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A RARE AND ARBITRARY FATE

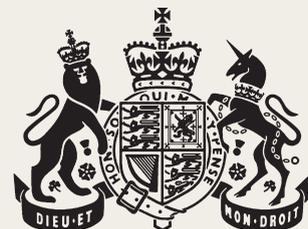
Conviction for Murder, the Mandatory Death Penalty and the Reality of Homicide in Trinidad and Tobago

Roger Hood and Florence Seemungal

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**Conviction for Murder, the Mandatory
Death Penalty and the Reality of Homicide
in Trinidad and Tobago**

**A Statistical Study of Recorded Murders and Persons
Indicted for Murder in 1998-2002**

A REPORT TO THE DEATH PENALTY PROJECT

Roger Hood and Florence Seemungal

**Centre for Criminology
University of Oxford**

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CONTENTS

| | |
|---|-----|
| PREFACE | iii |
| Chapter One: OBJECTIVES AND METHODS | 1 |
| The background | 1 |
| The police sample | 2 |
| The committal for murder sample | 4 |
| Chapter Two: MURDER IN TRINIDAD AND TOBAGO | 6 |
| The incidence of homicide recorded by the police as murder | 6 |
| <i>An escalating rate</i> | 6 |
| <i>The location of killings</i> | 7 |
| <i>Time of killings</i> | 9 |
| The characteristics of victims | 10 |
| <i>Gender, age and race</i> | 10 |
| Types of murder | 11 |
| The number of assailants | 17 |
| Suspects arrested and murders 'solved' | 18 |
| The final outcome | 19 |
| Chapter Three: COMMITTALS FOR TRIAL ON INDICTMENT FOR MURDER: THE PROSPECTS OF A CONVICTION FOR MURDER AND A DEATH SENTENCE | 24 |
| The outcome of prosecutions for murder | 24 |
| The outcome after appeal | 29 |
| Characteristics of murder prosecutions related to a probability of being convicted of murder | 31 |
| <i>Types of murder committed</i> | 31 |
| <i>Method of killing</i> | 34 |
| <i>Number of charges</i> | 35 |
| <i>Number of co-defendants</i> | 36 |
| <i>Victim-defendant relationship</i> | 36 |
| <i>Nationality and gender</i> | 38 |
| <i>Age</i> | 40 |
| <i>Previous convictions</i> | 41 |
| <i>Race of defendants and victims</i> | 42 |
| <i>Legal Defence</i> | 44 |
| Assessing the influence of the variables associated with the conviction for murder | 45 |
| Conviction for Homicide – Manslaughter or Murder? | 53 |

| | |
|---|----|
| Chapter Four: CONCLUSIONS AND IMPLICATIONS OF THE FINDINGS FOR THE DEATH PENALTY | 57 |
| The main conclusions | 57 |
| Implications for public policy | 59 |
| <i>Deterrence</i> | 59 |
| <i>Equity and fairness</i> | 60 |
| <i>The 'worst of the worst'?</i> | 60 |
| <i>Efficiency</i> | 63 |
| Summation | 68 |
| | |
| APPENDIX 1 | 69 |
| Table A1: Location of the killing | 69 |
| Table A2: Time of the killing recorded by the police | 69 |
| Table A3: Day of the killing recorded by the police | 69 |
| Table A4: Age of the victims of recorded murders 1998-2002 | 70 |
| Table A5: Race of the victims as recorded by the police | 70 |
| Table A6: Number of suspects identified by the police | 70 |
| Table A7: Type of murder by method of killing | 71 |
| Table A8: Outcome of completed prosecutions | 72 |
| Table A9: Outcome of prosecutions by number of charges | 73 |
| Table A10: Outcome of prosecutions by number of co-defendants | 73 |
| Table A11: Defendant's gender and victim's gender of persons indicted for murder 1998-2002 | 73 |
| Table A12: Age of defendant at the time of the offence by outcome for defendants indicted for murder 1998-2002 | 74 |
| Table A13: Age of victim at the time of the offence by outcome for defendants indicted for murder 1998-2002 | 74 |
| | |
| APPENDIX II | |
| Model 1: Regression Analysis: Probability of a defendant indicted for murder being convicted of murder | 75 |
| Model 2: Regression Analysis: Probability of a defendant indicted for murder being convicted of homicide (murder or manslaughter) | 76 |

PREFACE

It is appropriate in a study carried out by two people for the person responsible for conceiving and directing it to acknowledge the help received from his co-author. All the field-work was carried out in Trinidad and Tobago by one of its citizens, Dr Florence Vidya Seemungal, a graduate of the University of the West Indies. It was only through her indefatigable devotion, diplomatic skills and knowledge of the situation in Trinidad that we were able to collect information on 633 reports of murder and on 297 persons indicted for murder in the years 1998 to 2002 and tenaciously to follow-up what happened in these cases until the end of 2005. She carried out this tiring, exacting and at times very frustrating task with great dedication.

The research was carried out under the auspices of the Faculty of Law of the University of the West Indies and the Centre for Criminology, University of Oxford. In this regard we are pleased to acknowledge the help we received from Ms Tracy Robinson and Dean Andrew Burgess of the University of the West Indies, Cave Hill Campus Barbados in approaching, with a strong letter of support, the authorities mentioned below. We were also supported by Douglas Mendes S.C., Head of the Department of Law and Professor Ramesh Deosaran, Director, Centre for Criminology and Criminal Justice, University of the West Indies, St Augustine Campus, Trinidad.

It was commissioned and the funds administered by Saul Lehrfreund and Parvais Jabbar of Simons Muirhead & Burton, Solicitors, who lead The Death Penalty Project. The Project was formerly linked to Penal Reform International, a UK not-for-profit organisation. It is now established in its own right as an independent NGO. We are very grateful to Saul Lehrfreund and Parvais Jabbar for their enthusiastic support throughout but want to make it clear that we have been working entirely independently of The Death Penalty Project and that at no time did the sponsors attempt to influence how we went about the work or what we have written in this report. The research was made possible by grants from the European Union and the United Kingdom Foreign and Commonwealth Office Global Opportunities Fund to the Death Penalty Project, which enabled the Project to pay Dr Seemungal's salary, a consultancy fee to Roger Hood and to cover research expenses.

It would not have been possible to carry out this study without the approval of the authorities in Trinidad and Tobago. We are most grateful to the following persons. The study benefited enormously from the start by the imprimatur given by the Chief Justice of Trinidad and Tobago, The Honourable Mr Justice Satnarine Sharma, T.C., C.M.T, who gave permission for information to be extracted from the records of the High Court and the Court of Appeal. Access to police reports was granted by the then Commissioner of Police, Mr Everaldo Snaggs and continued by the present Commissioner Mr Trevor Paul; and permission to consult records in the Magistrates' Courts was kindly given by the Chief Magistrate, Mr Sherman McNicolls. We would not have been able to carry out the study of defendants indicted for murder and committed for trial without the warm support and interest throughout of the Director of Public Prosecutions Mr Geoffrey Henderson. We also received useful information about the status of Counsel and legal aid from Mr Israel Khan S.C., Mr Gilbert Peterson, S.C. and Ms Judy Anne Prescod, Executive Administrator, Law Association of Trinidad and Tobago. We were able to check whether persons awaiting trial were in custody through the good offices of the Commissioner of Prisons, Mr John Rougier.

At a more personal level, Florence was helped enormously by the Heads and staff of the Homicide Bureau in Port of Spain: Acting Senior Superintendent Felix Nimrod; Senior Superintendent Dyo Mohammed; Acting Assistant Commissioner of Police, Mr. Maurice Piggott, Assistant Superintendent Nadhir Khan, Inspector Clyde Phillips, WPC's Sheldene Bacchus and Rachael Thompson as well as Police Corporal Levi Morgan. They all willingly shared their time and knowledge of local policing culture. A similar degree of support was provided by Assistant Superintendent Fitzroy Fredricks and Inspector Cyril Harry of the Southern Office of the Bureau. We are grateful also to the Clerks of the Peace in the various Magistrates' Courts for facilitating access to records.

Ms Marcia Deonarine, Librarian Assistant II, Ministry of the Attorney General at the Director of Public Prosecutions Office, used her goodwill and excellent relations with colleagues to ensure that information required about the progress of cases through the system was made available to us. This was no easy task and well beyond the call of duty. We are especially grateful to her.

On completion of the fieldwork, Dr Seemungal came to Oxford as a Visiting Scholar at the University's Centre for Criminology. We are very grateful to the Director of the Centre, Professor Ian Loader, for making this possible and for providing the facilities for us to work together at the

Centre. In Oxford we worked together, re-coding and cleaning the databases. Florence was in charge of computing and providing information about Trinidad while Roger Hood took responsibility for analysing the data and drafting the report. This report is therefore a joint effort, but it must be recorded that it could not have been written at all without Dr Seemungal's contribution in collecting the information on which it is based.

We are grateful to Dr Andrew Roddam of the University of Oxford for expert statistical advice in the use of regression analysis and its interpretation. We have also received very helpful comments on the penultimate draft of this report from Professor Ramesh Deosaran, Dr Carolyn Hoyle, Professor Michael Radelet and Tracy Robinson.

Finally, we are well aware that this statistical study has its limitations as far as understanding the high and escalating murder rate in Trinidad and Tobago is concerned. To get to the root of that would have required a different research design and a much larger budget. We have focused on a particular issue – the phenomenon of murder as it related to convictions for murder, and as a result the imposition of a mandatory death penalty during a particular period of time. We hope that by providing information on this issue we shall have performed a useful service to the citizens and government of Trinidad and Tobago as they debate whether to retain the mandatory death penalty, to make it a discretionary punishment, or abolish capital punishment altogether.

Roger Hood

All Souls College, Oxford, May 2006

Chapter One

OBJECTIVES AND METHODS

THE BACKGROUND

1. The Republic of Trinidad and Tobago is one of the dwindling number of countries that retains the death penalty and of the even smaller number that retains it as the mandatory punishment for murder,¹ even though, as a result of successful legal interventions, executions have been comparatively rare.² In 2003, the Judicial Committee of the Privy Council held in the case of *Balkissoon Roodal v The State of Trinidad and Tobago* that the mandatory death penalty was an infringement of the right not to be subject to cruel and unusual treatment or punishment. However, a year later, on appeal from the State, a nine-member board of the Judicial Committee held in the case of *Charles Matthew* that, notwithstanding that a mandatory death penalty was cruel and unusual punishment, it was protected by the ‘savings clause’ in the Constitution of Trinidad and Tobago. Thus, it could only be repealed by Act of Parliament.³

2. Discussion of the role of the death penalty within Trinidad and Tobago has been heightened by the very substantial increase in recent years in the number of killings recorded as murder by the police, made all the more significant by an apparent decline in the proportion of them brought to justice through successful prosecutions and convictions for murder. However, this discussion has been hampered by the lack of reliable and systematically gathered information about the nature of the criminal homicides recorded by the police as murder and any detailed analysis of the outcome of prosecutions and of the types of killings perpetrated by those who are convicted of murder and mandatorily sentenced to death.

¹ See Roger Hood, *The Death Penalty a Worldwide Perspective*, Oxford University Press (3rd ed. 2002). Also United Nations Economic and Social Council, *Capital Punishment and the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty*. Seventh Quinquennial Report of the Secretary-General, 3 September 2005, E/2005/3.

² Since 1979, one man was executed in 1994, and 10 men were executed in 1999, nine of them convicted of the same crime. In June 2005, it was reported that 83 persons were under sentence of death, including five women. *Trinidad Guardian*, 14 June 2005.

³ *Roodal v The State of Trinidad and Tobago* [2005] 1 AC 328; *Matthew v The State of Trinidad and Tobago* [2005] 1 AC 433.

3. This study, the first of its kind in Trinidad and Tobago, therefore set out:
- Firstly, to provide as comprehensive and detailed a description as is possible, given the data available, of the variety of circumstances and relationships within which homicides (i.e. any apparent unlawful killing) that were defined and initially recorded by the police as murder had taken place and the extent to which this pattern has changed as the number of recorded murders has increased;
 - Secondly, to show the relationship between these circumstances and the frequency with which recorded murders are ‘solved’ and the accused successfully prosecuted;
 - Thirdly, to shed light on the probability of different types of recorded murders, and suspects with different characteristics, being convicted of murder and mandatorily sentenced to death; and
 - Fourthly, to discuss, in the light of the findings, the extent to which a policy of enforcing mandatory capital punishment for murder has or has not resulted in a fair, equitable and effective system of punishment.
4. In order to obtain a sufficient sample of cases to be able to analyse trends over time, the research covered a five-year period from 1st January 1998 to 31st December 2002, the last full year before fieldwork began in September 2003. This five-year period was chosen so as to ensure, given the substantial periods of time – often several years – that cases take to wend their way through the Trinidad and Tobago criminal justice system, that proceedings against most of those who were indicted for murder would have been completed by the time the research was due to end in December 2005. Two samples were studied.

THE POLICE SAMPLE

5. Details of all reported deaths recorded by the police in the Homicide Register as murder in the five years from 1 January 1998 to 31 December 2002 were analysed. In Trinidad and Tobago the police record almost all suspicious deaths as murder, rather than recording them as homicide, as most countries do. During the period in question only four per cent of all suspicious deaths were initially recorded as the lesser offence of manslaughter.⁴

⁴ The police register contained 16 cases marked as manslaughter (unlawful killing by gross negligence), not murder. A conviction for murder requires proof of an *intent* to kill or to cause grievous bodily harm. An examination of the circumstances recorded showed that while some of them (for example, the accidental discharge of a firearm in a Police Station) clearly lacked an intention to kill, at least six events appeared on the surface to be no different in character from events classed as murder. For example: ‘... the deceased was at a recreation club when he had an argument with the accused. As a result a scuffle ensued. The accused subsequently left the club and returned a short while after with a cutlass. He confronted the deceased in the club-yard where he chopped him and he fell to

The fact that the police initially record an event as murder does not mean that all the victims were in fact ‘murdered’. As this study will show, in many instances the case will remain unsolved and no determination of whether the event really was a murder rather than manslaughter could be made. In other cases later inquiries may reveal that the killing should properly be classed as manslaughter. The term ‘murders’ recorded by the police must be interpreted with this in mind.

6. The register contained a description of the murder as reported by the investigating officer, including: the time, the day and date of the offence or when the murder came to light; the police division within which it took place or the body was discovered; nearly always the cause of death and the weapon or method employed; where witnesses had been present, the number of perpetrators of the killing; in what kind of location the killing took place or the body was discovered; the police classification of the ‘motive’ for the murder whenever they could ascertain one – the main ones being whether it was ‘gang’ or drug-related, committed during the course of robbery or another crime, the outcome of an altercation, or a domestic dispute; the name, gender, age, ‘race’ and occupation of the victim; whether the police regarded the murder as ‘solved’ or ‘unsolved’; the name(s) and gender of any suspect(s) and sometimes, but by no means always, their age, race and occupation; and whether the suspect was arrested and charged or committed suicide or otherwise killed. But, as with all records, there were many gaps in the data available.⁵

7. Persons known to have been arrested and charged were followed up by checking the records of the Magistrates’ Courts and the files of the Director of Public Prosecutions in order to ascertain what the outcome was when the case was heard in the Magistrates’ Court and if sent for trial what the outcome was at the High Court. These data, for the first time, make it

the ground. He was taken to the hospital but was pronounced dead on arrival. Post-mortem; death due to shock and hemorrhage due to chop wounds’. Another example was ‘the deceased, an employee of a Youth Facility, was attending a fete. The deceased went outside of the said building about 20 feet away from a nearby fence to urinate when a negro man wearing a handkerchief over his nose came up to him and pointed an object towards him. A loud explosion was heard. The man fired another shot at the deceased and a crowd of people who were in the compound began running in a northerly direction towards the entrance building. About 100 meters from where the deceased was shot, he collapsed. He was taken to the POS hospital suffering from gunshot wounds to the right side of his chest. He died around 12.50 am on 5\11\01. Post-mortem; death due to gunshot wounds to the chest’. It is not clear why these killings were not classified as murder and included in the murder statistics.

⁵ Professor Ramesh Deosaran has recently stated: ‘Though some commendable advances have been made recently (e.g., more informative crime reporting forms, technology, our entire system of collection, compiling, and especially reporting crime statistics need a thorough overhaul ...’ *Crime Statistics, Analysis and Policy Action: A Way Forward*, Research Policy Report, University of the West Indies, January 2001, at p. 7. See also Ramesh Deosaran, *Key Regional Issues in Crime and Justice: The Caribbean*. Position paper presented on June 27, 2003 in Turin to a Meeting of Experts sponsored by the United Nations Interregional Crime and Justice Research Institute, June 26-28, Turin, at p. 4.

possible to show to what extent the system of criminal justice in Trinidad and Tobago is successful, in due course, in bringing alleged perpetrators of murder to justice and the outcome of the subsequent proceedings. Altogether, information was obtained on 633 recorded murders. However, in relation to 71 (11.2%) of these murders prosecution had still not been completed when the fieldwork came to a conclusion on 31st December 2005.⁶

THE COMMITTAL FOR MURDER SAMPLE

8. A separate sample was taken of all 297 defendants committed to the High Court of Trinidad and Tobago on an indictment for murder within the same five-year period – a substantial proportion (37%) of such cases having arisen from homicides recorded by the police well before 1 January 1998. In this sample the term ‘murder’ is more appropriate in that it signifies that after investigation by the police, the Magistrates’ Courts and review of the evidence by the Director of Public Prosecutions, a decision had been reached that the killing had all the ingredients of murder that, if proved, would constitute a proper conviction for murder.

9. The names of the defendants were collected from the Committals Register kept by the Director of Public Prosecution, supplemented by the file on the case prepared by the prosecution. This contained a statement giving full details of the nature and circumstances of the offence and demographic information about both the accused and victim(s), as well as the plea, the name and seniority of the defence Counsel (whether a Senior Counsel or not) and the outcome of the prosecution. This varied from the prosecution being withdrawn at the High Court; a guilty plea to manslaughter being accepted; where a trial for murder proceeded, the Judge directing an acquittal or a submission of ‘no case to answer’ being accepted by the Court, an acquittal by the jury, a conviction for manslaughter by the jury, or a conviction for murder.

10. The second sample was taken for two reasons. First, it was hoped that a decision would have been reached by the end of December 2005 in all cases where an indictment had been commenced prior to the end of 2002. Nevertheless, the prosecution of 17 indicted persons had still not been completed by that time and one person who had been found unfit to plead was still confined to a mental hospital.⁷ Thus a sample of 279 completed prosecutions for murder was obtained. The second reason for taking this sample, as mentioned above, was because many more details about the nature of the offence, the characteristics of victims and

⁶ One related to a murder recorded in 1998, 1 in 1999, 7 in 2000, 21 in 2001 and 41 in 2002.

⁷ Four of these cases had been committed for trial in 1998, three in 1999, one in 2000, two in 2001 and eight in 2002.

of defendants, and the nature of the relationship between them, was available than could be found in the police register. Furthermore, where the defendant was convicted we obtained access to the High Court files which contained a transcript of the court judgment when a conviction for murder was brought in and, where available, a transcript of the statement of mitigation and the Judge's sentencing remarks when there had been a conviction for manslaughter. For those convicted of murder and sentenced to death we obtained the judgment of the Trinidad and Tobago Court of Appeal and where an appeal to the Privy Council had been concluded, a copy of that judgment.

11. This sample of prosecutions for murder has therefore made it possible to analyse the relationship between the characteristics of the murder and of the defendants and victims and the outcome of the case – whether it resulted in a failure of prosecution (through withdrawal or a judicial direction of acquittal); a finding of not guilty by a jury; a conviction for the lesser crime of manslaughter (whether following a guilty plea or a decision of a jury), or a conviction for murder and sentence to death.

Chapter Two

MURDER IN TRINIDAD AND TOBAGO

THE INCIDENCE OF HOMICIDES RECORDED BY THE POLICE AS MURDER

An escalating rate

12. Over the years 1998 to 2002 the police recorded 633 deaths as murder. The annual number had fallen from 143 in 1994 to 98 in 1998 and then to 93 in 1999.⁸ Then it began to rise: 120 in 2000 to 171 in 2002 (Figure 1), an increase over the five-years 1998 to 2002 of 75 per cent, and from 7.6 murders per 100,000 of the population of approximately 1.26 million, to 13.6 per 100,000.⁹ Since then the number of recorded murders has climbed at an alarming rate, reaching 387 in 2005, or 30.7 per 100,000, one of the highest incidents of culpable homicide in relation to population in the world.¹⁰ This has, as to be expected, created enormous concern. A *Sunday Guardian* Poll in November 2003 found that 62 per cent of respondents said they were fearful of being murdered and two years later a further poll revealed that 55 per cent of respondents put crime as the major problem facing the country, citing the murder rate as their main concern.¹¹ Newspaper headlines have regularly announced the spiralling murder rate – ‘238 murders in 238 days. POS toll reaches last year’s total’ ... ‘an increase of 25 per cent over the corresponding period last year’ *The Trinidad*

⁸ See ‘The climb of crime’, *Sunday Express*, 12 June, 2005. Also for a commentary on the rise in the murder rate from 2000 onwards, following the fall since 1994, see Kirk Meighoo, ‘Failure of leadership’, *Sunday Express*, 24 April 2005.

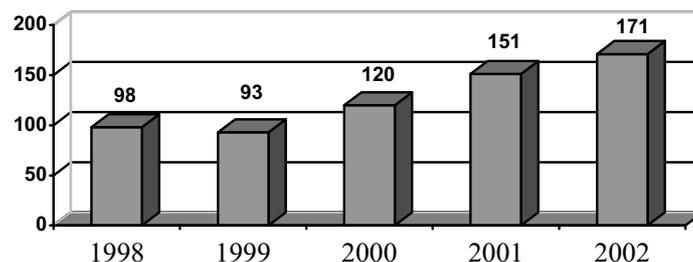
⁹ According to the 2000 Census the population of Trinidad and Tobago was 1,262,400. The population estimates for the police divisions have been taken from the mid-year estimates for 1996 given in *Report on Crime Statistics 1996*, Republic of Trinidad Central Statistical Office 1998. There is no evidence to suggest that the population changed dramatically between 1996 and 2000.

