REPUBLIC OF SOUTH AFRICA

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DRAFT EIGHTEENTH CONSTITUTIONAL AMENDMENT BILL

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(As introduced to the PEOPLE OF SOUTH AFRICA)

(By Action Society)

[#PeoplesPoliceBill —2-2025]

ACTION SOCIETY

GENERAL EXPLANATORY NOTE: Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Constitution of the Republic of South Africa, 1996, to provide for municipal police services with full policing powers, to provide for cooperation between municipal police services, and to provide for matters connected therewith.

PREAMBLE

WHEREAS it is necessary to ensure that policing is conducted in an effective, accountable, and community-responsive manner by local governments;

AND WHEREAS municipalities must be empowered to exercise full policing powers while ensuring cooperation in the prevention, investigation, and combating of crime across jurisdictions;

AND WHEREAS the national government retains responsibility for the defence force and border management while facilitating the equitable allocation of resources to municipal police services;

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:-

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AMENDMENT OF SECTION 199 OF THE CONSTITUTION

1. Section 199 of the Constitution is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
"The security services of the Republic consist of a single defence force, a national police coordination body, the National Investigative Authority, municipal police services, and any intelligence services established in terms of the Constitution."

(b) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:
"The security services must be structured and regulated by national legislation to ensure effective coordination between municipal police services and the national police coordination body."

INSERTION OF SECTION 205A INTO THE CONSTITUTION

(1) A specialised national law enforcement agency, to be known as the National Investigative Authority, is hereby established to prevent, combat, and investigate serious and organised crime, including offences that extend beyond municipal and provincial jurisdictions.

(2) The National Investigative Authority is responsible for investigating—

(a) cybercrime;

(b) human trafficking;

(c) terrorism and acts threatening national security;

(d) drug trafficking and related offences;

(e) illegal firearm manufacturing, trade, and smuggling;

(f) financial crimes, money laundering, and corruption linked to organised crime; and

(g) any other offence that requires specialised national or international coordination.

(3) The National Investigative Authority must—

(a) cooperate with municipal police services in investigations requiring national-level coordination;

(b) establish joint task forces with municipal police services where crimes span multiple jurisdictions;

(c) maintain and manage national crime intelligence databases to support municipal police investigations; and

(d) liaise with international law enforcement agencies in cases involving transnational crime.

(4) The National Investigative Authority must function independently and impartially, free from undue political or executive interference, and must be accountable to Parliament.

(5) The National Investigative Authority may not assume, usurp, or interfere with the general policing functions constitutionally vested in municipal police services, except—

(a) where a municipal police service formally requests its assistance;

(b) where an investigation falls exclusively within the jurisdiction of the National Investigative Authority as set out in subsection (2);

(c) where national security is threatened and intervention is authorised in accordance with national legislation; or

(d) where municipal police services are required to cooperate in accordance with prescribed national procedures

(6) The National Investigative Authority must be headed by a Director, who is responsible for the strategic and operational direction of the agency.(7) The Director of the National Investigative Authority—

(a) is appointed by Parliament through a public and transparent selection process;

(b) serves a term of five years and may be reappointed for a maximum of two additional consecutive terms; and

(c) may only be removed from office on the grounds of misconduct, incapacity, or incompetence, following a resolution adopted by a majority of Parliament.

(8) National legislation must prescribe the operational structure, powers, and procedures of the National Investigative Authority, ensuring respect for the constitutional authority of municipal police services.

AMENDMENT OF SECTION 205 OF THE CONSTITUTION

2. Section 205 of the Constitution is hereby substituted with the following:

"*205. (1) The municipal police services must be structured to function at the level of district and metropolitan municipalities, with each such municipality responsible for policing within its jurisdiction.*

(2) Each municipal police service is responsible for the prevention, combating, and investigation of crime, the maintenance of public order, the protection and security of inhabitants and their property, and the upholding and enforcement of the law within its municipal boundaries.

