



UNIVERSITY of the
WESTERN CAPE



Options for Reform: Appointing the National Director of Public Prosecutions in South Africa

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2025

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1. Introduction

No constitutional appointment in South Africa deserves the description of “poisoned chalice” more than the position of National Director of Public Prosecutions (NDPP). As the ultimate veto-holder over all criminal prosecutions, the NDPP holds the weight of expectation of a country struggling under the burden of past and present corruption and crime, sometimes emanating from within the criminal justice system itself. The National Prosecuting Authority (NPA) must bring to accountability the corrupt and criminal, from within and without government. Accountability is fundamental to the rule of law, a founding value in the Constitution.

Ideally the NDPP, its leader, should be not only scrupulously ethical, but also a good leader with the requisite legal and strategic skills to steer the institution to effectiveness and efficiency in an extremely challenging environment. The incumbent, Shamila Batohi was appointed in December 2018, to commence duties in February 2019. Batohi must vacate office in January 2026 by reason of her age, rather than because her term of office has ended. Her appointment and relatively stable tenure followed a series of tumultuous, compromised or short tenures, after the resignation of Bulelani Ngcuka in July 2004, summarised in the table below.

Table 1: National Directors of Public Prosecutions since 1998

Tenure	Name	President Appointing	Reason for end of tenure	Key decisions during tenure
1 August 1998 – July 2004	Bulelani Ngcuka	Nelson Mandela	Resignation	Decision not to charge Zuma
	<i>Silas Ramaite (acting)</i>	Thabo Mbeki		
1 February 2005 – 23 September 2007	Vusi Pikoli		Suspended by Mbeki in 2007 and removed by Kgalema Motlanthe in late 2008, Parliament confirmed in early 2009 Ginwala Inquiry found his suspension invalid in 2008 Out of court settlement in 2009 to stop his court bid for reinstatement	Decision to charge Zuma 2005 Decision to prosecute Jacky Selebi 2007

Tenure	Name	President Appointing	Reason for end of tenure	Key decisions during tenure
	<i>Mokotedi Mpshe (acting)</i>			Charges against Zuma reinstated 2007 Withdrawal of charges against Zuma 2009
November 2009 – October 2012	Menzi Simelane	Jacob Zuma	Appointment declared invalid by Constitutional Court in 2012	
	<i>Nomgcobo Jiba (acting)</i>		Mokgoro Enquiry found unfit in 2018 and removed in 2019.	
1 October 2013 – 11 May 2015	Mxolisi Nxasana		“Settlement” to vacate made with Zuma; settlement declared invalid by Constitutional Court	
	<i>Silas Ramaite (acting)</i>			
18 June 2015 – 13 August 2018	Shaun Abrahams		Appointment declared invalid by High Court in 2017, invalidity confirmed Constitutional Court 2018 – retired with benefits	Decision to reinstate charges against Zuma
	<i>Silas Ramaite (acting)</i>	Cyril Ramaphosa		
1 February 2019 – January 2026	Shamila Batohi		Section 12(1) of the NPA Act provides an NDPP must vacate office on attaining age of 65	Decision to prosecute Zandile Gumede 2019 Decision to prosecute Ace Magashule 2020

Previous NDPP’s fortunes have been closely linked to actions taken or not taken in respect of former President Zuma and other high-profile persons. Only Batohi was appointed through a

public consultative process, which is not an explicit requirement of the legislation (the National Prosecuting Authority Act 32 of 1998) governing the NPA, which arguably is one of the reasons it does not comply with the constitutional imperative in s179(4) that the legislation ensure that the NPA operates “without fear, favour or prejudice”. The appointments process, including the minimum requirements for the position which are far less onerous than applicable to the Public Protector or Auditor-General, is one of many parts of the NPA legislation that requires reform in order to meet the imperative of section 179(4).

