

## AFRICA RISK CONSULTING

### South Africa Monthly Briefing September 2023

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#### South Africa Summary 21 September 2023

*The Independent Electoral Commission (IEC) releases the latest political party funding disclosures on 31 Augst. The report again highlights the role a few major donors play in funding South Africa's major political parties. President Cyril Ramaphosa (2018-present) removes Busisiwe Mkhwebane as public protector on 13 September after Parliament votes to impeach her. Her presumed successor, acting public protector Kholeka Gcaleka, will now be tasked with rebuilding the constitutional institution's reputation and capacity. Department of public enterprises publishes the draft of the National State Enterprises Bill (2023) on 15 September. This proposed legislation seeks to eliminate the department and create a new state-owned asset management company to oversee South Africa's state-owned enterprises. Dozens of people die in a building fire in Johannesburg's Marshalltown area highlighting the city's challenges with illegally occupied buildings and poor governance. However, officials worryingly respond to the tragedy by criticising social justice NGOs and foreign nationals.*

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#### Political party funding bill again reveals prevalence of super donors

The **Independent Electoral Commission (IEC)** published its first quarter (March to June) political party funding report on 31 August once again revealing the major political parties' dependence on a few small donors.<sup>1</sup> Under the **Political Party Funding Act**, only donations over R100,000 (\$5,254.15) need to be publicly declared, with smaller donations and other sources of revenue only declared in the IEC's annual report following the various parties submitting their final audits. In addition, individual donors may not exceed R15m (\$794,895) in a reporting year.

Only four political parties made declarations in the latest report, namely, the ruling **African National Congress (ANC)**, the **Democratic Alliance (DA)**, **ActionSA**, and **Build One South Africa (BOSA)**. Combined these parties' declared donations were over R58.3m (\$3.07m).

The ANC declared donations totalling R20m (\$1.05m) comprising R15m (\$794,895) from the party's **Batho Batho Trust** and R5m (\$265,319) from the ANC's investment arm, **Chancellor House**. The ANC controls both these organisations and before the Political Party Funding Act came into effect in April 2021, the party had been opaque about how much funding it receives from these two trusts. However, since the law was introduced the two trusts have each donated the maximum amount of R15m (\$794,895) per year which likely indicates that they were providing the party annual sums above this prior to 2021. The substantial amount of funding provided by the two trusts has raised concerns over the ruling party's dependence on the companies which provide the bulk of the two funds' wealth.

The Batho Batho Trust owns a controlling stake in the **Thebe Investment Corporation (TIC)** whose most lucrative investment is in **Shell South Africa**.<sup>2</sup> The bulk of TIC's income comes from dividends paid out by Shell South Africa, which, in turn, means that most of the money received by the ANC from its Batho Batho Trust is indirectly from Shell. This financial connection was a major factor in allegations questioning the government's independence when it determinedly backed Shell's controversial hydrocarbon exploration plans off the coast of South Africa's **Wild Coast** in the **Eastern**

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<sup>1</sup> IEC, 31 Aug 2023

<sup>2</sup> Daily Maverick, 4 Mar 2022

**Cape Province.**<sup>3</sup> Mineral resources and energy minister **Gwede Mantashe** -who is also the ANC's national chairperson – was particularly supportive of Shell's (currently suspended) plans.

Similarly, a major source of Chancellor House's wealth comes from its shareholding in the **United Manganese Kalahari (UMK)** which itself donated R15m (\$794,895) to the ANC in the last year.<sup>4</sup> UMK is also linked to **Russian** oligarch **Viktor Vekselberg** who is considered a close ally of Russian President **Vladimir Putin** (2000 -present) and is currently under **United States (US)** sanctions.<sup>5</sup> The ANC's indirect financial ties to Vekselberg via UMK also raised questions about the government's pro-Russian positions in recent months as South Africa's support for Russia went beyond that of fellow **BRICS (Brazil, Russia, India, China, South Africa)** members and endangered the country's lucrative trade relationship with the US.

For its part the DA managed to pull in over R22.9m (\$1.2m) in declared donations during the first quarter period, the largest amount declared by any party.<sup>6</sup> The majority of this funding came from an entity called **Fynbos Ekwiteit** which donated R15m (\$794,895). Fynbos Ekwiteit is controlled by **Capitec** bank founder **Michiel le Roux** who has emerged as a powerhouse donor for the DA.<sup>7</sup> In the 2022 reporting year alone, three entities connected to Le Roux - Fynbos Ekwiteit, **Fynbos Kapitaal Propriety Limited**, and the **Fynbos Trust** – donated a combined R30.27m rand to the DA which comprised the bulk of the party's R54.4m (\$2.89m) declared donations.<sup>8</sup> Although Le Roux has technically not violated any election funding regulations, it does appear that he is exploiting a loophole in the Act that allows him to commit additional funding to the DA through the three various entities.

