

INT 1

J 484



**the doj & cd**

Department:  
Justice and Constitutional Development  
REPUBLIC OF SOUTH AFRICA

**OFFICE OF THE DIRECTOR-GENERAL**  
Private Bag X 81, PRETORIA, 0001 • SALU Building, corner of Thabo Sehume and  
Frances Baard Streets, PRETORIA  
Tel (012) 406 4701/4718

Enquiries: Ms B Muzetwa  
Telephone: 012 406 4701/18  
Email: BMuzetwa@justice.gov.za

**Adv. K van Rensburg**  
Chief Executive Officer  
National Prosecuting Authority  
Private Bag X 762  
PRETORIA  
0001

Dear Adv. Van Rensburg

**SETTLEMENT AGREEMENT : MR NXASANA**

Please find herewith the attached document for your urgent attention and processing.

It would be appreciated if you can process same urgently for relevant authorities approval, noting the time lines that are set out therein.

Your assistance in this regard will be greatly appreciated.

Kind regards

**MS T N SINDANE**  
DIRECTOR-GENERAL  
DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT  
DATE: 31.06.2015

IN THE NORTH GAUTENG HIGH COURT, PRETORIA

CASE NO 59160/14

In the matter between:

**NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS** Applicant

And

**THE PRESIDENT OF REPUBLIC OF SOUTH AFRICA** First Respondent

**MINISTER OF JUSTICE AND CORRECTIONAL SERVICES** Second Respondent

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**SETTLEMENT AGREEMENT**

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**WHEREAS**

1. On 4 July 2014, the President informed the Applicant (National Director of Public Prosecutions herein after referred to as the NDPP) of his decision to institute an enquiry in terms of section 12 (6) (a)(iv) of the National Prosecuting Authority Act 32 of 1998 (the Act).
2. On 30 July 2014, the President gave Notice of Intention to suspend the NDPP in terms of section 12 (6) (a) of the Act.
3. The NDPP brought an urgent application in the North Gauteng High Court to interdict the President from suspending him until the President has provided the NDPP with the requested particularity of the allegations

*TM*

2

levelled against him, and which allegations were to constitute the subject matter of the enquiry.

4. These proceedings now stand adjourned and the parties subsequently entered into discussions and negotiations in an attempt to resolve the matter.
5. The parties recognize that a protracted litigation process will not be in the interests of the office of the National Director of Public Prosecutions, the functioning of the National Prosecuting Authority nor the Republic of South Africa.
6. The parties are also mindful that the public glare brought on by the holding of an enquiry, whilst necessary for transparency in our democracy, has unintended consequences.
7. The parties are fully cognizant of the costs implications for litigating and/or conducting the enquiry which resources may be better applied given the challenges our country faces.

**RECOGNISING** the important and pivotal role which the National Prosecuting Authority occupies in our constitutional democracy and the functioning of the rule of law and the desire to bring certainty and preserve the dignity of both the NDPP and the NPA


**IT IS AGREED THAT**

1. The parties understand that this agreement is to be regarded as a "no-fault" settlement, and, as such, this agreement is not intended and will not be construed to constitute an admission or statement by either party as to the validity or invalidity of any legal or factual contention advanced in this matter.

T.M. [Signature]

4

2. The President recognizes that the NDPP is professionally competent, sufficiently experienced and conscientious and has the requisite Integrity to hold a senior public position both in the public and private sector.
3. The NDPP shall relinquish his post as National Director of Public Prosecutions as from 1 June 2015.
4. In lieu of this, the NDPP shall receive the sum of R 17 357 233,00 within 60(sixty) days of signature of this agreement in full and final settlement of all claims of whatsoever nature arising out of his employment as National Director of Public Prosecutions.
5. The settlement amount shall be subject to taxation, pension benefits, leave benefits, medical aid benefits and resettlement benefits, where ordinarily applicable to the NDPP in terms of his conditions of employment under the legislation and regulations.
6. The NDPP will withdraw his application in the North Gauteng High Court under case number 59160/14 upon signature of this settlement agreement.
7. The President will cease the holding of an enquiry into the fitness of the NDPP to hold such office.
8. The government has paid and will continue to pay the NDPP's legal costs including the cost of this application as well as the holding of the enquiry.
9. In the event that any disputes arises with respect to the Agreement, the party who believes there may be a breach shall contact the other party in writing setting forth the reason(s) for said belief and shall give the party five (5) business days to remedy the matter.

TM  


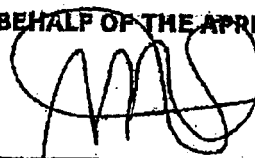
5

10. By signing this Agreement, the parties acknowledge that they have read the Agreement in its entirety and are possessed with the full knowledge and understanding of the Agreement's contents.

