

RESPONSES OF THE JUDICIARY OF TRINIDAD AND TOBAGO TO SUPPLEMENTARY QUESTIONS OF THE JOINT SELECT COMMITTEE OF THE PARLIAMENT OF TRINIDAD AND TOBAGO ON NATIONAL SECURITY

AUGUST 16, 2023

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1. Please provide this Committee with recommendations to address the constraints faced by the Judiciary relating to its operations under the Public Service.	Human Resource Management (HRM) The Judiciary’s lack of control over position design, definition and creation, as well as the lack of control over recruitment, compensation, training, promotion, enforceable ethical code, performance evaluation, training and compensation of its civil service staff continue to impact its capacity, effectiveness and efficiency negatively. Having to work using staff from the central civil service is a problem which has haunted the Judiciary consistently for over 131 (one hundred and thirty one years) and has been further exacerbated by the development trajectory of the Judiciary which has become more and more specialised in processes and systems and thus in jobs and skill set. It should be noted that the <u>Report on the System of Administration of Justice in the Colony</u>’ stated as follows: <i>“...But we desire to call Your Excellency’s attention to the fact that for the most part appointments to clerkships in the Registrar’s Office has in the past been made without any regard to the previous training of the gentlemen appointed. The Registrar’s Office appears to have been regarded as a Government Department to which a clerk could be promoted from any other office and promoted again from it to another. In point of fact the Registrar’s Office is one that requires a special training before a clerk can properly perform his duties, and no one, however great his general ability and official experience may be, can do this work without some preparation.</i> <i>We find that some of the clerks have been transferred from other Government Departments for no better reason apparently but that it was promotion for them in point of salary, but without any regard for his fitness for that office. No doubt after a time some of these Gentlemen have learnt their duties and have become excellent clerks, but in the meantime they have been of very little use. Some knowledge of law is required for many of the duties the clerks have to perform, and to take a Gentleman, say from the Audit Office and set him to draw up Decrees and Orders is fair neither to the Registrar nor himself.</i> <i>We venture to recommend that the Registrar’s Office should be a Department by itself, and that promotion should run as far as possible in the office. Young clerks can be taken in and trained up in the</i>

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	<i>special work of the office, and promoted from time to time as vacancies occur. In this way trained staff will always be available. We venture however, to strongly impress upon Your Excellency the undesirability of transferring a clerk from any other Government Department to the Registrar's Office unless it be one of junior clerkships with a view to his being trained up to the special work of that office.</i> <u>(Reference- 'Report on the System of Administration of Justice in the Colony' page 16 under heading Registry 1892.</u> Despite numerous and repeated calls by Chief Justices over the last 131 years since that report, the issue has been ignored. It is quite troubling that the country can see the need for the immigration department and the customs department being made closed departments and the country can see the need to the Office of the Procurement Regulator to be given independence by being able to select its own staff and appropriate terms, because of the need for the OPR to be independent, but the need for the Judiciary to have this right in order to ensure its independence and to improve its efficiency is not seen nor respected. Consequently, the Judiciary is not able to retain competent personnel beyond the short-term and, therefore, is burdened with the continuous training of new staff and the danger that is posed by untrained or unsuitable staff. To add insult to injury, the policy of sending staff from the Ministry of Labour for three-month assignments has heightened the problem. The Judiciary wishes to recruit staff and train them up and move them through a career in the court service. While an attempt to create unique positions has been made, the fact that the staff are recruited by the Public Service Commission and not the Judiciary and are promoted and disciplined on rules not in keeping with the Judiciary's needs and realities have caused this to be a failed exercise.

