

ICOPA CONFERENCE

Social exclusion and punishing assumptions

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Greetings my friends. All protocols observed. I represent the Greater Caribbean for Life. This working group emerged from the *Conference on the Death Penalty within the Greater Caribbean* held on Madrid, Spain on October 17-19, 2011.

Our main purpose is to create a sustainable organisation and network of persons and civil society organisations working towards the abolition of the death penalty and state executions. We urge you to consider joining forces with us and to sign the Memorandum of Understanding (MoU) which I have circulated - in solidarity with us. Please share this communication with other interested parties.

The group, which was elected by participants at the Madrid Conference, comprises:

- Mr. Simeon Sampson SC, President of the Human Rights Commission of Belize (Belize)
- Mr. Mario Polanco, Director of Grupo de Apoyo Mutuo (Mutual Support Group) (Guatemala)
- Dr. Lloyd Barnett, attorney-at-law (Jamaica)
- Mr. Carmelo Campos, member of the International Affairs Committee of the Puerto Rican Coalition against the Death Penalty (Puerto Rico)
- and me: Ms. Leela Ramdeen, Chair of the Catholic Commission for Social Justice and Attorney-at-Law (Trinidad & Tobago).

Our response to crime is a moral test for our nations. When a crime is committed, we should be seeking to redress the disorder caused by the offense, to promote right order and right relationships in society. We are failing in our efforts to do so because our approach is wrong. History has shown that in most countries punishment/incarceration continues to be an act of mere vengeance.

As the US Bishops have said in their 2000 Pastoral Letter: *Responsibility, Rehabilitation, and Restoration: A Catholic Perspective on Crime and Criminal Justice*: “Our societies seem to prefer punishment to rehabilitation and retribution to restoration, thereby indicating a failure to recognize prisoners as human beings. Punishment must have a constructive and redemptive purpose – it must be coupled with treatment.” They recommend an approach that leads us to encourage models of restorative justice that seek to address crime in terms of the harm done to

victims and communities, not simply as a violation of law.

And still we continue to adopt a retributive rather than a restorative justice approach to the criminal justice system. If we do not seek to rehabilitate offenders and address the issues that may have led them to commit crimes then our communities will continue to feel unsafe and insecure. There is a sense of urgency in the air. Sociologists see strong links between crime and social exclusion. Social exclusion has been defined in a number of different ways. For example,

“Dr. Lynn Todman, director of the Institute on Social Exclusion at the Adler School of Professional Psychology, suggests that social exclusion refers to processes in which individuals and entire communities of people are systematically blocked from rights, opportunities and resources (e.g. housing, employment, healthcare, civic engagement, democratic participation and due process) that are normally available to members of society and which are key to social integration.

The outcome of multiple deprivations that prevent individuals or groups from participating fully in the economic, social, and political life of the society in which they live.

Hilary Silver provides another definition of this sociological term: “Social exclusion is a multidimensional process of progressive social rupture, detaching groups and individuals from social relations and institutions and preventing them from full participation in the normal, normatively prescribed activities of the society in which they live” (Wikipedia).

The Social Exclusion Unit (1997) in England defines social exclusion as follows: “Social exclusion is a shorthand label for what can happen when individuals or areas suffer from a combination of linked problems such as unemployment, poor skills, low incomes, poor housing, high crime environments, bad health and family breakdown”

These different dimensions of social exclusion are mutually reinforcing.

In “Policy Responses to Social Exclusion: Towards Inclusion?” (Edited by Janie Percy-Smith (2000) we read that “while the causes of social exclusion may be structural, its effects can be ameliorated or exacerbated by the attitudes, activities and policies of governmental bodies.” Are we evaluating how our Governments' social policies are impacting on people's lives? Clearly these policies are exacerbating the effects of social exclusion.

As one drives around T&T it is plain to see the areas in which some of our brothers and sisters are socially excluded. Our prisons are full of individuals from these areas and we release them at the end into the same hell-holes and act surprised when some of them reoffend time and time again. And we build higher walls around our homes, install more burglar proofing and alarms to

keep out this 'underclass', who, in reality, are our brothers and sisters for whom we have a duty of care.

Martin Luther King Jr said that we should try to lift our brothers and sisters to a higher, more noble place. We have much work to do if we are to achieve this.

In his 1995 encyclical, *The Gospel of Life*, Blessed John Paul II stated: "Modern society in fact has the means of effectively suppressing crime by rendering criminals harmless without definitively denying them the chance to reform. (EV, 27).