¹⁰ According to the statistics collected by the United Nations on homicide trends between 1980 and 2000, ‘the available data for Latin America and the Caribbean show extraordinarily high levels of homicide, at around 25 per 100,000 inhabitants’, see Mark Shaw, Jan van Dijk and Wolfgang Rhomberg, ‘Determining trends in global crime and justice: an overview of results from the United Nations Surveys of crime trends and operations of criminal justice systems’. *Forum on Crime and Society*, Vol. 3 Nos. 1&2, 2003, United Nations Office on Drugs and Crime, pp 35- 63, at page 47. See also, Anthony Harriott, *Crime Trends in the Caribbean and Responses*, United Nations Office on Drugs and Crime, November 2002. Under the headline ‘TT’s murder rate alarming’, when the Trinidad and Tobago murder rate was ‘just under 20 per 100,000 citizens’, *Newsday* stated (Section A, March 20, 2005) that ‘There are only five countries with a higher murder rate: Russia (21 per 100,000), Brazil (26 per 100,000), Jamaica (32 per 100,000) and Colombia and South Africa (both over 50 per 100,000). It appears that by the end of 2005 Trinidad and Tobago may have had the fifth or sixth highest rate. In comparison, the homicide rate in the USA has fallen from 10.7 per 100,000 in 1980 to 5.5 in 2004, in Canada in 2002 it was 1.85, and in England and Wales in 2004, 1.55 per 100,000 population.

¹¹ *Sunday Guardian*, November 30, 2003 and October 16, 2005.

Guardian told its readers on 27th August 2005. In mid 2005 the Attorney General, John Jeremie, announced the intention of the State to hang everyone on death row who was eligible as part of its overall strategy to deal with escalating crime.¹² A decision that a poll found to be supported by 75 per cent of those questioned.¹³

Figure 1
Number of murders recorded by the police
Trinidad and Tobago 1998-2002



13. Although this study was not designed to shed light on the increase in recorded murders since 2002, it can provide evidence of the changing nature and incidence of homicide that was already being witnessed between 1998 and 2002. In addition, it must be remembered that the processing of prosecutions for murder begun in the years 1998 to 2002, discussed in Part III of this report, took place during a period when the rate of murder and concern about it were both increasing greatly.

The location of killings

14. Almost 60 per cent of the killings recorded as murder between 1998 and 2002 took place in the districts served by the Port of Spain, the Northern and North Eastern police division (in which a third of the population of Trinidad and Tobago live). A quarter of them occurred in Port of Spain and a fifth in the Northern district. In these three northern divisions the annual average rate of recorded murder was 17.6 per 100,000 population, with the rate being as high as 33 per 100,000 inhabitants of Port of Spain. As Table 1 shows, the Southern Division, in which the second most populous town, San Fernando, is situated, accounted for 11 per cent of murders and comparatively few were recorded in the Western, South Western and Central and Eastern divisions of Trinidad and even fewer in Tobago (an average of four a year). The average annual rate of recorded murders in these divisions was approximately 8 per 100,000 population. Table 1 also shows that the distribution of recorded murders between these areas changed over the period, the increase being comparatively greater in Port of Spain

¹² *The Trinidad Guardian* June 15, 2005.

¹³ 'People say Yes to hanging', *The Sunday Guardian* Poll, *The Sunday Guardian*, July 17, 2005.

(from 20 to 45 or 125%) and the North Eastern Division (from 6 to 24, a 300 per cent increase).

Table 1
Police division in which the murder was recorded in Trinidad and Tobago 1998-2002
and comparing 1998 with 2002

| Police division | Total 1998-2002 | | 1998 | | 2002 | |
|-----------------|-----------------|------------|-----------|------------|------------|------------|
| | Number | % | Number | % | Number | % |
| Port of Spain | 153 | 24.2 | 20 | 20.4 | 45 | 26.3 |
| Northern | 136 | 21.5 | 27 | 27.6 | 34 | 19.9 |
| North Eastern | 86 | 13.6 | 6 | 6.1 | 24 | 14.0 |
| Southern | 68 | 10.8 | 11 | 11.2 | 20 | 11.7 |
| Central | 53 | 8.4 | 8 | 8.2 | 11 | 6.4 |
| Western | 41 | 6.5 | 9 | 9.2 | 13 | 7.6 |
| Eastern | 40 | 6.3 | 9 | 9.2 | 13 | 7.6 |
| South Western | 37 | 5.8 | 6 | 6.1 | 9 | 5.3 |
| Tobago | 19 | 3.0 | 3 | 3.1 | 4 | 2.3 |
| TOTAL | 633 | 100 | 98 | 100 | 171 | 100 |

15. Over a quarter of the killings (28.8%) had taken place in the domestic residence of the victim and altogether 36.3 per cent had taken place in a domestic residence. As many as 181 (28.6%) had occurred in the street and in 81 instances (12.8%) the site of the killing was unknown because it was clear that the body had been transported and dumped elsewhere. Killings on commercial premises or in public institutions were comparatively rare, totalling 57 (9.0%) over the five-year period: only two of them had taken place in a prison.

16. However, a change could be observed over the five-year period covered by the study. As Table 2 reveals, there was no increase in the number of murders that took place in a domestic residence (not all of which by any means were due to domestic disputes – see footnote 19, page 16 below) between 1998 and 2002, and consequently they accounted for a much lower proportion of all murders in 2002 than in 1998. However, the number that took place, or where the victim was found, in a public space doubled. Comparing these two years, 46 per cent were killed in a public area or their bodies found dumped in such an area in 1998, but by 2002 the proportion of all killings of this kind had jumped to 63 per cent.

Table 2
Location of the killing as recorded by the police 1998-2002 and comparing
1998 with 2002

| Location | Total 1998-2002 | | 1998 | | 2002 | |
|---|-----------------|-------------|-----------|-------------|------------|-------------|
| | Number | % | Number | % | Number | % |
| Domestic residence | 230 | 36.3 | 47 | 48.0 | 47 | 27.5 |
| Commercial building\public institution | 57 | 9.0 | 6 | 6.1 | 17 | 9.9 |
| Street or other public space including bars | 265 | 41.9 | 30 | 30.6 | 78 | 45.6 |
| Unknown\body dumped | 81 | 12.8 | 15 | 15.3 | 29 | 17.0 |
| Total in public space | 346 | 54.7 | 45 | 45.6 | 107 | 62.6 |
| TOTAL | 633 | 100 | 98 | 100 | 171 | 100 |

Time of killings

17. With the exception of the early hours of the morning – from 2.31 a.m. to 6.30 a.m. – when murders were comparatively rare, killings occurred quite frequently at all times of day, a fifth of them in the morning. However, murders peaked in the evening between 5.30 p.m. and 9.30 p.m. and altogether half (52%) occurred after 5.30 p.m. and before 2.30 a.m. (see Appendix 1, Table A2).

18. As far as the day of the week was concerned, Sunday was the only relatively ‘quiet day’ but even then a substantial proportion, one in ten, of the killings occurred (see Appendix 1, Table A3). There was a slight peak on Friday and Saturday, when 35 per cent of the recorded murders took place. Taking time and day together, one fifth of the killings occurred on Friday and Saturday evenings between 6 pm and 2.30 in the morning, twice as many as would be expected if murders occurred at the same rate throughout the week.¹⁴ A greater frequency of murders during the weekend evenings has been commonly found in other studies of homicide, but the concentration on Friday and Saturday nights appears less pronounced in Trinidad and Tobago than in some other countries.¹⁵

¹⁴ There are 168 hours in a week, 20% of recorded murders occurred within the 17 hours (10% of the week) 6 p.m. to 2.30 a.m. Friday – Sunday morning.

¹⁵ For example, in the classic study by Marvin Wolfgang, *Patterns of Criminal Homicide*, University of Pennsylvania Press, 1958, pp.106-113.

THE CHARACTERISTICS OF VICTIMS

Gender, age and race

19. Taking the five-years as a whole, 80 per cent of the victims of recorded murders were male and one in five was female, but there was a significant change in the gender balance over the five-year period as can be seen in Table 3. The number of female victims was lower in 2002 than 1998 while the number of male victims had doubled: thus, proportionately, females were much less likely to be victims of homicide in 2002.

Table 3

Gender of victims of recorded murders 1998-2002 and comparing 1998 with 2002

| Gender | Total 1998-2002 | | 1998 | | 2002 | |
|--------------|-----------------|------------|-----------|------------|------------|------------|
| | Number | % | Number | % | Number | % |
| Male | 509 | 80.4 | 74 | 75.5 | 151 | 88.3 |
| Female | 124 | 19.6 | 24 | 24.5 | 20 | 11.7 |
| TOTAL | 633 | 100 | 98 | 100 | 171 | 100 |

20. There was, however, no major change in the distribution of the age of victims (see Appendix 1, Table A4). Overall, only 50 victims (4.3%) were juveniles aged under 18 and the killing of the very young was rare: only 10 victims over the five-year period were infants aged 30 months or younger, nine of them being baby boys. A somewhat higher proportion of female victims (15.5%) were between the ages of 10 and 20 than males (10.2%), but the majority of both sexes (69.4%) were between the ages of 21 and 49 (70% of the males and 65% of the females). Only 15 per cent of both males and females were age 50 or older.

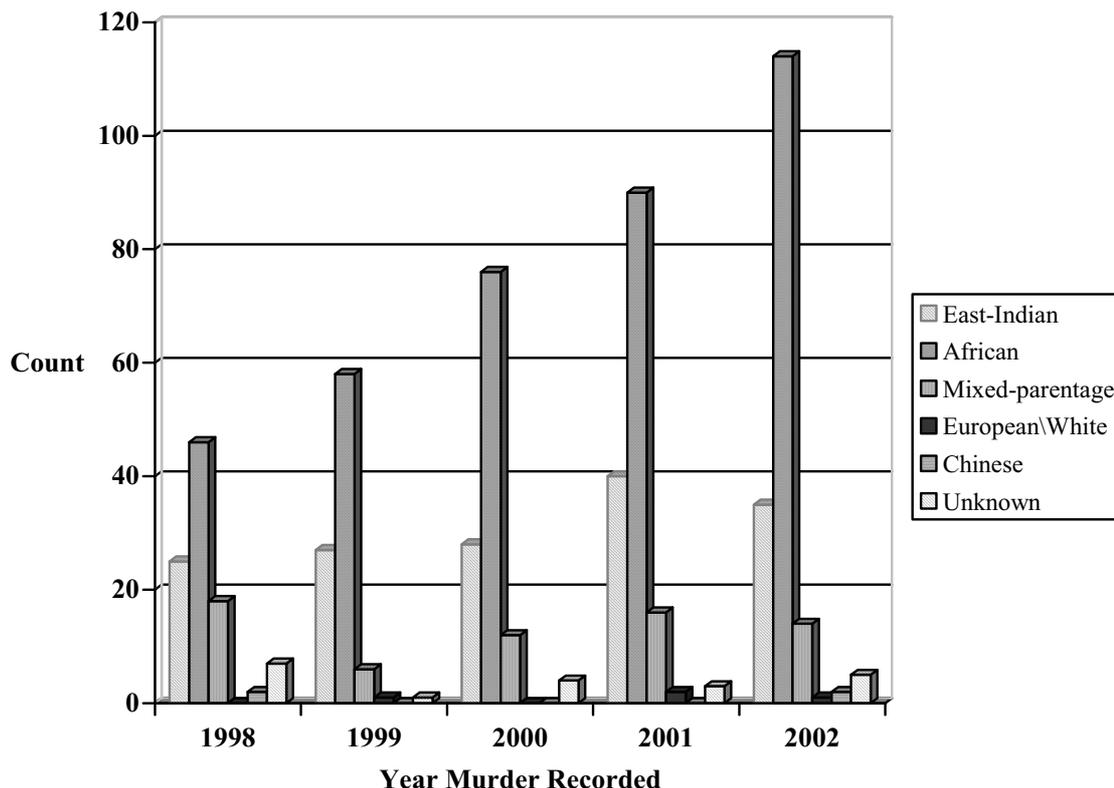
21. In most (95%) of the killings the police recorded the racial\ethnic identity of the dead person, only a handful of whom were not of either African, East-Indian or of mixed-race descent. Only two 'Caucasian' persons, two of 'Spanish descent' and four who were Chinese were killed.¹⁶ So, not surprisingly, almost all the victims were of Trinidadian (93%) or Tobagonian (2%) nationality.

22. The relative proportions of victims of East-Indian and of African descent changed over the five-year period (see Figure 2). By 2002 only a fifth of victims were of East-Indian origin compared with a quarter in 1998, and the proportion of African origin was two-thirds compared with just under a half in 1998. In absolute terms, the number of East-Indian victims had increased from 25 to 35, or by 40 per cent, while the number of African victims had more

¹⁶ The ethnic origin of 20 victims (3.2%) was either not established or not recorded in the police report.

than doubled from 46 to 114 (a 148% increase). Both the number and proportion of victims of mixed, East-Indian and African parentage was lower in 2002 than in 1998.¹⁷

Figure 2
Victim(s) race by year murder recorded



TYPES OF MURDER

23. We adopted the typology of murder used by the police, which was based broadly on the motive, as deduced from the circumstances of the offence, and type of relationship between the victim and the suspect(s) or assumed suspect(s). The main categories they employed were ‘gang-related’, ‘drug-related’, ‘robbery’ or other named crime, ‘domestic violence’ (which included not only killings of spouses and partners but also other family members) and ‘altercation’ (which resulted from disputes outside of the domestic setting). Further details would sometimes be added, such as whether the killing had been carried out in ‘execution style’ or as revenge. We had no choice but to accept the police categorisation in almost all cases, even though it might not have been obvious from the description of the event

¹⁷ In 1998 there had been 18 victims of mixed-parentage (18.4%) of all victims. In 2002 there were 14 mixed-parentage victims, accounting for 8.2% of all victims.

itself that it was, for example, 'gang-related'. In a few cases, however, we changed the police classification where the evidence appeared strongly to warrant it.¹⁸

24. However, in 99 (16%) of the 633 murders that the police recorded they had not been able to identify a motive or type that fitted into their categories. This was signified by 'unclassified', 'other' or 'unknown'. In such circumstances we read carefully the details of the event and did our best to classify those where sufficient information was available. In relation to those killings where a person had been indicted we were able to take into account the more detailed description of the offence available in the Director of Public Prosecutions' statement of facts, in the summing-up and/or sentencing remarks of the Judge in trial transcripts where available and, in every case where a conviction for murder had been obtained, in the Court of Appeal judgment. This enabled us to fit 51 of the 99 'unknowns etc.' into the police classification.

For example, the police had not classified the following crime:

Around 7.20 pm ... the deceased and his driver returned home and on reaching the driveway to his home a beige vehicle was parked on the driveway blocking the entrance. The driver stopped the vehicle in the drive ... several loud explosions were heard. The driver jumped out of the vehicle and ran for cover. Shortly after the shooting stopped the driver returned to the car and found the deceased who was sitting in the passenger seat suffering from wounds to his chest. He was taken to hospital where he died the same night.

This was clearly not an ordinary street altercation arising from a quarrel, nor apparently was robbery involved. We therefore classed this execution-style murder as a gang-related killing.

Similarly, in the following case, where the police had stated that the motive was unclassified, it seems most likely that it was a gang or drug-related killing, rather than an altercation arising from an ordinary inter-personal dispute:

At around 12.20 am the deceased was at his home when a person or persons unknown entered his house and shot him in his chest. He subsequently died.

25. In some cases the facts indicated a sexual motive rather than robbery. For example:

¹⁸ An example is the recoding of the following case from the police classification of 'gang-related' to a crime committed during commission of another offence, namely a sexual attack: '[A citizen] reported ...that he saw a nude body of a female of African descent lying on an open parcel of land on the said estate. Officers visited the scene and saw the body of the deceased lying on its back with injuries to the head and face. A piece of cloth was tied around the neck. Two pairs of black tights, an orange coloured panty, brown tee shirt, and black and white sneakers were identified as that of the deceased and were found about 5 feet from the body. The DMO visited the scene. Post-mortem examination; death due to ligature strangulation'.

Around 10.30 am a police constable accompanied by his brother ... had gone to cut bamboo. There they came upon the partly decomposed body of the deceased lying on her back about 10 feet away from the river clad only in an orange blouse and black bra ... Two pairs of gold earrings were worn by the deceased and identification was based on the similarity of the jewellery found. Death was due to cranio-cerebral traumatic injuries.

Around 4.05 pm the deceased, a standard 4 student was last seen alive in school uniform, walking north going towards her home by her schoolmate The deceased never reached home. Around 6.30 pm on the said day a report was made to the police by relatives. A search party which included relatives and villagers made a search in the area for the deceased but did not find her. Around 12.30 pm [2 days later] the body of the deceased was discovered lying on her back about 220 feet from the road in some bushes, by her step brother and a villager The body was clad in a red overall, cream skirt, white sneakers and a white belt with its head facing east. She did not have on underwear and there was what appeared to be the stalk of a sugar cane plant protruding from her vagina. The DMO visited the body which was in an early state of decomposition. Post-mortem; death due to multiple traumatic injuries (blunt force).

26. Of the remaining 48 killings that the police had not classified, 23 were categorised by the researchers as 'body dumped, unknown motive'. In most of these cases the circumstances often looked like being gang or drug-related killings, but they could also have been robberies.

For example:

Around 7.30 pm the deceased left the ... taxi stand, driving his taxi carrying passengers. He was not seen alive again. Around 10.30 am the next day his car was found with bloodstains on front and back seats. [Ten days later] a man was fishing when he stumbled upon the body of the man in advanced state of decomposition in the dam. The body was tied with rope at midsection and a concrete block attached to it. Post-mortem; gunshot wounds to head and neck.

Around 7.50 pm an anonymous caller informed the police that a body of the dead man was seen lying in the river. Officers visited the scene where the body of the man was seen lying face down in a tributary which leads to the Caroni river ... the body bore marks of violence with what appeared to be chop wounds; one on the left side of the face, two on the left hand and one on the back of the head ... The deceased had been charged [two months previously] for possession of marijuana and cocaine for the purpose of trafficking. Post-mortem: death due to several stab and incised wounds to the body and the head.

Around 9.05 am a 32 year old [man] went to a bamboo patch about 40 feet to the southern side of his home, as a result of a foul stench. He discovered a partly decomposed body of what appeared to be a man of African descent about 6 feet tall, clad in a yellowish coloured short sleeved jersey, short khaki coloured denim pants, and a pair of red, white and black slippers. An electrical cord was tied around its neck and the other end tied to a bamboo tree, with its knees bent and touching the ground. Its face was partly decomposed and the body was covered with maggots. The electrical cord measured 3 feet, 5 inches. Officers visited the scene and interviewed several persons. The DMO visited the scene. Post-mortem; death due to ligature strangulation.

27. In the cases of 25 victims, however, we were unable to determine what the motive or the relationship between the victims and the offenders might have been. One case involved three victims:

Around 8.00 pm the deceased and his wife, were seen alive by their neighbour. Around 2.30 am the following morning the brother-in-law of the deceased who lives nearby, came out of his house to urinate and saw a fire coming from the deceased's home. He called his stepson and a neighbour. They responded and accompanied him to the deceased's yard where they saw the deceased and his wife lying on the grass in the front yard face down, about 3 feet apart from each other with wounds to their head ...and saw the son of the deceased standing at the front door of the house that was burglar-proofed. He tried to rescue the son but could not because of the fire. Fire officers visited the scene, extinguished the fire and found the charred remains of the son lying on his back near to the front door of the house. The house measured 30 ft by 35 ft, it was a concrete 3 bedroom structure and it was completely destroyed along with a car. Post-mortem on the deceased and his wife – death due to chop\stab wounds to the head: on the son – death due to toxic smoke inhalation.

In another, the motive may have been a sexual attack but might have been the result of disturbing a burglar:

Around 6.10 pm a 14-year-old girl was at home with her sister, the deceased, and a younger sister, 3 years, when the deceased told her that she saw someone going behind the western side of the house and that she was going to see who it was. She told her not to go, but she insisted, and went out at 6.25 pm. When she did not return after a long time the elder sister went in search of her. She found the deceased lying in a pool of blood, with a wound to the throat and she appeared to be dead. She raised an alarm and two neighbours placed the body in the car and took it to the Hospital. She was pronounced dead on arrival. Post-mortem: death due to shock and hemorrhage due to injuries.

28. Because of the problems raised above in interpreting precisely, from the details given in the police homicide register, the motives and circumstances involved in some of the recorded murders, they have been grouped for purposes of analysis into five broad categories, distributed as shown in Table 4:

- Killings arising from a gang dispute or related to the trade in drugs including a sub-category where the killing was carried out like an assassination or execution.
- Killings arising during the commission of another crime, such as robbery or burglary and killings arising from a sexual assault.
- Killings arising from a domestic dispute including not only all killings in which the perpetrator and the victim were related by marriage or other family bonds but also those which arose from common-law relationships or former common-law relationships as well as child abuse and infanticide.

- Killings as a result of an attack or fight arising from other inter-personal altercations or conflicts, usually between persons known to each other, including killings by police and security personnel in the exercise of their duty, and also those arising from inter-personal conflicts where innocent bystanders were killed.
- Killings where the motive or relationship between victim and killer remained impossible to determine, the body having been found either ‘dumped’ or in other circumstances.

