

## AFRICA RISK CONSULTING

### South Africa Monthly Briefing August 2018

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#### South Africa Summary 15 August 2018

**The Constitutional Court of South Africa rules that National Prosecuting Authority (NPA) director Shaun Abrahams must step down immediately. South Africa-based mining companies Impala Platinum (Implats) and Gold Fields plan to cut jobs at their mining operations in South Africa due to economic issues. The rand loses more than 10% of its value against the United States (US) dollar on 13 August, its lowest level since June 2016, due to massive falls in Turkey's currency, the lira. The rand's substantial plunge illustrates the vulnerability of South Africa's currency to foreign events even if unrelated.**

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#### Shaun Abrahams removed as national director of public prosecutions

The **Constitutional Court of South Africa** ruled on 13 August that **National Prosecuting Authority (NPA)** director **Shaun Abrahams** must step down immediately as national director of public prosecutions (NDPP).<sup>1</sup> Constitutional Court justice **Mbuyiseli Madlanga** delivered the judgement that Abrahams' appointment as NDPP was unconstitutional as a result of former President **Jacob Zuma's** (2009-2018) actions in removing Abrahams' predecessor, **Mxolisi Nxasana**.<sup>2</sup> Zuma removed Nxasana in May 2015 and offered him a R17.3m (\$1.2m) severance package.<sup>3</sup> The **Pretoria High Court** found Nxasana's removal unconstitutional in December and ordered Nxasana to pay back the funds.<sup>4</sup> The constitutional court confirmed this order with its 13 August judgement,<sup>5</sup> though it went further to suggest that Zuma had given Nxasana a blank cheque in order to remove him as NDPP in order to install Abrahams.<sup>6</sup> The NDPP is supposed to be independent but the constitutional court ruled that presidential interference dictated both Nxasana's removal and Abrahams' appointment, making both actions unconstitutional.<sup>7</sup>

President **Cyril Ramaphosa** (2018-present) is responsible for appointing the next NDPP within three months.<sup>8</sup> Justice Madlanga noted that under ordinary circumstances Nxasana would be re-appointed as the NDPP as his removal from office was invalid, but that this was an exceptional circumstance:

*"For years, there's been instability in the office of the NDPP. With the court challenge of Nxasana's removal from office and to the appointment of Advocate Abrahams, that instability persists to this day. The sooner it is brought to an end, the better."<sup>9</sup>*

Abrahams is hardly the first NDPP to face controversy. The office has been plagued by accusations of corruption and nepotism since its creation in 1998.<sup>10</sup> The NDPP is supposed to have a 10-year term but no NDPP has finished a full term.

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<sup>1</sup> Times Live, 13 Aug 2018.

<sup>2</sup> News24, 13 Aug 2018.

<sup>3</sup> Business Day, 13 Aug 2018.

<sup>4</sup> Business Day, 13 Aug 2018.

<sup>5</sup> Business Day, 13 Aug 2018.

<sup>6</sup> Daily Maverick, 13 Aug 2018.

<sup>7</sup> Daily Maverick, 13 Aug 2018.

<sup>8</sup> EWN, 14 Aug 2018.

<sup>9</sup> EWN, 13 Aug 2018.

<sup>10</sup> National Prosecuting Authority Act (Act no. 32 of 1998)

NDPP	Years	Reason for removal
<b>Bulelani Ngcuka</b>	16 July 1998-24 July 2004	Resigned due to reported political pressure
<b>Silas Ramaite (acting)</b>	25 July 2004-2005	--
<b>Vusi Pikoli</b>	2005-24 September 2007	Former President Kgalema Motlanthe removed him for charging Zuma with corruption
<b>Mokotedi Mpshe (acting)</b>	25 September 2007-30 November 2009	--
<b>Menzi Simelane</b>	1 December 2009-5 December 2012	<b>Supreme Court of Appeal</b> finds appointment unconstitutional
<b>Nomgcobo Jiba (acting)</b>	6 December 2012-30 September 2013	--
<b>Mxolisi Nxasana</b>	1 October 2013-11 May 2015	Resigned due to political pressure
<b>Silas Ramaite (acting)</b>	12 May 2015-17 June 2015	--
<b>Shaun Abrahams</b>	18 June 2015-13 August 2018	Constitutional Court finds appointment unconstitutional
<b>Silas Ramaite (acting)</b>	14 August 2018-present	--

