and international levels are dominated by men “means that issues traditionally of concern to men are seen as *general* human concerns; “women’s concerns,” by contrast, are regarded as a distinct and limited category”.²⁹⁰ White, western property-owning men, those responsible for creating human rights discourse, were more concerned with protecting against violations of their civil and political rights in the public sphere and as a result these concerns are privileged in human rights discourse. As noted by Charlesworth, “rights are defined by the

²⁸⁷ Booth, “Three Tyrannies”, pp. 62-63.

²⁸⁸ Heading borrowed from Radhika Coomaraswamy, *Reinventing International Law: Women’s Rights as Human Rights in the International Community* (Massachusetts: Harvard Law School Human Rights Program, 1997).

²⁸⁹ Charlesworth, “What are “Women’s International Human Rights”?”, p. 67.

²⁹⁰ Charlesworth, “Human Rights as Men’s Rights”, p. 105. Emphasis in the original.

criterion of what men fear will happen to them”.²⁹¹ Violations in the private sphere - the home - were not an issue “because they were the masters of that territory”.²⁹² Power relations and the very political nature of the family unit went ignored for precisely this reason.²⁹³

‘Women’s rights are human rights’, a phrase that gained increasing currency since the early 1990s, should be tautological and transhistorical, but unfortunately, this is not the case. According to Charlesworth, this should be but a “distracting redundancy”.²⁹⁴ Unfortunately, abuses against women have become almost naturalised. As Kerr puts it, “So pervasive and systemic are the human rights abuses against women that they are regarded as part of the natural order”.²⁹⁵ For Bell, “the ambiguity of the phrase captures the essence of the feminist claim: an assertion for inclusion in the project of human rights and a radical redefinition of what that project entails”.²⁹⁶ Bunch thinks that because the dominant image of the political actor on the world stage is male that the problem for women is visibility, or lack thereof.²⁹⁷ In an earlier article, she takes a more gynocentric approach and uses as a starting point the fact that women *do* have inalienable human rights and sees the crux of the matter as understanding “why they were excluded before and how to gain wider implementation of these rights now”.²⁹⁸ Whereas Bunch sees visibility as the problem, Ashworth sees the problem as arising out of the silencing of women. “In the silencing, the fact and acts of silencing also become invisible: without a

²⁹¹ Charlesworth, “What are “Women’s International Human Rights”?”, p. 71.

²⁹² Charlotte Bunch, “Transforming Human Rights from a Feminist Perspective”, in Julie Peters and Andrea Wolper (eds), *Women’s Rights, Human Rights: International Feminist Perspectives* (London: Routledge, 1995), p. 13.

²⁹³ See Coomaraswamy, *Reinventing International Law*, p. 8.

²⁹⁴ Charlesworth, “What are “Women’s International Human Rights”?”, p. 59.

²⁹⁵ Joanna Kerr, “The Context and the Goal”, in Joanna Kerr (ed), *Ours By Right: Women’s Right as Human Rights* (London: Zed Books, 1993), p. 3.

²⁹⁶ Christine Bell, “Women’s rights as Human Rights: Old Agenda in New Guises”, in Angela Hegarty and Siobhan Leonard (eds), *Human Rights: An Agenda for the 21st Century* (London: Cavendish Publishing Limited, 1999), p. 139.

²⁹⁷ Bunch, “Transforming Human Rights from a Feminist Perspective”, p. 12.

²⁹⁸ Charlotte Bunch, “Organizing for Women’s Human Rights Globally”, in Joanna Kerr (ed), *Ours By Right: Women’s Right as Human Rights* (London: Zed Books, 1993), pp. 145-146.

visible victim, there is no crime, and without a crime there is no perpetrator”,²⁹⁹ thereby perpetuating the abuses against women.

3.4.1 The Public/Private Divide and Women’s Rights

The public/private debate that permeates international law provides fertile ground in international human rights discourse for feminist claims against state (ir)responsibility in incidences of abuses against women in the private sphere. Where has this distinction come from? It is said that the concept of the private sphere (versus the public sphere) is “a distinction that came...with a colonial inheritance of personal laws”.³⁰⁰ Charlesworth makes the point that the imposition of this distinction “replicates the “reforms” imposed by many colonial administrators which often weakened the position of women in colonial societies”.³⁰¹ Public international law is very heavily premised on this dichotomy and this is not surprising given that this subject area is a western concept, as discussed at the beginning of this chapter. The divide is therefore a Western import to developing countries and carries with it heavy burdens for women particularly in countries where culture and religion are deemed integral to the maintenance of the patriarchal structures that rely on the subordination and oppression of women for their existence.

Like human rights discourse, the public/private dichotomy is profoundly gendered and “an inherently political process that both reflects and reinforces power relations”³⁰² within society.

The public sphere is said to encompass politics, economics, law and the workplace all of which

²⁹⁹ Georgina Ashworth, “The Silencing of Women,” in Tim Dunne and Nicholas Wheeler (eds), *Human Rights in Global Politics* (Cambridge: Cambridge University Press, 1999), p. 261.

³⁰⁰ Radhika Coomaraswamy, “To Bellow like a Cow: Women, Ethnicity, and the Discourse of Rights”, in Rebecca Cook (ed), *Human Rights of Women: National and International Perspectives* (Philadelphia: University of Pennsylvania Press, 1994), p. 55.

³⁰¹ Charlesworth, “What are “Women’s International Human Rights”?”, p. 70.

³⁰² Donna Sullivan, “The Public/Private Distinction in International Human Rights Law”, in Julie Peters and Andrea Wolper (eds), *Women’s Rights, Human Rights: International Feminist Perspectives* (London: Routledge, 1995), p. 128.

are associated with men and their relationship with government. The private sphere on the other hand is where the family is found, and by necessary implication, where women belong. There is a “primal division of labour between the male warrior and the female childbearer” because “[m]an’s place is in the public sphere of political government and the market economy, while women’s place in the private sphere of domesticity”³⁰³ due to her supposed frailty of body and mind. As one Iranian scholar noted, quoting an ayatollah, “The specific task of women in society is to marry and bear children. They will be discouraged from entering legislative, judicial, or whatever careers may require decision, as women *lack the intellectual ability and discerning required for those careers*”.³⁰⁴ It is this self assumed intellectual arrogance coupled with the brute force that men may display over women that continues to oppress women and keep them dependent on men in such societies.

It is often within the home, or private realm, that women are at risk of facing the greatest physical and/or mental abuse and yet, such abuses are “not within the proper scope of national criminal justice systems”.³⁰⁵ At the international level, international human rights law operates largely within the public sphere (optional protocol provisions and inherent complications aside) and the state is encouraged to protect the sanctity of the institution of the family which encompasses the family’s right to privacy. This translates into the non-intervention by the state into the realm of family life, because of its allegedly sacrosanct nature, and as Sullivan rightly notes “the family is the site of many of the most egregious violations of women’s physical and mental integrity, [and] any blanket deferment to the institution of the family or privacy rights within the family has disastrous consequences for women”.³⁰⁶ The hypocrisy of the enshrined

³⁰³ Carmel Shalev, “Women in Israel: Fighting Tradition”, in Julie Peters and Andrea Wolper (eds), *Women’s Rights, Human Rights: International Feminist Perspectives* (London: Routledge, 1995), p. 90 and pp. 91-92.

³⁰⁴ Akram Mirhosseini, “After the Revolution: Violations of Women’s Human Rights in Iran”, in Julie Peters and Andrea Wolper (eds), *Women’s Rights, Human Rights: International Feminist Perspectives* (London: Routledge, 1995), p. 73. Emphasis added.

³⁰⁵ Charlesworth, “Human Rights as Men’s Rights”, p. 107.

³⁰⁶ Sullivan, “The Public/Private Distinction in International Human Rights Law”, p. 127.

principle of non-intervention by the state into the affairs of the family is revealed by feminist research. Peterson and Parisi note that “the state intervenes in private sphere dynamics in part to impose centralized authority” over women’s sexuality, the transfer of property and certain types of socialisation, such as heterosexuality (by criminalising homosexual behaviour).³⁰⁷ While the state uses its power to intervene in the private sphere dynamics to suit male dominated state interests, it uses that same power to promote the public-private divide as protecting the private from state interference.³⁰⁸ Such targeted intervention “is a vital part of the authority and power the state receives and institutionalizes for men”,³⁰⁹ thereby marginalizing and excluding women.

The fact that international human rights law operates primarily within the public sphere reflects the fact that the state is the subject of international law and that the transgressions of a state or its officials against individuals are the only offences that can be dealt with at this level. The actions of a private individual against another private individual are of necessity not subject to international scrutiny. The irony of the situation is that human rights activists are quick to pressure states to prevent other abuses, such as slavery and racism, which are often performed by private actors as well. Could it be that because slavery and racism are largely ungendered that they receive greater attention, as all of humanity and not just half (and the inferior half at that) is affected?

3.4.2 State Culpability and CEDAW

This is not to say that states cannot be held responsible for the actions of private individuals. Indeed, there are ways by which to infer culpability on the state for violations against women by

³⁰⁷ V. Spike Peterson and Laura Parisi, “Are Women Human? It’s Not an Academic Question”, in Tony Evans (ed), *Human Rights Fifty Years On: A Reappraisal* (Manchester: Manchester University Press, 1998), p. 140.

³⁰⁸ Peterson and Parisi, “Are Women Human?”, p. 145.

³⁰⁹ Zillah Eisenstein, *The Radical Future of Liberal Feminism* (New York: Longman, 1981), p. 25.

private actors. With the adoption and ratification of the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”)³¹⁰, despite the myriad reservations and notwithstanding its soft law nature, according to article 2, states parties have a positive duty towards women

- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women; and
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women...³¹¹

Threading the articles of the convention together is the call for the introduction and enforcement of legislation designed to protect and promote the social (as well as economic, political and cultural) advancement of women. Such articles, however, are of absolutely no legal force until the convention is incorporated into the domestic laws of states parties.³¹²

It is at this point that state culpability may be implied. Where a state refuses, actively or passively, to introduce legislative measures to give effect to the convention and prevent abuses against women, it may be said that it gives its tacit approval of such abuse. In the case of countries following the dualist theory of international law, there is even greater onus on the state to act and incorporate international law principles into domestic law. Failure to do so constitutes refusal on the part of the state to honour its commitments. While a state is not directly responsible for the abuses of private actors, the state may be accused of a lack of due diligence with regard to the awareness of human rights violations as well as its failure to address the situation through sanctions and/or compensation and through denying women equal protection before the law. Women’s human rights advocates hold that it is in condoning the acts of these

³¹⁰ Adopted by the United Nations General Assembly on 18 December 1979 and entered into force on 3 September 1981.

³¹¹ United Nations, “Convention on the Elimination of All Forms of Discrimination Against Women”, in Brownlie, *Basic Documents on Human Rights*, p. 171.

³¹² See section 3.3.2 above. This argument is developed further in section 5.3.2.4.4 below which deals with the responsibility of the state to protect women within the context of constitutional equality in Trinidad and Tobago.

private actors that the state may be held accountable.³¹³ It may even be said that “such actors are not really private because they could not function without the approval of the state”.³¹⁴ Concerning the abuses against women, “a state may be considered to have facilitated an international wrong or to be complicit in its commission when the wrong is of a pervasive or persistent character”.³¹⁵ State complicity in the commission of such abuses generally takes the form of a state’s failure to act. Romany makes the point that a state’s

failure to arrest, prosecute, and imprison perpetrators of violence against women can be interpreted as acquiescence in (or ratification of) the private actor’s conduct. State failure to prevent crimes against women can also be viewed as a conspiracy between the private actor and the state law enforcement agencies, thus rendering the state complicit.³¹⁶

It must be mentioned that the introduction of legislative measures into the domestic law of a state party, while extremely commendable, is not enough by itself. The judiciary, police and any other state entity responsible for ensuring women’s protection must be given the necessary capacity to perform. This includes general sensitisation to the rights of women and the changes in the law, education, training to deal with gender specific issues, human and financial resources. Perhaps most importantly is the need to educate *men* to understand women’s issues and get them to recognise the skewed nature of male-oriented “norms”. Sadly, these are all dependent on the political will of the state, as without any state directive (through the implementation of laws and all follow up procedures), there is no need to change the status

³¹³ See Elizabeth Friedman, “Women’s Human Rights: The Emergence of a Movement”, in Julie Peters and Andrea Wolper (eds), *Women’s Rights, Human Rights: International Feminist Perspectives* (London: Routledge, 1995), pp. 20-21.

³¹⁴ Courtney Howland, “Safeguarding Women’s Political Freedoms under the International Covenant on Civil and Political Rights in the Face of Religious Fundamentalism”, in Courtney Howland (ed), *Religious Fundamentalisms and the Human Rights of Women* (New York: Palgrave, 1999), p. 95.

³¹⁵ Rebecca Cook, “State Accountability Under the Convention on the Elimination of All Forms of Discrimination Against Women”, in Rebecca Cook (ed), *Human Rights of Women: National and International Perspectives* (Philadelphia: University of Pennsylvania Press, 1994), p. 237.

³¹⁶ Celina Romany, “State Responsibility Goes Private: A Feminist Critique of the Public/Private Distinction in International Human Rights Law”, in Rebecca Cook (ed), *Human Rights of Women: National and International Perspectives* (Philadelphia: University of Pennsylvania Press, 1994), pp. 100-101.

quo.³¹⁷ This is further compounded by the fact that the relationship between women and the state is extremely varied from state to state and continues both to evolve and regress in instances.³¹⁸ This lack of political will is not particular to women's and human rights law but is also seen in other areas considered to be of "lesser" importance, such as environmental law, particularly in developing economies, where emphasis is placed on the more pressing issues of maximising revenues by whatever means possible.³¹⁹ Political will and resource prioritisation always favour economic development in growing economies.

3.4.3 Cultural / Religious Relativism and Women's Rights

As mentioned above, the division of society into two different spheres, where one sphere is completely unregulated by law, creates greater difficulties for women living in societies ostensibly defined by cultural and religious practices. "No social group has suffered greater violation of its human rights in the name of culture than women,"³²⁰ observes one Indian writer. Culture, for women, includes on a broader level, the denial of civil, political, social, economic, sexual and reproductive rights; on a more specific level, it may include female genital mutilation, *sati*, the inability to obtain a divorce, lack of choice in marriage, the imposition of a dress code, discrimination in inheritance and property laws, among myriad other issues. Women in countries regulated by religious legal systems, where religion, and by necessary implication

³¹⁷ One writer believes that the lack of political will exhibited in developing countries is indicative of a deeper problem, namely the (continued) deterioration of morality and moral rectitude. See Kirk Meighoo [online], "Leadership and Legitimacy", *Sunday Express*, 24 October 2004. [cited 03 November 2004]. Available from Internet: http://www.trinidadexpress.com/index.pl/article_opinion?id=43442127.

³¹⁸ See Rebecca Cook, "Women's International Human Rights Law: The Way Forward", in Rebecca Cook (ed), *Human Rights of Women: National and International Perspectives* (Philadelphia: University of Pennsylvania Press, 1994), p. 31 and Marsha Freeman, "Women, Development and Justice: Using the International Convention on Women's Rights", in Joanna Kerr (ed), *Ours By Right: Women's Right as Human Rights* (London: Zed Books, 1993), p. 94.

³¹⁹ See generally for example, Rajendra Ramlogan and Natalie Persadie, *Developing Environmental Law and Policy in Trinidad and Tobago* (San Juan, Trinidad: Lexicon, 2004), pp. 31-32 and 89-95.

³²⁰ Arati Rao, "The Politics of Gender and Culture in International Human Rights Discourse", in Julie Peters and Andrea Wolper (eds), *Women's Rights, Human Rights: International Feminist Perspectives* (London: Routledge, 1995), p. 169.

culture, becomes enshrined into law and legalises patriarchal norms, face the greatest difficulty in abolishing discriminatory practices either through their own agency or with external help. In such instances demands for equality based on sex “is met with resistance on the grounds that such demands amount to interference with the right to freedom of religion”.³²¹

Cultural relativists claim that women are the embodiment of a nation’s culture and that the current human rights legal regime does not take this into consideration, and as a result, is not universally applicable.³²² This embodiment depends on the subordination of women and the maintenance of male elites. According to Chinkin, “Cultural and religious groups are often identified by the role and behaviour that they *designate* to women”³²³ implying that women have no choice as to what their role might be. Women in such groups are ostensibly held to be “the repository of tradition and old affection and family history”,³²⁴ which provides the justification for their continued and unquestioning oppression. The imposition of the Western notion of the public/private divide only reinforced this conception as Coomaraswamy notes that “private life remained immune and was constructed and reinvented so that women’s position [in society] became tied up with the cultural symbolism of the nation or ethnic group”.³²⁵ It is in this way that religion, culture and the Western import of the right to privacy have become inextricably linked and even more powerful in terms of keeping women subordinated. As Raday notes, “deference

³²¹ Indira Jaising, “Violence against Women: The Indian Perspective”, in Julie Peters and Andrea Wolper (eds), *Women’s Rights, Human Rights: International Feminist Perspectives* (London: Routledge, 1995), p. 52.

³²² There has always been a problem in “exporting feminism”. See Jean Bethke Elshtain, “Exporting Feminism”, *Journal of International Affairs*, 48:2 (Winter 1995), pp. 541-558 where she explores criticisms directed specifically against American Feminism which assumes political/cultural superiority.

³²³ Christine Chinkin, “Cultural Relativism and International Law”, in Courtney Howland (ed), *Religious Fundamentalisms and the Human Rights of Women* (New York: Palgrave, 1999), p. 57. Emphasis added.

³²⁴ Vickram Seth, *A Suitable Boy* (London: Phoenix, 1994), p. 285.

³²⁵ Radhika Coomaraswamy, “Different but Free: Cultural Relativism and Women’s Rights as Human Rights”, in Courtney Howland (ed), *Religious Fundamentalisms and the Human Rights of Women* (New York: Palgrave, 1999), p. 82.

to religious and subculture norms operates to impose patriarchy on women” and is worsened when such ideals are formally institutionalised into law.³²⁶

Cries of cultural imperialism by non-western countries have allowed many states parties to CEDAW to enter significant reservations on ratification, accession or succession despite the fact that these reservations have the effect of nullifying the objective of the convention and are contrary to article 28(2) which states that “[a] reservation incompatible with the object and purpose of the present Convention shall not be permitted”,³²⁷ which is also in keeping with Article 19(c) of the Vienna Convention on the Law of Treaties that says, “A State may...formulate a reservation unless: (c) in cases not falling under sub-paragraphs (a)³²⁸ and (b)³²⁹, the reservation is incompatible with the object and purpose of the treaty”.³³⁰ According to the United Nations Division for the Advancement of Women website, there are 180 states parties as of 18 March 2005.³³¹ From its update on 18 December 2003 to its current update, this number went up by only four. CEDAW, not surprisingly, is known as having the highest number of reservations of any other human rights convention ever formulated³³² despite the fact that it is in apparent violation of specific articles within CEDAW itself and the Vienna Convention on the Law of Treaties, which governs treaty making. The soft law approach taken in this convention allows for “consensus” (in its *loosest* possible meaning) where it would have

³²⁶ Frances Raday, “Religion and Patriarchal Politics: The Israeli Experience”, in Courtney Howland (ed), *Religious Fundamentalisms and the Human Rights of Women* (New York: Palgrave, 1999), p. 156.

³²⁷ United Nations, “CEDAW” in Brownlie, *Basic Documents on Human Rights*, p. 181.

³²⁸ Where the reservation is prohibited by the treaty.

³²⁹ Where the treaty provides that only specified reservations, which do not include the reservation in question, may be made.

³³⁰ International Law Commission [online], *Vienna Convention on the Law of Treaties*. The Convention was adopted on 22 May 1969 and opened for signature on 23 May 1969 by the *United Nations Conference on the Law of Treaties*. Entered into force on 27 January 1980, in accordance with article 84(1). [cited 23 January 2003]. Available from Internet: <http://www.un.org/law/ilc/texts/treaties.htm>

³³¹ See United Nations, Division for the Advancement of Women [online], “States Parties”, updated 29 March 2005. [cited 07 April 2005]. Available from Internet: <http://www.un.org/womenwatch/daw/cedaw/states.htm>

³³² Bell, “Women’s rights as Human Rights”, pp. 147-148 and Coomaraswamy, *Reinventing International Law*, p. 3. Some 60 countries entered reservations that range from specific provisions to broad reservations of the convention. See tables 3.1 and 3.2.

otherwise been impossible despite the obvious absurdity the many reservations have resulted in and the fact that the status quo of women worldwide remains largely unchanged.³³³

3.4.4 Gender Equality and The Male Standard

Coming out of the treaty was the obvious and pressing need for gender equality and the means by which to achieve this. Unfortunately, equality for women in the human rights discourse has come to be understood to mean the achievement of rights accorded to men with reluctance to recognise the inherent differences between men and women. Men provide the measure by which equality is measured. The very title of CEDAW “presupposes a male standard... attempting to bring women into the male world through the removal of legal constraints”.³³⁴ The search for equality initially led to severe absurdities in the interpretation of the law, particularly in cases of sex discrimination and unfair dismissal due to pregnancy. In the infamous American case, *General Electric Company v Gilbert et al*,³³⁵ a group of women brought an action against the firm on the basis that the firm’s disability plan which paid weekly non-occupational sickness and accident benefits precluded “disabilities” arising from pregnancy. In a strange turn of events, the lower courts held that this amounted to discrimination under the Civil Rights Act, but the highest Court of Appeal, in a majority decision, reversed the decision. Justice Rehnquist, referring to a decision taken by him and his colleagues in *Geduldig v Aiello*,³³⁶ stated in the decision that the plan “is facially nondiscriminatory in the sense that “[t]here is no risk from which men are protected and women are not. Likewise, there is no risk from which women are protected and men are not””. He also went on to show that the company’s plan simply divided “potential recipients into two groups – pregnant women and non-pregnant persons. While the

³³³ See more on reservations to the convention in section 3.5.1.2 below.

³³⁴ Natalie Hevener Kaufman and Stefanie Lindquist, “Critiquing Gender-Neutral Treaty Language: The Convention on the Elimination of All Forms of Discrimination Against Women”, in Julie Peters and Andrea Wolper (eds), *Women’s Rights, Human Rights: International Feminist Perspectives* (London: Routledge, 1995), p. 121.

³³⁵ 429 U.S. 125 (1976).

³³⁶ 417 U.S. 484 (1974)

first group is exclusively female, the second includes members of both sexes”. Could the first group possibly *be* constituted differently? This was a case of “if men don’t need it, women don’t get it”,³³⁷ as one author noted rather sardonically.

Kaufman and Lindquist sought to justify this ludicrous decision by emphasising the need for maintaining consistency in the common law tradition.³³⁸ The Court could have equally *overruled* the decision and still adhered to the principles of the common law tradition and not produced such a startlingly gendered (not to mention nonsensical) judgement, although this would have meant overruling one of their own decisions. There are those who believe that the use of gender-neutral language and having more female lawyers and judges can help improve the lot of women. While the latter may deal with issues of female under-representation in a male dominated arena, most women who undertake such professions are socialised by the legal practice to think and behave like men and while sympathetic, may not always be able to render objective decisions, or even decisions tending towards a female oriented view of the world. They also tend to be discriminated against on the basis of their female gender.³³⁹ Those who are, in fact, strong enough to maintain a female perspective may not be aggressive enough or be able to gather consensus from fellow colleagues on certain issues.

Equality should recognise the inherently differential roles and contributions of both sexes and should not seek to level the playing field as such, as again men are used as the standard by which to achieve such equality and can result in absurdities as highlighted in the case above. Instead of an androcentric approach, or even a gynocentric approach, a “humanocentric” approach should be applied which neither reduces women by attempting to eliminate their

³³⁷ Kathleen Mahoney, “Gender and the Judiciary: Confronting Gender Bias”, in Kirstine Adams and Andrew Byrnes (eds), *Gender Equality and the Judiciary: Using International Human Rights Standards to Promote the Human Rights of Women and the Girl-child at the National Level* (London: Commonwealth Secretariat, 1999), p. 97. Quoting Catherine MacKinnon.

³³⁸ See Kaufman and Lindquist, “Critiquing Gender-Neutral Treaty Language”, p. 116. For more on the common law tradition, see section 5.2 below.

³³⁹ See section 2.3.3 above.

differences or marginalise them *because* of those differences, but one which embraces said differences and treats women with similar regard as men are accorded all at once. The concept of women's rights as human rights as painted above does present a picture of gloom; however, the situation would appear to be changing with women of all professions and status taking on a much more aggressive, active and visible role in promoting the rights of women around the world.

3.5 International Law and Women's Rights: The Struggle for Equal Treatment

3.5.1 The Politics of Rights

International law's weaknesses as a tool for the promotion of gender equality and human rights generally have been explored. Inherent gender bias; its soft law character and associated issues of implementation and enforcement at the national level; primacy of the state as actor in the international arena; unwillingness of states to relinquish any degree of sovereignty; and cultural / religious relativist arguments comprise the main obstacles to the effectiveness of international law instruments. These difficulties notwithstanding, international legal instruments have the potential to be used as political tools with positive effect. When states sign up to a convention, this provides a site for activists on the ground to organise and pressure states to act. Activists can now engage in "accountability politics"³⁴⁰ to remind governments of their obligations and, in the face of inaction, expose the recalcitrant state and bring pressure to bear on the powers that be and even successfully force change. NGOs have been successful at the international level in having provisions dealing with the status of women and their participation included in international legal instruments and subsequently using these documents as leverage

³⁴⁰ See Keck and Sikkink, *Activists Beyond Borders*, pp. 24-25. The authors cite information politics, symbolic politics, leverage politics, and accountability politics as the means by which transnational advocacy networks effect change from within the "political spaces" in which they operate. See pp.16-25.

to effect change at the national level.³⁴¹ Sankey makes the point that international law filters downward

“[d]ue in part to the slow but steady pressure of NGOs... declarations have been replaced by binding conventions, monitoring their implementation has been entrusted to special committees and rapporteurs, and individual governments suddenly find themselves being called to account for cases of torture, detention and ‘disappearances’.”³⁴²

The potential for international law to have effect at the national level, therefore, is real and can be effected through the work of activists especially where international law seems to lack the mechanisms to do so in areas not deemed to be vital to state interests, such as the promotion of women’s rights.³⁴³

3.5.2 Women’s Rights and the United Nations

The fight by women for equality has taken on a largely legal character³⁴⁴ as it is recognised that legal reform, combined with the necessary changes to the education system (to deal with deeply entrenched patriarchal attitudes), has the ability to provide one of the greatest catalysts for societal change. This fight has to be examined at the international level so as to determine the effectiveness of the “top-down” approach in remedying the repression of women’s rights, a problem that has existed throughout much of human history. It should be noted that the term “legal” is used loosely as the non-binding aspect of declarations, conventions³⁴⁵ and platforms for action (despite States’ ostensible intention to be bound), as well individual legal systems,

³⁴¹ Carolyn Stephenson, “Women’s International Nongovernmental Organizations at the United Nations”, in Anne Winslow (ed), *Women, Politics and the United Nations* (Westport, Connecticut: Greenwood Press, 1995), p. 151.

³⁴² John Sankey, “Conclusions”, in Peter Willetts (ed), *“The Conscience of the World”: The Influence of Non-Governmental Organisations in the U.N. System* (London: Hurst & Company, 1996), pp. 272-273.

³⁴³ This is discussed in greater detail in chapter four.

³⁴⁴ Although this holds true since the era of first wave feminism, it has taken a much more organised and focussed approach since post-1945.

³⁴⁵ Lack of enforceability tends to counteract the binding nature of conventions.

make domestic application and enforcement rather difficult.³⁴⁶ While protocols tend to be of greater force, they too suffer from similar problems.

The United Nations has formulated eight conventions and two declarations that are committed specifically to promoting women's rights. These include:³⁴⁷

- The UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others³⁴⁸ which calls for the punishment of those procuring others for prostitution;
- The International Labour Organization Convention on Equal Remuneration (1951) which establishes the principle and practice of equal pay for work of equal value as requested and endorsed by ECOSOC;³⁴⁹
- The UN Convention on the Political Rights of Women³⁵⁰ fully supported by the General Assembly as early as 1946³⁵¹ which commits Member States to allow women to vote and hold public office on terms with men;³⁵²
- The UN Convention on the Nationality of Married Women³⁵³ which sought to protect the right of a married woman to retain her nationality;³⁵⁴
- The UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages³⁵⁵ which states that marriage can only take place with the consent of both parties;³⁵⁶
- The United Nations Educational, Scientific and Cultural Organization Convention against Discrimination in Education (1960) which provides for equal educational opportunities for girls and boys;
- The UN Declaration on the Elimination of Discrimination Against Women³⁵⁷ which declares women's equal status with men;³⁵⁸
- The UN Convention on the Elimination of All Forms of Discrimination against women which prohibits any distinction, exclusion or restriction made on the basis of sex that impairs or nullifies the human rights and fundamental freedoms of women in all areas;³⁵⁹

³⁴⁶ See section 3.1 of Chapter three above on critiques of the soft law approach in international law.

³⁴⁷ This list is taken largely from UN Department of Public Information, "Focus on Women: UN Action for Women", DPI/1796/Rev.1, May 1996.

³⁴⁸ UN Treaty Series, Vol. 96, No. 1342, p. 271.

³⁴⁹ See "ECOSOC resolution calling on Member States to implement the principle of equal pay for work of equal value for men and women workers, irrespective of nationality, race, language or religion", E/RES/121 (VI), 10 March 1948.

³⁵⁰ UN Treaty Series, Vol. 193, No. 2613, p. 135.

³⁵¹ See "General Assembly resolution calling on Member States to adopt measures necessary to fulfil the aims of the Charter of the United Nations in granting women the same political rights as men", A/RES/56 (I), 11 December 1946.

³⁵² See also "Report of the Secretary-General to the CSW on the possibility of proposing a convention on the political rights of women", E/CN.6/143, 28 April 1950.

³⁵³ UN Treaty Series, Vol. 309, No. 4468, p. 65.

³⁵⁴ See "ECOSOC resolution calling for the preparation of a convention on the nationality of a married woman", E/RES/242 C (IX), 1 August 1949.

³⁵⁵ UN Treaty Series, Vol. 521, No. 7525, p. 231.

³⁵⁶ See ECOSOC resolution A/RES/1763 (XVII), 07 November 1962.

³⁵⁷ See A/RES/2263 (XXII), 7 November 1967.

³⁵⁸ See also "General Assembly resolution requesting ECOSOC and the CSW to prepare a draft declaration on the elimination of discrimination against women", A/RES/1921 (XVIII), 05 December 1963.

- ▀ The UN Declaration on the Elimination of Violence Against Women³⁶⁰ which condemns any act causing physical, sexual or psychological harm or suffering to women of violence against women by the family, community or state;
- ▀ The UN Convention on the Rights of the Child which recognises the right of the child to fundamental human rights and special care.³⁶¹

The question here really is whether international legal instruments can have positive effects in domestic legal regimes,³⁶² but again this relies on commitment, priority and political will of the state concerned. To determine the effectiveness of the “top-down” approach, one convention (including its precursor and follow-ups) and two declarations are examined in some detail.

3.5.3 Convention on the Elimination of All Forms of Discrimination Against Women

3.5.3.1 Declaration on the Elimination of Discrimination Against Women

While the UN made moves towards establishing a fair amount of legislative and institutional support for the promotion of women’s equal rights, the organisation recognised that women were still largely unprotected by these changes and discrimination continued unabated. In light of this, the General Assembly requested the drafting of a Declaration on the Elimination of Discrimination Against Women (“DEDAW”) and this was unanimously approved by the General Assembly on 07 November 1967. It consisted of eleven Articles which declare that discrimination against women is unjust and incompatible with the welfare of the family and society and called on States to implement new laws to end discrimination against women so that women would be afforded full protection under the law.³⁶³ As a declaration, it meant that this was but a statement of intent, moral and political, and was therefore of even less contractual

³⁵⁹ See “General Assembly resolution calling on the CSW to complete the draft convention on the elimination of discrimination against women”, A/RES/3521 (XXX), 15 December 1975.

³⁶⁰ See A/RES/48/104, 20 December 1993.

³⁶¹ This convention was not part of the list but should be included.

³⁶² See discussion on the applicability of international law into domestic law above.

³⁶³ See United Nations, *The United Nations and the Advancement of Women*, p. 79.

force than treaties which have also proved problematic in terms of enforcement at the national level.

3.5.3.2 Convention on the Elimination of Discrimination Against Women

The above mentioned UN Conventions provided a very scattered approach to dealing with the issue of women's human rights; a comprehensive approach was required and there was need to prepare a single, comprehensive and internationally binding legal instrument to eliminate discrimination against women.³⁶⁴ As a means of "preparing a binding treaty that would give normative force to the provisions of the Declaration",³⁶⁵ the Commission on the Status of Women ("CSW") requested the Secretary-General to call upon UN member states to communicate their ideas on such a proposal. This instrument was to be prepared without prejudice to any future recommendations that might be made by the United Nations or its specialised agencies with respect to the preparation of legal instruments to eliminate discrimination in specific fields.³⁶⁶

These initiatives led to the adoption by the General Assembly of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which was subsequently dubbed an international bill of rights for women. Article one of the convention defined discrimination against women as

"any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women irrespective of their marital status, on a basis of equality of men and

³⁶⁴ See UN, Division for the Advancement of Women [online], "Short History of CEDAW Convention", updated 10 February 2005. [cited 06 April 2005]. Available from Internet: <http://www.un.org/womenwatch/daw/cedaw/history.htm>.

³⁶⁵ UN DAW, "Short History".

³⁶⁶ UN DAW, "Short History".

women, of human rights and fundamental freedoms on the political, economic, social, cultural, civil or any other field".³⁶⁷

While it may have been the swiftest entry into force of any human rights instrument at the time,³⁶⁸ it was also the convention with the largest number of reservations entered reflecting States Parties' unwillingness to accept the full scope of obligations stated in the instrument.³⁶⁹

Noteworthy are the reasons for reservations. The most significant number of reservations, as seen in tables 3.1 [which provides an aggregate of the data provided in table 3.2] and 3.2 below [which provides a breakdown by country of the specific reservations and declarations made], concerns articles 2, 9, 11, 15, 16 and 29 and reflect states' unwillingness to be bound by provisions that strike at the root of the convention, especially articles 2 and 16. Several countries which practice Islamic law have clearly stated that the convention will not be given preference over current religious practices which are legislated in those countries; however, it is said practices which negate the effect of the convention.³⁷⁰

³⁶⁷ Article 1 of CEDAW.

³⁶⁸ It entered into force less than two years after it was adopted by the General Assembly. See United Nations, *The United Nations and the Advancement of Women*, p. 42.

³⁶⁹ Some 58 countries entered reservations on specific provisions of the convention.

³⁷⁰ This is blatantly contrary to Article 5 of the convention. 14 countries have entered reservations on the basis of the Convention's incompatibility with Islamic *Shari'ah* (Algeria, Bahrain, Bangladesh, Egypt, Iraq, Kuwait, Libyan Arab Jamhuriya, Malaysia, the Maldives, Mauritania, Morocco, Pakistan, Saudi Arabia and Syrian Arab Republic); 2 countries have entered reservations on the basis of incompatibility with their constitution (Lesotho and Tunisia [where Tunisia's constitution is based on Islamic *Shari'ah*]); 2 countries have entered reservations on the basis of incompatibility with the multicultural nature of their society (India and Singapore); two countries have entered reservations on the basis of incompatibility with customs and traditions (Micronesia and Niger [where Niger's customs are regulated by Islamic *Shari'ah*]); one country has entered reservations on the basis of incompatibility with Judaic *Halakhah* (Israel); and one country has entered reservations on the basis of its finite resources with which to implement the provisions of the Convention (Mexico) which surely applies to many more countries. For more on the religious legal systems, see for *Shari'ah*, Michael Mumisa, *Islamic Law: Theory and Interpretation* (Maryland: Amana Publications, 2002) and K. Zweigert and H. Kötz, *An Introduction to Comparative Law*, translated by Tony Weir (Oxford: Oxford University Press, 1998); for *Halakhah*, see Moshe Zemer, *Evolving Halakhah: A Progressive Approach to Traditional Jewish Law* (Vermont: Jewish Lights Publishing, 1999) and Jeremy Call [online], "The Halakhah and its Role in Modern Israeli Law". [cited 08 April 2005]. Available from Internet: http://www.law2.byu.edu/lwb/papers/Call-Halakhah_FINAL.PDF.

Other countries have also invoked multiculturalism, custom and tradition [or cultural relativism, which is ordinarily discriminatory towards women³⁷¹] as reasons for not implementing the convention, thereby justifying the continued discriminatory practices against women, representing “nothing more than disguises for the universality of male determination to cling to power and privilege”.³⁷² On the other hand, however, there are countries that have entered reservations on the basis that their constitutions and/or domestic legislation is already more generous than the requirements stated by the convention and will continue to give preference to their own legislation even though Article 23 provides for such an occurrence.³⁷³

³⁷¹ See section 3.4.3 above on issues of cultural relativism and women.

³⁷² Ann Mayer, “Cultural Particularism as a Bar to Women’s Rights: Reflections on the Middle Eastern Experience”, in Julie Peters and Andrea Wolper (eds), *Women’s Rights, Human Rights: International Feminist Perspectives* (London: Routledge, 1995), p. 185

³⁷³ See for example, France, Ireland, Liechtenstein, Luxembourg and the United Kingdom which reserve the right to give preference to domestic legislation which are more favourable to women than is provided for in the Convention.

Table 3.1 Number of Reservations and Declarations entered per article³⁷⁴

Convention Article Number	Number of reservations	Number of declarations
1	9	
2	15	1
5	4	3
7	5	
9	21	3
11	14	
13	9	
14	7	
15	14	3
16	32	2
29	32	3
TOTAL	162	15

The reservations incompatible with the purposes and objectives of the convention continue despite the General Assembly's appeal at the fiftieth anniversary of the Universal Declaration of Human Rights to States Parties to honour their obligations under the convention.³⁷⁵ CEDAW has also called on States Parties to remove or modify reservations, especially those made to articles 2 and 16, as this

“would indicate a State party's determination to remove all barriers to women's full equality and its commitment to ensuring that women are able to participate fully in all aspects of public and private life without fear of discrimination or recrimination. States which remove reservations would be making a major contribution to achieving the objectives of both formal and de facto or substantive compliance with the Convention”.³⁷⁶

³⁷⁴ Information for tables 3.1 and 3.2 are derived from UN, Division for the Advancement of Women [online], “Declarations, Reservations and Objections to CEDAW”, last updated 10 February 2005. [cited 07 April 2005]. Available from Internet: <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>.

³⁷⁵ See UN, General Assembly, “Convention on the Elimination of All Forms of Discrimination Against Women”, A/RES/53/118, 05 February 1999 and United Nations, General Assembly, “Report of the Committee on the Elimination of Discrimination Against Women”, A/54/38, 04 May 1999, paragraph 11. See also, Committee on the Elimination of Discrimination Against Women [online], “General Recommendations”, nos. 4, 20 and 21, updated 10 February 2005. [cited 11 April 2005]. Available from Internet: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>.

³⁷⁶ UN, Division for the Advancement of Women [online], “Reservations to CEDAW”, updated 10 February 2005. [cited 08 April 2005]. Available from Internet: <http://www.un.org/womenwatch/daw/cedaw/reservations.htm>

Table 3.2 Reservations and Declarations entered by States Parties according to specific articles of the Convention on the Elimination of All Forms of Discrimination against Women³⁷⁷

Country*	Articles of the Convention with Reservations/Declarations ³⁷⁸										
	1	2	5	7	9	11	13	14	15	16	29
Algeria		R			R				R	R	R
Argentina											R
Australia						R					
Austria						R					
Bahamas		R			R					R	R
Bahrain		R			R				R	R	R
Bangladesh		R									
Brazil											R
China											R
Cuba											R
DPR Korea		R			R						R
Egypt		R			R					R	R
El Salvador											R
Ethiopia											R
France			D		D			R		R	R
India			D							D	R
Indonesia											R
Iraq		R			R					R	R
Ireland						R	R			R	
Israel				R						R	D
Jamaica											D
Jordan					D				D	D	
Kuwait				R	R					R	R
Lebanon					R					R	R
* R = Reservation D = Declaration											

³⁷⁷ References to articles do not necessarily indicate reservations or declarations with the whole article, as many states entered reservations and declarations to specific sub-articles.

³⁷⁸ It should be noted that this table does not include countries that have entered general reservations and/or declarations. The following countries have entered general reservations: Australia, Italy, Mauritania and Saudi Arabia. The following countries have entered general declarations: Australia, Chile, Germany, Mexico, Netherlands, Pakistan, Spain, Thailand and Tunisia. This information is correct as at 10 February 2005.

Table 3.2 Reservations and Declarations entered by States Parties continued

Country	Articles of the Convention with Reservations/Declarations										
	1	2	5	7	9	11	13	14	15	16	29
Lesotho		R									
Libyan Arab Jamahiriya		R								R	
Liechtenstein	R										
Luxembourg				R						R	
Malaysia			R	R	R					R	
Maldives				R						R	
Malta						R	R		R	R	
Mauritius											R
Micronesia		R	R			R				R	R
Morocco		D			R				D	R	R
Myanmar											R
New Zealand		R	R								
Niger		R	R D						R	R	R
Pakistan											R
Rep. of Korea					R					R	
Saudi Arabia											R
Singapore		R				R				R	R
Syrian Arab Republic		R			R				R	R	R
Switzerland									R	R	
Thailand										R	R
Trinidad and Tobago											R
Tunisia					R				D	R	R
Turkey					D						R
United Kingdom	R				R	R			R	R	
UK on behalf of Isle of Man, BVI, the Falkland Islands, South Georgia and the South Sandwich Islands, the Turks and Caicos Islands	R	R			R	R	R		R	R	
Venezuela											R
Viet Nam											R
Yemen											D

Despite the myriad obstacles faced in obtaining international consensus on the issue, CEDAW may be seen as a watershed in the development of an international legal instrument for the promotion, protection and recognition of women's human rights as well for the recognition and incorporation of the specificity of the female subject. If nothing else, it has certainly contributed to raising worldwide awareness of women's issues.

3.5.3.3 The Beijing Declaration and the Platform for Action

At the largest UN Conference ever held, the Fourth World Conference on Women, the Beijing Declaration reaffirmed its commitment to continue to promote and protect the rights of women in all spheres and to ensure that they are treated with the same respect as men.³⁷⁹ The Declaration also called for the implementation of the Platform for Action ("BPFA") and the mainstreaming of a gender perspective into all UN policy and programmes. The objectives of the conference were to review and appraise the advancement of women since 1985 with regard to the Nairobi Forward-Looking Strategies; to mobilise women and men at both the policy-making level and grass-roots level to achieve the objectives; to adopt a Platform for Action which deal with key issues identified as posing grave hindrances to the advancement of women; and to determine the priorities for the following five years for implementation of the BPFA.³⁸⁰ As a tool for the implementation of the Declaration, the BPFA is an agenda for women's empowerment³⁸¹ and identifies the following as critical areas of concern for women.³⁸²

³⁷⁹ See "Report of the Fourth World Conference on Women", A/CONF.177/20, 17 October 1995.

³⁸⁰ UN, Department of Public Information, "Fourth World Conference on Women: Beijing, China, 4-15 September 1995", DPI/1324, February 1993.

³⁸¹ UN, Fourth World Conference on Women [online], "Platform for Action: Mission Statement". [cited 28 January 2004]. Available from Internet:

<http://www.un.org/womenwatch/daw/beijing/platform/plat1.htm#statement>

³⁸² UN, Fourth World Conference on Women [online], "Platform for Action: Critical Areas for Concern". [cited 28 January 2004]. Available from Internet:

<http://www.un.org/womenwatch/daw/beijing/platform/plat1.htm#concern>

- The persistent and increasing burden of poverty on women
- Inequalities and inadequacies in and unequal access to education and training
- Inequalities and inadequacies in and unequal access to health care and related services
- Violence against women
- The effects of armed or other kinds of conflict on women, including those living under foreign occupation
- Inequality in economic structures and policies, in all forms of productive activities and in access to resources
- Inequality between men and women in the sharing of power and decision-making at all levels
- Insufficient mechanisms at all levels to promote the advancement of women
- Lack of respect for and inadequate promotion and protection of the human rights of women
- Stereotyping of women and inequality in women's access to and participation in all communication systems, especially in the media
- Gender inequalities in the management of natural resources and in the safeguarding of the environment
- Persistent discrimination against and violation of the rights of the girl child.

This document provides the countries of the world with “a comprehensive action plan to enhance the social, economic and political empowerment of women”.³⁸³ It draws on the legacies of past UN Conferences that dealt with women’s issues, such Nairobi (1985), New York (children 1990), Rio de Janeiro (environment 1992), Vienna (human rights 1993), Cairo (population and development 1994) and Copenhagen (social development 1995) and reviews and assesses progress in implementing the Nairobi Forward-Looking Strategies for the Advancement of Women. Beijing represented a “stock-taking of the progress made in the worldwide advancement of women”.³⁸⁴ Unfortunately, the BPFA had to call for efforts to be made to achieve the goals drawn up at Nairobi ten years earlier.³⁸⁵

As with the other conferences dealing with women’s issues, it is instructive to note that “[t]he most visible and active forces behind this movement [for gender equality] have been the non-

³⁸³ UN, Department of Public Information, “From Beijing, a Platform for Action and a clear mandate for women’s progress”, DPI/1749/WOM, October 1995, p. 1.

³⁸⁴ Hilikka Pietilä and Jeanne Vickers, *Making Women Matter: The Role of the United Nations* (London: Zed Books, 1994), p. 160.

³⁸⁵ UN DPI, “Beijing Declaration”, para. 22.

governmental organizations”.³⁸⁶ Some 30,000 NGO representatives gathered at the parallel unofficial NGO Forum held in Houairou, some thirty miles outside of Beijing.³⁸⁷ At the same time, however, “some NGOs were part of their country’s state apparatus, serving as advocates and even watchdogs for their governments, silencing grassroots NGOs and keeping even those from other countries under scrutiny”.³⁸⁸ It was, nevertheless, still quite free and representatives stated their opinions.

There were three main problematic issues which Charlesworth correctly described as being Sisyphean.³⁸⁹ Just when the feminist movement thought that important advances were made in particular areas at previous conferences, objections were taken at Beijing which could have negated the progress made before. The Holy See objected to the use of the term ‘gender’ as it could lead to dubious interpretations, with the potential to endorse homosexuality and bestiality,³⁹⁰ Islamic states were able keep the universalist-cultural relativist issue alive by decrying the universality of women’s human rights as western feminist imperialism,³⁹¹ and this was also applied by Islamic states and the Vatican to their strong opposition “to sections of the BPA that dealt with women’s autonomy in relation to sexuality and reproductive function”.³⁹²

³⁸⁶ UN DPI, “From Beijing”, p. 5.

³⁸⁷ Judith Howard and Carolyn Allen, “Introduction”, *Signs*, 22:1 (Autumn 1996), p. 181. Why was the NGO Forum distanced from the main convention at Beijing? The NGO Forum represented a threat to the political stability [read: state control of power] and the distancing of the Forum expressed “not only the leaders’ determination not to let this event disturb China’s political status quo but also the state’s suspicion and hostility towards women’s spontaneous activities”. The situation was so severe that Chinese representatives at the NGO Forum had to behave like political puppets, expressing only favourable views of the status of women in China. See Wang Zheng, “A Historic Turning Point for the Women’s Movement in China”, *Signs*, 22:1 (Autumn 1996), pp. 192-199.

³⁸⁸ Esther Chow, “Making Waves, Moving Mountains: Reflections on Beijing ’95 and Beyond”, *Signs*, 22:1 (Autumn 1996), p. 186.

³⁸⁹ See Hilary Charlesworth, “Women as Sherpas: Are Global Summits Useful for Women?”, *Feminist Studies*, 22:3 (Autumn, 1996), pp. 542-544. See also Charlotte Bunch and Susana Fried, “Beijing ’95: Moving Women’s Human Rights from Margin to Center”, *Signs*, 22:1 (Autumn 1996), pp. 202-203.

³⁹⁰ See “Adoption of the Beijing Declaration and Platform for Action”, para. 11 and Charlesworth, “Women as Sherpas”, p. 543.

³⁹¹ Bunch and Fried, “Beijing ’95”, pp. 202-203.

³⁹² Jill Steans and Vafa Ahmady, “Negotiating the Politics of Gender and Rights: Some Reflections on the Status of Women’s Human Rights at ‘Beijing Plus Ten’”, *Global Society*, 19:3 (July 2005), pp. 240-241.

These difficulties notwithstanding there were also some limited but important gains that are captured in the BPFA. Steans and Ahmady state that efforts towards gender mainstreaming have institutionalised the link between selected NGOs and women's groups and various bodies in the UN system.³⁹³ According to Rao, the BPFA has emphasised women's rights as human rights and believes that there is some, though minimal, acknowledgment of the difference between rights versus needs.³⁹⁴ There has been, too, some recognition of violence against women as a public issue and not a private one and there have also been some advances in the issue of women's reproductive health.

Unsurprisingly, Beijing +5 (2000) and Beijing +10 (2005) both represent reaffirmations by governments of their commitment to implementing the BPFA as well as appeals to governments to advocate its implementation.³⁹⁵ *Beijing Betrayed*, an aptly named report issued in time for Beijing +10 which examines global progress made to date vis-à-vis the implementation of the BPFA, asserts that

“Governments worldwide have displayed a lack of will in turning their commitments to women's rights into decisive action, instead adopting a piecemeal and incremental approach that cannot achieve the economic, social and political transformation underlying the promises of Beijing”.³⁹⁶

³⁹³ Steans and Ahmady, “Negotiating the Politics of Human Rights”, p. 5.

³⁹⁴ See Aruna Rao, “Engendering Institutional Change”, *Signs*, 22:1 (Autumn 1996), p. 219.

³⁹⁵ See for example, UN, Division for the Advancement of Women [online], “Beijing +5: Process and Beyond”, available from Internet: <http://www.un.org/womenwatch/daw/followup/bfbeyond.htm>; UN, General Assembly, “Political Declaration”, A/RES/S-23/2, 16 November 2000; UN, General Assembly, “Further Actions and Initiatives to Implement the Beijing Declaration and Platform for Action”, A/RES/S-23/3, 16 November 2000; UN Economic and Social Council, “Declaration adopted by the Commission on the Status of Women as its forty-ninth session as orally amended”, E/CN.6/2005/L.1, 03 March 2005; Center for Women's Global Leadership, the NGO Committee on the Status of Women, and the Women's Environment and Development Organization [online], “2005 CSW Review of the Beijing Platform for Action (Beijing +10)”, April 2004, available from Internet: <http://www.peacewomen.org/un/Beijing10%20NGOCSWBeijing10.html>; UN, Department of Public Information, “Beijing at Ten: Achieving Gender Equality, Development and Peace”, Press Release, DPI/2363F, March 2005.

³⁹⁶ Women's Environment and Development Organization (WEDO), *Beijing Betrayed: Women Worldwide Report that Governments have failed to turn the Platform into Action* (New York: Women's Environmental and Development Organization, 2005), p. 11.

The organisation attributes the non-implementation of the BPFA to a combination of global trends. The lack of practical commitment can be attributed to “the predominance of the neo-liberal economic framework, growing militarization, and rising fundamentalism” in addition to a lack of resources and political will.³⁹⁷

Similar to the Vienna Declaration and Platform of Action, the Beijing Declaration and BPFA are not legally binding. Bunch and Fried make the point that such instruments “carry the political and moral weight as policy guidelines” and “must be approached as statements of best intentions and commitments to which organized groups can seek to hold governments and the UN accountable”.³⁹⁸ Given this, it is the responsibility of individual governments to implement the measures suggested in the BPFA for the advancement of women and without the necessary incentives (either positive or negative) domestic changes will be slow in coming. The gap between rhetoric and reality is still alarming. Governments keep pledging their commitment but there is little of substance to reflect this. In the absence of any truly legally binding instrument, hope lies possibly only with the NGO movement and civil society which have the power to have the Platform effectively implemented by gathering support from those who are truly affected and lobbying governments from below to effect positive change at the national level.

3.5.3.4 The Optional Protocol

Hailed as a landmark decision for women,³⁹⁹ the Optional Protocol (“the Protocol”) to CEDAW was adopted by the General Assembly on 06 October 1999 at its 28th plenary meeting⁴⁰⁰ and

³⁹⁷ WEDO, *Beijing Betrayed*, p. 7.

³⁹⁸ Bunch and Fried, “Beijing ‘95”, p. 201.

³⁹⁹ UN, Division for the Advancement of Women [online], “Optional Protocol to Women’s Convention Comes Into Force”, Press Release, WOM/1242, 21 December 2000. [cited 11 April 2005]. Available from Internet: <http://www.un.org/womenwatch/daw/cedaw/protocol/wom1242.htm>

entered into force on 22 December 2000⁴⁰¹ and set out the first gender-specific international complaints procedure seeking to reinforce human rights monitoring.⁴⁰² It was borne out of initiatives taken by the CSW and supported by the Vienna Declaration and Platform of Action as well as the Beijing Platform for Action. Optional protocols often follow human rights treaties to provide procedures with regard to the treaty or address a substantive area related to the treaty.⁴⁰³ They are treaties in their own right and bring specificity to the main treaty. This Protocol was seen as necessary to strengthen CEDAW by giving individuals, groups and NGOs the right to complain to the Committee about violations of the convention and to allow the Committee to conduct enquiries into grave or systematic abuses of women's human rights in countries that have ratified the Protocol.⁴⁰⁴ It is meant to:

- 1) Improve and add to existing enforcement mechanisms for women's human rights
- 2) Improve States' and individuals' understanding of CEDAW
- 3) Stimulate States to take steps to implement CEDAW
- 4) Stimulate changes in discriminatory laws and practices
- 5) Enhance existing mechanisms for the implementation of human rights within the UN system
- 6) Create greater public awareness of human rights standards relating to discrimination against women⁴⁰⁵

Nevertheless, there are several problems that are immediately discernable with the Protocol. First of all, like treaties generally, it is *optional*, states need not become a party to it. What is the point of having an optional protocol that provides specificity when states are not legally obligated to join and further, view the main treaty (CEDAW) as optional in itself and refuse to implement

⁴⁰⁰ UN, General Assembly, "Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women", A/RES/54/4, 15 October 1999.

⁴⁰¹ UN, Division for the Advancement of Women [online], "Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women", updated 10 February 2005. [cited 11 April 2005]. Available from Internet: <http://www.un.org/womenwatch/daw/cedaw/protocol>

⁴⁰² Janusz Symonides and Vladimir Volodin, *A Guide to Human Rights: Institutions, Standards, Procedures* (Paris: United Nations Educational, Scientific and Cultural Organization, 2003), p. 328.

⁴⁰³ UN, Division for the Advancement of Women [online], "What is an Optional Protocol?", updated 10 February 2005. [cited 11 April 2005]. Available from Internet: <http://www.un.org/womenwatch/daw/cedaw/protocol/whatis.htm>

⁴⁰⁴ Kwong-Leung Tang, "The Leadership Role of International Law in Enforcing Women's Rights", *Gender and Development*, 8:3 (November 2000), p. 68.

⁴⁰⁵ UN, Division for the Advancement of Women [online], "Why an Optional Protocol?", updated 10 February 2005. [cited 11 April 2005]. Available from Internet: <http://www.un.org/womenwatch/daw/cedaw/protocol/why.htm>

the provisions found therein? Article 17 states that no reservations to the Protocol are permitted, but in the same breath, states may opt out of the of the enquiry clause of the Protocol, Article 10, by refusing to recognise the competence of the Committee to conduct investigations into claims of grave or systematic violations thereby nullifying the potentially positive effects of Articles 8 and 9. This continues to leave the Committee toothless. Article 19 also allows for a State Party to denounce the Protocol at any time. International law is already especially problematic as concerns the domestic application of international instruments; with these conditions, how is this self-negating Protocol supposed to serve its purpose, besides, perhaps, to temporarily placate interest groups until they recognise the Protocol for what it truly is?

3.5.4 The Vienna Declaration

The World Conference on Human Rights produced the Vienna Declaration and Programme of Action.⁴⁰⁶ Section II.A.3 deals specifically with the equal status and human rights of women, emphasizing the importance of synchronizing the *de jure* and *de facto* human rights of women. The Declaration highlighted the inalienability and universality of women's human rights; the importance of gender mainstreaming;⁴⁰⁷ and the elimination of violence and discrimination against women.⁴⁰⁸ One author believes that Vienna represented the commencement of the narrowing of the universalist-cultural relativist gulf which plagues the promotion of women's human rights and the beginning of the ability of the international community to achieve practical commitments and enforceable standards for the protection of

⁴⁰⁶ United Nations, "Vienna Declaration and Programme of Action", A/CONF.157/24, 13 October 1993.

⁴⁰⁷ UN, "Vienna Declaration", paragraph 37.

⁴⁰⁸ UN, "Vienna Declaration", paragraphs 38 and 39.

women's rights.⁴⁰⁹ This may be so in light of the steps taken (on paper) at the Conference towards institutional and legal capacity building with a view to rendering the legal human rights regime of women effective.⁴¹⁰ Nevertheless, documents produced as a result of the conference are of no legal effect and it is left to governments to decide whether to act on the suggestions made.

3.5.5 Declaration on the Elimination of Violence Against Women

Not only was discrimination against women a problem, but so too was the issue of violence. The right to equality sought by women included the right to equal treatment by the law and to be protected against violence. In recognition of the scourge of violence faced by millions of women and the fact that CEDAW did not expressly deal with violence, the General Assembly requested the CSW to draft a document to deal with the elimination of violence against women.⁴¹¹ The Declaration on the Elimination of Violence Against Women ("DEVAW") was adopted by the General Assembly on 20 December 1993.⁴¹² It is important to note that it was the NGO movement that spearheaded efforts at the international level to have violence against women recognised as a serious problem.⁴¹³ It was the first attempt to define gender based violence that traversed the private/public divide and recognised individuals, communities as well as the State as perpetrators of violence against women. According to

⁴⁰⁹ See generally Manisha Desai, "From Vienna to Beijing: Women's Human Rights Activism and the Human Rights Community", in Peter Van Ness (ed), *Debating Human Rights: Critical Essays from the United States and Asia* (London: Routledge, 1999) and pp. 184-185.

⁴¹⁰ See Dorota Gierycz, "Human Rights of Women at the Fiftieth Anniversary of the United Nations", in Wolfgang Benedek *et al* (eds), *Human Rights of Women: International Instruments and African Experiences* (London: Zed Books, 2002), pp. 45-46.

⁴¹¹ See UN, General Assembly, "Resolution on Implementation of the Nairobi Forward-Looking Strategies and requesting the CSW to complete work on a declaration on the elimination of violence against women", A/RES/47/95, 16 December 1992. DEVAW builds on the Committee's General Recommendation No. 19.

⁴¹² UN, General Assembly, "Declaration on the Elimination of Violence Against Women", A/RES/48/104, 23 February 1994.

⁴¹³ Christine Brautigam, "International Human Rights Law: The Relevance of Gender", in Wolfgang Benedek *et al* (eds), *Human Rights of Women: International Instruments and African Experiences* (London: Zed Books, 2002), p. 12.

Article 1, gender-based violence refers to the “physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”.

This is explicitly developed in Article 2 which states:

Violence against women shall be understood to encompass, but not be limited to, the following:

(a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;

(b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

(c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

Article 4 of DEVAW, which echoes Article 5 of CEDAW, specifically requests that states not “invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination”. It also declares that “States should pursue by all appropriate means and without delay a policy of eliminating violence against women...”

The Commission on Human Rights appointed a Special Rapporteur⁴¹⁴ to investigate the issue of gender-based violence and make recommendations for its elimination. Her preliminary report revealed that gender-based violence was a result of historically unequal power relations between men and women which became institutionalised over time.⁴¹⁵ She made a very interesting point that “men control the knowledge systems of the world” and that “it is this lack of control over knowledge systems which allows them [women] not only to be victims of violence,

⁴¹⁴ UN, Commission on Human Rights, “Resolution appointing a Special Rapporteur on violence against women”, ESCOR, 1994, Suppl. No. 4.

⁴¹⁵ Special Rapporteur on violence, “Preliminary Report to the Commission on Human Rights”, E/CN.4/1995/42, 22 November 1994, Part II, B.

but to be part of a discourse which often legitimizes or trivializes violence against women”.⁴¹⁶ This ties in very neatly with the arguments made in chapter two above on critical theory and the feminist exposure of male biases in knowledge construction. The Special Rapporteur has taken the first step of recognising the bias and making recommendations for its removal. It is the last step of emancipation that is proving quite challenging.

In her conclusions and recommendations, the Special Rapporteur called on states to:

- a) Condemn violence against women and not invoke custom, tradition or religion to avoid their obligations to eliminate such violence;
- b) Ratify CEDAW without reservation
- c) Formulate national plans of action to combat violence against women
- d) Initiate strategies to develop legal and administrative mechanisms to ensure effective justice for women victims of violence
- e) Train and sensitize judicial and police officials with regard to the issues concerning violence against women
- f) Reform educational curricula so as to instil values which prevent violence against women
- g) Promote research with regard to the issues concerning violence against women
- h) Ensure proper reporting of the problem of violence against women to international human rights mechanism.⁴¹⁷

She also called for the formulation of an optional protocol to CEDAW to allow for an individual right of petition once local remedies have been exhausted.⁴¹⁸

Unfortunately, despite these excellent recommendations, should this Declaration be formalised into a convention, it would likely receive a similar response to CEDAW in terms of the number of reservations that are liable to be entered. The duties placed on states to eliminate violence against women would be quite onerous and wide ranging and will meet with opposition as it will have the effect of ‘infringing’ on custom and tradition and in some cases would require a complete socio-cultural and legal overhaul, as is currently the case with CEDAW.

⁴¹⁶ Special Rapporteur on violence, “Preliminary Report”, Part II, B, para. 57.

⁴¹⁷ Special Rapporteur on violence, “Preliminary Report”, Part V, para. 315.

⁴¹⁸ Special Rapporteur on violence, “Preliminary Report”, Part V, para. 317.

3.6 Non Gender-Specific International Legal Instruments

There are other conventions that are non-gender specific but have the potential to enhance women's rights at the international level. Initially, women played an insignificant role in the determination of political, legal and institutional structures both in the USA and in Europe where much of the human rights debate was pursued,⁴¹⁹ largely because women historically have been denied political identity and agency.⁴²⁰ International law as it pertains to the rights of women (as humans) is biased by the probability that the main international law makers are men and really do not take into account the needs of women. A look at the various conventions dealing with war crimes and crimes committed against humanity would suggest that they still do not take into consideration women's issues. The Convention of the Prevention and Punishment of the Crime of Genocide⁴²¹ defines genocide in reference to national, ethnical, racial or religious groups as "(a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting in the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group; (f) forcibly transferring children of the group to another group." It is prohibited in the Geneva Convention relative to the Protection of Civilian Persons in Time of War⁴²² to commit any of the following: "(a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (b) taking of hostages; (c) outrages upon personal dignity, in particular humiliating and degrading treatment:..." The former would appear to include women by virtue of section (d), while there are no gender specific references in the latter convention. How does either of these conventions treat with the issue of ethnic cleansing in the form of rape after which these women are forced to bear these children? It is to be inferred in

⁴¹⁹ Noreen Burrows, "International Law and Human Rights: the Case of Women's Rights", in Tom Campbell *et al* (eds), *Human Rights: From Rhetoric to Reality* (Oxford: Basil Blackwell, 1986).

⁴²⁰ Spike Peterson, "The Politics of Identity in International Relations", *The Fletcher Forum of World Affairs* 17:2 (1993), p. 7.

⁴²¹ Entered into force on 12 January 1951.

⁴²² Entered into force on 21 October 1950.

sections (a) and (c) of the Geneva Convention relative to the Protection of Civilian Persons in the Time of War? If not, why has neither of these conventions been amended to consider this fact? Why have there not been any attempts to make new international legal instruments to deal with such grievous crimes?⁴²³

It would appear from a survey of gender-based treaty law that these types of conventions are discriminatory in the sense that they describe “exclusionary provisions which reflect a societal concept of women as a group which either should or cannot engage in specified activities.”⁴²⁴ In contrast, corrective or non-discriminatory conventions seek to improve treatment meted out to women without making overt comparisons to the treatment of man such as seen in the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.⁴²⁵ Hevener goes on to describe the non-discriminatory conventions as those which do not separate women as a different group and which do not assert that biological differences should create the basis for social or political discrimination. This is evidenced in the Universal Declaration of Human Rights of 1948.

⁴²³ This is not to say that international law cannot deal with such issues in a non gender-specific manner. In the unprecedented case of *Prosecutor v Akayesu*, Case No. ICTR-96-4-T (Trial Chamber), 02 September 1998, rape was defined for the first time in international law and the Trial Chamber “underscored the fact that rape and sexual violence also constitute genocide in the same way as any other act, as long as they were committed with intent to destroy a particular group targeted as such”. United Nations [online], “Rwanda International Criminal Tribunal Pronounces Guilty Verdict in Historic Genocide Trial”, Press Release AFR/94 L/2895, 02 September 1998[cited 16 January 2008]. Available from Internet: <http://www.un.org/News/Press/docs/1998/19980902.afr94.html>. See also, “When Rape becomes Genocide” [online], *The New York Times*, 05 September 1998. [cited 16 January 2008]. Available from Internet: <http://query.nytimes.com/gst/fullpage.html?res=990DE3D9163EF936A3575AC0A96E958260> where a very interesting observation was made: “When charges were first brought against Mr. Akayesu, rape was not among them. Despite extensive media reports of rapes, the tribunal's investigators, at the time, virtually all men, could not find evidence to support an indictment. But during the trial a witness brought up rape in the cultural center. Questioned by Navanethem Pillay, a South African who is the tribunal's only female judge, the witness gave details. Other witnesses followed. Largely due to pressure from women's groups, the investigators went back to ask about rape, and those charges were added. **Without female judges and investigators, this cruel aspect of the Rwandan genocide might never have been addressed**”. Emphasis added.

⁴²⁴ Natalie Hevener, “An Analysis of Gender Based Treaty Law: Contemporary Developments in Historical Perspective”, *Human Rights Quarterly*, 8:1 (1986), p. 71.

⁴²⁵ This was entered into force on 25 July 1951.

These conventions prove that historically there has been a concern with the rights of women in the arena of international law and human rights. International law has proven, however, to be somewhat myopic and the fact of an absence of a forum for international review of these instruments aggravates the situation. These legal instruments have remained rather restrained in their ability to improve, or even affect, the condition of women and are criticised as representing little more than statements of good intentions on behalf of the parties to the international conventions.⁴²⁶ This is further aggravated by the fact that women generally remain under-represented in decision-making structures,⁴²⁷ particularly where governance is concerned on both the domestic and international level.

According to Gaer, there are several reasons why women's issues do not rank high in the United Nations human rights mechanisms.⁴²⁸ Firstly, many delegates to these UN conventions are lawyers and there is a tendency on their part to focus on due process and traditional formal procedures. Further, human rights bodies tend to focus on civil and political rights rather than on socio-economic rights. Even if socio-economic rights are contemplated, it is generally through the lens of development issues. Gaer states that there would appear to be a lack of consciousness of gender discrimination among human rights organisations. Finally, the sentiment that gender discrimination is a private affair justifies keeping it outside the responsibilities of governments. There would also seem to be little communication between the separate UN bodies mandated to examine the legal instruments.

⁴²⁶ Laura Reanda, "Human Rights and Women's Rights: The United Nations Approach", *Human Rights Quarterly*, 3:2 (1981), p. 21.

⁴²⁷ Steans, *Gender and International Relations: An Introduction*, p. 5.

⁴²⁸ Felice Gaer, "Human Rights at the UN: Women's Rights are Human Rights", *In Brief*, No. 14 (November 1999).

3.7 Managing the Relationship Between States: International Relations and the Gender Bias

The above discussions clearly place the state as the central actor in international law and it is therefore critical to examine the attitude of states in the management of their relationships with each other as this attitude would certainly enhance the understanding of the place of women's rights issues in the spectrum of international law. Feminist writings illustrate that gender *is* in fact enormously important to the understanding of international relations. Peterson notes that international relations feminists have expanded and transformed international relations theories as they pertain to issues of identity, sexuality, militarism, polity, revolutions, nationalisms, social hierarchies, transnational economics, political movements and international organisations.⁴²⁹ Sylvester has grouped such issues and identified three main areas of international relations in which gender is interested: critique and reappropriation of stories told about the proper scope of international relations; revisions of war and peace narratives; and reevaluations of women and development in the international system and its parts.⁴³⁰ It is the very first area which is of concern here, as it forms the subject of study here in illustrating male bias.

The very notion of the principal actor in (realist) international relations, the sovereign state, is gendered. Sovereignty revolves around notions of the exercise of power within state boundaries, the duty of non-intervention in the affairs that fall within the exclusive jurisdiction of other states, and protection of the people and property that form part of that state.⁴³¹ In order to

⁴²⁹ V. Spike Peterson, "Feminisms and International Relations", *Gender and History*, 10:3 (November 1998), p. 587.

⁴³⁰ Christine Sylvester, "Feminist Theory and Gender Studies in International Relations", *International Studies Notes*, 16/17, 3/1 (Fall 1991/Winter 1992), pp. 32-38. Also available online at: <http://www.isanet.org/sections/ftgs/femir.html>.

⁴³¹ See Ian Brownlie, *Principles of Public International Law* (Oxford: Clarendon Press, 1996), p. 287 and Rajendra Ramlogan, *The Developing World and the Environment: Making the Case for the Effective Protection of the Global Environment* (Lanham: University Press of America, 2004), p. 204. In Bull's classical realist text, he has divided sovereignty into two types: "internal sovereignty" - state

fulfil these requirements the state adopted a certain character and came to personify an idealised concept of masculinity.⁴³² Certain decidedly masculine characteristics were projected onto the state - strength, power, autonomy, independence and rationality⁴³³ - all necessary in exercising sovereignty and maintaining the integrity of state security.

According to Steans, this personification of the state into a “purposive individual”, known as sovereign man or rational political man,⁴³⁴ is a rational choice-making individual able to legitimise violence. He is placed at the centre of the conceptual universe and therefore becomes the subject of knowledge. Sovereign man is held to embody the “truth” of international relations where international relations refer to the relations between “him, the state...and a series of marginalized and displaced others”.⁴³⁵ Examining international relations critically from a gender perspective allows not only for rendering visible structural gender inequalities but also for “empowering women as subjects of knowledge”⁴³⁶ and not seeing them solely as passive objects.

Runyan and Peterson posit a very interesting argument concerning women’s ostensible unimportance to international relations. According to these authors, women are “both invisible in and yet central to the tenets of realism”.⁴³⁷ They liken woman to all that realist international

supremacy over all other authorities with that territory and population - and “external sovereignty” - not supremacy, but independence of outside authorities. Bull, *The Anarchical Society*, p. 8.

⁴³² According to Connell’s idea of “hegemonic masculinity” which he defines as “the configuration of gender practice which embodies the *currently accepted* answer to the problem of the legitimacy of patriarchy, [and] which guarantees...the dominant position of men and the subordination of women”, the concept of masculinity as accepted by society varies over time and reflects the need for intermittent change. Rob Connell, *Masculinities* (Cambridge: Polity Press, 1995), p. 77. Emphasis added. Masculinity as defined here does not apply to all men, as men, like women, do not constitute a homogenous group and are also differentiated on the bases of race, class, ethnicity, nationality, culture, age and sexual preference.

