

TO : Portfolio Committee on Justice and Correctional Services
Mr V Ramaano
Npabill@parliament.gov.za

DATE : 13 October 2023

SUBJECT: National Prosecuting Authority Amendment Bill [B29 – 2023]

TABLE OF CONTENTS

INTRODUCTION.....	2
SUMMARY OF SUBMISSION	3
URGENT NEED FOR COMPREHENSIVE REFORM.....	4
Alarming Increase in Crime Statistics	4
Urgency of Comprehensive Reform.....	5
INDEPENDENCE OF THE NPA	5
Significance of an Independent NPA	6
Constitutional Guarantees of Independence	6
Symbiotic Relationship Between Independence and Accountability.....	6
Establishment of Investigating Directorate Against Corruption (IDAC)	7
Positive Step in Combating Corruption	7
Empowerment and Adequate Funding	7
Deterrence through Swift Punishment.....	8
Essentiality of Strict and Swift Punishment.....	8
Making South Africa Safer for All Citizens.....	9
Devolution of NPA Power.....	10
A Call for Constitutional Changes.....	10
Arguments Supporting Devolution of Power.....	10
CONCLUSION	12

INTRODUCTION

Action Society, established in 2019, is a proactive civil rights organization operating as a non-profit company with PBO (Public Benefit Organization) status. Our organisation's fundamental mission is to advocate for policy change, acting consistently in the public interest, and providing a voice for the voiceless within our communities. Our unwavering commitment revolves around reforming the justice system and holding the government accountable for its unacceptable failure to safeguard the citizens of South Africa, with a primary focus on the most vulnerable segments of our population, namely women and children.

Since our inception, Action Society has been on the forefront of community-based initiatives aimed at confronting the escalating crime statistics in South Africa. We firmly believe in the urgent need for a robust justice system where perpetrators of heinous crimes do not act with impunity and where justice delayed is not justice denied. Our organization is not only dedicated to shedding light on the deficiencies within the current justice system but also actively engaged in collaborative efforts to bring about substantive changes.

These changes are envisioned to ensure stricter and swifter punishment for criminals, thereby addressing individual acts of crime and acting as a powerful deterrent to potential offenders. In the face of rising contact crime rates and perceived inadequacies in the South African Police Services' responses to such crimes, Action Society seeks to mobilize public support and engagement.

Our endeavours are directed towards the transformation of South Africa into a safer place for all its residents, where the rule of law is respected, and the justice system is equitable, efficient, and effective. The driving force behind Action Society's mission is to ensure that every South African citizen, regardless of their background, can live in a nation where their safety is prioritized, and their rights are upheld.

By actively promoting policy reforms and through persistent advocacy for the rights of the unheard, Action Society aspires to bring about a transformed justice landscape in

South Africa. Our vision encompasses a government that is responsive and accountable, and a justice system where justice is not merely a theoretical concept but a lived reality for every individual.

This document serves as a formal submission by Action Society in response to the public call for submissions on the National Prosecuting Authority (NPA) Amendment Bill. We submit this document with the intention of contributing to the ongoing legislative deliberation and policy formulation relating to the NPA Amendment Bill. Our aim is to articulate concerns and provide constructive recommendations to address the identified issues within the bill, thereby assisting in the creation of a piece of legislation that truly upholds the principles of justice, independence, transparency, and accountability in the pursuit of a safer and more just South Africa for all its citizens.

SUMMARY OF SUBMISSION

This submission will focus on the following:

1. Action Society emphasizes the pressing need for comprehensive reform to address the alarming increase in crime statistics in South Africa, particularly contact crimes. We underscore the urgency of implementing effective measures to confront and combat this crisis head-on.
2. Action Society stresses the significance of an independent National Prosecuting Authority (NPA) that is free from political influence. We argue that NPA autonomy is vital for impartial and unbiased prosecution of corruption cases. We draw inspiration from the express constitutional guarantees protecting the independence of institutions like the Independent Police Investigative Directorate (IPID).
3. Action Society expresses support for the creation of the Investigating Directorate Against Corruption (IDAC) as a positive step in combating corruption. We advocate for adequate empowerment and funding to enable the

IDAC to conduct thorough investigations, ultimately enhancing its effectiveness.

