

THE CONSTITUTION (AMENDMENT)
(CAPITAL OFFENCES) BILL, 2011

Arrangement of Clauses

Clause

1. Short title
2. Commencement
3. Alteration of the Constitution
4. Part IIA inserted
5. Section 89 amended

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No. 2 of 2011

First Session Tenth Parliament Republic of
Trinidad and Tobago

HOUSE OF REPRESENTATIVES

BILL

AN ACT to amend the Constitution of the Republic of
Trinidad and Tobago to make special provisions
with respect to capital offences

THE CONSTITUTION (AMENDMENT) (CAPITAL
OFFENCES) BILL, 2011

Explanatory Note

(These notes form no part of the Bill but are intended only to indicate its general purport)

This Bill seeks to amend the Constitution in relation to the implementation of the death penalty.

The Bill seeks to alter the Constitution and, in accordance with section 54(3) of the Constitution, needs to be passed by a special majority of three-fourths of the members of the House of Representatives and two-thirds of the members of the Senate in as much as it would amend section 89 of the Constitution.

By clause 2, the proposed Act would come into operation on such date as is fixed by the President by Proclamation.

By clause 3, the proposed Act would be construed as altering the Constitution.

Clause 4 would insert into the Constitution a new Part IIA which would make special provisions with respect to capital offences. New sections 6A to 6L contain provisions of the Offences Against the Person (Amendment) Act, 2000 (Act No. 90 of 2000) which has not been brought into force. These provisions pertain to the creation of the categories of murder 1, 2 and 3, the mandatory imposition of the death sentence in relation to murder 1, the circumstances in which the death sentence or life imprisonment may be imposed for murder 2 and other matters connected thereto.

A new section 6M of the Constitution would declare that the imposition of a mandatory sentence of death by a Court or the execution of such a sentence shall not be held to be inconsistent with or in contravention of section 4 or 5 of the Constitution.

For the removal of doubts, the new section 6M would further declare that on no grounds whatsoever would the execution of a sentence of death be held to be inconsistent with or in contravention of section 4 or 5 of the Constitution, including any, or any combination, of the following grounds: (a) a delay in the hearing or determination of a charge for a capital offence; (b) a delay in executing the sentence of death; (c) the conditions or arrangements under which a person is held in prison, or otherwise lawfully detained, pending the execution of the sentence of death; or (d) the effect of reading to a person, more than once, a warrant for the execution of the sentence of death on him.

It would also be stipulated that a warrant for the execution of a sentence of death on a person shall be read to the person at least four days, including a Friday, Saturday and Sunday, before the date of the execution of the sentence and that the execution of the sentence may be on any day of the week.

The new section 6M would, however, apply only to persons on whom the sentence of death is imposed on or after the coming into operation of the proposed Act.

Clause 5 would amend section 89 of the Constitution to ensure that, at least twenty-one days before the date of the meeting at which the Advisory Committee on the Power of Pardon considers the case of a person who is sentenced to death, the person is given notice of the date of the meeting and a copy of the report and other information that will be considered by that Committee, and is also informed that he is entitled to submit written representation to the Minister and the Advisory Committee. The written representation of a person would need to be submitted at least three days before the date on which the Advisory Committee meets to consider his case. A person would be able to submit his written representation directly or through a legal or other representative. A person would not, however, be entitled to an oral hearing by the Minister or the Advisory Committee.

Clause 5 would also amend section 89 of the Constitution to empower the President to impose time-limits within which a person who is sentenced to death may appeal to, communicate with or consult any person or body outside of Trinidad and Tobago in relation to the offence or sentence in question. The President would also be able to impose time-limits within which any such appeal, communication or consultation shall be concluded. Upon the expiration of the time-limits, the Minister and the Advisory Committee on the Power of Pardon would be empowered to exercise their respective functions in relation to such a person even though the appeal, communication or consultation has not been concluded. The exercise of the functions of the Minister and the Advisory in those circumstances would not be construed as being inconsistent with or in contravention of the fundamental rights and freedoms guaranteed under sections 4 and 5 of the Constitution.

