

Remanded in custody and punished without trial: The Criminal Justice System and Remand Populations in Trinidad and Tobago



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Abstract

In Trinidad and Tobago, inordinate trial delays coupled with a frustratingly immobile criminal justice system have caused numerous individuals to remain remanded in custody for five to ten years and in some instance, upwards of fifteen years. Quite surprisingly, few scholars in Trinidad and Tobago have focused their research attention on the pervasive issue of remand incarceration which the authors of this article cogitate is akin to 'punishment without trial' and 'the criminalization of the presumption of innocence'. This article fills an existing void by examining pre-trial detention on the island. The study was conducted from a rights-based, socio-legal, sustainable development and small state multidisciplinary perspective and utilizes quantitative data obtained from the statistical department of the Trinidad and Tobago Prison Service (TTPrS). The results indicate that male inmates spend on average four to ten years and females two to four years on remand due to the state's inability or inefficiency in bringing these 'presumably innocent individuals' to trial. In sum, this article highlights problems at remand facilities, remand trends and reasons for the concerns with remanded inmates. Recommendations to reduce the current level of pre-trial detention on the island are discussed.

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Introduction

In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception - W. H. Rehnquist, C.J. (1987).

Trinidad and Tobago is a post-colonial, twin-island Parliamentary democratic Republic lying at the southern-most tip of the Caribbean, just off the northeast coast of Venezuela (U.S. Department of State, 2009). The island's criminal justice system (CJS) is modeled after the English CJS due to its legacy as a former British colony. However, while the CJS in England has undergone several reforms and seems contemporary, several aspects of Trinidad and Tobago's CJS seems to have ingested the tranquilizing drug of gradualism and is slow to change. This is particularly applicable to the system of pre-trial detention or remand custody on the island. In Trinidad and Tobago's jurisdiction, persons charged with the commission of criminal offences may have their matters determined by a court of competent jurisdiction, released on personal bail (own bail) or on bail with or without independent sureties (undertaking by third party). Conversely, individuals may be remanded in custody to await the start or completion of their trial if they are granted bail and are awaiting bail, if they are granted bail and cannot afford bail, if they are awaiting sentence in court or if they cannot abide by the bail conditions imposed upon them.

Pre-trial detention or remand detention refers to the period during which individuals are deprived of their liberty (including detention in police lock-ups) through to the conclusion of the criminal trial (including appeal) (Schönteich, 2011). Remand detention also refers to those persons who, in connection with an alleged offence or offences, are deprived of liberty following a judicial or other legal process, but have not been definitively sentenced by a court for the offence(s) (Gordin & Cloete, 2013; Walmsley, 2017; Van Zyl, 2012). In Trinidad and Tobago, a remand prisoner is "any person charged with a criminal offence who has been ordered by the Court to be detained in custody while awaiting trial or sentencing" (Final Report of the Cabinet Appointed Task Force on Prison Reform and Transformation 2002, 433) and include:

1. Persons whose cases have been adjourned at the Magistrates' Court.
2. Inmates awaiting trial in the High Court.
3. Inmates who have appealed their sentences and are awaiting the determination of their appeals.
4. Prohibited immigrants and deportees.

Globally, persons on remand are referred to as pre-trial detainees or remandees, awaiting trial prisoners, untried prisoners, and un-sentenced prisoners

(Orjiakor et al., 2017; Schönteich, 2011). For the purpose of this article, the terms remandee, remand inmate, and/or remand prisoner will be used interchangeably as they are widely utilized and easily understood by Prison officials and prisoners alike in Trinidad and Tobago.

Pre-trial/remand detention is a great global concern (Walmsley, 2017) and this concern has not bypassed Trinidad and Tobago. For the political and prison executives on the island, the use of remand detention has been under the spotlight for extended periods of time and remains in focus at this time. On the other hand, academicians in Trinidad and Tobago as well as international state entities are concerned with the continuing increase in the number of persons in prison because they have been refused bail, are awaiting trial or awaiting sentencing, in some instances, for up to ten years. For instance, the United States Department of State (2013) points out that the Port of Spain Prison which was designed to hold 250 inmates, held 600 prisoners, and the Remand Yard, designed to hold 600 inmates, held 1,156 prisoners at the end of 2012. As it relates to time spent on remand in Trinidad and Tobago, Al-Rawi (2016), using data obtained from the TTPrS, points out that, of the 2,235 individuals who were in remand custody as at December 2015, 11% (246 inmates) were on remand for more than 10 years, 19% (425 inmates) were on remand for more than 5 years, but less than 10 years and 70% (1,565) were on remand for 5 years or less (see Table 1). Using data obtained from the Trinidad and Tobago Prison Service (TTPrS), Al-Rawi (2016) pointed out that as of December 2015, there were 3,667 inmates in prisons on the island and of that total number, 2,235 individuals (or 61%) were on remand. The position by Al-Rawi (2016) later found support from Dillon (2017), who in an address at the 'Preparation for Release Programme Launch' indicated that "68% of the prison population in Trinidad and Tobago were held on remand and that this situation is untenable." What the data indicate are that prisons in Trinidad and Tobago contain a substantial number of persons who are on remand, who have not been proved guilty or convicted of the offence(s) for which they have been charged, and who should be presumed innocent in the eyes of CJS. Yet they are in prison, in conditions that are worse than those of convicted prisoners (Schönteich, 2014). Furthermore, there appears to be a remand crisis at prison facilities on the island as remand facilities on the island are severely overcrowded (Khan, 2013) with no end in sight to this calamitous situation.

