WRITTEN COMMENTS OF THE
LAW ASSOCIATION OF TRINIDAD AND TOBAGO

TO THE
JOINT SELECT COMMITTEE
ON NATIONAL SECURITY

IN THEIR INQUIRY INTO
THE CRIMINAL JUSTICE SYSTEM
IN TRINIDAD AND TOBAGO

Introduction

1. The **Legal Profession Act** Ch: 90:03 (the LPA), at Section 5, outlines the role of the Law Association of Trinidad and Tobago (LATT) to include:-

    (a) to maintain and improve the standards of conduct and proficiency of the legal profession in Trinidad and Tobago;

    (b) to represent and protect the interests of the legal profession in Trinidad and Tobago;

    (c) to protect and assist the public in Trinidad and Tobago in all matters relating to the law;

    (d) to promote good relations within the profession, between the profession and persons concerned in the administration of justice in Trinidad and Tobago and between the profession and the public generally;

    (e) to promote good relations between the profession and professional bodies of the legal profession in other countries and to participate in the activities of any international association of lawyers and to become a member thereof;

    (f) (f) to promote, maintain and support the administration of justice and the rule of law; (g) to do such other things as are incidental or conducive to the achievement of the purposes set out at (a) to (f).

2. LATT is grateful for the invitation from this Joint Select Committee to express its views on the matters identified in the email dated 3rd April 2023.

3. The Republic of Trinidad and Tobago is a constitutional democracy. Sections 4 and 5 of the Constitution establish certain inalienable and fundamental rights which include :-

    4 (a) the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law;

    4 (b) the right of the individual to equality before the law and the protection of the law.

4. Certain actions are prohibited. As set out below, the State cannot:

5 (a) authorise or effect the arbitrary detention, imprisonment or exile of any person;

5 (b) impose or authorise the imposition of cruel and unusual treatment or punishment;

5 (c) deprive a person who has been arrested or detained—

(i) of the right to be informed promptly and with sufficient particularity of the reason for his arrest or detention;
(ii) of the right to retain and instruct without delay a legal adviser of his own choice and to hold communication with him;
(iii) of the right to be brought promptly before an appropriate judicial authority;
(iv) of the remedy by way of habeas corpus for the determination of the validity of his detention and for his release if the detention is not lawful;

5 (d) authorise a Court, tribunal, commission, board or other authority to compel a person to give evidence unless he is afforded protection against self-incrimination and, where necessary to ensure such protection, the right to legal representation;

5 (e) deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations;

5 (f) deprive a person charged with a criminal offence of the right—

(i) to be presumed innocent until proved guilty according to law, but this shall not invalidate a law by reason only that the law imposes on any such person the burden of proving particular facts;
(ii) to a fair and public hearing by an independent and impartial tribunal; or
(iii) (iii) to reasonable bail without just cause;

5 (g) deprive a person of the right to the assistance of an interpreter in any proceedings in which he is involved or in which he is a party or a witness, before a Court, commission, board or other tribunal, if he does not understand or speak English; or

5(h) deprive a person of the right to such procedural provisions as are necessary for the purpose of giving effect and protection to the aforesaid rights and freedoms.

5. LATT sets out these principles as a reminder that one of our Association's mandate is to promote, maintain and support the administration of justice and the rule of law.

6. The Remand Court Committee Report of 2003, which was compiled by all the major stakeholders in the criminal justice system, pointed out that an important barometer of a country's commitment to democratic ideals is the degree of attention it pays to its criminal justice system.

7. It is in this system that the tension between the broad need to protect the public interest and the equally important need to protect the individual rights and liberties of the citizen is most acutely felt.

8. In one publication, former appellate Judge of the Court of Appeal and of the Caribbean Court of Justice, Peter Jamadar, pointed out that the bedrock of an effective, impartial and sustainable justice system is the public's trust and confidence in the administration of justice.

9. LATT notes that there is already a substantial amount of material already in existence identifying and recommending solutions for the problems which face the criminal justice system today. Significantly, there is the Mackay Report of 2001 which was a Report of the Commission appointed to Enquire Into and Report and Make Recommendations on the Machinery for the Administration of Justice in the Republic of Trinidad and Tobago, is perhaps the one most often referred to by commentators.

10. It must be recognised that there have been changes to address several of the problems which plagued the criminal justice system at the time of the MacKay Commission Report and the Remand Committee Report. It is disappointing to note that some of the major problems, not all of which are complex, persist.

11. According to VISION 2030 NATIONAL DEVELOPMENT STRATEGY 2016 – 2030, a publication of the Ministry of Planning and Development, National Security goes way beyond the simple control and containment of crime and is an institutional responsibility whereby a government is entrusted with the task of creating an environment which ensures public safety and national peace through the maintenance of law and order.