BILL

AN ACT to amend the Constitution of the Republic of
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[, 2011]

WHEREAS it is enacted by section 54(1) of the Preamble
Constitution that Parliament may alter any provision
thereof:

And whereas it is enacted by section 54(3) that
insofar as it alters certain provisions of the

Constitution, a Bill for an Act of Parliament under the said section shall not be passed by the Parliament unless it is supported at the final vote thereon in the House of Representatives by the vote of not less than three-fourths of all members of the House and in the Senate by the vote of not less than two-thirds of all the members of the Senate:

And whereas it is intended by this Act to alter the Constitution:

Enactment	ENACTED by the Parliament of Trinidad and Tobago as follows:
Short title	1. This Act may be cited as the Constitution (Amendment) (Capital Offences) Act, 2011.
Commencement	2. This Act comes into operation on such date as is fixed by the President by Proclamation.
Alteration of the Constitution	3. This Act shall be construed as altering the Constitution.
Part IIA inserted	4. The Constitution is amended by inserting after section 6, the following Part:

“PART IIA

EXCEPTIONS FOR CAPITAL OFFENCES

Penalty for Murder 6A. Subject to this Part, a person convicted of murder shall suffer death.

Murder 1 6B.(1) Murder 1 is the category of the offence of murder as may be determined under section 6H which is not reduced to manslaughter or which is not required to be punished as manslaughter under any written law and consists of the offences specified in section 6C.

(2) A person shall suffer death if he is convicted of murder 1.

Categories of Murder 1 6C. (1) Subject to subsection (2), murder committed in the following circumstances is murder 1, that is to say:

(a) the murder of—

- (i) a member of the security forces acting in the execution of his duties or of a person assisting a member so acting;
- (ii) a prison officer acting in the execution of his duties or of a person assisting a prison officer so acting; and
- (iii) a judicial officer or legal officer acting in the execution of his duties or a former judicial officer or legal officer where the murder was intentionally carried out in retaliation for the performance of his official duties,

and includes the murder of any such member of the security forces, prison officer, judicial officer or legal officer directly attributable to the nature of his occupation;

(b) the murder of any person or the immediate family member of that person for any reason directly attributable to—

- (i) the status of that person as a witness or party in any pending or concluded criminal proceedings; or
- (ii) the service or past service of that person as a juror in any criminal trial;

- (c) any murder committed by a person in the course or furtherance of an arrestable offence involving violence;
- (d) murder committed by means of a destructive device, bomb or explosive—
 - (i) planted, hidden, or concealed in any place, area, dwelling, building or structure; or
 - (ii) that the defendant mailed or delivered, attempted to mail or deliver, or caused to be mailed or delivered, and the defendant knew, or reasonably should have known, that his act would create a great risk or death to one or more human beings;
- (e) murder committed pursuant to an arrangement whereby money or anything of value—
 - (i) passes or is intended to pass from one person to another or to a third party at the request or direction of that person; or
 - (ii) is promised by one person to another or to a third person at the request or direction of that other person,

as consideration for that other reason causing or assisting in causing the death of any person or counselling or procuring any person to do an act causing or assisting in causing that death;

- (f) murder that is especially heinous, atrocious or cruel, manifesting exceptional depravity; and
- (g) murder where the deceased was intentionally killed because of his race, religion, nationality or country of origin.

(2) Where it is alleged that a person accused of murder is guilty of murder 1, the offence shall be charged as murder 1 in the indictment.

(3) In this section—

“prison officer” has the same meaning as in the Prison Service Act;

“judicial officer” means—

- (a) a Puisne Judge or a Justice of Appeal, a Master in Chambers or any person for the time being performing the functions of a Puisne Judge or a Justice of Appeal or a Master in Chambers;
- (b) the Registrar or Deputy Registrar of the Supreme Court of Judicature, the Board of Inland Revenue or the Court of Appeal or any person for the time being performing the functions of Registrar or Deputy Registrar;

(c) a Magistrate or any person for the time being performing the functions of a Magistrate;

“immediate family member” means a husband, wife, father, mother, daughter, son, brother, sister, stepparent, grandparent, stepchild or grandchild;

“legal officer” means an officer of the court who carries out the function of the prosecution of offences and includes State attorneys in the office of the Director of Public Prosecutions, attorneys-at-law engaged to carry out functions on behalf of the Director of Public Prosecutions and police officers who prosecute in the courts;

“member of the security forces” means a member of—

(a) the Police Service;

(b) the Prison Service;

(c) the Defence Force to the extent that such member has been assigned to act in aid of the Police; and

(d) the Special Reserve Police;

“terrorism” means an act involving the use of violence

by a person which, by reason of its nature and extent, is calculated to create a state of fear in the public or any section of the public.

Non-applicability of section 6A

6D. (1) A person convicted of murder 2 shall suffer death only in the circumstances referred to in section 6E.

