

Democracy and the legislature

Cadre deployment weakens representative democracy¹

The ANC's dominance during four elections has eroded the checks on power created by the South African Constitution. As explained above, specific ANC policies like 'democratic centralism' and cadre deployment by the party to national and provincial executives and legislatures have weakened the processes of representative democracy.

Strict enforcement of ANC party discipline against ANC MPs has weakened national legislative oversight of the executive. Formally, legislative authority is vested in Parliament, but in practice its role has been reduced to approving bills drafted by the ANC-led executive. Behind the formal structures and processes, cadre deployment and the party rules.²

Cadre deployment disrupts the link of accountability between voters and the National Assembly they elect. Instead of voters electing MPs through their inclusion in a list, MPs can be removed and appointed by the NEC. Cadre deployment also disrupts the link of accountability between Parliament and the President. The National Assembly elects the President after an election or within 30 days of a vacancy occurring and the President is accountable to Parliament for the performance of his functions. However, the NEC can remove a President, regardless of whether the National Assembly still maintains confidence in him or her.

Cadre deployment by the NEC also disrupts the link of accountability between a member of Cabinet and Parliament.³ The President appoints the Cabinet from among the MPs, assigns them their powers and functions, and may dismiss them. The Cabinet is individually and collectively accountable to Parliament for performance of their functions. However, by using democratic centralism, the ANC NEC can remove a member of Cabinet, even if the National Assembly has not passed a motion of no-confidence in the Cabinet.

Similarly, cadre deployment disrupts the whole chain of accountability within each province. The ANC NEC, instead of provincial voters, can remove members of the provincial legislature. The ANC NEC can also remove a provincial premier, even if he has not lost the confidence of the provincial legislature. In addition, the ANC NEC can also remove a provincial member of the executive, even if he or she has not been dismissed by the Premier

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1. This section is largely based on Soujit Choudry, *'He Had a Mandate': The South African Constitutional Court and the African National Congress in a Dominant Party Democracy*, 2010 at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1651332 and Samuel Issacharoff, *The Democratic Risk to Democratic Transitions* at <http://constitutionaltransitions.org/wp-content/uploads/2013/09/Issacharoff-Democratic-Risk-to-Democratic-Transitions.pdf>.
 2. William Mervin Gumede, *Thabo Mbeki and the Battle for the Soul of the ANC* (Zebra Press, Cape Town, 2005), p. 272.
 3. Soujit Choudry, *'He Had a Mandate': The South African Constitutional Court and the African National Congress in a Dominant Party Democracy*, 2010 at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1651332.

and the provincial legislature has not passed a motion of no-confidence in the Executive Council.⁴

The rise and maintenance of one-party dominance is checked by a federal constitutional structure. Federalism increases the number of governments that must be elected and creates different political majorities empowered to elect different governments. This creates the political space for parties that lose at national level to try and win support through the backing of a different political majority, and distribute political resources which ultimately shape the competitiveness of national elections.

The ANC's policy of centralism and cadre deployment by the NEC means that the provincial government as a representative of the provincial population has a limited role and authority. It also harms the federal structure by making the elected provincial officeholders not accountable to provincial voters, but to the centre, and then not the centre of the state, but the central decision-making body of a party.

No political alternation prevents democratic consolidation

The ANC NEC has tremendous power over elected MPs. The system of closed-list proportional representation assigns legislative seats to candidates based on their relative position on a party list, and the NEC draws up the ANC's party list. Even elected MPs can be redeployed by the ANC NEC and replaced by another ANC cadre. The non-parliamentary wing of the ANC dominates the parliamentary wing.⁵ Unelected party functionaries thus set the national government's policy priorities. The public officials subject to electoral accountability tend to be subordinated to the unelected party functionaries.⁶ Politics are pulled out of the elected legislature into the party and into processes that lie outside Parliament, and do not need to comply with the same norms of transparency, participation and accountability.

