

CRO8P

F.A.O. Ms T Sepanya
Secretary to the Joint Constitutional
Review Committee
Post # 80, 3rd Floor
90 Plein St
Tel 021 403 3738
Fax 403 2854
Cape Town 8000
P.O. Box 15 Cape Town
8000 Rep. South Africa
email : tsepanya@parliament.gov.za

Clive Rubin

Free-lance Journalist/photographer

Free-lance Journalist/photographer
Cape Town, South Africa
Tel 021 700 2497
F " " "
new : (" " "
email " " "
Free-lance Journalist/photographer

To of the chair of the Joint Constitutional Review Committee Mr S D Montsitsi & all the committee members, 6/9/7

First of all I would like to congratulate Mr Montsitsi on his recent appointment as chair.

Would the Portfolio Committee please take the following into consideration ;

Was 12th Amendment Constitution act (and related acts incl ; Cross Boundary Municipal repeal act) ever passed?

The facts : Votes for 265 (altered 266, no signature appended) votes against 65.

As stipulated in the Constitution - an Amendment to the Constitution requires 267 votes or a two thirds majority. When the 12th Amendment to the Constitution act and the cross boundary municipality repeal act came before the National Assembly on the penultimate sitting of 2005, according to both the Voting Summary and the Hansard, the figure announced and recorded by both, never exceeded the figure of 266 votes (with 65 against).

According to the Hansard, this figure was repeated twice, yet it is one vote short of the minimum required and the figure of 267 or above was never mentioned .

At some stage either before or after the Chair added her vote, as is permitted, the electronic printout with a printed figure of 265 was manually altered and an additional vote was added going from an insufficient 265 to a critical 266.

It entirely but irregularly altered the outcome. This is not in conformity with the rules of parliament and in breach of practice (recognized, routine and best). The rules of parliament (Rule 88) entitles changes to be made but stipulates that the signature of the Whip "must" appear - it does not feature anywhere on the voting summary (copy provided).

The rules of parliament have been ignored and the rule of law has been disregarded.

It is – however - accepted practice that in the event of a voting console not functioning, that if announced to the chair and presiding officer and the entire house - any unrecorded votes can be added. Yet there is no mention or documentation demonstrating that either an mp, whip (chief or other), the chair or any office bearer announced or was informed that any or a member was unable to vote on 15/11/05, during or after the vote took place or at any other time.

Recently (and not uncommonly) when as the current minister of Housing (the Hon.L Sisulu) was unable to record a vote that merely needed a simple majority to be carried, the minister in question, still felt the need to inform the deputy speaker that she had been unable to cast her vote and this was duly noted (Public service administration amendment vote 2007).

(Should the committee wish, other similar examples can be furnished to the committee). Yet in this case, being a far more sensitive issue involving the amending of the Constitution, that depended and turned on a single vote to make a difference between happening or not proceeding to the NCOP, no announcement was made and no one in the house was informed and yet the Voting Summary was altered regardless and unannounced.

if the rules of parliament are not followed, then they are being broken.(Regardless of the Public Protectors, legally non-binding, contortions and contentions). It would set a precedent that would allow any shortfall, concerning any vote, in the future, to be made up simply by compiling a tally of names, of allegedly non voters, to ensure that any vote could be passed regardless of the figure captured by the electronic voting summary. It is hoped that all members would disapprove and abhor this prospect.

At Issue is whether the National Assembly abides by the rules it has drawn up for itself or whether it can forswear the rules and ignore the law when making the law or altering the Constitution or merely when it so pleases.

What sort of example can the citizenry be expected to follow, if the law makers ignore their laws and rules? By imposing this illegitimate act it has forced peoples otherwise well disposed to the elected government to oppose it. This cannot have been the intention of the amendment and related acts.

Is there a recording in the house?