Table 1: Total remand inmate population and average time spent on remand in Trinidad and Tobago as of December 2015

Length of time on remand	Percentage of total inmates on remand (N= 2,235)
More than ten (10) years	11% (n = 246)
More than five (5) years but less than ten (10) years	19% (n = 425)
Five (5) years or less	70% (n = 1,565)

Source: Al-Rawi (2016).

The data in Table 2 shows the extent of remand population in Trinidad and Tobago between 2000 and 2015 and highlights the continuously increasing trend in remand populations over the past fifteen years. From economic, socio-legal and human rights perspectives, it is important to keep remand trends under close review, and to understand critical factors and key issues associated with the remand population. However, much of the research and writing on remand detainees in prisons emanates from research on Western prisons conducted by Western researchers. What this means is that the frameworks for conceptualization of research and understanding about remand inmates are generally derived from the ideas of the West. These frameworks often result in cloistered, Western dictum and systematic blockage of knowledge bases on remand inmates in other parts of the world, including the Caribbean. Instructively, while the remand population in some states in the USA as well as in countries such as Australia, Bolivia, Haiti, Liberia and Mexico are high and similar to that of Trinidad and Tobago, the cultural and CJS practices of those jurisdictions differ from that of Trinidad and Tobago and this necessitates the use of a local context to understand the remand phenomenon on the island.

Table 2: Pre-trial/remand imprisonment in Trinidad and Tobago

Year	Number in pre-trial/remand imprisonment	Percentage of total prison population	Pre-trial/remand population rate (per 100,000 of national population)
2000	1,475	31.8%	116
2005	1,573	42.2%	121
2008	1,595	41.9%	121
2011	2,098	52.1%	155
2015	2,235	60.9%	164

Source: World Prison Brief (2016).

While numerous individuals in Trinidad and Tobago have spoken out against the lengthy time spent in remand custody as well as the horrendous conditions at remand facilities on the island (Dillon, 2017; Gobin, 2004; Joint Select Committee on Human Rights, Equality and Diversity, 2017; Ramdeen, 2012; Special Prisons Committee, 2013) and despite several protests and Prison riots by remand prisoners to highlight their plight, there is limited empirical literature on remand prisoners in Trinidad and Tobago's Prisons (see Hagley, 1996; Julien, 2017). The Cabinet Appointed Task Force on Prison Reform and Transformation, 2002 as exceptions) when compared to the availability of literature on remand prisoners in the international arena (Aguilar-García, 2014; Belloni & Hodgson, 1999; Csete 2010; Duff, 2012; Freeman, 2008; John Howard Society of Ontario, 2005; Orjiakor et al. 2017; Sarre, King & Bamford 2006; Schönteich, 2014).

Fundamental principles underlying pre-trial detention

There are several fundamental legal principles underlying pre-trial detention, however, three of those principles will be applied to this study. The first legal principle that will be discussed is bail as a defendant's inability to access bail is linked to pre-trial detention. The purpose of bail in Trinidad and Tobago is to provide defendants with due process; ensure the defendant's appearance before the court; and to protect victims, witnesses, and the community from threats, danger, and interference. Therefore, the decision to grant bail in Trinidad and Tobago is premised with the following aims in mind:

1. Ensuring the integrity and credibility of the justice system,
2. Protection of the community, and
3. Assisting in the care and protection of the rights of defendants.

It is important to note, however, that the decision to detain an individual pending trial is a key point in Trinidad and Tobago's judicial system as the Bail Act of 1994 places tremendous power into the hands of magistrates and judges in the jurisdiction. Unfortunately, as there is less judicial scrutiny placed on judicial decisions to remand individuals in custody, this allows magistrates and judges a great deal of discretion, which is often used in an inflexible manner. This inflexibility has led some researchers to submit that judicial decisions on pre-trial detention may be subject to high levels of bias (Hagan, 1974; Steffensmeier, 1980).

The second legal principle that is applied to this study is the presumption of innocence (POI). Based on this legal principle, pre-trial inmates are presumed to be

innocent (Aguilar-Garcia, 2014; Inter-American Commission on Human Rights, 2013; Sarre et al., 2006) and this presumption should never be abrogated at any stage of the CJS. Internationally, the POI is universally recognized as one of the central fundamental principles of criminal justice (de Jong & van Lent, 2016; Mackor & Geeraets, 2013) as well as a bulwark of CJS as it serves to distinguish convicted from charged individuals thereby offering a measure of protection to individuals who are charged, but not convicted with the commission of criminal offences. In addition to distinguishing convicted from charged individuals, the constitutional basis for the POI is of much importance as it serves to secure at least one pre-trial right – the right to be released on bail pending trial in the absence of egregious factors such as flight risk, previously absconding whilst on bail and witness/victim interference. Given that the POI is of universal applicability which affords innocent individuals a measure of protection, remand custody should not be so widely used, however, for some jurisdictions and their CJS, remand custody has become their “default setting” (Schönteich, 2014) and this includes Trinidad and Tobago.

The importance of the POI cannot be understated as it is contained in several international conventions and treaties such as Article 6(2) of the European Convention on Human Rights (ECHR), Article 48(1) of the European Union Charter of Fundamental Rights, Article 11(1) of the Universal Declaration on Human Rights and the UN Standard Minimum Rules for Non-Custodial Measures (the “Tokyo Rules”). Keeping in mind the importance of the POI, the decision to detain a person before being found guilty of a crime is one of the most draconian the State or individual can make (Berry, 2011) and “Remanding a person in custody is a serious matter” (Sarre, King & Bamford, 2006, p. 1). In Trinidad and Tobago’s context, the POI is applicable to remanded individuals as they are afforded protection under this legal principle as they have not been convicted by a court of competent jurisdiction and should not be treated as convicted prisoners. However, in spite of this, the POI with its ‘de jure’ effect of ensuring that a person charged ‘enjoys the same legal status as an innocent person’ (Maier, 2004), is under constant assault from the CJS in Trinidad and Tobago and appears fragile and so too is the system of remand detention on the island.