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	The Judiciary has the authority to hire staff on contract and uses a very detailed and specific recruitment exercise and enforces a disciplinary ethos that is consistent with jobs in the Judiciary. Disciplinary processes are not delayed and natural justice prevails. It is obvious that it is not that people hired on contract are better than those hired as public officers. There are excellent public servants in the jobs and excellent contract officers; there are some weaker public servants and some weaker contract officers. The difficulty lies with the methods and systems employed for the management of public servant human resources. Their terms and conditions, the performance management system, the disciplinary process, and the inability to truly test them on the job and observe them in probation are not suited to the work of the Judiciary. For some, the “you can’t discipline me or you can’t fire me” malaise steps in and is highly inconsistent with working in a judiciary. The Judiciary also must be able to change rapidly as new laws, rules, and procedures are developed and the system of a full civil service staff is not conducive to this. COURT ADMINISTRATION Court Administration is a very new field in the scheme of things and there is not a ready pool of persons to fill these positions. It is also important that it is recognised as highly specialised. One cannot be a permanent secretary and from this be able to be a court administrator. For this reason, the management level of the judiciary has continued to be contracted. Attempts made by public service agencies who know nothing about managing a judiciary to force court administration positions into the civil service structure is a signal for disaster. For the 25 years in which court administration has begun to exist it has had to fight for its recognition and its existence despite the obvious positive effect that it has had on the development of the Judiciary. There are continuous attempts by public servants and public service agencies to “knock it down to size”. Terms and Conditions One method of “knocking it down to size” and “showing that the Judiciary is not special” has been in the determination of public service agencies to undervalue the jobs. The Judiciary has been at a loss to understand why the position of Court Executive Administrator should have been placed lower than even a Deputy Permanent Secretary in the 98th SRC Report and kept that way until legislation intervened? A Court Executive Administrator does everything that a Permanent Secretary does and much much more.

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	Why should the Deputy Court Executive Administrator who is the person responsible for a Division of the Judiciary be given terms and conditions which are inferior to a Deputy Permanent Secretary? This continues to be the situation. The determination of unsuitable/poor terms and conditions for jobs by the Chief Personnel Officer for contract staff and the particularly slow process for determining same impacts the Judiciary’s ability to recruit and retain staff and also negatively affects staff morale. This has resulted in the weakening of hitherto successful initiatives. This has occurred despite numerous discussions and the submission of justifications to the CPO in an attempt to provide context to the staffing needs of the Judiciary, which are different to those of the wider public service. Despite attempts, decisions have been made by the CPO, which do not take into account the Judiciary’s operations and the delivery of judicial services to the public. Administrative Actions At times, the actions of the Executive are not those of Cabinet but of those agencies that exercise managerial authority as agents or arms of the Executive. Chief Justice Hyatali on several occasions found it necessary to address this concern. On the occasion of the 1981-1982 Law Term Opening, he had this to say: <i>“EROSION OF JUDICIAL INDEPENDENCE</i> <i>This serious disability imposed on judges is but one of the many ways in which the status of judges and their independence are eroded by subordinate public officers in a number of Government Departments – officers who, in almost all matters pertaining to the judges and the Courts, I regret to say, arrogate unto themselves the authority of delaying, obstructing frustrating or ignoring firm decisions of the cabinet of the country.”</i> It is important that the Judiciary manages its own human resources. To enable the Judiciary to assume full control of its human resources, it must be allowed to design and establish an appropriate structural framework. This framework will support the Judiciary’s vision, strategic goals and objectives, and operational requirements and enable it to meet the demands of its customers. Recommendations Under section 111 of the Constitution, the Judicial and Legal Service Commission (“the Commission”) has power to appoint persons to hold or act in prescribed public offices for which legal qualifications are required; including the

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	power to make appointments on promotion, to transfer and confirm appointments and to remove and exercise disciplinary control over persons holding or acting in such offices. For the wider Judiciary, the Commission should have responsibility for: 1. recruitment or making staff appointments; 2. determining terms and conditions of service based on the compensation structure developed for the Judiciary; 3. conducting disciplinary proceedings; and 4. terminating staff appointments. In light of this recommendation, the following changes may be proposed: 1. Section 111(4) of the Constitution should be amended to provide for the Judicial and Legal Service Commission (JLSC) to appoint, promote, transfer, remove and exercise disciplinary control over a new category of staff for the Judiciary who may be called “court service officers”. These officers will comprise the non-legal support staff of the Judiciary. 2. The capacity of the Commission should be strengthened in order to amply undertake these functions for which the JLSC will become responsible. A revision of the structure of the Commission may be necessary in light of the expanded mandate, including the introduction of its own secretariat. 3. Arrangements should be made with the Executive for pension to be continued for public servants who will be transferred to the Court Service. 4. Court Service offices should be pensionable offices under the Pensions Act and all arrangements should be made with the Executive for same. 5. Court Service Rules should be made to govern and regulate the operations and procedures of employment in the court service. 6. The Commission should be empowered to recruit both public officers and officers on contract.
2. Do you believe that financial autonomy of the Judiciary would aid its ability to fulfil its mandate and role within the criminal justice system?	The Judiciary’s document on Financial Autonomy is attached to this document and is instructive in response to this question. Financial autonomy for the Judiciary will require a dependable source of funding that does not involve Executive discretion. The funding must be adequate for the purposes of the operations and development of the Judiciary.