Despite repeated requests telephonically, then written as per requests from the National Assembly, then written on my behalf (Public Protector), then requested by the Parliamentary Monitoring Group , then latterly in conjunction with the Freedom of Expression Institute a legal request was delivered via the - Promotion of Access to information Act (PAIA, 27/6/7) to the National Assembly and yet to date, despite all these entreaties, no extant filmed recording of the vote in the National Assembly has been forthcoming – a further and final internal review request now has been lodged with the National Assembly (4/9/7) and consistent with the PAIA.

Once again it is requesting a copy of the (routinely) filmed vote, that continues to be withheld. If the recording continues to be withheld, there is the prospect that the National Assembly will be, in due course, judged to be in contempt of the PAIA. Effectively denying this committee and all the members who sit on it too - an opportunity to view, the recording of a vote that many participated in.

Why? Has the National Assembly something to hide?

The question remains as to whether the correct procedure or any procedure was in place when the 12th amendment was voted on in the National Assembly and what exactly transpired on the 15/11/5.

Would the committee consider that ;

CRO8/1

Teboho Sepanya - Two revised submission based on Hansard recording, 29/5/05

The 12th Amendment never happened because it fell short of the Constitutionally required two thirds and no recording of the events surrounding the vote exists in the National Assembly. It then follows that all subsequent votes in the NCOP, rulings, amendments and all related articles, laws and bills simply never existed too and have no home here in records of Parliament and are similarly invalid. Similarly on the 23rd of December when enacted by acting President Z Skewyia the 12th Amendment was signed "Ultra Vires".. As the 12th Amendment was not, in the first place properly procedurally passed on 15/11/05.

Dear Mr. Sepanya
I hope that the committee will take into consideration all of the above.

I also forward to you the e-mail, that I also sent for your consideration.

I hope it

Voting summary 15/11/5

Yours
Hansard 15/11/5

PAIA – Internal Appeal 4/9/7

Clive Rubin

Begin forwarded message:

From: Clive Rubin <clive@rubin.co.za>
Date: 11 September 2005, 12:44:29 PM
To: Teboho Sepanya <teboho@parliament.gov.za>
Subject: revised submission based on Hansard recording.

Teboho Sepanya
Workstation 0507 3rd floor
90 Plain Street
Tel No: (021)403 714
Fax No: (021)403 547/56 319 0436
Mobile: 083 797 1107
E-mail: teboho@parliament.gov.za

Clive Rubin

Teboho Sepanya
P.O. Box 120
New Constitution
email: teboho@parliament.gov.za

F.A.O. Ms T Sepanya
Secretary to the Joint Constitutional
Review Committee
Post Bag 80, 3rd Floor
90 Plain St
Tel 021 403 371

Fax 403 2854
Cape Town 8000
P.O. Box 15 Cape Town
8000 Rep. South Africa
email : tsepanya@parliament.gov.za

To of the chair of the Joint Constitutional Review Committee, Mr S D Montsitsi & all the committee members,
11/9/7

Would you please consider this addition since providing a submission to the Standing Committee on Provincial & Local Government and the Portfolio Committee on Justice & Constitutional Affairs. Subsequently there have been several important "turns of events", that I would like to bring to the attention of the **Joint Constitutional Review Committee**. In addition to this introduction, there are number of modifications, based on the recent discovery of an audio recording, and there may be more, if a filmed recording is still to be released. This has also lead to the several necessary alterations to the initial submission of the 5/9/7.

The most important is that a digital audio (WAV) recording of the second reading 12th Amendment to the Constitution act 15/11/05 was obtained, requested and provided by Hansard on Friday of last week (7/9/7). (Arrangements can be made to duplicate a copy should the committees require it.) The recording, inter-alia - reveals that there was a five minutes of delay following the completion of the voting procedure. Only afterwards does the Deputy speaker announce that 267 votes has been reached, after the addition of her vote from the chair.

