

AFRICA RISK CONSULTING

Country briefing – South Africa

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Summary

After a lengthy delay President Jacob Zuma (2009 -) appoints new heads of the National Prosecuting Authority (NPA) and the anti-corruption body, the Special Investigating Unit. Mxolisi Nxasana's first task at the NPA will be to justify not recharging Zuma on corruption. In August the chair of the election commission refused to resign after being found guilty of improper conduct and maladministration while the commissioner of the revenue service was dismissed for damaging the reputation of the institution. Politically and state-connected media ownership is in focus with a takeover deal and two new television launches. Iqbal Survé's takeover of the Independent Media newspapers is criticised as he is seen as being too close to the ruling African National Congress and his partners include a state agency. The South African Broadcasting Corporation launches a 24hour news channel as does the Gupta family, counting one of the president's sons as a shareholder. Electronic tolling of Gauteng's freeways is delayed again and is now only expected to become operational in April 2014.

New leaders for public institutions

President **Jacob Zuma (2009 -)** announced two significant political appointments on 30 August, both of which take effect on 1 October. **Mxolisi Nxasana** is the new **National Director of Public Prosecutions** at the **National Prosecuting Authority (NPA)**. Nxasana is the first permanent head of the NPA since the suspension of former head **Vusi Pikoli** in 2007. Pikoli was at the helm of the NPA when it instigated criminal charges against then South Africa police commissioner, **Jackie Selebi** and the **African National Congress (ANC)**'s president, Jacob Zuma.¹ The acting NPA chief dramatically dropped corruption charges against Zuma weeks before the 2009 elections. In the four years since, Zuma had not appointed a permanent prosecutions head, in part to guard against the charges resurfacing.² Earlier in August Zuma launched an appeal to stop the NPA releasing tapes of conversations that had led to the decision to drop the charges against him.

Nxasana, an attorney with criminal litigation experience and the former chairman of the Kwa-Zulu Natal Law Society,³ has the discretion to reinstate Zuma's charges.

“He (Nxasana) will come under a great deal of pressure from the media and opposition parties to clarify if the NPA will recharge Zuma with corruption. He isn't well known in legal circles and owes his job to the president, so it is highly unlikely that the charges will

¹ 'ANC interference prompts Pikoli sacking', M&G, 25 May 2012

² 'NPA delay may be tied to Zuma corruption charges- lawyer', Legal Brief, 24 July 2013

³ 'Zuma names new heads for NPA, Special Investigating Unit', Business Day, 30 August 2013

return. When he decides not to prosecute the president, the media and opposition will attack his lack of independence. It's an unenviable position.”⁴

Zuma announced that advocate (senior counsel) **Vasantrai ‘Vasi’ Soni** will head the **Special Investigating Unit** which has been without a permanent head for 18 months. The SIU investigates corruption in the public sector. Soni served on the **Judicial Services Commission**, the body that recommends judicial appointments to the president. He also played a crucial role as chief evidence leader in the **Jali** commission of inquiry into corruption in prisons in South Africa.⁵

Leadership quality determines the credibility of public institutions. In their influential treaty on what makes countries economically successful, economists **James Robinson** and **Daron Acemoglu** identify the quality of political and economic institutions as key factors⁶. South Africa’s constitution is widely praised, but the quality of its public institutions has diminished in the nearly 20 years of democracy.⁷ When police commissioner **Jackie Selebi** was jailed for 15 years in July 2010 on corruption charges, it confirmed what South Africans had long known about the police service. Two recent cases of tarnished leadership in two public institutions show that leadership can be fallible but effective management of the process can maintain the institution’s credibility.

In the first case, Public Protector **Thuli Madonsela** found **Pansy Tlakula**, chair of the **Independent Elections Commission (IEC)**, guilty of “improper conduct and maladministration” on 26 August when Tlakula entered into a lease agreement for the IEC’s new \$32m headquarters. Tlakula was alleged to be in a romantic relationship with **Thaba Mufamadi**, the ANC chair of parliament’s finance committee. Mufamadi is a co-director of a company involved in the lease deal. Tlakula has denied wrongdoing and will fight to keep her position. Tlakula’s decision to defend herself may further harm the image of the IEC with only eight months to go before the next general election.⁸

Finance minister **Pravin Gordhan** handled matters very differently in the case of former **South African Revenue Service (SARS)** Commissioner **Oupa Magashula**. An internal probe found that Magashula’s actions had damaged SARS’ reputation when he was caught on tape offering a job to an acquaintance of a convicted drug dealer.⁹ Gordhan acted quickly to distance SARS from the allegations against its head: the internal probe concluded its inquiry and delivered its report within two months of the allegations surfacing. Magashula resigned with immediate effect.

...and media deals raise concerns

Media deals and the launch in August of two new television news channels with political links have raised questions about the ownership and independence of South African media. Prominent businessman **Iqbal Survé** leads a consortium that has bought the **Independent Media** stable of newspapers from the Irish **Independent News & Media Plc** for \$200m¹⁰. Survé, a medical doctor and former medical officer for the national football team, is closely connected to the ruling ANC.

⁴ Source, civil society legal and governance expert

⁵ ‘Zuma names new heads for NPA, Special Investigating Unit, BDLive, 30 August 2013

⁶ Why Nations Fail: The Origins of Power, Prosperity and Poverty, Crown, 2012

⁷ Only 22% of national and provincial entities received a clean audit from the Auditor General in 2011/2012. ‘Auditor-general reports some light at the end of the dark depressing tunnel’, Daily Maverick, 13 March 2013

⁸ Tlakula mess not a simple issue of probity’, M&G, 30 August 2013

⁹ The drug lord who took Oupa down’, TimesLive, 14 July 2013

¹⁰ Independent Media group includes: The Star, The Pretoria News, Cape Times and the Argus.

