The threat to property and investor rights

[From the annual South African Monitor Report of February 2018: Political factionalism, business risks and the ANC's hybrid regime]

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 aimed at boosting the economic growth rate to 5.4% of the GDP and generating eleven million jobs. These objectives have never been reached, but the ANC did proceed with several statutes and bills that greatly increased the government's interventionist powers. They clearly prioritized the redistribution of the existing economic pie, rather than its expansion.[1]

In a report on all business-related legislation since 2013, the IRR 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".[2] Examples during the Zuma presidency include new regulations, policy initiatives and legislation regarding investment, expropriation, mining and energy, the security industry, affirmative action, black empowerment and land. 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.

Several drivers will reinforce economic interventionism by ANC policy-makers in the next few years. These include economic stagnation and shrinking resources, the loss of access to sources of patronage after the ANC's local election losses, the uncertainty about Zuma's political survival, related risks and opportunities for current systems of

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1. Anthea Jeffery, "The ANC govt's war on economic rationality", 27 March 2014 at http://www.politicsweb.co.za/politicsweb/view/politicsweb/en/page71619?oid=579465&sn=Detail&pid=71616; http://www.economist.com/blogs/baobab/2014/03/property-rights-south-africa.
2. http://www.politicsweb.co.za/politicsweb/view/politicsweb/en/page71619?oid=579465&sn=Detail&pid=71616.

patronage, and factional struggles over fewer spoils. The role of the one-party-dominated state in the economy is bound to remain strong.

Shifts in ANC economic rhetoric indicate that the government's role in the economy could even become more interventionist. "Radical economic transformation" was the theme of Zuma's SONA of February 2017. It was delivered amid scenes of MPs brawling and security forces imposing an unprecedented lockdown outside Parliament. Zuma repeated pledges by the ANC to use the state to boost BEE, speed up land reform and strengthen the government's role in the mining industry.

This SONA was the first since the ANC had suffered its worst electoral performance, when it lost control of Pretoria and Johannesburg in the August 2016 municipal elections that saw its support fall to a record low of 54.5%, down 7.7 percentage points from the national vote of 2014. If the ANC were to take another hit of that magnitude in 2019, it would probably be relegated to the opposition. "Time is running out for Zuma; time is running out for the ANC," Tinyiko Maluleke, a political analyst at the University of Pretoria commented. "That for me is at the heart of why you have 'radical economic transformation'."[3] The ANC's new leader, Cyril Ramaphosa, has also used the rhetoric of radical economic transformation.

Bad business perceptions of the ANC government

This role by government will not necessarily benefit the economy. During ANC rule of 24 years, extensive de-industrialization has occurred. In 1994, manufacturing accounted for 23% of GDP, which is now at about 11%. High wage rates, high strike rates, a steep decline in labour productivity and policies discouraging foreign and domestic investment all played a role. R.W. Johnson, liberal analyst, now contends that South Africa can choose to have an ANC government or a modern industrial economy, but not both.[4]

The World Economic Forum's Global Competitiveness Index (GCI) for 2017-2018 reflects the perceptions of domestic and international business.[5] In terms of the overall GCI, South Africa ranks quite well, namely in position 61 out of 137 countries measured. However, it was a drop in the position from being in position 56 in 2016-

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3. https://www.businesslive.co.za/bd/politics/2017-02-13-embattled-zuma-pins-his-hopes-on-populist-shift/.
4. R.W. Johnson, *How long will South Africa survive? The looming crisis* (Jonathan Ball Publishers, Cape Town, 2015), p 158.
5. Klaus Schwab and Xavier Sala-i-Martin (eds), "The Global Competitiveness Report, 2017-2018", *World Economic Forum,* https://www.weforum.org/reports/the-global-competitiveness-report-2017-2018, pp. 268-269. Compare Klaus Schwab (ed), "The Global Competitiveness Report, 2009-2010", *World Economic Forum 2010,* p 283 at http://www.weforum.org/reports/global-competitiveness-report-2009-2010 and Klaus Schwab and Xavier Sala-i-Martin (eds), "The Global Competitiveness Report, 2016-2017", *World Economic Forum*, pp 324-325.

2017. The GCI measure of South Africa's competitiveness is also 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 four years in a row, South Africa has had low scores for the diversion of public funds (position 106), a major drop in the past year, and the perceived wastefulness of government spending (position 103). In terms of organised crime, it dropped significantly to position 122 out of 137 countries. For "business costs for crime and violence", it is again in position 133. In terms of the reliability of the police, it is in position 118, a further drop from being in position 102 in 2015. South Africa ranks in position 114 in terms of "public trust in politicians", a further drop after already being in position 65 in 2009. It also is in position 98 in terms of "the burden of government regulation". South Africa dropped from position 115 in terms of "favouritism in the decisions of government officials" to being in position 127, a huge drop from being in position 69 in 2009.[6]

International media reports revealing self-enrichment and selective patronage by President Zuma and his entourage have reinforced these perceptions. However, 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. They are unwilling to jeopardize the government licences they require to operate.[7] Nevertheless, both local and international business have adapted the forms and extent of their investment in South Africa accordingly.

