

# CARIBBEAN JOURNAL OF CRIMINOLOGY AND PUBLIC SAFETY

## INFORMATION FOR AUTHORS

The *Caribbean Journal of Criminology and Public Safety* will help develop and promote research and policy relevant to criminology and public safety in the Caribbean. Articles with a multi-disciplinary thrust, papers dealing with theoretical issues in criminology and public safety, or those with cross-cultural implications will be considered suitable. Papers which establish theoretical or empirical relationships between criminology and public policy will also be welcome.

This journal seeks to encourage interaction among academics, policy-makers and judicial administrators in the Caribbean and internationally. Papers from within the Caribbean region and other parts of the world are therefore welcome.

**Submission of papers:** All manuscripts submitted to this journal should follow the style and method of presentation outlined in the revised edition of the *Publication Manual of the American Psychological Association*. An abstract of 100-150 words should accompany the paper. Papers must be typed, double-spaced and sent via email or in triplicate with diskette copy in Microsoft Word (PC version) to:

**Professor Ramesh Deosaran (Emeritus),**  
**Editor, *Caribbean Journal of Criminology and Public Safety*,**  
**The University of Trinidad and Tobago, O'Meara Campus, Arima,**  
**TRINIDAD AND TOBAGO, WEST INDIES.**  
**E-mail address: [criminology@utt.edu.tt](mailto:criminology@utt.edu.tt)**  
**Tel: 868-642-8888 Ext. 21350; Fax: 868-643-2895**  
**[www.utt.edu.tt](http://www.utt.edu.tt)**

**Book Reviews:** Authors who wish to have their books reviewed in this journal may send these to: Book Review Editor (use above address).

**Theoretical Notes:** There will be room for brief commentaries which challenge or enhance current issues on the theoretical or research literature. Such commentaries may also introduce new perspectives or ideas which could be eventually expanded by concerned workers in the field. Send to Editor.

**Abstracting Service:** *The CJCPSS is covered to date by the following Abstracting and Indexing Services: Caribbean Abstracts, ClinPSYC, Criminal Justice Abstracts, Index to Periodical Articles Related to Law, Mental Health Abstracts, National Criminal Justice Reference Services (NCJRS Database), Political Science and Government Abstracts, Psychological Abstracts, PsycINFO and PsycLIT, PAIS International, PAIS International in Print, PAIS International Guide to Public Policy Information Sources: Journals, Publishers and Websites, Sociological Abstracts and Social Services Abstracts.*

---

### SUBSCRIPTIONS & ORDERS

The *Caribbean Journal of Criminology and Public Safety* (ISSN 2073 5405) is published semi-annually (Jan & July). All correspondence should be directed to Order Department, *Caribbean Journal of Criminology and Public Safety*, The University of Trinidad and Tobago, O'Meara Campus, Arima, Trinidad and Tobago, West Indies. Tel: 868-642-8888 Ext. 21350; Fax: 868-643-2895; Email: [criminology@utt.edu.tt](mailto:criminology@utt.edu.tt)

**Subscription Rates:** (Local and regional) – Libraries and institutions TT\$170; Individuals TT\$130; Students TT\$110. One issue only: Libraries and institutions TT\$90; Individuals TT\$70; Students TT\$60. (Foreign-Europe, Latin America and elsewhere) Libraries and institutions US\$30; Individuals US\$25; Students US\$20. One issue only: Libraries and institutions US\$20; Individuals US\$15; Students US\$10. Subscription will commence after payment is received. Foreign orders must be made in US Dollars via bank draft/cheques drawn from a US/European bank. Cheques should be made payable to The University of Trinidad and Tobago. Use order forms attached and send with payment. Allow 4 weeks for delivery. All prices include postage.

---

---

## CONTRIBUTORS

---

- Dr. Godfrey St. Bernard, Fellow, SALISES, The University of the West Indies, St. Augustine Campus, Trinidad and Tobago.
  - Dr. Roe A. Roberts, Associate Professor, Health and Public Administration, Midwestern State University, Texas, USA
  - Dr. Laura Woods Fidelie, Assistant Professor, Criminal Justice, Midwestern State University, Texas, USA
  - Dr. Christopher A.D. Charles, Assistant Professor, King Graduate School, Monroe College, USA
  - Mr. Courtney D. Daye, Judge in the Supreme Court of Jamaica
  - Professor Marion van San, Senior Researcher, Rotterdam Institute of Social Policy Research, Erasmus University, The Netherlands
  - Mr. Purnanand N. Sangalad, Research Scholar, Department of Criminology and Forensic Science, Karnatak Science College, Dharwad, India
  - Dr. M.G. Huddar, Associate Professor, Department of Criminology and Forensic Science, Karnatak Science College, Dharwad, India
  - Ms. Abida Ellahi, Ph.D. Scholar, Department of Technological Management, International Islamic University, Pakistan
  - Dr. Irfan Manarvi, University of Engineering and Technology, Pakistan
  - Mr. Oniel Jones, M.Sc., Department of Management Studies, The University of the West Indies, Mona Campus, Jamaica
  - Hon. Mr. Justice Malcolm P. Holdip, Judge in the High Court of Trinidad and Tobago
  - Mr. Roger Ramgoolam, Magistrate, Trinidad and Tobago
  - Mr. Richard Ramoutar, doctoral candidate, Queen's University, Belfast, Northern Ireland
  - Mr. Simon Alexis, doctoral candidate, Department of Behavioural Sciences, The University of the West Indies, St. Augustine Campus, Trinidad and Tobago.
  - Mr. Wendell C. Wallace, doctoral candidate, Department of Behavioural Sciences, The University of the West Indies, St. Augustine Campus, Trinidad and Tobago.
  - Mr. Kevin Peters, M.Sc. candidate, Department of Behavioural Sciences, The University of the West Indies, St. Augustine Campus, Trinidad and Tobago.
-

## CONTENTS

<b><u>Editorial</u></b>	<b>i</b>
Ramesh Deosaran	
<b><u>Papers</u></b>	
<b>Demographics, Youth Victims and Prospective Measures for Prevention: The Case of Homicide in Trinidad and Tobago</b>	<b>1</b>
Godfrey C. St. Bernard	
<b>The Ethics of Capital Punishment in the Americas</b>	<b>35</b>
Roe A. Roberts, Laura Woods Fidelie & Philip Plubell	
<b><u>Research/Theoretical Notes</u></b>	
<b>Representations of Extortion in Jamaican Newspapers</b>	<b>75</b>
Christopher A.D. Charles	
<b>A Micro-Perspective of Public Passenger Transportation in Jamaica: Do Regulatory Laws Intersect with Demand and Supply?</b>	<b>103</b>
Courtney D. Daye	
<b>Whachulookinat? Honour, Masculinity and Violence Among Curaçaoan Youths in The Netherlands</b>	<b>147</b>
Marion van San	
<b>A Profile of Poisoning Among Farmers of Dharwad and Bagalakot Districts of North Karnatak</b>	<b>181</b>
Purnanand N. Sangalad & M.G. Huddar	
<b>Crime Data Mining: An Analysis of Real Time Data in Pakistan</b>	<b>195</b>
Abida Ellahi & Irfan Manarvi	
<b><u>Policy Notes</u></b>	
<b>A Perspective on Juvenile Rights and Justice in Jamaica: A Case for Wards of the State</b>	<b>215</b>
Oniel Jones	
<b>Recommendations for Systematic Transformation of the Criminal Justice System in Trinidad and Tobago</b>	<b>256</b>
Malcolm P. Holdip	
<b>Towards a New Approach in Solving the Problem of Illegal Drugs</b>	<b>268</b>
Roger Ramgoolam	
<b><u>Graduate Students Section: Research/Policy Notes</u></b>	
<b>Border Security, Human Trafficking and Smuggling in Trinidad and Tobago: A Human Rights Analysis</b>	<b>277</b>
Richard Ramoutar	
<b>Aspects of Trinidad and Tobago's Criminal Justice System: Recidivism Rates of Rapists</b>	<b>322</b>
Simon Alexis	
<b>Juvenile Delinquency and Juvenile Justice: Continuing Myths or Promised Realities in Trinidad and Tobago</b>	<b>359</b>
Wendell Wallace	
<b>Faith-Based Programmes as a Means to Combat the Revolving Door Syndrome in Trinidad and Tobago</b>	<b>399</b>
Kevin Peters	

---

---

# SPECIAL INVITATION TO GRADUATE STUDENTS

**A CALL FOR BRIEF SUMMARIES  
OF THESES, RESEARCH OR  
THEORETICAL NOTES  
ON ISSUES WITHIN CRIMINOLOGY  
OR PUBLIC SAFETY**

---

---

The *CJCPs* has introduced a regular **Graduate Research Section** in its issues.

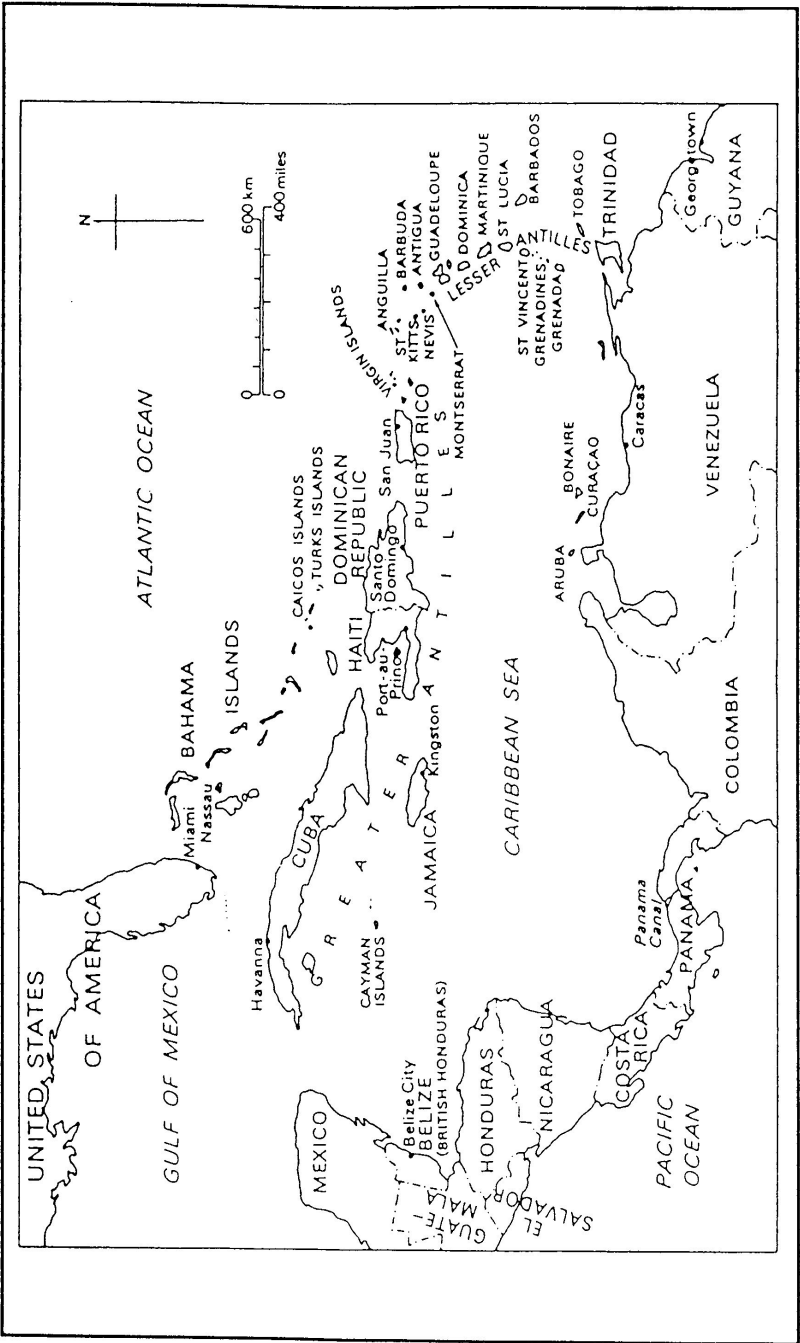
This is an invitation to graduate students both within and outside the Caribbean to submit synopses of their theses, commentaries and research/theoretical notes for consideration to be published in this journal.

Guidelines for Contributors (inside back cover) apply. Papers should be sent to:

**Graduate Research Editor**  
*Caribbean Journal of Criminology and Public Safety*  
**The University of Trinidad and Tobago**  
**O'Meara Campus, Arima**  
**TRINIDAD AND TOBAGO, WEST INDIES.**  
**Tel: 868-642-8888 Ext. 21350, Fax: 868-643-2895**  
**Email: [criminology@utt.edu.tt](mailto:criminology@utt.edu.tt)**

---

---





---

**EDITORIAL –**  
***A HAPPY 15<sup>th</sup> ANNIVERSARY and***  
***EDITOR'S FAREWELL***  
***Ramesh Deosaran***

---

***The Contents***

First published in 1996 as the *Caribbean Journal of Criminology and Social Psychology*, this journal evolved with a new name in 2008 as the *Caribbean Journal of Criminology and Public Safety* since several significant changes took place. Among these was the emergence of a wider appreciation for “public safety” as an embracing concept in criminology, accompanied by a need for more applied, skill-development criminology.

This volume contains fourteen articles, including four from outside the Caribbean, but which have theory and data quite relevant to what we are doing in the region. It is similar to what other extra-regional journals do to papers from the Caribbean.

The first article by Godfrey St. Bernard on youth homicides fits in well with the one on the death penalty by Roe Roberts, Laura Woods Fidelie and Philip Plubell. The literature review by both is quite useful to young researchers and to the wider public given the intense debate now over the death penalty across the Caribbean.

Among the Research Notes are two eye-opening papers on Jamaica. The first by Charles deals with how the Jamaican

media publish incidents of extortion; the other by Daye really relates a struggling public policy to the demands for public transport - a problem now affecting all Caribbean states. Marion van San's paper on youth masculinity and violence is based on Netherlands' data but again, given the high research and public policy interest in this phenomenon in the Caribbean, her paper does hold value.

The poisoning of farmers in North Karnatak, as written by Purnanand Sangalad and M.G. Huddar, should enlighten our own farmers, especially in Caribbean states where agriculture and farming generally play a significant part in the economy. Abida Ellahi and Irfan Manarvi's paper is a strictly technical one, but if carefully read can contribute to an understanding of the application of social statistics.

Oniel Jones' paper on juvenile rights in Jamaica, research-based but passionately written, is important not only for Caribbean researchers but for policy-makers. The juvenile justice system must take better care of juveniles, before and after case disposal, he argues.

Then Roger Ramgoolam advocates a "new approach in solving the problem of illegal drugs." He is a practising Magistrate who not only recounts his own judicial experience, but reaches out to advocate methods other than punishment for reducing drug use. He calls for a second look at the problem, beyond zero-tolerance. This journal has been quite fortunate to have contributions from the judiciary in various parts of the Caribbean. In addition to Magistrate Ramloogam, we have High Court Justice

Malcolm Holdip who provided a set of experience-driven recommendations for transforming the justice system in his country, Trinidad and Tobago where severe concerns exist over case back-log and adjournments. It makes challenging and useful reading.

### *The Graduate Students*

Richard Ramoutar has long held a burning interest in border security. He has applied this interest to his graduate work as exemplified in his paper on human trafficking, contextualising the problem into the human rights realm. Following this, Simon Alexis, another enterprising graduate student, throws some new light on the elusive question of rapists' recidivism.

Wendell Wallace's paper on myths and realities of juvenile delinquency is the kind of paper that stirs debate. Taking a largely sociological approach, he questions the extent to which society defines, unwittingly perpetrates and then punishes delinquency. Finally, Kevin Peters, another graduate student, brings a welcome, relatively new perspective into criminology. That is, the extent to which faith-based programmes could reduce prison recidivism.

### *My Farewell Volume*

After fifteen volumes, this is the last time I will be serving as Editor. Since I am now given several new assignments, the time has come to hand over to other capable hands. What an exciting challenge it has been since I launched the journal in 1996. Even some of my good friends told me the journal would have died a quick death, not because they

wished it, but because many journals in the Caribbean have unfortunately suffered early death, notwithstanding the original enthusiasm and professional dedication of its founders. And after all, criminology was a relatively young discipline in the Caribbean.

To help energise the journal, I developed three graduate programmes in Criminology and Criminal Justice (M.Sc., M.Phil. and Ph.D.) at The University of the West Indies (UWI) in 2003. After my 25-plus years at the UWI, I was invited to join The University of Trinidad and Tobago (UTT) in 2008 as a Programme Professor to establish an Institute for Criminology and Public Safety and develop three undergraduate programmes (Certificate, Diploma and B.A.Sc.) in Criminology, Security and Public Safety. This I did. The journal was also able to receive regular funding from the UTT through then UTT President, Professor Kenneth Julien. It was a relief. I will always be deeply appreciative of his goodwill and appreciation for this piece of intellectual work.

As expected, several graduate students have contributed useful papers to the journal to date. So far, therefore, this journal has escaped death and instead flourished. We were always fortunate to get a reasonable crop of scholarly papers with a fair mixture of research, policy and theoretical content. Of course, there were other challenges, but they merely helped to push us onwards.

### *The Journal's Mandate*

A journal should be a precious flagship for any university.

More than that, this journal is the only Caribbean journal in the discipline of criminology and public safety. Available on-line as well, this journal continues to be a major source of information for researchers, journalists, academics and policy-makers from all parts of the world.

Taking into firm account the obvious need to develop the discipline of Criminology in the Caribbean, and at the same time to satisfy the need of those outside the region for “Caribbean ideas and data,” this journal has attempted to produce issues with a regular mixture of data-based and policy papers, apart from research notes and articles from graduate students. Of course, in such a situation, the challenge is how best to maintain journal quality and accommodate seminal initiatives, especially from our graduate flock. But we have survived for fifteen years and intend to move on. I look forward to passing on this journal to equally safe hands.

### *Acknowledgements*

For their support and goodwill in various ways, I express deep appreciation to Professor George Maxwell Richards when he was Campus Principal of the UWI, Professor Bridget Brereton, Professor Patrick Watson, Mr. Vishnu Ramlogan, and of course, more recently, Professor Kenneth Julien as former President of UTT.

For the long hours and spirited assistance they provided, Vidya Lall (M.Phil.) and Ian Ramdhanie (M.Sc.) deserve my very deep gratitude. Throughout the past fifteen years, these two helped bring each volume to life working at the

editorial and technical details as only an Editor would really appreciate.

To the authors who have contributed and continue to send in papers for review to date, and to my colleagues on the Editorial Boards over the years, all renowned scholars in their own right who always gave me their time and support so readily, I say a special thanks to all of you for helping to keep the *Caribbean Journal of Criminology and Public Safety* alive and well.

***Professor Ramesh Deosaran (Emeritus)***  
**Editor, CJCPS**

**DEMOGRAPHICS, YOUTH VICTIMS AND  
PROSPECTIVE MEASURES FOR PREVENTION:  
THE CASE OF HOMICIDE IN  
TRINIDAD AND TOBAGO**

Godfrey C. St. Bernard

*The University of the West Indies, St. Augustine Campus,  
Trinidad and Tobago*

In Trinidad and Tobago, contemporary patterns of homicide among children and youth have been alarming. Such homicidal episodes have resulted in the victimization of children under 15 years and young persons 15-29 years. This paper focuses specifically upon persons 15-29 years insofar as an earlier paper has addressed dynamics in the context of children under 15 years in Trinidad and Tobago.

**Introduction**

Whether in the context of children or youth, any attempt to understand patterns of homicide is warranted insofar as such a phenomenon is likely to be an indication of "anomie" within myriad social institutions that ought to provide a basis for protecting children and youth. Moreover, children constitute a sub-population that is considered to be highly vulnerable and criminal activity with fatal consequences for children has been emerging as a principal shock which ought to be understood more comprehensively. In the transition from childhood to adulthood, adolescents and youth encounter a variety of life stage challenges that expose them to variable risks of victimization with fatal consequences.

A number of social systems including education, family, legal, belief, communications, cultural and systems of governance mix to produce a range of outcomes that are likely to impact positively or negatively on the lives of youth whether as individuals or as groups. In Trinidad and Tobago and the Caribbean as a whole, criminological research has not focused much on population sub-groups such as children and the youth as the principal units of analysis in studying homicidal victimization with fatal consequences. Rather, any treatment of homicidal victimization has emerged in the context of more generalized criminological inquiries that make reference to homicidal patterns in the broader context of criminal activity, violence, national security and governance.

This paper embraces a socio-demographic perspective and is primarily exploratory, but also permitting a descriptive account of contemporary episodes of homicide among young victims aged 15-29 years in Trinidad and Tobago between January 2000 and December 2006. Such a socio-demographic perspective examines variations in homicidal outcomes according to demographic characteristics such as victims' age and sex.

Homicidal outcomes focus on characteristic features of homicidal cases, for example, detection status, probable cause, the means employed for committing the offence and the type of homicidal episode. In addition to examining patterns and variations that have been revealed among the young persons 15-29 years regarding the characteristic features of homicidal cases, emphasis has also been

placed upon examining such patterns and variations across other sub-populations predicated on age.

While research done primarily in North Atlantic settings show some standard patterns, the findings contained in this paper should permit efforts to gauge the extent to which homicidal outcomes with fatal consequences are likely to be consistent or not with North Atlantic patterns.

In Trinidad and Tobago, homicide statistics have reflected noteworthy increases in fatality among the youth with the onset of the new millennium. Such trends have been consistent with national increases in fatalities due to homicide and heightened feelings of insecurity. This means that a systematic approach to understanding the dynamics of homicide particularly from the standpoint of different sub-populations is likely to be exposed to different sets of stimuli in their encounter with homicidal episodes.

### **Literature Review**

While this paper is primarily concerned with the dynamics of homicide targeting young persons 15-29 years, there does not appear to be much research focusing specifically on this sub-population, whether on an international scale or in the Caribbean sub-region. Nonetheless, St. Bernard (2008) has undertaken such a study in the context of children who have been victims of homicide and cited a number of earlier international studies that embraced a similar focus on children as victims of homicide.

#### 4 DEMOGRAPHICS, YOUTH VICTIMS AND PREVENTION

In explaining criminological behaviour including homicide, sociological theories typically fall into two schools of thought, the first hinging upon structural theories and the second upon interaction theories.

In essence, structural theories strive to understand motives of the committal of homicide and predicated upon the assumption that such behaviour is abnormal and not endorsed by societies. This could be deemed a characteristic of strain theory. Conflict theories, however, claim homicide is due to the fact that there is unequal access to resources. Such limitations are associated with the committal of homicide as a means of sustaining privileged positions or removing oppressive barriers.

Interaction theories may seek to understand differential thrust towards the committal of homicide across different sub-populations as in the case of differential association theories. In some instances, interaction theories may explain why some individuals interpret the committal of homicide as being advantageous and the best response given events in their lives, this being borne out by deterrence theories. In the context of interaction theories, labeling theories constitute an alternative set of explanations associated with interaction theories and account for the fact that perpetrators internalize their roles as killers.

Strain theory as advocated by Robert Merton in the 1930s stands out as a principal framework explaining criminal

behavior such as homicide. In accordance with “strain theory” as advocated by Merton (1938), persons who lack legitimate means of satisfying their societal goals become frustrated and subsequently reject the means and accept the goals (innovation), reject the goals and accept the means (ritualism), reject the goals and reject the means (retreatism), or reject and replace the goals and reject and replace the means (rebellion). In the context of strain theory as a means of explaining homicide, innovation constitutes the most appropriate context. More recently, the ability to attain greater autonomy and status have featured as additional criteria that could place strain on individuals in the absence of legitimate means (Agnew, 1992, 2001; Elliot et al, 1979).

The cultural school links variations in values, ideas and norms that are shared within specific cultural settings to variations in criminal outcomes across different cultural settings. Differential association as articulated by Sutherland (1939) associates cultural nuances that are transmitted across the membership of a primary group and conducive to criminal behavior.

In more recent times, the “sub-culture of violence theory” (McCaghy and Chernkovich, 1987; Wolfgang and Ferracuti, 1967) raises the importance of focusing upon social attributes as masculine honour, physical prowess, victim participation, alcohol use and the availability of weapons as further determinants of criminal outcomes and thus reinforce the virtues of the structural and cultural

approaches working in tandem.

Gibbons (1971) argues that situational circumstances ought to take precedence over motivational factors that have been associated with “differential association.” He alludes to the seminal work of Cohen (1955) and the notion that status discontent was a primary motivational force impacting the behavior of gang delinquents insofar as they believed that others were thinking ill of them. Alternatively, he noted that Cloward and Ohlin (1960) had recognized position discontent rather than status discontent as the principal motivational factor impacting delinquent behavior among gang members.

While the former embraces a more interactional approach, the latter embraces a more structural approach. Such explanations are rooted in motivational stimuli despite alternative explanations that have emphasized the value of situational circumstances (Briar and Piliavin, 1965; Matza, 1964; Short and Strodtbeck, 1965). From the standpoint of situational circumstances, Gibbons (1971) makes reference to stimuli such as lack of commitment to conformity, lack of social skills and provocative life circumstances as reinforcing juvenile misbehavior. These sentiments have been echoed more recently in the work of scholars such as Mucchielli (2004) in the context of a French Department.

Homicidal episodes are mainly perpetrated by males, in particular, young males and that a preponderance of young males could be associated with increases in homicide rates. Gartner and Parker (1990) use a time

series analysis to examine this relationship in the context of five countries over a 70-year period and reveal that with the exception of post-war United States and Italy, that there was no evidence of any systematic relationship between the proportion of young males and homicide rates in any of the countries including Scotland and Japan. In the United States, Land, McCall and Cohen (1990) provide evidence of a positive association between homicide rates and the percentage of young people aged 16-30 years in the total population. While no such studies have been conducted in a Caribbean context, it is hypothesized that such a relationship between the preponderance of young males and homicide rates is not likely to be tenable.

During the 1990s, there was an attempt to investigate the demographic and social characteristics of murderers and victims in the French Department of the Yvelines. Mucchielli (2004) has documented findings based on that investigation and reveal that virtually all of the murderers were overwhelmingly males from working classes, with social handicaps, economically inactive and not married.

He surmised that the life histories of murderers indicated that they had not gained much in life and as such, did not have much to lose to the extent that they placed little value on their lives and those of their victims. Accordingly, childhood life histories overwhelmingly point towards evidence of conflict-ridden relationships between parents and perpetrators, complete failure in school and emotional deprivation. In this context, labeling theories may

constitute a possible approach towards explaining the committal of homicide.

Hirschi and Gottfredson (1983) allude to the invariant nature of the relationship between age and crime irrespective of space, time and context. In accordance with this relationship, Hirschi and Gottfredson (1983) notes that crime, especially serious interpersonal crimes, increases during early adolescence, peaks during late adolescence and early adult life before rapidly decreasing during the 20s and 30s remaining relatively lower at later stages in life.

In accounting for the ubiquitous character of the invariant “age-crime” relationship, Kanazawa and Still (2000:434) claim that it must be due to “something that is constant across all societies and cultures.” As cited in Kanazawa and Still (2000), Gove (1985:138) and Walsh (1995:185-185) seek to explain the “age-crime” relationship as a “function of the combination of high autonomy and low responsibility during the teenage years” though deemed applicable only in the context of the United States and other western nations in the latter half of the twentieth century.

Kanazawa and Still (2000) embrace evolutionary psychology as a theoretical strand for explaining “why men at certain ages or in certain life stages are more criminal than the same men would otherwise be.” Their focus is on the notion of criminality, the propensity of human beings, notably male, to commit crime, and not

simply males' criminal behaviour. They note that crime is a function of criminality and external factors such as opportunities and constraints that impact criminal episodes.

### **Research Questions**

This paper seeks to describe the characteristic features of homicidal episodes involving youth 15-29 years. The paper strives to provide answers to the following research questions:

*Question #1:*

*What are some of the principal age-related characteristics of homicide that have targeted youth 15-29 years old when compared to persons in other age cohorts, principally children under 15 years and adults aged 30-44 years, 45-59 years and 60 years or older?*

*Question #2:*

*How has age cohort been associated with characteristic features of homicidal episodes among youth aged 15-29 years? Specific focus is upon teenaged youth, youth in their early twenties and youth in their late twenties.*

*Question #3:*

*How has gender been associated with characteristic features of homicidal episodes among youth aged 15-29 years?*

*Question #4:*

*What are the implications of the outcomes emerging from answers to Questions #1 to Question #3 above in the context of*

*prospective research and insights toward quelling the prevalence of homicide among youth specifically and by extension, the national community?*

### **Methodology**

The paper is informed by primary data collected by the Police Service of Trinidad and Tobago and refined in the form of a SPSS datafile. The SPSS datafile contains 1,688 cases pertaining to homicidal victims in Trinidad and Tobago between January 2000 and December 2006. For the purpose of this study, however, 748 of the 1688 cases have been analyzed insofar as they pertain to youths aged 15-29 years.

The respective homicide cases have been disaggregated according to detection status, probable motive, means employed in committal, geographic location, sex of the victim and ethnicity of the victim. Additionally, patterns are also examined according to age groups (under 15 years, 15-29 years, 30-59 years and 60 years and over). Because of the high rate of non-detection with regard to homicidal cases across the period under review, subsequent analyses do not examine patterns of persons accused as perpetrators.

### **Youth Homicide Data: Preliminary Observations and Findings**

*Temporal, Spatial and Demographic Characteristics –  
Youth Homicide Cases*

Table 1 shows that the majority of cases were youth in

their early twenties. Table 1 also reveals a marked preponderance of male youth and youth of African descent among homicide victims 15-29 years. Further statistical analyses emanating from the SPSS datafile, focus on homicide that targeted youth 15-29 years and are presented in the next section as preliminary observations and findings.

**Table 1**  
**Demographic Characteristics of Homicidal Victims,**  
**Youth 15-29 years, 2000 – 2006**

Demographic Attributes	Count	Percentage
<b>All Homicidal <u>Victims</u></b>	748	100.0
<b>Sex</b>		
Male	675	90.2
Female	73	9.8
<b>Ethnic Origin</b>		
African	599	80.1
East Indian	94	12.6
Mixed	50	6.7
Caucasian	1	0.1
Chinese	1	0.1
Other	3	0.4
<b>Age</b>		
15 years	6	0.8
16 years	22	2.9
17 years	31	4.1
18 years	34	4.5
19 years	55	7.4
20 years	63	8.4
21 years	69	9.2
22 years	54	7.2
23 years	65	8.7
24 years	65	8.7
25 years	59	7.9
26 years	60	8.0
27 years	63	8.4
28 years	56	7.5
29 years	46	6.1

Table 2 shows an overwhelming preponderance of youth

**Table 2**  
**Episode Characteristics of Homicidal Victims,**  
**Youth 15-29, 2000 – 2006**

<b>Demographic Attributes</b>	<b>Count</b>	<b>Percentage</b>
<b>All Homicidal Victims</b>	748	100.0
<b>Police Division where Homicide Occurred</b>		
Port of Spain	244	32.6
Eastern	29	3.9
North Eastern	117	15.6
Western	101	13.5
Central	42	5.6
South Western	30	4.0
Southern	37	4.9
Northern	137	18.3
Tobago	11	1.5
<b>Year</b>		
2000	40	5.3
2001	60	8.0
2002	75	10.0
2003	101	13.5
2004	120	16.0
2005	191	25.5
2006	161	21.5
<b>Means Employed to Commit Homicide</b>		
Gunshot	574	76.7
Stabbing	95	12.7
Beaten	28	3.7
Chopped	22	2.9
Strangled	16	2.1
Other	9	1.2
Unknown	4	0.5
<b>Probable Cause</b>		
Domestic Violence	17	2.3
Altercation	105	14.0
Gang Related	120	16.0
Robbery	45	6.0
Kidnapping	1	0.1
Revenge	15	2.0
Drug Related	44	5.9
Domestic Dispute	12	1.6
Other	12	1.6
Unknown	377	50.4

homicide in the Port-of-Spain Police Division and to a somewhat lesser extent in the North Eastern Division, the Northern Division and the Western Division. Homicide cases targeting youth 15-29 years increased since 2000 culminating in more than a four-fold by 2005 and 2006. Firearms were responsible for the vast majority of youth homicide (76.7%) and though more than half of the cases were due to unknown causes, the majority of the remainder of cases was due to gang-related activities and to a lesser extent, altercations.

Table 3 indicates that 44.3 percent of all homicide cases between January 2000 and December 2006 targeted youth. Since 2001, youth have consistently accounted for in excess of 40 percent of homicide cases on an annual basis.

*Age-Related Characteristics: All Homicidal Cases*

In the context of homicide victims during the period January 2000 to December 2006, Table 4 examines the location of homicidal cases according to victims' age group. It indicates that greater proportions among youth 15-29 years were victims killed in the Port-of-Spain Division, in the Northern Division and in the Western Division than among victims belonging to any of the other age groups. Firearms have already been observed to be the principal means for executing homicide in Trinidad and Tobago. However, Table 5 indicates that there has been a greater prevalence of firearm use in the committal of homicidal episodes among victims 15-29 years than among victims belonging to any of the other age groups.

**Table 3**  
**Characteristics of Homicidal Episodes, 2000-2006**

<b>Attributes of Homicidal Episodes</b>	<b>All Homicide Cases</b>	<b>Number of Youth Homicide Cases</b>	<b>Youth Homicide Cases as a Percentage of All Cases</b>
<b>All Homicidal <u>Victims</u></b>	1,688	748	44.3
<b>Sex of Victim</b>			
Male	1,458	675	46.3
Female	229	73	31.9
Unknown	1	-	-
<b>Ethnic Origin of Victim</b>			
African	1,220	599	49.1
East Indian	318	94	29.6
Mixed	126	50	39.7
Caucasian	14	1	7.1
Chinese	4	1	25.0
Other	5	3	60.0
Unknown	1	-	-
<b>Police Division</b>			
Port of Spain	469	244	52.0
Eastern	76	29	38.2
North Eastern	252	117	46.4
Western	207	101	48.8
Central	128	42	32.8
South Western	85	30	34.1
Southern	136	37	27.2
Northern	299	137	45.8
Tobago	36	11	30.6
<b>Period</b>			
Jan-Dec 2000	119	40	33.6
Jan-Dec 2001	149	60	40.3
Jan-Dec 2002	172	75	43.6
Jan-Dec 2003	229	101	44.1
Jan-Dec 2004	260	120	46.2
Jan-Dec 2005	389	191	49.1
Jan-Dec 2006	370	161	43.5
<b>Means Employed to Commit Homicide</b>			
Gunshot	1,115	574	51.5
Stabbing	217	95	43.8
Beaten	143	28	19.6
Chopped	80	22	27.5
Strangled	55	16	29.1
Other	60	9	15.0
Unknown	18	4	22.2

**Table 3 (continued)**  
**Characteristics of Homicidal Episodes, 2000-2006**

<b>Attributes of Homicidal Episodes</b>	<b>All Homicide Cases</b>	<b>Number of Youth Homicide Cases</b>	<b>Youth Homicide Cases as a Percentage of All Cases</b>
<b>Probable Cause</b>			
Domestic Violence	94	17	18.1
Altercation	214	105	49.1
Gang Related	178	120	67.4
Robbery	195	45	23.1
Kidnapping	3	1	33.3
Revenge	29	15	51.7
Drug Related	88	44	50.0
Domestic Dispute	29	12	41.4
Other	45	12	26.7
Unknown	809	377	46.6

**Table 4**  
**Homicidal Cases by Police Division and Age Group,**  
**Jan 2000-Sept 2006**

<b>Police Division</b>	<b>All Cases</b>	<b>Less than 15 years</b>	<b>15-29 years</b>	<b>30-44 years</b>	<b>45-59 years</b>	<b>60 years and over</b>
<b>Port-of-Spain</b>	468 (27.8%)	12 (22.6%)	244 (32.6%)	147 (26.9%)	42 (18.9%)	23 (20.0%)
<b>Eastern</b>	75 (4.5%)	6 (11.3%)	29 (3.9%)	23 (4.2%)	15 (6.8%)	2 (1.7%)
<b>North Eastern</b>	251 (14.9%)	3 (5.7%)	117 (15.6%)	87 (15.9%)	25 (11.3%)	19 (16.5%)
<b>Western</b>	207 (12.3%)	7 (13.2%)	101 (13.5%)	59 (10.8%)	28 (12.6%)	12 (10.4%)
<b>Central</b>	128 (7.6%)	6 (11.3%)	42 (5.6%)	51 (9.3%)	25 (11.3%)	4 (3.5%)
<b>South Western</b>	85 (5.0%)	3 (5.7%)	30 (4.0%)	24 (4.4%)	18 (8.1%)	10 (8.7%)
<b>Southern</b>	136 (8.1%)	6 (11.3%)	37 (4.9%)	43 (7.9%)	27 (12.2%)	23 (20.0%)
<b>Northern</b>	298 (17.7%)	9 (17.0%)	137 (18.3%)	100 (18.3%)	36 (16.2%)	16 (13.9%)
<b>Tobago</b>	36 (2.1%)	1 (1.9%)	11 (1.5%)	12 (2.2%)	6 (2.7%)	6 (5.2%)
<b>All Cases</b>	1,684 (100.0%)	53 (100.0%)	748 (100.0%)	546 (100.0%)	222 (100.0%)	115 (100.0%)

**Table 5**  
**Homicidal Cases by Means Employed and Age Group,**  
**Jan 2000-Sept 2006**

Means Employed	All Cases	Less than 15 years	15-29 years	30-44 years	45-59 years	60 years and over
<b>Gunshot</b>	1,115 (66.8%)	11 (21.2%)	574 (77.2%)	376 (69.2%)	118 (53.6%)	36 (32.4%)
<b>Stabbing</b>	217 (13.0%)	6 (11.5%)	95 (12.8%)	65 (12.0%)	33 (15.0%)	18 (16.2%)
<b>Beaten</b>	143 (8.6%)	15 (28.8%)	28 (3.8%)	48 (8.8%)	29 (13.2%)	23 (20.7%)
<b>Chopped</b>	80 (4.8%)	5 (9.6%)	22 (3.0%)	23 (4.2%)	19 (8.6%)	11 (9.9%)
<b>Strangled</b>	55 (3.3%)	2 (3.8%)	16 (2.2%)	13 (2.4%)	10 (4.5%)	14 (12.6%)
<b>Other</b>	60 (3.6%)	13 (25.0%)	9 (1.2%)	18 (3.4%)	11 (5.0%)	9 (8.1%)
<b>All Cases</b>	1,670 (100.0%)	52 (100.0%)	543 (100.0%)	543 (100.0%)	220 (100.0%)	111 (100.0%)

The results contained in Table 6 provide evidence suggesting that the majority of homicide cases were of unknown cause, this being evident irrespective of victims' age group. However, unknown causes were more prevalent among victims 15-29 years than among victims in any of the other age groups. With respect to cases for which there was likely knowledge of causal antecedents, factors such as gang related activities and altercations were mostly prevalent as probable causes among victims 15-29 years than among those belonging to any of the other age groups.

Table 7 examines the detection status of all homicide cases between January 2000 and December 2006 according to victim's age groups and shows that cases resulting in the victimization of youth 15-29 years were less likely to have resulted in having someone accused than cases involving persons in any of the other age groups.

**Table 6**  
**Homicidal Cases by Probable Cause and Age Group,**  
**Jan 2000-Sept 2006**

Probable Cause	All Cases	Less than 15 years	15-29 years	30-44 years	45-59 years	60 years and over
Domestic Violence	94 (5.6%)	16 (30.2%)	17 (2.3%)	45 (8.2%)	12 (5.4%)	4 (3.5%)
Altercation	214 (12.7%)	5 (11.3%)	105 (14.0%)	61 (11.2%)	31 (14.0%)	11 (9.6%)
Gang Related	178 (10.6%)	1 (1.9%)	120 (16.0%)	43 (7.9%)	12 (5.4%)	2 (1.7%)
Robbery	195 (11.6%)	- (0.0%)	45 (6.0%)	64 (11.7%)	49 (22.1%)	37 (32.2%)
Revenge	29 (1.7%)	- (0.0%)	15 (2.0%)	11 (2.0%)	3 (1.4%)	- (0.0%)
Drug Related	88 (5.2%)	- (0.0%)	44 (5.9%)	31 (5.7%)	10 (4.5%)	3 (2.6%)
Domestic Dispute	29 (1.7%)	5 (9.4%)	12 (1.6%)	6 (1.1%)	3 (1.4%)	3 (2.6%)
Other	48 (2.9%)	4 (7.5%)	13 (1.7%)	20 (3.8%)	7 (3.2%)	4 (3.5%)
Unknown	809 (48.0%)	21 (39.6%)	377 (50.4%)	265 (48.5%)	95 (42.8%)	51 (44.3%)
<b>All Cases</b>	<b>1,684</b> <b>(100.0%)</b>	<b>53</b> <b>(100.0%)</b>	<b>748</b> <b>(100.0%)</b>	<b>546</b> <b>(100.0%)</b>	<b>222</b> <b>(100.0%)</b>	<b>115</b> <b>(100.0%)</b>

**Table 7**  
**Homicidal Cases by Detection Status and Age Group,**  
**Jan 2000-2006**

Detection Status	All Cases	Under 15 years	15-29 years	30-44 years	45-59 years	60 years or older
Nobody Charged	1,186 (70.4%)	16 (30.2%)	556 (74.3%)	388 (71.1%)	149 (67.1%)	77 (67.0%)
Somebody Charged	498 (29.6%)	37 (69.8%)	192 (25.7%)	158 (28.9%)	73 (32.9%)	38 (33.0%)
<b>All Cases</b>	<b>1684</b> <b>(100.0%)</b>	<b>53</b> <b>(100.0%)</b>	<b>748</b> <b>(100.0%)</b>	<b>546</b> <b>(100.0%)</b>	<b>222</b> <b>(100.0%)</b>	<b>115</b> <b>(100.0%)</b>

*Age-Related Outcomes and Youth Victimization*

The characteristic features of youth victimization are likely to be associated with current age cohort experiences of selective groups of youth. With respect to youth homicide

victims between January 2000 and December 2006, Table 8 indicates that at least 90 percent were male with just under 10 percent being female. The preponderance of male cases persisted whether victims were aged 15-19 years, 20-24 years or 25-29 years. Notwithstanding such a regular pattern, females constituted a relatively larger number among victims - teenaged victims 15-19 years than among older victims aged 20-24 years and 25-29 years.

**Table 8**  
**Youth Homicide Cases by Sex of Victim and Age Group of Victim, 2000-2006**

Sex of Victim	All Cases	15-19 years	20-24 years	25-29 years
<b>Male</b>	675 (90.2%)	130 (87.8%)	288 (91.1%)	257 (90.5%)
<b>Female</b>	73 (9.8%)	18 (12.2%)	28 (8.9%)	27 (9.5%)
<b>All Cases</b>	748 (100.0%)	148 (100.0%)	316 (100.0%)	284 (100.0%)

According to Table 9, the use of firearms and stabbings have been the principal means employed in the committal of homicide that targeted youth 15-29 years between January 2000 and December 2006 (77.2% and 12.8% respectively). Whether 15-19 years, 20-24 years, or 25-29 years, the vast majority of homicide cases had been committed with the use of firearms. However, the use of firearms appears to have been increasingly prevalent among victims in older age groups than among their younger counterparts (66.7%, 78.7% and 80.9% respectively). With respect to stabbings, a higher prevalence was observed in the case of teenaged victims aged 15-19 years than among older victims, 20-24 years and 25-29 years.

**Table 9**  
**Youth Homicide Cases by Means Employed and Age Group of Victim, 2000-2006**

<b>Means Employed</b>	<b>All Cases</b>	<b>15-19 years</b>	<b>20-24 years</b>	<b>25-29 years</b>
<b>Gunshot</b>	574 (77.2%)	98 (66.7%)	248 (78.7%)	228 (80.9%)
<b>Stabbing</b>	95 (12.8%)	29 (19.7%)	35 (11.1%)	31 (11.0%)
<b>Beaten</b>	28 (3.8%)	6 (4.1%)	14 (4.4%)	8 (2.8%)
<b>Chopped</b>	22 (3.0%)	7 (4.8%)	10 (3.2%)	5 (1.8%)
<b>Strangled</b>	16 (2.2%)	4 (2.7%)	5 (1.6%)	7 (2.5%)
<b>Other</b>	9 (2.3%)	3 (2.1%)	3 (1.0%)	3 (0.0%)
<b>All Cases</b>	744 (100.0%)	147 (100.0%)	315 (100.0%)	282 (100.0%)

As in the case of all homicide victims irrespective of age, the results contained in Table 10 provide evidence suggesting that the majority of homicide among victims 15-29 years were of unknown cause, this being evident irrespective of victims' age group. However, unknown causes were more prevalent among victims 15-19 years and 20-24 years than among victims 25-29 years.

With respect to cases for which there was likely knowledge of causal antecedents, factors such as gang-related activities and altercations were mostly prevalent as probable causes. In particular, gang-related activities were more prevalent among 20-24 year-old victims than among victims 15-19 years or 25-29 years (18.4% as opposed to 14.9% and 14.1% respectively) while altercations were more prevalent among 15-19 year old victims than among victims 20-24 years and 25-29 years (20.9% as opposed to 12.7% and 12% respectively). In instances where there was

some knowledge of the likely cause of homicide, the results contained in Table 10 reveal that altercations appeared to be more frequently associated with fatal outcomes in the case of victims 15-19 years old. For victims 20-24 years and 25-29 years, gang-related violence appeared to be more frequently associated with fatal outcomes. Nonetheless these two causal antecedents stand out as likely factors for the demise of 15-29 year old youth irrespective of age cohort.

**Table 10**  
**Youth Homicide Cases by Probable Cause and Age Group of Victim, 2000-2006**

Probable Cause	All Cases	15-19 years	20-24 years	25-29 years
Domestic Violence	17 (2.3%)	- (0.0%)	10 (3.2%)	7 (2.5%)
Altercation	105 (14.0%)	31 (20.9%)	40 (12.7%)	34 (12.0%)
Gang Related	120 (16.0%)	22 (14.9%)	58 (18.4%)	40 (14.1%)
Robbery	45 (6.0%)	6 (4.1%)	16 (5.1%)	23 (8.1%)
Revenge	15 (2.0%)	3 (2.0%)	5 (1.6%)	7 (2.5%)
Drug Related	44 (5.9%)	4 (2.7%)	12 (3.8%)	28 (9.9%)
Domestic Dispute	12 (1.6%)	2 (1.4%)	4 (1.3%)	6 (2.1%)
Other	13 (1.7%)	4 (2.7%)	3 (0.9%)	6 (2.1%)
Unknown	377 (50.4%)	76 (51.4%)	168 (53.2%)	133 (46.8%)
All Cases	748 (100.0%)	148 (100.0%)	316 (100.0%)	284 (100.0%)

Table 10 shows a total of 6 percent of all youth homicides had been linked to robbery as a probable cause. Specifically, the evidence is consistent with a greater likelihood that victims from older cohorts were killed in

instances where robbery appeared to be the motive (8.1% for 25-29 year-olds, 5.1% for 20-24 year-olds and 4.1% for 15-19 year-olds). A similar proportion (5.9%) of all youth homicides had been linked to drug-related activities as a probable cause. Interestingly, the outcome is similar to that observed in the case of the link between robbery as a probable motive and youth homicide, being indicative of a greater likelihood that drug-related activities constituted a probable motive for youth homicide in the cases older cohorts as opposed to younger cohorts (9.9% for 25-29 year-olds, 3.8% for 20-24 year-olds and 2.7% for 15-19 year-olds).

On examining the relationship between the age cohort of victims and the detection status of youth homicide cases, Table 11 reveals that nobody had been accused in almost three-quarters of the cases.

**Table 11**  
**Youth Homicide Cases by Detection Status and Age Group of Victim, 2000-2006**

Detection Status	All Cases	15-19 years	20-24 years	25-29 years
<b>Nobody Charged</b>	556 (74.3%)	101 (68.2%)	241 (76.3%)	214 (75.4%)
<b>Somebody Charged</b>	192 (25.7%)	47 (31.8%)	75 (23.7%)	70 (24.6%)
<b>All Cases</b>	748 (100.0%)	148 (100.0%)	316 (100.0%)	284 (100.0%)

The evidence contained in Table 11 suggests that the age cohort of victims has had no bearing upon detection status of youth homicide cases. As such, cases involving victims from each of the age cohorts seem much more likely to have had nobody being accused than to have had

somebody being accused. Nonetheless, the prospect of somebody being accused seems to be greater in cases involving teenaged victim than older victims aged 20-24 years and 25-29 years (31.8% as opposed to 23.7% and 24.6% respectively).

### **Gender-Related Outcomes and Youth Victimization**

With respect to youth victims, variations in the means employed to commit homicide as well as variations in probable underlying motives were analyzed according to the sex of victims. Such analyses are expected to permit gendered interpretations of outcomes and throw further light on associated dynamics characterizing homicidal episodes among youth aged 15-29 years. While gendered interpretations can be enhanced based upon knowledge of the sex of perpetrators, limitations associated with available evidence that is based principally on accused persons is somewhat of a constraint. Nonetheless, limited available data on the characteristics of the accused suggest that they have been overwhelmingly male.

Table 12 is indicative of variation in the means employed to commit homicide dependent on whether victims were male or female. Male victims were killed mainly through the use of firearms (82.4%) followed by stabbings which accounted for 10.4 percent of the male homicide victims. Relatively speaking, much smaller numbers were beaten, chopped, strangled or killed by other means.

In contrast, the majority of female victims amounting to

a little more than one-third were killed by stabbings (34.2%) followed by the use of firearms which accounted for 28.8 percent. It is worth noting that another 19.2 percent, just under 1 in 5 female victims were strangled. Altogether, [Table 12](#) suggests that the means employed to commit homicide that targeted female victims were more variable than in the case of male victims.

**Table 12**  
**Youth Homicide Victims by Means Employed and Sex of Victim, 2000-2006**

Means Employed	All Cases	Male	Female
Gunshot	574 (77.2%)	553 (82.4%)	21 (28.8%)
Stabbing	95 (12.8%)	70 (10.4%)	25 (34.2%)
Beaten	28 (3.8%)	22 (3.3%)	6 (8.2%)
Chopped	22 (3.0%)	18 (2.7%)	4 (5.5%)
Strangled	16 (2.2%)	2 (0.3%)	14 (19.2%)
Other	9 (2.3%)	6 (0.8%)	3 (4.2%)
All Cases	744 (100.0%)	671 (100.0%)	73 (100.0%)

Like [Table 12](#), [Table 13](#) is also indicative of variation in the probable motive underlying the committal of youth homicide dependent on victims' sex. In the case of male victims, the motive is more likely to be unknown than in the case of female victims (50.4% as opposed to 45.2%). With respect to cases for which there was probable knowledge of the motive underlying the case, gang-related activities (17.6%) and altercations (14.4%) featured most prominently among male victims followed by drug-related

activities (6.4%) and robbery (6.1%). In cases where there was knowledge of underlying probable motives underlying the committal of homicide, domestic upheavals featured prominently accounting for at least 31.5 percent of the cases among all female victims (at least 17.8% due to domestic violence and 13.7% due to domestic dispute). At least 11 percent of all female victims were killed due to altercations as a probable motive.

**Table 13**  
**Youth Homicide Victims by Probable Cause and Sex of Victim, 2000-2006**

<b>Probable Cause</b>	<b>All Cases</b>	<b>Male</b>	<b>Female</b>
<b>Domestic Violence</b>	17 (2.3%)	4 (0.6%)	13 (17.8%)
<b>Domestic Dispute</b>	12 (1.6%)	2 (0.3%)	10 (13.7%)
<b>Altercation</b>	105 (14.0%)	97 (14.4%)	8 (11.0%)
<b>Gang Related</b>	120 (16.0%)	119 (17.6%)	1 (1.4%)
<b>Robbery</b>	45 (6.0%)	41 (6.1%)	4 (5.4%)
<b>Revenge</b>	15 (2.0%)	15 (2.2%)	- (0.0%)
<b>Drug Related</b>	44 (5.9%)	43 (6.4%)	1 (1.4%)
<b>Other</b>	13 (1.7%)	10 (1.4%)	3 (4.1%)
<b>Unknown</b>	377 (50.4%)	344 (51.0%)	33 (45.2%)
<b>All Cases</b>	748 (100.0%)	675 (100.0%)	73 (100.0%)

Among male and female victims, stabbings featured prominently as a principal medium that resulted in their demise. Accordingly, Table 14 shows variations in motives underlying homicide due to stabbings. For male victims, such events when known were mainly due to altercations (at least 64.3% of all male victims). For female victims,

domestic upheavals (at least 40% of all female victims) and to a lesser extent altercations (at least 16% of all female victims) were deemed probable motives associated with the majority of stabbings. Notwithstanding, a total of 40% of the stabbings involving female victims could not be traced to any specific causal factor, this being substantially larger than the corresponding proportion (24.3%) that could not be traced to any causal factors in the case of stabbings involving male victims.

**Table 14**  
**Youth Homicide Victims Who Were Stabbed by Probable Cause and Sex of Victim, 2000-2006**

<b>Probable Cause</b>	<b>All Cases</b>	<b>Male</b>	<b>Female</b>
<b>Domestic Violence</b>	9 (99.5%)	1 (1.4%)	8 (32.0%)
<b>Domestic Dispute</b>	2 (2.1%)	- (0.0%)	2 (8.0%)
<b>Altercation</b>	49 (51.6%)	45 (64.3%)	4 (16.0%)
<b>Gang Related</b>	2 (2.1%)	2 (2.9%)	- (0.0%)
<b>Robbery</b>	4 (4.2%)	3 (4.3)	1 (4.0%)
<b>Revenge</b>	1 (1.1%)	1 (1.4%)	- (0.0%)
<b>Other</b>	1 (1.1%)	1 (1.4%)	- (0.0%)
<b>Unknown</b>	27 (28.4%)	17 (24.3%)	10 (40.0%)
<b>All Cases</b>	95 (100.0%)	70 (100.0%)	25 (100.0%)

Table 15 examines variations in means employed for the committal of homicide resulting from variations in plausible motives according to the sex of victims. In the case of male victims, the use of firearms have been overwhelmingly the principal means employed in the committal of homicide that was attributed to domestic

violence, robberies, gang-related activities, revenge, drug-related activities and unknown causes.

**Table 15**  
**Male Youth Homicide Victims by Means Employed, Probable Cause and Sex of Victim, 2000-2006**

<b>Probable Cause</b>	<b>All Cases</b>	<b>Gunshot</b>	<b>Stabbing</b>	<b>Other</b>
<b>Domestic Violence</b>	3 (100.0%)	2 (66.7%)	1 (33.3%)	- (0.0%)
<b>Domestic Dispute</b>	2 (100.0%)	1 (50.0%)	- (0.0%)	1 (50.0%)
<b>Altercation</b>	97 (100.0%)	43 (44.3%)	45 (46.4%)	9 (9.3%)
<b>Robbery</b>	40 (100.0%)	34 (85.0%)	3 (7.5%)	3 (7.5%)
<b>Gang –Related Activities</b>	119 (100.0%)	115 (96.6%)	2 (1.7%)	2 (1.7%)
<b>Revenge</b>	15 (100.0%)	11 (73.3%)	1 (6.7%)	3 (20.1%)
<b>Drug Related Activities</b>	43 (100.0%)	43 (100.0%)	- (0.0%)	- (0.0%)
<b>Other</b>	13 (100.0%)	7 (53.8%)	1 (7.7%)	5 (38.5%)
<b>Unknown</b>	342 (100.0%)	297 (86.8%)	17 (5.0%)	28 (8.2%)
<b>All Cases</b>	671 (100.0%)	553 (82.4%)	70 (10.4%)	48 (7.1%)

The prevalence of the use of firearms was extremely high for cases due to drug-related activities (100%), gang-related activities (96.6%), unknown causes (86.8%) and robbery (85%); a set of plausible motives that accounted for the demise of 82.4% of all male victims.

A noteworthy proportion of male homicide cases resulting from altercations were due to the use of firearms (44.3%) despite the fact that stabbing in altercations comprised 46.4% percent. Irrespective of the motive, the evidence is indicative of the pervasiveness of the use of firearms in the committal of homicide among male victims.

Table 16 permits a similar analysis among female victims, the majority of whom were killed as a result of being stabbed. This was especially the case where homicides were attributed to domestic violence, altercations and unknown causes.

**Table 16**  
**Female Youth Homicide Victims by Means Employed, Probable Cause and Sex of Victim, 2000-2006**

Probable Cause	All Cases	Gunshot	Stabbing	Other
Domestic Violence	13 (100.0%)	1 (7.7%)	8 (61.5%)	4 (30.8%)
Domestic Dispute	10 (100.0%)	5 (50.0%)	2 (20.0%)	3 (20.0%)
Altercation	8 (100.0%)	2 (25.0%)	4 (50.0%)	2 (25.0%)
Robbery	4 (100.0%)	2 (50.0%)	1 (25.0%)	1 (25.0%)
Gang –Related Activities	1 (100.0%)	1 (100.0%)	- (0.0%)	- (0.0%)
Drug Related Activities	1 (100.0%)	1 (100.0%)	- (0.0%)	- (0.0%)
Other	3 (100.0%)	- (0.0%)	- (0.0%)	3 (100.0%)
Unknown	33 (100.0%)	9 (27.3%)	10 (30.3%)	14 (42.4)
All Cases	73 (100.0%)	21 (28.8%)	25 (34.2%)	27 (37.1%)

Nonetheless, the use of firearms featured as a means employed irrespective of motive being the principal means employed in homicide attributed to domestic disputes, robberies, gang-related activities and drug-related activities. Thus, it appears as though the sex of prospective youth victims does not matter in homicide cases attributed to robberies, gang-related activities and drug-related activities as firearms usually constitute the principal means of committal. The overwhelming prevalence of stabbings and to a lesser extent, choppings and strangulation as

means employed for the committal of homicide among female victims is also noteworthy.

### **Discussion**

In Trinidad and Tobago, the evidence spanning the period between January 2000 and December 2006 reveals that youth victims of homicide are mainly in their twenties, mainly male and mainly of African origin.

The vast majority of episodes have occurred in urban domains encompassing the City of Port-of-Spain and working class communities across the length and breadth of the East-West Corridor consisting of sub-urban districts to the east and west of the City of Port-of-Spain.

Compared to victims who were under 15 years, 30-44 years, 45-59 years and 60 years and over, a notably greater prevalence of homicide has been observed to be due to the use of firearms, activities in principally urban centres and no knowledge of motives among youth victims aged 15-29 years. In cases where there is some knowledge of a probable motive, a greater prevalence of killings associated with gang-related activities and to a lesser extent altercations, has been observed in the case of victims aged 15-29 years than in the cases of victims in the other four age groups.

Based on the results emanating from this study, there are some definite constants that characterize homicide episodes that have targeted victims 15-29 years. The first is

the primacy of firearms as a principal means used in the committal of youth homicide irrespective of victims' sex. The second treats with the all-pervasive character of gang-related activities as a primary motive, and to a lesser extent altercations, both being manifest in cases where probable motives had been detected. A third constant is especially alarming and relates to the fact that the majority of cases appear to have had no satisfactory detection status which, in many cases, has accounted for the large number of cases for which there has been no knowledge of motives.

Thus, factors including the primacy of firearms as a weapon of choice in the committal of homicide, the proliferation of gangs and gang-related activities, the persistence of scenarios that stimulate altercations, unfavourable rates of detection and the inability to discern motives are worthy of comprehensive scholarly investigation in order to discover strategies that can promote progressive outcomes.

The primacy of firearms as a weapon of choice in homicide has several dimensions that ought to be considered in problem-solving initiatives. The first is the availability of firearms, a second is the vulnerability of victims, a third is the source of motivation of the perpetrator with regard to the desire to kill, a fourth is the motivation and decision-process that precipitates the use a firearm, and a fifth being the prospect of executing homicidal intentions in the absence of firearms.

The availability of firearms is contingent upon the supply

of firearms which has increased phenomenally in tandem with narcotics trafficking in Caribbean societies. The demand for firearms fuels the supply and is contingent upon the motivation of the perpetrator with regard to the desire to execute a homicidal episode and the motivation and decision-process that precipitate the use of firearms.

This study has provided results that could inform insights regarding the vulnerability of victims, age cohorts and sex. Nonetheless, there are clear gaps insofar as the study does not permit analysis of victims' attributes deemed to be indicative of situational circumstances that may have precipitated their demise.

The proliferation of gangs hinges upon the etiology of gang membership and gang activities. This reinforces the importance of structural and interaction theories in uncovering culture-specific variants within frameworks such as strain theories, conflict theories, differential association, labeling theories among others.

A cursory examination of the results in the study corroborate a strong association between gang-related activities and the use of firearms in executing homicide among young victims 15-29 years.

The characteristic features of gangs as a unit of analysis are significant and ought to be investigated in order to appreciate their mission and vision in much the same way that such attributes are investigated within the confines of more formal entities. It is important to interrogate why

some males respond aggressively and others do not to similar external stimuli. For those males who respond aggressively, it is important to interrogate why some direct their aggression towards females only, males only or both males and female in response to similar external stimuli.

Though available evidence suggest that females are much less likely than males to be perpetrators of violent crime, similar research interventions can be pursued focusing on females as the aggressor. From the standpoint of perpetrator status, it is important to consider whether offences were stranger-perpetrated, acquaintance-perpetrated or intra-familial and whether perpetration was a function of a single actor or multiple actors taking into account inter-group dynamics in the case of the latter.

The vulnerability of victims can be assessed in terms of victims' capacity to offer resistance and/or build defense mechanisms to the extent that this might explain why male youth victims have mostly been killed by firearms while female youth victims have mostly been killed by stabbings, cutlass attacks and strangulation.

Among cases for youth victims 15-29 years, someone was less likely to have been accused and more likely to have not been accused irrespective of their age cohorts, this being most evident among victims aged 20-24 years.

Low detection status is mostly characteristic of cases that have been due to gang-related activities, robberies, drug-related activities and unknown causes; motives that have

been precipitated by the use of firearms. However, there appears to be a more favourable detection status for cases that have been due to domestic violence, domestic disputes, altercations and stabbings.

### **Conclusion**

In addressing emergent research initiatives borne out of this paper, novel challenges are envisaged for a new wave of researchers. While some research questions will rely upon the techniques of survey research with some invocation of experimental logic, considerably more emphasis will have to be placed on a range of qualitative research designs that may redound to obtaining more comprehensive knowledge of the culture of gangs, narcotics trafficking and the mind of the assassin.

## Bibliography

- Agnew, R. (1992). "Foundation of a General Strain Theory of Crime and Delinquency." *Criminology*, 30, pp 47-87.
- Agnew, R. (2001). "Strain Theory." In *The Sage Dictionary of Criminology*, ed. E. Mc Laughlin and J. Muncie. London: Sage Publishers.
- Briar, S. & Piliavin, I. (1965). "Delinquency, Situational Inducements and Commitment to Conformity." *Social Problems: 13* (Summer), pp 35-45.
- Cohen, A.K. (1955). *Delinquent Boys*. New York: Free Press.
- Cloward, R.A. & Ohlin, L.E. (1960). *Delinquency and Opportunity*. New York: Free Press.
- Elliot, D.S., Ageton, S.S. & Canter, R. (1979). "An Integrated Theoretical Perspective on Delinquent Behaviour." *Journal of Research in Crime and Delinquency*, 16, pp 3-17.
- Gartner, Rosemary and Robert Nash Parker (1990) "Cross-National Evidence on Homicide and the Age Structure of the Population", *Social Forces*: Vol. 69, No. 2, pp 351-371.
- Gibbons, Don (1971) "Observations on the Study of Crime Causation" *The American Journal of Sociology*, Vol. 77, No. 2, pp 262-278.
- Le Franc E, M. Samms-Vaughan, I. Hambleton, K. Fox, and D. Brown (2008) "Interpersonal Violence in three Caribbean Countries: Barbados, Jamaica, and Trinidad and Tobago" *Rev Panam Salud Publica* Volume 24, No. 6, pp 409-421.
- Matza, David (1964) *Delinquency and Drift*, New York: Wiley
- Mc Caghy, C. H., and S. A. Chernovich (1987) *Crime in American Society*, New York: Macmillan.
- Merton, Robert (1938) "Social Structure and Anomie" *American Sociological Review*, Volume 3, pp 672-682.
- Mucchielli, Laurent (2004) "Demographic and Social Characteristics of Murderers and the Victims – A study of a Departement of the Paris

34      DEMOGRAPHICS, YOUTH VICTIMS AND PREVENTION

Region in the 1990s", Population: English Edition, Vol. 59, No. 2, pp 167-194.

Short, James F, Jr. and Fred L. Strodbeck (1965) Group Process and Gang Delinquency, Chicago: University of Chicago Press.

St. Bernard, Godfrey (2008) "Exploring Childhood Victimization in Trinidad and Tobago – An Analysis of Homicidal Cases" In Promoting Child Rights through Research – Selected Papers from the Caribbean Child Research Conference 2006, Volume 1, eds. Aldrie Henry-Lee and Julie Meeks-Gardner, 30-55, Sir Arthur Lewis Institute of Social and Economic Studies.

