An inquiry by the Joint Select Committee on National Security into the Criminal Justice System in Trinidad and Tobago to determine strategies to achieve greater efficiency and effectiveness.

COMMENTS ON THE CRIMINAL JUSTICE SYSTEM

SUBMITTED BY THE PUBLIC DEFENDERS' DEPARTMENT, LEGAL AID AND ADVISORY AUTHORITY

5th May 2023

TABLE OF CONTENTS

EXECUTIVE SUMMARY

1.1 By way of letter dated 3rd April, 2023, the Legal Aid and Advisory Authority was invited by the Joint Select Committee on National Security to comment on the Criminal Justice System as it stands in the Republic of Trinidad and Tobago.

1.2 The Public Defenders' Department, a department within the Legal Aid and Advisory Authority, and a key stakeholder within the Criminal Justice System has experienced and continues to experience first-hand the throes of the current State of affairs within our Jurisdiction.

1.3 The request of the Committee was therefore welcomed with open arms as it provides an avenue for our department to contribute our collective ideas and suggestions which can make for meaningful and sustainable change within our society.

1.4 Our submission addresses the key components of the Criminal Justice System and how they are interrelated, the primary challenges faced at each stage of the Criminal Justice Process, strategies to improve the efficiency and effectiveness of the its operations and the function the Legislative Arm may fulfil to improve the System.

1.5 An effective Criminal Justice System comprises many moving parts interwoven to keep the wheels of justice moving. These key stakeholders include, but are my no means limited to, The Judiciary of Trinidad and Tobago, the Trinidad and Tobago Police Service, The Trinidad and Tobago Prison Service, The Office of the Director Public Prosecutions, Defence Counsel at both the Public Defender's Department and the Private Bar, The Law Association and The Criminal Bar Association.

1.6 Overtime, there have been emerging challenges faced at each stage of the Criminal Justice Process such as infrequent reporting of crimes and citizens' distrust of police officers, low detection and conviction rates owing to improper and tardy investigation by law enforcement officials, lack of resources in the offices of key Criminal Justice participants, inordinate delays

in the trial process including delays in effecting disclosure, filing of indictments and response to plea requests and also conduct on the part of limited Counsel practising at the Defence Bar.

1.7 There has also been a lack of utilization of the plea-bargaining process at both the Summary and Supreme Court levels, and a lack of rehabilitative programmes accessible to persons on remand who are incarcerated for much longer than desired awaiting the outcome of their matters.

1.8 In light of these challenges, a collaborative and purpose-driven approach is critical in tackling the reform of our Criminal Justice System. The Criminal Justice System represents society's response to crime, and CRIME affects us all. Accountability must therefore be taken by every Stakeholder but REFORM cannot be addressed by any one participant in isolation. In this vein, our considered recommended solutions include the following:

i. Provision of more staff, equipment, training and other necessary resources to Offices such as the Director of Public Prosecutions and the Forensics Science Centre;

ii. Legitimization and expansion of the Public Defenders' Department to significantly assist with the delay and backlog;

iii. Greater use of Plea Bargaining by implementation of further guidelines, and the encouragement of a more "interests of justice approach" by Stakeholders. Moreover, an increase of public awareness campaigns advising interested parties of the benefits to this process would also be valuable;

iv. Codification of an accused's right to a speedy trial to contain an express provision for trial within a reasonable time;

v. Imposition of statutory timelines for tasks to be completed within the Criminal Trial Process inclusive of sanctions to ensure timely compliance of Court Orders;

vi. Improve Policing Practices and employ sanctions to weed out rogue police officers;

vii. More considered and effective use of Bail Conditions to avoid bail restrictions acting as punishment to accused persons who are unable to access their bail;

viii. Adaption of a more consistent therapeutic and restorative justice approach by Judicial Officers conducting sentencing exercises;

ix. Improved prison conditions to aid in the successful rehabilitation of offenders; and

x. Consideration of legislation proposals for improvement of the Criminal Justice System.

1.9 It is our hope that our submission will not only continue discussions on how we can effect positive change but would also engender individual and joint efforts in the implementation of strategies for a more effective and efficient system. The Public Defenders' Department and the Legal Aid and Advisory Authority remain fully committed to "*playing its part"* and working with other movers and shakers to achieve our mutual goal of a reformed Criminal Justice System of Trinidad and Tobago.

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

Introduction

2.1 The criminal justice system is the collection of agencies, government departments, courts and processes that are responsible for responding to crime. Specifically, it aims to apprehend, prosecute, and sentence those who are alleged to have committed criminal offences and rehabilitate those who have been convicted. Additionally, it seeks to control and minimize crime. All in all, it represents society's response to crime.

2.2 An effective criminal justice system depends on the interaction of several critical components including the following:

i. Trinidad and Tobago Police Service

ii. Judiciary
    a. Judicial Officers and Staff at the varied levels of Magistrate's Court, Specialized Courts, Supreme Courts, and Court of Appeal

iii. Trial Participants
    a. Attorneys:
        (I) Prosecutors
        (II) Defence Attorneys
    b. Other trial participants – e.g., Expert Witnesses
    c. Jurors

iv. Trinidad and Tobago Prison Service

v. Trinidad and Tobago Forensic Science Centre (TTFSC)

vi. The Law Association of Trinidad and Tobago

vii. Immigration Division

viii. Customs and Excise Division

ix. Probation Services Division

x. Mental Health Institutions

a. St. Ann's Psychiatric Hospital
b. Private Psychiatric Institutions

2.3 The above list is not by any means exhaustive and all the aforementioned institutions play a pivotal role in ensuring the wheels of the Criminal Justice System (CJS) keeps turning. For the purposes of this missive, however, the roles and responsibilities of some of the major components will be briefly explored below:

Trinidad and Tobago Police Service

2.4 The police service is usually an individual's first encounter with the criminal justice system when they are alleged to have committed an offence; or if they make a complaint against another who they suspect have committed an offence. Their primary functions are preventing, detecting, and investigating criminal activity as well as apprehending suspects and maintaining public order and safety. Police officers also resolve conflict within communities and create a sense of safety and security for its members.

2.5 For the criminal justice system to function effectively, police officers must be persons of integrity, well-equipped, well-trained, and accountable to the communities they serve. Community policing initiatives that prioritize building trust between law enforcement and communities can foster positive relationships and promote mutual understanding and respect between citizens and the police.

Judiciary

2.6 The Judiciary upholds the law and is responsible for resolving disputes in accordance with established legal rules and principles. It is imperative that presiding Judicial Officers adjudicate matters objectively and impartially so that fairness is meted out to all parties involved in the process including accused persons. It is also essential that dispensation of justice should be done in a fair, timely and efficient manner to gain and maintain the public's trust and confidence in the judicial system.

2.7 Court staff at all levels of the judiciary must be trained to assist judicial officers in the execution of their duties, that is, judicial research counsel, judicial support officers, transcriptionists, court administrators and other administrative staff.

Trial Participants

2.8 Prosecutors

2.8.1 The Office of the Director of Public Prosecutions is responsible by virtue of Section 90 of the Constitution to initiate, take over and continue, and/or discontinue criminal proceedings against persons alleged to have committed offences.

2.8.2 The Office of the Director of Public Prosecutions is responsible by virtue of Section 90 of the Constitution to initiate, take over and continue, and/or discontinue criminal proceedings against persons alleged to have committed offences.

2.8.3 Prosecutors, as ministers of justice, are responsible for presenting available evidence that may prove that an Accused person is guilty but ought not to seek a conviction. Prosecutors must be well-trained in law, evidence, and procedure, particularly because of their interaction with the other components of the criminal justice system. For example, prosecutors will guide police officers in their collection of disclosure items that are required for trial. Moreover, they will greatly assist the tribunal of fact in

determining the guilt of the Accused through their eliciting of evidence from witnesses.

2.8.4 Prosecutors must be supported by an organizational structure that is well-resourced in order for the CJS to function effectively. This means that there must be:

i. Sufficient Attorneys to deal with the number of prosecutions at all levels of the court system.

ii. Specialization within the organization to deal with matters at the Magistracy, High Court, and Court of Appeal and also Plea-Bargaining matters.

iii. Support staff which consists of administrative assistants, investigators, psycho-social experts, and individuals who specialize in communications. They will all work together to support the operations of the organization.

2.9 Defence Attorneys

2.9.1 The Public Defenders' Department (PDD)

2.9.1.1 Public Defenders are paid by the State to provide legal representation to persons of limited means who do not have the resources to obtain an attorney privately. The PDD is led by the Chief Public Defender (CPD) and the Deputy Public Defender (DPD) with an approved structure via cabinet note for thirty-six (36) Attorneys comprising the following positions:

Public Defender II Senior – nine (9) positions
Public Defender II Junior – nine (9) positions
Public Defender I - nine (9) positions
Public Defender Entry – nine (9) positions

2.9.1.2 To date, the PDD has twenty-nine (29) attorneys with a complement of 7 administrative staff allocated to the PDD Registry. The PDD retains a significant portion of criminal matters at the High Court and the Court of Appeal for matters which fall under the **Legal Aid and Advice Act, Chapter 7:07**. The external panel, which consists of members of the External Bar who have indicated a willingness to participate in the provision of legal aid services, also continue to be assigned criminal matters at the High Court and the Court of Appeal. The PDD also deals with fast-track hearings, conduct prison visits with inmates and assist with the resolution of any welfare issues as well as engage in plea discussions with the State.

2.9.1.3 The role of a Public Defender as a Defence Attorney is to ensure, as far as within his/her power, that an Accused person has a fair trial and that the accused is afforded all defences which are available based on the circumstances of the case. A Defence Attorney's role is critical in ensuring that a citizen's right to be presumed innocent until proven guilty is protected within the confines of the law and its due process.

2.9.2 Defence Counsel at the Private Bar

2.9.2.1 Similar to the role of a Public Defender, a defence attorney at the private bar is expected to represent an accused person and ensure that his/her rights are adhered to and all available defence/s are properly advanced before the court. Owing to the significantly high number of criminal matters currently engaging the attention of the Courts, an adequate complement of Defence Attorneys practicing at the Criminal Bar is also essential. This would not only ensure that accused persons have adequate legal representation but would also minimize any contribution by the Defence due to the backlog due to absenteeism, unavailability or tardiness of Counsel.

Trinidad and Tobago Prison Service

2.10 The Role of the Prison Service is two-fold – firstly, to assist in the rehabilitation and reintegration of offenders into society; and secondly, to ensure that prisoners are housed in safe and humane conditions with access to essential food and health care. The role of the prison in the rehabilitation of offenders cannot be undermined. Particularly in criminal justice systems where there is significant backlog, both remanded and convicted inmates must have access to programmes that will assist in improving their behaviour and mental health and acquiring education and skills training that will promote law abiding behaviour. It requires significant resources and facilities to achieve these objectives.

Trinidad and Tobago Forensic Science Centre (TTFSC)

2.11 The TTFSC as a division of the Ministry of National Service assists in crime detection and conducts the scientific examination of items of evidential value from a crime scene which would either assist in the successful prosecution of offenders or the acquittal of persons where appropriate. The efficiency of the TTFSC depends heavily on the efficiency of police officers in their evidence collection and storage methods prior to the deposit of the said evidence at the TTFSC. From examinations conducted at the Centre, several independent expert witnesses may be called to give evidence in a criminal trial from time to time. The Forensic Science Centre must also be well resourced to analyse evidence in a time sensitive manner so as to produce the best analysis of evidence in criminal trials.

B. GENERAL CHALLENGES FACED AT EACH STAGE IN THE CRIMINAL JUSTICE SYSTEM

Introduction

3.1 An evaluation of the Criminal Justice System requires a systematic approach to properly identify and understand the challenges. Whilst the PDD currently does not operate at the Magisterial level, the prior experience of the attorneys in the PDD who previously practiced at that level has assisted to inform our submissions. The PDD submits the following primary challenges faced at each stage in the Criminal Justice System:

Reporting of Crimes

3.2 Many crimes go unreported in Trinidad and Tobago with statistics from 2015 revealing that serious crimes went unreported by 39.7% of victims on a nationwide basis[1]. In a study conducted in 2015 by the Citizen Security Programme, part of the Ministry of National Security, it was revealed that "Most victims chose not to report based on their feelings about the police service, including: inability to trust the police, police apathy and lack of confidence in police to pursue the matter appropriately. Approximately half the victims of police victimization chose not to make an official report.[2]" We believe that any survey done in 2023 will reveal much of the same information.

3.3 There is inconsistency and a level of unprofessionalism by police officers meted out to the public when persons make reports. Oftentimes citizens complain about the slapdash service they receive then engage with some police officers. Additionally, persons have complained about inability to contact the Trinidad and Tobago Police Service in cases of emergency to report a crime.

---

[1] https://cso.gov.tt/wp-content/uploads/2018/10/CSP-CVS-Final-Report-2015-v-6.1.pdf
[2] Ibid. pg. 6

3.4 The lack of trust in the police service has a large part to play in the underreporting of crime as it is thought that if citizens perceive the police and justice system as legitimate and competent, they will be more willing to report crimes and work with the authorities to enhance their effectiveness. Conversely, these institutions can generate unintended increases in crime and a lower sense of security if they are not transparent, fair, and accountable. Trust in these institutions is important[3] and is essential for[4] the rule of law and for the police to be effective in controlling and preventing crime.

3.5 This lack of trust in the police service has been fuelled by:

i. Limited responses to reports of crimes which are due to a myriad of reasons including negligence be it perceived or actual, a lack of manpower and resources such as vehicles;

ii. Low crime detection rates;

iii. Lack of follow up by police officers on reported crimes during a reasonable time frame if at all; and

iv. Corruption or corrupt practices in the police service. Whilst an increasing number of police officers are being charged and brought before the courts, this is a clear indication of the corrupt and illegal practices of police officers to the citizenry.

Low Detection Rates

3.6 We continue to grapple with low detection rates for crime. Statistics from the TTPS' Crime and Problem Analysis Branch (CAPA), show that 8 out of 91 murders committed in 2023

[3] Restoring paradise in the Caribbean, combatting violence with numbers, page 6 https://publications.iadb.org/publications/english/viewer/Restoring-Paradise-in-the-Caribbean-Combatting-Violence-with-Numbers.pdf

[4] Ibid. pg. 149

were solved–a detection rate of less than 10 per cent. As at 1st May, 2023 there were 203 murders committed for the year. Overall, the average detection rate of the TTPS has plummeted in recent years from a dismal 24 per cent to 14 per cent[5]. These low detection rates have a negative impact on the public confidence in the police service.

3.7 Low public trust coupled with low detection rates have the effect of eroding the citizens' confidence in the justice system. The citizens of Trinidad and Tobago are also stakeholders who interact with the criminal justice system either through the accused persons, as witnesses or even as jurors.

Arrest and Detention

3.8 In the recent matter of **Claim No. CV2022-04567 Brent Thomas and Another v The Attorney General of Trinidad and Tobago and the Director of Public Prosecutions,** the Honourable Justice Rampersad stated that the conduct of the police was held by the court to be unlawful and an erosion of the Claimant's constitutional rights. According to the evidence in the case, the first warrant was executed at Thomas' premises on 8 August 2022. Investigators executed three more search warrants before Thomas was first detained on 29 September 2022. Thomas spent several days in police custody before the Honourable Madame Justice Quinlan-Williams ordered his immediate release due to the inability of the TTPS to justify his continued detention on 2 October 2022. Thomas was then arrested on 5 October 2022 in Barbados while seeking medical attention and was returned to Trinidad on a plane belonging to the Trinidad and Tobago Defence Force. Justice Rampersad ruled that Thomas was unlawfully abducted in Barbados since his detention and arrest was a clear attempt to bypass the lawful procedure of requesting his extradition.

3.9 Moreover, the search warrants did not conform with the law. Having heard the evidence relative to the obtaining and execution of the search warrants, the court held that the procuring

[5] https://www.guardian.co.tt/article-6.2.397561.66bff43cf

and execution of the search warrants obtained by the TTPS was unconstitutional, unlawful, arbitrary, unnecessary and disproportionate. The warrants were invalid, null and void and of no effect in that it contravened the claimant's constitutional rights. The items which were unlawfully seized by the TTPS are to be returned to Mr. Thomas and an order was also made for a stay of the criminal proceedings initiated against Mr. Thomas. Additionally, Mr. Thomas is to receive compensation in damages for the breach of his constitutional right which is an additional cost on the tax payers' pocket.

