

10.30 a.m.: *Meeting resumed in the J. Hamilton Maurice Room.*

Madam Chairman: Good morning, ladies and gentlemen, the Joint Select Committee on Finance and Legal Affairs is now reconvening in public and we are being broadcast live on the Parliament channel. So, I would also like to welcome the viewers who are looking at their television sets and following this programme. This is the first public hearing of this Committee, and I think this is the first public hearing for this Eleventh Parliament of the Republic of Trinidad and Tobago.

My name is Sophia Chote, I am a Member of the Senate; I am an Independent Senator, and because of that fact I happen to chair this particular Committee. This is one of those committees which is required to be chaired by an Independent Senator. To my left and right are parliamentarians who will, in a moment, introduce themselves to you, but I ought to introduce you to the Clerk to this Committee, Mr. Julien Ogilvie, who sits to my left, and there is another gentleman who normally sits to his left, Mr. Sieunarine, who is a member of the Secretariat, which is on this Committee. So I will ask members of this Committee, please, and I will begin with Miss Mc Donald, to introduce themselves to you.

[Introduction by Members of the Committee]

Madam Chairman: Now, we have two persons sitting before us today, one is the Inspector of Prisons, Mr. Daniel Khan. Mr. Khan, would you introduce yourself and the lady sitting next to you?

Mr. Khan: I am Daniel Khan, Inspector of Prisons, and to my right is Ms. Rea Mankee Sookram, Attorney-at-Law, my legal adviser.

Madam Chairman: Yes. I would also like to welcome those members sitting in the public gallery who I understand are students of the Hugh Wooding Law School; is that so Mr. Khan?

Mr. Khan: Yes, Madam Chair. The Committee was kind enough to allow

students of the Law School, and partly the criminal and legal aid, to attend, and I am grateful.

Madam Chairman: Yes. Well, thank you students for attending and showing an interest in parliamentary procedure. Is there anyone here from the Legal Aid and Advisory Authority?

Ms. Arneaud: Yes, Chair.

Madam Chairman: Oh, Ms. Arneaud, of course. I am sorry, I missed you. Do you want to come and sit on the table next to Mr. Khan?

Ms. Arneaud: Chair, I also have with me Joan Eversley-Gill, who is our Head Legal at the Authority, and Ms. Hazel Castro, Legal Officer.

Madam Chairman: Of course, I am sure there are enough seats there.

Ms. Arneaud: I am guided.

Madam Chairman: Now, you probably want to know why I have asked you ladies to come and sit at this table, and it is because the Legal Aid and Advisory Authority is one of the stakeholders in the enquiry in which we are about to embark. So, while the Authority is here only to observe today, that is unless they say otherwise, we would like members of the viewing public to understand that the Legal Aid and Advisory Authority is represented. They answered our call for assistance, and they are here to observe and will probably be making a presentation on another occasion.

Now, I would like us, before we begin, to remind ourselves of the objectives of this enquiry. The Constitution permits, section 66 of the Constitution, in particular, permits parliamentary committees to conduct enquiries into a fairly wide range of matters, but our enquiry, or this enquiry, upon which we have embarked, is fairly a specific one. We have highlighted four things that we would be looking at; one, we want to gain an appreciation of the number of outstanding matters, both

indictable and non-indictable, before the criminal courts. We want to understand the the systemic reasons for the backlog of cases in the criminal courts. We want to understand the efforts being made, and the challenges that exist in alleviating the backlog, and perhaps in our report at the end of the day to make recommendations for the improvement of the system of criminal justice.

Now, I ought to make it clear that we wrote to various persons seeking to obtain information. For example, we wrote to the Commissioner of Prisons—is any representative, apart from the Inspector, from the prison service is here?

Mr. Khan: Madam Chair, I do not believe so, but if the Committee could take note, there are two members for the responsibility for transporting prisoners, who I understand also made written representations, present.

Madam Chairman: Yes. They are from Amalgamated Security Services Limited.

Mr. Khan: Yes, and they are within the audience.

Madam Chairman: Good, thank you. We had also written to the Registrar and Marshal of the Supreme Court, and the Court Executive Administrator of the Supreme Court. Now, these officers are not here and they have provided us with some legal materials for our consideration, and we will address that on another occasion, but we want to move forward with the enquiry, not waste the day. So, we are very grateful to Mr. Khan for his attendance and for placing himself in the hot seat, as it were. Now, is there anybody who would like to start off with questions for Mr. Khan? I take it we all have copies of the written material sent?

Mr. Khan: Madam Chair, if I may, I know I am allowed to make an opening statement and I am wondering if I could probably get the ball rolling in regard to that, and perhaps inveigle some questions after.

Madam Chairman: Sure. I just thought that because you had sent us something

in writing that you would have preferred for us to look at that, but of course, go right ahead.

Mr. Khan: Yes. Madam Chair, in Committee, if I may, delays are endemic in our criminal justice system and generally, currently, the Judiciary is being held accountable for these delays. Public confidence is low, the justice system is very, very backlogged, and often, while I have been Inspector of Prisons for about five years, there are often well-articulated policies seeking to alleviate the backlog and address the problems. There are always many, many recommendations of specialized courts, more judges, more judicial facilities, but the tenacity and the collaboration effort to have the committees—not referring to this Committee of course—to investigate into the criminal justice flow system is often more excitable to have the committees and make reports rather than to implement them. The drive to have the committees does not extend as far to the implementation of the recommendations, and we have, and I speak as a criminal defence attorney, slowly and surely seen the criminal justice system almost grind to a halt with our current sitting Chief Justice, referring to that in his opening speech in 2013.