12. The criminal justice system has been in crisis in recent years and remains so.

THE COMPONENTS OF AN EFFECTIVE CRIMINAL JUSTICE SYSTEM AND HOW THEY ARE INTERRELATED

13. The criminal justice system is the set of agencies and processes that are responsible for responding to crime and imposing penalties on those who violate laws. Each component of a criminal justice system plays a key role in the criminal justice process. Attempting to define the components of a criminal justice system may, at first blush, seem a simple and straightforward task. However, when one considers the vastness of the criminal justice system and its numerous operating and intersecting arms, the true complexity of the task is revealed.

14. Notwithstanding, there are some components which assume primacy. These components, which will be explored below, are law enforcement, prosecution, courts and prisons. Although these agencies may be considered the protagonists of the criminal justice system, many other organisations assume supporting roles. To name a few, the Forensics Sciences Centre, mental health facilities such as St Ann's Hospital, the legislative arm of Government, social institutions such as the Probation Officers' Departments, and the Children's Authority all interact at different stages of the criminal justice system to ensure its operation.

15. It is submitted that the role and functions of these supporting actors must not be neglected in any worthwhile review of the criminal justice system in Trinidad and Tobago.

16. For the purposes of this submission, the following agencies are identified as the key components of our criminal justice system.

Law Enforcement – Trinidad and Tobago Police Service

(Supporting agencies include Immigration/Customs and Excise Division/ Board of Inland Revenue/Defence Force /Coastguard/the Forensics Sciences Centre)

17. The major tasks of law enforcement include protecting the public, preventing and investigating crime, enforcing the law, gathering and protecting evidence and arresting suspected law violators. Law enforcement is usually the public's first interaction with the criminal justice system and is thus integral to the process.

Prosecution – Office of the Director of Public Prosecutions
(Supporting agencies include Police Prosecutors/Legal Officers of the TTPS re financial crimes/ Customs and Excise, Members of the public as victims, witnesses etc)

18. The Director of Public Prosecutions (DPP) is constitutionally empowered to initiate, take over, continue and/or discontinue criminal proceedings against any person alleged to have committed an offence. Prosecutors represent the State throughout the court process, from the first appearance of the accused in court until the accused is acquitted or sentenced. Prior to charges being laid, prosecutors may also review the evidence brought to them by law enforcement to decide whether to file the charge. Prosecutors present evidence in court, question witnesses and decide whether to negotiate plea bargains with defendants.

Defence attorneys – Private Attorneys, Public Defenders' Department, Legal Aid and Advisory Authority
(Supporting agencies include Bar Associations)

19. Defence attorneys may be privately retained, or in the case of defendants who cannot afford an attorney, a defence attorney may be appointed from the Public Defenders' Department or from the list of external attorneys attached to the Legal Aid and Advisory Authority. Defence attorneys defend the rights of the accused in all stages of the criminal justice process, including but not limited to ensuring that the defendant gets a fair hearing, negotiating plea agreements on behalf of their clients, making applications before the Courts for bail, habeas corpus etc.

Judiciary – Magistrate's Courts, Specialised Courts such as the Children's Court, the Drug Treatment Court, High Court, Court of Appeal, Privy Council
(Supporting agencies include administrative staff of the Judiciary/the JLSC/the Probation Officers' Department/St. Ann's Medical Hospital/Juries selected from the Public)

20. Courts are run by Judicial Officers made up of Magistrates, Masters and Judges. Judicial officers engage in case management, conducting trials as the arbiter of the law and in judge only trials as both arbiter of law and fact, ensuring that the laws of the jurisdiction are followed and applied in relation to all court procedures. Judicial Officers decide on applications, set dates for court hearings, oversee all court proceedings, and impose sentences at the end of criminal trials or in accordance with plea agreements.

Prisons – Trinidad and Tobago Prison Service
(Supporting Agencies include NGOs such as Vision on a Mission, St. Ann's Hospital)

21. The Prison Service supervises all inmates: convicted offenders and persons on remand. The Prison Service also prepares pre-sentencing reports with background information about the offender to help judges decide sentences. The role of the Prison Service is to ensure that the facilities that hold offenders are secure and safe. They oversee the custody of inmates, including the release processes for inmates.

THE PRIMARY CHALLENGES FACED AT EACH STAGE IN THE CRIMINAL JUSTICE PROCESS

ACCESS TO JUSTICE

22. The continued closure of court facilities by the judiciary is unacceptable and is contributing to delay. According to the Practice Direction (Please click here to view the Practice Direction) if a court decides to hold an in-person hearing or if a party asks for one, then the judicial officer considering the application may consider and accede to it.