ActionSA – former **Johannesburg** mayor **Herman Mashaba**'s political project – brought in the third largest value of declared donations with R12.1m (\$642,073).<sup>9</sup> The largest single donor to ActionSA during this period was the **Oppenheimer** family's **Victoria Freudenheim** who donated R7.2m (\$378,674). Notably, Mashaba himself also donated R2m (\$106,127) to his party. Four members of the Oppenheimer family, including Freudenheim, **Mary Slack**, **Jessica Slack-Jell** and **Rebecca Oppenheimer**, have been revealed as major donors to political parties since the act came into effect. Collectively they have donated over R40m (\$2.1m) to political parties, primarily to centrist opposition parties such as the DA and ActionSA.<sup>10</sup>

Similarly, South African online gaming magnate **Martin Moshal** has also been unveiled as a leading political donor. In this latest reporting period, he donated R2m (\$106,127) to BOSA which was founded by former DA leader **Mmusi Maimane** (2015-2019).<sup>11</sup> However, since published declarations began in 2021, Moshal has donated R46.5m (\$2.47m) to opposition parties. In addition to his recent donation to BOSA, he had donated R14.5m (\$769,427) to ActionSA and R30m (\$1.59 million) to the DA in the past two years.

The emergence of these super donors does raise questions over their possible influence over political parties. This is especially significant as South Africa is less than a year away from its next general election and parties are expected to aggressively solicit donations in the coming months. The possibility that the election will result in coalition governments at a provincial and even national level will mean that such political influence could be even more impactful on policymaking and regulation enforcement. Similarly, parties such as the DA and ActionSA which share a clear donor base may be under pressure from these donors to work together, even if the party leaders themselves do not welcome this prospect.

<sup>3</sup> News24, 13 Dec 2022

<sup>4</sup> Daily Maverick, 9 May 2022

<sup>5</sup> Reuters, 7 Feb 2023

<sup>6</sup> IEC, 31 Aug 2023

<sup>7</sup> Business Tech, 1 Sep 2023

<sup>8</sup> Daily Maverick, 10 Sep 2023

<sup>9</sup> IEC, 31 Aug 2023

<sup>10</sup> Daily Maverick, 10 Sep 2023

<sup>11</sup> IEC, 31 Aug 2023

## Public protector (PP) impeached and removed, creating challenge for incoming PP

**President Cyril Ramaphosa** (2018-present) formally removed **Busisiwe Mkhwebane** as the public protector on 13 September following a **National Assembly** vote to impeach her on 11 September by a margin of 318 votes to 43.<sup>12</sup> Mkhwebane was impeached on the recommendations of the ad hoc parliamentary committee which had been formed to investigate her and found her guilty of incompetence and misconduct.<sup>13</sup> These findings relate to both how she ran the public protector's office and how she conducted her investigations and reports.

Mkhwebane's term was marked by controversy and allegations of political bias and under her management the quality of the public protector's work declined dramatically. Indicative of this were numerous reports and findings which were overturned by the country's court system. In some cases, her actions were so egregious that South Africa's courts issued several personal cost orders against her when overturning her investigative findings.<sup>14</sup>

Practically, Mkhwebane's removal will have little impact on the operations of the public protector's office as she had been suspended since June 2022 while the investigations into her conduct proceeded. However, it is notable that she was impeached and removed from office roughly a month before her non-renewable term would have ended meaning that she will not receive her lucrative retirement and compensation package, which includes a lifetime salary.<sup>15</sup> Mkhwebane's removal and impeachment is a first for a constitutional office bearer in South Africa. It has now set the precedent for how such procedures last and offered a healthy example of **Parliament** exercising its oversight capacity. The fact that she was impeached by such a wide margin also reflected wide cross-party support for her removal.

However, it remains to be seen how long it will take the new public protector to repair the reputational damage to the constitutional ombud. This task is expected to fall to the current acting public protector **Kholeka Gcaleka** who is anticipated to soon be appointed as the new office bearer.<sup>16</sup> Gcaleka was nominated for the position on 19 August by a parliamentary committee set up to interview potential candidates. Her eventual confirmation by the National Assembly is currently viewed as a formality.