The effect on prison is that remand prisoners have a different psychology, a different view than inmates, convicted inmates. Convicted inmates have an idea of how long they would be there; remand inmates, when they go to court they have a hope that their matter will start, and a hope that they will be successful or acquitted, and that is when they are transported there. When they are transported back they are transported in despair, and it is the alternating feelings of hope and despair that causes them to be aggravated and depressed, which is a very light term, to put it within prison, the remanded prisoners are more aggressive, more feisty than convicted inmates who are settled there and have access to facilities. And as set out in the letter, under the hand of the Commissioner, it does highlight

the practical difficulties, but there is a psychology and mental effect that remand prisoners are suffering, and this is a direct effect of the delay within the justice system. That is my opening statement to understand the heat in the prison.

Madam Chairman: Thank you, Inspector. Mr. Sturge, do you have—

Mr. Sturge: Yes. Madam Chair. Mr. Khan, you are both Inspector of Prisons and a practicing attorney, is that right?

Mr. Khan: Yes, member.

Mr. Sturge: Now, with respect to the remanded prisoners, you can classify remanded prisoners as those who are awaiting trial and cannot access bail because of the law, murder for instance, and the various bail amendments, and the others would be those who are on bail but cannot access bail; can you give us an idea in terms of the ratio between the two?

Mr. Khan: In terms of the ratio between different types of remandees, it would be difficult. If the Committee, in terms of inmate population, it is perhaps—and I am subject to correction—about 60 per cent remandees as opposed to 40 per cent convicted, and that is figures that I had two years ago before the more strict bail laws, but I would be subject to correction, and I would make written clarification of that, if allowed.

Mr. Sturge: Now, I am interested, quite apart from those who cannot access bail, particularly for murder, there are those who are on bail but cannot access bail; you would agree, if measures are put in place, we can reduce, somewhat, the prison population if we assist those persons who are on bail but cannot access bail?

Mr. Khan: Yes. And if I could answer that question in that the Government or legislation is often put to restrict bail, and I always understand that is the idea that it would solve crime. It often and it does infringe your presumption of innocence, and it is a balancing exercise. I am also of the opinion that you ought to put some

faith into the judicial officers and believe that they will exercise their discretion in a judicial way. Taking away their discretion to grant bail, absolute, causes problems, further from the idea that there is no bail for murder and there is increasingly many murder accused. On the other issue of when you are entitled to bail but cannot access it, it really comes to the point where most of those charged with violent criminal offences are often of lower socio-economic means, and they cannot access—they do not have freehold land to access bail, unlike in the United States and other jurisdictions where someone would stand your bail, and I refer to, they would undertake the responsibility of you, bring you to court and financially suffer if they do not. We do not have that system so you have increasingly, inmates accused defendants that are allowed bail but cannot access it, which I hope addresses your question.

Mr. Sturge: Yes, there was—

Madam Chairman: Mr. Sturge, could I just interject and ask a question? Mr. Khan, you said you had prepared a report and you were relying on statistics from two years ago, how often are you required to prepare an Inspector of Prisons report?

Mr. Khan: That would be yearly, please, Madam Chair. I am currently drafting this year's report, which I would have liked to put before the Committee but proper procedure is to submit it to my line Minister first.

Madam Chairman: Yes, indeed. And that would contain all the current statistics?

Mr. Khan: Yes, please. Madam Chair, I was focusing on similar ideas currently. You often have the focus of prison to change from prison conditions then to another issue, and currently the issue is delays, which my report would assist on that issue.

Madam Chairman: Thank you. Yes, Mr. Sturge.

Mr. Sturge: Mr. Khan, you just raised an issue with respect to prisoners who are on bail but cannot access it being in the lowest socio-economic bracket. Do you have any suggestions as to how we deal with such prisoners?—since you raised the issue of they not being seised and possessed of an estate in fee simple or freehold land, owners of land.

Mr. Khan: Well, the first thing is to allow bail where you have a cash alternative, or there is the Electronic Monitoring Bill—I am not sure where that has reached—that would allow to satisfy your bail conditions that could allow that without you being financially set back, or you simply pull back the bail conditions. You pull back the bail laws.

Mr. Sturge: Meaning what?

Mr. Khan: You revoke some of them.

Mr. Sturge: Which ones?

Mr. Khan: The ones for the most minor offences. The ones where the risk of the offender, being the larger society, is less than the risk of him being within the prison system. You are putting more and more people in a volatile situation. You are exposing those who are charged with less serious offences, such as possession of marijuana. There was one inmate highlighted that stole some coconuts and he was a socially displaced person, what we would call a vagrant, and there was no one to take his bail and he was there for upwards of nine months, and he really just, as countrymen do, helped himself to some coconuts, and that really is farcical and shows how strict laws can lead to abuse.

Madam Chairman: Well, could I just ask, he had been in custody for that period of time, what was happening with his case? Do you know? Or does the prison have a record of the speed at which prisoner's matters are dealt with?

Mr. Khan: Madam Chair, they do. That information would be before the warrant section, which comes back with an endorsement from the judicial officer saying, “Remanded in custody”; perhaps a note saying, “File not ready”. On that specific example, while extreme, is someone in the county courts that may not have the benefit of legal advisers, and it goes back and forth, but the statistics can help, but it is all the same solution to the same problem.

Madam Chairman: Mr. Ramadhar.