11. This agreement shall become effective and enforceable upon signature by both parties.

SIGNED AT Waltham MA ON 09 MAY 2015

FOR AND ON BEHALF OF THE APPLICANT (NDPP)

  
\_\_\_\_\_

SIGNED AT LAPE TOWN ON 14 MAY 2015

FOR AND ON BEHALF OF THE FIRST AND SECOND RESPONDENTS

  
\_\_\_\_\_



Cancelled  
1358335

NATIONAL PROSECUTING AUTHORITY

New Sundry payment approved

Handwritten signature and date: 8/6/2015

Payment No. [grid]

Office SALARIES

Capture by: [redacted]  
Date capture: [redacted]  
Pre-Authorised by: [redacted]  
Date authorised: [redacted]  
Final Authorised by: [signature]  
Date authorised: 10 June 2015



Description	SETTLEMENT
Initials	MSO
Surname/ Supplier	NDXASANA 28895102
Address	
Postal code	

<input type="checkbox"/> Receipt cheque	Purchase order no	[grid]	Settlement details	[grid]
<input type="checkbox"/> Invoice	Source doc No.	002378	Settlement date	[grid]
<input checked="" type="checkbox"/> Sundry	Source doc. date	18/06/2015	Discount %	[grid]
<input type="checkbox"/> Credit note	Ref No.	[grid]	Discount Date	[grid]

<input type="checkbox"/> System cheque	Cheque No.	[grid]	Bank acc No	10011627922
<input type="checkbox"/> Manual cheque	Cheque date	[grid]	Branch code	580105
<input checked="" type="checkbox"/> EBT			Bank acc type	INVESTEC

Line Description	
Fund/Vote	VOTED FUNDS
Responsibility	NATIONAL DIRECTOR & SUPP STAFF
Objective	PROSECUTION SERVICES
Item	Specialised Services BUDGET
Project	NO PROJECTS
Assets	NON-ASSETS RELATED
Regional Indicator	NAT FUNCTION:WHOLE COUNTRY DOM
Infrastructure	NON INFRASTRUCTURE
Matching Field 2	Trans C
Whatever	NATIONAL PROSECUTING AUTHORITY
Matching Field 3	

Allocation Amount R 10 240 767.47

Total amount to be paid R 10 240 767.47

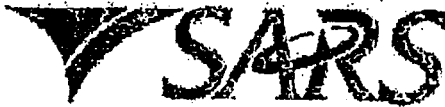
MOSES	[signature]	[signature]
[signature]	[signature]	[signature]
FC	SSA	GD
8	8	2015
8	06	2015
8	8	2015

Certified Correct  
08/06/2015

NATIONAL PROSECUTING AUTHORITY  
Name of Issuer: [signature]  
Date Invoice Presented: 10/06/15  
Parasigned By: [signature]

FA 1358335 rejected by National Treasury (Safety Net) Banking details differ. 11 June 2015.

Printed in accordance with SARS recommended format



## INCOME TAX

## Employees' tax deduction directive

Enquiries should be addressed to:  
Receiver of Revenue DURBAN

P.O. BOX 921  
DURBAN  
4000

Tel: (031) 328 6000 Fax: (031) 332 2210

Always quote this reference number in  
correspondence with this office or during interviews

Reference number : 0076080142  
Date : 2015/06/05  
Tax Year : 2016  
Directive Number : 18364440  
Application number : 00000020983085

**A: Particulars of Employee / Member of Fund**

Surname : nxasana  
Initials : mso  
First names : mxollsi  
Address : 54 bonne view  
midrand  
pretoria

Date of Birth : 1987/11/23

Identity number / Other : 6711235284086

Office where registered for Income Tax : DURBAN

Employee, Policy, Pension or Provident fund number : Employee Number - 28895102

**B: Directive information**

Employees' Tax reference number (PAYE) : 7530738295

Name of fund/employer : national prosecuting authority

Reason for directive : settlement

Date of accrual : 2015/05/31

Under the provisions of paragraphs 2 and 11 of the Fourth Schedule to the Income Tax act, you are required to comply with the directive as set out below, regarding the remuneration paid to the above-named employee or member of fund.

Tax amounting to R 7116486.63 to be deducted from the gratuity / lump sum payment of R 17357233.

This directive is valid for the period 2015/03/01 - 2016/02/29

**Please note:**

1. This directive is invalid if any alterations have been made thereto.
2. Please file this on the employee's file in your office.
3. This form must be retained for inspection purposes.
4. You may only act on an original directive issued to your business or institution. You may, therefore, not act upon a photocopy of this form.