Then the chair repeats the figure 266 twice. Significantly, there is no mention of any correction to the vote or any vote not being properly recorded at any point or any announcement of the need to add any vote after the vote was completed. Nor does any MP or Whip inform the house of such a vote or the need for any member to have their vote added, according to the Hansard audio recording. Today (10/9/7) Ms Madu Sefora of the Audio Visual unit at Parliament, informed the Freedom of Expression Institute that a visual recording on DVD of the 15/11/05 could be made available soon. If the recording is relevant (twice before unsolicited and irrelevant recordings were presented to the Public Protector and the Parliamentary Monitoring Group on a commercial basis) and if relevant and released timeously, it still remains to be seen if the recording provides a clearer picture, as to what precisely transpired on 15/11/05. Whether it contributes materially to elucidating whether correct or indeed any procedure was adhered to when the computerized voting summary was altered and how the electronic printing summary came to be manually altered without the House being informed or why and even by whom and on whose instructions, may yet be revealed. Otherwise suffice to say, that a recording made by Hansard always existed.

Last week too, we were reminded by the Speaker, "that the House imposes on itself" (6/9/7) rules and all of them, it is assumed are given equal importance and weight and when transgressed suitable corrective measures are imposed and sanctions imposed on those that disregard them. The Speaker chose to cite three rules "and having studied the Hansard pertaining to the incident" arrived at a firm and resolute decision.

The Speaker demonstrated an abiding respect for the rules "that the House imposes on itself" and by recognizing the Hansard as the official record of parliament, set an exemplary standard and it must follow that an equally high standard, in all circumstances must necessarily be applied when considering the voting procedure in general and in particular when it affects the modification of the Constitution. It is reasonable to assume this to be the case.

To admit wrongdoing takes candour but only those in responsible and leadership positions can find solutions;

I would like to agree and side with the Chair of the Portfolio Committee when she stated that were it possible "what could be undone, should be undone" and agree with Dr P Bouwer (of the Department of Justice) when he confirmed that a complete reversal could be completed and accomplished by July 2008, after the end of the fiscal year.

I would like to thank the Chair and Dr Bouwer for their leadership solutions and their power to refer, just such a solution to this Portfolio Committee. I can only echo and share their points of view and look to the day that this committees recommendations reverberate through the hills and valleys of Matatiele and the two other communities of Moutse and Khutsong, that have endured the same fate, through no mistake of their making.

Clive Rubin.

"Sincerely"

10/9/07

Call 10/9/07

Call 10/9/07

F " " "

new :

e. psibisi@parliament.gov.za

Free-lance Journalist/photographer
 F.A.O. Phumelele Sibisi
 Secretary to the Portfolio Committee
 On Justice and Constitutional Affairs
 P.O. Box 15 Cape Town
 8000 Rep. South Africa
 email psibisi@parliament.gov.za

To the Chair, Ms F Chohan of the Portfolio Committee
 on Justice and Constitutional development and all committee members, 10/9/7
 Would the Portfolio Committee please take the following into consideration ;
 Was 12th Amendment Constitution act (and related acts incl ; Cross Boundary
 Municipal repeal act) ever passed?

The facts : Votes for 265 (altered 266, no signature appended) votes against 65.
 As stipulated in the Constitution - an Amendment to the Constitution requires 267
 votes or a two thirds majority. When the 12th Amendment to the Constitution act
 and the cross boundary municipality repeal act came before the National
 Assembly on the penultimate sitting of 2005, according to the Voting Summary
 and only if the rules of Parliament are ignored, as revealed, by the Hansard digital
 recording, was the desired and required figure of 267 ever announced and put
 forward. However the facts do not allow for a figure in excess of 266 votes (with 65
 against) as no outstanding or unrecorded vote was announced, documented or
 captured on the Hansard digital audio recording.

According to the printed Hansard, this figure was repeated twice, yet it is one vote
 short of the minimum required and the figure of 267 or above was never in the
 printed Hansard. Why, is quite obvious.

Because at some stage either before or after the Chair announced she had added
 her vote, as is permitted, the electronic printout with a printed figure of 265 was
 tampered with and manually altered and an additional vote was added going from
 an insufficient 265 to a critical 266. (re Voting Summary)

It entirely but irregularly altered the outcome. This is not in conformity with the
 rules of parliament and in breach of practice (recognized, routine and best). The
 rules of parliament (Rule 88) entitles changes to be made but stipulates that the
 signature of the Whip "must" appear - it does not feature anywhere on the voting
 summary (copy provided).

