Your Excellency Mr. Anthony Thomas Aquinas Carmona O.R.T.T, S.C. President of the Republic of Trinidad and Tobago and Mrs. Carmona

The Honourable Kamla Persad-Bissessar, S.C. Prime Minister of the Republic of Trinidad and Tobago, and Dr Bissessar

Senator Timothy Hamel-Smith, President of the Senate

The Honourable Wade Mark, Speaker of the House of Representatives and Mrs Mark

Senator the Honourable Anand Ramlogan, Attorney General

Senator The Honourable Emmanuel George, Minister of Justice

The Honourable Prakash Ramdar, Minister of Legal Affairs

Other Members of the Cabinet of the Republic of Trinidad and Tobago

Mr Orville London, Chief Secretary of the Tobago House of Assembly

The Honourable Keith Rowley, Leader of the Opposition and Mrs Rowley

Members of the Diplomatic Corps

The Right Honourable Sir Charles Denis Byron, President of the Caribbean Court of Justice, and Lady Byron

Honourable Justices of Appeal and Judges and Masters of the Supreme Court of Trinidad and Tobago

Heads of Religious Bodies

Chairmen and Members of Superior Courts of Record

Members of Parliament

Her Worship Marcia Ayers Caesar, Chief Magistrate
Members of the Legal Fraternity, the business sector, religious organisations and civil society

Other specially invited guests

Members of the Media

Distinguished ladies and gentlemen all.

The format of today’s address may be different from what some of you may have come to expect based on past presentations. I will not be reporting in detail on grand projects completed or to be launched although there are successes to report. I will not be spending any significant time on statistics as that information is in the Annual Report. Work on the transformation of the Judiciary continues on course albeit not as quickly as I would like. What may appear from the outside to be a period of relative inactivity is really the quiet hum of a work in progress.

In keeping with our theme of reshaping the Judiciary’s identity, I propose to spend a little time on our main areas of strategic focus and in doing so will point to one or two accomplishments in the relevant areas over the past year. However, a large part of this address will be directed towards suggestions for addressing an issue which has major implications for our peace and security and, if not resolved, will thwart our most cherished hopes and ambitions. I will be speaking about the crisis in the criminal justice system.

Over the last 15 years, the Judiciary has been taking deliberate steps, as far as its resources and capacity allowed, towards building a court system that would serve as a pillar of strength and stability for our democracy, and as a forerunner to a modern and effective justice administration system.
We do not see the Judiciary’s transformation as an end in itself, but as actively helping to create a fair, just, progressive and prosperous society with the rule of law as its cornerstone. It is understood that the Judiciary can only play its part effectively when citizens have utmost confidence in the integrity, independence and impartiality of judges, and in the fact that due process is afforded to all who come before the courts.

To operate effectively and to garner that level of public trust and confidence, and to ensure timeliness and consistency, court systems require effective leadership and management at all levels in the organisation, complemented by partnerships and collaboration with stakeholders, awareness of the needs of customers, effective internal and external communication, and healthy employee engagement and consultation. Moreover it involves an unwavering vision for justice, a resolute hope that Trinidad and Tobago can realise its true potential as a nation, and a steadfast commitment to the development of our people.

Last year, our national golden anniversary provided us with the opportunity for introspection and for an appreciation of where leadership has taken us as a Judiciary. We celebrated how far we have come. But we also paused to get a better picture of where we want to go. The latter predominated our work during the past year.

A critical issue for which the Judiciary has remained vigilant has been the fundamental basis for inspiring public trust and confidence – the separation of powers and judicial independence. Another important and related issue is the ability of the Judiciary to deliver on its mandate to the ultimate benefit of the Court’s customers and the rule of law. That is why the institution took the lead a decade ago in beginning to focus on the customer, arising from modern court and new public management concepts, and paving the way for our current
initiatives at transforming the institution into a service-oriented entity. Not only has the Judiciary strived to develop a deep awareness of the customer and the skills for operating from a customer service perspective, but the institution has also taken steps to ensure that its justification for resources from the public coffers is based on the requirements of serving the customer. The Judiciary can still hold up as an example the Family Court which began as a pilot but has developed into a model court with consistently high customer satisfaction levels. Today the customer service philosophy is still being shaped and nurtured as the organisation seeks to come to terms with and promote the required culture that should complement process change and transformation.

