

MINISTRY OF THE ATTORNEY GENERAL AND LEGAL AFFAIRS

**RESPONSE TO THE FIRST REPORT OF THE JOINT SELECT COMMITTEE ON
FINANCE AND LEGAL AFFAIRS ON AN INQUIRY INTO CRIMINAL CASE FLOW
MANAGEMENT IN THE JUDICIAL SYSTEM**

Second Session (2016/2017) of the 11th Parliament of the Republic of Trinidad and Tobago

The Attorney General and Minister of Legal Affairs takes the opportunity to commend the work of the Joint Select Committee on Finance and Legal Affairs on an Inquiry into Criminal Case Flow Management in the Judicial System (“the JSC Report”) this being a topic of tremendous importance to the mechanics of the Criminal Justice System.

RESPONSES TO RECOMMENDATIONS

1. THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS (DPP)

1.1 *Recruitment* –

1.1.1 The Committee recommended that the Ministry of the Attorney General and Legal Affairs (MoAGLA) immediately collaborate with the Director of Personnel Administration and the Chief Personnel Office (CPO) to rectify the gross human resource deficits at the Office of the DPP.

1.1.2 The Judicial and Legal Service Commission (JLSC) is currently conducting interviews for thirty-three (33) State Counsel I positions for the Office of the DPP. Appointments to these positions were expected to take place by the end of January, 2017. The JLSC has also advertised the position of State Counsel III and five (5) appointments to this position are anticipated.

1.1.3 With regard to the concerns raised relating to the remuneration packages for attorneys at the Office of the DPP, a response from the Chief Personnel Officer (CPO) is awaited in this regard.

1.2 *Financial Autonomy* –

1.2.1 It is noted that the issue arose that the Office of the DPP is not financially autonomous and must depend on the approval of the MoAGLA for the hiring of staff and the acquisition of plant and equipment.

1.2.2 The MoAGLA is currently reviewing the situation, especially in view of the move towards financial autonomy for the Judiciary, and will require Cabinet consideration for any such proposals or policy. In the interim, the MoAGLA is undertaking a comprehensive review of interdependent structures across the Ministry.

1.3 *Safety of Prosecutors* –

1.3.1. The Committee recommended that an appropriate security risk assessment be conducted in order to determine whether a Prosecutor may have a high level of security risk that would require necessary security arrangements to be facilitated by the State.

1.3.2 The Trinidad and Tobago Police Service (TTPS) currently provides security for state prosecutors. The MoAGLA has initiated a further process of assessment with the Special Branch of the Police Service to review the said security risk assessment on a more frequent basis.

1.4 *Shortage of attorneys practicing at the Criminal Bar* -

1.4.1 The Committee recommended that MoAGLA should undertake recruitment drives that reasonably outsource attorneys from other jurisdictions and consider the engagement of retired attorneys in service to Trinidad and Tobago.

1.4.2 The MoAGLA is at present progressing the development of a Public Defenders Department to provide competent counsel for defendants and a National Prosecution System both of which involve recruitment as suggested as well as understandably to engage reputable seniors in the legal profession.

1.5 *Physical Expansion of the Office of the DPP -*

1.5.1 The Committee commented on the pace at which the process for the expansion of the Office of the DPP was moving. The status on this matter is as follows:-

- *South Office* – Feedback is awaited from the Office of the DPP on the draft layout of the space. Additionally, the necessary processing by PRES D is still ongoing.
- *Port of Spain* – Feedback is awaited from the Office of the DPP to indicate its agreement with the proposals by the landlord for works to be performed at the agreed accommodation.
- *Tobago* – The Tendering Process for the outfitting of the office space located at Lowlands, Tobago was carried out by NIPDEC and Cabinet approval is awaited for the award to be made. It is projected that the space will be ready for the Office of the DPP by the end of the 3rd quarter of fiscal 2017.

2 **THE JURY SYSTEM**

2.1 It is noted that the DPP and the Director of the Legal Aid and Advisory Authority have expressed the view that the jury system should not be discontinued and is of the opinion that the justice system must have a certain level of connection between the “man in the street” and the dispensing of justice.

