UNDAMAGED REPUTATIONS?

Implications for the South African criminal justice system of the allegations against and prosecution of Jacob Zuma

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CENTRE FOR THE STUDY OF VIOLENCE AND RECONCILIATION
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1. INTRODUCTION

This report was initiated a couple of months after the conviction of Schabir Shaik in June 2005 in the Durban High Court. In the months following the completion of the Shaik judgment on June 2, and President Thabo Mbeki's sacking of Zuma as deputy president of the country on June 14, important and powerful members of the ruling alliance mobilised in support of Zuma and against Mbeki, contributing to a political crisis that at times seemed to threaten the very stability of the country. At the centre of this crisis were allegations that the South African criminal justice system was being used by the country's leadership to settle political scores — in effect, that the criminal justice system, or components of it, were party to a conspiracy against Zuma (readers who want a factual explanation of each of the events referred to should consult the detailed diary of events related to the Zuma saga and the criminal justice system, which is attached as an appendix to this paper).

Then, on Sunday 13 November 2005, the *Sunday Times* reported that a family friend had lodged a complaint of rape against Zuma. By 6 March 2006, when Zuma's trial on charges of rape started in the Johannesburg High Court in an atmosphere of high drama, a major campaign of political support had been mobilised around Zuma, in turn premised on the idea that the rape prosecution was part of the aforesaid conspiracy.

By the time he was brought to court on charges of rape, Zuma was already also facing charges of corruption in the Durban High Court, having first been brought to court on two charges of corruption at the end of June 2005, shortly after the Shaik verdict and Mbeki's sacking of Zuma.

At the time of writing (September 2007), more than two years after the Shaik verdict, Zuma has been acquitted of the charges of rape (in May 2006) and had the corruption case against him struck from the court roll (in September 2006). But Zuma's legal travails are not necessarily over as there is still the possibility that corruption charges against him may be reinstated. What we were referring to in mid-2005 as "the Zuma crisis" has developed into a protracted set of legal battles between the state and Zuma legal team.

The saga is interesting not only as political drama and in terms of its implications for the political future of South Africa, but also in terms of its implications for the criminal justice system. In an emerging and still potentially fragile democratic social order, questions about the relevance of political considerations and political influence to the operation of the criminal justice system in South Africa — in cases where powerful high-profile individuals are implicated in criminal cases — are of major interest.

With components of the criminal justice system centrally involved in the saga, and subjected to political challenges and attacks both before, but especially after, the firing of Zuma, questions have been asked about the impact of this political crisis on the criminal justice system, as one of the key institutions of our democracy. Some of these questions have included:

- Whether or not (or to what degree) the fact that first Shaik, and then Zuma, were brought to trial, reflected a political agenda against Zuma.
- Questions about judicial transformation and the credibility of the judiciary and the kind of steps that should be taken to address these issues.
- Questions about whether Zuma's right to a fair trial was potentially jeopardised.
- Questions about the broad impact of the Zuma saga on public perceptions relating to components of the criminal justice system.

In examining the implications of the Zuma saga for the criminal justice system, it seems clear that there are two key components of the criminal justice system, namely, the National Prosecuting Authority (NPA) and the judiciary, whose status and reputation has been brought into question. Should the questions that have been raised about these key criminal justice institutions merely be seen as virtually inevitable consequences of the prosecution of powerful political role-players and their associates, or are there substantial questions about the role these institutions have played?

In the build-up to the ANC's December 2007 conference, where Zuma is seen by some ANC members as the most suitable and favoured candidate for the presidency of the ANC and, by implication, the country, the handling of matters relating to this drawn-out political-legal saga by elements of the criminal justice system, continue to be of central political importance. In this context, where the criminal justice system is in effect a key political role-player, this paper therefore seeks to reflect on the issues raised in relation to the principles — such as those of equality before the law, and independence — that are supposed to guide the criminal justice system in the performance of its functions.

Before doing so, however, the paper reflects on certain key dimensions of the context within which this drama has played itself out.

2. THE NATURE OF THE CONFLICT IN THE ANC AND THE TRIPARTITE ALLIANCE

On 26 August 2005, ANC president Thabo Mbeki — writing in *ANC Today* — characterised the crisis facing the ruling ANC tripartite alliance and the broad democratic movement as follows:

> I am informed that some within our broad movement, who believe that deputy president Zuma is a victim of a counter-revolutionary, capitalist and neo-liberal offensive, are convinced that as president of the ANC and the Republic, I occupy the leading position in the political onslaught against deputy president Zuma. I understand that these are spreading the story that, presumably for counter-revolutionary reasons, I am opposed to Comrade Zuma becoming president of the ANC and the Republic. This has led some of our own members to make public demands that are unprecedented in the 90-year history of the ANC, that seek to determine who our leaders should be, with absolutely no regard for the democratic processes and traditions of our movement. I understand that this is being done because some have communicated the notion that what we are involved in is a factional right wing/left wing struggle, represented respectively by the President and the Deputy President of the ANC. This understanding, whatever its merits or demerits, has already caused great harm to the ANC, the Alliance, the broad democratic movement, the democratic revolution and the country" (Mbeki, 26 August 2005).

Mbeki then went on to recommend the constitution of a commission of inquiry to investigate the allegation of a conspiracy against Zuma. Mbeki's characterisation of the crisis facing the ANC is interesting in several respects. This intervention by the ANC president addresses different aspects of the Zuma crisis, namely:

- The belief in the existence of a conspiracy to undermine Zuma and prevent him from becoming president of the ANC in 2007 and that of the country in 2009.
- That there are those in the ANC and the alliance who hold the view that Mbeki is behind this plot.
- That the demand for Zuma to be elected president prior to the 2007 ANC national conference is not only unprecedented but undermines internal party processes.
- That the Zuma–Mbeki battle is regarded as one between the Left and the Right.
- That party and country are being harmed by the Zuma affair.

The view that the charges against Zuma were in some ways related to a conspiracy between politicians, role-players in the criminal justice system, and others was first aired after the August 2003 press conference at which NPA national director Bulelani Ngcuka announced that Zuma was not to be charged in the Shaik matter despite the existence of a prima facie case against him. But, as acknowledged by Mbeki's letter, the view that there was a conspiracy against Zuma came to the fore most strongly in the months following the conviction of Shaik at the beginning of June 2005, pervading discussions of the issue in that period.

In its response to the Shaik verdict the ANC Youth League, on 5 June 2005, argued in a press statement that:

> The ANC Youth League is deeply concerned with the continued rubbishing of the name of the Deputy President, particularly by the media and various political institutions that otherwise themselves enjoy protection against similarly unqualified attacks through our constitutional and legislative democracy" (ANCYL, 2005).