⁴³³ Tickner, *Gender in International Relations*, p. 3.

⁴³⁴ Note the parallel to rational economic man, where both are white, rational and male - another uncritical universalisation.

⁴³⁵ Steans, *Gender and International Relations*, p. 53.

⁴³⁶ Steans, *Gender and International Relations*, p. 31.

⁴³⁷ Anne Sisson Runyan and V. Spike Peterson, “The Radical Future of Realism: Feminist Subversions of IR Theory”, *Alternatives*, 16 (1991), p. 68.

relations theory has no control over, such as the state of anarchy, war and crises, which states ultimately seek to control. They examine it from the perspective of patriarchal relations of “manstate” seeking to control “women,” which it construes as an unreasonable (mad), anarchical “outsider” or “other”.⁴³⁸ This construction of woman as madness, other and outsider is coterminous with realism’s definition of international relations and gives rise to the need to “tame” and “domesticate” her as she must be brought under control due to her inability to ever be capable of reason.⁴³⁹ This reinforces Enloe’s examination of “how the conduct of international politics has *depended* on men’s control of women”.⁴⁴⁰

As an alternative perspective and part of the “third debate” or “inter-paradigm debate”, the introduction of the gender viewpoint problematises the “truths” presented in various paradigms of international relations. It questions the “underlying ontological, epistemological, and axiological premises and assumptions”⁴⁴¹ of these paradigms by highlighting the gendered premises on which international relations is based. Feminist theorising

“critically probes social theories for marks of gender that have gone unnoticed, and reveals distortions, biases, exclusions, inequalities, and denied identity politics in such theories; it traces how it has come to be that gendered theories seem neutral and universal and without gender; it transgresses the boundaries of supposedly true theories by posing gender experiences or narratives that counter or deepen our knowledge, or that reveal another side, a different puzzle, perhaps a different story than gender; it looks in ‘strange’ places for the people, stories, or even data...to fill out or rewrite, sometimes with unusual linguistic moves, what we think we know”.⁴⁴²

Whitworth’s approach to analysing gender in international relations is to ask whether international relations theory allows for a discussion on the social construction of meaning,

⁴³⁸ Runyan and Peterson, “The Radical Future of Realism”, p. 68.

⁴³⁹ Runyan and Peterson, “The Radical Future of Realism”, p. 69.

⁴⁴⁰ Cynthia Enloe, *Bananas, Beaches and Bases: Making Feminist Sense of International Politics* (Berkeley: University of California Press, 2000), p. 4. Emphasis in the original.

⁴⁴¹ Yosef Lapid, “The Third Debate: On the Prospects of International Theory in a Post-Positivist Era”, *International Studies Quarterly*, 33: 3 (Sept. 1989), p. 241.

⁴⁴² Christine Sylvester, “The contributions of feminist theory to international relations”, in Steve Smith *et al* (eds), *International Theory: Positivism and Beyond* (Cambridge: Cambridge University Press, 2002), p. 257.

historical variability and for the theorisation of power, as gender cannot be understood without reference to these issues.⁴⁴³ In using these premises, Whitworth deliberates whether there exist any spaces within the various paradigmatic traditions of international relations to facilitate gender discussions.⁴⁴⁴ According to her review, realism's ontological commitments to states and statesmen preclude any incorporation of gender into its analysis; neither can it theorise power. Pluralism is equally myopic as it is ahistorical and incapable of understanding the structural features of gender inequality and women's oppression. Critical theory, however, takes into account the three criteria mentioned above as central to theorising about international relations and holds the greatest promise for incorporating gender into international relations theory. Criticisms of critical theory itself notwithstanding, critical international relations theory presents the most appropriate place for treating with feminist concerns.

Whitworth also assesses mainstream feminist theories and identifies important deficiencies.⁴⁴⁵ Liberal feminism was concerned mainly with the absence of women from both the study and practice of international relations, erroneously implying that women were not there in the first place. It uncritically accepts the realist "high politics" agenda and fails to comprehend the structural features of socio-political behaviour. Radical feminism suffers from essentialism, as it privileges women over men and perpetuates gender dichotomies. Feminist postmodernism argues for the social construction of meaning but also lacks the ability to identify and change gender inequalities. Again, for Whitworth, only critical feminist theory is able to assess biases, why and how such biases came into being, the effects of such biases and the possibility for change. Concurring with Whitworth, Steans states, "Feminist critical theory attempts a complex

⁴⁴³ Sandra Whitworth, *Feminism and International Relations: Towards a Political Economy of Gender in Interstate and Non-Governmental Institutions* (Basingstoke: Palgrave MacMillan, 1997), p. 42. This is dealt with in chapter two and is an expansion of her discussion in "Gender in the Inter-Paradigm Debate", *Millennium: Journal of International Studies*, 18:2 (Summer 1989), pp. 265-272.

⁴⁴⁴ See Whitworth, *Feminism and International Relations*, pp. 42-56.

⁴⁴⁵ See Whitworth, *Feminism and International Relations*, pp. 12-24 and 30-31.

analysis of why and how the construction of gender has served to legitimize the subordination of women and of how hegemonic structures are imbued with patriarchal ideology".⁴⁴⁶

Tickner identifies the origin of the dichotomisation of gender roles with the birth of the public/private divide at the onset of the industrial revolution as the foundation upon which modern theories of international politics have been constructed.⁴⁴⁷ This is coupled with the fact that policy formulations on the core concerns of international relations are conducted by men and international relations as a discipline that analyses these activities are "bound to be primarily about men and masculinity".⁴⁴⁸ The reverse of this notion may also be true. If international relations, from an orthodox perspective, is comprised mainly of the activities of men, then this may also provide a forum for the production and maintenance of masculinities. According to Hooper, "It is likely that political events and masculine identities are both *simultaneous* products of men's participation in the practices of international relations".⁴⁴⁹

Women are also generally absent from warfare, but according to Steans, this is no historical accident.⁴⁵⁰ Women symbolise masculinity subordinated or insufficient. Echoing de Beauvoir's sentiment, a boy is not born a soldier; he becomes a soldier. Many studies on the military reveal the fact that "[w]ar does not come naturally to humans. Men must be trained to fight and kill others".⁴⁵¹ Such training is achieved through misogynistic means by expunging feminine

⁴⁴⁶ Steans, *Gender and International Relations*, p. 174.

⁴⁴⁷ Tickner, *Gender in International Relations*, pp. 135-136. See also chapter two above.

⁴⁴⁸ Tickner, *Gender in International Relations*, p. 5. See also Fred Halliday, "Hidden from International Relations: Women and the International Arena", *Millennium: Journal of International Studies*, 17:3 (Winter 1988), p. 420.

⁴⁴⁹ Charlotte Hooper, "Masculinities, IR and the 'Gender Variable': A Cost-Benefit Analysis for (Sympathetic) Gender Sceptics", *Review of International Studies*, 25 (1999), p. 478. Emphasis in the original.

⁴⁵⁰ See Steans, *Gender and International Relations*, p. 93.

⁴⁵¹ Jane Jaquette, "States Make War", *Foreign Affairs*, 78:1 (Jan/Feb 1999), p. 128. Her article was (one of a few) in response to Fukuyama's claim that males are naturally aggressive and ready for war based on a crude comparison of chimp behaviour in a human controlled environment with the natural aggression of young men and biological tendencies. See Francis Fukuyama, "Women and the Evolution of World Politics", *Foreign Affairs*, 77:5 (Sept/Oct 1998), pp. 24-40 and responses, Barbara

traits and behaviours in men in order to make them “real men”.⁴⁵² Steans goes on to make a link between war and domestic violence.⁴⁵³ The cultivation of a particular brand of masculinity for the killing fields, strongly linked to patriotism and violence, unfortunately makes its way into homes where it is completely inappropriate as the battered are simply not similarly mentally and physically equipped.⁴⁵⁴

Brown’s definition of a critical feminist international relations reflects the ideas postulated by both Whitworth and Steans and is quite instructive.

“A feminist international relations that is genuinely emancipatory will take gender difference as its starting point but will not take it as given. Its proper object and purpose must be to explain how gender has been constructed and maintained in international relations and if and how it can be removed.”⁴⁵⁵

For Steans, critical feminist international relations has a fourfold purpose. It must point to the exclusions and biases of mainstream international relations; make women visible as social, economic and political subjects in international politics; analyse how gender inequalities have been embedded in the daily practices of international relations; and importantly, empower women as subjects of knowledge.⁴⁵⁶

These indeed amount to a monumental task and are what this work seeks to achieve with particular reference to law. It is of fundamental importance not to reduce gender relations in international relations to *women* in international relations,⁴⁵⁷ as gender is simply *not* synonymous with ‘woman’. Brown recognises that a feminist critical theory of international

Ehrenreich *at al*, “Fukuyama’s Follies: So What if Women Ruled the World?”, *Foreign Affairs*, 78:1 (Jan/Feb 1999), pp.118-129.

⁴⁵² See also Marysia Zalewski, “Well, what is the feminist perspective on Bosnia?”, *International Affairs*, 71:2 (1995), pp. 351-352 and 353 and Ehrenreich *at al*, “Fukuyama’s Follies”, pp. 118-129.

⁴⁵³ Steans, *Gender and International Relations*, p. 101.

⁴⁵⁴ This, however, is *not* to condone the construction of a wartime behaviour.

⁴⁵⁵ Sarah Brown, “Feminism, International Theory, and International Relations of Gender Inequality”, *Millennium: Journal of International Studies*, 17:3 (Winter 1988), p. 473.

⁴⁵⁶ Jill Steans, “Engaging from the Margins: Feminist Encounters with the ‘Mainstream’ of International Relations”, *British Journal of Politics and International Relations*, 5:3 (August 2003), p. 435.

⁴⁵⁷ Brown, “Feminism, International Theory”, p. 472.

relations is basically a political act of commitment to see the world through the eyes of the socially subjugated.⁴⁵⁸ An immediate problem that arises here is that the socially subjugated speak from a position of marginality (and powerlessness) but lack the resources, access and knowledge to be heard.⁴⁵⁹ The difficulty for the critical feminist theorist is to get the socially subjugated to appreciate the implications of what they see and to improve their condition if possible.

3.8 Conclusion

Groups are discriminated against on the basis of class, nationality, race, gender and sexual orientation. Human rights conventions have evolved over time and are indeed becoming increasingly inclusive. This is evidenced by the fact that human rights theory has expanded across ethnic and national lines in the context of decolonisation.⁴⁶⁰ Interestingly, though, human rights are not necessarily synonymous with women's rights and have not included the notion of gender where gender may refer to the ideological and material relations which exist between men and women;⁴⁶¹ human rights would seem to be the human rights of men.

Early international law was predicated on Western theological notions and the role of women was accorded little or no significance. The situation did not change perceptibly in the Renaissance period when international law assumed a more secular character. This period emphasised the notion of sovereignty and rights, but rights as applicable to men.

⁴⁵⁸ Brown, "Feminism, International Theory", p. 472.

⁴⁵⁹ See generally Cynthia Enloe's "Margins, Silences and Bottom Rungs: How to Overcome the Underestimation of Power in the Study of International Relations", in Steve Smith *et al* (eds), *International Theory: Positivism and Beyond* (Cambridge: Cambridge University Press, 2002).

⁴⁶⁰ Andrew Deutz, "Gender and International Human Rights", *The Fletcher Forum of World Affairs*, 17:2 (1993), p. 34.

⁴⁶¹ Steans, *Gender and International Relations: An Introduction*, p. 10.

In the post-World War II era with the establishment of the UN Charter, human rights discourses assumed great importance. The UN Charter and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations reflect the priorities of powerful states by firmly emphasising the importance of sovereign equality and the duty of non-intervention, with the UN Charter simultaneously promoting human rights and gender equality. These latter are also reaffirmed in the Universal Declaration of Human Rights but there is obvious tension in reconciling state concerns and individual rights. Continued bias at the level of the state in international law has circumscribed the inclusion of women's rights as part of general human rights discussions. The male bias in the system of governance in most nations has translated into a similar bias in the management of the relationship between states rendering it hardly surprising that women's rights in international law have been ascribed limited importance.

The picture painted above is admittedly bleak but it is the reality facing the world's women. Does international law provide the means for women to achieve equality? Yes and no. As seen above, while the international community can get together and achieve some degree of consensus on the advancement of women's human rights, obvious problems of resource prioritisation combined with a lack of political will can spell a death sentence for the promotion of women's human rights nationally and internationally. International instruments mean nothing if they are not incorporated into domestic legislation. Even if incorporated, legislation alone cannot change the very real power imbalances that exist between men and women.⁴⁶² Important to the process are education to change traditional and (often) discriminatory attitudes, training, legal literacy, adequate gender representation in top policy making positions and the provision of resources, financial and otherwise, which, if provided, would indicate political will at the level of the state. This political will can be forced through the application of pressure from

⁴⁶² See Christine Chinkin, "Violence Against Women: The International Legal Response", *Gender and Development*, 3:2 (June 1995), p. 28.

above and below. The discussions on international law, international relations and the rights of women, particularly with respect to the right to equality illustrate the limitations of the “top-down” approach. Noteworthy is the fact that DEVAW arose from the pressures being asserted by NGOs concerned with violence against women, exemplifying the strength of the “bottom-up” approach and illustrating the fallacy that international law can exclusively effect change.

In this vein, chapter four examines the role of the United Nations in promoting women’s human rights. It will treat with the development of the international machinery dealing with women’s human rights in the post 1945 period through the various United Nations bodies.

CHAPTER FOUR

4.0 The Institutional Framework: The United Nations and Non-Governmental Organisations Post-1945

4.1 Women and the United Nations

Women have been struggling to have their voices heard for centuries.⁴⁶³ It was only until the late 1800's, however, that women were truly able to mobilise themselves in the fight against gender discrimination concerning political, economic and social issues. With the establishment of the United Nations in 1945 and the formulation of the Charter of the United Nations came the purposive call for the promotion and encouragement of respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.⁴⁶⁴ The inclusion of this sex equality provision is attributed to the work of feminists working with the Inter-American Commission on Women.⁴⁶⁵

This chapter will review the institutional framework established by the United Nations, including women's groups, for the promotion of women's human rights through an examination of institutions such as the Commission on the Status of Women, the Division for the Advancement of Women and the Committee on the Elimination of Discrimination Against Women. The chapter will also examine the role of NGOs in influencing the international response to the struggle for women's rights. Figure 4.1 illustrates the structure of the UN human rights bodies.

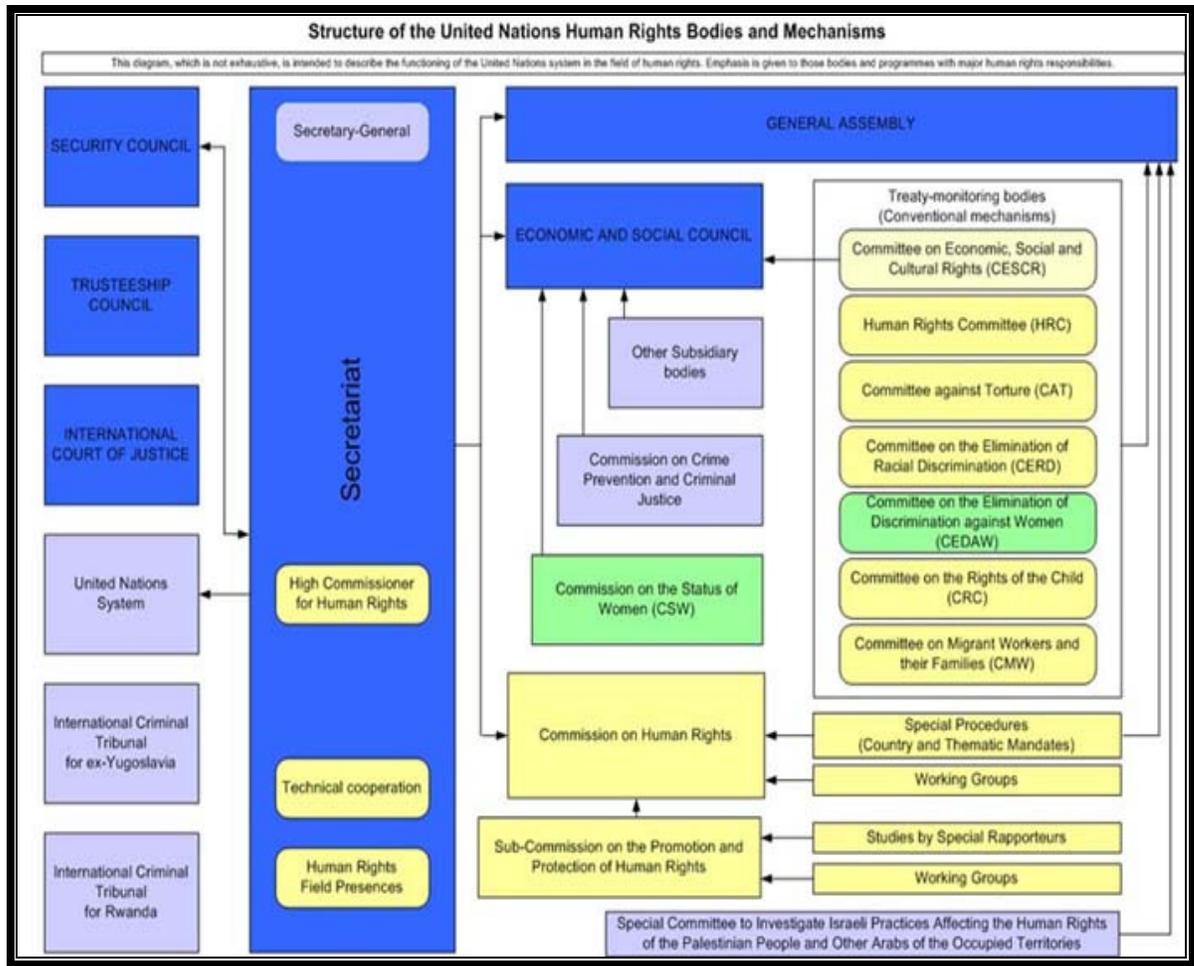
⁴⁶³ See section 2.2.2 in chapter 2 above.

⁴⁶⁴ See Article 1, paragraph 3 of the Charter of the United Nations.

⁴⁶⁵ Association of Bahá'í Women [online], "Gender Studies Forum". [cited 30 March 2005]. Available from Internet: <http://www.bci.org/abw/ABW/forum/tahe.html>. See also section 3.3.2 in chapter 3 above.

4.2 Institutional

Figure 4.1 Structure of the United Nations Human Rights Bodies and Mechanisms⁴⁶⁶



⁴⁶⁶ United Nations, Office of the United Nations High Commissioner for Human Rights [online], "Structure of the United Nations Human Rights Bodies and Mechanisms". [cited 23 June 2005]. Available from the Internet: http://www.ohchr.org/english/structure_small.htm. This diagram is not an exhaustive list but shows the Commission on the Status of Women, the Committee on the Elimination of Discrimination Against Women and the Division for the Advancement of Women and their position in the general UN human rights structure.

4.2.1 Commission on the Status of Women

The development of women's issues at the level of the United Nations began as early as 1946 with a request from the United States delegation at the inaugural session of the General Assembly to governments of the world "to encourage women everywhere to take a more active part in national and international affairs".⁴⁶⁷ This was very quickly followed by the establishment of a Commission on Human Rights and a Subcommission on the Status of Women by the United Nations Economic and Social Council ("ECOSOC") for the purposes of pursuing the objectives stated in Article 1, paragraph 3 of the Charter of the United Nations.⁴⁶⁸

The Subcommission was established "to make proposals about how to raise the status of women to equality with men in all fields of human enterprise"⁴⁶⁹ thereby providing the Commission on Human Rights with special support regarding problems relating to women. Immediately upon its establishment, though, interest groups and non-governmental organisations ("NGOs") recognised that the parent body would not have been able to give due attention to the Subcommission in face of the vast amount of work facing it, including the drafting of an international bill of rights, and feared that women's issues would not be considered with the urgency required.⁴⁷⁰ The Subcommission therefore requested that it be elevated to the status of Commission. ECOSOC conferred upon the Subcommission status of full Commission, now known as the Commission on the Status of Women ("CSW"), less than

⁴⁶⁷ United States of America, "Open Letter to the Women of the World", read by Eleanor Roosevelt at the first session of the General Assembly, A/PV.29, 12 February 1946.

⁴⁶⁸ ECOSOC, "Resolution establishing the Commission on Human Rights and the Subcommission on the Status of Women", E/RES/5(1), 16 February 1946.

⁴⁶⁹ Bodil Begtrup, "Statement made by the Chair of the Subcommission on the Status of Women to ECOSOC recommending that the status of the Subcommission be raised to full Commission", E/PV.4, 28 May 1946.

⁴⁷⁰ See Division for the Advancement of Women, Paragraph 13, "Progress Achieved in the Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women", CEDAW/C/1995/7, 14 November 1994.

one month after the request.⁴⁷¹ ECOSOC stated the CSW's functions as focussing on the preparation of recommendations and reports to ECOSOC on promoting women's rights in political, economic, social and education fields.

In its first report to ECOSOC, the CSW recognised the need for legislative change to advance the status of women and stated that it intended

“to raise the status of women, irrespective of nationality, race, language or religion, to equality with men in all fields of human enterprise, and to eliminate all discrimination against women in the provisions of statutory law, in legal maxims or rules, or in interpretations of customary law”.⁴⁷²

It further went on to state that its aims included the equal participation of women in government and full citizenship; full equality for women to exercise all civil rights; full opportunity for women to take equal part in social life; and equal opportunity for compulsory, free and full education, all very important in empowering women to realise their full potential. In recognition of the importance of strengthening the legal framework to provide women with the means to achieve equality, ECOSOC requested CSW to examine the legal and customary disabilities that women face with regard to political, economic, social rights and educational opportunities with a view to framing proposals for action.⁴⁷³

Despite what appeared to be very positive moves towards advancing the status of women in all spheres of life, there existed a very disturbing restriction on the powers of the CSW. While the CSW, like the Commission on Human Rights, was free to receive communications from

⁴⁷¹ See “ECOSOC Resolution establishing the Commission on the Status of Women (CSW)”, E/RES/2/11, 21 June 1946. This is one of nine functional commissions set up by the UN. See UN Department of Public Information [online], “Organization Chart of the United Nations”, March 2004. [cited 04 April 2005]. Available from Internet: <http://www.un.org/aboutun/chart.html>.

⁴⁷² See “Report of the CSW to ECOSOC on the first session of the Commission, held at Lake Success, New York, from 10 to 24 February 1947”, E/281/Rev.1, 25 February 1947, Chapter X.

⁴⁷³ See “ECOSOC resolution defining the functions of the CSW and requesting Member States to provide the Commission with data on the legal status and treatment of women in their countries”, E/RES/48(IV), 29 March 1947, Paragraph A.6.

individuals, groups and NGOs, neither was given the power to take any action in regard to complaints concerning the status of women.⁴⁷⁴ The CSW had neither the power to investigate specific cases of discrimination nor did it have the authority to take measures to ensure compliance with United Nations standards.⁴⁷⁵ So, what was its purpose? It was established to be the main policy-making body of the United Nations dealing with women that promoted global sensitisation to women's status and encouraged governments to incorporate international conventions into their domestic laws.

The CSW faced many other problems as a body dealing specifically with women's issues. While it was suggested that the CSW be comprised of experts serving in a personal capacity so as to avoid governmental control, it was decided that its composition should be of States members and meant that it was basically an intergovernmental body representing the official policies of States rather than the concerns of interest groups.⁴⁷⁶ At the same time, nevertheless, the CSW's members are largely women, but if they do not have necessary support of their respective governments, and it can be argued that women's issues will not have the same force as economic development, for example, and therefore not be afforded priority, the operations of the CSW will continue to be constrained. This is further compounded by the CSW's lack of institutional weight as evidenced by the budgetary and procedural restrictions imposed on the CSW by ECOSOC.⁴⁷⁷

The mandate of the CSW was expanded in 1987 to include the objectives of the Nairobi Forward-Looking Strategies for the Advancement of Women to deal not only with matters of equality for women, but also to include women as integral agents of change and beneficiaries in

⁴⁷⁴ See, "ECOSOC resolution requesting the Secretary-General to provide the CSW with communications received concerning the status of women", E/RES/76(V), 5 August 1947.

⁴⁷⁵ United Nations, *The United Nations and the Advancement of Women*, p. 14.

⁴⁷⁶ See Laura Reanda, "The Commission on the Status of Women", in Philip Alston (ed), *The United Nations and Human Rights: A Critical Appraisal* (Oxford: Clarendon Press, 1995), p. 269. This chapter offers a comprehensive review of the CSW.

⁴⁷⁷ Reanda, "The Commission on the Status of Women", pp. 269-271.

issues of development and peace.⁴⁷⁸ At the General Assembly's request,⁴⁷⁹ after the Fourth World Conference on Women, ECOSOC once again modified the CSW's terms of reference stating that it shall:

- (a) Assist the Economic and Social Council in monitoring, reviewing and appraising progress achieved and problems encountered in the implementation of the Beijing Declaration and Platform for Action at all levels, and shall advise the Council thereon;
- (b) Continue to ensure support for mainstreaming a gender perspective in United Nations activities and develop further its catalytic role in this regard in other areas;
- (c) Identify issues where United Nations system-wide coordination needs to be improved in order to assist the Council in its coordination function;
- (d) Identify emerging issues, trends and new approaches to issues affecting the situation of women or equality between women and men that require urgent consideration, and make substantive recommendations thereon;
- (e) Maintain and enhance public awareness and support for the implementation of the Platform for Action.⁴⁸⁰

While the CSW was previously emphasising gender-specific machinery and projects, it was now responsible for implementing the Beijing Platform for Action and for mainstreaming a gender perspective into the activities of the United Nations.⁴⁸¹

Despite the many obstacles faced by CSW, it has still been able to secure recognition in law of women's rights in many countries, notwithstanding the *de jure / de facto* divide, and has raised the problem of discrimination against women politically, economically, socially and institutionally.⁴⁸²

⁴⁷⁸ See "ECOSOC Resolution adopting the long-term programme of work of the CSW to the year 2000", E/RES/1987/24, 28 May 1987.

⁴⁷⁹ See General Assembly, "Follow-up to the Fourth World Conference on Women and full implementation of the Beijing Declaration and the Platform for Action", A/RES/50/203, 22 December 1995.

⁴⁸⁰ ECOSOC, "Follow-up to the Fourth World Conference on Women", Resolution 1996/6, 22 July 1996.

⁴⁸¹ United Nations, Commission on the Status of Women [online], "Functions". [cited 28 January 2004]. Available from Internet: <http://www.un.org/womenwatch/daw/csw/index.html#functions>

⁴⁸² Reanda, "The Commission on the Status of Women", p. 301.

4.2.2 Division for the Advancement of Women

The CSW has had the support of a unit within the United Nations Secretariat dealing with the status of women.⁴⁸³ While the Division for the Advancement of Women (“DAW”) as it is now known was established in 1946, it was originally established as a Section on the Status of Women within the Human Rights Division of the United Nations Department of Social Affairs. In 1972, it was upgraded to the Branch for the Promotion of Equality of Men and Women and moved to the Centre for Social Development and Humanitarian Affairs established in the same year. It was renamed the Branch for the Advancement of Women in 1978 and was further upgraded to its current status as a Division in 1993 when it was moved to the UN headquarters in New York and is now part of the Department of Economic and Social Affairs which in turn forms part of the UN Secretariat.

DAW is meant to act as a catalyst in mainstreaming gender issues and has four main branches:⁴⁸⁴

1. The Gender Analysis Section conducts research and develops policy options, fosters interaction between governments and civil society and provides substantive servicing for UN intergovernmental and expert bodies;
2. The Women’s Rights Unit assists in breaking down the barriers between human rights and development and fosters the attainment of women’s human rights as an integral part of development;
3. The Coordination and Outreach Unit raises awareness, promotes international standards and norms and sharing of best practices, and strengthening communication between the international and national policy-making processes and the women of the world; and
4. The Gender Advisory Services Unit provides governments with advisory services and technical support in the activities related to gender in development.

DAW’s most important role came about in 1995 when it acted as the substantive secretariat for the Fourth World Conference on Women in Beijing, the largest conference in the history of the United Nations, and was also responsible for the preparations for the three previous World

⁴⁸³ See United Nations, *The United Nations and the Advancement of Women*, p. 15.

⁴⁸⁴ Extracted from Dorothea Gaudart, “Charter-based Activities Regarding Women’s Rights in the United Nations and Specialized Agencies”, in Wolfgang Benedek *et al* (eds), *Human Rights of Women: International Instruments and African Experiences* (London: Zed Books, 2002), pp. 60-61.

Conferences on Women (Mexico 1975, Copenhagen 1980, Nairobi 1985).⁴⁸⁵ In its mission statement, it says:

...the Division for the Advancement of Women (DAW) advocates the improvement of the status of women of the world and the achievement of their equality with men. Aiming to ensure the participation of women as equal partners with men in all aspects of human endeavour, the Division promotes women as equal participants and beneficiaries of sustainable development, peace and security, governance and human rights. As part of its mandate, it strives to stimulate the mainstreaming of gender perspectives both within and outside the United Nations system.⁴⁸⁶

DAW's placement in the Department of Economic and Social Affairs was aimed at "ensuring the integration of gender issues in policy formulation and coordination, including the servicing of the intergovernmental machinery."⁴⁸⁷ As seen above from the responsibilities of its four main branches, it is meant to foster dialogue, provide advisory services and raise awareness. It is therefore very important in the UN's decision to move away from gender specific machinery towards gender mainstreaming in all areas and continues to provide the support required by the CSW.

4.2.3 Committee on the Elimination of Discrimination Against Women

The United Nations Committee on the Elimination of Discrimination against Women ("the Committee") was established in 1982 to monitor compliance with CEDAW and is composed of

⁴⁸⁵ UN, Division for the Advancement of Women [online], "About DAW: Brief History". [cited 28 January 2004]. Available from Internet:

<http://www.un.org/womenwatch/daw/daw/index.html#history>

⁴⁸⁶ UN, Division for the Advancement of Women [online], "About DAW: Mission Statement". [cited 28 January 2004]. Available from Internet:

<http://www.un.org/womenwatch/daw/daw/index.html#mission>

⁴⁸⁷ UN Secretary General, "Report to General Assembly on implementation of the outcome of the Fourth World Conference on Women: Action for Equality, Development and Peace", A/50/744, 10 November 1995, Paragraph 62.

23 experts, elected by States Parties but serving in their personal capacity,⁴⁸⁸ on women's issues from around the world.⁴⁸⁹

Part V Articles 17-22 of CEDAW outlines the form and functions of the Committee. Article 17 establishes the Committee and its main tasks, as stated in Article 18, is to meet annually (Article 20) to report on the legislative, judicial, administrative or other measures which States Parties have adopted and to indicate the factors and difficulties affecting the degree of States Parties' ability to fulfil their obligations under the convention. This single annual meeting proved inadequate and Article 20 was amended in 1995 where the duration of the meeting of the Committee would be determined by States Parties to CEDAW, subject to the approval of the General Assembly.⁴⁹⁰ In addition to communications received from States Parties, the Committee may also request information from other UN agencies and NGOs to assist its members in assessing government reports.⁴⁹¹ While NGOs are accorded no formal involvement in the Committee's work,⁴⁹² either as part of the Committee's procedures and practices or through CEDAW, the involvement of NGOs cannot be overstated as they have the ability to get information at the ground level to which other groups may not have access.

According to Article 18 of CEDAW, States Parties are obligated to submit an initial report within one year after the entry into force of the State concerned and thereafter at a four yearly interval or whenever the Committee so requests. The initial report is meant to be comprehensive,

⁴⁸⁸ Andrew Byrnes, "The Convention on the Elimination of All Forms of Discrimination against Women", in Wolfgang Benedek *et al* (eds), *Human Rights of Women: International Instruments and African Experiences* (London: Zed Books, 2002), p. 129.

⁴⁸⁹ See UN, Division for the Advancement of Women [online], "Committee on the Elimination of Discrimination Against Women", updated 10 February 2005. [cited 04 April 2005]. Available from Internet: <http://www.un.org/womenwatch/daw/cedaw/committee.htm>.

⁴⁹⁰ See "Report of the Secretary-General to the General Assembly on the Convention on the Elimination of All Forms of Discrimination against Women, including the text of the proposed amendment to article 20 of the Convention", A/50/346, 11 August 1995.

⁴⁹¹ See United Nations, *The United Nations and the Advancement of Women*, pp. 54-55.

⁴⁹² See Roberta Jacobson, "The Committee on the Elimination of Discrimination Against Women", in Philip Alston (ed), *The United Nations and Human Rights: A Critical Appraisal* (Oxford: Clarendon Press, 1995), pp. 466-468.

establishing a baseline of information against which progress can be measured in the four yearly reports.⁴⁹³ Due to the lack of enforcement capabilities of the Committee and associated sanctions, many countries have been delinquent in submitting their reports. As at the end of January 2005 at the Committee's thirty-second session, 112 countries have a total of 219 overdue reports,⁴⁹⁴ 35 countries have yet to submit their initial reports with three countries having initial reports due as far back 03 September 1982.⁴⁹⁵ Predictable is the fact that most of the countries which have not submitted even their initial reports are developing countries, as this reflects prioritisation and commitment at the level of the state.⁴⁹⁶ Even when some countries do submit reports they are of such poor quality that both the tardy submission as well as the wanting character of the report is a sad but true reflection of the level of commitment of the state involved.⁴⁹⁷ In light of the backlog of reports, the Committee has decided to allow states to submit combined reports to encourage submission of reports.⁴⁹⁸

Trinidad and Tobago is, regrettably, one of those delinquent states and only submitted its combined *initial, second and third* periodic report in January 2001,⁴⁹⁹ even though it ratified the convention 11 years earlier.⁵⁰⁰ Its fourth periodic report was due on 11 February 2003.⁵⁰¹ The country stated as its reason for the delay in submitting the report that "no mechanism existed to

⁴⁹³ See, UN, Division for the Advancement of Women [online], "Reporting", updated 10 February 2005. [cited 05 April 2005]. Available from Internet: <http://www.un.org/womenwatch/daw/cedaw/reporting.htm>.

⁴⁹⁴ This includes initial to sixth periodic reports.

⁴⁹⁵ Numbers derived from Annex I of UN, Secretary-General, Report to the Committee on the Elimination of Discrimination Against Women, "Status of submission of Reports by States Parties under Article 18 of the Convention", CEDAW/C/2005/I/2, 03 December 2004, pp. 2-13.

⁴⁹⁶ This is not to say that developed countries are not just as guilty. See Philip Alston, "Reconceiving the UN Human Rights Regime: Challenges Confronting the New UN Human Rights Council", Center for Human Rights and Global Justice Working Paper No. 4. New York: New York University School of Law, 2006, pp. 10-11.

⁴⁹⁷ See Jacobson, "The Committee on the Elimination of Discrimination Against Women", p. 455.

⁴⁹⁸ See Byrnes, "The Convention on the Elimination of All Forms of Discrimination against Women", p. 133.

⁴⁹⁹ See UN, General Assembly, "Report of the Committee on the Elimination of Discrimination against Women", A/57/38, 14 January-01 February 2002.

⁵⁰⁰ See UN DAW, "States Parties".

⁵⁰¹ See UN, Secretary-General, "Status of submission of Reports by States Parties under Article 18 of the Convention", Annex I, p. 12.

deal with reporting under international human rights treaties and insufficient resources had been allocated for that purpose”.⁵⁰² This problem of insufficient resources is ubiquitous and not limited only to the issue of the submission of reports or to this country or to the national level. Insufficient resources are normally compounded by a lack of political will concerning the implementation of measures designed to promote women’s issues. Again, this reflects the level of commitment that the government is willing to give towards honouring its international obligations concerning women’s human rights.

The reporting procedures of the Committee take the following simplified format.⁵⁰³ Countries must submit their written reports which the Committee considers to determine whether it conforms to the guidelines elaborated by the Committee.⁵⁰⁴ After having considered the report, a representative of the government of the state whose report is up for discussion is invited to introduce the report. The representative may then field questions or supply additional information or clarification as required by the members. The Committee then supplies its concluding comments on the positive actions taken by governments; the factors and difficulties affecting the implementation of the Convention; notes principle areas of concerns; and makes recommendations.⁵⁰⁵ This document drawn up by the Committee is particularly important as it points out priority areas of concern and provides detailed recommendations for action.⁵⁰⁶

While this latter action is commendable, like the CSW, the Committee lacks the institutional weight required to make it as effective as it should be. The budgetary and procedural restrictions placed on the Committee by the General Assembly prevent it from effectively

⁵⁰² Paragraph 121, General Assembly, “Report”.

⁵⁰³ See Jacobson, “The Committee on the Elimination of Discrimination Against Women”, pp. 455-462 and Byrnes, “The Convention on the Elimination of All Forms of Discrimination against Women”, pp. 135-137 for greater detail.

⁵⁰⁴ For the guidelines see CEDAW, “Compilation of Guidelines on the Form and Content of Reports to be Submitted by States Parties to the International Human Rights Treaties”, HRI/GEN/2/Rev.1/Add.2, 5 May 2003.

⁵⁰⁵ General Assembly, “Report”.

⁵⁰⁶ See Byrnes, “The Convention on the Elimination of All Forms of Discrimination against Women”, p. 137.

pursuing its mandate.⁵⁰⁷ It is also like the CSW, in the sense that it is not empowered to take action with regard to investigating individual cases of violations of women's rights but is only concerned with following general trends and patterns. As stated in Article 21 of CEDAW, the Committee may make suggestions and general recommendations based on their review of the reports and information received to the General Assembly through its parent body, ECOSOC. This means that it is left to the General Assembly to decide whether any particular action can be taken and what that action should constitute.

4.2.4 Gender Mainstreaming and the United Nations

Attention has been given to promoting women's issues over the years, albeit in a piecemeal and largely ineffective fashion. In light of this, the BPFA mandates gender mainstreaming as the main global strategy for promoting gender equality. In each of the twelve critical areas of concern in the BPFA is stated the need for the promotion of "an active and visible policy of mainstreaming a gender perspective into all policies and programmes" which takes into account the effects of such policy on women and men.⁵⁰⁸

ECOSOC, in 1997, defined gender mainstreaming as,

"...the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality."⁵⁰⁹

⁵⁰⁷ See Jacobson, "The Committee on the Elimination of Discrimination Against Women", p. 469.

⁵⁰⁸ See paragraphs 57, 79, 105, 123, 141, 164, 189, 202, 229, 238, 252 and 273 of the BPFA.

⁵⁰⁹ UN, Economic and Social Council, "Report of the Economic and Social Council for 1997: Gender Mainstreaming", A/52/3, 18 September 1997, Chapter IV, Part I, A.

The International Labour Organization summed up the definition of gender mainstreaming nicely by saying that mainstreaming is “the transformation of unequal social and institutional structures into equal and just structures for both men and women”.⁵¹⁰

Gender mainstreaming is meant to incorporate a gender perspective into all activities at all levels with a view to ensuring that gender equality is placed at the centre of policy decisions, medium-term plans, programme budgets and institutional structures and processes,⁵¹¹ instead of having separate structures for dealing with women’s issues. Initial efforts to achieve gender equality by the UN focussed on separate targeted activities for women, but it was later admitted that this approach did not tackle the structural constraints to gender equality and that an integrative approach would be better suited.⁵¹² Yet, it must be understood that mainstreaming does *not* replace the need for targeted, women-specific policies and programmes, but are complementary strategies, as affirmative action is still required for women’s empowerment. Such targeted interventions are necessary where there are “glaring instances of persistent discrimination of women and inequality between women and men”.⁵¹³

At the national level, there is debate as to whether the establishment of a single national institution (better known as ‘national machinery’) for the purpose of gender mainstreaming would be more effective than having gender immediately incorporated into the overall governance structure of the state.⁵¹⁴ In 2000, the UN General Assembly held a special session

⁵¹⁰ International Labour Organization [online], “Gender Equality Tool”. [cited 13 April 2005]. Available from Internet: <http://www.ilo.org/public/english/bureau/gender/newsite2002/about/defin.htm>.

⁵¹¹ UN, Office of the Special Advisor on Gender Issues and Advancement of Women [online], “Gender Mainstreaming: Strategy for Promoting Gender Equality”, updated August 2001. [cited 13 April 2005]. Available from Internet: <http://www.un.org/womenwatch/osagi/pdf/factsheet1.pdf>.

⁵¹² UN, Office of the Special Advisor on Gender Issues and Advancement of Women [online], “The Development of the Gender Mainstreaming Strategy”, updated August 2001. [cited 13 April 2005]. Available from Internet: <http://www.un.org/womenwatch/osagi/pdf/factsheet3.pdf>.

⁵¹³ UN, Office of the Special Advisor on Gender Issues and Advancement of Women [online], “Gender Mainstreaming”. [cited 13 April 2005]. Available from Internet: <http://www.un.org/womenwatch/osagi/gendermainstreaming.htm>

⁵¹⁴ See Shirin Rai, “Institutional Mechanisms for the Advancement of Women: Mainstreaming Gender, Democratizing the State?”, in Shirin Rai (ed), *Mainstreaming Gender, Democratizing the State?*

to review the progress made and the obstacles remaining to the implementation of the BPFA.⁵¹⁵ Paragraph 24 recognises that “National machineries have been instituted or strengthened and recognized as the institutional base acting as “catalysts” for promoting gender equality, gender mainstreaming and monitoring of the implementation of the Platform for Action”, but at the same time their effectiveness has been hindered largely by “inadequate financial and human resources and a lack of political will and commitment” which have pervasive effects on other related issues.⁵¹⁶ It must also be noted that national machineries have to be sensitive to the socio-political climate of each country and therefore are generally not intersubstitutable. Incorporating a gender perspective into the general governance of a state, however, would have the effect of naturalizing gender issues by moving them from the margin to the centre, as they would not be treated with by a separate, single national institution; although, national machineries just might prove to be the most feasible starting place for achieving such a goal.

4.3 Non-Governmental Organisations

Women’s NGOs play an important role both nationally and internationally in the promotion and protection of women’s rights and for this reason must be included as one of the key institutional players at the international level. Their central role is further enhanced by their very active interface with the UN concerning women’s issues the world over. NGOs are certainly not a new

Institutional Mechanisms for the Advancement of Women (Manchester: Manchester University Press, 2003) on national machinery for gender mainstreaming and Kathleen Staudt, “Gender Mainstreaming: Conceptual Links to Institutional Machineries”, in Shirin Rai (ed), *Mainstreaming Gender, Democratizing the State? Institutional Mechanisms for the Advancement of Women* (Manchester: Manchester University Press, 2003) on integrating a gender perspective into the general governance structure.

⁵¹⁵ Shirin Rai, “Introduction”, in Shirin Rai (ed), *Mainstreaming Gender, Democratizing the State? Institutional Mechanisms for the Advancement of Women* (Manchester: Manchester University Press, 2003), p. 4.

⁵¹⁶ UN General Assembly, “Report of the Ad Hoc Committee of the Whole of the Twenty-Third Special Session of the General Assembly”, A/S-23/10/Rev.1 (New York: United Nations, 2000), paragraphs 24-25.

phenomenon but today hold greater political influence⁵¹⁷ and have established themselves as important actors in international relations.⁵¹⁸ Women have been organising to effect social change from as early as the mid-1800's, advocating the abolition of slavery and universal female suffrage.⁵¹⁹ Today, the mandates of women's groups may be wide-ranging but their objectives are nevertheless the same: to promote the interests of women at all levels of social, legal, economic, political and cultural development. While environment and development NGOs may be perceived to be of greater effect in promoting social change, perhaps because the results of some of their activities are more readily visible, the importance of women's NGOs should in no way be understated. Their importance as part of the human rights movement is gaining similar popularity in their ability to effect [real] social change, even though such change may be much more muted and difficult to achieve.

Edwards and Hulme state that development NGOs secure small scale successes which tend to be highly localised and fleeting and have little, if any, impact on the distribution of power and resources within and between societies,⁵²⁰ as their influence has been confined to projects rather than fundamental attitudes and ideology.⁵²¹ Women's NGOs, however, with particular reference to the post-Beijing era, hope to achieve much more widespread and permanent successes that necessarily question the status quo privileging men and which ultimately would affect the distribution of power and resources to the benefit of women. Social transformation of

⁵¹⁷ Environment and development non-governmental organisations emerged explosively on the scene in the 1980s but were in existence long before. See for example, Michael Cernea, *Nongovernmental Organizations and Local Development* [World Bank Discussion Paper No. 40] (Washington, D.C.: The World Bank, 1988), pp. iii, 1-2.

⁵¹⁸ Robert Jordan *et al*, *International Organizations: A Comparative Approach to the Management of Cooperation* (Westport Connecticut: Praeger Publishers, 2001), p. 243.

⁵¹⁹ See end of section 2.2.2 of chapter two above.

⁵²⁰ Michael Edwards and David Hulme, "Scaling-up the developmental impact of NGOs: concepts and experiences", in Michael Edwards and David Hulme (eds), *Making a Difference: NGOs and Development in a Changing World* (London: Earthscan Publications Ltd., 1992 [1994]), p. 13.

⁵²¹ Michael Edwards and David Hulme, "Making a difference? Concluding Comments", in Michael Edwards and David Hulme (eds), *Making a Difference: NGOs and Development in a Changing World* (London: Earthscan Publications Ltd., 1992 [1994]), p. 212.

this type is a much more lengthy process with much less readily visible results and would explain why the successes of women's NGOs tend to be low-key and difficult to attain.⁵²²

While many agree that it is difficult to capture the essence of what an NGO is in a simple definition,⁵²³ the term 'NGO' consequently has a variety of definitions but "typically are entities that are entirely or largely independent of government and have humanitarian or cooperative rather than commercial objectives".⁵²⁴ Despite this rather vague and all-encompassing description, Hilhorst denounces such definitional attempts as she believes that NGOs are many things at the same time, as they are required to present different faces to the various stakeholders (donors, beneficiaries, colleagues) in order to satisfy each.⁵²⁵ Lewis and Wallace also perceive the term 'nongovernmental organisation' as "a virtually meaningless label"

⁵²² See Mary Meyer and Elisabeth Prügl, "Gender Politics in Global Governance", in Mary Meyer and Elisabeth Prügl (eds), *Gender Politics in Global Governance* (Lanham, Maryland: Rowman and Littlefield Publishers Inc., 1999), p. 16.

⁵²³ Some authors prefer the use of the term "civil society organisation" (CSO) as a more "neutral and politically correct alternative", as they believe the term "NGO" to be a loaded term referring to very structured, bureaucratic organisations. See Marlies Glasius and Mary Kaldor, "The State of Global Civil Society: Before and After September 11", in Marlies Glasius, Mary Kaldor and Helmut Anheier (eds), *Global Civil Society 2002* (Oxford: Oxford University Press, 2002), p. 5 and the contributions to the volume.

⁵²⁴ Christopher Gibbs, Claudia Fumo and Thomas Kuby, *Nongovernmental Organizations in World Bank-Supported Projects: A Review* (Washington, D.C.: The World Bank, 1999), p. 1. NGOs, however, span a continuum from those that are purely voluntary groups with no governmental affiliation or support to those that are creations and arms of governments. Moreover, many are highly market driven or are relations of corporations so that they are, for all practical purposes, profit making NGOs (the profits of which are generally reaped back into the NGO activity). In addition, NGOs may not just be concerned with singular issues, such as women's issues or development or human rights only for example, but may represent any combination of all. See Thomas Princen and Matthias Finger, "Introduction", in Thomas Princen and Matthias Finger (eds), *Environmental NGOs in World Politics: Linking the Local and the Global* (London: Routledge, 1994), pp. 15-16. The following terms represent some of the ways in which NGOs attempt to define themselves in terms of their organisational and operational frameworks: CBO: Community Based Organisation; DONGO: Donor Organised Non-governmental Organisation; GONGO: Government Organised Non-Governmental Organisation; NGO: Non-Governmental Organisation; NGDO: Non-Governmental Development Organisation; NPO: Non-profit Organisation; PDO: Private Development Organisation; PSO: Public Service Organisation; PVO: Private Voluntary Organisation; QANGO: Quasi Non-governmental Organisation; VALG: Voluntary Agency/Organisation; VO: Voluntary Organisation. University of Colorado [online], "NGOs", created October 2004. [cited 17 June 2005]. Available from Internet: <http://www.colorado.edu/careerservices/pdf/NGOs.pdf>. "COME N'GOs" is the term given to fly by night NGOs.

⁵²⁵ Dorothea Hilhorst, *The Real World of NGOs: Discourse, Diversity and Development* (London: Zed Books, 2003), pp. 3-4. Hilhorst provides a rather insightful ethnographic study of a Philippine NGO illustrating the impacts of the country's history and culture on the NGO and their effects on the relationship between the NGO and international donor institutions.

precisely because their functions and nature are so diverse.⁵²⁶ Hilhorst sees NGOs “not as things but as open-ended processes” as they are constituted of people and do not operate in isolation and consequently are in a state of constant flux.⁵²⁷ For her, the question is not what an NGO is, but how ‘NGO-ing’ is *done*.⁵²⁸ Further, Hilhorst states that NGO definitions and classifications do not question why and how organisations become NGOs or what causes such organisations to adopt the label ‘NGO’. For Hilhorst, the term ‘NGO’ is a *claim-bearing label* imputing a moral component and meaning that the organisation is doing good for the development of others.⁵²⁹ Women’s NGOs certainly seek to do good for the development of women worldwide, providing a forum in which women are more comfortable to express themselves.

NGOs have created a space for themselves within civil society, both nationally and globally. According to Marchand and Runyan, “civil society is one of the most familiar grounds for feminist activists and women NGOs”.⁵³⁰ They go on to state that “[s]trengthening civil society is often seen as an important tool and objective in the struggle for democracy and in the fight to improve women’s/human rights”. Within this space, NGOs provide alternative decision-making structures which claim to allow for “greater participation and broader democracy than other top-down institutional forms”.⁵³¹ It is important, however, not to equate NGOs with civil society, as NGOs are just one of the many actors within civil society and play an important role in its

⁵²⁶ David Lewis and Tina Wallace, “Introduction”, in David Lewis and Tina Wallace (eds), *New Roles and Relevance: Development NGOs and the Challenge of Change* (West Hartford, Connecticut: Kumarian Press, 2000), p. x. Such diversity derives from differences in size, duration, range and scope of activities, ideology, cultural background, organisational culture and legal status. Princen and Finger, “Introduction”, p. 6.

⁵²⁷ Hilhorst, *The Real World of NGOs*, pp. 4-5.

⁵²⁸ Hilhorst, *The Real World of NGOs*, p. 5.

⁵²⁹ Hilhorst, *The Real World of NGOs*, p. 7.

⁵³⁰ Marianne Marchand and Anne Runyan, “Feminist Sightings of Global Restructuring: Conceptualizations and Reconceptualizations”, in Marianne Marchand and Anne Runyan (eds), *Gender and Global Restructuring: Sightings, Sites and Resistances* (London: Routledge, 2000), p. 20. It should also be noted that this is the same space within which fundamentalist groups, which tend to be anti-feminist, operate.

⁵³¹ Irene Tinker, “Nongovernmental Organizations: An Alternative Power Base for Women?”, in Mary Meyer and Elisabeth Prügl (eds), *Gender Politics in Global Governance* (Lanham, Maryland: Rowman and Littlefield Publishers Inc., 1999), pp. 94-95.

development.⁵³² According to Grzybowski, “NGOs are a minute fraction of the organisational and active universe that constitute[s] civil societies. To confuse [NGOs] with civil society itself is to ascribe to them capacities and a legitimacy that they do not possess...”⁵³³

4.3.1 NGOs at the International Level: The UN

At the level of the UN, NGOs do not hold any powers of negotiation or decision making; they are allowed consultative status.⁵³⁴ The use of the term “consultative status” was deliberately chosen to indicate their secondary role - they would be able to give advice but not take part in the decision making process; in some fields, such as human rights and sustainable development, however, NGOs have become high status participants at the centre of policymaking.⁵³⁵ Article 71 of the UN Charter provides for NGOs consultative status within ECOSOC: “The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence”.

⁵³² Julie Fisher, *Nongovernments: NGOs and the Political Development of the Third World* (West Hartford, Connecticut: Kumarian Press, 1998), p. 12. Fisher identifies six major ways in which NGOs promote civil society in developing countries: 1) NGOs act as intermediary between citizen and state; 2) NGOs play an important role in promoting sustainable development and viable civil societies; 3) NGOs promote political rights and civil liberties; 4) NGOs focus on bottom-up democratization; 5) NGOs influence other voluntary organisations, and; 6) NGOs form the crux of the relationship between the profit and non-profit sector of society. See pp. 13-17.

⁵³³ Cândido Grzybowski, “We NGOs: A Controversial Way of Being and Acting”, in Deborah Eade and Ernst Ligteringen (eds), *Debating Development: NGOs and the Future* (Oxford: Oxfam Publishing, 2001), p. 215.

⁵³⁴ There are three levels of consultation with the ECOSOC. This status allows some direct participation in the intergovernmental process. Below ECOSOC status, there is “association” with the Department of Public Information, which does not allow participation, but does permit access to the UN. The third level deals with accreditation to conferences and other one-time events, which can permit considerable participation and lobbying in informal sessions, but not allow a continuing relationship with the UN. Global Policy Forum [online], “NGO Status at the UN”, updated December 2000. [cited 08 July 2005]. Available from Internet: <http://www.globalpolicy.org/ngos/ngo-un/info/status.htm>. For information on accreditation, see UN [online], “How to Obtain Consultative Status with ECOSOC”. [cited 14 July 2005]. Available from Internet: <http://www.un.org/esa/coordination/ngo/howtoapply.htm>.

⁵³⁵ See Peter Willetts, “From “Consultative Arrangements” to “Partnership”: The Changing Status of NGOs in Diplomacy at the UN”, *Global Governance*, 6:2 (Apr-Jun 2000), pp. 191-213. See Willetts also for the relationship between NGOs and the General Assembly.

In 1946, ECOSOC granted consultative status to 41 NGOs.⁵³⁶ Currently, there are 135 NGOs with general consultative status, 1566 with special consultative status and 942 with roster consultative status with ECOSOC.⁵³⁷ The table below illustrates the various categories.

Table 4.1 NGOs in Consultative Status with ECOSOC

STATUS	NUMBER
ECOSOC General Consultative Status	135
ECOSOC Special Consultative Status	1566
A1 - ECOSOC Roster Consultative Status	387
A2 - ECOSOC Roster Consultative Status	98
B - ECOSOC Roster Consultative Status	33
C - ECOSOC Roster Consultative Status	424
TOTAL	2643

In 1968, ECOSOC Resolution 1296 (XLIV) defined the rights of NGOs conferred with consultative status⁵³⁸ and up until 1996, only international NGOs were so privileged. ECOSOC resolved in 1996 that the process be widened to include the participation of national, sub-regional and regional NGOs as well.⁵³⁹ In view of such an achievement, if women's NGOs have no decision making powers, what is the purpose of such consultative status? Such status is meant to facilitate advice and information gathering⁵⁴⁰ by ECOSOC or any of its bodies and to allow NGOs that represent important elements of public opinion to express their views.⁵⁴¹ The

⁵³⁶ United Nations, Economic and Social Council, Non-Governmental Organizations [online], "Consultative Status with ECOSOC", updated 2007. [cited 26 September 2007]. Available from Internet: <http://www.un.org/esa/coordination/ngo/>.

⁵³⁷ Figures collated from UN [online], "NGOs in Consultative Status with ECOSOC", dated 15 March 2005. [cited 14 July 2005]. Available from Internet: http://www.un.org/esa/coordination/ngo/pdf/INF_List.pdf

⁵³⁸ See ECOSOC Resolution 1296 (XLIV), "Arrangements for Consultation with Non-Governmental Organizations," 23 May 1968. [cited 08 July 2005]. Available from Global Policy Forum [online] from Internet: <http://www.globalpolicy.org/ngos/ngo-un/info/res-1296.htm>.

⁵³⁹ See article four, ECOSOC, "Consultative Relationship between the United Nations and Non-Governmental Organizations", Resolution 1996/31, 25 July 1996.

⁵⁴⁰ NGOs generally have good, if not the best information, on the subject matter that they represent. See William Hopkinson, "Challenges Facing the International System in the 21st Century", in *The Europa Directory of International Organizations 2003* (London: Europa Publications, 2003), p.12.

⁵⁴¹ See article twenty of ECOSOC Resolution 1996/31.

benefit to NGOs of having consultative status is that they are able to lobby governments and have successfully done so, even though such successes may be fairly limited. This forum is important in allowing local women's NGOs to represent themselves and increasing the diversity of voices at the UN.⁵⁴²

Gaer makes the point that “[s]trategic, technical and organisational leadership in the UN human rights programming has always come from the NGO sector”.⁵⁴³ Women's movements at the UN provide similar skills in promoting women's rights. The World Conference on Human Rights, held in Vienna, is said to have marked a turning point in women's participation in the UN as a forum in which to advance women's rights.⁵⁴⁴ Women in all regions formed an active and effective lobby presence in the preparatory meetings for the conference, participating directly in defining NGO positions and lobbying on women's issues. Since then, women's NGOs have refined their approach and developed key strategies to participate effectively in UN conferences, whether gender specific or not.⁵⁴⁵ They:

- ◆ Mount global campaigns. In order to exert pressure on official policy makers, women's NGOs mount global campaigns calling for dialogue and action at the local level; for lobbying at the national, regional and international levels; for gathering empirical data; and attending meetings at all levels.
- ◆ Build coalitions and consensus. In order to build coalitions and consensus, women's NGOs network and hold meetings with women's NGOs from around the world at all levels.
- ◆ Prepare policy documents. Women's NGOs draft their own documents (resolutions, treaties, protocols, conventions, platform documents) to present to and influence policy

⁵⁴² Alice Miller, “Realizing Women's Human Rights: Nongovernmental Organizations and the United Nations Treaty Bodies”, in Mary Meyer and Elisabeth Prügl (eds), *Gender Politics in Global Governance* (Lanham, Maryland: Rowman and Littlefield Publishers Inc., 1999), p. 164.

⁵⁴³ Felice Gaer, “Reality Check: Human Rights NGOs Confront Governments at the UN”, in Thomas Weiss and Leon Gordenker (eds), *NGOs, the UN, and Global Governance* (Boulder, Colorado: Lynne Rienner Publishers, 1996), p. 65.

⁵⁴⁴ Connors, “NGOs and the Human Rights of Women at the United Nations”, p. 171.

⁵⁴⁵ See Martha Chen, “Engendering World Conferences: The International Women's Movement and the UN”, in Thomas Weiss and Leon Gordenker (eds), *NGOs, the UN, and Global Governance* (Boulder, Colorado: Lynne Rienner Publishers, 1996), p. 151.

makers. Being prepared makes it much easier to argue points and persuade than simply presenting one's self "on the spot".⁵⁴⁶

- ◆ Influence official delegations. Women's NGOs not only gather and disseminate information but discuss, lobby and nominate representatives to be members of official delegations to influence the position of national governments.
- ◆ Bridge NGO and official deliberations. Women's NGOs have developed a mechanism known as the women's caucus which facilitates daily meetings between NGOs and official delegates and policy makers to have their voices heard.

With such detailed organisation, NGOs are sometimes, if not most times, better prepared than official delegates. It is argued that the parallel NGO forums are much more productive than the official conferences, if for no other reason than the fact that they are necessarily less formal and can provide feminist alternatives or lay out issues that have not been addressed by the official conference.⁵⁴⁷ West observed that NGO forums "brought to life a participatory democracy that generated immeasurable discussion" in what she calls "counterpolitical spaces".⁵⁴⁸ This was certainly the case at the parallel NGO forum held in the Beijing suburb of Huairou, despite the difficulties the host government attempted to create to make it difficult for participants to attend. Nevertheless, some activists have questioned the strategy of working through the UN conference process to advance women's rights for fear that participating to influence pre-set agendas and intergovernmental documentation would result in cooptation.⁵⁴⁹ Further, working with governments and UN agencies legitimises the frameworks offered by them which do not typically represent women's interests.

⁵⁴⁶ Chen, "Engendering World Conferences", p. 143.

⁵⁴⁷ Lois West, "The United Nations Women's Conferences and Feminist Politics", in Mary Meyer and Elisabeth Prügl (eds), *Gender Politics in Global Governance* (Lanham, Maryland: Rowman and Littlefield Publishers Inc., 1999), p. 193.

⁵⁴⁸ West, "The United Nations Women's Conferences and Feminist Politics", p. 191.

⁵⁴⁹ Ellen Dorsey, "The Global Women's Movement: Articulating a New Vision of Global Governance", in Paul Diehl (ed), *The Politics of Global Governance: International Organizations in an Interdependent World* (Boulder, Colorado: Lynne Rienner Publishers, 2001), p. 456.

In terms of international activity, women's NGOs are seen to be "more effective in changing policy statements" and "able to lobby their own governments to follow UN recommendations".⁵⁵⁰ While this may hold true for what is presented on paper, what actually happens in practice would indicate that these are but hollow victories, both internationally and nationally. Stienstra makes the point that even though women's concerns have been integrated into UN deliberations [and national policies], "the incorporation of these issues has followed a pattern of commitment on paper while ensuring marginalization of these issues through inadequate allocation of resources".⁵⁵¹ The emphasis can no longer remain on measuring "success by how many words or phrases [NGOs] were able to have inserted into international agreements", but the goal must ultimately take into account the need to shift emphasis to implementation and monitoring.⁵⁵² This may call for NGOs to form strategic alliances with other civil society based organisations to develop the capacity required to make this ideological shift.⁵⁵³

Stienstra has identified what she considers to be reasons for the limited achievements of women's groups at the international level.⁵⁵⁴ The first is that negative changes in the global political economy, such as war and economic crises, disproportionately affected women, who tend to be the most vulnerable group in society and therefore most susceptible to negative change. This was particularly the case in countries which adopted structural adjustment programmes. The second reason lies with the inherent conservatism of social institutions which

⁵⁵⁰ Tinker, "Nongovernmental Organizations", p. 101.

⁵⁵¹ Deborah Stienstra, *Women's Movements and International Organizations* (London: St. Martin's Press, 1994), p. 144. See also paragraph above in section 4.2.3 on Trinidad and Tobago.

⁵⁵² Deborah Stienstra, "Of Roots, Leaves, and Trees: Gender, Social Movements, and Global Governance", in Mary Meyer and Elisabeth Prügl (eds), *Gender Politics in Global Governance* (Lanham, Maryland: Rowman and Littlefield Publishers Inc., 1999), p. 265. See also Deborah Stienstra, "Dancing Resistance from Rio to Beijing: Transnational Women's Organizing and United Nations Conferences, 1992-6", in Marianne Marchand and Anne Runyun (eds), *Gender and Global Restructuring: Sightings, Sites and Resistances* (London: Routledge, 2000), pp. 220-223.

⁵⁵³ Josephina Stubbs, "Gender in Development: A Long Haul – But We're Getting There!", in Deborah Eade and Ernst Ligteringen (eds), *Debating Development: NGOs and the Future* (Oxford: Oxfam Publishing, 2001), p. 353.

⁵⁵⁴ See Stienstra, *Women's Movements and International Organizations*, p. 157.

reflect power relations and resist any changes to the *status quo*, particularly as concerns changes in gender relations favouring women. The third reason, related to the second, is that institutions, and by extension, governments, are simply unwilling to undertake the radical restructuring of economies and societies required to truly facilitate women's requests. The easiest concession is the incorporation of language that supports broad principles of equality, which tends to appease women's groups, despite the poor history of implementation of such clauses.

4.3.2 NGOs at the National Level: The State

At the domestic level, Ackerly identifies six ways NGOs work to promote women's human rights.⁵⁵⁵ These include making legal changes such that domestic or international laws better conform with CEDAW and other international agreements which recognise women's human rights (legal change); reinventing local legal practices (training the judiciary and police officers) (support); providing support systems for survivors of violence (support); educating society generally and broadly (in schools, through the media, gender training programs, creative arts [which could include songs, role-playing, theatre and various other non-threatening forms of advocacy tools to promote political awareness especially among the poorly literate⁵⁵⁶]) (education); networking and promoting alliances with women's groups and other civil society organisations (networking); and integrating women's human rights efforts with other initiatives for social, economic and political change (integration).

⁵⁵⁵ Ackerly, "Women's Human Rights Activists as Cross Cultural Theorists", pp. 316-317.

⁵⁵⁶ Brooke Ackerly and Bina D'Costa, "Transnational Feminism: Political Strategies and Theoretical Resources", Working paper 2005/1, (Australian National University, Canberra: Department of International Relations, 2005), p. 12.

NGOs' most essential role, either at the national level or the international level or in tandem with each other, is perhaps their role as agents of change.⁵⁵⁷ Historically, it has been NGOs and private citizens, rather than states, that have served as prominent conduits of pressure and influence on state activity and policy with regard to human rights and environmental principles.⁵⁵⁸ The question now is how can NGOs have true influence on state activity? Apart from the fact that NGOs prioritise single issues to the exclusion of all others and focus all their energies on promoting that issue, theoretically, social constructivism offers a possible answer.⁵⁵⁹ Chapter three above introduced the problems of relying on a realist, reified conception of sovereignty for the purposes of understanding the effects and practicality of international human rights law. It is therefore important at this point to revisit the usefulness of a social constructivist approach, as this offers a better understanding of how (better) human rights practices are adopted by states, especially in conjunction with NGO activity.

Risse and Sikkink offer a theory of socialisation⁵⁶⁰ that deals with “the process through which principled ideas (“beliefs about right and wrong held by individuals”) become norms (“collective [intersubjective] expectation about proper behaviour for a given identity”) which in turn influence the behaviour and domestic structure of states”.⁵⁶¹ Norms may also be seen as “standards of

⁵⁵⁷ NGOs also act as agents of change in the corporate world. See for example Jonathon Doh, “Nongovernmental Organizations, Corporate Strategy and Public Policy: NGOs as Agents of Change”, in Jonathon Doh and Hildy Teegen (eds), *Globalization and NGOs: Transforming Business, Government, and Society* (Westport, Connecticut: Praeger Publishers, 2003), pp. 1-18.

⁵⁵⁸ Ann Marie Clark, “Non-Governmental Organizations and their Influence on International Society”, *Journal of International Affairs*, 48:2 (Winter 1995), p. 512.

⁵⁵⁹ Sikkink states that “[r]ealism offers no convincing explanation for why relatively weak non-state actors [NGOs] could have an impact on state policy or why states would concern themselves with the internal human rights practices of other states...” Sikkink, “Human Rights, Principled Issue-Networks”, p. 437.

⁵⁶⁰ This is based on case studies of over ten countries with poor human rights records and repressive governments. See Risse, Ropp and Sikkink (eds), *The Power of Human Rights*.

⁵⁶¹ Thomas Risse and Kathryn Sikkink, “The Socialization of International Human Rights Norms into Domestic Practices: Introduction”, in Thomas Risse, Stephen Ropp and Kathryn Sikkink (eds), *The Power of Human Rights: International Norms and Domestic Change* (Cambridge: Cambridge University Press, 1999 [2002]), p. 7.

behaviour defined in terms of rights and obligations”.⁵⁶² They identify three types of socialisation processes which operate in conjunction with each other and are necessary for enduring change in human rights issues.

- ✘ Processes of adaptation and strategic bargaining
- ✘ Processes of moral consciousness-raising, “shaming,” argumentation, dialogue, and persuasion
- ✘ Processes of institutionalisation and habituation⁵⁶³

They define socialisation as “the induction of new members... into the ways of behaviour that are preferred in a society”, the goal of which is “for actors to internalise norms, so that external pressure is no longer needed to ensure compliance”.⁵⁶⁴

Unfortunately, it is only with pressure from “above and below”, ordinarily initiated by NGO action, that any sort of change takes place.⁵⁶⁵ The first process concerns the instrumental adaptation by the state to domestic and international pressures. Governments reacting to accusations of human rights violations may make superficial but tactical concessions such as signing international agreements or releasing political prisoners.⁵⁶⁶ Such actions are the result of strategic [crude] cost-benefit analyses, or in Checkel’s words, rational means-ends logics,⁵⁶⁷ based on the forced imposition of norms executed by the state in question with a view to maximising or optimising given interests and preferences, such as having embargoes lifted or ensuring/regaining access to international aid.⁵⁶⁸ The second process, usually coupled with material sanctions, deals with the shaming and persuasion of deviant states. Joachim asserts that when issues are adopted by the UN it sends a signal to states concerning which actions are

⁵⁶² Andrew Cortell and James Davis, “How do International Institutions Matter? The Domestic Impact of International Rules and Norms”, *International Studies Quarterly*, 40:4 (December 1996), p. 452.

⁵⁶³ Risse and Sikkink, “The Socialization of International Human Rights Norms”, p. 11.

⁵⁶⁴ Risse and Sikkink, “The Socialization of International Human Rights Norms”, p. 11.

⁵⁶⁵ See Alison Brysk, “From Above and Below: Social Movements, the International System, and Human Rights in Argentina”, *Comparative Political Studies*, 26:3 (October 1993), pp. 259-285.

⁵⁶⁶ Risse and Sikkink, “The Socialization of International Human Rights Norms”, p. 12.

⁵⁶⁷ Jeffrey Checkel, “International Norms and Domestic Politics: Bridging the Rationalist-Constructivist Divide”, *European Journal of International Relations*, 3:4 (1997), p. 475.

⁵⁶⁸ See Thomas Risse, “International Norms and Domestic Change: Arguing and Communicative Behaviour in the Human Rights Area”, *Politics and Society*, 27:4 (December 1999), p. 530.

considered proper or satisfactory within the international arena. As a result, NGOs can capitalise on this intersubjective understanding of acceptable behaviour to exert pressure on norm-violating states to “follow through on their international commitments or to shame them by pointing out the gap between national practice and international agreements”.⁵⁶⁹ This use of tactics such as shaming and denunciation is not meant to change state attitudes with logic but by the isolation and/or embarrassment of the target state. Persuasion need not be only trying to reason with the norm-violating state but by applying pressure in the form of sanctions.⁵⁷⁰ The application of sanctions, though, may prove fruitless if the state continues to receive military support, as happened in the early years of the Pinochet regime.⁵⁷¹ It is only when human rights norms become internalised in domestic practices and states comply with them whether or not they believe in their validity is the third and final stage in the socialisation process achieved.⁵⁷²

In effecting change at the domestic level, NGOs see five phases of state responses when applying pressure from above and below with the help of the transnational network of NGOs.

These are:

- Repression
- Denial
- Tactical concessions
- Prescriptive status
- Rule-consistent behaviour.

The first stage begins with a repressive situation in a norm-violating state where domestic opposition is too weak and/or oppressed to pose a significant threat to the government.⁵⁷³ It is during this time that domestic NGOs, depending on the level of government oppression, can activate links with transnational NGOs. The role of domestic NGOs here is information

⁵⁶⁹ Jutta Joachim, “Framing Issues and Seizing Opportunities: The UN, NGOs, and Women’s Rights”, *International Studies Quarterly*, 47 (2003), p. 250.

⁵⁷⁰ Risse and Sikkink, “The Socialization of International Human Rights Norms”, p. 14.