Of importance is the perception that over the two past decades, the emphasis on the rights of suspects and defendants in Trinidad and Tobago have given way to: (1) using the criminal law, pre-trial detention as a means of reducing risk and attaining community safety, and (2) an approach by the courts and police that discourages the granting of bail. However, the Prison Reform Trust (2011, p. 3), firmly submit “the presumption of innocence should be the yardstick for the treatment of, and conditions for, those remanded in custody” and in accordance

with the UN High Commissioner for Refugees (UNHRC), pre-trial detention “must not only be lawful but reasonable and necessary in all the circumstances” (Domingo & Denney, 2013, p. 2). In sum, pre-trial detention is morally problematic in more ways than are acknowledged as it treats innocent defendants as guilty ahead of trial and this is inconsistent with the presumption of innocence (POI). This inconsistency has led the Prison Reform Trust (2011) to point out that time spent on remand is akin to punishment with attendant harmful effects on remanded individuals and their family members which goes beyond the loss of one’s liberty.

The third legal principle that is applicable to this study is that while an individual’s rights to liberty is protected by international criminal law standards, remand detention is acknowledged as a legitimate exception to this right to liberty. For example, Section 6 of the Bail Act of 1994 in Trinidad and Tobago gives authority to magistrates and judges to detain a criminal defendant pending trial. This section allows the magistrate or judge to detain a defendant if it is determined that conditions exist that raise doubt as to whether the defendant will appear at trial or whether the defendant may cause harm to victims and/or witnesses if released on bail. In other words, individuals charged with a criminal offence and awaiting trial may have their release subject to guarantees to appear for trial. With this in mind, there can be no argument about the need to protect society from the scourge of crime and criminals; however, there is a corresponding need to balance community safety with the POI and the right to personal liberty.

As it relates to the POI/bail/pre-trial detention nexus, there is a paucity of data collected by relevant authorities in Trinidad and Tobago on failure to appear, the reasons for failure to appear, offending on bail, interference with witnesses and victims that allows for the measurement of the extent to which current bail and remand practices have achieved their stated objectives. Scholars Deosaran (2003) and James (2010) who both posit that data collection in the Caribbean is in an unhealthy state have pronounced upon the lacuna in data collection in the Caribbean. The result of this lacuna in data collection is that the effectiveness of bail and remand practices in Trinidad and Tobago have not been analysed with any degree of accuracy. The result is an appearance of tension between the stated objectives of bail and the goals of custodial remand in Trinidad and Tobago and this is manifested by the current unhealthy state of remand on the island.

Literature review

To fully contextualize remand and existing conditions at remand facilities in Trinidad and Tobago, it is imperative that a brief review of relevant literature on remand inmates in Trinidad and Tobago is provided as an *aide memoir* to readers. Ramdeen (2012, p. 3) reporting on the condition of prisons, prisoners and persons on remand in Trinidad and Tobago points out that “Many languish in pain for years on end in our Remand Yard without trial.” Ramdeen (2012, p. 3) also points out that in 2011 an international visitor to the remand yard in Trinidad described it in the following manner: “Remand Yard was not quite hell, but was a room next to hell.” Star Convict Alladin Mohammed of the TTPrS, whose artwork adorn the cover of the Inspector of Prison – 2012 Report, supports the position of Ramdeen (2012). The artwork likens the condition of the Prison system to the past incivilities that are usually associated with African slavery in Trinidad and Tobago (Khan, 2013). In the caption of the artwork, Mohammed opined the following:

Notorious for degrading, inhumane conditions and treatment, slavery in Trinidad and Tobago is said to have been abolished in 1838.....yet 174 years later, the housing of reluctant persons in cramped, appalling conditions still prevails. It is said that the progress and civility of a society can be measured by the conditions of its prisons. In the spirit of this statement, the cover design depicts a lingering problem inherited from our predecessors; the transference of overcrowding and unsanitary conditions from the days of slavery, to our prisons today. Can you spot the difference? (Mohammed, 2013 as cited in Khan, 2013, p. ii).

Interestingly, approximately eight years prior to the statement by Mohammed (2013) as cited in Khan (2013), the Honourable Madam Justice Carol Gobin made a similar pronouncement in Colin Edghill v. The Commissioner of Prisons and the Attorney General of Trinidad and Tobago, No. 3178 of 2004 (unreported - para 31). In this matter, Madam Justice Carol Gobin opined that “The atrocities of the slave trade as well as indentureship are well known to us and have been part of our history. Some of the conditions at the Remand Yard are not so different from those experienced by our forefathers” (Gobin, 2004, as cited in Khan, 2013, i). The issues of remand and remand conditions are so pervasive that in November 2013, the then Prime Minister of Trinidad and Tobago, Mrs. Kamla Persad-Bissessar, appointed a Special Prisons Committee to urgently examine prison life on the island. Term of Reference 2.2 was ‘To investigate, study and make recommendations on resolving the overcrowding at the remand yard, including the expediting of the justice system as it relates to pending matters’ (Special Prisons Committee Proposals for Early Urgently Needed Action, 2013).

