



DIGGING IN: NDPP MXOLISI NXASANA



SACKED: FORMER NDPP MENZI SIMELANE



OPAQUE POST: NATIONAL POLICE COMMISSIONER RIAH PHIYEGA

The crisis that should never have happened

A transparent, non-partisan appointment process is vital to restore public trust in key criminal justice institutions, say Hamadziripi Tamukamoyo and Kaveshnee John

BARELY a year into his tenure as National Director of Public Prosecutions (NDPP), Mxolisi Nxasana is embroiled in a highly public scandal.

Early reports stated that shortly before new cabinet ministers were appointed, former justice minister Jeff Radebe had asked Nxasana to resign because he failed to reveal that he had previously been charged and acquitted of murder.

Nxasana has reportedly also been accused of nepotism, has two criminal convictions for assault to his name, and has been charged with resisting arrest related to "serious traffic offences".

While there should be a transparent and fair process that enables Nxasana to explain these revelations, there is no denying that this debacle will only further dent public trust and cast another ominous shadow over the National Prosecuting Authority (NPA).

Public trust in key criminal justice institutions such as the NPA, the South African Police Service (SAPS) and the Special Investigating Unit (SIU) needs to be restored, and a vital first step in doing this is to ensure that a competitive and transparent process takes place when appointing the leadership of these entities.

It should be remembered that for 18 months the NPA had an acting NDPP in the form of Advocate Nomqobo Jiba. It was only after the Council for the Advancement of the South African Constitution took legal action against President Jacob Zuma to force him to make a permanent appointment, which went all the way to the Constitutional Court, that Nxasana was appointed.

Considering the December 2011 ruling by the Supreme Court of Appeal stipulating that Zuma's previous appointment of Advocate Menzi Simelane as NDPP was "inconsistent with the Constitution and invalid", it is fair for the public to have expected far greater circumspection regarding the current ap-



ACTING NDPP NOMQOBO JIBA

pointment.

In Kenya, for instance, prospective candidates are rigorously interviewed on national television.

Similarly, the opaque appointment of Riah Phiyega, a person with no policing experience, as national commissioner of the SAPS, also eroded the morale of police officers and reduced public trust in the police.

In his inauguration speech on May 24, Zuma stated that the National Development Plan (NDP), a product of the National Planning Commission, would underpin all efforts to move the country "forward to prosperity and success".

To his credit, Zuma stated that for the NDP's targets to be realised – for instance, in terms of economic growth, jobs, infrastructure and ensuring the safety of citizens – it was critical for the performance of the state to improve and for public service corruption and inefficiency to be eradicated.

Indeed, with South Africa having

just celebrated 20 years of democracy, Zuma has an opportunity to leave a lasting legacy by ensuring that over the next five years, there is a revitalisation of various state institutions – including those with a mandate to tackle corruption, such as the NPA, the SAPS and the SIU.

As a starting point, it is crucial to address the issue of appointments to these important agencies.

This would spark a process of restoring staff morale and public support.

It is time for the country's political leadership to heed the calls for such appointments to be made according to a transparent, competitive and non-partisan process.

There is already a precedent for this, considering that the heads of Chapter Nine institutions such as the Auditor-General and the Public Protector are appointed after being interviewed and recommended to the president by a multiparty parliamentary committee.

The NDP, adopted by the previous cabinet, supports the principle that a transparent, non-partisan body should vet and interview candidates for key positions in the police before appointment, where necessary, by the president. This could be adapted to other criminal justice institutions.

The NDP recommends that a national policing board consisting of expertise from various sectors and disciplines should be established to set standards for recruiting, selecting, appointing and promoting police officials.

Regarding the national commissioner of the SAPS and the deputies, the NDP suggests that appointments be recommended to the president following panel interviews based on a clear set of objective criteria. This is intended to "ensure the incumbents are respected and held in high esteem by the police service and the community".

This cogent set of recommendations should similarly be applied or



EX-JUSTICE MINISTER: JEFF RADEBE

adapted to the position of the NDPP, particularly considering the vital importance that this person be "fit and proper" – and also independent.

Indeed, there would be many benefits for these institutions – and also for applying the rule of law – if such a transparent and competitive process were to be followed.

This would invariably result in heightened public scrutiny of the applicants and include rigorous background checks of the candidates. Any subsequent concerns would be raised and engaged with throughout the process.

Arguably, this would go a long way to preventing instances where key appointments are made only for serious problems to arise later on, to the substantial detriment of both the appointee and institution involved.

A competitive and transparent appointment process will also allow competent candidates to raise their public profiles before they are appointed. Thus, when they take up

their positions, the public and public servants should know that appointees do indeed have the experience, skills and integrity required to head their departments with authority.

Let us imagine that South Africa decided, for instance, to follow Kenya's example, where prospective candidates for the position of the chief of police and attorney-general (similar to the NDPP) are rigorously interviewed on national television. Indeed, if the current head of the NPA had been appointed following such a publicly transparent process, the recent revelations would have emerged sooner, and he would have had a fair chance to publicly resolve them and ensure that there would not be a shred of doubt concerning his suitability to head the organisation.

It is deeply disconcerting and unfair – not only to him, but also to the many honest and hardworking men and women in the NPA – that yet another period of uncertainty will have to be endured, which will only serve as a distraction from their core business.

The country's political leadership should urgently and publicly ensure that the current NDPP debacle is resolved fairly and speedily.

Any future leadership appointments to key criminal justice institutions have to be preceded by a robust, publicly transparent and impartial vetting and interviewing process.

This will revitalise these entities and spark a process of restoring staff morale and public support, which would be immensely beneficial for efforts to tackle crime and corruption while enhancing the rule of law in South Africa.

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