



UNIVERSITY of the
WESTERN CAPE



Brief on the National Prosecuting Authority's Office for Ethics and Accountability

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Executive Summary

The National Prosecuting Authority's (NPA) Office for Ethics and Accountability (OEA), established in 2023, is a newly created internal mechanism aimed at promoting ethical conduct and accountability among prosecutors in South Africa. Its creation was mandated by the National Prosecuting Authority Act of 1998, but a formal complaints mechanism was only gazetted through regulations in late 2023. The OEA fills a critical gap in the NPA's accountability framework, especially amid widespread criticism and declining public trust following state capture revelations and systemic inefficiencies in the justice system.

The OEA has two primary functions: to manage and investigate complaints against members of the NPA, and to cultivate a culture of ethics within the organisation. These functions are carried out through two internal divisions: the Ethics Management and Advocacy Division (EMAD), which focuses on promoting ethical norms and preventive strategies, and the Complaints Management and Investigation Division (CMID), which handles the intake, processing, and resolution of complaints from the public and NPA staff.

Regulations define who may lodge a complaint—ranging from accused persons and victims to legal representatives and Members of Parliament—and specify 24 types of complaints, broadly grouped into service delivery issues, improper conduct, and maladministration or corruption. While the broad scope signals seriousness, the regulations lack clarity on procedures, timeframes, and oversight mechanisms. For instance, although the regulations require acknowledgment of complaints and outline general reporting duties, they do not mandate timelines for investigation completion or provide for appeals. Additionally, there is no assurance that systemic issues—rather than just individual misconduct—will be addressed.

The OEA's lack of structural independence is a central concern. Housed in the office of the National Director of Public Prosecutions (NDPP), its head is a Special Director reporting to the NDPP, raising questions about impartiality, especially when complaints involve senior officials. Moreover, the development of the regulations was reportedly internal and opaque, with no clear public consultation or parliamentary oversight, possibly breaching legal requirements for legislative transparency.

The document critiques the limited guidance provided by the NPA's existing Code of Conduct, which has not been updated since 2010 and lacks explicit reference to constitutional values like transparency and accountability. While a supporting Code of Ethics exists, it is not grounded in legislation and may be revised under the OEA's mandate.

Operationally, there are concerns about implementation: the public's ability to distinguish NPA staff in court settings, the use of a private company to manage complaints, and the risk of insufficient resourcing. Despite these challenges, the OEA represents a needed step toward improved accountability in a prosecutorial service that has been widely criticised for its perceived lack of independence and responsiveness.

In conclusion, while the establishment of the OEA is legally overdue and conceptually important, its current structure and regulations may fall short of ensuring transparency, public trust, and genuine accountability within the NPA.

Table of Contents

1. Introduction	6
2. Context.....	7
3. What are accountability and ethics?	8
3.1 The NPA’s Code of Conduct	8
3.2 Accountability	10
3.3 Ethics	10
4. What was the drafting history of the regulations establishing the OEA?	11
5. What are the aims and objectives of the OEA?	14
6. What do the Regulations provide for?	15
6.1 Chapter 1 - Definitions	15
6.2 Chapter 2 – The Office for Ethics and Accountability	16
6.2.1 Ch. 2 Part I.....	16
6.2.2 Ch. 2 Part II.....	17
6.2.3 Ch. 2 Part III.....	18
6.3 Chapter 3 Reporting.....	26
7. Conclusion.....	27
Appendix 1 NPA Code of Conduct	28
Sources.....	32

1. Introduction

The National Prosecuting Authority's Office for Ethics and Accountability (OEA) has been in place only since 2023. It seeks to manage complaints against prosecutors and so to ensure ethical conduct on the part of prosecutors. The need for it is grounded in the Constitutional requirement that prosecutors exercise their powers without fear, favour or prejudice.¹ The UN Guidelines on the Role of Prosecutors set extensive standards for prosecutorial conduct, but emphasise this overarching requirement for ethical conduct:

12. Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.²

The Prosecution Policy of the National Prosecuting Authority (NPA) notes as follows in respect of the role of the prosecutor:

Prosecutors must at all times act in the interest of the community and not necessarily in accordance with the wishes of the community. The prosecutor's primary function is to assist the court in arriving at a just verdict and, in the event of a conviction, a fair sentence based upon the evidence presented. At the same time, prosecutors represent the community in criminal trials. In this capacity, they should ensure that the interests of victims and witnesses are promoted, without negating their obligation to act in a balanced and honest manner.³

Prosecutors have wide powers to institute a prosecution, to stop a prosecution and withdraw charges.⁴ It is, however, not only the accused that is affected, but also the victim and witnesses, and more broadly societal perceptions of right and wrong, as well as trust in the prosecution service. It is because of the potential consequences of unethical or even criminal conduct by prosecutors, that there must be a high standard of professional ethics maintained in the prosecution service.⁵

The National Prosecuting Authority Act (NPA Act) imposes an obligation on the National Director of Public Prosecutions (NDPP) to advise the Minister on creating a structure to deal with any complaint or any alleged improper conduct or any conduct resulting to any impropriety or

¹ "Constitution of the Republic of South Africa" (1996), sec. 179(4).

² UN, "Guidelines on the Role of Prosecutors" (Cuba, Havana: Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, September 7, 1990), <https://www.ohchr.org/en/professionalinterest/pages/roleofprosecutors.aspx>.

³ National Prosecuting Authority, "Prosecution Policy" (Pretoria: National Prosecuting Authority, 2013), 4.

⁴ Constitution of the Republic of South Africa, sec. 179(2).

⁵ Constitution of the Republic of South Africa, sec. 195(1)(a).

prejudice, on the part of a member of the prosecuting authority.⁶ Despite the Act being passed in 1998, there was no gazetted general complaints structure until late 2023.

This complaints structure is to be distinguished from the structure established by s 22A of the NPA Act, to be headed by a retired judge, in relation to investigations by the Investigating Directorate, which was to be inserted by a 2024 amendment⁷ with effect from a date determined by proclamation in the Gazette, which was not yet proclaimed at the time of writing.

In November 2023 regulations were gazetted establishing the *Office for Ethics and Accountability* (OEA) within the NPA.⁸ Prior to the regulations establishing the OEA, there was no formal complaints structure to report unprofessional, dishonest or improper conduct by a prosecutor. Anyone with a complaint would have had to approach the senior prosecutor in the relevant court. The regulations therefore seek to address an important gap in the accountability architecture of the NPA. This brief will describe the regulations establishing the OEA in the NPA, unpacking the structure and functioning. It will also raise questions about a number of issues that require clarification or are regarded as shortcomings in the regulations.

2. Context

From the outset it needs to be noted that not many people have frequent direct contact with the prosecution service and furthermore, the prosecution service is not as visible as, for example, the police may be. When members of the public come into contact with prosecutors, it is typically within the context of a trial and they may be the accused, or the victim or a witness or a person rendering support to any of the preceding. The court environment is typically not service oriented and usually associated with unpleasant and challenging experiences.