10240767.47

08:47:34 Mon Jun 08, 2015

8

PF12=ACCOUNT HOLDER DETAILS

PERSAL BETP  
5.06.04 (02)

SALARY ENQUIRIES: NAT PROSECUTING AUTH  
HISTORY - BASIC INFORMATION

2015-06-08  
08:50:27.8  
C80581

PERSALNO...: 26895102 01 MSO NXASANA NAS DIREC NDPP  
PAY DATE...: 20150529 NORMAL  
SAL-EFF-DAT...: 20150531  
ORGANISATION..: NAT PROSECUTING AUTH SEC. ORGANISATION:  
STATUS...: CURRENT REG SERV COUNCIL.: 23  
STATUS REASON: CURRENT RACE.....: AFRICAN  
STATUS DATE...: GENDER.....: MALE  
PAY GROUP...: TEMPORARIES P. SERV. MARITAL STATUS...: NEVER MARRIED  
NOTCH/TARIFF.: 2081868.00 221 NOTCH DATE.....: 20140401  
PAY METHOD...: DEPOSIT - CURRENT IDENTITY NUMBER...: 6711235284086  
INSTITUTION..: INVESTEC BANK LTD NATURE OF APPT...: CONTRACT  
MAIN BRANCH..: 580105 INVESTEC BANK GRAYST APPOINTMENT ACT...: NAT PROSECUTING ACT  
ACCOUNT NO...: 10011627922 F/P.: FULLT  
DATE OF BIRTH: 19671123 SALARY LEVEL.....: 17  
DAYS/HOURS...: APPOINTMENT DATE.: 20131001  
DEDUCTIONS...: 64658.80 REGION/PAY POINT.: 0001 / 580000  
NET SALARY...: 87922.51 PROBATION PERIOD.:  
SCALE.....: 81868 - 81868 RANK TYPE.....: 9 EMS PROF. (70.00%)

CHOICE: \_ (2=ALLOW.; 3=IRP5; 4=OBJECTIVE; 5=ADDITIONAL; 6=TAX; 7=DEPEND.; 8=MEDICAL)



08:47:47, Mon Jun 08, 2016

9

PERSAL BHTP  
5.06.04(06)

SALARY ENQUIRIES: NAT PROSECUTING AUTH  
HISTORY - OBJECTIVE INFORMATION

2015-06-08  
08:50:40.2  
C80581

PERSALNO....	26895102 01	M50 NYASANA	NAS DIREC NDPP
PAY DATE.....	20150529	NORMAL	
SAL-EFF-DAT....	20150531		
ORGANISATION....	C8	NAT PROSECUTING AUTH	
COMPONENT.....	580000	OFFICE OF THE NDPP	
SUBCOMPONENT....	000001	NATIONAL PROSECUTING	
RESPONSIBILITY..	4209	NAT DIR SUPP STAFF	
PROVINCE/DEPT...	88C8	NATIONAL DEPARTMENTS / NPA	
OBJECTIVE 1.....	012097		
OBJECTIVE 1 %....	100.00		
OBJECTIVE 2.....			
OBJECTIVE 2 %....			
OBJECTIVE 3.....			
OBJECTIVE 3 %....			
OBJECTIVE 4.....			
OBJECTIVE 4 %....			
OBJECTIVE 5.....			
OBJECTIVE 5 %....			

CHOICE: \_ (1-BASIC; 2-ALLOWANCE; 3-IRP5; 5-ADDITIONAL; 6-TAX; 7-DEPEND.; 8-MEDICAL)

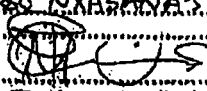
**ADVICE OF APPOINTMENT/STAFF CHANGE**  
**KENNISGEWIG VAN AANSTELLING/PERSONEEL VERANDERING**

Dept/Adm. <b>NPA</b>	Tel No. <b>Ext. 6182</b> Bylyn
Reference number Verwysingsnommer <b>26896102</b>	Date Datum <b>05/06/2015</b>

THE DIRECTOR-GENERAL, OFFICE OF THE PUBLIC SERVICE COMMISSION  
 DIE DIREKTOR-GENERAAL, KANTOOR VAN DIE STAATSDIENKOMMISSIE

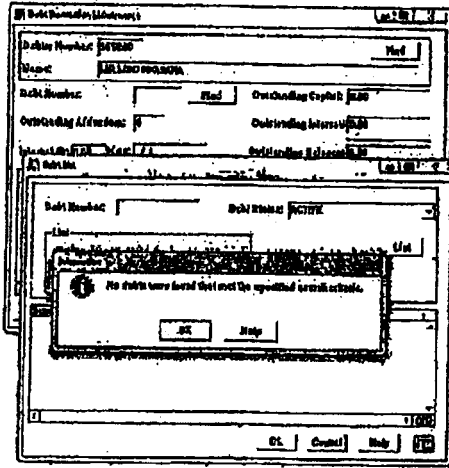
THE/DIE **FINANCE**

*Kindly note the following appointment/staff change/ Gedeurs van die volgende aanstelling/ personeelverandering kennis te neem:*

