



7th Report

JOINT SELECT COMMITTEE ON

FINANCE AND LEGAL AFFAIRS

on an

Inquiry into the

**Wider Application of Non-custodial Penalties in the
Criminal Justice System of Trinidad and Tobago**

FIFTH SESSION (2019/2020) OF THE 11TH PARLIAMENT

An electronic copy of this report can be found on the Parliament website:
<http://www.ttparliament.org/reports/p11-s5-J-20191025-FLA-r7.pdf>

The Joint Select Committee on Finance and Legal Affairs

Contact the Committee's Secretariat

Telephone: 624-7275 Extensions 2277/2284/2283, **Fax:** 625-4672

Email: jscfla@ttparliament.org

7th REPORT

OF THE

JOINT SELECT COMMITTEE ON
FINANCE AND LEGAL AFFAIRS

ON

AN INQUIRY INTO THE WIDER APPLICATION OF
NON-CUSTODIAL PENALTIES IN THE CRIMINAL
JUSTICE SYSTEM OF TRINIDAD AND TOBAGO

Date Laid: HoR: 08/11/2019

Senate: 25/10/2019

CONTENTS

| | |
|---|-----------|
| CONTENTS | 4 |
| ACRONYMS AND ABBREVIATIONS | 6 |
| LIST OF TABLES | 6 |
| LIST OF FIGURES | 6 |
| LIST OF APPENDICES | 7 |
| THE COMMITTEE | 9 |
| COMMITTEE MANDATE AND ESTABLISHMENT | 9 |
| SPECIFIC AREAS OF RESPONSIBILITY | 10 |
| POWERS OF THE COMMITTEE | 10 |
| MEMBERSHIP | 10 |
| SECRETARIAT SUPPORT | 11 |
| EXECUTIVE SUMMARY | 12 |
| SUMMARY OF RECOMMENDATIONS | 15 |
| INTRODUCTION | 19 |
| BACKGROUND | 19 |
| CONDUCT OF THE INQUIRY | 21 |
| WRITTEN SUBMISSIONS | 22 |
| SUMMARY OF EVIDENCE, FINDINGS AND RECOMMENDATIONS | 23 |
| OBJECTIVE 1: TO ASSESS THE EFFICACY OF NON-CUSTODIAL PENALTIES IN DEALING WITH THE BACKLOG OF CRIMINAL CASES | 23 |
| Matters heard before the Courts | 23 |
| Statistical Data | 24 |
| The application of non-custodial sentences in the justice system | 24 |
| Rates of Incarceration | 27 |
| Cost of Maintaining Prisoners | 27 |
| Non-Custodial Sentences: feasibility of reducing the backlog | 28 |
| of criminal cases | 28 |
| Examples of Non-Custodial Sentences used in the Judicial System | 29 |
| FINDINGS | 30 |
| RECOMMENDATIONS | 31 |

| | |
|--|-----------|
| OBJECTIVE 2: TO DETERMINE WHETHER NON-CUSTODIAL PENALTIES MAY REDUCE HIGH RECIDIVISM RATES..... | 33 |
| Immigration and Customs and Excise Divisions..... | 33 |
| The application of NCPs in the Children’s Court | 34 |
| The role of Adult Diversion Programmes to reduce recidivism | 35 |
| The role of Juvenile Diversion Programmes to reduce recidivism | 37 |
| The role of Mediation in reducing recidivism | 39 |
| The role of post-incarceration support systems in reducing recidivism | 41 |
| FINDINGS..... | 42 |
| RECOMMENDATIONS..... | 43 |
| OBJECTIVE 3: TO ASCERTAIN WHAT ARE THE CRITICAL REQUIREMENTS/PREREQUISITES FOR THE WIDER APPLICATION OF NON- CUSTODIAL SANCTIONS IN THE ADMINISTRATION OF JUSTICE | 45 |
| The importance of Probation Officers | 45 |
| The introduction of Electronic Monitoring- a comprehensive approach..... | 46 |
| Applying a Non-Custodial sentence-the critical requirements | 48 |
| The significance of Re-Integration Support | 49 |
| Scope for the implementation of a System of Cautions | 49 |
| The prospects of a National Parole System..... | 49 |
| FINDINGS..... | 50 |
| RECOMMENDATIONS..... | 51 |
| APPENDICES | 55 |
| APPENDIX I..... | 56 |
| Minutes of Proceedings | 56 |
| APPENDIX II | 74 |
| Witnesses Appearing and Providing Evidence | 74 |
| APPENDIX III..... | 78 |
| Verbatim Notes..... | 78 |

ACRONYMS AND ABBREVIATIONS

| Abbreviation | Term |
|--------------|--|
| DPP | Director of Public Prosecutions |
| DTC | Drug Treatment Court |
| MoAGLA | Ministry of the Attorney General and Legal Affairs |
| NCPs | Non-Custodial Penalties |
| NGOs | Non-Governmental Organisations |
| TTPS | Trinidad and Tobago Police Service |
| TTPrS | Trinidad and Tobago Prisons Service |

LIST OF TABLES

| | |
|--|-----------|
| Table 1: Application of Non-Custodial Sentences High Court | 24 |
| Table 2: Application of Non-Custodial Sentences Magistrates' Court..... | 25 |
| Table 3: Incarceration rate from 2014-2018 | 27 |
| Table 4: Application of Non-Custodial Sentences Children's Court | 38 |
| Table 5: Number of Persons Convicted and Housed within Prisons | 47 |
| Table 6: List of Witnesses Appearing and Providing Oral Evidence | 75 |

LIST OF FIGURES

| | |
|---|-----------|
| Figure 1: Percentage of persons receiving non-custodial vs other sentencing at the High Court for the period 2015/2016 and 2017/2018. | 25 |
| Figure 2: Use of Non-Custodial Sentences in the High Court | 26 |
| Figure 3: Breakdown of Convicted and Un-convicted prison population statistics 2014-2018 | 26 |
| Figure 4: The Number of Graduates and Relapses for the San Fernando and Tunapuna Drug Treatment Court..... | 37 |
| Figure 5: Percentage of Referrals made to the Child Drug Treatment Court up to December 31, 2018..... | 38 |

LIST OF APPENDICES

| Appendix | Page |
|--|-------------|
| Appendix I: <ul style="list-style-type: none">• Minutes of Proceedings | 56 |
| Appendix II: <ul style="list-style-type: none">• Persons that appeared as witnesses and provided oral evidence | 74 |
| Appendix III : <ul style="list-style-type: none">• Verbatim Notes | 78 |

MEMBERS OF THE COMMITTEE



Ms. Sophia Chote, SC
Chairman



Mr. Clarence Rambharat
Vice Chairman



Dr. Lovell Francis, MP



Mrs. Vidia Gayadeen-Gopeesingh, MP



Mr. Taharqa Obika



Dr. Lester Henry



Mr. Terrence Deyalsingh, MP



Mrs. Cherrie-Ann Crichlow-Cockburn, MP

THE COMMITTEE

COMMITTEE MANDATE AND ESTABLISHMENT

1. Section 66A of the Constitution of the Republic of Trinidad and Tobago declares, that not later than three months after the first meeting of the House of Representatives, the Parliament shall appoint Joint Select Committees to inquire into and report to both Houses in respect of Government Ministries, Municipal Corporations, Statutory Authorities, State Enterprises and Service Commissions, in relation to their administration, the manner of exercise of their powers, their methods of functioning and any criteria adopted by them in the exercise of their powers and functions.
2. Pursuant to the foregoing provision, motions approved in the House of Representatives and Senate on November 13, 2015 and November 17, 2015, respectively, the **Joint Select Committee on Finance and Legal Affairs** was established.
3. Standing Order 91 of the Senate and 101 of the House of Representatives outline the general functions of a Committee of this nature. They are as follows:
 - a. to examine Bills and review all legislation relating to the relevant Ministries, Departments or Bodies or as may be referred to it by the House;
 - b. to investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration and operations of the assigned Ministries, Departments or Bodies;
 - c. to study the programme and policy objectives of Ministries, departments or bodies and the effectiveness of the implementation;
 - d. to assess and monitor the performance of Ministries, Departments and Bodies and the manner of the exercise of their powers;
 - e. to investigate and inquire into all matters relating to the assigned Ministries, Departments and Bodies as they may deem necessary, or as may be referred to them by the House or a Minister; and

- f. to make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.

SPECIFIC AREAS OF RESPONSIBILITY

4. The Joint Select Committee on Finance and Legal Affairs is mandated to inquire into areas related to Finance, Planning, Trade, Tobago Affairs, Office of the Prime Minister, Attorney General, Justice and Legal Affairs as listed in Appendix IV and V of the Standing Orders of the House of Representatives and Senate respectively.

POWERS OF THE COMMITTEE

5. Standing Orders 101 of the Senate and 111 of the House of Representatives delineate the general powers of the Committee which include:
 - a. to send for persons, papers and records;
 - b. to sit notwithstanding any adjournment of the House;
 - c. to adjourn from place to place;
 - d. to report from time to time;
 - e. to appoint specialist advisers either to supply information which is not otherwise readily available, or to elucidate matters of complexity within the Committee's order of reference;
 - f. to communicate with any other Committee on matters of common interest; and;
 - g. to meet concurrently with any other Committee for the purpose of deliberating, taking evidence or considering draft reports.

MEMBERSHIP

6. The Committee comprises the following members:
 - i. Ms. Sophia Chote, SC - Chairman
 - ii. Mr. Clarence Rambharat - Vice-Chairman
 - iii. Dr. Lovell Francis, MP
 - iv. Mrs. Vidia Gayadeen-Gopeesingh, MP
 - v. Mrs. Cherrie-Ann Crichlow-Cockburn, MP

- vi. Mr. Terrence Deyalsingh, MP
- vii. Dr. Lester Henry
- viii. Mr. Taharqa Obika

SECRETARIAT SUPPORT

- 7. The following officers were assigned to assist the Committee:
 - i. Mr. Julien Ogilvie - Secretary
 - ii. Mr. Brian Lucio - Assistant Secretary
 - iii. Ms. Terriann Baker- Research Assistant
 - iv. Ms. Ria Rampersad – Parliamentary Intern

EXECUTIVE SUMMARY

1. At its 25th Meeting held on November 23, 2018, the Committee resolved to pursue an inquiry into the *wider application of non-custodial penalties in the criminal justice system in Trinidad and Tobago*. The Committee's decision to examine this issue was propelled by several inter-related factors principally; the discussions surrounding the high rate of crime, the decriminalization of marijuana the increasing prevalence of youth related offences and the need to adopt a humane approach to imprisonment.

2. The inquiry process involved gathering and collating oral and written evidence from primary and secondary stakeholders as well as from the public. As far as possible, the Committee ensured that oral and written evidence received were relevant to the terms of reference of the inquiry. In this regard the Committee received evidence from several stakeholders, listed as follows:
 - i. The Ministry of the Attorney General and Legal Affairs (MoAGLA);
 - ii. The Ministry of National Security (MNS);
 - iii. Office of the Director of Public Prosecutions (DPP);
 - iv. Trinidad and Tobago Police Service (TTPS);
 - v. Trinidad and Tobago Prisons Service (TTPrS);
 - vi. Immigration Division;
 - vii. Vision on a Mission (VoM); and
 - viii. The Judiciary.

3. Based on the evidence received from the stakeholders listed above, the Committee was able to acquire some useful insights into the scope of a wider application of non-custodial sentences in Trinidad and Tobago.

4. Some of the issues which the Committee took into account were as follows:
 - i. The lack of data to inform policy on which aspects of non-custodial sentencing are most effective;
 - ii. The apparent under-utilisation of non-litigious measures to address cases before the court such as mediation and plea bargaining
 - iii. Fines, bonds and community service orders are among the more popular types of non-custodial penalties dispensed by the High Court, the Magistracy and the Immigration Division of the Ministry of National Security;
 - iv. The lack of non-custodial options available for use by Judicial Officers and inadequacies in the wrap around services to ensure that the existing options are effectively dispensed;
 - v. Given the sensitivity of some of the matters considered non-custodial penalties are more readily dispensed in the Children's Court;
 - vi. The inconsistencies in the provision of non-custodial sanctions in the Adult courts due to a dearth of community service officers, probation officers and timely receipt of psychiatric evaluations;
 - vii. The committee noted that the dispensing of non-custodial penalties must be supplemented by proper rehabilitation and monitoring of first-time offenders (particularly juvenile) offenders. These social and psycho-social support systems are essential for sustaining the corrective and or positive behavior changes that are intended;
 - viii. The potential for the wider application of non-custodial sentences both to reduce prison overcrowding and contamination within prisons;
 - ix. A need to address cultural attitudes towards the imposition of non-custodial sentences as a viable and practical option in the administration of justice;

- x. The potential of developing electronic monitoring systems in Trinidad and Tobago as a means of expanding the use of non-custodial restrictions and the need for inter-agency collaboration in this regard; and

- xi. The need for greater collaboration in the discussions of the wider application of non-custodial sentences between all agencies involved in the criminal justice system (TTPS, TTPrS, DPP) as well as NGOs and the community-at-large.

SUMMARY OF RECOMMENDATIONS

The following are key recommendations proffered by the Committee:

A. The Judiciary adopt the following measures with a view to streamlining case flow management:

- **Once there are sufficient numbers of Judges, multiple sessions of the Fast Track Court, during court vacations to determine cases that are trial ready;**
- **Greater public sensitisation on the expedited options that are available to dispose of cases such as Trial by Judge Alone and Plea Bargaining;**
- **Complete implementation of TT.jim case management system within all Magistrates' Courts by the end of fiscal 2019;**

Any alternatives to incarceration be implemented in accordance with Rule 60 of the Bangkok Rules which emphasises the need to employ gender sensitive alternatives to imprisonment.

B. That alternatives to incarceration be considered for persons charged with the non-payment of maintenance under the Family Law Guardianship of Minors, Domicile and Maintenance Act 46:08;

C. That the Ministry of National Security's Immigration Division submit a report to the Parliament within 60 days detailing the process for and the cost of introducing electronic monitoring/gps monitoring systems.

D. A review be done on the use of existing financial resources, especially as they concern the detention centres. An audit should be provided to this Committee within three months setting out the allocations received over the last fiscal six months and the uses to which these monies have been put;

- E. The relevant Departments should provide figures indicating the difference between monies requested of the relevant Permanent Secretaries and monies received. This should include the purpose of the request and the reasons for refusal;**
- F. Given the existing resource constraints appropriate collaborations must be pursued. In this regard, we recommend the inclusion of the Student Support Services Division to augment the rehabilitation services offered to minors by the Family Court since invariably these minors may be school children;**
- G. A formalised system of referrals be instituted for entry into prison diversion programmes such as the Bail Support Programme. We also recommend that the Judiciary in its response to this report advise the Parliament on feasibility of transferring the responsibility for referrals to this programme from the DPP's Office to the presiding District Judge;**
- H. The phased expansion in the provision of the Bail Support Programme and Drug Treatment Court outside of the San Fernando and Port of Spain Courts;**
- I. The implementation of programmes such as the *Sycamore Tree Project* within the Trinidad and Tobago Prison Service;**
- J. That the Parole Bill be given priority in the government's legislative agenda for the consideration of the Houses of Parliament in the Fifth Session of the Eleventh Parliament.**
- K. Expansion in the cadre and training of probation officers specifically in the areas of report writing, conflict resolution and mediation;**

- L. A standardised approach be adopted in the probation management process inclusive of mechanisms instituted to prepare reports, assess, supervise, intervene and review cases;
- M. Consideration should be given to a trial use of a pre-charge system of cautions that is similarly employed in Australia and the United Kingdom for minor offences. Such alternatives will be subject to the level of trust between police and communities requiring effective training for the former and sensitisation of the latter in the implementation of this programme. It is not recommended that this be considered a “criminal record”;
- N. In a bid to manage the movement of prisoner populations (inclusive of any future parole implementation system); that consideration be given to a system that is similar to the twenty-three (23) module PRISMS project currently utilised by the Goa State Department in India which records prisoners’ personal identification information inclusive of registration number, age, height, nationality, biometric identification, marks of identity, photographs and employment. The Committee notes that the TTPrS does keep records but a standardised process will ensure that these records are constantly updated up to the time of release.
- O. That the Ministry of National Security examine the feasibility of establishing the Prison Transformation Unit to act as the primary oversight body with respect to prison reform;
- P. Given that Vision on Mission (VoM) has emerged as the lead organisation engaged in prisoner re-integration, we recommend that formal discussions between VoM and the Probation Services Department be facilitated by the Permanent Secretary, Ministry of National Security. We believe that such collaborations may result in a higher degree of planning and resource allocation to assist prisoners demitting the system;

Q. With a view to establishing data and/or statistics on the successes and failures of non-custodial options, we recommend the urgent implementation of monitoring and evaluation (M &E) arrangements with a view to objectively assessing the efficacy of non-custodial sentences. The application of M &E procedures can commence with structured and controlled initiatives aimed at adult offenders such as the Bail Support Programme and Drug Treatment Court.

INTRODUCTION

BACKGROUND

1.1. In accordance with the Tokyo Rules, non-custodial sentences form part of a larger thrust within the criminal justice system to reduce prison populations and rebalance justice in favour of the victim and the community. Worldwide there has been a general movement away from a retributive undertaking towards sentencing regimes that encompass the principles of restorative justice, offender rehabilitation and equity for the victim.¹

1.2. The Tokyo Rules adopted December 14, 1990 by United Nations General Assembly Resolution 45/110, provide a set of basic principles to promote the use of non-custodial measures, as well as minimum safeguards for persons subject to alternatives to imprisonment. These Rules are guidelines for promoting greater community involvement, specifically in the treatment of offenders, as well as to promote a sense of responsibility towards society²among offenders,

1.3. In Trinidad and Tobago, the existing non-custodial penalties include:

- A reprimand and discharge as defined under section 71 of the Summary Courts Act, Chap. 4:20;
- Fines;
- Binding over orders or bonds;
- Conditional release of offenders on probation under the Probation of Offenders Act, Chap. 13:51;

¹ United Nations. "United Nations Standard Minimum Rules for Non-custodial measures (the Tokyo Rules) Adopted by the General Assembly resolution 45/110" December 1990. Accessed: April 08, 2019: <https://www.ohchr.org/Documents/ProfessionalInterest/tokyorules.pdf>

² United Nations. "United Nations Standard Minimum Rules for Non-custodial measures (the Tokyo Rules) Adopted by the General Assembly resolution 45/110" December 1990. Accessed: April 08, 2019: <https://www.ohchr.org/Documents/ProfessionalInterest/tokyorules.pdf>

- Community service under the Community Service Orders Act, Chap. 13:06;
 - Restitution to the victim or compensation order ;and
 - Electronic monitoring under the Administration of Justice (Electronic Monitoring) Act (Act 11 of 12) which is currently awaiting proclamation.
- 1.4. Non-custodial orders establish effective alternatives to imprisonment for offenders and enable authorities to adjust penal sanctions to the needs of the individual offender in a manner that is proportionate to the offence committed³.
- 1.5. The imposition of a non-custodial sentence is determined by the presiding judicial officer who may consider, among other things, the nature of the offence and the profile (background, support system, health, mental state, expression of remorse) of the offender.
- 1.6. Non-custodial sentences are usually considered for first time adult offenders, committing a minor offence and is the first line of sentencing for juvenile offenders save and except for serious crimes or extenuating circumstances.
- 1.7. A non-custodial sentence must incorporate aspects of punishment (deterrence and incapacitation), justice for the victim and protection for the society. Such measures can be applied both pre-trial and during imprisonment.
- 1.8. Central to the success of non-custodial measures is the understanding that there is a need to rehabilitate the offender and equip them with the necessary tools to become functioning members of the society. Thus, social re-integration and behavioural training programmes must form part of a holistic approach geared towards preventing recidivism.

³ Office of the High Commissioner for Human Rights in Cooperation with the International Bar Association. "Professional Training Series no.9 Human Rights for Judges, Prosecutors and Lawyers." United Nations, 2003. Accessed: April 08, 2019: <https://www.ohchr.org/documents/publications/training9titleen.pdf>

1.9. The imposition of non-custodial sentences may result in the reduction of prison populations, decreased costs associated with the maintenance and upkeep of prisoners, deterrence of criminal networking as a result of incarceration, prevent recidivism and craft sentences that are just towards both the offender and the community.

OBJECTIVES

1.10. Notwithstanding the breadth of information received, the Committee agreed that its inquiry will be guided by the following objectives:

- 1. To assess the efficacy of non-custodial penalties in dealing with the backlog of criminal cases;**
- 2. To determine whether non-custodial penalties may ameliorate high recidivism rates;**
- 3. To ascertain what are the critical requirements/prerequisites for the wider application of non-custodial sanctions in the administration of justice;**

CONDUCT OF THE INQUIRY

1.11. The Committee commenced the inquiry as follows:

1.12. At its Meeting held on January 18, 2019, the Committee convened its *first Public Hearing* with the following entities:

- The Ministry of National Security;
- The Trinidad and Tobago Police Service;
- The Trinidad and Tobago Prisons Service;
- The Office of the Director of Public Prosecutions.

1.13. At its Meeting held on February 15, 2019, the Committee convened its *second Public Hearing* with the following entities:

- Vision on a Mission⁴;
- The Immigration Division.

1.14. At its Meeting held on March 15, 2019, the Committee convened its *third Public Hearing* with the following entities:

- The Judiciary

WRITTEN SUBMISSIONS

1.15. The Committee received written submissions from the following entities/stakeholders:

- i. The Ministry of the Attorney General and Legal Affairs;
- ii. The Ministry of National Security;
- iii. Office of the Director of Public Prosecutions;
- iv. Trinidad and Tobago Police Service;
- v. Trinidad and Tobago Prisons Service;
- vi. Immigration Division;
- vii. Vision on a Mission;
- viii. The Judiciary;
- ix. Customs and Excise Division;
- x. Head, Mediation Studies Programme, the University of the West Indies (UWI).

⁴ A Non-profit organization involved in the rehabilitation of ex-prisoners

SUMMARY OF EVIDENCE, FINDINGS AND RECOMMENDATIONS

OBJECTIVE 1: TO ASSESS THE EFFICACY OF NON-CUSTODIAL PENALTIES IN DEALING WITH THE BACKLOG OF CRIMINAL CASES

Matters heard before the Courts

1. To determine the relevance of non-custodial sentences to the backlog of criminal cases an appreciation of the recent statistical data regarding the disposition of matters before the Courts must first be obtained.
2. According to the written submission of the DPP⁵ for the law term **2017/2018**, in the Magistrates' Court one hundred and eighty-four thousand seven hundred and ninety-five (**184 795**) matters were **listed** of which eighty-two thousand, eight hundred and forty-one (**82 841**) were **determined** and one hundred and one thousand, nine hundred and fifty-four (**101 954**) were **adjourned**.
3. Statistical data obtained from the Ministry of National Security also noted the following:
 - Inmates convicted of a 'less serious offence' as classified by the MNS stood at three hundred and eighty-seven (387);
 - Of inmates serving sentences of five years and less; ninety (90) were imprisoned for possession of marijuana; and
 - Of inmates imprisoned in lieu of paying a fine/fee or breach of a Court Order forty-seven (47) were imprisoned for breach of maintenance orders.

⁵ Submission of the Director of Public Prosecutions dated January 17, 2019.

4. Data from the Family Court showed that custodial sentences were applied in **default of a payment of child maintenance**. In these instances, there is no conviction or declaration of guilt and the average period of incarceration was nine **(9) weeks**.
5. The DPP also observed that **Traffic matters** consistently represented **more than half the sum of all matters filed**. Litigants were generally **not using the Petty Civil Court** to handle their disputes involving sums of **less than fifty thousand (\$50,000)**.

Statistical Data

The application of non-custodial sentences in the justice system

6. Non- Custodial sentences applied to adults in the **High Court** for the **2015/2016** and **2017/2018** are provided in **Table 1**, this data given as a percentage is also shown in **Figure 1**.

Table 1: Application of Non-Custodial Sentences High Court

| Sentencing Type | Law Term | | | Total |
|---------------------------------|-----------|-----------|-----------|------------|
| | 2015/2016 | 2016/2017 | 2017/2018 | |
| Fines | 5 | 4 | 4 | 13 |
| Bonds | 8 | 8 | 10 | 26 |
| Bond with Condition | 19 | 15 | 7 | 41 |
| Community Service Orders | 0 | 2 | 2 | 4 |
| Compensation | 5 | 13 | 14 | 32 |
| Total | 37 | 42 | 37 | 116 |

Figure 1: Percentage of persons receiving non-custodial vs other sentencing at the High Court for the period 2015/2016 and 2017/2018.

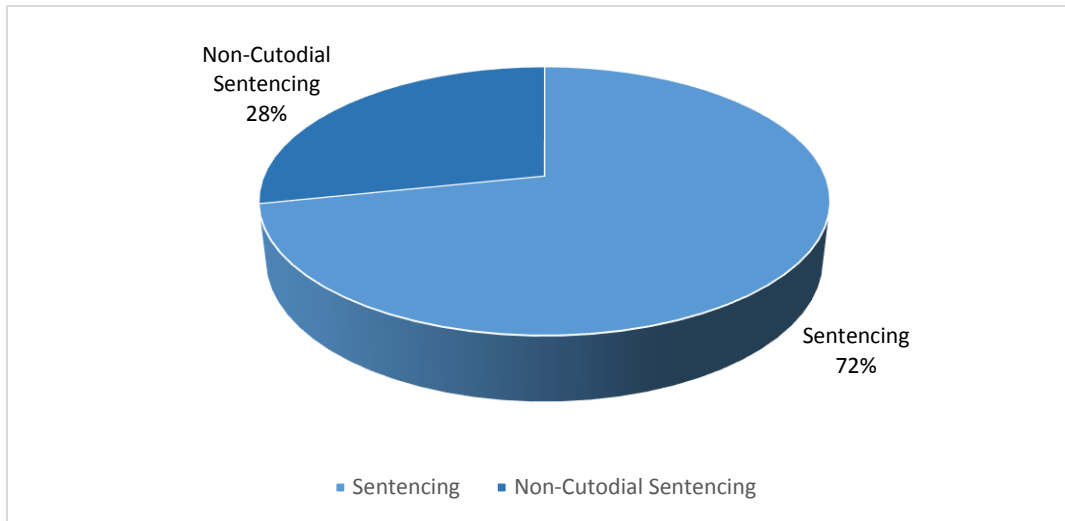
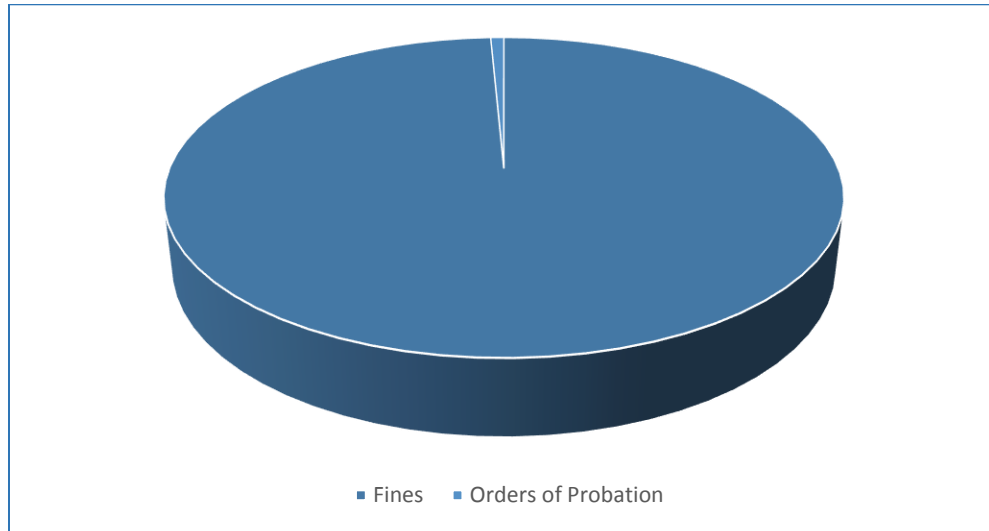


Table 2: Application of Non-Custodial Sentences Magistrates' Court

| Sentencing Type | Law Term | | | Total |
|---------------------------------|---------------|---------------|---------------|---------------|
| | 2015/2016 | 2016/2017 | 2017/2018 | |
| Fines | 12, 723 | 12, 348 | 10, 909 | 35,980 |
| Bonds | 1,440 | 1,607 | 1,398 | 4,445 |
| Probation | 86 | 121 | 52 | 259 |
| Community Service Orders | 185 | 325 | 282 | 792 |
| Compensation | 930 | 1,079 | 1,294 | 3,303 |
| Total | 15,364 | 15,480 | 13,935 | 44,779 |

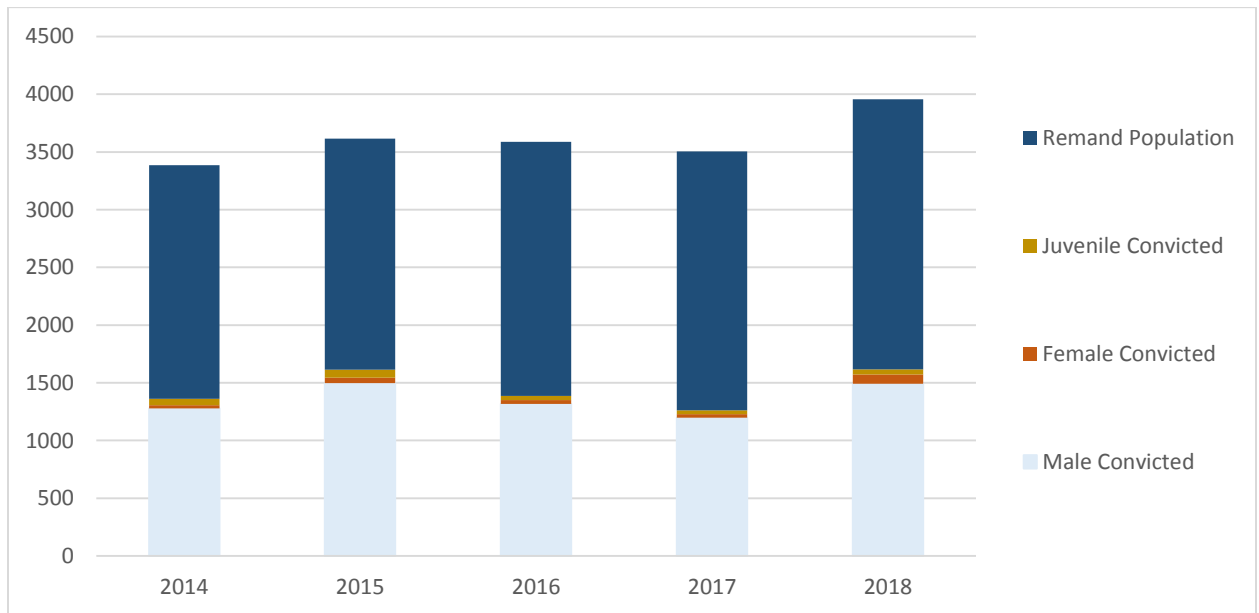
7. Of these sentences delivered, **80%** consisted of **fin**es whilst **0.6%** were **orders of probation**. The data presented in **Table 2** demonstrates that the courts sometimes impose NCPs such as non-violent offences. The breakdown of statistics for convicted and un-convicted prison populations are provided for in **Figure 2**.