It was against this backdrop that ACJR commissioned research in 2022 to solicit views from the public and stakeholders on what their expectations are from prosecution service.⁹ The following three expectations were consistently articulated by participants in the consultation workshops:

- “Keep me informed of my case” - participants indicated that they want to know what is happening with their case, but also requested to be informed well in advance of when they need to appear in court to give testimony, and when the matter would just be postponed to a further date.

⁶ “National Prosecuting Authority Act,” Pub. L. No. Act 32 (1998), sec. 22(5).

⁷ “National Prosecuting Authority Amendment Act,” 10 of 2024 § (2024), sec. 8.

⁸ Minister of Justice and Correctional Services, “Regulations on Establishment of Office for Ethics and Accountability,” GNR.4109 (Pretoria: Ministry of Justice, November 24, 2023).

⁹ ACJR, “‘The NPA That We Want’ – Summary Report on Consultations with Civil Society Stakeholders Commissioned by ACJR” (Bellville: Dullah Omar Institute, 2022), <https://dullahomarinstitute.org.za/acjr/acjr-publications/the-npa-that-we-want-report-with-appendices-v-3-4-10-2022.pdf>.

- “Treat me fairly and don’t discriminate”- there were consistent reports of participants alleging unfair treatment or that other people received preferential treatment. Although unconfirmed, this seems to have related to race, gender, and socio-economic status.
- “Know the law”- participants expressed the expectation that prosecutors must know and understand the law to ensure that the trial progresses as quickly as possible and that a just outcome is reached.

These plain language and common-sense expectations set a basic yardstick to assess if the OEA is set up to address the frustrations underlying these expectations. One may pose the question whether it would be unethical *per se* if prosecutors do not keep people informed of their cases? Perhaps it does not present an immediate and distinct ethical transgression, but it would contribute to a strained prosecutor – public relationship that is not built on respect and transparency. Ultimately negative public perceptions erode trust and a lack of trust undermines the legitimacy of state institutions.

A further contextual point to note is that the Zondo Commission made damning findings about senior NPA staff¹⁰ and also referred numerous matters to the NPA for possible prosecution. The NPA is under pressure from multiple directions to not only fix itself, but also to prosecute those implicated in state capture. Efficiency and effectiveness in the lower courts have also been in a steady decline and the criminal justice system is facing serious and sustained challenges. Establishing a complaints mechanism in this context is a complex task, but one that is nonetheless required by law.

3. What are accountability and ethics?

Prior to the delving deeper into the regulations governing the OEA it will be useful to pause briefly and reflect on the NPA’s Code of Conduct as well as accountability and ethics as subjects in law and more broadly in governance and the business of governing.

3.1 The NPA’s Code of Conduct

The drafters of the NPA Act were alive to the need to firstly set in legislation the requirement for a Code of Conduct, and secondly a complaints mechanism. However, the legislation provides that both are determined by regulation by the Minister, after internal NPA consultation.

The NPA Act of 1998 requires that the NDPP must frame a Code of Conduct which shall be complied with by members of the NPA.¹¹ The legislation provides that the Code of Conduct must

¹⁰ R Zondo, “Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State (Part 3)” (Pretoria, 2022), vol. 4: 766-786.

¹¹ National Prosecuting Authority Act, sec. 22(6)(a-b).

be developed in consultation with the Minister and after consultation with the Deputy National Directors and Deputy Directors of Public Prosecutions. The Code of Conduct may from time-to-time be amended, and must be published in the Gazette for general information. The Code of Conduct is therefore a public document, or differently put, it is a known standard to be consulted and reflected upon by prosecutors and the public alike.

A Code of Conduct was gazetted only in December 2010 under NDPP Menzi Simelane, more than ten years after the Act was passed.¹² Simelane's appointment as NDPP was later set aside: in October 2012, the Constitutional Court confirmed a judgement by the Supreme Court of Appeal that the appointment of Simelane as NDPP by Zuma was invalid.¹³ It is unclear whether this affects the validity of the Code of Conduct framed by him.

The Code of Conduct is mostly framed in as wide a way as possible and does not provide clear guidance to prosecutors as to what may or may not constitute unethical behaviour. The three-page Code of Conduct deals with six broad topics being Professional Conduct; Independence; Impartiality; Role in Administration of Justice; Cooperation; and Enforcement. It is not within the scope here to critique the Code of Conduct, but two broad remarks are warranted. Firstly, it would have bolstered the authority of the Code if more linkages were made with the Constitution and the Bill of Rights. For example, accountability and transparency are key values in the context of a prosecution service, but are not mentioned in the Code. Furthermore, there is also the duty on the NPA to respect, protect, promote and fulfil the rights in the Bill of Rights, but this rights-based language finds scant expression in the Code.

The Code of Conduct has remained unchanged since 2010 as far as could be established. From the preamble it is concluded that it was developed internally and no information is presented on consulting stakeholders inside or outside of government.

In support of the Code of Conduct, the NPA published an internal Code of Ethics and although undated, is estimated to originate from 2015. The 2015 Code replaced an earlier code of ethics published in 2004.¹⁴ The Code of Ethics is seemingly there to support, in more practical terms, compliance with the Code of Conduct. However, it has not been enacted in terms of any legislation.

¹² National Director of Public Prosecutions, "Code of Conduct for Members of the National Prosecuting Authority Under Section 22(6) of the National Prosecuting Authority Act, 1998." (Government Gazette, No.33907, No. R. 1257, December 29, 2010).

¹³ Democratic Alliance v President of the Republic of South Africa and Others (SCA), No. (263/11) [2011] ZASCA 241 (Supreme Court of Appeal December 1, 2011); Democratic Alliance v President of South Africa and Others (CC), No. (CCT 122/11) [2012] ZACC 24 (Constitutional Court October 5, 2012).

¹⁴ National Prosecuting Authority, "Ethics - a Practical Guide to the Ethical Code of Conduct for Members of the National Prosecuting Authority" (Pretoria: National Prosecuting Authority, 2004), https://www.npa.gov.za/sites/default/files/resources/public_awareness/Ethics_final.pdf.

3.2 Accountability

As an organ of state¹⁵ the (NPA is accountable to the public.¹⁶ Corder, Jagwanth and Soltau defined accountability as follows:

Accountability can be said to require a person to explain and justify - against criteria of some kind - their decisions or actions. It also requires that the person goes on to make amends for any fault or error and takes steps to prevent its recurrence in the future. A condition of the exercise of power in a constitutional democracy is that the administration or executive is checked by being held accountable to an organ of government distinct from it.¹⁷

Because they perform a public function, prosecutors are accountable to the courts who exercise judicial authority¹⁸ and to the public¹⁹ for the way they discharge their responsibility. Prosecutors are accountable internally through the internal management structure of the NPA to their Directors of Public Prosecutions (DPPs) who must supervise and direct²⁰ and who in turn are accountable to the National Director of Public Prosecutions (NDPP), who has authority over the exercise of all powers and functions in the NPA.²¹

Accountability to the public consists not only of informing and explaining, but also by embarking on corrective action. The duty to inform and explain is necessary but not necessarily sufficient. If mistakes were made, accountability also requires that corrective measures are adopted to minimize the chances of similar mistakes or shortcomings. Corrective measures of an administrative nature may comprise “lessons learned” or the adoption of “best practices” to avoid the repetition of errors or mistakes and to upgrade internal processes and approaches.