3.10 The above case is unfortunately not the exception. It is more common than not. It is noted from the matters before the courts that proper procedure is not always followed by police officers during the arrest and detention of persons which will inevitably affect conviction rates. Some of the improper practices are:

i. Failure to obtain a search and execute a search warrant in the requisite circumstances;

ii. Failure to adhere to the Judges Rules and Human Rights Conventions;

iii. Failure to follow the police standing orders which are the blueprints of police operations and functions; and

iv. The improper treatment of persons detained.[6]

3.11 The aforementioned practices are only some of the common occurrences which cause a delay in the court system because additional legal procedure may have to be adopted, such as a *voir dire*. As stated above, where it is shown that the police engaged in improper practices during the investigation, and/or arrest and detention of the Accused person it questions the integrity of the evidence and weakens the prosecution's case.

---

[6] Trinidad And Tobago Country Report for the Quebec Plan of Action, Section 3.2.5, Reports of Abuse among Police Service Personnel https://biblioteca.cejamericas.org/bitstream/handle/2015/5043/trin-country-report-access.pdf?sequence=1&isAllowed=y

Investigation

3.12 The Trinidad and Tobago Police Service (TTPS) is the main investigative body for Criminal investigation in Trinidad and Tobago and there are many procedures and policies outlined which serve to detail the procedures that should be followed in the reporting and recording of steps in the investigation, they are often not followed.

3.13 Investigations by the TTPS often take a prolonged period of time to be completed with police officers often awaiting instructions from their seniors after submitting a file and before charging accused persons for offences.

3.14 There is limited investigation conducted by police officers in the course of a criminal investigation. Officers often rely on statements from purported witnesses or accused persons, doing little or no further investigation, resulting in glaring lacuna in the investigation, primarily manifested in the lack of physical evidence to support. Further, the evidence gathered is often of limited evidential value at the time of trial due to improper collection methods of same.

3.15 The advent of the Police Standing Orders and other procedural documents shows that there is a plethora of investigative tools available to members of the TTPS however there is limited use of same during the course of an investigation.

3.16 No alternative investigations conducted in accordance with the evidence resulting in prejudice to accused persons and possible miscarriage of justice for the Victims.

3.17 Officers often claim that lack of resources hindered them in the course of an investigation, resulting, again, in less items of evidential value placed before the court. For example, the Police Standing Orders dictates the course of reporting that an officer should undertake during the course of an investigation, a large part of which is the recording of investigation in his pocket diary, which the orders dictate, should be on his person at all times. It is the experience of this department that in most cases, it is the indication of many members of the Police service, under cross examination, that they were not issued a Pocket Diary and as such had no

contemporaneous record of the steps taken during the investigation. Alternatively, they often give the excuse that their pocket diary cannot be found which ultimately means a lack of contemporaneous notes as corroborating evidence.

3.18 Another issue that is faced at the investigation stage of the Criminal Justice System is the limited use of technology in the course of policing. There are various means by which an investigation can be supplemented which includes but is not limited to wireless surveillance, GPS systems, in-car computers which can enhance the evidence collected by Police officers in the course of an investigation.[7] The implementation of such measures can increase the rates of reliability of evidence and ensure that justice is served in each matter.

Charge

3.19 Only if the person detained is a minor or charged with a capital offence will they be entitled to Duty Counsel. Where the person is of limited means and they are unable to afford an Attorney, he or she is charged and brought before the court without representation and proper legal advice.

3.20 There is a practice within the TTPS to detain persons without charge for an unreasonable amount of time (more than 72 hours). Upon receipt of a habeas corpus application the TTPS hastily proceeds to charge the person to avoid releasing them notwithstanding the absence of sufficient evidence to substantiate the charge.

3.21 The recent practice of circulating persons' mugshots after a person has been charged, supports the public assumption that there is a presumption of guilt rather than a presumption of innocence as enshrined in the **Constitution of Trinidad and Tobago Section 5(2)(f)(i).**

[7] James Byrne and Gary Marx, Technological Innovations in Crime Prevention and Policing. A Review of the Research on Implementation and Impact, Cahiers Politiestudies Jaargang 3(20): 17-40.

Appearance Before the Magistrates' Court

3.22 The lack of utilization of the plea-bargaining process at both the summary and High Court.

3.22.1 According to the **Criminal Procedure (Plea Discussion and Plea Agreement) Act No. 12 of 2017**, the Accused has the option to engage the State in Plea Discussions at any time before conviction including before charges are instituted.[8]It is likely that there are little to no cases where such discussions have taken place before the institution of charges. A failure to utilize those options may be due to the distrust of accused persons and a lack of awareness and acumen by those involved in the pre-charge stage as to how such an option might be utilized. The effect of this is to essentially continue to place all accused persons before the Courts rather than utilize this alternative method of dispensation of matters.

3.22.2 Though the PDD does not appear in the Magistrates' Courts, the departments' collective experience will reveal that at this stage the plea-bargaining process is also under-utilized. Police Prosecutors who do most of the less serious offences will be required to approach the DPP to engage in such discussions. Within the current construct of the relationship between the police prosecutors and the DPP's office, it is unlikely that the police prosecutors will see it as likely and feasible that any such approach will be dealt with in a timely manner. This is evidenced by the months that sometimes pass where police prosecutors will indicate that they have approached the DPP'S Office for advice in relation to a matter and are awaiting feedback in relation to same. One may think that perhaps a transferring of files to the DPP's office for prosecution in such cases where an accused person wishes to utilize this legislation may be useful, but the reality is that this will just add to the volume of cases that the DPP's office is currently under equipped to deal with.

[8]Section 5. "A plea discussion may be held and a plea agreement concluded at any time before conviction, including, before charges are instituted."

3.22.3 Thus, the plea-bargaining process as prescribed by the legislation remains under-utilized in this regard.

3.23 Use of police prosecutors at the Magistrates Court for less serious offences:

3.23.1 Police Prosecutors are not always legally trained and furthermore have very limited prosecutorial training as compared to State Counsel. As such they often require lengthy and frequent adjournments to research points of law and to seek advice from the DPP's Office or their superiors. Thus, the progress of the matters before the Court is often stymied in this regard and judicial time set aside to deal with particular matters is wasted.

3.23.2 Further to this, police prosecutors are not always properly equipped to deal with: vulnerable witnesses such as child witness and rape victims, hostile witnesses and often are not able to properly utilize hearsay applications under the **Evidence Act, Chapter 7:02** for witnesses who cannot be found or who are unfair etc.

3.23.3 The effect of this is that sometimes the evidence led before the Court is not properly and fully led leaving witnesses exposed to certain lines of cross-examination from Defence Counsel. Witnesses may now be less inclined to participate in the trial process as a result of these experiences.

3.23.4 Police Prosecutors, not being properly trained to deal with hostile witnesses are often seen placing witnesses in the witness box to give evidence stating that they no longer wish to give evidence in the matter. This is not ideal as there is a wider duty to society to have matters effectively prosecuted for the protection of the society.

3.24 Limited availability and ability of counsel to advise at that stage:

3.24.1 The provision of counsel at the Magistrates' Court currently occurs either through private retainers or legal aided attorneys emanating from the External panel. It should be noted however, there is a dearth of training opportunities for counsel at the

Criminal Bar and this affects their abilities significantly. Whilst the PDD does not appear in the Magistrates' Court, we do receive the committal bundles for those accused persons who have been before the Magistrates' Court. It is clear that there are deficiencies in the way that the matters are conducted. The most glaring concerns are:

i. No filing of alibi notices;

ii. Inadequate taking of instructions; and

iii. No statements taken from Defence witnesses.

3.24.2 The above causes serious issues at the High Court level since it often opens up the Accused persons to criticism of fabrication of alibis and/or their witnesses have gone missing or died and have no statements upon which they can rely on.

3.25 Delay in the submission of files to the DPP for capital matters, which in turn delays the appointment of State Counsel.

3.25.1 The DPP's Office once had a policy whereby they would only accept completed files from the TTPS. In some cases, more than 1 year would pass before this file was completed. During this time the Accused person appears before the Court and the complainant will give the indication that he is still in the process of completing the file or alternatively that the file is with the Senior officer to be transmitted to the DPP's Office.

3.25.2 There is no fixed definition of a completed file that we are privy to, but in spite of this lengthy period of time spent by the complainant completing same, it is the experience of Defence Counsel in the Magistrates Courts/District Courts that the State Attorneys will require additional time to get further statements, exhibits such as photos and DVD's, forensic reports etc.

Remand/Detention

3.26 Inhumane Prison Conditions

3.26.1 The prison facilities and conditions in Trinidad and Tobago have been described as falling below the minimum standards that constitute cruel, inhumane and degrading treatment by Amnesty International. According to the Trinidad and Tobago 2022 Human Rights Report[9], the conditions in some of the prison's nine (9) facilities continues to be harsh due to excessive overcrowding, inadequate sanitation, inadequate lighting and poor ventilation. The report further provided that in some of the remand facilities, reports indicated that an average of five (5) to nine (9) prisoners shared a nine-by-six-foot cell and that buckets were used as toilets. Additionally, the authorities investigated and prosecuted credible allegations of mistreatment of inmates.

3.27 Length of Time in Pre-Trial Custody

3.27.1 Due to the backlog in the Criminal Justice System and the length of time in pre-trial custody, there has been a significant increase in the number of persons held on remand. Oftentimes, bail is not granted, or even if it is granted, accused persons are unable to access bail and are left to wait until the date of their trial. The increasing remand population poses several challenges to the Trinidad and Tobago Prison Service.

3.27.2 According to the Trinidad and Tobago 2022 Human Rights Report,[10]pre-trial detainees constituted more than two-thirds of the prison population. Most detainees' trials began seven (7) to ten (10) years after their arrest, although some spent even

[9]https://www.state.gov/wp-content/uploads/2023/03/415610_TRINIDAD-AND-TOBAGO-2022-HUMAN-RIGHTS-REPORT.pdf

[10] Ibid.

longer in pretrial detention. The length of pretrial detention frequently equalled or exceeded the maximum sentence for the alleged crime. The said Report provided that officials cited several reasons for the backlog, including the burden of the preliminary inquiry process.

3.27.3 The published Regional Comparative Report of Surveys of Individuals Deprived of Liberty: Caribbean 2016–2019[11] provides a robust diagnosis of the realities and challenges faced by incarcerated individuals and prisons by examining survey data collected from 3,528 inmates in six Caribbean countries: The Bahamas (2016), Barbados (2018), Guyana (2017), Jamaica (2018), Suriname (2018), and Trinidad and Tobago (2018). The report's findings point to the urgent need for prison reform across the Caribbean and offer recommendations to Caribbean governments. One of the challenges noted was the percentage of prisoners on remand relative to those who have been convicted and sentenced. According to the most up-to-date data available, Trinidad and Tobago has the highest percentage of inmates on remand (60 percent in 2018) (World Prison Brief, 2018). Trinidad and Tobago's rate of incarceration was also high with an imprisonment rate of 258 persons per 100,000 inhabitants. The global average is 145 per 100,000 inhabitants.

3.28 Lack of Availability of Rehabilitative Programmes for Persons on Remand

3.28.1 The published Regional Comparative Report of Surveys of Individuals Deprived of Liberty: Caribbean 2016–2019[12] also identified that the prison system fails to rehabilitate many offenders or ensure their successful re-entry into society.

3.28.2 The report described the observations made from international research that employment programs, including work in prison, educational and vocational training

[11] Regional Comparative Report: Survey of Individuals Deprived of Liberty: Caribbean (2016-2019): The Bahamas, Barbados, Guyana, Jamaica, Suriname, and Trinidad and Tobago

[12] Ibid.

programs that aim to equip inmates with useful credentials, and programs that prepare inmates for job searches outside of prison, are associated with lower recidivism rates. However, the survey responses indicated the unavailability and inadequacy of programming of this type in Caribbean prisons. Incarcerated individuals in the six survey countries had limited access to work-related programs in prison.

Case Management (Magistrates' Court): Triable Either Way Offences/ Summary Offences

3.29 There are several challenges posed at the Magistrates' Court including the following:

3.29.1 The number of adjournments at the Magistrates' Court due to:

i. Police Prosecutors who are not qualified legal minds and often have to seek adjournments to get legal advice to be able to address legal issues raised in trials or inquiries. Additionally, police prosecutors are responsible for making recommendations to the court on how to proceed with either way offences. This discretion is often exercised on an ad hoc basis since there are no regulations or guidelines for same. There are many instances where matters triable either-way can be dealt with summarily but some police prosecutors fail to make a recommendation or they exercised their discretion incorrectly and the matter proceeds to the High Court. This often adds to the backlog of cases at the High Court.

ii. Police Complainants not appearing for matters for a variety of reasons which causes delays in the Court process due to the fact that Magistrates are forced to deal with issues relating to non-appearance and non-compliance of Court orders rather than the substantive matter at hand. Furthermore, oftentimes the complainant will be in possession of information that the court needs but cannot provide same because they are absent.

iii. There is often a delay in obtaining Forensic reports. This delay is sometimes further exacerbated by the delay of officers in submitting exhibits to be tested so as to have these reports generated.

iv. Non-appearance of witnesses.

3.29.2 Lengthy delays between Adjournments and the time of the commencement of Preliminary enquiries/ Trial.

3.29.3 The delays by Prosecutors to effect disclosure in matters.

3.29.4 Lack of appearance of the Complainant causing issues for want of Prosecution.

3.29.5 Lack of follow up with witnesses and virtual complainants in matters often results in persons not being found or unavailable on the days set for trial/ Preliminary enquiry.

Preliminary Inquiry (Indictable Offences)/ Trial (Summary Offences)

3.30 The delay in the completion of Preliminary Inquiries has long been identified and accepted as a source of significant delay in the Criminal Justice System. In 2017 the Office of the Prime Minister noted that "as it stands, thousands of criminal cases are stuck in the Magistrates' Courts, some languishing there for more than ten years in the Preliminary Enquiry phase, which is merely supposed to determine if there is sufficient evidence to make out a prima facie case."[13]

3.31 Whilst we await the proclamation of the legislation replacing the Preliminary Enquiry as it stands this process continues to take a number of years to be completed even when done by way of paper committal. Delays in this process stem from a number of reasons including:

3.31.1 Delay by the police officers in the provision of all witness statements to the prosecutors conducting the matter;

3.31.2 Delays in having witnesses swear to their statements;

3.31.3 Failure to effect timely disclosure of relevant material to Defence Counsel;

[13] https://www.opm.gov.tt/we-dont-need-preliminary-enquiries-heres-why/

3.31.4 Failure to locate witnesses who are to be cross-examined or who are to give evidence;

3.31.5 Unavailability of Defence Counsel due to the small size of the Defence bar;

3.31.6 Scheduling conflicts with both Prosecutors and Defence Counsel who have to go to multiple courts in one day; and

3.31.7 Reassignment of Magistrates/District Court Judges to different jurisdictions forcing them to leave matters part-heard for long periods whereby they have to return when their schedule aligns with the sitting court's schedule to allow the completion or continuation of a matter.

3.32 With regard to Summary Trials, issues are often faced with respect to the non-appearance of Police Complainants and/or witnesses on the date set for trial. This either leads to unnecessary adjournments or a dismissal for want of prosecution.

Committal/Verdict

3.33 Length of time for notes of evidence taken at preliminary hearings to be finalized is another challenge in the criminal justice system. Whilst this has improved with the introduction of the FTR system in some of the Magistrates' courts, there is still significant delay in the notes being generated. There is also often delay in the final sign off on the notes due to the retirement of the particular Magistrate.

3.34 There are significant delays between the preparation of the committal bundle from the Magistrates' Court after the conclusion of the Preliminary Inquiry and the dispatching of those bundles to the Office of the Director of Public Prosecutions for an indictment to be preferred.

Filing of Indictment by the Office of The Director of Public Prosecutions

3.35 There are significant delays, often spanning several years, between the period of committal of accused persons at the Magistrates' Court to the date that their indictment is filed initiating their High Court process.

3.36 In recent years there has been significant delay in the filing of Indictments from the Director of Public Prosecutions. At the opening of the 2019-2020 Opening of the Law Term, the Honourable Chief Justice Ivor Archie expressed concern that only 11 indictments were filed for that year. More recently, the Chief Justice in his statement of March 2023 expressed concern now that in the five years of the Children's Court, not a single indictment has been filed by the DPP in that Court. Whilst these may not be the consistently normal figures, it is inarguable that there is significant delay in the filing of indictments by the DPP. At PDD it has been our experience that it is not outside the norm to meet clients who have been in custody for more than 10 years whilst awaiting the filing of their indictment. Through the PDD's participation in the Fast Track Court, it is also not outside the norm that committal bundles are at the DPP's Office for more than two years awaiting the preparation of a summary, draft indictment and the subsequent filing of the indictment.