Table 4
Classification of the murders recorded by the police

| Type of murder | Number | Per cent |
|--|---------------|-----------------|
| Gang-related dispute | 21 | 3.3 |
| Drug-related dispute | 28 | 4.4 |
| Assassination | 111 | 17.5 |
| Apparent gang\drug-related murders | 160 | 25.3 |
| Body found ‘dumped’ unknown motive | 23 | 3.6 |
| Body found elsewhere unknown motive | 25 | 4.0 |
| Total ‘unknown or ‘unclassified’ | 48 | 7.6 |
| Committed during a robbery or burglary* | 120 | 19.0 |
| Committed during a kidnap | 5 | 0.8 |
| Committed during a rape or another sexual attack | 20 | 3.2 |
| All committed during course of another crime | 145 | 22.9 |
| Committed during a domestic altercation or arising from a domestic dispute | 95 | 15.0 |
| Infanticide or as a result of child abuse\child killing | 10 | 1.6 |
| All related to a domestic dispute | 105 | 16.6 |
| Other inter-personal dispute or altercation | 167 | 26.4 |
| By police or security officer | 3 | 0.5 |
| Killing of bystanders | 5 | 0.8 |
| All non-gang/non-domestic interpersonal altercations | 175 | 27.6 |
| TOTAL | 633 | 100 |

* Only one was committed during a burglary

29. In relation to the relative proportion of the different types of murder recorded we witnessed a very substantial change over the years 1998 to 2002. Table 5, below, shows that while the number and proportion of domestic killings was lower in 2002 than in 1998. They had accounted for almost a quarter of all recorded murders in 1998, made up only just over one in 10 of the 2002 total.¹⁹ Those carried out during an inter-personal altercation increased only by a small amount, but murders attributed to ‘gang or drug-related’ disputes and those committed during the commission of another crime – most often robbery – increased very substantially, as did the number of killings where the body was found but the motive unknown. In 1998 these three categories made up between them 40.7 per cent of the recorded murders, but by 2002 they accounted for 63.7 per cent.

Table 5
Type of murder and per cent in each category by year recorded

| Type of murder | 1998 | | 1999 | | 2000 | | 2001 | | 2002 | | TOTAL | |
|--|-----------|-------------|-----------|-------------|------------|-------------|------------|-------------|------------|-------------|------------|------------|
| | N | % | N | % | N | % | N | % | N | % | N | % |
| Gang-related | 15 | 15.3 | 10 | 10.8 | 29 | 24.2 | 54 | 35.8 | 52 | 30.4 | 160 | 25.3 |
| Body found unknown motive | 9 | 9.1 | 4 | 4.3 | 11 | 9.2 | 9 | 6.0 | 15 | 8.8 | 48 | 7.6 |
| During another crime | 16 | 16.3 | 28 | 30.1 | 25 | 20.8 | 34 | 22.5 | 42 | 24.6 | 145 | 22.9 |
| Total gang/body found\during other crime | 40 | 40.8 | 42 | 45.2 | 65 | 54.2 | 97 | 64.2 | 109 | 63.7 | 353 | 55.8 |
| Domestic-related | 23 | 23.5 | 17 | 18.3 | 27 | 22.5 | 20 | 13.2 | 18 | 10.5 | 105 | 16.6 |
| Interpersonal altercation | 35 | 35.7 | 34 | 36.6 | 28 | 23.3 | 34 | 22.5 | 44 | 25.7 | 175 | 27.6 |
| TOTAL | 98 | 100 | 93 | 100 | 120 | 100 | 151 | 100 | 171 | 100 | 633 | 100 |
| Percentage of total murders 1998-2002 recorded in each year | | 15.5 | | 14.7 | | 19.0 | | 23.9 | | 27.0 | 633 | 100 |

¹⁹ It should be noted in relation to the data presented in Table 2 above that 75.2% of domestic-related murders took place in a domestic residence, but of all murders committed in a domestic residence only 34.4% were due to a domestically-related dispute; 15 per cent were assassinations where a man or men called at a house and shot a resident dead and 18 per cent were murders during the commission of another crime, most often robbery, and 24 per cent were killings due to non-domestic altercations.

30. This picture of the changing characteristics of recorded murders is confirmed by the method of killing. The number in which death was caused by a gunshot wound increased three-fold between 1998 and 2002 (see Table 6) so that they accounted for 61 per cent of recorded murders in the latter year compared to only 31 per cent in the former. This is because killing by shooting was the main method employed in gang and drug-related murders – the category of murder that has increased most over these five years. Indeed, 83 per cent of all gang-related killings between 1998 and 2002 were caused by gunshot wounds (see Appendix 1, Table A7). Furthermore, the proportion of gang-related killings committed by shooting increased from 7 out of 10 in 1998 to nearly 9 out of 10 in 2002.

Table 6
Method of killing in recorded murders 1998-2002 and comparing 1998 with 2002

| Method of Killing | Total 1998-2002 | | 1998 | | 2002 | |
|------------------------------------|-----------------|------------|-----------|------------|------------|------------|
| | Number | % | Number | % | Number | % |
| Gunshot wound | 309 | 48.8 | 30 | 30.6 | 105 | 61.4 |
| Knife\cutlass\axe wound | 170 | 26.9 | 29 | 26.2 | 41 | 24.0 |
| Blunt instrument | 71 | 11.2 | 15 | 15.3 | 15 | 8.8 |
| Beating with fist or feet | 17 | 2.7 | 7 | 7.1 | 0 | 0.0 |
| Strangulation\ asphyxiation | 44 | 7.0 | 11 | 11.2 | 4 | 2.3 |
| Other: burning\poisoning\ drowning | 22 | 3.5 | 6 | 6.1 | 6 | 3.5 |
| TOTAL | 633 | 100 | 98 | 100 | 171 | 100 |

THE NUMBER OF ASSAILANTS

31. In order to estimate the number of persons who might have been responsible for the 633 deaths recorded by the police as murder, we read carefully the descriptions of the events made by the police on the basis of the statements of witnesses and suspects. Where no indication was given in the description of the number of perpetrators but the police later named a suspect or suspects we accepted the number named as the number who had actually been involved – even though this might in reality be an under-estimate of the true number. Table 7 shows that for 150 murders (23.7%) no assailant or assailants were identified at the time or subsequently. In 310 (49%) murders there appears to have been only one perpetrator and in only 25 (4%) four or more.

32. If one makes the very conservative assumption that in all killings where the number of assailants was not reported *only one* had been involved, the 633 recorded murders would

have been carried out by a minimum of 916 persons.²⁰ But a more realistic estimate, based on the assumption that the number of assailants among the 150 where no-one had been identified was distributed in the same way as among the known cases, the number of assailants would have been at least 1,000.²¹

Table 7
Number of assailants or suspects recorded in police description of the murder
1998-2002

| Number of assailants identified | Number of killings | Per cent Of total | Per cent of those where someone was identified N = 483 |
|---------------------------------|--------------------|-------------------|---|
| None | 150 | 23.7 | |
| One | 310 | 49.0 | 64.2 |
| Two | 98 | 15.5 | 20.3 |
| Three | 50 | 7.9 | 10.4 |
| Four | 15 | 2.4 | 3.1 |
| Five or more | 10 | 1.6 | 2.1 |
| TOTAL | 633 | 100 | 100 |

SUSPECTS ARRESTED AND MURDERS ‘SOLVED’

33. In addition to the 150 murders where no assailants were identified, the police did not name a suspect in a further 124 cases. Thus, in 274 of the 633 murders (43.3%) no-one was even arrested, and in a further six cases the person originally identified was later not considered a suspect.²² The police therefore recorded 280 murders (44.2%) as ‘unsolved’ and 353 (55.8%) as ‘solved’.

34. Looked at another way – that is in relation to the number of assailants who may have been involved in these murders – the ‘clear-up’ rate of suspected *murderers* was even lower.²³ Altogether 487 suspects were identified by the police as being involved in the 353 ‘solved’ murders. This was 53 per cent of the conservatively estimated number (916) of

²⁰ $150+310+98 \times 2+50 \times 3+15 \times 4+10 \times 5$

²¹ Calculated as follows: 64.2% of 150 = 96, 23.2% of 150 = 30.5x2 = 61, 10.4% of 150 = 15.6x3= 47 etc.

²² In five cases the police reported that they were unable to solve the case because the person originally identified was not charged, presumably because of lack of evidence, and in one other case because they were unable to execute an arrest warrant on the suspect.

²³ The number of suspects includes those who were not originally suspected but who were later arrested and prosecuted. Where a suspect was identified (359 victims) there was only a single suspect in the majority (288 = 80.2%) of cases. In very few killings that the police classed as murder – only 11 (1.8%) – were more than three suspects named by the police (see Appendix 1, Table A6).

assailants but only 49 per cent of the more realistic estimate of 1,000 persons involved in the offences.

35. In fact, the proportion of murders which the police recorded as ‘solved’ was very low for that class of murder which, as has been shown, has been increasing the most – namely gang and drug-related murders, and particularly where the victim’s body had been ‘dumped’ or the motive was unknown (see Table 8). On the other hand, those of a domestic nature or involving a non-domestic inter-personal altercation were recorded as ‘solved’ in the large majority of cases, for the suspect was usually readily identified.

Table 8
Recorded murders regarded as ‘solved’ by the police 1998-2002, by type of murder

| Type of murder | ‘Solved’ | | ‘Unsolved’ | |
|---|------------|-------------|------------|-------------|
| | Number | % | Number | % |
| Gang \drug-related | 31 | 19.4 | 129 | 80.6 |
| Body found unknown motive | 3 | 6.3 | 45 | 93.8 |
| Committed during course of another crime including sexual offence | 69 | 47.6 | 76 | 52.4 |
| Related to a domestic dispute | 103 | 98.1 | 2 | 1.9 |
| Other inter-personal dispute or altercation | 147 | 84.0 | 28 | 16.0 |
| TOTAL | 353 | 55.8 | 280 | 44.2 |

THE FINAL OUTCOME

36. In what sense were the 353 murders ‘solved’ by the police? In 45 of them (5.9% of all recorded murders) the suspect had either committed suicide (34), been killed (9) or had died (2). However, the term ‘solved’ in relation to the remaining 308 cases should not be taken to mean that they had all resulted in a conviction in the High Court – far from it. In fact, by the end of December 2005 a conviction for murder had been obtained for only 33 of the 633 murders recorded by the police. In relation to 28 victims one person had been convicted and in relation to 5 victims two people had been convicted: 38 people in all. Thus, of the 308 murders that the police classified as ‘solved’ and where the suspect remained alive, only one in 10 ($33 \div 308 = 10.7\%$) resulted in a conviction for murder. Altogether, at least one person had been convicted of *either* murder *or* manslaughter in 110 cases: just over a third (35.7%) of the cases classified by the police as ‘solved’ where the suspect was not dead (see Table 9).

37. Taking into account the cases for whom no suspect was arrested, the proportion of all recorded murders committed between 1998 and 2002 that had resulted in a conviction for murder by the end of 2005 was very low, only 1 in 20 (5.2%), with 17 per cent resulting in a conviction for *either* murder *or* manslaughter. According to a newspaper report in December 2005, the police have now decided to record as ‘solved’ only those murders “where a culprit is convicted in the High Court”. Thus, on this basis, 17 per cent of the murders recorded between 1998 and 2002 were ‘solved’.²⁴

38. The ‘success rate’ is probably even lower. The 38 *persons* convicted of a murder by the end of 2005 accounted for only 3.8 per cent of the estimated 1,000 persons who may have been involved in the 633 murders reported between 1998 and 2002. Taking into account the 88 *persons* convicted of manslaughter: altogether 126 (12.6%) had been convicted of homicide.²⁵ Thus, perhaps as many as 8 out of 10 assailants had so far gone scot-free.

39. Given the length of time it takes to process cases in Trinidad and Tobago – less than a quarter of defendants were tried and judgment reached in the High Court within two years following being charged and for as many as 70 per cent this took between three and five years – and the fact that the pattern of murders had changed so greatly over the five-year period covered by this survey, a better picture of the ‘clear-up rate’ is perhaps given by comparing the outcome for years 1998-1999 with 2000 and 2001-2002 – see Table 9.

²⁴ ‘Police: 250 murderers roam free for 2005’ by Darryl Heeralal, *Trinidad Express*, 9 November 2005. According to the leading Trinidadian expert, Independent Senator Ramesh Deosaran, “The police failed to solve three-quarters of all murders committed in Trinidad and Tobago ... He lamented that as the numbers of murders rose from 1992 to 2004, the detection rate for murder drastically fell.” Reported in *Newsday Section A*. June 29 2005.

²⁵ In 70 cases one person was convicted of manslaughter, in four cases two were convicted, in two, three and in one five persons were convicted

Table 9
Outcome of proceedings relating to deaths recorded as murder, number and percentage in each category

| Outcome | Year of offence | | | | | | Total | |
|--|-----------------|-------------|------------|-------------|------------|-------------|------------|------------|
| | 1998-1999 | | 2000 | | 2001-2002 | | 1998-2002 | |
| | Number | % | Number | % | Number | % | Number | % |
| No suspect identified ²⁶ | 56 | 29.3 | 49 | 40.8 | 169 | 52.5 | 274 | 43.3 |
| Suspect committed suicide\killed or died | 12 | 6.3 | 15 | 12.5 | 18 | 5.6 | 45 | 7.1 |
| Suspect not prosecuted | 3 | 1.6 | 5 | 4.2 | 9 | 2.8 | 17 | 2.7 |
| Case against suspect dismissed in Magistrates' Court | 16 | 8.4 | 5 | 4.2 | 12 | 3.7 | 33 | 5.2 |
| Prosecution withdrew charge at High Court | 10 | 5.2 | 5 | 4.2 | 1 | 0.3 | 16 | 2.5 |
| Acquitted of homicide in High Court ²⁷ | 35 | 18.3 | 13 | 10.8 | 19 | 5.9 | 67 | 10.6 |
| Convicted of Manslaughter | 38 | 19.9 | 16 | 13.5 | 23 | 7.1 | 77 | 12.2 |
| Convicted of murder | 19 | 9.9 | 5 | 4.2 | 9 | 2.8 | 33 | 5.2 |
| CONVICTED OF MURDER OR MANSLAUGHTER | 57 | 29.8 | 21 | 17.7 | 32 | 9.9 | 110 | 17.4 |
| Case ongoing | 2 | 1.0 | 7 | 5.8 | 62 | 19.3 | 71 | 11.2 |
| TOTAL | 191 | 30.2 | 120 | 19.0 | 322 | 50.9 | 633 | 100 |

40. Several trends can be noted from Table 9. First, the significant increase in the proportion of murders for which no suspect was identified – from 30 per cent in 1998-99 to over half in 2001-2002. The second is the decrease in the proportion of murders resulting in a conviction, which can be seen in 2000 and 2001-2002. The figure for the latter years is, to some extent, a reflection of the far larger proportion of cases in which proceedings had not been completed. Of course one cannot know how many of the 62 murders recorded in 2001 and 2002 in which a case against an identified person is still proceeding will end up with a

²⁶ It might be interesting for readers to note that of the 745 offences initially recorded as a homicide in England and Wales in the fiscal year 1998/99, no suspect had been charged by 2004/5 in relation to only 48 of them (6.4%). See Kathryn Coleman, *et al. Violent Crime Overview, Homicide and Gun Crime 2004/2005*, Home Office Statistical Bulletin 02/06, p. 55.

²⁷ In relation to one victim, three defendants were charged with manslaughter, two pleaded guilty to unlawful wounding, no evidence was offered against a third defendant.

conviction for murder or manslaughter. But even assuming that the same proportion of the total would eventually be convicted of murder as in 1998 (9.9%) one could expect only 15 murder conviction, making a mere 4.7 per cent of the total for 2001 to 2002.²⁸ It is therefore evident that from 1998 onwards there has been a marked decline in the ability of the criminal justice system to both identify a suspect and to convict persons of murder.

41. We found convincing evidence that whether or not a conviction for murder was obtained depended on the type of murder committed. The clear-up rate and conviction rate for ‘gang-related’ murders and those where the body was ‘dumped’ or found was extremely low. Only two of the 208 recorded murders of this kind resulted in a conviction for murder and two for manslaughter – 2 per cent together – by the end of 2005, although they made up 33 per cent of the recorded killings (see Table 10). By contrast, murders committed in the domestic situation, which accounted for 17 per cent of recorded killings, resulted in a conviction for murder in 17 cases. They made up 52 per cent of the 33 cases where a murder conviction and mandatory death sentence resulted. Moreover, another 24 persons prosecuted for a domestically-related murder were convicted of manslaughter. Thus 39 per cent of the 105 ‘domestic murders’ resulted in a conviction for *either* murder *or* manslaughter and 44 per cent of those cases for which the outcome was known.

42. As far as other types of inter-personal altercations and disputes were concerned, only two of the 175 (1.1%) recorded murders of this type resulted in a conviction for murder and sentence to death and less than a quarter of these murders resulted in a homicide conviction of any kind. Of those murders committed during the course of involvement in another crime – usually robbery – for which the outcome was known (121), only 12 (10%) had resulted in a conviction for murder with a further 12 cases ending with a manslaughter conviction. Thus 80 per cent of such crimes had so far evaded punishment.

²⁸ In 1998, 9.9% of recorded murders ended with a conviction for murder. Assuming that 9.9% of the 62 (that is six) ongoing cases in 2001-2002 will be convicted of murder, the total for 2001-2002 when all cases have been resolved would be $9 + 6 = 15$.

Table 10

‘Clear-up’ rates for murders recorded 1998-2002 by type of murder

| Outcome | Gang\drug related\ body found unknown motive | | Committed during another crime | | Domestic related murders | | Other inter- personal disputes | | Total | |
|--|---|-------------|-----------------------------------|-------------|--------------------------------|-------------|---|-------------|------------|------------|
| | N | % | N | % | N | % | N | % | N | % |
| No suspect identified | 170 | 81.7 | 75 | 51.7 | 2 | 1.9 | 27 | 15.4 | 274 | 43.3 |
| Suspect committed suicide\killed or died | 3 | 1.4 | 1 | 0.7 | 35 | 33.3 | 6 | 3.4 | 45 | 7.1 |
| Suspect arrested\ charged but not prosecuted | 9 | 4.3 | 2 | 1.4 | 1 | 1.0 | 5 | 2.9 | 17 | 2.7 |
| Case against suspect dismissed in Magistrates’ Court | 9 | 4.3 | 3 | 2.1 | 4 | 3.8 | 17 | 9.7 | 33 | 5.2 |
| Prosecution withdrew charge at High Court | 3 | 1.4 | 3 | 2.1 | 2 | 1.9 | 8 | 4.6 | 16 | 2.5 |
| Acquitted in High Court | 4 | 1.9 | 13 | 9.0 | 8 | 7.6 | 42 | 24.0 | 67 | 10.6 |
| Convicted of Manslaughter | 2 | 1.0 | 12 | 8.3 | 24 | 22.9 | 39 | 22.3 | 77 | 12.2 |
| Convicted of murder | 2 | 1.0 | 12 | 8.3 | 17 | 16.2 | 2 | 1.1 | 33 | 5.2 |
| Total convicted of murder or manslaughter | 4 | 2.0 | 24 | 16.6 | 41 | 39.0 | 41 | 23.3 | 110 | 17.4 |
| Case ongoing | 6 | 2.8 | 24 | 16.6 | 12 | 11.4 | 29 | 16.6 | 71 | 11.2 |
| TOTAL AND PERCENTAGE OF CASES | 208 | 32.9 | 145 | 22.9 | 105 | 16.6 | 175 | 27.6 | 633 | 100 |

N.B. Per cent of each outcome read down columns; total percentage from all cases.

43. This analysis of recorded murders has therefore shown conclusively that the general probability of a murder resulting in a conviction for murder in Trinidad and Tobago is not only very low, but that no category of cases can be identified with a very high probability of conviction and mandatory sentence to death for murder. Nor even of a conviction for murder *or* manslaughter. The examination of those cases in which the Director of Public Prosecutions brought an indictment for murder before the High Court of Trinidad and Tobago in the next section of this report will provide further evidence of the rare and arbitrary imposition of the mandatory death sentence, as well as indications that it is an ineffective and counter-productive method of punishment.

Chapter Three

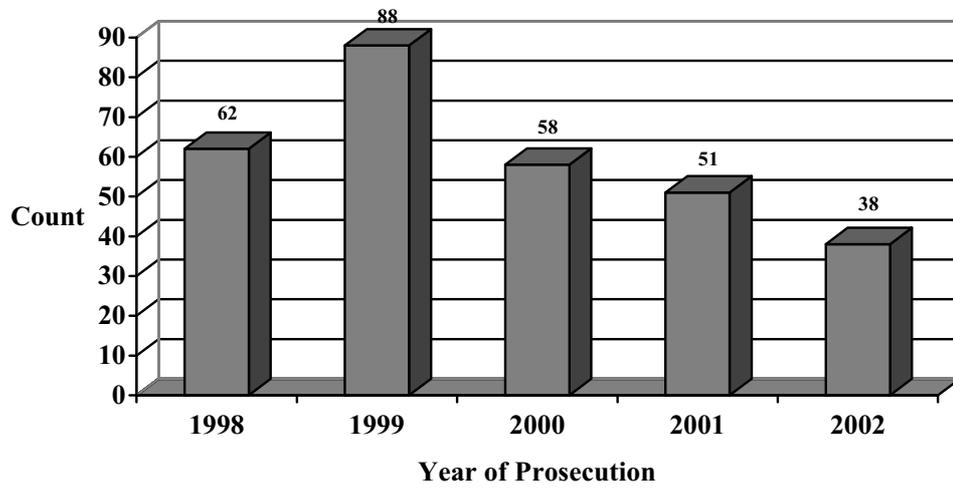
COMMITTALS FOR TRIAL ON INDICTMENT FOR MURDER: THE PROSPECTS OF A CONVICTION FOR MURDER AND A DEATH SENTENCE

THE OUTCOME OF PROSECUTIONS FOR MURDER

44. Over the five-year period 1st January 1998 to 31st December 2002, 297 individuals charged with committing offences against 322 victims were committed for trial at the High Court of Trinidad and Tobago charged with murder: 179 of them in Port of Spain, 95 in San Fernando and five in Tobago. Ninety-three per cent of these defendants had been indicted for the murder of one person, 17 for killing two persons and four for killing three people. By the end of December 2005 there were still 17 persons awaiting trial and one person had been found unfit to plead by reason of insanity. Thus the trials of 279 persons, indicted for murdering 304 individuals, had been completed.

