



Choosing the New National Director of Public Prosecutions

1. Introduction

At the end of January 2026 the current National Director of Public Prosecutions (NDPP), Shamila Batohi, will reach retirement age of 65. She will leave office with something of a mixed legacy. On the positive side, there is no doubt that she has stabilised the National Prosecuting Authority (NPA), which is responsible for criminal prosecutions country-wide, and has made real progress in winning back some of the credibility and trust that the institution lost under various of her predecessors, most notably during the state capture era.

On the other hand, little has been achieved when it comes to high-profile, politically-connected corruption cases. None of the former (and in some cases, current) cabinet ministers, deputy-ministers, provincial premiers, or other highly placed office-bearers fingered by the Zondo Commission of Enquiry into State Capture has been successfully prosecuted. And, judging by the continuing stream of revelations of corruption in high places, there seems to be a sense of impunity – no one appears to be much concerned that they will eventually have to face a court of law.

Nevertheless, the NPA is in a considerably better state than it was when Adv Batohi took over, and she deserves much of the credit for that. In turn, the manner in which she was selected was an important factor in securing a competent, honest and politically untainted leader for this vital institution. It is thus to be welcomed that President Ramaphosa has decided to follow a similar process in the selection of her successor, albeit there are some concerning aspects in this respect as well.

2. Background

Adv Batohi will be the first NDPP to complete their term of office.¹ This fact alone points to a history of instability and political interference in the post, and a brief survey of the circumstances surrounding the assumptions and vacations of office of her five predecessors confirms this.

Bulelani Ngcuka was the first NDPP appointed under the 1998 National Prosecuting Authority Act, and his tenure was widely regarded as competent and effective. Unfortunately, he became an early victim of the ANC's determination to shield then Deputy-President Jacob Zuma from prosecution for corruption and, after being subjected to 'fake news' smear campaigns and huge political pressure he resigned in July 2004.²

Adv Ngcuka was replaced by Vusi Pikoli, who also enjoyed a high reputation for independence and professionalism in the post. His downfall was also political – he insisted on investigating corruption allegations against the then National Commissioner of Police, Jackie Selebi, as well as against Jacob Zuma. Mr Selebi benefited from the protection of then-President Thabo Mbeki, who suspended Adv Pikoli at the end of 2007; then, when Kgalema Motlanthe took over as caretaker President in 2008, he fired Adv Pikoli as part of the ANC's ongoing effort to prevent the prosecution of their president-elect, Mr Zuma.

Next to be appointed was Menzi Simelane, a former Director-General of the Department of Justice who had been the subject of severe criticism by the Ginwala Commission of Enquiry into the dismissal of Adv Pikoli.³ The Constitutional Court subsequently found that Adv Simelane's appointment (by President Zuma) was invalid and he left office in October 2012.

A year later a relatively unknown attorney, Mxolisi Nxasana, was appointed, apparently on the advice of President Zuma's personal lawyer. Mr Nxasana was expected to be malleable enough not to get in the way of the state capture project, but he turned out not to be and thus fell foul of Mr Zuma and various of the latter's supporters among senior NPA staff. Mr Nxasana was prevailed upon to resign in May 2015 with a payout of R17 million – in effect a bribe, which he was subsequently ordered by the Constitutional Court to repay.⁴

This paved the way for the tenure of Shaun Abrahams, another Zuma appointee. Perhaps the low point of his tenure was the decision to bring fraud charges against former Finance Minister Pravin Gordhan, former acting SARS Commissioner Ivan Pillay, and SARS Commissioner Oupa Magashula – all three of whom had been targets of the state capture faction and thorns in the side of Mr Zuma. These charges were subsequently withdrawn, and Mr Abrahams's appointment was ruled invalid by the Constitutional Court on the grounds that the office had not been vacant when he was appointed; since Mr Nxasana's resignation has been unlawfully 'bought' it was itself invalid and he was thus still legally speaking in office when Mr Zuma purported to appoint Mr Abrahams.⁵

By this time – August 2018 – Cyril Ramaphosa had become President and he was ordered by the ConCourt to appoint a new NDPP within 90 days.

3. The Appointment of Shamila Batohi

Mr Ramaphosa was clearly alive to the less than edifying history set out above, and to his credit he departed from the way in which the previous five incumbents had been appointed – that is, directly by the sitting President, as provided for by the NPA Act: "The President must, in accordance with section 179 of the Constitution, appoint the National Director."⁶

Instead, he opened up the selection process to public scrutiny by appointing a committee to receive nominations, compile a shortlist, and conduct open interviews. This was an important statement by Mr Ramaphosa: even though he would make the final choice and carry out the formal appointment (as required by law), it signalled his intention to de-politicise the office of NDPP and to begin the long process of recovering the organisation's lost credibility.