2.2 In this regard, the MoAGLA is cognizant of the opposite view held by other prominent stakeholders in the Criminal Justice System that the Jury System is a significant source of delay in dispensing with matters and has embarked on consultation to solicit views from

other stakeholders on the proposal to enable an accused person to elect a trial by judge alone.

3 PUBLIC DEFENDER

3.1 It is noted that the LAAA has advised that accused persons usually select representation from a small pool of experienced attorneys which results in the overburdening of the said attorneys and resultant delays in the hearing of matters.

3.2 The MoAGLA has embarked upon discussions with local, regional and international partners, geared towards the creation of a Public Defender System which proposes to create an establishment that would house salaried defense attorneys who would be appointed to criminal matters to share the volume of matters currently engaging the attention of private criminal attorneys.

3.3 This system will also address the provision of competent counsel to be provided by the State to an accused where counsel of choice is not available thereby ensuring preparedness for trial and easing of the case through the criminal justice system.

4 THE INTRODUCTION OF A TICKETING SYSTEM

4.1 The Committee recommends the introduction of a ticketing system for certain summary offences which may permit Magistrates to deal with committal proceedings more expeditiously and thus push the Indictment process.

4.2 The MoAGLA is cognizant of the alarming statistics emanating from the Judiciary which reflects the tremendous backlog of cases before the Magistrates Courts. To this end, the Ministry undertook its own review and is presently finalizing draft legislation which will introduce a fixed penalty system for a number of summary offences and amend the current fixed penalty system for traffic offences.

4.3 The MoAGLA together with the Judiciary and representatives of the Trinidad and Tobago Police Service are near finalization of the mechanism to ease the processing of payments and finalization of fixed penalty offences.

(i) Fixed Penalty Traffic Ticketing System

4.4 The current administrative framework for administering the Fixed Penalty Traffic Ticketing System is heavily paper based and susceptible to corruption and high inefficiency. Additionally, while these matters are treated as summary offences, Magistrates are not provided with a legislative framework which would allow them to dispose of matters quickly and efficiently. The man hours lost due to poor administration is alarming and more particularly very expensive.

4.5 The system is also afflicted by extensive delays and unnecessary adjournments because of the failure of police complainants to attend Court when tickets are not paid. After numerous and protracted adjournments and the failure of the police to attend Court, the matters are often eventually dismissed. Conversely, when drivers who are charged do not attend Court after failing to pay fines, magistrates sometimes issue bench warrants for their arrest. The man hours lost due to poor administration is glaring and more particularly very expensive. This is because of the limited options presented to the Magistrates within the framework of the *Summary Courts Act, Ch. 4:20*.

4.6 The legislative amendments therefore, proposed by the Ministry of Works and Transport, with involvement by personnel from the MOAGLA, aim to create new options for the payment of fixed penalty tickets in Trinidad and Tobago using other venues as well as forms of payment as it is believed that with the introduction of more convenient methods of payment, there will be a higher percentage of persons paying their fixed penalty traffic tickets.

4.7 Further to this, under the proposed legislative framework a driver, who wishes to contest a fixed penalty ticket, will now be required to file a 'Notice to Contest' in the Court for

the jurisdiction in which the alleged violation occurred, within fifteen (15) days from the date that the fixed penalty notice was issued or affixed. If a Notice to Contest is not filed in accordance with the Act, a driver will not be allowed to contest the ticket and will be required to pay the stipulated fine within the period given on the notice. If the fine is not paid, on the day the matter is called, the Magistrate will be empowered to proceed to issue an order against the driver in accordance with the law thus bringing an end to the matter before the Court.

4.8 Where a ‘Notice to Contest’ is filed, the constable who issued the ticket shall be so notified and shall be required to attend Court on the day the matter is called. If such a Notice is not filed but the ticket remains unpaid, the constable shall not be required to attend Court on the scheduled date and the Magistrate may proceed to make an order against the driver in the manner specified under the legislation.

