

**IN THE HIGH COURT OF SOUTH AFRICA, PRETORIA
(GAUTENG DIVISION, PRETORIA)**

CASE NO.: 62470/15

In the matter between:

CORRUPTION WATCH

First Applicant

FREEDOM UNDER LAW (RF) NPC

Second Applicant

and

**THE PRESIDENT OF THE
REPUBLIC OF SOUTH AFRICA**

First Respondent

**MINISTER OF JUSTICE AND
CORRECTIONAL SERVICES**

Second Respondent

MXOLISI SANDILE NXASANA

Third Respondent

SHAUN ABRAHAMS

Fourth Respondent

**DIRECTOR GENERAL: DEPARTMENT OF
JUSTICE AND CONSTITUTIONAL DEVELOPMENT**

Fifth Respondent

CHIEF EXECUTIVE OFFICER OF

THE NATIONAL PROSECUTING AUTHORITY

Sixth Respondent

NATIONAL PROSECUTING AUTHORITY

Seventh Respondent

THE DEPUTY PRESIDENT OF THE

REPUBLIC OF SOUTH AFRICA

Eighth Respondent

FILING NOTICE

DOCUMENT: 1ST AND 8TH RESPONDENTS' RECORD

ON THE ROLL:

FILED BY: RESPONDENTS' ATTORNEY

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**TO: THE REGISTRAR OF THE HIGH COURT
PRETORIA**

**AND
TO:**

APPLICANT'S ATTORNEYS
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BERNHARD VAN DER HOVEN ATTORNEYS Sonder verskepte aanspraak op regte
2015 -10- 28
Without prejudice of Clients rights
GET/SIGN

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1/10/35

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TIME:

**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, PRETORIA)**

CASE NO.: 62410/15

In the matter between:

CORRUPTION WATCH

First Applicant

FREEDOM UNDER LAW (RF) NPC

Second Applicant

and

**THE PRESIDENT OF THE
REPUBLIC OF SOUTH AFRICA**

First Respondent

MINISTER OF JUSTICE AND

CORRECTIONAL SERVICES

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MXOLISI SANDILE NXASANA

Third Respondent

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JUSTICE AND CONSTITUTIONAL DEVELOPMENT

Fifth Respondent

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THE DEPUTY PRESIDENT OF THE

REPUBLIC OF SOUTH AFRICA

Eighth Respondent

REASONS FURNISHED IN TERMS OF RULE 53(1)(b)

1. Mr Nxasana was appointed as the National Director of Public Prosecutions on 30 August 2013 under Presidential Minute No. 295.
2. The President on 4 July 2014, informed Mr Nxasana that after consideration of all the evidence before him, a decision was taken to institute an inquiry in terms of Section 12(6)(a) of the National Prosecuting Authority Act, 32 of 1998.
3. The President on 5 February 2015, by notice in the Government Gazette, No. 38463, Notice 102 of 2015, established the inquiry into the fitness of Mr Mxolisi Nxasana to hold office of the National Director of Public Prosecutions. The Rules for the inquiry were published in the Government Gazette No. 38491, Notice 155 of 2015. The inquiry was to sit on 11 May 2015, when it was cancelled.
4. During the period, 4 July 2014 to 9 May 2015, Mr Nxasana and the President, had various discussions regarding the discord that existed in the National Prosecuting Authority between Mr Nxasana and the senior management.
5. The discord was so pronounced, the senior management was divided and the National Prosecuting Authority was destabilised. The looming inquiry into the fitness to hold office of Mr Nxasana also contributed to this discord.
6. Section 12(8) of the National Prosecuting Authority Act provides that the National Director of Public Prosecutions may request to vacate his office for any reason which the President deems sufficient. Mr Nxasana made the request on those grounds.
7. The President therefore deemed the reasons provided by Mr Nxasana, together with the anticipated protracted litigation and the holding of the inquiry

not to be in the best interest of the National Prosecuting Authority, Mr Nxasana and public at large, to be sufficient to allow Mr Nxasana to vacate office.

8. These reasons have been compiled by the President from the documents and discussions held with Mr Nxasana.

RECORD 1 IN TERMS OF PRAYER FIVE (5)

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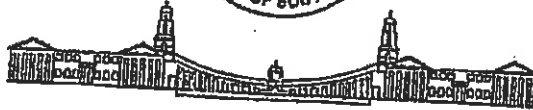
PRESIDENT'S MINUTE NO. 295

Under section 179(1)(a) of the Constitution of the Republic of South Africa, 1996 read with sections 10 and 12 of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998) I, as Head of the National Executive, hereby appoint **Mr Mxolisi Sandile Oliver Nxasana** as National Director of Public Prosecutions with effect from, 01 October 2013 in an existing vacancy.

Given under my Hand and the Seal of the Republic of South Africa at PRETORIA.....on this 30 day of AUGUST.....Twenty thousand and thirteen.

PRESIDENT

J. Radt
MINISTER OF CABINET



Dear Mr Nxasana,

19 June 2014

I refer to your correspondence dated 5 June 2014 addressed to me.

Without commenting on your account of your meeting with the Former Minister of Justice and Constitutional Development and more specifically sentiments which were attributed to me, the response to which I reserve and will express at the appropriate time, I request that you provide me with the following information:

1. The facts and circumstances of the incident which occurred on or about December 1985 which gave rise to you facing criminal charges;
2. The facts and circumstances of the outstanding complaints against you before the KwaZulu Natal Law Society;
3. The facts and circumstances which gave rise to your arrest on or about October 2012;
4. The facts and circumstances which gave rise to a charge/s of assault being proffered against you during the 80's;
5. Whether you are aware of a complaint lodged against you with the Public Service Commission by one Prince Mokotedi and the facts and circumstances which gave rise to such complaint;
6. Your comment on the appropriateness of the statements and sentiments recently attributed to you in the media, more particularly, regarding communications with officials of the National Prosecuting Authority, State Security and the Ministry of Justice and Constitutional Development.

I require your response within 48 hours of receipt of this correspondence in order that I may determine the appropriate course of action, which action may include sharing your responses with the affected government departments or placing information in the public domain should I deem it meet.

Yours sincerely,



Mr Jacob Gedleyihlekisa Zuma
President of the Republic of South Africa

Mr M Nxasana
National Director of Public Prosecutions
Private Bag X 752
PRETORIA
0001

Office of the
National Director of Public
Prosecutions



21 June 2014

His Excellency
The President of the Republic of South Africa
Union Buildings
Pretoria

Dear President

I refer to your letter dated the 19th instant which I received in the afternoon of the 20th June 2014 and respond thereto as follows:

I must mention from the outset that due to the lapse of time I may not be in a position to have a clear recollection of the detailed accounts of what happened more than 28 years ago but I trust that all the information requested is easily accessible as it should be in possession of the State. I am also constraint by the time I have been given within which to respond which leaves me with little or no time to travel to Durban and Nongoma to try and retrieve the information. However I try my best to recount the events which happened during those periods but I reserve my right to supplement any information at the appropriate stage should it become necessary for me do so.

1. The facts and circumstances of the incident which occurred on or about December 1985 which gave rise to me facing criminal charges.

It was in December 1985 when I was with my childhood friends was at my girlfriend's place at C Section, Umlazi. I remember that it was in the evening and it was already dark. Whilst we were there and when I was busy talking to my girlfriend in the kitchen I suddenly heard noise outside and my cousin, Peter Mngomezulu, screaming. I suddenly noticed that we were under imminent attack by unknown males. During the attack my cousin, Peter, sustained injuries on his arm when he tried to ward off a blow of a bush knife which was aimed at his head. I reached for a kitchen knife seeing that we were cornered inside the kitchen and our lives were in danger. These unknown people advanced towards us and continued attacking us and I remember stabbing one of the guys once. After that I

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remember that our attackers retreated and we found a chance to run away. I discovered that my friends who were standing outside with my cousin had managed to run away. We ran home and I reported the matter to my father. The following day my father informed me that he had received the news that one of our attackers whom I had stabbed the previous night had passed away. My father then took me to the police where I was detained. I was subsequently released on bail. I was subsequently charged and tried with Murder in the Regional Court, Durban. The trial proceeded and I was found not guilty and acquitted.

2. The facts and circumstances of the outstanding complaints against me before the KwaZulu-Natal Law Society.

At the time of my appointment to my current position there were two outstanding complaints that had been lodged with the KwaZulu-Natal Law Society against me. I have since been advised by the KwaZulu-Natal Law Society that one of these complaints was subsequently dismissed by the Complaints Committee of KwaZulu-Natal Law Society. This complaint was lodged by my former client, Mr S. E. Majola. I attach hereto a copy of the letter from the KwaZulu-Natal Law Society marked "MN 1" contents of which are self-explanatory. Mr Majola's complaint was that I allowed his motor vehicle accident claim against the Road Accident Fund to prescribe. I submitted a response to the KwaZulu-Natal Law Society and the Complaints Committee which dealt with the complaint and dismissed it. Needless to mention that Mr Majola's complaint was a non-starter but the details of this complaint are easily accessible from the KwaZulu-Natal Law Society.

The other complaint against me was lodged by Mr Jabulani Mtshali in about 2008. His complaint, as far as I can remember, was that I failed to wind up the estate of his late father timeously and expeditiously. I also filed my comprehensive response with the KwaZulu-Natal Law Society wherein I denied the allegations against me. As far as I can recall the complainant's father, hereinafter referred to as the deceased, was my client during his lifetime. We came to know each other when he gave me instructions to defend his late step son, Mondli, in a criminal matter at Umlazi Court. We developed a very good relationship thereafter and he regarded me as his Family Lawyer. During all that period I knew that Mondli was his son and not step son. When the deceased passed away his wife, i.e. Mondli's mother, approached me and instructed me continue with the winding up of the deceased's estate. The deceased died testate (leaving a valid Will).

Whilst I was busy with the process of reporting the estate to the Master the deceased's wife also passed away. Mondli then approached me to continue with the winding up of the estate. The deceased had nominated his wife, Mondli's mother Greta, as the sole heir to his estate. This meant that I had to wind up two estates, viz, the deceased's estate and that of his wife, Greta. As far as I can remember Greta had also left a Will in terms of which she nominated her son, Mondli, as the sole beneficiary. Mondli subsequently died whilst I was also in the process of winding up the estates but shortly before his (Mondli) demise he had introduced the complainant to me as the deceased's illegitimate son. It was only at during that time that I came to know that Mondli was in fact the deceased's step son.

I also established for the first time that the deceased was in fact married to two wives and that the first wife lived in UMzinto. The first wife's Attorneys contacted me and as part of winding up the deceased's estate we agreed to sell the house, which was the only asset of the estate, so that the proceeds thereof could be distributed amongst the beneficiaries accordingly. This was so because the first wife was married to the deceased in community of property and by law she was entitled to half share of the deceased's estate. To cut the long story short, the first wife also died in the process and so did her eldest daughter. The Master of the High Court had issued Letters of Authority to me and by law I was the only one who was authorized to deal with the deceased's estate. I think the complainant got frustrated when he tried to sell the deceased's house more than once and when I had to intervene. I asked the complainant to bring all the children of the deceased so that we could all discuss the best way of dealing with the asset of the estate, in this case the house. The complainant constantly made promises to bring them but failed to do so. I indicated to him that by virtue of the Letters of Authority issued to me by the Master of the High Court I had a legal duty to protect the interests of all the minor children of the deceased. Instead the complainant came to my office on many occasions whilst I was in court and tried to persuade my Secretary to give him the Deed of Grant. All his attempts failed because my Secretary would tell him to speak to me and that I she was not allowed to release any document without my consent. My suspicion was that the complainant wanted to sell the house and appropriate the proceeds thereof to himself to the exclusion of other deceased's beneficiaries. He had already displayed some degree of dishonesty with me before. I assisted him with claiming proceeds of the deceased's pension fund from Transnet. The proceeds were paid directly into his bank account but he did not tell me about it and as a result I kept chasing after

Transnet for payment until the latter advised me that the payment was effected into the complainant's account a long time ago. I later discovered that the complainant had admitted receipt of payment to my colleague's Secretary but asked her not to tell me about it. I have made numerous enquiries with the Kwazulu-Natal Law Society about the status of this complaint. At one stage I was advised by Mrs Mfusi, the Manager-Regulatory Affairs and Anita who reports to Mrs her (Mrs Mfusi) that the complaint file went missing amongst the members of the Complaints Committee. Mrs Mfusi has recently sent me a letter requesting that I provide them with copies of the complainant's complaint affidavit and my answering affidavit from my file, if I still have it, so that they can be in a position to reconstruct their file. I left all my client files at my former office when I got appointed to my current position. Mr Dlamini took over my practice with all my files. I have recently sent someone to go and look for my file at my former office and she reported that she could not find it and Mr Dlamini was not in the office. I have undertaken to make time and go down to Durban to look for the file personally and provide the KwaZulu-Natal Law Society with copies.

3. The facts and circumstances which gave rise to my arrest on or about October 2012.

I can't remember the date but it was in October 2012 in the evening when I was driving my wife's BMW 525 along Sydney Road. I was coming from my office and was in the company of a client. As I was driving I noticed a truck approaching me on my left hand side at a very high speed and it nearly collided with my vehicle. I noticed that the truck was overtaking a bus, which was also travelling at a high speed. I even made a comment to my client and said it looks like these people were racing. I picked up the speed to avoid the bus and truck colliding against my vehicle. I then slowed down as soon as I had maintained a safe distance away from them. When I checked my rear view mirror I saw lights of a vehicle approaching from behind at a very high speed. I also made another comment to my client and said "hey what's wrong with these people they are still racing". Seeing that the vehicle was coming at a high speed I tried to give way by moving to the left lane of my travel but the vehicle behind me also moved towards the left. I then moved to my original lane of travel in an attempt to avoid collision. This vehicle passed me on my left and drove onto my lane of travel and made a sudden stop blocking me from driving. I applied my brakes and made a sudden stop. Fortunately I was driving slowly and I managed to bring my vehicle to an abrupt stop. I then noticed that it

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was a police marked vehicle, a white Mercedes Benz Vito. I noticed that there were some white females inside the vehicle.

Suddenly the driver stepped out and approached me on the driver's side. The driver was an old white male who was dressed in police uniform and from the three stars on both his shoulders I deduced that he was a Captain. The other one also stepped out of the passenger seat also clad in police uniform and he was carrying a rifle. I remained in the driver's seat and opened the window to find out what was happening. The Captain, who I later learnt that his name was Needle became very abusive with me and kept using the "f..." word asking me why I was speeding. My pleas with him to stop being abusive with me were in vain and instead he accused me of thinking that I was clever. I made it very clear to him that I was not prepared to accept the way he was treating me and even told him that I did not expect a person of his rank (Captain) to conduct himself the way he was doing. He then ordered me to get out of the vehicle which I did. Captain Needle then threatened to arrest me and I told him that was not going to change my view. I asked him what was he going to arrest me for and he said for speeding. I asked him how he knew I was speeding. He was not prepared to even give me an opportunity to explain to him what had happened, if he was referring to the time I had to pick up the speed to avoid the truck and the bus. He shouted and swore at me and he called the police van. During this time Captain Needle's partner kept pointing a rifle at me. I told him I had no problem driving my vehicle to Umbilo police station, which was just a short distance away from the scene of arrest. When the police van arrived he and his partner grabbed me, threw me on to the road and shoved me into the back of the police van. I was taken to Umbilo police station and Captain Needle's partner drove my vehicle. I discovered at the police station that both Captain Needle and his partner were in fact police reservists. They did not even know what charges to prefer against me until they spoke to one Indian detective who then suggested that they should charge me with Inconsiderate driving and resisting arrest. At the police station they kept saying to me that if I had simply apologized to them they were not going to arrest me. I told them I was not going to apologize to them because I had done nothing wrong and instead they were the ones who owe me an apology. I told them I was going to lay charges against them as soon as they had finished processing me which I did. I must mention that I experienced some difficulty in laying charges against Needle and his partner until I had to phone the lady by the name of Maza, who was a detective that was attached to the Independent Complaints Directorate (ICD). I then laid the charges against

Captain Needle and his partner and as far as I know that case is still very much alive as I have not heard anything to the contrary.

I was released on R1000.00 bail and the next morning I went to Durban court where I was supposed to make the first appearance. The docket was read by the Senior Public Prosecutor, Mr Thami Ntuli, and he declined to place the matter on the roll. I did not even appear in court. I was then told to withdraw my bail money and that was it.