The committee was chaired by the then energy minister, Jeff Radebe, and consisted of seven additional members – the Auditor General; a member of the SA Human Rights Commission; and one representative from each of the Law Society of SA, the Black Lawyers' Association, the General Council of the Bar, Advocates for Transformation, and the National Association of Democratic Lawyers. The committee interviewed eleven candidates before sending five names to the President to choose from.⁷

Over and above her experience and qualifications, and the lack of any political taint, the transparency of the process of her appointment was an important factor in the near universal approval that Adv Batohi enjoyed in the early part of her tenure. And even as the years passed without the much-anticipated major state capture trials, it was never suggested that the failure to pursue such prosecutions successfully was due to ulterior motives on her part or that she was buckling under political pressure. Rather, it seems that the degree of damage done to the NPA as an institution during the many years when it was a pawn in the ANC's factional struggles, and by state capture, was such that its full recuperation was beyond the powers, and the term of office, of Adv Batohi.

4. Leading a Law Enforcement Agency

A number of key positions in our criminal justice system are vacant. These include the head of the Directorate for Priority Crimes (DPCI – the Hawks) in the South African Police Service, while a Deputy National Police Commissioner and the National Director of Crime Intelligence are both suspended. In the NPA, apart from the imminent retirement of Adv Batohi, some of her deputies are also close to retirement age, and the provincial director of public prosecutions in South Gauteng, the busiest court division in the country, has been suspended pending an inquiry into his fitness to hold office.

All of these examples underline the need on the one hand, and the opportunity on the other, to appoint capable, credible, trustworthy, and accountable leadership. Professional leadership is urgently needed not only to tackle the threats that violent crime and corruption present to our national wellbeing, but also to protect and safeguard the key pillars of our Constitution. Without an acceptable level of public safety and adherence to the rule of law, economic

development, job creation, and the promised pursuit of a better life will remain a pipe dream for too many South Africans.

But what does this mean in practical terms? What qualities should a future leader of a law enforcement agency have, apart from being an experienced crime fighter with a proven track record?

- Transparent, trustworthy, and tactical communication skills, as well as a positive and collaborative decision-making culture, are fundamental for successful leadership in everyday situations and crises. This applies particularly to leaders of law enforcement agencies.
- Delivering safety and security is not only a policing or law enforcement responsibility. Different government departments, civil society organizations, and private security companies all play an important role. However, the main law enforcement agencies should be the key organizations in co-ordinating and aligning the various players.
- There must be close co-ordination between police and prosecutors to fight crime efficiently. Leaders bear the responsibility of putting mechanisms in place across the criminal justice system to ensure a co-operative and trustworthy working relationship based on clear mandates, guidelines, and performance indicators.
- Law enforcement leadership has a special responsibility to protect democratic principles and values, both within and outside their specific agencies. They are obliged to act if they observe any negative developments in this regard, as ignoring such issues today can lead to a loss of public trust tomorrow.

5. Finding the Next NDPP

As mentioned, Mr Ramaphosa has decided to repeat the 2018 process in the search for a new NDPP, and he has appointed another committee to assist him. This willingness to go beyond the letter of the law and to embrace expert advice sets Mr Ramaphosa apart from some of his predecessors. It will be recalled that he did something similar in 2022 when a new Chief

Justice had to be appointed. The Constitution⁸ provides that the President need only consult with the Judicial Service Commission (JSC) and the leaders of other political parties in the National Assembly before appointing a Chief Justice. But Mr Ramaphosa instead set up an advisory panel to compile a shortlist, after which the JSC conducted public interviews of the shortlisted candidates before he made the final choice. In this way Mr Ramaphosa is quietly setting an important precedent for the way in which future Presidents go about exercising this kind of prerogative – with more openness to other views and inputs.

Having said all this, however, there are some concerns about the current selection process.

5.1. Leaving it late

Mr Ramaphosa has often been criticised for his tardiness, and this aspect of his leadership has once again come to the fore. The committee under discussion here was appointed on 7th October, with a mandate to “call for nominations through an open and transparent manner, conduct shortlisting, interviews, ensure vetting of suitable candidates, and submit the names of three suitable candidates with a detailed report on suitability of the individuals to the President for consideration.”⁹

The report is required to be ready in three months, that is by 7th January 2026. Assuming that the committee meets that deadline (and given that South Africa tends to go on holiday for a large part of December and January, this cannot be taken for granted), the President will then have just three weeks to mull over the final choice. Moreover, even if he acts with atypical haste, it is not going to be possible for the appointee to enjoy a handover period while Adv Batohi is still in office. There does not seem to be any provision in the NPA Act allowing for an NDPP who has reached the age of 65 to be kept on *pro tem*.