3.37 According to the Chief Justice in his statement published by the judiciary on 18 March 2023, there are 184 matters in which people wish to plead guilty but the indictment in their case has not been filed. Of these, 141 of the committal bundles have been prepared but no indictments have been filed.[14]

3.38 The Office of the Director of Public Prosecutions has been affected by severe staff shortages and challenges in the recruitment and retention of staff as there is a small pool of Prosecutors operating the Courts in Trinidad and Tobago. To date, the full complement of Prosecutors has not been satisfied. The said Office suffers from the provision of inadequate, outdated and

[14] https://www.ttlawcourts.org/attachments/article/12131/Statement%20of%20the%20Chief%20Justice%20on%20the%20Criminal%20Justice%20System%20v2.pdf

unattractive remuneration packages, which, coupled with the large volume of work to Prosecutor ratio, results in a large-scale exodus of Prosecutors. According to the Director of Public Prosecutions, Mr. Roger Gaspard S.C., at the 22nd Meeting of the Joint Select Committee on National Security on 19 April 2023, approximately twenty-five (25) Prosecutors resigned over the period of the last three (3) years. The Office also lacks financial autonomy as it is treated as a criminal department under the jurisdiction of the Ministry of the Attorney General and Legal Affairs where approval is required for various aspects of the Office's operation.

3.39 Whilst this situation may account for the delay in the filing of the indictments, this persisting situation greatly affects the CJS as all parties are affected by this significant delay.

Case Management (High Court)

3.40 Another major issue facing the system is the ratio of criminal Defence Attorneys to criminal matters. There is a small pool of criminal Defence Attorneys who practice in the Criminal Courts and who, once engaged before the Court in a trial, are forced to place their other matters on a backseat. Furthermore, there are not enough Prosecutors assigned to the various Criminal Courts.

3.41 Reports from the Forensic Science Centre with respect to forensic reports and analysis take a significant period of time to be prepared, sometimes spanning several years.

3.42 After the filing of an indictment, the case management of a criminal matter before a judicial officer spans a lengthy period of time owing several challenges:

3.42.1 Limited number of High Court Judges;

3.42.2 Limited number of Court Resources e.g. Support Staff and Court Room;

3.42.3 Unpreparedness of Attorneys for the State and Attorneys for the Defence;

3.42.4 The delays by prosecutors to effect disclosure in matters;

3.42.5 Passive case management by some judicial officers; and

3.42.6 No penalties for repeated non-compliance with court orders. Although the Criminal Procedure Rules indicate that sanctions can be imposed for failure to comply with same, judicial officers do not impose sanctions where parties fail to comply with the rules. Perhaps directions or guidance is needed on the types of sanctions that can be imposed.

Trial

3.43 The trial process is challenged by the following issues:

3.43.1 Judicial officers often have a lengthy trial list of matters. As a result of this, trial delays are pervasive as accused persons are often forced to wait a significant period of time before beginning their trial.

3.43.2 Criminal trials often take an inordinate period of time to be completed.

3.43.3 Scheduling conflicts between the Court and Attorneys from both the State and Defence.

3.43.4 Inefficient Trial Management with Cross examination and Trial subsumed by satellite issues.

Plea Bargaining

3.44 According to the **Criminal Procedure (Plea Discussion and Plea Agreement) Act No. 12 of 2017**, the Accused has the option to engage the State in Plea Discussions. At the PDD, once a client instructs, the Public Defender/ Defence Counsel engages the Office of the Director of Public Prosecutions via correspondence and sets out the basis for the plea request. Based on this request, the State Attorney, after receiving instructions, would send written

correspondence accepting the said request, rejecting the said request or indicating that permission was granted to engage in plea discussions.

3.45 One significant challenge is the lengthy delay within which a written response is provided by the State Attorney in relation to a plea request. On average, it takes approximately one (1) year in most criminal matters before the High Court for a written response to be provided by the State indicating its position in relation to the plea request.

3.46 If the plea request is accepted further delay occurs when the summary of facts is to be prepared by the State Attorney to be sent to the Defence Counsel for the Accused to review. This delay is exacerbated when sentencing submissions are to be filed which again, takes an inordinate period of time.

3.47 Thus, with delay at each stage, this results in a lengthy Plea-Bargaining process. This delay is worsened when the State indicates that they are willing to engage in plea discussions which takes up a significant amount of time, but later, indicate after lengthy delays that they are rejecting the plea request.

3.48 Oftentimes, Courts do not continue to engage in the Case Management process whilst plea discussions are ongoing. The significant delay at each stage of these discussions results in matters being further delayed when the plea discussions produce futile results.

3.49 The PDD has been actively trying to utilize alternative methods to resolving matters such as plea bargain and MSI. To date, the PDD has submitted 283 plea requests, of which 88 were resolved. While the State has rejected 10 of those requests, the others remain outstanding. According to our records, there are currently 110 plea requests awaiting a response from the State. Despite accused persons wanting to plead guilty and requests are made to the State, we are often hamstrung by the length of time it takes to receive a response. The PDD actively manages those matters that are subject to plea bargain discussions with the aim of advancing them to completion. Similarly, the PDD has filed 31 MSI applications, of which 22 were resolved without the need for trial.

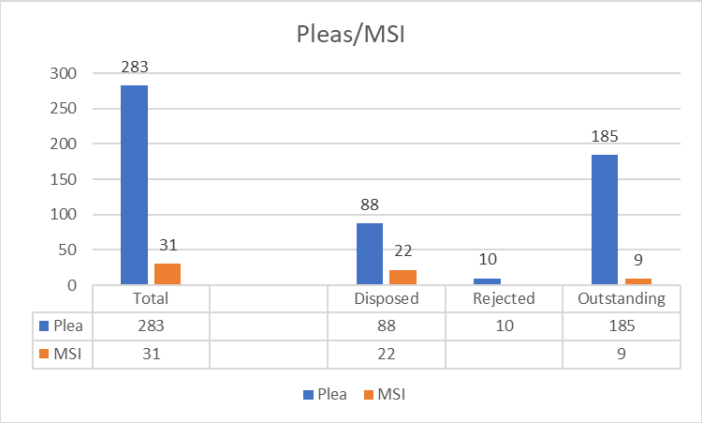

Figure 1: Statistics for Pleas/MSI at PDD

Verdict/Rulings

3.50 Length of time for rulings to be given by the Judicial Officers. Due to the backlog of matters and systemic delays, many Judicial officers are forced to balance several matters in attempts to increase efficiency. While the **Miscellaneous Provision (Trial by Judge Alone) Act #10 of 2017** allows a Judge in a matter to conduct the trial by Judge alone, and return a verdict within the maximum period of fourteen (14) days, there is no indication for the length of time required for a judicial officer to return a ruling on legal applications and submissions before the Court. This can result in delays in rulings on applications and submissions on legal issues which can result in further delays in the Criminal Justice System.

3.51 This may also cause delays in matters being scheduled consecutively, thus resulting in matters with only a few days of evidence be scheduled months apart, causing a trial to span months rather than days.

Sentencing

3.52 There are several challenges posed at the sentencing stage including the following:

3.52.1 Delays in obtaining reports such as Bio-Social Reports and Probation Officer's Reports.

3.52.2 Inaccurate information and missing information in the abovementioned reports.

3.52.3 Limited use of non-custodial sentencing options.

3.52.4 Since there are limited options for sentencing outside of custodial designations, there are systemic repercussions throughout society due to incarceration of persons. These repercussions are far reaching, causing rippling financial considerations and affects family life in the society including the ability of some families to provide a reasonable standard of living. There is also increased risk of homelessness and resultant strain on social services provided by the state.

Reintegration

3.53 There are limited options for rehabilitation and reintegration available in the Trinidad and Tobago Prison service for persons who are to be re- released into society after serving their debt to society in the form of incarceration. There are instances where the crux of these efforts falls to Non-Governmental Organizations for example Vision on Mission who focuses on rehabilitation, reintegration, and resettlement services to former offenders and other vulnerable groups in the region while adhering to the Restorative Justice Philosophy.

The Appeal Process

3.54 Challenges faced at the appeal stage include:

3.54.1 Lengthy appeal process, for example, there was an appeal filed in 2019 which was not listed for hearing until 2023.

3.54.2 Lack of information/follow up for citizens and attorneys, no public accountability in the judicial system.

Consequences of Delay

3.55 Unavailability of witness for the State (migrated/dead/unable to locate). Although there are mechanisms within the law which allows for a witness's statement to be admitted into evidence in certain circumstances, the accused is deprived the opportunity to test that witness's credibility by way of cross-examination. This can be seen as a weakness in the case.

3.56 The victim and by extension society loses faith and confidence in the system because of the chronic and unconscionable delays in the criminal justice system.

3.57 There are accused persons who would have used the time awaiting trial to rehabilitate themselves and become contributing members in society. Due to the delay, you now have accused persons facing custodial sentence decades after the alleged commission of the offence.

3.58 Hindrances to accused's ability to mount a proper defence of:

3.58.1 Alibi evidence

i. Death of alibi witnesses; and
ii. Degradation of evidence e.g., memories, technological records, physical records e.g. registers (possible destruction), Station Diaries.

C. VIEWS ON THE CURRENT STATE OF THE CRIMINAL JUSTICE SYSTEM IN TRINIDAD AND TOBAGO

4.1 As outlined above, the Criminal Justice System is in need of reform and all stakeholders need to work together and actively fulfil their respective roles and mandates for the system to work effectively. Some recommendations to improve the system are submitted in this paper below.

4.2 Crime is a social issue. While there are those persons who need to be incarcerated, there are those who can be rehabilitated therefore, more resources need to be invested into restorative justice and rehabilitating persons who are caught within the criminal justice system. The mandatory sentence for murder is the death penalty, yet we have seen over the years a continuous increase in the number of murders in Trinidad and Tobago, most of which are firearm related. There have been various amendments to the firearms legislation to increase the penalties imposed on offenders, however that has not been a deterrent to persons acquiring illegal firearms. There must be a holistic approach to improving the criminal justice system.

4.3 The criminal justice system is riddled with delays at every stage of the process. These delays have eroded society's faith in the system. It has also led to the public's mistrust and lack of confidence in the stakeholders of the criminal justice system. Justice must not only be done but it must also be seen to be done and our society is faced with the unconscionable delays.

4.4 Our system is primarily focussed on punishing offenders rather than rehabilitating them. This would inevitably result in repeat offenders and a high rate of recidivism. More resources need to be allocated to programmes geared towards rehabilitating inmates so that, when they are released, they can become contributing members of society.

4.5 Our prison population consists primarily of males which means that many homes are left without husbands and children without fathers. Research has shown that children whose parents are criminals, they are more likely to engage in crime. These children whose parents are incarcerated lack the moral guidance and support and often become easy targets to be recruited by gangs and engage in criminal activity. Mechanisms should be implemented to

provide mentorship and guidance to these at-risk children to prevent them from engaging in a life of crime.

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

Introduction

5.1 Any effort to improve the efficiency of the Criminal Justice System requires a multi-faceted and comprehensive approach. While individual strategies may alleviate particular obstacles, the major challenges faced at each stage of the Criminal Justice process ought to be addressed simultaneously via a multi-dimensional and cohesive plan. Such an approach would, by necessity, involve collaboration by all stakeholders.

5.2 The following strategies are submitted for the consideration of the Joint Select Committee:

Improve Policing Practices and Ensure Accountability for Improper Police Procedure

5.3 It is evident that the Police Service is an integral part of the Criminal Justice System as without the investigation of criminal activity, the gathering of evidence, identification and apprehension of suspects and laying of charges by the police, there would be no matters engaging the attention of the criminal justice system. However, rampant police misconduct and an apparent absence of accountability has had the effect of eroding the public's trust and confidence in the Police Service and, by extension, the Criminal Justice System.

5.4 For the Criminal Justice System to function efficiently and effectively, there is a need for the widespread implementation of technology in the police service to improve and optimise their processes and replace outdated practices and improve fairness. This can serve to minimise the opportunities for misconduct and as a consequence preserve the integrity of the overall process. For instance, due to the various challenges to the integrity and validity of evidence obtained from police interrogations, the implementation of electronically recorded police interrogations of potential suspects, where all parties are visible through the entire process, to

replace the outdated practice of transcribing interrogations using pen and paper would result in greater trust in the overall investigation and its fairness to potential suspects.

5.5 More strategic use of technology in the police service and the digitization of their processes can potentially solve a plethora of impediments faced in the Criminal Justice System, such as loss or misplacement of files, reports, exhibits and station diaries as these items can now be digitised and securely stored for future use.

5.6 Technology can also improve accountability by functioning as a check and balance on police officers during integral processes and as a deterrent to officers from engaging in misconduct during the course of their duties. The more consistent usage of items such as body-worn cameras by on-duty police officers with applicable privacy protections should be encouraged if not mandated and should include the creation of protocols that require that cameras remain activated and systems instituted to guard against the tampering of footage.

5.7 The unsavoury practice of police officers abusing their remit to maliciously, falsely or improperly charge civilians for offences, particularly for minor offences, or based on insufficient evidence has an adverse effect on all stakeholders of the criminal justice system. These superfluous matters only serve to clog up the criminal justice system by stretching already finite resources. A proper and continuous review of the evidential basis for charging must be undertaken for every criminal matter at various stages of the lifecycle of the matter.

5.8 To prevent the system from being inundated through such improper policing practices, there should be more uniform application of laws so that those rogue officers are routinely held accountable for engaging in such practices. It may be worth considering legislation to ensure that such officers bear the burden placed on taxpayers for successful litigation stemming from proven police misconduct. Alternatively, officers proven to have engaged in misconduct should also more routinely face disciplinary proceedings, which can, if justified, result in their dismissal from the Police Service. Without the implementation of such measures and prioritising police accountability, the criminal justice system may never attain the level of efficiency and effectiveness which encourages public trust and confidence in the system.

5.9 Ongoing sensitivity training should be facilitated for police officers in an effort to improve the execution of their duties particularly their interactions with members of the public. Most often

police officers are the public's first interaction with the criminal justice system and the nature of that interaction can form indelible impressions on the public's view of the state of the country's criminal justice system.

5.10 Additionally, more resources need to be poured into the Forensic Science Centre to alleviate the attendant backlog and delay in retrieving the results of the forensic analysis of exhibits submitted by the Police. To improve the efficiency and effectiveness of Police investigations and the detection of potential suspects, it is evident that the timely retrieval of the results of forensic analysis of exhibits should be one of the first areas addressed.

5.11 As such, it is recommended that the Forensic Science Centre be provided with more staff, machinery and other resources needed to allow the effective carrying out of examinations and for reports to be generated without unnecessary and significant delay. Also, the implementation of technology within the Forensic Science Centre to create a secure online portal where Police Officers can be informed of the status of examinations being conducted at the Forensic Science Centre and be alerted when the analysis has been completed would be a simple, yet efficient way of aiding the delay associated with this process.

5.12 It must be acknowledged that the Government of Trinidad and Tobago has actively taken steps to address the issues plaguing the Forensic Science Centre by approving plans to construct a new Forensic Science Centre, although the completion date remains unknown, to aid in alleviating the constraints of the current facility. However, it must be noted that the erection of new infrastructure must be tempered with the creation of a sustainable system for the storage of exhibits to prevent potential loss during criminal proceedings and the setting of timelines to conduct forensic analysis examinations and generate reports for those involved in criminal proceedings to have these results promptly. Further, in addition to the items highlighted above, for this initiative to have the desired effect on the Police Service and, by extension, the Criminal Justice System, it must also involve hiring competent staff and the maintenance of the specialised equipment.

Prosecutorial Efficiency

5.13 The prosecutorial office is one of the cornerstones of the Criminal Justice System. It is the DPP ultimately that determines whether cases get prosecuted. If he refuses to accept cases where police conduct falls below constitutional standards, police officers will have no recourse but to adjust their practices to ensure that their cases are prosecuted.

5.14 It is not always clear whether a decision to prosecute or rather a decision to continue prosecution is justified. It is recommended that the employment of the discretion to continue prosecutions be continuously reviewed by the Learned Director to assess whether tenuous prosecutions should be withdrawn.

5.15 It is recommended that an independent review of the administration of the prosecutor's office be undertaken to evaluate the efficiency of the DPP's office which should include an assessment of case management strategies, timelines, frequency of indictments filed, number of discontinuances, recidivism rates, diversion rates, and other metrics to evaluate prosecutor performance not simply limited to the number of prosecutions or the rate of conviction.

5.16 Appropriate focus should be placed on the monitoring, training, and the continuous development of prosecutors to ensure best practices are created and observed.