"If bloodless means are sufficient to defend human lives against an aggressor and to protect *public order* and the safety of persons, public authority should limit itself to such means, because they better correspond to the concrete conditions of the common good and are more in conformity to the dignity of the human person (Catholic Catechism, 2267).

The GCL agrees with the sentiments expressed in the U.S. Bishops Pastoral Letter of November 2000:

"We are guided by the paradoxical Catholic teaching on crime and punishment: We will not tolerate the crime and violence that threatens the lives and dignity of our sisters and brothers, and we will not give up on those who have lost their way. We seek both justice and mercy. Working together, we believe our faith calls us to protect public safety, promote the common good, and restore community. We believe a Catholic ethic of responsibility, rehabilitation, and restoration can become the foundation for the necessary reform of our broken criminal justice system."

Yes, our criminal justice system is badly broken; it blocks development of individuals and of our nations. Instead of exploring ways of fixing the system, around the world we build more prisons and offer little or no opportunities for offenders to redeem themselves. We are driven by vengeance. Perhaps that is why in T&T our recidivism rate, according to our Minister of Justice, is 55%. This statement was made by him in the Senate on 29 May. The revolving door is a reflection of our broken system. T&T's Prison Motto is: "To hold and treat". Fine words, but are we really treating offenders? And under what conditions are we holding offenders?

In 2011 the then AG of T&T invited a speaker from abroad to deliver the keynote speech at a Symposium on Human Rights. The speaker had an opportunity to visit some of our prisons before delivering his lecture. He said our Remand Yard was not quite hell, but was a room next to hell. We are operating on the mistaken belief that we will rehabilitate offenders by keeping many of them locked up in small overcrowded prisons in inhumane/disgraceful conditions. Many languish in pain for years on end in our Remand Yard without trial. Read what Prison Fellowship International says about the effects of overcrowded prisons and how we can overcome this (www.pfi.org/.../ten-keys-to-improving-conditions-in-overcrowded-p...)

Why do we punish? The 4 major theories of punishment are: Deterrence, Retribution, Rehabilitation and Incapacitation.

“**Deterrence** aims to reduce crime through threat of punishment, or through its example. The concept is that the experience of punishment would create an impact unpleasant enough to prevent any further offence. Penalties are established to prevent crime being contemplated, with the idea that the example of unpleasant consequences would make potential criminals reconsider any future offence.

“**Retribution** requires an offender to contribute community-based endeavours through proportionality related to the crimes committed. The concept involves cleaning the slate through enforced labour to account to society for any misdemeanour.

Conformity through inner positive motivation exemplifies the theory of **rehabilitation**, although it has been criticised for disparity in proportionality. The concept is not based on the degree of offence committed or focused on the criminal’s past, but on future rehabilitation to preclude re-offending through changes of circumstances.

“Conversely, **incapacitation** recognises that some offenders fail to respond to deterrence or rehabilitation and continue to commit crimes as and when an opportunity to do so presents itself. For criminals with this mind set the only option is protective sentencing to prevent further crimes being committed, thereby punishing the offender for crimes committed with a further implication of punishment for future crimes that could be envisaged if released.” (The Law Teacher).

In the Caribbean our current retributive justice system is a legacy of our former colonial system of governance. It was with much hope that citizens in T&T welcomed the 2002 report of the Cabinet appointed Committee/Task Force on Prison Reform and Transformation (<http://ttrprisons.com/downloads/taskforcereport.pdf>) . The report is a review of the Prison System in T&T inclusive of all departments and institutions under the penal system. Citizens looked forward to the implementation of bold recommendations that would reform our penal system taking us from a Retributive model to a Restorative Justice model.

Sadly, we have not made much progress since then. For 3 years (July 2004 - July 2007) I was 1 of 13 persons with diverse professional expertise who sat on a Cabinet appointed Committee entitled: *Parole Introduction Committee*. The Committee’s Terms of Reference were formulated from the recommendations of the Cabinet Appointed Task Force on Prison Reform contained in its 2002 Report.

For 3 years we laboured diligently. Our report never saw the light of day. It was clear from the report that unless we put adequate structures and personnel such as sufficient numbers of probation officers, social workers, psychologists, psychiatrists in place, such a plan would flounder. And yet, this is a key way forward if we are to move towards a Restorative Justice approach to the criminal justice system.

