



## Protecting Zuma versus Protecting the Constitution

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During his first year in government, Nelson Mandela reminded fellow ANC members at a party conference, that “power corrupts and absolute power corrupts absolutely.” He further noted, “It has happened in many countries that a liberation movement comes to power and the freedom fighters of yesterday becomes members of government.” Some of them, he warned, “forget about the people who put them in power and they become a class, a separate entity who are not accountable to their membership.” He then went on to caution that ANC leaders had to work hard to avoid misrule and tyranny.

For the past few years, Madiba’s warnings has been falling on deaf ears. On 5 April 2016, South Africa’s Parliament debated whether President Jacob Zuma should be impeached (Parliament of the Republic of South Africa 2016). It followed an important ruling by the Constitutional Court that Zuma failed to uphold the Constitution when he did not comply with the Public Protector’s remedial action regarding payment for the non-security upgrades to his Nkandla homestead. The Constitutional Court ruled, in no uncertain terms, that “the president failed to uphold, defend and respect the Constitution” (Shange and Quintal 2016). Yet, the ANC stood firm against the notion. Why did they do it? What will be the consequences?

### **What is the problem?**

After watching the entire Parliamentary ‘debate’ (which was a rather painful exercise), it is evident that there were only a handful of ANC member who attempted to defend Zuma from impeachment on legal grounds. Their legal arguments were sketchy and in contradiction with the Constitutional Court’s ruling. The rest of the ANC officials used other tactics to try to distract parliamentarians from discussing the heart of the issue.

Some ANC parliamentarians hammered opposition parties on peripheral issues related to protocol. Several ANC members called on opposition members to make use of “honorable” when referring to fellow parliamentarians. Minister Maite Nkoana-Mashabane was so disinterested in the debate that she even fell asleep in Parliament. Here and there, ANC members defended Zuma by arguing that the issue is closed given that the president already said he will pay back the money. Mmamoloko Kubayi (ANC MP) cloaked the motion of impeachment as a Western concept that has no role to play in South Africa. Kubayi said, “impeachment” does not exist in “our language”, it comes from “imperialistic language”.

As criticism mounted against Zuma and the ANC, party officials linked these occurrences to alleged “regime change” agendas of enemies of the state (Maromo 2016). The #ZumaMustFall rallies were said to have been organized by Whites with “racist agendas” (Quintal 2015). So-called Western “imperialists” are supposedly behind tainting the ANC’s image and promoting Zuma’s downfall (Times Live 2015). Even during the impeachment debate in Parliament, some ANC members utilised this language to defend Zuma. Kubayi accused the *New York Times* of undermining South Africa’s “sovereignty” because the newspaper published articles questioning the country’s leadership. She also encouraged others to protect South Africa from “international interference” and “regime change” agendas.

Why should we be worried that ANC officials use this language? Because it sounds similar to the vocabulary employed by Zimbabwe’s President Robert Mugabe and the ZANU-PF. When the political and economic crises in Zimbabwe escalated, ZANU-PF began to blame everyone but themselves for the country’s misrule.

In Zimbabwe, the opposition are dubbed “puppets of the West”; Black Zimbabweans are depicted collaborating with their “white masters”; those who speak out within ZANU-PF are called “traitors” of the liberation movement; the independent media are supposedly funded by “foreign elements” whose main goal is to undermine Mugabe; Whites are accused of trying to “reverse” the supposed democratic order, the West is accused of “regime change”, and so forth. Consequently, debates about important matters are dumbed down to accusations that a fifth column is responsible for everything that is going wrong. In the end, no-one in power is held accountable for their actions, and the use of violence and intimidation increasingly becomes justified to clamp down on supposed enemies of the state (i.e. the opposition, media, and non-governmental organisations etc).

