ADDRESS BY GERARD LATULIPPE
FORMER HIGH COMMISSIONER FOR CANADA, LECTURER, COLUMNIST
CEREMONIAL OPENING OF LAW TERM 17/18
“Re-setting the Criminal Justice System”
Your Excellency Mr. Anthony Thomas Aquinas Carmona O.R.T.T.,
S.C., President of the Republic of Trinidad and Tobago and Mrs.
Reema Carmona

His Lordship the Honourable Ivor Archie, Chief Justice of the
Judiciary

The Honourable Keith Rowley, Prime Minister of the Republic of
Trinidad and Tobago

Senator the Honourable Christine Kangaloo, President of the Senate

The Honourable Bridgette Anisette-George, Speaker of the House of
Representatives

The Honourable Faris Al Rawi, Attorney General

Other Members of the Cabinet

The Honourable Kevin Charles, Chief Secretary of the Tobago House
of Assembly

Mrs. Kamla Persad-Bissessar, S.C., Leader of the Opposition

Your Excellencies, Ambassadors and Heads of Mission accredited to
Trinidad and Tobago

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

His Grace the Archbishop of Port of Spain
Heads of Religious Bodies
Presidents, Chairpersons and Members of Superior Courts of Record
Chief of Defence Staff, Brigadier General Rodney Smart
Commissioner of Prisons (Ag.) Mr. Cecil Duke
Chief Fire Officer Mr. Roosevelt Bruce
His Worship Keron Valentine, Mayor of Port of Spain
His Worship Kazim Hosein, Mayor of San Fernando
Judges of The Caribbean Court of Justice
Her Worship Mrs. Marcia Ayers-Caesar, Chief Magistrate and other Magistrates
Members of the Legal Fraternity, the business sector, religious organisations and civil society
Other specially invited guests
Members of the Media

I am indeed grateful for the invitation extended to me by the Honourable Ivor Archie, Chief Justice of Trinidad and Tobago to share my thoughts at this inter-faith service to mark the Ceremonial Opening of the Law Term. I hope that we can bring our contribution to the resolution of the transformational issues of the judiciary system.

I am also please to be back in this beautiful land that I called home for nearly four years. My wife and I have very fond memories of the people of this country; of our friends with whom we have shared so
many beautiful moments; of the joy of living of the trinbagonians. We have learned that in this country personal relationships always come first.

It was an honor to represent my country as High Commissioner of Canada. I am convinced that Chief Justice Archie sought to pay tribute to the common values that bind our two countries in the rule of law and human rights. Our countries have developed close cooperation in criminal justice reform, the drug treatment courts, the fight against money laundering, transparency in the procurement process, the Extractive Industry Transparency initiative. We are also supporting the Caribbean Court of Justice. I am particularly proud of the support we have given to many NGOs that provide assistance to at-risk youth, victims of crime and women victims of violence.

The theme for this year is “re-setting the Criminal Justice System”. In my view, this objective should be based on strong moral values that generate social change. Greek philosophy was the first to define those values as *natural justice*. For the Greek philosophers, natural justice was a moral, religious and even a biological order that is independent of the evolution of human laws and traditions. According to Aristotle the interaction between justice and human equality is part of the Universal Law.

Centuries have passed but this moral framework of human civilization has remained. The Universal Declaration of Human Rights recognizes them in its preamble: “Whereas recognition of the inherent dignity of the equal and inalienable rights of all members of
the human family is the foundation of freedom, justice and peace in the world.”

The core principle of equality of human beings Is the catalyst of Article 7 of the Universal Declaration of Human Rights: “All are equal before the law and are entitle without discrimination to equal protection of the law”. The declaration also recognizes as a human right the way such equality must be exercised by the courts: “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him”

And then, what is the role and obligations of the state and its institutions? There is a fundamental social contract between the state and the community. The state is the trustee of its governed. Public authority must respect its legal norms; it shall respect the human rights. It is subject to the same legal obligations as the people. This is the rule of law.

Its the United States Supreme Court Judge Sonia Sotomayor who better summarized this concept: “I firmly believe in the rule of law as the foundation for all basic rights”. Effective rule of law reduces corruption, combats poverty and disease, and protect people from injustice. It is the foundation for communities that live in peace and that can provide equal opportunities. It is the bedrock of human development. Without rule of law there is no democracy. If the laws and constitution of a nation cannot be enforced in a fair, honest and independent manner, the citizens lived under the rule of perverted laws.
Coming back to the thematic of the law term opening ceremony, a resetting of the criminal justice system does not only mean to address what is “broken” in its governance. It is to put at the center the people who find themselves in a state of “brokenness”. It is to respect the universal moral values of dignity and equality of human beings.

