

**IN THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS REGARDING
EFFORTS OR ATTEMPTS TO STOP THE INVESTIGATION OR PROSECUTION OF
TRUTH AND RECONCILIATION COMMISSION CASES (TRC CASES COMMISSION)**

HELD AT:

Sci-Bono Discovery Centre, Corner Mirriam Makeba & Helen Joseph Street,
Newton, Johannesburg

BEFORE

The Honourable Justice Sesi Khampepe (Judge RTD) – Chairperson
The Honourable Justice Frans Diale Kgomo (Judge President RTD)
Advocate Andrea Gabriel (SC)

AFFIDAVIT OF MALALA GEOPHREY LEDWABA

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I, the undersigned,

MALALA GEOPHREY LEDWABA

do hereby state under oath as follows:

1. I am an adult male currently residing at Newlands Village, Gamashashne, Limpopo.
2. The facts contained in this affidavit are within my personal knowledge, unless the context indicates otherwise, and are true and correct.
3. I make this affidavit for the purpose of assisting the Judicial Commission of Inquiry into Allegations Regarding Efforts or Attempts to Stop the Investigations or Prosecution of Truth and Reconciliation Commission Cases ("the Commission") in its mandate under the Terms of Reference (ToR). The Commission is to establish whether there were any attempts to interfere with or stop the investigation and prosecution of the TRC cases by the South African Police Service or the National Prosecution Authority.
4. This affidavit is also aimed at addressing the allegations against me as contained in the Notice in terms of Rule 3.3 of the Commission's Rules dated 24 October 2025.
5. I have structured my affidavit as follows:

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- 5.1 first, I provide my educational and professional background;
- 5.2 second, I deal with the structure of the National Prosecuting Authority (NPA) (and specifically the Directorate of Special Investigation (the DSO) at the relevant period of the Terms of Reference of the Commission;
- 5.3 third, I deal with my position as the Head of Operations in the DSO with reference to the applicable legislation;
- 5.4 fourth, I address the mischaracterisation of my response to the removal of TRC Cases from the DSO's SNPU to the PCLU;
- 5.5 fifth, I address the repeated and misguided requests by the PCLU in terms of the NPA Act, and
- 5.6 finally, I address the allegations against me as contained in the Notice in terms of Rule 3.3 of the Commission's Rules, received from the Commission on 24 October 2025.

MY EDUCATIONAL AND PROFESSIONAL BACKGROUND

6. I hold a B.luris degree from the University of the North which I obtained in 1989 and an LLB degree from the University of the North obtained in 1992. I also hold an LLM degree (Law of Contract) from the University of Pretoria obtained in 1997 and a Masters in Business-Leadership degree obtained in 2003 from the University of South Africa.

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7. In 1985, I joined the then Department of Justice as a clerk in the Lebowakgomo Magistrates Court. The then Department of Justice of the Lebowa Homeland Government encompassed the Finance and Home Affairs Departments. I was involved in the administration of estates, maintenance claims, registration and licensing of cars, payment of government taxes (Lebowa government), registration of births and death certificates, passports and travelling documents.
8. In 1987 I became a clerk of the Court and a Court Interpreter and later a Sheriff of the Court.
9. After graduating with a B.luris in 1989 from UNISA, I began practising as a Prosecutor at the Lebowakgomo Magistrate Court. I then transferred to the Mankweng Magistrates Court in 1991, to complete my LLB degree, as the Court was just a kilometre away from the University of the North.
10. In 1992, I completed my LLB-degree, and continued as prosecutor at the same Mankweng Magistrate Court.
11. I was promoted and transferred in 1993 to a Regional Court Prosecutor at the Polokwane Regional Court. I was the first black prosecutor in the Polokwane Regional Court. I remained in that position until December 1994.
12. I was admitted as an advocate of the High Court, Pretoria in 1994.

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13. In 1995, I was appointed as a Junior State Advocate within the Attorney General's Office in Pretoria. I was one of the first black State Advocates in the office of the Attorney General's Office, after the end of apartheid.
14. In 1997, I was promoted to the position of Senior State Advocate and in 2000, to the position of Deputy Director of Public Prosecutions in Pretoria reporting to Dr D'Olliviera, the then Attorney General.
15. In 2001, I was transferred to the Directorate of Special Operations (the "DSO", colloquially known as the "the Scorpions"). I retained my position and rank as a Deputy Director of Public Prosecutions and joined Advocate Sonn and Advocate Leonard McCarthy at the DSO. They were reporting to the then NDPP, Advocate Bulelani Ngcuka.
16. At the DSO I was the Head of the Organized Crime Desk, a position I occupied until February 2003. On 1 March 2003, I was appointed as Investigative Director\Head of Operations/Deputy Head of the DSO. Advocate McCarthy was promoted to Head of the DSO after Advocate Sonn left the DSO. I occupied this position until my resignation in December 2004.
17. In January 2005, I began serving pupillage at the Johannesburg Society of Advocates (the JSA). Towards the end of January 2005, Advocate Pikoli ("Pikoli") invited me to withdraw my resignation and I agreed. I then rejoined the DSO in February 2005 as Investigative Director, a position I occupied until 30 June 2005, after which period I continued my pupillage programme with the JSA.

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18. I continued my pupillage and passed. I then joined the Duma Nokwe Group, a group of advocates under the auspices of the JSA.
19. I was struck off the roll of advocates in October 2014 after criminal charges of theft and fraud. I was subsequently acquitted of all the charges by the High Court, with the two Judges even making serious adverse criticisms against the prosecutors who handled my trial and expressly finding that the facts never established a commission of any offence.
20. I am currently unemployed.

**THE STRUCTURE OF THE NATIONAL PROSECUTIONS AUTHORITY AND
THE DIRECTORATE OF SPECIAL OPERATIONS (“THE SCORPIONS”)**

21. The Directorate of Special Operations (DSO), commonly known as the Scorpions, was a specialized unit of the National Prosecuting Authority of South Africa formed by the South African Parliament in 1998. It was tasked with investigating and prosecuting high-level and priority crimes including organised crime and corruption. It was an independent and multidisciplinary unit with a unique methodology which combined investigation, forensic intelligence, and prosecution.
22. The NPA was headed by Advocate Ngcuka who had four Deputy National Directors of Public Prosecutions who reported to him. There was the Division: National Prosecutions Services (NPS) which was responsible for the day-to-day

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prosecution of cases (District Courts, Regional Courts and High Courts) headed by Advocate Jan Henning; the second Division was the Asset Forfeiture Unit headed by Advocate Willie Hofmeyr. The third Division dealt with all the specialized divisions, namely, Priority Crimes Litigation Unit (PCLU), Specialised Commercial Crimes Unit (SCCU), Sexual Offences and Community Affairs Unit (SOCA), headed by Advocate Dr Silas Ramaite SC. The fourth Division, was the Directorate of Special Operations, headed by Advocate McCarthy.

23. The DSO operated along a model of four desks. The first desk was the Financial Crimes Desk and the second the Public Corruption Desk. The third was the Prevention of Organised Crime Desk and the fourth was the Organised Crime Desk, then headed by me.
24. The DSO operated on a so-called proactive troika methodology type of investigation. This meant a complete integration of investigators and prosecutors being designated on each project (sometimes with accountants and other experts where needed) on each of the authorised projects.
25. In March 2003, I was appointed as Deputy Head of the DSO, overall, in charge of all the investigations and prosecutions. Investigations and Prosecutions had subdivisions, the main ones being the five regional offices based in the provinces, namely Gauteng, Western Cape, Eastern Cape, KZN and Free State.
26. At the Head Office, we had a Crime Analysis Division (CAD) and the Special National Projects Unit (SNPU). There were also Ad Hoc Projects as well as the

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Crimes Intelligence Collection Unit (CICU). There were also the Human Resource and the Training Departments of the DSO.

27. The SNPU was first developed and located in the NDPP's Office which included Advocate Chris Macadam ("Macadam"), with whom I dealt with on some TRC Cases. The SNPU later formed part of the DSO and was reporting to me.
28. After the TRC had handed its final Report to Parliament in March 2003, and following President Thabo Mbeki's speech on 15 April 2003 to the Joint Sitting of Parliament, the handling of TRC Cases was handed over to the NPA.

The Turf War Between the DSO and SAPS

29. Prior to my appointment as Deputy Head of DSO in March 2003, there existed some power struggle (so-called turf war) between the DSO and SAPS over exactly which cases were to be investigated by the DSO and which ones were to be investigated SAPS. I was even part of the management meetings between the DSO and SAPS where proper lines of the type of cases to be investigated by the DSO, as per their mandate, were agreed.
30. My understanding then was that the mandate of the DSO was to investigate complex high-profile matters of financial crimes, corruption and organised crime.
31. The DSO created criteria for intake of cases. The cases were to be assessed by a project management office which received and registered all DSO matters referred for consideration.

32. The project management office would then direct each matter to the relevant desk. After consideration, the relevant Deputy would make a recommendation and submit the matter for my final decision. Each project from all the five regional offices and those at Head Quarters was allocated a unique reference name and file number.

MY POSITION AS THE HEAD OF OPERATIONS AT THE DSO FROM 2003 TO 2005

33. I was the Head of Operations of the DSO from 1 March 2003 until 30 June 2005. I deem it necessary to refer the Commission to the applicable legislative provisions regulating the parameters of my functions then. This is to enable the Commission to locate the misguided allegations made by the Calata Group and Advocates Ackermann SC and Macadam that I stopped the investigation and prosecution of TRC Cases. Understanding my role within the confines of the law, will provide much needed clarity.
34. My position as Head of Operations was regulated by the National Prosecutions Authority Act, 32 of 1998. The NPA Act gives effect to section 179 of the Constitution. At all material times, I was obligated to carry out my functions in line with the Constitution, the NPA Act and the existing NPA policies. Overarchingly, I was to act independently and without fear or favour.
35. The position of Head of Operations was introduced into the NPA Act through an amendment of the Act in 2000. The amendment reflects as follows:



Amendment of section 1 of Act 32 of 1998

2. Section 1 of the principal Act is hereby amended— (a) by the insertion after the definition of “Director” of the following definitions:

‘Directorate of Special Operations’ means the Directorate of Special Operations established by section 7(1)(a);

‘head of an Investigating Directorate’ means the Deputy National Director referred to in section 7(3)(a), or an Investigating Director referred to in section 7(3)(b), as the case may be.

‘Investigating Director’ means a Director of Public Prosecutions appointed under section 13(l)(b), 13(l)(aA) or (b) to the Directorate of Special Operations; or as the head of an Investigating Directorate established in terms of section 7(1 A).

36. Section 7 of the NPA Act reads thus:

7 Investigating Directorates

(1)

(1A) There is hereby established, in the Office of the National Director, an Investigating Directorate to be known as the Directorate of Special Operations to investigate, and carry out, any functions incidental to investigations-

(a) relating to serious, high-profile or complex corruption, commercial or financial crime and organised crime cases-

(i) referred to the Investigating Director by the National Director in terms of section 28 (1) (b); or

(ii) referred to the Investigating Director in terms of section 28(1)(a) or 28(13)

(b) relating to additional related statutory offences or categories of statutory offences, including contraventions of-

(i) the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004);

(ii) the Prevention of Organised Crime Act, 1998 (Act 121 of 1998).

37. As the Head of Operations and Investigating Director, I was the only person who could authorise an investigation in terms of sections 28(1)(a) and 13 of the NPA Act.
38. The authorising sections are quoted below and state thus:

“Section 28 (1)(a):

*If the Investigative director has reason to suspect that a “SPECIFIED OFFENCE” has been or is being committed or that an attempt has been or is being made to commit such an offence, he or she **MAY** conduct an investigation.*

*Section 28 (1) (b): If the National Director refers a matter in relation to the alleged commission of a specified offence to the Investigating Director, the Investigating Director **SHALL** conduct an investigation or a preparatory investigation as referred to in subsection 13, on the matter.*

*Section 28(2)(d): If the Investigative Director, at any time during the conduct of an investigation, is of the opinion that evidence has been disclosed of the commission of an offence which is not being investigated by the Investigating Director concerned, he or she **MUST** without delay, inform the National Commissioner of the SAPS of the particulars of such matter.*

Section 28(13): “If the Investigating Director considers it necessary to hear evidence in order to enable him or her to determine if there are

reasonable grounds to conduct an investigation in terms of section 28(1)(a), the Investigating Director MAY hold a preparatory investigation.”

39. Special Offences are defined in the NPA Act as “any matter which in the opinion of the head of an Investigating Directorate falls within the range of matters as contemplated in section 7 (1). As indicated in the preceding paragraphs, section 7 (1) offences *relat[ed]* to serious, high-profile or complex corruption, commercial or financial crime and organised crime cases and those relating to the Prevention and Combating of Corrupt Activities Act, 12 of 2004 and the Prevention of Organised Crime Act, 121 of 1998.
40. The NDPP saw it fit in April 2003, to declare all TRC Cases “*priority crimes*” and place them within a newly established Unit called the Priority Crimes Litigation Unit (PCLU). The PCLU was established in terms of a Presidential Proclamation in March 2003. It was responsible for certain identified “*priority crimes*”.
41. The decision by the NDPP to declare the TRC Cases as “*priority crimes*” falling under the PCLU, was endorsed by NPA EXCO Management and became policy of the NPA.
42. Following this new policy, it was agreed that all the TRC Cases that were located within the SNPU of the DSO had to be transferred to the new PCLU. As indicated, the PCLU reported directly to Dr Silas Ramaite. The DSO was therefore not responsible for the investigation and prosecution of TRC Cases.

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43. The Presidential Proclamation which created the PCLU was made on 23 March 2003. According to this proclamation, the PCLU was mandated "to direct investigations and prosecutions" in relation to various "priority crimes", including serious national priority crimes, such as terrorism, sabotage, high treason, sedition, and international crimes.
44. The PCLU was therefore clothed with both investigative and prosecutorial powers. The challenge however was that no specific investigators were employed or assigned to the PCLU from its inception.
45. It was however the understanding as discussed in the NPA EXCO Management meetings, where Dr Ramaite was in attendance that the investigation of the PCLU Cases would be done by the South African Police Services ("**SAPS**"), in accordance with the constitutional mandate of the South African Police Services.
46. The Calata Group in their papers alleged that when the PCLU through Advocates Macadam and Ackermann approached de Beer, who was the Divisional Commissioner of the South African Police Service, Mr de Beer advised them that the NDPP, Advocate Bulelani Ngcuka must approach President Mbeki for a decision on who should investigate the TRC Cases between the DSO and SAPS.
47. In his testimony before this Commission, Advocate Ngcuka said that there was no need for him to approach the President, as all the TRC Cases under the mandate of the PCLU would be investigated by SAPS.



48. All PCLU cases were investigated by SAPS and none were ever declared or investigated as a DSO project. I was aware that those cases included the following PCLU matters:
- 48.1 **STATE versus GEISSER & WISSER:** This was a matter investigated by SAPS and managed by SNPU. It involved nuclear weapons-grade uranium enrichment plant to Libya. SAPS arrested the Directors of KIRSCH ENGINEERING (PTY) LTD, and matter was prosecuted by PCLU in Pretoria High Court.
- 48.2 **STATE versus ASHER KARN:** This matter was also investigated by SAPS in Cape Town and managed by PCLU. The investigation dealt with import of nuclear devices to South Africa.
- 48.3 There were also other Foreign Military Assistance cases such as the arrest of SA citizens in Zimbabwe and Equatorial Guinea that were investigated by SAPS and prosecuted by PCLU.
49. In line with the above NPA Policy and the mandate of the PCLU to investigate priority crimes including the TRC Cases, the Head of the DSO, Advocate McCarthy confirmed that all TRC Cases that were within the DSO were to be transferred and formally handed over to the PCLU. This discussion occurred at the same time when I signed my performance contract with Advocate McCarthy. Therefore, the TRC Cases, save only the two matters that Advocate McCarthy insisted I, as Head of the DSO attend to them, were further not included as



performance indicators to be measures for the purpose of my employment contract.

50. I requested the Project Management office of Chief Investigating Officer (CIO) Mr Jonker to provide the DSO Management with an audit of all matters that had been investigated and dealt with by the SNPU.

51. Mr Jonker, prepared the audit and I attach Annexure "MGL1", as the list of all SNPU Cases then. The matters are as follows:

51.1 CICU AND SNPU PROJECTS

51.1.1 *Project Billabong.*

51.1.2 *Project Dog.*

51.1.3 *Project Dragon Chaser.*

51.1.4 *Project Moamba.*

51.1.5 *Project Otway.*

51.1.6 *Project Yorgurt.*

51.1.7 *Project Kanyisa.*

51.1.8 *Project Technikon NW.*

51.1.9 *Project Southern Ambition.*

51.1.10 *Project Quanxi.*

51.2 SNPU TRC CASES

51.2.1 **BLACKCATS** *Killing of ANC members by IFP in Ermelo.*




- 51.2.2 **COSAS 4** *Murder of 4 members of COSAS.*
- 51.2.3 **CRADOCK FOUR** *Kidnapping/Murder of ANC members by Security Branch.*
- 51.2.4 **DUBENI** *Murder of MK member by SAPS security branch.*
- 51.2.5 **EARLY LEARNING** *Investigation: Bombing of early learning centre in Cape Town.*
- 51.2.6 **FIREFLY** *Murder and kidnapping of Brian Ngalunga Vlakplaas Askari;*
- 51.2.7 **LUCKY STAR** *Investigation into the murder of Apla members.*
- 51.2.8 **MAMELODI TEN** *Murder of 10 ANC members by N-TVL security police.*
- 51.2.9 **NELSON SITHOLE** *Murder/killing of ANC members by unknown persons.*
- 51.2.10 **PEBCO THREE** *Kidnapping/murder of ANC members by SAPS security branch.*
- 51.2.11 **POWELL** *Powell received 70 tons of weapons from Eugene De Kock.*
- 51.2.12 **PROJACK** *assassination of activist Projack in Nyanga.*
- 51.2.13 **STEVE BIKO** *Investigation into the murder of Steve Biko by SAPS security branch.*
- 51.2.14 **TIMOL** *Alleged murder of detainee, TIMOL in police detention.*
- 51.3 **CLOSED FILES**
- 51.3.1 **Project Catcha** *Selling of case dockets by prosecutors.*
- 51.3.2 **Project Final Curtains** *Investigation into hijacking syndicate.*

51.3.3 **Project Hurricane** *Murder of traffic officer.*

51.3.4 **Project Mossafra** *Contravention of Foreign Military Act.*

51.3.5 **Project Observatory** *Legal opinion on the appointment of a Senior Counsel (SC).*

51.3.6 **Project Oxwhich** *Car hijacking syndicate, and*

51.3.7 **Project Thorn** *Investigation into contravention of Foreign Military Act.*

52. In line with my understanding of the NPA policy, I formally and officially transferred all TRC Cases within the SNPU of the DSO to the PCLU.
53. On 15 July 2003, after I had transferred the TRC Cases to the PCLU, I issued two memoranda; one addressed to the Head of SNPU, Advocate Obed Tongwane and another to the Chief Investigating Officer within the DSO, Mr Andrew Leask. I have been unable to locate the memoranda I addressed to Advocate Tongwane. My memoranda to Mr Leask, is annexed hereto as annexure "**MGL2**".
54. The memo to Leask (**MGL2**) reads as follows:

"1 Due to the recent creation of the PCLU, it has become necessary to redefine the mandate and operations of the SNPU as follows:

i) TRC Cases

I have decided that SAPS must take over the investigations of all such cases currently handled by you. Your files should be closed off and all the material given to the PCLU. It must also be given the storeroom currently being used.