⁵⁷¹ See Darren Hawkins, “Domestic Responses to International Pressure: Human Rights in Authoritarian Chile”, *European Journal of International Relations*, 3:4 (1997), pp. 411-412.

⁵⁷² Risse and Sikkink, “The Socialization of International Human Rights Norms”, pp. 16-17.

⁵⁷³ Risse and Sikkink, “The Socialization of International Human Rights Norms”, p. 22.

gathering which will be forwarded to the transnational network. When the network has gathered sufficient information it can expose the norm-violating state at the international level taking it to the second stage.⁵⁷⁴

In raising international awareness of the violations taking place in the target state through the production and dissemination of information, the transnational network can now begin to lobby international human rights organisations and influential governments, reminding the latter of their own human rights standards, thereby using moral persuasion to get them to take condemnatory action against the norm-violating state. The reaction of the target state tends to be denial where denial means that the government of the norm-violating state refuses to accept the validity of international human rights norms. Denial also includes the government claiming that such criticism is tantamount to intervention in the sovereign affairs of its territory and may even mobilise nationalist sentiment and domestic support. It is interesting that the government does not deny human rights, but frames its denial in terms of the encroachment of its sovereign rights. Risse and Sikkink state that the fact that the state feels compelled to deny such charges indicates that a process of international socialisation is already in progress. The transition to the third stage depends largely on the strength and mobilisation of the transnational network and the vulnerability of the norm-violating government to international pressures.

Should international pressures continue and escalate the norm-violating government would now feel obliged to make tactical concessions by instituting cosmetic changes in an attempt to pacify international criticism with the strategic result of lifting sanctions or lessening international isolation.⁵⁷⁵ While visible changes will be effected, this does not translate into a stable amelioration of human rights conditions. This stage facilitates social mobilisation in the target country; it is during this time that domestic groups can mobilise and mount its own campaign

⁵⁷⁴ Risse and Sikkink, "The Socialization of International Human Rights Norms", pp. 22-24.

⁵⁷⁵ Risse and Sikkink, "The Socialization of International Human Rights Norms", pp. 25-28.

against the activities of the government. According to Risse and Sikkink, this is the most precarious stage as it can have the effect of moving the process forward towards lasting change in human rights conditions or it can result in greater governmental oppression of domestic opposition either ceasing the forward movement or temporarily and indefinitely halting progress.⁵⁷⁶ Government can throw the domestic movement off, as at this stage it is often relatively small and dependent on a few key leaders. By removing the leader (by whatever means), the movement becomes leaderless and unable to function.⁵⁷⁷

For those countries on the forward moving path, in addition to the mobilisation of domestic pressure groups, norm-violating governments can no longer deny the validity of international human rights norms when they start making tactical concessions. The explanation for this is that in making the minor concessions, governments are unaware of the potent impact this act engenders. Once governments start “talking the human rights talk” they become entrapped by their own rhetoric and are forced to continue in the face of international processes and strong domestic opposition. At this point, the choices available to government are few. It can begin implementation of human rights norms domestically or increase the level of repression which only strengthens domestic opposition and alienates itself from any remaining international supporters⁵⁷⁸ which in turn results in a regime change. This stage in the socialisation process marks the transition to stage four.

⁵⁷⁶ See for example the case of Tunisia in Sieglinde Gränzer, “Changing Discourse: Transnational Advocacy Networks in Tunisia and Morocco”, in Thomas Risse, Stephen Ropp and Kathryn Sikkink (eds), *The Power of Human Rights: International Norms and Domestic Change* (Cambridge: Cambridge University Press, 1999 [2002]).

⁵⁷⁷ See for example the case of Guatemala in Stephen Ropp and Kathryn Sikkink, “International Norms and Domestic Politics in Chile and Guatemala”, in Thomas Risse, Stephen Ropp and Kathryn Sikkink (eds), *The Power of Human Rights: International Norms and Domestic Change* (Cambridge: Cambridge University Press, 1999 [2002]).

⁵⁷⁸ See for example the case of the Philippines in Anja Jetschke, “Linking the Unlinkable? International Norms and Nationalism in Indonesia and the Philippines”, in Thomas Risse, Stephen Ropp and Kathryn Sikkink (eds), *The Power of Human Rights: International Norms and Domestic Change* (Cambridge: Cambridge University Press, 1999 [2002]).

Stage four sees the target country accepting the validity claims of human rights norms, even if the actual behaviour of the state does not improve.⁵⁷⁹ The international community becomes satisfied that governments have accepted the validity of human rights norms when the target state ratifies international human rights conventions; incorporates international human rights instruments into domestic law; establishes a human rights violations complaints mechanism; and no longer denounces international criticism as interference in the sovereign affairs of the country. It is also important that the state maintain a consistent discursive stance on human rights despite regime changes and/or the effluxion of time. Governments may at this time create institutions for the promotion of human rights and start training public officials on the subject matter.

With continued pressure from above and below, the state can make the transition to stage five, rule-consistent behaviour.⁵⁸⁰ Risse and Sikkink correctly note, however, that at the end of stage four, much of the international community is satisfied that the target country achieved prescriptive status and that there has been a visible reduction in the intensity of human rights violations; as a result, international attention begins to wane and governments may falter.⁵⁸¹ Consistent pressure is required from above and below to bridge rhetoric and reality. Only when this gap is closed can the final stage in the socialisation process be reached. This is where international human rights norms are fully institutionalised domestically and norm compliance becomes a habitual practice of actors and is enforced by the rule of law. When this is achieved, it can be inferred that human rights norms have been internalised.

While this five stage model applies to highly oppressive and abusive regimes, there is validity in applying parts of the model to more democratic states, such as the country under study here,

⁵⁷⁹ Risse and Sikkink, "The Socialization of International Human Rights Norms", pp. 29-31.

⁵⁸⁰ Risse and Sikkink, "The Socialization of International Human Rights Norms", pp. 31-35.

⁵⁸¹ Political change from authoritarianism to democracy can provoke a similar response. See the case of Argentina in Brysk, "From Above and Below", p. 280.

Trinidad and Tobago.⁵⁸² This country has never been under authoritarian rule, but as with other developing countries, it has to prioritise the issues on the national agenda. As such, human rights issues are not quite at the top of the agenda, let alone issues dealing with the promotion of women's rights. In terms of the model proposed by Risse and Sikink, Trinidad and Tobago skipped the first three stages and is at the fourth stage, where all international human rights conventions and women-specific conventions have been ratified and some have been incorporated into domestic law in one way or another. The problem lies with the lack of political will which translates into inadequate resources for implementation, monitoring and enforcement procedures. While the role of NGOs should in no way be trivialised in the politicisation and promotion of women's human rights issues, the fact remains that governments still play influential roles in promoting human rights domestically.⁵⁸³ Brysk makes the point that "[i]n a democratic regime, human rights change must be promoted from above, from below, *and from within*".⁵⁸⁴ It is perhaps only with pressure from above and below that political will can be forced and the gap between rhetoric and reality can be closed, but as a nation without a history of gross women's human rights abuses, this may prove quite a challenge.

4.4 Conclusion

The UN institutional structure for advancement of women's rights is affected by major obstacles that undermine its ability to foster real and meaningful change. The analysis of the UN system points to the lack of enforcement capabilities regarding state compliance with international legal obligations, such as reporting under CEDAW. The lack of enforcement capabilities coupled with budgetary and procedural restrictions create an environment conducive to ineffectiveness. This picture is hardly surprising considering that the UN governance structure is a reflection of the

⁵⁸² To be developed in much greater detail in the following chapters.

⁵⁸³ See Bas Arts, "The Global-Local Nexus: NGOs and the Articulation of Scale", *Tijdschrift voor Economische en Sociale Geografie*, 95:5 (2004), pp. 498-510.

⁵⁸⁴ Brysk, "From Above and Below", p. 280. Emphasis added.

attitude of the majority of its members. The numerical dominance of developing countries where the greatest levels of abuse of women's rights exist contributes largely to the somewhat apparent apathetic approach of the UN. Even where a committee of the UN, such as the Committee on the Elimination of Discrimination Against Women, has a majority membership of women, the fact that around 78 percent of its members are from the developing world could account for the relative ineffectiveness of such a committee. These women members are coming from governance structures that are male dominated and are therefore constrained by how far they can proceed in the struggle for the enhancement of women's rights at the international level.

The struggle for women's rights is not limited to inter-governmental organisations such as the UN. In chapter three, it was noted that DEVAW owed its genesis to a large extent to the advocacy activities of NGOs. BPFA which came out of CEDAW highlighted the growing significance of NGOs as agents of change in the international attitude to women's rights. The unprecedented gathering of over 30,000 NGO representatives in the unofficial NGO Forum provided a powerful voice that resonated throughout the official meeting. The institutional efforts of NGOs reflect the "bottom-up" approach as it includes grass roots NGOs and NGO networks. The very nature of NGOs, where membership is generally exclusive of states, ensures that issues can be ventilated without the constraining influence of states.

Having assessed the international approach to women's rights both institutionally and legally, and noted inherent limitations in the "top-down" approach, it is worthwhile to examine the behaviour of a one country to help understand why the "top-down" approach is of limited effect and why it must be complemented by the "bottom-up" approach.

CHAPTER FIVE

5.0 Trinidad and Tobago's Domestic Gender Policy: The Legislative Response

5.1 Introduction

An examination of the international legal and institutional response to the promotion of women's rights illustrated the relative lack of effectiveness of the response. This raises the question of the efficacy of using the "top-down" approach to resolving the issue of women's rights. Given that the international community is really a society of individual states, it is useful at this point to focus on the attitude of the individual state to women's rights. The domestic legal and institutional response of Trinidad and Tobago with respect to the promotion of women's rights forms the basis of the discussions in chapters five to eight. This chapter establishes the legal background of Trinidad and Tobago and discusses how the country's colonial legacy is relevant to understanding the manner in which particular kinds of elitism and male privilege have become an inherent aspect of its legal system with continuing consequences for the promotion of gender equality using this legislative medium.

At the domestic level, the legislature is enshrined in Parliament which is responsible for making such laws as it determines necessary for the peace, order and good governance of the land; the executive has an administrative role in controlling the affairs of the nation; and, the judiciary is necessary for dispensing justice fairly in the hierarchy of Courts.⁵⁸⁵ Trinidad and Tobago emerged from the colonial past with a system of governance that throughout its post-colonial history has been dominated by the male elite. By 2006, or almost forty-four years after the end

⁵⁸⁵ See Ramlogan and Persadie, *Commonwealth Caribbean Business Law*, pp. 30-31. This is dealt with further later in this chapter.

of colonialism in 1962, the participation of women in the structures of power and decision making appears abysmal as appears in Table 5.1.

Table 5.1 Participation of Women in the Structures of Power and Decision-Making⁵⁸⁶

Type	Male	Female	Total	Percent total
House of Representatives	29	7	36	19.4
Senate	20	11	31	35.4
Mayors	5	0	5	0
Councillors and Aldermen	107	49	156	31.4

In the realm of the Parliament, which is the highest institution of power, the dominance of the male elite is quite apparent. The House of Representatives has some nineteen percent of its membership being female while the Senate, which comprises representatives of the Government, the Opposition and Independent Senators, shows a slightly different picture. Sixteen percent of the Opposition senators is female; thirty-one percent of the Government senators is female; while fifty-five percent of the Independent senators is female. It would appear that women fare better when the selection process is ostensibly not based on political imperatives. Accordingly, there can be no doubt that governance in post-colonial Trinidad and Tobago (“TT”) is entrenched in a male elite. Within the context of a dominant male elite, the domestic legal response of TT to gender issues and gender equality will be examined as the domestic behaviour is most likely to be mirrored in the international attitude.

⁵⁸⁶ Table taken from Gender Affairs Division, Ministry of Community Development, Culture and Gender Affairs, “National Report of the Republic of Trinidad and Tobago for the Presentation at the XXXIII Assembly of Delegates of the Inter-American Commission of Women (CIM)”, November 2006, El Salvador. CIM/doc.32/06, p. 4.

5.2 The Legal Tradition of Trinidad and Tobago

5.2.1 Background to Governance

Trinidad's colonial history began in 1498 with the rediscovery of the country by Christopher Columbus which he claimed for the Spanish Crown.⁵⁸⁷ In 1797, the island was surrendered to the British. Tobago has had a much more colourful history than most other Caribbean islands in that the island changed hands more than 22 times between the French, Dutch, British and even Latvians during the colonial period. Eventually, in 1814 Tobago was ceded to Britain and TT became a single political entity on 01 January 1889 by virtue of the Orders made pursuant to the TT Act 1887.

The twin island entity gained independence in 1962 and became a Republic in 1976, finally freeing itself of monarchical administration. This is not to say, however, that the vestiges of the colonial period are completely gone. The influences of British rule are still evident in the country's current legal practices.

It is often said that TT is a proud heir to that stock of constitutions drawn on the Westminster model. Noted local political analyst and constitutional expert, Hamid Ghany, states, however, that the model followed in this twin island republic should more correctly be referred to as the Whitehall model, as it was the civil servants in Whitehall who were intimately involved in the

⁵⁸⁷ For a brief history of Trinidad and Tobago, see NationMaster [online], "Encyclopedia: History of Trinidad and Tobago". [cited 12 September 2005]. Last updated 2004. Available from Internet: <http://www.nationmaster.com/encyclopedia/History-of-Trinidad-and-Tobago>. Trinidad and Tobago's history is generally taught from an Anglophone perspective. An interesting non-Anglophone account from a country laying claim to Trinidad during the colonial period is provided in Jesse Noel, *Trinidad, Provincia de Venezuela: Historia de la Administración Española de Trinidad* (Caracas: Academia Nacional de la Historia, 1972). Figure 5.1 below illustrates Trinidad and Tobago's geographical position within the Caribbean (at the very south of the archipelago) and the Americas (at the north eastern tip of Venezuela), while figure 5.2 shows a more detailed map.

process of drafting independence constitutions for the Commonwealth Caribbean.⁵⁸⁸ The major and most important difference between the two models is that while the “original Westminster formula emphasises parliamentary sovereignty, the Whitehall variant enshrines the supremacy of the written constitution”,⁵⁸⁹ England being the only member of the Commonwealth with an unwritten constitution.⁵⁹⁰

⁵⁸⁸ Hamid Ghany, “Parliament in Trinidad and Tobago 1962-1987: The Whitehall Model at Work”, in Selwyn Ryan (ed), *Trinidad and Tobago: The Independence Experience 1962-1987* (St. Augustine, Trinidad: Institute of Social and Economic Research, UWI, 1988), p. 175.

⁵⁸⁹ Selwyn Ryan, *Winner Takes All: The Westminster Experience in the Anglophone Caribbean* (St. Augustine, Trinidad: Institute of Social and Economic Research, UWI, 1999), p. 8.

⁵⁹⁰ The British Constitution is drawn from statutes, conventions, case law, custom and common law and authoritative legal writings, but not compiled into a single document. See R. Mosley, *Westminster Workshop: A Student's Guide to the British Constitution* (Oxford: Pergamon Press, 1967), pp. 4-5.

Figure 5.1 Map of Central America and the Caribbean⁵⁹¹



Figure 5.2 Map of Trinidad and Tobago⁵⁹²



⁵⁹¹ University of Texas Libraries [online], "Perry-Castañeda Library Map Collection, Map of Central America and the Caribbean". [cited 27 April 2005]. Last updated 22 March 2005. Available from Internet: http://www.lib.utexas.edu/maps/americas/central_america_ref02.jpg

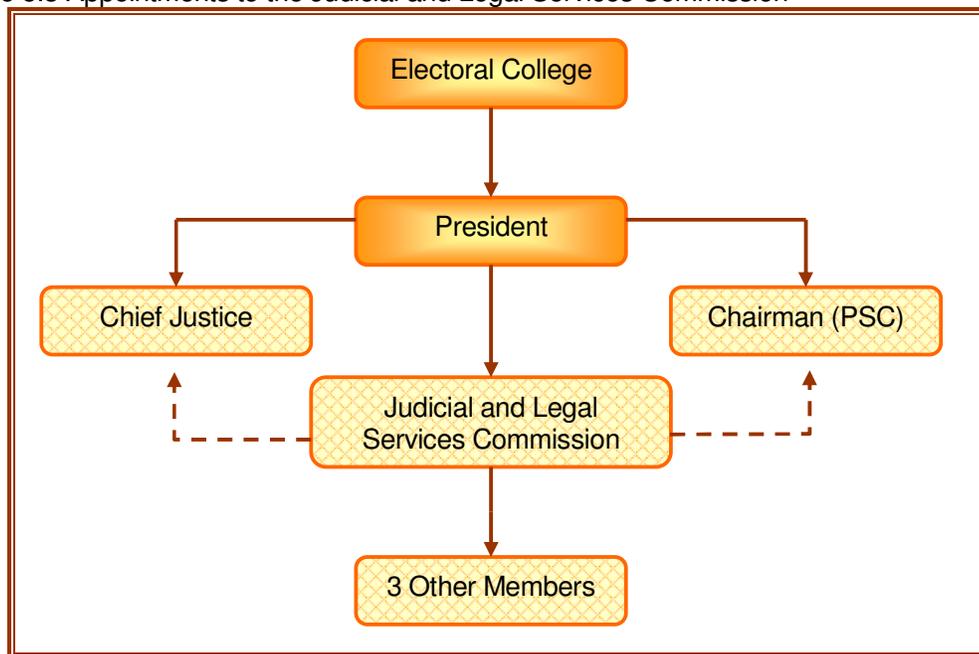
⁵⁹² University of Texas Libraries [online], "Perry-Castañeda Library Map Collection, Map of Trinidad and Tobago". [cited 27 April 2005]. Last updated 22 March 2005. Available from Internet: http://www.lib.utexas.edu/maps/cia04/trinidad_tobago_s_m04.gif.

Ghany identifies five basic tenets of the Whitehall model which distinguish it from the Westminster model:

- 1) A Bill of Rights in the constitution that diminishes the legislative supremacy of Parliament
- 2) A bicameral system with a Senate that is unique
- 3) A definitive enforcement of the Separation of Powers between the Legislature, the Executive and the Judiciary
- 4) Constitutional conventions that are written and not left to interpretation as obtains under the Westminster model
- 5) The entrenchment of constitutional articles that further diminishes the legislative supremacy of Parliament.⁵⁹³

The issue of the practice of the doctrine of separation of powers is questionable. Some believe in the independence of the judiciary given its supposed immunity from the executive [read: political pressure] through the buffer provided by the Judicial and Legal Services Commission.⁵⁹⁴ Illustrative at this point is an examination of how the various appointments are made.

Figure 5.3 Appointments to the Judicial and Legal Services Commission



⁵⁹³ Ghany, "Parliament in Trinidad and Tobago 1962-1987", pp. 175-176.

⁵⁹⁴ See for example Selwyn Ryan, *The Judiciary and Governance in the Caribbean* (St. Augustine, Trinidad: Sir Arthur Lewis Institute of Social and Economic Studies, UWI, 2001), pp. 7-11 and Ghany, "Parliament in Trinidad and Tobago 1962-1987", p. 183.

This simple diagram traces the appointments made to the Judicial and Legal Service Commission (“the JLSC”). As the members of the JLSC are all appointed by the President, it is important to examine how the President is appointed. At the very top of Figure 5.3 is a box showing the Electoral College. It is this unit that is responsible for appointing the President. What constitutes the Electoral College? According to Section 28(1) of the Constitution of the Republic of Trinidad and Tobago (Chap. 1:01) (“the Constitution”) the Electoral College is a unicameral body consisting of all the members of both Houses of Parliament: 31 Senators in the Upper House and 36 Members of Parliament in the Lower House. The President appoints all 31 Senators,⁵⁹⁵ however, 16 are appointed on the Prime Minister’s recommendations, 6 are appointed on the advice of the Leader of the Opposition, and 9 ‘Independent Senators’ are appointed at the President’s discretion. As for the Members of Parliament, it is generally the ruling party that has more members.⁵⁹⁶ In any event, it is clear that the majority of the Members of Parliament are affiliated with the ruling party and it is these Members that make up the Electoral College which appoints the President. Further, both the Prime Minister and the Leader of the Opposition make recommendations for presidential nominees; needless to say, throughout the history of Independent TT, the recommendation of the latter has never successfully prevailed in the Electoral College. It also goes without saying the post of Prime Minister is incontrovertibly political. It should be clear from this that the appointment of President is in fact a political appointment and that any appointments made by the President will necessarily also be political.⁵⁹⁷

⁵⁹⁵ See Section 40 of the Constitution.

⁵⁹⁶ Except in cases of deadlock, where the President has the discretion to choose which party shall govern.

⁵⁹⁷ In *Director of Personnel Administration and the Police Service Commission v Eusebio Cooper and Others*, Civ. App. No. 10 of 2004 (TT), Chief Justice Sharma also outlined the relationship between the Executive, Legislature and the Judiciary asking “What can be more political than that?” at paragraph 34, stating at the same time, however, that there must be a presumed integrity of holders of high office or the Constitution would be rendered unworkable. See paragraphs 33-39. In *Kangaloo JA*’s judgment of the same case, he admits at paragraph 20 that “the potential for interference must exist once there is the overlap of powers” but emphasises that the real issue is the *degree of influence or interference that is permissible* in any given situation. Conversely, in the Dominican case of *The Constituency Boundaries Commission and the Attorney-General of the Commonwealth of Dominica v Urban Baron*, Civil Appeal No. 12 of 1998 (DM), Singh JA believes that Commissions borne from the

As mentioned above, all members of the JLSC are appointed by the President (Section 110). The Chief Justice and the Chairman of the Public Service Commission (“the PSC”) are appointed directly by the President after consultation with the leaders of both parties.⁵⁹⁸ The three other members are appointed through the JLSC in the same manner, with the Chief Justice who acts as Chairman and the Chairman of the PSC who were previously appointed as the core members. Effectively, therefore, the Executive is ever present in these appointments causing the notion of a separation of powers to be more cosmetic than actual.

5.2.2 Sources of Law

5.2.2.1 The Constitution

Returning to the Constitution, it is not surprising that it is the supreme law of the land. Section 2 of the Constitution states, “This Constitution is the supreme law of Trinidad and Tobago, and any other law that is inconsistent with this Constitution is void to the extent of that inconsistency”.⁵⁹⁹ It is from this supreme law that laws dealing with the establishment, composition and functions of Parliament are derived. (There is no such document for the Westminster model.) Ramlogan and Persadie succinctly summarise the objectives of the Constitution.⁶⁰⁰ The Constitution of TT establishes the highest political office of the land, the office of the President, and governs his behaviour and his election to office. The Constitution also provides for the regulation of electoral activities. It governs the executive powers to be exercised by all Ministers of Cabinet as well as the functions, appointment and behaviour of other public officers. Financial provisions are an important part of the Constitution as it provides

Constitution “will lean more towards political loyalty than constitutional integrity” due to the same political relationship existing between the three bodies.

⁵⁹⁸ See Sections 102 and 120 of the Constitution respectively.

⁵⁹⁹ Section 2, The Constitution of the Republic of Trinidad and Tobago, Ch. 1:01 (Revised Laws of Trinidad and Tobago, 1980)

⁶⁰⁰ See Ramlogan and Persadie, *Commonwealth Caribbean Business Law*, p. 9.

for the establishment and use of the Consolidated Fund which comprises monies to be used for Government expenditure. The legal basis for the establishment and functioning of the judicature is also to be found in the Constitution. The Constitution is, therefore, an important source of law with respect to the establishment and regulation of government.

5.2.2.2 Common Law

Another item of inheritance resulting from the colonial experience is the common law legal tradition. Common law was born at the end of the Norman Conquest in 1066 A.D.⁶⁰¹ With common law's origination in England, it is not surprising that it found its way to the former conquered territories of the Commonwealth, such as TT. As Lord Diplock noted in *Kodeeswaran v. Attorney-General of Ceylon*, [1970] A.C. 1111 at page 1116: "In the case of most former British colonies which were acquired by conquest or cession, the English common law is incorporated as part of the domestic law of the now independent State because it was imposed upon the colony...", but this was to be done "subject to such qualifications as local circumstances render necessary".⁶⁰² In the case of TT, Section 12 of the Supreme Court of Judicature Act, Ch. 4:01, provides for the reception⁶⁰³ of English law into the local legislation,

"Subject to the provisions of any written law in operation on 1st March 1848, and to any written law passed after that date, the Common Law, Doctrines of Equity, and Statutes of general application in the Parliament of the United Kingdom that were in force in England on that date shall be deemed to have been enacted and to have been in force in Trinidad as from that date and in Tobago as from 1st January 1889".

⁶⁰¹ John Merryman, *The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America* (Stanford: Stanford University Press, 1985), p. 3.

⁶⁰² Emphasis added. See Lord Denning's judgement in *Nyali Ld. v Attorney-General*, [1956] 1 Q.B. 1 at page 16-17. The imposition of foreign laws without regard to the needs of the population also occurred in colonial Africa. See Terri Nderitu [online], "Balancing Pill and Patients: Intellectual Property and the HIV/AIDS Crisis", paragraphs 27-32. [cited 12 January 2007]. Last updated September 2001. Available from Internet: <http://www.murdoch.edu.au/elaw/issues/v8n3/nderitu83nf.html>.

⁶⁰³ On the "reception of laws" doctrine, see Rose-Marie Belle Antoine, *Commonwealth Caribbean Law and Legal Systems* (London: Cavendish Publishing Limited, 1999), pp. 57-69.

This means that TT adopted the laws of England on these dates as its own, although not by choice; such laws are amended, repealed and replaced by the Legislature as it sees fit.

Characteristic of the common law tradition is its reliance on precedents and judge-made law, distinct from civil law where legal principles and ideas are officially recorded in the form of a code. Judicial discretion finds expression in common law countries where new law emerges frequently to deal with changing times and needs.⁶⁰⁴

5.2.2.3 Statutory Law

Complementing common law is statute law which is created by Parliament in the form of legislation.⁶⁰⁵ In the Commonwealth, legal systems are based on common law and courts are quite important in interpreting statutes; nevertheless, legislation has become the principal means of law making.⁶⁰⁶

5.3 Assessing Gender Laws in the Framework of the Colonial Experience

The analysis that follows will show that the laws made relating to gender in the post-colonial era are very much shaped by what obtained in the colonial period. The colonial legal system was characterised by attributes that seemed to favour the ruling elite and exhibited elements of control, benevolence, inequality, and equality. In the post-colonial era, this characterisation continues to apply, the only difference being that the class elitism of the colonial period is replaced by gender elitism. The post-colonial legal response is largely a reflection of the colonial structure where the issues of gender and the position of women in society are closer to

⁶⁰⁴ See Ramlogan and Persadie, *Commonwealth Caribbean Business Law*, p. 4.

⁶⁰⁵ Gary Slapper and David Kelly, *The English Legal System* (London: Cavendish Publishing Limited, 1999 [2000]), p. 5.

⁶⁰⁶ For more on the actual legislative process, see Slapper and Kelly, *The English Legal System*, pp. 35-44.

that of the non-whites / non-elites during colonialism with men replacing the colonial elite who continue to exercise control.

5.3.1 The Shaping of the Law: The Role of Colonialism

Colonialism has in fact left quite an impression on the legal landscape of TT and continues to do so. As Sharma JA, as he then was, stated,

...even after independence, our courts have continued to develop law very much in accordance with English jurisprudence... The inherent danger and pitfall to this approach is that, since independence our society has developed differently from the English and now requires a robust examination in order to render our constitution and common law more meaningful.⁶⁰⁷

Even though many call for legal reform to reflect the uniqueness of this post-colonial society, Meighoo makes the point that society in TT is in a continual state of flux⁶⁰⁸ and as such a more suitable form of governance would be difficult to model.

Important, too, is not just the form of legal governance imposed by the imperialists, but also the *type* of laws enacted under the guise of attempting to maintain social order. Many authors are of the view that the historical function of law in Caribbean society was to legitimise the exploitative nature of plantation society.⁶⁰⁹ While law is meant to be an instrument of social control and public order, it was used very specifically in colonial societies such as TT by a dominant elite minority to shape and enact certain laws and use them to serve its own ends, ostensibly with the interest of the public at heart. Knafla and Binnie state, “English law was

⁶⁰⁷ *Boodram v Attorney General of Trinidad and Tobago*, (1994) 47 WIR 459 at 470, paragraphs e-f.

⁶⁰⁸ Kirk Meighoo, *Politics in a 'Half-Made Society': Trinidad and Tobago, 1925-2001* (Kingston: Ian Randle Publishers, 2003), p. xxiii.

⁶⁰⁹ Antoine, *Commonwealth Caribbean Law and Legal*, p. 12.

developed partly to further the interests of an elite white settler minority drawn to the island by the lure of profits from sugar cultivation”.⁶¹⁰

The colonial legal system was characterised by attributes that seemed to favour the ruling elite.

The laws exhibited elements of:

- Control (laws granting dominance by elite over non-elite group),
- Benevolence,⁶¹¹ (laws designed to show the non-elite group that the law-making elite are considerate and conscious of their condition and can be entrusted to ensure their well-being),
- Inequality, which can be further sub-categorised into positive and negative
 - ◆ Positive: laws that vested rights in the elite, but not to the non-elite;
 - ◆ Negative: laws that create liabilities applicable only to the non-elite group,
- Equality, which can be further sub-categorised into false, inverse and restorative
 - ◆ False: laws giving the appearance of equality, but on further examination, are elitist;
 - ◆ Inverse: laws conveying rights to the non-elite that are not enjoyed by the elite;
 - ◆ Restorative: laws conveying rights to achieve neutrality between the elite and non-elite.

5.3.1.1 Control

After the abolition of slavery, East Indians were brought as indentured workers to labour on sugar plantations and laws were enacted to discourage any possible social cohesion between the different ethnic groups. Haraksingh makes the point that in post-emancipation Trinidad

⁶¹⁰ Louis Knafla and Susan Binnie, “Beyond the State: Law and Legal Pluralism in the Making of Modern Societies”, in Louis Knafla and Susan Binnie (eds), *Law, Society and the State: Essays in Modern Legal History* (Toronto: Toronto University Press, 1995), p. 14.

⁶¹¹ ‘Benevolent’ here makes reference to the idea of the “benevolent autocrat”.

“[t]he force of the general law was directed in the first place at maintaining control: the strategy was to prevent the two major groups at the bottom of the social and economic system - the descendents of black ex-slaves and of Indian indentured workers - from establishing any common front”.⁶¹² This was a largely successful enterprise and continues to apply today, although the current socioeconomic and political climate offers new mitigating circumstances.

Control by the elite extended as well to other aspects of life. A significant characteristic of colonial legislation was the presence of laws that promoted the ruling elite. It is acknowledged that religion is a critical tool in controlling a non-ruling majority. Armed with this knowledge, the colonial masters ensured that their elitist control over religious indoctrination was well-entrenched in the law. The Alien Missionaries and Teachers Ordinance, No. 22 of 1917 created a statutory preference for the elite, giving only to them free reign to engage in religious or educational work - important tools of social control - in the Colony without written permission from the Governor. This was clearly elitist, as non-natural born or naturalised British subjects were required to obtain prior written permission before engaging in such activities. In prohibiting non-sanctioned religious or educational work, this Ordinance at the same time created negative unequal rights by establishing clear liability for the non-British found in breach.

5.3.1.2 Benevolence

The British colonialists recognised that a system founded on control and repression would have continuously created conditions of dissonance with the ever present threat of civil unrest from the colonised. It was therefore important for the ruling elite to appear to govern with a sense of benevolence that would accomplish the critical objective of demonstrating that they cared and could be entrusted to seek the interest of the colonised. This attitude was exemplified in the

⁶¹² Kusha Haraksingh, “Law-Making and Social Change in Colonial Trinidad, 1900-1950”, in Louis Knafle and Susan Binnie (eds), *Law, Society and the State: Essays in Modern Legal History* (Toronto: Toronto University Press, 1995), p. 130.

laws dealing with education at the secondary school level. The Secondary Education Ordinance, No. 13 of 1909 provided for the granting of three exhibitions (scholarships) per year to students who were successful in the secondary school entrance examination and were placed at the Queen's Royal College. While this seems benevolent enough, the hypocrisy of this piece of legislation reveals itself in section 5.3.1.3.1 below.

5.3.1.3 Inequality

5.3.1.3.1 Positive Inequality

The elite ensured that certain rights were well entrenched in the laws to perpetuate their well being and future control through their children. The public service in colonial times was largely the domain of the white settlers and non-white residents of TT that were supportive of the white settlers. The son or sons of any deceased public servant could have been lawfully granted admission to the Queen's Royal College without writing the same examination pursuant to the Secondary Education Ordinance. Moreover, not only were they eligible for entry, but their fees were paid out of the general revenues. These privileges could possibly have been justified on the basis that as a public servant, the parent contributed to the building of the nation; therefore, it was only fair that the son's education be paid out of the public coffers.

In continuing to vest rights in the elite, laws were passed that ensured that the non-elite were placed at a distinct disadvantage in the power structure of the colony. Even when democracy was being ostensibly promoted for the colony, the legal requirements in 1925, according to the Legislative Council (Elections) Ordinance, Ch. 2 No. 2, to become a member of the Legislative Council ensured that only members of the elite would qualify.⁶¹³ These requirements included

⁶¹³ Singh states that "[t]he sugar planters enjoyed a dominant influence in the Legislative Council through their near monopoly of the nominated seats...", confirming that the elites were the ones who sat on this Council. Kelvin Singh, *Race and Class Struggles in a Colonial State: Trinidad 1917-1945* (Calgary: University of Calgary Press, 1994), p. 2.

the ability to read and write English in a society where a large segment of the population comprised East Indian indentureds who were in the main part English illiterates. In addition, there was an ownership of real estate stipulation in the district in which one sought to be elected to qualify as a candidate for election as a member of the Legislative Council. There was the added obstacle of having to ensure that the real estate owned in the electoral district in which one sought election produced a minimum level of clear annual income. The net result of this type of legislation ensured that the majority of the non-elites were kept out of the governing political structure of the society.

5.3.1.3.2 Negative Inequality

The colonial period was also characterised by laws that created liabilities in the non-elite. Williams states that as the black slave population grew, “the resident planters, apprehensive of the growing disproportion between whites and blacks, passed Deficiency Laws to compel absentees, under penalty of fines, to keep white servants”.⁶¹⁴ In the immediate post-emancipation era, laws such as the Tenancy Acts and Vagrancy Acts, imported from England, sought to force ‘idle’, jobless ex-slaves, devoid of land, money or opportunity, back to the plantations.⁶¹⁵ The Vagrancy Act entered the statute books as the Habitual Idlers Ordinance, No. 7 of 1918 and defined a habitual idler as “any male person who has no visible means of subsistence, and who, being able to work, habitually abstains from work”, and who “has not worked for a period of four hours during each of three days or for a period of 14 hours during such period of 7 days” of the week before his arrest.⁶¹⁶ Haraksingh sardonically notes that “[i]t was not clear what constituted visible means or the ability to work, or even what magic lay in the

⁶¹⁴ Eric Williams, *Capitalism and Slavery* (Kingston: Ian Randle Publishers, 2005), pp. 24-25. The law did not, however, have the desired effect.

⁶¹⁵ Antoine, *Commonwealth Caribbean Law and Legal Systems*, p. 14.

⁶¹⁶ Section 2 of the Habitual Idlers Ordinance, No. 7 of 1918.

four-hour stipulation”.⁶¹⁷ In any event, Section 5 dealt with the issue of the burden of proof which unfairly lay on the ‘idler’ (non-elite) to prove that he was not in fact a habitual idler. Inferred in section 9 of the Ordinance is the fact that “detention in settlement” effectively led the ‘idler’ back to a plantation as part of his punishment. It is clear that the liabilities created by the Habitual Idlers Ordinance had as its primary target the non-elite.

5.3.1.4 Equality

5.3.1.4.1 False Equality

Additionally, the colonial elite were very good at promoting legislation that, *prima facie*, would appear to offer equality to all but which on closer examination in fact worked against the interests of the non-elite while favouring the elite. The part of the Education Ordinance, Ch. 14 No. 1 of 1935 dealing with religion in schools seemed to try to accommodate the cosmopolitan nature of the society. At first glance, the provision in question appeared to show appreciation for the need to remain secular in such a society by stating very clearly that “Religious teaching shall not form part of the instruction required to be given at any Government school by any teacher”; yet, it simultaneously gives authority to any Minister of religion to provide “religious instruction to the children of the religious denomination to which the Minister belongs, at such times and places as may be agreed upon between him and the Director”. The Director would presumably have been one of the elite who would have practiced Christianity and who would only have known Ministers (Christian) who were of the same class. This necessarily and immediately reduced the possibility of the Minister being of a religion other than that of what the Director practised or believed in, thereby nullifying the ostensible attempt of accommodating and respecting the religious beliefs of all.

⁶¹⁷ Haraksingh, “Law-Making and Social Change in Colonial Trinidad, 1900-1950”, p. 134.

5.3.1.4.2 Inverse Equality

Laws that conferred rights on the non-elite that are not enjoyed by the elite are referred to as conferring “inverse equality”, as it presumed here that rights enjoyed by the elite are the standard by which enjoyment of equality of rights will be measured and any rights conferred on the non-elite only will be necessarily inverse. These are, of course, rare; however, the Truck Ordinance, No. 34 of 1918 provided that labourers be paid only in money (as they were known to be paid sometimes partially in kind) and created offences for employers attempting to compensate labourers by other means. According to Haraksingh, though, this measure was meant to divert the labour supply from small contractors and emerging middlemen with limited cash to large planters who were able to manage a money payroll,⁶¹⁸ again ensuring a labour supply to the elite-owned plantations.

5.3.1.4.3 Restorative Equality

Laws seeming to remove class differences exhibit the characteristic of restorative equality. One such ordinance was the Hindu Marriage Ordinance, No. 13 of 1945. Even though Indians lived in TT for some one hundred years, it took that long for some of their cultural practices to be legally recognised. Section 5(1) of this Ordinance conferred on the Governor the right to authorise Hindu priests to officiate marriage ceremonies while Section 9(d) allowed the Hindu priest to do so under Hindu rites. This must have represented a major cultural victory as British practices were always imposed on the various immigrant groups.

⁶¹⁸ See Haraksingh, “Law-Making and Social Change in Colonial Trinidad, 1900-1950”, p. 134.

5.3.2 Law, Colonialism and Gender in the Post-Colonial Era

There are just about 150 laws, inclusive of the Constitution and constitutionally derived legislation, which deal with gender issues either directly or indirectly in a significant manner.⁶¹⁹ According to figure 5.4 below, which lists the legislation in alphabetical order, there are two main categories: the Constitution and constitutionally derived subsidiary legislation and general statutes and subsidiary instruments. The Constitution referred to here is the one drawn up when TT became a Republic in 1976. The second category consists of acts (post-1962) and ordinances (pre-1962), some of which continued to have effect even after TT gained independence in 1962 and began writing its own laws.

The elements that existed as part of the colonial legal system would appear to have been replicated in the subsequent post-colonial system, where the colonial elite were replaced by the local male elite and the population of former slaves and indentures by women. This means therefore that elitism and sexism amount to one and the same. The analysis which follows below will show that the post-colonial legal response is largely a reflection of the colonial structure where the issues of gender and the position of women in society are closer to that of the non-whites / non-elites during colonialism with men replacing the colonial elite who continue to exercise control.

⁶¹⁹ The author examined all the laws (ordinances, statutes) of TT to determine which laws were relevant. This information is correct as at 31 December 2006. See Appendix A at page 280 for the text of relevant laws.

Figure 5.4 List of Legislation relating to Gender in Trinidad and Tobago

The Constitution and Constitutionally-Derived Subsidiary Legislation	
1)	The Constitution (Chap. 1:01)
2)	Public Service Commission Regulations, deemed to be made under section 129 of the Constitution
3)	Police Service Commission Regulations, deemed to be made under section 129 of the Constitution
Legislation and Subsidiary Legislation of Trinidad and Tobago	
1)	Administration of Estates Ordinance (CAP.8/1), 1950 Rev., as amended by the Distribution of Estates Act, No. 28 of 2000
2)	Airports Authority Act (Chap. 49:02)
3)	Assisted Secondary School Teachers' Pensions Act (Chap. 39:03)
4)	Assisted Secondary School Teachers' Pensions Regulations, deemed to be made pursuant to section 15(1) of the Assisted Secondary School Teachers' Pensions Act
5)	Auxiliary Fire Service Act (Chap. 35:54)
6)	Bankruptcy Act (Chap. 9:70)
7)	Births and Deaths Registration Act (Chap. 44:01), 1980 Rev.
8)	Caribbean Aviation Training Institute (Chap. 39:52), 1980 Rev.
9)	Caribbean Community Act, No. 3 of 2005
10)	Children Act (Chap. 46:01), as amended by Acts No. 19 of 1994 and 68 of 2000
11)	Children's Authority Act, No. 64 of 2000
12)	Citizenship of the Republic of Trinidad and Tobago Act (Chap. 1:50)
13)	Civil Aviation Act, No. 11 of 2001
14)	Civil Service Act (Chap. 23:01)
15)	Civil Service (Amendment) Regulations, LN No. 217 of 1996, made pursuant to section 28 of the Civil Service Act
16)	Civil Service (External Affairs) Regulations, made pursuant to section 28 of the Civil Service Act
17)	Civil Service Regulations, made pursuant to section 28 of the Civil Service Act
18)	Cohabitation Relationships Act, No. 30 of 1998
19)	Compensation for Injuries Act (Chap. 8:05), 1980 Rev.
20)	College of Science, Technology and Applied Arts of Trinidad and Tobago Act, No. 77 of 2000
21)	Conveyancing and Law of Property Ordinance (CAP.27/12)
22)	Corporal Punishment (Offenders not over 16) Act (Chap. 13:03)
23)	Corporal Punishment (Offenders Over 18) Act (Chap. 13:04), as amended by Acts No. 66 of 2000 and 18 of 2005
24)	Counting Unremunerated Work Act, No. 29 of 1996
25)	Criminal Injuries Compensation Act, No. 21 of 1999
26)	Criminal Law Act (Chap. 10:04)
27)	Criminal Procedure Act (Chap. 12:02)
28)	Criminal Procedure (Plea Discussion and Plea Agreement) Act, No. 11 of 1999
29)	Customs Act (Chap. 78:01)
30)	Deceased Wife's Sister's Marriage Act (Chap. 45:54)
31)	Defence Act (Chap. 14:01)
32)	Defence (Pensions, Terminal and Other Grants) Regulations, LN No. 38 of 1968
33)	Defence (Short Service Commissions) Regulations, LN No. 104 of 1987
34)	Deoxyribonucleic Acid (DNA) Identification Act, No. 27 of 2000
35)	Distribution of Estates Act, No. 28 of 2000
36)	Domestic Violence Act, No. 27 of 1999
37)	Education (Teaching Service) Regulations, as amended by LN No. 184 of 2000, made pursuant to section 85(11) of the Education Act (Chap. 39:01)
38)	Equal Opportunity Act, No. 69 of 2000

Figure 5.4 List of Legislation relating to Gender in Trinidad and Tobago (continued)

- 39) Extradition (Commonwealth and Foreign Territories) Act, No. 36 of 1985
- 40) Family Law (Guardianship of Minors, Domicile and Maintenance) Act 1981 (Chap. 46:08)
- 41) Financial Institution (Non-Banking) Act (Chap. 83:01), 1980 Rev.
- 42) Fire Service Act (Chap. 35:50)
- 43) Fire Service (Terms and Conditions of Employment) Regulations, LN No. 267 of 1998 made pursuant to section 34 of the Fire Service Act
- 44) Food and Drugs Regulations, made pursuant to section 25 of the Food and Drugs Act (Chap. 30:01)
- 45) Friendly Societies Act (Chap. 32:50)
- 46) Friendly Societies Housing Corporation Regulations, deemed to be made pursuant to section 66 of the Friendly Societies Housing Corporation Act (Chap. 33:05)
- 47) Genocide Act (Chap. 11:20)
- 48) Guidelines for Contract Employment in the Tobago House of Assembly, LN No. 148 of 2000
- 49) Hindu Marriage Act (Chap. 45:03)
- 50) Human Tissue Transplant Act, No. 13 of 2000
- 51) Immigration Act (Chap. 18:01), 1980 Rev.
- 52) Immigration (Caribbean Community Skilled Nationals) Act, No. 26 of 1996, as amended by Act No. 6 of 2001
- 53) Income Tax Act (Chap. 75:01)
- 54) Indictable Offences (Preliminary Enquiry) Act (Chap. 12:01)
- 55) Industrial Training Act (Chap. 39:54)
- 56) Infants Act (Chap. 46:02)
- 57) Insurance Act (Chap. 84:01), 1980 Rev.
- 58) Integrity in Public Life Act, No. 83 of 2000
- 59) International Criminal Court Act, No. 4 of 2006
- 60) International War Crimes Tribunal Act, No. 24 of 1998
- 61) Interpretation Act (Chap. 3:01)
- 62) Judges Salaries and Pensions Act (Chap. 6:02)
- 63) Judicial Review Act, No. 60 of 2000
- 64) Jury Act (Chap. 6:53)
- 65) Justice Protection Act, No. 78 of 2000
- 66) Land Law and Conveyancing Act, No. 20 of 1981
- 67) Land Registration Act, No. 24 of 1981
- 68) Legal Aid and Advice Act (Chap. 7:07), as amended by Act No. 18 of 1999
- 69) Liquor Licences Act (Chap. 84:10)
- 70) Maintenance Orders (Facilities for Enforcement) Act, No. 12 of 2000
- 71) Management Development Centre Act (Chap. 85:51)
- 72) Married Persons Act (Chap. 45:50)
- 73) Maternity Protection Act, No. 4 of 1998
- 74) Matrimonial Causes Rules, made pursuant to sections 77-81 of the Supreme Court of Judicature Act (Chap. 4:01)
- 75) Matrimonial Proceedings and Property Act (Chap. 45:51)
- 76) Military Training (Prohibition) Act, No. 14 of 1996
- 77) Minimum Wages (Catering Industry) Order, LN No. 158 of 1991, made pursuant to section 3 of the Minimum Wages Act (Chap. 88:04)
- 78) Minimum Wages (Household Assistants) Order, LN No. 160 of 1991, made pursuant to section 3 of the Minimum Wages Act (Chap. 88:04)
- 79) Minimum Wages (Security Industry Employees) Order, LN No. 231 of 1994, made pursuant to section 3 of the Minimum Wages Act (Chap. 88:04)
- 80) Minimum Wages (Shop Assistants) Order, LN No. 159 of 1991, made pursuant to section 3 of the Minimum Wages Act (Chap. 88:04)
- 81) "MIZPEH" Half Way House (Incorporation) Act, No. 3 of 1990
- 82) Municipal Corporations (Pensions) Act (Chap. 25:05)

Figure 5.4 List of Legislation relating to Gender in Trinidad and Tobago (continued)

- 83) Muslim Marriage and Divorce Act (Chap. 45:02)
- 84) Muslim Marriage and Divorce Regulations, made pursuant to section 30 of the Muslim Marriage and Divorce Act (Chap. 45:02)
- 85) National Carnival Commission of Trinidad and Tobago Act, No. 9 of 1991
- 86) National Insurance Act (Chap. 32:01), as amended by Act Nos. 9 of 1999 and 2004
- 87) National Insurance (Benefits) Regulations, made pursuant to section 55 of the National Insurance Act as amended by LN Nos. 73 of 1999 and 66 of 2004
- 88) National Insurance (Contributions) Regulations, made pursuant to section 44 of the National Insurance Act
- 89) National Library and Information System Act, No. 18 of 1998
- 90) National Museum and Art Gallery Act, No. 5 of 2000
- 91) Occupational Safety and Health Act, No. 1 of 2004
- 92) Offences Against the Person Act (Chap. 11:08), as amended by Act No. 11 of 2005
- 93) Old Age Pensions Act (Chap. 32:02), 1980 Rev.
- 94) Orisa Marriage Act, No. 22 of 1999
- 95) Partnership Act (Chap. 81:02)
- 96) Pensions Act (Chap. 23:52)
- 97) Pensions Regulations, deemed to be made pursuant to section 7(4) of the Pensions Act, as amended by the Law Reform (Pensions) Act, No. 20 of 1997
- 98) Petty Civil Courts Rules made pursuant to section 53 of the Petty Civil Courts Act
- 99) Police Service Act (Chap. 15:01)
- 100) Police Service Act, No. 7 of 2006
- 101) Post Office Savings Bank Act (Chap. 79:04)
- 102) Post Office Savings Bank Regulations, deemed to be made pursuant to section 13 of the Post Office Savings Bank Act
- 103) President's Emoluments Act (Chap. 2:50)
- 104) Prevention of Corruption Act, No. 11 of 1987
- 105) Prime Minister's Pension Act (Chap. 2:51)
- 106) Private Hospital Regulations, made pursuant to section 21 of the Private Hospitals Act (Chap. 29:03)
- 107) Privileges and Immunities (Diplomatic, Consular and International Organisations) Act (Chap. 17:01)
- 108) Proceeds of Crime Act, No. 55 of 2000
- 109) Provident Fund Act (Chap. 23:57)
- 110) Public Assistance Act (Chap. 32:03)
- 111) Public Health Ordinance (CAP.12/4), 1950 Rev.
- 112) Public Service Transport Act (Chap. 48:02)
- 113) Purchase, Sweepstake, Departure and Airline Ticket Taxes Act (Chap. 77:01)
- 114) Real Property Ordinance (CAP.27/11)
- 115) Regional Health Authorities Act, No. 5 of 1994
- 116) Regional Health Authorities (Contracting for Goods and Services) Regulations, LN No. 225 of 1994 made pursuant to section 35(b) of the Regional Health Authorities Act
- 117) Registration of Clubs (Amendment) Act, No. 14 of 1997**
- 118) Regulated Industries Commission Act, No. 26 of 1998
- 119) Remedies of Creditors Act (Chap. 8:09)
- 120) Retiring Allowances (Diplomatic Service) Act (Chap. 17:04)
- 121) Retiring Allowances (Legislative Service) Act (Chap. 2:03)
- 122) Securities Industries Act, No. 32 of 1995
- 123) Sexual Offences Act, No. 27 of 1986, as amended by Act No. 31 of 2000
- 124) Shop (Hours of Opening and Employment) Act (Chap. 84:02)
- 125) Slum Clearance and Housing Act (Chap. 33:02)

Figure 5.4 List of Legislation relating to Gender in Trinidad and Tobago (continued)

126)	Socially Displaced Persons Act, No. 59 of 2000
127)	Special Reserve Police Act (Chap. 15:03)
128)	Statistics (Surveys of Industrial or Business Undertakings) Regulations, made pursuant to section 13 of the Statistics Act
129)	Statutory Authorities' Service Commission Regulations, made pursuant to section 6 of the Statutory Authorities Act (Chap. 24:01)
130)	Summary Courts Act (Chap. 4:20)
131)	Summary Offences Act (Chap. 11:02)
132)	Supplemental Police Regulations, made pursuant to section 12 of the Supplemental Police Act (Chap. 15:02)
133)	Teachers' Pensions Act (Chap. 39:02)
134)	Teachers' Pensions Regulations, deemed to be made pursuant to section 4 of the Teachers' Pensions Act (Chap. 39:02)
135)	Theatres and Dance Halls (Amendment) Act, No. 15 of 1997
136)	The Community Service Regulations, LN No. 138 of 2000, made pursuant to section 27(1) of the Community Service Orders Act, 1997
137)	The Defence (Rates of Pay and Allowances) Regulations, LN No. 84 of 1989, made pursuant to section 244 of the Defence Act
138)	The Judges (Conditions of Service and Allowances) Regulations (No. 1) made pursuant to section 16 of the Judges Salaries and Pensions Act
139)	The Judges (Conditions of Service and Allowances) Regulations (No. 2) made pursuant to section 16 of the Judges Salaries and Pensions Act, as amended by LN No. 190 of 1997
140)	The Police Service Regulations, made pursuant to section 65 of the Police Service Act as amended by LN No. 235 of 1999
141)	The Prison Service (Pension and Gratuity) Rules, as amended by Act No. 17 of 2000
142)	The Public Assistance Regulations, No. 182 of 1997 made pursuant to section 16 of the Public Assistance Act (Chap. 32:03)
143)	The State Land (Regularisation of Tenure) (Certificate of Comfort) Regulations, LN No. 36 of 2000, made pursuant to section 34(2) of the State Land (Regularisation of Tenure) Act, 1998
144)	Trinidad and Tobago Civil Aviation Authority Act, No. 33 of 2000
145)	Trinidad and Tobago Housing Development Corporation Act, No. 24 of 2005
146)	Water and Sewerage Act (Chap. 54:40)
147)	Widows' and Orphans' Pensions Act (Chap. 23:54)
148)	Wills and Probate Ordinance (CAP.8/2) 1950 Rev., as amended by the Distribution of Estates Act, No. 28 of 2000
149)	Workmen's Compensation Act (Chap. 88:05)
150)	Young Offenders Detention Act (Chap. 13:05)

Appendix A below provides the text of the Constitution and statutes as they relate to gender. Two acts highlighted in red and bold in figure 5.4 are the only pieces of legislation that make specific reference to gender equality with respect to discrimination on the basis of gender. Having reviewed the constitutional and statutory provisions as they relate to gender, it is generally possible to categorise the legal provisions into the same broad categories as were provided above for the analysis of the colonial legal system.

Main Categories	Sub-Categories
✓ Control	None
✓ Benevolence	None
✓ Inequality	Positive Inequality; Negative Inequality
✓ Equality	False Equality; Inverse Equality; Restorative Equality, Constitutional Equality

Just as the colonial legal system was characterised by attributes that seemed to favour the ruling elite, so too is the post-colonial legal system. In addition to exhibiting elements of control, benevolence, inequality, and equality, there are in fact areas which seem to favour the non-elite. In the post-colonial era, this latter category of equality assumed two different characteristics. While it retains the sub-category of restorative equality, the meaning of it here refers to laws creating rights for women where they were previously non-existent [such as maternity benefits], and conveying rights to achieve gender sameness [such as formalising the rights of the common law wife] or non-gender distinctiveness [such as illustrated by the Domestic Violence Act]. Moreover, this period saw the enactment of a Constitution which was not part of the colonial legislative framework. Being the supreme law of the land, it guarantees equal rights to all.

5.3.2.1 Control

Unlike law under the colonial system, there are not that many pieces of legislation in the post-colonial period that attempt to exert control over the non-elite. The Jury Act and the Post Office Savings Bank Act, however, are two pieces that blatantly control women's behaviour. Under the Jury Act, a person is only qualified to be a juror if he is over eighteen years of age, is a resident of TT for at least two years or is born in TT, is English literate, and other conditions

relating to the ownership of land and minimum clear annual net income. A married woman, notwithstanding these qualification requirements, shall be eligible to be a juror first if her husband is qualified to be one and then if she is over eighteen and English literate. The husband is not subject to these restrictions: he qualifies on his own merit. The intent and rationale behind this piece of legislation is not quite clear but is certainly prejudiced. Why is her capacity dependent upon her husband's?

The Post Office Savings Bank Act provides for the passing of regulations geared towards regulating deposits and withdrawals by minors and married women. Again, there is no such restriction on men, married or unmarried. It is important to note at this point the similar classification of minors and women. This occurs in many pieces of legislation and also lumps into the category those of sub-normal mental capacity bringing into question the capacity of women to act as full adults.

5.3.2.2 Benevolence

Laws falling into this category seem to seek to protect women's physical integrity and maternity rights or ensure that they are provided for financially in the event of the death or physical incapacitation of the male breadwinner. The Offences Against the Person Act and the Sexual Offences Act are both meant to protect the sexual integrity of women and young girls. The first seeks to protect against the carnal knowledge of a minor, incest, prostitution, rape (including marital rape), and wilful miscarriage. In addition to dealing with rape, incest and prostitution, the Sexual Offences Act is of particular interest as it attempts to criminalise sex with minors outside of a marital relationship as opposed to simply referring to it as unlawful carnal knowledge as is done under the Offences Against the Person Act .

Some laws ensure that where a female must physically interact with another that that other will be female. The Customs Act and the Military Training (Prohibition) Act both state that a female shall not be searched except by a female. The Police Service Regulations make special provisions for female prisoners – they are only to be entrusted into the custody of a Police Matron, kept in women only cells, and searched by the Police Matron or a woman police officer.

Labour laws tend to be quite protective of women and pay special attention to maternity issues. The Maternity Protection Act was passed in 1998 to deal with employers' abuses of pregnant employees. It specifically provides in Section 7 that, subject to certain conditions, an employee is entitled to (a) leave of absence for the purpose of maternity leave; (b) pay while on maternity leave; (c) resume work after such leave on terms no less favourable than were enjoyed by her immediately prior to her leave. Certain state bodies, such as the civil service (Civil Service Regulations, teaching service (Education (Teaching Service) Regulations), fire service (Fire Service (Terms and Conditions of Employment) Regulations), and police service (The Police Service Regulations), provide for maternity issues. The government also decided to protect the maternity rights of certain minimum wage earners through industry specific legislation: Minimum Wages (Catering Industry) Order, Minimum Wages (Household Assistants) Order, Minimum Wages (Security Industry Employees) Order, and Minimum Wages (Shop Assistants) Order.

The Occupational Safety and Health Act ensures that pregnant women do not expose their unborn children to any unnecessary harm at the workplace. The Act also ensures a pregnant woman's employer shall offer her suitable, alternative employment on terms and conditions that are no less favourable than her ordinary terms and conditions of work where she is required to perform work that poses a danger to her safety or health or that of her child. Employers are also required to establish separate washing facilities, sanitary conveniences and locker rooms for both sexes. The Shop (Hours of Opening and Employment) Act ensures that female shop assistants are provided with seats. The Workmen's Compensation Act makes financial

provisions for any dependant female, married or unmarried, in the event of her husband's incapacitation or death. The Private Hospital Regulations state that where male and female patients are accommodated on the same floor of the hospital, there shall be separate water closets and wash basins for both sexes.

There are many pieces of legislation that seek to ensure that women are well taken care of in the event of her husband's incapacitation or death. The Airports Authority Act, Chaguaramas Development Authority Act, Management Development Centre Act, National Carnival Commission of Trinidad and Tobago Act all state that pension schemes will "grant gratuities, pensions or superannuation allowances to, or to the widows, families or dependants" of its officers and employees. The Pensions Act, Teachers' Pensions Act, Police Service Act, Fire Service Act all make pension provisions for widows on condition that she is "unmarried and of good character". This is important to note as there are no pension provisions for widowers as it would appear that he was assumed to be the provider in any event. While the Interpretation Act states that references to persons or male persons include references to male and female persons, it is not clear that these pieces of legislation necessarily or primarily catered for adult male dependants. Given the historical evolution of society, it would be easy to infer that such legislative clauses were meant to ensure that female dependants and families would be taken care of in the event of the untimely passing of the male income earner. This is further and specifically exemplified by the Widows' and Orphans' Pensions Act. Provisions are made for women and children but there is no corresponding act for *widowers* and orphans, as it is understood that men can provide for themselves and their dependants. This, of course, also reflects the way that society evolved, where women tended to be the homemaker and the husbands the breadwinners. While this situation does not apply as strictly today, there is no corresponding evolution of or amendments to the laws in force.

The Supplemental Police Regulations, made pursuant to Section 12 of the Supplemental Police Act states that "[f]emales, lunatics and young children shall never be handcuffed". As mentioned in section 5.3.2.1, this brings into question the ability of women to act in their full capacity as adults. While it is all well and good that women are not perceived as enough of a threat to have to be handcuffed and can therefore be treated with greater leniency than men, this certainly is an undesirable way of classifying women.

5.3.2.3 Inequality

5.3.2.3.1 Positive Inequality

Laws reflecting positive inequality vest rights in the elite. Issues of paternity are covered by this category. The Births and Deaths Registration Act vests the right in a father of a child born out of wedlock not to have his name entered as the father unless he so desires. The Industrial Training Act vests a preferential right in fathers over mothers to decide whether their child between the ages of thirteen and eighteen may be taken in as an apprentice. Paternity leave has now been legislated by two state bodies: the fire service (Fire Service (Terms and Conditions of Employment) Regulations), and the police service (The Police Service Regulations). If the officer can prove that the child was born to him, he will be allowed three days paternity leave.

The Deceased Wife's Sister's Marriage Act and the Matrimonial Proceedings and Property Act provide other examples of the elitist nature of some of the laws. The first law validates the marriage between a man and his sister-in-law but there is no corresponding provision or separate law to validate the marriage between a woman and her brother-in-law. Why this law was necessary in the first instance is unclear, as the degrees of familial separation are delineated by blood relationships. The second law renders a marriage voidable where at the

time of the marriage the respondent was pregnant by some other than the petitioner. Again, there is no corresponding provision or separate law making marriage voidable on the part of a woman where her husband has had children in previous relationships or is having a child with another.

5.3.2.3.2 Negative Inequality

Legislation in this category creates liabilities in the non-elite. There are three pieces of legislation which legalise earlier ages at which members of the respective faiths shall be capable of contracting marriage. Under the Hindu Marriage Act the girl can be fourteen and the boy eighteen; under the Muslim Marriage and Divorce Act the girl can be as young as twelve and the boy sixteen; and the Orisas, under the Orisa Marriage Act, allow girls of sixteen and boys of eighteen to marry. This means that young girls may be taken out of school and generally be disallowed to fully mature before entering into a marriage while boys are allowed to finish school.

Women risk having their appointments terminated in cases where they are married and their family obligations are deemed to be affecting their performance at work pursuant to the Public Service Commission Regulations and the Police Service Commission Regulations. It is important to note here that these regulations are made pursuant to the Constitution which, while conferring equal rights on all,⁶²⁰ seems at the same time to place a disproportionate burden on women to perform at work and in the home. It would therefore appear unseemly that the supreme law of the land should create unequal rights between the sexes for whatever reason. The Statutory Authorities' Service Commission Regulations, though not a constitutional derivative, also contains a similar provision.

⁶²⁰ See more below in section 5.3.2.4.4 on the Constitution.

5.3.2.4 Equality

5.3.2.4.1 False Equality

False equality is a characteristic of legislation that appears to confer equality on both sexes but on closer examination is elitist. The Socially Displaced Persons Act, No. 59 of 2000 is one such act. This Act is meant to provide for the assessment, care and rehabilitation of socially displaced persons specifically through the establishment of a Socially Displaced Persons Unit. While this is commendable in itself, the Act does not take into account the specific social and security needs of women. Lumping women together with men in this instance can have the potential of not only creating unsafe situations but providing inappropriate or ill-equipped facilities for women. Moreover, Section 8 provides for the establishment of a Social Displacement Board of 12 members but there is no requirement that any of these members be female. It is questionable whether a board comprising only men would be sensitive to the needs of the socially displaced woman.

5.3.2.4.2 Inverse Equality

This section is meant to deal with laws that confer rights on the non-elite that are not enjoyed by the elite, hence the term “inverse equality”. It is presumed here that rights enjoyed by men are the standard by which enjoyment of equality of rights will be measured and any rights conferred on women only will be necessarily inverse. Admittedly, these are few but deserving of mention.

The Criminal Law Act allows women to claim as a defence for any offence apart from treason and murder that she committed said offence in the presence of and under the coercion of her husband. Similarly, under the Criminal Procedure Act a woman can claim diminished capacity where she wilfully causes the death of her child under twelve months old. She will be found

guilty of the lesser charge of infanticide and not murder. Under the Matrimonial Proceedings and Property Act the Court may order costs against the wife only if she owns separate property. These are not rights similarly enjoyed by men.

5.3.2.4.3 Restorative Equality

Restorative equality creates equal rights for men and women through three main means. Such laws create rights for women where women did not previously enjoy such rights or have such rights conferred on them (maternity benefits); they convey rights to achieve gender neutrality (such as seen in the Cohabital Relationships Act); and non-gender distinctiveness (Domestic Violence Act).

i. General Equality

The Registration of Clubs (Amendment) Act and the Theatres and Dance Halls (Amendment) Act both specifically prohibit, *inter alia*, gender discrimination on the premises by the owner or occupier and are the only two pieces of legislation to do so. The Equal Opportunity Act deals with discrimination in employment but makes distinctions with respect to the physical biological differences between men and women. Very importantly, though, it does not seem to construe rights associated with childbirth to be differential rights or ones for which men should be accorded any special reciprocal rights. As per Section 20, "It is not a contravention of this Act for a person to grant to a woman rights or privileges in connection with pregnancy or childbirth".

Other pieces of legislation retain in married women their capacity as equal legal individuals to execute deeds (Conveyancing and Law of Property Ordinance and Real Property Ordinance); to determine settlement issues (Income Tax Act); to enter into contracts, own and sell property, sue and be sued and be subject to the law relating to bankruptcy and to the enforcement of

judgments and orders (Married Persons Act); and to have their property used as collateral against them (Remedies of Creditors Act), as would any man.

ii. Newly Conferred Rights

Maternity benefits have been legislated to ensure that pregnant women and new mothers are not taken advantage of by their employers. As with the Equal Opportunity Act, conferring maternity benefits should not be seen as a right to be reciprocated to men as the physical biological/reproductive differences between men and women are real. The importance of legislating maternity benefits should not be trivialised through attempting to confer a reciprocal right on men, basic paternity benefits aside.

iii. Gender neutrality

Equality here deals not only with inter-gender equality but also *intra*-gender equality. Intra-gender equality implies that there is inequality *between* women. Many couples in TT have not formally legalised their relationships and live in “common law marriages”. This meant that women who practiced this type of relationship had no recourse in law when her significant other died or the relationship ended, as rights to property and maintenance required that there be a legal relationship instituted between them. It was only a married woman who could successfully (and legally) claim title to her husband’s property. The enactment of the Cohabitational Relationships Act, No. 30 of 1998 changed this, where a cohabitational relationship means “the relationship between cohabitants, who not being married to each other are living or have lived together as husband and wife on a *bona fide* domestic basis”. While a woman in a cohabitational relationship may make a claim with regard to property, this right was fettered by

the right, title, interest or claim of a legal spouse. This Act now gives women in cohabitational relationships entitlement to estate and the right to contest wills.⁶²¹

Some laws written or amended in the last ten to fifteen years tend towards the use of gender neutral terms such as “spouse” and in defining “relative” include husband and wife. The Judges Salaries and Pensions Act, Prime Minister’s Pension Act, President’s Emoluments Act, are the only three acts that make very clear that any reference to “widow” includes a reference to “widower” thereby ensuring that men receive financial entitlements as well. The Administration of Estates Ordinance, as amended by the Distribution of Estates Act, No. 28 of 2000 makes provision for either spouse to inherit property from his/her deceased spouse. The National Insurance Act and National Insurance (Benefits) Regulations both make provisions for either spouse. These are in direct opposition to the various pension acts discussed in section 5.3.2.2 above where only women were the intended beneficiaries.

Laws such as the Caribbean Aviation Training Institute, Caribbean Community Act, Immigration (Caribbean Community Skilled Nationals) Act confer diplomatic privileges on its employees and by extension, spouses and families of such employees during travel and work abroad.

Some pieces of legislation deal with the collection of information through surveys. One such act is the Counting Unremunerated Work Act which is meant to provide for the execution of surveys of people performing unremunerated work. Housework and childcare, *inter alia*, are generally unremunerated and it is primarily women who have the responsibility for providing these services. The Statistics (Surveys of Industrial or Business Undertakings) Regulations requires that persons engaged in business or industrial undertakings record information such as wages and salaries paid distinguishing amounts paid to males and females separately.

⁶²¹ See Rohandra John [online], “How common-law wives came into their own”, *Sunday Express*, 22 January 2006. [cited 21 August 2006]. Available from Internet at: http://www.trinidadexpress.com/index.pl/article_news?id=130196924

iv. Non-gender distinctiveness

The Domestic Violence Act, which was passed in 1999, recognised the grave social problems facing couples and families and added a new component to regulating male-female and parent-child relationships. The various facets of domestic violence are covered by the Act and include not only physical abuse, but also emotional or psychological abuse, financial abuse and sexual abuse. The objects of this Act are to provide immediate injunctive relief to victims of domestic violence; and ensure a prompt and just legal remedy for victims of domestic violence. In addition, this Act seems to have taken on a gender neutral character which does not take into account the fact that many of the victims are actually women. This is not to say that men are not victims as well, but the majority of victims are women and this Act was perhaps intended to address the abuse suffered by women. In writing the Act in this way, it perhaps detracts from the original intent of the Act.

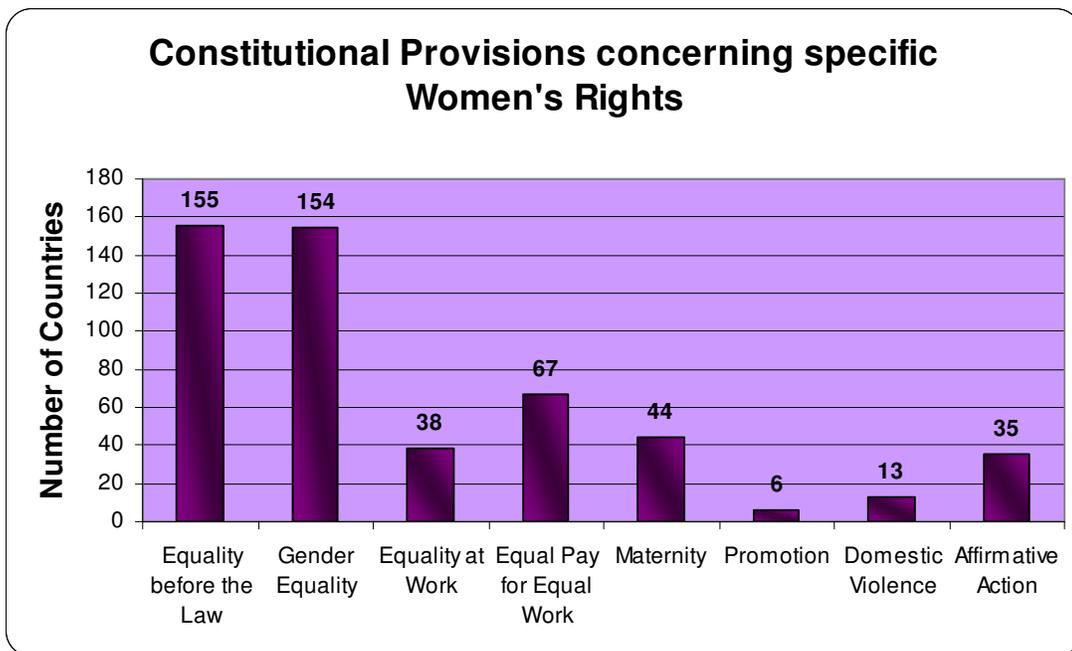
5.3.2.4.4 Constitutional Equality

The Constitution introduces a new sub-category under equality as there was no Constitution during the colonial era. It is interesting to note what obtains internationally as Constitutions and Bills of Rights confer equality and a variety of special rights to women in various permutations. Figure 5.5 below shows eight different categories of rights that affect women either directly or indirectly.⁶²² Of just over 190 instruments reviewed, 155 guaranteed women equality before the law while 154 offered gender equality, creating two separate categories of equality. The former recognises men and women as equal legal subjects before the law while the latter specifically states that women shall have equal rights with men (using men as the standard) or that men and women shall have equal rights. Women have the constitutional right to equality at work in

⁶²² Appendix B at page 344 provides a full table showing the rights that various countries confer on women.

