ZUMA’S HYBRID REGIME AND THE RISE OF A NEW POLITICAL ORDER:
The implications for business and NGOs

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South African Monitor aims to assess and promote civil rights in general and minority rights in particular in South Africa. It provides reliable information on relevant events, analyses significant developments and signals new emerging trends.

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» Democracy and the legislature;
» Order, the judiciary and the rule of law;
» Group relations and group rights;
» Freedom of expression, privacy and the media;
» Socio-economic rights and obligations;
» The political risks to business.

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<td>ANC</td>
<td>African National Congress</td>
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<td>BEE</td>
<td>Black Economic Empowerment</td>
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<td>BITS</td>
<td>Bilateral Investment Treaties</td>
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<td>CASE</td>
<td>Community Agency for Social Enquiry</td>
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<td>CDU</td>
<td>Christian Democratic Party (Germany)</td>
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<tr>
<td>CIA</td>
<td>Central Intelligence Agency (United States of America)</td>
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<tr>
<td>COSATU</td>
<td>Congress of South African Trade Unions</td>
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<td>DA</td>
<td>Democratic Alliance</td>
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<td>DDR</td>
<td>German Democratic Republic</td>
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<tr>
<td>DP</td>
<td>Democratic Party</td>
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<tr>
<td>DTI</td>
<td>Department of Trade and Industry</td>
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<td>EFF</td>
<td>Economic Freedom Fighters</td>
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<td>ESKOM</td>
<td>Electricity Supply Commission</td>
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<td>EU</td>
<td>European Union</td>
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<td>FDI</td>
<td>Foreign Direct Investment</td>
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<td>FPB</td>
<td>Films and Publications Board</td>
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<td>GATS</td>
<td>General Agreement on Trade and Services</td>
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<td>GCI</td>
<td>Global Competitiveness Index</td>
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<tr>
<td>GCIS</td>
<td>Government Communications and Information Service</td>
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<tr>
<td>GDR</td>
<td>German Democratic Republic</td>
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<tr>
<td>ICASA</td>
<td>Independent Communication Authority of South Africa</td>
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<td>ISS</td>
<td>Institute for Security Studies</td>
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<td>JSC</td>
<td>Judicial Services Commission</td>
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<td>MDDA</td>
<td>Media Development and Diversity Agency</td>
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<td>MK</td>
<td>Umkhonto we Sizwe</td>
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<td>MP</td>
<td>Member of Parliament</td>
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<td>MPRDA</td>
<td>Mineral and Petroleum Resources Development Act, 2002</td>
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<td>NDP</td>
<td>National Development Plan</td>
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<td>NDR</td>
<td>National Democratic Revolution</td>
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<td>NECSA</td>
<td>Nuclear Energy Corporation of South Africa</td>
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<td>NGO</td>
<td>Non-governmental Organization</td>
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<td>NUMSA</td>
<td>National Union of Metalworkers of South Africa</td>
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<td>PPiB</td>
<td>Promotion and Protection of Investment Bill, 2013</td>
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<td>SABC</td>
<td>South African Broadcasting Corporation</td>
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<td>SACCi</td>
<td>South African Chamber of Commerce and Industry</td>
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<td>Abbreviation</td>
<td>Full Form</td>
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<td>SACP</td>
<td>South African Communist Party</td>
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<td>SAFRI</td>
<td>Southern Africa Initiative of German Business</td>
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<td>SAIRR</td>
<td>South African Institute for Race Relations</td>
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<td>SANEF</td>
<td>South African National Editors’ Forum</td>
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<td>SAPS</td>
<td>South African Police Service</td>
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<td>Supreme Court of Appeal</td>
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<td>Security Industry Alliance</td>
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<td>SPD</td>
<td>Social Democratic Party (Germany)</td>
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<td>SSA</td>
<td>State Security Agency</td>
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<td>UK</td>
<td>United Kingdom</td>
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<td>UN</td>
<td>United Nations</td>
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<td>US</td>
<td>United States of America</td>
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<td>WTO</td>
<td>World Trade Organisation</td>
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Zuma’s hybrid regime and the rise of a new political order:
The implications for business and NGOs

Executive summary

A new symbolic political order

New symbolic and political order: The liberal democratic constitutional order, built on the consensus between the African National Congress (ANC) of Nelson Mandela, business and the National Party of FW de Klerk in the mid-1990s, has effectively been replaced by a new political and symbolic order. By 2015, nine key dimensions have reached a critical mass and have combined to form a new political order under Jacob Zuma.

Hybrid regime: The first key dimension of the new order is a shift to a hybrid regime under Jacob Zuma’s ANC. The locus of politics has shifted from accountable democratic institutions to a field of power in which weak democratic institutions and non-democratic institutions interact.

Oligopoly of violence: The second key dimension is an oligopoly of violence instead of the state’s monopoly of violence. The ANC government does not consider a restoration of the security of citizens and businesses as a state priority. Elections still occur. However, intimidation, threats of violence, rehearsals for violence, violent protests, and even political assassinations form part of the new rules of the game and the incentive systems in dealing with political claims, counter-claims and contestation.

State rests on new coalitions: The third key dimension is a new, more volatile and fragmented basis of the state’s authority and power. The bureaucracy’s capacity remains limited and becomes less efficient in service delivery. In an effort to maintain or regain some control, the ANC government and its factions are reshaping the political order around different local deals, relationships and settlements. At present, the active realignment with traditional authorities is especially noticeable.

Shrinking social contract: The fourth key dimension is that the new political order also promotes a shrinking social contract. Both the scope and the nature of the relationship between the governing party and the diverse population have changed. This relationship now includes a narrower re-racialized politics and the authoritarian and ethnic dynamics in the ANC. It is a stratified and exclusivist project of nation-building, privileging some groups of citizens above others.

Links and mutual obligations between some groups and those in power, as well as patron-client relationships, dominate the understanding of rights and entitlements. Among key ANC constituencies and leaders, this new social contract supersedes the understanding of the South African state as rooted in citizenship, in impartial service delivery, in the Constitution, and in loyalty to other citizens.

Non-pluralist exclusion of opponents and minorities: The fifth key feature is a limited responsiveness as far as the claims or needs of political opposition groups and some smaller ethnic groups are concerned. This relationship with the diverse population differs from the inclusive non-racialism of the Mandela era. It also serves to legitimize government actions and to divert attention from failures in service delivery and government performance by scapegoat politics.

Symbolic de-Westernization: The sixth key dimension is the promotion of de-Westernization in the symbolic domain and also the political rules of the game. Nativist discourses and new combinations of Christianity and indigenous African religion are increasingly prominent in the domestic symbolic domain. However, as is visible in the xenophobic tensions and attacks, and ANC responses to it since 2008, the nativist discourse excludes not only indigenous Western and Asian Africans, but also foreign Africans and Asians.

Resource appropriation: The seventh key dimension of the new political order is a different conception of property rights and the conditions of wealth, which often clashes with the existing liberal Constitution. The selective economic empowerment of politically-connected actors and the politics of the belly increasingly aim at gaining access to and control over the socio-economic formations of some indigenous and foreign minority cultural groups. The nativist symbolic discourse interacts with this process and sometimes serves as its legitimization. Both greed and grievance interact.

Excluding other African models: The ANC government presents its approach as the sole approach to African liberation in South Africa, excluding or silencing other more inclusive, democratic, federal and social enterprise-based models of African liberation. Its shrinking social contract reinforces the limited and
Executive summary

partisan protection of citizens whose contributions would be needed for a successful model of African liberation. It also legitimizes scapegoat politics by government and non-government actors.

Pro-Russian and pro-Chinese foreign policy: The eighth key dimension is a foreign policy that clearly privileges Russia and China, while being neutral or less favourable to Western powers. In addition, an interventionist and developmental state and ANC-aligned business actors are much more evident in economic diplomacy and various forms of protectionism. Domestic short-term political priorities are prioritized above Western foreign direct investment.

Self-help initiatives and authority migration: The ninth key feature is the limited but robust evolution of capacity and self-help initiatives within cities, communities, and the private sector. This feature will involve authority migration and shape the new political order.

Between a modular and a mediated state: The new political order already constitutes an asymmetric modular state. Organizations and institutions that do not form part of the central state fulfil several state functions in different ways in some areas or communities. Although the ANC government theoretically has the capacity to fulfil at least some of these functions, it accepts this modular state as part of its governance model.

In some areas of South Africa, the dynamics of self-help initiatives and authority migration may in time evolve into a mediated state. In those zones, “rule of the intermediaries” will act as substitute for the rule of the central state. The government will accept this situation and try to align with these actors, not voluntary, but based on necessity.

Hybrid regime

This report finds that during the more than six years of Pres Jacob Zuma’s rule, South Africa has moved from a flawed democracy to a hybrid regime. This transformation is partly reflected in a major shift in the international media’s reportage on ANC rule since 1994.

New locus of politics: In South Africa’s hybrid regime, the incentive systems and the rules of the political game have changed. The locus of politics is not in the legislature or elections. The locus of politics has moved to a field of power where democratic and non-accountable actors and processes interact. The hybrid regime could remain in place for the next decade, irrespective of whether Zuma or another ANC president is in power.

One-party dominance and state capture: One non-accountable factor is the ANC as a ruling party after twenty-one years in a one-party-dominant state. It has a non-pluralist political culture. Through its policy of cadre deployment, it has captured most state institutions and watered down the separation of powers. State institutions are now largely politically partisan, and the arena of factional struggles.

Uneven electoral and economic playing fields: The ANC’s capture of the state has allowed the party to become as important a gatekeeper to power as elections, if not more important. It has expanded its hold on key constituencies and the market, also through selective patronage and crony capitalism. Both the electoral and the economic playing fields have been made uneven.

Limited participation: In elections there has been a marked decline in the registration and participation of eligible voters since 1994. In 2014, the ANC only attracted an estimated 35% of eligible voters’ support compared to 54% in 1994. High levels of emigration at least partly reflect the lack of responsiveness to citizens by the existing institutions. A high number of protests constitute forms of political competition aimed at gaining access to power and wealth outside elections. Unaccountable presidentialism: Another driver of the hybrid regime is an unaccountable presidentialism that has exceeded the constitutional bounds of the office. Pres Jacob Zuma has not been held accountable by his party or Parliament in a one-party-dominant state. The media and institutions like the Public Protector have been able to identify and admonish examples thereof. However, in the current regime, the democratic checks and balances have not been able to restrain the executive in this regard.

The securitization of politics: The securitization of politics has become a trend in the hybrid regime. A longstanding non-pluralist political culture in the ANC, combined with increased factional struggles over positions, access to resources and opportunities within the ANC and its allies, will reinforce this development. Suspicion and fear will set the tone in the inner circles of power in the next five years. To the thousands of tourists and business people visiting South Africa, this will not necessarily be visible.

Protests and assassinations: Politics in the hybrid regime has also acquired a non-democratic tenor. Even
Archbishop Emeritus Desmond Tutu has referred to ANC intimidation. Political protests and assassinations have become an institutionalised part of local political alternation.

**Opaque decision-making:** Opaque decision-making, linked to patron-client relations now permeate the executive and bureaucracy. The judiciary and media remain spaces of freedom, but are under pressure.

**Democratic decline:** The interaction of the abovementioned forces has created a distinctive hybrid regime. They have resulted in democratic decline and transformed the political rules of the game, institutions and incentive systems in South Africa. The beautiful landscapes, vibrant communities and business opportunities of South Africa are still present, but these dynamics will dominate daily politics in the next five years.

**Three drivers:** Unfortunately, three drivers will reinforce the dynamics of a hybrid regime and democratic decline in the next five years: they are intensified factional competition in the run-up to elections and the presidential succession; the further politicization of the security forces and securitization of politics to prop up presidential rule; as well as the weak economy and more limited state resources.

**Increased factional struggles:** The hybrid regime could remain relatively stable. However, factional struggles inside the ANC are likely to increase in the run-up to the 2016 local elections, the 2017 ANC leadership alternation and the 2019 general elections.

**Economic policy uncertainty:** Economic policy swings and delays due to the infighting between different factions seem likely in the next five years. Policy uncertainty will be experienced most by companies in sectors most exposed to the government’s political priorities or regulatory and licensing power. Minerals, energy, security, agriculture, telecoms and pharmaceuticals would be among these sectors.

**More state interventionism:** The ANC has proceeded with several regulations, policy initiatives, bills and laws regarding mining and energy, the security industry, affirmative action and empowerment issues, land, patents, and foreign investors in general. The common underlying policy in all of these is the same: they greatly increase the ANC government’s interventionist powers in the economy.

**Weaker property rights:** Planned and actual measures weaken property rights and reduce private-sector autonomy, which would strengthen the position of crony capitalists with links to ANC factions compared to other businesses.

**Looking for new resources:** The high levels of state debt and the needs of the ANC’s patronage networks will drive efforts to look for new sources of income, both domestically and internationally. The value of some state-run corporations, but also other assets or opportunities of which it should be the public custodian, could be capitalized or mortgaged. Beneficiation requirements may also be emphasized. Sometimes this will have a knock-on impact on existing government undertakings towards business.

**International ANC fundraising:** The search for new sources of income will coincide with an increased effort at economic diplomacy, both formal and informal. The diplomacy will be couched in the rhetoric of branding, using South Africa’s many and unquestioned opportunities. However, the actual results would at least partially strengthen the presidential and partisan ANC networks in the hybrid regime, rather than the South African state, communities and citizens as a whole.

**Integrity and reputational risks:** Factional struggles for scarce resources will drive efforts to increase state income through these measures and others, which may be more indirect and informal. Unaccountable presidentialism, local big men and patron-client networks may play a role in this regard. There are different business and legal codes of conduct in different jurisdictions; international business is advised to heed best practices regarding integrity risk and reputational risk.

**Favouritism to Russia and China:** The factional search for more resources in the hybrid regime could result in an increased dependency on foreign patrons like Russia, China or other political and business actors. The field of competitors and the importance of specific competitive advantages of business may change suddenly.

**Uneven service delivery:** The levels of visible state mismanagement and operational risk are likely to remain high or sometimes even rise. This state of affairs will continue to have an effect in many areas of service delivery, such as the security of citizens and farmers, electricity supply, water management, waste management, roads, education and postal services, and others that may arise. The impact will differ per province and locality, with pockets of adequate or good service delivery in provinces and local areas.
Based on the internal and external dynamics of the ANC government, if government interventions do not have the required effect, there is a risk that such a result would not trigger a reassessment of the intervention, but rather a stronger form of intervention.

**Labour unrest:** Factions within trade unions and trade unions will compete intensely with each other for members, networks, power, status and resources. As a result, labour unrest will be a major risk during the next five years. Due to the context in which it will be occurring, the potential politicization of disputes could be fast and assume militant forms.

**Unexpected shifts and high political risk:** Business will be exposed to diverse forms of political risk in the next five years, and political risk will be high in several sectors and provinces. Unexpected major shifts and unforeseen high-impact events are possible. This has already happened in various forms, including the sudden electricity crisis and the outburst of xenophobic attacks in the first half of 2015.

**Opportunity cost:** Many attractive business opportunities remain in South Africa. Businesses and NGOs with a high risk appetite will remain involved or become active in South Africa. However, due to the increased political risk of the hybrid regime, some actors will also consider the opportunity cost when comparing South Africa to other markets.

**Entrepreneurship training a priority:** Under the ANC government, parts of the education sector have become among the worst in the world, while the autonomy of others is threatened. International business may find it worthwhile to conduct corporate social responsibility projects that focus on entrepreneurship training and business education. If the projects involve cooperation between foreign and South African institutions of public education, strict criteria and monitoring to reinforce the remaining spaces of academic freedom are recommended in policy-relevant education and research. However, it is recommended that business and NGOs focus on projects involving private and community education institutions.

**Self-help initiatives and authority migration:** There is a limited but robust evolution of capacity and self-help initiatives within cities, communities, and the private sector. This trend will involve an authority migration over time which will shape the new political order. Business and NGOs are advised to identify potential partners and to use the opportunities involved.
Part I: “Time to ditch the ANC”?

A major change in foreign media reporting on the ANC.

There has been a major change in the tenor of media reports on ANC rule. In 1994, foreign media praised the coming to power of the ANC under Nelson Mandela. During the past few years, however, mainstream media in Europe and the United States (US) have become much more critical: before the May 2014 elections, on 3 May 2014, The Economist published a report entitled: “Time to ditch Mandela’s party”.

On 7 October 2013, The Economist already wrote:

The continent’s biggest democracies, South Africa and Nigeria, have not lately been a compelling advertisement for representative government. South Africa, ruled by the African National Congress since 1994, is in danger of becoming a de facto one-party state.

The American The Wall Street Journal on 6 September 2013 published an article entitled “South Africa’s Ruling ANC Loses Its Luster”. The Canadian Globe and Mail of 21 February 2014 stated: “After Mandela, South Africa has fallen into a leadership vacuum”. The German Zeit reported on 18 July 2013 that self-enrichment and nepotism in government is corroding the capabilities of state institutions. The legacy of Mandela is breaking up, stated German journals like Cicero on 4 October 2013.

“Shadowy arms trade catches up with President Zuma”, was another heading in the German Welt on 22 August 2013, covering the arms trade scandals. On 26 August 2013, the Financial Times in the United Kingdom (UK) wrote about the problem of political assassinations under the heading “Whistleblowers have to fear for their lives in a country where corruption runs deep”.

By 7 April 2015, Bloomberg reported: “Zuma rules supreme over South African elites engulfed by chaos”.

On 13 May 2015, the Financial Times had a heading: “Power failure: South Africa’s president is mired in a series of scandals that have tarnished his reputation and that of the ruling ANC”.


The shift in consciousness among policy-makers.

The shift in consciousness is not restricted to the international media. Policy think tanks also registered the shift. The German Social Democratic Party (SPD) is part of the coalition government of Chancellor Angela Merkel. Renate Tenbusch, the resident director of the SPD’s Friedrich Ebert Foundation office in Johannesburg, has called the ANC a crisis party. In 2014 she wrote that the Nkandla scandal involving Pres Jacob Zuma symbolized a political elite focused on self-enrichment.

The respect for South Africa and the political leadership that peacefully overcame the apartheid system has disappeared on a broad front. In the international and regional context South Africa always disillusions the expectations from a civil authority regarding human rights, multilateralism and development.

The Konrad Adenauer Foundation, which is linked to Merkel’s Christian Democratic Union (CDU), also has an office in Johannesburg. In an election report in 2014, its head, Dr Holger Dix, refers to the political intimidation by a provincial ANC minister who connected continued welfare grants for poor people to their vote for the ANC, which suggests “a flawed understanding of democracy”.


Ideas have consequences

The international media, some diplomats and some policy think tanks already acknowledge the new dynamics of a hybrid regime in South Africa. However, disincentives to acknowledging democratic decline still exist in some circles. Stephen Brown states that most sub-Saharan African countries are neither liberal democracies, nor fully authoritarian. Officials from Western governments that provide assistance to these hybrid regimes often become apologists for their lack of democracy. Rather than cogently enquiring why democracy promotion activities should not be a priority, such donor officials frequently claim either that their host country is more democratic than it actually is, or that it could not be any more democratic for the time being.⁶

The position of citizens and communities in African countries is much more vulnerable than that of policy-makers in far-away and largely sheltered neighbourhoods. To what degree will foreign policy-makers and international business – and academic analysts – acknowledge the new dynamics of the ANC’s hybrid regime in South Africa?

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Part II: A new symbolic political order

The broader symbolic and political order diverges sharply from the non-racial and conciliatory model of public discourse during Nelson Mandela’s presidency in the late 1990s. The accumulated impact of policy iterations and policy pivots during the Zuma presidency, as well as trends and events not directly controlled by the ANC, is that of a new symbolic political order.

One can analyse this new order by looking at the state in South Africa. In political theory, a state entails a population, a territory, a government with a monopoly of violence, and the capacity to enter into relations with other states. Alan Whaites also distinguishes between the political settlement between elites to end and prevent conflicts, the survival functions, like protective and enforcing security, law and generating revenue, and the expected functions by citizens.7

The new political order entails nine key dimensions. The first key dimension is that the form of government has shifted to a new hybrid regime under Jacob Zuma’s ANC. The locus of politics has shifted from accountable democratic institutions to a field of power in which weak democratic institutions and non-democratic institutions interact.8 This dimension is analysed in Parts III to V of this report, while the other eight dimensions are analysed below.