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Notwithstanding the above decision Adv Tongwane must finalize the Black Cats and Winnie Mandela cases. Due to the fact that NDPP has requested a speedy finalization of the two matters this must be done before 30 July 2003. I have also transferred the two researchers to the PCLU. It may be necessary for your investigators to introduce certain witnesses with whom they have dealt to the SAPS investigators, and you are accordingly authorized to conduct the necessary handovers.

ii) Operation Sunflower

Advocate Macadam will continue to oversee the disruptive action with the Consumer Council with your assistance. Once the SAPS report is received and evaluated, I will make a decision on the final disposal of the case.

iii) Operation Black Widow

Advocate Tongwane must oversee the finalisation of the investigation and conduct the prosecution which may arise.

iv) Operation Final Curtain

SAPS must continue with the investigations under the direction of the prosecutor arranged by Adv Ackermann. You may give limited assistance to SAPS and the prosecutor on specific aspects when necessary.

v) Foreign Mercenaries

Adv Pretorius has been delegated to assess all cases currently being investigated by both SAPS and the DSO. (I have communicated separately to the Regional Head Gauteng in this regard). I will make a decision as to the involvement of the DSO in such investigations once I have received a report from Adv Ackermann."

55. It is clear from the above memorandum that neither myself as Head of the DSO Operations, nor the DSO stopped the investigation and prosecution of TRC Cases. Instead, I merely complied with the NPA policy at the time and transferred the TRC Cases to the PCLU.
56. It is also evident from my memo that I was concerned that the PCLU be assisted through a proper handover. I even went further in my assistance to the PCLU, by transferring two researchers who were located within the DSO and who had been

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dealing with TRC Cases, amongst other matters, to the PCLU. This was to ensure that they continue with assistance.

57. I also made it very clear to Mr Leask that his handover must assist the PCLU by ensuring that the DSO investigators who were charged with the investigation of TRC Cases, introduce witnesses to the SAPS investigators who were to take over the TRC Cases in their assistance with the investigation of the TRC Cases.

The Calata Group have Mischaracterised my Instructions to Advocate Tongwane and Mr Leask in the memoranda of 15 July 2003 as a decision to stop the Investigation of TRC Cases

58. As indicated in the preceding paragraphs, my decision to transfer all TRC Cases to the PCLU flowed from the NPA Policy, beginning with the Presidential Proclamation creating the PCLU, the decision of Advocate Ngcuka, who was the then NDPP to declare all TRC Cases as "*priority crimes*" and falling within the PCLU. This meant that the DSO had to transfer these matters to the PCLU.
59. The Calata Group, in the founding affidavit of Mr Lukhanyo Calata have regrettably taken my memoranda to Mr Leask out of context and mischaracterised it as a '*remarkable decision by the DSO to stop the investigation of TRC cases*'.
60. Neither myself nor the DSO stopped the investigation of the TRC Cases. My memoranda to Mr Leask as Chief Investigating Officer within the DSO contained



a decision I took, in line with the Presidential Proclamation and the declaration by Advocate Ngcuka, the then NDPP that all TRC Cases were "*priority crimes*" falling within the PCLU.

THE REQUESTS BY THE PCLU'S ADVOCATES ACKERMANN SC AND MACADAM FOR DSO ASSISTANCE

61. In May 2003, Advocate Macadam, in his capacity as Deputy Director in the PCLU filed applications with my office requesting that I declare certain TRC Cases as 'projects' under section 28(1)(a) of the NPA Act, in order for the TRC Cases to be investigated by the DSO.
62. This request fell outside the authority I held as Head of Investigations under the NPA Act as fully detailed in the preceding paragraphs. I advised Advocate Macadam of my position as determined by the NPA Act and that I could not assist him. However, I did point him to section 28(1)(b) of the NPA Act and advised him that it may be prudent for him to approach the NDPP with his request. Advocate Macadam was of the view that my interpretation of the NPA Act was wrong and was unwilling to heed my advice at that stage; that is in May 2003.
63. Again on or about 15 July 2003 and at the request of the PCLU's Advocates Ackerman and Macadam, a meeting was held in my office. In that meeting, Advocates Ackerman SC and Macadam requested me again to assist the PCLU with the investigation of TRC Cases, using the legislative process of declaring certain matters as '*projects*' in terms of the NPA Act.

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64. I advised them that I was unable to assist them.
65. Advocate Macadam, in his affidavit filed with this Commission described our meeting as unpleasant. In my view, the meeting was not unpleasant. I merely communicated that I would not authorise the applications in terms of section 28(1)(a). Advocate Macadam was unhappy that I declined his request. Again, in that meeting, I emphasised that the section 28(1)(b) avenue remained an option for the PCLU.
66. The unhappiness over my decision and interpretation of the NPA Act is grounded in the context of my professional journey within the NPA. Advocates Macadam and Ackerman SC were much senior to me when I joined the Attorney General's office in 1995. Advocate Ackerman SC was a Deputy DPP and was above my level of seniority. Advocate Macadam was also senior to me.
67. In 2003 however, I became their senior. It appeared to me that both Advocates Ackermann SC and Macadam were not willing to accept advice from someone they still regarded as their junior.
68. It is unfortunate that Advocates Ackermann SC and Macadam did not follow my advice. However, in December 2003, it appears to me that the penny did finally drop and they then approached the NDPP, Advocate Bulelani Ngcuka in terms of section 28(1)(b), as I had advised them in May 2003, July 2003, and November 2003 respectively.

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THE NOTICE IN TERMS OF RULE 3.3 OF THE COMMISSION'S RULES

69. On 24 October 2025, the Commission sent me a Notice in terms of Rule 3.3 of the Commission's Rules. I attach this Notice as annexure "MGL3". The Notice referred me to certain paragraphs of the Calata affidavit where I am implicated.
70. Below, I deal with the allegations as contained in the Rule 3.3 Notice, insofar as those allegations have not been explained in the preceding paragraphs.
71. It is incorrect that the DSO "*would not investigate TRC Cases*". As indicated in the preceding paragraphs, I informed Advocates Ackermann SC and Macadam that I was unable to authorise the investigation of TRC Cases in terms of section 28(1)(a) of the NPA Act and implored them to rather resort to the provisions of section 28(1)(b). They were simply not prepared to accept my advice, at that stage. Indeed, sanity finally prevailed, and they followed my advice and approached the NDPP but only in December 2003.
72. On 11 November 2003, I received a memorandum from Advocate Ackermann SC. In this memorandum, Advocate Ackerman SC stated, amongst other things that:

"On 3 November 2003 you informed me that you would sign the declaration in terms of section 28 (1) (b) and would appoint SSI De Lange to conduct the necessary investigation".



73. Advocate Ackermann SC is completely misrepresenting my advice to him. In the first place, section 28(1)(b) refers to the authority of the NDPP and I was not the NDPP. What I conveyed to him was that he must approach the NDPP under section 28(1)(b) and if the NDPP approves his request, I will then appoint SSI De Lange from the DSO to conduct the necessary investigation.
74. I expressly pointed out to Advocate Ackerman SC that I had been advising them all along to first approach the NDPP, as he was the only one in terms of the Act, to issue a directive first in terms of section 28 (1) (b).
75. On or about 10 November 2003, Advocate Macadam submitted four TRC matters for consideration in terms of sections 28(1)(b) and 28(13) of the NPA Act. This included their instruction that SSI De Lange be designated as the investigator to deal with the matter.
76. I informed Advocate Macadam that the applications that he had forwarded to me were not in compliance with the prescripts of section 28(1)(b). I again explained to Advocates Ackerman SC and Macadam that I was unable to authorize the four applications until they had followed the letter of the law.
77. I never oscillated in my advice to the PCLU at all. I advised them to first approach the NDPP, who would then issue the required directive and instruct me to declare the TRC Cases projects and appoint DSO investigators.



78. It is common cause that the PCLU finally accepted my advice and directed their applications correctly to the NDPP on 8 December 2003. The NDPP approved their request and duly signed the directive instructing me to authorize the four matters in terms of section 28 (1) (b) on 24 February 2004. I attach as annexure **MGL4**, the Directive signed by the NDPP on 24 February 2004.
79. I duly complied with the NDPP's Directive and authorized the following 4 matters and designated DSO investigators:
- 79.1 The PEBCO 3 matter;
 - 79.2 The BRIAN KULUNGA matter;
 - 79.3 The MOTHERWELL 4 matter; and
 - 79.4 The Reverend FRANK CHIKANE matter.
80. The PCLU, was alive to and fully appreciative of how section 28 (1) (b) should be invoked. They accordingly adopted the same procedure and submitted a further application in terms of section 28(1)(b) of the NPA Act.
81. They now addressed their application to the correct person, namely, the NDPP, Advocate Bulelani Ngcuka, who then issued the required directive and instructed me, on 26 February 2004, to authorise two further matters, in terms of section 28(1)(b). This Directive is attached hereto as **MGL5**.
82. I again duly complied with the instructions of Advocate Ngcuka, and I authorised the two matters and DSO investigators were assigned to assist in the matters.

83. It is inexplicable and confounding to me why the PCLU only utilised the section 28(1)(b) process only in respect of six (6) matters, leaving out the rest of possibly ripe matters that could have been similarly authorised by the NDPP.
84. I note that Advocate Macadam contends in paragraph 39 of his affidavit before this Commission that I failed to respond to Advocate Ackerman's memorandum of 10 November 2003. I disagree with Advocate Macadam's contention.
85. I engaged Advocate Ackermann on his memoranda to me of the 10th of November 2003 and Advocate Ackermann SC confirms our engagement and states that I was "unmoved" by his plea.
86. Significantly, it is incorrect that I was unmoved and tone deaf to the TRC Cases. It is I, who advised Advocates Ackermann SC and Macadam to adopt the section 28(1)(b) of the NPA Act to ensure that DSO investigators were appointed to assist with matters.
87. I further note that Macadam states in paragraph 40 of his affidavit that *"On 8 December 2003, NDPP, NGCUKA acting in terms of section 28 (1) (b) instructed Ledwaba to have 4 (four) TRC cases specified and referred to be investigated by DSO, ..."* Macadam is obviously incorrect in this regard because the NDPP only directed and instructed the DSO on 24 February 2004, in line with their request dated 8 December 2003.

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88. I am aware that the PCLU applied to the NDPP and NPA senior management that six (6) DSO investigators be seconded to their unit. I am also aware that this request was not acceded to by the NDPP and his team (Dr Ramaite and Advocate McCarthy).
89. I can confirm that the overriding factor in refusing this request was because of the available capacity of investigators within the DSO. The SNPU then only had six (6) investigators. These investigators were saddled with the investigation of highly complex DSO authorized projects in the PCLU. Had the request by the PCLU been acceded to, this would have resulted in the entire SNPU being highly constrained.
90. The Calata affidavit states that the DSO persisted in its refusal to appoint investigators, as did the SAPS. It is alleged that according to Advocate Macadam the refusal by the DSO to provide investigators, effectively brought an end to the investigation and prosecution of TRC Cases.
91. This is an incorrect representation of the context within which the DSO and the PCLU interacted, regarding the investigation and prosecution of TRC Cases.
92. The DSO authorized the investigation of a total of six (6) TRC matters as directed by the NDPP in 2004 and as per the requests of the PCLU.
93. In my view, the PCLU had no impediments from pursuing any new investigation utilising the section 28(1)(b) process by applying to the NDPP.

B A




94. The last application the PCLU made in 2003, was on 8 December 2003. The NDPP approved their request and instructed me to authorize the four matters on 24 February 2004 and further instructed me to authorize two TRC matters on 26 February 2004.

95. I again wish to stress that the DSO never stopped or refused to investigate TRC matters.

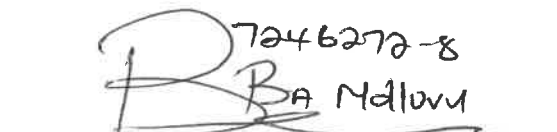
CONCLUSION

96. In conclusion I deny emphatically that I stopped or interfered with the investigation or prosecution of TRC Cases.

DATED AT PRETORIA ON THIS ^{14th} DAY OF APRIL 2026.


MALALA GEOPHREY LEDWABA

Thus sworn to and signed before me at JHB Central on this, the 14th of April 2026, the deponent having acknowledged that he understands the contents of this affidavit, and that the contents thereof are true, that he has no objection to the taking of the oath and that he considers this oath to be binding on his conscience.

⁷²⁴⁶²⁷²⁻⁸

COMMISSIONER OF OATHS



Believe Akani MDLOVU
01 Commissioner Street JHB
Constable



|

ANNEXURE "NYGLI"

CICU & SNU

Number	Project Name	List received from Head Quarters	On Head Office List	File at Head Office	Head Office File number	Questionnaire received	On e.gls.1
1	Bikabong	X	X	X	HQ-68	Yes	Yes
2	Dag	X	X	X	HQ-96	Yes	Yes
3	Drogen Chaser	X	X	X	HQ-19	Yes	Yes
4	Mocamba	X	X	X	HQ-155	Yes	Yes
5	Cherry	X	X	X	HQ-13	Yes	Yes
6	Yergart	X	X	X	HQ-78	Yes	Yes
7	Equatorial Guinea	X	X	X	HQ-136	Yes	Yes
8	Ryanyia	X	X	X	HQ-182	Yes	Yes
9	Technikon NW	X	X	X	HQ-11	Yes	No
10	Southern Ambition	X	X	X	HQ-8	Yes	No
11	Sumvit	Yes/KZN	X	Yes	KZAN-5	Yes	No

SNU TRC FILES

1	Blockets	Murder - killing of ANC members by IFF in Ermelo
2	COSASA	Murder of four members of COSASA
3	Credock Four	Kidnapping/Murder of ANC members by SAPS Security Branch
4	Duboni	Murder of MK member by SAP Security branch
5	Early Learning	Investigation: Bombing of early learning center in Cape Town
6	Fire Fly	Murder and kidnaping of Brian Ngalanga Veleplase Ashani
7	Lucky Star	Investigation into the murder of Apla members
8	Mamelodien	The murder of ten ANC comrades by N-TM Security police
9	Nelson Sifhole	Murder - killing of ANC members by unknown persons
10	Pelsoothlwa	Kidnapping/Murder of ANC by SAPS Security Branch
11	Powell	Powell received 70 tons of weapons from Eugens Da Lock
12	Project	Assassination of activists Project in Nyanga
13	Sevebiko	Investigation into the murder of Steve Biko by APS Security branch
14	Tinoli	Alleged murder of detainees in police detention

Closed Files

1	Catcho	Sealing of criminal case dockets by prosecutors
2	Finlauntain	Investigation into hijacking syndicate
3	Hurricanes	Murder of traffic officer
4	Mosafiro	Contravention of foreign military Act
5	Observatory	Legal opinion on the appointment of SC
6	Oswich	Car hijacking syndicate
7	Thorn	Investigation into contravention of Foreign Military Act

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[Handwritten initials]

~~ADIO~~ ~~AJ1473~~

Investigations

P. O. Box 752,
PRETORIA
0001

VGM Building
Hartley St.
Weavind Park
0001
Pretoria
South Africa

Office of the Head
Priority Crimes Litigation Unit
VGM Building
PRETORIA

INTERNAL MEMORANDUM

TO : CIO Leask
FROM : Adv M G Ledwaba
DATE : 15 JULY 2003

SUBJECT : SNPU INVESTIGATIONS

Tel: (012) 845 6431
Cell: 082 498 6033

- 1. Due to the recent creation of the PCLU it has become necessary to re-define the mandate and operations of the SNPU as follows:

(i) TRC cases

I have decided that SAPS must take over the investigations of all such cases currently handled by you. Your files should be closed off and all the material given to the PCLU. It must also be given the storeroom currently being used. Notwithstanding the above decision Adv TONGWANE must finalize the Black Cats and Winnie Mandela cases. Due to the fact that NDPP has requested a speedy finalization of the two matters this must be done before 30 July 2003. I have also transferred the two researchers to the PCLU. It may be necessary for your investigators to introduce certain witnesses with whom they have dealt to the SAPS investigators and you are accordingly authorized to conduct the necessary handovers.

(ii) Operation Sunflower

Advocate MACADAM will continue to oversee the disruptive action with the Consumer Council with your assistance. Once the SAPS report is received and evaluated, I will make a decision on the final disposal of the case.

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[Handwritten initials BA]
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- 2 -

(iii) **Operation Black Widow**

Adv TONGWANE must oversee the finalization of the investigation and conduct the prosecutions which may arise.

(iv) **Operation Final Curtain**

SAPS must continue with the investigations under the direction of the prosecutor arranged by Adv ACKERMANN. You may give limited assistance to SAPS and the prosecutor on specific aspects when necessary.

(v) **Foreign Mercenaries**

Adv PRETORIUS has been delegated to assess all cases currently being investigated by both SAPS and the DSO. (I have communicated separately to the Regional Head Gauteng in this regard). I will make a decision as to the involvement of the DSO in such investigations once I have received a report from Adv ACKERMANN.

Adv M G Ledwaba
HEAD : OPERATIONS

/tp

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NOTICE IN TERMS OF RULE 3.3 OF THE RULES OF THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS REGARDING EFFORTS OR ATTEMPTS HAVING BEEN MADE TO STOP THE INVESTIGATION OR PROSECUTION OF TRUTH AND RECONCILIATION COMMISSION CASES

TO: Geoph Ledwaba

EMAIL: Ledwaba.malala@yahoo.com

INTRODUCTION AND ESTABLISHMENT OF THE COMMISSION

1. On 29 May 2025, the President of the Republic of South Africa issued Proclamation Notice No. 264 of 2025, establishing the Judicial Commission of Inquiry into Allegations Regarding Efforts or Attempts Having Been Made to Stop the Investigation or Prosecution of Truth and Reconciliation Commission Cases ("the Commission").
2. The Commission was appointed in terms of section 84(2)(f) of the Constitution, 1996. The Honourable Madam Justice S. Khampepe serves as Chairperson, with the Honourable Mr Justice F. D. Kgomo and Adv A. Gabriel SC as members.
3. In terms of its mandate, the Commission is required to inquire into, make findings, report on, and make recommendations concerning allegations that, since 2003, efforts or attempts were made to influence, pressure, or otherwise improperly prevent the South African Police Service and/or the National Prosecuting Authority from investigating or prosecuting TRC cases. The Terms of Reference further require the Commission to determine whether officials within these institutions colluded in such efforts, and whether further action—including investigations, prosecutions, or the payment of constitutional damages—is warranted.

BA

4. Among the parties identified as having a substantial interest in these proceedings are:
 - a. The applicants in the matter of L.B.M. Calata and 22 Others v Government of the Republic of South Africa and Others (Case No. 2025-005245, North Gauteng High Court, Pretoria); and
 - b. The families of victims in TRC cases who have a substantial interest in the matters under inquiry.

NOTICE IN TERMS OF RULE 3.3

5. This notice is issued in terms of Rule 3.3 of the Rules of the Commission, read with the Regulations made under Government Notice R.278 of 2025.
6. The Commission's Evidence Leaders intend to present the evidence of one or more applicants in the Calata case, and any person who in the opinion of the Evidence Leaders possesses information that relates to the paragraph 9 allegations against you and is relevant to the Commission's work.
7. The specific date and venue for the hearing at which such evidence will be presented will be communicated to you in due course.
8. The evidence in paragraph 9, being the extract of the Calata matter's founding affidavit, with corresponding paragraph numbering, implicates, or may implicate, you in allegations regarding efforts or attempts to halt or suppress the investigation or prosecution of TRC matters. Further details of the Calata proceedings, including the said affidavit, are available on the Commission's website at www.trc-inquiry.org.za

BA

PARTICULARS OF IMPLICATION

9. It is alleged as follows:

129. Following Mbeki's speech, those wielding power and influence wasted little time in closing down the TRC Cases. Within a few weeks of the speech, attempts by PCLU prosecutors to commence investigations were blocked when they were refused investigative support by both the DSO and SAPS.

