



**Still walking to freedom?
A historical retrospective of the
first 20 years of South African
democracy**

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South Africa is once again under the international spotlight. Like proverbial No. 13 buses, a slew of important historical milestones have arrived all at once. First, Nelson Mandela - a man so central to the nation's collective imagination that he was known simply as *Tata* or "father" in isiXhosa - passed away last December after a long period of illness. Second, this coming Freedom Day on 27 April 2014 marked 20 years since South Africa resolved to leave behind centuries of racial discrimination and oppression to build a free, democratic and peaceful society. And third, on 7 May, South Africans will participate in general elections for the fifth time since the end of apartheid rule. In light of the historical, political and sentimental importance of these events, now would then be a good time to take stock of these 20 years. But, as South African sociologist Saleem Badat pointedly notes, the first question is: "20 years since *what?*"ⁱ This paper seeks to review and analyse the state of South African democracy on the eve of general elections tipped to be the most competitive yet. Reflecting on the magnitude and direction of political, social, economic and legal transition, this current affairs paper weighs up competing explanations on the state of democracy in Africa's most modern and developed country.

20 years since apartheid? A retrospective.

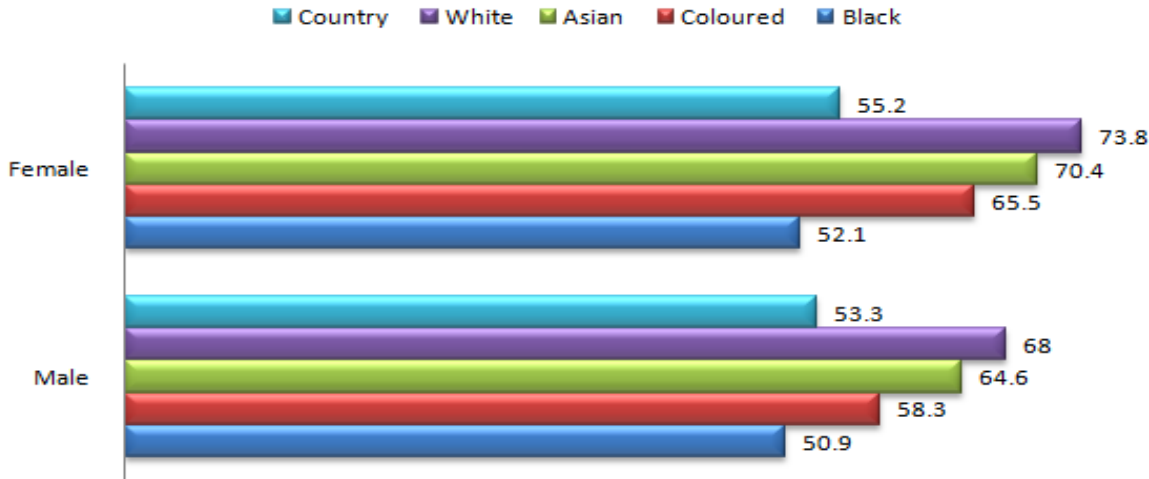
If apartheid is taken as not just an ideology of racism and racial segregation, but also a system of economic exploitation, it becomes difficult to say that it has meaningfully ended. A casual visitor will be struck by how - much like ships passing in the night - white and black societies appear to inhabit very different worlds. Indeed, notwithstanding dubious claims of an impending "white genocide", white South Africans on average live much longer and are vastly wealthier, better educated, and less affected by crime than non-white citizens (see Table 1). It is not by accident that South Africa is the most unequal society in Africa, and has consistently remained one of the most unequal societies in the world.



