



**THE PRESIDENT  
REPUBLIC OF TRINIDAD AND TOBAGO**

His Excellency, Anthony Thomas Aquinas Carmona, ORTT, SC President of the Republic of Trinidad and Tobago delivered the Keynote Address at the opening of the Restorative Justice Conference on October 13, 2014. The following is the entire content of His Excellency's address.

It is with pleasure that I address all present this morning at the opening ceremony of this Conference centred not only on developing a concept of Restorative Justice but possible implementable measure to arrest social deviance and dysfunction in Trinidad and Tobago.

The solutions to crime have traditionally been grounded in a reactive approach in terms of harsher punishment and additional legislation in an effort to get tough on crime. Attempting to examine the root of the problem, trying to understand why so many of our citizens turn to violence and even why crime is an option are all bedeviling against a background of a country rich with resources, a country that is referred to as a social welfare state where dependency continues to be the jockey riding the economy in all sectors, where there is a low employment rate, some 5%, where we have the highest GDP in the region, where the literacy level is high (though not as high as it should be, I must add), where education is so free that you are even paid a stipend to do courses, and the type of human development expected is not reflected in the billions of dollars spent. In this country of ours, the erstwhile critical sociologist may well have a difficulty in linking poverty to crime.

This 'tough on crime' approach that we sometimes invoke has resulted in the man-child being incarcerated in the nation's prisons for very long periods before trial. For many bail is simply unaffordable and sometimes the seriousness of the offence doesn't warrant bail. This hiatus is onerous, both for the accused and the victim. The prisons are viewed by some as 'schools of crime' where a prisoner is inculcated with a deep-rooted criminal and anti-social mindset that results in repeat offending. Many perpetrators of crime have served long harsh punishments, long sentences, and upon release return to a life of crime resulting in a further term of imprisonment. Recidivism is alarmingly high. It is reported that Trinidad and Tobago Inspector of Prisons, Attorney-at-Law Mr. Daniel Khan stated that 74% of former inmates reoffend within 3-5 years of leaving prison. It speaks of an integrative process in society that is simply not working. Against this statistic, can we honestly say that a term of imprisonment has benefitted the individual criminal and the society as a whole? Punishment in the form of incarceration is necessary and is required to serve the punitive and deterrent principles associated with a sentencing regime, but it is not the only option and must not be so regarded. This problem of repeat offending among persons who have been subject to the criminal justice system is not unique to Trinidad and Tobago, or in fact the region, but exists worldwide. The concept of restorative justice has presented itself on the international landscape as a possible solution to the non-effectiveness of mere incarceration and other traditional penal approaches to offending in preventing re-offending.

Restorative justice has been given the international stamp of approval. The United Nations, in the year 2000 at its 81<sup>st</sup> plenary meeting of the General Assembly adopted the ***Vienna Declaration on Crime and Justice: Meeting the Challenges of the twenty-first Century***. In that Declaration, the member States of the United Nations, of which Trinidad and Tobago is a member, decided to "introduce, where appropriate, national, regional and international action plans in support of victims of crime, such as mechanisms for mediation and restorative justice". The Declaration goes further to "encourage the development of restorative justice

*policies, procedures and programmes that are respectful of the rights, needs and interests of victims, offenders, communities and all other parties.”*

Many nations have heeded that call and have implemented restorative justice programmes in their justice systems with some success. These include Victim Offender Mediation in Canada and the United Kingdom; Reparation Panels in the Republic of Ireland; Family Group Conferencing in Australia, South Africa, and New Zealand; and Circle Sentencing in Canada and Australia. Many of these programmes pay particular focus on the unique cultural aspects of the country, particularly when there is a large population of indigenous peoples, and attempt to introduce those traditions into the justice system through such programmes.

Canadian author Robert Cormier in his book, *A Little Manual of Restorative Justice*, Canada, 2008, defines restorative justice in the following terms, “*Restorative Justice is an approach to justice that focuses on repairing the harm caused by crime while holding the offender responsible for his or her actions, by providing an opportunity for the parties directly affected by crime – the victim(s), offender and community – to identify and address their needs in the aftermath of the crime, and seek a resolution that affords healing, reparation and reintegration, and prevents future harm*”<sup>1</sup>

In the Australian case **Garrett v Williams, Craig Walter**, the trial judge, Justice Preston, explained what may be considered the components of a restorative justice programme. What does restorative justice hope to achieve? An insight into the constituents and components of a restorative justice programme, indicates this:

*“A restorative justice programme, whether general or case-specific, uses restorative processes and seeks to achieve restorative outcomes. A ‘restorative process’ can be defined as ‘any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator’... A ‘restorative outcome’ is an agreement reached as a result of a restorative process. The agreement may include the offender making reparation or restitution.”*<sup>2</sup>

In essence, therefore, restorative justice focuses on restoring the human relationships that are damaged or broken as a result of the hurt caused by one party to another, as well as the wider community, through that person’s offending. Restorative justice would have a different meaning and take a different form depending on the culture and the complexities of the community attempting to implement such approaches in the criminal justice system. The *raison d’être* is that if damaged relationships are restored, and the person who offends is not only made fully aware of the damage caused by his actions, but is also given the tools, as well as the opportunity, to address the issues within himself that lead to that offending behaviour, then the likelihood of him repeating an offence would be drastically reduced.