45. In rather stark contrast to the picture of rising numbers of murders recorded by the police over this period (see Figure 1, page 7 above), the number of persons committed for trial charged with murder fell from a high of 88 in 1999 to only 38 in 2002, a decline of over 50 per cent (see Figure 3). It has to borne in mind that few of the murders recorded by the police in 2002 would have come to trial during that year and the murders prosecuted in 1998 would all have been recorded by the police prior to 1998. Nevertheless one would have expected the sharp increase in the number of murders recorded in 2000 and 2001 to have had some impact on the number of prosecutions by 2002.

Figure 3
Number of prosecutions for murder 1998-2002



46. How successful were these prosecutions? As Table 11 reveals, of the 279 indicted for murder where proceedings had been completed, only 58 (20.8%) – 1 in 5 – had been convicted of murder.

Table 11
Outcome of prosecutions for murder in the High Court 1998-2002

| Outcome | Total | Percentage of Total (297) | Percentage of completed prosecutions (279) | Percentage of total trial proceeded (250) | Percentage of total for jury trial for murder (177) |
|--|--------------|----------------------------------|---|--|--|
| TOTAL COMMITTED FOR TRIAL TO THE HIGH COURT | 297 | | | | |
| Prosecution not completed | 17 | 5.7 | | | |
| Unfit to plead | 1 | 0.3 | | | |
| TOTAL OF COMPLETED PROSECUTIONS | 279 | 94.0 | | | |
| Prosecution withdrew charge at High Court prior to trial commencing | 29 | 9.8 | 10.4 | | |
| TOTAL TRIAL PROCEEDED | 250 | 84.2 | 89.6 | | |
| Guilty plea to manslaughter/infanticide (1) accepted | 56 | 18.8 | 20.1 | 22.4 | |
| Guilty plea to manslaughter provocation accepted | 14 | 4.7 | 5.0 | 5.6 | |
| Guilty plea to manslaughter diminished responsibility accepted | 3 | 1.0 | 1.1 | 1.2 | |
| TOTAL GUILTY PLEA TO MANSLAUGHTER ACCEPTED | 73 | 24.6 | 26.2 | 29.2 | |
| TOTAL TO TRIAL BY JURY FOR MURDER | 177 | 59.6 | 63.4 | 70.8 | |
| Judge directs acquittal | 24 | 8.1 | 8.6 | 9.6 | 13.6 |
| No case to answer accepted | 12 | 4.0 | 4.3 | 4.8 | 6.8 |
| Acquitted by the jury (2 at second trial) | 59 | 19.9 | 21.1 | 23.6 | 33.3 |
| TOTAL ACQUITTED BY JURY | 95 | 32.0 | 34.1 | 38.0 | 53.7 |
| Jury convicted for manslaughter | 12 | 4.0 | 4.3 | 4.8 | 6.8 |
| Jury convicted for manslaughter provocation | 9 | 3.0 | 3.2 | 3.6 | 5.1 |
| Jury convicted of manslaughter diminished responsibility | 3 | 1.0 | 1.1 | 1.2 | 1.7 |
| TOTAL JURY CONVICTED OF MANSLAUGHTER | 24 | 8.0 | 8.6 | 9.6 | 13.6 |
| JURY CONVICTED OF MURDER²⁹ | 58 | 19.5 | 20.8 | 23.2 | 32.8 |
| TOTAL CONVICTED OF MANSLAUGHTER (PLEA AND TRIAL)³⁰ | 97 | 32.7 | 34.8 | 38.8 | DNA |
| TOTAL CONVICTED OF MURDER/MANSLAUGHTER | 155 | 52.2 | 55.6 | 62.0 | DNA |

²⁹Note, in England and Wales, 277 (42%) of the 654 persons indicted for murder in the fiscal year 1999/2000, had by 2004/05 been convicted of murder. See Kathryn Coleman, *et al.* note 25 above, p. 65.

³⁰For details of the sentences imposed on these cases see Table 34 and para 105 below.

47. Even when the cases where the prosecution withdrew the charges (29) are omitted, the proportion convicted of murder was not much higher (23.2%). And leaving aside those whose plea to manslaughter was accepted by the court, still only a third (32.8%) of the 177 persons tried by a jury for murder were convicted of murder. And of the 82 persons (46%) who were eventually convicted of a homicide by a jury, 58 (71%) were convicted of murder and 24 (29%) of manslaughter. All but one of the 58, who had committed the offence when under the age of 18 (and therefore was sentenced to be detained indefinitely at the President's pleasure)³¹, received a mandatory death sentence. Two of the 58 had a history of mental illness, both on an earlier charge having been found unfit to plead, another defendant was said in a psychiatric report to be of 'borderline intelligence and semi-literate', and a fourth was assessed as suffering from 'depression and insecurity'.

48. Altogether, when one includes the 29 defendants for whom the prosecution was unable to proceed at trial and withdrew the charge; the 24 for whom the judge directed an acquittal; the 12 for whom the judge accepted the defence counsel's plea of no case to answer; and the 59 defendants who were found not guilty by a jury of *either* murder or manslaughter, the total number acquitted was 124: 44 per cent of the 279 individuals whose prosecutions had been completed.

49. Ninety-seven – 35 per cent – of those prosecuted for murder were convicted of the lesser offence of manslaughter. In respect of 55 defendants (20.1% of completed prosecutions), the prosecution accepted a guilty plea to manslaughter, and in one case to infanticide. There was no record of why these pleas were accepted, but in a further 14 cases a manslaughter plea was recorded as accepted on the grounds of provocation and in three on grounds of diminished responsibility. Twenty-four (13.6%) of the 177 defendants who proceeded to trial for murder were found guilty by the jury of manslaughter. In nine of them the jury accepted the defence of provocation and in three the plea of diminished responsibility. No grounds were given by the jury in the remaining 12 cases.³² Thus, in 69 per cent of the manslaughter convictions (67\97 of both pleas and jury decisions) no reasons were apparent in the records for the decision to accept manslaughter as the correct verdict rather than murder.

³¹ This is the equivalent sentence for a young offender of detention during Her Majesty's Pleasure in England and Wales – in effect an indeterminate sentence of life imprisonment, subject to review.

³² In Trinidad and Tobago for a conviction of murder the panel of 12 jurors must be unanimous. It should be noted that jury members do not need to be 'death qualified' (i.e. chosen only from citizens who testify that they are willing to impose a death sentence) as they are in the USA.

50. Not only was the number of persons indicted for murder lower at the end of the five-year period 1998-2002 than at the beginning, so also was the proportion convicted of murder (see Table 12). In fact, of the 30 prosecutions begun in that year that have so far been completed only two (6.7%) have resulted in a conviction for murder. On the other hand, the overall ‘not proceeded against/acquittal’ rate was lower than in the preceding two years (11 of the 30 completed prosecutions, or 36.7%) and the proportions of convictions for manslaughter was substantially higher (17 of 30=56.7%) than in any of the years 1998-2001. In other words, the overall prosecutorial success rate for the low number of prosecutions begun for murder was higher than in previous years but the probability of that prosecution resulting in the imposition of a mandatory death penalty was considerably lower than in any previous year.

Table 12
Outcome of prosecutions for murder proceeded with at the High Court 1998-2002

| Year | Trial not completed | | Prosecution withdrawn\ Acquired | | Convicted of manslaughter | | Convicted of murder | | TOTAL |
|---|---------------------|--------------------|---------------------------------|----------------------|---------------------------|----------------------|---------------------|----------------------|--------------------|
| | N | % | N | % | N | % | N | % | No |
| 1998 <i>% completed cases</i> | 4 | 6.5 | 31 | 50.0 53.4 | 19 | 30.6 32.8 | 8 | 12.9 13.8 | 62 58 |
| 1999 <i>% completed cases</i> | 3 | 3.4 | 34 | 38.6 40.0 | 27 | 30.7 31.8 | 24 | 27.3 28.2 | 88 85 |
| 2000 <i>% completed cases</i> | 1 unfit | 1.7 | 24 | 41.4 42.1 | 20 | 34.5 35.1 | 13 | 22.4 22.8 | 58 57 |
| 2001 <i>% completed cases</i> | 2 | 3.9 | 24 | 47.1 49.0 | 14 | 27.5 28.6 | 11 | 21.6 22.4 | 51 49 |
| 2002 <i>% completed cases</i> | 8 | 21.5 | 11 | 28.9 36.7 | 17 | 44.7 56.7 | 2 | 5.3 6.7 | 38 30 |
| TOTAL <i>% completed cases</i> | 18 | 6.0 6.5 | 124 | 41.8 44.4 | 97 | 32.7 34.8 | 58 | 19.5 20.8 | 297 279 |

51. A logistic regression analysis (for details see paragraphs 79-84 below) made it possible to compare for each year whether – given the characteristics of the cases dealt with – a greater or lesser proportion of defendants were convicted of murder in a year than would be expected if the rate was constant over all five years. It showed that in 1998 the number convicted of murder had been less than expected, but more than expected in 1999 and 2001.

The very small number convicted in 2002 was more than half the number expected, but it can be seen from Table 13 that in that year the profile of cases was such that many fewer murder convictions than in previous years would in any case have been expected. It is therefore clear that any comparison between murder conviction rates over a period of years needs to take into account changes in the nature of the cases that have been prosecuted.

Table 13
Observed and Expected rates of conviction for murder by year of prosecution

| Year | Observed number convicted of murder | Expected number convicted of murder | Percentage difference Observed-Expected\Expected |
|--------------|--|--|---|
| 1998 | 8 | 11.5 | - 30.0 |
| 1999 | 24 | 19.8 | + 21.2 |
| 2000 | 13 | 12.8 | +1.6 |
| 2001 | 11 | 9.5 | + 15.8 |
| 2002 | 2 | 4.5 | - 55.6 |
| Total | 58 | 58 | |

THE OUTCOME AFTER APPEAL

52. All 57 persons convicted of murder and sentenced to death appealed against their conviction and death sentence, as did the young offender against his sentence to be detained at the President's Pleasure. The outcome of these appeals to the Trinidad and Tobago Court of Appeal, by the end of December 2005, is shown in Table 14. In two cases the Court refused leave to appeal and in 25 others upheld both the conviction and death sentence. Another five defendants were still awaiting a hearing. The convictions of six defendants were upheld but a sentence of life imprisonment³³ was substituted following the decisions of the Judicial Committee of the Privy Council on the lawfulness of the mandatory death penalty in the cases of *Roodal* and *Matthew*.³⁴ Five defendants, including the person who had been

³³ Life imprisonment in Trinidad and Tobago is an indeterminate sentence, the length actually served is subject to periodic review by the executive under section 281 of the Prison Rules. There is no Parole Board. In some circumstances a life sentence could result in a full life term in prison.

³⁴ In deciding *Matthew v State of Trinidad and Tobago* [2005] 1 AC 433, the Privy Council ruled that because the earlier decision in *Roodal* (see note 2 above) had led to an expectation that those who had been mandatorily sentenced to death would instead receive a sentence of life imprisonment, *Matthew's* sentence of death would also be commuted to life imprisonment. The Privy Council recommended that this should apply to all persons who had already been sentenced to death and were

under the age of 18 at the time of the offence, were exonerated and discharged and a further seven were ordered to be retried as their original conviction was deemed to be unsafe. A further eight had their conviction for murder overturned and a conviction for manslaughter substituted. Taking this together, it means that of the 272 cases where both trial and appeal had been completed the conviction for murder and sentence to death had not been set aside in 27 of them with an additional five awaiting their appeal hearing: 32 in all.

Table 14
Outcome of first appeal in Court of Appeal of Trinidad and Tobago

| | Number | Per cent |
|--|-----------------------------------|-----------------|
| Conviction for murder sentence of death affirmed | 25 | 43.1 |
| Conviction affirmed but Roodal and Matthew life imprisonment substituted | 6 | 10.3 |
| Conviction quashed defendant discharged | 5 (including 1 young offender) | 8.6 |
| Conviction quashed retrial ordered | 7 | 12.1 |
| Conviction for murder quashed and manslaughter substituted | 8 | 13.8 |
| Appeal yet to be heard | 5 | 8.6 |
| Application for leave to appeal refused | 2 | 3.4 |
| TOTAL | 58 | 100 |

53. In seven cases where a determinate sentence of imprisonment for manslaughter was substituted for the conviction for murder, one was for 10 years, 2 for 15 years, 3 for 20 years and 1 for 35 years. In other words, very substantial periods of imprisonment were substituted. In the eighth case the person concerned was apparently committed to a mental hospital and has yet to be re-sentenced.

54. Three defendants whose first appeal against the death sentence had been denied had launched a second appeal to the Trinidad and Tobago Court of Appeal. In all three that had been heard by the end of December 2005, the conviction was upheld – in two the death

awaiting execution. However, this does not appear to have been done. See, Douglas L. Mendes S.C., 'Saving lives by luck and chance: Savings Law Clauses and the persistence of arbitrariness', in *Proceedings of the Death Penalty Conference 3rd - 5th June 2005*, Barbados. London: Simons, Muirhead and Burton, 2006.

sentence was affirmed and in one life imprisonment was substituted in conformity with the Roodal and Matthew judgments. Eight defendants had had their appeal against their conviction and mandatory death sentence heard by the Judicial Committee of the Privy Council, including the two whose leave to appeal had been refused by the Trinidad Court of Appeal. In none of these cases did the death sentence survive. One of them had his conviction for murder reversed, the case being remitted to the Trinidad and Tobago Court of Appeal for an appropriate term of manslaughter to be substituted³⁵; three had their conviction quashed and a retrial ordered; one had his conviction affirmed but the Privy Council substituted life imprisonment for the death sentence³⁶; and three had their conviction and sentence upheld but life imprisonment was substituted following the Roodal and Matthew decisions.³⁷

55. Thus, by the end of 2005 only 23 of the 57 persons sentenced to death (40%) remained under sentence of death, including five whose domestic appeals had yet to be heard and 15 who were waiting a hearing before the Privy Council. It is clear that after very lengthy delays and great expense to the State the number of convictions for murder and death sentences that will eventually be upheld will be only a tiny fraction of the cases originally indicted and an even smaller fraction of all ‘murders’ recorded by the police.

CHARACTERISTICS OF MURDER PROSECUTIONS RELATED TO PROBABILITY OF BEING CONVICTED OF MURDER

Types of murders committed

56. The murders for which defendants were indicted were categorised in the same way as had been done in the analysis of the police records, although in this sample more information was available about the circumstances and relationships within which the killing took place.

57. In Table 15 these categories are listed according to the proportion of defendants who were convicted of murder, in descending order. It can be seen that those accused of a murder arising from a domestic conflict ran the highest risk of being convicted of murder: indeed the proportion (35.7%) was more than five times higher than for someone involved in a homicide arising from an inter-personal dispute of a non-domestic nature (6.4%). It was also higher than for someone convicted of a gang or drug-related murder (21.7%). The probability of a person accused of a domestic murder being convicted of murder was even higher than for a

³⁵ He was sentenced to 20 years imprisonment.

³⁶ *Haroon Khan v The State* [2003] UKPC 79, on the grounds that the mandatory death penalty did not apply to persons convicted under Section 2 of the 1997 Criminal Law (Amendment) Act of a felony murder, as it was not covered by the savings clause in the Constitution of Trinidad and Tobago.

³⁷ One of these defendants had mounted a second appeal before the Privy Council. In addition 14 were awaiting a hearing before the Privy Council.

person who had killed during the commission of another serious crime such as robbery or burglary (28.9%, see Tables 15 and 16).

58. The acquittal rate (the total of abandoned prosecutions, directed acquittals and jury acquittals) was particularly high for gang and drug-related murders (70%) as well as for those arising from an altercation (56%). Table A8 in Appendix I shows that almost 40 per cent of prosecutions against those indicted for gang or drug-related murders were withdrawn before trial.

59. So what was the distribution of offences amongst those eventually convicted of murder? As Table 17 shows, although domestic homicides accounted for only a fifth (20.1%) of all persons prosecuted, they accounted for over a third (34.5%) of all persons convicted of murder. The type of crime accounting for the largest proportion (43%) of murder convictions was those murders that took place during the commission of another, non-sexual, crime. Although persons accused of killing during a kidnap were all convicted and the highest proportion of them convicted of murder (two-thirds, see Table 17), they still only accounted for less than one in five ($10 \div 58 = 17.2\%$) of all sentenced to death. Only one of the eight accused of murder during a sexual attack was convicted of the capital crime. Those who had committed a gang or drug-related murder accounted for only five (8.6%) of the 58 persons convicted of murder.

Table 15

Outcome of prosecution by type of homicide N = 279 completed prosecutions

| Type of homicide | Prosecution withdrawn\ Acquitted | | Convicted of manslaughter | | Convicted of murder | | Total Prosecuted | |
|---|-------------------------------------|-------------|---------------------------|-------------|---------------------|-------------|------------------|-------------|
| | Number | % | Number | % | Number | % | Number | % |
| Domestic dispute | 8 | 17.0 | 19 | 40.4 | 20 | 42.6 | 47 | 16.8 |
| Domestic contract killing | 6 | 75.0 | 2 | 25.0 | 0 | 0.0 | 8 | 2.9 |
| Infanticide | 0 | 0.0 | 1 | 100 | 0. | 0.0 | 1 | 0.4 |
| TOTAL DOMESTIC RELATED | 14 | 25.0 | 22 | 39.3 | 20 | 35.7 | 56 | 20.1 |
| During commission of a non-sexual crime | 28 | 34.1 | 29 | 35.4 | 25 | 30.5 | 82 | 29.4 |
| During sexual attack | 5 | 62.5 | 2 | 25.0 | 1 | 12.5 | 8 | 2.9 |
| TOTAL DURING COMMISSION OF ANOTHER CRIME | 33 | 36.7 | 31 | 34.4 | 26 | 28.9 | 90 | 32.3 |
| Gang\drug- related dispute | 16 | 80.0 | 2 | 10.0 | 2 | 10.0 | 20 | 7.2 |
| Gang-related contract killing | 0 | 0.0 | 0 | 0.0 | 3 | 100 | 3 | 1.1 |
| TOTAL GANG\DRUG RELATED | 16 | 69.6 | 2 | 8.7 | 5 | 21.7 | 23 | 8.2 |
| Non-domestic interpersonal altercations | 58 | 55.2 | 40 | 38.1 | 7 | 6.7 | 105 | 37.6 |
| Inter-personal contract killing | 2 | 100.0 | 0 | 0.0 | 0 | 0.0 | 2 | 0.7 |
| Shot by police\security officer | 1 | 33.3 | 2 | 66.7 | 0 | 0 | 3 | 1.1 |
| TOTAL INTER-PERSONAL RELATED | 61 | 55.5 | 42 | 38.2 | 7 | 6.4 | 110 | 39.4 |
| TOTAL | 124 | 44.4 | 97 | 34.8 | 58 | 20.8 | 279 | 100 |

Table 16

Outcome of trial in cases where murder was committed during commission of another crime (N = 90)

| Committed during commission of: | Prosecution withdrawn\ Acquired | | Convicted of manslaughter | | Convicted of murder | | Total | |
|---------------------------------|---------------------------------|-------------|---------------------------|-------------|---------------------|-------------|-----------|------------|
| | Number | % | Number | % | Number | % | Number | % |
| Robbery | 26 | 41.9 | 21 | 33.9 | 15 | 24.2 | 62 | 68.9 |
| Kidnapping | 0 | 0.0 | 5 | 33.3 | 10 | 66.7 | 15 | 16.7 |
| Burglary\ aggravated burglary | 2 | 40.0 | 3 | 60.0 | 0 | 0.0 | 5 | 5.6 |
| Rape | 2 | 66.7 | 1 | 33.3 | 0 | 0.0 | 3 | 3.3 |
| Buggery | 1 | 33.3 | 1 | 33.3 | 1 | 33.3 | 3 | 3.3 |
| Other sexual assault | 2 | 100.0 | 0 | 0.0 | 0 | 0.0 | 2 | 2.2 |
| Total | 33 | 36.6 | 31 | 34.4 | 26 | 28.8 | 90 | 100 |

Table 17

Proportion of those convicted of murder by type of homicide

| Type of homicide | Prosecuted for murder | | Convicted of murder | |
|---|-----------------------|-----------------------|---------------------|--------------------------------|
| | Number | % of those prosecuted | Number | % of those convicted of murder |
| Domestic-related | 56 | 20.1 | 20 | 34.5 |
| During commission of a non-sexual crime | 82 | 29.3 | 25 | 43.1 |
| During commission of a sexual crime | 8 | 2.9 | 1 | 1.7 |
| Gang\drug-related | 23 | 8.2 | 5 | 8.6 |
| Non-domestic interpersonal altercations | 110 | 39.4 | 7 | 12.1 |
| TOTAL | 279 | 100 | 58 | 100 |

Method of killing

60. Another indicator of the type of homicide committed was the choice of weapon. Two-thirds of the defendants whose prosecutions had been completed were accused of committing murder either with a firearm (93=33.3%) or with a sharp instrument (108=38.7%), most usually a cutlass or knife. More rarely murders were committed by strangulation or by beating with fists or feet. Three-quarters of the gang or drug-related

killings had been carried out with firearms, as had half (49%) of those association with the commission of another crime and 85 per cent of the 13 contract killings. In contrast, killings in domestic disputes had mostly been carried out with a cutlass, knife or other sharp instrument (51%) by strangulation (13%) or by use of a blunt instrument (13%): only four (9%) of the 47 alleged domestic murders were the result of a gunshot. While almost one in five (19%) of those killed in a non-domestic interpersonal altercation or conflict were shot, by the far the majority of such killings had also been carried through chopping with a cutlass or stabbing with a knife (55%) or beating with a blunt instrument (13%). But as Table 18 shows, those who had killed by using a firearm or who strangled their victim were more likely to have been convicted of murder than those who used a cutlass or knife or blunt instrument. Yet among the 58 actually convicted of murder 35 (60%) had used a method other than a firearm.