The next day the Congress of South African Trade Unions (Cosatu) issued its own statement arguing similarly that "it is now clear from the reaction of the media, and opposition parties and others that this was always a political trial of the Deputy President through Schabir Shaik" (Cosatu, 2005).

The two statements lump the media together with political forces that exist to undermine the ANC deputy president. In other words, to understand the forces behind the plot against Zuma we must, according to the ANC Youth League and Cosatu, look beyond the ANC because "various political institutions", "opposition parties" and "particularly the media" may, consciously or otherwise, have become agents of this wider conspiracy.

The statements also illustrate the ambiguity of some of the allegations regarding a conspiracy, which characterised many of the statements by Zuma's allies. Sometimes allegations were made suggesting a secretively initiated course of action by a group of people acting with a common purpose, which is the sense in which the word "conspiracy" is generally understood.[1] In other instances Zuma's allies appeared to be concerned rather about a combination of different forces that appeared hostile to Zuma, and were reading the situation in a similar way, though it was not necessarily implied that these role-players had actively agreed among each other about the course of action to be taken.

But might there be, or was there, an actual conspiracy against Zuma? Those looking for possible motivators for a conspiracy could consider questions to do with political and economic agendas, ethnicity, factionalism, or belief in the existence of an Indian or Xhosa cabal.[2] The Zuma saga has therefore created a crisis for the criminal justice system because it was actively or tacitly implied that components of the criminal justice system have been used as instruments of political forces hostile to Zuma.

As the saga unfolded, one of the major tensions that developed was that between the perception that Zuma was corrupt, and the belief in the existence of a political–judicial campaign against him. For Zuma the challenge has been to keep alive the perception that he is a victim of political intrigue since many of his supporters, especially in KwaZulu-Natal, have been mobilised on this basis. The perception that he is a victim of a political–judicial campaign, and that the prosecutions of Shaik and himself have been "political" trials, must be sustained not only in the media but also among ordinary South Africans and members of the ANC and the broad democratic movement.

The world is transformed by both the truth and lies. Because political communication is about altering the political environment to the advantage and/or detriment of specific political interests, we must be careful about how we

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[1] See for instance the definition provided in the Concise Oxford English Dictionary: "… a secret plan by a group to do something unlawful or harmful" (2002: 304).

[2] These factors were suggested by one of the participants at the panel convened to discuss an initial draft of this paper.

engage with the Zuma conspiracy theory. We must bear in mind that the idea of a conspiracy against Zuma and the possibility that such a conspiracy does not exist, and the issue of his guilt or innocence, are not mutually exclusive. It therefore does not follow that if he is guilty of corruption, we should see this as evidence of the absence of a conspiracy. It also does not follow that the existence of a conspiracy is proof of his innocence. Because conspiracies succeed by exploiting the weaknesses of opponents, we must be open to the possibility that the Zuma saga is a story of two seemingly contradictory truths: his guilt and the existence of a plot against him.

The major challenge Zuma faces, therefore, is to manage perceptions of corruption. In an article, *Sunday Times* editor Mondli Makhanya presents Zuma as:

> [S]omebody who was universally admired for his humility, political acumen and peace-making skills [but who] in his quest to please Schabir Shaik, the shady businessman who effectively owned him ... agreed to work against his country's investigative agencies on behalf of a French arms company" (Makhanya, 12 June 2005).

Not only has Zuma to grapple with the perception that he is corrupt but also the view held by some that he may be the willing agent of an ethnic–economic agenda in whose pursuit he was willing to abuse his power and sacrifice his political career. It may be for this reason that he must keep on reinforcing the belief among his supporters that his trial is part of a well-orchestrated political campaign to undermine him. His task is made doubly difficult by the fact that he seems to be directly implicated in the matters for which Shaik was convicted. Addressing the issue of the so-called "encrypted fax", for instance, Justice Hilary Squires said:

> We have no doubt at the end of it all that this document reports the conclusion of an agreement reached by Shaik and Thétard that Thomson would pay Jacob Zuma R500 000 a year until the ADS dividends became available, in order to secure the two benefits for Thomson, namely that he would provide a present protection from the corvette acquisition investigation and hereafter help in securing Government contracts in the future" (in the judgment of Justice Hilary Squires in *The State* v. *Schabir Shaik*, 31 May 2005).

The issue of the alleged conspiracy against Zuma no longer holds centre stage in political discourse but may resurface in the months leading to the ANC's national conference in December 2007. But what has obtained increasing prominence and acknowledgment is a concern that the prosecution of Shaik and Zuma, even if it falls short of a conspiracy against Zuma, represents a case of selective prosecution, particularly in light of recent reports of a British investigation into alleged corruption related to the arms deal.

3. THE MEDIA AS A ROLE-PLAYER IN THE CRISIS

Politics is often about the creation and management of perceptions. Successful political strategy at times involves the creation, in the public imagination, of perceptions of political opponents that are damaging to the interests of such opponents. Perception management also involves the imperative of ensuring that political interests are not undermined by the existence of negative perceptions in the public domain.

During the series of events that unfolded from 2003, and culminated in the crisis of 2005, the importance of perceptions was reflected in the central position of the media. The media emerged not only as a key site of contestation in the battle between the so-called Zuma and Mbeki camps, but also as a role-player. Opinion makers such as journalists and political commentators have themselves become a central feature of this battle, with some taking clear positions in favour of or against either Zuma or Mbeki to the point that, as indicated above, the political

role-players aligned with Zuma also saw the media as one of the forces that they were aligned against, and which were subjecting Zuma to a "political trial".

The high level of public interest and importance attached to the events was reflected in the fact that several of the key events in the drama, including the Hefer Commission, the judgment in the Schabir Shaik trial, and the joint sitting of parliament at which Mbeki announced his decision to axe Zuma from Cabinet, were televised live. Similarly, the centrality of the media and its role in influencing public perceptions was obviously of concern to Ngcuka, who not only announced his decision not to prosecute Zuma at a media briefing in August 2003, but also convened an off-the-record media briefing at which he allegedly made disparaging statements about Zuma, a month prior to this. Similarly, the September 2003 allegations that Ngcuka was an apartheid spy were first publicised through the media.

The media climate has mostly been hostile to Zuma and the coalition that has emerged in his support, and more positive towards Mbeki. In its hostility to Zuma, the media has been inclined to present the two leaders in terms of an "other" who must be seen in contradiction to the subject. In the *Sunday Times*, Makhanya argued that "the Mbeki camp and the thinking classes have — correctly — characterised this crisis as a simple conflict between good and bad, rule of law vs. lawlessness, corruption vs. good governance" (Makhanya, 6 November 2005).