Although many have criticised Batohi’s tenure, there is no suggestion that she herself has been corrupt. A full understanding of her tenure will probably only become apparent once cases initiated during her tenure come to conclusion. The arms deal case against Zuma and others proceeds yet again on 4 December 2025, but is unlikely to conclude before the end of Batohi’s term, not least because recess in the High Court runs from 7 December 2025 to 17 January 2026, as set by former Chief Justice Mogoeng in 2019.

Who is to follow Batohi as NDPP, is crucial to the future success of restoring the South African democracy. President Ramaphosa should complete his second term of office as President in 2029, although his term as ANC President ends in 2027. Whoever is NDPP, to be appointed by him, likely will have a term of office which extends into the term of both the next President and some of the following presidential term.

The transparent process President Ramaphosa followed is alluded to in the President’s Progress Report on the recommendations from the Zondo Commission. The Progress Report says, that there has been resistance from within the Department of Justice and Constitutional Development, on constitutional grounds, most likely section 179(1)(a) of the Constitution, which establishes the NPA and provides that the President appoints the NDPP who is head of it. However, section 179(1) read together with section 179(4) would seem to require the national legislation to outline a process for the President in exercising that power, to ensure the NPA operates without fear, favour or prejudice. The Progress Report says:

“a possible amendment is now being considered that would provide for a transparent and open process to be determined by the President though the development of ‘Practice and Guidelines’ for the appointment process of the NPA leadership.”

It is unclear precisely what this means, but it appears to suggest the actual process adopted should be determined by the President, rather than being “constrained” by legislation.

While the Constitution does provide for the President to appoint the NDPP, it does not say that the President must appoint Directors of Public Prosecutions (DPPs). It is the NPA legislation which provides for the appointment by the President of Deputy National Directors (DNDPPs) and Directors of Public Prosecutions (DPP).

There is a strong argument that the legislation providing for the President to appoint the top posts throughout the NPA without any transparent process, also falls foul of section 179(4). A transparent process should also apply to the appointment of these crucial positions. The DPPs in practice largely determine the quality of decision-making in the NPA. DPPs are responsible for all decisions in their Divisions, and the NDPP may only intervene in the prosecution process where policy directives are not complied with¹ and may review a decision to prosecute or not after consulting the relevant DPP and after taking representations within a period specified by the NDPP, from the accused, the complainant, or any other person the NDPP considers relevant.

2. Batohi Appointment Process and Candidates

An appointment process for the appointment of Batohi was initiated by President Ramaphosa only after the Constitutional Court in August 2018 ordered the president to appoint a new NDPP within 90 days, declaring the provision of the NPA legislation which at the time, permitted indefinite suspension of an NDPP without pay, unconstitutional. ²

In October 2018 Ramaphosa invited seven entities to help him identify and select individuals for consideration as possible candidates for the position of NDPP. The entities invited to assist the president in this endeavour had a dual role. First, they nominated senior legal practitioners to serve on the selection panel headed by Minister Jeff Radebe. The panel, appointed by Ramaphosa and chaired by Radebe, comprised:

- Thembekile Kimi Makwethu (Auditor-General of South Africa)
- Bongani Majola (South African Human Rights Commission)
- Jaap Cilliers (General Council of the Bar of South Africa) (late replacement for Advocate Barry Roux)
- Richard Scott (Law Society of South Africa)
- Lutendo Sigogo (Black Lawyers Association)
- Lawrence Manye (Advocates for Transformation), and
- Mvuzi Notyesi (National Association of Democratic Lawyers).

The second role for the institutions was to vet candidates who essentially put themselves forward, to each of the seven organisations, who then vetted them. It is not clear how many people in fact nominated themselves and were considered before the shortlist was published by the panel. The panel shortlisted 12 candidates, ultimately interviewing all except two:

¹ Section 179(5)(c) Constitution.

