



## JAMAICAN BAR ASSOCIATION MEDIA RELEASE ON AMENDMENTS TO SECTION 96(1) AND 121(1) OF THE CONSTITUTION OF JAMAICA

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**TO ALL MEDIA HOUSES, JAMAICA: 29 July 2023**

1. The Jamaican Bar Association (“JAMBAR”) has noted and observed the recent developments that have culminated in the 28 July 2023 passage of the Constitution (Amendment of Sections 96(1) and 121(1)) Act, 2023 (“the Bill) in the Senate, to increase the age of retirement of the Director of Public Prosecutions (“the DPP”) and the Auditor General (“the AuG”) to sixty-five years and to allow for extensions of same up to seventy years.
2. There are serious and compelling questions as to the validity of these amendments, in particular whether the amendments and the manner and procedure by which they were made contravene the Constitution.
3. These are not unreasonable questions and are indeed deeply concerning to JAMBAR, particularly as it relates to the public office of the DPP, the constitutional provisions dedicated to the manner in which the retirement age in that office may be extended and the fact that (as matter of public record) issues relating to those provisions are currently before the court in litigation involving the DPP.
4. JAMBAR recognizes and appreciates the stellar contribution of the DPP, Ms. Paula Llewellyn, KC, to the legal profession, the public service and Jamaica. It is indeed regrettable that the current and necessary conversation being had regarding the Constitutional Office of the DPP has added controversy to what is an outstanding tenure by Ms. Llewellyn, KC.
5. JAMBAR is aware from media reports that the issues arising from the passage of the Bill may well be considered by the courts, given a possible constitutional challenge. JAMBAR is therefore not only cautious in its pronouncements at this stage but is also carefully assessing all the legal implications of these amendments and considering in detail all relevant issues arising from this still unfolding development.
6. There are, however, aspects of this matter that are indisputable and highly undesirable. The amendments were carried through Parliament without the consultative process that ought to be adhered to, respected and employed in matters concerning an amendment to the Constitution, being the Supreme Law of the land.
7. Of equal concern is that the absence of consultation appeared, on any objective analysis, to be deliberate. The hasty passage of the Bill proposing to amend the Constitution caught the nation and, from all reports, Opposition legislators, by surprise. There was no opportunity in the Lower House, from all reports, for any informed or prepared debate on the Bill.



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8. An extension of time for an individual to remain in office is obviously a separate matter from an increase in the retirement age generally. The proviso to Section 96(1) expressly requires consultation between the Prime Minister and the Leader of the Opposition for a sitting Director of Public Prosecutions to continue in office after attaining 60 years. There is, however, no express provision for consultation with respect to an amendment of the subsection to increase the age of retirement; indeed, all that is required for an amendment of the provision is the majority votes of members present in each House. The not unreasonable question arises as to whether the amendment route was invoked to circumvent the consultative procedure.
9. Further, and on a proper reading of the proviso to Section 96(1), multiple extensions are not permissible. The present amendment that has increased the retirement age may well be seen to be peculiar to the sitting Director of Public Prosecutions whose tenure was already extended in 2020. This is a compelling basis for the increase to be regarded as effectively granting a further extension not provided for by the Constitution.
10. To describe the amendment as “simple”, as was done by The Honourable Minister of Justice in his address to Parliament on Tuesday, 25 July 2023, is reflective of the scant regard for the weighty matters that arise from the amendments in question and the assurance of a Parliamentary majority which guarantees a planned outcome regardless of the undesirability, and potential unconstitutionality, of the process.
11. The Constitution is and has been judicially described as “a living instrument” and JAMBAR is firm in its position that this hallowed instrument must at all times be accorded treatment that recognizes its supremacy. The mere adherence to the provisions that set out the required parliamentary vote does not automatically mean the results are cloaked in constitutionality. The procedure adopted (or not adopted) and the purpose for which the amendment is made are critical factors in any assessment as to whether an Act is constitutional and conforms with the spirit of the Constitution.
12. JAMBAR urges the Government to not apply the amendments to the incumbent DPP, in the light of the gravity of the issues that arise and the fact that they all point to an approach that is inimical to sound constitutional practice.
13. In acceding to JAMBAR’s request, the Government would have taken a step toward dispelling the notion that this general amendment was truly intended to extend the time for the incumbent to continue in office. This will no doubt allay at least one, but a hugely important, concern that has arisen as a result of these unfortunate developments.



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14. Should the Government reject this eminently reasonable request, it risks widespread public distrust of both offices of the DPP and AuG. That is a risk that no responsible Government should seek to assume. Extensions such as that obviously being contemplated, and the creation of avenues to freely implement them without any credible rationale and lawful process, weaken the authority and independence of these offices as intended by the framers of the Constitution. It is critical, for good governance and the transparency that is so central to Jamaica's democracy, that these two offices are seen to be independent and uninfluenced by political or other factors.

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**John S. Bassie**  
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**29 July 2023**