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# The judicial independent

**Mpumelelo  
Mkhabela**

examines the  
rulings and  
opinions of  
the man who  
has suddenly  
become South  
Africa's chief  
justice

**J**USTICE Sandile Ngcobo will go down in history with the rare honour of having been trusted by two presidents who, at some point, were at each other's throats politically.

Legend has it that when there was a vacancy on the 11-member Constitutional Court bench in 1999, then-President Nelson Mandela had his eye firmly set on Edwin Cameron.

But the then-deputy president, Thabo Mbeki, blocked Cameron's appointment. This paved the way for Justice Ngcobo to ascend from the Cape High Court and the Labour Appeal Court, where he had served almost simultaneously, to the Constitutional Court.

He was a man Mbeki could trust, unlike Cameron, who later blasted Mbeki's "catastrophic" Aids theories — and who then went as far as endorsing the ANC's decision to recall Mbeki as president of South Africa.

The dramatic "recalling" of Mbeki a year ago last month was the climax of the bitter fight between the then-state president and ANC president Jacob Zuma. When the latter triumphed — despite the

# SA's sudden chief justice

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Constitutional Court consistently finding against him and his financial advisor Schabir Shaik — Zuma lost trust in Justice Dikgang Moseneke, long-time heir apparent for the role of chief justice.

Zuma publicly lost his cool with Moseneke — the anti-apartheid activist with whom he had been imprisoned on Robben Island — following the justice's remarks about the dramatic Polokwane conference, which were perceived as being anti-ANC. Now the man to trust was Justice Ngcobo.

Call it luck or sheer coincidence, or call him an accidental chief justice, it doesn't matter. The fact is that Justice Ngcobo, who as recently as June was not even a blip on the radar screen, will end his term in two years' time with a title any self-respecting jurist would die for: chief justice.

In fact, the law allows that Justice Ngcobo, who is 56, could have his term extended beyond July 2011 if Zuma wishes to keep him.

Zuma has every reason to trust Justice Ngcobo, who is also, on balance, a good judge. When the Constitutional Court heard an appeal by Shaik who challenged the attachment of proceeds of his companies, Justice Ngcobo was off sick. He could not participate in the judgment by Justice Kate O'Regan which concluded that Shaik's money had flowed from the bribes he had given Zuma.

When the Constitutional Court, through outgoing Chief Justice Pius Langa, ruled that the Scorpions had acted constitutionally in raiding Zuma's homes, Justice Ngcobo dissented. He argued that the National Prosecuting Authority had failed to show that less intrusive measures would not have yielded positive results. On the NPA's argument that a surprise raid was required, the justice said that such thinking was in violation of the constitutional rights to the presumption of innocence.

Zuma's lieutenant, the minister of justice, Jeff Radebe, could not hide his glee when Justice Ngcobo appeared at the recent Judicial Service Commission interviews in Soweto. A member of the JSC, Radebe gave Justice Ngcobo a smile of approval that would have been the envy of the other judges competing for the four vacancies on the court.

This is not to suggest that Justice Ngcobo will be a Zuma stooge; he was certainly not Mbeki's. In the politically charged *Masetlha vs The President (Mbeki)*, Justice Ngcobo dissented from Justice Moseneke's majority judgment.

He wrote: "The conduct of the president (in axing Billy Masetlha) was therefore in breach of the principle of the rule of law and thus inconsistent with the constitution." He argued that the exercise of public power, including by the president, was constrained by the constitution. This, it can be argued, set Judge Ngcobo's precedent on how he would deal with Zuma, should he be challenged in the Constitutional Court on similar matters of the abuse of power.

When the JSC asked him about his judicial philosophy — which shapes his approach to interpreting the constitution — Justice Ngcobo did not spell it out. He gave a generalised idea: I am guided by the constitution. But this does not mean that he does not have a judicial philosophy of his own.

In fact, in one judgment — in the case of the National Director of Public Prosecutions vs the Minister of Justice — Justice Ngcobo stated that he subscribed to the approach of Dean Pound, a former Harvard expert on jurisprudence.



# SA's sudden chief justice

Pound said that justice could not be administered wholly by rule and without any recourse to the will of the judge and his personal sense of what should be done to achieve a result in the case before him.

Arguably among the most notable cases in which Justice Ngcobo spelt out his legal reasoning and his approach to the interpretation of the constitution came in this case. A lower court had ruled that certain parts of the Criminal Procedure Act were unconstitutional because, among other reasons, the act did not provide for intermediaries to assist children who are victims of sexual offences to testify in court.

The lower court also commented on legislation still being debated in parliament. This drew sharp criticism

from Justice Ngcobo who in his own judgment gave what amounted to his "personal sense" of what was just. He felt that blanket requirement for intermediaries would deny judges the right to make their own calls. The law did not prohibit them from doing so.

Whether or not such intermediaries for children are required was for each judge to decide on a case-by-case basis. Thus, Justice Ngcobo advanced his thinking on "judicial discretion". But he went further and criticised the lower court for playing the role of the executive by instructing it on how to legislate.

Courts, according to Justice Ngcobo, had no power to "supervise or interfere" with the executive or legislative functions "unless the circumstances amount to a clear disregard by the

executive of the powers and duties conferred upon it by the constitution".

