Thank you very much for your kind introduction, Mr Chairman, and at the same time let me thank you and the membership of the Trinidad and Tobago Transparency Institute for your invitation to share this time as you explore a most important issue, not unique to our country, but which so dominates our consciousness, that its mere mention evinces widespread agitation and debate.

Of course I speak of corruption, both the reality and the perception. You have highlighted some of the major governance and corruption issues facing Trinidad and Tobago. This forum hopefully will serve as a catalyst for seeking ways to enhance anti-corruption measures in Trinidad and Tobago. This is quite laudable. But as we unfold what you term the anti corruption package, despite the title of my address, I prefer to introduce my remarks in the context of transparency, as an aspect of our culture before I address the legal/judicial process.

The notion of transparency is, of course, a pillar of your institutional brand and also one of the rocks upon which the institution I head, the Judiciary of the Republic of Trinidad and Tobago, is firmly grounded. I know the nexus between transparency (or lack of it) and corruption is clear to you, but for some reason, in the public sphere, the advocacy for transparency, on the one hand, and the battle against corruption, on the other, always becomes so embroiled with negativity arising from our propensity for distrust that the objective of the debate becomes distorted and we lose sight of why we wish to highlight the issue in the first place.

I invite you to consider therefore whether it is not time to change the tenor of the transparency and/or the corruption debate. We spend a lot of energy seeking out the criminals who simply reach the status of being suspects (or sometimes defendants), but who we never seem to be able to effectively catch and punish regardless of the colour of their collar. This begs the question whether we should not instead be promoting transparency for the benefits it holds for the wider national
community, and intensifying our edification of our citizens in this regard. What I am saying is that unless transparency becomes an aspect of our culture, legislation alone will not solve the problem.

In the short time available to me I would like to explore briefly as well, the significance, of the lack of regard for process as an aspect of our culture and its relationship to transparency. It is all very well and good to talk about transparency, but what is it that must be transparent? For me, if a decision affects me or the wider community, I want to know who did what, when, how, applying what criteria, in pursuit of what objective and at what cost.

In other words, it is about process! The process of hiring, the process of procurement, the process of judging, the process of getting a drivers licence. We have very little regard for process because we have a corrupt culture. Chaos and lack of process foster corruption and we are all complicit.

If you don’t believe me then the next time you have to interface with some institution or office and you pick up the phone to ask somebody who they know in there then ask yourself what you are doing? You are jumping the queue! Of course if it would take a reasonable time you wouldn’t be so tempted, but the inefficiency pushes us towards corrupt practice - it’s not just about taking or giving money, which may or may not be a factor. But we don’t view it as corrupt!

We must understand this if we are to understand why we are so resistant to change, and initiatives to curb corruption flounder. We have replaced process with personal relationship networks. In this information age, why are the inner workings of most of our institutions so mysterious? To negotiate an internal process you need information. Think about it! Whatever service or output you desire requires information to move from input to decision maker or to be processed. At the most petty level it is to get the file to the right person’s desk and to the top of the pile so you can get the approval or whatever it is you need. Each node in your network represents a gateway to information or a mover of information or a choke point. It’s all about access. In turn, if I control access then I have value to someone. The corollary is that if we transform processes by making them simpler, faster and more transparent we are taking power away from someone. Knowledge (or information) is power!
Dare I say that ruling elites have little incentive to change anything. After all, the one thing that high office gives you more than anything is access to plug into an effective network. This is not unique to Trinidad and Tobago. This is simply human nature. Given the most recent findings of Transparency International, we can see how difficult it is to reverse priorities and alter the status quo. After all, the key findings of the 2013 global corruption barometer published at the end of last year were as follows:

- **Bribery is widespread overall**: More than one in four people (27 per cent) report having paid a bribe in the last 12 months when interacting with key public institutions and services.

- **Public institutions entrusted to protect people suffer the worst levels of bribery**: Among the eight services evaluated, the police and the judiciary are seen as the two most bribery-prone. An estimated 31 per cent of people who came into contact with the police report having paid a bribe. For those interacting with the judiciary, the share is 24 per cent.

- **Governments are not thought to be doing enough to hold the corrupt to account**: The majority of people around the world believe that their government is ineffective at fighting corruption and corruption in their country is getting worse.

- **The democratic pillars of societies are viewed as the most corrupt**: Around the world, political parties, the driving force of democracies, are perceived to be the most corrupt institution.