4. The facts and circumstances which gave rise to a charge/s of assault being proffered against me during the 80's

I can only recall the fact that in 1986 and at Nongoma I was charged with and convicted of Assault Common. I remember that it was as a result of a misunderstanding that took place between my girlfriend and I. I cannot really recall the nature of the misunderstanding because of the lapse of time but I can say that as a result of the said misunderstanding I ended up beating my girlfriend with open hands. She laid a charge of assault against me out of anger because even after my conviction and sentence we continued with our relationship. I was summonsed to appear in court and I pleaded guilty to the charge of Assault Common. I was sentenced to 30 days imprisonment or to pay a R50.00 fine. I paid the fine and the matter was disposed. I must add that had it been nowadays the matter would have been resolved by way of Alternative Dispute Resolution (ADR). I say this because the complainant was not even at court when I pleaded guilty and also that subsequent thereto we continued with our relationship.

I understand that my SAP 69's reflect that I also have another previous conviction of Assault Common, which was committed in 1985, where I was cautioned and discharged. I do not remember this conviction and I also mentioned this when I made a disclosure in my vetting form (Z 204). All that I can say is that I was just 17 years old at that time. It follows then that I can neither admit nor deny it. I cannot remember what this charge was all about. I would like to draw his Excellency to the provisions of Section 271 A of the Criminal Procedure Act 51 of 1977, as amended which reads as follows:

Where a court has convicted a person of-

(a) Any offence in respect of which a sentence of imprisonment for a period exceeding six months without the option of a fine, may be imposed but-

- (i) Has postponed the passing of sentence in terms of section 297 (1)(a) and has discharged that person in terms of section 297(2) without passing sentence or has not called upon him or her to appear before the court in terms of section 297(3); or
- (ii) Has discharged that person with a caution or reprimand in terms of section 297(1)(c); or

(b) any offence in respect of which a sentence of imprisonment for a period not exceeding six months without the option of a fine, may be imposed, that conviction shall fall away as a previous conviction if a period of 10 years has elapsed after the date of conviction of the said offence, unless during that period the person has been convicted of an offence in respect of which a sentence of imprisonment for a period exceeding six months without the option of a fine, may be imposed.

5. Whether I am aware of a complaint lodged against me with the Public Service Commission by one Prince Mokotedi and the facts and circumstances which gave rise to such complaint.

I must say I have not seen the complaint itself except what I was told by the former Minister of Justice and Constitutional Development during our evening meeting of the 21 May 2014. The Minister told me that apparently Prince Mokotedi reported to the Public Service Commission that when he (Prince) was investigating me about a case relating a killing of a person in 1985 I stopped him from doing that. The Minister also told me that Prince complained that I disbanded the Integrity Management Unit of the NPA which he is heading. On 22 May I wrote a letter to the Minister confirming everything that took place during our meeting on 21 May 2014. In that letter I requested to be provided a copy of the said complaint so that I could familiarize myself with the nature thereof and be in the position to respond to it as well. To date I have not received any response from the office of the Minister.

Last week Thursday, on 12 June 2014 whilst at Umthatha I received a call on my cellphone from Prince Mokotedi. He told me that he had been to my office to see me and he wanted us to sit down and talk. He had also left a voice message on my cellphone,

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which I still have, advising that he wanted to talk with me. I ultimately told him that I was not at work and was only going to be available to meet him on Tuesday, 17 June 2014. He asked me to request my P A to call him in as soon as I was in the office. On 17 June I asked my P A to call him and simultaneously I asked her to call Dr Ramalite to join us as well. This I did deliberately because I did not want to speak to Prince alone. I feared that he would distort our conversation again as he had already done according to what I was told by the former Minister. I must say that I deny flatly that I ever stopped or even attempted to stop Prince from investigating me. Contrary to the allegations he has allegedly leveled against me I specifically told him that I do not want to be accused of interfering with his investigation. When he told me that he was waiting to obtain a statement from some person and thereafter close his file "to cover his back" I requested him to please make sure that he obtains an affidavit instead of an ordinary statement from that person. All the IMU staff who were present at the meeting of my business unit visit, including the Deputy CEO, the NPA Spokesperson, Mr Nathi Mncube and Mr T C Duma can bear testimony that I made it very clear that the IMU is there to stay and that any suggestion that the IMU had been disbanded was untrue.

On 17 June 2014 Prince, Dr Ramalite and I met at my office. Prince told me that he came to basically apologize to me about all what had happened more particularly to what he was reported to have said in the Sunday Times of the 8th June 2014. He said he was quoted out of context and said "he realize in hindsight that he should have handled the whole thing differently". Prince was adamant that he did not lodge any complaint against me with the Public Service Commission and said the person he complained about was the CEO, Mrs Van Rensburg. He even promised to provide me with what he described as a "memorandum" that he submitted to the Public Service Commission. I even asked him why the former Minister would tell me that he (Prince) lodged a complaint against me if in fact he had only lodged it against the CEO. He was adamant that he only complained about the CEO whom he said she was intimidating everyone by threatening them with disciplinary actions. I am still waiting for Prince to provide me that memorandum. Prince vehemently denied that he told anyone that I disbanded the IMU.

6. My comment on appropriateness of the statements and the statements and sentiments recently attributed to me in the media, more particularly, regarding communications with officials of the National Prosecuting Authority, State

Security and the Ministry of Justice and Constitutional Development.

In giving my response to paragraph 6 above, it is important that I give a little background of why I ended up agreeing to respond to some journalist that were confronting me with a variety of allegations that sought to impugn my integrity.

As early as October 2013, it was brought to my attention that one of my deputies together with some NPA and SAPS officials were involved in a plot to have me removed from office. I was provided with tangible evidence that implicated these officials. Despite these allegations made against my deputy, I was determined to focus all my energy on my duties and responsibilities as the head of the organization. I did not confront any of the implicated persons with the information at my disposal instead I tried my best to be accommodative and professional to everyone. But I must mention that I did bring to the attention of EXCO that the aforesaid allegations had been brought to my attention but again I invited everybody to work together with me. I kept on receiving information that the campaign to have me removed was continuing such that members of SAPS seconded to the Missing Persons Task Team in Durban were used to find something on me that could be used to argue that I was not the right candidate for the position of the NDPP.

I was continuously receiving information that lies were being peddled about me, *inter alia*, that I intended to reinstate criminal charges against the President and against the KwaZulu-Natal MEC's. At first I dismissed all these allegations as nonsense as there had not been any official handover and I had not even seen the docket pertaining to the matter concerning the President. Apart from this I had not received any briefing on the two matters. When these allegations intensified I was concerned and tried my utmost best to seek audience with the President with the view to demystifying them. Unfortunately at the time of writing this letter the meeting had not materialized.

It is against this backdrop that when I was confronted by some journalists with damning allegations against me, which sought to impugn my integrity, I felt it necessary to put matters into correct perspective. These journalists confronted me with allegations, some of which were incidents that happened more than 28 years ago in my childhood. They also confronted me with allegations that portrayed me a person with no regard for the law. It was during those interviews that I was asked to confirm, *inter alia*, my meeting

with the former Minister of Justice, my vetting process, my meeting of the 22nd May 2014 with EXCO, comment on the involvement of some of the NPA and SAPS officials in plot to oust me. I am not aware of any inappropriate statements and sentiments that can be attributed to me except for my responses to the specific media questions. Having said that I am more than willing to take the President into my confidence and address any specific media remarks that I made which are of concern to the President should same be brought to my attention.

Yours Sincerely,



Mr Mxolisi Nxasana
National Director of Public Prosecutions



4 July 2014

Dear Mr Nxasana

NOTICE OF INSTITUTION OF ENQUIRY

I hereby advise you that, after careful consideration of all the matters before me, I have taken a decision to institute an enquiry in terms of Section 12(6)(a)(iv) of the National Prosecuting Authority Act 32 of 1998.

The detail regarding the establishment of the Enquiry will be communicated to you shortly.

Yours faithfully

A handwritten signature in black ink, appearing to read 'J. Zuma', is written over a faint circular stamp.

Mr Jacob G. Zuma

President, Republic of South Africa

Mr Nxasana
 National Director of Public Prosecutions
 Private Bag X 752
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 0001

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO:

In the matter between:

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

Applicant

and

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

First Respondent

THE MINISTER OF JUSTICE AND CORRECTIONAL SERVICES

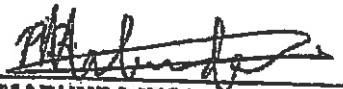
Second Respondent

FILING SHEET

DOCUMENTS PRESENTED FOR FILING:

1. NOTICE OF MOTION;
2. FOUNDING AFFIDAVIT;
3. ANNEXURES "MN1"- "MN6";
4. CONFIRMATORY AFFIDAVIT.

SIGNED and DATED at JOHANNESBURG on 8 AUGUST 2014



MABUNDA INCORPORATED

Applicant's Attorneys
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3RD FLOOR, EASTWING
SAMMY MARKS SQUARE
314 CHURCH STREET
PRETORIA
TEL : (011) 450-2284/1641
FAX : (011) 450-1655
REF: MR MABUNDA

TO :
The Registrar of the above Honourable Court
PRETORIA

AND TO :
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA
UNION BUILDINGS
GOVERNMENT AVENUE, PRETORIA
C/O MR MICHAEL HULLEY
michael@hulleyinc.co.za

Received copy hereof on this
day of 2014.

For: 1st Respondent's

AND TO :
THE STATE ATTORNEY
SALU Building
316 Thabo Sehume Street
PRETORIA

Received copy hereof on this
day of 2014.

For: 2nd Respondent's

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO:

In the matter between:

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS Applicant

and

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA First Respondent

THE MINISTER OF JUSTICE AND CORRECTIONAL SERVICES Second Respondent

NOTICE OF MOTION

TAKE NOTICE THAT the Applicant will apply to the above Honourable Court on **Tuesday 12 August 2014** at 10h00 or so soon thereafter as the Applicant may be heard, for orders in the following terms:

- 1 Dispensing with the forms and service provided for in the Rules of Court and allowing that the application be enrolled and heard as one of urgency under Rule 6(12)(a) of the Uniform Rules of Court.
- 2 Directing the First Respondent to provide the Applicant with the following particularity of allegations made against him in a notice dated 30 July 2014:

- 2.1 the criminal convictions referred to in the first bullet point of the notice;
 - 2.2 the comments the Applicant allegedly made to the media, the dates on which he is alleged to have made them and the media in which they were published;
 - 2.3 the prosecutions the Applicant is accused of not disclosing; and
 - 2.4 to whom and when he failed to make these alleged disclosures;
- 3 Interdicting the First Respondent from suspending the Applicant before:
- 3.1 providing the particularity referred to in paragraph 2;
 - 3.2 granting the Applicant a period of five (5) days after receipt of the particularity referred to in paragraph 2 to make supplementary representations;
- 4 Directing the First Respondent to grant the Applicant a period of five (5) days after receipt of the particularity contained in paragraph 2, within which to make supplementary representations.
- 5 Directing the First Respondent to pay the costs of this application;
- 6 Granting the Applicant further and/or alternative relief.

TAKE NOTICE FURTHER THAT the affidavit of Mxolosi Nxasana, together with annexures in support of this application will be used in support of this application.

TAKE NOTICE FURTHER THAT the Applicant has appointed Busani Mabunda of Mabunda Inc, as set out below, as its attorneys of record, at the address referred to in rule 6(5)(b) at which it will accept notice and service of all process in these proceedings.

TAKE NOTICE FURTHER THAT if you intend opposing this application, you are required to --

- (a) Indicate such intention by advising Mr Busani Mabunda by 10h00 on 11 August 2014;
- (b) file an answering affidavit, alternatively a notice in terms of Rule 6(5)(iii) on or before 14h00;
- (c) appear in court, duly represented by a legal practitioner with right of appearance at the above stated time.

TAKE NOTICE FURTHER THAT if no notice to oppose is given, the application will proceed unopposed at 10h00.

KINDLY enrol the matter for hearing accordingly.

SIGNED and DATED at JOHANNESBURG on 8 AUGUST 2014


MABUNDA INCORPORATED

Applicant's Attorneys
C/O T M CHAUKE INC.
3RD FLOOR, EASTWING
SAMMY MARKS SQUARE
314 CHURCH STREET
PRETORIA
TEL : (011) 450-2284/1641
FAX : (011) 450-1655
REF: MR MABUNDA

TO :
The Registrar of the above Honourable Court
PRETORIA

AND TO :
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA
UNION BUILDINGS
GOVERNMENT AVENUE, PRETORIA
C/O MR MICHAEL HULLEY
michael@hulleyinc.co.za

Received copy hereof on this
day of 2014.

For: 1st Respondent's

AND TO :
THE STATE ATTORNEY
SALU Building
316 Thabo Sehume Street
PRETORIA

Received copy hereof on this
day of 2014.

For: 2nd Respondent's

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO:

In the matter between:

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

Applicant

and

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

First Respondent

THE MINISTER OF JUSTICE AND CORRECTIONAL SERVICES

Second Respondent

FOUNDING AFFIDAVIT

I, the undersigned

MXOLISI NXASANA

do hereby state under oath as follows:

- 1 I am the National Director of Public Prosecutions ("NDPP") and the Applicant in this application. I was appointed by the President of the Republic of South Africa, the honourable Mr Zuma, with effect from 1 October 2013, in terms of section 84(e) of the Constitution of the Republic of South Africa (Act 108 of 1996).

- 2 I am based at the head office of the National Prosecuting Authority, Victoria and Griffiths Mxenge Building, 123 Westlake Avenue, Weavind Park, Silverton.

MXOLISI NXASANA

3 The facts deposed to below are within my personal knowledge, unless otherwise stated or indicated by the context, and they are, to the best of my belief, true.

The parties

4 The First Respondent is the President of the Republic of South Africa. Service on the President is usually through the office of the State Attorney, SALU Building, 318 Thabo Sehume Street, Pretoria.

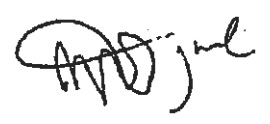
5 The Second Respondent is the Minister of Justice and Correctional Services ("the Minister"). Service on the Minister is usually through the office of the State Attorney, SALU Building, 318 Thabo Sehume Street, Pretoria. The Minister has no power to appoint or suspend me. He is cited because as the member of the executive responsible for exercising political oversight over the National Prosecuting Authority, excluding the NDPP, he has an interest in the outcome of this matter. No relief is sought against the Minister except in the event that he opposes this application.

Purpose of the affidavit

6 This is an urgent Application in which I seek the following order:

6.1 Directing the First Respondent to provide me with the following particulars of allegations made against me in a notice sent to me on 30 July 2014:

6.1.1 the criminal convictions referred to in the first bullet point of the notice;



6.1.2 the comments I allegedly made to the media, the dates on which I am alleged to have made them, and the media in which they were published;

6.1.3 the prosecutions I am accused of not disclosing; and

6.1.4 to whom and when I failed to make these alleged disclosures;

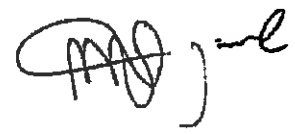
6.2 Interdicting the First Respondent from suspending me before:

6.2.1 providing me with particularity of the allegations contained in paragraph 6.1 above;

6.2.2 giving me a period of five (5) days after receipt of the particularity contained in paragraph 5 above within which to file supplementary representations.

Why this application is necessary

7 By letter dated 4 July 2014, the President informed me that, after careful consideration, he had taken a decision to institute an inquiry in terms of section 12(6)(a)(iv) of the National Prosecuting Authority Act, 32 of 1998 (the NPA Act). Section 12(6)(a)(iv) provides that the President may provisionally suspend the NDPP from his office, pending an inquiry into his fitness to hold office. A copy of this letter is attached marked "MN1".



8 The President advised me that the details regarding the establishment of the inquiry would be communicated to me shortly. The notice did not contain the terms of reference of such an inquiry. Nor did it list the allegations that the inquiry would investigate against me.

9 On 30 July 2014 I received a notice from the President informing me that he was considering suspending me on full pay pending the finalisation of the inquiry into whether I am fit and proper to hold the office of the NDPP. A copy of this notice is attached marked "MN2". The notice reads:

"The enquiry will examine your fitness to hold the office as National Director of Public Prosecutions having regard to whether:

- 1. *The criminal convictions which you possess for violent conduct;*
- 2. *Reported comments in the media are unbecoming of a National Director of Public Prosecutions, divisive and have the effect of bringing the National Prosecuting Authority into disrepute;*
- 3. *The lack of disclosure of the facts and circumstances of prosecutions which you faced.*

are consonant with the conscientiousness and integrity of an incumbent to the office of National Director of Public Prosecutions as required by the Act."

10 The notice invited me to provide the President with written representations as to why I should not be suspended by no later than 16h00 on Friday 1 August 2014.

AAJ Jurd.