Though an independent and separate arm of State, the Judiciary cannot function effectively without collaboration and consultation with the Executive and other court stakeholders. It must be emphasised that the Judiciary does not stand alone, but depends on the alignment of purpose of all actors who play a part in the administration of justice. Such alignment, the Judiciary believes, must incorporate the key principles of due process, impartiality, integrity, timeliness and expedition, and public trust and confidence. Positive results from this inter-sectoral collaboration and consultation will accrue only if these key principles are given prominence by all justice sector partners and promoted as key objectives for successful outcomes. It is this reasoning that has prompted the Judiciary’s consistent and very strong advocacy for consultation and collaboration as key drivers of success in achieving lasting transformation. It is also what has inspired the promotion and implementation of the concept of a Judiciary and Justice Sector Inter-Ministerial Committee which has garnered wide acceptance and participation by all members.
The Judiciary anticipates that the formula for modernising the justice system will not change very much in the short to medium term. As such the institution has once again taken the lead in developing a comprehensive strategy for its transformation and realignment, as well as for modernising the administration of justice that has at its core, service to customers, stakeholder collaboration, and building employee commitment.

Notwithstanding, the implementation of any strategies must consider the critical risks and obstacles that lie ahead and which must be managed. These include its ability to recruit and retain persons with the necessary competencies, as well as the capacity and autonomy for managing its own lawfully appropriated resources. These risks for the most part are based on externally dependent governance structures that are not always aligned with the needs of the organisation, and which have and will continue to affect the Judiciary’s ability to achieve its mission. I will say a bit more about this later.

The work undertaken during the past year involved a concentrated effort with the Ministry of Public Administration, the office of the Chief Personnel Officer, the Department of Personnel Administration, the Public Management Consulting Division, and the Public Sector Transformation Division to bring to light these issues and propose solutions. In this regard, the Judiciary has developed a position paper that addresses the Modernising [of] Judiciary Governance, Organizational Structure and Staffing for better Administration of Justice, which speaks to the critical issues of judicial reform, governance, labour force, and change management. It is hoped that this will reap the intended benefits for the nation as a whole, and the employees of the Judiciary who will be required to be part and parcel of this transformation. We will be engaging the Executive and relevant stakeholder agencies on this vision soon. Although the paper is not yet available for publication or distribution, I can say that our
strategic focus, which continues to be informed by internal and external stakeholder consultation and feedback, is aligned to five thematic areas. These are relevant to all areas of operation but, of particular interest in the context of the current environment, will be the impact on the criminal trial process. As you will gather from this address and a perusal of the Annual Report, the production of a single coherent document merely complements and enhances work that is already taking place in all key areas.

**Operational Excellence**

Operational excellence seeks to directly address the issue of delays with appropriate consideration given to due process, while reducing the cost of operations. Critically important with respect to the former is the ongoing review and redesign of court processes, the development of case and caseflow management policies, and the use of appropriate information and communication technologies to support said processes. Appropriate ICT solutions are essential for case and caseflow management, and giving real time feedback on the key performance indicators related to case management and disposition. They will also ensure that the right information is available in the right place at the right time for judicial officers to make decisions. You may wish to refer to the section in the annual Report entitled “Modernising Core and Support Processes and Information Systems” for details on the improvements to and benefits to be reaped from the ongoing redesign and upgrade of our core network infrastructure.

The success of the process improvement initiative will rely, in part, on the how well the court’s stakeholders are integrated into our processes, and how well their communication protocols work to support our processes. So, for example, there is no reason why tracing and any other relevant information should not be directly accessible
on a Judge or Magistrate’s monitor at a defendant’s first appearance so bail applications could be properly dealt with.

With regard to managing cost, the Judiciary intends to adequately allocate resources on a per court basis and account for the use resources at each court with a greater level of detail. This will allow for easier financial and cost management and monitoring and improved budgeting.

I should not pass from the subject of operational excellence so far as it relates to the question of delay reduction without mentioning the expanded ADR pilot involving a mix of mediation and settlement conferencing. It was conceived as a one year project and so it is not yet complete, but the early signs are encouraging and in line with expectations. We anticipate a 60% to 70% settlement rate in both limbs and a continued high level of satisfaction with the process from participants.

**Creating a High Performance Professional Culture**

We need to change the traditional mindset and behaviours relating to the meaning and purpose of a job and how work is carried out. Our basic philosophy is that improving job performance improves organizational performance. The Judiciary therefore seeks to create the conditions for improving organisational performance by focusing on the critical factors for increasing employee engagement and satisfaction. These include ensuring that departments, units and teams are properly staffed, that the Judiciary has the requisite systems and structures for managing this staff and appraising performance, and that job performers have the right skills and competencies, and tools for the job, and that they are compensated on time. With regard to building competencies, a high focus will be placed on ensuring that persons at all levels in the organisation
benefit from opportunities to develop leadership and critical thinking skills. May I direct your attention to the section in the Annual Report entitled “Developing the Human and Organisational Capital.”