Sutherland, E. H., (1939) Criminology (2<sup>nd</sup> Edition), Philadelphia, Pennsylvania: Lippincott.

Wolfgang, M. E. and F. Ferracuti (1967) The Sub-Culture of Violence: Towards an Integrated Theory of Criminology, London: Tavistock.

## **THE ETHICS OF CAPITAL PUNISHMENT IN THE AMERICAS**

Roe A. Roberts

Laura Woods Fidelie

Philip Plubell

*Midwestern State University, Texas, USA*

Many U.S. states and nations in the Americas have eliminated capital punishment. However, it is still used in others and supporters argue that the practice is ethical and has a deterrent value. This paper explores the practice from the vantage point of several ethical theories, and two major philosophical frameworks. It concludes that the ethical justification for the practice is determined by the individual and country's ethical values. Unlike a more homogeneous country, America's diversity results in ethical values that vary widely, confusing the practice's ethical acceptability. In many states, the cost of capital punishment exceeds that of other alternative punishments. Therefore, the authors suggest that it is more economical, supports the goal of justice, and is less ethically problematic to substitute life in prison without parole.

### **Introduction**

Even though the use of capital punishment is supported by the majority of Americans, it is still an issue that is fraught with unanswered ethical dilemmas. These ethical problems exist at all stages of capital punishment's imposition, from the jury that sentences an individual to be put to death to the physician or technician who is ultimately called upon to administer the final lethal injection. A recent U.S. Supreme Court ruling upheld the use of three-drug lethal injection (*Baze v. Rees*, 2008), but this case has again called into question an extremely

pressing and relevant issue: "Is the practice of capital punishment, rather than life in prison without the possibility of parole an ethical practice, and if not, is it a practice that should be permitted to continue in an ethical society?" Several different ethical frameworks will be drawn upon in an attempt to clarify the ethical dilemmas surrounding this practice.

The U.S. Supreme Court has placed some definite limits as to when the death penalty may be imposed. The Court ruled that statutes making the death penalty mandatory under certain circumstances are impermissible (*Woodson v. North Carolina*, 1976). Murder is the only crime for which the death penalty can be used (*Coker v. Georgia*, 1977). Capital punishment cannot be imposed upon those who were legally insane (*Ford v. Wainwright*, 1986), mentally handicapped (*Atkins v. Virginia*, 2002), or a minor child (*Roper v. Simmons*, 2005) at the time the crime was committed. Even with these constraints, fourteen U.S. states do not impose capital punishment under any circumstances, and even in jurisdictions that continue to sentence heinous offenders to death, the use of the death penalty is diminishing (Death Penalty Information Center, 2008(a); U.S. Department of Justice, 2006(a)).

The only other country in the Americas to conduct an execution in 2008 was St. Kitts and Nevis. Although several other countries in the Americas do have the option of capital punishment, this was the first execution in a Caribbean country since 2003 (Amnesty International, 2009). In the Caribbean, recent cases have greatly limited

both mandatory death sentences and the allowed delay between sentencing and execution (Sellwood & Fernandez, 2004). The second largest country in the Americas, Mexico completely eliminated capital punishment as a possible sentence in 2005. However, due to the current violent climate there, there has been growing public pressure to reinstate it. The Green party has launched a concerted effort to reinstate the death penalty as the number of murders doubled from 2007 to 2008 soaring to almost 6,000. The primary reason given for its reinstatement is one of deterrence. However, the Roman Catholic Church and two other major parties strongly oppose capital punishment, so it is unlikely that it will be reinstated as a punishment in the near future (Gibbs, 2009).

In the United States, the debate surrounding the ethical ramifications of capital punishment has increased at the state level since December 17, 2007, when New Jersey passed legislation abolishing the use of the death penalty, and substituting life imprisonment without the possibility of parole for those who have been convicted of murder and previously given a death sentence (N.J.S.2C:11-3 (amended 2007)).

Assembly Speaker Joseph Roberts, one of the foremost supporters of the bill, stated that when individuals commit particularly heinous crimes, they need to be permanently removed from society. However, Roberts went on to say that this goal is possible to bring about through the imposition of life sentences without the possibility of parole. He believes that when a state makes appropriate

use of life sentences, execution is not necessary to prevent these convicted offenders from being a future danger to society.

New Jersey Representative Wilfredo Caraballo, the chief sponsor of the legislation, said that one of the primary motivations for the state's elimination of the death penalty was the strong possibility that innocent people could be wrongly executed at the hands of the state (Hurdle, 2007).

Along with the states, some media backers of capital punishment are also re-examining their support of this practice. In 2007, three major newspapers renounced their long-standing support for the use of capital punishment. On March 25, the Chicago Tribune abandoned its prior support of the death penalty after the discovery of data indicating that a significant number of innocent individuals had been convicted and executed in the state of Illinois (*Abolish the Death Penalty*, 2007). On April 3, the Pennsylvania Sentinel also withdrew its support for capital punishment, citing the ineffectiveness of the death penalty, as well as its lack of a deterrent effect upon future murderers (*Death Penalty Has Served Its Time*, 2007).

Perhaps the most unexpected withdrawal of media support was published in an editorial that appeared in the April 15 edition of the Dallas Morning News. This Texas newspaper has the tenth-largest circulation in the United States. In its editorial, the paper stated that its "board has lost confidence that the state of Texas can guarantee that every inmate it executes is truly guilty of murder" (*Death*

*No More*, 2007). The paper's position was particularly surprising, given the extensive history of capital punishment in Texas.

Between the time of the death penalty's reinstatement by the Supreme Court in 1976 and 2007, 405 of the 1099 U.S. executions took place in Texas (U.S. Department of Justice, 2007(a)). Texas and its citizens have a long-standing record of adamant support for the death penalty. A 2001 Scripps Howard poll found that 75% of Texans support the use of capital punishment (Scripps Howard, 2001). Yet, even with overwhelming support by Texas citizens, the predominant newspaper of a conservative Texas city such as Dallas found itself unable to continue to support this practice due to the state's inability to ensure that no innocent person would be executed. The withdrawal of support by some states and the media may mean that it is time for the Americas to rethink their stance on the ethics and justification of capital punishment.

### **Ethical Frameworks**

Throughout recorded history, there has been a significant amount of debate and conflict over whether or not capital punishment is an ethically correct action. In this paper, the authors will analyze the ethics of capital punishment by utilizing a variety of ethical frameworks.

The first framework that is examined is ethical relativism. Ethical relativism assumes that moral principles are not universally valid (LaFollette, 1991). From the viewpoint of

ethical relativism, ethics originate from specific cultural preferences. As such, the rules and norms within a given society serve as the ethical standards for that particular society. Because the rules and norms of different societies greatly deviate from one another, the ethical standards of various societies are different as well. Ethical relativism is quite different from Deontology, another commonly used framework which is subsequently discussed.

The deontological framework focuses primarily upon moral rules and duties. Deontology (from Greek “deon”, which means duty) places significant emphasis upon individual autonomy, justice, and kind acts. If an act is not right, it may not be undertaken no matter what good is achieved by the act. So, the ends do not justify the means. This ethical framework requires that each individual be treated as an end unto themselves, and Deontology argues that it is never permissible to treat any individual as a means to an end, no matter how ethical or important that end may be. So, if our end is deterrence, as is argued in utilitarianism, we may not execute an individual in order to achieve that end (Broad, 1930, pp. 277-278).

Within the utilitarian framework, an individual’s actions are considered ethically right or wrong based solely upon the consequences of those actions. It may be possible to justify the use of ethically questionable means, so long as they are used to achieve an ethical end. So, in effect, the ends do justify the means within this framework. Utilitarianism further states that an ethically correct action is one which, in the end, produces a greater balance of

happiness over unhappiness. While each person's happiness is equally important, the focus of utilitarianism is the good of society over that of the individual. (Vanderbilt University Center for Ethics).

### **Ethical Relativism and Capital Punishment**

Ethical Relativism is a philosophical approach which states that there are no universal moral principles, and each moral principle is acceptable or unacceptable only in relation to its acceptability within the culture in which it functions (LaFollette, 1991; Raz, 2002). Herodotus, the 'first' historian's works were written about 440 BCE. When writing about of the madness of King Cambyses, he stated that not only do different cultures have different beliefs, but that each individual believes his own culture's beliefs are the 'right' ones (Herodotus, 1954). Yet, as he observed each culture in his Histories, Herodotus himself did not conclude that any particular society's beliefs, including his own, were better than any other society's. This concept has endured over time, as Nietzsche (1844-1900) once asserted, "This—is now *my* way—where is yours? For *the* way—it does not exist!" (Nietzsche, 2003, p. 150).

Ethical relativism is further complicated by the fact that it also asserts that as a culture evolves over time, what that culture considers to be ethical will also evolve. Slavery represents a clear example of changing ethics. As little as a century and a half ago, slavery was considered ethical in a number of societies throughout the world, including the Americas (Davis, 2006). Now, most of these same societies

consider slavery to be highly unethical. This same evolution may be occurring for capital punishment. Until very recently, most societies viewed capital punishment as an ethical response to murder. However, many of those societies no longer consider it an ethical response, while others still debate the issue (Hood & Hoyle, 2008).

### **Deontology**

Deontology is an ethical framework that places a significant amount of emphasis on a person's moral rules and duty. However, it also focuses upon kindness, justice, and human rights. Deontology treats each individual as an end within himself, and does not allow any individual person to be treated as a means to an end. The focal points of Deontology create a dichotomy in determining whether or not capital punishment is permissible within a deontological framework.

It could be argued that capital punishment is impermissible within a deontological framework because of the emphasis placed upon kindness, justice, and human rights. The use of capital punishment is wholly inconsistent with the deontological necessity of kindness. Kindness necessarily implies forgiveness and treatment of individuals with dignity.

While the murderers who are sentenced to death have undoubtedly committed atrocious acts against their fellow human beings, the deontological imperatives of kindness and justice indicate that imprisonment, not death, is the

appropriate means by which to punish these individuals. The criminal justice system, which strives to bring about justice in our society, takes the approach that when a person commits a crime such as rape or robbery, the just and right punishment is to place them in prison for an appropriate amount of time. The same is true of offenses such as larceny, arson, controlled substance offenses, and many more. The deontological goals of justice and kindness would extend this approach to all crimes, following the view that the imposition of capital punishment does not correspond with a deontological sense of ethics.

Deontological ethics also place a significant amount of emphasis upon human rights. One of the foremost rights given to human beings is the right to life. This is the right that is taken away when an individual is murdered. Such a retributive mentality cannot coexist with the deontological emphasis on justice and the inherent rights afforded to each individual.

However, capital punishment may be consistent with the deontological necessities of justice and moral rules. The Divine Command theory of ethics has arisen out of the Deontological framework. This theory is reasonable, given that many individuals' moral rules are derived from their religious life. These moral rules are dependent upon the religious beliefs to which that individual subscribes.

The imposition of capital punishment is an acceptable practice for Islamic individuals. Within the Islamic faith,

the only permissible reasons to take a life are for justice and the law (Qur'an 6:151). So, while it is inherently wrong to commit a murder, Islamic morals and justice are satisfied by allowing that murderer to be executed. Likewise, capital punishment is permissible to those who have adopted an Old Testament Christianity in which the taking of "an eye for an eye" is the preferable punishment. To this individual, taking the life of someone who took the life of another person satisfies their own moral duty and brings about justice to the murderer and the family whose loved one was killed.

In contrast, capital punishment is not an acceptable sentence to someone who follows a New Testament Christianity, which emphasizes forgiveness, compassion, and "turning the other cheek." To this person, his own moral duty would require some degree of forgiveness for the murderer, rather than attempting to enact justice through the imposition of the death penalty. While a New Testament Christian would likely advocate that some sort of punishment be imposed upon this individual, the punishment would not involve the "eye for an eye" mentality of making the criminal pay with his or her own life. Rather, an individual advocating a New Testament Christian ethical perspective would support the punishment of a murderer through the imposition of a prison sentence, during which an attempt to rehabilitate the offender could be made.

So, the divine command theory obtains its moral rules and duties from the commands of an all-knowing God. Under

this theory, any actions that conform to the laws of that God are ethically correct. Likewise, any actions that break God's laws are ethically wrong. Under this theory, retribution might be permissible, depending on one's religious beliefs, although even some religions have experienced difficulty in defining the ethical justifications for this practice. Deontology and divine command vary greatly from utilitarianism, which does not answer ethical questions solely based upon moral rules (Broad, 1930, pp. 277-278).

*Deontology, Kant and Capital Punishment*

If any philosopher is to be regarded as the proponent of the deontological framework, it would surely be Immanuel Kant. As is the case with a deontological framework, Kant's theory of ethics shows some conflict when discussing the imposition of capital punishment. Under Kant's theory of ethics, one of the prerequisites for a categorical imperative is that "each person must always be treated as an end in itself and not merely as a means" (Gaie, 2004).

Under this theory, the deterrent effect so heavily relied upon by those justifying capital punishment is an invalid reason to continue the use of the death penalty. If each person is to be treated as an end, we must examine capital punishment in terms of each *individual* executed, and not in terms of the supposed good done to society by using these executions of individuals as a *means* of deterring future crimes. Even if some deterrent effect from capital

punishment were proven, it would be impermissible under Kantian theory to justify using the execution of an individual to bring about the means of a deterrent effect upon other people who might otherwise choose to commit crimes in the future. Doing this would be allowing that person to be used as a means to an end for society at large, rather than only as an end unto himself.

When an individual is treated only as an end within himself, we are forced to look at each imposition of capital punishment only for what that particular execution, standing alone, exists as. When this is done, state-imposed execution is merely the killing of an autonomous individual in retribution for the crimes that he or she chose to commit during his or her lifetime.

Under Kantian theory, it is impermissible to look at the effects of that individual's execution on other people or on society at large. Doing this would be to allow any individual previously executed to be used as a means of bringing about a desired effect. Though the desired effect of preventing future deaths may be quite admirable, Kantian theory does not allow one to look at capital punishment as a way of deterring people from committing heinous murders in the future. This would be to allow an individual being executed to be used as a means of preventing other individuals from committing murder.

Kantian theory does not allow one to look at capital punishment as a way of effectively instilling in society at large a fear of committing vicious crimes. This would still

be allowing an individual's death to be used as a means of bringing about a larger societal effect (Kant, 1996). In Kant's writings, he argues that the scales of justice should be in balance, so if one person murders another it is then permissible for society to, in turn, murder that person.

Kant defends his conclusion for two reasons, the first in the Old Testament idea of "an eye for an eye", and the second in that the pain inflicted on the victim should be equivalent to the pain inflicted on the criminal. This is a part of the concept of *jus talionis*, the right of retaliation. Thus, he insists on capital punishment, as the only appropriate punishment when the harm inflicted is death.

However, Kantian theory does not allow for the imposition of capital punishment so as to allow those who have lost friends or loved ones to obtain retribution against the killer. If an individual who committed murder were executed so that the victim's family and friends are able to seek revenge and make sure that the criminal obtains his 'just desserts', this practice would allow that individual to be used as a means to an end, which is impermissible under Kantian theory.

Instead, each individual must be treated as an end within himself, and his or her death cannot be inflicted merely to obtain some desired effect upon particular individuals or society as a whole. However, if the state executes the individual and retribution for the family and friends is a secondary result, then that is permissible in Kantian theory.

Another portion of Kantian theory states that human beings are to rise above a state of nature and give up some freedoms in order to obey the law (Kant, 1996). While some may argue that the necessity of the law involves following through with capital punishment if that is what the law calls for, others opinions may differ on this issue.

Living in a state of nature involves living in a retributive society, which in a worst case scenario can degenerate into vigilante justice. A prime example of this is the subsequently-discussed Joe Horn story that took place in Houston, Texas. We would indeed be living in an extremely uncivilized and barbaric society if citizens regularly took criminal matters into their own hands, rather than waiting for the proper channels of law enforcement to handle the situation appropriately.

While this may be the course of action that feels good in the moment, Kantian theory states that in order to obtain civilization and order of law in a society, individuals must give up their ability to take such retributive action (Kant, 1996). In such a retributive society, if someone steals something from you, you would steal something from them as a means of inflicting punishment. If someone injures you, you would injure them as a form of punishment and retribution. Likewise, if someone kills an individual, that person would be killed.

Based upon this, it could be argued that capital punishment is very inconsistent with Kantian ethics because it involves a reversion to a retributive and

potentially more primitive state of nature. In a civilized society with an established and non-barbaric rule of law, society and the individuals residing in it rise above such retributive means of punishment. When persons commit arson, the criminal justice system does not sentence that person to have *their* homes burned as punishment. When an individual steals an automobile, the state does not sanction them to have *their* automobile stolen as punishment. To do so would be considered barbaric and inhumane. Rather, they are placed in a state-sanctioned prison with the stated goal being effectively rehabilitating them to become productive and law-abiding members of society.

Why does American law enforcement respond to other crimes with rehabilitative objectives, and murder with a retributive objective?

Murder is considered a special crime, because it involves the taking of another human life. Under the Kantian model all murderers would be sentenced to die. But, the application of the *lex talonis*, or “eye for an eye” approach is extremely inconsistent within the American system of justice (Davis, 2005). The likelihood of a criminal being sentenced to death varies depending on the state, the judge, the jury, the race and the sex of the committer. In some states, murderers are far more likely to be sentenced to life without the possibility of parole, thus protecting society while sidestepping the ethical issues raised by capital punishment. Indeed, this is cited as one of the main justifications for the recent New Jersey statute banning the

use of capital punishment within the state (Hurdle, 2007). So, the fact that society's interest in preventing these individuals from killing again can be effectively accomplished without resorting to the imposition of capital punishment indicates that the United States is not evolving into a more civilized and rational society. Rather, it suggests that state-sanctioned execution can cause our society to revert to a more primitive and barbaric state of nature. This stands in sharp contrast to the goal of Kantian ethics that human beings exhibit the ability to rise above the state of nature from which they began.

However, Kant makes it clear that an integral part of living in an orderly society is having a government with the ability to punish those citizens who break that society's laws (Kant, 1996). While Kant believes that capital punishment is an acceptable form of punishment for an individual guilty of murder, it is acceptable only as a punishment for that particular murder. It cannot be utilized as an overall societal benefit to deter other individuals from taking similar action in the future (Kant, 1996).

Furthermore, capital punishment is only acceptable if the person upon whom this punishment is inflicted has actually committed a murder. Because of this, it seems that within Kantian ethics, it is permissible for capital punishment to exist in a utopian society with a flawless criminal law system. However, its acceptability may be questionable in an ordinary society, in which innocent people have surely been executed (*Death No More*, 2007).

*Retribution v. Deterrence in a Deontological Framework*

Though the governments of countries that allow capital punishment frequently cite the presence of a deterrent effect as justification for its use (Sorensen, Wrinkle, Brewer & Marquart, 1999), one can argue, based upon a recent poll, that the death penalty is still used, not because of people's belief that it deters crime, but because of people's need for retribution against those who have taken the lives of friends and loved ones.

The majority (69%) of Americans support the use of the death penalty in murder cases (Gallup, 2007). However, their reasons for supporting capital punishment vary widely. The most recent Gallup poll data on the reasoning behind capital punishment shows that 37% of those who support the death penalty do so because they believe the punishment of death is fitting to a crime of taking another life (Gallup, 2003). These people support the use of capital punishment for retributive reasons, or *lex talionis* (Davis, 2005) - they seem to believe that killing the criminal serves as proper "payback" for the life that the criminal took.

The current government's justification is that if potential criminals see other criminals being put to death for murder, they will think twice before killing someone, either as an isolated crime, or during the commission of another crime (Sorensen et al., 1999). However, there has been no data that indicates that the use of capital punishment has any sort of deterrent effect upon future murders. Indeed, only 11% of the public who support the

death penalty do so because they believe that it sets an example and serves as a deterrent for future crimes (Gallup, 2003).

The deterrent argument is also problematic, because the recidivism rates of released prisoners show that those convicted of violent offenses such as murder and rape have recidivism rates of only 1.2% and 2.5%, respectively. In this paper, recidivism is defined as an arrest for a specific crime that takes place after the arrestee had been released from prison after serving a sentence for that same crime. These numbers contrast sharply with the recidivism rates for those convicted of theft offenses and controlled substance offenses, which have recidivism rates between 70% and 80% (Department of Justice Data, 2002). Therefore, violent offenses such as rape and murder have a much greater tendency to be one-time violations, while theft and drug offenses have a much higher likelihood of being repeated in the future by those offenders who have already served prison time for the same crime. This indicates that it is not violent offenses for which a deterrent effect is needed.

While 69% of Americans state that they support the use of capital punishment (Gallup, 2007), only 27% say that they have a significant amount of confidence that the criminal justice system sentences only guilty people to death (Gallup, 2006). These numbers do not correspond with the government's reliance on a deterrent effect as justification for the use of capital punishment. If the public support for the death penalty was because of its creation of a deterrent

effect, the number of people who support the death penalty would correspond with the number who believe that the criminal justice system only sentences guilty people to death.

No deterrent effect can exist when an innocent person is sentenced to death - that person did nothing wrong, so there is no criminal behavior to be punished publicly in order to serve as a deterrent to others. Of course, it might be argued from a Utilitarian perspective (discussed later in this article) that there is still a deterrent effect if the innocent person who is wrongly executed is generally believed to be guilty. Instead, the number of people who support capital punishment corresponds with a need for retribution, to take an "eye for an eye", and to make murderers pay for the lives they have taken with their *own* life.

The discrepancy in these numbers indicates that a large number of individuals may believe that it is permissible, or even preferable, to sentence a few innocent people to death if it is necessary to ensure that those who are truly guilty are put to death at the hands of the state. Indeed, 33% say that prior instances of juries sentencing innocent people to death, who are later exonerated of wrongdoing, would play absolutely no role in their willingness to impose the death penalty. Fifty-one percent (51%) believe that there is either a total certainty or a moderately good chance that the criminal justice system will sentence an innocent individual to death at some point in the future (Gallup, 2003).

The fact that the majority of people support the use of the death penalty, and that a majority *also* hold the belief that an innocent person will almost certainly be executed in the future leads to the conclusion that the support of capital punishment exists for the purpose of providing a means of revenge and retribution for the family and friends of the victim, as well as for society at large.

### **Utilitarianism**

Utilitarianism judges the morality of an action by the consequences that come about as a result of that action. Utilitarian theory states that an action is right only when it brings about the greatest amount of happiness over unhappiness as a result of the action's consequences. Within a utilitarian framework, an ethical end justifies whatever means are used to reach that end.

According to Jeremy Bentham, the main goal of hedonistic utilitarianism is to maximize the happiness or pleasure of society at large. Furthermore, Bentham holds that one of the main purposes of organized government is to assert its power to achieve this overall happiness by penalizing its citizens when appropriate (Bentham, 1789). Bentham first wrote on this ethical theory, which was later expanded upon by John Stuart Mill. Mill postulated that all political organizations and arrangements must meet the liberty principle. Mill's liberty principle states that "the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others." (Mill, 1999, p. 52).

When analyzing the use of capital punishment within a utilitarian framework, the ultimate question that must be answered is whether or not the use of the death penalty rather than life imprisonment brings about an end result of more happiness to society than that which would be achieved from punishing some murderers through life imprisonment. Even if the actual practice of killing is unethical, it may still be permissibly utilized, so long as the end result is a greater amount of happiness than would be achieved through the alternative of life imprisonment. Thus, the happiness that the victim's family and friends will derive from the execution must be balanced against the unhappiness felt by the family and friends of the individual put to death.

Another consideration in a utilitarian model is the amount of happiness or unhappiness that the general public obtains from the execution of a criminal. The public seems to believe that imposing capital punishment is preferable to life imprisonment, particularly within a utilitarian model, because of the costs associated with housing prisoners that is borne by citizens. From 1977 to 1996, the state of California spent over \$1 billion on its death penalty program. A mere five individuals were executed during this time, putting the cost per execution at over \$200 million (Costanza, 1997, p. 61). This enormous number stands in sharp contrast to data estimating that housing one inmate in the prison system for 50 years in a majority of states would cost less than \$1 million (Vago, 2006, p. 211). Thus, the argument for continuing the death penalty because of economic reasons is invalid within a utilitarian

model, as no greater amount of happiness is derived by citizens when more money is being spent on criminal punishment.

The state's use of capital punishment to bring about a deterrent effect is consistent with Bentham's principle that one of the main purposes of organized government is to inflict sentences, such as capital punishment, that bring about the overall happiness and greater good of society (Bentham, 1789). This consideration and Mill's liberty principle indicate that capital punishment is ethical from a utilitarian perspective only if a deterrent effect for other criminals in general results as a consequence of the execution of other murderers. As discussed below, there is no consensus that capital punishment serves as a deterrent for future criminal acts.

### *Deterrence*

A deterrent effect resulting from the implementation of the death penalty appears on the surface to make capital punishment justifiable when utilizing a utilitarian framework. The action, execution of some particularly atrocious murderers, could be ethical if it results in a decrease in future murders. In fact, according to Mill, this prevention of harm to others is the only acceptable reason for the government to forcibly exercise power over any citizen (Mill, 1999). From a utilitarian viewpoint, it is acceptable to take the lives of some murderers if this action prevents future murders, thus saving the lives of innocent citizens and benefitting the greater good of society at large.

Supporters of capital punishment often cite a deterrent effect as one of the main justifications for its continued use (Sorensen et al., 1999). The rationalization is that if potential criminals see other murderers being put to death, they will think twice before killing someone, either as the only crime being committed or during the commission of another crime.

However, capital punishment has not been conclusively shown to have any substantial deterrent effect for future criminal acts. The murder rate in states without the death penalty does not exceed the murder rate in those states that allow capital punishment (Department of Justice, 2006(b)). Indeed, a 1999 Texas study found that there was no relationship between the number of executions and the murder rate in a given state (Sorensen et al., 1999).

Another notable finding is that capital punishment does not serve as a deterrent for serial killers (Fisher, 1997). This is particularly significant since, by definition, a serial killer is an individual who kills three or more times (Hickey, 1997). So, the large number of victims whose lives are taken by serial killers and the great interest in protecting society from these individuals would validate the execution of some murderers if doing so were shown to deter these killers in the future. However, this is not the case.

The argument of a deterrent effect is also problematic within a utilitarian framework because of the recidivism rates for various criminal offenses. As discussed

previously, statistics from the U.S. Department of Justice show that those individuals convicted of violent offenses such as murder and rape have recidivism rates of only 1.2% and 2.5%, respectively (Department of Justice, 2002). These numbers strongly indicate that it is not offenses such as murder and rape for which a deterrent effect is needed.

Another problem with reliance upon deterrence through use of the death penalty is the fact that the homicide rates in those states that do not allow capital punishment do not exceed the homicide rates of those states that do allow capital punishment. If the death penalty served as a deterrent for future murders, the states that do not allow the use of capital punishment would have murder rates significantly higher than those in the rest of the country.

However, the opposite is true. In 2005, the average murder rate per 100,000 people in states that allow the use of the death penalty was 5.33%. The murder rate per 100,000 people in states that do not allow the death penalty was 2.95% (Department of Justice, 2006(a)). The lower murder rate in non-death penalty states further shows that the use of capital punishment does not have a deterrent effect upon future murders. The higher number of murders per capita in states that do allow the use of the death penalty indicates the possibility that such state-sanctioned killing may in fact aggravate the number of people murdered within that particular population.

Therefore, arguments in favor of continuing the use of capital punishment in order to prevent the future loss of

human life are flawed. Based upon Mill's liberty principle and the objective of maximizing happiness and the good of society, capital punishment is not an ethical action within a utilitarian framework either.

### *Discrimination*

A discussion of the utilitarian ethics of capital punishment is not complete without an examination of the apparent discriminatory implementation of state-sanctioned execution. Numerous studies have shown that criminals of minority racial groups and disadvantaged economic groups are more likely to be impacted by capital punishment than white, upper-class criminals (Parker, DeWees, & Radelet, 2003). Though the disparate treatment with regards to capital punishment is apparent, there are several potential causes for its existence.

One significant reason has to do with a defendant's representation by counsel throughout a case in which the death penalty is being sought. Criminal defendants obtain defense attorneys either through individual retention of a private attorney, or through appointment of an attorney by the court. In a criminal trial, privately-retained attorneys are generally preferable to court-appointed attorneys. They usually have a more extensive history of criminal defense experience and have often represented clients in a larger number of criminal trials.

The downside to this method of obtaining counsel is that the services of privately-retained attorneys almost always

cost a criminal defendant a significant amount of money. This is particularly true in a capital case. An experienced defense attorney often charges well in excess of \$100,000 to take on a capital case (Tolson, 2001). The economic costs of counsel result in criminal defendants who can afford to do so retaining private attorneys, and economically disadvantaged and indigent defendants relying upon the services of court-appointed attorneys.

The effects of this reality on the imposition of capital punishment are seen in a 2000 Texas Study, which showed that criminal defendants who were represented by court-appointed attorneys were 28% more likely to receive a conviction than those who were represented by privately-retained attorneys. Of convicted criminals, those with court-appointed attorneys were 44% more likely to receive the death penalty than those with private attorneys (Lane, 2001). All but one capital case acquittal from 1991-2001 was won by a highly-paid private attorney (Tolson, 2001).

Criminal laws are extremely complex and are next to impossible for the average person to successfully navigate on his or her own. This is precisely why individuals hire attorneys to represent them in criminal matters. A defense attorney has an indispensable role of both guiding the client through the legal system and serving as a zealous advocate for the defendant.

The right to effective assistance of counsel at all critical stages of a criminal proceeding is so important that it is guaranteed to criminal defendants in the Sixth

Amendment of the U.S. Constitution. In 1932, the U.S. Supreme Court deemed the right to counsel a fundamental right and made it applicable to state proceedings (*Powell v. Alabama*, 1932). Despite this guarantee, the reality is that while wealthy defendants are able to hire a defense attorney with a stellar reputation and extensive experience with capital murder trials, a large percentage of capital murder defendants are either indigent or are simply unable to afford this type of representation.

The use of capital punishment also shows a discriminatory impact upon men. From 1976-2007, 1099 individuals have been put to death by state-sanctioned execution. Of these individuals, only 11 were female (Death Penalty Information Center, 2008). This means that just over 1% of people who have been executed are women. This is vastly different from the 11.2% of murders that are committed by women (Department of Justice, 2007(a)). This disparity between the murder rate by females and the rate at which these female murders are executed does indeed indicate some degree of gender bias in the imposition of capital punishment.

Discrimination in the implementation of capital punishment is extremely relevant in the discussion of capital punishment ethics from a utilitarian perspective. Within a utilitarian framework, the ultimate goal is the greater good and happiness of society at large as a result of an action's consequences. Discrimination is problematic within a utilitarian framework because of the fact that utilitarianism weighs each person's happiness equally.

Since all people are treated as equals in determining the balance of happiness and unhappiness, it is logical that people would need to be treated as equals in other aspects of life as well. This would include the imposition of the death penalty.

While questionable means may be used to achieve ethical ends within a utilitarian framework, no greater good is achieved through the discriminatory method by which capital punishment is imposed. Society as a whole does not derive a benefit from sentencing to death poor and indigent defendants who cannot afford the assistance of privately-retained attorneys, while acquitting those who are able to afford the assistance of such counsel. The greater happiness of society would only come from sentencing those who are truly guilty to death and acquitting those who are innocent. However, the discriminatory implementation of capital punishment shows that this cannot be a reality under the current system.

Likewise, it does not seem that happiness is increased by sentencing more male murderers to death, while giving their female counterparts lesser sentences as a result of their gender. Even if a greater amount of happiness is achieved by allowing the use of the death penalty for some particularly heinous murders, there is certainly no additional happiness because of discriminatory imposition of the punishment, which is an inherent consequence of its present use. Based upon utilitarian principles, if capital punishment is to continue, it must be imposed in a non-

discriminatory method, which has proved impossible for the criminal justice system to achieve thus far.

### **Texas and Capital Punishment**

As discussed previously, the state of Texas has a long history of support for the use of the death penalty. Some 75% of Texans support the use of capital punishment; and most believe that this is a permissible punishment because death is the punishment that these individuals deserve. An overwhelming majority of Texans continue to support capital punishment even though 65% believe that an innocent person has been executed on their state's death row (Scripps Howard, 2001).

Never has Texans' mindsets regarding the permissibility of taking another's life been more apparent than in the recent Harris County killing of two potential burglars. On Wednesday, November 14, 2007 in Pasadena, Texas, a small community outside of Houston, Joe Horn observed two men attempting to burglarize his neighbor's home. In response to this, Horn called 911 around 2:00pm and relayed his observations to the dispatcher. However, authorities had still not arrived when it appeared that the suspects were preparing to leave the neighbor's home. The dispatcher's recording has Horn relaying this fact to the dispatcher. He is told to remain in his home and wait for the police.

The 911 tape then records Horn saying "I'm not going to let them get away with this. I'm gonna shoot. I'm gonna

shoot.” The dispatcher urges Horn multiple times to remain in his home and wait for the police to arrive. The dispatcher also tells Horn that property is not worth killing anyone over. Horn then told the dispatcher, “Well, here it goes, buddy; you hear the shotgun clicking and I’m going.” The tape then records the sound of a gun being loaded and Horn telling the individuals that if they move they will be killed. Three gunshots follow Horn’s command (Crowe, Stewart & Rendon, 2007). Miguel DeJesus and Diego Ortiz died at the scene from the gunshot wounds they sustained.

Several weeks later, police revealed that DeJesus and Ortiz were shot in the back by Horn, suggesting that the men were not making aggressive movements toward him at the time that Horn shot them. Neither Ortiz nor DeJesus was armed (Horswell & Stanton, 2007). On June 30, 2008, a Harris County grand jury issued a no-bill in Horn’s case. This determination cleared Joe Horn of any criminal wrongdoing in the shooting of Ortiz and DeJesus (Rogers, Rendon, Lezon & Latson, 2008).

This case has raised many issues regarding when force can be used to protect a home and whether an individual is permitted to use force to protect the home of another. However, the amount of support that Horn has received from other citizens who believe he had a right to take this course of action brings to light the fact that a person taking the law into their own hands is very often accepted in Texas. Numerous comments to the Houston Chronicle regarding this case indicate that the burglars “deserved what they got.” Texas is certainly unique in that it is one of

a minority of states that allows people to use deadly force to protect property in certain circumstances, under the newly-passed "Castle Doctrine" (Tex. Penal Code Ann § 9.01(4)-(5)), which went into effect in September of 2007. Indeed, regarding the Horn case, Patrick McCann, the President of the Harris County Criminal Defense Lawyers Association, said "We are in Texas. Things are different here." (Falkenberg, 2007).

The desire for retribution reflected in this case is very comparable to the logic for capital punishment in Texas. Thirty-seven percent (37%) of U.S. executions are carried out by the state of Texas (U.S. Department of Justice, 2008). Based upon the reasons for supporting capital punishment listed in the most recent Gallup poll, it can be logically deduced that a majority of Texans support the imposition of capital punishment because they believe it is the most fitting punishment for a murder, and because the murderers deserve to be killed for their crimes.

### **Conclusion**

Arguments in favor of capital punishment sometimes claim ethical justifications based on a religious mandate or deterrent effect. A religious or culturally-based argument, in favor of the ethical validity of capital punishment, forces everyone, no matter their personal ethics concerning this issue, to view it from within those frameworks. The use of these frameworks would pose a problem for most individuals, as both ethical relativism and the divine command frameworks would dictate that, for

fundamentalists Moslems residing in certain Islamic countries, honor killings are both legally and ethically permissible. This conclusion would be true, as honor killings are an accepted societal practice under Islamic law in many Islamic societies. However, the same conclusion would not hold true in the Americas.

A typical American would conclude that honor killings are unethical, as they are illegal in the Americas and are not an accepted religiously-based norm for the majority of the population. An Islamic citizen who moves to a non-Islamic country, such as America or the Caribbean, would suddenly find that the practice of honor killings is no longer an accepted legal practice. It would also be viewed as unethical by the majority of the individuals they have contact with each day; this cultural shift would create both an ethical and legal dilemma for that individual.

This cultural and religious shift poses a problem for many in the Americas. These societies consist of many different cultures with divergent views and beliefs as to whether capital punishment is a right or wrong action. Protestant Christians have divergent beliefs about capital punishment, depending on whether they base their beliefs on the Old or New Testament. The Roman Catholic Church opposes capital punishment. Moslem belief would support it, but many Jewish believers oppose it. So, there is no one universal cultural, or religious, norm in the Americas that can be used to decide whether capital punishment is ethically correct or even if it is ethically correct under certain specified situations.

So, if capital punishment laws were adopted that seek to accommodate the various societal and religious norms in these countries, those laws would have to vary depending upon which religion or culture was being dealt with by the legal system. It would even need to allow honor killings in order to accommodate Islamic societal norms. Even more subtle changes might be called for based on economic status. For example, the lower an individual's economic status, the more likely that person is to give violent responses to certain situations (Bjerk, 2007).

These responses seem to be derived from the Old Testament philosophy of 'an eye for an eye', combined with a distrust of current justice systems. So, the validity of the deontological and ethical relativism frameworks, as a justification for capital punishment, would be greatly restricted due to the variety of religions and social groups in the Americas. Thus, the claim for the ethical justification for capital punishment could not be universally applied.

The utilitarian argument in favor of capital punishment rests in large part upon the deterrence factor. However, as has been shown, there is a very real danger of executing innocent people. This danger, in addition to the lack of evidence that there is an economic benefit or a deterrent effect, seems to argue against the use of the utilitarian framework when attempting to justify capital punishment as an ethical law.

So, it has become obvious that the ethical justification of capital punishment in the Americas is fraught with

difficulties. A surface examination of the major frameworks appears to support this law. However, when one examines the frameworks, or the theories derived from these frameworks, more closely this conclusion becomes less clear. The risk of killing innocent people, the high costs of the practice, the lack of a clear deterrent effect resulting from the practice, and conflicting cultural and religious views have created a contradictory result when trying to assess the ethical implications of this law.

Another issue which further complicates this analysis is that there is a risk in making homicide an acceptable social alternative, no matter which of the major ethical frameworks one employs. This may in itself be an ethical argument against its use. The legalization of capital punishment may contribute to the promulgation of a societal view that murder is justifiable and thus ethical. The result could be an increase in the number of homicides.

During the first Gulf War, U.S. tanks fitted with bulldozer blades buried entrenched enemy soldiers alive by rapidly filling in their trenches. In response to criticism of this tactic, Pentagon spokesman Pete Williams said "There is no nice way to kill somebody in a war." There is also "no nice way to kill somebody" in peacetime either, no matter the justification.

Given the previous discussions, the authors have deduced it is not possible to conclude that capital punishment as a practice is universally ethical. Given the lack of consistent

supporting data, and the conflicting ethical perceptions of the public as to what is ethically correct, eliminating the capital punishment sentence, and substituting life imprisonment without the possibility of parole, appears to be a more ethical approach at this time.

## References

- Abolish the Death Penalty* [Editorial]. (2007, March 25) Chicago Tribune. Retrieved 11/2/2009 from <http://archives.chicagotribune.com/2007/mar/25/news/chicago/0703250314mar25>.
- Amnesty International Reports 2009 - St. Kitts and Nevis (2009, May 28). Retrieved 4/11/2009 from <http://www.unhcr.org/refworld/country,,,KNA,4562d94e2,4a1fad65a,0.html>
- Atkins v. Virginia*, 536 U.S. 304 (2002).
- Baze v. Rees*, 553 U.S. \_\_\_\_ (2008).
- Bentham, Jeremy (1789). *The Principles of Morals and Legislation*, Chap. VII, "Of Human Actions in General."
- Bjerk, David. (March, 2007). Measuring the Relationship Between Youth Criminal Participation and Household Economic Resources. 23 *Journal of Quantitative Criminology* pp. 23-39.
- Broad, C.D. (1930). *Five Types of Ethical Theory*. New York: Harcourt, Brace & Co.
- Coker v. Georgia*, 433 U.S. 584 (1977).
- Costanza, Mark. (1997). *Just Revenge: Costs and Consequences of the Death Penalty*. New York: St. Martin's Press.
- Crowe, R., Stewart, R., & Rendon, R. (2007, November 16). 'I'm not going to let them get away with it' / 911 tape traces deadly shooting by Pasadena man. *Houston Chronicle*, p. 1A.
- Davis, David Brion. (2006). *Inhuman Bondage: The Rise and Fall of Slavery in the New World*. USA: Oxford University Press.
- Davis, James F. (2005). *Lex Talionis in Early Judaism and the Exhortation of Jesus in Matthew 5:38-42*. T. & T. Clark Publishers.
- Death no more* [Editorial]. (2007, April 15). Dallas Morning News. Retrieved June 18, 2008 from [http://www.dallasnews.com/sharedcontent/dws/dn/opinion/editorials/stories/DN-toy\\_01edi.ART.State.Edition1.43b925d.html](http://www.dallasnews.com/sharedcontent/dws/dn/opinion/editorials/stories/DN-toy_01edi.ART.State.Edition1.43b925d.html).

- Death Penalty Has Served Its Time* [Editorial]. (2007, April 3). The Sentinel. Retrieved 20/6/2008 from <http://www.cumberlink.com/articles/2007/04/03/editorial/editorial/daily915.txt>.
- Death Penalty Information Center. (2008(a)). *Facts About the Death Penalty*. Retrieved June 18, 2008 from <http://www.deathpenaltyinfo.org/FactSheet.pdf>.
- Death Penalty Information Center. (2008(b)). *The Death Penalty: An International Perspective*. Retrieved August 22, 2008 from <http://www.deathpenaltyinfo.org/article.php?did=127>.
- Falkenberg, L. (2007, December 6). Missing trees for the forest. *Houston Chronicle*, p. 1B.
- Fisher, Joseph C. (1997). *Killer Among Us: Public Reactions to Serial Murder*. Westport, CT: Praeger Publishers.
- Ford v. Wainwright*, 477 U.S. 399 (1986).
- Gaie, Joseph B.R. (2004). *The Ethics of Medical Involvement in Capital Punishment: A Philosophical Discussion*, 1<sup>st</sup> edition. Springer.
- Gallup Poll, October 12, 2007. Retrieved February 16, 2009 from <http://www.gallup.com/poll/101863/Sixty-nine-Percent-Americans-Support-Death-Penalty.aspx>
- Gallup Poll, June 1, 2006. Retrieved February 16, 2009 from <http://www.gallup.com/poll/23167/Two-Three-Favor-Death-Penalty-Convicted-Murderers.aspx#2>.
- Gallup Poll, May 19, 2003. Retrieved February 16, 2009 from <http://www.gallup.com/poll/8419/Support-Death-Penalty-Remains-High-74.aspx>
- Gibbs, Stephen (4 February 2009). "Death penalty debate grows in Mexico". BBC News. From <http://news.bbc.co.uk/2/hi/americas/7866811.stm>. Retrieved 2 August 2009.
- Herodotus (1954). *The Histories*. Translated by Aubrey de Selincourt. Penguin, Classics. Section 38 of Book Three.

## 72 THE ETHICS OF CAPITAL PUNISHMENT

- Hickey, Eric (1997). *Serial Murderers and Their Victims*, 2nd edition. Belmont, CA: Wadsworth.
- Hood, Roger, & Hoyle, Carolyn (2008). *The Death Penalty: A Worldwide Perspective*, 4<sup>th</sup> Edition. USA: Oxford University Press.
- Horswell, C. & Stanton, R. (2007, December 8). NEW DETAILS IN PASADENA SHOOTINGS / Investigator says the two burglary suspects were shot in the back / Both men were hit by shotgun blasts after entering Joe Horn's front yard / Plainclothes officer arrived seconds before, witnessed the confrontation. *Houston Chronicle*, p. 1A.
- Hurdle, Jon (2007, December 13). *New Jersey legislature votes to end death penalty*.
- Thomson Reuters. Retrieved June 18, 2008 from <http://www.reuters.com/article/topNews/idUSN1324400820071214>
- Kant, I. (1996). *The Metaphysics of Morals*, trans. Mary Gregor, New York, Cambridge University Press.
- LaFollette, Hugh. (1991). The Truth in Ethical Relativism. 8 *Journal of Social Philosophy* pp. 146-154.
- Lane, Charles (2001, July 1). *O'Connor Expresses Death Penalty Doubt*. Washington Post. A.01
- Mill, John Stuart (1999). *On Liberty* (E. Alexander, Ed.). Peterborough, Ont.: Broadview Press.
- New Jersey Code of Criminal Justice Laws § 2C:11-3 (amended 2007).
- Nietzsche, Friedrich (2003). *Thus Spake Zarathustra* (trans. T. Wayne). New York: Algora Pub.
- Parker, Karen F., DeWees, Mari A., & Radelet, Michael L. (Spring, 2003). "Race, the Death Penalty, and Wrongful Convictions." *Criminal Justice Magazine*, vol. 18. Retrieved June 23, 2008 from [http://www.abanet.org/crimjust/spring2003/death\\_penalty.html](http://www.abanet.org/crimjust/spring2003/death_penalty.html).
- Powell v. Alabama*, 287 U.S. 45 (1932).

- Raz, Joseph (2002). "The Practice of Value," Tanner Lectures, Oxford. Retrieved October 20, 2008 from [http://users.ox.ac.uk/~%7eraz/Web\\_publishing/Tanners/Doc7.htm](http://users.ox.ac.uk/~%7eraz/Web_publishing/Tanners/Doc7.htm)
- Rogers, B., Rendon, R., Lezon, D. & Latson, J. (2008, July 1). THE JOE HORN DECISION /The case concludes / A Harris County grand jury sees the killing of two burglars as justified, but others call the outcome a miscarriage of justice / The emotions linger. *Houston Chronicle*, p. 1A.
- Roper v. Simmons, 543 U.S. 551 (2005).
- Rimer, Sara (2000, December 17). *Working Death Row*. New York Times. Retrieved 19/6/2008 from <http://query.nytimes.com/gst/fullpage.html?res=9C07E7DA1439F934A25751C1A9669C8B63&scp=1&sq=Huntsville&st=nyt>.
- Schmitt, Eric (1991, September 15). *U.S. Army Buried Iraqi Soldiers Alive in Gulf War*. New York Times. Retrieved online January 6, 2009 from <http://query.nytimes.com/gst/fullpage.html?res=9D0CEED6123CF936A2575AC0A967958260>
- Scrrips-Howard Texas Poll: Death Penalty (Mar. 2001).
- Sellwood, D. & Fernandez, O (2004). "Capital Punishment in the Caribbean: Evolving Jurisprudence and the Road to Abolition", *Penal Reform International*. Retrieved November 4, 2009 from <http://www.abolition.fr/Upload/documents/selwoodfernandez.pdf>.
- Sorenson, J., Wrinkle, R., Brewer, V., & Marquart, J. 1999. "Capital Punishment and Deterrence: Examining the Effect of Executions on Murder in Texas." 45 *Crime and Delinquency* pp. 481-493.
- Steiker, Carol S. (2005). "No, Capital Punishment Is Not Morally Required: Deterrence, Deontology, and the Death Penalty, 58 STAN. L. REV. 751.
- Sunstein, Cass R. & Vermeule, Adrian (March, 2005). "Is Capital Punishment Morally Required? The Relevance of Life-Life Tradeoffs." U Chicago Law & Econ, Online Working Paper No. 239; AEI-Brookings Joint Center Working Paper No. 05-06; U of Chicago, Public Law Working Paper No. 85. Retrieved on 10/1/08 from <http://ssrn.com/abstract=691447> or DOI: 10.2139/ssrn.691447.

Sunstein, Cass R. & Vermeule, Adrian (2005). "Deterring Murder: A Reply", 58 STAN. L. REV. 847 (2005). Retrieved on 10/6/08 from <http://lawreview.stanford.edu/content/vol58/issue3/sunstein2.pdf>

Tex. Penal Code Ann § 9.01(4)-(5) (Vernon 2007)

Tolson, Mike (2001, February 5). *A deadly distinction: part II*. Houston Chronicle. Retrieved June 18, 2008 from [http://www.chron.com/CDA/archives/archive.mpl?id=2001\\_3278987](http://www.chron.com/CDA/archives/archive.mpl?id=2001_3278987).

U.S. Department of Justice, Bureau of Justice Statistics. (2002). *Recidivism Rates of Prisoners Released in 1994* (NCJ Publication No. 193427). Retrieved June 18, 2008 from <http://www.ojp.usdoj.gov/bjs/pub/pdf/rpr94.pdf>.

U.S. Department of Justice, Bureau of Justice Statistics. (2006(a)). *Capital Punishment, 2006* (NCJ Publication No. 220219). Retrieved June 18, 2008 from <http://www.ojp.usdoj.gov/bjs/pub/html/cp/2006/cp06st.htm>

U.S. Department of Justice, Federal Bureau of Investigation. (2006(b)). *Crime In the United States 2005*. Retrieved June 18, 2008 from <http://www.fbi.gov/ucr/05cius/index.html>.

U.S. Department of Justice, Bureau of Justice Statistics. (2007(a)). *Capital Punishment Statistics*. Retrieved 18/6/2008 from <http://www.ojp.usdoj.gov/bjs/cp.htm>.

U.S. Department of Justice, Bureau of Justice Statistics (2007(b)). *Homicide Trends in the U.S.: Gender*. Retrieved 18/6/2008 from <http://www.ojp.usdoj.gov/bjs/homicide/gender.htm>.

U.S. Department of Justice, Bureau of Justice Statistics (2008). *Capital Punishment Statistics*. Retrieved 17/2/2009 from <http://www.ojp.gov/bjs/data/exest.csv>.

Vago, Steven. (2006). *Law and Society*. Upper Saddle Ridge, New Jersey: Pearson/Prentice Hall.

Vanderbilt University Center for Ethics. *Theoretical Frameworks*. Retrieved 23/6/2008 from <http://www.vanderbilt.edu/CenterforEthics/theory.html>.

*Woodson v. North Carolina*, 428 U.S. 280 (1976).

Zimmers, T.A., Sheldon J., Lubarsky, D.A., López-Muñoz F., Waterman L., et al. (2007).

"Lethal Injection for Execution: Chemical Asphyxiation?" PLoS Med 4(4): e156 doi:10.1371/journal.pmed.0040156.

## **Research/Theoretical Notes**

---

# **REPRESENTATIONS OF EXTORTION IN JAMAICAN NEWSPAPERS**

Christopher A.D. Charles

*King Graduate School, Monroe College, USA*

---

### **Background**

This study seeks to understand extortion from the content of communication in the major Jamaican newspapers. The research question is: What are the contents and meanings of the representations of extortion in the newspapers? Representation theory is the organizing framework and content analysis was used to unearth the data. The results suggest that extortion is caused by poor governance; extortion is hurting the country; and citizens and institutions from all sectors are victims. Extortion is widespread and occurs daily in 9 of the 14 parishes of Jamaica.

The majority of victims ignore the police because of the negative images circulating in the society that the perpetrators are violent individuals and gangs who use a range of methods to enforce compliance (including murder), without facing arrest. The solutions of the government and the police are the traditional policing

*Author note: Research assistance was provided by Tamika Allen. I take full responsibility for the limitations of this article.*

methods that have failed. Practical solutions such as undercover policing, reduction of political interference in hiring, and institutional cooperation come mostly from citizens, construction companies, and other entrepreneurs who are the major victims of extortion.

The widespread and pervasive nature of extortion and the state's inability to solve the problem suggest that Jamaica is becoming an extortionist state. This article deals with the representations of extortion in the major Jamaican newspapers (*The Jamaican Gleaner* and *The Jamaica Observer*). There is very little research on extortion in Jamaica. The fear and silence of extortion victims and the security risks faced by researchers in the field make it very difficult to conduct research on extortion in Jamaica. However, the major newspapers are sites of information that provide communication contents about the social thinking, the shared knowledge, the shared meanings, the shared understandings and debates about extortion.

First, I start with a brief outline of social representation theory (SRT). Second, I review the published works on extortion in Jamaica. Next, I go on to outline the methods section, then I present the results of the study. Finally, in the discussion section, I use SRT to explicate the extortion coverage as a socially shared issue with negative meanings after which I give my conclusion.

### **Social Representation**

This section deals with the production and dissemination of knowledge through representations starting with

Moscovici's study of the diffusion of psychoanalysis in France, which led to the development of SRT. This genesis of SRT is followed by the discussion of the link between individuals and their social context, the routinization and institutionalization of repeated exchanges that lead to cultural practices and beliefs, and the meaning-imbued images which can be found in people's cognitive frames of reference - the media and dialogic interactions.

Knowledge acquired in a social context is at the heart of social psychology because it facilitates our understanding of how ideas penetrate all areas of life through social acceptance and consensus. People make new ideas common and familiar by constructing representations of them. Therefore, communication and representation drive the social production of knowledge (Moscovici, 2001).

The social production and diffusion of knowledge is intrinsically dynamic. This dynamism was evident when Moscovici traced the diffusion of psychoanalysis from the clinicians' offices to social acceptance among the various social groups in France. There was mutual transformation between the group members and the knowledge they acquired of psychoanalysis, which took on commonsensical meanings (Moscovici, 1976b).

SRT amalgamates the individual and the social because it argues that individuals do not think in isolation. All the members in a group, despite their rank, exert some amount of social influence. The interaction among individuals builds a structure of common references,

which influence how these individuals think about the world. Representations structure how people talk and think about objects that are important to them, thereby creating reality for these individuals in a consensual universe (Moscovici, 1976a, 1993; Philogene, 2000).

Representation is a function of social thinking because it organizes the beliefs and available information about the experiences that a community finds important. Social exchanges between individuals eventually become routinized when they occur repeatedly. The exchanges take on an objective character because they become internalized and institutionalized cultural practices and beliefs which may even evolve into social movements (Moscovici, 1988; Philogene, 2000).

The meaning-imbued images and their content are not only in people's cognitive structure, but can also be found in the media, in gossip, in talk and conversations. There is a diffusion stage in the circulation of ideas where there is relative variance among people who create some common points of reference. The media circulates the multiple themes and opinions on the issue. The second stage commences when the various social groups start to organize network of meanings based on their knowledge, values, and belief systems (Clemence, 2001). The media sensitizes and mobilizes public opinion about crime. Public discourse drives the social construction and representation of offending, victim response, and support for crime control policies (Buckingham, 2004).

Media construction and representation of social problems can lead to moral panic in a society because of the disproportionate amount of time the media spend dealing with issues like crime (Colomb & Damphouse, 2004). People's daily conversations will reveal perspectives that have commonalities not because there is consensus among the individuals talking, but because these people have shared knowledge about the issue. People's socialization guides the positions they take on issues (Clemence, 2001). The arguments of authority are sometimes replaced by the authority of arguments. This change in the public sphere occurs when there are agreements and disagreements, and when old arguments are contested and replaced by the power of new ones (Jochelovitch, 2001).

The foregoing states that representations are the shared meaning-imbued images about social issues that can be found in people's cognitive frames of reference, the media, daily conversations, and cultural artifacts that arise from social thought which guides the behavior of people in their community. SRT suggests that when the Jamaican newspapers carry news stories, editorials, or letters about extortion, there are meaning-imbued images and content about extortion that can be unpacked to understand extortion in the Jamaican culture.

### **Extortion in Jamaica**

I commence this section with the role of the political parties in creating garrison communities backed by criminal gangs that commit crimes in the service of their

respective political party. Next, I talk about the proceeds of extortion and other crimes, which the gangs partly use in the welfare system of the garrisons to take care of the urban poor. I then report on the findings of two extortion studies conducted in Jamaica, and talk about the limitations of these studies and the need for more research on extortion in Jamaica.

The majority of the criminal gangs that are involved in extortion in Jamaica operate out of garrison communities that are affiliated to the People's National Party (PNP) and the Jamaica Labor Party (JLP). Garrison communities are urban political strongholds aligned to the JLP and the PNP. Political competition and challenges are not allowed in the garrisons because the political turf is protected by gang members in exchange for state largesse. During General Election campaigns, the gang members are engaged in political violence and murder. On Election Day the gang members commit voter fraud and voter intimidation on behalf of the political party they support.

The garrison communities and the gangs are headed by the dons who run the community like a counter society that replicates state functions such as creating laws and establishing a justice system, a welfare system, and a security infrastructure. Some residents of these materially challenged communities support the gangs because the gangs take care of their daily survival needs with some of the proceeds from extortion and other crimes. Predatory extortion leads to huge cost overruns on road and

construction projects (Charles, 2002, 2004; Figueroa & Sives, 2002, 2003; Harriott, 2000; Sives, 2002).

Charles (2007) found that extortion was rampant in the commercial areas of Red Hills Road, St. Andrew, and Downtown Kingston. The majority of business people in downtown Kingston renege on their ethical responsibility because they prefer to pay the extortionists rather than pay a private security firm, because the practice is cheaper and their stores and customers remain protected. Some business people have fled from Red Hills Road because of extortion. However, some entrepreneurs have remained and have hired community residents, have contributed to community projects and have worked with the police who were able to reduce extortion on Red Hills Road, unlike downtown. The Red Hills Road entrepreneurs who have cooperated with the police have placed the greater societal good over short-term personal gains.

Lawson (2004a, 2004b) found that criminals in the Kingston Metropolitan Region extorted money from entrepreneurs and workers in the transport sector for safe routes: the construction sector for site security, and the small business sectors for the protection of businesses and customers. The perpetrator-victim relationship sometimes resembles a patron-client relationship because some of the entrepreneurs are willing participants because of the perceived rewards and the inability of the police to provide protection.

The studies by Charles (2003) and Lawson (2004a, 2004b) are interesting and insightful qualitative studies in which a total of 19 persons were interviewed, including members of the police force and entrepreneurs from the transportation, construction, and business sectors. Generalizations cannot be made from these studies because of the small number of people interviewed in the qualitative methodology. The qualitative methodology was used because of the high security risk involved in doing a large-scale survey on extortion, and the unwillingness of many victims of extortion to speak to researchers.

Given the safety concerns of extortion researchers and the fear of extortion victims to speak to the researchers, a study of how extortion is represented in the major newspapers provides a safe space for researchers, and will add to the literature and aid in our understanding of extortion in Jamaica. The objective of this article is to understand extortion in the content of communication from *The Jamaica Gleaner* and *The Jamaica Observer* newspapers. My research question is: What are the contents and meanings of the representations of extortion in the Jamaican newspapers?

## **Method**

### *Sample*

A total of 60 newspaper items in the form of news stories, columns, editorials, and letters to the editor were collected

from the online editions of *The Jamaica Observer* and *The Jamaica Gleaner*.

### *Procedure and Coding*

The internet edition of *The Jamaica Gleaner* and *The Jamaica Observer* were searched daily from July 7, 2003, to November 8, 2004 (a period of 16 months), for articles dealing specifically with extortion or those which made mention of extortion. *The Jamaica Gleaner* and *The Jamaica Observer* were used because they are the two largest newspapers in the country, and they are circulated nationally and hosted online.

The newspaper articles were read several times in an open-ended way, and the emerging themes in the articles were identified (Massey, Cameron, Ouellette & Fine, 1989). A recurring issue/idea in each paragraph in the articles was coded as a theme or issue category about extortion. The themes identified in the headlines and content of the articles were summed. The frequency of the themes was used to determine the importance of the themes in the public discourse about extortion. Where necessary, exemplars of the various themes identified were selected. An exemplar is a representative issue of a theme or issue category that is identified.

A representation is the meaning-imbued contents and images held by people that arise from the consensual and shared references, social elaborations, and shared understandings that can be found in the contents of

communication. The themes or issue categories were coded by the author and two independent coders. The inter-coder agreement was .80 and .82.

## Results

Several themes or issue categories emerged from the data. These themes are the causes of extortion, the victims of extortion, the victims' responses, the perpetrators of extortion, the methods of extortion, the frequency of extortion, the places of extortion, the effects of extortion, and the solutions to extortion.

*Causes of extortion.* The newspapers reported a range of causes for extortion. Economic hardship/poverty was the most frequently reported cause with 31.03%, followed by distribution of jobs at 24.14%, unemployment at 17.24%, and political tribalism at 10.34%." See [Table 1](#).

**Table 1**  
**Causes of Extortion**

Causes	No. of Times Reported	%
Economic hardships/poverty	9	31.03
Distribution of jobs	7	24.14
Unemployment	5	17.24
Political tribalism	3	10.34
Corruption	1	3.45
Community development	1	3.45
Source of income	1	3.45
Failure of adequate security	1	3.45
Satisfaction of short term needs	1	3.45
<b>Total</b>	<b>29</b>	<b>100</b>

Representation: extortion caused by poor governance

These four categories account for just over 82% of the occurrences. The other categories of reasons each account

for less than 4% of the occurrences. The commonalities are that extortion is caused by a lack of security in a corrupt political system with high unemployment and poverty. The representation is that “extortion is caused by poor governance.” See [Table 1](#).

*Victims of extortion.* The newspapers reported 10 categories of victims including home owners and the prime minister. The most frequently reported victim was construction companies which comprised 39.78%, followed by bus operators at 22.58% and government agency at 12.90%, with the other category of victims each accounting for 5% or less of the occurrences. The shared reference is that extortion victims come from all sectors of the society including the government. See [Table 2](#). The representation is that “everyone is a victim.”

**Table 2**  
**Victims of Extortion**

Victims	No. of Times Reported	%
Construction companies	37	39.78
Business Operators	21	22.58
Government agency	12	12.90
Taxi operators	5	5.38
Construction workers	4	4.30
Bus drivers	4	4.30
Vendors	3	3.23
Individuals	3	3.23
Home owners	3	3.23
Prime Minister	1	1.07
<b>Total</b>	<b>93</b>	<b>100</b>

Representation: everyone is a victim

*Victims' responses.* The extortion victims responded in varying ways with 11 categories of behaviors that include: stopping work, praying for help, and fleeing the area,

among others. The categories of victim response with the largest frequencies are: report crime to officials comprising 28.12%, followed by refusal to pay at 18.75%, and pay dues reporting 12.53%, all of which accounts for just under 60 % of the category of occurrences. The shared knowledge is that one has to pay up, resist, or flee, because the authorities are slow to act. The representation is that “victims are mostly on their own.” See [Table 3](#).

**Table 3**  
**Victims’ Responses**

<b>Victims’ Response</b>	<b>No. of Times Reported</b>	<b>%</b>
Report crime to officials	9	28.12
Refusal to pay	6	18.75
Pay dues	4	12.53
Flee area	3	9.37
Stop work	2	6.25
Public statement	2	6.25
Fearful to report crime	2	6.25
Call on authority to act	1	3.12
Pay for extra protection	1	3.12
Internal probe	1	3.12
Pray for help	1	3.12
<b>Total</b>	<b>32</b>	<b>100</b>

Representation: victims mostly on their own

*Perpetrators of extortion.* There are 14 perpetrator categories. Some perpetrators operate as individuals and are referred to as extortionist, gunman, or man, while the others operate in groups and are referred to as gangs, jackals, employees, and the police, among others. The most frequently occurring category of perpetrators is that of extortionist at 32.26%, followed by the one order gang comprising 21.62%, and gang comprising 8.73%, criminals at 8.73%, group of men at 8.73%, all of which accounts for just about 80% of the occurrences. The dialogic commonality says a range of dangerous people are

involved, and the representation is that “extortionists consist of violent individuals and gangs.” See [Table 4](#).

**Table 4**  
**Perpetrators of Extortion**

The Perpetrators	No. of Times Reported	%
Extortionist	30	32.28
One order gang	20	21.62
Gang	8	8.73
Criminals	8	8.73
Group of men	8	8.73
Racketeers	5	5.50
Several persons	4	4.36
Thugs	2	2.35
Police	2	2.35
Employees	1	1.07
Jackals	1	1.07
Gunman	1	1.07
Warlords	1	1.07
Man	1	1.07
<b>Total</b>	<b>93</b>	<b>100</b>

Representation: extortionists are violent individuals and gangs

*Methods of extortion.* The extortionists use several methods to make contact with the victims such as making telephone calls, sending letters, or making face to face demands with a weapon, among others. Non-compliance may result in bombing of the business, robbery, and murder, among other actions. Murder is the largest category of occurrences with 21.22%, followed by death threats at 15.15%. The other six categories account for 64% of the methods. The common content of the social thinking is that the extortionists are dangerous and the representation is that “non-compliance equals violence/murder.” See [Table 5](#).

*Frequency of extortion.* Extortion occurs daily, weekly, fortnightly, and monthly. The largest frequency category is

weekly at 37.5%, but fortnightly and monthly combined account for 50%. The shared understanding is that extortion payments follow the formal salary payment schedules, and the representation is that “extortion occurs all the time.” See [Table 6](#).