Ramaphosa is faced with two choices in appointing a new NDPP. He could appoint an NDPP who is politically linked and who will follow the party line, or he could choose an independent NDPP who acts in the interest of the country and not a political party. The best choice would be a person of integrity who is not beholden to a political party, but this is not the easiest choice for Ramaphosa to make. The major issue facing Ramaphosa is that an independent NDPP may investigate and charge some top **African National Congress (ANC)** officials, including secretary-general **Ace Magashule** and deputy president **David Mabuza**, for corruption, fraud and, in the case of Mabuza, murder.<sup>11</sup> According to local newspaper **Business Day**, Ramaphosa is considering three people for the position: former NDPP **Vusi Pikoli**; former auditor-general **Terence Nombembe**; and **Western Cape** prosecuting authority director, **Rodney de Kock**.<sup>12</sup> Pikoli stated on 14 August that he has no intention of going back to the NPA.<sup>13</sup> Nombembe is an accountant, not a lawyer,<sup>14</sup> so de Kock may be the only choice.

Ramaphosa named **Silas Ramaite** as the acting NDPP on 14 August while he decides on Abrahams' replacement.<sup>15</sup> Ramaite has served as acting NDPP before and is the least visible of the four deputy NDPPs. While most agree that Ramaite is a capable advocate, the opposition **Democratic Alliance**

<sup>11</sup> New York Times, 4 Aug 2018.

<sup>12</sup> Business Day, 13 Aug 2018.

<sup>13</sup> News24, 14 Aug 2018.

<sup>14</sup> The South African, 7 Mar 2018.

<sup>15</sup> Mail & Guardian, 14 Aug 2018.

does not think he is the right choice because he has stood by while other NDPPs, such as Abrahams, “destroy[ed] the fabric of integrity of the criminal justice system.”<sup>16</sup>

South Africa needs an independent prosecutor willing and able to hold even the most politically connected to account. Ramaphosa has an opportunity to continue his war against corruption and to repair the damage of the Zuma regime to the criminal justice system, but it is prudent to take a ‘wait and see’ approach until he makes a final decision.

### Massive job cuts planned in mining sector

South Africa-based mining companies **Impala Platinum (Implats)** and **Gold Fields** both plan to cut jobs at their mining operations in South Africa due to economic issues. Implats announced on 1 August that it plans to close five of its eleven mines in South Africa, potentially leading to 13,400 job cuts in the next two years because of operational supply issues and low platinum prices.<sup>17</sup> Gold Fields announced on 14 August that it plans to restructure its **South Deep** operation and cut 1,100 permanent employees and cut ties with 460 contractors.<sup>18</sup> Gold Fields blamed the cuts on the inability of the mine to meet its target as well as rising operational and overhead costs.<sup>19</sup>

Mineral resources minister **Gwede Mantashe** was concerned over the job losses and requested the miners to follow the processes of the **Mineral and Petroleum Resources Development Act** before embarking on retrenchments.<sup>20</sup> The act does not bar large-scale cuts, but it does mandate companies to work with unions before they cut jobs. Mantashe blamed the miners of being “careless” with their finances.

The planned cuts will exacerbate an already large unemployment rate, which rose to 27.2% in the second quarter of 2018.<sup>21</sup> **Association of Mineworkers and Construction Union (AMCU)** president **Joseph Mathunjwa** said on 7 August that the AMCU plans to embark on industrial action over the cuts if it is unable to persuade the companies to decrease the number of retrenchments.<sup>22</sup> Implats responded that industrial action may be counter-productive and lead to further job cuts if operations slow down more than they already have.<sup>23</sup>

The opposing forces of mining companies’ desire to increase profit versus the government and unions’ desire to increase jobs and wages will be at the heart of the planned changes to the mining charter, which is currently up for public comment (see *ARC Briefing South Africa July 2018*). Both forces are resulting in a cyclical race to the bottom unless the government is able to balance the unions’ desires for well paid jobs with a realistic approach towards the dwindling mining sector which appears to be unsustainable in its current state. Stricter ownership requirements and stronger labour rights will help the ANC to win votes in mining areas, but will lead to further retrenchments in the future as companies leave South Africa in search of more profitable mining areas. In turn, these retrenchments lead leaders such as Mathunjwa and opposition **Economic Freedom Fighters (EFF)** leader **Julius Malema** to push even harder for nationalisation of the mines.<sup>24</sup> The prospect of nationalisation scares mining companies and motivates them to leave, resulting in further job losses.

<sup>16</sup> EWN, 15 Aug 2018.

<sup>17</sup> Business Day, 2 Aug 2018.

<sup>18</sup> IOL, 15 Aug 2018.

<sup>19</sup> IOL, 15 Aug 2018.

<sup>20</sup> IOL, 15 Aug 2018.

<sup>21</sup> MoneyWeb, 2 Aug 2018.

