

Politics, democracy and the machinery of the state

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August 2016 will be remembered as a month in which South African politics underwent an historic shift. On 3 August 15 million of South Africa's 26 million registered voters cast their ballots in the country's local government elections. The result has been a shift in power, perhaps unlike any since the end of apartheid in 1994.

When the votes had been counted and the two-week coalition negotiations had been concluded, the African National Congress (ANC) had lost majority control of the country's political capital, Tshwane, its economic powerhouse, Johannesburg, and the metro named after its most iconic leader, Nelson Mandela Bay. Cape Town and the Western Cape remained firmly under Democratic Alliance (DA) control. This came after the DA, the Congress of the People (COPE), the United Democratic Movement (UDM), the African Christian Democratic Party (ACDP) and the Freedom Front Plus (FF+) announced that they had formed a coalition across metros to keep the ANC out of power.

But it was the newcomers, the Economic Freedom Fighters (EFF), that sealed the fate of the ANC when they announced that they would vote with the DA-led opposition coalition, while opting out of any formal agreement with them. Considering the distance between the EFF's socialist-revolutionary and the DA's neo-liberal ideologies, the EFF couldn't have played its (limited) cards any more shrewdly.

Despite these changes, it remains unclear whether the election results indicate a voting swing towards opposition parties, or a pulling away from – and so a vote against – the ANC. It is believed that 3 million ANC voters stayed away from the polls, severely eroding the ANC's urban support. In Johannesburg, where the ANC's provincial and municipal leadership has been popular, their ousting has been interpreted by some as a sign that residents are fed up with the ANC's national leadership. Under President Jacob Zuma, 'Brand ANC' has been muddied and bloodied, taking the ANC in Gauteng down with it.

Together, the message from opposition parties, and the electorate that ushered them in (whether through abstinence or votes), was that the ANC and Zuma's 'arrogance' had gone too far. There was a vote against Nkandla, the Guptas, the abuses at the SABC, Prasa, SAA and the broader corruption of the state. According to the Afrobarometer, trust in Zuma dropped from 62% in 2011 to just 34% in 2015. It is now probably even lower.

By most accounts the election was a logistical success. Many would argue that it was also a victory for democracy – South Africans had a chance to see that their vote could shift power in a significant way. More than 63 000 candidates were up for election, representing 204 political parties. Figures released by the Independent Electoral Commission (IEC), which coordinates elections, suggest that

96% of voters believed the elections were free and fair, and 92% trusted the IEC's independence. And yet these figures hide something important. In the seven months preceding the election, at least 20 people were killed in what appear to be politically motivated assassinations. Many of these seem to have been the result of intra-ANC tensions. Factions within the ruling party appear to have clashed in their attempts to secure key positions and so access municipal budgets – and the patronage power linked to them. In this issue of *SACQ*, anthropologist and long-time monitor of violence in KwaZulu-Natal (KZN), Mary de Haas, offers a unique insider's analysis of the apparently politically motivated killings in KZN.

At the time of going to press in late August, another major storm was brewing in South African politics. Social media quickly branded the scandal #SarsWars, a reference to Finance Minister Pravin Gordhan's former position as head of the SA Revenue Service and a play on the famous movie franchise, *Star Wars*. The scandal has seen the police's elite investigations unit, the Hawks, summon Gordhan to their offices, apparently to be warned of his imminent arrest. While the summons related to a secret SARS investigation unit established under Gordhan's watch, legal commentators and Gordhan's counsel apparently believed that he had not breached any law and had no case to answer. In response, ANC stalwarts, including George Bizos, Trevor Manuel and Siphosiso Pityana, called for the president to intervene, while Pityana went as far as calling on Zuma to step down. The National Prosecuting Authority (NPA) confirmed, at the time of going to press, that it had received a docket on the matter from the Hawks, but said no decision had been taken to prosecute or not.