3.3 Ethics

The NPA Act requires that the National Director of Public Prosecutions (NDPP) must be a “fit and proper person”²² and the Constitution requires that in respect of the public administration “a

¹⁵ Constitution of the Republic of South Africa, sec. 239.

¹⁶ Constitution of the Republic of South Africa, sec. 195(1)(f).

¹⁷ H Corder, S Jagwanth, and F Soltau, “Report on Parliamentary Oversight and Accountability” (Cape Town: Faculty of Law, University of Cape Town, 1999), 3, https://www.parliament.gov.za/storage/app/media/1_Stock/Events_Institutional/2021/28-04-2021_NCOP_Budget_and_Fiscal_Oversight_Workshop/general_resource_documents/Report_on_Parliamentary_Oversight_and_Accountability.pdf.

¹⁸ Constitution of the Republic of South Africa, sec. 165.

¹⁹ Constitution of the Republic of South Africa, sec. 195(1)(f) and 195(2).

²⁰ National Prosecuting Authority Act, sec. 24(1).

²¹ National Prosecuting Authority Act, sec. 22(1).

²² National Prosecuting Authority Act, sec. 9(1).

high standard of professional ethics must be promoted and maintained”.²³ The implication is that the NDPP and their leadership team will set the standard and lead by example.

Professionalism is highly reliant on expertise (knowledge) and self-regulation, and less dependent on compliance management. When consulting a doctor or a lawyer, it is reasonable to have high expectations of expertise (the knowledge) and a reputation or history of behaviour that is untarnished by unethical behaviour or behaviour lacking integrity. It is in this plain language sense that citizens should expect of civil servants in general, but especially those in senior positions of trust, to adhere to a high standard of professional ethics.

It has been noted that ethics are essentially two things, the first being ‘well-founded standards of right and wrong that prescribe what humans ought to do, usually in terms of rights, obligations, benefits to society, fairness, or specific virtues.’²⁴ This would refer to conduct that must be refrained from (e.g., stealing, murder and fraud) as well as the virtues of honesty, compassion and loyalty. Furthermore, ethical standards also refer to standards relating to rights, such as the right to life, the right to freedom from torture and the right to privacy. Secondly, ‘ethics refers to the study and development of one's ethical standards.’²⁵ It is because ‘feelings, laws, and social norms can deviate from what is ethical’²⁶ that it is required to constantly reflect on one’s standards to verify that they are reasonable and well founded. Following from this ‘ethics also means, then, the continuous effort of studying our own moral beliefs and our moral conduct, and striving to ensure that we, and the institutions we help to shape, live up to standards that are reasonable and solidly-based.’²⁷

In the public service a high standard of professional ethics would then mean that officials, especially prosecutors, need to be firstly aware and comply with a known and accepted standard of ethical behaviour in service of the public and, furthermore, continuously assess their behaviour as well as the standards they are measured against to ensure that they meet a high standard and that the standard itself is relevant, accurate and sets a high bar.²⁸

4. What was the drafting history of the regulations establishing the OEA?

²³ Constitution of the Republic of South Africa, sec. 195(1)(a).

²⁴ M Velasquez et al., “What Is Ethics?” accessed June 2, 2021, <https://www.scu.edu/ethics/ethics-resources/ethical-decision-making/what-is-ethics/>.

²⁵ Velasquez et al.

²⁶ Velasquez et al.

²⁷ Velasquez et al.

²⁸ Louise Arbour, “Legal Professionalism and International Criminal Proceedings,” *Journal of International Criminal Justice* 4, no. 4 (2006): 236.

Work to establish a complaints mechanism meeting the requirements in the legislation, seems to have commenced more than 20 years after the legislation came into effect. It should be added that the NPA established an Integrity Management Unit (IMU) which became operational in 2001.²⁹ However, the IMU had a related but different mandate and was not a complaints mechanism as was required in the legislation. The IMU will now also be absorbed into the OEA.³⁰ The authority to issue regulations regarding the NPA rests with the Minister of Justice³¹ and specific reference is made, as noted already, to the National Director to, in consultation with the Minister and after consultation with the Deputy National Directors and the Directors, to “frame a code of conduct”.³² The NPA Act also states that a complaints mechanism must be established by regulation.³³ The requirements is that the NDPP must after consultation with the Deputy National Directors and the Directors, advise the Minister on creating a complaints mechanism by regulation. However, this has seemingly not been a priority since the Act came into force, as noted already.

The first indications that the NPA were initiating steps to comply with the legislative requirement to establish a complaints mechanism was found in the NPA Annual Report of 2019/20 where reference is made to “the Office of Complaints and Ethics”.³⁴ The first time that the work being done to establish the complaints mechanism was brought to the attention of Parliament was at the meeting of the Portfolio Committee on Justice and Correctional Services on 7 October 2020:

A complaints and ethics mechanism is also being set up to address the issue of the integrity of the NPA. This was a huge issue which showed up in a staff survey. It also indicated a need for a zero-tolerance approach to corruption within the NPA as there was a sense that it was not being dealt with sufficient vigour. The setting up of the ethics and complaints mechanism is provided for in the NPA Act but was never set up and there has been a lot of work in the past year, with engagements with the Minister in setting it up.³⁵

Eighteen months later, at a briefing to the Portfolio Committee on 10 May 2022, the Hon. Breytenbach asked the NPA “if there has been progress on the NPA’s initiative to establish an office for complaints and ethics, to comply with section 22(5) of the NPA Act?”. The NPA representative’s (Adv Du Plessis) response was recorded as follows:

²⁹ National Prosecuting Authority, “Annual Report 2006/7” (Pretoria: National Prosecuting Authority, 2007), 20.

³⁰ National Prosecuting Authority, “Annual Report 2023/24” (Pretoria: National Prosecuting Authority, 2024), 20.

³¹ National Prosecuting Authority Act, sec. 40(1).

³² National Prosecuting Authority Act, sec. 22(6).

³³ National Prosecuting Authority Act, sec. 22(5).

³⁴ National Prosecuting Authority, “Annual Report 2019/20,” 2020, 35.

³⁵ Parliamentary Monitoring Group, “PMG Report on the Meeting of the Portfolio Committee on Justice and Correctional Services: ‘NPA Quarterly Performances; Information Regulator Vacancy: Report on Committee Recommendation’ on 7 October 2020” (Cape Town: PMG, 2020), <https://pmg.org.za/committee-meeting/31139/>.

Regarding the Office for Ethics and Accountability, he mentioned that it is an important initiative, which will ensure that the Authority delivers on the Integrity and Anti-Corruption Advisory Committee values, particularly concerning its credibility. The Authority has partnered with the DOJCD to set up the terms of reference. He added that the committee has met twice and has established how it will engage with donations from foreign governments and the private sector – so that it does not affect the functioning of the NPA and its independence.³⁶

The reply was not on point and dealt with a related but different issue, namely donations from external parties whereas the requirement in the legislation spoke to a complaint's mechanism.

