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Crime and Punishment in the Turks and Caicos Islands

This Week

Article

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Geography and Governance

The Turks and Caicos Islands (TCI) are part of the British Overseas Territories in the Caribbean, situated some 575 miles south-east of Miami. The TCI are part of the Bahamas chain and cover some 193sq miles (430sq km). The total population was 34,862 in 2007, made up of about 34 *per cent* of indigenous "Belonger" population and the rest being "non-Belongers". TCI have been a British crown colony since May 31, 1962, though the Governor of the Bahamas had governance over the TCI until Jamaican independence in 1973. Since then, TCI have been a constitutional self-governing part of the British Overseas Territories (OT), with Queen Elizabeth II as the sovereign.

TCI has a ministerial system of government, comprising a Governor, the executive and the legislative council. The Governor retains responsibility for internal security, external affairs, defence, the public service and offshore finance; he also appoints the judiciary, the Attorney General (AG) and the Chief Secretary. There is a locally elected Premier as head of government and the TCI Parliament is called the "House of Assembly", comprising the Speaker, 15 elected members, four appointed members and the AG.

The two main political parties are the Progressive National Party (PNP), and the Peoples' Democratic Movement (PDM). Loosely defined, the PNP resembles the conservatives and the PDM the labour party. The policies of both parties are fairly parochial, resembling English local or parish councils. About 9,000 "Belongers" were eligible to vote at the February 2007 general election, where the PNP party was returned with a substantial majority, winning 60 *per cent* of the votes, and 13 of the 15 seats in the House of Assembly. The next general election is due in 2011. Full Parliamentary Assembly meetings are held three times a year.

Legislation

Like all Overseas Territories (OT), the TCI's legal system is based on English common law, though Jamaican and Bahamian custom laws still exist. The court system comprises the magistrates' court, the supreme court, court of appeal — all of which sit in the TCI — with the final court of appeal being the Privy Council in Westminster (see: *Kellar v. William* [1998] Privy Council Appeal No.42 of 1998).

Since the European Convention on Human Rights and Fundamental Freedoms (“the Convention”) came into force in England and Wales by way of the [Human Rights Act 1998](#) on October 2, 2000, the British Overseas Territories are expected to comply fully with the Convention as well as all other international human rights instruments. Article 3 ECHR is particularly relevant in relation to law enforcement on the TCI and equally art.19 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which requests regular reports on the treatment of persons in police or prison custody.

Crime

i) Types of crime

There exists an adversarial criminal justice system. Classification of offences follows English procedural and criminal justice legislation, such as the [Criminal Justice Act 2003](#) or the [Criminal Justice and Immigration Act 2008](#) (forthcoming — currently a Bill before Parliament at third reading stage). All defendants are brought before a TCI magistrates' court on Providenciales “Provo” island which has recently seen the installation of a new direct court video system linking the justices' bench to HMP Grand Turk on the neighbouring island. Full trials and “preliminary inquiries” still require the prisoner to appear at court in person — though the Supreme Court burnt down in October 2007. Rules of evidence also follow English law supplemented by TCI secondary legislation in form of statutory instruments (eg, Turks and Caicos Islands Order 1987 for “Proceedings in Other Jurisdictions” — [SI 1987/1266](#)).

By far the most serious offences on TCI involve international organized crime, such as drug trafficking and money laundering, prosecuted under the Proceeds of Crime Act 1998 supplemented by the [Proceeds of Crime Act 2002](#) and the TCI Proceeds of Crime Money Laundering Regulations 1999. Confusingly for local law enforcement officials, there exists an abundance of banking and financial services legislations to fight money laundering on the TCI and to stop the financing of terrorist organizations (eg, [Criminal Justice \(International Co-operation\) Act 1990](#); Enforcement of Overseas Forfeiture Orders and Amendment Order 1996 — [SI 1996/2878](#)).