Domestic business: Increased distrust and divestment

The relations between local business and the ANC government have deteriorated during Zuma's presidency. Peter Montalto, a respected foreign investment advisor, had already stated after visiting South Africa in November 2014:

> *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.*

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6. Klaus Schwab and Xavier Sala-i-Martin (eds), "The Global Competitiveness Report, 2017-2018", *World Economic Forum,* https://www.weforum.org/reports/the-global-competitiveness-report-2017-2018, pp. 268-269. Compare Klaus Schwab (ed), "The Global Competitiveness Report, 2009-2010", *World Economic Forum 2010,* p 283 at http://www.weforum.org/reports/global-competitiveness-report-2009-2010 and Klaus Schwab and Xavier Sala-i-Martin (eds), "The Global Competitiveness Report, 2016-2017", *World Economic Forum*, pp 324-325.
7. http://www.biznews.com/thought-leaders/2014/11/07/nomuras-peter-montalto-was-concerned-ahead-of-sa-research-visit-left-gloomier.

The private sector is ignored politically as the only real source of wealth creation and sustainable employment growth.[8]

In April 2016, two years later, Ann Bernstein confirmed that:

… a dysfunctional relationship between business and government that manifests failings on both sides, but has its roots in deep suspicion about business and markets, flourishes in and around the governing party. South Africa cannot hope to achieve growth while simultaneously being anti-business. The slide into crony capitalism makes matters considerably worse.[9]

The balance between high taxes and an appreciation of the benefits that this brings, is not evident to wealthier South Africans.[10] Meanwhile, the degree of capital flight among short-term portfolio investors has resulted in Central Bank warnings.[11] Andrew Rissik, the managing director of foreign currency trading at Sable Group, a London-based money manager, has linked the trend to increasing political risk: “Poor decisions by (Mr) Zuma and the ruling party triggered a widespread urge to move assets abroad”.[12]

In 2016, for the first time in many decades, the value of South African-owned assets outside of the country exceeded the annual flow of funds into it. Many of its own citizens preferred to send their money out of the country, rather than to invest locally.[13] There is no evidence that this trend has changed significantly in 2017.[14]

The University of Johannesburg’s Centre for Competition, Regulation and Economic Development estimates that the top 50 companies listed on the Johannesburg stock market are sitting on 1.4 trillion rand ($105 billion) of cash – nearly six times the amount in 2005, as the abstention from investment continues.[15] Since 2013, business

8. See http://www.biznews.com/thought-leaders/2014/11/07/nomuras-peter-montalto-was-concerned-ahead-of-sa-research-visit-left-gloomier/. Peter Attard Montalto is a London-based executive director and emerging markets economist at Japanese investment bank Nomura, responsible for South Africa and Emerging Europe.
9. Ann Bernstein, “Harsh choices await if we continue down the low road”, *Business Day*, 7 April 2016.
10. https://businesstech.co.za/news/business/218475/taxing-south-africas-rich-will-only-chase-them-away/.
11. “South Africa’s Central Bank Warns of Capital Flight Risk” at http://online.wsj.com/news/articles/SB10001424052702304518704579520901590608912.
12. “Politics pushes more money out of SA”, *Business Day*, 13 April 2016.
13. http://www.biznews.com/sa-investing/2016/01/06/capital-flight-plunging-rand-more-sa-owned-assets-abroad-than-flowing-in/; http://derstandard.at/2000027849282/Praesident-Zuma-als-Belastungsprobe-fuer-Suedafrikas-Wirtschaft.
14. On the major net outflows of capital since 2014, also see http://unctad.org/Sections/dite_dir/docs/WIR2017/wir17_fs_za_en.pdf.
15. https://www.ft.com/content/12b8a5d8-78f0-11e7-90c0-90a9d1bc9691.

confidence has been on a declining trend from above 50 to the current level below 35 in 2017.[16]

The ANC has underestimated the degree to which companies have opportunities to go elsewhere than South Africa, or it does not care too much.[17] For many companies, the best opportunities in mining and manufacturing no longer are in South Africa.[18] Major companies have already considered hiving off their South African assets, or have actually done so.[19]

Even senior government officials have admitted that, with some exceptions, South Africa's industrial policy is not working and that the process of de-industrialization of past years is continuing.[20]

The economist Mike Schüssler also commented:

> *One top firm after another is chasing opportunity elsewhere. Our top 60 companies now earn 70% of their turnover outside of South African borders. In effect, they have left and South Africa is just another market.*[21]

EU businesses concerned about ANC policies

The *Business Climate Survey 2016: EU Trade and Investment in South Africa* was published in 2017. The survey highlights several common concerns within the EU investor community. The outlook for South Africa as an investment destination is rather negative: twice as many firms reported that they were dissatisfied rather than satisfied. This is a sharp drop in comparison to the results of the 2012 Survey and a continuing trend with the 2014 results.[22]

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16. https://mg.co.za/article/2018-01-24-shaking-up-eskom-matters-for-south-africas-economy.
17. Also see http://www.bdlive.co.za/business/trade/2015/05/07/bee-code-change-shocks-industry; http://www.bdlive.co.za/opinion/2015/04/20/why-new-bee-codes-will-pull-the-rug-from-under-business.
18. http://www.biznews.com/video/2014/07/29/must-watch-invicta-holdings-arnold-goldstone-true-impact-numsas-strike/.
19. http://www.biznews.com/video/2014/09/11/what-crisis-rob-davies-shrugs-off-sa-corporate-flight-says-foreigners-investing/. On the issue of company actions to reduce their risk, also see http://www.miningweekly.com/article/major-south-african-assets-fail-to-make-the-cut-in-bhp-billiton-portfolio-remake-2014-08-15; http://www.reuters.com/article/2013/02/08/safrica-goldfields-idUSL5N0B86R420130208; http://www.miningmx.com/page/opinion/columnists/1474694-Selling-SA-gold-mines-is-strategy-of-last-resort.
20. http://m.engineeringnews.co.za/article/south-africa-continues-on-path-of-deindustrialisation-2017-10-05/rep_id:4433.
21. http://www.moneyweb.co.za/moneyweb-opinion/welcome-to-the-decline-south-africa/#.VkLfDu9ILUc.facebook.
22. See "Business climate survey 2016: EU trade and investment in Southern Africa" at http://www.euchamber.co.za/surveys/.