38 countries and equal pay for equal work in 67. Maternity rights are constitutionally guaranteed in 44 countries and women have the right to be considered for promotion in 6. In just 13 countries, women are afforded the protection of the constitution against domestic violence while 35 instruments provide for affirmative action.

Figure 5.5 International Constitutional/Bill of Rights Provisions relating to Equality and Specific Women's Rights



The Constitution of TT is one of the 155 that confers on women the right of equality before the law - it is the only one of the eight constitutional rights mentioned that it confers. It enshrines the notion of sexual equality with regard to the four fundamental rights it confers on the citizenry of TT. Section 4(a), in particular, guarantees the right of the individual to life, liberty and security of the person, while Sections 4(b) and (d) ensure the right of the individual to equality before the law and equality of treatment from any public authority in the exercise of its functions in such a capacity. It is interesting to note that these stated rights to equality do not guarantee *general*

sexual equality, such as equality between men and women at the workplace. Inferring general gender equality from the Constitution may prove tricky, given the specifics of Section 4.

It should follow, therefore, that, even though sexual equality at the workplace is not specifically guaranteed by the Constitution, women will be treated fairly, in terms of being considered for managerial positions and paid the same salary as male counterparts who are similarly qualified. This is certainly not what obtains in TT, as professional women in industry face patent discrimination with regard to both promotions and salaries. There has been no response from the State in this regard, but this may also be partly due to the fact that these women tend to remain quiet about this discrimination for fear of further discrimination in an already hostile and male-dominated environment.

Equally, women should not have to live in fear for their lives of their violent partners, as they are afforded the constitutional guarantee of protection by the State not only from external threats but also from abuse by public authorities or other citizens.⁶²³ The right to security of person can only be understood in conjunction with the rights to life and liberty. TT does not offer an explicit constitutional guarantee of protection against domestic violence; however, according to the argument made by the Human Rights Commission of New Zealand, the scourge of domestic violence is clearly unconstitutional, as the right to life, liberty and security of person should necessarily encompass domestic violence. Domestic violence deprives women of their right to security of person and life when they are battered and killed. Section 4(a) is clearly breached on a regular basis largely by unconstrained violent male partners with little or no real response from the State. The State in fact recognises the apathy that is met by victims of domestic violence who attempt to seek help from those with the legal responsibility to do so. Unfortunately, many of these cases end in the gruesome death of the female partner and in the

⁶²³ Human Rights Commission [online], "Human Rights in New Zealand Today". [accessed 12 February 2006]. Available from Internet: <http://www.hrc.co.nz/report/chapters/chapter07/life01.html>.

presence of their children. There are also instances where women react violently and take the life of the abuser.

During the period May 2006 – January 2007, three women, all victims of sustained domestic violence, were found guilty of the manslaughter of their husbands. Hillary Narine (03 May 2006), Cecilia Brown-Bedeau (05 May 2006), and Stephanie Bailey (17 January 2007) were all found to be suffering from Battered Woman Syndrome, the Court thereby recognising the scourge of domestic violence and the fact that it seems to be worsening with women taking matters into their own hands. It is interesting to note that all these cases were heard before the same judge, Anthony Carmona, who in each instance made the statement that while “women are under siege in T&T”,⁶²⁴ “violent behaviour should not be an avenue open to women...to empower themselves”.⁶²⁵ He also recognised the institutional deficiencies through their officials who acted as abettors to the crime. He admitted that the Police Service sometimes ignores women’s calls for help when they are abused and said, “The police are far too laid back and this could lead to mayhem in the home”.⁶²⁶

5.3.3 Case Law and Gender in the Post-Colonial Era

While this chapter deals largely with the bias found in statutory law, it is instructive to note what obtains in case law. Decisions seem generally to be taken on the basis of the facts presented before the Court and therefore there appears to be little or no bias as decisions vary according to the peculiar circumstances surrounding each case. A review of relevant cases from 1983 to

⁶²⁴ Reshma Ragoonath [online], “Husband killer to serve four years”, *Trinidad Guardian*, 06 May 2006. [cited 22 January 2007]. Available from Internet at: <http://www.guardian.co.tt/archives/2006-05-06/news3.html>.

⁶²⁵ Jade Loutoo [online], “Toco woman put on \$30,000 bond”, *Trinidad Guardian*, 04 May 2006. [cited 22 January 2007]. Available from Internet at: <http://www.guardian.co.tt/archives/2006-05-04/news1.html>.

⁶²⁶ Indarjit Seuraj [online], “Carmona: Women under siege in this country”, *Trinidad Guardian*, 18 January 2007. [cited 22 January 2007]. Available from Internet at: <http://www.guardian.co.tt/archives/2007-01-18/news3.html>.

2007 revealed six major cases in which women committed the offence of murder and attempted to enter the specific plea of diminished responsibility due to “Battered Woman Syndrome” as a defence. In 1999, in the landmark case of *Indravani Ramjattan v The State*, CrA. No. 59 of 1995, the Appellant, Indravani Ramjattan, was able to successfully claim Battered Woman Syndrome as a defence for having arranged to have her common-law husband killed, reflecting the characteristic of inverse equality as discussed above given that men cannot claim this. Battered Woman Syndrome was only five years prior classified as a mental disease in England (and as much as nine years in Canada) although it was recognised as early as the early seventies as a possible effect of prolonged physical abuse in the context of domestic killings.⁶²⁷ It would appear that Indravani was a victim of physical abuse from childhood and was forced into a marriage at age seventeen with a man eighteen years her senior who began abusing her three years into the relationship when he discovered that she visited her mother against his will. The abuse became increasingly worse with threats to her life and those of her children. She eventually left to live with another man but was forcibly taken back home where she was beaten unconscious. It was this man and his friend who eventually carried out the killing of her husband.

In the cases of *Angela Ramdeen v The State*, CrA. No. 33 of 1997 and *Kenrick London and Chandrouti London v The State*, Cr. App. Nos. 31 & 32 of 2002 both women, accused of murder, attempted to enter the plea of diminished responsibility due to battered woman syndrome. While they both failed, each woman had her death sentence commuted to one of life imprisonment due to a Privy Council ruling in *Charles Matthew v The State*, Privy Council Appeal No. 12 of 2004 which ordered that “the sentence of death imposed on those persons awaiting execution pending the determination of *Matthew* be set aside and, in its place, their

⁶²⁷ See Warner J.A., *Indravani Ramjattan vs The State*, CrA. No. 59 of 1995 at p. 4.

Lordships directed that a sentence of life imprisonment be imposed on such persons”.⁶²⁸ In *Giselle Stafford and Dave Carter v The State*, Cr. App. No. 88 & 91 of 1996, both Appellants were guilty of murder and sentenced to death. There was no claim of diminished responsibility and in this case Stafford was sentenced in the same manner as Carter.

Men seem to have it much easier than women in claiming diminished responsibility for the murder of their significant female other. It would appear that the defence of diminished responsibility in the form of “provocation” is less difficult to prove than battered woman syndrome. There are many instances of men found guilty of the murder of their wives/common-law wives and were able to successfully claim provocation and receive a more lenient sentence. In *Junior Colin Nicome v The State*, CrA. No. 83 of 1999, *Ashton Lee v The State*, CrA. No. 73 of 2001, *Foster Serrette v The State*, CrA. No. 40 of 2001 and *Ramnath Harrilal v The State*, CrA. No. 46 of 1996, all four men were found guilty of the murder of their common-law wives, the first three claiming provocation and the last one claiming diminished responsibility as a defence. In the provocation cases, all men were jilted (in their minds, perhaps, cuckolded) lovers and appeared to react in this fatal manner. Important here is the fact that in TT, many men have multiple female partners while it is less common for women to behave in the same way. In any event, women tend to be accepting of this state of affairs and accommodate men’s behaviour. Men, on the other hand, seem to always jealously safeguard their women and seem

⁶²⁸ R. Hamel-Smith, J.A., *Kenrick London and Chandrouti London v The State*, Cr. App. Nos. 31 & 32 of 2002 at p. 21. In *Matthew*, the majority judgement as delivered by Lord Hoffman stated that “the law imposing the mandatory death penalty for murder in Trinidad and Tobago remains valid” and that “their Lordships will allow the appeal, set aside the sentence of death and impose a sentence of life imprisonment”, *Charles Matthew v The State*, Privy Council Appeal No. 12 of 2004, pp. 4 and 10 respectively. The *Matthew* judgement overruled the previous case of *Balkissoon Roodal v The State*, Privy Council Appeal No. 18 of 2003 which stated that the penalty of death for murder is not a fixed penalty but the maximum penalty which can be imposed by discretion, the obvious alternative to which is imprisonment. See Lord Steyn, *Roodal*, p. 15. Convicted murderers awaiting judgement between *Roodal* and *Matthew* were therefore entitled to the benefit of the decision of the former and had their death sentences commuted to life imprisonment. See also judgement of Sharma, C.J., *The Attorney General of Trinidad and Tobago (Appellant) v Angela Ramdeen (Respondent)*, Cv.A. No. 6 of 2004, pp. 6-7, para 17.

unable to exercise restraint on rejection and perhaps, as an issue of pride, react violently.⁶²⁹ This is in no way meant to justify their behaviour regardless of the provocation claimed but remains a sad reality of the socio-cultural evolution of this society. The judges make it very clear that this type of behaviour is unacceptable,⁶³⁰ yet still take into account the extenuating circumstances and allow the plea of diminished responsibility. Unfortunately, while it is expected that men would behave in this atrocious manner, women are expected to be tolerant. Why this seeming leniency? Is it that the elite are privy to positive inequality features even in case law?

An interesting development in case law deals with the issue of the common-law wife. While the Cohabital Relationships Act formally vests the right in a woman to make a claim for maintenance or with regard to a man's estate on his death, it would appear that, prior to the passing of this Act, judges have recognised the legal plight of the common-law wife and saw it fit to recognise that they too have rights. Sharma J., as he then was, recognised the common-law relationship as "a voluntary union for life of one man and one woman to the exclusion of all others" and in so doing acknowledged "the role of the common law wife in society" and the fact that "she too, like the married woman also has rights",⁶³¹ thereby conferring intra-gender equality on the two classes of women. This point was taken up in *Marjorie Gould v Lenore Bridgell*, H.C.A. No. S-142 of 1982 where the Defendant attempted to claim her right as the common-law wife against the rights of the lawful wife. Although edifying in its explanations, the

⁶²⁹ It would appear that the other "choice" is suicide: see for example Radhica Sookraj [online], "Cop drinks poison after domestic row", *Trinidad Guardian*, 23 February 2006. [cited 29 January 2007]. Available from Internet at: <http://www.guardian.co.tt/archives/2006-02-23/news3.html> and Carol Kissoon [online], "Cop ties self to tree, drinks weedicide", *Trinidad Express*, 23 February 2006. [cited 29 January 2007]. Available from Internet at: http://www.trinidadexpress.com/index.pl/article_news?id=138085395. Murder-suicide presents yet another option: see for example Geisha Kowlessar [online], "Stormy relationship ends in murder-suicide in Valencia", *Trinidad Guardian*, 03 August 2004. [cited 29 January 2007]. Available from Internet at: <http://www.guardian.co.tt/archives/2004-08-03/news1.html> and Earl Manmohan [online], "Tobagonian chops Italian lover to death...kills himself", *Trinidad Express*, 26 January 2007. [cited 29 January 2007]. Available from Internet at: <http://www.trinidadexpress.com/index.pl/article?id=161090340>.

⁶³⁰ See Jones, J.A., *Ashton Lee v The State*, CrA. No. 73 of 2001 at pp. 10-11.

⁶³¹ See Sharma, J. (as he then was), *Ramratie Harrinarine v Rasheed Aziz & Kadar Aziz*, H.C.A. No. S-1992 of 1982, pp. 21-23.

judge found that, according to the facts, the Defendant did not meet the criteria of being a common-law wife but that of a mistress and therefore not entitled to her claims.

There are many cases of the common-law wife seeking money and property from her husband and in many cases it was found that, again, decisions were based on the facts presented, eligibility requirements depending on the statute(s) used to seek redress, and any perceived intention to build a life together / jointly own property in question. Women were generally the petitioner, they were generally financially dependent on their husbands, and awards were generally made based on the impecunious state of the women and the fact of her contribution to home-making and/or any financial contributions she may have made.⁶³² In cases where the facts of the case indicate that there was no intention to share property or that contributions on the part of the petitioner were inadequate, her claim would be unsuccessful.⁶³³

Much like murder charges, claims for maintenance between legally married couples abound. Yet again, the decisions taken appear to be based on the facts presented, truthfulness of the accounts presented, statutory eligibility requirements, quality of life to which the spouses are accustomed, and contributions by both parties to the life shared.⁶³⁴ The awards seem to be fair and also take into account periods of pre-marital cohabitation.⁶³⁵

In what must be another landmark case, *Josine Johnson and Yuclan Balwant v The Attorney General of Trinidad and Tobago*, H.C.A. No. S-2142 of 2004, the Appellants attempted to argue that the regulations dealing with married women, their family obligations and the effect of these on their performance at work in both the Police Service Commission Regulations (made

⁶³² See for example, *Ann Charles v Peter McMillan*, H.C.A. No. 141 of 1981; *Violet Bruce v David Chance*, H.C.A. No. 4873 of 1989; *Jasmine Albert v Irwin Mohammed*, H.C.A. No. 1651 of 2003.

⁶³³ See for example *Irma Richards v Hamilton Riviears*, H.C.A. No. 2045 of 1992.

⁶³⁴ See for example, *Deokee Beharry v Anthony Beharry*, H.C.A. M-313 of 1998, *Marine Munroe v Gregory Munroe*, H.C.A. 20 of 2000, *Sherma Harrington v Ermath Harrington*, H.C.A. M-1020 of 2002, *Brian Nicholson v Elizabeth Nicholson*, H.C.A. No. FH00712 of 2004.

⁶³⁵ See *Peter O'Neil v Pearly O'Neil*, H.C.A. M-985 of 2002.

pursuant to the Constitution) and the Statutory Authorities' Service Commission Regulations are not only unconstitutional in their discrimination against women but also "failed to give equal treatment in law of against married and unmarried female public servants".⁶³⁶ This case brings into question the issue of intra-gender equality as these regulations obviously do not take into consideration the common-law wife with family obligations. Unfortunately, the action failed and the Appellants were unable to make their claim of constitutional discrimination against women.

5.4 Domestic Legislation: A Simple Case of Replacement of the Elite?

The statutory legal framework for gender seems very much to reflect an elitist attitude on the part of those responsible for creating and enacting the various pieces of legislation. This is certainly in keeping with what obtained during the colonial period where laws were enacted to serve the interest of the elite in one way or another. Some 150 pieces of legislation have been cited as having some significant reference to gender; yet, when analysed, they do not lend themselves to the creation of a legal framework that accommodates gender equality in a real manner. This is directly attributable to the fact that the male elite responsible for enacting legislation does not take into account the particular needs of women. Even specific attempts to create equality in law seem to work against women, as laws written with gender neutrality in mind, such as the Domestic Violence Act, seem to detract from the importance of the scourge it is attempting to prevent. One important and positive effect, however, was the creation of legislation to protect women's maternity rights. Moreover, conferring maternity rights has not appeared to create a desire by men to have an equal and reciprocal right, which, if done, would perhaps trivialise the importance of biological and reproductive differences between men and women.

⁶³⁶ Best, J., *Josine Johnson and Yuclan Balwant v The Attorney General of Trinidad and Tobago*, H.C.A. No. S-2142 of 2004, p. 4.

In order to fully appreciate the place of gender in national legislation in Trinidad and Tobago, it is necessary to identify a specific area of gender concern and review its treatment within the analytical framework of feminist legal theory. Chapter six will examine domestic violence and its specific treatment in statutory law as a case study to illustrate TT's domestic commitment towards promoting women's human rights, namely the right of a woman to equal protection of the law and security of person.

CHAPTER SIX

6.0 Trinidad and Tobago and Domestic Violence: The Specific Legislative Response

6.1 Introduction

Prevention of domestic violence is in fact specifically legislated in TT by the Domestic Violence Act. As part of the empirical analysis of gender bias in the law, chapter five examined generally the place of gender and gender equality in the legal regime of Trinidad and Tobago. The findings of chapter five suggest that in contemporary TT the bias in favour of the colonial elite has now been replaced by a male elite where women constitute the prejudiced portion of the population. It is necessary to examine this principle against the backdrop of a specific area of gender concern, that is, domestic violence.

Domestic violence is the area chosen for an examination of gender bias in TT, thus the case study starts with a review of the primary piece of legislation that underpins the legal regime for addressing domestic violence, namely the Domestic Violence Act, No. 27 of 1999 (“Domestic Violence Act”).

6.2 Effectiveness of the Domestic Violence Act

Hailed by many as a comprehensive piece of legislation, the Domestic Violence Act appears to work better in theory than in practice and seems to have many gaps that hinder its effectiveness as a mechanism for safeguarding women from domestic violence. This analysis takes the format of an excerpt from the Domestic Violence Act followed by a commentary.

Preamble “*Whereas incidents of domestic violence continue to occur with alarming frequency and deadly consequences*”

The Domestic Violence Act starts with a clear recognition by the Government of TT that domestic violence is a major social ill. The preamble of the Domestic Violence Act fully illustrates the perception of the State as to the seriousness of domestic violence.

6.2.1 The Prompt and Equitable Response

Preamble: “*And Whereas the Government is of the view that one way to achieve these goals is to strengthen legislation to ensure a prompt and equitable legal remedy for victims of domestic violence...*”

2. *The objects of the Act are inter alia to –*
 - (a) *provide immediate injunctive relief to victims of domestic violence; and*
 - (b) *ensure a prompt and just legal remedy for victims of domestic violence.*

With respect to the “promptness” of the legal remedy, while women⁶³⁷ can in fact obtain immediate injunctive relief in the form of a protection order, this piece of paper cannot in reality stop the abuser from abusing. A protection order can even further inflame the situation and, unless the woman has somewhere she can seek refuge, her life may be in imminent danger. There needs to be some sort of State response to provide shelter to these women and their children as many of the shelters that do provide a haven for victims of domestic violence have restrictions on the age and sex of children that can stay as described in chapter seven.

The “equitableness” of the legal remedy creates another issue. While the Domestic Violence Act is meant to protect the abused, caution must be exercised in terms of the remedies offered against the abuser. The Domestic Violence Act fails to address the psychological fallout of the protection orders on the psyche of the fragile male ego which probably led to the situation in the

⁶³⁷ It must be remembered that the focus here is violence against women.

first place. He may feel emasculated and seek to intentionally hurt or kill the one who is meant to be protected.

6.2.2 The Domestic Violence Act and Women's Constitutional Right

1.(2) *"The Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution".*

Section 4(c) of the Constitution recognises the right of the individual to respect for his private and family life while section 5 deals with the abrogation, abridgment or infringement by any other law of any rights and freedoms guaranteed by the Constitution. The right to respect for private and family life forms the crux of the public/private divide and, as seen here, even forms part of the supreme law of the land. In the case of male violence against women, does this mean therefore that the State reserves the right to ignore what takes place in private simply because it occurs in private? This cannot be as section 4(a) of the Constitution confers upon an individual the right to "life, liberty and security of the person". Women facing domestic violence in the home do not appear to enjoy the benefit of this right nor do they seem to have this right enforced. Why, therefore, should the Domestic Violence Act be seen as inconsistent with section 4 of the Constitution? Why should it be seen to "abrogate, abridge or infringe" the rights and freedoms guaranteed by the Constitution of those (abusers) who take the liberty to adversely affect the Constitutional rights of others (abused)? The Domestic Violence Act, of necessity, enters the realm of the private. Is it that section 4(c) is seen to take precedence over section 4(a)? Such an interpretation would be ludicrous and unacceptable. Women, as individuals under the Constitution, should be entitled to feel safe in their homes and have the protection of the State where their homes (metaphorically speaking, as domestic violence takes place in public as well) become the site violence against them. Protection against domestic

violence should therefore be an inferred constitutional guarantee for individuals so threatened, as they are in fact guaranteed the right to “life, liberty and security of the person” by the State.

6.2.3 Responsibility of Independent Parties to Seek Protection Orders On Behalf of Victims

4. (4) *A police officer, probation officer or approved social worker may apply for a Protection Order on behalf of -*
(a) any person referred to in subsection (2); or
(b) a person or child who is in a residential institution.

In many instances, the victims themselves are unwilling to take the matter any further and according to the construction of this section, there is no obligation on the police officer, probation officer or social worker to apply for the order as the Domestic Violence Act employs discretionary language with respect to Section 4(4). While the section was not meant to be interpreted this way but simply to add to the list of people eligible to apply for a protection order, *should* there, in fact, be an obligation on the part of someone in such a position to do so, especially in a case of clear and present danger? While they can refer the victim to a shelter as a temporary safety measure, is that enough? Should proactivity dictate that more be done? There is nothing in section four as a whole that suggests that orders must always be voluntary on the part of the victim. Allowance should be made of involuntary orders as well.

6.2.4 Legislative Discretion to Grant Protection Orders

5. (1) *Where, on an application made by a person described in section 4, the Court determines, on a balance of probabilities, that domestic violence has occurred, it may issue a Protection Order containing any or all of the prohibitions or directions referred to in section 6.*
(2) The Court shall grant a Protection Order where it is satisfied that the respondent—
(a) is engaging in or has engaged in domestic violence against the applicant; or
(b) is likely to engage in conduct that would constitute domestic violence,

and in either case, having regard to all the circumstances, the Order is necessary for the protection of the applicant.

Sub-section 1 suggests that the Court need not issue a protection order even where it determines that domestic violence has occurred, but why should it not? The Court should adopt a pre-emptive approach to domestic violence given the recognition above of the “alarming frequency and deadly consequences” with which domestic violence occurs. Moreover, there appears to be a conflict between this section and subsection (2)(b) as they both seem to point to the need to prevent the abusive situation and should not be dealt with separately and neither should one be based on discretion. To avoid uncertainty in the exercise of any judicial discretion, the Domestic Violence Act should have clearly stated the circumstances under which domestic violence can be established on a balance of probabilities and yet no Protection Order is granted by the Court.

6.2.5 Counselling under the Domestic Violence Act

6. (1) A Protection Order may -
(c) direct that the respondent -
(iv) immediately vacate any place or residence for a specified period, whether or not the residence is jointly owned or leased by the respondent and the applicant, or solely owned or leased by the respondent or the applicant;
See above on equitableness of legal remedy.

(viii) or applicant or both, receive professional counselling or therapy from any person or agency or from a programme which is approved by the Minister in writing.

25. (3) Where a bond of good behaviour has been entered into under subsection (2) the Court may prescribe such additional conditions as follows:

(a) that the parties receive professional counselling, including family counseling...

Where Section 6(1)(viii) of the Domestic Violence Act says “applicant or both”, does this refer to individual sessions, or joint marriage counselling type sessions? In TT, professional therapy is mainly provided by the private sector and this is usually a paid service. Most victims of domestic violence who seek redress under the Domestic Violence Act cannot afford this service

and the Domestic Violence Act fails to provide the mechanism for facilitating such access. The Domestic Violence Act does provide for access to programs for counselling approved by the Government, but these programs are usually staffed by trained specialists who are trained generally in social work and/or psychology.

*(4) Where the Court makes an Order which, inter alia, directs the payment of compensation under subsection (1)(c)(ii), such compensation shall include, but not be limited to -
(b) medical and dental expenses...*

Where professional counselling or therapy is required, medical expenses here could be expanded to include this so that the respondent will be required to pay this cost.

6.2.6 Duration of Protection Orders

(9) A Protection Order may be made for such period as the Court considers necessary but shall not exceed three years.

What happens after three years or whatever timeframe the Magistrate sees fit? Is it that the abuser is supposed to have been rehabilitated during this time? If the abuser was ordered to immediately vacate the place, will the abuser now be allowed to return to his home after all this time? If counselling is not ordered for the respondent and/or the applicant, the psychological fallout could serve to nullify the original effect and intent of the protection order.

(10) Where the Order contains any prohibitions or directions, the Court may specify different periods, none of which shall exceed three years as the period for which each prohibition or direction shall remain in force.

Can the abuser then recommence the formerly prohibited action after the period is ended?

Does the process then recommence, that is, applying for a protection order and obtaining a new

order? The Domestic Violence Act should have provided for the seamless extension of a Protection Order beyond the initial three year period where it can be established on a balance of probabilities that the acts of domestic violence has continued or is likely to continue after the expiration of the Protection Order.

9. (1) In proceedings under this Act the Court may at any time before the taking of evidence, accept an Undertaking from the respondent given under oath, that the respondent shall not engage in conduct specified in the application or any other conduct that constitutes domestic violence.

(4) An Undertaking remains in force for the period stated in the Undertaking, but shall not exceed three years.

Related to the duration of Protection Orders is the duration of Undertakings which is based on the three year principle without any indication as to the appropriate course of action after the expiration of the three year period.

6.2.7 Hardship under the Domestic Violence Act

*7. In determining whether or not to impose one or more of the prohibitions or directions specified under section 6, the Court shall have regard to the following:
(e) the hardship that may be caused as a result of making of the Order;*

What hardship, and for whom? The Domestic Violence Act identifies hardship as a factor to be considered in the making of a Protection Order but fails to define how this factor ought to operate. Conceivably, the hardship to the abuser may be considered in terms of exclusion from the family home which may be the place of abuse. Such consideration is perverse as that hardship cannot be a factor in the making of a Protection Order to safeguard the lives of those at risk. Another manifestation of the hardship argument is that a woman could be forced into accepting a Protection Order that is limited in scope because her financial hardship precludes a full Protection Order.

6.2.8 The Preservation and Protection of the Institution of Marriage and Other Relationships

(g) the need to preserve and protect the institution of marriage and other relationships whilst affording protection and assistance to the family as a unit;

How can the need to preserve and protect the institution of marriage and other relationships outweigh the need to protect people from domestic violence? If the domestic violence continues and escalates to a fatal end, there will be no marriage to protect or preserve!

6.2.9 In Camera Proceedings

10. Proceedings in respect of an application for a Protection Order shall be held in camera unless the Court directs otherwise.

In what instances would it be permissible to hear proceedings for a Protection Order other than *in camera*? There is a need for guidelines to determine under what circumstances this will be allowed.

6.2.10 Date of Hearing of Application for Protection Orders

11. The Clerk shall fix a date for the hearing of the application which shall be no more than seven days after the date on which the application is filed.

While there is no provision for hearing life-threatening matters immediately, the clerk has the discretion to list the matter for hearing on the same day that the application is filed. This discretion is not always exercised and women who have complained of being in fear for their lives still have to wait seven days before the matter is heard. It would have been of much

benefit if the Domestic Violence Act had provided for immediate access to an Interim Protection Order on a 24 hour basis.

6.2.11 Non-Service of Summons

(6) Where the hearing of an application is adjourned because the application and the notice of proceedings have not been served on the respondent, the time and place fixed by the Court for the adjourned hearing, shall be the date, time and place stated in the new notice of proceedings.

Service of the application, deemed also to be a summons by subsection (4), seems to be an issue. Pursuant to Section 43(1) of the Summary Courts Act, notice of proceedings for a Protection Order is deemed to be a summons and summonses are to be served by police officers. One applicant attended Court on the set date with police escort only to learn that the respondent was absent because he never received the summons. This was not because he could not be found but simply because the person to serve it never did so and had no reason for not having served it. Moreover, when such a case is adjourned, the new date is usually two weeks from the original date, showing little regard for the welfare of the applicant. There should be a punitive clause to deal with such acts of negligence by those in whose hands women's hope lie.

6.2.12 Dismissal of Application for Protection Order due to Non-Appearance of Applicant

14. If, on the date of the hearing of an application for a Protection Order, the respondent appears in Court, but neither the applicant nor the person on whose behalf the application is made appears either in person or represented by his attorney-at-law, the Court may:

(b) having received a reasonable excuse for the non-appearance of the applicant or other person, adjourn the hearing upon such terms as it deems just;

The nature of domestic violence is such that it may not be possible for the applicant to send notice of her reasonable excuse for non-appearance. What happens in the event that on presentation of the summons, the applicant is beaten so severely that she has to be hospitalised and no one is aware of the situation? She will be unable to attend Court or give notice of her absence. The right to dismiss a matter for non-appearance should have been more carefully circumscribed to cater for situations that are natural to cases of domestic violence.

6.2.13 Time of Effect of Protection Order

15. Where the Court proposes to make a Protection Order or an Interim Order, and the respondent is before the Court, the Court shall explain to the respondent -
(a) the purpose, terms and effect of the Order;
(b) the consequences of failing to comply with the Order; and
(c) the means by which the Order may be varied or revoked.

It should be clearly stated that upon explanation of the order to the respondent that it takes immediate effect. There is no section that deals with the time of effect of the order and it cannot be that the order is only of effect when served on the respondent in hard copy.

16. Where a Protection Order or Interim Order is made or varied by the Court -
(b) the Court shall cause a copy of the Order to be served on -
(i) the respondent;
(ii) any other person to whom the Order is to apply whether or not the person is a party to the proceedings; and
(iii) the police officer in charge of the station located nearest to the area where the respondent or applicant resides.

When the Magistrate actually hears the matter, the order of the court is stated in the presence of both parties and then reduced to writing. Accordingly, the time of effect of the Protection Order can be deemed to be when stated to the parties; however, the situation is rendered somewhat complicated when it is an Interim Protection Order that is being sought. It would appear that the

Interim Protection Order can only be effected on the time of service on the respondent. Failure to serve the order on the respondent renders the order unenforceable. Moreover, in the event of a breach of the order, the police will have no power to arrest the offender.

17. (1) Where, the Court has not been able to serve notice of proceedings or the Order, as the case may be, upon the respondent personally, it may make an Order for substituted service of the notice of proceedings or Order, as the case may be.

(2) For the purpose of subsection (1)(b) "substituted service" means—

(c) service by advertisement in two daily newspapers which service is deemed to have been effected at midnight on the date of the later advertisement, the cost to be borne by the applicant...

By virtue of section 17, the Court has wide powers to have substituted service which can be as simple as leaving it at the last address of the Respondent. Under these circumstances, the time of effect of the order is not when personally received by the Respondent but when service has been made in such manner as deemed appropriate by the Court.

18. A respondent shall not be bound by a Protection Order or Interim Order-

(a) where he was not present at the time of the making of the Order; or

(b) where the Order has not been served on him personally or in accordance with section 17 (deals with substituted service).

It would appear that Section 18 contradicts Section 8(2) and Section 17 in as much as it would appear to only provide for an order to be effective when personally served or when a respondent was present at the time of the making of the order. What, then, is the purpose of section 8(2), which allows the Court to make an Interim Order in the respondent's absence, or section 8(5) which allows the Court to extend the period of the Interim Order or substitute such an Order with a Protection Order in the respondent's absence? Moreover, what is the purpose of section 13(a) which allows the Court to "proceed to hear and determine the matter in the respondent's absence"? In this last instance, however, he must have been served with the summons before the Court can proceed. It is certainly expected that the respondent will be served with the Order, but given the difficulty with service, it perhaps makes more sense to have

the respondent present in Court when this decision is being made. There is the possibility that the respondent could never be properly served but this must not lead to a defeat of the intent of the Act. There must be some way of ensuring the respondent's presence or proper service on him. This appears to be covered by section 17 dealing with substituted service which does not require personal service. Fault can therefore actually lie with the Court for unenforceability of an order due to not having served the order or having made an order for substituted notice. What remedies exist in the event that an applicant wishes to take action against the Court for negligence?

6.2.14 Variation or Revocation of Orders

19. (1) *Where an Order is in force, a party to the proceedings in respect of whom the Order was made may apply to Court on the Form described as "Form 5" in the Second Schedule, for an Order varying or revoking the original Order.*
- (2) *On an application under subsection (1), the Court may, by Order, vary or revoke the Order.*
- (3) *A copy of an application under this section shall be served on each person who was a party to the proceedings in respect of which the original Order was made.*
- (4) *In determining whether to vary or revoke an Order the Court shall have regard to the matters specified in section 7.*

There are no guidelines as to the procedure for this. Should it be inferred that the procedure for applying for an order will apply to variation, duration and revocation of orders?

6.2.15 Fines and Penalties

20. (1) *Subject to subsection (2) a person against whom an Order has been made and who -*
- (a) *has had notice of the Order; and*
- (b) *contravenes any provision of the Order or fails to comply with any direction of the Court, commits an offence and is liable -*
- (i) *on a first conviction to a fine not exceeding nine thousand dollars or imprisonment for a period not exceeding three months;*

- (ii) on a second conviction to a fine not exceeding fifteen thousand dollars or imprisonment for a period not exceeding twenty-four months or both;*
- (iii) on any subsequent conviction to a period of imprisonment not exceeding five years.*

Would/do these fines/penalties have the desired effect of curbing the unwanted behaviour?

In addition, there should not be standard fines applicable to all offences. Someone liable for not paying maintenance as a first or even recurring offence should not necessarily face the same fine as someone causing damage to the applicant's property. There should be a schedule depending on the severity of the offence with a tiered fine and imprisonment system.

6.2.16 Police Intervention

- 22. Where a Magistrate is satisfied, by information on oath, that -*
- (a) there are reasonable grounds to suspect that a person on premises has suffered or is in imminent danger of physical injury at the hands of another person in a situation amounting to domestic violence and needs assistance to deal with or prevent the injury; and*
 - (b) a police officer has been refused permission to enter the premises for the purpose of giving assistance to the first mentioned person in paragraph (a),*
- the Magistrate may issue a warrant in writing authorising a police officer to enter the premises specified in the warrant at any time within twenty-four hours after the issue of the warrant and subject to any conditions specified in the warrant, to take such action as is necessary to prevent the commission or repetition of the offence or a breach of the peace or to protect life or property.*
- 23. (1) For the avoidance of doubt, a police officer may act in accordance with the provisions of the Criminal Law Act where he has reasonable cause to believe that a person is engaging in or attempting to engage in conduct which amounts to physical violence and failure to act immediately may result in serious physical injury or death.*
- (3) Where a police officer exercises a power of entry under subsection (1) he shall immediately submit a written report to the Commissioner of Police, through the Head of the Division where the incident occurred, such report to contain the following information:*
- (a) the reasons for entering the premises without a warrant;*
 - (b) the offence being committed or about to be committed; and*
 - (c) the manner in which the investigation was conducted and the measures taken to ensure the protection and safety of the person at risk.*
- (4) The report referred to in subsection (3) shall be submitted to the Director of Public Prosecutions by the Commissioner of Police within seven days of receiving the report.*
- (5) Where a complaint is made against a police officer by a person resident in premises alleging that the officer's entry onto the premises under subsection (1) was unwarranted, the Police Complaints Authority shall investigate the complaint and submit a copy of its*

report to the Commissioner of Police and the Director of Public Prosecutions within fourteen days of the complaint having been made.

(6) Where the investigation of the Police Complaints Authority finds that the entry under subsection (1) was unwarranted, the Police Complaints Authority shall also submit the report to the Police Service Commission and such report may form the basis of disciplinary action against the police officer.

24. Where an Order is in force and a police officer believes on reasonable grounds that a person has committed or is committing a breach of the Order he may detain and arrest that person without a warrant.

While it is understandable that the time lag in getting the warrant could possibly lead to death of the complainant if she does not seek shelter elsewhere, this provision could possibly lead to abuse of power despite the series of post-entry protocols that could ultimately lead to disciplinary action against the police officer if his actions were found to be unwarranted. The Domestic Violence Act provides an excess of checks and balances to police intervention where there is the breach of a Protection Order and this may weigh against the police officer exercising discretion to enter premises to protect someone in the absence of a warrant.

6.2.17 Conditions of Bail

27. (2) Notwithstanding the Bail Act, the Court in granting bail, may order that the recognisance be subject to such of the following conditions as the Court considers appropriate:

(d) where the defendant continues to reside with the victim that the defendant not enter or remain in the place or residence while under the influence of alcohol or a drug.

This section is of particular interest, as many situations involving domestic violence are fuelled or enflamed by alcohol and drug use. This is evidenced by the increase in attendance at the various shelters across the country during the festive seasons of Christmas and Carnival (generally the period between November/December to February) when drinking to enhance merriment and celebrate the seasons is at its greatest. However, while the aims of the section may have been commendable, it may prove difficult to implement. There are issues such as the

level of influence of alcohol which triggers the exclusion from the house. Is it that the respondent must become a teetotaler to be allowed to remain in the house? What about the use of prescriptive and non-prescriptive drugs that can modify behaviour?

6.3 Conclusion

Gender equality and domestic violence are unwitting partners as women cannot achieve the former without first addressing the latter. With this in mind, domestic violence is dealt with as a subset of gender and its treatment in the law provides an indication as to how seriously it is taken. In TT, domestic violence is largely dominated by the abuse of women. Although data with respect to domestic violence is not sex disaggregated, anecdotal evidence and interviews (see chapter seven) indicated that the vast majority of orders sought pursuant to the Domestic Violence Act are by women. Legislating a system to deal with domestic violence, therefore, should necessarily take these facts into consideration to provide real and effective relief for those whom the act was intended to serve.

The Domestic Violence Act was passed with much fanfare. Heralded as a potent weapon to combat abuse of women, it has not quite lived up to such lofty expectations. The Domestic Violence Act contains many deficiencies that undermine its effectiveness. Looking at the Domestic Violence Act through gender lenses, it is clear that TT has created a relatively ineffective statutory scheme to combat domestic violence. Perhaps understandably so, considering that the Parliament agenda is controlled by the male governing elite.

Having reviewed the defects in the statutory regime for protection of women from acts of domestic violence, it is necessary to examine the institutional framework that also serves as an equally important and complementary mechanism for protecting women from abuse.

CHAPTER SEVEN

7.0 Trinidad and Tobago and Domestic Violence: The Institutional Response

7.1 Introduction

Legislatively, there appears to be numerous provisions for women and women's issues generally although there is the overarching issue of the elitist character of the laws favouring men and the fact that laws are not always designed to take into account gender specific needs. Chapter six explored the specific piece of legislation dealing with domestic violence which constitutes the area of concern for the case study on gender and the law in TT.

Despite inadequacies in the legal regime for dealing with domestic violence, the overall treatment of the problem of domestic violence at the national level cannot be assessed without first understanding the institutional framework within which it must operate. This chapter examines this institutional framework, governmental and non-governmental, focussing on the executive and state authorities which illustrate government's commitment to dealing with domestic violence as a reflection of the more general treatment of the gender agenda.

7.2 State Commitment

The commitment of the State to any issue can be measured in terms of budgetary allocations, policy formulation, and ministerial responsibilities. This section illustrates government's commitment to domestic violence using these measures.

7.2.1 Financial Investment in Dealing with Domestic Violence

The Public Sector Investment Programme (“PSIP”) is an integral part of the government’s major policy documents illustrating its intentions with respect to resource allocation to achieve strategic national goals and objectives aimed at stimulating further economic growth, promoting sustainable development and enhancing the quality of life for all citizens.⁶³⁸ It is a comprehensive instrument of government policy representing its public investment thrust across sectors and is meant to deal with high priority investments projects. Government’s financial investment under the PSIP targets areas deemed to be of critical concern.⁶³⁹ If this is indeed the case, then reviewing the thrust of government’s financial investment would be of interest to help illustrate its commitment to dealing with domestic violence.

As a preliminary point, there is no separate itemisation of Government spending under the rubric domestic violence. Government expenditure on addressing domestic violence is generally lumped into expenditure dedicated to community development and social, cultural and recreational activities. Again, it must be noted that even when lumped into expenditure dedicated to community development and social, cultural and recreational activities, this is done within the broader category of gender. This situation has arisen because of the fact that gender issues are dealt with by a ministry whose portfolio does not deal solely with gender. The following shows government’s commitment to gender through its PSIP for the period 1998-2006.

In 1998-1999, a total of USD\$13.4 million, representing 7.7% of total sectoral allocations, was allocated to the Ministries of Social Development and Community Development, Culture and

⁶³⁸ See Republic of Trinidad and Tobago, *Public Sector Investment Programme 2005* (Port of Spain, Trinidad: Ministry of Planning and Development and Ministry of Finance, 2004), p. 1.

⁶³⁹ Republic of Trinidad and Tobago, *Public Sector Investment Programme 2002* (Port of Spain, Trinidad: Ministry of Finance, 2001), p. 3.

Women's Affairs out of a total of USD\$62.6 million allocated to the development of social infrastructure.⁶⁴⁰ Expenditure here was dedicated to community centres, halfway houses and rehabilitation centres, refurbishment of cultural centres, and upgrading of library services. There is no gender specific expenditure save for projected expenditure of USD\$121,000 to complete training and outreach programmes in gender affairs and to purchase equipment, furniture, and promotional materials. This was a four year programme and only USD\$75,000 for the whole programme was financed by the government of Trinidad and Tobago while external funding in the sum of USD\$400,000 was sourced.⁶⁴¹

For 1999-2000, out of USD\$113.7 million allocated to the development of social infrastructure, the Ministry of Culture and Gender Affairs was allocated USD\$2.9 million, a mere 1% of total sectoral allocations, half of which was dedicated to the upgrade of library services.⁶⁴² The remaining money was dedicated to the establishment and continuation of refurbishment of cultural centres, training for museum staff, and the establishment of a Domestic Violence Unit. The government provided USD\$167,000 for a Non Traditional Training programme for women with an extra USD\$357,000 coming from external sources.⁶⁴³

The 2001 PSIP states that a total of USD\$2.7 million was allocated to the Ministry of Culture and Gender Affairs which was dedicated to the renovation and upgrade of several cultural facilities.⁶⁴⁴ The Non Traditional Training for Women project was allocated USD\$158,730 for its continuation, representing less than 0.1% of total sectoral allocations for the year on gender related expenditure.

⁶⁴⁰ Republic of Trinidad and Tobago, *Public Sector Investment Programme 1998/1999* (Port of Spain, Trinidad: Ministry of Finance, 1998), pp. 33 and 74.

⁶⁴¹ See Republic of Trinidad and Tobago, *Public Sector Investment Programme 1998/1999*, p. 53.

⁶⁴² Republic of Trinidad and Tobago, *Public Sector Investment Programme 1999/2000* (Port of Spain, Trinidad: Ministry of Finance, 1999), p. 39.

⁶⁴³ Republic of Trinidad and Tobago, *Public Sector Investment Programme 1999/2000*, p. 57.

⁶⁴⁴ Republic of Trinidad and Tobago, *Public Sector Investment Programme 2001* (Port of Spain, Trinidad: Ministry of Finance, 2000), p. 40.

In 2002, the Non Traditional Training for Women project received USD\$190,000 for its continuation “[i]n keeping with government’s commitment to gender equality and the development/empowerment of women in society”.⁶⁴⁵ In this year, USD\$47,619 was allocated to the establishment of a centre for the empowerment of young women at risk.⁶⁴⁶ This expenditure amounted to slightly over 0.1% of total sectoral allocations and 0.2% of money allocated to the development of social infrastructure.

“The 2003 PSIP has been designed to reflect Government’s effort at initiating the process of transforming Trinidad and Tobago into a developed country by 2020”.⁶⁴⁷ Whether gender figures into this development thrust continues to be of interest. It would appear that the trend remains the same. The Non Traditional Training for Women project was continued, but a dollar amount was not specified and was placed under the Community Development Fund Programme. The Ministry of Community Development and Gender Affairs received an allocation of USD\$634,920 to focus on its programme of construction and refurbishment of community centres.⁶⁴⁸

The Non Traditional Training for Women project was continued in 2004, but again, a dollar amount was not specified.⁶⁴⁹ The Ministry of Community Development and Gender Affairs was allocated USD\$2.22 million for the construction and refurbishment of community centres across

⁶⁴⁵ Republic of Trinidad and Tobago, *Public Sector Investment Programme 2002*, p. 41.

⁶⁴⁶ It is not clear “at risk” of what.

⁶⁴⁷ Republic of Trinidad and Tobago, *Public Sector Investment Programme 2003* (Port of Spain, Trinidad: Ministry of Planning and Development, 2002), p. 1.

⁶⁴⁸ Republic of Trinidad and Tobago, *Public Sector Investment Programme 2003*, p. 43.

⁶⁴⁹ Republic of Trinidad and Tobago, *Public Sector Investment Programme 2004* (Port of Spain, Trinidad: Ministry of Planning and Development, 2003), pp. 54-55.

the country. Tobago saw the dedication of resources for the construction of a facility for the Women's Federation Headquarters building, but a dollar amount was not specified.⁶⁵⁰

For 2005, the Ministry of Community Development, Culture and Gender Affairs was allocated USD\$2.2 million for the preservation of the "national cultural heritage".⁶⁵¹ No specific allocations were made for gender related activities. USD\$285,000 was provided for the reconstruction of a children's home and renovation of the Salvation Army Hostel – Josephine Shaw House for women.⁶⁵² It should be noted, however, that under the Community Development Fund, projects are implemented under the NGO and CBO Grants Window Programme which focus on women, youth, skills training, employment creation and persons with disabilities.⁶⁵³ The specified focus including women dates back to 2002. Projects and programmes recommended for priority funding (not funded under core PSIP) for 2005 included major energy industry-related projects, industrial development, electricity, and housing.⁶⁵⁴

"As the Government continues its efforts towards the attainment of developed country status by the year 2020, significant resources of USD\$51.1 million has been provided to continue the upgrade of recreational, community, sport and youth facilities, enhancement of social services delivery, and the promotion and conservation of our national culture".⁶⁵⁵ This notwithstanding, there is no expenditure on gender affairs apart from the Community Development Programme project for 2006. The *Social Sector Investment Programme 2007*, used to gauge the overall annual performance of social sector ministries against the benchmark of the Millennium Development Goals since 2003, however, states that USD\$317,460 was allocated to the

⁶⁵⁰ Republic of Trinidad and Tobago, *Public Sector Investment Programme - Tobago 2004* (Port of Spain, Trinidad: Ministry of Planning and Development, 2003), p. 19.

⁶⁵¹ Republic of Trinidad and Tobago, *Public Sector Investment Programme 2005*, p. 73.

⁶⁵² Republic of Trinidad and Tobago, *Public Sector Investment Programme 2005*, p. 71.

⁶⁵³ Republic of Trinidad and Tobago, *Public Sector Investment Programme 2005*, p. 74.

⁶⁵⁴ Republic of Trinidad and Tobago, *Public Sector Investment Programme 2005*, pp. 152-159.

⁶⁵⁵ Republic of Trinidad and Tobago, *Public Sector Investment Programme 2006* (Port of Spain, Trinidad: Ministry of Planning and Development and Ministry of Finance, 2005), p. 73.

Women in Harmony/Domestic Violence Programme where more than USD\$129.7 million in total was dedicated to developmental programmes.⁶⁵⁶

Having reviewed these PSIPs, expenditure is heavily focussed on education, health, roads and bridges and administration. Expenditure in these areas generally account for more than 50% of total allocations: 1998/99 - 48.3%; 1999/00 - 52.8%; 2001 - 57.3%; 2002 - 57.6%; 2003 - 56.2%; 2004 - 59.8%; 2005 - 48.4%; 2006 - 46.7%. While the focus on health and education are welcome, a well balanced population requires emphasis on gender differentials as well. Even where government dedicates resources to gender specific activities, such as the Non Traditional Training Programme for Women, it would appear that the project would not have unfolded without the assistance of external funding. This particular project was funded 31.9% by government and 68.1% by an IDB Grant.

It is clear that the government expenditure in the area of gender remains miniscule and from the spending pattern, expenditure on domestic violence is a small percentage of the already small percentage spent on gender. It is therefore hardly surprising that NGOs, as seen later in this chapter, have highlighted the paucity of state funding as a serious obstacle to dealing with domestic violence especially with regard to the establishment of the support network to facilitate women who may have availed themselves of legislative protection. Further, chapter six identified the absence of adequate legal provisions in the Domestic Violence Act to ensure effective and quality psychological assistance to both victims and perpetrators of domestic violence, and this no doubt has to do with the lack of financial commitment by the State to funding the proper response to incidents of domestic violence.

⁶⁵⁶ Republic of Trinidad and Tobago, *Social Sector Investment Programme 2007* (Port of Spain, Trinidad: Government of the Republic of Trinidad and Tobago, 2006), pp. 9 and 67.

7.2.2 Gender Policy

The Draft National Gender Policy and Action Plan (“the draft policy”) is the “culmination of three decades of planning”.⁶⁵⁷ The draft policy seeks to “promote gender equity, equality, social justice and sustainable human development” through improving the quality of life at all levels of society, improving relations between the sexes, and facilitating social and domestic peace and reducing levels of violence in society.⁶⁵⁸ It also seeks to transform inequitable gender relations in order to improve women’s status relative to that of men by identifying strategies to facilitate new and equitable relations between men and women. The draft policy is meant to provide written commitment by government to guarantee equality of status between the sexes. It looks specifically at prevention and protection in situations of domestic violence by examining briefly the passage and use of the 1991 Domestic Violence Act and the situation of shelters. It also briefly looks at the relationship between domestic violence and the judicial process and women’s reluctance to avail themselves of it.⁶⁵⁹ Additionally, the draft policy visits the issue of other gender based violence, such as rape/other sexual offences and incest/child abuse.⁶⁶⁰ Generally, the draft policy highlights the issue of gender equity, equality, social justice and the reduction of violence in society which certainly contemplates domestic violence.

In 2003, the Minister in the Ministry of Community Development, Culture and Gender Affairs recognised the importance of formulating a policy on gender. She recognised the issue of discrimination and stated that in line with long term national development there is a “need to harness all the resources and...give each person an equal chance and, therefore, the national

⁶⁵⁷ Senator The Honourable Joan Yuille-Williams, *Appropriation Bill (Budget)*, Senate, Friday October 14, 2005, p. 435.

⁶⁵⁸ Ministry of Community Development, Culture and Gender Affairs, *Draft National Gender Policy and Action Plan* (Port of Spain, Trinidad: Ministry of Community Development, Culture and Gender Affairs, 2005), p. 4.

⁶⁵⁹ See Ministry of Community Development, *Draft National Gender Policy*, pp. 69-71 and 71-72.

⁶⁶⁰ See Ministry of Community Development, *Draft National Gender Policy*, pp. 76-78.

gender policy is...extremely important”.⁶⁶¹ The Honourable Eulalie James also recognised the importance of the gender policy as a “major instrument for managing gender relations”.⁶⁶²

This policy has still not, however, been approved by government, even though it figures very prominently in government’s *Draft National Strategic Plan* under Gender and Development.⁶⁶³ It has proven to be a contentious document due to its recommendation to “review all issues (for example legal, medical, religious and/or cultural) relating to the termination of pregnancy” and its recognition of people who subscribe to relationships which “appear antithetical to proscribed rules of religion and culture”.⁶⁶⁴ Notwithstanding the apparent favourable position of the ruling People’s National Movement on the draft policy, the matter culminated in a major pronouncement by the Prime Minister as part of his budget presentation in 2005 that effectively dismissed the draft policy. To quote:

The Government recognises the need to develop a Gender Policy. The draft Gender Policy Document currently being circulated was not issued by the Government and does not reflect Government policy. In fact, *there are certain recommendations in the document to which the Government does not and will not subscribe*. The Government is therefore requesting that the document which purports to be official Government policy be withdrawn from circulation.⁶⁶⁵

The position of the draft policy as it now exists fully exemplifies the attitude of the male elite that has dominated the governance of TT from the colonial period through to the post-independence era. The government has effectively dismantled a policy developed by the Centre for Gender and Development Studies with the input of all the major stakeholders and with extensive public consultations because of the personal disapprobation of the Prime Minister to the deliberate termination of pregnancies and same sex relationships.

⁶⁶¹ Senator The Honourable Joan Yuille-Williams, *Appropriation Bill (Budget)*, Senate, Thursday October 23, 2003, p. 334.

⁶⁶² The Honourable Eulalie James, *Appropriation Bill (Budget)*, Senate, Friday October 15, 2004, p. 582.

⁶⁶³ See Government of the Republic of Trinidad and Tobago, *Vision 2020: Draft National Strategic Plan*, pp. 168-172.

⁶⁶⁴ Ministry of Community Development, *Draft National Gender Policy*, pp. 94 and 81.

⁶⁶⁵ The Honourable Prime Minister Patrick Manning, *Budget Presentation 2006*, Wednesday 28 September 2005, p. 25. Emphasis added.

7.2.3 Ministry of Community Development, Culture and Gender Affairs

At the Ministerial level, gender issues fall under the purview of the Gender Affairs Division of the Ministry of Community Development, Culture and Gender Affairs. It would appear that this division “has been subject to significant shifts in approach and priorities with changes in ministerial location and political administration”.⁶⁶⁶ The division saw its beginnings in 1974 when a National Commission on the Status of Women was appointed.⁶⁶⁷ In 1986, the Commission was replaced by the assignment of ministerial responsibility for Women’s Affairs.⁶⁶⁸ Later, a Women’s Bureau within the then Ministry of Community Development, Culture and Women’s Affairs was also established. The Government signed and ratified the Convention on the Elimination of all forms of Discrimination Against Women in 1991, which mandated the Government to develop a National Gender Policy.⁶⁶⁹ A national focal point for Gender and Development, the Women’s Affairs Division (now the Gender Affairs Division) was established in 1991 and institutionally strengthened between 1994-1997 with the help of the Inter-American Development Bank. Government sought during this period to expand the Policy Statement on Women to a National Gender Policy.

In the post-Beijing period, the name of the division was changed. In many ways this change reflected a heightened emphasis on relational aspects of gender in addition to its original focus on women. Although its activities expanded and entered new areas, the quest to mainstream

⁶⁶⁶ Ministry of Community Development, *Draft National Gender Policy*, p. 21.

⁶⁶⁷ Ministry of the Attorney General and Legal Affairs, *Initial, Second and Third Periodic Report of the Republic of Trinidad and Tobago* (Port of Spain, Trinidad: Ministry of the Attorney General and Legal Affairs, 2000), CEDAW/C/TTO/1-3, p. 25.

⁶⁶⁸ Brief history of the Division taken from Ministry of Community Development, *Draft National Gender Policy*, pp. 17-18.

⁶⁶⁹ Ministry of Community Development, Culture and Gender Affairs [online], “National Gender Policy and Action Plan”, 2006. [cited 02 April 2007]. Available from Internet: <http://www.cdcga.gov.tt/progs/genderpolicy.php>.

gender within government programming and policy and to develop a clear framework for the national intervention did not materialise.

Cabinet agreed in 2000 and a Committee was appointed to develop a National Gender Policy which could not be done in the face of limited time and resources. In 2002, with the support of the United Nations Development Programme (“UNDP”), and the Canadian International Development Agency (“CIDA”), the Government agreed to the development of a National Gender Policy and Plan of Action and to execute the strategies identified therein.

The now Gender Affairs Division is meant “to effectively promote gender equity and gender equality through the process of gender mainstreaming in all government policies, programmes and projects”.⁶⁷⁰ The division’s strategic objectives are to:

- Advance the status and rights of women and men.
- Develop policies/projects relevant to gender specific issues including the elimination of all forms of violence against women, the elimination of poverty and the education system as it affects males and females.
- Research and disseminate information on gender specific issues.
- Change gender discriminatory social consciousness and traditions.
- Assist in the strengthening of local communities and families.
- Foster participation of women and men in policy formulating processes.

The Gender Affairs Division has ten main programmes and initiatives designed to address key issues:⁶⁷¹

⁶⁷⁰ Ministry of Community Development, Culture and Gender Affairs [online], “About the Gender Affairs Division”, 2006. [cited 02 April 2007]. Available from Internet: <http://www.cdcga.gov.tt/ga/aboutgender.php>.

⁶⁷¹ All taken from Ministry of Community Development, Culture and Gender Affairs [online], “Programmes and Initiatives”, 2006. [cited 02 April 2007]. Available from Internet: <http://www.cdcga.gov.tt/ga/genderprog.php>.

- 🚩 The Male Support Programme
- 🚩 Defining Masculine Excellence Programme
- 🚩 Domestic Violence Unit
- 🚩 Domestic Violence Hotline (800-SAVE)
- 🚩 Drop In Centres
- 🚩 Maloney Resource Drop In Centre
- 🚩 Non-Traditional Skills Training Programme For Women
- 🚩 Women In Harmony Programme
- 🚩 Vision 2020 Through A Gender Lens
- 🚩 National Gender Policy and Action Plan Brief

It is necessary now to examine how some of the individual programmes specifically treat with domestic violence.

The Male Support Programme

Although in 1999 the preamble of the Domestic Violence Act recognised the scourge of domestic violence, it was only in 2004 that the Male Support Programme was only expanded to address the high incidence of domestic violence, including family disputes, incest, behavioural problems and other acts of violence against men, women and children.

The Male Programme is critically important to any gender thrust as it engages men in the process of creating gender respect and the reduction of domestic violence.

Defining Masculine Excellence Programme

Many men in society have come to equate masculinity with violence, irresponsibility, underachievement as well as physical and emotional absence from the home. Some men, unfortunately seem to have made masculinity synonymous with deviance, violence and abuse

of alcohol and drugs, others are often paralyzed by the fear of not measuring up to mainstream perceptions of masculinity.

The Defining Masculine Excellence Programme was developed as a means of stemming the tide of the societal problems associated with the concept and perceptions of masculinity. The Programme sought to train a cadre of men to support a wider initiative that would involve the establishment of support groups for men and the promotion of other initiatives which would be used to address the issues previously identified.

The Gender Affairs Division has recognised the need to enhance the strategies to retrain and re-educate men through society and to help them to explore the effects that initialised definitions of masculinity have had on their emotional and spiritual well-being and the ways in which this has impacted the roles they play within the workplace and in their social situations.

Domestic Violence Unit

The Unit was established in May 1997. Programmes offered by this Unit include counselling to victims of domestic violence, including victims of rape and incest. The programme also provides information and referral services to persons who require assistance to deal with other personal and family issues such as drug abuse, anger management, conflict management and teenage pregnancy. In addition, outreach programmes are conducted as a means of preventing violence and encouraging the establishment of support groups within the communities.

In conjunction with the domestic violence hotline and the drop-in centres, these programmes are meant to:

- Reduce the levels of gender-based violence in Trinidad and Tobago.
- Provide a 24 hour toll free Hotline Listening and Referral Service for victims/perpetrators of Domestic Violence.

- Provide community-based facilities where men, women and children can access help in situations of domestic violence.
- Reduce gender-based violence through the promotion of non-violent forms of conflict resolution and active public awareness campaigns.
- Provide extensive and on-going training for the staff of the Unit, safe-houses, shelters, the police, community and church organisations.
- Actively collect and analyse data and monitor trends in domestic violence.

Domestic Violence Hotline (800-SAVE)

In August 1996, in response to the escalating incidences of domestic violence, the Government of Trinidad and Tobago established the National Domestic Violence Hotline. This service is a twenty four (24) hour toll free hotline service to persons experiencing or affected by domestic violence. The line operates seven days per week and can be accessed by phoning the number 800-SAVE (7283). The services provided by the hotline include safe and confidential listening; crisis intervention/counselling; referral to appropriate agencies, such as the police, shelters; and advocacy.

Data for the period 01 October 2005 to 30 September 2006 revealed that a total of 1,867 clients benefited from the national domestic violence hotline, of which 1503 were female and 364 were male.⁶⁷²

Drop In Centres

The Drop-in Centre programme offers counselling to victims of domestic violence including victims of rape and incest. The programme also provides information and referral services to

⁶⁷² Ministry of Community Development, Culture and Gender Affairs, "National Domestic Violence Hotline: Report for the period 01.10.05 to 30.09.06". Data for other years were unavailable to the public as they are not in an acceptable format, such as the 2005 data, and not available for public distribution.

persons who require assistance to deal with other personal and family issues such as drug abuse, anger management, conflict management and teenage pregnancy. Outreach programmes are also conducted as a means of preventing violence and encouraging the establishment of support groups within the communities.

The drop-in Centres are primarily located in Community Centres and Complexes. Each Centre is staffed by a trained social worker (contracted through the Domestic Violence Unit) who works as part of a service delivery team. In addition to Secretary/Warden or Manager of the Community Centre or Complex, a police officer; a representative from the Ministry of Community Development, Culture and Gender Affairs; and volunteers from within the community are also members of the team.

The above description of the work of the Gender Affairs Division in integrating domestic violence in most of its programmes, may lead to a perception that domestic violence is receiving priority treatment. This would appear to be far from the reality that currently exists as field research paints a different picture. For example, the NGOs openly scoff at the Drop In centres claiming that there are largely non-functional. Further, the impressive description of Drop-In centres with the high level of skilled staffing only applies to one Drop-In centre in Maloney in north Trinidad. Finally, the abysmal level of funding identified in the section on government funding above for community development, social, recreational and cultural is further exacerbated by the fact that gender is a subset of these larger components. For example, based on the *Social Sector Investment Programme 2007*, only 0.2% of monies are allocated for social sector programmes and were dedicated to the Women in Harmony/Domestic Violence Programme. Moreover, the 0.2% expenditure is divided between two programmes of which domestic violence is one.

7.2.4 Ministry of Social Services

While gender issues are dealt specifically by the Ministry of Community Development, Culture and Gender Affairs, family and other social issues fall under the purview of the Ministry of Social Development. This ministry is responsible for disbursing funds among NGOs that deal with women's issues as well as subventions to women's halfway houses and shelters. Two other very important services offered by the Ministry of Social Development are provided by the National Family Services Division and the Probation Department.

National Family Services Division

Services related to domestic violence are only one aspect of the services available through the ten regional offices of the National Family Services Division.⁶⁷³ It also addresses abuse/incest, marital problems, depression, parenting, family life, foster care, drug abuse and life crises.⁶⁷⁴

The division was established in 1991 and its mission is to promote healthy family functioning through the provision of preventative, developmental and remedial programmes and services. It realises its mandate through counselling, advice, rehabilitation, consultation, networking, mediation, advocacy, research, lectures/workshops and placement. Victims and offenders in domestic violence situations access the services of this department mainly through court referrals. A Magistrate, during court proceedings, may request an interim report based on a recommendation of counselling for the parties involved. Friends or other agencies usually refer walk-in and telephone clients to the department. Clients that telephone are asked to visit the office and/or if necessary they are referred to another department or are visited at home.

⁶⁷³ Taken from Domestic Violence Unit, Division of Gender Affairs, Ministry of Community Development, Culture and Gender Affairs, *Report on Policy Round Table on Domestic Violence in Trinidad and Tobago*, 26 February 1999, p. 5; Ministry of Social Development, *A Guide to Social Programmes and Services* (Port of Spain, Trinidad: Ministry of Social Development, 2005), p. 66. Attempts to arrange interviews were repeatedly cancelled so dated information was all that was available and the links on the ministry's website return error pages.

⁶⁷⁴ Information taken from a brochure prepared by the Ministry of Social Development about the National Family Services Division.

Data is collected by the use of intake forms to record the type of case and the categories of abuse for walk-in and court referrals. Recording of data is difficult since confidentiality is important to the client and the department. Poor recording as well as the need for confidentiality sometimes lead to the duplication of service, since two officers may end up managing the same client.

The Probation Department

The Probation Department has its head office in Port of Spain and nine district offices located throughout the country.⁶⁷⁵ The department and its officers are mandated to promote the rehabilitation of clients through counselling and education, and to promote a healthy lifestyle through proactive intervention. The official system of data collection on domestic violence began with the enactment of the Domestic Violence Act, 1991. Under this Act, the Probation Department is one of two agencies identified for intervention in such cases. Clients are referred to the department by the court and other agencies, such as the Community Policing Unit, 800-SAVE, Justices of the Peace, and walk-ins.

Data are collected and recorded through several methods. During the confidential interview, the probation officers use registration forms for each specific case that give demographic information as well as descriptions of the issues and incidents of domestic violence against the client. The officers also maintain a domestic violence register in which official requests by the court for reports are recorded. This register contains basic data on the complainant and respondent involved in the court proceeding. The officers collate their domestic violence case data from the register and send them to the head office for submission and inclusion in the

⁶⁷⁵ Taken from Domestic Violence Unit, *Report on Policy Round Table on Domestic Violence in Trinidad and Tobago*, pp. 6-7; Ministry of Social Development, *A Guide to Social Programmes and Services*, p. 68

Monthly Returns. Special registers are created in specific regions where there is a high incidence of abuse.

The Ministry of Social Development has a major role in information dissemination on domestic violence; yet, it is difficult to even directly obtain information in person on the ministry. Moreover, a review of the budgetary allocations for the social and community services which fall under the Ministry of Social Development suggests that provisions are not made for either of the National Family Services Division or the Probation Department, of which assistance to victims of domestic violence forms an important component. For 2006, while expenditure on social and community services accounted for 8.5% of total budgetary allocations, most of this was dedicated to the upgrade or construction of recreational, cultural, sporting and even cemetery/cremation facilities with no mention of these two important services.⁶⁷⁶ This low level of funding seriously undermines an effort on the part of the Ministry of Social Development to project itself as an important and effective player in the national effort to address domestic violence.

7.2.5 Gender Affairs Division, Tobago House of Assembly

In 1999, a Gender Affairs Unit was established within the Health and Social Services Division of the Tobago House of Assembly.⁶⁷⁷ With limited human and social resources, the unit established a 24-hour Tobago Crisis hotline, an information and resource centre and provided counselling services to survivors and perpetrators of gender-based violence as well as to persons who were suicidal, addicted, homeless and abandoned and subject to other forms of abuse.

⁶⁷⁶ Republic of Trinidad and Tobago, *Public Sector Investment Programme 2006*, Appendix III, p. 132.

⁶⁷⁷ Taken from Ministry of Community Development, *Draft National Gender Policy*, p. 22.

The framework for the formulation and implementation of a Tobago Gender Policy is expressly stated in the Tobago Development Plan Report No. 4. The Plan identified the following gender specific activities for implementation in the period 1998-2013:

- To support and participate in the development of a national gender policy
- To increase the sensitising of the population to gender issues
- To combat domestic violence in all forms, including rape and incest.

Despite the impressive sounding agenda of the Gender Affairs Division of the Tobago House of Assembly, anecdotal evidence from an interview with a member of staff suggests that the division is effectively non-functional because of a recent change in directorship.

7.3 State Authorities

7.3.1 Magistracy

Applications made under the Domestic Violence Act are to be made specifically to a “Court of Summary Jurisdiction” and the Magistrate’s Court is such a court.⁶⁷⁸ The Magistracy plays an important role in supporting the battle against domestic violence in its capacity as facilitator of the Domestic Violence Act. The Magistracy exercises original jurisdiction in relation to summary criminal matters.⁶⁷⁹ The Magistrate’s Courts also facilitate preliminary inquiries in serious criminal matters to determine whether a *prima facie* case has been established against an accused person before he/she can be indicted for trial at the High Court. TT is divided into

⁶⁷⁸ According to section 2 of the Summary Courts Act (Chap. 4:20), a “Court” or “Summary Court”, or “Court of summary jurisdiction”, unless the same is expressly or by implication qualified, means any Magistrate or Justice when sitting in open Court to hear and determine any matters within his power and jurisdiction, either under this Act or any other written law, and such Magistrate or Justice when so sitting aforesaid shall be and be deemed a “Court” or “Summary Court” or “Court of summary jurisdiction” within the meaning of this Act”.

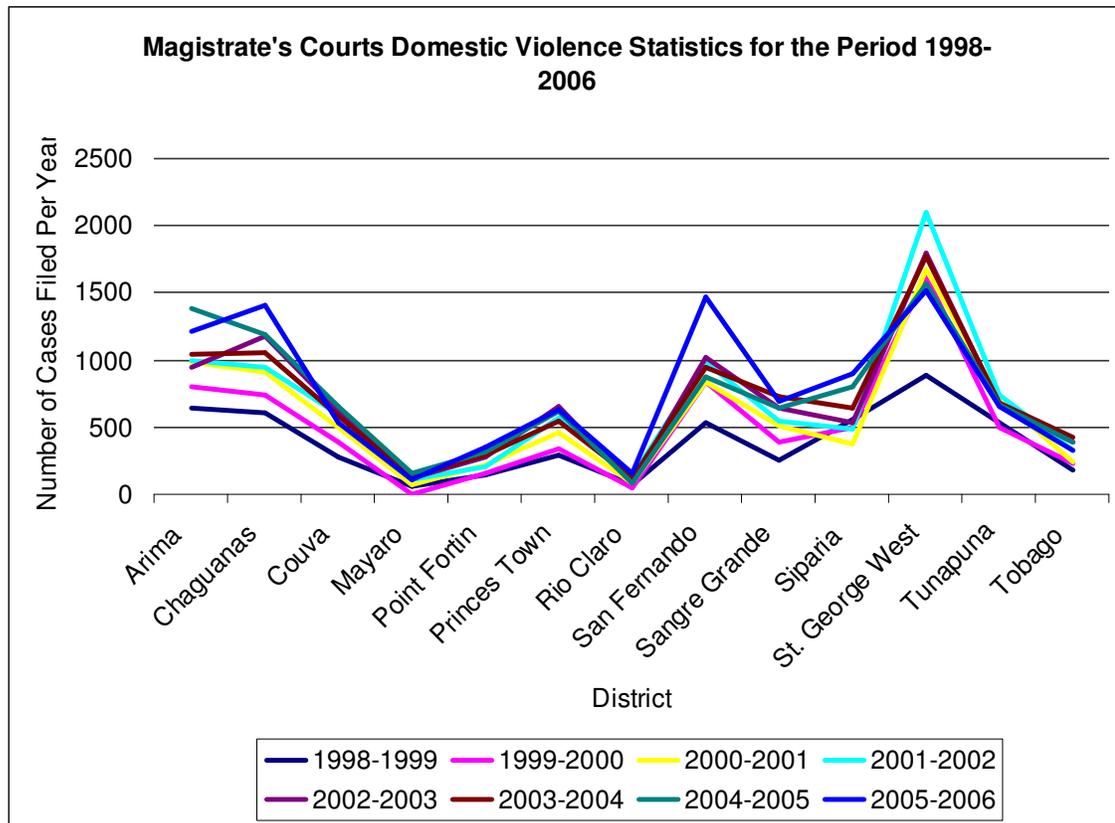
⁶⁷⁹ Judiciary of the Republic of Trinidad and Tobago, *Annual Report 2005-2006* (Port of Spain, Trinidad: Judiciary of the Republic of Trinidad and Tobago, 2006), p. 4.

thirteen magisterial districts, with some districts having more than one Magistrate's court.⁶⁸⁰ The Magistracy is comprised of a Chief Magistrate, a Deputy Chief Magistrate, twelve senior Magistrates, twenty-nine Magistrates and six temporary Magistrates.

Statistics on the various matters heard in the Magistrate's Courts are made available to the Statistical Office of the Judiciary and are compiled according to district and year for its annual report. The figure and table below illustrate and compile data for domestic violence over the period 1998-2006.

⁶⁸⁰ Judiciary, *Annual Report 2005-2006*, p. 5.

Figure 7.1 Domestic Violence Statistics collected by the Magistrate's Courts for the Period 1998-2006



The statistics in the graph and the table show what appears to be proportional distribution in the number of cases across the districts according to population density. St. George West and San Fernando are both heavily populated areas; conversely, Mayaro and Rio Claro are sparsely populated areas and the numbers of applications filed under the Domestic Violence Act reflect this demographic distribution.