For a constitutional democracy to exist, the formal structures are not sufficient. A state may be a constitutional democracy in a formal-legal sense, but due to a lack of alternation, not be a democracy.

According to political scientists, democratic consolidation entails not only compliance with the framework of electoral democracy for political competition, but also at least one electoral

4. For Zuma's agreement with this approach, see <http://www.politicsweb.co.za/politicsweb/view/politicsweb/en/page71619?oid=108130&sn=Detail>.

5. Soujit Choudry, *'He Had a Mandate': The South African Constitutional Court and the African National Congress in a Dominant Party Democracy*, 2010, pp. 17-18, 33-35, at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1651332.

6. William Mervin Gumede, *Thabo Mbeki and the Battle for the Soul of the ANC* (Zebra Press, Cape Town, 2005), p. 272.

loss, coupled with a transfer of power.⁷ Political competition, including a viable opposition and the credible possibility that an election may remove a party from office, lowers the risk of a governing party abusing its power.

Statements and actions by the executive do not reflect an appreciation that without the viable option of alternation a substantial democracy does not exist. They rather project a sense of entitlement to never-ending rule, based on the ANC's history of armed struggle against the previous political order.⁸

Even recourse to Christian and indigenous African religions have been used to legitimize such a lack of alternation. On 5 May 2008 Zuma declared to an ANC rally in Khayelitha:

*God expects us to rule this country because we are the only organisation which was blessed by pastors when it was formed. It is even blessed in Heaven. That is why we will rule until Jesus comes back. We should not allow anyone to govern our city (Cape Town) when we are ruling the country.*⁹

He made similar statements in 2004, 2006, 2009 and 2012.¹⁰ In April 2011, President Zuma remarked:

*When you vote for the ANC you are voting for Qamata [God], Qamata is the midst of the ANC. We are the mother of democracy, no other party deserves to be voted for other than the ANC. There's always the presence of God where we are. When you vote for the ANC even your hand gets blessed.*¹¹

Previously he had said that "only those with ANC membership will go to heaven".¹² In May 2011 he told voters before municipal elections that those who turn their backs on the ANC will face the wrath of the ancestors, a force considered by many in traditional communities to be powerful and actively intervening in daily life.

*I've been telling people that if you once belonged to the ANC and you leave, the ancestors of the ANC will turn their backs on you and you'll have continuous bad luck.*¹³

7. Adam Przeworski, Michael Alvarez, Jose Antonio Cheibub and Fernando Limongi, *Democracy and Development: Political Institutions and Well-Being in the World, 1950-1990* (Cambridge University Press, Cambridge, 2000) and Kenneth Greene, *Why Dominant Parties Lose: Mexico's Democratization in Comparative Perspective* (Cambridge University Press, Cambridge, 2007).

8. Stephen Ellis, *External Mission: The ANC in Exile, 1960-1990* (Hurst, London, 2012), pp. 298-299, 301-302.

9. <http://www.iol.co.za/news/politics/anc-to-rule-until-jesus-comes-back-1.398843?ot=inmsa.ArticlePrintPageLayout.ot>.

10. <http://www.politicsweb.co.za/politicsweb/view/politicsweb/en/page71639?oid=326899&sn=Detail&pid=71639>.

11. <http://152.111.1.87/argief/berigte/citypress/2011/04/11/CP/2/snZuma.html>.

12. <http://www.timeslive.co.za/sundaytimes/article895148.ece/God-is-on-the-ANCs-side-Zuma-tells-crowd>.

13. <http://mg.co.za/article/2011-05-14-zuma-vote-anc-or-face-ancestral-wrath>.

In February 2011, Zuma told a crowd in Mthatha that a vote for the opposition is a vote for the devil.

A political worldview that does not allow for political alternation has reinforced those key dynamics of the executive that reinforce the democratic decline in South Africa.