Mr. Ramadhar: Thank you very much, Chair. I am very interested, and actually I want to congratulate your expression in relation to bail. I will tell you now that work had been far advanced in relation to the cash deposit system and I find it troubling that it has not yet been instituted when I demitted office, equally in relation to the electronic monitoring. Equipment had already been procured and you were to have instituted that in the month of September, we are now in February. I am hearing that there is no step to take that far. In relation to bail bond houses, we had also done a tremendous amount of work to the point of actually bringing it into reality. So now we are in the presence of Ministers and this is a very important Committee, so I think it would be important for us now having heard, and your opening statement was very, very important to me when you said that this is a Committee and the implementation of solutions is something that we have faltered on, I want to assure you, knowing the members in Government and the Opposition, and indeed the Chairman, we do not intend to let this be a paper Committee, but that the recommendations are followed through and action taken to fix these things. So having now highlighted those issues, which I tell you, I am surprised that they have not moved forward, and the Minister is present in chair, this is a matter that we need to pursue, because, I would tell you, it was on the point of being delivered that would dramatically improve your circumstances in the

prisons.

Madam Chairman: Certainly. Mr. Rambharat, I believe you had a question.

Mr. Rambharat: Just to follow what Mr. Ramadhar has said, and just to put things in focus, Mr. Khan, this Committee is examining criminal case flow management in the judicial system, and my assessment is that the backlog in the flow of the cases in the system creates a problem in the prison; that is the first thing. Secondly, my assessment is that the prison may not be playing the role it should be playing in rehabilitation for a number of reasons; a complete role it should be playing. And third, my assessment would be that the prison conditions may be contributed to the wider issue of crime and, in particular, repeat offenders. And that is the context I feel we want to talk to you today.

Now I know, because in my life as a columnist I wrote on crime and prisons, in particular, between 1945 and 1980 there were seven reports on prison, and those seven reports contained about 1,000 recommendations. There were three recent reports, which together contained about 100 recommendations, 2002 Taskforce Report, which was 440 pages; your 2012 report, as Inspector of Prisons, 500 pages; and your report in 2012 was the first report by an Inspector of Prisons in 30 years, and in 2012, Selwyn Ryan's report, the report of his committee, 434 pages that contained 15 specific recommendations for prison. So that the context is that this is a long-studied issue. Prison conditions, it is a contributing factor to the crime in the society because every report has identified. There are recommendations that have been made over and over, and over, and I agree with you. Professor Ryan's report was titled, "No Time to Quit", and our report should be in the context of, it is time to act. Thank you.

Mr. Sturge: Mr. Khan, I would actually like to ask some questions of you. From my understanding there is nothing in law which requires freehold property for bail.

So in light of the fact you have made mention of persons not having freehold property because they are at the lower end of the socio-economic scale, quite apart from us waiting on the electronic monitoring, and so on, do you believe that there should be a right to own bail for the most minor of summary matters? Or, alternatively, do you believe that decriminalizing certain offences would relax, or ease up, so to speak, the congestion in the prisons?—and without being controversial, I would not want to say, possession of marijuana right away, but you agree there are persons—we both attended there with Professor Deosaran some time ago, there were about two cells with what we can loosely call “mad men”. So they are there for certain minor offences mainly, but they should not be in prison, that is not the best place for them, you agree that there were persons, over the course of the last few years, who died in prison, and when we found out why they were there it was failure to pay maintenance, and so on, and just this week a prisoner, Wayne Clement, who was remanded sometime for fraud also died. Now, in the context of jail being for the most violent offenders, do you agree, or which do you think would be much more workable in terms of relaxing, or reducing the congestion? Is it that we do away with many of the summary offences, like obscene language, resisting arrest, and so on?—the more popular ones that come up every Monday morning in court and flood the courts. Or, should there be some other alternative outside of the electronic monitoring, which we seem to be waiting on for a while?

Mr. Khan: Member, I agree with most of what you said, probably not of how you put it—

Mr. Sturge: Okay, I am a bit direct.

Mr. Khan:—the “mad men”, being someone suffering from mental health issues, we would not want to refer to them as that. The lesser serious offences, I generally

am someone that does not believe in absolutes or mandatory provisions, which do not show the faith in Judiciary. So it is unlikely that someone charged with an obscene language, or the minor offences will abscond, and it is more a burden on the system to deny him bail than allow him bail and he absconds. If one would say 10 out of, or five out of 100 people charged with minor offences absconded, and the procedures to get them before the court is less onerous in keeping them in prison.

11.00 a.m.

Mr. Khan: Your two suggestions, the freehold issue—yes, by law you do not need it, and what I think ought to be done is the Judiciary gives guidance to judicial officers on how to grant bail. So the discretion is there, but you have some guidance. The Judiciary has, to much praise, given guidance on sentencing, which has gone a long way to have a lack of discretion. You have some guidance and also other things, so guiding the judicial officers on bail would assist. I am not sure if I have answered your question though, member.

Mr. Sturge: Yes you have, but what I want to know is, do you agree that some of—you must agree that on Monday mornings in particular you would see so many persons coming before the courts for simple possession of marijuana, and they may be repeat offenders because they are habitual users. On Monday mornings the courts are filled with persons coming before the courts with obscene language, and once you use obscene language it is resisting arrest, obstruction and everything else on the statute books. Do you not agree that perhaps we can get some system where these persons do not need to appear before a court, perhaps a caution at the police station, written cautions or warnings, and if you rack up three or four, only then you come before the court? Would you not agree that these are better options as opposed to the existing predicament with accessing bail?

Mr. Khan: To your leading question I would answer yes. It is in the United Kingdom where you can give warnings for lesser offences, and I would take your word for it that that happens on a Monday morning. I have not attended the Magistrates' Court for about two years.

Madam Chairman: Mr. Sturge, Mr. Rambharat has a question.

Mr. Sturge: I am sorry.

Mr. Rambharat: Mr. Khan, going back to your report from 2012 and the work you have done since then. What are your views on the impact? I have a feeling, based on my interaction with constituents of Mayaro, some of whom are under your care, that meaningful access to justice in the form of legal aid presents a problem, particularly in rural communities, and a contributory factor to the backlog in the criminal justice system is access to legal aid, or access on a timely basis, access on a consistent basis. So I would like to hear your views based on your report, whether this issue of access to legal aid is a contributory factor in the backlog.

