



## “Stand Your Ground”

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A foreign concept? Or is it applicable in Trinidad and Tobago?

*“If a man is attacked the law is that he is entitled to defend himself by using such force as is reasonable, that is to say, force that is reasonably necessary in the circumstances of the attack, in defence of himself.”*

– Hamel-Smith JA<sup>1</sup>

### A Nation at a Crossroads

At Signature Hall in Chaguanas, Prime Minister Kamla Persad-Bissessar made headlines with her bold declaration:

“Empty the whole clip!”

This statement reignited debate around the proposed Stand Your Ground legislation — a move that could re-shape self-defence laws across Trinidad and Tobago.

There has been much public discourse following the recent Consultations which have begun in Trinidad and Tobago in relation to the proposed Stand Your ground Legislation. The idea of putting forth this Legislation first came while our current Prime Minister Mrs. Kamla Persad-Bissessar, was still Leader of the Opposition, Speaking at the United National Congress (UNC) meeting at Signature Hall, Montrose, Chaguanas, on 31<sup>st</sup> July 2023, she noted -: **“Woman Kills Home Invader”** as she reiterated that **‘her government will ensure that anyone who kills a criminal in self-defence in their home will not face charges.’**

According to the Daily Express article dated August 2<sup>nd</sup> 2023 and entitled “‘Light up’ home invaders”, she stated:

***“When the criminals invade your homes, you can draw your licensed firearm and light them up! Empty the whole clip! Empty it! Light them up! We have to fight fire with fire!”.***

The article further quotes Mrs. Persad-Bissessar as stating:

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<sup>1</sup> Hans Noel v. The State Cr. App. No 29 of 1990 at page 31.

***“This is why we must have ‘Stand Your Ground’ laws so this woman will not be charged. Imagine this mother seeing these criminals coming into her home...to rob and rape her and her children and now she can be charged because she was defending herself.”***

Whilst these statements may be polarizing and maybe even sensational, the statements of Mrs. Persad-Bissessar do appear to raise a valid concern amongst citizens. The question that arises consequently, is whether there is indeed need for such legislation, or does the law currently provide citizens with the tools necessary to protect themselves, their families and property.

## Crime is on the Rise

Recent police reports show a troubling increase in home invasions:

Region	% Increase in Burglaries (2024)
Tobago	31%
Central	21%
North-Central	14%
Port-of-Spain	11%
North Eastern	9%

**“We understand full well the trauma and the stress, the pain and the abuse.”**  
— **Fitzgerald Hinds**, Former National Security Minister

## The Origin of the “Stand Your Ground” law.

A “Stand Your Ground” law, often referred to as a "line in the sand" or "no duty to retreat" law, grants individuals the right to employ lethal force when they reasonably believe it's necessary to protect themselves against specific violent offenses. This law eliminates the obligation to retreat before resorting to deadly force for self-defence, so long as they are in a place where they are lawfully present. The specifics of this law differ depending on the jurisdiction. However, this principle is most prominent and applicable in the United States of America.

### Duty to Retreat

- Must attempt escape before using force
- Common in jurisdictions without Stand Your Ground laws

The contrasting concept to Stand Your Ground is the "duty to retreat." In jurisdictions that uphold a duty to retreat, even if someone is unlawfully attacked (or is defending another person who is unlawfully attacked), they cannot use deadly force if they can safely avoid the danger by retreating.

## Castle Doctrine

- No duty to retreat in one's home
- Deadly force permitted if threatened
- A proposed bill would shift Trinidad and Tobago closer to the Castle Doctrine model, aligning with laws in many U.S. states.
- Some jurisdictions follow the "castle doctrine" principle, which allows individuals to avoid retreating when attacked in their homes, and sometimes in their vehicles or workplaces. Both the castle doctrine and "stand-your-ground" laws offer legal protections to individuals who could face charges for various use-of-force offenses against others, including murder, manslaughter, aggravated assault, and unlawful display or use of weapons, as well as attempts to commit these offences.