Subjecting the bureaucracy to the dominant party

‘Democratic centralism’ and cadre deployment have also weakened the independence of the bureaucracy, including institutions like the Reserve Bank, the Revenue Service, the National Prosecuting Authority, the Government Information Service and the South African Broadcasting Corporation. There is concern that such ANC-aligned bureaucrats do not see themselves as independent civil servants, but as ANC deployees, whose career progression depends on continued close affiliation to the ruling party.

The record of independent institutions created by the Constitution is uneven in some high-profile cases involving allegations of executive misconduct. For example, in 2001 the joint report of the Auditor General, the Public Protector and the National Director of Public Prosecutions found that there had been no unlawful conduct by the government in the arms scandal. This finding obviously clashed with widespread irregularities and improprieties. The Public Protector also failed to act after the government directed a contract from the state oil company PetroSA to a company that diverted the bulk of the payment to the ANC.

In other cases, allegations of political intervention from above have occurred. As head of the National Prosecuting Authority, Vusumzi “Vusi” Pikoli, instigated criminal charges against disgraced Police Commissioner Jackie Selebi and ANC President Jacob Zuma. In 2008 Pikoli was suspended from his duties by President Thabo Mbeki, a close confidant of Selebi, and then subsequently fired by Mbeki’s successor, Kgalema Motlanthe.

In 2011, the Constitutional Court ruled that the Directorate for Priority Crime Investigations was vulnerable to political interference. The relationships of senior members of the SAPS crime intelligence with members of crime syndicates have also raised concerns.

The increased role of the security services

The South African security forces can only be understood in the context of the country’s political system. In the one party-dominant system, the ruling ANC, previously involved in a guerilla war (1960-1990), is still permeated by a conspiratorial mindset.¹⁴

Ronnie Kasrils, a founding member of the ANC’s military wing, Umkhonto we Sizwe (MK), and former Minister of Intelligence from 2004 to 2008, responded as follows to the question

14. Stephen Ellis, *External Mission: The ANC in Exile, 1960-1990* (Hurst, London, 2012).

whether the ANC has taken a reversible step towards authoritarianism, as illustrated by the Protection of Information Bill¹⁵ and other initiatives of the Zuma administration:

I would think so. And I am glad to note that you have not used the term 'irreversible', because my view is that we must resurrect the best values of the liberation movement. My experience as intelligence minister was that the security and intelligence community were hopelessly politicised. This was made worse by a culture of secrecy, paranoia, conspiracy theory and authoritarianism. The Protection of Information legislation is an illustration of this. My impression is that it has more to do with concealing graft and corruption in high places than with national security. Note its obsession with threats that would emanate from whistleblowers and the media with exceptionally heavy sentences.

Prof Jane Duncan, Highway Africa Chair of Media and Information Society in the School of Journalism and Media Studies at Rhodes University, describes the political heads of security services as the key actors of President Jacob Zuma's administration. During Zuma's term in office, he has been increasingly unable to deliver on promises made, and his powerbase has become less secure. Because of this, Duncan says, there have been significant attempts to strengthen the political security cluster in government policy making. The Minister of Defence, the Police Chief, Minister of State Security and the Head of National Intelligence have become difficult to call to account by Parliament.¹⁶

Zuma, an ethnic Zulu who used to be the head of intelligence of the ANC's guerilla army, has installed those he trusts in key positions of the security apparatus. In the process, the influence of Zulu decision-makers in the security cluster has been noticeable. In 2011, these included Bheki Cele as SAPS Chief, Police Minister Nathi Mthethwa, Intelligence Minister Dr Siyabonga Cwele and Justice Minister Jeff Radebe. This process also occurred while the Zulus came to form the strongest component (almost 25 per cent) of the ANC's increased membership.