The Joint Select Committee on Human Rights, Equality and Diversity (2017) in Trinidad and Tobago, also point to the gravity of the problems surrounding pre-trial detention, namely, grave overcrowding and unsanitary conditions at prisons on the island. The Joint Select Committee on Human Rights, Equality and Diversity (2017) report pointed out that the Remand Prison is overcrowded and has 203 functional cells of 9x6 feet in dimensions, which houses an average of 5 to 9 remanded prisoners per cell and that there are a total number of 714 beds for 1100 pre-trial detainees. The Joint Select Committee on Human Rights, Equality and Diversity (2017) report also points out that the Remand Prison at Golden Grove, which was built to accommodate 600 remanded prisoners, held 1,074 remanded prisoners at January 31, 2017. In a similar vein, the 2013 Ombudsman Report of Trinidad and Tobago (2013) and the Special Prisons Committee Report (2013) also expressed outrage at the poor and harsh conditions at the prisons and overcrowding at the Port of Spain and Golden Grove Remand Prisons.

The general unsanitary condition at remand facilities in Trinidad and Tobago is exemplified by the use of slop pails (in lieu of contemporary flushable toilets) by remand inmates at some remand facilities in Trinidad and Tobago. The use of slop pails for calls of nature, in some instances are conducted on sheets of newspaper in full view of cellmates and then disposed of in slop pails or in drains on the outside of the cells (Joint Select Committee on Human Rights, Equality and Diversity, 2017). This unsanitary use of the slop pail system at the remand facilities enables the increased chance of a rodent infestation and is a breach of Rules 12 and 15 of the United Nations Declaration on Human Rights and the United Nations Standard Minimum Rules for the Treatment of Prisoners which states: "The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner" and "Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and such toilet articles as are necessary for health and cleanliness." Added to this, the Nelson Mandela Rule 15 states, "The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner."

Another atrocity perpetuated on remand inmates in Trinidad and Tobago is the general lack of provisions for the inmates to follow current national affairs. Importantly, Nelson Mandela Rule 63 states, "Prisoners shall be kept informed regularly of the more important items of news by the reading of newspapers, periodicals or special institutional publications, by hearing wireless transmissions, by lectures or by any similar means as authorized or controlled by the prison

administration.” However, for remanded individuals in Trinidad and Tobago, their reality is that there are no provisions for them to follow current national affairs in the cell sections at the Remand Prison, Golden Grove, the Remand Section of the Women’s Prison and Remand Yard in the Port-of-Spain Prison (Joint Select Committee on Human Rights, Equality and Diversity, 2017).

This general lack of provisions for remanded prisoner at remand facilities in Trinidad and Tobago to follow current national affairs is due to the absence of electricity in many of the cells at remand facilities and is in direct contravention of the Nelson Mandela Rules for the treatment of prisoners. The existing conditions at remand facilities in Trinidad and Tobago are in line with the research findings of Domingo and Denney (2013). They point out that pre-trial detention can lead to negative impacts at multiple levels including over-crowding of detention facilities, deteriorating health and mental wellbeing of detainees, higher costs to society through lost productive potential and financial costs of detention and diminished effectiveness and trust in the CJS and serves to criminalize un-convicted individuals.

Another major source of bother for pre-trial inmates in Trinidad and Tobago is the inordinate trial delays and the subsequent length of time spent on remand, largely due to the inability of the state to begin and conclude criminal trials. For example, table 3 highlights that more than half of the remand population in state facilities in Trinidad and Tobago at February 20, 2017 have been in remand custody for between one to nine years, with some prisoners being in remand custody for 10-14 and 15-20 years. The authors of this paper cogitate that this practice is akin to the criminalization of the presumption of innocence and punishment without trial as in many instances, the time spent on remand, in some instances, exceeds the maximum sentence for the offence as well as the eventual sentence prescribed to the offender.

The gravity of the situation facing pre-trial inmates in Trinidad and Tobago (lengthy time spent in remand facilities) was given relevance in a landmark judgment in Trinidad and Tobago’s Court of Appeal 2012. In this case, Appeal Court Justice Rajendra Narine in *Borneo v The State Cr App 7 of 2011*, ruled that convicted criminals should have the time spent awaiting trial in remand discounted from their substantive sentence. The decision by Justice Rajendra Narine in *Borneo v The State Cr App 7 of 2011* was premised on the notion that many inmates on remand in Trinidad and Tobago were spending considerable time between pre-trial detainment and trial due to the backlog of criminal matters before the courts on the island. Instructively, Al-Rawi (2018), reporting on the backlog of matters before the courts in Trinidad and Tobago complements the earlier position by Justice

Rajendra Narine in 2011 as he (Al-Rawi) submitted that there is a chasm of decades between individuals being charged and convicted or acquitted.

Table 3: Number of years in remand custody as of February 20, 2017

Years in Custody	Number of Remanded Inmates
Over 20	1
15-20	5
10-14	148
5-9	515
1-4	653
Less than 1	836

Source: Joint Select Committee on Human Rights, Equality and Diversity (2017).

The present study

The current study focusses on the pervasive and underappreciated issue of pre-trial detention and the conditions under which remand inmates are kept in custody in Trinidad and Tobago. The current effort is premised on two separate, but inter-related factors: (1) the continuing practice of individuals spending five to ten years of their productive lives idling on remand (Special Prisons Committee, 2013, p. 4) is deleterious to the inmate, society, families and the criminal justice system itself, and (2) the length of time spent on remand in atrocious and inhumane conditions constitutes what the authors of this paper refer to as ‘punishment without trial’ and ‘the criminalization of the presumption of innocence’ in Trinidad and Tobago’s jurisdiction. Importantly, the current research effort aims to elucidate a deep critical analysis of the situation facing remanded prisoners in Trinidad and Tobago from a rights-based, socio-legal and sustainable development, small state multidisciplinary perspective.