Figure 2: Use of Non-Custodial Sentences in the High Court



8. A categorisation of the population of convicted persons is provided in **Figure 3**.

Figure 3: Breakdown of Convicted and Un-convicted prison population statistics 2014-2018



Rates of Incarceration

9. As per the MNS, the incarceration rate had fluctuated over the last five (5) years, this is itemized in **Table 3**.

Table 3: Incarceration rate from 2014-2018

| Convicted and Un-convicted (by year) | Totals |
|--------------------------------------|--------|
| 2014 | 3384 |
| 2015 | 3615 |
| 2016 | 3586 |
| 2017 | 3505 |
| 2018 | 3943 |

10. The **remand population** at January 01st 2019 stood at two thousand three hundred and forty-five (**2345**)⁶.

Cost of Maintaining Prisoners

11. The wider-application of non-custodial penalties was cited by several stakeholders as a strategy for reducing the number of persons that are incarcerated. According to information submitted by the Ministry of National Security, the **cost of maintaining prisoners annually** was seven hundred and twenty-eight million, seven hundred and thirteen thousand, two hundred and seventy-one dollars and eighty-one cents (**\$728, 713, 271.81 TTD**). The **total population of prisoners at 2018** was three thousand nine hundred and forty-three (**3943**). Of this figure, one thousand and sixty-four (**1064**) are **serving sentences of five years and less**.

⁶ Data obtained from the DPP submission dated January 16, 2019.

Non-Custodial Sentences: feasibility of reducing the backlog of criminal cases

12. The Office of the DPP and the Judiciary underscored that there were several factors that impact negatively on the expedition with which cases move through the courts (lack of human resources, inefficiencies in coordinating agencies and the exigencies of work); the imposition of **non-custodial** sentences alone **cannot be applied generally to treat with the backlog of cases.**

13. It was critical for the committee to examine the range of existing non-custodial penalties available to our Courts and statutory authorities. These include:

- i. A reprimand and discharge as defined under section 71 of the Summary Courts Act, Chap. 4:20;
- ii. Fines;
- iii. Binding over orders or bonds;
- iv. Conditional release of offenders on probation under the Probation of Offenders Act, Chap. 13:51;
- v. Conditional Release (including Order of Supervision) under the Immigration Act, Chap 18:03;
- vi. Community service under the Community Service Orders Act, Chap. 13:06;
- vii. Remedies applied in accordance with Sections 59 and 60 of the Children Act;
- viii. Restitution to the victim or compensation order ;and
- ix. Electronic monitoring under the Administration of Justice (Electronic Monitoring) Act (Act 11 of 12) which is currently awaiting proclamation.

14. The Committee also considered that while greater use of non-custodial options may reduce the prison population and therefore associated costs; the variation in costs will not be significant owing to an increased need for resources to be re-directed towards the rehabilitation and re-integration of offenders. The Court Executive Administrator (Head of the Department of Court Administration) advocated for the introduction of a Parole system as a custodial alternative.

Examples of Non-Custodial Sentences used in the Judicial System

Community Service Orders

15. According to additional information received from the Ministry of National Security⁷ Community Service as described in the Community Service Orders Act, Chapter 13:06, offers an alternative to custodial sentencing where Offenders are ordered by the Court to perform unpaid work for a period of no less than forty (40) hours and no more than two hundred and forty (240) hours within a twelve (12) month period. As at March 18, 2019, the current average case load per Community Service Officer was one hundred and two (102).
16. The Ministry of National Security maintained that there were unavoidable delays in the disposition of matters in which judicial officers may wish to impose probation or community service orders. This was recognised as a hindrance to the implementation of a non-custodial order.
17. Ideally, Community Service Orders should include the precise location where the hours of work are to be undertaken. However, in many jurisdictions, there were no Community Service Officers to oversee those processed. At a public hearing on March

⁷ Dated March 18, 2019

15, 2019, the Judiciary also acknowledged that the issuance of a Community Service Order was too cumbersome and that they lacked personnel.

Fines

18. The issuance of monetary penalties or fines are examples of non-custodial penalties exercised in the Court system. From statistics gathered by the Judiciary in their written submission, it was noted that fines were more readily employed in the District Criminal and Traffic Courts as opposed to the High Courts. In a comparison of the law terms **2015-2016 and 2017-2018**, the data illustrated that **thirty-five thousand, nine hundred and eighty (35,980)** fines were delivered in the District Criminal and Traffic Courts and **seventeen (17⁸) fine orders** in the High Court within the same period.

Conditional Releases

19. Conditional releases inclusive of Orders of Supervision are the principal form of Non-Custodial Penalties issued by the Immigration Division. Oral evidence received from the Immigration Division at a public hearing held on February 15, 2019, indicated that the decision to grant an Order of Supervision was based on a risk assessment which involved the payment of a bond in the form of a security deposit. Due to a lack of space at the Immigration Detention Centre, there were in excess of two thousand (2000) persons on an Order of Supervision.

FINDINGS

The Committee observed that:

- i. There exists within the criminal justice system a number of systemic and institutional shortcomings which have fueled the back log of cases. Factors

⁸ The submission from the Judiciary indicated that for the Law Term period 2015/2016 to 2017/2018, the High Court has delivered thirteen (13) fine orders and during the 2017/2018 Law Term of the High Court four (4) offenders received fines.

hindering the progression of matters through the criminal courts were explored during the Committee's first inquiry⁹;

- ii. The number of persons serving pre-trial detention (on remand) for extensive periods of time is indicative of systemic shortcomings in the criminal justice system;
- iii. Twenty-seven (27%) of the prison population is serving a five year sentence or less;
- iv. The aggregate costs incurred by the state to house a prisoner is significant. However, there are also notable costs associated with rehabilitating and monitoring ex-offenders who are released pursuant to the application of a NCP;
- v. Fifty percent (50%) of persons on an Order of Supervision with the IDC were in breach of the contract, given that illegal immigrants have a high rate of not attending on their appointment dates with the Immigration Division. Consequently, the Committee is not convinced that an expansion in the use of NCPs is desirable;
- vi. Currently there are several non-custodial penalties available to sentencers. However, to apply these measures effectively and meaningfully the necessary support systems must be instituted.

RECOMMENDATIONS

20. Based on the foregoing the committee recommends that:

⁹ <http://www.ttparliament.org/reports/p11-s2-J-20161109-FLA-R1.pdf>

A. The Judiciary adopt the following measures with a view to streamlining case flow management:

- **Once there are sufficient numbers of Judges, multiple sessions of the Fast Track Court, during court vacations to determine cases that are trial ready;**
- **Greater public sensitisation on the expedited options that are available to dispose of cases such as Trial by Judge Alone and Plea Bargaining;**
- **Complete implementation of TT.jim case management system within all Magistrates' Courts by the end of fiscal 2019;**

Any alternatives to incarceration be implemented in accordance with Rule 60 of the Bangkok Rules which emphasises the need to employ gender sensitive alternatives to imprisonment¹⁰.

B. That alternatives to incarceration be considered for persons charged with the non-payment of maintenance under the Family Law Guardianship of Minors, Domicile and Maintenance Act 46:08;

C. That the Ministry of National Security's Immigration Division submit a report to the Parliament within 60 days detailing the process for and the cost of introducing electronic monitoring/gps monitoring systems.

¹⁰ United Nations Office on Drugs and Crime. "The Bangkok Rules." March 2011.
https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf

OBJECTIVE 2: TO DETERMINE WHETHER NON-CUSTODIAL PENALTIES MAY REDUCE HIGH RECIDIVISM RATES

Immigration and Customs and Excise Divisions

21. With regard to data for repeat offenders, statistics provided by the Ministry of the Attorney General and Legal Affairs indicated that this country has a high **recidivism/re-offender rate of approximately over seventy percent (70%)**.
22. In addition to the Courts, non-custodial sentences are also **utilised by the Immigration and Customs and Excise Divisions**.
23. The Immigration Division applies the non-custodial options of release on an Order of Supervision, payment of a bond, surrender of travel documents and a specific place of abode in managing foreign nationals who are in breach of the Immigration Act, Chapter 18:01.
24. These directives are in alignment with Section 17 (1) of the Immigration Act Chapter 18:01 which authorises the Chief Immigration Officer to grant any person taken into custody or detained, release on an Order of Supervision.
25. The Customs and Excise Division is vested with the power to impose certain NCPs in accordance with Section 224 of the Customs Act Chapter 78:01. In accordance with the Act, the Comptroller may impose a fine, penalty and forfeiture but not imprisonment and not exceeding what is prescribed for the offence prior to the start of Court proceedings.
26. The Custom and Excise Division's written evidence reported that for the period January 01, 2017 to February 28, 2019, eight hundred and eighty-six (886) persons were charged with offences under the Customs Act. Thirty-nine (39) offenders

appeared before the Magistrates' Courts and eight hundred and forty-seven (847) appeared before the Comptroller of Customs and Excise. Of the thirty-nine (39) offenders appearing before the Magistrates' Courts, twelve (12) were sentenced whilst twenty-seven (27) matters were still pending.

27. The Customs Division indicated that while there have been repeat offenders appearing before the Comptroller, these offences can be deemed to be administrative and can re-occur due to negligence of the employees or Customs' representatives acting on behalf of importing companies.

The application of NCPs in the Children's Court

28. In the **Children's Court**, **non-custodial sentences** are the **norm** and are waived for serious crimes or if it is found to be in the best interests of the child to place him/her in a community residence.
29. In the **Children's Court**, **100%** of the persons granted a non-custodial sentence are first time offenders whilst in **the District Criminal and Traffic Courts the majority** of those being given a non-custodial sentence were **first time offenders**.
30. Interestingly, the Judiciary reported that in the **Children's Court** there were **no re-offenders** after the imposition of a non-custodial sentence and one imposition of a custodial sentence following a breach of a non-custodial order for the **law term 2016-2018**. This suggests that the principles and processes used to invoke corrective behaviour in the juvenile courts have been effective. It must be noted however, that the Children's Court is relatively young and data on the issue of recidivism should continue to be monitored. The Judiciary also lamented the shortfall in numbers of Child Probation Officers who perform the vital role of monitoring juvenile offenders in the post sentencing phase. The Committee was advised that the effectiveness of

monitoring is examined during regular 'Monitoring Hearings' which assess the progress of the interventions recommended by the Court.

The role of Adult Diversion Programmes to reduce recidivism¹¹

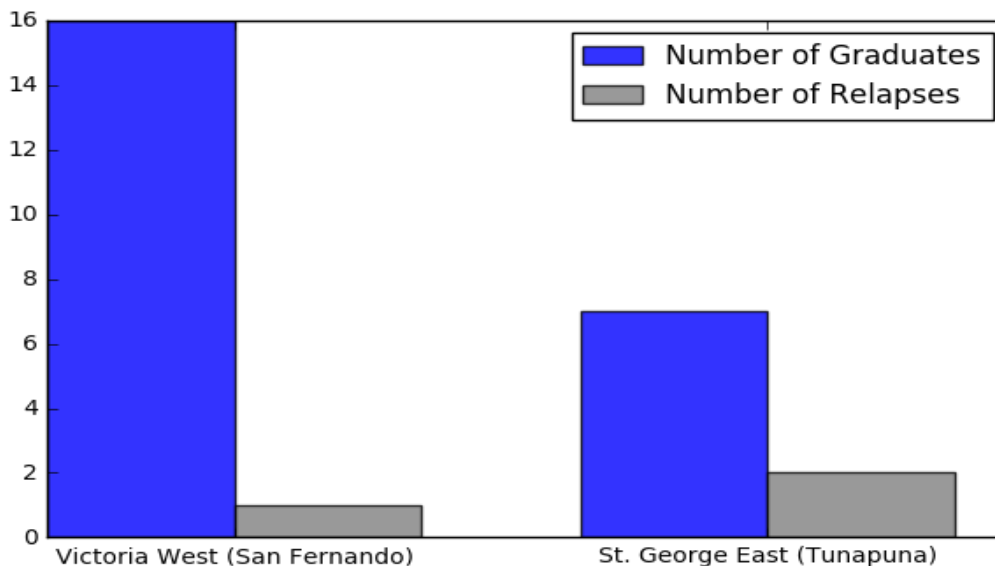
31. Diversion programmes can be defined as the movement of cases from the formal criminal justice system to alternative programmes at the discretion of the prosecution. These programmes are not designed to make offenders less accountable but to address the underlying causes of their behaviour. As such, programmes would incorporate both monitoring and rehabilitative aspects.
32. The success of diversion programmes in reducing recidivism rates is predicated on the avoidance of the negative socialisation that may occur during imprisonment (both within prison and on remand) and by intervening and altering at an early stage some of the criminogenic factors that influence behaviour. These programmes also divert persons away from prisons, reducing prison overcrowding and the burden on the Courts.
33. There are currently two such programmes within our local criminal justice system geared toward adult offenders: the Bail Support Programme and the Drug Treatment Court. The latter was formalised by the Criminal and Traffic Court Division Act of 2018.
34. **The Bail Support Programme is facilitated bi-monthly at the San Fernando and Port of Spain Courts.** The programme enforces a learning aspect (through varying trade programs) in addition to counselling, curfews and other restrictions alongside a

¹¹ Muntingh 2001 "The Effectiveness of Diversion Programmes-A Longitudinal Evaluation of Cases" South Africa National Institute for Crime Prevention and the Re-integration of Offenders.

support system to prevent recidivism and facilitate the re-integration of offenders into the society.

35. As of **October 2017**, the Bail Support Programme had a total of **125 participants**. The charge and trial of the accused remain on the courts' records as individuals engage in the programme.
36. The **Drug Treatment Court** was initially launched via a pilot in 2012 but is now approved for full implementation. The resources of the court are targeted to the treatment of an **offender who presents with a drug problem**. To be eligible for referral the person must be a first time offender charged with a non-violent offence related to substance abuse, inclusive of drunk-driving.
37. The passage of the Criminal Division and District Criminal and Traffic Courts Act, 2018 transformed the Drug Treatment Court from a pilot programme to a mainstream adult Drug Treatment Court. During an appearance on March 15 2019, the Judiciary reported that a Cabinet Note was being finalised to arrange for the staffing and other administrative requirements for this court.
38. The Committee was advised that this court is currently in operation at the **Tunapuna and San Fernando Courts**. The **San Fernando Drug Treatment Court** has produced **16 graduates** of 25 applicants with **one relapse**, the **Tunapuna Court** has produced **7 graduates and 2 relapses**. For the **September 2018** cycle, **11 candidates were shortlisted for San Fernando** and **8 for Tunapuna**. This information is presented in figure 4.

Figure 4: The Number of Graduates and Relapses for the San Fernando and Tunapuna Drug Treatment Court



39. Though it is within **the discretion of the DPP to recommend persons to the programme**, referrals may come from parents, probation officers and attorneys; however, the individuals themselves must also make an application.

The role of Juvenile Diversion Programmes to reduce recidivism¹²

Children’s Drug Treatment Court (DTC) and Peer Resolution Programme

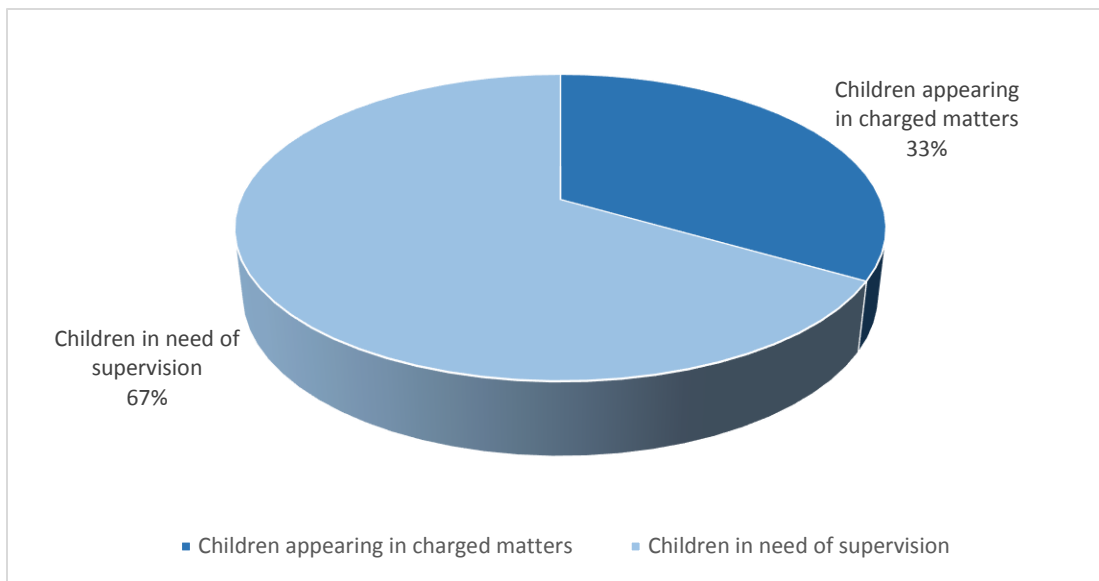
40. The Children’s Drug Treatment Court (DTC) was formally established by the Family and Children Division Act of 2016 and is a sub-division of the Family and Children Division of the High Court.

41. The Child DTC targets children who are in conflict with the law, who have committed non-violent offences and who are at medium to high risk of having drug use

¹² Muntingh 2001 “*The Effectiveness of Diversion Programmes-A Longitudinal Evaluation of Cases*” South Africa National Institute for Crime Prevention and the Re-integration of Offenders.

problems. As of December 31, 2018, there have been **sixty-six (66) referrals to the Child DTC**, twenty-two (22) being for criminal charges and forty-four (44) for Children in Need of Supervision (CHINS). Figure 5 demonstrates the number of children appearing in charge matters and children in need of supervision as percentages.

Figure 5: Percentage of Referrals made to the Child Drug Treatment Court up to December 31, 2018.



42. The Children’s Court has made a total of one hundred and forty-six (**146 non-custodial orders** over three locations (North, South and Tobago.) These are enumerated in **Table 4**.

Table 4: Application of Non-Custodial Sentences Children’s Court

| Sentencing Type | Total |
|---------------------------------|-----------|
| | 2018/2019 |
| Bonds | 2 |
| Fines | 2 |
| Community Service Orders | 7 |

| | |
|--|------------|
| Probation | 47 |
| Compensation Orders | 4 |
| Peer Resolution | 20 |
| Referred to- Children Drug Treatment Court | 2 |
| Referred to-Social Services Unit | 51 |
| Referred to- Chief Immigration Officer | 11 |
| Total | 146 |

43. The Peer Resolution Programme utilises Youth Volunteers to recommend sanctions for children under the age of eighteen (18) who come before the Court on minor offences.
44. Some of the sanctions utilised in the Peer Resolution Programme include: referrals to vocational programmes, curfews, drug testing, participation in community events etc. Peer Resolution becomes applicable only with the admission of guilt by the child. Fourteen (14) children were **referred to Peer Resolution** as at **December 31, 2018**. The resources of the programme include two hundred and twenty (220) peer resolution volunteers and seventy-three (73) adult volunteers.

The role of Mediation in reducing recidivism

45. Section 14 of the Mediation Act, Chap: 5:32 provides for Court-Annexed Mediation and states that:

*"1) Where in any matter **other than a criminal matter** the Court considers it appropriate to refer parties to mediation, the Court may refer them to a certified mediator who is –*

(a) a public officer; or

(b) in the employment of the Judiciary; or

(c) on the Judiciary's roster of mediators.

(2) The parties to any matter before the Court, may with the approval of the Court, agree to retain the services of a mediator who is not included under subsection (1).

(3) Any expenses incurred under subsection (2) shall be borne by the parties or either of them as the Court may direct or as the parties may agree."

46. According to the submission by the Judiciary, mediation as a practice has the potential to provide significant benefits to the out of court disposal of matters that are carefully selected and classified. Out of Court Disposals not only reduce the burden on the Courts but provide an opportunity for the victims of crimes to be heard and to confront the offenders. Such mechanisms would ideally be established con-currently with interventions that reduce the propensity for re-offending.
47. The Committee notes that there had been legislation providing for such a process but that this legislation may have been inadvertently repealed.
48. The Judiciary's submission also included comments from the Mediation Board. Mediation can be considered for the very minor matters, upon admission of guilt, not involving repeat incidences, or violence and upon agreement by both victim and offender; it may be prudent to include mediation as a mandatory first step before litigation.
49. However, in comments received from the Coordinator, Mediation Programme, Department of Behavioral Sciences, Faculty of Social Sciences, UWI, St. Augustine Campus, it was noted that while mediation speaks to a process of resolving conflicts; the application of mediation practices in isolation for resolving disputes arising out of minor criminal offences may not be the most feasible. It was further identified that because sanctions were already applied to such offences, it would be impractical to use mediation as a means of addressing these matters¹³.

¹³ Submission from the UWI, Department of Behavioural Sciences- Mediation Unit dated February 18, 2019.

The role of post-incarceration support systems in reducing recidivism

50. Parole schemes combine **early release from prison with strict supervision** in the community, any breach of which may result in the offender being forced to serve the remaining time within prison.
51. According to **Prison rule 285**, a prisoner displaying good behaviour on a sentence that is less than twelve (12) months, is entitled to '**normative remission**', which is six (6) months off of half the sentence. Offenders displaying good behaviour on sentences in excess of one (1) year, is also entitled to '**special remission**' which is one third off the sentence¹⁴.
52. **Remission** in its current form rewards prisoners for good behaviour but **does not involve the input of society** with respect to the prisoner's re-integration. It was found to be suitable for persons serving short terms of imprisonment¹⁵. A critical examination of the submissions received from the Prison Service revealed that the **existing system of early release lacks the structure, objectivity and transparency of an effective evaluative process** to assess the prisoner's suitability for re-entry into the community.
53. The DPP in its submission has acknowledged that a properly resourced re-integration programme which provides avenues to meet the basic needs of housing and employment for the offender is critical to the successful rehabilitation of offenders on parole.
54. However, according to the Ministry of National Security in its written submission, there is no official or fixed process to monitor released persons. However, in cases where persons served five (5) years and over, the Prison Welfare Officer would

¹⁴ As noted by the TTPrS during the January 18, 2019 Public Hearing before the Committee.

¹⁵ According to the Report of the Parole Implementation Committee "2007 Parole Implementation Report."

follow-up and give assistance where needed. Released inmates may also access the Prison Welfare Department via the walk-in option.

55. Thus, Vision on a Mission has emerged as the lead organisation providing a three year re-integration support programme for ex-offenders/ex-prisoners. During their appearance before the Committee on February 15 2019, Vision on a Mission proposed that the current application of non-custodial measures may be applied to pre-trial and even during imprisonment and may not only apply to minor offences. The organization's Programme Director cited the successes of the 'Sycamore Tree' project which allow surrogate victims and surrogate offenders to engage in dialogue through a panel. Research shows that such programmes enable inmates to develop empathetic skills.

FINDINGS

- i. With respect to offences committed under the Customs Act during the period January 01, 2017 to February 28, 2019 and 95% of the matters were concluded with the imposition of a NCP;
- ii. The Family and Children Division of the High Court routinely dispenses NCPs for offences. However, while the operations of the Court appear to be progressing effectively, there is a lack of critical post-sentencing services to support the rehabilitation of child offenders;
- iii. Consideration for admission into either the Drug Treatment Court or Bail Support Programme is hindered by the heavy work commitments of personnel at the office of the DPP;

- iv. Similarly, the establishment of the Children's Drug Treatment Court is stymied by a lack of suitable Child Rehabilitation Facilities to treat with high-risk juvenile offenders;
- v. Community mediation centres were accessed by walk-in clients only and were not used in matters involving the State;
- vi. There is no provision in the law for mediation in criminal matters;
- vii. Studies have shown that offenders who have participated in victim/offender panels such as the Sycamore Tree Project are less likely to re-offend upon release¹⁶;
- viii. The lack of a formalised system of prisoner re-integration was believed to be tied to an understaffed and underfunded Prison Welfare department and lack of complementary NGOs.

RECOMMENDATIONS

Based on the forgoing the Committee recommends that:

- A. A review be done on the use of existing financial resources, especially as they concern the detention centres. An audit should be provided to this Committee within three months setting out the allocations received over the last fiscal six months and the uses to which these monies have been put;**
- B. The relevant Departments should provide figures indicating the difference between monies requested of the relevant Permanent Secretaries and monies**

¹⁶ Centre for Justice and Reconciliation. 'The Sycamore Tree Project.' Available: <http://restorativejustice.org/we-do/sycamore-tree-project/#sthash.2QNTFvg2.dpbs>

received. This should include the purpose of the request and the reasons for refusal;

- C. Given the existing resource constraints appropriate collaborations must be pursued. In this regard, we recommend the inclusion of the Student Support Services Division to augment the rehabilitation services offered to minors by the Family Court since invariably these minors may be school children;
- D. A formalised system of referrals be instituted for entry into prison diversion programmes such as the Bail Support Programme. We also recommend that the Judiciary in its response to this report advise the Parliament on feasibility of transferring the responsibility for referrals to this programme from the DPP's Office to the presiding District Judge;
- E. The phased expansion in the provision of the Bail Support Programme and Drug Treatment Court outside of the San Fernando and Port of Spain Courts;
- F. The implementation of programmes such as the *Sycamore Tree Project* within the Trinidad and Tobago Prison Service;
- G. That the Parole Bill be given priority in the government's legislative agenda for the consideration of the Houses of Parliament in the Fifth Session of the Eleventh Parliament.

OBJECTIVE 3: TO ASCERTAIN WHAT ARE THE CRITICAL REQUIREMENTS/PREREQUISITES FOR THE WIDER APPLICATION OF NON-CUSTODIAL SANCTIONS IN THE ADMINISTRATION OF JUSTICE

During the Inquiry the Committee became aware of the critical factors necessary to ensure efficiency in the application of non-custodial penalties.

The importance of Probation Officers

56. Probation officers are critical to the imposition of non-custodial sentences because they assist in the monitoring of offenders on a conditional release. Written information received from the Ministry of National Security on March 18, 2019 highlighted that five hundred and thirty (530) persons are currently on probation in lieu of a term of imprisonment and that the ratio of probation officer to offender is 1:20.

57. According to the Judiciary's written submission, judicial officers rely on probation services when offenders are ordered to community service and other such non-custodial sentencing. Observations made by the Family Court indicated that timely submission of reports is the greatest challenge and this is in part due to the number of activities and time required to complete a report in conjunction with the active caseload of each officer.

58. The Probation Services Department require additional support, training and resources if they are required both to supervise the offender and provide the Courts with reports. Training may also be required for officers in the area of report writing.

59. Moreover, the Judiciary recognised that there was a need for specialised competencies to be developed in the officers to distinguish between family and criminal matters and

to liaise with a diverse group of individuals ranging from youth to domestic violence perpetrators and sex offenders.

The introduction of Electronic Monitoring- a comprehensive approach

60. Section 10 of the Administration of Justice (Electronic Monitoring) Act, No. 11 of 2012 provides for the use of electronic monitoring for an offence committed or in lieu of a sentence of imprisonment or any part thereof. Section 11 of the Act states that electronic monitoring may be imposed as a lawful condition of a pardon granted under section 87 (2) of the Constitution.

61. The court may also impose electronic monitoring as a condition of bail or a protection order under the Domestic Violence Act No. 11 of 2012.

62. The Ministry of the Attorney General and Legal Affairs also noted in its written submission that electronic monitoring should be an effective deterrent to offenders as it would provide a continuous surveillance mechanism in respect of persons who are subject to such an order. It was further noted by the MoAGLA that any penalty where there is the need for a child to be monitored in their activities and location may achieve more effective outcomes if electronic monitoring is added as a condition of their penalty.

63. Electronic monitoring would not only complement the work of the probations department through active supervision but would also encourage greater use of community service and probation as non-custodial options thereby reducing the prison population.

64. **Table 5** lists the numbers of persons imprisoned for what may be considered minor offences. In consideration of the numbers it may be appreciated how applying

electronic monitoring to these cases may impact favourably on the prison population¹⁷.

Table 5: Number of Persons Convicted and Housed within Prisons

| Offence | Male | Female | Total |
|-----------------------------------|-----------|-----------|------------|
| Traffic Offences | 22 | - | 22 |
| Breach of Immigration Regulations | 31 | 40 | 71 |
| Breach of Protection Order | 10 | - | 10 |
| Breach of Maintenance Order | 14 | - | 14 |
| Total | 77 | 40 | 117 |

65. By correspondence dated September 02, 2019, the Ministry of National Security noted that a contract with Amalgamated Security Services Limited (ASSL) to provide the Electronic Monitoring Solution was established. This contract was signed on April 18, 2019 and was valued at ten million three hundred and thirty-six thousand, five hundred and sixty-three dollars and forty-four cents (TTD\$ 10,336,563.44). As at August 21, 2019, three hundred **(300) devices had been acquired by the Electronic Monitoring Unit.**
66. At a public hearing on January 18, 2019, the Trinidad and Tobago Police Service indicated that the position of Police Liaison Officer had been created to facilitate the investigation of reports made to the police when there is a breach of the order of the court. Additionally, three hundred and sixty-one **(361) police officers** had also **been trained in electronic monitoring.** Pursuant to additional information received on September 02, 2019 the MNS also specified that five (5) persons were employed to facilitate operations at the Electronic Monitoring Unit which is located at 165 Tragarete Road, Port of Spain.

¹⁷ Data obtained from the Ministry of National Security.

67. There is also a proposed Police Response Mechanism Plan which is designed to assist with the recapturing of persons who have not been compliant with the terms of the electronic monitoring order. However, the Committee noted that in order for the proclamation of the Administration of Justice (Electronic Monitoring) Act (Act 11 of 2012) the following measures must first be undertaken:
- The Rules of Court to be made by the Judiciary of the Republic of Trinidad and Tobago; and
 - Regulations to be approved by the Parliament following:
 - i. Law Review Committee (LRC) to review and approve draft regulations; and
 - ii. Cabinet approval of the regulations.

Applying a Non-Custodial sentence-the critical requirements

68. The limited use of non-custodial sentencing is perpetuated largely in part due to the range of sentencing options and lack of accompanying resources and personnel to ensure effective follow through of sanctions. This includes, lack of probation and community service officers, delays in psychiatric evaluations and reports by officers, insufficiency in the range of re-integration programmes and wraparound services.
69. A reduction in bureaucracy and greater degree of permissiveness is required in order to strengthen the use of non-custodial sanctions for adult offenders.
70. Also noteworthy of mention is the importance of the '**Sentencing Handbook.**' The Sentencing Handbook first prepared as part of its mandate by the Judicial Education Institute in 2009 and updated in 2016 proposes a Maximum Sentence Indication (MSI) for certain offences and acts as a guide to judicial officers.

The significance of Re-Integration Support

71. Re-integration programmes provide care, support and supervision over a period of time to assist ex-offenders in their rehabilitation and re-entry into mainstream society.
72. Vision on Mission is the lead organisation undertaking these responsibilities and as at February 07, 2019 had one thousand and fourteen **(1014)** ex-offenders enrolled in their programme.
73. During an appearance before the committee on February 15, 2019 the organisation reported that the twenty-three **(23)** clients at the transition house administered by Vision on Mission are all employed.
74. The re-integration programme focuses on developing social/civil skills, cognitive coping skills, entrepreneurial/agricultural and job readiness skills, self-management among other skills.

Scope for the implementation of a System of Cautions

75. The Judiciary advised the Committee at a Public Hearing dated March 15, 2019 that a system of cautions for juveniles was originally envisaged for the Family and Children Division of the Court but was impeded by the lack of properly trained police officers to execute these duties.