Where such disregard occurred, courts were "obliged" to intervene. "(Judicial review) permits courts to call upon the executive and legislature to observe the limits of their powers but does not permit courts to exercise those powers themselves. Courts therefore have the duty to patrol the constitutional borders defined by the constitution. They cannot, therefore, cross those borders."

Justice Ngcobo believes that the government must do its job. Courts will intervene when it fails to do so. He adopted an almost identical approach on the Joe Slovo informal settlement matter in which squatters had refused to be relocated to temporary

shelter while the government built houses for them in the area in which they lived. Although the court decided that the informal dwellers could be evicted to alternative accommodation, the reasons for arriving at this conclusion varied among the justices.

Justice Ngcobo said that the government needed to consult with the people. Both sides needed to show good faith and reasonableness.

Controversially, he added that such engagement need not produce agreement, but an understanding of each other's concerns. "Ultimately, the decision lies with the government," he argued.

Justice Ngcobo's deference did not end with his legal reasoning in court. When the JSC asked how he would ensure that all official languages were used in



# SA's sudden chief justice



LEADING FIGURES: Justice Sandile Ngcobo and Cyril Ramaphosa at the JSC hearings in Kliptown  
Picture: MARTIN RHODES

courts, he gave a brief explanation before concluding that it was a matter on which he would rather "defer" to the legislature. "A dialogue between the legislature and the judiciary could find a solution. But in our courts, people have a right to use a language of their choice."

This was rather surprising, given the fact that Justice Ngcobo is known for his belief that judges should have the responsibility to run courts to ensure their independence from executive interference.

In an address to a judges' conference a few years ago, Justice Ngcobo argued that the exercise of judicial power included not only management of cases but also giving judges control of the budgets of courts.

"Independent court administration underpins the

independence of the judiciary and reduces the potential to interfere with the functioning of the courts. It is for this reason that I would put court administration on top of the agenda for change," he said then.

Although he exudes a sense of seriousness in his outlook, Justice Ngcobo can be playful even in a moment of tension in the court.

In *The Strange Alchemy of Life and Law*, retiring Justice Albie Sachs wrote how Justice Ngcobo playfully offered him a handkerchief in anticipation that he would cry after delivering judgment in a case in which the court had ordered the government to provide for antiretroviral treatment.

Justice Sachs had difficulty dealing with emotionally charged cases, which Justice

Ngcobo often made light of.

Justice Ngcobo — who apparently played the strong man in emotional moments — had seen Justice Sachs cry following a judgment ordering South African Airways to employ a steward despite his HIV-positive status.

Writing for a unanimous opinion, Justice Ngcobo stated: "Legitimate commercial requirements are, of course, an important consideration in determining whether to employ an individual.

"However, we must guard against allowing stereotyping and prejudice to creep in under the guise of commercial interests... SAA as a state organ has a constitutional duty to uphold the constitution and may not avoid its constitutional duty by bowing to prejudice and stereotyping. People who are living with HIV must be treated with compassion and understanding."

And when then-chief justice Arthur Chaskalson was about to order the government to make ARV treatment available to HIV-positive people, Justice Ngcobo approached Sachs with a handkerchief: "Albie, will you need this today?"

He replied: "No problem, Sandile. Today, I'm ready. You can keep your hankie". Alas, Justice Sachs cried — again. Justice Ngcobo must have felt vindicated.

In addition to the playfulness, Justice Ngcobo is fond of a phrase which is to be found only in his judgments.

When tackling a matter, particularly a difficult one, he would say: "The matter must be approached on the footing that", before proceeding to make a point.

Well, for now, the "footing" is that he is the chief guardian of South Africa's constitution, and a man who rose to the throne by charming two warring figures.



# Battle for control of SA economy

MOIPONE MALEFANE

**P**RESIDENT Jacob Zuma is battling to contain a bitter fight that has erupted between cabinet members and trade unions over the control of the country's economy.

Zuma's efforts to appease his trade union allies by creating the Department of Economic Development and giving it to a Cosatu appointee appear to have come back to bite him.

It has emerged that the promise to hand over the responsibility for the development of macro-economic policy to the newly created ministry, headed by Cosatu heavyweight Ebrahim Patel, could be in con-

**Zuma is said to be seeking legal opinion on how to deal with the fix in which he has placed himself**

travention of the constitution and other laws.

Currently, macro-economic policy resides with the treasury, which is led by minister of finance Pravin Gordhan. Although he has largely kept out of the fight, Gordhan has reminded parliament of his responsibilities as set out in the law.

Zuma is now said to be seeking legal opinion on how to deal with the fix in which he has placed himself. He is under pressure from Cosatu to hand over power to Patel, a move that would make the minister one of the most powerful in the government.

The veteran trade unionist was given the ministry at the insistence of Cosatu on the eve of Zuma's inauguration.

ANC leaders saw this as Cosatu's reward for supporting Zuma in his rise to power.

Cosatu celebrated Patel's appointment as a major victory because it placed the federation at the centre of macro-economic policy, from which it had been excluded during the Thabo Mbeki era.