The 2016 Survey asked the respondents to identify the three biggest challenges for investment in South Africa. In addition to expressing an overall declining investor confidence in the country, the key challenges that emerged were rising prices, government corruption, and lack of skilled labour combined with BBBEE legislation. Investor confidence in South Africa is further undermined by inadequately functioning government institutions. The respondents specifically pointed to the lack of transparency, inconsistent policies, as well as corruption.

Transformation emerged as the most negatively perceived factor affecting South Africa's business climate. The cost and administration of compliance with the BBBEE codes (the second biggest barrier to EU investment identified in the 2014 survey) is still expected to continue having a negative impact on foreign investment. EU investors questioned the BBBEE's overriding focus on ownership instead of the supply chain or skills development. In addition, the shortage of skilled labour in South Africa made compliance with the BBBEE management-related rules dificult.[23]

> *"In this respect, members of the EU Chamber have reported that an increasing number of tenders by the SOEs in SA include a requirement of 51% black ownership for their suppliers," Stefan Sakoschek, the chamber's national executive director said. He said the chamber had been informed that "such a discretionary measure lacked sound legal basis" as it would require pre-approval from the Department of Trade and Industry (DTI), based on appropriate studies examining the skills level and other market dynamics in respective commercial sectors. European companies were now faced "with surprising new rules" in relation to crucial tender procedures. "This has already caused investments to be put on hold or downscaled".*[24]

The emphasis of both Zuma and Ramaphosa on radical economic transformation may thus reinforce the negative outlook of EU investors over time. Two-thirds of respondents expected a further deterioration in corruption within the government and regulatory authorities. Respondents have difficulties with the government responsiveness and accessibility to government oficials. The respondents have largely mixed perceptions about issues of investment protection and taxation with the highest degree of uncertainty around investment protection and local intellectual property rules.[25]

23. See "Business climate survey 2016: EU trade and investment in Southern Africa", p 30 at http://www.euchamber.co.za/surveys/.
24. https://www.businesslive.co.za/fm/features/2017-04-21-eu-to-bee-or-not-to-bee/.
25. "Business climate survey 2016: EU trade and investment in Southern Africa", pp 28-29 at http://www.euchamber.co.za/surveys/.

In spite of the worsening investment outlook, many EU investors in South Africa have increased their turnovers and created jobs in the past three years. South Africa continues to present certain advantages in comparison to other African countries and therefore remains a destination of choice for regional headquarters and sales offices of many EU companies with operations in Sub-Saharan Africa.[26]

ANC government weakened European investor protection

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". Foreign diplomats, usually reserved, have started to voice their concerns in private and in public.[27]

Carol O'Brien, executive director of the American Chamber of Commerce in South Africa, 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.[28] The chamber represents almost 40% of the six hundred US companies with operations in South Africa. She said that the stream of legislation did not send a message that foreign investment was welcome in South Africa. SAFRI, one of the main German business associations looking at the interests of about six hundred German businesses in South Africa, has expressed dismay over the direction of economic policy.[29]

Following costly arbitration claims brought against South Africa by European investors, the Zuma administration decided in 2010 to stop signing bilateral investment treaties (BITs). The Department of Trade and Industry has, since 2012, undertaken a targeted termination of all 13 treaties with European states, replacing them with the Promotion and Protection of Investment Bill (PPIB). The department has not terminated the equally restrictive treaties that protect Chinese and Russian investors in South Africa.[30]

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26. https://www.businesslive.co.za/bd/business-and-economy/2017-03-24-surprising-new-rules-on-empowerment-are-holding-investors-back-says-eu-chamber/.
27. http://www.economist.com/blogs/baobab/2014/03/property-rights-south-africa; http://online.wsj.com/news/articles/SB10001424052702303948104579537802749237362; http://www.polity.org.za/article/businesses-brace-for-transformation-pressures-as-elections-loom-2014-04-08; http://www.bloomberg.com/news/2014-04-14/anc-adopts-laws-before-vote-that-may-hurt-south-african-business.html; http://www.bdlive.co.za/business/2014/03/09/diplomats-break-silence-on-investment-bill.
28. http://www.bdlive.co.za/economy/2015/02/20/barrage-of-new-laws-alarms-us-firms-in-sa.
29. http://www.dw.de/german-corporate-unease-in-south-africa/a-18078269; http://www.badische-zeitung.de/ausland-1/steinmeiers-vergebliche-visite-am-kap--95122906.html.
30. Ben Winks, "Investors pawns in political power play", *Business Day*, 19 April 2016.