In the meantime, are we really treating those who are incarcerated? The Commission which I Chair, The Catholic Commission for Social Justice, bought an 11 acre plot of land in San Raphael and built a Rehabilitation Facility called The Anthony Pantin Reintegration Centre. The Society of St Vincent de Paul assists us by running the Centre on a day to day basis. Since the Centre opened, two-thirds of those who have passed through have had to be referred to Piparo Drug Rehabilitation Centre. Clearly, their needs were not addressed while in prison.

Most of those who are incarcerated will eventually be released into society. We open the doors of our prisons on their release and bid them farewell without any action plan to assist them to rise from the grinding effects of poverty and social exclusion; from being on the margins of society, which may have contributed to their incarceration in the first place, to having a place at the table of life. Those who are deported e.g. from the USA and Canada are unceremoniously dumped on our shores and are often left to fend for themselves.

We will be failing in our duty as a nation if our anti-crime strategies fail to address certain risk factors that contribute to crime e.g. poverty, urban decay and social exclusion, family disintegration, lack of quality education and employment, poor housing, the proliferation of guns and drugs in TT. These all contribute to crime and unless our strategies address them, we will be spinning top in mud, as the saying goes.

The Caribbean Human Development Report 2012 *[Human Development and the Shift to Better Citizen Security](http://www.regionalcentrelac-undp.org/en/hdr-caribbean)* (<http://www.regionalcentrelac-undp.org/en/hdr-caribbean>) which was launched in Port of Spain, Trinidad & Tobago, on 8 February 2012 highlights the fact that our criminal law as it exists will not help us to build a just society. Justice is not about trampling offenders into the ground or ignoring the needs of victims for Reparative Justice. The report reviews the current state of crime as well as national and regional policies and programmes to address the problem in seven English- and Dutch-speaking Caribbean countries: Antigua and Barbuda, Barbados, Guyana, Jamaica, Saint Lucia, Suriname, and Trinidad and Tobago.

The report states that although murder rates are exceedingly high in our region by world standards Caribbean governments can reverse the trend. It calls for regional governments “to beef up public institutions to tackle crime and violence - including the criminal justice system- while boosting preventive measures.”

The report “stresses the need to rethink our approaches to tackling crime and violence and providing security on the ground. We need to follow approaches that are centred on citizen

security and address the causes of this recent increase in violent crime, including social, economic, and political exclusion," said Helen Clark (UNDP's Administrator).

"The new study recommends that Caribbean governments implement youth crime prevention through education, as well as provide employment opportunities that target the marginalized urban poor. A shift in focus is needed it says, from a state protection approach to one that focuses on citizen security and participation, promoting law enforcement that is fair, accountable, and more respectful of human rights.

"The new study also highlights other effects of crime that generally go unreported, such as low educational achievement and poor health among youth, physical and psychological pain, suffering and trauma caused by youth violence, reduced quality of life, the marginalization of youth and negative stereotypes that fuel further aggressive behaviour among young people."

This report provides us with an opportune time to rethink our assumptions about punishment and to embrace legislation and policies that are more in keeping with building the common good and promoting the dignity of the human person. Put simply, the 'common good' is about creating conditions that will allow individuals to realise their full potential. If we support this concept, we must work towards the establishment of new systems that will heal society. The UNDP report clearly shows that what we are doing is not working. Therefore, let's look at alternatives.

T&T's Government's sustainable development framework is based on 7 interconnecting pillars, the first of which is that it is "people-centred". Yet we, like so many other countries, have left people out of the justice equation.

In a population of 1.3 million in Trinidad and Tobago, there are approximately 4,000 inmates. And while we fail to think outside the box, our prison populations grow. Most of the 4,000 inmates are poor, uneducated, illiterate, unskilled, and socially excluded. As the 2002 Task Force report in T&T states, our prisons are full of people who are most damaged and the most damaging. And while countries such as Britain are considering strategies such as scrapping prison sentences of less than 6 months and giving community penalties instead, (see James Slack, Daily Mail, 3 Dec 2010), our proposal in T&T is really "more of the same". We are not addressing the root causes of crime.