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	Financial autonomy therefore requires systems, processes and procedures that support transparency and accountability in the use and management of funds. The following steps are recommended to facilitate the Judiciary's financial autonomy: • Identification and appropriation of a dependable source of funds; • A transfer of financial authority from the Executive to the Judiciary thereby allowing it to be responsible for the management of revenue collected and expenditure; • The transfer of financial authority to the Accounting Officer to shield judges and judicial officers from liability for actions they may have to adjudicate upon. Towards this end, appropriate and sufficient internal and external checks and balances must be put in place to ensure proper use of, and accounting for monies by the Judiciary. With financial autonomy comes greater financial responsibility and accountability. While the system of public finance management under the Exchequer and Audit Act and the Financial Regulations made under that Act are not in keeping with the financial independence of the Judiciary, any system for managing the Judiciary's finances should accord with the fundamental underlying principles of public finance management. The Judiciary will need to ensure that the public funds allocated to it are responsibly and accountably managed by a cadre of professionals and that adequate internal control systems are adopted, including internal and external audits. In the interests of transparency and accountability in the management of public funds, the Judiciary should develop Financial Rules and Operational Guidelines which should at the very least be laid in Parliament. <i>"A Judiciary that claims independence but which refuses to be accountable to society will not enjoy the trust of society and will not achieve the independence for which it strives".</i> The Judiciary is not unique in this regard as any entity which utilizes public funds should have good quality internal governance and sound financial management. Appropriate delegation of responsibilities and effective mechanisms for internal reporting should ensure that performance can be kept on track. Good practice should be followed in procuring and managing resources and assets; hiring and managing staff; and deterring waste, fraud and other malpractice.

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	Some mechanisms for the management of public funds are entrenched in the Constitution and will apply to the Judiciary regardless of the extent of financial autonomy with which it is vested and the internal financial management structure established by the Judiciary. The role of the Auditor General, set out in section 116 of Constitution is one of these mechanisms: “(2) The public accounts of Trinidad and Tobago and of all courts and authorities of Trinidad and Tobago shall be audited and reported on annually by the Auditor General, and for that purpose the Auditor General or any person authorized by him in that behalf shall have access to all books, records, returns and other documents relating to these accounts. ... (4) The Auditor General shall submit his reports annually to the Speaker, the President of the Senate and the Minister of Finance.” The reports of the Auditor General are laid before both Houses of Parliament. The Constitution, at section 119, also provides for a Public Accounts Committee consisting of members of Parliament for the purpose of considering and reporting to the House of Representatives on – “(a) appropriation accounts of money expended out of sums granted by Parliament to meet public expenditure of Trinidad and Tobago; (b) such other accounts as may be referred to the Committee by the House of representatives under any other enactment; and (c) the report of the Auditor General on any such accounts. In addition to these mechanisms, it is important to prescribe by law, the purposes for which the Judiciary may use the public funds appropriated, collected in the provision of its public purposes or raised on the security of public assets. These purposes may be either or both empowering and prohibiting. It is also critical to the management of the Judiciary’s funds that the parameter for the use of public funds be sufficiently broad to address all aspects of the Judiciary’s operations for which expenditure will or may be incurred. Once parameters are set for the uses of funds, the Judiciary should be solely responsible for the budgeting and allocation of the funds.

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3. In your written submission dated June 09, 2023, in response to a question on the critical flaws within the criminal justice system, you stated that the <i>"interdependence of these criminal justice components, as well as their connection to the broader social and economic context underscores the importance of a coordinated and collaborative approach to reformation initiatives."</i> • What common action or area of actions would you consider to be the first priority for all agencies?	• Understanding their role in caseflow management. • At present developments in the judicial operations are frustrated by a) the failure of various players to disseminate the information within their organisations b) the failure of various players to do what is necessary to ensure that new processes are put into place in their organisations or to even formally create and fill positions, which are required by new laws. • Understanding of mandates and ensuring that their policies, processes and legal systems are in keeping with same. • Reviewing the structures to ensure that mandates can be affectively achieved with same. • For those agencies providing direct services to other agencies, departments, Ministries, Judiciary, to gain a key understanding of their business in order to facilitate appropriate and effective policy, service and decisions that can have a serious impact on operations. • Determining strategies to provide for consistency in operations and management of stakeholder relationships that negatively impact the smooth function of the criminal justice system • Determining how ICT improvements can effectively support their operations and interactions with key stakeholders. Thus, a formal move to Digital Justice is necessary.
4. Are you of the opinion that any agencies within the criminal justice system should be merged, reassigned or restructured to assist the Judiciary in achieving its mandate? • If so, which agencies would benefit from such activities?	• Children's Authority of Trinidad and Tobago (CATT) ○ Restructuring to be able to effectively carry out its mandate • OPM and CATT ○ Establishment of appropriate community residences for children in different categories of risk, age and gender, with all the relevant supporting processes, systems and services. • Office of the Director of Public Prosecutions (DPP) ○ Restructuring to improve its ability to manage its operations and case management of its matters • Trinidad and Tobago Police Service (TTPS) ○ Restructure to include digital justice systems ○ Development of strategy for staffing to be stabilised ○ Structure of formal re training especially when changes are made including new legislation. System of informing all persons in the organisation about changes including new policies, procedures and legislation ○ Some stability in special units such as Child Justice and Courts and Process ○ The creation of a National Courts and Process Unit with dedicated persons in every location.