Method

The current research effort is descriptive in nature and was designed as an exploratory analysis intended to identify trends, factors and issues associated with remand populations in Trinidad and Tobago. Its contribution to knowledge was

constructed within the exploratory methodological apercu of Park and Burgess (1921) that focuses on illuminating phenomena rather than pursuing generalizability and hypothesis testing. The research design located the research within prisons in Trinidad and Tobago and relies primarily on data from the statistical department of the Trinidad and Tobago Prison Service (TTPrS). The TTPrS has the sole responsibility for holding and treating all remanded and convicted individuals within Trinidad and Tobago's jurisdiction as well as maintaining the statistical databases of the organization and collecting, collating and disseminating data on prisoners.

The current effort is founded on Participatory Action Research (PAR), a social science research and evaluation approach with a dizzying array of definitions. PAR is referred to as action research, participatory community research, empowerment evaluation, practitioner research and participatory learning and action. According to McGarvey (2007), PAR aspires to engage all parties relevant to an evaluation in all aspects of that evaluation, including defining the problem, developing questions, gathering and analyzing the data, and preparing recommendations. Additionally, the process of change is at the heart of the PAR approach as there is "recognition among community members or practitioners and researchers that there is a problem to be solved or a practice to be improved" (McGarvey, 2007, p. 3). With this in mind, the research was conducted within the TTPrS due to the recognition that inmates spent an inordinate amount of time on remand awaiting trial and that the problem needed to be solved. In keeping with the tenets of PAR, a major player (the second author) in this research effort is a Prison officer employed with the TTPrS who had the responsibility for framing the problem, attaining permission for the conduct of the study and ensuring that the data were collated and analyzed. The second author was also responsible for drafting recommendations aimed at changing and/or resolving the current practices surrounding remand inmates in Trinidad and Tobago. Further, the second author is impacted by the research in a direct sense by being employed in a prison setting housing remand individuals and indirectly as the data were gathered on inmates who are on remand.

Permission to conduct the research was granted by the Commissioner of Prisons in Trinidad and Tobago. Thereafter, the second researcher identified the data that were needed for this quantitative study. After the data were collated by the statistical department of the TTPrS and presented to the lead researcher, simple analyses were conducted on the data. The results are presented using simple percentages and tables. The data were analyzed to answer the following questions:

1. What are the number of males and females on remand between 2010 and 2015?
2. What are the offences for which inmates were remanded for between 2010 and 2015?
3. How many inmates (by gender and offence) are on remand in 2018 for the same offence(s) committed during 2010-2015?
4. What is the average time spent on remand in Trinidad and Tobago?
5. What are the major problems associated with remand facilities in Trinidad and Tobago?
6. What are the reasons for concern with individuals on remand?

Results

The data indicated that for the period 2010-2015, the remand inmate population (males and females) in Trinidad and Tobago's remand facilities varied considerably. As depicted in table 4, the number of males and females who were on remand at some point in time in Trinidad and Tobago's jurisdiction between 2010 and 2015 shows a general downward trend from 5,820 in 2010 to 4,519 in 2015. It is important to note that the data at table 4 does not indicate persons on remand at the end of the respective years, but persons who were on remand at some time during the respective years. In spite of this downward trend in the remand population, it should be noted that the remand population in the island still constituted more than half of the total prison population in Trinidad and Tobago (Al-Rawi, 2016; Dillon, 2017; World Prison Brief, 2016).

Using data from the TTPrS, the Joint Select Committee on Human Rights, Equality and Diversity (2017), pointed out that the average time spent on remand in Trinidad and Tobago is between 5-9 years, however, this figure is a combined average for male and female inmates on remand on the island. It was therefore important to disaggregate the data in order to have a fuller picture of male versus female remanded prisoners. The researchers thought it necessary to disaggregate male from female inmates based on Hedderman and Hough's (1994) proposition that men and women are treated differently by the CJS, and that these differences largely favour women as they (women) are less likely than men to be remanded in custody.

Table 4: Total number of persons remanded during the period 2010-2015 in Trinidad and Tobago

Year	Trinidad (Male)	Tobago (Male)	Total Remanded (Male)	Total Remanded (Female)
2010	5,820	294	6,114	404
2011	6,108	193	6,301	389
2012	5,040	213	5,253	366
2013	4,688	159	4,847	319
2014	4,345	147	4,492	260
2015	4,519	253	4,772	390

Source: Trinidad and Tobago Prison Service (2018).

The data emanating from the TTPrS (2018) indicates that the average time spent in remand custody by female inmates on the island is approximately 18-24 months, while for male inmates, the average time in remand custody is 4-10 years, this data supports the previous research finding, and position of Hedderman and Hough (1994) mentioned above. Unfortunately, data on remanded males in Trinidad and Tobago (2010-2015) by offence committed were unavailable from the TTPrS, however, table 5 presents a snapshot of the most prevalent offences committed by females for which they were placed on remand and the average time spent on remand for those offences in Trinidad and Tobago for the period 2010-2015. The data indicate that for serious offences (murder, attempted murder, trafficking marijuana and unlawfully killing an individual), female inmates spend up to seven years on remand.

Table 5: Females on remand by offence and time spent in custody - Trinidad and Tobago 2010-2015

Year	Offence	Numbers	Average Stay on Remand	Sentence range
2010-2015	Murder	21	6-7 years	Death
2010-2014	Attempted Murder	8	4-5 years	Any order imposed by the court to Life Imprisonment
2011, 2012 & 2015	Unlawfully killed	7	5-6 years	Any order imposed by the court to Life Imprisonment
2010-2015	Fraud/Intent to Defraud/False Pretense	83	9 months-2 years	2 to 14 years imprisonment or Life Imprisonment depending on the offence (Section 8 (1) Forgery Act)
2010-2015	Trafficking Cocaine	143	6-18 months	Any order imposed by the court - 25 years imprisonment
2010-2015	Trafficking Marijuana	127	5-6 years	Any order imposed by the court - 25 years imprisonment

Source: Trinidad and Tobago Prison Service (2018).