5.17 Ensuring that the prosecutions' department is afforded technical capabilities and capacity is necessary to promote efficiency in the management of the office and prosecution of cases. These capabilities should include evolving record-keeping systems and data analytics.

5.18 Data covering a multitude of complex issues are stored in prosecutors' offices, a well-organised data management system can provide an important tool to more comprehensively understand various aspects of cases including conviction rates and other raw data relative to case dispositions. Intelligence-led prosecution that uses and incorporates predictive analytics and other forms of data analysis has the potential to lead to more-efficient, and fairer practices and policies. The DPP's office must be equipped to take advantage of all the data it possesses through the efficient use of data and data analyses so that key challenges faced by the organisation can be identified and improved upon.

5.19 State prosecutors continue to contend with very high caseloads and comparatively lower salaries than practising attorneys in other settings. Remuneration for prosecutors must be commensurate with current and equitable standards taking into account the considerable workload faced by prosecutors and the need to address the challenge of retention within that department.

5.20 Staff retention revolves around not only recruiting the right persons for the job but also creating incentives to reduce the likelihood of senior staff looking elsewhere for better opportunities. The DPP's office must be sufficiently staffed in order to adequately cope with the volume of work under its remit and the everchanging criminal justice system. It may be helpful to collaborate further with the Law School and even secondary schools so that students can be exposed to the broad scope of prosecutors' work and impact through further development of the already existing criminal law clinics, courses and internships.

Plea Bargaining

5.21 **The Criminal Procedure (Plea Discussion and Plea Agreement) Act Chap 13:07, Act No. 12 of 2017 (as amended)** provides the statutory regime which governs Plea Bargaining in the criminal justice system. Despite the statutory regime's potential to serve as an effective tool to alleviate some of the impediments plaguing the criminal justice system, this potential has been stymied by its underutilisation by the various stakeholders and the absence of clear guidelines and structure surrounding its process.

5.22 The legislation provides that a plea agreement can be concluded at any time before conviction, including, before charges are instituted, however, the reality faced in the criminal justice system is that plea agreements are predominantly raised and concluded upon matters reaching the High Court and are rarely utilised in the Magistrates' Courts or even at the time when charges are being laid. Further to this issue, multiple matters which can reasonably be disposed of through a plea agreement are, more often than not, taken through the entire case management and trial processes due to the underutilisation of the legislation and culture of litigation which almost inevitably produce the similar or less favourable outcomes to that of a potential plea agreement.

5.23 For the Plea-Bargaining process to fulfil its true potential as a major player in combating inherent problems faced in this country's criminal justice system, all stakeholders involved should strive to make greater use of same and to identify matters that are appropriate for plea-bargaining as early as reasonably possible to prevent the wastage of the finite resources and to aid in the timely disposal of matters.

5.24 To further enhance the utilisation of the legislation amongst stakeholders and change stakeholders' attitudes towards plea bargaining, an educational campaign outlining the uses and benefits of plea bargaining can be created in addition to the implementation of plea-bargaining training for stakeholders as to how the process is to be carried out.

5.25 To import consistency, transparency and efficiency into the plea-bargaining processes, comprehensive guidelines on plea bargaining can be drafted and implemented after extensive consultation amongst the various stakeholders involved in the process.

Availability of Defence Attorneys

5.26 In many courts throughout the country and particularly in the Magistrates' Courts defendants who lack resources either receive no representation at all, or are represented by attorneys juggling far too many cases. Neither scenario provides the level of representation that our Constitution requires.

5.27 It is suggested that comprehensive strategies to address this challenge by both ensuring adequate representation for all defendants and making the system easier to navigate. Not only does adequate representation for defendants better ensure they receive a fair trial and their rights are safeguarded, it increases the efficiency of the trial process.

5.28 For the criminal justice system to work efficiently all stakeholders must be up to the task. Even if there were more judicial officers and prosecutors to handle the case load, a similar increase in competent defence attorneys would be required to assist defendants in readying their matters for trial. Additionally, competent defence counsels are instrumental in advising and assisting persons who wish to plead guilty or engage in plea discussions which avoids the need for lengthy trials.

5.29 New processes for Case Management under the Criminal Procedure Rules may allow for issues to be identified earlier and matters to be better progressed more efficiently. However, these legal processes such as the filing of the appropriate forms and compliance with practice directions to disclose the nature of one's defence may instead cause further delay for the unrepresented.

5.30 As a majority of persons before the criminal justice system lack resources to afford legal representation, a large portion of criminal defence, especially at the High Court, is conducted through the means of legal aid representation. Legal aid representation is provided either through the Public Defenders' Department, which is currently confined to High Court matters or by virtue of the external panel of the Legal Aid and Advisory Authority which provides representation for both High Court and Magisterial matters.

5.31 It is suggested that further development of legal aid infrastructure can increase efficiency in progressing criminal matters.

5.32 Local bar associations, the Legal Aid and Advisory Authority and law schools should form partnerships with each other and with the courts to expand indigent defence programs. For example, the Law School Partnership Program, where law schools support graduates in a public defence position in the South for a year[15].

5.33 Many attorneys in private practice are reluctant to take on legal aid cases due to the limited remuneration packages. It may be worthwhile to reassess the attorney compensation rate for serving on the indigent defence panel, especially for time outside the courtroom, to incentivize attorneys to allocate adequate time and preparation for these cases.

5.34 Additionally, the employment of full-time public defenders through the Public Defenders' Department has shown significant advantages in increasing the efficiency of legal aid representation at the High Court. However, currently the Public Defenders' Department has a complement of 29 attorneys, which is insufficient to represent all legally aided matters before the High Court alone and far below what would be required to additionally serve the defence

[15] http://www.gideonspromise.org/programs/lspp

needs of the Magistrates' Courts. An increase in the number of persons employed full time as public defenders would allow for improved availability of legal aid representation across the Criminal Justice System and allow for the faster dispensation of cases.

Avoid Bail Restriction as a Punishment/Deterrent

5.35 The reality of our criminal justice system is that accused persons spend many years in prison awaiting trial dates. This is due to them either being refused bail or their inability to access bail as granted. In order to protect the presumption of innocence persons should not be refused bail without good reason and, where granted, bail should be accessible. Courts routinely impose bail that does not take into account a defendant's financial resources, the risk the defendant poses, or possible alternative conditions of release. The result is that presumptively innocent people are incarcerated for years awaiting trial.

5.36 The courts should employ measures that prevent people from being unnecessarily detained by adopting individualised bail determinations based on actual ability to pay that ensure that individual defendants are not being incarcerated for poverty and are instead being assessed based on actual risk. This strategy should include providing judicial education on the appropriate role of bail and court-based risk-assessment programs where needed. The judiciary should encourage the use of release on personal recognizance or alternative conditions of release to manage pre-trial risk in cases deemed appropriate.

5.37 The prosecutorial department should also ensure that they are objecting to bail in cases of real risk and not merely employing pre-trial detention as a coercive and punitive strategy.

5.38 There has been considerable public discourse in recent years to the effect that the right to bail should be restricted where persons have been charged for certain offences either entirely or for a period of time. Legislation has been proposed and, in some cases, enacted which curtails the right to bail for 120 days for certain serious offences, especially for offences involving firearms. Despite public views in support of bail restrictions of this sort, local courts have

upheld the right to bail including the noteworthy case of **Akili Charles v The Attorney General Civ. Ap. No. CA S 046 of 2021; [2022] UKPC 49** which allows persons charged with murder to apply for bail.

5.39 Public and political sentiment in support of restricting bail in serious matters is understandable given increases in serious crime and frustrations with the length of time before justice is served in many cases. Additionally, it is perceived that persons charged with serious crime are just released back out on the street and are able to commit further crimes. Bail restriction is seen by some as one avenue by which to address high crime rates by keeping 'criminals' in jail and to act as a deterrent.

5.40 However, it is suggested that the availability of bail or restriction thereof is not an appropriate means in which to penalise accused persons or to deter potential offenders. The presumption of innocence and the right to bail are constitutional protections fundamental to any modern democracy. They serve as essential safeguards of all citizens so as to ensure they are not penalised or denied their liberty without due process. This prevents potentially innocent persons being severely penalised at the behest of state agents such as a rogue police officer or witness with improper motive, neither of which are uncommon. Persons should not be denied liberty for over a decade before being given an opportunity to prove their innocence.

5.41 The restriction of bail as penalty or deterrent aims is a stopgap approach to dealing with a symptom of the problem as opposed to its root cause. The real issue appears to be a frustration that persons who have committed criminal offences are not sufficiently penalised or are not penalised quickly enough, and as a result there is no deterrent to potential criminals. Further, due to the delay in the justice system, offenders may be able to commit multiple offences before facing any repercussions.

5.42 It is suggested that the appropriate solution to this issue is to ensure that justice is served in a timely and effective manner so that criminal wrongdoing (where proven) is punished quickly and consistently. This serves as a better deterrent while also protecting the rights of the innocent.

5.43 It is also noted that the right to bail is not automatic and judicial officers have ample authority to deny bail if there is a likelihood that an accused person will commit other offences or abscond.

Right to Trial Within a Reasonable Time

5.44 One of the most critical issues plaguing the criminal justice system is that of delay in the determination of criminal matters. It is not uncommon for a criminal matter to remain pending for 10 to 15 years before completion. Delays negatively impact all interested parties. There is currently no constitutional or statutory limit to the length of time a matter can remain pending before the Courts. While the Constitution protects the right to a fair trial, it does not expressly provide for a right to a hearing within a reasonable time.

5.45 Without a right to be tried within a reasonable time being enshrined constitutionally or via statute the limit on the length of prosecutions remains indeterminate. There is no overarching standard to which all parties are committed. The result is that the timely completion of individual matters is sacrificed to the exigencies of the competing workloads of judicial officers, prosecutors and defence attorneys.

5.46 While the right to be tried within reasonable time is primarily aimed at protecting accused persons who are presumed innocent until found guilty from unjustified delays, it can serve a dual purpose. It would ensure timeliness as a requirement in the dispensation of justice to the benefit of all stakeholders. A right to be tried within a reasonable time would create an overarching and mandatory limit to the length of time that matters are before the court.

5.47 The aim of this right is not to allow accused persons a technical defence to escape justice. Rather, the goal is to ensure that timely progression and dispensation of cases is not merely a desire or afterthought but a compulsory standard to which all stakeholders must adhere.

5.48 It should also be noted that the notion of *"reasonable time"* is not a definitive period after which an accused person walks free. The requirement of reasonableness is case specific to the type of matter and issues at hand and recognises that some delay may be inevitable or excusable in

a particular case. Further, delay occasioned by the defendant or his legal representative would not satisfy grounds for claiming a breach of this right.

5.49 It is submitted that the right to trial within reasonable time should be protected as a fundamental right by way of constitutional reform. In this way as a constitutional imperative the courts and other state agencies must ensure both timeliness and fairness throughout the criminal processes from inception to final disposition.

5.50 Such a right is not novel or uncommon in our region. For example, s 11 and 18 of the Constitution of Barbados, ss3a 6(1) and 6(2) of the Constitution of Belize and articles 40 and 144 of the Constitution of Guyana provide for the right to a fair hearing within a reasonable time under the guarantee of the protection of the law.

Case Flow Process Charts

5.51 It would be useful for each stakeholder to develop and design case flow process charts which include timelines for the life cycles of matters. To do so key events in the lifecycle and activities relevant to each event must be identified and assigned time-based measures. The newly released Benchbook of Belize, Guyana and Barbados provides an excellent illustration of such a case flow chart relative to the Judiciary.

5.52 It would be necessary to establish clear, overall, time-based standards for the completion of different categories of matters (for example typology), simple, standard, complex, tracking the case from inception (the first event) to completion (the last event). The case life cycle event process time flows must fit within these overall case completion time standards.

5.53 Account must be taken of the fact that cases differ substantially from each other in their complexity and in the time required for a fair and timely disposition. Some may be disposed of expeditiously, with very few intermediary events. Others may require extensive supervision over a myriad of processes, and activities. The fact is that all cases do not make the same demands on resources. However, a case flow chart would require the particular agency to pay greater attention to methods for reducing delay and improving predictability and certainty in criminal case management and can be tailored to each particular agency.

5.54 It is imperative that a process of measurement and evaluation be attached to the development of case flow charts for it to be an effective tool. Analysing and presenting performance results in an interpretable and compelling way by following the same process, allows stakeholders to actively manage their processes to achieve their case flow management goals. This data should be compiled, analysed, and represented periodically, e.g., annually, and shared publicly in annual reports and other publicly accessible spaces.

Implement Statutory Timelines

5.55 It is recognised that the regime established under the Criminal Proceedings Rules contemplates early and effective case management and the active progression of matters which are heard before the Courts. This allows for a judicial officer to set timelines for the completion of

certain identifiable steps in progressing a matter. However, these timelines are liable to unlimited extensions in the absence of precise limits or guidelines.

5.56 Further, case management only applies to one aspect of the lifecycle of criminal matters and does not address other key events when the matter is not actively being heard before the Court such as the preparation and filing of indictments.

5.57 For matters to be completed in an efficient manner, all key events in the life cycle of each matter must also be completed in a timely manner. Improvements to the Criminal Justice System over the years have often resulted in increased efficiency in some stages only for a bottleneck to emerge at another stage and the gains thereby diminished. A practical example is a Preliminary Inquiry that is quickly prosecuted in the Magistrate's Court by way of tendering written statements but then the matter remains in abeyance for a number of years before the Committal Bundle is prepared by the Court and ultimately transmitted to the office of the DDP for the indictment to be filed.

5.58 Timelines for the key events in the life cycle of criminal matters can be imposed through statute. This creates a mandatory target by which each stakeholder must complete a particular event. A few timelines already exist in legislation such as the filing of a Notice of Appeal. However, there are many stages for which timelines are largely left to the will of the particular stakeholder. The length of time it takes for indictments to be filed once the committal bundle is received by the DPP's Office is one glaring example out of many.

5.59 Statutory timelines whether through primary or delegated legislation should be introduced for specified events in the lifecycle of a criminal matter and should be based on a data driven analysis as is contemplated by the Case Flow Process Charts submitted above. Specifically, but not exhaustively, it is submitted that timelines should be imposed for:

i. The filing of paper evidence in Preliminary Enquiries or Sufficiency Hearings;

ii. The completion of a Preliminary Enquiry or Sufficiency Hearing;

iii. The production of transcripts and committal bundles;

iv. The filing of indictments; and

v. The filing of preparatory documents such as a Form 4, List of Witnesses and Applications to adduce Fresh Evidence.

Sanctions

5.60 The current Case Management process as established by the Criminal Procedure Rules envisions early and active case management where the judicial officer sets timelines to efficiently progress the matter for trial. Despite the CMC process now being implemented for a period of years, the practical reality is that timelines set are often ignored and extended ad infinitum. There exists no effective sanction within the current rules or legislation to prevent continuous non-compliance with directed timelines. Rules and directions without a means of enforcement amount to mere suggestion.

5.61 **Rule 10.3 of the Criminal Procedure Rules** provides that if there is a non-compliance with a rule or direction *"the court may (a) fix, postpone, bring forward, extend, cancel or adjourn a hearing; or (b) impose such other sanction as may be appropriate"*. While the rules contemplate the use of sanctions to enforce directions and timelines ordered by the Court, beyond changing the hearing date, it is unclear what sanctions the Court can lawfully impose. Additionally, there are legal arguments that while the rules purport to give the court the power to impose such sanction as may be appropriate, the rules are secondary legislation and cannot authorise unidentified penalties which are not authorised under the primary legislation. Another legal argument is that without express identification of the applicable sanction(s), it cannot lawfully be imposed on a party who would be unaware of such liability. There is a line of authorities relating to the Civil Proceedings Rules in which courts have disapproved of implied sanctions[16].

5.62 It is submitted that there should be express statutory authority to impose clearly identified sanctions for the failure to meet timelines. This would allow judicial officers a proverbial *'big stick'* with which they can ensure timely compliance with court orders.

[16] Attorney General v Keron Matthews (2011) UKPC 38

5.63 Sanctions should not only be limited to breach of court rules or directions but also any existing or proposed statutory timelines. Not all stages of the life cycle are actively governed by a judicial officer such as the filing of indictments.