Surname Van <b>NXASANA</b>	Date of birth Geboortedatum	Conjugal state Huwelikaant
First names Voornamés <b>MSO</b>		
Highest educational qualification Hoogste opvoekondige kwalifikasie		
Nature of change Aard van verandering <b>SETTLEMENT PAYMENT</b>		
Date of effect Datum van inwerkingtreding <b>31 MAY 2015</b>	PSC Ref. No. SDK Verw. No.	
	Before change/Voor verandering	Subsequent to change/Na verandering
Rank Rang		
Salary scale Salarieskaal		
Salary Salaris		
Allowance Toelaas		
Increment date Verhogingsdatum		
Dept Adm		
Establishment Disposisie		
Seniority date - Actual Senioriteitsdatum - Werklik		
Seniority date - Normal Senioriteitsdatum - Nominaal		
Appropriate experience Toesproke oewerervaring	Year(s) Jaar	month(s) maand(e)
<b>PENSION DEDUCTIONS:</b>		
<b>PENSIENAFREKKINGS:</b>		
Government Service Pension Fund.....%	From Vanaf	Temporary Employees Pension Fund.....% Pensioenfonds vir Tydelike Werknemers
Regeringsdienspensioenfonds		
Arrears/Agtorastelling.....%	From/Vanaf.....%	
Remarks/Opmerkings <b>PLEASE PAY THE SETTLEMENT OF R17 357 233.00 AS          MR MSO NXASANA'S LAST WORK DAY WAS 31 MAY 2015. SEE THE ATTACHED</b>		
 for Head of Department / vir Hoof van Departement		

FOR USE BY ACCOUNTANT/GEbruik DEUR REKENMEESTER

Noted/Aangeteken	Remarks/Opmerkings
Signature/Handtekening	Date/Datum



Active  
2015/06/08

SYSOP  
RP0026BS

DAS  
NAT: PROSECUTING AUTHORITY  
DISBURSEMENTS PER PAYEE

12  
DATE: 31/08/2015  
TIME: 15:49:47  
PAGE: 2

DISBURSMT NUMBER	ACTION DATE	PAYMENT METHOD	NICK/REF NUMBER	BENEFICIARY	AUTHORIZED BY	STATUS	PAYMENT TYPE/NO	AMOUNT
0000641599	11/06/2015	CT	693	MXASANA MSD	NGAKOANAT	CANCEL	AP 01350335	10,240,767.47
TOTAL AMOUNT FOR DBNO: 000641599								10,240,767.47
0000641593	15/06/2015	CT	698	MXASANA MSD	NDIVHUMOP	PAID	AP	10,240,767.47
SOURCE DOC NUMBER : NOT APPLIC		SOURCE DOC NUMBER : 003378				01350374	10,240,767.47	
TOTAL AMOUNT FOR DBNO: 000641593								10,240,767.47
TOTAL AMOUNT ISSUED EXCLUDING CANCELLED AND REVERSED PAYMENTS:								10,240,767.47

\* - REVERSED CREDIT TRANSFERS

\*\*\*\* END OF REPORT RP0026BS \*\*\*\*

**INT 2**

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

Case no: 62470/15

In the matter between:

**CORRUPTION WATCH (RF) NPC  
FREEDOM UNDER LAW (RF) NPC**

First Applicant  
Second Applicant

and

**THE PRESIDENT  
THE MINISTER OF JUSTICE  
MXOLISI SANDILE OLIVER NXASANA  
SHAUN ABRAHAMS  
DIRECTOR-GENERAL: DEPARTMENT OF JUSTICE  
AND CONSTITUTIONAL DEVELOPMENT  
CHIEF EXECUTIVE OFFICER OF  
THE NATIONAL PROSECUTING AUTHORITY  
THE NATIONAL PROSECUTING AUTHORITY  
THE DEPUTY PRESIDENT**

First Respondent  
Second Respondent  
Third Respondent  
Fourth Respondent  
Fifth Respondent  
Sixth Respondent  
Seventh Respondent  
Eighth Respondent

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**NOTICE TO ABIDE**

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**BE PLEASED TO TAKE NOTICE** that the Third Respondent abides by the decision of the above Honourable Court herein.

**BE PLEASED TO TAKE NOTICE FURTHER** that the affidavit of **MXOLISI SANDILE OLIVER NXASANA** will be used to explain the position of the Third Respondent herein.

---

BE PLEASED TO TAKE NOTICE FURTHER that the Third Respondent's Attorneys are Delaney Attorneys, care of MacRobert Attorneys, MacRobert Building, 1062 Jan Shoba Street, Brooklyn, Pretoria, at which address they will accept notice and service of all documents in these proceedings.

DATED AT PRETORIA THIS 12 DAY OF APRIL 2017.