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Table 1: South African Life Expectancy by race for 2010



Source: Statistics South Africa, preparation of the 2010 mid-year estimates

National Planning Commission. <http://www.npconline.co.za/pebble.asp?relid=85>

Crucially, a century after the introduction of the Natives Land Act of 1913, which legalised the exclusion of black South Africans from about 90% of the land, the 9% of the total population that is white still owns around 85% of urban and rural land.ⁱⁱ This is despite the Land Redistribution Programme (LRP), announced by the African National Congress (ANC) when it first came to power in 1994, under which 30% of all land was to have been redistributed to non-whites by 1999. Section 25(7) of the South African Constitution lays out the legal framework for land restitution, allowing for land expropriation only when in the public interest and in accordance with a fair land reform process. Fifteen years and more than 250,000 land claims later, what very little redistribution has taken place (less than 2% of the land set aside for the LRP) has been mismanaged so severely that in numerous cases white farmers were able to repurchase their land back at much lower prices than what they initially sold it off to the government for. Civic authorities have clearly worked very hard to prevent a Zimbabwe-style land grab, adopting a “willing buyer, willing seller” policy to avoid a sudden drop in the value of land and jeopardising food security. Since the government is not a voluntary “willing buyer,” but constitutionally compelled to do so, the expropriation of land is executed with compensation at market value despite constitutional options that could alleviate the rise in ‘artificial demand’ created by the state. Unsurprisingly, the ‘market-oriented’ approach has delayed the necessary reforms and wasted billions of Rands, mostly as the result of the government having to pay twice as much for land restitution as it has for distribution. Instead, poor, uneducated, landless and rural South Africans have been appeased with financial compensation. Although the land reform agenda, the most visible legacy of segregation politics, receives great attention every election season, the government has always managed to cover up the ticking time bomb, only for it to reappear at the next elections in some new party’s manifesto.ⁱⁱⁱ



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Socioeconomic fundamentals continue to be determined by race, and the “Rainbow Nation” is still very much black and white.

20 years of engagement with the international community.

Despite Cold War history research showing that NATO and Warsaw Pact countries had very different, and inconsistent diplomatic policies towards South Africa, since the ending of apartheid, a strong relationship has developed between South Africa and the expanding EU. For instance, South Africa is the EU's largest trading partner and most strategic political partner in Sub-Saharan Africa. The EU also contributes up to 70% of all development funding received by South Africa, averaging €125m a year since 1995. The EU recognises South Africa as a model for democratic transition and has hosted a presidential summit every year since 2008 to further develop key socioeconomic ties.

The same cannot be said of the EU's attitude to Zimbabwe under the leadership of Robert Mugabe, with whom the South African government has close ideological, historical, and commercial links. Indeed, the EU maintained economic sanctions against several members of Mugabe's ZANU-PF government and the military leadership until February this year, and continues to maintain them against Mugabe. This difference between the EU and South Africa over the question of Mugabe's Zimbabwe may yet prove to be an apple of discord. For instance, despite the comparatively close links and interests between EU and South Africa listed above, President Jacob Zuma declined to attend the 4th EU-Africa Summit held in April in Brussels. At first, the President's office diplomatically explained his absence as being due to having “other commitments”. Unsurprisingly, this was immediately interpreted as being in quiet solidarity with Mugabe's boycott of the summit due to the refusal to issue his wife a visa.^{iv} Extraordinarily, Zuma later personally cleared up any mystery over the question: in a statement to the South African state broadcaster, he said he was not attending because Africans ought no longer to be “looked on as subjects” by Europe, which had no business dictating “who must come and who must not come” to the summit.^v

The problem may be broader than just Zimbabwe. With Ethiopia now becoming the third African country after Uganda and Nigeria to enact new homophobic legislation, differences over EU and African priorities in negotiating Economic Protection Agreements (EPAs), and simmering resentment over the International Criminal Court's apparent obsession with African leaders, it is eminently possible that EU and African interests will diverge for a time. Given the fact that South Africa is (if only by default due to its relative economic strength), and will continue to grow as a continental power, its ambiguous foreign policy severely damages the image projected by the most liberal constitution on the continent. Despite active conflict-mediating and peacekeeping on the continent, South Africa will face a tough decision in choosing which camp it wants to belong to.