5.64 By way of example **Section 27 (2)** of the **Administration of Justice (Indictable Proceedings) Act** as amended (hereinafter referred to as "AJIPA") which is not yet in force provides in some cases a timeline of twelve months after a sufficiency hearing for the filing of an indictment. Failure by the DPP to file an indictment within this period, allows an accused person to apply for discharge which may be granted if it would be just to do so. Such a sanction should help ensure that matters are not languishing while awaiting the filing of an indictment as is currently common. While it may be undesirable that serious criminal matters are discharged due to mere lapse of time, the sanction ensures that the stakeholder responsible for taking such step is required to act expeditiously and is accountable to a judicial officer for any unusual delay.

5.65 Historically, there appears to be some disquiet at a policy level in imposing strict sanctions for prosecutorial delay for fears that serious matters will be dismissed on a mere technicality. This can also be seen in **Section 27 (2)** of the **AJIPA** whereby it exempts a long list of serious offences from the sanction for delay in filing an indictment. Consequently, a vast majority of the matters tried on indictment are exempt rendering the sanction practically ineffective. It is submitted that failing to place firm and enforceable timelines on stakeholders is partially responsible for the prevailing delays in the criminal justice system. The goal is not to allow persons to escape justice due to delay but to ensure that there would be no delay in the first place as stakeholders are kept accountable to their timelines due to the prospective sanction.

5.66 Possible sanctions include but are not limited to:

i. Orders for the payment of legal costs or administrative penalties;

ii. Prohibition on adducing particular evidence or advancing a particular application or objection without relief from sanctions; or

iii. (In some cases) dismissal of a charge for want of prosecution.

5.67 It should be noted that sanctions need not be automatic or compulsory and it is desirable to give oversight over the imposition or relief from sanctions to the appropriate judicial officer. As with **Section 27 (2)** of the **AJIPA** a discharge may only be granted if the Judge having considered the reason for the delay is satisfied that in all the circumstances it would be just to do so. Even if this sanction applied to all offences (as we suggest it should be), a judicial officer is sufficiently able and empowered to grant extensions taking into consideration the seriousness of the offence, the reasonableness of the delay and other relevant factors. In this way while extensions are possible and in some cases inevitable, the stipulated timeline should be seen as the rule. Further, judicial oversight over statutory timelines ensures accountability in open court when parties are unable comply with a particular timeline.

Trial Date Certainty

5.68 Trial date certainty is closely associated with the timely disposition of cases. Trial date certainty standards help to establish and execute credible trial dates, inspire proper preparation by all parties, assist with efficient case processing and further the interests of litigants and the public in timely justice. It can help to assure effective utilisation of resources, and promote high quality justice.

5.69 Such measures have been employed by various judicial arms in many jurisdictions and can be referenced for guidance. Different calculations may be employed but the goal is to determine the trial date credibility rate which is calculated using the figures for trial dates given measured against the number of trials that actually commenced on time and an assessment of the length of time between the two dates. The result is that a certainty/credibility rate is established and if that rate is unsatisfactory thereafter standards are set and measures implemented to improve that rate.

5.70 It is suggested that the Judiciary first employ a case processing measure which assesses whether cases disposed by trial are tried on the first date they are set or are continued for one or more times before they actually begin and the reasons for any adjournments.

5.71 A system-wide approach would be helpful to successfully implement trial date certainty standards. It would be advisable to consult with the different institutions, agencies, and individuals having key roles in case processing to develop realistic time standards in the Courts.

5.72 Once standards are created then effective monitoring and continued evaluation would be key to ensure that the standards are being met and/or reasons for non-compliance. This can allow the Courts to make adjustments where necessary either to their processes or to the standards themselves to account for factual realities.

5.73 It is recognised that while these standards may take several years to achieve, it is important to establish 'aspirational' standards and to set interim goals in order to measure and improve performance.

Judge Only Trials in specific cases

5.74 Many Commonwealth countries including Trinidad and Tobago have introduced some measure of trials without juries. The shift to judge alone trials is prompted by many factors, including challenges faced in jury trials such as the expense and onerous nature of jury management.

5.75 It is submitted that the present regime whereby judge only trials can proceed upon the election of an Accused person should not be extended to make judge trials mandatory as this may pose unfairness to Accused persons who wish to exercise their right to be tried by a jury of their peers.

5.76 It is however suggested that the present regime may be expanded to allow the prosecution, in particular cases, to make an application before the Court for judge-only trials. In Belize such an application is provided for under section 65B of the Indictable Procedure Act of Belize which allows the Prosecution to apply to the judge for the trial of offences (not otherwise specified as being mandatory judge-only trials) to be conducted without a jury, on any of the following grounds: (a) that in view of the nature and circumstances of the case, there is a danger of jury tampering or the intimidation of jurors or witnesses; (b) that a material witness is afraid or unwilling to give evidence before a jury; (c) that the case involves a criminal gang

element and would be properly tried without a jury; or (d) that the complexity of the trial or the length of the trial (or both) is likely to make the trial so burdensome to the jury that the interests of justice require that the trial should be conducted without a jury.

Sentencing Reform - Therapeutic Jurisprudence

5.77 The underlying philosophy and objectives of therapeutic jurisprudence have been embraced in the Caribbean, as reflected through **Ramcharan v DPP (2022) CCJ 4 (AJ) GY** where in the context of sentencing in criminal law it was stated at 88 that: *"sentencing is no longer to be viewed in a silo, as an adjudication limited to the interests of the State and the convicted person. Such a view is hopelessly myopic and divorced from lived realities. Arguably the persons most directly affected by a crime are its victims-survivors. Then their families, friends, and communities. And as well the larger society of persons who live in various degrees of relationships with each other.*

5.78 A therapeutic approach to sentencing is one that is fully aligned with all five sentencing objectives and requires a more encompassing approach to a sentencing hearing. An approach that includes all relevant evidence to enable the making of informed assessments and decisions, and that at the same time unlocks the law's capacity to be a source of healing and relevance for all persons, institutions, and communities that are affected by it.

5.79 The Drug Treatment Court and the Children's Court in TT are promising examples of the development of therapeutic jurisprudence. In the region examples of such initiatives exist with specialised courts and can be seen in Bermuda which has a Drug Treatment Court, DUI Treatment Court, Mental Health Treatment Court, Juvenile Court and is in the process of the establishment of a Family Treatment Court for parents with drug, alcohol, and mental health issues - and a Domestic Violence Court.

5.80 While specialised courts are effective techniques there must additionally be "mainstreaming" which is the process of 'applying the principles and practices of therapeutic jurisprudence to any and all aspects of the legal system where a therapeutic jurisprudence focus may "make a difference" (E Richardson, P Spencer, and D Wexler, The International Framework for Court Excellence and Therapeutic Jurisprudence: Creating Excellent Courts and Enhancing Well-

Being. Journal of Judicial Administration (2016) 25 Journal of Judicial Administration 148). What this means is that therapeutic jurisprudence must be employed in regular criminal courts and other general courts, beyond the specialized, problem-solving ones. The rationale for this expansion is that the law would be able to broadly impact the social wellbeing of society. (D Wexler and M Jones in Employing the 'Last Best Offer' Approach in Criminal Settlement Conferences: The Therapeutic Application of an Arbitration Technique in Judicial Mediation (2013) 6 Phoenix L)

5.81 Adopting restorative practices into the sentencing procedure is such a way of adopting a therapeutic approach to sentencing. The aim of restorative justice is to: i. resolve conflict ii. facilitate healing for victims – give them a voice iii. facilitate rehabilitation for offenders – let them accept responsibility for wrongdoing; apologise to victims iv. strengthen communities – restore trust between parties by putting right the harm caused: reparation/restitution e.g. financial or other compensations v. prevent future damage – no recidivism, through remediation of offenders Restorative justice seeks to enable a shift from the adversarial model of litigation, where the focus is on legal rights, entitlements, blame and punishment, to a justice system which balances the victims' needs for healing and rights for protection; the need for offender responsibility, rehabilitation and remediation, and the duty to protect the public/ community.

Reduction of the Incarceration Rate

5.82 Our current laws often see prison and detention as the main solution to every criminal infraction. The result is that we may be incarcerating persons who pose no harm to society and consequently overburdening the prison system and its resources.

5.83 Consideration may be given to the use of pardons which fully or conditionally forgive crimes on a case-by-case basis.

5.84 Restorative justice programs seek to repair the harm caused to victims and communities, and include practices such as family group conferences, mediation, community decision making, and mechanisms for restitution. It is often thought that restorative programmes should be limited to less serious offences however they can be successfully tailored to address serious

offences for example an offence such as causing death by dangerous driving may be, depending on the particular facts, an appropriate case for restorative justice as opposed to automatic incarceration.

5.85 How the State treats criminal offenders tells a lot and shows who the State considers to be responsible for crime. Coercive punishment is not only harmful to offenders but also destructive to society as it creates an enhanced risk of reoffending by hardening offenders and releasing them ill-equipped to reintegrate in society.

5.86 There is no evidence that prison operates as an efficient means of deterrence. The high levels of recidivism upon release from prison would demonstrate that incarceration is not always the most reliable form. Secure confinement ought to be considered as a last resort where other methods of addressing the aims of sentencing cannot be achieved.

Detention Conditions

5.87 Reasonable and decent detention conditions are basic human rights and crucial to the successful reintegration of formally detained people. Yet, the conditions in our detention facilities do not meet humane standards. It is crucial that detention conditions do not violate the basic human rights of incarcerated individuals.

5.88 Decent, rehabilitative prisons are not only a basic human right, but are also central to the successful reintegration of people emerging from prison which will in turn reduce recidivism and promote safe communities. Adherence must be maintained to United Nations Standard Minimum Rules for the Treatment of Prisoners[17], which provides the basic minimal guidelines for ensuring that the human rights of incarcerated individuals are respected during the course of their detention.

[17] https://www.ohchr.org/Documents/ProfessionalInterest/treatmentprisoners.pdf

5.89 It is critical that educational and vocational programs be made available not only to convicts but to prisoners on remand who spend significant lengths of time awaiting trial dates.

5.90 Measures to improve detention conditions should proactively include the voices of incarcerated and formerly incarcerated individuals in assessing policy initiatives that affect people in jails and prisons.

Mental Health Services

5.91 Strategies for improving the criminal justice system would be deficient if they do not consider the impact of mental health challenges on crime. A holistic approach must therefore include improved access to mental health services. The challenges faced by members of the public and especially members of the prison community in accessing the appropriate diagnosis and treatment for mental health conditions can directly impact on the occurrence of crime and recidivism.

5.92 The goal should be better access to health services in tandem with training efforts of all stakeholders focused on fostering a culture of understanding of issues relative to mental health challenges. Each agency should undergo some level of training which would allow them to adopt standardised practices which are necessary for coping with concerns relative to mental health especially where it intersects with the different arms of the criminal justice system.

5.93 Even where the courts order psychiatric evaluation of defendants, there is often significant delays in the carrying out of such orders. It is suggested that the system of collaboration between the judiciary, prisons and the mental health authorities needs to be improved and streamlined. There should be guidelines in place that ensure early evaluation of inmates that may require mental health assessment and treatment. Further, there should be sufficient follow up to ensure that the inmate receives adequate and consistent treatment for any diagnosed mental health condition.

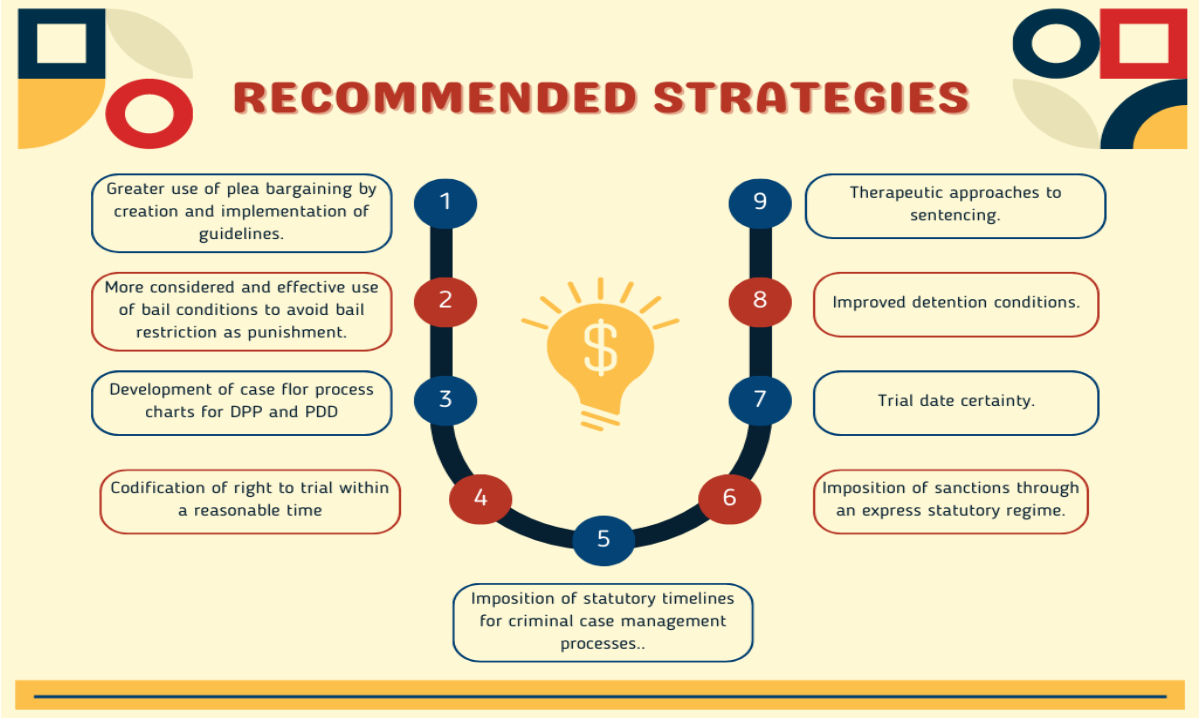

Figure 2: Recommended Strategies

E. THE FUNCTION LEGISLATION MAY FULFIL TO IMPROVE THE CRIMINAL JUSTICE SYSTEM

Introduction

6.1 Legislation has a critical role in the shaping of the Criminal Justice landscape and serves as the framework for criminal justice delivery among its stakeholders. Legislation can particularly function to improve efficiency in the disposal of matters and operate to further ensure that all stakeholders in the system are treated fairly. There have been several initiatives implemented in the last five (5) years aimed at improving the delivery of Criminal Justice in our jurisdiction.

Recent Initiatives

6.2 Implementation of Trials by Judge Alone

6.2.1 **The Miscellaneous Provisions (Trial by Judge Alone) Act 2017**. Trials by Judge Alone were implemented by proclamation on 1st February 2019 and tend to be completed quicker than jury trials due to the elimination of judge's themselves being able to deal with objections on spot due to the absence of a jury and the judge's ability to direct themselves in law in relation to applications made by either party and the elimination of the need for a summation. The use of the Judge Alone trial proved quintessential during the outbreak of Covid-19 wherein jury trials were suspended in order to maintain social distancing.

6.3 Creation of the Criminal Division

6.3.1 The Criminal Division and District Criminal and Traffic Courts Act specifically created a Criminal Division of the High Court upon its proclamation on the 1st December, 2018. This piece of legislation further created the office of the Master of the High Court in the criminal division whose primary function at this time (until the abolition

of Preliminary Inquiries) is to champion the flow of case management of criminal matters in the division and ensure that matters become trial ready.

6.4 Means of disposing with guilty pleas

6.4.1 **The Criminal Procedure (Plea Discussion and Plea Agreement) Act** came into force on 2nd January 2019 and promotes where the Accused is enabled to enter a plea of guilty in exchange for the Prosecution adopting a particular course by way of agreeing to the proposed plea. This creates an avenue for the effective disposal of matters without trial and an effective conviction.

6.5 As much as legislation plays a critical function in the role of improving the delivery of criminal justice it is plain that there are substantial delays in implementation. The Criminal Procedure Rules were tabled since in or around 2013 and not proclaimed until 2016.

6.6 The **Criminal Procedure (Plea Discussion and Plea Agreement) Act** was tabled in 23rd February, 2017 and did not come into force until 2nd January 2019. Similarly, the Criminal Division Act came into force fully on the 16 August 2019 having been tabled in March of 2018.

6.7 Legislative measures that have actually been implemented has plainly taken anywhere between 1-3 years.

6.8 Elimination of Preliminary Inquiries

6.8.1 Most glaringly the tabled **The Administration of Justice (Indictable Proceedings) Bill,** 2011 which proposes to effectively replace preliminary inquiries with sufficiency hearings conducted by Masters has only been partially proclaimed, with the preliminary inquiry procedure intact after twelve (12) years. This has been a critical missing piece in solving the proverbial criminal justice puzzle as the sufficiency hearing system is predicated on the office of the criminal master, which has been well implemented since 2019.