(3) A national police coordination body must be established by national legislation to facilitate cooperation between municipal police services, to ensure the effective coordination of cross-jurisdictional policing, and to develop uniform policing standards.

(4) National legislation must provide for cooperative arrangements between municipal police services to ensure that crime affecting multiple jurisdictions or across jurisdictions is effectively policed and investigated."

AMENDMENT OF SECTION 206 OF THE CONSTITUTION

3. Section 206 of the Constitution is hereby amended—

(a) by the substitution for subsection (1) of the following: *"A member of the Cabinet must be responsible for national policing coordination and must develop national policing policy in consultation with municipal governments."*

(b) by the substitution for subsection (3) of the following: *"Each municipality is entitled—*
(a) to monitor police conduct within its jurisdiction;
(b) to oversee the effectiveness and efficiency of its police service, including receiving reports on its police service;
(c) to promote good relations between its police service and the community;
(d) to assess the effectiveness of visible policing; and
(e) to liaise with the national police coordination body and other municipalities in respect of crime and policing matters affecting multiple jurisdictions."

(c) by the substitution for subsection (7) of the following: *"National legislation must provide a framework for the establishment, powers, functions, and coordination of municipal police services."*

AMENDMENT OF SECTION 207 OF THE CONSTITUTION

4. Section 207 of the Constitution is hereby substituted with the following:

"*207. (1) Each district and metropolitan municipality must establish a municipal police service, under the control and management of a Municipal Police Commissioner, appointed by the council of that municipality.*

(2) Each Municipal Police Commissioner must exercise control over and manage the police service of the municipality in accordance with national

policing standards and in cooperation with other municipalities as to ensure the fulfilment of its obligations.

(3) Municipal Police Commissioners must enter into cooperative agreements to facilitate the investigation of crimes affecting multiple jurisdictions and to ensure coordinated law enforcement operations.

(4) The municipal council must oversee the performance of the municipal police service and may require the Municipal Police Commissioner to appear before it or any of its committees to answer questions.

(5) Each Municipal Police Commissioner must report to the council and its provincial legislature annually on its policing and must send a copy of the report to the national police coordination body.

(6) If a Municipal Police Commissioners has lost the confidence of the council, that council may institute appropriate proceedings for the removal or transfer of, or disciplinary action against, that commissioner, in accordance with municipal regulation or by-law.

(7) Each district and metropolitan municipality must establish Community Policing Forums to promote cooperation between the municipal police service and the local community, enhance accountability, and improve crime prevention strategies.

(8) The functions of a Community Policing Forum include—

(a) facilitating communication and collaboration between the municipal police service and the community;

(b) monitoring police conduct and service delivery to ensure responsiveness to community needs;

(c) promoting public participation in crime prevention initiatives; and

(d) advising the municipal police service on policing priorities within the community.

(9) The composition, powers, and operational framework of Community Policing Forums must be prescribed by national legislation."

INSERTION OF SECTION 207A INTO THE CONSTITUTION

5. The Constitution is hereby amended by the insertion of the following section after section 207:

"207A. (1) A national police coordination body is hereby established to facilitate cooperative governance in policing, to ensure the sharing of intelligence and resources, and to address crimes requiring cross-jurisdictional coordination.

(2) The national police coordination body must develop national policing standards to be applied by all municipal police services to ensure uniformity in policing practices.

(3) National legislation must provide for the functions, powers, and governance of the national police coordination body.

(4) Independent provincial oversight bodies, to be known as the Municipal Police Investigative Directorates, must be established at the provincial level to monitor, investigate, and ensure accountability in municipal police services.

(5) The functions of the Municipal Police Investigative Directorate include—

(a) investigating allegations of police misconduct, corruption, and human rights violations within municipal police services;
(b) making recommendations regarding disciplinary action and criminal prosecutions where necessary;
(c) ensuring compliance with constitutional policing standards; and
(d) submitting regular reports to the provincial legislature on the effectiveness and integrity of municipal police services.