**Table 5**  
**Methods of Extortion**

Methods	No. of Times Reported	%
Murder	14	21.22
Death threats	10	15.15
Make demands	10	15.15
Make demands with weapon	8	12.12
Letter	8	12.12
Fraud	7	10.62
Phone call	5	7.57
Forgery	3	4.54
Bomb	1	1.51
<b>Total</b>	<b>66</b>	<b>100</b>

Representation: noncompliance equals violence/murder

**Table 6**  
**Frequency of Extortion**

Frequency	No. of Times Reported	%
Weekly	3	37.5
Fortnightly	2	25
Monthly	2	25
Daily	1	12.5
<b>Total</b>	<b>8</b>	<b>100</b>

Representation: extortion occurs all the time

*Places of extortion.* Extortion occurs in many urban and rural areas and several suburban areas in the parishes of Kingston, St. Andrew, Clarendon, Westmoreland, St. James, St. Elizabeth, Manchester, and Portland. The two

**Table 7**  
**Places of Extortion**

<b>Locations</b>	<b>No of Times Reported</b>	<b>%</b>
<b><i>Urban</i></b>		
Spanish town	40	30
Kingston	17	13
Portmore	4	3
Riverton City	2	1.4
Montego Bay	2	1.4
Tinson Pen	1	0.7
Washington Blvd	1	0.7
Mona	1	0.7
<b><i>Suburban</i></b>		
Temple Hall	14	10.6
Stony Hill	11	8.4
Brandon Hill	5	4
Tom's River	1	0.7
Golden Spring	1	0.7
<b><i>Rural</i></b>		
Westmoreland	7	5.2
St. Catherine	7	5.2
May Pen	7	5.2
Clarendon	2	1.4
St. Elizabeth	2	1.4
St. Andrew	2	1.4
Old Harbor	2	1.4
Williamsfield	1	0.7
St. James	1	0.7
Linstead	1	0.7
Manchester	1	0.7
Port Antonio	1	0.7
<b>Total</b>	<b>134</b>	<b>100</b>

Representation: extortion is widespread

most frequently reported urban locations are Spanish Town with 30% and Kingston at 13%. See [Table 7](#). The two most frequently reported suburban locations are Temple Hall comprising 10.6%, and Stony Hill at 8.4%. The most frequently reported rural locations are Westmoreland at 5.2%, St. Catherine at 5.2%, and May Pen reporting 5.2%.

The representation is that “extortion is widespread in Jamaica.” See [Table 7](#).

*Effects of extortion.* There are 10 categories of the effects of extortion such as cost to business, suspension of work, cost to the economy, increased crime, and the destruction of property. Extortion also creates a sense of hopelessness, influences potential criminals, leads to substandard work, creates health problems, and is a threat to security. The most frequently reported effects are cost to business comprising 33.96%, and suspension of work at 20.74%, which account for over 50% of the reported effects of extortion. The shared understanding is that extortion affects national security, production, and economic development. The representation is that “extortion is hurting the country.” See [Table 8](#).

**Table 8**  
**Effects of Extortion**

Effects	No. of Times Reported	%
Cost to business	18	33.96
Suspension of work	11	20.74
Cost to economy	6	11.32
Contribution to crime	6	11.32
Destruction of property	4	7.55
Sense of hopelessness	4	7.55
Influence potential perpetrators	1	1.89
Poorer quality of work	1	1.89
Health problems	1	1.89
Threat to security	1	1.89
<b>Total</b>	<b>53</b>	<b>100</b>

Representation: extortion is hurting the country

*Solutions to extortion.* The institutions that give solutions for the problem of extortion are the government, police, professional organizations, the Kingston and St. Andrew

**Table 9**  
**Solutions to Extortion**

Institution	No. of Times Reported	%	Exemplars
Government	17	28	State security at construction site; operation kingfish target gangs; contactors consult with community leaders; unity of business community; activism of citizens; report crime to police Public statement denouncing extortionist; shut down the work;
Police	11	18	Deploy security forces; issue arrest warrants; questioning suspects/gang members; use the law to deal with them; declare war; people with information should come forward
Executive Agency	8	13.1	clause that hold contractors for expenditure; contractor should work with the MP; better trained personnel; better tracking of payments; contractors must not pay; we have to deal with the problem
Professional Org	7	11.4	Security at construction site; public education; reduction of political influence in hiring; certify skilled workers
KSAC	5	8.1	Vendors operate in zoned areas; business unite to protect themselves
Opposition	3	5	Community involvement; divide job equally among political parties
Individual	3	5	Undercover police unit; deploy soldiers; tackle problem at root
Newspaper ed.	3	5	create means to fight; seek international assistance; create voluntary peace org
Peace Management Initiative	2	3.2	PMI oversee recruitment of workers; Independent body should handle job applications
Jamaica Defense Force	1	1.6	Investigating the matter
National Consultative Committee	1	1.6	call on all to support the police
<b>Total</b>	<b>61</b>	<b>100</b>	

Representation: solution is enforcement and cooperation.

Corporation (KSAC), citizens, the opposition party in parliament, newspaper editorials, the peace management initiative, the national consultative committee, and the Jamaica Defense Force (JDF). The largest category of solutions comes from the government at 28%, followed by the police at 18%, Executive Agency at 13.1%, professional organizations with 11.4%, and the KSAC at 8.1%, all of which accounts for 78.6% of the reported solutions. See Table 9.

The government solutions deal with providing security and going after the gangs, and encouraging public support for the police. The professional organizations suggest security at the construction sites, reduction of political interference in job recruitment, and public education, among other solutions.

The police solutions are: deploying security forces, encouraging the public to provide information, and going after the gangs, and so forth. The commonalities among the solutions suggest that extortion can be contained with law enforcement backed by the government, the private sector, and the support of citizens. The representation is that “the solution is enforcement and cooperation.” See Table 9.

### **Discussion**

This study deals with the representations of extortion in the two major Jamaican newspapers. The shared knowledge about the causes of extortion suggests that it is

brought on by the lack of security in a corrupt political system with high unemployment and poverty. The representation is that "extortion is caused by poor governance." The high rate of unemployment in Jamaica is the source of the economic hardship which is the largest category in this study among the causes of extortion. The politicians have less state patronage such as the distribution of jobs in their community development projects. The declining source of income in the corrupt and tribal political system influences some of the party activists who are in criminal gangs to turn to extortion in order to satisfy their short-term needs. The situation is compounded by the lack of adequate security resources to curb the problem of extortion.

The content of the social thinking in the newspapers suggests that "the perpetrators of extortion are violent individuals and gangs." The perpetrators who operate individually or in groups are more than just the regular criminal gangs. Extortion is pervasive because some employees are committing extortion against their employers and even against some police officers who are entrusted with solving crime.

The largest reported category of perpetrators is referred to as extortionist, which suggests that this term and the act of extortion are salient in the diffusion of knowledge. Some of the largest perpetrator categories are depicted as criminal collectives ("one order gang," "gang," and "group of men"), which, combined, account for 39.08% of the reported perpetrators.

A group of criminals is more likely to be feared than an individual. It is common knowledge in Jamaica that the criminal gangs have a penchant for ruthless violence, and some of these gangs have committed political murders repeatedly. Therefore, the social references to the extortionists in the newspapers such as “jackals” and “warlords” are reflections of the reputations of the gangs, which create negative images for the average citizen that the extortionists are violent and dangerous people who ought to be feared. The image of fear influences the behavior of the victims because many acquiesce to the extortionists.

The shared understanding about the victims is that they come from all sectors of the society, including the government. The representation is that “everyone is a victim,” and this can lead to moral panic in the society. The construction companies are the largest category of victims, and along with the business operators, account for 62.36 % of the reported victims. The pressure on the private sector is not surprising, given the declining resources of the government which, at 12.90 %, is the third largest category of victims. The fact that government agencies are victims suggests that the state is unable to deal with the problem of extortion. Other victims are the transportation sector (bus and taxi operators) and the citizenry (individuals and home owners).

The findings that the entrepreneurs in the private and transportation sectors are extortion victims corroborate the findings of Charles (2007) that extortion occurred in the

commercial areas of Red Hills Road and Downtown Kingston, and the findings of Lawson (2004a, 2004b) that entrepreneurs in transportation sectors pay for safe routes and the private sector pays to protect its businesses and customers. The present study reveals that extortion is so rampant in some communities that even private individuals (including homeowners who are building or repairing their homes) have to pay.

The victims of extortion respond in several ways. The shared understanding among the majority of victims suggests that they have to pay, resist, or flee, because the authorities are slow to act. The representation is that the “victims are mostly on their own,” because they cannot depend on the authorities. Reporting crime to the police accounts for 28.12% of the reported victim responses. This finding means that the overall majority of the victims is not depending on the state to address the problem of extortion. It is possible that the victims of extortion do not trust the police. This lack of trust would not be surprising, given the fact that there have been news reports that some police officers are engaged in extortion.

The representation of the methods of extortion suggests that “non-compliance equals violence/murder.” The extortionists make contact with potential victims through a range of methods such as letters, phone calls, and face-to-face demands, among other methods. The reported punishment for non-compliance with extortion demands ranges from robbery, to bombings, to death threats, and murder. Murder is the largest reported category for non-

compliance, which means that the extortionists are serious about compliance. The extortionists' capacity and ability to unleash violence without facing arrest make the extortionists very powerful and dangerous. The circulating images of violence shape the reality of the victims.

Therefore, extortion payments have become routine and institutionalized in the society because of the repeated interactions between the perpetrators and the victims. The frequency of extortion suggests that extortion payments follow the formal salary payment schedules that are daily, weekly, fortnightly, and monthly, with the representation that "extortion occurs all the time." The extortionists, like wage earners, are on the payroll. It is possible that for some commercial interests extortion is more an inconvenience and a part of the cost of doing business, rather than a threat. It is now a business practice, which means it has gained social acceptance.

In other words, extortion has become an institutionalized part of commercial life in Jamaica. The foregoing is a plausible explanation since Charles (2007) found that entrepreneurs in down town Kingston tolerated extortion because it is cheaper than employing a private security firm, and Lawson (2004a, 2004b) found that the perpetrator-victim relationship resembles a patron-client relationship.

Extortion reportedly occurs in nine of the fourteen parishes in Jamaica in the urban, suburban, and rural areas, with the representation that "extortion is widespread in

Jamaica.” The widespread occurrence of extortion suggests that the police are unable to stop the practice as the criminal gangs extend their reach. Extortion, which is an outgrowth of garrison politics, has become diffused throughout the country. The largest reported centers of extortion are the urban areas of Spanish Town and Kingston. Garrisons are largely an urban phenomenon, and the politically affiliated gangs who control the extortion racket rule the garrisons. The problem is compounded by the social norms and consensus in the garrison communities that guide the behavior of the gangs involved in extortion, because a part of the extortion proceeds go into the welfare system of the garrisons. The counter-society concept suggests that the collection of extortion payments by the garrison gangs is an informal replication of the state function of tax collection.

The effects of extortion are depicted by the newspapers as a security problem that impacts crime, employment standards, and the economy. The representation is that “extortion is hurting the country.” The largest reported category of the effects of extortion is cost to business, followed by suspension of work, and cost to the economy. Recall that business operators are the second largest reported category of victims following construction companies.

Combining the business and construction victim categories reveals that these two commercial entities account for more than 60% of the reported victims. Extortion of commercial entities is a cost to business and is a part of the

social thinking that extortion is a major security problem that negatively affects the viability of the Jamaican economy. The extent of the problem becomes clearer when the suspension of work on a construction or road project is viewed as a cost to business, which is what some construction companies do when they are pressured by the extortionists. The construction companies and other businesses experience poor work quality when they “employ” extortionists. The extortionists destroy property when “payments” are not forthcoming, which is an additional cost to the businesses.

The largest reported category of solutions is offered by the government because it is in charge of governance. However, the government’s solutions are public denouncements of extortion backed by traditional policing rather than any serious corrective public policy.

The police have the second largest category of solutions because the police force is the state institution that deals with crime. The police are also relying on traditional policing methods and information from a skeptical public. The absence of increased arrests among the solutions offered by the police highlights the inability of the police to deal with extortion. The police should follow the citizens’ solution, which is to create undercover police units to apprehend the extortionists.

The professional organizations and the executive agencies are directly impacted by extortion, so they give other tangible solutions like reducing political interference in the

job application process, and endorsing public education and entrepreneurial cooperation. The government, police, and professional organizations and executive agencies account for 70.5 % of the reported solutions which form a social consensus that enforcement and cooperation are required to tackle extortion.

The opposition party's solution of dividing the work equally among the PNP and JLP supporters reveals that patron-client politics is intricately linked to the problem of extortion. The linkage is also reinforced by the solution from the executive agencies that construction contractors liaise with the members of parliament to reduce extortion. The extortionists' relationship to the political system through state patronage is the reason why the executive agencies suggested that an independent body deal with job applications. The solution that holds construction contractors responsible for cost overruns because of extortion payments is downplaying the fact that the contractors are victims whom the police have been unable to protect. The newspapers' call for international assistance points to a belief in the media that the government and the police are incapable of solving the problem of extortion in the country.

### **Conclusion**

There is a dearth of research on extortion in Jamaica, which is difficult to address because of the fear and silence of extortion victims and the safety concerns of researchers. However, the major newspapers are sites of shared

meanings and social thinking about extortion that can be deconstructed through content analysis. The content of communication reveals that Jamaica is becoming an extortionist state, because some politicians and some police officers are implicated in extortion. Extortion is widespread and the extortionists use a range of violent methods (including murder) to enforce compliance with their demands, without facing arrests. Therefore, the majority of victims do not officially report the crime. The police, backed by the government, continue to use traditional policing methods which are ineffective at stopping predatory extortion.

## References

- Buckingham, J.I. (2004). 'News making' criminology or infotainment criminology? *The Australian and New Zealand Journal of Criminology* 37, 253-275.
- Charles, C. (2002). Garrison communities as counter societies: The case of the 1998 Zeek's riot in Jamaica. *Ideaz*, 1, 29-43.
- Charles, C.A.D. (2004). Political identity and criminal violence in Jamaica: The garrison community of August Town and the 2002 Election. *Social and Economic Studies*, 53, 1-73.
- Charles, C.A.D. (2007). Business ethics in Jamaica and the problem of extortion by counter societies. In *Ethical Perspectives for Caribbean Business*, N. Cowell, A. Campbell, G. Chen & S. Moore (ed.) pp.95-117. Kingston: Arawak Publications.
- Clemence A. (2001). Social positioning and social representations in *Representations of the Social*. Kay Deaux & Gina Philogene (ed.), pp. 83-94, Massachusetts: Blackwell Publishers.
- Colomb, W & Damphouse, K. (2004). Examination of newspaper coverage of hate Crimes: A moral panic perspectives, *American Journal of Criminal Justice*, 28, 147-163.
- Figueroa, M. & Sives, A. (2002). Homogenous voting, electoral manipulation and the 'garrison' process in post-independence Jamaica. *Journal of Commonwealth and Comparative Politics*, 40, 81-108.
- Figueroa, M. & Sives, A. (2003). Garrison politics and criminality in Jamaica: Does the 1997 election represent a turning point? in *Understanding Crime in Jamaica: New Challenges for Public Policy*,. A. Harriott, (ed.), pp. 63-88. Jamaica: University of the West Indies Press.
- Harriott, A. (2000) *Police and Crime Control in Jamaica*. Kingston: University of the West Indies Press.
- Jovchelovitch, S. (2001). Social representations, public life, and social construction, in *Representations of the Social*, Kay Deaux & Gina (ed.) pp, 165-182. Massachusetts: Blackwell Publishers.

102 EXTORTION IN JAMAICAN NEWSPAPERS

- Lawson, Y. (2004a). *Extortion in Jamaica's main urban centre*. Masters' Thesis, Sir Arthur Lewis Institute of Social and Economic Studies, University of the West Indies, Jamaica,
- Lawson, Y. (2004b). *Extortion in the Residential Construction Sub-Sector of Jamaica's Main Urban Centre: A Patron-Client System*. Unpublished paper.
- Massey, S., Cameron, A., Ouellette, S. & Fine, M. (1989). Qualitative approaches to thriving: What can be learned? *Journal of Social Issues*, 54 (2), 337-356.
- Moscovici, S.(1976a). *Social Influence and Social Change*. New York: Academic Press.
- Moscovici, S.(1976b). *La Psychanalyse son Image et son Public* 2<sup>nd</sup> ed. Paris: Presses Universitaires.
- Moscovici, S. (1993). *The Invention of Society*. Cambridge: Blackwell Publishers.
- Moscovici, S. (1988). Notes towards a description of social representations. *European Journal of Social Psychology*, 18, 211-250.
- Philogene, G. (2000). Social Representations in *Encyclopedia of Psychology*, Alan Kazdin (ed.) New York: Oxford University Press.
- Sives, A. (2002). Changing patrons, from politician to drug don: Clientelism in downtown Kingston, Jamaica,' *Latin American Perspectives*, 29, 66-89.

## **A MICRO-PERSPECTIVE OF PUBLIC PASSENGER TRANSPORTATION IN JAMAICA: DO REGULATORY LAWS INTERSECT WITH DEMAND AND SUPPLY?**

Courtney D. Daye

*Supreme Court of Jamaica, Jamaica*

---

### **Introduction**

Policymakers, legislators, regulators and law enforcement agencies have confronted and tackled the issue of private individual motor vehicle owners supplying public passenger transportation service illegally. In spite of their combined and concerted efforts, these single individual operators appear to be a permanent fixture within the public transportation sector.

This study advances the view that the existence and survival of private individual operators in the transport industry is essentially a response to economic laws of demand and supply. Further this study claims that any law or laws that seek to regulate and control these operators in society must demonstrate an understanding of the forces that affect these operators' conduct.

Any regulatory laws enacted by a legislature ought to be responsive to the "laws" of supply and demand. If there is

no such response, then there are likely to be social unrest and tensions, conflicts and disorder in vital areas of a nation and its economy.

It appears to be a feature or a phenomenon of urbanization in both developed and developing countries that public passenger transportation is segmented into formal vs. informal or legal vs. illegal operators. The major cities of the United States of America and their commuters have experienced this problem. They have devised various proposals, policies and strategies to generate some coherence in this sector. What these cities in the U.S. have already experienced, the island of Jamaica is now beginning to experience.

There has been a visible increase over the past four years on the island of Jamaica, of private motorcar owners offering public passenger transport. These privately owned vehicles have plied their trade alongside larger buses, medium sized "mini" buses and other motorcars used as legal taxis in the public transport system. This state of affairs has prompted the assertion that in every modern city a taxi service operates alongside a bus service.

It is not only that there is a taxi service and a bus service within the transport system, but also at issue is the nature of the taxi service provided. What is clear is that unauthorized and illegal private motor vehicle operators are supplying public transport service. A senior official of the Transport Authority in Jamaica noted in exasperation "'robot' taxis are a plague that refuses to go away" (*The Sunday Herald*, March 17, 2002 p.4a).

This study seeks to explore the reasons for the behaviour of private motor vehicle owners. Accordingly, it will aim to ascertain the following: Is the public transportation market in disequilibrium to the extent that private motor vehicles owners are drawn to supply this service whether or not regulatory laws exist to deter and bar entry to such service?

First, the study will briefly trace the history of mass transit or bus service in Jamaica. Secondly, the study will refer to and compare the public passenger transport structure of two cities in the United States and Jamaica.

### **History**

Up to 1898, the main mode of public transport in Kingston, the capital and main city in Jamaica, was the horse and buggy. Between 1898 and 1948, the tramcar was the main provider of public passenger transport. It was estimated to have carried almost two million passengers annually. After 1948 the tramcar was succeeded by a single large bus company (in effect a monopoly). This company owed its paternity to the Public Passenger Transport (Corporate Area) Act of 1947. (The Corporate Area was another term for the Kingston and St. Andrew municipalities).

The Minister of Transport was empowered by this law to grant an exclusive licence to an operator to provide public transport. It was not until 1953, however, that the 1947 Act came into force. This delay, it appears, was to facilitate the beginning of the operations of the bus company. In

**The Attorney General of Jamaica v. National Transport Cooperative Society Ltd.** Brooks J. considered, among other things, the definition of exclusive licence in the Act. He opined this meant a licence could only be granted to one operator within and throughout the Kingston Metropolitan Transport Area. Therefore, he concluded that a franchise agreement signed by the Government and the Society in 1995 which granted more than one licence to provide public passenger transport service in the corporate area was in breach of the Act and therefore was void and illegal. In effect, the Judge declared invalid an arbitration award of J\$4.5 billion in compensation to the Society in December 2003 for the Government's unilateral termination of the franchise agreement.

In 1954, the Government of Jamaica granted a fifty (50) year exclusive license or franchise to a foreign owned company to provide public passenger transport in the Corporate Area. This company was the Jamaica Omnibus Service (J.O.S). Ltd. The same year, 1953, the Road Traffic Act 1938 was amended to provide that no one could operate a public passenger vehicle without the granting of a road license for that purpose by the Minister. Therefore at the same time the legislation was granting an exclusive license to one single large bus company to provide public passenger service, it was instituting a regulatory scheme controlling the provision of such service by others.

The legislature's intention is inferred from the words it uses and so it is not without significance that laws regulating public passenger transport were made part of

the Road Traffic law. It indicates that the legislation intended to use the criminal law to protect the new exclusive license granted to this new bus operator. The legislative intent to place public passenger transport in the hands of one main supplier appears to be clear and consistent for a similar law was passed seventeen years later in 1970. This piece of legislation extended an exclusive right to a single large bus company in the second city, Montego Bay, located in Western Jamaica.

In 1974, the Government acquired majority shares in the privately owned Jamaica Omnibus Company (J.O.S.) which was heavily subsidized. Loss of profit forced this company to reduce its bus fleet, and the shortfall in passenger seats were made up by unlicensed or illegal operators who operated minibuses called "robots." "Robots" mainly operated minibuses at first and then as time went on they began to use standard passenger motor cars.

By 1982, the minibuses had increased their share of the public passenger traffic to account for over three quarters (79.6 percent) of the system. (*The Sunday Gleaner*, August 4, 2002, p.7a). The private minibus service (the Jamaica Minibus Association) which emerged on the scene in the 1970s was allowed to take over some JOS franchise routes and were responsible for the delivery of public passenger transport in the Kingston Metropolitan Region.

This was a shift in policy of the Government towards a package holder system. This system was introduced in

1984 and was an attempt by Government to formalise the operations of the illegal minibus operators. The system involved a division of the Kingston Metropolitan Transport Region (KMTR) into ten (10) packages of routes with each package holder paying an annual franchise fee. The package holder, in turn sub-franchised routes in their packages to individual minibus operators. The package holder system was unsuccessful as the fragmented system of bus ownership proved inefficient. It led to excessive competition for fares, reckless driving, high accident rates, failure to keep bus routes, increasing passenger abuse, declining discipline among the bus crews and further deterioration in the overall quality of the transportation system.

In 1989, the Government rescinded the package holder system and in 1992 sought to encourage a return to centralized management and control through the approval for and formation of a national transport cooperative society. This cooperative, however, did not encompass all the existing operators and owners in the system. Membership of the cooperative, though recommended, remained voluntary. (Transport Authority Brief, January 1998).

In 1994, the Government tried another system. The KMR was divided into five transport zones as exclusive franchise areas. Under a zonal license, the Government awarded the five franchise areas to three private firms: National Transport Cooperative Society, Metro Transport and Conurban Transit.

The franchise holders were responsible for delivering public transport in their exclusive franchise area, while the Government was to provide a fare table and execute penalties. This was another form of package holder system. Under this particular arrangement, the franchise holder was required to have control of the buses in their area and individual bus owners could obtain a franchise by paying the franchise holder for the right to operate within this franchise.

This franchise holder system failed to provide a quality public transport service. The franchise holders blamed this failure on their inability to obtain sufficient revenue, as no new fare tables were granted by the Government. This latter claim was the substance of the franchise holder, National Transport Cooperative Society Ltd., argument at the arbitration and in the Supreme Court of Jamaica in their dispute that the Government unilaterally terminated in 1998 the franchise agreement it signed with them in 1995 which was for a ten (10) year term.

This system gave way to the present mass transport system. In 1999, the publicly owned entity, Jamaica Urban Transit Company (JUTC) commenced bus operation with a fleet of one hundred and fifty (150) buses. This company, like its predecessors, soon began to experience financial difficulties. According to officials of the bus company, one reason for the financial downturn was that some members of the travelling public deliberately used the services of the illegal operators as their smaller vehicles were much faster.

In brief, there was a shift from big buses to the minibuses and then to motorcars in the development of Jamaica's public passenger service. In effect, earlier efforts at instituting a monopoly proved futile thus it should not have been surprising that the current attempt has not met with success.

### **Structure**

The study looks at how the transport system was organized and classified in Jamaica and two major cities of the U.S.A. This study also makes a comparison between these cities and Jamaica, and although covering different time periods, shows some basic similarities but just minor dissimilarities. The fundamental similarity is that in both the American cities and in the cities and main towns of Jamaica, the public transport system is segmented between formal and informal or legal and illegal operators.

The main regulatory body in Jamaica describes the present structure in these terms: "In recent years taxi service in the KMTR has experienced significant growth. This can be attributed mainly to the demand for seats and commuter preferences such as time. The growth in demand has seen an influx of individual operators both legal and illegal in that system." (Economic Regulation of Bus and Taxi Service in KMTR, October 2001).

These same regulators outlined the different types of service in the system: "Two types of taxi service are provided in the KMTR, that is, hackney carriage and route

service. Hackney service exists where operators are allowed to offer service to commuters without restriction to a specific route or geographic area. Route service occurs where operators are permitted to provide service on clearly defined routes." (Economic Regulation of Bus and Taxi Service in KMTR, October 2001). The structure of the transport system in the U.S. cities of New York and Chicago, and in Jamaica are in Charts A, B and C in Appendix 1. (*New York Times* 1986, 1992, 1994, 1998).

When Charts A and B are examined, one is better able to understand the complaint about public passenger operations in the cities of New York and Chicago some years ago. The operators then complained that the different regulatory bodies were in force for livery and yellow cabs. The latter is regulated by the Taxi and Limousine Commission and the former by their dispatching agency.

Further, there were complaints that two different levels of enforcement existed in New York for operators. As a result, there were concerns about the standard of public passenger vehicles. Specifically, there were complaints about different standards for checking and testing roadworthiness of these vehicles. Also, operators questioned the differences in time intervals for replacing yellow cabs and liveries. City officials were pressured to use road traffic regulations to take illegal taxis out of the market. This debate among the players in the New York industry was largely about profit sharing. The yellow cab and, to some extent the liveries, were seeking to maximise

their profit by sharing in the economic rent obtained from monopoly power. The yellow cab operators were seeking to protect their markets from unlicensed liveries that were seeking and were actually gaining some of the monopoly profits. (*Newsday*, 1992).

In a 1992 article, *The New York Times* stated that there were 11,787 medallion cabs in New York. Medallion is the license that yellow cabs were originally granted by the city of New York to operate public passenger service and the number of medallions had been frozen for 55 years up to 1992. When the medallion was first sold by the city in the 1930's, it cost US\$10.00. In 1992, the market value of a medallion was estimated at about US\$140,000. Several hundred medallions are sold privately each year. In other words, the rights which were attached to a medallion were transferable.

Many observers posited the view that the number of medallions has not increased over the years in spite of heightened demand because city officials had yielded to the pressure of yellow cab operators to preserve their monopoly in public passenger transport. Alongside 11,787 medallions or yellow cabs in the city of New York in 1992, there were about 30,000 licensed livery cabs and 20,000 unlicensed gypsy cabs. These yellow cabs took business mainly from livery cabs where yellow cabs rarely ran.

In Jamaica, a scheme was created to identify the different types of licenses that private motor vehicle owners could obtain from the licensing authority. Operators granted

public passenger road licenses were issued red colour license plates, while those granted a license for commercial use were issued green license plates. Private motor vehicle owners operating for personal and domestic purposes were issued white licence plates. This study is principally concerned with the category of private motor vehicle car owners offering public passenger transport without a public transport license.

One reason advanced for the existence of a segmented public passenger transport system is that there is usually an inadequate supply of transportation seats in cities and towns when this problem surfaces. The converse is that there is an unsatisfied demand for such service. Where the provision of such service is in the hands of a sole mass transit operator and another group can operate at a profit greater than what the formal market provides, such operation enjoys monopoly profits. It is this situation that attracts other operators who are typically barred by law, from sharing in these profits.

Considerable sums of money circulate in the public passenger transport system. A study in 1968 (Kitch et. al.) on the regulation of taxicabs in Chicago revealed that the taxicab industry generated estimated gross revenue of US\$54 million. In 1994 in New York it was estimated that livery cabs or car service collected annual revenue of close to US\$875 million in comparison to yellow cab industry US\$975 million. In December 2003, arbitrators in Jamaica awarded J\$4.5 billion compensation against the Government (GOJ) to a franchise holder for breach of a

1995 ten year franchise agreement. This award was set aside on technical legal grounds by the Supreme Court of Jamaica. However, the franchise holder has filed an appeal in the Court of Appeal of Jamaica against this decision.

In 2000, the Government of Jamaica invested J\$550 million to purchase buses for the government owned bus company, Jamaica Urban Transit Company (JUTC), formed in 1998. (Economic and Social Survey of Jamaica, 2000). This was as a result of the government's policy to provide a public bus transport system. This was intended to have one main provider of bus service and to exclude all other individual motor vehicle operators in the system. This policy appears not to have achieved its objective. Within two years an audit report revealed this bus company was insolvent. (Economic and Social Survey, 2000). That is, its liabilities exceeded its assets.

The report identified several factors that caused the insolvency of the bus company. There are two such factors that are relevant to this study. Firstly, the report found there was a shortfall between required and existing capacity for seats of 84 buses. (Economic and Social Survey 2000). Each bus had a capacity of about 30 passengers. Secondly, the management of the bus company claimed there was revenue leakage from the company due to the activities of legal and illegal competitors, of approximately J\$1.8 million per day.

These findings indicate that private individual motor vehicle operators were responding to a demand in the transport system. Also it showed that these operators were seeking out the economic rent or monopoly profit that was reserved for a sole mass transit operator or other select group of operators.

### **Literature Review**

The concept of granting sole responsibility to supply public passenger transport to a single or specific group of operators was examined closely by the Kitch study. This report examined the supply of taxi service in the city of Chicago. It showed that yellow cabs and checker cabs were the main provider of taxi service. The origin of taxi service in Chicago was traced to the Chicago city code of 1866. This law contained a comprehensive system of regulation for horse drawn carriers, which was the mode of public transportation at the time. The objectives of this regulation were:

- to raise revenue through license fees
- to place limits on the terms of contract for carriage to prevent extraction and extortive rates
- to organize the flow of taxi cabs in traffic
- to impose minimum standards of condition and appearance of vehicles
- to ensure that drivers were responsible and law abiding and
- to compel financial responsibility

The 1929 amendment of this code introduced an additional objective to ensure adequate profits for taxi owners and adequate earnings for drivers. This objective was used to justify the limits placed on issuing taxi licenses. It was a means of imposing entry control in the taxi industry in Chicago. It is against this background that unlicensed taxis commenced operations in Chicago.

According to the Kitch studies, the regulation of fares under this regime: “appear to be typically utility rate regulation designed to substitute regulated for negotiated prices and limits the regulated firms to a reasonable profit” (1968, *Journal of Law and Economics*, 265, 304). Public passenger transport was therefore traditionally regarded as a public utility that enjoyed monopoly profit in most economies. It appears too, that even present day policy makers and legislators regard public passenger transport as a public utility.

Under the Jamaican Office of Utility Regulation (Amendment) Act 2002, the provision of public passenger transportation by road is defined as a prescribed utility service. It is this study’s view that the law incorporated the traditional theory of monopoly as being natural to public passenger transport.

Posner (1988) equates common carrier regulations with public utility regulations in a discussion of natural monopoly in his main treatise (p. 377). Posner proffers an explanation of the theory of monopoly that is applicable to this study of the behaviour of individual operators in the

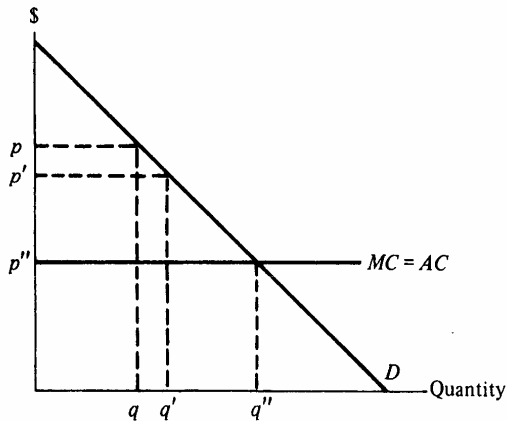
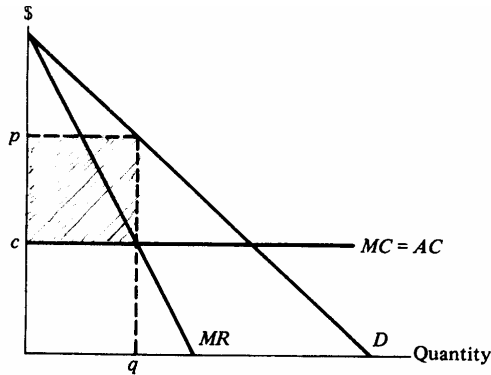
public passenger transport system of Jamaica. He discusses monopoly in the following terms: "Since a monopoly return is greater than a competitive return, sellers in competitive markets will gravitate to a market where a monopoly price is being charged. To obtain some of the monopoly profits in that market, the new entrants must sell and ... his sales will increase the output of the market, causing price to fall. Most monopolies thus contain the seeds of their destruction." (Posner, 1988, p. 307).

The theoretical operation of a monopoly is illustrated by Figure 1 and 2 below. Figure 1 represents a firm that is the sole supplier or that has monopoly power in an industry. The profit maximising output of the firm is the quantity ( $q$ ) at which marginal revenue equals marginal cost. The marginal revenue curve is downward sloping. On the other hand the marginal cost curve is horizontal and for this particular monopoly firm marginal cost equals average cost. The demand curve is also downward sloping.

The price charged where marginal cost equals marginal revenue is " $C$ " on the vertical axis. However, a monopoly firm can change the price " $P$ " on the vertical axis. That is the price where the profit maximising output meets the downward sloping demand curve. The shaded area is the monopoly profit or economic rent that a sole supplier enjoys. It is this profit that attracts other firms, i.e. private operators in the public passenger transport system. Figure 2 represents what happens to the monopoly profits or the economic rent of a sole supplier when other firms enter the

market. The sole supplier's total revenue is  $P \times Q$ , where another firm enters the market the total revenue for both will result in a profit or economic rent for both firms. In other words, there will be a fall in profit or economic rent for both firms.

**Figure 1 and Figure 2**  
**The Theoretical Operation of a Monopoly as Illustrated**



However, both firms still enjoy a monopoly profit or economic rent though not as high as when there was a sole supplier. Once there is economic rent available in the industry other firms will enter if there are barriers and these barriers are ineffective. Thereafter the price of the service or good will decrease as the gap between demand and supply narrows. The profit also will decrease until economic rent disappears at price (P2) where the marginal cost equals marginal revenue.

In spite of the theory of the cycle of monopoly many governments and legislators continue to maintain laws that entrench the model of monopoly in public passenger transport. To this extent such policies and laws are counter to first laws of demand and supply in economics.

This study adopts Mr. Justice Stevens' observation about the role of law and society in **Meachum v Fano**. He opined: "...law is essential to the exercise and enjoyment of individual liberty in a complex society. But it is not the source of liberty and surely not the exclusive source." (427 U.S. 215 (1976), 230 para. 3). It is this study's view that the judge meant there are other forces that impact, intersect and shape laws that create rights and benefits. Consequently, law ought to take into account as far as possible these other influences. At the same time the law should not elevate or subjugate one force over the other.

Supreme Court Justice Holmes expressed a similar view of law in relation to the United States Constitution in **Lockner v New York**. He said as follows: "...The

constitution is not intended to embody a particular economic theory, whether of paternalism and the economic relation of the citizen to the state or of laissez-faire." (198 U.S. 45 (1905), 348 para. 5).

The Constitution in the United States and in the Caribbean common law jurisdiction such as Jamaica is the supreme law. Hence, law should not be used to establish or institute or enshrine a particular economic theory. This seems to be the course taken when countries such as Jamaica pass laws and regulations that confer on public passenger transportation a public utility status consistent with the natural monopoly theory. Such laws inevitably run counter to the true market forces of demand and supply. The net result is that there are many times, persistent and unresolved conflicts among operators in the public passenger transport system. This is visible on the main roads and streets of the major cities of the United States as well as the island of Jamaica.

It is not only policies that support monopolies in the public passenger transportation that account for the presence of illegal operators. Other factors are also responsible for the presence of illegal operators in the system. Becker, the 1995 Nobel Prize winner for Economics unearthed some of these reasons. He postulated that "crime", which includes traffic and other violations, is an economically important activity or industry. He looked at the public and private cost of crime to analyse how resources are spent to prevent and punish crime. Becker was occupied with the optimum enforcement that a society would permit for its laws and

punishment. He adopted the method of analysis as follows: "The approach taken here follows the economists' usual analysis of choice and assumes that a person committed an offence if the expected utility to him exceeds the utility he would get by using his time and other resources in other activities." (Becker, 1968, p. 169-317).

Becker developed his theory by advancing the view that in order to combat crime, a society had to look at the behavioural relations behind the cost of crime. This was divided into five categories:

- (1) the number of crimes or "offences" and the cost of offences
- (2) the number of offences and punishment meted out
- (3) the number of offences, arrests and convictions and the public expenditure on police and courts
- (4) the number of convictions and the cost of imprisonment
- (5) the number of offences and the private expenditure or protection and apprehension

He summarizes that a person commits a crime essentially as a result of a cost/benefit analysis. Cost in this context is not solely mathematical or monetary. It encompasses the gain foregone or deferred. In other words, it involved opportunity cost.

Becker claims that the quantity of offences is related to the type and degree of punishment for the offence. In his view, when other variables are held constant, an increase in a person's possibility of conviction or punishment if convicted will generally decrease the number of offences he commits. He also points out that there is too, a

relationship between the offences a person commits and other variables such as the income available to the offender in legal and other illegal activities.

This study accepts Becker's premise and holds that there is a persistent and increasing presence of illegal operators in Jamaica's public passenger transport system because these operators see an incentive to participate in the industry notwithstanding the regulatory laws.

Ehrlich (1975) expounded on Becker's thesis by advancing additional economic factors that he contends influence a person to engage in a legal or illegal activity (1975, p. 54-56). Ehrlich's analysis goes one step further than Becker's. Ehrlich, in looking at the behaviour of offenders, takes into account their response to punishment and rewards. It is his view that offenders take into account the cost and gains from legitimate and illegitimate pursuits rather than the costs of punishment alone. His theory is encapsulated as follows: "...offenders as a group respond to incentives in much the same way that those who engage in strictly legitimate activities do as a group." (p.54-56).

Ehrlich goes on to add that the extent of an offender's participation in illegitimate activity as well as his response to incentives is related to and is a function of available opportunities in competing legitimate and illegitimate activity. He argues that the decision to engage in illegal activity is not solely an either/or choice, and offenders are free to combine "legitimate and illegitimate activities and switch from one during any period. What was important

to the offender was the optimum allocation of his time and other resources to competing legal and illegal activities.”

Stigler (1970) constructed “a rational theory of enforcement” to answer the question why individuals commit an offence or break the law. He goes on to demonstrate that offences may exist or persist even though a law or regulation is in full force. He states that the cost of enforcing a law is determinative of the amount of resources allocated to enforce the law. The basic features of Stigler’s theory are:

- (a) laws in society require enforcement
- (b) there is a cost of enforcement
- (c) the goal of enforcement is to achieve a degree of compliance with the rule of prescribed behaviour that the society can afford
- (d) A society cannot achieve complete enforcement as this is too costly
- (e) The degree of enforcement depends on how much by way of resources society allocates to the particular law
- (f) Society can achieve greater compliance or enforcement with its laws not only by investing its allocation of resources but also increasing the marginal punishment (cost) of the prescribed behaviour, so that it equals the marginal deterrence
- (g) The offender is deterred by the expected punishment, which is the probability of punishment times the punishment

Stigler provides the following example of his formulae above. If the probability of punishment is one tenth, and the fine from an offence is \$1,000.00, then the efficient

deterrent is a \$100.00 fine. In other words, any efficient enforcement of the particular law in his example would be a fine of \$100.00. This fine would effectively deter the conduct or activity the society seeks to regulate.

The extension of this theory is that if you increase punishment, then you will increase the deterrent. The increase in the punishment in this context is the marginal increase, or the addition to an existing punishment. That is, the law enforcement agency ought to aim at ascertaining whether a marginal increase of \$1.00 in cost in punishment will lead to a marginal savings of \$1.00. According to Stigler's analysis, the probability of apprehension and therefore conviction is an increasing function of the frequency of commission of offences. If the probability of detection is  $p$  for one offence, it is  $1-(1-p)^n$  for at least one conviction in  $n$  offences and this expression approaches unity as  $n$  become larger.

On Stigler's construct, the existing phenomena in Jamaica's transportation system can be explained on the premise that there is insufficiently effective enforcement of the regulatory laws in this sector. In other words, implicitly there are other forces within the system that are out of alignment with the formal legal structure. Stigler cautions that a society may face this misalignment in enforcing a law as a result of a clear choice.

On one hand, a society may deliberately allocate a limited amount of resources to enforce a law. On the other hand the society may under allocate resources to enforce a law.

Stigler postulated that optimum enforcement of a law could be achieved by adjusting the marginal cost of enforcement of the law to equate it to the marginal deterrent of the law. In the light of this proposition, this study will examine the penalty structure of the Road Traffic Act in Jamaica.

**The Road Traffic Law Penalty Regime**

The penalties for breaches or violation of public passenger regulatory laws are primarily provided for in the Road Traffic Act. Similarly, the penalties for other breaches of this Act are listed therein. The penalty regime for the past four years is expressed in a number of amendments to the Road Traffic Act enacted between 1993 and 2002. Table 1 below describes the movement of the tariff of fines for breaches of the Road Traffic Act for the past few years.

**Table 1**  
**Penalty Regime for Road Traffic Act**

OFFENCE	PENALTY	YEARS			
		J\$'000			
		1993	2000	2001	2002
OP without road license	Fine	500	1000	1500	15000
OP M. Vehicle, contrary to terms of license	Fine	400	2000	2000	20000
OP M. Vehicle as PPV without road license	Fine	250	1000	1000	15000
No PPV Insurance	Fine	No fixed penalty, Court's discretion			
Excess Passengers Carrying More Persons	Fine	100	250	800	2500

US\$1 = J\$85.00 exchange rate at December 2010

An individual private motor vehicle operator, who is operating illegally in the public passenger transport sector when faced with a penalty regime based on the premise

that he is a rational decision maker, is likely to seek to maximise his profit. He is likely to operate at a level where marginal revenue equals marginal cost. The tariffs or fines prescribed are one item of cost that such an operator will take into account.

Between 1993 and 2001, the tariff of fines for breaches of public passenger violations was relatively low. It was not a deterrent or barrier to private motor vehicle operators to participate in the transport industry. Further, there was no fixed time period for effecting increases to the tariff of fines. Increases of fines were dependent on the time lag that is associated in the passing amendments to the Road Traffic Act. It is during this interval that many illegal and unlicensed operators enter and remain in the public passenger transport market. This explains the picture of the division of the public passenger transport between legal and illegal operators.

A report in the losses of the Government owned Jamaica Urban Transit Company (JUTC) incorporated in July 1998 recommended some management responses as a means of stopping the J\$1.8 million per day leakage. The relevant recommendations were:

- (a) increased ridership of the JUTC – the critical success factor of this was increased penalties for illegal operators
- (b) proposed amendment to the Road Traffic Act so as to discourage illegal operators from encroaching on revenue. The critical success factor of this was the determination of a level of punishment that will act as a suitable deterrent

(KPMG, Final Report of Review of JUTC {1998 – 2002}, January 7, 2002.

## **Methodology and Report of Results**

The study seeks to test the null hypothesis that increased fines or penalties for violations of public passenger road traffic offences reduce the incidence of such offences or in effect, the activities of these illegal operators.

A simple t-test is conducted as the method of testing the null hypothesis in this study. The t-test was carried out to determine any statistically significant differences between two populations or two ratios of a normally distributed variable. For the data under observation, the t-distribution sufficiently approximates the normal distribution. In the case of this study, the normally distributed variables to which the t-test is applied are proportions.

### *The Data*

Data were collected for the number of road traffic tickets issued to violators of the public passenger offences for Jamaica's second city Montego Bay located in the parish of St. James. The study obtained annual data for eight (8) years, 1996 through 2003 inclusive, on the total number of citations for five (5) categories of road traffic offences (See Table 2). The data were extracted from the Road Traffic Court Sheets for the Resident Magistrate Court for the Parish of St. James, city of Montego Bay for the eight year period reviewed. These books are the official record of

road traffic offences reported to the Court and the penalties or fines imposed for these offences.

**Table 2**

**No. of Tickets Served for Breaches of the Road Traffic Act Public Passenger Offences for City of Montego Bay, St. James, 1996 to 2003**

PPV offences/Tickets	Number/Year							
	1996	1997	1998	1999	2000	2001	2002	2003
No PPV Insurance	164	302	450	471	238	246	310	401
No PPV Road Licence	859	1076	1025	1104	849	976	1280	1176
More Persons on Drivers Seat*	150	571	324	156	247	400	336	188
Excess Passengers (Overall)	24	161	131	240	265	305	199	147
Operating Contrary to Road Licence	39	78	81	122	266	920	697	671
Total	1236	2188	2011	2098	1865	2847	2822	2583

\* Indicates additional person(s) on front passenger seat, possibly encroaching on driver's space.

In addition to the above data, the study collected annual data for the same period 1996-2003, on total population for the city of Montego Bay. This represented a common denominator against which to compare trends in the occurrence of offences. (See Table 3).

**Table 3**

**Population – City of Montego Bay, St. James, 1996 to 2003**

1996	1997	1998	1999
169,800	173,600	176,100	178,200
2000	2001	2002	2003
180,800	182,600	185,280	187,400

The numbers obtained from the two sets of data are converted into proportions with a meaningful common denominator. This creates a statistically appropriate variable in the form of ratios, for conducting a t-test.

*Step 1*

The first set of data (Table 2) is divided into two halves. The first four years (1996-1999) represented a period of low penalties. The second four-year period (2000-2003) was marked by imposition of noticeably higher fines.

*Step 2*

Ratios of numbers of offences to total city population were calculated for each year for all five (5) categories of offences. An average ratio for each of the two four year periods described was then arrived at for each type of offence. That is, for each category, the sum of the ratios for 1966 through 1999 was divided by four (4). The same was done for the year 2000 through 2003 period. These ratios are compiled in Table 4.

**Table 4**  
**Ratios of Number of Citations to Population of City of Montego Bay, St. James**

OFFENCE	1996 – 1999 avg.	2000 –2003 avg.
No PPV Insurance	0.0019760	0.0016191
No PPV Road Licence	0.0058183	0.0054075
More Persons on Drivers Seat*	0.0017096	0.0015306
Excess Passengers (Overall)	0.0007899	0.0011993
Operating Contrary to Road Licences	0.0004727	0.0032389

\* Indicates additional person(s) on front passenger seat, possibly encroaching on driver’s space.

*Result of T-test*

A comparison of the ratios for each of the five categories of public passenger offences for the two separate periods disclose no statistically significant declines in these offences (Table 4). In other words, the T-test does not show a statistically significant difference between the numbers of offences per city population in the first four-year period vs. the second. An analysis of possible reasons for such results is provided in the section “Comments and Analysis of T-Tests.”

Linear regression analysis was employed to supplement the T-tests. The results are presented in the Endnote. As with the T-tests, the regression results (for example, value of R-squared) were not sufficiently robust to suggest a strong cause-effect relationship between the level of penalties and the incidence of offences.

*Comments and Analysis of T-Tests*

Key issues with respect to statistical results for incidence of violations vs. levels of penalties over eight-year period 1996-2003 (two sub-periods 1996-1999 and 2000-2003)

- T-test/regression results did not indicate statistically significant differences between first period with lower fines and second period with higher fines
- Small values of ratios of number of citations to city of Montego Bay population (accuracy of t-tests is compromised by ratios that are either very small, close to zero, or very large, close to one)

- High year to year variability in incidence of offences; in effect, there appeared to have been an indifference to the relatively low fines over the majority of the period (i.e., 1996 through late 2003) with fluctuations in occurrence of offences being possibly due to other factors such as fluidity in the population of operators and the inconsistency of enforcement due to lack of resources available to law enforcement personnel. The incidence of “No PPV Road Licence,” which manifested marked fluctuations throughout the period investigated, is a case in point.
- Imposition of significantly higher penalties came at the very end of the historical series (i.e., late 2003), preventing sufficient passage of time to allow for adequate number of observations of incidence of offences in light of new penalties
- There has been no structured periodic or systematic increase in fines by the legislature. For example, fines have not been increased on a two-year or three-year basis, but on an ad hoc basis, on occasion in response to public outcry against the undesirable social behaviour of illegal operators
- More significantly, increase in fines appear to be effected as a response by Government to an urgent need for increased revenue, for example, in the second period (2000-2003) there was an almost 100% increase in fines for all offences. As indicated earlier, this came at the end of 2003. It was at the same time that there was an increase in property taxes because of an anticipated shortfall in financing for the budget for the financial year 2003/2004
- The method of increasing the fine for traffic offences at the end of 2003 disclosed that revenue considerations were dominant factors. It was the Minister of Finance who, by order, implemented these increased fines. On the other

hand, previous increases of fines, covering the years 1996 to 2002 were implemented by order of the Minister of National Security under whose statutory authority the regulation of transportation fell

- This research proffers the view that the appropriate application of fines to regulate public passenger transport ought to be consistent with market forces. In this case the “good” in question would be the penalties or fines. At higher prices (i.e., increased fine) the “demand” for the “good” (i.e., level of offences), would fall (i.e., a normal “good”)
- As a matter of public policy, Government sought in 2001 to 2002 to reintroduce large public passenger units (e.g., 50-seater buses. This service proved to be markedly unprofitable to Government that owned and operated the fleet (Jamaica Urban Transit Co.-JUTC). In order to ensure greater public usage, Government implemented the large increase in fines toward the end of 2003 as a disincentive to competition for the JUTC fleet
- In effect, the interplay of market forces was not allowed. Indications from the commuting public were that the larger fleet did not allow for the degree of mobility (e.g., speed in getting to work and about in general) that the smaller private operators offered. This therefore was a question of efficiency and market forces by definition strive to maximize efficiency
- The factor of accessibility is also important to the travelling public. The smaller private units are able to negotiate roads and access locales that the larger JUTC units could not
- Despite the individual private operators being illegal, the demand for their services is relatively inelastic given the factors cited above. From the perspective of the operators, under the earlier dispensation of penalties (prior to late

2003), it was for some of them, worth their while to pay the fines and continue operating.

### **Micro Analysis of the Jamaican Economy**

There are other factors that appear to induce the illegal public passenger operators. Between 1999 and 2000, there was a contraction in the Jamaican economy. This was evident in several sectors including the garment and manufacturing sectors, large employers of labour, which laid off hundreds of workers. In many instances, these workers were paid a lump sum of money called a redundancy payment. (The Termination of Employment and Redundancy Payment Act, 1974).

Many of these workers later invested their redundancy payments. One form of investment was to purchase the popular four passenger standard Japanese motorcars, which they used in the public passenger transport system as either legal or illegal taxis. The informal or illegal taxi industry was a source of income and employment to those displaced workers.

At the end of the year 2000, the labour force stood at 1,105,3000 having declined by 1.2 percent. (Economic and Social Survey of Jamaica, 2000). There was a net reduction of 132,800 persons. Net employment also declined by 10,400 persons. The Economic and Social Survey report for the period showed that there was an increase in the service sector, with one sub sector being transport. In effect, the general trend for the years 1999 and 2000 was a decrease in

the Jamaican commodity sector and a corresponding increase in the service sector. There was a similar increase in the service sector including transport, according to the report of 2001. (Economic and Social Survey of Jamaica, 2001).

A section of the report on the labour market states: "The shift towards a service-driven economy continued with the service sector's share of employment increasing 1.3 percentage points to 63 percent while the goods producing sectors registered an overall decline of 1.6 percent." (Economic and Social Survey of Jamaica, 2001).

The same report indicated that there was a 1.7 percent increase in Gross Domestic Product (GDP) in 2001 compared to 2000. This was due to continued growth in the sector Transport, Storage and Communication. It is said that this sector grew by 6.3 percent over the five years to 2000, with the average annual growth being 7.3 percent. The average share of total (GDP) for the five-year period was 15.3 percent, while employment in the sector averaged 54,500. The official report attributes growth in this sector to the expansion of activities of the JUTC, that is, mass transit transport, to other areas of the city. (Economic and Social Survey of Jamaica, 2001).

In spite of growth in these areas, the overall unemployment rate is 15 percent of the labour force. The increase in availability of private motorcars to persons in the economy who are inclined to enter the transport sector is a significant factor. The selling price of these private

motor vehicles has become increasingly affordable as flexible credit finance schemes by retailers and other financial institutions are offered to the public. This is a factor to be considered in assessing the operation of unlicensed and illegal motor vehicle owners in the public passenger transport system.

The External Trade Report of Jamaica for 1998 and 1999 contains data for all types of motor vehicles imported into the island for these years. The total number of motor vehicles imported into the island by individuals and dealers, from Japan in 1998 (vehicles with a cc rating of more than 1000 cc.) was approximately 9,000 cars. (The External Trade Report, 1999). For this same period, overall car imports numbered 23,000. The vast majority of motor vehicles used as public passenger transport by route and hackney taxi operators fall within this category of imported vehicles.

About 90 percent of all motor vehicles imported in the island are from Japan, while South Korea, the United Kingdom and the United States account for the remaining ten percent. A large proportion of the motorcars imported in the island over the last five years are used cars not more than three years old. It is reasonable to conclude that private motorcars were acquired not as a consumer good any more but as capital goods.

Motor vehicles were bought not only to transport individuals and their families, but also to transport others for reward. This was a response to the demand for

transportation by commuters, and to address unemployment and the income generation needs of motor vehicle owners. These factors play a part, in Ehrlich's view, in the decision of an individual to engage in an illegal activity. In this research, these factors play a part in the private motor vehicle owner's decision to participate in the public passenger transport sector either legitimately or illegitimately.

The Research Department of the Transport Authority, the body responsible for processing and issuing public passenger road license has the official record of how many private individuals has applied for such licenses. A table on the data of road license issued for the period 1988 to 2002 is presented at Appendix 2. The figures indicate that the new category of public passenger transport service commenced operation in 1999. This was the route taxi. There was no such service in 1998 and prior to 1998 "robot" and or "deportee" taxis provided route taxi service.

Route taxi is that class of license which was permitted as "emergency and road license" under stage carriage license by section 61 of the Road Traffic Act[J]. This type of license is somewhat similar to "market license" which the Traffic Authority had power to grant alongside stage carriage license under the public passenger transport legislation of 1953. Such licenses could be granted on condition that they did not give rise to "wasteful competition." In this paper's view the policy of bringing this class of license in operation for the first time in 1999

was only a government response to market demand and the market failure of the monopoly policy pursued in public passenger transport. What is clear from these figures is that there is a shift from hackney (traditional) taxi service to route taxi. This is the service normally supplied by the bus and then later the mini bus system. This is due mainly to the market adjusting to supply and demand.

It is noticeable also that there was a decrease in route taxi license from 11,709 in 1999 to 8,267 in 2001. This is not to be equated with a fall or decrease in such transport service when one looks at the amount of prosecutions for violations such "No PPV road license" and "No PP insurance." It means several private motor cars are still in the market providing route taxi transport service.

Public passenger road license operators are recognized by what is called "red license plate." Even if these operators do not renew their road license, they still retain their license plate. If they are not insured, they cannot obtain a road license. The insurance law require special public passenger insurance for such taxis. A typical route taxi license is J\$4,250.00 per year. However, the public passenger insurance is between J\$50,000.00 to J\$70,000.00 per year.

Due to this last item of cost, many private motorcar operators who were initially granted whatever category of road license simply forego obtaining public passenger insurance and the relevant road license. They simply just

operate on the public streets offering their service to the willing commuters.

### **Conclusion**

Policymakers, legislators and law enforcement agencies have to re-examine the traditional theory of natural monopoly that applies to public passenger transport in the island. It is a rigid and inflexible adherence to this theory that accounts in one respect to the duality of one large official mass transit operator and many individual small operators. This explains some of the social and economic disharmony in the society's transport sector. Policies predicated on monopoly run contrary to policies of free market competition that are now accepted in the global economy.

In addition, policymakers and government authorities must take into account that small individual operators of private motor vehicles are rational decision-makers. They will choose to engage in an illegitimate activity if the marginal gains and marginal utility they obtain exceed that to be gained in other lawful enterprises in the society.

This means that the macroeconomic policymaker has a duty to stimulate real growth and employment in other areas of the economy. If there are gains in other areas of employment that are comparable in skill and relatively low investment of capital in the economy, then presumably these operators will move into these areas, so

long as the gains are at least equal to those from their present activity.

As the government ensures the enforcement of laws through its agencies then it will encounter fewer and fewer violations and breaches of its law. The government then ought to formulate a system of optimum enforcement of its law. This can be achieved by framing a set of penalties that cause marginal cost to exceed marginal benefits of operating outside the law in the transport system.

A joint implementation of these proposals will provide some remedy in the visible disorder on the nation's streets by illegal public passenger operators in the transport industry.

**Endnote:**

Regression Analysis: number versus pop, popsq

The regression equation is:

Number = - 71450 + 0.795 pop -0.000002 popsq

Predictor	Coef	SE	Coef T	P
Constant	-71450	18969	-3.77	0.013
pop	0.7951	0.2124	3.74	0.013
popsq	-0.00000220	0.00000059	-3.71	0.014

S = 49.64 R-Sq = 79.1% R-Sq (adj) = 70.7%

Analysis of Variance

Source	DF	SS	MS	F	P
Regression	2	46486	23243	9.43	0.020
Residual Error	5	12319	2464		
Total	7	58806			

Source	DF	Seq SS
pop	1	12562
popsq	1	33925

**Appendix 1**  
**Structure of the Transport System in the**  
**U.S. Cities of New York and Chicago, and in Jamaica**

**Chart A - City of Chicago**

Name	Type of Service	Size	Status
1. Mass Transit	Public Bus & Rail	Large Buses	Legal
2. Yellow/Checker Cab	Private Motor Cars – pick up passengers on street	Six (6) passengers - large rear seat	Legal
3. Livery Service	Pre-arranged pick-up at negotiated Price – no pick up on streets, cruise streets picking up passengers	Standard sedan motor car	Legal
4. Jitney	Cruise streets picking up passengers	Standard sedan motor car	Illegal

**Chart B - City of New York**

Name	Type of Service	Size	Status
1. Yellow or Medallion Cab	Pick up passenger for fee. Lower 2/3 Manhattan Street	Large rear street Private Motor Car	Legal
2. Mars Transit	Public Bus/Rail	Large buses/subway	Legal
3. Livery car/car service	Transport passengers by pre-arrangement to and from neighbourhood	Private 4 seater standard sedan motor car	Legal
4. Community Van	Transport passengers by pre-arrangement from Brooklyn, Queens and Bronx	Private Van and/or 12 to 16 seats	Legal
5. "Gypsy Cabs"	Pick up passengers in and outside city – solicit street h..	Private 4 seater standard Motor Car	Illegal

**Appendix 1 (continued)**  
**Structure of the Transport System in the**  
**U.S. Cities of New York and Chicago, and in Jamaica**

**Chart C - Island of Jamaica**

Name	Type of Service	Size	Status
1. Mass Transit/ Stage	Carry, pick up and set down passengers for hire at separate fare stage by stage along route	Private Owned buses 1953-1972 Public Owned buses 1972-1984 Private Owned Members 1984-1992	Legal
2. Route Taxi/Stage Carriage	Carry pick up and set down passengers at stages for hire along specialized route	Private 4-Seater Standard, Japanese Motor Cars	Legal
3. Express Carriage	Carry passenger for hire at separate fares along route but not stopping	Medium sized buses privately owned	Legal
4. Contract Carriage	Carry passengers on contract for the use of a vehicle as a whole	Private four-passenger seater Mini Bus operators at airport and ply tours for tourist	Legal
5. Hackney Carriage	Stand or ply for hire in public (traditional taxis)	Private four-passenger seater Motor Cars	Legal
6. Robot	Unlicensed Motor Cars carrying passengers	Motor Cars Private four passenger seater	Illegal

Source: Road Traffic Act 1938, Sec. 61

**Appendix 2**  
**Number of PPV Licensed Vehicles (1998-2002)**

Year (Mar.)	Rural Stage	Contract	Hackney	Route Taxi
1998	2,593	2,364	11,336	n/a
1999	2,634	2,361	8,220	11,709
2000	2,443	1,978	2,496	7,866
2001	2,594	2,086	2,625	8,267
2002	2,333	1,174	1,195	7,035

Source: Research & Planning Department, Transport Authority

## References

- Becker, Gary, S. (1968), Crime and Punishment: An Economic Approach, Journal of Political Economy, 76(20):169 – 217.
- Becker, Gary, S. and Stigler, George, J. (1974), Law Enforcement, Malfeasance and Compensation of Enforcers, 3 Journal of Legal Studies, 1-17.
- Breyer, Stephen, G. and Stewart, Richard, B. (1992), Administrative Law and Regulatory Policy (3<sup>rd</sup> ed.).
- Breyer, Stephen, G. Regulation and its Reform. (1982).
- Cooter, Robert, Prices and Sanctions, 84 Columbia Law Review. 1522-1553.
- Cooter, Robert, and Ulen Thomas S. (2000) Law and Economics, (3<sup>rd</sup> ed.) Addison Wesley Longman.
- Ehrlich, Isaac. (1996). Crime and Punishment and the Market for Offences, 10 Journal of Economic Perspective (Winter).
- Ehrlich, Isaac. (1972). Participation in Illegitimate Activities: A Theoretical and Empirical Investigation, 81 Journal of Political Economy, 521-564,
- Gordon, Tullock. 1969. An Economic Approach to Crime: 50 Social Science Quarterly, (1969), 59-71.
- Ippolito, Richard, A. The Effects of Price Regulation in the Automobile Industry: Journal of Law and Economics, 55-84.
- Kitch, Edmund, W. and Issacson, Mark and Kasper, Daniel. (1971). The Regulation of Taxicab in Chicago: 14 Journal of Law and Economics, 285.
- Lieberman, Jethro Koller. (1987). The Enduring Constitution. West Publishing Co.
- Phillips, Charles, F. Jnr. (1993). The Regulation of Public Utilities: Theory and Practice (3<sup>rd</sup> ed.).
- Posner, Richard, A. (1972). The Behaviour of Administrative Agencies, Journal of Legal Studies, 323-344.

- Posner, Richard, A. (1974). Theories of Economic Regulations, 5 Bell, Journal of Economics and Management Science, 335.
- Posner, Richard, A. (1971). Taxation by Regulation, 2 Bell Journal of Economics and Management Science, 22.
- Posner, Richard, A. (1976). Anti-trust law, An Economic Perspective. 18-20.
- Posner, Richard, A. (1975). The Social Cost of Monopoly and Regulation, 83 Journal of Political Economy, 807-827.
- Posner, Richard, A. (1998). Economic Analysis of Law (5 ed.). New York: Aspen Law and Business. 346-397.
- Pyle. D.J. (1995). An Economic Approach to Crime and Punishment: 6 The Journal of Interdisciplinary Economics, 1-22.
- Steven, Shavell. (1985). Criminal Law and the Optimum use of non-monetary sanctions as deterrent. 85 Colombia Law Review, 1233-1247.
- Stigler, George, J. (1970). The Optimum Enforcement of Laws. Journal of Political Economy, 526-536.
- Stigler, George, J. (1975). The Citizen and the State: Essays on Regulation.
- Wilson, A. (1983). Thinking about Crime (Revised ed.). 137-142.
- Wilson and Abrahams. (1992). Does Crime Pay. Justice Quarterly, 354, 367.
- Waldfoegel, Joe.l (1995). Are fines and prison terms used efficiently? Evidence of Federal Fraud offenders. 38 Journal of Law and Economics, 107-139.
- Wolpin Kenneth, J. (1978). An Economic Analysis of Crime and Punishment in England and Wales 1894 – 1967, 86 Journal of Political Economy, 815-839.

## PERIODICALS

A Review of the Jamaica Urban Transit Company, July 1998 to Feb 2000: KMPG Final Report, June 7, 2002

Economic and Social Survey of Jamaica 2000 (ESSJ 2000), Ch. 14, 20 21

## 144 TRANSPORTATION AND LAWS IN JAMAICA

Economic and Social Survey of Jamaica 2001 (ESSJ 2001) Ch. 14.2 Transport and Communication

Economic Regulation of Bus and Taxi Service in the KMTR – A Consultative Document, Office of Utilities Regulation, Jamaica, October 2001

Jamaica Survey of Living Conditions (JSLC) Report 1999 Ch. 1

Jamaica Survey of Living Conditions (JSLC) Report 1999 Ch. 3: 20,21

The External Trade Report 1999, Statistical Institute of Jamaica (STATIN)

### ARTICLES FROM JAMAICAN NEWSPAPERS

Anderson, Glenda, (2002, August 4), The taxi service meeting commuter's needs. The Sunday Gleaner, p. 15B

Anderson, Glenda, (2002, August 4), Hill and Valley Rides, The history of Jamaica's transportation. The Sunday Gleaner, p. 6A to 7A

Bell, Klao, (2002, January 13), Some robot taxis, minibus drivers carrying fake papers. The Sunday Gleaner

Editorial, Taxi Licenses, (2001, December 12), The Daily Gleaner

Messam Raul (2002, Feb. 24), Is the taxi business still viable?. The Sunday Gleaner, p. 11B

News, (2002, March 17-23), Chaos returns to public transportation. The Sunday Herald p. 4A to p. 5A.