Table 7.1. Domestic Violence Statistics collected by the Magistrate's Courts for the Period 1998-2006⁶⁸¹

DISTRICT	YEAR							
	1998-99	1999-00	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06
Arima	647	804	979	998	942	1041	1378	1215
Chaguanas	601	736	911	951	1178	1059	1187	1404
Couva	277	389	493	594	618	581	652	539
Mayaro	61	0	75	109	122	128	152	105
Point Fortin	144	161	214	202	276	289	319	347
Princes Town	290	337	467	576	659	552	616	635
Rio Claro	69	54	91	139	79	120	91	159
San Fernando	540	840	834	986	1024	941	874	1469
Sangre Grande	249	386	512	542	649	723	643	690
Siparia	559	500	381	491	534	639	801	900
St. George West	890	1626	1677	2105	1791	1768	1566	1512
Tunapuna	537	494	715	744	673	677	665	653
Tobago	178	227	246	327	390	422	386	322
TOTAL	5042	6554	7595	8764	8935	8940	9330	9950

While the number of applications under the Domestic Violence Act to the Magistrate's Courts would appear to be high, any optimism that the legislation is being well employed must be tempered with the fact that there are no credible statistics on the number of incidents of domestic violence in TT. Moreover, it should be noted that many cases are disposed of without even being heard. While yearly totals for disposals are available, the information is not disaggregated into reasons for disposal of cases. Anecdotal evidence would suggest that many cases are disposed of at various stages and generally before having been brought to completion.

⁶⁸¹ Statistics obtained from the Annual Reports of the Judiciary of Trinidad and Tobago for the period 1998-2006.

It is important to assess the role of the Magistracy in the implementation of the Domestic Violence Act. In chapter six, a review of the Domestic Violence Act demonstrated promptness as a requirement of the legislation. Yet, interviews with stakeholders would suggest that the relief provided is anything but summary. Matters tend to drag on too long and are constantly adjourned. Adjournments can be due to the Magistrate not having time to hear the matter (on any given day, criminal matters are heard first, then followed by family matters), or the absence of the served party. While the Magistrate has the power to issue a warrant for the (absent) respondent's arrest, this is rarely done; a notice with a new date of hearing is served. This process can be repeated until the order is discharged or the applicant becomes weary by the process and ceases to follow up.

Simple administrative blunders also frustrate the process. In one instance, an applicant, fearing for her safety, who already had an Interim Order in effect, went to the Magistrate's Court to request an expedited hearing before the Magistrate for the final Protection Order. It can take two weeks before the matter is listed to be heard. The Clerk gave the applicant the (expedited) date and, after having shown up and waited on said date, the applicant was told that there was no record of her application for a hearing. As mentioned above, family matters are heard only after all the criminal matters are heard, but the applicants and respondents are required to be in Court from 9:00 a.m. until such time as the matter is called. In this instance, she waited from 8:30 a.m. to 3:30 p.m. *in the company of* the respondent. Ordinarily, all the listed matters are read at the beginning of the day's proceedings; it is not clear whether this occurred. Moreover, she had to apply for a day off work to attend Court. This does not take into account the time she had to take off work to file the application.

Another failing by the Magistracy has been a lack of strictness in dealing with court attendance for hearings under the Domestic Violence Act. The Court can proceed to hear a domestic violence matter in the absence of a respondent that has been served or the Court can issue a

warrant for the respondent's arrest. From various interviews conducted by the author, it would appear that these options are hardly ever used and Magistrates tend simply to schedule a new date even though this option only applies to respondents who have not actually received summons. The constant rescheduling without using the provisions of this section can frustrate the applicant and cause her to drop the case. In other instances, due to the time limits set in the Act, the case is discharged without even being heard.

In some cases, Magistrates have shown an eagerness to dismiss matters when the applicant is believed to be absent from the Court. Applicants have complained that cases have been dismissed even though they are present. Because of the noise level in the courthouse, it is sometimes difficult to hear when the case is called and it can be dismissed as easily as that due to the large volume of cases to be heard on any given day. Further, the absence of the applicant may be justifiable and the dismissal of the case harsh where no excuse has been proffered by the applicant. The nature of domestic violence is such that it may not be possible for the applicant to send notice of her reasonable excuse for non-appearance. What happens in the event that on presentation of the summons, the applicant is beaten so severely that she has to be hospitalised and no one is aware of the situation? She will be unable to attend court or give notice of her absence.

In the case of one woman, she was taken to a shelter out of fear for her life after repeated death threats by her husband and applied for a protection order. When the respondent was finally served with the notice of proceedings (he was not served in time for the first hearing), he appeared at the hearing with a counter summons stating that the applicant was in fact the dangerous one, threatening to kill her children and him. The matter then had to be investigated before any relief could be given. This matter is still ongoing. It is quite possible that the respondent can file proceedings against the applicant in her absence causing a protection order to be taken out against her, creating a veritable perversion of justice.

It would appear that “the law fell victim to patriarchal “cultural habits” present everywhere in Trinidad and Tobago, including the courtrooms and the clerk offices. As a result, “the vast majority of applications for protection orders do not result in restraining orders”.⁶⁸² This is compounded by the fact that the institutional support from the Magistracy required to make the piece of legislation effective seems to defeat the purpose of the Domestic Violence Act which was meant to provide summary relief. The magisterial process seems to preserve and promote gender hierarchies, disempowers complainants, and has even been described as punishment.⁶⁸³ According to the statistics, women tend to prefer the magisterial route to the police service, however, the magisterial process leaves much to be desired as matters tend to drag on too long and are constantly adjourned.

7.3.2 Family Court

The Family Court of Trinidad and Tobago hears a variety of family issues and domestic violence as it relates to them but does not hear domestic violence matters as a primary issue.⁶⁸⁴ It is a pilot project that commenced operations in May 2004 and is of interest due to the scope of services it offers. In addition to adjudicating family matters, the Family Court offers Children Services, to look after and occupy children while parents deal with legal issues; Probation Services, where specially trained social workers monitor and assist families with respect to compliance orders, resolution of issues and investigation of family problems; Mediation

⁶⁸² Michèle Alexandre, “Dance Halls, Masquerades, Body Protest and the Law: The Female Body as a Redemptive Tool against Trinidad’s Gender-Biased Laws”, *Duke Journal of Gender Law and Policy* 13 (2006), p. 192.

⁶⁸³ See Lazarus-Black, “The Rite of Domination”, pp. 4, 13, 27.

⁶⁸⁴ Judiciary of the Republic of Trinidad and Tobago, *Annual Report 2004-2005* (Port of Spain, Trinidad: Judiciary of the Republic of Trinidad and Tobago, 2005), pp. 12-13.

Services, where mediators help couples discuss issues and come to an agreement; and Counselling Services, where both family and individual counselling is available.⁶⁸⁵

This post-order service is what is missing from the magisterial process where couples are required to deal with the psychological fallout of orders of the court on their own. The process of the Magistrate's Court does not take into account the psychological fallout of the protection orders on the psyche of the fragile male ego which probably led to the situation in the first place (or on the applicant or children). He may feel emasculated and seek to intentionally hurt or kill the one who is meant to be protected. The Family Court offers a different type of process, where the abused and the victim can be taken for immediate counselling which is available on the premises if so ordered. The Family Court assists couples in dealing with the emotional distress resulting from its decision, helping them to sort through the pain of family disintegration or assist in maintaining the family unit where possible. In addition to counselling, the Family Court offers an intake service, children's services, probation services, mediation service, and judicial services. It provides a one-stop shop for all family needs. This may be an approach to dealing with the post-order problems that may arise.

A key goal of the pilot was to continuously test the effectiveness and efficiency of the various innovations and approaches used.⁶⁸⁶ The project has been deemed a success and will therefore be continued and expanded. There is currently only one such Court but it is intended to expand to five other areas in the country.

⁶⁸⁵ Information taken from brochure prepared by the Family Court of Trinidad and Tobago.

⁶⁸⁶ Family Court of Trinidad and Tobago, *Family Court Evaluation: First Year Report* (Port of Spain, Trinidad: Family Court of Trinidad and Tobago, 2005), p. 1.

7.3.3 Police Service

The Trinidad and Tobago Police Service (“TTPS”) is a division of the Ministry of National Security. Prior to 1996, there was a Welfare Section of the TTPS which dealt not only with the welfare of police officers but also of the community.⁶⁸⁷ Based on information received from foreign training, the Commissioner of Police in 1996, Noor Mohammed, established the Community Policing Section. There was a perception that police officers were alienated from the clients that they served and this was evidenced by client complaints of unwarranted police hostility. With respect to domestic violence reporting, there was a perception that police officers do not treat with such reports with the necessary degree of seriousness. The establishment of the Community Policing Section, therefore, was meant to deal with this distance and bridge the gap, helping the officers to become more socially aware. The Community Policing Section saw “The police and the community working together to help solve mutually defined problems through deliberate effort aimed at reducing crime, violence, fear, insecurity and community decay”.⁶⁸⁸

Police officers from mainstream policing, previously engaged in the Welfare Section, were selected to be a part of this section and trained. Officers from the Community Policing Section would visit communities forging alliances and relationships. These alliances were strategically used to gain information on criminal activity. This section was responsible for the creation of neighbourhood watches; police youth clubs that infused discipline among young people; consultative groups; and carrying out lectures in schools with respect to crime awareness, drug abuse awareness and other topics of that nature. The section also engaged in networking with other agencies, such as joint police-NGO activities. Some people were trained in counselling

⁶⁸⁷ Inspector Glen Hackett, *Interview with author*, Port of Spain, Trinidad, 16 March 2007.

⁶⁸⁸ Ramesh Deosaran, *The Dynamics of Community Policing: Theory, Practice and Evaluation* (St. Augustine, Trinidad: Centre for Criminology and Criminal Justice, 2000), p. 32.

with respect to domestic violence situations and assisted in referrals to NGOs that could provide the necessary interventions.

In 2000, the Trinidad and Tobago National Quality Council commissioned a report on the effectiveness of the Community Policing Section which had the effect of “disbanding” the section as reservations were raised about the creation of a parallel police service that seemed to create a different ethos between the two entities.⁶⁸⁹ There was the issue of which service should respond to which matter, with the adverse consequence of undue delays. It was suggested that the Community Policing Section be reintegrated into the main police service even though “[t]his integration within the service should not mean that the sustained focus on community policing will or should be lost or absorbed beyond recognition”.⁶⁹⁰ This was, however, the ultimate effect. The public perception is that the Community Policing Section has been disbanded although they are not sure when or why. It was suggested that all police officers be “equally and properly trained in both tracks of public service”,⁶⁹¹ even though the requisite training was not forthcoming to make this transition.

Domestic violence matters are now, therefore, dealt with by mainstream policing. It is therefore not surprising that there is continuing strong denunciation of the attitude of the police to domestic violence complaints. In a series of recent judgements on the defence of “battered women syndrome”, Justice Carmona endorsed the widely held view of the unresponsiveness of the police to domestic violence complaints.⁶⁹²

The police service plays a critical role in the legal regime for dealing with domestic violence. Section 21 of the Domestic Violence Act requires the police to respond to complaints and

⁶⁸⁹ See Deosaran, *The Dynamics of Community Policing*, pp. 117 and 204.

⁶⁹⁰ Deosaran, *The Dynamics of Community Policing*, p. 204.

⁶⁹¹ Deosaran, *The Dynamics of Community Policing*, p. 204.

⁶⁹² See Seuraj, “Carmona: Women under siege in this country”. Quoted in Chapter 5.

maintain reports on domestic violence which are to be contained in a National Domestic Violence Register. The Modus Operandi and Records Bureau of the TTPS collects and collates this data from all police stations across the country. Anecdotal evidence gleaned from interviews suggests that domestic violence recording and reporting is not done faithfully. The figure and table below illustrate and compile data for domestic violence over the period 1997-2006.

Figure 7.2 Domestic Violence Statistics collected by the Trinidad and Tobago Police Service for the Period 1997-2006

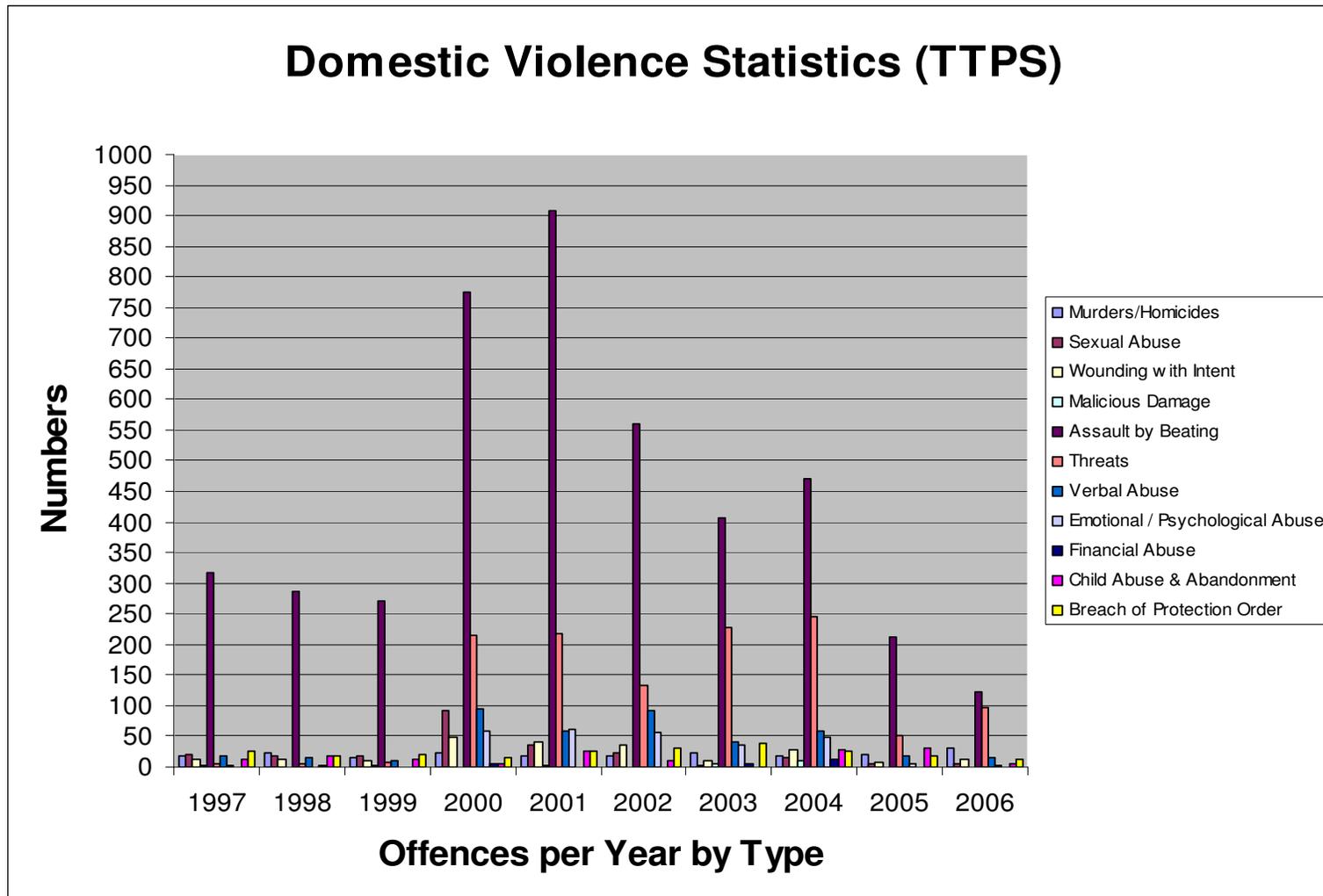


Table 7.2. Domestic Violence Statistics collected by the Trinidad and Tobago Police Service for the Period 1997-2006⁶⁹³

OFFENCE	YEAR									
	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Murders/Homicides	18	23	15	24	17	17	22	18	21	30
Sexual Abuse	21	19	17	92	37	24	3	15	4	5
Wounding with Intent	12	14	11	48	42	37	9	29	7	12
Malicious Damage	2	1	2	0	2	0	5	10	1	1
Assault by Beating	317	287	271	775	907	560	406	470	211	123
Threats	6	5	7	214	217	133	227	245	50	98
Verbal Abuse	18	15	11	94	60	91	40	60	18	15
Emotional / Psychological Abuse	3	1	1	59	61	55	37	49	5	2
Financial Abuse	1	2	0	4	0	1	4	12	0	0
Child Abuse & Abandonment	13	17	12	4	25	9	0	28	31	5
Breach of Protection Order	26	19	21	16	26	30	38	26	19	13
TOTAL	437	403	368	1330	1394	957	791	962	367	304

⁶⁹³ Statistics obtained from the Modus Operandi and Records Bureau.

When the number of complaints filed with the Police is compared to the number of applications made for Protection Orders at the Magistrates' Court, a great disparity is quite apparent. In 2006, for example, 9950 persons sought orders under the Domestic Violence Act but only 304 complaints were registered with the police. The number of complaints on domestic violence would suggest that the police are either not recording all the complaints made with respect to domestic violence or persons are in fact not availing themselves of the services of the police in light of the historically poor attitude of the police to domestic violence complaints. Perhaps the truth lies between both assumptions.

Police officers generally have a duty to deal with domestic violence as part of its mandate to protect and serve and this general duty is specifically contemplated by Section 21(1) of the Domestic Violence Act. Perceptions of police response have been mixed with some stating that the police respond positively and quickly while others state that they dismiss the matter nonchalantly saying that that is an issue between husband and wife and should be sorted out at home. In some cases, the police officers seem apathetic. A possible explanation for this apathy stems from the fact that in many instances where they do respond to a complaint, the complainant eventually wants to return to the abuser. The complainant would file a report, be escorted to a shelter, and either run away from the shelter, disclose her location to the abuser, or beg to be allowed to go back to the abuser.⁶⁹⁴ This is a regular occurrence and frustrates not only police officers, but shelter management as well. Police officers seem indifferent and even wary/weary of domestic violence reports. Yes, wary as women seeking assistance seem to return to the situation once the crisis point is passed and consequently weary because of this. This should not, however, have the effect of diminishing the police officers' responsibility to respond, or numbing their response.

⁶⁹⁴ See for example, Keino Swamber [online], "Wife pleads but husband lands in jail". *Saturday Express*, 04 February 2006. [cited 11 April 2007]. Available from Internet: http://www.trinidadexpress.com/index.pl/article_news?id=133510992. "A woman's pleas to a High Court Judge to spare her common-law husband a jail term failed on Thursday after she said the man was physically and verbally abusive to her during their seven-year relationship".

The police by their conduct also create circumstances that render the victim of domestic violence fearful of using their services. There was one instance where the victim, whose life was not under immediate threat, had a police escort to her home so that she could retrieve some personal items. There was a male and a female officer present and, out of earshot of the female police officer, the male police officer started making unsolicited advances on the woman. Even though she was scared and had no one else whom she could trust, she did not give in to his advances and he immediately and henceforth became particularly hostile towards her. The complainant was extremely grateful for the presence of the female officer and was safely delivered to a shelter.

Additionally, the role of the police in the effective implementation of the Domestic Violence Act extends to their attitude towards service of documents pertaining to applications for protection orders. Section 12(5) of the Domestic Violence Act provides for service of documents by the applicant or the applicant's agent. The primary method of service under the Domestic Violence Act is by the police as noted in Section 12(4). The common practice, however, is for the applicant to be encouraged to effect service directly rather than depend on the police. This practice has emerged because of the perception by the Clerk of the Courts that the police tend to be dilatory in the service of summons as issued under the Domestic Violence Act. It is unacceptable that it should even be contemplated that the applicant can serve notice on the respondent. Service should be strictly effected by the police or court marshals as service by the applicant can create a situation of further abuse and even death.

One applicant had the experience of having to serve the summons herself. She went to the Court to make the initial application and was given all the paperwork to serve on the respondent and deliver one copy to the police station in her area. Out of fear of a violent reaction, she served the summons by leaving it on the dresser where the respondent would see it the

morning before the actual date and spent that night with her daughter at a friend's. At the courthouse, the clerk advised her to serve it herself as the general trend is that the police station does not make the necessary arrangements for service and the matter would have to be constantly adjourned until perhaps finally discharged. The copy she took to the police station was misplaced; so when she went to make a report of breach of the Interim Order, they had nothing on file to corroborate her complaint. Moreover, on the date for obtaining a final Order she was told that there was no record of her application and the Interim Order had lapsed. Frustrated, she simply never bothered to follow up and now there is no order against the perpetrator.

The police play a critical role in dealing directly with incidents of domestic violence. Pursuant to Section 22 of the Domestic Violence Act, the police can act by means of a warrant to deal with situations of domestic violence, while under Section 23 of the Domestic Violence Act the police can act in the absence of a warrant. The power to act without a warrant is an important one as very often the acts giving rise to the need to act without a warrant can lead to physical harm or death. Yet, the power to so act is heavily regulated that has created disincentives for the police to move without a warrant to prevent domestic violence.

It must nevertheless be borne in mind that the rules governing the actions of the police to act without warrant in situations involving domestic violence has arisen because of the conduct of the police. Many interviewees stated that police officers abuse their positions of authority and trust and prey on victims of domestic violence. In one particular case, a woman reported an incident of domestic violence against her husband and she and the officer eventually entered into a relationship. A Protection Order was taken out against the husband and the police officer falsely reported a breach of the Order and the respondent was jailed. Fortunately, the matter was investigated and the man was released.

7.3.4 Legal Aid and Advisory Authority

The Legal Aid and Advisory Authority was established some thirty-one years ago as a division of the Ministry of Legal Affairs and has nine branches throughout the country.⁶⁹⁵ It is meant to provide affordable legal advice and assistance in a variety of matters to members of the public who are of small or moderate means. Applicants for legal aid must not possess disposal capital exceeding a maximum of USD\$794.00 nor must their net disposable income exceed USD\$1,111.00 per year.⁶⁹⁶ Victims of domestic violence seek assistance from Legal Aid generally to get advice on obtaining a protection or an exclusion order. Others come in just to have a confidential discussion even though the legal officers are not trained as counsellors. As many as one hundred such people can visit a single office in a day.

The process for applying for legal aid involves filling out a form and the legal aid officer instructing the Justice of the Peace at the relevant court. This form is then left with the Magistrate to determine eligibility of the applicant for legal aid. Once the applicant is eligible, the Magistrate grants aid and refers the matter back to the Legal Aid and Advisory Authority for assignment of counsel. Once the matter is complete, the Legal Aid and Advisory Authority pays all legal expenses which are generally nominal. In cases where it is determined that the applicant is in imminent danger, the Justice of the Peace or Clerk can list the matter to be heard by the Magistrate on the same day. The Magistrate then takes evidence *ex parte* and grants an interim protection order, not to exceed twenty-one days, advising that counsel be present at the hearing. Under section 14 of the Legal Aid and Advice (Amendment) Act, No. 18 of 1999, the

⁶⁹⁵ Natalie Diop, Legal Officer, *Interview with author*, Port of Spain, Trinidad, 12 February 2007. Further information also available from pamphlet prepared by the Ministry of Legal Affairs on the Legal Aid and Advisory Authority. Currently, at the Tobago office, domestic violence matters are without Legal Aid representation as Attorneys at Law are refusing to accept legal aid matters.

⁶⁹⁶ These figures are slightly higher than what is found in the Legal Aid and Advice Act (Chap. 7:07) where both the disposable capital and income are not to exceed USD\$714.00. The definition of disposable income was amended by the Legal Aid and Advice (Amendment) Act, No. 18 of 1999 but does not offer a ceiling under which disposable income must stay for eligibility.

Legal Aid and Advisory Authority can also prepare an emergency certificate in support of the applicant in relation to the Domestic Violence Act without reference to the Court or the Legal Aid and Advisory Authority to be forwarded to the Court and an attorney will be provided forthwith.

It would seem from interviews that obtaining legal aid has not been problematic with the defining issues being the post-legal aid scenarios as discussed in Sections 7.3.1 and 7.3.3 dealing with the magistracy and the police respectively.

7.4 Non-Governmental Organisations

NGOs are integral to the process of change. As discussed in chapter four, NGOs perhaps provide the impetus for action and, depending on the nature of the work undertaken by the organisation, can bring real and immediate relief to those who need it most. This section divides the NGOs in TT into three types: Research and Advocacy, Support Services, and Shelters. While this section is as exhaustive as possible, there are a couple that are not noted here as interviews were not possible and information was not otherwise available.⁶⁹⁷ For descriptions of the various NGOs, see Appendix C.

7.4.1 Research and Advocacy Groups

There are five main groups that engage in advocacy and research on domestic violence issues. These are the Trinidad and Tobago Coalition Against Domestic Violence (“the Coalition”); the Centre for Gender and Development Studies (part of the University of the West Indies, St. Augustine Campus), which also has a Women Development Studies Group; Caribbean

⁶⁹⁷ This is due to non-response from unwillingness to be interviewed so the information used is dated (true in the case of one NGO) and where literature on the organisation was not available and therefore not included at all (true in the case of one NGO).

Association for Feminist Research and Action (“CAFRA”); Network of NGOs of Trinidad and Tobago for the Advancement of Women; and Women Working for Social Progress.⁶⁹⁸

These groups have lobbied for legislative change, such as seen with the amended Domestic Violence Act and Sexual Offences Act, and the introduction of legislation with particular reference to children’s issues. Major changes to the Domestic Violence Act included:

- ◆ the introduction of definitions of the various types of abuse that can be suffered (emotional/psychological, financial, physical, sexual) (section 3);
- ◆ a change to only prohibitions being placed in a protection order to now include directions concerning interim compensation for monetary loss incurred, monetary relief, relinquishment of firearms, and making or continuation of rent or mortgage payments (section 6(c));
- ◆ the need to preserve the family unit (section 7(g));
- ◆ the ability of any member of the household to apply for an order (section 4(b));
- ◆ admissibility of views expressed by a child or dependent on whose behalf the application for an order is made having regard to the child’s age and maturity (section 10(5));
- ◆ the introduction of the legal duty of police officers to respond to every complaint or report alleging domestic violence (section 21(1)), to file a report (section 21(3), and to assist victims when power of entry is used (section 23A);
- ◆ the admissibility of a recorded statement where the complainant refuses to be sworn as a witness or gives oral evidence inconsistent or contradictory to the statement forming part of the police record (section 26);
- ◆ the introduction of a greater range of offences (First Schedule);
- ◆ an increase in the duration of an interim order from 14 days to 21 days (section 8(3));
- ◆ an increase in the duration of a protection order from a maximum of one year to a maximum of three years (section 6(a)); and

⁶⁹⁸ See Appendix C, section C.1 at page 352 for descriptions of the research and advocacy groups.

- ◆ an increase in fines for breaches of orders from USD\$794/imprisonment not exceeding six months to a tiered system: first conviction USD\$1429/imprisonment not exceeding three months; second conviction USD\$2381/imprisonment not exceeding 24 months; any subsequent conviction would result in imprisonment not exceeding five years.

These latter two changes, meant to truly keep the offender in check, were lauded as the greatest achievements in lobbying for legislative amendments for this particular Act by these NGOs; Justice Carmona, however, has noted that “the sentencing regime employed by the courts appears not to be having the desired impact. The killing goes on callously and unabated”.⁶⁹⁹ Even lawyers representing murder clients recognise that “these offences are far too common in society today”.⁷⁰⁰ The Sexual Offences Act of 1986 was amended to have marital rape included as an offence which was finally done in 2000 after much opposition by the government.⁷⁰¹ The original act only acknowledged sexual offences against a wife if the husband had intercourse with her without her consent or by force of fear where there was some degree of legal separation or an order by the court for the husband not to molest his wife. Moreover, proceedings for an offence under this section could only have been instituted by or with the consent of the Director of Public Prosecutions.

Research and advocacy NGOs also partake in training sessions, seminars and workshops (usually by invitation), such as training for members of the police service to apprise them of legal changes, as with the amendment to the Domestic Violence Act and their role under the Act, as well as sensitisation sessions on domestic and gender-based violence and treating victims who report such instances. A major training workshop was held in 2004 by the Coalition for

⁶⁹⁹ Imran Ali [online], “San Juan man gets 12 years for killing wife”, *Saturday Express*, 12 November 2005. [cited 28 March 2007]. Available from Internet: http://www.trinidadexpress.com/index.pl/article_news?id=115329965.

⁷⁰⁰ Keino Swamber [online], “Guilty of killing wife: sentencing today”, *Trinidad Express*, 17 November 2005. [cited 28 March 2007]. Available from Internet: http://www.trinidadexpress.com/index.pl/article_news?id=116629552.

⁷⁰¹ See section 5 of the Sexual Offences Act, No. 27 of 1986 – now repealed.

members of the judiciary on dealing with domestic violence matters. While research, training and legislative lobbying are high on the agenda of these types of organisations, some also provide drop-in and scheduled counselling services to both victims and perpetrators of domestic violence. As the foremost organisation in TT that deals with domestic violence, the Coalition also provides legal advice through its legal clinic to victims of domestic violence.

7.4.2 Support Service Groups

There are a variety of groups that provide varying degrees of support services to victims of domestic violence. These include Lifeline, Families In Action, Rape Crisis Society of Trinidad and Tobago, Flaming Word Ministry (while it is recognised that all religious organisations would be required to provide this type of support if necessary, this one was included as it is a member of the Coalition), Men Against Violence Against Women (“MAVAW”), and Women Against Abuse and Violent Encounters (Women’s Support Group) (“WAAVE”).⁷⁰²

Support groups provide services ranging from listening (where the person is not allowed to counsel or offer advice), counselling, outreach (usually by invitation), referrals to other organisations such as shelters or the domestic violence hotline, skills training to assist women in achieving financial security, and sensitisation programmes. The skills training programmes are designed to provide women with a marketable skill such as in agro-processing. Sensitisation programmes and outreach range from publications (pamphlets, brochures, posters, booklets) to giving talks at various venues.

There are two organisations in this group of particular interest. MAVAW, the only male group specifically engaged in domestic violence, offers a long term approach to dealing with the

⁷⁰² See Appendix C, section C.2 at page 359 for descriptions of the support service groups.

problem as opposed to the various short term solutions currently used, such as overnighting at a shelter and obtaining a protection order.⁷⁰³ MAVAW's philosophical approach allows it to view domestic violence as resulting from dysfunctional relationships and does not believe in terms such as "abuser" and "victim". Its "BSD Syndrome Concept" focuses on identifying belief, behavioural, and biological "deficits" with a view to developing them appropriately, such as the belief that men are superior or the behaviour that allows hitting to be acceptable. The concept also includes a "baggage system dependency" which requires the individual to completely resolve previous relationships before entering another. The concept is meant to scientifically place the violence in relationship issue into a medium that takes away the stigma and gender polarisation previously associated with it, at the same time recognising the social roots of the problem. MAVAW anticipates resistance to the concept by some women, "primarily because every statistic, which lists one person being hurt, will also have to list the other person causing pain, as being hurt too".⁷⁰⁴

The other group of interest is WAAVE, a unique support group started by actual victims of domestic violence.⁷⁰⁵ They came together to provide support to one another that no organisation, shelter, or counselling session could provide. In speaking with various members of this group as well as other battered women, it becomes clear that even though women's shelters are run by women, these latter still have little understanding or empathy for those seeking refuge. Some matrons complain that the women who come to the shelters are lazy; while this may be the case for some, it must be that others simply need a resting period before embarking on the rostered tasks at a shelter. These women come to the shelters battered and afraid, should they all be expected to immediately commence chores? Should a small but reasonable recovery period not be allowed? While it is certain that a recovery period is allowed, perhaps discretion would dictate whether a longer period can be granted depending on the

⁷⁰³ See Appendix C, section C.2.7 at page 364 for a description of this group.

⁷⁰⁴ Email communication between Donald Berment and Bert Hoff, 15 October 2003.

⁷⁰⁵ See Appendix C, section C.2.8 at page 366 for a description of this group.

individual. There have been instances, however, where women simply refuse to do anything and the reasons for this remain unclear.

7.4.3 Shelters

There are some ten shelters or halfway houses in TT that take in women victims of domestic violence.⁷⁰⁶ Shelters, located all around the country, include The Shelter, MIZPEH Halfway House, the Business and Professional Women's Club Halfway House, Goshen Halfway House for Battered Wives and Teenage Pregnancies, Vision of Hope Halfway House, Madinah House, Hope Shelter for Battered Women and Children, National Home for Family Reconciliation, Our Lady of the Wayside Shelter and Tobago Women's Enterprise for Empowerment and Rehabilitation Towards Self-Sufficiency.

All shelters provide meals, clothing, toiletries, and bedding as most women who seek refuge at shelters have with them only what they wore to get there. Counselling services are provided by most shelters as an integral part of the emergency services offered. Duration of stay and number and sex of children allowed differ from shelter to shelter. The timeframe seems to be flexible depending on the nature of individual cases. What is clear is that all shelters have restrictions on entry of boys of various ages into the shelter. This means that the mother must either decide to seek refuge elsewhere, be faced with the decision to split her family further during a time of crisis, or remain at home with the abuser. The women of WAAVE have recognised this problem and hope one day to run a shelter with facilities to accommodate boys. All the shelters have cited reasons of uncontrollability and curiosity of the female sex, whether innocent or not, as reasons for restricting entry of older boys into the shelters. While the need to preserve feminine modesty is foremost, what about the integrity of the family unit? Even this

⁷⁰⁶ See Appendix C, section C.3 at page 367 for descriptions of the shelters.

need is legislated (see the Domestic Violence Act). Surely splitting the family will have further adverse effects on the psyches of all involved and requires extensive reconsideration.

Most of the shelters offer skills training programmes aimed at empowering women to be self-sufficient. Programmes and courses in etiquette, crafts, sewing, needlework, gardening, animal husbandry, food preparation, pastry-making, flower-making, childcare, parenting, housekeeping, hairdressing, lay counselling, adult literacy, computer literacy and nursing are among the many to which women have access while at the shelters. In some cases, where the shelter does not actually provide the programmes or courses, they may locate venues where they are offered and pay for the women to attend once money is available.

Most of the shelters interviewed receive no government assistance but rely on corporate and individual contributions to meet their expenses. These funds are supplemented by various fund raising activities. Shelters which do receive a government subvention complain that it is very little and certainly not enough to run the homes. While this is the case, all the homes visited had quite a bit of spare capacity at the time, so that expenses should be less during such times. This also raises the question as to why women are not using the facilities available to them. Not wanting to split the family, hoping the abuser would eventually change, the fact that the children are clothed and fed at home, socialised to believe that violence against women is part of family life may all be reasons why women do not use the facilities offered by the shelters.

Women are referred to shelters either by the police, Court, or the domestic violence hotline. There are few walk-in victims. Shelters prefer referrals so as to have official records of the women's presence there. Many shelters report having positive relationships with the area police station but often complain that their response time to situations is too long. There was one shelter in particular that stated that when they call the area police station they do not receive full cooperation and are told that they cannot help. They have to rely on a police station many miles

away to provide assistance. In some cases, the police officers disclose the women's locations (the location of the shelters is generally unknown) thereby destroying the confidence and security of the victim.

Several trends were observed at the various shelters and can be said to be generally applicable to women victims of domestic violence. Women:

- 🚩 Stay one week to one month
- 🚩 Are generally of East Indian or African descent
- 🚩 Are young mothers up to age forty
- 🚩 Are of all religious backgrounds
- 🚩 Bring at least two children
- 🚩 Are in a common-law relationship
- 🚩 Are unemployed and/or unskilled
- 🚩 Have a history of abuse

There also tend to be more women seeking shelter between November and February. This increase is directly related to the seasons of Christmas and Carnival when excessive alcoholic intake and expenditure takes place.

7.5 Conclusion

The level of financing for gender issues generally, and domestic violence specifically, reflects the failure of the State to treat meaningfully with women's rights. The poor level of funding is exacerbated by the fact of government's recognition of the problem of domestic violence. State institutions meant to support the battle against domestic violence can be accused of not being

sufficiently sensitive to the issue. While, to some extent, the magistracy is hindered by legislation that reflects the bias of the male elite that was responsible for its passage in Parliament, much more can be done to make the existing legal regime more workable.

The police service, the other major state institution, is also male dominated and the attitude of the police exemplifies the male bias. Police officers are known to abuse their spouses as well. It is difficult for such a victim to make a report as the matter tends to be immediately reported to the abuser which translates into more abuse for her. How then should she seek assistance? In other instances, the police response tends to be poor as they feel that the women waste their time given that the majority of women eventually plead on the men's behalf to have them released or leave the shelters to which they were police escorted to return to them. When women come to the station the police officers repeatedly ask whether they are sure they want to file the report for fear of what they feel would be the inevitable response from the complainant which would result in a waste of time and effort. There was one anomalous instance of an upper class woman who filed a report at the police station and when her father found out, he "had the file destroyed" by a friend at the station.

Another problem is the fact that police officers seem to take advantage of female victims of domestic violence. Some people interviewed stated that women get involved with the officers to expedite matters. In one particular case, a battered woman, after going to the police station, was escorted home by two officers to collect some personal belongings and the male police officer made unsolicited advances towards her. With no one else to turn to, this put the woman in a very difficult situation. She was able to keep him at bay but he became very hostile.

That aside, the apathy and hesitancy on the part of police officers point to something serious – not simply dismissal of domestic violence as between husband and wife. The women themselves appear to be confused. They flee for their lives and then beg for the men not to be

harmed and to be released. It is understandable why the officers would take the approach that they do, but certainly does not justify it. They have a duty to serve and to protect and should take that seriously.

The non-State actors, namely the NGOs, have also suffered due to their reliance on the State for driving the forces necessary to address domestic violence. There remains very little evidence of these groups seeking to take control of the domestic violence agenda to ensure meaningful change in society to how the issue is addressed. The dominant role played by research and advocacy groups remains the effort towards legislative reform. Having regard to the fact that the legislative agenda is controlled by the male elite, it is hardly surprising that the legal regime for addressing domestic violence is of limited effect. Chapter six discussed many of the deficiencies in the Domestic Violence Act and discussions on the magistracy and the police contained in Sections 7.3.1 and 7.3.3 respectively of this chapter further illustrate the problems inherent in the legal regime for addressing domestic violence.

It has been noted that many of the women who seek help in fact fall within the lower socioeconomic bracket. Domestic violence, however, knows no class or race boundaries. Anecdotal evidence suggests that even up to the ministerial level and in affluent neighbourhoods abuse occurs. This information is, therefore, quite telling. Moreover, there are male victims of domestic violence, but the reported numbers are few. One interviewee observed that male battering appears to be a new trend, but shame and pride prevent reports from being made. The NGOs that provide support services are limited by the availability of financial resources. These NGOs by and large depend on external sources for financial resources and the male dominated State governance apparatus has not shown any great inclination to treat domestic violence with the seriousness it deserves, as illustrated in Section 7.2 of this chapter, by the level of funding directed to gender issues generally, and domestic violence, specifically. One issue that illustrates the limitations of support services provided by

NGOs pertains to the provision of counselling. It was raised several times in interviews that many of the counsellors available at the various NGOs are not properly trained in the field of counselling. They are trained in psychology and/or social work and are allowed to provide 'counselling' services to the abused. This is not to diminish in any way the services they provide, as social work provides a different but equally important form of assistance. Counselling specifically requires special training and skills which are not necessarily provided by the courses taken in psychology or social work. There are in fact some professional therapists that volunteer their time to some of the NGOs once to twice a week. There are many professionals in private practice who are eminently qualified in counselling, but this is a paid service and not readily accessed. The male elite driven State has not seen it fit (yet) to place some of these counsellors on a retainer to counsel a certain number of victims per month who are unable to pay for the service but need it.

It would appear that leaving an abuser is not as easy as deciding to leave after the first instance of abuse. Some stay for the benefit of the children who are clothed and fed; others stay because they believe that abuse in a relationship is acceptable; while yet others stay because they were there during the tough times and helped make him a success and do not wish for someone else to benefit from that sacrifice. Some interviewees cited the "male dependency syndrome" where women believe that they need a man to define them or simply feel that they cannot live without him. Apart from emotional dependency, there is financial dependency either because she is unskilled and cannot find employment or, surprisingly, because she is lazy and does not *wish* to work and desires to maintain a certain lifestyle. One woman from an affluent home decided to take the abuse because, if she left, she would no longer be able to drive the Mercedes Benz her abusive husband bought for her. These tough choices...

The fact remains that the NGOs that provide shelters are in need of proper funding not just to house persons that are the victims of domestic violence but also entire families. Moreover,

women who elect to leave situations of domestic violence need expert psychological assistance and job training to develop the means to be independent of the abuser. For a shelter to fulfil these needs they either turn to the State where funding is derisory or to private corporate citizens that are also managed by the male elite. In both instances, the true needs of the victims are not met and this is perhaps why the available shelters would appear to be underutilised. In addition, an important point was made that when women seek shelter, they sometimes have nowhere to go when they leave, mostly due to financial problems. This issue of post-shelter housing and a support system to help monitor women's progress or simply provide assistance along the way seems to be lacking.

The emerging picture of an institutional framework for addressing domestic violence in TT is not pretty. The State institutions are poorly equipped and funded to deal with domestic violence and this is a mere reflection of TT's lack of concern with the "softer" issues, such as protection of women. Further, the reliance of the non-state institutions on state *largesse* to achieve their objectives of protection of women from domestic violence would appear to be misguided. The situation in TT necessarily points to the need for women to seek to understand their peculiar role in protecting their vulnerable sisters from domestic violence and to seek to find the solutions from within their sphere of power rather than rely on a male post-colonial elite.

Having examined the domestic attitude of TT to domestic violence both legally and institutionally, it is important to review the behaviour of TT at the international and regional levels with respect to the issue of domestic violence so as to ascertain whether there is consistency of behaviour or whether TT expounds one set of principles at the international stage but practices another at the domestic level.

CHAPTER EIGHT

8.0 Trinidad and Tobago and Domestic Violence: The International Response

8.1 Introduction: International Context

Trinidad and Tobago has illustrated some degree of commitment in dealing with the issue of violence against women, especially with respect to the passage and amendment of legislation and discussions on accepting a national policy on gender. Nevertheless, these legislative changes seemed only to come about after extensive and unwavering lobbying by various interest groups and the policy remains a working, yet-to-be finalised and unaccepted document reflecting the true intent of those in authority. Furthermore, the financial commitment seems to be sorely lacking on the part of government and is reflective of the priority given to the issue at hand. This chapter will examine what TT has committed to internationally and regionally with respect to dealing with domestic violence to gauge the consistency of its international attitude with its domestic agenda.

8.2 International Law

8.2.1 Convention on the Elimination of All Forms of Discrimination Against Women

One of the most important international conventions on women's issues was the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") held in 1979. TT signed the convention in 1985 and ratified it in 1990. As a party to the convention, TT was expected to submit to the Secretary-General of the UN, pursuant to Article 18, "a report on the legislative, judicial, administrative or other measures" adopted to give effect to the provisions of the convention and this was meant to be submitted within one year after the entry into force for TT. Particular reference is made by the Committee to the inclusion of information and data on

violence against women. As mentioned in chapter three above, TT is, regrettably, one of those delinquent states and only submitted its combined *initial, second and third* periodic report in January 2001,⁷⁰⁷ even though it ratified the convention 11 years earlier.⁷⁰⁸ Its fourth periodic report was due on 11 February 2003 but has not yet been submitted.⁷⁰⁹ The government representative stated as the reason for the delay in submitting the report that “no mechanism existed to deal with reporting under international human rights treaties and insufficient resources had been allocated for that purpose”.⁷¹⁰ Insufficient resources result in inaction at many levels on many issues and are certainly reflective of government’s position with respect to violence against women. Important, however, was one of the Committee’s many concerns that “despite innovative legislation, policies and programmes, violence against women remains a serious reality that is being perpetuated by deeply rooted traditional patriarchal attitudes, apparently tolerated by society” and also that these “constitute obstacles to the full implementation of the Convention”.⁷¹¹

Admittedly, CEDAW does not once mention the word “violence” in the text of the document. Nevertheless, at its eleventh session in 1992, the Committee made clear the connection between discrimination against women and gender-based violence and recognised that the former can only be eliminated in tandem with eradication of the latter as the definition of discrimination implicitly includes gender-based violence.⁷¹² The Committee also recognised that “family violence is one of the most insidious forms of violence against women”.⁷¹³ With this in mind, the Committee urged TT in its report

⁷⁰⁷ See UN, General Assembly, “Report of the Committee on the Elimination of Discrimination against Women”.

⁷⁰⁸ See UN DAW, “States Parties”.

⁷⁰⁹ See UN, Secretary-General, “Status of submission of Reports by States Parties under Article 18 of the Convention”, Annex I, p. 12.

⁷¹⁰ General Assembly, Paragraph 121, “Report”.

⁷¹¹ General Assembly, Paragraphs 145 and 135 respectively, “Report”.

⁷¹² The Committee, *General Recommendation No. 19*, (11th session, 1992), paras 4 and 6.

⁷¹³ The Committee, *General Recommendation No. 19*, (11th session, 1992), para. 23.

“to place a high priority on measures to address violence against women in the family and in society in accordance with the Committee’s general recommendation 19 and the Declaration on the Elimination of Violence against Women. The Committee recommends that the State party introduce further measures to raise public awareness about violence against women and urges the State party to strengthen its activities and programmes to focus on sexual violence, incest and prostitution”.⁷¹⁴

The Gender Affairs Division is currently⁷¹⁵ working on the combined fourth and fifth periodic report for submission to the Committee which were due on 11 February 2003 and 11 February 2007 respectively.

With respect to the Optional Protocol, TT indicated that it was not considering accession to it.⁷¹⁶

8.2.2 Declaration on the Elimination of Violence Against Women

As stated in chapter three, the Declaration on the Elimination of Violence Against Women (“DEVAW”) was adopted by the General Assembly on 20 December 1993. According to the draft Gender Policy, TT signed/adopted the declaration in 1994. There is very little in the way of national policy, legal or administrative action to suggest that TT has done anything major in line with this declaration. Steps were taken to amend the Domestic Violence Act and the Sexual Offences Act to afford greater power to women but this was not accompanied by the necessary institutional capacity building to make them effective enough. Selected members of the police service and the judiciary received training to increase their awareness of the issue but this, too, did not seem to have had the desired effect as chapter seven above clearly illustrated. Moreover, it would appear that it was the local NGO movement that made these advances possible and was not necessarily directly attributable to the declaration.

⁷¹⁴ General Assembly, Paragraph 146, “Report”.

⁷¹⁵ May 2007.

⁷¹⁶ See United Nations, Committee on the Elimination of Discrimination Against Women, *Committee on the Elimination of Discrimination Against Women Concludes Consideration of Trinidad and Tobago Report*, (Press Release) WOM/1316, 26th Session, 547th Meeting, 29 January 2002.

8.2.3 The Beijing Declaration and Platform for Action

In 1995, the Women Affairs Division, as it was then, prepared a report for the Fourth World Conference on Women. It again recognised the problem of domestic violence and reported that steps were being taken to address the issue, such as the increase in the number of support services for both victims and perpetrators and the commencement of male outreach programmes.⁷¹⁷ The report recognised the need for increased research on the relationship between gender-based violence and male dominance in the national context; sensitisation of the judiciary, police, health and other professionals with whom victims of domestic violence have contact; and greater and strengthened support services and outreach programmes specifically targeting men and boys.⁷¹⁸ It also noted that domestic violence has the tacit acceptance of society as a part of life.⁷¹⁹ Legislative changes did not seem to have the intended effect of curbing the problem and support services, even though increasing in number, were still insufficient.⁷²⁰

The Beijing Declaration and Platform for Action was adopted unanimously by all countries that took part, TT included. In June 2000, the then Minister of Culture and Gender Affairs, Senator the Honourable Daphne Phillips, presented a progress report on TT's actions and initiatives post-Beijing.⁷²¹ She reported on ten areas in which action was taken, one of them being

⁷¹⁷ Ministry of Community Development, Culture and Women's Affairs, "National Report on Status of Women in Trinidad and Tobago", August 1995, presented at the Fourth World Conference on Women, Beijing, China, September 1995, p. 4.

⁷¹⁸ Ministry of Community Development, "National Report on Status of Women in Trinidad and Tobago", pp. 7-8.

⁷¹⁹ Ministry of Community Development, "National Report on Status of Women in Trinidad and Tobago", p. 32.

⁷²⁰ Ministry of Community Development, "National Report on Status of Women in Trinidad and Tobago", pp. 60-61.

⁷²¹ Senator the Honourable Dr. Daphne Phillips, Minister of Culture and Gender Affairs (as she then was) [online], "Statement to the Twenty-Third Special Session of the General Assembly entitled "Women 2000: gender equality, development and peace for the twenty-first century"", at the United

violence against women. She spoke of amendments to legislation, the establishment of the Domestic Violence Unit and other work undertaken by the Gender Affairs Division. She ended the statement by speaking of the challenges involved in realising the goals of the Beijing Platform for Action which included inadequate human and financial resources. In TT's response to a questionnaire on the implementation of the Beijing Platform for Action, more specific constraints included:⁷²²

- ◆ Financial resources: the budgetary allocation of the Gender Affairs Division is inadequate to ideally implement and execute projects and programmes.
- ◆ Human resources: extra technical and administrative staff are needed to ideally carry out the increased work load of the division.
- ◆ Limited information sharing: in terms of intra-agency information.
- ◆ Lack of disaggregated data: data from most sectors are not disaggregated.
- ◆ The absence of a fully operationalised Inter-Ministerial Committee: the current membership is positioned at varying levels of authority in their respective ministries and this affects their ability to influence policy.
- ◆ Ineffective ways of collaboration: there is a need to develop more effective ways of collaboration with NGOs intersectorally.

Nations General Assembly, New York, 6 June 2000. [cited 30 April 2007]. Available from Internet: <http://www.un.org/womenwatch/daw/followup/beijing+5stat/statments/trinidad6.htm>.

⁷²² United Nations, Division for the Advancement of Women [online], "Replies to Questionnaire on the Implementation of the Beijing Platform for Action: Trinidad and Tobago". Dated 02 June 1999. [cited 30 April 2007]. Available from Internet: <http://www.un.org/womenwatch/daw/followup/responses/trinidad.html>.

8.3 Regional Instruments

8.3.1 Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women

The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Convention of Belém do Pará) was adopted in June 1994 and signed and ratified by TT in November 1995 and May 1996 respectively. This was an initiative of the Inter-American Commission of Women (“CIM”), a specialised organisation of the Organization of American States, which is the principal forum for generating hemispheric policy to advance women's rights and gender equality.⁷²³ Established in 1928 at the Sixth International Conference of American States (Havana, Cuba), the CIM was the first official intergovernmental agency in the world created expressly to ensure recognition of the civil and political rights of women. As such, it has played a crucial role in making the participation and support of women a legitimate and indispensable part of governance and international consensus building in the Americas.

In 1986, the CIM began an analysis of violence against women which was followed by the 1990 Inter-American Consultation on Women and Violence, at which it thoroughly examined the topic of violence against women and the feasibility of drafting an inter-American convention on the subject.⁷²⁴ Emerging from this was the 1994 Convention of Belém do Pará, the first ever treaty instrument dealing with violence against women, and a subsequent strategic plan of action presented at Beijing which dealt with violence against women as one of ten major areas.

⁷²³ Organisation of American States, Inter-American Commission of Women [online], “Who we are”. Posted in 2000. [cited 02 May 2007]. Available from Internet: <http://www.oas.org/cim/English/About.htm>.

⁷²⁴ Organisation of American States, Inter-American Commission of Women [online], “Strategic Plan of Action of the Inter-American Commission of Women”. Posted in 2000. [cited 02 May 2007]. Available from Internet: <http://www.oas.org/cim/English/Strategic Plan.htm>.

In 2001, the CIM commissioned a report on violence in the Americas which examined national programs of ten Caribbean countries designed to deal with implementation of the convention. With respect to TT, it mentioned government initiatives taken since ratification of the convention. This included the strengthening of the National Domestic Violence Unit, support services and legislative provisions as well as data collection (including the commencement of gender disaggregated data) and sensitisation training for those in direct contact with victims of domestic violence.⁷²⁵ The report questioned the institutional capacity to properly support legislative changes, such as the ability of the court to enforce protection orders.⁷²⁶ This is a problem which continues today. The authors of the report note quite correctly that

“the implementation of the Convention of Belém do Pará has progressed very slowly in all of the Caribbean countries reviewed. Efforts to prevent, punish and eradicate violence against women in the Caribbean have concentrated on piecemeal legal reform, initiatives to raise public awareness of the issue, and initiatives to sensitise and train local officials. The provision of emergency services to victims of domestic violence, such as a hotline or some form of crisis intervention, and the establishment of shelters for women threatened by domestic violence were responsibilities largely left to the private and volunteer sectors... Some emphasis has been placed on offering training and education to the officials and professionals on whom victims of gender-based violence must rely for protection, help, information, financial assistance, and redress. These initiatives, unfortunately, were rarely sustained...

Social attitudes and cultural practices have also created powerful obstacles that have tended to be ignored at least as often as they were confronted. Governments have relied very heavily on nongovernmental organizations and women’s groups to offer the most basic level of support and assistance to women victims of violence. However, they have done so in ways that often ignore the fact that these organizations are themselves relying totally on their limited ability to raise their own funding and to recruit volunteers”.⁷²⁷

As a member of the Organization of American States, TT submitted its third national biennial report to the Inter-American Commission of Women in August 2006 dealing with seven areas of relevance, one of which dealt with violence against women. This section mentioned the establishment of the domestic violence unit, the 24 hour hotline and the development of a

⁷²⁵ Chin and Dandurand, *Violence in the Americas*, pp. 11-12.

⁷²⁶ Chin and Dandurand, *Violence in the Americas*, p. 31.

⁷²⁷ Chin and Dandurand, *Violence in the Americas*, p. 61.

systematic format for domestic violence data collection.⁷²⁸ Unfortunately, the above analysis of the status of the implementation of the Convention of Belém do Pará remains true still.

8.3.2 Charter of Civil Society for the Caribbean Community

At a Conference of Heads of Government of the Caribbean Community at their Special Meeting in Port-of-Spain, Trinidad and Tobago, in October 1992, the various governments adopted the recommendation of the West Indian Commission that a Charter of Civil Society for the Caribbean Community be subscribed to by Member States of the Community.⁷²⁹ This “oft-forgotten Regional instrument”⁷³⁰ was adopted on 19 February 1997⁷³¹ by member countries of Caricom, Trinidad and Tobago included, and seeks “to ensure continuing respect for internationally recognised civil, political, economic, social and cultural rights” as well as to “respect the fundamental human rights and freedoms of the individual without distinction as to age, colour, creed, disability, ethnicity, gender, language, place of birth or origin, political opinion, race, religion or social class”. Article XII, in particular, deals with the “promotion of policies and measures aimed at strengthening gender equality” and states categorically that “all women have equal rights with men in the political, civil, economic, social and cultural spheres”. Sub-article (d) provides for “legal protection including just and effective remedies against domestic violence, sexual abuse and sexual harassment”.

⁷²⁸ Gender Affairs Division, “National Report of the Republic of Trinidad and Tobago for the Presentation at the XXXIII Assembly of Delegates of the Inter-American Commission of Women (CIM)”.

⁷²⁹ Caribbean Community (CARICOM) Secretariat [online], “Charter of Civil Society for the Caribbean Community”, updated 2006. [cited 24 August 2007]. Available from Internet: http://www.caricom.org/jsp/secretariat/legal_instruments/chartercivilsocietyresolution.jsp?menu=secretariat.

⁷³⁰ Désirée Bernard, “Advances made on Gender Equality and Women’s Human Rights in the Caribbean Region”, 50th Anniversary Commemoration of the United Nations Commission on the Status of Women, United Nations Headquarters, New York, 10 November 2006, p. 14. Also available from http://www.caribbeancourtsofjustice.org/papers_addresses.html.

⁷³¹ Caribbean Community (CARICOM) Secretariat [online], “Charter of Civil Society Resolution, 1997”, updated 2006. [cited 24 August 2007]. Available from Internet: http://www.caricom.org/jsp/secretariat/legal_instruments/chartercivilsociety.jsp.

While specific mention is made of the right of women to legal protection and effective remedies against domestic violence, it would appear that the existence of the Charter is not well known, therefore, application of the principles by signatory countries is unlikely. Moreover, there is no documentation to suggest that it has been taken into account.

8.4 Conclusion

Several observations can be made about the conduct of TT at the international level, three of which are important here. TT takes a long time to officially accept international law addressing gender issues, such as reflected in its taking eleven years to ratify CEDAW, which is the primary international legal instrument seeking to address gender issues. It must be noted, however, that TT showed a greater sense of alacrity in ratifying the Convention of Belém do Pará and adopting the Charter of Civil Society for the Caribbean Community. After accepting its international obligations by ratification of the international instrument, it lags behind in its reporting duties, as again illustrated by its conduct towards the implementation of CEDAW. The first report was due in 1991 and was submitted in 2002 as a combined initial, second and third where the second two were due in 1995 and 1999. No further reports have yet been submitted by TT. At the national level, no real attempt has been made to enact the international obligations contained in CEDAW in domestic law thereby denying women the benefit of having those provisions enacted. CEDAW remains of no legal effect as it must be incorporated into national statutory law. It is a fair conclusion that the malaise displayed by TT at the domestic level is certainly mirrored in its international behaviour and *vice versa*.

CHAPTER NINE

9.0 Conclusion

This thesis sought to examine the effectiveness of law as a tool to achieve gender equality and address the problem of domestic violence in TT. Research has shown that passing legislation alone is clearly not enough, but must be complemented by an effective institutional framework and well trained human resource component to make implementation and enforcement of the law workable. In the absence of government commitment to provide a comprehensive framework for achieving gender equality and protection of women against domestic violence, there would appear to be very little else that can forge positive change.

9.1 Gender Equality and the Law in TT

The legislative framework of TT ostensibly provides for gender equality. The supreme law, the Constitution, provides women a circumscribed right to equality. As mentioned in chapter five, sections 4(b) and (d) ensure the right of the individual to equality before the law and equality of treatment from any public authority in the exercise of its functions in such a capacity. These rights to equality are with specific reference to treatment of individuals by the state and its representatives and do not guarantee *general* sexual equality, such as equality between men and women at the workplace. Attempting to infer general gender equality from the Constitution may prove tricky, given the specifics of Section 4. Constitution aside, the general legal framework seems controlling and patronising and lacks the ability to promote gender equality on a broad level. The statutory legal framework for gender seems very much to reflect an elitist attitude on the part of those responsible for creating and enacting the various pieces of legislation. This mirrors what obtained during the colonial period where laws were enacted to serve the interest of the elite in one way or another. Even current attempts to create equality in

law seem to work against women, as laws written with gender neutrality in mind, such as the Domestic Violence Act, seem to detract from the importance of the scourge it is attempting to prevent.

9.2 The Role of NGOs in TT

The challenges of the legal framework notwithstanding, the role of NGOs in providing assistance to and promoting the protection of women against domestic violence must be recognised. NGOs in TT consist of three major types. The support service groups provide emotional support for dealing with post-violence experiences, although the quality of the support provided has been brought into question. This is certainly not to decry the support that is provided, but perhaps with assistance from the state, it could be improved. The second group consists of NGOs that provide shelter to those in fear of their lives from domestic violence. This is an essential facility, which in TT, is largely funded by private individuals. Proper funding from the state would assist in many ways, one of which is housing not only persons who are the victims of domestic violence but also entire families if necessary. Moreover, women who elect to leave situations of domestic violence need expert psychological assistance and job training to develop the means to be independent of the abuser. While shelters do provide these, it may not be enough. For a shelter to fulfil these needs, they either turn to the state where funding is derisory or to private corporations. In both instances, the true needs of the victims are not met and this is perhaps why the available shelters would appear to be underutilised. In addition, when women seek shelter, it would appear that they sometimes have no where to go when they leave, mostly due to financial problems. This issue of post-shelter housing and a support system to help monitor women's progress or simply provide assistance along the way seems to be lacking.

The research and advocacy groups have had some success in raising awareness of the problem of domestic violence among the population and in effecting legislative changes in favour of women. These changes were viewed as real victories because they went to the root of male-female relationships to have marital rape and domestic violence officially recognised as problems by the legislature, thereby traversing the public-private divide into the previously-protected realm of the family. In chapter eight, it was noted that TT indicated that it was not considering accession to the Optional Protocol to CEDAW. Perhaps the research and advocacy groups could lobby the TT government to accede to the Protocol. However, would accession to the Protocol assist women in their struggle against gender inequality and domestic violence? It most likely would not, given the government's general response to CEDAW itself. TT is a signatory but has taken no positive steps towards implementing the convention or incorporating it into domestic law. Why would it then take steps to implement the Protocol which provides for specificity with respect to the main convention? Government commitment with respect to women's issues seems to be severely lacking.

It has become obvious that where the state falls short with respect to promoting women's interests, such as seen with the protection of women against domestic violence, that NGOs have featured prominently in filling in these gaps. A study by Alvarez on several Latin American countries revealed a trend by states of "sub-contracting" their responsibilities to NGOs, from policy assessment to service delivery.⁷³² This points to an effective abdication of state responsibility, but the claim of limited or even no resources has given rise to this development. Nevertheless, in TT, NGOs are not even sub-contracted for the roles they play. It simply falls to the NGOs to effect service delivery without recompense. While this has its advantages (such as not being seen as a state pawn and allowing NGOs to be more effective

⁷³² Sonia Alvarez [online], "Advocating Feminism: The Latin American NGO Boom". [cited 14 October 2007]. Available from Internet: <http://www.antenna.nl/~waterman/alvarez2.html>.

political actors), it means that NGOs perform these services with limited resources, and more specifically, without state support.

9.3 The Colonial Legacy of Legal Elitism

The actual national legal and institutional response reflects this lack of commitment despite the government rhetoric espoused at various forums. Legislative changes at the national level in favour of women's rights seemed only to have come about due to the unwavering efforts of support and advocacy groups. Moreover, the general statutory legal framework for gender seems very much to reflect an elitist attitude on the part of those responsible for creating and enacting the various pieces of legislation. This is due in large part to TT's colonial legal heritage that witnessed the enactment of laws during the colonial period that served the interest of the ruling elite in one way or another. This elitism has been perpetuated in the post-independence era by replacing class elitism of the former era with gender elitism in the current one. As mentioned earlier, current attempts to create equality in law seem to work against women, as laws written with gender neutrality in mind, such as the Domestic Violence Act, seem to detract from the importance of the scourge it is attempting to prevent. Even though the Domestic Violence Act was passed with much fanfare and heralded as a potent weapon to combat abuse of women, it has not quite lived up to such lofty expectations, as it contains many deficiencies that undermine its effectiveness. In addition, the concomitant institutional framework to render the law effective was not put in place. TT seems to have created a relatively ineffective statutory scheme to combat domestic violence.

9.4 The Institutional Response

Institutionally, as mentioned previously, the response seems equally poor. State institutions, such as the Magistracy and the Police Service, are poorly equipped and funded to deal with domestic violence and this is a mere reflection of TT's lack of concern with the "softer" issues, such as protection of women. Government's alleged commitment to dealing with domestic violence is not reflected in the amount of funding made available to state institutions to address the problem in a real way. The necessary human resource training for those who deal directly with women victims of domestic violence has been sporadic at best causing women to appear to prefer the least possible personally interactive route to protection - applying for a protection order. Insensitivity and apathy on the part of government officials have been general responses, however, this would be due to their experience in dealing with family situations. Unfortunately, women are partially at fault with respect to the institutional response as they have been known to suffer changes of heart when sentencing and/or jail time comes around for the abuser. While this should in no way negatively affect the institutional response to victims of domestic violence, it certainly presents a real complication. With respect to NGOs, as mentioned earlier, they provide an array of services designed to assist women; however, they too are poorly funded and sometimes insensitive to the abused who seek their help. Their reliance on state *largesse* to achieve their objectives of protection of women from domestic violence would appear to be misguided. The situation in TT necessarily points to the need for women to seek to understand their peculiar role in protecting their vulnerable sisters from domestic violence and to seek to find the solutions from within their sphere of power rather than rely on a male post-colonial elite.

These issues appear to permeate all levels. The international legal and institutional response is similar, if not worse than what obtains nationally given the very nature of the international

system of governance. Law created at this level is not binding in the strict sense and implementation and enforcement present their own difficulties. Even gaining consensus on articles for inclusion in treaties is complicated, as participating countries bring their own prejudices to the table. As noted with CEDAW, it has the largest number of reservations entered, reflecting States Parties' unwillingness to accept the full scope of obligations stated in the instrument. How, therefore, can international law be deemed a serious means of promoting change at the national level?

Once again, it would appear that even at the international level, NGOs are largely responsible for the "legal successes" in international law-making with respect to the advancement of women's concerns. In chapter three, it was noted that DEVAW owed its genesis chiefly to the advocacy activities of NGOs. BPFA, a successor to CEDAW, highlighted the growing significance of NGOs as an agent of change in the international attitude to women's rights. The unprecedented gathering of over 30,000 NGO representatives in the unofficial NGO Forum provided a powerful voice that resonated throughout the official meeting. The institutional efforts of NGOs reflect the "bottom-up" approach as it includes grass roots NGOs and NGO networks. The very nature of NGOs, where membership is generally exclusive of states, ensures that issues can be ventilated without the constraining influence of states.

While NGOs do have the power to effect change at the international and national levels, the individual domestic context can significantly contribute to or impede the success of such efforts. Risse and Sikkink's model of socialisation, dealt with in chapter four above, seems to offer a possible way around the inherent ineffectiveness of international law with respect to human rights abuses and issues at the national level. Global civil society has been known to effectively play the naming and shaming game to provoke positive responses at the level of the state. It is important to note, however, that this model applies to highly oppressive and abusive regimes and may not, therefore, be applicable to countries under democratic rule.

TT seems to be one of those countries which will be left unaffected as it has never been under authoritarian rule. As a developing country, it prioritises the issues placed on the national agenda and human rights / women's rights certainly do not fare well in this regard. Measures have, in fact, been taken to sign and ratify human rights conventions and women-specific conventions and have even been incorporated into domestic law in one way or another. The problem lies with the lack of political will which translates into inadequate resources for implementation, monitoring and enforcement procedures. Current political and economic events in TT may be conspiring to work against the fortification of this political will to deal with 'softer' legal issues, although, this could be said to be true of TT throughout its post-independence history. TT has a hydrocarbon based economy and is at this time one of the countries benefiting from record oil prices and the economy is booming. Government attention is, and has always been, therefore, on developing the hydrocarbon sector as well as the upstream and downstream industries and associated economic growth with little focus on issues that do not have adverse effects on such growth. Women's rights and domestic violence are not seen as directly relevant to TT's current growth spurt and will therefore continue to be marginalised as a policy issue. These reasons all contribute to the inefficacy of international law and even domestic law to forge positive and sustained changes in women's quest for equal treatment and protection against domestic violence.

9.5 Challenges at the Level of the UN

The actual UN institutional structure for advancement of women's rights is affected by major obstacles that undermine its ability to foster real and meaningful change. The analysis of the UN system points to the lack of enforcement capabilities regarding state compliance with international legal obligations, such as reporting under CEDAW. Inability to enforce coupled

with budgetary and procedural restrictions severely fetters UN bodies' capacity for effectiveness. In the absence of the UN's ability to perform enforcement and monitoring functions, however, NGOs have an extremely important role to play here as they can remind states of their obligations under international law and continue to 'persuade' them to give effect to these obligations at the national level. As noted in chapter four, this has been done with positive effects in many states.

9.6 TT's Response to Its International Law Commitments

TT's response to international law instruments and its commitment to adhering to such instruments are telling. TT takes a long time to officially accept international law instruments addressing gender issues, such as evidenced by an eleven year delay in ratifying CEDAW, which is the primary international legal instrument seeking to address gender issues. It seemed, however, to show a greater sense of alacrity in ratifying and adopting regional instruments, such as the Convention of Belém do Pará and the Charter of Civil Society for the Caribbean Community, although nothing came of these either. Even when TT accepted its international obligations by ratification of CEDAW, it showed little real commitment in its reporting duties. The first report was due in 1991 and was submitted in 2002 as a combined initial, second and third report where the second two were due in 1995 and 1999 respectively. No further reports have yet been submitted by TT. At the national level, no real attempt has been made to enact the international obligations contained in CEDAW in domestic law thereby denying women the benefit of having those provisions enacted. CEDAW continues to remain of no legal effect as it must first be incorporated into national statutory law. It is a fair conclusion that the malaise displayed by TT at the domestic level is certainly mirrored in its international behaviour and *vice versa*.

9.7 Limitations of International Law to Effect Change at the National Level: The Problem of Male Bias

The analysis of the international legal and institutional response to women's rights shows limited success. The "top-down" approach which promotes the use of international law as a mechanism for promoting national behaviour would appear to find little support for revolutionising the women's rights agenda. The weaknesses of the "top-down" approach must be properly understood if the international community is going to play a meaningful role in promoting and facilitating women's rights.

These poor legal and institutional responses are exacerbated by the fact that an examination of the systems of governance at the international and national levels illustrate that they are both inherently masculine in nature. Naturally, legislative frameworks created from within such systems reflect this bias and would also account for the lack of political will in promoting women's issues. While international human rights conventions have evolved over time and are indeed becoming increasingly inclusive, human rights are not necessarily synonymous with women's rights and have not included the notion of gender; human rights would seem to be the human rights of men. At the international level, this is perhaps because early international law was predicated on Western theological notions and the role of women was accorded little or no significance. That notwithstanding, the situation did not change perceptibly in the Renaissance period when international law assumed a more secular character. This period emphasised the notion of sovereignty and rights, but rights as applicable to men. Continued bias at the level of the state in international law has circumscribed the inclusion of women's rights as part of general human rights discussions. At the national level in TT, such male bias seems to be a direct result of its colonial legal heritage which bestowed on the legal system an entrenched sense of elitism with gender representing the new category for discrimination.

Within this peculiar post-colonial context, the male elite emerges as the defining influence in the development of the national legal system. The relationship between political representation, power and lack of political will has been borne out by the research conducted. Women in TT are poorly represented in the power structure and limited support is derived from the State in women's attempt to deal with gender issues. In the specific study of domestic violence in TT as a breach of women's fundamental right and ability to achieve equal treatment before the law, the male bias infuses the legal and institutional regime for addressing this aspect of women's fundamental rights and is translated into the system's inefficient and inadequate nature. It would appear, however, that when women occupy a meaningful place in governance structure, they can certainly strike significant blows against gender inequality.⁷³³ This, however, may not necessarily be the case when women have power in the context of such power being based on strong male support. Indira Gandhi ruled India for many years but did little for promoting the equality of women in India. This is due largely to the fact that she understood the religious and social forces that underlay her power and she was unwilling to threaten such bases as it would have resulted in her political demise.⁷³⁴

9.9 Efficacy of Law as an Agent of Change

Law as an agent of change has not proven quite effective in promoting gender equality or in protecting women against domestic violence in Trinidad and Tobago, either from efforts at the level of the state or from the regional and international levels. While legislation seems to have been passed and amended largely through the unwavering efforts of NGOs, the concomitant

⁷³³ See the case of Finland, for example. See Parliament of Finland [online], "Women Members of Finland's Parliament". Last updated 08 March 2006. [cited 25 May 2007]. Available from Internet: <http://www.parliament.fi/efakta/opas/tiedotus/naisede.htm>.