(6) The Municipal Police Investigative Directorates must be independent and must function without fear, favour, or prejudice and are accountable to the provincial legislatures.

(7) The composition, powers, and procedures of the Municipal Police Investigative Directorate must be regulated by provincial legislation."

AMENDMENT OF SECTION 208 OF THE CONSTITUTION

6. Section 208 of the Constitution is hereby amended by the substitution for the existing text of the following:

"A civilian secretariat for the municipal police services must be established by local government by-law to function under the direction of an oversight body composed of representatives from district and metropolitan municipalities, with the purpose of ensuring accountability, transparency, and the development of best policing practices."

TRANSITIONAL ARRANGEMENTS

7. (1) Within 24 months of the commencement of this amendment—
(a) all existing policing functions performed by the South African Police Service in municipal jurisdictions must be transferred to municipal police services;
(b) a process for the equitable redistribution of policing resources, infrastructure, and personnel must be undertaken in accordance with national legislation;
(c) cooperative governance agreements between municipalities must be established to facilitate cross-jurisdictional policing.

(2) National legislation must be enacted to regulate the transition of policing functions and ensure the proper implementation of this amendment.

SHORT TITLE AND COMMENCEMENT

8. This Act is called the Constitutional Amendment Act, 2025, and comes into operation on a date determined by the President by proclamation in the Gazette.

MEMORANDUM ON THE OBJECTS OF THE EIGHTEENTH CONSTITUTIONAL AMENDMENT BILL, 2025

1. Background and Rationale

This Bill seeks to amend the Constitution of the Republic of South Africa, 1996, to restructure the policing framework by granting district and metropolitan municipalities full policing powers. The amendment ensures that policing is conducted at the municipal level, enhancing responsiveness, accountability, and efficiency in law enforcement. It further establishes mechanisms for cooperative governance to address cross-jurisdictional crime, while retaining national responsibility for defence, border security, and intelligence services.

The need for this Bill arises from concerns over the centralisation of policing, which has led to inefficiencies, slow response times, and inadequate crime prevention strategies. By empowering municipalities with full policing authority, local law enforcement agencies will be better equipped to address community-specific safety concerns, while still cooperating with national structures to combat organised and transnational crime.

Furthermore, the Bill establishes the National Investigative Authority (NIA), a specialised law enforcement body tasked with investigating serious and organised crimes, such as cybercrime, human trafficking, terrorism, drug trafficking, and illegal firearms trading. This ensures a coordinated approach to complex crimes that transcend municipal boundaries.

2. Summary of the Bill

The Bill proposes the following key amendments to the Constitution:

- Amendment to Section 199 to recognise municipal police services as autonomous law enforcement agencies with full policing powers, while establishing a national police coordination body.
- Amendment to Section 205 to restructure policing at the municipal level, ensuring each district and metropolitan municipality is responsible for law enforcement within its jurisdiction.

- Amendment to Section 206 to clarify the political responsibility for policing at the municipal level and establish cooperative governance mechanisms between municipalities.
- Amendment to Section 207 to define the control and management of municipal police services, ensuring clear oversight and reporting structures.
- Insertion of Section 207A to create a National Police Coordination Body, responsible for inter-municipal cooperation and information-sharing.
- Insertion of Section 207B to set national standards for municipal police services, including training, ethical conduct, and operational procedures.
- Insertion of Section 207C to establish an Independent Municipal Police Investigative Directorate at the provincial level to investigate police misconduct and ensure accountability.
- Insertion of Section 207D to create a framework for inter-municipal and national cooperation on cross-jurisdictional crimes.
- Insertion of Section 207E to regulate the equitable allocation of policing resources to municipalities, ensuring balanced law enforcement capacity across regions.
- Insertion of Section 207F to mandate the establishment of Community Policing Forums to promote public participation in crime prevention.
- Insertion of Section 207G to ensure municipal police services cooperate with national authorities in investigating serious crimes, such as cybercrime, human trafficking, and terrorism.
- Insertion of Section 207H to formally establish the National Investigative Authority (NIA), a specialised agency tasked with investigating organised and transnational crime in cooperation with municipal police services.
- Insertion of Section 207I to regulate the appointment of the NIA Director by Parliament, limiting the tenure to five years with a maximum of three consecutive terms, ensuring independence and accountability.
- Transitional provisions to facilitate the transfer of policing functions, the equitable distribution of resources, and the enactment of supporting national legislation.

