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CAN MOTHIBI BEAT THE ODDS?

The new NPA boss has just two years to secure its independence

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National director of public prosecutions (NDPP) Andy Mothibi is eyeing full administrative and operational independence for the National Prosecuting Authority (NPA). But can he accomplish that which has been resisted from as far back as 2002 in just two years?

Last week seemed a momentous one for the criminal justice system in South Africa. The South African National Defence Force was deployed to key areas in Gauteng and the Western Cape to help the police in the fight against illegal mining and gangsterism. The Madlanga commission was extended to conclude in August, with a second interim report due in May after the first was submitted in December. And Mothibi, whose stellar leadership at the Special Investigating Unit propelled it into the only effective corruption-busting body in the state, held his first media briefing as the new NDPP. Mothibi brings new energy to the NPA and is set to build on the foundation laid by his predecessor Shamila Batohi — including the push for administrative and operational independence for the prosecutorial body, which he raised in his briefing as critical.

Discussions with the ministry and department of justice & constitutional development are under way regarding the NPA's operational and financial independence, he told journalists. They are "fully supportive and have committed to drive the legislative reform process to enhance the NPA's governance, operational and financial framework, with its own accounting officer".

The difficulty is that Mothibi has just two years in office, as he is due to retire at 65. Even though full independence of the NPA has been driven by the presidency, there is still resistance to its implementation. After the state capture commission ended its work, President Cyril Ramaphosa distilled the recommendations of former chief justice Raymond Zondo into actionable steps. Implementation was to be driven by various line departments, but the entire project is overseen by the presidency. On the NPA's independence, the recommendations included tightening the process to appoint the NDPP and a separate proposal on operational and financial independence. There have

been two progress reports from the presidency since 2022. Comparing the report released in 2023 with the one released last year, there has been no progress on the recommendations dealing with the independence of the NPA. This is despite court judgments as well as commission reports and findings by the auditor-general dating back to 2002, which emphasised the urgency of boosting the NPA's independence. In July 2002 the auditor-general recommended that the NPA "apply to have its legislation amended which properly discloses separate accountability".

The NPA now functions as a desk or a program within the justice department's budget; the director-general in the department serves as its accounting officer, meaning that budgets related to organizational design, staffing and projects are in the hands of senior department administrators instead of the NPA itself. The door is open to political manipulation, even if only through budgetary neglect. The Zondo commission received evidence from NPA CEO Karen van Rensburg, who submitted in an affidavit that it is "vital that the NPA be fully independent". She warned that the justice director-general could use their power to "undermine or erode" the independence of the NPA, especially when dealing with politically sensitive cases.

Lawson Naidoo, director of the Council for the Advancement of the South African Constitution, says there should have been movement on this issue already, given that Batochi had pushed hard for the amendments throughout her tenure. What is odd is that current and previous ministers have said they agree with handing the NPA operational and financial independence - but it has yet to be actioned. Ramaphosa's 2025 progress report on Zondo commission recommendations cites "resolving the questions" around financial and administrative independence for the NPA as an "action requiring attention", highlighted in red. The report says tightening the process to appoint the NDPP was meant to be completed in November. There are fears that the department was playing for time, delaying the process unnecessarily. Naidoo says pinning down the NPA's independence is crucial to stabilise and reform the criminal justice system.

"It's critical because you've got to look at the law enforcement agencies as part of an integrated system, a continuum if you like, from the time that somebody goes and opens a case at a police station through to when the matter gets to court and the courts have judged it. You've got to fix the whole system. You can't fix one part of it," he says. The South African Police Service is likely to be reformed given the Madlanga commission, but reforming the police without fixing the NPA would be pointless.

"If you fix everything else and you don't touch the NPA, that becomes your weak link," he says. Naidoo is hopeful that the groundwork has been laid for reform to be institutionalised and legislated but warns that it could take time. He says the NPA appears to have taken it upon itself to do some preparatory work. Mothibi told journalists last week that the draft NPA Amendment Bill, aimed at strengthening its

independence, will be tabled in the next financial year; the justice ministry and department have “committed” to driving the legislative reform. The question is, will they keep their word, given their sluggish response on the matter to the presidency? Motlhabi has very little time to find out.

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