The rules of parliament have been ignored and the rule of law has been
 disregarded

It is - however - accepted practice that in the event of a voting console not
 functioning, that if announced to the chair and presiding officer and the entire
 house - any unrecorded votes can be added. Yet there is no mention or

documentation demonstrating that either an mp, whip (chief or other), the chair or any office bearer announced or was informed that any or a member was unable to vote on 15/11/05, during or after the vote took place or at any other time.

Recently (and not uncommonly) when as the current minister of Housing (the Hon.L.Sisulu) was unable to record a vote that merely needed a simple majority to be carried, the minister in question, still felt the need to inform the deputy speaker that she had been unable to cast her vote and this was duly noted (Public service administration amendment vote 2007).

(Should the committee wish, other similar examples can be furnished to the committee). Yet in this case, being a far more sensitive issue involving the amending of the Constitution, that depended and turned on a single vote to make a difference between happening or not proceeding to the NCOP, no announcement was made and no one in the house was informed and yet the Voting Summary was altered regardless and unannounced.

if the rules of parliament are not followed, then they are being broken.(Regardless of the Public Protectors, legally non-binding, contortions and contentions). It would set a precedent that would allow any shortfall, concerning any vote, in the future, to be made up simply by compiling a tally of names, of allegedly non voters, to ensure that any vote could be passed regardless of the figure captured by the electronic voting summary. It is hoped that all members would disapprove and abhor this prospect.

At Issue is whether the National Assembly abides by the rules it has drawn up for itself or whither it can forswear the rules and ignore the law when making the law or altering the Constitution or merely when it so pleases.

What sort of example can the citizenry be expected to follow, if the law makers ignore their laws and rules. By imposing this illegitimate act it has forced peoples otherwise well disposed to the elected government to oppose it. This cannot have been the intention of the amendment and related acts

Is there a visual recording in the house?

Despite repeated requests telephonically, then written as per requests from the National Assembly, then written on my behalf (Public Protector), then requested by the Parliamentary Monitoring Group , then latterly in conjunction with the Freedom of Expression Institute a legal request was delivered via the - Promotion of Access to information Act (PAIA, 27/6/7) to the National Assembly and yet to date, despite all these entreaties, no extant filmed recording of the vote in the National Assembly has been forthcoming – a further and final internal review request now has been lodged with the National Assembly (4/9/7) and consistent with the PAIA.

Once again it is requesting a copy of the (routinely) filmed vote, that continues to be withheld. [Though there are now suggestions that a copy may yet be provided 10/9/7] However, If the recording continues to be withheld, there is the prospect that the National Assembly will be, in due course, judged to be in contempt of the PAIA. Effectively denying this committee and all the members who sit on it too - an opportunity to view, the recording of a vote that many participated in.

Although courtesy of Hansard, all can listen to a digital recording, of the unfurling of events

If not forthcoming, why the obfuscation? Has the National Assembly something to hide?

The question remains as to whether the correct procedure or any procedure was in place when the 12th amendment was voted on in the National Assembly and what exactly transpired on the 15/11/5.

Would the committee consider that ;

The 12th Amendment never happened because it fell short of the Constitutionally required two thirds and a recording of the events exists and confirms this. It then follows that all subsequent votes in the NCOP, rulings, amendments and all

related articles, laws and bills simply never existed too and have no home here in records of Parliament and are similarly invalid. Similarly on the 23rd of December when enacted by acting President Z Skewyia the 12th Amendment was signed "Ultra Vires". As the 12th Amendment was not, in the first place properly procedurally passed on 15/11/05.

I hope that the committee will take into consideration all of the above when pronouncing on the Cross Boundary Municipal repeal act and related articles.

C Rubin.

Documents :

Voting summary 15/11/5

Hansard 15/11/5

PALA – Internal Appeal 4/9/7