



ANC Whip

The bi-weekly newsletter of the ANC Caucus

22 Sept 06

Was Parliament misled on Cape Town power outages?

This week the DA tabled a motion in the National Assembly seeking to institute an investigation to establish if Minister of Trade and Industry Alec Erwin misled the public on the Cape Town power outages. The motion was dismissed through a vote. ANC Whip deliberates on the motion.

Background

ON 25th DECEMBER 2005 the No 1 Unit at Koeberg Nuclear Power Plant in the Western Cape tripped. This was followed by a number of outages and load shedding operations in the following weeks and months. A particularly serious event occurred on the 27th February 2006. Being just two days before the Local Government Elections, this incident attracted immense public interest and Ministers Alec Erwin (Minister of Public Enterprises) and Lindiwe Hendricks (then Minister of Minerals and Energy) addressed a press conference in Pretoria. The Minister of Public Enterprises, had at that stage been alerted by the CEO of Eskom that a 'bolt' had been found inside the generator and that bolt should normally have been on the outside of the generator. He reported that there would be an extensive investigation into how the bolt came to be inside the generator. The Minister went on to say that if it transpires that someone had deliberately interfered with the 'installation of electricity, it is serious...it is sabotage.'

Content to the subject matter

Minister Erwin has been subjected to numerous counts of speculation on this matter and released a statement on the 21st

of August to clarify the matter. In this statement he (through his spokesperson) said:

"This entire "sabotage-saga" has blown out of proportion. While we do not dispute that the Minister used the word "sabotage", certain sections of the media assumed that the Minister said the bolt found in the generator at Unit 1 was sabotage. Nothing could be further from the truth.

What the Minister said was:

"If someone deliberately interferes with the installation of electricity it is serious... it is sabotage."

Very simply, some journalists took this statement and the fact that the Minister said the bolt "did not get there by accident" and juxtaposed the two statements."

Despite this clarification, the Hon D Gibson introduced the following motion on September 7, 2006.

Draft resolution (Mr D H M Gibson):

"That the House appoints an ad hoc committee to investigate whether the Minister of Public Enterprises, Hon Mr Alec Erwin –

◆ Deliberately misled Parliament and the Members of Parliament on 17 August 2006 by stating the following in respect of the damage to the Koeberg unit in December:

“Of as much interest has been whether I said that this was an act of sabotage. I did not say this ...Why I deliberately did not say it was sabotage will be evident ...”

“(Excerpt from “ Statement to Parliament on the Damage to Koeberg Unit in December 2005”, by Minister Alec Erwin, MP);”

◆ Made a false statement to the National Assembly in that the Hon Minister on 28 February 2006 at a media briefing informed South Africa as follows

“This was no accident. The investigations proceed well and action will be taken of a legal nature and a criminal charge nature. Any interference with any electricity installation is an exceptionally serious crime. It is sabotage.”

“This statement was captured by the SABC on video footage flighted by ETV on 28 February 2006 and the evening of 17 August 2006; and, was quoted in the print media on the following dates: Mail & Guardian, 10 March 2006; Business Day, 18 August 2006); and should be censured in a manner commensurate with the seriousness of such a transgression.(//End of DA resolution).

ANC’s take on the matter is that the charge of misleading Parliament is a serious and the

organisation treated it as such. The concern must be that certain sections of the public may be under the impression that a Minister deliberately misled Parliament. Does this however warrant the appointment of an ad hoc committee or is the DA not merely trying to score political points?

Would the public interest be better served by appointing such a committee? It is also unfortunate that the media chose to report a more salacious version of events rather than the truth.

The ANC, through Chief Whip Mbulelo Goniwe, tabled an amendment to the DA motion, submitting that:

“We delete all the words after *“That the House”* and replace them with the following”

- ◆ Is of the view that there is no merit in appointing an ad hoc committee,
- ◆ That there has been extensive media coverage and explanation of the matter in which various views have been expressed; and,
- ◆ That the House is therefore of the view that the matter has been extensively discussed; and
- ◆ Resolves that the matter should not be pursued any further.

The ANC resolution was adopted by Parliament.



Appointment of ICASA Councilors

The National Assembly has approved a recommendation by the Minister of Communications for the appointment of councilors to the Independent Communications Authority of South Africa (ICASA).

The Portfolio Committee on Communications short-listed and interviewed candidates for the positions of ICASA councilors. The Portfolio Committee recommended eight candidates via the National Assembly to the Minister.

The Minister has made her choice and in terms of the Act, submitted to the National Assembly candidates she wishes to appoint.

The nominations procedure for councilors to serve on the board of ICASA is determined by the ICASA Amendment Act No3 of 2006.

The Minister appoints the Chairperson and 8 other councilors after approval of the National Assembly. The National Assembly must submit to the Minister a list of suitable candidates, at least one and half times the number of candidates to be appointed.

The Minister must recommend to the National Assembly, from a list submitted to her, persons to be appointed.

The National Assembly may ask the Minister to review her recommendations, if it is not satisfied with the persons recommended. Once the National Assembly has approved the Minister’s recommendations, the Minister must appoint the Chairperson and other councilors by notice in the Government Gazette.

Civil Unions Bill

Introduction

In 1998 the common law offence of sodomy was declared unconstitutional. A year later (1999), the Constitutional Court ruled that the Aliens Control Act unfairly discriminated against gay and lesbian couples by only allowing married partners of South African citizens to live and work in the country. The court ruled that lesbian and gay people and their immigrant partners should be free to live together as family. In 2001, the Constitutional Court ruled that gay and lesbian couples could adopt children.