The union federation has singled out the minister of national

planning, Trevor Manuel, for attack, blaming him for leading the marginalisation of Patel. The unions also want Manuel's powers to guide policy to be curbed, saying he was central to Mbeki's conservative policies.

Before transferring Gordhan's powers to Patel's ministry, Zuma has to sign a proclamation to that effect, something he has not done until now.

The battle for the control of macro-economic policy comes as political tensions grow between the ANC and its Cosatu and SA Communist Party allies over leadership issues.

It has also angered many ANC leaders, who fear what they see as a gradual takeover of their organisation as a result of the "dual membership" of the SACP and ANC by communists.

In his confidential political report to an ANC national executive committee meeting two weeks ago, Zuma warned that some members of the ANC's alliance partners were beginning to "abuse the relationship of mutual trust and respect".

Although he did not refer directly to the squabble over Patel's powers, Zuma said: "This would mean that we have a new development where people stand for positions as employees of the alliance rather than as ANC members..."

According to government insiders, Patel's job description clashes with Gordhan's.

He operates from the Pretoria offices of the Department of Trade and Industry with only a skeleton staff.

This has incensed Cosatu, which blames its arch-enemy, Manuel, for the state of affairs, saying he wants to oversee all policy co-ordination from his new position.

The federation has rejected the green paper on the national planning commission which Manuel unveiled last month, in part because the paper does not recognise the central role of Patel's department.

"The mandate of the minister of economic development is effectively negated by the green paper," Cosatu said in a document prepared for its congress last month.

Cosatu delegates were unequivocal about Patel's role as

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# 'Cosatu will insist on Patel'

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chief architect of economic policy, arguing that Zuma had given Patel that responsibility.

Last week, Cosatu urged Patel to "move with haste to assemble his team".

"In so doing, he must make sure to pick the best minds within the movement, so that he begins the long process of undoing the policies of the 1996 class project," a reference to the Mbeki government's economic policies.

Cosatu has also been turning up the heat on Zuma, reminding him of other undertakings he has given them. The Sunday Times can today reveal that Zuma last month privately met a Cosatu delegation and promised them he would address the issue.

"Zuma has agreed to address our concerns," a Cosatu leader said.

Cosatu claimed that Zuma told them that he had already met with Manuel and deputy president Kgalema Motlanthe to discuss their concerns.

Zuma had told parliament on June 24 that the new Department of Economic Development would address, among other things, macro-economic development planning. In laying claim to macro-economic policy, Patel has quoted from this speech by Zuma.

But in a presentation to parliament on June 23, Gordhan had listed macro-economic policy co-ordination as one of the treasury's mandates.

He said the mandate was based on chapter 2 of the Public Finance Management Act, and chapter 14 of the constitution.

Presidential spokesman Vincent Mangwenya said once discussions had been concluded in the government, the role of the Department of Economic Development would relate to economic policy development and co-ordination, economic development planning, spatial economic development and social dialogue on economic matters.

He said Zuma had been kept abreast of the work being done to develop the new department's strategic plan,

which would be tabled in parliament within the next few weeks.

Asked about Patel's job description, cabinet spokesman Themba Maseko said he was part of the economic cluster in which discussions on economic policy took place. He said Patel was still in the process of putting together his new department.

Cosatu president Sdumo Dlamini told the Sunday Times on Friday: "We envisage a situation where micro- and macro-economic policy is guided by the economic development minister and nothing else."

Last week, ANC secretary-general Gwede Mantashe said Manuel could not be singled out for personal attacks for the ANC's collective decisions.

"We are creating an impression that the resolution is not about the National Planning Commission or a green paper, but about creating a job for Ebrahim Patel. You can't do that as a federation. Patel is a minister in the Zuma administration and he is not at the mercy of anybody," Mantashe said.

Presidency communications chief Vusi Mona said: "Trevor is part of the Presidency; it's unfortunate he has been singled out."

"I will not imagine that the green paper is his own product. We must all be mature and engage with the green paper."

Senior ANC and government officials said Manuel had complained to Zuma about the lack of protection he has had in the face of Cosatu's attacks.

"Manuel is taking strain, feeling that the Presidency is not protecting him from Cosatu," a government insider said.

Some even expect Manuel to throw in the towel within months.

He has refused to discuss the turf wars, saying he will speak only about the green paper.

A senior government official said Zuma had created "an administration around individuals not based on the needs of government".

He said Patel had yet to produce a paper on how his department should look.



# No plot, says angry Mbalula

CHARLES MOLELE

ANC head of campaigns Fikile Mbalula is seething as talk that he is central to a succession plot to oust the current ANC secretary-general in 2012 gains momentum.

Several provinces — the Eastern Cape, Western Cape and North West — have accused Mbalula of embarking on a campaign to challenge Gwede Mantashe as the party's new secretary-general in Mangaung, Bloemfontein, in 2012.

This week several provincial leaders in North West told the Sunday Times that those who are opposed to the so-called "Fikile Mbalula 2012 Project" are being marginalised.

This claim came after the North West provincial task team set up by the ANC in July dissolved four regional executive committees last week in the Ngaka Modiri Molema, Bojanala, Bophirima and Dr Kenneth Kaunda regions.

A senior ANC provincial leader in the province, who spoke on condition of anonymity, said: "Part of the problem is that those of us who are suspected of not supporting Mbalula's programme are being set aside."