130. As mentioned above, the PCLU was engaged in identifying key TRC cases for further investigation, and they were entertaining requests from family members. One of the requests made to Macadam was from Imtiaz Cajee, nephew of Ahmed Timol who died in security detention in 1971. On 5 May 2003, Macadam sent a letter to Andrew Leask, the Chief Investigating Officer at the DSO (**Leask**) asking him to investigate the Timol case. A copy of this letter is attached to Macadam's aforesaid affidavit (**FA5**) as annex RCM1 (at p807).

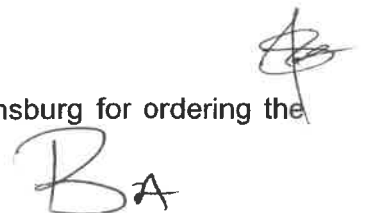
131. On 15 May 2003, Macadam submitted a report to the NDPP, the Head of the DSO and the head of DSO operations setting out the TRC cases which had been identified for investigation, which included the Timol case. A copy of this report is attached to Macadam's affidavit (**FA5**) as annex RCM2 (at p809).

131.1 According to Macadam the following cases were being prepared for prosecution:

131.1.1 The murder of four policemen in the Motherwell Bombing. The targets in this investigation were members of the Port Elizabeth

- SB and the Vlakplaas Unit, including Major General Nick van Rensburg.

131.1.2 The prosecution of Major General Nick van Rensburg for ordering the killing of askari Brian Ngqulunga.



- 131.1.3 The prosecution of the SB members responsible for kidnapping the PEBCO 3 from the Port Elizabeth Airport in 1985.
- 131.1.4 The prosecution of AZAPO leader George Wauchope for murder and other charges.
- 131.1.5 The prosecution of Phillip Powell for possessing hand grenades and other illegal weapons in April 1994.
- 131.1.6 The prosecution of JM Ngcobo and others for the concealment and possession of an arms cache at the Nqutu Bunker in May 1999.
- 131.1.7 The prosecution of the CCB members responsible for the bombing of the Early Learning Centre in Athlone.
- 131.2 The next category of cases was titled "POTENTIAL FURTHER PROSECUTIONS ARISING FROM THE ABOVE" and included:
- 131.2.1 The murder of the PEBCO 3. It was noted that a kidnapping prosecution could encourage one or more suspects to speak about the murders for a "lesser sentence".
- 131.2.2 The murder of the Cradock Four. It was noted that the same suspects behind these murders were also involved in the Motherwell and PEBCO 3 killings, and that prosecutions in those killings could encourage suspects to come forward in the Cradock Four case in order to secure a "lesser sentence".
- 131.3 The next category of cases was titled "NEW CASES BEING EVALUATED FOR PROSECUTION PURPOSES" and included:

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- 131.3.1 The murder of the COSAS 4.
- 131.3.2 The murder of askari Adriano 'Strongman' Bambo, who was allegedly murdered by the SB to prevent him disclosing details about the murder of Nokuthula Simelane and others.
- 131.3.3 The murder of a detainee on the East Rand by Willem Helm Johannes 'Timol' Coetzee.
- 131.3.4 The murder of askari Dan Mabolo.
- 131.3.5 Allegations by an IFP sentenced prisoner to have knowledge of murders in the East Rand from 1988.
- 131.3.6 447 dockets relating to APLA handed over by SAPS Crimes Against the State Unit.
- 131.3.7 Six to eight dockets linking the AWB to pre-election bombings previously dealt with by Adv Fick.


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The next category of cases was titled "HIGH INTEREST CASES WHICH REQUIRE ATTENTION IRRESPECTIVE OF THE NATURE OF AVAILABLE EVIDENCE" and included:

- 131.3.8 The murder of Victoria Mxenge.
- 131.3.9 The kidnapping, torture and murder of Ntombikayise Khubeka.
- 131.3.10 The kidnapping, torture and murder of Nokuthula Simelane
- 131.3.11 The decision by the DPP (Pretoria) not to prosecute SAP General Krappies Engelbrecht.
- 131.3.12 The un-investigated allegations against SAP General Bassie Smit.
- 131.3.13 The Ciskei coup d'etat.
- 131.3.14 The Transkei coup d'etat.
- 131.3.15 The pre-election train violence in Gauteng.
- 131.3.16 The murder of Reggie Hadebe.
- 131.3.17 The murder of Dulcie September.



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131.3.18 The refusal of amnesty to 37 high ranking ANC officials.

131.3.19 The decision by the DPP KwaZulu Natal not to prosecute IFP hit squads.

131.4 Other categories were titled "*CASES IN THE PROCESS OF BEING CLOSED*", "*ASSISTANCE TO OTHER AGENCIES*" and

- "*REPARATIONS RELATED ACTIVITIES*". Another category dealt with cases that had been put on hold pending the appeal in the Basson case in relation to jurisdiction for conspiracy to commit crimes outside South Africa. These cases included:

131.4.1 The murder of Anton Lubowski.

131.4.2 The Lesotho Raid (also known as the Maseru Raid).

131.4.3 The Botswana Raid (also known as the Gaborone Raid).

131.4.4 The Swaziland Raid.

131.5 Macadam concluded his letter with certain "Policy Considerations":

131.5.1 Prosecutions not to be conducted on a piece meal basis except where special circumstances demand (e.g. witness on point of

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death, accused about to leave South Africa or engaged in current criminal activities).

131.5.2 Once all the cases earmarked for prosecution have been investigated, a presentation will be given to the NDPP in order for him to confirm the prosecution strategy.

131.5.3 Thereafter prosecutions will be instituted. After convictions have been obtained attention will be given to cases which currently have evidence since convictions may act as incentive for perpetrators to come forward.

132. If only a fraction of the cases listed in Macadam's report had been resolved in the early 2000s it would have brought significant closure for the concerned families and given considerable impetus for the finalisation of the balance of cases.

133. The [minutes](#) of the Justice Portfolio Committee meeting on 10 June 2003 in respect of the NPA reflected:

*some cases emerging from the Truth and Reconciliation Commission are ready to proceed. In others the NPA awaits rulings from the Supreme Court of Appeal and from the reconvened TRC Amnesty Committee. **The Chair interjected to ask if any legislative change was needed to deal with TRC cases where immunity from prosecution was to be offered.** Mr Ngcuka replied that he could see no need for a change in legislation." (emphasis added)*

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134. At the DSO, it was Special Director Adv MG 'Geoph' Ledwaba (**Ledwaba**) who made decisions on the opening of new investigations. Accordingly, Ackermann and Macadam met with Ledwaba to ask the DSO to conduct investigations referred to in the aforesaid report. Ledwaba was firm in his refusal to take on the TRC cases. In his affidavit, Macadam noted the following about that meeting:

*"The meeting was unpleasant as Ledwaba **made it clear in no uncertain terms that the DSO would not investigate any TRC matters** and that these should all be referred to SAPS." (emphasis added)*

135. A copy of a letter addressed by Ledwaba to Leask dated 15 July 2003 reflecting this decision is annexed to Macadam's affidavit (**FA5**) as annex RCM3 (at p814). In this letter he instructed Leask as follows:

"TRC cases

I have decided that SAPS must take over the investigations of all such cases currently handled by you. Your files should be closed off and all the material given to the PCLU. It must also be given the storeroom currently being used. Notwithstanding the above decision Adv Tongwane must finalize the Black Cats and Winnie Mandela cases. Due to the fact that NDPP has requested a speedy finalization of the two matters this must be done before 30 July 2003. I have also transferred the two researchers to the PCLU. It may be necessary for your investigators to introduce certain witnesses with whom they have dealt to the SAPS investigators, and you are accordingly authorized to conduct the necessary handovers."




136. This refusal of the DSO to investigate the TRC cases was a remarkable decision, given that the DSO had previously been seized with the TRC cases and just weeks earlier the NDPP had declared the TRC cases to be "*priority crimes*".

The President must decide

137. It is reflected in Macadam's affidavit that he and Ackermann then met with Commissioner Johannes De Beer, the Divisional Head of the Detective Service of the SAPS (**De Beer**) and requested the SAPS to take over the investigations.

137.1 On 26 September 2003, De Beer replied to Ackermann informing him that the request had been discussed with the National Commissioner of the SAPS, Jacob "Jackie" Sello Selebi (**Selebi**). In his letter De Beer advised that the SAPS would not provide investigators for the TRC cases.

137.2 He indicated that the investigation of the TRC matters was a DSO responsibility and the NDPP would need to approach the President for a decision as to which agency should conduct the investigations. A copy of this letter is attached to Macadam's affidavit (**FA5**) as annex [RCM4](#) (at p816).

137.3 According to Macadam, NDPP Bulelani Ngcuka never approached the President.

138. De Beer explained as follows in his letter:




"I have discussed your request for the assistance of the South African Police Service, to investigate cases emanating from the TRC processes, with the National Commissioner, It is evident from your letter that the investigation and prosecution of these cases were referred to the National Director of Public Prosecutions, by the President. **Our understanding was that this referral was politically inspired.** As you know, a large number of cases to be investigated are those of ex- policemen. It is therefore understandable that you first endeavoured to have these cases investigated by the Directorate for Special Operations (DSO).

From your letter it is firstly not clear why the DSO do not have the legal mandate to investigate the cases emanating from the TRC, and secondly, why it was not possible to obtain a Presidential Proclamation to provide such mandate if it was lacking. Your letter only states that: "In March 2002, consideration was given to the issue of a Presidential proclamation, but problems were encountered in this regard. You are aware of the fact that the capacity created for the D 'Oliveira Committee is presently with the DSO.

In view of the nature of the investigations, the fact that the President has referred it to the National Director, and that it seem to be common cause that the initial understanding was that the DSO would have investigated it, the opinion is held that you, or the National Director should approach the President, and confirm the instruction of the President on who he wants to investigate these cases.

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If the President indicates that the South African Police Service should be involved in the investigations, the instruction should be obtained in writing. Upon receipt of such instruction, the South African Police Service shall of course assist, and the terms of reference, as well as issues such as logistics, number of investigators, command, can be discussed, as well as issues such as logistics, number of investigators, command, can be discussed, as well as other relevant issues.

- You are therefore requested to approach the President on the matter, where after we can take the matter further, if necessary.” (emphasis added)

139. It is notable that the SAPS regarded the TRC cases as a political issue. It is also noteworthy that the only state entities authorised to conduct official criminal investigations in South Africa both refused to touch the TRC cases. It is highly unlikely that their decisions were spontaneous or mere coincidences. It is apparent that by May 2003 both the SAPS and the NPA were reluctant to take on the TRC cases, and in all probability had been told not to do so from a political level.

140. The fact that the NPA was told to contact the President reflected that the question of investigating the TRC cases was now a purely political one, and a sensitive one at that. It appeared that only the head of state could make that decision, regardless of what the law and Constitution said about investigative authority.

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141. It is remarkable that NDPP Ngcuka did not contact the President for a decision on this question. The failure to do so probably suggests that approaching the President was seen as a futile exercise.

- No investigations

142. Thereafter Ackermann and Macadam made a last-ditch attempt to persuade Special Director Ledwaba at the DSO to reconsider his decision not to investigate the TRC cases. Ackermann sent Ledwaba a letter (styled as an "Internal Memorandum") dated 11 November 2003 appealing him to appoint investigating officers. It was pointed out in the letter that "*if the DSO did not provide investigators the PCLU would not be able to deliver on its mandate.*"

Both the NDPP and Head of the DSO were copied on the letter, a copy of which is attached to Macadam's affidavit (FA5) as annex [RCM5](#) (at p818). This letter is reproduced below:

"1. In the light of current developments, I am constrained to document the history of the above saga.

- i) In 2001 the NDPP decided that the DSO was responsible for the investigation and prosecution of the above cases. Both Advocates Sonn and McCarthy made a number of public statements creating an impression that the DSO was making a sincere effort to do justice to the cases. In



addition, Advocate Sonn gave the President a full briefing on the matter.

- ii) In 2002 the SNPU was established in order to investigate the cases.
 - iii) In 2003 and in response to the TRC's final report, the President placed the responsibility for the investigation and prosecution of TRC matter on the NDPP.
 - iv) In May 2003 I gave the NDPP and his Deputies a full briefing on all TRC, cases identified for prosecution.
- My prosecution strategy was endorsed and Advocate McCarthy indicated that there would be no problem in having the cases declared in terms of Section 28 of the NPA Act. The NDPP briefed the Minister and Justice Portfolio Committee accordingly.
 - v) Shortly thereafter and in the same month you were presented with applications in terms of Section 28 relating to the cases.
 - vi) In July 2003 you verbally informed me that you were not prepared to sign the declarations and were withdrawing the DSO from the further investigation of the cases. A letter to this effect was given to the CIO Leask by you.
(Copy attached)



- vii) In response thereto I requested Commissioner De Beer to appoint the police to take over the investigations. After a series of meetings with him, he approached the National Commissioner who indicated that the police would only investigate upon written instruction of the President (Copy of De Beer's letter is attached). His primary reason was that the SAPS had transferred all their members with appropriate experience to the DSO in order to capacitate it to conduct these investigations.
- viii) After receipt of De Beer's letter, I made several unsuccessful attempts to contact you to discuss the matter. Eventually I had to report the matter to Dr Ramaite.
- ix) On 3 November 2003 you informed me that you would sign the declarations in terms of Section 28(1)(b) and would appoint SSI De Lange to conduct the necessary investigations.
- x) On 6 November 2003 Dr Ramaite informed Adv Macadam that he had discussed the matter with Adv McCarthy who indicated that the DSO would investigate.
- xi) On 10 November 2003, Adv Macadam presented you with Section 28(i)(b) declarations.



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You informed him:

- a) That you are not prepared to sign any declarations
- b) De Lange would not be appointed despite the fact that it was explained to you that he was part of the initial investigation and familiar with all the witnesses and the facts of the cases.
- c) That during the course of 10 November 2003 another Investigator will be appointed.
- d) The President should not be approached to involve SAPS.

2. As at the date of this letter I have heard nothing further from you. I am constrained to express my concern at the above state of affairs. Since July 2003 no investigations have been conducted.

There are certain cases which could have been prosecuted which have prescribed. There is both National and International pressure to institute prosecutions (e.g. Simelane's case). An amnesty hearing for the Motherwell Matter has been set down for early March 2004 and the TRC was given an undertaking that certain investigations would be conducted and made available to the committee. The availability of witnesses and high public interest dictate that the other cases be brought to trial as soon as possible. The failure to do so will bring the *bona fides* of the National Prosecuting Authority into serious dispute and do irreplaceable damage.

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Since I do not have any investigative capacity, I am powerless to deliver on my mandate. For the sake of justice and expediency, I appeal to you to assign De Lange and another investigator to investigate these cases and to sign the declarations in terms of Section 28(1)(b). This chapter in our country's history must be closed without further delay."

143. Ackermann's heartfelt plea fell on deaf ears. Ledwaba was not moved to act, even though he was advised that the NPA was under local and international pressure, and cases were piling up. Ackermann's warning that the failure to proceed with the TRC cases would bring the NPA into disrepute, and do irreparable harm to its image, was precisely what happened.
144. The DSO persisted in its refusal to appoint investigators, as did the SAPS. According to Macadam this effectively brought an end to the TRC cases as it meant that no new investigations of the TRC matters could be opened.
145. The TRC cases were effectively closed down before the end of 2003, before the PCLU could commence real case work. The few cases taken forward subsequently were those in which investigation dockets had already been completed.
146.
147. The refusal by both the SAPS and the DSO to investigate some of the most serious crimes committed in South Africa deeply violated their legal and constitutional obligations.



YOUR RIGHTS AND OBLIGATIONS

10. You are entitled to attend the hearing at which the evidence relating to the above allegations, and any other that may be led against you, is presented. You may be represented by a legal practitioner of your choice.
11. Rule 3.4 requires that, within fourteen (14) calendar days of this notice, you submit a statement in the form of an affidavit responding to the allegations. Your affidavit must specify which parts of the evidence are disputed or denied, and set out the grounds for such dispute or denial.
12. If you wish to—
- a. give evidence yourself;
 - b. call any witness in your defence; or
 - c. cross-examine the witness whose evidence implicates you,
- you must apply in writing to the Commission for leave to do so within fourteen (14) calendar days of this notice, accompanied by your affidavit.



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13. You may also apply for leave to make written and/or oral submissions regarding the findings or conclusions that the Chairperson should draw from the evidence relating to you.

COMMUNICATION WITH THE COMMISSION

14. All correspondence, applications, and affidavits must be directed to: The Secretary of the Commission Secretary@trc-inquiry.co.za.

DATED at **Sci Bono Discovery Centre** Johannesburg on this 24th day of October 2025.

For and on behalf of the Evidence Leaders to the Judicial Commission of Inquiry into Allegations Regarding Efforts or Attempts Having Been Made to Stop the Investigation or Prosecution of TRC Cases.


BA

er/cris

Office of the Head
Priority Crimes Litigation Unit
HEADQUARTERS

INTERNAL MEMORANDUM

TO: HEAD OF OPERATIONS: DSO
FROM: NDPP
DATE: 8 DECEMBER 2003
RE: INVESTIGATION OF TRC CASES BY THE DSO

P. O. Box 1511
SILVERTON
PRETORIA
0127

VGM Building
123 Westlake Str
Weavind Park
0184

Tel: (012) 845 6431
Cell: 082 498 6033
Fax: (012) 845 7224

I have decided in terms of section 28(1)(b) of Act 32 of 1998 that the following three cases arising from the TRC be investigated by the DSO.

- (i) Kidnapping, assault and murder of the PEBCO 3;
- (ii) Murder of Brian Ngulunga;
- (iii) Murder of Motherwell 4; and
- (iv) Attempted murder of Reverend Frank Chikane.

Kind regards



B T Ngcuka
.....
B T NGCUKA
NATIONAL DIRECTOR OF
PUBLIC PROSECUTIONS

24/02/04

BA

APIS 1482



The National Prosecuting Authority of South Africa
Iginyo Jikelele lobeshutshini boMzantsi Afrika
Die Nasionale vervolgings-gesag van Suid-Afrika

PL

er trc (ns)

Office of the National Director of Public Prosecutions

Office of the Head
Priority Crimes Litigation Unit
VGM Building
PRETORIA

Victoria & Griffiths
Mxenge Building,
123 Westlake Avenue,
Leaving Park, Silverton


PiBag X752
Pretoria
0351
121 845-6000
www.npa.gov.za

TO : ADV M G LEDWABA
HEAD OF OPERATIONS
FROM : NDPP
DATE : 26 FEBRUARY 2004

REF: A/INV/25/02 TRC
A/INV/18/02 TRC

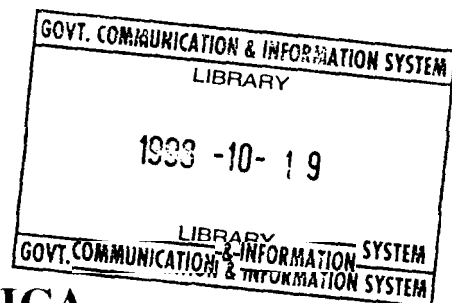
RE : REFERRAL OF TRC CASES TO THE DSO IN TERMS OF SECTION 28(1)(b) OF ACT 32 OF 1998

I have decided to refer the following matter to the DSO for investigation in terms of section 28(1)(b) of Act 32 of 1998. Crimes of murder, attempted murder and conspiracy or incitement to commit murder committed in an organized fashion by Letlapa Mphahlela with reference to the APLA attacks on the St James Church and Heidelberg Tavern situated in Cape Town.