23. This Practice Direction subsists, and apart from the constitutional right which an accused person has to a fair and public hearing, there are a number of difficulties which practitioners have found with virtual hearings.

24. LATT is of the view that virtual hearings during the extended State of Emergency were acceptable because of the existential crisis faced at the time. The extended period of closure of our courts has created problems which we did not face before and/or has aggravated some of the problems which we already had to address. Some of these matters have severely impacted the lower courts, which deal with the bulk of criminal cases.

25. A judicial system must be transparent and accountable to the people whom it serves. An entirely virtual system does not easily lend itself to that.

26. Hearings are not public. Indeed, some hearings may be described as ***in camera*** since the bandwidth does not support many people on available virtual platforms. This has resulted in witnesses who are victims or relatives of victims being unable to follow a case to its outcome or to understand why it may have been put off.

27. Some courts require attorneys or police officers to turn off their cameras so that the audio/visual quality of the hearing may be improved. Some courts turn off the video of themselves for the same reason. This is not a transparent process and is likely to undermine the respect that members of the public have for the judicial process and cause them to question its legitimacy. This is already evident in the manner in which parties, police officers and indeed attorneys on both sides, address a court and present themselves to a court.

28. It appears that High Court matters take priority over District Court matters. A District Court Judge (DCJ) is now constrained by the fact that his ability to hear a case is determined by whether he may be accommodated on the virtual platform. There have been examples of DCJs only being accommodated after 2:00 pm. or having to put off

hearings because of the High Court demand. This has aggravated the problem of delay in the lower courts.

29. The virtual access centres are in high demand, and at least in one area of the country, the booths are quite small, and not built for a witness to be reasonably comfortable while testifying. There is competition for space. It must be noted that some of these problems will be resolved if each court is required to occupy its own physical space. DCJs will have greater control over judicial time and will not be required to compete with superior courts and colleagues for bandwidth and witness room availability.

30. Virtual courts do not allow DCJs to have the supervision they would normally have over persons out on bail. The reporting system is very difficult to regulate virtually.

31. Virtual courts do not easily allow courts to remind witnesses that their cases are being dealt with. Indeed, the first time a virtual complainant may be seeing a judicial officer will be on a screen. It is not a situation which encourages confidence or transparency.

32. A system has developed whereby matters are not adjourned with both sides knowing the reason for the decision and being in a position to consider the reasonableness of it. On occasion, matters are listed and simply not called, notifications are sent of matters being given different dates or moved to another court with no reason given. This is arbitrary, not known to law, and undermines the transparency of the process and the accountability of the judicial officer. It also means that if there is no input from the citizen impacted by the decision or of the prosecutor, or defence Counsel, it means that the selected date may be inconvenient to one or all. What follows is additional delay.

33. Administrative staff are inaccessible. It is not unknown, for example, that a request for a document such as a court extract will be acknowledged with a notification that the request is being sent to the appropriate department. A reminder will receive the same response, and so on. Accessibility to the courts will enhance the accountability of administrative personnel.

34. The scanning of court documents has been a useful process. It appears that it is incomplete. However, there appears to be a lack of recognition that many of the cases before DCJs are quite old. A DCJ who is not operating out of a courtroom must have some difficulty in accessing relevant material which may not have been scanned and needs to await the ability of support staff to locate the file. This process sometimes is protracted and causes delay.

35. Virtual hearings may have had an impact on the decision of accused persons to choose Judge alone trials. An accused is less likely to be trusting of a trial where all the major players are on a screen. An accused person who has been on remand for a long time, as unfortunately is sometimes the case, will be even less trusting.

36. Collegial learning is important for all professionals. Judicial officers learn from seeing each other at work and sharing experiences, as do lawyers and police officers. The professions learn from each other, thereby improving the quality of service to the public. This does not happen with virtual courts, where people operate in silos.

37. LATT can say that new attorneys do not have the opportunity to learn from the judiciary and their colleagues, by sitting in on cases and listening or by volunteering to assist more senior attorneys in the courtroom. There is a reason why court attendance is part of the legal education programme, which operates in all Council of Legal Education law schools. There is academic and professional recognition of the importance of courtroom learning. Virtual hearings do not permit this.

38. Virtual hearings also do not lend themselves to allowing more senior judicial officers to provide mentorship, within the scope of judicial independence, to new judicial officers who may have not previously had a court practice.

39. Virtual hearings will continue to play a role in the criminal justice system, but its use, which has resulted in *in camera* justice, is no longer tenable and is having a general negative impact.