The provincial leader said the removal of ANC chief whip Bassie Moepeng and the sus-



2012 PROJECT: Deputy minister of police Fikile Mbalula denies ambitions to be next ANC secretary-general  
Picture: KEVIN SUTHERLAND

pension of Ngaka Modiri Molema municipality mayor Themba Gwabeni, who is also an ANC provincial executive committee (PEC) member in North West, was another attempt at purging people not aligned with the 2012 project.

Mbalula, who is also deputy minister of police, said in an interview this week: "I am aware that there are shapeless and faceless cowards and op-

portunists in the party going around like gun-toting criminals and saying that I was part of a team from Luthuli House to disband the North West provincial executive committee because I have ambitions to become secretary-general of the ANC.

"The problems in North West are well known ... infighting and squabbles resulting in the stagnation of the ANC. I am happy the PEC was disbanded

and we stand by the decision to do that," he said.

Mbalula vehemently denied there was a succession debate within the ruling party and that he was central to it.

"I have never had any secret meeting with anybody in the Eastern Cape, Western Cape or North West like I did in the run-up to Polokwane," he said.

Mbalula was speaking after Zuma warned ANC national executive committee members last week that leadership tussles were threatening to tear the party apart.

Zuma said: "Within the ANC, lobbying has been a long-standing practice. It cannot and should not take the form of an instruction on who to vote for, thereby creating a culture of despising the will of the ANC branch members in good standing."

He said these actions led to ANC structures not taking the leadership seriously. "Unfortunately, the information in the corridors is that business interests are driving some of the people talking about succession."

At Cosatu's 10th national congress last week, Zuma warned that tripartite alliance leaders found to be engaged in succession debates would be disciplined, and named and shamed by the party.



# Power has corrupted us — ANC

Discussion paper lists 'sins of incumbency' that beset the party and its leaders

MOIPONE MALEFANE

**T**HE African National Congress has begun circulating a discussion document that pulls no punches in describing how state power has corrupted many of its leaders.

The document says the acquisition of power has brought "stresses and strains on the values, culture, character and practices" of the ruling party.

The document also states that state power has led to the development of "social distance and bureaucratic elitism, arrogance of power, careerism and corruption".

The "moral and ideological degeneration among rank and file (and the) use of state institutions to fight inner party battles" are referred to in the document as the negative effects of state power and described as the "sins of incumbency or ruling-party syndrome".

The document was drawn up by the Gauteng ANC provincial executive committee and has been circulated to the party's Luthuli House headquarters as well as all party structures in Gauteng.

The document was circulat-

ed to the ANC structures shortly before last week's national executive committee meeting, in which party leader President Jacob Zuma is said to have described the ANC as "sick" because of internal party battles sparked by the desire to gain access to state resources.

"At the core of these sins of incumbency," says the docu-

**Power has led to 'social distance, bureaucratic elitism and corruption'**

ment, "is that a vibrant organisational culture and inner-party discourse is replaced by battles for the control of state resources that goes with it."

"Factionalism and divisions centre less on ideological questions and more (on) the struggle for control of the state and the organisation for self-gain and for dispensing patronage."

The document, drafted as part of efforts of "renewal" as the ANC approaches its 2012 conference, says the party's

survival and resilience can only be found in its "enormous capacity for self-reflection and self-correction".

It says the ANC and systems of government need to be ushered into a new era of renewal, otherwise the ANC was likely to repeat some of the mistakes rejected by the party at its Polokwane conference.

"One such cardinal mistake is to subordinate the political life of the movement to the goings-on in the state and pay scant or rhetorical attention to genuine mass work and popular mobilisation."

The document suggests that the ANC should not only lead communities and sectors during election campaigns but remain visible in communities all the time.

It also suggests that the deployment process be more transparent and objective.

"For the renewal to succeed, it requires clear and decisive collective leadership at all levels of organisation — courage and determination to fearlessly tackle tendencies that are beginning to erode the ANC values, culture and principles and besmirch its image, integrity and reputation."

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## Shaik to be on foreign ground

PADDY HARPER

NEW South African Secret Service boss Moe Shaik will head up South Africa's external intelligence operations, with no role in the domestic intelligence-gathering component.

Shaik is one of three Thabo Mbeki-era outsiders appointed on Friday by President Jacob Zuma to head up the country's streamlined State Security Agency (SSA).

Both the service, which focuses on intelligence operations abroad, and the National Intelligence Agency, which has a domestic mandate, will now fall under the SSA.

Previously, these were stand-alone agencies under the former Department of Intelligence.

The NIA will now be run by Lizo Gibson Njenje, a former NIA deputy director-general who left after being embroiled in the botched surveillance of Mbeki loyalist and businessman Saki Macozoma.

Both Njenje and Shaik will report to SSA director-general Mzuvukile Jeff Maqetuka, a former director-general of home affairs and the current SA ambassador to Algeria.



# Zuma supports case of apartheid victims

Warnings that US-led investigators could swoop on state buildings

CARMEL RICKARD and  
NKULULEKO NCANA

**P**RESIDENT Jacob Zuma has backed minister of justice Jeff Radebe's recent letter to support court action in the US against multinationals accused of aiding the apartheid government.