The prospects of a National Parole System

76. The Parole Implementation Committee produced a report in 2007 which reviewed the sufficiency and efficacy of the existing penal system. One of the areas that was found to be deficient related to the preparation of prisoners for release,

insufficiencies relating to improving prisoners' employability, their ability to make amends to victims and cope as functioning members of society.

77. Infrastructural improvements in terms of prisoners' accommodations within prisons and access to wrap-around services during imprisonment to assist in inmates' re-integration as well as an increase in the number and more comprehensive role for Prisons Officers were also cited as areas in need of development.

FINDINGS

- i. Probations Officers currently provide services to Magistrates' Courts on a rotation basis;
- ii. The submissions received pertaining to the state of the probation department revealed that there was need for further capacity building among the cohort of probation officers so that they would provide more effective service to the courts;
- iii. The quality of reports produced both by the St. Ann's Psychiatric Hospital and private practitioners were found to be inadequate to meet the assessment needs of the Courts;
- iv. To expedite the process of psychiatric evaluations, Judicial Officers had contributed to designing a new form that would be completed and submitted to the St. Ann's Psychiatric Hospital indicating the nature of the mental health concern;

- v. There is a lack of mental health facilities for children and qualified staff to attend to high risk juvenile offenders. This finding was also highlighted by the Committee on Social Services and Public Administration based on its inquiry into mental health support services¹⁸.
- vi. The introduction of electronic monitoring would assist in the surveillance aspect of non-custodial sentencing but requires collaboration among the entities in order to ensure successful application;
- vii. As at January 17, 2019 , nine hundred and sixty-four prisoners are due to be released within the next twenty-four (24) months;
- viii. There is little dialogue between the Probations Department and Vision on Mission;
- ix. The lack of data and statistics on the merits and de-merits of non-custodial options limits the use of such by Judicial Officers;
- x. There is a need for a collaborative system to promote synchronisation among agencies and NGOs.

RECOMMENDATIONS

The Committee recommends that:

- A. Expansion in the cadre and training of probation officers specifically in the areas of report writing, conflict resolution and mediation;**
- B. A standardised approach be adopted in the probation management process inclusive of mechanisms instituted to prepare reports, assess, supervise, intervene and review cases;**

¹⁸ <http://www.ttparliament.org/reports/p11-s4-J-20181120-SSPA-r6-MHTT.pdf>

- C. Consideration should be given to a trial use of a pre-charge system of cautions that is similarly employed in Australia¹⁹ and the United Kingdom for minor offences. ²⁰ Such alternatives will be subject to the level of trust between police and communities requiring effective training for the former and sensitisation of the latter in the implementation of this programme. It is not recommended that this be considered a “criminal record”;**
- D. In a bid to manage the movement of prisoner populations (inclusive of any future parole implementation system); that consideration be given to a system that is similar to the twenty-three (23) module PRISMS project²¹ currently utilised by the Goa State Department in India which records prisoners’ personal identification information inclusive of registration number, age, height, nationality, biometric identification, marks of identity, photographs and employment. The Committee notes that the TTPrS does keep records but a standardised process will ensure that these records are constantly updated up to the time of release.**
- E. That the Ministry of National Security examine the feasibility of establishing the Prison Transformation Unit to act as the primary oversight body with respect to prison reform;**
- F. Given that Vision on Mission (VoM) has emerged as the lead organisation engaged in prisoner re-integration, we recommend that formal discussions**

¹⁹ The discretionary authority to issue a caution is to be found in the Juvenile Justice Act. The caution can only be used when the juvenile and their parents accept that it is an alternative to court action. “Police cautioning- effective diversion or expedience?” Ann Lewis and Clement O’ Regan.

<https://aic.gov.au/sites/default/files/publications/proceedings/downloads/22-lewis-oregan.pdf>

²⁰ In the United Kingdom, the Police can serve you a conditional caution which is subject to rules and restrictions or a penalty notice for which you must sign a notice and pay a fine. “Police cautions, warnings and penalty notices”

<https://www.gov.uk/caution-warning-penalty>

²¹ Prisons Management System (PRISMS). National Institute for Smart Governance. July 2013.

<https://www.nisg.org/project/81>

between VoM and the Probation Services Department be facilitated by the Permanent Secretary, Ministry of National Security. We believe that such collaborations may result in a higher degree of planning and resource allocation to assist prisoners demitting the system;

- G. With a view to establishing data and/or statistics on the successes and failures of non-custodial options, we recommend the urgent implementation of monitoring and evaluation (M &E) arrangements with a view to objectively assessing the efficacy of non-custodial sentences. The application of M &E procedures can commence with structured and controlled initiatives aimed at adult offenders such as the Bail Support Programme and Drug Treatment Court.

The Committee respectfully submits the foregoing for the consideration of the Parliament.

Sgd.
Mrs. Sophia Chote, SC
Chairman

Sgd.
Mr. Clarence Rambharat
Vice-Chairman

Sgd.
Mrs. Vidia Gayadeen-Gopeesingh, MP
Member

Sgd.
Dr. Lovell Francis, MP
Member

Mr. Taharqa Obika
Member

Sgd.
Mr. Terrence Deyalsingh, MP
Member

Sgd.
Dr. Lester Henry
Member

Sgd.
Mrs. Cherrie- Ann Crichlow-Cockburn, MP
Member

October 02, 2019

APPENDICES

APPENDIX I

Minutes of Proceedings

MINUTES OF THE TWENTY-SIXTH MEETING OF THE JOINT SELECT COMMITTEE ON FINANCE AND LEGAL AFFAIRS, HELD IN CAMERA IN THE ARNOLD THOMASOS MEETING ROOM (EAST), LEVEL 6 AND IN PUBLIC IN THE J. HAMILTON MAURICE ROOM, MEZZANINE FLOOR, OFFICE OF THE PARLIAMENT, TOWER D, THE PORT OF SPAIN INTERNATIONAL WATERFRONT CENTRE, 1A WRIGHTSON ROAD PORT OF SPAIN ON JANUARY 18, 2019

PRESENT

| | |
|--------------------------------|---------------|
| Ms. Sophia Chote, S.C. | Chairman |
| Mr. Clarence Rambharat | Vice-Chairman |
| Mrs. Vidia Gayadeen-Gopeesingh | Member |
| Dr. Lester Henry | Member |
| Mr. Taharqa Obika | Member |

Secretariat

| | |
|--------------------|---------------------|
| Mr. Julien Ogilvie | Secretary |
| Mr. Brian Lucio | Assistant Secretary |
| Ms. Terriann Baker | Research Assistant |
| Ms. Ria Rampersad | Research Assistant |

ABSENT

| | |
|--|------------------|
| Mrs. Cherrie-Ann Crichlow-Cockburn, MP | Member (Excused) |
| Mr. Terrence Deyalsingh, MP | Member (Excused) |
| Dr. Lovell Francis, MP | Member |

COMMENCEMENT

1.1 The Chairman called the meeting to order at 9:33 a.m.

ANNOUNCEMENTS

2.1 The Chairman announced that Mrs. Cherrie-Ann Crichlow-Cockburn and Mr. Terrence Deyalsingh requested to be excused.

- 2.2 The Chairman welcomed Ms. Beverly Gibbons, Deputy Clerk of the Parliament of Barbados who was present to observe the Committee's proceedings.

CONFIRMATION OF MINUTES OF THE TWENTY-FIFTH MEETING HELD ON NOVEMBER 23, 2018

- 3.1 The Chairman invited Members to consider the Minutes of the 25th Meeting held on November 23, 2018 and enquired whether there were any amendments.
- 3.2 There being no amendments, a motion for the confirmation of the Minutes was moved by Mrs. Gayadeen-Gopeesingh and seconded by Mr. Obika.

MATTERS ARISING FROM THE MINUTES OF THE TWENTY-FIFTH MEETING

- 4.1 The Chairman enquired whether there were any matters arising from the Minutes:
- **Page 2, item 5.3** – The Chairman informed Members that the Secretariat was drafting the Inquiry Proposal for an inquiry into existing laws to curb money laundering and corruption and in doing so will attempt to narrow the focus of the inquiry.
 - **Page 3, item 5.5** – The Chairman proposed that the Committee not write to the Criminal Bar Association due to the organisation having ceased operations.
 - The Chairman inquired about the status of the Committee's report on an inquiry into Waste Management Policies of the State. In response, the Secretary advised the Committee that the report was being prepared.
 - The Vice-Chairman inquired about the status of the Committee's report on an inquiry into the Implementation of the new Public Procurement Regime. In response, the Secretary advised the Committee that the report was being prepared.

PRE-HEARING DISCUSSION RE: INQUIRY INTO THE FEASIBILITY OF WIDENING THE AVAILABILITY OF NON-CUSTODIAL PENALTIES IN THE CRIMINAL JUSTICE SYSTEM

- 5.1 The Chairman indicated that representatives from the following entities would be appearing before the Committee:
- Office of the Director of Public Prosecutions;
 - Ministry of National Security;

- Trinidad and Tobago Prison Service; and
 - Trinidad and Tobago Police Service.
- 5.2 The Chairman indicated that the Secretariat was awaiting a response from the Chief Magistrate regarding an invitation to contribute to the inquiry.
- 5.3 The Vice-Chairman proposed that the Archbishop of Port of Spain be invited to make a written submission. After a brief discussion, it was agreed that the Inter-Religious Organisation of Trinidad and Tobago should be invited to make a written submission.
- 5.4 The Chairman enquired whether Members were in receipt of the soft and hard copies of stakeholder submissions. Members confirmed receipt.
- 5.5 The Chairman proposed that the Chief Immigration Officer should be invited to attend the Committee's next public hearing.
- 5.6 A discussion ensued on the approach to be adopted for the hearing.

SUSPENSION

- 6.1 The meeting was suspended at 10:09 a.m.

[Members proceeded to the J. Hamilton Maurice Room, Mezzanine Floor]

PUBLIC HEARING WITH STAKEHOLDERS RE INQUIRY INTO THE FEASIBILITY OF WIDENING THE AVAILABILITY OF NON-CUSTODIAL PENALTIES IN THE CRIMINAL JUSTICE SYSTEM

- 7.1 The meeting resumed (*in public*) at 10:20 a.m. in the J. Hamilton Maurice Room.
- 7.2 The following officials joined the meeting:

MINISTRY OF NATIONAL SECURITY

Mr. Vel Lewis
Mr. Hayden Walcott
Ms. Sintra Maharaj
Mrs. Marian Taylor

Permanent Secretary
Chief Welfare Officer
Chief Probation Officer
Probation Officer III (Ag.)

TRINIDAD AND TOBAGO POLICE SERVICE

| | |
|----------------------|---|
| Mr. Deodat Dulalchan | Deputy Commissioner of Police (Ag.) Operations |
| Mrs. Joanne Archie | Assistant Commissioner of Police (Ag.) Operations |
| Mr. Jayson Forde | Assistant Commissioner of Police (Ag.) Anti-crime Operations |

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

| | |
|---------------------------|--|
| Mr. Roger Gaspard S.C. | Director of Public Prosecutions |
| Mrs. Tricia Hudlin-Cooper | Assistant Director of Public Prosecutions |
| Mr. Nigel Pilgrim | State Counsel III |

TRINIDAD AND TOBAGO PRISON SERVICE

| | |
|---------------------|--|
| Mr. Gerard Wilson | Commissioner of Prisons (Ag.) |
| Mr. Carlos Corraspe | Assistant Commissioner of Prisons (Ag.) |

7.3 The Chairman welcomed the officials and introductions were exchanged.

7.4 The Chairman outlined the objectives of the inquiry.

Key Issues Discussed

7.5 The following were the key subject areas/issues discussed during the hearing (*for further details, please see the Verbatim Notes*):

(a) Office of the Director of Public Prosecutions (DPP)

- i. Magistrates may be overburdened by increased sittings in both Magistrates Courts and the Petty Civil Court which may have accounted for the reduced use of the Petty Civil Court for matters \$50,000 and under;
- ii. A lack of resources have contributed to significant systemic and institutional shortcomings within the Criminal Justice system;
- iii. There is a need for an increase in Judicial Officers and Probation Officers;
- iv. The Probation Officers' role should be expanded;
- v. Remand prisoners enjoy the presumption of innocence;
- vi. Data is necessary in order to effectively evaluate non-custodial penalties;

- vii. The Office of the DPP utilises a standardised level of testing which is divided into two (2) stages. The first stage identifies the sufficiency of evidence while the second stage highlights whether the prosecution is in the interest of the public;
- viii. In cases where small amounts of marijuana or narcotics are discovered, the DPP may intervene for offenders under the age of eighteen to prevent the harsh reality of sentencing;
- ix. Evidence is sufficient if the evidence makes prosecution and conviction possible;
- x. The DPP is of the view that the reduction in the use of plea bargaining may be due to cultural reasons;
- xi. Plea bargaining is usually used in the High Court;
- xii. Persons must be better informed in order to increase the use of plea bargaining;
- xiii. Research must be undertaken to demonstrate whether there is a connection between 'soft' penalties and vigilante justice.

(b) Issues discussed with the Trinidad and Tobago Police Service (TTPS)

- i. Training is ongoing for police prosecutors through the Judiciary and the Office of the DPP;
- ii. The TTPS has not provided training to its officers on the benefits of non-custodial penalties;
- iii. There are currently no statistics from the Court and Process Branch of the TTPS outlining offences prosecuted by the police where non-custodial penalties were imposed;
- iv. Recently, twenty-six (26) ex-offenders were sent to the Community Police Unit for rehabilitation; Feedback received from the TTPS on the effectiveness of the individual's rehabilitation assists the Magistrate/Judge in determining an appropriate sentence;
- v. The TTPS is in need of research on non-custodial measures. There is also a need for a cost benefit analysis on the increased use of non-custodial penalties;
- vi. The imposition of non-custodial sentences should also place focus on the victim of the crime where sentences should provide justice for the victim and match the gravity of the crime;
- vii. Traditionally, police prosecutors do not recommend penalties;
- viii. Non-custodial penalties do not exempt an offender from being sentenced;
- ix. The TTPS is currently advancing preparations for the use of electronic tracking devices;
- x. Three hundred and one (301) officers have begun training for the implementation of electronic monitoring;

- xi. A Liaison Officer for the TTPS has already been identified to assist in the electronic monitoring process;
- xii. There is a need to have closer collaboration between the TTPS, the Trinidad and Tobago Prison Service and crucial agencies such as Vision on Mission to increase the effectiveness of Youth Clubs.

(c) Issues discussed with the Ministry of National Security

- i. There are currently thirty-five (35) Probation Officers on the establishment which is insufficient:
 - a. One (1) Chief Probation Officer
 - b. One (1) Assistant Chief Probation Officer
 - c. Five (5) Probation Officer III
 - d. Sixteen (16) Probation Officer I
 - e. Twelve (12) Probation Officer II
- ii. The main priority of the Probation Officers is to produce reports for the Magistrates Court and High Court;
- iii. In light of the existing staff constraints, there was an increase in Children Probation Officers for the Children's Court. The breakdown is as follows;
 - a. Three (3) Children Probation Officer III
 - b. Six (6) Children Probation Officer II
 - c. Nine (9) Children Probation Officer IIIAdditionally, approval has been granted for:
 - d. Two (2) Children Probation Officer III
 - e. Four (4) Children Probation Officer II
 - f. Eighteen (18) Children Probation Officer I
- iv. Approval for the requested complement of Probation Officers may take 2 to 3 years;
- v. Shortlisting has been completed and as such, new Probation Officers should be assigned to the Probation Division in 2019;
- vi. The positions created for the Probation Division is based on the staffing requirements;
- vii. The Ministry has noted the DPP's suggestion to expand the role of the Probation Officers to match international standards;
- viii. The maintenance of a prisoner is over \$15,000 per month;
- ix. Non-custodial sentences may be considered in an effort to reduce the current prison population;
- x. A contract has been awarded to facilitate the purchase of three hundred (300) electronic tracking devices;

- xi. There are no major hindrances in implementing the electronic tracking device system, however, minor legislative adjustments are required to facilitate the seamless integration of these devices;
- xii. An office has been created and staffed in order to assist in the monitoring and issuance of these devices;
- xiii. The overtime arrangements associated with Prison Officers is to be regulated in order to reduce cost;
- xiv. The cost per person for the electronic monitoring device has not been calculated;
- xv. The current system involves the Probation Officer II vetting the Probation Officer I's reports. The Probation Officer III will do likewise for the Probation Officer II;
- xvi. In critical matters, the Chief Probation Officer and Assistant Chief Probation Officer may also vet the Probation Officers' reports;
- xvii. In light of the foregoing, efforts are currently being made to improve the quality of reports emanating from the Probation Division;
- xviii. A first degree is required in order to become a Probation Officer. It is suggested that a written component be included in the recruitment and selection criteria for this post;
- xix. A Level of Service/Case Management Inventory (LS/CMI) risk assessment report has not been utilised prior to the submission of reports from the Probation Division.

(d) Issues discussed with the Trinidad and Tobago Prison Service

- i. Non-custodial sentences may significantly reduce overcrowding and contamination within prisons;
- ii. Restorative justice is often misused within the prison context;
- iii. According to Standard Minimum Rules for the Treatment of Prisoners, the only thing that is withdrawn from prisoners is freedom;
- iv. It is suggested that potential inmates should alternatively be able to repay the victim through the provision of a service;
- v. Mediation may curb instances of vigilante justice;
- vi. Forty-seven (47) persons have been arrested for breaches of maintenance orders;
- vii. More innovative measures should be formulated to facilitate the payment of child support. It is suggested that an arrangement be made where funds may be automatically deducted from a person's salary;
- viii. The imprisonment of errant parents who may be in breach of maintenance is a cycle that is beneficial to neither the state nor the children involved;
- ix. Non-custodial penalties may be better suited for specific cases such as non-payment of fines;

- x. In an effort to reduce deviant behaviour amongst students, schools have opted to visit the Youth Training and Rehabilitation Centre to highlight the possible outcome of engaging in criminal behaviour;
- xi. The Police and Prisons Youth Clubs have made efforts to maintain order among the youth through inclusive programs;
- xii. Prison rules allow for convicted inmates who demonstrate good conduct and industry above the normative level to be considered for discretionary special remission for periods of three (3) days or five (5) days;
- xiii. An inmate must first go through 3 stages prior to discretionary special remission. Having regard to the length of his/her sentence, inmates may be specially categorised prior to implementation of discretionary special remission. If six (6) months have been spent in this category, the inmate is allowed to request leave up to seven (7) days;
- xiv. The minimum sentence must be four (4) or five (5) years in order to qualify for this privilege;
- xv. According to Prison Rule 285, any prisoner who have served under twelve (12) months is entitled to six (6) months off of half of his/her sentence (normative remission);
- xvi. An offender who has served more than a year is entitled to 1/3 off the sentence (special remission);
- xvii. The Communications Unit of the Prison Service has embarked on a public interface initiative called "Conversations with the Commissioner".

7.6 Closing remarks were made by the chief officials present.

7.7 The Chairman thanked the officials for their attendance.

Requested Information

8.1 The Committee requested that the Ministry of National Security provide written submission to the following questions:

- i. With reference to the acquisition of the three hundred (300) electronic monitoring devices:
 - a. The devices will be used to monitor whom?
 - b. What is the total number of devices to be procured?
- ii. What is the estimated monthly cost to monitor an individual under the Electronic Monitoring System?
- iii. What is the formula used to assign Probation Officers among the districts?

ADJOURNMENT

9.1 The meeting was adjourned at 12:03 p.m.

I certify that these Minutes are true and correct.

Chairman

Secretary

February 07, 2019

MINUTES OF THE TWENTY-SEVENTH MEETING OF THE JOINT SELECT COMMITTEE ON FINANCE AND LEGAL AFFAIRS, HELD IN CAMERA IN THE CONFERENCE ROOM, LEVEL 2 AND IN PUBLIC IN THE J. HAMILTON MAURICE ROOM, MEZZANINE FLOOR, OFFICE OF THE PARLIAMENT, TOWER D, THE PORT OF SPAIN INTERNATIONAL WATERFRONT CENTRE, 1A WRIGHTSON ROAD PORT OF SPAIN ON FEBRUARY 15, 2019

PRESENT

| | |
|------------------------------------|---------------|
| Ms. Sophia Chote, S.C. | Chairman |
| Mr. Clarence Rambharat | Vice-Chairman |
| Mr. Terrence Deyalsingh, MP | Member |
| Mrs. Vidia Gayadeen-Gopeesingh, MP | Member |
| Mr. Taharqa Obika | Member |

Secretariat

| | |
|--------------------|--------------------|
| Mr. Julien Ogilvie | Secretary |
| Ms. Ria Rampersad | Research Assistant |

ABSENT

| | |
|--|------------------|
| Mrs. Cherrie-Ann Crichlow-Cockburn, MP | Member (Excused) |
| Dr. Lester Henry | Member |
| Dr. Lovell Francis, MP | Member |

COMMENCEMENT

1.2 The Chairman called the meeting to order at 9: 20 a.m.

ANNOUNCEMENTS

2.3 The Chairman announced that Mrs. Cherrie-Ann Crichlow-Cockburn requested to be excused.

CONFIRMATION OF MINUTES OF THE TWENTY-SIXTH MEETING HELD ON JANUARY 18, 2019

3.1 The Chairman invited Members to consider the Minutes of the 26th Meeting held on January 18, 2019 and enquired whether there were any amendments.

- 3.2 There being no amendments, a motion for the confirmation of the Minutes was moved by Mrs. Gayadeen-Gopeesingh and seconded by Mr. Deyalsingh

MATTERS ARISING FROM THE MINUTES OF THE TWENTY-FIFTH MEETING

- 4.1 The Chairman enquired whether there were any matters arising from the Minutes:
- **Page 2, item 5.2** – The Chairman informed Members that by letter dated February 11 2019, the Court Executive Administrator of the Judiciary confirmed the Judiciary’s intention to contribute to the Committee’s inquiry into non-custodial sentences.
 - **Page 3, item 5.3** – The Chairman informed Members that the Secretariat wrote to the Inter-Religious Organisation of Trinidad and Tobago. The submission was due on Thursday February 28, 2019.
 - **Page 8, item 8.1** – The Chairman informed Members that by letters dated February 07, 2019, the Secretariat requested additional information from:
 - The Ministry of National Security (submission due February 15, 2019);
 - The Trinidad and Tobago Police Service (submission received on February 14, 2019); and
 - The Director of Public Prosecutions (submission due February 15, 2019).

PRE-HEARING DISCUSSION RE: INQUIRY INTO THE FEASIBILITY OF WIDENING THE AVAILABILITY OF NON-CUSTODIAL PENALTIES IN THE CRIMINAL JUSTICE SYSTEM

- 5.1 The Chairman indicated that representatives from the following entities would be appearing before the Committee:
- Vision on Mission; and
 - Immigration Division.
- 5.2 The Chairman advised that written submissions were received from these entities and were circulated to Members via emails on Thursday February 07, 2019 and Thursday February 14, 2019 respectively.
- 5.3 The Chairman instructed the Secretariat to write to the Customs and Excise Division seeking comment on the imposition of non-custodial penalties.
- 5.4 A discussion ensued on the approach to be adopted for the hearing.

CONSIDERATION OF WORK PROGRAMME

- 6.1 Members revisited the Work Programme for the Fourth Session.
- 6.2 After some discussion, Members agreed to the following:
- i. the inquiry into money laundering was postponed;
 - ii. the Committee's next inquiry would be into the Adequacy of Magistrates Courts facilities; and
 - iii. thereafter, the Committee would inquire into the creative industries. Proposed topic: 'An evaluation of current initiatives in facilitating the growth of creative industries (including Carnival).'

OTHER BUSINESS

Date and Agenda of next meeting

- 7.1 The Chairman informed members that the next meeting of the Committee is scheduled for Friday March 15, 2019 and indicated that the Committee will convene its final hearing with representative of the Judiciary.

SUSPENSION

- 8.1 The meeting was suspended at 9:53 a.m.

[Members proceeded to the J. Hamilton Maurice Room, Mezzanine Floor]

PUBLIC HEARING WITH STAKEHOLDERS RE INQUIRY INTO THE FEASIBILITY OF WIDENING THE AVAILABILITY OF NON-CUSTODIAL PENALTIES IN THE CRIMINAL JUSTICE SYSTEM

- 9.1 The meeting resumed (*in public*) at 10:14 a.m. in the J. Hamilton Maurice Room.
- 9.2 The following officials joined the meeting:

IMMIGRATION DIVISION

Mrs. Charmaine Gandhi-Andrews
Mr. Gewan Harricoo

Chief Immigration Officer (Ag.)
Immigration Officer IV,
Enforcement Unit

Mr. Sherwin Johnson

Immigration Officer IV (Ag.),
Immigration Detention Centre
Immigration Officer III,
Enforcement Unit

Mr. Anderson Jerome

VISION ON MISSION

Mr. Gordon Husbands

Programme Director

Ms. Tamika Benard

Case Worker

9.3 The Chairman welcomed the officials and introductions were exchanged.

9.4 The Chairman outlined the objectives of the inquiry.

Key Issues Discussed

9.5 The following were the key subject areas/issues discussed during the hearing (*for further details, please see the Verbatim Notes*):

(e) Immigration Division

- xiv. Conditional releases (inclusive of Orders of Supervision) was the principal form of non-custodial sentence utilised by the Immigration Division to monitor detainees that cannot be housed at the Immigration Detention Centre (IDC);
- xv. The decision to grant an *Order of Supervision* was based on a risk assessment which measures the individual's vulnerability. It is a process that involves the payment of a security deposit to the Chief Immigration Officer, a statutory declaration from a member of the public to serve as the detainee's guarantor and to provide for their care and housing;
- xvi. The security deposit acts as a bond that was forfeited by the State and used to repatriate the offender should they be found to be in breach of the Immigration Act;
- xvii. The ideal capacity of the IDC was one hundred and fifty (150), there were a total of one hundred and thirty-seven (137) detainees at the IDC; one hundred and ten (110) male and thirty-six (36) female;
- xviii. In the case of children or unaccompanied minors being sent to the IDC, the Division endeavours as much as possible to partner with the Children's Authority, NGOs and families to place these children in a safe place until a flight ticket can be purchased for their departure;
- xix. There was no line item in the budget for the purchase of tickets so disbursements were facilitated through the Permanent Secretary. This may at times require funds to be

- transferred from one vote to the next and as such, there may be delays in effecting the repatriation of minors;
- xx. Due to a lack of space, there were in excess of two thousand (2000) persons placed on an Order of Supervision;
 - xxi. Almost fifty percent (50%) of those placed on an Order of Supervision were in breach of the terms and conditions of the Order and were still in the country but not reporting to the Immigration Division;
 - xxii. Additional detainees may be housed at the Eastern Correctional Facility and may at times be accommodated at Police Stations until a security deposit is paid;
 - xxiii. One of the challenges of the Order of Supervision is the difficulty in verifying the identity of individuals;
 - xxiv. The Immigration Division liaises with the international agency *Interpol* to validate the identity of individuals. This process may take months to complete depending on the country from which information is being sourced;
 - xxv. Some detainees also commit criminal offences whilst on a conditional release;
 - xxvi. Whilst it might be a stronger deterrent in having detainees report to a police station as opposed to the Immigration Division, there may be challenges in issuing date renewals for offenders. Currently no formal arrangement exists between the Trinidad and Tobago Police Service and the Immigration Division;
 - xxvii. Persons who have recourse to a Special Inquiry are persons on Orders of Supervision who have been married to a citizen of T&T but lack permanent residency and those appealing deportations;
 - xxviii. The IDC was engaging the Director of Public Prosecutions (DPP) to ascertain whether a deportation can be effected in circumstances where a *writ of Habeas Corpus* (an application made to the Courts to be released unless lawful grounds for their detention is ascertained) is filed by the detainee;
 - xxix. There were instances where Detainees were on an Order of Supervision for three (3) years and in most cases, these persons also have matters pending before the Courts;
 - xxx. Poor behaviour and lack of cooperation of detainees to source documentation make it difficult to arrange flights for their deportation;
 - xxxi. Despite the number of challenges associated with the implementation of Orders of Supervision, the issue of limited capacity at the Immigration Detention Centre (IDC) and the increasing number of illegal entries into the country make this a necessary option;
 - xxxii. The Immigration Division envisages that electronic monitoring may enhance the delivery and oversight of persons subjected to conditional release;
 - xxxiii. The administration of electronic monitoring will be carried out by the Ministry of National Security. The Immigration Division will need to engage both the Ministry

- and the Judiciary to ascertain a feasible method of implementation for its application within the Immigration Division;
- xxxiv. The number of electronic monitoring devices that the Immigration Division will require will fluctuate based on the number of detainees;
- xxxv. The Immigration Division did not conduct surveillance exercises in recent days to identify illegal immigrants, but estimated that at least 500 illegal immigrants would be detected should a random exercise be undertaken;
- xxxvi. Venezuelans represent a large number of illegal immigrants however, there were immigrants with serious criminal antecedents from Nicaragua, Guatemala and Peru also posing as Venezuelans;
- xxxvii. Foreign nationals seeking permanent residency were required to pay a bond; and
- xxxviii. The enforcement unit of the Immigration Division had thirty (30) members of staff. The Unit was short of thirty-five (35) officers and as such, requests were made to the Service Commissions Department for additional staff.

(f) Vision on Mission

- xiii. Vision on Mission (VOM) is a non-profit organisation under the ambit of the Ministry of National Security that is invested in the re-settlement and re-integration of ex-offenders including walk in clients;
- xiv. The type of offence and/or the profile of the offender that would qualify for a non-custodial sentence is a first time offender, for a minor offence without the use of violence or harm to the victim who can be diverted away from crime;
- xv. An instrument known as the Level of Service Case Management Inventory (LSCMI) can be utilised to assist in assessing the personality of the offender to determine the suitability of a non-custodial sentence;
- xvi. The profile of an individual fitting a non-custodial sentence usually expresses remorse, empathy and has a good support system among other qualities;
- xvii. The LSCMI can be used by the Courts, probation departments and the Trinidad and Tobago Police Service (TTPS);
- xviii. A non-custodial sentence must incorporate aspects of punishment (deterrence and incapacitation), justice for the victim and the protection of society;
- xix. Non-custodial measures may cost less but not tremendously so as investment would have to be re-directed towards developing rehabilitative systems for ex-offenders;
- xx. Non-custodial measures may be applied pre-trial and even during imprisonment and does not only apply to minor offences;
- xxi. Some programmes such as the 'Sycamore Tree' project allow surrogate victims and surrogate offenders to engage in dialogue through a panel;

- xxii. Research shows that such programmes enable inmates to develop empathetic skills;
- xxiii. The non-custodial sentence must match the offence and consideration should be given to the mental health of the victim;
- xxiv. Electronic monitoring may lack a human element as a non-custodial option;
- xxv. There is currently little dialogue between the Probation Department and Vision on Mission, however, re-entry planning plays an important role in corrections;
- xxvi. There currently does not exist any halfway houses to help former offenders to transition back into society;
- xxvii. Vision on Mission had a three (3) year tracking programme. These cases were monitored by case workers;
- xxviii. In terms of employment, Vision on Mission assists ex-offenders in securing jobs, the organisation has a starter employment CEPEP programme and refers clients to other employers;
- xxix. Vision on Mission received a twelve (12) acre parcel of agricultural land at Wallerfield and are working towards a business incubator focussed on agricultural entrepreneurship in collaboration with the European Union and Ministry of Social Development to assist ex-offenders in acquiring skills and a means of income;
- xxx. All twenty three (23) clients at Vision on Mission's transition house are employed;
- xxxi. Over the past five (5) years over sixty percent (60%) of Vision on Mission's clients have gained employment;
- xxxii. Approximately thirty-five percent (35%) of the organisation's clients are deportees; and
- xxxiii. There are some individuals who come into the programme on bail and Vision on Mission is active in making representations of the individuals' efforts to the Courts.