40. Much more can be said about this and, indeed, the impact it may have on judicial accountability to the public and the reduction in respect for the judiciary by the public, which expects, among other things, a system which is transparent and fair. But, not every matter is capable of being addressed in these contributions.

JUDICIARY

41. Inadequate numbers of DCJs. Currently, the position seems to be that many DCJs are required to cover two courts. This means that fewer cases are being heard, and adjournments are becoming longer and longer. Indeed, it is not uncommon for a case in the lower courts to be adjourned for a period ranging from six months to one year.

42. The legislative change which permitted prisoners to be remanded for longer periods does not appear to have had the intended outcome, which was to ensure that once a matter began, it would move expeditiously and efficiently to an end.

43. DCJs are still dealing with preliminary enquiries.

44. Matters are still taking a considerable period of time to be determined. In fact, in some cases, case management may go on for years which pushes back the possibility of an earlier trial date.

45. The front-loading of the system, which was the intention of the Criminal Procedure Rules seems to be defeated by lengthy case management sessions and adjournments.

46. Inordinate delay in the transmission of documents post-committal to the Office of the DPP.

47. Inordinate delay in the transmission of documents in Magisterial Appeals to the Appeals Section.

48. There is the bigger question of judicial accountability in terms of the appointment of suitable persons. This was the subject of a detailed report by LATT in 2017 prepared by a committee chaired by former Justice Desiree Bernard, a former Chancellor of the Judiciary of Guyana and a former Judge of the Caribbean Court of Justice. Please click here to view the Report.

49. LATT is unaware as to who, if anyone, is consulted by the Judicial and Legal Service Commission in its selection process. LATT certainly has not been consulted for several years. The lack of consultation has led to opacity in the process.

50. LATT recognises that judicial error will result in retrials being ordered and contribute to backlog and delay.

51. Failure of the judiciary to maintain its plant and equipment is fundamental. The San Fernando High Court appears to have been allowed to become dilapidated so that it has become unusable. (Note that we entered the pandemic lockdown with the High Court having to share space with the District Court). At the moment, San Fernando High Court jury trials are being heard at the Judicial Centre in Arima despite the fact that we have been out of a State of Emergency for quite some time.

52. This will cause inevitable delay and impact on the quality of justice offered to people so impacted, whether witnesses, jurors or attorneys-at-law.

PRISONS

53. Updated Prison Rules have been drafted. Nonetheless, they have not been implemented.

54. There is a need to ensure that long-serving prisoners are provided with four-year reviews in accordance with the existing Prison Rules.

55. Greater emphasis needs to be placed on ensuring that prisoners are afforded an equitable robust, and comprehensive opportunity to reform and learn skills to aid in rehabilitation.

56. Prison officers are often those who were not accepted by the TTPS. This thwarts any attempt to create a professional officer class within the Prison Service to create a cadre of people with integrity who are prepared to reform the system and recognise the benefits of reform.

57. Remuneration and working conditions for prison officers are below par, to say the least. This has the unfortunate impact of some officers creating "*a hustle*" within the prisons and acting unlawfully.

POLICE

58. There is an urgent need for the Police Service to deal with detection, gathering of evidence, arrest of persons breaching the law and prosecution.

59. It must be recognised that primary detection will continue to depend on citizen input. For example, technological advances seem to have diminished the value of informants in the detection process. Cameras may pick up a vehicle carrying a kidnapped person but may not assist as to where that person was taken or was being kept. This information must come from citizens. The informant system must be rehabilitated. The use of fingerprints is still very important and, with new technology for matching, can be very powerful evidence. But it is overlooked while officers focus on acquiring DNA samples.

60. There is a critical need for training that ensures that all officers who have investigative duties in the detection of crime are not only equipped with the ability to use investigative tools such as CCTV access, communications and phone tracking, and other forms of intelligence gathering but also have real-time access to these tools in ensure that investigations can be done in a meaningful way and bear fruit by holding perpetrators of crime accountable.

61. It appears that new equipment may not necessarily be distributed in an equitable manner, that is to say, in different geographical areas. It also appears that equipment may be handed out and not used, with no accountability and no apparent repercussions for failure to do so.

62. Fair compensation packages are a must for the TTPS. This will deter officers from falling into criminal activity, as too many have done.

63. There should be a psychiatric evaluation for applicants to the TTPS.

64. Applicants should also be literate as a condition of being permitted to enter at the lowest rank. This means that you do not simply pass out into the service after training but are able to competently take reports, statements, make entries, keep proper records and so on.

DIRECTOR OF PUBLIC PROSECUTIONS

65. To be clear, the criminal justice system will not significantly improve unless we understand that the Office of the DPP is one of the most fundamental stakeholders in the criminal justice system.