- 11 On receipt of the notice, I wrote to the President and requested that I be granted an extension until Friday 8 August at 16h00 within which to make representations. A copy of this letter is attached marked "MN3".
- 12 The reasons that I sought an extension were the following:
- 12.1 On 28 July 2014 my younger sister's husband had passed away. I informed the President that the funeral would take place on Saturday 2 August 2014 and that I was due to leave for KZN the following day to help my sister with funeral preparations.
- 12.2 In order for me to make proper representations, I required particulars of the following allegations:
- 12.2.1 the criminal convictions referred to in the first bullet point;
- 12.2.2 the comments I was alleged to have made, the dates on which I allegedly made them, to whom I made them and the media in which they were published;
- 12.2.3 the prosecutions I am accused of not disclosing; and
- 12.2.4 to whom and when I failed to make these alleged disclosures.
- 13 By Friday morning, 1 August 2014, the date on which I was required to make representations, I had not yet received a response to my request for additional time as well as additional particularity regarding the allegations

AND ml

against me.

- 14 My office manager, Mr Schmidt, tried unsuccessfully to contact someone in the Presidency to enquire whether or not the President had received my request for an extension. Eventually at approximately 08h40 he spoke to Mr Sekhoto, whom I understand is the President's private secretary. Mr Sekhoto confirmed that the President had received my request and that I would be informed of the outcome shortly. Mr Schmidt provided Mr Sekhoto with his email address and asked him to direct any correspondence for my attention to his email address.


- 15 Mr Schmidt did not hear from Mr Sekhoto for the rest of the day, despite repeated attempts to contact him.

- 16 The result is that I was put under tremendous pressure to make representations at short notice and without sufficient particularity to make them properly, so as to meet the deadline of 1 August 2014. Shortly after 16h00 (at 16h47) on Friday 1 August, my office emailed my representations to Mr Sekhoto for the President's attention. A copy of my representations is attached, marked "MN4".

- 17 I made these preliminary but inadequate and incomplete representations because I did not want to risk being accused of ignoring the President's invitation to make representations.

M.S. 1 ml

- 18 By letter on 2 August 2014, after the deadline for me to make representations had already passed, I received a letter from the President advising me that he had granted me an extension to make representations until Friday 8 August 2014. The President apologised for the fact that I had not been advised of this in time. I was informed that should I wish to do so, I would be entitled to supplement the representations I had already made. A copy of this letter is attached marked "MN5".
- 19 The President's letter made no mention of the fact that I had requested of the allegations made against me, which allegations are to form the basis of the enquiry against me, in my letter of 30 July 2014.
- 20 By letter dated 5 August 2014, I reminded the President that I had not yet had a response to my letter of 30 July 2014 in which I asked for particularity of the allegations made against me. I reiterated that I required these particulars in order to make proper representations and that if I did not receive them urgently, I would not be in a position to supplement my representations by Friday 8 August 2014. I asked the President to respond to this letter urgently.
- 21 The Presidency acknowledged receipt of my letter of 5 August 2014. They did not indicate however whether the contents had been brought to the attention of the President and whether the President intended to provide me with the particularity requested.
- 22 That is why by letter on 6 August 2014 I did the following:



- 22.1 I pointed out that I had not yet received a response to my request for particularity of the allegations made against me;
- 22.2 I again reminded the President that I would not be in a position to supplement my representations if I did not receive the particularity requested;
- 22.3 I stressed that I was being prejudiced by the President's failure to provide me with the particularity I requested and that even if the President were to provide me with the particularity I required, at this late stage I would not be in a position to supplement my representations by Friday 8 August 2014;
- 22.4 I asked the President when he would provide me with the particularity sought in my letter of 30 July 2014;
- 22.5 I also asked for an undertaking that he allow me five days from the receipt of the particularity to provide representations;
- 22.6 I informed the President that if I was not provided with an undertaking that I would be allowed five days from receipt of the particularity requested within which to make representations, by 15h00 on 7 August 2014, I would be forced to approach this Court for relief.
- 23 During the course of the late afternoon on 7 August 2014, the following happened:

A handwritten signature in black ink, appearing to be 'MAG J. M.' with a stylized flourish.

23.1 In response to queries from my office, Mr Sekhoto sent my personal assistant an email confirming that the President was out of the country and that on his arrival later that night my letter and its contents would be brought to his attention;

23.2 My attorney, Mr Mabunda, got hold of Mr Hulley, the President's legal advisor, who undertook that the Presidency would get back to me by 09:00 on Friday 8 August 2013 with a response to my request.

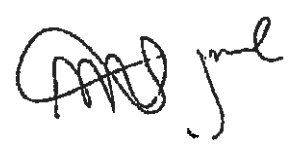
23.3 I decided to hold off launching papers until 09:00 on Friday morning.

24 By 09:00 I had not yet received any response to my 6 August letter. My attorney contacted Mr Hulley shortly after 09h00. Mr Hulley informed him that a letter responding to my request was on its way. By letter sent under cover of an email on 8 August 2014 at 10h35 the President informed me that of the following:

24.1 I have until 16h00 on Wednesday 13 August to supplement my representations;

24.2 He refused to furnish me with the particulars sought in paragraph 6 above.

25 A copy of the President's letter is attached, marked "MN6".



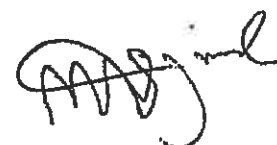
My right to a fair hearing

- 26 Section 12(6)(a) of the NPA Act empowers the President to suspend me pending an enquiry into my fitness to hold office. Implicit in the statutory power to suspend is the right to a fair hearing before suspension.
- 27 The requirement of fairness requires that I be given a fair hearing or a fair opportunity to be heard on why I should not be suspended. That means that I should be given sufficient or adequate time and sufficient or adequate particularity of the allegations against me to make proper representations. It is apparent from the President's letter of 30 July 2014 that I am not given sufficient or adequate essential particularity of the allegations against me.
- 28 The first bullet point of the President's notice of 30 July refers to the "criminal convictions I possess for violent conduct. The President does not give particulars of the criminal convictions to which this allegation refers.
- 29 In the second bullet point of the President's notice of 30 July I am told that the enquiry will investigate "reported comments in the media" which the President contends are unbecoming of an NDPP, are divisive and have the effect of bringing the NPA into disrepute. The President does not give particulars of the comments reported in the media, the dates on which those comments are reported and the media in which they are reported.



- 30 The third bullet point informs me that the enquiry will consider whether I am fit to hold the office of NDPP in light of my lack of disclosure, facts and circumstances of prosecutions which I faced. The President does not give particularity of the prosecutions, nor to whom and when I failed to disclose the prosecutions, referred to in the third bullet point.
- 31 I can speculate, as I have in my representations of 1 August 2014. But to require me to speculate about the essential particulars of the allegations against me is unfair.
- 32 Because I do not have the essential particulars of the allegations against me, I cannot say whether they are true, or whether they are sufficiently serious to warrant suspension, or whether they are such that it is not possible for me to interfere with an investigation into them or with witnesses who make them. These are all considerations relevant to suspension.
- 33 In his 8 August 2014 letter, the President justifies his refusal to provide me with particulars of the allegations by saying that:

"It is my view that the details you require in paragraph 5 of your letter dated 30 July 2014 and repeated under paragraph 2 of your recent letter are matters that will be the subject of the enquiry that I advised I shall be instituting. The information which I have provided is sufficient for the purpose of the representations which you are invited to make. In any event, it appears apparent from your initial response that you are well aware of the matters to which I refer.



As a result, I do not deem it appropriate to engage on the matters that will form the subject-matter of the enquiry. My letter invites you to make representations as to why you believe I should not suspend you pending the finalisation of this enquiry and I await your supplementary representations by no later than the extended deadline of 16h00 on Wednesday 13 August 2014."

- 34 I submit that it is unfair and unlawful to require me to respond to allegations as lacking in particularity as the allegations in the President's notice of 30 July 2014 are.

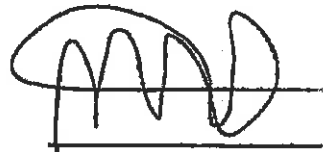
Prejudice/Urgency

- 35 The application to stop my suspension (until I am furnished with adequate or sufficient particularity) is urgent because it is threatened to, or is likely to place at 16h00 on Wednesday 13 August 2014.
- 36 The particularity I seek must be easily available since I assume that it informed the President's decision to institute an inquiry into whether I am fit and proper to serve as NDPP.
- 37 All I require is that I am furnished with the particularity so that I can make proper representations and deliver supplementary representations.
- 38 The President's failure to put me in an untenable position. I do not believe that there are sufficient grounds to suspend me. I want to supplement my representations to show that there are none. But I am unable to do so until I receive the particularity sought and time to respond.

AMJ

39 I have done everything possible to avoid having to approach the Court. Despite reminding the President on three different occasions with the fact that he has not provided me with sufficient particularity and that I require such particularity to make proper representations, he refuses to provide particularity.

40 I attach a confirmatory affidavit from my attorney.



MXOLISI NXASANA

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of his knowledge both true and correct. This affidavit was signed and sworn to before me at SANDTON on 8 AUGUST 2014, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended, have been complied with.

MAD
incl



M. Farooq
M. Farooq
COMMISSIONER OF OATHS
Full names: *M. Farooq*
Address: *60 VAN BURKES ROAD*
Capacity: *SECREARY*

34

nnl



4 July 2014

Dear Mr Nxasana

NOTICE OF INSTITUTION OF ENQUIRY

I hereby advise you that, after careful consideration of all the matters before me, I have taken a decision to institute an enquiry in terms of Section 12(6)(a)(iv) of the National Prosecuting Authority Act 32 of 1998.

The detail regarding the establishment of the Enquiry will be communicated to you shortly.

Yours faithfully

A handwritten signature in black ink, appearing to read "J. Zuma".

Mr Jacob G. Zuma

President, Republic of South Africa

Mr Nxasana
National Director of Public Prosecutions
Private Bag X 752
Pretoria
0001

A handwritten signature in black ink, appearing to read "MAG Juel".

MH 2



30 July 2014

Dear Mr Nxasana

**NOTICE OF INTENTION TO SUSPEND IN TERMS OF SECTION 12(6)(a)
OF THE NATIONAL PROSECUTING AUTHORITY ACT 32 OF 1998**

I had earlier advised you of my decision to institute an enquiry in terms of Section 12(6)(a)(iv) of the National Prosecuting Authority Act 32 of 1998. The enquiry is in the throes of being established and I am advised that the details of such will be communicated to you in the next few days with a view to it proceeding expeditiously.

You are no doubt aware that the National Prosecuting Authority is an important constitutional institution in the administration of justice and that maintaining public confidence in the institution is of necessity. In consideration of maintaining the integrity of the National Prosecuting Authority and in particular its good administration, I am giving consideration to suspending you on full pay pending the finalization of the enquiry to which I've referred.

The enquiry will examine your fitness to hold the office as National Director of Public Prosecutions having regard to whether:

1. the criminal convictions which you possess for violent conduct;
2. reported comments in the media are unbecoming of a National Director of Public Prosecutions, divisive and have the effect of bringing the National Prosecuting Authority into disrepute;

A handwritten signature in black ink, appearing to read "AND June".

3. the lack of disclosure of the facts and circumstances of prosecutions which you faced

are consonant with the conscientiousness and integrity of an incumbent to the office of National Director of Public Prosecutions as required by the Act.

You are required to furnish me with written representations in this regard by no later than 16h00 on Friday 1 August 2014.


Yours faithfully



Mr Jacob G. Zuma

President of the Republic of South Africa

Mr Nxasana
National Director of Public Prosecutions
Private Bag X 752
Pretoria
0001



37

mn 3

**Office of the
National Director of Public
Prosecutions**



NATIONAL PROSECUTING AUTHORITY
South Africa

His Excellency,
The President of the Republic of South Africa
Mr J G Zuma

Dear Mr President

Victoria & Griffiths
Mxenge Building
Westlake Avenue
Levinstad Park
Silverton

P/Bag X752
Pretoria
0001

Tel: (012) 845-6000
Fax: (012) 804 9529
www.npa.gov.za

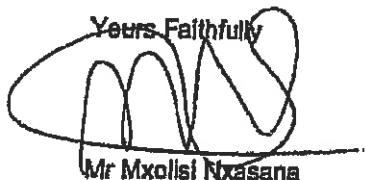
**Notice of intention to suspend the NDPP in terms of s12(6)(a) of the
National Prosecuting Authority Act 32 of 1998**

1. I refer to your letter requesting me to make representations by Friday 1 August at 16h00 as to why I should not be suspended from my position as National Director of Public Prosecutions.
2. I would like to request that the time period within which I am required to make representations be extended until Friday 8 August at 16h00.
3. On Monday I suffered a bereavement of a family member. My younger sister's husband passed away on Monday. I have a particularly close relationship with my younger sister since she was allocated to me by my parents according to custom, and I have special duties to fulfil at times such as these.
4. The funeral will be on Saturday in Paulpietersburg. In order to assist with preparations for the funeral, I am scheduled to leave for Paulpietersburg today. I am only due back in Pretoria on Monday and need time to consult with my legal representatives to prepare my representations.
5. In order for me to make proper representations, I require detail of the following allegations:
 - 5.1. What criminal convictions are referred to in bullet point 1?
 - 5.2. Please provide details of each comment allegedly made by me, the date on which it was reported and the name of the publication it was reported in.
 - 5.3. What prosecutions are referred to in bullet point 3? When and to whom did I fail to make disclosure as alleged in bullet point 3?



6. I look forward to hearing from you.

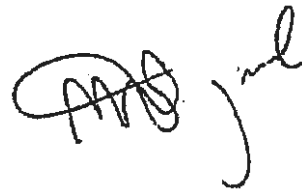
Yours Faithfully



Mr Mxolisi Nxasana

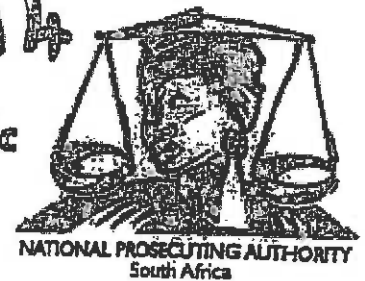
National Director of Public Prosecutions

Date: 31/07/2014



MAH

**Office of the
National Director of Public
Prosecutions**



The Honourable Mr Jacob G Zuma
President of the
Republic of South Africa

Dear President Zuma

**Representations for the National Director of Public
Prosecutions in response to notice of intention to suspend in
terms of section 12(6)(a) of the National Prosecuting Authority
Act, 32 of 1998 ("the NPA Act")**

Victoria & Griffiths
Mxenge Building
23 Westlake Avenue
Weavind Park
Silverton

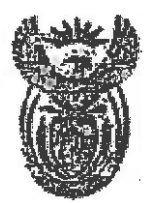
P/Bag X752
Pretoria
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Tel: (012) 845 - 6000
Fax: (012) 804 - 9529
www.npa.gov.za

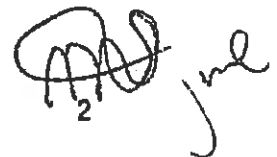
Discretionary power to suspend

1. Section 12(6)(a) of the NPA Act provides for the President to provisionally suspend the NDPP from his or her office pending an inquiry into his or her fitness to hold such office.
2. By letter dated 5 July 2014, I was informed of your intention to establish an inquiry in terms of section 12(6)(a) into my fitness to hold office. The reasons for the inquiry were not given, nor did the letter set out the allegations giving rise to the inquiry.
3. On 30 July 2014, I received a notice inviting me to make representations as to why I should not be suspended from my position as the National Director of Public Prosecutions ("NDPP"). The allegations that are the reason for the inquiry are the following:

3.1. My criminal convictions for violent conduct;



- 3.2. Comments reported in media to have been made by me that are unbecoming of an NDPP, are divisive and have the effect of bringing the NPA into disrepute; and
 - 3.3. The failure to lack of disclosure of facts and circumstances of prosecutions that I faced.
4. On receipt of this letter, I immediately wrote to you asking for additional time, until Friday 8 August 2014, to make representations as to why I should not be suspended.
 5. My reasons for requesting more time to respond are that I suffered a family bereavement and had to help organize and prepare for the funeral on Saturday 2 August 2014, and that I needed details of the allegations made against me in your notice of 30 July 2014 so that I can properly prepare for and make representations.
 6. I remind you that these details are the following:
 - 6.1. Details of the criminal convictions referred to in the first bullet point;
 - 6.2. Details of the comments I am alleged to have made, the dates on which I am alleged to have made them and the media in which they were published;
 - 6.3. Details relating to the prosecutions I am accused of not disclosing and details of to whom and when I failed to make these alleged disclosures.
 7. By 15:55 I had not yet received confirmation that you had granted me more time to file my representations. I take that failure to respond to mean that you do not grant my request.

 2 June

8. Consequently, I am forced to make these representations without adequate information that would enable me to respond properly and without being given sufficient time to prepare my response.