⁷³⁴ See for example also Amrita Basu, "Introduction", in A. Basu (ed), *The Challenge of Local Feminisms: Women's Movements in Global Perspectives* (Boulder, Co.: Westview Press, 1995), p. 15 where she states that politicians make platform promises but ultimately bow to pressures from conservative and religious groups.

institutional capacity building and/or strengthening was not forthcoming, thereby nullifying the positive potential of the law; nevertheless, the role of NGOs in effecting change and in providing support should in no way be understated, despite the constraints they face. Trinidad and Tobago's colonial heritage, however, further exacerbated the problem, as it bequeathed a legal legacy of entrenched class elitism which provided a ready framework in the post-independence era for the perpetuation of this elitism, this time with a gender slant, where laws tend to be written by and for the elite with little real reference to a gender perspective. This reflects unequal power relationships at various levels and has translated into a patent lack of political will, creating even more obstacles in women's struggle for gender equality and protection against domestic violence.

The statutory legal framework for gender in TT seems very much to reflect an elitist attitude on the part of those responsible for creating and enacting the various pieces of legislation. This is certainly in keeping with what obtained during the colonial period where laws were enacted to serve the interest of the elite in one way or another. Some 150 pieces of legislation in the post-colonial era have been cited as having some significant reference to gender; yet, when analysed, they do not lend themselves to the creation of a legal framework that accommodates gender equality in a real manner. This is directly attributable to the fact that the male elite responsible for enacting legislation does not take into account the particular needs of women. Feminist legal theory and feminist critical theory were used to expose the masculine nature of law and practice which create inherent difficulties in trying to achieve gender equality especially in the absence of legal and institutional reform as well as offer possible ways of addressing the situation.

More specifically, domestic violence was dealt with as a subset of gender and its treatment in the law provided an important indicator. In TT, domestic violence is largely dominated by the abuse of women. Although data with respect to domestic violence is not sex disaggregated,

anecdotal evidence and interviews indicated that the vast majority of orders sought pursuant to the Domestic Violence Act are by women. Legislating a system to deal with domestic violence, therefore, should necessarily take these facts into consideration to provide real and effective relief for those whom the act was intended to serve.

Various NGOs were quick to highlight the problems arising from male elitism and male domination. They invariably cited the insensitivity of state personnel who interacted with victims of domestic violence and their inability to be more accommodating. One NGO in particular formed support groups to accompany victims to court as the administration of justice in domestic violence cases seems to have the effect of preserving and promoting gender hierarchies, disempowering complainants, and has even been described as punishment.⁷³⁵ The Magisterial Court process is very user-unfriendly to women victims of domestic violence. The Family Court, however, offers a service that might prove much less traumatic if the court were to allow hearings primarily on domestic violence and not as incidental to family relations.

Nevertheless, the politics of emancipation depends on a legal framework geared towards gender equality supported by the inclusion of women's voices from within the governance structure. Activists play an equally important, if not greater, role from without in realising the true emancipatory potential of law. Once activists are able to use their power of 'persuasion' and Keck and Sikkink's "accountability politics"⁷³⁶ to effect legislative change at the national level, they can be said to have partially realised the emancipatory potential of law. Partially, since legislative change requires an effective concomitant institutional framework to give effect to the new legal provisions.

⁷³⁵ See Lazarus-Black, "The Rite of Domination", pp. 4, 13, 27.

⁷³⁶ See Keck and Sikkink, *Activists Beyond Borders*, pp. 24-25.

9.10 Effecting Change

The effectiveness of international law depends on understanding the dynamics of the issue which is the subject of international law. To ensure an international law regime that can deal with a specific problem, it is necessary to understand the elements that may undermine its effectiveness. The attitude of TT, with particular reference to its lack of political will coloured by patent male bias and its focus on the hydrocarbon sector to the detriment of 'softer' (non-economic [read: gender]) issues, amply illustrates why international law may not always have the desired effect at the national level. In understanding such a domestic contextual background, international law makers can anticipate and, possibly, address obstacles to effect successful international law regimes. Moreover, this study also illustrated the very inherently gendered nature of both international relations and international (and domestic) law which compounds the ability of the international community and domestic governments to even recognise the problem and therefore be able to deal with it.

In light of the government's unwillingness to take up the cause on behalf of women, it stands to reason, therefore, that gender equality and protection against domestic violence as fundamental human rights must flow in no small part from the struggle of women. Women, particularly from the developing world, must be wary of the "top-down" approach in relying on the international community to provide the necessary impetus for the achievement of gender equality. International conventions have proven to be somewhat myopic. These legal instruments have remained rather restrained in their ability to improve, or even affect, the condition of women and are criticised as representing little more than statements of good intentions on behalf of the parties to the international conventions.⁷³⁷ Yet, the international trends are predictable as the majority of nations are developing countries and the real power structure is held in most cases

⁷³⁷ Reanda, "Human Rights and Women's Rights", p. 21.

by the male elite even where there are female Heads of State.⁷³⁸ Women cannot wholly depend on the international community to gain gender equality and the analysis of the international legal regime and the UN readily demonstrates how limited such reliance can be.

There must be no fear of dealing with the issue of gender even where it may delve into the realm of the personal relations between men and women. The difficulty of interfering in an area which has traditionally been outside the scope of state intervention must be overcome. States must take responsibility domestically and internationally for the actions and human rights abuses of private citizens within this private realm.⁷³⁹ Failing to do so would sanction an approach to gender relations that perpetuates violence towards women, as illustrated by domestic violence.

The situation is admittedly bleak. How to break the cycle of gender inequality and domestic violence? Important to the process are education to change traditional and (often) discriminatory attitudes, training, legal literacy, adequate gender representation in top policy making positions and the provision of resources, financial and otherwise, which, if provided, would indicate political will at the level of the state. This political will can be forced through the application of pressure from above and below. The role of NGOs again comes to the fore here as they have an important role in fostering change and making sure that it is sustainable.

⁷³⁸ Steans, *Gender and International Relations: An Introduction*, p. 5.

⁷³⁹ Deutz, "Gender and International Human Rights", p. 36.

APPENDIX A

Existing Legislative Framework Relating to Gender in Trinidad and Tobago

A.1 CONTROL

Jury Act (Chap. 6:53), 1980 Rev.

4. (2) Notwithstanding subsection (1), a married woman shall be qualified to be a juror if -
- (a) her husband is qualified to be a juror; and
 - (b) she possesses the qualifications specified in subsection (1)(a) and (d).
8. (2) Notwithstanding subsection (1), a married woman who is qualified to serve as a juror under section 4(2), shall be liable to serve as a special juror, if her husband is qualified and liable to serve as such a juror.
22. (1) Notwithstanding any provision of this Act to the contrary any Judge before whom any cause is called on for trial may, in his discretion, on an application made by or on behalf of the parties...or any of them, or at his own instance, make an order that the jury shall be composed of men only, or may, on an application made by a woman to be exempted from service on a jury in respect of any case by reason of the nature of the evidence likely to be given or of the issues to be tried, grant such exemption.

Post Office Savings Bank Act (Chap. 79:04), 1980 Rev.

13. (1) The Minister may make regulations for the management of the Savings Bank. ...the regulations may -
- (e) regulate deposits by minors,...married women...
 - (f) prescribe conditions for the withdrawal of moneys by minors,...married women...

A.2 BENEVOLENCE

Airports Authority Act (Chap. 49:02), 1980 Rev.

11. Without prejudice to the generality of section 10, the Pension Scheme may enable the Authority to -
- (a) grant gratuities, pensions or superannuation allowances to, or to the widows, families or dependants of, its officers and employees...
 - (c) enter into and carry into effect agreements with any insurance company or other association or company for securing to any such officer or employee, or his widow, family or dependant such gratuities, pensions or allowances as are by this section authorised to be granted...
34. (2) With respect to any search made pursuant to subsection (1) -
- (b) except where the search is made by means of a mechanical or electrical or electronic or other similar device, no person shall be searched except by another person of the same sex.

Assisted Secondary School Teachers' Pensions Act (Chap. 39:03), 1980 Rev.

14. (2) Where a teacher in the teaching service in an assisted secondary school dies as a result of injuries received -

...the President may, in addition to the grant, if any made under section 13 to the legal personal representative of the deceased teacher or to his dependants, grant a pension to the dependants of the deceased teacher...

(3) The following pensions at the rates specified are authorised under this section:

- (a) when the deceased teacher leaves a widow, a pension may be granted to her while she is unmarried and of good character at a rate not exceeding ten-sixtieths of his salary...at the date of the injury...
- (e) when the deceased teacher does not leave a widow, or if no pension is granted to his widow, and if his mother was wholly or mainly dependant on him for her support, a pension may be granted to the mother, while she is of good character and without adequate means of support...

(4) Notwithstanding subsection (3) -

- (b) in the case of a pension granted under subsection (3)(e) -
 - (i) if the mother is a widow at the time of the grant of the pension and subsequently remarries the pension shall cease as from the date of re-marriage; and
 - (ii) if it appears to the President at any time that the mother is adequately provided with other means of support, the pension shall cease as from such date as the President may determine;
- (c) a pension granted in respect of a female child under subsection (3) shall cease upon the marriage of the child under the age of eighteen years.

Assisted Secondary School Teachers' Pensions Regulations, deemed to be made pursuant to section 15(1) of the Assisted Secondary School Teachers' Pensions Act

5. (1) Where a female teacher in teaching service in Trinidad and Tobago, having completed not less than five years teaching service retires from the service for the reason that she has married or is about to marry, and is not eligible for the grant of any pension or otherwise eligible for a gratuity under these Regulations, she may be granted on production within six months after her retirement...of satisfactory evidence of her marriage, a gratuity...

Auxiliary Fire Service Act (Chap. 35:54), 1980 Rev.

15. (1) The Minister may make such regulations as he considers necessary...-

- (h) the grant...of a pension or gratuity to the widow, children or other dependants of any member who dies from injuries received as a result and in the course of the performance of his duties without his own neglect...

Chaguaramas Development Authority Act (Chap. 35:02), 1980 Rev.

11. Without prejudice to the generality of section 10, the Pension Scheme may enable the Authority to -

- (a) grant gratuities, pensions or superannuation allowances to, or to the widows, families or dependants of, their employees...
- (c) enter into and carry into effect agreements with any insurance company or other association or company for securing to any such employee, widow, family or dependant such gratuities, pensions or allowances as are by this section authorised to be granted...

Children Act (Chap. 46:01), as amended by Acts No. 19 of 1994 and 68 of 2000

8. (1) If any person having the custody, charge, or care of a child or young person under the age of sixteen years causes or encourages the seduction or prostitution or unlawful carnal of

that child or young person, he is liable, on conviction on indictment, to imprisonment for five years.

(2) For the purpose of this section, a person is deemed to have caused or encouraged the seduction or prostitution or unlawful carnal knowledge (as the case may be) of a girl who has been seduced or has become a prostitute or has been unlawfully carnally known, if he knowingly allowed the girl to consort with, or to enter or continue in the employment of, any prostitute or person of known immoral character.

9. (1) Where it is shown to the satisfaction of a Magistrate, on the complaint of any person, that a child or young person under the age of eighteen years is, with the knowledge of her parent or guardian, exposed to the risk of seduction or prostitution or of being unlawfully carnally known or living a life of prostitution, the Magistrate may adjudge her parent or guardian to enter into a recognisance to exercise due care and supervision in respect of the child or young person.

44. (1) Any person may, without a warrant, bring before a Magistrate any person apparently under the age of eighteen who - ...

- (f) is the child of a person who has been convicted of an offence under section 6 or 12 of the Sexual Offences Act in respect of any of his children;...
- (h) is...living in circumstances calculated to cause, encourage, or favour the seduction or prostitution of the child...

Civil Aviation Act, No. 11 of 2001

31. (1) When an employee of the Authority who had exercised the option referred to in section 26(1)(b) dies, retires, is retrenched or his post in the Authority is abolished and he was a member of the pension fund plan, he or his estate shall be paid superannuation benefits by the pension fund plan at an amount which when combined with the superannuation benefits payable under section 29 is equivalent to the benefits based on his pensionable service in the Public Service combined with his service in the Authority and calculated at his salary applicable to him on the date of his death, retirement, abolition of his office or retrenchment.

Civil Service Act (Chap. 23:01), 1980 Rev.

32. Whenever a public officer dies the Minister shall order that a month's salary of the officer, from the date of his death, shall be paid to his widow or to his children or other next of kin.

Civil Service (Amendment) Regulations, LN No. 217 of 1996, made pursuant to section 28 of the Civil Service Act

149. (2) Without prejudice to the generality of subregulation (1), an officer who -
(e) commits any immoral, obscene or disorderly conduct in the office...
commits an act of misconduct.

Civil Service Regulations, made pursuant to section 28 of the Civil Service Act

14. (1) Married women may be recruited on a permanent basis into the Civil Service and female officers shall not be required to resign their appointment on marriage.

53. For the purposes of this Part, "family" shall be taken to mean an officer's wife and children, his mother, father, brothers, sisters, who are living with and are dependent on him.

88. (1) Maternity leave consisting of leave with full pay for one month followed by leave with half pay for two months shall be granted to female officers...

(2) This regulation also applies to acting and temporary officers subject to the following provisions:

- (a) the officer must complete twelve (12) months of service before she can become eligible for maternity leave...

(4) The grant of maternity leave or of no-pay leave on account of pregnancy shall not be a consideration for the termination of the services of any temporary or acting officer...

College of Science, Technology and Applied Arts of Trinidad and Tobago Act, No. 77 of 2000

34. (1) Where an employee who...dies or retires or is retrenched or his post in the College is abolished prior to the establishment of the pension fund plan and at the date of his death, retirement, retrenchment or the abolition of his post, he was in receipt of a higher salary than the pay, pensionable emoluments or salary referred to in section 33, the superannuation benefits payable to the employee or his estate shall be based on the higher salary.

35. (1) When an employee who had exercised the option under section 29(5)(a) or who had transferred in accordance with the provisions of section 30 and who is eligible for superannuation benefits under a pension law and is a member of the pension fund plan dies, retires or is retrenched or his post in the College is abolished, he or his estate shall be paid superannuation benefits by the pension fund plan at an amount which when combined with the superannuation benefits payable under section 33 is equivalent to the benefits based on his pensionable service in the College and calculated at the final salary applicable to him on the date of his death, retirement, retrenchment or the abolition of his office.

Corporal Punishment (Offenders Over 18) Act (Chap. 13:04), as amended by Acts No. 66 of 2000 and 18 of 2005⁷⁴⁰

2. Any male offender, above the age of eighteen years, on being convicted before the High Court of any of the offences mentioned in the Schedule, may be ordered by the Court to be flogged in addition to any other punishment to which he is liable.

Schedule. Offences for which an Offender may be Ordered to be Flogged.

2. Any offence wherein the offender committed or attempted to commit an assault involving the use of any corrosive fluid or any destructive or explosive substance with intent to disfigure or do any grievous bodily harm to any person or had in his possession such fluid or substance with the intention and for the purposes aforesaid.

4. Rape.

5. Any attempt to commit the offences specified in paragraphs 3 and 4.

6. Incest.

Criminal Injuries Compensation Act, No. 21 of 1999

3. In this Act -

“criminal injury” or “injury” includes any harm or damage done to a person’s physical or mental condition as a result of a crime listed in the First Schedule, any disease deliberately, recklessly or negligently inflicted on another person and pregnancy arising out of rape;

“dependant” means -

(a) a spouse or former spouse who was being maintained by the victim at the time of the victim’s death;

(b) a person who was living in a cohabitational relationship with the victim for not less than three years before his death;

(d) a person who at the time of the victim’s death was financially dependant on him;

First Schedule

Crimes to which this Act Applies

(h) Offences under the Sexual Offences Act.

⁷⁴⁰ Corporal Punishment (Offenders not over 16) Act (Chap. 13:03), 1980 Rev. was repealed by Act No. 66 of 2000.

Criminal Procedure Act (Chap. 12:02), 1980 Rev.

62. (1) Where a woman convicted of an offence punishable with death is found in accordance with this section to be pregnant, the sentence to be passed on her shall be a sentence of imprisonment for life instead of sentence of death.

Customs Act (Chap. 78:01), 1980 Rev.

66. A female shall not be searched except by a female.

Defence Act (Chap. 14:01), 1980 Rev.

167. (1) Where a court has made an order against any person...for the payment of any periodical or other sums specified in the order for or in respect of -

- (a) the maintenance of his wife or child or of any illegitimate child of whom he is the putative father...

168. (1) Where the Chief of Defence Staff or an officer authorised by him is satisfied that an officer or other rank is neglecting without reasonable cause to maintain his wife or any child of his under the age of sixteen, the Chief of Defence Staff or officer may order such sum to be deducted from his pay and appropriated towards the maintenance of his wife or child as the Chief of Defence Staff or officer thinks fit.

Defence (Pensions, Terminal and Other Grants) Regulations, LN No. 38 of 1968

11. (1) Where an officer or other rank dies while in the service of the Force and at the date of his death has completed ten years qualifying service, there shall be paid -

- (a) if he is survived only by a widow, to that widow, the terminal grant to which such officer or other rank would have been entitled had he retired at the date of his death and a pension while she remains unmarried...

Defence (Short Service Commissions) Regulations, LN No. 104 of 1987

19. Where an officer dies while in the service of the Force and at the date of his death he has completed ten years reckonable service, the gratuity and pension for which he would have been eligible had he retired at the date of his death shall be paid in accordance with regulation 11 of the 1968 Regulations.

20. (1) Where an officer dies while in the service of the Force but before he has completed ten years reckonable service, there shall be paid to his widow or orphans or to both such widow and orphans or where appropriate, to his legal personal representative, a special gratuity...

Deoxyribonucleic Acid (DNA) Identification Act, No. 27 of 2000⁷⁴¹

34. A qualified person who takes a tissue sample or bodily substance from another person -

- (a) shall ensure that -
 - (i) it is taken in circumstances affording reasonable privacy to that other person;
 - (ii) it is taken in the presence or view of a person who is of the same sex as that other person;
 - (iii) it is not taken in the presence or view of a person whose presence is not necessary for the purpose of taking the tissue sample or bodily substance;
 - (iv) the taking does not involve the removal of more clothing than is necessary; and
 - (v) the taking does not involve more visual inspection than is necessary;
- (b) shall ensure that the procedure -
 - (i) is carried out in a manner consistent with appropriate medical or other relevant professional standards;

⁷⁴¹ Not yet in force.

- (ii) is not carried out in a cruel, inhuman or degrading manner...

Education (Teaching Service) Regulations, as amended by LN No. 184 of 2000, made pursuant to section 85(11) of the Education Act (Chap. 39:01)

32. In these Regulations “family” shall be taken to mean a teacher’s wife and children, his mother, father, brothers, sisters, who are living with and are dependant on him.

48. Three months’ maternity leave, the first month on full-pay and the succeeding two months on half-pay commencing approximately one month before the expected date of confinement shall be granted and must be taken by married female teachers who become pregnant.

Extradition (Commonwealth and Foreign Territories) Act, No. 36 of 1985

First Schedule. Description of Extraditable Offences.

1. Murder.
2. Manslaughter.
3. Rape.
4. Abduction, kidnapping, false imprisonment or dealing in slaves.
5. Assault occasioning actual bodily harm.
6. Child stealing.
7. Abortion.
8. Unlawful sexual intercourse with a female.
9. Indecent assault.
10. Bigamy...

Equal Opportunity Act, No. 69 of 2000

20. It is not a contravention of this Act for a person to grant to a woman rights or privileges in connection with pregnancy or childbirth.

Fire Service Act (Chap. 35:50), 1980 Rev.

Fifth Schedule. Pensions and Gratuities Payable to Fire Officers in the First and Second Divisions.

9. (1) If a fire officer dies as a result of injuries received...while in the service of the Fire Service, the President...may grant...-

(d) if the deceased fire officer leaves a widow, a pension to her, while unmarried and of good character...

(h) if the deceased fire officer does not leave a widow...and if his mother was wholly or mainly dependant on him for her support, a pension to the mother, while of good character and without adequate means of support...

(3) In the case of a pension granted under subparagraph (1)(h), if the mother is a widow at the time of the grant of the pension and subsequently remarries, the pension shall cease as from the date of the remarriage...

(4) A pension granted to a female child under subparagraph (1) shall cease upon the marriage of the child under the age of eighteen years.

(7) If a fire officer dies while in the Fire Service, the President may grant to his widow or to his children...a gratuity...

Fire Service (Terms and Conditions of Employment) Regulations, LN No. 267 of 1998 made pursuant to section 34 of the Fire Service Act

86. (1) Subject to this Regulation, maternity leave of one month with full pay and two months with half pay shall be granted to a pregnant officer.

(2) In order to be granted maternity leave –

(a) the pregnant officer as of the date of commencement of such leave, shall have

- served for a period of not less than twelve continuous months in the Service;
 - (b) the pregnant officer shall proceed on maternity leave at least one month before the expected date of delivery of the child as certified by an approved medical practitioner; and
 - (c) the pregnant officer shall furnish the certificate referred to in paragraph (b) to the Chief Fire Officer six weeks before the expected date of delivery.

(6) A pregnant officer who has not completed twelve months continuous service prior to the date on which she would have proceeded on maternity leave had she so served, shall not qualify for the grant of maternity leave but shall be permitted to proceed on leave of absence of up to three months without pay on account of pregnancy provided the officer complies with the conditions in subregulation 2(b) and (c).

88. The Chief Fire Officer may direct that an officer who is pregnant be given light duties prior to her departure on maternity leave granted under regulation 86 and for such period as the circumstances of the officer's case may justify and may permit or require such officer to attend work out of uniform.

Food and Drugs Regulations, made pursuant to section 25 of the Food and Drugs Act (Chap. 30:01)

16A. (1) Every manufacturer or distributor of a breast-milk substitute shall display on the outer label of the container:

- (a) a statement headed "Important Notice" proclaiming the superiority of breast-feeding over other methods of infant feeding and advising that such substitute should be used only on proper medical advice having been obtained as to the need for, and the proper methods of its use;
- (b) directions for use and a warning of the consequences of failure to follow those directions.

(3) The manufacturer or distributor of every food product which is not a breast-milk substitute but which is capable of being modified to become one, shall include on the label a warning that the product is not to be used as the sole source of nourishment for babies.

Genocide Act (Chap. 11:20), 1980 Rev.⁷⁴²

Schedule. Article II of the Genocide Convention

In the present Convention genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (d) imposing measures intended to prevent births within the group...

Guidelines for Contract Employment in the Tobago House of Assembly, LN No. 148 of 2000

Maternity Leave

Provision shall be made for all female appointees to be granted maternity leave as follows:

1. Person engaged shall be eligible for maternity leave comprising one month with full pay and two months with half pay on the following conditions:

- (a) as of the date of commencement of such leave, she shall have served the government for a period of not less than twelve continuous months...
- (b) she shall proceed on maternity leave at least one month before the expected date of delivery of the child...

⁷⁴² While this Act has been repealed by the International Criminal Court Act, No. 4 of 2006, any action commenced under the Genocide Act shall continue as if it had been brought under the International Criminal Court Act.

2. Where the half pay to which the person engaged is entitled during maternity leave together with the Maternity Benefits payable under the National Insurance Act amounts to less than her full pay, the difference shall be paid to the person engaged.

3. Where the person engaged has not completed twelve months continuous service she shall not qualify for the grant of maternity leave but shall be permitted to proceed on leave of absence without pay on grounds of pregnancy.

5. The taking of maternity leave shall not prejudice or affect the eligibility of the person engaged for vacation leave.

Income Tax Act (Chap. 75:01), 1980 Rev.

8. (1) There shall be exempt from the tax -

(a) ...the pension received by...the widow of a President or retired President...

20. (1) Subject to subsection (2), an individual to whom section 17 applies who, in the year of income has paid -

(a) a maintenance or separation allowance...

(b) alimony to a former spouse from whom he or she is divorced...

shall be entitled to a deduction equal to the amount of the such allowance or alimony.

26. (4) In this section "dependent relative" means, in relation to an individual, a person who -

(a) whether incapacitated or not is the mother of the individual or of his wife and is unmarried, divorced, widowed or separated...

27. (1) An individual to whom section 17 applies who -

(c) has made a contribution under the Widows' and Orphans' Pensions Act...

(d) being an insured person within the meaning of the National Insurance Act...

shall be allowed such deduction of the premiums paid by him...

First Schedule.

18. If, in any year of income, and in the case of a woman who in that year of income is a married woman living with her husband the man disposes of an asset to the wife, or the wife disposes of an asset to the man, both shall be treated as if the asset was acquired from the one making the disposal for a consideration of such amount as would secure that on the disposal neither a gain nor loss would accrue to the one making the disposal.

International Criminal Court Act, No. 4 of 2006⁷⁴³

9. (2) For the purposes of this section, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(d) imposing measures intended to prevent births within the group...

10. (2) For the purposes of this section, a "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

(g) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

(h) persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3 of Article 7 of the Statute, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any

⁷⁴³ The Schedule to this Act is the Rome Statute of the International Criminal Court, 17 July 1998.

crime within the jurisdiction of the ICC...

International War Crimes Tribunal Act, No. 24 of 1998

Schedule One. Article 4.

2. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (d) imposing measures intended to prevent births within the group...

Management Development Centre Act (Chap. 85:51), 1980 Rev.

17. Without prejudice to the generality of section 16, the Pension Scheme may enable the Centre to –

- (a) grant gratuities, pensions or superannuation allowances, to, or to the widows, families or dependants of, its employees
- (c) enter into and carry into effect agreements with any insurance company or other association or company for securing to any such employee, widow, family or dependant such gratuities, pensions or allowances as are by this section authorised to be granted...

Maternity Protection Act, No. 4 of 1998

4. In this Act –

“confinement” means, in relation to a female employee who has become pregnant, labour resulting in the issue of a child or labour after twenty-six weeks of pregnancy resulting in the issue of a child whether dead or alive...

7. (1) Subject to this Act, an employee is entitled to -
- (a) leave of absence for the purpose of maternity leave;
 - (b) pay while on maternity leave;
 - (c) resume work after such leave on terms no less favourable than were enjoyed by her immediately prior to her leave.

(2) Where an employee has proceeded on maternity leave and the child of the employee dies at birth or within the period of the maternity leave, the employee shall be entitled to the remaining period of maternity leave with pay.

(3) Where an employee has not proceeded on maternity leave and –

- (a) a premature birth occurs and the child lives, the employee is entitled to the full period of maternity leave with pay; or
- (b) a premature birth occurs and the child dies at birth or at any time within the thirteen weeks thereafter, the employee is entitled to the full or remaining period of maternity leave with pay, as the case may be.

(4) An employee who is pregnant and who has, on the written advice of a qualified person, made an appointment to attend at any place for the purpose of receiving prenatal medical care shall...have the right not to be unreasonably refused time off during her working hours to enable her to keep the appointment.

(5) An employee who is permitted to take time off during her working hours, in accordance with subsection (4), shall be entitled to receive pay from her employer for the period of absence.

8. (1) An employee is not entitled to the rights referred to in section 7 unless:
- (a) as of the expected date of confinement as certified by a qualified person, she has been continuously employed by that employer for a period of not less than twelve months;
 - (b) she informs her employer, in writing, no later than eight weeks before the expected date of her confinement that she will require leave of absence due to pregnancy;
 - (c) she submits to her employer a medical certificate from a qualified person stating the probable date of confinement; and

- (d) she informs her employer in writing of her intention to return to work at the expiry of her maternity leave.

9. (1) An employee is entitled to thirteen weeks maternity leave and may proceed on such leave six weeks prior to the probable date of confinement...and is required to return to work, subject to section 10, no later than thirteen weeks from the date she proceeded on leave.

(2) During the period of maternity leave, an employee is entitled to receive pay from her employer to an amount equivalent to one month's leave with full pay and two month's leave with half pay.

(3) Where the sum of the amount paid to the employee under subclause (2) and the maternity benefits payable to her under the National Insurance Act is less than her full pay during the period, the employer shall pay the difference to the employee.

10. (1) Where an employee is unable to return to work on the required date, she shall submit to her employer a certificate from a registered medical practitioner stating that by reason of disease or bodily or mental disablement, whether to herself or her baby, she will be incapable of returning to work on the required date and stating her intended date of return.

(2) An employee who extends her absence from work for medical reasons under subsection (1) may do so for a period not exceeding 12 weeks after the required date of return and shall inform her employer in writing of her intended date of return.

(3) Subject to an employee's right to sick or vacation leave with pay under any other written law, industrial award or collective agreement, an employee under subsection (2) shall be paid half pay for the first six weeks and no pay for the next six weeks.

(4) An employee may postpone her return to work for non-medical reasons until a date not exceeding four weeks after the required date of return of, within ten working days, before the required date, she gives the employer written notice, stating the reason why she is unable to return to work and stating and intended date of return.

(5) Subject to an employee's right to sick or vacation leave with pay under any other written law, industrial award or collective agreement, an employer is not liable to pay an employee in respect of leave for the period between the required date of return to work under section 9(1) and the intended date of return under subsection (4).

12. (1) Where an employee or employer alleges non compliance with the provisions of this Act, or an employee's employment is terminated on the ground of pregnancy or on any ground relating to pregnancy, or there is a difference of opinion as the reasonableness or otherwise of any action taken or not taken by an employer or employee, the employee, trade union or the employer may report the matter to the Minister and the matter shall be deemed to be a trade dispute and shall be dealt as such with under the Industrial Relations Act.

18. (1) Subject to subsection (2), there is no limit to an employee's right to maternity leave under section 7(1)(a) and her right to return to work under section 7(1)(c).

(2) An employee's right to pay for maternity leave under section 7(1)(b) is limited to one payment during each twenty-four months commencing at the beginning of such leave.

19. Where an employee is entitled to maternity leave...that leave shall be in addition to any vacation leave and sick leave to which that employee is eligible.

20. An employee on maternity leave shall not be deprived of an opportunity to be considered for promotion for which she is eligible and which may arise during her period of leave.

21. Notwithstanding any other written law to the contrary, the period of maternity leave shall be included in the computation of an employee's pension or other terminal benefits.

Married Persons Act (Chap. 45:50), 1980 Rev.

11. (1) A married woman may effect a policy upon her own life or the life of her husband for her own benefit...

Matrimonial Proceedings and Property Act (Chap. 45:51), 1980 Rev.

18. (1) In the case of any petition for divorce or for nullity of marriage or for presumption of death and dissolution of marriage -

- (c) the Court may order the costs or any part thereof arising from such intervention to be paid by any of the parties, including a wife if she has separate property...

Matrimonial Causes Rules, made pursuant to sections 77-81 of the Supreme Court of Judicature Act (Chap. 4:01), 1980 Rev.

90. (2) The Court may, if it thinks fit, allow to the wife against the husband solicitor and client costs to be taxed.

Military Training (Prohibition) Act, No. 14 of 1996

7. (3) Every search of a female person under this section shall be conducted by a female officer.

Minimum Wages (Catering Industry) Order, LN No. 158 of 1991, made pursuant to section 3 of the Minimum Wages Act (Chap. 88:04)

8. (1) A pregnant worker shall be entitled to maternity leave and to resume work after such leave.

Minimum Wages (Household Assistants) Order, LN No. 160 of 1991, made pursuant to section 3 of the Minimum Wages Act (Chap. 88:04)

9. (1) A household assistant shall be entitled to maternity leave and to resume work after such leave.

Minimum Wages (Security Industry Employees) Order, LN No. 231 of 1994, made pursuant to section 3 of the Minimum Wages Act (Chap. 88:04)

9. (1) A pregnant employee shall be entitled to maternity leave with pay and to resume work after such leave.

Minimum Wages (Shop Assistants) Order, LN No. 159 of 1991, made pursuant to section 3 of the Minimum Wages Act (Chap. 88:04)

8. (1) A pregnant shop assistant shall be granted maternity leave with pay...

"MIZPEH" Half Way House (Incorporation) Act, No. 3 of 1990

3. The aims and objects of "MIZPEH" are to -

- (a) provide a programme of counselling, re-education and therapy for troubled young adults and women generally...
- (d) foster, feed, clothe or otherwise care and provide for poor, underprivileged, destitute, abandoned and abused young adults and women generally...
- (i) organise and conduct seminars to educate young adult and women generally...

Municipal Corporations (Pensions) Act (Chap. 25:05), 1980 Rev.

19. (2) Where a female officer, having completed not less than five years' service in the Corporation, resigns from the service on or with a view to marriage, or is required to retire from the service on account of her marriage, she may be granted on production within six months...of satisfactory evidence of her marriage, a gratuity...

24. (2) Where any person to whom a pension has been granted has left Trinidad and Tobago and deserted and left his wife or child within Trinidad and Tobago without sufficient means of support, the Council... may from time to time deduct from the moneys payable to such person by way of pension...and may apply the same for the maintenance and support of the wife or child.

25. (2) In any case where a pension or allowance ceases by reason of the bankruptcy or insolvency of the pensioner, the Council may...cause all or any part of the moneys to which the pensioner would have been entitled by way of pension or allowance...to be paid to or applied for the maintenance and personal support or benefit...of...the pensioner and any wife, child or children of his...

26. (2) Where a pension or allowance ceases under subsection (1), the Council may cause all or any part of the moneys to which the pensioner would have been entitled by way of pension or allowance to be paid to or applied for the benefit of any wife, child or children of the pensioner...

National Carnival Commission of Trinidad and Tobago Act, No. 9 of 1991

11. (1) The Commission shall...provide for the establishment and maintenance of a pension scheme for the benefit of its officers and employees.

(5) The pension scheme may enable the Commission to –

- (a) grant gratuities, pensions or superannuation allowances to, or to the widows, families or dependants of, its officers and employees...
- (c) enter into and carry into effect agreements with any insurance company or other association or company for securing gratuities, pensions or allowances to any such officer or employee or his widow, family or dependant...

National Insurance Act (Chap. 32:01), as amended by Act Nos. 9 of 1999 and 2004

46. (1) From the appointed day the benefits payable to or in respect of persons insured under section 36(1), shall be -

- (a) maternity benefit, that is to say, periodical payments in the case of the pregnancy or confinement of an employed woman...
- (bb) maternity grant that is to say, a payment in the case of the pregnancy or confinement of an insured woman...

National Insurance (Benefits) Regulations, made pursuant to section 55 of the National Insurance Act as amended by LN Nos. 73 of 1999 and 66 of 2004

22. (2) Maternity benefit shall be paid if the insured person, during the period of thirteen contribution weeks immediately preceding the contribution week calculated as the sixth week before the expected week of her delivery -

- (a) was in insurable employment for a period of not less than ten contribution weeks; or
- (b) was in receipt of sickness benefit for any period and either resumed insurable employment thereafter or continued receiving sickness benefit during the last contribution week in the period of thirteen contribution weeks.

22A. Subject to the provisions of these regulations a maternity grant shall be payable where confinement results in the birth of a living child or where confinement does not so result, the pregnancy lasted not less than twenty-six weeks, provided always that the insured satisfied the requirements set out in regulation 22(2)(a) or (b).

23. An insured person shall be disqualified from receiving maternity benefit, if during the period when such benefit is payable she engages in any work for which remuneration is or would ordinarily be payable.

27A. Maternity benefit shall be –

- (a) payable for a period starting not earlier than six weeks before the expected date of delivery and continuing until the expiration of thirteen weeks...
- (b) paid in a lump sum.

42. (2) Where a person in receipt of widow's allowance remarries, there shall be paid to that person a remarriage grant equal in amount to the unpaid portion of widow's allowance which would have been payable to her but for her remarriage.

National Insurance (Contributions) Regulations, made pursuant to section 44 of the National Insurance Act

14. No contribution shall be payable in respect of a person for any week in which such person is in receipt of sickness, maternity or employment injury benefit...

National Library and Information System Act, No. 18 of 1998

22. (1) Subject to subsection (2), NALIS shall provide for the establishment and maintenance of a pension scheme or arrange for membership in a scheme for such of its employees as are recruited by NALIS in accordance with section 18.

(4) Without prejudice to the generality of subsection (1), NALIS may, under the pension scheme –

- (a) establish contributory superannuation schemes and establish and contribute to superannuation funds for the benefit of the employees;
- (b) grant gratuities, pensions or superannuation allowances to the widows, families or dependants of its employees;
- (c) enter into and carry into effect arrangements with any insurance company or other association or company for securing for any of its employees or their widows, families or dependants, such gratuities, pensions or allowances and benefits as are authorised by this section.

Occupational Safety and Health Act, No. 1 of 2004

4. (1) In this Act, except where otherwise expressly provided -
"woman" means a female person who has attained the age of eighteen years...

6. (9) An employer shall, after being notified by a female employee that she is pregnant and upon production of a medical certificate to that effect, adapt the working conditions of the female employee to ensure that she is not -

- (a) involved in the use of, or exposed to, chemicals, substances or anything dangerous to the health of the unborn child; or
- (b) subjected to working conditions dangerous to the health of the unborn child, and where appropriate, the employer may assign alternative work, where available, to her without prejudice to her right to return to her previous job.

(11) No employer shall require or permit a pregnant employee or an employee who is nursing her child to perform work that is hazardous to her health or the health of the child.

(12) Notwithstanding any other law, during an employee's pregnancy, and for a period of six months after birth of her child, her employer shall offer her suitable, alternative employment on terms and conditions that are no less favourable than her ordinary terms and conditions of work, where the employee is required to perform work that poses a danger to her safety or health or that of her child, unless there is no other available suitable alternative employment or that in doing so the employer will incur costs greater than ordinary administrative costs.

40. The occupier of every factory shall provide and maintain separately for men and women employed therein, adequate, clean and easily accessible washing facilities which are provided

with soap and suitable hand drying materials or devices and such other provisions as are prescribed.

41. The occupier of every factory shall -

- (a) provide and maintain separately for men and women employed therein adequate, clean and easily accessible sanitary conveniences;
- (b) provide and maintain suitable receptacles or disposal units for use by women...

42. In every factory, there shall be provided and maintained, distinct and apart from any sanitary convenience or lunchroom and separately for the use of men and women, adequate and suitable changing rooms with locks on the inside and accommodation for their clothing not worn during working hours.

87. Where a young person is employed in contravention of this Act, the parent of the young person, as the case may be, commits an offence and is liable, on summary conviction, to a fine of five thousand dollars, unless it appears to the Court that the contravention occurred without the consent, connivance, or wilful default of the parent.

Offences Against the Person Act (Chap. 11:08), as amended by Act No. 11 of 2005, 1980 Rev.

4B. Where on a charge of murder there is evidence on which the jury can find that the person charged was provoked...to lose his self-control, the question whether the provocation was enough to make a reasonable man do as he did shall be left to be determined by the jury...

30A. (1) For the purpose of this section -

- (a) "harassment" of a person includes alarming the person or causing the person distress by engaging in a course of conduct such as -
 - (i) following, making visual recordings of, stopping or accosting the person;
 - (ii) watching, loitering near or hindering or preventing access to or from the person's place of residence, workplace or any other place frequented by the person;
 - (iii) entering property or interfering with property in the possession of the person;
 - (iv) making contact with the person, whether by gesture, directly, verbally, by telephone, computer, post or in any other way;
 - (v) giving offensive material to the person, or leaving it where it will be found by, given to, or brought to the attention of the person;
 - (vi) acting in any manner described in subparagraphs (i) to (v) towards someone with a familial or close personal relationship to the person; or
 - (vii) acting in any other way that could reasonably be expected to alarm or cause the person distress...

31. (1) Any person who is convicted of the crime of rape is liable to imprisonment for life or for any term of years.

(2) Every person who induces a married woman to permit him to have connection with her by personating her husband shall be deemed to be guilty of rape.

32. (1) A man who has sexual intercourse with a woman whom he knows to be his grand-daughter, daughter, sister or mother is guilty of the offence of incest...

(2) A woman of the age of eighteen years or over who permits a man whom she knows to be her grand-father, father, brother or son to have sexual intercourse with her with her consent is guilty of the offence of incest...

33. (1) On a man's conviction of an offence under section 32 against a girl under the age of eighteen, or of attempting to commit such an offence, the court may by order divest him of all authority over her.

34. (1) Any person who unlawfully and carnally knows any girl under the age of fourteen years is liable to imprisonment for life or for any term of years.

(2) Any person who attempts to have unlawful carnal knowledge of any girl under the age of fourteen is liable to imprisonment for four years.

35. (1) Any person who unlawfully and carnally knows or attempts to have unlawful carnal knowledge of any mentally subnormal female under circumstances which do not amount to rape but which prove that the offender knew at the time of the commission of the offence that the female was mentally subnormal is liable to imprisonment for four years.

36. (1) Any person who, being the owner or occupier of any premises or having, or acting or assisting in the management or control thereof, induces or knowingly suffers any girl under the age of fourteen years to resort to or be in or upon such premises for the purpose of being unlawfully and carnally known by any man, whether such carnal knowledge is intended to be with any particular man or generally, is liable to imprisonment for five years.

37. (1) Any person who -

(a) procures or attempts to procure any girl or woman under eighteen years of age, not being a common prostitute, or of known immoral character, to have unlawful carnal connection...

(b) procures or attempts to procure any woman or girl to become...a common prostitute;

(c) procures or attempts to procure any woman or girl to leave Trinidad and Tobago, with intent that she may become an inmate of or frequent a brothel elsewhere;

(d) procures or attempts to procure any woman or girl to leave her usual place of abode in Trinidad and Tobago (such place not being a brothel), with intent that she may, for the purposes of prostitution become an inmate of or frequent a brothel within or without Trinidad and Tobago,

is liable to imprisonment for two years.

38. (1) Any person who -

(a) by threats or intimidation, procures or attempts to procure any woman or girl to have any unlawful carnal connection...

(b) by false pretences or false representations, procures any woman or girl, not being a common prostitute or of known immoral character, to have any unlawful carnal connection...

(c) applies, administers to or causes to be taken by, any woman or girl any drug, matter or thing, with intent to stupefy or overpower so as thereby to enable any person to have unlawful carnal connection with such woman or girl,

is liable to imprisonment for two years.

39. (1) Any person who, with intent that any unmarried girl under the age of sixteen years should be unlawfully and carnally known by any man...takes or causes to be taken the girl out of the possession and against the will of her father or mother or any other person having the lawful care or charge of her is liable to imprisonment for two years.

40. (1) Any person who detains any woman or girl against her will -

(a) in or upon any premises with intent that she may be unlawfully and carnally known by any man, whether any particular man or generally; or

(b) in any brothel,
is liable to imprisonment for two years.

(2) Where a woman or girl is in or upon any premises for the purpose of having any unlawful carnal connection, or is in any brothel, a person shall be deemed to detain the woman or girl in or upon the premises or in the brothel, if, with intent to compel or induce her to remain in or upon the premises or in the brothel, that person withholds from the woman or girl any wearing apparel or other property belonging to her, or, where wearing apparel has been lent or otherwise supplied to the woman or girl by or by the direction of the person, the person threatens the woman or girl with legal proceedings if she takes away with her the wearing apparel so lent or supplied.

(3) No legal proceedings, whether civil or criminal, shall be taken against any such woman or girl for taking away or being found in possession of any such wearing apparel as was necessary to enable her to leave the premises or brothel.

43. (1) If it appears to any Justice, on complaint made before him on oath by any parent, relative, or guardian of any woman or girl...that there is reasonable cause to suspect that the woman or girl is unlawfully detained for immoral purposes by any person in any place within Trinidad and Tobago, the Justice may issue a warrant authorising any person named therein to search for, and, when found, to take to and detain in a place of safety the woman or girl until she can be brought before a Magistrate, and the Magistrate before whom the woman or girl is brought may cause her to be delivered up to her parents or guardians, or otherwise dealt with as circumstances may permit and require.

(2) The Justice issuing such warrant may...cause any person accused of so unlawfully detaining the woman or girl to be apprehended and brought before a Magistrate, and proceedings to be taken for punishing that person according to law.

(3) A woman or girl shall be deemed to be unlawfully detained for immoral purposes if she is so detained for the purpose of being unlawfully and carnally known by any man...and

(a) either is under the age of fourteen years; or

(b) if of or over the age of fourteen years, and under the age of sixteen years, if so detained against her will, or against the will of her father or mother...

(c) if of or above the age of sixteen years is so detained against her will.

(4) Any person authorised by warrant under this section to search for any woman or girl so detained as above may enter...any house, building or other place specified in the warrant, and may remove the woman or girl therefrom.

44. Where, on the trial of any offence under this Act, it is proved to the satisfaction of the Court that the seduction or prostitution of a girl under the age of thirteen has been caused, encouraged, or favoured by her father, mother, guardian, master or mistress, it is in the power of the Court to divest the father, mother, guardian, master or mistress of all authority over her...

45. (1) Any person who is convicted of any indecent assault upon any female is liable to imprisonment for three years.

46. Where any woman of any age has any interest...in any real or personal estate, or is an heiress or presumptive next of kin to any one having such interest, any person who, from motives of lucre, takes away or detains the woman against her will, with intent to marry or carnally know her, or causes her to be married or carnally known by any other person, and any person who fraudulently allures, takes away, or detains the woman, being under the age of eighteen years, out of the possession and against the will of her father or mother, or of any person having the lawful care or charge of her, with intent to marry or carnally know her, or causes her to be married or carnally known by any other person is liable to imprisonment for four years.

47. Any person who, by force, takes away or detains against her will any woman of any age, with intent to marry or carnally know her, or causes her to be married or carnally known by any other person is liable to imprisonment for four years.

48. Any person who unlawfully takes, or causes to be taken, any unmarried girl, being under the age of fourteen years, out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her, is liable to imprisonment for two years.

49. Any person who –

- (a) keeps or manages or acts or assists in the management of a brothel;
- (b) being the tenant, lessee, occupier, or person in charge of any premises, knowingly permits the premises...to be used as a brothel or for the purposes of habitual prostitution; or
- (c) being the lessor or landlord of any premises, or the agent of the lessor or landlord, lets the same or any part thereof with the knowledge that the premises or some part thereof are to be used as a brothel, or is wilfully a party to the continued use of the premises or any part thereof as a brothel,

is liable on summary conviction...

51. (1) Every male person who -

- (a) knowingly lives wholly or in part on the earnings of prostitution, or
- (b) in any public place persistently solicits or importunes for immoral purposes,

is liable on summary conviction to imprisonment for six months.

52. Every female person who is proved to have, for the purposes of gain, exercised control, direction, or influence over the movements of a prostitute in such a manner as to show that she is aiding, abetting, or compelling her prostitution with any person or generally, is liable, on summary conviction to imprisonment for six months.

59. (1) Any person who is convicted of the abominable crime of buggery...is liable to imprisonment for five years.

64. Whenever, upon the trial for any offence punishable under this Act, it may be necessary to prove carnal knowledge, it shall not be necessary to prove the actual emission of seed in order to constitute a carnal knowledge, but the carnal knowledge shall be deemed complete upon proof of penetration only.

Partnership Act (Chap. 81:02), 1980 Rev.

4. In determining whether a partnership does or does not exist, regard shall be had to the following rules:

- (c) the receipt by a person of a share of the profits of a business is *prima facie* evidence that he is a partner in the business, but the receipt of such a share, or of a payment contingent on or varying with the profits of a business, does not of itself make him a partner in the business; and in particular –
- (v) a person being a widow or child of a deceased partner and receiving by way of annuity a portion of the profits made in the business in which the deceased person was a partner, is not, by reason only of the receipt, a partner in the business or liable as such...

24. Where land or any heritable interest therein has become partnership property, it shall, unless the contrary intention appears, be treated as between the partners...and also as between the next of kin of a deceased partner and his executors or administrators, as personal and not real or heritable estate.

Pensions Act (Chap. 23:52), 1980 Rev.

15. (6) Notwithstanding the preceding provisions of this section a gratuity may be granted to a female officer, in accordance with this Act, who retires for the reason that she is married or is about to be marry, notwithstanding that she is not otherwise eligible under the section for the grant of any pension, gratuity or other allowance.

22. (1) Where an officer holding either a pensionable or a non-pensionable office dies as a result of injuries received...while in the service of the Government of Trinidad and Tobago, the President may grant...to his legal personal representative or to his dependants under section 21

- (i) if the deceased officer leaves a widow, a pension to her, while unmarried and of good character...
- (v) if the deceased officer does not leave a widow, or if no pension is granted to his widow, and if his mother was wholly or mainly dependant on him for her support, a pension to the mother, while of good character and without adequate means of support...

except that –

- (B) in the case of a pension granted under paragraph (v), if the mother is a widow at the time of the grant of the pension and subsequently remarries the pension shall cease as from the date of re-marriage...
- (C) a pension granted to a female child under this section shall cease upon the marriage of such child under the age of eighteen years.

24. (2) Where any person to whom a pension has been granted has left Trinidad and Tobago and deserted and left his wife or child within Trinidad and Tobago without sufficient means of support, the President...may from time to time deduct from the moneys payable to such person by way of pension such sum or sums as the President may think expedient, and may apply the same for the maintenance and support of the wife or child.

25. If any officer to whom a pension or other allowance has been granted under this Act is adjudicated a bankrupt or is declared insolvent by judgement of the Court, then the pension or allowance shall forthwith cease except that in the case where a pension or allowance ceases by reason of the bankruptcy or insolvency of the pensioner, the President may...cause all or any part of the moneys to which the pensioner would have been entitled...to be paid to or applied for the maintenance and personal support or benefit of all or any...namely, the pensioner and any wife, child or children...

26. If any officer to whom a pension or other allowance has been granted under this Act is sentenced to a term of imprisonment...the President may direct that the pension or allowance shall forthwith cease but –

- (b) where a pension or allowance ceases for the reason mentioned above the President may cause all or any part of the moneys...to be paid to or applied for the benefit of the wife, child or children of the pensioner...

Pensions Regulations, deemed to be made pursuant to section 7(4) of the Pensions Act, as amended by the Law Reform (Pensions) Act, No. 20 of 1997

4. (1) Subject to subregulation (2), where a female officer having held a pensionable office...for not less than five years, retires from the service of the Government for the reason that she has married or is about to marry, and is not eligible for a gratuity under this Part, she

may be granted upon production within six months after her retirement...of satisfactory evidence of her marriage –

- (a) a gratuity...

23. A female officer who has been transferred to or from the service of Trinidad and Tobago and who retires for the reason that she has married, or is about to marry...may be granted a gratuity which bears to the gratuity for which she would be eligible if her public service had been wholly in the service in which she is last employed...

Police Service Act (Chap. 15:01), 1980 Rev.

54. The Award Fund established under the former Ordinance shall continue to be kept by the Commissioner and administered in the manner directed by this Act, and shall be appropriated to the payment of -

- (b) such compassionate gratuities to the widows and orphans, being legitimate, of police officers as, in exceptional circumstances, the President may allow...

64. (1) The President may make regulations for carrying out or giving effect to this Act...

- (a) for prescribing classifications for officers in the police service, including qualifications, duties and remunerations;...
- (f) for regulating the hours of attendance of police officers...;
- (g) for regulating the duties to be performed by police officers;
- (h) for regulating the granting of leave to police officers;...
- (j) the enlistment, training and discipline of the Police Service;
- (k) the description and issue of arms, ammunition, accoutrements, uniform and necessaries to be supplied to the Police Service;...

(2) Regulations made under subsection (1) may provide that any of the Regulations -

- (a) shall not apply to all or any female officers; or
- (b) shall apply only to female police officers or to such of them as may be specified.

Sixth Schedule, Pensions and Gratuities Rules

4. (13) The President may, where a pension ceases for the reasons set out in subrule (11), cause all or part of the moneys to which the pensioner would have been entitled by way of pension to be paid to or applied for the benefit of any wife, child or children of the pensioner...

5. (2) Where any person to whom a pension has been granted hereunder has left Trinidad and Tobago and has deserted and left his wife or child in Trinidad and Tobago without sufficient means of support is, by reason of such person's absence from Trinidad and Tobago, unable and would but for such absence be able to obtain an order or maintenance, may from time to time cause to be deducted from the moneys payable to such person by way of pension such sum or sums as the President may consider expedient and apply the same for the maintenance and support of such wife or child.

10. (1) If a police officer dies as a result of injuries received...while in the service of the Police Service, the President...may grant, in addition to the grant, if any, made under subrule (3) -

- (i) if the deceased police officer leaves a widow, a pension to her, while unmarried and of good character...
- (v) if the deceased police officer does not leave a widow, or if no pension is granted to his widow and if his mother was wholly or mainly dependant on him for her support, a pension to the mother, while of good character and without adequate means of support...

(3) In the case of a pension granted under subrule (1)(v), if the mother is a widow at the time of the grant of such pension and subsequently remarries, such pension shall cease as from the date of the remarriage; and if it appears to the President at any time that the mother is adequately provided with other means of support, such pension shall cease...

(4) A pension granted to a female child under subrule (1) shall cease upon the marriage of such child under the age of eighteen years.

(7) (a) If a police officer dies while in the Police Service, the President may grant to his widow or to his children...a gratuity...

(b) Where a police officer...dies after retirement from the Police Service...the President may grant to his widow or to his children...a gratuity.

Provident Fund Act (Chap. 23:57), 1980 Rev.

17. (1) An employee on transfer from a pensionable office...to an office...which carries greater wages than those received by him immediately prior to his transfer may elect at his option to become a depositor -

(b) on the basis of the difference only between the wages of his new appointment and the wages of the pensionable office from which he is transferred and to be paid on his final retirement...except that if the employee is a contributor to the Widows' and Orphans' Pension Scheme under the provision of the Widows' and Orphans' Pension Act, he is required to contribute to the scheme on the basis of the wages of the office from which he has been transferred.

18. (1) Where an employee holding a non-pensionable post...is appointed to an office specified in Part A of the Schedule he may at his option elect to become a depositor -

(b) on the basis of the difference only between the wages of his new employment and the wages previously drawn by him and to be paid on his final retirement...except that if the employee is a contributor to the Widows' and Orphans' Pension Scheme under the Widows' and Orphans' Pension Act, he shall be required to contribute to the scheme on the basis of the wages of the office from which he has been transferred.

21. (2) Bonuses may be paid as mentioned below -

(a) full bonus -

(iii) to the nominee or legal personal representative of a depositor who dies while in the service...

22. (1) A gratuity...may be paid -

(d) to the nominee of legal personal representative of a depositor who dies while in the service of Trinidad and Tobago and who has at least five years' service...

41. (4) Such pensions as are provided for under this Act shall be payable only if the award thereof would...be more advantageous to the dependants of the deceased depositor than the payment of full bonus.

Public Service Transport Act (Chap. 48:02), 1980 Rev.

19. Without prejudice to the generality of section 18, the Pension Scheme may enable the Corporation to -

(a) grant gratuities, pensions or superannuation allowances to, or to the widows, families or dependants of, its employees...

(c) enter into and carry into effect agreements with any insurance company or other association or company for securing to any such employee, widow, family or dependant such gratuities, pensions or allowances as are by this section authorised to be granted...

Retiring Allowances (Diplomatic Service) Act (Chap. 17:04), 1980 Rev.

10. (1) Subject to this Act, where a person who...dies leaving a widow, there shall be paid to the widow during her lifetime and while unmarried, a widow's allowance...

11. (5) Notwithstanding subsection (1), a female child who marries while under the age of eighteen years shall cease to be entitled to a children's allowance.

Retiring Allowances (Legislative Service) Act (Chap. 2:03), 1980 Rev.

9. (1) Subject to the provisions of this Act, where a person...dies leaving a widow, there shall be paid to the widow during her lifetime and while unmarried, a widow's allowance at an annual rate equivalent to one-half of the retiring allowance...

10. (5) Notwithstanding subsection (1), a female child who marries while under the age of twenty-one years shall cease to be entitled to a children's allowance.

13. Any award payable under this Act shall not be assignable or transferable except for the purpose of satisfying -

- (b) an order of any court for the payment of periodical sums of money towards the maintenance of the wife, former wife or child...

Sexual Offences Act, No. 27 of 1986, as amended by Act No. 31 of 2000

2. In this Act -

'cohabitant' means a person in a cohabitational relationship in accordance with the Cohabital Relationships Act, 1998;

4. (1) Subject to subsection (2), a person ("the accused") commits the offence of rape when he has sexual intercourse with another person ('the complainant') -

- (a) without the consent of the complainant where he knows that the complainant does not consent to the intercourse or he is reckless as to whether the complainant consents; or
- (b) with the consent of the complainant where the consent -
 - (i) is extorted by threat or fear of bodily harm to the complainant or to another;
 - (ii) is obtained by personating someone else;
 - (iii) is obtained by false or fraudulent representations as to the nature of the intercourse; or
 - (iv) is obtained by unlawfully detaining the complainant.

(2) A person who commits the offence of rape is liable on conviction to imprisonment for life and any other punishment which may be imposed by law, except that if -

- (a) the complainant is under the age of twelve years;
- (b) the offence is committed by two or more persons acting in concert or with the assistance or in the presence, of a third person;
- (c) the offence is committed in particularly heinous circumstances;
- (d) the complainant was pregnant at the time of the offence and the accused knew that the complainant was pregnant; or
- (e) the accused has previously been convicted of the offence of rape, he shall be liable to imprisonment for the remainder of his natural life.

(5) This section also applies to a husband in relation to the commission of the offence of rape on his wife.

4A. (1) Subject to subsection (2), a person ('the accused') commits the offence of grievous sexual assault when he commits the act on another person ('the complainant') -

- (a) without the consent of the complainant where he knows that the complainant does

- not consent to the act or he is reckless as to whether the complainant consents; or
- (b) with the consent of the complainant where the consent -
 - (i) is extorted by threat or fear of bodily harm to the complainant or to another;
 - (ii) is obtained by personating someone else;
 - (iii) is obtained by false and fraudulent representations as to the nature of the act;
 - (iv) is obtained by unlawfully detaining the complainant.

(3) This section also applies to a husband in relation to the commission of the offence of grievous sexual assault on his wife.

6. (1) Where a male person has sexual intercourse with a female person who is not his wife and who is under the age of fourteen years, he is guilty of an offence...and is liable on conviction to imprisonment for life.

7. (1) Where a male person has sexual intercourse with a female person who is not his wife with her consent and who has attained the age of fourteen years but has not yet obtained the age of sixteen years he is guilty of an offence, and is liable on conviction to imprisonment for twelve years for a first offence and to imprisonment for fifteen years for a subsequent offence.

11. (1) An adult who has sexual intercourse with a minor who -

- (b) is in the adult's employment; or
- (c) is in respect of any employment or work under or in any way subject to the adult's control or direction; or
- (d) receives his or her wages or salary directly or indirectly from the adult,

 is guilty of an offence and is liable on conviction to imprisonment for twenty-five years.

12. (1) Where a person under circumstances that do not amount to rape has sexual intercourse with another who is mentally subnormal and who is not the person's spouse, that person is guilty of an offence and is liable on conviction to imprisonment for twenty-five years.

15. (1) A person who indecently assaults another is guilty of an offence and is liable on conviction to imprisonment for five years for a first offence and to imprisonment for ten years for a subsequent offence.

16. (1) A person who commits an act of serious indecency on or towards another is guilty of an offence and is liable on conviction to imprisonment...

(2) Subsection (1) does not apply to an act of serious indecency committed in private between -

- (a) a husband and his wife...

17. A person who -

- (a) procures a minor under sixteen years of age to have sexual intercourse...
- (b) procures another for prostitution...
- (c) procures another to become an inmate...

is guilty of an offence and is liable on conviction to imprisonment for fifteen years.

18. A person who -

- (a) by threats or intimidation procures another to have sexual intercourse...
- (b) by deception procures another to have sexual intercourse...
- (c) applies, administers to or causes to be taken by any person any drug, matter or thing with intent to stupefy or overpower that person so as thereby to enable any other person to sexual intercourse with that person,

is guilty of an offence and is liable on conviction to imprisonment for fifteen years.

19. (1) A person who detains another against that other's will -
(a) in or upon any premises with intent that the person detained may have sexual intercourse with any person; or
(b) in any brothel,
is guilty of an offence and is liable on conviction to imprisonment for ten years.

20. A person who takes away or detains a female person against her will with intent -
(a) to marry her or to have sexual intercourse with her; or
(b) to cause her to marry or to have sexual intercourse with a male person,
is guilty of an offence and is liable on conviction to imprisonment for ten years.

22. A person who -
(a) keeps or manages or acts or assists in the management of a brothel;
(b) being the tenant, lessee, occupier, or person in charge of any premises, knowingly permits the premises...to be used as a brothel or for the purposes of habitual prostitution; or
(c) being the lessor or landlord of any premises, or the agent of the lessor or landlord, lets the same or any part thereof with the knowledge that the premises or some part thereof are to be used as a brothel, or is wilfully a party to the continued use of the premises or any part thereof as a brothel,
is guilty of an offence and is liable on conviction to imprisonment for five years.

23. (1) A person who -
(a) knowingly lives wholly or in part on the earnings of prostitution, or
(b) in any place solicits for immoral purposes,
is guilty of an offence and is liable on conviction to imprisonment for five years.

24. A person who for purposes of gain, exercises control, direction or influence over the movements of a prostitute in a way which shows that the person is aiding, abetting or compelling the prostitution is guilty of an offence and is liable on conviction to imprisonment for five years.

31. (1) Any person who -
(a) is the parent or guardian of a minor;
(b) has the actual custody, charge or control of a minor;
(c) has the temporary custody, care, charge or control of a minor for a special purpose, as his attendant, employer or teacher, or in any other capacity; or
(d) is a medical practitioner, or a registered nurse or midwife, and has performed a medical examination in respect of a minor,
and who has reasonable grounds for believing that a sexual offence has been committed in respect of that minor, shall report the grounds for his belief to a police officer as soon as reasonably practicable.

(2) Any person who without reasonable excuse fails to comply with the requirements of subsection (1), is guilty of an offence and is liable on summary conviction to a fine of fifteen thousand dollars or to imprisonment for a term of seven years or to both such fine and imprisonment.

34A. (1) A person shall be subject to the notification requirements of this Part where -
(a) he has been convicted of a sexual offence to which this part applies and he has been sentenced to a term of imprisonment;
(b) such sentence has been commuted; or
(c) he has been convicted of such offence, but has not been dealt with for the offence.

34E. (4) Where it is found upon examination that the complainant has contracted HIV or any other communicable disease the court, upon application by the complainant and upon being satisfied on a balance of probabilities that the complainant contracted the disease as a result of the offence, may order the defendant to pay to the complainant compensation in addition to any amount ordered under section 3(5).

Shop (Hours of Opening and Employment) Act (Chap. 84:02), 1980 Rev.

17. (1) In all rooms of a shop where female shop assistants are employed the occupier of the shop shall provide seats...and such seats shall be in the proportion of not less than one seat to every three female shop assistants employed in each room...

(2) It shall be the duty of the occupier of the shop to permit the female shop assistants so employed to make reasonable use of such seats...

Special Reserve Police Act (Chap. 15:03), 1980 Rev.

22. (2) Without prejudice to the generality of the power conferred by subsection (1), regulations made under that subsection may provide for:

- (l) the grant...of a pension or gratuity to the widow and child or children, or dependent, of any member of the Special Reserve Police who dies as a result of injuries received...

Summary Courts Act (Chap. 4:20), 1980 Rev.

80. Where a person has been adjudged to pay a sum by a conviction or order of a Summary Court, or in proceedings for enforcing an order in any matter of affiliation, or an order which under weekly sums are made payable towards the maintenance of a wife, the Court may order him to be searched, and any money found on him on apprehension, or when so searched...may...be applied towards the payment of the sum so adjudged to be paid...

Summary Offences Act (Chap. 11:02), 1980 Rev.

5. (1) When any person is charged...with assault or battery upon...any female, or upon any old, infirm or sickly person...such person is liable...

Supplemental Police Regulations, made pursuant to section 12 of the Supplemental Police Act (Chap. 15:02)

9. ...Females, lunatics and young children shall never be handcuffed.

Teachers' Pensions Act (Chap. 39:02), 1980 Rev.

15. (1) Where a teacher in teaching service in Trinidad and Tobago dies as a result of injuries received -

- c. ...the President may grant in addition to the grant, if any, made to his legal personal representative or to his dependants under section 14 –
 - (i) if the deceased teacher leaves a widow, a pension to her, while unmarried and of good character at a rate not exceeding ten-sixtieths of his salary at the date of the injury...
 - (v) if the deceased teacher does not leave a widow, or if no pension is granted to his widow, and if his mother was wholly or mainly dependant on him for her support, a pension to the mother, while of good character and without adequate means of support...

Provided that –

(B) in the case of a pension granted under subparagraph (v), if the mother is a widow at the time of the grant of the pension and subsequently remarries the pension shall cease as from the date of re-marriage; and if it appears to the President at any time that the mother is adequately provided with other means of support, the pension shall cease as from such date as the President may determine;

(C) a pension granted to a female child under this section shall cease upon the marriage of the child under the age of eighteen years.

Teachers' Pensions Regulations, deemed to be made pursuant to section 4 of the Teachers' Pensions Act (Chap. 39:02)

12. (1) Where a female teacher in teaching service in Trinidad and Tobago, having completed not less than five years teaching service retires from the service for the reason that she has married or is about to marry, and is not eligible for the grant of any pension or otherwise eligible for a gratuity under these Regulations, she may be granted on production within six months after her retirement...of such satisfactory evidence of her marriage, a gratuity...

13. (1) Notwithstanding anything contained in these Regulations, but subject to subregulation (2), a married female teacher who -

- (a) has resigned or resigns from the teaching service on or after 19th October 1956, for the reason that she is married or is about to become married; and
- (b) has been subsequently re-employed permanently in such service;

shall, for the purpose of computing the amount of her pension, gratuity and allowance, be entitled to have taken into account as pensionable service both the period of service preceding the resignation from, and the period of subsequent employment in, the teaching service.

The Community Service Regulations, LN No. 138 of 2000, made pursuant to section 27(1) of the Community Service Orders Act, 1997

13. Where the offender is a female the officer shall be a female.

The Constitution (Chap. 1:01), 1980 Rev.

133. (7) This section applies to any benefits payable under any law providing for the grant of pensions, gratuities or compensation to persons who are or have been public officers in respect of their service in the public service, or to the widows, children, dependants...

The Judges (Conditions of Service and Allowances) Regulations (No. 1) made pursuant to section 16 of the Judges Salaries and Pensions Act

6. (1) The passage allowance payable to a Judge shall be the full actual cost of first class return passage (by air or sea...) for himself, his wife and children, if any, subject to a maximum of the equivalent of three adult first class return fares from Trinidad to the United Kingdom.

(2) The passage allowance shall be payable in a manner so as to enable the Judge's wife or children or both his wife and children to precede him or follow him, if he so desires, on the outward or homebound journey, as the case may require.

The Judges (Conditions of Service and Allowances) Regulations (No. 2) made pursuant to section 16 of the Judges Salaries and Pensions Act, as amended by LN No. 190 of 1997

7. (1) In every second year a Judge shall be entitled to be paid a passage allowance to enable him and his family to go abroad during his vacation, the amount of which allowance shall be equivalent to the full cost of first-class return air fares from Trinidad to London by the most direct route for the Judge and his spouse, if any, and his children, if any, but shall not exceed the cost of three such adult fares.

7A. (3) Passage allowance under this regulation shall cover first class travel, hotel accommodation and subsistence and shall be in respect of the judge, his spouse and not more than two of his children...

The Police Service Regulations, made pursuant to section 65 of the Police Service Act as amended by LN No. 235 of 1999

32. A temporary lodging allowance at such rate as may be approved by the Minister of Finance shall be paid to a woman police officer when she is transferred to a Division or District where quarters are not available for her.

36. For the purpose of regulation 35, "family" shall be taken to mean a police officer's spouse and children, his mother, father, brothers, sisters who are living with and are solely dependent on him.

94. (1) With effect from 1st October, 1997, maternity leave consisting of leave with full pay for one month followed by leave with half pay for two months shall be granted to women police officers on the following conditions:

- (a) that the expectant mother proceed on maternity leave at least one month before the expected date of birth of the child;
- (b) that the taking of maternity leave would not in any way prejudice or affect the eligibility of the officer for annual leave;
- (c) that the expectant mother would normally be required to furnish three months before the expected date of delivery a certificate from a registered medical practitioner of the expected date of delivery; and
- (d) that the officer has served for a period of not less than one year in the Police Service as at the date of commencement of such leave.

95. In addition to the period of maternity leave provided for in regulation 94, a woman police officer may be granted any period of annual vacation leave due to her, to precede or follow her maternity leave.

96. Any application for leave in excess of the periods provided for in regulations 94 and 95 shall be treated as an application for sick leave...

97. The Commissioner in his discretion may direct that a women police officer qualifying for maternity leave be given light duties to perform at work prior to and following her period of maternity leave...

102. A Police Matron shall be appointed to each Police Station and she shall be entrusted with the custody of female prisoners.

103. The cells for female prisoners shall each be provided with two locks or padlocks fitted with different keys. The key of one lock shall be kept by the police officer in charge of the Charge Room and the key of the other by the Police Matron. A duplicate of the key kept by the Police Matron shall be kept in the Charge Room under the station seal. Except in a case of emergency, no cell in which a female prisoner is confined shall be opened except by or in the presence of the Police Matron or woman police officer.

105. ...At the station...female prisoners [shall be searched] by the Police Matron or women police officers.

The Prison Service (Pension and Gratuity) Rules, as amended by Act No. 17 of 2000

4. (7) Where an officer is granted maternity leave in accordance with the Maternity Protection Act, 1998 the whole period of maternity leave shall be counted for the purpose of computing the amount of pension, gratuity or other allowance payable to the officer.

9. (1) Where an Order for maintenance is made against an officer to whom a pension has been granted in accordance with these Rules, the President may, upon proof to him that there is no reasonable probability of such Order being satisfied, cause to be deducted from the moneys payable to such person, such sum or sums as the President may consider expedient and may cause the same to be applied to satisfy the said Order, in whole or in part.

(2) Where an officer to whom a pension has been granted in accordance with these Rules has left Trinidad and Tobago and has deserted, leaving his wife or child in Trinidad and Tobago without sufficient means of support and, by reason of such person's absence from Trinidad and Tobago, the wife or child is unable to obtain an Order for maintenance, the President may cause to be deducted from the moneys payable to such officer by way of pension, such sum or sums as the President may consider expedient and apply the same for the maintenance and support of the wife or child.

11. (1) Where an officer dies as a result of injuries received -

- (a) in the actual discharge of his duty;
- (b) without his own default; and
- (c) on account of circumstances specifically attributable to the nature of his duty,

the President may, subject to subrule (2), award in addition to any allowances paid under rule 10, the following benefits:

- (i) where the deceased officer leaves a widow, a pension shall be paid to her while unmarried...
- (v) where the deceased officer does not leave a widow, or where no pension is granted to the widow and his mother was wholly or mainly dependant on him for her support, a pension shall be paid to the mother, while without adequate means of support, of an amount not exceeding the pension which might have been granted to his widow.

(3) In the case of a pension granted under subrule (1)(v), where the mother is a widow at the time of the grant of such pension and subsequently remarries, such pension shall cease as from the date of the remarriage, and if it appears to the President at any time that the mother is adequately provided with other means of support, such pension shall cease as from such date as the President may determine.

(4) A pension granted to a female child under subrule (1), shall cease upon the marriage of such child under the age of eighteen years.

(5) Where an officer dies while in the Service, the President may grant to his widow or to his children or to any of his dependants a gratuity of an amount not exceeding one year's salary of such officer, or his commuted pension, gratuity, if any, whichever is the greater.