The Judicial Education Institute is a key pillar in the ongoing commitment to continuing education and in providing research tools and materials to guide Judges and stakeholders. This past year workshops were held on various topics including Leadership Awareness, Security Awareness, Human Trafficking, Assessment of Credibility and Delivery of Extempore Judgements and Courtroom Communication Skills, just to name a few. We already have a Sentencing Handbook and I am proud to announce the publication of our Handbook on Awards of Damages for False Imprisonment and Malicious Prosecution in Trinidad and Tobago. It covers cases from 1991 to July 2013 in the High Court, Court of Appeal and Privy Council. Our focus on research and publication is but one aspect of our commitment to the inculcation of a culture of professionalism. The documentation and standardization of processes has been an ongoing work so that employees know what is expected of them. Desk manuals, codes of conduct for judicial and non-judicial staff, procurement manuals etc have been and continue to be developed to provide guidance and consistency. We continue to invest heavily in training targeted at behavior change and not merely for transmission of information.

Complementing the effort to ensure a productive workforce are supporting campaigns, programmes, and facilities, to assist employees with managing work-life balance, and developing and participating in a healthier lifestyle. These already include health fairs, sport and family days, an enhanced EAP programme and after school and vacation centres.
Creating a Safe and Productive Workplace

A safe and productive workplace is a critical support component for the previous theme of building a high performance professional culture. It is also important for ensuring that court customer and stakeholders have ease of access to the services of the Judiciary.

Given that the core business of the Judiciary is geographically dispersed and is chiefly handled through on-site transactions, it is important for these sites to be properly maintained and upgraded to modern standards. In this regard, the development and implementation of a maintenance and accommodation plan is a basic factor in achieving this result.

This past year, the main capital expenditure on accommodation was in relation to improvement works at the three Supreme Court locations and the Scarborough and Point Fortin Magistrates’ Courts. Again you may refer to the Annual Report for details of other ongoing work. The Judiciary is bursting at the seams and we urgently require movement on the construction of the proposed judicial complexes.

A complementary strategy of reducing the demands for physical space by utilising modern technology for electronic transaction and electronic payments will also be deployed.

Strategic Partnering with Customers and Stakeholders

As an organisation that serves the public, it is important that adequate and appropriate mechanisms be developed to receive and offer insights for improving service delivery. This theme therefore seeks to create an improved understanding by the public and court customers of the administration of justice by developing a dialogue to improve the Judiciary’s understanding of customer and stakeholder
needs, and to provide feedback on the tangible measures being taken to address these needs.

At the same time the Judiciary will strengthen those alliances with its justice stakeholders and partners to communicate the needs of the public and court customers with the goal of improving the overall administration of justice, and to ensure that it receives adequate resources for carrying out its operations.

Organisational Stewardship

As a public sector institution responsible for the administration of justice, it is essential that the policies, systems, management, and governance of the Judiciary be guided by an ethic that embodies the responsible, efficient and effective, planning and management of resources, according to its mandate. Independence and accountability, and public trust and confidence, are closely linked to how well the Judiciary can demonstrate that our actions are in the best interest of improving the administration of justice.

To undertake this responsibility, it is critical for the Judiciary to have adequate resources and the proper control and autonomy for managing them. This in turn is dependent on the capacity and capability for undertaking these responsibilities, and as such the required processes and policies must be sustained by a supporting structure that incorporates the required internal controls and the management information systems to ensure efficiency, integrity and security in the management and reporting of its expenditures.

I am of the firm view, that one of the biggest hindrances to Public Sector efficiency and productivity is the way that monies voted by Parliament and for which expenditure is therefore legally authorized are allocated and released. Procedures are lengthy and cumbersome,
and in the case of the Judiciary sometimes offend against the principle of judicial independence. Why, for example, does the Chief Justice have to send a note to Cabinet to release money to travel to a conference in Barbados when there is a travel vote? There is no justification for such a request to be subject to a blanket policy that all official travel must be scrutinized by a committee of Cabinet. I cite this merely as an example of the type of inefficient and over-centralised government that we have all inherited. The fact is that I have never known such a request to be refused, that is highly unlikely and therefore begs the question why is it necessary? By all means make us accountable but we must be free to manage. Last year, as of June 30th 2013 only $30,898,372 or 40% of our Capital Expenditure budget allocation was released. This I understand is not unusual in the Public Sector.