A spokesman for the Presidency, Vincent Magwenya, said the South African government could not interfere with the rights of people who were seeking some kind of redress for the injustices and suffering they believed they went through.

"There is no law in our country that can be used to stop this process. We respect the rights of individuals to pursue whatever avenue available in seeking justice, and we equally respect that the US court has decided to hear this matter.

"We will therefore observe and wait to see its final outcome and resolution."

The statement said that South Africa would "always be open to multinational companies" wanting to do business in the country.

Several lawyers familiar with the case have warned that unless Pretoria strongly stated that it disapproved of the litigation continuing, 2010 could turn into an embarrassing public-relations disaster for South Africa.

Radebe wrote to the US district judge hearing the case in New York to say that "the government of the Republic of South Africa ... is now of the view that this court is an appropriate forum to hear the remaining claims

of aiding and abetting in violation of international law."

This could lead to US-led teams of investigators swarming around government buildings, demanding documents relating to the litigation and taking evidence from a range of prominent South Africans — including commissioners from the Truth and Reconciliation Commission.

The plaintiffs said that Radebe's letter so fundamentally changed the situation that the court should reconsider its decision to allow the targeted companies the right to appeal.

The multinationals had been given the go-ahead to challenge a finding that the US courts have jurisdiction

over the dispute.

In legal papers submitted to the court, the plaintiffs said that the letter provided a clear indication that Pretoria "no longer believes that its sovereign interests are threatened by this litigation". Therefore, the basis of the companies' planned appeal would fall away.

Lawyers for the apartheid victims said: "The government of South Africa has not merely lifted its opposition to this litigation; it has affirmatively stated that ... it believes that the district court is 'an appropriate forum to hear the remaining claims'."

Radebe's letter and the statement from the Presidency herald a complete about-turn from the position

of former president Thabo Mbeki's administration.

Mbeki's view was that such litigation, taking place in a foreign country, would infringe the sovereignty of South Africa and that it ran counter to Pretoria's decision to deal with apartheid-era atrocities through the TRC.

This attitude was supported by Washington, which stated that support for Pretoria's efforts to deal with apartheid's legacy was a cornerstone of its policy and anything damaging South Africa's efforts to ensure "reconciliation and equitable economic growth" would be detrimental to US foreign policy.

If the letter is taken as approval by South Africa for the case to be heard by the US courts, and the litigation continues on that basis, the next phase would be discovery by the two sides.

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October 4 2009

**'We respect the rights of individuals to pursue whatever avenue available in seeking justice'**



# Democrats cannot be friends with despots

**P**RESIDENT Jacob Zuma's sudden change of heart is puzzling. Before the elections, the ruling party promised to be tough with Robert Mugabe. No more Mbeki's quiet diplomacy and cuddling approach.

Today he is singing a different tune. It did not take him long to become Uncle Bob's emissary.

Zuma's interview with CNN correspondent Christiane Amanpour is instructive. For his sake, I wish the Alice in the Wonderland faith were not misplaced. Dealing with Mugabe is like running on the treadmill – all sweat and no progress. Look at former president Mbeki.

Mugabe single-handedly destroyed Mbeki's African Renaissance legacy. That is the problem with dictators: they have no sense of decency. Why would Zuma tarnish his name defending Mugabe? Calling for the lifting of sanctions is premature. Actually, the targeted sanctions are for Mugabe and his cronies.

We dare not forget that Mugabe is the architect of Zimbabwe's woes. He is a barrier to progress and prosperity. He cannot be trusted with its future.

Peta Thornycroft's insightful piece, "Mugabe the builder", featured in last week's Sunday Tribune – shatters any illusions. It offers concrete evidence that the much publicised farm grabs have little to do with land redistribution, and much to do with filling Mugabe bulging coffers.

## Seizure

Coincidentally, on Amanpour's show Mugabe strongly defended the seizure of white-owned farms by his acolytes. This past week 223 white farmers were prosecuted for failing to vacate their farms. According to South Africa's Business Day, friends of war veteran Tekler Madhuze attacked the tobacco farmer, Murray Pott.

On the political front, the school bullyboy (Zanu-PF) is up to his old tricks. Harassments and arrests are the order of the day. Poor MDC. Roy Bennett's humiliation is illustrative. He is part minister, part prisoner.

## NOTHING SACRED

**Lucas Ntyintyane**



Morgan Tsvangirai is a frustrated paper prime minister, with no tangible powers. It's obvious all is not well. Zuma is asking us to ignore these atrocities.

Endorsing dictatorship is contrary to the spirit of our constitution. You cannot be a democrat and still be friends with despots. There is an alternative to Mugabe. Holding free and fair elections is the only option for Zimbabwe. Any other suggestion is a waste of time. Human lives are more important than political expediency. Feigning blindness to the unfolding catastrophe is negligence.

Mbeki's velvet glove approach was ill-conceived. Repeating the same mistake is foolish. Expecting Mugabe to change is misguided. Leopards do not change their spots.

## Sick joke

Mugabe is interested in one thing – himself. How can we expect him to resuscitate his country? Imagine president Barack Obama asking the failed executives of Enron and while Lehman to revive the collapsed companies. Or Dali Mpfu being re-appointed to save SABC? It is a sick joke.

