

PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

NO. 4740

19 April 2024

ADV GLYNNIS BREYTENBACH, MP

NOTICE OF INTENTION TO INTRODUCE A PRIVATE MEMBER'S BILL AND INVITATION FOR COMMENT ON THE DRAFT, NAMELY THE CONSTITUTION TWENTY FIRST AMENDMENT BILL, 2024

Adv. Glynnis Breytenbach, MP acting in accordance with section 73(2) of the Constitution of the Republic of South Africa, 1996, intends to introduce the Constitution Twenty First Amendment Bill, 2024, in Parliament. An explanatory summary of the Bill is hereby published in accordance with Rule 276(1)(c) of the Rules of the National Assembly (9th Edition) and section 74(5) of the Constitution of the Republic of South Africa, 1996 ("Constitution").

Section 74(5) of the Constitution requires that the person intending to introduce a Bill amending the Constitution, must at least 30 days before is introduced publish particulars of the proposed amendment in the national Government Gazette, for public comment.

The Corruption Perceptions Index, published by Transparency International, ranks countries and territories based on perceived corruption in their public sector - South Africa scored 41 / 100, with 0 being the most corrupt and 100 being the least corrupt. This report raises an alarm on the apparent inability of the South African government to curb the spread of corruption. Despite the President's promise to fight corruption, it continues to thrive. The score of 41 is South Africa's worst ever score on the Index.

South Africa has also been placed on its Grey List by the FATF largely due to the inability of the state to counter money laundering, terrorism financing and serious corruption.

The Judicial Commission of Inquiry into Allegations of State Capture (Zondo Commission), laid bare public sector corruption, however, since publication of its report prosecutions have commenced against only a few implicated individuals. At present, the functions and powers of the National Prosecuting Authority (“NPA”) are set out comprehensively in the Constitution and in the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998). These powers are limited to prosecution, and do not include the investigation of crime, including serious corruption. After the demise of the Directorate of Special Operations (‘DSO’), all investigative functions in relation to priority crimes were legislatively allocated to the Directorate of Priority Crime Investigation (‘DPCI’) or Hawks. The NPA is required to fulfil its functions without fear, favour, or prejudice. However, the NPA was one of the institutions that suffered the most at the hands of the State Capture project. The NPA lacks institutional independence because the Minister of Justice has final responsibility over it and must concur with all policies related to prosecutions. The NPA functions as a programme within this department. The Director General of Justice is the accounting officer of the NPA.

The DPCI has proved to be incapable of properly investigating serious corruption due to its structural and operational flaws. A tacit concession that this failure is ongoing is the questionable establishment by presidential proclamation of an investigative directorate within the NPA in 2019. Parliament has enacted legislation, the South African Police Services Act, 1995 (Act No. 68 of 1995), which currently reserves all investigative functions to the SAPS. The failure of law enforcement agencies to bring many of the corporations and individuals implicated in corruption and organised crime to justice serves to deepen inequality and social injustice, affecting the most vulnerable in society, who are denied delivery of their guaranteed human rights and access to justice against those who steal, loot, and misappropriate resources that are meant to uplift them. A weakened justice system creates an environment of impunity for, and reduced accountability of, those involved in corruption, especially as regards the recovery of their loot.

The best way to curb corruption is to have an independent, well-resourced, and specialised corruption fighting body that enjoys secure tenure of office. The international treaty obligations of South Africa oblige the state to establish and maintain an effective and independent anti-corruption entity. The proposed Constitution Twenty First Amendment Bill, 2024 (draft Bill), will when passed, establish an

Anti-Corruption Commission as a Chapter 9 institution which, like all Chapter 9 institutions reports directly to Parliament and is free of executive control as required by the decision of the Constitutional Court in *Glenister v President of RSA and Others* (48/10) [2011] ZACC 6. The Anti-Corruption Commission will be tasked with supporting and strengthening constitutional democracy in the Republic of South Africa by investigating and prosecuting serious corruption and high-level organised crime. The Anti-Corruption Commission, like all other Chapter 9 institutions, will be independent and subject only to the Constitution. The draft Bill will set out the functions, composition, membership, and tenure of the Anti-Corruption Commission and determine its relationship to the NPA. It is designed to prevent abuse of power.

Interested parties and institutions are invited to submit written representations on the proposed content of the draft Bill to the Speaker of the National Assembly within 30 days of the publication of this notice. Representations can be delivered to the Speaker, New Assembly Building, Parliament Street, Cape Town; mailed to the Speaker, P O Box 15 Cape Town 8000, or emailed to speaker@parliament.gov.za and copied to legislation@da.org.za.

Copies of the Constitution Twenty First Amendment Bill, 2024, may after introduction, be obtained from:

Democratic Alliance
P.O. Box 15, Cape Town, 8000
Attention: Adv Glynnis Breytenbach
Email: legislation@da.org.za.