Makhanya's colleague, then *Sunday Times* deputy editor Ray Hartley, echoes Makhanya's theme when he argues that:

> The rise of the movement to place in power Jacob Zuma — at best an incompetent, at worst a man who believes it is acceptable to take bribes — poses a grave risk to this country [because] the first assault of a Zuma Presidency would be on the independent institutions of democracy [and] populist leaders such as Zwelinzima Vavi and Blade Nzimande would be likely to find their way into the Cabinet, where their anachronistic economic fantasies could become reality (Hartley, 16 October 2005).

In what has been rare in the succession debate and intellectual engagement with the Zuma crisis, Vukani Mde and Karima Brown, in *Business Day,* not only illustrate the respective successes and failures of the Mbeki and Zuma camps in the media battle for the hearts and minds of ordinary South Africans, but in exposing the flaws of the approach taken by Makhanya and others also provide a more nuanced reading of the protagonists' attempts at "othering" their opponents. To them conventional analyses of the battle between Zuma and Mbeki amount to the following:

> To choose between Mbeki and Zuma is to choose between two competing futures. One is characterised by rationality and the rule of law, a strong state that punches above its weight internationally and is economically 'well managed'. The other future — the Zuma–SACP–Cosatu scenario — is a slide into South American-style lethargy. We will have a parasite state that fleeces the middle classes while the rulers loot the fiscus. We will lose our place in the international arena, and our economic policies will be 'populist'. Our legal institutions will be weakened to the point of being irrelevant.

They, however, take a different view, asserting that:

> This picture is a carefully constructed lie. It is neither neutral nor valueless, and it is downright dangerous in its denial of the lived reality of the vast majority of South Africans. It ignores the reality that under Mbeki's stewardship we have developed the clear symptoms of crony capitalism. It ignores the virtual disintegration of the state at the local level as patronage and rampant corruption take over. The 'corrupt Zuma, anticorruption Mbeki' conveniently ignores the quashing of the investigation into the arms deal, which is identified by some commentators as the real tipping point in our slide towards officially sanctioned graft.

They conclude that:

> SA need not fear the implications of the Zuma/Mbeki fallout. It does not portend the end of our democracy as we know it. It may well invigorate democracy. It represents a full frontal assault on the class consensus that has until now been our developmental paradigm (Mde and Brown, 31 October 2005).

Clearly, not all members of the "thinking class" agree with the sentiments expressed by Makhanya above. Mde and Brown do not deny the existence of corruption in this country but warn against the emerging orthodoxy which assumes that it is only the Zuma camp that may be guilty of flirting with corruption.

4. THE ZUMA SAGA AND THE CRIMINAL JUSTICE SYSTEM

The Zuma crisis is significant not only for its implications for the outcome of the ANC succession battle and the future shape of South African politics, but also for the reputation of the criminal justice system and the integrity of the rule of law. It is not the broad criminal justice system but, principally, two key components of the system — the NPA (in the more specific sense of the national office and its director) and the judiciary — that have at times become enmeshed in the controversy relating to the Zuma matter. In turn, two key events, almost two years apart, have each in their own way been defining moments in embroiling these two agencies in the controversy.

4.1 The NPA and Ngcuka's prima facie statement (August 2003)

One of the key events that played a role in feeding perceptions that Zuma was being subjected to a "political trial" was Ngcuka's "prima facie statement". In reflecting on this, it is perhaps worthwhile to report in detail the comments of a member of the Johannesburg Bar, who had the following to say about the statement and the decision not to prosecute Zuma:

- In ordinary circumstances it is not appropriate for the NDPP[3] to give reasons as to why he proposes to prosecute or not to prosecute.
- All prosecuting authorities have a prosecution policy which enables them to determine which cases will be proceeded with and which not. ... It is safe to assume that many factors are taken into account including, fundamentally, the strength of the case. Other factors that may be taken into account include the anticipated length of the trial and its cost.
- The Shaik case was unusual. The NDPP alleged that Shaik was guilty of corruption in his "bribery" of Zuma. The indictment was riddled with references to the relationship between Shaik and Zuma. The NDPP therefore knew that the moment the indictment was served, members of the public would justifiably demand to know why only Shaik had been charged and not Zuma. The indictment would have disclosed many allegations which, on the face of it, equally implicated Zuma. The NDPP therefore presumably realised that in the absence of an explanation there would be a public outcry.
- It was in these circumstances that the announcement was made. It most certainly could have been put differently so as not to create the implication of guilt despite the absence of a prosecution. Some explanation was called for but the manner in which this was done was unfortunate.

[3] The National Director of Public Prosecutions is the head of the NPA. The first head of the NPA was Bulelani Ngcuka, who resigned in July 2004 while embroiled in controversy, much of it related to his statement about Zuma and an informal press briefing which he had held a month prior to that. His place was taken by Vusi Pikoli, formerly director-general of the Department of Justice, who currently (September 2007) holds this position.

- The statement relating to Zuma was unfortunate in as much as it created the impression in the minds of the public that he was guilty but that the State could not prove his guilt.
- The manner in which the decision not to prosecute was conveyed to the public [also] raised doubts about the willingness to prosecute Zuma.

Ngcuka's statement has in some ways overshadowed every action taken in relation to Zuma by the NPA since that point. Until June 2005, when Zuma had not yet been brought to court, it fuelled suspicions that the NPA wished to tarnish Zuma's name without prosecuting him. Since that point it has helped to reinforce perceptions among his supporters, and doubts among some others, about whether their efforts to prosecute him are based on political motives rather than real evidence. At least for some, this impression is reinforced by the fact that Zuma has not yet been successfully prosecuted, despite having been brought to court on both corruption and rape charges.

4.2 The judiciary and the Shaik judgment (June 2005)

But Zuma was not only implicated by Ngcuka's statement. Particularly as the judgment was interpreted immediately after the Shaik trial, but even in retrospect, it appears that, though Justice Squires was careful in his choice of words, his judgment at the very least raises substantive questions about the possibility of Zuma's complicity. Viewed from the perspective of those sympathetic to Zuma, the Shaik judgment was seen as merely part of an ongoing campaign to tarnish Zuma's name, thereby implicating not only the NPA but the judiciary itself in the perceived conspiracy against him.

In its response to the Shaik judgment, Cosatu argued thus:

> The events of the past weeks confirm a long held view by COSATU that the trial of Shabir Shaik was nothing but a political trial of the Deputy President in absentia. The choice of a long retired judge who is a former Justice Minister of the then Rhodesia indicates the extent to which the country have not succeeded to transform its judicial system (Cosatu, 2005).