In a constitutional democracy, the accountability of the defence force to parliament is a key dimension of civilian control of the military. However, the Chief of the South African National Defence Force, together with the service chiefs, have never appeared before the Portfolio Committee on Defence and Military Veterans or the Joint Standing Committee on Defence. Although Parliament is expected to vote on the appropriation of more than

15. The Protection of Information Bill referred to here was passed by Parliament in April 2013. It is widely criticised as being aimed at silencing criticism against the ruling party and at discouraging whistleblowers from making information about corruption in state circles known – see Human Rights Watch's concerns in this regard:

<http://www.hrw.org/news/2013/04/29/south-africa-secrecy-bill-improved-still-flawed>.

16. http://www.academia.edu/1798769/Voice_political_mobilisation_and_repression_under_Jacob_Zuma;
<http://www.dailymaverick.co.za/article/2011-06-16-jane-duncan-on-the-ever-increasing-menace-of-sas-security-cabal>.

R36 billion for the defence department, Parliament has never been briefed on the combat readiness of the defence force. Major capital acquisition projects are buried in the Special Defence Account, despite only a small portion of expenditure on projects being tagged as ‘sensitive projects’. According to opposition parties – and this must be accepted as a partisan source – written parliamentary questions are simply ignored, half answered and in some cases simply not answered, and now hardly seem worth submitting.

Access to information requests on the arms deal, which allegedly goes to the heart of the post-1994 government and may taint former President Thabo Mbeki and current President Jacob Zuma, are largely being ignored.¹⁷

Likewise, the Secret Service Evaluation Committee has essentially been non-functional, also because of protection of their fiefs by senior intelligence officials. The General Intelligence Laws Amendment Bill is intended to formalise the amalgamation of the domestic and foreign intelligence services into one security agency. The Constitution put the President or his delegate in charge of the intelligence services but, over time, authority had shifted steadily to State Security Minister Siyabonga Cwele. Some key proposals will result in the Minister becoming a unique gatekeeper to the agency and its products.

The National Intelligence Co-ordinating Committee comprises the heads of all the intelligence services that collate and sift intelligence for the state and the Cabinet and identify potential threats to national security. The proposed legislation would remove the committee’s role in setting intelligence priorities; require all intelligence ‘taskings’ to be initiated by the Minister or, if they come from the President, the Cabinet or its security cluster, to be routed through the Minister; and locate the committee in the Minister’s office. The Bill would reduce the head of the committee, currently a civil servant whose powers balanced those of the Minister, to a functionary reporting to the Minister.

The issue should be how to ensure that the intelligence services remained above politics. However, in terms of the draft Bill, they would be brought more tightly under the direct control of a politician.

The non-democratic tenor of politics

There is a perception among some NGOs and also analysts that while elections may occur every four years, politics have acquired a non-democratic tenor. Dr Nicola de Jager, political scientist at the University of Stellenbosch, writes:

17. <http://mg.co.za/article/2011-12-02-arms-deal-bell-was-deaf-to-bribes-and-lost-out>;
<http://mg.co.za/specialreport/the-arms-deal>; http://www.armsdeal-vpo.co.za/articles04/told_you_so.html;
Paul Holden and Hennie van Vuuren, *The Devil in the Detail: How the Arms Deal Changed Everything* (Jonathan Ball, Johannesburg, 2011); Andrew Feinstein, *After the Party: Corruption, the ANC and South Africa’s Uncertain Future* (Verso, London, 2009).

Political analysts have begun to observe two trends within South Africa's democracy. The first, political centralisation, is evident in a centralising South African government, with some pointing to the restructured presidency and some to South Africa's dominant party system. The second trend is a weakening of agents of accountability: political and civil society. Analysts have investigated the relationship between the state and civil society, highlighting that the government appears to be constraining the operating space of civil society organisations (CSOs) as agents of accountability, or so-called 'watch-dogs', while others point to the decreasing effective competition from opposition parties ...

