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DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

NO. R. 6686 **30 September 2025**

TERMS OF REFERENCE

Enquiry in terms of section 12(6) of the National Prosecuting Authority Act 32 of 1998, into the fitness of Advocate Andrew Chauke (Adv Chauke) to hold the office of Director of Public Prosecutions

Section 179 (1) of the Constitution provides for the establishment of a single national prosecuting authority, structured in terms of an Act of Parliament, consisting of a National Director of Public Prosecutions, Directors of Public Prosecutions and prosecutors as determined by an Act of Parliament. The requisite Act of Parliament envisaged in subsection 1 is the National Prosecuting Authority Act, 32 of 1998 (National Prosecuting Authority Act).

In terms of section 179 (2) of the Constitution, the prosecuting authority has the power to institute criminal proceedings on behalf of the state, and to carry out any necessary functions incidental to instituting criminal proceedings.

In terms of section 9(1) (a) of the National Prosecuting Authority Act, read with section 179 (3) of the Constitution, the Directors of Public Prosecutions must be appropriately qualified, and must be fit and proper to be trusted with the responsibility of the office concerned.

In exercising the functions under section 24 of the National Prosecuting Authority Act, read with s 179 (4) of the Constitution, a Director of Public Prosecutions must exercise his/her functions without fear, favour or prejudice.

In terms of section 179 (6) of the Constitution, the Minister responsible for the administration of justice exercises final responsibility for the prosecuting authority. All other matters concerning the prosecuting authority must, under section 179 (7), be determined by the National Prosecuting Authority Act.

Any person appointed as a National Director of Public Prosecutions, Deputy National Director of Public Prosecutions or Director of Public Prosecutions appointed under section 13(1) must, in terms of section 9(1)(b) of the National Prosecuting Authority Act, "*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*";

Section 14(3) of the National Prosecuting Authority Act, provides that section 12 (3), (4), (6), (7), (8) and (9), in respect of the vacation of office and discharge of the *National Director*, shall apply, with the necessary changes, with regard to the vacation of office and discharge of a *Director* of Director of Public Prosecutions

In terms of section 12(6) (a), read with section 14(3) of the National Prosecuting Authority Act the President may provisionally suspend a Director of Public Prosecutions from office pending "*such enquiry into his or her fitness to hold such office as the President deems fit and, subject to the provisions of this subsection, may thereupon remove him or her from office—*

(i) for misconduct;

(ii) …

(iii) on account of incapacity to carry out his or her duties of office efficiently; or

(iv) on account thereof that he or she is no longer a fit and proper person to hold the office concerned;"

The Code of Conduct for prosecutors as published in Government Notice 1257 (*Government Gazette* 33907, 29 December 2010) enjoins the members of the National Prosecuting Authority to meet the highest standards of the legal profession, assist and respect the courts, act with integrity in their professional dealings, and at all times, to conduct themselves in a dignified manner commensurate with their position.

In terms of the Constitution, the National Prosecuting Authority Act and the rules of natural justice, an enquiry as regards the allegations made against any Director of Public Prosecutions, should be conducted fairly and impartially.

On 1 September 2011 Adv Chauke was appointed Director of Public Prosecutions.

Based on certain serious allegations regarding Adv Chauke's fitness and propriety to hold office as Director of Public Prosecutions and member of the prosecuting authority, the President, acting pursuant to section 12(6)(a) of the National Prosecuting Authority Act, has suspended Adv Chauke, effective from 20 July 2025, on full pay pending the finalisation of an enquiry into his fitness to hold office as set out below.

THEREFORE, the President hereby establishes an enquiry into Adv Chauke's fitness to hold office pursuant to the provisions of section 12(6) of the National Prosecuting Authority Act.

1. The President appoints the retired Justice Baaitse Elizabeth (Bess) Nkabinde as Chairperson of the enquiry, assisted by Adv Elizabeth Baloyi-Mere (SC) and Ms Thenjiwe Vilakazi (Attorney), as Panel Members of the Enquiry.
2. The Panel shall inquire into, report on and make findings and/or recommendations on allegations set out in paragraph 3 below.
3. The fitness of Adv Chauke to hold office as a prosecutor in the prosecutorial services, in particular, in the capacity as a Director of Public Prosecutions, insofar as it relates:
    3.1. His direct or indirect conduct of Adv Chauke relating to his fitness and propriety to hold office based on information, including, but not limited to matters related to the following allegations:
        3.1.1 The institution of the racketeering charges in terms of section 2(4) of the Prevention of Organised crime Act,1998 against Major-