Robots eating into income of legal taxi operators (2002, April 29), The Jamaica Observer p. 4

St. Bernard, Dennis, (2002, August 4), "Deportee" remain in the fast lane. The Sunday Gleaner, p. 10B

Thompson, McPherse, (2001, December 11), Unlimited Taxi licenses proposed. The Financial Gleaner p. 2

Two thousand illegal taxi seized (2002, April 29) The Jamaica Observer p. 1

**ARTICLES FROM U.S. NEWSPAPERS**

Alan, Finder (1992, January 27), Dinkins Plan would alter taxi industry, The New York Times. p. 1

Bazzi, Mohamad, (1992, July 4), Quality of Taxi Service Declined. Newsday (Queens ed.) p. 83

Boorstin, Robert, O. (1986, August 13), 2 Taxi Groups urge a tripling of Medallions. The New York Times. p. 5

Liff, Bob, (1992, October 14), Taxi Plan Hailed, Hocked. Newsday (City ed.) p. 8

Newman, Andy. (1998, November 17), Yellow Cabs and Black Cabs: A Quick Lesson. The New York Times, p. 14

**LIST OF LEGISLATION AND CASES**

1. The Road Traffic Act 1933 [J] – Sec. 60.e. Sec.6
2. The Road Traffic Regulation 1938
3. The Road Traffic (Taxi and Contract con) Regulation 1963
4. The Road Traffic Amendment Act 1991 [J]
5. The Road Traffic Act (Amendment of Appendix) Order 2001
6. The Public Passenger Transport (Corporate Area) Act, 1947, Act 21 of 1953 [J]
7. The Public Passenger Transport (Rural Area) Act, 1970 [J]
8. The Office of Utility Regulation Act., 1965 [J]
9. The Office of Utility Regulation (Amendment) Act, 2000 [J]
10. The Transport Authority Act 1987
11. Termination of Employment and Redundancy Payment Act 1974 [J]
12. Motor Vehicle Insurance (Third Party Risk) Act [J] 1941

146      TRANSPORTATION AND LAWS IN JAMAICA

13.      *Lochner v New York* 198 U.S. 45 (1905)

14.      *Meachum v Fano* 427 U.S. 215 (1976)

15.      The Provisional Collection of Tax (Road Traffic) Order, 2002

16.      *The Attorney General of Jamaica v. National Transport Cooperative Society Ltd.*, Claim No. 2003/HCV, 1969, delivered November 29, 2004 by Brooks, J.

## **WHACHULOOKINAT? HONOUR, MASCULINITY AND VIOLENCE AMONG CURAÇAOAN YOUTHS IN THE NETHERLANDS**

Marion van San

*Rotterdam Institute for Social Policy Research, Erasmus University,  
The Netherlands*

---

### **Background and Introduction**

The article analyses juvenile justifications for stabbing. It is part of a larger study on the justification of delinquent behaviour by Curaçaoan adolescents in The Netherlands. It focuses on the differences and similarities of how these youths justify their behaviour.

Sixty (60) youths (half with a police record, half without) and some of their family members have been interviewed. The analysis reveals that the youths often take carrying knives for granted. Surprisingly, there are only small differences between the justifications of the youths with or without a criminal record, and between offenders and non-offenders.

To explain this, the article examines the meaning, explanation and background of the practice of stabbing. Neutralization theories and concepts of honour and manhood provide a theoretical backdrop for the discussion.

For quite a few years, Curaçaoan youths have been causing serious crime problems in The Netherlands. The growing problems mainly have to do with the influx of poorly educated immigrants from The Netherlands Antilles. The Netherlands Antilles is still officially part of the Kingdom of The Netherlands, and Antilleans can freely settle in The Netherlands - especially after 1985 when the Shell refinery, where many Curaçaoans worked was closed down, more and more Curaçaoans immigrated to The Netherlands. It was mainly members of the lower socio-economic class in Curaçao who came to The Netherlands since as unskilled labourers, they were the first to lose their jobs at Shell.

They differ in a socio-economic sense from earlier waves of immigrants who came to The Netherlands with scholarships to study there or were selected for a labour contract. The earlier colonial migration of middle-class immigrants that had been going on since the 1960s was thus largely replaced by lower-class settlement. The educational level of the lower-class immigrants was extremely low, their mastery of Dutch was poor and their experience with The Netherlands limited. The group largely consisted of single mothers and poorly educated youths who often came to The Netherlands without their parents (Van Dijke et al, 1990).

Unfortunately, the growing inflow of immigrants came at the time of a severe downturn in Dutch employment. In the first half of the 1980s, the economic recession caused high unemployment rates among Dutch, as well as,

immigrant workers. One explanation for the high unemployment among ethnic minorities is that the recession was particularly widespread in the industrial sector, and mainly in the lowest ranks there where many immigrants were employed. Another explanation is that industries were restructured and many of the jobs done in the past by immigrant workers were now automatized.

A 1984 survey showed that unemployment among Antilleans was 20% as compared to a total unemployment of 8%. There was a slight improvement in the economy starting in 1985, but the ethnic minorities barely noticed it. In absolute figures, as well as percentages, ethnic minority unemployment continued to increase (Tijdelijke Commissie Onderzoek Integratiebeleid, 2004:180-181).

The downturn in Dutch employment was particularly unfortunate for poorly educated immigrants from The Netherlands Antilles who had mainly settled in harbour and industrial cities such as Amsterdam, Den Helder, Rotterdam and Dordrecht. These immigrants from the poorest neighbourhoods of Curaçao found a safe haven in the poorest neighbourhoods of these cities where they met many people they knew from back in Curaçao. Many of the Antillean residents of Dordrecht, for example, live next door to their former neighbours in Curaçao.

The arrival of these poorly educated immigrants led to a considerable crime problem that has attracted the attention of criminologists. De Haan (1993) examined the role of Antillean and Surinamese youths in street muggings in

Southeast Amsterdam. Bos and Van Hulst (1993) have conducted a study in different police regions on the crime rates of Curaçaoan youths in The Netherlands and the types of crimes they commit, and De Jong, Steijlen and Masson (1997) have studied Antillean crime rates in the Rotterdam Rijnmond region from 1990 to 1995.<sup>i</sup> The authors conclude that the criminal behaviour of Antillean youths and young adults differs from that of other ethnic groups including the Dutch. They exhibit extremely high crime rates and the severity of their offences is serious.

According to the researchers, there is also a rising trend in the amount of crime among Antillean youths in the 1990s. The situation with Antillean youths in The Netherlands has only gotten worse since then, especially the fact that more and more single uneducated youths have recently moved from the Antilles to The Netherlands where they have gone straight into the world of crime as it were, and is a cause of great concern. So after all these years, the delinquent behaviour of youths from Curaçao is still high on the agenda.

What is striking, besides the high crime rates among Curaçaoan youngsters, is the frequent violence of the offences they commit. Relatively speaking, the high rate of violent crime among youths from The Netherlands Antilles has been common knowledge for years and is repeatedly confirmed by research (Korf et al, 2001). It is also clear from the study that this article is based upon that the respondents are youths who regularly carry a knife and in most cases do not hesitate to use it. Very little is

known, however, about the possible reasons why, for example, because so little research has been conducted so far on what is going through the minds of the offenders when they injure or kill someone.

This is why the central question in this article is how Curaçaoan youths justify stabbing someone with a knife. The extent is examined to which there are similarities or differences in the contents of the justifications of violent offenders and non-offenders. The issue is also addressed of how these differences and similarities can be explained. But before this, however, we should first look at the most important conclusions which flow from neutralization theory.

### **The Scope of the Neutralization Theory**

Theories on justifying behaviour are described at length by various authors (Hewitt and Stokes, 1975; Hirschi, 1969; Mills, 1940; Scott and Lyman, 1968; Sykes and Matza 1957). Sykes and Matza have been the first to study the justification of criminal behaviour by youths with a police record. Based on their research, they formulated a new theory in criminology, the neutralization theory, which greatly influences how criminologists approach crime and the underlying reasons for it.

Based on their study, Sykes and Matza come to the conclusion that delinquent youths internalize the values of the dominant, conventional society as well as those of criminal subcultures. Matza (1964:28) describes how the

delinquent transiently exists in a limbo between convention and crime, responding in turn to the demands of each, flirting now with one, now with the other, but postponing commitment and evading decision. According to this author, the delinquent drifts between criminal and conventional action.

In addition, Sykes and Matza conclude that young offenders justify searching for their behavior patterns, what they call neutralization techniques. They note that neutralizing the sense of guilt precedes criminal behavior, thus enabling deviant behavior to occur and so excusing the offender from any guilt. Delinquent youngsters thus do not reject conventional values, but when engaged in illegal activities put their guilty feelings (temporarily) on hold. They do, however, express feelings of guilt and shame about their criminal behavior and they make a clear distinction between those who might, and those who might not be their victims.

In his later theory of drift, Matza (1964) criticizes the subcultural assumptions accepted till then even more emphatically. In his study *Delinquency and Drift*, he suggests that one can speak of a subculture of delinquency, but not of a delinquent subculture. In the theories of Cohen (1955), Miller (1958) and Cloward and Ohlin (1960), the delinquent subculture is seen to be in opposition to the conventions of middle-class morality and inexorably leads its adherents to the breaking of laws. According to Matza (1964:37), the relation between the subculture of delinquency and the wider culture cannot be neatly

summarized in the term opposition. A subculture is almost always not simply oppositional precisely because it exists within a wider cultural environment which affects it, and which it, in turn, affects.

Radical justification is according to Matza (1964:42) characteristic of oppositional cultures, whereas apology characterizes more accommodating subcultures. With the exception of a few bizarre oddities who are regarded by ordinary delinquents as crazy, according to this author, radical defenses do not occur. Instead, delinquents who are not given to contrition, justify their behavior through apology. Their justifications include "I had to join that gang and use a knife. A guy has to defend himself, don't he?" His very slogans reveal his assessment of delinquency. It may be necessary or unavoidable, but he evaluates it in terms of ordinary conventions. He excuses himself, but his gruff manner has obscured the fundamental sense in which he begs our pardon.

According to Matza, it may well be normal that youngsters within a group allow themselves to be pulled along or drift along, away from a number of conventional values and attachments. The periodic breaking of the moral attachment to law arising from neutralization and resulting in drift does not however assure the commission of a delinquent act. Drift makes delinquency possible or permissible by temporarily removing the restraints that ordinarily control members of society, but of itself it supplies no irreversible commitment or compulsion that would be sufficient to push the person into the act (Matza

1964:181). What is more, according to Matza, delinquents after their adolescence, continue as normal members of society. Most juvenile delinquents do not develop into adult career criminals but stop committing criminal acts as soon as they have conventional 'adult' responsibilities like family and job.

Although neutralization theory has had an important influence on thinking about criminality, the literature on justification is still unclear on a number of issues. An important question is, for instance, why youths who adhere to the same values and consequently justify violent conduct in the same way can nonetheless behave very differently in their daily lives? Why does one commit a crime and the other not, given their common background?

Matza's theory gives no answer to this question because he never compares delinquent with non-delinquent youths. Neutralization theoreticians mainly base their conclusions on the statements of youths with a police record. Youths with no police record are not the subject of their research, and so an important basis for comparison is overlooked. It is also unclear to what extent the individual backgrounds of youths might or might not have an influence on the way in which they legitimize their behavior.

In the work of Sykes and Matza and in Matza's later work, no distinction is made between youths from different ethnic groups. In this way, it is not clear to what extent the cultural circumstances in which youngsters grow up might or might not influence the legitimizations which they use.

Since I work from a comparative perspective in my research by comparing delinquent with non-delinquent youths, I hope to be able to use the material I have gathered to contribute to the discussion, which has been going on for many years in criminology in general and in justification research in particular. In addition, this article discusses the legitimizing of a specific group, Curaçaoan youths who have to a great extent grown up in The Netherlands.

Curaçaoan youths in The Netherlands are an interesting case for neutralization research because the justifications they present may have been affected by their own experiences and background. That is why this article examines the justifications they present and the extent to which they are related to the specific background and current life situation of these youths in The Netherlands.

### **Method**

The research material consisted of interviews conducted with 60 Curaçaoan youths in The Netherlands aged 14 to 17. Their families are all from the lower socio-economic class of Curaçao. Half of the youths already have a police record, the others have never been in trouble with the law.

The offences these youngsters committed include theft, robbery with violence, homicide or manslaughter (attempted or actual), threatening behavior, firearms possession, drug offences and rape. Thirteen of the youths with police records stated that they have been involved in

manslaughter or attempted manslaughter (stabbing), and fourteen of them have threatened with a knife or gun. One of the youths without a police record admitted that he was guilty of attempted manslaughter, and fifteen of them have threatened someone with a knife or gun. The youths with a police record were approached when they were under arrest. In the course of two years, all the youths in the age group to be examined were approached.

They had all been born in Curaçao and were incarcerated in one of the facilities for juvenile delinquents in The Netherlands. Some would not cooperate, others were not suitable (for example, if they were psychologically disturbed) to participate in this research. Some thirty youths remained who were interviewed extensively about their criminal careers.

The youths without a police record were approached at the schools they were attending at that time. Several youths who attended a vocational training school were selected because it is the type of school that youths in trouble with the police had been attending at the time of their arrest. A few of them attended a five-year or six-year secondary school, and a few had dropped out of school but had been attending a vocational training school up till then.

Though the results of the interviews with these youths could not be generalized, I have aimed in this study for "qualitative completeness." That is to say, that I have spoken to so many youths, that I feel that I have obtained a complete picture of the mechanisms of delinquency and its

legitimizations which are manifested within this group. According to the rules of ethnographic methodology, the researcher continues searching for the unknown until no new information is obtained and thus feels reasonably sure of being able to formulate a well-founded answer to the research question. This level had been reached after sixty youths had been interviewed.

As in the study by Sykes and Matza, the main focus is on the youths' stories themselves. Interviews were conducted in Dutch, not the original language of the respondents, but this fact was not an insurmountable problem. Although I tried to remain as neutral as possible during the interviews, never expressing a judgment, my presence as a female interviewer must have had some influence on their responses. It is conceivable in some cases that my presence made some youths describe their realities differently.

In an attempt to bypass these obstacles, inherent in this type of research, I associated intensively with ten families throughout the two-year field work period. I spent quite some time in their homes trying as much as possible to become part of their lives. A number of random indications enabled me to see past the research group's presentation of self and make my own interpretations ever more acute (see also Sansone, 1992).

I also regularly pointed out to the youths that they say one thing and do something else. This was how I discovered that the youths had not told me about certain offences they committed. Despite my efforts to obtain as reliable as

possible a picture of the world which these youths inhabit, it is not inconceivable that my role as researcher may have affected the material. It is, however, impossible to know to what extent a study conducted by a male researcher would have led to different results.

### **On the Obvious Logic of Stabbing**

In general, the Curaçaoan youths I approached for an interview in my field work period were very willing to talk about their criminal behaviour. It is striking, however, that they made every effort during the interviews to justify it. It is clear from the interviews that most of them viewed stabbing or having a knife in their pocket and using it “if the situation calls for it” as something completely logical. As an indication of how logical it is, they said things like “then you just stab him” or “you have no choice, you have to stab him” and “everyone walks around with a knife.”

They usually described stabbing as “normal” behaviour, as is illustrated in the following interview fragment: *“But something like what I did, that is nothing you know. They ought to just let it go. I didn’t do anything really bad, I am a pretty relaxed kind of guy. Yeah, they (the judges, MvS) call it horrible, but to me it isn’t horrible at all. To me it is just normal you know. You get into a fight, you hit somebody, it is just normal you know. Some people think it is horrible you know, just the fact that you hit someone is just awful. Maybe he has a bloody nose or a bloody lip or you knocked out a tooth or something. But that is just normal, that always happens when you get into a fight you know, so it is normal. And stabbing, yeah in a way that is normal too because wherever people fight nowadays, they stab each other or shoot each other. So the police also realize it is only*

*normal. Because everybody who gets into some kind of fight has some kind of weapon nowadays.*" (Angelo, police record).

The youths who said they never stabbed anyone also agreed that being provoked by someone is a valid reason to stab them. Even if they themselves never stabbed anyone, they said they would if they were attacked. In this respect, they agreed that the offenders were right to stab anyone who attacked them: *"You know if someone is looking for trouble that is a different story. I wouldn't just stab someone for no reason. If they started trouble with my mother or something like that, I would just ... you know. I can hit back, but I don't know what it would take for me to do that. Sometimes I do have a knife when I go out. I am not the kind of person who goes looking for trouble, but if someone starts up with me, if I have to fight, then I fight. But let's say the other guy pulls a knife on me, then I would pull a knife on him. But that has never happened. Fighting, yes, but not with a knife or anything."* (Pajo, no police record).

In some situations a man has to demonstrate that he can defend himself, the youths feel, and then stabbing is almost viewed as a "duty." Especially if their relatives are threatened or insulted, particularly their mother, the youths feel stabbing someone is justified. The following interview fragment illustrates how a relative serves as a kind of catalyst for a youth who pulls a knife: *"Another guy threatened my mother and he said he was going to set her house on fire. Once we ran into him. I was with my mother and my cousin downstairs near the building where my cousin lives. So I hit him, and I happened to have a knife in my pocket, I don't know why I had it on me that day. So I stabbed him in the neck. My mother started screaming at me, but by then I had already stabbed him and I couldn't undo it any more."* (Marcelo, police record).

If their friends are threatened, the youths also intervene. In that case, they feel they are confronted with a dilemma because they have to choose between violating the norms of society as a whole and violating the norms of their circle of friends: *"I went to help out another friend of mine because that guy had grabbed him. You know I am not going to just stand there when somebody is beating up my friend. Another guy was there too and he had a knife. But he wasn't doing anything. So I stepped in."* (Papito, police record).

Loyalty to the group of friends is just as strong among the youths who have never stabbed anyone. When asked whether they would inform the police if they witnessed a stabbing by one of their friends, most of them say no: *"If a friend of mine stabbed someone, I wouldn't say anything to the police. Usually if something like that happens, there is a good reason for it. For example, you are just walking along and someone comes looking for trouble. You try and do your best to get around it but you see that the other person isn't listening and he wants trouble, so you can't just stand around and wait for him to stab you. You have to beat him to it. Then I would help my friend (...) If I had to, I would stab someone for him."* (Armando, no police record).

After "someone else looking for trouble," "self-defence" is cited as another good reason to stab someone. Jankowski (1991) who studies youth gangs in the United States, shows that gang members often justify violence by saying that if the victim had the chance, he would do the same thing. They justify their behaviour by assuming that the world is steered by the Darwinist notion of survival of the fittest. According to the Curaçaoan youths in my study, with or without a police record, the idea that "it is either

him or me" is enough justification for stabbing someone. They claimed that in some cases, they are "obliged" to react with violence, especially if they run the risk of being killed themselves. And if they use violence in self-defence, there is not the slightest reason for them to feel guilty: *"I carry a knife for protection. I have a right to defend myself, don't I? (...) If you get into a fight you have to defend yourself, so you always have to carry a knife, just in case, you know. In case you get into a fight (...) I call it self-defence, some people call it violence or something like that. All it is to me is self-defence, that's all. But the judge doesn't understand that (...) A lot of people carry a knife to defend themselves, you know. Because they think so and so was stabbed, so I better carry a knife too. Or some guy thinks so and so is carrying a knife and maybe I'll get into a fight with him so I ought to carry a knife too. That is how everyone thinks."* (Angelo, police record).

It is evident from the interviews that there are clear rules about the use of violence. The youths feel it is important to use violence in a prescribed, formalized, theatrical fashion because deviation from protocol and scenario often results in disqualification (see also Blok, 2001:109). Most of the youths associate just shooting or stabbing someone for no reason with some kind of psychological disorder. However, if they are "forced" to react and do so the right way, their status rises.

A recurrent theme in the interviews is that carrying a knife and sometimes using it is very logical. It is clear that some of the youths have not only been carrying a knife for the last few years, it is something that goes back to when they were very young. Some even say they were already carrying a knife when they were five or six years old. As is

clear from the accounts, stabbing with little knives often begins as a game or a joke: *“I don’t see myself as a criminal because I didn’t really stab anyone. I was just playing around with a knife. I threw the knife and it fell on his foot. So we were just having a little fun.”* (Benito, police record).

The element of fooling around is also evident from the tendency of the youths whether or not they have a police record to distinguish between “really stabbing” and “not really stabbing.” When they talk about a conflict, they speak of really stabbing (“really stabbing is when you have a fight”). The youths refer to stabbing because you’re just having a little fun or stabbing by accident as not really stabbing: *“I haven’t been really stabbed yet, I was just stabbed for the fun of it or by accident in my leg or some place like that. We would just be fooling around with a knife and it just gets you in the leg or something or in your hand or shoulder or back. That is not really stabbing. Really stabbing is when you get into a fight with someone and you stab them and there is some blood, you know. That is serious business, really serious. But just in your leg or something, that is not real, well maybe it is real but not to me.”* (Angelo, police record).

It is clear from the interviews though that playing with knives often leads to real fighting, especially since the youths want to test their skills. According to them, the reason why conflicts are rarely if ever solved in a fistfight is because their adversaries are often bigger and stronger. If that is the case, they feel it is justified to stab them. After all, nothing is worse than losing, which means a loss of face. What is more, most of the youths feel it is worse to get beaten up, which is perceived as humiliating, than to get stabbed, since it reinforces rather than decreases a

man's status. So they feel it is only right to stab opponents who are bigger and stronger and with whom there is a good chance of otherwise losing a fight with.

It is hard for an outsider to tell who starts a fight, and just as hard to tell whether the adversaries are indeed bigger and stronger than my respondents. At any rate, they probably just use this as an excuse to justify their own violent behaviour. Lastly, the youths refer to how irreversible a situation is ("I can't undo what I did") and the unintentional effects of their acts ("I did not expect him to die"). They told me it was not their intention to cause any harm, but their acts had more serious effects than they could have foreseen.

Since the youths said they never mean to do any harm, they feel they cannot really be blamed for anything: *"It was never my intention to kill him, but he did die. (...) I did not expect him to die from just one stab, because you read in the newspapers about how someone is stabbed maybe ten times and still manages to survive. And I stab him just that one time. (...) Well, I can't say I regret it, because it is over and done with. But I do think it is horrible that the guy is dead because it was not my intention. But you know he is dead so there is nothing I can do about it."* (Papito, police record).

### **Reasons Underlying the Logic of Stabbing**

#### *Honour and Respect*

The various ways Curaçaoan youths can justify their violent behaviour do not exist in a vacuum, they are closely related to their backgrounds. In the society they are from – the

deprived neighbourhoods of Curaçao - honour and respect are issues that play a role in every aspect of daily life. Various authors (Blok, 1991 et al.; Campbell, 1964; Pitt-Rivers, 1966) describe this phenomenon in a wide range of cultures. Their studies show that for individuals who belong to a community where honour and respect are important, insults and threats are often what leads to the use of violence.

Insults and threats are perceived as being so hurtful and offensive that only the use of violence can restore a sense of honour (Blok 1980: 211). In cases like these, the slightest little thing can often be interpreted as an insult or a threat. In *Honour, Family and Patronage*, Campbell (1964:43) makes the following comment on the life of Greek shepherds, the Sarakatsani: "...it often happens at weddings that quarrels develop between unrelated guests. Insults, curses and blows are exchanged and sometimes knives are drawn. (...) A man is insulted, or imagines he has been insulted, by another."

Katz describes how a *visual bump* analogous to a *physical bump* - when someone bumps into you by accident - is enough to lead to violence: "In perhaps all subcultures of the badass, there is a homegrown version of a mind-fucking strategy that is deeply rooted in the danger of eye contact. It is recognizable with the opening phrase 'Whachulookinat?'" (Katz, 1988: 110).

Pitt-Rivers (1966:26) notes that every physical insult leads to disgrace if it creates a situation that requires restitution. This

restitution can be attained by making excuses, which usually amount to a *denial of intention*: by stating that something was not done deliberately, the attacker reduces the seriousness of the insult. This makes the excuse easier to accept. If this does not occur, revenge is called for. There is generally very little leeway however for making excuses and especially for accepting them. Campbell notes: "When a man appears to insult you, you do not pause to consider whether he may have misunderstood what you previously said, you do not in charity accept his apology. You consider only your honour and the consequences his remarks are likely to have if you do not act." (Campbell, 1966:151).

The need to respond to insults is all the more urgent if the humiliation is observed by spectators and the reputation of the person who has been insulted or feels offended is at stake (for example, Van den Brink, 1994). Honour is not only interpreted as the value a person attributes to himself, it is also his value in the eyes of others.

There are certain rules for this kind of conduct (cf. Blok, 1991). Although pointless violence is dishonourable, a man's esteem does rise if he has killed someone. There is no clearer way to show you are stronger (Campbell 1966:152). More generally, individuals always seek out circumstances enabling them to prove their worth (cf. Goudsblom, 1995). Violent confrontations do not simply develop by accident, they are often provoked, as Jamous (1992) observes in his study of the Iqar'iyen, a Berber-speaking people in the north of Morocco. His study shows that a man is only considered honourable if he does not just react defensively to insults,

but also attacks others in an aggressive fashion.

These notions of honour and respect hold true for any number of groups. They also pertain, however, to the Curaçaoan youths in the study this article is based on. It is similarly true that these youths are not apt to sit back and wait, and far more likely to provoke violent confrontations themselves. If someone “butts into their business” or “comes looking for trouble” or if someone “insults” or “threatens” them, most of the Curaçaoan youths feel justified in stabbing them: *“Why should I get into an argument with that guy? That is what goes through my mind, you know. Why should I waste any words on him? So I just go ahead and shoot him. Then he is not going to bother me any more. That is the way we think, at least it is how I think. And I think the rest of us think that way too. Why should you talk to the guy or get into an argument? That is more the way women would do it. I am not a woman, I don’t have to start talking to someone who is bothering me. It is better to just get him out of my way. Yeah, and then just deal with it.”* (Marcelo, police record).

The youths only respond to insulting comments made by people who are in more or less the same position. The elderly and women are categories of victims the youths themselves say they would never harm. Men and peers are the ones who run the greatest risk of being stabbed “if they come looking for trouble.” Responding to insults from people with a lower status is considered dishonourable (Elias, 1983; Jamous, 1992 et al; Pitt-Rivers, 1966). This implies that insults from them can more easily be tolerated. It is dishonourable for a man to attack women, old people and children - in short anyone weaker than he is. If he does so, he risks losing his own reputation. This explains why the

victims are usually youths of approximately the same position and age as the Curaçaoan youths.

### *The Knife as Status Symbol*

Most of the Curaçaoan youths think it is a “good” thing to always have a knife in their pocket. They feel the neighborhood they are from in Curaçao, where it is considered normal to have a knife or a pistol in your pocket, has influenced their way of thinking. In their opinion, the fact that so many people in the districts they are from are in the habit of carrying a gun or a knife has to do with the high crime rates there, and it is wise to always have “something” to defend yourself with.

The respondents said that in Curaçao, they were accustomed to violence, which is why they reacted without any emotions at all when they witness violence or use it themselves: *“I have seen blood plenty of times. In Curaçao when I was a little kid I used to go to clubs when I was twelve, thirteen years old. I have seen a lot of people killed. That is why I don’t feel anything when I see blood. In Curaçao, I saw people get stabbed and shot. I am just standing there and I see the guy bleeding. I walk away. That is why I can stab someone and not feel anything.”* (Benito, police record).

When they come to The Netherlands, the youths feel it is only logical to carry a knife in their pocket, especially since they also live in the kind of neighborhoods there where crime rates are high. Ultimately, the knife is a status symbol for them up until a certain age. Once they have become adults and started their own families, they seem to consider carrying a knife less important. After all, a man with the

status of head of the family is less trigger happy, since he is now responsible for his family and has to think more about the consequences of whatever he does. When they are young, men mainly have to prove their courage to show they are worthy of their name. When they are older, however, they mainly have to demonstrate that they are capable of leading and taking care of a family, the way their fathers did (Di Bella 1992:153).

There is also a strong macho culture in the network these youths are part of. A man is expected to defend himself against any insults that come his way by using violence. The youths' physical ability to defend themselves is largely what determines their social position, their status and the respect others have for them, and thus their honour, reputation and identity (Blok, 1980:219). Since it is what provides them with this identity and status, the knife is the symbol of their sense of honour. The knife makes words redundant and the use of the knife is consequently sometimes inevitable.

Carrying a knife and stabbing others with it is their way of coping within the group, of "belonging." The Curaçaoan youths often claim they "have to" stab someone, and this has to do with their view of stabbing as the most logical solution. As a result, most of them do not feel guilty about it. If an act is viewed as "necessary," then in their perspective, there is no reason to feel guilty about it.

Minor (1981) refers to this neutralization technique as the *defense of necessity*, which is similar in many ways to what Sykes and Matza call denial of responsibility.

*'Konjo bo mama', 'Yu'i puta' and Other Terms of Abuse*

Something else that is related to the youths' sense of honour and plays an important role in their lives is the matter of defending their mother. Only a few of the youths have ever actually stabbed anyone because their mother was threatened or insulted. But virtually all the youths consider an insult to their mother a good reason to stab someone.

Various authors (Campbell, 1964; di Bella, 1992 et al.; Pitt-Rivers, 1966) describe how a man's honour is linked to the sexual virtue of the women in his family (his mother, wife, sisters and daughters). If women do not behave virtuously or anything negative is said about them in this connection, it affects the man's honour and consequently the reputation of the rest of the family. This is also largely the case with the Curaçaoan youths. In the absence of their fathers, they have to protect the honour of their mother and sisters (Römer-Kenepa, 1992:26). The woman's virginity complex and the man's virility complex are part and parcel of lower-class culture in Curaçao (Abraham-Van der Mark, 1984).

Men in Curaçao can derive prestige from sexual relations with various women, but it is totally taboo for Curaçaoan women to ever be unfaithful. A woman's adultery is first and foremost a loss of face for the man. The honour of the lower-class Curaçaoan man is largely linked to the virtue of his wife. Women need to be protected from men who use sexual conquests to prove their manliness. The man who does not provide this protection in his role as husband, father, brother or son or gives the impression of failing in

this respect is certain to lose face (cf. Blok, 1980:215).

Precisely because of the taboo on being unfaithful, Curaçaoan women rarely talk about whatever escapades or relationships with “outside men” they might have (Van Dijke et al, 1990). Curaçaoan youths also frequently conceal the fact that their mother has relations with men. One thing that often struck me in my visits to Curaçaoan families is that the youths virtually never said a word about their mothers’ relations with various men. It is only when I visited the family at home that I noticed the mother often has relations with one or more men. Without their openly admitting it, the fact that their mothers also often have children from various fathers generates a sense of shame among the youths.

It is obvious why remarks like “konjo bo mama!” (literally “your mother’s cunt,” but often used in the sense of “go to hell”) or “yu’i puta” (son of a whore) are the worst imaginable insults. By insulting their mothers’ sexual virtue, they insult the youths’ honour. No wonder the Curaçaoan youths blow up if anyone makes any remarks about their mother: *“I don’t care what people say about my father, but if they call my mother a whore or something like that, it upsets me. Because my mother is something that will always be with me. She made me, you know (...) When you are born the umbilical cord is cut, but that umbilical cord is still always there between the mother and child.”* (Roy, police record).

Even though “konjo bo mama” is the worst insult of all, “konjo” can also be used in a friendly way. It depends on whom the insult is coming from. The way the insult is

interpreted depends on one's social relationship with the insulter. Comments about one's mother are more apt to be tolerated if they are made by friends. But in any other case, a man of honour is supposed to react with violence to any offence to his mother's reputation.

### **Conclusion**

This article examines how Curaçaoan youths justify stabbing someone with a knife. It addresses the extent of the similarities and differences in the justifications of violence given by offenders and non-offenders and how they can be explained. The issue is addressed of whether certain justifications are or are not related to the specific backgrounds and life situations of the youths in The Netherlands.

Since a comparison is drawn in this connection between violent offenders and non-offenders, greater insight is granted into the relation between the justifications the youths give and their ultimate behaviour. An important question is why youths who have the same values and norms and justify violent behaviour in the same way on the basis of them nonetheless behave so differently in their daily lives. Up until now, the answer to a question like this has largely remained unclear in justification studies because neutralization theoreticians only base their conclusions on the statements of delinquent youths.

Sykes and Matza work from the assumption that juvenile delinquents believe in the same rules as society as a whole

even if they do violate them themselves. They wonder though why it is that individuals violate the rules they believe in, and try to discover why even though most youths with or without a police record believe criminal behaviour is wrong, one category engages in crime and the other does not. The authors assume that even if youths who do and do not engage in criminal behaviour might have the same norms and values, this does not necessarily mean they will behave the same way. According to these authors, one factor this has to do with is the language usage of criminal youths, which provides them with a number of mechanisms for justifying their criminal behaviour.

One striking result of my study is that there are far more similarities than differences in how Curaçaoan offenders and non-offenders justify violence. It appears, for example, that both categories of youths use the same justifications for violence (“someone else looking for trouble” or “self-defence”) or stabbing with a knife. The fact that justifications of this type are used by the youths has a great deal to do with their backgrounds and the day-to-day reality in the deprived neighbourhoods of Curaçao that they come from. In these neighbourhoods, notions like honour and respect are extremely important, knives are not viewed as weapons but as status symbols, and it is expected of a man that he defend his mother’s sexual chastity at all times.

Although the kind of life they led in Curaçao does exert an important influence, it would go too far to assume this life

is simply continued as it were in The Netherlands. I object to an all too facile interpretation of crime as something caused or determined by people's cultural background. Immigrants adapt to a new country, adopt its customs and abandon elements of their old culture. So in itself, this fact would not provide an adequate explanation.

It is true though that many of the immigrants do wind up in the slums of the large cities in The Netherlands where they meet up with their neighbours from back home so that their lives exhibit considerable similarities to their lives back in Curaçao. According to Bovenkerk (2001:178), it is true that of all the immigrant groups, the one from The Netherlands Antilles exhibits a criminal pattern that most resembles the home country's. More than any other established minority in The Netherlands, Bovenkerk feels this group's problematic crime pattern, especially as regards minors, can be viewed as a continuation of the Curaçaoan lifestyle and crime pattern.

The question remains, however, as to why some youths stab someone, and others do not. In view of the background factors cited above, the main question is not why stabbing is so common in this group, but why it is so uncommon. Compared with other groups, as is witnessed by the statistics, violent offences occur relatively frequently among Curaçaoan youths and young men. But if we examine the number of violent offences, we see that the figures are not that high.

Of my sixty respondents, for example, *only* fourteen

admitted ever having stabbed anyone with a knife. Certainly, if we take into consideration the youths' background, one might expect there to have been more violent incidents. To make sense of the data, it might be wise to take a closer look at the youths' socio-economic background, particularly as regards the difference between the ones who have stabbed someone and the ones who have not.

As we have seen, insults and threats tend to be the immediate reason for stabbing someone. We have seen how several authors (Campbell, 1964; Katz, 1988; Pitt-Rivers, 1966 et. al.) have come to a similar conclusion. Matza (1964:79) looks at youths' reactions to insults and threats. He notes that whenever the delinquent is assailed or provoked, the moral bind to law may be neutralized. He may in any situation, on turf or off, take the offensive. Whether he does or does not depends on occasion and mood. The possibility of delinquency exists since the compunction to conform emanating from the bind of law has been neutralized. He may now drift into delinquency.

But there is no assurance that the drift will culminate in actual delinquent behavior. Over the long run, it is reasonable to expect that on occasion the drift will culminate in actual combat. But in any single instance, it is difficult if not impossible to determine whether the loosening of social control in drift will result in the commission of an offense. The delinquent's subculture is simply too rich in options, too poorly delineated and specified, too ambivalent about its enterprises to yield

anything approaching clear-cut directives to action (Matza 1964:81).

Unlike Matza, on the basis of this study, I came to the conclusion that delinquency is not simply dependent on 'mood' and 'occasion,' but rather, it is the specific backgrounds of the youths which make that one individual will, while another will not commit a violent act.

These youths, who are in a weaker position than their peers in various senses, not only use insults and threats as justifications for their behaviour, their weaker position also makes them more apt to feel threatened or insulted. Compared with youths who have never committed a violent offence, their weaker position makes them more apt to feel their honour is at stake. This is also why they are generally quicker than others to react to threatening confrontations and more apt to feel offended. What is more, it is usually they themselves who seek out situations where they can fight to defend their honour.

Lastly, violent offenders, who are generally unsuccessful in various fields, have less at stake when they react to violent confrontations with violence than non-offenders who attach greater importance to their education or careers or other matters. In this sense, their behaviour bears a considerable resemblance to the behaviour of other groups who attach great importance to honour, respect and status (Campbell 1964; di Bella 1992). Contrary to what Sykes and Matza assume, it is only partially true that

the Curaçaoan youths in my study believe in the rules of society as a whole.

Unlike Sykes and Matza, in this study I have found little evidence to support the idea that delinquent youths subscribe to both the values of criminal subcultures and those of the conventional society. On the basis of my research, I arrive at the conclusion that some of the Curaçaoan youths to whom I spoke came into such minimal contact with conventional values that it seems highly unlikely that they will subscribe to them.

In this respect, I agree with the conclusions which Anderson (1999:36) in his study *Code of the Street* found. That is, that there is a great deal of “code-switching” among youths between decent and street-oriented behavior, depending on the situation. Anderson notes that young people share many of the middle-class values of the wider white society but know that the open display of such values carries little weight on the street. Those strongly associated with the street, who have less exposure to the wider society, may have difficulty in switching codes; imbued with the code of the street, they either don’t know the rules for decent behavior or may see little value in displaying such knowledge.

The neighborhoods where Curaçaoan knife-carriers come from and the neighborhoods where they tend to live in The Netherlands, just as the families in which they grow up, give them few opportunities to come into contact with conventional values. The fact that these youths do not tend

to resolve conflicts in a conventional manner – for example by talking – but rather by choosing violence, is, from this perspective, scarcely surprising.

### **Endnote**

---

<sup>i</sup> It is difficult, however, to get a clear picture of the crime problem as regards Curaçaoan youths, since the Dutch authorities do not register the ethnic identity of suspects. They do register the place of birth though, which is often The Netherlands, so that the crime figures on this group should also be approached with caution.

**References**

- Abraham-Van der Mark, E.E., *Yu'i Mama. Enkele facetten van gezinsstructuur op Curaçao* (Amsterdam: Universiteit van Amsterdam, 1984).
- Bella di, M.P., 'Name, blood and miracles: the claims to renown in traditional Sicily', in: J.G. Peristiany and Pitt-Rivers, J. (eds.), *Honor and Grace in Anthropology* (Cambridge: Cambridge University Press, 1992) pp.151-165.
- Benson, M.L., Denying the Guilty Mind: Accounting for Involvement in a White-Collar Crime, in: D.H. Kelly, ed., *Deviant Behavior. A Text-reader in the Sociology of Deviance* (New York: St. Martin's Press, 1989) pp.408-419.
- Blok, A., The Meaning of 'Senseless' Violence, in: A. Blok, *Honour and Violence* (Cambridge: Polity Press, 2001) pp. 103-114.
- Bos, J. and Van Hulst, H., *Pan i rèspèt. Criminaliteit van geïmmigreerde Curaçaose jongeren* (Utrecht: OKU, 1993).
- Bovenkerk, F., *Misdaadprofielen* (Amsterdam: Meulenhoff, 2001).
- Brink van den, G., Van gevecht tot gerecht. Geweldpleging in het Zuidoosten van Brabant 1811-1875, in: Bos, D. and Sonneveld, H., eds., *Derde Jaarboek Amsterdamse School voor Sociaal wetenschappelijk Onderzoek* (Amsterdam: Thesis Publishers, 1994) pp. 109-122.
- Campbell, J.K, *Honour, Family and Patronage. A Study of Institutions and Moral Values in a Greek Mountain Community* (Oxford: Clarendon Press, 1964).
- Caring mothers and their 'innocent' sons. On justifying the criminal behavior of Curaçao youths in the Netherlands, *The Netherlands' Journal of Social Sciences*, 2003, vol. 38, no.3, 212-238.
- Dijke, A. van, van Hulst, H. and Terpstra, L., *Mama Soltera. De positie van 'alleenstaande' Curaçaose en Arubaanse moeders in Nederland* (Den Haag: Uitgeverij Warray, 1990).
- Elias, N., *The Court Society* (Oxford: Basil Blackwell Publisher Limited, 1983).
- Goudsblom, J., De civilisatietheorie: kritiek en perspectief, *Amsterdams Sociologisch Tijdschrift*, 1995, vol. 22, nr.2, 262-282.

- 
- Haan, W. De, *Veiligheidsbeleid, berovingen van voorbijgangers* (Utrecht: Willem Pompe Instituut, 1993).
- Hewitt, J.P. and Stokes, R., Disclaimers, *American Sociological Review*, 1975, vol. 40, no 1, 1-11.
- Hirschi, T., *Causes of Delinquency* (Berkeley: University of California Press, 1969).
- Hong, L.K. and Duff, R.W., Becoming a Taxi-Dancer: The Significance of Neutralization in a Semi-Deviant Occupation, *Sociology of work and occupations*, 1977, vol.4, no.3, 327-342.
- Hunt, J., Police Accounts of Normal Force, *Urban Life*, 1985, vol. 13, no 4, 315-341.
- Jamous, R., From the death of men to the peace of God: violence and peace-making in the Rif, in: Peristiany, J.G. and Pitt-Rivers, J. (eds.), *Honor and Grace in Anthropology*, (Cambridge: Cambridge University Press, 1992) pp. 167-191.
- Jankowski, M.S., *Islands in the Street. Gangs and American Urban Society* (Berkeley/Los Angeles/Oxford: University of California Press, 1991).
- Jong, W. De, Steijlen, F. and Masson, K., *Hoe doe je je ding. Antilliaanse jongeren en criminaliteit in de politieregio Rotterdam-Rijnmond* (Delft: Eburon, 1997).
- Katz, J., *Seductions of Crime. Moral and Sensual Attractions in Doing Evil* (Basic Books, 1988).
- Korf, J., Bookelman, G.W. and De Haan, T., Diversiteit in criminaliteit. Allochtone arrestanten in de Amsterdamse politiestatistiek, *Tijdschrift voor Criminologie*, 2001, vol. 43, no 3, 230-259.
- Kroese, G. and Staring, R., 'Je gaat niet naar binnen met een bosje bloemen'. Geweldstoepassing, rationaliteit en professionaliteit bij gewapende overvallen, in: H. Franke, N. Wilterdink en C. Brinkgreve (ed.) *Alledaags en ongewoon geweld* (Amsterdam: Amsterdams Sociologisch Tijdschrift/Wolters-Noordhoff Groningen, 1991) pp. 76-95.
- Levi, K., Becoming a Hit Man. Neutralization in a Very Deviant Career, *Urban Life*, 1981, vol. 10, no 1, 47-63.
- Matza, D., *Delinquency and Drift* (New York: John Wiley and Sons, 1964).
- Mills, C.W., Situated actions and vocabularies of motive, *American Sociological Review*, 1940, vol. 5, no 6, 5-19.
- Minor, W.W., Techniques of neutralization: a reconceptualization and empirical examination, *Journal of Research in Crime and Delinquency*, 1981, vol. 18, no

2, 295-318.

Neutralization techniques. Toward a simplified measurement scale, *Pacific Sociological Review*: 1974, 313-331.

Pitt-Rivers, J.G., Honour and Social Status, in: Peristiany, ed., *Honour and Shame. The Values of the Mediterranean Society* (Chicago: The University of Chicago Press, 1966) pp. 21-77.

Reckless, W.C., *The Crime Problem* (New York: Appleton-Century-Crofts, 1967).

Rogers, J.W. and Buffalo, M.D. (1971), Behavioral norms, moral norms, and attachment: problems of deviance and conformity, *Social Problems*, 1971, vol. 19, 101-113.

Römer-Kenepa, N.C., Curaçaose vrouwen in de slavenmaatschappij, in: Ansano, R., Clemencia, J. et.al., eds., *Mundu Yama Sinta Mira. Womanhood in Curaçao* (Curaçao: Fundashon Publikashon, 1992) pp. 21-41.

San, M. van, Het mes als verlengstuk van de arm. Legitimeringen van 'steken' bij Curaçaose jongens in Nederland, *Amsterdams Sociologisch Tijdschrift*, 1996, vol. 23, no. 3, 454-479.

Schaamte, schande en gezichtsverlies. Hoe Curaçaose moeders aankijken tegen het delinquente gedrag van hun zonen, *Amsterdams Sociologisch Tijdschrift*, 1997, vol. 24, no.3/4, 464-495.

*Stelen en Steken. Delinquent gedrag van Curaçaose jongens in Nederland* (Amsterdam: Het Spinhuis, 1998).

Sansone, L., *Schitteren in de schaduw. Overlevingsstrategieën, subcultuur en etniciteit van Creoolse jongeren uit de lagere klasse in Amsterdam 1981-1990* (Amsterdam: Het Spinhuis, 1992).

Scott, M.B. and Lyman, S.M., Accounts, *American Sociological Review*, 1968, 33: 46-62.

Scully, D. and Marolla, J., Convicted Rapists' Vocabulary of Motive: Excuses and Justifications, *Social Problems*, 1984, vol. 31, no. 5: 530-544.

Sykes, G.M. and Matza, D., Techniques of Neutralization: A Theory of Delinquency, *American Sociological Review*, 1957, 22: 664-670.

Tijdelijke Commissie Onderzoek Integratiebeleid, *Bruggen bouwen* (Den Haag: Sdu Uitgevers, 2004).

## **A PROFILE OF POISONING AMONG FARMERS OF DHARWAD AND BAGALAKOT DISTRICTS OF NORTH KARNATAK**

Purnanand N. Sangalad

*Karnatak Science College, India*

M.G. Huddar

*Karnatak Science College, India*

---

### **Introduction**

Morbidity and mortality due to poisoning is a worldwide problem. The pattern of poisoning varies from country to country, place to place and changes over a period of time due to various reasons. To know the pattern of poisoning at Dharwad and Bagalakot districts of farmers during 2003-2009, a total of 76 poisoning cases were studied from OPD to IPD, followed from admission to recovery or death in a systematic manner. All these cases were analyzed with an objective of knowing the age distribution of victims, the most common type of poison, the manner of poisoning, and also the rural and urban trends.

Among 76 cases, 63 (82.89%) were males and 13 (17.11%) were females with the majority, (40.78%) belonging to the 41-50 years age group. The most common poison encountered was the organophosphorous compounds

(44.74%). Suicide (71.05%) was the most common manner then accidental poisoning (21.05%). Agricultural farmers with rural backgrounds belonging to the lower socio-economic strata were the most common victims (68.42%) compared to others.

Rapid industrialization and exposure to hazardous chemical products, introduction of newer ranges of drugs for treatment, massive use of pesticides in agriculture, increased alcohol consumption and unhealthy dietary habits have widened the spectrum of toxic products to which people have been exposed as compared with the early days. Knowingly or unknowingly, millions of people are exposed to danger by hazardous occupational practices and unsafe storage of toxic chemical products in their day to day lives. Lack of specialized toxicological services in developing countries like India has further contributed to the higher rate of morbidity and mortality (Eddleston, 2000; Flemming, et al., 2003; Jayaratnam, 1990; Shreemanta, et al., 2005; Singh, et al., 2006; Suresh, et al., 2003; Unnikrishnan, et al., 2005; Yanko, et al., 2001).

Easy availability and low cost of hazardous chemicals play major roles in both accidental and suicidal poisoning in developing countries like India, Sri Lanka, South Africa, etc., (Eddleston, 2000; Naser, et al 2003; Shreemanta, et al., 2005; Singh, et al., 2006; Suresh, et al., 2003). Most of the fatality rate is of intentional poisoning by organophosphorous (OP) compounds which have been reported from southern and central India (Batra, et al., 2003; Srinivas, et al., 2005; Thomas, et al., 2000). According

to the World Health Organization (WHO) (1999), more than three million poisoning cases have been reported out of which 251,881 deaths occur world wide annually, of which, 99% of fatal poisoning occur in developing countries, predominantly among farmers due to various kinds of poisoning, including poisonous toxins from natural products (Batra, et al., 2003; WHO,1999). Therefore, an alarm for early diagnosis, treatment and prevention is crucial in reducing the burden of poisoning related injury in any country.

Comparative data revealed that in developed countries, the mortality rate due to poisoning is only 1 to 2%, but in developing countries like India it varies between 15% to 30% (Escoffery, et al., 2004) and is the fourth most common cause of mortality especially in rural India (Peterson, et al., 1977; Unnikrishnan, et al., 2005). It is very difficult to draw a report to say which kind of poisoning is more frequent, as the nature of poisoning varies from one region to another depending on the poison availability and the knowledge and local population regarding the properties of poisons (Unnikrishnan, et al., 2005). This paper aimed to determine the various parameters of poisoning such as type of poisoning involved, the most vulnerable age group and the sex of farmers.

### **Materials and Method**

A total of 76 poisoning cases admitted and autopsied at two Districts of Dharwad and Bagalakot of North Karnataka were analyzed during 2003-2009. The victims

were studied from the time of OPD admission to wards and followed up till recovery or death. Data were collected in a Performa, from the history given by the patient, hospital records, police inquest reports, post mortem reports, FSL reports and also personal interviews with the victims' relatives. Information was collected on the type of poison consumed, age, sex, marital status, religion and hospitalization days were noted from records for each case and analyzed.

## Results

Among 76 cases of poisoning studied during 2003-2009, the majority of the victims were in the age group of 41-50 (40.78%). See [Table 1](#). The most common type of poison encountered was the compounds of Organophosphorus (44.74%) and the least was the Phenol with a single case (1.32%). See [Table 2](#).

**Table 1**  
**Age Distribution of Victims**

Age	No. of Patients	Percentage
0-10	0	0%
11-20	1	1.32%
21-30	8	10.52%
31-40	15	19.74%
41-50	31	40.78%
51-60	19	25%
61 and Above	2	2.63%
<b>Total</b>	<b>76</b>	<b>100</b>

The majority of patients requiring intubation (34/76, 44.74%) were intubated on admission (or soon after) because of severe cholinergic features. Nine of these patients (26.47%) died before hospital discharge. In

patients requiring early intubation, atropine usually treated bronchospasm and bronchorrhoea, but did not affect either GCS or respiratory rate. The effect of pralidoxime was not apparent. Three died within 8 hours of intubation: all were severely ill on admission, were never stabilized, and did not regain consciousness before death. Five died 13–47 hours after intubation. Most had ingested dimethoate and all but one remained unconscious until death. Three patients died later during their inpatient stay, from 3 to 17 days post intubation, mostly from pneumonia that developed soon after admission, and probably resulted from pre-hospital aspiration in some cases.

**Table 2**  
**Most Common Types of Poison**

Poison	No. of Cases	Percentage
Organophosphorus compounds	34	44.74%
Diazepam	10	13.16%
Rat poison	9	11.84%
Barbiturates	7	9.21%
Kerosene	5	6.57%
Alcohol	2	2.63%
Datura	7	9.21%
Bhang	1	1.32%
Phenol	1	1.32%
<b>Total</b>	<b>76</b>	<b>100</b>

Two patients intermittently regained consciousness, while still requiring ventilation, before they died. Seven patients survived and were discharged. Although most were extubated within 48 hours, some were extubated after periods of up to 9 days. Two patients from the latter group regained consciousness but could not be extubated for a further 1 to 7 days. During this time, despite reductions in

muscle power, the patients could move their limbs and eyes to communicate but they could not be weaned from the ventilator. One patient redeveloped respiratory failure over the three days following extubation and required reintubation and ventilation for 3–16 days. Two patients had a GCS of 15/15 at the time of reintubation; the fourth had a sudden respiratory arrest and required cardiopulmonary resuscitation before intubation. The patients were conscious for 3 to 12 days before extubation.

Absorption through the stomach depends on some factors: fullness of stomach and presence of pyloric stenosis. The toxic action of the poison depends on the amount of the substance taken, its distribution to the tissues and also the rate of excretion from the body. With massive ingestion or inhalation, symptoms may appear within five minutes; or may be delayed up to half an hour or a maximum of 2 to 8 hours. Signs and symptoms appear when the cholinesterase level drops to 30% of its normal activity.

Very small amounts of OPC are required to kill a person. The fatal period is usually within 24 hours in untreated cases and within 10 days if treatment is not successful. In nonfatal cases, acute effect lasts for 6 to 30 hours, which disappear within 2 to 3 days but it may persist for 2 weeks. Complete recovery occurs in 10 days in patients treated early. However rapid atropinization, stomach wash with 5000 potassium permanganate solution, artificial respiration, oxygen inhalation, specific cholinesterase reactivator - pralidoxim iodide and antibiotics can save such a victim, if the treatment is given in time.

The most common manner of poisoning was suicide (71.05%) followed by accidental poisoning accounting for 21.05%. Not a single case of homicidal poisoning was observed in our study. See [Table 3](#).

**Table 3**  
**Manner of Poisoning**

Manner	Victim	
	No	%
Accidental	16	21.05%
Suicidal	54	71.05%
Unknown	06	7.89%
Homicidal	0	0
<b>Total</b>	<b>76</b>	<b>100</b>

Most of the victims belonged to rural areas, that is, 63 (82.89%) compared to urban areas. See [Table 4](#).

**Table 4**  
**Rural/Urban Distribution of Victims**

Areas	No. of patients	Percentage
Rural	63	82.89%
Urban	13	17.11%
<b>Total</b>	<b>76</b>	<b>100</b>

Persons in the low socio-economic strata were the most common victims (68.42%) followed by middle class (25%) and least involved were the upper class (6.58%). See [Table 5](#).

**Table 5**  
**Socio- Economic Status of Victims**

Status	No. of Cases	Percentage
Lower class	52	68.42%
Middle class	19	25%
Upper class	5	6.58%
Unknown	0	0
<b>Total</b>	<b>76</b>	<b>100</b>

## **Discussion**

The present scenario of globalization, urbanization and industrialization is creating a lot of stress on individuals in particular as well as on the society in general. Persons who are not able to sustain these stressful situations are the major victims of either suicidal or accidental poisonings.

Males out-numbered females and the majority was in the age group of 41-50 years (40.78%). This particular age group is the most active phase of life for men who are involved mentally, physically and socially in agriculture. They are also more exposed to day to day stresses of life than females. This observation is consistent with previous studies (Dalal, 1998; Escoffery, et al., 2004; Peterson, et al., 1977).

The most common poison observed was the organophosphorus compounds and least encountered was the phenol. This is consistent with the observations made by earlier studies. Suicide was the most common manner of poisoning (71.05%) among residents in rural areas (82.89%) who belong to the lower socio-economic strata (68.42%).

These observations were similar to the other earlier works (Dalal, 1998; Karlliedde, et al., 1988). This is possibly due to illiteracy and poverty of the agricultural farmers residing in rural parts. They solely depend on the agricultural income for their livelihood. Due to some reason (for example, either lack of water or flood) if they are not able

to generate the required income for their day to day living and commitments, they may get frustrated and resort to suicide by these agricultural insecticides, pesticides or weed killers which are available in their backyards.

Poisons may enter the body through different routes. The rapidity of action of a poison depends upon the route of administration, the rate of absorption and the mode in which it is introduced into the system. In order of rapidity of action, the routes are as follows - Inhalation in gaseous or vaporous form (during spraying of insecticides in the field, if proper precautions are not taken, then OPC in vaporous form can be inhaled); injection into the blood vessels; intramuscular, subcutaneous, intra dermal injection; application to an open wound (handling OPC insecticides with bare hands, when there is an open wound in the user's hand); application to a serous surface; application to a broncho tracheal mucous membrane; introduction into stomach (when ingested for suicidal purposes); introduction into natural orifice-rectum, urethra, vagina (as abortifacients, village dais sometimes use OPC, datura, ergot, coleopteris, madar, yellow oliender.); application to unbroken skin (OPC, nicotine, phenol and its derivatives).

### **Conclusion**

The study clearly highlights the profile of poisoning in two districts; Dharwad and Bagalakot of the North Karnataka area, showing that males from the 41-50 years age group were the major victims. It also points towards the most

common poison used, that is, organophosphorous compounds to commit suicide by agricultural farmers of rural areas who also belong to the lower socio-economic strata.

The incidence, trends of poisoning, the morbidity and mortality due to poisoning can be possibly curtailed by the following means:

- (i) Strict vigilance over the sale and distribution of insecticides/pesticides
- (ii) Educating the users regarding the safety measures
- (iii) Good treatment facilities (that is, antidotes, etc.) at rural areas like PHC's and PHU's
- (iv) Establishing Poison Information Centers at schools and hospitals
- (v) Proper and correct implementation of social and economic projects aimed for upliftment of the rural poor and downtrodden

### **Treatment of Organophosphate Poisoning**

#### *Prevention of illness after contact*

- Leave the area where the chemical was released and move to fresh air.

#### *Remove clothing*

- Quickly take off clothing that may have the chemical on it. If possible, any clothing that has to be pulled over the head should be cut off the body instead so the chemical does not get near the eyes, mouth or

nose. If helping other people remove their clothing, try to avoid touching any contaminated areas.

*Wash affected areas*

- As quickly as possible, wash any chemical from the skin with lots of soap and water.
- If the eyes are burning or vision is blurred, rinse your eyes with plain water for 10 to 15 minutes.
- If contact lenses are worn, remove them and put them with the contaminated clothing. Do not put the contacts back in. If eyeglasses are worn, wash them with soap and water. Eyeglasses can be put back on after they are washed.
- If you are wearing jewelry that you can wash with soap and water, wash it and put it back on. If it cannot be washed, put it with the contaminated clothing.

*Discard contaminated items*

- Place the clothing and any other contaminated items inside a plastic bag. Avoid touching contaminated areas of the clothing. If you cannot avoid touching contaminated areas, or you are not sure where the contaminated areas are, wear rubber gloves or use tongs, sticks or similar objects. Anything that touches the contaminated clothing should also be placed in the bag.
- Seal the bag, and then seal that bag inside another plastic bag.
- Call the local county health department right away.

- When the local or state health department or emergency personnel arrive, tell them what you did with your clothes. The health department or emergency personnel will arrange for further disposal. Do not handle the plastic bags yourself.
- Treatment of illness: If an organophosphate is ingested, the person's stomach may be pumped at a hospital. Other times, the person is given activated charcoal to drink. Activated charcoal is a substance that binds with the poison in the stomach to help the poison pass out of the body naturally. Hospitals and other health care experts have medicines that reverse the effects of organophosphate poisonings.

## References

- Batra, A. K., Keoliya, A. N., Jadhav, G. U. (2003). Poisoning: An unnatural cause of morbidity and mortality in rural India. *JAPI*, Oct 2003; 51: 955-959.
- Dalal, (1998). Poisoning trends—a post mortem study. *J.Ind.Acad. Forensic Med.* 1998; 20(2); 27 -31.
- Eddleston, M. (2000). Patterns and problems of deliberate selfpoisoning in the developing world. *Q J Med* 2000; 93: 715- 731.
- Escoffery, T., Carlos., Shirley, E. S. (2004). Fatal poisoning in Jamaica. A Coroner's autopsy study from the University hospital of West Indies; 2004; 44(2), 116 – 120.
- Flemming K., Wim van der Hoek., Donald C., Cole., Gerard Hutchinson., Hubert Daisley., Surjit Singh., Michael Eddleston. (2003). Reducing acute poisoning in developing countries-options for restricting the availability of pesticides. *Toxicology*. 2003; 192: 249-261.
- Jayaratham, J. (1990). Acute pesticide poisoning. A major global health problem. *World Health Statist Quart.* 1990; 43:139-144.
- Karlliedde, L. and Senanayake, N. (1988). Acute Organo phosphorous insecticide poisoning in Sri Lanka. *For.Sci.Int.*1988; 36, 97-100.
- Naser, J., Abdolkarim, P., Mohammad, A., Shahin, S., Nasrin, P.(2003). *Progress in Medical Research*, 2003; 1:52.
- Peterson, H., and Brosstad, F.(1977). Pattern of acute drug poisoning in Oslo. *Acta-Med-Scand.* 1977; 201 (3).233-37.
- Shreemanta, K. D., Manoj, K. M., Kiran, K. P., Sachidananda, M. (2005). Sociodemographic profile of poisoning cases. *JIAFM*, 2005; 27 (3): 133-138.
- Singh, D. P., Aacharya, R. P. (2006). Pattern of poisoning cases in Bir Hospital. *Journal of Institute of Medicine*, 2006; 28:1:3-6.
- Srinivas, R. C. H., Venkateswarlu, V., Surender, T., Eddleston, M. and Nick, A. B. (2005). Pesticide Poisoning in South India-Opportunities for prevention

## 194 A PROFILE OF POISONING

and improved medical management. *Trop Med Int Health*. June 2005; 10(6):581- 588.

Suresh, K. G., Sharda, S. P., Amita, S. and Thomas, K. (2003). A study of childhood poisoning at National Poisons Information Centre, All India Institute of Medical Sciences, New Delhi. *J Occup Health* 2003; 45: 191-196.

Thomas, M., Anandan, S., Kuruvilla, P. J., Singh, P. R., David, S.(2000). Profile of hospital admissions following acute poisoning experiences from a major teaching hospital in south India. *Adv Drug React Toxicol Rev*. 2000; 19: 313-317.

Unnikrishnan, B., Singh, B., Rajeev, A. (2005). Trends of acute poisoning in south Karnataka. *Kathmandu University Medical Journal*, 2005; Vol 3, No.2, 10: 149-154. 67. World Health Organisation.(1999). Guidelines for poison control. *Bulletin* 1999; Geneva, World Health Org.

Yanko, I., Valentin, A. and Ivan, D. (2001). Acute poisoning mortality rate in Plovdiv region, Bulgaria. *Arh Hig Rada Toksikol*, 2001; 52: 307-313.

## **CRIME DATA MINING: AN ANALYSIS OF REAL TIME DATA IN PAKISTAN**

Abida Ellahi

*International Islamic University, Pakistan*

Irfan Manarvi

*University of Engineering and Technology, Pakistan*

---

The law and order crisis in Pakistan has continued to deepen over time, and in recent years the police have been increasingly unable to cope with their additional responsibilities, particularly regarding to combating serious crime.

For law enforcement to be effective, it needs to extract previously unknown knowledge from large amounts of different types of data. Data mining is the most compelling tool for this task.

This report takes the real time data of Police crime statistics of six years from the Federal Bureau of Statistics of Pakistan. It investigates its trends and poses new solutions not only for current police systems at local levels but at the national level also. This paper also explores the weak areas of police systems in dealing with crimes and suggests recommendations.

No part of the world is free from crime. The concern of security and crimes has taken a new turn in the 21<sup>st</sup> century. Some mega events like the terrorist attacks on 11 September 2001 have created security threats not only for the affected country but also for other countries. Technology has brought not only easiness for law-enforcement and intelligence-gathering agencies, but also opened new ways for criminals. In today's world, the major challenge for these agencies is analyzing the increasing volume of data accurately and efficiently. Good information enables law enforcement to prevent crimes and reduce risks of potential dangers (Cope, 2004; Tilley, 2005).

The current police system was introduced by the British in Pakistan. This system currently comprises outdated, time-consuming techniques. Suddle (2008) indicates many problems of Pakistani police such as an outdated legal and institutional framework, inadequate accountability, poor incentive systems, widespread corruption, and severe under-resourcing of law and order.

Today's insecure environment of Pakistan imposes a strong need for more advanced computerized systems for solving crimes. This study intends to explore trends of crime and poses new solutions not only for current police systems at the local level, but also the national level also by taking a real time data perspective. The study also explores the weak areas of the police system and suggests recommendations both for the police and national policy makers.

## **Data Mining Techniques and Crimes**

### *Definition of Data Mining*

Data mining is an interdisciplinary field mainly consisting of research in applied mathematics and computer science (Han & Kamber, 2006). We define data mining in the context of crime analysis as "...an intoxicating tool which aids the criminal investigators in quick, well-organized and valuable extraction of relationships from a large number of crime statistics." It over-rides the need of traditional statistical framework of testing relationships and analysis which is complex and consumes time. Data mining provides in-depth analysis while enabling the investigators to identify patterns and trends by scanning the crime data sets. Some of the techniques are hot spots, Artificial Neural Networks, Repeat Victimization, Univariate Methods and Geographic profiling.

### *Application of Data Mining to Law Enforcement*

Some of the applications of data mining are as follows: Data mining is used to disclose links between crimes and offenders (Goldberg & Wong, 1998). Data mining can be used to get useful information (e.g., marital status, conviction history, and drugs and alcohol addiction) to find links such as physical characteristics of victims and offenders, type of weapon used, and location (Blokland et al., 2005; De Bruin et al., 2006). Similar application of data mining can be seen in detection of credit card frauds using financial transaction (Kingston et al., 2004). The last but

not the least application of data mining can be seen in the analysis of armed robberies (Dahbur & Muscarello, 2003).