In a similar vein the ANC Youth League, in its 5 June 2005 press statement, echoes the sentiments of Cosatu in asserting that:

> Having followed the case and the hype around the case being misdirected against an innocent individual in the person of the Deputy President, we have come to the conclusion that the judge himself, by unduly pronouncing on the guiltiness of the Deputy President in his absentia, is in fact issuing a political verdict and we shall deem this verdict absolutely wrong and baseless in as far as it unduly rubbishes the name of the Deputy President. The only fitting judiciary judgment would be one that considers evidence given by the Deputy President as defendant against whatever allegations have been made against him (ANCYL, 2005).

This is a three-pronged attack. For weeks after the Shaik verdict, Cosatu, the ANC Youth League and the Young Communist League continued to attack Judge Hilary Squires, his verdict and the integrity of the judiciary by suggesting that Squires acted politically and that his judgment must be seen as an indicator of the extent to which the judiciary is still not transformed.

In the process doubts have been cast on the capacity of our courts to give Zuma a fair trial. The emotional content of these sentiments assumed a new significance when President Mbeki decided to release Zuma from his duties as deputy president of the country and appointed former Minister of Minerals and Energy Affairs, Phumzile Mlambo-Ngcuka[4] in his place. In the climate of tension that followed, the Third Central Committee of Cosatu, on Tuesday,

[4] The fact that Zuma's replacement as deputy president is Bulelani Ngcuka's wife obviously also tends to give substance to a view of Ngcuka being politically close to Mbeki.

16 August 2005, passed the following resolution:

> "... believing that:
>
> - The trial of Comrade Zuma is a classic attempt to drag the working class into a war whose terrain and outcome have been predetermined by neo-liberals using their control over key components of the machinery, in this case, the judiciary.
> - Comrade Zuma has massive support among the working class and the situation has the potential for deeply dividing the progressive movement.
> - The judiciary must be independent of political interference, but must be transformed to ensure a bias toward the interests and rights of the majority.
> - The matter must be handled politically ... and not in a narrow legal fashion.
>
> Therefore resolve(s):
>
> - To call on the President of South Africa to review the decision to relieve Comrade Zuma of his responsibilities.
> - To call for the withdrawal of charges against Comrade Zuma.
> - If the case goes ahead despite our calls, Cosatu demands a fair hearing and a full bench to hear the case (Cosatu, 21 August 2005).

The resolution highlights not only the climate of heightened emotion and suspicion that characterised the period after the Shaik judgment, but also the degree to which the Shaik judgment in particular was seen as not only reflecting a hostile agenda on the part of the NPA, but also the complicity of the judiciary. It was in the climate of these heightened emotions that the drama of the rape trial unfolded, which culminated in his acquittal but also, at least for some, further damage to his credibility.[5]

In this climate of heightened emotions, the phrase "a generally corrupt relationship", which is not used in the judgment, came to be understood as defining the Shaik judgment not only among opponents but also among Zuma's sympathisers, journalists, analysts, and even the judiciary. This in turn gave venom to the claims of Zuma's allies that Zuma was convicted without having been brought to court, and that the judiciary itself was party to the conspiracy against him.

Writing in September 2007, it would appear that there has been some recovery of perspective on this issue. Events in 2006, including the acquittal of Zuma on rape charges in May, the termination of his corruption trial in September, and the publicity given in November to Justice Squires's letter of clarification regarding the contents of the Shaik judgment, all helped at least to neutralise perceptions that the judiciary was actively taking sides against Zuma; in turn, it helped to confirm the reputation of the judiciary as a reliable and independent arbiter, rather than a partisan role-player suspected of vindictiveness towards Zuma.

5. THE CONSTITUTION AND THE RULE OF LAW

According to section 9(1) of the Constitution, "Everyone is equal before the law and has the right to equal protection and benefit of the law" (Constitution of the Republic of South Africa, 1996), thus reinforcing an idea contained

[5] Some of the issues here — partly related to the manner in which Zuma conducted his defence and mobilised his supporters outside the courtroom — are reflected in Motsei, 2007, and Suttner, 2007.

in the preamble where, in adopting the Constitution, the representatives of the people "Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law" (Constitution of the Republic of South Africa, 1996).

Rather than appealing to divine authority or some other factor, the Constitution therefore seeks to ground its authority, and the authority of laws passed under it, in the contention that it is based on "the will of the people". This authority provides the basis for the rule of law, and related to it the principle that all, irrespective of their position in society, not only have the right to equal benefit but also are equally subject to the law. According to Fagan:

> The rule of law is understood in a number of ways. Taken literally, the rule of law requires no more than fidelity to the law of one's community. A legislator, judge, policeman or citizen does all the rule of law requires of him, so long as he obeys the community's law. This is not, however, how most people understand the rule of law. Most people are of the view that, in order to observe the rule of law, a legislator, judge and so on has to conform also with a number of independent standards, standards that may be set down in a community's law but need not be. Some legal philosophers ... insist that these standards are entirely formal in nature. The International Commission of Justice, by contrast, has endorsed an understanding of the rule of law that is rather more substantive in content. As far as the consequences of non-observance are concerned, the main issue seems to be whether non-compliance with the rule of law constitutes only a moral or also a legal failure (Fagan, 1999: 107).

In a brief prepared for the World Bank by Matthew Stephenson of the Harvard University Department of Government and Law School, the formal, substantive and functional dimensions of the rule of law are defined as follows:

- Formal definitions of the rule of law look to the presence or absence of specific, observable criteria of the law or the legal system. Common criteria include: a formally independent and impartial judiciary; laws that are public; the absence of laws that apply only to particular individuals or classes; the absence of retroactive laws; and provisions for judicial review of government action.
- An alternative to the formal approach to the rule of law is one that looks to substantive outcomes such as "justice" or "fairness". This approach is not concerned with the formal rules, except inasmuch as they contribute to the achievement of a particular substantive goal of the legal system.
- A third approach to the rule of law is similar to the substantive definition, but tries to avoid the thorny normative issues by focusing on how well the law and legal system perform some function — usually the constraint of government discretion, the making of legal decisions predictable, or some combination of both (Stephenson, 2 November 2005).

In the South African context, it is some combination of principles of "fairness", "justice" and "equality before the law" that sets the standards by means of which the criminal justice system's engagement with the Zuma matter is evaluated. This suggests that, in this country, conceptions of the rule of law are not limited to the formal but extend to the substantive.