Where treaties are terminated, the foreign investors currently protected by them may have no remedy against damaging policy changes. They are also likely to receive less than the "prompt, adequate and effective" compensation promised by the treaties.[31]

The new Investment Bill or PPIB was approved by Parliament and signed into law by President Zuma at the end of 2015. In terms of the law, the rights of foreign and domestic property owners have been much reduced. The PPIB is supposed to apply equally to foreign and domestic investors. "This bill is part of a worrying trend that South Africa's protection of private property is weakening," stated Carol O'Brien in 2015.[32]

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 European 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.*[33]

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31. http://mg.co.za/article/2013-11-01-swiss-govt-reacts-to-termination-of-bilateral-investment-treaty-with-sa; http://www.bdlive.co.za/business/2014/03/09/diplomats-break-silence-on-investment-bill.
32. https://www.bloomberg.com/news/articles/2015-11-17/south-african-lawmakers-approve-foreign-investment-bill.
33. Southern Africa Initiative of German Business, *South Africa: New Legal Framework for Direct Investments,* 2014, pp 1-2 at www.safri.de.

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. According to Matthias Boddenberg, CEO of the South African-German Chamber of Commerce and Industry, the PPIB would raise the investment risk of German companies, as well as the risk insurance premiums they would need to pay.[34] German exports for the past decade show an upward curve. However, German investment in South Africa remains subdued, largely caused by the political uncertainties and the general economic situation.

Stefan Sakoschek, the executive director of the EU Chamber of Commerce in South Africa, told parliamentarians during public hearings in September 2015:

> *We are aware of a number of projects that are pending due to the degree of uncertainty related to the investment framework … The withdrawal of SA's (bilateral treaties) with EU member states has sent an alarming message to the EU business community regarding the standard of protection of investments. The new bill does not sufficiently allay those concerns.*[35]

In May 2016, Sakoschek stated that the conditions for investing and doing business in South Africa were "very different", compared to the period when bilateral treaties still protected businesses. According to Sakoschek, political instability and regulatory uncertainty was forcing European firms to reconsider investing in the country. The rules for investing in South Africa appear to be changing too quickly and too drastically.[36] In September 2017, Sakoschek again expressed deep concern over the large number of bills affecting foreign business. According to him, several will have a major impact and there is concern over the ambiguous nature of the legislation.[37]

ANC government weakened property rights[38]

Under the PPIB, signed by President Zuma into law in December 2015, expropriated owners will receive less than market value and will have no right to damages for consequential loss. One danger in the law is that domestic property owners will be confined to "just and equitable" compensation falling somewhat short of market value.

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34. http://www.marktundmittelstand.de/zukunftsmaerkte/ppib-deutsche-firmen-fuerchten-um-standort-suedafrika-1233191/.
35. http://www.bdlive.co.za/economy/2015/09/10/investment-bill-may-cause-investor-flight-eu-firms-warn.
36. "Rules for investing in SA changing too drastically and too quickly", *Moneyweb*, 31 May 2016.
37. http://www.ftwonline.co.za/article/126293/Pending-legislation-unsettles-EU-business/66.
38. The analysis of the PPIB's contents is heavily indebted to the analyses of Doctor Anthea Jeffery of the SAIRR and Advocate Martin Brassey, SC, as reflected in the sources quoted. Also see http://www.bdlive.co.za/opinion/2013/06/10/bills-threaten-the-property-rights-of-all-south-africans; http://www.politicsweb.co.za/politicsweb/view/politicsweb/en/page71639/page71619?oid=579465&sn=Detail&pid=71619.

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 Doctor Anthea Jeffery,[39] this danger stems from a key clause in the legislation stating that various actions "do not amount to acts of expropriation". 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".[40]

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 PPIB. 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 President Jacob Zuma.[41] 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

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39. http://www.bdlive.co.za/opinion/2013/06/10/bills-threaten-the-property-rights-of-all-south-africans; http://www.politicsweb.co.za/politicsweb/view/politicsweb/en/page71639/page71619?oid=579465&sn=Detail&pid=71619. Also see "Concourt ruling, new Investment Bill could give government sweeping powers to take property without compensation", *Polity*, 19 May 2014; Martin Brassey, "The ANC govt's property rights grab", *Politicsweb,* 22 July 2014.
40. http://www.sabinetlaw.co.za/economic-affairs/legislation/promotion-and-protection-investment; http://www.saiia.org.za/opinion-analysis/draft-investment-bill-requires-amendment; http://www.bdlive.co.za/opinion/2013/06/10/bills-threaten-the-property-rights-of-all-south-africans.
41. http://mg.co.za/article/2011-08-16-zuma-picks-mogoeng-as-chief-justice.

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”.[42]

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 PPIB 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.[43]

Disempowered international and South African property owners

Government could use the PPIB’s 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 thereof.

Similar measures, intended to generate a similar outcome, could be taken as regards all other “investments” covered by the PPIB. 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 PPIB 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.[44]

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42. Anthea Jeffery, “The ANC govt’s plan for expropriation on the sly”, *Politicsweb*, 25 February 2014; Martin Brassey, “The ANC govt’s property rights grab”, *Politicsweb*, 22 July 2014.
43. Anthea Jeffery, “The ANC govt’s plan for expropriation on the sly”, *Politicsweb*, 25 February 2014; Martin Brassey, “The ANC govt’s property rights grab”, *Politicsweb*, 22 July 2014.
44. Anthea Jeffery, “The ANC govt’s plan for expropriation on the sly”, *Politicsweb*, 25 February 2014; Martin Brassey, “The ANC govt’s property rights grab”, *Politicsweb*, 22 July 2014.

