
GENERAL NOTICE

NOTICE 155 OF 2015

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

Made by Adv NA CASSIM, SC

CHAIRPERSON OF THE ENQUIRY

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1 DEFINITIONS

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

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

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

2 SUBMISSIONS

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

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

3 HEARINGS

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

4 EXCHANGE OF SUBMISSIONS AND CORRESPONDENCE

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

5 DISCOVERY

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

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

6 AMENDMENT OF RULES

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

7 THE REPORT

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