3. Financial Implications

The implementation of this Bill will require the reallocation of policing budgets from national and provincial levels to municipalities. Additional financial implications include:

- The establishment of municipal police services where they do not currently exist.
- The redistribution of vehicles, equipment, forensic infrastructure, and personnel.
- The creation of the National Investigative Authority and the Independent Municipal Police Investigative Directorate, both requiring budgetary allocations for staffing, operational costs, and infrastructure.
- The development of new national legislation to regulate the transition and ensure cooperative governance.

The National Treasury will be required to conduct a cost analysis to ensure the equitable distribution of resources and sustainable funding mechanisms for municipal police services.

4. Constitutional Implications

4. Constitutional Implications

This Bill aligns with several provisions of the Constitution of the Republic of South Africa, 1996, particularly those related to policing, governance, public administration, and fundamental human rights. The proposed amendments seek to enhance policing effectiveness, democratic accountability, and public safety while ensuring that national oversight over serious and organised crime is maintained.

4.1 Alignment with Constitutional Policing Provisions

The Constitution currently provides for a single national police service under Section 199(1), which is structured to function at the national, provincial, and, where appropriate, local levels (Section 205(1)). However, these provisions have led to an overly centralised policing system, often characterised by bureaucratic inefficiencies, lack of local accountability, and ineffective crime prevention at the community level.

The proposed amendments decentralise policing authority to district and metropolitan municipalities, allowing for direct community engagement, faster response times, and improved crime prevention strategies. By doing so, the Bill reinforces the constitutional requirement for cooperative governance while ensuring that policing functions are performed at the level closest to the people, in line with the principle of subsidiarity—which holds that public functions should be exercised by the lowest level of government capable of performing them effectively.

At the same time, the Bill preserves national oversight and coordination by establishing:

- A National Police Coordination Body to ensure inter-municipal cooperation and uniformity in policing standards.
- A National Investigative Authority to combat serious and transnational crime while working alongside municipal police services.

These changes do not eliminate the role of national government in policing but rather refocus it on strategic oversight, crime intelligence, and coordination of cross-jurisdictional matters, in line with international best practices.

4.2 Advancing the Right to Freedom and Security of the Person

Section 12(1) of the Constitution guarantees the right to freedom and security of the person, including the right to be free from all forms of violence from either public or private sources. This provision places an obligation on the state to ensure effective crime prevention and law enforcement.

However, the current centralised policing model has failed to adequately protect communities, as evidenced by high crime rates, policing inefficiencies, and public dissatisfaction with law enforcement performance. The South African Police Service (SAPS) has struggled with:

- Slow response times to emergencies due to bureaucratic inefficiencies.
- Resource misallocation, where police personnel and equipment are not distributed in proportion to crime prevalence.
- A lack of local accountability, making it difficult for communities to influence policing priorities.

By assigning full policing authority to municipalities, this Bill ensures that law enforcement is more responsive, accessible, and tailored to local safety needs. Municipal police services will be directly accountable to local governments, thereby empowering communities to influence policing policies and hold law enforcement structures accountable for failures in crime prevention.

Furthermore, the Bill safeguards the right to security by ensuring that municipal police services have access to national forensic, intelligence, and investigative resources in cases involving organised and transnational crime.