As at March 2018, there were 745 inmates who retained the status of pre-trial detainees at remand facilities in Trinidad and Tobago for offences that were committed during the period 2010-2015 (Trinidad and Tobago Prison Service, 2018). This figure consists of 19 females and 726 males. The offences for which the inmates were still detained on remand include minor offences such as resisting arrest, false imprisonment, possession of marijuana, breach of Customs Regulations and breach of Immigration Regulations to more serious offences such as Rape, Buggery, Sexual Intercourse with a Minor, Manslaughter, Shooting at the Police and Murder. However, the most prevalent offences for which individuals are still detained on remand as of March 2018, despite the offences being committed during 2010-2015, were Murder, Rape, Trafficking Marijuana, Armed Robbery and Possession of Firearm (see Table 6).

Table 6: Inmates by gender and offence on remand as of March 2018 for offences committed during (2010-2015)

Year	Offence	Males (Trinidad)	Males (Tobago)	Females	Total
2010-2015	Murder	493	6	17	516
2010-2015	Rape	31	1	0	32
2010-2015	Trafficking Marijuana	22	0	0	22
2010-2015	Armed Robbery	18	0	0	18
2010-2015	Possession of Firearm	13	0	0	13

Source: Trinidad and Tobago Prison Service (2018).

In order to further strengthen the authors' proposition that time spent on remand in Trinidad and Tobago is akin to the criminalization of the presumption of innocence and punishment without trial, analyses were conducted on: (1) pre-trial/remand detention rates in Trinidad and Tobago (2000-2015) (table 2) and (2) inmates by gender and offence still remanded in March 2018 for offences committed during (2010-2015) (Table 6). Instructively, table 2 highlights the ever increasing trend in pre-trial detention in Trinidad and Tobago from 116 per 100,000 persons in 2000 to 164 per 100,000 in 2015, while table 6 highlights the chasm in terms of the time spent between the period charged for offences (2010-2015) and trial and/or acquittal (in this instance March 2018 as the inmates are still on remand). Offences for which persons are remanded by average percentage of the total remand inmate population as of December 2015 (Table 7) and offences and average time spent on remand in Trinidad and Tobago as of December 2015 (Table 8) are highlighted. It is evident from those analyses that for simple offences such as using obscene language and breach of traffic regulations, presumably innocent individuals can spend up to five (5) years and six (6) months and one year respectively awaiting trial (see Table 8). The data in tables 7 and 8 serve to strengthen the authors' views that the pre-trial detention in Trinidad and Tobago serves to criminalize the POI and act as punishment without trial due to the length of time spent on remand as in some instances, the time spent on remand exceeds the maximum sentence for the offence which the individual is charged.

Table 7: Remand offences by average percentage of the total remand inmate population in Trinidad and Tobago as of December 2015

Offence	Average % of Total Remand Inmate Population (% of 2,235)
Murder	42%
Illegal drugs	
Simple Possession	5%
Trafficking	6%
Sexual offences	7%
Possession of Firearms and Ammunition	13%
Other	27%

Source: Trinidad and Tobago Prison Service (2018).

Table 8: Sample offence and average time spent on remand in Trinidad and Tobago as of December 2015

Offence	Average time spent on remand	Sentence range
Using obscene language	Five (5) years and six (6) months	A fine of \$200.00 to 30 days imprisonment (maximum)
Failure to pay maintenance	Six (6) months	6 months imprisonment (may be increased depending on whether it is the first, second or third offence)
Breach of Traffic Regulations	One (1) year	A fine (offences in this category do not attract a custodial sentence except where there is a failure to pay the fine and a warrant is issued)
Malicious damage	Two (2) years and three (3) months	2 years to life imprisonment

Source: Trinidad and Tobago Prison Service (2018).

Discussion

In discussing the results that emanated from the datasets on remand prisoners in Trinidad and Tobago, the data suggests a diminution of the POI in the jurisdiction. This diminution of the POI is troubling as the percentage of defendants held in pre-

trial detention facilities on the island is demonstrably higher than convicted prisoners, thus facilitating a situation whereby the majority of persons in Trinidad and Tobago's prisons have not been convicted of any crime. The authors of this article submit that this situation is similar to the criminalization of the POI as well as punishment without trial. Based on the data emanating from the statistical department of the TTPRS (2018) and contained in tables 1, 4, 5, 6 and 8, the authors of this paper are in agreement with the pronouncement by Schönteich (2014, p. 96) that the POI is "not a factual but a normative assumption." Indeed, while the POI is in principle guaranteed to every individual charged with a criminal offence in Trinidad and Tobago, the presumption appears non-factual as it lacks compliance and appears to be a mere normative concept or how things should or ought to be. Not surprisingly, the authors of this article submit that the analysis of the data on remanded prisoners in Trinidad and Tobago suggests that "the presumption of innocence is in jeopardy on a practical as well as on a normative level" (de Jong & van Lent, 2016, p. 32).