20 years of progress?

Nor is it entirely unproblematic to suggest that 2014 marks “20 years of democratic success and progress,” as the ruling ANC would have us do. Job creation remains the ANC's



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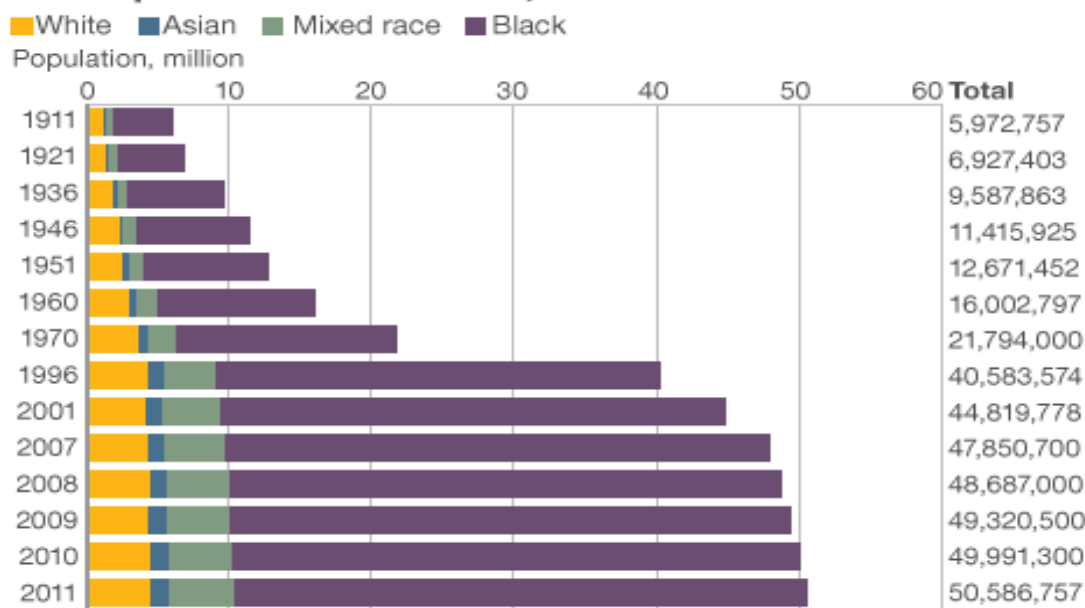
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biggest challenge in the battle against rising poverty. Despite consistent but modest economic growth, unemployment has risen steadily since 1994 and hovered at just below 30% for the last decade, meaning that more South Africans now live in poverty than before. In the process, this has created a huge economic burden for South Africa's lavish (by African standards) and expanding welfare state.^{vi} As was recently emphasised by Finance Minister Pravin Gordhan in his state Budget Speech, the elaborate social grants system will remain at the core of the ANC's poverty elevation strategy.^{vii} However, even as the ANC highlights its economic achievements on the eve of the next elections, millions of South Africans effectively depend on their monthly social assistance payments just to survive.

Moreover, the balance between state-building and service delivery has eluded the ANC leadership since 1994. A growing urban-rural divide has resulted in visible social unrest amongst the ANC's core support base of liberation struggle veterans, largely made up of rural labour unionists, farmworkers and woman's rights organisations. Significant population growth (both in relative and absolute terms) and immigration has crowded out the government's basic service delivery objectives, and as urbanisation continues to grow at an unprecedented pace, demand for housing, water, and electricity has outstripped the government's ability to supply (See Table 2). Service delivery strikes have become the norm since 2005, and the recent spike in violent protests is forcing the government and local municipalities to reprioritise urban and rural development objectives, as unsatisfied voters begin to show their discontent at the most inconvenient of times for the ruling party.^{viii}

Table 2: Race and Population Growth.