Suspension – the general rule

9. Section 12(6)(a) of the NPA Act empowers the President to suspend the NDPP pending an inquiry into his or her fitness to hold office. The NPA Act is silent on the circumstances that must exist for the President to exercise this discretion. My understanding of s12(6) is that the President is given a discretionary power to suspend. That means he must exercise it subject to the law and the requirements of fairness and rationality.

10. The object of the President's discretionary power to suspend is to protect the integrity of the office of the NDPP and to protect any pending investigation from improper influence or interference by an NDPP who is under investigation.

11. So, a suspension without a hearing or an adequate opportunity to be heard would be unfair. And a suspension in the absence of allegations of serious misconduct and reasonable grounds for believing that the NDPP will interfere with or jeopardise an investigation into the allegations, would not be exercising your discretionary power to suspend fairly, lawfully or rationally.¹

¹ Mogothe v Premier of the North West Province (2009) 30 ILJ 605 (LC) at [33] and [39]

Regulated Flexibility: Revisiting the LRA and the BCEA (2006) 27 ILJ 663 at 683

AMJ me
3

The allegations against me do not constitute serious misconduct

No criminal convictions

12. Section 271A(b) of the Criminal Procedure Act, entitles me to apply to expunge my criminal record. Although I have not done so, I intend to do so. When I do, the Director-General will be obliged to issue me with a certificate of expungement. These two convictions will fall away and in law, I will not have any criminal convictions.

The assaults are not allegations of serious misconduct

13. The two assaults of which I was convicted, concern events that took place almost 30 years ago. They are unrelated to the NPA or to my responsibilities as NDPP nor were they related to an employment situation.

14. The first assault happened in 1985. I do not recall the details or what I was found guilty of. I had forgotten about it. I was reminded of it when I applied for my security clearance during December 2013. I was convicted of the first assault on 23 July 1985. At the time I was 17 years old. I was cautioned and discharged.

15. The second assault happened in 1986, at Nongoma. I was charged and convicted on 13 November 1986 of common assault for assaulting my girlfriend at the time. I remember that my girlfriend and I had a fight, although I do not recall the details. I was sentenced to 30 days imprisonment or a R50 fine. I paid the fine.

16. In my application for admission as an attorney, made in the Pietermaritzburg High Court, I disclosed the assault

[Handwritten signature]
4

conviction. The High Court found me to be a fit and proper person to be admitted as an attorney of the High Court.

17. The fit and proper test for admission as an attorney is the same or substantially similar to the fit and proper test for appointment as NDPP.² A High Court has already found me to be fit and proper. It has already found that my past criminal record does not make me unfit or improper to be admitted as an attorney. There cannot be any reason why two very old criminal convictions for minor offences, that will be expunged, should render me unfit or improper to be appointed as NDPP.

Reported comments in the media

18. I have requested details about what comments I allegedly made, when I made them and in what media they were reported. At the time of making these submissions, I was not provided with this information.

19. I assume that they are comments reported in the Sunday Independent and the Weekend Argus on 1 June 2014 and the Sunday Times on 6 July 2014.

20. In the interview, I am reported as saying:

20.1. Former Minister of Justice asked me to resign;


20.2. Two of my deputies, Jiba and Mrwebi were plotting to have me fired;

20.3. Jiba had sanctioned people to investigate me with the intention of "finding dirt on me";

² Pikoli v President of the Republic of South Africa 2010 (10 SA 400 (GNP) at 406F

AMJ
5

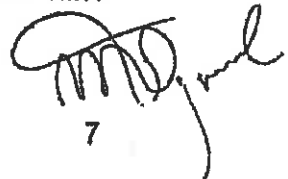
- 20.4. I learned about the President's intention to establish and inquiry to determine whether I was a fit and proper person from the media.
21. These news reports are accurate. As I confirmed in my response to the Minister dated 22 May 2014, he asked me to resign at a meeting on 21 May 2014. That allegation is true.
22. As I explained in my response to you on 21 June 2014:
- 22.1. As early as October 2013 I was provided with two affidavits from two NPA employees confirming that they had been approached by Colonel Welcome "WS" Mhlongo, a member of the Hawks for information about me. One of them provided a voice recording in which Col Mhlongo is heard to confirm that he was acting on the authority of Deputy NDPP Nomgcobo Jiba to collect information about me to discredit me.
- 22.2. As soon as I was made aware of this I brought it to the attention of the Executive Committee of the NPA.
- 22.3. I have also brought these allegations to your attention and asked that you investigate them.
- 22.4. It was also brought to my attention that rumours about me were circulating. One of the rumours is that I intended reinstating criminal charges against the President. That rumour is false.


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22.5. The information by Col Mhlongo gives rise, at the very least, to a reasonable suspicion that there is a plot by Jiba to discredit me.

Lack of disclosure regarding prosecutions I faced

23. I have asked for, but have not been provided with details of the prosecutions referred to in the notice. Because of this I am forced to speculate.
24. I suspect that this allegation relates to two matters. The first relates to my arrest and subsequent acquittal for murder. Briefly, the facts are that in December 1985, in an attack by a number of men on the occupants (including me) at my girlfriend's house, I reacted in self defence and one of the perpetrators died. I was acquitted of a charge of murder.
25. I explained the background circumstances in my letter to you on 21 June 2014. I also raised it with the former Minister of Justice and Constitutional Development when I met with him on 21 May 2014.
26. At the time the Minister questioned why I had not disclosed that I had been arrested for murder when I was undergoing my security clearance. I did disclose these facts to the SSA before it refused to grant me a top secret security clearance.
27. The second incident that I suspect is being referred to is an event that took place during October 2012. Briefly, the facts are the following:
- 27.1. Although I cannot remember the exact date, one evening in October 2012 while driving my wife's BMW


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520B along Sydney Road, I was arrested for inconsiderate driving and resisting arrest.

27.2. I was released on R1 000 police bail. The following morning I went to the Durban I Magistrates Court. The senior public prosecutor, Mr Ntuli declined to place the matter on the roll.

27.3. I have laid criminal charges against the police officers that arrested me. I have subsequently learned that two of the police officers are in fact police reservists. That investigation has not yet been finalised.

No justification to suspend

28. The allegations relating to my previous convictions are not serious. There are no outstanding prosecutions against me.

29. My previous criminal convictions do not arise out of my appointment as NDPP, my carrying out my duties as NDPP or the exercise by any employee of the NPA of his or her duties.

30. The facts and circumstances related to my criminal convictions, my acquittal during 1985 for murder and the withdrawal of the September 2013 charge for inconsiderate driving are a matter of public record.

31. They are accessible court files or files held by the SAPS. These investigations were completed almost 30 years ago. There is no need for any additional investigation. And, in so far as the President might want to investigate these matters, they do not involve information held by the NPA, nor do they

[Handwritten signature]
8

involve employees of the NPA. It is self evident that, as NDPP, I cannot interfere with or influence that investigation.

32. The source of my comments to the media is Col Mhlongo. He is not an employee of the NPA. He works for the Hawks. The information relating to his investigation of me is not held by the NPA but by him. I have no control or influence over him and cannot influence or interfere with him during the course of any investigation into the information held by him.

33. It is self evident that I cannot interfere with or influence the former Minister relating to his request to me to resign. I informed the former Minister of his request. My comments to the media about his request are accurate.

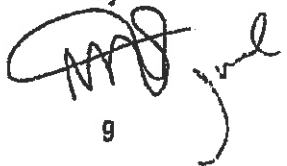
Prejudice

34. In light of the above, the office of the NDPP and I will be prejudiced if I am suspended.

35. The office of the NDPP will be prejudiced by my suspension because there are no grounds for my suspension and nothing to warrant it. To suspend in these circumstances would amount to interference with the office of the NDPP.

36. I will be prejudiced if I am suspended because it will affect my right to exercise my duties as NDPP, imposed upon me by law. It will also prejudice my professional reputation.

37. I was informed of your decision to establish an inquiry in terms of section 12(6)(a)(iv) on 4 July 2014. I have not influenced or interfered with or attempted to influence or interfere with any


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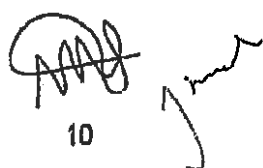
person or any information or documents connected to the allegations giving rise to the inquiry.

38. Accordingly, there is no reason why I should not be allowed to continue in my position pending the outcome of the inquiry.

Yours sincerely



1 Mr Mxolisi Nxasana
National Director of Public Prosecutions
Date: 01/08/2014



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MH 5



02 August 2014

Dear Mr Nxasana

NOTICE OF INTENTION TO SUSPEND IN TERMS OF SECTION 12(6)(a) OF THE NATIONAL PROSECUTING AUTHORITY ACT 32 OF 1998

I refer to your correspondence dated 31 July 2014 and 1 August 2014 addressed to me.

1. Unfortunately my correspondence advising you that I had acceded to your request for an extension was delayed and consequently had not been dispatched prior to receiving your latest correspondence.
2. Should you wish to supplement the representations already made, you may do so by no later than Friday 08 August 2014.
3. I extend my condolences to you and your family and wish you well over this period of bereavement.

Yours faithfully

**Mr Jacob G Zuma
President of the Republic of South Africa**

**Mr Mxolisi Nxasana
National Director of Public Prosecutions
Private Bag X 752
Pretoria
0001**

MH 6



08 August 2014

Dear Mr Nxasana

Reference is made to the plethora of correspondence addressed to me, the last of which is your letter dated 08 August 2014.

I have noted all the other issues highlighted in your response. The sole purpose of this letter is to clarify the nature of representations required from you at this stage.

It is my view that the details you require in paragraph 6 of your letter dated 30 July 2014 and repeated under paragraph 2 of your recent letter are matters that will be the subject of the enquiry that I advised I shall be instituting. The information which I have provided is sufficient for the purpose of the representations which you are invited to make. In any event, it appears apparent from your initial response that you are well aware of the matters to which I refer.

As a result, I do not deem it appropriate to engage on the matters that will form the subject-matter of the enquiry. My letter invites you to make representations as to why you believe I should not suspend you pending the finalisation of this enquiry and I await your supplementary representations by no later than the extended deadline of 16h00 on Wednesday 13 August 2014.

In the circumstances your request for an undertaking from me is unnecessary and accordingly denied.

Yours faithfully

Mr Jacob Gedleyihlekisa Zuma
President of the Republic of South Africa

Mr Nxasana
National Director of Public Prosecutions
Private Bag X752
PRETORIA
0001

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO:

In the matter between:

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

Applicant

and

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

First Respondent

**THE MINISTER OF JUSTICE AND CORRECTIONAL
SERVICES**

Second Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned


BUSANI MABUNDA

do hereby state under oath as follows:

- 1 I am the Applicant's attorney of record. I practise under the name of Mabunda Incorporated of 2ND PROTEA ROAD, BEDFORDVIEW, 2008.

- 2 The facts deposed to below are within my personal knowledge, unless otherwise stated or indicated by the context, and they are, to the best of my belief, true.

- 3 I have read the Applicant's Founding Affidavit. I confirm and corroborate the contents in so far as they relate to me.


 P.B.M

[Handwritten signature]

BUSANI MABUNDA

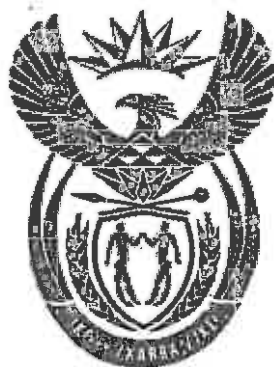
Handwritten initials: J.M.B.M.

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of his knowledge both true and correct. This affidavit was signed and sworn to before me at **JOHANNESBURG** on **8 AUGUST 2014**, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended, have been complied with.

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BEDFORDVIEW - OOSRAND
GEMEENSKAPSDIENSSENTRUM
2014-08-08
COMMUNITY SERVICE CENTRE
BEDFORDVIEW - EAST RAND
SOUTH AFRICAN POLICE SERVICE

Handwritten signature
08/31/2014
M. MABUNDA
COMMISSIONER OF OATHS
Full names: *M. MABUNDA*
Address: *60 VAN BUREN ROAD*
Capacity: *SEAGRAM*

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Vol. 596 Pretoria, 9 February 2015 No. 38463
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GENERAL NOTICE

NOTICE 102 OF 2015

ENQUIRY INTO THE FITNESS OF MR MXOLISI NXASANA TO HOLD OFFICE OF NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

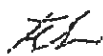
In terms of section 12(6)(a) of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1988), I hereby establish an enquiry to determine the fitness of Mxolisi Sandile Oliver Nxasana to hold office as National Director of Public Prosecutions and appoint Advocate Nazeer Ahmed Cassim, SC as the chairperson of the enquiry and Advocate Lindi Nkosi-Thomas, SC and Advocate Stembiso Mdladla as additional members thereof.

Given under my Hand and the Seal of the Republic of South Africa at Pretoria on this 5th day of FEBRUARY Two thousand and fifteen.



PRESIDENT

By Order of the President-in-Cabinet:



MINISTER OF THE CABINET

**TERMS OF REFERENCE OF THE ENQUIRY INTO THE FITNESS OF MR MXOLISI
NXASANA TO HOLD OFFICE AS NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS**

WHEREAS section 9(1)(b) of the National Prosecuting Authority, 1998 (Act No. 32 of 1998) ("the NPA Act") provides that:

"Any person to be appointed as National Director, Deputy National Director or Director must....

(b) be a fit and proper person, with due regard to his or her experience, conscientiousness and integrity to be entrusted with the responsibility of the office concerned".

AND WHEREAS section 12(6) of the NPA Act provides that the President of the Republic of South Africa may institute an enquiry into the fitness of the National Director or a Deputy National Director to hold such office;

AND WHEREAS on 30 August 2013 the President appointed MR MXOLISI NXASANA as National Director of Public Prosecutions ("the NDPP");

AND WHEREAS certain facts have since come to light that raise real and important questions regarding Mr Nxasana's fitness and propriety to hold office;

NOW THEREFORE the President acting in terms of the power conferred by section 12(6) of the NPA Act hereby establishes an Enquiry to enquire into Mr Nxasana's fitness to hold the office of the NDPP.

The Terms of Reference of the Enquiry are as follows:

1. To enquire into the fitness of Mr Nxasana to hold the office of the NDPP and

whether the facts and circumstances reflected below are consonant with the conscientiousness and integrity of an incumbent of the office of the NDPP as prescribed by law, regard being had to:

- a. His two previous separate convictions on charges of assault;
 - b. The complaints of professional misconduct laid against him with the Kwazulu-Natal Law Society;
 - c. His having faced criminal charges for acts of violence;
 - d. His arrest and detention on criminal charges;
 - e. Issuing and/or making media statements and/or causing media statements to be issued that undermine or bring the office of NDPP or the National Prosecuting Authority into disrepute;
 - f. Any other matter as may be relevant to the abovementioned issues and his fitness and propriety to hold the office of the NDPP as contemplated in section 9(1)(b) of the NPA Act.
2. To make findings, report on and make recommendations concerning the matters set out in paragraph 1 above.
 3. These terms of reference may be amended or varied at any stage prior to the conclusion of the enquiry, as may be required.
 4. The enquiry shall be completed within six (6) weeks from date commencement of the Enquiry. This period may be extended by the President on representation by the Chairperson.
 5. The Chairperson of the Enquiry shall submit a report and recommendations within

a period of two (2) weeks after the Enquiry completes its work. All documents filed during the enquiry shall form part of such report.

6. The Chairperson shall determine the rules of the enquiry.

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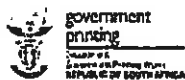
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GENERAL NOTICE

NOTICE 155 OF 2015

**RULES FOR THE ENQUIRY INTO THE FITNESS OF MR
MXOLISI NXASANA TO HOLD OFFICE AS NATIONAL
DIRECTOR OF PUBLIC PROSECUTIONS**

Made by Adv NA CASSIM, SC

CHAIRPERSON OF THE ENQUIRY

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1 DEFINITIONS

In these Rules, unless the context indicates to the contrary -

- 1.1 "the Act" means the National Prosecuting Authority Act, 1998.
- 1.2 "Chairperson" means Advocate Nazeer Cassim SC, appointed by the President in terms of section 12(6)(a) of the Act.
- 1.3 "Confidential", "Secret" or "Classified" means any communication or document which by law is protected from public disclosure.
- 1.4 "Constitution" means the Constitution of the Republic of South Africa, 1996.
- 1.5 "Discovery" means the discovery of all relevant documents, records, tape recordings, electronic communications and data messages as are directed to be discovered by the Chairperson through the Secretary.
- 1.6 "Enquiry" means this enquiry established in terms of Section (12)(6)(a) of the Act and recorded in the President's Notice No. 102 of 2015.
- 1.7 "Evidence leader" means any knowledgeable person appointed to assist the Enquiry in the presentation and evaluation of evidence.
- 1.8 "Hearing" means the taking of evidence only on such matters as the Chairperson may direct.
- 1.9 "Issues" means the issues defined in the Terms of Reference.
- 1.10 "the Minister" means the Minister for Justice and Constitutional Development.
- 1.11 "NDPP" or "National Director" means the National Director of Public Prosecutions, namely Mr. Mxolisi Sandile Oliver Nxasana ("Mr. Nxasana").
- 1.12 "NPA" means the National Prosecuting Authority.
- 1.13 "party" or "parties" means the Minister, the NDPP, and third parties.