Table 18
Outcome of prosecution by method of killing

| Weapon | Prosecution withdrawn\ Acquitted | | Convicted of manslaughter | | Convicted of murder | | Total | |
|--|-------------------------------------|-------------|---------------------------|-------------|---------------------|-------------|------------|------------|
| | Number | % | Number | % | Number | % | Number | % |
| Gunshot wound | 53 | 57.0 | 17 | 18.3 | 23 | 24.7 | 93 | 33.3 |
| Chopping or stabbing | 42 | 38.9 | 48 | 44.4 | 18 | 16.7 | 108 | 38.7 |
| Blunt instrument | 11 | 45.8 | 11 | 45.8 | 2 | 8.3 | 24 | 8.6 |
| Beating with fists or feet | 6 | 35.3 | 9 | 52.9 | 2 | 11.8 | 17 | 6.1 |
| Strangulation | 9 | 30.0 | 11 | 36.7 | 10 | 33.3 | 30 | 10.8 |
| Other: Burning\ poisoning or drowning | 3 | 50.0 | 1 | 12.5 | 3 | 37.5 | 7 | 2.8 |
| Total | 124 | 44.4 | 97 | 34.8 | 58 | 20.8 | 279 | 100 |

Number of Charges

61. In relation to the 279 persons whose prosecutions had been completed, 265 (95%) had been accused of only one count of murder (see Appendix 1, Table A9). Only 14 defendants (5%) had been charged with more than one murder (10 with two and 4 with three). While the probability of being convicted of murder rose steeply with the number of charges levelled – half of the 10 charged with two counts were convicted of murder and three of the four who had faced three counts of murder – nevertheless 50 of the 58 (86.2%) convicted of murder had only faced one count.

Number of co-defendants

62. One hundred and sixty-two defendants (58.1%) had faced a charge of murder alone and only 19 (11.7%) were convicted of murder. Those facing a charge alone were far more likely to be convicted of manslaughter. By contrast a third of those with at least one co-defendant were convicted of murder (see Appendix 1, A10). The highest conviction rate occurred where there were two defendants charged, 44 per cent of whom were sentenced to death. However, there was not a steady increase in the chances of being convicted of murder and sentenced to death the more the number of co-defendants rose. While all 10 defendants involved in one killing were sentenced to death, in neither of the two cases with five co-defendants nor in the one case with seven co-defendants were any of the 17 defendants convicted of murder. Of the 58 convicted of murder 40 (69%) had no co-defendant or only one co-defendant.

Victim-defendant relationship

63. In two-thirds of all incidents which led to a person being prosecuted for murder, it had been established that the defendant was known to the victim and a somewhat higher proportion of them had been convicted of murder (see Table 19), although this difference was not statistically significant.³⁸

Table 19
Victim and Offender – Knowledge of each other

| Victim and offender knew each other | Prosecution withdrawn\ Acquitted | | Convicted of manslaughter | | Convicted of murder | | Total | |
|--|---|-------------|----------------------------------|-------------|----------------------------|-------------|---------------|------------|
| | Number | % | Number | % | Number | % | Number | % |
| Yes | 73 | 39.9 | 65 | 35.5 | 45 | 24.6 | 183 | 65.6 |
| No | 31 | 48.4 | 22 | 34.4 | 11 | 17.2 | 64 | 22.9 |
| Not Known | 20 | 62.5 | 10 | 31.3 | 2 | 6.3 | 32 | 11.5 |
| TOTAL | 124 | 44.4 | 97 | 34.8 | 58 | 20.8 | 279 | 100 |

³⁸ $\chi^2 = 8.502, 4df, p < 0.075$. The chi square test is used to determine the significance of differences between independent samples with regard to differences in the distribution of some characteristic. In this case whether the outcome (whether prosecution withdrawn, a conviction for murder or for manslaughter) was significantly different in relation to whether the victim and offender knew each other. The chi square value gives the probability that the distribution could have occurred by chance. It is usual to count as a significant difference, probabilities that are less than 0.05 – that is, that the distribution would not have occurred by chance in more than five per cent of such samples.

64. A more detailed description of the known prior relationships between defendants and victims (see Table 20) reveals that a quarter of defendants had been accused of killing a person with whom they had or had had an intimate relationship. These defendants were half as likely to be acquitted and much more likely – indeed twice as likely – to be convicted of murder than those who had no prior intimate relationship with the victim. This difference was highly statistically significant.³⁹ Indeed, this quarter of defendants accounted for 41.4 per cent (24/58) of all those convicted of murder.

Table 20
Outcome of murder prosecution by victims' relationship to accused

| Relationship of victim to accused | Prosecution withdrawn\ Acquitted | | Convicted Of manslaughter | | Convicted of murder | | Total | |
|--|----------------------------------|-------------|---------------------------|-------------|---------------------|-------------|------------|-------------|
| | Number | % | Number | % | Number | % | Number | % |
| Partner | 3 | 16.7 | 10 | 55.6 | 5 | 27.8 | 18 | 6.5 |
| Child \Step child | 1 | 14.3 | 1 | 14.3 | 5 | 71.4 | 7 | 2.5 |
| Other family member | 8 | 25.8 | 13 | 41.9 | 10 | 32.3 | 31 | 11.1 |
| Former partner or related to former partner | 3 | 30.0 | 4 | 40.0 | 3 | 30.0 | 10 | 3.6 |
| TOTAL INTIMATE RELATIONSHIP | 15 | 22.7 | 28 | 42.4 | 23 | 34.8 | 66 | 23.7 |
| Employer\ employee\ in professional relationship | 4 | 44.4 | 5 | 55.6 | 0 | 0.0 | 9 | 3.2 |
| Neighbour or landlord | 7 | 46.7 | 6 | 40.0 | 2 | 13.3 | 15 | 5.4 |
| Friend | 4 | 50.0 | 4 | 50.0 | 0 | 0.0 | 8 | 2.9 |
| Casual acquaintance | 38 | 50.7 | 19 | 25.3 | 18 | 24.0 | 75 | 26.9 |
| Stranger | 36 | 48.6 | 25 | 33.8 | 13 | 17.6 | 74 | 26.5 |
| Not known | 20 | 62.5 | 10 | 31.3 | 2 | 6.3 | 32 | 11.5 |
| TOTAL OTHER RELATIONSHIP | 109 | 51.1 | 69 | 32.4 | 35 | 16.4 | 213 | 76.3 |
| TOTAL | 124 | 44.4 | 97 | 34.8 | 58 | 20.8 | 279 | 100 |

65. Even though at least a quarter of defendants (26.5%) appeared to have been strangers to the victim, most killings seemed to have taken place after at least some interaction between the parties – a factor which would have helped to identify a suspect. There were very few instances – only 12 (4.3%) in all – where there had been no reported precipitating interaction of any kind prior to the victim being attacked. Most disputes (73.1%) were said to have been

³⁹ Comparing intimate v non-intimate by outcome $\chi^2 = 18.85, 2df, p < 0.000$

initiated by the accused, but in roughly one in eight cases (15.8%) it was the victim who was reported to have initiated the conflict, and in 17 (6.1%) it was unclear who the aggressor was. This was a factor of great importance as regards obtaining a conviction for murder (see Table 21). It was not surprising to find that only one person (2.3%) in a situation where the victim appeared to have initiated the dispute was convicted of murder: the rest were either acquitted (47.7%) or convicted of manslaughter (50%). In contrast, where the dispute had been initiated by the defendant or where there was no precipitating interaction, 25 per cent were convicted of murder.

Table 21
Outcome of prosecution for murder by victim-accused prior interaction

| Initiator of dispute | Prosecution withdrawn\ Acquitted | | Convicted of manslaughter | | Convicted of murder | | Total | |
|--|----------------------------------|-------------|---------------------------|-------------|---------------------|-------------|------------|------------|
| | Number | % | Number | % | Number | % | Number | % |
| Dispute initiated by the accused | 86 | 42.2 | 66 | 32.4 | 52 | 25.5 | 204 | 73.1 |
| Dispute initiated by the victim | 21 | 47.7 | 22 | 50.0 | 1 | 2.3 | 44 | 15.8 |
| Initiating party unclear | 13 | 68.4 | 4 | 21.1 | 2 | 10.5 | 17 | 6.1 |
| No apparent precipitating interaction between accused and victim | 4 | 33.3 | 5 | 41.7 | 3 | 25.0 | 12 | 4.3 |
| TOTAL | 124 | 44.4 | 97 | 34.8 | 58 | 20.8 | 279 | 100 |

Nationality and gender

66. The defendants were overwhelmingly citizens of Trinidad: 270 (96.8%), with four Guyanese citizens and five whose citizenship was not mentioned in the files. Over ninety per cent were male (261=93.5%). Only 18 were females (6.5%). But females accounted for over a fifth of the victims (22.2%). This was to be expected given the much higher clear-up rate for domestically-related murders.

67. Males had killed 55 (88.7%) of the 62 female victims and 94.9% of the male victims. The few females accused of murder killed five per cent of the male victims but 11 per cent of the females. But females were still more likely to have been indicted for killing a male (11 of the 18=61.1%) than a female (7=38.9%). Females were also more likely to have been

indicted for killing a child aged nine or younger (2\18=11.1%), compared to males (9\262=3.5%) and females were much more likely (66.7%) than males (20.4%) to have killed a victim with whom they had had an intimate relationship. Looked at from the other angle, half the female victims (49%) were killed by a person with whom they had an intimate relationship but only one in eight (16%) of the males were killed by an intimate.

68. Nevertheless, females were much less likely than males to have been acquitted (22% compared with 46%), and just as likely to be convicted of murder and sentenced to death as males (see Table 22).

Table 22
Convictions for murder by gender of defendant

| Gender | Prosecution withdrawn\ Acquitted | | Convicted of manslaughter | | Convicted of murder | | Total | |
|--------------|-------------------------------------|-------------|---------------------------|-------------|---------------------|-------------|------------|------------|
| | Number | % | Number | % | Number | % | Number | % |
| Male | 120 | 46.0 | 87 | 33.3 | 54 | 20.7 | 261 | 93.5 |
| Female | 4 | 22.2 | 10 | 55.6 | 4 | 22.2 | 18 | 6.5 |
| TOTAL | 124 | 44.4 | 97 | 34.8 | 58 | 20.8 | 279 | 100 |

69. Furthermore, those who killed female victims were far less likely (27% compared with 52%) to have been acquitted and more than twice as likely (39% compared with 15%) to have been convicted of murder than slayers of men (see Table 23). This was true whether the defendant was male or female.

Table 23
Convictions for murder by gender of defendant and victim

| Defendant\ victim | Prosecution withdrawn\ Acquitted | | Convicted of manslaughter | | Convicted of murder | | Total | |
|--|--|-------------|---------------------------------|-------------|------------------------|-------------|------------|------------|
| | Number | % | Number | % | Number | % | Number | % |
| Male defendant\ Male victim(s) | 102 | 51.5 | 65 | 32.8 | 31 | 15.7 | 198 | 71.0 |
| Female defendant\ Male victim(s) | 3 | 27.3 | 8 | 72.7 | 0 | 0 | 11 | 3.9 |
| Total male victim(s) only) | 105 | 50.2 | 73 | 34.9 | 31 | 14.8 | 209 | 74.9 |
| Male defendant\ female victim(s) | 14 | 28.0 | 20 | 40.0 | 16 | 32.0 | 50 | 17.9 |
| Male defendant\ female and male victims | 4 | 30.8 | 2 | 15.4 | 7 | 53.8 | 13 | 4.7 |
| Female defendant\ female victim(s) | 1 | 14.3 | 2 | 28.6 | 4 | 57.1 | 7 | 2.5 |
| Total with a female victim | 19 | 27.1 | 24 | 34.3 | 27 | 38.6 | 70 | 25.1 |
| TOTAL | 124 | 44.4 | 97 | 34.8 | 58 | 20.8 | 279 | 100 |

Age

70. A high proportion of the accused had been young at the time the offence was committed. Almost a quarter had been under the age of 21 and a half (49.1%) were age 25 or younger. Only 11 defendants (3.9%) were aged 50 or above.⁴⁰ Just one of the 22 defendants aged 17 or younger at the time of the offence was convicted of murder (4.5% - later overturned and acquitted on appeal), but only six were acquitted or the proceedings dropped (27.3%) – by far the lowest acquittal rate in relation to age. Those aged 18 to 36 were more likely to be convicted of murder ($45 \div 186 = 24.2\%$), than those aged 37 and above ($8 \div 53 = 15.1\%$). This meant that a fifth (12) of the 57 persons sentenced to death had been aged 18 to 20 at the time they had committed the offence. And 26 (47%) had been no older than 25.⁴¹

⁴⁰ The age of 18 defendants at the time of offence had not been recorded.

⁴¹ The age at the time of the offence of four defendants sentenced to death had not been recorded.

71. Victims were more widely distributed in age than defendants, a higher proportion were 17 or younger and 50 or older.⁴² The probability of being convicted of murder was highest for the small number of defendants who killed a victim aged nine or younger (5\11=45.5%). On the other hand, none of the 16 defendants who killed a person aged between 10 and 17 was convicted of murder and only 13 per cent (2\11) of those who killed a victim aged between 21 and 25. Thus, of the 57 persons sentenced to death only 11 (19.3%) had killed a victim under the age of 25. Half the victims of those sentenced to death were aged 37 or older.⁴³

Previous Convictions

72. We cannot be confident that the data on previous convictions is complete and accurate, for we had to rely on what happened to be recorded in the DPP's case files. Sixty-three (22.6%) of those indicted for murder are known from this source to have had a previous conviction of whom 24 (8.6%) had a previous conviction for a violent crime. Altogether 37 (58.7% of those with a previous conviction) had previously served a prison sentence (13.3% of the sample). Three of the defendants, according to the records available, had previously been charged with a homicide and one of them previously convicted. None of these three was convicted of murder and sentenced to death. Although a higher proportion of those with no previous convictions were acquitted and fewer convicted of murder, the differences noted in Table 24 were not statistically significant.⁴⁴ In any case, 40 of the 58 convicted of murder (69%) had no prior recorded convictions on the prosecution file; 47 (81%) had not previously served a prison sentence and 50 (86%) apparently had no prior recorded convictions for violent or sexual crime.

⁴² The age of nine victims at the time of the offence was not recorded.

⁴³ The age of four victims of defendants sentenced to death had not been recorded.

⁴⁴ Criminal record v no criminal record $\chi^2 = 3.157$, 2df, $p < 0.206$ NS. Previous prison sentence v no prior prison sentence $\chi^2 = 2.7$, 2df, $p < 0.290$ NS. Previous conviction for violence v no prior violent conviction $\chi^2 = 2.733$, 2df, $p < 0.255$ NS.

Table 24
Convictions for murder by previous record

| Previous criminal record | Prosecution withdrawn\ Acquitted | | Convicted of manslaughter | | Convicted of murder | | Total | |
|--|----------------------------------|-------------|---------------------------|-------------|---------------------|-------------|------------|------------|
| | Number | % | Number | % | Number | % | Number | % |
| No convictions recorded | 100 | 46.3 | 76 | 35.2 | 40 | 18.5 | 216 | 77.4 |
| Previous conviction recorded | 24 | 38.1 | 21 | 33.3 | 18 | 28.6 | 63 | 22.6 |
| Previous prison sentence recorded | 13 | 35.1 | 13 | 35.1 | 11 | 29.7 | 37 | 13.3 |
| Previous conviction for violence\sexual crime recorded | 8 | 33.3 | 8 | 33.3 | 8 | 33.3 | 24 | 8.6 |
| TOTAL | 124 | 44.4 | 97 | 34.8 | 58 | 20.8 | 279 | 100 |

Race of Defendants and Victims

73. Table 25 shows that just under a third of defendants prosecuted for murder were of East-Indian origin, 58 per cent were of African background and one in ten of mixed-parentage.

74. Not only was a smaller proportion of East-Indian defendants acquitted than were defendants of other backgrounds but also a substantially higher proportion (30.7%) of them than defendants of African origin (14.2%) were convicted of murder; a statistically significant difference.⁴⁵ Indeed, while East-Indians made up only 31.5 per cent of defendants, they accounted for 47 per cent of the 58 defendants convicted of murder.

⁴⁵ $\chi^2 = 14.92, 4df, p < 0.005$

Table 25
Outcome of prosecution by race of defendant

| Race of defendant | Prosecution withdrawn\ Acquitted | | Convicted of manslaughter | | Convicted of murder | | Total | |
|-------------------|-------------------------------------|-------------|---------------------------|-------------|---------------------|-------------|------------|------------|
| | Number | % | Number | % | Number | % | N | % |
| East-Indian | 27 | 30.7 | 34 | 38.6 | 27 | 30.7 | 88 | 31.5 |
| African | 85 | 52.5 | 54 | 33.3 | 23 | 14.2 | 162 | 58.1 |
| Mixed parentage | 12 | 41.4 | 9 | 31.0 | 8 | 27.6 | 29 | 10.4 |
| TOTAL | 124 | 44.4 | 97 | 34.8 | 58 | 20.8 | 279 | 100 |

75. The same statistically significant pattern is evident as regards the racial origin of victims.⁴⁶ Those who killed East-Indians – and the very small number who killed a white/European or Chinese person – were much less likely to be acquitted and more likely to be convicted of murder than a person who killed an individual of African origin (Table 26). Those who killed an East-Indian victim accounted for 48 per cent (28/58) of murder convictions although they made up only 32 per cent of the accused.

Table 26
Outcome of prosecution by race of victim

| Race of victim | Prosecution withdrawn\ Acquitted | | Convicted of manslaughter | | Convicted of murder | | Total | |
|--------------------------------|-------------------------------------|-------------|---------------------------|-------------|---------------------|-------------|------------|------------|
| | Number | % | Number | % | Number | % | Number | % |
| East-Indian | 29 | 33.3 | 31 | 35.2 | 28 | 31.8 | 88 | 31.5 |
| African | 86 | 56.2 | 46 | 30.1 | 21 | 13.7 | 153 | 54.8 |
| Mixed parentage | 8 | 25.8 | 17 | 54.8 | 6 | 19.4 | 31 | 11.1 |
| European \white\ Chinese | 1 | 14.3 | 3 | 68.0 | 3 | 68.0 | 7 | 2.5 |
| TOTAL | 124 | 44.4 | 97 | 34.8 | 58 | 20.8 | 279 | 100 |

76. As can be seen from Table 27, the highest rate of murder convictions was secured against East-Indian defendants who killed East-Indian victims: almost forty per cent

⁴⁶ $\chi^2 = 27.75, 8df, p < 0.001$

compared to 12.5 per cent of Africans who killed Africans or persons of mixed African and East-Indian background.

Table 27
Outcome of prosecution by racial characteristics of defendants and victims

| Race of defendant and victim | Prosecution withdrawn\ Acquitted | | Convicted of manslaughter | | Convicted of murder | | Total | |
|---|----------------------------------|-------------|---------------------------|-------------|---------------------|-------------|------------|------------|
| | Number | % | Number | % | Number | % | Number | % |
| East-Indian accused\East-Indian victim(s) | 13 | 23.2 | 21 | 37.5 | 22 | 39.3 | 56 | 20.1 |
| East-Indian accused\African and/or mixed-parentage, or European\Chinese victim(s) | 14 | 43.8 | 13 | 40.6 | 5 | 15.6 | 32 | 11.5 |
| African accused\African and/or mixed-parentage victim(s) | 70 | 54.7 | 42 | 32.8 | 16 | 12.5 | 128 | 45.6 |
| African accused\East-Indian and/or other race victim(s) | 15 | 44.1 | 12 | 35.2 | 7 | 20.6 | 34 | 12.2 |
| Mixed-parentage accused\East-Indian victim and/or European\Chinese victim(s) | 3 | 60.0 | 0 | 0 | 2 | 40.0 | 5 | 1.8 |
| Mixed-parentage accused\African and/or mixed-parentage victim(s) | 9 | 37.5 | 9 | 37.5 | 6 | 25.0 | 24 | 8.6 |
| TOTAL | 124 | 44.4 | 97 | 34.8 | 58 | 20.8 | 279 | 100 |

77. These findings were clearly due to the different proportions of the various types of killing committed by East-Indians. Of the 56 East-Indian defendants accused of killing an East-Indian victim 25 (44.6%) had been in an intimate relationship with that victim, compared to 26 of the 128 (20.3%) of the African defendants accused of killing an African or mixed-race victim. The ‘race’ differences noted may therefore have only been a reflection of the different probabilities of conviction for murder associated with different kinds of killings.

LEGAL DEFENCE

78. It might be assumed that the conviction rate would depend, at least to some extent, on the experience of the Counsel representing the defendant. Only 57 defendants (20.4%) were

represented by a Senior Counsel. They appeared to be not much more successful than more junior counsel in obtaining, by one means or another, the acquittal of their client, as Table 28 shows. But defendants represented by Senior Counsel were rather more successful in obtaining a conviction for manslaughter rather than murder: in fact the conviction rate for murder of those represented by senior counsel was almost half that of the rate obtained in cases represented by more junior counsel. However, this difference was not statistically significant.⁴⁷

Table 28

Outcome of proceedings in prosecutions for murder by seniority of defence counsel

| Seniority of defence counsel | Prosecution withdrawn\ Acquitted | | Convicted of manslaughter | | Convicted of murder | | Total | |
|------------------------------|----------------------------------|-------------|---------------------------|-------------|---------------------|-------------|------------|------------|
| | Number | % | Number | % | Number | % | Number | % |
| Senior Counsel | 28 | 49.1 | 22 | 38.6 | 7 | 12.3 | 57 | 20.4 |
| Not Senior Counsel | 96 | 43.2 | 75 | 33.8 | 51 | 23.0 | 222 | 79.6 |
| TOTAL | 124 | 44.4 | 97 | 34.8 | 58 | 20.8 | 279 | 100 |

ASSESSING THE INFLUENCE OF THE VARIABLES ASSOCIATED WITH CONVICTION FOR MURDER

79. So far we have found evidence that a number of variables were associated with the proportion of defendants who were convicted of murder. But, of course, several of these variables are closely inter-related. For example, if the type of murder was gang or drug-related it was far more likely to have been carried out with a firearm than other types of murder. Similarly, the ethnic origin of defendants was related to the frequency of conviction for murder, the highest rate being for East-Indian defendants who killed East-Indian victims. But ethnic origin was also related to type of murder, a higher proportion of those committed by East-Indian defendants on East-Indian victims were carried out in the context of a domestic relationship, or of an intimate. Such killings were more likely to result in a conviction for murder. These two variables are therefore not independent of each other. Similarly, the finding relating to Senior Counsel may have been the result of Senior Counsel

⁴⁷ $\chi^2 = 3.15$, 2df, $p < 0.207$ NS. When comparing convicted of murder v not convicted of murder (prosecution withdrawn\acquitted plus convicted of manslaughter) the difference was much closer to being significant at the 0.05 level. $\chi^2 = 3.15$, 1df, $p < 0.076$.

having been retained more often for defendants charged with the types of killings that had a lower probability of being convicted of murder.