66. The office needs to be adequately staffed with professional and administrative staff if they are to be able to perform their duties. This is not the case and has not been the case since the MacKay Commission heard from a former DPP and continued to be the situation when the Remand Committee, chaired by that former DPP, prepared its report. The Remand Committee recommended a substantial increase in the numbers of professional staff. Haemorrhaging of staff has been taking place since the 1990s.

67. It must be noted that this staffing problem cannot be resolved by a simplistic approach of filling available positions. They must be filled with those who have experience in the field or who appear to show the aptitude for training in the field.

68. The problems facing the DPP may also be found in the Report of the Joint Select Committee on Case Management. **Please click here to view the Report.** The DPP testified before this JSC in 2016, and the problems which he identified with considerable specificity then, appear to still persist.

69. If the position remains in terms of staffing, the following is going to continue:

    a. Prisoners in the system who want to plead guilty will have to continue to wait over twelve to fifteen months to get an application acknowledged and a prolonged period before he is actually sentenced.

    b. Masters in the High Court are unable to effectively case manage and get matters ready for trial because there are too few prosecutors to keep up with the demands of case management. Accordingly, matters are bottlenecking at the case management stage.

    c. The road to the indictment, even after committal bundles are received at the DPP's office, is very slow, and it takes years for persons to be indicted; regrettably, in some instances, only after civil action is threatened.

    d. The process between the arrival of the committal bundles at the DPP's office and the signing of the indictment is often delayed because of the severe staff shortage, but the three-step process seems to increase the likelihood of delay.

    e. Instead of being efficiently case managed and determined, matters in the Appeal Court are delayed because prosecutors are simply unable to comply with directions to file submissions because there are not enough of them.

    f. Prosecution teams in trials are at a decided disadvantage simply because there are not enough people to populate these teams and also appear at case management

and other hearings. Failure to adequately staff the DPP's office contributes to delay, and we say, it significantly does so.

g. AJIPA will not succeed without there being a properly resourced DPP's office.

70. It is no secret that the Office of the DPP requires urgent assistance in locating or converting suitable and secure plant and equipment to house its professional and administrative staff.

71. There is no provision for an IT Manager for the DPP's office.

72. There is no administrative grouping within the Office to assist with its management. When prosecutors are taken out of court to do office administration or to work on matters related thereto, this negatively impacts the criminal justice system.

73. LATT is aware that the DPP has made his own presentation to the JSC, and we are aware of, and indeed familiar with, many of the problems he has identified since our members who practice criminal law are witnesses to the impact of these problems on the criminal justice system.

Law Association of Trinidad and Tobago

74. The private Criminal Bar is very small, and while it has been enhanced by the creation of a Public Defenders' Department, these professionals may have moved from the DPP's Office or the private Bar, depleting resources in both those areas. There is an urgent need for steps to be taken to increase the numbers at the Criminal Bar.

75. The private Bar does not have compulsory continuous legal training. This means that a private practitioner may take it upon himself to do a complex criminal trial with no experience whatsoever. This is not only to the detriment of an accused person who may

suffer injustice but adds to the backlog if a person so convicted appeals and a re-trial is ordered.

76. Because continuous legal education is not compulsory and also because new practitioners have not had the experience of witnessing actual trials, there is a lack of knowledge and experience in how to address certain areas of the law, for example, how to treat with expert witnesses or how do prepare for a case which relies on scientific evidence such as DNA evidence.

77. The Bar, like other institutions, must address the impact of the pandemic on the profession.

78. The Bar must continue its programme to build on assisting attorneys to have access to case law, texts, articles and academic material which may assist them in preparing a case since access to the High Court library was removed for a period of time.

79. The Bar has always done *pro bono* work and must remind attorneys of the need to take such cases.

80. The LPA, which governs the way lawyers are admitted to practice and how they are governed while in practice, is grossly outdated and is long overdue for amendment.

81. Regrettably, attorneys need to be repeatedly reminded of the protocols of a legal practice and, often, of ethical guidelines.

STRATEGIES TO IMPROVE THE EFFICIENCY AND EFFECTIVENESS OF THE CRIMINAL JUSTICE SYSTEM

82. The short-term impacts of the pandemic must be addressed. Team building exercises are necessary, as well as refresher courses for existing staff and courses to ensure that new staff are aware of how a fully open and accountable justice system operates and why. Such an assessment must take into account the mental health component as well as work-force wellbeing.

83. In-person hearings must resume. The justice system exists to serve the public. Open justice is not facilitated on virtual platforms for reasons which have been identified above. This will be a booster shot in the arm for transparency and accountability, two factors which are of primary importance according to the Bangalore Principles, which should guide the judiciary. Please click here to view the Bangalore Principles.