The regulations establishing the OEA were gazetted on 23 November 2023, but a copy is not available on the NPA website. The webpage of the NPA has a complaints page, but there is no reference to the OEA. However, on the page of the NDPP there is a link to the "Ethics Helpdesk", but none of the links work. There is a phone number operated by an independent service provider under the domain name "@behonest.co.za". It appears the service is operated by the company "Advance Call" with the "Ethics and Fraud Hotline" as one of their services.³⁷ *Advance Call* is owned by *DigiCall*, an unlisted company with Altman Allers as the head.³⁸ *Advance Call* and *DigiCall* share a number of Directors.

No record could be found of public consultations on the draft regulations establishing the OEA and it appears that it was developed internally. If this was indeed the case, it was a missed opportunity to foster better public relations. There may also be a procedural compliance issues, since the NPA Act requires that any regulations issued in terms of section 40(1) "must be submitted to Parliament before publication in the Gazette".³⁹ This is also a requirement of the Interpretation Act.⁴⁰ However, no record could be found that the regulations were submitted to Parliament and, more specifically, that the Portfolio Committee on Justice had sight of it. The challenges Parliament is facing in providing effective scrutiny over delegated legislated (e.g. regulations) is not a new one⁴¹ and the OEA Regulations should have been referred to the Portfolio Committee on Justice which in turn ought to have invited public comment given the general public interest in the performance of the NPA and the overall context within which the

³⁶ Parliamentary Monitoring Group, "PMG Report on the Meeting of the Portfolio Committee on Justice and Correctional Services on 'National Prosecuting Authority & Public Protector South Africa 2022/23 Annual Performance Plan' of 10 May 2022" (Cape Town: PMG, 2022).

³⁷ "Advance Call Hotline," Advance Call, accessed March 9, 2025, <https://advancecallhotline.com/>.

³⁸ "DigiCall - Our Leadership," DigiCall Group, n.d., <https://www.digicallgroup.co.za/our-leadership/>.

³⁹ National Prosecuting Authority Act, sec. 40(3)(c).

⁴⁰ "Interpretation Act" (1957), sec. 17.

⁴¹ M Masutha and T Setona, "Interim Report of Joint Subcommittee on Delegated Legislation on Scrutiny of Delegated Legislation" (Cape Town: Parliament of South Africa Joint Rules Committee, 2002); S Smit, "The South African Parliament's Oversight of Delegated Legislation" (Unpublished Master's Thesis, Cape Town, University of Cape Town, 2018), <http://hdl.handle.net/11427/29476>.

NPA is functioning. This raises serious questions about whether the public had any opportunity for engagement on the OEA Regulations, let alone a meaningful opportunity.⁴²

5. What are the aims and objectives of the OEA?

The mandate of the OEA is set out in Regulation 3(1) and is summarised as follows:

- The office must develop and promote a culture of ethics and good governance within the NPA.
- The office must promote and maintain a high standard of professional ethics in the NPA.
- It must further develop implement, maintain and manage a complaints procedure.
- The complaints procedure must be guided by the principles of promptness, fairness, consistency and uniformity.
- It must furthermore promote efficient service delivery in the prosecuting authority.⁴³

The office does not have the mandate to deal with any matter relating to improper conduct or any other conduct where the National Director has intervened when policy directives were allegedly not complied with or there was a review of the decision to prosecute or not prosecute an offence.⁴⁴ However well-intentioned this provision may be, it gives rise to some questions. Firstly, the intervention of the NDPP may indeed reveal improper conduct and then the procedure to handle this is not clear. Secondly, an unscrupulous NDPP may use this provision to intervene and consequently protect certain parties from a rigorous investigation by the OEA. Third, reference is made to non-compliance with policy directives. The particular directives are not identified, but it is the case that the Prosecution Policy Directives⁴⁵ are classified as confidential and not accessible to the public nor Parliament. The intervention by the NDPP based on non-compliance with the requirements of a confidential document does at least on face value not meet transparency requirements since an unscrupulous NDPP may manufacture a transgression of the directives to protect particular interests or punish individuals.

Furthermore, the office may also not deal with grievances from members of the prosecuting authority that fall within the scope of the formal grievance procedures in the public service. Also excluded are misconduct appeals by a member of the prosecuting authority that are covered by the disciplinary code and procedures of the public service. Importantly a complaint against a person appointed and employed in or seconded or assigned to an Investigating Directorate (mostly investigators) in terms of section 7(4) of the NPA Act are also excluded from the mandate of the office. The mechanism established under section 22A of the Act (which is not yet in force)

⁴² Doctors for Life International v Speaker of the National Assembly and Others, No. (CCT12/05) [2006] ZACC 11; 2006 (12) BCLR 1399 (CC); 2006 (6) SA 416 (CC) (17 August 2006) (August 7, 2006).

⁴³ Minister of Justice and Correctional Services, "Regulations on Establishment of Office for Ethics and Accountability," r. 3(1).

⁴⁴ Minister of Justice and Correctional Services, r. 3(2).

⁴⁵ National Prosecuting Authority, "Prosecution Policy Directives - Policy Directives Issued by the National Director of Public Prosecutions" (Pretoria: National Prosecuting Authority, 2014).

will exclusively deal with such complaints. This provision, in essence, enables the Minister of Justice to appoint a retired judge to investigate complaints against persons employed in an Investigative Directorate of the NPA. The retired judge may, however, not investigate complaints about intelligence matters falling under the jurisdiction of the Inspector-General of Intelligence.⁴⁶ These complaints (to the IG of Intelligence) are related to complaints from members of the public and members of the services on alleged maladministration, abuse of power, transgressions of the Constitution, laws and policies, the commission of specified offences and improper enrichment of any person through an act or omission of any member.

6. What do the Regulations provide for?

The regulations establishing the OEA are divided into three chapters although Chapter 3 is numbered as Chapter 5.

Chapter 1 deals with the definitions. Chapter 2 is divided in three parts being:

- Part 1 establishes the office for ethics and accountability
- Part 2 establishes the ethics management advocacy division
- Part 3 establishes the complaints management and investigation division

Chapter 3 deals with reporting obligations as well as offences and penalties. These are described in more detail below.

6.1 Chapter 1 - Definitions

A few of the definitions need highlighting:

- complainant means a person who lodged a complaint.
- complaint means any alleged action or omission, improper conduct any other conduct listed in Regulation 13 on the part of a member of the NPA which has resulted in impropriety or prejudice.
- a member of prosecuting authority includes the following
 - a member referred to in section 4, which are the National Director, Deputy National Directors, Directors, Deputy Directors and prosecutors.
 - a member of the NPA appointed at or assigned to the office of the National Director as contemplated in section 5(2)(d) of the Act; these refer to Deputy National Directors; Investigating Directors and Special Directors;
 - a member of the administrative staff employed in the offices of the National Director; Directors (including Investigating Directorates) and the offices of prosecutors.

⁴⁶ "Intelligence Services Oversight Act," 40 of 1994 § (1994), sec. 7(7)(cA); National Prosecuting Authority Act, sec. 22A(3).