² Corruption Watch and others v President of South Africa and others CCT 333/17 and CCT 13/18 Case CCT 333/17

Breytenbach and Ramaite. Although originally planned to take place behind closed doors, after an urgent application by civil society organisations, the interviews were open to the media.³

The shortlist, which was dominated by candidates from within the NPA, appears below, with the candidates ultimately preferred by the panel in bold:

- **Rodney de Kock (NPA)**
- **Andrea Johnson (NPA)**
- Matodzi Makhari (NPA)
- Matric Lumphondo (NPA)
- Khehla Andrew Chauke (NPA)
- Dinah Mopone Noko (NPA)
- **Siyabulela Mapoma**
- **Simphele Mlotshwa**
- **Shamila Batohi**
- Naome Manaka
- Glynnis Breytenbach (not interviewed)
- Silas Ramaite (NPA) (not interviewed)

It is sobering to reflect that of the 10 interviewed candidates, three now have serious findings or allegations against them. **Matric Lumphondo** was fired from the NPA for offering a bribe to another prosecutor, and is facing charges in court. **Andrew Chauke** has been suspended provisionally by Ramaphosa, after Batohi wrote to him requesting this in August 2023 on the basis of questionable decisions; an inquiry into his fitness to be Gauteng DPP is in progress. **Moipone Noko**, famously called “that woman down in Natal” in a voice recording of Gavin Watson, resigned after a panel headed by Advocate Rodney de Kock reportedly concluded in 2019 that she had manipulated charges while she served as DPP in KwaZulu-Natal. It is a reflection of the fragility of the political situation at the time that these candidates, the latter of which already had question-marks around their actions, made the shortlist.

Rodney de Kock, subsequently appointed Deputy NDPP, passed away in late 2024. Former Transnet general manager **Siyabulela Mapoma** was among the five 2018 preferred candidates, despite testifying in the Zondo Commission and thus having clear conflicts of interests in any matters involving Transnet. **Simphele Mlotshwa**, also a 2018 preferred candidate and former acting DPP in KZN, is now in private practice, most recently representing the alleged killers of Kiernan “AKA” Forbes. **Naome Manaka**, a former magistrate-turned advocate, is now a member

³ Right2Know Campaign (R2K) won its urgent application in the North Gauteng High Court to allow media coverage of the interviews. Case Number 81783/2018, North Gauteng. Not reported.

of the Magistrates' Commission. Former prosecutor **Glynnis Breytenbach** remains a DA Member of Parliament, which position likely rules her out for consideration, as does her age. **Silas Ramaite**, caretaker NDPP on many occasions, took retirement in 2019.

However, **Andrea Johnson**, who worked with the inimitable Gerrie Nel when he was still in the NPA, has since been elevated to be head of the Investigating Directorate (ID). At only 44, she could be a candidate for NDPP in 2026, although this would likely weaken the ID. **Matodzi Rachel Makhari- Sekhaolelo** is now DPP in the North West, and also remains a potential 2026 NDPP candidate.

Indeed, it seems likely that from within the NPA, Deputy National Directors of the NPA, any of the Special Directors, as well as the DPPs would be up for consideration for the 2026 position, their age permitting. However, in 2018, the final list included only two preferred candidates from within the NPA. It may still be the case that an outside candidate may be considered necessary, despite the partial recovery of the NPA. What are the possible processes that should ideally be followed, in terms of requirements, application or nomination, vetting and selection?

3. NDPP 2026 Appointment Process

The process adopted in 2018 was an improvement on previous appointments, which happened entirely behind closed doors. However, there is no doubt that the 2018 model can be improved upon, and it would be preferable to have this legislated, to prevent a future President from designing a process to achieve a predetermined outcome. In particular, a more open and transparent nomination process is probably preferred, rather than funnelling nominations through only seven institutions, of which three did not have any official status and arguably had historical links to the governing party. Attention must be paid to the following aspects of the appointment process:

- Requirements: What are the minimum requirements for the position? What are the unwritten or read-in requirements?
- Nominations: How and by whom may persons be nominated for consideration?
- Vetting: Who does the vetting, and what is taken into account?
- Should vetting and selection be done by different bodies?
- Selection Process: How and by whom are nominated candidates considered, and how many candidates are put forward to the President?
- Who appoints, and is this subject to veto?