84. Open courthouses will positively impact upon the accountability of the Bar, whether public or private and that of the court administrative staff.

85. Persons who are victims of crime or related to crime victims will be able to attend court and be reassured that the cases against the accused are being prosecuted. If a case is put off, they will be in a position to appreciate what has occurred and why.

86. The resumption of in-person hearings will ensure that lower courts are not at the vagaries of the High Court's schedule or the availability of the Remand link but can do a full productive day's work. It will make it easier for lower courts to hold persons accountable, for example, accused persons who are required to attend court, as well as complainants and witnesses.

87. Anyone who has had to use an interpreter on a virtual platform will recognize the benefits of an in-person hearing.

88. Continuous review by stakeholders of their role and performance within the criminal justice system is needed. The Remand Court Committee had recommended the formation of a Criminal Justice Oversight Committee and had recommended that one should be created by legislation. The fact that the Committee was formed, lapsed, reformed, sat for

about a year and has not sat for a considerable period of time, suggests that there should be a legislative mandate for this. After all, the criminal justice system is much more than the implementation of AJIPA.

89. All these institutions should have access to facilities for data collection and analysis.

90. DCJs in the Port of Spain District and Traffic Court have spoken about having to deal with two courts. It follows that there are insufficient numbers of judicial officers to handle the workload assigned to them.

91. Return to legal principles and protocols. For example, adjournments seem to take place without regard for established principles of criminal practice and procedure. There is the delisting of matters and the setting of adjourned dates without consultation with the parties and so on. This has made the scheduling of cases for every stakeholder, except judicial officers, quite arbitrary.

92. Accused persons may be less likely to elect Judge alone trials if the Judge is a person whom they cannot see clearly, or get a sense of, as a human being. They may be less inclined to place their liberty in the hands of a judicial officer whom they can only see as one of the boxes on a screen. It is quite likely that there will be considerable distrust in the process. This is more likely to be the case if someone has been in prison for some time and is unfamiliar with technological advances.

93. The Judge is also unable to get a clear view of the accused person and make his or her assessments. Reliability and credibility assessments are likely to be compromised.

94. There must be a collaborative approach to ensuring criminal courts are adequately serviced and efficiently run.

95. There must be a clear approach to plea bargaining. It must be noted that the Plea Bargaining legislation permits pleas to be taken via the Maximum Sentence Indication Process.

96. There has, on occasion been prosecutorial dissembling about the following which may affect the speedy of disposition of a case:

    a. clear and early indication, where possible, of a decision to proceed via the murder felony rule in capital cases, where it is warranted;

    b. insisting on use of the plea-bargaining legislation even though it is clear that the legislation does not impact the Maximum Sentencing Procedure and may actually lead to the earlier disposition of the case.

97. Putting things in place for the implementation and success of AJIPA.

98. Recognizing that the introduction of legislation is useless if the choke in the justice system is simply moved from one point to the other. As such, there is a need to provide the DPP's office with the necessary human resources approved by the Cabinet Minute of 2014. This must be done by the JLSC and the AGLA.

99. A professional administrative arm which includes an ICT component should be set up within the DPP's office to ensure that the office's resource needs are recognized and that steps are taken for their fulfilment.

100. Proper, secure work accommodations for the existing office and provision for its expected need for increased capacity.

101. Off-site security for prosecutors or a security allowance.

102. Adequate compensation must be provided, otherwise, there will be no incentive for an experienced professional to remain in a low-paying, high-risk job.

103. With an enhanced complement, ideally, there should be three prosecutors to each criminal court.

104. Litigators should have at least one day out of court to do their other work, which includes much more than preparation for trial.

105. Consideration should be given as to whether the existing three-step internal process for a file on its way to indictment or being considered for plea bargaining, can be streamlined.

106. The private Bar must find methods to build capacity. LATT must encourage students beginning a career in law to see the practice of criminal law as rewarding. It must be de-mystified, particularly since women may be less inclined to consider doing such cases because they may have to "*deal with criminals*" or the misconception that a practitioner at the criminal Bar "*deals with facts and not law*". An understanding of the tie-in between criminal and constitutional law is crucial. There is a gross shortage of private practitioners at the Criminal Bar, especially after the pandemic, and even fewer who are capable of appearing in the higher courts.

107. Focused, mandatory and continuous legal training both for the private and public Bar in general and in specialist areas such as the use of expert evidence. For example, crime detection often relies on DNA evidence (the analysis of which has changed over the last 20 years and which continues to change).

108. Witness protection exists, but there appears to be no mechanism for auditing its effectiveness.

109. It is unclear as to whether the Sentencing Commission has been operationalised as opposed to appointed and housed. Its role and function is important to promote a consistent approach to the sentencing of offenders.

