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**ADDRESS BY DAVE STEWARD
CHAIRMAN OF THE FW DE KLERK FOUNDATION
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**STATE CAPTURE SINCE 1994 - AND THE ROLE THAT THE CONSTITUTION HAS PLAYED IN
PROTECTING OUR DEMOCRACY**

Twenty-four years ago when we established our new non-racial democracy we hoped that South Africa would settle down to the humdrum process of becoming a normal society. We hoped that we would be less ‘interesting’ than we had been during the preceding 30 years.

We were wrong. South Africa was never destined to be a boring country.

The first ‘interesting’ development came only two years after 1994 when the ANC under Nelson Mandela and Thabo Mbeki dumped the RDP - the socialist Reconstruction and Development Programme that had been strongly supported by the South African Communist Party and the trade union confederation COSATU. In its place the ANC adopted the neo-liberal Growth, Employment and Redistribution programme, known as GEAR.

Under the guidance of Thabo Mbeki and Trevor Manuel, GEAR achieved some spectacular results. Between 2005 and 2007 the economy grew at the 5% plus levels that South Africa so desperately needs to create jobs and a better life for all its people. Manuel halved the national debt to only 23% of GDP and succeeded in achieving budget surpluses. All this was, of course, anathema to the SACP and COSATU, which were side-lined from any meaningful policy role.

At its 9th Congress in 2006 COSATU decided to launch a battle for the ‘heart and soul’ of the ANC at the organisation’s next National Conference which would be convened in Polokwane at the end of 2007. It resolved, among other things, that

“the working class must re-direct the National Democratic Revolution towards socialism and jealously guard it against opportunistic tendencies that are attempting to wrest it from achieving its logical conclusion, which is socialism”.

COSATU, the SACP and the ANC Youth League - at that time still under the leadership of Julius Malema - chose as their presidential candidate at the Polokwane conference the disgraced former Deputy-President, Jacob Zuma - despite the fact that he had 783 outstanding fraud charges against him.

To Mbeki’s immense shock and surprise, Zuma won the ensuing ANC presidential election by a margin of 60% to 40%.



Polokwane was the second 'interesting' development in the history of the young republic. It signalled a complete changing of the guard; the resurgence of the SACP and COSATU and a radical change from the orthodox macro-economic policies.

Having secured total control of the ANC's machinery it was just a question of time before the left wing recalled President Mbeki and forced him to resign as national president. The Polokwane Conference also resolved to dismantle "the Scorpions" - the highly effective and independent anti-corruption unit that had become a real threat to Zuma and to many of his colleagues in the ANC leadership. The destruction of the Scorpions opened the floodgates of corruption.

In 2012, in another 'interesting' development, the left wing launched the ANC's so-called Radical Second Phase of the National Democratic Revolution. The ANC announced its intention to proceed with radical economic transformation - primarily by means of the redistribution of economic power and wealth on a racial basis.

By 2015 the SACP had once again established a strong position in the formulation and direction of economic policy. It controlled some ten key ministries - most of which were involved in economic policy and land reform. The SACP boasted that there had been a "*considerable strengthening of the left's ideological positions on government economic and social policies and programmes*".

The SACP's policy successes included initiatives and legislation that seriously undermined property rights. Among them were:

- *The cancellation of bilateral investment treaties with European countries;*
- *The Promotion and Protection of Investments Bill;*
- *The Mineral and Petroleum Resources Bill;*
- *The Restitution of Land Rights Amendment Act;*
- *The Regulation of Land Holdings Bill; and*
- *The Private Security Amendment Bill.*

Interestingly enough, the corrupt - but perhaps more pragmatic - President Zuma pushed most of these initiatives to the back burner.

After Polokwane the left wing had thought that they would be able to control the avuncular and traditionalist Jacob Zuma. They were so busy trying to capture the state for the advancement of socialism that they failed to notice that the wily old President was moving with great skill to capture the state for himself and his associates.

Soon after he became President, Zuma:

- appointed trusted colleagues to ministries that could infiltrate associates of the Guptas onto the boards of state-owned enterprises;



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- secured control of the National Prosecuting Authority and the Hawks (South Africa's version of the FBI) to ensure that none of his friends would be investigated or prosecuted - and to harass his opponents; and
- also brought the intelligence services under his control and used them to gather damaging information on anyone who might become a threat.

The SACP - and respected ANC leaders from the Mandela era - were shocked by these developments and began to criticise those around Zuma vociferously - especially the so-called Premier League - which included the premiers of Mpumalanga, North-West and the Free State - who were all strong supporters of President Zuma. By last year the SACP had become the core of the opposition to President Zuma within the ANC Alliance. Inevitably, it paid the price and was once again thrust into the political wilderness.