Weak fulfilment of the government’s security function

While the government enjoys external sovereignty in the international world, its monopoly of violence and ability to protect the population has shrunk markedly since 1994. Prof Susan Booyse stated after the xenophobic attacks in 2015:

The government has lost authority over vast tracks of South Africa, over the underworld where xenophobia, looting and parading mobs rule.9

Violent crime has shaped the new democracy, and is shaping the current hybrid regime. Since 1994, more than 400 000 people have died due to violent crime and hundreds of thousands have been raped in South Africa. Estimates on rape vary from between 140 and 1 200 incidents per day. Unfortunately, the value of human life is not considered high by everyone.10

Due to the uneven quality of policing and no independent audit of the data-gathering process of crime statistics, the statistics of crime of Interpol have often been much higher than the statistics of the South African Police Service (SAPS). Police statistics are widely regarded as underestimating the situation. Security researcher David Bruce concludes:

The implication is that the non-recording of crime is widespread within the SAPS and that this non-recording is responsible for much of the reduction in violent crime that has been reported in statistics over recent years. The implication of this, in turn, is that current crime statistics cannot be regarded as a reliable indicator of trends in crime, particularly in violent crime.11

Gareth Newham of the Institute for Security Studies (ISS) states:

Murders, sexual offences and robberies are the violent crimes that have the biggest impact on people’s lives and determine how safe people feel, particularly those who are poor or vulnerable. The number of people being murdered is growing at an alarming rate. The SAPS reported that 17 068 had been murdered in the most recent statistics available for 2013/2014. This is 1 459 more murder victims than what was recorded two years previously in 2011/2012.12

Over the past two years, the number of armed robberies has increased by over 18 000 cases, or 50 more attacks every day on average. This has contributed to the increase of over 1 700 more murders, with four more people killed every day on average than two years ago.13

According to thinkers from Hobbes to Whaites, the provision of security is one of the state’s survival functions, if not the key one. Yet, Zuma did not consider the above state of insecurity sufficiently important to address it in depth in his 2015 State of the Nation address.

8. The specific features and dynamics of this shift is analysed in later chapters.
When assessing the impact of violent crime on South Africa’s citizens, it is of major importance to take note of the psychological impact of fear. As noted by foreign psychologists visiting South Africa, in some parts of the country a continuous fear of violent crime is prevalent that usually only emerges in areas of armed conflict. The reason is that a violent incident can occur anywhere, and at any time, in a completely arbitrary, but brutal manner.14

In this regard, the fear of violent crime against oneself and loved ones in private spaces like homes plays an important role. The incidence of armed house robbery has doubled in the past decade. It involves hold-ups of a home's inhabitants, often entailing threats or actions involving assault, rape, torture and murder of children, the elderly, the disabled or women.

A global crime study, conducted by renowned global polling group Gallup in December 2012, showed that South Africa ranked second behind Venezuela on the list of countries where adults were afraid to walk alone at night on streets where they lived.15 The low government responsiveness to citizen demands regarding this issue is another dimension of the current political order.

Partisan protection in the ANC's hybrid regime?

Public trust in the police is deteriorating. Future Fact released a recent survey that reveals 75% of adult South Africans agree with the statement "a lot of police are criminals themselves". Furthermore, 44% think there is "no point" in reporting crime to the police, and one in three people said they are scared of the police. According to Amnesty International's report on South Africa for 2014/2015, allegations of torture against members of the SAPS and the Department of Correctional Services were rife.16

Gareth Newham of the ISS states:

The police cannot become more effective because the national commissioner of police was a political appointment and has no police experience. The system for a professional ethos has collapsed and lower level officials are excluded because they aren’t politically-aligned. If people are not seen as a part of the ruling factions and they are killed, there is little chance of an investigation.17

A particularly serious category of crime, is attacks on the small community of about 30 000 commercial farmers. These attacks are being perpetrated against members of all groups; however most of the victims of such attacks are Afrikaner farmers.

More than 3 300 farm attacks have been recorded in the period 1991 to 2014, with almost 2 000 farmers being killed.18 In the case of the killing of the English-speaking Peter Hackland in 2013, for example, 30 permanent workers and 40 temporary workers and their families also lost their source of livelihood as a result of the farmer's death.19

Few of these incidents involve large-scale theft. Usually arms, vehicles, mobile phones and cash are robbed, but combined with high levels of brutality, violence and even torture. Eileen de Jager and Roelien Schutte, two sisters who clean up crime scenes nationally, say that they have seen a definite increase in extreme violence in farm attacks. They are of the opinion that if the public were to realise what actually happens during such attacks, it would serve as a wake-up call that would mobilise communities. De Jager states:

Victims are often tortured before being dragged behind cars, or they are mutilated with boiling water. It is beyond insane.20

Even the organization Genocide Watch of US Prof Gregory Stanton voices concerns about farm attacks and murders.21 However the ANC refuses to categorise this as a priority crime, deserving of special police strategies to prevent such incidents.22 Food security has dropped in the past five years to include only 45.6% of the population, yet no priority attention is given to the key economic actors and vulnerable community.23
Several factors politicize the issue: the ANC’s National Democratic Revolution (NDR) policy, also regarding land possession and ownership; its cadre deployment, also in the police; its focus on own patronage rather than service delivery; its decreasing accountability to citizens and communities; and ANC factions that want the land of many farmers to be transferred to ANC cadres.

The Africanist, Prof Patrick Chabal, has noted in some cases elsewhere in Africa that rulers have allowed violent crime to restructure the political environment in its favour. Local “big men” have often played a role in this regard, sometimes with tacit support from national leaders. In the case of farm murders, also in labour unrest and political assassinations, the life stories of the victims often get lost in the bigger maelstrom of politics and predation.

The disappearance of non-racialism

At present, the economy has diverse socio-economic formations and wealth inequalities resembling France and the Francophone region in Africa combined, or the region of Mexico, the Caribbean islands, the United States, and French and Anglophone Canada combined. However, these vast differences in histories and wealth are compressed in a single country of an estimated 54 million people.

Among them, 6.17 million people of all population groups pay 99% of all personal income tax. Many, if not most of them, support opposition parties. The social welfare system they help to fund, support at least sixteen million people. The growing informal economy also constitutes a part of the arena of political competition.

In the case of South Africa, the public resources structure rests on a complex set of relationships between the ANC-controlled state, as well as emerging black elites in the ANC establishment and large private sector corporations. This set of relationships supports the ANC’s use of a number of policy levers. Relatives and allies of Pres Zuma, including Khulubuse Zuma and Duduzile Zuma, and ANC insiders like Cyril Ramaphosa and Tokyo Sexwale, participate and benefit to a disproportionate degree.

The American Christian Science Monitor of 10 July 2013 noticed that Black-empowerment schemes to redress apartheid’s injustices have been widely abused to enrich ANC-linked people. Mr Zuma’s relatives and pals have hugely benefited …

Historically, the ANC experienced tensions between professed non-racialism and racial nationalist convictions among its leaders and members. During its pre-1994 struggle, its international supporters often referred to its non-racial ideals and credentials. However, after 1994, the ANC also retained the racial classification system of the population used during the apartheid system. It has also gone further. Ineke van Kessel states:

An exclusive brand of African nationalism, also labelled “nativism”, seems set to become the new hegemonic discourse … Black nationalism may indeed provide the glue in securing the loyalty of the ANC’s main constituency, but in the process another cherished principle of the liberation struggle, – non-racialism – is increasingly under pressure … The demise of the rainbow ideology that guided the UDF is much regretted by coloured, white, and Indian former activists, but is hardly problematized by my African interviewees.

The political ecology of Black Economic Empowerment (BEE) is often represented as if it constitutes an advance for all members of one racial group. However, it has become a partisan political programme. During its execution in the hybrid regime, it is closely linked to the political friends and relatives of one political organization among others of the racial group, the ANC. BEE also provides a disincentive to members of the elite to defect and form an electoral alternative in the hybrid regime.

25. Carla van der Spuy, Farm Killings: Victims Tell Their Own Stories (Bargain Books, Cape Town, 2014) is an introduction to the life stories of the first category of victims. To date, newspaper reports are the best sources of information on victims in the other two categories, but more comprehensive studies are necessary.
According to Moeletsi Mbeki, a prominent economist and the brother of former Pres Thabo Mbeki, BEE has not benefited black business people, but in fact inflicted them a fatal blow. He states that those who have benefited are a small group of unproductive black capitalists with enormous political influence. Other black business people almost had no chance.30

This process, which started in the previous political order, will continue in the new one. Sometimes, it involves forms of pressure and intimidation. Loane Sharp, an economist, states:

*Behind closed doors, the Department of Trade and Industry (DTI) is secretly strong-arming South Africa’s finest companies to adopt new BEE regulations under the threat of damage to their reputations. The proposed fines and mandatory prison sentences are one thing; damage to a firm’s good name is something else entirely. In this hostile milieu, no business dares to be accused of racism, whatever the facts.*

But the government now consumes 32% of national income each year. As such, too many businesses are connected to the government’s sphere of economic influence to be able to ignore its directives. Banks, insurers, mobile networks, broadcasters, miners, vehicle manufacturers, construction companies, oil refineries, drug producers, transport companies … all of them are tied up with the government.31

International business will periodically encounter similar dilemmas.

### Zulufication in the ANC

Zuma’s presidency has clearly reinforced ethnic politics in the ANC. In the case of South Africa, no single ethnic group dominates numerically in the population of 54 million. Zulus constitute the biggest minority, about 22% of the population, with their core historical areas and kingdoms in the eastern KwaZulu-Natal province. The broader population has at least eleven major identity groups. None of these groups constitute a complete majority, according to South Africa’s Census 2011: Zulus 11.58 million; Xhosas 8.15 million; Northern Sothos 4.6 million; Tswana 4 million; Afrikaners about 2.6 million; English-speaking whites about 2 million; Coloureds who speak Afrikaans about 3.4 million and English about 1.2 million; Tsongas, Swazis, Vendas and Ndebeles all between 2.2 and 1.2 million people.32

All of these groups have distinctive cultures and languages, sometimes core areas of residence and concentration, and often histories of struggles against domination by other groups. Each group’s members have a spectrum of iterated and negotiated identities. Many of them also draw from cultural repertoires of fervent individualism, ruses and social mobility, based on the specific dynamics of their group and locality.33 Compared to some other identities available to citizens, the South African identity itself has often been a thin, fluid and contested national identity for purposes of political mobilization.

Zuma is an ethnic Zulu who also upholds some Zulu cultural traditions. He has more than twenty children and six wives, whom he had married in traditional weddings.

For many years before the ANC came to power in 1994, Nelson Mandela, an ethnic Xhosa, was the leader of the ANC.

The ANC always stressed its “non-tribalism”. However, Mbeki expanded the number of Xhosas in his cabinet during his tenure as president. During this time, most members of the ANC executive were Xhosas and Zulus speaking Nguni languages, and Zuma was the highest-ranking Zulu in the ANC. In 2006, Archbishop Emeritus Desmond Tutu warned about a potential “Nguni-ocracy” in the ANC.34

As a result of Zuma’s skills as a mobilizer since 1994, Zulus have come to form the strongest component (almost 25%) of the ANC’s increased membership.35 At the 2012 ANC conference, the ANC in KwaZulu-Natal voted through its own programme to become the national programme and the province took over half the seats on the ANC executive. Former KwaZulu-Natal premier, Zweli Mkhize, currently holds the key position as ANC treasurer general. KwaZulu-Natal as a province is also receiving more than its proportional share of major state projects.

This Zulu dominance is resented by representatives of other ethnic groups, resulting in growing rivalry.
between often ethnic-based networks. However, as the British historian R.W. Johnson remarked:

To many Zulus, supporting Zuma meant “taking back” the ANC – it was founded by a Zulu, John Dube, and Chief Albert Luthuli, also a Zulu, had led the anti-apartheid struggle in the Fifties. The Zulus had patiently put up with three successive Xhosa ANC leaders – Tambo, Mandela and Mbeki – and there was a strong feeling that “now is our time”.36

Zuma used to be the head of Counter-Intelligence of the ANC’s guerrilla army. He 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, Nathi Mthethwa as minister of Police, Dr Siyabonga Cwele as minister of Intelligence and Jeff Radebe as minister of Justice. In the cabinet of 2015, Zulu confidantes of Zuma include Knowledge Malusi Nkanyezi Gigaba as minister of Home Affairs, Nkosinathi Nhlleko as minister of Police, Jeff Radebe as minister in the Presidency and David Mahlobo as minister of State Security.37

The chance of future regional and ethnic-based political responses to Zuma’s privileging of KwaZulu-Natal and of Zulus in the ANC will remain strong. Some individual ANC supporters are also disillusioned by the extent of “tribalism” and nepotism in the current ANC. However, these processes now form a key part of the ANC’s positioning and alliances in the new order.

Coalitions with traditional authorities and local strongmen

The effective power of the state bureaucracy has decreased under the ANC government. The population has expanded by more than 20%, while the hybrid regime, cadre deployment and selective patronage have “eaten the state”. In addition, labour union allies have become weaker. Up to a third of South Africa’s population lives in areas where traditional authorities have become weaker. Up to a third of South Africa’s population lives in areas where traditional authorities have become weaker. In the case of traditional authorities, the ANC and especially Zuma potentially benefit in several ways. Zuma gains access to some of the moral authority of these leaders, while also extending the power of the ANC over them where possible. He increases the political order’s responsiveness to rural constituencies in order to offset the loss of support in some urban and middle-class black constituencies. He also strengthens the symbolic legitimacy of the hybrid regime in areas where the state’s actual penetration and especially its actual service delivery may be weak.41

It is still uncertain whether Zuma will also benefit materially from his alignment with traditional leaders. Parts of South Africa’s communally held rural land is also the richest in minerals. It was reported in 2014 that Zuma’s nephew, Inkosi Simpiwe Zuma, had launched a land claim targeting more than 60 farms in Impendle also the richest in minerals. It was reported in 2014 that Zuma’s nephew, Inkosi Simpiwe Zuma, had launched a land claim targeting more than 60 farms in Impendle. He has installed those he trusts in key positions of the security apparatus. In the cabinet of 2015, Zulu confidantes of Zuma include Knowledge Malusi Nkanyezi Gigaba as minister of Home Affairs, Nkosinathi Nhlleko as minister of Police, Jeff Radebe as minister in the Presidency and David Mahlobo as minister of State Security.37

As The Economist noticed on 2 May 2015,

When King Goodwill Zwelithini, the Zulu traditional head, made anti-foreigner remarks recently that whipped up attacks on black migrants, South African political leaders were loath to rebuke him (he claimed his words had been mistranslated). The response was similar when King Goodwill called homosexual relationships “rotten” a few years back.38

King Goodwill Zwelithini is one of ten traditional kings and one queen among the traditional leaders. He will receive R60 million this year from the state for the upkeep of his household: seven palaces, six wives and at least twenty-eight children.39 Groups like the Tembu, the Xhosa, the Mpondom and the Pedi also have kings, but they are only paid about R1 million a year. There are more than eight hundred senior traditional leaders and more than five thousand chiefs in the country who get much smaller salaries from the state.40

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New prominent sources of symbolic legitimation

Recourse to both Christian and indigenous African religions, which also enjoy support among urban
A symbolic domain of nativism and violent scapegoat politics

South Africa is a young state, just over a hundred years old, with shifting political group identities and territorial borders. It is currently experiencing its fourth political order since 1910. Its current nine provinces, with their distinctive landscapes and dynamics, are often grafted on previous political orders: African and European settler societies, Asian and Khoisan structures, the indigenous chiefdoms, Afrikaner republics, and Matabele and Zulu empires of more than five hundred years of history.

The position of different groups in this population is currently being recast. The social contract between the government and the diverse population is shrinking and becoming stratified. In the symbolic domain, the influence of a nativist mythology that creates new boundaries of the “nation” is quite high, compared to two decades ago. The formal democratic institutions, the neopatrimonial networks and the autocratic processes and practices of the hybrid regime are now combined in racially-focused and exclusivist nation-building projects. These projects differ from the inclusive non-racialism of the Mandela era. They are also employed to legitimize government actions and to divert attention from failures in service delivery and government performance. In the ANC’s competition for support, they also interact with and respond to the Afro-radicalism and economic nationalism promoted by the Economic Freedom Fighters (EFF) of Julius Malema.

Often these symbolic politics interact with the politics of the belly and the politics of patronage: nativist mythology is used to legitimize efforts to gain access and break up the socio-economic formations of some indigenous and foreign minority cultural groups.

Afrobarometer’s surveys show that a vast majority of South African citizens distrusts (black) foreigners, wishes to restrict their residence rights and prohibit the eventual acquisition of citizenship. The ANC reinforced or responded to some of these demands. The ANC’s secretary general, Gwede Mantashe, announced on

constituencies and leaders, have been used as additional sources to legitimize the ANC’s hold on power. On 5 May 2008, Zuma declared to an ANC rally in Khayelista:

*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.*


Previously he had said that “only those with ANC membership will go to heaven”. 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 citizens 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.*

Adam Ashforth, as well as Stephen Ellis and Gerrie ter Haar, identifies a potential legitimacy gap if many citizens who adhere to Christian or indigenous African religious views do not see the state acknowledging and protecting themselves against the profound threat posed by evil spirits.

Zuma is able to have recourse to this repertoire and that of the NDR to align with different constituencies. In this way, he can also gain access to some of the moral authority of traditional authorities, increase the political order’s responsiveness to such constituencies, and strengthen the symbolic legitimacy of the hybrid regime. Other discourses are also present, but a discourse of de-Westernization now dominates the symbolic domain.

12 April 2014 that the government would restrict small foreign-owned businesses from being opened in the country’s townships and rural areas, so as to create opportunities for South Africans. He added:

If you go to Soweto corner shops have been taken over by foreigners. We must do something about it. If you see all the malls here, who is in those malls? Who owns shops there? Why can’t our people pull their resources together and own business opportunities in their backyards?52

In January 2015, the minister of Small Business Development, Lindiwe Zulu, said that foreign business owners should share their business practices with locals if they wanted to live and trade in South Africa without fear of disturbance or violence.53

Amnesty International stated in its report on South Africa for 2014:

In September, the Supreme Court of Appeal (SCA) overturned a High Court ruling which had allowed in effect the forced closure of refugee-operated small businesses by police and municipal authorities under what was known as Operation Hard Stick. These closures had been accompanied by ill-treatment, abuses, displacement and destitution. The SCA ruled that both formally recognized refugees and asylum-seekers were entitled to apply for trading licences, particularly where the latter faced long delays in the final determination of their application for asylum.54

During 2014 there were numerous incidents involving threats and violence against refugees, asylum-seekers and migrants, with looting or destruction of hundreds of their small businesses and homes. In the first four months of the year incidents in seven provinces led to the displacement of over 1 600 people. In June, sustained attacks in the Mamelodi area near Pretoria and the slow response of the police led to the looting or destruction of some seventy-six Somali-owned shops, large-scale displacements, the death of one refugee and injuries to ten others. There was continuing concern at the failure of the government to protect the life and physical integrity of refugees and others in need of international protection.

On 20 March 2015, Goodwill Zwelithini, the Zulu king, told a cheering audience: “I won’t keep quiet when people who have no say are playing with this country. It is now time for us to have a say”. He added: “We must deal with our own lice. In our heads let’s take out the ants and leave them in the sun”. It is not clear what he meant by that. He said foreigners were all over South Africa and they were making the streets dirty. “We ask that immigrants must pack their bags and go back where they came from.”

Edward Zuma, the president’s son, supported Zwelithini’s appeal.55 These remarks triggered a series of xenophobic attacks that spread from KwaZulu-Natal to Gauteng province. Hundreds of foreigners were injured by mobs wielding machetes, bricks and firearms, and at least seven people were killed. In areas of Durban and Johannesburg, jubilant mobs drove over a thousand Somalis, Mozambicans, Zimbabweans and Pakistanis from their homes and small businesses. The international media published a photograph encapsulating the tragedy: a street vendor from Mozambique, Emmanuel Sithole, lay begging in vain for his life in a gutter as four men beat him and stabbed him in the heart with a long knife.56

Pres Jacob Zuma and his ANC rely on the Zulu king to stay in power in the province of KwaZulu-Natal. They did not condemn his comments. Nor did they follow up warnings of xenophobia, despite similar widespread killings in 2008. Prof Loren Landau, director of the African Centre for Migration and Society (ACMS) at the University of the Witwatersrand, explained the political dynamics involved:

Ward councillors, or some of them, are the only directly elected officials (the rest appear only on party lists). Although few citizens know their parliamentarians or local officials, councillors and those challenging them are familiar and known. With almost no budget or legislative authority, they are held responsible for problems they have little hope of resolving. Faced with perennial shortfalls of services, dwellings and jobs, local leadership has allowed and abetted the scapegoating and appropriation of foreign-owned shops, houses or goods. With new resources to distribute and a demon to blame, they come out winners. While low employment, poor services and political competition do not necessitate violence even

After the xenophobic attacks, sociologists Heribert Adam and Kogila Moodley wrote:

After two weeks of denial did the government acknowledge the emergency in response to business repercussions in the rest of Africa and the deteriorating image of the country abroad. In 2014, at the US-Africa Leaders Summit, former South African ambassador to the US Ebrahim Rasool declared South Africa “a moral superpower”, able to teach the world the way Nelson Mandela managed conflict resolution. In this view, liberated citizens cannot be xenophobic if the image of a glorified rainbow nation is to be salvaged. Admitting racism toward fellow Africans would deprive the ruling party of the moral high ground … As the ruling elite enriches itself by looting the state, the forgotten slum-dwellers claim their share by collecting the crumbs from the vulnerable amakwerekwere (foreigners). The derogatory label this time included not only other Africans, mainly Somalis, but Pakistani and Bangladeshi informal traders as well.58

After twenty years of underperforming one-party dominant rule, there is an undercurrent of volatile scapegoat politics in South Africa. Foreign Africans are excluded, marginalized or not recognized in the nativist discourse. So are indigenous Western and Asian Africans.

