



'Corruption, Conflict and Security'

The Honourable Mr Justice Adrian Saunders, President of the Caribbean Court of Justice

Release of the 2022 Corruption Perceptions Index (CPI) by the Trinidad and Tobago Transparency Institute

Virtual
31 January 2023

Launched in 1998, **the Trinidad & Tobago Transparency Institute (TTI)** is a non-profit company registered under the Trinidad and Tobago Companies Act, 1995 and governed by a Board of Directors elected by our members, both individual and corporate. We are an NGO that is politically non-partisan, working in a non-confrontational way with relevant players from government, civil society, business and the media to reduce corruption. The chairman is Dion M. Abdool LL.B Lec LL.M Fcis Gmp.

Keynote Address
‘Corruption, Conflict and Security’
delivered by
The Honourable Mr Justice Adrian Saunders, President of the Caribbean Court of
Justice
on the occasion of the
Virtual Release of the 2022 Corruption Perceptions Index (CPI) by the Trinidad and
Tobago Transparency Institute
31 January 2023 || Virtual || 9:00 am – 10:00 am

Protocols.

Good morning.

Introductory Remarks

There’s a story that is told of Ernest Hemingway, the great American writer who won the Nobel prize for literature in 1954. Hemingway was noted for his brevity – short sentences and short stories. It is said that one day some fellow writers challenged him to a wager. They bet him \$10 (a considerable sum at the time) that he could not produce a story in six words. Hemingway thought about it for a little time and then he came up with this masterpiece: ‘FOR SALE: BABY’S SHOES, NEVER WORN’.

Now it takes a little time to wrap one’s head around the profundity and poignancy of this sad tale, but once you do so, you can’t but be satisfied that Hemingway had rightly earned the \$10.

Today I propose to be brief. Not quite six words, but enough to offer some reflections on the topic you have asked me to speak on.

As President of the Caribbean Court of Justice (CCJ), a regional institution, I was heartened to receive the invitation to attend and deliver these brief remarks at this event to mark the virtual launch of the 2022 Corruption Perceptions Index (CPI). This is because, across the region, there

are several issues that are common to the various States of the Caribbean Community (CARICOM) when we examine Corruption, Conflict and Security. These issues, if left unresolved, will stymie our progress in realising our aspirational goals and objectives as individual States and as a region.

For all my years as a judicial officer, I have been a judge of a regional court. I began my career as a judge of the Eastern Caribbean Supreme Court in 1996, and then, in 2005, I was one of the first cohorts of judges recruited to preside at the CCJ. My instinct, therefore, is to see issues such as *Corruption, Conflict and Security*, the topic I have been asked to address, from a regional perspective. Indeed, a collective and collaborative approach to treating with these matters has been identified as being critical if we are to meet our objectives in battling corruption. A 2021 article published by the World Economic Forum rightly notes, for example, that,

‘when we speak of collective action, it must also mean *multilateral* and *multistakeholder* in nature because no *single* country...industry can achieve its anti-corruption goals by itself...everyone bears the burden of corruption, even if it is not within their own...borders. Every stakeholder, therefore, needs to be part of the solution... Like the COVID-19 pandemic and climate change, corruption is a transnational and multisectoral problem that requires transnational and multisectoral solutions. Collective action...will prove essential in the coming months and years as we shape a more equitable post-pandemic world and a more sustainable future.’¹

Each year, the release of the CPI statistics provides a snapshot of just where States are in the fight against corruption. The release also gives us a comparison with the previous year’s statistics. Of course, I do not know what the 2022 statistics that will be revealed later this morning will indicate, but I am almost sure that throughout the Caribbean, there is still much more to be done to combat the scourge of corruption. In 2021, where the average global score was 43/100, it was noted that the ‘global average remains unchanged for the tenth year in a

¹ World Economic Forum, ‘The Private Sector is Key to Fighting Corruption’ (9 Dec 2021) <<https://www.weforum.org/agenda/2021/12/the-private-sector-is-key-to-fighting-corruption/>> accessed 25 January 2023 (emphasis added).

row'.² That global average was the same as that for the region of The Americas³ in which the Member States of CARICOM fall. Notably, this regional score of 43/100 has remained the same for the past 3 years.⁴ It is not a score of which one can be proud.

It is trite that corruption in any and all forms and in any and all sectors - whether occurring at the national, regional or international level - undermines the rule of law, impedes economic and social development, and prevents the full realisation of the true potential of our people and States. The work of civil society organisations such as Transparency International and its national chapters like the Trinidad and Tobago Transparency Institute (TTTI), is therefore critical in the collective effort to promote good governance. It is in this vein that the mandates of Transparency International on the one hand and that of the Caribbean Court of Justice (CCJ) on the other share some degree of alignment.