Gcaleka will now be tasked with continuing to repair the public protector's reputation and rebuild the office's capacity. The organisation experienced a number of staff departures during Mkhwebane's term leading to a loss in institutional capacity. The incoming public protector will be under pressure to be circumspect in the cases they accept, as the public protector produces reports which will be incontestable should their findings be challenged before the courts. The public protector is an essential institution in South Africa helping combat corruption and maladministration.

## Government proposes major restructuring of state-owned enterprises (SOEs)

The department of public enterprises (DPE) on 15 September published the draft of the **National State Enterprises Bill (2023)** for public comment.<sup>17</sup> This potentially landmark legislation seeks to disband the DPE itself and create a state-owned asset management company under which nearly all of the country's state-owned enterprises (SOEs) would be restructured. This promised holding company would be called the **State Asset Management SOC Ltd** and would be the sole representative of the state's shareholding in SOEs.

<sup>12</sup> M&G, 11 Sep 2023

<sup>13</sup> EWN, 23 Aug 2023

<sup>14</sup> M&G, 22 Jul 2019

<sup>15</sup> Daily Maverick, 11 Sep 2023

<sup>16</sup> EWN, 29 Aug 2023

<sup>17</sup> DPE, 15 Sep 2023

The bill aims to improve the governance of the SOEs through deeper corporatisation and reducing political interference. It is currently unclear if all of South Africa's nearly 700 SOEs will be placed under this state-owned management firm, or whether it is just the firms in which the DPE manages the state's shareholding. However, even if it is just the DPE's shareholding, this would be a substantial portfolio including the national energy utility **Eskom**, the ports and railway company, **Transnet**, aerospace and defence firm **Denel**, and state diamond company **Alexkor**.<sup>18</sup>

The bill also fails to clarify how the State Asset Management SOC Ltd – whose only shareholder will be the government – will prevent political interference and the development of systems of patronage in both the asset management firm itself and the SOEs it will oversee. Yet again the success of the proposed new legislation will be in its implementation rather than its intent. However, it must be acknowledged that the creation of such a partially autonomous state-owned asset management company has had success in countries such as China, **Malaysia**, and **Singapore**. But again, the efficacy and reputability of this firm will only be evident with the appointment of its board and management team.

The proposed bill is an acknowledgement that the DPE has failed in its mandate to oversee the country's SOEs which are largely failing to function as a result of years of state capture-related corruption. This is particularly concerning at Transnet and Eskom and their respective declines have resulted in a deterioration in South Africa's ability to provide reliable electricity and railway services resulting in substantial economic decline.

### Fire in Johannesburg building highlights governance failures and fuels xenophobia

A fire in an illegally occupied building in Johannesburg's **Marshalltown** neighbourhood killed at least 76 people on 31 August, highlighting the challenge of illegally occupied buildings in central Johannesburg, many of which are controlled by criminal syndicates.<sup>19</sup> The exact cause of the blaze is still under investigation, but the high death toll was a result of the building being illegally occupied, overcrowded, and uncompliant with fire safety regulations.

The continued proliferation of these buildings is also reflective of the deterioration in governance in South Africa's economic capital. This decline in governance is partly related to the recent political instability in the municipality – Johannesburg has had eight mayoral changes since 2019 which has had a knock-on effect on incoming administrations actively seeking to undo the actions of their predecessors. This includes decisions to shut down the city's **Problematic Properties Task Team** which was tasked with combatting illegal occupations and even the decision in mid-August to cancel an order for 17 specialised fire engines.<sup>20</sup> Johannesburg reportedly only has 10 reliable operating fire engines.

However, city and provincial officials have sought to deflect blame for the fire on social justice nongovernmental organisations (NGOs) and undocumented migrants in the city.<sup>21</sup> Officials claim that these NGOs prevent authorities from evicting occupants of these buildings; however, under South African law the municipality needs to provide alternate accommodation when it carries out such evictions and cannot often do so.

The criticism levelled by Johannesburg's political leaders at NGOs and undocumented foreign nationals – many of whom live in such illegally occupied buildings – is reflective of a wider worrying trend in South Africa's politics. Already the government has faced criticism for seeking to pass legislation which will subject all NGOs to vetting by the security forces.<sup>22</sup> This rhetoric and attempted legislative agenda indicate that the state currently views civil society with growing antipathy. However, more worrying was the ease with which local political leaders pivoted to blaming foreign

<sup>18</sup> DPE, 21 Sep 2023

<sup>19</sup> News24, 2 Sep 2023

<sup>20</sup> News24, 16 Aug 2023

<sup>21</sup> 702, 31 Aug 2023

<sup>22</sup> The Citizen, 14 Sep 2023

nationals for the fire, which included the victims of the blaze itself. South African politics has entrenched xenophobic undercurrents which are becoming more pronounced as the country's economic malaise continues and the 2024 general election nears. Next year's election will likely be marked by overt xenophobic rhetoric and incidents of violence targeting foreign nationals.

