

Is the Cape High Court judgement a fatal blow to South Africa's nuclear pretensions?

By David Fig

This article was written for and is scheduled to be published in The Conversation.

On 26 April 2017, coincidentally the 31st anniversary of the Chernobyl disaster, the Cape High Court presented its judgement on the case brought by Earthlife Africa Johannesburg and the Southern Africa Faith-Communities' Environmental Institute. The two NGOs were challenging the way in which the state has determined that we should be purchasing 9600 megawatts of extra nuclear power. The judge, Lee Bozalek, used terms like 'unconstitutional' and 'illegal' to refer to the state's behaviour and declared invalid the steps taken by the state.

What has been deemed illegal are the state's determinations that the nuclear build go ahead, its handing over of the procurement process to Eskom, the regulator NERSA's automatic endorsement of the state's plans, and the secretive agreement with Russia and two others with the US and South Korea on nuclear co-operation. Eskom's request for information from nuclear vendors, a step taken to prepare the procurement, which ends on 28 April, is also invalid.

Government will have to start again on all these procedures if it is serious about going ahead with the nuclear build. To do so legally, it will have to open up the process to detailed public scrutiny. The regulator will have to have a series of public hearings before the country can endorse its historically highest ever spend on infrastructure estimated at well over R1 trillion. The international agreements will have to be brought before the scrutiny of parliament.

All this will take time. Time that president Zuma does not have. Despite throwing out two Ministers of Finance who clearly opposed the deal, and his relatively loyal Minister of Energy, the procurement cannot happen in June, as planned by Eskom. This is unlikely to happen before Zuma leaves office in two years' time. It is unlikely that his successors will be as eager as he to champion a new deal. Meanwhile the facts about the deal will become open and public, and will demonstrate that we cannot afford and do not need more nuclear energy.

Despite the moral panic engendered by load shedding that we are short of capacity, the truth is otherwise. Since 2011, Stats SA has revealed that we are consuming far less energy than before the power crisis of 2008. We can attribute this to the economic downturn, the higher price of electricity causing more to save energy, the rapid roll out of renewables (now producing more than Koeberg can), and the opening up of giant coal burning plants at Medupi

and Kusile. We produce more than we currently need, allowing us to export electricity to our neighbours. Eskom also has plans to close six coal burning power stations.

The CSIR has developed models showing that new nuclear is likely to be much more expensive than coal or renewables in our energy mix. The R1 trillion price ticket for new nuclear is for the 'overnight' costs, which do not take into account the costs of operation, fuel, insurance, emergency planning, regulation or decontamination at the end of the life of the reactors.

Secret arrangements with the Russians were revealed some time ago, when it became known that the deal signed by Tina Joemat-Petersen allowed Rosatom to build the reactors, take more control over our nuclear establishment, and were not going to be liable if anything went wrong.

The need for the 9600 megawatts was identified in documents that were produced in 2011 and are widely acknowledged as now badly out of date. Recent studies coming out of the University of Cape Town's Energy Research Centre have shown that we do not need to consider nuclear for another twenty years.

Zuma's enthusiasm for the deal has led to suspicions of why, despite the scientific and economic facts, he is pushing for the deal to go ahead. One source of pressure might be the Russians, another more than likely the Gupta family. The Guptas control Shiva uranium mine on the West Rand, and despite its inability to produce at current low prices, they may be banking on a future expansion of nuclear energy to make their investment more viable. In her report on state capture in November, the Public Protector pointed to overlapping directorships between Gupta-owned companies and Eskom. Eskom CEO Brian Molefe was compelled to resign after his close relationship with the Guptas was revealed in the same report. Zuma's son and other relatives are directly employed by the Guptas.

Zuma is relatively isolated in his quest for nuclear procurement. The ANC is clearly divided on this, as indicated by Zuma having to reshuffle ministers without reference to party officials. The private sector, epitomized by the Electricity Intensive User Group, chambers of commerce, organisations of black entrepreneurs and the financial press, are against the idea. Most scientists, except for those with a stake in nuclear, have advised against it. The list of civil society organisations opposed to nuclear expansion goes well beyond the environmental lobby, and includes foundations, faith communities, human rights campaigners, defenders of the constitution and many other citizen groups.

The nuclear judgement in Cape Town indicates that our legal system has not yet been captured by private interests. Will Zuma and Eskom accede to the

verdict, or will they challenge it, while continuing to overturn the rule of law? Not only will this subvert our constitution and our democratic form of government, but will illegally deny popular participation in energy democracy. The stakes are high, but the president's own future is part of these stakes. Will he continue to treat the country's future with impunity? Or will this judgement symbolize the roll-back of the democratic dispensation envisaged by the authors of our constitution? The issue of nuclear procurement has become one of the key markers of our nation's political health.

David Fig is a South African environmental sociologist, political economist, and activist. He holds a PhD from the London School of Economics, and specializes in questions of energy, trade, biodiversity, and corporate responsibility. His recent books include *Staking their Claims: Corporate Social and Environmental Responsibility in South Africa* (UKZN Press, 2007) and *Uranium Road: Questioning South Africa's Nuclear Direction* (Jacana, 2005), which was turned into a 53-minute documentary film in 2007. Fig chairs the board of Biowatch South Africa, which is concerned with food security and sustainable agriculture, and works closely with various environmental justice non-government organizations. He has previously been executive director of the Group for Environmental Monitoring in Johannesburg, a senior lecturer in sociology at the University of the Witwatersrand, and a board member of South African National Parks.