

AFRICA RISK CONSULTING

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South Africa Summary 21 April 2021

Former president Jacob Zuma (2009-2018) continues his attacks on the judiciary in his answering affidavit to the Constitutional Court, which issued directions that Zuma file an affidavit addressing what penalty the court should impose if it were to find him in contempt of court. Ruling party African National Congress (ANC) secretary general Ace Magashule loses the fight to reverse the decision for ANC officials implicated in corruption to step aside. The Judicial Services Commission (JSC) tribunal finds Western Cape Judge President John Hlophe guilty of “gross misconduct” in trying to influence two Constitutional Court judges in 2008 in a matter relating to Zuma’s corruption charges. Public service trade unions gear up for possible strike action as wage negotiation season gets under way. President Cyril Ramaphosa (2018-present) hints that the government will involve the private sector in the R100 billion (\$7 billion) expansion of Durban (KwaZulu-Natal) port. The government opens a portal to register vulnerable people for the Covid-19 vaccination and extends the State of Disaster by yet another month until 15 May.

Justice looms for Zuma, Magashule and Hlophe

The legal noose around former President **Jacob Zuma** (2009-2018), ruling **African National Congress (ANC)** secretary general **Ace Magashule**, and **Western Cape** Judge President **John Hlophe** is tightening. Zuma has been mounting a so-called “*Stalingrad*” defence since 2005 when he was first implicated in corruption allegations regarding a 1990s arms deal with **France**-based arms company **Thales**. The **Constitutional Court** in early April issued directions that Zuma file an affidavit addressing what penalty the court should impose if it were to find him in contempt of court.¹ Despite a court order, Zuma failed to present himself in February in line with a summons from the **Judicial Commission of Inquiry into Allegations of State Capture** (commonly known as the **Zondo Commission**). When the contempt application was heard, Zuma did not participate and did not file court papers on why he should not be held in contempt. From Zuma’s point of view, it may be preferable to serve a short prison sentence for contempt of court rather than a longer one for corruption. Zuma’s entire legal team withdrew on 21 April.²

Magashule, in turn, has followed the Zuma playbook and questioned the impartiality of the judiciary, attempting to rally “*popular*” support, which could result in a split in the ANC – the last thing the ruling party needs ahead of local government elections on 27 October. Magashule is facing corruption charges relating to a contract to identify homes with asbestos roofs in the **Free State**.³ He made his first court appearance in connection with the charges in November.⁴

The ANC, at its 2017 national conference, had resolved that any representative (elected or employed) who was criminally charged should step aside.⁵ The ANC’s **Integrity Commission**, made up of ANC party elders, met with Magashule mid-December and decided that Magashule should step down pending the outcome of his corruption case in court.⁶ The commission, in its final report, stated that

¹ Business Day, 9 Apr 2021

² Times Live, 21 Apr 2021

³ Business Day, 15 Dec 2020

⁴ Daily Maverick, 10 Nov 2020

⁵ Daily Maverick, 30 Mar 2021

⁶ Business Day, 15 Dec 2020

the **National Executive Committee (NEC)** must implement the party's resolution that those facing formal corruption charges step aside; if the secretary-general resists that decision, the party must consider suspending him.⁷ The integrity commission said Magashule had indicated during the meeting that he would "*never resist the decision of the NEC, even if he might not agree with it*".⁸ However, Magashule to date has dodged the order to step aside, arguing that he can only be instructed to do so by a conference of branches that elected him.⁹ The NEC convened for four days from 26-29 March, at the end of which it gave Magashule 30 days to step aside from his role or face suspension and disciplinary action by the party.¹⁰

The **Judicial Services Commission (JSC) Tribunal** found on 10 April that Western Cape Judge President John Hlophe had tried to influence Constitutional Court Justice **Bess Nkabinde** and Justice **Chris Jafta** in March 2008, ruling this to be "*gross misconduct*".¹¹ The matter Hlophe was accused of trying to influence related to the constitutional court hearing on leave to appeal in the case of French arms subsidiary **Thint Holdings Limited** and Zuma against the national director of public prosecutions.¹² The applications concerned the lawfulness of various search and seizure operations that were carried out in 2005 at the offices of Zuma's lawyer, **Michael Hulley**, and Thint. After deliberations, the constitutional court lodged a complaint with the JSC, which convened hearings on the matter in April 2009. Due to ill health at that time, Hlophe was unable to attend and the hearings went ahead without him. Hlophe successfully applied to the High Court to have the hearings declared void.