- 1.14 "Rules" means these Rules as determined by the Chairperson and as may be amended from time to time.
- 1.15 "Secretary" means the secretary of the Enquiry appointed by the Chairperson.
- 1.16 "Terms of Reference" means the Terms of Reference for the Enquiry, published on 5 February 2015.
- 1.17 "third parties" means those persons who have been invited by the Chairperson and/or those persons with special interest and/or knowledge who have been invited to make representations and submissions to the Enquiry.
- 1.18 Any reference to the singular includes the plural and *vice versa*.
- 1.19 Any reference to a gender includes the other genders.
- 1.20 Any reference to a person includes natural and juristic persons.
- 1.21 If any obligation or act is required to be performed on a particular day it shall be performed (unless otherwise stipulated) by 16h00 on that day.

2 SUBMISSIONS

- 2.1 The Minister shall, by a date directed by the Chairperson, file with the Secretary a copy (and an electronic copy where possible) of his submissions, which should include –
- 2.1.1 Statements on oath by persons who are able to depose to any factual allegations made in the submissions.
- 2.1.2 Documents that are relevant and support the submissions.
- 2.1.3 Any other material relevant to and in support of the submissions.
- 2.1.4 Separate sections for those parts of the submissions which are deemed Confidential, Secret or Classified, and the basis for such classification.

- 2.1.5 Legal submissions addressing the Terms of Reference.
- 2.1.6 Any expert opinion on any relevant aspect of the Terms of Reference.
- 2.2 The NDPP shall, by a date directed by the Chairperson, file with the Secretary a copy (and an electronic copy where possible) of his submissions, which should include –
 - 2.2.1 Statements on oath by persons who are able to depose to any factual allegations made in the submissions.
 - 2.2.2 Documents that are relevant and support the submissions.
 - 2.2.3 Any other material relevant and in support of the submissions.
 - 2.2.4 Separate sections for those parts of the submissions which are deemed Confidential, Secret or Classified and the basis for such classification.
 - 2.2.5 Legal submissions addressing the Terms of Reference.
 - 2.2.6 Any expert opinion on any relevant aspect of the Terms of Reference.
- 2.3 Third Parties shall each, by a date directed by the Chairperson, file with the Secretary a copy (and an electronic copy where possible) of their submissions, which where applicable should include –
 - 2.3.1 Statements on oath by persons who are able to depose to any factual allegations made in the submissions.
 - 2.3.2 Documents that are relevant and support the submissions.
 - 2.3.3 Any other material relevant and in support of the submissions.
 - 2.3.4 Separate sections for those parts of the submissions which are deemed Confidential, Secret or Classified, and the basis for such classification.
 - 2.3.5 Legal submissions addressing the Terms of Reference.
 - 2.3.6 Any expert opinion on any relevant aspect of the Terms of Reference.

3 HEARINGS

- 3.1 The Chairperson may, after receipt of the submissions, call for a Hearing on any relevant aspect of the Terms of Reference.
- 3.2 The Chairperson may call upon any competent and compellable person to give evidence on any of the Issues.
- 3.3 Any party may, through the Secretary and after approval from the Chairperson, call upon any competent and compellable person to give evidence on any relevant aspect of the Terms of Reference.
- 3.4 A Hearing shall, at the direction of the Chairperson, be held either in public or private and at a venue to be determined by the Chairperson.

4 EXCHANGE OF SUBMISSIONS AND CORRESPONDENCE

- 4.1 The Secretary shall, at the direction of the Chairperson, following receipt of any submission, cause such submission to be served on any other party.
- 4.2 All correspondence shall be directed to the Secretary who shall in turn direct such correspondence to any relevant party.
- 4.3 After receipt of submissions by the Minister, the NDPP shall file his submissions within the timeframes directed by the Chairperson.
- 4.4 After receipt of the submissions by the NDPP, the Minister may file a response to the NDPP's submissions within the timeframes directed by the Chairperson.
- 4.5 The third parties shall file their submissions within the timeframes directed by the Chairperson.

5 DISCOVERY

- 5.1 The Chairperson may at any stage call on any person to make Discovery on oath to the Enquiry within the timeframe directed by the Chairperson.

- 5.2 Any party may, after approval from the Chairperson, call upon any other person, through the Secretary, to make Discovery.
- 5.3 Any party who believes that there are, in addition to documents which have been Discovered, any other documents which may be relevant to any of the Issues may, after approval from the Chairperson, call for further Discovery, through the Secretary.
- 5.4 Documents which are by law protected from public disclosure will, notwithstanding this rule, remain so protected.

6 AMENDMENT OF RULES

- 6.1 The Chairperson may at any stage supplement and/or amend any of the Rules.
- 6.2 The Chairperson will direct any aspect of the Enquiry not otherwise provided for in these Rules.

7 THE REPORT

At the end of the Enquiry the Chairperson shall submit a report to the President. All documents filed during the enquiry shall form part of such report.

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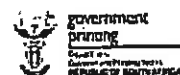
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GOVERNMENT NOTICE

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

No. R. 1257

29 December 2010

CODE OF CONDUCT FOR MEMBERS OF THE NATIONAL PROSECUTING AUTHORITY UNDER SECTION 22(6) OF THE NATIONAL PROSECUTING AUTHORITY ACT, 1998.

I, Menzi Simelane, National Director of Public Prosecutions, acting under section 22(6) of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998), and in consultation with the Minister for Justice and Constitutional Development and after consultation with the Deputy National Directors and Directors of Public Prosecutions, framed the attached code of conduct which shall be complied with by members of the National Prosecuting Authority with effect from 18 October 2010, which is published for general information.

ADV MENZI SIMELANE
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

'H'

THE CODE OF CONDUCT FOR MEMBERS OF NATIONAL PROSECUTING AUTHORITY

PREAMBLE

Section 22(6)(a) of the *National Prosecuting Authority Act, 1998 (Act No. 32 of 1998)* (hereinafter referred to as 'the Act'), provides for a Code of Conduct to be framed by the National Director of Public Prosecutions, which should be complied with by all members of the Prosecuting Authority.

In framing this Code, the Minister, Deputy National Directors of Public Prosecutions and Directors of Public Prosecutions were consulted as prescribed by the Act. Due account was taken, *inter alia*, of the values and principles enshrined in the *Constitution of the Republic of South Africa, 1996* ("the Constitution"), the aims to be achieved as set out in the Act, the "*United Nations Guidelines on the Role of Prosecutors*" as well as the "*Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors*" developed by the International Association of Prosecutors as tabled at the 17th session of the UN Commission on Crime Prevention and Criminal Justice.

This Code acknowledges the crucial role of prosecutors in the administration of criminal justice. It emphasises the essential need for prosecutions to be fair and effective and for prosecutors to act without fear, favour or prejudice.

Furthermore, it serves to inform the public of what is expected of prosecutors and is aimed at ensuring public confidence in the integrity of the criminal justice process.

Above all, this Code requires all prosecutors to respect human dignity and human rights, and to perform their professional duties with full recognition of the supremacy of the Constitution and the rule of law.

CODE OF CONDUCT

A. PROFESSIONAL CONDUCT

Prosecutors must—

- (a) be individuals of integrity whose conduct is objective, honest and sincere;
- (b) respect, protect and uphold justice, human dignity and fundamental rights as entrenched in the Constitution;
- (c) protect the public interest;
- (d) strive to be and to be seen to be consistent, independent and impartial;
- (e) conduct themselves professionally, with courtesy and respect to all and in accordance with the law and the recognised standards and ethics of their profession;
- (f) strive to be well-informed and to keep abreast of relevant legal developments; and
- (g) at all times maintain the honour and dignity of their profession and dress and act in a manner befitting their status and upholding the decorum of the court.

B. INDEPENDENCE

The prosecutorial discretion to institute and to stop criminal proceedings should be exercised independently, in accordance with the Prosecution Policy and the Policy Directives, and be free from political, public and judicial interference.

C. IMPARTIALITY

Prosecutors should perform their duties without fear, favour or prejudice. In particular, they should—

- (a) carry out their functions impartially and not become personally, as opposed to professionally, involved in any matter; *
- (b) avoid taking decisions or involving themselves in matters where a conflict of interest exists or might possibly exist;
- (c) take into consideration the public interest as distinct from media or partisan interests and concerns, however vociferously these may be presented; *
- (d) avoid participation in political or other activities which may prejudice or be perceived to prejudice their independence and impartiality;
- (e) not seek or receive gifts, donations, favours or sponsorships that may compromise, or may be perceived to compromise, their professional integrity;
- (f) act with objectivity and pay due attention to the constitutional right to equality;
- (g) take into account all relevant circumstances and ensure that reasonable enquiries are made about evidence, irrespective of whether these enquiries are to the advantage or disadvantage of the alleged offender;
- (h) be sensitive to the needs of victims and do justice between the victim, the accused and the community, according to the law and the dictates of fairness and equity; and
- (i) assist the court to arrive at a just verdict and, in the event of a conviction, an appropriate sentence based on the evidence presented.

D. ROLE IN ADMINISTRATION OF JUSTICE

1. Prosecutors should perform their duties fairly, consistently and expeditiously and—
 - (a) perform their duties fearlessly and vigorously in accordance with the highest standards of the legal profession;
 - (b) where legally authorised to participate or assist in the investigation of crime, they should do so objectively, impartially and professionally, also insisting that the investigating agencies respect legal precepts and fundamental human rights;
 - (c) give due consideration to declining to prosecute, discontinuing criminal proceedings conditionally or unconditionally or diverting criminal cases from the formal justice system, particularly those involving young persons, with due respect for the rights of suspects and victims, where such action is appropriate;
 - (d) in the institution of criminal proceedings, proceed when a case is well-founded upon evidence reasonably believed to be reliable and admissible, and not continue a prosecution in the absence of such evidence; and
 - (e) throughout the course of the proceedings the case should be firmly but fairly and objectively prosecuted.

2. Prosecutors should, furthermore—
 - (a) preserve professional confidentiality;
 - (b) refrain from making inappropriate media statements and other public communications or comments about criminal cases which are still pending or cases in which the time for appeal has not expired;
 - (c) consider the views, legitimate interests and possible concerns of victims and witnesses when their personal interests are, or might be, affected, and endeavour to ensure that victims and witnesses are informed of their rights, especially with reference to the possibility, if any, of victim compensation and witness protection;
 - (d) if requested by interested parties, supply reasons for the exercise of prosecutorial discretion, unless the individual rights of persons such as victims, witnesses or accused persons might be prejudiced, or where it might not be in the public interest to do so;
 - (e) in the case of child victims and child witnesses, always ensure that their best interests are taken into account;
 - (f) safeguard the rights of accused persons, in line with the law and applicable international instruments as required in a fair trial;
 - (g) as soon as is reasonably possible, disclose to the accused person relevant prejudicial and beneficial information, in accordance with the law or the requirements of a fair trial;
 - (h) examine proposed evidence to ascertain if it has been lawfully or constitutionally obtained;
 - (i) refuse to use evidence which is reasonably believed to have been obtained through recourse to unlawful methods which constitute a grave violation of the accused person's human rights and particularly methods which constitute torture or cruel treatment;

- (j) take the necessary steps to ensure that suitable action be taken against those responsible for using illegal methods in obtaining such evidence;
- (k) save in exceptional circumstances, not discuss pending cases with the presiding officer, in the absence or without the consent or knowledge, of the defence; and
- (l) if during the preparation for a trial or the conducting of criminal proceedings or functions incidental thereto, a prosecutor is of the opinion that information has been disclosed of the commission of an offence which has not been investigated or prosecuted, he or she must without delay in writing inform and disclose to the South African Police the particulars thereof.

E. CO-OPERATION

In order to ensure the fairness and effectiveness of the prosecution process, prosecutors should—

- (a) co-operate with the police, the courts, the legal profession, defence counsel, and any relevant government agencies, whether national or international;
- (b) in their professional dealings, at all times conduct themselves in a dignified manner commensurate with their position; and
- (c) render assistance to the prosecution services and colleagues of other jurisdictions in accordance with the law and in a spirit of mutual co-operation.

F. ENFORCEMENT

1. All prosecutors should respect and comply with the terms of this Code and report any instances of unprofessional conduct by colleagues (and also, as the case may be, other court officials) to the relevant supervising authority who should consider the appropriate steps to be taken, and do so.
2. In the event of transgressions, appropriate disciplinary steps may be taken in terms of the Public Service Regulations and NPA Act No 32 of 1998.

Notes to Code of Conduct

1. Deputy Directors of Public Prosecutions and prosecutors, being civil servants, are also expected to comply with the Code of Conduct for the Public Service.
2. References in this Code to prosecutors include members of the National Prosecuting Authority as defined in the Act and every person acting under a temporary delegation to prosecute, unless the context indicates otherwise.
3. A copy of this Code should be handed to all prosecutors at the time of their taking the oath or making an affirmation as prescribed in section 32(2) of the Act or as soon as possible thereafter, and signed for to denote acceptance thereof.
4. This Code is a public document which will be published in the Government Gazette. Changes may become necessary from time to time and will be similarly gazetted. The Code is available from offices of the National Prosecuting Authority.

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NPA boss accused of assaulting former girlfriend

The NPA is keeping its silence on the latest claim to surface against its head, Mxolisi Nxasana, of allegedly assaulting his former girlfriend.

Jun 2014 16:44 Mmanaledi Mataboge



NPA head of security Tshilidzi Ramahana is in the eye of the storm surrounding Mxolisi Nxasana.

The National Prosecuting Authority (NPA) refused to be drawn on a fresh media report on Sunday that its leader Mxolisi Nxasana was a “woman beater” who had assaulted his former girlfriend “at the slightest provocation”.

The latest allegation, reported by the *Sunday Times*, was that pensioner Aggrieneth Khumalo – the mother of Nxasana’s ex-girlfriend Joyce Khumalo – painted a picture of a man who was a “woman beater, bully and thug” when recalling her late daughter’s relationship with the NPA boss. The paper alleged Nxasana tried to strangle Khumalo when she ended the relationship. It further stated that Khumalo then laid an assault charge in Nongoma, KwaZulu-Natal, for which Nxasana paid a R50 admission of guilt fine in 1986.

Khumalo died in 1998 in an unrelated incident after her relationship with Nxasana.

NPA spokesperson Bulelwa Makeke referred to the report as “an apparent crusade against Nxasana” and told the *Mail & Guardian* that the prosecuting agency was not interested in giving the report “any credence”.

President Jacob Zuma’s return to official duties on Tuesday raises hopes that he will soon provide guidance on what should be done to stabilise the faction-riddled NPA. Zuma was admitted to a Pretoria hospital last week with instructions to rest following a demanding election and transition to a new administration. The ANC leadership then ordered Zuma to take a break.

Though Justice Minister Michael Masutha last week pleaded with NPA bosses to stop publicly bickering and focus rather on improving the agency’s image, this has not stopped old scandals from crawling out of Nxasana’s closet.

Makeke said the NPA leadership, including Nxasana, had committed to stop fuelling the media furore. She also accused some media houses of “unending attempts to smoke him [Nxasana] out”.

Nxasana went on the defence after the *M&G* reported last month that the State Security Agency had denied him security clearance because he failed to disclose that he was acquitted of killing a man in 1985. In May, on the eve of an announcement of a new Cabinet, former justice minister Jeff Radebe asked Nxasana to resign but the national director of public prosecutions (NDPP) snubbed the instruction.

The Democratic Alliance has requested that Parliament’s portfolio committee on justice – which has yet to be formed – meet to investigate the process followed in appointing Nxasana and determine whether the NPA was being politicised.

DA parliamentarian Glynnis Breytenbach, a former prosecutor, said there were allegations that Nxasana was not appointed through an appropriate process. She did not rule out the possibility of a factional attempt to push Nxasana out because he was “a fit and proper person” to hold the NDPP office and was “trying to assert his independence”.

