



THE PRESIDENCY: REPUBLIC OF SOUTH AFRICA  
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**Per email:Rupert@rupertcandy.co.za**

Dear Mr Candy

**THE RIGHT2KNOW CAMPAING: URGENT APPLICATION FOR LIVE BROADCAST OF INTERVIEW PROCESS FOR THE APPOINTMENT OF THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS**

Reference is made to your letter dated 08 November 2018. Your letter has been referred to the Legal and Executive Services Unit for further attention and reply.

Section 179(1)(a) of the Constitution of the Republic of South Africa, 1996 , gives power to appoint the National Director of Public Prosecutions to the President. The Supreme Court of Appeal in this regard in matter of *Democratic Alliance v The President of the RSA & others* (263/11) [2011] ZASCA 241 at paragraph 92 stated the following regarding the appointment of the NDPP “ *In this regard, counsel for the respondents are correct, when they point out that the President’s original power to appoint the NDPP is sourced in s 179(1)(a) of the Constitution, which provides in express terms that the NDPP is appointed by the President, ‘as head of the National Executive’. The act of appointment is thus clearly executive action.*”

In paragraph 107 of the above mentioned judgement the Supreme Court of Appeal goes further and stated the following “*It is true that no process is prescribed, either by the Constitution or by any provision of the Act, for the President to follow in assessing a candidate’s fitness for the position of NDPP*” . It is clear from the above that the Court acknowledges that there is no process prescribed by the Constitution or the National Prosecuting Authority Act for the appointment of the NDPP.

The President has decided to exercise his power to appoint the new NDPP in manner that allows for inclusive inputs. This does not however change the nature of the President’s power to appoint the NDPP.

The decision taken by the President is that the interviews of the NDPP will not be in public.

We trust that you will find the above in order.

Regards



**Mr Geoffrey Mphaphuli**  
**Acting Head: Legal and Executive Services**

Date: 09/11/2018