In August 2009, the JSC found that the evidence in respect of the complaint did not justify a finding that Hlophe was guilty of gross misconduct and dismissed the matter.¹³ However, non-profit organisation **Freedom under Law** launched two separate applications challenging the JSC's decision. In March 2012, Hlophe was granted leave to appeal the two applications.¹⁴ In 2010, the **Judicial Services Commission Act** was amended and a new statutory regime dealing with complaints against judges came into operation. The amendments provided for the establishment of a **Judicial Conduct Committee (JCC)** and a tribunal. The complaint against Hlophe was referred in April 2012, resulting in the April 2021 judgement.

In terms of section 20(4) of the JSC Act, if the JSC finds gross misconduct, it must refer that finding, together with the reasons and a copy of the report of the tribunal, to the Speaker of the **National Assembly**. In terms of section 177 of the South African constitution, the national assembly must vote on Hlophe's removal. Successful removal requires a two-thirds majority vote. If the resolution succeeds, the president will remove Hlophe. The JSC may also advise the president to suspend Hlophe. Hlophe's case will be reviewed on 4 June.

Public service trade unions gear up for possible strike action

The South African government and other public entities such as municipalities are gearing up for tough wage talks with trade unions, which have responded to the opening bid of wage freezes with the threat of possible strike action. In many cases, the workers are considered "*essential*", thus limiting their ability to strike.

Water utility **Rand Water** averted a strike on 21 April after gaining an urgent interdict to stop its employees, affiliated to the **SA Municipal Workers' Union (Samwu)**, from downing tools.¹⁵ In a submission to the **Labour Court**, Rand Water said it renders an essential service. It referred to a

⁷ Business Day, 15 Dec 2020

⁸ Business Day, 15 Dec 2020

⁹ Daily Maverick, 30 Mar 2021

¹⁰ Daily Maverick, 30 Mar 2021

¹¹ Citizen, 11 Apr 2021

¹² Saturday Star, 17 Apr 2021

¹³ Saturday Star, 17 Apr 2021

¹⁴ Saturday Star, 17 Apr 2021

¹⁵ Business Day, 21 Apr 2021

minimum service agreement concluded between the organisation and Samwu in August 2019, where it was agreed that should Samwu members go on strike, those deemed to be rendering essential services should not go on strike in order that the water utility could meet its constitutional mandate. Rand Water argued that under its constitutional and statutory duties, it is required to provide essential services to the communities it serves without unlawful interference with its essential service operations:

“The intended strike action will effectively hamper and/or restrict the provision of potable water to a vast majority of the populace.”¹⁶

Samwu argued in response that its members deemed to be performing essential duties would not take part in the strike.¹⁷ The union maintained that its dispute with Rand Water was about the unilateral change of conditions of employment and not about unfair labour practices. Samwu claimed a clause in the employment contracts of its members stipulated that they may qualify for an incentive bonus on completion of a year’s service:

“The applicant has been paying respondents (employees) their bonus on a yearly basis for the last 17 years in terms of the employment contracts and policy. It therefore came as a surprise that the applicant on March 31 2021 notified the respondents that there will be no incentive (bonus) payout for the 2019/2020 financial year.”¹⁸

Finance minister **Tito Mboweni** has made controlling the public service wage bill one of his primary objectives since his appointment in October 2018. The treasury noted in the February budget that over the past decade, increased government spending has failed to promote growth.¹⁹ Since 2008, real spending growth has averaged 4.1% annually, well above annual real GDP growth of 1.5%.²⁰ Yet despite high levels of expenditure, supported by increased debt accumulation, growth has not recovered to pre-2008 levels. The rise in government spending over the past decade, compared with slow growth for the overall economy, meant that consolidated government spending accounted for 35.9% of GDP in 2019/20 compared with 29.6% of GDP in 2008/09. A major part of the rise in government spending has been the 51% increase in the real cost of the public-service wage bill since 2008.