General Booysen and members of the Cato Manor Unit and the defence of those actions in subsequent review proceedings brought by Major-General Booysen to have the racketeering certificates set aside, in that he, Adv Chauke —

3.1.1.1 supported a decision to prosecute the accused notwithstanding that there was no evidence justifying the decision, and he sought to improperly have the Acting Director of Public Prosecutions of KwaZulu-Natal sign the case dockets and/or prosecution memorandum detailing the alleged evidence implicating the accused on which the decision to indict had to be made;

3.1.1.2 recommended to the then Acting National Director of Public Prosecutions, Adv Nomgcobo Jiba, the application for issuing a racketeering authorisation in terms of section 2(4) of the Prevention of Organised Crime Act, 1998, whereas there was no evidence justifying the institution of racketeering charges against the accused;

3.1.1.3 sought to defend the institution of the aforementioned racketeering charges in the review proceedings brought by Major-General Booysen to have the said racketeering charges set aside, and that he finalised the answering affidavit of the then Acting National Director of Public Prosecutions, Adv Nomgcobo Jiba, in the Booysen review proceedings in opposing the review application, notwithstanding that there was no evidence justifying the institution of racketeering charges against the accused;

3.1.1.4 instituted an appeal against the judgment of Judge Gorven in the review case of *Booysen v Acting National Director of Public Prosecutions and others, 2014(2) SACR 55 (KZN)* without the approval of the then National Director of Public Prosecutions, Mr Mxolisi Nxasana,

notwithstanding that there was no evidence justifying the institution of racketeering charges against the accused, and thus no justification for lodging an appeal against the judgment; and

3.1.1.5 attempted to have racketeering charges against Major-General Booysen and members of the Cato Manor Unit reinstated by the then National Director of Public Prosecutions, Mr Nxasana, notwithstanding that there was no evidence justifying the institution of racketeering against the accused.

3.1.2 The failure to continue with charges against Lieutenant-General Richard Mdluli for his involvement in the murder of Mr Tefo Abel Ramogibe, in that he, Adv Chauke, caused the charge of murder relating to the killing of Mr Tefo Abel Ramogibe, and related charges to be withdrawn, notwithstanding that there was strong evidence justifying the institution of a prosecution in the matter, which decision caused a significant delay in proceeding with charges concerned.

3.2 Whether, in fulfilling his responsibilities as Director of Public Prosecutions, Adv Chauke—

3.2.1 complied with the Constitution, the National Prosecuting Authority Act and any other relevant laws in his position as a senior leader in the National Prosecuting Authority and is fit and proper to hold this position and be a member of the prosecutorial service;

3.2.2 properly exercised his discretion in relation to —

3.2.2.1 instituting and conducting criminal proceedings on behalf of the State;

3.2.2.2 carrying out any necessary functions incidental to instituting and conducting such criminal proceedings, and

3.2.2.3 discontinuing criminal proceedings;

3.2.3 duly respected court processes and proceedings before the Courts as required by applicable prescripts and as a senior member of the National Prosecuting Authority;

3.2.4 exercised his powers and performed his duties and functions in accordance with prosecution policy and policy directives as determined under section 21 of the National Prosecuting Authority Act;

3.2.5 acted at all times without fear, favour or prejudice;

3.2.6 displayed the required competence and capacity required to fulfil his duties by, among others, objectively engaging with facts presented to him, impartially, in good faith and without fear favour or prejudice, subject to the Constitution of the Republic of South Africa, 1996 and the law, in order to discharge his duties as a Director of Public Prosecutions; and

3.2.7 in any manner, brought the National Prosecuting Authority into disrepute by any of his actions or omissions.

4. In consultation with the Minister responsible for the administration of justice, the Chairperson shall determine the seat of the enquiry.

5. The Chairperson shall determine the rules of procedure of the enquiry.

6. The enquiry will be completed within 4 (four) months of its commencement date or such extended period as the President may determine upon submission of an

interim report to the President, and reasons for an extension of the 4 (four) month period for the completion of the report.

7. In the event of new matters emerging during the course of the enquiry, the President may include these matters as part of the enquiry, by way of amendment to these terms of reference.

8. At the end of the enquiry the Chairperson shall submit a report to the President. All documents filed during the enquiry shall form part of the report.

Given under my hand at Pretoria on this 19th day of September 2025.

Mr Matamela Cyril Ramaphosa

President of the Republic of South Africa

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