Mr. Khan: Yes, member and Madam Chair, I will answer that question not really so much as the Inspector of Prisons, but more so as a member of the legal aid panel, forgive me for saying the son of the D/C and familiar with the Legal Aid difficulties. Legal Aid did submit a submission, February 12, 2016, which did acknowledge the concern of the member, in that, there are several what I call "rural courts" and they are not as staffed as the main courts, and it does present difficulties. I would have to agree—

Mr. Rambharat: I want you to answer as Inspector of Prisons. In other words, within the prison system is there an issue of access to legal aid? In other words, for the prisoners and the persons on Remand Yard, is access to legal aid contributing to their ability to put forward their cases in the court? Is it

contributing to a backlog?

Mr. Khan: Yes. The difficulty is with the median to get the information to legal aid, if it were—and I am subject to correction—that there is an attorney based or there is an open communication: this person has come from this, this is the charge, that they wish legal aid, and in a timely manner—I am not saying it is not made timely—to communicate on a point for those rural areas. I am subject to correction whether there is someone, and I use the word loosely, “staffed” from Legal Aid, although I am aware that several Legal Aid officers will attend prison, perhaps once a week to take requests for legal aid appointments.

Madam Chairman: Is this done for the prison in Tobago as well?

Mr. Khan: I understand yes.

Miss Mc Donald: Madam Chair, question through you to Mr. Khan. My colleague, Mr. Rambharat, made reference to Mayaro, but it is not only Mayaro. I want to tell you about the constituency I am from, Port of Spain South and surrounding environs. There are many horror stories I would have heard with respect to persons attempting to access legal aid.

For my own personal edification this morning, what is the problem or what do you see as those obstacles in legal aid which would prevent access by those persons at Remand Yard who would like to access your services? What are the problems? I would like to leave here this morning with a sense of satisfaction, that I understand your problems, because when I understand your problem, I will take it to the relevant Minister. As you said before, or I think MP Prakash Ramadhar said, this Committee is a Committee of implementation. So I would like to hear from you, give me a sense of comfort this morning.

Mr. Khan: In regard to the prison and access to the constitutional right to an attorney, what ought to take place—and I understand it was to be put in place—is

that you are allowed to make a telephone call to communicate with your attorney, probably under supervision, and where you could check the number is what you are saying it is. Member, if I could answer twofold. You have an attorney but to communicate with him may be difficult, because of the lack of staffing and visits, an attorney would spend an entire day to see a prisoner. Often a popular attorney may have many clients, to sacrifice one day to see a Legal Aid attorney—no disrespect to Legal Aid and their funds—is very onerous financially on you. So to allow a telephone call to communicate, one, with your attorney, yes, and I could say the Legal Aid also is understaffed. There are so many applicants for attorneys that in-house—which was the recommendation in the Director’s February 12 of this year’s letter, is to have more in-house attorneys, and perhaps raise the fees for the outhouse attorneys—if I could use that phrase.

Madam Chairman: Mr. Khan, is there any branch of the prison that perhaps could assist with this communication? Can the Prison Welfare Branch, for example, facilitate prisoners in custody to communicate with their attorneys?

Mr. Khan: Yes, and it does happen where a welfare officer will call an attorney and communicate the concern of the inmate. However, the staffing or the under-resourcing, if you have 1,200 inmates wishing to reach 1,200 attorneys or 300 attorneys, it is a staffing issue. Madam Chair, if I could say, the systems are there, the systems exist, the solutions exist, and the policies exist. How to solve the problem is simply—and forgive me for saying “we”—are we going to invest in what we think would solve at least some of the problems? That is the only thing in question.

Madam Chairman: Which brings me to the next question, that is to say, in your report I am sure that you made certain recommendations in 2012. Can you tell us whether any of those recommendations have been implemented?

Mr. Khan: Madam Chair, I would not be able to answer that question, because I am not really part of the implementation part. If I could say, the 2012 report really dealt with matters of prison conditions, legislative framework. It did not touch the bail and it did not touch delays, which have developed in the last two or three years to be the current focus on the prison system. But I do hope that my 2016 report will touch some of that, and if I may be able to say, as Mr. Sturge said, to decriminalize certain offences, which the learned Chief Justice did say in his opening address in 2013, to ease up bail conditions, to have more noncustodial options, and probably it is to put some pressure on the Director of Public Prosecutions to start accepting some of these lesser offences pleas or requests.

Madam Chairman, may I continue?

Madam Chairman: Certainly.

Mr. Khan: The Chief Justice did say, well look, we cannot try all these matters; we cannot. The last time I saw Ms. Seetahal, we attended a plea bargaining session, and it was the best solution to the indictable offences backlog. It simply cannot have—and my mother would say, “What we just need is some elbow grease”. Everybody just get down and we do the work, we take the pleas, prison prepares the reports, Legal Aid appoints the people, the DPP prepares the files, the Judiciary sentences, and that would address at least the indictable offences backlog. Those to me are the solutions that I would include in the 2016 report.

Madam Chairman: I believe there is in a place now the MSI procedure which was introduced, I think, by a practice direction, by the honourable Chief Justice. I understand that some judges are making use of it.

Mr. Khan: Yes, but it still does not force the hand of the DPP to accept some of these lesser offences: murder to manslaughter, a development away from murder. Mr. Ramadhar is smiling, but he once made an application for bail in a murder case

eight years ago. I recall that, and I thought it was quite interesting. I am not saying that is the solution, but you have to give something. You cannot have it all. The Judiciary cannot hold on to this idea that “We are the guardian of justice; we are the saviour of the nation”.

