

## STATEMENT TO PARLIAMENT

Tuesday, 19<sup>th</sup> September 2017

MS, The Michaelmas term of the Annual Judicial year begun yesterday with an overwhelming number of cases to be tried. In the Circuit Courts across the island, there are over 2000 cases, with 861 serious cases in the Home Circuit alone; many of these cases are in the system for over five years. In addition, there are over 35,000 cases in the several parish courts awaiting trial, some of them part heard, and many are in the system for over 3 years. Criminal cases are overwhelming the courts and with the best will in the world, they cannot all be tried within a reasonable time, thereby breaching the constitutional rights of the accused persons. The Ministry of Justice's response is twofold.

Firstly, The Ministry of Justice is responding by providing additional courts, and provisions for additional staff. In the Supreme Court, we expect to double the number of courts available to try criminal cases from 6 to 12 courts. However, unless there are personnel to manage and staff these courts, they cannot operate. Cabinet has signed off on an additional 17 posts, including 10 crown counsels, for the office of the DPP, but to date instructions have not been sent from the MOJ to implement this decision – I expect that this will be done forthwith. Request has also been made to the MOJ for upgrading of existing posts in the courts and for additional staff to work in these courts, but so far there is no agreement for these additional staff. In the meantime, it is the intention of the Ministry of Justice to shift staff from various agencies of the Ministry on secondment to the courts, pending additional staff being provided. MS, it is important to get all the available courts operating fully.

Secondly, The Ministry of Justice is placing great emphasis on an initiative started by the Chief Justice, Hon. Zaila McCalla, to have more accused persons pleading guilty. The Ministry of Justice however would urge stakeholders in the criminal justice system to make use of The Plea Negotiations and Agreement Act which was passed on the 23<sup>rd</sup> of June, 2017 after brief debates in both Houses of Parliament. MS, we must move away from the prevailing dominant system of trials to a system of pleas. MS, plea bargain provides the best means to ease the backlog of cases in the criminal justice system and is certainly the appropriate basis to temper justice with mercy. Other alternative dispute mechanisms such as Mediation and Restorative Justice will also be utilized as well as stronger utilization of criminal case management and fuller use of Night Courts.

MS, although improvements are being made to the justice system by renovating, expanding and building new Courts, the number of matters being filed each day far exceeds the rate of disposal in the Courts. In the United States, the rate at which cases are disposed of by way of

guilty pleas, averages 95%. MS, there is no need to reinvent a strategy that is successfully used elsewhere, and plea bargain has been a huge success in the USA at all levels of their criminal justice system. They now acknowledge that they have a system of pleas instead of a system of trials. The prosecutors and defence counsel must now buy into this new system of pleas and avoid trials unless they are absolutely necessary and only in cases that can go either way. The Circuit Courts in Jamaica, where serious matters are tried, such as murder, rape and wounding, will never be able to dispose of the over 2,000 cases waiting to be tried. The Courts cannot try its way out of these cases in the short term and even if they did, for each case disposed of, there are several new ones being filed.

The new Plea Bargaining legislation must now attract the attention, support and fulsome use of the stakeholders in the criminal justice system: the Judiciary, the Prosecution, Defence and police.

MS, I wish to set out the definitive roles of the Judges, the Prosecution and the Defence in respect of this Law and how it will work.

The Prosecution now has a greater and more active role in leading the plea discussions with Defence Counsel and to agree on an appropriate sentence if the accused person pleads guilty. This is a new role for the prosecution. For the first time in our criminal justice system, the prosecution will be actively involved in negotiating and deciding on the appropriate sentence to be imposed in particular cases. It is a role I expect and urge all prosecutors to take on with energy and enthusiasm. If more accused persons plead guilty, there will be less cases to prosecute. I expect all prosecutors to see successful negotiations to settle cases as one of their primary duties. In truth, there must be give and take from both sides if there is to be a successful plea bargain and an ultimate plea agreement. Once a recommended sentence is agreed then it must be brought before the Plea Judge, who will make the final decision, acting in the public interest. If the accused person agrees to plead guilty to the charge, and a recommended sentence cannot be agreed, it is strongly urged that the matter should be brought before a Plea Judge who can give assistance in coming to the appropriate sentence.

MS, It is expected that in all criminal cases, which are now in the Court system as well as the new matters being filed, the Prosecutor will review the file and make an offer, preferably in writing, to Defence Counsel that based on the allegations, if the Accused pleads guilty, the Prosecutor will recommend a particular sentence to the Court in accordance with the sentencing guidelines. The Defence will have the opportunity to make a counter offer on sentence within the ambit of the Guidelines and within reason. The Prosecution and Defence therefore have the opportunity to negotiate a reasonable sentence within the ambit of established sentencing guidelines. And, it is important to repeat for emphasis that once an accused agrees to plead guilty, which may be based on getting an appropriate sentence, if the

prosecutor and defence counsel are unable to agree then an application can be made before the Plea Judge to determine the final sentence.

So far, progress has been seen in this area. In the St. James Circuit during the last term, 40 matters were concluded by way of guilty pleas and in St. Ann Circuit, over 20 matters were completed by way of guilty pleas. But, we have a far way to go. We need to have much more than 50% of accused persons pleading guilty. Plea Bargaining has the potential to make a significant dent in the Backlog of cases before the Courts. This will also save the victims the trauma of re-living the experience in the Court, in a public and highly stressed setting. Moreover, guilty pleas save the court, the judiciary, the prosecution, witnesses and the state an enormous amount of time, resources and anxiety. Defence Counsel must see their role as strong negotiators on behalf of accused persons to get the best sentence in exchange for the accused persons giving up their right to be tried within a reasonable time by an impartial tribunal. Accused persons must now acknowledge and accept their wrongdoing, and by agreeing to plead guilty indicate that they want to start on the long road of rehabilitation and to put crime behind them. The Ministry of Justice intends to assist persons who plead guilty by providing sessions on restorative justice and mediation inside and outside the prisons. In addition, the Ministry proposes to amend the Parole and Expungement Acts, so that persons who plead guilty will become ELIGIBLE for parole after one third of the prison sentence or 3 years, whichever is shorter, unless the plea bargain includes a minimum sentence before parole; and for all persons who plead guilty, it will be proposed that after serving their full sentence and an additional 15 or 20 years of a crime free life, then they will become ELIGIBLE for expungement of their sentence.

MS, I fully expect, and look forward to the support of all participants in the Justice sector in encouraging guilty pleas, thereby enabling the Courts to focus their resources on those matters which need to go to trial. MS, we all look forward to a justice system characterized by pleas, which will foster an environment of rehabilitation rather than one in which every case waits for years to be tried by an overburdened Court system.