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	• Solicitor General Department ○ Restructuring to facilitate more effective operations and management of cases ○ Classifying and filling the position of Children Attorneys pursuant to Section 88 of the Children Act, in which their roles and responsibilities are clearly defined and they receive proper training on child justice. • Legal Aid and Advisory Authority • There is a need for a public defender's department or sub-department for children matters ○ There is a need for amendment of Legal Aid and Advisory Act to provide for Legal Aid to address the monitoring phase of children matters which is provided for by law and rules.
5. On the matter of Child Justice, the Committee notes your submission of recognised flaws including: • Lack of understanding of provisions in legislation by some agencies; • Organisations not adhering to judgments of the Courts; • Organisations relinquishing their legislative duties; • Insufficient collaboration and coordination among stakeholders; and • Re-traumatising of children due to perpetuation of a system that allows repetition of investigative questions. Please provide this Committee with recommendations for the following: I. addressing the aforementioned issues; II. enhancing the institutional relationship between the Judiciary and the Children's Authority of Trinidad and Tobago; and III. Preventing the graduation of juvenile offenders to adult offenders.	• Lack of understanding of provisions in legislation by some agencies; ○ Training and sensitisation sessions outlining and clarifying the legislative roles, amendments and functions of the various agencies involved in child justice such as: ▪ CATT ▪ TTPS (Child Protection Unit, Gender Based Violence Unit, Municipal Police, Patrol Officers, Officers assigned to Police Stations/Posts etc.) ▪ Ministry of Education (Student Support Services, Estate constables) ▪ Ministry of Health (Regional Health Authorities) ▪ Ministry of Social Development and Family Services ▪ Ministry of Youth Development and National Service ▪ Ministry of National Security (Counter Trafficking, Immigration etc.) • Organisations not adhering to judgments of the Courts; ○ Sensitisation and awareness of the recent judgments of the Court and the impact on the actions or inactions of the various agencies (CATT, Counter Trafficking, Immigration, Ministry of Health). ○ Greater legislative sanctions including contempt proceedings against agencies in breach of court orders. ○ The Court is not respected by public sector agencies. While the court does have coercive authority, the judicial officers have been bending over backwards to use persuasion instead. This however has not been appreciated. • Organisations relinquishing their legislative duties; ○ CATT

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	• Ministry of Health – cohesive plan to adequately address different categories of children (risk, age, gender) with mental health and substance abuse issues. • Insufficient collaboration and coordination among stakeholders; ○ Increased collaboration and coordination between the Police Service Child Protection Unit and Special Victims and Witness Support Unit; ○ Increased collaboration and coordination between the Counter Trafficking Unit of the Police Service and Immigration Division of the Ministry of National Security; ○ Increased collaboration and coordination between the Ministry of Education and the Trinidad and Tobago Police Service; ○ Increased collaboration between the Ministry of Education and the Judiciary; ○ Increased collaboration and coordination between CATT and other stakeholders; ○ Increased collaboration and coordination between the DPP and other stakeholders. • Re-traumatising of children due to perpetuation of a system that allows repetition of investigative questions ○ Adoption of the <i>“Achieving Best Evidence (ABE) Protocol in Criminal Proceedings: Guidance for Vulnerable or Intimated Witnesses including Children”</i> (used in the UK). This is a four phase process: ▪ Phase one - rapport building, ▪ Phase two - free narrative account (interviewee gives their uninterrupted account of the incident, minor prompting), ▪ Phase three - questioning using techniques to prevent witnesses from becoming distressed (forced choice and leading questions should be only used as a last resort.), ▪ Phase four - closure (interviewer is given an opportunity to summarise the information from the interview). ○ The use of video recorded evidence of a child as evidence in chief in criminal proceedings according to the <u>Judges Rules for Children (Rule VI(20)) and Section 151 of the Evidence Act (as amended)</u>. ○ Increased coordinated approach to social service assessments/investigations among various agencies.