B T NGCUKA
NATIONAL DIRECTOR OF
PUBLIC PROSECUTIONS







REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

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No. 19021

OFFICE OF THE PRESIDENT

No. 892.

3 July 1998

It is hereby notified that the President has assented to the following Act which is hereby published for general information:—

No. 32 of 1998: National Prosecuting Authority Act, 1998.

KANTOOR VAN DIE PRESIDENT

No. 892.

3 Julie 1998

Hierby word bekend gemaak dat die President sy goedkeuring gegee het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 32 van 1998: Wet op die Nasionale Vervolgingsgesag, 1998.

ACT

To regulate matters incidental to the establishment by the Constitution of the Republic of South Africa, 1996, of a single national prosecuting authority; and to provide for matters connected therewith.

PREAMBLE

WHEREAS section 179 of the Constitution of the Republic of South Africa, 1996 (Act No.108 of 1996), provides for the establishment of a single national prosecuting authority in the Republic structured in terms of an Act of Parliament; the appointment by the President of a National Director of Public Prosecutions as head of the national prosecuting authority; the appointment of Directors of Public Prosecutions and prosecutors as determined by an Act of Parliament;

AND WHEREAS the Constitution provides that national legislation must ensure that the Directors of Public Prosecutions are appropriately qualified and are responsible for prosecutions in specific jurisdictions;

AND WHEREAS the Constitution provides that national legislation must ensure that the prosecuting authority exercises its functions without fear, favour or prejudice;

AND WHEREAS the Constitution provides that the National Director of Public Prosecutions must determine, with the concurrence of the Cabinet member responsible for the administration of justice, and after consulting the Directors of Public Prosecutions, prosecution policy which must be observed in the prosecution process;

AND WHEREAS the Constitution provides that the National Director of Public Prosecutions may intervene in the prosecution process when policy directives are not being complied with, and may review a decision to prosecute or not to prosecute;

AND WHEREAS the Constitution provides that the Cabinet member responsible for the administration of justice must exercise final responsibility over the prosecuting authority;

AND WHEREAS the Constitution provides that all other matters concerning the prosecuting authority must be determined by national legislation;

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

CHAPTER 1

Introductory provisions

Definitions

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1. In this Act, unless the context otherwise indicates—

- (i) “*Constitution*” means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996); (v)
- (ii) “*Deputy Director*” means a Deputy Director of Public Prosecutions appointed under section 15(1); (ii)

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- (iii) “*Deputy National Director*” means a Deputy National Director of Public Prosecutions appointed under section 11(1); (iii)
- (iv) “*Director*” means a Director of Public Prosecutions appointed under section 13(1); (iv)
- (v) “*Investigating Director*” means a Director of Public Prosecutions appointed under section 13(1)(b) as the head of an *Investigating Directorate*; (x) 5
- (vi) “*Investigating Directorate*” means an Investigating Directorate established under section 7(1); (xi)
- (vii) “*Minister*” means the Cabinet member responsible for the administration of justice; (viii) 10
- (viii) “*National Director*” means the National Director of Public Prosecutions appointed in terms of section 179(1)(a) of the *Constitution*; (ix)
- (ix) “*Office of the National Director*” means the Office of the National Director of Public Prosecutions established by section 5; (vii)
- (x) “*prescribed*” means prescribed by regulation made under section 40; (xvi) 15
- (xi) “*prosecuting authority*” means the single national prosecuting authority referred to in section 2; (xv)
- (xii) “*prosecutor*” means a prosecutor referred to in section 16(1); (i)
- (xiii) “*Public Service Act*” means the Public Service Act, 1994 (Proclamation 103 of 1994); (xiv) 20
- (xiv) “*Republic*” means the Republic of South Africa, referred to in section 1 of the *Constitution*; (xii)
- (xv) “*Special Director*” means a Director of Public Prosecutions appointed under section 13(1)(c); (xiii)
- (xvi) “*this Act*” includes the regulations. (vi) 25

CHAPTER 2

Structure and composition of single national prosecuting authority

Single national prosecuting authority

2. There is a single national prosecuting authority established in terms of section 179 of the *Constitution*, as determined in *this Act*. 30

Structure of prosecuting authority

3. The structure of the single *prosecuting authority* consists of—

- (a) the *Office of the National Director*; and
- (b) the offices of the *prosecuting authority* at the High Courts, established by section 6(1). 35

Composition of national prosecuting authority

4. The *prosecuting authority* comprises the—

- (a) *National Director*;
- (b) *Deputy National Directors*;
- (c) *Directors*; 40
- (d) *Deputy Directors*; and
- (e) *prosecutors*.

Office of National Director of Public Prosecutions

5. (1) There is hereby established the National Office of the *prosecuting authority*, to be known as the Office of the National Director of Public Prosecutions. 45

(2) The *Office of the National Director* shall consist of the—

- (a) *National Director*, who shall be the head of the Office and control the Office;
- (b) *Deputy National Directors*;
- (c) *Investigating Directors* and *Special Directors*;
- (d) other members of the *prosecuting authority* appointed at or assigned to the Office; and 50
- (e) members of the administrative staff of the Office.

(3) The seat of the *Office of the National Director* shall be determined by the President.

Offices of prosecuting authority at seats of High Courts

6. (1) There is hereby established an Office for the *prosecuting authority* at the seat of each High Court in the *Republic*.
- (2) An Office established by this section shall consist of—
- (a) the head of the Office, who shall be either a *Director* or a *Deputy Director*, and who shall control the Office; 5
 - (b) *Deputy Directors*;
 - (c) *prosecutors*;
 - (d) persons contemplated in section 38 (1); and
 - (e) the administrative staff of the Office. 10
- (3) If a *Deputy Director* is appointed as the head of an Office established by subsection (1), he or she shall exercise his or her functions subject to the control and directions of a *Director* designated in writing by the *National Director*.

President may establish Investigating Directorates

7. (1) (a) The President may, by proclamation in the *Gazette*, establish not more than three Investigating Directorates in the *Office of the National Director*, in respect of specific offences or specified categories of offences. 15
- (b) A proclamation referred to in paragraph (a) shall be issued with the concurrence of the *Minister* and the *National Director*.
- (2) A proclamation referred to in subsection (1) (a) must specify the offences or the categories of offences for which an *Investigating Directorate* had been established. 20
- (3) The head of an *Investigating Directorate* shall be an *Investigating Director*, and shall perform the powers, duties and functions of the Directorate subject to the control and directions of the *National Director*.
- (4) (a) An *Investigating Director* shall be assisted in the exercise of his or her powers and the performance of his or her functions by— 25
- (i) one or more *Deputy Directors*, to perform, subject to the control and directions of the *Investigating Director*, any functions of the *Investigating Director*;
 - (ii) *prosecutors*; 30
 - (iii) officers of any Department of State seconded to the service of the Directorate in terms of the laws governing the public service;
 - (iv) persons in the service of any public or other body who are by arrangement with the body concerned seconded to the service of the Directorate; and
 - (v) any other person whose services are obtained by the *Investigating Director* for the purposes of a particular inquiry. 35
- (b) For the purposes of subparagraphs (iv) and (v) of paragraph (a)—
- (i) any person or body requested by the *Investigating Director* in writing to do so, shall from time to time, after consultation with the *Investigating Director*, furnish him or her with a list of the names of persons, in the employ or under the control of that person or body, who are fit and available to assist the *Investigating Director* as contemplated in the said subparagraph (iv) or (v), as the case may be; and 40
 - (ii) such a person or body shall, at the request of the *Investigating Director* and after consultation with the *Investigating Director*, designate a person or persons mentioned in the list concerned so to assist the *Investigating Director*. 45

CHAPTER 3

Appointment, remuneration and conditions of service of members of the prosecuting authority

Prosecuting authority to be representative 50

8. The need for the *prosecuting authority* to reflect broadly the racial and gender composition of South Africa must be considered when members of the *prosecuting authority* are appointed.

Qualifications for appointment as National Director, Deputy National Director or Director

- 9.** (1) Any person to be appointed as *National Director, Deputy National Director or Director* must—
- (a) possess legal qualifications that would entitle him or her to practise in all courts in the *Republic*; and
 - (b) be a fit and proper person, with due regard to his or her experience, conscientiousness and integrity, to be entrusted with the responsibilities of the office concerned.
- (2) Any person to be appointed as the *National Director* must be a South African citizen.

Appointment of National Director

- 10.** The President must, in accordance with section 179 of the *Constitution*, appoint the National Director.

Appointment of Deputy National Directors 15

- 11.** (1) The President may, after consultation with the *Minister* and the *National Director*, appoint not more than three persons, as Deputy National Directors of Public Prosecutions.
- (2) (a) Whenever the *National Director* is absent or unable to perform his or her functions, the *National Director* may appoint any *Deputy National Director* as acting *National Director*.
- (b) Whenever the office of *National Director* is vacant, or the *National Director* is for any reason unable to make the appointment contemplated in paragraph (a), the President may, after consultation with the *Minister*, appoint any *Deputy National Director* as acting *National Director*.
- (3) Whenever a *Deputy National Director* is absent or unable to perform his or her functions, or an office of *Deputy National Director* is vacant, the *National Director* may, in consultation with the *Minister*, designate any other *Deputy National Director* or any *Director* to act as such *Deputy National Director*.

Term of office of National Director and Deputy National Directors 30

- 12.** (1) The *National Director* shall hold office for a non-renewable term of 10 years, but must vacate his or her office on attaining the age of 65 years.
- (2) A *Deputy National Director* shall vacate his or her office at the age of 65.
- (3) If the *National Director* or a *Deputy National Director* attains the age of 65 years after the first day of any month, he or she shall be deemed to attain that age on the first day of the next succeeding month.
- (4) If the President is of the opinion that it is in the public interest to retain a *National Director* or a *Deputy National Director* in his or her office beyond the age of 65 years, and—
- (a) the *National Director* or *Deputy National Director* wishes to continue to serve in such office; and
 - (b) the mental and physical health of the person concerned enable him or her so to continue,
- the President may from time to time direct that he or she be so retained, but not for a period which exceeds, or periods which in the aggregate exceed, two years: Provided that a *National Director's* term of office shall not exceed 10 years.
- (5) The *National Director* or a *Deputy National Director* shall not be suspended or removed from office except in accordance with the provisions of subsections (6), (7) and (8).
- (6) (a) The President may provisionally suspend the *National Director* or a *Deputy National Director* from his or her office, pending such enquiry into his or her fitness to hold such office as the President deems fit and, subject to the provisions of this subsection, may thereupon remove him or her from office—

- (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.

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(b) The removal of the *National Director* or a *Deputy National Director*, the reason therefor and the representations of the *National Director* or *Deputy National Director* (if any) shall be communicated by message to Parliament within 14 days after such removal if Parliament is then in session or, if Parliament is not then in session, within 14 days after the commencement of its next ensuing session.

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(c) Parliament shall, within 30 days after the message referred to in paragraph (b) has been tabled in Parliament, or as soon thereafter as is reasonably possible, pass a resolution as to whether or not the restoration to his or her office of the *National Director* or *Deputy National Director* so removed, is recommended.

(d) The President shall restore the *National Director* or *Deputy National Director* to his or her office if Parliament so resolves.

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(e) The *National Director* or a *Deputy National Director* provisionally suspended from office shall receive, for the duration of such suspension, no salary or such salary as may be determined by the President.

(7) The President shall also remove the *National Director* or a *Deputy National Director* from office if an address from each of the respective Houses of Parliament in the same session praying for such removal on any of the grounds referred to in subsection (6)(a), is presented to the President.

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(8) (a) The President may allow the *National Director* or a *Deputy National Director* at his or her request, to vacate his or her office—

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- (i) on account of continued ill-health; or
- (ii) for any other reason which the President deems sufficient.

(b) The request in terms of paragraph (a)(ii) shall be addressed to the President at least six calendar months prior to the date on which he or she wishes to vacate his or her office, unless the President grants a shorter period in a specific case.

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(c) If the *National Director* or a *Deputy National Director*—

- (i) vacates his or her office in terms of paragraph (a)(i), he or she shall be entitled to such pension as he or she would have been entitled to under the pension law applicable to him or her if his or her services had been terminated on the ground of continued ill-health occasioned without him or her being instrumental thereto; or
- (ii) vacates his or her office in terms of paragraph (a)(ii), he or she shall be deemed to have been retired in terms of section 16(4) of the *Public Service Act*, and he or she shall be entitled to such pension as he or she would have been entitled to under the pension law applicable to him or her if he or she had been so retired.

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(9) If the *National Director* or a *Deputy National Director*, immediately prior to his or her appointment as such, was an officer or employee in the public service, and is appointed under an Act of Parliament with his or her consent to an office to which the provisions of *this Act* or the *Public Service Act* do not apply, he or she shall, as from the date on which he or she is so appointed, cease to be the *National Director*, or a *Deputy National Director* and if at that date he or she has not reached the age at which he or she would in terms of the *Public Service Act* have had the right to retire, he or she shall be deemed to have retired on that date and shall, subject to the said provisions, be entitled to such pension as he or she would have been entitled to under the pension law applicable to him or her had he or she been compelled to retire from the public service owing to the abolition of his or her post.

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Appointment of Directors and Acting Directors

13. (1) The President, after consultation with the *Minister* and the *National Director*—

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- (a) may, subject to section 6(2), appoint a Director of Public Prosecutions in respect of an Office of the *prosecuting authority* established by section 6(1);

- (b) shall, in respect of each *Investigating Directorate*, appoint a Director of Public Prosecutions as the head of such an *Investigating Directorate*; and
- (c) may appoint one or more Directors of Public Prosecutions (hereinafter referred to as Special Directors) to exercise certain powers, carry out certain duties and perform certain functions conferred or imposed on or assigned to him or her by the President by proclamation in the *Gazette*. 5

(2) If a vacancy occurs in the office of a *Director* the President shall, subject to section 9, as soon as possible, appoint another person to that office.

(3) The *Minister* may from time to time, but subject to the laws governing the public service and after consultation with the *National Director*, from the ranks of the *Deputy Directors* or persons who qualify to be appointed as *Deputy Director* as contemplated in section 15 (2), appoint an acting *Director* to discharge the duties of a *Director* whenever the *Director* concerned is for any reason unable to perform the duties of his or her office, or while the appointment of a person to the office of *Director* is pending. 10

Term of office of Director 15

14. (1) Subject to subsection (2), a *Director* shall vacate his or her office on attaining the age of 65 years.

(2) A *Special Director* may be appointed for such fixed term as the President may determine at the time of such appointment, and the President may from time to time extend such term. 20

(3) The provisions of section 12(3), (4), (6), (7), (8) and (9), in respect of the vacation of office and discharge of the *National Director*, shall apply, with the necessary changes, with regard to the vacation of office and discharge of a *Director*.

Appointment of Deputy Directors

15. (1) The *Minister* may, subject to the laws governing the public service and section 16 (4) and after consultation with the *National Director*— 25

- (a) in respect of an Office referred to in section 6(1), appoint a Deputy Director of Public Prosecutions as the head of such Office; and
- (b) in respect of each office for which a *Director* has been appointed, appoint Deputy Directors of Public Prosecutions. 30

(2) A person shall only be appointed as a *Deputy Director* if he or she—

- (a) has the right to appear in a High Court as contemplated in sections 2 and 3(4) of the Right of Appearance in Courts Act, 1995 (Act No. 62 of 1995); and
- (b) possesses such experience as, in the opinion of the *Minister*, renders him or her suitable for appointment as a *Deputy Director*. 35

(3) If a vacancy occurs in the office of a *Deputy Director*, the *Minister* shall, after consultation with the *National Director*, as soon as possible appoint another person to that office.

Appointment of prosecutors

16. (1) *Prosecutors* shall be appointed on the recommendation of the *National Director* or a member of the *prosecuting authority* designated for that purpose by the *National Director*, and subject to the laws governing the public service. 40

(2) *Prosecutors* may be appointed to—

- (a) the *Office of the National Director*;
- (b) Offices established by section 6(1); 45
- (c) *Investigating Directorates*; and
- (d) lower courts in the *Republic*.

(3) The *Minister* may from time to time, in consultation with the *National Director* and after consultation with the *Directors*, prescribe the appropriate legal qualifications for the appointment of a person as *prosecutor* in a lower court. 50

(4) In so far as any law governing the public service pertaining to *Deputy Directors* and *prosecutors* may be inconsistent with *this Act*, the provisions of *this Act* shall apply.

Conditions of service of National Director, Deputy National Directors and Directors

17. (1) The remuneration, allowances and other terms and conditions of service and service benefits of the *National Director*, a *Deputy National Director* and a *Director* shall be determined by the President: Provided that— 5

- (a) the salary of the *National Director* shall not be less than the salary of a judge of a High Court, as determined by the President under section 2 (1) of the Judges' Remuneration and Conditions of Employment Act, 1989 (Act No. 88 of 1989);
- (b) the salary of a *Deputy National Director* shall not be less than 85 per cent of the salary of the *National Director*; and 10
- (c) the salary of a *Director* shall not be less than 80 per cent of the salary of the *National Director*.

(2) If an officer or employee in the public service is appointed as the *National Director*, a *Deputy National Director* or a *Director*, the period of his or her service as *National Director*, *Deputy National Director* or *Director* shall be reckoned as part of and continuous with his or her employment in the public service, for purposes of leave, pension and any other conditions of service, and the provisions of any pension law applicable to him or her as such officer or employee, or in the event of his or her death, to his or her dependants and which are not inconsistent with this section, shall, with the necessary changes, continue so to apply. 15 20

(3) The *National Director* is entitled to pension provisioning and pension benefits determined and calculated under all circumstances, as if he or she is employed as a Director-General in the public service.

(4) The President may, whenever in his or her opinion it is necessary and after consultation with the *Minister* and the *National Director*, transfer and appoint any *Director* to any Office contemplated in section 6 (1) or *Investigating Directorate*, or as a *Special Director*. 25

Remuneration of Deputy Directors and prosecutors

18. (1) Subject to the provisions of this section, any *Deputy Director* or *prosecutor* shall be paid a salary in accordance with the scale determined from time to time for his or her rank and grade by the *Minister* after consultation with the *National Director* and the Minister for the Public Service and Administration, and with the concurrence of the Minister of Finance, by notice in the *Gazette*. 30

(2) Different categories of salaries and salary scales may be determined in respect of different categories of *Deputy Directors* and *prosecutors*. 35

(3) A notice in terms of subsection (1) or any provision thereof may commence with effect from a date which may not be more than one year before the date of publication thereof.

