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STATEMENT BY THE JUDICIARY ON THE MISCELLANEOUS PROVISIONS BILL (PRISONS) 2013

The Honourable Chief Justice has noted the exchange which took place among Honourable Senators with regard to the comments offered by the Judiciary on the Miscellaneous Provisions Bill (Prisons) 2013. The Chief Justice advises that from time to time legislation affecting the justice system is sent to the Judiciary and other stakeholders in the administration of justice for comment before submission to Parliament. This is considered to be a prudent measure since the implementation of new legislation often requires changes in the way Judicial Officers’ function, as well as the re-engineering of the Judiciary’s internal processes or even the alteration of physical plant. Consultation therefore reduces the risk of the passage of unworkable legislation.

Legislative reform is necessarily a consultative process and as long as the Judiciary does not dictate the form the legislation takes, the fact of consultation breaches no principle of separation of powers. In offering its comments, the Judiciary is not making policy, it is commenting where appropriate and when invited, on policies formulated by the Executive and articulated in draft legislation.

While in the justice sector, just as in others, it is up to the Legislature to approve and pass Primary Legislation in whatever form it deems appropriate, in the justice sector in particular, however, much of the Primary Legislation passed by the Parliament is unworkable without secondary legislation in the form of Rules promulgated by the Rules Committee. This Committee is chaired by the Chief Justice and includes the Attorney General and representatives of the Bar. The process of consultation, therefore, is also relevant to the preparation of these Rules and continues during such preparation.

In addition, the Judiciary can and has, from time to time, made specific suggestions for law reform with a view to enhancing the fair
and efficient delivery of justice. Ultimately, however, the Courts are obliged to interpret and apply what is passed by Parliament, not what the Judiciary or any other body recommends.

In the case of the Miscellaneous Provisions (Prisons) Bill, 2013 now engaging the attention of the Senate, it should be noted that this Bill addresses the welfare and management of prisoners detained pursuant to the orders of the Court. Many persons are unaware that the Honourable Judges of the Supreme Court are, ex-officio, official prison visitors. The Judiciary as a consequence of the request by the Ministry of Justice for its comments, took the opportunity to indicate the considerations that it felt might be relevant to the establishment of an Inspectorate of Prisons and Appeals Tribunal and, without attempting to say what form any such provisions should take, drew attention to relevant case law on compulsory drug and HIV testing.

The public can feel assured that the offering of comments in the context described cannot and does not commit or predispose the individual Judges to any particular interpretative position should the legislation fall to be considered by the Courts.

For further information kindly contact:
Cassie Ann James
Senior Court Communication Officer
Telephone: (Office Direct): 627 9744
(Mobile) :356 2244
E-Mail: cannjames@ttlawcourts.org