This means either that an acting NDPP will have to be appointed from among the existing Deputy National Directors, or that the new NDPP will have to assume office within days of being chosen. Neither option is ideal, and both could easily have been avoided had the President initiated the whole process sooner; and, since Adv Batohi’s retirement date has been known all along, there is no excuse for the situation having arisen.

5.2. The Chairperson

As noted above, the committee that sat in 2018 was chaired by the then energy minister, Jeff Radebe. For some reason, Mr Ramaphosa has now chosen the justice minister, Mmamoloko Kubayi, as chair. This has attracted criticism on two grounds: Ms Kubayi has no legal qualifications or experience; and the NDPP will report to her, thus creating a possible conflict of interest on her part.

Perhaps not too much should be made of the first objection. One would expect various others on the panel to be legally qualified, and there is more to making this kind of selection than just the legal questions. However, the conflict of interest point is more concerning – there should be no sense in which the Minister is able to influence the choice out of personal motives. To go further, there is no reason why any minister should chair the committee – a retired judge or similarly disinterested party could do so, thereby removing any suggestion of executive influence from the process.

5.3. The committee

This time around the committee has six additional members, and the overall composition differs markedly from that of 2018. The current Auditor General and the chair of the SA Human Rights Commission are members, along with the chairs of the Gender Equality Commission and the Public Service Commission. But there are only two representatives of legal societies – the Black Lawyers' Association and the National Association of Democratic Lawyers. Advocates for Transformation is absent as are, more worryingly, the two largest lawyers' bodies, the Law Society and the General Council of the Bar.

The upshot is that only two people on the committee appear to have direct experience of legal practice,

and it is far from certain that either of them will be experts in criminal practice or prosecution. Whether the unbalanced nature of the committee is intentional, or merely an oversight, is hard to determine, but either way it risks undermining public confidence in the process.¹⁰

It is also unfortunate that there is no representation of civil society. There are a number of organisations with specialist knowledge in this area, such as Corruption Watch, Freedom Under Law, CASAC,¹¹ Judges Matter, the Dullah Omar Institute, and others. Indeed, the case that overturned the dismissal of Mxolisi Nxasana and the appointment of Shaun Abrahams was brought by the first three of these CSOs. The presence of any of them on the selection committee would have added a useful perspective and deepened its credibility.

6. Conclusion

The next NDPP will have to deal with the same massive challenges that Adv Batohi has been facing since assuming office. The NPA is a huge institution which, in a crime-ridden country, carries a heavy burden of public expectation on its shoulders. It was severely damaged during the state capture years and by blatant political interference by three of our five post-1994 Presidents. It is not only the personal qualities and skills of the successful candidate that will determine their success, but the degree of confidence we can have that the selection process was fair, credible and objective.

Despite reservations about the make-up of the selection committee, the procedure initiated by President Ramaphosa is a distinct improvement on what went before. It promotes openness and transparency and, to a considerable extent, insulates the selection process from political manipulation and other kinds of undue interference.

Mike Pothier
Programme Manager
mike@cplo.org.za

¹ Section 12(1) of the *National Prosecuting Authority Act 32 of 1998* provides that “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 <https://hsf.org.za/publications/focus/issue-35-third-quarter-2004/an-inauspicious-end-to-ngcuka-saga>

³ <https://static.pmg.org.za/docs/090120pikoli1.pdf>

⁴ <https://theconversation.com/constitutional-court-strikes-a-blow-for-south-africas-criminal-justice-system-101537>

⁵ Ibid.

⁶ Section 10.

⁷ <https://www.corruptionwatch.org.za/adv-shamila-batohi-announced-as-new-ndpp/>

⁸ Section 174(3).

⁹ <https://www.thepresidency.gov.za/president-ramaphosa-names-panel-selection-national-director-public-prosecutions>

¹⁰ <https://www.news24.com/citypress/politics/ramaphosa-under-fire-for-appointing-legally-inexperienced-panel-to-find-new-head-of-prosecutors-20251011-1067>

¹¹ The Council for the Advancement of the South African Constitution.



The Democracy & Governance Project of the CPLO is supported by the Hanns Seidel Foundation (HSF). The opinions and statements contained in CPLO's publications do not necessarily reflect the views of the HSF.

This Briefing Paper, or parts thereof, may be reproduced with acknowledgement.