As we have noted, many of the attacks levelled on the criminal justice system in defence of Zuma are located in the realms of both the formal and substantive. Questions have been raised about the independence and impartiality of the judiciary, consistency in the application of the law and the prospects of a fair trial for Zuma.

Thus, in asking, "What kind of rule of law? Is it the rule of law that only goes for Jacob Zuma?" (Mbalula, 30 October 2005), ANC Youth League president Fikile Mbalula seems to be suggesting that his principle objections to the prosecution are, at least in part, that Zuma is being prosecuted while others who should equally be subject to the rule of law are not. In doing so he perhaps reflects the perceptions of various sections of our society who feel alienated

from our constitution and doubt the claims of our institutions to upholding its principles, including the principle that all are equal before the law.

6. TRANSFORMATION OF THE JUDICIARY

As we have seen, one of the arguments advanced in the process of questioning the judgment in the Shaik trial is that the judiciary "must be transformed to ensure a bias toward the interests and rights of the majority" (Cosatu, 21 August 2005). In terms of this approach, the court's verdict in the Shaik fraud and corruption trial is indicative of the extent to which the first decade of our democracy has not delivered a transformed judiciary. The transformation of key institutions such as the judiciary is seen as one of the imperatives of societies emerging from authoritarian rule. The transition from an apartheid state to a democratic state must, therefore, include the transformation of the criminal justice system in general, and the judiciary in particular. Transitional justice in this context is not only about instituting legal processes against those who, on behalf and in defence of an authoritarian regime, violated the human rights of citizens, but is also about ensuring that the criminal justice system upholds the values and principles of the new and democratic order. An aspect of this is the transformation of the judiciary. In its annual 8 January statement in 2005, the ANC declared that it was faced with:

> ... the continuing and important challenge to work for the transformation of the judiciary. Much work has already been done to address the race and gender imbalances within this institution. Nevertheless, more progress has to be achieved in this regard.

The ruling party further argued that it was:

> ... also confronted by the similarly important challenge to transform the collective mindset of the judiciary to bring it into consonance with the vision and aspirations of the millions who engaged in struggle to liberate our country from white minority domination (ANC, 2005).

But what forced some, especially those in the media, to rush to the defence of the judiciary must have been this, seemingly ominous, statement in which the ruling ANC argued that:

> ... the reality can no longer be avoided that many within our judiciary do not see themselves as being part of these masses, accountable to them, and inspired by their hopes, dreams and value systems [and warned that] if this persists for too long, it will inevitably result in popular antagonism towards the judiciary and our courts, with serious and negative consequences for our democratic system as a whole (ANC, 2005).

These sentiments were, unfortunately, made at a time when the ANC government was facing difficult challenges in some of our courts. They, therefore, lent some credence to the view that the ruling party is committed to the independence of the judiciary only to the extent that the impartiality of our courts should not disadvantage its own interests. But we must hasten to add that the former chief justice, Arthur Chaskalson, did not see the ANC statement as a threat to the independence of our courts.[6]

It is possible, however, that those who attacked Justice Squires were opportunistically latching onto a genuine concern about the transformation of the judiciary. These ANC statements were, therefore, at best prophetic, to

[6] The then chief justice issued a public statement in which he indicated that the statement would best be interpreted as referring to the need for judges to uphold and give effect to the values in the Constitution (2005).

the extent that sections of the public responded negatively to the Shaik judgment, and at worst facilitated the opportunistic mobilisation of "popular antagonism" by those who sought to immunise Zuma from the consequences of his relationship with Shaik. Put differently, some of those who support Zuma have tried to impose a conception of transitional justice according to which the transformation project must either promote or undermine certain factional interests. As a developing country and a nation in transition, the challenge is to remember that "economic growth, political modernization, the protection of human rights, and other worthy objectives are all believed to hinge, at least in part, on 'the rule of law'" (Stephenson, 2 November 2005). It is for this reason that some have warned against political actions that threaten the independence of the judiciary in the name of transformation.[7]

7. THE APPOINTMENT OF JUDGES

Closely linked to the issue of transformation of the judiciary have been questions about what criteria, if any, should inform the selection of the judge in any matter against Zuma. As stated by a Johannesburg advocate at an earlier stage: "As in the case of Shaik, the choice of judge could raise questions and it is important that the kinds of criticisms levelled at Mr Justice Squires not be levelled at the judge assigned to try Zuma" (anonymous senior member of the Johannesburg bar, 2005).

Criticism that was levelled at Justice Squires seemed to suggest that in any matter involving Zuma his supporters would only be satisfied with a judge who is not white and is not seen as an "apartheid judge". There is no doubt that the political context of the various proceedings against Zuma has put the judiciary under immense pressure and reflects conceptions of the transformation of the judiciary that are focused primarily on issues of race. As fate would have it, it was a black judge, Justice Msimang, who struck the corruption charges against Zuma from the roll, but a white judge, Justice Van der Merwe, who acquitted Zuma on the charges of rape. In effect the preoccupation of Zuma's supporters with appointing someone who is the racial and historical antithesis of Justice Squires, has fallen away.

But this is not the first time that there have been apprehensions about the impartiality of judges. In what has become known as the "Sarfu case", Louis Luyt made a recusal application on the basis that some of the judges of the Constitutional Court had a history of links with the ANC and would, therefore, not be able to give him a fair hearing in his case against then president Nelson Mandela. In dismissing the application, the Constitutional Court referred to:

> ... a presumption that judicial officers are impartial in adjudicating disputes. This is based on the recognition that legal training and experience prepare judges for the often difficult task of fairly determining where the truth may lie in a welter of contradictory evidence.

The court referred to the judgment of in *R.* v. *S.* where Cory J stated that:

> Courts have rightly recognized that there is a presumption that judges will carry out their oath of office. ... This is one of the reasons why the threshold for a successful allegation of perceived judicial bias is high. However, despite this high threshold, the presumption can be displaced with 'cogent evidence' that demonstrates that something the judge has done gives rise to a reasonable apprehension of bias.

The court acknowledged that "absolute neutrality on the part of a judicial officer can hardly if ever be achieved", stating that "it is appropriate for judges to bring their own life experience to the adjudication process. The court again quoted Cory J in *R.* v. *S.*:

[7] On the relationship between transformation and independence, see Gordon (2007) which is to be published simultaneously with this paper.

> It is obvious that good judges will have a wealth of personal and professional experience that they will apply with sensitivity and compassion to the cases that they must hear. The sound belief behind the encouragement of greater diversity in judicial appointments was that women and visible minorities would bring an important perspective to the difficult task of judging.