The **Public Servants Association (PSA)**, which represents state workers including teachers, attorneys, police officers and others, is threatening to shut down public service until the government takes its demands seriously.²¹ PSA assistant general manager **Reuben Maleka** stated:

“Public servants can no longer pay the price for the country’s economic woes fueled by rampant fraud, corruption, and mismanagement.”²²

The two largest unions representing workers at state-owned power utility **Eskom** are seeking 15% wage increases. The **National Union of Metalworkers of South Africa (NUMSA)** and the **National Union of Mineworkers (NUM)**, representing Eskom workers, tabled their demands at a preparatory meeting on 16 April, and pay talks will resume on 4 May.²³ **Solidarity**, a smaller union, wants 9.5% increases for its members.²⁴ NUM’s acting general secretary, **William Mabapa**, claims the latest pay demands are “reasonable and affordable”, with many of Eskom’s problems “manufactured” by a management that is failing to do its job.²⁵

¹⁶ Business Day, 21 Apr 2021

¹⁷ Business Day, 21 Apr 2021

¹⁸ Business Day, 21 Apr 2021

¹⁹ Budget Review, 24 Feb 2021

²⁰ Budget Review, 24 Feb 2021

²¹ Business Day, 21 Apr 2021

²² Business Day, 21 Apr 2021

²³ Business Day, 21 Apr 2021

²⁴ Business Day, 21 Apr 2021

²⁵ Business Day, 21 Apr 2021

Eskom bowed to pressure from public enterprise minister **Pravin Gordhan** in 2018 wage negotiations after claiming it could not afford any wage increase. Eskom's refusal to increase wages prompted strikes and sabotage that crippled the power grid. Following Gordhan's intervention, Eskom agreed to a one-time cash payment and annual increases of at least 7%. Former Eskom CEO **Phakamani Hadebe** cited this intervention as one of the reasons for his resignation as CEO in 2019.²⁶

Ramaphosa hints at private sector involvement in Durban port expansion

President Cyril Ramaphosa hinted that the private sector will be involved in the R100 billion (\$7 billion) **Durban** (KwaZulu-Natal) port expansion after he visited the port on 15 April. Durban is South Africa's largest container port, handling most of the container traffic to and from the industrial heartland province of **Gauteng**. Ramaphosa noted in his weekly report on 19 April that expansion of port infrastructure will require R100 billion (\$7 billion) in new investment over the next decade and more:

*"These ambitious plans will require greater private sector participation and investment."*²⁷

Trade unions reacted angrily to the move, seeing it as "stealth" privatisation with attendant job losses.²⁸ **South African Transport and Allied Workers Union (Satawu)** workers picketed on the doorstep of the venue in which Ramaphosa was engaged in a meeting that lasted nearly four hours. **Congress of South African Trade Unions (Cosatu)** provincial secretary **Edwin Mkhize** said:

*"The real agenda now is coming out that it is about taking the port to the hands of private business. Currently the port authority has close to 100 licences, and about 16 of those are under [state-owned enterprise] **Transnet**, the rest are in the hands of private businesses."*²⁹

In March, the number of full containers imported jumped by 33% from a year ago as manufacturers and retailers re-stock depleted inventories, caused in part by global supply chain disruptions following the outbreak of the **Covid-19** pandemic.³⁰ Transnet has had plans to redevelop the old Durban airport for at least a decade, anticipating it will reach the limit of its current capacity around 2025.³¹

Vaccine registration portal opens for vulnerable citizens

The government has opened the portal for the second phase of its Covid-19 vaccine rollout. Registration for vaccination of vulnerable citizens and those over 60 began on 16 April.³² The second phase is set to begin on 17 May, following the arrival of the first batch of 30 million **Pfizer** vaccine doses. Phase 2 prioritises vaccines for essential workers, persons in congregate settings, persons aged 60 and older, and persons over the age of 18 with health problems that have been prevalent comorbidity factors in Covid-19 deaths. The first phase, for health workers, was marred by a slow rollout and concerns about the efficacy of the vaccines against the South African variant.

Although the number of new confirmed Covid-19 cases dropped to 1,089 on 18 April from a peak of 21,980 on 8 January, **Medical Research Council Vaccines and Infectious Diseases Analytics Research Unit (VIDA)** director **Shabir Madhi** said the official figures vastly underestimate reality. Madhi said South Africa's excess mortality indicates that more than 150,000 people are likely to have died from Covid-19:

²⁶ Business Insider, 3 Jun 2019

²⁷ The Mercury, 16 Apr 2021

²⁸ The Mercury, 16 Apr 2021

²⁹ The Mercury, 16 Apr 2021

³⁰ TPNA, 12 Apr 2021

³¹ Transnet briefing, 8 May 2013

³² Business Day, 16 Apr 2021

“Even if one assumes that only 70% of our excess mortality is due to Covid-19, which would be conservative, South Africa still ranks 11th globally with a mortality rate that is higher than Spain, Italy, the [United Kingdom] UK and even the [United States] US.”³³