3.1 Requirements for Appointment

The NPA legislation in section 9 provides for only three explicit requirements for appointment, and in section 12 for one implicit requirement. The person must:

- “possess legal qualifications that would entitle him or her to practise in all courts in the Republic”. This is a more complicated requirement than it looks, and will be discussed in more detail below.
- “be a fit and proper person, with due regard to his or her experience, conscientiousness and integrity, to be entrusted with the responsibilities of the office concerned.” The courts have opined extensively on this requirement, and Lukas Muntingh has covered this in detail.⁴ It is unlikely, for example, that an un-rehabilitated insolvent would qualify.
- be a South African citizen. This would exclude those from sister jurisdictions who have obtained right of appearance in South African courts.
- be under the age of 65, as section 12 of the NPA Act provides that an NDPP must vacate office on attaining that age. This is a questionable provision, as will be discussed below.

Section 8 provides that “The need for the prosecuting authority to reflect broadly the racial and gender composition of South Africa must be considered when members of the prosecuting authority are appointed.”. With this must be read s 195(1) of the Constitution, which sets the values and principles for the public administration.

The minimum requirement to possess a legal qualification must be contrasted with the situation under the Attorney-General Act of 1992 (now repealed), which limited the possible appointees to those admitted as advocates, who had been

“concerned in the application of the law for a continuous period of at least ten years after his admission to practise as an advocate” and who

“possesses such experience as, in the opinion of the State President, renders him suitable for appointment as an attorney-general”.

In other words, 10 years of litigation experience in the High Court was required (this was also the requirement before 1992). Note that at the time, there was no national attorney-general, and provincial Attorneys-General were the equivalent of today’s DPPs. Ten years of experience is commonly required for DPP positions, comparatively speaking, including in Kenya and Ireland, with eight years applying in Zambia.

⁴ See, inter alia, his submission to the Constitutional Review Committee available on: https://pmg.org.za/files/230317ACJR_Submission_Constitutional_Review_2021.pdf

3.1.1 Legal qualifications

This requirement is far more complicated than it at first appears. It would appear to include three categories of person:

- Advocates admitted as such, with the actual experience this implies varying by date of admission;
- Attorneys with the relevant right of appearance
- Prosecutors not admitted as legal practitioners still in the employ of the NPA with the relevant right of appearance.

This is largely the result of prosecutors not being covered by the Legal Practice Act (LPA)⁵.

At the time of the passage of the NPA legislation (1998), the Right of Appearance in Courts Act⁶ (RACA) had just been passed. This provided that any advocate has the right to appear on behalf of any person in any court in the Republic. “Advocate” was defined as any person duly admitted and enrolled as an advocate in terms of the Admission of Advocates Act, 1964, which in turn simply required an LLB degree, and being a fit and proper person (and not being removed from the roll of Attorneys). In other words, a new graduate who enrolled him or herself would qualify.

The RAC Act also provided that attorneys (which previously could not appear in the High Court) had the right of appearance in any court other than the Supreme Court of Appeal and Constitutional Court, but could obtain such right on application, with a minimum of three years of practice.

The situation changed with the promulgation of the Legal Practice Act (LPA)⁷, which commenced in February 2015,⁸ most notably removing the automatic right to appear in the High Court from new attorneys. Section 114 did however provide for a process for existing attorneys and advocates to be included in the new consolidated roll of legal practitioners, and section 115 those who at the time of the passage of the act were entitled to be admitted as attorneys and

⁵ Act 28 of 2014.

⁶ Act 62 of 1995.

⁷ Act 28 of 2014.