- **Personal connections are seen as corrupting the public administration**: People surveyed regard corruption in their country as more than just paying bribes: almost two out of three people believe that personal contacts and relationships help to get things done in the public sector in their country.

- **Powerful groups rather than the public good are judged to be driving government actions**: More than one in two people (54 per cent) think their government is largely or entirely run by groups acting in their own interests rather than for the benefit of the citizens.
• People state they are ready to change this status-quo: Nearly 9 in 10 surveyed say they would act against corruption. The majority of people said that they would be willing to speak up and report an incident of corruption. Two-thirds of those asked to pay a bribe say they refused.

This is not a very pretty picture and we should not bury our heads in the sand and pretend that one or more of these perceptions aren’t applicable to Trinidad and Tobago. Neither should we take any comfort in, nor gloat about any three points positive movement in our position on the global corruption index when compared with the previous year.

But the last finding gives us some hope! The average person wants to change the status quo. What can we give them? How do we empower them? This brings us again to the important question of why is transparency so very important? A very interesting paper emerging from a body of research on the issue and published in World Development, The Multi-Disciplinary International Journal Devoted to the Study and Promotion of World Development, furthers the question by asking: is transparency key to reducing corruption in resource-rich countries.

The researchers, Ivar Kolstad and Arne Wiig observe the following:

• A lack of transparency makes corruption less risky and more attractive.

• A lack of transparency makes it harder to use incentives to make public officials act cleanly.

• A lack of transparency makes it hard to select the most honest and efficient people for public sector positions or as contract partners.

• Informational advantages give access to rents, making reform difficult.

• A lack of transparency makes co-operation more difficult to sustain, and opportunistic rent-seeking more likely.
• A lack of transparency may undermine social norms and reduce trust.

But a warning from the research: increased transparency in the form of more effective channels of information can have undesirable consequences if access to these channels is significantly unequal. It has been shown that where a government controls information channels, false allegations of corruption against political opponents may be levied, or a government may mount counter publicity campaigns to fend off allegations against itself as well as information channels independent of the government may always be assumed to be a benign force. The media, for instance, may concoct false allegations to increase profits, or use information to get access to rent rather than to hold a government or any institution for that matter to account.

This raises the question of the necessity to ensure the independence of the organs charged with investigation and oversight and careful consideration of the mechanisms for their accountability, as well as access to information for all. That is not a discussion that I have time for today but suffice it to say that we must take a hard look at some of our historical approaches.

Mr Chairman, I know that your organisation was so concerned over Trinidad and Tobago’s ranking in the international corruption perception index when the report came out late last year, that you pledged to undertake a number of initiatives including meetings with the highest level of government to discuss such issues as procurement; with the Elections and Boundaries Commission, the United Nations Development Programme, the Organisation of American States, and the High Commissioner of Canada to discuss issues relating to party and election campaign financing. You also proposed stimulating your advocacy group for the formation of proper legislation and regulation policies to ensure that there is a way for the average citizen to report on allegations of corruption so as to spur some kind of investigation by relevant bodies such as the Fraud Squad, the Financial Intelligence Unit, the Integrity Commission, and the Police Complaints Authority.

I think that the encouragement and protection of whistle blowers by legislation is a step in the right direction. Vampires don’t do very well in sunlight. We have seen the salutary effect of leaks in the media on the behaviour and political fortunes of those who transgress. If we like to leak, then let it serve a purpose. The solution to our challenge does not lie in more legislation, although what we do
have can be improved in some instances. We already have numerous statues ranging from the Income Tax Laws, Official Corruption Laws, Misconduct in Public Office, Proceeds of Crime Act etc. What we lack is effective monitoring, analysis and enforcement.

The financial and forensic investigative abilities of our key agencies need to be enhanced. We don’t need more agencies especially if they are operating in silos and not sharing information and data bases where appropriate. We are a nation of paradoxes. We love to know that we know but we can’t let people know we know unless we breach confidentiality, and yet we can be so cagey at times (back to the power thing again). So everybody knows but nobody official officially knows, at least not so they can do anything about it! The truth is that we don’t know what to do with information and those who do, plunder us whether it is through bid-rigging or just outright theft.

Just as an example, we inundate the Integrity Commission with thousands of mandatory reports every year but only have the capacity to only analyse and pursue a minimal percentage of them in any meaningful way in the absence of a complaint is wasting time. We need more targeted approaches. If I am under suspicion then there are already mechanisms to compel or procure the relevant information. But don’t give me information unless it is in response to credible suspicion.

