



**FW de Klerk**  
FOUNDATION

## **IS THE CONSTITUTION IN JEOPARDY AFTER THE ANC'S 5TH POLICY CONFERENCE?\***

The chairs and tables have been packed away, the delegates are home and the myriad of reports of the ANC's 5<sup>th</sup> Policy Conference are at Luthuli House for editing, publication and, in due course, for sending to regions and branches countrywide for discussion. The final policy decisions will be made in December, at the Elective Conference.

It is important to consider whether, from the verbal feedback and media reports, the Constitution is in jeopardy after the Policy Conference. What must be taken into account is that this Policy Conference was less about policy and more about the fierce leadership struggle between the delegates backing Mrs Zuma ("NDZ") and Cyril Ramaphosa ("CR17").

A few policy proposals may make one think that there was a return to the Constitution and its values. One such is that land reform should take place within the framework of the Constitution (with the implication of fair compensation, subject to agreement or a court verdict). As in many other instances, there is, however, a "but", emerging in the fact that the NDZ camp got the compromise that if that did not work, the Constitution should be changed. Another positive is the call that a proper land audit should be done. Without knowing what the situation on the ground is (in terms of both agricultural and urban land), it is not possible or indeed advisable to make policy.

The deracialising of the mischievous "White Monopoly Capital" to just "Monopoly Capital" may seem unimportant. It does, however, present a significant return to the non-racialism of the Constitution (and the ANC itself). But the ANC remains united in its mistrust of Monopoly Capital, with a dialectic position in terms "co-operation with and contestation of" private capital.

There are, however, a number of proposals that should be viewed as putting the Constitution and its principles in jeopardy. Even though "Radical Economic Transformation" (RET) was changed to "Radical Socio-economic Transformation" (RSET), purportedly focusing more on socio-economic delivery than attacking parts of the economy not in the hands of black South Africans, the suspicion remains that this may just be a smokescreen for further state capture and Guptasization of the economy. As important as socio-economic rights and their realisation are, this emphasis also begs the question how these rights and the increasing provision of these in practice, could be achieved in the context of an economy that is on its proverbial knees. This situation was not helped by the lack of clear and decisive economic policy proposals emanating from the Conference.

This sorry state of economic affairs was aggravated by the Mining Charter, gazetted by Minister Mosebenzi Zwane just before the Policy Conference. Despite the fact that the Charter caused mining companies to suffer heavy losses on the JSE, the fact that AngloGold Ashanti has just announced the retrenchment of thousands of workers, and the fact that even ANC politicians rejected it, the Charter was still punted as the epitome of radical economic transformation. The proposal to establish a state bank is another example of this trend.



**FW de Klerk**  
FOUNDATION

But perhaps the most worrying proposal only emerged after the Conference had ended, in a report given on the Monday after. Taking its point of departure that the Presidency is the strategic centre of governance and it must be the central driver of several processes, it further states in the original policy document: *The following core functions must form part of the strategic centre located within the Presidency, state policy and planning; **resource allocation and prioritisation**, cooperative governance, public administration and performance enforcement.* (my emphasis)

In essence, this means that President Zuma would have the last say on not only policy and planning, but also resource allocation (read: money) and prioritisation (read: projects that could generate money for him and his cronies). If accepted and implemented, this would be the ultimate state capture - that of the purse and how the money in the purse should be spent. The fact that the proposal also stated that the Presidency must drive the National Development Plan (NDP) does not even begin to hide the real motive of this sinister move. It is centralisation in the ultimate sense, which could hardly be surpassed in a plain dictatorship.

It destroys the constitutional responsibilities of the Department of Finance and the Treasury and probably several ministries.

But there is more. *The strategic center of government in the Presidency must ensure that strong capacity is deployed in all branches of the state to ensure that the NDR is advanced. The merit principle must apply in senior appointments. The Centre of Government must establish a central organising machinery for optimal deployment of talent across the spheres of government (sic) become a clearing house for all senior appointments, succession planning and career development.*

It is at last clear that the ultimate aim of strong capacity in government is to advance the National Democratic Revolution (NDR). And the President will decide who would be appointed where. The almost incongruous remark about merit in senior appointees, is almost comical, were it not so ominous. It is no wonder that Naledi Pandor distanced herself from this proposal of diminishing the authority of the Treasury, stating that it is neither possible nor desirable.

Then there is the resuscitated proposal that there should be fewer provinces. This may be couched in nice terms, such as more effective spending and more money reaching the people, but it is clear that it is merely a way to eliminate the opposition's urban strengths. The problem with bad spending lies in corruption, mismanagement and a lack of capacity at provincial and local level, *not* the number of provinces. This would also need the Constitution amended, with a 75% majority, as well as the agreement of six of the nine provinces.



**FW de Klerk**  
FOUNDATION

But perhaps the biggest negative from the National Policy Conference (NPC) is the fact that almost half of the delegates ignored or even rejected the spirit of the Constitution, and its principles of transparency, accountability and service to the people. Part of this is the sterile thinking (again expressed in the *Strategy and Tactics* document) that the 1994 election and the adoption of the 1996 Constitution were only elements of a beachhead on the way to the final establishment of the national democratic society (read: socialist society). This implies that the Constitution is something that could be used and then changed at will, or even discarded. This does not bode well for the future of the country.

Commentators are mostly united in their opinion that CR17 came stronger out of this NPC, but that the battle for the presidency of the ANC has not yet been won by a long shot. The conclusion must be that, although there were a few welcome signs that the Constitution may be respected and adhered to in future, there are still ominous signs of constitutional neglect and even antagonism. The extent to which the Constitution is in jeopardy, hinges on the question of who will become President of the ANC in December 2017.

**\*The second in a series of three articles by the FW de Klerk Foundation and its Centre for Unity in Diversity (CUD) and Centre for Constitutional Rights (CFCR), reflecting on the recent ANC Policy Conference.**