Declaration of items left in bank safety deposit boxes is not yet compulsory and coupled with the abundance of proceeds of crime-type legislation existent on TCI, it is difficult to regulate and oversee the financial sector, and therefore lends itself to being a tax and money laundering haven from operations overseas. Though, theoretically, [s.442](#) of the Proceeds of Crime Act 2002 brings the power to disclose information for overseas territorial purposes within the scope of the provisions of the [Anti-Terrorism, Crime and Security Act 2001](#) (as well as the Anti-Terrorism (Financial and Other Measures) (Overseas Territories) Order 2002).

The problem of law enforcement and investigation in the areas of money laundering remains, resting on the fact that the offence is criminalised by four statutes on TCI. Money laundering offences extend to proceeds derived from all serious (indictable) offences, the *mens rea* requirements are “knows or has reasonable cause to suspect”, self-laundering is covered, and corporate bodies can also be held liable for money laundering. This means that drug and non-drug money laundering regimes run parallel and issues of consistency arise.

The International Monetary Fund (IMF) led an enormous investigation into the financial services industry and

money laundering allegations on TCI in 2003. The ensuing IMF Report of 2005 recommended that TCI urgently need to harmonize and unify all applicable money laundering offences by removing the distinctions between drug and non-drug money laundering, and consolidating all legislation into one statute for the TCI and other OTs, that govern the criminalization of money laundering.

ii) Money laundering and law enforcement

Extradition laws should make the extradition of wanted suspects easier, though the practice proves very difficult indeed (the [Extradition Act 1989](#) was enhanced and amended by the Terrorism Act 2005 and the Extradition (Overseas Territories) Order 2002).

The reality of law enforcement in this area of law remains complex and local law enforcement officers are often confused. As the following case of *R. v. Hape* [2007] shows. The law report stems from the Canadian Supreme Court and features a high profile money-laundering case involving TCI: "*R. v. Hape* [2007] SCC 26 of June 7, 2007 on appeal from the Ontario Court of Appeal, [2005] O.J. No.3188".

In 1996, Royal Canadian Mounted Police (RCMP) officers commenced an investigation of the accused, Lawrence Richard Hape, a Canadian businessman, for suspected money laundering activities on the Turks and Caicos Islands (TCI). The RCMP sought permission from the TCI law enforcement authorities to conduct parts of their investigation on the TCI, where the accused's investment company was located.

Detective Superintendent L of the Turks and Caicos Police Force in charge of the criminal investigation, agreed to allow the Canadian police to continue the investigation on TCI territory, but warned the RCMP officers that he would be in charge, and that the Canadian officers would be working under his authority. The investigation took over a year. On each occasion the accused's offices were searched, L was with them. The largest "sting" undercover raid took place in March 1998.

At his trial, Mr Hape argued in his defence that the TCI police never produced search or seizure warrants. The Crown adduced documentary evidence that the police had gathered from the records of the accused's office and the RCMP officers testified that they were aware there were no warrants authorizing the searches of Mr Hape's premises; that they had relied on L's expertise and advice regarding the legalities of investigations conducted on the TCI. The Canadian force firmly believed that there were warrants in place for the covert operations. At no point in the trial did the TCI police adduce any evidence of search and seizure warrants.

At his appeal at the Canadian Supreme Court, *post* conviction for money laundering, Mr Hape argued that the police operation conducted without a warrant had violated his human right to a fair trial under s.8 of the Canadian Charter. His full appeal argument rested on the fact that the extraterritorial searches and seizures conducted by Canadian police officers without the evidence of a warrant had rendered his trial unfair (ss.7, 8, 11(d), 24(2) and 32 of the Canadian Charter of Rights).

The Canadian Supreme Court dismissed Mr Hape's appeal on the grounds that the Canadian Charter did not generally apply to searches and seizures conducted *outside* of Canada; that s.32(1) of the Charter only applied to Canadian territories. The only reasonable approach was to apply the law of the state in which the activities occurred, namely that of the Turks and Caicos Islands, that is the UK.