A shrinking social contract and indigenous cultural groups

The current political order consists of several numerical minority groups. After the xenophobic attacks of 2015, sociologists Heribert Adam and Kogila Moodley wrote:

Sensitive scholars such as Francis Nyamnjoh have already hinted that the “bizarre nativity game of exclusionary violence” could easily expand from “outsiders within” to longtime insiders, such as Indian South Africans, coloureds and whites. Retribalisation has been relatively successfully contained by the ANC and its ally, the South African Communist Party, in public discourse, but it nevertheless simmers under the surface.59

The editorial of the Mail and Guardian on 17 April 2015 also noted:

It would not take much for the groundswell against foreigners to be translated into violence against the Indian community, particularly in KwaZulu-Natal, where there is a long and dishonourable tradition of sectarian hatred. There is now an attempt to paint South Africans of Indian origin as “co-conspirators”, by suggesting that foreigners are using their warehouses or that “they are working together against us, the Zulu majority”.

Even Zuma turned to exclusionary identity politics to build his support base. “You must remember that a man called Jan van Riebeeck arrived here on 6 April 1652, and that was the start of the trouble in this country,” Zuma told a fundraising dinner in February 2015. “What followed were numerous struggles and wars and deaths and the seizure of land and the deprivation of the indigenous peoples’ political and economic power.” Van Riebeeck’s arrival “disrupted South Africa’s social cohesion, repressed people and caused wars”, he said. Zuma later claimed that the new settlers had stolen the land of other resident groups.

Several Afrikaner-led organizations saw Zuma’s remarks on history as a delegitimization of the position of the Afrikaners, also because of his silence about their contributions. Their ancestors, as in the case of America, came from European countries in the seventeenth century, settled in a region with several competing political orders, created Western republics, and saw themselves as a people rooted in Africa.60

Leaders of the organizations took note of a feature already noted by Raymond Suttner during the xenophobic attacks:

One of the striking features of current South African politics is the callousness that reigns, that harmful acts are perpetrated against some people while others remain unmoved.61

Their criticism of Zuma’s remarks also reflected a consciousness of the speech acts that had preceded the anti-Tutsi genocide in Rwanda in 1994, ironically the same year Mandela had become president of South Africa.62

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Zuma’s remarks, like that of the populist political opposition leader Julius Malema, reflected new and selective claims for belonging and entitlement versus exclusion under the rubric of “autochthony”. Given the history and pattern of socio-economic formations in South Africa, they increased the risk of a “sons of the soil” contestation between citizens, similar to such politics in some parts of Africa and Asia.63

Zuma’s remarks also emphasized that the consensus of the various group elites in 1994 had broken down by 2015. A new political order with a new exclusionary symbolic domain was being established. Sometimes, the institution of a new symbolic domain happened through grassroots action with intimidatory or violent dimensions, like the actions against statues of Afrikaner, English and Asian historical figures, including the Indian anti-imperialist politician Mahatma Gandhi.64 Sometimes, they took the form of the deadly xenophobic attacks.

Mostly, the new domain was pursued through speech acts and bureaucratic actions selectively aimed at those communities where most people supported political opposition parties and actors. There has been a focused effort, for example, to weaken the position of Afrikaans and Afrikaans speakers at certain schools and universities, and to increase the ANC government’s control over these institutions and their discourses.

This campaign has been noticeable, since many of these schools and universities were working well, while the government did not really undertake a concerted effort to rather improve the majority of the other less functional schools and universities in the country where education in general remains in crisis. As indicated in the World Economic Forum’s Global Competitiveness Report 2014-2015, South Africa’s overall position regarding the quality of education had slipped from a low 119th position in 2009 to one of 140th out of 144 countries by 2015.65

Not only Asian and Afrikaner groups have been affected by the new identity politics. Sentiments and actions hostile to South Africa’s Jewish community have emerged too.66 On 27 April 2015, the political economist Ismail Lagardien wrote on the ANC’s return to ethnic and racial politics:

In consultations over the past year or so, and visits to the province, I have found that there has been a significant anti-Indian sentiment, on the back of calls for the largest indigenous community, the Zulus, to take greater control of KwaZulu-Natal. In the provincial bureaucracy, “coloured” people are stripped of authority, and increasingly find themselves marginalised; if not formally and physically, they are ignored and their work is shoved aside.

Now turn to the Western Cape, where “coloured” workers – professionals like nurses and librarians – are losing their jobs because “there are too many coloureds” in the province. The official policy is that the province should reflect that “national” population/racial demographics. Turn to the capital, where the central government has essentially purged, by various means of coercion and consent, all “non-Africans” (mainly whites) from the bureaucracy, and effectively denuded the state of skills, experience and institutional memory developed over decades. It is in central government, too, where the state-party nexus will insist on getting the population/racial demographics right.

Of secondary consideration are matters of efficacy, capability and efficiency of service delivery. How far are we from loading people into trains, and shipping them off to locales where they meet racial criteria of the state-party nexus?67

The social contract between the government and the population is shrinking, and the identified population is also becoming stratified: citizens from certain groups are now clearly privileged by the government, while it marginalizes and delegitimizes the position of others. It is possible that the new symbolic domain could eventually also stratify black ethnic groups and result in new claims-making and contestation. People from the Venda and Tsonga minority cultures have already complained about being harassed or attacked by Nguni-speakers.68

International business and NGOs would ignore the stratified, ethnicized and racialized understandings of citizenship, rights and entitlements at their peril. Linked to the hybrid regime, they reflect a new symbolic and political domain that is far removed from that expressed in the formal, liberal, democratic Constitution.69

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Privileging Russia and China in foreign relations

In all these dimensions, there have been significant policy changes under Zuma. In entering into relations with other states, for example, the Zuma government has a foreign policy clearly privileging Russia and China. The policy towards Western powers is no longer as positive as during the Mandela presidency.

The nuclear deal with Russia in 2014 was one indicator in this regard. There are other ones. A satellite system, known as Project Condor, which was launched into orbit by Russia in December 2014, provides surveillance coverage of the entire African continent. The ANC government is seeking closer strategic ties with Russia on the basis of the integration of the Condor project with another satellite system being developed by Russia. The prospect also exists of the two governments cooperating in the arms market, challenging the position of other European arms manufacturers in Africa. As stated by Melber, the ANC, like similar ruling parties in Southern Africa, has “a symbiotic relationship with the state security apparatus (military, police, prisons, intelligence) and their leading officers”.

The ANC is establishing a Political School and Policy Institute at a town called Venterskroon, and decided to specifically cooperate with one of its allies during the Cold War and the pre-1990 struggle, the Chinese Communist Party, to do so. The ANC government also signed a deal with the Chinese government on cooperation related to internet infrastructure and cyber-security. This event occurred while the Chinese record on limiting citizens’ access to undesirable news from the outside and social media is widely criticized by Western powers.

South Africa’s private sector previously constituted a major part of its interaction with the broader world. Under Zuma, an interventionist and developmental state and ANC-aligned business actors are much more evident in the economy and also in economic diplomacy. As reflected in the cancellation of bilateral investment treaties, various forms of protectionism are emerging. Attracting Western foreign direct investment seems to be on the backburner compared to other foreign and domestic policy considerations.

The foreign policy focus also carries with it remnants of a paranoid and sometimes knee-jerk anti-US attitude. In September 2014 Kebby Maphatsoe, the deputy minister of Defence and Veterans, called Public Protector Thuli Madonsela a CIA agent because of her continued investigation of the Nkandla scandal involving Pres Jacob Zuma. The US ambassador was present and lodged an official complaint.

Peter Fabricius of the ISS commented:

[A]t least [Maphatsoe] did new members of the diplomatic corps a favour … Many diplomats still arrive in the country under the naïve impression that they are coming to serve in the land of Mandela, a rather idyllic rainbow nation in love with itself and the entire world. Maphatsoe’s crude suggestion … would have been a wake-up call, alerting them to the sort of ideological sentiment that still runs beneath the surface here, and sometimes emerges.

In early June 2015 the news broke that the hosting of the FIFA World Cup Soccer Tournament of 2010 in South Africa may have been obtained through a $10m bribe to FIFA officials. Nkosazana Dlamini-Zuma, the then foreign minister and currently the African Union chairperson, and Danny Jordaan, then the organizer and presently ANC mayor of the major Nelson Mandela Bay city, were among those allegedly involved. A similar response emerged from ANC circles. Peter Bruce, senior journalist at Business Day, wrote:

The government’s defensive reaction seems at least partly motivated by an improbable conspiracy theory that the arrests and warrants out for Fifa executives are an American plot to embarrass our new ally, President Vladimir Putin, and to take the shine off the Fifa World Cup in Russia in 2018, or to have the 2022 Qatar cup moved to the US. Mbula.md sounded plausible at times addressing the media on Wednesday, but repeatedly spoiled the effect by drifting off into incoherent but presumably revolutionary swirls at Imperialism.

The ANC government’s foreign policy often diversts from Western powers’ concerns regarding human rights and rule of law. On 15 June 2015, for example, the Sudanese president Omar Al-Bashir was allowed to leave South Africa, despite an International Criminal
A rise in self-help initiatives and authority migration

The neopatrimonial factions and networks in the hybrid regime privilege gaining exclusive access to resources and conspicuous consumption, rather than investment and non-partisan service delivery. Current state capabilities vary: the taxation structures of the Receiver of Revenue are highly-organized, while institutions like the parastatal Post Office, the national electricity supplier ESKOM, or the Department of Basic Education often contain large dysfunctional parts. There is a decline in or a limit to state capabilities in some areas including security, healthcare, education and, lately, energy.

Partly in response, there already is a limited but robust evolution of capacity within communities and subsystems of the state. Sometimes, these capacities are linked to organizations located in specific local governments, resulting also in some authority migration to such actors. For example, many of the local services of the Western Cape province, in general, currently controlled by the Democratic Alliance (DA), function better than most ANC-run municipalities in the Limpopo province. Cities like Cape Town exhibit an own foreign policy and governance. As has been mentioned above, sometimes these capacities are linked to organizations located in communities. Also in this case, authority migration occurs. Community courts and policing occur in several richer and poorer pro-ANC townships, also in the Western Cape. Among Cape Muslims, own institutions and even neighbourhood watches have played an important role since the 1990s. As discussed above, as Pres Zuma’s position has weakened and some black middle-class voters have considered not voting for the ANC, he has reinforced the position of traditional leaders. They often remain the gatekeepers to numerically strong local constituencies.

The predominantly Afrikaner-led Solidarity Movement has mobilized almost 300 000 members, especially in northern areas of South Africa, around a trade union. As a movement, it includes 18 organizations initiating self-help initiatives. These initiatives sometimes complement and at other times substitute state structures. The movement positions itself as a centre-right Christian democratic organization favouring forms of community federalism.

The movement’s member organizations include one of the fastest-growing civil rights groups in South Africa – AfriForum, founded in 2006, has reached a membership of more than 130 000 by 2015. It conducts court cases on constitutional, cultural and municipal issues of interest to its members or citizens in general.

The movement has also created a technical training facility, a business school based on a broader philosophy of lifelong learning, community radio stations, a social welfare service and campaigns where members help local municipalities to provide better services.

Sometimes, the non-state capacities are linked to actors in the private sector or certain rural areas, suburban neighbourhoods or towns. This trend is visible in the plethora of private security companies. An estimated 445 000 security guards are employed by the industry, which far outnumber the country’s 270 000 policemen. In addition, home schooling and private education initiatives, healthcare services, and energy production and distribution services have expanded considerably in past years.

On 15 June 2015, Judge President Dunstan Mlambo of the High Court in Pretoria ruled that the ANC government’s failure to arrest Al-Bashir was inconsistent with the South African Constitution, that the government was in contempt of court and should have arrested and detained Mr Bashir.

A new symbolic and political order

Court warrant for his arrest. The New York Times commented:

This could not have happened without the complicity of the South African government, which deserves international condemnation. The biggest losers are the innocent victims of Mr. Bashir’s cruel policies in Darfur who are still being denied justice. Members of the international court like South Africa are supposed to respect its warrants. The charges against Mr. Bashir include murder, acts of extermination and rape among other abuses in Darfur, where 300,000 people have been killed and 2.5 million displaced since 2003.

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Given the empowerment of individuals by communication and information technology, as well as trends towards prosumers in the renewable energy sectors of other countries, these trends are likely to continue. They will also provide opportunities for considerable innovation by business, but also by other organizations, communities, neighbourhoods and cities.

Key dimensions of the new symbolic and political order

By 2015, the consensus between different elites of the 1990s has disappeared. The liberal democratic constitutional order, built on the consensus between the ANC of Nelson Mandela, business and the National Party of FW de Klerk, has been replaced by a new political and symbolic order. Remnants of these older discourses remain, and some dynamics of the present were already present in the previous order of the Mandela and Mbeki presidencies. However, nine key dimensions have reached a critical mass and combined to form a new political order under Jacob Zuma.

The first key dimension of the new order is shift to a hybrid regime under Jacob Zuma’s ANC. The locus of politics has shifted from accountable democratic institutions to a field of power in which weak democratic institutions and non-democratic institutions interact.

The second key dimension is an oligopoly of violence that has emerged instead of the state’s monopoly of violence. The ANC government does not appear to consider a restoration of the security of citizens and businesses as a state priority. Elections still occur. However, intimidation, threats of violence, rehearsals for violence, violent protests, and even political assassinations form part of the rules of the game and the incentive systems in dealing with political claims, counter-claims and contestation.

The third key feature is a new more volatile and fragmented basis of the state’s authority and power. The bureaucracy’s capacity remains limited and becomes less efficient in service delivery, while the economy stagnates and selective patronage politics and the population expand simultaneously. In an effort to maintain or regain some control, the ANC government and its factions are reshaping the political order around different local deals, relationships and settlements. At present, the active realignment with traditional authorities is especially noticeable.

Currently or in future, these alignments may also involve... gang leaders in townships and squatter settlements, vigilante-type organisations, ethnically-based protection rackets, millenarian religious movements, transnational networks of extended family relations, organised crime or new forms of tribalism... They have the capacity to exert violence on a large scale against outsiders and the capacity to control violence within their respective strongholds.

The fourth key dimension is that the new political order also rests on a shrinking social contract. Both the scope and the nature of the relationship between the governing party and the diverse population have changed. This relationship now includes a narrower re-racialized politics and the authoritarian and ethnic dynamics in the ANC. It is a stratified and exclusivist project of nation-building, privileging some groups of citizens above others.

Mutual obligations between some groups and those in power, as well as patron-client relationships, now dominate the understanding of rights and entitlements. Among key ANC constituencies and leaders, this new social contract supersedes the understanding of the South African state as rooted in citizenship, impartial service delivery, in the Constitution, and in loyalty to other citizens.

The fifth key feature is a limited responsiveness and a non-pluralist approach as far as the claims or needs of political opposition groups and some smaller ethnic groups are concerned. This relationship with the diverse population differs from the inclusive non-racialism of the Mandela era. It also serves to legitimize government actions and to divert attention from failures in service delivery and government performance by scapegoat politics.

The sixth key dimension is the promotion of de-Westernization in the symbolic domain and also the political rules of the game. Nativist discourses and new combinations of Christianity and indigenous African


86. Volker Boege, Anne Brown, Kevin Clements and Anna Nolan, On Hybrid Political Orders and Emerging States (Berghof Research Centre, Berghof Handbook Dialogue 8, 2008).
religion are increasingly prominent in the domestic symbolic domain. However, as is visible in the xenophobic tensions and attacks, and ANC responses to it since 2008, the nativist discourse excludes not only indigenous Western and Asian Africans, but also foreign Africans and Asians.

The seventh key dimension of the new political order is a different conception of property rights and the conditions of wealth. The selective economic empowerment of politically-connected actors and the politics of the belly increasingly aim at gaining access to and control over the socio-economic formations of some indigenous and foreign minority cultural groups. The nativist symbolic discourse interacts with this process and sometimes serves as its legitimization.87 Both greed and grievance interact.

In the competition for support from similar constituencies, this ANC approach also interacts with and responds to the Afro-radicalism and economic nationalism promoted by the EFF party of Julius Malema.88 The ANC government presents its approach as the sole approach to African liberation in South Africa, excluding or silencing other more inclusive, democratic, federal and social enterprise-based models of African liberation. Its shrinking social contract reinforces the limited and partisan protection of citizens whose contributions would be needed for a successful model of African liberation. It also legitimizes scapegoat politics by government and non-government actors.

The eighth key dimension, also linked to Zuma’s search for reliable allies, is a foreign policy clearly privileging Russia and China, and less favourable to Western powers. In addition, an interventionist and developmental state and ANC-aligned business actors are much more evident in economic diplomacy and various forms of protectionism. Domestic short-term political priorities are prioritized above Western foreign direct investment. The current political order also enjoys a much more critical reception in Western media than for example the previous order under the Mandela presidency.

The ninth key feature is the limited but robust evolution of capacity and self-help initiatives within cities, communities, and the private sector. This feature will involve authority migration and shape the new political order. Where actors are perceived as powerful or effective, authority migration and the substitution of state services or service delivery failures will occur in time.

These dynamics of capacity building and authority migration will influence the incentives and preferences of citizens and communities. They already result in a situation where diverse and competing authority structures, sets of rules, and claims to power co-exist, overlap, and intertwine.89 Thus, resilient and fragile processes of state-reformation co-exist in the new order.90 So does the differentiated performance of core functions like security, but also of the expected state functions, with different expectations in different areas and communities of South Africa.

The new political order already constitutes an asymmetric modular state. Organizations and institutions that do not form part of the central state fulfil several state functions in different ways in some areas or communities. Although the ANC government theoretically has the capacity to fulfil at least some of these functions, it accepts this modular state as part of its governance model.

In some areas of South Africa, the dynamics of self-help initiatives and authority migration may in time evolve into a mediated state. In these zones, “rule of the intermediaries” will substitute the rule of the central state. The government will accept this situation and try to align with these actors, not voluntary, but based on necessity.91

87. This feature is explored in more depth in Part VII on The threat to property and investor rights.
Part III: The shift to a hybrid regime

From a flawed democracy to a hybrid regime

Roger Southall compares the record of the liberation movements of Southern Africa after coming to power in Zimbabwe, Namibia and South Africa. He concludes that even with the difficult legacies they inherited, their performance in power has been deeply disappointing. While they will survive organizationally, Southall states that their essence as progressive forces is dying.92

Samuel Issacharoff, Reiss professor of Constitutional Law at the New York University School of Law, also stated in 2013:

As the founding generation moved off the historic stage, however, and as less-broad-minded functionaries took the reins of power, the heroic ANC emerged as the head of an increasingly one-party state, with all the attendant capacity for antidemocratic abuse. South African democracy entered a period of what is termed “dominant party” democracy, a term that may simply connote the imminent collapse of real democratic contestation.93

In 1994, high hopes existed internationally for the new multiparty political order, with Nelson Mandela as its first president and Thabo Mbeki and FW de Klerk as its vice-presidents. By 2006, The Economist’s Democracy Index classified South Africa under Pres Thabo Mbeki as a flawed democracy, due to its political culture and the functioning of government.94 By 2014, after six years of rule by Pres Jacob Zuma and twenty years of ANC rule, the one-party-dominant state had transformed into a hybrid regime.95

In political science, a political regime is the particular set of institutions that govern a country, constitute the incentive systems and establish both the formal and informal rules of a political game.96 A hybrid regime can be many variants of institutional arrangements, due to the presence of both democratic and non-democratic processes and institutions.

In hybrid regimes, the locus of political power is not the legislature and elections, and democratic checks and balances on the executive are weak. The locus of politics shifts from accountable democratic institutions to a field of power in which weak democratic institutions and non-democratic institutions interact. New rules of the game and incentive systems dominate.

In the case of the ANC, the following non-democratic dynamics are active: the non-pluralist political culture of the ANC and the capture of state institutions by cadre deployment; the ruling party of a one-party-dominant state becoming the gatekeeper to power; a weaker separation of powers; personalised and unaccountable presidentialism; weak or neutralised checks on the executive and the uneven implementation of the rule of law to the president; selective patronage and corruption; and the increased securitization of politics.

Electoral politics still matter in South Africa, but they do so in a subservient role to the new institutional arrangement of the order that provides the electoral opportunities. Away from the daily lives of most citizens, these dynamics represent a distinctive political order: a hybrid regime. The political incentive systems, the rules of the game, and the field of power differ from that of democracies.

Three drivers will reinforce the dynamics of a hybrid regime and democratic decline in the next few years. The first driver is intensified factional competition for positions and access to state resources. The resources are scarcer due to years of unproductive and profligate spending, pervasive self-enrichment and patronage politics. In addition, the local elections in 2016 and the succession after Pres Zuma’s second term are approaching, and politicians are positioning themselves.

The second driver is the increased securitization of politics: local protests increasingly form part of intra-ANC struggles and local opposition politics, which increases the paranoia among incumbent ANC politicians at all levels. It also continuously draws in

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94. Economist, The world in 2007: Democracy Index 2006, p 3. The annual index looks at factors like electoral process and pluralism, civil liberties, free and fair competitive elections, the functioning of the government, and political culture.
the security cluster and politicized top of the security forces, which are committed to propping up Zuma and his dominant faction in the ANC. The institutions that could restrain the executive are weaker than in 1994.