In 2002 the Pretoria High Court ruled against an application by a lesbian couple to legalise, recognize and register same sex marriages, based on the fact that our constitution defines marriage as a union between a man and a woman; the application was therefore dismissed as it was of a constitutional nature.

In terms of a 2005 Constitutional Court judgment, Parliament has until December 2006, to correct section 30 (1) of the Marriage Act.

The reason being that the reference to a wife or a husband in the current Marriage Act is unconstitutional because it excludes same-sex partners. Based on the ruling by the Constitutional Court; the statutory and common law definition of marriage is invalid because it does not permit same-sex couples to enjoy the status and the benefits coupled with responsibilities it accords to heterosexual couples.

The Constitutional Court ruled that the omission of the words "or spouse" after the words "or husband" in the Marriage Act was inconsistent with the Constitution as it did not permit same-sex partners to enjoy the same status as heterosexual couples.

The Constitutional Court gave Parliament a year to correct the defects, in that the Legislature was better placed to decide the best way to achieve equality on this matter. However, should Parliament fail to do this either within the prescribed time period or through its equal but separate doctrine in the Civil Union Bill, the Marriage Act of 1961 will automatically be changed to allow single-sex unions the required equal rights. The state law advisor declined to certify the Bill and instead proposed a new version of

the draft measure, which the Minister declined based on time constraints and alternatively suggested that whatever changes might be necessary, would be done through the public participation process arranged by Parliament.

Objectives

The Bill seeks to provide for the conclusion of:

- ◆ A civil partnership or marriage between persons of the same sex solemnized before the State with all legal consequences of a marriage.
- ◆ A domestic partnership between persons in a permanent relationship, whether of a heterosexual or homosexual nature, who do not wish to marry or enter into a civil partnership or marriage, but with legal consequences provided for in the Bill.

Content

Chapter 1: Defines the terms in the Bill in order to clarify the meanings thereof.

Chapter 2: Provides for the regulation of solemnization and registration of civil partnerships and the legal consequences thereof. This chapter also empowers marriage officers to refuse to solemnize civil partnerships, for examples, no marriage officer should be compelled to solemnize a civil partnership, provided that he/she has informed the minister in writing of his or her objection on the grounds of conscience.

Chapter 3: to ensure the right to equality and dignity of partners in domestic partnerships and to reform family law, to comply with the provisions of the Bill of Rights, through:

- ◆ The recognition of the legal status of domestic partners, regulation of the rights and obligations of domestic partners.
- Protection of interests of both domestic partners and interested parties on the termination of domestic partnership; and
- ◆ Final determination of financial relationships between domestic partners and interested parties upon termination of domestic partnerships.

Political Implications

The African National Congress has passed about 35 pro-sexual orientation laws since it

came into government in 1994. This is law reform unprecedented anywhere in the world. The passing of these pieces of legislation is proof that the ANC is committed to the values enshrined in the Constitution. This bill, however, has introduced a number of social and moral challenges based on the traditional definition of the marriage

institution. Secondly, the ruling by the Constitutional Court that the Parliament has to pass this Bill by December 2006 is likely, unless processes are fast tracked, to deny maximum participation through public hearings, especially at Provincial level given the time line requirements for bills to be processed.



Parliament votes for motion on DA's Gibson

Parliament has overwhelmingly voted in favour of the ANC motion condemning DA's Douglas Gibson for invading the privacy of the President and his family. He led an entourage of journalists to the site of the retirement home of the President and First Lady on an ostensible oversight work. Below is the ANC motion

Motion by ANC Chief Whip

The House:

Noting,

■ The reprehensible actions of the Hon. DHM Gibson, MP, Chief Whip of the Democratic Alliance and other members of the Democratic Alliance, accompanied by members of the news media, who attempted to enter a private property belonging to President Thabo Mbeki and First Lady Mrs. Zanele Mbeki, on Friday, 1 September 2006, in Johannesburg;

Recognises,

■ That the Constitution of the Republic provides that:

■ The Republic of South Africa is one, democratic state founded on the following values: human dignity, the achievement of equality and the advancement of human rights and freedoms;

■ Everyone has inherent dignity and the right to have their dignity respected and protected;

■ Everyone has the right to privacy, which includes the right not to have their person or home searched;

Further recognises that,

■ The Constitution, national legislation and the Rules of Parliament provide for a variety of mechanisms to ensure openness, transparency and accountability with regard to the use of public funds;

Believing that,

■ The conduct of the Hon. GHM Gibson, MP, exceeded all bounds of political maturity and human decency, was undignified and unbecoming that of a member of this House;

■ Had the Hon. GHM Gibson, MP, intended to conduct bona fide Parliamentary oversight he would have made use of the many mechanisms that exist for this purpose. His failure to do so is indicative of a calculated attempt to make cheap political capital;

■ Parliament and its Members have a duty, at all times, to be at the forefront of upholding the values of human dignity, the achievement of equality and the advancement of human rights and freedoms and of good governance, transparency and accountability;

■ The Hon. GHM Gibson, MP's actions constitute an infringement of the human dignity and privacy of President and First Lady Mrs. Mbeki and an assault on the dignity and integrity of the Office of the President;

Therefore Resolves,

■ To condemn in the strongest terms, the actions of the Hon. DHM Gibson, MP; and,

■ To call upon the Hon. DHM Gibson, MP, to apologise unreservedly to President Thabo Mbeki and First Lady Mrs. Zanele Mbeki, Parliament and the nation for his actions