110. Appointment of Justices of the Peace who are persons of integrity and ensuring proper training for them, and putting mechanisms in place to ensure their accountability is critical since they act as judicial officers in certain circumstances. For example, they should keep

an official record when issuing a warrant, whether it is a search warrant or warrant of arrest.

111. Removal of Justices of the Peace of questionable character.

112. Video-record all confession statements. While the TTPS has the equipment for this, it appears that this is not necessarily used in all districts and units. A recorded confession, taken in accordance with legal principles, will lead to shorter trials since there will be fewer ***voire dires*** and will also lead to more guilty pleas.

113. **Promote integrity in law enforcement.** One element of instilling public confidence in the law enforcement agencies is ensuring that these entities are held accountable for their actions. To this end, the powers of the investigators of the Police Complaints Authority will be expanded, and the Professional Standards Bureau of the Trinidad and Tobago Police Service (TTPS) will transition to a semi-autonomous agency. At the moment, its portfolio seems to involve the investigation of other crimes as well as internal investigations, which hampers the TTPS' ability to deal with disciplinary infractions by police officers.

114. Taking steps to monitor and address hate crimes is important.

115. Treating victims equally is important.

116. In 1997, the late Dana Seetahal SC, former President of LATT, a former prosecutor, victim of crime, wrote an article in the newspapers called "*Effective prosecution and public confidence*". Please click here to view the Article. Among other things, she pointed out that as long as witnesses feel that it is a waste of time coming forward, then the criminal justice system is under attack and national security is threatened. Once a person becomes a witness, there must be a system which shores him up until the time for him to testify. This cannot be done by the police.

117. Create a body independent of the JLSC as LATT recommended in its 2017 Bernard Report for the appointment of judges.

118. There must be a Code of Conduct for judges within the parameters of the Bangalore principles. The creation of a national Code accessible to the public will be a lodestone for judges, and it will be a reminder to the public that adjudicators in their matters are required to follow legal principles and must do so within an ethical framework of transparency, integrity and accountability.

119. Judges should fall under the Integrity in Public Life Act. There has been a tendency by the judiciary to be anxious to say what does not apply to it as an institution. Instead, it must understand that isolating itself and seeking to place itself above scrutiny undermines public trust and confidence. A famous jurist said that the judiciary must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men.

THE FUNCTION LEGISLATION MAY FULFIL TO IMPROVE THE CRIMINAL JUSTICE SYSTEM

120. The important function that legislation will perform to improve the criminal justice system cannot be gainsaid. Legislation is one of the primary sources of process correction and institutional reform. The LATT, therefore, advocates for a strategic, coordinated legislative agenda to continue to address and improve the key components of the system. It is important to note, however, that overzealousness by the Legislature may lead to further inefficiencies and hamstring the continuing efforts at improvement.

121. Our democracy begins with respect for the rights and freedoms articulated and protected by our written Constitution. It is the supreme law of the land and the bedrock of our justice system. The Constitution specifically protects several important rights which must be guaranteed by any system of criminal justice. The right to a fair hearing and public hearing by an independent and impartial tribunal is one right.

122. There is one common fundamental human right which, by its omission from our Constitution, has encouraged an inefficient and delayed justice system. The LATT cannot stress enough that constitutional reform to include the right to a speedy trial or the right to a fair hearing within a reasonable time must feature as a top priority in any proposed legislative schedule to improve the criminal justice system. Such constitutional reform would not only galvanize institutional efficiency, but it would also protect citizens from the unnecessary punishment of delayed justice.

123. The LATT also wishes to identify other areas where the promulgation of new legislation can improve the criminal justice system. It is not meant to be an exhaustive list but is meant to identify some critical areas which need addressing as well as to underscore the value that new legislation has in improving the system.

124. The LATT has previously expressed and endorsed the passing of the Administration of Justice (Indictable Proceedings) (Amendment) Act 2020, which seeks to replace preliminary enquiries with the conduct of sufficiency hearings before Criminal Court Masters in the High Court. The LATT echoes the well-publicised view of many stakeholders that the Act should only be proclaimed when the Office of the DPP is sufficiently able to cope with the new burden that the Act will place on this vital cog in the system. The DPP's office must receive an increase in human resources in the form of both trained State attorneys and administrative assistants to make this must needed shift in dealing with indictable (serious) matters.

125. There is also room for improvement of administrative processes by introducing definitive timelines for the completion of various processes. For example, section 26(1) of the Administration of Justice (Indictable Proceedings) (Amendment) Act provides for the transmission of the hearing documents by a Master to the DPP. The sub-section states:

> "(1) Where an order to put an accused on trial has been issued, the Master shall, without delay, transmit to the Director of Public Prosecutions the complaint or indictment as the case may be, the witness statements and other documentary evidence, any evidence submitted by the accused, the

order to put the accused on trial, any recognisances entered into by the accused and any other relevant documents."

