REPUBLIC OF SOUTH AFRICA

CONSPIRACY, INSTIGATION AND INCITEMENT TO COMMIT OFFENCE BILL

(As introduced in National Assembly (proposed section 75); explanatory summary of Bill and prior notice of its introduction published in Government Gazette No. 55223 of 21 August 2026)
(The English text is the official text of the Bill)

(MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B 28—2026]

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BILL

To define "serious offence"; to make provision for the offence of conspiracy and for the offence of instigating, inciting, commanding and procuring another person to commit a serious offence; to repeal the Riotous Assemblies Act, 1956; and to provide for matters incidental thereto.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Conspiracy and incitement to commit offence

1. (1) For the purposes of subsection (2)*(b)*, ''serious offence'' means an offence referred to in the Schedule in respect of which a period of imprisonment exceeding six months may be imposed.

(2) Any person who—

(a) conspires with any other person to aid or procure the commission of or to commit an offence; or

(b) instigates, incites, commands, or procures any other person to commit a serious offence,

is guilty of an offence and liable, on conviction, to the punishment to which a person who has been convicted of committing that offence or serious offence would be liable.

Repeal of Act 17 of 1956

2. The Riotous Assemblies Act, 1956 (Act No. 17 of 1956), is hereby repealed.

Short title and commencement

3. This Act is called the Conspiracy, Instigation and Incitement to Commit Offence Act, 2026, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

SCHEDULE

(Section 1)

1. Treason.
2. Sedition.
3. Public violence.
4. Murder.
5. Any offence referred to in sections 3 to 10, 12 to 26 and 55 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007).
6. Trafficking in persons as provided for in section 4 and involvement in the offence as provided for in section 10 of the Prevention and Combating of Trafficking in Persons Act, 2013 (Act No. 7 of 2013).
7. Robbery.
8. Kidnapping.
9. Child stealing.
10. Assault—
    (a) when a dangerous wound is inflicted; or
    (b) where a person is threatened with—
        (i) grievous bodily harm; or
        (ii) a firearm or dangerous weapon, as defined in section 1 of the Dangerous Weapons Act, 2013 (Act No. 15 of 2013).
11. Arson.
12. Malicious injury to property.
13. Breaking or entering any premises, whether under the common law or a statutory provision, with the intent of committing an offence.
14. Theft, whether under the common law or a statutory provision.
15. Receiving stolen property knowing it to have been stolen.
16. Fraud.
17. Forgery or uttering a forged document knowing it to have been forged.
18. Offences relating to coinage.
19. Any offence, except the offence of escaping from lawful custody in circumstances other than the circumstances referred to immediately hereunder, the punishment for which may be a period of imprisonment exceeding six months without the option of a fine.
20. Escaping from lawful custody, where the person concerned is in such custody in respect of any offence referred to in this Schedule or is in custody in respect of the offence of escaping from lawful custody.
21. Offences referred to in section 4(1) and (2) of the Prevention and Combating of Torture of Persons Act, 2013 (Act No. 13 of 2013).
22. Any offence under any law relating to the illicit dealing in or possession of precious metals or precious stones.
23. Any offence under any law relating to the illicit—
    (a) possession of—
        (i) cannabis, except as provided in—
            (aa) section 2 of the Cannabis for Private Purposes Act, 2024 (Act No. 7 of 2024); and
            (bb) section 22A(9)*(a)*(i) of the Medicines and Related Substances Control Act, 1965 (Act No. 101 of 1965); or
        (ii) any other dependence-producing drugs; or
    (b) cultivation or transportation of cannabis, except as provided in the Cannabis for Private Purposes Act, 2024; or
    (c) conveyance, supply of or dealing in dependence-producing drugs.
24. Any offence, if committed on a wide scale or as part of a scheme to substantially endanger or harm—
    (a) national interests;
    (b) the dignity or physical integrity of persons;
    (c) property or property rights; or
    (d) the constitutional order of the Republic of South Africa.
25. Defeating or obstructing the course of justice.
26. Extortion.
27. Any offence relating to the Firearms Control Act, 2000 (Act No. 60 of 2000).
28. Any offence relating to the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004).