But before we even get there we must first create a culture of transparency where, absent issues of economic or national security, we should not have to wait on a Freedom of Information Act request or a Parliamentary Committee to know what is going on in our public departments and institutions. A regular and different form of reporting for accountability needs to be considered. And what of the private sector, how can businesses be rewarded for best practice? Where are the pre-emptive strategies? And what should the public know that they are entitled to expect when dealing with any institution but in particular a public authority or body.

All of this, I submit ladies and gentlemen, underscores the need for an education thrust that must transcend what I choose to call the police and thief approach to the transparency and corruption debate. We must alter expectations. Education, researchers Kolstad and Wiig conclude, is a key pre-condition for the ability of a population or a more limited group of stakeholders to process that information. The effect of transparency on corruption is not unconditional. In other words, transparency is a necessary but not sufficient condition to reduce corruption. In addition to access to
information, you need the ability to process the information, and the ability and the incentives to act
on the processed information. Hence the need to enhance the capacity of our many relevant
institutions and our individual citizens to empower them to go beyond merely advocating
transparency. Culture change is a huge task, but it cannot be avoided. And we are right back where
we started: it begins with us.

I do not want to leave this topic without fulfilling the promise of the title by sharing my perspective
on the criminal justice system, particularly as it relates to the effective prosecution of white collar
crime. I draw on my experience of 10 years prosecuting such crimes before joining the bench. There
are a couple of key points.

It begins with the investigative process. The highest level of legal and forensic accounting skill needs
to be brought to bear from the outset of an investigation. If you raid you need to know what you are
looking for (and these days it may be on a computer hard drive and they may have hit delete as you
were breaking down the door, but there are ways to recover information). But one must always keep
an eye on the preservation and organisation of evidence in admissible form to be presented in an
easily comprehensible manner to establish an offence/s. That’s the objective. If you wait till after
you are charge it’s too late. When you are up against drug traffickers and money launderers your
competition is the best lawyers and accountants in the world - they can afford them. That capability
is not up to strength.

Forget preliminary inquiries, whether long or short form. What is the point of going through all of
that material twice? You have to live the case for a while and the average magistrate does not have
the time or the specialised training to grapple with these cases without severe difficulty. Even at the
High Court level special training is necessary. I have been in matters where the lever arch files filled
a whole room. Having two bites only contributes to delay.

There must be economy in the indictments. Only go for the strongest two or three counts. If you
can’t convince a jury of those the defendant is likely to walk on the other 12.

Speaking of juries, we are long past the time where the average lawyer, let alone the average juror
can digest and comprehend the vast amounts of material often involving complex layered
transactions. It is unfair to them and in the past there have been spectacular failures in England and other jurisdictions where trials have collapsed after a year or two under the sheer volume and complexity of the evidence. Other jurisdictions have learned from their experiences. One useful suggestion is the use of expert panels to try complex corruption cases. These may consist of a judge and two lay assessors with accounting or other relevant expertise.

Whether or not juries are retained for these matters, (my recommendation is that they should not) we must consider that there has been a generational shift in the way we pay attention and process information visually. This must be taken into account in the presentation techniques employed including pictorial and graphical presentation. That in turn will require aggressive case management and pretrial identification of undisputed evidence that can be condensed and stipulated as well as appropriate courtroom technology. None of this is rocket science but it does require significant retooling if we are to avoid the spectacle of prosecutions dragging on for 10 years, which does nothing for public confidence in the administration of justice or for deterrence.

Mr. Chairman, I could go on but I am conscious that the backdrop to this address is lunch. One can only digest so much at a sitting. I would like to close by assuring you that the Judiciary remains committed to transparency as one of its key pillars in accordance with our vision and mission. We seek to discharge that responsibility through detailed regular periodic reporting on our internal managerial, financial and performance data and processes via print and online publication (and of course Parliamentary Committee appearances). While maintaining our independence and impartiality in respect of criminal prosecutions, we consider ourselves to be partners with every citizen in the effort to combat corruption, including the adoption of our own codes of conduct and tendering and procurement procedures in addition to those specified by statute or subsidiary legislation. Additionally, we are committed to continuing education for judicial officers via the Judicial Education Institute for the enhancement and maintenance of relevant competencies in this area.

May I once more commend you for the initiatives that you have taken and wish you continued success in your endeavours.

Thank you ladies and gentlemen for your attention.