The PPIB'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 law will apply to everyone, including "natural persons" and "regardless of nationality".[45] The law gives 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 Restitution of Land Rights Amendment Act came into force in July 2014, reopening the land claims window and causing uncertainty about investment in agriculture. In May 2016, Parliament approved the Land Expropriation Bill, which indicate the requirements for the state to lay claim to land for public purposes or in the public interest without the owner's consent. The term "property" in the Bill was not defined as referring to land only, meaning it was open to interpretation and could lead to movable property like shares and intellectual property being expropriated.[46]

Expropriation of land without compensation?

Agriculture contributes less than 3% of the national GDP and employs just 4.4% of workers. Land reform may serve political purposes, but it cannot serve as the mainstay of serious economic reform. However, serious disruption of the already challenged agricultural sector can have major negative implications for food security in South Africa.

In September 2017, Stefan Sakoschek, regional director of the EU Chamber of Commerce and Industry in South Africa, expressed the Chamber's concern over land reform that was also still pending:

> *Again the definitions in the legislation are very broad and if accepted it will have major impact on foreigners operating in South Africa. There are concerns that the bill is aimed at keeping foreigners out, but there are worries about the expropriation potential that is created.*[47]

One of the key policy decisions at the ANC conference in December 2017 was on expropriation of land without compensation. On 27 February 2018, the ANC, EFF and other parties supported a resolution to start a process of amending the Constitution in order to allow for expropriation without compensation. The National Water Act of

45. "A new Expropriation Bill by another name", *Liberty*, 25 February 2014, p 5; http://www.miningweekly.com/article/top-lawyers-warn-of-mining-bills-devastating-consequences-2013-09-13.
46. http://mg.co.za/article/2016-05-26-parliament-approves-land-expropriation-bill.
47. http://www.ftwonline.co.za/article/126293/Pending-legislation-unsettles-EU-business/66.

1998 has already made the ANC government the “public trustee of the nation’s water resources”.[48]

Creeping state ownership in the mining and energy sectors

According to a survey published by the Chamber of Mines in December 2017, based on 16 member companies, the uncertain policy and regulatory environment had caused the mining industry to freeze investment on new projects. The estimated planned capital spending of R145 billion in mining could increase by R122 billion or 84% in a more stable and conducive environment, the survey found.[49]

Among the changes has been the amended Mineral and Petroleum Resources Development Amendment Bill of 2013 (the Mining Bill), which was approved by the National Assembly on 1 November 2016.[50] The Mining Bill also applies to offshore oil and gas exploration and production.[51]

The law gives the minister of Mineral Resources unprecedented discretionary powers in many spheres. It 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.[52]

Business Day, the premier business publication in South Africa, previously commented:

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48. http://www.politicsweb.co.za/documents/triumph-of-the-raceultras-this-is-who-voted-for-ew; https://www.iol.co.za/news/south-africa/kwazulu-natal/warning-of-war-follows-violent-clashes-on-farms-12637332; https://www.dwa.gov.za/Documents/Publications/NWAguide/part1.pdf.
49. https://www.businesslive.co.za/bd/economy/2018-01-16-mining-output-accelerated-more-than-expected-in-november-2017/.
50. http://www.lexology.com/library/detail.aspx?g=e4cc1739-49a3-41e1-98e0-5d97cb86d704; http://allafrica.com/stories/201612050901.html.
51 http://www.miningweekly.com/article/local-mining-industry-still-in-doldrums-economists-2016-12-08/rep_id:3650.
52. http://mg.co.za/article/2013-09-13-experts-stakeholders-grill-proposed-changes-to-mining-laws.

> *(T)he 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 explore in South Africa. Nor will they develop projects they know the government will nationalise.*[53]

In April 2016, the Department of Mineral Resources released a revised mining charter that demands a perpetual minimum of 26% black ownership per mining right. The charter was drawn up without consultation with the industry. Many companies have complied with this requirement, but BEE partners have exited, taking their profits, or the previous BEE partner has transferred shares to a non-BEE company. The charter now states that all BEE targets stipulated in the mining charter shall be applicable throughout the lifespan of mines. The charter increased the level of capital goods procurement from BEE-compliant companies to 60% from 40%.[54]

A new Mining Charter III in 2017 increased the uncertainty in the sector. It proposed an increase in black ownership targets to 30%; the creation of more onerous ownership requirements for suppliers to the industry; and demands that research and development be focused locally, ideally at previously disadvantaged universities. Increasingly, investors are looking to the mining sector in other Southern African countries as preferable to the sector in South Africa.[55]

It remains to be seen whether a new ANC government will be able to provide the longer-term policy uncertainty that the mining industry requires for its projects of long-term investment. The current political dynamics do not favour such policy certainty.

Increased state ownership and control of the lucrative security industry

ANC attempts at other forms of creeping expropriation can be expected in the hybrid regime in the next decade. The Private Security Regulation Amendment Bill of 2013 (alias the Security Bill) was adopted by Parliament in February 2014 and is 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

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53. http://www.bdlive.co.za/opinion/columnists/2014/03/31/a-hard-ask-for-business-to-criticise-government.
54. "Department blindsides miners with new charter", *Business Day*, 15 April 2016.
55. https://www.moneyweb.co.za/moneyweb-opinion/soapbox/mining-industry-hopes-that-the-new-broom-sweeps-clean/.

companies must be "exercised by South African citizens". Foreign-owned companies will be forced to sell 51% of their shares to South Africans.

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 President Zuma not to sign this bill.[56] There are concerns that the bill is focused less on legislating the companies and more on regulating them as businesses. This would mean that the sector would be subject to government's "transformation" strategies and discouraging foreign investment in favour of South African ownership.[57] These clauses would be in violation of South Africa's commitments under the General Agreement on Trade in Services (GATS) of the World Trade Organisation (WTO).