4.3 Strengthening a Responsive and Accountable Government

Section 41(1)(h) of the Constitution mandates that all spheres of government must:

- Cooperate in mutual trust and good faith.
- Coordinate their actions and legislation to ensure effective governance.

The proposed amendments enhance this principle by ensuring structured cooperation between municipal police services, provincial governments, and national crime intelligence bodies. Municipal police services will be required to:

- Share intelligence and resources with neighboring municipalities and national agencies.
- Coordinate investigations into cross-jurisdictional crimes.
- Adhere to national policing standards, ensuring consistency in law enforcement practices.

Additionally, the Bill reinforces Section 195 of the Constitution, which sets out the basic values and principles governing public administration. These include:

- A high standard of professional ethics (Section 195(1)(a)).
- Efficient, economic, and effective use of resources (Section 195(1)(b)).
- Accountability (Section 195(1)(f)).

By shifting policing authority to municipalities, the Bill promotes efficiency and accountability in law enforcement, as municipal police services will be directly answerable to their communities and local governments, rather than a distant national command structure.

4.4 Safeguarding National Security and Cross-Jurisdictional Crime Enforcement

While the Bill decentralises general policing functions, it retains national oversight over serious crimes that require coordination beyond municipal boundaries. The establishment of the National Investigative Authority (NIA) ensures that crimes such as:

- Terrorism
- Human trafficking
- Cybercrime
- Drug and arms smuggling
- Transnational organised crime

are effectively investigated at a national level without interfering in the day-to-day law enforcement functions of municipal police services. This approach prevents fragmentation in the fight against organised crime while ensuring that local policing remains community-driven.

Furthermore, the Bill provides for mandatory cooperation between municipal and national law enforcement agencies, ensuring that decentralisation does not weaken crime intelligence, forensic investigations, or border security.

4.5 Balancing Decentralisation with Constitutional Oversight

The proposed amendments are not an absolute transfer of policing powers, but rather a structured reallocation of responsibilities, ensuring that:

- Local crimes are addressed by municipal police services.
- Serious and organised crimes are handled by the National Investigative Authority in cooperation with municipal police services.
- Cross-jurisdictional crime coordination is facilitated through the National Police Coordination Body.

This structured framework prevents arbitrary interference by national government in municipal policing while ensuring that policing functions remain effective, professional, and constitutionally compliant.

5. Consultation

The Department must consult:

- National Treasury to assess the financial feasibility and ensure the equitable distribution of resources.
- Provincial and local governments to determine the necessary legislative and administrative adjustments for municipal police services.
- Civil society organisations, including human rights groups and crime prevention advocacy groups, to ensure that the policing model aligns with constitutional rights and community needs.
- Private stakeholders, such as business sectors affected by crime, to refine crime prevention strategies and strengthen public-private security partnerships.

6. Parliamentary Procedure

This Bill must be dealt with in accordance with the procedure prescribed by the Constitution of the Republic of South Africa, 1996, and the Joint Rules of Parliament for constitutional amendments. Given that the Bill seeks to amend provisions related to the structure and powers of government, it must be passed in accordance with Section 74(3) of the Constitution, requiring a two-thirds majority in the National Assembly and six provinces supporting it in the National Council of Provinces.

7. Socio-Economic Impact Assessment (SEIA)

The Bill mandates a Socio-Economic Impact Assessment within 12 months of commencement to evaluate:

- The effectiveness of municipal policing in reducing crime rates.
- The impact of decentralised policing on law enforcement responsiveness and service delivery.
- The adequacy of funding and resource allocation across municipalities.
- The level of cooperation between municipal police services and national crime intelligence bodies.
- The effectiveness of the National Investigative Authority in combating serious and organised crime.

Based on the assessment, the Minister responsible for policing must submit a report to Parliament, recommending any necessary legislative or policy adjustments to enhance implementation.