

**MINISTRY**

**JUSTICE AND CORRECTIONAL SERVICES**

**REPUBLIC OF SOUTH AFRICA**

**NATIONAL ASSEMBLY**

**QUESTION FOR WRITTEN REPLY**

**PARLIAMENTARY QUESTION NO: 397**

**DATE OF QUESTION: 24 FEBRUARY 2023**

**DATE OF SUBMISSION: 10 MARCH 2023**

**Adv G Breytenbach (DA) to ask the Minister of Justice and Correctional Services:[🟊46] [Question submitted for oral reply now placed for written reply because it is in excess of quota (Rule 137(8))]:**

With reference to the criteria for successful corruption busting institutions as set out in the Glenister Judgments of the Constitutional Court, on what grounds is the Government relying to persist with its proposal to establish a permanent investigative directorate within the National Prosecuting Authority instead of a separate, completely independent institution, which would meet the Constitutional Court’s requirements for total independence?

**NW428E**

**REPLY:**

The Glenister Judgment must not be interpreted to mean that the National Prosecuting Authority (NPA) in its current form falls outside of the realm of independence.

As the Honourable Member is aware, the NPA is governed by both the Constitution and the National Prosecuting Authority Act (NPA Act).

Section 108 of the Constitution provides for the establishment of an NPA under the direction of a National Director of Public Prosecutions (NDPP).

The constitutional tenets governing the prosecution system are implemented through the NPA Act, which provides the power to institute and conduct criminal prosecutions on behalf of the State, ‘vests in the prosecuting authority.

The Constitution and the NPA Act guarantee the independence of the NPA in regard to its performance of the prosecutorial function. Both the Constitution and NPA Act also require that the NPA do its work ‘without fear, favour and prejudice’ and subject only to the Constitution and the law. This obligation was confirmed by the Constitutional Court in the certification of the Constitution in 1996.

There is objective evidence that STIRS criteria is being implemented.

Thus government has ensured that the Investigative Directorate (ID) has:

1. Specialised skills;
2. Highly Trained personnel;
3. Independence - as per the tenants of the Constitution and the NPA;
4. Resourcing - the NPA receives R1.3 billion to support the implementation of the recommendations of the State Capture Commission; and
5. Security of Tenure.