According to Stefan Sakoschek, the director of the EU Chamber of Commerce and Inustry in Southern Africa, the Private Security Industry Regulation Amendment Bill currently is a priority concern. "Our concern is that it introduces the topic of nationalisation again. The legislation gives power to the minister of Police to expropriate up to 100% of a foreign-owned security company. The bill also allows for foreign ownership of local private security companies to be limited." He said in terms of the legislation the definition of a security company was extremely broad in the bill. "We have many companies that manufacture and import security products into South Africa and this bill could impact on them negatively."[58]

State-owned enterprises (SOEs)

SOEs with their billions in lucrative procurement budgets, are already at the heart of the ANC government's economic policies and political patronage. In 2016, briefings on a cabinet meeting announced that President Jacob Zuma would chair a new presidential SOE co-ordinating committee. The suggestion was withdrawn after resistance, but Zuma has already used senior appointments to SOEs to extend his networks of patronage.

South African SOEs like Eskom, Transnet and SAA have massive debts, funding restraints, risks, rent extraction and governance issues. As a result, they are an extreme liability on the National Treasury. Companies like Eskom and SAA claim

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56. http://www.bdlive.co.za/national/2014/06/19/business-groups-urge-zuma-not-to-sign-disputed-bill-on-private-security; http://www.issafrica.org/iss-today/are-foreign-owned-private-security-companies-a-threat-to-south-africas-national-security; http://www.prweb.com/releases/2014/06/prweb11907317.htm.
57. https://businesstech.co.za/news/business/175651/new-laws-could-mean-the-end-of-private-security-as-we-know-it-in-sa-report/; http://city-press.news24.com/Business/Private-security-amendment-bill-the-enemy-of-SA-economy-20151009.
58. http://www.ftwonline.co.za/article/126293/Pending-legislation-unsettles-EU-business/66.

that they are working to be less of a burden. However, prominent financial analysts like Nomura's Peter Attard Montalto believe that the implicit exposure of these companies to the country's sovereign is much higher than stated.[59]

Especially ESKOM, as revealed by the #Guptaleaks, but also other SOEs, came to play a central role in serving as a conduit to transfer government resources to well-connected and corrupt individuals and families.[60] Many SOEs, having squandered much resources, are now deeply troubled.[61] The SOEs are one of the chief obstacles to the aims of stabilising national debt and government finances.[62] Questionable, dubious and very expensive deals are being done at many parastatals.[63]

Congested railways and ports controlled by SOEs have constrained exports. According to *The Economist*, this situation removed an estimated percentage point from South Africa's low annual growth. 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, has since 2015 been rationing its supply, because its aging plants cannot keep up with the demand. ESKOM implements blackouts when it struggles to meet the demand. These measures have had a huge impact on productivity and also on business morale in South Africa.[64]

The sectors using the most electricity are also the foreign exchange earners, namely non-ferrous metals; basic iron and steel; non-metallic minerals; mining; paper and paper products; and chemicals. According to Peter Montalto:

> *The problem is not its technical ability, but the external political and ideological pressure that has slowed the process ... As ever, the government seems to have too much time. The knowledge to solve the ESKOM problem is already within the government. Remove the politics, the tenderpreneurship and the cadre deployment.*[65]

Similarly, water supplies and water management have become a major issue. In Cape Town, taps are set to dry up sometime in mid-2018, after which at least 20 000

59. https://businesstech.co.za/news/government/189946/south-africa-likely-to-be-fully-junked-by-march-2018-analyst/.
60. https://www.sowetanlive.co.za/news/south-africa/2018-02-04-eskom-the-power-giant-at-the-core-of-south-africas-state-rot/.
61. https://businesstech.co.za/news/general/136311/sa-parastatals-are-losing-billions-while-being-used-for-personal-ends/; http://www.dailymaverick.co.za/opinionista/2016-09-02-dear-moral-investor-would-you-invest-in-rotting-state-owned-entities/#.V84uKJUw_IV.
62. http://mg.co.za/article/2016-10-28-00-fiscal-risk-beware-the-parastatals.
63. http://mg.co.za/tag/parastatals; http://mg.co.za/article/2016-09-02-00-treasurys-bids-to-end-corruption-are-peeling-back-a-curiously-connected-gravy-trail.
64. http://www.bdlive.co.za/opinion/2015/04/14/eskom-lies-will-continue-over-ideology.
65. http://www.bdlive.co.za/opinion/2015/04/14/government-knows-eskom-solution-but-lacks-resolve.

residents will have to queue at one of 200 water collection points for a daily water ration of 25 litres per person. The Cape metro contributes 10% to South Africa's gross domestic product (GDP) and 72% to the Western Cape economy.[66]

According to a visiting professor at the University of the Witwatersrand, Mike Muller, "the shenanigans in the water sector have little to do with radical economic transformation. They are more about the ongoing enrichment of a new elite".[67] Anthony Turton, professor of Environmental Management at the University of the Free State, says that South Africa had the necessary water skills, provided institutions remained well-funded and robust. However, there has been a systemic failure across the board. "What is happening in the water sector now as a system is almost a mirror of the energy sector failures (of a few years ago)".[68] The inability to provide basic electricity and water services will have a major deterrent effect on many foreign investors.