We are not doing—and forgive me for saying “we” all the time—what we ought to do. We are so delayed that what we are asked to do we cannot even do, so we have to pull back a bit and say, “Well, look, we are not here to solve crime. We are not the saviour of the nation.” We have our principles of sentencing, which member Mr. Rambharat did say is rehabilitation, and we are not achieving it. Deterrent simply does not work because detection rates are so low. Retributive or revenge does not work, because you are taking the revenge 10 years later. Rehabilitative does not work because the prison conditions are poor, and if I may say with regard to delays, member Sturge had said jail. There is a difference between jail and prison. Prison is for convicted people, and prison is well suited for convicted people. The convicted people are doing well. Jail is for remand people. We in the prison system are asked to take care of remandees and we do not have a jail. The responsibility of remandees are the Judiciary, and they have asked us, the prison, to keep these inmates till their cases start and we are suffering the problems of delays. Yes, you could blame the Judiciary and yes, when inmates come up—Madam Chair, forgive me if I am speaking too long. If I may continue?

Madam Chairman: Sure.

Mr. Khan: While prisoners may be loaded up in court and shout and all that for five minutes, and you appease them and you mamaguy them, they still go back to prison and prison where they live is where we work, and they are hostile. They are hopeful for their cases to start, and the remandees are not philosophically our problem; they are not our responsibility. It is the Judiciary’s responsibility.

Madam Chairman: We have a question from my Vice Chair.

Mr. Coppin: Good morning, Mr. Khan. You began your presentation basically by speaking about the psychological differences between prisoners and those on remand, and as you just continued it a while ago. The Commissioner of Prisons, he also submitted some comments on the situation, and he identified also those awaiting trial as being the most troublesome or the biggest problem for the prison system. So there seem to be a universal consensus as to the problems created by persons on Remand Yard. One of the reasons he believed for this problem was the inadequacies of the existing regulatory framework, the 1950 revised Ordinance, Ch. 11.

What recommendations, if any, would you make? Because he says it is veritably silent on the treatment of remanded inmates. What type of recommendations would you make with regard to the amendment of this regulatory framework?

Mr. Khan: The 1943 rules are advanced thinking in rehabilitation, but as you correctly said, Vice Chair, its focus was on inmates. In South Africa there is a specific separation between jail under the head of a completely different, if I can call it “supervisor”, than from prison. They are financed differently. I do not believe they were at one point under different Ministries. There was a 2005 South African paper to recommend the separation and then a 2012 or 2013 paper to highlight how the separation has occurred.

So I hope that answers your questions. You have to philosophically separate the remandees and how we treat them. Former Chief Justice Sharma in 2003 talked about the cruel and unusual punishment to those who are presumed innocent, separate and apart from those who are convicted.

Mr. Coppin: Following on that, has any scientific study been conducted? You said earlier that you found them to be more depressed and more aggressive. Is

there any concrete statistic maybe in your annual reports which you could point to, which could perhaps commence the philosophical understanding of the differences between these individuals?

Mr. Khan: None that I know of, but I am sure with the World Wide Web it could be sourced.

Mr. Coppin: As it relates to Trinidad?

Mr. Khan: No, none that I came across. But often when people like the Commissioner or those within the system who have about 30 years, day in and day out experience, you talk about evidence-based observations. Although one cannot do the survey in terms of what the psychological deficiency you are suffering from, it simply goes: you go to this prison that has a remand and you see a lot of people shouting. You go to MSP, you see some people playing football and everybody is cool, and they are convicted. But I agree that they ought to have some firm written confirmation of this.

Madam Chairman: Could I just ask you: Do your responsibilities include YTC?

Mr. Khan: No, I sit on the board of management of YTC and I report to the Commissioner who has control of YTC, but no I am not in charge of YTC. I sit as the Chairman of the board of management and we make recommendations to the Commissioner, who would then make recommendations to the line Minister.

Madam Chairman: Could you just give us some statistics? I know earlier you said about 60 per cent of the persons in our prisons are persons on remand. Could you tell us what figure that 60 per cent would be?

Mr. Khan: In terms of lads, Madam Chair, in terms of YTC?

Madam Chairman: No in terms of adults in prisons, on remand.

Mr. Sturge: Remand population.

Mr. Khan: The 60 per cent, I did not include YTC. I always separate that. In my

opinion, last time, there are generally between 95 and 110 lads, as we refer to them from the English system, within YTC. Obviously that has changed because of the Children Act, but they generally do not cross 150.

Madam Chairman: What about adults? How many adults are there on remand?

Mr. Khan: The inmate population overall tends to be around 4,000, up or down a bit. Madam Chair, if I defer that question, because I do not want to misinterpret or misinform, but more than half tend to be remandees, which is 2,000, please.

Madam Chairman: About 2,000 persons on remand.

Mr. Sturge: On average, 2,000?

Mr. Khan: I would say so, yes, but that would be best within the knowledge of the warrant section.

Mr. Sturge: Mr. Khan, if I may. Following on the question asked by the Vice-Chairman, would you agree that the majority of the prison violence, or the violence in the system, comes from the remand section of the prison.

Mr. Khan: I think that question is best suited for the Commissioner, not that I do not want to answer. But I would say generally, yes, and it turns back to what Vice-Chair said. It is a psychological difference and it is increasingly difficult where there is more so an issue of separation of the inmates.

Mr. Sturge: Because these persons are not proven guilty and presumed innocent, I want to ask several questions on this issue, with respect to murder in particular. Can you tell us, on average, what is the waiting time between charged and committal, between committal and indictment, when you actually get a date to go to court, and between receiving your indictment and first appearing in court, and the final resolution of your matter in the High Court? That is the first thing, if you can tell us.