6.9 Generally, the concept of Active Case-Management, sufficiency hearings, judge alone trials and further emphasis on plea bargaining are all supportive of the impetus of better criminal justice delivery. What seems to be required is the timely implementation of the legislative infrastructure and further utilization of already available facets such as plea bargaining by stakeholders.

6.10 Permanency of the Public Defenders' Department

6.10.1 The PDD is a relatively new office that has the mandate to represent and ensure representation for persons at the High Court in criminal matters. The PDD's owes its existence to a cabinet note and not legislation. The Courts routinely order the Chief Public Defender to appoint attorneys to particular matters where persons are deemed without means and in need of legal aid representation at the High Court, this practice is codified by a **Practice Direction No. 40 of 2022** issued by the Chief Justice to ensure the commencement or progress of matters.

6.11 It is also a foreseeable problem that **The Administration of Justice (Indictable Proceedings) Bill,** 2011 allows no more than one extension of fourteen days to the prosecution to file and serve witness statements, to the accused to retain an attorney and to the Legal Aid and Advisory Authority to provide legal aid to the accused. The maintenance of the Public Defenders' Dept in a more permanent form is therefore critical to ensuring that Accused persons are properly represented upon the elimination of preliminary inquiries.

Legislative Proposals for The Improvement and Modernization of the Criminal Justice System

6.12 Improving Police Practices

6.12.1 The Police Standing orders were first issued as a consolidated bundle of subsidiary legislation in July 2001. Since that time there has been little to no update to the Standing Orders to reflect changes in technology or the shifting sands of the criminal

justice landscape. Examples of areas that are in need of updating would be (1) the police guidelines for the taking of statements to require a greater reliance on videotaped interviews with persons suspected of having committed a crime, (2) timelines for exhibits to be taken to the Forensic Science Centre, (3) Guidelines for the preservation of evidence at crime scenes, (4) Guidelines for the digitization of station diaries and pocket diaries that are no longer in use so as to preserve them for use in cases that come to trial late due to various factors.

6.13 Plea-Bargaining Guidelines

6.13.1 Currently while the implementation of the Plea-Bargaining legislation is a welcome step towards the reduction of the current backlog plaguing the criminal justice system, the time that it takes for a plea to go from initiation of the process to permission to enter into discussions to concluded plea agreement to sentence/disposition is entirely too long. This in turn delays the process as case management is often paused to allow the plea process to run its course as there may not need to be extensive documents filed to progress the case to trial. There are examples, however, of requests to enter into discussions sent by Counsel that have not been addressed until well over a year has passed. These matters were consequently not progressed in any meaningful way while waiting for the process to finish. Plea Bargaining would benefit from the implementation of guidelines which impose timelines for the various segments of the plea-bargaining process on both sides. The Plea-Bargaining legislation however does not contain these guidelines and it may be time for an amendment to the Act to either include the guidelines themselves or give the Attorney General the power to make regulations after consultation with the various stakeholders.

6.14 Sanctions for Non-Compliance with timelines set by the Master under the Criminal Procedure Rules

6.14.1 Currently the Criminal Procedure Rules while it provides for sanctions does not specifically set out what those sanctions are. This is another area that would benefit

from the implementation or augmentation of legislation with sanctions for non-compliance with disclosure orders, failure to file lists of witnesses, fresh evidence applications or any other application within the timeline set by the Court. This can serve the dual purpose of keeping the parties to timelines set by the Court as well as shortening the delay caused by adjournments to ensure compliance.

6.15 Statutory timelines

6.15.1 A significant cause of the delay in the criminal justice system is the lack of specific timelines for the filing of certain key documents. Legislation can be implemented to provide for timelines for the filing of the following: (1) Prosecution evidence, (2) completion of a Preliminary Inquiry or Sufficiency Hearing, (3) Trial Bundles, (4) Indictments and (5) filing of preparatory documents.

6.16 Judge Alone Legislation

6.16.1 While the PDD strongly suggests that there should not be mandatory judge alone trials for any offence for the reasons itemized above. It may be prudent in certain cases to allow the Prosecution the right to apply for a Judge-Alone trial in certain circumstances akin to the measures taken in the Belizean legislation outlined above.

F. THE PUBLIC DEFENDERS' DEPARTMENT PERSPECTIVE

Introduction

7.1 By Minute No. 1110 dated July 5th, 2018, Cabinet approved the establishment of a Public Defenders' Department (PDD) under the ambit of the Legal Aid and Advisory Authority (the Authority). This department was envisioned to be a key component to assist with the chronic delay and backlog of criminal matters in the judicial system. It is expected to deal specifically with the insufficient numbers of attorneys at the private external bar who were the only previous option for representation for those persons who required legal aid.

7.2 The PDD was operationalized with the assumption of the Head Legal Criminal/Chief Public Defender on March 2nd, 2020. The PDD is led by the Chief Public Defender (CPD) and the Deputy Public Defender (DPD) with an approved structure via cabinet note for thirty-six (36) Attorneys comprising the following positions:

Public Defender II Senior – nine (9) positions
Public Defender II Junior – nine (9) positions
Public Defender I - nine (9) positions
Public Defender Entry – nine (9) positions

7.3 To date, the PDD has hired twenty-nine (29) attorneys, while we are currently recruiting for three (3) entry level positions. The PDD also has a complement of staff allocated for administrative purposes, the PDD Registry. However, to date, we have only employed eight (8) administrative persons. There are also complementary positions of paralegals, investigators and social workers which are part of the department but have not yet been hired.

7.4 The PDD retains a significant portion of criminal matters at the High Court and the Court of Appeal for matters which fall under the **Legal Aid and Advice Act, Chapter 7:07**. The external panel, which consists of members of the external bar who have indicated a willingness to participate in the provision of legal aid services, also continue to be assigned criminal

matters at the High Court and the Court of Appeal. At this time, the Authority, Civil Advisory continues to deal with assignment of matters at the Magisterial level.

Internal Challenges faced by the PDD

7.5 During its infancy, the PDD commenced its operation in the midst of the Covid pandemic and thus the department operated in a hybrid manner along with many of the other criminal justice stakeholders for quite a substantial period of time. Now, with the large-scale return to physical environments, the operation of the PDD as intended, is much more ascertainable. Thus, the challenges faced by returning to work in a singular physical environment, and at an increased capacity are much more easily detectable. Some of the primary issues in this regard are as follows:

i. Limited physical space and infrastructure;
ii. Need for increased legal human resources;
iii. Need for increased support staff;
iv. Legitimisation through legislative reform/ legislative pinnings;
v. Review of terms and conditions; and
vi. Separate budget and/or increased allocation for the use of the Public Defenders' Department.

7.6 <u>Limited Physical Space and Infrastructure</u>

7.6.1 The physical department of the PDD operates primarily within two (2) floors of the Legal Aid & Advisory Authority building located at #23 Stanmore Avenue, Newtown, Port-of-Spain. These two floors are designed in an open-plan office layout and is intended to be utilised by thirty-six (36) Attorneys-at-Law as per our cabinet note and support staff of which only 8 are currently hired.

7.6.2 At present there are only 43 total cubicle spaces, which are occupied by 27 attorneys and 8 administrative staff. It should be noted that 3 of those 8 spaces will be filled shortly with entry level positions, and thereby mean there would be a balance of 5 spaces left for 8 attorneys. The current lack of physical accommodation thereby makes it impossible for the Department to hire further needed administrative staff and other complementary positions, specifically paralegals and social workers. It is therefore a current and immediate need for additional physical space.

7.6.3 **Recommendation:** Additional physical space is required as there is no room within the building for housing all the required legal and non-legal staff.

7.7 Improper accommodation/infrastructure for attorneys in discharge of their duties

7.7.1 While an open-plan office layout is a modern approach to office design, in its current format, with Attorneys-at-Law sharing partitions, it is impractical for use by Public Defenders who are required to perform in-office tasks such as, attending virtual court, conducting client and witness briefings, preparing complex legal submissions.

7.7.2 In addition to the impracticality of the layout, consequent effects of this type of design include an inability to comply with the mandatory directive outlined in the **Practice Direction contained in Gazette No 37 of 2022** and a lack of privacy when meeting with clients or conducting virtual visits. To that end, Public Defenders are required to use client interview rooms and/or the available training room. There are currently six (6) interview rooms in the building, three (3) on the ground floor, which are allocated to the Civil Advisory Section, who are required to use same to advise the public, and three (3) on the 2nd Floor allocated to the Public Defenders' Department. There is one training room on the 3rd Floor and one conference room on the 6th Floor which are for the use of all departments in the Legal Aid and Advisory Authority.

7.7.3 As such, due to the limited number of interview rooms and the high demand for use of the training and conference room, to which preference is given to those who are

conducting virtual trials or other members of the Legal Aid & Advisory Authority who have booked same, means that more infrastructure is needed for the Department to run as efficiently as it can.

7.7.4 **Recommendation:** Enclosed offices to allow attorneys to conduct virtual trials, which would eliminate the need for additional interview rooms and other enclosed spaces to be created.

7.8 Need for additional Attorneys

7.8.1 There is a direct co-relation between the inadequacy of the physical infrastructure to the ability to acquire additional staff. Notwithstanding this, in light of the current remit of the Department and the anticipated increased workload that will arise from the implementation of legislative reform, one such example of which would be the implementation of AJIPA, there is a clear need to obtain additional staffing, both on the administrative and legal levels. At present, Public Defenders attend to all of the following which is not exhaustive:

i. Fast-Track Court;

ii. Case management hearings and Trials at all of the High Courts;

iii. Magisterial Appeals;

iv. High Court Appeals;

v. Prison Visits for internal legal aid clients;

vi. Processing of Form IXs for all legal aid applicants at the Prison;

vii. Committal Bundle Reviews;

viii. Welfare Issues for legally aided clients in prison;

ix. Bail Applications for High Court and Fast Track clients;

x. Legislative Review; and

xi. Participation in Committees as requested.

7.8.2 When one considers the number of matters that currently require legal aid attorneys, and the paucity of the external bar as it relates to criminal practitioners who have expressed a willingness to provide services, the only conclusion can be that without an injection of additional resources, legal aid clients will face a disadvantage. The current average ratio of cases assigned to each public defender is twenty-five (25) matters. It should be noted that since our jurisdiction is not primarily based on plea bargaining, these matters are being prepared from assignment to trial. Other jurisdictions where plea bargaining is the norm and/or the preferred approach the assigned case numbers are higher per public defender. The case assignment does not change the requirement for a public defender to be engaged in multiple other tasks as mentioned at 5.4.

7.8.3 The bar graph below at Figure 3 and accompanying table at Table 1 illustrate the number of requests for assignments that emanate from the High Court and Court of Appeal for assignment of legal aid attorneys. For the year 2023, January to April, we have already received 925 requests for legal aid attorneys. The current number of matters internally are approximately 1100 matters between the 29 public defenders. This includes some matters which are assigned to the department as a whole such as those matters without indictments where we rotate representation amongst the 29 public defenders monthly.

7.8.4 When one considers the statistics provided, it is inevitable that a significant number of matters are still being outsourced. In light of our current complement, it simply would

not be possible to retain all of the matters for which assignments are needed, to have them conducted internally. Not only would it be unproductive and contrary to good sense to attempt to keep all matters internally as our limited number of Public Defenders can only do a limited number of matters at a time, but it would also lead to delay for the clients and further add to the delay within the criminal justice system.

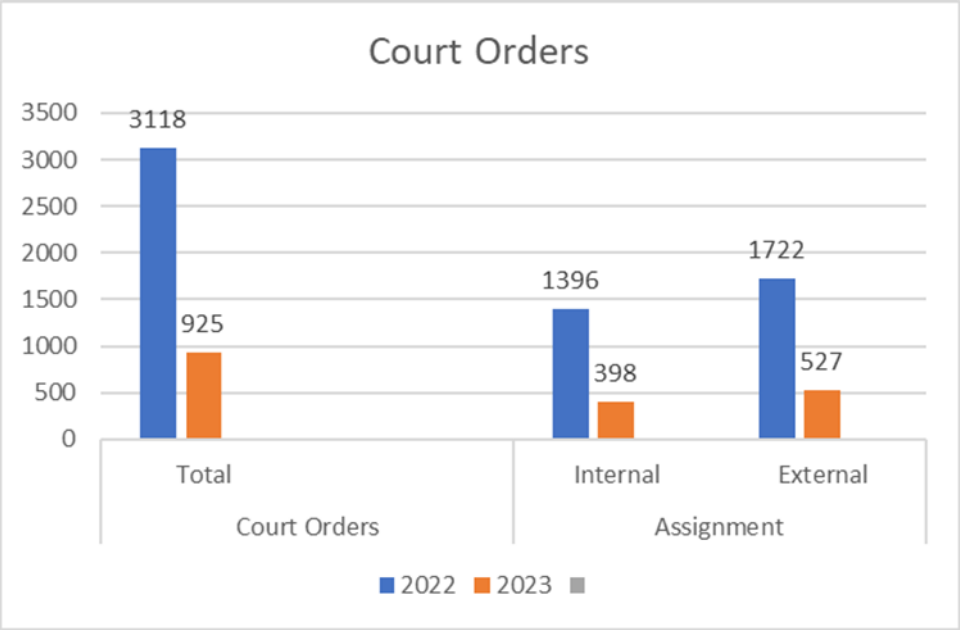

Figure 3: Court Orders Received for 2022 and 2023

COURT ORDERS			
Year	**Court Orders**	**Assignment**	
	Total	**Internal**	**External**
2022	3118	1396	1722
2023	925	398	527
Total	**4043**	**1794**	**2249**

Table 1: Court Orders Received for 2022 and 2023

7.8.5 Another important service which the PDD provides is representation to accused persons before the Fast Track Court. This Court is so-named as its fundamental objective is to hasten the process from the culmination of committal proceedings to the filing of an indictment for accused persons who have indicated an intention to

plead guilty to the offence(s) charged. This Court is presided over by the Registrar of the Supreme Court. The role of the Public Defender during these hearings is to ascertain the following information: (i) the preparation of the committal bundle by the Magistrate's Court, (ii) the preparation and filing of the indictment by the DPP's office (iii) any welfare concerns of the Accused person. Any welfare or bail related issues raised by the Accused person during these hearings is subsequently tasked to a Public Defender for further follow-up and resolution. There is also the requesting and review of the committal bundles of these persons to determine whether viable pleas exist. If so, instructions are sought and representations are made for plea bargaining with the DPP's office.

7.8.6 Since inception, the PDD has had oversight of 388 matters on the Fast Track List. To date, the department was able to provide representation to accused persons during this process and a total of 133 indictments have been filed. Currently, there are 255 matters awaiting the filing of indictments which are at various stages of the process at the DPP's office.

7.8.7 For the period April 2022 to April 2023, the PDD received 787 requests from inmates for prison visits throughout the various prisons in the country. During this period, the Public Defenders of the PDD processed 570 Form IX applications for persons requiring legal aid representation. Although the Department received 787 requests from inmates for virtual visits, in fact, a total of 1175 virtual visits were conducted by the PDD during the period April 2022 to April 2023 of whereby inmates were provided with legal advice and legal assistance inclusive of but not limited to welfare letters, bail applications and status updates on their matters.

7.9 Need for Additional Administrative Staff

7.9.1 In the same way that additional legal staff is required, it is also true that additional administrative support staff is needed.

7.9.2 By Cabinet Note, the PDD has been allocated the following support staff:

POSITION	AMOUNT OF SUPPORT STAFF ALLOCATED
Legal Research Officer I	3
Research Officer II	2
Clerk Typist	4
Clerk Typist II	3
Library Assistant	1
Receptionist/Telephone Operator	1
Cashier II	1
Cashier I	1
IT Assistant	1
Filing and Processing Clerk	3
Business Operations Co-ordinator	1 (filled)
Business Operations Assistant II	2 (filled)
Business Operations Assistant I	5 (filled)

Table 2: PDD Support Staff Allocation

7.9.3 As of present, only eight (8) positions were filled, and all persons assumed duties as per ministerial approval, which are the business operations positions as indicated above.

7.9.4 The current complement of staff are the persons who are primarily responsible for the administration of the department from the request for legal aid until the matter is disposed. The registry utilizes an electronic Legal Management Case System (LCMS) therefore all assignments/requests are tasked via the system with a delivery date thereby monitoring the efficiency and effectiveness of the delivery of service. The administrative staff manages the following portfolios:

i. Monitoring and responding to the Department's general emails;

ii. Management and recording of Incoming and Outgoing Mails via the electronic (LCMS) and paper filing;

iii. Drafting and issuing letters (assignment and reassignment of attorneys, etc.);

iv. Fast Track Bundles;

v. Prison requests for internal and external attorneys;

vi. Manage and facilitate virtual prison visits for external attorneys;

vii. Logging of Criminal Court Orders & Depositions;

viii. Requisition for Fees;

ix. Processing of Duty Counsel fees;

x. Answering queries from internal, external attorneys and other stakeholders;

xi. Maintenance of the multiple statistical documents for records of PDD; and

xii. Scanning, copying, and bundling court documents.