<sup>22</sup> EWN, 7 Aug 2018.

<sup>23</sup> EWN, 8 Aug 2018.

<sup>24</sup> EWN, 8 Aug 2018.

## Turkish lira decline shows rand's sensitivity to fluctuation

The rand lost more than 10% of its value versus the **United States (US)** dollar on 13 August due to massive falls in **Turkey's** currency, the lira.<sup>25</sup> The plunge of the rand to its lowest level since June 2016 illustrates the vulnerability of South Africa's currency to foreign events, even if they are not related. The lira's decline began on 10 August after US President **Donald Trump** (2017-present) approved a doubling of tariffs on Turkey's metal imports amid continuing political tension with the US over the detention of US pastor **Andrew Brunson**.<sup>26</sup> Turkey's President **Recep Tayyip Erdogan** (2014-present), maintained that there was no economic reason for the lira's decline:

*"This is called carrying out an operation against Turkey."*<sup>27</sup>

However, **JP Morgan** strategist **Kerry Craig** noted that the issues are more than just political:

*"The decline in the lira is multifaceted, caused not only by a weak external position in terms of current account deficit and inadequate currency reserves, but also the challenging political environment which exacerbates the vulnerabilities in the lira."*<sup>28</sup>

There is also a general lack of confidence in Turkey's economy after Erdogan appointed his son-in-law, **Berat Albayrak**, as finance minister in July.<sup>29</sup> The move was reminiscent of Zuma's dismissal of **Nhlanhla Nene** as finance minister in December 2015, which caused the rand to drop drastically.<sup>30</sup> The difference is that market pressure has not forced Erdogan to backtrack on his decision.

The drop in the lira resulted in a drop in the value of the rand as global investors begin to sell other potentially risky investments. Due to South Africa's stalled economy, large unemployment, threat of a credit rating downgrade and continuing political instability over land reforms, investors have been quick to sell the rand.

The liquidity of the rand exacerbated the issue. According to **Renaissance Capital** global chief economist **Charlie Robertson**,

*"The rand is the most overtraded currency in the world – the equivalent of about 17% of its GDP is traded in a day."*<sup>31</sup>

The rand was traded much more than other emerging market currencies during the lira crisis. However, this spillover is unlikely to cause any long-term decline in the rand. Analysts are confident that the market will adjust itself and the rand will return to its previous rate of R13-R14 per US dollar.<sup>32</sup>

<sup>25</sup> Reuters, 13 Aug 2018.

<sup>26</sup> The Guardian, 14 Aug 2018.

<sup>27</sup> CNBC, 12 Aug 2018.

<sup>28</sup> CNBC, 12 Aug 2018.

<sup>29</sup> IOL, 10 Jul 2018.

<sup>30</sup> FT, 9 Dec 2015

<sup>31</sup> www.twitter.com

<sup>32</sup> Multiple sources: Fin24, 14 Aug 2018; BusinessTech, 14 Aug 2018; Citizen, 14 Aug 2018.

8 Aug 2018 09:00 UTC - 15 Aug 2018 09:46 UTC **USD/ZAR** close:**14.44345** low:**13.34344**  
high:**15.03813**



### Planner

30 Aug 2018: Committee to present report on amending constitution for expropriation of land without compensation

18-20 Sep 2018: **South African Reserve Bank** MPC meeting

20-22 Nov 2018: **South African Reserve Bank** MPC meeting

12 Nov 2018: Proposed date for the start of Zuma's trial

May 2019: Next presidential election

### Chronology

14 Aug 2018 **Johannesburg (South Africa)** *News24*. President **Cyril Ramaphosa** appoints **Silas Ramaite** as acting chief prosecutor;

14 Aug 2018 **Johannesburg (South Africa)** *Reuters*. Ramaphosa proposes setting up a sovereign wealth fund to boost economic growth;

13 Aug 2018 **Johannesburg (South Africa)** *Daily Maverick*. The **Constitutional Court of South Africa** rules that the appointment of chief prosecutor **Shaun Abrahams** was invalid and orders Abrahams replaced within 90 days;

13 Aug 2018 **Johannesburg (South Africa)** *Reuters*. **South African Reserve Bank** (central bank) deputy governor **Daniel Mminele** says that the SARB is not close to intervening to help the weak rand;

13 Aug 2018 **Johannesburg (South Africa)** *Reuters*. **South Africa**-based mining company **Gold Fields** plans to cut 1,100 jobs due to continual economic losses;

10 Aug 2018 **Kinshasa (DRC)** *News24*. South Africa's President **Cyril Ramaphosa**, in a working visit to DRC, praises President **Joseph Kabila** for respecting the constitution;