The court held that, acting under the authority of Detective Superintendent L of the TCI, the RCMP officers had not acted unreasonably or unfairly, and the officers believed that search warrants had been obtained and that the investigation was lawful under Turks and Caicos (English) law. Furthermore, as the appellant chose to conduct business in the TCI, it should have been the appellant's reasonable expectation that Turks and Caicos law would apply to the investigation. There was no evidence that the searches and seizures were conducted in a manner inconsistent with the requirements of Turks and Caicos law. There was no basis for concluding that the procedural requirements for a lawful search and seizure failed to meet basic standards commonly accepted by free and democratic societies.

The primary basis for law enforcement was territoriality, which means that the TCI had exercised their authority in law enforcement and adjudicative jurisdiction over criminal matters which had arisen by a foreign

subject who had committed money laundering offences within TCI borders.

The Supreme Court held that under territorial principles of international law, that the state where the crime occurs, claims jurisdiction over the criminal act that commenced or occurred in that state and within that jurisdiction (see: *Libman v. The Queen* [1985] 2 SCR 178).

iii) Crime statistics

The official TCI tourism web site informs the visitor that crime on the islands is “the lowest in the Caribbean.” Yet, TCI are one of the main transshipment points for illicit drugs for South American narcotics destined for the US and Europe. Another problem is illegal immigration mainly from “Haitian boat people” fleeing economic and civil disorder. Government reports state that most crimes are committed by illegal immigrants from neighbouring Haiti (see: House of Commons, Foreign Affairs Committee Report, 2007).

Sporadically recorded police statistics show that most property crimes are committed on the tourist island of Provo, mostly by inter-islanders. The Royal Turks and Caicos Police Force has been strengthened and increased in size when overseas aid funding was increased by the British Government in 2000, this also accounts for the increase in police clear-up rates. Five Cays and Chalk Sound now have sub-police stations to tackle illegal drug trafficking into Miami.

Police statistics for 2006, showed a decrease in crime by 17 *per cent* in Providenciales, whereby 287 fewer crimes were reported compared with the previous year. However, there was a sharp increase in recorded crime on Grand Turk, accounting for a quarter of all crime committed on TCI, an increase of 148 *per cent* in 2006, compared with the previous year. The latter can be attributed to increased police resources on Grand Turk as well as new stop and search powers. In 2003, some 505 persons were arrested and charged; this figure decreased to 467 in 2005 and rose again to 557 in 2006. Police clear up rates have averaged 30 *per cent* since 2005. Provo — the holiday island — continues to report the largest proportion of crime (67 *per cent* in 2007).

Most reported crimes are (tourist) vehicle-related, making up 17 *per cent* of the total crimes reported in 2006. There were 263 reported “motor-vehicle interferences” in 2005; this decreased in 2006 to 120, a decline of 54 *per cent*. The offence of “taking a motor vehicle without authority” decreased from 115 to 59 over the same period, a drop of over 50 *per cent*. There were 34 firearms offences in 2006. Of the 38 robberies reported in 2006, 74 *per cent* involved the use of firearms — 35 of which occurred on Providenciales. A gun amnesty was held in 2007 in an effort to combat gun-related crime in the TCI. The TCI “Free Press” annual public opinion poll of 2006 showed that the fear-of-crime-element had decreased, with locals feeling “safer” due to an increased police presence on the islands. In 2005, 82 “non-Belongers” were charged with at least one criminal offence and 128 in 2006.

iv) Youth crime

Juvenile delinquency is a large social problem, mainly linked to the Haitian boat people crisis with large influxes of children from Haiti or the Dominican Republic being dumped on TCI and trafficked-on to other Caribbean islands or sold on to Florida. The number of teenage boys involved in crime has increased dramatically, though there are still low prosecution results, something which continues to worry TCI Government (see: House of Commons, Foreign Affairs Committee Report, 2007 at QQ 95 — 100). In 2005, 14 boys were charged with property offences compared with 69 in 2006 — a 40 *per cent* increase. Most of them are repeat offenders. Three teenage girls were arrested and charged in 2005.