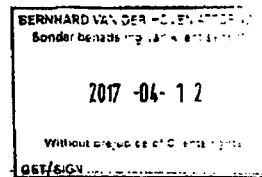
  
**DELANEY ATTORNEYS**  
 Third Respondent's Attorneys  
 6 Stafford St, Westdene, Johannesburg  
 Cell: 083 397 0057  
 Email: [simon@delaney.co.za](mailto:simon@delaney.co.za)  
 c/o MacRobert Attorneys  
 MacRobert Building  
 1062 Jan Shoba Street  
 Brooklyn  
 Pretoria

TO:

THE REGISTRAR OF THE ABOVE HONOURABLE COURT

AND TO:

**WEBBER WENTZEL**  
 Applicant's Attorneys  
 10 Fricker Road, Ilovo Boulevard  
 Johannesburg, 2196  
 P O Box 61771, Marshalltown  
 Johannesburg, 2107  
 Tel: 011 530 5539  
 Fax: 011 530 6539  
 Email: [maray.hathorn@webberwentzel.com](mailto:maray.hathorn@webberwentzel.com)  
 Ref: M Hathorn 3001972  
 c/o Bernard van der Hoven Attorneys  
 2<sup>nd</sup> Floor, Parc Nouveaux Building  
 225 Veale Street  
 Brooklyn  
 Pretoria  
 Ref: Elmari Robbertse  
 Tel: 012 346 4243  
 Fax: 086 584 3261  
 Email: [elmari@bvdh.co.za](mailto:elmari@bvdh.co.za)



Received by  
 on this 12<sup>th</sup> day of April 2017

Signed:  09/100

AND TO:

**THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA**  
First Respondent  
c/o State Attorney: Pretoria  
316 SALU Building  
Thabo Sehume Street  
Pretoria

Received by  
on this \_\_\_\_ day of \_\_\_\_\_ 2017

Signed: \_\_\_\_\_

AND TO:

**MINISTER OF JUSTICE AND CORRECTIONAL SERVICES**  
Second Respondent  
c/o State Attorney: Pretoria  
316 SALU Building  
Thabo Sehume Street  
Pretoria

Received by  
on this \_\_\_\_ day of \_\_\_\_\_ 2017

Signed: \_\_\_\_\_

AND TO:

**SHAUN ABRAHAMS**  
Fourth Respondent  
Victoria and Griffiths Mxenge Building  
123 Lake Avenue  
Silverton, Pretoria

Received by  
on this \_\_\_\_ day of \_\_\_\_\_ 2017

Signed: \_\_\_\_\_

AND TO:

**DIRECTOR-GENERAL: DEPARTMENT OF JUSTICE  
AND CONSTITUTIONAL DEVELOPMENT**  
Fifth Respondent  
c/o State Attorney: Pretoria  
316 SALU Building  
Thabo Sehume Street  
Pretoria

Received by  
on this \_\_\_\_ day of \_\_\_\_\_ 2017

Signed: \_\_\_\_\_

AND TO:

**CHIEF EXECUTIVE OFFICER OF THE NATIONAL PROSECUTING AUTHORITY**  
Sixth Respondent  
Victoria and Griffiths Mxenge Building  
123 Lake Avenue  
Silverton, Pretoria

Received by  
on this \_\_\_\_ day of \_\_\_\_\_ 2017

Signed: \_\_\_\_\_

AND TO:

**NATIONAL PROSECUTING AUTHORITY**  
Seventh Respondent  
Victoria and Griffiths Mxenge Building  
123 Lake Avenue  
Silverton, Pretoria

Received by  
on this \_\_\_\_ day of \_\_\_\_\_ 2017

Signed: \_\_\_\_\_

AND TO:

**THE DEPUTY PRESIDENT**  
Eighth Respondent  
c/o State Attorney: Pretoria  
316 SALU Building  
Thabo Sehume Street  
Pretoria

Received by  
on this \_\_\_\_ day of \_\_\_\_\_ 2017

Signed: \_\_\_\_\_



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

CASE NO.: 62470/15

In the matter between:

**CORRUPTION WATCH (RF) NPC** First Applicant

**FREEDOM UNDER LAW (RF) NPC** Second Applicant

and

**PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA** First Respondent

**MINISTER OF JUSTICE AND CORRECTIONAL SERVICES** Second Respondent

**MXOLISI SANDILE OLIVER NXASANA** Third Respondent

**SHAUN ABRAHAMS** Fourth Respondent

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

**CHIEF EXECUTIVE OFFICER OF THE NATIONAL PROSECUTING AUTHORITY** Sixth Respondent

**NATIONAL PROSECUTING AUTHORITY** Seventh Respondent

**DEPUTY PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA** Eighth Respondent

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**EXPLANATORY AFFIDAVIT**

**BY THE THIRD RESPONDENT**

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I, the undersigned,

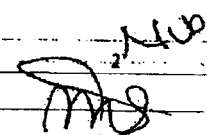
**MXOLISI SANDILE OLIVER NXASANA**

do hereby make oath and say that:

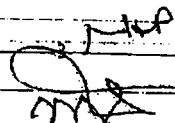
1. I am an adult male attorney and I am the third respondent in this matter.
2. The facts contained in this affidavit are both true and correct and are, unless the contrary is clearly indicated, within my own personal knowledge. Where I make submissions of a legal nature, I do so on the advice of my legal representatives.