However, Zuma expects international investors to trust Mugabe with their money. The same man who strangled his country into economic stupor is required to perform mouth-to-mouth. I would be laughing, if this was not tragic. If you want Zimbabwe to prosper, remove Mugabe from the levers of power.

It is the ethical responsibility of African leaders to call for early elections. Let ordinary Zimbabweans make their choice without fear of victimisation. This is the essence of democracy: liberty to choose.

The future of Zimbabwe is in the ballot box. Delaying the inevitable is tantamount to criminality.

The interim government is imploding. Are you surprised? You cannot run the race with your eyes blindfolded. The MDC is in a no-win situation. It is trying to rebuild the country, while Zanu-PF is planting limpet mines. A functioning Zimbabwe is a perfect antidote to the daily influx of immigrants across the Limpopo River to South Africa. Throwing money at the problem will not solve it.

Zimbabwe needs new blood, and fresh thinking. Mugabe is too divisive a figure to foster reconciliation and rebirth.

As good neighbours, it is our responsibility to call Mugabe to account. South Africa should use its financial leverage to stop the rot. The era of signing blank cheque to despots and offering blind African solidarity is over. Zanu-PF's one-eyed pirates must answer.

Otherwise the electorate will be asking: Why give money to Uncle Bob whilst millions of South Africans are living in dire poverty? It is time for Pretoria to change tack. Difficult decisions must be made. Mbeki failed, allowing Mugabe to dictate negotiation terms. Let us not repeat the same blunder.

For Zuma to be dancing the tango with Mugabe is disheartening. It is a betrayal of the new African agenda. The new African leadership represented by President Zuma is expected to bring politics of hope and accountability.

Zero tolerance to dictatorship, is the first step. Many Zimbabweans look to Zuma for direction. If Africa is to grow, we need courageous leaders, who do not shy away from uncomfortable decisions.



# MEC cracks whip

Beware dodgy contractors and crooked officials – our head of housing is sending chancers to jail, writes Juggie Naran

**K**WAZULU-NATAL Human Settlement and Public Works MEC Maggie Govender is clamping down on fly-by-night contractors who produce shoddy workmanship, and corrupt officials and individuals who use the government's housing subsidy to get homes fraudulently.

The concerted campaign has netted 12 government officials who appeared in the Ladysmith Regional Court on Thursday for allegedly attempting to defraud the government through its subsidy scheme.

Those charged come from various areas including Nquthu, Newcastle, Madadeni, Glencoe, Nondweni, Bilanyoni, Ntokozweni and Ladysmith.

The cases were adjourned to December.

Since May, 29 people who did not qualify for the subsidy scheme have been prosecuted and convicted in the Pietermaritzburg Magistrate's Court



Human Settlement and Public Works MEC is getting tough with housing corruption.

alone, for fraudulently misrepresenting their position to benefit from a housing project.

The usual sentence meted out by the court has been a nine-month suspended jail sentence together with an order that the subsidy money be repaid to the department.

"The causes of the annual increase in housing backlogs are not new and the delivery of habitable units is hampered partly by inept, fly-by-night contractors who present shock-

ingly bad work, and by individuals defrauding their way into a unit that was never intended for them," said Govender.

"Valuable resources aimed at improving the lives of poor people cannot be wasted on enriching those who choose crooked methods."

Govender also sent out a warning that the department was not a "cash cow to line the pockets of unscrupulous contractors or to earn a salary for half a job, and no one, officials included, is above the law".

She said the department was determined to ensure that low-cost housing reached the intended beneficiaries, and was intent on enforcing proper performance by contractors and department officials.

In the meantime, the MEC was committed to support continuing investigations by the Special Investigative Unit into subsidy fraud.

This was aimed at ensuring true beneficiaries were not robbed of the opportunity to

have a decent roof over their heads by anyone who misrepresented their position, public servant or otherwise, she said.

"The latest service level agreement signed with the Special Investigative Unit mandates it to investigate fraud, corruption and maladministration in low-income housing contracts.

"The department is committed to provide all the support and information the unit needs to complete this task."

Govender said she would also revive departmental commitment to enhanced service delivery and to the prompt payment of contractors when payment was due.

In Shallcross, a generator providing electricity to families in temporary homes was recently removed because of non-payment to the supplier.

Govender met the residents on site and remained there until officials had remedied the situation and the generator had been replaced.



## Would-be king rejected by own clan

**NATHI OLIFANT**

THE MAN who would be king, Inkosi Melizwe Dlamini of Nhangwini, near Highflats, has had his claims roundly rebuked from all quarters.

Not only are the Zulu royal household and the provincial government questioning his kingship, Dlamini was this week publicly rebuked when three amakhosi from his own clan distanced themselves from his claim. The amakhosi said they knew of only one monarch in KwaZulu-Natal.

Dlamini has often referred to himself as Dlamini III. However, the amakhosi, backed by premier Zweli Mkhize, said there was only one Dlamini III – King Mswati III of Swaziland – and that all other Dlaminis were his subjects.

"We do not know where his claims emanate from," said Prince Kholwani Dlamini.

