



Southern African Catholic Bishops' Conference
PARLIAMENTARY LIAISON OFFICE



SUBMISSION

to the

Portfolio Committee on Justice & Correctional Services

on the

NATIONAL PROSECUTING AUTHORITY AMENDMENT BILL (B29 – 2023)

13 October 2023

Introduction

1. The Catholic Parliamentary Liaison Office (CPLO) welcomes the opportunity to comment on the National Prosecuting Authority Amendment Bill (B29 – 2023).

2. The CPLO is an office of the Southern African Catholic Bishops' Conference. It is tasked with liaising between the Church and Parliament/Government, commenting on issues of public policy, and making submissions on legislation.

3. Our submission focuses on four points which, in our view, make the Bill a less than satisfactory response to the need to combat complex corruption and crimes of a commercial or financial nature.

4. **Inadequate Independence of the Directorate:** It is proposed to amend section 7(1) of the principal Act so that an Investigating Directorate against Corruption ('the Directorate') will be brought into being by statute, rather than by presidential proclamation. According to the Memorandum to the Bill, this will "support the independence" of the Directorate. This is, if anything, a very flimsy kind of independence, when the Directorate will be fully part of the National Prosecuting Authority and thus accountable not to Parliament but to the executive. There have been a number of occasions over the years when the executive has interfered with, or exerted control over, the NPA and its officials. Nothing in the proposed amendment

to section 7(1) provides any assurance that the same will not happen regarding the Directorate.

5. **Appointment and Removal of Director:** According to Clause 6 of the Bill, the head of the envisaged Directorate will be appointed by the President, subject only to consultation with the Minister and the National Director of the NPA. The head will be chosen from among existing Directors of Public Prosecutions. Regarding removal from office, the President will be empowered to suspend and, after an enquiry, dismiss the head of the Directorate subject only to having to inform Parliament of his or her decision to do so (s 14(3) read with s 12(6 – 8) of the principal Act). Although s 12(6)(c) and (d) of the principal Act in effect give Parliament the power to overrule the President, this is in practice most unlikely to happen. In addition, s 12(7) of the principal Act provides that Parliament, with a simple majority of both houses, can cause the President to dismiss the Director.

All this means, simply put, that the head of the Directorate will be appointed, and could be dismissed, by the President. He or she will not be independent in any meaningful sense of the word; they will be subject to political control like any other civil servant, with only the slenderest of parliamentary protections available to them.

6. **Inadequate Permanence:** It may well be that giving the Directorate a statutory basis, as opposed to its present status as a creature of presidential proclamation, will provide it with a higher degree of permanence. However, it is only a matter of degree. As is well known, the Directorate of Special Operations (the Scorpions) was a statutory body, but when its investigations became embarrassing to sections of the governing party it was quickly shut down. Exactly the same thing could happen with the Directorate now under consideration. If it starts to probe in politically sensitive places there will be nothing to stop the governing party from closing it by way of a simple legislative amendment. What is needed is an anti-corruption entity which cannot be shut down with a simple parliamentary majority.

7. **'Stopgap measure':** The Deputy-Minister of Justice has been quoted in the media as saying that the proposed amendments are a 'stopgap measure', intended to give some impetus to the fight against corruption while the work of the National Anti-Corruption Advisory Council continues. There are two problems with this approach.

Firstly, it overlooks the fact that the demand for a properly independent anti-corruption body, along the lines of a Chapter 9 Institution, did not arise recently. More than 10 years ago the Constitutional Court ruled that what was needed was an anti-corruption entity with "adequate structural and operational independence to deliver effectively and efficiently on its core mandate" (in the Glenister 3 judgment). On this point, Judge Richard Goldstone recently said the following: *"There is currently an unfortunate and unnecessary debate on whether the Constitutional Court has ordered the establishment of*

a completely independent corruption investigating body. It did so in clear terms. The Government refuses to set [up] such an institution that is independent of a simple majority in Parliament.”¹

Parliament, in the form of this Committee, must ask why, all these years after the Glenister decision, and after the whole ‘wasted nine years’ of state capture that President Ramaphosa often refers to, the government is still only at the stage of a ‘stopgap’ measure.

Secondly, there is a great risk that what is said to be only a stopgap measure will come to constitute the country’s permanent anti-corruption capacity. We can easily imagine being told that “the Directorate needs to be given a chance to do its work”; or that we cannot afford to have two such bodies; or that a Chapter 9 anti-corruption body would be a confusing duplication of the Directorate. Any momentum that has so far been built up towards the establishment of a truly independent, well-resourced and secure anti-corruption body would be lost.

Conclusion

8. It is disappointing that government has decided not to go the route of a truly independent anti-corruption body and, instead, has chosen only to strengthen the existing capacity within the NPA. While we may have confidence that the current leadership of the NPA will work

¹ Speaking at the Interfaith Forum’s conference on *Our Country, Our Responsibility*, Birchwood Conference Centre, Johannesburg, 9th October 2023.

diligently to make the new Directorate as effective as possible, we also know that in the recent past the NPA has been led by people with other agendas, including the furtherance of state capture – and there is absolutely no guarantee that this will not happen again.

What is needed is an anti-corruption body with full institutional independence, constitutionally entrenched, which will outlive any change in the leadership of the NPA and indeed any change of leadership in the governing party, or even of government itself. This Bill fails to provide this, and it will thus be up to Parliament, and this Committee in particular, to ensure that these unsatisfactory amendments do not become the last word in the struggle against corruption.

9. We wish the Committee well in its deliberations, and we would appreciate the opportunity to address the Committee orally.

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