80. In order to find out which were the most influential variables associated with a conviction for murder it was necessary to use multivariate analysis. A logistic regression analysis calculated which variables best predicted the dependant variable – in this case whether a murder had or has not ended with a conviction for murder – and showed how the probability (odds) of being so convicted was affected by the presence or absence of a particular variable. For each defendant it calculated the probability that he or she would be convicted of murder, and this made it possible to group defendants into categories with different levels of probability of being convicted for murder.

81. As the data relating to the characteristics of the cases indicted for murder and of the defendants has shown, those charged with ‘domestic’ murders; those charged with murders committed during the commission of another crime, typically robbery; those committed by firearms or strangulation; those who murdered intimates; those who initiated the dispute that led to death; males who killed females; those charged with more than one killing; those with a co-defendant; East-Indians who killed other East-Indians; and defendants not represented by Senior Counsel, were more likely to have been convicted of murder and sentenced to death. The regression analysis took 13 variables,⁴⁸ with 46 attributes, into account and weighed their relative influence in affecting the probability of a defendant being convicted of murder. Five variables were left in the final model, each with a statistically significant relationship with a conviction for murder:

- type of murder: whether gang-related, committed during the commission of a crime, domestic-related, interpersonal conflict
- co-defendants: none or more
- counts of murder: one or more than one
- victim’s sex: male or female
- race of accused and victim(s):
 - African accused\ African or mixed parentage victim(s)
 - East-Indian accused\ East-Indian victim(s)
 - East-Indian accused\other race victim(s)
 - African accused\other race victim(s)
 - Mixed-parentage accused\other race victim(s)

⁴⁸ The variables mentioned in paragraph 80 plus: age of defendant, gender of defendant, previous conviction, whether victim and defendant knew each other.

82. It should be noted, that when these variables were taken into account, neither the method of killing, who had initiated the dispute, whether there was a prior intimate relationship, nor the seniority of Counsel added anything to the discriminant power of the variables left in the model.

83. The logistic regression model identified correctly 94.1% of those not convicted of murder and 53.4 per cent of those convicted of murder – an overall 85.7 per cent correct classification. When we grouped each defendant's probability of being convicted for murder into seven bands, it was seen that almost a third of the persons indicted and prosecuted in the High Court for a recorded murder had a probability of actually being convicted of murder of .05 (5%) or lower (see Table 29). Indeed, 58 per cent of those indicted had, according to the model, a probability of no more than 20 per cent of being convicted of murder. In other words, 80 per cent of such persons escaped a murder conviction. At the other end of the scale only 5 per cent of defendants were identified who had at least a 58 per cent probability of being convicted for murder.

84. As regards the 57 persons convicted of murder and mandatorily sentenced to death, Table 29 reveals that 12 of them (21%) had a probability, according to the model, of being convicted of murder of 0.21 or lower: the average probability of the 12 sentenced to death being 0.12 (12%). Altogether 26 (46%) of those sentenced to death belonged to a category of defendants who had less than a 50 per cent chance of being convicted of murder – the very low and the low to medium groups combined in Table 29. In fact, the average probability of being convicted of murder and sentenced to death of these 26 defendants was only 0.21 (21%). The fate of those who were convicted of murder and sentenced to death in this group could certainly not be said to be 'even-handed' when compared with other defendants with similar case characteristics who had been indicted for murder. Indeed, in such cases a death sentence could be regarded as 'presumptively excessive'.⁴⁹ Thirty-one of the 57 (55%) sentenced to death had an average probability of receiving such a fate of 60 per cent, but only eight of the 57 belonged to a category of cases where it might be said that their treatment was reasonably 'even-handed': i.e. the characteristics of their cases meant that their average

⁴⁹ In his famous study of discretionary death sentencing in Georgia in the United States, David Baldus and his colleagues argued that where offenders convicted of murder were in a category where less than 0.35 were sentenced to death, such a sentence would be 'presumptively excessive'. See David Baldus, George Woodworth and Charles Pulaski, *Equal Justice and the Death Penalty. A Legal and Empirical Analysis*, Boston: Northeastern University Press, 1990, p. 60.

probability of being mandatorily sentenced to death after being indicted for murder was 0.72 or 72 per cent.⁵⁰

Table 29
Probability of a defendant indicted for murder being convicted of murder

| Probability | Number of persons indicted for murder | Percentage of cases indicted for murder | Average (mean) probability of a murder conviction | Average (mean) probability of those actually convicted of murder | Number convicted of murder and sentenced to death | Percentage of those convicted of murder |
|--|---------------------------------------|---|---|--|---|---|
| 0.05 or lower | 88 | 31.5 | | | 3 | 5.3 |
| >0.05 to 0.13 | 52 | 18.6 | | | 4 | 7.0 |
| >0.13 to 0.21 | 22 | 7.9 | | | 5 | 8.8 |
| TOTAL very low: 0.21 or lower | 162 | 58.1 | 0.07 | 0.12 | 12 | 21.1 |
| Low >0.21 to 0.30 | 54 | 19.4 | | | 8 | 14.0 |
| Medium-low >0.30 to 0.46 | 17 | 6.1 | | | 6 | 10.5 |
| TOTAL low to medium: >0.21 to 0.46 | 71 | 25.4 | 0.28 | 0.30 | 14 | 24.6 |
| Medium-high >0.46 to 0.58 | 32 | 11.5 | | | 23 | 40.4 |
| High >0.58 to 0.87 | 14 | 5.0 | 0.72 | 0.73 | 8 | 14.0 |
| TOTAL Medium-high to high > 0.46 to 0.87 | 46 | 16.5 | 0.59 | 0.60 | 31 | 54.4 |
| Total | 279 | 100 | | | 57 | 100 |

85. The logistic regression analysis (see Appendix II, Model 1) also revealed that:

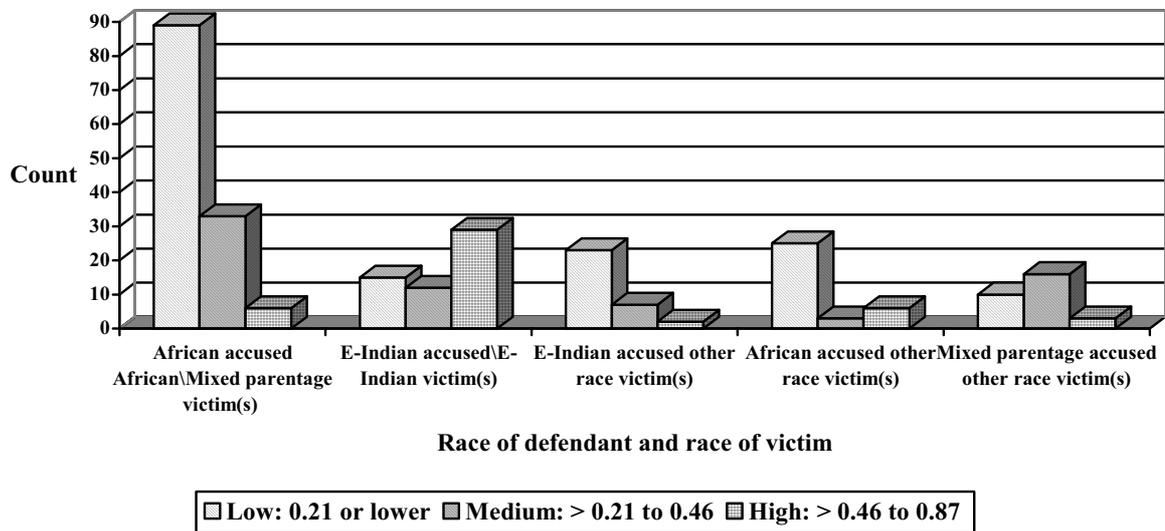
- those who had been charged with more than one count of murder were, as to be expected, significantly more likely (with odds 5.3 times greater) than those with only one count of being convicted of murder.⁵¹
- those with at least one co-defendant were 6.55 times more likely to be convicted of murder (i.e if one was convicted the other was more likely to be convicted as well).⁵²

⁵⁰ Baldus *et al* at p. 60 suggested that it would only be ‘presumptively evenhanded’ to sentence a person to death when all those with similar case characteristics had a probability of being sentenced to death of 0.80 and over. For a discussion of this study see Roger Hood, *The Death Penalty* (3rd ed. 2002), pp. 190-200.

⁵¹ $p < 0.011$

- the odds of a defendant of East-Indian descent who killed an East-Indian victim being convicted of murder was nearly four times (odds of 3.84) that of a defendant of African descent who killed an African victim.⁵³
- the odds of a defendant who had killed during the commission of another crime or had killed in a domestic situation were both significantly higher than for defendants who had killed during an altercation: 3.04 and 5.5 times respectively.⁵⁴

Figure 4
Proportionate probability of conviction for murder
by race of defendant and victim



86. We attempted to assess the relative influence of ‘race of defendant and victim’ and ‘type of murder’. Figure 4 shows that a higher proportion of East-Indians whose victim was an East-Indian fell into the highest category of risk of being convicted of murder than any other racial combination of defendant and victim. This is because, as Table 30 illustrates, a much higher proportion of East-Indian defendants with East- Indian victims – 7 out of 10 – had committed murders during the commission of another crime or a murder in a domestic setting: the types of murders with the highest probability of leading to a conviction for murder. In comparison, just over four out of 10 defendants of African descent who had killed African victims had committed such murders.

⁵² p< 0.000

⁵³ p< 0.003

⁵⁴ Homicide during another crime p< 0.031; homicide in domestic situation p<0.003

Table 30
Proportion of different types of murder committed by ‘defendant and victim’s’ race

| Type of murder | African\African and mixed-parentage | | East-Indian\ East-Indian | | East-Indian\ African and other | | African\ East-Indian and other | | Mixed\ parentage and other | | Total | |
|------------------------|-------------------------------------|------------------|--------------------------|------------------|--------------------------------|------------------|--------------------------------|------------------|----------------------------|------------------|------------|------------|
| | N | % of murder type | N | % of murder type | N | % of murder type | N | % of murder type | N | % of murder type | N | % |
| Gang-related | 17 | 13.3 | 0 | 0.0 | 2 | 6.3 | 0 | 0.0 | 4 | 13.8 | 23 | 8.2 |
| During other crime | 33 | 25.8 | 20 | 35.7 | 12 | 37.5 | 21 | 61.6 | 4 | 13.6 | 90 | 32.3 |
| Domestic-related | 20 | 15.6 | 19 | 33.9 | 6 | 18.8 | 3 | 18.8 | 8 | 27.6 | 56 | 20.1 |
| Interpersonal conflict | 58 | 45.3 | 17 | 30.4 | 12 | 37.5 | 10 | 29.4 | 13 | 44.8 | 110 | 39.4 |
| TOTAL | 128 | 100 | 56 | 100 | 32 | 100 | 34 | 100 | 29 | 100 | 279 | 100 |

87. But while the proportion of East-Indian defendants convicted of those types of murder that *might* be likely to result in a conviction for murder was higher, was a higher proportion of them *actually* convicted of murder? To test this we compared the proportions of those defendants who were East-Indian who had killed East-Indians in a domestic setting or during the commission of another crime that had been convicted of murder and sentenced to death with the proportions of defendants in any other racial combination of defendant and victim convicted of these crimes that had been convicted of murder and sentenced to death (Table 31). No differences were found among those who had been convicted of murder in a domestic situation or a murder arising from an inter-personal conflict. In other words, the differences in the outcome between East-Indian defendant\East-Indian victim cases and ‘other race defendants\other race victims’ combinations was due to the higher proportion of the former cases being prosecuted for the types of murder most likely to lead to a conviction for murder. The much higher proportion of East-Indian\East-Indian defendants convicted of murder when prosecuted for a crime committed during the commission of another offence can mostly be explained by the fact that 9 of the 14 East-Indians who killed an East-Indian victim were co-defendants in the same case. They had kidnapped a man for whom they had demanded a ransom of TT\$5 million, but failing to get paid they had shot him, burned his body and left his head in a box.

Table 31

Proportion convicted of murder by race of defendant\race of victim and type of homicide

| Defendant\victim by type of murder | Not convicted of murder | | Convicted of murder | | Total | |
|--|-------------------------|-------------|---------------------|-------------|------------|------------|
| | Number | % | Number | % | Number | % |
| East Indian\East Indian and gang-related homicide | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Other race combination and gang-related homicide | 18 | 73.8 | 5 | 21.7 | 23 | 8.2 |
| East Indian\East Indian and homicide <i>during commission of another crime</i> | 6 | 30.0 | 14 | 70.0 | 20 | 7.2 |
| Other race combination and homicide <i>during commission of another crime</i> | 58 | 82.9 | 12 | 17.1 | 70 | 25.1 |
| East Indian\East Indian and homicide in <i>domestic situation</i> | 12 | 63.2 | 7 | 36.8 | 19 | 6.8 |
| Other race combination and homicide in <i>domestic situation</i> | 24 | 64.9 | 13 | 35.1 | 37 | 13.3 |
| East Indian\East Indian and homicide during <i>interpersonal conflict</i> | 16 | 94.1 | 1 | 5.9 | 17 | 6.1 |
| Other race combination and homicide during <i>interpersonal conflict</i> | 87 | 93.5 | 6 | 6.5 | 93 | 33.3 |
| TOTAL | 221 | 79.2 | 58 | 20.8 | 279 | 100 |

88. When the *observed* numbers convicted for murder for either a domestic homicide or a homicide committed during another crime was compared with the *expected* number, taking into account the other characteristics of the cases that could have affected the conviction rate as calculated by the regression analysis, a

relatively small difference was found (see Table 32). Thus, there was only a slightly higher probability of East-Indian defendants who killed East-Indian victims being convicted of murder for these types of homicide. The evidence therefore suggests that the most powerful influence on the racial differences in the probability of being convicted of murder found in this study lies in the type of murders they are prosecuted for rather than in any direct racial discrimination.

Table 32

Observed and Expected rates of conviction for murder in domestically-related homicides and homicides during the commission of another crime. Comparison of East-Indian defendant\East-Indian victim(s) cases with other defendant\victim racial combinations

| Race of defendant and victim | Observed number convicted of murder | Expected number convicted of murder | Percentage difference Observed - Expected\Expected |
|---|--|--|---|
| East-Indian defendant\East-Indian victim(s) N = 39 | 21 | 19.7 | + 6.6 |
| Other defendant\victim(s) N = 107 | 25 | 26.1 | - 4.2 |
| Total | 46 | 46 | |

CONVICTION FOR HOMICIDE – MANSLAUGHTER OR MURDER?

89. Leaving aside all the indictments for murder in which the prosecution withdrew the charge, the court directed an acquittal and a jury acquitted the defendant, was there evidence of arbitrariness in whether defendants who were convicted of a homicide were convicted of murder or manslaughter?

90. In order to answer this question, another logistic regression analysis was undertaken on the 155 defendants who were convicted of *either* murder or manslaughter. The regression equation took into account 13 variables with 41 attributes,⁵⁵ and seven variables were left in the final model, which predicted 81.3 per cent of the decisions (72.4% of those convicted of murder and 86.6% of those

⁵⁵ Type of murder, counts of murder, co-defendant(s) or not, method of killing, victim and offender known to each other, intimate relationship, initiator of dispute, defendant's gender, defendant's and victim's gender, age of defendant, defendant's criminal record or not, race of defendant and victim, seniority of defence counsel.

convicted of manslaughter, see Model 2, Appendix II).⁵⁶ It should be noted that seniority of defence counsel was again eliminated from the model.

91. The analysis revealed the following statistically significant findings:

- That the few cases (only 7) of gang-related homicides were much more likely (with odds 38.3 times) to be convicted of a murder than those convicted of a ‘altercation’ murder.⁵⁷
- That those convicted of a domestically-related homicide were 4.1 times more likely to be convicted of murder than an ‘altercation murder’.⁵⁸
- Those with one or more co-defendants were 14.4 times more likely to be convicted of murder than those who were charged alone.⁵⁹ But this finding was greatly affected by the fact that in one case there were 10 defendants charged with the same offence, all of whom were convicted of murder and sentenced to death.
- The odds of a male defendant who killed a female victim or victims being convicted of murder rather than manslaughter were 4.4 times higher than those of males who killed only other males.⁶⁰
- Those that had a previous criminal conviction recorded in the DPP file were 4.2 times more likely to be convicted of murder than those without a conviction recorded.⁶¹
- East-Indian defendants who had killed an East-Indian victim or victims were 5.1 times more likely to be convicted of murder rather than manslaughter than an African Trinidadian who had killed a victim of African or from any other racial group.⁶²

92. The probability of being convicted of murder rather than manslaughter was calculated for each person and we grouped these probabilities into five bands. This showed (see Table 33) that over a third of those convicted of homicide (38.7%) had a very low probability of being convicted of murder. Indeed only 5 of the 60 in this category were so convicted. At the other end of the scale of probabilities, one in six

⁵⁶ The seven variables were: type of murder; co-defendant(s) or not; did victim and offend know each other; initiator of the dispute; gender of defendant and victim; defendant previously convicted or not; race of defendant and victim. Nagelkerke $R^2 = 0.53$

⁵⁷ $p < 0.007$

⁵⁸ $p < 0.061$ NS but approaching a significant difference at the 0.05 level.

⁵⁹ $p < 0.000$

⁶⁰ $p < 0.006$

⁶¹ $p < 0.008$

⁶² $p < 0.012$

(16.8%) had a very high probability of being convicted of murder (81% or higher). Of those actually sentenced to death a fifth (21.1%) had a probability of such a fate of 0.35 (35%). In their cases, a conviction for murder could in Professor Baldus's words be said to be 'presumptively excessive'. In other words, their case characteristics were more like those that had been convicted of manslaughter than those who had been convicted of murder. Another 10 (17.5%) had a probability on average of around 50 per cent. Less than half (44%) of those sentenced to death had characteristics which predicted that at least 81 per cent of them would receive such a penalty. The outcome in these cases was, as David Baldus would have put it, 'presumptively even-handed'.⁶³ These findings suggest, therefore, that not all those subject to a mandatory death sentence for murder share the same characteristics. In other words, there is a degree of arbitrariness in the system which ought to be taken into account in sentencing decisions.

Table 33
Probability of a defendant convicted of homicide being convicted of murder and being sentenced to death

| Probability | Number of persons convicted of homicide | Percentage of cases convicted of homicide | Average (mean) probability of a conviction for murder | Average (mean) probability of those actually convicted of murder | Number convicted of murder and sentenced to death | Percentage of those convicted of murder |
|---------------------------------|---|---|---|--|---|---|
| 0.17 or lower | 60 | 38.7 | 0.06 | 0.11 | 5 | 8.8 |
| >0.17 to 0.35 | 27 | 17.4 | 0.27 | 0.30 | 7 | 12.3 |
| TOTAL low: 0.35 or lower | 87 | 56.1 | 0.13 | 0.22 | 12 | 21.1 |
| Medium: >0.35 to 0.64 | 23 | 14.8 | 0.48 | 0.51 | 10 | 17.5 |
| High: >0.64 to 0.81 | 19 | 12.3 | 0.70 | 0.68 | 10 | 17.5 |
| Very high: = >0.81 | 26 | 16.8 | 0.87 | 0.87 | 25 | 43.9 |
| Total | 155 | 100 | | | 57 | 100 |

⁶³ See footnotes 49 and 50 above.

93. The fact that we have, through statistical analysis, been able to identify a group of cases among those convicted of homicide, most of whom at one end of the scale were convicted of manslaughter, and at the other end of the scale of murder, does not necessarily mean that all those convicted of manslaughter have been guilty of lesser crimes than those convicted of murder and vice-versa. For example, the fact that very few 'altercation' homicides resulted in a murder conviction does not mean that some of them were not very serious offences, as discussed in paragraph 105 below. Nor can it be assumed that all those convicted of murder and sentenced to death had committed the very worst kinds of homicide.

94. The implications of the findings presented in Parts II and III of this report for the use of the death penalty as a mandatory punishment for murder in Trinidad and Tobago are discussed in the final section.

Chapter Four

CONCLUSIONS AND IMPLICATIONS OF THE FINDINGS FOR THE DEATH PENALTY

THE MAIN CONCLUSIONS

95. Several important findings stand out from this research:

- First: the overall very low rate of conviction for murder in relation to the total number of murders recorded by the police, and especially when related to the estimated number of those who might have committed these murders. One could truly say, that the majority of those who unlawfully killed in the period covered by this study did ‘get away with murder’.
- Second: that even amongst those who are arrested, charged, found to have a case to answer in the Magistrates’ Courts, indicted and prosecuted by the Director of Public Prosecutions, only one in five defendants were found guilty of murder. Even bearing in mind that undoubtedly some of those indicted whose cases were withdrawn or who were found not guilty may have been innocent or rightly acquitted because of reasonable doubt, this is still a low ‘success rate’ by any measure, and furthermore a success rate that appeared to be falling.
- Third: there were substantial differences in the proportions of unlawful killings of different types that were convicted of murder. Those defendants whose alleged crimes arose from inter-personal conflicts outside of a domestic setting, who accounted for almost 40 per cent of the indictments, were extremely unlikely (only 1 in 16) to be convicted of murder; those who had been indicted for killing during the commission of another crime, such as robbery and kidnapping were more likely (29%) to have been convicted of murder, but even so, 70 per cent of them were not. On the other hand, four out of 10 of those prosecuted for a murder that arose from a domestic dispute were convicted of murder and mandatorily sentenced to death.