At a press briefing on Thursday in Durban, the prince recited the lineage of the Dlamini kings and claimed the pretender was not even a legitimate inkosi. He alleged that Melizwe was not even in the lineage because the rightful inkosi was in fact Mqigqelwa Dlamini, who was also present at the press briefing.

### Threat

The provincial government, through Mkhize, has requested the department of Traditional Affairs MEC, Nomusa Dube, to help record the history of Nhangwini and the Dlaminis.

However, the Nhangwini traditional leadership alliance, sympathetic to Dlamini, issued a statement late on Friday threatening that whoever tried to distort the history of Nhangwini would be sued.

Dlamini has been at loggerheads with the Zulu royal household since asking that he be declared a second monarch in KZN, a status he wants to share with the Zulu king.

On Tuesday, Dlamini was in the North Gauteng High Court to force the Moleleki Commission to finalise his application to be declared king.

The court ruled in his favour and ordered that the findings of the commission be released in three months.

The commission was appointed by former president Thabo Mbeki in 2003 to probe traditional leaders' disputes.

However, Dlamini's bid suffered an unexpected blow on Thursday when amakhosi of his clan pledged their unwavering support and loyalty to King Goodwill Zwelithini. Mkhize appeared alongside the Zulu king and Zulu traditional prime minister Mangosuthu Buthelezi at the press briefing.

Amakhosi apologised to the monarch and condemned Dlamini, saying they were not consulted about his (Dlamini's) plans to become a monarch.



# NPA will work with British on arms corruption

**FIONA FORDE**

THE National Prosecuting Authority will consider extraditing any South African who is wanted if Britain's Serious Fraud Office (SFO) prosecutes arms giant BAE Systems.

The company is alleged to have paid bribes to former and current ANC and government members in the controversial 1999 arms deal.

Talks between the London-based anti-fraud office and the arms firm broke down this week when BAE refused to enter into a plea bargain.

In terms of the deal, it would have admitted a degree of guilt in corrupting a number of foreign governments, possibly named and shamed the recipients of the bribes, and ultimately coughed up hefty fines of more than half a billion pounds.

The details of the deal are still unknown, but failure to reach an agreement left the SFO with no alternative but to threaten prosecution.

Should the SFO want to go to court, it will first have to seek the permission of Baroness Patricia Scotland, Britain's Attorney-General.

## Co-operation

Though a final decision on a trial is weeks away, a number of high-profile South Africans are likely to be called to take the stand in London if it goes ahead.

"We would consider any request for extradition or any kind of co-operation if and when that happens," said the NPA's Mthunzi Mhaga. "But we have not been approached yet."

As news of the intent to prosecute broke on Thursday, ANC spokesman Brian Sokutu said the BAE saga was a British concern, as the arms deal was "a closed matter" for South Africa. Government spokesman Themba Maseko could not be reached for comment.

It is understood that BAE is not refuting the critical and substantial evidence which the years-long investigation carried out by the anti-fraud office has thrown up. Rather, it is disputing the amount of the penalties and level of guilt it would have to admit to.

The allegations involve a £100 million fund allegedly used to grease the hands of the governments of South Africa, Tanzania, the Czech Republic and Romania. In the case of South Africa, the alleged bribes run into tens of millions of rands and spotlight those involved in the procurement of Hawk trainer and Gripen fighter aircraft 10 years ago.

The credibility of the anti-fraud office was dealt a blow three years ago, at the height of the so-called war against terror, when it was forced to drop its probe into alleged corruption involving Saudi Arabia and BAE.

Opposition parties have welcomed the move and say they will follow events closely.

"If there is any evidence of wrongdoing (by South Africans), we would support whatever happens next," said Cope spokesman Phillip Dexter.



# Opposition fears eThekweni boundary shifts will boost ANC

**MATTHEW SAVIDES**

THE ANC could use shifts in eThekweni ward boundaries to strengthen its majority amid concerns that service delivery shortfalls could put it under pressure in the 2011 local government elections.

This is the belief of opposition parties, which have also raised concerns about the cost of adding new wards.

The process, run by the Municipal Demarcation Board, involves adding as many as 12 wards to the municipality, though local government MEC Nomusa Dube has recommended only seven new councillors – which translates into three or four wards.

After Dube's recommendation, the demarcation board decides on the actual number of new wards and then a period of public consultation should begin. This is likely to take place over the next few months.

Any additional wards would result in the shifting of existing boundaries, which the DA says the ANC could use to strengthen its support in some areas while gaining a foothold in areas where its support is low.

The handling of the Durban Transport bus crisis, issues over low-cost housing developments and run-down road and traffic infrastructure are among the issues that could have the ruling party under pressure.

ANC provincial secretary Sihle Zikalala strongly denied

these claims.

Officially, the reason behind the addition of new wards was the higher number of registered voters in the metro. A ratio of 15 000 registered voters to one councillor is the accepted norm and, partly because of more registrations before the April national election, this ratio has grown in many areas.

This means ward councillors would find it difficult to meet the needs of their communities.

## Younger

Municipal manager Michael Sutcliffe, who used to chair the demarcation board, said another factor leading to the increased voter numbers was that Durban's population was younger than the other metro municipalities, meaning people were not 18 and eligible to vote when the boundaries were first drawn up.