From my own understanding, correct me if I am wrong, do you not agree that the

longest waiting period from first charge to completion would be the time between committal for trial and indictment, that period where the DPP must file an indictment after committal?

Mr. Khan: I would not agree to your last part. If I could answer generally, between charge and filing of indictment, which is your first appearance in High Court—and if I could clarify the terms. You are charged with an indictable offence, there has to be a DPP attorney appointed. You then have your preliminary enquiry. The outcome of the preliminary enquiry will then be a committal to High Court. The notes are then prepared and sent to the DPP who then considers what to indict. Then the indictment is prepared and filed in High Court, and at that time you are brought to High Court and stand in line and wait your trial.

My experience from my matters, it tends to be at least eight years between charge and indictment. It is difficult to say how long you would take for your trial to start. As controversial as it sounds, one of the themes of my report was section 35, in that, look, if you have not had your case started in 10 years—

Mr. Sturge: Section 34.

Mr. Khan: I have renumbered it. I have added a number.

In section 34 we are not dismissing your matter, if you have not had your matter, if you have not gotten—I have been the Inspector of Prisons for five years, having been appointed in December 2010, and—forgive me, member—if you have not gotten your house in order in 10 years, perhaps you should consider bail. That is not dismissing your matter.

Mr. Sturge: Bail for murder?

Mr. Khan: A discretionary bail in all matters, which would include murder in certain circumstances. The learned D/C of Legal Aid suggests a categorization of murder. I did speak to a judge from a different jurisdiction that says, even

indictable offences, all matters, if you do not have your house in order in six months, you are given bail.

In terms of the breakdown, your preliminary enquiry might last two or three years. In then Chief Justice Mc Nichols days it was—Chief Magistrate, I apologize, the chief justice of the Magistrates' Court, [*Laughter*] it was about six to eight months.

Mr. Sturge: Now it is two to three years.

Mr. Khan: Forgive me, Madam Chair, if I have gone beyond my remit. That is because they have changed the remand period from 10 to 28 days, so now you have 12 hearings in one year, as opposed to about 50 hearings. The paper committal procedure has caused more delay than speeding it up.

Mr. Sturge: Agreed.

Mr. Khan: Then you have another three years.

Madam Chairman: Mr. Khan, I just want to stick a pin, as one of my friends keep saying, and ask you this: as Inspector of Prisons is there anything within the prison system which can be changed and have the result of accelerating the process of criminal cases?

Mr. Khan: No.

Madam Chairman: So there is absolutely nothing the prison can do to accelerate the process?

Mr. Khan: Nothing that I have thought of for the last five years.

Miss Mc Donald: Through you, Madam Chair, to Mr. Khan. Mr. Khan, how long have you been Inspector of Prisons?

Mr. Khan: Forgive me, I was appointed in December 2010. I have since been reappointed three times. My current tenure is to end in June of this year.

Miss Mc Donald: Mr. Khan, over the last five years, have you seen any changes in the prison system? Are you aware of any reduction, let us say, in the Remand

Yard, how the system was dealt with over the last five years, to reduce the backlog of cases? You are the Inspector of Prisons for five years, tell us what transpired over the five years and how—because we are hearing a lot this morning. We are hearing all the ills this morning, but you have been there for the past five years. What is your input, because you would have seen the system at work? What has happened over the last five years? Has there been any improvement?

Mr. Khan: No, no; we have degraded further and further. When prison hits rock bottom, we start digging to get much lower and it becomes a bottomless pit. The prison population is a subset of the larger society. Forgive me for saying the larger society seems to be also digging a pit, and the dregs of the pit are being thrown in our pit, and our pit just keeps—

Madam Chairman: I am sorry, I am losing you, Mr. Khan. Perhaps you are speaking too softly or maybe you have other things on your mind. I see both Mr. Rambharat and Mr. Ramadhar have questions.

Mr. Ramadhar: Thank you very much. I find it a bit troubling, Mr. Khan, to suggest that there has been no improvement. You might very well be aware of the infrastructural work that has been engaged for some time now, and I thought today you might have been able to assist this Committee and the nation widely as to improvements on the conditions at Remand Yard and, equally, and I speak now as a former Minister of Justice for a short period of time, of course, in relation to the opening up of the Maximum Security to take away a lot of the pressures of the Remand Yard. Also for the institution, I do not know how far it has gone, for the building of a 1,500 bed institution for pre-detention—well, pre-prison, if you may want to call it that. Are you in any position to help us? To suggest that nothing has happened in the last five years, really is not an accurate statement.

Efforts had been made, whether they had borne fruit at this point in time—and I

refer to my earlier statement in relation to some of the legislative changes, and I congratulate you on your efforts too in the contributions to the new prison rules. If you could help us with those, so that we have a clearer picture of the tremendous amount of effort that has been put. Whether it has borne fruit up to this time is another issue, but that the efforts have been made and work I am sure would be in process. Could you help us with that?

Miss Mc Donald: Madam Chair, before Mr. Khan answers. My colleague, MP Ramadhar, I get a feeling as if you want to put words in the mouth of Mr. Khan. Let me finish. I see Mr. Khan as a very credible person and very competent person and I am sure—Mr. Khan has been there for five years. He has been renewed three times over the last five years by the previous Government and, certainly, I think that he is quite—I listened to him; a very articulate young man. He seems to know exactly what he is talking about. So why do you want to put words? He is speaking the truth. I want to jump to his—

Madam Chairman: Could we just have some order, please. I think it was a straightforward question. Mr. Khan, if you could answer it succinctly.