Madame Prime Minister, I hope that as we move forward there can be a productive dialogue on the question of appropriate financial arrangements for the Judiciary that will be conducive both to greater efficiency and to the financial and administrative independence that is an internationally accepted component of the Institutional Independence of the Judiciary. Three models are mentioned briefly in the Annual Report and those and others like them can be the starting point for discussion.

**Court Performance Statistics**

I now turn briefly to the actual performance of the Courts over the past year.

While all of this developmental and transformation work is being undertaken, the business of the Courts continues apace. The demands on the Courts have increased as has the output in every area of operation. I will summarise:
In the Court of Appeal, 548 matters were filed, including Family and Petty Civil appeals, while 578 were disposed of. These figures represent an increase in activity over the previous year when 482 matters were filed and 385 disposed of.

In the case of the High Court, in the Civil Registry 5,230 matters, both trial and non-trial, were filed while 5,245 matters were determined. In terms of the Civil Registry these data reveal that the performance remained fairly constant when compared to the 2011/2012 Law Term when 5,228 matters were filed and 5,439 determined.

In the Criminal Registry, 339 indictments were filed with 91 being disposed of, up from 116 indictments and 64 disposed matters in the previous law term. This is despite losing the services of justices MonDesir and Carmona during the year. The 2012-2013 totals are indicative of a significant increase in the workload in the Criminal Registry when compared with the year before.

In the Matrimonial Registry 2,922 divorce cases were filed. During this same period 1,833 Decrees Nisi and 1,645 Decrees Absolute were granted. A total of 3,488 Probate applications were filed while 3,538 applications were disposed of. During the corresponding period in 2011/2012, a total of 3,921 Probate applications were filed but only 2,820 were disposed of. This represents a significant uptick in performance.

In the Magistrates’ Courts a total of 130,872 new matters were filed while 86,986 matters were disposed of. This means that there was a marked increase in the work of the Magistracy in the 2012/2013 Law Term when compared with the previous year in which a total of 116,903 new matters were filed and 81,953 disposed of.
One matter that may be of interest is that approximately one third of the High Court appeals and just under 20% of the Magisterial appeals were allowed, with the rest either being dismissed or withdrawn. When one considers that most matters are not appealed, this suggests a creditable performance by the trial courts, and in the context of a 16.4% increase in filings and an overall disposition to filings ratio of 1.05, a busy and productive year for the Court of Appeal.

Some concerns remain, however. There is a decrease in the number of criminal appeals disposed of and, in general, it is becoming more difficult to get a hearing date within a short time frame. This is in part because we have not been operating at full strength but I am happy to announce that with the elevation of two new Justices of Appeal, the pressure may be somewhat relieved.

**THE CRIMINAL JUSTICE SYSTEM**

I now turn to an issue that is of pressing concern to everyone in this country and a major focus for this year, the Criminal Justice system. There can be no dispute that the system is in crisis. Not the Judiciary, not the DPP, not the Police – the whole system. A brief look at the High Court statistics will illustrate the point. The 42% increase in disposition of indictments from 64 to 91 in the last term is modest having regard to the fact that indictments filed increased from 116 to 339. If we take one non-bailable offence alone, murder, I regret to inform you that as I speak there are 575 persons in custody awaiting trial in respect of 468 murders. With the length of the average murder trial running into several weeks, we could have 10 judges assigned to try nothing but murder cases for the next 5 years and we still will not have cleared the backlog (assuming that all the matters go to trial). This is not a new problem, it existed when I assumed office and it resists efforts to address it because up to now we have not been able to effect comprehensive reform. This cannot go on! No civilized society
should tolerate the lengthy incarceration of persons whose guilt has not yet been determined. It is inhumane. Additionally, public confidence in the system of justice is eroded and the all-important timeous connection between commission of offences and punitive consequences, which is a major deterrent factor, is lost. It is important to examine the root causes but I think those have been articulated ad nauseum. We must act now! I believe that the paralysis flows from a more fundamental source and that is the absence of hope or any real belief that the situation is actually controllable.