The diversity of wards in terms of needs and wealth levels was also something that needed to be addressed.

DA caucus leader Tex Collins said that if these were the "real reasons" behind the proposal, then "this is something we can work with". "If this is the reason they want to make the changes, then that doesn't represent a problem."

However, he was sceptical. He suggested the ANC would create the additional wards to "bolster their support" in certain areas ahead of the 2011 local government elections.

Political analyst Protas Ma-

dlala said this tactic was commonly used in the past, particularly by the apartheid government to ensure election victories.

However, he did not believe this is the case now.

Minority Front councillor Jayraj Singh agreed that the increased number of registered voters did necessitate the addition of new wards.

"For one person to manage more than 15 000 registered voters is difficult, especially when there are non-registered voters living in the area who call on the councillor for help. When you go into the more disadvantaged areas, the work becomes even more difficult," he said.

Sutcliffe said there could be as many as 12 wards, but there were likely to be much fewer.

"We don't want every ward to change; the realignment is not going to be massive," he said.

Zikalala said the DA's claims were "unfounded".

"There's no way the ANC will use the re-demarcation process to boost its support. Where there needs to be a review of the wards, it will be done in the context of the social and economic impacts on our people, along with the number of people in a particular ward," he said.

Zikalala said a process of consultation was under way for the party to make a recommendation to the demarcation board, "in the same way that any other party would".

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# We will rein in the spooks

Intelligence boss Jeff Maquetuka promises big shake-up in agency

XOLANI MBANJWA

**S**OUTH Africa's new intelligence boss has vowed to shake up the agency, ridding it of politically partisan spooks who found themselves in the middle of ANC succession battles. He has also promised to crack down on unauthorised interceptions of communication and to fire operatives who leak sensitive information.

Jeff Maquetuka, the new director-general of the State Security Agency – a new, powerful agency which combines the National Intelligence Agency (NIA) and the SA Secret Service (SASS) – has laid down the law and promised to “chop” spooks that leak sensitive information and conduct unauthorised spy operations.

“No intelligence service can allow a situation where there are random leaks,” he said. “The country cannot afford that. Clearly, mechanisms will have to be put in place to deal with this.”

“The challenge is to minimise these problems through mechanisms. Should an agent do these things, you chop (off) his head or her head so that it should be a lesson to the others. You reprimand. You coach an individual who has not committed a serious offence.”

Maquetuka said he would sort out divisions emanating from the ANC's succession battle leading to the Polokwane conference.

Speaking after his appointment by President Jacob Zuma this week, Maquetuka assured citizens there would be no repeat of the shenanigans that brought the country's intelligence services into disrepute.

Zuma also appointed two of his close allies to top posts in the intelligence service. Moe Shaik is now head of the foreign intelligence service, the South African Secret Service.

Gibson Njenje, another casualty of Zuma's fight with former president Thabo Mbeki, will head the National Intelligence Agency, the domestic intelligence arm.

**No intelligence service can allow a situation where there are random leaks... The country cannot afford that. Clearly, mechanisms will have to be put in place...**

Jeff Maquetuka

Zuma seems to have opted for those loyal to him when appointing the three new bosses. They have been part of his inner circle since their days in exile, when he was chief of the ANC's intelligence department.

Shaik is said to have played a key role in acquiring tapes which featured intercepted communication between former National Prosecutions boss Bulelani Ngcuka and ex-Scorpions boss Leonard McCarthy sharing information on the timing of corruption charges against Zuma. The NPA used the tapes to justify its decision to let Zuma off the hook.

Shaik leaked news of Zuma's imminent acquittal and the existence of the tapes to newspapers. It is believed he handed the tapes to Zuma's lawyer Michael Hlule.

Shaik was central in the high political drama that became the Hefer Commission in 2003 to look

into claims that Ngcuka might have been an apartheid spy, when he

broke down while giving testimony. He is the brother of Zuma's former financial adviser, Schabir.

Njenje was fired by Mbeki as NIA operations chief in 2005 for unauthorised surveillance of former ANC national executive committee member, businessman and prominent Mbeki ally Saki Macozoma. He was later cleared and resigned from the NIA.

Maquetuka cut his teeth in the ANC's department of intelligence and security in 1979 under Zuma.

Now he wants to rein in spooks he says have “embarrassed” the country, such as the 2005 hoax e-mail saga and the unauthorised tailing of Macozoma in the run-up to Polokwane.

He said he would not allow spooks to play a part in politics, because it led to partisanship.

“You should not allow agents to be involved in politics in whatever way,” said Maquetuka, who left the country yesterday to announce his resignation as ambassador to Algeria. “We will reprimand them because what the agents will do (is) embarrass the country, the government, the minister and the president. It is a norm and a practice that intelligence services should never get involved in politics and political activities.”

Maquetuka claims he was a “bystander” of events leading to Polokwane: “I am a member of the ANC. But I cannot and I should not be allowed to be an office-bearer of the ANC. If you hear that I am an (ANC) office bearer in a branch in the area I live in, that would be wrong. I would be partisan.”

He expected a “great” working relationship with Njenje and Shaik because they go “way back”.

Maquetuka said his priorities included revitalising the national intelligence academy to help recruit and train new spooks.