## U.S. Insights: What the Data Shows

A study by JAMA Network found that Stand Your Ground laws in the U.S. led to:

- **8–11% increase** in monthly homicide rates
- **Over 700 additional gun deaths** annually
- **4x higher justification rates** for white shooters killing Black victims

These findings raise questions about how similar laws might affect Trinidad and Tobago.

Stand Your Ground laws were first introduced in Florida in 2005 and later implemented by states across the US, essentially removing the conventional restriction that the use of deadly force was only as a last resort measure. In Florida for example, these laws allow someone to fatally shoot another person in private and public spaces if they have a reasonable fear of imminent death or great bodily harm, without the obligation to flee or threat of a conviction<sup>2</sup>.

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<sup>2</sup> Chapter 776.012 Use or threatened use of force in defense of person.—

(1) A person is justified in using or threatening to use force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to defend himself or herself or another against the other's imminent use of unlawful force. A person who uses or threatens to use force in accordance with this subsection does not have a duty to retreat before using or threatening to use such force.

(2) A person is justified in using or threatening to use deadly force if he or she reasonably believes that using or threatening to use such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony. A person who uses or threatens to use deadly force in accordance with this subsection does not have a duty to retreat and has the right to stand his or her ground if the person using or threatening to use the deadly force is not engaged in a criminal activity and is in a place where he or she has a right to be.

Chapter 776.013 Home protection; use or threatened use of deadly force; presumption of fear of death or great bodily harm.—

(1) A person who is in a dwelling or residence in which the person has a right to be has no duty to retreat and has the right to stand his or her ground and use or threaten to use:

- (a) Nondeadly force against another when and to the extent that the person reasonably believes that such conduct is necessary to defend himself or herself or another against the other's imminent use of unlawful force; or
- (b) Deadly force if he or she reasonably believes that using or threatening to use such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony.

## Notable cases involving Stand your Ground law in the United States.

The Stand Your Ground law is most widely associated with the February 26<sup>th</sup> 2012 shooting death of Trayvon Martin, an unarmed 17-year-old killed in Florida by George Zimmerman, a neighborhood watch volunteer who claimed he was acting in self-defence. Zimmerman asserted that he shot Martin because he feared for his life. In July 2013, Zimmerman was acquitted<sup>3</sup> of both charges by a jury, with the defence successfully invoking Florida's stand-your-ground law.

In March 2012, Bo Morrison was shot and killed by a homeowner in Wisconsin who discovered the unarmed 20-year-old on his porch early one morning. The investigation report in this case says law enforcement was called to a noise complaint involving an underage drinking party that Morrison was attending. The homeowner, thinking Morrison was a burglar, was not charged by the local district attorney. The investigation report stated that the requirements were met in this case based on prevailing factors including: time of day of the shooting, location of the shooting, small size of the room where the shooting took place, lighting conditions of the room (dark), dark clothing Morrison was wearing and the fact that the homeowner's wife and three young children were in the home at the time<sup>4</sup>.

While Wisconsin did not have a specific Stand Your Ground law at that time, Gov. Scott Walker signed an “intruders bill” in December 2011 that presumes somebody who uses deadly force against a trespasser in their home, business or vehicle acted reasonably, whether or not the intruder was armed. Before the law was enacted, homeowners could only use deadly force if their own lives were at risk.

## Public Sentiment

Community consultations reveal mixed reactions:

- Many citizens support the bill as a **deterrent to crime**
- Others fear **vigilantism** and **racial bias**
- Legal experts warn of **misinterpretation** and **misuse**

“This bill offers a measured yet assertive response to a reality many citizens now face daily.”  
— *Paul Sarrao, columnist*

## The Stand Your Ground law and its applicability to Trinidad and Tobago

Having established the concept of Stand Your Ground, we must consider whether it applies to Trinidad and Tobago. The common law jurisdiction of England and Wales, which has strong persuasive legal authority in Trinidad and Tobago, has a Stand-Your-Ground law rooted in the common law defence of using reasonable force in self-defence.