Some of you may recall that in my inaugural address I spoke of the audacity of hope and vision that was necessary to shake us out of our torpor. The truth is that, even if we had the money to do so, merely throwing more judges or other resources at the problem is not going to fix it. We in this country have a tendency to locate the forces that shape our existence outside of ourselves. Success and failure are unavoidably related in our minds with the state of things around us. For those who are failing the world is to blame, but equally devastating is the fact that, for those who think they are succeeding in their little corner, they are never quite sure of all the ingredients of their success. The world out there is precariously balanced mechanism and if it is ticking in our favour, why tinker with the status quo? We retreat in the legal profession behind the comforting fortress of precedent, as if concepts of justice and fairness have not always been evolving.

Discontent, by itself, will not move us unless two things are also present – accepting that we have the power to change things and faith that there can be a better future. I have learned the hard lesson that we cannot transform a judiciary or a nation simply by demonstrating the reasonableness and desirability of intended changes, and we certainly do not have the ability to coerce even if we wished to.
If we are to plunge into undertaking radical change, as we must, then we must be discontented with the status quo yet not destitute of hope. Indeed we must believe that we have irresistible power and possess an extravagant conception of our future potential. In that regard, experience can be a handicap because it reminds us too often only of the potential difficulties.

My call today is for us to take a leap of faith. Nothing should be off the table. The Judiciary will do its part but we are only one component of the criminal justice system. I would like to present 5 areas of possible reform that we should seriously take on board. Of course consultation with all stakeholders is necessary and the understanding and cooperation of the Bar is of critical importance but ultimately the Parliament and the Executive must have the courage to act. As our esteemed President keeps reminding us we must do the right thing because it is the right thing to do.

**Jury Trials**

Earlier this year, the Judiciary hosted a lecture and panel discussion on the question whether jury trials should be retained. It arose in part out of a concern that jury trials were becoming lengthier, expensive and unmanageable and that the quality of justice received was questionable. I want to preface my remarks by reminding us that there is no such thing as a constitutionally entrenched right to a trial by jury. What our Constitution guarantees is the right to a fair and public hearing before an independent and impartial tribunal. Judging from the appeal statistics, that is what the vast majority of persons charged with criminal offences get before the magistrates in this country, without the assistance of a jury. In the High Court, trial by judge alone has always been an option, albeit rarely exercised. The conventional argument is that juries are more in touch with life on the ground and that somehow translates into a truer verdict. In my
experience where the issue is the determination of the legal issue of

guilt or innocence based on the assessment of the weight and

reliability of complex evidence, for which jurors are not trained, that

supposed advantage is far less significant than might be imagined.

One also has concerns about the general level of functional literacy.
The truth is that as the issues and evidence involved in criminal trials

have become more complex, so have the length of trials. They often

have to be interrupted for lengthy legal submissions while jurors
twiddle their thumbs; evidence is led in voir dires and then, if deemed
admissible, has to be repeated in its entirety before a jury. Issues of
admissibility, bad character etc. are dealt with during the trial, further
increasing the length of the trials and lost productivity of the jurors. It
is now not unusual for trials to last several months at the end of

which the jury receives a summing up covering many weeks’ evidence,

which they are supposed to assimilate and then required to return a
verdict in a few short hours. It is not fair to them.

Moreover, there is a more fundamental philosophical and process
issue. If transparency of process and accountability are the underlying
principles of practical justice then how come the one process that
ultimately determines one’s guilt or innocence is neither transparent
nor accountable. We have no way of knowing whether jurors
understand the Judges’ instructions or, if they did, whether they
followed them. I have heard this argument brushed aside by some
defence attorneys on the basis that it is the jury’s right to return a
capricious verdict or one more in line with their values, which
presumably represents the community’s sense of justice. One asks
rhetorically, why then pretend to be a court of LAW? I thought that
the premise of representative government was that the values and
mores of society were embodied by Parliament in the laws. What about
the jurors’ oath to return a verdict according to the evidence and in
accordance with the instructions on the law given by the trial judge?
Prejudice and bigotry can cut both ways. At least a Magistrate or
single Judge is obliged to give reasons for their decision that can be analysed and critiqued.

Longer trials also increase the risk of jury tampering and intimidation. It is not unknown for jurors to announce that they wish justice to be done but someone else should do it because they do not think the state can protect them from certain individuals. If that is a real perception out there then who knows what is influencing verdicts. Each year we spend millions of dollars on sequestering juries only to end up with a hung jury in many cases and we have to start all over again. At least with a judge we will get a decision one way or the other. From a strictly utilitarian point of view, jury trials have become too inefficient and expensive. I am not attracted either by a piecemeal approach to this issue, that is to say abolishing them for the more serious offences like murder and armed robbery and retaining them for lesser offences. Who are we appeasing? Where is the logic in devoting more resources to the less serious offences that have less impact on the accused’s life and liberty? We have to bite the bullet on this one. The time has come for serious study if more empirical evidence is require but we need a decision.