(6) Where an officer to whom either an unreduced pension or gratuity and reduced pension has been granted, dies after retirement from the Service, and the sums paid or payable to him at his death on account of such unreduced pension or gratuity and reduced pension, as the case may be, are less than the amount of the annual salary enjoyed by him at the date of his retirement, the President may grant to his widow or to his children or to any of his dependants a gratuity equal to the deficiency.

The Public Assistance Regulations, No. 182 of 1997 made pursuant to section 16 of the Public Assistance Act (Chap. 32:03)

4. (3) ...public assistance may be provided to meet the needs of a woman where she is a person referred to in subregulation (5)(a) or (b).

(5) For the purposes of this regulation –

“child of the family” means a child of both of the spouses or cohabitantes...

“dependant” means –

- (a) a spouse of the applicant;
- (b) a person of the opposite sex to that of the applicant and who has been cohabiting with the applicant for a period of at least three years...

Trinidad and Tobago Civil Aviation Authority Act, No. 33 of 2000

30. (1) Where an employee of the Authority who had exercised the option referred to in section 26(1)(b) dies, retires or his post in the Authority is abolished or he is retrenched prior to the establishment of the pension fund plan, and at the date of the death, retirement, abolition or retrenchment he was in receipt of a salary higher than that referred to in section 29, the superannuation benefits payable to the employee or his estate shall be based on the higher salary.

Trinidad and Tobago Housing Development Corporation Act, No. 24 of 2005

37. (1) Where an employee of the Corporation who exercises the option referred to in section 31(2)(b) or 32(2)(b) retires, dies or is retrenched prior to the establishment of the pension fund plan, and at the date of retirement, death, or retrenchment was in receipt of a salary higher than that referred to in section 36, the superannuation benefits payable to his estate or him shall be based on the higher salary.

38. (1) Where an employee of the Corporation who exercises the option referred to in section 31(2)(b) or 32(2)(b) retires, dies or is retrenched and is a member of the pension fund plan, he or his estate shall be paid superannuation benefits by the pension fund plan at the amount, which when combined with the preserved superannuation benefits payable under section 37, the equivalent to the benefits based on his pensionable service in the public service combined with his service in the Corporation and calculated at the pensionable salary applicable to him on the date of his retirement, death or retrenchment.

Water and Sewerage Act (Chap. 54:40), 1980 Rev.

22. Without prejudice to the generality of section 21, the Pension Scheme may enable the Authority to –

- (a) grant gratuities, pensions or superannuation allowances to, or to the widows, families or dependants of, their employees...
- (c) enter into and carry into effect agreements with any insurance company or other association or company for securing to any such employee, widow, family or dependant such gratuities, pensions or allowances as are by this section authorised to be granted...

Widows' and Orphans' Pensions Act (Chap. 23:54), 1980 Rev.

2. In this Act –

“pensionable age” as applied to children means, in the case of a male, that he is under the age of eighteen years and, in the case of a female, that she is under the age of eighteen years and has not been married...

8. Pensions payable under this Act shall commence upon the death of the contributor in respect of whom they are payable...

9. (1) The pension payable to the widow of a contributor shall cease on her death, bankruptcy or re-marriage...

(3) If on such pension to the widow ceasing as mentioned above there are such children or a child living and of pensionable age the pension shall be continued and paid to such children or child...

(4) The pension to the children of a deceased contributor shall cease in the case of males at eighteen years of age, and in the case of females at eighteen years of age or on marriage under that age. However, where the President is satisfied that a child who has reached the pensionable age is by reason of infirmity of mind or body incapable of earning a

livelihood, and has no sufficient means of support, he may order that the whole or any portion of the pension...shall be paid to the child for such period as he may determine.

17. In any case in which any person ceases to be a contributor or becomes a contributor to a reduced extent, the pension to his widow or children shall be reduced in the same proportion...

33. (2) The widow of a contributor whose marriage with him is contracted after he has retired from the public service or subsequently to the time when the contributor ceased, or was not under obligation, to contribute to the scheme, shall not be entitled to any pension...

(3) No widow of a contributor whose husband dies within twelve calendar months of the marriage without issue of the marriage born in his lifetime or in due time after his death shall be entitled to any pension under this Act; but the Committee may, with the approval of the President, grant to the widow all or any part of the pension to which she would have been entitled but for this subsection.

40. (1) When a contributor dies leaving a widow and children of pensionable age by the widow, the Committee may, either in the first instance or at any time while a pension is payable, pay to the widow the whole of the pension, or pay to the widow a part only of the pension, and pay or apply the balance of such pension for or towards the maintenance or education of the children...

Wills and Probate Ordinance (CAP.8/2), 1950 Rev., as amended by the Distribution of Estates Act, No. 28 of 2000⁷⁴⁴

90. (1) Where, after the commencement of this Ordinance, a person dies domiciled in the colony leaving -

- (a) wife or husband,
- (b) a daughter who has not been married, or who is by reason of some mental or physical disability incapable of maintaining herself,
- (c) an infant son, or
- (d) a son who is, by reason of some mental or physical disability incapable of maintaining herself,

and leaving a will, then, if the Court on application by or on behalf of any such wife, husband, daughter or son as aforesaid (hereinafter referred to as a "dependant" of the testator) is of opinion that the will does not make reasonable provision for the maintenance of that dependant, the Court may order that such reasonable provision as the Court thinks fit shall, subject to such condition or restriction, if any, as the Court may impose, be made out of the testator's net estate for the maintenance of that dependant:

Provided that no application shall be made to the Court by or on behalf of any person in any case where the testator has bequeathed not less than two-thirds of the income of the net estate to a surviving spouse and the only other dependant or dependants, if any, is or are a child or children of the surviving spouse.

(2) The provision for maintenance to be made by an order shall, subject to the provisions of subsection (4) of this section, be by way of periodical payments of income and the order shall provide for their termination not later than -

- (a) in the case of a wife or husband, her or his re-marriage;
- (b) in the case of a daughter who has not been married, or who is under disability, her marriage or the cesser of her disability, whichever is the later;
- (c) in the case of an infant son, his attaining the age of twenty-one years;
- (d) in the case of a son under disability, the cesser of his disability;

or, in any case, his or her earlier death.

⁷⁴⁴ This Ordinance is repealed by Succession Act, No. 27 of 1981, but as this Act has not yet been brought into effect the Ordinance is still in force.

Workmen's Compensation Act (Chap. 88:05), 1980 Rev.

2. (1) In this Act -

“dependants”...includes a dependant female and any other person whom the workman at the time of his death treated as under a duty by him to support in whole or in part...

“dependant female” means a woman who, for not less than twelve months immediately before the date on which the workman died or was incapacitated as a result of the accident, although not legally married to him, lived with him as his wife and was dependant wholly or in part upon his earnings.

5. (1) Subject to this Act, the amount of compensation shall be as follows:

(a) where death results from the injury, a lump sum of an amount calculated as follows:

(i) if the workman leaves any dependants wholly dependant on his earnings, the lump sum shall be a sum equal to thirty-six months earnings...

9. (1) Compensation payable where the death of a workman has resulted from an injury shall be deposited with the Registrar, and any sum so deposited shall be apportioned among the dependants of the deceased workman or any of them in such proportion as the Commissioner thinks fit...

10. Save as provided by this Act, no lump sum or half-monthly payment payable under this Act shall be capable of being assigned, charged or attached or shall pass to any person other the workman by operation of law, nor shall any claim be set off against the same.

12. (4) Where a workman whose right to compensation has been suspended under subsection (2) or subsection (3) dies without having submitted himself for medical examination as required by either of those subsections, the Commission may...direct the payment of compensation to the dependants of the deceased workman.

Young Offenders Detention Act (Chap. 13:05), 1980 Rev. and Regulations made pursuant to the Act deal with male offenders only.

A.3 INEQUALITY

A.3.1 POSITIVE INEQUALITY (Rights vested in elite)

Bankruptcy Act (Chap. 9:70), 1980 Rev.

40. (2) Where the husband or a married woman has been adjudged bankrupt, any money or other estate of such woman lent or entrusted by her to her husband for the purpose of any trade or business carried on by him or otherwise, shall be treated as assets of his estate, and the wife shall not be entitled to claim any dividend as a creditor in respect of any such money or other estate until all claims of the other creditors of her husband for valuable consideration in money or money's worth have been satisfied.

Births and Deaths Registration Act (Chap. 44:01), 1980 Rev.

21. (1) The Registrar shall not enter the name of any person as the father of a child born out of wedlock except –

(a) at the joint request of the mother and the person acknowledging himself to be the father of the child...; or

(b) at the request of the mother on production of –

- (i) a declaration in the prescribed form made by the mother stating that the said person is the father of the child; and
- (ii) a statutory declaration made by that person acknowledging himself to be the father of the child...

Citizenship of the Republic of Trinidad and Tobago Act (Chap. 1:50), 1980 Rev.

2. (1) In this Act -

“responsible parent” in relation to any child means the father but –

- (a) where the father is dead; or
- (b) where custody of the child has been awarded to the mother;
- (c) paternity of the child is not admitted or established in accordance with the Status of Children Act;

the expression “responsible parent” means the mother...

Conveyancing and Law of Property Ordinance (CAP.27/12), 1950 Rev.⁷⁴⁵

27. (1)(F.)(3) Where a wife conveys and is expressed to convey as beneficial owner, and the husband also conveys and is expressed to convey as beneficial owner, then, within this section, the wife shall be deemed to convey and to be expressed to convey by direction of the husband as beneficial owner...

Deceased Wife’s Sister’s Marriage Act (Chap. 45:54), 1980 Rev.

3. (1) Every marriage, otherwise lawful, contracted before or after the commencement of this Act, between a man and his deceased wife’s sister, within or outside Trinidad and Tobago, is deemed to be and to have been valid and of full force and effect.

Fire Service (Terms and Conditions of Employment) Regulations, LN No. 267 of 1998 made pursuant to section 34 of the Fire Service Act

89. (1) An officer is eligible for paternity leave of three working days at or about the time his spouse gives birth on furnishing a certificate to the Chief Fire Officer from a registered medical practitioner stating the expected date of birth.

(2) For the purposes of this regulation, a “spouse” includes a person with whom the officer lives as his spouse and whose name is registered accordingly with the Chief Fire Officer.

Indictable Offences (Preliminary Enquiry) Act (Chap. 12:01), 1980 Rev.

37. If an accused person who is admitted to bail is a married woman or infant, the recognisance of bail shall be taken only from the surety or sureties.

Industrial Training Act (Chap. 39:54), 1980 Rev.

11. (1) It shall be lawful for the father of any boy or girl above the age of thirteen and under the age of eighteen years, or, in case such boy or girl has no father, for the mother of such boy or girl...to bind such boy or girl...for any term not exceeding five years to be an apprentice...

Land Law and Conveyancing Act, No. 20 of 1981⁷⁴⁶

64. (1) Where, in any proceedings, there arises on the rule against perpetuities a question which turns on the ability of a person to have a child at some future time, then -

- (a) ...it shall be presumed that a male can have a child at the age of fourteen years or over, but not under that age, and that a female can have a child at the age of twelve years or over, but not under that age or over the age of fifty-five years...

⁷⁴⁵ This Ordinance is repealed by Land Law and Conveyancing Act, No. 20 of 1981, but as this Act has not yet been brought into effect the Ordinance is still in force.

⁷⁴⁶ Not yet in force.

Matrimonial Proceedings and Property Act (Chap. 45:51), 1980 Rev.

13. (2) A marriage which takes place after the commencement of this Act shall be voidable on the following grounds only:...

- (f) that at the time of the marriage the respondent was pregnant by some person other than the petitioner.

Matrimonial Causes Rules, made pursuant to sections 77-81 of the Supreme Court of Judicature Act (Chap. 4:01), 1980 Rev.

26. (2) An application under subrule (1) shall not be made in an undefended cause -

- (a) where the husband is the petitioner; or
- (b) where the wife is the petitioner and –
 - (i) it appears from the petition that she was either a widow or divorced at the time of the marriage in question; or
 - (ii) it appears from the petition or otherwise that she has borne a child; or
 - (iii) a statement by the wife that she is not a virgin is filed,

unless, in any such case, the petitioner is alleging his or her own incapacity.

Muslim Marriage and Divorce Act (Chap. 45:02), 1980 Rev.

8. The age at which a person, being a member of the Muslim community, is capable of contracting marriage shall be sixteen in the case of males and twelve in the case of females.

However, in the case of an intended marriage between persons either of whom is under eighteen years of age (not being a widower or widow), the consent to the marriage, of the father if living, or if the father is dead of the guardian or guardians lawfully appointed or of one of them, and in case there is no such guardian then of the mother of the person so under age, and if the mother is dead then of such other person as may be appointed for the purpose by the President...

Muslim Marriage and Divorce Regulations, made pursuant to section 30 of the Muslim Marriage and Divorce Act (Chap. 45:02)

6. (1) In any case in which separate applications for dissolution or annulment of marriage are filed by the husband and wife with different Muslim bodies the applications shall be determined according to the following order of priorities:...

- (d) if the applications were filed on the same day, by the Council of the body with which the husband's application was filed.

National Insurance Act (Chap. 32:01), as amended by Act Nos. 9 of 1999 and 2004

29. (2) A person employed in any of the following employments shall be regarded as being engaged in uninsurable employment and shall not be registered for the purposes of this Act:

- (b) employment of a married woman by her husband...

Purchase, Sweepstake, Departure and Airline Ticket Taxes Act (Chap. 77:01), 1980 Rev.

27. Nothing in this Part shall require tax to be paid or accounted for in respect of –

- (c) the President, his wife and children...
- (e) the official representatives of the Government of any country, their wives and their children...when travelling with them;
- (f) representatives of the United Nations Organisation...and persons sent on missions on behalf of any such organisation, their wives and children...
- (h) members of the Armed Forces of the United States of America and their wives and children...

Real Property Ordinance (CAP.27/11), 1950 Rev.⁷⁴⁷

2. (1) In this Ordinance -
“incapable person” includes any married woman who is under the law for the time being in force under any legal incapacity so far as she is under such incapacity...

28. Whenever any notice is required by this Ordinance, or by any order made under this Ordinance by a Judge, to be given to any incapable person...it shall be lawful for a Judge to direct that such notice be served on any person as the guardian, committee, trustee, or representative of any other person, and in such case any notice served on such guardian, committee, trustee, or representative shall be as binding on such person as if he had been under no disability, and had been personally served therewith.

The Defence (Rates of Pay and Allowances) Regulations, LN No. 84 of 1989, made pursuant to section 244 of the Defence Act

6. (2) An officer is entitled to an unaccommodated rent allowance where he -
(a) is maintaining his wife and his dependent children...
(3) An other rank is entitled to an unaccommodated rent allowance where he -
(a) is maintaining his wife and his dependent children...

The Police Service Regulations, made pursuant to section 65 of the Police Service Act as amended by LN No. 235 of 1999

31. (4) Where a police officer is married to another police officer only one house allowance shall be paid and that to the officer in receipt of the higher allowance or, if both officers are in receipt of an equal amount of house allowance, to the husband.

97A. With effect from 1st October, 1997, a male officer shall be eligible for paternity leave of three working days in respect of each pregnancy of his spouse, whether a spouse by a marriage under the Marriage Act or a common-law spouse, to be granted at the time of delivery where:

- (a) he furnishes a medical certificate stating the expected date of delivery; and
(b) he registers the name of his common-law spouse, where applicable, with the Commissioner of Police.

Widows' and Orphans' Pensions Act (Chap. 23:54), 1980 Rev.

2. In this Act -

“pensionable age” as applied to children means, in the case of a male, that he is under the age of eighteen years and, in the case of a female, that she is under the age of eighteen years and has not been married...

8. Pensions payable under this Act shall commence upon the death of the contributor in respect of whom they are payable...

9. (1) The pension payable to the widow of a contributor shall cease on her death, bankruptcy or re-marriage...

(3) If on such pension to the widow ceasing as mentioned above there are such children or a child living and of pensionable age the pension shall be continued and paid to such children or child...

(4) The pension to the children of a deceased contributor shall cease in the case of males at eighteen years of age, and in the case of females at eighteen years of age or on

⁷⁴⁷ This Ordinance was repealed by the Land Registration Act, No. 24 of 1981, which was never brought into force; however, Act 16/2000 repealed the unenforced 1981 Act therefore the Ordinance is still in force.

marriage under that age. However, where the President is satisfied that a child who has reached the pensionable age is by reason of infirmity of mind or body incapable of earning a livelihood, and has no sufficient means of support, he may order that the whole or any portion of the pension...shall be paid to the child for such period as he may determine.

17. In any case in which any person ceases to be a contributor or becomes a contributor to a reduced extent, the pension to his widow or children shall be reduced in the same proportion...

33. (2) The widow of a contributor whose marriage with him is contracted after he has retired from the public service or subsequently to the time when the contributor ceased, or was not under obligation, to contribute to the scheme, shall not be entitled to any pension...

(3) No widow of a contributor whose husband dies within twelve calendar months of the marriage without issue of the marriage born in his lifetime or in due time after his death shall be entitled to any pension under this Act; but the Committee may, with the approval of the President, grant to the widow all or any part of the pension to which she would have been entitled but for this subsection.

40. (1) When a contributor dies leaving a widow and children of pensionable age by the widow, the Committee may, either in the first instance or at any time while a pension is payable, pay to the widow the whole of the pension, or pay to the widow a part only of the pension, and pay or apply the balance of such pension for or towards the maintenance or education of the children...

A.3.2 NEGATIVE INEQUALITY (Liabilities in non-elite)

Hindu Marriage Act (Chap. 45:03), 1980 Rev.

11. (1) The age at which a person, being a member of the Hindu faith or religion, is capable of contracting marriage shall be eighteen years in the case of males and fourteen years in the case of females.

Legal Aid and Advice Act (Chap. 7:07), as amended by Act No. 18 of 1999

Second schedule, Part II, Excepted Proceedings

1. Proceedings wholly or partly in respect of -

- (e) the loss of the services of a woman or girl in consequence of her rape or seduction...

Muslim Marriage and Divorce Act (Chap. 45:02), 1980 Rev.

8. The age at which a person, being a member of the Muslim community, is capable of contracting marriage shall be sixteen in the case of males and twelve in the case of females.

Orisa Marriage Act, No. 22 of 1999

9. (1) The age at which a person, being a member of the Orisa faith or religion, is capable of contracting marriage shall be eighteen years in the case of males and sixteen years in the case of females.

Public Service Commission Regulations, deemed to be made under section 129 of the Constitution

57. The Commission may terminate the appointment of a female officer who is married on the grounds that her family obligations are affecting the efficient performance of her duties...

Police Service Commission Regulations, deemed to be made under section 129 of the Constitution

52. The Commission may terminate the appointment of a female police officer who is married on the grounds that her family obligations are affecting the efficient performance of her duties...

Statutory Authorities' Service Commission Regulations, made pursuant to section 6 of the Statutory Authorities Act (Chap. 24:01)

58. The Commission may terminate the appointment of a female officer who is married on the grounds that her family obligations are affecting the efficient performance of her duties...

Summary Offences Act (Chap. 11:02), 1980 Rev.

46. A person...who commits any of the offences mentioned below in this section...shall be liable to imprisonment –

(j) any woman loitering about and soliciting passers-by for the purpose of prostitution.

A.4 EQUALITY

A.4.1 FALSE EQUALITY

Socially Displaced Persons Act, No. 59 of 2000

3. In this Act, unless the context otherwise requires—

“socially displaced person” means any idle person habitually found in a public place whether or not he is begging and who by reason of illness or otherwise is unable to maintain himself, or has no means of subsistence or place of residence, is unable to give a satisfactory account of himself and causes or is likely to cause annoyance or damage to persons frequenting that public place, or otherwise to create a nuisance.

4. The Minister shall establish a Social Displacement Unit (hereinafter referred to as “the Unit”) for the assessment, relocation, care and rehabilitation of socially displaced persons.

A.4.2 INVERSE EQUALITY (Conveying rights to non-elite that are not enjoyed by the elite)

Criminal Law Act (Chap. 10:04), 1980 Rev.

7. Any presumption of law that an offence committed by a wife in the presence of her husband is committed under the coercion of her husband is abolished, but on a charge against a wife for any offence other than treason or murder it shall be a good defence to prove that the offence was committed in the presence of, and under the coercion of, the husband.

Criminal Procedure Act (Chap. 12:02), 1980 Rev.

63. (1) Where a woman by any wilful act causes the death of her child, being a child under the age of twelve months, but at the time of the act the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then, notwithstanding that the circumstances were such that but for this section of the offence would have amounted to murder, she shall be guilty of infanticide... [RE: BWS]

Friendly Societies Act (Chap. 32:50), 1980 Rev.

34. (3) The mother of an illegitimate child under sixteen years of age shall...exercise on behalf of the child any powers in this section expressly or impliedly contained.

Liquor Licences Act (Chap. 84:10), 1980 Rev.

35. (1) The authority given to any person by any licence in respect of any premises shall extend, in respect of such premises, to his servant, or his wife or a member of his family resident with him.

Matrimonial Proceedings and Property Act (Chap. 45:51), 1980 Rev.

18. (1) In the case of any petition for divorce or for nullity of marriage or for presumption of death and dissolution of marriage -

(c) the Court may order the costs or any part thereof arising from such intervention to be paid by any of the parties, including a wife if she has separate property...

28. (1) Either party to a marriage may apply to the Court for an order under this section on the ground that the other party to the marriage (in this section referred to as "the respondent") -

- (a) being the husband, has willfully neglected -
 - (i) to provide reasonable maintenance for the applicant; or
 - (ii) to provide, or to make a proper contribution towards, reasonable maintenance for any child of the family to whom this section applies;
- (b) being the wife, has willfully neglected to provide, or to make a proper contribution towards, reasonable maintenance -
 - (i) for the applicant in a case where, by reason of the impairment of the applicant's earning capacity through age, illness or disability of mind or body, and having regard to any resources of the applicant and the respondent respectively which are, or should properly be made, available for the purpose, it is reasonable in all the circumstances to expect the respondent so to provide or contribute...

Workmen's Compensation Act (Chap. 88:05), 1980 Rev.

2. (1) In this Act -

"dependants"...includes a dependant female and any other person whom the workman at the time of his death treated as under a duty by him to support in whole or in part...

"dependant female" means a woman who, for not less than twelve months immediately before the date on which the workman died or was incapacitated as a result of the accident, although not legally married to him, lived with him as his wife and was dependant wholly or in part upon his earnings.

5. (1) Subject to this Act, the amount of compensation shall be as follows:

- (a) where death results from the injury, a lump sum of an amount calculated as follows:
 - (i) if the workman leaves any dependants wholly dependant on his earnings, the lump sum shall be a sum equal to thirty-six months earnings...

9. (1) Compensation payable where the death of a workman has resulted from an injury shall be deposited with the Registrar, and any sum so deposited shall be apportioned among the dependants of the deceased workman or any of them in such proportion as the Commissioner thinks fit...

10. Save as provided by this Act, no lump sum or half-monthly payment payable under this Act shall be capable of being assigned, charged or attached or shall pass to any person other the workman by operation of law, nor shall any claim be set off against the same.

12. (4) Where a workman whose right to compensation has been suspended under subsection (2) or subsection (3) dies without having submitted himself for medical examination as required by either of those subsections, the Commission may...direct the payment of compensation to the dependants of the deceased workman.

A.4.3 RESTORATIVE EQUALITY (Conveying rights to achieve gender neutrality [eg. cohabitational relationships act] or non-gender distinctiveness [maternity benefits])

Administration of Estates Ordinance (CAP.8/1), 1950 Rev., as amended by the Distribution of Estates Act, No. 28 of 2000⁷⁴⁸

2. In this Ordinance -

“cohabitant” means a person of the opposite sex who, while not married to the intestate, continuously cohabited in a *bona fide* domestic relationship with the intestate for a period of not less than five years immediately preceding the death of the intestate...

24. (1) Where an intestate dies leaving a surviving spouse but no issue, his estate shall be distributed to or held on trust for the surviving spouse absolutely.

(3) Where an intestate dies leaving a spouse and one child, the surviving spouse shall take one-half of the estate absolutely and the other half shall be distributed to or held on trust for the child.

(4) Where the intestate dies leaving a spouse and more than one child, the surviving spouse shall take one-half the estate absolutely and the remaining one half shall be distributed to or held on trust for the children.

25. (1) Notwithstanding section 24, where an intestate dies leaving no surviving spouse, but dies leaving a surviving cohabitant, the cohabitant shall be treated for the purposes of this Ordinance as if he or she were a surviving spouse of the intestate.

(2) Notwithstanding section 24, where an intestate dies leaving a spouse and a cohabitant and the intestate and his spouse were at the time of his death living separate and apart from one another, only such part of the estate as was acquired during the period of cohabitation shall be distributed to the cohabitant, subject to the rights of a surviving spouse and any issue of the intestate.

Caribbean Aviation Training Institute (Chap. 39:52), 1980 Rev.

Second Schedule. Privileges and Immunities.

1. The personnel of the Institute employed in Trinidad and Tobago shall have the right to the following -

- (c) immunity together with their spouses and relatives dependent on them from immigration restrictions;
- (e) the same repatriation facilities for themselves and their spouse and relatives who are dependent on them as are accorded diplomatic envoys in the event of international crises.

Caribbean Community Act, No. 3 of 2005

Article 34

In performing its tasks set out in Article 33, COTED shall, *inter alia*:

- (d) establish measures to ensure the removal of restrictions on the right of establishment in respect of activities accorded priority treatment pursuant to

⁷⁴⁸ This Ordinance is repealed by the Succession Act, No. 27 of 1981, but as this Act has not yet been brought into operation the Ordinance is still in force.

paragraph (a) of this Article as they relate to:

- (i) the conditions governing the entry of managerial, technical or supervisory personnel employed in such agencies, branches and subsidiaries, including the spouses and immediate dependant family members of such personnel...

Article 37

3. In establishing the programme mentioned in paragraph 2 of this Article, COTED shall:

- (c) establish measures to ensure the abolition of restrictions on the right to provide services in respect of activities accorded priority treatment in accordance with subparagraph (a) of this paragraph, both in terms of conditions for the provision of services in the territories of Member States as well as the conditions governing the entry of personnel, including their spouses and immediate dependant family members, for the provision of services...

Children's Authority Act, No. 64 of 2000

6. (1) It shall be the duty of the Authority to – ...

(2) When determining what is in the best interest of a child the Authority shall take into consideration -

- (h) domestic violence, regardless of whether the violence was directed against or witnessed by the child...

19. (1) The Authority shall provide for the establishment and maintenance of pension schemes or arrange for membership in a scheme for its employees...

(2) Without prejudice to subsection (1), the Authority may, under a pension scheme -

- (a) grant gratuities, pensions or superannuation allowances to the surviving spouse, families or dependants of its employees;
- (b) enter into and carry into effect, arrangements with any insurance company or other association or company for securing for any employee or surviving spouse or dependant, such gratuities, pensions or allowances authorised by this section...

Civil Aviation Act, No. 11 of 2001

14. (1) A member of the Board who was in any way, whether directly or indirectly, interested in a contract or proposed contract with or in any other matter concerning an entity regulated by the Authority, or any body corporate carrying on business with the Authority, shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest.

(2) A disclosure under subsection (1), shall be recorded in the minutes of the Board, and the member -

- (a) shall not take part after the disclosure in any deliberation or decision of the Board with respect to that contract; and
- (b) shall be disregarded for the purpose of constituting a quorum of the Board.

(3) For the purpose of this section, a person who or any nominee or relative of whom is a Director, a shareholder or partner in a company or other body of persons other than a statutory authority or who is an employee thereof shall be treated as having indirectly, a pecuniary interest in a contract or proposed contract or such other body of persons is a party to the contract or proposed contract or has a pecuniary interest in such other matter under consideration

(5) In subsection (3), "relative" means spouse, common-law spouse, father, mother, brother, sister, son or daughter of a person and includes the spouse of a son or daughter of such person.

Civil Service (External Affairs) Regulations, made pursuant to section 28 of the Civil Service Act

9. (3) The Government shall also pay the cost of passages, of transportation and of insurance against loss or damage of the personal baggage of...:

- (a) (i) the officer's spouse...

28. (1) Where an officer posted at a Mission travels to Trinidad and Tobago because of the terminal illness or death occurring there of his spouse, parent, or child, he shall...be paid a compassionate travel allowance...

43. The spouse of a Foreign Service Officer may take up such mode of employment in the host country as is approved by the Head of Mission.

Civil Service Regulations, made pursuant to section 28 of the Civil Service Act

88. (1) Maternity leave consisting of leave with full pay for one month followed by leave with half pay for two months shall be granted to female officers...

(2) This regulation also applies to acting and temporary officers subject to the following provisions:

- (a) the officer must complete twelve (12) months of service before she can become eligible for maternity leave...

(4) The grant of maternity leave or of no-pay leave on account of pregnancy shall not be a consideration for the termination of the services of any temporary or acting officer...

Cohabitation Relationships Act, No. 30 of 1998

2. (1) In this Act -

“cohabitant” means –

- (a) in relation to a man, a woman who is living or has lived with a man as his wife in a cohabitational relationship; and
- (b) in relation to a woman, a man who is living with or has lived with a woman as her husband in a cohabitational relationship;

“cohabitational relationship” means the relationship between cohabitants, who not being married to each other are living or have lived together as husband and wife on a *bona fide* domestic basis...

6. Under this Part, a cohabitant may apply -

- (a) to the High Court for the granting of an adjustment order or for the granting of a maintenance order; or
- (b) to the Magistrate's Court for the granting of a maintenance order.

8. (1) Where cohabitants have ceased to live together as husband and wife on a *bona fide* domestic basis, an application under this Part shall be made within two years after the day on which they so ceased to live.

10. (1) On an application for an adjustment order, the High Court may make any such order as is just and equitable, having regard to -

- (a) the financial contributions made directly or indirectly by or on behalf of the cohabitants to the acquisition or improvement of the property and the financial resources of the partners; and
- (b) any other contributions, including any contribution made in the capacity of homemaker or parent, made by either of the cohabitants to the welfare of the family constituted by them;
- (c) the right, title, interest or claim of a legal spouse in the property.

11. (2) In forming an opinion as to whether there is likely to be a significant change in the financial circumstances of either or both the cohabitants the court may have regard to any change in the financial circumstances of a cohabitant that may occur by reason that the cohabitant -

- (a) is a contributor to a deferred annuity plan or pension fund plan or participates in any plan or arrangement that is in the nature of an annuity;
- (b) may become entitled to a superannuation benefit; or
- (c) may become entitled to property, as the result of the exercise in his favour, by the trustee of a discretionary trust, of a power to distribute trust properties.

15. (1) A court may make a maintenance order, where it is satisfied as to one or more of the following matters:

- (a) that the applicant is unable to support himself adequately by reason of having the care and control of a child of the cohabitational relationship...
- (b) that the applicant's earning capacity has been adversely affected by the circumstances of the relationship, and in the opinion of the court a maintenance order would increase the applicant's earning capacity by enabling the applicant to undertake a course or programme of training or education; and
- (c) having regard to all the circumstances of the case, it is reasonable to make the order.

(2) In determining whether to make a maintenance order and in fixing the amount to be paid pursuant to such an order, the court shall have regard to -

- (a) the age and state of health of each of the cohabitants including the physical and mental disability of each cohabitant;
- (b) the income, property and financial resources of each cohabitant;
- (c) the financial needs and obligations of each cohabitant;
- (d) the responsibilities of either cohabitant to support any other person;
- (e) the terms of any order made under section 10 with respect to the property of the cohabitants;
- (f) the duration of the relationship;
- (g) a standard of living, that in all the circumstances is reasonable;
- (h) the extent to which the applicant has contributed to the income, earning capacity, property and financial resources of the other cohabitant;
- (i) the terms of any order made by a court in respect of the maintenance of a child or children in the care and control of the applicant;
- (j) any fact or circumstance that, in the opinion of the court, the justice of the case requires to be taken into account.

17. (1) The court may not make a maintenance order in favour of a cohabitant who has entered into a subsequent cohabitational relationship or has married or remarried.

(2) A maintenance order shall cease to have effect on the marriage or remarriage of the cohabitant in whose favour the order was made.

24. (1) A man and a woman who are not married to each other may enter into a cohabitation agreement or a separation agreement for the purpose of facilitating their affairs under this Act.

25. (1) A man and a woman who intend to cohabit or who are cohabiting partners, may enter into an agreement in which they agree on their respective rights and obligations during the period of cohabitation, or ceasing to cohabit, or on death, including -

- (a) their interests in or division of property;
- (b) their maintenance obligations;...
- (d) any other matter in the settlement of their affairs.

(2) If the parties to a cohabitation agreement marry each other, the agreement shall be unenforceable.

26. A man and a woman who are cohabitants or who were in a cohabitational relationship and are subsequently living separate and apart may enter into an agreement in which they agree on their respective rights and obligations, including -

- (a) their interests in or division of property;
- (b) their maintenance obligations;...
- (d) any other matter in the settlement of their affairs.

College of Science, Technology and Applied Arts of Trinidad and Tobago Act, No. 77 of 2000

11. (2) A member who has a pecuniary interest in a matter being considered by the Board shall, as soon as possible after the relevant facts come to his knowledge, disclose the nature of this interest before the Board's deliberation on the matter.

(3) A disclosure under subsection (2) shall be recorded in the minutes of the meeting of the Board and after such disclosure the member shall neither be present during any deliberation of the Board nor take part in any decision of the Board, with respect to that matter.

(4) For the purposes of this section, a person who, or a nominee or relative of whom, is a shareholder who owns shares in excess of five per cent or is a partner in a company or other body of persons other than a statutory authority or who is an employee thereof, shall be treated as having a pecuniary interest.

(5) In this section "relative" means spouse, cohabitant within the meaning of the Cohabital Relationships Act, father, mother, brother, sister, son or daughter of a person.

Compensation for Injuries Act (Chap. 8:05), 1980 Rev.

2. (1) In this Act, "dependant" means wife, husband...

Conveyancing and Law of Property Ordinance (CAP.27/12), 1950 Rev.⁷⁴⁹

76. (1) A married women, whether an infant or not, has power, as if she were unmarried and of full age, by deed, to appoint an attorney on her behalf for the purpose of executing any deed of doing any other act which she might herself execute or do...

Counting Unremunerated Work Act, No. 29 of 1996

2. The Director of the Central Statistical Office shall -

- (a) conduct periodic household surveys, at least once every three years to assess household incomes and breakdown of expenditures;
- (b) conduct surveys of unremunerated work performed in Trinidad and Tobago including –
 - (i) work performed in and around dwelling places;
 - (ii) work related to the care of children, the handicapped, the elderly and other care services;
 - (iii) agricultural work and work related to food production;
 - (iv) family businesses; and
 - (v) volunteer and community work in both the formal and informal sectors of society;
- (c) calculate the monetary value of such unremunerated work separately for men and women...

Criminal Procedure (Plea Discussion and Plea Agreement) Act, No. 11 of 1999

2. In this Act -

"relative" means the spouse (including a common law spouse)...

⁷⁴⁹ This Ordinance is repealed by Land Law and Conveyancing Act, No. 20 of 1981, but as this Act has not yet been brought into effect the Ordinance is still in force.

Distribution of Estates Act, No. 28 of 2000

2. (1) In this Part -

“cohabitant” or “cohabiting partner” means -

- (a) in relation to a man, a woman who has been living with or who has lived together with a man in a *bona fide* domestic relationship for a period of not less than five years immediately preceding the date of his death;
- (b) in relation to a woman, a man who has been living with or has lived together with a woman in a *bona fide* domestic relationship for a period of not less than five years immediately preceding the date of her death, but only one such relationship shall be taken into account for the purposes of this Part;

“cohabitational relationship” means the relationship between cohabitants, who not being married to each other, have lived together in a *bona fide* domestic relationship for a period of not less than five years immediately preceding the death of either cohabitant;

“spouse” means a husband or wife and in relation to a deceased person a widow or widower...

Domestic Violence Act, No. 27 of 1999

2. The objects of the Act are *inter alia* to -

- (a) provide immediate injunctive relief to victims of domestic violence; and
- (b) ensure a prompt and just legal remedy for victims of domestic violence.

3. In this Act –

“cohabitant” means a person who has lived with or is living with a person of the opposite sex as a husband or wife although not legally married to that person;

“domestic violence” includes physical, sexual, emotional or psychological or financial abuse committed by a person against a spouse, child, any other person who is a member of the household or dependant;

“emotional or psychological abuse” means a pattern of behaviour of any kind, the purpose of which is to undermine the emotional or mental well-being of a person including:

- (a) persistent intimidation by the use of abusive or threatening language;
- (b) persistent following of the person from place to place;
- (c) depriving that person of the use of his property;
- (d) the watching or besetting of the place where the person resides, works, carries on business or happens to be;
- (e) interfering with or damaging the property of the person;
- (f) the forced confinement of the person;
- (g) persistent telephoning of the person at the person’s place of residence or work; and
- (h) making unwelcome and repeated or intimidatory contact with a child or elderly relative of the person;

“financial abuse” means a pattern of behaviour of a kind, the purpose of which is to exercise coercive control over, or exploit or limit a person’s access to financial resources so as to ensure financial dependence;

“physical abuse” means any act or omission which causes physical injury...

“sexual abuse” includes sexual contact of any kind that is coerced by force or threat of force and the commission of or an attempt to commit any of the offences listed under the Sexual Offences Act in the First Schedule;

“spouse” includes a former spouse, a cohabitant or former cohabitant;

“visiting relationship” means a noncohabitational relationship which is otherwise similar to the relationship between husband and wife.

5. (2) The Court shall grant a Protection Order where it is satisfied that the respondent -

- (a) is engaging in or has engaged in domestic violence against the applicant; or
- (b) is likely to engage in conduct that would constitute domestic violence...

6. (1) A Protection Order may -
- (a) prohibit the respondent from -
 - (i) engaging or threatening to engage in conduct which would constitute domestic violence towards the applicant;
 - (ii) being on premises specified in the Order, that are premises frequented by the applicant including any residence, property, business, school or place of employment;
 - (iii) being in a locality specified in the Order;
 - (iv) engaging in direct or indirect communication with the applicant;
 - (v) taking possession of, damaging, converting or otherwise dealing with property that the applicant may have an interest in, or is reasonably used by the applicant, as the case may be;
 - (vi) approaching the applicant within a specified distance;
 - (vii) causing or encouraging another person to engage in conduct referred to in paragraphs (i) to (vi);
 - (c) direct that the respondent -
 - (i) return to the applicant specified property that is in his possession or under his control;
 - (ii) pay compensation for monetary loss incurred by an applicant as a direct result of conduct that amounted to domestic violence;
 - (iii) pay interim monetary relief to the applicant for the benefit of the applicant and any child, where there is no existing order relating to maintenance until such time as an obligation for support is determined, pursuant to any other written law;
 - (iv) immediately vacate any place or residence for a specified period, whether or not the residence is jointly owned or leased by the respondent and the applicant, or solely owned or leased by the respondent or the applicant;
 - (v) relinquish to the police any firearm licence, firearm or other weapon which he may have in his possession or control and which may or may not have been used;
 - (vi) make or continue to make payments in respect of rent or mortgage payments for premises occupied by the applicant;
 - (vii) ensure that reasonable care is provided in respect of a child or dependant person;
 - (viii) or applicant or both, receive professional counselling or therapy from any person or agency or from a programme which is approved by the Minister in writing.

(4) Where the Court makes an Order which, *inter alia*, directs the payment of compensation under subsection (1)(c)(ii), such compensation shall include, but not be limited to -

- (a) loss of earnings;
- (b) medical and dental expenses;
- (c) moving and accommodation expenses;
- (d) reasonable legal costs, including the cost of an application pursuant to this Act.

(6) Where the Court makes an Order which *inter alia* -

- (a) directs that the respondent vacate any place or residence; or
- (b) directs the respondent to return to the applicant specified property that is in his possession or control,

the Court may...direct the police to remove the respondent either immediately or within a specified time from the said place or residence, or to accompany the applicant, as the case may be, either immediately or within a specified time to specified premises in order to supervise the removal of property belonging to the applicant and to ensure the protection of that person.

7. In determining whether or not to impose one or more of the prohibitions or directions specified under section 6, the Court shall have regard to the following:

- (a) the nature, history or pattern of the violence that has occurred and whether a previous Protection Order or Interim Order has been issued;
- (b) the need to protect the applicant and any other person for whose benefit the Protection Order has been granted from further domestic violence...

9. (1) In proceedings under this Act the Court may at any time before the taking of evidence, accept an Undertaking from the respondent given under oath, that the respondent shall not engage in conduct specified in the application or any other conduct that constitutes domestic violence.

21. (1) A police officer shall respond to every complaint or report alleging domestic violence whether or not the person making the complaint or the report is the victim.

22. Where a Magistrate is satisfied, by information on oath, that -

- (a) there are reasonable grounds to suspect that a person on premises has suffered or is in imminent danger of physical injury at the hands of another person in a situation amounting to domestic violence and needs assistance to deal with or prevent the injury; and
- (b) a police officer has been refused permission to enter the premises for the purpose of giving assistance to the first mentioned person in paragraph (a),

the Magistrate may issue a warrant in writing authorising a police officer to enter the premises specified in the warrant at any time within twenty-four hours after the issue of the warrant and subject to any conditions specified in the warrant, to take such action as is necessary to prevent the commission or repetition of the offence or a breach of the peace or to protect life or property.

23. (1) For the avoidance of doubt, a police officer may act in accordance with the provisions of the Criminal Law Act where he has reasonable cause to believe that a person is engaging in or attempting to engage in conduct which amounts to physical violence and failure to act immediately may result in serious physical injury or death.

27. (1) Notwithstanding the Bail Act, where the Court is required to determine whether to grant bail in respect of an offence under this Act, the Court shall consider -

- (a) the need to protect the applicant from domestic violence;
- (b) the welfare of a child where the defendant or victim of the alleged offence has custody of that child;
- (c) the welfare of any child being a member of the household; and
- (d) any hardship that may be caused to the defendant or other members of the family if bail is not granted.

(2) Notwithstanding the Bail Act, the Court in granting bail, may order that the recognisance be subject to such of the following conditions as the Court considers appropriate:

- (a) that the defendant not harass or molest or cause another person to harass or molest the victim of the alleged offence;
- (b) that the defendant not be on the premises in which the victim resides or works;
- (c) that the defendant not be in a locality in which are situated the premises in which the victim resides or works; and
- (d) where the defendant continues to reside with the victim that the defendant not enter or remain in the place or residence while under the influence of alcohol or a drug.

Assault upon children, women and old, infirmed, sickly persons, Section 5
Aggravated assaults causing wound or harm, Section 5
Violent or obscene language or disturbance of the peace, Section 49
Possession of weapons intended for crime, Section 62
Throwing stones or other missiles, Section 69
Inciting animals to attack, Section 75
Misuse of telephone facilities and false telegrams, Section 106.

MALICIOUS DAMAGE ACT, CHAP. 11:06

Setting fire to a dwelling house, any person being therein, Section 4
Conspiracy to set fire, Section 10
Destroying or damaging a house with gunpowder, any person being therein, Section 11
Attempting to destroy buildings with gunpowder, Section 12

OFFENCES AGAINST THE PERSON ACT, CHAP. 11:08

Conspiring or soliciting to commit murder, Section 5
Attempted murder, Section 9
Sending letters threatening to murder, Section 10
Shooting or wounding with intent to do grievous bodily harm, Section 12
Inflicting injury with or without weapon, Section 14
Attempting to choke, etc., in order to commit any indictable offence, Section 15
Using drugs, etc., with intent to commit offence, Section 16
Administering poison, etc., so as to endanger life or inflict grievous bodily harm, Section 17
Administering poison, etc., with intent to injure or annoy, Section 18
Exposing children so that life endangered, Section 21
Causing bodily injury by explosive substance, Section 22
Use of explosive substance or other noxious thing with intent to do grievous bodily harm,
Section 23
Attempting to blow up buildings, Section 26
Drivers of vehicles injuring person by furious driving, Section 26
Procuring abortion, Section 56
Procuring drugs to cause abortion, Section 57

CHILDREN ACT, CHAP. 46:01

Punishment for cruelty to children and young persons, Section 3
Suffocation of infants, Section 4
Begging, Section 5
Exposing children to risk of burning, Section 6
Allowing children or young persons to be in brothels, Section 7
Causing, encouraging or favoring seduction or prostitution of young girls, Sections 3, 4, 5, 6, 7
and 8

SEXUAL OFFENCES ACT, 1986

Rape, Section 4
Sexual assault by a husband in certain circumstances, Section 5
Sexual intercourse with a female under fourteen, Section 6
Sexual intercourse with a female between fourteen and sixteen, Section 7
Sexual intercourse with a male under sixteen, Section 8
Incest, Section 9
Sexual intercourse with adopted minor, Section 10
Sexual intercourse with mentally subnormal person, Section 12
Buggery, Section 13
Serious indecency, Section 16

Procuration, Section 17
Procuring defilement of a person, Section 18
Detention of a person, Section 19
Abduction of a female, Section 20

Education (Teaching Service) Regulations, as amended by LN No. 184 of 2000, made pursuant to section 85(11) of the Education Act (Chap. 39:01)

48. Three months' maternity leave, the first month on full-pay and the succeeding two months on half-pay commencing approximately one month before the expected date of confinement shall be granted and must be taken by married female teachers who become pregnant.

Equal Opportunity Act, No. 69 of 2000

4. This Act applies to -

(a) discrimination in relation to employment...

7. (1) A person shall not otherwise than in private, do any act which -

(b) is done because of the gender...of the other person or of some or all of the persons in the group;

9. An employer shall not discriminate against a person employed by him...

11. (1) Sections 8 to 9 shall not apply in respect of discrimination on the grounds of sex in a case where being of a particular sex is a genuine occupational qualification for employment, promotion, transfer or training.

19. Nothing in this Act shall, in relation to any sport, game or other activity of a competitive nature where the physical strength, stamina or physique of the average woman puts her at a disadvantage to the average man, prohibit any act related to the participation of a person as a competitor in events involving that activity which are not confined to competitors of one sex.

Family Law (Guardianship of Minors, Domicile and Maintenance) Act 1981 (Chap. 46:08), 1980 Rev.

4. (1) In relation to the custody or upbringing of a minor, and in relation to the administration of any property belonging to or held in trust for a minor or the application of income of any such property, a mother shall have the same rights and authority as the law allows to the father, and the rights and authority of mother and father shall be equal and be exercisable by either without the other.

6. (2) Subject to the provisions of this Act, the mother of a minor born out of wedlock shall be the sole guardian of the minor unless and until the paternity of the minor has been registered...

13. (13) A Magistrate's Court may also on the application of the father of a minor born out of wedlock make an order that the custody of such minor be committed to the father.

37. (1) The domicile of a married woman, shall, instead of being the same as her husband's by virtue only of marriage, be determined as if she were unmarried and by reference to the same factors as in the case of any other individual capable of having an independent domicile and (if she is a minor) as if she were of full age; and the rule of law whereby upon marriage a woman acquires her husband's domicile and is thereafter during the subsistence of the marriage incapable of having any other domicile is abolished.

Financial Institution (Non-Banking) Act (Chap. 83:01), 1980 Rev.

13. (1) No director of a financial institution shall be present, or shall vote on a resolution of the Board of Directors of that institution when a loan or an advance to or by -

- (a) him or his associate; or
- (b) a company of which he or his associate is an employee, or in which he or his associate owns not less than ten per cent of the paid up share capital;

is being considered.

(2) In this section "associate", in relation to a director of a financial institution means -

- (a) the wife, husband, son or daughter of that director...

Fire Service (Terms and Conditions of Employment) Regulations, LN No. 267 of 1998 made pursuant to section 34 of the Fire Service Act

86. (1) Subject to this Regulation, maternity leave of one month with full pay and two months with half pay shall be granted to a pregnant officer.

(2) In order to be granted maternity leave -

- (a) the pregnant officer as of the date of commencement of such leave, shall have served for a period of not less than twelve continuous months in the Service;
- (b) the pregnant officer shall proceed on maternity leave at least one month before the expected date of delivery of the child as certified by an approved medical practitioner; and
- (c) the pregnant officer shall furnish the certificate referred to in paragraph (b) to the Chief Fire Officer six weeks before the expected date of delivery.

(6) A pregnant officer who has not completed twelve months continuous service prior to the date on which she would have proceeded on maternity leave had she so served, shall not qualify for the grant of maternity leave but shall be permitted to proceed on leave of absence of up to three months without pay on account of pregnancy provided the officer complies with the conditions in subregulation 2(b) and (c).

88. The Chief Fire Officer may direct that an officer who is pregnant be given light duties prior to her departure on maternity leave granted under regulation 86 and for such period as the circumstances of the officer's case may justify and may permit or require such officer to attend work out of uniform.

Friendly Societies Housing Corporation Regulations, deemed to be made pursuant to section 66 of the Friendly Societies Housing Corporation Act (Chap. 33:05), 1980 Rev.

6. ...no loan shall be made to an individual for the purpose of acquiring a house from his or her husband or wife, as the case may be, or, for the purpose of acquiring a house if he or his wife, or, she or her husband, already owns a house.

Guidelines for Contract Employment in the Tobago House of Assembly, LN No. 148 of 2000
Maternity Leave

Provision shall be made for all female appointees to be granted maternity leave as follows:

Provision shall be made for all female appointees to be granted maternity leave as follows:

1. Person engaged shall be eligible for maternity leave comprising one month with full pay and two months with half pay on the following conditions:

- (a) as of the date of commencement of such leave, she shall have served the government for a period of not less than twelve continuous months...
- (b) she shall proceed on maternity leave at least one month before the expected date of delivery of the child...

2. Where the half pay to which the person engaged is entitled during maternity leave together with the Maternity Benefits payable under the National Insurance Act amounts to less than her full pay, the difference shall be paid to the person engaged.

3. Where the person engaged has not completed twelve months continuous service she shall not qualify for the grant of maternity leave but shall be permitted to proceed on leave of absence without pay on grounds of pregnancy.

5. The taking of maternity leave shall not prejudice or affect the eligibility of the person engaged for vacation leave.

Human Tissue Transplant Act, No. 13 of 2000

2. In this Act -

“spouse” means a partner by a subsisting legal marriage or a cohabitant as defined in the Cohabital Relationships Act...

Immigration Act (Chap. 18:01), 1980 Rev.

6. (1) Subject to this Act and the regulations, persons who come within the following classes may...be granted permission by the Minister if he thinks it fit, to become residents, that is to say -

(c) the spouse of a citizen or resident of Trinidad and Tobago...

Immigration (Caribbean Community Skilled Nationals) Act, No. 26 of 1996, as amended by 6 of 2001

10. (1) For the period of the duration of a permission under section 3(1), the spouse and dependant members of the family of a person to whom section 3 applies shall...not be subject to any restriction on freedom of movement...

Income Tax Act (Chap. 75:01), 1980 Rev.

69. (3) For the purposes of this section, a settlement shall be deemed to be revocable if under its terms the settlor -

(c) has power...to revoke or otherwise determine the settlement and, in the event of the exercise of such power, the settlor or the wife or husband of the settlor will or may become beneficially entitled to the whole or any part of the property comprised in the settlement or to the income from the whole or any part of such property...

Infants Act (Chap. 46:02), 1980 Rev.

21. (1) Every female infant may upon or in contemplation of her marriage...make a valid and binding settlement or contract for a settlement of all or any part of her property...

Insurance Act (Chap. 84:01), 1980 Rev.

48. (1) A local company shall not after the commencement of this Act directly or indirectly -

(b) lend any of its funds to a director or an officer of the company or to the spouse or a child of a director...; nor shall a company registered under this Act lend any of its funds to another company where more than one-third of the shares of that other company is owned either jointly or severally by a director or an officer of the company or by the spouse or a child of a director...

106. Nothing in sections 104 and 105 shall affect any payment by way of dividend, bonus, profit or savings which is provided for by the policy or shall be construed so as to prevent an insurer from compensating a *bona fide* salaried employee of its head or branch office or the spouse or a child of such employee, in respect of insurance issued by the employing insurer upon the life or property of such person or so as to require such employee to be registered as an agent under this part to effect such insurance.

124. (1) An insurable interest shall be deemed to be had by -
- (a) a parent of a child under eighteen years of age or a person in *loco parentis* to such a child, in the life of the child;
 - (b) a husband, in the life of his wife;
 - (c) a wife, in the life of her husband...

Integrity in Public Life Act, No. 83 of 2000

2. In this Act -

“spouse” in relation to a person in public life means a person to whom the person in public life is married or living with in a conjugal relationship outside of marriage...

12. (1) A declaration required under this Act, shall include such particulars as are known to the declarant, of the income, assets and liabilities of himself, his spouse and his dependant children.

Judges Salaries and Pensions Act (Chap. 6:02), 1980 Rev.

12. (1) Where a person dies while he is entitled to receive a pension in respect of his service as Chief Justice and he leaves a widow, the widow shall be paid a pension...

(2) Where a person dies while holding the office of Chief Justice and he leaves a widow, the widow shall be paid -

- (a) a gratuity...
- (b) a pension...

(3) A widow shall not be entitled to receive and shall not be paid a pension under this section in respect of any period after her remarriage.

(5) In this section a reference to “widow” includes a reference to “widower”.

13. (1) Where a person dies while he is entitled to a pension in respect of his service as a Judge and he leaves a widow, the widow shall be paid a pension...

(2) Where a person dies while holding the office of a Judge and he leaves a widow, the widow shall be paid -

- (a) a gratuity...
- (b) a pension...

(3) A widow shall not be entitled to receive and shall not be paid a pension under this section in respect of any period after her remarriage.

(6) In this section - ...
“widow” includes “widower”.

Justice Protection Act, No. 78 of 2000

First Schedule. Offences which may give rise to protection under the Justice Protection Programme

...Any sexual offence...

Any domestic violence offence

Maintenance Orders (Facilities for Enforcement) Act, No. 12 of 2000

7. (2) Where a court has made a provisional order under section 5 consisting of or including a provision for periodic payments by a husband or wife and the order has been confirmed by a court in a reciprocating state, then, if after the making of the order, the marriage of the parties to the proceedings in which the order was made is dissolved or annulled but the order continues in force, the order, or as the case may be, the provision thereof in so far as it relates to the husband or wife, shall cease to have effect on the remarriage of the party in whose favour the order was made, except in relation to any arrears due under the order on the date of the remarriage, and such order or provision thereof shall not be capable of being revived.

(3) Notwithstanding subsection (2), where such periodical payments are made towards the maintenance of a minor or other dependant, such payment shall continue in respect of any period after the remarriage of the party in whose favour the order was made.

Married Persons Act (Chap. 45:50), 1980 Rev.

3. Subject to this Act, a married woman shall –

- (a) be capable of acquiring, holding, and disposing of any property;
- (b) be capable of rendering herself, and being rendered, liable in respect of any tort, contract, debt or obligation;
- (c) be capable of suing and being sued, either in tort or in contract or otherwise; and
- (d) be subject to the law relating to bankruptcy and to the enforcement of judgments and orders,

in all respects as if she were a *feme sole*.

4. Subject to this Act, all property...belongs to her in all respects as if she were a *feme sole* may be disposed of accordingly.

6. (1) Where a married woman would, if single, be the protector of a settlement in respect of a prior estate, then she alone shall, in respect of that estate, be the protector of the settlement.

8. (1) This section applies where a husband or wife makes a contribution of a substantial nature in money or money's worth to the improvement of property in which, or in the proceeds of sale of which, either or both of them has or have a beneficial interest.

(2) The contributing spouse shall be treated as having then acquired by virtue of his or her contribution a share, or an enlarged share, as the case may be, in that beneficial interest of such an extent –

- (a) as may have been agreed upon between them; or
- (b) in default of any such agreement as may seem, in all circumstances, just to any court before which the question of the existence or the extent of the beneficial interest of the husband or wife arises...

14. (4) The wife or husband...shall not be compellable either to give evidence or, in giving evidence, to disclose any communication made to her or him during the marriage by the accused, and her or his failure to give evidence shall not be made the subject of any comment by the prosecution.

16. Subject to this Act, the husband of a married woman shall not, by reason only of his being her husband, be liable –

- (a) in respect of any tort committed by her whether before or after the marriage, or in respect of any contract entered into, or debt or obligation incurred, by her before the marriage; or
- (b) to be sued, or made a party to any legal proceedings brought, in respect of any such tort, contract, debt, or obligation.

Maternity Protection Act, No. 4 of 1998

4. In this Act –

“confinement” means, in relation to a female employee who has become pregnant, labour resulting in the issue of a child or labour after twenty-six weeks of pregnancy resulting in the issue of a child whether dead or alive...

7. (1) Subject to this Act, an employee is entitled to -

- (a) leave of absence for the purpose of maternity leave;

- (b) pay while on maternity leave;
 - (c) resume work after such leave on terms no less favourable than were enjoyed by her immediately prior to her leave.
- (2) Where an employee has proceeded on maternity leave and the child of the employee dies at birth or within the period of the maternity leave, the employee shall be entitled to the remaining period of maternity leave with pay.
- (3) Where an employee has not proceeded on maternity leave and –
- (a) a premature birth occurs and the child lives, the employee is entitled to the full period of maternity leave with pay; or
 - (b) a premature birth occurs and the child dies at birth or at any time within the thirteen weeks thereafter, the employee is entitled to the full or remaining period of maternity leave with pay, as the case may be.
- (4) An employee who is pregnant and who has, on the written advice of a qualified person, made an appointment to attend at any place for the purpose of receiving prenatal medical care shall...have the right not to be unreasonably refused time off during her working hours to enable her to keep the appointment.
- (5) An employee who is permitted to take time off during her working hours, in accordance with subsection (4), shall be entitled to receive pay from her employer for the period of absence.
8. (1) An employee is not entitled to the rights referred to in section 7 unless:
- (a) as of the expected date of confinement as certified by a qualified person, she has been continuously employed by that employer for a period of not less than twelve months;
 - (b) she informs her employer, in writing, no later than eight weeks before the expected date of her confinement that she will require leave of absence due to pregnancy;
 - (c) she submits to her employer a medical certificate from a qualified person stating the probable date of confinement; and
 - (d) she informs her employer in writing of her intention to return to work at the expiry of her maternity leave.
9. (1) An employee is entitled to thirteen weeks maternity leave and may proceed on such leave six weeks prior to the probable date of confinement...and is required to return to work, subject to section 10, no later than thirteen weeks from the date she proceeded on leave.
- (2) During the period of maternity leave, an employee is entitled to receive pay from her employer to an amount equivalent to one month's leave with full pay and two month's leave with half pay.
- (3) Where the sum of the amount paid to the employee under subclause (2) and the maternity benefits payable to her under the National Insurance Act is less than her full pay during the period, the employer shall pay the difference to the employee.
10. (1) Where an employee is unable to return to work on the required date, she shall submit to her employer a certificate from a registered medical practitioner stating that by reason of disease or bodily or mental disablement, whether to herself or her baby, she will be incapable of returning to work on the required date and stating her intended date of return.
- (2) An employee who extends her absence from work for medical reasons under subsection (1) may do so for a period not exceeding 12 weeks after the required date of return and shall inform her employer in writing of her intended date of return.
- (3) Subject to an employee's right to sick or vacation leave with pay under any other written law, industrial award or collective agreement, an employee under subsection (2) shall be paid half pay for the first six weeks and no pay for the next six weeks.
- (4) An employee may postpone her return to work for non-medical reasons until a date not exceeding four weeks after the required date of return of, within ten working days, before the

required date, she gives the employer written notice, stating the reason why she is unable to return to work and stating and intended date of return.

(5) Subject to an employee's right to sick or vacation leave with pay under any other written law, industrial award or collective agreement, an employer is not liable to pay an employee in respect of leave for the period between the required date of return to work under section 9(1) and the intended date of return under subsection (4).

12. (1) Where an employee or employer alleges non compliance with the provisions of this Act, or an employee's employment is terminated on the ground of pregnancy or on any ground relating to pregnancy, or there is a difference of opinion as the reasonableness or otherwise of any action taken or not taken by an employer or employee, the employee, trade union or the employer may report the matter to the Minister and the matter shall be deemed to be a trade dispute and shall be dealt as such with under the Industrial Relations Act.

18. (1) Subject to subsection (2), there is no limit to an employee's right to maternity leave under section 7(1)(a) and her right to return to work under section 7(1)(c).

(2) An employee's right to pay for maternity leave under section 7(1)(b) is limited to one payment during each twenty-four months commencing at the beginning of such leave.

19. Where an employee is entitled to maternity leave...that leave shall be in addition to any vacation leave and sick leave to which that employee is eligible.

20. An employee on maternity leave shall not be deprived of an opportunity to be considered for promotion for which she is eligible and which may arise during her period of leave.

21. Notwithstanding any other written law to the contrary, the period of maternity leave shall be included in the computation of an employee's pension or other terminal benefits.

Minimum Wages (Catering Industry) Order, LN No. 158 of 1991, made pursuant to section 3 of the Minimum Wages Act (Chap. 88:04)

8. (1) A pregnant worker shall be entitled to maternity leave and to resume work after such leave.

Minimum Wages (Household Assistants) Order, LN No. 160 of 1991, made pursuant to section 3 of the Minimum Wages Act (Chap. 88:04)

9. (1) A household assistant shall be entitled to maternity leave and to resume work after such leave.

Minimum Wages (Security Industry Employees) Order, LN No. 231 of 1994, made pursuant to section 3 of the Minimum Wages Act (Chap. 88:04)

9. (1) A pregnant employee shall be entitled to maternity leave with pay and to resume work after such leave.

Minimum Wages (Shop Assistants) Order, LN No. 159 of 1991, made pursuant to section 3 of the Minimum Wages Act (Chap. 88:04)

8. (1) A pregnant shop assistant shall be granted maternity leave with pay...

National Insurance Act (Chap. 32:01), as amended by Act Nos. 9 of 1999 and 2004

2. (2) For the purposes of this Act and the regulations -

(a) where it is a condition for title to benefit that -

(i) a woman is the widow of an insured person, the Executive Director may treat a single woman or widow who was living with a single man or widower as his wife at the date of his death as if she were in law his widow; or

(ii) a man is the widower of an insured person, the Executive Director may treat a single man or widower who was living with a single woman or widow as her husband at the date of her death as if he were in law her widower, if the insured person nominated the woman or the man as the case may be as beneficiary for the purpose of entitlement to benefit;

(b) where the question of marriage or remarriage or of the date of marriage or remarriage arises in regard to the title or cessation of title to benefit, the Executive Director shall, in the absence of the subsistence of a lawful marriage or where there is any impediment to lawful marriage, decide whether or not the person concerned ought to be treated as if he were married or as if he had remarried...

(c) unless the context otherwise requires the determination of the Executive Director under paragraph (a) and (aa)(i) or (b) shall have the effect of extending, as regards title or cessation of title to benefit payable to a man or woman, the meaning of the word "marriage" to include the association between a single woman or widow and a single man or widower as aforesaid; and the meaning of the words "wife", "husband", "widow", "widower", and "spouse" shall be extended accordingly.

46. (1) From the appointed day the benefits payable to or in respect of persons insured under section 36(1), shall be -

(a) maternity benefit, that is to say, periodical payments in the case of the pregnancy or confinement of an employed woman...

(bb) maternity grant that is to say, a payment in the case of the pregnancy or confinement of an insured woman...

(g) survivor's benefit, that is to say, a payment or periodical payments...made in respect of an insured person who dies...

(2) In this section "survivor's benefits" means -

(a) widow's pension payable to the widow of the deceased for life or until she remarries, whichever is sooner, and where the widow remarries, a grant is payable on the termination of the benefit, by reason of the widow's remarriage; and

(b) widower's pension payable to the widower of the deceased for life or until he remarries, whichever is sooner, and where the widower remarries, a grant is payable on the termination of the benefit, by reason of the widower's remarriage...

(f) parent's pension, payable to a parent of two deceased insured parents where at the date of death of two deceased insured parents such parent was being wholly or mainly maintained by him.

(3) Subject to this Act, employment injury benefit shall be paid to or in respect of persons insured under section 37 and such benefit may be in the nature of -

(cc) a death benefit payable where the insured person dies as a result of the injury, that is to say -

(i) widow's pension payable as from the date of death of the insured person to his widow for life or until she remarries, whichever is sooner, and where the widow remarries, a grant is payable on the termination of the benefit, by reason of the widow's remarriage;

(ii) widower's pension payable as from the date of death of the insured person to her widower for life or until he remarries, whichever is sooner, and where the widower remarries, a grant is payable on the termination of the benefit, by reason of the widower's remarriage;

(iv) parent's benefit, payable to parents of an insured person where such parents were at the date of death of the insured person being wholly or mainly maintained by him.

National Insurance (Benefits) Regulations, made pursuant to section 55 of the National Insurance Act as amended by LN Nos. 73 of 1999 and 66 of 2004

5. (1) In determining a claim for survivor benefit or death benefit in which the claimant is relying on being treated by the Executive Director as the spouse of the insured person..., in the absence of the subsistence of lawful marriage, or where there was any impediment to lawful marriage, the requirement of supporting the claim by a marriage certificate shall not apply.

(3) No benefit shall be paid in respect of a claim to which subregulation (1) refers unless such claim is advertised once a week for a period of three weeks...and no objection has been raised to such claim by any person who –

- (a) is the lawful spouse or either the insured person or the claimant...

14. The maximum periods for which benefits payable by periodical payments shall be paid are as follows:

- (e) survivor benefit, that is to say -
 - (i) widow's pension payable to a widow for life or until she remarries, whichever is sooner;
 - (ii) widower's pension payable to a widower for life or until he remarries, whichever is sooner...
 - (iv) parent's pension payable to the parent for life or until the parent remarries.
- (f) employment injury benefit, that is to say –
 - (iv) death benefits, that is to say –
 - (A) widow's benefit payable to a widow for life or until she remarries, whichever is sooner;
 - (B) widower's benefit payable to a widower for life or until he remarries...
 - (D) parent's benefit payable to the parent for life or until the parent remarries, whichever is sooner.

22. (2) Maternity benefit shall be paid if the insured person, during the period of thirteen contribution weeks immediately preceding the contribution week calculated as the sixth week before the expected week of her delivery -

- (a) was in insurable employment for a period of not less than ten contribution weeks; or
- (b) was in receipt of sickness benefit for any period and either resumed insurable employment thereafter or continued receiving sickness benefit during the last contribution week in the period of thirteen contribution weeks.

22A. Subject to the provisions of these regulations a maternity grant shall be payable where confinement results in the birth of a living child or where confinement does not so result, the pregnancy lasted not less than twenty-six weeks, provided always that the insured satisfied the requirements set out in regulation 22(2)(a) or (b).

23. An insured person shall be disqualified from receiving maternity benefit, if during the period when such benefit is payable she engages in any work for which remuneration is or would ordinarily be payable.

27A. Maternity benefit shall be –

- (a) payable for a period starting not earlier than six weeks before the expected date of delivery and continuing until the expiration of thirteen weeks...
- (b) paid in a lump sum.

42. (1) Where a person in receipt of widow's benefit or pension or widower's benefit remarries, there shall be paid to that person a remarriage grant...

National Insurance (Contributions) Regulations, made pursuant to section 44 of the National Insurance Act

14. No contribution shall be payable in respect of a person for any week in which such person is in receipt of sickness, maternity or employment injury benefit...

National Museum and Art Gallery Act, No. 5 of 2000

23. (1) The Museum shall provide for the establishment and maintenance of a pension scheme or arrange for membership in a scheme for its employees upon terms to be agreed upon between the Museum and the relevant representative association or trade union.

(2) Without prejudice to subsection (1) the Museum may, under a pension scheme -

- (a) establish contributory superannuation schemes and establish and contribute to superannuation funds for the benefits of its employees;
- (b) grant gratuities, pensions or superannuation allowances to the surviving spouse, families or dependants of its employees;
- (c) enter into and carry into effect arrangements with any insurance company or other association or company for securing for any employee, or surviving spouse or dependant, such gratuities, pensions or allowances as are authorized by this section...

Occupational Safety and Health Act, No. 1 of 2004

4. (1) In this Act, except where otherwise expressly provided -
“woman” means a female person who has attained the age of eighteen years...

6. (9) An employer shall, after being notified by a female employee that she is pregnant and upon production of a medical certificate to that effect, adapt the working conditions of the female employee to ensure that she is not -

- (a) involved in the use of, or exposed to, chemicals, substances or anything dangerous to the health of the unborn child; or
- (b) subjected to working conditions dangerous to the health of the unborn child, and where appropriate, the employer may assign alternative work, where available, to her without prejudice to her right to return to her previous job.

(11) No employer shall require or permit a pregnant employee or an employee who is nursing her child to perform work that is hazardous to her health or the health of the child.

(12) Notwithstanding any other law, during an employee's pregnancy, and for a period of six months after birth of her child, her employer shall offer her suitable, alternative employment on terms and conditions that are no less favourable than her ordinary terms and conditions of work, where the employee is required to perform work that poses a danger to her safety or health or that of her child, unless there is no other available suitable alternative employment or that in doing so the employer will incur costs greater than ordinary administrative costs.

40. The occupier of every factory shall provide and maintain separately for men and women employed therein, adequate, clean and easily accessible washing facilities which are provided with soap and suitable hand drying materials or devices and such other provisions as are prescribed.

41. The occupier of every factory shall -

- (a) provide and maintain separately for men and women employed therein adequate, clean and easily accessible sanitary conveniences;
- (b) provide and maintain suitable receptacles or disposal units for use by women...

42. In every factory, there shall be provided and maintained, distinct and apart from any sanitary convenience or lunchroom and separately for the use of men and women, adequate and

suitable changing rooms with locks on the inside and accommodation for their clothing not worn during working hours.

87. Where a young person is employed in contravention of this Act, the parent of the young person, as the case may be, commits an offence and is liable, on summary conviction, to a fine of five thousand dollars, unless it appears to the Court that the contravention occurred without the consent, connivance, or wilful default of the parent.

Old Age Pensions Act (Chap. 32:02), 1980 Rev.

5. (1) Where a person is living away from his spouse, any sum paid to him or her by way of maintenance shall be deducted in calculating his or her means.

Petty Civil Courts Rules made pursuant to section 53 of the Petty Civil Courts Act

14. Save in respect of default summonses, the service of which is to be governed exclusively by rule 7, the service of all summonses or other processes is subject to the following provisions –

- (c) where husband and wife are both defendants, either may be served unless the Judge shall otherwise order...

Police Service Act, No. 7 of 2006⁷⁵⁰

3. In this Act—

“cohabitant” means –

- (a) in relation to a man, a woman who has been living with or has lived together with him in a *bona fide* domestic relationship for a period of not less than five years immediately preceding the date of his death; or
- (b) in relation to a woman, a man who has been living with or has lived together with her in a *bona fide* domestic relationship for a period of not less than five years immediately preceding the date of her death,

but only one such relationship shall be taken into account for the purpose of this Act...

65. The Award Fund continued under the former Act shall continue to be kept by the Commissioner and administered in accordance with this Act, and shall be appropriated to the payment of such—

- (b) compassionate gratuities to the spouse and children of a police officer as, in exceptional circumstances, the Commissioner may allow...

76. When a police officer dies the Minister shall order that three months salary of the officer, from the date of his death, shall be paid to his spouse, children or other next of kin.

Post Office Savings Bank Regulations, deemed to be made pursuant to section 13 of the Post Office Savings Bank Act

14. It shall be lawful to pay any sum of money in respect of any deposit made by or on behalf of any married woman, whether made before or after her marriage, upon the receipt of the woman, which, notwithstanding her coverture, shall be a sufficient discharge without the concurrence of her husband.