The third driver is the economy, which is struggling. In previous years, the strength of the economy and built-up infrastructure provided a cushion for the ANC not to face the consequences of neopatrimonial policies. However, the neopatrimonial politics of the elites has “devoured” much of the state.

The extra reserves that would be needed to change again, this time into a truly democratic regime, are exhausted. According to academics like Prof Jannie Rossouw, the state may be heading for a fiscal cliff, which would entail a systemic crisis. Even if this is to be avoided through an unexpected windfall or safety rope, more intense factional infighting about the scarcer spoils is likely to prevail.

ANC intolerance of dissenting views

The Tripartite Alliance comprising the ANC, the much smaller South African Communist Party (SACP) and the trade union federation COSATU have won in five general elections in South Africa between 1994 and 2014. While the ANC participated in elections, its leadership’s rootedness in an armed struggle still permeated its political culture.

As The Economist concludes in its review of the study of the ANC in exile by the prominent scholar in African Studies, Prof Stephen Ellis,

The real message of Stephen Ellis’ history of the African National Congress (ANC) in exile — painfully and palpably obvious between the lines — is how the conspiratorial past affects the ruling party to the present day. It makes uncomfortable reading, for it goes some way towards explaining why President Jacob Zuma, a former head of the ANC’s intelligence service in exile, and his comrades now running South Africa find it so hard to embrace the notion that a diversity of opinion and tolerance of dissent must be at the heart of any functioning, decent democracy.96

William Gumede, Oppenheimer fellow at St Antony’s College, Oxford, and the biographer of former Pres Thabo Mbeki and Archbishop Emeritus Desmond Tutu, already noticed during Mbeki’s rule that the ANC’s political style in exile has become the dominant pattern of the ANC in government. The ANC’s approach was one of centralised decision-making, unquestioned loyalty, sycophancy, and no public criticism, as opposed to the open debate of a dynamic democracy.99

The ANC has repeatedly recommitted itself to a National Democratic Revolution (NDR) in South Africa. This has been the case at its national conferences at Mafikeng (1997), Stellenbosch (2002), Polokwane (2007) and Mangaung (2012). So has Pres Jacob Zuma.100

Anthea Jeffery of the South African Institute of Race Relations (SAIRR), a liberal think tank, is one of the foremost experts on the NDR. According to her, as a result of the NDR framework, the ANC sees itself as a national liberation movement responsible for implementing the NDR and uniquely entitled to rule.101 This approach is clear in ANC discourse.102 It often marginalizes or denies the contributions of the multiracial United Democratic Front,103 the predominantly Zulu Inkatha Freedom Party,104 liberals and reformists from all ethnic groups,105 and the Black Consciousness Movement106 to the struggle against different dimensions of minority rule.

A political scientist at the University of Stellenbosch in South Africa, Nicola de Jager writes:

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.107

This reflects the historical institutional dynamics of the party. The Dutch historian Ineke van Kessel states:

As in the 1980s, in my interviews over 2006-2008 I often encountered a profound distrust in pluralism.

98. http://www.economist.com/news/books-and-arts/21569372-how-conspiratorial-past-affects-present-day-good-guys-were-often-bad and
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As in the 1980s, in my interviews over 2006-2008 I often encountered a profound distrust in pluralism.
ANC officials and representatives often do not see a distinction between party and state and perceive the ANC as the sole legitimate locus of power. This legitimacy is derived from its past as the liberation movement that defeated apartheid... ANC politicians in Sekhukhuneland tend to view opposition as illegitimate. It is almost to have the Democratic Alliance in Cape Town, which is perceived as “a thing for whites”, in spite of the DA’s substantial Coloured support. However, in one’s own district, municipality or constituency, rival political parties such as the PAC and AZAPO ought to be silenced, side-lined or even “crushed”. The distinct historical traditions in different parts of South Africa have produced different understandings of the concept of democracy.

The ANC, as Jeffery identifies, does not regard itself to be bound by the Constitution of 1996. It considers the Constitution to be a tactical compromise to be changed as the balance of power shifts in favour of the ANC. Various constitutional provisions have in practice simply been disregarded. These include Parliament’s duty to hold the executive to account, the need for a new electoral system after 1999, and the prohibition of cadre deployment.

The NDR also means that the ANC has no principled commitment to key constitutional safeguards, including press freedom, an independent judiciary and property rights. After several years, this political culture and approach have transformed the multiparty democracy into a hybrid regime. The key message of Pres Zuma’s second inaugural address on 27 June 2014, was that during the next five years his government will focus on implementing the NDR, consisting of “radical socio-economic transformation policies and programmes over the next five years”.

ANC politics “eats the state”

The ANC is already widely in control of the state institutions, after a deliberate policy of cadre deployment in all centres of power. The party has captured state institutions, which have on many levels become partisan, rather than the impartial bureaucratic organizations of a democracy. Patronimial and legal-bureaucratic elements now co-exist in a neopatrimonial political system. Through its control thereof, the ANC is a source of jobs and careers. The ANC also mobilises and uses state resources, as well as access to business opportunities. As a result, it remains the best-funded political party and can counter electoral initiatives by opposition parties.

A hybrid regime also constitutes a different way of elite management. The ANC can use its capture of state institutions and state-based patronage to reward allies and punish opponents. It can also reinforce intra-elite unity, and contain potential defectors that may form viable opposition groups.

One-party-dominance, instrumental individual patron-client relations and more socially-based norms and practices of patronage permeate the captured state. They reproduce uncertainty about the role and behaviour of state agents. Neopatrimonial political dynamics also play a major role in Russia, the Balkans and several Asian and Latin-American states. However, particular African and South African historical drivers shape neopatrimonial politics in the ANC’s hybrid regime.

According to Tom Lodge, the ANC historian and political scientist, neopatrimonial practices have a long history within the ANC. They were restricted during its years in exile and began to resurface once the armed struggle was over. The party’s historical ties to criminal networks, pressures arising from the transition to majority rule, and contemporary electoral politics also played a role. Neopatrimonialism also reflected broader tendencies within South African political and economic life.

Susan Booysen, a political scientist at the University of the Witwatersrand, concludes that the ANC and central government have multiple plans to end corruption and mismanagement. They frequently issue statements in this regard and work on monitoring activities and redesigning state institutions. However, she also concludes that the ANC-in-government is the custodian of high levels of visible mismanagement and exploitation of state resources for personal benefit. Activities in the “dubious but legal” category are tolerated and emulated. There is little hesitation to pursue business interests through the state. The worsening corruption in South Africa is also reflected in its Transparency International ranking, which dropped...
The shift to a hybrid regime

The ANC used political power to gain economic clout, which its patrons and networks converted into more political power. That power was used to gain even more clout in the market.

It is well-resourced and ensures that it stays that way, if necessary through leveraging state resources and the movement acting as a business operative, often dressed in patriotism and empowerment. The ANC was the best-resourced party in South Africa. It seamlessly leveraged state power for financial deals – with the state and by the ANC benefactors. The ANC’s Chancellor House business operations, largely veiled from public scrutiny, dealt in mega-scoring business deals with the state. Chancellor House would help guarantee the ANC the resources to counter opposition advances, including electoral initiatives. 119

Many of the 6.17 million taxpayers paying an estimated 99% of personal tax in South Africa voted for opposition parties or abstained from voting. Still, the ANC also used their money to rebuild an uneven electoral playing field in the hybrid regime.

Intense factional competition

Especially since about 2011, the ANC has increasingly had to rely on its control of government and state institutions for support. This was due to the combined effect of the so-called liberation dividend becoming thin, compared to the lack of service delivery, more internal factional competition for power and positions, as well as many new young voters becoming disgruntled and supporting opposition parties.

As Booysen notes:

The greatest fragility, sabotaging the regeneration of ANC power, was in the interface of long-standing community observations of lack of accountability that combined with pervasive evidence of corruption. 120

Opportunism, careerism and pre-occupation with movement position and power – for what it can leverage in terms of state power – dominate many ANC operations. Talk about the need for containment was far more widespread than actual action to eliminate it. Action can stimulate reaction and trigger revenge, which leaders aiming at elected office want to avoid at all costs. Intra-ANC silences and “diplomacy” – whether on colleagues’ extravagances in employing state resources, being pre-occupied with lucrative business operations while in fulltime ANC and/or government employment – were often due to internal ANC positioning for future leadership …

Corruption, insufficient capacity and self-benefication over service frequently impeded the ANC’s rise to the achievement of full state power. Organisationally the ANC was a giant on porous legs, courtesy of a plethora of internal contests for position, privilege and influence over state resources, whether for personal or community gains. 121

Alexander Beresford, a specialist in African politics at the University of Leeds School of Politics and International Studies, talked to former cabinet ministers of the Nelson Mandela and Thabo Mbeki administrations, and current members of the party’s National Executive Committee (NEC). 122

Beresford’s paper points to what he prefers to call “gatekeeper politics”. This is something towards which he says the ANC has been leaning since the 1950s, but which started to assume its current proportions when the party took power in 1994, and is “exaggerated” in the Zuma regime.

At branch level, where it is widely talked about, he says the party is sometimes seen as “some sort of sordid pyramid scheme”. “It depends on the extent to which it [the ANC] can contain errant gatekeepers,” said Beresford. “If they can contain the internal politics, it can stand up.”

The interplay between money and power is complex, with each feeding the other, but Beresford told UJ students that ANC patronage has two core elements: the distribution of the spoils of power, such as control over developmental project jobs wielded by ANC councillors, and the phenomenon of crony capitalism, where closeness to the ANC provides access to market opportunities and tenders.

In both cases that makes those who guard the gates, whether to government money or to those in power, important – and makes the contest for the position fierce. “This allows us to understand the factional politics,” he said. “The struggle for who controls the gates is extremely intense.”

Former Pres Thabo Mbeki recently criticized Zuma, but acknowledged that self-enriching ANC cadres were already prominent during his own term in office.

There are members and supporters who deplore these dynamics, but they have limited influence. The factional struggles are also expected to increase in the run-up to local elections in 2016, the election of an ANC leader in 2017, and the general elections in 2019. The recent split in the ANC-aligned COSATU and the resulting competition between trade unions will reinforce factional tensions and struggles. They will also reinforce the dynamics of a hybrid regime.

Sometimes factional struggles have taken the form of intimidation or political assassinations, especially at some local and provincial levels. Raymond Suttner, honorary professor at the University of the Witwatersrand, as well as an ANC activist and former political prisoner, stated in August 2013:

(Wholesale assassinations have become a regularised way of deciding on leadership and access to wealth within the ANC and its allies. This is a time when lawlessness is widespread. Consequently one should have realistic expectations and recognise that these events are part of some years of repudiation of the values on which democratic South Africa was established. This period has seen the undermining of constitutionalism and the distinction between public and private wealth being blurred.

ANC funding troubles and the Russian nuclear deal

In South Africa, legislation currently ensures that no party is obliged to disclose who its corporate or private donors are. For nearly twenty years, the ANC had failed to introduce the legislation required to ensure transparency in party funding. Nevertheless, much is already known of the ANC’s organizational structure, culture and mechanisms particular to raising money.

Business Day editor Peter Bruce speculated in 2013 that ANC finances and bankruptcy would probably result in the party returning to its dependence on foreign funders, especially among non-Western powers.

The Russians will bail the party out of its debt – some say it is more than R1bn – and get big contracts in return. If they are nuclear it will mean offending the Chinese, who also want to build the plants (with technology licensed from the French), but as the (Kgalema) Motlanthe debacle may show, Zuma may already not be concerned about doing that.

In 2014, reports emerged that the ANC was broke. The ANC denied the reports. During the same period, news emerged of a mysterious, but major personal deal on a nuclear energy programme concluded in Russia between Russia’s Pres Vladimir Putin and Pres Jacob Zuma. It is reputed to be worth R1 trillion.

For Zuma the trip might have brought memories of his days of training in Soviet Russia. He was elected to the executive of the SACP in 1989, when it (the SACP) had decided “to build the DDR in Africa” after the fall of minority rule, but left the party in 1990. An affable politician of many parts, he also was a military intelligence head of the ANC before the fall of the Berlin Wall. Putin, a former KGB intelligence officer, and like Zuma a man expounding conservative family values, used the opportunity to strengthen Russia’s policy to enhance its position in Africa and extend its influence in South Africa.

The deal was in contrast with energy and economic policies, including the 1999 White Paper on Energy and the National Development Plan. As the Business Day journalist Gareth van Onselen commented:

... the amount involves about R1 trillion, ten times the size of the arms deal. Future generations will foot the bill. This deal should have been afforded more attention than the budget; for it is of a similar scale. Instead, it has been all but concluded behind closed doors. The ANC has no interest in running this deal through Parliament because it cannot even trust its own majority to credibly feign best democratic practice.

Such moments are critical. They are turning points in the internal dynamics of a decaying party. They

129. Christopher Andrew, The Mitrokhin Archive II: The KGB and the World (Penguin, London, 2005), p 469. Opinions differ on whether it was a tactical move or a change in view at the time.
represent the moment when the executive begins to abandon ostensible legitimacy, to ride roughshod over many institutions and decisions in the pursuit of unadulterated self-interest. One way or the other, the ANC’s political culture has spawned a new behaviour: a president above even his own party.\textsuperscript{133}

Unaccountable presidentialism constitutes a key force in the ANC’s hybrid regime.

Presidentialism and the executive

The ANC under Zuma has used a big cabinet to ensure the support of key constituencies and networks. In his second term after the 2014 elections, Zuma appointed 36 ministers and 37 deputy ministers.

Zuma runs the executive like a lottery. Only 12 members of the executive have retained their position over the course of his first five years. Since he was first elected, Zuma has overseen seven executive reshuffles — a staggering 101 changes. An environment like that negates stability and policy certainty and it trickles down, too. As of August 2013, 114 different directors-general served in either permanent or acting capacities since Zuma first came to office … he thrives in chaos; it is how he retains control. If you never know when you are going to be fired, that engenders deference and loyalty; certainly acquiescence before his will. But the consequences for service delivery are catastrophic. And it shows.\textsuperscript{134}

While the ANC’s top six officials are influential in Pres Zuma’s political decisions, on other decisions and appointments he is allegedly influenced by a “kitchen cabinet” of people mainly located outside official ANC party structures.\textsuperscript{135}

Party-state separation, cadre deployment and patronage

The ANC has adopted “democratic centralism” as a central policy; this means that the making of all policy decisions is concentrated in the NEC, the ANC’s highest decision-making body. This policy is not only indifferent to formal institutions and multiple centres of policy-making envisaged by the South African Constitution. In its execution, it is corroding the democratic checks and balances built into the Constitution.\textsuperscript{136}

The ANC pursues democratic centralism by a policy of cadre deployment. This policy entails placing party loyalists in “key centres” of power. The ANC conference in 1997 identified these centres of power as “the army, the police, the bureaucracy, intelligence structures, the judiciary [my cursivation], parastatals, and agencies such as regulatory bodies, the public broadcaster, the central bank and so on”. The 2007 ANC Polokwane conference, during which Jacob Zuma was elected as president of the ANC, added the “private sector”.

Cadre deployment has been used to quell dissent and to co-opt potential internal opposition from the ANC’s parliamentary caucus. In addition, the ANC and bureaucratic structures are permeated by informal, patron-client relationships that often stem from the struggle period, family and ethnic networks, spiritual advisers, and new business partnerships.\textsuperscript{137} Pres Zuma’s active participation in such relationships has also reinforced their role in the regime.

Informal relations may in theory be functional for formal institutions in the sense that they complement them or that they compensate for weak institutions. However, they reinforce several problems in the ANC’s hybrid regime: the neutralization of democratic checks and balances by cadre-related networks with a non-pluralist political culture; unaccountable presidentialism; opaque decision making and selective patronage in the party and state institutions; the uneven electoral playing field in a one-party-dominant state; and the gaps in the legitimacy of the hybrid regime due to weak protection of its citizens and communities as a whole.\textsuperscript{138}

In practice, patronage politics has resulted in the number of civil servants ballooning from a million in 1994 to more than three million in 2014. Salaries have also exceeded the inflation rate. In essence, the taxpayers are funding the ANC’s growing cadre-led patronage machine. The civil servant wage bill increased by 76% during the first four years of Zuma’s presidency.\textsuperscript{139}

In some areas that may affect political support in the short term, the ANC does provide good services, which

\textsuperscript{132} “Jacob Zuma’s secret nuke stitch-up”, Mail and Guardian, 26 September 2014; “Less Russia, more speed” (editorial), Financial Mail, 4 September 2014; “SA denies corruption in Russia’s nuclear deal”, Fin24, 1 October 2014. For tensions involving the executives of the South African Nuclear Energy Corporation (NECSA) and alleged payments of NECSA funds to the ANC, see http://mg.co.za/article/2015-02-27-energy-minister-shields-key-zuma-nuclear-ally.

\textsuperscript{133} http://www.bdlive.co.za/opinion/columnists/2014/09/26/tweet-of-the-week-radioactive-governance; http://www.bdlive.co.za/opinion/columnists/2015/06/10/“Jacob Zuma’s secret nuke stitch-up”, Mail and Guardian, 26 September 2014; “Less Russia, more speed” (editorial), Financial Mail, 4 September 2014; “SA denies corruption in Russia’s nuclear deal”, Fin24, 1 October 2014. For tensions involving the executives of the South African Nuclear Energy Corporation (NECSA) and alleged payments of NECSA funds to the ANC, see http://mg.co.za/article/2015-02-27-energy-minister-shields-key-zuma-nuclear-ally.

\textsuperscript{134} http://www.bdlive.co.za/opinion/columnists/2014/09/26/tweet-of-the-week-radioactive-governance; http://www.bdlive.co.za/opinion/columnists/2015/06/10/“Jacob Zuma’s secret nuke stitch-up”, Mail and Guardian, 26 September 2014; “Less Russia, more speed” (editorial), Financial Mail, 4 September 2014; “SA denies corruption in Russia’s nuclear deal”, Fin24, 1 October 2014. For tensions involving the executives of the South African Nuclear Energy Corporation (NECSA) and alleged payments of NECSA funds to the ANC, see http://mg.co.za/article/2015-02-27-energy-minister-shields-key-zuma-nuclear-ally.


also serves as a form of patronage. Housing for the poor has meant that one in five now lives in a state-provided house. Based on support from the financial services sector, and the redistribution of tax money from a small base of taxpayers, the state delivers pensions, child-support grants and disability payments to more than sixteen million people per month.\(^{140}\)

Van Kessel states that when it comes to social grants, the South African state functions as a bureaucratic state, dispensing its services to those who qualify and not only to ANC loyalists. When it comes to the allocation of housing, contracts and certainly recruitment for jobs, there is ample room for favouritism, but the social grants system seems largely immune from political interference.\(^{141}\) According to the World Bank, such an approach, combined with a redistributitional tax system, has lifted 3.6 million people out of poverty in the recent past.\(^{142}\)

The current model has a political effect: it reinforces citizens’ dependence on the ANC-ruled state. It is also increasingly difficult to sustain, due to the minority of taxpayers and rising state debt. With notable exceptions, like the raising of tax by the South African Revenue Service, even cabinet ministers admit that the broader ANC-controlled civil service provides very uneven service delivery.\(^{143}\) In the past months, the lives of citizens, business and state institutions have been disrupted by the consequences: several crises regarding postal services and water services, and the ESKOM power utility constantly on the verge of collapse.\(^{144}\)

### Reshaping markets and the democratic playing field

As the political scientist Kenneth Greene has demonstrated, where there has been a one-party-dominant system for several terms in office, the dominant party tends to politicize the government’s public resources. The party then uses them for partisan purposes. There is no external constraint in the form of possible alternation, and no internal constraint either. The bureaucracy is politically controlled through non-merit-based hiring, dismissal, demotion and promotion. This monopoly also reinforces the political dominance of the party.

According to Greene, public resources can be used for partisan purposes by appointing party supporters to senior positions in publicly-owned corporations. In various ways, public resources are transferred to the party: through politicized appointments in the bureaucracy to reward party supporters and punish party opponents; by privileging party-aligned businesses to contract with the state and publicly-owned corporations; by contracts for public works contracts and other forms of tenders, subsidies, advertising revenue and tax breaks to such entities.\(^{145}\)

As a result, the tools of repression and electoral fraud need not be relied on in a hybrid regime. People and enterprises soon learn that their prospects depend on their political connections.


Part 4

SA Monitor

The legislature, elections and violent politics

Part IV: The legislature, elections and violent politics

Weak separation of the executive and legislature

On 13 November 2014, opposition parliamentarians were criticizing the ANC’s refusal to let Zuma appear in Parliament to answer questions related to alleged irregularities when armed riot police entered. One opposition MP, who refused to heed the speaker's injunctions to stop calling Zuma a thief, was removed by the police. *Timeslive* reported: “President Zuma’s demand that ANC MPs use their numbers to crush opposition in Parliament is at the center of the chaos that erupted this week”. The liberal former editor of the *Rand Daily Mail*, Allister Sparks, commented: “This is outrageous. This is no longer democracy”.147

The event was one signal among many that the ANC’s dominance during five elections has eroded the checks on power created by the Constitution, also Parliament’s oversight role. 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 separation of powers.