Criminal Procedure Rules

While I found many of the criticisms of the Indictable Offences (Preliminary Enquiry) Act to be valid, my main difficulty with it is not that it went too far but that it did not go far enough! What it does, in a rather cumbersome manner, is transfer a lot of the old procedural concepts from the Magistrates’ Courts to the High Court. In the process there are several steps and procedures that add no value. Unfortunately, what has been termed the St. Lucian model was adopted without a thorough interrogation of the many difficulties they have experienced in implementation. From my point of view though, that is water under the bridge. With the current postponement in
implementation, we now have an opportunity to fix it. I have already spoken about the procedural and evidential issues that tend to prolong trials. We must stop thinking of these procedures as if they are an immutable part of the criminal trial process. We have a lot to learn from the gains made in the civil jurisdiction where the average time from filing to disposition has fallen by an order of magnitude because of better pretrial management. We need a fundamental conceptual rethink. When should the trial process actually start? Once an indictment is filed the judge assigned should be able to deal with admissibility issues by way of preliminary motions so that once the leading of evidence is to begin, opening addresses can be tailored and the evidence led concisely and without interruption (including formal stipulation of undisputed evidence). Issues in dispute must be clearly defined so that evidence in chief and cross-examination can be disciplined and focused. That requires fair disclosure on both sides.

The era of the ambush defence is over. Again some of the arguments advanced hardly survive scrutiny. Fear is often expressed about the imbalance in power and resources between the state and the defendant. The reality is that the states’ resources are overstretched. The idea that the state will be allowed to go off and find evidence to embellish its case once the nature of the defence is disclosed ignores the role of the Judge in maintaining balance and fairness. No responsible Judge will allow the state willy nilly to introduce fresh evidence that was previously available through reasonable and diligent investigation. What it does require is proper case management.

In that regard, there are two possible sources of authority. The first is the inherent jurisdiction of the Court to regulate its own processes. We often forget that rules of evidence were developed by the common law and not just by statute. However, the comprehensive changes contemplated are better effected by a set of Criminal Procedure Rules. These need not await specific legislation. There is a general rule
making power under the Supreme Court of Judicature Act which I propose to employ as head of the Rules Committee after due consultation and with the cooperation of stakeholders. I call on the bar to lend mature and responsible support to this initiative. Without Rules, we will never extricate ourselves from this morass.

**Decriminalisation**

The next suggestion is more controversial and lies properly in the realm of the policy makers but I offer these observations for consideration. After over a quarter of a century in the law, nine years of which were spent as a prosecutor actively involved in drug prosecutions and asset confiscation, I have come to the view that drug trafficking and drug consumption should be treated differently. Addiction is a disease and is as much a public health issue as it is a criminal problem. This is not a moral judgment although one might observe that marijuana consumption probably wreaks no more havoc than alcohol addiction but we provide support for one and punishment for the other. The economic and social consequences of incarcerating large numbers of our youths for possession and/or consumption of small amounts of drugs are immense. Moreover it is now appearing that the consensus about many of the assumptions about the effects of marijuana in particular is unraveling. So much so that CNN’s Dr. Sanjay Gupta recently publicly changed his stance on the issue. In an economy where the state is the major employer and a criminal conviction is a bar to employment, we may be pushing minor non-violent offenders into criminality when they can be saved. The Drug Treatment Court is a first effort at arresting that trend. It is early days yet and the numbers so far are small. While results so far are not all perfect, there are very encouraging signs. Rather than just giving you figures, I would like to quote excerpts from the progress report on one participant (dually redacted to preserve anonymity) to give a flavor of the small miracles that are beginning to occur.
“Participant continues to impress us with his commitment to change. He lives in very humble circumstances, is illiterate, and travels from [village mentioned] to join us. Since admission, he has successfully applied for and received a food card and is scheduled to begin adult literacy classes in September 2013. He maintains a drug use diary as part of the programme. I am pleased to report that he has written for the past two weeks (however awkwardly) as his first two words ‘No Use’!