126. Provisions such as these should have definitive timeframes which would bring certainty to the various processes and would make it easier for stakeholders such as the ODPP, an accused person, victims and witnesses, to hold the judiciary to account for delays to the administration of justice brought about by administrative inefficiency.

127. The LATT would also advocate for specific timeframes for the ODPP to file indictments following receipt of all the necessary documents required to review the matter and for the DPP to determine whether to file an indictment, what charges should be contained in the indictment or to discontinue the matter(s).

128. Another area that is in desperate need of procedure and process guidance by way of legislation is reform to the Advisory Committee on the Power of Pardon (commonly called the Mercy Committee). The Mercy Committee performs a vital function in relation to the prerogative of mercy (pardon and commutation/reduction of sentence) to offenders. At present, the Mercy Committee is our closest equivalent to a parole procedure. For the last several years, the Mercy Committee has been inconsistent at best and, more recently, non-functioning of its constitutional mandate. The Mercy Committee has constitutional obligations to consider applications for pardon, commutations of the death sentence for condemned prisoners on whom the State can no longer carry out the death penalty and commutation of other sentences. The Mercy Committee has also been incorporated into the system of periodic reviews of sentences by the Executive. The absence of clear rules regarding procedure and timelines for the determination of applications has allowed this important component in the justice system to become stagnant.

129. Legislation can also assist in the case management of criminal proceedings. The advent of the Criminal Procedure Rules, which came into force in January 2017, brought with it much promise regarding timely case preparation before trial and, thereafter, trial disposal. This, sadly, has not been the experience of LATT's members. Case management has, if anything, been protracted by a culture of extensions to direction compliance and

adjournments. One primary issue which frequently stymies case management is protracted and untimely disclosure. It is an area which may benefit from a legislative underpinning certainly in regard to timeframes for prosecutors (police prosecutions and matters prosecuted by the ODPP) to comply with disclosure obligations. The experience of LATT's members is that cases can be held up for years in both the District Courts and the High Court over this initial part of criminal case management.

130. There is a complete absence of supporting legislation to underpin the Proceeds of Crime Act. As such, different District Court judges are using unique and individual approaches to these hearings. The justice served is unequal. It is disappointing that this has not been remedied, and it appears as though only when an aggrieved party appeals is there some guidance available to District Court Judges.

131. A final area in which legislation may assist in the improvement of the Criminal Justice System is the area of assessing defendants and accused persons for mental health issues, and the powers of Criminal Court Judges and District Criminal and Traffic Court judges to impose mental health orders as part of sentencing procedures. Prisoners with mental health conditions as well as prisoners with learning disabilities and/or behavioural disorders, are a severely neglected sub-group of offenders. Mental health assessments can ordinarily only be performed in the one Psychiatric Hospital for accused persons and prisoners who are incarcerated. The St. Anns' Hospital is overburdened and has its own challenges with dealing with prisoners who turn up for these evaluations. By way of example, the current waiting time for a mental health assessment that is required, for instance, to sentence a sexual-offence-offender, is over eight months. An accused person who has pleaded guilty to a rape, for example, may therefore have to wait close to a year after their plea before they are sentenced for the rape.

132. There is also an absence of sentencing powers for a Court to impose mandatory psychiatric care, counselling or therapy to an offender while they undergo their rehabilitation in prison. The prison authorities also lack adequate programmes specifically targeted at sexual offending and paedophilic disorders. While society may benefit from locking away these offenders for several years, without the necessary mandatory

psychological and psychiatric treatment for their offending behaviour, offenders may be released after a sentence of a term of years, as dangerous and as likely to re-offend as they were when they were first arrested.

Other agencies

133. There are departments and agencies which play integral roles in the criminal justice system, and which affect the speed and efficiency at which it operates. The Forensic Science Centre is one of the most important. The problems which plague this institution and the services it is intended to provide have been recounted so often and are so well known that LATT will not repeat them but simply ask that the JSC considers them.

Conclusion

134. The view held by many attorneys and their clients may suggest that there is a crisis, and loss, of public trust in the criminal justice system. We must remind ourselves that this system is people-based. A democratic society which has pledged itself to adherence to the rule of law cannot afford such a loss. We must commit ourselves to hard work with the clear purpose of improving the existing system.

Dated this 27th April 2023

Sophia Chote SC
Rajiv Persad
Candace Nanton
Peter Carter
Vishala Khadoo