Prof Raymond Suttner has summarized an account of a second event:

*On the evening of 12 February 2015 President Jacob Zuma presented his State of the Nation Address to a combined sitting of the National Assembly and the National Council of Provinces. Before the sitting began media and MPs complained that mobile phone signals had been blocked … MPs would not allow proceedings to begin until the signal was restored, which it was. When the president began his speech, EFF MPs rose repeatedly to ask questions on the basis of various rules of Parliament. The Speaker read prepared answers saying that the rules of Parliament did not cover their questions and observations and eventually, after repeated interruptions, EFF leader, Julius Malema and subsequently, deputy leader Floyd Shivambu were asked to leave the House.*

When they and another EFF MP who had asked questions refused to leave the Speaker asked the Parliamentary services to remove them and then also made a vaguely phrased reference to other security services.

The television feed then focused on the Speaker’s podium so that it was not possible for viewers to see what was happening at that point. Footage provided from mobile phones by eNCA reporter Paula Chowles amongst other showed the entry of men wearing white shirts who used considerable force to evict not only the MPs ordered to withdraw by the Speaker but all EFF MPs. Some EFF MPs fought back. A female MP, Reneilwe Mashabela, was badly injured and hospitalised for a broken jaw. Zuma was photographed laughing as these events unfolded.148

Strict enforcement of ANC party discipline against ANC MPs has also 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 rule.

The ANC’s 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’s NEC and replaced by another ANC cadre. The non-parliamentary wing of the ANC dominates the parliamentary wing.149

Unelected party functionaries thus set the national government’s policy priorities. The public officials subject to electoral accountability tend to be subordinated to unelected party functionaries.150

The legislature, elections and violent politics

Politics are pulled out of the elected legislature into the party and into processes that lie outside Parliament. Politicians do not need to comply with the same norms of transparency, participation and accountability.

The non-alternation of power in a hybrid regime

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 loss, coupled with a transfer of power. 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.

ANC statements and actions 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. This approach reflects the non-pluralist political culture described.

After the Nkandla scandal involving Pres Zuma, Prof Raymond Suttner, former ANC activist, stated:

*What is the weight of our constitution if we cannot hold Zuma and the many other mini-Zumas, proto-Number ones accountable? The ANC will be voted back into power. From what we can see, even if they were to ditch Zuma as too embarrassing there are many others who could come forward and play a similar role. The crisis may suggest a more profound phenomenon signifying our simultaneous disenfranchisement as a people. We have the vote but its effect has been neutralised.*

To some extent, such dynamics are visible in all communities in South Africa. Among the Afrikaner and English-speaking white communities, emigration has reached proportions of 10-15% or more, a percentage usually encountered in conflict zones. It constitutes the loss of hundreds of thousands of skilled professionals, productive business people and young families.

High numbers of black, Asian and so-called coloured professionals have also emigrated since 1994. For many, it was in response to the lack of security provided to citizens in the hybrid regime. Citizens from these groups also formed the backbone of protest voters and supporters of the multiracial main opposition party, the DA. Many self-help initiatives have emerged in several communities, because limited help is expected from the ANC-ruled state. For example, AfriForum, a civil rights movement for minorities, has expanded its membership from just more than 9 000 in January 2010 to more than 130 000 by June 2015.

However, others from largely black and poorer communities also feel excluded from existing forms of ANC patronage. Many of them turned to protests as a form of political participation, often in conjunction with voting support for the ANC. Data of the SAPS shows that there are four to five violent “anti-government” protests per day in South Africa. The Gauteng province alone had experienced more than five hundred protests since the beginning of 2014, of which over a hundred had turned violent. According to a research group, Municipal IQ, there has been a sharp increase in protest action over the past five years.

The protests combine with declining voter turnout and signal alternative ways of voicing disagreement. Often, as Beresford indicates, they also constitute political participation and competition within the ANC over access to positions, resources and opportunities. As such, they have become part of the politics of a hybrid regime.

The elections of 2014

Elections in South Africa have occurred within the context of a one-party dominant state for the past twenty years. Furthermore, pockets of citizens live comfortably, while the majority are relatively poor and a large percentage of the population is unemployed. Nicola de Jager, a political scientist at the University of Stellenbosch, states:

*In such an environment, the incumbent’s ability to create jobs, issue tenders, pay for advertisements, determine economic policy and otherwise influence the movement of resources is a pronounced advantage ... In SA, the ANC gains an important*
advantage between elections, as it has the lion’s share of public funds, access to private funding through party-owned businesses and reaps the rewards of cadre deployment within government. In this context, elections might be free, but declaring them to be fair becomes problematic.  

Moreover, efforts to use a combination of mobilization, patronage and intimidation usually proceed long before election monitors take to the field. The Community Agency for Social Enquiry (CASE) did field research into the voting of the poor before the 2014 elections. CASE’s research points to the increasingly transactional nature of voting in South Africa, where votes become a transaction currency: a means of buying goods and services from a political elite, and not just an expression of confidence in the inherent capabilities of a particular party or leader. 

According to Mohamed Motale, CASE’s director, the ANC uses the economic needs and anxieties of poor people to influence their voting patterns:

> The only lifeline that poor households have are social security grants and the services rendered to them by the Department of Social Development in collaboration with other departments, such as health and education. Notwithstanding how poorly they are managed and resourced, the roll out of these services keep poor households going … [R]ational behaviour under these perilous and precarious conditions means that people hold on to what they have and the best way of doing that is keeping the ANC in power. In this way, the ANC uses the economic needs and anxieties of poor people to influence their voting patterns.

CASE’s research shows that the ANC uses strategies that go beyond the charm offensive when engaging with the poor electorate that makes up its support base during campaigning periods. These strategies include providing poor households with inferior services thinly disguised as a caring government, intimidating members of opposing political parties and maintaining the support of poor workers by controlling worker politics through its alliance with COSATU.

It does this, in the short term, by engaging in disinformation, such as threatening to stop social security grants and linking government social security delivery to the provision of services by a political party. Government services are delivered to the poor in a manner that strengthens the ANC’s political party support.

The ANC also displays its power and strength in an intimidating manner using huge numbers of its supporters to induce a sense of fear and anxiety among the poor electorate. This is apart from engaging in direct acts of intimidation, such as controlling campaigning venues and organising marches to disrupt opposition political parties. These big brother bullying tactics target opposing political party supporters.

A hybrid regime resting on 35% of eligible voters?

The ANC gained the support of about 35% of the eligible voters in the 2014 national elections. The group who did not vote was the single biggest group, namely 43%. The shrinking base of actual voter support also reflects how the locus of politics has shifted from democratic institutions to the zone of interaction between democratic and non-democratic institutions of a hybrid regime. The elections now interact with the non-democratic institutions of the hybrid regime.

Among the 57% of eligible voters that did vote, the ANC won decisively with 62.2% of the national vote. The largest opposition party, the liberal DA, secured 22.2% of the vote. The newcomer, the socialist EFF, established itself as the third-largest political party nationally with 6.4% of the vote. The other 29 political parties that contested the national elections shared the remaining 9.2%.

Hertzberg comments:

> The turnout of registered voters in the 2014 elections was 73% … When the turnout is examined as a proportion of the eligible voting-age population turnout over 20 years, the figures confirm a decline in participation from 86% in 1994 to 72% in 1999 and 58% in 2004. Only in 2009 was there a slight rise to 60%, but this was again followed by a drop to 57% in the 2014 elections. It appears that there is an increasing number of eligible South African voters who do not cast a vote.

The legislature, elections and violent politics

During the elections, the ANC experienced setbacks in several bigger urban constituencies. According to estimates, more than 750 000 black voters did not vote for the ANC, but for the opposition DA.163 Most voters among ethnic constituencies like the Asians, Afrikaners, English-speaking whites and coloureds supported opposition parties.

However, the ANC used political mobilization and patronage in the populous and largely rural KwaZulu-Natal, Zuma’s ethnic and political base. Thus, it could compensate for some losses in urban areas.164 During the campaign, the KwaZulu-Natal Member of the Executive Council, Meshack Radebe, stated that social grants are only for “ANC supporters”.165

Actual physical violence was not widespread enough to have significantly influenced the outcome of the national elections, but it made a difference at local levels. In the six months leading up to the election on 7 May 2014, 76 incidents of election-related violence had taken place. Of these, two-thirds turned violent. Where the political affiliation of perpetrators was known, the main perpetrating party was the ANC (52%), followed by the EFF (26%).166

Political violence could also escalate during the 2016 local government elections. For many local politicians and officials, their government salaries and access to state resources constitute the main route out of poverty. To date, most political assassinations have tended to be at local levels.

A split in the Tripartite Alliance

On 9 November 2014, the National Union of Metalworkers of South Africa (NUMSA) was expelled from the ruling alliance’s COSATU federation of trade unions. The COSATU executive voted to expel NUMSA. Ostensibly, the reason was that it had contravened COSATU’s rules.167 In March 2015, it also expelled Zwelinzima Vavi, the COSATU general secretary.

NUMSA was the largest of nineteen COSATU affiliates, and the split marked the biggest split in the ANC-led Tripartite Alliance since 1994. NUMSA took the unprecedented decision not to endorse the ANC ahead of the May 2014 elections. It also called on Zuma to step down over a scandal involving R246 million of taxpayers’ money spent on his private Nkandla homestead.

The split reflected the increased hold of the ANC on COSATU, the strength of the pro-Zuma faction, and broader factionalism in the ANC and labour domain. However, once two million members-strong, COSATU now faces a split as six more affiliates protest Vavi’s dismissal. The pro-Zuma candidate lost during the election in June 2015 of a new NUMSA leader.168

Traditionally, the COSATU affiliates have been an important source of funding and voter mobilisation for the ANC, since they have members, money and organizers. The event will reinforce the factional struggles and militancy in the labour field, which is closely linked to the competition over access to posts, resources and opportunities. It could also add to political pressure on the ANC in the run-up to the 2016 local elections.169

The non-democratic tenor of politics

There is a perception among some analysts and NGOs that while elections may occur every four years, politics have acquired a non-democratic tenor. Henning Melber of the Dag Hammarskjöld Foundation writes with reference to the government in South Africa, but also in Angola, Mozambique, Namibia and Zimbabwe:

The form of democracy practised has been unable to dislodge the liberation parties in any of these countries. Instead, they have formed dominant-party-systems based on a de facto one-party rule. A key feature determining the political culture in all these states in various degrees is the consistent use of structural violence to repress and disenfranchise political opponents in order to retain power.170

Melber sees a lack of checks and balances, practices of exclusion and rule by law (as law of the rulers) instead of rule of law, and control over agencies supposedly

167. See several articles of Terry Bell on “Terror of elections”, Fin24, 14 November 2014.
tasked to act independently from the governing bodies and political authorities as among the manifestations of structurally embedded violence under these parties.

Their equation that the party is the government and the government is the state translates into a specific form of authoritarian rule.\(^{171}\)

Karl von Holdt, director of the Society, Work and Development Institute at the University of the Witwatersrand, concludes that three forms of intra-elite conflict occur.\(^{172}\) The first is the struggle for factional control over the coercive instruments of the state, covered in Part IV. The second form is local protests and violent struggles, often related to intra-elite contests over access to positions and resources. The third form is political assassinations.

Mark Heywood, executive director of the civil rights group Section 27, refers in an article that appeared in the \textit{Sunday Times} of 13 October 2013 to several incidents of threats, veiled threats and burglaries targeting civil NGOs.\(^{173}\) A report by the NGO Right2Know in 2015 details cases of surveillance and harassment of academics, unionists and community activists.\(^{174}\) Hennie van Vuuren, the former director of the Cape Town office of the ISS, describes the context as follows:

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 cell phones … 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 …

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 businessmen, arms dealers and politicians alike.\(^{175}\)

Archbishop Emeritus Desmond Tutu, a fervent anti-apartheid activist and Nobel Peace Prize laureate, 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.\(^{176}\)

Political assassinations in a hybrid regime

Political intimidation also occurs in the form of political assassinations.\(^{177}\) There have been more than fifty political assassinations between 2007 and 2012. More than 80% of the hitmen or those who ordered them are still walking around free.\(^{178}\) In August 2013, Raymond Suttner, a lawyer and honorary professor at Witwatersrand University, as well as a former ANC


\(^{173}\) For similar conduct under Pres Zuma’s predecessor, Thabo Mbeki, see William Mervyn Gurnee, Thabo Mbeki and the Battle for the Soul of the ANC (Zebra Press, Cape Town, 2005), pp 298-299.

\(^{174}\) http://www.daily Maverick.co.za/article/2015-04-29-right2know-intelligence-agencies-harass-political-activists-and-civic-organisations/#.VUC_nZUcTIW.

\(^{175}\) http://mg.co.za/article/2012-08-17-00-zuma-why-were-not-laughing-any-more.

\(^{176}\) “Tutu: I will not be able to vote for the ANC”, Mail and Guardian, 10 May 2013.

\(^{177}\) “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 businessmen, arms dealers and politicians alike.”

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.¹⁷⁹

In November 2014 alone, an ANC councillor was shot dead in Cape Town and COSATU reported the body of one of its regional chairpersons was found floating in a dam. Andile Lili, of the Ses’khona People’s Rights Movement, was shot outside his home in Khayelitsha after his organization’s standoff with the ANC.

Motives for other 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.¹⁸⁰

A few provincial cabinet members and senior ANC officials have been suspected of 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.

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 sixteen other politicians who could have revealed tender corruption related to building projects for the FIFA Soccer World Cup Tournament of 2010 were killed, Nkambule by poisoning. No one has been prosecuted.

Gauteng-based ANC youth leader Kabelo Matsepe in March 2015 reported to the police a case of housebreaking where he found “two bullets” on top of a table in his apartment and a note reading: “stay away from Mpumalanga”. His personal computers, an iPad phone and several documents had been removed from his apartment. He said that he suspected the threat was “linked to sensitive documents exposing corruption in Mpumalanga that some political leaders have been trying to get from him”.¹⁸¹

The trend seems at present to be largely 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 ISS, describes the situation as follows:

> 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.¹⁸²

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¹⁸². http://mg.co.za/article/2012-08-17-00-zuma-why-were-not-laughing-any-more.
Part V: The politics of disorder and pressures on the judiciary

Decreased separation of powers

The separation of powers in a democracy can only work if the impartiality and competence of the judiciary, police and prosecuting services are ensured. In South Africa’s hybrid regime, the separation of powers has been decreased, also by cadre deployment and informal patron-client relations, sometimes in the criminal domain. There is strong protection of the ruling elite, but the hybrid regime provides a weak and uneven protection of citizens and communities against traumatic violent crime. A serious emerging trend is the apparent withholding of proper protection of citizens and communities that are not considered to be part of the ruling faction.

Zuma and the arms scandal

South Africa has a formal conventional economy, which has become strongly entangled with the ANC political elites. However, there also is an informal economy, part of which is dominated by crime syndicates with links to politicians and security agencies. As in countries like Mexico and Colombia, these two domains co-exist in the same political system.183

Historically, the legal and illegal domains are also interlinked. In the case of the ruling ANC, partnerships of some cadres with drugs and smuggling crime syndicates during the years of the political underground and exile have continued after 1994. A former Mandrax specialist became a business partner of Billy Masethla, former chief of the National Intelligence Agency and now a Zuma loyalist.184 The ANC’s Polokwane conference in 2008 which brought Jacob Zuma, a head of ANC intelligence during the underground years, to power, was also attended by Zuma confidante Mo Shaik, later head of the South African Secret Service. Shaik, currently head of the Development Bank of Southern Africa’s international division, was at the time accompanied by syndicate leader Cyril Beeka, who gave him the lift to Polokwane.185

A series of billion-dollar arms trade scandals reach to the inner core of the ANC and the foundation of the new political order, allegedly involving the then minister of Defence Joe Modise and later presidents Thabo Mbeki and Jacob Zuma. The ANC also held a 10% share in Nkobi Holdings, a company of which Zuma’s financial adviser Schabir Shaik, Mo Shaik’s brother, was a director. Nkobi was one of the companies that benefited from the multi-billion rand arms deal.186

All the details of the arms deal have not been unearthed yet, but much is already available in the public domain.187 In 2005 Schabir Shaik was convicted on three charges of corruption, fraud, and that he facilitated a bribe to Zuma from the French arms company Thomson-CSF, which changed its name to Thales. “In the end, due partly to the Zuma Spy Tapes, and partly to what was surely political pressure, those charges were dropped on the eve of the 2009 elections,” according to political analyst Stephen Grootes.

The Sunday Times reported in September 2014 that it had received transcripts of evidence given to a judge in a confidential arbitration hearing. The hearing involved Ajay Sooklal, who sat as an attorney with a watching brief for Thales through the Shaik trial. In his evidence, he claimed that he lobbied every person with influence over the process, in particular the then minister of Justice, Penuell Maduna. He also claimed that Thales bought Zuma virtually a new wardrobe in Paris. In 2000, Zuma accepted a R500 000 a year bribe from Sooklal to ensure that Thales got arms deal contracts. He signalled his acceptance by using the code words “Eiffel Tower” during a meeting with Alain Thetard, the then-head of Thales’ South African subsidiary Thint, stating “I see the Eiffel Tower lights are shining today.”

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).
One of the main defences by Shabir Shaik during his trial was that he provided the money to Zuma to help an old friend from the liberation struggle. Grootes states:

Judge Hilary Squires didn’t buy that argument (partly as a result of the fact that Zuma insisted on starting the construction of a home at a little place called Nkandla, when he had no expectation of a source of income unless Shaik was arranging a bribe. That part of the story isn’t quite over yet.) and so convicted Shaik ... It will surely be impossible for Zuma to claim he was not a willing participant. He spent the money and he wore the clothes. 188

When asked why an outright denial of the allegations was not declared in the presidency’s statement, Zuma’s spokesman Mac Maharaj said that the matter was before the Seriti Commission investigating the controversy. 189 Zuma is alleged to have brushed off allegations regarding the arms scandal with a statement that “corruption is only a crime in a ‘Western paradigm’”. 190

Six senior commission staff members withdrew from the Seriti Commission in September 2014 saying that they could no longer co-operate with an institution that “is so deeply compromised that its primary outcome will be to cover up”. 191

The unaccountable presidentialism is closely linked to nepopatrimonial dynamics at the core of the ANC and the hybrid regime. As Bratton and Van der Walle states, in neo-patrimonial orders parallel and unofficial structures may well hold more power and authority than the formal administration. 192

Zuma and the Nkandla scandal

More recently, the expensive refurbishment of Pres Zuma’s private residence at Nkandla has been condemned by the Public Protector, Thuli Madonsela. The Public Protector found that the president had violated the Executive Ethics Code and acted inconsistently with the Constitution:

The earliest concerns regarding opulent or excessive expenditure at the private residence of Pres Zuma were expressed on 04 December 2009 by the Mail and Guardian in an article titled “Zuma’s R65 million Nkandla splurge”. Apart from the release of a statement by the Presidency on 03 December 2009, denying that government was footing the bill, nothing seems to have been done by government to verify the 2009 allegations or attempt to arrest the costs which the article predicted would continue to rise.

It is also not unreasonable to expect that when news broke in December 2009 of alleged exorbitant amounts, at the time R65 million on questioned security installations at his private residence, the dictates of sections 96 and 237 of the Constitution and the Executive Ethics Code required of Pres Zuma to take reasonable steps to order an immediate inquiry into the situation and immediate correction of any irregularities and excesses. 193

She found that the upgrades went beyond what was required for the security of the president and became “a license to loot”. The expenditure was excessive and Pres Zuma, his family and relatives improperly benefited from state spending. There was the belief among technocrats that there was political pressure on them, and they acted accordingly. There was a problem with the rules regarding the benefits due to presidents, their deputies and former holders of office. Unless they were remedied, there could be another Nkandla in future.

Madonsela’s report also described many attempts to prematurely end, delay, frustrate or cancel the report she released. There was the abortive November 2013 attempt by the security ministers to secure what practically amounted to court-sanctioned censorship rights over the report. “The investigation has had an unprecedented number of threats to litigate, right up to the eve of the release of the report.”

Madonsela wrote that, at one point, she was dealing with seven attorneys and five advocates representing various parties. “Many of these threats involved an intention to prevent the publication of the report”. In early 2013, the State Attorney, the Chief State Law Adviser and several ministers “insisted” that the Nkandla investigation should be suspended. At other times lawyers acting for Pres Zuma argued that Madonsela was not fit to question security measures because she is not a security expert. In one case, the
Presidency delayed the provision of information that it was obliged, by law, to give to the Public Protector on request by nine months.\footnote{194}

In May 2014, after the general elections, the government’s security cluster disclosed that they planned to contact the High Court for a judicial review of Madonsela’s report. The effect would clearly be to inhibit other processes to ensure accountability.\footnote{195}

On 19 April 2014, religious leaders from the Christian, Muslim and Buddhist faiths, including anti-apartheid icon and Archbishop Emeritus Desmond Tutu, marched to Parliament to call for the protection of the Constitution’s Chapter 9 institutions, like the Public Protector, as well as an end to corruption and maladministration under the Zuma government.\footnote{196}

Amnesty International has summarized the matter in its 2014/2015 report:

\begin{quote}
Harassment of human rights defenders and organizations, and improper pressure on institutions, including oversight bodies, remained a major concern. The Office of the Public Protector and its Director, Thuli Madonsela, faced sustained pressure amounting to intimidation by members of the government in connection with the oversight body’s investigation and report on the improper use of public funds by the President at his home in KwaZulu-Natal Province.\footnote{197}

A report by police minister Nkosinathi Nhleko cleared Zuma from any liability. Madonsela indicated in May 2015 that the Public Protector would challenge the report, since Nhleko is a member of Zuma’s executive.\footnote{198} Unaccountable presidentialism confirms that the political order has become a hybrid regime as defined.\footnote{199}

The increased role of politicized security services

The dynamics of the South African security forces can currently only be understood in the context of a new hybrid system, not by reference to a full multiparty democracy.