(4) The first notice in terms of subsection (1) shall be issued as soon as possible after the commencement of *this Act*, and thereafter such a notice shall be issued if circumstances, including any revision and adjustment of salaries and allowances of the *National Director* and magistrates since the latest revision and adjustment of salaries of *Deputy Directors* or *prosecutors*, so justify. 40

(5) (a) A notice issued in terms of subsection (1) shall be tabled in Parliament within 14 days after publication thereof, if Parliament is then in session or, if Parliament is not then in session, within 14 days after the commencement of its next ensuing session. 45

(b) If Parliament by resolution disapproves such a notice or any provision thereof, that notice or that provision, as the case may be, shall lapse to the extent to which it is so disapproved with effect from the date on which it is so disapproved. 50

(c) The lapsing of such a notice or provision shall not affect—

- (i) the validity of anything done under the notice or provision up to the date on which it so lapsed; or
- (ii) any right, privilege, obligation or liability acquired, accrued or incurred as at that date under or by virtue of the notice or provision. 55

(6) The salary payable to a *Deputy Director* or a *prosecutor* shall not be reduced except by an Act of Parliament: Provided that a disapproval contemplated in subsection

(5)(b) shall, for the purposes of this subsection, not be deemed to result in a reduction of such salary.

Conditions of service of Deputy Directors and prosecutors, except remuneration

19. Subject to the provisions of *this Act*, the other conditions of service of a *Deputy Director* or a *prosecutor* shall be determined in terms of the provisions of the *Public Service Act*. 5

CHAPTER 4

Powers, duties and functions of members of the prosecuting authority

Power to institute and conduct criminal proceedings

20. (1) The power, as contemplated in section 179 (2) and all other relevant sections 10
of the *Constitution*, to—

- (a) institute and conduct criminal proceedings on behalf of the State;
- (b) carry out any necessary functions incidental to instituting and conducting such criminal proceedings; and
- (c) discontinue criminal proceedings, 15

vests in the *prosecuting authority* and shall, for all purposes, be exercised on behalf of the *Republic*.

(2) Any *Deputy National Director* shall exercise the powers referred to in subsection (1) subject to the control and directions of the *National Director*.

(3) Subject to the provisions of the *Constitution* and *this Act*, any *Director* shall, 20
subject to the control and directions of the *National Director*, exercise the powers referred to in subsection (1) in respect of—

- (a) the area of jurisdiction for which he or she has been appointed; and
- (b) any offences which have not been expressly excluded from his or her jurisdiction, either generally or in a specific case, by the *National Director*. 25

(4) Subject to the provisions of *this Act*, any *Deputy Director* shall, subject to the control and directions of the *Director* concerned, exercise the powers referred to in subsection (1) in respect of—

- (a) the area of jurisdiction for which he or she has been appointed; and
- (b) such offences and in such courts, as he or she has been authorised in writing 30
by the *National Director* or a person designated by the *National Director*.

(5) Any *prosecutor* shall be competent to exercise any of the powers referred to in subsection (1) to the extent that he or she has been authorised thereto in writing by the *National Director*, or by a person designated by the *National Director*.

(6) A written authorisation referred to in subsection (5) shall set out— 35

- (a) the area of jurisdiction;
- (b) the offences; and
- (c) the court or courts,

in respect of which such powers may be exercised.

(7) No member of the *prosecuting authority* who has been suspended from his or her 40
office under *this Act* or any other law shall be competent to exercise any of the powers referred to in subsection (1) for the duration of such suspension.

Prosecution policy and issuing of policy directives

21. (1) The *National Director* shall, in accordance with section 179(5)(a) and (b) and any other relevant section of the *Constitution*— 45

- (a) with the concurrence of the *Minister* and after consulting the *Directors*, determine prosecution policy; and
- (b) issue policy directives,

which must be observed in the prosecution process, and shall exercise such powers and perform such functions in respect of the prosecution policy, as determined in *this Act* or 50
any other law.

(2) The prosecution policy or amendments to such policy must be included in the report referred to in section 35(2)(a): Provided that the first prosecution policy issued

under *this Act* shall be tabled in Parliament as soon as possible, but not later than six months after the appointment of the first *National Director*.

Powers, duties and functions of National Director

22. (1) The *National Director*, as the head of the *prosecuting authority*, shall have authority over the exercising of all the powers, and the performance of all the duties and functions conferred or imposed on or assigned to any member of the *prosecuting authority* by the *Constitution*, *this Act* or any other law. 5

(2) In accordance with section 179 of the *Constitution*, the *National Director*—

- (a) must determine prosecution policy and issue policy directives as contemplated in section 21; 10
- (b) may intervene in any prosecution process when policy directives are not complied with; and
- (c) may review a decision to prosecute or not to prosecute, after consulting the relevant *Director* and after taking representations, within the period specified by the *National Director*, of the accused person, the complainant and any other person or party whom the *National Director* considers to be relevant. 15

(3) Where the *National Director* or a *Deputy National Director* authorised thereto in writing by the *National Director* deems it in the interest of the administration of justice that an offence committed as a whole or partially within the area of jurisdiction of one *Director* be investigated and tried within the area of jurisdiction of another *Director*, he or she may, subject to the provisions of section 111 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), in writing direct that the investigation and criminal proceedings in respect of such offence be conducted and commenced within the area of jurisdiction of such other *Director*. 20

(4) In addition to any other powers, duties and functions conferred or imposed on or assigned to the *National Director* by section 179 or any other provision of the *Constitution*, *this Act* or any other law, the *National Director*, as the head of the *prosecuting authority*— 25

- (a) with a view to exercising his or her powers in terms of subsection (2), may—
 - (i) conduct any investigation he or she may deem necessary in respect of a prosecution or a prosecution process, or directives, directions or guidelines given or issued by a *Director* in terms of *this Act*, or a case or matter relating to such a prosecution or a prosecution process, or directives, directions or guidelines; 30
 - (ii) direct the submission of and receive reports or interim reports from a *Director* in respect of a case, a matter, a prosecution or a prosecution process or directions or guidelines given or issued by a *Director* in terms of *this Act*; and 35
 - (iii) advise the *Minister* on all matters relating to the administration of criminal justice; 40
- (b) shall maintain close liaison with the *Deputy National Directors*, the *Directors*, the *prosecutors*, the legal professions and legal institutions in order to foster common policies and practices and to promote co-operation in relation to the handling of complaints in respect of the *prosecuting authority*;
- (c) may consider such recommendations, suggestions and requests concerning the *prosecuting authority* as he or she may receive from any source; 45
- (d) shall assist the *Directors* and *prosecutors* in achieving the effective and fair administration of criminal justice;
- (e) shall assist the *Deputy National Directors*, *Directors* and *prosecutors* in representing their professional interests; 50
- (f) shall bring the United Nations Guidelines on the Role of Prosecutors to the attention of the *Directors* and *prosecutors* and promote their respect for and compliance with the above-mentioned principles within the framework of national legislation;
- (g) shall prepare a comprehensive report in respect of the operations of the *prosecuting authority*, which shall include reporting on— 55
 - (i) the activities of the *National Director*, *Deputy National Directors*, *Directors* and the *prosecuting authority* as a whole;

- (ii) the personnel position of the *prosecuting authority*;
- (iii) the financial implications in respect of the administration and operation of the *prosecuting authority*;
- (iv) any recommendations or suggestions in respect of the *prosecuting authority*; 5
- (v) information relating to training programmes for *prosecutors*; and
- (vi) any other information which the *National Director* deems necessary;
- (h) may have the administrative work connected with the exercise of his or her powers, the performance of his or her functions or the carrying out of his or her duties, carried out by persons referred to in section 37 of *this Act*; and 10
- (i) may make recommendations to the *Minister* with regard to the *prosecuting authority* or the administration of justice as a whole.

(5) The *National Director* shall, after consultation with the *Deputy National Directors* and the *Directors*, advise the *Minister* on creating a structure, by regulation, in terms of which any person may report to such structure any complaint or any alleged improper conduct or any conduct which has resulted in any impropriety or prejudice on the part of a member of the *prosecuting authority*, and determining the powers and functions of such structure. 15

(6) (a) The *National Director* shall, in consultation with the *Minister* and after consultation with the *Deputy National Directors* and the *Directors*, frame a code of conduct which shall be complied with by members of the *prosecuting authority*. 20

(b) The code of conduct may from time to time be amended, and must be published in the *Gazette* for general information.

(7) The *National Director* shall develop, in consultation with the *Minister* or a person authorised thereto by the *Minister*, and the *Directors*, training programmes for *prosecutors*. 25

(8) The *National Director* or a person designated by him or her in writing may—

- (a) if no other member of the *prosecuting authority* is available, authorise in writing any suitable person to act as a prosecutor for the purpose of postponing any criminal case or cases; 30
- (b) authorise any competent person in the employ of the public service or any local authority to conduct prosecutions, subject to the control and directions of the *National Director* or a person designated by him or her, in respect of such statutory offences, including municipal laws, as the *National Director*, in consultation with the *Minister*, may determine. 35

(9) The *National Director* or any *Deputy National Director* designated by the *National Director* shall have the power to institute and conduct a prosecution in any court in the *Republic* in person.

Powers, duties and functions of Deputy National Directors

23. Any *Deputy National Director* may exercise or perform any of the powers, duties and functions of the *National Director* which he or she has been authorised by the *National Director* to exercise or perform. 40

Powers, duties and functions of Directors and Deputy Directors

24. (1) Subject to the provisions of section 179 and any other relevant section of the *Constitution*, *this Act* or any other law, a *Director* referred to in section 13(1)(a) has, in respect of the area for which he or she has been appointed, the power to— 45

- (a) institute and conduct criminal proceedings and to carry out functions incidental thereto as contemplated in section 20(3);
- (b) supervise, direct and co-ordinate the work and activities of all *Deputy Directors* and *prosecutors* in the Office of which he or she is the head; 50
- (c) supervise, direct and co-ordinate specific investigations; and
- (d) carry out all duties and perform all functions, and exercise all powers conferred or imposed on or assigned to him or her under any law which is in accordance with the provisions of *this Act*.

(2) In addition to the powers, duties and functions conferred or imposed on or assigned to an *Investigating Director*, such an *Investigating Director* or any person authorized thereto by him or her in writing may, for the purposes of criminal prosecution—

- (a) institute an action in any court in the *Republic*; and 5
- (b) prosecute an appeal in any court in the *Republic* emanating from criminal proceedings instituted by the *Investigating Director* or the person authorized thereto by him or her:

Provided that an *Investigating Director* or the person authorized thereto by him or her shall exercise the powers referred to in this subsection only after consultation with the *Director* of the area of jurisdiction concerned. 10

(3) A *Special Director* shall exercise the powers, carry out the duties and perform the functions conferred or imposed on or assigned to him or her by the President, subject to the directions of the *National Director*: Provided that if such powers, duties and functions include any of the powers, duties and functions referred to in section 20(1), they shall be exercised, carried out and performed in consultation with the *Director* of the area of jurisdiction concerned. 15

(4) In addition to any other powers, duties and functions conferred or imposed on or assigned to him or her by section 179 of the Constitution, *this Act* or any other law, a *Director* referred to in section 13 (1)— 20

- (a) shall, at the request of the *National Director*, submit reports to the *National Director* or assist the *National Director* in connection with a matter referred to in section 22(4)(a)(ii);
- (b) shall submit annual reports to the *National Director* pertaining to matters referred to in section 22(4)(g); 25
- (c) may, in the case of a *Director* referred to in section 13(1)(a), give written directions or furnish guidelines to—
 - (i) the Provincial Commissioner of the police service referred to in section 207(3) of the *Constitution* within his or her area of jurisdiction; or
 - (ii) any other person who within his or her area of jurisdiction— 30
 - (aa) conducts investigations in relation to offences; or
 - (bb) other than a private prosecutor, institutes or carries on prosecutions for offences; and
- (d) shall, subject to the directions of the *National Director*, be responsible for the day to day management of the *Deputy Directors* and *prosecutors* under his or her control. 35

(5) Without limiting the generality of subsection (4)(c) and subject to the directions of the *National Director*, directions or guidelines under that subsection may be given or furnished in relation to particular cases and may determine that certain offences or classes of offences must be referred to the *Director* concerned for decisions on the institution or conducting of prosecutions in respect of such offences or classes of offences. 40

(6) The *Director* shall give to the *National Director* a copy of each direction given or guideline furnished under subsection (4)(c).

(7) Where a *Director*— 45

- (a) is considering the institution or conducting of a prosecution for an offence; and
- (b) is of the opinion that a matter connected with or arising out of the offence requires further investigation,

the *Director* may request the Provincial Commissioner of the police service referred to in subsection (4)(c)(i) for assistance in the investigation of that matter and where the *Director* so requests, the Provincial Commissioner concerned shall, so far as practicable, comply with the request. 50

(8) The powers conferred upon a *Director* under section 20(1) shall include the authority to prosecute in any court any appeal arising from any criminal proceedings. 55

(9) (a) Subject to section 20 (4) and the control and directions of a *Director*, a *Deputy Director* at the Office of a *Director* referred to in section 13(1), has all the powers, duties and functions of a *Director*.

(b) A power, duty or function which is exercised, carried out or performed by a *Deputy Director* is construed, for the purposes of *this Act*, to have been exercised, carried out or performed by the *Director* concerned. 60

Powers, duties and functions of prosecutors

- 25.** (1) A *prosecutor* shall exercise the powers, carry out the duties and perform the functions conferred or imposed on or assigned to him or her—
- (a) under *this Act* and any other law of the *Republic*; and
 - (b) by the head of the Office or *Investigating Directorate* where he or she is employed or a person designated by such head; or
 - (c) if he or she is employed as a *prosecutor* in a lower court, by the *Director* in whose area of jurisdiction such court is situated or a person designated by such *Director*.
- (2) Notwithstanding the provisions of the Right of Appearance in Courts Act, 1995 (Act No. 62 of 1995), or any other law, any *prosecutor* who—
- (a) has obtained such legal qualifications as the *Minister* after consultation with the *National Director* may prescribe; and
 - (b) has at least three years' experience as a *prosecutor* of a magistrates' court of a regional division,
- shall, subject to section 20 (6), have the right to appear in any court in the *Republic*.

CHAPTER 5

Powers, duties and functions relating to Investigating Directorates

Definitions

- 26.** (1) In this Chapter, unless the context otherwise indicates—
- “inquiry” means an inquiry in terms of section 28 (1);
 - “specified offence” means any offence which in the opinion of the *Investigating Director* falls within the category of offences set out in the proclamation referred to in section 7(1) in respect of the *Investigating Directorate* concerned.
- (2) This Chapter only relates to the *Investigating Directorates* established under section 7(1) of *this Act*.

Laying of certain matters before Investigating Director

- 27.** If any person has reasonable grounds to suspect that a specified offence has been or is being committed or that an attempt has been or is being made to commit such an offence, he or she may lay the matter in question before the *Investigating Director* by means of an affidavit or affirmed declaration specifying—
- (a) the nature of the suspicion;
 - (b) the grounds on which the suspicion is based; and
 - (c) all other relevant information known to the declarant.

Inquiries by Investigating Director

- 28.** (1) (a) If the *Investigating Director* has reason to suspect that a specified offence has been or is being committed or that an attempt has been or is being made to commit such an offence, he or she may hold an inquiry on the matter in question, whether or not it has been laid before him or her in terms of section 27.
- (b) If the *National Director* refers a matter in relation to the alleged commission or attempted commission of a specified offence to the *Investigating Director*, the *Investigating Director* shall hold an inquiry, or a preparatory investigation as referred to in subsection (13), on that matter.
- (c) If the *Investigating Director*, at any time during the holding of an inquiry on a matter referred to in paragraph (a) or (b), considers it desirable to do so in the interest of the administration of justice or in the public interest, he or she may extend the inquiry so as to include any offence, whether or not it is a specified offence, which he or she suspects to be connected with the subject of the inquiry.
- (2) (a) The *Investigating Director* may, if he or she decides to hold an inquiry, at any time prior to or during the holding of the inquiry designate any person referred to in section 7 (4) to conduct the inquiry, or any part thereof, on his or her behalf and to report to him or her.

- (b) A person so designated shall for the purpose of the inquiry concerned have the same powers as those which the *Investigating Director* has in terms of this section and section 29 of *this Act*, and the instructions issued by the Treasury under section 39 of the Exchequer Act, 1975 (Act No. 66 of 1975), in respect of commissions of inquiry shall apply with the necessary changes in respect of such a person. 5
- (3) All proceedings at an inquiry shall take place *in camera*.
- (4) The procedure to be followed in conducting an inquiry shall be determined by the *Investigating Director* at his or her discretion, having regard to the circumstances of each case.
- (5) The proceedings and evidence at an inquiry shall be recorded in such manner as the *Investigating Director* may deem fit. 10
- (6) For the purposes of an inquiry—
- (a) the *Investigating Director* may summon any person who is believed to be able to furnish any information on the subject of the inquiry or to have in his or her possession or under his or her control any book, document or other object relating to that subject, to appear before the *Investigating Director* at a time and place specified in the summons, to be questioned or to produce that book, document or other object; 15
- (b) the *Investigating Director* or a person designated by him or her may question that person, under oath or affirmation administered by the *Investigating Director*, and examine or retain for further examination or for safe custody such a book, document or other object. 20
- (7) A summons referred to in subsection (6) shall—
- (a) be in the prescribed form;
- (b) contain particulars of the matter in connection with which the person concerned is required to appear before the *Investigating Director*; 25
- (c) be signed by the *Investigating Director* or a person authorized by him or her; and
- (d) be served in the prescribed manner.
- (8) (a) The law regarding privilege as applicable to a witness summoned to give evidence in a criminal case in a magistrate's court shall apply in relation to the questioning of a person in terms of subsection (6): Provided that such a person shall not be entitled to refuse to answer any question upon the ground that the answer would tend to expose him or her to a criminal charge. 30
- (b) No evidence regarding any questions and answers contemplated in paragraph (a) shall be admissible in any criminal proceedings, except in criminal proceedings where the person concerned stands trial on a charge contemplated in subsection (10)(b) or (c), or in section 319(3) of the Criminal Procedure Act, 1955 (Act No. 56 of 1955). 35
- (9) A person appearing before the *Investigating Director* by virtue of subsection (6)—
- (a) may be assisted at his or her examination by an advocate or an attorney; 40
- (b) shall be entitled to such witness fees as he or she would be entitled to if he or she were a witness for the State in criminal proceedings in a magistrate's court.
- (10) Any person who has been summoned to appear before the *Investigating Director* and who— 45
- (a) without sufficient cause fails to appear at the time and place specified in the summons or to remain in attendance until he or she is excused by the *Investigating Director* from further attendance;
- (b) at his or her appearance before the *Investigating Director*— 50
- (i) fails to produce a book, document or other object in his or her possession or under his or her control which he or she has been summoned to produce;
- (ii) refuses to be sworn or to make an affirmation after he or she has been asked by the *Investigating Director* to do so;
- (c) having been sworn or having made an affirmation— 55
- (i) fails to answer fully and to the best of his or her ability any question lawfully put to him or her;
- (ii) gives false evidence knowing that evidence to be false or not knowing or not believing it to be true,
- shall be guilty of an offence. 60
- (11) The *Investigating Director* may, whether or not he or she holds an inquiry, and,

if he or she does hold an inquiry, at any time prior to, during or after the holding of the inquiry, if he or she is of the opinion that the facts disclose the commission of an offence by any person, notify the *Director* of the area of jurisdiction concerned accordingly.

(12) Upon the completion of an inquiry, the *Investigating Director* shall furnish the *National Director* with a report on his or her findings and recommendations, if any, and send a copy of the report to the *Director* of the area of jurisdiction concerned. 5

(13) If the *Investigating Director* considers it necessary to hear evidence in order to enable him or her to determine if there are reasonable grounds to conduct an investigation in terms of subsection (1)(a), the *Investigating Director* may hold a preparatory investigation. 10

(14) The provisions of subsections (2) to (10), inclusive, and of sections 27 and 29 shall, with the necessary changes, apply to a preparatory examination referred to in subsection (13).