The NPA Act gives the president the power to initiate a commission of inquiry and, if needs be, suspend the NDPP. It is this commission of inquiry that Nxasana told the *M&G* last month he was willing to answer to. – Additional reporting by Sapa

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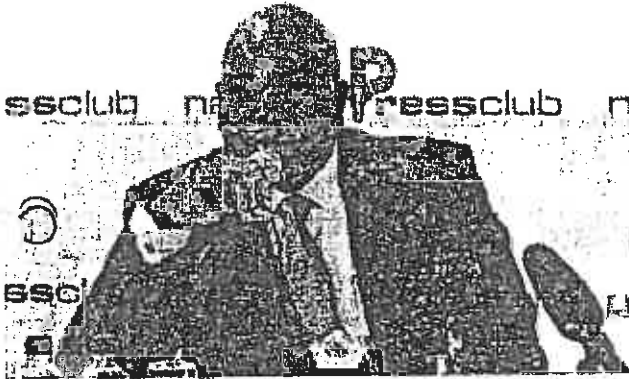
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ZUMA SETS UP INQUIRY INTO NPA BOSS

<http://www.ewn.co.za/2015/02/03/Mxolisi-Nxasana-returns-to-work>
The inquiry's terms of reference will be published in the Government Gazette today.



National Director of Public Prosecutions (NDPP) Mxolisi Nxasana.

President Jacob Zuma (<http://ewn.co.za/Topic/President-Jacob-Zuma>) NPA (<http://ewn.co.za/Topic/NPA>) Mac Maharaj (<http://ewn.co.za/Topic/Mac-Maharaj>)
Eyewitness News (<http://ewn.co.za/Contributors/Eyewitness-News>) | about a month ago (06/02/2015)

JOHANNESBURG – President Jacob Zuma has set up an inquiry into National Prosecuting Authority (NPA) boss Mxolisi Nxasana (<http://ewn.co.za/Topic/Mxolisi-Nxasana>)'s fitness to hold office (<http://ewn.co.za/2014/10/17/Nxasana-demands-R7point5m-to-step-down-quietly>).

Zuma appointed Nxasana 18 months ago after the Constitutional Court struck down his appointment of Menzi Simelane as head of the NPA.

Nxasana has faced pressure to step down after it was revealed he failed to disclose he faced a murder case in 1985.

He was acquitted after it was found he acted in self-defence.

It is also alleged Nxasana didn't reveal a law society fine and a traffic offence he received several years ago.

Presidency spokesperson Mac Maharaj says the inquiry's terms of reference will be published in the Government Gazette today.

"President Zuma has appointment advocate Nazeem Cassiem as the chairperson of the inquiry, advocate Lindi Nkosi-Thomas and advocate Sthembiso Dladla have been appointed as additional members."

It's understood the NPA boss returned to work this week (<http://ewn.co.za/2015/02/03/Mxolisi-Nxasana-returns-to-work>), remaining silent about the inquiry.

(Edited by Tamsin Wort)

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Zuma appoints Mxolisi Nxasana as new NPA head

Aug 30, 2013 | Sapa

President Jacob Zuma has appointed Mxolisi Nxasana as the new national director of public prosecutions, the presidency said.



President Jacob Zuma. File photo.

Photograph by: Gallo Images/ The Times / Esa Alexander

"Mr Nxasana currently practises as an attorney with a wealth of experience in criminal litigation, coupled with his having occupied senior positions in the legal profession including the chairpersonship of the KwaZulu-Natal Law Society," Zuma said in a statement.

Zuma also announced Vasantrai Soni would head the Special Investigating Unit.

"Advocate Soni is a senior counsel with some 25 years experience and played a crucial role as chief evidence leader in the Jali Commission of Inquiry into corruption in prisons in South Africa," Zuma said.

Another third appointment was that of Sophy Moipone Dinah Noko, as director of public prosecutions of the jurisdictional area of the KwaZulu-Natal Division of the High Court.

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Mail & Guardian

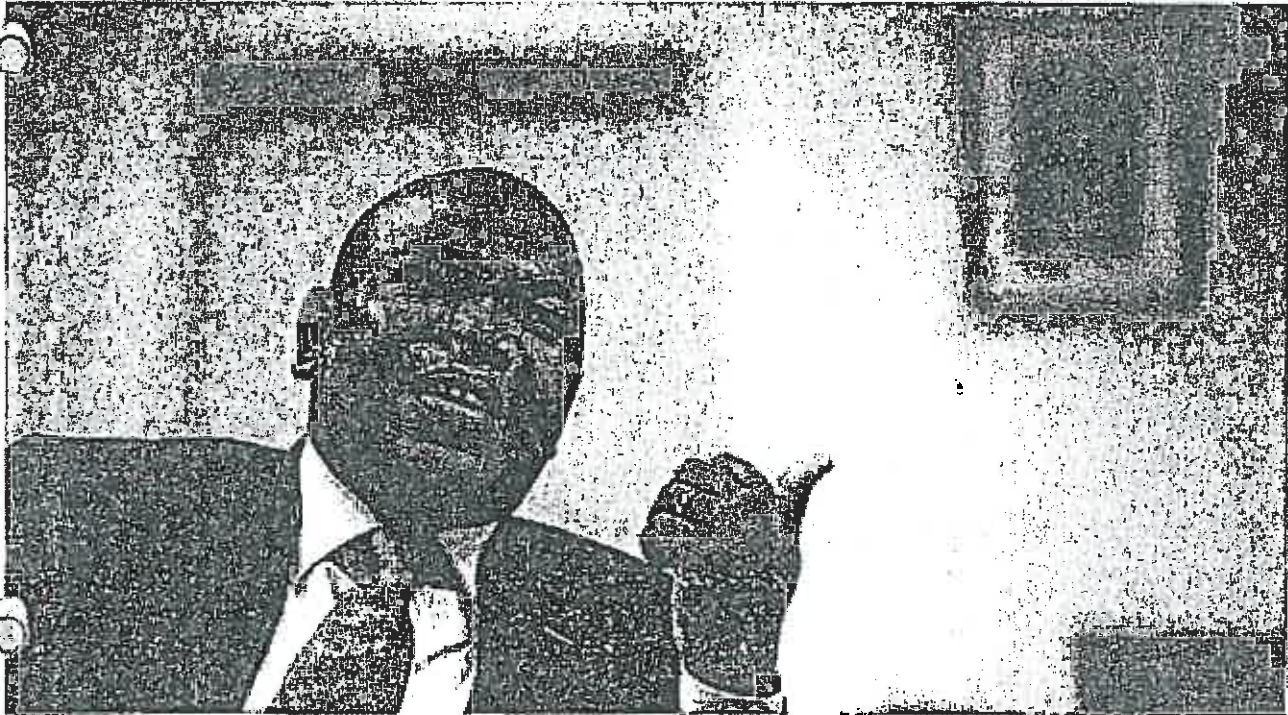
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NPA chief Nxasana says media is out to get him

National Prosecution Authority boss Mxolisi Nxasana says the media is trying to tarnish his image with reports of alleged assault and murder charges.

01 Jun 2014 08:50 Sapa



Mxolisi Nxasana has apparently failed to disclose vital information and may be suspended. (Paul Botes, M&G)

Embattled National Prosecution Authority boss Mxolisi Nxasana says the media is trying to tarnish his image with reports of alleged misconduct, the *Sunday Times* reported.

“At this stage I elect to exercise my right to remain silent,” he was quoted saying. “I cannot give you an audience because I cannot trust that you won’t distort the facts about the issue.”

The *Mail & Guardian* on Friday reported that Nxasana was allegedly accused of nepotism and not revealing prior to his appointment that he was convicted twice for assault, and charged with murder but acquitted.

The *Sunday Times* reported that he had also faced other cases including serious traffic offences and resisting arrest.

According to the report, President Jacob Zuma’s legal adviser Michael Hulley had recommended



Nxasana to the then justice minister Jeff Radebe.

On Friday the SABC reported that new Justice Minister Michael Masutha had requested a meeting with Zuma to discuss Nxasana. "I sought urgent audience with the office of the president," he told the public broadcaster.

Nxasana, of the KwaZulu-Natal division of the high court, was appointed by Zuma in October 2013.

The *Star* reported on Friday that former justice minister Jeff Radebe instructed him to resign, just a few days before Zuma announced his new Cabinet but he would not.

Radebe allegedly claimed that Nxasana had not been given a security clearance because of past brushes with the law. – Sapa

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10 March 2015 09:07 (South Africa)

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Opinionista Pierre de Vos

NPA crisis: Open warfare was just the beginning

- Pierre de Vos
- 26 Jun 2014 11:38 (South Africa)

Politically the appointment by President Jacob Zuma of Mxolisi Nxasana as National Director of Public Prosecutions (NDPP) – and the subsequent eruption of open warfare between various factions inside the National Prosecuting Authority (NPA) – has been a monumental embarrassment for our government. But the instruction allegedly subsequently issued by Justice Minister Michael Masutha to NPA leaders not to comment on any organisational matters was almost certainly illegal, as it interfered with the independence of the NPA.

Regardless of the legal technicalities or the merits of his appointment, it is clear that President Jacob Zuma should never have appointed Mxolisi Nxasana as NDPP.

The appointment was a monumental political blunder as it further eroded the legitimacy of the NPA. The organisation's credibility had already been badly dented by the various scandals and political controversies which have plagued that body ever since it first started investigating allegations of corruption against President Jacob Zuma more than ten years ago.

It has now emerged that Nxasana had previously twice been convicted of assault, and – according to the mother of one of his former lovers – had also assaulted his former lover and is thus allegedly a women beater.

Politically, it matters not that Nxasana may well today be a man of the highest integrity who will always act in a fearless manner to apply the law impartially. What matters is that the unsavoury facts about his criminal record and allegations of past involvement in gender-based violence had given his many enemies ammunition to tarnish his name and to further discredit the integrity of the NPA.

Not that his enemies inside the NPA are necessarily people of high integrity. Nxasana fingered both Nomgcobo Jiba (who acted as NDPP before Nxasana's appointment) and Lawrence Mrwebi (who heads the NPA's specialised commercial crimes unit) as his enemies, working to oust him from office. Both have had their honesty called into question by court judgments.

Earlier this year the KwaZulu-Natal Local Division of the High Court found in *Booyesen v Acting National Director of Public Prosecutions and Others* that then Nomgcobo Jiba, had misled the court when she had claimed that she had considered four statements before deciding to prosecute. As the Court stated:

"In response to Mr Booyesen's assertion of mendacity on her part, there is a deafening silence. In such circumstances, the court is entitled to draw an inference adverse to the NDPP."

The character of Lawrence Mrwebi was also torn to shreds in the judgment of the North Gauteng High Court in *Freedom Under Law v National Director of Public Prosecutions and Others*.

It is therefore difficult to come to grips with the exact contours (and the political significance) of the toxic infighting that is destabilising the NPA.

The independent media often report on these fights in a simplistic manner – as if these squabbles simply relate to disagreements between those whose only aim is to protect President Zuma from prosecution and those who are prepared to enforce the law without fear, favour or prejudice.

I suspect that the matter is far more complex.

Not that some of those NPA leaders involved in what often appears to be petty squabbles about power and positions do not see loyalty towards President Zuma as the pivotal issue.

On Wednesday the suspended head of the NPA's internal integrity unit, Prince Mokotedi, phoned in to a Gauteng radio station and made the remarkable statement that he welcomed the opportunity to clear his name at a disciplinary hearing:

“because it will be the first time a so-called Zuma man will come out and enter the public platform to put across my side, or their side, of the story”.

Whether there are indeed a “Zuma camp” and a camp opposed to President Zuma inside the NPA may be of less concern for most many ordinary citizens concerned about the prosecution of criminals. For many of more concern would be the fact that the political infighting must surely have affected the morale of NPA members as well as the efficiency of that organisation.

These squabbles may well make it more difficult for ordinary prosecutors to get on with the job of prosecuting those accused of crime and of achieving high conviction rates.

This is why even those citizens who could not care less that some politicians and well connected businessmen and women are (for political reasons) not being prosecuted for corruptions while political enemies of the dominant faction inside the ANC may be targeted for prosecution must worry about the chaos and infighting at the NPA.

When the organisation is ripped apart because of political infighting, when its legitimacy is destroyed by political meddling, when morale plummets and the good prosecutors start to leave the sinking ship, it becomes more difficult for the NPA to go after ordinary criminals (of the non-political kind) and have us all more vulnerable to criminals.

Moreover, where perceptions take root that the NPA is not independent and that it takes decisions on who to prosecute for corruption and fraud (and who not to prosecute) based on the suspects’ political affiliations or his or her access to leaders of the dominant faction of the governing party, the legitimacy of the entire criminal justice system is called into question.

It is then when every two-bit crook will try to undermine the NPA and the criminal justice system by making wild allegations that he or she is being prosecuted as part of a political conspiracy.

It is for this reason that section 179(4) of the Constitution states that “national legislation must ensure that the prosecuting authority exercises its functions without fear, favour or prejudice”.

Because section 179(6) further states that the “Cabinet member responsible for the administration of justice must exercise final responsibility over the prosecuting authority” it is often wrongly assumed that the NPA operates under the control of the Minister of Justice and that it is therefore not a truly independent body but one directed by the Minister.

But as the Supreme Court of Appeal explained in *National Director of Public Prosecutions v Zuma* although “these provisions may appear to conflict... they are not incompatible”. There is nothing wrong with the Minister interacting with the NPA, discussing issues relating to the prosecution of criminals and even making suggestions on how best to solve internal disputes. But what the Minister is not authorised to do is to instruct anyone in the NPA to do or not to do something.

As the SCA made clear in the *Zuma* judgment:

“[A]lthough the Minister may not instruct the NPA to prosecute or to decline to prosecute or to terminate a pending prosecution, the Minister is entitled to be kept informed in respect of all prosecutions initiated or to be initiated which might arouse public interest or involve important aspects of legal or prosecutorial authority.

The fact that the NPA is independent and that the Minister cannot instruct its members to do or not to do something, but can ask it to provide it with information in order to exercise final responsibility for the NPA, is further made clear by various other provisions of the NPA Act that give effect to section 179 of the Constitution.

Section 32(1)(a) of the Act requires members of the NPA to serve “impartially” and to exercise, carry out or perform their powers, duties and functions “in good faith and without fear, favour or prejudice” and subject only to the Constitution and the law.

Section 32(1)(b) further prohibits anyone (including the minister or the president) from improperly interfering with the NPA in the performance of its duties and functions. Where somebody interferes in the affairs of the NPA this constitutes a criminal offence.

Section 33(2) reaffirms that the minister must exercise final responsibility over the NPA and obliges the NDPP, at the request of the minister, to furnish the latter with information or a report with regard to any case and to provide the minister with reasons for any decision taken.

To ensure this independence of the NPA neither the Minister of Justice nor the president can easily remove the NDPP from office. Section 12(6) of the NPA Act states that the president may provisionally suspend the NDPP, pending an inquiry into his or her fitness to hold the office of NDPP.

However, the president can only remove the NDPP from office on account of the following objective criteria:

- (i) for misconduct;
- (ii) on account of continued ill-health;
- (iii) on account of incapacity to carry out his or her duties of office efficiently; or
- (iv) on account thereof that he or she is no longer a fit and proper person to hold the office concerned.”

When Vusi Pikoli was removed from office this was almost certainly done unlawfully as – objectively – there was no clear evidence that Pikoli had been guilty of misconduct or was no longer fit and proper.

If Pikoli had pursued his case in court he would almost certainly have been reinstated. The reason for this is that a court would have asked whether – objectively – the Ginwala Inquiry provided any proof that Pikoli had been guilty of misconduct. As it did not, there was no legal basis for his removal.

This means that if an NDPP is prepared to fight for his job it will not be easy for the President to remove him – especially not on the basis of having been convicted many years ago of a criminal offence.

As President Zuma ponders how to fix the political mess created by his appointment of Nxasana as NDPP, his lawyers – if they are reasonably well informed – will warn him to think twice before attempting to remove him from office, given the difficulty of doing so in a legally valid way. **DM**

• Pierre de Vos



Pierre de Vos

Pierre De Vos teaches Constitutional law at the University of Cape Town Law Faculty, where he serves as deputy dean and as the Claude Leon Foundation Chair in Constitutional Governance. He writes a regular blog, entitled 'Constitutionally Speaking', in which he attempts to mix one part righteous anger, one part cold legal reasoning and one part irreverence to help

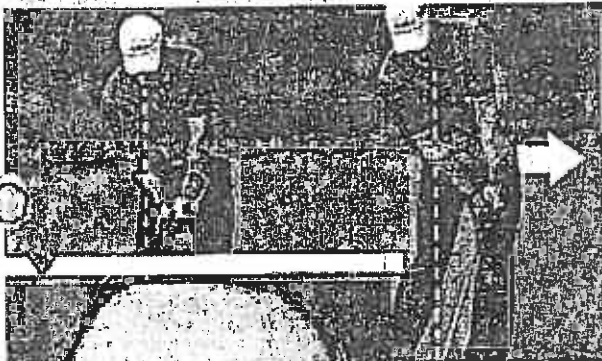
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Pierre De Vos teaches Constitutional law at the University of Cape Town Law Faculty, where he serves as deputy dean and as the Claude Leon Foundation Chair in Constitutional Governance. He writes a regular blog, entitled 'Constitutionally Speaking', in which he attempts to mix one part righteous anger, one part cold legal reasoning and one part irreverence to help keep South Africans informed about Constitutional and other legal developments related to the democracy.