Access to justice is a human right. The International Covenant on Civil and Political Rights is unequivocal. Article 9 stipulates that “anyone arrested or detained on a criminal charge shall be bought promptly before a judge or another officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or be release. It shall not be the general rule that persons awaiting trial shall be detained in custody…..”

In 2016, the Supreme Court of Canada delivered a ground-breaking judgment on access to justice that has disrupted the Canadian judicial system as well as all the Ministries of Justice of the Provinces and of the Federal Government.

Barrett Jordan was charged in December 2008 for taking part in a drug deal in British Columbia but was not convicted until February 2013. His lawyers appealed the case, arguing that the delay of 49 months was unreasonable.

A majority of judges decided that: “All the parties were operating within the culture of complacency toward delay that has pervaded the criminal justice system in recent years……An unreasonable delay denies justice to the accused, victims and their families and the public as a whole”. The convictions of Jordan were set aside and a
stay of proceeding entered. For cases going to trial in the Superior Court, the ceiling beyond which delay is presumptively unreasonable, was fixed at 30 months and 18 months for the Provincial Courts.

Because of this judgment, several charges for criminal offenses were rejected by Canadian courts. It was a shock treatment. For instance, hundreds of millions of dollars are now being spent by the provincial and federal governments for the hiring of new judges, crown prosecutors and staffers. The Federal Minister of Justice has introduced legislation to eliminate various minimum sentences to facilitate voluntary plea of guilty.

In Trinidad and Tobago as in many countries of the Caribbean, the high crime rate overwhelms the justice system with caseloads that far exceed the processing capacity of the criminal justice system. An accused can be held in remand without trial for periods up to ten years. The whole chain of judicial actors is faced with significant budgetary restrictions.

As a result, public perception of the judicial system's ability to solve insecurity problems is very low. It is not surprising that the public opinion calls for a tough on crime approach. A survey has shown that 89.9% of citizens believe that criminality should be punished more harshly.

It is not because more offenders are imprisoned that crime diminishes. For instance, the USA has six time more inmates than Canada with a murder rate per 100 000 inhabitants 2.5 time higher than the Canadian rate (4.2 vs 1.6).
Is the repressive approach the only option? Are not the victim and the community injured when a crime is committed? What does the universal moral values of human dignity and equality dictate to us? Ancient wisdom can help to resolve the justice issues of our times. A Nunavit Inuit elder interviewed about indigenous legal traditions before the arrival of Europeans in North America, said: “We always had regulations in our camps. When someone had a bad behavior, the elders of the community gathered and took care of the individual.” Oral tradition reports that in front of the community, the father of a murderer gave his son to the victim's parents so that he assumed the responsibilities of their son, who were to hunt, split the wood and, more generally, insure their subsistence. Through this gesture which the community witnessed, the murderer was obliged to restore some of what had been caught by his reprehensible gesture.

Victor Hugo, the poet and French writer, once said: “Nothing is stronger than an idea whose time has come.”

This idea today is a paradigm shift from exclusivity of guilt and punishment towards an all-encompassing system of justice for victims and offenders where the community has an important role to play. The Criminal Justice system could be reset to reflect the restoratives principles and values. It implies to focus on redressing the harm done to the victims, holding offender accountable for their actions and engaging the community in their resolution. This approach encourages the peaceful resolution of conflict, promote tolerance and inclusiveness and build respect for diversity.
I am very aware of the injuries that society has suffered because of many years of crimes of violence that often go beyond imagination. It need courage to move ahead in spite of despair. We have to learn from the words of Martin Luther King Jr: “Take the first step in faith” You don’t have to see the whole staircase, just take the first step”.

Under the leadership and the strong commitment of Chief Justice Ivor Archie, Trinidad and Tobago is engaged in a journey for change. On two occasions, I have attended the graduation of offenders who participated in the drug treatment courts program. It’s a moving experience. They all come a long way from hell to social reintegration. The program contributes to reducing the number of crimes perpetrated because of drug dependence while providing offenders with appropriate treatment.

There is no better example of restorative justice than the juvenile justice project and the Peer resolution Centre. The state will thus fulfill its moral obligation to the youth of this country. We must remember the words of former French President Francois Mitterand: "Youth is not always right but the society that strikes it is always wrong"

The father of your nation, Eric Williams, had put his hope in the youth and especially its education. You surely remember his words. “To increase student engagement and ownership of learning, we should give students opportunities to do meaningful work that makes a difference locally, nationally and globally.” Among these opportunities, there must be the possibility of rehabilitating deviant
behaviors so that those youth could play a constructive role in society.

The UN Report on Restorative Justice for Children demonstrated that children involved in restorative and rehabilitative programs show fewer tendencies toward violence. The rate of recidivism is lower. They are more likely to stay away from gangs. It increased the likelihood that the child will return to education and improved job prospects.