Entering upon premises by Investigating Director

29. (1) The *Investigating Director* or any person authorised thereto by him or her in writing may, subject to this section, for the purposes of an inquiry at any reasonable time and without prior notice or with such notice as he or she may deem appropriate, enter any premises on or in which anything connected with that inquiry is or is suspected to be, and may— 15

(a) inspect and search those premises, and there make such enquiries as he or she may deem necessary; 20

(b) examine any object found on or in the premises which has a bearing or might have a bearing on the inquiry in question, and request from the owner or person in charge of the premises or from any person in whose possession or charge that object is, information regarding that object; 25

(c) make copies of or take extracts from any book or document found on or in the premises which has a bearing or might have a bearing on the inquiry in question, and request from any person suspected of having the necessary information, an explanation of any entry therein; 30

(d) seize, against the issue of a receipt, anything on or in the premises which has a bearing or might have a bearing on the inquiry in question, or if he or she wishes to retain it for further examination or for safe custody. 30

(2) Any entry upon or search of any premises in terms of this section shall be conducted with strict regard to decency and order, including—

(a) a person's right to, respect for and the protection of his or her dignity; 35

(b) the right of a person to freedom and security; and

(c) the right of a person to his or her personal privacy.

(3) No evidence regarding any questions and answers contemplated in subsection (1) shall be admissible in any subsequent criminal proceedings against a person from whom information in terms of that subsection is acquired if the answers incriminate him or her, except in criminal proceedings where the person concerned stands trial on a charge contemplated in subsection (12). 40

(4) Subject to subsection (10), the premises referred to in subsection (1) may only be entered, and the acts referred to in subsection (1) may only be performed, by virtue of a warrant issued in chambers by a magistrate, regional magistrate or judge of the area of jurisdiction within which the premises is situated: Provided that such a warrant may be issued by a judge in respect of premises situated in another area of jurisdiction, if he or she deems it justified. 45

(5) A warrant contemplated in subsection (4) may only be issued if it appears to the magistrate, regional magistrate or judge from information on oath or affirmation, stating— 50

(a) the nature of the inquiry in terms of section 28;

(b) the suspicion which gave rise to the inquiry; and

(c) the need, in regard to the inquiry, for a search and seizure in terms of this section, 55

that there are reasonable grounds for believing that anything referred to in subsection (1) is on or in such premises or suspected to be on or in such premises.

(6) A warrant issued in terms of this section may be issued on any day and shall be of force until—

(a) it has been executed; 60

(b) it is cancelled by the person who issued it or, if such person is not available, by any person with like authority; or

(c) the expiry of three months from the day of its issue, whichever may occur first.

(7) (a) Any person who acts on authority of a warrant issued in terms of this section may use such force as may be reasonably necessary to overcome any resistance against the entry and search of the premises, including the breaking of any door or window of such premises: Provided that such person shall first audibly demand admission to the premises and state the purpose for which he or she seeks to enter such premises.

(b) The proviso to paragraph (a) shall not apply where the person concerned is on reasonable grounds of the opinion that any object, book or document which is the subject of the search may be destroyed, tampered with or disposed of if the provisions of the said proviso are first complied with.

(8) A warrant issued in terms of this section shall be executed by day unless the person who issues the warrant authorises the execution thereof by night at times which shall be reasonable in the circumstances.

(9) Any person executing a warrant in terms of this section shall immediately before commencing with the execution—

(a) identify himself or herself to the person in control of the premises, if such person is present, and hand to such person a copy of the warrant or, if such person is not present, affix such copy to a prominent place on the premises;

(b) supply such person at his or her request with particulars regarding his or her authority to execute such a warrant.

(10) (a) The *Investigating Director* or any person referred to in section 7(4)(a) may without a warrant enter upon any premises and perform the acts referred to in subsection (1)—

(i) if the person who is competent to do so consents to such entry, search, seizure and removal; or

(ii) if he or she upon reasonable grounds believes that—

(aa) the required warrant will be issued to him or her in terms of subsection (4) if he or she were to apply for such warrant; and

(bb) the delay caused by the obtaining of any such warrant would defeat the object of the entry, search, seizure and removal.

(b) Any entry and search in terms of paragraph (a) shall be executed by day, unless the execution thereof by night is justifiable and necessary, and the person exercising the powers referred to in the said paragraph shall identify himself or herself at the request of the owner or the person in control of the premises.

(11) If during the execution of a warrant or the conducting of a search in terms of this section, a person claims that any item found on or in the premises concerned contains privileged information and for that reason refuses the inspection or removal of such item, the person executing the warrant or conducting the search shall, if he or she is of the opinion that the item contains information which is relevant to the inquiry and that such information is necessary for the inquiry, request the registrar of the High Court which has jurisdiction or his or her delegate, to seize and remove that item for safe custody until a court of law has made a ruling on the question whether the information concerned is privileged or not.

(12) Any person who—

(a) obstructs or hinders the *Investigating Director* or any other person in the performance of his or her functions in terms of this section;

(b) when he or she is asked in terms of subsection (1) for information or an explanation relating to a matter within his or her knowledge, refuses or fails to give that information or explanation or gives information or an explanation which is false or misleading, knowing it to be false or misleading,

shall be guilty of an offence.

Preservation of secrecy and admissibility of evidence

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30. (1) Notwithstanding any other law, but subject to subsection (3), no person shall without the permission of the *Investigating Director* disclose to any other person—

- (a) any information which came to his or her knowledge in the performance of his or her functions in terms of *this Act* and relating to the business or affairs of any other person;
 - (b) the contents of any book or document or any other item in the possession of the *Investigating Director*; or
 - (c) the record of any evidence given at an inquiry,
- except—
- (i) for the purpose of performing his or her functions in terms of *this Act*; or
 - (ii) when required to do so by order of a court of law.
- (2) Any person who contravenes subsection (1) shall be guilty of an offence.
- (3) A person from whom a book or document has been taken under section 28(6)(b) or 29(1)(d) shall, as long as it is in the possession of the *Investigating Director*, at his or her request be allowed, at his or her own expense and under the supervision of the *Investigating Director*, to make copies thereof or to take extracts therefrom at any reasonable time.

Compensation regarding expenses

31. The Director-General: Justice may in his or her discretion, on the recommendation of the *Investigating Director* and with the concurrence of the Minister of Finance, order that the expenses or any part of the expenses incurred by any person in the course of or in connection with an inquiry be paid from State funds to that person.

CHAPTER 6

General provisions

Impartiality of, and oath or affirmation by members of prosecuting authority

32. (1) (a) A member of the *prosecuting authority* shall serve impartially and exercise, carry out or perform his or her powers, duties and functions in good faith and without fear, favour or prejudice and subject only to the *Constitution* and the law.
- (b) Subject to the *Constitution* and *this Act*, no organ of state and no member or employee of an organ of state nor any other person shall improperly interfere with, hinder or obstruct the *prosecuting authority* or any member thereof in the exercise, carrying out or performance of its, his or her powers, duties and functions.
- (2) (a) A *National Director* and any person referred to in section 4 must, before commencing to exercise, carry out or perform his or her powers, duties or functions in terms of *this Act*, take an oath or make an affirmation, which shall be subscribed by him or her, in the form set out below, namely—
- “I
 (full name)
 do hereby swear/solemnly affirm that I will in my capacity as *National Director/Deputy National Director* of Public Prosecutions/*Director/Deputy Director* of Public Prosecutions/*prosecutor*, uphold and protect the *Constitution* and the fundamental rights entrenched therein and enforce the Law of the *Republic* without fear, favour or prejudice and, as the circumstances of any particular case may require, in accordance with the *Constitution* and the Law. (In the case of an oath: So help me God.)”
- (b) Such an oath or affirmation shall—
- (i) in the case of the *National Director*, or a *Deputy National Director*, *Director* or *Deputy Director*, be taken or made before the most senior available judge of the High Court within which area of jurisdiction the Office of the *National Director*, *Director* or *Deputy Director*, as the case may be, is situated; or
 - (ii) in the case of a *prosecutor*, be taken or made before the *Director* in whose Office the *prosecutor* concerned has been appointed or before the most senior judge or magistrate at the court where the *prosecutor* is stationed,

who shall at the bottom thereof endorse a statement of the fact that it was taken or made before him or her and of the date on which it was so taken or made and append his or her signature thereto.

Minister's final responsibility over prosecuting authority

33. (1) The *Minister* shall, for purposes of section 179 of the *Constitution, this Act* or any other law concerning the *prosecuting authority*, exercise final responsibility over the *prosecuting authority* in accordance with the provisions of *this Act*. 5

(2) To enable the *Minister* to exercise his or her final responsibility over the *prosecuting authority*, as contemplated in section 179 of the *Constitution*, the *National Director* shall, at the request of the *Minister*— 10

- (a) furnish the *Minister* with information or a report with regard to any case, matter or subject dealt with by the *National Director* or a *Director* in the exercise of their powers, the carrying out of their duties and the performance of their functions;
- (b) provide the *Minister* with reasons for any decision taken by a *Director* in the exercise of his or her powers, the carrying out of his or her duties or the performance of his or her functions; 15
- (c) furnish the *Minister* with information with regard to the prosecution policy referred to in section 21(1)(a);
- (d) furnish the *Minister* with information with regard to the policy directives referred to in section 21(1)(b); 20
- (e) submit the reports contemplated in section 34 to the *Minister*; and
- (f) arrange meetings between the *Minister* and members of the *prosecuting authority*.

Reports by Directors 25

34. (1) A *Director* must annually, not later than the first day of March, submit to the *National Director* a report on all his or her activities during the previous year.

(2) The *National Director* may at any time request a *Director* to submit a report with regard to a specific activity relating to his or her powers, duties or functions.

(3) A *Director* may, at any time, submit a report to the *National Director* with regard to any matter relating to the *prosecuting authority*, if he or she deems it necessary. 30

Accountability to Parliament

35. (1) The *prosecuting authority* shall be accountable to Parliament in respect of its powers, functions and duties under *this Act*, including decisions regarding the institution of prosecutions. 35

(2) (a) The *National Director* must submit annually, not later than the first day of June, to the *Minister* a report referred to in section 22(4)(g), which report must be tabled in Parliament by the *Minister* within 14 days, if Parliament is then in session, or if Parliament is not then in session, within 14 days after the commencement of its next ensuing session. 40

(b) The *National Director* may, at any time, submit a report to the *Minister* or Parliament with regard to any matter relating to the *prosecuting authority*, if he or she deems it necessary.

Expenditure of prosecuting authority

36. (1) The expenses incurred in connection with— 45

- (a) the exercise of the powers, the carrying out of the duties and the performance of the functions of the *prosecuting authority*; and
- (b) the remuneration and other conditions of service of members of the *prosecuting authority*,

shall be defrayed out of monies appropriated by Parliament for that purpose. 50

(2) The Department of Justice must, in consultation with the *National Director*, prepare the necessary estimate of revenue and expenditure of the *prosecuting authority*.

(3) The Director-General: Justice shall, subject to the Exchequer Act, 1975 (Act No. 66 of 1975)—

- (a) be charged with the responsibility of accounting for State monies received or paid out for or on account of the *prosecuting authority*;
- (b) cause the necessary accounting and other related records to be kept.
- (4) The records referred to in subsection (3)(b) shall be audited by the Auditor-General. 5

Administrative staff

37. The administrative staff of—
- (a) the *Office of the National Director*;
- (b) the Offices of the *Directors*, including *Investigating Directorates*; and
- (c) the Offices of *prosecutors* as determined by the *National Director*, in consultation with the *Director* concerned, shall be persons appointed or employed under the *Public Service Act*. 10

Engagement of persons to perform services in specific cases

38. (1) The *National Director* may in consultation with the *Minister*, and a *Deputy National Director* or a *Director* may, in consultation with the *Minister* and the *National Director*, on behalf of the State, engage, under agreements in writing, persons having suitable qualifications and experience to perform services in specific cases. 15
- (2) The terms and conditions of service of a person engaged by the *National Director*, a *Deputy National Director* or a *Director* under subsection (1) shall be as determined from time to time by the *Minister* in concurrence with the Minister of Finance. 20

Disclosure of interest and non-performance of other paid work

39. (1) The *National Director*, a *Deputy National Director* and a *Director* shall give written notice to the *Minister* of all direct or indirect pecuniary interests that they have or acquire in any business whether in the *Republic* or elsewhere or in any body corporate carrying on any such business. 25
- (2) The *National Director*, a *Deputy National Director* and a *Director* shall not, without the consent of the President, perform any paid work outside his or her duties of office.

Regulations

40. (1) The *Minister* may make regulations, not inconsistent with *this Act*, prescribing— 30
- (a) matters required or permitted by *this Act* to be *prescribed*;
- (b) the steps to be taken to ensure compliance with the code of conduct referred to in section 22(6); or
- (c) matters necessary or convenient to be *prescribed* for carrying out or giving effect to *this Act*. 35
- (2) Any regulation made in terms of subsection (1) which may result in the expenditure of State monies shall be made in consultation with the Minister of Finance.

Offences and penalties

41. (1) Any person who contravenes the provisions of section 32(1)(b) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment. 40
- (2) Any person convicted of an offence referred to in section 28(10), 29(12) or 30(2) shall be liable to a fine or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment. 45

Limitation of liability

42. No person shall be liable in respect of anything done in good faith under *this Act*.

CHAPTER 7

*Transitional arrangements***Transitional arrangements**

43. (1) (a) Anyone holding office as an attorney-general in terms of the Attorney-General Act, 1992 (Act No. 92 of 1992), shall, subject to paragraph (b), be deemed to have been appointed as a *Director* in terms of *this Act*, and shall continue to function in terms of the laws applicable to his or her Office. 5

(b) The President shall, as soon as reasonably possible after the commencement of this section, appoint each attorney-general referred to in paragraph (a) as a *Director* at the Office that, and for such term as the President, after consultation with the attorney-general concerned, may determine, but such term shall not extend beyond the date on which the attorney-general concerned will attain the age of 65 years. 10

(c) The provisions of section 12(4) shall apply with the necessary changes in respect of a *Director* referred to in paragraph (b): Provided that the reference in section 12(4) to the age of 65 years shall be construed as a reference to the date on which the *Director's* term of office as contemplated in paragraph (b) expires. 15

(d) If the term of office of a *Director* appointed under paragraph (b) expires before he or she has attained the age of 65 years, he or she shall be entitled to pension benefits determined and calculated under all circumstances as if he or she was employed as a Director-General in the public service, who served as a Director-General for five years. 20

(2) Anyone holding office as an attorney-general in terms of a law other than the Attorney-General Act, 1992, or holding an appointment as acting attorney-general, shall be deemed to have been appointed as an acting *Director* under *this Act* at the office where he or she holds such office or appointment, and shall continue to function in that capacity until otherwise determined under *this Act* or any other law. 25

(3) (a) Any person who immediately before the commencement of this section was employed by the State as a deputy attorney-general shall continue in such employment and shall be deemed to have been appointed as a *Deputy Director* in terms of section 15(1). 25

(b) Any person who immediately before the commencement of this section was employed by the State as a state advocate or prosecutor and who has been delegated in terms of any law to institute criminal proceedings and to conduct any prosecution in criminal proceedings on behalf of the State— 30

- (i) shall continue in such employment as a *prosecutor*; and
- (ii) shall be deemed to have been authorised to exercise the powers referred to in section 20(1): Provided that no *prosecutor* shall, by virtue of this section, have more powers than he or she would have had under the delegation concerned. 35

(4) Criminal proceedings which have been instituted before the commencement of *this Act*, must be disposed of as if the decision to institute and prosecute in such criminal proceedings had been taken by a member of the *prosecuting authority* appointed in terms of *this Act*. 40

(5) Any attorney-general, deputy attorney-general, state advocate or prosecutor who continues in office in terms of this section must, within three months after the commencement of *this Act*, take the oath or make the affirmation referred to in section 32(2). 45

(6) As from the date of the commencement of this section, all offices of attorneys-general at the High Courts contemplated in item 16(4)(a) of Schedule 6 to the *Constitution*, shall become offices of the *prosecuting authority* as referred to in section 6(1) of *this Act*.

(7) (a) As from the date of the commencement of this section— 50

- (i) the Office for Serious Economic Offences established by section 2 of the Investigation of Serious Economic Offences Act, 1991 (Act No. 117 of 1991), shall become an *Investigating Directorate*, which shall be deemed to have been established by the President under section 7 and which shall be known as the Investigating Directorate: Serious Economic Offences; 55

- (ii) subject to the provisions of *this Act*, the Director and staff of the Office for Serious Economic Offences referred to in section 3 of the Investigation of

Serious Economic Offences Act, 1991, shall remain in office and continue their functions under *this Act*; and

(iii) all pending matters pertaining to the Office for Serious Economic Offences shall be dealt with as if *this Act* had at all times been in force.

(b) Notwithstanding the repeal of the Investigation of Serious Economic Offences Act, 1991, the regulations made under section 10 of that Act shall remain in force pending the repeal or amendment thereof under section 40 of *this Act*. 5

(c) The President may, on the request of the *National Director* and by proclamation in the *Gazette*, further specify the categories of offences in respect of which the Investigating Directorate: Serious Economic Offences must exercise its functions. 10

(8) Subject to the *Constitution* and *this Act*, all measures which immediately before the commencement of this section were in operation and applied to attorneys-general, deputy attorneys-general, state advocates and prosecutors, including measures regarding remuneration, pension and pension benefits, leave gratuity and any other term and condition of service, shall continue in operation and to apply to the said attorneys-general, deputy attorneys-general, state advocates and prosecutors until amended or repealed by *this Act*: Provided that no such measure shall, except in accordance with an applicable law or agreement, be changed in a manner which affects such attorneys-general, deputy attorneys-general, state advocates and prosecutors to their detriment. 15

(9) Notwithstanding the commencement of *this Act*, all measures regulating the institution and conducting of prosecutions in any court shall remain in force until repealed or amended under *this Act* or by any competent authority. 20

Amendment or repeal of laws

44. The laws mentioned in the Schedule are hereby amended or repealed to the extent indicated in the third column thereof. 25

Interpretation of certain references in laws

45. Any reference in any law to an attorney-general or deputy attorney-general in respect of the area of jurisdiction of a High Court, shall be construed as a reference to a *Director* or *Deputy Director* appointed in terms of *this Act*, for the area of jurisdiction of that Court. 30

Short title and commencement

46. This Act shall be called the National Prosecuting Authority Act, 1998, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

SCHEDULE

(Laws amended or repealed by section 44)

Number and year of law	Title	Extent of amendment or repeal
Act No. 51 of 1977	Criminal Procedure Act, 1977	<p>(a) Repeal of sections 2 and 5.</p> <p>(b) Amendment of section 111 by the deletion of subsection (1) and the substitution for subsections (2), (3) and (4) of the following subsections:</p> <p>“[(2)](1) (a) The direction of the [Minister] National Director of Public Prosecutions contemplated in section 179(1)(a) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), shall state the name of the accused, the relevant offence, the place at which (if known) and the [attorney-general] Director in whose area of jurisdiction [the offence was committed and the attorney-general in whose area of jurisdiction] the relevant <u>investigation and</u> criminal proceedings shall [commence] be conducted and commenced.</p> <p>(b) A copy of the direction shall be served on the accused, and the original thereof shall, save as is provided in subsection [(4)](3) be handed in at the court in which the proceedings are to commence.</p> <p>[(3)](2) The court in which the proceedings commence shall have jurisdiction to act with regard to the offence in question as if the offence had been committed within the area of jurisdiction of such court.</p> <p>[(4)](3) Where the [Minister] National Director issues a direction [under] contemplated in subsection (1) after an accused has already appeared in a court, the original of such direction shall be handed in at the relevant proceedings and attached to the record of the proceedings, and the court in question shall—</p> <p>(a) cause the accused to be brought before it, and when the accused is before it, adjourn the proceedings to a time and a date and to the court designated by the [attorney-general] Director in whose area of jurisdiction the said criminal proceedings shall commence, whereupon such time and date and court shall be deemed to be the time and date and court appointed for the trial of the accused or to which the proceedings pending against the accused are adjourned;</p> <p>(b) forward a copy of the record of the proceedings to the court in which the accused is to appear, and that court shall receive such copy and continue with the proceedings against the accused as if such proceedings had commenced before it.”.</p>
Act No. 117 of 1991	Investigation of Serious Economic Offences Act, 1991	The whole
Act No. 92 of 1992	Attorney-General Act, 1992	The whole



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THE PRESIDENCY

DIE PRESIDENSIE

No. 1352.