- Fourth: that even when a number of legally relevant variables were taken into account that were related to the likelihood of being convicted for murder, the majority (58%) of cases indicted for murder had a probability of being convicted of that crime of 0.21 (21%) or less. Indeed nearly a third of them had a probability of 0.5 (5 per cent or less). At the other end of the scale only one in six defendants (16.5%) had a probability of over 0.46 (46%) of being successfully prosecuted for murder, and for most of those the probability was not higher than 0.58 (58%).
- Fifth: among those convicted of murder and mandatorily sentenced to death, a fifth belonged to a category of cases, the characteristics of which predicted that the risk of being convicted of murder was 0.21 or lower; 35 per cent to a category with a probability of 0.30 or lower; and 45 per cent with a probability of 0.46 or lower. At the other end of the scale only 8 of the 57 persons mandatorily sentenced to death had characteristics that predicted that on average that 72 per cent of them would be sentenced to death. Thus, there was clear evidence of a high degree of arbitrariness in the fate of defendants prosecuted for murder.
- Sixth: there was a high rate (44%) of failure of prosecutions for murder, either through the prosecution being abandoned or through the jury acquitting the defendant. This was particularly apparent in gang or drug-related killings where the State failed to obtain a conviction for either murder or manslaughter against 70 per cent of defendants indicted for this type of murder. The State also failed to obtain a conviction against 56 per cent of defendants indicted for murder arising from a non-domestic altercation.
- Seventh: where prosecutions resulted in a conviction, they were more likely, overall, to be through a conviction for manslaughter rather than for murder. Of the 155 completed cases where a prosecution had resulted in a conviction 97 (63%) were convicted of manslaughter, in three-quarters of cases through acceptance of a guilty plea by the prosecution, and in a quarter by the jury after being found not guilty of murder. This pattern was most marked when prosecutions for murder were mounted against persons accused of killing during a non-domestic inter-personal altercation, the largest category of unlawful killing among those prosecuted. Of the 49

defendants convicted of this kind of homicide, 85 per cent were convicted of manslaughter and only 15 per cent of murder.

- Eighth, leaving aside those whose cases were not proceeded with or who were acquitted, there was evidence to show that among those convicted of murder rather than manslaughter, less than a half had case characteristics that predicted that most of them would be convicted of murder. A fifth of those convicted of murder had a low probability that this would be their fate.

IMPLICATIONS FOR PUBLIC POLICY

Deterrence

96. It is a well-established axiom of penal policy that penal sanctions can only be effective in deterring those who contemplate crime if they are applied with a high degree of certainty and without too long a delay. Certainty is the prerequisite rather than severity. And delays of several years between a crime and the punishment of an offender, as occurs in Trinidad and Tobago, blunts the perceived connection between the two, let alone producing problems of memory, loss of interest, and, it appears, possibilities of suborning witnesses. Severity only occasionally inflicted will fail to have an impact on those who are willing to take risks.⁶⁴ The matter is further complicated when the risks of death, as appears to be the case in Trinidad and Tobago as regards gang and drug-related activity and in inter-personal conflicts, may appear to be much higher by not striking out against an opponent than by doing so. The fact that only five per cent of murders recorded by the police between 1998 and 2002 had by the end of 2002 resulted in a conviction for murder and a mandatory sentence of death, and that even the proportion of defendants prosecuted for murder whose death sentences stand after appeal is only 8 per cent (23/279, see paragraph 54), indicates how unlikely that penalty is to be as an effective deterrent to all types of murder.

97. It is ironic that the very type of murder which is perhaps least likely to be the result of carefully planned crime, namely those arising largely from jealousy, passion, loss of temper and revenge in a domestic or post-domestic relationship where emotion usually over-rules consideration of the threat of later punishment, is

⁶⁴ For a review of the evidence relating to the general deterrent effects of capital punishment, see Roger Hood, *The Death Penalty. A Worldwide Perspective*, 3rd ed. Oxford University Press, 2002, pp.208-232.

the type of killing most likely to end up with a conviction for murder. But even here, the study of such killings recorded by the police shows that of the 93 cases in which proceedings had been completed (see Table 10, page 24 above) only 17 (18%) had resulted in a murder conviction and of those actually prosecuted nearly 60 per cent evaded conviction for murder and sentence to death. All the evidence suggests therefore that the problem faced by law enforcement in Trinidad and Tobago is to increase the certainty of punishment. The occasional and long delayed mandatory sentence to death is very unlikely to add weight to the deterrent effectiveness of a poorly enforced criminal law.

Equity and Fairness

98. It is a paramount principle of justice that it should be administered fairly and equitably between like cases. Discussion of this issue usually refers to discretionary sentencing decisions once a person has been found guilty of a crime, but it is also relevant to the issue of conviction if the *system* of law enforcement and administration of criminal justice works in such a way that the result is one where the vagaries of the process are such that there is a high degree of chance and arbitrariness in the outcome, especially where the outcome is a mandatory death sentence. The implications of the findings of this study are inescapable – the chances of a person who committed a murder in Trinidad and Tobago suffering sentence to death was very rare. Even among those brought to justice the majority of persons had only a low probability of being convicted of murder and sentenced to death. Infliction of the death sentence was therefore both rare and arbitrary. To borrow the words of Justice Potter Stewart of the United States Supreme Court in the famous case of *Furman v Georgia* in 1972, whether a person is convicted of murder and sentenced to death in Trinidad and Tobago can be regarded as ‘cruel and unusual in the same way that being struck by lightning is cruel and unusual’.⁶⁵

The ‘worst of the worst’?

99. Most countries that have retained the death penalty have subscribed to the view that it can only be imposed on those who commit the ‘worst of the worst’ murders.⁶⁶ In the United States of America, the statutes of those states that retain capital punishment have defined broadly the categories or characteristics of

⁶⁵ *Furman v Georgia* 408 U.S. (1972), 92 *Supreme Court Reporter* 1972 at 308.

⁶⁶ For a discussion of what might constitute a ‘worst of the worst’ case under a discretionary death penalty law, see, Edward Fitzgerald Q.C., ‘The mitigation exercise in capital cases’ in *Proceedings of the Death Penalty Conference* 3rd - 5th June 2005, Barbados. London: Simons, Muirhead and Burton, 2006.

murders that are ‘death eligible’ and have put in place a trial system that provides discretion to the prosecutor whether or not to seek the death sentence and to the jury as to whether the convicted person should be sentenced to death. Even so this has not protected the system from being accused of arbitrariness and discrimination in the application of capital punishment.⁶⁷ In India, the Supreme Court has laid it down that the death penalty should be reserved for ‘the worst of the worst cases’⁶⁸ and should never be applied mandatorily.⁶⁹ Closer to home, the Inter-American Commission on Human Rights⁷⁰ and the U.N. Human Rights Committee⁷¹ have held that a mandatory death penalty is in breach of the international conventions on the grounds that consideration of ‘potential mitigating circumstances of offenders and offences is a condition *sine qua non* for the non-arbitrary and humane imposition of capital punishment’.⁷² The Eastern Caribbean Court of Appeal as well as the Judicial Committee of the Privy Council have decided that a mandatory death sentence amounts to ‘cruel and degrading punishment and treatment’ on the grounds that it gives no opportunity for the Court to take into account the individual circumstances of the case.⁷³ In line with article 6(2) of the International Covenant on Civil and Political Rights, which states that where the death penalty still exists it should be reserved for ‘the most serious offences’ most countries have accepted that the category of murder is too wide to be treated as a common entity in which all cases are of equal heinousness.

100. The findings of this study certainly show that in practice the death penalty falls most often on certain types of murder, those committed between intimates often in domestic situations, and those committed during commission of another

⁶⁷ See Roger Hood, *The Death Penalty*, pp. 172-207.

⁶⁸ *Bachan Singh v State of Punjab* 2 SCJ [1980] 474 at 524 and [1983] 1 SCR 145 at 252 and 256

⁶⁹ Murder committed by a life-sentenced convict was made subject to a mandatory death penalty by the Indian Penal Code (Section 303). This was struck down in 1983 by the Supreme Court of India in *Mithu v Punjab* because ‘it deprived the Court of its wise and beneficent discretion in a matter of life and death ... So final, so irrevocable and so irresistible is the sentence of death that no law which provides for it without involvement of the judicial mind can be said to be fair, just and reasonable.’ *Supreme Court Reports* (1983) 2 S.C.R. at pp. 692-693.

⁷⁰ *Hilaire v Trinidad and Tobago*, Inter-American Commission Report 66\99 (1999)

⁷¹ *Thompson v St Vincent and the Grenadines* (2000), UN doc. CCPR\C\70\D906\ 1998, which held that the mandatory death penalty breached Article 6 (1) – the right to life – of the International Covenant on Civil and Political Rights.

⁷² In *Baptiste v. Grenada*, Inter-American Commission Report 38\00 (2000), para 59.

⁷³ *Spence and Hughes v The Queen*, Appeal No 20 of 1998, Eastern Caribbean Court of Appeal, Judgment 2 April 2001; *The Queen v. Peter Hughes* [2002] UKPC 12, para. 30; *Berthill Fox v. Queen* [2002] UKPC 13; *Patrick Reyes v. The Queen* [2002] UKPC 11, para. 43.

crime. The majority of those convicted of murder whose prosecutions began during 1998-2002 were, as far as we could ascertain, not persons with criminal histories marked by convictions for violence.⁷⁴ The death penalty is rarely enforced for gang or drug-related crimes, largely because the perpetrators are usually immune from law enforcement.⁷⁵ Nor is it often enforced for homicides arising from quarrels between citizens. This is either because witnesses do not come forward and the case therefore cannot proceed, if they do come forward the prosecution often accepts a guilty plea to manslaughter, or the jury brings in an acquittal.⁷⁶ Furthermore, the multi-variate regression analysis proved that a substantial proportion of those actually sentenced to death belonged to a category of cases among whom the probability of being convicted of murder was low. And even restricting the comparison to those actually convicted of a homicide, there was among those sentenced to death a substantial minority whose case characteristics predicted a low probability that they would be convicted of murder – the circumstances of their cases were more like those of defendants who were mostly convicted of manslaughter. Thus, although it is true that among the 57 defendants sentenced to death there were a substantial minority with a very high probability that they would be convicted of murder rather than manslaughter, equally there were others where the characteristics of the case were associated with a low probability of a murder conviction and who did not appear to be very different from many defendants who were not convicted of murder.

101. It is difficult to imagine that citizens of Trinidad and Tobago, faced with these facts, would find it possible to come to the conclusion that the system of mandatory death sentences has ensured that *every one* of the murders that have resulted in a death sentence are among the ‘worst of the worst’ that have been committed and prosecuted.

⁷⁴ And although the probability, if convicted of a homicide, of being convicted of murder rather than manslaughter was significantly higher for those with a recorded prior conviction (see paragraph 91), the fact remained that 40 of the 58 (69%) of those convicted of murder had no recorded previous conviction in the prosecution file (see paragraph 72).

⁷⁵ Although the probability of being convicted of murder rather than manslaughter, was significantly higher among the very few – 7 only – who were convicted of a gang-related homicide (see paragraph 91), only 5 of the 57 mandatorily sentenced to death had been convicted of a gang-related murder.

⁷⁶ Of the 110 persons indicted for a murder arising from an ‘altercation’ (see Table 15 above) the prosecution were either unable to proceed or an acquittal was directed in 29% of cases, in 26.4% the prosecution accepted a guilty plea to manslaughter, in 26.4% the jury acquitted the defendant of murder and in 6.5% the jury returned a verdict of manslaughter.

102. Furthermore, because the *system* as it operates produces a pattern of murder convictions biased towards certain types of unlawful killing, those who are of East-Indian descent who kill East-Indian victims are far more likely to be sentenced to death than persons of African descent who kill African victims.

Efficiency

103. It cannot be doubted that great difficulties have been faced by the prosecution authorities in Trinidad and Tobago in bringing cases before the courts and obtaining convictions. The reasons are well documented in the Trinidadian press and have recently been frankly identified by the Director of Public Prosecutions.⁷⁷ “Witnesses intimidation appears to be a key factor” along with the “heavy reliance on the oral evidence of eyewitnesses and insufficient emphasis on objective and/or scientific evidence as a means of establishing guilt.”⁷⁸ Not only do witnesses sometimes fail to come forward when it comes to the trial, even when they do they may be reluctant to testify. The situation is not helped by the long delays that occur between the killing and the trial. That convictions have been easier to obtain in cases that involved domestic disputes is understandable because there are usually no gangs or other parties likely to threaten witnesses or put pressure on jurors. Notwithstanding the problem of intimidation, it is the experience of other jurisdictions that witnesses are sometimes also reluctant to testify where they believe that a conviction for murder would lead automatically to the imposition of the death penalty. Similarly, jurors may be more reluctant to convict a person of murder where the consequence will be a death sentence and will choose instead to convict of manslaughter even when the facts indicate that the blows were struck or the weapon used deliberately. And prosecutors of course can also use their discretion to accept a guilty plea to manslaughter, and are especially likely to do so if they believe that the prospects of conviction for murder at a jury trial are relatively low and that a mandatorily imposed death sentence would be unwarranted given the facts of the case. In other words what amounts to a kind of sentencing discretion shifts from the court down to witnesses, prosecutors and jurors. In England and Wales and Canada, for example, murder convictions were

⁷⁷ Letter from Mr G. Henderson, Director of Public Prosecutions, dated 29 June 2005 to the Editor of the *Trinidad and Tobago Newsday*, in response to an article by Francis Joseph published on 26 June 2005 entitled ‘No murder convictions for 2005 – Accused Persons Walking Free.’

⁷⁸ See, Geoffrey Henderson, ‘Public Confidence in the Criminal Justice System and Crime Reduction’, Paper presented to a conference held at the Centre for Criminology and Criminal Justice, UWI, St Augustine Campus, February 2006.

much easier to obtain after capital punishment was abolished.⁷⁹ Killings that result directly from altercations between the parties concerned leave room for interpreting the killing as a response to provocation or as a result of blows delivered in a fight that were not intended to cause grievous bodily harm or kill, the essential facts to prove in order to convict a person of murder rather than manslaughter as a result of bodily harm arising from gross negligence, provocation or diminished responsibility.

104. It will be recalled that 97 (35%) of the 279 defendants in completed prosecutions for murder had been convicted of manslaughter after either a plea being accepted by the prosecution or a finding by a jury. An indication of the gravity of these cases and of the weight given to mitigating factors may be deduced from the sentences imposed by the Court (see Table 34).

⁷⁹ See Roger Hood, *The Death Penalty. A Worldwide Perspective*, pp. 215-223.

Table 34

Sentences imposed for manslaughter in cases indicted for murder

| Sentence | Number | Per cent |
|--|---------------|-----------------|
| Life imprisonment | 3 | 3.1 |
| Determinate sentence of imprisonment | 76 | 78.4 |
| Mental hospital order (indeterminate) | 9 | 9.3 |
| Boys' residential home | 1 | 1.0 |
| TOTAL CUSTODIAL | 89 | 91.8 |
| Bond to keep the peace | 5 | 5.2 |
| Psychiatric out-patient care plus a bond | 3 | 3.1 |
| TOTAL NON-CUSTODIAL | 8 | 8.3 |
| TOTAL | 97 | 100 |

105. In addition to the three sentenced to life imprisonment (2 whose guilty plea had been accepted by the prosecution and one convicted by a jury) 18 defendants were sentenced to imprisonment for 10 years or more in addition to the considerable periods of time they had spent in custody awaiting trial (14 in guilty plea to manslaughter cases and 4 in cases where the jury returned a manslaughter verdict). The longest prison term imposed on these 21 defendants was 30 years. It is apparent from the lower sentences – ranging from a few non-custodial dispositions to imprisonment for less than 10 years – imposed on the remaining 76 manslaughter convictions that the decisions of the DPP to accept a guilty plea to manslaughter and of juries to acquit of murder and convict of manslaughter indicates that these were not among the worst cases of homicide. However, it is possible (we have no means of knowing for certain) that some or all of the 21 offenders who received long prison terms on conviction for manslaughter would have been convicted of murder had there not been a mandatory sentence of death. The judicial comments in the following five cases, by The Hon Justice Volney and The Hon Justice Moosai, illustrate the disadvantage of an inflexibility of the law of murder when tied to a mandatory death penalty.

Example 1. Addressing the defendant in *The State v Elias Robin Henry*, who had been found guilty of stabbing a young man to death, The Hon Justice Volney said: "... the Jury has found you guilty of the lesser offence of manslaughter ... The evidence on which they could have found that you were provoked was that you were short paid by one dollar; that when you brought this to the attention of the deceased, who was then a 16-year-old man – sorry, boy, and at the time when he had come out of your maxi taxi that you were driving, this is what he did and this is what he said to you: "I came in at Arouca," meaning that the fare that he had to pay was the correct fare and the fare that you were demanding was the wrong fare. This is borne out by two prosecution witnesses. You insisted, against the weight of evidence, that you told him no, that he came in at Tunapuna, to which he replied "You are an old man, you stupid or what, I came in at Arouca. You must be drunk or what". And after you told him you don't drink or smoke, he again replied, "Is Arouca I came from boy", and then you didn't say what was the curse, but you said he cursed you. You then opened the driver's door, took out your key from the ignition, took a knife, which was exhibited in this court, which looking at it alone is enough to drive shivers into any human being, and you went up to him saying that you wanted your fucking money. This is you, a maxi taxi driver in this country, priority Bus Route or no priority Bus Route.

You pushed him, according to you, with your hands and he said "All right, all right I would pay you". You got your money, your one dollar, and it was then on the evidence, clear evidence it would seem to me, that you inflicted a stab wound in the heart of the deceased thereby ending 16 years of his life.

The jury finding you not guilty of murder means that you have seen the luckiest day of your life, because if in this country today a maxi taxi driver would react to those words and that conduct of no more than a boy by arming himself deliberately, the purpose of mind, and proceed assaulting the boy for a dollar, a passenger for one dollar, and after you got your dollar, you deliberately stabbed him to death, if a Jury finds that, as this Jury has done, finds that the reasonable man, meaning that every taxi driver out there would be entitled or excused in murdering a passenger – I beg your pardon, let me correct myself, because the Jury have found you not guilty of murder – of unlawfully killing a passenger, then Lord have mercy on this country and people who travel on maxi taxis.

It pains me to understand how twelve adults, which is their right under the law of this country to return a verdict like this, could find that the reasonable man, sober, expected to have the self-control of a 46-year-old man, would arm himself with a knife and deliberately go and kill a young passenger even after the passenger, on the evidence, appeared to be right.

The jury may have given you mercy by their verdict. But I can find no mercy for you. And I must send a message to the public out there, including every maxi taxi driver in this country, and it is this: If they follow your example and they get a verdict as merciful as you have gotten from a jury of their peers, then it is the duty and function of the Judge to ensure that the right message is nonetheless sent to them, which is that they can expect a severe sentence of years of incarceration, which I propose to do so, to impose in order to level the two arms of justice... You are sentenced to 30 years with hard labour commencing today".

Example 2 Sentencing a man convicted in *State v Ricardo Marshall, Dillon Baptiste and Nimrod Phagoo* of taking part in the killing of a young shopkeeper during a robbery, the State having accepted a guilty plea to manslaughter. The Hon

Justice Volney addressed one of the defendants as follows: “I have no doubt in my mind that it would have been a perverse verdict indeed if a jury, having the opportunity to reflect on the evidence, would have found you guilty of anything short of capital murder. But the State for reasons better known to it, has accepted your plea of guilty to the lesser alternative of manslaughter, and it is for manslaughter that I have to sentence you ... Citizens will not feel safe unless persons of your ilk are put away for a very long time so that ... persons who contemplate that sort of criminal activity will know that the reward for robbery is not \$400, more or less, but a maximum term of imprisonment if they come in my court ... So to deter others, and having regard to all that has been put forward on your behalf, the sentence of this Court for you is that you will serve a term of 20 years with hard labour, commencing today”.

Example 3 The State had accepted a plea of guilty to manslaughter in the case of *The State v Beverley Pierre*, where a female servant invited some men into the house “to rob the deceased [an elderly woman] and give her some ‘licks’”. The Hon Justice Moosai stated: “... the Court must take a very serious view of people who counsel or procure people to cause harm to others, particularly as there is a likelihood that death may result ... Another aggravating factor in this case is that the deceased was tortured in a manner that no rational human being can imagine ... Another aggravating factor is that this torture was inflicted on an old woman aged 65 years at the time. I think that you deserve to be punished in the harshest possible manner so that others who may be minded to follow suit would think twice ... I am of the view that the appropriate sentence in this matter is that you be sentenced to a term of imprisonment for life. I further declare that you ought not to be released before a period of 25 years ... The sentence is to be served with hard labour and ... is to commence from today”

Example 4 After the defendant in *The State v Albert Neptune* was found not guilty of murder by the jury but guilty of manslaughter by reason of provocation by the jury for chopping to death the mother of his child, inflicting fourteen wounds including a chop wound to the skull opening the skull... as well as injuries that left one shoulder of the deceased almost severed, the Hon Justice Volney, in sentencing him to 12 years hard labour, stated: “It would seem to me that this was little more than a spontaneous reaction to provocation. And on the Prosecution’s case the evidence of provocation was you making the statement “Oh, God you are horning me”. If this Court does not show that the law cannot countenance the chopping of women folk because they ‘horn’ or choose to be with another man who they want to be with, then it will be granting an open savannah, a recipe, for men to continue chopping women in this country ... It would seem to me that the jury found you, they gave you mercy as it were by not finding you guilty of murder. And your cup overfloweth with mercy, it has overflowed with the mercy of the jury by finding you, on that evidence, guilty of manslaughter by reason of provocation

Example 5 In *State v Emmanuel King*, a case involving a man aged 34 who shot a man who was chasing him following an altercation about some money that the brother of the victim had said had been exchanged by the defendant but was later found to be forged, the jury found him guilty of manslaughter by reason of provocation. The Hon Justice Volney stated that “As such it is my duty to sentence you on the basis that you had lost your self-control and at the time while it is that you may have even operated with the intention to kill or to cause grievous bodily harm the jury in its wisdom has excused your behaviour and hence the verdict of manslaughter ... Because you were carrying this firearm without a Firearm User’s Licence and your use of it, I consider these factors that militate against the

mitigation that has been put forward by your attorney, and for that reason I consider it important that in sentencing you as I do [to 15 years hard labour starting from today] I will let others know that if they arm themselves with illegal firearms then they stand to suffer the consequences of a term of imprisonment which will be on the greater as opposed to the lesser end of the judge's sentencing".