On any given day, approximately 4,500 persons are detained in Trinidad and Tobago's prisons. Approximately three quarter of them are in pre-trial custody – legally innocent and awaiting trial, bail or a determination of their sentence. The delays faced by remanded individuals in Trinidad and Tobago are prevalent and bothersome, yet, ironically, persons held on remand on the island are, legally speaking, protected by both national and international laws. For example, Section 5(2)(c)(iii) of the Constitution of Trinidad and Tobago clearly states 'Parliament may not deprive a person who has been arrested or detained of the right to be brought promptly before an appropriate judicial authority', while Article 9(3) of the International Covenant on Civil and Political Rights provides that "anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power." While there is no doubt that pre-trial detention is a legitimate tool of the CJS (Shaw, 2008), the present system of remand incarceration in Trinidad and Tobago where remanded persons may spend up to ten years or more awaiting trial or sentencing appears to be a breach of Trinidad and Tobago's system of human rights protection as the presently constituted system of remand treats with innocent men in a guilty space. Instructively, Section 5(2)(c)(iii) of the Constitution of Trinidad and Tobago states that 'Parliament may not deprive a person who has been arrested or detained of the right to be brought promptly before an appropriate judicial authority', while the United Nations (1994) confirms that pre-trial detention should be an exception and for a short period of time as possible. With the aforementioned in mind, it is argued that the current system of remand incarceration in Trinidad and Tobago constitutes a breach of human rights on the national and international levels.

Being on remand in Trinidad and Tobago should not only take into account the temporal element, that is, the total length of time spent in detention or time spent before being brought to trial, but should also take into account other elements such as uncertainty, loss of hope, despair, frustration and lack of trust in the CJS. From the perspective of sustainable development, it is counter-intuitive to have a substantial proportion of presumably innocent individuals locked away in a non-productive capacity for years on end on remand. Further, being on remand for inordinate periods of time affects the state in multidisciplinary ways that range from medical and social to economic and familial. Therefore, the conditions and circumstances surrounding 'remand' in Trinidad and Tobago should not be viewed in a vacuum, but should be conceptualized from a rights-based, socio-legal and sustainable development, small state multidisciplinary perspective.

Instructively, the findings of this study should be conceptualized within a broader framework of why being held on "remand" in Trinidad and Tobago matters. First, being kept on remand for lengthy periods is a human rights violation (Schönteich, 2014), with negative socio-economic impacts for the inmates, their future (as they may lose their jobs, housing etc.) and their family members (John Howard Society of Ontario, 2005). Second, lengthy periods on remand without trial has significant implications for individual liberty and system efficiency. Third, when individuals are condemned to living their lives in remand custody knowing that they are legally innocent in the eyes of the law, there is a sense of fear and distrust of the justice and public safety systems displayed by citizens and they tend to lose respect for the legitimacy of the system and the institution that it is aligned with (Aguilar-Garcia, 2014). Fourth, prison systems generally treat pretrial detainees as temporary and incidental and therefore devote fewer resources to them. For example, when compared to sentenced prisoners, pretrial detainees have less access to food, beds, health care, and exercise (Schönteich, 2014). Finally, Schönteich (2014), points out that while convicted prisoners are often segregated into low-, medium-, and high-security facilities, a pretrial detainee charged with minor theft will be confined in the same facilities as someone charged with a serious violent crime. This practice facilitates the transference of criminal knowledge and practices during the lengthy time spent idling on remand (see Singh, 1997 on prisons as universities of crime).

Reasons to care about remanded inmates

There are numerous debates surrounding the issue of remand detention in Trinidad and Tobago, however, much of the public debate on the remand issue are couched in simplistic and emotional terms. Irrespective of the substance of the debates surrounding remand and remand populations, numerous reasons abound for prison officials, legislators and others to care about individuals in remand detention on the island. For instance, being on remand in Trinidad and Tobago is akin to being warehoused in unsanitary, degrading and dangerous conditions as the remand facilities on the island are generally overcrowded and lack basic sanitary amenities. Maintaining sanitary conditions is also problematic given the overcrowding and the low turnover of remanded inmates. As remand facilities in Trinidad and Tobago are often overcrowded, the result is that an average of 5 to 10 remanded prisoners share a cell measuring 10x10 feet in dimensions, with insufficient beds (US Department of State, 2013). The result of this is that some inmates resort to sleeping razor edge style (each person sleeps on their side with no room to move) or on a mattress on the floor near an open drain outside the cell conveying excrement from other cells (Joint Select Committee on Human Rights, Equality and Diversity, 2017). This level of overcrowding and unsanitary conditions only serve to exacerbate the 'pains of imprisonment' (Sykes 1958) and the 'normal toll' of the loss of liberty on remanded inmates by virtue of the conditions in which they are held. Additionally, being held on remand for an indefinite period of time exacerbates the psychological pressure placed on these 'innocent individuals' as they are fearful of losing their jobs, families and relationship as well as being severed from community ties.

Other reasons for concern surrounding remand inmates in Trinidad and Tobago include:

1. The mixture of first-time offenders with inmates with extensive criminal backgrounds can transform remand facilities from simple holding bays to universities of crime (Singh, 1997).
2. There is little in the way of programmes/services available to remand inmates when compared to those available to convicted prisoners on the island.
3. A significant portion of the remand population (conservatively 10% to 15%) are mentally ill and the conditions at remand facilities in Trinidad and Tobago are ill-suited to deal with mental illness and can exacerbate the problems of the mentally ill.