4. We argue for the essentiality of strict and swift punishment to deter potential wrongdoers. Action Society highlights how such measures can make South Africa safer for all citizens. We also address the prevailing deficiencies in our justice system, including challenges with the South African Police Services (SAPS), court congestion, and correctional services, which collectively contribute to the deterioration of the justice system.
5. Finally, Action Society introduces the call for constitutional changes that would allow provinces to establish their prosecuting authorities concurrently with the national NPA. We provide compelling arguments supporting this devolution of power, emphasizing potential benefits for efficiency and localized responsiveness.

URGENT NEED FOR COMPREHENSIVE REFORM

South Africa is facing a severe and escalating crisis in terms of crime statistics, with contact crimes reaching alarming levels. The data paints a stark picture of a nation grappling with insecurity and fear, especially among its most vulnerable citizens. Action Society acknowledges that this situation demands immediate and comprehensive reform to safeguard the well-being of South African communities. We emphasize two critical aspects:

Alarming Increase in Crime Statistics

The latest crime statistics reveal a deeply concerning trend. The incidence of contact crimes, including violent offenses such as assault, robbery, and murder, has surged to unprecedented levels. These crimes have a devastating impact on individuals, families, and communities, eroding the very fabric of society. The statistics not only reflect the prevalence of these crimes but also underscore the profound suffering and

trauma experienced by victims and their loved ones. South Africans, particularly women and children, live in constant fear, burdened by the ever-present threat of violence. This reality cannot and should not be tolerated in any civilized society.

Urgency of Comprehensive Reform

The urgency of addressing this crime crisis cannot be overstated. The safety and security of South African citizens are at stake, and every day without effective reform measures exposes more individuals to danger and harm. The increase in contact crimes is not merely a statistical anomaly; it represents a pressing and immediate threat to the well-being of our nation. Comprehensive reform is the need of the hour. Piecemeal approaches and incremental changes will not suffice in the face of this crisis. What is required is a bold, sweeping, and systemic transformation of our justice system and law enforcement agencies. Action Society firmly believes that the NPA Amendment Bill can be a pivotal component of this comprehensive reform effort. By addressing critical issues such as independence, accountability, and the establishment of a specialized entity like the Investigating Directorate Against Corruption (IDAC), the bill has the potential to contribute significantly to restoring trust in our justice system. In the sections that follow, we will delve into specific aspects of the NPA Amendment Bill, highlighting areas of concern and providing constructive recommendations. Our goal is to ensure that this legislation aligns with the urgency of the crime crisis and serves as a catalyst for meaningful change in South Africa's fight against corruption and crime.

INDEPENDENCE OF THE NPA

The independence of the National Prosecuting Authority (NPA) is a cornerstone of a just and fair legal system. It is an attribute that must be cherished and upheld without compromise. In this section, Action Society underscores the critical importance of an independent NPA, free from any political influence, as we argue for the vital autonomy necessary for impartial and unbiased prosecution, particularly in corruption cases.

Significance of an Independent NPA

The NPA's independence is not a mere administrative detail; it is the linchpin that ensures the fair administration of justice. An NPA free from political interference is essential to safeguard the rights and interests of South African citizens. It allows prosecutors to execute their duties without fear or favor, ensuring that justice is dispensed impartially. Political pressure or influence on the NPA can have dire consequences, compromising the integrity of investigations and prosecutions. It is incumbent upon us to protect the NPA from any form of external manipulation, allowing it to function as a true bastion of justice. Independence is the bedrock upon which public trust in the NPA is built.

Constitutional Guarantees of Independence

In examining the need for an independent NPA, it is instructive to consider the constitutional framework that guarantees such independence. The Independence of the Independent Police Investigative Directorate (IPID) is expressly guaranteed and protected under section 206(6) of the Constitution. The preamble to the IPID Act further underscores the significance of maintaining an independent oversight body. The express constitutional entrenchment of IPID's independence is both significant and decisive. It demonstrates the Constitution's intent to insulate certain governmental institutions from political influence, recognizing the unique role they play in upholding fundamental rights and providing effective independent oversight.