**PURPOSE OF THIS AFFIDAVIT**

3. I depose to this explanatory affidavit in response to the application launched by the applicants, Corruption Watch (RF) NPC ("*Corruption Watch*") and Freedom Under Law (RF) NPC ("*FUL*"), in which they seek, primarily, to review the settlement agreement concluded between the first respondent ("*the President*"), the second respondent ("*the Minister*") and myself.
4. Although this explanatory affidavit is filed in response to the founding affidavits of Corruption Watch and FUL, I wish to record that I do not oppose the relief that they seek and file this affidavit to assist the Court with relevant and material factual information.



5. The purpose of this affidavit is thus to provide this Court with an account of the facts within my personal knowledge, which it has not been fully apprised of in the answering affidavits of the respondents that I have now seen and which are relevant to its consideration and determination of this matter.
6. To this end, I confirm the allegations made in Corruption Watch and FUL's affidavits, to the extent that they accord with what is set out below and in the contemporaneous correspondence regarding my tenure at the NPA, the circumstances of my premature departure from it and the state of the institution of which I was aware at that time.
7. I do not intend to address all of the allegations made in the answering affidavits filed by the President, the National Prosecuting Authority ("NPA") the fifth respondent, and the Minister paragraph-by-paragraph. To the extent that any of those allegations (to the extent that they concern me) conflict with what is set out below and in the paragraphs of the applicant's affidavits that I have confirmed, they are denied. My failure to address any specific allegations should not be construed as an admission as to their correctness.
8. This affidavit is structured as follows:
  - 8.1. I address the conclusion of the settlement agreement between myself, the Minister and the President and the basis on, and the understanding with, which I concluded it.



8.2. Thereafter, I address my reasons for leaving the NPA and the material and central fact that I never made a request to the President to vacate the office of the NDPP in terms of section 12(8) of the NPA Act, contrary to what is contained in the answering affidavits that I have now seen.

8.3. Finally, I address the Court on the reasons for, and seek condonation for, the late filing of this affidavit.

#### **BACKGROUND**

9. I was appointed as the National Director of Public Prosecutions ("NDPP") by the President with effect from 1 October 2013.

10. My appointment came about after the President's legal advisor Mr Michael Hulley met me at my office in Durban and he told me that my colleagues had recommended me to take up the position of NDPP. He asked if I was willing to serve as NDPP and I said yes I would. Following my appointment, I met Mr Hulley again as part of my transition to the office of NDPP.

11. In terms of section 179 of the Constitution read, with section 10 of the National Prosecuting Authority Act ("NPA Act"), my appointment was for a period of 10 years.

12. However, during my first year in the office, it became clear that my leadership of the NPA was resisted by National Deputy Director Advocate Jiba and the Special Director: Specialised Commercial Crime Unit

*MS*

Advocate Mrwebi appeared determined to undermine my standing with the President. I later established that they had run a campaign to discredit me as a person fit and proper to hold the office of NDPP.

13. In addition, I believe that Advocates Jiba and Mrwebi advised the President that I intended to reinstate the criminal charges against him that my predecessor had withdrawn. The President informed me in one of our meetings that he had been told that I was apparently meeting former NDPP Mr Bulelani Ngcuka at a flat in Durban. He said: "Hey Mfanakithi, umuntu uma eke washo igama lalwomuntu angifuni nokuzwa lutho ngaye indlela angangifuni ngakhona, ngivesane nyihlanye." This can be roughly translated as "once they mention the name of Ngcuka I don't want to hear anything about that man - I simply go crazy." I told the President that I have never met Mr Ngcuka and that he was being misled.
14. I believe that Advocate Jiba was resentful when she was not appointed as NDDP as she had been acting in that position prior to my appointment. I do not have any reason to believe that Advocate Jiba and I were unable to work together professionally, but do believe that the campaign to have the President remove me was aimed at ensuring her continuing to act as, or even her permanent appointment as, the NDPP. I later discovered that Advocate Jiba had been recommended in a memorandum by former Minister of Justice and Constitutional Development, Mr Jeff Radebe, for permanent appointment as NDPP. This campaign was similar to that

NCP



which disqualified Mr Stanley Gumede who was widely tipped to be made NDPP before my appointment.