- a person engaged to perform services based on a special skills requirement as contemplated in section 38(1) of the Act and a person performing services for the prosecuting authority in terms of secondment consultancy.

6.2 Chapter 2 – The Office for Ethics and Accountability

6.2.1 Ch. 2 Part I

The OEA is headed by a Special Director⁴⁷ and supported by a person appointed as the head of the Ethics Management and Advocacy Division (EMAD) as well as a Deputy Director who is appointed as the head of the Complaints Management and Investigation Division (CMID). The regulations further provide for a Complaints Registrar, as well as any other members of the prosecuting authority assigned or appointed to the office, and administrative staff. While the head of the CMID is specified to be a Deputy Director, the same is not said in respect of the head of EMAD.

The regulations further state that the NDPP and the head of the OEA office must in consultation with the Director-General of Justice and Constitutional Development determine the structure of the office as well as the posts necessary to perform the required functions and that this will constitute an approved establishment of the office.

The head of the OEA may in consultation with the NDPP and the DG of Justice establish an advisory committee to advise on the structuring or restructuring of the office. If such an advisory committee is strictly internal to the Dept. of Justice and Constitutional Development (which would include the NPA) and there are no financial implications, it is likely to comply with the Public Service Act and other relevant legislation. The regulations do, however, not explain what the powers of the advisory committee would be, save to advise on the structure and restructuring of the OEA. The head of the office may also establish or designate existing administrative structures within the prosecuting authority to assist the office in his duties. The head of the office may further establish operational project teams.

Recall that the NPA is a programme within the Department of Justice and the DG of Justice is the accounting officer. Their approval is therefore required for defining the establishment of the OEA. This would also explain the concurrence of the DG of Justice in the composition of an advisory committee regarding the structure of the OEA. This close and undesirable operational involvement of the DG of Justice in the NPA confirms the need for the NPA to be financially and administratively independent of the Department of Justice and Constitutional Development.

⁴⁷ National Prosecuting Authority Act, sec. 13(c).

The regulations also provide for security vetting and lifestyle audits of prospective members of the OEA and indeed no person may be appointed or assigned to the office unless they have received the necessary security clearance and a lifestyle audit has been conducted.

6.2.2 Ch. 2 Part II

Part II deals with the EMAD and describes the objects of this division to be

- to develop and implement an ethics management strategy aimed at preventing and deterring unethical conduct in the prosecuting authority,
- to provide for proactive ethics management and the building of an ethical culture and the establishment of a whistleblowing culture within the prosecuting authority,
- to build an organisational culture that is conducive to the disclosure of improper conduct and impropriety,
- to manage ethical norms and standards and codes of conduct in the prosecuting authority
- to promote an independent and impartial prosecuting authority, and
- to facilitate the eradication and prevention of unethical conduct in the prosecuting authority.

In essence, the objects of the EMAD are to focus on changing organisational culture with a view to promote ethical conduct and internal accountability. There is indeed a list of 23 outputs for the EMAD which can be summarised under 6 headings: to advise management; to engage in promotional activities such as education, training and information sharing; to address matters concerning the regulatory framework with reference to developing and updating standards and to ensure that existing monitoring tools are up-to-date; to engage in research such as surveys and keeping abreast of research on ethics; to record declarations with regards to conflicts of interests and donations by members of the prosecuting authority; and to refer matters of non-compliance to the CMID.

It is noted that one of the outputs is the development of a code of ethics for the prosecuting authority and it is assumed that this will replace the 2015 Code of Ethics referred to above. Nonetheless, the relationship between the Code of Conduct and the Code of Ethics is not explained properly. One may indeed argue that the Code of Conduct, which is a statutory requirement, is the problematic document given its brevity and lack of detail. There is of course a case to be made out for a code of ethics to give more practical expression to the Code of Conduct, but then it needs to be confirmed that the latter does not suffer from substantial shortcomings. Given the history of the NPA in recent years, there may be good cause to review the Code of Conduct that is now 15 years old. The fact that it took seven years to remove Nonceba Jiba and Lawrence Mrwebe from their positions in the NPA is testimony to the lack of urgency

from the Presidency in addressing ethics and integrity in the NPA.⁴⁸ If successive presidents have dealt with serious ethical challenges in the NPA in a pedestrian manner it is perhaps not surprising that the lack of urgency had permeated into the leadership's thinking on the issue.

The NPA Act requires the establishment of a complaints mechanism and it is necessary to cite the relevant provision here:

22(5) The National Director shall, after consultation with the Deputy National Directors and the Directors, advise the Minister on creating a structure, by regulation, in terms of which any person may report to such structure any complaint or any alleged improper conduct or any conduct which has resulted in any impropriety or prejudice on the part of a member of the prosecuting authority, and determining the powers and functions of such structure.

The requirement is for the establishment of a mechanism where any person can lodge a complaint regarding the conduct of a prosecutor. The legislation does not mandate the establishment of a structure to address organisational culture and inculcate ethical behaviour as set out above with reference to EMAD. This is not to argue that there is not a need for such a structure, but rather that s 22(5) of the NPA Act, from which the OEA Regulations derive, does not mandate the establishment of such a structure. Furthermore, the overbroad mandate may lead to dilution of the work on complaints, or simply be used to justify additional staffing which could be better used elsewhere.

6.2.3 Ch. 2 Part III

5.2.3.1 *Objects and outputs*

Part III deals with the CMID and note the objects to be

- to develop a formal written procedure for dealing with complaints
- ensure that the complaints procedure is accessible to all members of the prosecuting authority and the general public
- to enable staff of the prosecuting authority to lodge complaints regarding ethics and integrity violations, failures and risks within the authority as well as improper conduct by colleagues or management
- to receive and manage internal and public complaints
- to investigate complaints and determine if they fall within the mandate of the office
- to refer the complaints to the relevant business unit authority to deal with such complaints which may be the National Directors, human resources management or the police as the case may be

⁴⁸ The Presidency, "President Removes NPA Advocates Jiba and Mrwebi from Office," April 26, 2019, <https://thepresidency.gov.za/president-removes-npa-advocates-jiba-and-mrwebi-office>.

- to resolve complaints and report on the resolution or referral of complaints
- the deal with complaints in a confidential and protected basis
- to increase effective accountability
- reduce and address improper and abusive behaviour within the prosecuting authority
- promote and contribute to the protection of victims' rights and improve service delivery by the prosecuting authority

The regulations set out 15 outputs for the CMID and these are summarised as follows:

- to develop a complaints procedure policy
- to develop and maintain an electronic complaints system to record, manage, track complaints and provide feedback
- to engage in public and stakeholder education and promotion of the complaints mechanism
- to refer matters to internal and external entities as needed
- to investigate and resolve complaints
- to monitor service delivery and conduct inspections
- to liaise with other public complaints structures.

6.2.3.2 Who can lodge a complaint?

The regulations also define who may lodge a complaint with the CMID and as expected this lists persons directly affected by the alleged improper conduct of a member of the prosecuting authority, such as an accused person or family member of the accused person, legal representative, a witness, a victim, a whistleblower, a presiding officer any other member of the prosecuting authority and also a Member of Parliament. Juristic persons may also lodge complaints.⁴⁹ This would seem to exclude complaints in relation to matters which have no direct victim. Would an NGO be able to complain about delays in money-laundering cases?