Against this background, the unorthodox Hawks engagement with Gordhan in late August 2016 is believed by many to signal an abuse of the criminal justice system (the Hawks and NPA) to overcome the last barrier to a Zuma-linked coalition of politicians and business people, intent on plundering the state purse. One of the people accused of enabling this abuse is National Director of Public Prosecutions, Advocate Shaun Abrahams. We are thus very pleased to include in this issue an intimate and honest discussion between ISS Executive Director Anton du Plessis, ISS researcher Othilia Maunganidze and Abrahams, conducted in July 2016. Here Abrahams answers some tough questions about his appointment and his vision for the NPA, and denies any political meddling on his or his colleagues' part.

While post-election shifts in power at the municipal level will be unlikely to shape these alleged national machinations in the criminal justice system, where opposition parties rule major metros they have gained immense financial power and responsibility. For instance, one of the first actions of incoming Tshwane mayor Solly Msimanga (DA) was to ban blue light police escorts for all but the president. Msimanga can enforce this with the Tshwane metro police, as the DA mayor of Johannesburg, Herman Mashaba, can do with the Johannesburg metro police. Part of the DA's campaign in Nelson Mandela Bay included promises to show an impact on crime and disorder through its control of municipal law enforcement.

Analysis by the ISS and Cornerstone Economic Research suggests that, having previously controlled over 82% of a R287 billion local government budget, the August 2016 elections reduced the ANC's control to only 41.73%. In hung councils (where there was no outright winner) coalition budgetary control has surged from 2.63% in 2011 to 41.31% in 2016. Similar figures apply to overall capital expenditure budgets, which total R57 billion nationwide. These shifts are huge. Will the opposition and coalition governments be able to improve service delivery, including that of their municipal law enforcers – perhaps the most visible face of local government? Time will tell.

Other articles in this issue explore some of the more technical aspects of criminal justice in South Africa. For instance, it is common to hear South Africans complain that the day following the arrest of a criminally accused person, the accused is 'back on the street'. This, in part, reflects a misunderstanding about how bail works in South Africa, and the basic right of all accused to be granted bail. In this issue, Jameelah Omar explores whether the right to bail is granted to some and denied to others based on their economic status. With a focus on asset ownership and verifiable address, she suggests poor people are the unintended victims of discriminatory judgements.

In their contribution, Ursula Ehmke et al. question the reliability and accuracy of blood alcohol concentration results presented in South African courts, in cases where the driver is suspected of having been under the influence of alcohol. Having analysed samples from the Pretoria Forensic Chemistry Laboratory, they reveal an average delay of approximately five months between sample acquisition and laboratory analysis, with potentially detrimental effects on the course of justice. The authors call for urgent intervention in the ways in which samples are acquired, stored and analysed. With traffic enforcement a local competency in most of the country's major cities, but with forensic laboratories nationally managed, this will be another area to watch with interest in opposition-run metros.

To mark the five-year review of the Child Justice Act, Marelize Schoeman asks whether the procedural mechanisms currently in place to determine the age of criminal capacity in South Africa, are adequate and in children's best interests. Finally, Elrena van der Spuy reviews Don Pinock's new book, *Gang town*. Noting that Pinock is perhaps 'the most academically informed and practically qualified person in the Western Cape to write on youth gangs', she discusses his contribution in relation to what is a rich literature on gangs, identity, youth and exclusion in South Africa.

Lastly, as we prepare to bid farewell to SACQ's Editor of nine years, Chandré Gould at the end of this year, I am very pleased to announce that we have welcomed three new members to the SACQ Board. They are: Dr Hema Hargovan, an academic and an Advocate of the High Court of South Africa, currently lecturing in the School of Built Environment and Development Studies at the University of KwaZulu-Natal; Nwabisa Jama-Shai, a Senior Researcher at the South African Medical Research Council's (MRC) Gender and Health Research Unit; and Nomfundo Mogapi, a clinical psychologist heading up the Trauma and Transition programme (TTP) at the Centre for the Study of Violence and Reconciliation (CSVR). We are thrilled to have them on our team.

I hope you enjoy the issue.

Andrew Faul
(Editor)