LAW ASSOCIATION OF TRINIDAD AND TOBAGO

MEDIA RELEASE

The plan by the Commissioner of Police to have the laws governing the grant of bail amended as a measure to reduce the murder rate, has a certain neat logic to it. The logic is that if all persons who the police suspect to be in possession of firearms, or to have committed crimes involving the use of firearms, are compulsorily detained pending trial, there would eventually, in theory, be fewer at large to commit murders.

According to the Commissioner, the off-duty police officer slain by bandits, and the suspect gunned down by police officers in a shootout, would both have been alive today if the suspect had been denied bail for the firearm offences with which he had been previously charged. The Commissioner's plan, however, can only be achieved at great sacrifice to fundamental constitutional principles.

The abiding problem with laws which automatically deny an accused the constitutional right to bail is the grave potential of taking away his or her liberty pending trial when there is in fact insufficient evidence to convict. Earlier this year, we witnessed the spectacle of someone charged with murder being released after being incarcerated for ten years awaiting trial when the main eye witness recanted his evidence. Systems of criminal justice the world over are plagued with cases of persons who had to be released after serving many years in prison for crimes which fresh evidence established conclusively they did not commit. Laws which indiscriminately deny the right to bail, therefore, not only infringe the right to be presumed innocent until proven guilty, but also the right not to be deprived of liberty except by a fair process which establishes guilt on the basis of cogent evidence.

Of equal significance is the fact that laws which deny accused men and women the right to bail simply because of the laying of a criminal charge, effectively bestow on police officers the power to determine who should or should not be put in gaol entirely on the basis of their own assessment of whether there is sufficient evidence that a crime has been committed. It is a fundamental principle of western democracies such as ours that decisions on whether anyone should be deprived of their liberty pending trial should be determined only by judicial officers who are sufficiently trained and experienced in the relevant principles of law. Laws which empower police officers to make such decisions bring us closer to a police state and not one based on the rule of law.

This is why the Privy Council ruled in the *State of Mauritius v Khoyratty* that a law which required the judiciary to deny bail to persons charged with specific terrorism and drug related offences violated the separation of powers doctrine, which is one of the hallmarks of a democratic state.

The Law Association is committed to working with all law enforcement agencies to develop laws and strategies which would rid Trinidad and Tobago of the scourge of violent crime. This is part and parcel of our statutory mandate "to protect and assist the public ... in all matters relating to the law." However, the statute which governs our work also requires us to "to promote, maintain and support the administration of justice and the rule of law." It is therefore incumbent on us to caution against the blithe abandonment of our constitutional protections in search of short term solutions to deep-seated societal problems. The fact that the murder rate has been steadily increasing over the years under the stewardship of all political contenders and Commissioners of Police of varying degrees of skill and enthusiasm, is enough to compel us, together, to consider more radical solutions and to focus more on the root causes of crime, even as we tweak and refine our policing strategies.

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