9.6 Closing remarks were made by the chief officials present.

9.7 The Chairman thanked the officials for their attendance.

ADJOURNMENT

10.1 The meeting was adjourned at 11:40 p.m.

I certify that these Minutes are true and correct.

Chairman

Secretary

March 07, 2019

APPENDIX II

Witnesses Appearing and Providing Evidence

Table 6: List of Witnesses Appearing and Providing Oral Evidence

| Name of Official | Portfolio | Organisation |
|---|--|---|
| Public Hearing held on January 18th 2019 | | |
| Mr. Vel Lewis | Permanent Secretary | Ministry of National Security |
| Mr. Hayden Walcott | Chief Welfare Officer | Ministry of National Security |
| Ms. Sintra Maharaj | Chief Probation Officer | Ministry of National Security |
| Mrs. Marian Taylor | Probation Officer III (Ag.) | Ministry of National Security |
| Mr. Deodat Dulalchan | Deputy Commissioner of Police (Ag.) Operations | Trinidad and Tobago Police Service |
| Mrs. Joanne Archie | Assistant Commissioner of Police (Ag.) Operations | Trinidad and Tobago Police Service |
| Mr. Jayson Forde | Assistant Commissioner of Police (Ag.) Anti-crime Operations | Trinidad and Tobago Police Service |
| Mr. Roger Gaspard S.C. | Director of Public Prosecutions | Office of the Director of Public Prosecutions |
| Mrs. Tricia Hudlin-Cooper | Assistant Director of Public Prosecutions | Office of the Director of Public Prosecutions |
| Mr. Nigel Pilgrim | State Counsel III | Office of the Director of Public Prosecutions |
| Mr. Gerard Wilson | Commissioner of Prisons (Ag.) | Trinidad and Tobago Prisons Service |
| Mr. Carlos Corraspe | Assistant Commissioner of Prisons (Ag.) | Trinidad and Tobago Prisons Service |
| Public Hearing held on February 15th 2019 | | |
| Mrs. Charmaine Gandhi - Andrews | Chief Immigration Officer (Ag.) | Immigration Division |
| Mr. Gewan Harricoo | Immigration Officer IV Enforcement Unit | Immigration Division |

| | | |
|--|---|----------------------|
| Mr. Sherwin Johnson | Immigration Officer IV (Ag.) Immigration Detention Centre | Immigration Division |
| Mr. Anderson Jerome | Immigration Officer III Enforcement Unit | Immigration Division |
| Mr. Gordon Husbands | Programme Director | Vision on Mission |
| Ms. Tamika Benard | Case Worker | Vision on Mission |
| Public Hearing held on March 15th 2018 | | |
| Master Christie-Anne Morris-Alleyne | Court Executive Administrator | Judiciary |
| Mr. Jerome Mark | Deputy Court Executive Administrator | Judiciary |
| Mr. Recarb Ali | Deputy Court Executive Administrator | Judiciary |
| Mrs. Wendy Lewis- Callender | Deputy Court Executive Administrator Family and Children Division | Judiciary |
| Ms. Vanessa Garcia | Deputy Court Executive Administrator, Criminal and Traffic Division | Judiciary |
| Mrs. Nirala Bansee- Sookhai | Registrar and Marshall, Supreme Court | Judiciary |
| Ms. Carlene Cross | Children Court Administrator Family and Children Division | Judiciary |
| Ms. Stephanie Burke | Family Court Administrator, Family and Children Division | Judiciary |
| Mr. Anderson Gordon | Court Planning Director, Judiciary | Judiciary |

| | | |
|--------------------|---|-----------|
| Mr. David Bazil | Director, Court Research and Statistics | Judiciary |
| Ms. Jamie Philbert | Legal Research Officer | Judiciary |
| Ms. Johanna Olendo | Judicial Research Counsel I | Judiciary |

APPENDIX III

Verbatim Notes

**VERBATIM NOTES OF THE TWENTY-SIXTH MEETING OF THE JOINT
SELECT COMMITTEE ON FINANCE AND LEGAL AFFAIRS HELD IN
THE J. HAMILTON MAURICE MEETING ROOM, MEZZANINE FLOOR,
(IN PUBLIC), OFFICE OF THE PARLIAMENT, PORT OF SPAIN
INTERNATIONAL WATERFRONT CENTRE, #1A WRIGHTSON ROAD,
PORT OF SPAIN, ON FRIDAY, JANUARY 18, 2019, AT 10.20 A.M.**

PRESENT

| | |
|------------------------------------|--------------------|
| Ms. Sophia Chote SC | Chairman |
| Mr. Clarence Rambharat | Vice-Chairman |
| Mrs. Cherrie-Ann Crichlow-Cockburn | Member |
| Dr. Lester Henry | Member |
| Dr. Lovell Francis | Member |
| Mrs. Vidya Gayadeen-Gopeesingh | Member |
| Mr. Taharqa Obika | Member |
| | |
| Mr. Julien Ogilvie | Secretary |
| Ms. Terriann Baker | Research Assistant |
| Mr. Brian Lucio | Research Assistant |

ABSENT

| | |
|-------------------------|--------|
| Mr. Terrence Deyalsingh | Member |
|-------------------------|--------|

**Ministry of National Security
Trinidad and Tobago Prison Service**

| | |
|-------------------|-------------------------------|
| Mr. Vel Lewis | Permanent Secretary |
| Mr. Gerard Wilson | Commissioner of Prisons (Ag.) |

| | |
|---------------------|-------------------------------------|
| Mr. Carlos Corraspe | Asst. Commissioner of Prisons (Ag.) |
| Mr. Hayden Walcott | Chief Welfare Officer |
| Ms. Sintra Maharaj | Chief Probation Officer |
| Mrs. Marian Taylor | Probation Officer III (Ag.) |

Trinidad and Tobago Police Service

| | |
|----------------------|---|
| Mr. Deodat Dulalchan | Dep. Com. of Police (Ag.) Operations |
| Mrs. Joanne Archie | Asst. Com. of Police (Ag.) Operations |
| Mr. Jayson Forde | Asst. Com. of Police (Ag.) Anti-crime Operations |

Office of the Director of Public Prosecutions

| | |
|---------------------------|---------------------------------------|
| Mr. Roger Gaspard SC | Director of Public Prosecutions |
| Mrs. Tricia Hudlin-Cooper | Asst. Director of Public Prosecutions |
| Mr. Nigel Pilgrim | State Counsel III |

Madam Chairman: Good morning all. Thank you for attending and a Happy New Year to all of you.

This is the 26th meeting of the Joint Select Committee on Finance and Legal Affairs, and this is our first public hearing into the enquiry into the feasibility of widening the availability of non-custodial penalties in the criminal justice system.

Members of the public who are listening on the radio or looking on, on television, may send comments or questions during the course of the session via Parliament's various social media platforms.

This morning the Committee welcomes the Director of Public Prosecutions and representatives from his office; representatives from the Trinidad and Tobago Police Service; representatives from the Trinidad and Tobago Prison Service; and representatives from the Ministry of National Security. Starting from my left I will ask everyone to introduce himself to the Committee please.

[Introductions made]

Madam Chairman: Thank you all. Now, I will invite members of our Committee to introduce themselves.

[Introductions made]

Madam Chairman: I am the Chairman of this Committee, the Joint Select Committee, and my name is Sophia Chote.

Before we begin, just so that we can focus our attention on why we are here, and I am going to read out very quickly the three objectives of this enquiry. The first is to assess the efficacy of non-custodial penalties in dealing with the backlog of criminal cases; two, to determine whether non-custodial penalties may ameliorate high recidivism rates; and, three, to ascertain what are the critical requirements or prerequisites for the wider application of non-custodial sanctions in the administration of justice.

Now, there is a protocol that we normally follow when we hold these enquiries, and that involves the head of each attending group making a brief statement for two minutes on the proposed objectives of the enquiry, or with respect to their position on how they see things. So I will ask the Director of Public Prosecutions, Mr. Roger Gaspard SC, to open. If you can give us a brief opening statement of two minutes we will be very grateful.

Mr. Gaspard SC: Thank you very much, Madam Chairperson. Before I embark on my opening statement, may I hasten to apologize for the late submission of our response to the Committee's enquiries. I would indicate at this juncture that that late submission was not as a result of anything disrespectful, or any indication to be disrespectful, but rather because of the exigencies and the pressures of work.

Be that as it may, Madam Chairperson, the topic at hand this morning is both apposite and timely, having regard to the fact that it must be that institutionally and

systemically we may be doing some things quite wrong. Having regard to the burgeoning if not galloping crime situation in Trinidad and Tobago today, this topic assumes especially sharp relief since it cannot be gainsaid that the mere warehousing, to use a term that is rather popular these days, of prisoners, is not the panacea for dealing with the galloping crime situation, both in terms of the national community's goals and in terms of those little issues touching upon recidivism and re-offending.

It is my respectful view that this particular topic and its treatment and the discussion today is overdue, and I expect and pledge on behalf of the DPP's Office to do all in our power to further the discussions this morning and to meet all enquiries with the fullest response. Thank you very much.

Madam Chairman: Thank you, Mr. Gaspard. We accept your apology, but pleased be advised that it seems as though everybody was late. You were not unique in that regard, but we do appreciate the fact that everyone made an attempt to send us something in writing prior to today's meeting.

May I now invite Mr. Lewis to make an opening statement of about two minutes.

Mr. Lewis: Thank you, Madam Chairman, and again good morning to you and the members of the Committee. Like the DPP, I also would want to apologize for the late submission of our document to you, for much of the same reasons, and again we would want to suggest, we would want to assure you that no disrespect was meant in that delayed submission.

We would also want to thank the Committee for the opportunity to appear here this morning. With me are the Commissioner of Prisons and the Chief Probation Officer along with members of their teams. We want to welcome this discussion, this enquiry. We want to welcome the initiative of non-custodial penalties. This

could certainly have some positive impact for us in terms of the possibly reduction of the prison population, and of course the attendant negativities that come out of that. We see this as well as an opportunity for a widened scope of work of the probation services. And in fact, the Ministry of National Security has actually begun to develop that particular division to recruit additional members of staff and the like, in preparation of an outcome such as this.

So again, I would want to give the assurance that this is something that the Ministry of National Security would embrace, and we would want to continue supporting the work of this Committee. Again, we are happy to be part of these enquiries this morning, and we give you the assurance of our continued support. Thank you very much.

Madam Chairman: Thank you, Sir. May I invite the Acting Commissioner of Prisons, Mr. Wilson, to make an opening statement.

Mr. Wilson: Morning, Madam Chair and members of the Committee. I will just like to take this opportunity to wish you and the other members a bright and prosperous 2019 and also to all viewers and listeners.

The prison service continues to be committed to the criminal justice system. We continue to look at reformation and rehabilitation as one of our watchwords. And our concern would be that we continue to get the particular resources and add value to what we do.

I am extremely pleased that we have been invited here this morning. I think that it is a conversation that we need to have, and now that we have met—and yesterday I spoke with members of the Probation Department, and in other jurisdictions there is this nexus between the prisons and the probation. And I hope coming out of this, we will be able to have a closer association that would benefit our clients, as we call them now.

So that for the Prison Service we are on board, and we hope that coming out of this meeting and these deliberations we will be able to have that impetus to continue to make a change. And of course our goal in the prison is public safety. So I thank you.

Madam Chairman: Thank you, Commissioner. May I invite comments from Acting Deputy Commissioner of Operations, Mr. Dulalchan.

Mr. Dulalchan: Madam Chair, I appreciate the opportunity.

The Trinidad and Tobago Police Service recognizes that sentencing is about more than just punishment of offenders. Non-custodial penalties have the ability to place controls on the behaviour of offenders who do not have to be held incarcerated in prison and warehoused, as it was previously alluded to. Non-custodial penalties have the potential to rehabilitate offenders and to restore justice to victims, when coupled with specific programmes geared towards these goals. Therefore, the TTPS supports the implementation of non-custodial penalties, coupled with strict supervision and programmes geared towards social integration, rehabilitation and restorative justice, which can have positive outcomes once monitored and managed properly.

I thank you.

Madam Chairman: Thank you, Deputy Commissioner.

Now, the way we are going to structure our hearing this morning is a bit different from how we have done it before. I think because we recognize the fact that the Director of Public Prosecutions has had to attend before various parliamentary committees over the last few months, and we know how valuable the time of the Director and his staff is, what we will focus on first, Director, if you do not mind, is we will deal with our questions for you and then if you wish we will allow you to be relieved to return to your offices.

Mr. Gaspard SC: Madam Chairperson, rest assured that I have set aside this time to provide any assistance my office can this morning and into this afternoon if necessary, so that there is no need for me to be relieved. I am very much interested in hearing what the other stakeholders have to say in relation to this very, very valuable topic.

Madam Chairman: Excellent. So I just want to remind everyone that questions are asked through the Chair, and you also answer through the Chair. When you speak please ensure that your microphone is put on.

I suppose there is nothing at this point then preventing the actual enquiry beginning. So does any member want to begin?

Mr. Rambharat: I will begin. To the police service. I just wanted to know, to open with the question, what role do police prosecutors play in recommending non-custodial sentences?

Mr. Dulalchan: What happens is that with respect to each offence or each trial before the learned judge or magistrate, there is in fact enshrined in statute what is the minimum or maximum sentence. I know for a fact that there is in fact mitigating factors that play a role, but I do not think, and I am subject to correction, that they on the outset will indicate that a non-custodial sentence should be a consideration for determination or pronouncement by the magistrate or the judicial officer.

Mr. Rambharat: Is there a programme of training for police prosecutors?

Mr. Dulalchan: Yeah, we do have training. Training is ongoing, and we also source that training externally from members of the Judiciary as well as officers from the Office of the DPP.

Mr. Rambharat: And does this programme of training include the views of the Trinidad and Tobago Police Service on the possible efficacy of non-custodial sentences?

Mr. Dulalchan: I do not think so.

Madam Chairman: I just want to enquire, Acting Commissioner: you represent operations, does operations include your Court and Process Division?

Mrs. Archie: No, it does not Ma'am.

Madam Chairman: Do you have a representative here from the Court and Process Division?

Mr. Dulalchan: Mr. Forde, who is the ACP Crime, Court and Process Branch falls under his remit.

Madam Chairman: So perhaps, Mr. Forde, you may be able to assist us. Do we have any statistics from the Court and Process Department with respect to offences prosecuted by the police in which non-custodial penalties were imposed?

Mr. Forde: Madam Chairperson, good morning to you and the panel. Now, statistics in the Trinidad and Tobago Police Service are gathered by our Crime and Problem Analysis Branch. I believe as we sit here we should have statistics. Unfortunately I do not have those statistics with me as we speak, but if need be I can make all attempts to get them and share them with you, please.

Madam Chairman: Excellent. The Committee is always willing to receive material, whether written or oral, after the hearing, if you have material which you think may assist us in our deliberations. But we are certainly interested in what statistics the Court and Process Branch may have collected over recent years, with respect to cases in which non-custodial penalties have been imposed.

Mr. Forde: Madam Chair, I am guided and that information will be forwarded to you.

Madam Chairman: Thank you.

Mr. Obika: Thank you, Madam Chair. The question I have is for the police service. What role does the community policing arm of the police service play in assisting

the decision to go into, for offenders in particular, non-custodial sentencing?

Mr. Dulalchan: At this point in time I have data where 25 persons were sent to the community policing section; 25 by magistrates and one person by a judge, I think. They came there for rehabilitation, and after they would have gone through the various processes and so on, feedback went back to the judge and in some cases the magistrates, where they would have determined sentencing. In fact I was told that one of the persons who was in that programme is now a member of the Hugh Wooding Law School.

Dr. Henry: Morning again. My question is for the DPP. In your submission, you mentioned that litigants were generally not using the Petty Civil Court to handle their disputes involving sums of less than \$50,000. I would like to know some more about this—why you think that is the case, and what could be done to improve that situation, if that would be one of the solutions to this problem? It is on page 2 of your submission.

Mr. Gaspard SC: It is difficult to say why litigants are not availing themselves of this particular facility. This lies more in the civil arena which falls outside my immediate remit, but what I do know is that because of this you find that the Magistrates' Courts tend to be overburdened, and sometimes a magistrate may be better placed. There is an opportunity cost to a magistrate sometimes sitting in the Petty Civil Court as opposed to a court dealing with criminal matters. So that may exacerbate the problems as they pertain to resources and timeliness and disposal of matters in the Magistrates' Court, as those matters pertain to the criminal law arena.

Dr. Henry: So would you recommend some kind of programme to improve the use of the Petty Civil Court, could that be one of our takeaways here today? Because I was unaware, personally, of the lack of use of this court until I read it in your document. Could we see that as a possible avenue to explore, to help as you say

decrease the burden on the magistrates who deal with criminal matters and so on?

Mr. Gaspard SC: It can be, but there would be a need for the thinking of individuals, almost a site shift in the thinking of individuals, so that they may be persuaded to do otherwise.

Dr. Henry: So a public awareness campaign or something like that?

Mr. Gaspard SC: Yes, and sometimes the urgings might properly come from the magistrate in question or the presiding magistrate. Yes, we are becoming more and more litigious, but to a large extent persons can be encouraged to deviate from the litigation route, sometimes by way of moral suasion, and sometimes by a healthy administration of common sense.

Mrs. Gayadeen-Gopeesingh: Through you, Madam Chair, and to the DPP. You had said in one of your responses, and even in your opening statement a while ago, that there are systemic and institutional shortcomings. You also said having non-custodial remit is not really the panacea. What are these systemic and institutional shortcomings that you think you would need to fill that gap, and to see how we can move forward in bringing some changes to the criminal justice system?

Mr. Gaspard SC: Without purporting to give you an exhaustive list, when I speak about systemic and institutional shortcomings I am focusing or placing the accent on resources. There is a crying need for an increase perhaps in the number of judicial officers, the number of magistrates, the number of probation officers. There may be a need as well for probation officers to see their roles as being perhaps more holistic, as opposed to episodic or limited to the extent of their merely furnishing a report pursuant to a court order. You find in other jurisdictions where focus is placed on this particular accent, the role of the probation officer tends to be much wider than the role usually embraced, from my experience, by probation officers in this jurisdiction.

If we are to cultivate healthy diversion streams, for instance the creation say of community courts, again you have the issue of building space, you have the issue of personnel, you have the issue of resources, you have the issue at the prisons. You would find that unlike in the case of convicted prisoners, many of the prisoners are on remand, and I am not too sure what type of treatment, what type of intervention the prison service makes in relation to remand prisoners, bearing in mind of course that remand prisoners enjoy the presumption of innocence and they would have would have been found guilty by no court. When you look at prison statistics, and the goodly Prison Commissioner would be better versed to speak on these, it appears to me as though remand prisoners constitute a fairly large segment of the prison population. So when I spoke about institutional and systemic changes, the accent really is on resources.

Madam Chairman: Well, perhaps I could pose a question at this stage before I come back to a couple of other issues raised. I could pose a question to the Chief Probation Officer. Can you give us the disparity between what you actually have in terms of numbers in your department, as opposed to how many officers you would require?

Ms. Maharaj: Okay, Madam Chairperson. As it is right now we have 35 probation officers on the establishment, two being the Chief and the Assistant Chief Probation Officer, who are more in terms of administration. We have five Probation Officers III, those positions are filled. We have 16 Probation Officers I and 12 Probation Officers II. Now, that is just a meagre amount based on the amount of duties that we have to fulfil. So I could understand how the DPP—I know we do a lot of reports, and a lot of our focus really is to try to churn out reports for the Magistrates, High Court, Appeal Court, and that puts a strain on the limited capacity we have in terms of the amount of Probation Officers to do the report, the actual supervision.

However, we have gotten an increase to actually address two situations, one would be the Children Court, where we would have gotten 18. We would have gotten three Children Probation Officers III, six Children Probation Officers II and 18 Children Probation Officers III. Now, this is going to be on the establishment. So prior to having these people on the establishment which will take probably between two to three years, we have gotten approval for two Children Probation Officers III, four Probation Officers II and 18 Probation Officers I. Now, one of the problems is—

Madam Chairman: I am sorry to interrupt, but before I lose my train of thought, would these officers who are filling positions within your department, be confined in their duties to the Children Court?

Ms. Maharaj: Yes, the Children Probation Officers will definitely be confined to the Children Court, but we have also gotten Cabinet approval to hire a number of other probation officers, but that process is going on with Service Commission and there were some internal—okay, what we have is, as we speak, shortlisting has been completed and we are in the process. I understand from Service Commission that it should happen within the financial year—I am hoping—all things being equal.

Now, the numbers—we were guided by PMCD in terms of the numbers, and based on our statistics that we would have had from before, and the numbers that came up would have been what we would have gotten. They would have cut some that we think we would have needed, but we will be having some new duties coming up in terms of, possibly, electronic monitoring and that kind of thing. So I guess we would be able to look at it after one year to determine whether or not we will be needing more probation officers.

Madam Chairman: Well, how many do you need currently?

Ms. Maharaj: Probably over 50, because probation officers are attached to each

magisterial district, and so in some areas we are going to need more than the stipulated amount. So a definite figure is very difficult to come up with at this point in time, but it all depends on the amount of work that we have to do, not only for the court. But then we have other duties too, which—

Madam Chairman: Sure. I see the PS trying to catch my attention. Sir, do you have something you wish to add to this?

Mr. Lewis: Yes, I just wanted to add that the additional staff that we have—the positions that we have created for the Probation Division was actually done based on an assessment of the staffing requirements at the time, and therefore those positions were created based on that assessment. What I am hearing with the DPP is that he seems to suggest that we need to have an expanded role for the officers, and it is something that we have perhaps, hitherto, not considered and it is certainly something that we would want to sit down and look at in a serious way in terms of the roles, duties and responsibilities of the probation officer.

Madam Chairman: That is an excellent point, because if I may just say, one of the roles that probation officers now have to take on is the role of witness before the court. So that expanded role of learning how to testify and that kind of thing is becoming more important. So, Permanent Secretary, has there been consideration by your Ministry for further training of officers along these lines?

Mr. Lewis: Certainly, there are training plans so officers are at various intervals exposed to training. But with respect to the expanded role and what the DPP talked about as obtains in other jurisdictions is something certainly that I have taken note of here this morning. It is something I would want to sit with the Chief Probation Officer and other personnel at the Ministry to look at and to determine how we could see an expansion in the role of the officers.

Madam Chairman: Thank you.

Mr. Rambharat: Thank you, Chair. I have looked at the submissions from the DPP—I have looked at all, but in particular the police service and the DPP. I think particularly from the police service there is a more fundamental problem which is that we have not actually researched, and we do not have access to data on the performance of non-custodial sentences. That is clear. We have some guidance from other jurisdictions. We have some academic learning, but there is no local research and no data that we could rely on in terms of the performance of non-custodial sentences. That is clear to me. Maybe all of you could indicate what recommendations can come out of this enquiry which will allow you to really assess the value of non-custodial sentences. That is my first point.

The second thing is that I have listened to the issue of resources and the other factors. It is very clear that non-custodial sentencing fits into a number of other issues in the criminal justice system. This Committee has already conducted an enquiry into the criminal case management system, where we heard and we reported on the issues of staffing at the DPP, staffing elsewhere, buildings and other issues related to the criminal justice system.

So, I personally would like to be careful that we do not go back into an examination of the wider criminal justice system, but that we focus on the efficacy of non-custodial sentences within the criminal justice system.

10.55 a.m.

The third point I would make is that, there is, you know, there may be a link between non-custodial sentencing and the backlog. That has to do with the way we approach the prosecution of cases, and the opportunities for non-custodial sentencing up front, but I think my interest is in the other aspects of it, how a non-custodial sentence impacts on the person on whom it is imposed, the likelihood of reoffending. I think the DPP's views on that are very clear where you have

highlighted two things, one is that it may not necessarily avoid repeat offenders; one.

And two, you have made a very important point, DPP, in saying that when somebody who has been convicted comes back up for sentencing on a second offence, non-custodial sentencing in the current arrangements may not be available. Those are my points; anyone, maybe the DPP can respond.

Mr. Gaspard SC: Thank you very much. The question that you would have posed is a very valid question. If we are speaking or looking into the feasibility of widening the availability of non-custodial penalties in the criminal justice system, we must adhere to data. And as far I know, the data in this regard is rather slender, so it causes us to be hamstrung to some extent in assessing the issue of feasibility. So as far as I am concerned, you are quite correct.

In relation to the impact of non-custodial sentences, I heard the member focus on the impact on the offender, and I would just like to indicate that, in my view, for any criminal justice system to achieve its just deserts, while the interests of the offender are critical, the interests of the victims are just as critical. And if we are to assess the feasibility of widening the availability of non-custodial penalties in the criminal justice system, some focus must be placed also on victim impact statements especially in the context of restorative justice principles.

Mr. Rambharat: Deputy Commissioner Dulalchan, I just raised the issue because your written submission points to both the absence of data and the absence of local research, and through no fault of the Trinidad and Tobago Police Service, but do you see the need for that work to be done, and is it possible that the police service will try to allocate resources for that to be done?

Mr. Dulalchan: I think really, for us to really make the kind of informed presentation here, the research is critical, and I have no doubt that it is something that we see value in as a TTPS, and there will, in fact, be cost-benefit analysis. And

I can give a commitment here, we do, in fact, have a research department and I think it is something that we can probably task them to.

Mr. Rambharat: Just as a follow-up to the DPP's submission, what—could you tell us a little bit about the victim impact statement, and the role that it plays in prosecution?

Mr. Dulalchan: Yeah. I think it is important really, to—I mean, the victim here, we need to satisfy the victim. At the end of the day, there is need for victim satisfaction here. And I know for a fact that with respect to the sentencing there is confrontation where you find that face to face, the offender may show remorse, may apologize. There are instances where compensation depending on what offence was perpetrated, but I think key here, whilst we understand that non-custodial sentences can probably release some of the stresses within the systems in the criminal justice system, I mean, we must take into account the message we want to send to society as a whole, and the victim himself or herself.

Madam Chairman: Officer Dulalchan, I want to return to something to which you had said earlier which is to say, when asked about whether your officers who are prosecuting in the courts ever recommend non-custodial sentences, your answer was, no. May I ask, why?

Mr. Dulalchan: Madam Chair, that is the information that I was able to discern before coming here.

Madam Chairman: What is the source of your information, may I enquire?

Mr. Dulalchan: I attempted to get some information through one of the officers who was detailed to do this research in presenting the written—our written comments to you.

Madam Chairman: Well, perhaps I should pose my next question to officer Forde. Is there a policy decision that police prosecutors will not recommend non-custodial

penalties in certain cases or in all cases?

Mr. Forde: Madam Chair, the process as it relates to the presentation of evidence in our courts is that, remember, we have two sides and the prosecutor will present its State's case. Upon completion, the law basically gives the magistrate the leeway to determine how to impose sentencing. By the knowledge that I have, it is that traditionally the prosecutors do not enter into that realm and give—whether give an account as to whether it should be custodial or non-custodial.

Madam Chairman: Perhaps I should say, that used to be the case, now prosecutors are entitled to address the court when it comes to sentencing and, in fact, the Judicial Education Institute has produced its second edition on guidelines with respect to sentencing. So, prosecutors certainly have the option in the appropriate case to recommend non-custodial penalties. I find it somewhat odd that this change in the legal position having existed for some time does not seem to have trickled down to the police prosecutors; but be that as it may.

Hon. DPP, may I ask this question of you. Now, on a previous occasion when you had appeared before this Committee, we had spoken very briefly about the efficiency of the plea bargaining Act. And what I wanted to enquire is whether there is more use of the Act? And if so, whether the kinds of cases which are considered under the Act attract or are appropriate for non-custodial penalties?

Mr. Gaspard SC: Madam Chairperson, there appears to be some cultural reason why greater use is not made of plea bargaining. Usually, you would find that plea bargaining where it is used, it is usually used in relation to High Court matters. That may be something to be looked into, and it may have arisen as a result of a certain level of cultural stasis, but there is nothing debarring you from embarking on a plea bargain, whether under the Act or informally, because before the plea bargaining Act, for all practical purposes there would have been bargaining between the State

and defence counsel or between the State and a defendant or an accused person, sometimes even at the invitation of a presiding magistrate. But you would find that in this jurisdiction there appears to be a reluctance to embark on plea bargaining.

Madam Chairman: Why is that? I mean, is it that because the ones that have been engaged in are not acceptable to the person offering to plead guilty? Or is it just that people do not know that they can use this mechanism?

Mr. Gaspard SC: I think that people can always be better informed. I think people can always be better informed, and I also think that there needs to be a greater consciousness of it in the sphere of the defence counsel or at the private Bar, because as it stands, everyone seems to want to have his day in court, regardless. So greater use can be made of plea bargaining, and as I reiterate, whether formally under the Act or informally.

Madam Chairman: That is an excellent suggestion. I know, I was just about to invite you, Commissioner Wilson, but I know that you want to have an input into this.

Mr. Wilson: Madam Chair, thanks for the opportunity. I wanted to make two points. One is, of course, this non-custodial process will impact positively on the prisons because of overcrowding, that is one thing. When someone comes into the prison system, we are looking at overcrowding; and it is not a secret to anyone. We also look at contamination, there are, you know—that mixing because of the overcrowding and the fact that we cannot really, you know, carry through the process as we should, there is contamination.

And I think that in a case like that, mediation may help even before the matter goes to court, and I think that mediation was quite popular not too long ago, a lot of lawyers were even, you know, doing that particular programme, but the DPP raised an issue of restorative justice, and this is where I wanted to comment, because it has

become a buzz word, “restorative” justice. And it is sad to say, even amongst my staff they may not quite understand what is restorative justice, sometimes they mix it up with “minimum standard rules”.

So that if you hand an inmate a glass of water, they say it is restorative justice. If you say “thank you” to them it is restorative justice. But the minimum standard rules say that the only thing that a person loses while they are incarcerated is their freedom. So even listening to the radio, looking at television is not something that you take from them. Okay? It is surprising to most people, but that is a fact.

What I would like to say based on this whole restorative process, I would like to give, with your permission, Ma’am, a scenario. Someone is held for probably a stick of marijuana or someone is held for breaking into a school and stealing computers. So, he steals two computers from a school, so he is sentenced and he probably gets a year or two years, and he is, more or less, warehoused. What good does that do to us and the general public?

So, I am thinking, probably the school may need two or three classrooms painted. This particular person is also a good painter. So two things they do. He broke into the school because he has a drug habit, so two things you do. You give him the opportunity to seek help for his drug habit, so you are dealing with his drug problem. He paints the school which would have saved that school about \$30,000, because they were about to embark on, you know, raising funds to paint the school. So, he paints the school, by doing that he saves them \$30,000, so they are able now to buy 10 computers.

So the victim that the DPP spoke about, wins in the process because the victims would be the teachers and the children. So from three computers being stolen or two, they now have 10, based on the fact that this person has a skill. So, we send him for help, counselling, and he also uses his skill to help save the school some

funds. In my view, that is real restorative justice taking place there because we take cognizance of the fact that victims are involved.