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Robert Carter • 8 months ago

"has been a monumental embarrassment". It never ceases to amaze me that some people actually believe that these folk feel embarrassed. Pierre, they don't have the foggiest idea what that word, or my personal favourite, SKAAM means. Haven't you figured it out yet, that they desire western things/lifestyle, but certainly not to be measured on western standards!?

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Johan Kruger • 8 months ago

This is because Zuma looks to appoint the slimiest most venal he can find. These are a bunch of vipers, every single one.

They are all two-bit criminals.

• Reply • Share



Moor • 8 months ago

Ivan Moor

One has to feel for the poor erks who have to advise His Almighty Awesomeness on who to appoint to these positions

appoint to these positions.

It is not simply asking, "Who would do the job best?"

Firstly they have to consider if he is malleable enough to be persuaded not to fling SA's biggest crook into chookie for life.

What is his/her gender? Cannot be gay, Zuma has said he would strike down any poofa who stood in front of him.

Tribe? What is the tribe's voting strength, does numba wun need their votes?

Colour? Never forget the deal breaker, colour. Hell no, that's cardinal. Put that at no. one criterium.

Of course he has to have struggle creds, substantial struggle creds. Like claiming to have once thought of throwing a rock as a policeman, or having met Hector Peterson's cousin, twice removed.

A law degree would be a "nice to have". A non-fake one would be an unexpected bonus. Even one from Turfloop would be a real, tangible, bonus to keep the M&G at bay.

Tricky, tricky job, even for someone with nous, but remember the selection panel were themselves chosen using the same eligibility filters. Expect the best.

How the hell did they allow Adv. Madonsela to slip through and who will face the music for that unimaginable boo boo?

• Reply • Share ›



Johan Kruger • Moor • 8 months ago

The poor erks are similarly compromised. Slimy venal crooks. Selection of crooks, by crooks, for crooks, presided over by no 1 crook.

• Reply • Share ›



W Mulder • 8 months ago

This is nothing new, look at SAA and many other state entities, it is called ubuntu. I think it is a cultural problem.

• Reply • Share ›



Jakalashé • 8 months ago

The term exercising "the final responsibility" does seem to be a vague one.

• Reply • Share ›



John Vorster • 8 months ago

According to standard zanc practice, BLAME IT ON APARTHEID! Very few people rely on news from the media, both television and newspapers! Debate or discussions on Social media serves as a much more enjoyable medium of communication, the only time you hear from the people and not from the High Priests of CORRUPTION.



Johan Kruger • 6 months ago

Pierre, you are assuming that this was done by mistake. I do not think a mistake is really a correct term for decisions by Zuma and his "legal advisor": their search criteria are simply too narrow to allow for a "mistake". There is one criterion only: is the person going to do his job of prosecuting crooks or not? Not? You're hired.

• Reply • Share ›



Baba raphael • 6 months ago

Well, that is the problem-they are not reasonably well informed, otherwise we will not be having one blunder after the other, eish.

• Reply • Share ›



Johan Kruger → Baba raphael • 5 months ago

The choice is limited to crooks.

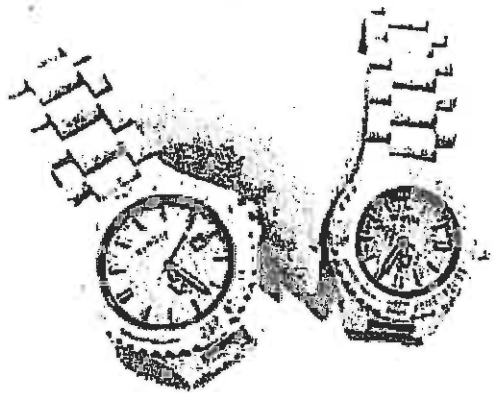
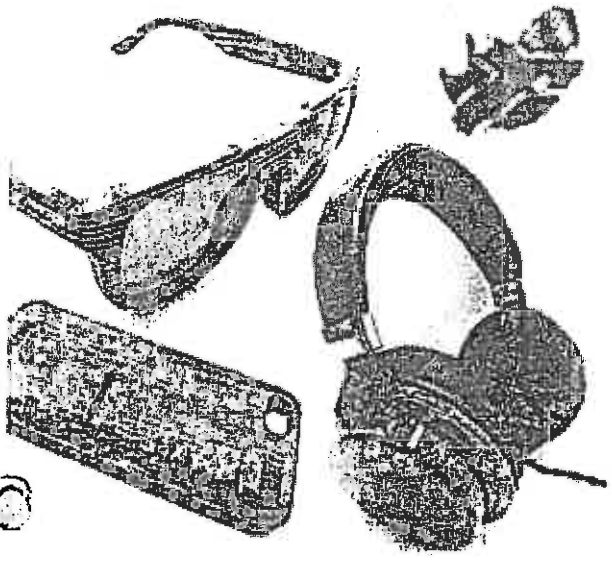
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Nxasana probe will be expedited in order to resolve the matter: Mac Maharaj

Jan 31, 2015 | Sapa

President Jacob Zuma is going ahead with a probe into National Director of Public Prosecutions (NDPP) Mxolisi Nxasana's the fitness to hold office, the presidency said on Saturday.



Mxolisi Nxasana. File photo

Photograph by: Sunday Times

President Jacob Zuma is proceeding with the enquiry into the fitness of the NDPP Mr Mxolisi Nxasana, to hold office and has requested that such an enquiry should proceed expeditiously in order to resolve such a matter which is no doubt of paramount public interest," said spokesman Mac Maharaj in a statement.

In August last year, Zuma notified Nxasana that he was considering suspending him pending an inquiry into his fitness to hold office.

Nxasana filed an urgent application in the High Court in Pretoria in September seeking an interdict to stop Zuma from suspending him before he had been provided with full details of the allegations against him and given a chance to make further representations.

Judge Joseph Raulinga postponed his application indefinitely.

Zuma announced his decision to institute the inquiry on July 5, after reports emerged that Nxasana had apparently not been given a security clearance because of past brushes with the law.

This included being tried for murder around 30 years ago. He was acquitted on the charge based on his version of self-defence.

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~oOo~

01 August 2014

PROSECUTOR GENERAL'S OFFICE

100

NPA CHIEF 'S

ABRAM MASHEGO

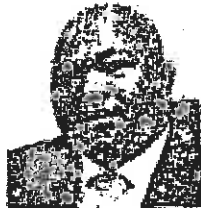
CONFUSION mounts over whether or not NPA boss Mxolisi Nxasana has been put on suspension starting today.

This is another dramatic twist in the ongoing National Prosecuting Authority (NPA) saga.

According to highly placed sources who attended the NPA exec meeting at the NPA headquarters in Silverton yesterday, a letter informing Nxasana to vacate his office by the end of business yesterday was received from the Presidency on Monday.

Presidential spokesperson Mac Maharaj refused to comment on Nxasana's alleged suspension.

"An announcement will be made as soon as the processes have been completed," he said.



NPA spokesperson Mxolisi Nxasana Nathi Mncube dismissed claims that Nxasana had been suspended when he said the NPA boss was instead on leave attending a family bereavement.

"He has appointed Willie Hofmeyr to act in his absence. It is only for a day," said Mncube.

Zuma announced his decision to open an inquiry into Nxasana's fitness to hold office after it emerged that he had past brushes with the law.

The NPA boss has reportedly refused to resign from his job and vowed to challenge the matter in court or at an inquiry.

Nxasana stood for trial in 1985 for murder but was acquitted, based on his version of self defence.

He reportedly also admitted to being arrested for "careless driving and refusing arrest" in September last year.

In addition he was fined R2 000, suspended for three years, by the KwaZulu-Natal Law Society for misconduct about 12 years ago.

Meanwhile, the NPA yesterday issued a statement announcing the appointment of a fact-finding committee into senior employees of the NPA in the leaking of information to the media and unethical and unprofessional conduct.

"During the past weeks there were various media articles which demonstrate the involvement of certain employees, including senior members of the NPA in leaking information to the media and other interested parties.

"There are also allegations that certain members of the NPA were and are involved in other unethical and unprofessional conduct unbecoming of members of the prosecuting authority," NPA spokesperson Nathi Mncube said.

He said the exact motive for these allegations was not known, but did not negate the fact that the country as

a whole is feeling the effects of these attempts and this negatively impacts on the ability of prosecutors and the NPA as a whole to perform their functions without fear, favour or prejudice.

The inquiry comes while damning allegations of infighting within the prosecuting authority were laid bare by the suspended IMU head, Prince Mokotedi.

Some sources said the inquiry will also tackle issues or perceptions affecting the organisation. The issues includes transformation, infighting, misappropriation and targeting of certain individuals and the conduct of some of the NPA senior staff.

"Claims by suspended IMU head Prince Mokotedi that there is a (President Jacob) Zuma camp and (DA leader Helen) Zille camp will also be investigated," said one senior NPA official.

The official said the inquiry would be headed by a retired judge.

abramm@thenewage.co.za

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REPORT TO

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RECENT MEDIA REPORTS ON NDPP

1. M&G-01 Jun 2014 16:17

Advocates body says NPA's Nxasana should not be prejudiced

The Advocates for Transformation say NPA head Mxolisi Nxasana should not be prejudiced for failing to disclose being acquitted for killing a man.

Advocates For Transformation (AFT) has called on newly appointed Justice Minister Mike Masutha to urgently meet with President Jacob Zuma to ensure national prosecutions boss Mxolisi Nxasana is not prejudiced due to having killed a man at age 18 – allegedly in self-defence.

On Friday, the Mail & Guardian reported that the national director of public prosecutions (NDPP) Nxasana was denied security clearance, apparently for failing to disclose the incident.

Nxasana said he was acquitted of the murder, which took place in 1985 in Umlazi, outside Durban, but this has now come back to haunt him. Nxasana insisted this was part of factional machinations by his rivals at the National Prosecuting Authority (NPA) and politicians who want to get rid of him.

"There have been stories circulating, which I will tell a commission of inquiry if there is one," Nxasana told the M&G. "They have spread rumours that I want to reinstate charges against President Jacob Zuma, that I want to reinstate charges in the Amigos case in Durban [involving ANC politicians]."

"My problem is that there are allegations, I am told, that I also am seeing Bulelani Ngcuka, the former NDPP. I don't know where they get all this rubbish. Because I have never ever done anything like this. There has been no handover of cases. How can I ever talk about reinstatement of charges when I have never ever seen the dockets for that matter?"

He was informed about his security clearance's decision last week, seven months after the State Security Agency started its vetting process.

On Saturday, AFT chairperson advocate Dumiza Ntsebeza said in a statement that the reports were extremely concerning and unfair to Nxasana. "The AFT, if the reports are true, is extremely concerned that a sitting NDPP could, after appointment, be pursued for things that should have been investigated before his appointment," it read.

"We are even more perplexed by the reported view that he should have disclosed that in 1985 he had killed a man. For one thing, one does not see how that has to do anything to do with 'security clearance'. Secondly, it is outrageous that he is expected to resign from a position because he did not disclose having been charged with murder of which he was acquitted by a court of law.

"It is like arguing that Zuma should not have been competent to run for higher office because he had been charged with, and acquitted of, rape," said Ntsebeza.

Ntsebeza said that was "not how the rule of law works".

"The AFT calls upon the newly appointed minister [Masutha] to seek audience with the presidency urgently with a view to making it very clear that the basic tenants of the doctrine of the rule of law

are that while no one is above the law, it is equally preposterous that anyone, let alone Mr Nxasana, could be prejudiced in his job because he did not disclose a case of murder in which he was acquitted after an open trial."

'Establishing facts'

Meanwhile, the justice ministry on Sunday confirmed to the *M&G* that it had requested a meeting with Zuma "to establish the facts" around Nxasana's appointment.

As of Sunday afternoon, the ministry had yet to receive confirmation of a meeting date, according to Masutha's spokesperson Lawrence Ngoveni. But he could not say what the minister would want to discuss with Zuma.

In terms of section 179 of the Constitution, the president appoints the NDPP. But Ngoveni said the issue of security vetting was the sole responsibility of the State Security Agency and so neither the presidency nor the justice minister were responsible for ensuring this was done.

However, Ngoveni told the *M&G* that Masutha wanted to "establish the facts" around Nxasana's appointment from Zuma. As of Sunday afternoon, no response had been received from the presidency, he said.

Red herring

At the same time, Ngoveni could not confirm whether other senior NPA officials were in the same position as Nxasana – appointed without being properly vetted. Ngoveni also did not know whether security vetting was a requirement for the appointment of the NDPP. The Constitution requires that the appointee be a "fit and proper person".

"You will appreciate that we are new ... all the appointments were done by the previous ministry," he said, referring to Masutha's appointment last Sunday. Masutha replaced former justice minister Jeff Radebe, who is now minister in the presidency.

Ngoveni also said the ministry was trying to establish what impact, if any, Nxasana's lack of security clearance would have on his day-to-day work within the NPA.

On Sunday, the new Democratic Alliance (DA) justice spokesperson – and former prosecutor – Glynnis Breytenbach said the party would revive a Private Members' Bill in Parliament that sought to bring more "independence" to the process of firing the NDPP.

Her predecessor, Dene Smuts, introduced the Bill in June 2013. Had it been passed, it would have required that any NDPP could only be removed by the president after a resolution by two-thirds of the National Assembly. This would follow an inquiry which would have had to find the NDPP incompetent or unfit to hold office. But the ANC rejected the Bill.

Breytenbach said: "The claims made against Nxasana about having not received the necessary security clearance is simply a red herring. The department of state security is notorious for its lengthy processes and the blame can hardly be placed on Nxasana when the delay is not his own doing."

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"Furthermore, it is perplexing that the issue of Nxasana's criminal record is only resurfacing now that there is a hit on his back. The question must be asked why this was never raised before and taken to task. It is hardly conceivable that an appointment of this importance was made without vigorous background checks being completed."

2. Times Live-08 June, 2014 08:36

Conflict escalates at NPA as boss allegedly linked to murder case

Conflict in the National Prosecuting Authority escalated into open war this week, with embattled boss Mxolisi Nxasana accused of being linked to a second killing.

NPA integrity management unit head Prince Mokotedi claimed yesterday he had been blocked from investigating allegations that one of the assault cases Nxasana was convicted of in the 1980s might in fact have been a murder.

"I got information that seemingly it's not one murder but actually two - that one of the assault cases was actually a murder," he said.

Mokotedi claimed NPA CEO Karen van Rensburg blocked him from investigating further.

The murder claim follows weeks of public mudslinging and revelations that Nxasana had been asked to step down by former justice minister Jeff Radebe, who accused him of failing to disclose his acquittal in a 1985 murder case, when he was 18.

This has lifted the lid on vicious internal power struggles in the NPA, with Nxasana accusing a grouping led by his deputy, Nomgcobo Jiba, of trying to oust him.

Yesterday, Nxasana and Van Rensburg vehemently denied Mokotedi's allegations.

"This is sheer nonsense," said Nxasana. "Please write the story and quote him [Mokotedi]. I will deal with him. I will sue him."

NPA spokesman Bulelwa Makeke said Van Rensburg "emphatically denies" Mokotedi's allegation.

Mokotedi had laid a complaint with the Public Service Commission "against the CEO in this regard. In respect of the investigative processes of the PSC ... It is premature and completely improper to run to the media with his complaint".

In an interview on Friday, Nxasana said he had paid a R50 admission-of-guilt fine in an assault case in Nongoma, KwaZulu-Natal, in 1986, which concerned "a problem with my girlfriend", and could not recall the second case. "How can you believe I paid a R50 fine if someone died? It's just stupid and naive."

During the interview, Nxasana laid bare the details of his meeting with Radebe on May 21, during which he was told he had been denied top secret security clearance for failing to declare the murder acquittal, a R2000 law society fine and a 2012 traffic offence, and for allegedly wanting to disband Mokotedi's integrity unit.

But Nxasana told Radebe he would not go quietly - which means President Jacob Zuma must decide whether he should face an inquiry into his fitness to hold office. He was appointed last year on the advice of Michael Hulley, Zuma's lawyer.

Nxasana pointed out he had declared two assault convictions - one in the Nongoma case and another in Umlazi in 1985 - and the law society fine when asked to fill out a security clearance form on December 4 2013. It obliged him to declare only convictions and pending cases, which meant the murder acquittal was a "non-issue".

"It's a smoke screen, a red herring. What must you disclose if you've been acquitted?" he said.