Racial profile of South Africa, 1911-2011



Source: Census/Statistics South Africa

Retrieved from http://news.bbcimg.co.uk/media/images/62524000/gif/_62524784_racial_profile_sa_464.gif



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As for “democratic progress”, after having enjoyed power for the last two decades, the ANC’s central leadership has effectively become a corrupt network of factions competing with each other for the sake of money. Bribery thrives at many levels of central and local government, as exemplified by the infamous 1999 Arms Deal^{ix} and other public tender scandals. A good portion of this degeneration into corruption and cronyism may also be traced to the fact that Parliament operates on a party list system that allows political parties effectively to appoint individuals to seats based on “seniority”. This culture of venality is symbolised most visibly by the ongoing Nkandla scandal surrounding the expenditure of more than R 250 million (US\$ 26 million) of taxpayer funds on President Zuma's private “homestead”.

Moreover, South African political culture is still resolutely governed by race rather than ideology, with the Democratic Alliance (DA) - the main opposition party, and widely considered centre-right - perceived as an unelectable party of the whites (and a few *nouveau riche* “black diamonds”). This consideration was certainly at the top of DA leader Helen Zille’s mind earlier in February 2014, when she announced that the DA’s presidential candidate for the upcoming elections would not be her but Mamphele Ramphele, who was at the time leading the centre-left Agang (“to build” in SeSotho) party. Dr. Ramphele was the partner of Steve Biko, with whom she founded the Black Consciousness movement. It transpired that nobody in Agang had been informed of Dr. Ramphele’s parachuting into the DA ticket, or about the plans to merge both parties. The alliance unraveled mere days later, resulting in accusations of shadowy machinations by behind-the-scenes funders, a potentially lethal dose of embarrassment for the DA and Agang, and a political gift, neatly wrapped and delivered to the ANC.

Left in the Lurch

The racial basis of South African political culture comes at a cost for the black working class, which has largely been left without genuine political alternatives. The ANC has long ceased to represent this constituency in any meaningful way, as was made exquisitely clear in August 2012 by the pictures of the bullet-ridden bodies of striking miners at Marikana. It is unclear how long the ANC will be able to hold on to their loyalty after this latter-day Sharpeville, especially given that Mandela is no longer around to serve as a link between the present ANC and the liberation movement of the past. The DA, on the other hand, represents the interests of the traditionally white (but increasingly black) wealthy and middle class: its general criticism of the policies of Black Economic Empowerment (BEE) and the expansion of state-owned enterprise is that it has done little more than create a few black billionaires. Their opponents naturally ask in response why notice is taken of billionaires only when they happen to be black, and observe that there was no more pervasive and thoroughgoing affirmative action program in history than apartheid, whose former supporters now largely vote DA.

Given the various fissures and crises of confidence within the ANC, continued political fragmentation has allowed new populist and progressive parties to contest the growing political space for opposition. Undeterred by the recent DA-Agang debacle, new parties are emerging to challenge the ANC’s majority leadership. The Congress of the People



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(COPE), the 'oldest' and largest of these new political factions, was formed by a number of ANC-breakaways in 2008 as a response to the political rise of Jacob Zuma.

With the state guaranteeing proportional funding to parties represented in the National Assembly, new parties have been established on the backs of anonymous party donors, forming strong or loose alliances against the ANC at provincial and/or national levels. What makes the upcoming elections so unpredictable is the emergence of a rapid realignment with electoral verdicts proclaiming credible alternatives in a multiparty democracy, alongside a strong, but waning ANC endorsement.^x In the four national elections from 1994 to 2009, totals of 19, 16, 21 and 26 parties were present on the electoral ballot. This coming May, at least 32 parties will compete for seats in the National Assembly, displaying a further pluralisation of multiparty democracy in South Africa.