He has participated in presidential business trips, represented the ANC at the **United Nations** and is a director of a company that paid \$10,000 for private security at Foreign Minister **Maite Nkoana-Mashabane's** private residence.¹¹

Survé and his **Sekunjalo Independent Media Consortium** now own 55% of the Independent Media. The state-owned **Public Investment Corporation (PIC)** holds 25% and the **China-Africa Development Fund** and **China International Television Corporation** hold 20%.¹² Although there are no laws against foreign ownership, competitor newspaper **Mail and Guardian** has voiced concerns about media independence and government control.¹³ Survé hit back at critics suggesting that the Mail & Guardian is “*controlled by the US Central Intelligence Agency.*”¹⁴

In television the **South African Broadcasting Corporation (SABC)** launched a 24 hour news channel on the pay-TV platform **DSTV**. An SABC executive is championing “70% positive content”, a reference to what cynical journalists refer to as “sunshine journalism”.¹⁵ After years of delays, the channel competes for viewers in the upper economic segment against the likes of **BBC World News** and **Sky News**.

Later in August **Infinity Media** launched **ANN7 (Africa News Network 7)** which suffered a humiliating start on DSTV with poorly prepared presenters.¹⁶ **Infinity Media** is a joint venture between the controversial **Gupta** family, **Duduzane Zuma** (the president’s son) and the **Indian** company **Essel Media**. The Gupta’s reportedly assured President Zuma that the channel would be pro-ANC.¹⁷ In May, the Gupta family used their political connections to illegally land a commercial aircraft at a military base in Pretoria and hired policemen to moonlight as chauffeurs. The family owns **The New Age** newspaper that earned \$7.5m in government advertising in its first year.¹⁸ It hosts a business breakfast series that has featured the president and cabinet ministers. The breakfasts are sponsored by state-owned enterprises, allegedly under pressure from Public Enterprises minister **Malusi Gigaba**, and broadcast live by the SABC at no cost to the newspaper

Brakes on road tolls

Motorists in **Gauteng** province will not pay to use the highways as electronic-tolling (e-tolls) are delayed until after the 2014 elections.¹⁹ Originally planned to become operational in April 2011, the implementation of e-tolling has been delayed through civic legal challenges. The latest speed-bump is a concern that the law to govern the system, the **Transport Laws and Related Amendment Bill**, is procedurally flawed.

The latest delay compounds the **South African National Roads Agency’s (SANRAL)** weak financial position. The agency borrowed \$2 billion to upgrade the road network in the province and

¹¹ ‘Tycoon pays for Minister’s guards’, M&G, 25 November 2011

¹² ‘Indy boss threatens to ‘expose M&G’, M&G, 23 August 2013

¹³ ‘Indy boss threatens to ‘expose M&G’, M&G, 23 August 2013

¹⁴ ‘Indy boss threatens to ‘expose M&G’, M&G, 23 August 2013

¹⁵ ‘SABC calls for 70% happy news’ M&G, 30 August 2013

¹⁶ ‘ANN7: Car crash viewing, but no laughing matter’, Daily Maverick, 26 August 2013

¹⁷ ‘ANN7 was to be pro-ANC: former editor’, Times Lives, 30 August 2013

¹⁸ ‘ANN7: Car crash viewing, but no laughing matter’, Daily Maverick, 26 August 2013

¹⁹ ‘E-tolls will only come after polls’, M&G, 26 August 2013

expected to generate between \$25 - \$30m a month in toll fees. It has to repay a \$148m debt installment in October.²⁰ The company has not returned to the market following a failed bond auction in October 2011, which it blamed on investors concerned about "uncertainty".²¹

The trade union federation **Congress of South African Trade Unions (COSATU)**, an ally of the ruling ANC, has opposed the e-toll system saying that it would be an additional financial burden on the working classes and the poor. COSATU has held poorly attended "*drive-slow*" protests and does not contribute to the legal campaign against the tolls.²²

Implications

Significant political appointments to the NPA and SIU refocus attention on the importance of these public institutions, particularly in South Africa where crime and corruption are perennial concerns. The public forms an opinion of institutions primarily through the actions of its leaders. Leaders' judgment in carrying out their responsibilities is vital to establishing the credibility of the institution. On the eve of 20 years of democracy South Africa's progress will be judged by the quality and accountability of its public institutions. In the case of the NPA and SIU, it appears that the national interest of having credible individuals to lead vital institutions has been of secondary importance to a president dogged by the possible reinstatement of corruption charges.

There is no xenophobia about media ownership, but new entrants into the market highlight the ongoing challenge of maintaining a media industry free of government and political influence.

With e-tolls delayed until after April 2014, the government's ability to formulate and rollout policy is questionable. The delays jeopardise SANRAL's finances. The looming debt tranche repayment and continuing policy inertia will force investors to consider bonds issued by public sector companies more carefully and will dampen enthusiasm for public-private-partnerships.

²⁰ 'Sanral bonds paralysed as protests stall e-tolls', Business Day, 11 July 2013

²¹ 'Toll road block wreck Sanral bond market', Reuters, 29 July 2013

²² 'Cosatu still relentless to stop e-tolls', Financial Mail, 11 July 2013