Also quoted in the Luyt judgment were excerpts from the concurring judgment by L'Heureux–Dube and MacLachlin JJ in *R* v. *S*:

> [Judges] will certainly have been shaped by, and have gained insight from, their different experiences, and cannot be expected to divorce themselves from these experiences on the occasion of their appointment to the bench. In fact, such a transformation would deny society the benefit of the valuable knowledge gained by the judiciary while they were members of the Bar. As well, it would preclude the achievement of a diversity of backgrounds in the judiciary. The reasonable person does not expect that judges will function as neutral ciphers; however, the reasonable person does demand that judges achieve impartiality in their judging.

The court also referred to the judgment of Hlophe J in *S.* v. *Collier*. As the court reports:

> Before the commencement of a criminal trial in the magistrate's court, the accused insisted that he be tried by a black magistrate. The white magistrate before whom the matter was called refused to recuse himself. In dismissing an appeal against that decision, Hlophe J said:
>
> 'Equally, the apparent prejudice argument must not be taken too far; it must relate directly to the issue at hand in such a manner that it could prevent the decision-maker from reaching a fair decision. ... Professor Baxter gives a commonly cited example, namely the mere fact that a decision-maker is a member of the SPCA does not necessarily disqualify him from adjudicating upon a matter involving alleged cruelty to animals. By the same token, the mere fact that the presiding officer is white does not necessarily disqualify him from adjudicating upon a matter involving a non-white accused. The converse is equally true. Otherwise no black magistrate or Judge could ever administer justice fairly and evenhandedly in a matter involving white accused.'
>
> For the reasons set out above, the argument that the white magistrate erred in refusing to recuse himself upon being asked to do so at the appellant's trial is both unfortunate and untenable. The fact that he is a white person does not disqualify him from presiding in a case involving an accused belonging to a different race (Constitutional Court of South Africa, 4 June 1999).

It would appear that the concerns relating to the choice of judge in the various proceedings against Zuma, unlike those dealt with by Hlophe J in *S* v. *Collier*, relate to the need to placate Zuma's political supporters, rather than the accused himself. Notwithstanding the fact that some of those who are regarded as Zuma's principal opponents are black, the implication has often seemed to be that in any matter against Zuma a judge who has struggle credentials or is black will meet with the approval of this constituency. Faced with this kind of political pressure it has been argued by some legal experts that these sensitivities, in particular sensitivities about race, must be taken into account in order to ensure that the trial is regarded as credible.

Despite this well-intentioned argument, the judiciary must always resist the temptation to yield to political pressure because of the potential to do irreparable harm to the independence and integrity of our judicial system. Appointing a black judge on bases other than the ability of such a judge to deliver a judgment only on the strength of the evidence presented to the court will set a dangerous precedent. It will send the message that the outcome of judicial processes can be predetermined if political demands are supported by a programme of mass mobilisation, and will inadvertently lend credence to the allegation of a political–judicial conspiracy against Zuma. Thus far the principal legal proceedings against Zuma have generally met with approval, but this has had much to do with their outcome. In the end, appointing a black judge in any further proceedings that may be launched against Zuma may only satisfy

his supporters if the court delivers an acquittal. From their perspective a black judge who convicts Zuma may also not suffice.

This issue has not always been purely about the credibility of the court which tries Zuma. At the height of the Zuma crisis it seemed that the political mobilisation in support of Zuma could reach the point of political instability, particularly if Zuma was convicted on the corruption charges. If the country must choose between stability and principle, we must uphold the Constitution even if it means risking the possibility of instability.

8. THE RIGHT TO A FAIR TRIAL

Aside from the suggestion that the selection of a judge may compromise Zuma's right to a fair trial, his supporters have raised other doubts about whether Zuma will have a fair trial if the charges of corruption against him are pursued.

One of those who have tried to argue on a formal basis is Willem Heath, a former judge and now an advocate who has identified himself with the Zuma camp. Heath argues that Zuma cannot have a fair trial because of the following:

- Ngcuka's prima facie statement undermined Zuma's rights.
- The off-the-record briefing of seven editors at which Ngcuka allegedly made scurrilous comments about Zuma violated his rights.
- The failure to prosecute Zuma with Shaik was another violation of his rights.
- The "raid" on Zuma's lawyers may have compromised Zuma's defence (Heath, 10 November 2005).

Many of these arguments in support of the view that Zuma cannot have a fair trial are applicable to a jury system and do not apply in the South African context. The extent to which Zuma will receive a fair trial should depend on whether the judge bases his/her conclusions only on the facts and evidence presented to the court. In other words, the question that must be asked is whether statements that have been made in the public domain and the Shaik judgment will have any impact on the Zuma trial. If the judge upholds the constitutional provisions (section 35.3) that govern what constitutes a fair trial, Zuma's rights are under no threat.[8]

These arguments were supported by a senior member of the Johannesburg Bar, who also suggested that it may sometimes seem that those who argue that Zuma will not receive a fair trial are "those who are not particularly interested in a trial at all", and that there is no reason to doubt "that Zuma will be afforded all the requirements stipulated by the Constitution for a fair trial" (Anonymous, 2005).

It needs to be noted that this perspective is not completely unchallenged. Another member of the Johannesburg bar, Advocate Muzi Sikhakhane, for instance, indicated that the argument that Zuma will not receive a fair hearing lacks

[8] In relation to accused persons, section 35(3) provides that the right to a fair trial includes the right to be informed of the charge with the sufficient detail to answer it; to have adequate time and facilities to prepare a defence; a public trial before an ordinary court; to have the trial begin and conclude without unreasonable delay; to be present when being tried; to choose and be represented by a legal practitioner and to be informed of this right promptly; to have a legal practitioner assigned by the State if substantial injustice would otherwise result; to be presumed innocent; to remain silent and not to testify during the proceedings; to adduce and challenge evidence; not to be compelled to give self-incriminating evidence; to be tried in a language that the accused person understands; not to be convicted for an act or omission that was not an offence at the time it was committed; not to be tried for an offence in respect of an act for which that person has previously been either acquitted or convicted; and to appeal to a higher court.

credibility if it is supported only in terms of the unspecific allegation of a conspiracy against Zuma, but that it may have some credibility in the context of the Scorpions' raid on Zuma's lawyers.

As reported in the *Sunday Times* on 11 September 2005, in his judgment on the raid on Zuma's lawyer, Julekha Mahomed, Justice Ismail Hussain said he was not convinced that the Scorpions had disclosed all the material facts when they applied for search warrants. If they were to convince the court that Zuma's right to a fair trial has been compromised, Zuma's defence team may have to focus on the implications of the raid in relation to attorney–client privilege, potentially arguing that in breaching this privilege key rights of the accused have been compromised.