11 December 2000

No. 1352.

11 Desember 2000

It is hereby notified that the President has assented to the following Act which is hereby published for general information:—

No. 61 of 2000: National Prosecuting Authority Amendment Act, 2000.

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 61 van 2000: Wysigingswet Op die Nasionale Vervolgingsgesag, 2000.

Public Prosecutions, prosecution policy which must be observed in the prosecution process;

AND WHEREAS the Constitution provides that the National Director of Public Prosecutions may intervene in the prosecution process when policy directives are not being complied with, and may review a decision to prosecute or not to prosecute;

[AND WHEREAS the Constitution provides that the Cabinet member responsible for the administration of justice must exercise final responsibility over the prosecuting authority;]

AND WHEREAS the Constitution provides that the prosecuting authority has the power to institute criminal proceedings on behalf of the state, and to carry out any necessary functions incidental to instituting criminal proceedings;

AND WHEREAS the Constitution provides that all other matters concerning the prosecuting authority must be determined by national legislation;

AND WHEREAS the Constitution does not provide that the prevention, combating or investigation of crime is the exclusive function of any single institution;

AND WHEREAS the Constitution does not prohibit Parliament from amplifying the powers and functions of the prosecuting authority in national legislation;

AND IN ORDER TO ENSURE that the prosecuting authority fulfils its constitutional mandate to institute criminal proceedings on behalf of the state and to carry out the necessary functions incidental thereto, to make provision for—

- * **the establishment of an Investigating Directorate, with a limited investigative capacity, to prioritise and to investigate particularly serious criminal or unlawful conduct committed in an organised fashion, or certain offences or unlawful conduct, with the object of prosecuting such offences or unlawful conduct in the most efficient and effective manner; and**
- * **the necessary infrastructure and resources to perform these functions.”**

Amendment of section 1 of Act 32 of 1998

2. Section 1 of the principal Act is hereby amended—

- (a) by the insertion after the definition of “*Director*” of the following definitions:
 - “ ‘Directorate of Special Operations’ means the Directorate of Special Operations established by section 7(1)(a);
 - ‘head of an Investigating Directorate’ means the *Deputy National Director* referred to in section 7(3)(a), or an *Investigating Director* referred to in section 7(3)(b), as the case may be;”;
- (b) by the substitution for the definitions of “*Investigating Director*” and “*Investigating Directorate*” of the following definitions:
 - “ ‘Investigating Director’—
 - (a) means a Director of Public Prosecutions appointed under section [13(1)(b)] 13(1)(aA) or (b)—
 - (i) to the *Directorate of Special Operations*; or
 - (ii) as the head of an Investigating Directorate established in terms of section 7(1 A),
 - as the case may be; and
 - (b) in Chapter 5, includes the head of the *Directorate of Special Operations*; ‘Investigating Directorate’ means an Investigating Directorate established [under] by or in terms of section 7(1);”;
- (c) by the insertion after the definition of “*Investigating Directorate*” of the following definition:
 - “ ‘investigation’ in Chapter 5, means an investigation contemplated in section 28(1);”;
- (d) by the insertion after the definition of “*Special Director*” of the following definitions:

“*special investigator*” means a special investigator appointed under section 19A;
 “*specified offence*” means any matter which in the opinion of the head of an Investigating Directorate falls within the range of matters as contemplated in section 7(1)(a)(aa) or any proclamation issued in terms of section 7(1)(a)(bb) or (1A), and any reference to the commission of a **specified offence** has a corresponding meaning.”

Amendment of section 5 of Act 32 of 1998

3. Section 5 of the principal Act is hereby amended by the insertion after paragraph (d) of subsection (2) of the following paragraph: 10
 “(dA) *special investigators*.”

Substitution of section 7 of Act 32 of 1998

4. The following section is hereby substituted for section 7 of the principal Act:

“Investigating Directorates

7. (1) (a) There is hereby established in the *Office of the National Director* an Investigating Directorate, to be known as the Directorate of Special Operations, with the aim to— 15

(i) investigate, and to carry out any functions incidental to investigations;
 (ii) gather, keep and analyse information; and
 (iii) where appropriate, institute criminal proceedings and carry out any **necessary** functions incidental to instituting criminal proceedings, relating to— 20

(aa) offences or any criminal or unlawful activities committed in an organised fashion; or

(bb) such other offences or categories of offences as determined by the President by proclamation in the *Gazette*. 25

(b) For the purpose of subparagraph (au), ‘organised fashion’ includes the planned, ongoing, continuous or repeated participation, involvement or engagement in at least two incidents of criminal or unlawful conduct that has the same or similar intents, results, accomplices, victims or methods of commission, or otherwise are related by distinguishing characteristics. 30

(1A) The President may, by proclamation in the *Gazette*, establish not more than **[three]** two additional Investigating Directorates in the *Office of the National Director*, in respect of **[specific offences or specified categories of offences]** **matters not contemplated in subsection (1)(aa) or (bb)**. 35

(2) Any proclamation issued in terms of this section—

(a) shall be issued on the recommendation of the *Minister* and the *National Director*;

(b) may at any time be amended or rescinded by the President on the recommendation of the *Minister* and the *National Director*; and 40

(c) must be submitted to Parliament before publication in the *Gazette*.

(3) The head of—

(a) the *Directorate of Special Operations*, shall be a *Deputy National Director*, assigned by the *National Director*; and 45

(b) **[an]** any other Investigating Directorate, shall be an *Investigating Director*,

and shall perform the powers, duties and functions of the **[Director-ate]** Investigating Directorate concerned subject to the control and directions of the National Director.

(4) (a) **[An Investigating Director]** The head of an Investigating Directorate shall be assisted in the exercise of his or her powers and the performance of his or her functions by—

(i) in the case of—

(aa) the Directorate of Special Operations, one or more Investigating Directors and one or more Deputy Directors; and

(bb) any other Investigating Directorate, one or more Deputy Directors [, to perform, subject to the control and directions of the Investigating Director, any functions of the Investigating Director];

(ii) prosecutors;

(iiA) in the case of the Directorate of Special Operations, special investigators;

(iii) officers of **any Department of State seconded to the service of the** Investigating Directorate in terms of the laws governing the public service;

(iv) persons in the service of any public or other body who are by arrangement with the body concerned seconded to the service of the Investigating Directorate; and

(v) any other person whose services are obtained by the **[Investigating Director for the purposes of a particular inquiry]** head of the Investigating Directorate,

and the persons referred to in subparagraphs (i) to (v) shall perform their powers, duties and functions subject to the control and direction of the head of the Investigating Directorate concerned.

(b) For the purposes of subparagraphs (iv) and (v) of paragraph (a)—

(i) any person or body requested by the [Investigating Director] head of an Investigating Directorate in writing to do so, shall from time to time, after consultation with the [Investigating Director] head of an Investigating Directorate, furnish him or her with a list of the names of persons, in the employ or under the control of that person or body, who are fit and available to assist the [Investigating Director] head of that Investigating Directorate as contemplated in the said subparagraph (iv) or (v), as the case may be; and

(ii) such a person or body shall, at the request of **[the Investigating Director]**, and after consultation with, the [Investigating Director] head of the Investigating Directorate concerned, designate a person or persons mentioned in the list concerned so to assist the [Investigating Director] head of the Investigating Directorate.”.

Amendment of section 11 of Act 32 of 1998

5. Section 11 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The President may, after consultation with the *Minister* and the *National Director*, appoint not more than **[three] four persons, as Deputy National Directors of Public Prosecutions.**”.

Amendment of section 13 of Act 32 of 1998

6. Section 13 of the principal Act is hereby amended—

(a) by the insertion after paragraph (a) of subsection (1) of the following paragraph:

“(aA) may appoint one or more Directors of Public Prosecutions to the Directorate of Special operations;” and

(b) by the substitution for paragraph (b) of subsection (1) of the following paragraph:

“(b) shall, in respect of **[each] any** [investigating Directorate established in terms of section 7(1 A), appoint a Director of Public Prosecutions as the head of such an Investigating Directorate; and”.

Amendment of section 15 of Act 32 of 1998

7. Section 15 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) The *Minister* may, subject to the laws governing the public service and section 16(4) and after consultation with the *National Director*— 5
- (a) in respect of an Office referred to in section 6(1), appoint a Deputy Director of Public Prosecutions as the head of such office; **[and]**
- (b) in respect of each office for which a *Director* has been appointed, appoint Deputy Directors of Public Prosecutions; **and**
- (c) in respect of the *Office of the National Director* appoint one or more Deputy 10
Directors of Public Prosecutions to exercise certain powers, carry out certain
duties and perform certain functions conferred or imposed on or assigned to
him or her by the *National Director*.”.

Insertion of Chapter 3A in Act 32 of 1998

8. The following Chapter is hereby inserted in the principal Act: 15

“CHAPTER 3A**Appointment, remuneration and conditions of service of special investigators****Appointment of special investigators**

19A. (1) The *National Director* may, on the recommendation of the head 20
of the *Directorate of Special Operations*, appoint any fit and proper person
as a special investigator of that Directorate.

(2) The *National Director* must, in the prescribed form, issue an identity 25
document under his or her signature to each person so appointed, which
shall serve as proof that such person is a *special investigator*.

Security screening of special investigators

19B. (1) Subject to subsection (2), no person may be appointed as a 30
special investigator unless—

(a) information with respect to that person has been gathered in a security 30
screening investigation by the National Intelligence Agency estab-
lished by section 3 of the Intelligence Services Act, 1994 (Act No. 38
of 1994); and

(b) the *National Director*, after evaluating the gathered information, is 35
satisfied that such person may be appointed as a *special investigator*
without the possibility that such person might be a security risk or that
he or she might act in any way prejudicial to the objectives of the 35
Directorate of Special Operations.

(2) If the *National Director* is so satisfied, he or she shall issue a 40
certificate with respect to such person in which it is certified that such
person has successfully undergone a security clearance.

(3) Any *special investigator* may from time to time, or at such regular 40
intervals as the *National Director* may determine, be subjected to a further
security screening as contemplated in subsection (1)(a).

(4) The *National Director* may withdraw a certificate referred to in 45
subsection (2) if he or she obtains information which, after evaluation by
him or her, causes him or her to believe that the person in question could be
a security risk or could possibly act in any manner prejudicial to the 45
objectives of the *Directorate of Special Operations*.

(5) If the certificate referred to in subsection (2) is withdrawn, the *special 50*
investigator concerned shall be unfit to continue to hold such office and the

National Director must discharge him or her from the *Directorate of Special Operations*.

Remuneration and conditions of service of special investigators

19C. (1) The remuneration, allowances and other service benefits of *special investigators* are determined by the *Minister*, in consultation with the *National Director* and with the concurrence of the Minister of Finance. 5

(2) [an officer or employee in the public service is appointed as a *special investigator*. the period of his or her service as a *special investigator* shall be calculated as part of and continuous with his or her employment in the public service, for purposes of leave, pension and any other condition of service. The provisions of any pension law applicable to him or her or, in the event of his or her death, to his or her dependants which are not inconsistent with this section, shall, with the necessary changes, continue so to apply. 10

(3) No *special investigator* may strike or induce or conspire with any other member of the *Directorate of Special operations* to strike. 15

(4) The services of the *Directorate of Special Operations* shall, for the purposes of the application of Chapter IV of the Labour Relations Act, 1995 (Act No. 66 of 1995), be deemed to have been designated as an essential service in terms of section 71 of that Act. 20

(5) All other conditions of service of *special investigators* are as prescribed in terms of *this Act*.”.

Amendment of section 23 of Act 32 of 1998

9. Section 23 of the principal Act is hereby amended by the addition of the following subsection, the existing section becoming subsection (1): 25

“(2) In addition to any powers, duties or functions referred to in subsection (1), the head of the *Directorate of Special Operations* may exercise the powers and must perform the duties and functions referred to in sections 7 and 19A(1), and Chapter 5.”.

Substitution of section 26 of Act 32 of 1998 30

10. The following section is hereby substituted for section 26 of the principal Act:

“Application

26. (1) This Chapter only relates to *Investigating Directorates*.

(2) Nothing in this Chapter or section 7(1), or any proclamation issued in terms of section 7, derogates from any power or duty which relates to the prevention, combating or investigation of any offences and which is bestowed upon the South African Police Service in terms of any law.”. 35

Substitution of section 27 of Act 32 of 1998

11. The following section is hereby substituted for section 27 of the principal Act:

“Reporting of matters to Investigating Director 40

27. If any person has reasonable grounds to suspect that a *specified offence* has been or is being committed or that an attempt has been or is being made to commit such an offence, he or she may **[lay the matter in question before]** report the matter in question to the [Investigating Director] head of an *Investigating Directorate* by means of an affidavit or affirmed declaration specifying— 45

- (a) the nature of the suspicion;
- (b) the grounds on which the suspicion is based; and
- (c) all other relevant information known to the declarant. ”.

Amendment of section 28 of Act 32 of 1998

12. Section 28 of the principal Act, is hereby amended—

(a) by the substitution for subsections (1) to (6) of the following subsections:

“(1) (a) If the *Investigating Director* has reason to suspect that a *specified offence* has been or is being committed or that an attempt has been or is being made to commit such an offence, he or she may **[hold an inquiry] conduct an investigation** on the matter in question, whether or not it has been **[laid before]** reported to him or her in terms of section 27. 5

(b) If the *National Director* refers a matter in relation to the alleged commission or attempted commission of a *specified offence* to the *Investigating Director*, the *Investigating Director* shall **[hold an inquiry] conduct an investigation**, or a preparatory investigation as referred to in subsection (13), on that matter. 10

(c) If the *investigating Director*, at any time during the **[holding of an inquiry] conducting of an investigation** on a matter referred to in paragraph (a) or (b), considers it desirable to do so in the interest of the administration of justice or in the public interest, he or she may extend the **[inquiry] investigation** so as to include any offence, whether or not it is a *specified offence*, which he or she suspects to be connected with the subject of the **[inquiry] investigation**. 15 20

(d) If the *Investigating Director*, at any time during the conducting of an *investigation*, is of the opinion that evidence has been disclosed of the commission of an offence which is not being investigated by the *Investigating Directorate* concerned, he or she must without delay inform the National Commissioner of the South African Police Service of the particulars of such matter. 25

(2) (a) The *Investigating Director* may, if he or she decides to **[hold an inquiry] conduct an investigation**, at any time prior to or during the [holding of the inquiry] conducting of the *investigation* designate any person referred to in section 7(4)(a) to conduct the [inquiry] *investigation*, or any part thereof, on his or her behalf and to report to him or her. 30

(b) A person so designated shall for the purpose of the **[inquiry] investigation** concerned have the same powers as those which the *Investigating Director* has in terms of this section and section 29 of *this Act*, and the instructions issued by the Treasury under section 39 of the Exchequer Act, 1975 (Act No. 66 of 1975), in respect of commissions of inquiry shall apply with the necessary changes in respect of such a person. 35

(3) All proceedings **[at an inquiry]** contemplated in subsections (6), (8) and (9) shall take place *in camera*.

(4) The procedure to be followed in conducting an **[inquiry] investigation** shall be determined by the *Investigating Director* at his or her discretion, having regard to the circumstances of each case. 40

(5) The proceedings **[and evidence at an inquiry]** contemplated in subsections (6), (8) and (9) shall be recorded in such manner as the *Investigating Director* may deem fit. 45

(6) For the purposes of an **[inquiry] investigation**—

(a) the *Investigating Director* may summon any person who is believed to be able to furnish any information on the subject of the **[inquiry] investigation** or to have in his or her possession or under his or her control any book, document or other object relating to that subject, to appear before the *Investigating Director* at a time and place specified in the summons, to be questioned or to produce that book, document or other object; 50

(b) the *Investigating Director* or a person designated by him or her may question that person, under oath or affirmation administered by the *Investigating Director*, and **examine or retain** for further examination or for safe custody such a book, document or other object; Provided that any person from whom a book or document has been taken under this section may, as long as it is in the possession of the *Investigating Director*, at his or her request be allowed, at his or her own expense and under the supervision of the *Investigating Director*, to make copies thereof or to take extracts therefrom at any reasonable time;; 55 60

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- (b) by the deletion of subsections (11) and (12); and
 (c) by the substitution for subsection (14) of the following subsection:
 “(14) The provisions of subsections (2) to (10), inclusive, and of sections 27 and 29 shall, with the necessary changes, apply to a preparatory **[examination] investigation** referred to in subsection (13).”.

5

Amendment of section 29 of Act 32 of 1998

13. Section 29 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
 “(1) The *Investigating Director* or any person authorised thereto by him or her in writing may, subject to this section, for the purposes of an **[inquiry] investigation** at any reasonable time and without prior notice or with such notice as he or she may deem appropriate, enter any premises on or in which anything connected with that **[inquiry] investigation** is or is suspected to be, and may—
- (a) inspect and search those premises, and there make such enquiries as he or she may deem necessary;
- (b) examine any object found on or in the premises which has a bearing or might have a bearing on the **[inquiry] investigation** in question, and request from the owner or person in charge of the premises or from any person in whose possession or charge that object is, information regarding that object;
- (c) make copies of or take extracts from any book or document found on or in the premises which has a bearing or might have a bearing on the **[inquiry] investigation** in question, and request from any person suspected of having the necessary information, an explanation of any entry therein;
- (d) seize, against the issue of a receipt, anything on or in the premises which has a bearing or might have a bearing on the **[inquiry] investigation** in question, or if he or she wishes to retain it for further examination or for safe custody: Provided that any person from whom a book or document has been taken under this section may, as long as it is in the possession of the *Investigating Director*, at his or her request be allowed, at his or her own expense and under the supervision of the *Investigating Director*, to make copies thereof or to take extracts therefrom at any reasonable time.”;
- (b) by the substitution for subsection (5) of the following subsection:
 “(5) A warrant contemplated in subsection (4) may only be issued if it appears to the magistrate, regional magistrate or judge from information on oath or affirmation, stating—
- (a) the nature of the **[inquiry] investigation** in terms of section 28;
- (b) **[the suspicion which gave rise to the inquiry] that there exists a reasonable suspicion that an offence, which might be a specified offence, has been or is being committed, or that an attempt was or had been made to commit such an offence;** and
- (c) the need, in regard to the **[inquiry] investigation**, for a search and seizure in terms of this section,
 that there are reasonable grounds for believing that anything referred to in subsection (1) is on or in such premises or suspected to be on or in such premises.”; and
- (c) by the substitution for subsection (11) of the following subsection:
 “(11) If during the execution of a warrant or the conducting of a search in terms of this section, a person claims that any item found on or in the premises concerned, contains privileged information and for that reason refuses the inspection or removal of such item, the person executing the warrant or conducting the search shall, if he or she is of the opinion that the item contains information which is relevant to the **[inquiry] investigation** and that such information is necessary for the **[inquiry] investigation**, request the registrar of the High Court which has jurisdiction or his or her delegate, to seize and remove that item for safe custody until a court of law has made a ruling on the question whether the information concerned is privileged or not.”.