The community has an important role to play in reducing crime. It is not just the responsibility of the police and the justice system. The fight against crime is also a social project.

The Peer Resolution Centre project is a leading criminal justice initiative in Trinidad and Tobago. Children who commit minor offences will be referred by the Children Courts to Peer Resolution where Children will recommend sanctions to the judge. Through interaction with their peers, young offenders will more easily act to correct the harm caused. This process will also facilitate their reinsertion in the community.

On several occasions, Chief Justice Archie stressed the importance of involving business, volunteers and all citizens to join civil society in supporting restorative justice initiatives. I would like to echo this preoccupation of the Chief Justice by highlighting a Canadian example of a successful partnership between civil society, volunteers, donors and judicial actors: the Restorative Justice Centers.
These centers are located in the regions to be better embedded into the community they serve. Their mission is to help those affected by an act of violence by accompanying them in a restorative process based on dialogue. They also seek to promote restorative justice in the community.

How do they get there? Through innovative actions that stick to the local culture. Here are some examples. The Center holds victim-to-offender meetings that bring together victims of crime, people who have committed and sustained related crimes as well as members of the community. They are supervised on a voluntary basis by facilitators selected because of their human and professional qualities. A local radio station broadcasts a weekly program called *How to do justice differently* that broadcasts testimonies from people who have found a way to social reinsertion. The Centre organizes days of sensitization in the localities. There is also the Cabaret of the second chance. Artists and people who have been judicialized present a good quality show that is also featured on UTube. Art workshop is even use as a therapy by awakening creativity in a restorative spirit.

In Canada, victim-offender mediation as an alternative to sentencing has been in place for many years. With the assistance of a professional mediator, the victim and the offender meet voluntarily to express their feelings and perceptions of the offense. The meetings conclude with an attempt to reach an agreement on what actions the offender will take to repair the damage suffered by the victim. The Centers facilitate access to these services. In addition to
their staff, these centers have a team of trained volunteers and are largely funded by donations.

Restorative justice is not a panacea for all the flaws of the justice system. A better responsiveness of the Criminal Justice System is key. It implies a greater collaboration among a group of interconnected yet independent actors such as the Police Service, the Forensic Center, the Office of Public Prosecutors, defense attorneys, and the Judiciary. Silo work is endemic which greatly impact the effectiveness of the system. Accountability is needed every step of the way.

I want to pay tribute to the efforts being made by Attorney General Faris Al Wari, Chief Justice Ivor Archie, the Director of Public Prosecutions and many others to reform criminal justice. I refer in particular to the Plea Bargaining legislation, the Criminal Procedure Rules, Maximum Sentence Indication and Cases Management Rules. However, the system is still disturbed by flaws such as a culture of adjournments, judges delaying ruling, slow turnover of forensic analysis, poor evidence gathering, staffing shortage.

There is a culture of sluggishness that has settled into the system that needs to be changed through improved accountability. Accountability is the glue that lies commitment to results. The person who is responsible of a matter, should be accountable for it but not if it has no control on it. The lack of accountability is the root of impunity. Accountability must be promoted but it should be enforceable.
A Chief Justice in Trinidad and Tobago as in Canada is the administrative head over judicial officers. By his duties, he is responsible for the application of performance standards, the directives he gives and the Principles of Judicial Conduct. The Court Excellence Framework applied by the Judiciary of Trinidad and Tobago is a high standard tool to assess and improve the quality of justice.

However, the process for disciplining a judge in Trinidad and Tobago is inadequate and the Chief Justice lack remedies to properly keep judicial officials accountable.

The accountability of judges is a delicate matter that overlaps with the concept of judicial independence, the authority of the chief justice and the right of citizens to an accountable judicial system. The key lies in its effectiveness and enforceability. It is the prerogative of each government to determine their mechanism of accountability.

In Canada, Judicial Councils are responsible for the good behaviour of judges. They are composed mainly of judges, lawyers but also members of the public. They adopt and apply a code of ethics for judges. The code contains, among other things, an obligation for judges to abide by the directives of the Chief Justice. Members of the public can file a complaint against a judge.

The question arose whether the Chief Justice has the legal authority file a complaint against a judge and whether there is a reasonable apprehension of bias on the institutional level. In a famous Supreme Court decision, *Ruffo VS Conseil de la Magistrature*, the judges
stated that the Chief Justice, as a primus inter pares within the court, which he sees the functioning in all respects, occupies a privileged position to ensure respect for judicial ethics. In short, the power to file complain is intrinsically the responsibility of the chief justice in that field ...

I would like to conclude with this thought. Trinidad and Tobago is at a historic moment where it must reset its criminal justice system on new foundations. It should be guided by the values of equality and dignity of which universal human rights are the bedrock. I remind you of the words of Nelson Mandela: “To deny people human rights is to challenge their very humanity.”