The questions are not, however, purely whether it is fair that Zuma is being tried, or whether the trial will be fair, but also whether he will be *perceived* to have a fair trial.

9. PUBLIC CONFIDENCE IN THE CRIMINAL JUSTICE SYSTEM

There are signs that point to problems of public confidence in the criminal justice system, but most of them predate the Zuma crisis and are linked to the perception that the police are inefficient when it comes to the apprehension of criminals. This perception is reinforced even when courts rightly grant bail to suspects. This erosion of confidence has at times resulted in communities, particularly those that are plagued by conditions of underdevelopment, taking the law into their own hands.

We must be open to both the view that some damage has occurred and also to assertions that aspects of the handling of the Shaik–Zuma affair have demonstrated the independence of our prosecuting authority and the judiciary, and therefore the strength of our democracy. The negative perceptions certainly do not constitute a crisis of legitimacy for the criminal justice system. The possible irony is that it is because of its independence and efficacy that our criminal justice system may become instrumental in political battles. There should be less doubt about the possibility that the institutions will survive the vagaries of personal and political interest.

In examining the key components of the criminal justice system involved in the drama, it may also be important to distinguish between the somewhat different fortunes of the NPA and judiciary in the court of public opinion.

It would appear that the net effect of the several legal battles that have taken place around Zuma and his associates has been to strengthen awareness of, and respect for, the independence of the judiciary. But, as argued, Ngcuka's August 2003 statement continues to cast a shadow over the NPA. For Zuma's supporters every action against Zuma is proof of malevolent intentions. But ever since the Shaik judgment the stakes in this matter have become higher and higher. Once Zuma had been fired as deputy president, it seemed that the political pressure in terms of public credibility was such that the NPA had no choice but to charge Zuma, despite Ngcuka's statement that the NPA did not think it had enough evidence to convict him — a statement that can be seen to have been authenticated when the case against Zuma was struck from the court roll. The unenviable position of the NPA is reflected in the fact that, ever since the Shaik judgment, it has had little choice but to pursue Zuma in order to retain broad public credibility. If the NPA at any point acted in a manner consistent with Ngcuka's original statement, and withdraw from its efforts to prosecute Zuma on the basis that it had insufficient evidence, this would be taken as proof that it had succumbed to political pressure, or that a political deal had been made, while Zuma's supporters will be vindicated in their contention that he had been unfairly pursued all along.

10. CONCLUSION

We will probably never know whether there is a conspiracy to prevent Jacob Zuma from becoming president of the ANC in 2007 and that of the country in 2009. The existence or otherwise of such a conspiracy may be less important than the reality that political conduct has been driven by this perception. Furthermore, perceptions about the existence of a conspiracy against Zuma have spawned the perception among some that the criminal justice system colluded with certain political forces to undermine Zuma's political interests. There exists no clear evidence in the public domain to support perceptions of a political-judicial campaign against the ANC deputy president, but negative perceptions about the criminal justice system may have been reinforced by Ngcuka's August 2003 media briefing where it was announced that there was a prima facie case against Zuma but that he would not be prosecuted.

But negative perceptions about the criminal justice system have tended to co-exist with the view that the prosecution of a senior leader of the ruling ANC is indicative of the health and strength of our democratic institutions. To the extent that some damage has been done to the image of the criminal justice system, such damage has certainly not been fatal and we can be confident that our democratic institutions will survive the Zuma crisis.

Alongside this it is possible that role-players in the South African criminal justice system may have found the Zuma matter instructive in relation to the prosecution of high-profile politicians. The key lesson here is that, in entering this terrain, they inevitably become political role-players, incurring the suspicion, and potentially the wrath, of one or other political faction. Considering this likelihood it is incumbent on them not only to act with integrity but to demonstrate and defend to the public the integrity of whatever course of action they have chosen.

More broadly the Zuma crisis raises profound questions for criminal justice in South Africa, including questions about the nature of our adherence to principles of equality before the law, about political contestation and its relationship to the criminal justice system, and about popular opinion and its relevance to the operation of the South African criminal justice system.

Coinciding as it does with a focus on the transformation of the criminal justice system, and with a period where the judiciary itself has been the focus of questions about the extent of transformation, the Zuma crisis also raises strong questions about the meaning of transformation, and whether transformation will ultimately strengthen the integrity of the criminal justice system and its ability to promote the principles of the Constitution, or whether transformation will ultimately undermine the independence of the criminal justice system and create a system that bows to the directives of politicians and political factions.

As the ANC's December 2007 conference looms, the legal issues around Zuma continue to boil over and many people now assume that, in the coming period, it will be political, and not legal, factors that determine Zuma's fate. Is it only the naïve who would dare hope that the key criminal justice institutions will proceed in this matter on the basis of the appropriate principles, and not be swayed in their judgment by political considerations?

APPENDIX 1:

CHRONOLOGY OF KEY EVENTS IN THE ZUMA SAGA

In April 1998, Parliament approved the Defence Review, a study that was commissioned to establish the future needs, role and structure of the South African National Defence Force (SANDF). This launched the Strategic Arms Procurement Package, also known as the "arms deal". On 15 September 1999 Cabinet announced that R21.3 billion would be spent over eight years to procure the required armaments. In the same month, Patricia de Lille, then a Pan Africanist Congress (PAC) Member of Parliament, made allegations to the effect that key players in the arms deal had received kickbacks. It was the investigations into these kickbacks that can be seen as the origin of the protracted legal saga that is the focus of this paper.

Here follows a chronology of some of the key events that have subsequently unfolded.

2000

In November the Scorpions launch a preliminary investigation into the arms deal.

2001

In August the head of the National Prosecuting Authority (NPA), Bulelani Ngcuka, approves an investigation into allegations of corruption in awarding arms deal contracts.

2002

In October the Scorpions extend their probe to include allegations of bribery against then Deputy President Jacob Zuma.

2003

- At an informal press briefing on 24 July, Ngcuka allegedly makes disparaging remarks about Zuma.
- In August the Scorpions lay charges of corruption and fraud against Zuma's financial adviser, Schabir Shaik.
- On 23 August Bulelani Ngcuka announces at a media briefing that he has a prima facie case against Zuma but has decided not to prosecute him. Ngcuka is reported to have said: "We have concluded that, while there is a prima facie case of corruption against the deputy president, our prospects of success are not strong enough. That means that we are not sure if we have a winnable case. Accordingly we have decided not to prosecute the deputy president" (*Mail & Guardian Online*, 26 August 2003). Minister of Justice Penuell Maduna also attends the briefing.
- On 7 September allegations are published in *City Press* that Ngcuka had been a spy for the apartheid government.
- Later in September President Thabo Mbeki appoints a commission of inquiry to investigate allegations that Bulelani Ngcuka was an apartheid spy.