10 Aug 2018 **Lusaka (Zambia)** *Town Press*. President **Edgar Lungu** meets with South Africa's President Cyril Ramaphosa to discuss the situations in the **DRC** and **Zimbabwe**;

9 Aug 2018 **Johannesburg (South Africa)** *News24*. State-owned energy company **Eskom** reaches a wage agreement "in principle" with unions;

8 Aug 2018 **Johannesburg (South Africa)** *The South African*. **Alibaba Group** founder, **Jack Ma**, donates \$10m to establish the **Africa Entrepreneur Prize** over the next 10 years;

8 Aug 2018 **Johannesburg (South Africa)** *702.co.za*. **Patrice Motsepe** plans to acquire **TymeDigital** which will become **South Africa's** first black-owned commercial bank;

8 Aug 2018 **Johannesburg (South Africa)** *BusinessTech*. Telecommunications company, **MTN South Africa**, reports R10.8 billion (\$812.8m) in operating profit in the first half of 2018, up slightly from R10.4 billion (\$782.6) in the first half of 2017;

7 Aug 2018 **Johannesburg (South Africa)** *Reuters*. The **Association of Mineworkers and Construction Union** threatens industrial action if talks with mining company **Impala Platinum** over its plans to cut a third of its workforce fail;

6 Aug 2018 **Johannesburg (South Africa)** *Reuters*. **Absa Group** reports a 4% fall in profit in the first half of 2018 due to costs related to its separation from **United Kingdom (UK)**-based **Barclays**;

6 Aug 2018 **Cape Town (South Africa)** *Reuters*. Mayor **Patricia de Lille** quits as mayor effective 31 October and the **Democratic Alliance** withdraws its charges against her;

2 Aug 2018 **Johannesburg (South Africa)** *BusinessTech*. Unions refuse state-owned electricity company **Eskom's** 7.5% wage increase offer, leading to further power cuts;

2 Aug 2018 **Johannesburg (South Africa)** *Reuters*. **South Africa**-based mining company **Impala Platinum** will cut 13,400 jobs over two years due to increased costs and decreased mineral prices;

1 Aug 2018 **Johannesburg (South Africa)** *Reuters*. **India**-based **ArcelorMittal** posted a modest profit increase for its **South African** operations in the first half of 2018 due to higher steel prices;

31 Jul 2018 **Johannesburg (South Africa)** *BBC*. President **Cyril Ramaphosa** states that the ruling **African National Congress** will finalise a proposed amendment to allow expropriation of land without compensation;

30 Jul 2018 **Johannesburg (South Africa)** *Reuters*. Some workers at state-owned energy company **Eskom** stop work over wage disputes but energy supply is not disrupted;

27 Jul 2018 **Pietermaritzburg (South Africa)** *News24*. **France**-based arms company, **Thint (Thales)**, which is charged with corruption along with former President **Jacob Zuma**, claims it has no chance of a fair trial in **South Africa** and will apply for a permanent stay of prosecution;

27 Jul 2018 **Pretoria (South Africa)** *TRT World*. **Turkey's** President **Recep Tayyip Erdogan** warns South Africa that the **Fetullah Terrorist Organisation (FETO)**, which reportedly attempted a coup in Turkey in 2016, is active in the country;

26 Jul 2018 **Johannesburg (South Africa)** *Sunday Times*. Ruling **African National Congress** treasurer-general **Paul Mashatile** states that while South Africa cannot afford an expansion of its nuclear power plants, it is open to future nuclear deals with **Russia**;

25 Jul 2018 **Cape Town (South Africa)** *News24*. Mayor **Patricia de Lille** and council speaker,

**Dirk Smit**, face separate motions of no confidence in the city council;

25 Jul 2018 **Johannesburg (South Africa)** *Reuters*. Finance minister **Nhlanhla Nene** orders an independent inquiry into the **Public Investment Corporation** after corruption allegations emerge;

24 Jul 2018 **Johannesburg (South Africa)** *Reuters*. The **New Development Bank** approves a \$300m loan to **South Africa** for energy projects and a \$300m loan to **China** for transportation projects;

24 Jul 2018 **Pretoria (South Africa)** *News24*. Chinese President **Xi Jinping** promises \$14.7 billion in investment to South Africa during a state visit;

23 Jul 2018 **Johannesburg (South Africa)** *IT Web Africa*. **China**-based connectivity services provider, **China Unicom**, launches in **South Africa**;

23 Jul 2018 **Johannesburg (South Africa)** *Reuters*. State-owned energy company **Eskom** considers cutting staff and selling assets after posting a \$171m loss;