Covid-19 has further expressed its potency by mutating into powerful new variants. Both the UK’s B117 variant and South Africa’s B1351 variant have a mutation that makes the virus both more transmissible and more virulent.³⁴ These variants are about 53% more transmissible and 1.4 to 1.6 times more virulent than the original virus. Those infected are more likely to end up in hospital or die.³⁵ South Africa’s B1351 variant has additional mutations that make it relatively resistant to the antibody produced by past infection. Madhi noted:

“Therefore, the strategy of allowing the population to get to natural immunity by allowing people to contract the virus, won’t work. Covid-19 simply begins to target that immunity with new mutations.”³⁶

The B1351 variant is also relatively resistant to many of the first generation vaccines that target the spike protein.³⁷ This is especially true for mild to moderate infections. However, these vaccines will probably be effective against severe disease, and for this reason Prof Madhi is critical of the government’s decision to sell the **AstraZeneca** vaccines it acquired earlier this year. While the AstraZeneca vaccine is not effective against mild to moderate disease caused by the South African variant, the **World Health Organisation (WHO)** suggests it is likely to protect against severe disease. Madhi said:

“Selling our AstraZeneca vaccines was a miscalculation by our government; one that has set us back by several months in terms of our vaccination rollout.”

Between 10,000 and 11,000 people die from seasonal flu each year in South Africa. Madhi suggests if the country reaches the point where the number of people who die each year from Covid-19 is around the same level as those who die from seasonal flu, that will be a positive scenario.

South Africa reported its first case of Covid-19 on 5 March 2020. As of 22 April 2021, it has reported 1,571,348 cases in its population of 60 million.³⁸ The seven-day average is easing from a peak of 19,042 in the seven days ending 11 January to 1,202 in the seven days ending 22 April.

State of disaster and travel restrictions

The government on 15 April extended the national state of disaster by one month to 15 May. The first state of disaster was proclaimed on 15 March 2020. South Africa currently has Level 1 restrictions, which involve a midnight to 4am curfew. Nightclubs remain closed. Establishments such as shops, restaurants and banks are limited to half their regular capacity in their establishment. Masks are mandatory in public places.³⁹

Other countries have imposed a total of 84 “major restrictions” on South Africa. These include full suspension on travel from South Africa, or refusal of entry from South Africa, or entry only possible for citizens or those who meet strict entrance requirements. By comparison, there are currently 68 moderate restrictions in place on South Africa, where travel is possible, but only if travellers meet certain entry requirements such as taking Covid-19 tests. The **Dominican Republic** and **Costa Rica** have “low-risk restrictions”, meaning that travellers are unlikely to face enforced quarantine periods.⁴⁰

³³ PSG webinar, 20 Apr 2021

³⁴ PSG webinar, 20 Apr 2021

³⁵ PSG webinar, 20 Apr 2021

³⁶ PSG webinar, 20 Apr 2021

³⁷ PSG webinar, 20 Apr 2021

³⁸ Department of Health, 23 Apr 2021

³⁹ Department of Cooperative Governance and Traditional Affairs, 23 Apr 2021

⁴⁰ Business Tech, 19 Apr 2021

Planner

27 Apr 2021 **(South Africa)** Freedom Day national holiday;

18-20 May 2021 **Pretoria (South Africa) South African Reserve Bank (SARB) Monetary Policy Committee (MPC)** meeting;

25 May 2021 **Africa Day**;

8 Jun 2021 **Pretoria (South Africa) Stats SA First Quarter 2021 GDP release**;

16 Jun 2021 **(South Africa) Youth Day**

30 Jun 2021 **Pretoria (South Africa) South African Reserve Bank (SARB) centenary**.

20-22 Jul 2021 **Pretoria (South Africa) SARB MPC** meeting;

21-23 Sep 2021 **Pretoria (South Africa) SARB MPC** meeting;

27 Oct 2021 **(South Africa)** Local government elections;

16-18 Nov 2021 **Pretoria (South Africa) SARB MPC** meeting;

7-10 Feb 2022 **Cape Town (South Africa) Investing in African Mining Indaba**

2024 **(South Africa)** General election.