If you are critical of the ANC-led government or its officials then you will be branded as disloyal to South Africa and the future of South Africa ... Consequently, there is little room for the voices of opposition parties, since they are portrayed as 'forces opposed to transformation'. Opposition is further constrained by the very real threat of being branded as disloyal to South Africa if one is critical of the ANC-led government.¹⁸

Mark Heywood, Executive Director of civil rights group Section 27, refers in an article in the *Sunday Times* of 13 October 2013 to several incidents of threats, veiled threats and burglaries targeting civil NGOs.¹⁹ Among those targeted are the anti-fracking TKAG (Treasure the Karoo Action Group), Section 27, the NUMSA trade union and the trade union federation Cosatu. In his view, the incidence is also growing. He states in an article in the *Sunday Times* of 13 October 2013:

These incidents coalesce to create a climate in which some legitimate civil society organizations begin to fear that they are being watched unlawfully and may be targeted for dirty tricks. These organizations are pro-poor and do all they can to support the government's delivery of its constitutional obligations. But they are also independent and vociferously critical when necessary and they mobilise people to stand up for their constitutional rights. There is once again an assumption that phones are tapped. And there is a lurking fear that things could get worse.

Hennie van Vuuren, the former Director of the Cape Town office of the Institute for Security Studies, describes it as follows:²⁰

Researching the Mdluli saga, I was struck by the fact that some of the country's highest-ranking current and former police chiefs were afraid to speak on their

18. http://www.kas.de/wf/doc/kas_10560-1522-2-30.pdf?070328103113, pp. 15, 25.

19. For similar conduct under President Zuma's predecessor, Thabo Mbeki, see William Mervin Gumede, *Thabo Mbeki and the Battle for the Soul of the ANC* (Zebra Press, Cape Town, 2005), pp. 298-299.

20. <http://mg.co.za/article/2012-08-17-00-zuma-why-were-not-laughing-any-more>.

cellphones. They, like Julius Malema, answer their phones with the rhetorical “Hello, Mr Mdluli”. Are top cops really that afraid a criminal network controls police intelligence? And this under the noses of the minister of police, minister of state security and the president?

What is certain is that a climate of fear grips politics in South Africa and it is driven by the securocrats. The Protection of State Information Bill (the ‘Secrecy Bill’) and its ugly twin, the draft General Intelligence Amendment Bill, will block the free flow of information, protect the corrupt and monitor citizens’ email, Mxit, Facebook, Twitter and Skype communication.

Consider, too, the sinister way the Mail & Guardian’s editor and senior members of the M&G Centre for Investigative Journalism were made to report to the police three weeks ago, in what appears to be a pre-arrest process. This foreplay to possible criminal sanction is all because of an exposé linking presidential spokesperson Mac Maharaj – a public servant – to corruption. Did Maharaj consult his boss before pressing charges? Is the intention to charge investigative journalists, or to scare them? This is far too much like the harassment suffered by Sunday Times journalist Mzilikazi wa Afrika and others last year.

Other attempts at intimidation happen, but nobody can pin the blame on the state.

Earlier this year, Constitutional Court judge Sisi Khampepe and Advocate Muzi Sikhakhane’s homes were burgled and their laptops stolen. In the case of Sikhakhane (who also acts for Julius Malema), one of the documents stolen was an affidavit by Tokyo Sexwale requesting a probe into Richard Mdluli’s alleged abuse of state resources.

One should be circumspect about such allegations. This is a country with much crime. Yet, in the past 18 months, my own office was broken into twice, late at night, using the same cat-burglar method of entry. The first time, my external hard-drive (containing a manuscript on the arms deal) was stolen. The second time, the visitors took nothing because the hard drive was stored elsewhere (and for the record, I am not sitting on some smoking gun). All other shiny objects were left untouched. It may be ordinary crime; it may be coincidence.

Far more worrying is the alleged suicide of the secretary of the commission of inquiry into the arms deal, advocate Mvuseni Ngubane, in May.

On the same day he met the president, he climbed into his car and shot himself. He had no known financial or personal problems. Whatever the reason for his death, it has delayed the commission. It is unlikely to start its public deliberations before the ANC’s Manguang conference and will probably

conclude only after the 2014 elections – a happy coincidence for corrupt businesspeople, arms dealers and politicians alike.