(2) A person convicted of murder 3 shall not suffer death.

Multiple murders

6E. (1) A person convicted of murder 2 shall be sentenced to death, if before conviction of that murder he has been convicted in Trinidad and Tobago of another murder, whether or not done on a different occasion.

(2) Where, pursuant to subsection (1), a person is charged with the murder of two or more persons, no rule of practice shall prevent the murders being charged in the same indictment or, unless separate trials are desirable in the interests of justice, prevent them being tried together; and where a person is convicted of two murders tried together but done on different occasions, subsection (1) shall apply as if one conviction had preceded the other.

Murder 2

6F. (1) Murder 2, subject to this section, is the category of the offence of murder as may be determined under section 6H that is reduced to manslaughter or that is required to be punished as manslaughter under a written law, and includes, gross negligence, mercy killing, recklessness as to participation in the offence of murder,

Chap. 10:04 the use of excessive force outside the contemplation of section 4 of the Criminal Law Act, but does not include murder 3 or matters falling within murder 1.

(2) In this section, “mercy killing” means an act or acts otherwise amounting to murder done with respect to a patient *in extremis* in such circumstances as demonstrate the absence of culpable malice aforethought.

Murder 3 6G. Murder 3 is involuntary homicide committed otherwise than is referred to in section 7 of the Offences Against the Person Act for which a person is liable to be convicted, and includes manslaughter by provocation, negligence and causing death by reckless driving.

Chap. 11:08

Discretion to prosecution 6H. (1) Notwithstanding anything in this Act or in any other law, in exercising his discretion to prosecute for a category of the offence of murder under sections 6B to 6F the Director of Public Prosecutions may—

(a) having regard to the nature of the circumstances in which the killing took place, himself determine in which category the offence falls; or

(b) in any case where he considers the interest of justice so requires, apply to a Judge to determine whether an indictment shall lie and if so, for what category of the offence.

(2) In any proceedings under subsection (1)(b) any person who is charged or to be charged or who is otherwise concerned with any offence before the Judge or collateral thereto, or who may be

involved in the prosecution of such offence has the right to be present and to take part in the proceedings.

(3) No appeal shall lie from any determination of a Judge under this section.

(4) A determination under subsection (1) shall be taken to fix the category of the offence for the purpose of liability to conviction for any act or acts amounting to, or consisting of murder 1 or murder 2.

Life imprisonment for murder 2

6I. (1) Subject to the provisions of this Part, every person who is convicted of murder 2 shall be sentenced to imprisonment for life.

(2) Notwithstanding any other law, on sentencing any person convicted of murder 2 to imprisonment for life, the Court may specify a period, being longer than ten years, which that person should serve before becoming eligible for parole.

Procedure

6J. (1) On an indictment charging a person with capital murder, he may be found not guilty of capital murder but guilty of murder 2.

(2) Capital murder shall be treated as a distinct category of offence from murder 2 for the purpose of any appeal against conviction.

(3) Where on an appeal against conviction of capital murder the Court substitutes a verdict of guilty of murder 2 for the verdict of guilty of murder 1, the Court shall nevertheless determine whether the sentence of death is warranted by section 6E(1) and shall confirm that sentence if it is found to be so warranted.

(4) Subject to the foregoing provisions of this section, murder 1 shall not be treated as a different category from the offence of murder 2 for any purpose.

(5) A person referred to in section 6E(1) shall not by virtue of that subsection be sentenced to death by reason of a previous conviction for murder, unless—

- (a) at least seven days before the trial, notice is given to him that it is intended to prove the previous conviction; and
- (b) before he is sentenced, his previous conviction for murder is admitted by him or is found to be proven by the Jury.

Provisions as to appeals in relation to repeated and multiple offences

6K.(1) Where a person is sentenced to death by virtue of section 6E(1), he shall have the like right of appeal against the sentence as if the appeal were against a conviction involving the sentence of death.

(2) On any such appeal against sentence, the Court shall have the same powers as to allowing or dismissing the appeal as on an appeal against conviction; and where the Court allows the appeal, and it appears to the Court that, having regard to the decision on the appeal, the sentence is not warranted in law, the Court shall quash the sentence and pass the appropriate sentence in substitution for it.