According to Thongtae and Srisuk, (2008), the applications in law enforcement from data analysis have two categories. One is crime control and the other is criminal suppression. In crime control, the information from analyzed data is used to control and prevent the incidence of crime. However, criminal suppression is used to grab a criminal by using his/her history recorded in data mining. These and other applications of data mining in law enforcement are helpful in exploring the hidden and obvious links, patterns and trends. Enquiring all these links, patterns and trends gives a clear picture or image of understanding from the crime album.

### *Matching Crimes*

Matching crimes refers to identifying a link among a series of crimes. Matching or linking crimes is important to the police. When crime analysts match a set of incidents then they can identify those patterns which are used by criminals for operations. According to Pease (2001), location is not a sufficient basis for detection and prevention of crimes but non spatial variables can become a potential source for generating patterns of concentration.

A number of studies have been conducted to explore the problem of linking criminal incidents (Brown & Hagen., 2003; Lin and Brown., 2006). Lin and Brown (2004) explained that in agencies where incidents are not in

complete order, manual comparison of incident records is used for making links. On the contrary, agencies with well-managed and well-defined record systems used automated systems.

### *Predicting Crimes*

The literature contains insufficient information about predictive models for police decision support (Oatley, MacIntyre, Ewart & Mugambi , 2002). Prediction of location of crimes can be a valuable source of information not only for police but for all law enforcement agencies. It can help in making decisions about allocation of police resources. By properly allocating resources, police can respond to any crime activity in less time than before. Similarly if taken from the policy- making perspective, prediction can help the policy makers not only about the future trends, but also to provide information about the social causes of crimes. It gives a chance to revise the strategies which seem less effective.

### *Crime Data Mining Techniques*

Data mining techniques use both structured and unstructured data. Some of the famous techniques used in the world in advanced crime detection systems are:

- (1) ***Classification*** groups data into predefined categories with common observed properties. Some of the examples include Bayesian classifiers, evolutionary computing, fuzzy logic, neural networks and rule induction. These are

often used for the prediction of crime trends. Reasonably complete training and testing data may be a requirement of classification in order to avoid limit prediction caused by missing data. It is also known as *pattern recognition, discrimination, supervised learning or prediction*.

- (2) ***String comparator techniques*** make comparisons of textual fields in data base records. Along with it, computation of resemblance between the records is also part of its functions. Identification of unreliable information like name, addresses and security number is also another function of string comparators.
- (3) ***Entity extraction*** is the technique of data mining which point outs the patterns from the available data sets in the form of text, images, or audio materials. According to Chau, Xu and Chen (2002), it has been used for the identification of persons, addresses, vehicles, and personal characteristics from police narrative reports.
- (4) ***Clustering techniques*** have an objective of analysis of data so that it can be grouped in similar groups of data for interpretation in order to learn something about the cases.
- (5) ***Association rule*** mining aims to discover the modes which associate the data element with other elements of data e.g., the association of parent's separation and children crimes. Lee, Stolfo, and Mok (1999) found this technique to be applicable in network intruders' profiles to help detect potential future network attacks.
- (6) ***Deviation detection*** is the technique used for the determination of a different looking part of whole data. It is also called the outlier detection. It can be used for fraud detection, network intrusion detection and other crime

analyses.

- (7) *Series Analysis*: A database which consists of sequences of values or events that change with time is referred to as a time-series database (Han & Kamber 2000). The aim of series analysis is to discover sequences within the data. Han & Kamber (2000) found four types of patterns extracting from time series analysis. These are: Trend analysis, Sequential patterns, Periodical patterns and Similarity search.

#### *Data Challenges Associated with Crime Data*

Currently, law enforcement agencies are gathering large amounts of data from various sources. Processing and analyzing such data, however, has become increasingly difficult. McCue (2006) identified that incident data, narrative reports, financial transactions, telephone records, and internet activity does not represent all information resources but a few. The challenges associated with such data that limit access and functional integration of data resources are:

- (1) *Characteristics of crime related data*. The challenges associated with crime data are the overload of data obtained from diverse data sources, stored in multiple data formats, and large data volumes. Both authoritative information (e.g., crime incident reports, telephone records, financial statements, and immigration and customs records) and open source information (e.g., news stories, journal articles, books etc) are necessary to be collected. All such data are in multiple formats. This causes the unstructured nature of records. Similarly the

increasing volume of data is also a problem.

- (2) *Characteristics of crime analysis techniques.* Several information technologies techniques are being used for crime analysis purposes. However they lack a steady framework which can address major challenges. The effective employment of such techniques in crime analysis is the unanswered question.
- (3) *Characteristics of individual criminals and gangs.* The criminals may be from different countries, nations and cities. As a result, an investigation must cover multiple offenders who commit criminal activities in different places at different times. This can be difficult based on limited investigation resources.

Chen et al (2004b) propose a solution for various data and technical challenges, in the form of the development of “Intelligence and Security Informatics” (ISI). The main objective of this ISI is the “development of advanced information technologies, systems, algorithms, and databases for national security-related applications, through an integrated technological, organizational, and policy-based approach” (Chen et al., 2003a).

### **Methodology**

The study analyzes the real time data (six years) of police crimes. Data was taken from the Federal Bureau of Statistics of Pakistan. The data comprised of crime statistics and numbers of police stations. The variables taken for study were: time period of six years, crime against property, crime against person, geographical

location and number of police stations. Crime analysis can be done in respect of population but unfortunately the data for the population of Pakistan is 10 year old census data. Secondly, the crime data of most recent years could not be retrieved.

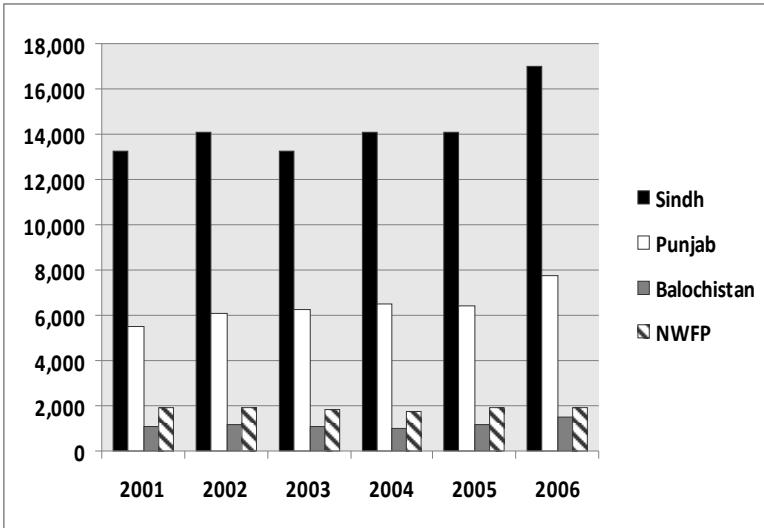
The purpose is to explore the trend of crimes over the last six years in each province of Pakistan, correlation of crimes against the person, with crime against property; the most probable area for crime rate, required actions of police and reduction of crimes at the national level. Data was analyzed using stat pro for excel software. Trends and probable areas of crime were analyzed using time series plots.

### **Data Analysis**

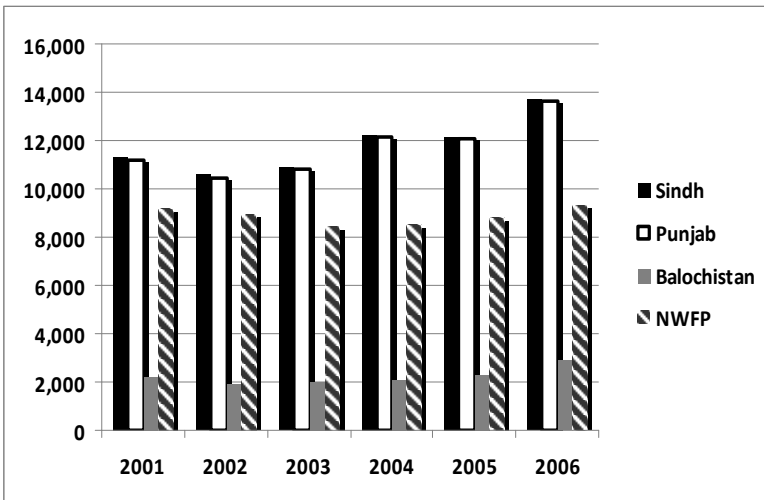
Illustrated below are trends of crime against persons and property in all four provinces over the six year period of time. In [Figure 1](#) and [Figure 2](#) the offence years are shown on the x-axis while the crime statistics are shown on the y-axis.

The figures give information about the most probable area for crimes among four provinces as well as the increasing or decreasing trends of crimes over time. This point is more challenging for police. From the probable area point, the trend shows that the highest crime rate was in Sindh and Punjab (both crime against person and property). NWFP is third and Balochistan stands last. This poses an important question for Sindh and Punjab police

**Figure 1**  
Time Series Plot of Crime Against Property in all Provinces



**Figure 2**  
Time Series Plot of Crime against Person in all Provinces



departments. Increase in crimes against the person can be for several reasons. The movement of NWFP and Balochistan crime rates over the years seems to be smooth.

*Required Actions of Police in this Scenario*

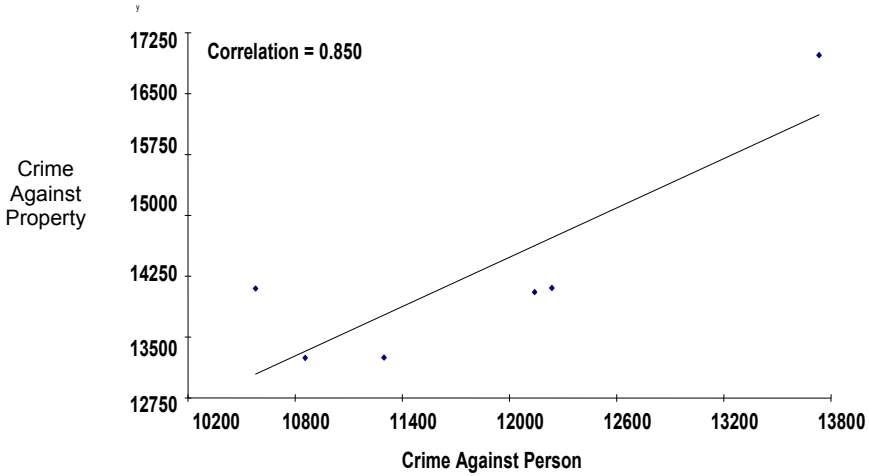
These results show that police have several challenges in all provinces. These are the detection of crime offenders, solving all the reported cases and the prevention of crimes. In this scenario the police have to:

- 1) Quit all the traditional and inefficient practices (incidents of neglect, incompetence, inefficiency, arbitrariness, inadequate or no response to citizens' requests for help to institutionalized abuse of power and widespread resort to high-handedness and corruption).
- 2) They have to look into more advanced techniques to help in handling crime threats.
- 3) To keep a strict check and balance in both provinces regarding migrants.
- 4) To weaken the most wanted and powerful criminal groups.
- 5) To focus on weakening the network of these active groups especially in Sindh.
- 6) To find out the possible linkages among the criminal groups of both provinces.

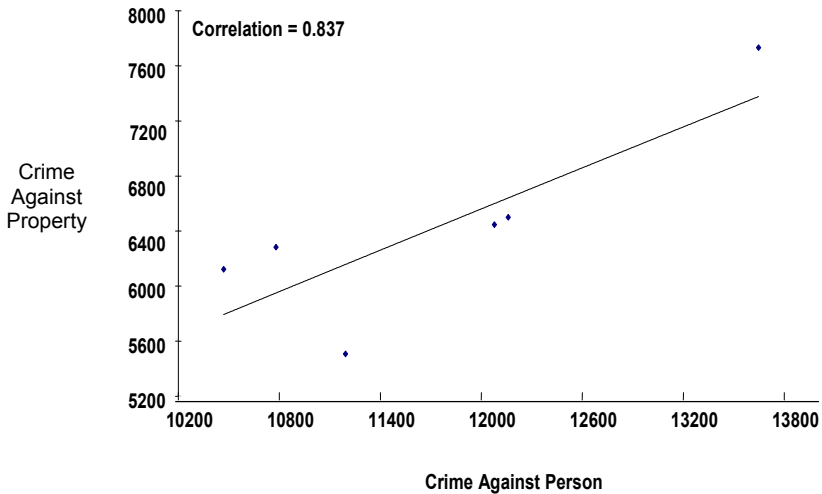
**Correlation between Crime Against Person and Crime Against Property in High Potential Crimes Provinces**

As Sindh and Punjab have the most potential area for crimes, an effort has been made to find out correlations between crimes against property and crimes against

**Figure 3**  
**Correlation between Crime against Person and Crime Against Property in Sindh**



**Figure 4**  
**Correlation between Crime against Person and Crime against Property in Punjab**



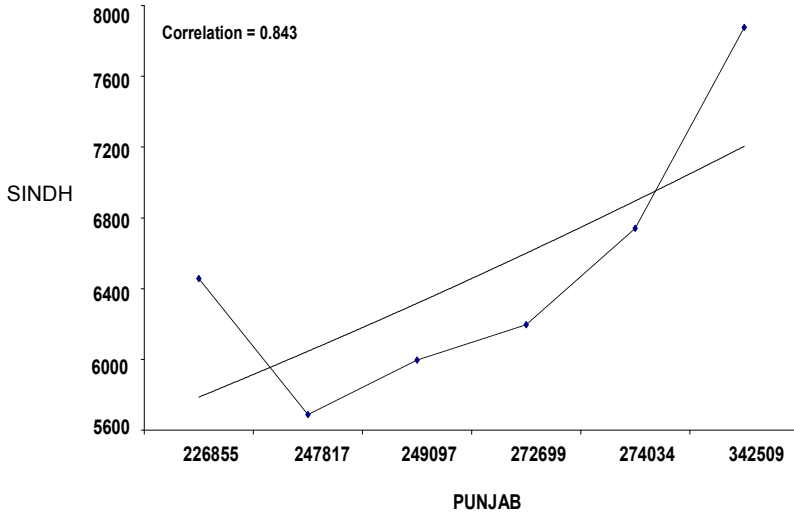
person. The correlation is 0.8 for both which is highly significant (see Figures 3 and 4, respectively). An assumption can be taken that most of car thefts are used as means to commit crimes against persons. Similarly the murder and attempt to murder can be related to dacoity. It means that in dacoity the chance of murder or attempt to murder can be increased.

*Required Actions of Police in this Scenario*

For the police, it indicates that the both categories of crimes can be interlinked. For this purpose a strong networking is necessary. Police should maintain an efficient data base, especially a geographical information system which is able to forecast the most probable area for the next crime attempt. It can help police to prevent crime by tightening security. The correlation between total crimes of two provinces is positive (0.843). (Refer to Figure 5). The trend line shows the increasing trend in both provinces over the time.

This situation requires a strong collaboration and coordination between police departments of both provinces. They have to strictly check the incoming, outgoing migrants as well as the vehicles. The supply of weapons and explosives has to be carefully checked especially in the remote areas. It also requires keeping check on communication media especially cells phone Sims. It requires collaboration with telecom agents. To assess the nature, extent, and distribution of crime in one province is required in order to efficiently and effectively allocate resources and deploy personnel in both provinces.

**Figure 5**  
**Correlation between Total Crime in both Provinces**

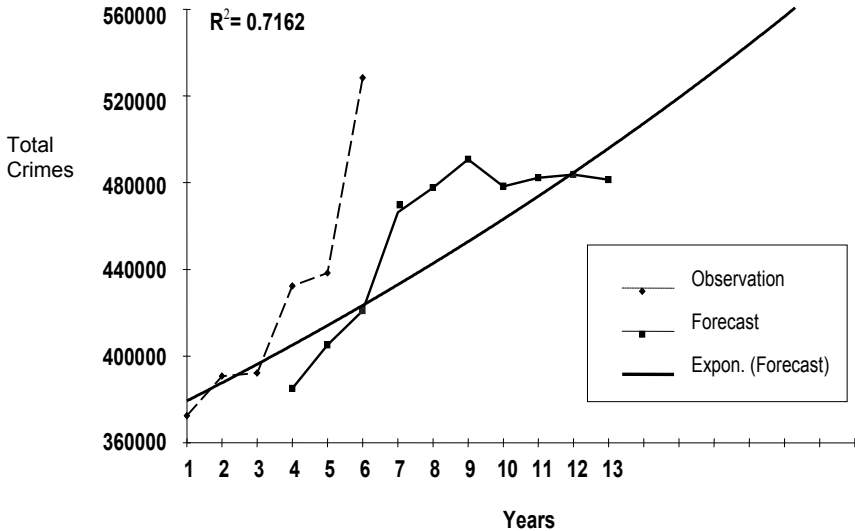


The statistics show the number of police check posts present all over the provinces. This demands a need for adequate police force or personnel. See [Table 1](#) and [Figure 6](#).

**Table 1**  
**Statistics of Police Centers**

Province	Division	No of Police Stations in 2006	No of Police Stations in 2007	No of Police Posts in 2006	No of Police Posts in 2007
Punjab	8	497	629	206	196
Sindh	5	465	436	324	345
NWFP	7	213	214	231	545
Balochistan	6	141	139	215	332
Islamabad	13	15			

**Figure 6**  
**Forecasting Trend for Pakistan**



*Required Actions of Police Administration in this Scenario*

1. Separate division for force on entry and exit points of the city (Terrorism prevent division).
2. To provide advanced gadgets to detect explosives.
3. To keep a balance between technological race of criminals and police.
4. To provide adequate metal detectors and walkthrough gates, enough bulletproof jackets, shields, pads and helmets.
5. Adequate and effective training (for example, training modules, workshops).
6. Reformation of current training systems. It should train minor to major issues such as (i) How to best identify a suspicious person (ii) How to identify a vehicle being

used in a suspected criminal activity (iii) What to do about suspicious people loitering on your street (iv) How to identify stolen merchandise (v) How to recognize an auto theft in progress (vi) How to recognize a burglary in progress.

Pakistan has to look not only from a technological advancement perspective but also to systems and policy view. Following are the main areas which need strong attention:

*Law Enforcement Modernization*

1. To change the way the police are operating.
2. To develop a sub-culture of professional policing, trained and equipped to uphold the rule of law by shifting from more-than-century-old oppressive policing practices to community policing.
3. To reinvent the police partnership with citizens and communities.
4. To enter into a customer service contract with the people of Pakistan, with a new guarantee of more responsive and accountable policing.
5. To implement ideas that work and get rid of those that did not.
6. The police hierarchy should be made responsible not merely for the organization and the internal administration of the force, but also for other matters connected with maintenance of law and order.
7. To take necessary steps for rendering the police professionally competent, operationally neutral, functionally cohesive and responsible for all its actions.

8. To implement the new Police Ordinance (2002). The new Police Ordinance will lead to efficient police operations, better quality decision-making, improved discipline of the Force, and revamping of internal accountability mechanisms.
9. To establish public safety commissions at national, province and district levels crucial to bringing police under a system of external accountability that enjoys public confidence.
10. To improve the quality of both investigation and prosecution, in addition to introducing a system of check and balance.
11. To create institutional structures that ensure political neutrality and democratic control of the police.
12. To establish the recruitment and selection system of personnel- based on merit.

### *Social Reformation*

A national action plan against violence is necessary. This plan should be capable of collecting data on crimes, defining priorities for, and support research on the causes, consequences and prevention of crimes, promoting primary prevention responses and integrating crime prevention into social and educational policies. However, it cannot be ignored that the social perspective of crime gives evidence about injustice in law and public disorder as major factors for increasing crimes. What is needed includes effective prison rehabilitation, community policing, and identifying the conditions that facilitate crime and incivility so that policymakers may make informed decisions about prevention approaches.

**Conclusion**

In this study, an overview of crime data mining in a developing country perspective is presented. The use of data mining for identifying crime patterns (trends and forecasting) in Pakistani crime data is analyzed. Conventional investigation approaches make inevitable mistakes in solving crimes. Therefore data mining can be a better solution in order to reduce crime and produce more accurate results. The crime pattern analysis, however, can only help the detectives, not replace them. Also data mining is sensitive to quality of input data that may be inaccurate, have missing information, be data-entry error prone, etc. The reduction of crimes also needs the revision of social policies.

## References

- Blokland, A., Nagin, D., & Nieuwbeerta, P., (2005). Life Span Offending Trajectories of a Dutch Conviction Cohort. *Criminology* Volume 43 (Issue 4), 919-954.
- Cope, N., (2004). Intelligence Led Policing or Policing Led Intelligence? Integrating Volume Crime Analysis into Policing. *The British Journal of Criminology* Volume 44 (Issue 2), 188-203.
- Dahbur, K., & Muscarello, T., (2003). Classification System for Serial Criminal Patterns. *Artificial Intelligence and Law* Volume 11 (Issue 4), 251-269.
- D.E. Brown, S.C. Hagen., (2003). Data association methods with applications to law enforcement. *Decision Support Systems*, 34 (4): 369– 378.
- De Bruin, J., Cocx, T., Kusters, W., Laros, J., & Kok, J., (2006). Data Mining Approaches to Criminal Career Analysis. In C. Clifton, & N. Zhong (Eds.), 6th IEEE International Conference on Data Mining (pp. 171- 177). Hong Kong: IEEE Computer Society.
- D.J. Icove., (1986). Automated crime profiling. *Law Enforcement Bulletin*, 55: 27– 30.
- Ewart, B.W., Oatley, G.C., & Bum K., (2004). Matching Crimes Using Burglars' Modus Operandi: A Test of Three Models. Forthcoming.
- Goldberg, H., & Wong, R., (1998). Restructuring Transactional Data for Link Analysis in the FinCEN AI System. In D. Jensen, & H. Goldberg (Eds.), AAAI Fall Symposium (pp. 38-46). Orlando, FL: AAAI Press.
- J. Han and M. Kamber., (2001). *Data Mining: Concepts and Techniques*, Morgan Kaufmann.
- Kingston, J., Burkhard, S., & Vandenberghe, W., (2004). Towards a Financial Fraud Ontology: a Legal Modelling Approach. *Artificial Intelligence and Law* Volume 12 (Issue 28), 419-446.
- M.Chau, J.J. Xu, and H. Chen., (2002). Extracting Meaningful Entities from Police Narrative Reports, *Proc. Nat'l Conf. Digital Government Research*, Digital Government Research Center, pp. 271-275.

- Oatley, G.C., MacIntyre, J., Ewart, B.W., & Mugambi, E., (2002). SMART Software for Decision Makers KDD Experience. *Knowledge Based Systems*, 323-333.
- Pease, K., (2001). What to do about it? Lets turn off our minds and GIS. In: *Mapping and Analysing Crime Data - Lessons from Research and Practice*, A., Hirschfield & K, Bowers (Eds.). Taylor and Francis, London and New York, pp. 225-237.
- Sahito, Irfan (2009). Implementation of Digital and e. Investigation Techniques in Law Enforcement Agencies in Pakistan. accessed from: [http://www.allacademic.com/meta/p313966\\_index.html](http://www.allacademic.com/meta/p313966_index.html)
- Song Lin, Donald E. Brown., (2006). An outlier-based data association method for linking criminal incidents. *Decision Support Systems* , 41(3): 604-615.
- Suddle Shoaib Muhammad., (2008). Reforming Pakistan Police: An Overview, Accessed from: [www.unafei.or.jp/english/pdf/PDF\\_rms/no60/ch05.pdf](http://www.unafei.or.jp/english/pdf/PDF_rms/no60/ch05.pdf)
- Tilley, N. , (2005). Community Policing, Problem-Oriented Policing and Intelligence-Led Policing. In T. Newburn (Ed.), *Handbook of Policing* (pp. 311-339). Plymouth Devon: Willian Publishing.
- Thongtae, P.; Srisuk, S.; (2008). An Analysis of Data Mining Applications in Crime Domain. *Computer and Information Technology Workshops, 2008. CIT Workshops 2008. IEEE 8th International Conference;* Page(s):122 – 126.

## **Policy Notes**

---

# **A PERSPECTIVE ON JUVENILE RIGHTS AND JUSTICE IN JAMAICA: A CASE FOR WARDS OF THE STATE**

Oniel Jones

*The University of the West Indies, Mona Campus, Jamaica*

---

## **Background and Introduction**

This paper focuses on the preservation of the rights of juvenile offenders and its implications for the Jamaica juvenile justice system. The starting point of analysis is at the moment the juvenile comes in contact with the justice system, and it goes through the different stages of the justice process to the point where the matter is disposed of. The post disposition phase is also analysed particularly for offenders who are deprived of their liberty. These issues are examined within the context of the Jamaican but references are made to the Caribbean, first world and other third world countries.

---

*This paper is based on research conducted within the Jamaica juvenile justice system in 2006 for the completion of a Masters of Science degree. The paper represents preliminary research on the subject matter and the results are by no means conclusive. The motivation to write and complete this paper is attributed to Dr. Noel Covell, Head, Management Studies; Dr. K.A.H Knife, Strategist and Lecturer Management Studies, and Dr. Densil Williams, Lecturer and Head of the Research Task force, Management Studies. Extensive editing of the paper was done by Caren Yvonne Nelson and Dr. Noel Covell.*

This study sought to answer the following central question: Does the Jamaica juvenile justice system and process inadvertently or deliberately violate the internationally acclaimed rights of juvenile offenders? The study incorporated the use of the survey method and used the questionnaire and the interview as its primary instruments.

One hundred juveniles from three correctional centres were surveyed and interviews were administered to personnel from the Correctional Services, The Child Development Agency and the Child Advocates Office. The data was analysed using SPSS software.

Among its findings, the study revealed that juvenile rights are infringed at all levels of the justice process (particularly in pre-sentencing detention areas and within correctional centres), but there is also evidence that some rights are preserved. It also revealed that there is a low understanding by stakeholders as to how regional and international conventions and norms should influence the carrying out of juvenile justice.

In the Caribbean the interrelated issues of juvenile rights, juvenile crime and juvenile justice are obscured in the area of academic research and are relatively new in policy development and implementation. This is because the focus has always been on the criminal justice system, as opposed to a juvenile justice system. The international spotlight has been so focused on criminal justice that Caribbean governments dedicate much resource to ensure

that their countries are viewed favourably by international human rights organisations<sup>1</sup> and organisations of international economic interest. Therefore, juvenile justice has been overshadowed by the broader criminal justice system with focus on adult offenders.

Jamaica has been highlighted by international organisations for its contravention of numerous adult rights. The 2005 Amnesty International Report on Jamaica,<sup>2</sup> for example, makes special reference to Jamaica's mandatory death penalty for capital murder based on a prior ruling on the matter by the UK Privy Council<sup>3</sup> which is the court of final adjudication in Jamaica. The ruling requires that all those currently under sentence of death be given new sentencing hearings in order to present mitigating evidence to the court. The report states further, "There were continuing reports of ill-treatment, possibly amounting to torture, in police custody. Conditions in prison and other places of detention were harsh and in many cases amounted to cruel, inhuman or degrading treatment" (Amnesty International Report, 2005).

Cases such as *Osborne vs. Jamaica*<sup>4</sup>, *Robinson vs. Jamaica*<sup>5</sup>, *Wright and Harvey vs. Jamaica*<sup>6</sup>, *Kelley vs. Jamaica*<sup>7</sup> and the renowned case of *Pratt and Morgan*<sup>8</sup>, have all contributed to the pool of literature in international law as a result of rulings by international legal organisations. These cases have also invoked legal reform and policy considerations on the part of the Jamaican Government. Interestingly, all are adult criminal cases; finding a juvenile case of such repute is almost an impossible task. This

could be misconstrued by a uninformed observer to mean that there is nothing to report, or be properly interpreted to mean that interest in child and juvenile rights is not only obscured but is sacrificed for the more “news worthy” adult rights.

Barrow (2002) states: *The children of the Caribbean remain virtually unseen and unheard on the region’s agenda for development and research. Where children are visible, it is as passive beneficiaries of traditional services in health, education, welfare and the objects of socialisation in preparation for adulthood, rather than as subjects of rights.*

This quote captures the very essence of the priority given to Caribbean children, and her observation that there is mounting evidence of abuse, exploitation and the violation of child rights aptly puts in context an issue that yearns for scholastic attention and further highlights the slow pace at which there have been any regional or national policies that deal specifically with childhood and child development welfare.

It has been argued that “the concept of child rights is still alien to Caribbean society”<sup>9</sup> and that in the absence of resources and alternatives child rights are often sacrificed. There are still others who are of the view that juvenile justice is an “oxymoron” in the Caribbean region, and purport radical measures of legal reform to bring local legislation in conformity with the Convention on the Rights of the Child.”<sup>10</sup> The conclusion of this bold rhetoric on child rights is that practices and conditions of the justice

system “exposes children to sub-cultures of violence, fragments families and communities, disrupts education and, rather than acting as deterrent, in fact increases the likelihood of recidivism.”<sup>11</sup>

These perspectives on juvenile rights are indications that there is much to be done in the areas of development and research to move this issue from a position of obscurity to one of academic, social and political relevance. They also highlight the gaps that exist in Caribbean research on juvenile crime, juvenile justice and juvenile rights. This research is therefore timely and necessary, not only as a Jamaican-based piece of literature, but as a policy relevant paper with significant implications for the Caribbean and other third world countries.

This paper focuses on the Jamaican Juvenile Justice System and its implications for the observation and preservation of the internationally acclaimed rights of juvenile offenders. It provides critical analyses of crime from the context of juvenile justice and seeks to fill the void in the literature on juvenile crime, juvenile justice and juvenile rights from a Jamaican and Caribbean perspective.

The paper will also incorporate the views of juveniles who are wards of the state to determine the extent to which their rights have been observed by the Jamaica Juvenile Justice system and process. Finally the paper will make recommendations to align the Jamaica Juvenile justice system with the stipulations of international human right conventions that address the treatment of juveniles. While

the paper is primarily focused on the Jamaica, references are made to other Caribbean countries, first world and other developing countries.

In Jamaica, the definition of juvenile is unclear giving the repeal of the Juvenile's Act and the promulgating of the Child Care and Protection Act in 2004. The Child Care and Protection Act, 2004 creates a clear distinction between an adult and a child, but makes no reference, in terms of a definition, to juveniles. Article 2.1 of the Act defines an adult as "a person who has attained the age of eighteen years" and it defines a child to mean "a person under the age of eighteen."

By moving the previous landmark of who constitutes "a child," Jamaica has opened a new debate, particularly among national social agencies, as to whether the concept of "juvenile" is still relevant, given the fact that child has now become such an all embracing a concept. The fact that Jamaica has not withdrawn from any of the Conventions that speaks directly to the right of juveniles is a clear indication that as a nation the philosophy and concept of juvenile continue to be relevant.

Perhaps the most workable Caribbean definition was forwarded by Christine Barrow. She highlighted that 'juvenile' refers to a class of persons comprising both 'children' and 'young persons.' Her justification is based on the fact that most Caribbean legislation define the 'child' as being 'a 'person' under the age of fourteen years and a 'young person' as a person' who is fourteen years of age

and upwards, but under sixteen years.<sup>12</sup> It would therefore seem that any attempt to create a policy for the Caribbean as it relates to 'juveniles' would have to take into consideration the fact that there is no uniform definition of juvenile and in some cases implications have to be drawn from legislations that deal specifically with children.

The paper therefore will use the word "child" and "juvenile" interchangeably. The focus of the paper, however, is on those individuals who are above the age of criminal responsibility, but below the age when they can be legally be considered an adult. This ensures that universality and conformity is attained across the Caribbean despite the fact that there are differences in the specific age limits that defines these conditions. The nature of the paper is of such that it will exclude some children, but will not include anyone that can be legally considered to be an adult.

### **Jamaica Juvenile Crime in Context**

Specifically, the Jamaican crime situation as it relates to juveniles is very prominent among Caribbean states. The Department of Correctional Services, in its 2005 annual report, revealed that the number of juveniles appearing before the Courts in 2005 for various offences was 2,263, representing 383 (21%) more cases than in 2004. It also reveals that 194 inmates were admitted to juvenile institutions during 2005, which reflected a significant increase of 51% over 2004.<sup>13</sup> Further reports in the

Economic and Social Survey of Jamaica (2006) revealed that in 2006, a total of 235 new wards were admitted to the juvenile correctional centres, representing an increase of just over 21%.

While this seems to indicate that a very high number of juveniles have been deprived of their liberty as a result of committing crimes, it does not convey the full picture of juvenile crimes in Jamaica. The real situation is more disquieting if one considers that a larger number of persons are on community-based orders. Some offenders are also diverted from the system at the arrest and detention stage on the discretionary powers of the police. It is also important to note that a number of juveniles, despite committing serious breaches of the law, are never brought to book and therefore their actions are not a part of formal crime statistics.

It would appear, however, that Jamaica's domestic law and international legal commitments guarantee juvenile offenders some of the rights afforded by international standards. It would also appear that the social, economic, and political factors-rooted in Jamaican history and the influence of contemporary trends often combine to subvert many of these standards.

The issue at hand therefore is not so much whether the Juvenile Justice System has taken into consideration the rights of juveniles, but rather, the extent to which what is being done is aligned to the international human rights standards to which Jamaica has obligations.

There is one view that the criminal environment in which the justice system operates is of such that it is difficult to deal with the issues of crime and violence without the inadvertent (and sometimes deliberate) infringement of rights. The important analysis in this regard is whether the interpretation of juvenile rights in the Caribbean should be done based on universally accepted standards, or whether some consideration should be given to the Caribbean culture and sub-cultures.

This gives rise to a number of preponderances: Who set those standards by which Caribbean states judge human rights infringements? What are the initial motives of those who set the standards? Are these guidelines compatible with the Caribbean justice system and process? This Juvenile crime represents a small part of Jamaica's dynamic crime situation, but its importance in the overall scheme of things cannot be understated.

Jamaica's criminological profile in the context of the Caribbean and even internationally is unenviable. There seems to be a general consensus among writers on Caribbean criminology that Jamaica, and by extension the Caribbean, has shown an increasing rate in both conventional and organized crimes (Jones 2003; Harriott 2003; Rampersad 2007; Seiveright 2006). In 1999, Jamaica was highlighted as the country with the third highest murder rate in the world. Although it is an exaggeration, the moniker "murder capital of the world" is certainly not just an over-used criminological expression from a Jamaican perspective.

International scrutiny of Jamaica has not only focused on areas of traditional crime, but there is evidence to show that “white collar crime”, “computer assisted fraud” and violent crimes, are now the focus of international as well as national analysis (Harriott, 2003, Ramdin 2006). Albert Ramdin (2006) suggests that “this represents a shift from... traditional threats to... new transnational and internal security issues.” In 2005, the US State Department’s report on Trafficking in Persons, listed Jamaica in the third tier of countries who were guilty of this new phenomenon.<sup>14</sup> Importantly, despite pervasive public ignorance on the issue, Jamaica has been grouped with countries with a reputation of wide-spread violence and gross human rights abuse.

Youth crimes in Jamaica have made a significant contribution to the country’s overall crime situation. Children and youths were identified as offenders for 23.2% of major crimes in Jamaica (Economic and Social Survey Jamaica, 2006). This is inclusive of 34 children aged 12 to 14 and 1,622 youths aged 15 to 24. The incidence of youth crimes also registered an increase of 3.9 percent over the previous year. It is clear from a Jamaican perspective that the incidence of juvenile crime is inextricably tied to that of crime overall.

What is interesting, however, is the fact that while there has been a decrease in the general crime rate, juvenile crimes has increased. It is also shown in a survey carried out in the Jamaica Juvenile Correctional Centers that crimes by male youth, inclusive of juveniles, is

exponentially higher than those committed by female youth. This is indicative of the fact that the issue of gender is a factor in understanding juvenile crime and presents another area in which much research is needed.

Jamaica's response to changes in international approaches to juvenile crime has been commendable in the context of the Caribbean, but slow and pretty average from the purview of international expectations. Even so, Jamaica has progressed ahead of most of its Caribbean counterparts as it relates to putting in place the stipulations of the Convention on the Rights of the Child.

Importantly the repealing of the Juvenile Act and the passing in Parliament of the Child Care and Protection Act (2004) represent bold steps in the direction of legislation that deals specifically with child rights. Since then Jamaica has set up a Children's Advocate Office and is in the process of instituting a child's registry. It seems fair to suggest that since the signing of the Convention on the Rights of the Child, public debate on child rights have heightened in Jamaica, and for the first time the issue is seen as major both in political and social arenas.

### **Contextualising the Legal Framework**

The deliberations on juvenile justice at the global level have given rise to four very important legal instruments: The United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), The United Nations Standard Minimum Rules for the Administration

of Juvenile Justice (the Beijing Rules), The Rules for the Protection of Juveniles Deprived of their Liberty (The JDL rules) and The Convention on the Rights of the Child (CRC).

The first three instruments are seemingly interrelated and, to get a comprehensive picture of international justice policies, it is imperative that they be viewed together. The Riyadh Guidelines, for example, seem to be focused on the social policies to be applied to prevent and protect young people from committing offences. The Beijing Rules appear to focus on developing an ideal kind of justice system that can best protect the rights of young persons who are in conflict with the law. The JDL Rules on the other hand focus more on safeguarding the fundamental rights of juveniles deprived of their liberty, as well as ensuring that measures for ensuring social integration are established.

### **The Convention on the Rights of the Child**

Regional initiatives since the ratification of the CRC by Caribbean states have signaled that child rights, like other social issues, will be a part of a regional agenda. Hazel Thompson-Aye (2002) captures the very essence of regional commitment in her article on "Juvenile Justice: An Oxymoron in the Caribbean."<sup>15</sup> She stated that in the Belize Commitment to Action for the Rights of the Child, Caribbean states affirm their commitment to 'review' and revise the relevant laws, policies and programmes and fully comply with the letter and the spirit of this Convention.

This commitment is seen as a reaffirmation of an earlier commitment made at the signing of the Santiago Accord that same year. The 1997 Kingston Accord and the 1998 Lima Accord were successful in ensuring that juvenile rights are placed in their proper perspective on the regional agenda. Thomas-Aye (2002) notes that the Kingston Accord “identified as priority areas, juvenile delinquency and neglect and abuse of children... both of which come within the ambit of juvenile justice.” The Lima Accord of 1998 speaks to the issue of the administration of juvenile justice and institutional strengthening.

Caribbean initiatives are seemingly bold steps in the direction of juvenile justice and they continue to be guided by the recommendations of the United Nations whenever periodic reports are made by Caribbean states. The issue of constitutional reform to bring national constitutions in line with the CRC for effective implementation seems to be an issue across the Caribbean. States are increasingly engaging in this important activity to ensure compatibility between CRC and national constitutions.

Despite these deliberations on juvenile justice, it appears that third world countries are slow to ensure that the requisite constitutional reforms are done to facilitate the implementation of recommendations. This is evident in the slow pace at which the recommendations are implemented across the Caribbean, partly as a result of the incompatibility between the Convention on the Rights of the Child and numerous national conventions. It is also

evident in the comments made by the United Nations when Caribbean States make their reports to the Commission on the Rights of the Child and the nature of reform advocated for states in Africa , Asia and some Latin American Countries.

### **Juvenile Rights and the Jamaica Constitution**

Despite the many negative perceptions internally and sometimes externally, it seems that Jamaica has been ensuring some of the main rights that are enshrined under the different treaties. It is, however, difficult to measure with any level of surety the exact extent to which these rights are being observed.

Professor Vasciannie (2002) suggested that in trying to determine the extent to which these standards are observed and implemented, one has to take into consideration cultural and social conditions within the domestic jurisdiction, the expectation of the populace concerning human rights, perceived tensions between respect for human life and effective law enforcement, political commitment to human rights, economic constraints faced by the state and the level of vigor displayed by non-government groups in defense human rights.<sup>16</sup>

Chapter 3 of the Jamaica Constitution speaks to the Fundamental Rights and Freedoms of Jamaicans. While its provisions are not specific to juveniles, general concepts such as "every person," "no person" and "any person"

ensure that the fundamental rights of juveniles have been preserved by the use of inclusive and general language. Among the rights and freedoms that juveniles enjoy by virtue of the fact that they are Jamaicans are the right to "life, liberty, security of the person.....and the protection of the law."<sup>17</sup>

The constitution is also very clear on matters of arrest and detention. Section 2 of Chapter 3 outlines that "Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language which he understands, of the reasons for his arrest or detention." This of course has been the sore point in Jamaican legal system, as there is no clear indication of what amount of time is considered "reasonably practicable." The section goes on to outline that while it is not unlawful to detain, there is certainly some amount of legal ramifications if such detention is not followed by the specific action of bringing the individual before the court so that due process can be achieved.

Perhaps the most profound human rights provision within the Constitution is Section 5 of Chapter 3. This states, inter alia, that "Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty." The concept of due process is outlined in Section 6 of the same chapter and outlines that every person who is charged with a criminal offence - shall be informed as soon as reasonably practicable, in a language which he understands, of the nature of the offence charged; shall be given adequate time and facilities

for the preparation of his defense; shall be permitted to defend himself in person or by a legal representative of his own choice.

On observation the language is quite general and one can argue that it allows for manipulation to suit the agendas of the different stakeholders in the justice process. For example, phrases such as “reasonably practicable” and “adequate time” can be interpreted in many ways, and it now seems that the preservation or exploitation of rights is not so much dependent on the nature of the justice system but on the strength of representation afforded. What is certain, however, is that this section of the Jamaican Constitution closely mirrors the various international instruments and by all indications is meant to ensure that those rights that are inherent to juveniles by virtue of the fact that they are Jamaicans are preserved in some meaningful way.

The Child Care and Protection Act (2004) is perhaps Jamaica’s greatest response to the need to preserve and protect the rights of juvenile offenders since the ratification of the Convention on the Rights of the Child. While it speaks expressively to “child,” the stipulations are inclusive of juveniles since the new law defines a child as a person below the age of eighteen. Its retention of the concept “juvenile” in a number of instances seems to be an indication that the objective was not to abandon the terminology altogether, but to bring Jamaica in line with international standards. What is also clear is that this new law strengthens the legal framework by introducing new

standard treatments for children and by extension juveniles. It was also effective in creating a comprehensive guideline for the preservation of child rights which is diametrically opposed to the fragmented system that existed before it. The new legal framework also culminates years of strategic planning on the part of the Jamaican Government and a number of national and international stakeholders.

The effectiveness of the Child Care and Protection Act as the national authority of juvenile and child rights is curtailed by a number of inconsistencies. One seems to be the extent to which there is conformation to the Child Care and Protection Act by the numerous state agencies that comprise the juvenile Justice system.

This situation of non compliance gives rise to two complex ironies. One is that those agencies that are noncompliant are the same agencies with which consultation was sought in the development of the Act. The 2006 -2007 Annual Report of the Office of the Children's Advocate clearly identifies, and in some cases implies, that the police, the Department of Correctional Services, the Child Development Agency, and the administrators of the Public School System are the main perpetrators.

The second irony seems to be the fact that when the Act is breached at the micro level (by individuals) the Office of the Children's Advocate usually review the cases and make referral to these same agencies that are in breach. The Report revealed that in the period February 1, 2006 to

March 31, 2007, 100 cases have been referred to the Child Development Agency, 40 have been referred to the Jamaica Constabulary Force, 31 to the Ministry of Education, nine (9) to the justice system (Family Court and Correctional Facilities) and 7 to the Ministry of Health.

The extent to which the rights of juvenile offenders is preserved is therefore clearly debatable since in principle the legal framework that contains the national mandate for such preservation is constantly being breached by the very agencies designed to ensure that the framework is effective.

The Act is also rendered ineffective by the pace at which the requisite institutional mechanisms necessary to make it work are put in place and /or are functional. The time between the passage of the Act and the setting up of the Office of the Child Advocates Office was much too long.

The Appointment of a Registrar for the Child's Registry was even a longer process. Over three years after the passing of the Act. There is still no defined Child Registry. There are still issues pertaining to procedures and agencies are still not sure what is their specific role as opposed to other agencies. The blatant non compliance of the existing agencies is a clear indication that the institutional framework that should make the Act effective are in some part nonexistent and in others dysfunctional.

Despite the best effort of the Children's Advocate Office to educate the general public on the new Act, there still

appears to be a high level of ignorance concerning its stipulations. This is because the Agency does not have the resources (physical, financial and human) to effectively create an effective education programme.<sup>18</sup>

### **The Jamaican Reality: A Criminological Case Profile**

A survey was carried out as part of this project at the three juvenile correctional institutions in Jamaica. The aim was to determine whether the rights of Juveniles who had passed through the juvenile justice system had been observed. The survey was meant to trace the movement of youth offenders through the justice system from the arrest stage through to the post-sentencing stage and to evaluate participants' experiences using the international human rights instruments as well as national legal instruments as guides.

### **Methodology**

One hundred juveniles were selected from three juvenile correctional centres and questionnaires administered to them. Of the selected sample, 70 were males and 30 were females. The sample was selected using the official listing of wards presented at the correctional centres at the time the survey was carried out. The researcher simply selected the first thirty (in the case of the females) or seventy (in the case of males) available to administer the questionnaire.

### *Limitations*

This survey has certain limitations that must be taken into

consideration when interpreting these results:

- There is limited information on juvenile justice and juvenile rights from the context of Caribbean justice. While there is an abundance of literature on Crime in the Caribbean (see works of Harriott, Headley and other Caribbean Criminologists), little research has been done in the area of juvenile crime.
- It is difficult to ascertain whether the information that is given by juvenile offenders is a hundred percent accurate. There is the likelihood that opinions could have been formed based on the bad experiences. It is also possible that if the motive for the questionnaire is not properly understood, this might affect the validity of the answers. Apart from this, a number of the respondents have limited literacy skills and this might limit their ability to properly interpret questions.
- The findings of the survey will be limited by the fact that no pre-testing was done prior to administration of the data collecting instrument.
- The paper is not a funded paper; hence the extent that the researcher would like to go has been constrained by the unavailability of adequate funding.

### *Investigation and Prosecution*

The survey revealed that 22% of all respondents had suffered some level of abuse on detention. From a parish level, 36% of respondents from Kingston and St. Andrew also experienced some level of abuse while in detention. Twenty percent (20%) of respondents had been placed with adults on remand. The survey also revealed that there were incidents of abuse in detention in six parishes. As

many as 34% of the wards described the area in which they were detained as “degrading,” while another 28% felt that it was uncomfortable. Only 13% of the respondents were satisfied with the conditions under which they were detained. What this shows is that the issues that affect juvenile detainees in 1999 are still critical areas for analysis today. It would also appear that the criminological environment is such that the rights of juveniles are systemically infringed by the justice system.

The study also revealed other areas of human rights concerns at this stage of the justice process. As much as 26% of juveniles in detention facilities, for example, were forced by the police to give information. While the practice is in keeping with the effort to curb a crime problem that is of crisis proportion, one has to bear in mind that it is a serious human rights infringement. The Convention on the Rights of the Child speaks to “conducting an interview with the child and preparing a psychological and social report on admission.” This seems to be contrary to any action that is coercive in nature. It also seems to have contravened article 40(2) (b) (iv) of the same convention which states, that “every child alleged as or accused of having infringed the penal law has... guarantee not to be compelled to give testimony or to confess guilt.”

A high percentage (41%) of the juveniles housed in correctional centres was detained at a police lockup on arrest. Thirty three (33%) percent were released on bail and only eleven percent (11%) of the respondents indicated

that they were detained in a juvenile remand centre. While these percentages seem unusual, a number of factors have to be taken into consideration. Juveniles in correctional centers do not represent the total number of juvenile offenders. A larger number of offenders are on community-based orders (Probation and Supervision Orders) and are not captured in this analysis. The analysis therefore is of those juveniles who are considered high-risk, either as a result of the nature of the crime or their criminological and social history.

Perhaps the most critical factor is the analysis of police action by parish. It is certainly interesting that of the 30 juveniles from Kingston and St. Andrew who responded to this question, as many as 14 were detained in police lockups. This is critical as, at the time of analysis, the only remand centre for males is in this parish. Kingston and St. Andrew also housed the Glenhope Place of Safety and the Horizon Adult Remand which function as an alternate means of remand for juveniles. The percentage of respondents from St. James was also high, with 13 out of 16 respondents indicating that they were detained in police lockups.

Perhaps one of those areas in which the infringement of juvenile rights is perpetuated is the area of juvenile remand and detention. The limited space available for remand necessitates that untried juveniles be housed with juveniles who have been found guilty of an offence, particular in the transition period before the guilty offenders are transported to a correctional centre. This

runs contrary to Section 17 of the United Nations rules for Juveniles Deprived of their Liberty, which states that “untried detainees should be separated from [the] convicted juveniles.”

The perception of juvenile offenders of the way they are treated in detention? is also critical to this discussion. The study revealed that only 10% of offenders in correctional centres felt that the police were professional in handling their particular cases. Fifty five percent (55%) felt that the police had handled their cases reasonably well, while 35% indicated that the police had handled their cases poorly.

#### *The Adjudication Process*

The study revealed that eighty four percent (84%) of juvenile offenders who responded to the questionnaire were not represented by a lawyer in court; 64% were not informed of the necessity of getting a lawyer. The inability to communicate court-related information seems to be a major concern, as seventy eight (78%) of the juveniles reported that court proceedings were not explained to them before or during the adjudication process.

While at face value it may not appear that this constitutes an infringement of offenders’ rights, it could be argued that by withholding information that could assist the juvenile in getting legal representation, the court may have contributed to the deprivation of liberty of a substantial number of juvenile offenders. Section 18(a) of the United Nations Rules for the Protection of Juveniles deprived of

their Liberty, outlines that “juveniles should have the right of legal counsel and be enabled to apply for free legal aid.”

When interpreted in tandem with the Convention on the Rights of the Child it seems to be simply a matter of determining whether this is in the best interest of the child. The Convention mandates that the child offender shall have “prompt access to legal and other appropriate assistance.” It could be construed that by not informing all juvenile offenders of this fundamental right the court may have been acting contrary to the child’s best interest and had perhaps inadvertently affected his/her access to legal assistance.

The presence of offenders’ parents in court seems to be one area in which juvenile rights is strictly observed in Jamaica. Ninety-five percent (95%) of respondents revealed that they were afforded this right by the juvenile justice system. The requisite social enquiry report by the social worker seems also to be a standard in the Jamaica justice system. The latter seems to be an attempt by the court to ensure that enough information is provided thus making sure that the stipulation of the Convention on the Rights of the Child that juveniles should be deprived of their liberty only as a last resort is strictly upheld.

There seem to be some concerns as it relates to the environment in which juveniles are tried. Article 37(c) of The Convention on the Rights of the Child advocates that “every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the

human person, and in a manner which takes into account the needs of persons of his or her age.”

This does not seem to be consistent with the potential apparent psychological trauma that juveniles undergo in the adjudication process. Fifty-five percent (55%) of juvenile offenders expressed that they were frightened by the court-proceedings. Fifteen (15%) expressed sadness for committing the crime while 5% said they had regrets and 3% suggested that they were depressed. The implication is that 78% of juveniles who go through the court proceedings experience negative emotions.

#### *Institutional Treatment*

Respondents to the survey revealed a high incidence of abuse among wards, particularly among the males. Forty one percent (41%) of respondents revealed that they had been abused by the staff at correctional centres. Of the 70 male respondents 37 or 53% admitted to being abused. Only four of the 30 female respondents, or 13% percent admitted that they were abused. Thirty-one percent (31%) of wards indicated that they had been disciplined in the presence of other wards. The instrument of abuse varies from wire, pieces of board and sticks to the use of the hand. This is in direct contravention of Article 67 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.<sup>19</sup>

Rights to education, vocational training and work seem to be one of the highlights of institutional treatment as it

relates to the observation and preservation of rights. Ninety two percent of those who responded indicated that they were enrolled in academic programmes at the correctional facilities. Ninety-three percent (93%) of the total respondents were also enrolled in vocational and skills training programmes. Ninety (90%) percent of the respondents felt that the quality of education was either "good" or "excellent." Fifty-nine percent (59%) had access to library service, and as much as 57% indicated that this service was either good or excellent.

The fact that there is currently no collaboration with external academic institutions to accommodate wards in their regular programmes could be construed as a deficiency. However, This is offset by the fact that the Department of Correctional Services is doing well in this area on its own, given the high level of enrollment in education and academic programmes and the fact that mechanisms are in place to facilitate the wards' taking local examinations without leaving the facility.

Recreational rights are invariably observed, with eighty percent (80%) of wards surveyed indicating that they are allowed time to exercise and play outdoors each day. The 2005 Annual Report of the Department of Correctional Services also indicates that extra-curricular activities form a major part of the rehabilitation programme. A "house system," similar to that used in schools, is used to organize sports and other social activities, thus ensuring a high level of participation through team loyalty and competition. The 4H club is vibrant in two of three correctional centres and

the female correctional centre is actively involved in the Girl's Guide Movement. Apart from a proliferation of sporting activities, wards are engaged in other more subtly social activities such as Black History Month activities, Safe Sex Week activities and Career Day activities. The indication seems to be that, as a general principle, the Department has embarked on rehabilitation in ways that are conducive to the preservation of rights.

The right to adequate medical care has also been advocated by the numerous Human Rights Conventions. For example, The JDL Rules has a very comprehensive guideline on the level of medical care that should be afforded juvenile offenders. The Jamaican situation appears to satisfy some of these stipulations but falls short on others.

In the sample survey, only 59% of the wards interviewed indicated that they were seen by a medical officer on entry to the correctional centre. Also, only 58% indicated that they were always referred promptly to medical personnel on reporting that they were not well. In terms of quality of care, the adequacy of the medical facilities was positively appraised by 80% of the respondents. This is not surprising since the Department has an established medical unit that serves both juvenile and adult correctional centres.

The primacy of healthcare as a departmental policy has moved the Department to avail itself of the facilities and services of external medical personnel and institutions in

cases where incidents of ill health are disproportionate to the available resources of the centres. This is standard procedure not only at the juvenile correctional centers, but in adult institutions as well.

### **Recommendations and Conclusion**

What is clear from this research is that much needs to be done to ensure that juvenile offenders are treated in a manner that is not only civil but protects their inherent rights. After careful analysis the following recommendations are being put forward to ensure that the juvenile justice system functions in such a way as to perpetuate respect for the rights of Jamaican juvenile offenders. These recommendations are also important to ensure the necessary adjustment to bring Jamaica in line with international standards. These recommendations are consistent with those put forward by numerous criminologists<sup>20</sup> and are also similar to the proposals for other developing countries.<sup>21</sup>

#### *Government Policies*

- Policies that govern the treatment of juvenile offenders should be closely aligned with: The Convention on the Rights of the Child, The 'Riyadh Guidelines,' The 'Beijing Rules,' the 'JDL Rules';
- The age of criminal responsibility should be raised to 15 to protect younger and less mature juveniles from the rigors of the justice system;
- The age of sexual consent should be raised to 18, to exclude all legal children from the sexually activity.

## *Institutional Strengthening*

### *The Modernizing of the Police Force*

- This is inclusive of the development, in Jamaica, of new approaches and technologies to policing, especially information technology and forensic sciences; more advanced training and higher educational requirements for police officers and investigators; the application of more modern management tools with greater attention to planning and using results-oriented instruments to ensure accountability. It also means significantly improving the relations between police and citizens
- Another important aspect of modernization is the development of a computer management system that can properly record the entry and exit of juveniles in the justice system. It should also be able to indicate re-entry so that the appropriate method of rehabilitation can be employed
- The employment by the government of a special pool of lawyers who are trained to deal with juvenile matters.
- The speedy realization of the child registry under the guidance of the Office of the Children's Advocate.
- Community-based policing should be strengthened with additional resources to enhance its effectiveness. This includes the strengthening of police youth clubs, and the school programme, and the direct involvement of the police personnel in the planning and implementation of sports programmes particularly in the inner cities.

### *The Reform of the Juvenile Court System*

- **Alternative Sentences.** A wider range of alternative sentences to incarceration are needed, particularly those

which emphasize the values of restorative justice.

- **Diversionary alternatives.** There is a need for more diversionary alternatives to prosecution particularly for minor offences and for cases where it is believed that a non-custodial sentence is the best alternative. Warnings, cautions and admonitions can be accompanied by other social interventions to assist with related problems or difficulties. An assessment must be done of every case, with the view of diverting all cases where possible to pretrial diversion programmes.

### *The Reform of Correctional Services*

#### *Juvenile Remand*

- i. An increase in the number of juvenile remand facilities to one per parish;
- ii. Ensuring that juvenile remand is under the direct control of one agency;
- iii. Ensuring that juvenile remand meets international minimum standards;
- iv. The development of dedicated female juvenile remand centres;
- v. The standardization of the education offerings at juvenile remand centres in keeping with the stipulations of the requirements of the Ministry of Education.

#### *Correctional Facilities*

- There needs to be at least two juvenile correctional centres in each region, one of which should be dedicated to female juveniles.
- There should be screening and separation of juveniles

within the correction centres to ensure that those admitted for minor offences are not housed in the same space as those admitted for major crimes (separation should be determined by a risk/needs analysis exercise).

- There has to be clear cut policies governing the disciplining of wards of the state and, where these policies are breached, there should be sanctions imposed on the offending party or parties.
- Each ward should be seen by a certified medical officer on admission. The implication is that there should be trained residential medical personnel to serve each facility.
- There should be certification of all education and skills training programmes. This could mean a greater collaboration with the Ministry of Education and also with the HEART Trust NTA to ensure that both academic and skills training programmes are certified. This would authenticate the rehabilitation programmes within the institutions and enhance a smooth transition back to mainstream society.
- Structural reforms of correctional centers to make them more aligned to international standards.
- Adequate numbers of staff should be trained and carefully selected for duties in the correctional centres. Training should include knowledge of social work, counseling and some level of conflict resolution.

#### *Reform of the Legal System*

- There should be a group of lawyers specifically trained in juvenile matters that are paid by the state to ensure that all juveniles who interface with the system get legal representation.
- These lawyers should be specifically aligned with the Office of the Children's Advocate and should assist with

the reformation process to ensure that the rights of juveniles are not indirectly contravened by the justice system.

*Reform of the Juvenile Justice Process*

- The arrest of juveniles should be a measure of last resort. Every effort should be made to deal with juvenile issues, particularly those for non-violent crimes, outside of the mainstream system. This is only possible if there is the development of a system that allows for referrals and diversion at each stage of the process. This referral should not be informal, but an integral part of the justice process, institutionalized in a specifically created crime plan.
- Detention in police custody should be totally eliminated, thus reducing the opportunity for the contravention of rights in police lock up. For this to be a reality there must be adequate remand facilities.
- In cases where detention is absolutely necessary, juveniles should be separated from adults and held in special cells that that minimize negative psychological effects
- Questioning should be undertaken by selected and trained officers in the presence of parents, guardians or other appropriate adults.
- Children should be informed of their rights at all stages of the process. There is no doubt that despite Jamaica's efforts to meet international standards in the areas of crime prevention and the treatment of offenders, juvenile justice continues to be an area of grave concern. The situation of wards of the state continues to be the highlight of juvenile justice in Jamaica. This is particularly so because they have been exposed to the entire justice system and the possibility of the infringement of rights becomes higher. The extent to which rights of juvenile

offenders are infringed is obscured and for the most part inconclusive as not much research has been done to get empirical data to substantiate any claim or counter claim. It appears that policies on juvenile justice in Jamaica have been implemented without much specific information from guided research.

The findings of this paper are by no means conclusive. More intensive research needs to be done before any conclusion can be drawn on these matters. Research has to incorporate not only juvenile offenders who are wards of the state but all juveniles who interface with the justice system, no matter the stage of diversion. Priority attention must be given to this matter if any reform of the juvenile justice system is to be effective.

My own reflection has to do with whether Jamaica's justice system is influenced by an indigenous culture that is not compatible with the western ideal of universal rights. Can it be argued that juvenile rights are ideal rights from the perspective of Jamaica and other third world countries? Are the numerous features of the system that are recognized as infringements really just elements that are culturally relative and part of what identifies us a people?

Our method of interrogation by the police, for example, is very is by its very nature a Caribbean phenomenon. It seems to be related to the way our ancestors were beaten into submission by those in authority, and who at that time in our history constituted the law. This method has been passed on as part of the justice system and contemporary personnel seem to have mastered this art. While it can be

argued that the Plantation explanation seems to be an outdated and clichéd way to explain anything Caribbean, it should not be ignored, however. Despite the critics, it is a part of our history and has shaped who we are as a people.

Caribbean states operate within certain constraints that are fashioned by the fact that they are poor states. These constraints affect all areas of life and the justice system is no exception. Best practices in justice seem to be priced beyond what we can afford and we seem to be forced to function within our means. The fact that in Jamaica, for example, there is no juvenile remand centre for both male and female in all parishes does not mean that we should stop remanding high risk juvenile offenders. For poor states like Jamaica, it means making use of all available space whether it is in an adult lock up, an adult prison or an adult remand. If the space available does not allow for separation what then are our options?

The court system is essentially manual. Jamaica and by extension Caribbean states cannot afford the technology that is used in first world states to ensure that there is efficiency in all areas. Juveniles being absent from court as a result of bad communication between the police who do the pick up, the remand centre that does the preparation of the remandee and the court system to which he must answer is not uncommon in Jamaica. The problem however does not appear to be a deliberate effort by any of these stakeholders to prolong the process and thus infringe on inherent rights of Juvenile. It seems more like a

systemic condition that happens by virtue of the fact that we are ill-equipped to deal with the justice at any level in a globalize world.

While the argument of cultural relativism seems logical, it should not be used to perpetuate a state of backwardness on the part of the Jamaican Government. It definitely should not be used as an excuse to abuse the rights of individuals within the state. The real issue therefore is how we strike the balance between international expectations and the Jamaican reality as it relates to juvenile rights. What should be given precedence, cultural relativism or universalism?

These are issues that cannot be exclusively answered. The policy response of the Jamaican government, however, will inform the scope and nature of justice, the extent to which juvenile rights are observed and preserved, and the approach to juvenile crime.

**Footnotes:**

- 1) Such as Amnesty International
- 2) Amnesty International Human Rights Report; Jamaica 2005
- 3) The UK Privy Council is the Court of final adjudication in Jamaica
- 4) Vasciannie, Stephen (2002) International Law and Selected Human Rights Issues
- 5) Human Rights Report, United Nations General Assembly, Official Records 44<sup>th</sup> Session Supp. 40 (1988) Cited By Stephen Vasciannie (2002)
- 6) 1995 Human Rights Report, United Nations General Assembly, Official records 51st session Supp. No 40.(Cited by Vasciannie 2002)
- 7) Vasciannie Stephen (2002) International Law and Selected Human Rights Issues
- 8) In the case of Pratt and Morgan warrants for execution were issued twice by the Governor General, and a stay of execution was granted on each occasion. The United Nations Human Rights Committee ruled that the delay between the time that the warrants were issued and they were removed from their condemned cell constitute cruel and inhumane treatment.
- 9) Brown, Janet "The Caribbean Child's Right to Education : Educational Provision, Socio-economic and Family Factors and School Achievement" in Christine Barrow's Children's Rights : Caribbean Realities
- 10) Brown, Janet "The Caribbean Child's Right to Education : Educational Provision, Socio-economic and Family Factors and School Achievement" in Christine Barrow's Children's Rights : Caribbean Realities
- 11) Wendy Singh "Imprisonment and Caribbean Youth" Christine Barrow Children's Rights: Caribbean Realities
- 12) Laws of Republic of Trinidad and Tobago, Children's Act , Sec 87(1)
- 13) Annual Report (2005); Department of Correctional Services
- 14) At the time of analysis most Jamaicans probably have never heard of the term "trafficking in persons" and the government was having difficulties explaining to the general populace what exactly its constituents are.
- 15) In Children's Rights, Caribbean Realities, Christine Barrow (2002). p5
- 16) International law and selected Human Rights in Jamaica. Stephen Vasciannie Council of Legal Education, Norman Manley Law school Mona Campus 2002, p. 33
- 17) Chapter 3, The Jamaican Constitution
- 18) Interview with Miss Roxanne Samuels, Public Education and Special Projects Director from the Office of the Children Advocate
- 19) This Article states: "all disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment,...or any other punishment that may compromise the physical or mental health of the juvenile concerned."
- 20) Prof. Anthony Harriott in particular
- 21) Malawi, Namibia, Uganda , Bahamas

## References

- Acosta, Andrés Mejía "The Policymaking Process in Jamaica: Fiscal adjustment and Crime fighting policies" [Online] (2005) <http://www.iadb.org/res/publications/pubfiles/pubS-308.pdf>
- "Amnesty International 2005 Report" [Online] Access March 26, 2006 <http://web.amnesty.org/report2005/index-eng>
- Barrow, Christine. Children Rights Caribbean Realities Ian Randle Publishers, 11 Cunningham Avenue, Box 686, Kingston 6, 2002
- Brown , Janet, "Parental Resistance to Child Rights in Jamaica" in Children Rights Caribbean Realities Edited by Christine Barrow ,Ian Randle Publishers, 11 Cunningham Avenue, Box 686, Kingston 6, 2002
- Buckley, Melina. "Overview of the Jamaican Justice System Reform: Issues and Initiatives." [Online] November 21, 2006. [http://moj.gov.jm/jamaicanjustice/pdf/research\\_overview.pdf](http://moj.gov.jm/jamaicanjustice/pdf/research_overview.pdf) March 11, 2007.
- Chang, Kevin. "The Real Root of Crime "The Sunday Jamaica Gleaner" February 4, 2007.
- "Charter of the United Nations" <http://www.un.org/aboutun/charter/> (assessed June 15, 2007).
- "Committee on the Rights of the Child Consideration of Reports Submitted By states Parties under Article 44 of the Convention, Second Periodic Reports Of States Parties Due In 1998 Jamaica? [Online] [Http://www.hri.ca/fortherecord2003/Documentation/Tbodies/Crc--C-70-Add15.Htm](http://www.hri.ca/fortherecord2003/Documentation/Tbodies/Crc--C-70-Add15.Htm) (Assess June 15, 2007)
- Office of the High Commissioner on Human Rights "Convention on the Rights of the Child" Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 *entry into force* 2 September 1990, in accordance with article 49 <http://www.UNICEF.org/crc/>
- Defense for Children International "United Nations Standard Minimum Rules for the Administration of Juvenile Justice" (Beijing Rule) (Online) <http://www.die.gov.tr/CIN/un-guidelines-for-prevention.htm>

## 252 JUVENILE RIGHTS AND JUSTICE IN JAMAICA

Department of Correctional Services "Department of Correctional Services Annual Report, 2005" Department of Correctional Services, 1-3 Kings Street Kingston 2005

Dunkley, Alicia "Care and Protection of Children Top Priority of Govt." Ministry of Health, Jamaica [online] <http://www.jis.gov.jm/health/html>

"Economic and Social Survey Jamaica, 2006" Published by the Planning Institute of Jamaica, 2007

Harriott, Anthony. "Crime Trends in the Caribbean and Responses" [Online] Report submitted to the United Nations Office on Drug and Crime Nov. 12, 2002. [http://www.unodc.org/pdf/barbados/caribbean\\_report\\_crime-trends.pdf](http://www.unodc.org/pdf/barbados/caribbean_report_crime-trends.pdf) (assessed March 2, 2006).