## Planner

1 Nov 2022 **Cape Town (South Africa)** Medium Term Budget Policy Statement;  
2024 **(South Africa)** General election

## Chronology

20 Sep 2023 **Durban (South Africa)** *M&G*. **eThekweni** municipality appoints a panel to investigate alleged corruption by three **Democratic Alliance (DA)** councillors related to a R48m (\$2.54m) water project;

20 Sep 2023 **Pretoria (South Africa)** *StatsSA*. **Statistics South Africa (StatsSA)** reveals that South Africa's annual inflation increased slightly to 4.8% in August from 4.7% in July. This remains well within the **South African Reserve Bank's (SARB)** targeted band of between 3% and 6% and, as such, no interest rate increases are expected;

20 Sep 2023 **Johannesburg (South Africa)** *EWN*. Civil society group, the **Organisation Undoing Tax Abuse (Outa)**, releases a report criticising **Parliament** for failing to exercise its oversight duties;

20 Sep 2023 **Johannesburg (South Africa)** *Business Day*. The **National Treasury** reveals that it has exempted state-owned **Eskom** and **Transnet** from new mandated cost-cutting measures;

20 Sep 2023 **Cape Town (South Africa)** *EWN*. The **National Assembly** approves a motion requiring electricity minister **Kgosientsho Ramokgopa** to report to the portfolio committee on public enterprises reversing the **African National Congress (ANC)** majority's previous position that Ramokgopa did not need to report to any committee;

20 Sep 2023 **Swellendam (Western Cape)** *EWN*. A community hall and municipality-owned vehicles are set alight during service delivery protests in Swellendam;

20 Sep 2023 **New York (United States)** *EWN*. President **Cyril Ramaphosa** uses his address before the **United Nations General Assembly (UNGA)** to call for global peace and for sanctions on **Zimbabwe** and **Cuba** to be lifted;

19 Sep 2023 **Johannesburg (South Africa)** *M&G*. The **African National Congress (ANC) Youth League (ANCYL)** announces it wants its deputy president to be in the cabinet and for all its provincial chairpersons to be in provincial government;

19 Sep 2023 **Cape Town (South Africa)** *EWN*. The **Special Investigating Unit (SIU)** notes that it is struggling to properly investigate individuals implicated in state capture corruption due to these figures opting to resign from their positions;

19 Sep 2023 **Cape Town (South Africa)** *News24*. The **National Assembly** votes against passing the opposition **Democratic Alliance**-backed **Public Administration Laws General Amendment Bill** which was aimed at ending cadre deployment in government;

19 Sep 2023 **Johannesburg (South Africa)** *EWN*. Higher education minister **Blade Nzimande** denies that there is a crisis in the **National Student Financial Aid Scheme (NSFAS)** after thousands of students reported not receiving their financial aid payments;

6 Sep 2023 **Johannesburg (South Africa)** *News24*. The **Mozambican** government requests clarity on why South Africa has not begun importing the 100MW of electricity it agreed to sell South Africa in June;

2 Sep 2023 **Johannesburg (South Africa)** *News24*. Deputy finance minister **David Masondo** reveals that government is planning on providing fiscal support to the automotive manufacturing industry to help it transition to making electric vehicles;

1 Sep 2023 **Johannesburg (South Africa)** *EWN*. Cabinet issues a statement criticising the **Western Cape Provincial Powers Bill** warning the Western Cape provincial legislature that it cannot seek to operate as an independent country by assuming greater powers;

30 Aug 2023 **Johannesburg (South Africa)** *EWN*. Former ruling **African National Congress (ANC)** secretary-general **Ace Magashule** announces the formation of his new political party, the **African Congress for Transformation (ACT)**;

28 Aug 2023 **Cape Town (South Africa)** *EWN*. The **Electricity Regulation Amendment Bill** is tabled in **Parliament**, and if passed, will enable the creation of a dedicated electricity transmission company and the creation of a competitive electricity supply market;

26 Aug 2023 **Johannesburg (South Africa)** *EWN*. The **South African Police Service (SAPS)** reveals that law enforcement has established three new task forces aimed at tackling illegal mining in the country.

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