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President Jacob Zuma (2009-present) survives a parliamentary vote of no confidence by a narrow margin of 198 to 177. Over 30 MPs in the ruling African National Congress (ANC) vote against the president. The Gupta family, at the centre of the so-called 'state capture' scandal for over a year, sells several key assets held by its South Africa-based company Oakbay Resources to key allies and business associates. The South African Reserve Bank (SARB) (central bank) wins a case in the North Gauteng High Court preventing the public protector, Busisiwe Mkhwebane, from altering its mandate. The court criticises Mkhwebane for an unconstitutional attempt to force the outcome of a vote in parliament.

Zuma survives parliamentary no-confidence vote

President **Jacob Zuma** (2009-present) survived a parliamentary vote of no confidence on 8 August by a narrow margin of 198 to 177.¹ The vote, via secret ballot, is the closest opposition parties and Zuma's opponents in the ruling **African National Congress (ANC)** have come to removing him from power. Speaker of the national assembly and ANC deputy chairperson **Baleka Mbete** surprised the ANC, opposition parties and the media by announcing on 7 August that the vote of no confidence would take place by secret ballot.² A **Constitutional Court** ruling on 22 June ruled that the vote could take place by secret ballot at the speaker's discretion.³ Mbete provoked a frenzy of speculation and lobbying by the opposition **Democratic Alliance (DA)**, **Economic Freedom Fighters (EFF)** and **United Democratic Front (UDF)** parties who had called the vote of no confidence for ANC members of parliament (MPs) to vote against Zuma.⁴ However, senior ANC figures remained silent on the issue. Deputy president **Cyril Ramaphosa**, who is seen as Zuma's primary opponent within the ANC, did not comment on the issue, despite having openly attacked the president in the media on other issues over the past months. Only former president **Thabo Mbeki** (1999-2007) urged ANC MPs to "vote with your conscience."⁵ According to sources within the ANC, even Zuma's opponents did not want the opposition to remove him:

"The ANC comes first, the party is a broad church and its survival is more important than Zuma's removal...Cyril [Ramaphosa] and all the rest [of the ANC moderates] are concerned that handing the opposition a victory to get rid of Zuma will result in them losing the 2019 [general] election."⁶

The vote took place via secret ballot, making it impossible to tell who voted for, or against, the motion. However, assuming that all opposition MPs voted for the motion to remove Zuma – apart from those from the **Inkatha Freedom Party** who abstained – at least 30 ANC MPs rebelled.⁷ Both the government and the opposition are claiming the result of the vote as a victory. The ANC celebrated on the evening of the 8 August with Zuma addressing supporters telling them that there was no longer

¹ Business Day, 8 Aug 2017.

² Business Day, 8 Aug 2017.

³ Rand Daily Mail, 22 Jun 2017.

⁴ Business Day, 8 Aug 2017.

⁵ Business Day, 8 Aug 2017.

⁶ Source, ANC insider, Johannesburg

⁷ Business Day, 8 Aug 2017.

any doubt he should remain in charge of **South Africa**.⁸ However, the media and sources within the ANC claim that the president is concerned by the closeness of the vote.⁹ The DA and EFF both claimed in statements on 8 August that the vote showed a major split within the ANC.¹⁰ If 30 to 40 ANC MPs were to form a new party it would be the third largest bloc in the national assembly and would reduce the ANC's majority to between 9 and 19 seats. However, the opposition remains unable to unseat Zuma and has also established a precedent of secret ballots on key issues that makes it harder to hold ANC MPs directly to account.¹¹ Zuma has responded to the vote by attempting to punish MPs who openly voted against him: former finance minister **Pravin Gordhan**, former minister in the treasury **Mcebisi Jonas**, and former tourism minister **Derek Hanekom**.¹² The ANC is considering removing Hanekom from his position as head of the party's disciplinary committee, however the party has little recourse to punish MPs in open defiance of the president.¹³

Zuma's future remains contingent on the outcome of the ANC's internal vote in December to decide the new president of the party. His attack on those who openly opposed him is an effort to sideline dissenting voices before the vote in order to help his preferred candidate (and ex-wife) **Nkosazana Dlamini Zuma** beat deputy president Ramaphosa. However, his standing within the ANC has been hurt by the number of MPs willing to risk exposure to openly defy him. The number of MPs who oppose the president is undoubtedly larger than this. However, for the ANC, party comes before president, and the overwhelming concern is to ensure victory in 2019. The opposition parties are unlikely to call another no-confidence vote against the president but have achieved a more important victory: showing division within the ANC.