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<sup>3</sup> <https://www.nytimes.com/2013/07/14/us/george-zimmerman-verdict-trayvon-martin.html>

<sup>4</sup> <https://www.fox6now.com/news/no-charges-filed-against-homeowner-accused-of-shooting-bo-morrison>

The classic exposition of the law of self-defence is contained in the dictum of Morris LJ in **Palmer v R [1971] AC 814**. The local Court of Appeal in **Stephen Robinson a/c Psycho a/c Tony v The State Cr. App. No 12 of 2009**, synthesized the essential principles to be extracted from Palmer. They are as follows:

- “1. A person who is attacked is entitled to defend himself.
2. In defending himself he is entitled to do what is reasonably necessary.
3. The defensive action must not be out of proportion to the attack.
4. In a moment of crisis a person may not be able to weigh to a nicety the exact measure of his necessary defensive action.
5. In a moment of anguish a person may do what he honestly and instinctively thought was necessary
6. If there has been no attack then the issue of self-defence does not arise.”

These common law principles on self-defence have generally been accepted and applied by the Courts of Trinidad and Tobago as will be demonstrated and discussed below.

The common law principle of self-defence applies when an individual employs necessary, reasonable, and proportionate force to protect themselves or others from an imminent attack. This defence fully exonerates an accused in cases involving the unlawful use of force, encompassing offenses from battery to murder. Since this defence leads to a complete acquittal, the courts have interpreted it restrictively to prevent overly easy acquittals. For instance, a defendant will not typically be acquitted solely because they believed their use of force was reasonable. The reasonableness of the force used is subject to objective evaluation by the jury, not solely based on the defendant's belief at the time. Thus, an individual is entitled to use reasonable force to protect themselves, others and their property<sup>5</sup>.

Lord Morris in **Palmer v R** stated the following about someone confronted by an intruder or defending himself against attack:

***“If there has been an attack so that defence is reasonably necessary, it will be recognised that a person defending himself cannot weigh to a nicety the exact measure of his defensive action. If the jury thought that in a moment of unexpected anguish a person attacked had only done what he honestly and instinctively thought necessary that would be the most potent evidence that only reasonable defensive action had been taken...”***

The law plainly demonstrates that individuals are able to, in self-defence, use dangerous force against an assailant. However, is this force only to be used as a last resort when all other options have been exhausted?

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<sup>5</sup> **Beckford v The Queen [1988] AC 130[3]**

## Duty to retreat

The duty to retreat is a legal principle requiring individuals to avoid using lethal force and instead seek a safe escape when facing a threat, if possible. It suggests that one should make reasonable efforts to avoid confrontation before resorting to self-defence, especially in situations where retreating can prevent harm. There is however no longer a duty to retreat before a person may use reasonable force against an attacker<sup>6</sup>, nor need a person wait to be attacked before using such force, but one who chooses not to retreat, when retreat would be a safe and easy option, might find it harder to justify his use of force as 'reasonable'.

## Intentional killing:

Persons, who in acting in self-defence, deliberately cause the death of their attacker, may be concerned as to whether they may face legal consequences for their actions. The law is pellucid that where an individual may have intended to kill another person, where such killing is reasonably done in self-defence, the individual is not guilty of any crime<sup>7</sup>.