Participant has been sober for 66 days since admission [they are tested weekly]. However, during the period between his application in February and admission in May he began attending Narcotics Anonymous sessions and maintains that he has in fact been sober for 162 days”

The burden on the Police and Prisons and the Courts in terms of cost and human resource will be lessened if we focus on the scourge of trafficking, but as long as we have laws on the books we have to enforce them. We must take a long hard look at policy in this area.

**Plea Bargaining**

There is absolutely no way that all of the matters before the courts can be disposed of by trials within a reasonable time frame. Plea bargaining is an essential feature of most modern criminal justice systems and is a rational, albeit not perfect way of weeding out those matters that can be justly disposed of without a trial. It is not a soft option and the court retains the discretion over sentencing so that the prosecution and defence cannot simply cut a deal and impose it on the court. We have plea bargaining legislation but it has not so far been employed with any regularity. I am informed that the reason for this is threefold. Uncertainty or perceived inconsistency in sentencing means lawyers cannot properly advise their clients, concern by prosecutors that they may fall afoul of the provision regarding improper influence, and the existence of statutory mandatory
minimum sentences for certain offences. The first two concerns have
now been alleviated somewhat by the Judiciary’s publication of
sentencing guidelines and the adoption by the DPP of a code for the
guidance of prosecutors, who can gain some measure of assurance
and protection by demonstrably adhering to it. The problem with
mandatory minimum sentences is that they interfere with the Court’s
ability to tailor the punishment to fit the particular circumstances of
the case. So, for example, a teenager who takes a marijuana cigarette
to school to share with a friend is technically exposed to the same
legal liability for possession with intent to supply within the vicinity of
a school as the adult pusher who lurks around the corner luring
vulnerable youths into the trap of addiction. I hope to see a more
flexible approach to legislation in the future. With proper training, the
employment of existing or amended legislation will go a long way in
reducing the backlog.

Investigative Capacity

It has been observed in many quarters and on diverse occasions that
the ability to convict the guilty is dependent on the quality of evidence
placed before the courts, which in turn is dependent on the forensic
evidence gathering capabilities of the investigative agencies. I do not
wish to debate or dispute the reasons for disbanding SAUTT but by
whatever the name or the structure, the capabilities and training that
had become available are desperately needed. I echo His Excellency’s
concern expressed on Independence Day that investigations cannot
end with a confession statement. Faster testing of narcotics and
firearms is also a must. We can’t have 21st century justice without
21st century police investigations and that requires investment in and
facility with the latest available technology.
**Legal Aid and a Public Defender’s Office**

Despite the large numbers of Attorneys graduating from the Law School every year there appears to be a shortage of practicing attorneys at the Criminal Bar especially at the experience level required for more serious and complex matters. Often, the Court and the prosecution may be ready to proceed but the defendant is unrepresented. Despite increases in the fees payable on legal aid briefs, there are apparently still not many attorneys who regard a substantial legal aid practice as not financially viable. This is further compounded by the fact that attorneys often return briefs just before trials or appeals without any consequence other than loss of the potential fee. Given the regularity with which this happens one is driven to the conclusion that it may often be because the matters are no longer considered to be convenient and/or financially worthwhile. This both contributes to and is probably also precipitated by the chronic delays in the system as adjournments have to be granted to assign new lawyers.

Effective case management requires consistency and continuity and can ideally be most efficiently achieved by the Judge managing a docket or a court with prosecutors and defence counsel who are readily and regularly available. This will of course not preclude private or ad hoc legal aid representation, but some arrangement of that sort is necessary to move the vast majority of cases through the system. Some effort has already been made to alleviate the problem by increasing the complement of lawyers at the Legal Aid and Advisory Authority but it would make sense to go all the way and establish a properly staffed and structured Public Defender’s Office that can provide a career path for attorneys like the DPP’s office.
The Judiciary’s Preparation

In the meantime, the Judiciary continues to strengthen its institutional capability through training and recruitment and the refinement of its internal processes. The Appellate bench is being strengthened by the promotion of Justices Prakash Moosai and Mark Mohammed who both have extensive criminal credentials and are capable of performing well in the civil arena. Indeed before joining the bench, Justice Moosai had a mixed practice and they have both sat as civil Judges. Justice Moosai’s appointment takes effect today and we welcome and congratulate him. Justice Mohammed will join us in October and we also extend congratulations to him. Welcome and congratulations are also in order for three of six Judges who are joining us this term. Two of them have impressive criminal credentials. Justice Norton Jack is a lawyer of 27 years’ standing. He has held several positions over the course of his distinguished career including Assistant Registrar General, Senior Magistrate, DPP of St. Lucia, Senior Legal Advisor to the Attorney General of Trinidad and Tobago (advising 4 Attorneys General over a period of 8 years on matters including death penalty cases and legislative reform). He was also the Country Expert for the OAS on the Inter-American Convention against Corruption. Since 2010 he has been General Counsel, Acting General Manager and most recently Chief Executive Officer of the SEC.