Alongside Agang, the new kids on the block of South Africa's political scene are the Economic Freedom Fighters (EFF), led by the controversial ex-ANC Youth League (ANCYL) president, Julius Malema. Despite sporting a US\$ 30,000 Breitling watch and being embroiled in a plethora of court cases, the charismatic Malema has an uncanny ability to connect with that section of young unemployed South Africans who have been failed thoroughly by the declining education system and unaccommodating labour market, consequently allowing him to take significant support away from the ANCYL. Moreover, the EFF has managed to enlist support from numerous influential left-leaning organisations and parties such as the Black Consciousness Movement (BCM), the Azanian People's Organisation (AZAPO), the Socialist Party of Azania (SOPA) and the Pan Africanist Congress (PAC).^{xi}

Malema is not alone in recognising the growing significance of young voters. With most "born-frees" (those born after 1994) being uncertain of who to vote for, or whether to vote at all, political parties are chasing the potential swing vote (see Table 3). The stakes are extremely high as with over 50% unemployment amongst South Africans aged 18-29, the socially, economically and politically marginalised urban and rural youths have very little to be happy about. Those born after 1994 may be less impressed than their parents by the ANC's history and are far more worried about declining education standards and slender job prospects.^{xii} However, their disenchantment with politics also translates into low attendance at polls: only 10% of 18-19 year-olds have registered on the electoral roll and if the Independent Electoral Commission's new awareness campaign does not make an impact, it is likely that less than 50% of all potential voters under the age of 30 will head to the polls on 7 May.

The question remains as to whether this upcoming election will see the EFF and Agang making inroads into the constituencies of the ANC or perhaps even the DA, or whether they will fare just as poorly as COPE did in the 2009 elections. COPE was trounced by the ANC in the 2009 elections due in part to a wretched media strategy, and in part to whispers of an anti-affirmative action position that alienated its target audience of middle-class black professionals. However, the recent take-over of the conservative National Republican Party (NRP) has proved that the party is still able to attract new supporters

