



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

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10 June 2026

The Honourable Ms Mmamoloko Kubayi MP
Minister of Justice and Constitutional Development
Republic of South Africa

By email

Dear Minister,

**URGENT REQUEST FOR THE TRANSFER OF THE NATIONAL PROSECUTING
AUTHORITY'S BUDGET AND THE ESTABLISHMENT OF FULL FISCAL
INDEPENDENCE**

I write to urge you to take immediate steps to ensure that the budget of the National Prosecuting Authority ("NPA") is transferred directly to the NPA and administered by it independently of the Department of Justice and Constitutional Development. If I recall correctly, this is a step that you committed to during the course of last year. It has, however, not been actioned and the delay compromises the ability of the NPA to begin its road to recovery.

The constitutional imperative for an independent prosecuting authority is clear. Section 179(4) of the Constitution requires that national legislation must ensure that the prosecuting authority exercises its functions without fear, favour or prejudice. While considerable attention has historically been paid to the operational and decision-making independence of prosecutors, insufficient attention has been given to the practical reality that true institutional independence cannot exist where financial dependence remains.

At present, the NPA remains financially dependent on the Department of Justice and Constitutional Development. The Authority's budget is appropriated through, and administered under, the Department. This arrangement creates an inherent tension between the constitutional requirement of independence and the practical realities of financial control. An institution that is reliant upon another organ of state for the allocation, administration and prioritisation of its resources cannot be said to enjoy full institutional independence.

The NPA occupies a unique constitutional position. It is entrusted with enforcing the criminal law, combating corruption, prosecuting organised crime and ensuring accountability for serious offences. In carrying out these responsibilities, it must frequently investigate and prosecute matters involving politically connected individuals, public officials and, at times, departments of state themselves. Public confidence in the integrity of these processes requires not only actual independence but also the appearance of independence.

The experience of the past two decades has demonstrated the devastating consequences that follow when prosecutorial institutions are weakened, whether through political interference, resource constraints or administrative dependence. The findings of the State Capture Commission highlighted the importance of building resilient institutions capable of resisting undue influence and carrying out their constitutional mandates effectively.

Granting the NPA fiscal independence would represent a significant step towards strengthening its institutional integrity. Direct control over its budget would allow the Authority to determine its own priorities, recruit and retain specialist prosecutors and investigators, invest in technology and skills development, and plan strategically over the medium and long term without undue administrative constraints.

Importantly, fiscal independence would align the NPA more closely with other constitutional and oversight institutions whose independence is protected through separate budgetary arrangements. Such a reform would demonstrate government's commitment to strengthening the rule of law and enhancing the effectiveness of the criminal justice system.

I therefore respectfully request that you urgently:

1. Initiate the necessary legislative and administrative processes to establish a separate budget vote for the National Prosecuting Authority;
2. Engage with the Minister of Finance and National Treasury to facilitate the direct appropriation of funds to the NPA;
3. Consider amendments to the National Prosecuting Authority Act and any other relevant legislation to provide for the NPA's financial and administrative autonomy;
4. Develop a clear implementation plan, with defined timelines, to achieve full fiscal independence for the NPA; and
5. Report to Parliament on the steps being taken to strengthen the institutional independence of the prosecuting authority.

South Africa's constitutional democracy depends upon strong, capable and independent institutions. Ensuring the fiscal independence of the National Prosecuting Authority is not merely an administrative reform; it is a constitutional necessity and a critical investment in the rule of law.

I trust that you will give this matter your *urgent* attention.

Regards.



ADV. GLYNNIS BREYTENBACH MP
Chief Whip of the Democratic Alliance