At first blush it would appear that a restorative justice approach is an attempt to give persons who have committed grievous offences a ‘slap on the wrist’ which flies in the face of society’s need for retribution (the eye for an eye approach) when it is aggrieved by a particularly hurtful crime. The traditionally retributive approach in the main continues to fail us in stemming the seemingly endless flow of crime. The restorative justice approach places on the offender a greater burden to take *active* steps to atone for the harm caused through his offending, rather than a passive term of reflection behind prison walls, since the offender must not only hear from the victim but take steps to repair the harm caused in a manner that is not only acceptable to the victim, but the community as a whole.

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<sup>1</sup> *A Little Manual of Restorative Justice*, Canada, 2008

<sup>2</sup> [2007] NSWLEC 96 para 41

In the publication “*Beyond Retribution – Prospects for Restorative Justice in South Africa*”<sup>3</sup>, the authors<sup>4</sup> noted that “government’s response to crime in recent years has been characterised by two approaches: more arrests and prosecutions on the one hand, and increasing the punishment for those convicted of crime on the other. While improving the efficiency of the criminal justice system is necessary, applying harsher punishments to offenders has been shown internationally to have little success in preventing crime. Moreover, both these approaches are flawed in that they overlook important requirements for the delivery of justice, namely:

- considering the needs of the victims;
- helping offenders to take responsibility on an individual level; and
- nurturing a culture that values personal morality and encourages people to take responsibility for their behaviour.

*Considering that crime rates in South Africa remain high and that government’s current focus appears to be on punishment rather than justice, a different approach is needed. In this regard, the paradigm of restorative justice can make a new and valuable contribution. One of the basic tenets of restorative justice is that crime prevention is more likely to be achieved through social reintegration rather than ostracism and punishment. This is achieved through conferences between offenders and victims where guilt is admitted, hurt is revealed, restitution is explored, commitment about future behaviour is made, and the responsibility for carrying out obligations is shared.”*

It is not a perfect world, and as much as restitution is one of the sign posts of restorative justice, it creates problems in murder, manslaughter and trials of great violence. For a Judge dispensing justice with restorative justice in mind, it is a veritable minefield. It sometimes requires a combination of social engineering and judicial activism. I wish to share two instances of this. (A). Leroy X vs the State (16 yr old guilty of murder and given an indeterminate sentence by the court. Victim impact statement (first time in T&T, probation officer’s report). (B). Family in Penal involving two brothers fighting over land (Panchite). Some parity can be found between the experience of South Africa and Trinidad and Tobago; enough to warrant an examination of restorative justice principles in order to determine how these approaches can benefit us. Restorative justice is not new in the international landscape.

Whilst many may argue that a restorative justice approach will only be relevant with respect to the commission of a minor offence, the use of such principles can actually be of great assistance in serious matters, even matters involving violence. For instance, in the South African case of the **State v Joyce Maluleke and ors**<sup>5</sup>, the first named accused was convicted of murder. The accused had caused the death of the deceased by participating actively, together with her husband, in a sustained assault upon the deceased after he had been apprehended in her home into which he had broken with the apparent intent to commit theft. Her husband, who was originally charged with her, died before the start of the trial. The accused lived in a small, close-knit community. The deceased was part of her extended family and well known to her. It was the accused first offence and she was a widow with four minor children dependent on her.

There was a traditional custom in the accused’s community of apologizing for an unlawful killing by sending an elder member or members of her family to the family of the deceased. Prior to the trial, the accused did not abide by the said custom. The failure to comply with this custom was normally regarded as adding insult to injury by the family of the victim. During the trial, the state called the victim’s mother to inform the court of the hurt and loss that the

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<sup>3</sup> Institute for Security Studies, Pretoria, South Africa, 2005

<sup>4</sup> Mike Batley and Tragg Maepa at pgs 15-16

<sup>5</sup> High Court of South Africa, delivered 13<sup>th</sup> June, 2006

deceased's family had suffered. In cross-examination, counsel for the defence enquired from her whether she would be prepared to receive a senior representative from the accused's family in order to attempt to restore the broken relationship between families. The deceased's mother answered in the affirmative, adding "But she must tell me why she killed my child." This answer enabled the Court to involve the community in the sentencing and rehabilitation process. The accused was sentenced to eight (8) years imprisonment, all of which was suspended for three (3) years on several conditions, inclusive of which was that the accused apologized according to custom to the mother of the deceased and her family within a month after the sentence having been imposed. Justice Bertelsmann of delivering judgment on sentence remarked:

*"It is obvious that restorative justice cannot provide a single and definitive answer to all of the ills of crime and its consequences. Restorative justice cannot ensure that society is protected against offenders who have no wish to reform, and who continue to endanger our communities.*

*But on the other hand restorative justice, properly considered and applied, may make a significant contribution in combating recidivism by encouraging offenders to take responsibility for their actions and assist the process of their ultimate reintegration into society thereby.*

*In addition, restorative justice, seen in the context of an innovative approach to sentencing, may become an important tool in reconciling the victim and the offender and the community and the offender. It may provide a whole range of supple alternatives to imprisonment. This would ease the burden on our overcrowded correctional institutions."*<sup>6</sup>

What this case demonstrates is the shift in approach that must take place in the mind of the judicial officer in imposing a particular sentence on an accused person when seeking to apply a restorative justice approach. But even more poignantly, this case demonstrates the profound effect that can be had by involving the victim in not only the trial, but in the sentencing process as well. The involvement of the victim can go a long way to bringing resolution to the matter and promoting healing.

Against this background, how can the law in effect be used as a tool to promote restorative justice? And what is the role of the judge and the lawyer in the process? Some would say that the Courts and by extension judges in general may be required to take a more activist or interventionist role not only to preserve at large the rule of law in society, but to interpret the law in a manner to promote restorative justice.

Several generations ago, Dean Roscoe Pound articulated the concept and idea of law as playing a vital role in social engineering. Citing this source, a Supreme Court Justice from India, Justice Mane, remarked in relation to the topic of legal philosophy and judicial activism referencing the definition of judicial activism as explained in Blacks' Law Dictionary, Sixty Edition, stating that judicial activism is : "Judicial philosophy which motives judges to depart from strict adherence to judicial precedent in favour of progressive and new social policies which are not always consistent with the restraint expected of appellate Judges. It is commonly marked by decisions calling for social engineering and occasionally these decisions represent intrusions in the legislative and executive matters."

On the other hand, Abraham Lincoln specifically disputed the idea that judges should even be labelled as activist exclusively. He opined as follows: "Have we not lived enough to know that two men may honestly differ about a question, but both be rights? In this paradox lies the secret of judicial process. There are areas where the judges must be activists and there are

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<sup>6</sup> Ibid at paras 32-34

areas where they must be passivists. In which areas they should be activist and in which areas they should be passivists can be gathered from the knowledge we get by experience.”

Judges therefore are to uphold the law and the Constitution of their respective jurisdictions and at risk of being labelled by some as activist, giving effect to the law entails doing what is right and not what is popular.

Justice Mane points out in relation to one of India’s pioneering judges for social justice that: “Though it is the legislature, which makes the Law, the Judgments rendered by the Supreme Court and High Courts give the Law a concrete shape, which the people understand better as the Law. Hence, there is importance of the decision making process. In the Common Law, development is permitted, if not expected in Stature law, there must be at least a presumption that Parliament has on the topic it is dealing with, said all that it wanted to say, Justice V. R. Krishana Iyer, the greatest activist Judge, India has so far seen, feels, judicial activism is a device to accomplish the cherished goal of social justice. He said, “After all, social justice is achieved not by lawlessness process, but legally tuned affirmative action, activist justicing and benign interpretation within the parameters of Corpus Juris”. [In Search of Social Justice, page.8]

In New Zealand, Parliament recognized the rights and interest of the victim through the passage of the **Victim Rights Act, 2002**. As an indication of the belief that restorative justice processes are in victims’ interest, that Act includes a special provision at section 9 that prescribes that an offender/victim meeting should take place and there should be encouragement to hold such a meeting. Such a meeting may be arranged and facilitated by a judicial officer, lawyer for the offender, member of court staff, probation officer, or prosecutor. The meeting, however, should only be encouraged once certain criteria are met, namely:

- (a) the victim and offender agree to the holding of a meeting of that kind; and
- (b) the resources required for a meeting of that kind to be arranged, facilitated and held are available; and
- (c) the holding of a meeting of that kind is otherwise practicable, and in all circumstances appropriate.