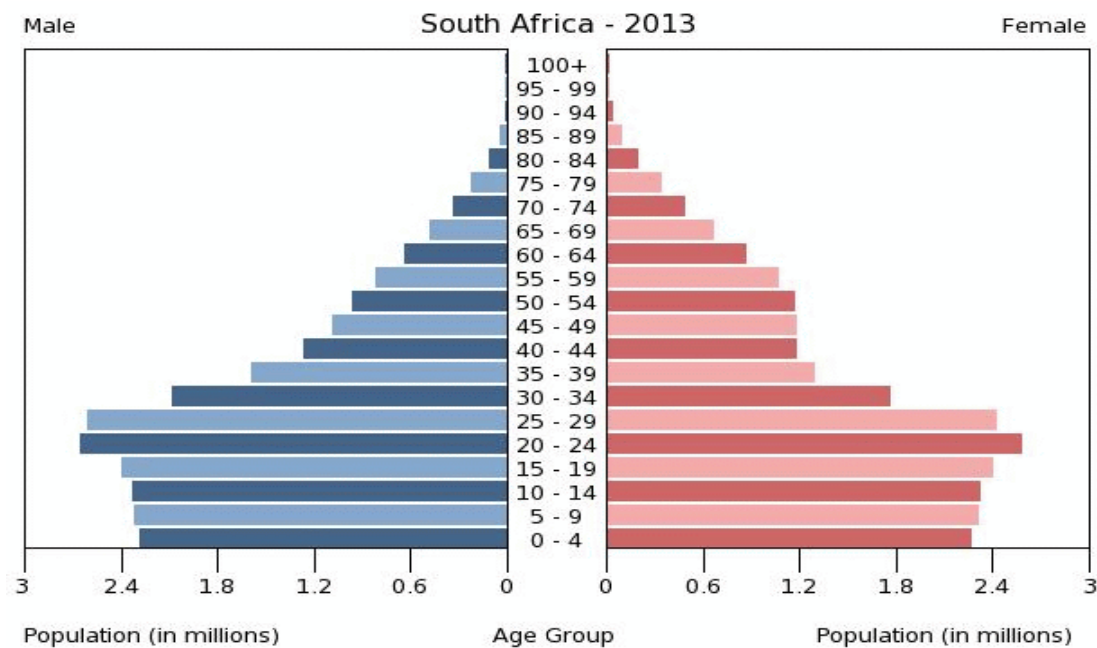


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and old ANC renegades with its strong anti-Zuma message.^{xiii} Currently, the main threat to the party's ambitions is an unresolved court battle between its leaders Mbhazima Shilowa and Mosiuoa Lekota. Like COPE, Agang has not taken up a clear space on the ideological spectrum, instead remaining content with an anodyne and banal message of "reform" and anti-corruption. The EFF, however, has a clear ideology, which strikes one as being a very deep shade of red, in that it espouses radical aspirations of expropriating land without compensation, nationalising banks and mines, and such like. Whether these will actually amount to any policy positions is a separate question. Unlike COPE, the EFF and Agang are clearly wrapped up in the personalities of their individual founders. In this regard too, the gulf between Agang and EFF could not be greater. Dr. Ramphela, despite her stalwart reputation with the Black Consciousness movement, strikes one as a champagne socialist, given her millions of Rands and three volumes of authored books. Malema, on the other hand, is unambiguously a demagogue with a knack for arresting language and visual imagery. As mentioned earlier, his stirring rhetoric and trademark red beret may capture the attention of South Africa's disaffected black youth, but whether they will actually vote is yet another question.

Table 3: Population demographics by age group



Source: CIA World Factbook. Retrieved from http://www.indexmundi.com/south_africa/age_structure.html

An underlying resilience

Despite such gloomy prognostications, there are however many causes for optimism. It must not be forgotten that in the darkest days between 1991 and 1994, when the world predicted an imminent collapse into bloody civil war, South Africa held together. As Tocqueville



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notes, democracies are more resilient than they appear. Despite a long-standing paranoid whispering campaign among the white, affluent sections of society of South Africa's imminent transformation into a "second Zimbabwe," it has not yet done so, nor - in the opinion of the authors - is it likely to do so. Certainly, there is much in the news that is depressing and farcical. Examples include the already discussed DA-Agang merger-by-surprise and the government's 2013 clandestine loan of the Waterkloof military airbase to the billionaire Gupta brothers for a family wedding. However, underneath this swirling miasma, South Africa has managed to create (and retain) certain political institutions that promise to hold the state in good stead.

With respect to the current political landscape, the immediate cause for hope is the fact that the growing pool of discontented unionised workers is challenging the troika of the ANC, its allies in the Congress of South African Trade Unions (COSATU), and the South African Communist Party. As the political left grapples with the likely parting of ways between the ANC and National Union of Metalworkers (NUMSA), a new coalition of leftist parties is likely to emerge just before the elections. NUMSA is already trying to capitalise on the political tension by questioning the authority of COSATU over the manner in which the suspended COSATU General-Secretary Zwelinzima Vavi was ousted. In recognising the political changes after the Marikana massacre, workers and their unions are challenging the internal dynamics of the old and weakening Tripartite Alliance. Many South African political analysts now believe that the current break-up of the 1994 political settlement is but a step on the path towards genuine political representation of the (largely unemployed) working class. It is hoped that this will be accomplished sooner rather than later, given the recent surge in violence as most recently demonstrated in East London by rioting South African Municipal Workers Union (SAMWU) members in February 2014.

On a deeper level, South Africa's great triumphs have been the maintenance of a robust press and media, and the creation of a constitutional legal order with rich and extensive human rights jurisprudence. These have together resulted in a vibrant civil society whose collective commitment to the Constitution's principles of democracy and the checks and balances of power between the legislative, executive and judicial functions of government were recently displayed during the unveiling of the proposed Protection of State Information Bill. If it had passed, the Bill would have controlled the public's ability to report and condemn corrupt government activities. In the last three years, the public's outrage over the proposed legislation created an extensive civil campaign, uniting South Africans of all social and political stripes under a common democratic cause, forcing President Zuma to send the Bill to the National Assembly for reconsideration.