Harriott, Anthony Police and Crime Control in Jamaica Problems of reforming excolonial constabularies. The University of the West Indies Press, 1A Aqueduct Flats, Mona 2000

Harris D. J. Cases and Materials on International Law (5th Edition) London, Sweet and Maxwell 1998.

Hernandez, Elizabeth. "Latino Youth and the Disproportionate Minority Confinement (DMC) Rate" [Online] Congressional Hispanic Policy Brief, 2003 <http://17thjudicialdistrict.com/Disproportionate%20Minority%20Confinement%20in%20the%20Juvenile%20Justice%20System.pdf> (accessed Jan. 6, 2006)

Human Rights Watch (1994) "Nobodies Children" [ Online] [www.hrw.org/reports/1999/Jamaica/Jam995-01.htm](http://www.hrw.org/reports/1999/Jamaica/Jam995-01.htm)

"International Covenant on Civil and Political Rights" Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 *entry into force* 23 March 1976, in accordance with Article 49 [ONLINE] <http://www1.umn.edu/humanrts/instrree/b3ccpr.htm>

"International Covenant on Civil and Political Rights" [online] Office of the High Commissioner for Human Rights [http://www.unhchr.ch/html/menu3/b/a\\_cescr.htm](http://www.unhchr.ch/html/menu3/b/a_cescr.htm)

Jamaica Reports to Treaty Bodies **Committee on the Rights of the Child (Second**

**Periodic Report 2003) [online] <http://www.org/derechos/Jamaica.htm>**

- Jones, Peter. "A Global Approach to Crime and Violence in Jamaica Volume III" [Online] Economic Development Institute Information Booklet Series I, June 2003. <http://129.3.20.41/eps/dev/papers/0410/0410007.pdf> (assessed January 26, 2007).
- Kakama P T "Juvenile Justice in Uganda" Paper presented (Save the Children, UK) at a seminar on Juvenile Justice held in Lilongwe, Malawi, 23 - 25 November 1999; [www.tsa.ac.za/corp/research/papers/dupreez2001unrules.doc](http://www.tsa.ac.za/corp/research/papers/dupreez2001unrules.doc)
- Lynch, James. "Trends in Juvenile Violent Offending: An Analysis of Victim Survey Data." *Juvenile Justice Bulletin*. [Online] October 2002, <http://www.ncjrs.gov/pdffiles1/ojjdp/191052.pdf> (Assessed March 15, 2006)
- McDowell, Zanifa. Domestic Law and The United Nations Convention on the Rights of the Child" in *Children Rights Caribbean Realities* Edited by Christine Barrow ,Ian Randle Publishers, 11 Cunningham Avenue, Box 686, Kingston 6, 2002
- Mills, Claude. "Youth Crime Surges in Jamaica and the Caribbean" [Online] June 8, 2007 <http://www.claudemills.com/?p=226> (accessed Nov. 5, 2007)
- Mills, Gladstone E. 1997. Westminster Style Democracy: The Jamaican Experience. Kingston: The Grace, Kennedy Foundation.
- Mukonda Ricardo "Juvenile Justice Project in Namibia" (Legal Assistance Centre, Namibia) Paper presented at a seminar on Juvenile Justice held in Lilongwe, Malawi, 23 - 25 November 1999; [http://www.penalreform.org/english/vuln\\_juvenamibia.htm](http://www.penalreform.org/english/vuln_juvenamibia.htm)
- Novak, Barbara "Keeping It Better in the Bahamas: A Nation's Socioeconomic Response to Juvenile Crime" *Journal of Black Studies*, Vol. 31, No. 4. (Mar., 2001), pp.483-493. [Online] <http://links.jstor.org/sici?sici=0021-9347%28200103%2931%3A4%3C483%3AKIBITB%3E2.0.CO%3B2-B> (March 15, 2006)
- Penal Reform International and the Malawi Human Rights Commission "Draft Model For Juvenile Justice in Malawi" based on the proceedings of a conference held on 23rd – 25th November 1999 in Lilongwe, hosted by the Ministry of Justice with the support of UNICEF, DFID,

254 JUVENILE RIGHTS AND JUSTICE IN JAMAICA

[http://www.penalreform.org/English/vuln\\_jimala.htm](http://www.penalreform.org/English/vuln_jimala.htm)

Penal Reform International "New Models on accessible justice and penal reform in Developing Countries" [Online ]

Roberts Elizabeth "Traditional and Modern Approaches to Customary International Law: A reconciliation"[Online]  
<http://www.asil.org/ajil/roberts.pdf>

"Report on the National Committee on Crime and Violence." Online  
<http://www.jis.gov.jm/EXECUTIVE%20SUMMARY.pdf> (Assessed March 15 2007)

Jamaica Coalition on the Rights of the Child "Rights and Responsibilities of Parents" Published by Jamaica Coalition on the Rights of the Child. 2000

Shields Barry, "Bad Kids, Race And The Transformation Of The Juvenile Court" 1999 in Taking Sides: Crime and Criminology 6<sup>th</sup> Edition Edited by Richard C Monk 2001

Singh Wendy "Imprisonment of Caribbean Youth" in Children Rights Caribbean Realities Edited by Christine Barrow ,lan Randle Publishers, 11 Cunningham Avenue, Box 686, Kingston 6, 2002

The Child Care and Protection Act, 2004 [Online]  
<http://www.moj.gov.jm/law/search?lawsearch=child+and+and+protection+Act>

The Common wealth Secretariat "Global Commitments to youths Rights", Commonwealth Youth Programme Commonwealth Secretariat Pall Mall, London 1997

The Constitution of Trinidad and Tobago [Online]  
<http://www.ttparliament.org/Docs/constitution/ttconst.pdf>

The Jamaica Coalition on the Rights of the Child "Rights and Responsibilities: a guide for parents" 2000

The Jamaica Coalition on the Rights of the Child "United Nations Convention on the Rights of the Child" Non-Governmental Organizations Written Submission under Article 45 (A) of the Convention: Jamaica [Online]  
[http://www.crin.org/docs/resources/treaties/crc.33/jamaica\\_ngo\\_report.pdf](http://www.crin.org/docs/resources/treaties/crc.33/jamaica_ngo_report.pdf)

- The Jamaica Constitution of 1962 with Reforms through 1999  
<http://pdba.georgetown.edu/Constitutions/Jamaica/jam62.html>
- The United Nations Rules for the Protection of Juveniles Deprived of their Liberty 1990 (JPL's)  
<http://www1.umn.edu/humanrts/instree/jlnurjdl.htm>
- The United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines)  
<http://www1.umn.edu/humanrts/instree/j2ungpjd.htm>
- The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules),  
[http://www.unhchr.ch/html/menu3/b/h\\_comp48.htm](http://www.unhchr.ch/html/menu3/b/h_comp48.htm)
- Thomas- Haye, Hazel. "Juvenile Justice: An Oxymoron in the Caribbean?" in Children Rights Caribbean Realities Edited by Christine Barrow ,Ian Randle Publishers, 11 Cunningham Avenue, Box 686, Kingston 6, 2002
- Trinidad's Second Periodic Report to the United Nations on Child Right in Trinidad  
<http://www.unhchr.ch/html/menu2/6/crc/doc/report/srf-trinidad&tobago-2.pdf>
- Universal Declaration of human Rights <http://www.un.org/Overview/rights.html>
- UNICEF "Juvenile Justice" *Innoceti Digest 1997*[Online] <http://www.unicef-icdc.org/publications/pdf/digest3e.pdf> (Assessed April 4, 2006)
- UNDP Human Rights and Human Development Issues in Jamaica. *Arawak Publications 2003*
- Vasciannie, Stephen. International Law and Selected Human Rights in Jamaica . Council of Legal Education Norman Manley Law School, Mona, Kingston 7 2002
- Vincent R. J. Human Rights and International Relations (1986) Cambridge University Press The Edingburgh Building Cambridge CB2,2RU, UK.

---

## **RECOMMENDATIONS FOR SYSTEMATIC TRANSFORMATION OF THE CRIMINAL JUSTICE SYSTEM IN TRINIDAD AND TOBAGO**

Malcolm P. Holdip

*Judge in the High Court of Trinidad and Tobago*

---

The criminal trial is a fundamental concept of the Judiciary of the Trinidad and Tobago criminal justice system. Persons accused of committing criminal offences may elect to challenge those accusations in court before a panel of their peers. The trial affords protections to the accused, such that any case against them must be fair and proven beyond reasonable doubt. Similarly, the trial affords protection for the community to ensure that criminal offenders against whom there is sufficient evidence are convicted and sentenced.

The objectives of the criminal trial can be summarized as follows:

- The innocent should be acquitted. This object requires that a person who has not committed an offence should not be tried. If he is tried, then he should not be convicted and if he is convicted then his convictions should be quashed on appeal.

- The trial should be conducted in conformity with civilized standards of behaviour. We are entitled to expect that a criminal trial will be open to the public, that judges will act impartially, that the prosecution will not, by delay or deceit, abuse the process of the court and that no one shall be subjected to double jeopardy by being tried twice for the same crime. Thus it is not merely the result of the trial which is important
- Any malpractice which threatens to contaminate the system of justice for example, on the part of the police should be prevented
- The guilty should be convicted
- Victims and witnesses should be treated with consideration
- The system should be speedy and efficient

In the late 1880s, the British Prime Minister William Gladstone is believed to have said "Justice delayed is justice denied." At the time he was concerned primarily with the lengthy delays experienced in the passage of legislation that sought to grant home rule for the Irish.

In more recent times, the quote has been used as commentary on the impact of delays in the processing of criminal matters through the courts. In Trinidad and Tobago, delay remains a key issue for policy makers and practitioners to value efficiency and effectiveness as critical outcomes of the criminal justice system.

Delay has become a benchmark against which criminal

justice performance is measured. This is for good reason – delay, among other things, may be responsible for increasing community disillusionment with the justice system and decreasing satisfaction with the law. Delay affects everyone, the accused who might or might not be guilty, the victims and their family who have been aggrieved by the offences against them and the community who demand justice, safety and protection.

Delay inevitably consumes valuable criminal justice resources including court administration, judicial, prosecutorial and defence resources, not to mention the time and cost implications for victims and witnesses. Delay has become the hobby horse and whipping post for the media and politicians, it is however a reality of the criminal trial system.

The most widely recognized cause of delay is systemic – arising when criminal matters cannot be resolved expeditiously because the criminal justice system itself cannot provide the means through which speedy resolution can be facilitated. The criminal justice system has two primary transition points – the initial hearing (summary or committal) and the trial. In order for a criminal matter to proceed through each transition, the matter must be ready to proceed and the court must have the capacity to facilitate it.

Systemic delay is the by-product of an increasing court workload which results from several possible factors including: i) increases in the number of matters initiated

within the courts ii) increases in the average length of criminal trials and iii) increases in the number of court appearances needed to resolve a matter. Some of the several reasons I can attribute to the increasing length of criminal trials include:

- Criminal investigation is becoming more complex for the average case and greater standards of evidence are being required by juries
- Trial involves a large number of state witnesses
- Trials are of a particular charge type – multiple defendant murders
- Involves legally aided accused

The second, but equally important form of delay in the criminal justice system is attributable to the actions or inaction of the parties to the trial process. Here, delay results from factors not within the control of the criminal justice system, but is imposed on criminal matters from the parties to that system:

- *Unavoidable delay* resulting from factors outside the control of criminal justice practitioners, typically imposed upon the system by defendants and witnesses
- *Unnecessary delay* caused by the incompetence/ignorance of criminal justice practitioners
- *Deliberate delay* resulting from the engineering or exploitation of the criminal trial process by practitioners to generate excess duration

Most matters that have not been proceeded with fall into two defined groupings: i) matters not reached by the court and ii) matters adjourned upon request. Matters not reached by the court are those listed where the court is unable to provide the judicial and court resources to facilitate it. This can be due to: i) over listing where the court lists more trials than it has the capacity to hear ii) limited court facilities and iii) unexpected reductions in court capacity, for example.

Matters which have been adjourned on request by the defence or prosecution or both are due, for example, because i) matters cannot proceed because one or more of the parties (witness, defendants, legal counsel) are unavailable on the day of trial or ii) additional information is required, sometimes one or both parties had not adequately prepared themselves and their case prior to the day of trial.

Underlying factors that can be identified as contributors to trial adjournment/withdrawal include:

- Trial uncertainty, that is, legal counsel are less likely to prepare for a criminal matter that they believe is unlikely to proceed to trial
- Prosecution case uncertainty
- Lack of seniority of prosecuting legal practitioners
- Limited or late disclosure by both prosecution and defence
- Limited or late communication between defence and prosecuting counsel

Reasons for witness absences include:

- Witness had a conflicting appointment or work appointment or their personal situation was regarded as a higher priority
- They were unable to attend due to the financial burden of missing work or the travel costs associated with attending court
- They were anxious or concerned about their role in the trial process
- They had become disillusioned with the trial system and no longer wanted to participate

In 2005, the British criminal case management framework released by the British Lord Chief Justice was done in an effort to provide clearer understanding of what should be done at each stage of the criminal trial process. That framework in conjunction with their then newly established criminal procedure rules represent “the blueprint for transforming the vulnerable criminal justice system that has served for centuries, into a system which is appropriate for the 21<sup>st</sup> century.”

The case management framework provides practitioners with guidance on how cases might be managed more effectively and efficiently. The key to its success will be cooperation of the different agencies involved in the criminal justice system and of the legal profession and the acceptance of i) active pre-trial case management by the court ii) listing suited to local conditions iii) tight control of the conduct of the trial itself.

In terms therefore of the pre-trial case management, the framework provides for trial management to be handled by the court, but with the explicit assistance of prosecution and defence counsel. There must be a commitment as well as a need for the development of innovative methods for:

- Improving the quantity, quality and timeliness of information sharing and communication between the investigating authorities, prosecution, defence, the court and the prisons
- Promoting earlier discussion and consideration of a guilty plea with the accused, including the improvement of incentives for early guilty pleas and discentives for non-cooperating counsel
- Improving certainty in trial listings
- Improving services for victims and witnesses and encouraging greater satisfaction and participation in the criminal trial process

Some of the factors which would be essential to the success of improving the early preparation and finalization of criminal trials are:

- Greater commitment from investigating authorities to improve the quality of information available at the time of arrest and charging by minimum standards that state what should be included in the investigative materials
- Involvement of the DPP as early as possible in the trial process, preferably prior or at the time of charging

- Review of all charges by experienced legal practitioners, preferably those who will take the matter to trial
- Availability of legal representation at the earliest possible time after arrest and prior to charge
- Identification of dispute focused on the key issues of fact or law – counsel should be encouraged to find and agree to as much common ground as possible
- Communication between prosecution and defence counsel should be undertaken between experienced practitioners with the authority to make decisions and with a commitment to expediency
- Sufficient incentives available and clearly articulated to the accused at earliest possible time, preferably at or before committal

Two necessary points of consideration in any attempt to minimize ineffective trials are firstly, that any such methods developed with the intention of modifying current criminal justice procedure should be cognizant of the financial and resource implications of such changes. Managing the criminal trial procedure is a costly process shared across multiple agencies, and increasing their burden would have significant financial and resource implications many of which may prohibit effective and consistent implementation.

Secondly, innovations and changes in criminal trial procedures should be evaluated for their effectiveness. A commitment to long-term consistent and systematic data collection and evaluation is necessary for assessing the

outcomes of new trial procedure and will assist in identifying areas where further improvement and efficiencies can be made.

Changes to the criminal trial system should be driven equally by academic debate as by practice. Innovative methods implemented by the courts and criminal trial practitioners should be subject to rigorous evaluation. We must ensure that when we start to utilize new practices or stop using older ones, that the impact is measured in a systematic way. Research and evaluations are critical for ensuring the survival and effectiveness of reform in the criminal trial system. If implemented, front ending systems, sentence discounting and plea bargaining schemes should be followed by evaluation and assessment. It is only with a continuing programme of analysis that problems can be identified and solutions generated.

### **Recommendations**

1. To introduce case management framework for the criminal justice system thereby re-engineering procedures and systems.
2. The reorganization/new organizational structure for the Office of the DPP which would correct the salary disparities between the DPP/Solicitor-General/Chief State Solicitor and contracted staff – the staff shortage and hopefully stem the early attrition rates.
3. Plea-bargaining to be vigorously pursued as a means of early resolution of matters. Sentence discounts to be granted for early guilty pleas.
4. Appropriate amendments to the Bail Act so as to reduce the crisis of overpopulation at the remand prisons.

5. Amendment to the Jury Act to provide for pre-trial instructions in all trials at the assizes. Change in the hours allowed for jury deliberation – time should be increased to take account of long and complex trials. If possible juries to be provided with copies of judges' written summation.
6. The Legal Aid and Authority Act to be amended to reduce the disparity between prosecutorial fees and defence fees for a trial. In other words an increase has to be considered. Defence attorneys must also be adequately and sufficiently compensated for preparatory work.
7. There should be statutory guidelines for disclosure by both prosecution and defence. The state must be given adequate notice of alibis and grounds for voir dire.
8. Adequate resources be provided for the immediate work increase consequential upon the switch to paper committals.
9. The DNA Act to be amended as to facilitate its greater use in court driven matters.
10. Introduction of tape-recording. An obligatory warning of the need for caution for confessions similar to what is used in identification cases.
11. In the short-term the Criminal Procedure Act can be amended for the court to be enabled to sanction imprisonment for non-payment of compensatory orders. In the long-term a new Criminal Procedure Act should be introduced.
12. With respect to the overburdened/understaffed forensic science centre – field tests to be allowed for drug identification purposes – and with consent of defence attorneys, the matter can go to trial without further laboratory testing. This would require an amendment to the Drugs Act.

13. With respect to firearm and ammunition, matters have a cadre of senior police officers trained as armourers to provide that evidence in court, again freeing up the resources at the Forensic Centre.
14. Vigourously introduce court driven mediation in summary offences as a means of intervention and diversion out of the overburdened criminal trial system.
15. Introduce the video-link technology so that the remand court centre can effectively be instituted, thereby reducing the burden on the prisons especially re the transportation of the prisoners and stress on prisoners and prisons' officers alike.
16. The criminal Procedure Act be amended to increase the period of remand from the current ten (10) day period to a longer time frame.
17. The office of the DPP should determine the charge in all but minor routine offences or where, because of the circumstances, there is need for a holding charge before seeking the advice of the DPP.

## References

Criminal Justice Under Stress. 1992. Eric Stockdale and Silvia Casdale. Blackstone Press.

Criminal Trial Delays in Australia

Judiciary of the Republic of Trinidad and Tobago. Annual reports 2000-2008.

Research and Public Policy Series No. 74. The Australian Institute of Criminology.

Review of the Criminal Court of England and Wales. [www.criminal-courts-review.org.uk/ccr-10htm](http://www.criminal-courts-review.org.uk/ccr-10htm).

Trial Listing Outcomes. Jason Payne.

## **TOWARDS A NEW APPROACH IN SOLVING THE PROBLEM OF ILLEGAL DRUGS**

Roger Ramgoolam

*Magistrate, Trinidad and Tobago*

---

The well documented social ills occasioned through the use of illegal drugs have plagued our society for the better part of two decades. Indeed, this has been a global problem occupying the attention of law makers, law enforcers and society as a whole. Yet it seems that despite the concerted efforts of successive political administrations to pass harsher drug laws and of Judges and Magistrates to hand out increasingly stiffer penalties, the use and trafficking of illegal narcotics still looms large in our society.

There is a paucity of published empirical statistical data available locally on the subject of drug abuse, yet as recently as 2002 our then Minister of National Security declared that the drug trade was related to 65% of all serious crimes committed in Trinidad and Tobago.<sup>1</sup>

If this figure is indeed accurate then it is quite startling given Trinidad and Tobago's patently zero tolerance approach, reflected in its relatively harsh laws and stiff

sentencing of convicted offenders. In this context, it is therefore rational to posit that our approach is perhaps deserving of a second look.

Perhaps the biggest influence on our local illegal drug policy is the United States of America (USA). Trinidad and Tobago has financial, political and social links with this world superpower. Perhaps more significantly, the government of the USA has identified this country as being a major transit point for the trans-shipment of illegal narcotics between South America and the USA. Significant pressure has therefore been brought to bear upon our various governments to align our local drug policy to that of the United States. The United States' zero tolerance approach rests on several grounds including:

- 1) Much crime and terrorism is drug related or drug funded. Strict drug laws are required to reduce this. Former US president George W. Bush in signing the Drug-Free Communities Act Reauthorization Bill in December 2001 is quoted as saying "if you quit drugs you join the fight against terror in America"<sup>2</sup>
- 2) Frequent use of hard drugs is a strong indicator of a criminal career
- 3) Offenders who use drugs are among the most serious and active criminals engaging in both property and violent crime<sup>3</sup>
- 4) Marijuana use impacts negatively upon young persons' mental development, their ability to concentrate in school, and their motivation and initiative to reach goals<sup>4</sup>

At what can be considered the other end of the scale, the Netherlands has adopted quite a liberal approach to the

problem of illicit drug use. In a nutshell, laws criminalizing the possession and sale of narcotics are technically enforceable. However, there is an official policy of non-enforcement of these laws on many occasions. With regard to so called soft drugs (for example, marijuana), the Dutch Ministry of Justice has published certain guidelines which inform public prosecutors under which circumstances offenders should not be prosecuted.

Allied to these guidelines, the Dutch have refined their laws so as to meet the challenges posed by their policy of condonance. By way of illustration, it is prohibited in the Netherlands to operate a motor vehicle while under the influence of any drug that affects driving ability to such an extent that you are unable to drive properly (Section 8 of the 1994 Road Traffic Act Part 1). Furthermore, the offence of causing an accident while under the influence of any drug which results in bodily harm is a crime that may be punishable by up to three years imprisonment or nine years imprisonment in the case of a fatal accident.<sup>5</sup>

The Netherlands focuses heavily on the treatment and rehabilitation of drug users, and there are also extensive demand reduction programmes available to most of the country's hard drug users. It has been claimed that the Netherlands' drug policy has yielded lower rates of drug use than in the United States.<sup>6</sup> This provides an interesting comparison between the two very differing approaches to the drug problem adopted by these states. In the United Kingdom, the legislative framework provides for fairly severe penalties for drug offences. Under the provisions of

the Misuse of Drugs Act 1971, illicit drugs are divided into Class A, Class B and Class C drugs. Class A is reserved for the most harmful drugs (for example, heroin). Class B includes Cannabis and Cannabis resin, and Class C is reserved for drugs considered the least harmful (for example, tranquillizers). In the case of Class B drugs, there is a maximum penalty of fourteen years imprisonment and/or unlimited fine for trafficking, and five years imprisonment and/or unlimited fine for possession. In addition, producers and traffickers in illegal drugs are liable to confiscation of assets under The Drug Trafficking Act 1994 (UK).

Despite the presence of strict laws on the books, many cases involving illegal narcotics in the UK are kept out of the courts through the use of a system of cautioning or compounding, and in Scotland, warning.<sup>7</sup> Compounding is the payment of a monetary penalty by the offender in lieu of prosecution. Cautioning may be employed at the discretion of the police after the arrest of an offender for a specified drug offence. This is provided that the offender admits to the offence. The police in the UK can also give informal warnings which may not be cited in court as part of ones' criminal record and which are often unrecorded.

In Trinidad and Tobago, criminal prosecutions for illegal drugs are mainly governed by the substantive law contained in the Dangerous Drugs Act Ch 11:25. Under this Act, there is no attempt at classification of various types of drugs, and thus the sentence for possession and trafficking of marijuana or cocaine, etc., is the same,

regardless of the potency or harmful effect of the particular drug, that is, upon summary conviction, to a fine of up to \$25,000.00 and imprisonment for 5 years. Upon conviction on indictment, an offender is liable to a fine of up to \$50,000.00 and imprisonment for a term which shall not exceed 10 years, but shall not be less than 5 years.

In Trinidad and Tobago, a conviction for a narcotic offence typically results in the offender receiving a heavy fine, and/or being sentenced to a term of imprisonment. In the case of juvenile offenders, however, courts typically adopt a more lenient approach in which the juvenile offender is often let off with a stern warning, and no conviction is recorded. This is typically the result for first-time offenders.

By far, the great majority of illegal narcotics cases are tried in the Magistrate's courts. This factor allied with the growing numbers of drug-related arrests has led to frequently overburdened court lists, and overworked Magistrates and court prosecutors. Yet, despite the almost daily handing out of stiff sentences for narcotics offences, the influx of narcotics cases into the court system is seemingly unending.

Related to the problem of illicit drug use and trafficking, are the escalating problems of gang violence, firearms offences, and all sorts of offences against the person, including homicides. These cases then add further to the strain placed on our court system, to say nothing of the pressures placed on ordinary citizens. It is therefore

suggested that changes in the present legal regime have the potential to effect meaningful change in the present parlous state of affairs.

It is firstly suggested that the law should reflect a less punitive approach to possession-type offences. Where an offender is apprehended by the police for possession of illegal narcotics, the police at their discretion could give the offender the option of either agreeing to seek counseling and treatment or be prosecuted for the offence. Furthermore, if the offender does not satisfy the police that he/she has fulfilled their promise within a specific time, the police would proceed to commence prosecution. This procedure, if utilized in conjunction with a system of compounding, cautioning, or even warning letters as obtains in the United Kingdom and Scotland, would do a great deal to keeping many cases out of the court system.

Legislative amendments can similarly be made in order that courts may be vested with the power to require convicted offenders of possession-type offences to undergo treatment and rehabilitation as part of a community service order, made under the provisions of The Community Service Orders Act Ch 13:06. As part of this Order, the offender convicted of a possession-type offence should be made to submit to mandatory drug testing, failing which, penalties can be imposed at the courts discretion.

It is noteworthy that at present legislative provisions extant under the Domestic Violence Act Ch 45:56 provide

for mandatory rehabilitation/counseling for persons found guilty of committing a Domestic Violence offence. A further suggestion calls for the classification of dangerous drugs as is the case in the United Kingdom, and thus the creation of a hierarchy of drug offences.

In doing this, it will be no more than an acknowledgement of scientific opinion that certain drugs are more harmful than others, for example, a hard drug like cocaine is more harmful to the user than a soft drug like marijuana. This classification of offences will also reflect Trinidad and Tobago's unique culture and traditions, some of which include the use of marijuana for religious rituals and also as a medicine for ailments like asthma and glaucoma.

At present, in the face of dwindling national resources, it may well prove to be prudent to move for a re-allocation of these resources away from the enforcement of the drug laws dealing with possession-type offences, and instead re-direct them towards treatment and rehabilitation of offenders, and also towards education at both the school level and beyond.

The Report of the Partnership for the Americas Commission interestingly calls for "a new paradigm in addressing the drug problem all across the Americas." Among its recommendations includes "increasing substantially the amount of state funds available to drug courts and related treatment programmes; a complimenting of drug prevention programmes in schools with drug education outside the classroom."<sup>8</sup>

There is presently a need to utilize more effectively existing legislation in order to properly deal with drug traffickers. One such example involves the law on seizure of assets from drug traffickers. Through more strenuous implementation of the law, a greater proportion of money from the confiscated assets can then be channeled back into treatment, rehabilitation and education programmes.

Reference is drawn in this regard to Part V. of The Dangerous Drugs Act Ch 11:25, Section 30. Under the provisions of this Section, a Magistrate is obligated to commit a convicted drug trafficker to the High Court for sentence where it appears that the person convicted "may have benefited from drug trafficking and has or may have realizable property." This section also allows the DPP to apply for such a convicted drug trafficker to be similarly committed. Part V. then allows the High Court to subsequently make confiscation orders against the convicted drug trafficker.

Unfortunately, this law has not seen widespread use despite its relatively long existence. It is suggested that urgent efforts should be made to sensitize Magistrates and Judges about its potential use. One such effort was a recently concluded seminar for Magistrates facilitated by Andrew Mitchell, Q.C. in which attending Magistrates were provided with valuable information on the subject.

In conclusion, one can say with confidence that there is in existence plausible solutions to what seems at present to be an insurmountable drug problem. However, what is

needed is for all concerned to firstly make a frank appraisal of the present law, in particular its shortcomings, and then to subsequently make a determined and realistic effort to implement much needed changes.

#### ENDNOTES

- 1 Exilus Deceyon, Report of 5<sup>th</sup> April 2006. Retrieved from <http://www.AlterPresse.org>
- 2 Remarks by the President in signing the Drug Free Communities Act Reauthorization Bill (Dec. 2001). Retrieved from <http://www.whitehouse.gov/briefingroom>
- 3 Retrieved from <http://www.whitehousedrugpolicy.gov.com>
- 4 Speaking out against Drug Legalization, US Drug Enforcement Administration (2003). Retrieved <http://www.justice.gov/dea/demand>
- 5 Drugs and Driving (2003). Retrieved from <http://www.eldd.emcdda.europa.eu>
- 6 Drug Policy Alliance: The Netherlands. Retrieved from <http://www.drugpolicy.org>
- 7 Report of the Independent Inquiry into the Misuse of Drugs Act (1971) Drugs & the Law. Retrieved from <http://www.parl.gc.ca>
- 8 Andy Johnson, Summit Distraction, Daily Express, March 12<sup>th</sup> 2009

**Graduate Students Section:  
Research/Policy Notes**

---

**BORDER SECURITY, HUMAN TRAFFICKING  
AND SMUGGLING IN TRINIDAD AND  
TOBAGO: A HUMAN RIGHTS ANALYSIS**

Richard Ramoutar

*Queen's University, Northern Ireland*

---

**Introduction**

This article assesses the response of Trinidad and Tobago to the growing threat of one of the dark sides of globalization - human trafficking. While the government denies that trafficking out of Trinidad and Tobago is a major concern, it does not deny that women and children are trafficked into the country for prostitution and sexual exploitation. This article argues that whilst human trafficking may be low on the priority list, its capacity to address the problem substantively is dictated by availability of resources and competing priorities of other criminal activities.

Additionally, it also appears that government complacency, alleged corruption at several layers in the law enforcement agencies, and lack of political will, have resulted in unchecked escalation of trafficking in human

beings. Furthermore, an examination of related pieces of domestic legislation, namely, the *Sexual Offences Act*, the *Anti-Kidnapping Act*, the *Immigration Act* and the Government's obligations to international human rights treaties raise serious concerns, as well as its obligations under the *2001 Convention against Transnational Organized Crime*.

According to the U.S. Department of State, *Trafficking in Persons Report 2008*, "trafficking in persons for sexual exploitation or forced labour, both within a country and across international borders, is a lucrative criminal activity that is of major concern to the United States and the international community. This is estimated to be a multi-billion dollar business."<sup>1</sup> Approximately 800,000 people are trafficked across international borders worldwide.<sup>2</sup> Of this number, around 80 percent of the victims are women and girls, of whom 70 percent are trafficked for exploitation in the sex industry.<sup>3</sup> Trafficking in persons affects virtually every country in the world, and is now second only to drug trafficking in relation to international organized crime."<sup>4</sup>

### **Nature and Scope of the Problem of Human Trafficking in Trinidad And Tobago**

Countries in Latin America and the Caribbean serve as source, transit and destination countries for trafficking victims.<sup>5</sup> Latin America, along with Southeast Asia and the former Soviet Union, is a primary source region for people trafficked to the United States.<sup>6</sup> The U.S. State Department estimates that some 14,500 to 17,500 people are trafficked

to the United States annually.<sup>7</sup> Countries in Latin America and the Caribbean also serve as transit countries for victims brought from China and other countries to Canada or the United States.<sup>8</sup> As such, Trinidad and Tobago is not immune to the trafficking phenomenon. According to an International Organization for Migration (IOM)<sup>9</sup> report, “Trinidad and Tobago is one of the most prosperous countries in the Caribbean, primarily due to the significant oil and natural gas resources, high levels of direct foreign investment and an expanding tourism industry.<sup>10</sup> The “pull” factor is therefore strong; available data suggest that one-third of intra Caribbean migrants reside in Trinidad and Tobago.

Despite those facts, Trinidad and Tobago faces considerable security challenges and is an active transit point for regional and extra-regional irregular migration to North America and Europe.<sup>11</sup> People smugglers are active, taking advantage of porous borders. Governments in the region, including Trinidad and Tobago, remain particularly concerned about the vulnerability of their borders to transnational organised crime.<sup>12</sup>

These same governments have noted a critical need to upgrade or restructure current migration management and border security systems by acquiring the necessary technological tools and strengthening migration officials’ professional capacity to better identify potential security risks.<sup>13</sup> Of particular significance is the fact that IOM spokesperson Amy Mahoney said the IOM had found evidence of human trafficking in Trinidad and Tobago.<sup>14</sup>

This includes five cases of females (mostly minors) trafficked to Trinidad and Tobago from Colombia for sexual exploitation between 2007 and 2008. In 2008, the IOM was requested to assist with a case of 20-plus Surinamese in Trinidad and Tobago who have since returned to Suriname, some of whom were victims of trafficking.<sup>15</sup> Therefore, in order to effectively fight human trafficking, the government of Trinidad and Tobago would need to pass legislation criminalising human trafficking.<sup>16</sup>

This article begins by illustrating the scale of trafficking of human beings on a global scale, its relevant legislations and challenges, and then looks at the scope of human trafficking in Trinidad and Tobago. This is followed by an examination of national laws and policies of Trinidad and Tobago and their enforcement. Central to this analysis is the question whether the current pieces of legislation can effectively deal with human trafficking, and at the same time maintain its international legal commitments. Answering this question requires analysis of the proposed Caribbean Community legislation to combat human trafficking, which focuses on the prevention of trafficking, protection of victims, prosecution of offenders and establishing partnerships, both within government and beyond. This is relevant as victim protection is one way of implementing a human rights framework to address the practice at the national level.

### **Global Legislation - UN Convention Against Trans-National Organized Crime**

Trafficking has received enormous attention since the late

1990's,<sup>17</sup> driven in particular by the US initiatives under the Trafficking Victims Protection Act of 2000 (TVPA),<sup>18</sup> and its subsequent reauthorizations in 2003<sup>19</sup> and 2005.<sup>20</sup> The UN Convention against Trans-national Organized Crime and Additional Protocol to Prevent, Suppress and Punish Trafficking in Persons (commonly known as the *Palermo Protocol*)<sup>21</sup> was adopted by the General Assembly of the UN on 15 November 2000,<sup>22</sup> and entered into force 29 September 2003.<sup>23</sup>

Unlike its predecessors, the Convention is open for signature not only to States, but also to regional economic integration organizations, provided that at least one Member State of such organization has signed the Convention.<sup>24</sup> Its main purpose is to punish and prevent crimes committed by organized criminal groups where either the crimes or the groups that commit them have an element of trans-national involvement. Among the measures undertaken by state parties in accordance with the Convention are adoption of domestic legislation and measures to establish relevant criminal offenses; measures to assist and protect victims and witnesses; frameworks for mutual legal assistance; extradition; law enforcement cooperation; technical assistance and training provisions.<sup>25</sup>

The Convention is supplemented by two additional protocols of direct relevance to the crime of trafficking: one against the *Smuggling of Migrants by Land, Sea and Air* and another to *Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*. Although the *Migrants Protocol* has some relevance to the issue in discussion, as it

addresses the problem of organized criminal groups smuggling migrants across the borders, it was adopted by the General Assembly the Protocol<sup>26</sup> and came into force on 25 December 2003 and has currently 111 parties (states and organizations) and 117 signatories.<sup>27</sup>

It sets international legal standards on criminal characterization of the crime trafficking, makes suggestions on the severity of criminal punishment for the trafficking offences, as well as provides benchmarks for anti-trafficking preventive policies and effective human rights measures to protect the victims. It contains provisions ensuring that trafficked persons are treated as victims, and not as criminals, and therefore assigning them specific human rights protection, regardless of their origin, race, religion, occupation or other characteristics.<sup>28</sup> These measures are direct reflections of already existent international human rights and criminal law norms that States have an obligation to respect and enforce. Thereby, the Protocol does not establish a new category of rights, but sets out specific measures aimed at enforcing the existing ones.

### **Definitional Controversies**

*Article 3* of the Trafficking Protocol provides the following definition of trafficking: 'Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring, or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulner-

-ability, or of the giving or receiving of payments to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at the minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or removal of organs.<sup>29</sup>

The definition awards the status of victims of trafficking to all persons, men and women, recruited, transported or transferred by the means of coercion, deception, threat or use of force for the purpose of exploitation of sexual or other nature with or without their initial consent. According to the Protocol, trafficking of children occurs in all the cases where “recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation” is involved even in situations where coercion or threat against the victims is not applied.<sup>30</sup>

One of the main problems in understanding the prevalence of trafficked persons is the lack of a standard operating definition as to what constitutes the act of trafficking who can be considered “traffickers” and who trafficked persons are. Even when countries are in full agreement with the relevant international laws and protocols, a clear usable legal consensus definition accepted by all actors in the international community is a key first step to drafting and implementing successful anti-trafficking policies.

First, such a legally binding definition emerged in 2000 in

the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (PPSPTP)*, supplementary to the United Nations Convention against Organized Crime (UNCOC)<sup>31</sup> will be used. This protocol is considered relevant to the Caribbean region and to Trinidad and Tobago, which affirms both the spirit and the protocols of the United Nations Convention against Transnational Organized Crime, of which the *PPSPTP* is part. Article 3 of the Smuggling Protocol defines smuggling as “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit of illegal entry of a person into a State Party of which the person is not a national or permanent resident.”<sup>32</sup>

The definition contained in the Protocol creates an important legal threshold. It specifically spells out the differences between trafficking, illegal migration and migrant smuggling as contained in the variety of acts involved in trafficking (recruitment, transportation, transfer, harbouring, purchase, sale, receipt of person), actors (chain of individuals or criminal enterprise in various countries constituting the import, transit and export states), means (threat, attempt or use of force, violence or other forms of coercion, abduction, fraud, deception, abuse of power, etc.), intended exploitative purposes (forced labour or services, debt bondage, slavery or slavery-like conditions, sexual exploitations, servitude, etc.) in unfamiliar and foreign places to the victims location.

As evident in the Protocol’s definition, since any apparent,

implied or express consent is mitigated by the use of deception, coercion or other forms of violence, the matter of victim's consent is an element of evidence, not definition. A person who hires a "smuggler" or travels for a job promised by a "recruiter" is unaware of the "smuggler" or "recruiter's" intent to hold or place her/him in forced labor, servitude or slavery-like conditions. In accordance with the above definitions, it is the element of criminal intent, *mens rea*, to coerce a person into forced labor not the actual execution of the intent that is decisive in determining the crime of trafficking. It is also critical to understand the differences in the definitions of trafficking and smuggling.

Firstly, trafficking is carried out with the use of coercion and/or deception, whereas smuggling is not, indicating that it can be a voluntary act on the part of those smuggled. Secondly, trafficking encapsulates exploitation of women and children especially, whilst those smuggled can be left at unofficial ports of entry to fend for themselves or placed in the hands of unscrupulous people to get assistance in the country of destination. Third, trafficking can take place both within and across national frontiers, whilst smuggling involves movement across international frontiers.

**Optional Protocol to The Convention on the Rights of the Child, Sale of Children, Child Prostitution and Pornography**

Another international document worth noting in this section is the Optional Protocol to the Convention on the

Rights of the Child, on the Sale of Children, Child Prostitution and Child Pornography.<sup>33</sup> The main purpose of the Protocol, as described in its Preamble, is addressing “significant and increasing international traffic in children for the purpose of the sale of children, child prostitution and child pornography” through the adoption of: “a holistic approach, addressing the contributing factors, including under-development, poverty, economic disparities, inequitable socio-economic structure, dysfunctional families, lack of education, urban-rural-rural migration, gender discrimination, irresponsible adult sexual behaviour, harmful traditional practices, armed conflicts and trafficking in children.”<sup>34</sup>

To this effect, the Protocol prohibits: (a) sale of children, defined as “any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;”<sup>35</sup> (b) child prostitution, defined as the use of a child in sexual activities for remuneration or any other form of consideration<sup>36</sup> and (c) child pornography i.e., any representation of the sexual parts of a child for primarily sexual purposes.<sup>37</sup>

The Protocol maintains a predominantly criminal law approach, evidenced by the Article 3(1), which requires the States Parties to ensure national criminal liability for the acts related to international or domestic sale of children, including attempt to commit and complicity or participation, offering, delivering or accepting a child for the purpose of sexual exploitation; organs sales; engage-

-ment in forced labor; illegal adoption; engaging a child in prostitution or production and dissemination of child pornography.<sup>38</sup>

This article assesses the response of the government of Trinidad and Tobago in dealing with its border security and the phenomenon of human trafficking from an international human rights perspective. The article begins by illustrating the scale of trafficking of human beings in Trinidad and Tobago, with particular reference to the major causes of the phenomenon and profiles of traffickers. This is followed by an examination of national laws and policies and their enforcement.

Central to this analysis is the question whether the current pieces of legislation can effectively deal with human trafficking, and at the same time maintain its international legal commitments. Answering this question requires analysis of the proposed Caribbean Community legislation to combat human trafficking, which focuses on the prevention of trafficking, protection of victims, prosecution of offenders and establishing partnerships, both within government and beyond. This is relevant as victim protection is one way of implementing a human rights framework to address the practice at the national level.

### **The Scale of Human Trafficking in Trinidad and Tobago**

According to June, 2008 *Trafficking in Persons Report* from the United States Department of State, "Venezuela is a

source, transit and destination country for men, women and children trafficked for the purposes of commercial sexual exploitation and forced labour. The Report further stated, "Venezuelan women and girls are trafficked for commercial sexual exploitation to Western Europe, Mexico and the Caribbean like Trinidad and Tobago, Aruba and the Dominican Republic."<sup>39</sup>

Trinidad and Tobago appears to be both a State of transit and destination. A large number of nationals from Colombia, Venezuela and Guyana - both male and female - appear before the courts, and are charged with "appearing at an undisclosed location, and not presenting oneself before an immigration officer."<sup>40</sup> Most of the female immigrants work as prostitutes, call girls, waitresses at bars and private homes and hotels. Not every illegal immigrant, however, is trafficked.<sup>41</sup> Some may be smuggled, instead of being trafficked, and others may travel independently.<sup>42</sup>

Nevertheless, the statistical information on illegal migrants is still an important indicator of the scale of trafficking, as traffickers facilitate illegal migration. It has been reported that up to 2,000 foreign women per year are trafficked for the purpose of sexual exploitation in Trinidad and Tobago.<sup>43</sup> Not only women, but children are also trafficked for sexual exploitation and drug trafficking. The Police estimate that over eighty percent of prostitutes working in San Fernando, Arima, Chaguanas and Port-of-Spain are from Colombia and Venezuela.<sup>44</sup> Whilst it is true that many trafficked women and children enter illegally, there

are also those who would enter through lawful ports of entry and then there are those nationals who are coerced and lured to sexual exploitation from within the country.<sup>45</sup> The vast majority of trafficked women and children to Trinidad and Tobago from Latin American countries for sexual exploitation are usually under the guise and lure of well-paying jobs and other attractive methods of deception.<sup>46</sup> While human trafficking is illegal and can be termed the equivalent of modern-day slavery, it is a crime and constitutes a violation of human rights.<sup>47</sup>

### **Trafficking for Sexual Exploitation**

A 2008 report by the *IOM* asserts that the Caribbean's relatively open borders, lax enforcement of entertainment visas and work permit rules, legalized prostitution, and the burgeoning tourism industry have contributed to the problem of trafficking there.<sup>48</sup> Trinidad and Tobago presents an interesting example of a country, well endowed with natural resources, and is a transit country for human trafficking. Sex tourism is on the rise in Trinidad and Tobago, and European and North American men are the main sex tourists.<sup>49</sup> From all indications, Trinidad and Tobago has been a lucrative destination for human trafficking for many years because of the thriving underground sex trade that exists here.<sup>50</sup>

The growth of the sex tourism industry in Trinidad and Tobago sparks the demand for women in prostitution and fuels the trafficking in women and children in the Republic.<sup>51</sup> In addition, many people are lured into this

country with “promises of a better life because of our economic stability.”<sup>52</sup> However, the situation usually gets exposure when a brothel is raided and prostitutes-most of them smuggled in from Colombia and Venezuela-are arrested and deported.<sup>53</sup>

Tourist agencies and unlisted guesthouses apparently run the industry, by advertising package deals in magazines that include the cost of buying a woman. Older men are known to recruit children and it has been reported that girls across all socio-economic strata often initiate sexual relationships with cab drivers in exchange for transportation or other goods.<sup>54</sup> Child labour is a problem in Trinidad and Tobago. Exact numbers of children who are working in Trinidad and Tobago do not exist; however, studies show that children on these islands are working as beggars and street vendors and are involved in prostitution and the drug trade.<sup>55</sup>

The latest media investigation and *special report* in the *Trinidad Guardian* (January 17, 2009) indicated that undercover journalists went to Cedros, to acquire first hand information about the thriving human trafficking and smuggling trade between Trinidad, Venezuela and Colombia on the south coast of Trinidad. According to the report, “A thriving trade in human flesh between Venezuelans and Trinidadians is conducted under the cover of night on Columbus Bay, Iacos Bay and other ports on the south-western peninsula, apparently uninterrupted by the law enforcement agencies in the area.”<sup>56</sup> “They are picked up by Trinidad “agents,” who

take them to brothels in Chaguanas, San Fernando and parts of the country where they work as prostitutes, well placed sources told the newspaper journalists.<sup>57</sup> Journalists were told that law enforcement officials patrolled regularly near Columbus Bay, but this did not seem to interfere with the illegal flesh trade on the bay.

Traffickers use force, fraud and coercion to compel victims to engage in the sex trade or forced labour.<sup>58</sup> They also use rape, beatings and confinement to control victims. Forceful violence is used, especially during the early stages of victimization, known as “the seasoning process,” to break victims’ resistance to make them easier to control. False offers are also used to induce people into trafficking situations.<sup>59</sup> For example, women and children will reply to advertisements promising jobs in other countries, and are then trafficked for purposes of prostitution once they arrived at their destinations. A problem of this magnitude, like other international activities, can only be brought under control with co-ordinated, well-organised counter-trafficking measures informed by solid evidence of the extent of the problem.<sup>60</sup>

### **Factors Contributing to Human Trafficking and Sexual Exploitation**

In many cases, the exploitation of trafficking victims is progressive: a person trafficked into one form of labour may be exploited in another. In any one of its forms, trafficking involves a full spectrum of human rights violations. The victims are often beaten and sexually

abused; suffer from forced substance, sexually transmitted diseases and HIV/AIDS, food deprivation and psychological torture, which often lead to death.

Despite the common misconception, trafficking is as much of a local and regional phenomenon, as it is an international one. A person may decide to travel to another location for a job, within his or her own country or abroad and subsequently fall into voluntary servitude. Trafficking also implies placement of the victim in an unfamiliar milieu where he/she is culturally, linguistically or physically isolated and denied legal identity or access to justice. Such dislocation increases the marginalisation and therefore the risk of abuse, violence, exploitation, domination or discrimination both by traffickers and by State officials such as the police, the courts, immigration and other officials.<sup>61</sup>

Additional factors contributing to human trafficking include the following: political, social or economic crises, as well as natural disasters occurring in neighbouring Caribbean and South American countries, existence of established trafficking networks with sophisticated recruitment methods, public corruption, especially complicity between law enforcement and border agents with traffickers and alien smugglers, government disinterest in the issue of human trafficking.<sup>62</sup>

Whilst the Caribbean is a “region of dynamic migration flows” that requires a counter-trafficking strategy focused particularly on women and children, there is another

concern that the emerging CARICOM Single Market and Economy (CSME) is a factor that may aid the mushrooming of human trafficking.<sup>63</sup>

Another problem which enhances human trafficking is the prevailing corruption amongst government officials. Henry Illes, Suriname's Ambassador to the Organisation of American States (OAS) alluded to this: "Undoubtedly, corruption within governmental entities can contribute to the global trafficking of women and children in numerous ways, for example, customs and immigration officers accept payoffs to turn a blind eye to trafficking crimes, and local police officers accept bribes and allow brothels in their jurisdiction to operate undeterred. They also allow individuals to recruit women for prostitution purposes."<sup>64</sup>

**National Case Study:  
Trinidad and Tobago National Laws and Policies  
Offences Against the Persons Act**

In Trinidad and Tobago, several laws are relevant to trafficking. One example is the Offences Against the Person Act.<sup>65</sup> The Act covers offences of assault occasioning actual bodily harm, wounding or causing great bodily harm and others which cause danger to life or bodily harm. These offences are relevant as there are cases where those trafficked are placed under harsh conditions and suffer from bodily injuries.

If people end up dying, then the charges of murder and manslaughter may be brought against traffickers. In addition, common end purposes of trafficking, namely

prostitution and sexual exploitation, has been regulated by the Sexual Offences Act, 2001.<sup>66</sup> Although the Act does not specifically use the terms “traffic” or “trafficking” it does cover some aspects of the phenomenon. For instance, Sections 2 and 3 stipulate that procuring of women by threats or false representations for unlawful sexual intercourse in any part of the world is an offence.<sup>67</sup> These provisions were adopted mainly to combat the white slave traffic. Sections 17-21 establish offences of abduction of women or girls for unlawful sexual intercourse or marriage.<sup>68</sup>

In addition, there are sections on prostitution which not only criminalise the procuring of, and exercising control over women and girls to become prostitutes in any part of the world, but also prohibit soliciting and owning/managing brothels (including landlords and tenants permitting premises for prostitution).<sup>69</sup> The punishment for these offences range from three months’ imprisonment and/or a fine to life imprisonment (permitting a girl under thirteen to use premises for sexual intercourse under Section 25.)<sup>70</sup>

Some amendments have been made to the Sexual Offences Act 1986, over the course of time and the laws on sexual offences have recently been reviewed by the government. A White Paper in relation to new legislation was published by the government in 2000 and the Sexual Offences Act 2003.<sup>71</sup> Of particular importance is the introduction of offence of trafficking for sexual exploitation. Sections apply to trafficking people into, within or from Trinidad

and Tobago for sexual exploitation, and provide for a maximum penalty of fifteen years imprisonment. This is a welcome change, as the degree of punishment under the Sexual Offences Act, 1986 has been criticised as being very lenient.<sup>72</sup>

The Sexual Offences Act prohibits procuring a person for prostitution,<sup>73</sup> regardless of whether the person is already in prostitution, procuring a female so she will become an inmate of a brothel,<sup>74</sup> and procuring a minor below the age of 16 for the purposes of sexual intercourse with another person.<sup>75</sup> Procuring another person by using threats, intimidation or deception or by administering drugs is also prohibited. Furthermore, the Convention against Torture (CAT) forbids abducting or detaining a female against her will or for the purpose of having sexual intercourse with her. Punishment is imprisonment for ten years.<sup>76</sup>

It is illegal for the owner, occupier, or manager of any establishment to permit a minor below the age of 16 to have sexual intercourse on the premises. The punishment is imprisonment for ten years.<sup>77</sup> Any person who keeps or manages a brothel, allows premises under his or her control to be used as a brothel, or wilfully is a party to the continued use of the premises as a brothel is subject to imprisonment for 5 years.<sup>78</sup>

In Trinidad and Tobago, prostitution is illegal, and the authorities continued to monitor, investigate, and prosecute major operators believed to be engaged in soliciting for prostitution.<sup>79</sup> For example, on July 21, 2007,

police arrested 71 foreign women involved in a prostitution ring. Many of the women entered the country illegally. The authorities deported many of the women, whilst some were jailed for illegally entering the country.<sup>80</sup> The inadequate legislation fails to address these most important issues of the rights of human trafficking, and having them incarcerated is a travesty of justice.

### **Children's Act**

Under the Children's Act, it is illegal for anyone in charge of a child or a young person between 4 and 16 years of age to allow the child or young person to reside in or frequent a brothel.<sup>81</sup> Any custodian or any person in charge of a girl younger than 16 who causes or encourages her in prostitution or seduction is subject to imprisonment for two years.<sup>82</sup> Under the Sexual Offences Act, any person who lives on the earnings of prostitution or any person who aids, abets or compels prostitution can be imprisoned for 5 years.<sup>83</sup> The constitution provides that "labour should not be exploited or forced by economic necessity to operate in inhumane conditions and that "there should be an opportunity for advancement on the basis of recognition of merit, ability and integrity."<sup>84</sup>

### **Immigration Act**

In addition to legislation on sexual offences, immigration law is also pertinent. The principal act is the Immigration Act 1969. A critical point to be made is that the Act only covers trafficking for the purpose of prostitution. Some provisions apply to those who are trafficked. As for

traffickers, Sections 8 (1)(e)(f) of the prohibited class states that "Except as provided in subsection (2) entry in Trinidad and Tobago of the persons described in this subsection, other than citizens and subject to subsection 7(2), residents, is prohibited, namely (e) prostitutes, homosexuals or persons living on the earnings of prostitutes or homosexuals or persons reasonably suspected as coming to Trinidad and Tobago for these or any other immoral purposes; (f) persons who are reasonably suspected of attempting to bring into Trinidad and Tobago or of procuring prostitutes or other persons for the purpose of prostitution or homosexual or other immoral purposes."<sup>85</sup>

### **Kidnapping Act, 2003**

Section 3(1) of *the Kidnapping Act 2003*, states "A person who for ransom, reward, or for any similar considerations unlawfully leads, takes, entices away, abducts, seizes or detains any person without his consent obtained by fraud or duress and without lawful excuse such that the person (hereinafter in this Act referred to as the "kidnapped person") is held confined, restricted, imprisoned or prevented from returning to his normal place of abode or sent or taken out of Trinidad and Tobago, commits an offence and is liable to imprisonment for not less than twenty-five years;"<sup>86</sup>

In addition, the Act states that a person under the age of sixteen years is deemed incapable of consenting to being led, taken, enticed away, abducted, seized, detained, held,

confined, restrained or imprisoned.<sup>87</sup> As is evident from all these particular pieces of legislations that concern human trafficking for sexual exploitation and prostitution, there are no human rights concerns. The legislations are mainly punitive.

### **Enforcement - Relevant Agencies and Statistical Information**

The earlier section entitled 'The Scale of Human Trafficking in Trinidad and Tobago' described the likely scenarios taking place in this country. Recent disclosures by the media in Trinidad and Tobago on the growing phenomenon of human trafficking and smuggling in the country may have initially prompted a sense of denial by the Attorney General, Brigid Annisette-George.<sup>92</sup> The Attorney General acknowledged that there was a "lack of empirical evidence," whilst the Acting Commissioner of Police was not of the opinion that nationals of Trinidad and Tobago were being smuggled out of the country.<sup>93</sup> In this regard, it should be borne in mind that empirical evidence in trafficking is difficult to obtain given the nature, scope and secrecy that usually shroud such illegal operations.

However, former Chief Immigration Officer, Herman Browne confirmed the existence of human trafficking in Trinidad and Tobago.<sup>94</sup> In a newspaper report, Mr. Browne stated in 2007 that "the 71 women held by a surprise raid by immigration, police, and defence force at the *Villa Capri* hotel, Marabella were victims of human trafficking."<sup>95</sup> The women held were nationals of Colombia

Santo Domingo, Venezuela, Suriname, and Guyana, China and Asian countries, and also Trinidad and Tobago.<sup>96</sup>

Furthermore, Tom Sinkovits, the former Director of the International Office of Migration (IOM), Trinidad Office, as well as John Cushing, the Political Affairs Officer of the US Embassy in Port-of-Spain,<sup>97</sup> and officials of the *Congress of the People*,<sup>98</sup> a growing political party in Trinidad and Tobago and leaders of non-governmental organizations attest to some form of human trafficking in this country.<sup>99</sup> What adds increasing credibility to the growing human trafficking for sexual exploitation are the investigation and arrests of law enforcement officials who allegedly had brutal sexual relations with foreign women and children.

For example, according to a report in the *Trinidad Guardian* in 2008, a 14 year-old Colombian prostitute had sex with a police officer in exchange for not arresting her.<sup>100</sup> Another news report indicated that Constable Derrick Badree was arrested and charged with serious indecency and grievous assault, rape and common assault on a Colombian woman,<sup>101</sup> and that a senior police officer in charge, took four female illegal immigrants from Colombia, to the nearby Clifton Hill beach, bought them meals and then had sex with them in the Point Fortin police station.<sup>102</sup> In this respect, these allegations and abuses experienced by these trafficked Colombian women and children constitute grave violations of their human rights.

### **Analysis of Law Enforcement Efforts**

Several observations can be made in analysing law enforce

-ment operations in the Republic of Trinidad and Tobago. In his investigation and research on human trafficking in Thailand, Dr. Tom Obokata raises similar problems that currently exist in Trinidad and Tobago. For example, issues relating to trafficking are not well understood by law enforcement agencies.<sup>103</sup>

Generally, court decisions tend to look at those trafficked not as victims, but merely as violators of immigration laws and regulations.<sup>104</sup> Furthermore, the Police Service in Trinidad and Tobago still does not believe that trafficking is serious enough to merit attention.<sup>105</sup> Such a mentality is shared by the Trinidad and Tobago's Police Service, and dealing with the growing phenomenon is low in their list of priorities which includes drug trafficking, illegal weapons and gang violence which is rampant throughout the twin-island republic.

One consequence of this is that there is little interest in providing adequate resources to deal with trafficking.<sup>106</sup> It is worth noting in this respect that some police forces have disbanded their vice units which dealt with the sex industry, including trafficking. The lack of resources also means that officers receive insufficient training on foreign languages, identification of false travel documents and visas, treatment of victims of trafficking and other issues related to the phenomenon.<sup>107</sup>

Moreover, the treatments of trafficked people raise human rights concerns.<sup>108</sup> The decision to implement enforcement actions are sometimes made by immigration officers, who

may lack adequate knowledge of refugee laws and of human rights situations in the States of origin.<sup>109</sup> Many illegal immigrants are also detained for a long period of time prior to deportation.<sup>110</sup> One reason for this is that many States of origin are said to be unwilling to accept their own nationals and this is making it difficult to accelerate the deportation procedure.<sup>111</sup> In essence, the government of Trinidad and Tobago primarily treat trafficking as a migration issue and therefore concentrates on deporting the trafficked victims.<sup>112</sup>

In addition, border control does not appear to be completely effective. It suggests that immigration officials do not conduct extensive examinations at some borders, unless they detect something unusual, and there are those who enter illegally at the country's porous borders. It is also instructive to note that the lack of resources once again prevents the law enforcement agencies from enhancing their intelligence and law enforcement capabilities against organised criminal groups. Allegations of corruption are also a widespread problem partly caused by the influence of organised criminal groups. The widespread nature of transnational or international activities conducted by these groups also suggests that multi-lateral or international law enforcement co-operation is required to support them.

Whilst there is no anti-trafficking legislation in Trinidad and Tobago at the time of writing this paper and no sponsored public awareness campaigns to address the issue, yet there are domestic laws that if properly enforced,

could have served as a deterrent. Significantly, the government has yet to address the structural causes of trafficking, or its social implications. While it is mentioned by the Attorney General that “Trinidad and Tobago must be anticipatory in its approach in an era of globalisation by instituting preventative/precautionary measures such as tightening our immigration policies and improving our capacity to patrol our borders,” yet these measures recommended must adequately address the increasing phenomenon of human trafficking.

Preventative or precautionary measures may appear to be punitive, and may not actually address the victims of these human rights atrocities, the prosecution of traffickers, agents and corrupt law enforcement officials inherent to the traffic and smuggling of human beings. Confronted with this growing menace, the then Honourable Minister of National Security, Senator Martin Joseph in an address to Parliament spoke of a “crime symposium addressing human trafficking”<sup>113</sup> and this may be prompted by the media and other reports emanating from influential circles and heightened public awareness. In this endeavour, the government must be commended in that it continues to cooperate with the IOM, which began a Strengthening Technical Capacity (STC) project.<sup>114</sup> The STC’s goal is to bolster capabilities of the Immigration Division and other law enforcement agencies.<sup>115</sup>

### **Victim Protection Measures**

According to the 2008 US Department of State Human Rights Report, “on March 24, a senior police officer

allegedly swam nude with four female Colombian detainees, fed them and then returned to the police station where he proceeded to have sex with them. An official investigation began after another officer confirmed the allegation."<sup>116</sup> Thus far, there has been no official outcome, except that the women were ordered deported to Colombia.

Protection of victims is an important aspect of a human rights framework to trafficking of human beings. What is evident in Trinidad and Tobago is that in the absence of an anti-trafficking legislation, victims of trafficking receive more or less the same treatment as those smuggled. However, an emphasis on their deportation and a tendency to protect only those willing to co-operate seem to illustrate that immigration and crime control has been the priority in these jurisdictions in order to protect the principle of national sovereignty and territorial integrity, and that the protection of human rights remains a secondary concern at the national level.

### **Proposed Caribbean Counter-Trafficking Model Legislation**

In recognition of the growing problem of human trafficking in the Caribbean and Trinidad and Tobago, the IOM, not only established an office in Trinidad and Tobago, but have been providing technical advice to the Immigration Department, Ministry of National Security.<sup>117</sup> It is stated that "the IOM identified some level of human trafficking in the areas of forced labour, sexual exploitation and domestic servitude."<sup>118</sup> In this respect, an IOM

initiative, funded by the U.S. Department of State, to Monitor and Combat Trafficking in Persons, brought together ten legal experts from 10 countries (Antigua and Barbuda, The Bahamas, Belize, Grenada, Guyana, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago), and CARICOM officials to aid in the drafting of Counter-trafficking legislation.<sup>119</sup>

At the end of 2007, four CARICOM member states, Belize, Guyana, Jamaica, and Suriname, had enacted national counter-trafficking legislation. Six CARICOM member states, including these five countries, ratified or acceded to the main international instrument that deals with trafficking in persons, the United Nations (UN) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which supplements the UN Convention against Trans-National Organized Crime.<sup>120</sup>

The proposed counter trafficking legislation, mirrored after the Trafficking Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (The Trafficking Protocol) served as the basis for anti-trafficking laws enacted in Belize, Guyana and Jamaica. Similarly, the experts agreed to use the Trafficking Protocol to structure the model legislation. Some of the provisions in the Caribbean Counter of Trafficking Model Legislation are non-negotiable to give effect to the Trafficking Protocol, which needs to be read in conjunction with the UN Convention against Trans-

national Organized Crime.<sup>121</sup> The legislation is divided into six parts, namely, Part 1-Preliminary, Part II—Criminal Offences and Related Provisions, Part III—Assistance and Protection of Victims of Trafficking, Part IV—Misuse of Commercial Transportation, Part V—Prevention of Trafficking in Persons, and Part VI-General. They can be classified in three categories, under Prevention, Protection and Prosecution.<sup>122</sup>

Some of the redemptive features in the proposed criminalised legislation for violations of human rights in human trafficking can be found in Part II, which makes it an offence to traffic in persons, withholding of identification papers, transporting a person for the purpose of sexual exploitation/prostitution, restitution to the victim (includes cost of medical and psychological treatment; lost income, attorney's fees, therapy and rehabilitation), forfeiture of property local and overseas, money, and other movable and immovable property of persons convicted.<sup>123</sup>

Part III deals with the safety, protection, witness protection, assistance to victims, improving immigration status of victims in country, special consideration to be given to child victims.<sup>124</sup> Part V deals with the establishment of a national task force to establish policies, provide training for law enforcement, immigration and other relevant officials, facilitate co-operation with other countries, particularly those which are a significant source of victims, and co-ordinating the implementation of the plan.<sup>125</sup>

Given the nature and scope of the problem, Caribbean governments and civil society have been working to better understand and respond to human trafficking.<sup>126</sup> In partnership with the IOM, their counter-trafficking activities have ranged from training and research to public awareness and victim assistance initiatives. Though much work remains to be done, the region has made considerable progress in preventative and protective efforts.<sup>127</sup>

Yet, many Caribbean countries struggle to prosecute traffickers for committing the offence of trafficking in persons.<sup>128</sup> A lack of national legislation tends to be the primary reason behind the struggle. Other reasons include the speed of the Caribbean's judicial systems and limited human and financial resources.<sup>129</sup> While all Caribbean countries have criminal provisions related to one or more elements of the trafficking process, such as procurement, forced detention, prostitution, sexual offences, kidnapping, and abduction, not having specific anti-trafficking legislation can pose a significant barrier.<sup>130</sup> Prosecutors and judges are challenged by having human trafficking cases in court because other pieces of legislation do not adequately prescribe provisions. Enacting comprehensive counter-trafficking legislation helps law enforcers overcome these impediments in prosecuting human trafficking cases.<sup>131</sup>

### **Trinidad and Tobago's Adherence to UN Conventions and Treaties**

There are four UN conventions that Trinidad and Tobago has ratified which have provisions related to trafficking in

Women and Children. These are: the Convention on Civil and Political Rights (ICCPR), the Convention on Economic, Social, and Cultural Rights (ICESCR), the Convention on the Rights of the Child, (CRC), and the Convention on the Elimination of Discrimination against Women (CEDAW).