Around the world, right-thinking persons are realizing that we are getting it wrong. In his presentation entitled: *Alternative Approaches to Sentencing* in Sept 2006 – delivered at a Conference in Toronto, Canada, His Honour Judge A J Becroft, Principal Youth Court Judge, New Zealand Youth Court, said:

"Children whose lives have been damaged and disfigured by disadvantage, neglect and abuse are the very children who occupy the juvenile remand wings of our prisons. These are the children for whom the fabric of life invariably stretches across poverty; family discord; public care; drug

and alcohol abuse; mental distress; ill-health; emotion, physical and sexual abuse; self-harm; homelessness; isolation; loneliness; circumscribed educational and employment opportunities and the most pressing sense of distress and alienation”.

<http://www.justice.govt.nz/courts/youth/publications-and-media/speeches/alternative-approaches-to-sentencing>

GCL is of the opinion that a large majority of those who are incarcerated should not be in prison and that capital punishment should be abolished, not only in our region, but across the world. It is not a deterrent to crime; it does nothing to alleviate the culture of violence that pervades our societies or to build a just society and it does not address the root causes of crime which, according to Patrick V. Murphy (1985) former NYPD Commissioner include: poverty, unemployment/underemployment, racism, poor health care, bad housing, weak schools, mental illness, and alcoholism and a society of selfishness and greed. And I would add: substance abuse, social exclusion, and communities that need regenerating.

If we are to address the high and diverse costs of crime, we would do well to take these into consideration as well as the need for more effective victim support. We would do well also to address white collar crime and corruption at all levels of society. In a society in which anything goes; in which role models are few and far between and mentors are often not forthcoming; and in which conscience formation and character building are sorely lacking, there is little motivation for offenders to turn their lives around. As Johann Schiller, an 18th Century writer (1759-1805), said:

It is criminal to steal a purse,

It is daring to steal a fortune.

It is a mark of greatness to steal a crown.

The blame diminishes as the guilt

increases. <http://www.des.ucdavis.edu/faculty/Richerson/BooksOnline/He16-95.pdf> (Chapter on Crime and Criminality, by the University of California Davis, USA, quotes)

So, what are some of the alternatives to incarceration? The GCL believes that there are some cases in which incarceration is the only appropriate measure. We believe that inadequate attention is paid by those in authority to psychiatric treatment for some of those who are incarcerated. We do not have comprehensive training of prison staff on mental health issues affecting inmates. Neither do we have adequate numbers of psychiatrists to cater in a timely manner to the needs of inmates or a high quality mental health treatment regime that's effective. What needs assessment exists as part of the health care regime of our prisons? Our system does not appear to have the necessary multi-disciplinary in-reach services to meet the needs of the mentally ill. Often those with mental health illnesses are simply released into society at the end of their term of incarceration to fend for themselves. This is not how we will build a just society.

The 2012 UNDP Report clearly shows that the “iron fist” does not work and that the criminal justice system as it stands currently blocks sustainable development. How can we expand the UNDP's recommendations into practice and into support for penal abolition where necessary? A key strategy is for us to work with our respective governments to encourage them to seriously consider some of the alternatives to incarceration. Prison alone will never solve crime.

Documents such as that produced by the 2006 Criminal Justice Assessment Toolkit produced by the UN Office on Drugs and Crime and entitled: *Custodial and non-custodial measures: Alternatives to incarceration* are extremely useful.

The implementation of alternatives to incarceration will require careful planning. It must be stated from the outset that these alternatives are not 'soft' options. The Tokyo Rules (8.2) (the UN's standard minimum rules for non-custodial measures), lists "a wide range of dispositions other than imprisonment that can be imposed at the sentencing stage."

Of course, there will need to be legislative reform to implement those alternatives that are not on our statute books. Magistrates and Judges will need guidance and training as to which offences can attract non-custodial sentences and appropriate personnel such as probation officers etc. will need to be trained and appointed. Some of these alternatives are included in the following list:

- (a) Verbal sanctions, such as admonition, reprimand and warning;
- (b) Absolute or Conditional discharge;
- (c) Status penalties;
- (d) Economic sanctions and monetary penalties, such as fines and day fines and restitution;
- (e) Confiscation or an expropriation order;
- (f) Restitution to the victim or a compensation order;
- (g) Suspended or deferred sentence (with or without supervision);
- (h) Probation and judicial supervision;
- (i) A community service order in lieu of imprisonment;
- (j) Referral to an attendance centre;
- (k) House arrest/House confinement;
- (l) Half-way houses /"community correction centers" or "residential reentry centers" Sometimes halfway houses can be used instead of prison or jail, usually when a person's sentence is very short. While in halfway houses, offenders are monitored and must fulfill conditions placed on them by the court.
- (m) An arbitrated settlement
- (n) Some combination of the measures listed above.