2004

- In January the Hefer Commission finds that Ngcuka was probably not a spy; in the same month Public Protector Lawrence Mushwana launches an investigation into allegations that Ngcuka — as alleged by Zuma — abused the powers of his office.
- In May the Public Protector finds that the prima facie statement by Ngcuka was "unfair and improper".
- Ngcuka resigns in July.
- On 11 October Schabir Shaik appears in the Durban High Court on charges of fraud and corruption.

2005

- On 2 June Schabir Shaik is found guilty on two counts of corruption and one of fraud. Although Deputy President Zuma was not on trial, Justice Hilary Squires finds evidence of a "mutually beneficial" relationship between Zuma and Shaik, the deputy president's former financial adviser (S v. *Shaik*, 2005: 76).[1] Within days the media reports that Justice Squires found that there was "a generally corrupt relationship" between the two. The latter phrase becomes established as one of the "facts" of the case until November 2006 (see below).
- On 14 June Mbeki fires Zuma from the position of deputy president.
- On 16 June, ANC Youth League supporters chant anti-Mbeki songs at a rally addressed by Zuma in Nelspruit, Mpumalanga.
- On the same day at a rally in Durban, KwaZulu-Natal, Premier S'bu Ndebele and other government officials are pelted with an assortment of objects by an angry crowd demanding to be addressed by Zuma.
- On 27 June a crowd of Zuma supporters hold a night vigil ahead of his first appearance.
- The next day there are clashes between the police and Zuma supporters who demand to enter the Durban Magistrate's Court. Zuma appears in court on two charges of corruption arising from his relationship with Shaik. The case is remanded to 11 October.
- On 29 June the National General Council (NGC) of the ANC and the rank-and-file of the party chastise the leadership for "forcing" Zuma to recuse himself from party activities, and successfully demand that Zuma's status as deputy president of the ANC be restored in full.
- In August the Scorpions expand their investigations to include potential charges of fraud and tax evasion against Zuma.
- On 16 August a resolution is passed at a meeting of the Central Committee of the Congress of South African Trade Unions (Cosatu) that demands the reinstatement of Zuma as deputy president of the country, and that Mbeki should intervene to have the charges against him withdrawn.
- On 18 August the Scorpions conduct a "search and seize" operation at properties belonging to Zuma, his lawyers and associates. The warrants for the raids were issued six days earlier, on 12 August.
- Zuma addresses a meeting of trade unionists a few days later at which he contends that there is a conspiracy against him. He says he will talk when the "right time" comes.
- On 26 August Mbeki posts a letter on the ANC website proposing the setting up of a tripartite alliance commission of inquiry to investigate the allegation of a conspiracy against Zuma. A few days later Cosatu and the SACP reject the proposal.
- On 9 September the Johannesburg High Court sets aside the search warrants granted against Zuma's attorney, Julekha Mohomed, after finding that they had been obtained and executed unlawfully.
- Also on 9 September Mbeki and Zuma present a joint document to the National Executive Committee of the ANC in which they commit themselves to finding a common solution to the crisis.
- On 11 October and 12 November Zuma appears in the Durban magistrate's court on charges of corruption. His trial is set to start on 31 July 2006.
- On 13 November a newspaper reports that a family friend has lodged charges of rape against Zuma. He appears in the Johannesburg magistrate's court on 6 December in connection with this charge, and his case is remanded to the Johannesburg High Court on 13 February 2006.

[1] The full paragraph from which this phrase is taken reads: "It would be flying in the face of common sense and ordinary human nature to think that he did not realise the advantages to him of continuing to enjoy Zuma's goodwill to an even greater extent than before 1997; and even if nothing was ever said between them to establish the mutually beneficial symbiosis that the evidence shows existed, the circumstances of the commencement and the sustained continuation thereafter of these payments, can only have generated a sense of obligation in the recipient."

2006

- On 13 February the Transvaal Judge President, Justice Bernard Ngoepe, recuses himself from the Zuma rape trial.
- On 15 February the Durban High Court instructs the Scorpions to return documents seized from the homes of Zuma and his lawyer, Michael Hulley.
- The rape trial starts on Monday 6 March, presided over by Pretoria High Court Judge Willem van der Merwe.
- On 8 May Zuma is acquitted of the charge of rape.
- On 31 July the trial of Zuma and arms company Thint on charges of corruption and fraud begins in the Durban High Court before Judge Herbert Msimang.
- On 20 September Judge Msimang strikes the case against Zuma from the roll, but allows for the possibility that the charges be reinstated.
- On 25 September Schabir Shaik's appeal hearing starts in the Supreme Court of Appeal.
- On 6 November the Supreme Court of Appeal rejects Schabir Shaik's appeal. In its judgment the court indicates that Justice Squires had found that there was a "generally corrupt relationship" between Shaik and Zuma. Shaik starts serving his 15-year sentence of imprisonment on 9 November.
- On 11 November the *Weekender* publishes a story to the effect that Justice Squires had written to it to point out that he had not used the words "generally corrupt relationship" in his judgment. The clarification provokes another political storm and attacks on the Supreme Court of Appeal by Cosatu (not to mention the embarrassment of others who also believed they were quoting Justice Squires when using the phrase). Cosatu is among those who apologise to Justice Squires. Constitutional Court Chief Justice Pius Langa says that "mistakes will sometimes occur" in the administration of justice.

2007

- In January press reports indicate that the British Serious Fraud Office has requested legal assistance from South African authorities regarding an investigation of BAe Systems, one of the defence conglomerates involved in the arms deal.
- On 2 April, in the Durban High Court, Justice Phillip Levensohn grants the NPA's application for a "letter of request" to be issued to the Mauritian authorities to provide the prosecution with documents it wants to use as part of the investigations into Zuma and Thint. Shaik's legal team gives notice of its intention to appeal against the court judgment.
- At the end of August various appeals are presented to the Supreme Court of Appeal in Bloemfontein by Zuma and his legal representatives, and the National Prosecuting Authority, against judgments in branches of the High Court pertaining to search-and-seize operations carried out by the NPA in Gauteng and KwaZulu-Natal in August 2005. Speculation is that judgment will be given on these matters by end-October.
- On 2 October the Constitutional Court dismisses the appeal by Schabir Shaik against his conviction and sentence.

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