Justice Althea Alexis-Windsor has a Master of Laws Degree from the University of Utrecht (Magna Cum Laude) in the Internationalisation of Crime and Criminal Justice. She has been an Acting Senior State Counsel at the DPP’s department, Deputy Director of the Human Rights Unit of the Ministry of the Attorney General and a Trial Attorney and Appeals Counsel at the United Nations International Criminal Tribunal for Rwanda.
Early in this term we will be convening a meeting of all the Judges involved in Criminal trials to plan and execute training in criminal case management within the boundaries of the existing law and to formulate recommendations for reform.

Recognising that reduction in crime is also linked to the strengthening of families we have also recruited two Judges who will be assigned to the Family Court. One of them has already assumed office and comes with equally impressive credentials. Madame Justice Sandra Paul is the recipient of a Master of Laws Degree from the University of London and holds diplomas in International Environmental Law and Comparative International Environmental Law from the UN Institute of Training and Research in Geneva. She is a qualified mediator in the fields of labour, family civil and commercial disputes. She is also a Fulbright Scholar having participated in the Hubert Humphrey Fellowship Program specializing in Alternative Dispute Resolution. She was a magistrate, a judge of the Industrial Court and Chairman of the Environmental Commission.

**TRANSITIONS**

Time does not permit me to pay tribute to all of those who have left us after making their contributions but it would be remiss of me if I were not to mention two. Sadly, we were faced this year with the passing of Mr. Justice Wendell Kangaloo who finally succumbed to complications from injuries suffered in his horrific accident, after battling for more than a year. Glowing public tributes, accolades and awards have been heaped on him but for us in the Judiciary it was a deep personal loss and, as this is the first opening of term for 17 years that he is not with us, I must take this final opportunity to acknowledge his enormous contribution to our jurisprudence, judicial education and the professionalization of the Judiciary. His grace, humour, compassion and incisive intellect have left an indelible mark.
Thankfully, not all departures were sad. We were immeasurably proud to see one of our own elevated to the highest office in the land. Mr. Justice Anthony Carmona, after an illustrious career at the bar and bench became President Carmona. We wish him success and pray that he will be guided to discharge his duties with the wisdom, fortitude and compassion of which we know he is capable. Madame Prime Minister, with this fortuitous appointment, for the first time in our nation’s history the top three offices are all held by graduates of the Hugh Wooding Law School. It is a new era. Surely we must complete the structure of indigenous government by doing something about the CCJ.

THANKS
Before I close I must thank all those who have made today’s events a successful and worthwhile experience. First and foremost we owe a debt of gratitude to His Excellency the President for granting us the privilege of his presence. Thanks must also be extended to our distinguished guest speaker Senator Helen Drayton for an inspiring and thought-provoking address.

Our thanks go out as always to the Dean of the Cathedral Church of the Holy Trinity for once more graciously hosting our service of divine worship and celebration. It is a tradition of which we are very appreciative. As usual the IRO is also an integral part of the service and we thank them through their esteemed President.

To the Honourable Prime Minister, members of Cabinet, members of Parliament, members of the diplomatic corps and all other specially invited guests, your presence is what marks this occasion as a special one. I am by now accustomed to the fact that great interest is paid to this occasion and it does remind me that it is one of the main opportunities to discharge our onus of accountability and to garner public trust and confidence. I hope that I have done it justice.
Thank you as well to Q-E-D TT and accompanists. And I must never forget all the MTS and Judiciary staff who pitched in (especially the Court Protocol and Information Department and Mrs. Gittens) thank you so much!

Ladies and gentlemen, I have placed before you a number of proposals for sweeping change. Big problems require extraordinary solutions. But if we all pull together, there is nothing that we cannot accomplish. Let us not be daunted by the magnitude of the task. Let us rather be inspired by a broader vision and the hope that must reside in our hearts for a better Trinidad and Tobago. The Judiciary stands ready to move in partnership with every agency or citizen that at least shares our objectives. There is always room for discussion about the best pathway to our destination. Thank you so much for your patience and the courtesy of your attention. May God Bless our nation. This Court now stands adjourned.