The CCJ, which has been headquartered in Port of Spain over the last 18 years, was established by Agreement⁵ among the Conference of Heads of Government of CARICOM in 2001. Under that 2001 Agreement, the Heads of Government expressed their conviction that the CCJ 'will have a determinative role in the further development of Caribbean jurisprudence through the judicial process.' The Heads also referenced 'the desirability of entrenching the Court in [the] national Constitutions [of the Member States]', and they expressed awareness that the establishment of the CCJ was 'a further step in the deepening of the regional integration process'. All of these grand expectations for the Court signalled a sincere belief that a CCJ would promote the rule of law, democracy and good governance within both the national and regional spheres.

² Transparency International, 'Corruption Perceptions Index' <<https://www.transparency.org/en/cpi/2021>> accessed 25 January 2023.

³ Transparency International, *Corruption Perceptions Index 2021*, 11 <https://images.transparencycdn.org/images/CPI2021_Report_EN-web.pdf> accessed 25 January 2023.

⁴ *ibid* 12.

⁵ Agreement Establishing the Caribbean Court of Justice (adopted 14 February 2001, entered into force 23 July 2002) 2255 UNTS 319.

These were not misplaced hopes. As the only apex or final appellate court sited within CARICOM, and as the court exclusively entrusted with interpreting and applying CARICOM's regional integration treaty (the Revised Treaty of Chaguaramas⁶ or 'RTC'), the CCJ is uniquely well placed to realise those expectations. This is because it is an indigenous court. Its judges, selected on a competitive, transparent and non-political basis, live in the region. They are, for the most part, of the region. They are well attuned to our history and our habits, our aspirations and our culture. They are able to appreciate and to close the gap, when appropriate, between law and society. They can best render decisions that serve the ends of justice within our specific context in mind. And they have amply demonstrated this time and time again.

Despite all of this, and notwithstanding the Court's almost two decades of operation, the significance of the CCJ seems hardly to register in the consciousness of many citizens of this country. In many respects, this is tragic as Trinidad and Tobago, and Jamaica together contributed a little more than one-half of the monies being used to fund the Court.

By contrast, the Court enjoys a high reputation among the people of those States that send their final appeals to it. Have a conversation with the citizenry of the States of Barbados, Guyana, Belize and Dominica and they will speak about the Court with knowledge and confidence and *pride*. They will be able to recognise the judges of the Court if they see them. They can even discuss with you some of the decisions of the Court that have contributed to advancing the jurisprudence and the rule of law in *their* States. In those countries, the people not only enjoy a superior level of access to justice at an apex court level, but they also experience a civic bond with their final court.

⁶ Revised Treaty of Chaguaramas Establishing the Caribbean Community including the CARICOM Single Market and Economy (adopted 5 July 2001, entered into force 4 February 2002) 2259 UNTS 293.

Compare, for example, Jamaica (which sends their final appeals to London) with Barbados (which sends *their* final appeals to Port of Spain). Jamaica has a population of almost 3 million, but it sends an average of only three cases annually to its final court. The population of Barbados is about one-tenth of Jamaica's, but Barbados' final court, the CCJ, hears approximately three times as many cases annually as Jamaica's final court does. What accounts for this difference? In part, the problem lies in the huge expense and inconvenience in taking a case to London. But even where, as in Trinidad and Tobago, quite a few appeals do go from Port of Spain to London, as Lord Hoffman, a former distinguished Privy Councillor once stated, 'A court of your own is necessary if you are going to have the full benefit of what a final court can do to *transform* society in partnership with the other two branches of government.'⁷

I go into this detail because I firmly hold the view that it is the duty of civil society organisations across CARICOM to take a look at the CCJ's institutional framework and performance over the years, to make an objective assessment of our systems and performance and to lend their own efforts to increasing the public's awareness of the need to champion the cause of the region's final court. Accession to the CCJ is *not* and ought not to be made a political football. I hope you will forgive me for using your invitation to render this address as an opportunity to get all this off my chest, but in good conscience, I can hardly do otherwise. Every regional institution that is invested in the promotion of a Caribbean jurisprudence and the rule of law has a responsibility to support those institutions that are best equipped to advance that in which they are invested.

Corruption, Conflict and Security

It is impossible to be a citizen of CARICOM and be oblivious to the huge challenges this region faces as it seeks to address corruption, conflict and security. According to Transparency

⁷ 'Privy Council Judge Supports CCJ' (*Jamaica Observer*, 19 Oct 2003) <<https://www.jamaicaobserver.com/news/privy-council-judge-supports-ccj/>> accessed 25 January 2023 (emphasis added).

International, in 2021, Trinidad and Tobago's CPI score was 41, and this country ranked 82 out of a total of 180 countries.⁸ Only three CARICOM states ranked lower, namely Guyana, Suriname and Haiti. In 2014, Trinidad and Tobago scored 38 and was ranked at 85 of 175.⁹

So far as conflict and security are concerned, the picture is not a good one. One-half of the top 12 countries with the worst homicide rates in the world are from CARICOM. Last year, if Press reports of 600 murders in 2022 are accurate¹⁰, Trinidad and Tobago would have had a homicide rate of close to 40 per 100,000. According to World Population Review, this country's homicide rate falls in the top twelve countries in the world. Jamaica, Belize, St Vincent and the Grenadines, St Kitts and Nevis and The Bahamas are CARICOM countries with just as bad if not worse homicide rates.¹¹

These are statistics that call for regional responses to complement and strengthen national efforts. It seems to me that the region must acknowledge that it has an alarming problem on its hands and commit to tackling that problem in a strategic manner at both a regional and national level. For example, the region does not manufacture firearms, but many of the homicide victims are gunned down. At a regional level, what more can we do collectively to stem the importation of arms and ammunition?