6.2.3.3 The types of complaints

Regulation 13 notes that a complainant may report any complaint including the 24 types listed in the regulations. The 24 categories of complaints fall broadly in three groups being *Service delivery*, *Improper conduct*, and *Maladministration, crime and corruption*. These are presented below in Table 1. Note that the original paragraph numbering was retained.

⁴⁹ Interpretation Act.

Table 1

Group	Complaint category
Service delivery	(a) any dissatisfaction regarding an act or omission within the prosecuting authority which adversely affects, or may adversely affect, that complainant, or may be detrimental to the prosecuting authority; (b) dissatisfaction with the service, treatment or information received from a member of the prosecuting authority; (c) that his or her rights were not or are not being observed by the prosecuting authority; (l) breaching by a member of the prosecuting authority of a victim's right to be free from intimidation, harassment, fear, tampering, bribery, corruption or abuse;
Improper conduct	(d) improper conduct or any act of impropriety or unethical conduct on the part of a member of the prosecuting authority; (g) the behaviour or diligence of members of the prosecuting authority; (h) actions of any form of discrimination by a member of the prosecuting authority; (i) incidents of unprofessional conduct by a member of the prosecuting authority; (j) conduct which is inconsistent with the letter and spirit of the Code of Ethics of the prosecuting authority or the Code of Conduct for members of the prosecuting authority; (k) adverse findings or comments made by a presiding officer about the prosecuting authority or a member thereof; (m) engaging in any transaction or action that is in conflict with or infringes on the execution of the member of the prosecuting authority's official duties; (n) a member of the prosecuting authority conducting business with any organ of state; (o) a member of the prosecuting authority engaging in any official action or decision-making process which may result in improper personal gain; (p) a member of the prosecuting authority favouring relatives and friends in work-related activities; (p) a member of the prosecuting authority favouring relatives and friends in work-related activities;

Group	Complaint category
	(q) a member of the prosecuting authority abusing his or her authority or influencing another member of the prosecuting authority, or being influenced to abuse his or her authority; (r) using or disclosing by a member of the prosecuting authority of any official information for personal gain or the gain of others; (s) a member of the prosecuting authority receiving or accepting any gift from any person in the course and scope of his or her employment, contrary to or not in accordance with the Gifts Policy for the prosecuting authority; (t) a member of the prosecuting authority performing outside remunerative work without permission, or performing such work during official work hours, or using official equipment or state resources for such work; (u) a member of the prosecuting authority performing party political activities in the workplace; (v) noncompliance by a member of the prosecuting authority with a provision of the Public Service Act, the Public Service Regulations, the Code of Conduct for members of the prosecuting authority, the Prosecution Policy of the prosecuting authority, the Code of Conduct for Public Servants or a directive issued by the Minister of Public Service and Administration; (x) non-compliance by a member of the prosecuting authority with the information security standards referred to in regulation 94 (1) of the Public Service Regulations.
Maladministration, crime and corruption	(e) actions of maladministration or the commission of an offence by a member of the prosecuting authority; (f) dishonesty or improper dealings with regard to public money by a member of the prosecuting authority; (w) actions of misconduct by a member of the prosecuting authority emanating from criminal investigations;

It is noted that 17 of the 24 complaint types relate to improper conduct and one may question if such detail is indeed required. However, this may in the immediate assist in establishing standards or interpretation and application, and could always be reviewed at a later stage.

The list of complaint types in Regulation 12 does not seem to deal with systemic failures of the prosecution service. The approach then appears to adopt a strategy of individualisation of complaints, victims and wrongdoers. Whilst one cannot discount the impact of transgressions by

individuals, the challenges faced by the NPA are largely systemic in nature and that a focus on individual complaints may have the effect of not seeing the wood for the trees.

6.2.3.4 Methods to lodge a complaint

Regulation 14 deals with the manner in which a complainant can lodge a complaint and a variety of ways are provided for. The method requires the completion of a form that must be provided by the OEA and the form should be available online on the website of the NPA or at any office of the NPA. The complaint may also be lodged via a letter or statement addressed to the head of the OEA and may be sent via postal services or to the email address provided for this purpose on the website of the NPA. A complainant may also contact any office of the NPA telephonically to lodge a complaint and the requirement is then that the form noted above must then be completed on behalf of the complainant and the relevant office must then be submitted to the Complaints Registrar. A complainant may also lodge a complaint verbally in person at any office of the NPA and then the same procedure would apply in that the appropriate form must be completed and submitted to the Complaints Registrar.

Important to note is that the OEA is obliged to investigate all complaints⁵⁰ or refer as is provided for.⁵¹ It is also noted that an anonymous complaint must be investigated if supported by evidence or corroborating documentation and the identity of the complainant is not material to conducting the investigation. The regulations do, however, not specify or define what are the minimum standards for what would constitute an investigation.

The current implementation of the complaints mechanism, as far as could be established, utilises a private company to record complaints. The desirability of a private company having access to potentially very sensitive information about the conduct and decisions of prosecutors falls outside the scope of this brief, but the question is nonetheless raised. The Regulations make no mention of private sector involvement in service provision and the managing of complaints. Private sector involvement, in the absence of effective oversight, may also run the risk of data massaging, if not manipulation, to create a better or worse picture, depending on the outcome being sought.

A practical issue is also that members of the public are not able to easily identify NPA staff and distinguish them from other officials in a court building, such as other court officers and administrative staff rendering support services to the Department of Justice within the same

⁵⁰ Minister of Justice and Correctional Services, “Regulations on Establishment of Office for Ethics and Accountability,” r. 14(2)(a).

⁵¹ Minister of Justice and Correctional Services, r. 10(1)(g).

building. An effective complaints mechanism would require that staff of NPA are easily identifiable by, for example, wearing a name tag.

6.2.3.5 Complaints procedure and handling of complaints

Regulation 15 states that if the complaint is lodged against the National Director or Deputy National Director or Director, such a complaint must be lodged within 90 days from when the complainant became aware of the issue giving rise to the complaint. The reasons for placing a time limit on this are not clear. Complaints against these officials must further be reported to the Minister for referral to the President since their appointment and dismissal fall within the discretion of the President.⁵²

In the case of other employees of the NPA, there does not appear to be a time limit within which the complaint must be lodged. The regulations then require that any complaint received by the OEA must be registered and managed by the Complaints Registrar and that the Complaints Registrar must within three days of receiving the complaint, acknowledge receipt thereof.

Regulation 16 deals with the handling of complaints, requiring that complaints must be dealt with sensitively, fairly and confidentially and that the complainant must be informed of the outcome of the complaint. It is stated that if the complaint is upheld, the prosecuting authority must:

- apologise to the complainant or the person that was prejudiced by the issues giving rise to the complaint
- wherever possible to adequately address the complaint
- take steps to ensure that the issues do not re-occur

In the course of investigating a complaint a member of the CMID that is assigned to the matter may request and obtain any report, document, information and any evidential material from any member of NPA for the purposes of a specific investigation. The regulations further require that members of the NPA, including those under investigation, must give their full cooperation to the investigation.