60

Substitution of sections 30 and 31 of Act 32 of 1998

14. The following sections are hereby substituted for sections 30 and 31 of the principal Act:

“Powers and functions of special investigators

- 30. (1)** A *special investigator* may, subject to the control and direction of the head of the *Directorate of Special Operations*, exercise such powers and must perform such duties as are conferred or imposed upon him or her by or under *this Act* or any other law and must obey all lawful directions which he or she may from time to time receive from a person having the authority to give such directions. 5
- (2) A *special investigator* has the powers as provided for in the Criminal Procedure Act, 1977 (Act No. 51 of 1977), which are bestowed upon a peace officer or a police official, relating to— 10
- (a) the investigation of offences;
 - (b) the ascertainment of bodily features of an accused person;
 - (c) the entry and search of premises;
 - (d) the seizure and disposal of articles;
 - (e) arrests;
 - (f) the execution of warrants; and
 - (g) the attendance of an accused person in court. 15 20
- (3) (a) The *Minister* may, in consultation with the Minister for Safety and Security, from time to time by notice in the *Gazette* bestow any power— 25
- (i) which is conferred under any other law upon any specified person or category of persons; and
 - (ii) which relates to the prevention, investigation or combating of any offence or other criminal or unlawful activity, upon *special investigators*.
- (b) Any notice referred to in paragraph (a)— 30
- (i) may from time to time be amended or rescinded by the *Minister* in consultation with the Minister for Safety and Security; and
 - (ii) must be submitted to Parliament before publication in the *Gazette*.

Ministerial Coordinating Committee

- 31. (1)** There is hereby established a committee, to be known as the Ministerial Coordinating Committee (hereinafter referred to as the Committee), which may determine— 35
- (a) policy guidelines in respect of the functioning of the *Directorate of Special Operations*;
 - (b) procedures to coordinate the activities of the *Directorate of Special Operations* and other relevant government institutions, including procedures for— 40
 - (i) the communication and transfer of information regarding matters falling within the operational scope of the *Directorate of Special Operations* and such institutions; and
 - (ii) the transfer of investigations to or from the *Directorate of Special Operations* and such institutions; and 45
 - (c) where necessary—
 - (i) the responsibility of the *Directorate of Special Operations* in respect of specific matters; and
 - (ii) the further procedures to be followed for the referral or the assigning of any investigation to the *Directorate of Special Operations*. 50
- (2) The Committee comprises—
- (a) the Cabinet members responsible for— 55
 - (i) the administration of justice, who is the chairperson thereof;
 - (ii) correctional services;

- (iii) defence;
 - (iv) intelligence services; and
 - (v) safety and security; and
 - (b) any other Cabinet member designated from time to time by the President.
- (3) The Committee may conduct its business and proceedings at its meetings as it deems fit.”.

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Amendment of section 36 of Act 32 of 1998

15. Section 36 of the principal Act is hereby amended by the substitution for subsections (3) and (4) of the following subsections:

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“(3) Subject to subsection (3A), the Director-General: Justice shall, subject to the [Exchequer Act, 1975 (Act No. 66 of 1975)] Public Finance Management Act, 1999 (Act No. 1 of 1999)—

(a) be charged with the responsibility of accounting for State monies received or paid out for or on account of the prosecuting authority; and

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(b) cause the necessary accounting and other related records to be kept.

(3A) (a) The Minister must appoint a fit and proper person as the Chief Executive Officer of the Directorate of Special Operations.

(b) The Chief Executive Officer is the accounting officer of the Directorate of Special Operations and shall, subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999)—

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(i) account for money received or paid out for or on behalf of the administration and functioning of the Directorate of Special Operations; and

(ii) cause the necessary accounting and other related records to be kept.

(4) The records referred to in subsection (3)(b) and (3A)(b) shall be audited by the Auditor-General.

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(5) The Director-General: Justice or, in respect of a matter dealt with by the Directorate of Special Operations, the Chief Executive Officer, may, on the recommendation of the National Director and with the concurrence of the Minister of Finance, order that the expenses or any part of the expenses incurred by any person in the course of or in connection with an investigation contemplated in section 28(1) be paid from State funds to that person.”.

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Amendment of section 38 of Act 32 of 1998

16. Section 38 of the principal Act is hereby amended by the addition of the following subsections:

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“(3) Where the engagement of a person contemplated in subsection (1) will not result in financial implications for the State—

(a) the National Director; or

(b) a Deputy National Director or a Director, in consultation with the National Director,

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may, on behalf of the State, engage, under an agreement in writing, such person to perform the services contemplated in subsection (1) without consulting the Minister as contemplated in that subsection.

(4) For purposes of this section, ‘services’ include the conducting of a prosecution under the control and direction of the National Director, a Deputy National Director or a Director, as the case may be.”.

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Substitution of section 40 of Act 32 of 1998

17. The following section is hereby substituted for section 40 of the principal Act:

“Regulations

40. (1) The *Minister* may, subject to subsection (2), make regulations prescribing—
- (a) matters required or permitted by *this Act* to be prescribed;
 - (b) the steps to be taken to ensure compliance with the code of conduct referred to in section 22(6); or
 - (c) matters necessary or convenient to be prescribed for carrying out or giving effect to *this Act*.
- (2) **The Minister** may, in consultation with the *National Director*, make regulations regarding the *Directorate of Special Operations*, prescribing—
- (a) the employment, training, promotion, posting, transfer, leave of absence, resignation, discharge, retirement, dismissal, suspension or reduction in rank or grade of *special investigators* and the personnel management of those *special investigators* in general;
 - (b) the standards of physical and mental fitness and the medical examination of *special investigators*, and the medical, dental and hospital treatment of such *special investigators* and their families;
 - (c) the provision of medical, dental and hospital treatment of *special investigators* who have retired on pension and their families, and of the families of *special investigators* who have died;
 - (d) the numerical establishment of the *Directorate of Special Operations*, the conditions of service of the *special investigators* thereof, the salaries, salary scales, wages and allowances of *special investigators* and the systems relating to the administration and determination thereof and the various structures, grades, ranks and designations in the *Directorate of Special Operations*;
 - (e) the establishment and maintenance of training institutions or centres for *special investigators*, and the instruction, training, discipline and control of such *special investigators* at such institutions or centres;
 - (f) all matters relating to misconduct and discipline in the *Directorate of Special Operations*;
 - (g) the deductions to be made from the salaries, wages or allowances of *special investigators*;
 - (h) procedures to be followed in respect of cases of alleged or presumed medical unfitness;
 - (i) procedures to be followed in respect of cases of alleged or presumed inefficiency;
 - (j) the recovery from a *special investigator* of any deficiency, loss, damage or expense which he or she has unlawfully caused to the State;
 - (k) the control of funds collected or received by *special investigators* for the benefit of *special investigators* or former *special investigators*, or their dependants;
 - (l) the general management and maintenance of the *Directorate of Special Operations*;
 - (m) the regulation of labour relations and the creation of accompanying structures;
 - (n) a code of conduct to be adhered to by *special investigators*;
 - (o) the establishment of procedures regarding the presentation, consideration and adjudication of grievances of *special investigators*;
 - (p) the establishment and functioning of a structure to which any person may report any complaint or any alleged improper conduct on the part of a *special investigator* of the *Directorate of Special Operations*;
 - (q) any matter required or permitted in terms of *this Act* to be prescribed;
- or

- (r) generally, all matters which are necessary or expedient to prescribe in order to promote the efficient functioning of the *Directorate of Special Operations*.
- (3) Any regulation made in terms of this section—
- (a) which may result in the expenditure of State monies shall be made in consultation with the Minister of Finance;
- (b) may provide that a contravention thereof shall be an offence; and
- (c) must be submitted to Parliament before publication in the *Gazette*.”.

Insertion of section 40A in Act 32 of 1998

18. The following section is hereby inserted in the principal Act:

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“Unauthorised access to or modification of computer material

40A. (1) Without derogating from the generality of subsection (2)—

- (a) ‘access to a computer’ includes access by whatever means to any program or data contained in the random access memory of a computer or stored by any computer on any storage medium, whether such storage medium is physically attached to the computer or not, where such storage medium belongs to or is under the control of the *prosecuting authority*; 15
- (b) ‘contents of any computer’ includes the physical components of any computer as well as any program or data contained in the random access memory of a computer or stored by any computer on any storage medium, whether such storage medium is physically attached to the computer or not, where such storage medium belongs to or is under the control of the *prosecuting authority*; 20
- (c) ‘modification’ includes both a modification of a temporary or permanent nature; and 25
- (d) ‘unauthorised access’ includes access by a person who is authorised to use the computer but is not authorised to gain access to a certain program or to certain data held in such computer or is unauthorised, at the time when the access is gained, to gain access to such computer, program or data. 30
- (2) Any person is guilty of an offence if he or she wilfully—
- (a) gains, or allows or causes any other person to gain, unauthorised access to any computer which belongs to or is under the control of the *prosecuting authority* or to any program or data held in such a computer, or in a computer to which only certain or all members of the *prosecuting authority* have access in their capacity as members; or 35
- (b) causes a computer which belongs to or is under the control of the *prosecuting authority* or to which only certain or all members of the *prosecuting authority* have access in their capacity as members, to perform a function while such person is not authorised to cause such computer to perform such function; or 40
- (c) performs any act which causes an unauthorised modification of the contents of any computer which belong: to or is under the control of the *prosecuting authority* or to which only certain or all members of the *prosecuting authority* have access in their capacity as members with the intention to- 45
- (i) impair the operation of any computer or of any program in any computer or of the operating system of any computer or the reliability of data held in such computer; or 50
- (ii) prevent or hinder access to any program or data held in any computer.

(3) Any act or event for which proof is required for a conviction of an offence in terms of this section and which was committed or took place outside the Republic is deemed to have been committed or to have taken place in the Republic if—

- (a) the accused was in the Republic at the time when he or she performed the act or any part thereof, or
- (b) the computer, by means of which the act was done, or which was affected in a manner contemplated in subsection (2) by the act, was in the Republic at the time when the accused performed the act or any part thereof; or
- (c) the accused was a South African citizen or domiciled in the Republic at the time of the commission of the offence.”

Substitution of section 41 of Act 32 of 1998

19. The following section is hereby substituted for section 41 of the principal Act:

“Offences and penalties

41. (1) Any person who contravenes the provisions of section 32(1)(b) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding [two] 10 years or to both such fine and such imprisonment.

(2) Any person convicted of an offence referred to in section 28(10) or 29(12) [or 30(2)] shall be liable to a fine or to imprisonment for a period not exceeding [five] 15 years or to both such fine and such imprisonment.

(3) Any person who is convicted of an offence in terms of a regulation made under section 40, shall be liable to a fine or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment,

(4) Any person who is convicted of an offence referred to in section 40A(2), shall be liable to a fine or to imprisonment for a period not exceeding 25 years or to both such fine and such imprisonment.

(5) Any person who, in connection with any activity carried on by him or her, in a fraudulent manner takes, assumes, uses or publishes any name, description, title or symbol indicating or conveying or purporting to indicate or convey or which is calculated or is likely to lead other persons to believe or to infer that such activity is carried on under or by virtue of the provisions of *this Act* or under the patronage of the *prosecuting authority*, or is in any manner associated or connected with the *prosecuting authority*, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 25 years or to both such fine and such imprisonment.

(6) Notwithstanding any other law, no person shall without the permission of the *National Director* or a person authorised in writing by the *National Director* disclose to any other person—

(a) any information which came to his or her knowledge in the performance of his or her functions in terms of *this Act* or any other law;

(b) the contents of any book or document or any other item in the possession of the *prosecuting authority*; or

(c) the record of any evidence given at an investigation as contemplated in section 28(1),

except—

(i) for the purpose of performing his or her functions in terms of *this Act* or any other law; or

(ii) when required to do so by order of a court of law.

(7) Any person who contravenes subsection (6) shall be guilty of an

offence and liable on conviction to a fine or to imprisonment for a period not exceeding 15 years or to both such fine and such imprisonment.”.

Insertion of section 43A in Act 32 of 1998

20. The following section is hereby inserted in the principal Act:

“Transitional arrangement relating to Investigating Directorates 5

43A. (1) Any Investigating Directorate (in this section referred to as a former Investigating Directorate) which had been established prior to the amendment of section 7 by the National Prosecuting Authority Amendment Act, 2000, shall, as from the date of the commencement of that Act, cease to exist as a separate Investigating Directorate and become part of the Directorate of Special Operations. 10

(2) Any proclamation which had been issued under section 7 in respect of a former *Investigating Directorate*, prior to the amendment of section 7 by the National Prosecuting Authority Amendment Act, 2000, shall, as from the date of the commencement of that Act, be deemed to have been issued under section 7(1) in respect of the *Directorate of Special Operations*. 15

(3) Subject to the provisions of *this Act*, the *Investigating Director* and staff of any former Investigating Directorate shall remain in office and continue their functions under *this Act* in the Directorate of Special Operations. 20

(4) As from the date of the commencement of the National Prosecuting Authority Amendment Act, 2000, all pending matters pertaining to any former Investigating Directorate shall be dealt with as if that Act had at all times been in force.”.

Insertion of index in Act 32 of 1998 25

21. The following index is hereby inserted in the principal Act after the enactment clause:

“CHAPTER 1

Introductory provisions

1. Definitions 30

CHAPTER 2

Structure and composition of single national prosecuting authority

2. Single national prosecuting authority
3. Structure of prosecuting authority
4. Composition of prosecuting authority 35
5. Office of National Director of Public Prosecutions
6. Offices of prosecuting authority at seats of High Courts
7. Investigating Directorates

CHAPTER 3

Appointment, remuneration and conditions of service of members of the 40 Prosecuting Authority

8. Prosecuting authority to be representative
9. Qualifications for appointment as National Director, Deputy National Director or Director
10. Appointment of National Director 45
11. Appointment of Deputy National Directors
12. Term of office of National Director and Deputy National Directors
13. Appointment of Directors and Acting Directors

- 14. Term of office of Director
- 15. Appointment of Deputy Directors
- 16. Appointment of prosecutors
- 17. Conditions of service of National Director, Deputy National Directors and Directors 5
- 18. Remuneration of Deputy Directors and prosecutors
- 19. Conditions of service of Deputy Directors and prosecutors, except remuneration

CHAPTER 3A

Appointment, remuneration and conditions of service of special investigators 10

- 19A. Appointment of special investigators
- 19B. Security screening of special investigators
- 19C. Remuneration and conditions of service of special investigators

CHAPTER 4

Powers, duties and functions of members of the Prosecuting Authority 15

- 20. Power to institute and conduct criminal proceedings
- 21. Prosecution policy and issuing of policy directives
- 22. Powers, duties and functions of National Director
- 23. Powers, duties and functions of Deputy National Directors
- 24. Powers, duties and functions of Directors and Deputy Directors 20
- 25. Powers, duties and functions of prosecutors

CHAPTER 5

Powers, duties and functions relating to Investigating Directorates

- 26. Application
- 27. Reporting of matters to Investigating Director 25
- 28. Investigations by Investigating Director
- 29. Entering upon premises by Investigating Director
- 30. Powers and functions of special investigators
- 31. Ministerial Coordinating Committee

CHAPTER 6 30

General provisions

- 32. Impartiality of, and oath or affirmation by members of prosecuting authority
- 33. Minister's final responsibility over prosecuting authority
- 34. Reports by Directors
- 35. Accountability to Parliament 35
- 36. Expenditure of prosecuting authority
- 37. Administrative staff
- 38. Engagement of persons to perform services in specific cases
- 39. Disclosure of interest and non-performance of other paid work
- 40. Regulations 40
- 40A. Unauthorised access to or modification of computer material
- 41. Offences and penalties
- 42. Limitation of liability

CHAPTER 7

Transitional arrangements 45

- 43. Transitional arrangements
- 43A. Transitional arrangement relating to Investigating Directorates
- 44. Amendment or repeal of laws

Act No. 61, 2000 NATIONAL PROSECUTING AUTHORITY AMENDMENT ACT, 2000

45. Interpretation of certain references in laws
 46. **Short title and commencement**

Schedule—Laws amended or repealed by section 44”.**Amendment of section 1 of Act 127 of 1992, as amended by section 32 of Act 38 of 1994, section 1 of Act 77 of 1995 and section 13 of Act 34 of 1998** 5

22. Section 1 of the Interception and Monitoring Prohibition Act, 1992, is hereby amended—

- (a) by the insertion after the definition of “Agency” of the following definition:
 “ ‘Directorate’ means the Directorate of Special Operations referred to in section 1 of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998);” and
 (b) by the addition to the definition of “serious offence” of the following paragraph:
 “(c) any specified offence as defined in section 1 of the National prosecuting Authority Act, 1998 (Act No. 32 of 1998);”. 15

Amendment of section 3 of Act 127 of 1992, as amended by section 32 of Act 38 of 1994, section 4 of Act 18 of 1996 and section 15 of Act 34 of 1998

23. Section 3 of the Interception and Monitoring Prohibition Act, 1992, is hereby amended by the addition in subsection (2) of the following paragraph:

- “(d) for the purposes of the matters referred to in subsection (1)(b) or subsection (4), be made by the head of the Directorate, or by an Investigating Director authorised in writing by the head of the Directorate to make such an application.”. 20

Amendment of section 4 of Act 127 of 1992, as amended by section 32 of Act 38 of 1994, section 4 of Act 18 of 1996 and section 16 of Act 34 of 1998 25

24. Section 4 of the Interception and Monitoring Prohibition Act, 1992, is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
 “(1) If a direction has been issued in terms of section 3, any member of the Force as defined in section 1 of the South African Police Service Act, 1995 30 (Act No. 68 of 1995), or a member, excluding a member of a visiting force, as defined in section 1 of the Defence Act, 1957 (Act No. 44 of 1957), a member of the Directorate or a member of the Agency or the Service may execute that direction, provided that the member concerned has been authorized by the officer or member who made the application in terms of section 3(2) to 35 execute that direction or to assist with the execution of the direction concerned.”; and
 (b) by the addition to paragraph (b) of subsection (2) of the following subparagraph:
 “(iv) the head of the Directorate or an Investigating Director of the Directorate.”. 40

Amendment of section 5 of Act 127 of 1992, as amended by section 32 of Act 38 of 1994, section 4 of Act 18 of 1996 and section 17 of Act 34 of 1998

25. Section 5 of the Interception and Monitoring Prohibition Act, 1992, is hereby amended by the substitution for subsection (2) of the following subsection: 45

- “(2) If a person, body or organization has made a facility, device or telecommunications line available for the purposes mentioned in subsection(1)(b), the remuneration agreed upon by the person or organization and the National Commissioner of the South African Police Service, the Chief of the South African National Defence Force, the head of the Directorate, or the Director-General of the Agency or the Service, as the case may be, shall be paid to that person, body or organization.”. 50

Act No. 61, 2000 NATIONAL PROSECUTING AUTHORITY AMENDMENT ACT, 2000

Short title and commencement

26. This is the National Prosecuting Authority Amendment Act, 2000, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.