Chronology

21 Apr 2021 **Pretoria (South Africa) Polity**. President **Cyril Ramaphosa** announces that local government elections will be held on 27 October;

21 Apr 2021 **Johannesburg (South Africa) Business Day**. Former **North West Province African National Congress (ANC)** provincial chair **Supra Mahumapelo**'s party membership is suspended pending an outcome of the party's disciplinary process;

21 Apr 2021 **Pretoria (South Africa) Statistics South Africa**. Consumer inflation rose to 3.2% y/y in March from 2.9% y/y in February. The core rate, which excludes food and energy, eased to 2.5% y/y from 2.6% y/y. Annual inflation for goods and for services was 3.9% and 2.6% respectively. Provincial annual inflation rates ranged from 3.1% in **Gauteng** and **Mpumalanga** to 3.7% in **North West** and **Limpopo**;

21 Apr 2021 **Johannesburg (South Africa) Business Day**. **Botswana, Namibia and Mozambique** suspend poultry imports from **South Africa** in a bid to contain the spread of avian flu after an outbreak was reported on a farm in the **North West**;

20 Apr 2021 **Cape Town (South Africa) Cape Argus**. The **City of Cape Town** approves the R4 billion (\$280m) **River Club** mixed-use development that will house the **African** headquarters of **United States**-headquartered online retailer **Amazon**;

20 Apr 2021 **Johannesburg (South Africa) Business Day**. Former **South African Reserve Bank** deputy governor **Daniel Mminele** resigns as CEO of banking group **Absa** only 15 months after his appointment due to a difference in opinion with the board about the bank's strategic direction;

19 Apr 2021 **Johannesburg (South Africa) Business Day**. The **Municipal Demarcation Board (MDB)** says only 36% of wards retained the same boundaries as in the 2016 local government election;

19 Apr 2021 **Pretoria (South Africa) National Treasury**. The **National Treasury** and the **South African Reserve Bank (SARB)** reject allegations by former minister **Tokyo Sexwale** that "billions of dollars" have been deposited at the SARB as the SARB claims there is no evidence to support the existence of such funds and that allegations of theft of non-existent funds have no validity;

18 Apr 2021 **Cape Town (South Africa)** *Cape Argus*. A wild fire fuelled by strong winds and dry underbrush sweeps from **Devil's Peak** near **Rhodes Memorial** to the upper campus of the **University of Cape Town** destroying several buildings as well as priceless books and documents;

16 Apr 2021 **Johannesburg (South Africa)** *EWN*. A fire that broke out in a storage room just before midday at the **Charlotte Maxeke Hospital** forces the evacuation of 800 patients to other hospitals and causes destruction of R40m (\$2.8m) worth of personal protection equipment.

13 Apr 2021 **Johannesburg (South Africa)** *Energy Voice*. **Sasol** and **Air Liquide** will jointly procure 900 MW of renewable energy by 2030; Sasol will take 500 MW while Air Liquide will take 400 MW and generation should begin commercial operations as of 2023.

12 Apr 2021 **Pretoria (South Africa)** *National Treasury*. The government's loan guarantee scheme of R200 billion (\$14 billion) has been extended to 11 July 2021 as only R18.16 billion (\$1.28 billion) in loans have been advanced to small and medium-sized businesses as of 27 March 2021;

8 Apr 2021 **Shanghai (China)** *New Development Bank*. The **BRICS New Development Bank** has granted **South Africa** a second **Covid-19** relief loan of \$1 billion, which will support income relief measures for those who have lost their jobs due to lockdown restrictions; the government used the 2020 loan to buy personal protection equipment for healthcare workers;

1 Apr 2021 **Pretoria (South Africa)** *South African Revenue Service*. For the period ending 31 March 2021, the **South African Revenue Service** collected a gross amount of R1 541.1 billion (\$108.5 billion), which was offset by refunds of R290.9 billion (\$20.5 billion) resulting in net collections of R1,250.2 billion (\$88 billion), R38 billion (\$2.7 billion) better than expected in the February 2021 Budget, but nevertheless representing a contraction of R105.6 billion (\$7.4 billion) (-7.8%) against the 2019/20 financial year;

30 Mar 2021 **Pretoria (South Africa)** *South African Reserve Bank*. The quarterly bulletin shows that the ratio of industrial and commercial inventories plunged to a record low of 8.2% in the fourth quarter from 9.2% in the third quarter, compared with an annual average of 15.8% in 2007;

24 Mar 2021 **Palma (Mozambique)** *Mail and Guardian*. An estimated 100 insurgents attack Palma in **Cabo Delgado Province**, killing several foreigners, including **South Africans**;

About Africa Risk Consulting:

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