In some CARICOM States, the criminal justice system appears to be broken, with little evidence that there is significant coordinated effort among the various entities that comprise that system, let alone among the States of the region, to work together to repair it. There are noble efforts

⁸ Transparency International (n 2).

⁹ *ibid.*

¹⁰ Joshua Seemungal, '2022 T&T's Deadliest Year' (*Trinidad and Tobago Guardian*, 1 Jan 2023) <<https://guardian.co.tt/news/2022-tts-deadliest-year-6.2.1599761.5a14292030>> accessed 25 January 2023; Shane Superville, 'Broken Record, Broken Families – A Review as Trinidad and Tobago Reaches 600 Murders in 2022' (*Trinidad and Tobago Newsday*, 31 Dec 2022) <<https://newsday.co.tt/2022/12/31/broken-record-broken-families-a-review-as-trinidad-and-tobago-reaches-600-murders-in-2022/>> accessed 25 January 2023.

¹¹ World Population Review, 'Murder Rate by Country 2023' <<https://worldpopulationreview.com/country-rankings/murder-rate-by-country>> accessed 25 January 2023.

made here and there to fix this and that, but the system as a whole and the level and nature of the coordination among its various components seem in need of reform. The broken nature of criminal justice reflects itself in some States in, among other things, an inordinately high remand population at the prisons; low detection and conviction rates; the excessive time it takes to dispose of cases of murder and the widespread perception that abounds in many quarters that hardly enough is done to prosecute and punish even egregious instances of white-collar crime.

Over 10 years ago, in a judgment authored by then President of the CCJ, The Right Honourable Mr Justice Michael de la Bastide, and myself, we noted that ‘The failure to detect, investigate, prosecute and punish corruption has a corrosive impact on democracy and the rule of law.’¹² We went on further to say that, ‘We underestimate at our peril the degree to which such failure affords encouragement to the criminal element in society and contributes to burgeoning crime rates.’¹³ Drawing directly on the text of the 1996 Inter-American Convention Against Corruption¹⁴, we reiterated that ‘corruption undermines the legitimacy of public institutions and strikes at society, moral order and justice, as well as the comprehensive development of peoples’.¹⁵

An appropriate response to the problems inherent in corruption, conflict and security must be multifaceted, national and multinational. At both the domestic and regional levels, the efforts of grass root organisations, NGOs, civic and community bodies must be recognised, harnessed and appropriately channelled.

¹² *Marin v AG of Belize* [2011] CCJ 9 (AJ), BZ 2011 CCJ 1 (Carilaw), (2011) 78 WIR 51 at [44].

¹³ *ibid.*

¹⁴ Inter-American Convention Against Corruption (adopted 29 March 1996, entered into force 6 March 1997) <https://www.oas.org/en/sla/dil/docs/inter_american_treaties_B-58_against_Corruption.pdf>.

¹⁵ *Marin* (n 12) at [37].

I am positive that within the region we have the skills to analyse and proffer solutions. Moreover, other States outside the region have faced the same challenges, and we can learn from their experiences. For example, as I have read, ‘many countries have approached the problem of violence from a crime and security angle, focusing their action on law-enforcement only. While justice and police have an important role to play, repression only is counter-productive if not combined with development interventions that look at the drivers of violence...’¹⁶.

Effective policing must therefore be combined with an intensive drive to combat socio-economic inequalities. The focus must be on preventing the conditions that lead to violent or criminal behaviour. This in turn, requires what has been described as ‘a systematic, integrated, coordinated approach combining the responsibilities of a wide range of state and non-state actors’¹⁷.

The CCJ is ready and willing to lend our modest efforts to initiatives in the judicial sphere that are relevant to addressing corruption, conflict and security. Indeed, from time to time, we do assist regional courts to become more efficient and effective by routinely engaging in judicial training exercises and by the implementation of case and caseflow management reforms in these courts. While these initiatives are useful, we are only too well aware that a whole lot more must be done to solve the problem.

In conclusion, I would like once again to express my appreciation for permitting me this honour to share these views with you and allowing me to tell you a little about the CCJ. I take this

¹⁶ Naomi Larsson, ‘24 Ways to Reduce Crime in the World’s Most Violent Cities’ (*The Guardian*, 30 Jun 2015) <<https://www.theguardian.com/global-development-professionals-network/2015/jun/30/24-ways-to-reduce-in-the-worlds-most-violent-cities>> accessed 25 January 2023.

¹⁷ *ibid.*

opportunity to invite you all to come and visit the Court at 134 Henry Street. We shall be only too pleased to offer you a tour of the premises.

I thank you.