### **Why the ANC protected Zuma**

There are 400 seats in Parliament and two-thirds of the vote was required to unseat Zuma. The ANC has 249 out of 400 seats in Parliament. In the end, the impeachment motion was defeated by 233 votes to 143 on 5 April (14 ANC Parliamentarians were absent). It meant that there must have been a lot of whipping going on prior to the debate because the ANC strongly came out in support of Zuma (Nxedlana 2016). Broadly speaking, the ANC protected Zuma for largely three reasons:

Firstly, some ANC officials depend on Zuma for patronage and the ability to dispense their own patronage in a highly nepotistic regime. When Zuma came into power, he brought many of his loyal supporters with him. Some arguably fear that if he falls, they will fall with him. Their power, wealth and the benefits that come with their positions, are highly dependent on Zuma staying in office.

Secondly, Zuma is one of several ANC high-level officials who have clouds hanging over their heads. Ever since he became the party leader, a controversial clique took hold of the party and took it down a dangerous path. When Zuma unceremoniously unseated President Thabo Mbeki in Polokwane in December 2007, he was joined by a group of rogues. According to one

account, “More than a quarter of the members of the new seventy-strong [National Executive Committee] either had criminal convictions or were being investigated or had had to resign from office over ethical lapses.” The late ANC stalwart, Kader Asmal, was so appalled by Zuma’s faction’s ascendancy that he remarked, “another grubby political party.” For some, Zuma’s actions are thus not a far stretch from what they themselves are doing anyway because the distinction between right and wrong has become blurred. At the same time, some might fear that exposing Zuma could lead to the exposure of their own malpractices, so it would be best for them to simply keep quiet.

A third reason why the ANC rejected impeachment of Zuma, is because some, arguably, feared that it would be seen as a win for the opposition. The opposition has argued for a long time that Zuma is unfit for office. If the ANC supported Zuma’s impeachment, they would acknowledge that opposition parties have been right all along.

### **A dangerous precedent**

What happened in Parliament on 5 April was democratic in the strict sense of the word – the rule of the majority was upheld. Yet, it set a dangerous precedent where democratically elected leaders can get away with murder.

In the mid-1990s, Fareed Zakaria published a paper where he cautioned against the “rise of illiberal democracy” (Zakaria 1997). He argued, you have to distinguish between “democracy” and “constitutionalism”. The former concept relates largely to free and fair elections and representation, while the latter idea is much more complex, as it involves supporting individual liberty and separation of powers. Importantly, constitutionalism is about supporting liberal institutions that are able to constrain government’s power. As argued by the late Samuel Huntington (1991: 10), “governments produced by elections may be inefficient, corrupt, short-sighted, irresponsible, dominated by special interests, and incapable of adopting policies demanded by the public good. These qualities make such governments undesirable but they do not make them undemocratic.” Over the long run, democracy without constitutionalism is dangerous. Adolf Hitler and Robert Mugabe originally came to power democratically. Over time however, they did away with the separation of power and individual liberty.

What was at stake in the South African Parliament is thus not simply a matter of protecting Zuma’s patrons or the ANC’s image. It was much more than that. The ANC’s outright rejection of Zuma’s impeachment has been the biggest blow to South Africa’s Constitution. As many of the members of the opposition noted, some of the founders of the Constitution were shamefully sitting in Parliament on that very day. It was a momentous moment to defend a beautiful Constitution and the institutions, most notably the Constitutional Court and the Public Protector, which they helped to forge. The Constitution guarantees the separation of power, respect for individual liberty, and accountability. Yet, these values are highly dependent on whether government respects or rejects them. A good Constitution by itself is meaningless, unless it is consistently upheld. That is what constitutionalism is about. The ANC deliberately defended a

president who is clearly in violation of the country's highest law, which is another step in the wrong direction.

### **Beyond weakening constitutional democracy**

Whatever reason ANC members had for blocking Zuma's impeachment, they have exposed a lack of accountability within the party. Zuma has become increasingly expensive for the party and they will have to face the consequences during the next election.

Already in 2011, Desmond Tutu said to Zuma and the ANC, "You represent your own interest and I am warning you. I really am warning you out of love. I'm warning you like I warned the Nationalists ... One day, we will start praying for the defeat of the ANC Government. You are disgraceful. I want to warn you. You are behaving in a way that is totally at variance with the things for which we stood" (Lowman 2016).