South Africa is particularly fascinating for human rights lawyers the world over because of its recognition of extensive socioeconomic, or "positive" rights in the 1996 Constitution, and the jurisprudence developed by the Constitutional Court interpreting them. These rights go beyond the usual complement of civil and political rights of free speech, fair trials, and the like, and extend to rights of access to housing, food, health care, and social security. Crucial to this are the relatively liberal rules on



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standing, which allow civil society groups extensive rights to bring public interest litigation on behalf of victims of rights violations. The combined power of civil society, the media, and the judiciary is best demonstrated by the way the Treatment Action Campaign (TAC) sued and obtained an order from the Constitutional Court requiring the government to provide anti-retroviral drugs for HIV patients, at a time when the Mbeki government maintained a HIV/AIDS denialist stance, with health minister Dr. Manto Tshabalala-Msimang claiming that AIDS could be cured with African beer, garlic and beetroot.

Certainly, the “rights” culture has its share of challenges, lying mainly in the practical problem of governmental non-compliance with court orders, due both to incompetence and intransigence. Despite having won a victory in the seminal case of *Grootboom* on the right to housing, Irene Grootboom was still living in a shack when she died eight years later.^{xiv} As for intransigence, in the recent *Democratic Alliance* case in 2012, the Supreme Court of Appeal ordered the Acting National Deputy Public Prosecutor to produce before the court a record of a decision to discontinue the prosecution of President Jacob Zuma. This order has been consistently and blatantly ignored. The courts have, however, fought back. While the Constitutional Court has so far declined - wisely - to imprison dilatory officials for contempt of court, it has taken the extraordinary step of allowing the attachment of government property for instances of governmental non-compliance with orders against it for the payment of damages, debts and other monies. Moreover, in the 2013 case of *Mukaddam*, it gave the green light for class actions. These two developments have already had some effect on vindicating the right to education in the Eastern Cape,^{xv} and are likely to be of great promise in advancing other rights as well.

Conclusion: The politics of change

The first 20 years of South African democracy were expected to be difficult. Emerging from a long period of international political isolation, the ‘new’ South Africa has moved slowly along a path of multiparty democracy, social reconciliation and economic development. Certainly, South Africa has not totally left behind its shameful divided past. Indeed, it has even acquired some new vices. Despite modest political, social and economic gains, more and more South Africans continue to plunge into poverty. Huge levels of inequality prevail and there is little hope that the trend can be reversed anytime soon. This has largely been ignored by South Africa’s political leaders who themselves were not born into privilege, but have quickly adjusted to the culture of opulence and lost touch with those they have left behind.

As South Africa continues to heal from its long history of racial segregation, the consolidation of a multiparty democracy has forced the ruling ANC to realign its development priorities, countering a potential electoral threat from opposition parties. Although the advent of democracy has established a thriving black middle-class, one of the world’s most progressive constitutions and a representative democratic government, post-apartheid politics continue to divide South Africans into insiders and outsiders. That said, South Africa has more or less successfully made the crucial step of building a



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new civic culture based on the human rights and fundamental freedoms of all people, regardless of race, ethnicity, gender, religion and education level. Something of the importance of the rights culture can be gleaned from these words taken from the last page of *Long Walk to Freedom*:

“The truth is that we are not yet free; we have merely achieved the freedom to be free, the right not to be oppressed. We have not taken the final step of our journey... For to be free is not merely to cast off one’s chains, but to live in a way that respects and enhances the freedom of others.”

It may very well be the case that Mandela’s distant but brilliantly-envisioned destination of perfect Kantian freedom will be forever unattainable. Be that as it may, South Africa should definitely not stop walking.

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