I just want to point out too that some years ago, I remember two young children were exposed to a particular crime. I would not call names, but if you could recall, and I know that you recall, Ma'am, that one of them, the female, went on to do well while the male ended up incarcerated, and he was a victim.

At that point they were children, and they suffered the consequences as victims because nobody took the time to think about the victim. We always think about punishing the offender, but looking at the victim is crucial to us in this whole criminal justice scenario. So, I just wanted to make those two points. Thanks.

Madam Chairman: Thank you. Senator.

Mr. Obika: Thanks, Chair. Basically, I wanted to ask a follow-up question for all three in front of us, the prisons, police and DPP, it is in regard to the perception that soft penalties, notwithstanding the beauty in the revelation of your answer, soft penalties and its connection to perceived increases in vigilante justice in Trinidad and Tobago. How do you reconcile that challenge?—if we are to be introducing an increased number of non-custodial sentencing, but preventing vigilante justice by the perceived victims.

Mr. Wilson: I think mediation in this particular scenario would be crucial because we have to study, if we are looking at a soft sentence, as you may deem it, Sir, and whether there would be some retaliation from the persons so offended. I think mediation is crucial, and if we can have that, you know, introduced in the whole process, it may curb any sort of vigilante approach to that particular scenario; this is how I view it.

Mr. Obika: I want to solicit a response from the DPP, as well as the police service, but with respect to, in general, and in respect to child maintenance. So where persons

are sentenced, based on maintenance arrears or non-payment, how do you reconcile that, because we know the Single Fathers Association is getting prominence, and that is a separate topic, but it is connected to this issue. How do you reconcile the victim, and the victim being satisfied, at the same time restoring the offender?—for either the DPP and the police service, given your role.

Mr. Gaspard SC: Well, first of all, the characterization of a particular initiative as a soft penalty is something that I may take light exception to. In my view, based on the discussions that we are having, it might not be so much about a soft penalty as an appropriate penalty in the context of what is currently facing Trinidad and Tobago in terms of the warehousing of prisoners who perhaps ought not to be warehoused especially for lengthy periods. So, I am not sure if the premise is correct in terms of the characterization or categorization of the penalties as “soft”.

The second point that I would wish to make is that, I do not know that one can easily identify a causal connection between vigilante justice and what you may have referred to as a “soft penalty”. So, I do not know that soft penalties lead to vigilante justice or that they do not lead to vigilante justice. This might be something, again, which should be made the subject of some research and some empiricism, since while we are speaking about it as a fact, it may not be a fact and there may be no real link between soft penalties and vigilante justice.

But not only that, even if there is a link, if we are analysing this thing comprehensively, then you would have to look at that in the context of a situation where victims of crime find that the system takes too long to administer justice to them or for them. So that, that too may lead to vigilante justice, and that too should be made the subject of some research. Because of the length of time before a victim of crime has his day in court, that undermines public confidence in the judicial system, and as a result of that, persons might feel more inclined to take the law into

their own hands.

With respect to the issue of maintenance, I am not too sure that I understood exactly what your question was in relation to that particular issue.

Mr. Obika: Allow me to explain. If an individual, a parent is imprisoned, incarcerated for maintenance for a non-payment of child support, as we call it in Trinidad and Tobago, it may be perceived to be defeatist because, really and truly, if they are imprisoned, they cannot support their children in the first place. So, given that, how do you reconcile non-custodial sentencing with respect to a non-payment of child support?

Madam Chairman: If I may intervene at this point, perhaps the Director is not the person to proffer a point of view on this because it really does not fall within his remit, but perhaps we can hear from one of the representatives of the TTPS on this matter.

Mr. Dulalchan: Madam Chair, I just want to indicate that non-custodial sentencing does not mean that an offender does not have to be sentenced. That is to say, that offenders have been fined, offenders have been placed on a bond, and in some cases offenders are, in fact, reprimanded. And we are talking about punishment here, but a different type of punishment as opposed to custodial punishment. When someone is fined, the money goes into the Consolidated Fund.

Now, with respect to one not paying the maintenance, I cannot see how “fine” there can in any way assist, because in the first instance, the reason why you have been arrested or a warrant was issued for you, is that you did not have the money to pay, whatever moneys you have to pay for the maintenance of your child or your children as the case may be. Right? I do not know to what extent it really helps, because obviously, the person being incarcerated, it does not mean to say that he is working in prison to see if he can probably pay whilst in prison whatever fine, and

that is—

Madam Chairman: Thank you, Mr. Dulalchan, but I think this pins straight into your court, Commissioner, because one of the things we would want to find out is: How many people do you have incarcerated for non-payment of maintenance currently?

Mr. Wilson: All right. I will let the Offender Management, Mr. Corraspe, he will have the statistics to give you, Ma'am.

Mr. Corraspe: Yes. Thank you, Madam Chair. From our statistics that were provided, the breach of maintenance order, at this time we have 47 persons so circumstanced.

Madam Chairman: Forty-seven?

Mr. Corraspe: Forty-seven persons.

Madam Chairman: I see. I think what the member was trying to enquire about, Commissioner Dulalchan, is about other options, not necessarily a fine, other options such as community service and so on, as opposed to imprisonment for non-payment of maintenance moneys. What is your view on that?—Commissioner of Prisons.

Mr. Wilson: Well, Madam Chair, that is a good point because some of these persons incarcerated for this particular issue will tell you, “If I am incarcerated, I am not working, how could I pay”. And then what happens too is at the expiration of that particular period, when they come out, they are rearrested for, of course, for arrears, so that that creates a scenario for them.

I have spoken to a few of them who, there is a level of hatred after a while because some of them may even say, “I am not going to pay it, I will just make the time and continue to do that”. So that we have to look at probably a more creative way of getting—because at the end of it, Madam Chair, the children suffer, so that we have to look at probably a creative way to get around that.

Madam Chairman: Acting Deputy Commissioner, Mr. Dulalchan, I would imagine that the TTPS has to devote a certain amount of its resources, personnel and so on, to have these warrants executed on persons who have not paid child maintenance and that kind of thing. Do you have any data to say how many members of your staff or of the TTPS are on a weekly basis or monthly basis engaged in having these kinds of warrants executed, and having these persons brought before the court?

Mr. Dulalchan: Madam Chair, I know that that is a daily activity. It happens in our 77-plus station districts. It would be difficult for me now to really quantify the amount of officers, but I know it is a tremendous amount of resources. But just to suggest, I do not know much about arrangements with employer and employee, but whether considerations can be given where these persons who are, in fact, in the employ, whether there can be some arrangement. Where even before the offender receives his salary, whether or not whatever pronouncement has been made with respect to that respective matter at the Magistrates' Court, whether something can be done at that point in time, I cannot say. But I think that is something that can be considered, where the person is forced to, he is forced to make his contribution, because at the end of the day the bigger picture really is the maintenance and the care and comfort of the children.

Mrs. Gayadeen-Gopeesingh: Thank you. Mr. Wilson, I am using your minimum standard rules and I am using a submission here. And I am seeing 964 inmates are due to be released within the next 24 months, meaning that they are there in excess of three years. We have 180 inmate sentences are forfeitable by payment of fines, 19 forfeitable by payment of compensation, one by payment of debt and cost, and 19 sentences are forfeitable at payment of maintenance arrears.

So, we have 964 persons there warehoused, using your words, and it is a cost to keep these persons here, and look we are looking at the type of, the commission

of offence. Do you not think that perhaps these are some of the offences that could gain some, maybe leeway, using non-custodial penalties?

Mr. Wilson: Through the Chair, definitely, I totally agree with you. I have had discussions with Mr. Corraspe who is in charge of offender management, and we have looked at those issues. So when we received this information in terms of non-custodial, we felt that those are some of the, you know, cases that can be looked at. Similar to the recent events where those who would have pleaded guilty by the—of course, by the courts, would have been allowed to just complete their sentences. So that is an interesting point, and it is something that we can all look at, and that is why I am happy that we have the police service, probation and prison, and I hope that after this we can all sit and have the same conversation and, of course, come up with recommendations that would suit the process.

Mrs. Gayadeen-Gopeesingh: Also, I have been hearing words like “restorative justice”, we are hearing words of “rehabilitation” and so, but is it that any of the groups, the police, the prisons and even with networking perhaps with the Ministry of Education, that we do something which is prophylactic, it is preventative. Has there been any sort of networking with these different institutions, in particular, to look at the Ministry of Education where you would have perhaps the principal, you might get a list from the students submitting to the principal, and identifying students who may be disruptive students, and the potential of those who may have some mental issues.

And perhaps if you could have some, maybe some programmes to deal with that at the onset, we will not have all these problems here with the overcrowding and the rehabilitation, it is costing money to do all these different—which you call, setting up committees and so and to do these different programmes.

So the question is: Are there any programmes that you may want to start to

have or to initiate where you can network with the Ministry of Education to start to pick out those students who may be prone and become vulnerable for the commission of offences later?

Mr. Wilson: Okay. Well, through the Chair, sometimes at Youth Training Centre, schools would visit to more or less bring a shock to those students who may be a bit deviant at times, so that I do not know how much that helps. But I want say at this point that I know that the Police Youth Club, you know, is doing a pretty good job by trying to keep the youths in line.

We also have—the prison, we also introduced the Prison Youth Club, and through the youth clubs we have tried to introduce programmes to prevent them from entering into or even the Youth Training Centre.

So that I know we have collaborated, the Prisons Sports Club and the Police Sports Club, we have collaborated a bit in getting some programme to keep the youths in line. So that is the only thing I can tell you about at this time.

Mrs. Gayadeen-Gopeesingh: And I do not want to leave out Mrs. Joanne Archie, but the commission of offences by females, how prevalent is it, like with respect to the young female?

Mrs. Archie: Well, whilst it is not as prevalent as the males, we still have I would say, a moderate percentage of women committing—young women, and we are seeing more and more young women, and I am speaking about between the ages of 15 to 25 committing offences. How we treat with that through, again, our community policing units and the youth clubs which fall under the community policing unit.

And I want to agree with Mr. Corraspe who suggested that the programmes that we should have and should be in place to assist in that regard, and you alluded to it, I think we should have a closer collaboration with the agencies involved as a proactive measure. I think it is not as strong as we could have it. And, for instance,

aligning with NGOs in the community, and in this case I know Commissioner Wilson and Mr. Corraspe and also myself, we are on the board of the Vision and Mission who are doing excellent work as it relates to reintegration, and if we could work closer together, I think we can come up with more vibrant programmes that we will see reduction in even the recidivism in the communities.

11.30 a.m.

Mr. Rambharat: Thank you very much, and this is directed to the PS and Commissioner Wilson. One of the views on non-custodial sentencing is that it would lead to a reduction in the cost at the prisons. When I looked at the submission, using a prison population of 3,933, what I say saw, when I think about the prison for example, I thought that feeding prisoners would have been a very significant component of the monthly cost, the annual cost, and I was quite surprised, because you have a figure of 24 million for food, which translates to a cost of about \$16 per day per prisoner, or just under \$500 a month. However, looking at the staffing cost for the prisons, on average it cost about \$15,000 a month per prisoner. Now, I have already said, of that 15,000 a month, food is about 500. But, basic salaries make up about \$8,000 per prisoner per month, and if you add overtime and allowances you get close to 10 or 11,000. So, the bulk of the 15,000 a month per prisoner is in staffing cost. Now, if we reduce the number in the prison we would reduce the cost of food, but we would still remain with the prison officers establishment and the staffing cost as it is, so, the question I want to direct to both of you is whether in fact the cost of running the prisons is a factor in non-custodial sentencing?

Mr. Lewis: Thank you, and through you, Madam Chair, I want to tell you right off, yes, it is a factor. In fact, when we computed the figures and we realized that to maintain one prisoner in the prison service is over \$15,000 per month, we recognized the need for reduction in cost. In fact, we have already begun to discuss ways and

means of reducing that cost and looking at ways we could save on the expenditure that we are currently making on maintaining persons in prison. So that is a discussion that we have already begun. Let me also say before I hand over to Commissioner Wilson, that I need also to add to the discussion here the fact that the Ministry of National Security has actually already begun the establishment of the electronic monitoring system in Trinidad and Tobago. This is where we are hoping to institute the whole business of non-custodial sentencing through offenders wearing a certain device and who could be released, but be tracked and so on, through this electronic system. In fact we—

Madam Chairman: Sorry to interrupt you Mr. Permanent Secretary, but before it flies out of my head I need to ask: Has the Ministry acquired those devices?

Mr. Lewis: The Ministry has just awarded a contract actually to a firm to acquire the devices.

Madam Chairman: And how many are we looking at?

Mr. Lewis: I am sorry, I do not have the figures right now, but we are beginning actually immediately with 300 devices and that should be increased over time.

Madam Chairman: Mr. Henry.

Dr. Henry: Okay. That was the question I was going to ask, in terms of, what are some of the obstacles remaining, practical obstacles into implementing that electronic monitoring. Is the entire system of electronic monitoring, what are some of the final obstacles apart from just getting the devices, which we just heard? Are there any other practical hindrances to bringing that into play?

Mr. Lewis: I do think there are any major obstacles after we have gotten the devices. I think there are some minor things that we need to do with respect to the order and those things, and with respect to the police processes and so on that have already been drafted. So, I think, once the devices have been acquired there are just some

minor legislative things to treat with in order to put a system in place. In fact, we have already set up the office and staffed the office with the manager and some initial staffing to have the system up and running as swiftly, as soon as we have been able to acquire the devices.

Madam Chairman: If I may, I am just a little confused by this, but perhaps the Acting Deputy Commissioner, Mr. Dulalchan, might be able to shed some light. Is it, since we are only going to have 300 devices, is it the intention of the TTPS that these devices will be used for the purposes of persons who are on bail, or is it that they would be used post sentence? What is the proposal for that?

Mr. Dulalchan: Ma'am, I am really not in a position to speak to that, but just to say that as PS would have said, we are advanced in terms of preparation. We have already prepared our draft SOPs. We would have trained about 361 officers thus far, and those are officers of the middle management ranks. We are going to recommence that training in the month of February. We have already identified who would be the liaison officer to the manager of the Electronic Monitoring Unit. And my information is that the regulations need to be signed off by Cabinet. I am just reporting what was told to me. But we are in an advanced state and we are preparing ourselves to welcome this initiative.

Madam Chairman: Thank you.

Mr. Obika: Thank you, Chair. The question I have is from both the DPP and the police service. It is with regard to, notwithstanding there is no legislation regarding decriminalizing marijuana, small amounts of marijuana, what has been the position—is there any changing position in advancing non-custodial sentencing for persons who have very small—who are caught with very small amounts of marijuana? Because we are seeing here on the list presented to us by the Ministry of National Security, of 1,064 persons serving sentences of five years and less, 90 are

incarcerated for possession of marijuana. I am not sure if that is small or large quantities, so, the question is, is there any shift in focus regarding non-custodial sentencing for persons who are caught with small amounts of marijuana?

Mr. Dulalchan: From the policing standpoint, we do not have a position on this. We have to just abide by the law as it stands.

Madam Chairman: You have a question.

Mr. Obika: Can the DPP offer any?

Mr. Gaspard SC: I understand that this topic is particularly topical, and there are initiatives to engage the public by way of public consultation on this whole issue of decriminalization of marijuana. But as it stands, the Director of Public Prosecutions' office is guided by our standard test as to where we go with, by way of prosecution of matters of this nature, and, of course that is a two-stage test. The first stage deals with the sufficiency of evidence, and the second stage is whether or not a prosecution is in the public interest. From time to time the DPP's office may make interventions, especially where the offender is young, like a school child, so as to prevent the harsher realities of sentencing being visited upon those individuals, where they may have been charged with possession of marijuana or narcotics.

Mr. Rambharat: PS and Commissioner, just back to the cost issue, and the Chairman introduced the electronic monitoring discussion. PS, you talked about reduction in the cost, we have established that the cost per month per prisoner is over 15,000, and we have established that a significant part, may be as much as 10,000 is related to staff cost, and based on your data I had calculated the food is about \$500. So, I am trying to establish where are you targeting for the cost reduction for prisoners, and I want to specifically understand if there are plans to reduce the staffing cost? That is the first question. And the second question is, have we established—we have agreed that cost per prisoner per month is 15,000—the cost

per month per person of the electronic monitoring system?

Mr. Lewis: Thank you again member, through you, Chairman. With respect to the first part of the question, the reduction, the cost saving is actually proposing to make with respect to the expenditure on the prison service, one of the areas we are looking at certainly is in the overtime payments. After we have broken out the figures—after we have broken down the figures we felt that that is at least one of the areas that we feel strongly we could restructure and to make some savings. There might be others that we have not really delved into those very deeply just yet, but certainly that is one of the areas that we are looking at immediately. And the Commissioner could talk a “lil” bit more about how we propose to restructure and how we would allocate the prison officers’ duty, and time, shifts and so on to be able to achieve some savings in the overtime bill. The electronic monitoring, unfortunately I did not walk with those figures, those details, but we have some estimates with respect to cost that I could perhaps share with the Committee maybe in writing at a later stage.

Mr. Rambharat: Okay, thank you.

Mrs. Gayadeen-Gopeesingh: Hon. DPP, you just used the words “sufficiency of evidence”. I know we want to eliminate PI, preliminary inquiries, what does the ordinary, reasonable man glean from the meaning of “sufficiency of evidence”?

Mr. Gaspard SC: It would be difficult for me to be so bold as to posit the reasonable man’s interpretation of the term “sufficiency of evidence”. But, as far as the law is concern, evidence is considered to be sufficient if that evidence is such that to go forward with a prosecution on the basis of that evidence, there is a reasonable prospect of conviction. If the evidence meets that threshold it is considered sufficient.

Mrs. Gayadeen-Gopeesingh: So in the case—now, if I could just go off on just one point, Chairperson, with Masters? With respect to Masters now dealing with

sufficiency hearings, and we do not have the evidence, what you call true evidence, or the Evidence Act coming into play with Masters determine sufficiency hearing, is that the same threshold? Is it a higher burden to overcome, or greater burden?

Mr. Gaspard SC: The interpretation on the term “sufficiency of evidence” from the point of view of a prosecutor going forward with a charge might be different from the situation where a Master is considering “sufficiency of evidence”. Similarly, in the case of preliminary inquiry, magistrates commit persons at preliminary inquiries on the basis that the State would have made out a prima facie case. A prima facie case to my mind suggests a lower standard than the standard the prosecutor employs in deciding if to go forward with a prosecution.

Madam Chairman: Thank you Director, I know that some of these terms are technical legal terms, but thank you for your very precise explanation. I have a question for the Chief Probation Officer. There have been some comments or observations in the courtrooms; family court, criminal courts and so on, about the quality of the reports being produced by probation officers. Some of the comments have been that the reports are not quite up to standard, and the other comment is that they are so widely varying in standard that what I would like to find out, is whether there is an education process, or do probation officers have enough time to have further education on the preparation of these reports which play a very important part in the courtroom process?

Ms. Maharaj: Madam Chairperson, I am aware that the standard has dropped, and it has dropped incrementally for a little while now. What I have done is to—apart from the training that they get, because we have a hierarchical system where the PO III’s are responsible for vetting the reports of the entire area. We are divided into geographical areas. We have the II’s vetting I’s, the III’s vetting the II’s, and in very critical matters the Assistant Chief or the Chief myself, I might be able to make sure

that the reports that go to court are acceptable. However, we have a lot of—it is a First Degree to get into probation services, and we believe that at least there must be a degree of—I mean, people should be able to have proper English at least. However, we have several challenges with that, and I know it is, sometimes it is like pulling teeth trying to sanitize these reports before they actually go to court. Because of the number of matters we have, and we have to work so quickly, sometimes a number of them would probably fall through the cracks. What I have been doing right now, is deal with Service Commission to get a written component, at least, to be part of the shortlisting, to ensure that the officers that come in this new batch will be able to produce at least proper English, so the content where we would learn—
[*Interruption*] Pardon me?

Madam Chairman: Thank you. I was just indicating to the member that he would be able to ask his question next. But, certainly, complete your answer.

Ms. Maharaj: Okay. All right. So, as it is right now, we are working on the new ones that are coming in, and we do continuous training. Another one of the comments that I would have gotten from a judge recently is that some of the reports are vacuous. Now, we have the LSCMI risk assessment tool which is supposed to be implemented before the report actually goes to court to determine the level of risk, and apparently that was not happening. I recently got wind of this, and we have put things in place to ensure that the information that reaches the court is what is supposed to be there. So, we are working on it, it is a work in progress.

Madam Chairman: Thank you.

Dr. Henry: Maybe Mr. Corraspe could help shed some light. How effective and how successful has been the time off for good behaviour? We see in one of the submissions here that it does exist, and it is up to the Superintendent of Prisons and so on to let somebody out on good behaviour. How has the experience with that

programme been?

Mr. Corraspe: Through you, Madam Chair, the prison rules allow that facility for inmates who show good conduct and industry above the normative level to be considered for discretionary special remission, three days and five days. Those only apply, of course, to convicted persons. So, when the inmate comes through the first three stages, having regard to the length of their sentence, they will then come into this special category, and if they are at that category prior to release then they are entitled to make the request of the superintendent for that three-day consideration, and if they have spent six months or more in that category then they are entitled to make the application for the seven days. So, time is important for an individual, and to leave three days or seven days is much better than leaving at the actual date where the normative remission standard would apply. The inmates who use it are inmates who are assessed after they have made the application, and if the superintendent is satisfied that looking at the length and breadth of the person's stay in the institution, that they are so qualified then the superintendent will exercise that discretion and allow the special remission. So it is a facility that is used fairly regularly for those persons who have long stay. Because in order to get to that special category your sentence must be on average at four to five years in the very least.

Dr. Henry: Do you monitor what happens when someone has successfully utilized this facility in terms of follow up?

Mr. Corraspe: I should perhaps make the distinction between the special remission that you are speaking to and the normative remission. Under Prison 2 Rule—Prison Rule 285, every offender who spends under 12 months is entitled to six months of half of the sentence, and the offender who is over a year a third of the sentence. So those are the normative remissions that apply to every offender who is convicted by the courts. Separate and apart from that then we come into the special

remission which is what I spoke to in your earlier question. So all offenders who are convicted who fall in a sentence of under one year are entitled to remission of half of, and over one year a third of. That is the rules and it applies, and of course this applies to good conduct and industry. When the offender comes into the institution an initial interview is conducted, and the offender is told what the expectations are, and if they conduct themselves, and they show good industry then they would be entitled to this part of their sentence.

Mr. Obika: Thank you, Chair. This is my last question today and it has to do with victim satisfaction and a cultural shift, public education. In light of the submissions of the TTPS and the DPP in particular, as well as the illustration of the Commissioner of Prisons, what can we do as a country, or from your respective institutions, what do you think should be done, as well as what we should do as a country to ensure this cultural shift occurs regarding plea bargaining, and regarding acceptance by the population of non-custodial sentencing, by and large, and probably I guess in some specific circumstances where you would need public acceptance of a non-custodial sentence for there to be social peace? Anyone could answer.

Mr. Corrapse: Okay, through you, Madam Chair, let me suggest that, one of the things that the prison service has begun doing is getting the message out there, because within recent times I have—my communications department, we have started a programme called Conversations with the Commissioner, and I use that forum to get all the messages out there, and of course for the public to interact with me. Apart from that we are also featured on one of the programmes during the week and sensitize the public to various issues. So, at least the prison service is trying to get the message out there, you know like years ago we were a guarded secret, a well-kept secret and I am trying to change that. So, we interface with the public more, and I think what we need to do is carry the information to them so that they would

be able to be better informed in terms of these processes and where we intend to go. So, I think interaction, communication with the public is key.

Mr. Obika: Thanks.

Madam Chairman: Thank you. I think we are running out of time, because this room is required for another purpose in a short period of time. So, I just want to begin the wrap up, because we have received so much information from all of you that I have to begin by thanking you for your tremendous input. The sad thing is that we could not continue for the rest of the day, because then we may have been able to actually resolve some of the issues which have been raised here. However, what we will do is we intend to write you with questions which have not been able to have been asked during the course of this session, or questions which have arisen from what you have given to us today, and we hope that we would be able to have your responses before we do our report.

Before I invite persons to do their closing speeches, could I just make for what is perhaps a personal plea? Could we not refer to the housing of prisoners who are human beings as warehousing? I think in the context of the history of this beloved country of ours, we need to remember that human beings are human beings, and let us keep warehouses for property, and for items, and inanimate objects. But that is just my personal plea and an aside.

I will now invite persons to make their closing remarks, and this time I will ask the Acting Commissioner of Prisons. We will go from left to right, to make some closing remarks.

Mr. Corraspe: Madam Chair, I would like to thank you and the other members of the Committee for inviting the prison service here, and I sincerely hope that that word “warehousing” comes out of the public domain, [*Laughter*] but I think it just highlights how persons feel about that whole incarceration process. But we

are, the prison service, I can assure you is attempting to transition into something new. We have a lot of initiatives that we would be seeing from time to time, and I assure you that our main objective continues to be the safety of the public. Thank you very much.

Madam Chairman: Thank you. Mr. Lewis.

Mr. Lewis: Thank you, Madam Chairman. Again, I would want to thank yourself and the members of this Committee for the opportunity to have presented here, what we have gleaned from the discussion here this morning, certainly useful to the work of the Ministry of National Security, specifically, of course to the Prison Service and the Probation Services. And we go back to our office with renewed vigour to support the work of this Committee. Thank you.

Madam Chairman: Director.

Mr. Gaspard SC: Thank you very much, Madam Chairperson, members, there was a particular point that we did not spend any time on today perhaps because of the time constraints, but in examining the feasibility of widening the availability of non-custodial penalties in the criminal justice system, I think we need to be cognizant of the distinction between, say serious criminal offences and trivial or more petty offences. If you look at our submissions closely, and I expect that you did, you would realize that in the Magistrates' Courts for instance, which really is the mantelpiece of justice for most persons in the country, you would find that there are over a 100,000 matters pending before the Magistrates' Courts, and of these a significant amount speak to traffic offence or regulatory offences.

In my respectful view, it is much more feasible to deal with these offences in the context of available, widening the plateau, as far as non-custodial penalties go. So I think we need to make that distinction, because non-custodial penalties in the criminal justice system may be wholly inappropriate where the offences are serious

criminal offences. I would also like to add that these discussions, I dare say, and I fully understand the notion and the concept of separation of powers, but I would be so bold to say, I take the liberty to say, that perhaps these discussions could be even richer if we were to have a representative from the Judiciary, since a lot of the discussion on sentencing involves a critical stakeholder, which is the judicial officer, and the judicial officers exercise of a judicial discretion, the moorings of that discussion and how they are amplified, that type of discussion, I respectfully submit, may also enrich these discussions and they may go a long in the edification of the public.

Finally, I would like to thank this Committee for inviting my office to make a contribution here today, and I also want to thank all the presenters and all in attendance, since for my own part, and I speak on behalf of my colleagues, we too would have been the beneficiaries of this rather productive experience. Thank you very much.

Madam Chairman: And before I call on Acting Deputy Commissioner, Dulalchan, Director perhaps I could indicate that we have written to the Chief Magistrate, and we hope to have some input from the Magistracy with respect to sentencing. Mr. Dulalchan.

Mr. Dulalchan: Madam Chair, on behalf of the Trinidad and Tobago Police Service, we also appreciate the opportunity to be here this morning, and to join with the conversation. I also understand and appreciate this initiative, if I should term it like this, but just to say that we sitting here and we are going to deliberate upon a person who is already—a person who has been convicted. But I am just asking whether or not also consideration can be given for that person who may probably have run afoul of the law, maybe for some trivial offence, and cannot meet bail, and that person is now remanded with the presumption of innocence until proven guilty. What also is

his or her situation in the realm of what of what we are in fact discussing? Whilst we may want to contemplate that, I want to give the commitment that we as the TTPS stand ready to continue to support this Committee in whatever way forward in relation to this matter at hand.

Madam Chairman: Thank you all very much. I want to thank the media, persons in the public gallery for attending, and the viewing and listening audience. There being no other business, this meeting is now adjourned. Thank you again.

12.03 p.m.: *Meeting adjourned.*

**VERBATIM NOTES OF THE TWENTY-SEVENTH MEETING OF THE
JOINT SELECT COMMITTEE ON FINANCE AND LEGAL AFFAIRS
HELD IN THE J. HAMILTON MAURICE MEETING ROOM, MEZZANINE
FLOOR, (IN PUBLIC), OFFICE OF THE PARLIAMENT, PORT OF SPAIN
INTERNATIONAL WATERFRONT CENTRE, #1A WRIGHTSON ROAD,
PORT OF SPAIN, ON FRIDAY, FEBRUARY 15, 2019, AT 10.15 A.M.**

PRESENT

| | |
|--------------------------------|----------------------|
| Ms. Sophia Chote SC | Chairman |
| Mr. Clarence Rambharat | Vice-Chairman |
| Mrs. Vidia Gayadeen-Gopeesingh | Member |
| Mr. Taharqa Obika | Member |
| Mr. Terrence Deyalsingh | Member |
| Mr. Julien Ogilvie | Secretary |
| Ms. Ria Rampersad | Parliamentary Intern |

ABSENT

| | |
|------------------------------------|--------|
| Mrs. Cherrie-Ann Crichlow-Cockburn | Member |
| Dr. Lester Henry | Member |
| Dr. Lovell Francis | Member |

IMMIGRATION DIVISION

| | |
|-------------------------------|--|
| Mrs. Charmaine Gandhi-Andrews | Chief Immigration Officer (Ag.) |
| Mr. Gewan Harricoo | Immigration Officer IV – Enforcement Unit |
| Mr. Sherwin Johnson | Immigration Officer IV (Ag.) – Immigration Detention Centre |

and they are members of the Secretariat for this Committee. To my left is Mr. Julien Ogilvie who heads the team.

Now, just for the purposes of reminding those who are viewing and listening, I am going to read out the three objectives of the enquiry:

1. To assess the efficacy of non-custodial penalties in dealing with the backlog of criminal cases;
2. To determine whether non-custodial penalties may ameliorate high recidivism rates; and
3. To ascertain what are the critical requirements or prerequisites for the wider application of non-custodial sanctions in the administration of justice.

It is normal for us to ask a representative from each group attending to make a brief opening statement of about two minutes or so. So I will invite the Chief Immigration Officer now to do that.

Mrs. Gandhi-Andrews: Thank you very much, Madam Chair. The Immigration Division of the Ministry of National Security thanks the Joint Select Committee on Finance and Legal Affairs for the opportunity to contribute to the enquiry into the feasibility of widening the availability of non-custodial penalties in the criminal justice system. The Division is mandated to enforce the Immigration Act and Regulations which set out, among other things, who can legally reside in the country, who are prohibited immigrants and permitted entrants, what the criteria are for remaining in the country legally, the offences and penalties for those who have breached the legislation and the process for detaining and deporting the offenders.

Prior to November 2009, foreign nationals who breached the conditions of their landing certificate or committed immigration offences were detained at the nation's prisons. Subsequently, the Immigration Detention Centre was opened to

house immigration detainees to ensure that they were not treated in the same manner as or exposed to criminal offenders.

Detainees come from various countries around the world and the length of their detention can vary depending on their unique circumstances. Obstacles to repatriation can arise such as lack of documentation and inability to identify the detainee, a lack of cooperation by the detainee and the demands of airlines and transit countries. While the Division has improved its processing time from detention to order for removal, these obstacles can prolong the process and ultimately the length of detention.