⁸ In terms of s25(3) of the LPA, only those attorneys who have applied for and obtained a certificate from the Registrar of the relevant High Court may appear in the High Court and other superior courts. In other words, the automatic right of appearance in the High Court introduced by the RAC Act, was removed. Thus, attorneys admitted since February 2015 do not have right of appearance other than in the lower courts, unless they have the relevant certificate. This certificate must be issued if the Registrar is satisfied that the attorney has been practising for a continuous period of 3 years (or undergone a trial advocacy training programme approved by the Council); has an LLB degree; and has not been struck off the roll or suspended from practice. This suggests that an attorney admitted since 2015 not in possession of such a certificate should apply for one, should she or he wish to qualify for consideration for appointment as NDPP.

advocates, retained that entitlement, and attorneys with right of appearance in all courts, retained that right.

In other words, those admitted as advocates before 2015, on the basis only of their degree and being “fit and proper”, continue to qualify, even if they have not engaged in litigation since admission. Attorneys with three years of experience who apply or who have applied for a certificate may also qualify, even if their practice does not involve court litigation.

Furthermore, it is not a requirement for appointment as a prosecutor to be admitted as a legal practitioner, nor to have an existing right of appearance. However, section 25(2) of the NPA Act provides that any prosecutor who has “obtained such legal qualifications as the Minister after consultation with the National Director may prescribe”⁹ and has at least three years’ experience as a prosecutor of a magistrates’ court of a regional division, shall, subject to section 20(6), have the right to appear in any court in the Republic, which, together with section 20(5), implies that only currently serving prosecutors with the authorisation of the NDPP, have right of appearance.¹⁰

This means newly appointed prosecutors with little or no experience and only a degree, would qualify for appointment. (Although the NPA’s “aspirant prosecutor programme” for new graduates includes an examination, this not externally accredited nor moderated.) However, former prosecutors no longer employed as prosecutor, lose their right of appearance, if they have not also at some point been admitted as legal practitioners. Career prosecutors departing the NPA, not admitted as legal practitioners, would not meet the requirements, if they later wished to be considered for the position of NDPP.

⁹ GNR 423 of 18 May 2001: Regulations on the Legal Qualifications for Prosecutors. The appropriate legal qualifications for any prosecutor to have the right to appear in any court in the Republic of South Africa as contemplated in section 25 (2) of the Act are a recognised three-year degree or diploma obtained at a university in the Republic of South Africa, including, but not limited to, the degrees *baccalaureus iuris* or *baccalaureus procurationis* or the *diploma iuris*, which includes at least a course in each of the following: Law of Evidence, Civil Procedure, Criminal Procedure, Criminal Law and the Interpretation of Statutes: Provided that a legal diploma will with effect from 1 January 2006 not be regarded as a legal qualification as contemplated in section 25 (2)(a) of the Act: Provided further that a prosecutor who holds a legal diploma and has the right to appear in any court in the Republic as contemplated in section 25 (2) of the Act on 31 December 2005, will continue to have the right to so appear.

¹⁰ Section 20(5) provides that “any prosecutor shall be competent to exercise any of the powers ... to the extent that he or she has been authorised thereto in writing by the National Director, or by a person designated by the National Director” while section 20(6) provides that “written authorisation referred to in subsection (5) shall set out—(a) the area of jurisdiction; (b) the offences; and (c) the court or courts, in respect of which such powers may be exercised.”

3.1.2 Age requirement

The limitation of the age of the NDPP (as well as all other senior positions of the NPA) to age 65 is thought to have originated in a desire to ensure that apartheid-era attorneys-general who became DPPs via transitional provisions, would be required to leave on attaining age 65, and that older prosecutors, more likely to emanate from the old order, would be excluded from future senior appointments.