29. Any contravention of the Public Finance Management Act, 1999 (Act No. 1 of 1999).
30. Any contravention of the Municipal Finance Management Act, 2003 (Act No. 56 of 2003).
31. Any offence relating to the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 (Act No. 33 of 2004).
32. Any offence relating to the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998).
33. Any offence relating to the Explosives Act, 1956 (Act No. 26 of 1956).
34. Any offence relating to the Criminal Matters Amendment Act, 2015 (Act No. 18 of 2015).
35. Any offence relating to the Cybercrimes Act, 2020 (Act No. 19 of 2020).

MEMORANDUM ON THE OBJECTS OF THE CONSPIRACY, INSTIGATION AND INCITEMENT TO COMMIT OFFENCE BILL, 2026

1. PURPOSE OF BILL

The primary objectives of the Conspiracy, Instigation and Incitement to Commit Offence Bill, 2026 (''the Bill''), is to define ''serious offence'', to provide for the offence of conspiring with another person to commit an offence, to provide for the offence of instigating and inciting, commanding and procuring another person to commit a serious offence and to repeal the Riotous Assemblies Act, 1956 (Act No. 17 of 1956) (''the Act'').

2. OBJECTS OF BILL

2.1 One of the key priorities of the Department of Justice and Constitutional Development (''the Department''), is the reform and repeal of apartheid and colonial-era legislation and the replacement of such legislation with new legislation. Since the Act was originally designed to combat gatherings, publications and conduct engendering hostility between one population group and another, the Act has been identified as apartheid-era legislation which must be repealed.

2.2 As part of Project 25: Statutory Law Revision, the South African Law Reform Commission (''the SALRC''), *inter alia*, concluded that the Act has lost its relevance, given that its express purpose was to suppress political resistance and to manage interaction between race groups in line with apartheid objectives.

2.3 In the Constitutional Court case of the *Economic Freedom Fighters and Another vs The Minister of Justice and Correctional Services and Another 2021(2) SA 1 (CC)*, the Constitutional Court held that the stated objective of the Act was, and still is, to ''consolidate the laws relating to riotous assemblies and the prohibition of the engendering of feelings of hostility between the European and non-European inhabitants of the Republic . . .''.

2.4.1 The majority decision of the Constitutional Court held that the Act is a remnant of the apartheid era and that it is unconstitutional and invalid, insofar as it makes incitement to commit even ''minor'' crimes an offence. It was further held that the section of the Act which the National Prosecuting Authority had used to prosecute Mr. Malema, was overbroad and unconstitutional, since, according to the Constitutional Court, section 18(2)*(b)* of the Act makes it a criminal offence to incite anyone to commit ''any offence''.

2.4.2 According to the majority ruling, incitement should be defined as a crime only in circumstances where ''serious offences'' has been committed. However, the Constitutional Court did not define what constitutes a ''serious offence'', but indicated that the Schedules in the Criminal Procedure Act, 1977 (Act No. 51 of 1977) (''CPA''), could provide the necessary guidance in this regard.

2.4.3 Although the Constitutional Court did not declare the Act as a whole unconstitutional, but only section 18(2)*(b)* and only insofar as this section makes it a criminal offence to incite anyone to commit ''any offence'', the Act has lost its relevance in our constitutional democracy.

2.4.4 The Constitutional Court gave Parliament 24 months to remedy the defects in the Act and ordered that, in the interim, the words ''any offence'' as they appear in the relevant section, should be replaced with the words ''any serious offence''. According to the order of the Constitutional Court, Parliament had until November 2022 to remedy the defect. During the 24-month period of suspension of the order of

invalidity in respect of section 18(2)*(b)* of the Act, the reading-in provision remained in operation until the expiry of the 24-month period.

CLAUSE-BY-CLAUSE ANALYSIS

2.5 **Clause 1** defines a serious offence as those offences identified in the Schedule to the Bill in respect of which a period of imprisonment exceeding six months may be imposed. The clause further makes provision for the offence of conspiring with another person to commit an offence and for the offence of instigating, inciting, commanding and procuring another person to commit a serious offence.

2.6 **Clause 2** of the Bill repeals the Act.