Retired Archbishop Desmond Tutu, a fervent anti-apartheid activist and Nobel Peace Prize winner, indicated in May 2013 that he would “very sadly not be able to vote for the ANC after the way things have gone”. As reasons, he referred to pervasive state corruption, mismanagement and the intimidation of political opponents.

Political killings and democratic decline in South Africa²¹

Political intimidation in South Africa also occurs in the form of political assassinations. At least 60 political assassinations have occurred in South Africa in the past eight years. In August 2013, Raymond Suttner, a lawyer and honorary professor at Witwatersrand University, as well as a former ANC activist and political prisoner, stated:

(W)holesale assassinations have become a regularised way of deciding on leadership and access to wealth within the ANC and its allies.²²

Motives for the political killings have included the silencing of whistleblowers revealing corruption in the ANC or civil service, the targeting of political opponents, or competition for positions in the ANC or civil service that provide access to public funds and cash from firms eager to buy political influence.

More than 90 per cent of the hitmen or those who ordered them are still walking free. A few provincial cabinet members and senior ANC officials have been suspected or involved in such killings in Northwest Province, KwaZulu Natal, Free State and Mpumalanga.

Just before the Mangaung conference of the ANC in 2012, Obuta Chika, a district secretary of the ANC in Northwest Province, was shot in the driveway of his house. In February 2013, China Dodovu, the provincial ANC cabinet member for local government, was arrested as the person possibly giving the order for the killing. The former Mayor of Rustenburg and his bodyguard was sentenced in 2012 for the assassination of ANC Councillor Moss Phakoe. According to a forensic report obtained by *City Press* newspaper, many other local politicians may have been involved too.

However, witnesses fear retribution and also do not know for certain whether networks in the police might be aligned with those ordering the killings.

21. <http://www.bdlive.co.za/opinion/columnists/2013/08/12/political-assassinations-how-the-anc-is-killing-its-own;>
<http://www.ft.com/intl/cms/s/0/b8a413ee-f855-11e2-92f0-00144feabdc0.html#axzz2dL5TbrWy;>
<http://thinkafricapress.com/south-africa/political-violence-south-africa-growing-pains-democracy-or-adolescence-anc.>

22. [http://raymondsuttner.com/2013/08/18/raymond-suttner-government-and-tripartite-alliance-no-pitch-at-marikana-memorial/.](http://raymondsuttner.com/2013/08/18/raymond-suttner-government-and-tripartite-alliance-no-pitch-at-marikana-memorial/)

Corrupt policemen and private security people, as well as assassins from neighbouring countries like Mozambique and Zimbabwe are used. Most victims are watched and shot. James Nkambule and other politicians who could have revealed tender corruption related to building projects for the World Cup 2011 were poisoned. The trend seems at present to be concentrated in northern provinces, and have an impact on politics. Mary de Haas, an independent security monitor, states that even experienced ANC cadres in KwaZulu-Natal dislike travelling to meetings at night for fear of being attacked.

Hennie van Vuuren, former Director of the Cape Town office of the Institute for Security Studies, describes the situation as follows:²³

In the shadows, formal and informal security networks are settling scores and doing the dirty work of those in power. Collusion between the people who have the guns and the people who have the money is infecting our politics.

According to British political scientist James Hamill,

*South Africa's ruling African National Congress party is beset by problems it is incapable of seriously addressing, far less resolving. The main question now is whether it will experience a dignified 'democratic decline' or a descent into Zanufication, whereby, like Zimbabwe's ZANU-PF, the liberation movement asserts its right to rule on the basis of history rather than the will of the people.*²⁴

23. <http://mg.co.za/article/2012-08-17-00-zuma-why-were-not-laughing-any-more>.

24. <http://www.worldpoliticsreview.com/articles/12437/south-africa-after-the-anc-part-i>.