Today, however, this requirement likely works to limit the contribution of some of the best lawyers who may be prepared to serve for the relatively low salary of an NDPP, after largely completing their more lucrative career in private practice. Competent mid-career younger lawyers, by contrast, not yet at that age are likely to be earning significantly more than an NDPP, whose salary is legislatively capped at below that of a High Court judge.¹¹ Unlike judges, however, an NDPP after a 10-year term does not enjoy the “salary for life” of a judge, although they will receive government pension benefits on retirement, but only as if he or she were employed as a Director-General in the public service.¹²

There is a strong argument that the age requirement may fall foul of the equality clause of the Constitution. Anyone who by reason of age is infirm or no longer competent may be removed from the position of NDPP; it should not be the case that simply by reason of attaining the age of 65, a person is not, or no longer, in a position to serve. This is particular the case in the legal realm where sufficient experience takes decades to accumulate and many older persons continue to operate at a high level. In the Constitutional Court, for example, judges serve for 12 years or on attaining the age of 70, not age 65, unless they choose to retire earlier.

Similarly, the provision that DPPs continue to serve until age 65 even if they were appointed at a young age, leads to an arbitrary length of term of office, and may lead to a moribund and stagnant prosecution service, and stymie the ambitions of rising prosecutorial stars. Term limits should apply to these positions. The permanency of the DPPs (without any review or renewal mechanism) creates a significant governance risk. A DPP entrenched in their division for ten or more years can ensconce themselves in a powerful network. Andrew Chauke, at the time of his suspension in 2025, had already served since 2011, during the tenure of seven different NDPPs or acting NDPPs.

¹¹ Section 17(1)(a) NPA Act 32 of 1998.

¹² Section 176(3) NPA Act 32 of 1998.

3.1.3 Representative

The current section 8 of the NPA Act provides as follows: “The need for the prosecuting authority to reflect broadly the racial and gender composition of South Africa must be considered when members of the prosecuting authority are appointed.” By 2019, data in the NPA Annual Report showed that the NPA appears to have met or exceeded the requirement of adequate representation: some 58 percent of NPA employees were female, and 93 percent black, with 72 percent black African.¹³ By contrast, the legal profession is approximately 50 percent black African, and two-thirds of new admissions to the profession in the last decade are black.¹⁴ Outside the NPA, the pool of experienced, qualified candidates would seem to include a large fraction of people who are not black.

3.2 Appointment processes

Currently, there is no legislative or other requirement providing for nominations/applications, vetting, a selection process, such as transparent interview, or any other such requirements, nor is there any confirmation by Parliament. The need for a process and selection panel transparently to put forward preferred candidates to be appointed appears to be recognised by a number of countries, some of which are considered below.

3.2.1 Kenya: Selection panel appointed by President

In Kenya, the DPP is appointed through a public process, provided for in the Office of the Director of Public Prosecutions Act of 2013, which was passed after the promulgation of the 2010 Constitution of Kenya. The Act provides in section 8 that whenever a vacancy arises, the President must within fourteen days constitute a selection panel comprising one person from each of the following bodies— the Office of the President; the Office of the Attorney-General; the Ministry responsible for public service; the Kenya National Commission on Human Rights; the Law Society of Kenya; the Central Organizations of Trade Unions; and the Ethics and Anti-corruption Commission.

The Public Service Commission of Kenya is then required to convene the first meeting of the selection panel, at which the members of the selection panel must select a chairperson from

¹³ Table 28, NPA Annual Report 2019.

¹⁴ Calculations based on Law Society data.

among their number. The selection panel must, within seven days of convening, by advertisement in at least two daily newspapers of national circulation, invite applications from persons who qualify for nomination and appointment for the position of the Director. Ten years of experience is required.

The selection panel must within 14 days consider the applications received to determine compliance with the Constitution; shortlist the applicants; and publish the names of the shortlisted applicants and qualified applicants in at least two daily newspapers of national circulation; conduct interviews of the shortlisted applicants; shortlist three successful applicants in the order of merit; and forward the names to the President. The President must within 14 days of receipt of the names of successful applicants forwarded, select one candidate and forward the name of the person so selected to the National Assembly for approval. The National Assembly must, within 21 days of the day it next sits after receipt of the name of the applicant under subsection, vet and consider the nominee, and may approve or reject him or her.