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	The Judiciary recommends the following: I. addressing the aforementioned issues; ○ Increased collaboration ○ A review of processes ○ Ongoing stakeholder sensitisation and training programmes II. enhancing the institutional relationship between the Judiciary and the Children's Authority of Trinidad and Tobago; ○ Review of structure, policies and processes at CATT to ensure mandate can be fulfilled and is in keeping with legislation ○ A more cohesive approach to integrating relationship between the court and CATT ○ Enhancement of the human resource capacity of the CATT - case managers should see out the life of a matter III. preventing the graduation of juvenile offenders to adult offenders. ○ Addressing children at risk before they become offenders- early targeted interventions ○ More community diversion, transition and mentorship programmes to provide targeted support for children and families ○ Greater employment opportunities for child offenders ○ Programmes that promote a sense of self-esteem in order to prevent the child from returning to negative environments and influences. ○ More targeted education programmes based on a child's mental capacity and more social programmes developed by Ministry of Education. A National focus on our children!
6. The Committee is aware that one major evolution in the criminal justice system has been from physical to virtual courtrooms, required during the height of the COVID-19 pandemic. However, submissions from the Law Association of Trinidad and Tobago have	It is unfortunate to presume that the LATT's stated challenges are accurate. The Judiciary considers this to be much speculation and sometimes a failure to understand the virtual process or to make use of the tools provided.

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highlighted several challenges with this arrangement including: • Access centres for virtual hearings are in high demand, resulting in limited space; • Hearings are not public, as current bandwidth does not support several persons on available virtual platforms, resulting in witnesses who are victims or relatives of victims unable to follow a case or its outcomes. • Matters are adjourned without both sides knowing the reason for decision, nor being in a position to consider the reasonableness of it; and • Matters may sometimes be listed and not called, with notifications of matters being given different dates or moved to another court without reason." a. Has the Law Association engaged the Judiciary on this matter? b. What measures have been/will be implemented to address these concerns?	The statistics can speak to the true picture. There is also a lack of understanding re virtual access and use of the VACCS including when and how VACCs are scheduled and utilised. This is not to say that more VACCS are not required. It is exactly the success of the system which has the Judiciary creating more VACCS. It must be understood that this move to virtual and hybrid hearings and the further introduction of Litigation presentation technology is a big change for some attorneys who may not be as comfortable with technology as they should be or may not wish it to be known that they are not as comfortable with technology as they should be. All Court Lists for the country are published on the website. This provides far greater access and information than hitherto provided where lists were posted on the doors of the court. Parties and the public (up to a manageable number in any hearing) have been provided with the option to attend matters virtually and this service has been offered since [2021/2022]. As was the situation pre-covid, access to physical space is dependent on the Judge/judicial officer and available seating in an in person hearing and the number available comfortably to the judge in a virtual hearing. . There have been complaints about not receiving links only to have it found in the attorney's or client's junk folder. The Judiciary's bandwidth has not been an issue. The Judiciary has however been accused of not having bandwidth only for it to be discovered that the attorney was not in possession of an adequate package from his ISP. The Judiciary has also been accused of poor bandwidth only to discover that the attorney did not know how to unmute his microphone. These are teething problems, which will be ironed out as people become more familiar with the system. In the main, the Judiciary has received several words of thanks for the virtual systems and appreciation of the new software as well as requests that there not be a reversion to full in person hearings. The Judge has the option to have Parties and the public attend in-person for some time now as courts have resumed hearing matters in-person when required. As was the situation pre-Covid, access to physical space is dependent on the Judge/judicial officer and available seating. The Judiciary continues to communicate with the LATT and has prepared and carried on training for the Bar. The Judiciary has also prepared training material for the members of the LATT and asked that it be shared. Much to the

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	Judiciary's disappointment, the uptake of the online training has been weak with only two attorneys accessing some online training and later only a few more. It is hoped that through the Bench-Bar meetings which have been reinstated, there will be improvement. It is also hoped that through the Criminal Justice Committee headed by the Hon Chief Justice, there will also be greater improvement.