President's Emoluments Act (Chap. 2:50), 1980 Rev.

5. (1) Where a person dies while holding the office of President and he leaves a widow, the widow shall be paid -

- (a) a gratuity...
- (b) a pension...

⁷⁵⁰ On proclamation, this Act will repeal the Police Service Act (Chap. 15:01).

(2) Where a person dies after having retired from the office of President, there shall be granted to his widow an annual pension...

(4) In this section a reference to "widow" includes a reference to "widower".

Prevention of Corruption Act, No. 11 of 1987

9. (1) If a judge in Chambers is satisfied...that there is reasonable cause to believe that a person has committed an offence under this Act, the judge may make an order authorising any police officer not below the rank of inspector to enter and search any premises...

(2) Where an order is made under subsection (1) and the judge is satisfied that there is reasonable cause for so doing, he may make a further order authorising the police officer to enter and search any premises named in the order...and to inspect and make copies -

(a) of the relevant financial records of the spouse of the person against whom the order is made...

Prime Minister's Pension Act (Chap. 2:51), 1980 Rev.

2. In this Act –

"entitled child" means a person who, being a male has not attained the age of twenty-one years or being a female, has neither married while under the age of twenty-one years nor attained the age of twenty-one years...

5. (1) Where a person dies while he is entitled to receive a Prime Minister's pension and he leaves a widow, the widow shall...be paid a pension...

(3) A widow is not entitled to receive and may not be paid a pension under this section in respect of any period after her remarriage.

(4) Without prejudice to section 16(1) of the Interpretation Act, a reference in this Act to "widow" includes a reference to "widower".

8. Any pension payable under this Act shall not –

(a) be assignable or transferable except for the purpose of satisfying...an order of any court for the payment of periodical sums of money towards the maintenance of the wife, former wife, or child...

Private Hospital Regulations, made pursuant to section 21 of the Private Hospitals Act (Chap. 29:03)

20. (2) Where male and female patients are accommodated on the same floor of the hospital, there shall be separate water closets and wash basins for both sexes...

Privileges and Immunities (Diplomatic, Consular and International Organisations) Act (Chap. 17:01)

Fifth Schedule.

Part IV Privileges and Immunities of Official Staffs and of High Officers' Families

2. Where any person is entitled to any such privileges and immunities as are mentioned in Part II of this Schedule as an officer of the organisation, that person's wife or husband and children under the age of twenty-one shall also be entitled to those privileges and immunities...

Proceeds of Crime Act, No. 55 of 2000

32. (12)(i) ..."relative", in relation to a person means -

- (a) spouse of the person or cohabitant of the person;
- (c) brother or sister of the spouse or cohabitant of the person;
- (e) any lineal ascendant or descendant of the spouse or cohabitant of the person;
- (f) spouse or cohabitant of a person referred to in paragraph (b), (c), (d) or (e);

Public Health Ordinance (CAP.12/4), 1950 Rev.

141. The local authority may...make bye-laws as to all or any of the following matters in relation to common lodging-houses, barracks, and barrack yards, that is to say –

- (a) the fixing and from time to time varying of the number of persons who may be received as lodgers in each common lodging-house and in each room thereof, and the separation of the sexes in such common lodging-houses...

Real Property Ordinance (CAP.27/11), 1950 Rev.⁷⁵¹

77. A married woman, being a proprietor of land, shall be deemed to be entitled thereto for her sole benefit, and for the purposes of this Ordinance a married woman may deal with land under this Ordinance, and may execute and sign all instruments, and do all personal acts, without the concurrence of her husband as effectually as if she were a *feme sole*.

Regional Health Authorities Act, No. 5 of 1994

30. (1) An Authority shall provide for the establishment and maintenance of a pension scheme...

- (3) Without prejudice to subsection (1) an Authority may, under a pension scheme –
 - (b) grant gratuities, pensions or superannuation allowances to the surviving spouse, families or dependants of its employees...
 - (c) enter into and carry into effect agreements with any insurance company or other association or company for securing for any employee or surviving spouse or dependant, such gratuities, pensions or allowances...

Regional Health Authorities (Contracting for Goods and Services) Regulations, LN No. 225 of 1994 made pursuant to section 35(b) of the Regional Health Authorities Act

12. (1) A member of a Board or Tenders Committee who –

- (b) has a relative or whose spouse has a relative who is a member of or has a financial or other vested interest in a business entity,

...shall disclose the fact and shall not be present at or take part in the consideration or discussion of, or vote on, any question relating thereto.

Registration of Clubs (Amendment) Act, No. 14 of 1997

14B. (1) Discrimination on premises of a club registered in pursuance of this Act by the owner or occupier...on the ground of race, colour, religion or sex is hereby prohibited.

Regulated Industries Commission Act, No. 26 of 1998

21. (1) The Commission shall provide for the establishment and maintenance of a pension scheme or arrange for membership in a scheme for its employees...

- (3) Without prejudice to subsection (1), the Commission may, under the pension scheme –
 - (a) establish contributory superannuation schemes and establish and contribute to superannuation funds for the benefit of its employees;
 - (b) grant gratuities, pensions or superannuation allowances to the surviving spouse, families or dependants of its employees;
 - (c) enter into and carry into effect arrangements with any insurance company or other association or company for securing for any employee or surviving spouse or dependant, such gratuities, pensions or allowances and benefits authorized by this section.

⁷⁵¹ This Ordinance was repealed by the Land Registration Act, No. 24 of 1981, which was never brought into force; however, Act 16/2000 repealed the unenforced 1981 Act therefore the Ordinance is still in force.

Remedies of Creditors Act (Chap. 8:09), 1980 Rev.

43. Any estate of a married woman debtor, legal or equitable, as to which she is under no present restraint on anticipation, may be made available by any creditor who has obtained judgment against her by proceedings under this Act in the same way as if she were a *feme sole* seised in her own right.

Securities Industries Act, No. 32 of 1995

18. (4) For the purposes of this section, a Commissioner shall be deemed to have an interest in a matter if he, or his spouse...is a shareholder or partner in, or an officer of, a company or other body of persons having an interest or being involved in a matter before the Commission.

Sexual Offences Act, No. 27 of 1986, as amended by Act No. 31 of 2000

2. In this Act -

'cohabitant' means a person in a cohabitational relationship in accordance with the Cohabital Relationships Act, 1998;

4. (1) Subject to subsection (2), a person ("the accused") commits the offence of rape when he has sexual intercourse with another person ('the complainant') -

- (a) without the consent of the complainant where he knows that the complainant does not consent to the intercourse or he is reckless as to whether the complainant consents; or
- (b) with the consent of the complainant where the consent -
 - (i) is extorted by threat or fear of bodily harm to the complainant or to another;
 - (ii) is obtained by personating someone else;
 - (iii) is obtained by false or fraudulent representations as to the nature of the intercourse; or
 - (iv) is obtained by unlawfully detaining the complainant.

(2) A person who commits the offence of rape is liable on conviction to imprisonment for life and any other punishment which may be imposed by law, except that if -

- (a) the complainant is under the age of twelve years;
- (b) the offence is committed by two or more persons acting in concert or with the assistance or in the presence, of a third person;
- (c) the offence is committed in particularly heinous circumstances;
- (d) the complainant was pregnant at the time of the offence and the accused knew that the complainant was pregnant; or
- (e) the accused has previously been convicted of the offence of rape, he shall be liable to imprisonment for the remainder of his natural life.

(5) This section also applies to a husband in relation to the commission of the offence of rape on his wife.

4A. (1) Subject to subsection (2), a person ('the accused') commits the offence of grievous sexual assault when he commits the act on another person ('the complainant') -

- (a) without the consent of the complainant where he knows that the complainant does not consent to the act or he is reckless as to whether the complainant consents; or
- (b) with the consent of the complainant where the consent -
 - (i) is extorted by threat or fear of bodily harm to the complainant or to another;
 - (ii) is obtained by personating someone else;
 - (iii) is obtained by false and fraudulent representations as to the nature of the act;
 - (iv) is obtained by unlawfully detaining the complainant.

(3) This section also applies to a husband in relation to the commission of the offence of grievous sexual assault on his wife.

6. (1) Where a male person has sexual intercourse with a female person who is not his wife and who is under the age of fourteen years, he is guilty of an offence...and is liable on conviction to imprisonment for life.
7. (1) Where a male person has sexual intercourse with a female person who is not his wife with her consent and who has attained the age of fourteen years but has not yet obtained the age of sixteen years he is guilty of an offence, and is liable on conviction to imprisonment for twelve years for a first offence and to imprisonment for fifteen years for a subsequent offence.
8. (1) Where a female adult has sexual intercourse with a male person who is not her husband and who is under the age of sixteen years, she is guilty of an offence...and is liable on conviction to imprisonment for five years.
9. (1) A person commits the offence of incest who, knowing that another person is by blood relationship, his or her parent, child, brother, sister, grandparent, grandchild, uncle, niece, aunt or nephew, as the case may be, has sexual intercourse with that person.
11. (1) An adult who has sexual intercourse with a minor who -
(b) is in the adult's employment; or
(c) is in respect of any employment or work under or in any way subject to the adult's control or direction; or
(d) receives his or her wages or salary directly or indirectly from the adult,
is guilty of an offence and is liable on conviction to imprisonment for twenty-five years.
12. (1) Where a person under circumstances that do not amount to rape has sexual intercourse with another who is mentally subnormal and who is not the person's spouse, that person is guilty of an offence and is liable on conviction to imprisonment for twenty-five years.
13. (1) A person who commits buggery is guilty of an offence and is liable on conviction to imprisonment...
14. (1) A person who commits bestiality is guilty of an offence and is liable on conviction to imprisonment of fifteen years.
15. (1) A person who indecently assaults another is guilty of an offence and is liable on conviction to imprisonment for five years for a first offence and to imprisonment for ten years for a subsequent offence.
16. (1) A person who commits an act of serious indecency on or towards another is guilty of an offence and is liable on conviction to imprisonment...
(2) Subsection (1) does not apply to an act of serious indecency committed in private between -
(a) a husband and his wife...
17. A person who -
(a) procures a minor under sixteen years of age to have sexual intercourse...
(b) procures another for prostitution...
(c) procures another to become an inmate...
is guilty of an offence and is liable on conviction to imprisonment for fifteen years.
18. A person who -
(a) by threats or intimidation procures another to have sexual intercourse...
(b) by deception procures another to have sexual intercourse...

(c) applies, administers to or causes to be taken by any person any drug, matter or thing with intent to stupefy or overpower that person so as thereby to enable any other person to sexual intercourse with that person,
is guilty of an offence and is liable on conviction to imprisonment for fifteen years.

19. (1) A person who detains another against that other's will -
(a) in or upon any premises with intent that the person detained may have sexual intercourse with any person; or
(b) in any brothel,
is guilty of an offence and is liable on conviction to imprisonment for ten years.

20. A person who takes away or detains a female person against her will with intent –
(a) to marry her or to have sexual intercourse with her; or
(b) to cause her to marry or to have sexual intercourse with a male person,
is guilty of an offence and is liable on conviction to imprisonment for ten years.

22. A person who -
(a) keeps or manages or acts or assists in the management of a brothel;
(b) being the tenant, lessee, occupier, or person in charge of any premises, knowingly permits the premises...to be used as a brothel or for the purposes of habitual prostitution; or
(c) being the lessor or landlord of any premises, or the agent of the lessor or landlord, lets the same or any part thereof with the knowledge that the premises or some part thereof are to be used as a brothel, or is wilfully a party to the continued use of the premises or any part thereof as a brothel,
is guilty of an offence and is liable on conviction to imprisonment for five years.

23. (1) A person who -
(a) knowingly lives wholly or in part on the earnings of prostitution, or
(b) in any place solicits for immoral purposes,
is guilty of an offence and is liable on conviction to imprisonment for five years.

24. A person who for purposes of gain, exercises control, direction or influence over the movements of a prostitute in a way which shows that the person is aiding, abetting or compelling the prostitution is guilty of an offence and is liable on conviction to imprisonment for five years.

31. (1) Any person who -
(a) is the parent or guardian of a minor;
(b) has the actual custody, charge or control of a minor;
(c) has the temporary custody, care, charge or control of a minor for a special purpose, as his attendant, employer or teacher, or in any other capacity; or
(d) is a medical practitioner, or a registered nurse or midwife, and has performed a medical examination in respect of a minor,
and who has reasonable grounds for believing that a sexual offence has been committed in respect of that minor, shall report the grounds for his belief to a police officer as soon as reasonably practicable.

(2) Any person who without reasonable excuse fails to comply with the requirements of subsection (1), is guilty of an offence and is liable on summary conviction to a fine of fifteen thousand dollars or to imprisonment for a term of seven years or to both such fine and imprisonment.

34A. (1) A person shall be subject to the notification requirements of this Part where -

- (a) he has been convicted of a sexual offence to which this part applies and he has been sentenced to a term of imprisonment;
- (b) such sentence has been commuted; or
- (c) he has been convicted of such offence, but has not been dealt with for the offence.

34E. (4) Where it is found upon examination that the complainant has contracted HIV or any other communicable disease the court, upon application by the complainant and upon being satisfied on a balance of probabilities that the complainant contracted the disease as a result of the offence, may order the defendant to pay to the complainant compensation in addition to any amount ordered under section 3(5).

Slum Clearance and Housing Act (Chap. 33:02), 1980 Rev.

4. Subject to the provisions of this Act, the Authority may –

- (j) with the approval of the Minister make advances upon such securities as may likewise be approved to suitable social organisations for the purpose of assisting the erection of hostels for single men and single women of the working class...

Statistics (Surveys of Industrial or Business Undertakings) Regulations, made pursuant to section 13 of the Statistics Act

4. A person carrying on an industrial or business undertaking shall...make on the forms supplied...a return containing information on such of the following matters as may be prescribed...:

- (i) wages and salaries paid distinguishing –
- (iii) amounts paid for overtime work; and showing amounts paid to males and females separately...

Theatres and Dance Halls (Amendment) Act, No. 15 of 1997

4B. (1) Discrimination on premises by the owner or occupier...on the ground of race, colour, religion or sex is hereby prohibited.

The Police Service Regulations, made pursuant to section 65 of the Police Service Act as amended by LN No. 235 of 1999

94. (1) With effect from 1st October, 1997, maternity leave consisting of leave with full pay for one month followed by leave with half pay for two months shall be granted to women police officers on the following conditions:

- (a) that the expectant mother proceed on maternity leave at least one month before the expected date of birth of the child;
- (b) that the taking of maternity leave would not in any way prejudice or affect the eligibility of the officer for annual leave;
- (c) that the expectant mother would normally be required to furnish three months before the expected date of delivery a certificate from a registered medical practitioner of the expected date of delivery; and
- (d) that the officer has served for a period of not less than one year in the Police Service as at the date of commencement of such leave.

95. In addition to the period of maternity leave provided for in regulation 94, a woman police officer may be granted any period of annual vacation leave due to her, to precede or follow her maternity leave.

96. Any application for leave in excess of the periods provided for in regulations 94 and 95 shall be treated as an application for sick leave...

97. The Commissioner in his discretion may direct that a women police officer qualifying for maternity leave be given light duties to perform at work prior to and following her period of maternity leave...

124. There shall be at least two prisoners' cells provided at each police station – one for adult male prisoners and the other for adult female prisoners.

The Prison Service (Pension and Gratuity) Rules, as amended by Act No. 17 of 2000

4. (7) Where an officer is granted maternity leave in accordance with the Maternity Protection Act, 1998 the whole period of maternity leave shall be counted for the purpose of computing the amount of pension, gratuity or other allowance payable to the officer.

The State Land (Regularisation of Tenure) (Certificate of Comfort) Regulations, LN No. 36 of 2000, made pursuant to section 34(2) of the State Land (Regularisation of Tenure) Act, 1998

7. (1) Where an applicant is legally married and living together with his spouse, the Agency shall advise the parties to make a joint application for the Certificate of Comfort, and where the parties so apply, the Certificate...shall be issued in the names of both parties.

(2) Where it is brought to the attention of the Agency that the applicant is living in the dwelling house with another person, as husband and wife on a *bona fide* domestic basis, and has continued to live in such a cohabitational relationship for a period of not less than five years, the Agency shall advise the parties to make a joint application for the Certificate of Comfort, and where the parties so apply, the Certificate...shall be issued in the names of both parties.

Trinidad and Tobago Civil Aviation Authority Act, No. 33 of 2000

14. (2) A member who has a pecuniary interest in a matter being considered by the Board shall, as soon as possible after the relevant facts come to his knowledge, disclose the nature of this interest before the Board's deliberation on the matter.

(3) A disclosure under subsection (2) shall be recorded in the minutes of a meeting of the Board and after such disclosure the member shall neither be present during any deliberation of the Board nor take part in any decision of the Board, with respect to that matter.

(4) For the purposes of this section, a person who, or a nominee or relative of whom, is a shareholder who owns shares in excess of five per cent or is a partner in a company or other body of persons other than a statutory authority or who is an employee thereof, shall be treated as having a pecuniary interest.

(5) In this section "relative" means spouse, cohabitant within the meaning of the Cohabital Relationships Act, father, mother, brother, sister, son or daughter of a person.

A.4.4 CONSTITUTION

The Constitution (Chap. 1:01), 1980 Rev.

4. It is hereby recognized and declared that in Trinidad and Tobago there have existed and shall continue to exist, without discrimination by reason of race, origin, colour, religion or sex, the following fundamental human rights and freedoms, namely –

- (a) the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law;
- (b) the right of the individual to equality before the law and the protection of the law;
- (c) the right of the individual to respect for his private and family life;
- (d) the right of the individual to equality of treatment from any public authority in the exercise of any functions...

A.5 MISCELLANEOUS

Interpretation Act (Chap. 3:01), 1980 Rev.

16. (1) Words in a written law importing, whether in relation to an offence or not, persons or male persons include male and female persons...

Judicial Review Act, No. 60 of 2000

5. (2) The Court may, on an application for judicial review, grant relief in accordance with this Act -

(a) to a person whose interests are adversely affected by a decision...

(3) The grounds upon which the Court may grant relief to a person who filed an application for judicial review includes the following:

- (a) that the decision was in any way unauthorised or contrary to law;
- (b) excess of jurisdiction;
- (c) failure to satisfy or observe conditions or procedures required by law;
- (d) breach of the principles of natural justice;
- (e) unreasonable, irregular or improper exercise of discretion;
- (f) abuse of power;
- (g) fraud, bad faith, improper purpose or irrelevant consideration;
- (h) acting on instructions from an unauthorised person;
- (i) conflict with the policy of an Act;
- (j) error of law, whether or not apparent on the face of the record;
- (k) absence of evidence on which a finding or assumption of fact could reasonably be based;
- (l) breach of or omission to perform a duty;
- (m) deprivation of a legitimate expectation;
- (n) a defect in form or a technical irregularity resulting in a substantial wrong or miscarriage of justice; or
- (o) an exercise of a power in a manner that is so unreasonable that no reasonable person could have so exercised the power.

APPENDIX B

International Constitutional/Bill of Rights Provisions dealing with Equality and Specific Women's Rights

CONSTITUTIONAL/BILL OF RIGHTS PROVISIONS ⁷⁵²							
COUNTRY	Equality		Labour			Family	
	Before the law	Gender	Equality at work	Equal pay for equal work ⁷⁵³	Maternity	Promotion	Domestic violence
Afghanistan	✓						
Albania	✓						
Algeria	✓						
Andorra	✓						
Angola	✓						
Antigua and Barbuda		○					
Argentina	✓		▣	✓			
Armenia	✓						
Australia	▣						
Austria	✓						
Azerbaijan	✓	✓					
Bahamas		○					
Bahrain	✓						
Bangladesh†	✓	✓					
Barbados		○					
Belarus	✓		▣	✓			
Belgium	✓						
Belize	✓	○					
Benin†	✓	✓	▣	✓			▣

⁷⁵² All constitutions were located using the Constitution Finder facility of the University of Richmond School of Law at <http://confinder.richmond.edu> with the exception of the constitutions of Brunei Darussalam, San Marino and United Arab Emirates which were located in G.H. Flanz and A.P. Blaustein (eds), *Constitutions of the Countries of the World: a Series of Updated texts, Constitutional Chronologies and Annotated Bibliographies*, (Dobbs Ferry, N.Y.: Oceana Publications, 1971-). Many of the African constitutions are available at Centre for Human Rights, University of Pretoria at http://www.chr.up.ac.za/hr_docs/docs_country.html.

Country names in bold have no relevant constitutional clauses; ✓ indicates an explicit right; ▣ indicates an inferred right; ○ indicates gender equality to be exercised in the performance of the function of a public body or public authority; † indicates that the country reserves the constitutional right to implement affirmative action measures in favour of women (explicit and inferred). Information correct as at February 2006.

⁷⁵³ Also to be understood to mean "equal pay for work of equal value".

CONSTITUTIONAL/BILL OF RIGHTS PROVISIONS							
COUNTRY	Equality		Labour			Family	
	Before the law	Gender	Equality at work	Equal pay for equal work	Maternity	Promotion	Domestic violence
Bhutan	✓			✓			✓
Bolivia	✓	✓					
Bosnia and Herzegovina	☐						
Botswana		☐ ○					
Brazil	✓	✓	☐	✓			✓
Brunei Darussalam							
Bulgaria	✓						
Burkina Faso	✓	☐					
Burundi	✓			✓			
Cambodia	✓	✓		✓	✓		☐
Cameroon	✓						
Canada	✓	✓					
Cape Verde	✓			✓			
Central African Republic	✓	✓		☐			
Chad†	✓	✓	✓	☐			✓
Chile	✓						
China	✓	✓	✓	✓			
Colombia†	✓	✓			✓		✓
Comoros ⁷⁵⁴	✓	✓					
Congo (Republic of)†	✓	✓	✓	✓			✓
Costa Rica	✓		☐	✓			
Côte d'Ivoire	✓	☐					
Croatia	✓	✓					
Cuba†	✓	✓		✓	✓		
Cyprus	✓	✓					
Czech Republic							
DPR Korea†	☐	✓			✓		
Dem. Rep. of Congo†	✓	✓					✓
Denmark							
Djibouti	✓						

⁷⁵⁴ These rights (and duties) are not found in clauses of the Constitution, but in the preamble which forms an integral part of the Constitution.

CONSTITUTIONAL/BILL OF RIGHTS PROVISIONS							
COUNTRY	Equality		Labour			Family	
	Before the law	Gender	Equality at work	Equal pay for equal work	Maternity	Promotion	Domestic violence
Dominica		○					
Dominican Republic					✓		
Ecuador	✓	✓	✓	✓	✓	□	✓
Egypt	✓	✓ ⁷⁵⁵			✓		
El Salvador	✓	□		✓	✓		
Equatorial Guinea	✓	✓	□	□			
Eritrea†	✓	□					✓
Estonia	✓	□					
Ethiopia†	✓	✓	□	✓	✓		
Fiji†	✓	□					
Finland	✓	✓	✓	✓	□	□	
France	□						
Gabon	✓						
Gambia	✓	✓○	□	□			
Georgia	✓						
Germany†	✓	✓					
Ghana	✓	□		✓	✓	✓	
Greece	✓	✓		✓			
Grenada		○					
Guatemala	✓	✓		✓	✓		
Guinea	✓	✓					
Guinea-Bissau	✓	✓	□	□			
Guyana†	✓	✓○	✓	✓	✓	✓	
Haiti	✓		✓	✓			
Honduras	✓	□		✓	✓		
Hungary	✓	✓		✓	✓		
Iceland	✓	✓	□	□			
India†	✓	□			✓		
Indonesia	✓						

⁷⁵⁵ Without prejudice to Sharia.

CONSTITUTIONAL/BILL OF RIGHTS PROVISIONS							
COUNTRY	Equality		Labour			Family	
	Before the law	Gender	Equality at work	Equal pay for equal work	Maternity	Promotion	Domestic violence
Iran† ⁷⁵⁶	✓				✓		
Iraq	✓	✓			✓		✓
Ireland	✓						
Israel ⁷⁵⁷							
Italy	✓	□	✓	✓	□		
Jamaica		○					
Japan	✓	□					
Jordan	✓	□		□			
Kazakhstan	✓	□		□			
Kenya†	✓	✓○			✓		
Kiribati ⁷⁵⁸							
Kuwait	✓				✓		
Kyrgyz Republic	✓	□					
Lao	✓	✓	□	□			
Latvia	✓						
Lebanon	✓	✓					
Lesotho	✓	✓○	✓	✓	✓	✓	
Liberia	✓	□		✓			
Libyan Arab Jamahiriya	✓						
Liechtenstein	✓	✓					
Lithuania	✓	□					
Luxembourg	✓						
Macedonia	✓	✓					
Madagascar	✓	□	□	□			
Malawi†	✓	✓	□	✓	✓		✓
Malaysia	✓	□					
Maldives	✓						

⁷⁵⁶ In conformance with Islamic criteria.

⁷⁵⁷ No written constitution, but basic laws which would constitute such a document have no clauses on equality or women.

⁷⁵⁸ While there is a provision dealing with protection from discrimination, it does not include "sex" as a ground of discrimination.

CONSTITUTIONAL/BILL OF RIGHTS PROVISIONS							
COUNTRY	Equality		Labour			Family	
	Before the law	Gender	Equality at work	Equal pay for equal work	Maternity	Promotion	Domestic violence
Mali		☐					
Malta†		✓○	✓	✓			
Marshall Islands	✓	☐					
Mauritania	✓	☐					
Mauritius		○					
Mexico		☐		✓	✓		
Micronesia		☐					
Moldova	✓	☐					
Monaco	✓	☐					
Mongolia	✓	✓	☐	☐	✓		
Morocco	✓						
Mozambique†	✓	✓			✓		
Myanmar ⁷⁵⁹	✓						
Namibia†	✓	✓		✓	✓		
Nauru							
Nepal†	✓	☐		✓			
Netherlands	✓	☐					
New Zealand ⁷⁶⁰		☐					
Nicaragua	✓	☐		✓	✓		
Niger		✓					
Nigeria	✓	✓○		✓			
Norway							
Oman	✓	☐					
Pakistan†	✓	✓			✓		
Palau	✓	○					
Palestine†	✓	✓					
Panama	✓	☐		✓	✓		

⁷⁵⁹ This constitution has been suspended since 1988. See Lucy Murray [online], "Myanmar's lesson in 'discipline democracy'", *Asia Times Online*, 17 February 2005. [accessed 27 February 2006]. Available from internet: http://www.atimes.com/atimes/Southeast_Asia/GB17Ae01.html.

⁷⁶⁰ While the constitution of New Zealand has no relevant provisions, it has a separate Bill of Rights that deals with discrimination.

CONSTITUTIONAL/BILL OF RIGHTS PROVISIONS							
COUNTRY	Equality		Labour			Family	
	Before the law	Gender	Equality at work	Equal pay for equal work	Maternity	Promotion	Domestic violence
Papua New Guinea		✓					
Paraguay†	✓	✓	✓	✓	✓		✓
Peru	✓	□					
Philippines	✓		✓		✓		
Poland	✓	✓	✓	✓		✓	
Portugal	✓	✓		✓	✓		
Qatar	✓	✓					
Republic of Korea (South)	✓	□	□	□			
Romania	✓	□		✓			
Russia	✓	✓		□	□		
Rwanda	✓	□					
St. Kitts and Nevis	✓	○					
St. Lucia	✓	○					
St. Vincent & the Grenadines		○					
Samoa†	✓	□					
San Marino							
São Tomé and Príncipe	✓	✓		✓			
Saudi Arabia							
Senegal	✓	✓	✓	✓			
Serbia and Montenegro		✓					
Seychelles			✓	✓	✓		
Sierra Leone	✓	○		✓			
Singapore	✓						
Slovakia		✓					
Slovenia	✓	□					
Solomon Islands		○					
Somalia ⁷⁶¹							
South Africa†	✓	□					

⁷⁶¹ Somalia does not have a constitution.

CONSTITUTIONAL/BILL OF RIGHTS PROVISIONS							
COUNTRY	Equality		Labour			Family	
	Before the law	Gender	Equality at work	Equal pay for equal work	Maternity	Promotion	Domestic violence
Spain	✓	☐	☐	☐			
Sri Lanka	✓	☐					
Sudan†	✓	✓					
Suriname		☐		✓	✓		
Swaziland†	✓	✓		✓			
Sweden ⁷⁶²		✓					
Switzerland	✓	✓	✓	✓			
Syrian Arab Republic	✓	✓					
Taiwan†	✓				☐		
Tajikistan	✓	✓		✓			
Tanzania	✓	○		☐			
Thailand†	✓	✓					
Timor-Leste	✓	✓	☐	☐	✓		
Togo	✓	✓	✓				
Tonga	☐						
Trinidad and Tobago	✓						
Tunisia	✓	✓					
Turkey	✓	✓					
Turkmenistan ⁷⁶³	✓	☐					
Tuvalu							
Uganda†	✓	✓	☐	✓	✓		
Ukraine†	✓	✓	☐	☐	✓		
United Arab Emirates	✓				☐		
United Kingdom ⁷⁶⁴		✓	✓	✓			

⁷⁶² While Sweden has a written Constitution, it comprises of four fundamental laws which serve as a basis for how the country is ruled. This right stated here comes from the document called “The Instrument of Government”. See Sveriges Riksdag [online], “The Constitution”, [cited 14 April 2006]. Available from Internet: http://www.riksdagen.se/templates/R_Page_6357.aspx.

⁷⁶³ The right to gender equality is specific to the enjoyment of civil rights only.

⁷⁶⁴ The UK does not have a written constitution; however, it has a Bill of Rights (1689), a Sex Discrimination Act (1975, 1986) and a Human Rights Act which all form part of its Constitutional Documents.

CONSTITUTIONAL/BILL OF RIGHTS PROVISIONS							
	Equality		Labour			Family	
	Before the law	Gender	Equality at work	Equal pay for equal work	Maternity	Promotion	Domestic violence
United States of America							
Uruguay	✓				✓		
Uzbekistan	✓	✓					
Vanuatu†	◻						
Vatican City State							
Venezuela†	✓	◻	✓	✓	✓		
Viet Nam†	✓	✓		✓	✓		
Yemen	✓	✓ ⁷⁶⁵					
Zambia		○					
Zimbabwe		○					

⁷⁶⁵ Without prejudice to Sharia.

APPENDIX C

NGOs and Domestic Violence

C.1 Research and Advocacy Groups

C.1.1 Trinidad and Tobago Coalition Against Domestic Violence (“The Coalition”)

The Coalition was founded by Diana Mahabir-Wyatt and Radhica Saith in 1988 and is committed to developing responses and policies that address the specific issues of violence among men, women, children, and the elderly.⁷⁶⁶ As the foremost organisation in Trinidad and Tobago that deals with domestic violence, it provides counselling services and legal advice to victims of domestic violence. While it does not provide financial assistance, the Coalition can get such assistance through the social services for those requiring it.

The Coalition provides free counselling support services to persons who have been victims of domestic violence, as well as to perpetrators who wish to stop their abusive behaviour. Counselling is undertaken by the Coalition’s qualified in-house counsellors and is also done for couples and young persons. This support is extended to help victims of serious crimes, such as sexual assault and domestic violence, in dealing with the fear of court appearances, especially where the offender is present. A Legal Clinic has been established to give clients in domestic abusive situations legal advice. Lawyers volunteer their time once a month to give advice on remedies available under the Domestic Violence Act, the most popular requests dealing with applications for protection and maintenance orders and divorce.

Another important area of the Coalition’s work lies in training those from whom victims seek help (police, magistracy, etc.) how to deal with domestic violence situations. The apathy and,

⁷⁶⁶ Kelli Coombs, Public Relations Officer, *Interview with author*, Port of Spain, Trinidad, 09 February 2007. Further information also available from pamphlets prepared by The Coalition as well as from its website: <http://www.ttcadv.org/>.

sometimes, clear reluctance to assist by some who deal with victims of domestic violence are well known. The Coalition has been engaged in several projects with the police. The main focus of this assistance has been in helping to train police officers to handle domestic violence and child sexual abuse cases with sensitivity, instead of relegating them to the category of family matters not for police action. This has involved, among other things, explaining to the police the provisions of the Domestic Violence Act and the new provisions in the Sexual Offences Act, helping them to find more appropriate ways of dealing with their own anger (it is recognised that police officers are also abusers in their homes) and to, in turn, counsel batterers in their districts. Among these initiatives are:

- ◆ Funding of the furnishing of the Community Police Safe House.
- ◆ Anger Management/Behaviour Modification training for community and other police officers and for 300 Police recruits in 2000.
- ◆ Counselling services for officers who are high risk for violent behaviour in their own homes.
- ◆ Sensitisation on domestic and gender-based violence and how to treat victims who report such instances.

Counselling and legal aid are services that assist the victim directly. The Coalition is also very much involved in advocacy at the national level and general sensitisation programmes. Together with other NGOs, the Coalition has been a chief advocate of legislation designed to protect women and children from abuse and sexual offences. In terms of sensitisation, the Coalition has produced a DVD series and leaflets on domestic violence. It participates in outreach by invitation and attends various fairs to distribute information on domestic violence. The Coalition is also requested to prepare speeches and talks to select groups, such as magistrates and police officers in training, groups of people who directly affect the lives of the abused. In October 2004, the Coalition was involved in a seven day training workshop for the judiciary.

The Coalition has close ties with Canada and receives funding from the Canadian International Development Agency. This relationship redounds to the benefit of victims in severely abusive domestic situations as the Coalition regularly supplies affidavits to lawyers, mainly in Canada, on behalf of applicants for refugee status on the grounds of domestic violence. Some 60% of the applications are successful. In unsuccessful cases, the Coalition also provides assistance with the appeal.

C.1.2 Centre for Gender and Development Studies (“CGDS”)

The Centre for Gender and Development Studies (“CGDS”) of the University of the West Indies, founded in September 1993, seeks to promote teaching, research and outreach activities in gender-related issues by:

- ◆ Offering interdisciplinary courses in gender and development across faculties within the University of the West Indies, at both the undergraduate and post-graduate level.
- ◆ Initiating collaborative research projects that address the relationship of gender to all areas of society.
- ◆ Pursuing a programme of outreach activities that includes seminars, workshops and networking events.⁷⁶⁷

There is a branch of the CGDS at each of the University of the West Indies’ three campuses - Mona, Jamaica; Cave Hill, Barbados; and St. Augustine, Trinidad - and has its origins in the University-wide Women and Development Studies Group. The CGDS is regional in scope, with a Regional Co-ordinating Unit located at the Mona Campus in Jamaica, and headed by

⁷⁶⁷ Information on the Centre taken from its website: Centre for Gender and Development Studies [online], “About the Centre”. [cited 20 March 2007]. Available from Internet: <http://sta.uwi.edu/cgds/aboutus.asp>.

Professor Barbara Bailey. Professor Elsa Leo-Rhynie, also of the Mona Campus, holds the Chair in Gender and Development Studies.

The Head of the St. Augustine Unit of the CGDS, Professor Rhoda Reddock, spearheads the mission to support research on all aspects of gender and feminist scholarship. The centre also aims to act as a forum for work by scholars, artistes and teachers at all levels of the educational system, as well as by organisers from the national, regional and international community.

An ongoing activity of the CGDS is the weekly Lunchtime Seminar Series in which local, regional and international faculty, writers, scholars and activists concerned with gender-related issues and actions present aspects of their work. All talks are free and open to the public. Conferences, video showings, public lectures and workshops are organised periodically by the centre.

Research at the CGDS focuses around seven key themes⁷⁶⁸:

- ◆ Gender, Science and Technology (including Gender and the Environment)
- ◆ Construction of Caribbean Masculinities
- ◆ The Making of Feminisms in the Caribbean
- ◆ Gender and Sexuality
- ◆ Gender, Film, Image and Iconography
- ◆ Gender and Ethnomusicology
- ◆ Rethinking Caribbean Economy

With respect to gender-based violence, the CGDS has produced a “Policy Roundtable on Data Collection on Domestic Violence”; the “National Report – Trinidad and Tobago: 1999-2000:

⁷⁶⁸ Centre for Gender and Development Studies, *Research Activity and Output: 1993-2006* (St. Augustine, Trinidad: Centre for Gender and Development Studies, 2006), p. 6.

United Nations Inter-Agency Campaign on Gender Violence against Women and Girls". It has also prepared a Manual for Gender-Sensitive Policy Making, a National Gender Policy and Action Plan of Trinidad and Tobago (2004); and a National Gender Policy for Gender Equity and Equality for the Commonwealth of Dominica (2005).

C.1.2.1 Women Development and Studies Group

Since 1982, the Women and Development Studies Group ("WDSG") has been committed to the maximisation and development of the human resource potential of women in the region.⁷⁶⁹ It aims to improve gender relations in society and the Caribbean region primarily through a variety of well-organised staff development and outreach activities within and outside of the Campus. The WDSG philosophy is based on the promotion, development and recognition of women's status in society through education, training and the legislative process. Ultimately, the group is intent on empowering women to chart their own destiny, a destiny that involves gender equity, openness and sustainable growth and development.

Along with the other two WDSG branches, at the Mona and Cavehill campuses, the Trinidad and Tobago arm of the WDSG has been successful in the creation of the CGDS, which was officially established as a University Unit in September 1993. Cooperation between the CGDS and the WDSG has become vital to the effective functioning of both organisations.

The WDSG was established:

- ◆ To strengthen the foundation for gender equity in the University community, the society and the region.
- ◆ To facilitate, support, promote and undertake research on women's issues with a view to influencing policy and generating feminine scholarship.

⁷⁶⁹ Taken from Centre for Gender and Development Studies [online], "Women Development and Studies Group". [cited 20 March 2007]. Available from Internet: <http://sta.uwi.edu/cgds/wdsg.asp>.

- ◆ To organise public programmes and engage in public policy issues with a view to the recognition and celebration of the differences in gender.
- ◆ To provide assistance and support to the CGDS in its work.

The WDSG also promotes, undertakes and encourages research, and arranges or provides for the holding of workshops, lectures, exhibitions and other forums on gender related issues.

C.1.3 Caribbean Association for Feminist Research and Action (“CAFRA”)

CAFRA is a regional network of feminists, individual researchers, activists and women’s organisations from the Dutch, Spanish, French and English speaking Caribbean who define feminist politics as a matter of both consciousness and action.⁷⁷⁰ CAFRA is an autonomous umbrella organisation that was founded on 02 April 1985 at an all-day meeting in Barbados of forty feminists and women activists from the region. The organisation’s main areas of work include communication and networking; education and consciousness-raising; institutional development; research/action projects on issues of relevance to the regional women’s movement; solidarity/action on national, regional and international campaigns. CAFRA is actively involved in promoting women’s rights and does in fact deal with domestic violence as a major area of concern; this is especially the case with respect to its programme on Women and the Law.

C.1.4 Network of NGOs of Trinidad and Tobago for the Advancement of Women (“The Network”)

The Network was founded in 1984 by a group of thirteen women to act as an umbrella organisation working towards ensuring gender equality, promoting women’s human rights, and

⁷⁷⁰ Information on CAFRA available from CAFRA, *CAFRA Annual Report 2004* (CAFRA: Tunapuna, Trinidad, 2004) and a pamphlet prepared by the organisation in preparation for the Fourth World Conference on Women, held in Beijing in 1995.

women's empowerment nationally, regionally, and globally.⁷⁷¹ It is currently headed by Hazel Brown and its mission is to improve and enhance the quality of life for women and girls in TT through effective representation and advocacy. While it does not generally deal with victims of domestic violence, the odd call from a victim would be referred to one of its member organisations. The Network has also undertaken a project of "media monitoring", with a focus on the media as one location from where domestic violence is learnt. It reviews the portrayals of women and girls in the media to help further understand the problem.

C.1.5 Women Working for Social Progress

Women Working for Social Progress was established in 1985 by Rawwida Baksh-Soodeen, Merle Hodge and Jacquie Burgess.⁷⁷² The purpose of the organisation is to empower women of all ethnicities and social groups in Trinidad and Tobago to improve their lives, and to bring about positive change in their communities and their country. This is to be effected through advocacy campaigns, education programmes, and support systems. These activities are guided by the core values of equitable access to economic resources and decision-making, non-violence, and mutual support.

In 1999, the group established a drop-in centre for victims of domestic violence. Some women are referred by the area police station while others come on their own. There are three regular social workers who provide counselling services from Tuesdays to Thursdays. The organisation also distributes food and small amounts of money (USD\$15 or less) to assist with transportation costs to those who need it most. General financing comes from membership dues, fund-raising activities, and workshops. Those who require legal aid are usually referred to the Legal Aid Clinic at the Hugh Wooding Law School or to members (lawyers) of the group who explain the

⁷⁷¹ Hazel Brown, *Interview with author*, Port of Spain, Trinidad, 12 February 2007 and pamphlet prepared by The Network for International Women's Day 2006.

⁷⁷² Jacquie Burgess, *Interview with author*, Tunapuna, Trinidad, 24 February 2007.

legal remedies available. A School of Alternative Education was started at the organisation's office where it offers (paid) courses on functional literacy (not just learning to read, but to be able to read and understand bills, notices, etc. that affect daily life); languages (Spanish, Patois); lay counselling; and English for tertiary education.

Women Working for Social Progress engages in training, and campaigning and holds workshops. With respect to domestic violence, it has undertaken training sessions for the area police station to explain to them their role under the Domestic Violence Act - they have a duty to intervene by law - and to solicit their views as well. The group has also been very active in lobbying for legislative change. They held a forum and a campaign with respect to the Sexual Offences Act of 1986 to have marital rape included as an offence which was finally done in 2000 after much opposition by the government.⁷⁷³

C.2 Support Service Groups

C.2.1 Lifeline

Lifeline was established some thirty years ago to provide a "listening" service to those in need of someone to talk to.⁷⁷⁴ It was founded by Dr. Lucy Gabriel due to her affiliation with the Central London Samaritans which was established to "offer confidential support to anyone passing through a crisis or thinking of taking their own lives".⁷⁷⁵ Like this organisation, Lifeline offers time and space for people to express their feelings, helping them to talk through their options and find a way to face the future. It is made very clear that the service provided is one of

⁷⁷³ The original act only acknowledged sexual offences against a wife if the husband had intercourse with her without her consent or by force of fear where there was some degree of legal separation or an order by the court for the husband not to molest his wife. Moreover, proceedings for an offence under this section could only have been instituted by or with the consent of the Director of Public Prosecutions. See section 5 of the Sexual Offences Act, No. 27 of 1986 – now repealed.

⁷⁷⁴ Sylvia Brathwaite, Listener, *Interview with author*, St. Augustine, Trinidad, 07 February 2007.

⁷⁷⁵ Central London Samaritans [online], "Central London Samaritans". [cited 23 February 2007]. Available from Internet: <http://www.samaritans.org/~cls/>.

listening only – no judgements are made nor advice offered. At present, Lifeline has two “listeners”.

During any given month, Lifeline can receive up to an average of seven calls from women that are directly related to domestic violence. When such calls are received and it becomes clear that the caller is a victim of emotional abuse, she is generally referred to The Coalition (no males call with respect to domestic violence). In instances of physical abuse, the caller is referred to 800-SAVE, the Ministry’s/government’s domestic violence hotline.

C.2.2 Families in Action

Families In Action was established in 1988 by Ivis Gibson and is dedicated to the upliftment and healing of families and individuals, through counselling and group support.⁷⁷⁶ Its mission is to promote healthy family life, balancing emotional, spiritual, social and psychological needs and to regenerate both the family unit and/or any individual of that unit experiencing pain, isolation, addiction or dysfunction. Before founding Families In Action, Ms. Gibson ran an employee’s assistance programme and was moved to start the NGO when she learnt that a former employee of hers killed his mother for money to purchase cocaine.

In addition to employee assistance programmes, the organisation offers programmes on peer counselling, helpline training, community outreach and parenting. Its services include a 24/7 hotline, drop-in counselling centre and recovery therapy. With respect to domestic violence, Families In Action offers counselling to victims. It also assists in referrals to shelters, 800-SAVE, or other organisations that are better equipped to deal with such issues. When the person’s life is in danger, Families In Action will contact the police to have a report filed.

⁷⁷⁶ Ivis Gibson, Managing Director, *Interview with author*, Port of Spain, Trinidad, 26 February 2007 and pamphlet prepared by Families In Action on their programmes and services.

C.2.3 Rape Crisis Society of Trinidad and Tobago

The Rape Crisis Society was established in 1984 and had its beginnings in a committee organised by Eunice Gittens, Keith Joseph and Sr Marina Serrette the year before.⁷⁷⁷ It has two offices, one in Port of Spain and the other in San Fernando which was opened in 1988; an office will soon be opened in Tobago. The Rape Crisis Society seeks to address the issues of sexual and domestic violence, particularly as they impact on the most vulnerable members of society, through counselling and public education. A 24-hour hotline service is available to those who wish to talk and face-to-face counselling is offered free of charge and includes referral services to victims of domestic violence, among others. Arrangements are also made for high risk women to send them to shelters in other Caribbean islands, such as the one in Antigua. Small amounts of money (USD\$15 or less) are sometimes given to assist with transportation costs.

While one of the objectives of the organisation is to provide educational and outreach programmes, inadequate (government) funding has caused this to be done by invitation only. Basic and advanced counselling courses, however, are provided and, recently, this tends to be directed towards teachers to be able to detect signs of abuse among children. Another important activity undertaken by the Rape Crisis Society is the agro-processing project which began in 1993 to give support and impart skills to survivors of rape and sexual violence. Many of these survivors are unskilled and financially dependent on the abuser and this ten-week programme provides training in agro-processing. In addition, these survivors, numbering 10-15 per session, receive counselling, are exposed to health education and a small business-training component.

⁷⁷⁷ Rape Crisis Society of Trinidad and Tobago, *The National Conference on Revisiting Abuse: The Impact on the Individual, Family and National Community* (Rape Crisis Society: Port of Spain, Trinidad, 2005), p. 6. Other information on the Rape Crisis Society was obtained from Cherise Clarke, Trained Social Worker, *Interview with author*, Port of Spain, Trinidad, 09 February 2007 and pamphlets published by the organisation.

A survivors' support group was recently started and meets every fourth Thursday of the month to give members an opportunity to discuss issues pertinent to them. Another important initiative undertaken by the Rape Crisis Society in 1995 was the Community Caravan. Its mission is to stimulate community action and programmes that focus on family life and values, non-violent forms of conflict management, and resolution and improve levels of self-esteem. Whether this still occurs is not clear, given the fact that the organisation, like many other NGOs, is underfunded.

C.2.4 Social Establishment for the Welfare of All (“SEWA”)

The Social Establishment for the Welfare of All was established in 1997 under the auspices of the Sanatan Dharma Maha Sabha, the foremost Hindu organisation in Trinidad and Tobago.⁷⁷⁸ The organisation emerged out of a six month training programme conducted by Dr. Hari Maharaj for twenty-five members of the Hindu congregation of the Todds Road Hindu Temple on “Counselling Services for Victims of Domestic Violence.” It subsequently became part of the Ministry of Social Development’s SHARE programme which is designed as an emergency measure towards alleviating the unfortunate situation of the new poor and expanded to engage in food distribution and provided relief to victims of different types of abuse, the unemployed, single parents with many dependents, and dysfunctional families. SEWA also receives a government subvention.

Its primary aims and objectives are to provide:

- ◆ A social cushion to assist in instituting change through counselling, educational programmes, personal development and spiritual growth.
- ◆ Temporary accommodation for displaced individuals with related social problems.

⁷⁷⁸ This organisation is currently closed and no interview was possible. Information was therefore taken from the Coalition website and is available from the Internet at: <http://www.ttcadv.org/sewa.shtml>.

- ◆ A walk-in service to persons encountering domestic violence and/or related social problems so as to render positive rehabilitative solutions.
- ◆ Social assistance to families that are plagued by sustained poverty and children who may suffer as a result of related afflictions.
- ◆ And establish educational and training programmes to equip persons who may not be able to afford such services, so as to enhance the standard of living of such persons.

C.2.5 Flaming Word Ministry

Flaming Word Ministry is a religious organisation that began in 1985 and was formalised by an Act of Parliament ten years later.⁷⁷⁹ It was started by Prophet Dave Allen whose mission is to inspire people to have faith and praise God. As a religious leader, he deals with victims of domestic violence of all socioeconomic classes, usually over the telephone, but some do come in to speak with him. The organisation can provide temporary support to women facing dangerous situations at home. It refers women to shelters, legal aid, assists in job placement and there is a security arm of the ministry that can be called upon to assist in physically threatening situations. His membership has a women's fellowship that is headed by a female pastor to ensure that the group is developed in line with the organisation's vision. Some victims of domestic violence are urged to join this group. He also has a team of counsellors to whom he can refer such victims to be counselled under his guidance. The organisation arranges women's seminars where public figures are invited to talk to the women's fellowship helping to empower the members.

⁷⁷⁹ Dave Allen, Pastor, *Interview with author*, Chaguanas, Trinidad, 06 March 2007.

C.2.6 Legal Aid Clinic

The Legal Aid Clinic forms part of the Hugh Wooding Law School of the University of the West Indies, St. Augustine Campus.⁷⁸⁰ It originally began under Hazel Thompson-Ahye in the early seventies to provide a teaching function to law students but is now also serviced by four Attorneys at Law who provide legal aid. The students are allowed to prepare the ground work but the Attorneys at Law are the ones who will actually make court appearances.

The Legal Aid Clinic provides for those of slightly better means who are not eligible for state assistance through the Legal Aid and Advisory Authority. Some clients are referred to the clinic while others come on their own. Whereas persons (mainly female applicants) do not generally seek help from the clinic specifically for domestic violence issues, they do come in to seek advice and assistance on divorce and maintenance proceedings. Domestic violence does, however, form one of the main reasons why women seek to commence divorce and maintenance proceedings.

C.2.7 Men Against Violence Against Women (“MAVAW”)

MAVAW is the only men’s group specifically engaged in domestic violence issues and is currently headed by Superintendent Christopher Holder. It was established in 1994 in recognition of the rising crime situation with particular emphasis on violent male behaviour and intended to develop strategies to reduce and eventually stop this undesirable behaviour.⁷⁸¹ According to its website, MAVAW is a proactive way to take responsibility for male violence and to contribute towards the creation of a violence free society. The organisation believes in the

⁷⁸⁰ Rhonda de Freitas, Director, *Interview with author*, St. Augustine, Trinidad, 13 February 2007.

⁷⁸¹ Information on MAVAW available from “MAVAW’s Formal Documents” and MAVAW [online], “MAVAW”, last updated 06 April 2006. [cited 27 February 2007]. Available from Internet: <http://www.mavaw.com/>. Information also obtained from Donald Berment, Secretary, *Interview with author*, St. Augustine, Trinidad, 09 February 2007.

pursuit of equal rights while appreciating the differences between the sexes, utilizing the principle of equity, and focusing on (the return of) paternal care in the home.

MAVAW's philosophical approach to domestic violence appears to be radically different from the offerings of other NGOs. They view domestic violence as resulting from dysfunctional relationships and do not believe in terms such as "abuser" and "victim". Their "BSD Syndrome Concept" focuses on identifying belief, behavioural, and biological "deficits" with a view to developing them appropriately, such as the belief that men are superior or the behaviour that allows hitting to be acceptable. The concept also includes a "baggage system dependency" which requires the individual to completely resolve previous relationships before entering another. The concept is meant to scientifically place the violence in relationship issue into a medium that takes away the stigma and gender polarisation previously associated with it. MAVAW anticipates resistance to the concept by some women, "primarily because every statistic, which lists one person being hurt, will also have to list the other person causing pain, as being hurt too".⁷⁸²

Since its inception, MAVAW has worked alongside and supported all the major social change NGOs in TT and alongside international NGOs in Canada, Barbados, Suriname, Guyana and Jamaica. MAVAW members participated in the review of the Domestic Violence Act and have also assisted in the analysis of the status of the family in Trinidad and Tobago. On a more localised level, MAVAW takes part in many sensitisation programmes. They have produced a domestic violence handbook and a violence reduction CD. They attend a weekly radio show, have produced a television programme for men, are involved in outreach by invitation and participate in conferences. At the individual/family level, they offer peer and professional counselling and make referrals where needed.

⁷⁸² Email communication between Donald Berment and Bert Hoff, 15 October 2003.

C.2.8 Women Against Abuse and Violent Encounters (Women's Support Group) ("WAAVE")

Women Against Abuse and Violent Encounters (Women's Support Group) is a unique group – it was founded in 1994 in Tobago by seven women who were themselves victims of domestic violence.⁷⁸³ They came together to provide support to one another. One member found that during her experience with domestic violence, the support she got from the group gave her the strength to talk about her experience and deal with it.

The group was forced to split between 1999-2006 due to a lack of money and inter-institutional support, and personal issues.⁷⁸⁴ The women are now trying to regroup and even though they do not meet as a group, they continue to work individually in the interim by providing support to members of their communities. All members of the group received training in counselling and provide counselling to community members. In its earlier days, members of the groups have also taken part in symposia on domestic violence, a radio-thon and sensitisation programmes at schools. They would attend Court with women to provide them with emotional support in the court room. It is their hope when they become fully operational again that they will continue their awareness-raising programmes and open a shelter. From the perspective of those who know, they recognise the need for keeping families together and hope to have facilities for boys within the shelter. Moreover, they see the need to have a programme on parenting which women will have to attend as part of their stay. While they were indeed victims, they wish to fight that label and have themselves recognised as persons in their own right and not (only) as survivors of domestic violence.

⁷⁸³ Sherla Gordon, Founding Member; Gemma Joseph, Assistant Secretary/Treasurer; Allison Munroe, Secretary/Treasurer; Anita Joseph, Member, *Interview with author*, Scarborough, Tobago, 01 March 2007.

⁷⁸⁴ The group was blacklisted in 1999 when one of the members publicly spoke out against the poor financial support received from the Social Services Department of the Tobago House of Assembly.

C.3 Shelters

C.3.1 Goshen House

The Goshen Halfway House for Battered Wives and Teenage Pregnancies is one of four homes under management by the Eternal Light Community.⁷⁸⁵ This halfway house was established by Babsie Blesdell thirteen years ago. Many people in her community sought help from her and she would provide meals, counselling, clothing and shelter in her own home to those in need. She eventually decided to find a home to accommodate everyone and money was donated for the purchase of the house. Due to her busy schedule, she requested the Eternal Light Community, headed by Sr. Deborah de Rosia, to take over the management of the home. This shelter is privately funded.

The home can hold eighteen people comfortably but held as many as twenty-seven once. Boys of schooling age are not allowed, but are sent to a sister organisation, Joshua House, where they live and attend school. Girls of schooling can also be sent to Amica House, another sister organisation. Besides this, there are no restrictions on the number of children a mother can bring nor on the length of stay at the home. At Goshen House, the women are taught skills in food preparation, housekeeping and childcare. The home recently purchased three computers and needs volunteers to teach the women computer literacy. Those in need of counselling can receive it at the home or at the Eternal Light Community in Tunapuna.

Women are generally referred to the house by the Court. Those arriving at the house requiring medical attention are taken by ambulance to the district hospital; those under eighteen must be taken by the matron or person in charge. At the hospital, a social worker will assist women with applying for a protection order if necessary and the women are escorted by police to and from the Court.

⁷⁸⁵ Joyce Greyson, Matron, *Interview with author*, Arima, Trinidad, 12 March 2007. The other three houses are Vision of Hope, Amica House for Girls and Joshua House for Boys.

C.3.2 Vision of Hope

The Vision of Hope Halfway House is another of four homes under management by the Eternal Light Community.⁷⁸⁶ Prior to 1994, when the home was placed under its current management, the La Brea Social Action Group began working in the La Brea community to alleviate the social ills in the area. During this time, they discovered that there were many battered women lacking economic security and with no place to go. To help these women, the group identified an abandoned building in need of extensive repairs belonging to the State-owned oil company and approached the company about it. It was agreed that the group could have use of the house and three acres of surrounding land once they took responsibility for refurbishment. An Irish couple of missionaries, the Crowleys, assisted with the actual repairs and funds for materials came from companies and embassies. On completion, the head of the group, Sr. Paul asked Eternal Light to take over management of the house and in December 1994 the keys were handed over.

The house can accommodate 31 people and takes in mothers with children where the boys must be under 10. Residents, preferably referred by the police, are generally allowed to stay six months, but depending on the nature of individual cases, they may be allowed to stay longer. The home, or rather the Eternal Light Community in general, receives no government subvention but relies on the charity of companies and individuals. The home sometimes organises fund raising activities such as raffles. To deal with women's economic insecurity, the home began a skills training programme and animal farming. With the assistance of another group, Women in Action for the Needy and Destitute, they raised funds to construct a Hope Learning Centre where skills in Literacy, Parenting/Child Care; Computer Literacy, Cookery, Garment Construction, Hair Dressing, Cosmetology and Counselling are taught. These courses

⁷⁸⁶ Sr. Jude-Marie Aird, Assistant Administrator, *Interview with author*, Curepe, Trinidad, 07 March 2007. Information also obtained from document dealing with the home's history and activities.

are all taught by retired teachers and principal who volunteer their time. These volunteers also assist in job placements.

C.3.3 MIZPEH House

The MIZPEH Half Way House was incorporated by Act of Parliament, No. 3 of 1990. Among its aims and objectives are to “(a) provide a programme of counselling, re-education and therapy for troubled young adults and women generally... (d) foster, feed, clothe or otherwise care and provide for poor, underprivileged, destitute, abandoned and abused young adults and women generally... (i) organise and conduct seminars to educate young adult and women generally...”.

A Christian organisation, the Mizpeh Half Way House, provides temporary shelter for battered women and their children.⁷⁸⁷ Its services are targeted to women from all over the country; however, it has the capacity to house only a limited number of clients.

There are voluntary counsellors who work in the house on a part-time basis, who can be contacted at short notice. The service also includes a doctor who is available to the home. Fortunately, the health services at the district hospital are very accessible and are utilised as required.

Services provided by MIZPEH Half Way House include:

- ◆ Education and skill training seminars for women are conducted in and around the community in Sangre Grande. The shelter also conducts cooking and sewing training classes as well as an agricultural course.

⁷⁸⁷ This organisation is currently closed and no interview was possible. Information was therefore taken and adapted from United Nations Development Programme, *National Reports on the Situation of Gender Violence Against Women: National Report – Trinidad and Tobago*, Regional Project RLA/97/014 (April 1999), pp. 78-80.

- ◆ Feeding and clothing programme that extends to individuals and families as far as Mayaro. These families are often referred to MIZPEH through the school principals who identify the children in need of assistance.
- ◆ Counsellor training programme in which individuals are trained to work with and care for abused women, incest victims, and substance abusers. The counseling programme provides services to both the female and the male partner if the latter is willing to be counselled. Fortunately, MIZPEH House has also been able to obtain male counsellors to work with the male partners. Attempts are made to mediate between the partners and effect reconciliation. When this is not possible the partners are encouraged to separate.

The MIZPEH compound consists of several buildings, including one that needs to be refurbished to provide shelter for the young male children of the battered women who cannot always be accepted because of emotional state of some of the other clients housed at the shelter.

The lack of financial response from the State and the public could threaten the sustainability and quality of the programmes. Currently, the shelter is closed due to financial constraints. The management of MIZPEH has recognised the important roles played by education and spirituality in interventions against domestic violence and has sought to impart this to all its clients, the communities within which it works, and among the staff and cadre of volunteers.

C.3.4 Halfway House

The Business and Professional Women's Club Halfway House was established in 1986 and is now popularly known as the Halfway House.⁷⁸⁸ Before this, it started out as a halfway house for

⁷⁸⁸ Joyce Blenman, Director, *Interview with author*, Gasparillo, Trinidad, 28 February 2007.

unwed mothers. The founder, Mrs. Brooks, found herself unable to continue and asked the Club to take it over from her. In so doing, the Club decided to expand its reach and make it a halfway house for victims of domestic violence, incest and rape. The actual building was funded by donations from various sponsors and the government leased the land to the Club. The shelter now receives a quarterly government subvention that covers some 13% of its monthly expenses while other money comes from various sponsors.

Women are referred to the shelter by the police, 800-SAVE, other halfway houses and NGOs, and the Court. It can accommodate 25 women and children, including boys under seven years. There is a dormitory for single women and several family rooms. Generally, women are allowed to stay three months, but this timeframe is flexible, depending on individual needs. A part time counsellor is available to speak to those who need counselling. The shelter has developed a relationship with the nearby health centre so that women who are taken there for medical attention are seen and sent back immediately. The Halfway House also provides support with respect to Court – someone from the organisation makes the appointment and the victim is taken to and from Court. A skills programme is run by volunteers for the women. Depending on the number of women in the shelter at any time, the volunteers would teach the women pastry-making, crafts (sewing, flower-making using plastic soft drink bottles), and gardening. If there are courses at the nearby community centre, the shelter would make arrangements for the women to attend. For women with children, the shelter has an arrangement with two secondary schools in the area to take the children in.

C.3.5 Madinah House

Madinah House was founded in 1998 by Gayaz Rajab to provide temporary shelter in a secure environment for female victims and children (of any religion) who suffer from domestic violence

and abuse.⁷⁸⁹ The shelter can accommodate eighteen mothers and children and takes boys under twelve years old. Most clients are referred to the shelter by the police, Muslim organisations, social workers, and other NGOs that deal with domestic violence. While it provides emergency shelter (food, clothing, medical assistance, counselling) for up to six months, many women stay only between 2-4 weeks. Counselling can also be obtained over the telephone. A skills enhancement programme aimed at empowering women provides them with skills in crafts, such as needle work, recycling, sewing, and gardening. Madinah House assists in job placement, relocation, legal aid, and provides support for those who have to attend Court. It also provides outreach programmes with respect to education and counselling for the wider community. While it receives no government subvention, it did receive USD\$3,968 to outfit a counselling room. The shelter is financed by corporate and individual contributions and fund-raising activities.

Madinah House keeps track of the clients who seek refuge at the shelter. Several trends were observed and, from discussions with other interviewees, can be said to be generally applicable to women victims of domestic violence. Women:

- ✚ Stay one week to one month
- ✚ Are generally of East Indian or African descent
- ✚ Are young mothers up to age forty
- ✚ Are of all religious backgrounds
- ✚ Bring at least two children
- ✚ Are in a common-law relationship
- ✚ Are unemployed and/or unskilled
- ✚ Have a history of abuse

⁷⁸⁹ Lydia Choate, President, *Interview with author*, Valsayn, Trinidad, 27 February 2007 and pamphlet prepared by Madinah House.

There also tend to be more women seeking shelter between November and February.

C.3.6 The Shelter

Formerly known as the Samaan Shelter, the Shelter was established in 1987 by a group of (prominent) concerned citizens.⁷⁹⁰ Recognising the problem of 'family' violence in society, the group approached the then government for assistance. The group was given the building by the then government and continues to receive a quarterly government subvention. Other monies come from private donors.

The shelter can accommodate ten adults and twenty-four children. They try to limit it to no more than three children per mother with boys under eleven and girls under fifteen. Women are allowed to stay between three weeks to three months, depending on the nature of their case. During their stay, they receive individual and group counselling and the counsellor then advises whether the women should be kept on or makes other recommendations. Apart from counselling, women may receive medical care, psychiatric help, assistance to receive welfare cheques (in instances of child welfare, the process takes about three months) and benefit from a skills enhancement programme. The Ministry of Community Development, Culture and Gender Affairs offers courses for free, such as geriatric nursing, which the women are allowed to attend. If there are other programmes that the women may be interested in, (such as computer literacy, culinary courses, sewing) the shelter tries to locate venues where they are taught, and where possible, pays for their attendance.

Most women are referred to the shelter by the police. For their safety, the women are generally escorted to and from Court by police officers when filing for a protection order or when the case

⁷⁹⁰ Jennifer Talma, Shelter Coordinator, *Interview with author*, Port of Spain, Trinidad, 07 March 2007.

is being heard. In very severe cases, women are moved to other shelters in the Caribbean (such as Antigua) or Canada, England or the United States where these women can seek refuge with family.

Sensitisation programmes are offered by the Shelter when invited to do so for businesses, schools, and rallies. They have also worked with the Coalition in training members of the police force and judiciary to sensitise them in their dealings with victims of domestic violence.

C.3.7 Hope Shelter for Battered Women and Children

Dr. Vishnu Jeelal, a medical doctor, founded the Hope Shelter for Battered Women and Children in 1999.⁷⁹¹ As a District Medical Officer, Dr. Jeelal has worked alongside the police for twenty years in cases of murder, rape, and physical abuse and it was due to this exposure to violence against women that he decided to open the shelter. When the facility received government assistance, it was able to accommodate 3-4 families; now it can only facilitate 1-2 families, where a family consists, on average, of a mother and two children with no boys over five years. All cases are by referral from the police, 800-SAVE or the Family Court. There is no time restriction on women's stay. One woman was known to live at the shelter for nearly three years! The shelter has applied for some UNDP funding to develop an agricultural field near by. The intention (in part), if successful, is to provide the women with basic agricultural skills as a means of empowerment.

C.3.8 National Home for Family Reconciliation

The National Home for Family Reconciliation is a shelter for Hindu women.⁷⁹² It was founded some fourteen years ago by Pundit Bramanand Rambachan who recognised the growing

⁷⁹¹ Dr. Vishnu Jeelal, *Interview with author*, Chaguanas, Trinidad, 22 February 2007.

⁷⁹² Pundit Bramanand Rambachan, *Interview with author*, El Socorro, Trinidad, 22 February 2007.

scourge of domestic violence in East Indian homes and the fact that these women needed a safe place to seek refuge. The facility was originally able to accommodate twenty-one people but can now only cater for ten as government assistance is no longer provided. Women are generally referred to the shelter by the area police station and are allowed to stay for up to one month. According to Pundit Rambachan, the women are supposed to use this time to “rest” and gather themselves. Women with female children are allowed, but no male children. As a religious leader, Pundit Rambachan has a large membership to draw from in the event that the women require medical or legal assistance. There is a pool of fifteen medical doctors, eight nurses and two attorneys at law who give of their time and services. Women who require it can also receive counselling from a psychologist. The shelter also assists in job placements for the women if necessary.

C.3.9 Our Lady of the Wayside Shelter

The shelter was established in Belmont, Port of Spain as a temporary home and transition service for women and children in crisis.⁷⁹³ A client coming from any area in Trinidad is usually brought to the home by the police, welfare officers, by order of the Court, or sometimes parents. The board of directors of the Living Water Community manages the shelter.

A coordinator from the board liaises with the manager/administrator of the shelter. In addition to the manager there is one welfare officer; five paid trained counsellors (one full-time and the others part-time); a paid full-time clerical assistant; and a psychologist who volunteers. The shelter has also been able to obtain the services of two visiting psychologists with expertise in behaviour management for disturbed and autistic children. The psychologists provide training

⁷⁹³ An interview with this organisation was not possible; however, the author did speak briefly via telephone with one of the co-ordinators from the shelter who stated that the home is now primarily for children and that only in emergency situations, when called upon by the police and when other shelters are full, are women taken in and only for very short stays. Information was taken and adapted from UNDP, *National Reports on the Situation of Gender Violence Against Women*, pp. 80-82.

for the staff, as well as the mandatory counselling programme. While all training is provided in-house, some staff members have professional qualifications in nursery and childcare.

The shelter provides different services to its clients. It provides:

- a. Shelter for children from the age of infancy to ten years old. However, in a few cases, teenagers are also granted temporary accommodation.
- b. Counselling for children as well as loving care and assistance in re-organising their lives. Parents that have abused children as well as those who were witnesses to the abuse are given special counselling.
- c. When necessary, training in parenting and other specific skills for employment purposes. Accordingly, the shelter must be sure that there is clear evidence of rehabilitation of all family members before the child is returned to his/her home.

Funds are disbursed to the shelter by its parent body, the Living Water Community which is funded through private donations; fundraising activities; deeds of covenants; donations; revenue from a coffee and bookshop; donations of foodstuff, medical supplies and clothing; and a food catering ministry.

C.3.10 Tobago Women’s Enterprise for Empowerment and Rehabilitation Towards Self-Sufficiency (“TOWERS”)

Tobago Women’s Enterprise for Empowerment and Rehabilitation Towards Self-Sufficiency was established twenty years ago to provide a temporary haven for women and children who suffer from domestic violence as well as to empower these women by working to secure their physical safety, emotional well-being, individual freedom and economic independence.⁷⁹⁴ It was

⁷⁹⁴ Barbara Stewart, Chairperson; Sherma Joseph, Secretary; Shirley Leith, House Mother, *Interview with author*, Mt. Grace, Tobago, 01 March 2007 and organisation’s report for May 1995 to August 1997.

established when a medical social worker who dealt with domestic violence victims recognised that there was an increase in the reported incidents of domestic violence in Tobago and the consequent need to provide a shelter for such women. This is the only women's shelter in Tobago.

Women are referred to the shelter by the police, social services, or come on their own. High risk women are referred to any shelter in Trinidad that can accommodate them and these women also benefit from police escort to and from the shelters when they are being moved. Within Tobago, women are provided with transportation money when necessary. Management from the shelter will provide support to victims when they have to go to Court. TOWERS also assists with job placements, apartment placements (where the women is financially independent) and will refer victims to legal aid if they require legal assistance.

TOWERS allows women to stay for three months, but as with other shelters, this timeframe is flexible and women have stayed for as long as two years. While boys under eleven are generally not allowed, the shelter has adopted a certain degree of flexibility and allows mothers to bring their sons of all ages depending on the other residents at the time (whether there are other children or the number of girls at the shelter). The facility can accommodate ten single women or as many as twenty mothers and children. The chairperson and the secretary are both social workers and they provide counselling to the residents. Skills training is also provided in house, such as cooking, baking, sewing, and general etiquette (setting the table, use of cutlery). If women wish to pursue training TOWERS does not offer, such as hairdressing, then it will pay for the course on behalf of the woman or solicit help to do so.

TOWERS currently receives a monthly government subvention of USD\$436.50. The building used for the shelter is a rented property and the government also covers the cost of rent (USD\$556.00). Other money comes from corporate sponsors.

APPENDIX D

NGO Questionnaire

- 1) Name of Organisation
- 2) Date of Establishment
- 3) Mission Statement / Purpose of Organisation
- 4) Name of Founder
- 5) Head of NGO (if different from above)
- 6) Can victims of domestic violence seek refuge / assistance from NGO?
- 7) What kind – financial, shelter, legal aid (filing actions under the Domestic Violence Act, representation in Court, etc.), starting over (if leaving abuser)?
- 8) With respect to legal aid given, if applicable, describe process of filing a Domestic Violence complaint from moment of registering complaint with police to moment of hearing by Magistrate.
- 9) What type of relief is sought and what type is given? What type of considerations goes into granting relief (by Magistrate)?
- 10) Average number of victims that come to NGO per week / month?
- 11) Are they male, female? (Numbers of each)

- 12) Type of abuse suffered
- 13) Does NGO seek police assistance?
- 14) What is the police response like?
- 15) Does the NGO interact with the Judiciary?
- 16) What is the Judiciary's response like?
- 17) In what type of advocacy programmes does your organisation engage?
- 18) In what type of sensitisation programmes (workshops, lectures, etc.) does your organisation engage?
- 19) While your organisation does not actually offer assistance to victims of domestic abuse, they do come to you for referral. What types of abuse do these women suffer?
- 20) How can Domestic Violence be abated in Trinidad and Tobago?

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