



**12 December 2008: For immediate release**

**LAW SOCIETY SAYS PRESIDENT'S DECISION TO DISMISS PIKOLI APPEARS TO FAIL THE TEST OF RATIONALITY**

The Law Society of South Africa (LSSA) says the decision by President Kgalema Motlathe to recommend the dismissal of National Director of Public Prosecutions (NDPP), Vusi Pikoli, albeit the President's prerogative, appears to have failed the test of rationality for various reasons. LSSA Co-Chairpersons, Max Boqwana and CP Fourie, say the enquiry raised a number of shortcomings in the system.

'Instead of taking the narrow approach and dismissing the NDPP, the President should have taken this opportunity to reorganise and strengthen the prosecutorial authority, and in particular the manner in which it relates to the Executive,' said the Co-Chairpersons.

As regards the test for rationality, the LSSA points out that Mr Pikoli's dismissal raises a number of questions:

- The Enquiry Commission was set up in terms of the National Prosecuting Authority Act, 1998; but its authority is not clear.
- Can the President, in future, on his own and without the application of the facts, dismiss the head of the prosecutorial services?
- Should the President, in future, be guided by political considerations in appointing a National Director of Public Prosecutions, rather than by the internationally acceptable principles of independence and the discharging of prosecutorial responsibilities without fear, favour or prejudice.

The LSSA understands that the parties involved in this matter may still exercise their legal rights and, therefore, does not wish to deal with the merits of this matter at this stage, save to point out that

- in exercising its responsibilities the NDPP must appreciate its independence from the Executive;
- Parliament should consider all the facts before confirming the President's decision;
- the grounds on which the President can ignore the recommendations of a properly constituted committee and take his decision, should be assessed;
- the impact of the precedent created by the decision of the President; and

- above all, Parliament must consider the interest of the nation rather than a narrow political stance.

Since President Motlanthe chose to recommend Mr Pikoli's dismissal on the ground that he was insensitive to national security and the political environment, the LSSA urges the President to explain clearly his understanding of where prosecutorial independence to carry out prosecutions without fear, favour or prejudice, as guaranteed by the Constitution, is superseded by the protection of national security. 'The President should explain the basis for his decision to both the public and Parliament,' say Mr Boqwana and Mr Fourie.

The LSSA believes the South African public is entitled to a proper explanation by the President so that, when presenting his case to Parliament, Parliament is not seen to be simply rubber-stamping a politically motivated decision.

***ISSUED ON BEHALF OF THE CO-CHAIRPERSONS  
OF THE LAW SOCIETY OF SOUTH AFRICA***

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**Editor's note:**

The Law Society of South Africa brings together its six constituent members – the Cape Law Society, the KwaZulu-Natal Law Society, the Law Society of the Free State, the Law Society of the Northern Provinces, the Black Lawyers Association and the National Association of Democratic Lawyers – in representing South Africa's 18 400 attorneys and 4 900 candidate attorneys.

In Afrikaans items, please refer to the 'Prokureursorde van Suid-Afrika'.