In the one party-dominant system, the ruling ANC, previously involved in a guerrilla war (1960-1990), is still permeated by a conspiratorial mind-set.\footnote{200} Pres Zuma’s history as the intelligence head of the ANC’s military wing Umkhonto we Sizwe (MK) in exile, and his reliance on people he trusts from those days, also influence the ANC’s current approach. In addition, political opponents had allegedly used covert units linked to the South African Revenue Service to spy on him before he became president.\footnote{201}

Ronnie Kasrils, a founding member of MK and former minister of Intelligence (2004-2008), responded as follows to the question whether the ANC has taken a reversible step towards authoritarianism, as illustrated by the Protection of Information Bill\footnote{202} 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 is 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.\footnote{203}

In 2014, Kasrils stated that the intelligence service had become a tool for the ruling party, and that officers were increasingly working for the ANC rather than for the state. However, under Zuma, the ANC executive did not act upon a report he had tabled in 2008 to improve the state of affairs:

I blew the whistle and I figured out that there were (intelligence) agents, that there were officers who were not working for the state but were doing … (work) for Luthuli House … They don’t want to know anything about that report because they want the intelligence service to be a tool of Luthuli House and of the president.\footnote{204}
Before the April 2014 elections, news emerged about a group of former intelligence officers working from the eleventh floor of ANC Headquarters at Luthuli House to screen ANC parliamentary and provincial candidates. It was headed by Thabo Kubu, who worked in the National Intelligence Agency. Before 1990, in exile, he worked in the ANC’s Mbokodo Security Department, allegedly involved in the torture of dissidents and detainees. Jacob Zuma was its deputy head from 1986 to 1993. Kubu is listed as a director, with former NIA boss and ANC leader Billy Masetha, in a company called Maruapula Capital. Some candidates feared that the screening project, known as Project Veritas, was an attempt by Zuma’s supporters to tighten his control over the party’s caucus, and that the information gleaned during the screening process could be used against them.  

According to Prof Jane Duncan, following “a bruising succession battle” inside the ruling ANC to replace Pres Thabo Mbeki in 2008, “we saw the abuse of the intelligence services in order to advantage one or the other political faction”. The winners took all, but the losers have not gone away – and they charge that the State Security Agency (SSA) under Pres Jacob Zuma is politicised and out of control.  

In 2009, contrary to advice published in its own intelligence white paper, the government merged five security agencies into a single agency, the abovementioned SSA. It partly wanted to avoid inter-agency competition and raw intelligence being “stove-piped” to leaders without any analysis. Rather than achieving greater efficiency and coordination through centralisation, centralisation and the absence of oversight increased its power in policy-making. According to Ronnie Kasrils, the SSA has “become totally immersed in the game of politics and the power politics at play in this country”.  

The political heads of the security services have become key actors of Zuma’s administration. The minister of Defence, the chief of the SAPS, the minister of State Security and the head of National Intelligence, the so-called “security cluster”, have also become difficult to call to account by Parliament.  

Several factors are combining to securitize politics: some of these are the ANC’s non-pluralist political culture; the mind-set among many of its key leaders formed during a guerrilla struggle; the impact of cadre deployment on the leadership of the security forces; the increased prominence of the security cluster in decision-making; and the wave of militant strikes and service delivery protests often linked to factional politics.  

The SSA was at the centre of the unauthorized jamming of cellular signals in Parliament on 12 February 2015. In March 2015, State Security minister David Mahlobo announced that the intelligence service had initiated an investigation based on an unknown blog with a misspelt web link and social media. The case was related to published allegations that political opponents of the Zuma government, such as the public protector Thuli Madonsela, Julius Malema, leader of the EFF, and Joseph Mathunjwa, a prominent trade unionist, were CIA agents.  

Laurie Nathan, the director of the Centre for Mediation at the University of Pretoria, saw the statement as proof that the intelligence services had become more involved in domestic politics than it had admitted to previously. Nathan, one of three commissioners in the Mathews Commission into the intelligence services, stated:

“The trend has been growing for the past 20 years. Previously we only knew about it through leaks, but now they are admitting it.”  

Factional struggles in and among the ANC, its allies and breakaway factions are set to continue. Some of the reasons include scarcer state resources and local elections in 2016; the ANC leadership elections in 2017; and the presidential succession and national elections in 2019. This trend will reinforce the securitization of politics in a hybrid regime.  

ANC cadre deployment in the police  

Due to cadre deployment, key crime intelligence, investigative and prosecutorial services are unable to use their constitutional powers against senior ANC politicians allegedly involved in corruption, including Pres Zuma, effectively. The formal democratic checks on presidentialism in the hybrid regime have been neutralised.
The Directorate of Special Operations (known as the “Scorpions”), was formed in 1999 under then Pres Thabo Mbeki. With a staff of several hundreds, it investigated Zuma and his allies on charges of corruption before he became president. Richard Mdluli, a Zuma supporter, was appointed as divisional commission of the police’s Crime Intelligence Division effective from 1 July 2009. Shortly thereafter, the Scorpions investigating unit was formally disbanded.

Advocate Vusi Pikoli, former national director of Public Prosecutions, alleged in his memoirs, My Second Initiation, that Billy Masetlha, the ANC cadre deployed as head of the National Intelligence Agency, wanted to forbid Pikoli from prosecuting Zuma for corruption. Kgalema Motlanthe, president at the time, agreed with Masetlha. Pikoli also states that the decision to disband the Scorpions was “aimed at protecting corrupting politicians”.

The official Directorate for Priority Crime Investigations (known as the “Hawks”), replaced the Scorpions. In 2011, the Constitutional Court also found that it was “insufficiently insulated from political influence in its structure and functioning” to fulfil its functions as an anti-corruption investigation agency. The Hawks is vulnerable to political interference as there are two processes by which its head could be removed: one through the minister of Police and the second by Parliament, but there is no clarification on which process is superior. The Hawks’ current acting head, Maj Genl Berning Ntlemeza, has been found to be “dishonest” and lacking “integrity and honour” for lying under oath by a High Court judge.

The details of the case of Crime Intelligence chief Richard Mdluli and the politicization and supine approach of the National Prosecuting Authority against Pres Zuma are intricate and not covered here. However, an analysis of these cases confirms the dynamics of a hybrid regime, not a democracy.

As Gareth Newman of the ISS has concluded:

“The question is why Zuma does not follow the recommendations of the National Development Plan and use his constitutionally mandated powers to appoint the best possible leadership to the criminal justice system. Why does he seem to repeatedly appoint unethical and inexperienced people to head the criminal justice system, and then appear content to allow chaos to reign despite its toll on public safety? Perhaps Zuma needs to protect many of his benefactors who are involved in crime and corruption? Or perhaps he believes a compromised criminal justice system will assist him in future if he ever has to answer the 782 criminal charges for fraud and corruption that may one day be reinstated against him. One thing is certain; time will tell.”

The justice system and the judiciary

Policy documents of the ANC state unambiguously that the organization wants to deploy its cadres in the judiciary too. The South African judiciary is still generally seen as independent and free of executive interference. However, this position is under threat.

Constitutional Law experts Issacharoff and Pildes distinguish between first-order and second-order approaches to constitutional judicial review. In South Africa, the Constitutional Court has tended to use a first-order approach that gives attention to those consequences of the ANC’s domination that manifests themselves as violations of rights. A second-order approach to tackle the background rules that structure and result from ANC domination has been largely absent.

At present, as argued by Constitutional Law expert Sujit Choudry, the Constitutional Court lacks an adequate understanding and the conceptual tools to question the assumption of political competition and alternation in South Africa’s political order. The Constitutional Court judges do not realize that it cannot rely on the risk of losing power as a strong check on the ANC’s abuse of power.

Under Jeff Radebe as the minister of Justice, new legislation affecting the judiciary was introduced in


2012. According to Loammi Wolf\textsuperscript{20}, a legal academic, Radebe had been trained at Karl Marx University in the judicial model of the former German Democratic Republic (GDR/DDR), in the early 1980s. According to the GDR model, the Constitutional Court would be the apex of the court system. Legislation also reconstituted the Constitutional Court in this way.

In the East German model, subordinate courts would not be bound by precedent, but also had to adjudicate according to the directives issued by the most senior court, which in turn had to reflect political and socio-economic policies in the state. Judicial review of legislation or executive action was not permitted, as this reflected a “Western” notion of the separation of powers. The chief justice would become directly accountable to the political elite. This model is more compatible with a hybrid regime than a fully-functioning democracy.\textsuperscript{21}

As The Economist reported on 23 August 2014:

“Critics worry less about the qualifications and abilities of those who have been appointed, but rather express concern that some of the country’s best lawyers have been blocked from appointment. Sir Jeffrey Jowell, a South Africa-born Queen’s Counsel who runs the Bingham Centre for the Rule of Law in London, thinks that several of those passed over “would simply grace the bench of any top court of any country in the world”. Many lawyers think they were turned down for being too independent-minded.

Those suspicions have been buttressed in the few instances when the Judicial Services Commission (JSC), which recommends the nomination of judges, has deigned to give reasons ...

A second avenue of attack is through a new bill that would end self-regulation of the legal profession. The bill, which has been passed but not yet signed into law, would give the government considerable influence over the day-to-day running of the legal profession. The government would gain the right to appoint members of a new council that would oversee lawyers. It would also be allowed to dissolve the council, a power that could be used if its members proved to be too headstrong.

Critics of the bill have included both Mr Bizos [George Bizos, Nelson Mandela’s defender before his incarceration] and – before he died in 2012 – Mr Chaskalson, who served as chief justice under Mandela. Mr Chaskalson wrote that the new bill was “calculated to erode” the independence of lawyers and indirectly that of the judiciary.\textsuperscript{222}

These ANC government initiatives point to a hybrid regime, not a democracy.

Deputy Chief Justice Dikgang Mosenekoe and fellow Constitutional Court Judge Johann van der Westhuizen are due to retire during Zuma’s term of office. They will join justice Thembile Lewis Skweyiya, who retired recently.\textsuperscript{223}

The three judges were all appointed by former Pres Thabo Mbeki and are constitutionally required to retire after serving a 12 year, non-renewable term or on reaching the age of seventy. Their retirement gives Zuma an opportunity to tilt the scale of the top court in South Africa.

Legal command and rent extraction by ANC cadres

The international system confers a juridical sovereignty on states that may in practice be less absolute. Pierre Englebert states that regardless of the state institutions’ actual capacity, juridical sovereignty nevertheless confers legal command to African states, defined as “the capacity to control, dominate, extract or dictate through the law”.\textsuperscript{224}

Legal command offers opportunities for rent seeking and patronage to the main power holders, but also local and intermediary actors. Rather than being an instrument for limiting the state’s arbitrary power, it becomes a tool to exercise power over others and extract rents, ranging from official documents and citizenship to the right to seize public resources. These authorities embody the legitimacy of the state, defined in legal terms. As a result, they can extract rents even in the absence of administrative efficiency, coercive capacities or good public services.\textsuperscript{225}

The emphasis in hybrid regimes shifts from “the rule of law” to “the rule by law”. Even if the hybrid regime impinges significantly on the civil and business rights protected by the existing Constitution, ANC actors are likely to use justifications based on legal command.

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\end{thebibliography}
Part VI: Universities, the media and attempts at ANC control

Pressures on the autonomy of universities

The non-pluralist political culture of the ANC, which does not differentiate between party and state, is unlikely to respect the autonomy of universities and academic dissenting views. In September 2014 Pres Zuma spoke at the Progressive Professionals Forum and called on South Africa’s universities to become incubators for “patriotic citizens”.226 As indicated by the political scientist Nicola de Jager, “patriotism” has become a code word to inhibit criticism of the ANC, while critics are often smeared as being non-patriotic.227

The minister for Higher Education and Training, Blade Nzimande, also is the leader of the SACP. History is very present in Nzimande’s speeches. In a speech in 2007, he referred to “The pessimists, those who lost their will to struggle with the collapse of the Berlin Wall”. His conclusion was different: “It is possible (and imperative) to press ahead with the socialist-oriented transformation in the present right now”.228 At a meeting of the SACP’s Central Committee on 10 December 2009, he stated: “On the education front, the SACP must throw its full weight, and where necessary lead, in the ANC campaign to transform our education system”.

On 2 October 2014, almost a month before the twenty-fifth celebration of the fall of the Berlin Wall, Nzimande stated to the South African Democratic Teachers Union:

“The second, more radical phase of our transition would require that we transform our education and training system, including curriculum... This would require, as Karl Marx put it, that the educators be educated themselves. The educators must be steeled in the revolutionary theory of our struggle.”

It is not clear whether the ANC government sent congratulations to the German government during the twenty-fifth anniversary celebrations of German reunification on 9 November 2014.230

Universities whose students come from communities that largely support opposition parties will face the greatest threat to autonomy in the next five years. There has been a focused effort, for example, to weaken the position of Afrikaans and Afrikaans speakers at certain schools and at the only four out of thirty-eight universities in South Africa where Afrikaans is still being used as medium of instruction, as well as to increase the ANC government’s control over these institutions and their discourses. This campaign has been noticeable, since many of these schools and universities were working well, while the government did not really undertake a concerted effort to also improve the majority of other less functional schools and universities in the country where education is in crisis.

As indicated in the World Economic Forum’s Global Competitiveness Report, South Africa’s overall position regarding the quality of education had slipped from a low 119th position in 2009 to one of 140th out of 144 countries by 2015.231 Its position in maths and science education had slipped from 133th in 2009 to 144th by 2015. Education policy, budget strings, employment criteria and speeches to demarcate the boundaries of political and economic research provide current means to potentially inhibit the autonomy of universities.

Media freedom

In post-1994 South Africa, press freedom is guaranteed by Section 16 of the Bill of Rights. Together with parts of the judiciary, the media has been considered to be one of the most important remaining checks on the power of the ruling party, since the ANC government has largely neutralised other potentially independent watchdog institutions through its policy of cadre deployment and other measures such as intimidation.

230. On the current frosty relations with Britain, see “Zuma’s smoke and mirrors are his own worst enemy”, Rand Daily Mail, 3 November 2014; Dennis Worrall, “President Zuma, you have to do better”, Polity, 3 November 2014.
However, it is important also to scrutinise the *de facto* realities of media freedom in South Africa.\(^{232}\) The South African Broadcasting Corporation (SABC) is the South African public broadcaster.\(^{233}\) It controls most television and radio broadcasting in South Africa.

The ANC has used cadre deployment to align the state broadcaster with the ruling party. During the 2014 elections, the SABC was criticised for refusing to air the campaign adverts of two main opposition parties, namely the DA, as well as the EFF.\(^{234}\) As stated by Nicola de Jager, political scientist at the University of Stellenbosch:

> Reporters, analysts and others within the public broadcaster who are considered to operate out of line are slowly moved out, examples include Eusebius McKaiser and John Perlman.\(^{235}\)

The ANC’s policy of cadre deployment has also weakened the performance of the SABC.\(^{236}\) Freedom House’s report for 2015 mentioned that

> ... concerns about press freedom have grown in recent years as the ANC government has appeared to exert increasing political pressure on both state-run and independent outlets ... The government is highly sensitive to media criticism and has increasingly encroached on the editorial independence of the SABC. Some government critics have been barred from SABC programs; a number of programs have been cancelled due to political considerations; and there is strong pressure on journalists to refrain from critical reporting of the ANC and Zuma.\(^{237}\)

Private newspapers and magazines are often critical of powerful figures and institutions and remain a crucial check on the government. However, government allies own a growing share of independent media. A number of key staff members have left the Independent News & Media South Africa claiming political interference since the company was acquired by the ANC-connected Sekunjalo Investments.

There has been an increase in direct attacks on journalists. These incidents have included police harassment of reporters across the countries who have been subject to wrongful/illegal arrest, forced to delete photographs or barred from entering particular spaces. In February 2015, the SSA confirmed handing Mpumalanga premier David Mabuza intelligence reports on the lives and movements of journalists in the province.\(^{238}\)

Due to cadre deployment to the regulatory body, the Independent Communication Authority of South Africa (ICASA), it has failed to ensure the non-partisan nature of the SABC.\(^{239}\) The *Mail & Guardian* reported in early May 2014 that Pres Zuma wasrumoured to be considering an information ministry based on Zimbabwean, Chinese and Russian models, with the intent to reshape the image of his administration, also internationally.\(^{240}\) When announcing his new cabinet after the national elections in May 2014, Pres Zuma announced that a new communications ministry would be “formed out of components” including the SABC, Brand SA, the Media Development and Diversity Agency (MDDA), the Government Communications and Information System (GCIS) and ICASA.

Industry experts and the opposition have depicted the government’s decision to group the public broadcaster and state communication entities under one ministry. This, they argue, raises concern about the independence of the SABC in particular.\(^{241}\) The party dominance of the public broadcaster reinforces the ANC’s hybrid regime. Allegations recently emerged about ANC attempts to also influence the commercial eTV television service.\(^{242}\) Some ANC officials are discussing how the SABC could be used to promote Zuma’s image.\(^{243}\) In February 2015 an SABC memorandum of incorporation emerged that gave the minister of Communications the power to discipline and remove executive managers and board members at the SABC. Before the emergence of the memorandum, SABC board members could be removed only through a parliamentary process.\(^{244}\)

The Protection of State Information Bill was introduced in 2010 and passed by the National Assembly.\(^ {245}\) At present, South Africa is ranked 42nd in the world with respect to press freedom according to the Press Freedom Index of 2014. This constitutes a descent


\(^{233}\) http://www.sabc.co.za/wps/portal/SABC/SABCARTICLE?id=5c5c9804c9afed6bf68b3e39f63bc90148& page_from=CSI.


\(^{240}\) “Toothless regulator?” A critical analysis of ICASA’s regulation of the SABC so that it functions as a public service broadcaster (University of the Witwatersrand, Johannesburg, 2009).


\(^{242}\) When announcing his new cabinet after the national elections in May 2014, Pres Zuma announced that a new communications ministry would be “formed out of components” including the SABC, Brand SA, the Media Development and Diversity Agency (MDDA), the Government Communications and Information System (GCIS) and ICASA.

\(^{243}\) Hence the report of Freedom House.

\(^{244}\) The Protection of State Information Bill was introduced in 2010 and passed by the National Assembly. At present, South Africa is ranked 42nd in the world with respect to press freedom according to the Press Freedom Index of 2014. This constitutes a descent
Strained relations between the ANC and critical journalists

Although no serious incidents regarding government authorisation to actively target journalists have been reported, the ANC’s relationship with the media is generally strained.

In 2008, the South African National Editors’ Forum (SANEF) citing the ANC Today Online, stated that Pres Zuma’s newsletter, revealed a “hostile state of mind towards the media”, and contained “wild generalisations encompassing the media as a whole”. In September 2013, Zuma, in dressing down South Africa’s media, called for “patriotic reporting”. He cited Mexico, where, he claimed, crime was not reported on. Even in his “victory speech” after the announcement of the 2014 election results, Zuma made some hostile remarks regarding the media in general.

Communications minister Faith Muthambi told MPs in April 2015 they needed to take further action on the issue of a regulatory system for the print media so that they could achieve the meaningful transformation agenda of the country. Her comments came amid various signals from within government indicating unhappiness about media coverage. This included Pres Jacob Zuma’s comment that the Sunday Times newspaper’s front page photo of the killing of Mozambican national Emmanuel Sithole had depicted the country in a bad light. Deputy Police minister Maggie Sotyu criticised media coverage of xenophobia and said she now understood why a media tribunal was necessary. ANC spokesperson Zizi Kodwa confirmed the ANC was sticking to its 2007 resolution to call for a state-controlled media appeals tribunal to regulate the media.

The most critical media sometimes reflect an Anglo-centric and pro-capitalist focus. To be very fair to Zuma, the journalists of these media may not always understand or try to understand politics from his vantage point: the frameworks of many Zulu men of his generation and socio-economic background; his political socialization as a young man and later as the military intelligence head of a guerrilla force in a brutalizing struggle; the complex requirements of his

from the 38th position in the 2010 survey.

Potential for internet censorship

The Film and Publications Board (FPB) gazetted a Draft Online Regulation Policy document on 4 March 2015. In terms of this, everything published on the internet could be subjected to classification from the FPB. Anyone wishing to publish or distribute content would first have to apply for a digital publisher’s online distribution agreement with the FPB, which would require a subscription fee. Once paid, the publisher would have to submit the content to the FPB for classification prior to publishing. This effectively constitutes a form of pre-publication censorship, which would undermine the internet’s immediacy. The regulations would also allow the FPB to “dispatch classifiers to the distributors’ premises for the purposes of classifying digital content”. Distributors would have to “ensure that the work of classifiers takes place unhindered and without interference.”