He denied disbanding the integrity unit, but said its investigators were "abusing their mandate" by sharing information with state security and crime intelligence agents.

He said that, in April, he had been informed that two state security agents had spent two weeks in KwaZulu-Natal digging into his past. The agency did not confirm the investigation.

This week, he received a letter from the agency, dated May 30, stating his security clearance had been declined. "I have written to them to ask them to give me the reasons. They did not come back to me."

He accused Jiba of being part of a cabal that was colluding with state security agents and police officials to tarnish his name. The "cabal" included NPA commercial crimes unit head Lawrence Mwrebi and security head Tshilidzi Ramahana.

He said they had used Welcome Sthembiso Mhlongo, a colonel in the Hawks based in Durban, to dig up dirt on him to get him fired.

"I said to [Radebe] that I know it was Jiba who instructed Mhlongo [and] that every time she drops your name," he said. He claimed Mhlongo had been offered a promotion to brigadier for his efforts.

Radebe's response was that "it's in your imagination", said Nxasana.

But he insisted that "the minister and Jiba are friends. I am told he'd recommended her and wanted her to be in my job."

Radebe said yesterday he would not "validate these baseless allegations with a response".

An atmosphere of paranoia pervades the NPA offices, with claims of e-mails and calls being intercepted.

"Large amounts of documents are also disappearing from the building," a senior official said.

This week, a security guard controlling access to the top brass's offices and boardroom at the NPA was fired after he was suspected of spying on Nxasana and carting off sensitive documents.

Two senior sources said the guard, who was fired on Wednesday, had allegedly been instructed to spy on Nxasana by Jiba and was caught removing files relating to high-profile cases.

Makeke, the NPA spokesman, confirmed his removal. "The NPA complained of suspected security breaches by a security official [who] was suspended."

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Nxasana also accused Jiba of being obstructive when asked to hand over major case files.

These include cases against former spy boss Richard Mdluli, the so-called Amigos case against prominent KwaZulu-Natal politicians, the Cato Manor death squad case and the spy tapes case used to withdraw corruption charges against Zuma.

He said: "Jiba has told these lies that I wanted to reinstate charges against the president."

Mhlongo, the Hawks colonei, insists he "was never tasked by anyone to investigate Mxolisi".

"I never had any meeting with Jiba nor do I have her contact numbers. I have nothing to lose or gain by destroying Mxolisi or investigating him."

He denied Jiba offered him a promotion: "Jiba can't promise me any position. She works for NPA and I am with the South African Police Service."

Mwrebi called the allegation "a figment of [Nxasana's] Imagination". Ramahana declined to comment.

Jiba, after asking to be sent questions, responded late yesterday by SMS, saying: "I will not stoop to that level. I choose to channel my energy on ensuring that work of the NPA as mandated by our constitution and NPA Act continues unabated, and I won't be deterred in so doing by these baseless stories."

3. News 24- 09-06-14

Chris Ndaliso, The Witness

Durban - The family and former neighbours of beleaguered NPA boss Mxolisi Nxasana have leapt to his defence, saying the murder charges he faced in the eighties was a tragedy he had never fully recovered from.

Despite Nxasana's involvement in the stabbing incident and new claims that he had been involved in another murder incident in Nongoma in 1986, they said he was idolised in the community.

His role as president of the KwaZulu-Natal Law Society and now head of the NPA was an inspiration to those who lived in Umlazi.

Nxasana was asked to step down by former justice minister Jeff Radebe, who accused him of failing to disclose his acquittal in the 1985 murder case. He was aged 18 at the time.

At the meeting last month, Nxasana was told he had been denied top secret security clearance for failing to declare the murder acquittal, a R2 000 law society fine and a 2012 traffic offence, and for allegedly wanting to disband NPA integrity management unit head Prince Mokotedi's unit.

The Sunday Times reported that Mokotedi claimed he had been blocked from investigating allegations that one of the assault cases Nxasana was convicted of in the eighties might in fact have been a murder.

Love triangle

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Nxasana's family, who live in a modest home in E-Section, Umlazi, said the resurrection of the murder claims has put a lot of strain on them.

Neighbours and family members said Nxasana had been caught up in a love triangle in 1985, and his rival had attacked Nxasana and his brother.

Nxasana, speaking to The Witness, said the incident is something he wished he was not reminded about and did not like to talk about.

"I was 18 at the time. Yes, I was at my girlfriend's place in C-Section and we were attacked. I am forced to talk about the incident against my will. When these guys attacked us, my brother was hacked with a bush knife, and I grabbed a kitchen knife and stabbed one guy. Sadly, I heard later that he had passed on."

He said he had heard that the girlfriend had since died.

"I think she would give you more details about the incident," he said.

The Mail & Guardian reported last week that the murder took place in 1985 and Nxasana was acquitted by the Durban regional court in 1986.

His older brother, Sbonelo, said his late father had taken Nxasana to the police after hearing about the incident and the subsequent death of one of the attackers.

"This whole thing weighs heavily - not only on Mxolisi, but on the entire family. A tragedy happened and individuals are using that to get back at my brother for whatever reason they have. Go and talk to the community and they will tell you what kind of a person Mxolisi is," said Sbonelo.

Church

The family said whenever Nxasana returned home, he made a point of attending community functions and going to his childhood church.

Mhlobo Nkosi said Nxasana mixed with everyone when he was around. "I know him from when he was a child. He was not a troublesome person, and he loved soccer and going to the cinema. Mxolisi is a good man but now people are just trying to drag his name through the mud," said Nkosi.

Reverend Linda Mandindi of the Methodist Church said Nxasana has contributed a lot to the church. "Recently, the church received a water bill of R11 000 due to illegal water connections. I phoned him and explained [our predicament]. Mxolisi told us not to worry and he settled the bill. When we were building this church, he contributed whenever we would run short of material," said Mandindi.

Khumbuzile Cele said she watched Nxasana growing up in front of her.

"I know him as a very sweet child who respected the adults. As an adult, he still has that respect for people. What happened in 1985 could have happened to any other young man," said Cele.

Flawed vetting process

The KwaZulu-Natal Law Society said Nxasana is a victim of a flawed vetting process.

"The office of the NDPP [National Director of Public Prosecutions] is an office of the Constitution and as such an appointment to such office should have proceeded with the highest degree of due diligence," the society's president Poobalan Govindasamy said.

"The current issues raised by the executive reflects a shocking but not surprising incompetence in the due diligence process which should have addressed in the first place, the issues now raised."

Nxasana was appointed into the NPA position by President Jacob Zuma last year.

Govindasamy said the situation sent an incorrect message to the public that someone found not guilty in court "may possibly be lacking in security clearance".

He said the law society had undiminished confidence in Nxasana's integrity.

4. The Citizen 15.6.2014 10.47

Mxolisi Nxasana's ex girlfriend laid assault charges

Joyce Khumalo, the former girlfriend of NPA head Mxolisi Nxasana laid an assault charge against him in 1986 because he allegedly beat her up.

When Joyce tried to dump him, Nxasana allegedly beat her so badly that she was admitted to hospital, Khumalo's mother, Aggrieneth Khumalo, the Sunday Times was told.

Nxasana also allegedly attempted to strangle her during the breakup.

Khumalo then laid an assault charge against him in Nongoma, KwaZulu-Natal, and it was believed this was the case for which he paid a R50 admission of guilt fine, the newspaper reported.

Joyce died in 1998 in an unrelated incident.

Last month, former justice minister Jeff Radebe reportedly instructed Nxasana to resign after not being given a security clearance because of past brushes with the law. He has refused to resign.

The Sunday Times reported that he was acquitted on a murder charge in 1985 as it was in self defence, and that he had twice been convicted for assault, charged with reckless and negligent driving and resisting arrest. He was also fined R2000 for misconduct by the law society.

The newspaper said it could not get comment from Nxasana or NPA spokeswoman Bulelwa Makeke. Sapa could also not immediately get comment on the report from the NPA.

5. NEWS 24-2014-06-15 09:21

NPA boss facing woman beater allegations

Johannesburg - Embattled National Prosecuting Agency boss Mxolisi Nxasana has been accused of being a woman beater by a former girlfriend's mother.

According to the Sunday Times, Aggrieneth Khumalo, the mother of Nxasana's one-time girlfriend,

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the NPA boss was a hothead that would beat her daughter, Joyce, at the slightest provocation.

The 72-year-old mother said that during their year-long relationship "he liked beating her up for every little mistake she made".

When the young woman dumped him, he allegedly tried to strangle her. He also beat her so badly that she landed up in hospital.

She brought an assault charge against him but was apparently too scared to testify.

It is believed that this is the assault case for which Nxasana paid a R50 admission of guilt fine in 1986. Joyce died in 1998 in an unrelated incident.

Controversy around the NPA boss has continued to deepen after he was accused of being linked to a second murder recently.

It was reported last week that the head of the integrity management unit Prince Mokotedi said he had been stopped by the agency from investigating allegations that one of the assault charges against Nxasana in the 1980s had in fact been a killing.

The controversy arose a few weeks back when it emerged that Nxasana was called to a meeting by former justice minister Jeff Radebe and asked to resign only days before President Jacob Zuma announced his new Cabinet. This came after Nxasana failed to get security clearance.

Last week the DA said it is seeking an urgent probe into the October appointment of Nxasana.

Democratic Alliance MP Glynnis Breytenbach said in a statement on Wednesday that Parliament's justice portfolio committee should meet to investigate the process followed in appointing Nxasana, as well as determine whether the National Prosecuting Authority was being politicised.

Breytenbach said allegations had surfaced that Nxasana was not appointed through an appropriate process.



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NATIONAL AND INTERNATIONAL BROADCAST AND ONLINE MEDIA COVERAGE REPORT

From: 01 Apr 2014 00:00 To: 24 Jul 2014 23:59

HEADLINES

Breytenbach dismisses NPA accusations

Charges reinstated against Richard Mdluli

Frantic search for Zuma spy tapes

Fresh row brewing at NPA

Glynnis Breytenbach defends the new prosecution boss

Hawks deny raid allegations

Justice Minister and the Presidency discussing NPA boss's fate

Justice minister calls for calm at NPA

NDPP scandal might drag to Parliament

NPA boss faces uncertain future

NPA boss: I won't resign

NPA bosses gives Mxolisi ultimatum

NPA staff reportedly raided and searched of Zuma spy tapes

Nxasana head hangs in the balance

Nxasana was informed about the issued statement

Nxasana's removal from office won't be easy

Pressure rising for NPA boss

JUSTICE, CRIME PREVENTION AND SECURITY

National Prosecuting Authority

Not all procedures followed in Mdluli case – NPA. Not all internal procedures to convince the national director of public prosecutions (NDPP) to reinstate charges against suspended police crime intelligence head Richard Mdluli were followed, the Supreme Court of Appeal heard on Tuesday. Advocate Lawrence Hodes for the National Prosecuting Authority (NPA), submitted any party wanting to re-institute charges against anybody first had to approach the NDPP and not a court directly. "Any prosecutor in any court can decide to withdraw charges on reinstatement then in my submission there are certain procedures to be followed before a court can be approached." A full SCA bench was hearing argument in an urgent appeal by Mdluli, the police and the NPA. The appeal concerns a ruling in favour of lobby group Freedom Under Law (FUL) to set aside a decision to withdraw criminal and disciplinary charges against Mdluli. Mdluli, the NPA, and the Specialised Commercial Crime Unit were granted leave to appeal against a ruling by high court Judge John Murphy in September 2013 in favour of FUL. Murphy had set aside the decision to withdraw charges of money laundering, murder, and disciplinary proceedings, against Mdluli. Argument was continuing in the SCA. (News24.com - 01 Apr 2014 - 13:11)[South Africa]

mailto:lpd@npa.gov.za

NDPP scandal might drag to Parliament. There are calls for the future of the National Prosecuting Authority to be discussed in Parliament, following a security clearance debacle surrounding its head, Mxolisi Nxasana. It emerged last week that Nxasana was refused a high level security clearance because of previous brushes with the law, which include being tried for murder years ago. The Democratic Alliance says these revelations are yet another indication of how severely comprised and politicised the prosecutions body is. Nxasana is reportedly determined to keep his job and has accused his colleagues of being behind a plot to have him fired. Nxasana has also been accused of nepotism and serious traffic offences. (Radio 702 -

News - 02 Jun 2014 - 07:00][South Africa]

Glynnis Breytenbach defends the new prosecution boss. Former top prosecutor Glynnis Breytenbach has come out in defence of National Prosecuting boss Mxolisi Nxasana. A furore erupted around Nxasana appointment with claims he did not disclose the fact he faced a murder charges 30 years ago, which would mean he does not have security clearance for his job. But Nxasana insists he disclosed this before his appointment, it's now being speculated he is facing the axe. But Breytenbach who is now a DA MP says she believes the reports are an attempt to discredit Nxasana because he wants to prosecute former intelligence head Richard Mdluli, she says Nxasana must be given a chance. (PowerFM News - 02 Jun 2014 - 08:00)[South Africa]

Nxasana head hangs in the balance. Mxolisi Nxasana fate as head of the National Prosecuting Authority continues to hang in the balance. Newly appointed Justice Minister Mike Masutha is yet to meet with President Jacob Zuma on what should happen to Nxasana. The NPA has no head of security clearance after it emerged that he killed a man over 30 years ago and while also he has two assault convictions against his name. (PowerFM News - 02 Jun 2014 - 12:00)[South Africa]

NPA boss: I won't resign. Embattled national prosecutions boss, Mxolisi Nxasana, who has been asked to resign after being denied top security clearance for allegedly failing to disclose a series of brushes with the law, is refusing to go down without a fight. The former Durban advocate would rather be fired. He was now preparing for President Jacob Zuma to possibly set up a commission of inquiry to investigate the allegations against him so he could defend himself, his legal adviser said on Sunday. Nxasana, who was appointed National Director of Public Prosecutions (NDPP) by Zuma in October, has come under pressure following revelations that he allegedly did not disclose that As an 18-year-old was tried and acquitted of murder; had been arrested for inconsiderate driving and resisting arrest; that he was fined by a law society; and tried to prevent an NPA unit from investigating him. Two weeks ago, then-justice minister Jeff Radebe, in the light of these allegations, asked him to resign. "But he will not take this lying down because the allegations against him are concocted," Nxasana's legal adviser, advocate Thulani Duma, said on Sunday. "The reality is he is not going down without a fight. "That is exactly what he told the former minister of justice, Jeff Radebe, when he brought up talk of resignation. He said he would rather be fired. "For the president to fire him, they will have to suspend him first and then get a commission of inquiry running. "At the end of the commission of inquiry people will know the truth, not this rubbish in the Sunday papers," he said. He was referring to calls for him to be fired. (Independent Online - 02 Jun 2014)[South Africa]
<http://bit.ly/1kxCyFJ>

Zuma did not heed the Con Court direction. The Council for the Advancement of the South African Constitution (CASAC) says it seems that President Jacob Zuma did not heed the Constitutional Court's direction when he appointed the National Director of Public Prosecutions (NDPP). Nine months in office and allegations have started surfacing about National Prosecuting Authority (NPA) head Mxolisi Nxasana's past. Two years ago, in overturning another one of Zuma's NDPP appointment, that of Menzi Simelane, the Constitutional Court urged the President to consider all objective facts before making such an important appointment. (SAFM: News - 02 Jun 2014 - 15:00)[South Africa]

Justice Minister and the Presidency discussing NPA boss's fate. New Justice and Correctional Services Minister Michael Masutha says a decision about the fate of Mxolisi Nxasana will be made in the next few days. A few furores erupted over Nxasana's appointment with claims he does not have security clearance and failed to disclose a murder charge he faced 30 years ago. Nxasana insists he disclosed this before his appointment, there has now been a call for his head to roll. (PowerFM News - 03 Jun 2014 - 08:00)[South Africa]

Black Lawyers Association defends Nxasana. The Black Lawyers Association has expressed its support for National Director of Public Prosecutions Mxolisi Nxasana following recent comments by former Justice Minister Jeff Radebe urging him to step down. Radebe called for Nxasana's resignation accusing him of failing to disclose that he had been acquitted of murder charges.

In a statement issued yesterday, the BLA says the attacks on Nxasana by Radebe are unwarranted and unacceptable. The organisation's president Busani Mabunda says they believe Nxasana remains innocent of the murder charge, as he was acquitted by a competent Court of the Law. He adds that there is no need to disclose the incident because there was never any conviction. (East Coast Radio - 03 Jun 2014 - 11:05)[South Africa]

<http://bit.ly/S2cQFT>

Pressure rising for NPA boss. President Jacob Zuma must now decide whether National Prosecuting Authority head Mxolisi Nxasana will face an inquiry into his fitness to hold office. Reports last week said Justice Minister Michael Masutha wanted to meet the president to discuss the matter. However, pressure is now mounting in the wake of weekend reports