SUMMATION

106. It may well be that if the death penalty were abolished, or failing that the mandatory death penalty, witnesses, prosecutors and juries would be more likely to make sure that those accused of murder who are guilty of murder are convicted of murder and not of a lesser offence. The greater certainty of conviction for murder might prove to be a more effective deterrent and greater certainty of punishment would bring with it greater uniformity and fairness in the administration of justice. The evidence adduced by this study adds weight to the arguments of those who maintain that the retention of the mandatory death penalty for murder in Trinidad and Tobago serves no useful purpose, is arbitrary and unfair in its enforcement, and may well be counterproductive.

107. Indeed, it is clear that the problem of high and escalating lethal violence in Trinidad and Tobago cannot be 'fixed' by executing occasionally a tiny fraction of those who commit murder. The solution must lie in tackling the economic and social conditions that have given rise to the problem, the cultural factors that support the use of deadly force as a means of resolving disputes, the reasons why law enforcement by the police is so ineffective and why so many homicides remain unsolved, and if 'solved' fail to result in a conviction. These broader, vital issues, which of course affect convictions for other grave crimes as well, were beyond the scope of a study that focused on convictions for murder and the use of the mandatory death penalty. But no one can doubt that these questions are urgently in need of independent impartial investigation as a basis for effective political action.

APPENDIX I
ADDITIONAL TABLES

Table A1: Location of the killing

| | Number | Per cent |
|---|------------|------------|
| Domestic dwelling of the victim | 182 | 28.8 |
| Domestic dwelling of the suspect or other residence | 48 | 7.6 |
| In the street | 181 | 28.6 |
| Other public space | 73 | 11.5 |
| Commercial premises | 46 | 7.3 |
| Public building or institution | 11 | 1.7 |
| Bar or drinking venue | 11 | 1.7 |
| Place unknown – body dumped elsewhere | 81 | 12.8 |
| TOTAL | 633 | 100 |

Table A2: Time of the killing recorded by the police

| | Number | Per cent |
|---------------------|------------|------------|
| 2.31 am to 6.30am | 51 | 8.1 |
| 6.31 am to 12.30 pm | 134 | 21.2 |
| 12.31 to 17.30 pm | 105 | 16.6 |
| 17.31 to 21.30 pm | 172 | 27.2 |
| 21.31 to 2.30 am | 157 | 24.8 |
| Time not recorded | 14 | 2.2 |
| TOTAL | 633 | 100 |

Table A3: Day of the killing recorded by the police

| | Number | Per cent |
|--------------|------------|------------|
| Monday | 91 | 14.4 |
| Tuesday | 93 | 14.7 |
| Wednesday | 90 | 14.2 |
| Thursday | 78 | 12.3 |
| Friday | 105 | 16.6 |
| Saturday | 114 | 18.0 |
| Sunday | 62 | 9.8 |
| TOTAL | 633 | 100 |

Table A4: Age of victims of recorded murders 1998-2002

| | Number | Per cent |
|----------------------|---------------|-----------------|
| 30 months or younger | 10 | 1.6 |
| 3 to 9 years | 13 | 2.1 |
| 10 to 17 | 27 | 4.3 |
| 18-20 | 44 | 7.0 |
| 21-25 | 98 | 15.5 |
| 26-36 | 198 | 31.3 |
| 37-49 | 143 | 22.6 |
| 50-90 | 95 | 15.0 |
| Age unknown | 5 | 0.8 |
| TOTAL | 633 | 100 |

Table A5: Race of victims as recorded by the police

| | Number | Per cent |
|----------------------|---------------|-----------------|
| African | 384 | 60.7 |
| East-Indian | 155 | 24.5 |
| Mixed descent | 66 | 10.4 |
| Other | 8 | 1.2 |
| Not stated by police | 20 | 3.2 |
| TOTAL | 633 | 100 |

Table A6: Number of suspects identified by the police

| | Number | Per cent |
|-------------------------|---------------|-----------------|
| No suspect identified | 274 | 43.3 |
| One suspect identified | 286 | 45.2 |
| Two suspects identified | 39 | 6.2 |
| Three identified | 23 | 3.6 |
| Four identified | 5 | 0.8 |
| Five identified | 3 | 0.5 |
| Six or seven identified | 2 | 0.4 |
| Seven identified | 1 | 0.2 |
| TOTAL | 633 | 100 |

Table A7
Type of murder by method of killing

| Type of murder | Gunshot wound | | Knife/cutlass axe etc | | Blunt Instrument | | Beating with fists or feet | | Strangulation Asphyxiation | | Other\burning Drowning\poisoning | | TOTAL | |
|---|---------------|-------------|--------------------------|-------------|---------------------|-------------|----------------------------------|------------|-------------------------------|------------|-------------------------------------|------------|------------|------------|
| | N | % | N | % | N | % | N | % | N | % | N | % | N | % |
| Gang-related dispute | 19 | 90.5 | 0 | 0 | 2 | 9.5 | 0 | 0 | 0 | 0 | 0 | 0 | 21 | 3.3 |
| Drug-related dispute | 23 | 82.1 | 2 | 7.1 | 1 | 3.6 | 0 | 0 | 1 | 3.6 | 1 | 3.6 | 28 | 4.4 |
| Assassination | 107 | 97.3 | 2 | 1.8 | 1 | 0.9 | 0 | 0 | 0 | 0 | 0 | 0 | 110 | 17.3 |
| Body found unknown motive | 18 | 42.9 | 8 | 19.0 | 9 | 21.4 | 0 | 0 | 5 | 11.9 | 2 | 4.8 | 42 | 6.6 |
| All gang\drug related murders | 167 | 83.1 | 12 | 6.0 | 13 | 6.5 | 0 | 0 | 6 | 3.0 | 3 | 1.5 | 201 | 31.8 |
| Committed during course of another crime including sexual offence | 70 | 48.3 | 32 | 22.1 | 13 | 9.0 | 2 | 1.4 | 27 | 18.6 | 1 | 0.7 | 145 | 23.0 |
| Related to a domestic dispute | 17 | 16.0 | 41 | 38.7 | 20 | 18.9 | 8 | 7.5 | 7 | 6.6 | 13 | 12.2 | 106 | 16.7 |
| Other inter- personal dispute or altercation | 47 | 27.2 | 85 | 49.1 | 25 | 14.5 | 7 | 4.0 | 4 | 2.3 | 5 | 3.0 | 173 | 27.3 |
| By police or security officer | 3 | 100 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | 0.5 |
| Killing of bystanders | 5 | 100 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 5 | 0.8 |
| Total other inter- personal dispute | 55 | 30.4 | 85 | 47.0 | 25 | 13.8 | 7 | 3.9 | 4 | 2.2 | 5 | 2.8 | 181 | 28.6 |
| TOTAL | 309 | 48.8 | 170 | 26.9 | 71 | 11.2 | 17 | 2.7 | 44 | 7.0 | 23 | 3.6 | 633 | 100 |

Table A8: Outcome of prosecution by type of homicide N = 279 completed prosecutions

| Type of homicide | Prosecution withdrawn | | Acquitted | | Convicted of manslaughter | | Convicted of murder | | Total prosecuted | |
|---|-----------------------|-------------|-----------|-------------|---------------------------|-------------|---------------------|-------------|------------------|-------------|
| | N | % | N | % | N | % | N | % | N | % |
| Domestic dispute | 1 | 2.1 | 7 | 14.9 | 19 | 40.4 | 20 | 42.6 | 47 | 16.8 |
| Domestic contract killing | 0 | 0.0 | 6 | 75.0 | 2 | 25.0 | 0 | 0.0 | 8 | 2.9 |
| Infanticide | 0 | 0.0 | 0 | 0.0 | 1 | 100 | 0. | 0.0 | 1 | 0.4 |
| TOTAL DOMESTIC RELATED | 1 | 1.8 | 13 | 23.2 | 22 | 39.3 | 20 | 35.7 | 56 | 20.1 |
| During commission of a non-sexual crime | 4 | 4.9 | 24 | 29.3 | 29 | 35.4 | 25 | 30.5 | 82 | 29.4 |
| During sexual attack | 0 | 0.0 | 5 | 62.5 | 2 | 25.0 | 1 | 12.5 | 8 | 2.9 |
| TOTAL DURING COMMISSION OF ANOTHER CRIME | 5 | 1.1 | 29 | 32.2 | 31 | 34.4 | 26 | 28.9 | 90 | 32.3 |
| Gang/drug related dispute | 9 | 45.0 | 7 | 35.0 | 2 | 10.0 | 2 | 10.0 | 20 | 7.2 |
| Gang related contract killing | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 3 | 100 | 3 | 1.1 |
| TOTAL GANG/DRUG RELATED | 9 | 39.1 | 7 | 30.4 | 2 | 8.7 | 5 | 21.7 | 23 | 8.2 |
| Non-domestic interpersonal altercations | 14 | 13.3 | 44 | 41.9 | 40 | 38.1 | 7 | 6.7 | 105 | 37.6 |
| Inter-personal contract killing | 1 | 100.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 | 1 | 0.4 |
| Shot by police/security officer | 0 | 0.0 | 1 | 33.3 | 2 | 66.7 | 0 | 0 | 3 | 1.1 |
| TOTAL INTER-PERSONAL RELATED | 15 | 13.6 | 45 | 40.9 | 42 | 38.2 | 7 | 6.4 | 110 | 39.4 |
| TOTAL | 29 | 10.4 | 95 | 34.1 | 97 | 34.8 | 58 | 20.8 | 279 | 100 |

Table A9: Outcome of prosecution by number of charges

| Number of charges | Prosecution withdrawn\Acquitted | | Convicted of manslaughter | | Convicted of murder | | Total | |
|-------------------|---------------------------------|-------------|---------------------------|-------------|---------------------|-------------|------------|----------------------|
| | Number | % | Number | % | Number | % | Number | % of completed cases |
| One | 120 | 45.3 | 95 | 35.8 | 50 | 18.9 | 265 | 95.0 |
| Two | 3 | 30.0 | 2 | 20.0 | 5 | 50.0 | 10 | 3.6 |
| Three | 1 | 2.5 | 0 | 0.0 | 3 | 75.0 | 4 | 1.4 |
| Total | 124 | 44.4 | 97 | 34.8 | 58 | 20.8 | 279 | 100 |

Table A10: Outcome of prosecution by number of co-defendants

| Number of co-defendants | Prosecution withdrawn\Acquitted | | Convicted Of manslaughter | | Convicted of murder | | Total | |
|-------------------------|---------------------------------|-------------|---------------------------|-------------|---------------------|-------------|------------|----------------------|
| | Number | % | Number | % | Number | % | Number | % of completed cases |
| No co-defendant | 77 | 47.5 | 66 | 40.7 | 19 | 11.7 | 162 | 58.1 |
| One co-defendant | 18 | 37.5 | 9 | 18.8 | 21 | 43.8 | 48 | 17.2 |
| Two co-defendants | 19 | 45.2 | 15 | 35.7 | 8 | 19.0 | 42 | 15.1 |
| Four co-defendants | 5 | 50.0 | 5 | 50.0 | 0 | 0.0 | 10 | 3.6 |
| Six co-defendants | 5 | 71.4 | 2 | 28.6 | 0 | 0.0 | 7 | 2.5 |
| Nine co-defendants | 0 | 0.0 | 0 | 0.0 | 10 | 100.0 | 10 | 3.6 |
| Total | 124 | 44.4 | 97 | 34.8 | 58 | 20.8 | 279 | 100 |

Table A11: Defendant's gender and victim's gender of persons indicted for murder 1998-2002

| Defendant's gender | Male victim | | Female victim | | Total | |
|--------------------|-------------|--------------|---------------|-------------|------------|------------|
| | N | Per cent | N | Per cent | N | Per cent |
| Male | 206 | 78.9 | 55 | 21.1 | 261* | 93.5 |
| Female | 12 | 66.7 | 6 | 33.3 | 18 | 6.5 |
| Total | 218 | 78.18 | 61 | 22.2 | 279 | 100 |

- Including 13 males who had killed both male and female victims

Table A12: Age of defendant at the time of the offence by outcome for defendants indicted for murder 1998-2002

| Age of defendant | Prosecution withdrawn\Acquitted | | Convicted of manslaughter | | Convicted of murder | | Total | |
|---------------------|---------------------------------|-------------|---------------------------|-------------|---------------------|-------------|------------|------------|
| | N | % | N | % | N | % | N | % |
| 17 years or younger | 6 | 27.3 | 15 | 68.2 | 1 | 4.5 | 22 | 7.9 |
| 18 – 20 years | 20 | 46.5 | 11 | 25.6 | 12 | 27.9 | 43 | 15.4 |
| 21 – 25 years | 40 | 55.6 | 18 | 25.0 | 14 | 19.4 | 72 | 25.8 |
| 26 – 36 years | 26 | 36.6 | 26 | 36.6 | 19 | 26.8 | 71 | 25.4 |
| 37 – 49 years | 16 | 38.1 | 19 | 45.2 | 7 | 16.7 | 42 | 15.1 |
| 50 – 61 years | 4 | 36.4 | 6 | 54.5 | 1 | 9.1 | 11 | 3.9 |
| Unknown | 12 | 66.7 | 2 | 11.1 | 4 | 22.2 | 18 | 6.5 |
| TOTAL | 124 | 44.4 | 97 | 34.8 | 58 | 20.8 | 279 | 100 |

Table A13: Age of victim at the time of the offence by outcome for defendants indicted for murder 1998-2002

| Age of victim | Prosecution withdrawn\Acquitted | | Convicted of manslaughter | | Convicted of murder | | Total | |
|--------------------|---------------------------------|-------------|---------------------------|-------------|---------------------|-------------|------------|------------|
| | N | % | N | % | N | % | N | % |
| 9 years or younger | 4 | 36.4 | 2 | 18.2 | 5 | 45.5 | 11 | 3.9 |
| 10 -17 years | 9 | 56.3 | 7 | 43.8 | 0 | 0.0 | 16 | 5.7 |
| 18 – 20 years | 6 | 54.5 | 3 | 27.3 | 2 | 18.2 | 11 | 3.9 |
| 21 – 25 years | 16 | 51.6 | 11 | 35.5 | 4 | 12.9 | 31 | 11.1 |
| 26 – 36 years | 38 | 48.7 | 26 | 33.3 | 14 | 17.9 | 78 | 28.0 |
| 37 – 49 years | 35 | 50.0 | 18 | 25.7 | 17 | 24.3 | 70 | 25.1 |
| 50 – 97 years | 13 | 24.5 | 28 | 52.8 | 12 | 22.6 | 53 | 19.0 |
| unknown | 3 | 33.3 | 2 | 22.2 | 4 | 44.4 | 9 | 3.2 |
| TOTAL | 124 | 44.4 | 97 | 34.8 | 58 | 20.8 | 279 | 100 |

APPENDIX II
REGRESSION ANALYSES

Model 1: Probability of a defendant indicted for murder being convicted of murder.

| Observed | Predicted | | |
|--------------------------------------|-------------------------|---------------------|--------------------|
| | Not convicted of murder | Convicted of murder | Percentage correct |
| Step 5 Not convicted of murder (221) | 208 | 13 | 94.1 |
| Convicted of murder (58) | 27 | 31 | 53.4 |
| Overall percentage | | | 85.7 |

Percentage of variance explained as measured by the Nagelkerke statistic in Step 5: 35.2%. 2Log likelihood: 213.882

Variables remaining in the Equation

| | <i>B</i> | <i>S.E</i> | <i>Sig.</i> | <i>Exp(B)</i> |
|--|----------|------------|-------------|---------------|
| Step 5 | | | | |
| <i>Type of homicide^b</i> | | | .024 | |
| Gang-related | 1.090 | .699 | .119 | 2.973 |
| During commission another crime | 1.113 | .515 | .031 | 3.044 |
| Domestic-related | 1.708 | .567 | .003 | 5.519 |
| <i>Race of defendant and victim^c</i> | | | .004 | |
| E-Indian def.\any other race victim(s) | -.550 | .628 | .381 | .577 |
| African def.\any other race victim (s) | -.381 | .653 | .560 | .683 |
| Mixed-parentage def \any other race victim(s) | .910 | .547 | .097 | 2.484 |
| E-Indian def\E-Indian victim(s) | 1.346 | .449 | .003 | 3.843 |
| <i>Female victim^e</i> | 1.050 | .429 | .014 | 2.856 |
| <i>One or more co-defendants^a</i> | 1.880 | .449 | .000 | 6.552 |
| <i>Two and more counts of murder^d</i> | 1.670 | .657 | .011 | 5.311 |
| Constant | -4.083 | .557 | .000 | .017 |

- a.* Variable (s) entered on step 1: Number of co-defendants. Reference group, no co-defendant.
- b.* Variable (s) entered on step 2: Type of homicide. Reference group, inter-personal altercation.
- c.* Variable (s) entered on step 3: Race of defendant and victim. Reference group, African defendants\African and other race victim(s).
- d.* Variable (s) entered on step 4: Counts of murder. Reference group, 1 count of murder.
- e.* Variable (s) entered on step 5: Victim's gender. Reference group, male victim.

Model 2: Probability of a defendant convicted of a homicide (manslaughter or murder) being convicted of murder

| Observed | Predicted | | |
|---------------------------------------|---------------------------|---------------------|--------------------|
| | Convicted of manslaughter | Convicted of murder | Percentage correct |
| Step 7 Convicted of manslaughter (97) | 84 | 13 | 86.6 |
| Convicted of murder (58) | 16 | 42 | 72.4 |
| Overall percentage | | | 81.3 |

Percentage of variance explained as measured by the Nagelkerke statistic in Step 7: 53%. 2Log likelihood: 128.735

Variables remaining in the Equation

| | B | S.E | Sig. | Exp(B) |
|---|--------|-------|------|--------|
| Step 7 | | | | |
| Type of homicide ^b | | | .034 | |
| Gang-related | 3.645 | 1.342 | .007 | 38.289 |
| During commission another crime | .852 | .702 | .225 | 2.344 |
| Domestic-related | 1.420 | .759 | .061 | 4.139 |
| Co-defendants ^a | | | | |
| One or more co-defendants | 2.666 | .668 | .000 | 14.376 |
| Victim and defendant know each other ^d | | | | |
| No | -1.648 | .591 | .005 | .192 |
| Initiator dispute ^c | | | | |
| Accused | 2.532 | 1.162 | .029 | 12.575 |
| Defendant's and victim's gender ^e | | | .012 | |
| Male defendant\female victim (s) | 1.491 | .545 | .006 | 4.440 |
| Female defendant \male and female victim (s) | -.410 | .877 | .640 | .664 |
| Defendant's criminal record or not ^f | | | | |
| Previous convictions in DPP files | 1.447 | .547 | .008 | 4.249 |
| Race of defendant and victim ^g | | | .037 | |
| E-Indian def.\all other race victim(s) | -.506 | .844 | .548 | .603 |
| African def.\all other race victim (s) | .352 | .735 | .632 | 1.421 |
| Mixed-parentage def\all other race victim(s) | 1.326 | .787 | .092 | 3.766 |
| E-Indian def\E-Indian victim(s) | 1.620 | .642 | .012 | 5.054 |
| Constant | -6.141 | 1.399 | .000 | .002 |

- a. Variable (s) entered on step 1: Number of co-defendants. Reference group, no co-defendant.
b. Variable (s) entered on step 2: Type of homicide. Reference group, inter-personal altercation.
c. Variable (s) entered on step 3: Initiator of dispute. Reference group, victim.
d. Variable (s) entered on step 4: Victim and defendant know each other. Reference group, yes.
e. Variable (s) entered on step 5: Defendant's and victim's gender. Reference group, male defendant, male victim.
f. Variable (s) entered on step 6: Defendant's criminal record or not. Reference group, no convictions recorded.
g. Variable (s) entered on step 7: Race of defendant and victim. Reference group, African defendant\ African and other race victim(s).

A report to the Death Penalty Project in association with Simons Muirhead & Burton and Penal Reform International

simons muirhead & burton



This report is based on a detailed study of all cases of homicide recorded by the police as murder in the years 1998 to 2002, and on all cases in which a person was committed for trial on indictment for murder in the same years. It provides for the first time an analysis of the kinds of murder that were committed in Trinidad and Tobago in these years and the extent to which they resulted in a conviction for murder and a mandatory death sentence.

Among the many findings, it reveals:

- The sharp rise in ‘gang-related’ and ‘drug-related’ killings and the very high proportion of them – 82 per cent – in which no suspect was identified.
- The very low proportion of all murders – one in twenty – that had resulted in a conviction for murder and the relatively high proportion where the prosecution had failed through being withdrawn or as a result of acquittal.
- The low proportion of convictions for murder – one in five defendants – among those indicted for murder, and an even lower proportion (less than one in 10) after appeals had been heard.
- That, among those indicted for murder, convictions for murder were highest amongst those arising from a domestic dispute, and where both the victim and defendant were of East-Indian origin. A conviction for murder was very rare where the killing had arisen from an ‘altercation’ between citizens: a conviction for manslaughter was much more common.
- That, in relation to the characteristics of the cases indicted for murder, there was a great deal of variability in the chances that the defendant would be convicted of murder and sentenced to death. It was clear that not all those convicted of murder had committed offences that would be regarded as ‘the worst of the worst’.

And therefore that:

- The certainty of conviction for murder is so low that a mandatory death penalty cannot be an effective deterrent to murder.
- Under the system of criminal justice as it operates in Trinidad and Tobago, there is a great deal of arbitrariness affecting which defendants are convicted of murder and sentenced to death and this means that a mandatory death sentence is inequitable.
- The existence of a mandatory death penalty may itself be one of the factors affecting the ability of the system to secure convictions for murder.