



ANC IN FOR AN UGLY FIGHT

The Constitutional Court of South Africa ruled that President Jacob Zuma had failed to uphold, defend and respect the Constitution. The President did not offer his resignation despite this condemning verdict. This started a heated discussion in and outside the ANC with many critical remarks coming also from prominent ANC members who fear that the ANC would lose important votes in urban areas at the next local government election on August 3rd. The party is urged to modernise and to give up cadre discipline which had developed during the fight against apartheid and which is still dominating internal party discussions helping to cover widespread corruption.

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The Constitutional Court of South Africa unanimously ruled on 29th March this year that President Jacob Zuma failed to uphold, defend and respect the Constitution as the supreme law of the Republic.

The President had refused to comply with a report (Secure in Comfort) of the Public Protector (Ombudswoman), Thuli Madonsela, published in March 2014, according to which he is to pay back a portion of the public money of around 250 million Rand (15 million Euros) that was spend on security upgrades to his private homestead Nkandla. The Public Protector found that many buildings had nothing to do with security like for example a swimming pool, a chicken run and an amphitheatre. Instead, the president had his police minister and two parliamentary committees fabricate reports which came to the conclusion that he is not obliged to contribute financially to the alterations. In such reports for example a swimming pool was declared to be a fire pool. The court confirmed that the remedial action ordered by the Public Protector is binding unless successfully challenged in court. Something the President did not do.

President Zuma is staggering from one scandal to the next. The decision of the prosecution authorities to drop corruption charges against him shortly before he came to power in 2007 is still challenged in court and drags on due to the President's procedural delaying tactics. Zuma allegedly received a bribe from French arms company Thales via his former financial adviser Schabir Shaik, who was jailed for corruption. A serious blow to his power was the misjudgement to fire the renowned Finance Minister Nene and to replace him with a little known backbencher. The ANC forced him to revise his decision and to give the job to Pravin Gordhan, who had already been Finance Minister from 2009 to 2014.¹

This setback seems to have opened avenues for ANC members to report on other disturbing dealings. The Deputy Minister of Finance, Mcebisi Jonas, revealed at a press conference that he was offered the job of Finance Minister two weeks before Minister Nene was fired. But this offer did not come from the President himself but from the Gupta family.

The three Gupta brothers arrived from India in 1993 and have since then amassed stakes in uranium, gold and coal mines. They own a luxury game lodge, an engineering company, a newspaper and a 24-hour television news channel. They have employed or been in business with at least three of Zuma's immediate family including his son Duduzane who, after his father became president of the ANC in 2007, was given shares and who over the next two years was appointed director in more than 11 Gupta companies. Under the heading "Guptagate" or "State capture" more and more information in the media reveals that the family has decisive influence over state officials and appointments and that they use their influence to win government contracts. They would be the main local beneficiary for example if South Africa decides to go for a 1 trillion Rand nuclear contract (probably with Russia). Three former chiefs of intelligence suggested that the Guptas should be investigated and finally all of them resigned when they faced resistance from the Minister of State Security. In view of the growing public criticism about the influence of the family two Gupta brothers flew to Dubai and newspapers speculate that they have left South Africa for good.

¹ I refer to my article: *Can the ANC survive Zuma*, <http://www.feps-europe.eu/assets/3f1a8bd3-ecea-4ddd-9c12-1771682034cf/20160106-wehmhoerner-can-the-anc-survive-zuma-pdf.pdf>

After the condemning verdict of the Constitutional Court one would expect the President to offer his resignation. Instead, he apologized; but not for using tax money for his personal wellbeing or for ignoring the constitutional status of the Public Protector, instead he apologized for having “caused a lot of frustration and confusion”. The ANC Secretary General Gwede Mantashe was quick to state how humble it is for a state president to apologize in public; and that there is no cause for the President to resign or for the party to re-call its leader. A joint motion by all opposition parties in parliament to oust Zuma was defeated with the secure majority of the ANC.

The ANC fears that the image of the party could be damaged ahead of the local government elections which will take place on 3rd August this year. But this strategy could backfire. Middle class people in urban areas are fed up with Zuma’s scandals and there is a real danger that the ANC would lose its majority in urban areas like Johannesburg (Gauteng) and Port Elizabeth. ANC branches in urban areas would probably rather like to see a new start with a new leader. The Gauteng ANC Provincial Executive Committee called for Zuma to “do the right thing”. The committee did not officially call for Zuma to resign but has emerged as the main opposition to Zuma within the ANC. However, the Gauteng ANC Youth, Veterans and Women Leagues reacted swiftly with a press conference which can be summarized in two statements: “The dirty hand of the West is fiddling with our country” and President Jacob Zuma has “to finish his term”.²

The ANC still remembers the polarising period after President Thabo Mbeki was recalled in 2008. They do not want to repeat this experience. But the situation today is different. Public opinion has shifted against the President. And calls for his resignation are not only coming from opposition parties but also from respected ANC members. Dennis Goldberg, the only white person to be accused together with Nelson Mandela in the Rivonia trial and who spent 20 years in prison, advised the president to resign, and Ahmed Kathrada, also sentenced to life together with Mandela, appealed “to submit to the will of the people and resign”. A long list of critical ANC members among them former and present ministers could be added. All of them voice their doubts about the leadership qualities of the President. At a central committee meeting of the South African Communist Party, part of the ANC alliance, it was resolved that Zuma’s apology was not enough, implying that he should step down.