4.9 The legislation further proposes that the Court impose non-conventional penalties for non-payment of tickets in addition to the imposition of a demerit points system which would allow for demerit points to be ascribed to a person’s driver’s licence, the effect of which would allow for an assessment of an individual’s driving records to determine breaches of traffic laws and provide an indication of when a driver should be barred from driving for a period of time.

4.10 Further to this, the proposed amendments to the current legislative framework seeks to introduce innovative and practical measures for imposing penalties and more convenient mechanisms for drivers to pay fines, such as the designation of multiple payment venues for the payment of fines in order to obviate the inconvenience of making payments within a specified magisterial district as well as the implementation of online payments in the near future. It is believed that with the introduction of more convenient methods of payment, there will be a higher percentage of persons paying their fixed penalty traffic tickets. Further to this it is expected that such amendment will result in an increase in the compliance rate for ticket payments. In essence this will have the consequential effect of

easing the great burden on the judiciary as well as law enforcement officers and providing a golden opportunity to focus on other areas in the administration of justice.

(ii) Fixed Penalty – Certain Summary Offences

4.11 The MoAGLA intends to introduce legislation that will contain a schedule of offences with fixed penalties attached and police officers will be empowered to issue notices to any person that the police have reason to believe has committed or is committing an offence contained in the said schedule. The notice will effectively charge the said person with the commission of the offence and the person to whom the notice is issued will then be required to either pay the fixed penalty within the time specified in the notice or to appear at the Court specified in the notice on the day and at the hour stated therein to answer the offence for which the person was charged.

4.12 In so doing, it is intended that the number of matters at the Magistrates' Courts will be reduced. A draft Bill (*Summary Offences (Fixed Penalty) Bill*) has been developed to give effect to this initiative and the policy paper for the Bill is currently before the Law Reform Commission of the MOAGLA. It is intended that this legislation will be brought before the Parliament within the current session of the Parliament.

5 ELECTRONIC MONITORING

5.1 The Committee recommends that in his Ministerial Response to this Report, the Attorney General should update the Parliament on the steps taken to implement the systems required for the *Administration of Justice (Electronic Monitoring) Act 2011*.

5.2 Responsibility for the administering of the implementation of the system of electronic monitoring falls within the purview of the Ministry of National Security. An *Implementation Committee for the Establishment of an Electronic Monitoring System in*

Trinidad and Tobago (“the Committee”) was established by the Ministry of National Security and is chaired by a representative of that Ministry. Personnel from the MOAGLA forms part of the membership of the Committee.

5.3 The Committee first convened on 11th August, 2016 and thus far met on six (6) occasions. The last meeting of the Committee was on 31st January, 2017. In anticipation of the implementation of a system of electronic monitoring, the following steps are being pursued:

(a) Recruitment of personnel for the Electronic Monitoring Unit –

- Interviews were conducted for the contractual positions of Electronic Monitoring Manager and Deputy Electronic Monitoring Manager and in this regard, candidates were selected.
- The Human Resource Department of the Ministry of National Security is in receipt of the terms and conditions from the Chief Personnel Officer (“CPO”) for these positions.
- The matter of the engagement of persons as the Electronic Monitoring Manager and Deputy Electronic Monitoring Manager is before the Permanent Secretary in the Ministry of National Security for consideration.

(b) A location has been identified for the placement of the Electronic Monitoring Unit and such location as identified, is before the Permanent Secretary in the Ministry of National Security for consideration.

(c) The Ministry of National Security received proposals in respect of the implementation of the system of electronic monitoring from the High Commission of Canada and the British High Commission. These proposals are before the Permanent Secretary in the Ministry of National Security for consideration for approval to enter into formal discussions.

- (d) Commencing in January 2017, the Committee will be developing a policy for draft regulations to administer *the Administration of Justice (Electronic Monitoring) Act, 2011*.
- (e) The Judiciary of the Republic of Trinidad Tobago and the Trinidad and Tobago Police Service are represented on the Committee and in this regard, same are involved in discussions at the Committee level, regarding the preparation of these entities in anticipation of the implementation of a system of electronic monitoring.