The Kenyan model has the benefit of being absolutely transparent as well as being clear on timelines, even if the panel is somewhat government-heavy. Furthermore, the National Assembly role is via veto, rather than in the selection process.

3.2.2 Zambia: Selection by Judicial Service Commission

In Zambia, the President appoints the Director of Public Prosecutions, following a recommendation from the Judicial Service Commission (JSC), which consists of a Chairperson who is a person who holds or qualifies to hold high judicial office or has held high judicial office and is appointed by the President; a judge nominated by the Chief Justice; the Attorney-General, with the Solicitor-General as the alternate; the Permanent Secretary responsible for public service management; a magistrate nominated by the Chief Justice; a representative of the Law Association of Zambia nominated by that Association and appointed by the President; the Dean of a Law School of a public higher education institution, nominated by the Minister responsible for justice; and one member appointed by the President. This is a much less political model than the South African JSC, in which politicians are more prominent, but its membership is more closely determined by the government of the day.

3.2.3 England and Wales: government selection panel chaired by Civil Service Commissioner

In the case of the United Kingdom, the DPP is appointed by the Attorney-General after submitted nominations are considered by a committee or panel chaired by the Civil Service Commissioner.¹⁵ The Attorney General, who is chief legal adviser to government, is not a Cabinet minister, but is designated as also attending Cabinet. Although the Attorney-General is appointed by the Prime Minister and he can be fired by the Prime Minister, the Attorney-General is the Sovereign's Attorney General, not the Prime Minister's Attorney General. Thus, the Prime Minister does not directly appoint the Director of Public Prosecutions, and nor does any of her or his Ministers.

3.2.4 Ireland

In the case of Ireland, the DPP is appointed by the executive government after selection by a panel comprising the Chief Justice, Chair of the Bar Council, President of the Law Society, Secretary to the Government (secretary-general of the department of the government) and the Senior Legal Assistant in the Office of the Attorney-General. Candidates must have 10 years of experience as a barrister or solicitor (advocate or attorney). The Irish model limits the input to that from legally-oriented institutions, plus some government input. This may be a result of its history of colonisation, encouraging a more technocratic NDPP.

3.2.5 Canada: Political selection panel established by the Attorney-General

In Canada, the legislation requires that the Governor in Council, on the recommendation of the Attorney-General, appoint the DPP. The Attorney-General (who, unlike in England and Wales, is also the Minister of Justice) establishes a selection committee consisting of a person named by the Federation of Law Societies of Canada; a person named by each recognised political party in the House of Commons (approximately five parties), the Deputy Minister of Justice; the Deputy Minister of the Department of Public Safety and Emergency Preparedness; and a person selected by the Attorney-General.

This is a far more political model which seeks to gain consensus across political points of view, while maintaining some input from legal professionals as well as government. Because Canada does not have a proportional representation system, there are only five recognised parties represented in the House of Commons (compared to 18 in South Africa). The model however ensures that the person ultimately appointed is not solely within the gift of a single member of executive government.

¹⁵ Prosecution of Offences Act 1985, s2(1).

4. Conclusion

Parliament should as a matter of urgency amend the legislation for the NPA to formalise a transparent process for all of the top prosecutors of the NDPP. This should include a nomination process, provision for a selection panel, ideally comprised of legal experts rather than being overtly political, as in the Kenyan model, and transparent, public interview process, possibly shepherded by the Public Service Commission. If veto by the National Assembly is introduced, there may be a need to amend the Constitution. In addition, it is recommended that the minimum requirements be amended to cover 10 years of experience as either a practicing legal practitioner engaged in litigation or as a prosecutor conducting actual prosecutions. The term of office should also not be limited by age. While the impending end of Batohi's term of office make the NDPP appointment process amendments particularly urgent, the provisions regarding the appointment and tenure of DPPs also require urgent amendment.