

3. Legislative Mandate

In terms of the Constitution and NPA Act, the NPA is the sole entity seized with the responsibility for instituting prosecutions on behalf of the State. The key legislation is briefly discussed below.

The Constitution

The NPA derives its mandate from section 179 of the Constitution. Section 179(2) expressly empowers the prosecuting authority to institute criminal proceedings on behalf of the state, and to carry out any necessary functions incidental to instituting criminal proceedings. Furthermore, national legislation requires that the prosecuting authority must exercise its functions without fear, favour or prejudice. Therefore the NPA exercises its functions without fear, favour or prejudice.

The National Director of Public Prosecutions (NDPP), as head of the prosecuting authority, and Directors of Public Prosecutions (DPPs), as heads of NPA offices within the various seats of the High Court, are responsible for ensuring compliance with the above-mentioned constitutional obligation.

In terms of section 179(5) of the Constitution the NDPP must determine with the concurrence of the Minister prosecution policy and issue policy directives, which must be observed by all DPPs and prosecutors in the prosecution process. Furthermore, in terms of section 179(6) of the Constitution, the Minister responsible for the administration of justice must exercise final responsibility over the prosecuting authority.

National Prosecuting Authority Act, 1998 (Act No. 32 of 1998) (NPA Act)

The NPA Act refers to section 179 of the Constitution which states that there is a single national prosecuting authority structured in terms of an Act of Parliament that consists of:

- (a) a National Director of Public Prosecutions, who is appointed by the President, as head of the national executive; and
- (b) Directors of Public Prosecutions as determined by an Act of Parliament.

In terms of the Constitution and the NPA Act each DPP is responsible for the decision whether or not to prosecute a person within his or her specific jurisdictional area. Most prosecutorial decisions are taken by prosecutors subject to the supervision, direction and co-ordination of the DPP. The NDPP may intervene in any prosecution process when policy directives are not complied with and he or she may review the decision of a DPP. The NDPP may review a decision after consulting with the relevant DPP and after taking representations from the accused person, the complainant and any other person or party whom the NDPP considers to be relevant. Section 24 of the NPA Act provides that the DPPs must submit annual reports on all their activities during the previous year to the NDPP. The NDPP must in turn submit an annual report to the Minister to be tabled in Parliament (section 35(2)(a)).

In terms of section 20(1) of the NPA Act, the power vests in the prosecuting authority, to-

- (a) institute and conduct criminal proceedings on behalf of the State;
- (b) carry out any necessary functions incidental to instituting and conducting such criminal proceedings; and
- (c) discontinue criminal proceedings.

The NPA exercises these powers on behalf of the Republic. All prosecutors can carry out the above-mentioned functions. This includes the NDPP, DNDPPs, DPPs and DDPPs.



Non-entity specific legislation

Various pieces of legislation place an obligation on the NPA as the prosecuting authority. The most pertinent are discussed below:

The Criminal Procedure Act, 1977 (Act No. 51 of 1977)

This Act regulates matters relating to criminal proceedings in a court of law, including the power to withdraw a charge and stop a prosecution; private prosecution; search and seizure; attendance in court; arrest; summons; admission of guilt; bail; release of accused person; summary trial; the charge; the plea; jurisdiction; preparatory examination; trial before different courts; conduct of proceedings; witnesses; evidence; competent verdicts; previous convictions; sentence; compensation; and reviews and appeals.

Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998)

This Act provides measures for the law enforcement agencies and the prosecuting authority to combat organised crime and money laundering. The primary features of the Act include provisions for the recovery of the proceeds of unlawful activity. Chapter 5 provides for the forfeiture of benefits derived from crime in those cases where the "defendant" is convicted of an offence. Chapter 6, on the other hand, does not focus on wrongdoers themselves, but on property that either has been used to commit an offence or which constitutes proceeds of crime. Although it provides for forfeiture of proceeds of and instrumentalities used in crime, it is not conviction based and may be invoked even where there is no prosecution.

Public Finance Management Act, 1999 (Act No. 1 of 1999)

The PFMA promotes the objective of good financial management in order to maximise service delivery through the effective and efficient use of the limited resources.

The key objectives of the PFMA may be summarised as follows:

- Modernise the system of financial management in the public sector,
- Enable public sector managers to manage, but at the same time be held more accountable,
- Ensure the timely provision of quality information, and
- Eliminate the waste and corruption in the use of public assets.

The Witness Protection Act, 1998 (Act No. 112 of 1998)

The Office for Witness Protection (OWP) provides a support service to the Criminal Justice System (CJS) by providing protection to threatened or intimidated witnesses, thus enabling them to testify in criminal proceedings. The OWP is administered by the NPA but is accountable to the Director-General of Justice and Constitutional Development.

Other legislations that impacts on the NPA are the following:

- Public Service Act, 1994 (PSA), and
- The Rome Statute of the International Criminal Court Act, 2002 (Act No. 27 of 2002).

The Minister is responsible for the tabling of legislation pertaining to the functioning of the NPA.