Aside from the Tutu and the opposition, several highly respected South Africans, including senior ANC officials, have become increasingly outspoken against the party (Times Live 2016). Some of them even have the courage to openly call for Zuma to step down. But people like Tutu, Ahmed Kathrada, Trevor Manuel, Zwelinzima Vavi, George Bizos, Zac Yacoob, Mavuso Msimang, Cheryl Carolus and so on, do not stand alone. Ordinary South Africans understand that the ANC is betraying the values for which they initially fought for. Afrobarometer recently concluded that "Less than half of South Africans currently believe that the country is 'a full democracy' or 'a democracy with minor problems' (48%) or are satisfied with its implementation (47%)", a massive decline since the previous survey (Afrobarometer and IJR 2016).

Although the ANC saved Zuma for the time being, they have taken South Africa further down a slippery slope. Even if they remove Zuma internally, they have sent a message to South Africans that the party has lost its way. The next big test for the ANC will be how they react to losing votes in the next elections.

### **References**

- Afrobarometer and the Institute for Justice and Reconciliation (2016) 'South Africans increasingly discontent with the country's Democracy', <[http://afrobarometer.org/sites/default/files/press-release/south-africa/saf\\_r6\\_pr\\_democracy\\_perceptions\\_in\\_south\\_africa\\_09022016.pdf](http://afrobarometer.org/sites/default/files/press-release/south-africa/saf_r6_pr_democracy_perceptions_in_south_africa_09022016.pdf)>, accessed 2 February 2017.
- Huntington, S. P. (1991) *The Third Wave: Democratization in the Late Twentieth Century*, University of Oklahoma Press: Norman.
- Lowman, S. (2016) 'Desmond Tutu's warning shot: Zuma and ANC worse than Apartheid Govt', *BizNews*, 2 February, 2016, <<http://www.biznews.com/leadership/2016/02/02/desmond-tutu-goes-360-jacob-zuma-and-anc-worse-than-apartheid-govt/>>, accessed 2 February 2017.

- Maromo, J. (2016) 'USA plotting regime change in SA: ANC', *IOL News*, 19 February 2016, <<http://www.iol.co.za/news/politics/usa-plotting-regime-change-in-sa-anc-1987226>>, accessed 2 February 2017.
- Nxedlana, K. (2016) 'Analyst explains Ramaphosa, Gordhan and Jonas' vote to keep Zuma on', *East Coast Radio*, 6 April, 2016, <<https://www.ecr.co.za/news/news/analyst-explains-ramaphosa-gordhan-and-jonas-vote-keep-zuma/>>, accessed 2 February 2017.
- Parliament of the Republic of South Africa (2016) 'Plenary: National Assembly, Tuesday 05 April 2016', *YouTube*, <<https://www.youtube.com/watch?v=3ekNpWMI9Mo>>, accessed 2 February 2017.
- Quintal, G. (2016) '#ZumaMustFall marches racist, hypocritical – ANC', *News24*, 16 December 2015, <<http://www.news24.com/SouthAfrica/News/zumamustfall-marches-racist-hypocritical-anc-20151216>>, accessed 2 February 2017.
- Shange, N. and Quintal, G. (2016) 'President Zuma failed to uphold, defend the Constitution – ConCourt', *News24*, 31 March 2016, <<http://www.news24.com/SouthAfrica/News/president-zuma-failed-to-uphold-defend-the-constitution-concourt-20160331>>, accessed 2 February 2017.
- Times Live (2015) 'Zuma is being targeted by imperialists, says SACP', 17 December 2015, <<http://www.timeslive.co.za/politics/2015/12/17/Zuma-is-being-targeted-by-imperialists%E2%80%9A-says-SACP>>, accessed 2 February 2017.
- Times Live (2016) 'Gallery: These past and present ANC alliance members have had enough of Zuma', 7 April 2016, <<http://www.timeslive.co.za/politics/2016/04/07/Gallery-These-past-and-present-ANC-alliance-members-have-had-enough-of-Zuma1>>, accessed 2 February 2017.
- Zakaria, F. (1997) 'The Rise of Illiberal Democracy', *Foreign Affairs* 176 (6): 22-43.

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