PROMOTING JUSTICE ADMINISTRATION
Presentation by the Honourable Chief Justice of the Republic of Trinidad and Tobago
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The Independence of the Judiciary:
Promoting Independence through Financial, Institutional and Administrative Autonomy & Innovative Information Management

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Good day

In keeping with the overall theme of this conference, I would like to use the limited time that I have to share the perspective of a small jurisdiction to regional and global approaches to Justice Administration, the challenges we face and the opportunities that regional and global cooperation afford us to achieve meaningful Independence of the Judiciary not only in theory but in practical application. I speak specifically to facilitation of that independence through our thrust for financial and administrative autonomy and meaningful control over our information management solutions.

A. Historical Background and Location
Permit me first so set the historical and juridical context. With a population of approximately 1.5 million, Trinidad and Tobago are the most southerly islands of the Caribbean, just eleven (11) kilometres off the north east tip of Venezuela and 130 kilometres south of the Grenadines.

Until 1889, both islands were separate territories with a history of repeated invasion and conquest by competing European powers. When the British took over governance of the islands, the islands were incorporated into a single crown colony for administrative convenience. Our constitution and justice system have therefore have their foundations in our British colonial past. And though we attained political independence in 1962, our constitution and the way it prescribed for the arrangement and management of our systems of governance and justice,
reflected the British colonial worldview and ethos of the period.

While the independence of the Judiciary, as the third arm of the State is espoused in principle and in the structure of relationship among the three arms of the State: the Executive; the Legislature and the Judiciary, in practice we find that independence stymied by lack of control over our resourcing arrangements. I'm sure we all agree that the notion of judicial independence embodies more than non-interference in the adjudicative function. The situation I am about to describe is not unusual in the Caribbean. However, a window of opportunity was opened when the Executive, in the last budget speech, promised "financial autonomy" for the judiciary without saying exactly what that would look like. And so, working together with external consultants, our Judiciary of has embarked on the task of developing a suitable framework for
presentation to the Executive, for placing the control of resources in the hands of the Judiciary.

B. Our Current Situation

a. Financial and Administrative Autonomy

Our economic context is an oil and gas economy where oil prices have fallen from $110 to around $40 per barrel. The lack of control I referenced only a moment ago, has placed limits on the appropriate discharge of our functions and progress has concentrated on squeezing greater process efficiencies out of a system that is fraught with excessive case backlogs and procedural delays more especially so in the Criminal Justice System.

The Trinidad and Tobago Judiciary has implemented a number of initiatives aimed at reducing the transit time
for both civil and criminal matters, among them, the introduction of:

➢ Solution oriented courts (A Family Court, a Drug Treatment Court and later this year a dedicated Children’s court with sub-divisions for those clients needing the care and protection of the State separate as distinct from those who have committed criminal offences;

➢ Case Management Information System to re-engineer and streamline court processes;

➢ Use of court-annexed mediation aimed at moving towards an expeditious and just disposition as opposed to a trial;

➢ The development of civil (in 2005) and more recently criminal procedure rules (which will come into effect January 2017) aimed at imposing
stricter timelines to manage the progress of matters through the Court;

➢ Key Performance Indicators through the development of systems for collecting and publishing court statistics

➢ Improved court plant and employee engagement;

➢ Greater collaboration with justice stakeholders to improve system processes and flow; and a

➢ Greater utilisation of ICT technologies across both core and support business units of the Court.

Each of those initiatives began or was facilitated by assistance and collaboration with our counterparts and colleagues in the hemisphere and the wider commonwealth! Whether it was training and financing through the NCSC, USAID and DFATD (formerly
CIDA); Identification and sharing of best practices through study tours and exchanges with Canada, Sandy Hook, or Florida; or Joint training with our Jamaican and Barbadian counterparts, the development of a cadre of regional trainers and subject matter experts has saved us the expense of reinventing the wheel and has allowed us to achieve collectively more than the possible total of individual achievements. The exchange of experience and best practice has not been one-way i.e. from the supposedly more developed jurisdictions in the North to those in the South. I dare say our Family Court has become a much studied model of success and our staff are now practiced masters at conducting study tours.

While these initiatives have netted significant returns, what is needed are fundamental changes in structure and in the allocation and management of resources voted by the Legislature for the Judiciary, in order for
us to realise even greater process efficiencies. Put simply, we need control of both financial and human resources. My point in the way I prefaced this presentation is to underscore my firm belief in the value of organizations like IACA as clearing houses where best practices can be discussed and shared and the confidence gained from shared experience can be leveraged to persuade our Parliaments and Executives to give us the freedom and resources that we need.