6 **PRELIMINARY ENQUIRIES**

- 6.1 The Committee recommended that the Attorney General provide the Parliament with the Government's proposal for the abolition of preliminary enquiries and for the provision of what may be necessary to ensure that preliminary enquiries do not become another clog on an overloaded system in the High Court.
- 6.2 At present there are three (3) laws governing the Preliminary Enquiry procedure, that is, the *Indictable Offences (Preliminary Enquiry) Act Chapter 12:01*, the *Administration of Justice (Indictable Proceedings) Act No. 20 of 2011* and the *Indictable Offences (Committal Proceedings) Act No. 14 of 2014*. These laws are in a state of disarray following the Privy Council decision in the case of *Steve Ferguson v The Attorney General of Trinidad and Tobago ([2016] UKPC 2)* upon the previous government's proclamation of Section 34 of the *Administration of Justice (Indictable Proceedings) Act 2011*.
- 6.3 It is proposed that there should be the abolition of preliminary enquiries by legislatively changing the way in which criminal cases proceed from the initial charging of a person by the Police to the filing of an indictment by the Director of Public Prosecutions before the High Court.

6.4 It is further proposed that the Director of Public Prosecutions (DPP) should make the decision whether to indict a person, and if so, upon what charges, in respect of all criminal offences that are indictable, inclusive of indictable criminal offences that can be tried pursuant to the preferring and filing of an indictment or summarily. In this regard, the Director of Public Prosecutions will be charged with the responsibility of reviewing all criminal matters that are indictable, in order to determine whether an indictment should be preferred.

6.5 A draft Bill that proposes to abolish preliminary enquiries, repeal the existing law and provide for a new pre-trial procedure in respect of indictable offences, to be cited as the *Indictable Offences (Pre-Trial Procedure) Act, 2016*, was prepared in 2016.

6.6 This draft Bill proposes to provide *inter alia*, for the following:

- Subsequent to the police charging a person for an indictable offence, the police will be required to submit to the Director of Public Prosecutions, the complaint; any statements of witnesses in support of the charge; any documentary exhibit which might be produced in evidence by the prosecutor at the trial; and a list of exhibits, if there are any exhibits, which might be produced in evidence by the prosecutor at the trial.
- The Director of Public Prosecutions will be required to cause a copy of the complaint and of the statements, documentary exhibits and the list of exhibits which he intends to produce in evidence at trial to be served on the accused person or his Attorney-at-law, within three (3) months of receiving these documents from the police or within such further period as a Magistrate may, on application, permit.
- The accused person or his Attorney-at-law after being served such documentation by the Director of Public Prosecutions, may within three (3) months thereafter, or within such further period as a Magistrate may, on application permit, serve on the Director of Public Prosecutions a statement of any evidence that the accused person wishes to

- give on his own behalf at his trial; any statements of witnesses in support of the defence; any documentary exhibits which he intends to produce in evidence at the trial; a list of exhibits, if there are any exhibits, which he intends to produce in evidence at the trial; and a notice of alibi.
- After having been served such documentation by the accused person or his Attorney-at-law, the Director of Public Prosecutions has twelve (12) months, or within such further period as a Magistrate may, on application permit, from that date to prefer an indictment against the accused person. If the Director of Public Prosecutions does not prefer an indictment within that time period, then the accused person may apply to a Judge for a discharge. The Judge may discharge the accused if, having considered the reason for the delay in preferring an indictment, he is satisfied in all the circumstances of the case it would be just to do so.
 - In respect of indictable offences that may be tried summarily, if the Director of Public Prosecutions, after the receipt of statements and other documents from the police provided subsequent to when a person is charged, is of the view that the accused person should be tried summarily, the Director of Public Prosecutions may, if he thinks fit, refer the case back to the Magistrate to be dealt with summarily.
 - The draft Bill also provides inter alia, for the power of a Magistrate:
 - to issue a search warrant; to issue a summons or warrant for the apprehension of an accused person;
 - to endorse a warrant of arrest with a direction for bail, subject to the provisions of the Bail Act Chapter 4:60;
 - to commit an accused person for sentence before the High Court where such a person who is represented by an Attorney-at-law, informs the Magistrate that is guilty of the charge, with the exception of a charge of treason or murder. In this regard, the Director of Public Prosecutions will be required to prefer and file an indictment against the accused person within four (4) months of the committal for sentence;

- to grant or revoke bail in accordance with the Bail Act.