Guptas sell South African assets to avoid scrutiny

The **Gupta** family, at the centre of the so-called 'state capture' scandal for over a year (see *ARC Briefing South Africa March 2017*), sold several key assets held by its South Africa-based company, **Oakbay Resources**, on 21 and 23 August.¹⁴ The sale of the assets shows the Guptas are now concerned the ruling ANC government could come after their South African business empire, despite their proximity to Zuma.¹⁵ Oakbay announced on 21 August that it would sell its shares in the Gupta's two media outlets, the **ANN7** television channel and **The New Age** newspaper, for \$34.1m.¹⁶ **Lodidox**, a holding company owned by **Mzwanele 'Jimmy' Manyi**, purchased the assets.¹⁷ Lodidox purchased shares in **Infinity Media**, which manages ANN7, for \$22.8m and shares in **TNA Media** that publishes The New Age for \$11.4m.¹⁸ Manyi is Zuma's former spokesperson, and an outspoken defender of both Zuma and the Gupta family.¹⁹ Manyi is likely to continue the editorial line of the ANN7 and The New Age: defending the president and his interests, as well as attacking other figures in business as "*white majority capital*".²⁰ His outspoken defence of the Gupta family's purchase of influence in government departments caused the **Black Business Council** to fire him as president in March 2016.²¹

⁸ City Press, 9 Aug 2017.

⁹ City Press, 9 Aug 2017.

¹⁰ City Press, 9 Aug 2017.

¹¹ Business Day, 9 Aug 2017.

¹² Business Day, 22 Aug 2017.

¹³ Business Day, 22 Aug 2017.

¹⁴ Daily Maverick, 23 Aug 2017.

¹⁵ Daily Maverick, 23 Aug 2017.

¹⁶ Mail and Guardian, 21 Aug 2017.

¹⁷ Mail and Guardian, 21 Aug 2017.

¹⁸ Mail and Guardian, 21 Aug 2017.

¹⁹ Mail and Guardian, 21 Aug 2017.

²⁰ Mail and Guardian, 21 Aug 2017.

²¹ News24, 21 Aug 2017.

“Manyi has become rich under Zuma, he has seen how corrupt the Gupta family is and hammered down the door to get involved. It is likely that he is going to be passing some of the profits back to the Gupta family, but it will be well hidden.”²²

Oakbay announced on 23 August that it would sell **Tegeta Exploration & Resources**, a company that holds controversial stakes in coal mines, to **Switzerland**-based holding company **Charles King SA** for \$230m.²³ Tegeta holds stakes in **Optimum Collieries**, **Koornfontein Colliery** and **Optimum Coal Terminal**, all of which supply coal to state-owned power utility **Eskom**.²⁴ The Gupta family allegedly used their influence with mining minister **Mosebenzi Zwane** to shut Optimum Colliery until its former owner, Switzerland-based **Glencore**, put it into administration and sold it to Tegeta for a reduced price.²⁵ Investigative journalists in South Africa allege that the Guptas have sold the company to themselves.²⁶ **Dubai**-based **Amin Al Zarooni** is reportedly the owner of Charles King SA.²⁷ Al Zarooni is the sole shareholder of Dubai-based **SKG Resources**, a holding company for the assets of **Kamal Gupta**, the son of **Ajay Gupta**.²⁸ Al Zarooni travelled to South Africa in October 2015 as part of a delegation that visited Optimum before Glencore sold it to Tegeta.²⁹ Oakbay described Al Zarooni as an *“independent and highly respected businessman in Dubai”*.³⁰ However, the transfer of ownership would place the assets beyond the scope of any investigation into the Gupta family, while allowing them to benefit from the lucrative Eskom contracts.³¹

The sale of assets is not the end of the Gupta family’s involvement in South Africa but a protective measure to ensure that the state is unable to seize any assets in the event of an investigation. It shows the Guptas, and possibly also Zuma, are worried that Ramaphosa will become ANC president in December and push through investigations into state capture. The fact that journalists have uncovered that the Guptas have sold Oakbay resources to themselves will make little difference as the government is unable to investigate a Dubai-based business. However, if the state were to find beneficial ownership in Lodidox by the Gupta family, or indeed by Zuma, then the government could take action.

SARB wins case against public protector’s remedial action on independence

The **South African Reserve Bank (SARB)** (central bank) won a case in the **North Gauteng High Court** on 16 August preventing the public protector, **Busisiwe Mkhwebane**, from altering its mandate.³² The case is a further test of South Africa’s legal system as Mkhwebane was attempting to alter the constitution by direct order compelling parliament to act. Mkhwebane released a report in June investigating the bail-out of **Bankorp** (now **ABSA**) by the apartheid regime from 1981 to 1995 and the administration of former late president **Nelson Mandela** (1994-1999).³³ The SARB approved bailouts by ABSA of a total of \$83.4m across the period.³⁴ Mkhwebane’s report argued that the bailouts were illegal and that the banks should have to pay back the money to the state.³⁵ ABSA has refused to do so and is currently fighting the remedial action in the courts.³⁶ The report also contained a remedial action that parliament should alter the SARB’s remit in the constitution to include ensuring

²² Source, journalist, Johannesburg

²³ Business Day, 23 Aug 2017.