There are also alternatives that can be implemented as part of a Restorative Justice continuum which focuses on repairing harm and bringing healing to those impacted by a crime, including the offender. Representatives of the justice system, victims, offenders, and community members are involved and achieve these goals through e.g. sentencing circles, victim restitution, victim-offender mediation, family group conferencing, restorative circles, restorative systems and formalized community service programs. Sentencing circles occur when the victim, offender, community members, and criminal justice officials meet and jointly agree on a sentence that repairs the harm the offender caused. Victim-offender mediation allows the offender and victim to meet and exchange apologies and forgiveness for the crime committed. Restorative justice practices can be used alone or as a condition of a sentence of probation.

Drug courts are also a useful alternative to incarceration. They provide court-supervised drug treatment and community supervision to offenders with substance abuse problems. As Families against mandatory minimums (<http://www.famm.org/repository/files/alternatives>) state, "Drug court eligibility requirements and program components vary from one locality to another, but they typically

- Require offenders to complete random urine tests, attend drug treatment counseling or Narcotics Anonymous/Alcoholics Anonymous meetings, meet with a probation officer, and report to the court regularly on their progress;
- Give the court authority to praise and reward the offender for successes and discipline the offender for failures (including sending the offender to prison);
- Are available to nonviolent, substance-abusing offenders who meet specific eligibility requirements (e.g., no history of violence, few or no prior convictions);
- Are not available on demand – usually, either the prosecutor or the judge handling the case must refer the offender to drug court; sometimes, this referral can only be made after the offender pleads guilty to the offense; and
- Allow offenders who successfully complete the program to avoid pleading guilty, having a conviction placed on their record, or serving some or all of their prison or jail time; some programs also allow successful participants who have already pled guilty to have their drug conviction removed from their record."

Mental Health Courts like drug courts, are "specialized courts that place offenders suffering from mental illness, mental disabilities, drug dependency, or serious personality disorders in a court-supervised, community-based mental health treatment program. Court and community supervision is combined with inpatient or outpatient professional mental health treatment. Offenders receive rewards for compliance with supervision conditions and are disciplined for noncompliance. They are also linked to housing, health care, and life skills training resources that help prevent relapse and promote their recovery. Often, offenders must first plead guilty to charges before being diverted to mental health court." (<http://consensusproject.org/mhcp>)

GPS (Global Positioning System) Monitoring is also proving to be a useful alternative to incarceration. This is an electronic tracking system that follows suspects and offenders around their neighbourhoods. Recently (29 May), as the Minister of Justice (Hon. Herbert Volney) piloted the Administration of Justice's Electronic Monitoring bill in the Senate, he said that it cost \$315.57 daily to maintain an offender in prison in TT in 2010 whereas the cost of monitoring an offender via an electronic device in TT would cost between US \$13 (\$84) and US \$20 (TT \$128). He admitted that it would reduce costs, present enhanced opportunities for offender rehabilitation, extend the range of sentences available to courts, and reduce overcrowding of prisons which is a problem in TT. The statistics he revealed showed the extent of our overcrowded prison system. He also admitted that "sentencing low risk offenders to prison can lead to reoffending no release." He stated that electronic monitoring is particularly

useful in dealing with juvenile offenders since it is in the interest of the juvenile to avoid where possible, detention.

The GCL sees the above as some of the alternatives to incarceration, particularly for the thousands of inmates who are non-violent or who need various kinds of treatment. As Families against mandatory minimums say: "Alternatives to incarceration can repair harms suffered by victims, provide benefits to the community, treat the drug-addicted or mentally ill, and rehabilitate offenders. Alternatives can also reduce prison and jail costs and prevent additional crimes in the future. Before we can maximize the benefits of alternatives to incarceration, however, we must repeal mandatory minimums and give courts the power to use cost-effective, recidivism-reducing sentencing options instead."

Much work would need to be done to ensure that these alternatives work effectively e.g. legislative reforms will be required to introduce and widen the scope of alternatives to imprisonment in the penal statutes; human and technical capacity will be required to implement them and so on.

We have a long way to go to build a just society but there are enough of us who are committed to making this a reality. The more we work at it, the closer we will be to making it a reality. We have nothing to lose and everything to gain. **I thank you.**