The Immigration Act does set out discretionary alternatives to detention. However, our records show that at least 45 per cent of foreign nationals failed to adhere to the terms and conditions of their release and remain at large in the country. The use of other alternatives such as electronic monitoring is a welcomed initiative that can aid the Division in carrying out its mission of promoting national security by effectively monitoring and controlling the movement of persons into, within and out of Trinidad and Tobago.

My team here today stands ready to address any of the concerns of the Committee. Thank you.

Madam Chairman: Thank you, Chief Immigration Officer. Mr. Husbands, will you be doing the opening remarks?

Mr. Husbands: Yes, I would, Madam Chair. Thank you again. I sit here to represent Vision on Mission in the absence of Mr. Wayne Chance who is incapacitated at the moment so he sends his apology for not being able to attend.

Vision on Mission is a non-profit organization which has been involved in resettlement or reintegration of ex-offenders since 2000. We are now under the ambit of the Ministry of National Security and with the mandate in terms of how can

we prepare offenders for a smooth reintegration. And that is done by providing what Vision on Mission has developed called a transition from prisons to corrections model which is the most contemporary approach in terms of reintegrating offenders and that consists of two components. The first component is developing a curriculum that prepares the individual for re-entry, covering topics as “prisonization”, spirituality, the 10 keys towards reintegration, the aspect in terms of job readiness and we are trying to expand what we do within the prison for 2019 and beyond because of a grant we received from the European Union to develop an entrepreneurial mindset and to develop what you call an incubator in terms of preparing inmates and providing them with the guidance and the capability to go into their own small businesses.

Having said that, we welcome the whole aspect in terms of looking at alternative to custody. In another incarnation, I was a Chief Prison Welfare Officer so I recognize the need to see if we can really decriminalize some of the persons who come in to avoid them being contaminated and to develop what I like to call legitimacy. Who do we really want to send to prison? Do we really want to send all of our offenders to prison? Having said that though, for that to work, there must be a clear perspective in terms of those offences, those minor offences, probably non-violent offences, who can be better treated within the community.

Again, I believe that the range which I saw here in document that came to us is too limited. There are far more—a wider scope of non-custodial sentences which I think I would have the opportunity later on to expand on, both at the pre-trial level, the sentencing level and of course, the post-sentencing. So that discussion will ensue.

Again, I want to thank the Committee for thinking Vision on Mission worthy, you know, to come and share our knowledge and our experiences with this august

body.

Madam Chairman: Thank you very much, Mr. Husbands

Mr. Deyalsingh: Thank you, Chair. As you know, I have another Joint Select to be at but I do have one question I would like aired because I am very interested in it. Mr. Husbands, what category of person or what sort of crime is best suited for non-custodial sentences? One. Two, what are the range of non-custodial sentences used? But what I am more interested in, what type of person with the correct attitude and aptitude and psychological profile is more amenable to non-custodial sentences?

Mr. Husbands: Thank you, member. To answer the first question pointedly, as I mentioned earlier, it must be for non-violent offences and particularly for first-time offences. I know people say you know, there is nothing like a victimless crime but then sometimes you see, a young man might be smoking marijuana. That person can be diverted into a rehab centre. That person comes before the court, can also be placed on some suspended sentence or a rehabilitation order and divert that person into a treatment. Again, you could suspend the sentence and if that person completes the programme successfully, then you no longer continue the prosecution of that person.

In terms of the personality trait, we are looking at persons who seem not to have a history of getting involved with the law. What do I mean by that? And of course, the personality, this is a very difficult thing, but then there are instruments, particular in corrections. The most contemporary instrument that is being used, they call it the LS/CMI, that is, the Level of Service/Case Management Inventory, which addresses the history of the individual, the person's educational level, work, if the person is at the age to work, in terms of his association, in terms of if there is any substance abuse, any kind of family issues, in terms of his reasoning level, in terms of his support system as it were. Again, that instrument is going to be utilized by

the probation department, by even magistrates or people in the court who can use that instrument to look at the profile on the individual.

You are looking for persons who have not demonstrated traits of modification. What does it mean? It means that they do not devalue the limit or the impact of their crime. They do not seem to think that they are obligated to commit these crimes. They call this “super-optimism”, that they would not be caught, that they do not demonstrate that level of cognitive laziness in terms of they are going to ensure that they are going to complete any programme that they get into; and there are others. But I am just trying to make sure that we give a good profile.

Again, there is something in correction that is being utilized is called the “criminal mask” in terms of looking at the person, if that person is self-centred, they call it “narcissism”. If that person has not showed that sense in terms of not following through on authority, a dislike for authority, a history of lying and stealing, lack of empathy and not understanding the keys to freedom.

So there are a lot of instruments and there are a lot of profiling that must be done both by the court, the person under probation, particularly which supposed to be the agency that is supposed to champion this change in terms of non-custodial sentences against even the police service. Now, they have the authority to caution and warn. They can use this particular kind of instrument as well to say which individual, young non-violent offender who does not seem to be a habitual offender, that is, who can probably divert to a programme. Right so—thank you, Madam Chair.

Madam Chairman: Thank you, Mr. Husbands. That was very helpful. Member, I understand that you have to be in another committee so you may be excused.

Mr. Deyalsingh: Thank you.

Madam Chairman: But that takes us straight into an issue that we perhaps could

begin with when looking at the Immigration Department and how the Department deals with detainees. What informs the decision for conditional release? Well, the boss is here so I guess the boss will say who has to answer. *[Laughter]*

Mr. Harricoo: Thank you, Chair. There are several conditions that must be met for conditional release, one of which the person or if there are persons who are willing to post a security deposit or a landing deposit with the Chief Immigration Officer. That landing deposit varies by nationality. And also there must be someone in the public domain that is willing to take care of them because we cannot place somebody on a conditional release and they have nowhere to go. Thirdly, where they are staying, because we have instances of where police or immigration would have picked up foreign nationals on the streets where they are living on streets. So we must have some place to put them, we must have someone who is willing to house them and take care of them.

And then the other thing is how is that person going to be supported? Is that person who is willing to take care of them, will take care to all their needs? That is their financial needs, their social needs because in Trinidad and Tobago, a foreign national cannot work unless there is a work permit or a work permit exemption or unless they are under the ambit of the CSME.

And an important point also in trying to ascertain whether a person could be conditionally released on an order of supervision is actually identifying that person. We have had significant challenges in some cases of actually identifying the person where the person is not willing to say who they are, where they are from or they are giving us incorrect information to divert us into another direction. They may have criminal history in their homeland or so. So we have to look at the entire position of vulnerability of that individual, do a risk assessment and then from that risk assessment, we will be able to determine whether that person could be placed on a

conditional release. Thank you.

Madam Chairman: Just before I invite other members to ask questions, how do you all liaise with Interpol? Because I would imagine if you are trying to ascertain the identity of someone and you suspect that they may have changed their names because they have criminal convictions elsewhere, does the unit dealing with these detainees, does the unit liaise with the Interpol division in Trinidad and Tobago?

Mr. Harricoo: Thank you, Chair. Yes, we do liaise with the Interpol unit. We will fingerprint and photograph the foreign national that we cannot identify or in some cases, that we can identify but based on the interviews, we suspect that that person may not be telling us the truth. So we do fingerprint, we photograph and we forward that to the Interpol bureau. However, the responses depend on the country in which the information is being requested, from the local bureau. So we cannot even give a timeline as to how long. In some cases, responses come back quite quickly, within a week, within some days, in other cases, it takes months in order to get information.

Mr. Rambharat: Thank you very much. I just want to ask some questions about the persons who are on the order of supervision. How many persons are currently under the order of supervision? One. And what issues have arisen with persons who are under the order of supervision?

Mr. Harricoo: Thank you, Vice-Chair. In 2016—now this is a snapshot, all right. So in 2016, we would have approximately 2,000 persons who were placed on orders of supervision. You have to be minded that is from January to December. In 2017, 1,600; in 2018, it was close to 2,000 and as at 2019, we have approximately 200 persons being placed on orders of supervision. The challenges are with respect to placing persons on orders of supervision. Again, what I would have alluded to earlier, in that we may not be able to identify that person in the first instant. There may not be anyone who is coming forward to assist that person in terms of their

housing needs, their social needs, so it places the Immigration Division in a sort of a conundrum as to whether or not that person is to be placed on an order of supervision or whether or not we may have to detain that person pending the identification, pending the fact that we may have to get someone who may be willing to take care of that person. Also, what we have to look at is the breaches of the terms of the orders of supervision. There is a reporting structure in place.

Mr. Rambharat: Okay, before you go into the second question, I just want to— just for clarity. You gave the figure of 2,000 for 2016, right? Now that means that for the year 2016, there were 2,000 persons under order of supervision.

Mr. Husbands: That is correct.

Mr. Rambharat: Right, and then you gave the other years and then you gave a number for 2019?

Mr. Harricoo: Yes, 200.

Mr. Rambharat: So the persons who were under the order of supervision in 2018, do they not continue into 2019?

Mr. Harricoo: Yes. Well, the 200 are new persons.

Mr. Rambharat: Or, new? Right.

Mr. Harricoo: Yes, the 200 are new persons we would have placed on orders of supervision.

Mr. Rambharat: Right, and then you have the 139 who are in detention?

Mr. Harricoo: Yes.

Mr. Rambharat: Right, so, right now, you would have more than 2,000 under order of supervision?

Mr. Harricoo: That is correct.

Mr. Rambharat: Right. So the second question I asked and you had to started to answer was what challenges you have and you were talking about the breaches.

Mr. Harricoo: Yes, persons placed on orders of supervision, as we mentioned earlier, it is a conditional release and as part of being placed on the order of supervision, as I mentioned earlier, would have been the whole identification issues and the fact that the person is required to pay a bond or have someone pay a bond on their behalf. We must be minded that when the person is placed on an order of supervision, there is a reporting structure in place where they are given a date, time and place in which to report to whatever office, be it the Port of Spain office, the San Fernando office or the Tobago office. And what you are finding in most of the cases is there is an almost 50 per cent breach of that order of supervision in that they are not reporting. They are in the system somewhere and they are not reporting. When we check our border management systems, it shows that they are in the country but they are not reporting to us.

Mr. Rambharat: What is the risk to the public of these people not meeting the reporting requirements?

Mr. Harricoo: Well again, it is breaches of the Immigration Act. In some cases the persons are ordered deported but we, in the first instance, would try and see if we can have them report on these orders of supervision. In terms of the consequences, in terms of they not reporting, they are in the system working without a work permit, studying without a student permit so essentially breaching the Immigration Act by they being out not reporting in to Immigration. We cannot monitor them because essentially that is what we do when we try to place the person on an order of supervision. We are not monitoring them. What we are finding also is a lot of them, a lot of the persons who are not reporting on the orders of supervision, when they do come to our attention because of some police exercise or law enforcement exercise, they have criminal offences and in some cases, multiple criminal offences.

Mr. Rambharat: Okay, before my colleague, Sen. Obika asks, I was getting to that. So at the time they are detained by Immigration, they do not have criminal records?

Mr. Harricoo: In some cases.

Mr. Rambharat: They do? And then you found that they commit crimes while they—

Mr. Harricoo: While they should be on the order of supervision but they have breached that order of supervision.

Mr. Rambharat: Okay, thank you very much.

Mr. Obika: Thank you, Vice-Chair. Chair, through you, I want to ask, is it that the Immigration Division is proposing that all persons, all foreign nationals who are to be placed on a bond be subject to some form of enhanced monitoring, for example, electronic monitoring?

Mrs. Gandhi-Andrews: No, that is not what we are proposing. There are some instances where we believe that the persons can be electronically monitored and I will give you an example. There are some persons who are ordered deported but we cannot effect the deportation because they have criminal matters before the courts and the courts may have granted them bail. In a lot of the instances, those persons we either have them in detention depending on the nature of the criminal offence or the immigration offence or we place them on an order of supervision because their matters go on for a long period of time and the question of keeping them in the detention centre arises and of course, we have lots of writs of habeas corpus, et cetera, and if they are granted bail, why should they be in the detention centre?

So some of those persons, when we do put them on orders of supervision, they fail to report to us because they do not see the Immigration reporting structure as important. They might have reporting requirements on the conditions of bail but we have no idea where they are and sometimes, like Mr. Harricoo has mentioned, they

come back to us having committed another criminal offence. So those persons are as some of what we are thinking as part of their conditions of bail, they might be— because they have been ordered deported and the electronic monitoring system can be used in cases like that where we know where they are. Some of them have actually left the country clandestinely. So there are a number of situations wherein which we can utilize the electronic monitoring and that is just one example of what it is.

Madam Chairman: It seems to me that what you are telling us or what the department is telling us is that these orders of supervision are not working in the way in which they ought to and sometimes when persons under these supervisions orders are allowed their conditional liberty, they go out and they commit crimes and so on. Has any thought been given to having the person report instead of to the Immigration office which opens eight to four, having the person report to a police station? So if they are on bail, for example, and they have to report to the police station, they can report at the same place and satisfy both conditions and the systems, the Government systems do not have to duplicate their efforts to ensure that someone has to report two places. That is one thing. And the other thing is it might be, I suppose more of a deterrent to someone who is thinking about committing a criminal offence if they know that they have to go and report to police station as opposed to an office at the Immigration offices' department. So has any thought been given to that option or possibility?

Mr. Harricoo: Thank you. Usually when a person is granted bail there is reporting structure where they have to report to a police station. If that person is also on an order of supervision, there is the additional requirement that that person reports on the order of supervision. But increasingly, what we are finding is that, especially in the police service, is they are not willing to treat with the immigration matter. So

the court asks the person to report to the police, they will deal with that matter but they will not deal with the immigration matter where that person has to also report on an immigration matter. They are saying it is not a case for the police. So we have had instances with regard to that too.

10.45 a.m.

Madam Chairman: I appreciate that, but I mean, I am just drawing on my own experience here, and for example, somebody who is subject to a detention order who is applying for bail in the High Court, we see the immigration officers there assisting the court together with the police officers in determining whether that person should be granted bail; and if the court then decides that that person is granted bail—is to be granted bail—then representations are made to the Chief Immigration Officer to allow that person to be conditionally freed in accordance with the terms of the court orders. So it seems as though there is a parity there, or a working together of both arms of the State. Is it that there has been a formal request to the Commissioner? So, we are simply relying on the good faith of the officer who happens to be at the desk, and if that is the case would a formal request help?

Mr. Johnson: Well, there is no formal structure in place with respect to instances like what you are suggesting. So, it may be something that may be up for discussion where we can probably have a discussion with, and see what we can come up with, so that there may not be a sort of dual reporting for the individual. So it is something that, you know, that we could look at as well.

Now, what we also have to look at too is the fact that the order of supervision has a specific date that that person has to report. So what happens if that person reports to the police station, and under the requirement of the Act—where the section of the Act, where we would place a person on that conditional release, which is 17(1) of the Immigration Act, we have to renew that order of supervision. So that in itself

may be an issue whether the police may want to renew that as well seeing that it forms part of the Immigration Act.

Mrs. Gayadeen-Gopeesingh: Thank you. I believe I want to get Mr. Anderson Jerome involved in this. You are from the Enforcement Unit. So, my simple question is: How effective is this unit with respect to dealing with those released on—like have conditional release—those detainees released on conditional release? How effective is this unit?—the Enforcement Unit, in dealing with those detainees who have been released conditionally, in other words.

Mr. Jerome: Once they have been released on the order of supervision, we are the ones that basically monitor their movements in terms of, okay, if I am telling you that you need to report to us every week we give you conditions in terms of what day you are supposed to report to us. Depending on the person, themselves, depending on what matters you have, depending on the type of character that the person is, we determine if it is going to be like, once a week, once a month, every two weeks in terms of their reporting condition.

Now, we have some people who may not have criminal matters, right; however, there are members of the public who would have reported these people, and they might be fearful of these people who are now loose, and just need to have a little assurance to know that, okay, the Immigration Department at least is looking at these people. So, with respect to effectiveness, we do what we can on what we are at liberty to do, and what we have within the ambit of the law in terms of their detention and their release.

Mrs. Gayadeen-Gopeesingh: So, how are these persons assessed, to know whether they are at risk and whether—is it that you are just looking at the person and determining that this person may be at risk for the public? Or is it that you have persons coming in to assess these persons? Are they assessed with their behavioural

patterns, psychological behaviour? What is it that you are looking for to determine whether this person should remain in the Detention Centre or be released?

Mr. Jerome: Most times, it is based on reports that have been made by members of the public to the Immigration Division; for example, if it is you have someone who has been violent towards—let us say it was a matter where the police picked up this person in an abusive relationship. I mean, it will be against our good conscience to just release that person, knowing that the person might go straight back to the person who they are abusing. I mean, if it is that we have somebody who is willing to take care of that person and taking responsibility for that person and say, “Okay, I am responsible for this person to report to you all at whatever time.” He will also make sure that this person does not go back to the person that he has abused or she has abused or whatever the case is. And we get this in a form of a statutory declaration stating that, okay, I will make sure that this person reports to you all. Those are the things that we take into consideration when we try to decide who is going to be released and who is not going to be released.

Mrs. Gayadeen-Gopeesingh: How effective is this bond that the person is placed on? Can a person also breach a bond?

Mr. Jerome: The bond is basically a security deposit, for example, if it is the person is or has an outstanding court matter or an immigration matter and we put this person on bond. We say, okay, we are going to release you conditionally, you have to pay a security deposit, basically, so that in case anything happens, you have been ordered to be deported and you are not compliant, we have the funds now to deport you.

Once the person breaches the order of supervision there are provisions within the Act which states that the Chief Immigration Officer can retain the funds that the person paid for their repatriation, and it is forfeited to the State.

Mr. Obika: Thanks, Chair. I want to get something clear here because you

mentioned, Mr. Jerome, the bond really comes into effect as a fail-safe for someone who may reoffend. But, from my understanding, once a foreign national, in particular extra-regional foreign nationals, come to Trinidad and Tobago from certain countries it is mandated that they pay a bond, regardless of whether they are offender or not. Once they are coming into Trinidad and Tobago they have to pay a bond; that is my understanding.

Mr. Jerome: That is incorrect.

Mr. Obika: Okay. Are there countries where foreign nationals come into that once they enter Trinidad and Tobago with an intention to stay, they must pay a bond?

Mr. Jerome: The persons who are entering Trinidad and Tobago and who are required to pay a bond are those people, for example, who are married to citizens of Trinidad and Tobago and they are going to be in the process of applying for permanent residence. They are required to pay a bond because they would be here beyond the time and most likely their tickets would have expired, or they may have a one-way ticket and therefore you need to have some sort of security in case they need to go back. But, other people come into the country, no they are not required to pay a bond.

Mr. Obika: Okay. Thank you.

Mr. Rambharat: Thank you very much. Three quick questions, what is the capacity of the IDC at this time?

Mr. Johnson: Good day, Mr. Rambharat, Vice-Chair. The capacity of the IDC is 110 males and 36 females.

Mr. Rambharat: So, you might be up to capacity right now?

Mr. Johnson: No, Sir. We are a little bit under—

Mr. Rambharat: I was just calculating. So, it sounds so far that the order of supervision is a problematic area. But assuming you were to keep all those persons,

the IDC would not accommodate it. If I work it out, because it costs right now about \$8,000 a month per detainee. So, if you had to detain all those persons, the 2,000 from last year and the 200 from January, you are talking about \$219 million a year, \$18 million a month; so, it is a significant cost. Now, part of the work of the Committee is to see if non-custodial sentencing could do, among other things, reduce the cost; but this is an area where the non-custodial is not working and the cost of the custodial is going—it sounds prohibitive, am I correct?

Mrs. Gandhi-Andrews: The cost, of course, will always be an issue in terms of the numbers that you can maintain. If we were to keep 2,000 persons, you are talking about increasing the staff, finding alternative accommodation. There have been times when we have resorted, when we have a whole lot of persons that we cannot yet release because for one reason or the other—we have used the Eastern Correctional Facility, which the Minister has declared as a place of detention, because the Act sets out places of detention. We avoid as far as possible putting them in the prison.

So it is going to escalate. We find that more and more persons are coming into the country and breaching the terms and conditions of their landing certificate, remaining in the country illegally. More and more, you see persons entering the country illegally without documentation, and that is providing a significant headache for us because there is nowhere to keep them. Persons have come forward, in certain instances, to make representations and say, yes, they will care for them depending on the nationality, et cetera.

So, from time to time, we review the persons at the Detention Centre to see if we can release them on an order of supervision. Sometimes persons come forward and say, “Yes, we will take care of them”, et cetera, et cetera. When we do our checks, they are not there. But, it is a problem for us, and we have a very small

detention centre compared to the number of issues, and the number of persons that we find in breach of the Immigration Act. The capacity of the Detention Centre ideally is 150, but it can go to 200, and that is really pushing it and we are talking about cramped conditions thereafter. So we try to keep the number to 150, so that is really doing a risk assessment to see whether or not this person needs to be at the Detention Centre.

So, that is why we have more than 2,000 persons on an order of supervision. But, even that, when we put them on the order of supervision they simply do not come back to us. Some of them do, because some of them who may want to come back may have breached the terms and conditions— overstaying, but married, have families whatnot, willing to go home. We put them through the special enquiry process because the intention really is to get them out of the country. And we put them before a special enquiry officer in the shortest time possible so that we can make a determination as to whether they are to be ordered deported, or to be given voluntary departure.

Some persons comply with us after the special enquiry; they buy their tickets they go home. Some persons are determined not to leave, and file several motions so that we would not effect the deportation. A lot of them end up at the Detention Centre, but then that could—almost at a stalemate at that point in time—we are ready to deport you, to effect that deportation order, everything is in place, and you refuse to leave; and therefore what do we do in those circumstances?—they remain in detention.

So, there are a number of challenges within the system, either place an order of supervision, we cannot keep them all in detention. It is either we ignore the fact that they are illegally in the country, which is not our mandate. We have a mandate to enforce the Act, and turning a blind eye is really not the solution to it. But we find

ourselves sometimes between a rock and a hard place, because even the capacity of the ECRC—and I go back to 2016 when we had nearly 400 persons in detention, but at the same time we had 2,000 persons on an order of supervision. So the numbers can fluctuate. We at this point in time are not conducting any exercises, because I can tell you if we were to conduct an exercise today, we would perhaps find at least 500 persons in breach of the Immigration Act.

Mr. Rambharat: Well, the question I am anxious to ask you is this: Would you say that you are giving this order of supervision because you cannot accommodate people?

Mrs. Gandhi-Andrews: In effect, yes.

Mr. Rambharat: Right. And you—

Mrs. Gandhi-Andrews: And it is not the ideal situation. But, let me say one thing too, and this is where the police have actually tried to accommodate us; in keeping some of the persons at a police station, until we can identify and get travel documents, and whatnot, and perhaps getting a security deposit posted for them and being able to release them.

Mr. Rambharat: In this group of 2,000, on average, how long have these people been in the system? Like, the longest person in that 2,000 would be how long?

Mr. Johnson: We have persons ranging from mere weeks, days perhaps, to a year, maybe more. Those persons who are there for a year or more are persons who are the subject of court matters, where they may have civil or criminal matters before the courts. All right, and the only way we can monitor them really is to have them placed on that order of supervision.

Madam Chairman: Sorry, Mr. Harricoo, but the question posed by the Vice-Chairman was, what is the longest time that you have someone in detention for? Who is the longest imprisoned person or longest detained person, how many

years?

Mr. Johnson: Good morning, Ma'am. We have one person in the IDC since January of 2015.

Madam Chairman: And that person is from which country?

Mr. Johnson: He is a Nigerian national, Ma'am.

Madam Chairman: And does that person have matters before the court?

Mr. Johnson: Yes, Ma'am.

Mr. Rambharat: And the order of supervision. The reason I am asking this is because the Chief Immigration Officer has mentioned people go off and get married and have families. So you have persons who are under an order of supervision who have gone off and have established families in Trinidad and Tobago?

Mrs. Gandhi-Andrews: That is correct. And those persons may be entitled, there is an entitlement under the Act, if you are married to a citizen of Trinidad and Tobago to apply for a permanent residence. It does not give you the residence, you just have an entitlement to apply. However, there is a requirement that you are in the country legally. So what happens, they already fall into a section, under section 94 of the Act, where they would have breached the terms and condition of their landing certificate or whatever and they are deportable. What we do in instances like that, we place them before a special enquiry officer. More often than not, based on the deliberations at the special enquiry, they can either be given voluntary departure which means they can leave and re-enter to pursue their application for permanent residence.

Those who are ordered deported, it depends on what was the outcome and the decisions at the special enquiry; of course, if they were ordered deported there is a provision for them to appeal. More often than not, if somebody appeals the deportation order, they will be assessed to determine if we can put them on an order

of supervision. So there is a process. Even if they are married to a citizen of Trinidad and Tobago there is a process in terms of applying for permanent residence which will then allow them to stay. Just being married to a citizen does not mean that you can stay. You have to ensure that you are coming to Immigration, you applied for permanent residence, because the provisions are there.

Mr. Rambharat: In your experience what would be the—the person who has been on an order of supervision for the longest period what would that period be?

Mrs. Gandhi-Andrews: We have seen persons on orders of supervision for as much as three years, and as Mr. Harricoo said, those persons are more often the ones who have matters before the court. And they will come to us, we know when the court matter is, and we would await a determination of the court matter—are they being prosecuted, whatever, are they jailed, whatever is the outcome—but, of course, we know that the matter may be adjourned to a new date, another year. So we cannot effect a deportation order or remove the person from the country while the court matter is ongoing. Right now, we are engaging the DPP to find out what we really can do in those circumstances, whether we can effect the deportation, but, of course, we do not want to be in contempt of court.

Madam Chairman: Well, I am trying to figure out, if there are civil proceedings in place and there is no stay of execution from a court, nothing prevents you from deporting the person. And if there are criminal proceedings, let us say the person has been convicted of a non-immigration offence and has appealed and so on, there is also nothing preventing you in law from deporting that person. So, I am trying to understand the rationale for keeping such persons and housing them at our expense in this country.

Mrs. Gandhi-Andrews: I do not want to sound facetious. However, when we do try to effect a deportation order that is when we would receive a writ of habeas,

always at the last minute; we received one recently at two o'clock in the morning, when the person was supposed to leave the country on a flight at six o'clock. And therefore, that cost the Government money because the Government was paying for the deportation. And that is where we encounter a lot of the challenges in effecting the deportation. The intervention by persons' attorneys, and yes they have a right. But a lot of the time that is what prevents us from effecting the deportation.

Madam Chairman: I was just wondering about that, because I know that many of the courts have said that once somebody is ordered to be deported, that is it; even if they resist or they do not want to go, that is really beside the point. Once the arrangements can be made to send them, there is nothing legally preventing them from being sent. So, why is it then, or is it that consideration is given to the resistance of someone who is supposed to be deported? And if so, why is that consideration given?

Mr. Jerome: We will have to say that, yes, consideration is given to resistance. Because, for example, we are not in control of airlines, if for example a—

Madam Chairman: I am sorry, I did not get the last part.

Mr. Jerome: We are not in control of the airlines.

Madam Chairman: Oh yes.

Mr. Jerome: All right, so, for example, if a pilot who is in control of his flight decides that okay this person is rowdy, he may cause a disturbance on our flight, I am not going to take him. He is kicking up in the airport, he passes and sees this person behaving himself in an unmannerly manner, and he would say straight that he is not going to take that person on board, he has to take into consideration the lives of his passengers and his crew. So, where it comes to resistance, we have to take that into consideration; that is why we have to sometime escort some of these people.

The fact that we also need to understand that they need to have visas sometimes to go through certain countries. If the people, the detainees, I should say, are unwilling to sign certain documents, we cannot sign on their behalf. Right? So, that is where expenses come in, and we have to look for different routes; some countries are not willing to have some of these detainees passing through their countries; they have to consider the in-transit time through the other countries and stuff as well. So, besides the legal challenges, we have to consider the people, their willingness to go as well. So, yes, they have been ordered deported, but they have resisted, some of the detainees.

Mr. Obika: Thanks Chair. I want to ask a question—we have a very good support system in Parliament here and they have provided some research. From the submission, Madam Chief Immigration Officer, you mentioned that there are some issues that have to be clarified regarding preparation for electronic monitoring, you need some protocols to be in place. So I have a two-part question: one, given that Mr. Harricoo has mentioned that around 50 per cent of persons have breached these orders, what is the quantum of electronic monitoring devices, or persons to be electronically monitored, that you may envision once you roll out such a proposal? And, do you have the protocols in place or would it cost the Immigration Division an additional expense to have an electronic monitoring department, for example?

Mrs. Gandhi-Andrews: From my discussions with the director of this particular unit, it is my understanding that that unit will be responsible for the electronic monitoring, and not necessarily the Immigration Division. Therefore—

Mr. Obika: Sorry to interrupt. The unit is housed where, is located at which institution?

Mrs. Gandhi-Andrews: The electronic monitoring or—?

Mr. Obika: Yes.

Mrs. Gandhi-Andrews: Because that is a unit that is under the broader Ministry of National Security, I think their office is now on Tragarete Road. So, we would have to work out with that unit the protocols, how it would be done. As far as I am aware, and from what he has told me, the court has to order that the electronic monitoring be done. And therefore, we would have to consider how many persons and under what circumstances we would approach the court for this electronic monitoring. And that is why I mentioned earlier that as part of the conditions of bail for those persons who have been ordered deported, et cetera, and have come to the attention of the division that the court at that point could order the electronic monitoring based on representations from the Immigration Division.

So there are certain things that have to be put in place, because the Detention Centre as far as I am aware was not considered in this, and the immigration detainees. However, it can work for us, once the criteria set out, once the unit itself that is responsible for this knows what is required from us, because they will have to report to us if anybody has breached the monitoring, et cetera, and then—so a symbiotic relationship would have to be built with that particular unit and that is what has to be worked out between us and that unit.

Mr. Obika: So, in a sense it may not necessarily warrant creation of a separate unit at Immigration at an additional cost?

Mrs. Gandhi-Andrews: No, I do not think it would warrant a separate unit. In fact, the Enforcement Unit can liaise with that electronic monitoring unit at the Ministry of National Security, so I do not anticipate an additional cost. The cost, of course, would come in with how many monitoring systems would have to be placed, how many persons we are going to monitor. And that can run into maybe a couple hundred, maybe less than that; it depends on how many persons we have at any given

point in time, because even in the detention system the numbers fluctuate.

Mrs. Gayadeen-Gopeesingh: Thank you. Mr. Jerome just said that you all do not control of the airlines. When I look at the stats as at January 18, 2019, and the number of detainees at the Detention Centre, I saw the highest number of detainees are from Venezuela, we have 82 males and 32 females, which gives us 114. We are only seven miles away from Venezuela, so is it possible that you could use some alternative sort of transport to get these people to Venezuela? And if we were to remove this 114 persons you would be left with only 39 persons at the Detention Centre. So you know how much cost would have been reduced there, I do not know how you can reconcile it.

Madam Chairman: Before you all answer. There is another aspect to it that perhaps we could take into account, as well. How is Immigration dealing with the exodus from Venezuela, because is it that this 114 here have committed criminal offences in Trinidad and Tobago? Is it that they have not applied for refugee status, or is it that they have applied for refugee status, and if so why are they inside? How is Immigration dealing with the breaches of the Immigration Act in the context of Venezuelan citizens who have arrived on our shores?