The local Court of Appeal in **La Roche v The State Criminal Appeal No. 32 of 2009** agreed with Lord Morris's approval of the direction of the Judge below in **Palmer v R** where it was stated:

*"A man who is attacked in circumstances where he reasonably believes his life to be in danger or that he is in danger of serious bodily harm, may use such force as on reasonable grounds he believes is necessary to prevent and resist the attack and if in using such force he kills his assailant **he is not guilty of any crime even if the killing was intentional**, and in deciding in a particular case whether it was reasonably necessary to have used such force as in fact was used regard must be had to all the circumstances of the case including the possibility of retreating without danger or yielding anything that he is entitled to protect."*

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<sup>6</sup> The **5th edition of Smith and Hogan Criminal Law** at page 327 (As approved in **Bird, R. v [1985] EWCA Crim 2**) states that:

"There were formerly technical rules about the duty to retreat before using force, or at least fatal force. This is now simply a factor to be taken into account in deciding whether it was necessary to use force, and whether the force was reasonable. If the only reasonable course is to retreat, then it would appear that to stand and fight must be to use unreasonable force. There is, however, no rule of law that a person attacked is bound to run away if he can; but it has been said that — '.... what is necessary is that he should demonstrate by his actions that he does not want to fight. He must demonstrate that he is prepared to temporise and disengage and perhaps to make some physical withdrawal.

"It is submitted that it goes too far to say that action of this kind is necessary.

"It is scarcely consistent with the rule that it is permissible to use force, not merely to counter an actual attack, but to ward off an attack honestly and reasonably believed to be imminent. A demonstration by D [defendant] at the time that he did not want to fight is, no doubt, the best evidence that he was acting reasonably and in good faith in self-defence; but it is no more than that. A person may in some circumstances so act without temporising, disengaging or withdrawing; and he should have a good defence."

<sup>7</sup> This principle was affirmed by the local Court of Appeal in **Baptiste v The State 34 WIR 253** and **Sinanan and Others v. The State 44 W.I.R. 383.**

The Court of Appeal in **La Roche (supra)** also approved the ruling of Marnan J in **John DeFreitas v R (1960) 2 WIR 523**. Marnan J, in delivering the judgment of the former Federal Supreme Court, made reference to the decision of **R v Howe [1959] 100 C.L.R 448**. Marnan J was in agreement with the self-defence direction given by Menzies J in **Howe**, stating at page 530:

*“Menzies J, gives a concise and lucid account of the law relating to self-defence which might usefully serve as a direction to a jury in cases where that defence is raised. He said (32 ALJ at p 219):*

*‘A man who is attacked may use such force as on reasonable grounds he believes is necessary to prevent and resist attack, and if in using such force, he kills his assailant, he is not guilty of any crime even if the killing is intentional. In deciding in a particular case whether it was reasonably necessary to have used as much force as in fact was used, regard must be had to all the circumstances, including the possibility of retreating without danger or yielding anything that a man is entitled to protect.’*

*This is a perfectly clear and, in our view, a correct direction.”*

The Court of Appeal in **La Roche** also accepted the decision of the High Court of Australia in **Zecevic v Director of Public Prosecutions 162 (Vic) (1987) CLR 645**. In this case the court made the following observations about directions to the jury when self defence is pleaded in cases of homicide:

*“... there is wisdom in the observation of the Privy Council in **Palmer** that an explanation of the law of self-defence requires no set words or formula. **The question to be asked in the end is quite simple. It is whether the accused believed upon reasonable grounds that it was necessary in self-defence to do what he did ...***

*Murder consists of an unlawful killing done with intent to kill or to do grievous bodily harm. Recklessness may be put to one side as having no apparent relevance in the context of self-defence. Manslaughter also consists of an unlawful killing, but without such an intent. **A killing which is done in self-defence is done with justification or excuse and is not unlawful, though it be done with intent to kill or do grievous bodily harm.**”*

Legal authority has therefore established that self-defence relies on the individual’s reasonable belief in the necessity of their actions, justifying intentional killings as excusable in the context of preventing imminent danger. Thus, in cases of intentional killing carried out in self-defence, the individual is not criminally liable.

In light of this, however one question that arises is that of whether such actions in self-defence can be initiated even before any attack has occurred?