A former Chief Justice once summarized our financial impediments this way and I quote retired Chief Justice Michael de la Bastide:

“Every year the Judiciary has to submit to the Ministry of Finance detailed budget proposals for the next financial year which it must defend with facts, figures, and argument in order to avoid the sharp axe of the Minister of Finance. Funds are then voted by Parliament to the Judiciary under specific heads. Even after these funds are voted, before money can be spent, application must be made
to both the Director of Budgets and the Treasury for authorisation. The difficulties which we have experienced at times in securing authorisations from the Director of Budgets are well documented.”

Our main difficulties include but are not limited to the following:

1. A formal request must be made for the release of funding. The Judiciary is never sure that we will obtain those funds and even if the request is approved that there will be a timely release of those funds. Consequently there are delays in payments for projects, contractors withhold services and our physical infrastructure cannot be properly maintained.

2. Point one sometimes leads to staff, service provider and customer complaints as
3. Emergency requests cannot be resolved quickly.

4. Transfers from votes dedicated to one type of expenditure to another can only be done upon receipt of approval which may not come on time or at all. This leads to delays in effecting re-prioritisation of activities and delays in payments for projects.

5. Requests must be made for the confirmation of availability of funds before tenders can be issued. When confirmation is not received in a timely manner is leads to delays in the tendering process.
6. There is a manual system of accounting which is burdensome and fraught with potential for errors, yet the Judiciary.

That’s the finance side.

As regards the management of our human resources, the picture is no more encouraging. The Judiciary of Trinidad and Tobago is obligated to seek the services of the Executive in its human resourcing. The Executive

➢ Sets and approves the staffing limits

➢ Sets terms and conditions of engagement for staff

➢ Sends public service staff to fill certain vacant positions

➢ Provides the information systems for managing human resources; and
The performance management framework for staff.

Often the Judiciary is forced to defend its request for remuneration at appropriate levels for certain categories of staff with specialized competencies and skill sets not found in other parts of the public service.

It is difficult to keep a core group of competent personnel with institutional knowledge beyond the short-term. Training and re-training in the same areas must be done continuously and there are long periods of vacant positions for contracted positions of three years. There are also lengthy delays in the filling of permanent public service posts. Additionally, public service personnel are not always suitable to the role and context of the job. Recruitment and its attendant costs are a continuous activity. In such an environment, staff engagement is challenging, and there are
breakdowns in business processes when positions remain unfilled for inordinate lengths of time.

The net result of our lack of financial autonomy and control over our human resources is that we are stymied in achieving strategic goals and objectives, implementing our plans, programmes, initiatives and projects as policy-makers outside of the Judiciary determine:

➢ the amount and speed at which the Judiciary are resourced;

➢ the framework in which resources must be requested; and

➢ the manner in which we are accountable for those resources for the purpose of transparency.
In effect, the net overall impact of it all is an erosion of our Judicial Independence and an inability to successfully fulfil our mandate.

b. Judicial Independence through Technological Innovation and Flexibility

Many of us are familiar with the arguments for financial and administrative autonomy and the Relevant international conventions and studies such as the UN Basic Principles on the Independence of the Judiciary, 1985, the Beijing Statement of Principles of the Independence, 1995, the Latimer House Guidelines, 1998, the Beirut Declaration 1999, the Cairo Declaration on Judicial Independence 2003 and the International Bar Association Code of Minimum Standards of Judicial Independence to list a few.
But there is another growing threat to our effectiveness and our independence in how our information management needs are met. We all employ various ICT solutions in a bid to manage what can be arguably one of the more complex information management processes known; the progress of a case through a Court system. Twenty years ago Trinidad and Tobago utilised an off-the-shelf solution which we have been deploying at our Supreme Court, at two pilot Courts in the Magistracy, and more recently in our Family Court and the Probate Registry.

While this off-the-shelf CMIS has contributed to the speedier disposition of matters, in recent years, growth in the volume of matters before the courts in addition the complexity of some of those cases has presented us with some limitations with regard to the software’s capability and more so its suitability.
Additionally, restrictive administrative arrangements imposed by the owners of the software have severely limited our ability to customise and maintain the software to suit our local needs. Increasing annual expenses (by as much as six per cent year on year), associated with vendor’s support of the solution have defeated one of our strategic goals— reducing the costs of our operations. Currently we spend approximately USD$176,000 annually to maintain the system (primarily in licensing fees), and licenses for use are paid on a per user basis thus limiting the potential for expansion. That's USD$176,000 for a system we neither own nor can fully customise to suit our needs! Every time we identify a need to develop a new capability or generate a new type of report, we have to return to the vendor and pay exorbitant sums for the upgrade.
In other words, the private sector interest in a business arrangement that guarantees long term profits collides with our imperative of serving our clients as effectively and efficiently as possible.

C. Judicial Independence must be Resourced Financially, Administratively & Technologically

How have we confronted these challenges? Speaking firstly to our technology issues, we have long recognized that given the short economic life of IT solutions and products, it is vital to have the capability to adapt and revisit our ICT solutions on a regular basis.