There was nothing new about state capture. After 1994 the ANC - according to its own documentation - set out consciously to secure all *"the levers of state power"* including *"the legislatures, the executives, the public service, the security forces, the judiciary, parastatals, the public broadcaster, and so on"*.

However, the ANC's idea was always that the captured state should serve the organisation's altruistic ideological purposes. The idea was not that the levers of state power should be abused for the purpose of amassing immense hoards of private wealth.

The latest 'interesting' development was, of course, the election of Cyril Ramaphosa as the ANC president some seven weeks ago.

There were a number of factors that led to the demise of Jacob Zuma.

Firstly, the fact that we have very free and outspoken media.

- The rigorous efforts of investigative journalists - particularly Sam Sole and Stefaans Brummer at AmaBhungane - ultimately focussed such brilliant light on the perpetrators of rampant corruption that even the leadership of the ANC had to sit up and take notice.
- The media publicised the avalanche of damning information contained in the Gupta Leaks. The leaks emanated from between 100 000 and 200 000 emails that provided graphic information on the industrial scale looting of state resources at Transnet, Eskom and the notorious Estina dairy scheme in the Free State.
- Civil society organisations - including Save South Africa - a coalition that was established in November 2016 mobilised, demonstrated, informed and litigated. The South African Council of Churches and academic organisations published damning reports on State Capture. ANC 'Stalwarts' called on President Zuma to resign. The National Foundations Dialogue Initiative - including the Mbeki Foundation, the Tutu Foundation and the FW de Klerk Foundation - began a national dialogue on the problems confronting the country.
- The former Public Protector - Thuli Madonsela - fearlessly examined the expenditure of R246 million on the president's retirement home at Nkandla and cut to the root of allegations relating to state capture.



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All this was made possible by the framework of rights, freedoms and institutions that had been created by the Constitution. In judgment after judgment the courts placed serious checks on unconstitutional action by the government. Relentlessly, they called government to account, struck down unconstitutional legislation and executive action and began to exert irresistible pressure on President Zuma:

- In 2008, in a case brought by the Democratic Alliance, the Constitutional Court overturned the appointment by President Zuma of Menzi Simelane as National Director of Public Prosecutions;
- In a scathing judgement in March, 2016 the Constitutional Court - in a case initiated by the EFF and DA - ruled that the Public Protector's recommendations on Nkandla were binding. It held that the National Assembly's resolution purporting to exonerate President Zuma was unlawful and it declared that the conduct of the President and the National Assembly were inconsistent with their constitutional obligations.
- The Supreme Court of Appeal delivered another judicial body blow to President Zuma in October last year when it declared that the 2009 decision of the National Prosecuting Authority to drop 783 fraud charges against President Zuma was irrational and should be reconsidered.
- In December last year, the Constitutional Court held Parliament to account for failing to exercise its oversight role with regard to allegations against President Zuma. The Court ordered to the National Assembly to make rules regulating the removal of a President in terms of section 89(1) of the Constitution;
- In yet another scathing judgment in December last year, the North Gauteng High Court dismissed the President's application to set aside the Public Protector's report on state capture. The Court insisted that the Public protector's recommendation that the Chair of the proposed commission of enquiry should be appointed by the Chief Justice - rather than by the President because of his personal conflict in the case. The Court said that the President's "review application was a non-starter and the President was seriously reckless in pursuing it as he has done". It added that the President's conduct fell "far short of the standard expressed in Section 195 of the Constitution" (which deals with the basic values and principles governing public administration).

These were the factors that created the environment in which Jacob Zuma - and his selected candidate - Nkosazana Zuma - lost out at the ANC's 54th National Conference in December.

Those who support constitutional government breathed a huge sigh of relief.

Nevertheless, as the Duke of Wellington commented after the Battle of Waterloo, it was "the nearest run thing you ever saw in your life". Ramaphosa won by only 179 votes - and would have lost had David Mabusu - the Premier of Mpumalanga (and one of the members of the pro-Zuma Premier League) not shifted his support at the last moment.



According to the Institute of Race Relations (IRR), Ramaphosa should have won by a landslide. He had the support of 44.2% of black South Africans - compared with only 18.9% for Dlamini-Zuma; he was the more popular candidate among all of the black language groups - except the Zulus. Even there he polled a respectable 32.8% compared with 37.5% for his Zulu opponent.