Mr. Khan: Yes. Contextually I was not saying that nothing has been done. In response to Miss Mc Donald's question, I interpreted the question as, has anything been done to alleviate delay? I hope that in context of what she was saying, I was saying no. In terms of development of the infrastructure, yes, the last administration within the last five years, which is documented by the Commissioner's letter of February 19, about the infrastructure investment, the eastern correctional facility, the investment into the Maximum Security Prison infrastructure allowing for more cells to be used, within that. I did not mean to say nothing has been done. I was referring to nothing has been done or can be done on the prison side to alleviate delays.

11.30 a.m.

Madam Chairman: Yes. Mr. Khan, could you just help me with this? There would be persons in the detention centre who would have matters before the courts. Are you responsible for those persons or which group or authority or body is responsible?

Mr. Khan: That does fall under the Commissioner of Prisons, and a liberal interpretation of my powers would fall under my remit as well. I understand, and if I can expand, that facility is being used to acclimatize inmates when they have six months to run out. That is my understanding at this point. I am not sure whether that has been changed.

Madam Chairman: That is your understanding based on—?

Mr. Khan: Based on communication with the Commissioner. There have been some shifts in the last year about separation.

Madam Chairman: I see. So you can provide us with information in writing, let us say, perhaps with respect to the population of the detention centre and how many persons are on remand there?

Mr. Khan: Yes. I can and I will.

Madam Chairman: And we will appreciate that. Before, Mr. Ramadhar continues, I believe Mr. Rambharat had a question that he wished to ask.

Mr. Rambharat: Mr. Khan, I have a combination of questions and comments and I make four points now. The first is that I appreciate you drawing the distinction between prison and Remand Yard. I, of course, a full-blooded solicitor, my knowledge of criminal law is purely academic, so I appreciated that difference. I think it is one of the things that I will take with me through this discussion because you drew a very important distinction and you drew an important point. You made an important point on the role of the Judiciary in relation to Remand Yard.

Now, I disagree with you based on my previous question on legal aid and prison. I disagree with you on—I believe, that the prison has a role on this issue of the criminal case flow management. We have to be very careful that this examination is not on prison and prison conditions. This is an examination of criminal case flow management. And I stick to my view that the prison plays an important relationship between the prisoner, the people on Remand Yard, the court, the access to justice and the relationship between those persons and the Judiciary. And based on my previous question I formed the view before that access to justice within the prison is an important part of the case flow management process.

The third point I will make, in deference to my friend Mr. Ramadhar, I do not believe that infrastructure plays an important role in the question before us and the issues are more systemic than infrastructure. And I compare it to saying that the construction of hospitals will not improve health care. The construction of hospitals demonstrates a problem with health care; a systemic issue with health care, and I use the same reference to the prison.

But I will close on this point. And it is really for the benefit of the law students who are here, the law school students. The issue of legal aid has been a vexing one for a long time. Every report from legal aid would have said, you know, we have much less, fewer attorneys than we need. Legal aid was not attractive for attorneys in private practice. But I wondered whether you think—and this is a combination of your experience at the law school and your combination of your experience as criminal attorney and Inspector of Prisons—whether it was time for the Law Association to examine granting a limited right of audience for students at the law school, perhaps in their second year, to represent criminal defendants under the supervision of a more experienced attorney, in particular in rural courts?

Now, I know the law allows people to be represented by a friend, but I thought that

maybe it is a way in which we can supplement what is available through legal aid. I know the law school has its own legal aid and maybe we should try to carve out a role for these students because we recognize that in our system law students go through five years of training to get a full right of audience and in other jurisdictions that happens after two years, in some cases three years. And in the law schools now we have a student body that includes some far more experienced people than we would have had when I was in law school decades ago. So I just want you to consider that, and I am just sticking to that point of access to justice and the relationship between that and criminal case flow management.

Madam Chairman: Yes. I know that we are all looking at the clock, but there are just a few things that I was hoping we could round off with. And Mr. Rambharat's suggestion sounds interesting, but I would imagine there are serious ethical considerations which would flow from the implementation of that kind of programme, and if the Law Association is asked to make a contribution perhaps they can express their view on that.

In terms of identifying persons who may be moved out of the remand section of the prison and have their matters dealt with more expeditiously, let us say in terms of identifying a group. Is there any process by which, let us say, persons who have mental health issues and who are on remand, can they be identified by the prison authorities and managed, in a sense, to ensure that they are evaluated so that their psychiatric reports are brought before the courts? The court know that you are dealing with a mentally ill person and thereby the courts might give priority to such cases. Is there any possibility that something like that can occur?

Mr. Khan: Madam Chair, yes. They do. They can and they do identify those with mental health issues. As a matter of resources there are, I believe, two psychologists and one psychiatrist that service the prison which would include

4,000 inmates and the prison officers as well that do have mental health issues at times. I do not mean to be—that—in that environment.

Madam Chairman: Yes.

Mr. Khan: To carry out evaluations may be difficult because also the forensic psychologists and psychiatrists in Trinidad are limited.

In my first prison report there was an opinion of Dr. Ghany that said the mental illness within the prison is substantially higher than out in the wider population. And he did say the wider population in Trinidad generally does have a higher percentage than other jurisdictions. But we can and we do identify those; to treat them would be another issue.

Madam Chairman: I see.

Mr. Sturge: Madam Chair, through you.

Madam Chairman: Yes.

Mr. Sturge: Mr. Khan, can you—you are a practising attorney. It is obvious that the delays have gotten much worse than it was 10, 15 years ago. Now, you know that there are only six courtrooms in the Port of Spain Assizes and four in San Fernando. So that there are—and only one matter can be heard in one court at a time. Do you agree that trials take much longer from start to finish when the accused is actually arraigned up to the time of the verdict? Do you agree that trials take much longer now than they did years ago? And if you do agree, can you give us some indication as to why?

