



## *Response*

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### **Reaching Consensus in Parliament**

Amid all the excitement of last week's accusations about undue influence in cabinet appointments, two noteworthy decisions were made in Parliament. In the long term, they may turn out to be just as important as the exposure of suspicious activities involving the Gupta family and President Zuma. The decisions in question also demonstrate that the work of Parliament goes much deeper than the apparent circus that is regrettably often depicted on our screens.

On Wednesday, the ANC withdrew the nomination of its MP, Cecil Burgess, to the post of Inspector-General of Intelligence. The position has been empty for more than a year, as opposition parties and civil society battled to prevent Mr Burgess, whom they see as too partisan, from being selected. Mr Burgess chaired the *ad hoc* committee that considered the Protection of State Information Bill (the so-called Secrecy Bill), and was one of the MPs who supported some of the more draconian provisions of the Bill.

Because this position is clearly an extremely sensitive one, the Constitution (section 210(b)) provides that the approval of two-thirds of the members of the National Assembly is required before the President can formally make an appointment. Moreover, since the ANC does not have such a majority, and has been unable to persuade any of the opposition parties to support Mr Burgess's nomination, it has had to back down. The process of finding a suitable candidate will now resume, and hopefully the various parties will refrain from nominating people who are clearly unsuitable.

Is this a naïve hope? Can our fiercely rival parties actually be expected to agree on nominations to important independent public posts?

Well, also on Wednesday, when it came to filling a commissioner vacancy at the Independent Electoral Commission, they did exactly that. Parliament unanimously chose Janet Love to fill the post. Ms Love is a former ANC MP and NEC member and, before that, was in *Umkhonto we Sizwe*, the ANC's armed wing. However, her political history notwithstanding, the opposition parties were satisfied that she would carry out her IEC duties fairly and impartially, as she has done for some years as a member of the Human Rights Commission. (Interestingly, the ANC could easily have forced through the nomination of its choice, since section 193(5) (b) (iii) of the Constitution requires only a simple majority of members of the National Assembly to support the nomination.)

Ideally, all appointments to posts like the two under discussion here would be made based on consensus. Key independent state institutions are intended to outlast the tenures of political parties, whether they be in government or in opposition. It is therefore unwise for parties to politicise such

appointments, apart from the fact that doing so always negatively affects the capacity of the institutions to carry out their constitutional duties.

The withdrawal of Mr Burgess's nomination may also help to ensure that later this year, when Parliament will have to make one of the most important nominations of all, an atmosphere of consensus will prevail. In October, the term of office of the Public Protector, Adv Thuli Madonsela, comes to an end, and her replacement must also be approved by the National Assembly; this time, to make things slightly more complicated, a 60 per cent majority is required.

Many people would assume that, given the fractious relationship between Adv Madonsela and the governing party (senior leaders of which have accused her of being a CIA spy, among other things) the ANC would be keen to see someone more amenable to it, and to the government, stepping into her shoes. On paper, it has the votes to achieve this: it has 249 MPs, and 240 votes would suffice. However, it has proved exceptionally difficult for the ANC to get all its MPs into Parliament at once (understandably, given that 75 of them are either ministers or deputy-ministers, occupied mostly outside the National Assembly). It is also very likely that more than nine ANC MPs would absent themselves from Parliament rather than be involved in pushing through a partisan or otherwise unsuitable candidate.

Therefore, the nomination process for the new public protector will present the governing party with an intriguing dilemma – whether to risk trying to force through an unpopular choice, or to seek consensus and thereby avoid the embarrassment of a defeat. Let us hope that this week's Burgess/Love experience prompts the party towards the latter option.

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