Symbiotic Relationship Between Independence and Accountability

Independence is not a standalone concept; it must coexist harmoniously with accountability. The proper exercise of prosecutorial discretion requires independence to ensure that justice is administered without "fear, favor, or prejudice." However, accountability is equally crucial to maintain public trust and transparency in the NPA's operations. Action Society firmly believes that a balance must be struck between independence and accountability. While an independent NPA is vital to the fair prosecution of cases, it must also be subject to appropriate checks and balances to

prevent abuse of power or negligence. In our further analysis of the NPA Amendment Bill, we will delve into specific provisions that address the balance between independence and accountability, offering recommendations that uphold the principles of justice, transparency, and the protection of citizens' rights. It is our collective responsibility to ensure that the NPA remains an independent and accountable institution, dedicated to the pursuit of justice in South Africa.

ESTABLISHMENT OF INVESTIGATING DIRECTORATE AGAINST CORRUPTION (IDAC)

Action Society wholeheartedly supports the establishment of the Investigating Directorate Against Corruption (IDAC) as a commendable and vital step in the ongoing battle against corruption in South Africa. This dedicated body represents an opportunity to enhance the effectiveness and efficiency of investigations into corrupt activities, ultimately leading to greater accountability and a more just society. In this section, we express our unwavering support for the creation of the IDAC and advocate for the empowerment and funding necessary to enable it to conduct comprehensive investigations.

Positive Step in Combating Corruption

The creation of the IDAC signals a clear commitment from the South African government to confront and combat corruption head-on. Corruption poses a grave threat to the country's stability, its economy, and the well-being of its citizens. By establishing the IDAC, South Africa takes a proactive stance against this insidious problem. The IDAC's specialized focus on corruption cases allows for a more targeted and effective approach to investigations. It enables the authorities to direct their resources and expertise toward addressing this specific form of criminal activity, which has far-reaching consequences for society.

Empowerment and Adequate Funding

While the establishment of the IDAC is a significant step, its effectiveness hinges on empowerment and adequate funding. To conduct thorough investigations and achieve meaningful results in the fight against corruption, the IDAC must be equipped with the necessary resources, both human and financial. Action Society advocates for a robust allocation of resources to the IDAC, ensuring that it can attract top-tier investigators and prosecutors who are dedicated to uncovering and prosecuting corruption cases. Adequate funding will also facilitate the implementation of advanced investigative techniques and the capacity to handle complex cases swiftly and efficiently. Moreover, the IDAC must have the autonomy and independence to carry out its duties without external interference. This ensures that its investigations are not hampered by political pressure or undue influence, further bolstering its effectiveness and integrity. In conclusion, the creation of the IDAC represents a significant stride forward in the fight against corruption in South Africa. Action Society firmly believes that with the right support, empowerment, and funding, the IDAC can play a pivotal role in holding corrupt individuals and entities accountable for their actions. We call upon all stakeholders to prioritize the IDAC's success and provide it with the resources it needs to fulfill its critical mandate effectively.

DETERRENCE THROUGH SWIFT PUNISHMENT

Action Society contends that a fundamental principle of any just and effective legal system is the swift and strict punishment of wrongdoers. This section underscores the critical importance of implementing stringent and prompt penalties as a deterrent against potential offenders. We also emphasize how such measures can contribute to making South Africa a safer place for all citizens.

Essentiality of Strict and Swift Punishment

A justice system that seeks to maintain law and order must, by necessity, administer strict and swift punishment to those who break the law. Deterrence through punitive measures serves as a powerful mechanism to discourage individuals from engaging

in criminal activities, particularly corruption and other serious offenses. When potential wrongdoers perceive the real threat of significant consequences for their actions, they are less likely to commit crimes. In the context of corruption, which has a profoundly corrosive effect on society, strict and swift punishment is of paramount importance. It sends a clear message that corruption will not be tolerated and that perpetrators will face severe consequences for their actions. This deterrence factor can significantly reduce instances of corruption, leading to a more transparent and ethical society.