(3) Where a person is sentenced to death under section 6E(1), (which relates to more than one conviction for murder) and afterwards one of the convictions is set aside on appeal—

- (a) that person may apply to the Court of Appeal to set aside the sentence

of death on the ground that it is no longer warranted in law having regard to the decision on appeal; and

- (b) whether or not an application is made under paragraph (a), the Registrar of the Court of Appeal shall notify the Court that the sentence is one which should be set aside on the ground referred to in that paragraph,

and the Court if satisfied that the sentence is no longer warranted in law, shall set it aside and pass the appropriate sentence in substitution for it.

(4) Where a person is sentenced to death as aforesaid then, unless he is so sentenced on being convicted of murder 1, the sentence shall not in any case be executed so long as the other conviction can be set aside on appeal or by any other legal process.

Provisions as to procedure regarding two or more murders tried together

6L. (1) Subject to subsection (2), where a sentence of death is passed on a person convicted of two or more murders tried together it shall be treated as passed in respect of each of the convictions.

(2) If one of the convictions as aforesaid is and any other is not set aside on appeal, the Court deciding the appeal, unless satisfied that the sentence remains warranted in law in respect of any other conviction, shall set the sentence aside and pass the appropriate sentence in substitution for it.

Exceptions re: death sentences

6M.(1) The imposition of a sentence of death by a Court on a person in respect of a criminal offence under the law of

Trinidad and Tobago of which he has been convicted or the execution of such a sentence shall not be held to be inconsistent with or in contravention of section 4 or 5.

(2) Without prejudice to the generality of subsection (1) and for the removal of doubts, the execution of a sentence of death referred to in subsection (1) shall not be held to be inconsistent with or in contravention of section 4 or 5 on any grounds whatsoever, including any, or any combination, of the following grounds:

- (a) a delay in the hearing or determination of a charge for a capital offence;
- (b) a delay in executing the sentence of death;
- (c) the conditions or arrangements under which the person is held in prison, or otherwise lawfully detained, pending the execution of the sentence of death; or
- (d) the effect of reading to the person, more than once, a warrant for the execution of the sentence of death on him.

(3) A warrant for the execution of a sentence of death on a person shall be read to the person at least four days, including a Friday, Saturday and Sunday, before the date of the execution of the sentence and the execution of the sentence may be on any day of the week.

(4) This section applies to a person on whom the sentence of death is imposed on or after the coming into operation of the Constitution (Amendment) Act, 2011.”

5. Section 89 of the Constitution is amended, by Section 89 amended inserting after subsection (1), the following subsections:

“ (1A) An offender referred to in subsection (1) shall—

(a) at least twenty-one days before the date of the meeting of the Advisory Committee to consider his case, be given—

(i) notice of that date; and

(ii) a copy of the written report and other information referred to in subsection (1), and be informed that he is entitled to submit written representation in accordance with paragraph (b); and

(b) be entitled to submit—

(i) directly, or through a legal or other representative; and

(ii) at least three days before the date mentioned in paragraph (a),

written representation in relation to the exercise by the Minister or the Advisory Committee of any of their respective functions under this section, but shall not be entitled to an oral hearing.

(1B) The President may, by instrument under the Public Seal, direct that there shall be time-limits within which an offender referred to in subsection (1)—

(a) may appeal to, communicate with or consult; and

(b) shall conclude any appeal to, or communication or consultation with,

any person or body of persons outside Trinidad and Tobago in relation to the offence or sentence in question, and where the time-limits that apply in the case of the offender by reason of such a direction have expired, the Minister and the Advisory Committee may exercise their respective functions under this section in relation to that offender, notwithstanding that the appeal, communication or consultation relating to that offender has not been concluded.

(1C) Nothing contained in subsection (1B) shall be construed as being inconsistent with or in contravention of section 4 or 5.”.

Passed in the House of Representatives this day
of , 2011.

Clerk of the House

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed in the House of Representatives and at the final vote thereon in the House has been supported by the votes of not less than three-fourths of all the members of the House, that is to say, by the votes of members of the House.

Clerk of the House

I confirm the above.

Speaker

Passed in the Senate this day of , 2011.

Clerk of the Senate

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed in the Senate and at the final vote thereon in the Senate has been supported by the votes of not less than two-thirds of all the members of the Senate, that is to say, by the votes of Senators.

Clerk of the Senate

I confirm the above.

President of the Senate

No. 2 of 2011

FIRST SESSION
TENTH PARLIAMENT
REPUBLIC OF

TRINIDAD AND TOBAGO

BILL

AN ACT to amend the Constitution of the Republic of Trinidad and Tobago to make special provisions with respect to capital offences

Received and read the

First time

Second time

Third time