²⁴ Business Day, 23 Aug 2017.

²⁵ Business Day, 23 Aug 2017.

²⁶ Daily Maverick, 23 Aug 2017.

²⁷ Daily Maverick, 23 Aug 2017.

²⁸ Daily Maverick, 23 Aug 2017.

²⁹ Daily Maverick, 23 Aug 2017.

³⁰ Daily Maverick, 23 Aug 2017.

³¹ Daily Maverick, 23 Aug 2017.

³² Mail and Guardian, 16 Aug 2017.

³³ BizNews, 21 Jun 2017.

³⁴ BizNews, 21 Jun 2017.

³⁵ BizNews, 21 Jun 2017.

³⁶ BizNews, 21 Jun 2017.

the socio-economic well-being of citizens and achieving socio-economic transformation.³⁷ The SARB contested the report, and filed a case challenging it on 1 August.³⁸

The SARB argued that the courts should strike down the remedial action on the basis that it falls outside of the powers of the public protector and breaches the separation of powers by attempting to compel parliament to change the constitution.³⁹ The SARB also argued that the remedial action fell outside of the original scope of the investigation – which was into the recipients of the funds, not the approving body.⁴⁰ It also argued that Mkhwebane fundamentally misunderstood the purpose of a central bank. SARB governor **Lesetja Kganyago** testified that the role of any central bank is to protect the value of the currency in the interest of balanced and sustainable growth:

“I know of no central bank that does not have this mandate. These institutions are best equipped to carry out this function, and stripping them of this mandate would raise the question as to where the responsibility for price stability should lie.”⁴¹

The SARB requested that the court declare the remedial action unlawful as a **Constitutional Court** ruling in 2016 found that the public protector’s remedial powers are legally binding.⁴² Mkhwebane, under pressure and criticism from the ruling ANC, opposition parties, legal authorities and business figures, decided not to defend the remedial action.⁴³ The court ruled to declare the remedial action unlawful, as the public protector has no ability to compel parliament to act.⁴⁴ It also ordered Mkhwebane to cover the costs of the court proceedings.⁴⁵ The judgement also strongly criticised Mkhwebane for being:

“impervious to criticism [of her]...dismissive and procedurally unfair investigation that...will tarnish her reputation and damage the legitimacy of her office.”⁴⁶

Critics of the investigation and the remedial action argue that it was a politically motivated attempt to undermine the SARB’s independence.⁴⁷ They question why Mkhwebane has refused to investigate the links between Zuma and the Gupta family and instead focus on issues from 20 years ago.⁴⁸ Zuma nominated Mkhwebane to the position of public protector in 2016, following a pattern of elevating junior and relatively obscure figures to prominent positions. Mkhwebane’s background working for the **State Security Agency (SSA)** intelligence service prior to her appointment raises suspicion that she reports to Zuma who has considerable influence in South Africa’s intelligence apparatus.⁴⁹

The courts remain the best functioning part of South African democracy. While **Thuli Madonsela** was public protector, the courts upheld her rulings against the Zuma administration. Zuma appears to have assumed that by changing the public protector he would force the courts to rule in his favour. However, the courts are willing to challenge Mkhwebane’s rulings, thwarting a presidential attempt to coopt the SARB. Nevertheless, Zuma has succeeded in preventing the office of the public protector from scrutinising corruption in government. Mkhwebane’s inexperience and political exposure will prevent the public protector from carrying out its mandated role after Zuma leaves office, showing the continuing impact he will have on the function of South Africa’s government.

³⁷ Mail and Guardian, 16 Aug 2017.

³⁸ Mail and Guardian, 16 Aug 2017.

³⁹ Mail and Guardian, 16 Aug 2017.

⁴⁰ Mail and Guardian, 16 Aug 2017.

⁴¹ Mail and Guardian, 16 Aug 2017.

⁴² Mail and Guardian, 16 Aug 2017.

⁴³ Daily Maverick, 16 Aug 2017.

⁴⁴ Mail and Guardian, 16 Aug 2017.

⁴⁵ Mail and Guardian, 16 Aug 2017.

⁴⁶ Daily Maverick, 16 Aug 2017.

⁴⁷ BizNews, 21 Jun 2017.

⁴⁸ BizNews, 21 Jun 2017.

⁴⁹ Daily Maverick, 16 Jun 2017.

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