It is noted that Regulation 16 does not require complaints to be dealt with in a timely or expeditious or urgent matter. Regulation 3(d) notes that 'promptness' is part of the mandate of the OEA. The Regulations state that the complaint must be registered by the Complaints Registrar within three days. What seems to be lacking in the procedure outlined, are timelines for the OEA to conduct and conclude its investigations and provide feedback to the complainant. If deadlines

⁵² National Prosecuting Authority Act, secs. 12 and 13.

cannot be provided, then at least there should be a standard for regular communication with the complainant.

The regulations also do not set any requirement for the prioritisation of complaints. It is not inconceivable to give priority to complaints that may have serious and far-reaching consequences for the NPA (for example, corruption), or may indicate serious victimisation by a prosecutor (for example, sexual harassment or sexual violence).

The Regulations do not raise the prospect of restitution, even if non-monetary or symbolic, apart from an apology and this is also not defined. Much depends on the nature of the complaint and the facts which gave rise to it. For example, one complaint category reads “improper conduct or any act of impropriety or unethical conduct on the part of a member of the prosecuting authority”. There is no definition provided for what constitutes such improper conduct, but this could possibly range from a rude remark to sexual harassment or undue influence on a witness. The impression is therefore created that a potentially very wide and diverse range of complaints, from minor to potentially very serious, would be handled by officials sitting in the office of the National Director. The Regulations do not propose a hierarchy of complaints, nor a ranking of who would handle such complaints within the OEA.

Regulation 16, with reference to the handling of complaints, notes that one of the options would be to “take steps to ensure that the issues do not occur again”. It is not clear what this could mean. It may refer to addressing systemic issues arising from one or several complaints, but it could also mean disciplining the implicated staff member. As it reads now, there does not appear to be a mechanism or a step in the complaints handling process where a decision needs to be taken by somebody on whether or not to institute disciplinary proceedings against an official based on the evidence arising from a complaint – or even a prosecution

The Regulations do not provide an appeal or review procedure. If a complainant is dissatisfied that their complaint is not upheld, the Regulations simply do not provide for a mechanism that would enable the complainant to have the decision reviewed, unless they direct themselves to the courts. This would be an inaccessible option for many, if not most, people. Secondly the Regulations note that the NPA would “endeavour, where ever possible, to adequately address the complaint”. The meaning of this is not clear. Could that, for example, mean that an undertaking is given to the complainant that the transgressing official will be subjected to a disciplinary enquiry and that the complainant will receive prompt updates and the outcome of such a disciplinary action?

The overwhelming majority of prosecutions happen in district and regional magisterial courts. The complaints mechanism is, however, placed in the office of the National Director. This centralised approach may not work in favour of promoting transparency and rebuilding trust in

the NPA. The extent to which the OEA would be able to conduct proper investigations into complaints lodged in rural district courts must be questioned. The most recent (2023/4) annual report of the NPA does not provide more detail on a roll-out plan.

As have been noted elsewhere, there is in law no relationship between the NPA and the provinces and provincial legislatures.⁵³ Yet the provinces have a vested interest to see an effective, productive and trusted prosecution service as it will contribute substantially to improved safety and security. The issue is perhaps even more pronounced in the metros, where Metro police have powers of arrest and consequently the expectation that prosecutions will happen. Poor services or improper conduct on the part of prosecutors may therefore have an impact on how a Metro government is assessed for its responses to crime and safety. The Regulations are fortunately drafted in such a manner that a juristic person can lodge a complaint and that a Metro government can foreseeably lodge a complaint if it is of the view that it was, for example, prejudiced by the prosecution service.⁵⁴

6.2.3.6 Information required regarding a complaint

This concerns the information requirements for lodging a complaint, but excluding those complaints lodged against the National Director, Deputy National Director or Director, as noted already in the preceding section. The information required is divided in three categories:

- The person lodging the complaint, be that the individual allegedly affected or on behalf of another person, group or class of persons, association, organisation or organ of state.
- The personal information of the person lodging a complaint with reference to their name, address, contact details and preferred method of communication.
- A detailed description of the alleged offending act, omission, or conduct which may cover the following such as the date and place of occurrence of the act, omission or conduct; the nature of the alleged offending act, omission or conduct; if known, the particulars of the NPA member in question; names and contact details of any possible witness as; particulars if the matter has been lodged with or reported with another complaints mechanism; the particulars of any person who has attempted to resolve the complaint; whether the complaint requires urgent attention and the reasons for such urgency; and any other relevant information supporting documents relevant to the investigation.

⁵³ L Muntingh, “The Prosecution Service and the Provinces” (Bellville: Dullah Omar Institute, 2021), <https://dullahomarinate.org.za/acjr/resource-centre/npa-report-prosecution-services-and-the-provinces-30-7-2021-1.pdf>.

⁵⁴ Minister of Justice and Correctional Services, “Regulations on Establishment of Office for Ethics and Accountability,” r. 12.

6.3 Chapter 3 Reporting

The third chapter, which is numbered Chapter 5, presents general provisions dealing with reporting responsibilities, offences and penalties. Regulation 19 requires that the head of the OEA must submit a monthly report to the NDPP on the activities of the office and, in turn, the National Director must include in the annual report to Parliament⁵⁵ a report on the activities of the office that should deal with the managing, investigation and outcome of any complaint, including complaints against the National Director, Deputy National Director or Director.

The Regulations in the current form do not provide for disaggregated anonymized reporting. There is indeed little guidance on what should be reported on. The requirement, in its narrow reading, require only reporting on complaints contemplated in respect of regulation 17, which refers to complaints against the National Director, Deputy National Director or Director. What is required, is detailed reporting on all complaints and the manner and process of their resolution. It would therefore not be possible to observe if there are any trends in, for example, what gave rise to complaints or if complaints originate disproportionately from a particular division or NPA office or court. There is furthermore no requirement stating that there needs to be a report on how matters are handled by the OEA with reference to whether it firstly fell within the mandate of the office, and, secondly, if so, how was the matter resolved as provided for in the Regulations. The reporting requirement in the regulation simply do not comply with an acceptable standard of transparency as provided for and required in the Constitution. By way of comparison, the Judicial Inspectorate for Correctional Services (JICS) provides detailed information on complaints it receives as well as investigations undertaken. The impact of this approach has been that JICS has over a period of more than 20 years consistently placed important information regarding the prison population and conditions of detention in the public domain to the benefit of Parliament, academic researchers, civil society rights groups and the families and friends of those in prison. In its current form there is a real risk that reports on the OEA will, at best, present a fairly bland and national perspective.

Finally, the Regulations require that no person may improperly interfere with, hinder or obstruct the Office or any member in the performance of their powers, duties and functions. Any contravention would be an offence and upon conviction may be subject to a fine or to imprisonment for a period not exceeding 10 years or to both the fine and imprisonment.⁵⁶ Any person who submits false information in relation to security vetting or lifestyle audit⁵⁷ may upon

⁵⁵ National Prosecuting Authority Act, sec. 22(4)(g) and 35(2).