Mr. Harricoo: Thank you, Madam Chair. With respect to the Venezuelans who are currently housed at the Immigration Detention Centre, almost 100 per cent are persons who would have arrived clandestine—by clandestine means, not through a legal port of entry. And a significant amount, if not all, we cannot identify. They are coming to Trinidad without any identity documents. So it takes a while for us in terms of the liaising with the requisite embassy, in trying to identify these individuals who have breached the Immigration Act in terms of arriving by a clandestine means.

11.15 a.m.

Madam Chairman: What? Is it that the embassy is uncooperative?

Mr. Harricoo: No Ma'am. We have a good relationship with the Venezuelan Embassy. It is just that it takes some time for them to validate the information, as well as persons who are entering Trinidad and Tobago now, we would have them listed as Venezuelans at the IDC, and what we are finding is that they are not Venezuelans in some cases. They are posing as Venezuelans, but there are other nationalities that are coming to Trinidad posing as Venezuelans: Nicaraguans, Guatemalans, Colombians and even some from Peru, and it takes a significant amount of effort and time to try and identify these people.

What you are also finding is that, in some cases, these persons also have significant criminal antecedents in their homeland—serious criminal antecedents in their homeland—and we get that through our partnership with the Interpol bureau. But, again, that tracing takes some time as well.

Madam Chairman: So, it brings me to the point then: What is your staffing capacity like, Mrs. Gandhi-Andrews, for this department?

Mrs. Gandhi-Andrews: The Enforcement Unit right now has a total of 30 officers. We are currently short of about 35 Immigration Officers. So, I really cannot take officers from some places to put into the Enforcement Unit, because then I deplete either the airport or somewhere else. So steps are being taken. We are hoping that Service Commission will give us the staff sometime soon. I do not really want to say my comments on that one, because we have been asking for staff for the last two years, but at this time it is really critical, because we are seeing larger numbers of persons coming in every time there is an exercise. Last weekend, there were close to 100 persons that were detained by police and handed over to us that we had to process.

So, it is we do have some short-staffing issues, but the staff has been working, I would say—long hours—in trying to deal with them because we do not want to

hold them. We cannot hold them at a police station for any lengthy period of time either, so they have been going out to the police stations, treating with the persons there, because we cannot put them at the Detention Centre. So, it is a challenge for us in trying to manage the numbers coming in and that is why I have stopped them really from doing any exercises on their own, because we just would not have the capacity to deal with it, but it is a significant problem.

Madam Chairman: What about children? When you arrest or when you detain some of these people, do you find that they are with children, especially if you have families who are fleeing and so on? How do you address that?

Mr. Harricoo: In some instances, we do find children, families. What we are also finding is that there are a lot of unaccompanied minors coming by clandestine means. In some cases, we have been able to partner with the Children's Authority in finding shelters for them. In other cases, the court will rule with respect to—we have had about three cases recently where the court has ordered that they be placed in the care of the Chief Immigration Officer. The Immigration Division only has one place where we can manage that and that is at the Immigration Detention Centre.

Mrs. Gandhi-Andrews: The thing is, Madam Chair, if I may, that recent decision to place the minors in the custody of the Chief Immigration Officer is very troubling for me, because like Harricoo has said, the only place I have to detain anybody is at the Detention Centre. We do try to partner with some of the NGOs who may be willing to take the children, the minors—and when I say children they may be 16, 17, but they are under 18—and some of them have facilitated us, but there are times when they simply cannot, and when we cannot find anywhere to place the child, at any given point in time, we do not have a choice but to put them at the Detention Centre on a temporary basis until we find either a family who is willing to keep them, and some of them we have engaged some persons who are willing to keep

them for us while we make arrangements to send them home.

Now, the court has also ordered that we repatriate them as soon as possible. I do not have a line item in my budget to purchase a ticket. So I have to request money from the Permanent Secretary to buy a ticket to send the person home, and sometimes when there are no releases and we have to wait a while—we waited, what? Two weeks for the last ticket?

Mr. Harricoo: Three weeks. That was because of prodding.

Mrs. Gandhi-Andrews: Three weeks. So we do have challenges with getting the funds made available to us in a timely manner to effect the repatriation. So that is the other side of the challenge when we have to purchase a ticket. Some persons have come forward and bought a ticket for us. Some of my officers in certain cases have actually put up money and bought a ticket, just to be able to get the person out of the country. And like I said, that is where we find ourselves and sometimes people do not know all of these things where my officers have done this, because they do not want people to know, but we have had to resort to doing that kind of thing. Especially, we do not want to wait three weeks to buy a ticket to send somebody home, you know, especially when you are dealing with a minor. So that is part of my challenge.

Madam Chairman: Yes. I do not want—there is so much more that we could talk about, but I do not want Mr. Husbands and Ms. Benard to think that we are only here to talk about the Immigration Department issues, but the Committee does hear you with respect to the fact that you have to wait for funding from the Permanent Secretary of the Ministry of National Security. Is there an average time? Just before I go to Vision on Mission? Is there an average time between request and compliance or is that all up in the air?

Mr. Jerome: Once finances are released from the Ministry of Finance and we have

funding available to us, I will say between—we usually have a good working relationship between the staff between our unit and the Permanent Secretary staff—let us say a week to two weeks, once again—

Madam Chairman: What if finances are not available? It is years. Is it not? It can come up to years. It has come up to years?

Mr. Jerome: I would not say years. I will say it will be a long time, if it is we do not get releases.

Mrs. Gandhi-Andrews: Sometimes what we have had to do is to try to transfer money from one Vote to the next in order to purchase the ticket. So whatever releases we might have had remaining from even salaries, the accounts unit has had to ask to transfer some of that money to the Vote in order to purchase the ticket, so.

Madam Chairman: Thank you all, but I do not want you to leave quite as yet. So, Mr. Husbands, if we can get to you and Ms. Benard. Now, you had said in your submission that you sent to us that not all offenders should be sent to prison—well, I think everybody in Trinidad and Tobago will agree with that—as some of them can be punished and treated in the community. What we wanted to get an idea of is: What kind of offender or what kind of offence are you looking at for that kind of punishment and treatment in the community?

Mr. Husbands: Sure. As I indicated earlier, it will be a minor offence, minor offences such as, you may find people for break and enter. Right? Some of them are found trespassing; some of them, they might have stolen a chain from someone on the road. While people may frown on that, but no weapon was used, the person was not damaged. All these things you take into consideration. And, of course, that person should not have a previous court record. So those persons we feel, you know, can be given those non-custodial sentences.

But there is something I want to identify. A non-custodial sentence must also

satisfy the justification for punishment. It is not that we are just going to say, all right, you fit a non-custodial sentence, but it must satisfy the rehabilitation needs, the deterrent need, the incapacitation need and you also have to take into consideration the victim, how the victim feels about it. So all these things must be taken into consideration and, of course, it would cost us less but not tremendously less you know, Madam Chair, because if you are looking in terms of that person must also seek rehabilitation, you must have those rehabilitation centres. You must have trained persons to do that and the quality of supervision, the level of contact, the human aspect in terms of the supervision still remains, you know.

Yes, you can use electronic monitoring and you can have that person located—you know the person is in Belmont. But what is the contact when that person comes, say, to the reporting centre or the probation department, what is the interaction? What are the goals in terms of that person coming? When that person comes to the rehabilitation centre, is that person going to choose something like you call thinking of rehabilitation or reconditioning? Those things are important in terms of those alternatives. So despite the fact you are not going to prison, you still need to satisfy those different needs of sentencing.

Madam Chairman: Yes. I just wanted to get your views on this. On the one hand, for more serious offences, we see that offences are getting stiffer and, at the same time, we are talking about restorative justice. Is it your view that restorative justice should be confined to the minor offences?

Mr. Husbands: Madam Chair, certainly not. There are lot of programmes that can be developed to deal with serious offenders, particularly while they are in prison, not even when they are outside. For instance, there is the whole question in terms of a programme that is run in most developed countries, they call it the Sycamore Tree where you have victims can come in and have panels with offenders, not the primary

perpetrator. You are looking for more or less surrogate perpetrators and surrogate victims. But, for instance, if you have about 20 inmates within the prison who have been convicted on sex offences, you can have victims who have also been victims of a sex offence, they can have an opportunity to come in in a controlled environment to have a dialogue with those offenders who are not the direct perpetrator of the direct offenders.

And research has shown that inmates who go through that kind of process, develop that sense of empathy and they are the ones who are willing that when they come out, once the victims or the community will accept them, they are the ones who are willing to make some level of restitution and giving back. But, of course, if these people are coming out, there needs to be what we call an intensive probation supervision, and you will hear me talking about the role of probation, because probation is normally what we call the champions of corrections in communities, community corrections—that is the soft feel of corrections—where that continuity and supervision and the quality of monitoring. We talk about electronic monitoring, that too is going to come in play, but it is still going to require the human element to ensure that the rehabilitative aspect continues.

Again, if you want to use it for a non-custodial sentencing, in terms of the supervision again, I know a lot of people are asking for community service as a non-custodial sentence, first and foremost, the non-custodial sentence must match the type of offence. What do I mean by that? You might find someone probably was found urinating in public and that person is sent to prison—or should be sent to prison for a 30 days or 60 days—you can place that person on a community service, but that person must be working in a dog pound to clean that dog pound so they would understand the scent and the conditions when he or she urinates. But, more than that, you also have to find out if that person has any kind of challenges. Does

that person have a mental disorder or why that person is doing that? So you would divert that person to a treatment facility as well.

Madam Chairman: Sure. You raised a very interesting point, and that is to say, the role of the Probation Officer in all of this. Now, we had the Chief Probation Officer before us earlier on in this enquiry and it was quite apparent that the office is quite understaffed and is not running at optimum. What is the relationship between your organization and the Chief Probation Officer's Department?

Mr. Husbands: At the moment, very little, if any at all. I go back probably five, six years ago where the former Chief Probation Officer, Ms. Claire Blandin, had taken an interest in terms of understanding what NGOs do and ensuring that if there is any sort of training, for instance, when the prison service was conducting training in terms of what you call the cognitive counter-behavioural therapies, Moral Reconciliation Therapy, thinking for a change, substance use and all those. They would incorporate the probation department and all NGOs, to train them to develop that kind of synergy because in corrections, there needs to be a joint approach with probation and the prison service and NGOs in terms of preparing you—even in the court—preparing the way forward in terms of administering those kinds of instruments to decide who are good risks for community sentences and those who are incarcerated to work together with the prison service to develop re-entry plan, because re-entry plan is a crucial aspect in terms of offender management, in terms of again—What are the risks? What are the needs? How can we match that person with needs and resources? Under what level of condition? How long the supervision is supposed to be? Can you send that person right back to the home or should that person go into a reintegration centre?

You do not have halfway houses yet, so we do not send people to spend the last part of their sentence in halfway houses. It is after they have completed their

two-thirds, after remission, then if they cannot go back to their homes, then Vision on Mission steps in and provides that transitional care and support with employment and other kinds of services. So, it is a whole rethinking in terms of offender management and the kind of intervention that we need to make, not only for those in prison, but those who we keep in the community.

Madam Chairman: Yes. We have a question from a member.

Mr. Husbands: Sure.

Mrs. Gayadeen-Gopeesingh: Mr. Husbands, I just would like to find out: What mechanism is currently in place to track the progress of X offenders following their period of rehabilitation?

Mr. Husbands: I can speak—I would say I speak from the cap of a former Chief Prison Welfare Officer. There was a two-year tracking device by the welfare department in the prison. Now, the kind of tracking that is done, I cannot speak to it correctly, but those who come to us, we do a three-year tracking in terms of if they come to us, transitional housing, we try to keep them there for nine months, even a year, even longer. If we get employment for them, we are going to track and work with the employers. When they have transitioned or graduated out of our transitional homes and if they go in the community, we keep a two-year contact with them in terms of having our case workers make contact. If there is any kind of relapse, they can come back to us. So we keep that kind of tracking, and what we have recognized as well is that in doing that tracking you can also continue to divert them for services. Some of them may relapse, some of them may need substance abuse treatment again, some of them may have mental issues. We then become what you call the medium so we can get them back to treatment.

Mrs. Gayadeen-Gopeesingh: You said you try to get employment for some of those persons who have been rehabilitated. Is it a question of the employers being a

little hesitant in employing these persons or is it that they willingly employ these persons?

Mr. Husbands: Quite a number of employers are indifferent. And I have no problem with it. They have their other workers to protect, but then there are some of them who are very willing—some of them who work with us, some of them who actually come to us and say, “I am looking for a driver, I am looking for a person in that particular field. Do you have someone who fits the bill?” What we do, we look at the person’s development, because we too operate an aspect of the level of service case management inventory where we look at the person’s motivation, the change and the like. So if we believe that person is a good risk then, you know, we would recommend and we would take that person for that kind of employment, but it must be done in terms of the level of risk and you must be able to monitor it and you must be able to evaluate and you must have the kind of personnel to continue to work with those persons as well.

Madam Chairman: Yes. Thank you. Sen. Obika.

Mr. Obika: Thank you, Chair. Now, Mr. Husbands, employment is key, I am assuming, to prevent recidivism because we do not want reoffending to happen. Do you have any statistics—because we are seeing here 4,339 former offenders over the last five years from your submission—do you have any statistics on the percentage of them that are unemployed or employed?

Mr. Husbands: I will hand over to Ms. Benard to apprise you of our stats.

Ms. Benard: Good day everyone on board. All right. So the question. Currently that was for the past five years, the 4,339 inmates. So, currently, for the year 2018, when we look at our clients, first we operate our CEPEP programme so that is our starter employment. So, after they go through the initial assessment, we source employment from there. Currently, at our transition house, all of our clients are

employed.

Mr. Obika: How many are at the transition house?

Ms. Benard: Can you repeat the question?

Mr. Obika: Can you say how many clients are at the transition house at the moment?

Ms. Benard: Okay. Currently, the transition house holds 90, but currently we have 23, but we also have walk-in clients as well.

Mr. Obika: All right. So, I interjected, but did you have any statistics regarding the total percentage that have found employment over the past five years from that statistic or that are unemployed at least?

Ms. Benard: Okay. So 60 per cent of our clients over the last five years would have gainful employment.

Mr. Obika: So then we are looking at a figure of over 1,500 persons finding challenges to get employment. Mr. Husbands mentioned at the beginning, a business incubator. Is it that this is at the idea stage or you have developed it to the point where you have stakeholder interest, namely, training and development personnel as well as a lending agency that has the capacity to lend to them?

Mr. Husbands: Okay. It is in the—that is why we call it the incubator—and this is why it is at the stage in terms of developing and the reason why we are now getting into that particular aspect is that this requires a certain amount of funding, and we have just partnered with the EU who have given us a grant, so we can now think in terms of developing that entrepreneurship programme with our clients in our pre-release programme within the prisons.

So, it begins there where we are going to identify those who seem to have the mindset. We have already met with a service provider and an expert in terms of entrepreneurship education. That person worked with the EU before and has done a

lot of work in Trinidad and Tobago. Up to yesterday we met with her to flesh out the curriculum in terms of the in-house and then to actually train those who we believe have the right kind of ideas, and when they get into the entrepreneurship to be coached and provided with the kind of pathway to develop proper small businesses, and also part of that funding is going to provide some level of seed capital as well for those participants.

As well, there is the aspect in terms of social development—sorry, social development. Yes, they have a seed project where we are also going to be working with social development so that they can get additional seed capital. So that we hope that is going to bring a certain amount of sustainability to the idea in terms of developing entrepreneurs, because a lot of the inmates cannot go to employers to get employment. So we believe if we can start that entrepreneurship.

And, in addition to that, we have a 12-acre agricultural project which we have already started. We have contracted a farm manager at Wallerfield which will be housing around 80 ex-offenders who are going to be, in terms of the path of the transition, when they get there we are also going to introduce them to agriculture, and we are hoping also to expand it to an agro business entity at Wallerfield. So, that is the plan in terms of that entrepreneurship incubator project.

[Madam Chairman exits the committee room]

Mr. Obika: Then, really and truly, Vision on Mission is on the right mission. That sounds well.

Mr. Husbands: I would like to think so, member Obika.

Mr. Rambharat: Okay. I think we are coming close to the end, and I just have one question to Vision on Mission and that is, because Vision on Mission is not heavily involved in non-custodial sentence, right? Do you have people who come into your programme and they are on bonds?

Mr. Husbands: Not necessarily bonds. Some of them who are on bail.

Mr. Rambharat: Some of them are on bail?

Mr. Husbands: Definitely, and they are in the community and they are seeking work. Some of them cannot go back to their communities.

Mr. Rambharat: Right. So they have not been sentenced?

Mr. Husbands: No, not yet.

Mr. Rambharat: But are they in the programme for when sentencing comes up, they may be able to demonstrate what they have been doing while on bail?

Mr. Husbands: Definitely. On a few cases, Mr. Chance has been called upon to come and, you know, say a few words on behalf of a couple of our residents who had outstanding matters in the court.

Mr. Rambharat: Okay. The second question is: What percentage of your clientele are deportees?

Ms. Benard: All right. So, currently, our percentage of deportees is 35 per cent.

[Madam Chairman re-enters the committee room]

Mr. Rambharat: Okay. Thank you very much. I see the Chair is coming back, so I will let her resume her spot.

Madam Chairman: Apologies. Thank you, Mr. Vice-Chairman. At this stage, I will invite each representative, or I suppose a representative from each group, to make brief closing remarks. So, Mrs. Gandhi-Andrews, again, I will start with you.

Mrs. Gandhi-Andrews: Thank you, Madam Chair. The division is always keen to ensure that the rights of any foreign national is upheld. There are challenges at times in the length of time that we process and sometimes it is not from our fault, it is just the circumstances concerning that particular individual, and that is what I would want people to understand.

This initiative to include us, or to attempt to include us, in this non-custodial

arrangement and even with the electronic monitoring, would be a welcome measure for us in terms of being able to deal with some of our issues and to ensure that we keep as minimal as persons in detention, because really the ideal is to keep a lot of persons, especially immigration offenders, out of detention. There are times when we do not have a choice.

So we welcome this opportunity to be able to express the challenges that we have and to say that we are willing to work with the other arms of the Ministry of National Security—we do some work with Vision on Mission and other stakeholders—in trying to deal with this issue of illegal immigration and migration as a whole and, therefore, we welcome any opportunity to sit and work out arrangements and what is best for not only the foreign nationals, but the national community because a lot of what is happening and a lot of the things that we encounter are from reports from nationals who have raised their concerns and ask the question: Well, what is Immigration doing about it? So, I thank you for this opportunity.

Madam Chairman: Thank you. Mr. Husbands. I do not want you to think that because we have not spent as such time with Vision on Mission as we have with the Chief Immigration Officers Department, that we value your contribution less. We have received your written submissions, and I think we also want to understand the Chief Immigration Officers Department is a large department with a lot of statutory powers, so we had to spend considerable time with the representatives.

Before you close, I want to offer you the opportunity though, if you feel that we have not gone into any area that you wish to expand upon, that you are welcome to write to us, to put it down in writing, and send us an additional contribution to the one that you have already done. Okay? So, I will ask you now to give a few closing remarks.

Mr. Husbands: Sure, Madam Chair, thank you. And I do not feel slighted. There are things that are important, that are urgent, that need to be addressed. It is all part in terms of developing a framework so that we could better treat with all our problems.

Back to my closing remarks. I want to thank this honourable House for allowing us the opportunity to share our ideas on non-custodial sentencing. I go a way back and this had been discussed in the 1990s—the non-custodial, minimum standard rules and the like—and it is there, but it required a certain amount of changing of our lens, as it were. We are talking about restorative justice and restorative justice is first and foremost about forming our perspectives, transforming our structures and transforming our personnel who work in criminal justice to see things differently, to unlearn the things that are not working and to find new ways of delivering justice.

11.45 a.m.

Thus, non-custodial sentences is part of the whole aspect in terms of delivering justice and using it to also punish some of those offenders who are good enough risk to be punished. I am using the word “punished” because, you know, it is a form of punishment in the community, but it must also satisfy the goals of sentencing and take into consideration the protection of society, the needs of victims, and also the needs of offenders. So it must be a balance, and it must be based on, what we call in Correction, responsivity—match the needs and the risks with the type of intervention. And I want thank you, Madam Chair.

Madam Chairman: Thank you, all. I also want to thank the media and our viewing and listening audience for tuning in to this session of our enquiry. At this stage the meeting is adjourned.

11.46 a.m.: *Meeting adjourned.*

10.13 a.m.

Madam Chairman: Good morning all. This meeting of the Joint Select Committee into Finance and Legal Affairs is now reconvened.

I want to welcome all of you who are in attendance today to assist us in our enquiry, and I want to welcome our viewing and listening audience.

It is the Twentieth-Eighth Meeting of our Committee, and our third public hearing into the feasibility of widening the availability of non-custodial penalties in the criminal justice system.

I want to advise members of the public that you may send comments and questions to us via the Parliament's various social media platforms.

I do not normally like to use the word "auspicious", but for want of a better word, this is indeed an auspicious occasion, because this is the first time after a proper protocol has been worked out for members of the judicial system to come before a parliamentary Committee, and we are so happy that so many of you have made yourselves available to assist us in this enquiry. So I see Master Morris-Alleyne has attended, in spite of what must be a very difficult situation, and I want to thank her especially for that.

So what I will do, I would like you to introduce yourselves so that the members of the viewing and listening public will know who are the persons in attendance today. So, Mr. Mark, may we start with you?

[Introductions made]

Madam Chairman: Thank you. I am the Chairman of this Committee, and my name is Sophia Chote. I will ask other members of the Committee to introduce themselves to you starting from my right.

[Introductions made]

Madam Chairman: Thank you. So that those listening and looking on may remember what the objectives of the enquiry are, I am going to read them out:

1. To assess the efficacy of non-custodial penalties in dealing with the backlog of criminal cases;
2. To determine whether non-custodial penalties may ameliorate high recidivism rates; and
3. To ascertain what are the critical requirements or prerequisites for the wider application of non-custodial sanctions in the administration of justice.

At this point I will ask Master Morris-Alleyne to make a brief opening of about two minutes, if possible, so that we can get the hearing going

Mrs. Morris-Alleyne: Thank you very much, Madam Chair. The Judiciary wishes to thank the Committee for the invitation to be present here today, and to submit comments on the feasibility of widening the availability of non-custodial penalties in the criminal justice system.

We note the objectives of the enquiry, and have received from the Committee particular questions which we have sought to answer in our written responses.

The term “criminal justice system” presupposes that there is a seamless system known as the “criminal justice system”, and unfortunately it is the experience of the Judiciary that the term is somehow juxtaposed in the public mind with the Judiciary. The Judiciary through its criminal courts is just one of the players in the system of criminal justice. Its mandate is very specific and is delineated by law, both statutory and common law.

It is of critical import that all players in the criminal justice system are placed in a position in which they are able to play their parts efficiently and effectively in order for the system to work. These players include police, criminal investigators,

Office of the DPP, Forensic Science Centre, medical practitioners, witnesses, prison service, Legal Aid, public defenders, probation services, health, private Bar, the Judiciary and the public.

Each agency and group of actors has a specific role and is not able to encroach on the role of others. There are, however, some instances in which there can be some developmental cooperation and sharing. We have seen this in the development of the Juvenile Court Project which yielded the children court system, and the Family and Children Division, and in areas such as the development of the ICCS and the Drug Treatment Court, and in cooperative works with St. Ann's. These opportunities are cherished.

The Judiciary's role is to hear and adjudicate in matters in which a charge has been laid. When adults are charged, the Judiciary's role ends when the sentence is pronounced. When children are charged, the new system provides for the court to play a monitoring role after a child is sanctioned. The children system also provides for the child to be assessed and for sanctions which differ greatly from those available to the judge in matters involving adult offenders.

In terms of judicial administration, policies are oft stated in rules of court, practice directions and practice guides, and other policy statements which may affect the way in which the Judiciary conducts business. It is trite law of course that the Judiciary determines its own procedure. The system of common law provides official guidance and sets policy by the doctrine of binding precedent and the hierarchy of the courts. This having been said, members of the Judiciary and the courts administration are not without personal opinions as to improvements which can be made to our system of criminal justice.

In an effort to assist the Committee today, the court's administration has solicited the views of judicial officers, the Mediation Board, the Judicial Education

Institute, among others. They have reviewed statements of Chief Justices, looked at international trends and looked at documents by the Judiciary or judicial officers which are in the public domain, including the Drug Treatment Court policy, as well as such documents and treaties as the 2016 Bail Support Programme Summary Report.

In those circumstances, as I have indicated Madam Chair, we have submitted written responses and we are here to assist the Committee in any way in which we can.

Madam Chairman: Thank you very much. We have received your written bundle, and we must commend you and your team for the work which was put into it. It has been tremendously helpful to us simply by reading it, and we hope that we may be able to focus on a few of the aspects of it this morning. Mrs. Gayadeen-Gopeesingh, would you lead off?

Mrs. Gayadeen-Gopeesingh: Thank you. The public perception is that the criminal justice system is not seamless. We have hiccups, we have resources issues, and from one of your submissions dated March 11, 2019, your submission stated, and I quote:

The Children Court is structured in such a way that monitoring and evaluation of a child offender begins when he or she enters the court system and continues post-sentencing.

My question is, usually prosecutors and so, would want a custodial sentence for most of the offences committed. What role and function does the Judiciary play in informing prosecutors that there are alternatives to custodial sentences? That is the first question, and when you answer then I will take the subsequent one.

Mrs. Morris-Alleyne: Thank you. First of all the Children Act, I believe at section 59(2)—and please, I am asking my team to correct me if I am wrong in citing the

section—provides for really a smorgasbord of sanctions which can be brought in a situation in which a child has been charged. I believe, again correct me if I am wrong, I think the list is so extensive that the sub-subsections go from (a) to (o). So it is in this way that the prosecutors are aware of the various options.

What can also be done, and what is often done, is that there is a combination of sanctions which may be used. Those sanctions include things, for example, such as counselling, not only of the child but also of the members of the household and other people who are surrounding the child. Community Service Orders for the child, various types of very specific orders as well are cited therein.

Also, in developing the children court system, as I had indicated, there was great cooperation among all of the players. It was at that time, I think, that we were able to educate everyone, ourselves included, on the whole question of the difficulties facing children, number one, the question of youth development, also on the question of the new science which tells us that between the ages of 14 and about 25, a child's judgment is not yet fully formed, and that a lot of maturation takes place during that period. Judiciaries worldwide have been addressing this particular issue. So you will find there is an entire movement worldwide in the area of child justice. And therefore the prosecutors, just as the police service, are all more aware of it and together we have managed to work out something.

Mrs. Gayadeen-Gopeesingh: Do you have any system in place, or the Judiciary I should say, have any system in place for monitoring and evaluating post judgment for these children?

Mrs. Lewis-Callender: The legislation allows for the court to monitor children post sentencing, and in that event a child probation officer is assigned to monitor. In some instances, apart from the child probation officer, for example for peer resolution, we also assign adult volunteers. So apart from the child probation officer

you have an adult volunteer monitoring what is happening with the child.

Mrs. Gayadeen-Gopeesingh: How effective is it?

Ms. Cross: So what you have now is another phase called “monitoring hearings” where the child is brought back to court together with the probation officer and all those persons as part of the team who are part of that monitoring exercise.

Mrs. Gayadeen-Gopeesingh: And would you say there are sufficient probation officers to deal with all these matters and cases?

Mrs. Lewis-Callender: At this time no, but we do know that there is approval for a cadre of child probation officers to service the three court locations, and some of them have been recruited and we are about to receive five of them in the north location. But we expect that we may have about 18 child probation officers assigned specifically to the court.

Mrs. Gayadeen-Gopeesingh: And the role and function, do you have like, mediators on board to deal with matters before the court, and before sentencing, like mediators?

Mrs. Lewis-Callender: At this time we only have mediators in the Family Court.

Mrs. Crichlow-Cockburn: Thank you, Madam Chair. Just one follow-up question. You indicated that you also utilize adult volunteers. What is the process involved in identifying and bringing those persons on board, and if you can give us an idea who are the persons who would become adult volunteers?

Mrs. Lewis-Callender: Sure. What we had done in the project and subsequent to the project is we advertised for adult volunteers. An adult volunteer could be a parent, a teacher, a police officer, a law student, a social worker, particularly anybody from—people from different walks of life. What we did is that we screened to ensure that we have a varied group, and they would have gone through a period of training for over four days with youth volunteers. Subsequent to that, they would

have been vetted.

Madam Chairman: Thank you. Since we are on the issue of probation officers, we have spoken about the numbers of probation officers in relation to cases involving children. What would you say is the position with respect to resources in terms of adequate numbers of probation officers for regular courts?

Mrs. Bansee-Sookhai: With respect to the criminal courts for adult offenders, it has been a challenge in terms of the timely submission of the probation officer's report once an order has been made. That is one challenge being faced by the judges of the criminal jurisdiction.

Madam Chairman: I see in the comments by some of the judicial officers, judicial officers were saying, one, the reports take a little too long to come, but there was one comment where a judge suggested that the probation officer was not independent. When such a thing occurs, is there a mechanism whereby the Judiciary may bring its concerns to the Chief Probation Officer?

Mrs. Morris-Alleyne: What you will find in a situation such as that is that the judicial officer will direct the Registrar to bring concerns to the Chief Probation Officer.

Madam Chairman: And has the Registrar, well, this one is directed to you, Mrs. Nerala Bansee-Sookhai, have you written to—I suppose it would be the Permanent Secretary in the relevant Ministry, Ministry of National Security, with respect to the impact felt by the Judiciary with respect to the inadequate numbers of probation officers to service the courts?

Mrs. Bansee-Sookhai: As Registrar I have not sent that correspondence, but correspondence was sent to the relevant Ministry from the Judiciary outlining the issues that we currently experience.

Madam Chairman: And have you had a reply, a positive reply I should say?

Mrs. Morris-Alleyne: If I may, what we should also say is that that has not been sent to the Permanent Secretary in the Ministry, but instead the discussions and the correspondence would have been with the Chief Probation Officer. Now, this is not a one-time event. This is something that has happened over a period of time, and oftentimes it may deal with the work of a particular probation officer, et cetera. Then what tends to happen is that the Chief Probation Officer will address it, either through training with the officer or may, for example, suggest that the officer is not particularly suited to that aspect of the work, but may be better suited to another aspect of the probation work.

Mr. Rambharat: Thank you very much. I read your submission and a significant part of it deals with the Drug Treatment Court. I wanted to know, I am not seeing any reference to breathalyzer cases, and going back to the debate on that piece of legislation to introduce breathalyzers, an issue—and it appears in the legislation, there is provision for rehabilitation and for addiction counselling and addiction treatment to play a role in final sentencing. So my question to you is: What has been the experience with the implementation of the breathalyzer legislation, and what role has rehabilitation and addiction counselling played in the final sentences? Thank you.

Mrs. Morris-Alleyne: If I may just make an enquiry of my colleague. *[Interruption]* Thank you very much, Chair. We do not have stats specifically on the question of matters brought to the court after breathalyzer tests, I am afraid. So that is basically where it stands, and that we are unable to identify those specifically as opposed to anything else.

Mr. Rambharat: Okay, would you be able to make a further submission after you have had the opportunity to maybe check with judicial officers or check with the court?

Mrs. Morris-Alleyne: Yes, I think we can.

Mr. Rambharat: I raise that because—my experience, I support the breathalyzer, but I am always mindful of striking the balance. The truth is that while we are discussing non-custodial sentencing, for people in rural communities who must have private forms of transport, the imposition of a ban on driving for three years is far less welcomed than the imposition of a custodial sentence. Because a ban on driving for three years really sets back a family living in a rural community, and while I support the objectives of breathalyzers, if you look at compared to urban communities where opportunities for transport and alternative transport exists, it works severely on persons in rural communities.