The key questions now are whether President Ramaphosa has the power, the will and the intention to restore integrity to government - and what policies he will adopt if he can do so?

- Much will depend on his ability to consolidate his power within the ANC. As we can see from the push-back by Jesse Duarte and Ace Magashule, two of the ANC's top six, the struggle for the heart and soul of the ANC is far from over. The reality is that many members of the leadership and senior ranks of the ANC are deeply compromised by state capture - and are fundamentally dependent on the cascading system of patronage that was established by President Zuma. Many have no other means of livelihood. If they are ejected from the gravy train they face a frightening prospect of very radical economic transformation.
- Secondly, how will President Ramaphosa deal with the very sensitive business of dismantling state capture? How effective will the forthcoming commission of inquiry be? And how will the state deal with those who are found guilty of corruption? Will they be treated "with sensitivity" and let off the hook? And if wrong-doers are not punished, will we not establish a principle of rolling impunity from one administration to the next? On the other hand, what happens to the unity of the ANC if the culprits face the full retribution of the law?
- Finally - and most crucially - what will Ramaphosa do to re-establish the independence of the institutions on which the integrity of governance depends? Will people of unimpeachable character and independence be appointed to head the intelligence services; the police and the Hawks; the Office of the Public Protector; the Human Rights Commission; and the National Prosecuting Authority? Will the government be able to resist the temptation of interfering once again in their activities?

Dealing successfully with these challenges will require immense political skill; perseverance; courage and integrity.

And finally, if Ramaphosa can consolidate his power over the ANC and re-establish the integrity of key institutions, what policies will he adopt? Will he bring the SACP and COSATU - his principal support base - back to the heart of policy formulation - or will he follow the prescripts that he himself helped to develop in the National Development Plan seven years ago?

The President's State of the Nation Address gave few clues about the actual direction that his policies will take. He was everything to all people. He expressed clear determination to re-establish the integrity of government; he announced grandiose programmes - such as free university tuition; the introduction of a National Health Scheme and the advent of a



new dispensation of minimum wages. He supported the idea of working with business and labour to promote accelerated economic growth. He wanted all South Africans to work together in achieving the vision set out in the Constitution.

And then he announced once again his support for expropriation without compensation - apparently unaware that such a move would destroy any prospect for investment, economic growth and racial harmony.

Or was this just rhetoric to placate the ANC radicals?

The President would do well to consider the IRR's recent research which indicates that there is far greater support for moderate and pragmatic policies than there is for the radical and racial approach that is being touted by the Africanists, the SACP/COSATU and the radicalised children of the emerging black middle class.

- Only 19.2% of black South Africans support radical economic policies while more than 50% would favour a more pro-business approach;
- 80% believe that race relations have actually improved or stayed the same since 1994;
- Interestingly, the fabulously rich businessman, Cyril Ramaphosa, enjoyed far greater support among the black underclass than his more radical rivals. He was favoured by 53.6% of those with little education and by 52.5 % of the unemployed.

There can be no doubt that South Africa has taken a serious knock as a result of the rapacious, radical and racially divisive policies advocated by President Zuma:

- our economy is hardly growing;
- we are not attracting investment - (because who would invest in a country that calls for expropriation without compensation?); and
- we are facing mounting economic and social crises.

All this is perhaps best summed up by the fact that last year South Africa fell 14 places to the 60th position in the World Economic Forum's *Global Competitiveness Index*.

Despite this, the enormous potential of the country remains:

- according to CitiBank we have the greatest mineral and ore reserves in the world with a value of \$2.5 trillion;
- we have the most sophisticated economy in Africa - and even after our precipitous fall, are still the most competitive country on the continent;
- we produce 600 000 motor vehicles a year - three times more than Sweden;
- we are the 30th largest economy in the world;
- more than 7.5 million black South Africans own their own homes bond free;
- we have immense tourist potential;
- more than 30% of households own a car; and



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- we have a million young people at university - 80% of them black.

So, a great deal depends on the outcome of the power struggle taking place within the ANC leadership as I speak. Which of the four tendencies that have characterised the ANC since 1994 will prevail?

- will it be the SACP/COSATU's Road to Socialism?
- will it be the aggressive racist ideology of the National Democratic Revolution and Radical Economic Transformation favoured by the Africanists?
- will it be a continuation of rampant corruption?
- will it be the successful macroeconomic policies that were implemented by Trevor Manuel and Thabo Mbeki that are reflected in the National Development Plan?
- or will it, perhaps, be a continuation of the present confused mixture of these approaches?

Who knows?

Of this we can be sure: one way or another - there will be more interesting times for South Africa.