Punishment

Due to deep rooted Christian values and beliefs, “Belongers” of TCI associate crime with sin, impurity and evil and the retributive justice paradigm, in that the offender must be punished severely for his wrong-doing and misdemeanours. Prison sentences tend to be long and the local population thinks this a suitable sacrifice towards an aggrieved deity (see Sellin, 1976). Generally, the TCI courts make no distinction between the sentencing of a male, female or juvenile offender for similar crimes. Prisoner accommodation for all offenders is in one prison, HMP Grand Turk, a small Pentonville-copy, built in 1997 (see **Smartt**, 1999).

Though corporal punishment had officially been abolished in 1988 under [s.134](#) of the Criminal Justice Act 1988 (Torture) (Overseas Territories) Order 1988, it was still in existence until 1998 as the European Torture Commission of the Council of Europe discovered when visiting HMP Grand Turk in 1998. The Commission noted with grave concern that prisoner beatings by staff were commonplace and stated that corporal punishment was no longer acceptable in a modern society and that the maltreatment of prisoners was contrary to the European Convention (see Report submitted by Great Britain and Northern Ireland and Dependent Territories under art.19 of the Convention. UN Doc. CAT/C/44/Add.1 1998).

Subsequently, on March 25, 1998, the TCI's Legislative Council passed new legislation and removed all references to corporal punishment from three statutes: the Offences Against the Person Ordinance, the Young Offenders Punishment Ordinance and the Malicious Injuries to Property Ordinance — all of which had previously provided for corporal punishment (see The Law Revision Miscellaneous Amendment Ordinance No.4 1998, on May 15, 1998). The Death Penalty was abolished in 1991 under the Abolition of Death Penalty for Murder — Caribbean Territories Act 1991 for treason and piracy- related offences.

HMP Grand Turk

The majority of prisoners are either remanded or convicted in connection with the illegal drugs or money laundering trade. Due to long and harsh prison sentences, the relatively small prison has become overcrowded, housing adult male and female, as well as some young offenders in very confined space.

Race relations amongst staff remain a problem, first noted by the European Torture Commission during its visit in 2000. The Commission noted openly practised racial discrimination at the prison (see European Torture Commission, Report May 2000). During 2006, there were a number of security breaches and serious riots at HMP Grand Turk. All disturbances were illegal drugs related. One prison officer was arrested in July 2006; he had been found with 90 grams of cannabis hidden in his vehicle. After he pleaded guilty to the charge of possession with intent to supply he was fined \$3,500 and deported back to Jamaica.

Juvenile Offenders

Though s.3 of the Turks and Caicos Islands Constitution Order 2006 provides for separate accommodation for juvenile prisoners under the age of 16, HMP Grand Turk continues to accommodate unconvicted juvenile prisoners. Child protection legislation is still in need of reform regarding corporal punishment.

In 2003, the UK Government released more grant in aid to construct a separate juvenile detention and rehabilitation facility in Cockburn Town, part of the Department of Social Development as a “Safe Holding Facility” for under 18-year-olds. But local residents on Grand Turk protested and the construction of the new juvenile facility was halted by the TCI Cabinet in 2007. This meant that juveniles were still held with adult prisoners at HMP Grand Turk.

Juvenile offending remains on the increase with little room for juveniles at the local prison. The Department for Social Development tries, wherever possible, to send young convicted offenders outside TCI for rehabilitation in the absence of a juvenile detention facility. In 2007, seven male juvenile offenders were

accommodated at the Jamaican juvenile rehabilitation centre, part of the Jamaican Department of Corrections. Three juveniles were at a Seventh-Day Adventist facility in West Virginia and a further 18 young males were accommodated at HMP Grand Turk.

A UK Government report of 2006 noted that sending juvenile convicts outside the TCI for punishment created an unnecessary expense; furthermore that the TCI Government was losing sight of the care and rehabilitation of its young offenders.

Further Reading

International Monetary Fund (2005) *Turks and Caicos Islands: Assessment of the Supervision and Regulation of the Financial Sector — Review of Financial Sector Regulation and Supervision*. IMF Country Report No.05/24, January 2005.

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