Mrs. Morris-Alleyne: Thank you.

Madam Chairman: Has any consideration been given to affording these persons, well, drunk drivers, the option to go to the Drug Treatment Court? Is that at all possible within the set up?

Ms. Philbert: The Drug Treatment Court programme is an option for persons who would have been charged with non-violent offences. So, yes it is possible that persons can be directed to the programme.

Madam Chairman: And is that done so as a matter of practice in the courts, because the average person may not know? He may have been held over the course of a weekend and may have been brought to court on a Monday morning, let us say.

Mrs. Bansee-Sookhai: Upon being charged, the police officer can make the recommendation. At the end of the day, eligibility to the Drug Treatment Court is solely within the discretion of the DPP. But once a person has been charged with a non-violent offence and that person has not been a repeat offender, whether possession of drugs or substance abuse, alcohol, that person can be referred to the Drug Treatment Court. The Drug Treatment Court, though it is operational for

adults, we are also in the planning phase of rolling the Drug Treatment Court shortly out for the Children Court also.

Madam Chairman: Okay. I am also interested in the extension of the court, because I see from your bundle at page 49, we have drug treatment courts in San Fernando and in Tunapuna. Has there been any consideration given to one in Tobago?

Mrs. Morris-Alleyne: The Drug Treatment Court really began as a pilot, and so therefore when you say that, you are saying the reference for pilot. Recently, with the passage of the Criminal Division and District Criminal and Traffic Courts Act, provision has been made for the Drug Treatment Court Unit and so therefore, for taking it out of pilot stage into full use for adults.

10.40 a.m.

With the Family and Children Division Act, provision has been made for it to have wide operation and full operation in the Children Court and perhaps if my colleague can speak to a point of that.

Mrs. Lewis-Callender: So the administrative process has been worked out and two committees have been formed which would be the drug treatment committees for both north and south, and south handling Tobago as well. And they are now looking at all of these administrative processes together with the legislation, et cetera, to finalize their process.

What I would like to add is that the court is challenged by the fact that there are no drug treatment facilities in Trinidad and Tobago that are set up specifically for children, and so that is something that we have been talking to our stakeholders about.

Madam Chairman: So the Drug Treatment Court roll-out post the pilot project, is this intended to be only for children or is it for both adults and children?

Mrs. Morris-Alleyne: No, the pilot project was an adult project. The Family and Children Division Act which, of course, came before the Criminal Division Act, the Family and Children Division Act specifically made reference and provided for a Children Drug Treatment Court and hence the Family and Children Division has been developing that aspect of it. The Criminal Division legislation which has recently been passed and proclaimed now makes provision for the Drug Treatment Court for adults. We are, at this time, about to take the note to Cabinet for the staffing—the specific staffing for units such as the drug treatment unit in the adult courts.

Mrs. Crichlow-Cockburn: Thank you, Madam Chair. In your submission, you indicated that and I quote:

None of us believe that the use of incarceration therefore has been very effective in reducing the incidents of juvenile offending.

Do you have any data to support that belief, one, and two, what are the alternatives to incarceration of juvenile offenders?

Mrs. Morris-Alleyne: May I be permitted to just have a second to pull up that portion of the legislation, please?

Mrs. Crichlow-Cockburn: Sure.

Mrs. Morris-Alleyne: Section 59(2) of the Children Act provides that:

“Where a child charged with any offence is tried by any Court, and the Court is satisfied of his guilt, the Court shall take into consideration the provisions of written law enabling the Court to deal with the case and the Court may—

- (a) dismiss the charge;
- (b) discharge the offender on his entering into a recognisance;
- (c) discharge the offender and place him under the supervision of a probation officer;

- (d) place the offender in the care of a fit relative or other fit person;
- (e) commit the offender to a Community Residence appropriate to the age of the child;
- (f) order the offender to pay a fine, damages and costs;
- (g) order the parent or guardian of the offender or person with responsibility for the offender to pay a fine, damages and costs;
- (h) order the parent or guardian of the offender or person with responsibility for the offender to give security for his good behaviour;
- (i) make a Supervision Order as described in section 25K of the Children's Authority Act;
- (j) order that the offender be deemed in need of care and protection and referred to the Authority..."

That is the Children's Authority.

"...which shall investigate and seek any appropriate order of the Court with jurisdiction in..."—juvenile matters.

- "(k) make an order for counselling, any other rehabilitative intervention or treatment or for psychological evaluation and resultant assistance;
- (l) make an order for community service;
- (m) order that no conviction been recorded;
- (n) order that the proceedings be sealed and not divulged without an order of the Court; and
- (o) make any other order that the Court deems fit."

Subsequent to the passage of this with the Family and Children Division Act, there were other things which were instituted as well. One was referred to the Children Drug Treatment Court, the other was referral to Peer Resolution which is a particular process in which children who have been trained and are on board as child

peer volunteers or peer assessors question the child, et cetera, and determine the sanctions which should be afforded the child.

Aside from this as well, provision was also made for the court to have the parents show cause why, regardless of anything which was to be done where the child was concerned, a parent should show cause why they should not be either fined, et cetera or should not be brought for counselling, et cetera, in light of—should I say the possibility of their negligence that may have contributed to the child’s offence.

Mrs. Crichlow-Cockburn: Has it been found that we have sufficient community residences and are people significantly aware so that you can, in fact, utilize some of these provisions as provided here?

Mrs. Lewis-Callender: What I would say is no, that there are not sufficient community residences. The existing community residences, really, they are challenged because they are not equipped to handle the children that we are seeing before the court who are high risk—medium to high risk and children who might be in gangs, et cetera. These homes cater for children who are sometimes orphans and who have other issues and you know they are in a different category.

We really have to, I think, invest in establishing some community residences that are appropriate for children who are at high risk that are well equipped and staffed with professionals who can make the necessary interventions into these children’s lives, our children’s lives because sometimes, children find themselves in situations that are not of their making and so we have to put things in place to ensure that the appropriate facilities are there, a home away from home, but yet structured enough and with intervention programmes to get them back on track.

Mrs. Crichlow-Cockburn: So in the absence of adequate community residences, is it that these children are, in fact, incarcerated like adults?

Ms. Cross: No, these children are not incarcerated. You find that there are

alternative programmes that we would try to find but placement is in fact an issue. It is the last option because a child, of course, we prefer to place the child with a family member or with someone who is responsible for the child. In a lot of those circumstances, we cannot send the child back to the home and—so that we go through a process of trying to get the child into a safe and secure place. It is very limited and as Mrs. Lewis-Callender said, the type of child that we are introducing into these homes, the homes are just not equipped for it. So we are introducing a child who is maybe just a 16- or 17-year-old boy presenting with some type of mental—that that child needs some type of mental evaluation and you are placing that child in a home where there are just children, ordinary children who are just orphans in that home. So that mix is, of course, not healthy.

Madam Chairman: Sen. Obika.

Mr. Obika: Thank you, Chair. Apologies to the Committee and to our distinguished contributors for my tardiness today. However, it does not diminish my view of the importance of this hearing and I wish to raise a question, through you, regarding pages 59 to 66 of the report which speaks to a national parole system and I want to submit that faith in the system overall, especially for the persons who are incarcerated or who are offending may assist in mitigating against recidivism. This is a hypothesis because it is not founded in theory, this is just my hypothesis. So your submission from the Judiciary on the role of a national parole system was very extensive and can it successfully implement to engender trust in the system. That is my humble view. Specifically, the one-third rule was declared deficient by the Judiciary citing lack of structure, objectivity, transparency and qualitative evaluation and you advance that a national conversation is required on the parole implementation report.

I want to defer this decision to the Chair and to the members of this Committee

that this may be outside the ambit of this enquiry but can form the—of course, with the Chair and the Committee’s concurrence—basis of a subsequent enquiry where the Judiciary is at the centre of it, that is if it falls within the remit of this Committee. Because I feel that it is very important for us address that conversation that you have cited and in effect, you basically cited that we should have a parole authority and a parole board and if we can get any comments on that which in effect would start this conversation but may not be able to conclude it given the scope of this enquiry. Chair?

Madam Chairman: Thank you, Sen. Obika. I believe a parole Bill has been drafted but I am not sure whether it has, in fact, been tabled. But certainly that is something we can look into.

Mr. Obika: Would we be able to ask the Judiciary to comment on that section of their submission regarding the parole authority?

Madam Chairman: Well, the thing is if a Bill has been drafted, it may be inappropriate for them to comment at this stage if the Bill is about to be tabled. They may have already sent comments or had an input into the drafting of the legislation. Vice-Chairman.

Mr. Rambharat: Thank you. Master Morris-Alleyne, I want to ask three questions which would really bring into focus the objectives of the enquiry. The first is to ask you to summarize for us the performance of what currently exists as non-custodial sentencing. Two, to comment on the feasibility of widening, which is really the word we use in our objectives, in our statement, the feasibility of widening the availability of non-custodial sentencing and the third question is to ask you in widening the availability, where should we focus on and how do you see it working? Thank you.

Mrs. Morris-Alleyne: Thank you. That is a tall order. Nonetheless, together we

will try our best. First of all, if I may be perfectly candid, I believe that in the Children Court, we have gotten it right. Of course, the external resources and the internal resources are the areas which must be beefed up. In the adult system, I am of the view that it has not been working as well as it should be working. I think we had great hopes for community service orders but unfortunately, I believe that the process is far too cumbersome.

You will find, for example, that there is certain information and that is referred to in our submission. There is certain information which a probation officer needs to give to the judicial officer first but with the fact that our probation officers are swamped with work and in some areas, there is not a community service officer at all, it means that the information does not come to the court and therefore, the court is not able to make a community service order. We are aware, for example, that with drug treatment, as in our criminal system, only the DPP can compromise criminal charges but the DPP is someone who is swamped with work and when the sign-off of the DPP is required for each person to be admitted to the drug treatment programme, again, you have a bottleneck. Surely we can work out some sort of systems that can make things like this flow far more easily. In the adult system as well, I—and I say I—see a very strong need for a parole system.

Madam Chair, we cannot, as a country, just keep incarcerating people. I looked particularly, for example, at the question of incarcerating children who, like any adolescent and young adult, may have done some stupid things, but at that point, to cross them out of society is not something that should be done. Really and truly, I am of the view that no child really reaches there on his own, it is a combination of factors and a combination of circumstances. We have to do as a country everything that we can do to ensure that we give that child a real opportunity to turn around. That is not to say, and statistics actually dictate, that about 10 to 15 per cent of child

offenders will be life course, long-time offenders, but you have another 85 per cent and it has been interesting, especially where the Children Court and the preparation and the Juvenile Court project work that we were involved in have brought us quite close to a lot of children who have run afoul of the law in one way or another.

The thing that really struck me is the fact that the children are so angry and there are two things, as I have said to my colleagues only recently, there are two things that really struck me in talking to all of those children that we have spoken with and I have seen anger and I have seen embarrassment and with the embarrassment comes a defence mechanism that causes the anger to grow. Why is there all of this anger? I think we need to have a national conversation on how we raise children. I honestly—and I say this from me, I honestly feel that we are failing our children and our children are going to be our adults and are going to take our country forward. Our children are the people who are going to pay our pensions. We have to think about these things. Our children are the people who have to develop the society and far too many of them are coming before these courts.

When we sought initially to get some sort of baseline data as to the number of matters we expected to come to the Children Court in the space of a year, we thought that we were being a little excessive in saying that we expected 1,500 matters to come before the court in the space of a year. Within three months, we had crossed that figure. For a society as small as ours, that does not augur well. So we need to strengthen these non-custodial options. We cannot be locking up our children.

We also need to strengthen the non-custodial options for adults because some of those adults that are before the courts are also within that 14 to 25 year age group eh. We consider children to be under the age of 18. Once you cross 18, you are an adult but what the science tell us is that the maturation process really goes on to about 25 and I am sure if we were able to analyse, which we have not yet been able

to do because of our systems, if we were able to analyse the ages of people coming before the courts, the adult court, we would realize we have a lot of 18 to 25 year olds as well. So we need further work.

Mr. Rambharat: Thank you very much, Master Alleyne. I gather that you are advocating, if we have to widen, we widen in respect of children and we strengthen in respect of both offences relating to children and offences committed by adults. In relation to adults, you have used the word “strengthening” but do you see us widening the availability of non-custodial sentencing for adults and if you do, in what areas?

Mrs. Morris-Alleyne: Yes I do. Improving the processes because we do have ticked community service orders, very important. Parole is not yet there. Hopefully, it gets there. That will be extremely important. Drug treatment. By the way, a lot of the people who are coming before the Drug Treatment Courts are in their earlier 20s so, again, stronger support in drug treatment, widening its span. And we also need to have some wraparound services for the adults as well the same way in which we have the wraparound services for the children because there are counselling services that are necessary, social services that are necessary.

Madam Chairman: Thank you, Master Alleyne. Sen. Obika, you had a question?

Mr. Obika: Thank you, Chair. My question takes us to pages 17 to 19 of the submission regarding mediation and out of court disposal. I have a preliminary question just to enquire because on part 13, the mention was made, which is on page 19, community mediation centres under the control of the State. Are those under the control of the Ministry of Community Development, Arts and Culture?

Mrs. Morris-Alleyne: I am afraid I am not aware as to what Ministry it falls under at present, the community mediation centres.

Mr. Obika: Notwithstanding that part, but the strict nature of the relationship

regarding the work of the community mediation centres, can you explain what criminal offences they mediate there or general knowledge of the work of those mediation centres so we could understand, regarding non-custodial sentencing, what they actually do?

Madam Chairman: Well, perhaps, I could just interject here. I think what had happened is there had been legislation in place to permit mediation for minor criminal offences but that legislation, I think, through inadvertence, had been repealed. I do not think that legislation has been re-enacted to permit that, but Master Alleyne, perhaps, you or a member of your team could indicate whether you support such a re-enactment to deal with or to provide for mediation for minor matters, minor criminal offences.

Mrs. Morris-Alleyne: Madam Chair, I would like to refer in particular to page 16 of our document and the comments with the mediation board, and I think that these comments are very valuable in this regard. It discusses the question of offender victim mediation as an option but mediation in criminal matters is extremely risky and there are so many considerations which must be taken into account. Matters of a non-violent nature, first of all, you know, that should be the first line. Secondly, of course, there is the question of what is the role of the DPP. Once a charge has been laid, a charge has been laid and it is a matter against the State and it is the DPP who can compromise a criminal charge.

So you know, there is a lot to be considered and it is not something to my mind that you should just step into very calmly and you have private complaints. That is a different situation. Those are not offences against the State and some of those may be matters which can be addressed but participation must be voluntary, there must be no violence, the question of the equality of the parties is extremely important. There are so many things to be taken into account.

Madam Chairman: Sure. Do we have any data from the time when it was possible, when it was legislatively possible for parties, you know, like neighbours who bring each other up in court for use of annoying language or for pelting stones and that kind of thing? Do we have any data as to how the mediation process worked when it was possible for them to go to mediation? I know it was some years ago.

11.10 a.m.

Mrs. Morris-Alleyne: The referrals were not coming from the court really at that point in time. There were walk-in centres. So you may have found that someone may have come with a private complaint to the court, but at the same time they went to the walk-in centre. So it was not really a referral from the court. My recollection of it was that it was really not used by the court. As to, of course, matters against the State, it was not used at all.

Mrs. Gayadeen-Gopeesingh: Thank you, Chair. I just would like to retract a little with respect to child offenders. Some of these child offenders may have presented themselves with some mental illness. How does the court deal with children who have presented themselves with that particular symptom or disease? That is one, and two, when I looked at the data presented, for the number of persons who have had matters adjourned, awaiting St. Ann's report and I look at the Law Term 2016/2017 and then 2017/2018, the number of persons who had to wait for this report was more than double from 2016 to 2017. So if, perhaps, one of the objectives of the criminal court justice system is to expedite matters through the court, I am trying to see how the court is going to reconcile the expedition of these matters, and yet we have delays in the reports from St. Ann's. Are they working in silos or are they working in tandem with the Judiciary, the St. Ann's Hospital?

Mrs. Morris-Alleyne: Chair, was that focus on the children or is the focus on both children and adults, please?

Mrs. Gayadeen-Gopeesingh: For both children and the adults with the reports from St. Ann's Hospital.

Mrs. Morris-Alleyne: I will deal generally with it and then my colleagues will speak specifically to the Children Court. There is at present, I understand, a small committee where, with Judiciary and the St. Ann's Hospital working on ways in which these assessments can be speeded up. I am afraid I do not have before me, or really my knowledge exactly where they are on the process, other than to state that it is my understanding that one of the things that is being implemented is a form that would state more specifically the nature of the concern and the nature of the assessment to be done, as opposed to it being such a broad-based request that comes. So that is number one.

It takes a long time, an average of 18 months, and it is one of the things that, when I speak about the criminal justice system, the court can speed up certain things, but when we are dependent on the other agencies to do certain things, then that really tends to slow down the course of case-flow management. So there is a specific issue where children are concerned and I will ask my colleague to speak to that.

Mrs. Lewis-Callender: So, when a child needs to be assessed for mental health and the court makes that order, the child is committed to St. Ann's and the assessment would usually take about two weeks. The problem with that is that St. Ann's is really an adult hospital, and so there are no provisions within that facility for children to be separate from adults, and that poses a very serious problem. And so that is something that, as a country we need to work on because there are no mental health facilities for children. In addition to which, at some point in time we only had one child psychiatrist and that is a problem. So, in terms of the assessment of a child, depending on what is presented, the resource is not there.

So, generally that is something that we wanted to raise; that we really need to

focus on the needs of the children who come before the court, in terms of mental health; the fact that there is not another place for them to be assessed, and if there is need for long-term stay, there is not a facility for a child.

Mrs. Gayadeen-Gopeesingh: So, where then do these children go? They remain incarcerated? Where are these children placed? Where is a safe place to house these children?

Mrs. Lewis-Callender: Well, so far they have been working with the court and trying, as far as possible to put them in a particular area that they feel would be safest for them. But there is no other facility.

Mrs. Gayadeen-Gopeesingh: Master Alleyne had mentioned 18 months for a report. So during this 18 months, the person remains incarcerated?

Mrs. Bansee-Sookhai: Once an order is made for psychiatric evaluation, as Master Alleyne mentioned, there is a set form. The court will submit relevant information to St. Ann's and upon receipt of that document, the psychiatrist will then send to the court an appointment date and make certain requests for particular information and during that time, yes, that person remains incarcerated.

St. Ann's has been working with the courts, due to their limited accommodation, as well as the limited availability of trained personnel at the hospital. Sometimes they do some of the assessments at the Golden Grove Prison or at the Maximum Security Prison, depending on how high-risk these prisoners are. But the answer is yes, they remain incarcerated.

Madam Chairman: I just wanted us to look at, or go back to one of the issues raised earlier and that had to do with community service personnel or personnel who would assist in determining whether someone ought to do community service, or is suitable for community service, or has done community service. Now, Master Alleyne, you had indicated that we do not have such personnel in all courts. Can

you give us an indication of how or what percentage of courts we have adequate personnel in?

Mrs. Morris-Alleyne: It is not at the courts. It is actually the probation officers. So it is the responsibility in the Act is for—there is a lot of responsibility in the Act for probation officers.

Madam Chairman: I do not mean to interrupt you but are they based at the Courts?

Mrs. Morris-Alleyne: In some courts we have—in some Magistrates' Courts we have a probation officer. In most of the courts, as a matter of fact, there is provision for a probation officer. They are not necessarily based there all the time in all courts, but in some courts they have office hours when they are there. But that is it.

Madam Chairman: So we have those probation officers performing those duties in each court or are there courts without this facility?

Mrs. Morris-Alleyne: I believe at this in point in time, I cannot be a hundred per cent sure, I am afraid; my understanding is that there is at least some service, not a full service, but some service, even on a rotating basis, to each court.

Mr. Rambharat: Master Morris-Alleyne, I just have two questions. The first is, you had mentioned before the bottleneck at the DPP's office with the DPP having to sign off on or authorize discussions on non-custodial sentences. Is there a model that you can recommend or what are your views to deal with the bottleneck at the DPP's office on this particular issue? And I will come back to my second question.

Mrs. Morris-Alleyne: At this point in time, I am afraid I do not have an answer to that. I think it is something that the DPP may want to be heard on. The DPP has a lot of work and—

Mr. Rambharat: But just to ask you, is delegation of authority an option?

Mrs. Morris-Alleyne: I really cannot tell you. I cannot answer that question, because I do not know how the DPP's office works in that regard.

Mr. Rambharat: Okay. The second question deals with, cannabis is still an offence and you can be prosecuted for possession of the smallest amount. Do you see an opportunity for, in terms of non-custodial sentencing and the subject of this discussion, the feasibility of widening the availability of non-custodial sentencing in the criminal justice system? Do you see this area, possession of cannabis being an area that we should be looking at?

Mrs. Morris-Alleyne: I will answer that question from my personal view and this is Christie-Anne Morris-Alleyne speaking and my answer is yes. Small amounts of cannabis, I really do not think we should be locking people up for.

Madam Chairman: Sen. Obika.

Mr. Obika: Thank you, Chair, I had to take some time to collect myself after that response, but we are very grateful. Madam Chair, the question I want to turn to carries us to pages 40 to 42 of the submission, regarding the Family Court and payments. I want to just highlight the comments of the Judiciary regarding, it stated on page 40, that custodial sentences are applied in default of payment of maintenance moneys as ordered by the court. But on page 42, in paragraph one, the Judiciary submitted that after custodial sentencing, a payer becomes unemployable, which largely defeats the entire purpose of sentencing in the first place, because the party that loses out significantly would be the child to whom the system was seeking to protect by penalizing the delinquent parent. So the question is: Has the Judiciary engaged in discussion with stakeholders to develop a system which will facilitate automatic garnishing of earnings? Chair, that is the question.

Ms. Burke: Good morning. So the option of garnishing of wages is actually a relief that is available to customers of the court. It is not automatic, so it has to be applied for by a particular customer. So someone can come to the court and indicate that they would either like their wages to be garnished or they would like the wages of

the peer to be garnished. So it is something that is already available to customers of the court.

Mr. Obika: And if the Judiciary could enlighten us, Chair, regarding the submission in the second paragraph on page 42, where they stated that the non-custodial sentencing, whilst it must, it should have ideally a financial component so the payer can continue paying, it should also not form part of the criminal record of the person because then that also defeats the purpose. Can we get some expansion on that point for us?

Ms. Philbert: Madam Chair, I am sorry to intervene. Before we give a response to the question, may I just request briefly that these proceedings be held in camera, just for a brief moment?

Madam Chairman: Is it to respond to this question?

Ms. Philbert: No, it is not to respond to the question, but it is to treat with an urgent issue.

Madam Chairman: Certainly. Would you prefer if we suspend?

[Assent indicated]

Okay, so we can suspend for—how much time do you need?

Ms. Philbert: Just about 10 minutes, please.

Madam Chairman: Certainly. So we suspend and we will return at 11.35.

Ms. Philbert: I am grateful. Thank you.

11.25 a.m.: *Meeting suspended.*

11.35 a.m.: *Meeting resumed.*

Madam Chairman: Okay, thank you all. The meeting is now resumed and I think we can continue where we ended, that is to say Sen. Obika had posed a question. Would you like him to restate the question?

Mrs. Morris-Alleyne: Yes, please. Thank you.

Mr. Obika: Delightfully. Thank you, Chair. The question is: Has the Judiciary engaged in discussions with stakeholders to develop a system which will facilitate automatic garnishing of earnings? And that was given in the submissions from pages 40 to 42 regarding the Family Court, indicating that the sentencing should be non-custodial and should not form part of the payer's criminal record, because then that may result in the payer becoming unemployable and defeats the intent of the penalty which is to ensure that the child is assisted.

Ms. Burke: Good morning, again. So, as I indicated the ability to garnish wages is a relief that is currently available at the court. It requires one of the parties to come before the court to request such a relief. And, in terms of the sentences appearing on your criminal record, presently they do not appear on a criminal record and given the challenges associated with that, we were just making a comment that it should continue to not appear on a criminal record.

Mr. Obika: Thank you. There is a subsequent question but I am sure there are many groups of the NGOs that came before us who would be appreciative of that and state agencies, not in the least would be the prisons authority because they expressed concerns when they came before us with the fact that if you incarcerate an individual and he is released and then he is faced with this backlog of payment, he may decide that he is not going to pay at all and be recommitted and then of course, the children suffer.

The second question is: Is the Electronic Payments into and out of Court Act, 2018, how does this facilitate, or does it facilitate? Does it make it easier for garnishing of salaries, in terms of system flow and cost?

Ms. Burke So, the Electronic Payments into and out of Court Act facilitates the making of online payments, so not necessarily the garnishing of wages but what it does, it provides us with the legislative backing to allow for online payments into

and out of court, for example, maintenance. So at present, that system is being operated at the Family Court with CourtPay.

Madam Chairman: So does it mean to say that the Magistrates' Courts do not have the facility as yet and if not, is there a proposal to have them included?

Mrs. Morris-Alleyne: If you may recall, the Family and Children Division is supposed to be handling all family matters but there is a transition provision. So until there are facilities available in the south and in Tobago, these family matters are still being handled in some Magistrates' Courts. So in those Magistrates' Courts, the electronic payments are not yet available, but the intention is that within the next month, they are to be so made available.

Mrs. Gayadeen-Gopeesingh: Thank you. As it stands now, what do you see, or what are the gaps that you think need to be filled so this non-custodial sentencing could be effective within the court system? There must be something that is not intertwined and is not working effectively. So what do you think you need to iron out for the system to work?

Mrs. Morris-Alleyne: With the adults, it needs to be more permissive, the judicial officer, with less red tape. The resources need to be made available, not just to the courts in terms of the wrap-around services but also to the other agencies in the system. And I think that is basically it. And I think when it comes to the children, it is—maybe my colleague would speak specifically to that.

Mrs. Lewis-Callender: When it comes to the needs of the children, we really have to focus on establishing the appropriate community residences for children who are at medium to high risk. At this time, I can tell you, our daily routines, sometimes we have children at seven o'clock at night and we have no place to put them because of some of the homes refuse because they are either filled or they are unable to handle a child of that nature. So a lot of focused attention really needs to be placed

on community residences that are appropriate for children who are high-risk, with all the necessary staffing intervention programmes, ensuring there is transportation for children to go to court-ordered programmes so that they could get back on track. Of course as well, for drug treatment, to have facilities that are specific for children and service providers who are able to deal specifically with children.

Mrs. Gayadeen-Gopeesingh: Do you have any system in place to monitor these children?

Mrs. Lewis-Callender: What aspect of the monitoring?

Mrs. Gayadeen-Gopeesingh: Perhaps we could deal with the post-sentencing.

Mrs. Lewis-Callender: Well, child probation officers.

Mrs. Gayadeen-Gopeesingh: But then we do not have sufficient. So is it effective?

Mrs. Lewis-Callender: Well, at this time what the court would usually do is to do an order when that child needs to return to court and the child is returned to court, based on the court order, so that the judicial officer could determine how well that child is doing, whether some of the interventions that are ordered for the child, how things are working and progressing and whether there is need for additional intervention in that child's life.

Madam Chairman: Okay. A member of the public sent in a question. Now, it does not strictly fall within the ambit of the enquiry, and Sen. Obika will forgive me. But since there are persons here with knowledge about the Family Court and how it works, and so on, perhaps someone may be able to provide the assistance to this member of the public, and the question is: Are there any services in place to assist parents and guardians to identify usage and how to seek professional guidance and assistance to address the issue of minor intoxication? So I suppose it covers not only alcohol but it may cover, you know, glue or whatever else may cause intoxication.

Mrs. Morris-Alleyne: I do not think that is really within the ambit of the court. We

do have to remember how any matter, whether it be for a child or an adult, comes to court and that is that it would start either with a charge or with an application. So that which is purely advisory would really be within the hands of the Executive and of NGOs.

Madam Chairman: Perhaps you could just tell me. Is there an agency that such a parent can go to for advice or would it have to be an NGO?

Mrs. Morris-Alleyne: I really would not want to venture. I mean, the Children's Authority would have a certain type of role, including a referral role. So, a parent looking that particular way may quite possibly seek the advice of the Children's Authority of National Family Services.

Madam Chairman: I just have one last thing that I would like to get your view on and that is to say, in the UK, there is a system whereby a young offender might be cautioned instead of charged and placed before the courts. Do you think there is any benefit to have that included in our system?

Mrs. Morris-Alleyne: Our legislation provides for cautioning only in certain types of matters at this point in time. That was something which was looked at quite heavily when we were looking at both the Children Act, 2012, and the Family and Children Division Act, and one of the things is that, one of the difficult issues in something like that, which is really a sort of out-of-court disposition, has to do with the exercise of that particular authority and public confidence in the equal exercise of that particular authority, and it was felt some work had to be done first in order to give the public comfort and in order to train the police service in how to handle that, before we could venture in that particular direction. That was the view of the joint stakeholders.

Madam Chairman: Thank you. I think we have had a lot of information, a lot of useful material, which we can use for the purposes of the drafting of our report. So

unless there is any other question. Yes, Sen. Obika.

Mr. Obika: Thanks, Chair, final question regarding the electronic monitoring system, and if the Judiciary can give us some idea as to the possible impact on ability to supervise offenders who are placed under community service orders. What would be the benefits of such a system, in terms of electronic monitoring? What would be the challenges? And how do you think we can mitigate against that?

Mrs. Morris-Alleyne: Thank you, Chair. The Judiciary has expressed its support for the electronic monitoring system and has actually had quite a few meetings with the team from the Ministry of National Security. It is felt that it is a very good option for dealing with certain things. Number one, for dealing with persons on bail or for dealing with persons who may be on probation or who may be on a bond. So there are definite pluses, and also, in matters involving domestic violence. It also presents a valuable opportunity to assist the victims of domestic violence. So there is tremendous support for that. As to the challenges, we just have to make sure that we get it right. We must make sure that our GPS systems are in place and that everything is targeted and on track.

Madam Chairman: Okay. Thank you, Master Morris-Alleyne. I now invite you to make a few brief closing remarks.

Mrs. Morris-Alleyne: Thank you, Madam Chair. Madam Chair, first of all I do want to correct something that I stated and that was when I stated that in the first two and a half to three months we had crossed the 1,500 mark. It is that we had crossed already one-third of the 1,500 mark in the Children's Court for children matters. So I wanted to correct that. I would not want to make any statement to the Parliament, which is incorrect in any way.

But generally speaking, it gives me pleasure to be here and to take part in what you had called an auspicious occasion. I do not like the word either. But we must

admit that it is a historical occasion and the Judiciary is very pleased to have been able to assist the Committee in any way in which we have been able to assist the Committee.

We would like to thank you very much and also to thank the staff of the Parliament and the staff of this Committee for earlier discourse with us. As you know, we have begun and we have drafted a sort of first-level protocol for the interactions between these arms of the State and I look forward, and on behalf of the Judiciary, we look forward to a good relationship in this regard and in a good sharing of ideas. So again, thank you very much for having us and thank you very much to the Committee and to the staff.

Madam Chairman: Thank you to you and your team. I will also like to thank the media, persons in the public gallery for attending and our viewing and listening audience. There being no other business, this meeting is now adjourned.

Mrs. Morris-Alleyne: Thank you.

11.50 a.m.: *Meeting adjourned.*