2.7 **Clause 3** of the Bill provides for the short title and commencement.

2.8 The **Schedule** to the Bill makes provision for the list of serious offences as envisaged in Clause 1 of the Bill.

3. CONSULTATION

3.1 The Department requested and received comments on the Bill from the National Director of Public Prosecutions (''NDPP''), South African Police Service (''the SAPS'') and Civilian Secretariat for Police Service (''the CSPS'').

3.2 The NDPP submitted initial, additional and further comments on the Bill.

3.3 The SAPS submitted initial and additional comments on the Bill.

3.4 The Bill has been revised and the comments of the NDPP and SAPS have been addressed, whilst the CSPS indicated its support for the Bill.

4. IMPLICATIONS FOR PROVINCES

There are no implications for the provinces.

5. FINANCIAL IMPLICATIONS FOR STATE

There are no financial implications for the State.

6. PARLIAMENTARY PROCEDURE

6.1 In *Tongoane and Others v Minister of Agriculture and Land Affairs and Others*[1] *("Tongoane")*, the Constitutional Court confirmed the test formulated in order to determine the classification of a Bill (''tagging test''). According to the Constitutional Court, what matters for the purposes of tagging, is not the substance or purpose of the Bill, but rather whether the provisions of the Bill in ''substantial measure'' fall within a functional area listed in Schedule 4.[2]

6.2 In commenting on the ''substantial measure test'', the Constitutional Court made the following remarks:

> *"[60] The test for tagging must be informed by its purpose. Tagging is not concerned with determining the sphere of government that has the competence to legislate on a matter. Nor is the process concerned with preventing interference in the legislative competence of another sphere of government. The process is concerned with the question of how the Bill*

[1] 2010 (6) SA 214 (CC).

[2] See paragraph 58.

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should be considered by the provinces and in the NCOP, and how a Bill must be considered by the provincial legislatures depends on whether it affects the provinces. The more it affects the interests, concerns and capacities of the provinces, the more say the provinces should have on its content.

. . .

[71] On the other hand, the 'substantial measure' test permits a consideration of the provisions of the Bill and their impact on matters that substantially affect the provinces. This test ensures that legislation that affects the provinces will be enacted in accordance with a procedure that allows the provinces to fully and effectively play their role in the law-making process. This test must therefore be endorsed.

[72] . . . What must be stressed, however, is that the procedure envisaged in section 75 remains relevant to all Bills that do not, in substantial measure, affect the provinces. Whether a Bill is a section 76 Bill is determined in two ways. First, by the explicit list of legislative matters in section 76(3)(a)-(f), and second by whether the provisions of a Bill in substantial measure fall within a concurrent provincial legislative competence.".

6.3 As stated above, a Bill, the provisions of which in substantial measure fall within a functional area listed in Schedule 4 to the Constitution, must be classified as a section 76 Bill. In order to test whether the provisions of a Bill fall within a functional area listed in Schedule 4, the cumulative effect of all the provisions of the Bill must be considered in order to determine its impact on the provinces.

6.4 The subject matter of the Bill deals with, *inter alia*, conspiracy, instigation and incitement to commit an offence. The offence of ''instigation'' and ''incitement'' are described as ''inchoate, incomplete or anticipatory crimes'', because they are forms of conduct performed in anticipation of the commission of the main offence[3]. The subject matter of ''offence'', including incomplete or anticipatory crimes as envisaged in Clause 1 of the Bill, does not fall within the ambit of the matters listed in Schedule 4 to the Constitution. The Department and the State Law Advisers are of the view that the Bill is an ordinary Bill not affecting the provinces and must be tagged as a section 75 Bill.

6.5 The Department and the State Law Advisers are also of the view that it is not necessary to refer the Bill to the National House of Traditional and Khoi-San Leaders as the Bill contains no provisions which directly affects customary law or the customs of traditional or Khoi-San communities as envisaged in terms of section 39(1)*(a)*(i) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019).

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[3] See Snyman C.R, ''Criminal Law – Attempt, Conspiracy, Incitement, Part 1, Chapter VIII'', 7th edition, 2020 at page 241.

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