We have identified two core "must haves":

• Owning the source code

• Developing an in-house capability to program and customize.
The second one may be particularly challenging for small courts/jurisdictions so, while we do have some in-house programming capability we are exploring the establishment of regional support groupings through linkages with other small states in the Caribbean and local Universities. One idea is a stand-alone development institute where we share control of the Board.

In the meantime, we have been testing and piloting various ICT tools and technologies to improve timeliness and quality while reducing the costs. And in our corner has been the National Center for State Courts (NCSC) providing the necessary technical knowledge of and support. One of the most exciting initiatives that the NCSC has made available to us is an ingenious indigenous solution they developed along with the National Judicial Council of Nigeria.
In February this year I, along with other Caribbean Chief Justices, signed a Memorandum of Understanding with the NCSC and the National Judicial Council of Nigeria (NJC) for the sharing of their Case Management Information System (CMIS) for our new Juvenile Court Project. Trinidad and Tobago stands to benefit from this sharing and it will afford us opportunities to further modify the software to suit the needs of the Children Court as well as the wider judiciary. The MOU commits us to share our learnings with Nigeria and the other signatories.

The modification of the software will be informed by new process flows currently being defined under our Juvenile Court Project, continuously refined juvenile justice data projections and the establishment of more effective data management techniques. To this end, a two-day workshop was held on April 20-21, 2016, with 23 agencies in the Juvenile Justice system in order to
determine strategies for the harmonisation of data collected by these agencies. This collaboration among agencies also serves to establish mechanisms for easier dissemination and sharing of juvenile justice data. In turn, the data will allow for institutional and national decision-making concerning children who come into conflict with the law. The CMIS should result in better access to court data and improved court planning and efficiency. If successful in the Trinidad and Tobago context, the CMIS may also be adopted in other Caribbean territories making this partnership between Trinidad and Tobago and Nigeria only the start of future Judiciary-to-Judiciary collaborative efforts both within and outside the Commonwealth.

On the financial side, the judiciary is also engaged in collaborative efforts to design an appropriate framework upon which to build the financial and administrative autonomy of the Trinidad and Tobago
Judiciary that incorporate the requisite accountability and safe guards. We have already learned a lot from a scan of the global landscape. I only have time for some brief observations.

Across the Commonwealth there are varying models employed. Most are similar to ours but there are important differences. In Canada, for example, the process of obtaining funds is similar to that of Trinidad and Tobago. However, there is a base level of approved funding both in terms of statutory and voted amounts, there is no budgetary control over statutory amounts and the Court is in charge of the voted sums. There are, however, issues related to compliance with central authority policies and requirements.

In Ireland, funds are negotiated through the Ministry of Justice and an independent body manages the funds, and there is statutory independence of administrative services. Kenya has an established fund known as the
Judiciary Fund which has a constitutional guarantee of the fund being paid to the Judiciary. The funds are administered by the Chief Registrar but there are challenges with accountability.

The challenge in every case is the development of systems that allow for financial autonomy but that also include robust accountability mechanisms.

That is implicit in the Latimer House principles, to which we are committed. Even though those principles acknowledge that there is a recognised obligation of the Legislature to vote "Sufficient and sustainable funding to enable the judiciary to perform its functions to the highest standards", they go on to state that: "Such funds, once voted for the judiciary by the legislature, should be protected from alienation or misuse."

Also, as noted earlier, efficient management of one's own funds is not possible without meaningful and effective control of an adequate human resource.
Finally, structure is one thing but quantum is also crucial.

The various best practice models also point to consistency in the level of funding to manage the Judiciary. While the Gross Domestic Product (GDP) of Trinidad and Tobago has moved from US$8.1-Bn (2000) to US$24.64-Bn (2013), the funding of the Judiciary has not kept pace. In fact the Judiciary currently gets less than half of 1 per cent of our country’s annual budget where the recommended international best practice stands at around 3-4 per cent. Over the last 3 years our request for recurrent funding has ranged between: US$81.4-Mn (2013) to US$105-Mn (2016) – and for capital expenditure between US$20.3-Mn (2013) to US$22-Mn (2016). The Judiciary received nothing close to those figures. Our 3
year recurrent expenditure allocation for the period 2013-2016, was approximately US$57-Mn to US$65Mn, and for capital expenditure during the same period it declined from approximately US$14 Mn to US$12Mn. Funds voted for the year not utilised in the same fiscal year are returned to the Consolidated Fund at the end of the fiscal year whether or not the projects to which they are allocated are ongoing with obvious consequences for Project Management.

D. Conclusion

As we move forward, the scope for regional and global approaches is both obvious and immense! These will be guides not rigid formulae. We seek an approach that is customised to our unique needs and context. And with the support of our partners and the ingenuity of our people, we expect that within a year or so we would have framework for financial and administrative
autonomy that will support the development thrusts of the Judiciary of Trinidad and Tobago.

Ladies and Gentlemen, I thank you.