6.7 The said draft Bill also provides *inter alia*, for a proposed procedure that is to be followed;

- (i) when a person is to be indicted for an offence for which he was charged or for any offence which, in the opinion of the Director of Public Prosecutions, is disclosed by the documents or evidence submitted to the Director of Public Prosecutions by the police;
- (ii) when the Director of Public Prosecutions directs that a case is to be dealt with summarily; and
- (iii) in respect of pre-trial requirements.

6.8 The said Bill was submitted to stakeholders for consultation and comments, including, the Director of Public Prosecutions; the Law Association of Trinidad and Tobago; the Criminal Bar Association and the Judiciary. In this regard the MOAGLA is awaiting the submission of such comments from these entities. Such feedback would be necessary in order to address any further recommendations or matters associated with this proposed new pre-trial procedure. Consequently, it is anticipated that such consultation would result in a recommended pre-trial procedure that will be efficient and expeditious thus ensuring a speedier criminal justice in the disposition of matters.

7 **PLEA BARGAINING**

7.1 The Committee recommends that full disclosure should be mandatory to complement plea bargaining proceedings. The Committee anticipates that an expansion in this approach will result with less matters going to the trial stage.

7.2 It is to be noted that a specific recommendation was not made for the MOAGLA to address this matter however the following information is submitted for the Committee's

consideration which provides an overview of the work of the MOAGLA in respect of plea bargaining.

7.3 A draft *Criminal Procedure (Plea Discussion and Plea Agreement) Bill, 2016* has been submitted to stakeholders for consultation and comments, including the Director of Public Prosecutions; the Law Association of Trinidad and Tobago; the Criminal Bar Association and the Judiciary. In this regard the Ministry of the Attorney General and Legal Affairs is awaiting the submission of such comments from these entities.

7.4 The said draft Bill proposes to enable a prosecutor and an accused person (whether on his own or represented by an Attorney-at-law) to engage in plea discussions aimed at arriving at a plea agreement. Plea discussions could be initiated in respect of an indictable or a summary offence. Under a plea agreement, the accused agrees to plead guilty to a specified offence or undertakes to perform any other obligations contained in the plea agreement in exchange for the Prosecutor's undertaking to take a particular course of action. It is recommend that this draft Bill would repeal and replace the *Criminal Procedure (Plea Discussion and Plea Agreement) Act Chapter 13:07*.

7.5 It is to be noted that the draft *Criminal Procedure (Plea Discussion and Plea Agreement) Bill, 2016* proposes that a prosecutor would have the duty to disclose evidence to the accused person as follows:

- If plea discussions are initiated before charges are laid, the prosecutor shall inform the accused person of the allegations against him and provide the accused or his Attorney-at-law with a written summary of the evidence against him.
- If a plea discussion is initiated after charges are laid but before the prosecutor tenders evidence implicating the accused person, the prosecutor shall provide the accused person or his Attorney-at-law with a written summary of the evidence against him.
- The prosecutor would not be required to disclose all of the evidence supporting his case; or the names of witnesses or any other information by which such witnesses may be identified, if the prosecutor is reasonably of the view that such information

should not be disclosed at that stage and the accused is not thereby misled or prejudiced

The MoAGLA attempted to solicit information from the Judiciary and the Office of the DPP on further matters mentioned in the report within the purview of the respective entities, however, the information has not been received to date.

The MoAGLA takes the opportunity to mention other initiatives that have been specifically targeted by the Ministry to assist with criminal case flow management in the judicial system – the operationalization of *the Administration of Justice (Deoxyribonucleic Acid) Act, 2012* (the DNA Act) in order to create a DNA Database, the implementation of the *Criminal Procedure Rules, 2016* which are expected to take effect in April, 2017 and the analysis of the prisons and remand system based on statistical and empirical data.

THE ATTORNEY GENERAL AND MINISTER OF LEGAL AFFAIRS