It is important to point out that Trinidad and Tobago signed the United Nations against Corruption on 11 December 2003, and ratified on 31 May, 2006.<sup>132</sup> It also signed the parent instrument of the protocols against trafficking and smuggling, the United Nations Convention against Trans-national Organized Crime, on 26 September, 2001, and ratified it on 6 November 2007.<sup>133</sup> Furthermore, the government signed the Protocols to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Trans-national Organized Crime.<sup>134</sup>

However, the lack of enforcement of Trinidad and Tobago's laws suggests the need to use the international system. Even though prostitution is illegal in Trinidad and Tobago, the government of Trinidad and Tobago still has not adopted the 1949 Convention. Ratification or accession of UN treaties is the primary way to hold countries accountable for their actions. Ratification requires that the country deposit an instrument of ratification with the Secretary General or another UN government body. Ratification is when a country consents to a treaty prior to the convention going into effect. Accession is when a country agrees to be bound by a convention that has

already come to force.

The Commission on Human Rights stressed the “urgent need to eliminate all forms of sexual violence and trafficking, including for prostitution, which both violate and impair or nullify the enjoyment by women and girls of their human rights and fundamental freedoms and are incompatible with the dignity and worth of the person of the human person, through the adoption of effective measures nationally, regionally and internationally.”<sup>135</sup>

It invites Governments to take steps to ensure for victims of trafficking the respect of all their human rights and fundamental freedoms, including taking steps to ensure all legislation related to combating trafficking is gender-sensitive and provides protection for the human rights of women and girls and against violations committed against women and girls.”<sup>136</sup> It calls upon Governments to criminalize trafficking in women and children in all its forms and to condemn and penalize traffickers and intermediaries, while ensuring protection and assistance to the victims of trafficking with full respect for their human rights, and “encourages governments to conclude bilateral, sub-regional, regional and international agreements to address the problem of trafficking in women and children, in particular, girls.”<sup>137</sup>

### **Summary of Trinidad and Tobago’s Response to Human Trafficking**

At the time of writing, the government of Trinidad and Tobago has not fully complied with the minimum

standards for the elimination of trafficking, but has initiated efforts with the IOM to strengthen the institutional capacity of the relevant organs of the Ministry of National Security.<sup>138</sup>

The government continues to lack adequate anti-trafficking laws, and despite evidence of trafficking abuses as reported in the media, did not report any criminal prosecutions, convictions or prison sentences for trafficking crimes committed against foreign domestic workers.<sup>139</sup> The government similarly did not take law enforcement action against trafficking for commercial sexual exploitation or take any steps to provide victims of sex trafficking with protection.<sup>140</sup>

### **Prosecution**

Trinidad and Tobago took inadequate measures to protect victims of trafficking and sometimes punished victims. However, the Government of Trinidad and Tobago did demonstrate some law enforcement efforts to combat trafficking in persons by conducting raids at brothel houses and hotels in Marabella, Chaguanas and Woodbrook.<sup>141</sup> While Trinidad and Tobago does not have a comprehensive anti-trafficking law, a variety of laws, the Sexual Offences Act,<sup>142</sup> the Immigration Act,<sup>143</sup> and the Kidnapping Act<sup>144</sup> cover most but not all forms of trafficking.

However, the lack of a comprehensive anti-trafficking law meant that statistics on trafficking prosecutions and

convictions are not kept. Most of the trafficked persons are women and children for the purpose of sexual exploitation, and who after incarceration are charged for immigration offenses under the Immigration Act, and deported. The government has not launched any major initiative towards rescuing victims, disrupting trafficking networks, developing intelligence and raising public awareness. Although the law does not specifically prohibit trafficking in persons, there were no substantiated reports that persons were trafficked to, from or within the country.<sup>145</sup>

That may be due to the fact that the government hardly paid attention to this area of trans-national organised crime, and the difficulty with obtaining data. In the event of trafficking, perpetrators can be prosecuted under several related laws, with penalties ranging from seven years to life imprisonment. There were no prosecutions during the year.<sup>146</sup> The government had not designated a specific agency to combat trafficking in persons, and it sponsored no public awareness campaigns to address the issue during that year.

### **Protection**

Women and children caught for sexual exploitation are usually incarcerated, and charged for immigration violations before being deported.<sup>147</sup> Overall, protective services remain lacking. The government employed no formal procedures for identifying trafficking victims among vulnerable populations, such as persons detained for prostitution or immigration violations.<sup>148</sup>

The government generally did not penalize victims for unlawful acts committed as a direct result of being trafficked. However, officials treated some foreign adults as illegal migrants and deported them without taking steps to determine if they were trafficking victims. The law does not provide temporary residency status for foreign trafficking victims, although foreign nationals may be able to apply for work permits or refugee status.

### **Prevention**

Whilst government officials have not denied the existence of trafficking in Trinidad and Tobago, there were no available statistics as there is no anti-trafficking legislation in force. Increased government collaboration with Trinidad and Tobago's hotel and tourism industry would assist efforts to prevent child sex tourism in tourist areas. Thus far, no investigations or prosecutions of such suspected criminal activity were reported by the government. The government made efforts to address demand for commercial sex acts by conducting high-profile raids on hotels and night clubs.

### **Conclusion**

This article has sought to present the issue confronting border security and the growing phenomenon of trafficking of human beings in Trinidad and Tobago. The main conclusion reached is that although it is easy to regard trafficking as a human rights issue in theory, it is difficult to address the human rights aspects inherent in the phenomenon in practice at the national level. In

addition, Trinidad and Tobago does not deal with wider human rights issues including the causes and consequences of the act. However, such factors as a lack of adequate funding and co-operation from the government and other sectors serve as obstacles to promoting a human rights framework.

According to Dr. Obokata, "Trafficking of human beings undoubtedly is a criminal justice issue. It affects the territorial integrity of States as the practice in many cases involves the facilitation of illegal crossing of borders in violation of national immigration laws and policies. It also threatens the rule of law and the political foundation of States, because traffickers, particularly organised criminal groups, resort to violence and corruption as means to advance their business."<sup>149</sup>

The response thus far from the government of Trinidad and Tobago is to conduct raids, incarcerate and deport those caught in brothels and hotels used for sexual exploitation and prostitution. The immigration law is used as the vehicle of control and removal. However, this approach reflects an inadequate medium in understanding the phenomenon of human trafficking. It is painfully obvious that trafficking cannot be suppressed solely by domestic efforts of States. The practice is a global phenomenon that has increasingly been facilitated by transnational organised criminal groups.<sup>150</sup>

In effectively addressing the need for reform, the government of Trinidad and Tobago may wish to consider a threefold strategy, namely (a) strengthening its capacity

and domestic legislation to incorporate new legislation,<sup>151</sup> with the full impact of the law on the traffickers, intermediaries, agents, and from source, transit and destination countries, whilst ensuring the full protection of human rights for the trafficked victims, (b) co-ordinating of improved Caribbean and regional diplomatic relationships, which will lead to improved co-operation and sharing of information,<sup>152</sup> and (c) improving adherence to all of its international human rights obligations.<sup>153</sup>

It is believed that the effort to combat trafficking in Trinidad and Tobago will be slowed by any impending legislation that is merely punitive. Just criminalisation of human trafficking and smuggling will not stop the demand for these activities, and will further victimise people whom Trinidad and Tobago may offer protection. Instead, Trinidad and Tobago as a State signatory must ensure its rapid entry into force and extended scope of application as the new strategy against trafficking. Also, consistency in insisting on the protection of human rights both at home and abroad would lessen the need for people to migrate and their exploitation upon arrival in Trinidad and Tobago.

The proposed *Caribbean Counter-Trafficking Legislation* possesses the four necessary requisites of prevention of trafficking, protection of victims, prosecution of offenders, and partnerships both within government and beyond.<sup>154</sup> If the government of Trinidad and Tobago intends to seriously address the growing phenomenon in trafficking and its human rights violations, then this legislation is

worthy of consideration and implementation.

There is also a need to establish a Venezuela-Colombia-Trinidad tripartite relationship with regards to anti-trafficking co-operation and the sharing of intelligence and information is crucial. Given the current malaise of what appears to be a *laissez-faire* public service culture, it would take much needful change in culture and public attitudes to ensure compliance and adherence of normative international human rights standards.

Furthermore, there is a need to implement measures in domestic legislation to detect and deter the illicit movements of human trafficking, whilst upholding the human rights of trafficked persons. Whilst the presence of such a legislation is necessary in Trinidad and Tobago, it must be accompanied by robust implementation, public awareness programs, and sensitivity of human rights issues promoted by the government, public, and all law enforcement agencies in order to address the human trafficking phenomenon effectively.

## ENDNOTES

- 1 See June 2008 *Trafficking in Persons Report*, available at <http://www.state.gov/g/tip/rls/tiprpt/2008>. Accessed on 02/06/2009.
- 2 This figure was cited in June 2008 *Trafficking in Persons Report*.
- 3 Ibid.
- 4 Ibid.
- 5 See CRS Report for Congress on "Trafficking in Persons in Latin America and the Caribbean, December 15, 2007. See also CRS Report for Congress, "Trafficking in Persons: U.S. Policy and Issues for Congress, June 20, 2007.
- 6 Ibid.
- 7 Ibid.
- 8 Ibid.
- 9 The International Organization for Migration (IOM) is an intergovernmental organization established in 1951, and is committed to the principle that humane and orderly migration benefits migrants and society. Statement taken from IOM website. Available at: [www.iom.int](http://www.iom.int).
- 10 See International Organization for Migration (IOM), Country Report on Trinidad and Tobago. Available at <http://www.iom.int/jahia/Jahia/pid/485>. Accessed on 20/01/2009.
- 11 Ibid.1.
- 12 Ibid.
- 13 Ibid.
- 14 Ibid.
- 15 Ibid.
- 16 See Trinidad and Tobago *Guardian*, "World body calls for specific laws to combat scourge," available at <http://guardian.co.tt/news/general/2009/02/11world-body-calls-specific-laws-combat.....> Accessed on 02/06/2009.
- 17 See Mohammed Y. Mattar, *Trafficking in Persons: An Annotated Legal Bibliography*, 96 Law Library Journal 669(2004).
- 18 See Trafficking Victims Protection Act of 2000 # 102, 22 U.S.C., 7101 (2001) [hereinafter TVPA].
- 19 Trafficking Victims Reauthorization Act of 2003, Pub.L. No. 108-193, 108<sup>th</sup> Congress (2003)[hereinafter TVPRA 2003]
- 20 Trafficking Victims Reauthorization Act of 2003, Pub.L. No. 109-164, 109<sup>th</sup> Congress (2005)[hereinafter TVPRA 2005]
- 21 UN DOC.A/55/383.
- 22 UN DOC. A /RES/55/25 (15 November 2000). Currently, it has 147 signatories and 133 state-parties from all regions and continents.
- 23 Ibid.
- 24 Ibid. Article 36.
- 25 V. Wahl, "Trafficking in Human beings for the Purposes of Sexual Exploitation-Legal Challenges in the Fight Against Modern Slavery in Crisis

## 316 BORDER SECURITY AND HUMAN TRAFFICKING

- Regions; A case study of Bosnia and Herzegovina” in Roberta Arnold and Geert-Jan Alexander Kooops. Eds., *Practice and Policies of Modern Peace Support Operations under International Law* (2006) at 229.
- 26 UN DOC. A/RES/55/25 (15 Nov 2000). See also David Mc Clean, *Transnational Organized Crime*, Oxford: Oxford University Press, 2007, pp. 339-350.
- 27 UNOCP, available at [http://www.unodoc.org/unodoc/en/crime\\_cicp\\_signatuires\\_trafficking.html](http://www.unodoc.org/unodoc/en/crime_cicp_signatuires_trafficking.html). Accessed on 18/01/2009.
- 28 These include temporary resident status, temporary shelter, medical and psychological services, access to justice, compensation and restitution.
- 29 See Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime, Article 3(a).
- 30 B. Oswald and S. Finnin, *Combating the Trafficking of Persons on Peace Operations*, 10 *International Peacekeeping* 1 at 5-6.
- 31 United Nations Convention against Transnational Organized Crime, UN DOC. A/55/383. (29 Sep 2003); Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, UN DOC. A/55/383, A/RES/55/25(15 Nov 2000). See also David Mc Clean, *Transnational Organized Crime*, Oxford: Oxford University Press, 2007, pp. 18-36.
- 32 See Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the UN Convention against Trans-national Organized Crime, Article 3(a).
- 33 A/RES/54/263 (25 May 2000), entered into force 18 January 2002.
- 34 A/RES/54/263 (25 May 2000), see Preamble.
- 35 Id., Articles 1, 2(a)
- 36 Id., Article 2(b).
- 37 Id., Articles 1, 2(c)
- 38 Id., Article 3.
- 39 See Trafficking In Persons Report, June, 2008, U.S Department of State. Available at <http://www.state.gov/g/tip/rls/tiprpt/2008/105389.htm>. Accessed on 17/01/2009. See also Francis Miko in *CRS Report RL30545, Trafficking in Persons: The U.S. and the International Response, July, 2006*.
- 40 See *Special Report* on “Villagers caught up in human flesh trade,” in the *Trinidad Guardian*, 17 January, 2009; See Article by Suzanne Sheppard, “Sex tourism drives illicit trade,” *Newsday*, August 5, 2007. Also Special Report on “Villagers caught up in human flesh trade,” in the *Trinidad Guardian*, 17 January, 2009.
- 41 Ibid.
- 42 Ibid.
- 43 See *Special Report* on “Villagers caught up in human flesh trade,” in the *Trinidad Guardian*, 17 January, 2009; Article by Suzanne Sheppard, “Sex tourism drives illicit trade,” *Newsday*, August 5, 2007.

- 44 Ibid.
- 45 Ibid.
- 46 Ibid.
- 47 Ibid.
- 48 "Exploratory Assessment of Trafficking in Persons in the Caribbean Region," *IOM*, June, 2008.
- 49 Ibid. See also Chissey Mueller, "Human Trafficking Context in the Caribbean and Latin America: Responding to Trafficking in Persons in the Americas, Catholic Relief Services, November 3, 2008. Available at: <http://www.iom.int/jahia/jahia/pid/485>. Accessed at 16/01/2009. Muller is also the Co-ordinator of the Caribbean Counter-Trafficking Project.
- 50 See Article by Suzanne Sheppard, "Sex tourism drives illicit trade," *Newsday*, August 5, 2007. Also Special Report on "Villagers caught up in human flesh trade," in the *Trinidad Guardian*, 17 January, 2009.
- 51 "Ricky Martin, US Labor Secretary to meet on Child Labor," *Agence France Presse*, 24 September 2003.
- 52 Article by Suzanne Sheppard, "We need more facts on human trafficking in TT," in *Newsday*, January 18, 2009. See also Clive Dottin, "Human Trafficking-Coercion or Deception? in *Trinidad Guardian*, January 21, 2009.
- 53 See CRS Report for Congress on "Trafficking in Persons in Latin America and the Caribbean, December 15, 2005. See also CRS Report for Congress, "Trafficking in Persons: U.S. Policy and Issues for Congress, June 20, 2007. Also see General Committee Report of the Permanent Council of the OAS, General Committee, OEA/SER.G, IOM/OAS, Hemispheric Meeting on Trafficking in Persons, February 10, 2005.
- 54 Ibid.
- 55 Ibid.
- 56 See *Special Report* on "Villagers caught up in human flesh trade," in the *Trinidad Guardian*, 17 January, 2009
- 57 Ibid.
- 58 See Article by Suzanne Sheppard, "Sex tourism drives illicit trade," *Newsday*, August 5, 2007. Also Special Report on "Villagers caught up in human flesh trade,"
- 59 See Yvonne Baboolal's article "Residents link cops to 'dens of iniquity,' in the *Trinidad Guardian*, January 11, 2009.
- 60 Commission on Human Rights, OHCHR, Resolution 2001/48, and Traffic in Women and Girls. Also See Report of the Third Committee, General Assembly, 57/176, Trafficking in Women and Girls, January, 2003, and General Assembly, 61/144, Trafficking in Women and Girls, February 1, 2007.
- 61 See P. Belsar&F. Mehran, in ILO Minimum Estimate of Forced Labor in the World 33(2005).
- 62 See CRS Report for Congress on "Trafficking in Persons in Latin America and the Caribbean, December 15, 2005. CRS Report for Congress,

318 BORDER SECURITY AND HUMAN TRAFFICKING

- "Trafficking in Persons: U.S. Policy and Issues for Congress, June 20, 2007. General Committee Report of the Permanent Council of the OAS, General Committee.
- 63 See Andrea Downer "Human Trafficking in the Caribbean-The Experience of Seven Countries," In the Panos Institute of the Caribbean. Available at <http://www.panosinst.org/regional>.
- 64 Ibid.
- 65 See Sexual Offences Act No 27 as amended by Sexual Offences Act No.31 of 2000. Available at <http://www.interpol.int/Public/Children/SexualAbuse/NationalLaws/csaTrinidadtobago>. Accessed on 10/06/2009.
- 66 Ibid.
- 67 Ibid.
- 68 Ibid.
- 69 Ibid.
- 70 Ibid.
- 71 Ibid.
- 72 Ibid.
- 73 Article 17(b) of the Sexual Offences Act, No. 27 of 1986, as amended by the Sexual Offences Act No. 31 of 2000.
- 74 Article 17(c).
- 75 Article 17(a).
- 76 Article 18.
- 77 Article 21.
- 78 Article 22.
- 79 Ibid.
- 80 See article by Radhica Sookraj, "Women victims of human trafficking," *Trinidad Guardian*, Monday 23rd July, 2007
- 81 Chapter 46:01, Article 7.
- 82 Article 8.
- 83 Articles, 23 and 24.
- 84 Preamble of the Constitution of Trinidad and Tobago, as amended by Act No.89 of 2000.
- 85 See Section 8(e)(f) of the Immigration Act, 41 of 1969, Chapter 18. Available at [www.immigration.gov.tt/documentlibrary/downloads/13/Immo/o20Act/o&o/oRegs.pdf](http://www.immigration.gov.tt/documentlibrary/downloads/13/Immo/o20Act/o&o/oRegs.pdf).
- 86 See Kidnapping Act, 2003, available at [www.ttparliament.org/legislations/a2003-21pdf](http://www.ttparliament.org/legislations/a2003-21pdf).
- 87 Ibid.
- 88 See Yvonne Baboolal's article "Residents link cops to 'dens of iniquity,' in the *Trinidad Guardian*, January 11, 2009. See Article by Suzanne Sheppard, "Sex tourism drives illicit trade," *Newsday*, August 5, 2007. Also Special Report on "Villagers caught up in human flesh trade," in the *Trinidad Guardian*, 17 January, 2009.
- 89 Ibid.

- 90 Ibid.
- 91 Ibid.
- 92 See article by Richard Lord, AG: "No Empirical Evidence of Human Trafficking in TT", *Trinidad Guardian*, 7 January, 2009.
- 93 Ibid.
- 94 See *Trinidad Guardian*, 23 July, 2007 article on "71 women held in raid."
- 95 Ibid.
- 96 Ibid.
- 97 See article 'Prostitution laws are humorous, inadequate' in the *Trinidad Guardian*, April 29, 2008. In this article, Sinkovits, former Chef De Mission for the IOM indicated that "there were cases of trafficking in the Caribbean, and during the time that he has been in Trinidad, he had reports of human trafficking." Also see article by Yvonne Baboolal, "US Embassy Follows Up on Human Trafficking Report," *Trinidad Guardian*, December 27, 2008.
- 98 See Article by Yvonne Baboolal, "Hispanic women brought in," *Trinidad Guardian* 4 January, 2009.
- 99 See article by Asha Javeed, "A prostitute's tale: sex to avoid arrest," *Trinidad Guardian*, April 16, 2008. The article touches on the sexual exploitation of illegal Colombian women, and allegations of abuse by law enforcement officials. See article by Richard Charan, "Cop charged with sex crimes at hotel," in the *Trinidad Express*, November 19, 2008. See also article by Rhondor Dowlal, "Police officer in court on rape charge," in the *Newsday*, November 19, 2008. Article deals with the charge of rape of a Colombian woman by the same police officer, Derrick Badree. See article by Denyse Renne, "Blows for Police Service: From 'walking whisky' to sex on the beach," in the *Trinidad Express*, December 27, 2008.
- 100 See article by Richard Charan, "Cop charged with sex crimes at hotel," in the *Trinidad Express*, November 19, 2008. See also article by Rhondor Dowlal, "Police officer in court on rape charge," in the *Newsday*, November 19, 2008. Article deals with the charge of rape of a Colombian woman by the same police officer, Derrick Badree.
- 101 See article by Denyse Renne, "Blows for Police Service: From 'walking whisky' to sex on the beach," in the *Trinidad Express*, December 27, 2008.
- 102 Ibid.
- 103 Tom Obokata, *Trafficking of Human Beings from a Human Rights Perspective*, Leiden/Boston: Martinus Nijoff Publishers, 2006, 47-59.
- 104 Ibid.
- 105 Ibid.
- 106 Ibid.
- 107 Ibid.
- 108 Ibid.
- 109 Ibid. See "Caribbean's Response to the Challenge" in Caribbean Counter-Trafficking Model Legislation and Explanatory Guidelines. Available at <http://www.iom.int>. p.9

## 320 BORDER SECURITY AND HUMAN TRAFFICKING

- 110 Ibid.
- 111 Tom Obokata, *Trafficking of Human Beings from a Human Rights Perspective*, Leiden/Boston: Martinus Nijhoff Publishers, 2006, 47-59.
- 112 Ibid.
- 113 See article "Gov't to probe human trafficking," *Trinidad Guardian*, January 23, 2009.
- 114 See International Organization for Migration (IOM), Country Report on Trinidad and Tobago. Available at <http://www.iom.int/jahia/jahia/pid/485>. Accessed on 20/01/2009.
- 115 Ibid.
- 116 See 2008 Human Rights Report: Trinidad and Tobago published 25, 2009. Available at: <http://www.state.gov/g/drl/rls/hrrpt/2008/wha/119175.htm>. Accessed on 02/06/2009.
- 117 Ibid.
- 118 See also Chissey Mueller, "Human Trafficking Context in the Caribbean and Latin America: Responding to Trafficking in Persons in the Americas, Catholic Relief Services, November 3, 2008. Available at: <http://www.iom.int/jahia/jahia/pid/485>. Accessed at 16/01/2009. Muller is also the Co-coordinator of the Caribbean Counter-Trafficking Project. See also the Caribbean counter-Trafficking Initiative (CCTI), available at <http://www.iom.int/united states/ct/ctregional.htm>. Accessed on 04/06/2009.
- 119 Ibid.
- 120 Ibid.
- 121 Ibid.
- 122 See "Caribbean's Response to the Challenge" in Caribbean Counter-Trafficking Model Legislation and Explanatory Guidelines. Available at <http://www.iom.int>. p.9
- 123 Ibid.
- 124 Ibid.
- 125 Ibid.
- 126 Civil society is defined by the London School of Economics Centre for Civil Society: Civil Society refers to the arena of uncoerced collective action around shared interests, purposes and values.
- 127 See "Caribbean's Response to the Challenge" in Caribbean Counter-Trafficking Model Legislation and Explanatory Guidelines. Available at <http://www.iom.int>. p.9.
- 128 Ibid.
- 129 Ibid.
- 130 Ibid.
- 131 Ibid.
- 132 See UNODOC, Doc. A/58/422.
- 133 See UNODOC, Resolution A/RES/55/25.
- 134 Ibid.
- 135 Office of the High Commissioner for Human Rights, the Commission on Human Rights, at its 75<sup>th</sup> meeting, Resolution 2001/48. See also General

- Assembly Resolution 57/176, (2003) Trafficking in Women and Girls, and General Assembly Resolution 61/144 (2007). The last resolution mentioned, also calls upon governments to “take appropriate measures to strengthen existing legislation with a view to providing better protection of the rights of women and girls.”
- 136 Ibid.
- 137 Ibid.
- 138 See International Organization for Migration (IOM), Country Report on Trinidad and Tobago. Available at <http://www.iom.int/jahia/jahia/pid/485>. Accessed on 20/01/2009.
- 139 See Yvonne Baboolal’s article “Residents link cops to ‘dens of iniquity,’ in the Trinidad Guardian, January 11, 2009.
- 140 Ibid.
- 141 Ibid.
- 142 See Sexual Offences Act No 27 as amended by Sexual Offences Act No.31 of 2000. Available at <http://www.interpol.int/Public/Children/SexualAbuse/NationalLaws/csaTrinidadtobago>.....Accessed on 10/06/2009.
- 143 See Section 8(e)(f) of the Immigration Act, 41 of 1969, Chapter 18. Available at [www.immigration.gov.tt/documentlibrary/downloads/13/Immo/o20Act/o&o/oRegs.pdf](http://www.immigration.gov.tt/documentlibrary/downloads/13/Immo/o20Act/o&o/oRegs.pdf).
- 144 See Kidnapping Act, 2003, available at [www.ttparliament.org/legislations/a2003-21pdf](http://www.ttparliament.org/legislations/a2003-21pdf).
- 145 Ibid.
- 146 See “Caribbean’s Response to the Challenge” in Caribbean Counter-Trafficking Model Legislation and Explanatory Guidelines. Available at <http://www.iom.int>. p.9.
- 147 See International Organization for Migration (IOM), Country Report on Trinidad and Tobago. Available at <http://www.iom.int/jahia/jahia/pid/485>. Accessed on 20/01/2009
- 148 Ibid.
- 149 Tom Obokata, *Trafficking of Human Beings from a Human Rights Perspective*, Leiden/Boston: Martinus Nijoff Publishers, 2006, 173.
- 150 See 2008 Human Rights Report: Trinidad and Tobago published 25, 2009. Available at: <http://www.state.gov/g/drl/rls/hrrpt/2008/wha/119175.htm>. Accessed on 02/06/2009.
- 151 See International Organization for Migration (IOM), Country Report on Trinidad and Tobago. Available at <http://www.iom.int/jahia/jahia/pid/485>. Accessed on 20/01/2009.
- 152 Ibid. See also Tom Obokata, *Trafficking of Human Beings from a Human Rights Perspective*, Leiden/Boston: Martinus Nijoff Publishers, 2006, 176-177.
- 153 Ibid.
- 154 See “Caribbean’s Response to the Challenge” in Caribbean Counter-Trafficking Model Legislation and Explanatory Guidelines. Available at <http://www.iom.int>. p.9.

## **ASPECTS OF TRINIDAD AND TOBAGO'S CRIMINAL JUSTICE SYSTEM: RECIDIVISM RATES OF RAPISTS**

Simon Alexis

*The University of the West Indies, St. Augustine Campus*

---

### **Introduction**

Rape is a significant social problem globally. Recidivism of rapists places special demands on any criminal justice system. In this study, the researcher analysed the three arms of the criminal justice system focusing on too lengthy trials, harsh punishment and how these impact the recidivism rates of male rapists.

The roles and functions of the police service regarding investigations of rapists were first examined and inefficiencies in the investigating procedure noted. This was followed by laying out the processes involved in judicial trials of rapists with documentation of shortcomings in the processes. The management of convicted rapists within the Corrections (Prisons) Service was then scrutinized and its inefficiencies highlighted.

Data have shown that a substantial amount of time is wasted by police officers attending court and an enormous

sum of money spent on incarcerating rapists. The researcher posited that the inefficiencies in the Trinidad and Tobago criminal justice system, manifested in forms of too lengthy trials and court sentences, as well as harsh punishment, contribute to the zero recidivism rate of rapists (Prisons, 2009).

The recidivism rate of rapists in Trinidad and Tobago has not been established (Ramdhanie 2002). However, long-serving members in the correctional system have indicated that the recidivism rate is zero, which they attributed mainly to corporal punishment (Trinidad and Tobago Prisons Service 2009). Ramdhanie (2002) stated that rape, incest and other sexual offences account for 2% of the prison population. According to the Trinidad and Tobago Prison Service (2008) in 2007 there were 71 convicted rapists. Trinidad and Tobago Police Service data show that during the years 2000-2006 there was a total of 3,621 reports of rape made to the police. During the period 2007 to the end of 2009, 19 incarcerated rapists were released leaving a total of 52 convicted rapists in prison, (Trinidad and Tobago Prisons Service, 2010).

In the United States, sex offenders, inclusive of rapists, are four times more likely than non-sex offenders to be arrested for another sex crime after discharge from prison (Bureau of Justice Statistics, 2003). In addition, at the time of that study, 43% of those sex offenders had been on probation or parole when they committed the offence for which they were incarcerated (Bureau of Justice Statistics, 2003). However, because of the harsh punishment that

a second-time rape convict can receive in Trinidad and Tobago, it is arguable that the likelihood of a rapist reoffending is slim. It is reasonable to contend that the severity of sentence may have an impact on rapists whose cases are pending such that they are deterred from repeating the act. The efficacy of severe/harsh punishments handed down by judges in sentencing rapists in the high court is an aspect of the criminal justice system that will be evaluated.

Offenders are no doubt aware that the severity of the sentence can increase based on previous conviction or recidivism. The severity of assigned punishments should reflect the seriousness of the offence as well as the offender's relevant history (Home Office, 2001). As such, a defendant with a record of prior criminal behaviour is more culpable than a first offender and thus deserving of greater punishment (US Sentencing Commission, 2006). It is not surprising, therefore, that legislatures around the world continue to approve harsher penalties for recidivists (Robert 2008).

This trend seems to have a greater impact on Trinidad and Tobago rapists such that the recorded recidivism rate of rapists in Trinidad and Tobago is zero (0) percent compared to rates of 20% within two years of release in the U.K. (Home Office 2003). It must be pointed out, however, that there could be a difference between official measures of recidivism and actual measures. It is, therefore, the intention of the researcher to get self-report data on recidivism using semi-structured interviews, since the

recidivism rate of zero percent is the official rate as reported by the Prison/Correctional officials, and not necessarily the actual rate.

In addition to heavy punishment for the offence there are also challenges with respect to proper case processing. For example, Burgess et al. (2006) have explored the importance of forensic science processing at crime scenes. They indicated that: "The lack of DNA may be attributed to a number of factors such as the nature of sexual assault ...the victim may have showered, brushed her teeth, or washed her clothes; or the perpetrator may have used a condom or may not have ejaculated (thus not leaving any or enough biological evidence for analysis)" (p. 207).

It is important to note that varied rates of recidivism for rapists are not unusual. However, a rate of 0%, as in Trinidad and Tobago, is unheard of. Langevin et al. (2004) unearthed an 88.3% recidivism rate for sexual offenders while Kruttschnitt, Uggen, and Shelton (2000) found that only 6% of convicted offenders had committed another sex offence within five years. The extremes of rates posited by these researchers show that a more reliable result must be found. This strongly supports the need for researching the recidivism rate of convicted rapists in Trinidad and Tobago.

The untimely manner in which cases are dealt with in the criminal justice system has caused a backlog of cases to be tried, including rape cases resulting in extended waiting periods for victims, witnesses and accused alike. As a

consequence of the lengthy waiting periods, post-rape trauma, which is experienced by the victim, is further exacerbated. Victims are negatively affected when they relive traumatic aspects of the rape crimes while giving evidence long after the rape.

By the same token, the accused person undergoes psychological strain. While the accused rapists may be charged, they are deemed innocent until proven guilty. However, being subjected to lengthy trial periods (from arrest to completion of trial) with the threat of harsh punishment, rapists can be affected psychologically and by extension their families and relatives may be affected if they have to endure negative reactions from members of society, especially in their communities. In the case of witnesses, they are required to attend court on numerous occasions, with the possibility of a loss of wages for being away from the job.

In addition to the untimely manner in which cases are dealt with, the criminal justice system also has a high, spiralling maintenance cost associated with housing convicted persons. Society as a whole, through state management, bears the brunt of this cost incurred by the system. There is a need, therefore, to formulate policies for efficient policing, judicial and correctional processes in order to reduce and in some cases eradicate unnecessary stresses that members of society endure as a result of the functioning of the criminal justice system. *It is hypothesised that the inefficiencies in the criminal justice system not only adversely affect society as a whole, but also contribute to the zero*

*recidivism rate of rapists.*

### **Aims and Objectives of the Study**

The main aim of the study is to determine whether the inefficiencies in the criminal justice system contribute to a zero recidivism rate of male rapists in Trinidad and Tobago. In the proposed study the researcher theorizes that inordinate delays in prosecuting rapists prevent them from being recidivistic by virtue of the fact that these delays give the accused time to reflect on the severity of punishment that will be meted out if convicted a second time for a rape crime. The thought of receiving even more severe sentences deter them from committing new rape crimes.

The researcher will also argue that the antiquated processes of the Trinidad and Tobago criminal justice system result in the inefficiencies that persist. The impact of the police department, the judiciary and the corrections – the prisons – will also be evaluated. In cases of rape, the police department is responsible for bringing the perpetrators before a magistrate and subsequently a judge and jury. The research will examine:

- Police tardiness, lack of proficient rape investigations and their poor exhibit, case file management and court attendance.
- Lengthy trials caused by the backlog of cases.
- Harsh and lengthy incarceration of rapists.
- Delays and inefficiencies in the criminal justice system.

## **Recidivism**

Having articulated the aims and objectives of the study, it is necessary to define recidivism especially as it relates to recidivism of rapists. Defining recidivism in a clear, concise and generalizable manner, poses difficulty. The Concise Oxford English Dictionary states that a recidivist is a 'convicted criminal who reoffends.' However, existing literature gives various other factors to consider when defining recidivism.

For example, Kevin and Wells (2003) highlighted probationer recidivism and looked at the offender who is on probation and commits another offence. Factors like the period whilst rapists are on bail, the number of crimes they commit and the seriousness of these crimes are all to be explored before deciding on a definition for recidivism. One definition of recidivism of rapists states that it is a "conviction for a post-discharge sexual offense" (Studer, Aylwin and Reddon 2005). Prentky and Lee (2007) looked at it "from parole violation and arrest or charges to conviction and re-incarceration."

In gauging recidivism some researchers have used four measures, namely: (i) new arrests; (ii) new convictions; (iii) any occurrence of re-imprisonment, and (iv) any return to prison with a new prison term (Langan and Levin 2002; Connecticut Recidivism Report 2009). For the purpose of this study, a recidivistic rapist will be defined as a person who has been charged and convicted of the crime of rape and, having served his punishment, commits another rape

and is re-incarcerated after conviction. *The research will also show that the impact of punishment is sufficiently significant as a deterrent to reoffending by rapists in the future.*

### **Rape Data**

Having defined recidivism, one can now consider rape data. According to the Canadian Centre for Justice, Canada saw 23,000 sexual assaults reported to the police in 2005. On the other hand British police recorded 39,451 reports of serious sex crimes committed against women in 2006-2007, a rate per 100,000 of 65.75, and during the period 2007-2008 recorded 36,838 serious sex crimes against women, a rate of 61.39 (Crime in England and Wales, 2007/2008). Comparatively speaking, during the years 2000-2006 the highest rate of rapes in Trinidad and Tobago was for the year 2006 with 55.8 per 100,000 and the lowest being 32.6 for the year 2000 (Trinidad and Tobago Police Service, 2007).

### **Criminal Justice System in Trinidad and Tobago**

The problem of rape without supporting data is of great concern to the criminal justice system. The criminal justice system in Trinidad and Tobago has three major divisions: (1) the Trinidad and Tobago Police Service, (2) the Judiciary and (3) Corrections – Trinidad and Tobago Prisons Service. In the case of the Judiciary, it is made up of the Supreme Court of Judicature and the Magistracy with the Chief Justice as the head (Judiciary of the Republic of Trinidad and Tobago Annual Report, 2005-2006).

Confidence in the criminal justice system can be based on perceptions as to how effectively criminals are brought to justice with sentences perceived as being too severe or inadequate (Crime in England and Wales, 2007/2008). Duckett and Schinkel (2008) indicated that criticisms of the criminal justice system are those that question the system's efficiency rather than propriety and are concerned with improving the efficiency with which the system operates. In Trinidad and Tobago, the criminal justice system has also been often criticized for its inefficiencies which continue to affect the rights of accused persons, specifically their right to a speedy trial. Those accused of rape are no different.

### **Role of Law Enforcement**

Identifying the branches of the criminal justice system is important in order to have a clear understanding of the role of law enforcement within the system. The Police Service is guided by its vision 'to be the national provider of professional policing service' when servicing people of all nationalities (Commissioner's Report, 2007). All police officers are mandated to "preserve the peace and detect crime and other infractions of the law" (Police Service Act, 2006). Their role also focuses on prosecuting offenders and bringing them before court justices. These processes are critical for effective management of the Trinidad and Tobago criminal justice system. One, however, has to be concerned as to whether such effective policing is delivered when officers are investigating or prosecuting rapists.

## **Impact of Police Response**

### *Victim Encounter*

Impact of the police response includes encounter with victims. Professional sympathy for, and reassurance by the police of rape victims and their associates, may also be considered imperative during the period where both rape victims and their associates may be depressed. Although victim assurance service has been instituted by the police service, it is in its embryonic stage and has not effectively made its mark.

It is necessary that at an appropriate time, victims should be made aware that they will be required to attend court and give evidence. This is so since giving evidence as a rape victim in a court environment can be intimidating. Such information must not just be given to victims in a rushed or haphazard manner but care must be used when it is given and all possible details about court attendance must be shared with them.

Police officers have been guilty of not managing these issues and generating unnecessary fear in victims which may result in rapists being acquitted. Herman (2005) and Regehr and Alaggia (2006) have suggested that the acquittal of rapists is in large part due to a disconnect between victims' expectations of the system and the purpose and processes of the justice system. Effective rape investigations depend a lot on the victim's willingness and preparedness to cooperate and attend court.

Rape victims' encounters with the police should result in proper rape investigation. Brownmiller (1975) suggested that rape is neither irrational nor impulsive. It is not a demonstration of uncontrollable lust. It is, rather, a hostile, deliberate, violent act, performed to degrade and possess the victim. In most cases, police officers are the first to come into contact with a rape victim soon after the traumatic event. This is a critical stage and requires efficient, professional handling of victims. Such service has been found to be lacking on the part of police investigators, and overall proper rape investigations conducted by police officers leave a lot to be desired.

When one reviews the extent of violence used by some rapists it is clear that rape crime scenes can supply evidence to assist prosecution. Both the rapist and the victim should be examined physically as part of the rape crime scene processing. The rape crime scene does not cover only the physical area where the event occurred. It, in fact, includes the physical person of both victim and accused rapist.

It is of important evidential value that the physical person of both victim and accused rapist be thoroughly examined by competent crime scene investigators with a view to extracting evidence from them. Forensic science demands that all possible areas that are available for examination be examined. Extremely small particles of body tissue from the victim trapped on the accused rapist can assist in solving a rape case and bringing a rapist to justice. Proper crime scene exploration and management can aid in

unearthing evidence that may be instrumental in identifying a rapist who might have been previously convicted for a rape crime.

An experienced criminal who commits a rape offence may destroy evidence from such activities. Park et al. (2008) discussed various acts of violence rapists inflicted on their victims, which included tearing off clothes, stabbing, gagging, vaginal and anal penetration. Effective crime scene control can result in having appropriate exhibits for management. The police have been heavily criticized on several occasions for mismanagement of exhibits which are an integral part of prosecuting any offender inclusive of rapists.

Akile Simon noted in the Trinidad Guardian on September 4, 2009, "marijuana and cocaine exhibits that were ordered destroyed by a Magistrate were found at a police corporal's home." Although the Trinidad and Tobago Police Service has written guidelines for managing exhibits, these guidelines have not always been adhered to. This non-adherence has resulted in embarrassment to the Service.

Exhibits coming into police custody should be handled according to these specific guidelines, which instruct as to the procedure to follow for the care and custody of exhibits (Trinidad and Tobago Police Service Standing Order, Section 26). Improperly managed evidence collected from rape crime scenes would have almost the same effect as such evidence that was not collected at all - valueless.

Examples of this mismanagement are seen in cases where police officers failed to collect exhibits from their property managers and attended court without them, or where exhibits are damaged, destroying evidential markings. When this information is brought before the courts they affect the strength of the case and many times accused persons go free.

### **The Police and Case File Management**

Like exhibits, managing case files is significant for court trials. There is, however, a continuous problem, where some police officers fail to submit timely case files. Most court cases have several witnesses who all must submit written statements to the investigating police officer. On occasion, investigators claim that witnesses are not cooperative or that these witnesses do not have the time and this contributes to delays in timely submission of these case files. Late or non-submission of case files contributes to postponement of cases (Commissioner's Report, 2007). Some investigators report that their analysis reports of exhibits are unavailable due, at times, to incompleteness at the Forensic Science Centre where they are sent for scientific processing.

### **Impact of the Judicial Process**

#### *The Role of the Judiciary*

The discussed impact of the police response laid the path for exploring the impact of the judicial process. The Judiciary boasts of its independence, integrity and justice,

and comprises the Supreme Court of Judicature, which consists of the Court of Appeal and the High Court, and the Magistracy, which is made up of courts of summary jurisdiction and petty civil courts, created under the Summary Courts Act Chapter 4:20 and the Petty Civil Courts Act Chapter 4:21 of the Laws of Trinidad and Tobago, (Judiciary of the Republic of Trinidad and Tobago Annual Report, 2005-2006; 2007-2008).

The Court of Appeal addresses appeals emanating from Magistrates' and High Court trials. The High Court is responsible for trying cases committed to it after preliminary inquiry hearings. The Magistrates' Courts are where the cases of persons accused of rape are heard at the preliminary inquiry hearing, whilst the Petty Civil Courts ventilate private proceedings that victims of rapes may choose to bring against rapists. Appeals beyond the Trinidad and Tobago Judiciary are facilitated as of right or with leave to the Privy Council of the United Kingdom. The functioning of the various courts will be essential to this research since they impact the processes of the criminal justice system.

### *Court Activities*

Of all the critical processes, the charge case is the first event that impacts the judicial process. Rapists' first court day attendance is mostly a formal event. Case trials never start on the first attendance and are normally reserved for reading out the charge to the accused. A great deal of time is lost by this formal process which in the Magistrates'

Court is the 'charge case' appearance of the accused. Police officers can be kept all day in court awaiting the call of a 'charge case' although it is common knowledge that the case would not be proceeding on that day. This helps to make the criminal justice system slow and inefficient and will be evaluated during the course of this study.

Court attendance has also impacted the criminal justice system. The attendance of police officers in court is important for getting rape trials started. There are numerous reasons given by police officers for not attending court. Some officers report sick on the trial day and do not attend court. The non-attendance of police complainants is a major contributing factor for postponing court cases (Commissioner's Report, 2007). When this occurs cases cannot be continued and are therefore postponed or dismissed/discharged by the presiding magistrates. Some officers fail to attend court when they are performing other critical duties such as conducting investigations into murders or arresting persons suspected of rapes and murders. Other officers blatantly disregard court hearings claiming that they forgot the date of the trial. Additionally, quite a few would have been on vacation leave.

Interviews conducted by the researcher with police officers on October 8, 2009 revealed that "court attendance of the victim is even more important than that of the police officer since another police officer, who would have been present to witness the report, can be used to fulfil the necessary requirements in the absence of the original

officer. On the other hand if the victim fails to attend court no one can substitute for that victim.”

For victims, especially in rape cases, attending court and having to confront the rapist can be a traumatic experience. Victims have complained about not wanting to face their assailant, as doing so brings back painful memories of the rape. In other instances there have been situations where victims fail to appear in court because they were threatened and had become fearful. Prosecution witnesses are sometimes reluctant to appear in court and testify (Commissioner’s Report, 2007). Some victims attend court and give contrary evidence having been paid to do so by the accused.

There is also a significant effect on a rape trial when the accused person fails to attend court. Whilst the law caters for trials to proceed without the accused, the gravity of rape cases militates against trials proceeding in the absence of the accused. Accused persons have claimed to be victimized and not brought to court for their trial because they failed to conform to the illegal act of paying correctional officers as a favour to be taken to court. The efficiency of the criminal justice system can be affected by these interventions in trials, the extent of which the research will attempt to verify.

Some attorneys attend court but will not proceed with the trial if they are not ‘fully briefed/paid’ whilst others attend and beg for a postponement as instructed by the accused. These actions of the attorneys impede the efficiency of the

criminal justice system. It has been said that some attorneys are paid to delay the court trial by giving various excuses why the case should not begin or, if started, why it should not continue swiftly.

Regehr et al. (2008, 106) stated "in one case, lawyers did not attend court, but sent a letter leaving the victim alone... and the process was prolonged and exhausting." A few attorneys have been said to fabricate reasons for not proceeding with trials with a view to presenting their matters before a judge of their choice. These strategies are successfully utilized since judges are rotated from time to time to preside in different courts. The use of these strategies, however, hampers the flow of trials and assists in delaying court procedures or reducing efficiency in the criminal justice system.

#### *Trial Delays and Challenges*

Failure by parties to attend court hearings, especially in rape cases, inevitably leads to trial delays. Magistrates, whose efforts should be directed to ensuring speedy trials, have themselves helped to delay trials at times. It has been reported that many Magistrates complete their day's work before 2:00 p.m. after commencing at 9:00 a.m. the said day. Another complaint made against Magistrates is that they seldom start court on time.

Correctional officers who arrive late with accused persons or who fail to bring accused persons to court have been criticized by Magistrates. Traffic congestion is an excuse

regularly used by these correctional officers for late arrival or non-attendance of the accused persons in their care. There have been delays caused by the absence or late arrival of Magistrates' Court recorders. Some trials at the Magistrates' Courts have been delayed because of the dilapidated condition of the court, which prompted protest from attorneys. All these add to delays in trials of cases including rape cases.

The processing of a rape case from charge through to conviction and/or dismissal of the offence has proven to be extremely time-consuming for police officers. This process necessitates a reduction in the operational abilities of core police officers in that, instead of being utilized in operations directed at preventing rapes and other crimes, officers are stuck in lengthy court attendance.

The police divisions in Trinidad and Tobago - Port of Spain, North-Eastern and Western - are served by fourteen (14) Magistrates' Courts. These courts adjudicate for the geographic areas from San Juan in the east to Chaguaramas in the west; Caroni River in the south and Maracas Bay to the north. Fifteen police stations and two police posts service these areas.

The number of new cases, inclusive of rapes, for the areas mentioned which involved police court attendance filed for the period August 1, 2008 to July 31, 2009 was 18,063, (Judiciary of Trinidad and Tobago Annual Report, 2008-2009). Police officers must follow a particular procedure before they appear at the Magistrates' Court. Trinidad and

Tobago Police Service Departmental Orders instruct that police complainants and police witnesses report to the relevant police prosecutor between 7.30 a.m. and 8.15 a.m. on the day of the case for consultation about the case. This process is called Orderly Room.

The police complainant and police witness then proceed to attend the Magistrates' Court, which is normally carded to begin at 9.00 a.m. The police officer then follows the court procedure, which is controlled by the presiding magistrate, in keeping with the guidelines set out in the Summary Court Act Chapter 4:20. This process involves calling of the case, reading of the charge to the accused, consultation between attorney and accused, and declaration by the police prosecutor of readiness to begin the case. The magistrate can decide to postpone or start a case.

The range of average daily caseload for Court No. 4A, Magistrates' Court, Port-of-Spain, is 25 to 70 matters for the period August 1, 2004 to July 31, 2005 (Judiciary of Trinidad and Tobago Annual Report, 2004-2005). The range of average daily caseload for the 7<sup>th</sup> Court - a new court which now deals with sexual offences only - for August 1, 2008 to July 31, 2009 is 15 to 30, with an annual caseload of 5,026. It must be pointed out that old cases awaiting trial are given the same procedural treatment.

The researcher observed that at the end of any day's hearing at the Magistrates' Courts, three (3) matters are the most that can be tried and completed. Thus, of the 37 cases listed on April 1, 2005 in the Magistrates' Court Number

4A, 34 cases would have been carried forward to other dates. These 34 cases that could not have been heard required at least two police officers for each case, which resulted in having 68 police officers present in court for that day's hearing.

As mentioned earlier, before police officers attend court they are mandated to attend Orderly Room at 7.30 a.m. Most times after attending court for untried cases these officers leave the Magistrates' Court around 10.30a.m.; thus an officer spends approximately three hours at the court. The average of three hours multiplied by 68 officers, gives a total of 204 hours wasted police time, knowing that their presence at the court was not necessary. This is a clear state of inefficiency in the criminal justice system and it will be examined by the research.

The extent of this problem does not end with just the wasted hours. It erodes the core crime fighting mechanism by removing police officers from active duties in the areas of Trinidad and Tobago that are prone to rapes and other crimes, where their experience, knowledge and skills are in greatest demand. The majority of police officers who attend the courts of Trinidad and Tobago are familiar with their community and may be aware of the persons who are responsible for most of the crimes that have the highest negative impact on members of society.

It is in this light that all efforts must be made to have all officers not required in court to be on their "beat." It must be pointed out that the functioning of the Magistrates'

Courts falls under the Judiciary, as are the magistrates' court recorders, the executive managers, the police prosecutors, police complainants and police witnesses. An integrated effort by both arms - Judiciary and Executive - has to be used to reduce unwanted police presence in courts in Trinidad and Tobago.

Just as there are challenges faced by the police related to time, so too the High Court is faced with various challenges. On the completion of a preliminary inquiry into a rape case at the Magistrates' Court, if there is enough evidence to warrant a full trial, the accused would be taken before a judge and jury in the High Court for that trial some time later. Several years normally elapse before the High Court trial comes up.

This situation exists partly because of the large number of cases to be tried and, among other things, the inadequate number of high courts and judges together with the unnecessary delays. In the Trinidad and Tobago High Court there are 26 judges inclusive of acting and temporary. For the High Court year 2008-2009 these judges had 116 new cases to manage exclusive of cases that would have been brought over from previous years (Judiciary of the Republic of Trinidad and Tobago Annual Report, 2008-2009).

A rape trial can extend for as long as one month depending on the number of witnesses involved in the case. The High Court sits for ten months per court year with 33% of its cases being murder cases. Murder cases are

normally given priority over rape cases as they are categorized as the most serious matters to be adjudicated upon. It is important to note that some murder cases can go far beyond one month. Based on the 2008-2009 caseload and other cases that would have been brought forward over several years, 26 judges are inadequate to effectively manage High Court cases such as rape cases in Trinidad and Tobago.

There are also other issues at trials and appeals of rape cases that pose challenges to the system. In an attempt to determine the availability of all parties at a trial, a cause list hearing is undertaken. This is where the defence who represents the accused, the prosecution who represents the State and victim, and the judge collaborate to fix a date that suits all parties with a view to having a fair and speedy trial.

However, because of the heavy caseload and insufficient judges and support staff, speedy trials most times are mere wishes. Cause list hearings for rape cases have been postponed for as long as three years before trial begins. This lengthy waiting period for a person charged with rape, whose preliminary trial has already suggested that he can be found guilty can create fear of punishment in his mind. For an accused rapist in particular, the fear of punishment, particularly for the commission of another rape, is a great deterrent.

The delay of trial supports the notion that inefficiency exists in the criminal justice system in Trinidad and

Tobago. *It is hypothesized that the period of years during which an accused rapist waits for his trial to begin plus the severity of the possible sentence he could potentially receive if he is found guilty are the factors that prevent him from reoffending.*

In other words, if the process from commission of the crime to sentencing was considerably shorter, the chances of recidivism of rapists in Trinidad and Tobago would be greater. That is, there is an inverse relationship between length of the trial process for rapists and the rate of recidivism of rapists. As the length of the process becomes shorter, the rate of recidivism goes up. The research will evaluate this hypothesis and the variables that generate the hypothesis to determine its validity. Rape trials can be extended for as many as ten years after the commission of the alleged crime. Although at the High Court, trials are conducted on a daily basis until their completion, the extended duration of a rape trial affects the capacity of the criminal justice system to expeditiously conclude trials.

At the end of a High Court trial, if an accused person is found guilty of rape, he would most likely appeal the sentence which, most times, includes corporal punishment. Appeals are firstly heard by the Appeal Court in Trinidad and Tobago and are usually set based on a first-case-completed, first-case-to-be-dealt-with basis. This process does not take a fixed period and several years can elapse before the appeal is ventilated. Both the High Court and Appeal Court processes consume a considerable amount of time and add to the inefficiency of the criminal justice system.

*Sentencing*

Successful prosecution trials and appeals normally end with sentencing. Sentencing of rapists is determined by several factors. A person convicted of rape is liable on conviction to imprisonment for life and any other punishment which may be imposed by law (Sexual Offences Act, Chapter 11:28 Section 4(2)).

However, subsets of this section of the Act outline a harsher sentence when the following circumstances are involved: (a) the victim is under the age of twelve years; (b) if the rape was committed by more than one person or in the presence of a third person; (c) if the rape involved heinous circumstances; (d) if the victim was pregnant and the rapist was aware of this fact; or (e) the rapist had been previously convicted of rape. Such circumstances would warrant imprisonment for the remainder of the rapist's natural life.

Whilst imprisonment for life is not a frequent occurrence, long sentences are normally given to rapists by the High Court of Trinidad and Tobago (Sexual Offences Act, Chapter 11:28). The contempt displayed by members of the public for rapists may serve as a deterrent to rapists reoffending. United States' studies have indicated that about 50 percent of those released from prison will return (Schlesinger, 1987). In 29 states of the United States of America, the lowest recidivism rate within a three-year period was 24.5 percent for the state of Arizona with the highest of 65 percent for the State of Alaska (Connecticut

Recidivism Study, 2009). In Trinidad and Tobago 56 percent of inmates in 2002 were general recidivists (Ramdhanie, 2002). However, the recidivism rate of rapists in Trinidad and Tobago is contrary to these findings with a zero rate and certainly justifies research. The acceptance of rapists who are reintegrated into society can assist in reducing the recidivism rate of rapists.

Punishment given to rapists according to law is done with several principles in mind: they are the principles of retribution, incapacitation, deterrence, reformation/rehabilitation and/or restoration (Sykes, 1996; Smith and Hogan, 2002; Loewy 2003). The early focus of retribution is that the rapist gets what he deserves. A previous criminal record and the severity of the crime committed contribute to determining such punishment as enumerated by the Sexual Offences Act, Chapter 11:28 Section 4(2).

The principle of incapacitation emphasizes the removal of the rapist by confinement. This form of punishment ensures that the rapist's opportunity for further crime is eliminated whilst incarcerated. Repeat and violent criminals are almost sure to receive such punishment when convicted. The deterrence principle ensures that criminal solution to problems is an unattractive choice, so that both the offender and others who are made aware would not commit crime.

The harsh punishments rapists receive in Trinidad and Tobago when convicted seem to be a deterrent and may be

one of the things responsible for the zero recidivism rates of rapists in the country. The research will explore this premise. The rehabilitation principle looks at treatment and reform for restoring a convicted offender to a state that is accepted by society. Treatment, education and training are the foremost emphases of this principle.

Barring the other mentioned principles, a recent one, restoration, has been introduced to have offender, society, and victim return to the positions they were in before the crime took place. The focus is on the deviant act committed and not on the offender. Focus is also placed on the negative impact both the community and the victim endured. In the case of rapists it seems as though incarceration and corporal punishment have impacted them creating a deterrent to committing new rape crimes and as a result contributing to the nonexistent recidivism rate of rapists in Trinidad and Tobago. It is important to society that the recidivism rate of rapists be researched in order to identify the factors that can stymie rapes.

### **Impact of Severity of Punishment**

#### *The Role of Corrections*

The examined impact of the judicial process is followed by the impact of severity of punishment. The prison (corrections) system in Trinidad and Tobago is administered by the Trinidad and Tobago Prisons Service. This organization houses, and is responsible for, all persons incarcerated by the courts either pre- or post-trials. "To hold and treat" is the motto used for guiding

personnel towards the organization's goal. In keeping with its motto, to hold and treat, the Trinidad and Tobago Prisons Service's rehabilitation drive focuses on education, which directs one to believe that liberated inmates would have been endowed with virtues that are adequate to prevent them returning to the deviant behaviour. In reality, however, incarceration, in many instances, seems to strengthen criminal behaviour. This supports the differential association theory as to the importance that learning plays in one's life. Prisons do not educate, save for the values and techniques conducive to further criminality (Kappeler, Blumberg and Potter, 1996). The practice of lengthy incarceration has led to stinging criticisms of the criminal justice system, even from its personnel.

The objective of the criminal justice system should be to enhance the ability of reducing crime by having an effective, fair sentencing system with honest uniformed sentencing practices. The ultimate aim of the law itself, and punishment in particular, is the control of crime (United States Sentencing Commission Guidelines Manual, 2003). Rapists serving very long sentences can be subjected to discrimination post release regarding maintaining themselves. Scottish Executive (2001, 11) states that: "...imprisonment may even aggravate some of the pressures which are likely to lead to re-offending because of the damage done to prisoners' employment, housing and family links and their ability to fend for themselves."

### **Emotional and Economic Concerns**

In addition to the contributing role of correction mention-

-ed above, emotional and economic concerns are also important areas that should be explored. There are a number of emotional and psychological effects directly related to imprisonment, some of which have been studied by various theorists. Thoughts of long sentences and denial of privileges which impact the emotional and psychological state of rapists can act as a deterrent to their committing another act of rape.

Men in the prison correctional system in Trinidad and Tobago are denied conjugal visits which is an inefficiency in the criminal justice system. In a properly managed correctional system conjugal relationships would be afforded inmates as this might help to maintain family bonds and reduce the emotional and psychological stress experienced both by prisoners and their spouses.

Additionally, according to the Trinidad and Tobago Prisons Service Statistical Report (2004), conjugal visits add to the support and maintenance of the family structure. A challenge with which rapists are confronted is the inability to adjust to constant confinement. Being accustomed to freedom of movement, a rapist confined to a life of institutional captivity will have difficulty adjusting to such confinement. This can cause confined rapists to be emotionally affected and show contempt for correctional officers and even their relatives.

Ramdhania (2002) indicated that 97 percent of inmates were from lower social class groupings. As such, the majority of persons confined pending trials are poor and in

most instances, their bail amount is prohibitive. Such persons have no option but to remain incarcerated and be brought to court every ten days until a magistrate tries their cases or until their relatives can accumulate the money to post bail. This economic concern is not faced only by the rapist. Society as a whole is affected economically due to the high cost associated with the incarceration of persons. This excessive expenditure is a reflection of the inefficiency of the criminal justice system.

The lengthy incarceration of rapists should be examined in the context of its cost effectiveness. It is costly to maintain an inmate in the Trinidad and Tobago Prison system. The daily average cost of maintaining an inmate during the year 2004 was \$127.07 with the following six factors used to reach the 2004 cost: food, clothing, medication, maintaining the institutions, officers' emoluments, and terminal benefits of staff. The daily average cost as calculated up to September 30, 2009 was \$348.32 (Trinidad and Tobago Prisons Service, 2010). The expenditure by the State on rapists who might be incarcerated for extended periods renders the criminal justice system inefficient. Further, the expenditure can be more effectively utilized in a manner that is beneficial to the citizenry.

In the year 2002 there were 4,449 inmates in the Trinidad and Tobago prison system, with 16 percent, which amounted to 707 inmates, incarcerated for serious crimes like rape (Ramdhanie, 2002). The cost of maintaining 707 inmates, at \$127.07 per day, for one year is \$32,791,048.85. Apart from inflation, emoluments and terminal benefits of

staff, expenditure has greatly increased since the year 2004. In 2009 maintaining these same inmates would cost \$89,885,717.60. Some of the enormous expenditure allotted for incarceration can be directed towards programs designed to enlighten would-be victims of rape and other crimes. If efficiency existed in the criminal justice system reduction in expenditure over some lengthy sentences could be achieved.

### **Rapists and Punishment**

Apart from the emotional and economical concerns the punishment meted out to rapists will be assessed by this research to determine their impact on the criminal justice system. When a convicted rapist who is sentenced to imprisonment is received by correctional officers a specific process of classification takes place. A person found guilty by a Magistrates' Court and sentenced to incarceration is classified by correctional officers as a 'prisoner,' whilst a person found guilty by the High Court and sentenced to prison is classified as a 'convict.' Rapists who are convicted for sex crimes are convicts as their cases are always tried in the High Court.

Rapists are not afforded rehabilitation therapy or treatment to suppress or prevent them from reoffending. Whilst rehabilitation therapy or treatment helps reduce recidivism in other countries, a zero recidivism rate in Trinidad and Tobago is theorized to be caused by inefficiencies in the criminal justice system and its harsh sentencing. Ward et al. (2007) indicated that therapy is

seen as an activity that should add to an offender's repertoire of adaptive skills, rather than an activity that simply removes a problem or is devoted to handling or managing problems, as if simply restricting one's activity is the best way to avoid offending.

Ward and Connolly (2008, 94) have stated that: "...offender treatment should aim to help individuals to achieve as normal a level of functioning as possible... thus a man who raped an adult woman might be encouraged to avoid certain situations in his future life, but should not be expected to give any hopes of developing an intimate relationship by being told to avoid all situations where single women might be present."

Harsh prison conditions and rules enforced by physical punishment leave inmates with little incentive for rehabilitation or self-improvement (Siegel, 2006). Some correctional departments focus on incarceration of rapists without examining their need for help. According to Ward and Birgden (2007) and Ward et al. (2007) treatment and correctional agencies tend to view sex offenders as threats who deserve to be confined or controlled, instead of persons in need of help.

This assessment has led to the support of severe punishment (Glaser, 2003; Perlin, 2005), and the consequences of this managerial perspective have arguably been the increasing introduction of harsh and disproportionate punishment and a denial of the sex offender's basic human rights. It is not surprising

therefore, that many convicted rapists in Trinidad and Tobago receive long sentences with corporal punishment. *It is hypothesized that these penalties separately are stern and, when combined, effectively deter rapists from reoffending.*

Several factors influence the length of prison sentencing including the severity of the crime, the previous criminal record of the accused and whether the accused used violence or a weapon (Siegel, 2006). With respect to corporal punishment it must be administered to the rapist within six months of sentencing (Corporal Punishment Act, Chapter 13:04).

Apart from the rapist's fear of receiving this punishment, other inmates housed at corrections who are easily made aware of its infliction also fear and resent it. The mere thought of receiving such punishment can cause a rapist and his incarcerated peers to refrain from reoffending. Corporal punishment is a brutal act that is normally meted out to rapists found guilty of hideous rapes. Most times it leaves rapists with scars on their body. Some rapists who received corporal punishment developed an unusual gait. This research will also evaluate the deterrent effect of corporal punishment, that is, whether the possibility of receiving corporal punishment reduces recidivism.

### **Perspectives of Correctional Officers**

In addition to the rapists and their punishment, the role of correction officers and their interaction with rapists is extremely important in order to understand recidivism

rates of rapists. There is need to interview senior, long-serving correction officers so that the following determinations can be made:

- Whether they share the view that convicted rapists who served prison sentences, especially with corporal punishment, are less likely to commit another rape.
- Whether those rapists who receive corporal punishment would not return because the trauma and pain of the corporal punishment as opposed to the imprisonment make the convicted rapist less likely to reoffend.
- Whether the length of incarceration is a deterrent to those who boast of the undetected rapes they committed before incarceration causing them to refrain from boasting, thus denying them the fame which their boasting would have created.

