

COMMUNIQUE ON THE OCCASION OF THE RELEASE OF THE PROSECUTION COMMISSION BILL AND THE CONSTITUTION (AMENDMENT NO. 3) BILL

1. The object of the Constitution (Amendment No. 3) Bill is to amend the Constitution to make provision for a Prosecution Commission which –

- (a) shall determine whether the decision of the Director of Public Prosecutions to institute or not to institute criminal proceedings against a person is irrational, perverse, against public interest or otherwise erroneous in law or on facts;
- (b) shall determine whether the decision of the Director of Public Prosecutions to discontinue criminal proceedings against a person is irrational, perverse, against public interest or otherwise erroneous in law or on facts;
- (c) shall make recommendations to the Director of Public Prosecutions for the expeditious disposal of criminal proceedings and for the reduction of systemic delays; and
- (d) may require the Director of Public Prosecutions to furnish a report concerning the discharge of his functions under section 72 at such times and in such manner as it may determine.

2. (1) The Prosecution Commission shall consist of a Chairperson and 2 other Commissioners appointed by the President, acting in accordance with the advice of the Judicial and Legal Service Commission. These persons will enjoy the same security of tenure as Judges.

(2) Given that this mode of appointment is similar to that of the Director of Public Prosecutions, Judges and the Electoral Commissioner, there can be no doubt as to the independence of the persons who will be selected by the Judicial and Legal Service Commission to hold such important constitutional posts.

(3) The only difference in the appointment is that the members of the Prosecution Commission will be eligible to be appointed for a fixed term of 5 years and that term will not be renewable. It is felt that inasmuch as there will be no possibility of renewal, Commissioners of the Prosecution Commission will have nothing to gain by ingratiating themselves to Government of the day.

3. (1) Where the Judicial and Legal Service Commission fails to advise the President under section 5(4), within 90 days of the commencement of this section or of any subsequent vacancy arising in the composition of the Prosecution Commission, the appointment of the Commissioners shall be made by an Appointments Committee consisting of the President, as Chairperson, and the Prime Minister and Leader of Opposition as members.

(2) At any meeting of the Appointments Committee, 2 members, including the Chairperson, shall constitute a quorum.

4. The object of the Prosecution Commission Bill is to make provision for the accountability of the Director of Public Prosecutions through –

- (a) the Prosecution Commission;
- (b) the issue of directions by the Prosecution Commission to the Director of Public Prosecutions;
- (c) the furnishing of information by the Director of Public Prosecutions to the Prosecution Commission,

and for such supplementary or ancillary matters as may appear necessary or expedient.

5. The Prosecution Commission will not have jurisdiction with regard to any –

- (a) criminal proceedings instituted by the Director of Public Prosecutions before any court of law more than 36 months before the commencement of this Act;
- (b) criminal proceedings discontinued by the Director of Public Prosecutions, whether in person or through other persons acting in accordance with his general or specific instructions, more than 36 months before the commencement of this Act;
- (c) decision of the Director of Public Prosecutions not to institute criminal proceedings more than 36 months before the commencement of this Act.

6. The functions and powers of the Prosecution Commission are set out at clause 6 of the Bill and are as follows –

(1) The Commission shall, on its own initiative, or on the application of any aggrieved party, discharge its functions and powers under section 72A of the Constitution.

(2) Where an application is made under subsection (1), the Commission shall endeavour to determine the application within 21 days of the date on which it receives the application.

(3) Where the Commission takes more than 21 days to determine an application it shall, in its determination, state the reasons for the delay.

(4) Any application under subsection (1) shall be made within 21 days of the institution or discontinuance, as the case may be, of the criminal proceedings to which the application relates or, in case of a decision not to

institute criminal proceedings, of the decision not to institute criminal proceedings.

(5) Notwithstanding subsection (4), any application regarding criminal proceedings instituted or discontinued or a decision not to institute criminal proceedings before the commencement of this Act shall be made before 30 September 2017.

7. Further, clause 7 of the Bill provides, as follows, for the information to be provided to the Prosecution Commission by the Director of Public Prosecutions –

(1) The Director of Public Prosecutions shall, not later than 7 days after the end of every quarter, submit a report on the discharge of his functions in a form approved by the Commission.

(2) Notwithstanding subsection (1), the Director of Public Prosecutions shall submit a report on the discharge of his functions for the period starting 1 January 2014 to 31 December 2016 in a form approved by the Commission not later than 30 June 2017.

(3) The Commission may, at any time, request from the Director of Public Prosecutions any information as it requires to enable it to discharge its functions.

(4) The Director of Public Prosecutions shall provide any information requested by the Commission within such time as the Commission may require.

(5) The Commission shall cause any report received under subsections (1) and (2) to be laid before the Assembly, together with such observations as the Commission may deem appropriate within 3 months of its submission to the Commission.

**ATTORNEY GENERAL'S OFFICE
16 DECEMBER 2016**