15. I believe that this campaign against me culminated in the President's establishment of the Inquiry into my continued service as NDPP.
16. Finally, I was concerned that this campaign was also used to influence some staff members against me and some staff members were used in pursuit of the campaign, which disrupted the operation of the organisation.
17. I had taken various steps to address the instability suffered by the NPA at this time. These included :

17.1. Obtaining a legal opinion from senior counsel regarding the findings of the High Courts and the Supreme Court of Appeal against Advocates Jiba, Mrwebi and Mzinyathi (the Director of Public Prosecutions : North Gauteng Division);

17.2. The appointment of the Commission headed by retired Constitutional Court Justice Yacoob to inquire into the instability within the NPA;

17.3. The preparation of the Memorandum, signed by Mr Willie Hofmeyr, addressed to the Minister for onward transmission to the President regarding the situation at the NPA;

17.4. Correspondence addressed to the Bar Council regarding Advocates Jiba, Mrwebi and Mzinyathi;

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17.5. Informal attempts to improve my relationship with Advocates Jiba, Mrwebi and Mzimyathi; and

17.6. Repeatedly requesting a meeting with the President, so as to request him to intervene and address the situation at the NPA by instituting disciplinary action Advocates Jiba, Mrwebi and Mzimyathi.

18. In July 2014, I was informed by the President that he had taken a decision to institute a commission of inquiry to determine whether I was fit and proper to hold office, in terms of section 12(6)(a)(iv) of the NPA Act.

19. At the end of that month, the President also informed me that he intended to suspend me with full pay pending the outcome of the inquiry and he gave me an opportunity to make submissions in that regard.

20. However, I was of the opinion that insufficient information had been provided to enable me to respond and to make meaningful submissions, and so I sought further information from the President, which was not forthcoming.

21. As a result, on 15 August 2014, I approached this Court on an urgent basis seeking to interdict my suspension by the President and to obtain the relevant information needed to respond fully to the allegations made against me in any inquiry.

22. I did not proceed with my urgent application since negotiations then commenced between myself and the President with a view to settling the

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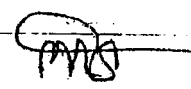
dispute that had arisen regarding my continued service as head of the NPA.

23. On 5 February 2015, the President formerly appointed the commission of inquiry to inquire into my fitness to hold office
24. During May 2015, the President, the Minister and I concluded a settlement agreement in terms of which I agreed to relinquish my position as NDPP and received a settlement amount equivalent to what I would have received as a salary had I served my full term as NDPP. In that agreement, the President acknowledged that I was a fit and proper person to hold office as the NDPP. Below I explain the circumstances that gave rise to the settlement agreement at issue in this application.

#### THE CONTEXT OF THE SETTLEMENT AGREEMENT

25. My reasons for concluding the settlement agreement are relevant in order to understand its context and purpose.
26. First, I entered into the settlement agreement to settle what I considered to be an intractable, undesirable and ongoing dispute between myself, the President and Mr Radebe.
  - 26.1. The source of the dispute was the fact that the President wanted me to vacate the office of the NDPP and I did not want to leave office. A number of spurious and baseless grounds were raised for me to depart office, and I vehemently disagreed with those grounds. To this day I maintain that I am fit and proper to hold the

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office of NDPP and would serve again. My fitness and propriety was agreed to and recorded by the President and Minister in the settlement agreement, and they do not contend otherwise before this Court.

26.2. In my position as the NDPP, I understood my relationship with the President as the appointing authority of the NDPP to be relevant to my employment status. This is based on his appointment powers in terms of section 179 of the Constitution. I further understood my tenure as NDPP to be contractual in nature and not exclusively regulated by the NPA Act.

26.3. While the dispute between the President and I remained unresolved, attempts were made to resolve it through negotiations between myself, the President's legal representatives, Michael Hulley and Busisiwe Makhene, the Minister and the Minister of State Security, David Mahlobo, as set out below.

26.4. In light of these negotiations, I ultimately accepted the terms of the settlement agreement so as to resolve the dispute that had arisen with the President and the pending litigation I had been forced to bring to this Court. I did so on the basis that the President and I were entitled to resolve disputes by reaching a settlement that is acceptable to all parties.

26.5. I was therefore of the view that the settlement agreement was concluded, not in terms of the NPA Act, but rather to settle this dispute.

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26.6. I have since been advised, and accept, that, as the applicant contends, the NPA Act regulates the terms of any early termination of my tenure as NDPP. Of course, it has no application to the litigation brought to interdict the inquiry into my continued service.

26.7. However, all of this does not change the simple fact that the settlement agreement was not, and was never intended to be, concluded to constitute a request on my part to vacate office in terms of section 12(8) of the NPA Act, and I will deal with this in greater detail below.

27. Second, I am also of the view that my entering into the settlement agreement was an attempt to protect the integrity of the office of the NDPP.

27.1. The dispute between the President and I, and my difficulties with Advocates Jiba and Mrwebi of the NPA, had been ongoing and the President did not seem willing to intervene to resolve it.

27.2. There was also considerable media attention paid to the dispute and speculation on the issues at stake regarding the integrity and functionality of the NPA.