### **Conclusion**

The examination of the impact of police response, the judicial process and severity of punishment in the Trinidad and Tobago criminal justice system has unearthed numerous areas that are in dire need of consideration. This has certainly shown that inefficiencies do exist in the three divisions of the criminal justice system that negatively impact rapists and other trials. These serious flaws support the importance and justification for perusing research pertinent to the criminal justice system and the recidivism rates of rapists.

## References

- Brownmiller, S. 1975. *Against our will: Men, women, and rape*. New York: Simon and Schuster.
- Bureau of Justice Statics. <http://www.ojp.usdoj.gov/bjs/abstract/rpr94.htm>.
- Bureau of Justice Statistics, [www.ojp.usdoj.gov/bjs/](http://www.ojp.usdoj.gov/bjs/).
- Burgess, Ann. Lewis-O'Connor, Annie. Nugent-Borakove M. Elaine and Fanflik, Patricia. 2006. SANE/SART Services for sexual Assault Victims: Policy Implications. *Victims and Offenders*, 1:205-212. Taylor and Francis Group.
- Commissioner's Report 2007.
- Connecticut Recidivism Study 2009.
- Crime in England and Wales 2007/08: Findings from the British Crime Survey and police recorded crime. Edited by: Chris Kershaw, C. Sian Nicholas, S. and Alison Walker, A. Crown ISSN 1358-510X. [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk).
- Duckett, Paul and Marguerite Schinkel. 2008. Community Psychology and Injustice in the Criminal Justice System. *Journal of Community and Applied Social Psychology*. 18: 518–526. Wiley InterScience.
- Glaser, Bill. (2003). Therapeutic jurisprudence: An ethical paradigm for therapists in sex offender treatment programs. *Western Criminology Review*, 4, 143-154.
- Herman, J. (2005). Justice from the victim's perspective. *Violence Against Women*, 11(5), 571–602.
- Home Office 2003. *Sexual Offenders – measuring reconviction, reoffending and recidivism*. London Home Office.
- Home Office, 2001. *Making Punishments Work*. London : Home Office .
- Judiciary of the Republic of Trinidad and Tobago Annual Report 2005-2006.
- Judiciary of the Republic of Trinidad and Tobago Annual Report 2008-2009.
- Judiciary of the Republic of Trinidad and Tobago Annual Report, 2007-2008.

356 RECIDIVISM RATES OF RAPISTS

- Kappeler, Victor. E., Blumberg, M., and Potter, G. 1996. *The mythology of crime and criminal justice* (2<sup>nd</sup> ed.) Prospect Heights, IL: Waveland.
- Kevin I., and Wells, J. 2003. Recidivism Among Federal Probationers: Predicting Sentence Violations. *Minor Sims, Crissy, Federal Probation*, Vol. 67, Issue 1.
- Kruttschnitt, C., Uggen, C., and Shelton, K. 2000. Predictors of desistance among sex offenders: The interaction of formal and informal social controls. *Justice Quarterly* 17: 61-87.
- Langan, Patrick A. and David J. Levin. 2002. :Recidivism of Prisoners Released in 1994:.
- Langevin, Ron., Curnoe, Suzanne., Fedoroff, Paul., Bennett, Renne., Langevin, Mara., Peever, Cheryl., Pettica, Rick., and Sandhu, Shameen. 2004. Lifetime Sex Offender Recidivism: A 25-year follow-up Study. *Canadian Journal of Criminology and Criminal Justice*.
- Laws of Trinidad and Tobago, Corporal Punishment Act Chapter 13:04.
- Laws of Trinidad and Tobago, Police Service Act 2006.
- Laws of Trinidad and Tobago, Sexual Offences Act, Chapter 11:28.
- Loewy, A. 2003. *Criminal Law in a nutshell* (2<sup>nd</sup> Ed.). St. Paul, M: West Publishing.
- Park, J. Louis B. Schlesinger, Anthony J. Pinizzotto and Edward F. Davis. 2008. Serial and Single-Victim Rapists: Differences in Crime-Scene Violence, Interpersonal Involvement, and Criminal Sophistication *Behavioral Sciences and the Law* Behavioral Science. Law 26: 227-237. Wiley InterScience. ([www.interscience.wiley.com](http://www.interscience.wiley.com)).
- Perlin, Michael. 2005. "With faces hidden while the walls were tightening": Applying international human rights standards to forensic psychology. Paper presented at the 15th European Law and Psychology Conference, Vilnius, Lithuania, July.
- Prentky, Robert and Austin Lee 2007 Effect of Age-at-Release on Long Term Sexual Re-offense Rates in Civilly Committed Sexual Offenders Springer Science and Business Media.

- Ramdhanie, Ian. 2002. Prison Recidivism In Trinidad and Tobago: Results from a Baseline Study in Caribbean Journal of Criminology and Social Psychology 7(1&2).
- Regehr, Cheryl., and Ramona Alaggia,. 2006. Perspectives on justice for victims of sexual violence. *Victims and Offenders*, 1(1), 33–46.
- Regehr, Cheryl, Ramona Alaggia, Liz Lambert, and Michael Saini. 2008. Victims of Sexual Violence in the Canadian Criminal Courts. *Victims and Offenders*, 3:99–113. Taylor and Francis Group.
- Roberts, J. 2008. Punishing Persistence, Explaining the Enduring Appeal of the Recidivist Sentencing Premium. *Brit. J. Criminol.* 48, 468-481, Advance Access Publication. Centre of Criminology, University of Oxford, Manor Road Building, Manor Road, Oxford. Oxford University Press.
- Schlesinger, Stephen.1987. "Prison Crowding in the United States: The Data. "Criminal Justice Research Bulletin, 3 (1), 1-3.
- Scottish Executive. 2001. Short-term prison sentences. Report to the Criminal Justice Forum. Edinburgh: Scottish Executive. sexual offenders. *Sexual Abuse: A Journal of Research and Treatment*, 16, 139-150.
- Seigel, Larry. 2006. 'Criminology 9<sup>th</sup> Ed. Thompson and Wadsworth, U.S.A.'
- Seligman, Martin. 1975. Helplessness: On depression, development, and death. San Francisco: Freeman.
- Smith John and Brian Hogan. 2002. Criminal Law Butterworths, LexisNexis.
- Studer Lea., Scott Aylwin, and John R. Reddon. 2005. Testosterone, Sexual Offense Recidivism, and Treatment Effect Among Adult Male Sex Offenders. *Sexual Abuse: A Journal of Research and Treatment*, Vol. 17, No. 2, April.
- Sykes, Gresham. 1996. The Pains of Punishment: Criminal Justice in America. Prentice Hall USA.
- Trinidad and Tobago Police Service Standing Order 2001.
- Trinidad and Tobago Police Service. Commissioner's Report. January – June 2007.
- Trinidad and Tobago Prisons Service 2007.

358    RECIDIVISM RATES OF RAPISTS

Trinidad and Tobago Prisons Service 2007.

Trinidad and Tobago Prisons Service, 2009.

Trinidad and Tobago Prisons Service, 2010.

Trinidad Guardian September 4, 2009. "Two more guns found"  
<http://guardian.co.tt/news/crime/2009/09/04/two:-more-gun-found>  
(accessed January 8, 2010).

United States Sentencing Commission Guidelines Manual. 2003.

United States Sentencing Commission. 2006. *Guidelines Manual*, [www.ussc.gov](http://www.ussc.gov).

Ward Tony and Marie Connolly. 2008. A human rights-based practice framework for sexual offenders. *Journal of Sexual Aggression* (July 2008), Vol. 14, No. 2, 87-98 Taylor and Francis Group, Routledge.

Ward, Tony and Birgden, Astrid. 2007. Human rights and correctional clinical practice. *Aggression and Violent Behavior*, 12, 628-643.

Ward, Tony, Mann, Ruth. and Theresa Gannon,. 2007. The Good Lives Model of offender Rehabilitation: clinical implications. *Aggression and Violent Behavior*, 12, 87-107.

## **JUVENILE DELINQUENCY AND JUVENILE JUSTICE: CONTINUING MYTHS OR PROMISED REALITIES IN TRINIDAD AND TOBAGO**

Wendell Wallace

*The University of the West Indies, St. Augustine Campus*

---

### **Introduction**

It is posited that Trinidad and Tobago lacks a real Juvenile Justice System. Indeed, there is a shortage of agencies for treating youths who possess anti-social and deviant propensities. These propensities force Magistrates and Judges to rely increasingly on custodial punishment for juveniles who come into contact with the justice system. Juvenile detention facilities are therefore, simply the anticipated first stop on a road leading directly to the big house, adult prison.

Most people agree that there is an urgent need to improve the effectiveness of the available institutions that deal with young offenders in Trinidad and Tobago. It is submitted that with an effective and efficient Juvenile Justice System, young offenders may not even need to be placed in juvenile detention facilities. Instead, there would be a

wide range of pre and post sentencing options available to divert the juvenile away from a life of deviance and adult prison. However, it seems that the Justice system in Trinidad and Tobago has been tranquilized with the drug of gradualism and therefore a 'real' Juvenile Justice System is absent in this jurisdiction. This paper examines the present Juvenile Justice System in Trinidad and Tobago, assesses its deficiencies and seeks a comprehensive restructuring of the system so that it reflects a contemporary approach to juvenile justice.

*"Children are much harder to fix once they become criminals than they are when they first show signs of deviant or anti-social behaviour" E.B. Fincher, 1980*

Crime is always a serious problem when it occurs in any country, but when the perpetrators are children, it becomes even more difficult to address. This is evident in Trinidad and Tobago as almost everyday the incidence of crime shatters the peace and tranquility of many neighbourhoods.

Over the past five to ten years there has been an increased number of youthful offenders within the Justice System in Trinidad and Tobago on a wide range of minor and serious criminal charges. Yet, there has been a persistent reluctance on the part of local policy makers to formulate a National Juvenile Justice Plan, similar to what our Caribbean neighbour, Jamaica, has done. Most modern jurisdictions have specific laws to guide the way that the courts and legal system handle juvenile delinquents

because it is widely assumed that minors do not exercise a mature approach to decision making. Therefore, they may not have been able to appropriately judge what the consequences of their criminal actions would be. It is posited that Trinidad and Tobago lacks the necessary infrastructural and statutory framework to deal effectively with youth crime and deviance.

On a regular basis the local print media displays sensational headlines such as, 'Teen bandits nabbed,'<sup>1</sup> 'Unruly students leave teacher bloody,'<sup>2</sup> '\$60,000 bail for student on gun charge,'<sup>3</sup> 'At 15 he took part in murder, sold drugs and stole cars,'<sup>4</sup> '\$10,000 bail for student'<sup>5</sup>, 'Fifth Form student charged with wounding'<sup>6</sup> or 'After schools' football match students stab, stone schoolboy to death.'<sup>7</sup> The question that is most frequently asked after reading these headlines is, 'what should society do with these deviant youths?' More often than not the frustrated victims, as well as other frightened members of the public cry out 'lock them up and throw away the keys.' Any other response besides incarceration is seen as being 'soft.'

However, it is the punitive or rehabilitative response by the 'Criminal Justice System' which will eventually determine the outcome of the lives of these juveniles in Trinidad and Tobago. It is instructive to note that in Trinidad and Tobago there is no actual entity called the 'Juvenile Justice System.' What obtains is an overall Criminal Justice System which allocates time and personnel to deal with youth issues. Further, there was once a Juvenile Bureau in the Trinidad and Tobago Police

Service (TTPS) and this aided in the fight against juvenile crime and the escalation from juvenile to wider criminal activities. This Bureau was disbanded in the mid 1990's and a valuable data base on at risk youth was lost.

Globally a high percentage of the prison population consists of juveniles and Trinidad and Tobago is not exempt from this phenomenon. In Canada, youths represent 21% of all persons charged by the police. A total of 23,215 youths were sentenced to a term of imprisonment in 1999.<sup>8</sup> Available statistics for Jamaica highlight the fact that in November 2003, the total prison population was 4,744, with a total of 319 juveniles.<sup>9</sup> In Trinidad and Tobago the percentage of the juvenile prison population was recorded as 1.2% for ages 12-16 and 10.4% for ages 17-21 for the year 1996.<sup>10</sup>

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985, (The Beijing Rules) states: *"The purpose and justification of a sentence of imprisonment or a similar measure depriving a person of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon release to society the offender is not only willing, but able to lead a law abiding and self supporting life...to this end, the institution should utilize all the remedial educational, moral, spiritual and other forces and forms of assistance which are appropriate and available and should seek to apply them in accordance with the individual treatment needs of prisoners."*

Thus, the incarceration of children and young people at state penal institutions should be a last resort. However, in Trinidad and Tobago the sentencing option most frequently utilized is that of confinement at state institutions for juveniles, namely St. Jude's Home for Girls, St. Michael's Home for Boys, Youth Training Centre and in some instances the Golden Grove Women's Prison for female juveniles who commit serious criminal offences. This reflects the society's increasing frustration and abhorrence at the violent nature of crimes committed by juveniles and this phenomenon is compounded by the lack of a Juvenile Justice System.

It has been submitted that the social value placed upon any group of people is determined largely in part by the level at which decisions about them are made. The literature on juvenile delinquency has shown that incarcerating children and young people in detention centers, young offender institutions or prisons in an attempt to reform them has been an expensive failure. According to Singh (1997)<sup>11</sup> these institutions have the tendency of increasing the reconviction rates of their ex-inmates.

It has also been stated that young people who have spent time at these institutions are likely to end up in prison as adults confirming the notion that prison establishments are "universities of crime." Therefore, as the pervasive problem of juvenile delinquency continues to threaten the safety, security and moral fabric of society, concerns and

searches for initiatives to curb this growing menace continues to grow.

Based on both negative and positive factors which exist in the various communities, there is hope that this alarming rise in juvenile deviant activities can be reversed. As such, there is an urgent need to implement a structured Juvenile Justice System in Trinidad and Tobago. This will attack the problem of delinquency at the back and front end and also create appropriate restorative measures for status or petty offences for first time defaulters, and rehabilitative and even punitive measures of more serious repeaters.

### **Literature Review**

Rule 2.2 of the Beijing Rules defines who is a juvenile. It is to be noted that age limits in different jurisdictions depend on, and are a factor of each respective legal system, fully respecting the economic, social, political, cultural and legal systems of member states of the United Nations. This makes for a wide range in ages coming under the definition of 'juvenile,' spanning from 7 years to 18 years or above.

Such a variety seems inevitable in view of the different national legal systems. Juvenile delinquency in the jurisdiction of Trinidad and Tobago refers to various offences committed by children or youths under the age of eighteen and is frequently called youth deviance. These offences include deviant acts which would be crimes if committed by adults and status offences or less serious

anti-social behaviour such as truancy, running away, beyond control and parental disobedience. In this paper juvenile delinquency will refer to status offences as well as the more serious crimes committed by persons eighteen years and under.

According to the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines, 1990), the most important fundamental principle is that "the prevention of juvenile delinquency is an essential part of crime prevention in society. By engaging in lawful, socially useful activities and adopting a humanistic orientation towards society and outlook on life, young persons can develop non-criminogenic attitudes."

The guidelines also dictate the need for and importance of progressive delinquency prevention policies as well as the systematic study and elaboration of contemporary measures. Accordingly, these should avoid criminalizing and penalizing juveniles for behaviour that does not cause serious damage to the development of the child or harm to others. The Riyadh Guidelines state that such policies and measures should involve:

- (a) The provision of opportunities, in particular educational opportunities, to meet the varying needs of young persons and to serve as a supportive framework for safeguarding the personal development of all young persons, particularly those who are demonstrably endangered or at social risk and are in need of special care and protection;

- (b) Specialized philosophies and approaches for delinquency prevention, on the basis of laws, processes, institutions, facilities and a service delivery network aimed at reducing the motivation, need and opportunity for, or conditions giving rise to, the commission of infractions;
- (c) Official intervention to be pursued primarily in the overall interest of the young person and guided by fairness and equity;
- (d) Safeguarding the well-being, development, rights and interests of all young persons;
- (e) Consideration that youthful behaviour or conduct that does not conform to overall social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood;
- (f) Awareness that in the predominant opinion of experts, labelling a young person as "deviant," "delinquent" or "pre-delinquent" often contributes to the development of a consistent pattern of undesirable behaviour by young persons.

Decades of research conducted in the U.S.A. also demonstrates that early delinquency prevention programs and wide ranging sentencing options are cost effective. According to one conservative estimate, the average cost of incarcerating a juvenile for one year is close to \$34,000. Others put the figure between \$35,000 and \$64,000.<sup>12</sup> In contrast, an intervention program known as Head Start which is effective in developing school readiness skills among high-risk children and reduction in later delinquency, costs \$4,300 per year per child.<sup>13</sup> Similarly, a delinquency prevention program in California produced a direct savings to law enforcement and the juvenile justice

system of \$1.40 for every \$1.00 spent on prevention.<sup>14</sup> Research conducted in the United Kingdom and the USA has yielded evidence which notes that there are several key indicators of an effective juvenile justice system. These indicators are:

- (i) Legislation which allows for quick intervention as soon as a young person begins to show signs of offending or begins to offend;
- (ii) Young offenders being confronted with the consequences of their actions;
- (iii) Celerity of justice;
- (iv) Punishment that is proportionate to the offence committed;
- (v) Reparation to the victim;
- (vi) A component of parental responsibility for the behaviour of their children or wards;
- (vii) Wide ranging sentencing options;
- (viii) Well trained juvenile justice professionals; and
- (ix) Specialized and well equipped detention centres for the rehabilitation and reintegration of juveniles

### **The Juvenile Justice System in Trinidad and Tobago – A Myth?**

As elucidated earlier, there is no real 'Juvenile Justice System' in Trinidad and Tobago and it is the Criminal Justice System which contains little or none of the components outlined above that occasionally assists with youth matters. The present system is averse to change and largely maintains the traditional adversarial posture of one party versus the other. Additionally, there is no legislation

for the compulsory reporting of juvenile abuse and delinquency, weak capacity to enforce action against youths and inadequate resources for funding research on children.

In a series of semi-formal interviews which were conducted with members of the local judiciary between 2006 and 2010 it was revealed 'that there is an urgent need for a separate Juvenile Court as what presently obtains is a judicial system where all Magistrate Courts adjudicate upon children issues and youth deviance. This view was also echoed by several legal luminaries in Trinidad and Tobago who have witnessed the efficacy of juvenile systems in other jurisdictions. Added to this is the fact that there is no existing institution to house young female offenders who commit serious violent acts which results in their placement at the Golden Grove Women's Prison.'<sup>15</sup>

Though they are kept in separate cells away from adult female offenders, this situation does not conform to contemporary standards for the institutionalization of juveniles nor best practices as elucidated by the United Nations. Juvenile matters are still being heard 'in camera' in adult courts with members of the public being required to leave the court when the juvenile trial is being conducted. There is a Family Court which was established in May 2004, but it deals primarily with family issues which may involve child custody cases. The Family Court of Trinidad and Tobago, under its Magisterial Jurisdiction deals with juvenile delinquency issues including breach of school rules, juvenile runaways, truancy offences and

beyond control applications. However, there are no distinct and separate courts for children with special facilities for their comfort and well being.

Legislation is limited to the Children (Amendment) Act (2000) (which is not in force at the time of writing this research paper), The Young Person and Offenders Act (Young Offenders Detention Act, No. 19 of 1926, which has been in operation since November, 1962) and The Probation (of Offenders) Act (1947). Overall these pieces of legislation are inadequate and a total system of Juvenile Justice is an urgent requisite. It is instructive to note that though there is no 'real' Juvenile Justice System in Trinidad and Tobago, this should not be interpreted to mean that there is no protection for juveniles within the existing justice system as the system offers a small measure of comfort for these deviant youths.

This includes not photographing youths under the age of eighteen who are being tried for serious offences and not mentioning their names in reports carried in the print or electronic media. This limited protection is often breached as was evident in the case of two male juveniles who were charged for the murder of six year old Sean Luke Lum Fai in 2006 when their images were captured electronically and circulated via the internet. As such, it is the Family Court and mainly the adult Magistrates' Courts throughout Trinidad and Tobago which deals with juvenile offenders. However, the Family Court does not deal exclusively with juvenile issues. In 2004, the then Attorney General, John Jeremie, in an address on the

purpose of the Family Court opined that it was “to preserve the institution of the family.”<sup>16</sup>

It is submitted that in Trinidad and Tobago, legislation must be enacted to classify and categorize delinquent youths as this will determine how they will be processed in the Justice System, for example, secure confinement, probation or trial as adults. They can be placed into one of four categories outlined below depending on the nature of the offence committed and this would prevent previously well behaved children from being placed in the justice system for minor violations.

Tables 1 to 3 below are statistics showing persons 18 years and under who passed through the Criminal Justice System for being involved in Serious Crimes for the period January 1<sup>st</sup> 2006 to December 31<sup>st</sup> 2008, and who fall within the four identifiable categories of juvenile delinquents, whilst Table 4 shows the number of persons brought before the Family Court from 2006 to 2009.

### **Juvenile Justice in Trinidad and Tobago – Continuing Myth or Promised Reality?**

It is of vital importance not only to prevent delinquency through contemporary judicial measures but also to ensure the protection, well-being and rights of all juveniles who come into conflict with the law. The United Nations Riyadh Guidelines have set standards for the prevention of juvenile delinquency, including measures for the protection of young persons who are abandoned,

neglected abused or in marginal circumstances - in other words, at 'social risk.' The Guidelines cover the pre-conflict stage, that is, before juveniles come into conflict

**Table 1**  
**Persons 18 Years and Under Involved in Serious Crimes**  
**January 1st - December 31st 2006**

Divisions	M	W	SO	K	BO	R	GL	LM/V	FO	NO	TOT
Port of Spain	2	0	0	0	0	0	0	0	0	1	3
Southern	0	0	0	0	0	1	2	0	0	0	3
Western	2	0	2	1	0	0	0	0	0	0	5
Northern	1	0	0	0	0	0	0	0	0	0	1
Central	1	0	0	0	0	0	0	0	0	0	1
South Western	2	0	0	0	0	0	0	0	0	0	2
Eastern	1	0	0	0	0	1	1	0	0	0	3
North Eastern	1	0	2	0	0	0	0	0	0	1	4
Tobago	0	0	0	0	2	0	0	0	0	0	2
<b>TOTAL</b>	<b>10</b>	<b>0</b>	<b>4</b>	<b>1</b>	<b>2</b>	<b>2</b>	<b>3</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>24</b>

Source: C.A.P.A Unit, Trinidad and Tobago Police Service, 2009.

[M=Murder; W=Woundings; SO=Sexual Offences; K-Kidnappings; BO=Breaking Offences; R=Robberies; GL=General Larceny; LM/V=Larceny Motor Vehicles; FO=Firearm Offences; NO=Narcotic Offences]

with the law, have a 'child-centered' approach and are based on the premise that it is necessary to offset those conditions that adversely influence and impinge on the healthy development of juveniles.

**Table 2**  
**Persons 18 Years and Under Involved in Serious Crimes January 1st - December 31st 2007**

Divisions	M	W	SO	K	BO	R	GL	LM/V	NO	TOT
Port of Spain	1	2	0	0	2	4	5	1	1	16
Southern	1	6	8	1	22	27	6	2	8	81
Western	0	1	0	0	3	12	3	0	3	22
Northern	2	1	2	0	6	30	4	0	5	50
Central	2	1	2	1	6	14	6	2	2	36
South Western	3	2	2	0	7	11	4	0	4	33
Eastern	5	1	1	2	14	5	0	1	10	39
North Eastern	2	1	0	0	5	3	0	0	2	13
Tobago	1	0	0	0	2	2	4	0	1	10
<b>TOTAL</b>	<b>17</b>	<b>15</b>	<b>15</b>	<b>4</b>	<b>67</b>	<b>108</b>	<b>32</b>	<b>6</b>	<b>36</b>	<b>300</b>

Source: C.A.P.A Unit, Trinidad and Tobago Police Service, 2009.

[M=Murder; W=Woundings; SO=Sexual Offences; K-Kidnappings; BO=Breaking Offences; R=Robberies; GL=General Larceny; LM/V=Larceny Motor Vehicles; NO=Narcotic Offences]

**Table 3**  
**Persons 18 Years And Under Involved In Serious Crimes**  
**January 1st - December 31st 2008**

Divisions	M	W	SO	K	BO	R	GL	LM/V	NO	TOT
Port of Spain	6	0	0	0	2	10	1	0	1	20
Southern	2	0	8	2	11	35	7	2	9	76
Western	0	1	1	0	4	7	0	0	4	17
Northern	2	1	2	0	12	32	1	4	16	70
Central	2	1	3	0	10	14	6	0	8	44
South Western	3	2	1	2	16	12	3	2	1	42
Eastern	1	1	9	3	6	35	5	0	3	63
North Eastern	1	1	1	0	7	6	3	0	2	21
Tobago	0	1	0	2	4	1	0	0	3	11
<b>TOTAL</b>	<b>17</b>	<b>8</b>	<b>25</b>	<b>9</b>	<b>72</b>	<b>152</b>	<b>26</b>	<b>8</b>	<b>47</b>	<b>364</b>

Source: C.A.P.A Unit, Trinidad and Tobago Police Service, 2009.

[M=Murder; W=Woundings; SO=Sexual Offences; K-Kidnappings; BO=Breaking Offences; R=Robberies; GL=General Larceny; LM/V=Larceny Motor Vehicles; NO=Narcotic Offences]

To this end, the Riyadh Guidelines suggest that comprehensive, multi-faceted, multi-disciplinary measures are implemented in order to ensure that juveniles endure a life free from crime, victimization and conflict with law.

The Guidelines focus on early preventive and protective intervention modalities since the root cause of crime and deviance are many and diverse.

**Table 4**

**Persons Under the Age of Eighteen Brought Before The Family Court, January 1<sup>st</sup>, 2006 – December 31<sup>st</sup>, 2009.**

2006	2007	2008	2009
116	128	122	105

Source: Family Court of Trinidad and Tobago, 2010.

Globally, approaches to the prevention of juvenile delinquency, administration of juvenile justice and protection of the juveniles have undergone a progressive evolution of thought and action under the aegis of the United Nations, to which Trinidad and Tobago is a signatory. However, an objective assessment of the system of juvenile justice in Trinidad and Tobago will reveal several critical flaws which belie the noble efforts of the United Nations regarding juvenile delinquents.

As such, it is opined that the political executive should fashion a system of juvenile justice that is founded on high moral and social goals keeping in line with the dictates of the United Nations. This will vastly improve the ability and capacity of the 'existing' pseudo system to respond to potential juvenile offenders. Failure to do so will result in a potentially huge cost to society, wanton loss of productive human lives and capacity and a great burden on future generations. Theoretically and practically, the system should assist and rehabilitate young offenders as much as possible. The state should act as a guardian,

seeking the best interest of its future adults. This Juvenile Justice System must contain safeguards and juveniles should be processed through the system with hope of treatment. The foundation of this proposed Juvenile Justice System in Trinidad and Tobago should be built on solid empirical research findings which may either be local or adapted from foreign research to suit our historical and cultural context. The government must promote and support research on juveniles that will widen the knowledge base of what we already know about them and develop effective policies that will aim to reduce or eliminate juvenile delinquency. This research must be totally independent of political interference.

Fincher (1980) states that "Children are much harder to fix once they become criminals than they are when they first show signs of deviant or anti-social behaviour."<sup>17</sup> Therefore, with crime being rampant in Trinidad and Tobago and with figures for a randomly chosen year, 1998, indicating that most crimes were committed by persons between seventeen and twenty six years of age,<sup>18</sup> it is evident that there is need for a vibrant, well-planned and coordinated system of juvenile justice that will take decisive action in preventing juveniles from following in the destructive footsteps of adults in their communities.

The lawmakers must, however, respond to those repeat juvenile offenders who may continue to victimize and traumatize society. The ideal Juvenile Justice System in Trinidad and Tobago must be equipped to address the full

range of juvenile problem behaviours. There must be meaningful interventions and consequences for all actions. The system must rehabilitate and, or hold the juvenile delinquent accountable and juveniles must know that if they break the law they will be held accountable. Thus, a properly structured system of juvenile justice that ensures decisive and appropriate accountability and sanctions is key in reducing youth deviance and crime overall.

In order to ensure that the system is not abused, juveniles charged with serious crimes such as robbery and murder (serious crimes to be defined by juvenile legislation) should or may be transferred to adult criminal courts and tried as adults. The state juvenile prosecutor (to be created by legislation) acting on the advice of the Director of Public Prosecutions, should have the capacity to make that decision or the transferred child could be granted a special hearing to consider his age and criminal record, the type of crime and prevalence in society and the possibility of the youth being rehabilitated by the Juvenile Justice System.

Personal accountability for actions and decisions made are the foundations of any civilised nation. Thus, juveniles should be taught both at home and at school how to make informed decisions. They should also be taught that there are swift consequences from the juvenile justice system for making poor decisions and tangible and intangible rewards for good decision making. These lessons must be reinforced by all actors within the system, from the police officer, the counsellor to the magistrate. There must be a determined effort by all to ensure that the system works

effectively in providing consequences for negative actions of young persons who come into contact with the proposed juvenile justice system. A new system of juvenile justice in Trinidad and Tobago must ensure the following:

- Gathering of biometric data and photographing of youths charged with delinquent acts;
- Creation of an interconnected database so that Juvenile Justice Professionals would know of all suspended and expelled school students;
- Diagnostic testing for learning disabilities and difficulties;
- Development of innovative and/or alternative sanctions such as community-based corrections options;
- Continuous review of mechanisms for prosecuting, adjudicating, and sentencing juveniles in the justice system;
- Formulation of re-integrative policing strategies in which law enforcement officers help juveniles make the transition back into the community following secure confinement
- Development of local Futures Programs in which Police Officers can serve as mentors and role models, focusing on the academic and non-academic achievement of at-risk students.
- Development of outreach programs to youth through school and youth organisations to learn their views, discuss alternatives to violence and crime, and enlist their leadership and involvement;
- Sharing of market communications research conducted in the area of youth violence;
- Sourcing of financial resources to support public outreach efforts;
- Development of a statement that could be integrated into

individual media projects, such as billboards, radio and print announcements;

- Creation of collaborative projects; and
- Institution of neighbourhood reporting mechanisms

It is important that before a Juvenile Justice System is implemented in Trinidad and Tobago, the research mentioned earlier in this discourse must be conducted extensively throughout the various communities and must involve the major stakeholders, such as parents or guardians, teachers, law enforcement and judicial officials, members of the business community, charitable organizations and the youth themselves.

This research will indicate the problems faced by our juvenile population, as well as those they pose to the wider community. It will also indicate the shortcomings of the infrastructure that deals with these young persons, those youth who are at risk of becoming delinquent, the quantity of youth who are, or have been incarcerated and possible intervention strategies. This data must then be collated and translated into the Trinidad and Tobago Juvenile Justice Action Plan (TJJAP).

### **Creation of a Trinidad and Tobago Juvenile Justice Action Plan**

Hoge (2007) in a paper written on advances in the assessment and treatment of juvenile offenders described several alternative approaches to the treatment of offenders within contemporary juvenile justice systems that might be explored in this jurisdiction. One such

approach is the child welfare and rehabilitation model, whose goal is to control the antisocial behavior of young persons under the assumption that this can be best achieved by improving their behavioral and emotional competencies as well as deficits in their environment.

A second approach is the corporatist model, which shares the goals of the previous model but departs from it by emphasizing the integration of all services for children. A third model is the justice model, which shifts from a concern for the needs of the individual offender and towards the criminal act and appropriate legal responses to it. A fourth model is the modified justice model which combines elements of both the child welfare and justice models.

There is also the crime control model which shares with the justice model a focus on formal legal procedures; however, the primary concern in this model is the use of legal sanctions against offenders that ensure the protection of society. It is instructive to note that based on the Riyadh Guidelines (1990) and the Beijing Rules (1985) this approach - the crime control model - seems archaic and unsuited to modern realities.

Though arguments can be developed for and against all of the aforementioned models, Hoge's (2007) fundamental assumption was that current theory and research supports the child welfare and rehabilitation orientation as the optimal means for addressing juveniles' antisocial behavior. The author of this paper suggests the

implementation and usage of the child welfare and rehabilitation model to address the problem of juvenile delinquency in Trinidad and Tobago.

Ideally, this model could and should be delivered in the larger context of the education, mental health, and social service systems; however, it can be delivered in the context of the justice model so long as the focus is on addressing deficits and needs of the juvenile. Implementation of this preferred model (child welfare and rehabilitation model) does not mean that young offenders will not be held accountable for their actions. Accountability does not require harsh punishment. It is on this premise that the author has suggested the creation of a modern, reformed, juvenile justice plan for Trinidad and Tobago.

The author of this paper opines that a Trinidad and Tobago Juvenile Justice Action Plan (**TJJAP 12 POINT PLAN**) should be created as a community-based blueprint action plan designed to address the problems of youth violence and delinquency by emulating the child welfare and rehabilitation model, the corporatist model or the modified justice model. It should involve representatives from the public and private sectors, state and local community leaders, and most importantly, youth from all social and economic classes. The aims of the plan should be:

- (i) Prevention, intervention, sanction and treatment of juvenile delinquency;
- (ii) Strengthening of families and communities;

- (iii) Reduction of youth in gangs and violence;
- (iv) Provision of greater education, educational alternatives, recreational facilities and opportunities for youths;
- (v) Greater infrastructural and financial support for research initiatives for youth;
- (vi) Design, implementation and marketing of a public outreach program designed to alleviate youth deviance;
- (vii) Development of a nationwide interactive system of databases of delinquent youth,
- (viii) Promotion of positivity among youth through lecture series, youth forums, mentorship programs and reward systems via the media;
- (ix) Breaking of the vicious cycle of youth violence by addressing critical youth issues of neglect, despair, abuse and feelings of hopelessness;
- (x) Implementation of drugs and weapons free school zones;
- (xi) Prosecution of persistent and chronic youth offenders; and
- (xii) Parental responsibility for crimes committed by juveniles.

When the Trinidad and Tobago Juvenile Justice Action Plan is examined thoroughly, the result is that the policy makers in Trinidad and Tobago should respond in the following ways:

- (i) Allocation of funds for a Juvenile Justice System with a wide range of options, for example, treatment, probation and placement in secure facilities;
- (ii) Creation of greater job opportunities and additional skills training for low income youth similar to the Youth Training and Employment Partnership Programme (YTEPP), Military Led Academic Training Programme (MILAT) and Military Led Youth Apprenticeship Reorientation Training Programme (MYPART) - programs

- which are already implemented;
- (iii) Increased and, or, improved recreation and recreational facilities for youths;
  - (iv) Regular policing of troubled/dysfunctional families;
  - (v) Improvements in research and data collection and dissemination of information on youth and their issues;
  - (vi) Allocation of funds with emphasis on youth development, delinquency prevention programs and after school programs.

### **Enactment of Legislation**

Prior to the creation of the Trinidad and Tobago Juvenile Justice Action Plan, it is submitted that legislation should be enacted for the creation of a Juvenile Justice System with special juvenile courts, magistrates and probation officers which would in effect remove the detention, rehabilitation and release of young offenders from the clutches of prison officials and a few overworked probation officers into the well-trained hands of a body specifically created for that purpose.

It is proposed that two major state agencies dedicated to and allocated with Juvenile Justice functions be created via statute, to manage the Juvenile Justice System similar to what entails in the state of Texas, USA. The agencies to be created are:

- (1) *Trinidad and Tobago Juvenile Probation Commission (TTJPC) and*
- (2) *Trinidad and Tobago Youth Commission (TTYC)*

### **Trinidad and Tobago Juvenile Probation Commission**

This body will bring a level of consistency and high quality juvenile probation services to Trinidad and Tobago. The purpose of the Trinidad and Tobago Juvenile Probation Commission should be:

- (i) Provision of an efficient and qualitative juvenile probation service to local juveniles;
- (ii) Improving the effectiveness of juvenile probation services;
- (iii) Improvements to the communication network among juvenile agencies;
- (iv) Establishment of uniform standards within the Juvenile Justice System;
- (v) Provision of financial aid to juvenile and charitable organisations in order to provide alternatives to incarceration, and
- (vi) Promotion of delinquency prevention and early intervention strategies and activities for juveniles.

The functions of the Trinidad and Tobago Juvenile Probation Commission should be:

- (i) A conduit for budgetary allocations - Distribution of funds to assist organisations in the operation of probation facilities and provision of basic and special services to young offenders.
- (ii) Policy Development and Planning - to be done in conjunction with key stakeholders.
- (iii) Education and Training - Low or no cost training to juvenile justice professionals.
- (iv) Enforcement of approved standards - Regulate the administration of juvenile departments and standards

related to the construction and operation of pre and post incarceration standards, via annual visits.

- (v) Facilitation of workshops and youth projects.
- (vi) Research - Collection and collation of data relating to juveniles.
- (vii) Maintenance and accreditation of juvenile probation officials.
- (viii) A medium for publications - Publication of annual reports, newsletters, statistical reports and programs on the best available practices in delinquency, trends and risk factors.
- (ix) Provision of legal and technical advice and expertise.
- (x) Creation of programs - Funding, assistance and development of creative and innovative programs for youth on illegal substances, delinquency and early intervention programs.

### **Trinidad and Tobago Youth Commission (TTYC)**

This body will operate the detention and institutionalisation component of the new Juvenile Justice System. It will provide the care, custody, rehabilitation and reintegration into society of juveniles who have been detained due to delinquent behaviours. It will also supervise juveniles' social re-integration upon release into their respective communities. The purpose of the Trinidad and Tobago Youth Commission should be control and rehabilitation of Trinidad and Tobago's most violent and chronic juvenile offenders. The functions and programs of the Trinidad and Tobago Youth Commission should be, but not limited to:

- (i) The provision of specialised training programs for juvenile offenders, sex offender treatment programs, substance

- abuse, drug dependency and behaviour modification programs such as anger management.
- (ii) The provision of academic and technical/vocational skills training to promote the juveniles' advancement and viable sustainability upon release.
  - (iii) Community placement in a secure setting via a transitional assignment following completion of a youth's institutionalisation.
  - (iv) Development and provision of alternative educational programs catering for institutionalised as well as other youth who have been expelled or suspended from schools with the requisite diagnostic testing for learning difficulties and remedial classes, where appropriate.

This two tiered system of Juvenile Justice if implemented in Trinidad and Tobago will provide for the transfer of the more serious, violent and chronic repeat offenders to adult courts based on age, offence and prevalence of offence in society and allow greater discretion to the juvenile prosecutor in dealing with older, more serious offenders. Additionally, any new legislation must make provision for the creation of juvenile courts and juvenile prosecutors specially trained in youth issues.

Once the necessary legislation is in place, the policy makers in Trinidad and Tobago should proceed apace with the infrastructural development such as the construction of juvenile courts, probation departments, secure correction centres for chronic violent offenders, a communication network among juvenile agencies linked to a central database and the reconstruction and remodeling of less secure homes for the placement of delinquent children

such as the St. Michael's Home for Boys and St. Jude's Home for Girls. Additionally, legislation similar to that in Texas, USA, where the incidence of juvenile delinquency has been reduced, can be modified and implemented in this jurisdiction in an effort to curb the self destructive propensities of potential deviants. Such laws may include:

- (i) The Juvenile Rehabilitation Act
- (ii) The Juvenile Justice and Delinquency Prevention Act, (Minor and status offences) and
- (iii) The Violent and Repeat Offenders and Rehabilitation Act (Allows juveniles to be tried as adults for serious crimes).<sup>19</sup>

### **Infrastructural and Other Developments**

Apart from the creation of the Trinidad and Tobago Youth Commission and the Trinidad and Tobago Juvenile Probation Commission there should also be a coterminous advance in the supporting infrastructure to support the ideals of the new and reformed Juvenile Justice System which will assist the child welfare and rehabilitation model. Supporting infrastructure such as the Juvenile Courts, sentencing and treatment of juvenile offenders must also be re-evaluated and re-configured to contemporary standards as elucidated by the United Nations.

### **The Juvenile Courts**

The Juvenile Court should be a noble institution, similar to its adult counterpart, where the needs of our nation's children are paramount and where the culture

promulgates a passion for helping children, as defined in its very existence. In this revamped system of Juvenile Justice, children would be an absolute priority. The Juvenile Courts should deal exclusively with:

- (i) Young offenders who commit crimes;
- (ii) Maintenance;
- (iii) Custodial matters;
- (iv) Termination of parental rights;
- (v) Disposition of child abuse and neglect cases

With this new dispensation, each magisterial district should possess a juvenile court which would offer juvenile probation services within the same building, catering not only for delinquent children from the Juvenile Justice System, but also referrals from various agencies inclusive of schools which fall within the court's geographical jurisdiction and must be linked to a Police Juvenile Bureau Branch in a Police Division (Interconnectivity of agencies).

When the new and improved Juvenile Justice System is fully implemented, determination of the appropriate sentence to be imposed on a youthful offender in Trinidad and Tobago, will be done based on our present existing juvenile laws, the available institutions, socio-economic factors and the ever-increasing challenges faced by young persons.

As such, in dealing with these different categories of youth and youthful offenders who will be brought before the Juvenile Justice System, officials would be required to

attain an individual assessment and develop a plan of action that would be best suited to that individual. Therefore, the focal point will shift from mass grouping and placement of youth in institutions as punishment. Instead, programs that are best suited to the individual needs of the juvenile will be utilised.

### **Treatment of Offenders**

The Juvenile Justice System in Trinidad and Tobago, when reformed and configured to international standards should be geared towards prevention, treatment and rehabilitation of youngsters. The methods to be utilised will be categorised as:

#### *(i) Community Treatment*

Placing the child on probation when the individual is seen as not being harmful to others. He or she will be placed under the supervision of an officer of the juvenile court and must abide by the specific rules worked out between the officer and the youth, inclusive of restitution to the victim.

#### *(ii) Preventive measures*

Programs should be made available at the 'front end' of the Juvenile Justice System for youth. This should steer them away from delinquency and crime.

#### *(iii) Institutionalisation*

Incarceration of the more chronic and violent juveniles with a view to rehabilitation. The aim of the measures

outlined above (i-iii) should be to challenge the delinquent youth to use information, ideas and newly acquired skills, so that they can move from lower to higher cognitive levels. Some of the available sentencing options which will be available to the local delinquent youth under the restructured Juvenile Justice System in Trinidad and Tobago would be as follows:

*(a) An Action Plan Order*<sup>20</sup>

The Action Plan Order lasts for three months from the date of the order being made. The order aims to prevent re-offending by ensuring that the young person complies with the requirements of an Action Plan which will be designed to address the causes of such behaviour by requiring the young person to complete a number of specific tasks.

Its aim is to encourage the young person to take responsibility for his or her actions and to consider the wishes and feelings of victims of the offence. It will also consider the need for 'reparation' (putting things right) for the victim(s). This Order would be of particular relevance to youths who commit acts of vandalism, larceny and bullying of peers. Specific requirements of an Action Plan Order may include:

- Participation in activities (dependant on individual needs).
- Attendance at offence focused work groups.
- Attendance at an Attendance Center.
- Staying away from specified places.
- Monitored school attendance.

- Reparation, either to the victim of the offence or to the community as a whole.
- Attendance at a review hearing at the Court

Such an Order would ensure that juvenile offenders will be involved in programs that place focus on their particular needs, address shortcomings and challenges that they may experience and would further enhance their social, psychological and educational development.

The role of the parents or guardians in this program will be extremely important because they will be required to participate so as to ensure the youth adheres to the requisite objectives of the program, to monitor his or her behaviour when not in the care of the officer assigned, as well as to forge better relationships with their child to encourage greater communication.

*(b) Probation Orders*

These can be imposed in relation to status offences. Certain Commonwealth Caribbean jurisdictions provide this form of supervisory sentence and Trinidad and Tobago is one such country.<sup>21</sup>

The main aim of the Probation Order would be to provide the juvenile offender with the opportunity for rehabilitation as well as guidance meted out by the assigned Probation Officer. Whilst such an order is in place, the offender would be required to meet regularly with this Officer, conform to the specified conditions of the order and still remain a valuable contributor to society.

Such specified conditions will be outlined in the Order and communicated to the juvenile probationer. Any breach of these would entail being brought before the court. These conditions may include adhering to curfew hours, regular attendance at school or staying away from designated areas. When implemented, a Probation Order may stipulate that the probationer attend a computer training program until completion, thus providing the probationer with an activity to foster rehabilitation, better monitoring opportunities and growth and development. This can therefore be viewed as a vehicle to reduce recidivism.

Utilisation of certain aspects of the Intensive Supervision and Surveillance Program (ISSP) can further strengthen the Probation Order, as the ISSP is an extremely rigorous intervention which combines very high levels of community-based surveillance with a comprehensive and sustained focus on tackling the factors that contribute to a young person's offending behavior.

Whilst the Probation Order provides a limited amount of supervision, with ISSP, the supervised contact is made subject to community surveillance and this includes tracking (offenders visited by staff at home at specified times), tagging (electronically monitored to ensure that they remain at home during the night), voice verification (young people are required to call in to confirm that they are in a given place at a specific time) and intelligence-led policing (links made between local community Police Officers and the ISSP staff).

Due to ISSP's structure, offences related to consistent truancy, habitual and blatant disobedience of parents and 'running' away from home could be effectively managed through such an intensive program.

*(c) Restorative Justice*

This is a growing worldwide movement that aims to change the direction of current law by focusing on the needs of victims and repairing communities. It is particularly useful for juvenile offenders and it encompasses a number of initiatives united by some common goals. It entails active involvement by members of the community operating with official sanction of the Court. The resources of restorative justice depend largely on the assets available in a community as well as the willingness of various individuals and groups to participate in the process.

*(d) Community Mediation*

The roots of community mediation can be found in the community's concern to help find a better way to resolve conflicts, and thereby improve and compliment the legal system. Community mediation is a method for treating with youth who commit status or petty offences and has the capacity to offer the victim some form of effective compensation for the loss or any injury sustained.

If successful, mediation could lead to reparation to the victim and rehabilitation of the young offender. Mediation is best utilised if the offence is minor in nature and has a community link. In treating with first-time offenders, it can

also be an appropriate method because it can prevent labeling of the individual. Mediation is also cost and time-effective as solutions can be met in just one sitting.

*(e) Community Service*

This is another option which the new juvenile justice system may choose to exercise if it believes that the offender can make suitable amends by performing constructive unpaid work within the community. In addition, first-time offenders are given the opportunity to return to court and have their record expunged, thereby giving them that important second chance.

Community service can create advantages for the offender in the community as he or she is seen to be physically, emotionally and socially making reparation for his or her offence. Personal growth is therefore encouraged. At present community service is an existing alternative in Trinidad and Tobago, for both adults and juveniles, as the Community Service Orders Act (1998) allows for offenders 16 years and over who have been found guilty of committing minor offences and who are sentenced for a period of 12 months or less to be placed on community service. This sentencing option is, however, currently underutilized.

*(f) Other Measures*

These would include Anti-Social Orders, Local Child Curfew Orders and, or, the 3F Warning System (First, Future and Final) similar to the Final Warning Scheme that is utilized in the United Kingdom.

(g) *Incarceration*

This should be a last resort; rather diversion should be the norm and detention terms kept to a minimum to allow re-integration.

### **Conclusion**

The existing justice system as it relates to juvenile offenders in Trinidad and Tobago echoes society's sentiments of "locking them up and throwing away the key" as the main method of dealing with and reducing juvenile crime. It totally ignores the fact that these youth are known to be both 'architects of poor decision making as well as 'victims of poor decision making' by some adults and that they can be rehabilitated and may become productive contributing members of society if given the proper guidance and, or, a chance.

Trinidad and Tobago can ill afford to make the wrong choice and adopt a laissez faire approach to dealing with youth crime and deviance, as any approach to reformation of the existing 'juvenile justice system' along those lines will be fatally flawed and have long term detrimental consequences for the entire populace. The Trinidad and Tobago Juvenile Justice Plan presents unique and creative answers using a holistic approach in the search for solutions that work. We now have an opportunity to expand on these approaches and eventually implement them in our jurisdiction.

In our thrust towards developed nation status by the year 2020, we must forge ahead with a changed outlook of our existing archaic Juvenile Justice System, policies and the mindset of our policy makers, law enforcement and social service agencies, as well as the general society in treating with our juvenile offenders.

As the guardians of our future generations we must seek to make the most appropriate decisions that will help to foster the healthy growth and development in the lives of our adolescent males and females (even though they may be juvenile delinquents) who will eventually become the future parents, leaders and workforce of this society. It is therefore of tremendous importance that a justice system totally devoted to the rehabilitation of the youthful offending population be established with some urgency.

A system which seeks to rehabilitate first and incarcerate young persons as a last resort, may well breathe a breath of fresh air and hope into the local judiciary and redound to the benefit of the entire country via the reduction of youth deviance and crime and crime overall.

## ENDNOTES

1. Daily Express, Tuesday 31<sup>st</sup>, January, 2006, page 15.
2. Newsday Section A, Friday February 3, 2006, page 7.
3. Trinidad Guardian, February 8<sup>th</sup>, 2006, page13.
4. Newsday Section A, Wednesday February 8<sup>th</sup>, 2006, page 7.
5. Tobago News, Friday February 10<sup>th</sup>, 2006, page16.
6. Tobago News, Ibid.
7. Newsday, Sunday October 25<sup>th</sup>, 2009, page 1.
- 8 <http://www.prisonjustice.ca>
- 9 <http://www.kcl.acu.uk>
- 10 1996 survey for United Nations by Wendy Singh, PRI.
- 11 W. Singh, Alternatives to custody in the Caribbean. The handling of children who come into conflict with the law (1997).
- 12 Cohen, M.A. The Monetary Value of Saving a High Risk Youth. (Washington, D.C.: The Urban Institute, (1994).
- 13 M.W. Lipsey, Juvenile Delinquency Treatment: A Meta- Analytic Inquiry into the Variability of Effects. In T.D Cook et al., Eds. Meta-Analysis for Explanation: A Casebook. (New York Russell Sage Foundation, 1992).
- 14 Cohen, *ibid*.
- 15 Justice Betsy-Ann Lambert Peterson, Family Court Division of Trinidad and Tobago.
- 16 Daily Express, Thursday 13<sup>th</sup>, May, 2004, page 7.
- 17 E.B. Fincher, The American Legal System. (Franklin Watts: New York, 1980).
- 18 Ian. K, Ramdhanie, Prison Recidivism in Trinidad and Tobago, Caribbean Journal of Criminology and Social Psychology, Volume # 7, Editor, Ramesh Deosaran (2002), 119.
- 19 Robert O. Dawson, Texas Juvenile Law, 4<sup>th</sup> Edition. (Texas Justice Publishing Company, Austin, 1996).
- 20 An Action Plan Order is a community sentence, which is intended to offer an early opportunity for work and/or support to help prevent further offending.
- 21 Dana Seetahal, Commonwealth Caribbean Criminal Practice and Procedure, 1<sup>st</sup> Ed (Cavendish Publishers Ltd., 2001).

## References

- Cohen, M.A. (1994). *The Monetary Value of Saving a High Risk Youth*. Washington, D.C.: The Urban Institute.
- Community Service Orders Act (1997) of Trinidad and Tobago.
- Dawson, Robert O. (1996). *Texas Juvenile Law*, 4<sup>th</sup> Edition. Texas Justice Publishing Company, Austin.
- Deosaran, R. (2002). *Caribbean Journal of Criminology and Social Psychology*, Volume 7, Nos. 1 & 2. St. Augustine: Centre for Criminology and Criminal Justice.
- Family Court of Trinidad and Tobago, Statistical Department, (2010).
- Fincher, E.B. (1980). *The American Legal System*. Franklin Watts: New York.
- Hoge, R. D. (2007). *Advances in the Assessment and Treatment of Juvenile Offenders*. UNAFEI: Annual Report for 2007 and Resource Material Series No. 75, 81 – 104.
- King, Martin Luther. (1964). Excerpt from the Speech 'I Have a Dream' delivered in Washington D.C.
- Lipsey, M.W. (1992). *Juvenile Delinquency Treatment: A Meta- Analytic Inquiry into the Variability of Effects*. In Cook, T.D et al., Eds. *Meta-Analysis for Explanation: A Casebook*. New York Russell Sage Foundation.
- Office of the United Nations High Commissioner for Human Rights. Geneva, Switzerland.
- Peterson, Betsy-Ann Lambert. (2006). *Family Court Division of Trinidad and Tobago*.
- Scott, K. (1993). *Monster: The Autobiography of an L.A. Gang Member*. New York: Atlantic Monthly Press.
- Seetahal, D. (2001). *Commonwealth Caribbean Criminal Practice and Procedure* 1<sup>st</sup> Edition. Cavendish Publishers Limited.
- Singh, W. (1997). *Alternatives to Custody in the Caribbean: The Handling of Children Who Come into Conflict with the Law*.

Singh, W. (1996). United Nations Survey.

**Newspaper Articles**

Daily Express, Thursday 13<sup>th</sup>, May, 2004, page 7.

Daily Express. Tuesday 31<sup>st</sup>, January, 2006.

Newsday. Section A, Friday February 3, 2006.

Newsday. Section A, Wednesday February 8<sup>th</sup>, 2006.

Tobago News. Friday February 10<sup>th</sup>, 2006.

Trinidad Guardian February 8<sup>th</sup>, 2006.

Newsday, Sunday October 25<sup>th</sup>, 2009, page 1.

**Websites**

<http://www.kcl.acu.uk>

<http://www.prisonjustice.ca>

---

## **FAITH-BASED PROGRAMMES AS A MEANS TO COMBAT THE REVOLVING DOOR SYNDROME IN TRINIDAD AND TOBAGO**

Kevin Peters

*The University of the West Indies, St. Augustine Campus*

---

There has been some research which concluded that religious commitment buffers the propensity to crime (Baier & Wright 2001; Evans et al. 1996; Johnson et al. 2000). This paper attempts to highlight faith-based programmes as a means to short circuit criminality in the life course of those who have been incarcerated and would, reintegrate into society one day.

Although the US has been at the forefront in faith-based initiatives there has been little empirical evidence of its potency. While this does not suggest that the policy is ineffective, there is a need for closer scrutiny from academia so that initial promise found in any of the programmes can be improved. Coming out of the 1970's debate of "What works" many in contemporary academia have concluded that "Nothing works" in the fight against the revolving door syndrome that is recidivism.

In spite of this, however, policy makers cannot yield to this

paradigm and must continue to search for and improve restorative models. Trinidad and Tobago is no exception to this phenomenon as the penal administration grapples with increasing rates of recidivism.

Based on a phenomenological-based M.Sc. thesis the findings revealed that religiosity (in addition to other factors) were an integral ingredient in successful reentry in society. Based on this, a 3-dimensional model is borrowed to argue a case for a greater focus on faith-based programs in local prisons and strengthening of its aims and objectives via periodical monitoring and evaluation.

In a paradigm which purports that “Nothing works” in penal practice, policy has nevertheless been moving towards activities which promote a restorative agenda. This ideology has incorporated religious notions of the justice process and has pegged some of the reformist activities on this (Johnstone and Van Ness, 2006).

Indeed, religion is recognized as one of the most powerful instruments of social control in society and thus a possible tool in behavioural change (Sumter 2006). The US is one of the pioneers in this particular initiative as every dispensation of penal practice and reform has incorporated religiosity as one of its tenets and pillars (Johnson 2004; Camp et al. 2006). So solid is the footing of religion in penal history that it has borrowed terms such as “reformation” and “restoration” from religious schools of thought and has incorporated them into criminological jargon (Umbreit 1985).

Its legitimacy was further concretized when former US President George Bush in 2001 issued an executive order to have the Department of Justice (in addition to other departments) establish a Center for Faith-Based and Community Initiatives (Sumter and Clear, 2005). Moreover, a US \$28billion injection of funds was made available for Faith-Based organizations to assist in their non-profit activities aimed at addressing social problems both in the community and prisons (Sumter, 2006).

In spite of the attention given to this arm of the restorative mandate in the US, there have been challenges in empirically proving the legitimacy of these investments. From a general vantage point it can be concluded that research surrounding this phenomenon has primarily focused on either the impact of religion on the prisoner's behaviour or an assessment of faith-based programs (Johnson 2004). This area is thus, to a great extent virgin territory in academia.

Hewitt (2006) points to the argument that participants in faith-based prison programs are inmates who are "seekers" and are thus apt and motivated to absorb the specific religious ideology. This is evident in a number of studies (O'Connor and Perreyclear, 2002; Johnson and Larson, 2003). This bias then creates the atmosphere of success both within the walls and upon reentry but is limited to members of the said program. Also, there is little empirical analysis into the strength of the correlation

between religion and its potency as a means to social control as well as its link to reducing recidivism (Camp et al., 2006). These challenges however should not impede on the social sciences extrapolating the potency and feasibility of faith-based programs as there have been some success stories originating from this penal program.

Studies have concluded that there is a negative relationship between religion and both in-prison deviancy and recidivism (Johnson et al., 2000, Johnson, 2004; Kerley et al., 2005) thus providing the impetus for more investigation towards not only legitimizing and validating but also improving what currently exists in this area. Indeed, other research on religiosity and prisoner reentry have shown favourable results for greater emphasis to be placed on faith-based programs as a reentry strategy as parolees in the US pegged their successful reentry on "spiritual transformation" (Solomon et al., 2001).

The role of faith-based rehabilitation in the penal system of Trinidad and Tobago saw its genesis in the reforms which pervaded the British prisons between 1894 and 1944 and presented in a report compiled by Professor T. S. Simey in 1944 (Abdulah, 1980). Since Trinidad and Tobago was a colony at that time, the policy of religious and voluntary groups participating in the probation process was adopted.

As Trinidad and Tobago grapples with the present realities

of crime, immense attention has been apportioned to combating the phenomenon on all fronts of the criminal justice system. The penal system is no exception in this continuous struggle to “hold and treat” those who have been found guilty of crimes against their fellow man. As at May 2002, 56% of the total prison population were recidivists (Ramdhanie, 2007); a far cry from decades gone by as the recidivism rate in 1975, 1976 and 1977 was 27.5%, 27.1% and 22% respectively (Abdulah, 1980).

This was the impetus for the direction of my M.Sc. thesis which focused on the revolving door syndrome, specifically shining the spotlight on catalytic and antagonistic factors that affected the successful reentry of 3 former male inmates of the Golden Grove Prison. The study was phenomenological in methodology and attempted to gain a first-hand insight into the factors surrounding them during the process of reintegration into society and their interpretation of the experience.

In understanding the experiences through their description it was evident that in their perception the religious classes (in addition to other factors) they received while in prison had a profound effect on their behaviour when they returned to society. They all professed a renaissance in their outlook on life and this consequently affected their conformist behaviour to society's norms.

Words like “Spiritual Upliftment” was used by the

respondents as they attempted to explain the change in their lives. It would be myopic in the final analysis to hinge their success and non-recidivism totally on their newly found spirituality. However, it could not be denied that within their interpretation of the realities which surrounded them the faith-based programs offered at the Golden Grove Prison fostered a new value system and ultimately conformist behaviour. It was therefore concluded that the presence of this new bond in their lives created the impetus to avoid criminality as they held their attachments to their respective religious denominations in high esteem. Therefore, their allegiances were no longer to the criminal element but to institutions which formed the basis of social cohesion, order and stability in their lives.

In arguing a case for more focus to be placed on this policy, O'Connor et al. (2006) posits that *inter alia* faith-based initiatives warrant the participation of the community, propagates a more humane criminal justice system and ultimately reduces the rate of recidivism. Letessa (2006) operationalizes the question of "What works" and offers three ingredients to reducing recidivism. These can be applied to the Trinbagonian context in charting a new course for penal reform and combating the revolving door syndrome. These are the "Who," "What" and "How" of recidivism.

The "Who" would channel faith-based programs in the

direction of those prisoners who are at greater risk of recidivism. In Trinidad and Tobago these would be the 17-41 male age bracket which comprise 78% of the local recidivist population (Ramdhanie 2007). Given the nature and mandate of this focus, the policy is now geared at addressing a problem which has an empirical basis for action to be taken. This removes the ineffectiveness of a traditional “scatter shot” approach that may be taken to the selection of participants for faith-based programs.

To encourage more participation from inmates, the program can be hinged to the inmate’s probation (parole and community service when it is established) so that involvement is mandatory. Statistics show that over the period 2005-2007 the majority of the sentences were between 3-12 months (CSO 2008, 2010) thus emphasizing the need for the rehabilitative process to continue even beyond the walls of incarceration if any potent change is to occur in the lives of individuals released, less they return for another short stint at the tax payer’s expense.

The “What” in a faith-based approach to curtailing recidivism would target the needs of prisoners. As inmates are weaned off narcotics there would be a need to infuse an ideology and ethos that buffers the yearning to relapse into substance abuse yet again. Moreover, the need to solve problems in a constructive and productive manner can be assisted through guidance from religious instruction. Self esteem would ultimately be positively affected and this

can have an effect on recidivist behaviour (Latessa, 2006).

Finally the "How" addresses the present circumstances of the inmate by germinating pro-social skills in lieu of the anti-social ones which may have played a role in their criminality. An argument for faith-based guidance is of paramount importance since this faculty of the model provides the foundation for attitudinal change after other unproductive attributes have been wiped clean of the prisoner's schema. Propagation of pro-social attributes via a belief in a higher being and obeying the tenets of the belief could infuse long term conformity to social norms, values and behaviours. The attachment to a religious group after incarceration would also provide involvement at a level which preoccupies the individual's time in constructive behaviour thereby reducing the chances of reentering the revolving door.

It is quite clear that an argument for a greater focus on faith-based programs in prisons is not a stand-alone policy to affect change in the lives of the inmates. Indeed, other factors that surround the inmate both in, and post prison can have just as great an impact on their criminality in the life-course and can promote or impede their propensity to recede into crime. What is essential to this advocacy is the reality that the local prison administration must find a battery of complementary programs which assist in reintegration while facilitating timely monitoring and

evaluation to allow for tweaking of the policy. Only then can we truly combat the revolving door syndrome.

## 408 FAITH-BASED PROGRAMMES

### References

- Baier, C.J., & Wright, B.E. (2001). If you love me, keep my commandments: A meta-analysis of the effect of religion on crime. *Journal of Research in Crime and Delinquency*, 38, 3-21.
- Camp, S.D., Klein-Saffran, J., Kwon, K.K., Daggett D.M. & Joseph V. (2006). An exploration into participation in a faith-based prison program. *Criminology and Public Policy*, 5, 529-49.
- Evans, C.A. Jr. (1995). Links to faith community may help public health. *The Nation's Health*, p. 2.
- Hewitt, J.D. (2006). Having faith in faith-based prison programs. *Criminology and Public Policy*, 5, 551-57.
- Johnson, B.R., Li, S.D., Larson, D.B. & McCullough, M. (2000). Religion and delinquency: A systematic review of the literature, *Journal of Contemporary Criminal Justice*, 16, 32-52.
- Johnson, B.R. & Larson D.B. (2003). *The Innerchange freedom initiative: A preliminary evaluation of a faith-based prison programs*. Philadelphia, Penn.: Center for research on religion and urban civil society.
- Johnstone, Gerry and Daniel Van Ness, Eds. (2006). *Handbook of Restorative Justice*. Devon, U.K.: Willian Publishing.
- Johnson, B.R. (2004). Religious programs and recidivism among former inmates in prison fellowship programs: A long term follow-up study. *Justice Quarterly*, 21, 329-54.
- Kerley, K.R., Todd L.M. & Troy C.B. (2005). Religiosity, religious participation, and negative prison behaviours. *Journal for the scientific study of religion*, 44, 443-57.
- Latessa, E. & Lowenkamp, C. (2006). What works in reducing recidivism. *St Thomas Law Journal*, 3, 521-35.
- O'Connor, T.P. & Perreyclear M. (2002). *Prison religion in action and its influence*

on offender rehabilitation. In Thomas P. O'Connor & Nathaniel J. Pallone (eds.), *Religion, the Community, and the Rehabilitation of Criminal Offenders*. New York: Haworth Press.

O'Connor, T.P., Duncan, J. & Quillard F. (2006). Criminology and religion: The shape of an authentic dialogue. *Criminology and Public Policy*, 5, 559-70.

Ramdhania I.K. (2007). Prison recidivism in Trinidad and Tobago: A base line study. In Deosaran R. (Ed.), *Crime, delinquency and justice: A Caribbean reader*. Kingston, MI: Ian Randle Publishers.

Solomon, A.L., Roman, C.G. & Waul, M. (2001). Summary of focus group with ex-prisoners in the district: Ingredients for successful reintegration. Washington, D.C: Urban Institute.

Sumter, M. (2006). Faith-Based Prison Programs. *Criminology and Public Policy*, 5, 523-27.

Sumter, M. & Clear T.R. (2005). Religion in the correctional setting. In Rosalyn Muraskin (ed.), *Key Correctional Issues*. Upper Saddle River, NJ: Pearson/Prentice-Hall.

Umbreit, M.S. (1985). *Crime and Reconciliation: Creative options for victim and offender*. Nashville: Abingdon Press.