7.9.5 Once a request has been made to the Authority for legal representation, the department's administrative process is engaged, and the matter is managed by the PDD until its completion. All these systems and procedures in place are necessary to ensure that the legal aid clients are actively served with the end product of legal representation.

7.9.6 It should be noted that currently the senior members of staff namely the Chief Public Defender and the Deputy Public Defender function without any administrative staff, as all administrative staff are required to function within the PDD Registry due to the limited numbers.

7.9.7 As seen above, the PDD Cabinet's note also provides for other attendant roles of clerk typist, messengers and IT personnel, paralegals, investigators, and social workers. However, to date, those roles have not been filled. This is primarily due to there being no room to facilitate these persons and we have had to use the available cubicles for the staffing of legal persons. It is an obvious hindrance to the efficiency of the department whereby the workload requires more staff both in the registry functions, as well as administrative personnel to the senior members of staff.

7.9.8 **Recommendation:** Sourcing of additional physical space for hiring and housing of additional administrative staff. The most urgent hires include the legal research officers/paralegals; clerk typists; IT assistant and research officers/investigators.

7.10 Review of terms and conditions for staff retention

7.10.1 An observation of the Current Terms and Conditions which ended on May 31, 2022 shows that that they are not particularly different from the oft complained terms and conditions which the Office of the Director of Public Prosecutions currently have. It can be seen the more senior positions inclusive of the Chief Public Defender and Deputy Chief Public Defender earn significantly less than their counterparts at the DPP's office and as managers in the public service. Benefits such as car loan facilities have also not been provided for in adequate terms so the current employees are unable to access it.

7.10.2 Whilst the Public Defenders' Department has tried to manage its workload and work culture to encourage public defenders to stay employed, there is the real concern of staff retention. This becomes particularly more problematic when significant time and resources have been expended in training and mentorship that is lost when persons depart the office.

Contract Positions in the Public Service – Legal Category	Public Defenders' Positions in the Legal Aid and Advisory Authority Current ending – May 31, 2022
There are no contract positions in the legal category that bears a similar job description to the Chief Public Defender. The Chief Public Defender is required to have a dual function role of active criminal litigation in addition to management/ administrative role. **Director of Public Prosecutions** - (2013 Salaries Review Commission Report) Bears dual function of management and active criminal litigation as head of the organization of the Office of the Director of Public Prosecutions. • Salary- $32,700,00 • Professional Allowance- $6250.00 • Duty Allowance- $3270.00 • Service Allowance- $5050.00 • Transport Allowance- $4200.00 • Housing Allowance- $7740.00 • Car Loan Facility- Maximum loan of $250,000 at a rate of interest of 6% per annum repayable over a period of six (6) years to facilitate the purchase of either:- (a) a new motor vehicle with exemption from Motor Vehicle Tax limited to the amount payable on a vehicle with an engine capacity of 1999cc and exemption from Value Added Tax to a maximum of $45,000; or (b) a used	**Head Legal Criminal/Chief Public Defender –over 10 years' experience - Head of Public Defenders' Office** Current Job Description: - Train, mentor, evaluate, supervises attorneys and support personnel - Represents LAAA for Court and other entities for policy issues. - Reviews systems, policies, procedures and makes recommendations for improved productivity and quality. - Participate/supervises legislative review and makes recommendations on behalf of LAAA - Prepare reports for department for internal and external entities. • Salary - $26,250.00 • Transport Allowance - $3,200.00 • Special Allowance - $2,200.00 • Subsistence (daily) - $200.00 (when assigned to sub offices) • Car Loan Facility - $180.000.00 exclusive of VAT repayable over a two-year period at a rate of 6% per annum

motor vehicle with exemption from Special Motor Vehicles Tax limited to the maximum amount payable in respect of Motor Vehicle Tax on a vehicle at (a) above and exemption from Value Added Tax to a maximum of $45,000. • Pension **Deputy Director of Public Prosecutions** – (2013 Salaries Review Commission Report) • Salary - $27,850.00 • Transport Allowance - $3,900.00 • Professional Allowance - $3,200.00 • Housing Allowance- $4620.00 • Subsistence (daily) - $200.00 (when assigned to sub offices) • Car Loan facility- Maximum loan of $250,000 at a rate of interest of 6% per annum repayable over a period of six (6) years to facilitate the purchase of either:- (a) a new motor vehicle with exemption from Motor Vehicle Tax limited to the amount payable on a vehicle with an engine capacity of 1999cc and exemption from Value Added Tax to a maximum of $45,000; or (b) a used motor vehicle with exemption from Special Motor Vehicles Tax limited to the maximum amount payable in respect of Motor Vehicle Tax on a vehicle at (a) above and exemption	• Gratuity- 20% of gross salary of contract period subject to tax upon successful completion of the contract.

from Value Added Tax to a maximum of $45,000. • Pension **Top Manager – Statutory Bodies** (2013 Salaries Reviews Commission- responsible for administering and directing the policies and procedures of those Statutory Bodies which provide services to the citizens of the Republic of Trinidad and Tobago) • Salary- $31,950.00 • Transport Allowance - $3900.00 • Service Allowance- $5050.00 • Housing -$7740.00 • Subsistence Allowance- $200.00 (outside of 16 km radius) • Pension/Gratuity • Car Loan Facility- Maximum loan of $250,000 at a rate of interest of 6% per annum repayable over a period of six (6) years to facilitate the purchase of either:- (a) a new motor vehicle with exemption from Motor Vehicle Tax limited to the amount payable on a vehicle with an engine capacity of 1999cc and exemption from Value Added Tax to a maximum of $45,000; or (b) a used motor vehicle with exemption from Special Motor Vehicles Tax limited to the maximum amount payable in respect of Motor Vehicle Tax on a vehicle at (a) above and exemption	

from Value Added Tax to a maximum of $45,000. • Pension	
There are no contract positions in the legal category that bears a similar job description to the Deputy Public Defender. The Deputy Public Defender is required to have a dual function role of active criminal litigation in addition to management/ administrative role. **Assistant Director of Public Prosecutions –** • Salary - $25,860.00 • Transport Allowance - $3,900.00 • Professional Allowance - $3,000.00 • Subsistence (daily) - $200 per day when assigned out of head office • Car Loan Facility - Maximum loan of $250,000 at a rate of interest of 6% per annum repayable over a period of six (6) years to facilitate the purchase of either:- (a) a new motor vehicle with exemption from Motor Vehicle Tax limited to the amount payable on a vehicle with an engine capacity of 1999cc and exemption from Value Added Tax to a maximum of $45,000; or (b) a used motor vehicle with exemption from Special Motor Vehicles Tax limited to the maximum amount payable in respect of Motor Vehicle Tax on a vehicle at (a) above and exemption	**Team Lead Criminal/Deputy Public Defender** Current Job Description: - Represents LAAA for Court and other entities for policy issues. - Reviews systems, policies, procedures and makes recommendations for improved productivity and quality. - Participate/supervises legal opinions, legislative reviews and makes recommendations on behalf of LAAA - Participate/supervises court case preparation work, assign, review, mentor, supervise junior attorneys • Salary – $25,725.00 • Transport Allowance – $3,200.00 • Special Allowance – $1,800.00 • Subsistence (daily) – $200.00 per day when assigned to sub-offices • Car Loan Facility – $180,000.00 exclusive of VAT repayable over a two-year period at a rate of 6% per annum • Gratuity- 20% of gross salary of contract period subject to tax upon successful completion of the contract.

from Value Added Tax to a maximum of $45,000. • Pension **Top Manager (Deputy) – Statutory Bodies** (2013 Salaries Reviews Commission- responsible for administering and directing the policies and procedures of those Statutory Bodies which provide services to the citizens of the Republic of Trinidad and Tobago) • Salary- $26,980.00 • Transport Allowance - $3900.00 • Housing -$4620.00 • Subsistence Allowance- $200.00 (outside of 16 km radius) • Pension/Gratuity • Car Loan Facility- Maximum loan of $250,000 at a rate of interest of 6% per annum repayable over a period of six (6) years to facilitate the purchase of either:- (a) a new motor vehicle with exemption from Motor Vehicle Tax limited to the amount payable on a vehicle with an engine capacity of 1999cc and exemption from Value Added Tax to a maximum of $45,000; or (b) a used motor vehicle with exemption from Special Motor Vehicles Tax limited to the maximum amount payable in respect of Motor Vehicle Tax on a vehicle at (a) above and exemption	

from Value Added Tax to a maximum of $45,000.	
There are no contract positions in the legal category that bears a similar job description to the Public Defender II Senior. The closest counterpart with a similar JD in criminal practice is DPP Senior State Counsel. **DPP - Senior State Counsel** • Salary – $24,870.00 • Transport Allowance – $3,480.00 • Professional Allowance - $2,900.00 • Subsistence (daily) - $200 per day (when assigned out of the head office) • Car Loan Facility – maximum loan of $180,000 at a rate of interest of 6% per annum repayable over a period of six (6) years to facilitate the purchase of either:- (a) a new motor vehicle with exemption from Motor Vehicle Tax limited to the amount payable on a vehicle with an engine capacity of 1799cc and exemption from Value Added Tax limited to the amount payable on a vehicle costing $180,000; or (b) a used motor vehicle with exemption from Special Motor Vehicles Tax limited to the maximum amount payable in respect of Motor Vehicle Tax on a vehicle at (a) above and exemption from Value Added Tax	**Public Defender II Senior** *(*Over 10 years' experience) • Salary – $24,675.00 • Transport Allowance – $3,200.00 • Special Allowance – $1,800.00 • Subsistence (daily) – $200.00 • Car Loan Facility - $180,000.00 exclusive of VAT repayable over a two-year period at a rate of 6% per annum • Gratuity- 20% of gross salary of contract period subject to tax upon successful completion of the contract.

limited to the amount payable on a vehicle costing $180,000. • Pension	
Contract Positions in the Public Service – Legal Category	**Public Defenders' Positions at the Legal Aid and Advisory Authority** **Current ending – May 31, 2022**
There are no contract positions in the legal category that bears a similar job description to the Public Defender II Junior. The closest counterpart with a similar JD in criminal practice is DPP State Counsel III. **DPP – State Counsel III** • Salary - $22,130.00 • Transport Allowance - $3,480.00 • Special Allowance - $2,700.00 • Subsistence (daily) - $200.00 per day (when assigned out of the head office) • Car Loan Facility - $180,000.00 at a rate of 6% per annum repayable over a period of six (6) years with exemption from VAT up to the amount payable for a vehicle worth $180,000.00 • Pension • Car Loan Facility- maximum loan of $180,000 at a rate of interest of 6% per annum repayable over a period of six years to facilitate the purchase of either:- (a) a new motor vehicle with exemption from Motor	**Public Defender II Junior** *(*Over 5 years' experience) • Salary – $22,575.00 • Transport Allowance – $3,200.00 • Special Allowance – $1,700.00 • Subsistence (daily) – $200.00 (when assigned to sub offices) • Car Loan Facility - $160,000.00 exclusive of VAT repayable over a two-year period at a rate of 6% per annum • Gratuity- 20% of gross salary of contract period subject to tax upon successful completion of the contract.

Vehicle Tax limited to the amount payable on a vehicle with an engine capacity of 1799cc and exemption from Value Added Tax limited to the amount payable on a vehicle costing $180,000; or (b) a used motor vehicle with exemption from Special Motor Vehicles Tax limited to the maximum amount payable in respect of Motor Vehicle Tax on a vehicle at (a) above and exemption from Value Added Tax limited to the amount payable on a vehicle costing $180,000.	
There are no contract positions in the legal category that bears a similar job description to the Public Defender I. The closest counterpart with a similar JD in criminal practice is DPP State Counsel II. **DPP – State Counsel II** • Salary - $20,390.00 • Transport Allowance - $2,880.00 • Special Allowance - $1,900.00 • Subsistence (daily) - $200.00 per day (when assigned out of the head office) • Car Loan Facility - - maximum loan of $160,000 at a rate of interest of 6% per annum repayable over a period of six years to facilitate the purchase of either:- (a) a new motor vehicle with exemption from Motor	**Public Defender I** (2-5 years' experience) • Salary – $19,950.00 • Transport Allowance – $3,200.00 • Special Allowance – $1,700.00 • Subsistence (daily) – $200.00 (when assigned to sub offices) • Car Loan Facility – $160,000.00 exclusive of VAT repayable over a two-year period at a rate of 6% per annum • Gratuity- 20% of gross salary of contract period subject to tax upon successful completion of the contract.

Vehicle Tax limited to the amount payable on a vehicle with an engine capacity of 1799cc and exemption from Value Added Tax limited to the amount payable on a vehicle costing $160,000; or (b) a used motor vehicle with exemption from Special Motor Vehicles Tax limited to the maximum amount payable in respect of Motor Vehicle Tax on a vehicle at (a) above and exemption from Value Added Tax limited to the amount payable on a vehicle costing $160,000. • Pension	
There are no contract positions in the legal category that bears a similar job description to the Public Defender Entry. The closest counterpart with a similar JD in criminal practice is DPP State Counsel I. **DPP – State Counsel I** • Salary - $12,310.00 (under 2 years in service; $16,040.00 (over 2 years in service) • Transport Allowance - $2,880.00 • Special Allowance - $1,900.00 • Subsistence (daily) - $200.00 per day (when assigned out of the head office) • Car Loan Facility - - maximum loan of $160,000 at a rate of interest of 6% per annum repayable over a period of six years to facilitate the purchase of either:- (a) a new	**Public Defender Entry** *(*Less than 2 years) • Salary – $17,850.00 • Transport Allowance – $3,200.00 • Special Allowance – $1,700.00 • Subsistence (daily) – $200.00 (when assigned to sub offices) • Car Loan Facility - $160,000.00 exclusive of VAT repayable over a two-year period at a rate of 6% per annum • Gratuity- 20% of gross salary of contract period subject to tax upon successful completion of the contract.

motor vehicle with exemption from Motor Vehicle Tax limited to the amount payable on a vehicle with an engine capacity of 1799cc and exemption from Value Added Tax limited to the amount payable on a vehicle costing $160,000; or (b) a used motor vehicle with exemption from Special Motor Vehicles Tax limited to the maximum amount payable in respect of Motor Vehicle Tax on a vehicle at (a) above and exemption from Value Added Tax limited to the amount payable on a vehicle costing $160,000. • Pension	

Table 2: Comparative Terms and Conditions

7.10.3 Since the expiry of the Terms and Conditions for the Public Defenders' Department, a new proposal has been submitted for approval by the Chief Personnel Officer. To date, there is no approval of this which affects payments of gratuities. By extension therefore, public defenders have finished their first two-year contract, have almost completed one year of their new contract but are yet to be paid their gratuities due and owing. This is also demotivating to the staff who work very diligently to successfully complete their contracts to receive same. It is noted with concern that in other state agencies, persons are paid their gratuities immediately upon completion of their contract or shortly thereafter because it is a binding term of the contract which is not hinged upon new terms and conditions which are subject to negotiation.

7.10.4 The suggested Terms and conditions awaiting approval are as follows:-

Head Legal Criminal/Chief Public Defender- over 10 years experience- Head of Public Defenders' Office

Proposed Terms and Conditions:

- Salary - $32,027.50 to $36,742.50

Suggested Increase in considered of what the closest equivalent Deputy DPP is currently paid from 2013 recommendations plus 15% increase as the lesser range and the higher range of what a top manager is paid currently from 2013 recommendations plus 15% increase.

- Transport Allowance - $3,900.00- $4200.00

Proposed increase of $ 700.00 to $1000.00 in keeping with the range of Managers in the Public Service.

- Duty Allowance- $3270.00

Proposed addition of duty allowance as a holder of those offices who must always be available to respond to the demands of their offices outside of working hours. The offices to which the allowance applies are generally at the most senior levels.

- Special Allowance - $3,200.00

Proposed increase of $1,200.00 in keeping with the absence of professional allowance, whereby holder of the office must be an attorney to hold this office, and the current allowance provided for Deputy DPP who is the closest counterpart in salary.