Mr. Khan: Yes. To have a trial going on for two years is unacceptable.

Mr. Sturge: That is not the question, but—

Mr. Khan: Trials take longer because criminal principles have expanded to perhaps, 10 legal issues that arise in a trial to about 30 issues. There are more applications in court for legal issues. There are cross examiners, defence counsel,

that are not reined in by the judge, engaged in protracted cross-examination; there are unnecessary adjournments to prepare written submissions; there is a decision by trial judges to prepare written judgments or rulings when they ought to exercise their discretion and give an oral ruling. There is not case management or in the civil jurisdiction where you front load the matter. Meaning all the work you do is before the matter starts; you agree to what witnesses; you do not have to cross-examine every witness. Those are my suggestions.

Madam Chairman: Yes. My Vice-Chair has a quick question before we round up.

Mr. Coppin: Returning to the question of the conditions—of the mental conditions of the remanded inmates. There is a view that some sort of parallel incentive for good conduct for them is something that would perhaps help with the despair that they face because currently there is no such incentive for those persons who behave well to be taken into account perhaps when they are actually sentenced. Is this something that you agree with and are there any other suggestions along those lines?

Mr. Khan: Yes. In terms of convicted inmates, there is currently what is called a third discount of your sentence. It is for good behaviour, to encourage good behaviour. Because of accounting proceedings or management, you are often given that discount as of right, and it is withdrawn from you when you behave badly, as opposed to you having an incentive not to behave badly as opposed to that incentive to behave well. And there is or ought to be put in place a parole board, an encouraging reward to prisoners for their good behaviour, holding out the reward of an earlier release.

Madam Chairman: Yes. But if—Mr. Ramadhar.

Mr. Ramadhar: Thank you very much. Now could you very briefly tell us, in

terms of the improvement of communication for the use of telephones, legitimate use of telephones under controlled circumstances by inmates to family, friends and even lawyers?

Two, what is the status of the videoconferencing infrastructural development for which, of course, will unburden the courts to actually deal with cases. And then you said something most troubling—the expansion of the remand period from 10 to 28 days was intended to prevent the unnecessary transport of prisoners to and fro when their cases could not go forward. I am hearing now that is used as a mandatory period as distinct from a maximum period when cases could be adjourned for anytime within a 28-day period.

Mr. Khan: Yes. With regard to the first, there were tenders to install telephones within every hallway, within every section of the prison which is manned by one prison officer and therefore, to facilitate that. There was, under the previous Minister of Justice when there was a Ministry of Justice, a system to jam all the illegitimate phone calls and therefore, siphon it only to legitimate phone calls.

In response to your 28 days, it was passed, but with the idea that at the beginning of the case nothing would start so you would take the 28 days longer to alleviate the transport. However, when a matter started it ought to go from day-to-day which the Chief Justice—the Magistrates' Court ought to do. They used to force your hand—that is Mc Nichols—to force your hand to go on the matter from day to day to day to day, but it is being used 28 days, 28 days, 28 days and that is causing delay. The 10 days—it was to alleviate the concern and it is not being exercised in that manner. It is causing delays.

Madam Chairman: We have a question from Mr. Mitchell.

Mr. Ramadhar: Your conferencing facilities.

Mr. Khan: Oh. I apologize. The videoconferencing was set up in a pilot project.

I know it was run—the current Chief Magistrate, I believe, I am subject to correction, had a pilot run and those kinds of things about implementation. I cannot say at what stage that is and whether the pilot project was successful. But that is a very important and useful way to assist the prison system and the Judiciary.

Madam Chairman: Sure. Mr. Mitchell.

Mr. Mitchell: Yeah. Notwithstanding the infrastructural improvements, the planned infrastructural improvements, can you give us an indication as to what improvements to the system of managing the consequences of delays in terms of the violence, the gang problems, that sort of thing?

Mr. Khan: The present Commissioner is doing everything he can with the issue of separation and segregation. Because you have an influx of higher profile accused and—that are there for longer periods. And it is extremely difficult, one, when they come into prison to ascertain their loyalty to what other inmates. I am saying that loosely and I hope the Committee understands. To separate them, not to put them in the same cell and it is becoming increasingly difficult.

What I was trying to say about digging the hole is that as the society as a large gets more violent, you are taking the worst violent, the most violent people and putting them in the prison and prison is getting more hostile, more heated and the segregation is an issue, but there are many, many efforts. As Madam Chair alluded to, the eastern correction facility is being used to put some here, MSP here, just to move them around, but it is difficult to know what an accused person's affiliation is. And you have accused persons or defendants charged with minor matters that are being commingled with those charged with more serious offences which is against the prison rules because that would increase their exposure to criminality. I hope that addresses your concern.

Mr. Mitchell: One other question. Is there an information-based management system at the prison or is it just done by paper records?

Mr. Khan: I believe it is being digitized. The warrant section is a large body of statistics that could, I believe, inform this Committee as best to the figures. When you come in you have your—what offence you are charged with, what area, your remand. You would have your date of committal or your date of entry into, your date of indictment, and it does go along to help the statistics. But no matter what the statistics show, it is that the delays are unacceptable.

Madam Chairman: Okay. I believe that these are the questions which the Committee has for you, Mr. Khan. Thank you very much for attending. Thanks to the legal aid officials who are here and we are hoping that we would be able to ask you some questions on the next occasion which is due to be March 18, if that is convenient to you? If it is not convenient, then perhaps we can schedule another session, but please feel free to communicate with Mr. Ogilvie to let him know what best suits you. So, Mr. Khan, thank you. You have been very helpful.

Mr. Khan: Much obliged.

Madam Chairman: And the meeting is now adjourned.

11.48 a.m.: *Meeting adjourned.*