In March 2015, Germany and Brazil spearheaded a United Nations (UN) resolution calling for a UN special rapporteur on privacy. The resolution affirmed the right to privacy in the digital age and expressed deep concern at “the negative impact that surveillance and/or interception of communications, including extraterritorial surveillance and/or interception of communications, as well as the collection of personal data, in particular when carried out on a mass scale, may have on the exercise and enjoyment of human rights”. The rapporteur would be appointed for three years to gather information on privacy-related matters and practice and report on violations of the right to privacy. South Africa and Saudi Arabia opposed the resolution. In March 2014, South Africa led a group including China, Russia and Saudi Arabia in proposing amendments to water down the right to peaceful protest.

It is even difficult for political scientists to assess the real limits to the regime's capabilities amidst growing socio-economic and demographic challenges.

Still, such media contributions also form part of democratic discourse. They, and various actors from civil society, have played an important role in maintaining the constitutional space for freedom of the media and expression against ANC pressure.

However, it is clear that the ruling party will continue to be suspicious when it comes to media entities that do not align themselves with ANC objectives and policies. The space for freedom of the media will continue to be under pressure in the hybrid regime. Both self-censorship and more independent investigative journalism by citizens and business may be the result.

The impact of the media on changing political dynamics should however not be overestimated. If the media uncovers questionable conduct by ANC politicians, it depends firstly on the ANC and its factions how it would respond to the revelations. The ANC's support to Zuma, even in the face of considerable scandals, indicate how strong a role the fear of losing jobs and access to resources can play. Sometimes this fear is strengthened because the politician or faction concerned would be unlikely to gain a similar position. These dynamics limit the impact of the media and reinforce the hybrid regime.
Part VII: The threat to property and investor rights

Increased political intervention and selective patronage

In August 2012, the Zuma government adopted the National Development Plan (NDP) as South Africa’s policy blueprint until 2030. The ANC’s national conference in Mangaung (Bloemfontein) in December 2012 endorsed the plan, which aims at boosting the economic growth rate to 5.4% of GDP and generating eleven million jobs.

However, the ANC has also proceeded with several statutes and bills that greatly increase the government’s interventionist powers and clearly prioritize the redistribution of the existing economic pie, rather than its expansion.\(^{253}\) In a report on all business-related legislation since 2013, the SAIRR concluded that a common thread through all the bills is that “they weaken property rights, reduce private-sector autonomy, threaten business with draconian penalties, and undermine investor confidence”.\(^{254}\)

Recent examples include new regulations, policy initiatives and legislation regarding mining and energy, the security industry, affirmative action and black empowerment, land, patents, and foreign investors in general. During their implementation, these laws are especially likely to enhance the opportunities for political and bureaucratic decision-makers to gain access to lucrative positions or to engage in selective patronage.

Foreign business distrust and limited investment

The World Economic Forum’s Global Competitiveness Index (GCI) reflects the perceptions of domestic and international businesses.\(^{255}\) In terms of the overall GCI in 2014-2015, South Africa ranks quite well, namely in position 56 out of 144 countries measured. However, the GCI measure of South Africa’s competitiveness is distorted favourably by its spectacular performance in a number of the GCI’s sub-components. These include aspects strongly shaped by the private sector, like auditing standards, efficacy of corporate boards and the availability of financial services.

In GCI sub-indices that measure business perceptions of the government, South Africa fares very poorly. For two years in a row, South Africa has low scores for the diversion of public funds (96th) and the perceived wastefulness of government spending (89th). In terms of the reliability of the police, it is in the 102nd place, and in terms of organised crime, in the 99th position. For “business costs for crime and violence” it is in the 133rd position out of 144. This is a marked decline even after the low position of 100 in 2009. The quality of the educational system is very poor (140th), a marked decline, even after the low position of being 119th in 2009. South Africa ranks 90th in terms of “public trust in politicians”, a further drop after already being 65th in 2009. It also is 120th in terms of “the burden of government regulation”, a major drop from being 65th in 2009. This decline reflects the ANC’s even greater state intervention. South Africa ranks 104th in terms of “favouritism in the decisions of government officials”, a huge drop from being 69th in 2009.\(^{256}\) International media reports revealing self-enrichment and selective patronage by Pres Zuma and his entourage have reinforced these perceptions.\(^{257}\)

Business-government relations in the past five years have been characterized by growing mutual distrust. There have been several large deals since 1994, mainly in banking, retail and telecommunications, but South Africa has not attracted the amount of foreign investments most macroeconomic measures suggest it should. Instead, South Africa’s foreign direct investment (FDI) is volatile and on average lower than comparable developing countries. In 2013 there was again an increase in FDI. However, greenfield long-
term investment remains an exception and overall FDI limited and volatile.\textsuperscript{258}

Given the hybrid regime dynamics, foreign business and local business not aligned to the ruling ANC are reluctant to publicly oppose harmful policies and practices. It is unwilling to jeopardize the government licenses they require to operate.\textsuperscript{259} However, both local and foreign business have adapted the forms and extent of their investment in South Africa accordingly.

Meanwhile, the degree of capital flight among short-term portfolio investors has recently resulted in Central Bank warnings. Portfolio investment has helped to plug South Africa’s yawning current account deficit, but is liable to dry up or reverse when the perceived political and business risk in South Africa becomes too high.\textsuperscript{260}

Growing suspicion of ANC policies in business circles

Since 2013, several ANC-directed business bills and acts have increased distrust and concern in foreign and domestic business circles. A headline in The Economist of 27 March 2014 was clear: “Bashing business for votes: New legislation may save the ANC votes but will chase away foreign investment”. The Wall Street Journal of 9 May 2014 stated that the ANC envisaged a greater role in the economy, prompting the headline “South African Policies Worry Big Business”. Foreign diplomats, usually reserved, have also started to voice their concerns in private and in public.\textsuperscript{261}

According to Bobby Godsell, chairman of the lobby group Business Leadership South Africa and a member of the government’s National Planning Commission, “[b]usiness and government is a marriage that’s gone wrong, if it was ever right”.\textsuperscript{262}

As leader of the Consultative Business Movement in the early 1990s, Theuns Eloff organised the first partnerships between business and the ANC government through the National Business Initiative and the R1bn Business Trust. According to Eloff, that trust is now all but dead and buried:

All that these laws will do is chase business away … What the government is proposing is exactly the way Zimbabwe went over the past 10 years. The agenda of this government is not economic transformation. Its agenda is to create benefits for a part of the population – the upper part, the middle class upwards.\textsuperscript{263}

The business leaders who would support economic development are not close enough to the government to make it happen. Those who are close to it, “probably would not want it because they’re cosy” with things as they are.

There is a fundamental lack of understanding in government of the way business works – that there are shareholders and there must be certainty.\textsuperscript{264}

Peter Montalto, a respected foreign investment advisor, stated after visiting South Africa in November 2014:

Shifts in BEE policy, employment equity, land reform etc all are weighing significantly on business sentiment. We continue to be upset that there is a lack of private sector corporates standing up to government and challenging them to improve micro policy … We got the impression that the government and ANC are increasingly leaving out the private sector from its political discourse with voters, focusing on what the government has, is and will achieve for individuals. The private sector is ignored politically as the only real source of wealth creation and sustainable employment growth.\textsuperscript{265}

Tony Leon, former South African ambassador to Argentina and previously leader of the pro-business opposition Democratic Party (DP), described government expectations of business in April 2014:

It is the enemy, or at least that section of it that has not submitted to the government’s itch to control it.\textsuperscript{266}

The ANC underestimates the degree to which companies have opportunities to go elsewhere than South Africa, or it does not care too much.\textsuperscript{267} Arnold Goldstone, the CEO of Invicta, a major engineering industrial company, has stated that South Africa has been “on the journey of a gradual decline of industrialization” and has become less competitive in


the past four years. For many companies, the best opportunities in mining and manufacturing are no longer in South Africa. He stated that his company has a policy to get 50% of their revenues from outside South Africa as soon as possible.267 Major companies like BHP Billiton, AngloGold Ashanti and Gold Fields Limited have already considered hiving off their South African assets, or have actually done so.268

According to Koos Bekker, the billionaire chairman of Africa’s biggest company Naspers, there was too much of a sense of entitlement and comfort in economic policy, and a lack of coordination. “We have four or five departments within the economic cluster that do not talk to each other and have no commonality in their approach.”269

The former ANC treasurer general and Mpumalanga premier Mathews Phosa stated on 19 May 2015 to the Austrian Business Chamber in Johannesburg that a lack of policy stability was making investors wary.270 He included inconsistencies in land reform, land ownership laws and agricultural development policies, BEE policies that are often challenged and inconsistent, and costly mining policies resulting in investment now going elsewhere in Africa. “Past empowerment activities focused on dividing the economic cake rather than implementing actions and activities to grow the economic cake,” Phosa noted.

Johann Rupert, the billionaire head of the Rembrandt Group and Richemont, is usually quite reticent on giving political commentary. He stated in a speech on 3 February 2015: People are trying to run a private sector (in South Africa) when the public sector is not being run properly,” he said and asked rhetorically whether there is free transfer of property: “[The answer is] no. Ownership incentives for capital formation are declining”. There was not a strong and convertible currency. There was no longer protection of private property. Was there freedom of speech, he asked: “It is totally under attack”. Was there honesty and transparency in government actions, he asked: “Please … we don’t have to debate that”.271

Foreign business perceptions worsen

According to a newspaper report, The Economic Freedom of the World Report of 2014 tracked 152 countries, ranking how supportive their laws and institutions are with regard to certain economic freedoms such as personal choice, voluntary exchange, freedom to compete and security of private property. South Africa continued to fall, from 89th in 2013 to 93rd in 2014. South Africa ranks in the bottom quintile for business costs of crime, capital controls, hiring regulations, and minimum wage controls; and most importantly, general size of government and its parastatals. The country ranks 9th in the world in terms of government consumption as a percentage of the gross national product. In 1995, South Africa ranked 42nd on the list. In 2014, it had fallen to 93rd.272

There are six hundred German firms in South Africa employing some ninety thousand people. Germany is South Africa’s most important trading partner after China. Nevertheless, the German foreign minister Frank-Walter Steinmeier had to contend with disrespectful breaches of protocol during his visit to South Africa in November 2014. Spokespeople of SAFRI, a German business association in South Africa, has expressed dismay over the direction of economic policy.273

American Chamber of Commerce SA executive director Carol O’Brien stated in February 2015 that the plethora of legislation coming out of South Africa is causing “jitters” in US businesses with operations based in the country.274 The chamber represents two hundred and fifty of the six hundred US companies with operations in South Africa, such as General Electric and Google. She said that the stream of legislation did not send a message that foreign investment was welcome in South Africa. The severe power outages, weak economic growth, and the compulsory ownership element in the new broad-based BEE codes were also weighing on US companies in South Africa. She said the negative behaviour in Parliament had also affected economic growth because parliamentarians were apparently more focused on politics than on how to grow the economy and deal with South Africa’s social problems.

declining 15.9% in the first quarter and 9.3% in the second quarter.

Dianna Games, the CEO of a business advisory group, wrote in March 2015:

A survey conducted by the Economist Corporate Network among more than 200 CEOs, both local and foreign, in 25 industries across Africa, reflects an unfortunate trend – the relative decline of SA as a key market of choice for Africa-based investors over the next five years … SA is suddenly seeing risks that were once regarded here as the preserve of other African countries – corruption, bureaucracy, regulatory uncertainty, government interference in the economy, infrastructure deficits and skills shortages.

As other African economies open up for business, SA is showing an increasing suspicion of foreign investors, and foreigners in general, putting out mixed messages about how welcome they are. The new immigration and visa requirements, as well as increasingly onerous black empowerment regulations and ownership laws, are among the negative signals in this regard. SA is not a basket case but it is on a distinctly downward trajectory.  

Investors’ perception of risk in South Africa has increased. Credit-rating companies, such as Moody’s Investors Service downgraded South Africa in November 2014 to Baa2, the second-lowest investment-grade level. The rand has slumped 14% against the US dollar in the past year, while credit-default swaps have climbed twenty-nine basis points to reach the fourth-highest among twenty-four emerging and major markets monitored by Bloomberg.

ANC plans to weaken property rights

Under the new Promotion and Protection of Investment Bill of 2013 (better known as the Investment Bill or PPIB), the rights of foreign and domestic property owners will be much reduced. The Investment Bill is supposed to apply equally to foreign and domestic investors.

The current Expropriation Act of 1975 gives property owners the right to full compensation on expropriation, which must include not only the market value of their properties, but also compensatory damages for consequential loss. The act also guarantees them immediate payment of 80% of the compensation due, with interest on the outstanding balance.

Under the Investment Bill, by contrast, expropriated owners will receive less than market value and will have no right to damages for consequential loss. They will also have to wait for the state to make payment in what it regards as “a timely manner”. One danger in the Investment Bill is that domestic property owners will be confined to “just and equitable” compensation falling somewhat short of market value. An even greater danger is that such property owners will receive no compensation at all.

According to analyses of senior advocate Martin Brassey and policy analyst Anthea Jeffery, this danger stems from a key clause in the Investment Bill stating that various actions “do not amount to acts of expropriation”. According to the bill, there will thus be no expropriation where the state’s actions result “in the deprivation of property”, but “the state does not acquire ownership” and “there is no permanent destruction of the economic value of the investment”.

This situation could arise, for example, where the state takes commercial farmland under claim as “custodian” for land claimants, and then invites them to apply to it for licences to use portions of this land for specified periods. In these circumstances, commercial farmers would be deprived of their property, but the state would acquire it as custodian rather than as owner — and there would be “no permanent destruction of the economic value” of the land, which would continue to be farmed by others. This means there would be no “act of expropriation” under the principles established by the Investment Bill. As a result, no compensation would be payable.

Constitutional Court neutralized property rights clause in Constitution

The wording of this provision can be traced back to a majority judgment of the Constitutional Court in April 2013. This ruling was made by Chief Justice Mogoeng
Mogoeng, an appointee of Pres Jacob Zuma. The ruling was concerned with whether expropriation had occurred when an unused and unconverted private mining right “ceased to exist” under the Mineral and Petroleum Resources Development Act (MPRDA) of 2002.

Judge Mogoeng found that Sebenza Property Limited, which used to own the coal mining right in issue, had suffered a “compulsory deprivation” of its right under the MPRDA. In addition, “the custodianship” of this resource was now “vested in the state on behalf of the people of South Africa”. However, the state had not acquired ownership of the mining right. Instead, it was simply a “custodian” or “conduit” through which “broader and equitable access to mineral resources could be realised”.

The chief justice ruled that since the deprivation of ownership from Sebenza had not been matched by the acquisition of ownership by the state, no expropriation had taken place. It followed that no compensation was payable. Echoing this judgment, a key provision in the Investment Bill states that various actions “do not amount to acts of expropriation”. Among the actions it lists are “measures which result in the deprivation of property, but where the state does not acquire ownership of such property”.

When Chief Justice Mogoeng handed down the ruling on Sebenza’s rights, two judges of the Constitutional Court, Johan Froneman and Johann van der Westhuizen, disagreed with the majority’s conclusion that no expropriation had taken place. They also cautioned against the implications of Judge Mogoeng’s ruling. According to the judges, the ruling could lead to “the abolition of the private ownership of… all property” without the payment of any compensation. “Any legislative transfer of property from existing property holders” would no longer be “recognised as expropriation” if it was “done by the state as custodian of the country’s resources”, they said. The warning sounded by these judges could become a reality if the Investment Bill were to be enacted into law in its current form.

During the consultation about the Mineral and Petroleum Resources Development Amendment Bill of 2013 (also known as the “Mining Bill”), the state petroleum company PetroSA used the Constitutional Court case to propose further amendments. In its written submission, PetroSA suggested the bill should designate it the custodian over all of South Africa’s allocation of petroleum rights. It also argued that where the rights to an oil block are relinquished, abandoned, lapsed or cancelled, PetroSA should be granted first right of refusal over the acreage or be allowed to determine its commercial value, before it could be released for bidding in the market.

**Disempowered foreign and South African property owners**

Once the Investment Bill becomes law, government could use its rules to take further measures to vest all mining land, mining equipment and other mining assets in the state as the custodian of the nation’s mineral resources. Simultaneously, it could invite black-owned businesses in particular to apply to the Department of Mineral Resources for a licence to use a portion of these assets for a specified period. If past experience is any guide, the businesses that benefit would usually be tied to supporters of the ANC, and not to political opponents of the ANC.

Similar measures, intended to generate a similar outcome, could be taken as regards all other “investments” covered by the Investment Bill. These are broadly defined to include companies; equities; land; movables; and intellectual property; along with mining rights and similar “licences, authorisations, or permits … to carry out economic and commercial activities”. Moreover, the Investment Bill applies equally to domestic and foreign investors, for the need to ensure equal treatment for both categories of investor is a key theme of the measure.

The bill’s reference to “investors” is also misleading, for it suggests that the new law will apply solely to companies and other commercial enterprises. In fact, the Investment Bill will apply to everyone, including “natural persons” and “regardless of nationality”. Any South African who owns a home, car; or unit trusts for it suggests that the new law will apply solely to companies and other commercial enterprises. In fact, the Investment Bill will apply to everyone, including “natural persons” and “regardless of nationality”. Any South African who owns a home, car; or unit trusts are enterprises of every size and in every sector of the economy, from mining to agriculture, banking, manufacturing, and services.

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Once the Investment Bill is in place, the current Expropriation Act is likely to be overtaken or repealed. Instead, all South Africans will find that their rights on expropriation are already governed by the rules laid down in the Investment Bill. The bill will give the state the power to take measures to acquire property of virtually any kind as “custodian” for the poor, and without the need to pay any compensation.

The new Preservation and Development of Agricultural Land Framework Bill of 2015 was gazetted in March 2015 for public comment. It would also provide that state the power to take measures to acquire any property as “custodian” for the poor. The Bill diminishes ownership rights over agricultural land in various ways. Many of the powers that owners now have are effectively transferred to the minister of Agriculture, Forestry, and Fisheries (the minister), acting in conjunction with a host of new bureaucratic bodies. The author of the bill is Senzeni Zokwana, who is both the current minister of Agriculture and chairman of the SACP.

In February 2015, Zuma announced a Regulation of Land Holdings Bill, which looks to ban land ownership by foreign nationals. The Department of Rural Development and Land Reform is aiming for the controversial bill to be submitted to Parliament by August to test its constitutionality. Local landowners are also mentioned in the bill, which puts a 12 000 hectare land ownership ceiling on them.

Creeping state ownership in the mining and energy sectors

The Mineral and Petroleum Resources Development Amendment Bill of 2013 (the Mining Bill) was approved by the National Assembly in March 2014. The Mining Bill also applies to offshore oil and gas exploration and production.

The bill gives the minister of Mineral Resources unprecedented discretionary powers in many spheres, and threatens mining companies with maximum fines exceeding 10% of annual turnover, plus jail terms of up to four years, for failing to fulfil the ambitious demands laid down in the revised mining charter of 2010.

The Mining Bill gives the state a 20% “free carried interest” (or free stake) in all new ventures of this kind. It “entitles the state to a further participation interest” of an unspecified percentage, to be attained either via “acquisition at an agreed price” or through a “production sharing agreement” obliging the petroleum company in question to “share ... the extracted resource” with the state.

An earlier version of the bill put this additional interest at 30% and expressly limited the state’s potential stake to a maximum of “50% per petroleum operation”. Now, the state can demand as much as an 80% additional share, over and above its 20% free share.

Oil and gas companies will find it difficult to negotiate an accurate price. They will be required to pay 100% of the costs of developing new projects, but will receive only 80% of the profits. This means that only projects that can fund the government’s 20% free ride will be developed.

Business Day, the premier business publication in South Africa, commented as follows on 31 March 2014:

The government’s right to increase its stake to 100 per cent of a project is much more damaging. Oil, gas and mining companies spend large sums of money exploring for new deposits. They do so believing these costs can be recouped when profitable projects are found and developed. Because it is difficult to accurately predict how much gas or minerals can practically be extracted, some projects are much less profitable than expected.

Successful companies can absorb these costs because the profits made from very successful projects more than offset the earlier costs. If they do not, shareholder funds will have been wasted.

But the Mineral and Petroleum Resources Development Amendment Bill allows government to “cherry-pick”, forcing producers to sell all of their most profitable projects to the government. They must do this at an “agreed price” rather than a market price. This means companies can never recoup the costs of exploration or of unprofitable projects. The consequences are obvious. Under such conditions companies will not

288. http://today.moneyweb.co.za/article?id=479716&acid=Z254vWXulCUeZeuwhd4cWQ%3D%3D&date=2015-06-04#.VW_6H5Uw_IU.
According to the Mining Bill, the minister of Mineral Resources may also declare specified minerals to be “designated” or “strategic”. Strategic minerals may be subjected to both export and price controls. The bill empowers the mining minister to demand the "marginal value" or "agreed" prices. Agreement on prices may not be easy in practice to achieve.