Patronage pressures and emptying state coffers

The prominent economist Moeletsi Mbeki stated that the only agenda of the ANC currently is "it is our turn to eat".[69] However, after twenty-four years of one-party-dominant rule, 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 and SOEs, in conjunction with profligate spending, corruption and extreme consumption. Over the past decade the number of civil servants has increased by about 25%. One in five working people now works for the government.[70] The post-2000 period has generated a new labour elite in the labour market, namely the unionised public sector employee.[71]

Under President Zuma's administration, public sector wages, debt interest payments and welfare grants now account for 60% of the budget.[72] In addition, according to South African chief procurement officer, Kenneth Brown, as much as 40% of the country's R600 billion budget for goods and services is being eaten up by inflated

66. https://www.dailymaverick.co.za/article/2018-01-22-analysis-a-drought-of-nature-compounded-by-a-drought-in-leadership/#.WmyJ4KjibIV.
67. https://mg.co.za/article/2016-12-05-south-africas-water-sector-a-case-study-in-state-capture.
68. https://www.dailymaverick.co.za/article/2018-01-22-analysis-a-drought-of-nature-compounded-by-a-drought-in-leadership/; https://mg.co.za/article/2018-02-02-00-capes-water-crisis-to-have-ripple-effect.
69. Andrew England, "Power failure", *Financial Times*, 13 May 2015, p 7.
70, "The hollow state", *The Economist*, 20 December 2015.
71. https://theconversation.com/south-africas-civil-servants-are-the-countrys-new-labour-elite-54269.
72. R.W. Johnson, *How long will South Africa survive? The looming crisis* (Jonathan Ball Publishers, Cape Town, 2015), p 124.

prices from suppliers and fraud.[73] Without sufficient new wealth-generating activities, investment, savings and productivity, a risk of insufficient state income is looming.

Professor Jannie Rossouw, currently head of the University of the Witwatersrand's School of Economics and Business Sciences, with co-researchers Adele Breytenbach and Fanie Joubert referred to an approaching fiscal cliff, "the danger that the South African government might run out of income to cover growing government expenditure".[74] Social grants and state jobs together would account for all government revenue by 2026 – assuming high average annual revenue growth of between 9.7% and 9.9%. 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.

Professor Susan Booysen concludes that there is little evidence of Zuma's policy leadership on economic growth and job creation.[75] The budget in 2018 would need R40 billion in spending cuts and R30 billion in new revenue measures to get South Africa back on the fiscal consolidation path. Zuma's free tertiary education promise is set to cost R12-R15 billion in the first year.

Political pressures to raise extra income for the ANC, its cadre networks in the state structures and key constituencies will also increase in the next few years.[76] Intense factional competition in the ANC and its allies, and between the ANC and breakaway political or politicized opponents like the EFF and some trade unions, will reinforce these dynamics.[77]

Downgrades by credit rating agencies

Especially since late 2015, according to the perceptions of investors and international credit rating agencies, political and economic risks in South Africa have increased.[78] Moody's Investors Service warned in late November 2016 that political infighting,

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73. http://businesstech.co.za/news/government/139193/shocking-levels-of-fraud-and-inflated-prices-cost-south-africa-r233-billion/.
74. Jannie Rossouw, "South Africa's fiscal cliff: A different meaning to a well-know concept", ERSA, 16-17 May 2013; "SA is headed for a financial cliff", *Financial Mail*, 14 October 2014.
75. Susan Booysen, *Dominance and Decline: The ANC in the time of Zuma* (Wits University Press, Johannesburg, 2015), p 304.
76. See for example http://www.bdlive.co.za/business/mining/2015/05/18/chamber-of-mines-comes-to-members-defence.
77. http://today.moneyweb.co.za/article?id=466373&acid=Z254vWXulCUeZeuwhd4cWQ%3D%3D&adid=CxgRuNO6fqMeZeuwhd4cWQ%3D%3D&date=2015-04-22#.VXbCkssR673; http://sa-monitor.com/anc-youth-league-nationalisation-call-plunge-mining-deep-pit-bdlive-11-october-2016/.
78. http://www.bloomberg.com/news/articles/2015-05-07/riots-signal-what-is-going-wrong-with-south-africa-s-economy.

low growth and unemployment pose the greatest risks to the South African economy.[79] In November 2016, Fitch stated that political risks to standards of governance and policy-making had increased.

In November 2017, credit ratings agency S&P Global downgraded South Africa's credit rating to full junk status. It followed a similar announcement by the third major ratings agency, Fitch, affirming South Africa's rating at sub-investment or junk status.

Their counterpart, Moody's, has placed the country on review for a downgrade. The agency will only complete its review after the 2018 budget. This will allow it to factor in the outcome of the ANC conference. This has been a temporary stay of execution, as it means that South Africa can, for now, remain in key global bond indices such as the Citigroup World Government Bond Index (WGBI). Moody's holds South Africa's local and foreign issued debt at one rung above junk. Membership of the WGBI requires that either Moody's or S&P Global rates a country's local currency rating as investment grade.

S&P said in its report that weak economic growth had led to deterioration in public finances beyond previous expectations. "A momentous political agenda has overshadowed policy making, despite the deteriorating economy and weakening public finances."

