**SUMMARY OF WRITTEN SUBMISSIONS AND RESPONSES: JUDICIAL MATTERS AMENDMENT BILL [B 13 - 2019]**

**Introduction**

The Portfolio Committee on Justice and Correctional Services invited stakeholders and interested persons to make written submissions on the Judicial Matters AmendmentBill [B 13 - 2019]. Two written submissions have been received.

* Table 1 provides a clause by clause summary of the submissions and general comments.

**List of commentators:**

1. Africa Criminal Justice Reform

2. COSATU

**TABLE 1**

**SUBMISSIONS/RECOMMENDATIONS BY CLAUSE**

| **Clause/ theme** | **Name** | **Submission / Recommendation** | **DOJCD Response** |
| --- | --- | --- | --- |
| 2  *(b)* Appointment of an NDPP  *(c)* Dismissal of an NDPP  *(d)* Ministerial control over the prosecution service  *(e)* Accountability of the NPA to Parliament | Africa Criminal Justice Reform  (ACJR) | *(a)* This amendment deviates from the order of the Constitutional Court which states that the period of suspension of a National Director of Public Prosecutions (NDPP) or a Deputy National Director of Public Prosecutions (Deputy National Director) by the President may not exceed a period of six months.  ACJR submits that *“the position of NDPP or DPP is one of the most important positions in any country. It is of utmost importance that all processes (appointment and disciplinary) involving such incumbents should be facilitated and processed as soon as possible to ensure that the office of the NDPP or DPP is not compromised.”*  *(b)* The authority of the President in terms of the Constitution and the National Prosecuting Authority Act, 1998 (Act 31 of 1998)(the NPA Act) to appoint the NPDD and the Deputy National Directors poses significant risks for the NPA’s independence as the President and the Minister of Justice may appoint the entire top echelon of the NPA without any input from other key stakeholders, such as Parliament, professional bodies or the public in general. The appointment of the NDPP should not be the sole prerogative of the President and the appointment process should be transparent. There are no provisions guiding the President on the interpretation of a ‘fit and proper’ incumbent. The NPA is therefore not completely sheltered from political interference because of inadequate legislative measures in the appointment of the NDPP.  *(c)* The provisions of the NPA Act that grant the President the power to remove the NDPP for misconduct, on account of ill health or incapacity to carry our his or her duties, and on account that he or she is no longer a fit and proper person, pending a resolution passed by Parliament to endorse or dismiss the decision of the President creates the risk that the President, with the concurrence of a Parliament dominated by the ruling party, will seek to remove an NDPP who is not willing to co-operate with the President’s demands.  *(d)*  The provisions in the Constitution and the NPA Act that state that the Minister of Justice must exercise final responsibility over the prosecuting authority and that the NDPP must determine prosecution policy with the concurrence of the Minister of Justice which could imply a great deal of ministerial control of the prosecuting authority and a restriction of its independence.  *(e)* (i) The NPA’s accountability to and Parliament’s role should be limited to reviewing performance and influencing policy and policy directives.  (ii) The NPA should not be accountable to Parliament in relation to its decisions in individual cases.  *(f)* The Portfolio Committee should initiate a comprehensive programme of the reform of the NPA that would look at all aspects of the legal frameworks, policies, and operations with a view to rebuild public trust in the institution. | *(a)* The amendment does not necessarily mean that the period of suspension of an NDPP or a Deputy National Director must be 12 months, the period may be shorter than 12 months, especially in relation to investigations that are not complex.  The twelve month period is proposed for pragmatic purposes.  In **Helen Suzman Foundation v President of the Republic of South Africa and Others 2015 (2) SA 1 (CC) (27 November 2014)**, which involved the suspension of the National Head of the Directorate for Priority Crime Investigation, the Constitutional Court held that the employer has a duty to “expedite the inquiry to avoid lengthy suspensions on pay”. This principle also finds application in the suspension of an NDPP or a Deputy National Director  *(b)* Noted. A change of this nature will require revision of policy, whereby different policy options may need to be considered. It is not appropriate to consider amendments of this nature at this point because of the urgency of the Bill. The Bill aims to give effect to a decision of the Constitutional Court, which should be enacted as soon as possible. Adding other amendments to the Bill will require extensive consultation with stakeholders and the public, which will delay the Bill even further.  *(c) Noted.* See response in (b) above.  *(d)* See response in (b) above.  *(e)* (i) Noted. See response in (b) above.  *(ii)* Noted.  (f) Noted. |
| 2 | COSATU | (a) The Bill is welcomed and supported. | Noted. |
|  |  | *(a)* A clause formalising the process that was followed in the appointment of the current NPDD which entails a call for applications, the appointment of a Judicial Services Commission type panel of non-partisan experts to interview the candidates, the hosting of such interviews in an open and transparent manner should be inserted in the Bill. | *(a)* Noted. A change of this nature will require revision of policy, whereby different policy options may need to be considered. It is not appropriate to consider amendments of this nature at this point because of the urgency of the Bill. The Bill aims to give effect to a decision of the Constitutional Court, which should be enacted as soon as possible. Adding other amendments to the Bill will require extensive consultation with stakeholders and the public, which will delay the Bill even further. |