⁵⁶ National Prosecuting Authority Act, sec. 41(1).

⁵⁷ Minister of Justice and Correctional Services, "Regulations on Establishment of Office for Ethics and Accountability," r. 7.

conviction be subject to a fine or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.⁵⁸

7. Conclusion

The main critique is that this is an internal unit in the office of the National Director and it must be assumed that the head of the OEA will toe the line. It is therefore not an independent mechanism. Over the years the NPA as shown itself to be very sensitive about criticism, regardless of how well intentioned the messenger and the message may be. The legislation requires that there must be a complaints mechanism, but the regulations are drafted in such a manner that it stifles transparency and accountability. It is indeed hard to see how the Regulations will enable greater accountability as it does not provide for a mechanism that can institute or even recommend disciplinary action, nor does it compel the NPA to report to Parliament in a comprehensive and transparent manner of complaints received and their resolution.

⁵⁸ National Prosecuting Authority Act, sec. 41(3).

Appendix 1 NPA Code of Conduct

<https://www.npa.gov.za/npa-code-conduct>

NPA Code of Conduct

Preamble

The National Prosecuting Authority is committed to the highest ethical standards.

This commitment guides every decision we make as an organization and as individuals within the organization. We understand that deviation from the adherence to the ethical standards and levels of integrity we set ourselves we lose the public's confidence.

This confidence, and trust, is vital to the efficient running of an equitable justice system that works for all. We are cognizant of the vital role we play in the administration of criminal justice and are reminded every day that we must act without fear, favour, or prejudice.

A public that has lost confidence in the criminal justice is a public that turns to mob justice and leads to an unstable and unsafe society. To avoid this outcome, we are guided by this Code of Conduct to perform our duties with full recognition of the supremacy of the Constitution and the rule of law.

Furthermore, we commit ourselves to respect human dignity and human rights of all who turn to us to right wrongs committed against them.

A. Professional Conduct

All members of the NPA must serve impartially and, exercise, conduct or perform their powers, duties and functions in good faith and without fear, favour or prejudice subject only to the constitution and the law.

Prosecutors must-

- be individuals of integrity whose conduct is objective, honest, and sincere.
- respect, protect and uphold justice, human dignity, and fundamental rights as entrenched in the Constitution.
- protect the public interest.
- strive to be and to be seen to be consistent, independent, and impartial.
- conduct themselves professionally, with courtesy and respect to all and in accordance with the law and the recognised standards and ethics of their profession.
- strive to be well-informed and to keep abreast of relevant legal developments; and
- at all times maintain the honour and dignity of their profession and dress and act in a manner befitting their status and upholding the decorum of the court.

B. Independence

The prosecutorial discretion to institute and to stop criminal proceedings should be exercised independently, in accordance with the Prosecution Policy and the Policy Directives, and be free from political, public, and judicial interference.

C. Impartiality

Prosecutors should perform their duties without fear, favour, or prejudice. In particular, they should

- conduct their functions impartially and not become personally, as opposed to professionally, involved in any matter.
- avoid taking decisions or involving themselves in matters where a conflict of interest exists or might exist.
- take into consideration the public interest as distinct from media or partisan interests and concerns, however vociferously these may be presented.
- avoid participation in political or other activities which may prejudice or be perceived to prejudice their independence and impartiality.
- not seek or receive gifts, donations, favours, or sponsorships that may compromise, or may be perceived to compromise, their professional integrity.
- act with objectivity and pay due attention to the constitutional right to equality.
- consider all relevant circumstances and ensure that reasonable enquiries are made about evidence, irrespective of whether these enquiries are to the advantage or disadvantage of the alleged offender.
- be sensitive to the needs of victims and do justice between the victim, the accused and the community, according to the law and the dictates of fairness and equity; and
- assist the court to arrive at a just verdict and, in the event of a conviction, an appropriate sentence based on the evidence presented.

D. Role in Administration of Justice

1. Prosecutors should perform their duties fairly, consistently, and expeditiously and-

- perform their duties fearlessly and vigorously in accordance with the highest standards of the legal profession.
- where legally authorised to participate or assist in the investigation of crime, they should do so objectively, impartially, and professionally, also insisting that the investigating agencies respect legal precepts and fundamental human rights.
- give due consideration to declining to prosecute, discontinuing criminal proceedings conditionally or unconditionally or diverting criminal cases from the formal justice system, particularly those involving young persons, with due respect for the rights of suspects and victims, where such action is appropriate.

- in the institution of criminal proceedings, proceed when a case is well-founded upon evidence believed to be reliable and admissible, and not continue a prosecution in the absence of such evidence; and
- throughout the course of the proceedings the case should be firmly but fairly and objectively prosecuted.

2. Prosecutors should, furthermore-

- preserve professional confidentiality.
- refrain from making inappropriate media statements and other public communications or comments about criminal cases which are still pending or cases in which the time for appeal has not expired.
- consider the views, legitimate interests, and possible concerns of victims and witnesses when their personal interests are, or might be, affected, and endeavour to ensure that victims and witnesses are informed of their rights, especially with reference to the possibility, if any, of victim compensation and witness protection.
- if requested by interested parties, supply reasons for the exercise of prosecutorial discretion, unless the individual rights of persons such as victims, witnesses or accused persons might be prejudiced, or where it might not be in the public interest to do so.
- in the case of child victims and child witnesses, always ensure that their best interests are considered.
- safeguard the rights of accused persons, in line with the law and applicable international instruments as required in a fair trial.
- as soon as is reasonably possible, disclose to the accused person relevant prejudicial and beneficial information, in accordance with the law or the requirements of a fair trial.
- examine proposed evidence to ascertain if it has been lawfully or constitutionally obtained.
- refuse to use evidence which is reasonably believed to have been obtained through recourse to unlawful methods which constitute a grave violation of the accused person's human rights and particularly methods which constitute torture or cruel treatment.
- take the necessary steps to ensure that suitable action be taken against those responsible for using illegal methods in obtaining such evidence.
- save in exceptional circumstances, not discuss pending cases with the presiding officer, in the absence or without the consent or knowledge, of the defence; and
- if during the preparation for a trial or the conducting of criminal proceedings or functions incidental thereto, a prosecutor is of the opinion that information has been disclosed of the commission of an offence which has not been investigated or prosecuted, he or she must without delay in writing inform and disclose to the South African Police the particulars thereof.

E. Co-operation

In order to ensure the fairness and effectiveness of the prosecution process, prosecutor should-

- co-operate with the police, the courts, the legal profession, defence counsel, and any relevant government agencies, whether national or international.
- in their professional dealings, at all times conduct themselves in a dignified manner commensurate with their position; and
- render assistance to the prosecution services and colleagues of other jurisdictions in accordance with the law and in a spirit of mutual co-operation.

F. Enforcement

All prosecutors should respect and comply with the terms of this Code and report any instances of unprofessional conduct by colleagues (and also, as the case may be, other court officials) to the relevant supervising authority who should consider the appropriate steps to be taken and do so.

In the event of transgressions, appropriate disciplinary steps may be taken in terms of the Public Service Regulations and NPA Act No 32 of 1998.

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