After the humiliating week with the verdict of the Constitutional Court the President went to his home province, KwaZulu-Natal. There he feels comfortable and in this province he managed to increase the votes for the ANC dramatically. This gave him the power base in the party. In a rural surrounding he urged the people to register to vote to “counteract the votes of the whites”. He promised his audience that if they voted “it would be possible for them to reclaim land that was taken during apartheid, and the colonial era before that.” He referred to himself as a “shepherd”, and that the people should let him lead them.³

Land and race are explosive subjects. Zuma’s tactic reminds one on how Robert Mugabe, Zimbabwe’s President, 16 years ago used land restitution to win votes when Zimbabwe’s economy was in crisis and the popularity of his party sagging. And Zuma actually is not telling the truth. Since 1994 the ANC government allocated never more than 0.4% of the national budget for land reform measures and has been remarkable reluctant to make use of its expropriation powers under the constitution. Land reform is an important issue but also a very difficult one⁴ and should not be used opportunistically.

² Greg Nicholson: *ANC provincial league: Forgive Zuma, blame the West*, in Daily Maverick, 14.4.2016

³ Stephen Grootes: *Op-Ed: Zuma’s post ConCourt fightback won’t be pretty* in Daily Maverick, 5.4.2016

⁴ I refer to my article: *Demystify land reform*, 10. June 2011

By resorting to “naked racial political campaigning”⁵ Zuma is failing to comply with his foremost duty as President of South Africa: to promote national unity and reconciliation.

The roots of state capture in South Africa “lie in the sense of entitlement by the ANC as the governing party to reward itself and individual leaders for their sacrifices during the struggle for freedom” writes Mamphela Ramphele.⁶ ANC leaders use every opportunity to remind the people that the ANC liberated the country from apartheid and that they are working on the second national democratic revolution. Revolution implies that harsh measures are necessary and that it is justified that the party controls all levers of power, especially the public service. The provision of public service in this line of thinking is not something to which the people are entitled because it is financed through taxes but a gift from the ANC for which the people should be grateful and finally should vote for the ANC.

The verdict of the Constitutional Court is a victory for constitutional democracy in South Africa. It is a reminder that the constitutional institutions of the country like the Office of the Public Protector must be respected. The Public Protector has been strengthened. At present this office seems to be the only one that can investigate independently corruption and misuse of government funds after the institutions of the National Prosecution Authority have been damaged due to consistent interference from the government. The offices of the Helen Suzman Foundation have been robbed and seven computers were taken just days after it started legal action against the appointment of the head of the Hawks (special unit of the National Prosecution Authority).

The critical voices from inside and outside the ANC are encouraging and a positive sign that criticism about persons in the highest office is possible and the independent press and social media reflect this criticism fearlessly. The change must come from inside the ANC. This is a difficult process under the present political system in South Africa with an executive president who has more power than for example the French president. The proportional electoral system in which the list of candidates is determined nationwide by national committees of the parties exacerbates the dependencies of MPs from the top of the party. To go against the top leadership is connected with the danger to lose a lucrative government job or to lose the nomination for the next elections. Politics is about power and once the vested interests of those depending on Zuma are in danger and once the conflict becomes desperate one can expect that this is also the end of fair play. It needs courage to go against the mainstream in the ANC.

The split in the party will be deep, the fight will be ugly and the polarisation could drag on – until after the local elections in August this year or until the next ANC congress in 2017. It could be an awful long time; too long for a country which has come to an economic still stand. The IMF predicts the economy to grow by just 0.6% for this year and 1.2% for 2017. If the “Zuma faction” succeeds and continues to dominate the ANC with or without Zuma at the head of the party, then South Africa is in danger to join other southern African countries in which “liberators have turned into oppressors”.⁷

During the struggle liberation movements like the ANC “operated along the lines of command and obedience” and “internalised a ‘we-they’ divide categorising people as comrades or enemies”⁸. After the liberation with such history in mind party, state and government became the same. The

⁵ Stephen Grootes, 5.4.2016

⁶ Mamphela Ramphele: *State capture: how ‘liberation culture’ damages SA’s future* in Sunday Times, 10.04.2016

⁷ Henning Melber: *How southern African liberators turn into oppressors* in The Conversation, 11.4.2016

⁸ Henning Melber, 11.04.2016

constitution is just a compromise on the way to further liberation from the colonial and capitalist order and must not be taken seriously. On the background of such thinking the government was not much concerned when it ignored a court order and did not arrest Sudanese President Omar al-Bashir when he attended a meeting in South Africa. The Supreme Court of Appeal ruled that the government had broken the law. To strengthen his rural base President Zuma wants to introduce a new Traditional Courts Bill which would give traditional leaders the authority to adjudicate both civil and criminal disputes. Lawyers would not be allowed. This contradicts fundamentally constitutional principles. “I think we can resolve these matters in an African way, not through the law” is President Zuma’s remark in the National House of Traditional Leaders.⁹

But more and more people in and outside the ANC are realizing that such thoughts of “doing things the African way” and the reversion to cadre discipline under the slogan “a luta continua”¹⁰ are just smokescreens to cover up for the enrichment of larger parts of the ANC. The dominance of such beliefs is slowing down the modernisation of the country which is necessary to keep up with globalisation. And sadly, they discredit African values like “ubuntu”¹¹ which are essential for the genuine development of a South African culture in which all races would feel at home. South African commentators like Dumisani Hlophe clearly see the challenges the ANC is facing. They criticise that the party is still operating as under apartheid oppression, that the party fails to modernise and align itself to the different conditions post 1994 and that this “may result in the ANC becoming another ZANU-PF.”¹²

⁹ Peter Fabricius: *Justice without law?* In ISS Weekly, 14.04.2016

¹⁰ A luta continua: the struggle continues

¹¹ Ubuntu: Could be translated: togetherness, responsibility for each other

¹² Dumisani Hlophe: *ANC must adapt to new era or die* in Sunday Independent, 17.04.2017, ZANU-PF: the ruling party in Zimbabwe