27.3. My initiation of disciplinary action against Advocates Jiba, Mrwebi and Mzinyathi appeared not to be supported by the President and the Minister. I had requested that the President intervene by taking disciplinary steps against Advocates Jiba, Mrwebi and Mzinyathi, and I had provided him with a file of relevant

documentation. This included the legal opinion, reports and memoranda that are before this Court. At the NPA meeting at Emperors Palace in March 2015 referred to below, the Minister informed me that the President had agreed to intervene as I had requested. He failed to do so.

27.4. I was of the opinion that protracted and acrimonious litigation and disputes between myself and the President would further impair the standing of the NPA and the office of the NDPP.

27.5. It was my belief that it was in the best interests of the office of the NDPP and the institutional integrity of the NPA that the President and I settle our dispute, and that I relinquish my position as NDPP as a part of that settlement.

28. These reasons are expressly set out in the settlement agreement itself – attached as "CW 12" to the founding affidavit. In this regard, I emphasise that the settlement agreement recorded that –

*"both parties recognize that a protracted litigation process will not be in the interests of the office of the National Director of Public Prosecutions, the functioning of the National Prosecuting Authority nor the Republic of South Africa,"*

29. It was further recorded at paragraphs 5 and 6 of the settlement agreement that –

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[Signature]

*"the parties are also mindful that the public glare brought on by the holding of an enquiry, whilst necessary for transparency in our democracy, has unintended consequences."*

and

*"the parties are equally cognizant of the cost implications for litigating and/or conducting an enquiry which resources may be better applied given the challenges our country faces"*

30. Finally, whilst I knew that I would be found fit and proper by the inquiry, it remained open to doubt whether the findings of the inquiry would ultimately resolve the dispute regarding my leadership of the NPA. I also had seen what had happened to my predecessors as NDPP. They became involved in lengthy, acrimonious and expensive litigation and endured well-publicised personal attacks, all while their tenure as NDPP was made untenable. This adversely affected the integrity of the office of the NDPP, the stability of the NPA and them personally.

31. All of these factors resulted in me concluding the settlement agreement and relinquishing my position as NDPP in accordance with the provisions of the settlement agreement.

### **I DID NOT REQUEST TO LEAVE OFFICE**

32. It was never my intention to make a request to vacate the office, nor did I ever make such a request to the President, in terms of section 12(e) of the NPA Act.

NDPP  
NDPP

33. I did not feel compelled to make such a request since I have at all times considered myself to be fit and proper to hold the office of the NDPP and I had no intention of leaving the office of the NDPP. As explained above, the settlement discussions were only commenced as a result of the ongoing dispute between myself and the President.

34. These intentions are plainly evident from the following excerpts from the contemporaneous correspondence.

35. My position was expressly articulated in the letter from my lawyers, Mabunda Incorporated, to the President on 10 December 2014, a copy of which is attached to this affidavit marked "MN 1". That letter explicitly records that:

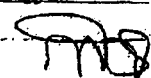
*"It has never been the NDPP's intention to resign from his position since he considers himself to be a fit and proper person to hold this position."*

36. My position is further made clear with reference to paragraph 4 of that letter which states:

*"the proposed settlement was triggered by the discussions which the NDPP had with the President following the latter's announcement of his decision to hold an enquiry into the NDPP's fitness to hold office and the possible suspension pending the enquiry."*

37. I also expressed my unwillingness to resign to the Minister during a meeting which he called me to and which was held at the Sheraton Hotel in Pretoria on or about 26 February 2015. Contrary to the Minister's answering affidavit, what transpired at that meeting was the following:

N/A



- 37.1. The Minister stated that he understood that I had reached an agreement with the President and that I would be leaving the NPA.
- 37.2. I advised the Minister that the opposite was in fact true, since I had never had any intention of leaving the NPA and I was discussing the issue further with Mr Hulley (the President's legal representative) with a view to resolving the dispute so that I may retain office.
- 37.3. I further expressed that I had, in any event, not consulted my family or my lawyers about the settlement proposed by the President.
- 37.4. The Minister appeared unaware of my discussions with Mr Hulley and indicated that he would need to get clarity from his principal on his (the Minister's) role in this matter. As a matter of fact, the Minister played no further role in the settlement negotiations.
38. In addition, when I next met the Minister at an NPA workshop at Emperors Palace on or about 10 March 2015, contrary to what is stated in his answering affidavit, we did not discuss the settlement negotiations. He did, however, advise me that the President had agreed to intervene to take the disciplinary steps I had requested against Advocates Jiba, Mrwebi and Mzinyathi.
39. My unwillingness to leave the office of the NDPP is further evidenced by a letter which I addressed to the President and in which I indicated that my preference was to resolve the dispute between us through a section 12 inquiry. A copy of this letter is annexed as "MN 2".

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