## Pre-emptive Self-Defence

Pre-emptive self-defence involves one acting to prevent an anticipated threat before it materializes, based on a reasonable belief of imminent danger or attack. It allows individuals to use necessary force when facing a perceived threat to their safety, even if the threat has not yet manifested. If an individual genuinely believes that an attack is imminent or underway, it does not matter that they are mistaken once it was reasonable to believe that the attack was imminent<sup>8</sup>.

**R v Owino (1996) 2 Cr. App. R. 128** states at 134 that:

*“A person may use such force as is [objectively] reasonable in the circumstances as he [subjectively] believes them to be.”*

Further, as stated by Lord Griffith said in **R v Beckford (1988) 1 AC 130**:

*“A man about to be attacked does not have to wait for his assailant to strike the first blow or fire the first shot; circumstances may justify a pre-emptive strike.”*

Such was the case in **Rambharrack v The State Criminal Appeal No. 41 of 1975**.

Rambharrack (the appellant) was about to be attacked by two men in his mother's home, following an assault on his brother that left him unconscious. The attackers advanced to the kitchen, with a large stone and a cutlass. Feeling threatened and trapped, Rambharrack defended himself by using a cutlass, resulting in a severe injury to one of the men, leading to his partial paralysis.

Rambharrack was indicted for two offences: wounding with intent to murder and wounding with intent to do grievous bodily harm.

The Court of Appeal found that while the actions of Rambharrack were deliberate and intended to cause bodily harm, it was clear that the peril which he faced on this particular occasion and the background against which he faced it was such as to make it abundantly plain that he was acting perfectly reasonably in using the measure which he did to defend himself in the circumstances.

The court quashed Rambharrack's conviction and sentence.

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<sup>8</sup> Lord Lane in **R v Gladstone Williams (1984) 78 Cr. App.** at p. 281:

*“In a case of self-defence, where self-defence or the prevention of crime is concerned, if the jury came to the conclusion that the defendant believed, or may have believed, that he was being attacked or that a crime was being committed, and that force was necessary to protect himself or to prevent the crime, then the prosecution have not proved their case. If however the defendant's alleged belief was mistaken and if the mistake was an unreasonable one, that may be a powerful reason for coming to the conclusion that the belief was not honestly held and should be rejected.*

*Even if the jury come to the conclusion that the mistake was an unreasonable one, if the defendant may genuinely have been labouring under it, he is entitled to rely upon it.”*



Thus, individuals are justified in employing pre-emptive self-defence as a means of protecting themselves or others from perceived imminent harm. This proactive approach is permissible when there is a reasonable belief that an impending threat could lead to serious harm or danger, enabling individuals to take necessary measures to prevent harm before it materializes. The legal recognition of pre-emptive self-defence underscores the importance of safeguarding personal safety and acting on reasonable assessments of potential danger.

## Conclusion

Whilst the concept of Stand Your Ground laws in Trinidad and Tobago may seem novel, the existing common law of self-defence already provides similar protection to individuals as a standalone "Stand Your Ground" law would. The common law defence of self-defence allows individuals to use reasonable force to repel an attack based on their genuine belief, even if that belief is mistaken. The level of force to be implemented is to be assessed according to the perceived threat.

Therefore, for persons facing a serious and imminent threat to themselves, their family, or property, pre-emptive force to prevent the attack is legally justifiable, but enticing citizens to eagerly 'light up' and 'empty the whole clip' in the absence of proper education, policy, and procedure may serve to be detrimental, both presently and in future should such Stand Your Ground legislation be passed, as the foundation of such law, whether at common law or legislatively, has always been the reasonable application of force.

However, the codification of the above discussed common law self-defence principles in some form may aid laypersons and regular citizens in understanding the extent of their rights to protect themselves, families and property, possibly preventing them from going beyond what they are entitled to do, without overly restricting their ability to engage in protective actions in Defence of themselves, their Homes and their Families when under attack, if they choose the option to STAND YOUR GROUND. The Stand Your Ground debate is more than legal reform — it's a reflection of national identity, public safety, and the balance between justice and restraint.