An export licensing system is effectively introduced through Section 21(d) of the Mining Bill. It states that no one may export "designated" minerals or petroleum without permission from the minister, and subject to conditions. Designated minerals may not be exported, unless producers first supply the proportions prescribed for local beneficiation. This means they can be directed away from their most profitable use as ministers see fit. The criteria that will govern such decisions are not clear.

During consultations regarding the bill, ESKOM, the struggling state-owned electricity company, made submissions that argued that coal be declared a strategic mineral and that coal exploration and mining rights should be awarded giving due consideration to "domestic coal supply power generation". ESKOM wanted the bill to ensure that it and other state utilities be given first right of refusal "on large coal resources, which were previously earmarked for domestic use". The minister of Mineral Resources, Ngoako Ramathlodi, is considering the reclassification of coal and ore as strategic resources.

The National Water Act of 1998 already made the ANC government the "public trustee of the nation's water resources". ANC attempts at other forms of creeping expropriation can be expected in the hybrid regime in the next decade.

The weakening of foreign investor protection

The new powers given to the state under the Mining Bill could amount to indirect expropriation under the bilateral investment treaties (BITs) South Africa signed with some thirteen European nations after 1994. The provisions also potentially contravene South Africa's bilateral investment treaties, particularly the treaty between South Africa and the United Kingdom. This treaty requires, among other things, that South Africa and the UK afford investors and their investments "fair and equitable treatment". This obliges South African public authorities to act transparently, reasonably and without ambiguity.

According to major South African law firms like Webber and Wentzel, South Africa will be in breach of a BIT where it has failed to protect investors' legitimate expectations to rely on the host state's earlier commitments, in that it has not provided a predictable regulatory framework for investments. These provisions could also be deemed unconstitutional, under Section 25, which protects against the arbitrary deprivation of property.

The proposed amendments permit interference with mining companies' right to the use, enjoyment and exploitation of the minerals they have extracted, and thus constitute a deprivation. As there is no legal constraint on the minister's discretion or clear rules of procedure in this regard, the deprivation is arbitrary and potentially unconstitutional.

The Department of Trade and Industry (DTI) is now busy unilaterally terminating these treaties. The ANC government states that the BITs limit the country's sovereignty and play little part in attracting direct investment. The government also claims that the international arbitration to which foreign investors are entitled under these treaties yields unpredictable and often unfair results – and that foreign investors will be adequately protected by South Africa's own courts.

However, representatives of the European Union (EU) have broken their usual diplomatic silence to state their opposition. Where treaties are terminated, the foreign investors currently protected by them may have no remedy against damaging policy changes of the kind contained in the Mining Bill. They are also likely to receive less than the "prompt, adequate and effective" compensation promised by the treaties.

South Africa is Germany's most important trading partner on the African continent. The response of the Southern Africa Initiative of German Business to the
cancellation encapsulates the key objections of foreign business to the policy:

1. **Compared to the terminated BIT the Promotion and Protection of Investment Bill (PPIB) does not provide a guarantee for the fair and equitable treatment of foreign investment.** Changes in the legal framework conditions to the disadvantage of investors are possible at any time and might have the effect that both the investment protection and possible claims for compensation are cancelled.

2. **According to the wording of the bill the legal protection of investments only comprises such cases in which there is a direct expropriation.** Measures having an equivalent effect to expropriation are, however, not comprised so that in such cases – contrary to the BIT – a claim for compensation is not provided for.

3. **In contrast to the BIT compensation payments in cases of expropriations can be below market value, as the basis for any decision is the general provision of fair and equitable compensation, which reflects the consideration of both public interests and the interests of the parties concerned, and not the market value.**

4. **The PPIB envisages the recourse to national arbitral jurisdiction and arbitral tribunals, whereas the access to international arbitral tribunals is neither explicitly mentioned nor allowed.** However, for international investors, the objective and neutral settlement of disputes according to international law is an important element in investment decisions.  

Foreign companies may in fact receive zero compensation if a taking of property by the state is not recognised as an “act of expropriation” under the PPIB of 2013. The survival clauses in the agreements now being terminated were supposed to protect existing investments for between ten and twenty years after the relevant agreements had come to an end. However, this bill is also to have retroactive operation, in an attempt to bypass the “survival” clauses in the treaties.

**The Investment Bill in the context of the Restitution Bill**

The Investment Bill also needs to be read in the context of the Restitution of Land Rights Amendment Bill of 2013 (better known as the Restitution Bill). The Restitution Bill extends the deadline for lodging land restitution claims from December 1998 to December 2018. In this extended period, some 379 000 new land claims are likely to be submitted, according to the government’s regulatory impact analysis. Some 8 000 existing claims have yet to be resolved.

Settling these claims could cost the state an estimated R179 billion, yet in the 2013/2014 financial year, the restitution budget was roughly R3 billion only. It is unclear how the government will find the money to settle all these new claims. However, if the state takes land under claim as a “custodian” for land claimants, there will be no expropriation flowing from this deprivation, and hence no compensation to be paid.

The new land claims lodged under the Restitution Bill could extend far beyond agricultural land. The deputy chief land claims commissioner, Thami Mdontswa, stated in September 2013 that “people might think, ‘Hey, there’s a coal mine out there, let me place myself within its reach [by lodging] a claim’.”

As a result, the SAIRR has stated that the Investment Bill, in combination with the Restitution Bill, could “spell the end of private property rights in South Africa – not just in agriculture but across the economy”.  

**We believe that the Government and the ANC are preparing the ground to seize private property and distribute it to poor communities if and when they feel the need to do so. That time will come when the political pressure on the ANC is so great that it fears losing a future election.**  

In a recent report entitled South Africa: Monitoring the Cabinet, Election Promises and Legislation, Credit Suisse warns that the new Bill “undermines property rights, a cornerstone in a market-driven economy, and discourages investment in fixed capital”. Credit Suisse analysed it as follows: “Any property can be expropriated by the minister in the ‘public interest’, and for redistribution purposes. Any possible compensation would occur at a level determined by Government and would not reflect the market value of said property.”

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Increased state ownership and control of the lucrative security industry

The Private Security Regulation Amendment Bill of 2013 (alias the Security Bill) was adopted by Parliament in February 2014 and is soon to be signed into law. A provision reintroduced in the closing stages of the parliamentary process requires that “at least 51% of the ownership and control” of security companies must be “exercised by South African citizens”. Foreign-owned companies will be forced to sell 51% of their shares to South Africans.

According to the Security Bill, the disposal of any excess shareholding is to be carried out “in accordance with” the Investment Bill. The clause on expropriation speaks of a minimum of 51% local ownership, but leaves it up to the minister of Police to decide on a higher figure. Both the South African Chamber of Commerce and Industry (SACCI) and the Security Industry Alliance (SIA) have requested Pres Zuma not to sign this bill.298

Government says that the 445 000 guards employed by the industry far outnumber the country’s 270 000 policemen and soldiers, making foreign control of security companies a threat to national security. However, the guards in fact employed by foreign companies number fewer than 45 000. The growth of the private security industry is directly linked to high levels of crime and violence, as well as public perceptions that the government in general and the police specifically are unable to provide adequate security.

In response, Axel Pougin de la Maisonneuve, the head of Economics and Trade at the EU delegation, addressed a letter to the ANC chief whip and the chairperson of the Select Committee on Security and Constitutional Development in the National Council of Provinces in February 2014. The letter stated that foreign equity caps would violate South Africa’s GATS commitments. Gaspard said almost all security technology is manufactured and distributed by international companies like Bosch and Sony, and “the proposed amendments could compel many of these companies to divest”.300 In March 2015, the minister of Police, Nathi Nhleko, stated that the South African government would withdraw from its commitments to the World Trade Organisation’s (WTO’s) General Agreement on Trade in Services to consult member countries on the Amendment Bill.301

ESKOM and the ANC’s power failure

The ANC government did not invest enough in expanding its power generation capacity and neglected maintenance. It also did not respond after earlier crises. ESKOM, which supplies about 95% of the nation’s electricity, is since 2015 rationing supply because its aging plants cannot meet demand. ESKOM is implementing almost daily rolling blackouts as it struggles to meet demand. These measures are having a huge impact on productivity and also business morale in South Africa. Dawie Rooyd, chief economist of Efficient Group Ltd in Pretoria, estimates the electricity crunch since 2007 has cost the economy more than R300 billion ($25 billion) in lost output.302

The sectors using the most electricity are also the foreign exchange earners, namely nonferrous metals, basic iron and steel, non-metallic minerals, mining, paper and paper products, and chemicals. The budget statement that only low-import and electricity-light sectors will be supported over the medium term means support for tourism, agriculture, agro-processing, light engineering and services. According to Henk Langenhoven, the agreement between South Africa and the United Kingdom obliges the South African government not to impair the investments of British nationals or companies. The government should not offer treatment less favourable than what it accords to its own nationals or companies. In addition, the investments of British companies “shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation”.

The American ambassador to South Africa, Patrick Gaspard, also wrote a letter dated 28 February 2014, warning that the ownership requirement would violate South Africa’s GATS commitments. Gaspard said almost all security technology is manufactured and distributed by international companies like Bosch and Sony, and “the proposed amendments could compel many of these companies to divest”.300 In March 2015, the minister of Police, Nathi Nhleko, stated that the South African government would withdraw from its commitments to the World Trade Organisation’s (WTO’s) General Agreement on Trade in Services to consult member countries on the Amendment Bill.301

The threat to property and investor rights

The prominent economist Moeletsi Mbeki has stated that the only agenda of the ANC currently is “it is our turn to eat”. Anthony Butler, a political scientist at the University of Cape Town, has analysed how short-term political and personal interests are shaping the economic policies:

Take the energy sector. Here, there are three indications that present-day elite gain is being privileged over society’s longer-range interests. First, there has been apparent acquiescence to the ANC’s proposal to reach deep into the R1,2-trillion Government Employees Pension Fund to recapitalise ESKOM, so potentially robbing tomorrow’s pensioners.

Second, the international shale gas industry appears to be successfully lobbying the government for a special dispensation that will enable fracking to go ahead in spite of uncertainty about its longer-term environmental and economic consequences.

Third, the government plans to finance nuclear power generation by imposing debilitating electricity costs on future consumers. Such costs are not just a distant menace, of course, because anticipated price rises will quickly discourage investment and undermine confidence in SA’s future creditworthiness.

The real price of nuclear power will also depend on who absorbs the risks. An opaque procurement process run by short-termist actors will not allow the allocation of future risk to be appropriately scrutinised. The immediate beneficiaries of a nuclear deal (other than French, Chinese or Russian governments peddling mostly redundant technologies) will be South African political brokers, the owners of “offset” and “domestic content” companies and fronts, and what Sports Minister Fikile Mbalula might describe as “approved recipients” in the ANC’s internal “diaspora legacy programme”.

This is all very bad news for the poorest 40% of citizens, who will continue to languish in poverty. But it is also bad news for what Prof Brian Levy and others have described as SA’s “missing middle”. Below the top 20% of earners, there is a “distributional cliff” that leaves the next 40% of the population unusually impoverished when compared with their peers in otherwise similar developing countries.

Patronage and the emptying state coffers

After more than twenty years, the state sources to satisfy important actors and constituencies have declined. The ANC’s policies have included the overuse and abuse of civil service employment, in conjunction with profligate spending, corruption and extreme consumption. South Africa’s total debt to foreign creditors increased by 250% in the past decade, now totalling about 40% of national debt. International economic events since 2008 have also played a role in reducing South African trade. Without sufficient new wealth-generating activities, investment, savings and productivity, a risk of insufficient state income is looming.

Research by Prof Jannie Rossouw in this regard, is instructive. Rossouw, currently head of the University of the Witwatersrand’s School of Economics and Business Sciences and previously serving for 27 years at the South African Reserve Bank, has concluded that “a continuation of the recent growth trend will crowd

out other public-sector priorities”. Rossouw and co-researchers Adele Breytenbach and Fanie Joubert refer to an approaching fiscal cliff, “the danger that the South African government might run out of income to cover growing government expenditure”.308

Social grants and state jobs together would account for all government revenue by 2026 – just a dozen years away, assuming high average annual revenue growth of between 9.7% and 9.9% between 2012 and 2013. It is currently at 1% per year. Even sharp increases in personal tax, company tax, fuel levies and excise duties would merely defer the fiscal cliff for two or three years.

The public commentator and former editor of the anti-apartheid weekly Vrye Weekblad, Max du Preez, summarized it in 2014:

In Zuma’s first four years in power, the salary bill for civil servants rose 76%. For every R100 generated by our economy, R14 goes to paying bureaucrats. This makes our civil service the most expensive in the world. In Russia this figure is R3.70, in Brazil R4.60 and in Nigeria R4. Some 17 million people now get social grants from the state, costing us more than R390 billion. Combined, welfare payments and public service salaries consume 56.4% of all state revenue, leaving just 43.6% for everything else that has to be done in this country. That is madness … The government and the ANC don’t have the political guts to limit civil service pay hikes to the inflation rate, because they don’t want to annoy the trade unions.309

As Montalto noticed recently:

Our meetings with the unions and others suggest that central government employment level freezes may very well be possible, but that significant “stuffing” of posts is expected into the 2016 local elections at the municipal and provincial levels, in addition to continued use of public works employment programmes (an expanded form of unemployment benefit) into the same elections.310

The government in May 2015 agreed to a 7% increase in civil servant salaries for this year, with similar increases for the next two years. This decision will reinforce the trends described above.311 Political pressures to raise

extra income for the ANC, its cadre networks in the state structures and key constituencies will increase in the next five years.312 Intense factional competition in the ANC and its allies, and between the ANC and breakaway political or politicized opponents like the EFF and NUMSA, will reinforce these dynamics.313

The ANC government will try to raise extra income in the form of taxes, including road tolls, regulations, licence fees and other means. Business may be expected to take on new obligations usually fulfilled by the tax-funded state. Business will often have difficulty in establishing whether extra state revenue is actually spent on improving the infrastructure or conditions of all citizens, or on subsidizing the ANC’s patronage and reinforcing its one-party dominance in a hybrid regime.

312. See for example http://www.bdlive.co.za/article7=49163&acid=Z2s4WkueCUeZeuwhd4cWQ%3D%3D&addid=CxgRNO6ftqMeZeuwhd4cWQ%3D%3D&date=2015-04-22#.VXbCkssR673.
313. http://today.moneyweb.co.za/article?id=466373&acid=Z2s4WkueCUeZeuwhd4cWQ%3D%3D&addid=CxgRNO6ftqMeZeuwhd4cWQ%3D%3D&date=2015-04-22#.VXbCkssR673.
Part VIII: The political risks to business in the next five years

South Africa continues to present attractive business opportunities. However, the political risk to business cannot be ignored. Simiso Velepi, the South Africa analyst of Control Risks, a major business risk consultancy, stated in February 2014 that in the medium to long term, the political risk outlook in South Africa will worsen before it gets better. This report follows a different methodology for the analysis of events, but comes to a similar conclusion.\(^{314}\)

What are some of the key issues of political risk in the new symbolic order and hybrid regime in the next five years?

The increased political risk in the next five years will increase the opportunity cost of business in South Africa. Several domestic and foreign businesses have already restructured or reduced their activities in South Africa. Others have waited or stayed away from South Africa, or have decided to rather pursue opportunities in other markets.

Three drivers will strengthen the dynamics of a hybrid regime and democratic decline in the coming years: they are intensified factional competition in the run-up to elections and the presidential succession; the further politicization of the security forces and securitization of politics to prop up presidential rule; and the weak economy and more limited state resources.

The ANC hybrid regime is likely to remain in place in the next ten years. A change in president in 2019 may cause a few policy changes, but it will be unable to significantly change the underlying dynamics, rules of the game and incentive systems described. Once state institutions in a one-party-dominant state have become so permeated with factions, patron-client networks and unaccountable presidentialism, the processes become self-generative. Incumbents have too much to lose and too slim chances of having political or economic alternatives. Democratic checks and balances on these forces will be ineffective.

Faced with new political and trade union challengers, the ANC is desperately trying to find ways of regaining some of its lost support among key constituencies. Due to the current levels of state debt, ANC factions are under pressure to find economic resources to sustain themselves and their patron-client networks.

Policies for economic growth will remained torn between different stakeholders and policy preferences. Policy incoherence and unexpected twists will often reflect phases in factional competition and newly-bargained advantages and alignments, rather than ideological vacillation.

Policy swings and uncertainty will be experienced most by companies in those sectors most exposed to the government’s political priorities or regulatory and licensing power. Minerals, energy, security, agriculture, telecoms and pharmaceuticals would be among these sectors.

The ANC has proceeded with several regulations, policy initiatives, bills and laws regarding mining and energy, the security industry, affirmative action and black empowerment, land, patents, and foreign investors in general. The common underlying policy in all of them is the same: they greatly increase the ANC government’s interventionist powers in the economy.

The planned and actual measures would weaken property rights and reduce private-sector autonomy. This result would strengthen the position of crony capitalists with links to ANC factions compared to other businesses.

To date, consumption and short-term fulfilment of patron-client obligations, rather than production, state capacity-building or long-term investment, have dominated the deployment of resources and opportunities gained.

The political effect of more ANC resources will be to regenerate the power of ANC factions, since patrons will be able to cultivate new clients and constituencies and sustain relationships with existing ones in the hybrid regime. During the competition with new political and trade union challengers, such steps could also be presented as populist measures aimed at improving the lot of the poor.

The high levels of state debt and the needs of the ANC’s patronage networks will drive efforts to look for new sources of income, both domestically and internationally. The value of some state-run corporations, but also other assets or opportunities of which it should be the public custodian, could be capitalized or mortgaged. Sometimes this will have a knock-on impact on existing government undertakings towards business.

The search for new sources of income will coincide with an increased effort at economic diplomacy, both formal and informal. The diplomacy will be couched in the rhetoric of branding, using South Africa’s many and unquestioned opportunities. However, the actual results would at least partially strengthen the ANC’s patron-client networks in state structures, rather than South African communities and citizens as a whole.

Factional struggles for scarce resources will drive efforts to increase state income through these measures and others. Unaccountable presidentialism, local big men and informal patron-client networks may play a role in this regard. There are different codes of conduct in different jurisdictions, and international business would need to heed best practices regarding integrity risk and reputational risk.

The levels of visible state mismanagement and operational risk are likely to remain high or sometimes even rise. This state of affairs will continue to have an effect in many areas of service delivery: the security of citizens and farmers, electricity, water management, waste management, roads, education, and postal services, and others that may arise. The impact will differ per province and locality, with pockets of sufficient or good service delivery in provinces and local areas.

Based on the internal and external dynamics of the ANC government, if interventions do not have the required effect, there is a risk that such a result would not trigger a reassessment of the intervention, but rather a stronger form of intervention.

Protest politics may have some impact on operations in a specific location, but are likely to be of limited duration. Depending on the locality, protest politics may be more prominent during periods in the run-up to elections, during elections and shortly thereafter.

Factions within trade unions and trade unions will compete intensively with each other for members, networks, power, status and resources. As a result, industrial unrest will be a major risk during the next five years. Due to the context in which it will be occurring, the potential politicization of disputes could be fast and assume militant forms.

Real or instigated xenophobic, anti-Western or indigenization sentiments may emerge during power plays or tough negotiations. When under pressure over non-democratic or bad governance, the ANC, as during the fracas in Parliament on 13 November 2014, will resort to smearing credible critics and political opponents as “racists” or “fascists”. Business may sometimes be caught in the crossfire.

There is an oligopoly of violence instead of the state’s monopoly of violence. The ANC government does not consider a restoration of the security of citizens and businesses as a state priority. Business and NGOs should review and regularly update their risk mitigation measures.

The factional search for more resources in the hybrid regime could result in an increased dependency of key decision-makers on foreign patrons like Russia, China or other political and business actors. The field of competitors and the importance of specific competitive advantages of business may change suddenly. Western business is advised to actively involve their business associations, business media and policymakers to support their projects in South Africa.

International business may find it worthwhile to conduct corporate social responsibility projects that focus on entrepreneurship training and business education. Given current socio-political dynamics, such initiatives should take into account the cultural
capital and mother-tongue preferences of different
groups and the option of private education institutions.
If the projects involve cooperation between foreign
and South African institutions of public education,
strict criteria and monitoring to reinforce the remaining
spaces of academic freedom are recommended in
policy-relevant education and research.

There is a limited but robust evolution of capacity and
self-help initiatives within cities, communities, and
the private sector. This trend will involve an authority
migration over time and shape the new political order.
Business and NGOs are advised to identify potential
partners and to use the opportunities involved.
About the author

Dr Heinrich Matthee is a strategy advisor and political risk analyst for companies and NGOs in the Middle East and Africa. He has a D Phil in Muslim politics from the University of Marburg, Germany and is an associate of the Africa Studies Centre, Netherlands, a research associate at the University of the Free State, South Africa, and a member of the South African Academy of Science and Art. During the Mandela presidency, he was a senior researcher in African security at the University of Stellenbosch. After 2000, he was a researcher/editor at the Emirates Center for Strategic Studies and Research in Abu Dhabi, and a Middle East analyst at Control Risks, London. He is the author of *Muslim Identities and Political Strategies* (Kassel University Press, 2008) and a regular book reviewer for the US-based *Middle East Policy*. 