Making South Africa Safer for All Citizens

The implementation of strict and swift punishment measures has the potential to transform South Africa into a safer environment for its citizens. Currently, South Africa grapples with rising contact crime rates, an overwhelmed justice system, and a correctional services system fraught with challenges. Even assuming the most optimal functionality of the NPA post-amendment, achieving true justice in South Africa remains elusive due to these prevailing deficiencies in our justice system. The South African Police Services (SAPS) face numerous challenges in responding effectively to crime, leading to a sense of insecurity among the population. Moreover, our courts are plagued by overwhelming congestion, resulting in prolonged trial processes and delayed justice. The precarious state of our correctional services system further compounds the problem, as it fails to rehabilitate offenders adequately, allowing many to re-offend upon release. In this environment, strict and swift punishment serves as a beacon of hope for South Africa. It not only holds wrongdoers accountable but also acts as a powerful deterrent, discouraging criminal behaviour from the outset. A safer South Africa is one where citizens can live without constant fear, secure in the knowledge that justice is swift and certain. In conclusion, Action Society firmly believes that the implementation of strict and swift punishment measures is indispensable in the fight against corruption and crime in South Africa. While the NPA Amendment Bill represents a crucial step, we recognize that true justice can only be realized when all components of the justice system function effectively and efficiently. We urge all stakeholders to prioritize the establishment of a justice system that delivers swift and

strict punishment to wrongdoers, ultimately creating a safer and more just South Africa for all its citizens.

DEVOLUTION OF NPA POWER

Action Society advocates for a transformative change in the structure of the National Prosecuting Authority (NPA) in South Africa. We believe that it is time to consider constitutional amendments that would allow provinces to establish their prosecuting authorities concurrently with the national NPA. In this section, we introduce this call for constitutional changes and provide compelling arguments supporting the devolution of power, emphasizing potential benefits such as enhanced efficiency and localized responsiveness.

A Call for Constitutional Changes

The current centralized structure of the NPA in South Africa poses significant challenges in terms of efficiency and responsiveness to local needs. Action Society proposes a visionary shift in the distribution of prosecutorial power within the country. This shift would entail constitutional amendments that empower provinces to establish their prosecuting authorities, working concurrently with the national NPA.

Arguments Supporting Devolution of Power

Efficiency and Specialization

Devolution of prosecutorial power to provinces can significantly enhance the efficiency of the criminal justice system. Provinces are better equipped to understand and address the unique challenges and crime dynamics within their jurisdictions. By allowing provinces to establish their prosecuting authorities, specialized knowledge and expertise can be developed to handle region-specific cases more effectively.

Faster Case Resolution

Local prosecutors who are intimately familiar with their communities and the specific nuances of cases can expedite case resolution. This can lead to shorter trial periods, reduced case backlog, and swifter justice for victims. The reduction in case backlog, in particular, is essential to ensure that justice is not delayed, leading to the oft-repeated adage that "justice delayed is justice denied."

Localized Responsiveness

Provincial prosecuting authorities can respond more swiftly to community concerns and priorities. This localized responsiveness allows for tailored approaches to address specific criminal challenges faced by different provinces. It ensures that the justice system is not a one-size-fits-all model but adapts to the diverse needs of South Africa's regions.

Accountability and Transparency

Devolution of power also enhances accountability and transparency within the NPA. Localized prosecuting authorities can be more directly accountable to their respective communities and provincial governments. This proximity ensures that the justice system is responsive to the needs and expectations of the people it serves.

Strengthening the Rule of Law

By allowing provinces to establish their prosecuting authorities, South Africa can strengthen the rule of law at the grassroots level. Communities will have greater confidence in a justice system that is not only efficient but also attuned to their specific concerns. This, in turn, contributes to a more stable and law-abiding society.

In conclusion, Action Society believes that the devolution of NPA power through constitutional changes is a forward-thinking approach that has the potential to enhance efficiency, responsiveness, and accountability within the South African criminal justice system. We urge policymakers and stakeholders to seriously consider this proposal as part of broader efforts to reform and improve our justice system, ultimately creating a safer and more just South Africa for all its citizens.

CONCLUSION

Action Society is receptive and would be pleased to have the opportunity to present oral submissions.

Thank you for your thoughtful consideration.

Sincerely,

Ian Cameron

Director at Action Society