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Date: 17 September 2018

**To: The Honorable President of the Republic of South Africa:  
Cyril Matamela Ramaphosa, MP**

**Dear Mr President,**

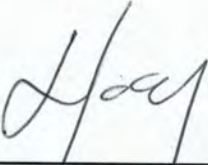
**Open Letter to The President of the Republic of South Africa  
Re: Situation within the NPA and appointment of the NDPP**

1. The Society of State Advocates and Prosecutors of South Africa (SSAPSA) is the only association for prosecutors in South Africa and currently represents 501 prosecutors. SSAPSA membership consists of prosecutors who are in the fulltime employ of the National Prosecuting Authority. SSAPSA is an organisational member of the International Association of Prosecutors (IAP which held its annual conference and annual general meeting at the Sandton Convention Centre Johannesburg last week, 9 – 14 September 2018). As one of the founding members of the IAP, SSAPSA was instrumental in drafting the International Standards of professional responsibility and statement of the essential duties and rights of prosecutors which was adopted by the IAP on 23 April 1999 and to which our members subscribe.
2. One of the main objectives of the SSAPSA is to promote an effective prosecution service for the people of South Africa. This aligns with the Constitutional imperative to prosecute “without fear, favour or prejudice”.

3. This is increasingly challenging for prosecutors in the current climate within the NPA where the position of the NDPP is uncertain and where there is turmoil within the leadership of the NPA. This is exacerbated when the independence of the office of the NDPP and by implication that of the NPA itself is at risk.
4. Over the years and in the absence of proper leadership the NPA became weak and divided, where it should have been the bastion of integrity and independence.
5. The recent Constitutional Court judgement: *Corruption Watch v The President and others* (case no 333/17), once again emphasised the dire state of affairs within the NPA.
6. It is imperative that the NPA has a credible, fearless and competent leader at the helm, one who promotes the independence of the organization and bring stability to its ranks. Instability within the NPA detracts the organization from its responsibility in fulfilling its obligations in terms of Section 179 of the Constitution of the Republic of South Africa.
7. In a crime ridden country like South Africa, where crime has become part of every citizen's life, the NPA is the last line of defence in the fight against crime. When the NPA, one of the pillars of the criminal justice system, is threatened in any manner, it not only adversely affectst the criminal justice system, but also the public it serves.
8. Since 1998 when the NPA was established, only 5 NDPPs were appointed, none of whom completed their appointed term.
9. For the rest of the time, the NPA was headed by acting appointees. This ongoing situation was unbearable for prosecutors and created a difficult and unstable environment. Furthermore, the inconsistency undermined public confidence in the credibility of the NPA and interfered with its ability to exercise its constitutional obligations.

10. Any person to be appointed as NDPP must be a fit and proper legally qualified South African citizen who will be able to exercise the constitutional mandate and functions of a NDPP without fear, favour or prejudice.
11. From the Constitution and the National Prosecuting Authority Act, it can be inferred that it is imperative and important to investigate whether a person qualifies to be appointed as a NDPP, prior to making the appointment.
12. It is submitted that the test for the determining whether a candidate is a qualified fit and proper person (not only in regard to NDPP, but all prosecutors) requires the application of professional standards to be determined by the prosecution profession. It is a best practice rule that every profession has to lay down standards and ethical principles applicable to its members. Once those standards have been laid down, it becomes easy to assess and determine what the profession prescribes for one to be a fit and proper person, as is the case with the appointment of judges. Prosecutors should therefore have an input into the appointment of their NDPP.
13. Unfortunately, to date, prosecutors have only discovered what is happening within their own work environment when they hear about it in the media. This is extremely undesirable, especially where prosecutors already work in a volatile and stressful milieu.
14. Prosecutors are overworked due to the high vacancy rate (the last indication was that it was 23%). Posts are not filled, which burdens all prosecutors with an increase in their work load. This in itself adversely impacts on effective prosecutions. According to the NPA Annual Report 2016/2017 parliamentary briefing meeting's minutes of 4 October 2017, 239 critical posts need to be filled currently. Furthermore, quoting from the same NPA Annual Report 2016/2017 parliamentary briefing meeting's minutes: "as the government cost reduction project had had a severe impact on the NPA and had resulted in a decline of 404 in the number of prosecutors."
15. Due to the fact that posts are not filled and the adverse working conditions of prosecutors, more prosecutors are lost every day to the private sector and magistracy.

16. The NPA is facing enormous financial constraints and prosecutors are also acutely aware of resource challenges, which they experience on a daily basis.
17. The NPA has also been repeatedly burdened with the costs, which it has been ordered to pay where it has lost the cases associated with the prosecution of Mr Zuma. Most recently the Supreme Court of Appeal ordered that the NPA cover costs “including the costs of three counsel and the costs related to the applications for leave to appeal” (*Zuma v DA* at paragraph 96).
18. Furthermore, we note with concern the abovementioned decision of *Corruption Watch NPC and another v The President and Others* delivered by the Constitutional Court (case no:333/17) on 13 August 2018 as well as its predecessor *Corruption Watch NPC and another v The President and Others* Gauteng Division (Pretoria) of the High Court of South Africa (case no 62470/2015) on 8 December 2017. In these matters again, the NPA was ordered to pay exuberant costs for the applications and/or appeal. The question left to be answered is whether these cost orders were fruitless and wasteful expenditure as per The Public Finance Management Act 1 of 1999 and read with The Public Service Act of 1994.
19. Our plea to you, Mr President, is to take the utmost care and consideration in the appointment of a NDPP and to consult with and consider the prosecutors who serve under the new NDPP . The morale of prosecutors is at an all-time low. However, we remain committed to ensure effective prosecutions for the sake of the people that we serve.



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**Adv Elivera du Plooy**  
**SSAPSA Contact Person**

**This letter was compiled by Adv Elivera du Plooy on behalf of SSAPSA members on the mandate received from SSAPSA members at their Annual General Meeting held 8 September 2018.**