- Housing Allowance- $4620.00 -$7740.00

Proposed addition in keeping with the current allowance provided for Deputy DPP who is the closest counterpart in salary but noting top managers are provided an allowance of

$7740.00. This allowance is provided for office holders to assist in obtaining suitable residence accommodation.

- Subsistence (daily) - $200.00 (when assigned to sub offices)

- Car Loan Facility

Maximum loan of $250,000 at a rate of interest of 6% per annum repayable over the period of engagement to facilitate the purchase of either:- (a) a new motor vehicle with exemption from Motor Vehicle Tax limited to the amount payable on a vehicle with an engine capacity of 1999cc and exemption from Value Added Tax to a maximum of $45,000; or (b) a used motor vehicle with exemption from Special Motor Vehicles Tax limited to the maximum amount payable in respect of Motor Vehicle Tax on a vehicle at (a) above and exemption from Value Added Tax to a maximum of $45,000.

Change to car loan facility in keeping with public service provision for managers. Current car loan facility is not properly defined in its terms and was unable to be accessed.

- Gratuity

20% of gross salary of contract period subject to tax upon successful completion of the contract. (Paid in lieu of pension)

Team Lead Criminal/Deputy Public Defender

Proposed Terms and Conditions:

- Salary – $29,739.00 to $31,027.00

Suggested Increase in considered of what the closest equivalent Asst DPP is currently paid from the 2013 recommendations plus 15% increase as the lesser range and the higher range of what a top manager (deputy) is paid currently from the 2013 recommendations plus 15% increase.

- Transport Allowance – $3,900.00

Proposed Increase of $700.00 in keeping with the rate of counterpart Asst DPP and with deputy managers in public service.

- Special Allowance – $3000.00

Proposed increase of $1200.00 in keeping with the rate of the counterpart Asst DPP and in absence of professional allowance where this office holder is required to be an attorney.

- Housing Allowance - $4620.00

Proposed addition in keeping with the top managers (deputy). This allowance is provided for office holders to assist in obtaining suitable residence accommodation.

- Subsistence (daily) – $200.00 per day when assigned to sub offices

- Car Loan Facility

Maximum loan of $250,000 at a rate of interest of 6% per annum repayable over a period of engagement:- (a) a new motor vehicle with exemption from Motor Vehicle Tax limited to the amount payable on a vehicle with an engine capacity of 1999cc and exemption from Value Added Tax to a maximum of $45,000; or (b) a used motor vehicle with exemption from Special Motor Vehicles Tax limited to the maximum amount payable in respect of Motor Vehicle Tax on a vehicle at (a) above and exemption from Value Added Tax to a maximum of $45,000.

Change to car loan facility in keeping with public service provision for managers. Current car loan facility is not properly defined in its terms and was unable to be accessed.

- Gratuity

20% of gross salary of contract period subject to tax upon successful completion of the contract. (Paid in lieu of pension)

Public Defender II Senior (Over 10 years' experience)

Proposed Terms and Conditions:

- Salary - $28,600.50

Proposed Increase in consideration of what the closest equivalent DPP Senior State Counsel is currently paid from the 2013 recommendations plus 15% increase.

- Transport Allowance - $3,480.00

- Special Allowance - $2,900.00

Proposed increase in keeping of what the closest equivalent DPP Senior State Counsel currently receives for transport. Special allowance increase in keeping the absence of the professional allowance and the requirement that the holder of this position required to be an attorney.

- Subsistence (daily) - $200.00 (when assigned to sub offices)

- Car Loan Facility

Maximum loan of $180,000 at a rate of interest of 6% per annum repayable over a period of engagement to facilitate the purchase of either:- (a) a new motor vehicle with exemption from Motor Vehicle Tax limited to the amount payable on a vehicle with an engine capacity of 1799cc and exemption from Value Added Tax limited to the amount payable on a vehicle costing $180,000; or (b) a used motor vehicle with exemption from Special Motor Vehicles Tax limited to the maximum amount payable in respect of Motor Vehicle Tax on a vehicle at (a) above and exemption from Value Added Tax limited to the amount payable on a vehicle costing $180,000.

Change to car loan facility in keeping with public service provision for equivalent position. Current car loan facility is not properly defined in its terms and was unable to be accessed.

- Gratuity

20% of gross salary of contract period subject to tax upon successful completion of the contract. (paid in lieu of pension)

Public Defenders' Positions at the Legal Aid and Advisory Authority

Proposed June 01, 2022 – May 31, 2025

New Terms and Conditions

Public Defender II Junior (Over 5 years' experience)

Proposed Terms and Conditions:

- Salary - $25,961.25

Proposal of 15% increase.

- Transport Allowance - $3,480.00

- Special Allowance - $2,700.00

Proposed increase in keeping of what the closest equivalent DPP State Counsel III currently receives for transport. Special allowance increase in keeping with equivalent position and the absence of the professional allowance and the requirement that the holder of this position required to be an attorney.

- Subsistence (daily) - $200.00 (when assigned to sub offices)

- Car Loan Facility

Maximum loan of $180,000 at a rate of interest of 6% per annum repayable over the period of engagement to facilitate the purchase of either:- (a) a new motor vehicle with exemption from Motor Vehicle Tax limited to the amount payable on a vehicle with an engine capacity of 1799cc and exemption from Value Added Tax limited to the amount payable on a vehicle costing $180,000; or (b) a used motor vehicle with exemption from Special Motor Vehicles Tax limited to the maximum amount payable in respect of Motor Vehicle Tax on a vehicle at (a) above and exemption from Value Added Tax limited to the amount payable on a vehicle costing $180,000.

Change to car loan facility in keeping with public service provision for equivalent position. Current car loan facility is not properly defined in its terms and was unable to be accessed

- Gratuity

20% of gross salary of contract period subject to tax upon successful completion of the contract. (paid in lieu of pension)

Public Defender I (2-5 years' experience)

Proposed Terms and Conditions:

- Salary – $23,448.50

Proposed Increase in consideration of what the closest equivalent DPP State Counsel II is currently paid from the 2013 recommendations plus 15% increase.

- Transport Allowance – $3,200.00

- Special Allowance – $1,900.00

Proposed increase of $200.00 in line with DPP State Counsel II and in keeping the absence of the professional allowance and the requirement that the holder of this position required to be an attorney

- Subsistence (daily) – $200.00 (when assigned to sub offices)

- Car Loan Facility

Maximum loan of $160,000 at a rate of interest of 6% per annum repayable over the period of engagement to facilitate the purchase of either:- (a) a new motor vehicle with exemption from Motor Vehicle Tax limited to the amount payable on a vehicle with an engine capacity of 1799cc and exemption from Value Added Tax limited to the amount payable on a vehicle costing $160,000; or (b) a used motor vehicle with exemption from Special Motor Vehicles Tax limited to the maximum amount payable in respect of Motor Vehicle Tax on a vehicle at (a) above and exemption from Value Added Tax limited to the amount payable on a vehicle costing $160,000.

Change to car loan facility in keeping with public service provision for equivalent position. Current car loan facility is not properly defined in its terms and was unable to be accessed.

- Gratuity

20% of gross salary of contract period subject to tax upon successful completion of the contract. (paid in lieu of pension)

Public Defender Entry (Less than 2 years)

Proposed Terms and Conditions:

- Salary – $20,527.50

Proposed increase of 15%.

- Transport Allowance – $3,200.00

- Special Allowance – $1,700.00

- Subsistence (daily) – $200.00 (when assigned to sub offices)

- Car Loan Facility

Maximum loan of $180,000 at a rate of interest of 6% per annum repayable over the period of engagement to facilitate the purchase of either:- (a) a new motor vehicle with exemption from Motor Vehicle Tax limited to the amount payable on a vehicle with an engine capacity of 1799cc and exemption from Value Added Tax limited to the amount payable on a vehicle costing $180,000; or (b) a used motor vehicle with exemption from Special Motor Vehicles Tax limited to the maximum amount payable in respect of Motor Vehicle Tax on a vehicle at (a) above and exemption from Value Added Tax limited to the amount payable on a vehicle costing $180,000.

Change to car loan facility in keeping with public service provision for equivalent position. Current car loan facility is not properly defined in its terms and was unable to be accessed.

- Gratuity

20% of gross salary of contract period subject to tax upon successful completion of the contract. (paid in lieu of pension).

Table 3: Suggested Terms and Conditions for PDD awaiting approval

7.11 Parity of Infrastructure for Defence and Prosecution

7.11.1 The Public Defenders' Department was envisioned to be the criminal defence counterpart to the Office of the Director of Public Prosecutions.

7.11.2 The staffing structure between the two offices is quite different, however: -

The Office of the Director of Public Prosecutions have the following posts on establishment:

i. State I – thirty-three (33) posts (18 vacant)
ii. State II- forty-six (46) posts (22 vacant)
iii. State III- twenty-five (25) posts (16 vacant)
iv. Senior State Counsel – fifteen (15) posts (13 vacant)
v. Assistant DPP- six (6) posts (2 vacant)
vi. Deputy DPP- three (3) posts (2 vacant)
vii. DPP- one (1) post (0 vacant)

7.11.3 It has constantly been indicated by the current DPP that these posts have been underfilled and understaffed due to a high level of attrition. In addition, there are contractual positions that currently exist within the framework that allows for additional capacity.

7.11.4 The PDD has no established positions, nor do we have additional positions that allow for additional capacity when needed. As such, when one considers the PDD legal capacity:

i. PD Entry which is the equivalent of State I that bears no level of experience, we have a maximum capacity of nine (9) posts compared to thirty-three (33) posts.

ii. PD I which is the equivalent of State II up to 4 years of experience, we have a maximum capacity of nine (9) posts compared to forty-six (46) posts.

iii. PD II Junior, which is the equivalent of State III, we have a maximum capacity of nine (9) posts to their twenty-five (25) posts.

iv. PD II Senior, which is the equivalent of Senior State Counsel, we have a maximum capacity of nine (9) posts to their fifteen (15) posts.

v. PDD has no provision for Assistants, nor do we have provision for more than one Deputy, so we have two posts, Chief and Deputy that cover the work of ten (10) senior posts at the DPP level.

7.11.5 It should be noted that some of the DPP's attorneys are currently assigned to magisterial districts, but this is subject to change upon the commencement of AJIPA, whereby all matters of an indicatable nature would be heard in the High Court where the PDD is based. Our staffing complement of 29 attorneys simply does not allow for magisterial matters to be dealt with at this time.

7.11.6 In relation to infrastructure, the DPP's office is to be moved to a new building which has been outfitted specifically for their needs which includes offices for legal staff and the attendant provisions for support staff. It is expected to house the approved number of attorneys namely approximately 129 attorneys.

7.11.7 It is imperative that similar provisions are put in place in terms of infrastructure to allow for the Public Defenders' Department to function at an equivalent level.

7.11.8 **Recommendation:** Consideration to be given to an increase in complement that is more in line with the current and expected increase in workload. Consideration to be given to improved infrastructure on par with the DPP's office.

7.12 Legitimization through legislative underpinning

7.12.1 The PDD was initiated by virtue of a pilot project via cabinet note by which there is no legislative underpinning. Therefore, although employees' contracts have been renewed, there is a lack of permanency for the PDD having regard to the fact that there it was not a creature of statute.

7.12.2 **Recommendation:** Establishment of the Public Defenders' Department in legislation.

7.13 Separate vote in the Budget for Public Defenders' Department/ Increased Allocation for the Use of the Public Defenders' Department

7.13.1 Currently, the Public Defenders' Department has no separate vote and/or budgetary allocation. All monies expended come from the general Legal Aid and Advisory Budget.

7.13.2 There is the constant allocation of 40 million dollars for the entire of the Legal Aid and Advisory Authority. This amount is well below the requested figures which usually amount to approximately 75 million dollars. The items which are most important to the Public Defenders' Department include the vote for Training and for Publicity. These items are approximately $180,000.00 and $125,000.00 respectively. These are not fixed line items which means that it has to be requested and balanced against the other more urgent expenses of the Authority.

7.13.3 When one factors in the expenses of the LAAA:

i. Salaries of the persons employed- legal and non-legal staff. Salaries for the PDD attorneys alone amount in the vicinity of 11-12million dollars annually.

ii. Rent for the buildings. Currently the rent for Stanmore Avenue is approximately 7 million yearly.

iii. Payments to external panel attorneys.

iv. Overheads- electricity, internet, telephones, cellular phones.

7.13.4 There is very little left over to facilitate the training and resources that are currently needed by the Public Defenders' Department. Resources are needed to build awareness and visibility in addition to being able to provide funds for training. As a new department of only three years old, we need to be able to invest into the department and a lack of funds makes it virtually impossible to do that.

7.13.5 **Recommendation**: A separate vote item for Public Defenders' Department will allow for the specific needs of the department to be met.

7.14 Other Challenges faced by the PDD

7.14.1 Underutilization of alternative means of disposition of matters on the Criminal Justice System:

i. MSI / Goodyear Hearings;
ii. Plea Bargaining;
iii. Guilty Plea; and
iv. Discontinuance.

7.14.2 Lack of Consultations amongst Key Stakeholders: There is a lack of meaningful and solution-oriented stakeholder engagement and consultations amongst the key agencies and institutions that comprise the Criminal Justice System to address the deficiencies and critical challenges, and to provide suggestions on the areas for improvement.

7.14.3 Delays caused due to the limitations of major Stakeholders in the Criminal Justice System e.g.:

i. The Forensic Science Centre;
ii. The Medical issues e.g. Mental Health Professionals;

iii. The limited size of the Criminal Bar causes delays in the course of case and trial management as the Court is forced to consider the scheduling conflicts when these attorneys are also before other equally constituted Courts.

iv. Understaffing of the Office of the Director of Public Prosecution causes delays in the course of case and trial management as well; no Prosecutions at the Criminal Assizes or Court of Appeal can be advanced without a prosecutorial team. Further these limitations also exist at the Magisterial level and inhibit many initiatives instituted by the Judiciary and other stakeholders

in the Criminal Justice Process including but not limited to the Children's Court, the resolution of matters via the Plea-bargaining process and the expedited filing of indictments in the Fast Track Court.

v. Understaffing of the Public Defenders' Department; and

vi. Insufficient and Inefficient resources available to Prison Officers, Attorneys for the Accused and Prisoners

7.14.4 The PDD has identified several issues with the Prison Bio-Social Reports which are instrumental in the sentencing process. Bio-social reports are prepared by the Prison and submitted to the court which outlines the activities and programmes undertaken by the inmate at the prison. The report usually includes, but is not limited to any disciplinary infractions, any courses participated in and/or completed during incarceration and an assessment of his rehabilitation and risk of recidivism. The report also shows the inmate's family and social background as well as his criminogenic needs. More importantly, it gives a detailed breakdown of his prison history. The following are some of the issues highlighted from the reports which can significantly prejudice accused persons:

i. Lack of training for officers responsible for the welfare of the inmates.

ii. Reports are prepared and submitted to the court by persons who are not qualified to make certain pronouncements contained in the report.

iii. The reports often refer to an LSCMI report conducted on the inmate to assess his risk of re-offending which criteria is based on a US correctional system.

iv. By virtue of the recent judgment of **Cr App 10 of 2022 The State v Joel King**, biosocial reports are now required for determining bail for persons accused of murder and there is no real indication of programmes available to these inmates on remand.

G. CONCLUSION

8.1 The Criminal Justice System has been fraught with issues that prevents its efficient and effective running. The multiplicity of challenges that it faces, requires political and social will for it to be resolved.

8.2 There is the need to focus on each of the stakeholders to ensure that they are able to accomplish their tasks with proper support.

8.3 From the PDD perspective, the internal problems faced are not uncommon when one looks at the Office of the Director of Public Prosecutions. However, proactivity will ensure we are dealing with preventative measures rather than attempting to fix when the problems are almost insurmountable.

8.4 The PDD is hopeful that the submissions made herein will be given consideration with a view of transforming the criminal justice system to a place where it functions effectively at all levels. This is not an overnight process and it requires, time, effort and significant resources. In summary, some of the key recommendations for a functioning criminal justice system are as follows:

i. Increased utilization of alternative methods to resolve criminal matters with a view of reducing the backlog;
ii. Increased human and financial resources for key stakeholders in the criminal justice system;
iii. Legitimization of the Public Defenders Department whose focus is specifically on criminal defence to assist with the delay and backlog;
iv. Improved detention conditions and implementation of adequate programmes to ensure proper rehabilitation of inmates with the aim of reducing recidivism;
v. Improvement of police practices and imposition of sanctions against derelict police officers who breach their duty; and
vi. Greater consideration to non-custodial sentences where appropriate to reduce the prison population.

Submitted for your kind consideration.