A meeting akin to the type held in New Zealand, or any process that directly involves the victim and gives the victim the opportunity to speak with the offender could greatly benefit persons such as Dexter Baker, the father of 13 year old Dayron Baker who was shot dead in Diego Martin on July 11<sup>th</sup> this year. Young Dayron was shot multiple times about the body at 9:30 at night while walking from his parent’s home to his grandparent’s shop, a short distance away. Mr. Baker, while awaiting the autopsy report on his son at the Forensic Science Centre in St. James, repeatedly stated that he wanted his son’s killers to explain why they killed Dayron, saying: *“I not issuing any threats, I not inviting trouble. But I just want to see my son’s killer just to ask him what’s the reason you really kill that young boy for? Why him? What message are you sending and to whom? Because he wasn’t a criminal or in a gang or used to associate with any nefarious characters. So what you killed him for? And you shot him so many times. I don’t know what kind of war them little boys are fighting but it’s innocent people who are the casualties and that is madness. My son was going down the hill for some bandages and a soft drink and you gun him down? Why? I need to know why.”*<sup>7</sup> The grieving father went on to say that an explanation was the only way he thought he could get some closure on the killing.

By actively participating in the process, a victim such as Dexter Baker would not only gain closure but would also be given the opportunity to feel like he was a part of justice being

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<sup>7</sup> As reported in the Trinidad Express Newspaper by Alexander Bruzual, 15 July, 2014

served. This would be of immense benefit to not only him, but the community as a whole and would go a long way towards persons regaining confidence in the justice system. At the same time a meeting with the victim would demonstrate to the offender, in a real way, the effect of his actions on another person and should encourage the offender to understand the value of attempting to repair the harm caused by him.

The preceding examples demonstrate that restorative justice models may take many forms and require equal participation of the offender, the victim and the community to be of lasting benefit. As we move towards active implementation of a restorative justice approaches in Trinidad and Tobago, that prevailing principle must always be borne in mind. In fact, restorative justice has for some time been in operation on our shores without being necessarily identified as such. One instance that comes to mind is the Bail Boys project and the Drug Treatment Court Programme that was implemented by the Judiciary of Trinidad and Tobago.

In 2009 things came to a head in dealing with bail applications in the San Fernando Court I had by then been speaking in my sentencing judgments for sometime that the “man child was in crisis,” a type of rally cry to the society to wake up from its slumber – it was not working. That groundswell was simply not there.

I felt a deep sense of desperation triggered by the urgency of now. The revolving door had become a constant phenomenon in the criminal justice system in a land that often walks the beaten path and if I am allowed the liberty of being facetious emptying a bucket of ice and cold water was not going to be of much assistance or value. An immediate result was required and immediate action became necessary. Young men, many on bail, were dying and life was being trivialized by characterizing their deaths as gang-related and that somehow made their deaths almost all right because it happened in another place whilst those who ought or should have done something were essconced in gated communities or had the required security or believed in a type of representative silence and I was simply fed up with getting goose pimples when I saw the television news nightly displaying the body of a young man either in a canal, a drain, the road or in isolated bushes, who had appeared before me in the Criminal Court weeks or days before or whilst on trial before me or my brother and sister judges and the wail of a mother’s greatest nightmare that stated, that is my son, that is somebody’s brother or cousin, that is somebody’s father and I do not mean to be dramatic but that is how I felt and in my quiet moment, I said I had to do something about it or at least try something and so the Bail Boys project began as a working component of restorative justice.

#### **REFER TO SUPERVISED BAIL AND BAIL REVIEW REPORT**

The Drug Treatment Court project was launched in 2012 and evolved out of a proposal made by the Honourable Chief Justice arising out of concerns about the number of persons brought before the Courts on drug related offences. These Courts attempt to achieve a measured intervention in the lives of persons brought before the Court for drug related offences by providing an opportunity to address in a more effective manner the disease of substance abuse among non-violent offenders while reducing the recurrence of persons relapsing into a life of crime. The Honourable Chief Justice, in his address at the launch of the Drug Treatment Court on September 11<sup>th</sup>, 2012 in San Fernando described the project as follows:

*“The “Drug Treatment Court”, as you have heard from the previous speakers, offers a path that links “Treatment” to a structured court supervised system. I am confident that the establishment of such a Court will not only result in savings to the Judiciary, Prison Service and other state agencies, but more importantly, it offers those persons who are afflicted with the disease of addiction an opportunity to access a series of services, under the umbrella of the court and to equip them for a productive life with healthy relationships.”*

The Drug Treatment Court celebrated the graduation of its first group of participants on Friday July 11<sup>th</sup>, 2014 at which five (5) male participants celebrated their completion of the programme in an effort to address their substance addiction and make a meaningful change in

their lives. Before the launch of this programme, it is more likely that most, if not all, of those gentlemen would have found themselves in a revolving door between the Courts and prison as a result of their addiction. Instead, they were given an opportunity, by successfully completing the rigorous programme ascribed to the Drug Treatment Court, to change that future. This, in my humble view, is restorative justice in action.

Our purpose here today, and over the course of this two day conference, is to discuss what restorative justice means to us on both an individual and community level, and to conceptualise more projects like the Drug Treatment Court that can result in a more healing justice system and a safer Trinidad and Tobago.

I thank you.