Moody's lead sovereign analyst for South Africa, Zuzana Brixiova, said its review was due to South Africa's economic and fiscal challenges being more pronounced than Moody's had previously assumed:

> *Both low investor confidence and limited progress on structural reforms are rooted in the uncertainty created by the fluid and unpredictable political environment ... Unclear and shifting policy objectives, political maneuvering and frequent changes of leadership in key ministries, and concerns over the pressures on the key policymaking institutions such as the Reserve Bank and the National Treasury, have weakened South Africa's economy, finances and institutions*.[80]

The International Monetary Fund (IMF) have revised South Africa's economic growth forecast downward in 2018 and 2019 as a result of rising political uncertainty which it says weighs on confidence and investment. It projects the country's economy to grow by 0.9% over the next two years, down from a projection of 1.1% in 2018 that it had

79. http://www.businesslive.co.za/bd/economy/2016-11-26-moodys-to-sa-watch-your-politics/; http://www.businesslive.co.za/bd/economy/2016-11-26-infighting-in-anc-distracting-policymakers--read-full-fitch-statement/.
80. https://mg.co.za/article/2017-11-25-global-credit-ratings-agency-has-downgraded-south-africa-to-junk-status.

forecasted in October 2017, and 1.6% in 2019. The IMF noted that the numbers predated the most recent developments in the country, notably the election of Deputy President Cyril Ramaphosa to the position of president of the ANC in December.[81]

According to the IMF, South Africa's capital inflows may become scarcer, costlier and more volatile in future. This situation would pose risks to South Africa's external financing. "A potential pull out of foreign investors, divesting their existing holdings of local assets, also poses risks."[82]

Staggering unemployment and budget pressures

In August 2017, Statistics South Africa announced that youth unemployment officially remained at a staggering 27.7%. Stanlib Chief Economist Kevin Lings stated in a company note that according to the expanded definition of unemployment, which includes discouraged workers, the unemployment rate is 36.6%, up from 36.4% in the first quarter of 2017:

> *In addition, the unemployment rate for the youth younger than 25, using the expanded definition, is a shockingly high 67.4%. Clearly, the rate of youth unemployed has become a national crisis, with significant social, economic and political implications. Fundamentally, this reflects the lack of fixed investment spending by the private sector, as well as the sustained low business confidence.*[83]

Elize Kruger, analyst at NKC African Economics, stated in a company note that it is clear that the lacklustre economic activity currently characterising the South African economy is unable to sustain the job market:

> *Heightened political and policy uncertainties have impacted negatively on the overall economy, but particularly where substantial capital outlays are needed.*[84]

Ramaphosa's election as ANC president has provided a significant boost to confidence. The Asset Forfeiture Unit, which forms part of the National Prosecuting

81. https://businesstech.co.za/news/finance/220451/imf-cuts-south-africas-growth-forecast-for-2018-and-2019/.
82. IMF, South Africa: Selected Issues, 16 June 2016, pp 14-16 at https://www.imf.org/external/pubs/ft/scr/2016/cr16218.pdf; *Balance of Payments Manual: Fifth Edition (BPM5)*, (International Monetary Fund, Washington, D.C., 1993).
83. http://www.fin24.com/Economy/youth-unemployment-in-sa-a-national-crisis-economists-20170807.
84. http://www.fin24.com/Economy/youth-unemployment-in-sa-a-national-crisis-economists-20170807.

Authority, also now sees the chance to seize at least R50 billion in several cases relating to state-capture investigations.[85]

However, unless there are real structural improvements, South Africa will not be more attractive to investors in the real economy.[86] After all, the same ANC who elected Ramaphosa, adopted a resolution at the December 2017 conference calling for the nationalisation of the central bank and land expropriation without compensation.[87]

The need to tread carefully

Political pressures to raise extra income for the ANC, its cadre networks in the state structures and key constituencies will also increase in the next year. Under budget pressures, the ANC government will try to raise extra income in the form of taxes, licence fees and other means. Unorthodox actions and rules of the game may also emerge as a result.

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 Gupta scandals have gone global.[88] The FBI has begun a probe into US ties to alleged corrupt transactions involving the Gupta brothers. In the UK, the Financial Conduct Authority, the Serious Fraud Office and the National Crime Agency are all investigating allegations that HSBC and Standard Chartered handled illicit funds. The scandal has entangled some of the biggest multinational companies, damaging the reputation of McKinsey, KPMG and SAP.[89]

South African Monitor reports since 2014 have given clear advice to international business:

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85. https://www.businesslive.co.za/bd/national/education/2018-01-22-analysis-populist-policies-make-the-road-even-rougher-for-south-africa/.
86. https://www.businesslive.co.za/bd/opinion/editorials/2018-01-12-editorial-south-africas-challenges-are-now-even-greater/.
87. https://www.moneyweb.co.za/news/south-africa/anc-calls-for-nationalising-central-bank-land-expropriation/.
88. https://www.ft.com/content/707c5560-d49a-11e7-8c9a-d9c0a5c8d5c9.
89. https://www.businesslive.co.za/bd/opinion/columnists/2018-01-18-hilary-joffe-overseas-firms-treading-sas-minefield-need-to-know-what-the-bombs-look-like/; http://www.handelsblatt.com/unternehmen/dienstleister/korruptionsverdacht-suedafrika-fordert-millionen-von-mckinsey-zurueck/20856860.html.

> *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 … There are different codes of conduct in different jurisdictions, and international business would need to heed best practices regarding integrity risk and reputational risk.*[90]

This advice will remain valid in the years to come. ■

90. Heinrich Matthee (ed), *The ANC's hybrid regime, civil rights and risks to business: Democratic decline and state capture in South Africa*, South African Monitor 3, 2014, pp 47-49. See also South African Monitor reports of 2015 and 2016.