4. These over-crowded remand facilities are breeding grounds for many diseases such as Tuberculosis, Measles and Scabies (Joint Select Committee on Human Rights, Equality and Diversity, 2017).
5. The daily average cost of maintaining an inmate on remand is 618.96 TTD per prisoner (TTPrS, 2018) and the monthly average cost to the taxpayer in Trinidad and Tobago to maintain a person on remand is approximately 13,271.41 TTD per prisoner (Al-Rawi, 2016). This money could be better spent on community alternatives as they are significantly cheaper (John Howard Society of Ontario, 2005).
6. Being held in custody, even for short periods of time tends to disrupt the inmate's personal life and can have serious consequences, such as loss of accommodation and employment (John Howard Society of Ontario, 2005).
7. The increased psychological effects of prolonged remand period on remand prisoners as they experience depression, frustration and anxiety that are compounded by the current conditions at the remand facilities in Trinidad and Tobago (Joint Select Committee on Human Rights, Equality and Diversity, 2017).
8. The uncertainty of remand increases psychological pressure on remanded inmates, more-so, remand prisoners who are emotionally brittle (Joint Select Committee on Human Rights, Equality and Diversity, 2017).
9. Excessive pretrial detention is a form of human rights abuse (Schönteich, 2011).
10. When remanded inmates are acquitted, they are not entitled to compensation, unless they can prove malice by the state or its agents, for example, malicious prosecution.

Reducing the use of remand: recommendations and suggestions

In keeping with the tenets of PAR, the recommendations and suggestions for changing and/or solving the existing problems associated with remand in Trinidad and Tobago emanated from the data on the research population and were framed by the second author (a prison official in Trinidad and Tobago). The authors of this paper argue for potential alternatives to the current system of remand detention that will serve the interest of the charged individual, the CJS, witnesses and victims, while at the same time respecting the POI. These alternatives to remand detention should be designed to ensure that accused individuals are present in court as required, that they do not hinder the criminal process, and guarantee the safety of

complainants, witnesses and the community. If this is not possible, then bail should be denied and remand detention utilised. In sum, measures for granting bail should retain procedural value and provide the needed balance between the POI and public safety, while employing the use of remand.

Recommendations and suggestions to reduce the current level of remand inmates in Trinidad and Tobago include the increased use of pre-trial supervision in the community (UNODC, 2011), usage of electronic monitoring of offenders awaiting trial, and the implementation of Intensive Supervision Probation (ISP) systems to monitor inmates within their social milieus. Other measures, for example, increased use of community-based sanctions such as those contained within the Community Service Orders Act (1997 as amended) of Trinidad and Tobago, the introduction of special problem solving courts to ensure speedy trials and reduce pre-trial detention usage and the use of empirically-based risk tools to help guide bail decision making as is being done in some states in the USA (Laura and John Arnold Foundation, 2013; Mamalian, 2011) can be utilised. A key constituent in bringing about changes to the problematic system of remand detention in Trinidad and Tobago is to increase public awareness of the plight faced by remanded individuals as well to increase public pressure on the state to implement change, however, unless directly affected, many citizens are largely unconcerned about the plight of remand inmates as they view them as criminals worthy of being locked away as their 'just deserts'.

Conclusion

Globally, the practice of holding individuals on remand is a restrictive, yet necessary precautionary measure within the CJS. This necessity is premised on the notion of community safety; however, while being on remand is a necessary component of the CJS, the remand experience in Trinidad and Tobago is often viewed as a dystopic reality in inmate's lives. In light of the stated purpose of remand, the authors of this paper submit that contemporary remand systems and practices in Trinidad and Tobago should allow for a reduction in the dystopian experience suffered by inmates as well as a removal of the 'criminalization of the presumption of innocence' and 'punishment without trial' faced by remand inmates on the island.

While there is no doubt about the desire for community safety, this desire should be balanced with the POI and the right to an individual's personal liberty as the remand process in some instances can lead to human rights breaches and violations by unreasonably restricting the inmate's personal liberty. The narrative of

this study indicates chronic overcrowding, lack of sufficient bed spaces, limited educational and vocational programmes for remand inmates and unsanitary conditions at remand facilities in Trinidad and Tobago. The narrative also indicates that the weaknesses and subsequent abuses of the pre-trial detention system in Trinidad and Tobago may be situated within the island's CJS and this is similar to Klein's (1997) dicta on the pre-trial detention crisis in the USA. Further, the study highlights that being on remand in Trinidad and Tobago is particularly stressful and the stress level is exacerbated by the shock of being in prison, poor conditions, overcrowding, the stress of the remand period itself and the uncertainty of court matters and sentencing (see Mills, 2004 for support). Further, being on remand for prolonged periods has negative social, psychological, familial and economic impacts on remanded individuals, their families and the citizenry of Trinidad and Tobago. With the aforementioned in mind, the authors of this article submit that lengthy time on remand, atrocious conditions and a general apathy toward remandees, all combine to whittle away and criminalize the 'POI' and act as 'punishment without trial' for remand inmates in Trinidad and Tobago. However, time spent on remand should not serve to criminalize the POI, punish individuals without trial, and/or to transform the remand experience from its stated objective as a temporary phase in the CJS to one that is viewed as an "elusive aspiration" (Schönsteich, 2014, p. 96).

The authors of this article cogitate that the study's narrative as well as the pronouncements of several scholars cited in the text, highlight genuine concerns for the rights of pre-trial detainees in Trinidad and Tobago's legal system from socio-legal, human rights, sustainable development and small state multidisciplinary perspectives. This study gives meaning to the cliché that 'change depends not on what is said, but what is done' and with this in mind, it is the fervent desire of the authors of this paper that the pervasive issues surrounding remand prisoners and remand facilities in Trinidad and Tobago will be addressed with the 'urgency of now'. By way of the legal principle - '*non bis in idem*', a principle that concludes tried cases indefinitely, the authors implore those with responsibility for the safety and security of prisoners in Trinidad and Tobago to heed the words of Lord Nicholls of Birkenhead (2004) 'that indefinite imprisonment without charge or trial is anathema in any country which observes the rule of law'.

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