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The prospects for a vigorous parliamentary opposition in a democratic South Africa

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CHAPTER TWO

Nature of Parliamentary Opposition and its relevance in South Africa; Roles and Weaknesses of the Opposition in South Africa.

The indispensable role of opposition parties in protecting the interests and rights of citizens, monitoring government and ultimately in consolidating democracy cannot be over-emphasized. Mainstream democratic theorists have all argued that both the constitutional right to form opposition and the reality of a viable electoral alternative must exist for the successful consolidation of democracy. In democratic theory, political parties are 'voluntary' organizations that are supposed to promote democracy. Whereas the executive, the legislature and the judiciary promote horizontal accountability, vertical accountability is promoted by political parties, which link the people and government. Parties organize campaigns, recruit candidates and mobilize the political community to participate in the selections of office bearers. The goal of party activism is to build institutions and shape public politics, policies and laws that impact the rights and welfare of the political community.

It needs to be clarified here that the formal existence of political parties does not necessarily mean that they will fulfill the functions expected from them in a democratic polity. Parties must not only exist just for the sake of it, but they must be mechanisms that enable representation and express the social interests of significant constituencies in society. This is why democratic theorists insist that parliamentary opposition should only be recognized if it is capable or perceived as a potential alternate in government.[42]

In buttressing this argument on the relevance of a vibrant parliamentary opposition, Courtney Jung and Ian Shapiro identified three main reasons. They maintain that opposition parties are necessary to facilitate a peaceful alternation in government and second, parliamentary opposition ensures that citizens disenchantment with the government is not translated into a de-legitimation of the

[42] Habib Adam & Taylor Rupert, 'Political Alliances and Parliamentary Opposition in post-Apartheid South Africa' in Southall Roger (ed) *Opposition and Democracy in South Africa*, Frank Cass Publishers, London, 2001. P.209

democratic order and thirdly, they facilitate institutional arrangements that enable the performance of a variety of public interest functions[43].

These points as mentioned here are quite plausible because parties are seen as institutional sites where "counter political elites" can organize and inform themselves so as to be able to contest for power. If such institutional options are not available, crises for the government are correspondingly more likely to become crises for the democracy because there is not an outlet for the government critics to express their dissent or keep hope alive for the possibility of future change of power. More importantly, the society is favoured to gain if the political environment permits debate and competition over ideas. Parliamentary oppositions will thrive on such debates because such engagements over political issues and public policy enables them to sell themselves to the citizenry as credible alternatives to the ruling party. This will motivate the opposition to monitor government performance and in the process, expose corruption.

In giving credence to this, Habib and Taylor added that there is need for the development of institutional mechanisms, of which a viable parliamentary opposition is one component, which will ensure that citizens' electoral votes are considered as important a variable in determining power relations as are the financial resources of foreign investors and international financial agencies. Both are of the view that as long as government is convinced that citizens will not vote for any opposition party, they have no incentive to take citizens' interest into account. Should they fear that citizens' would vote for an opposition party, they are more likely to deal with this electoral challenge by enhancing delivery and at least attempting to satisfy the interests of the majority.[44]

The polarization of opposition in racial terms is one of the problems. Mainstream theorists maintain that the citizenry primarily conceptualize and identify themselves in racial terms. In the work of Hermann Giliomee and Charles Simkin, in a comparative study on one-party states entitled "***The Awkward Embrace: One Party- Domination and Democracy***", they maintained that the establishment of a viable parliamentary opposition is impossible because of the South African

[43] Courtney Jung and Ian Shapiro cited in Habib and Taylor as quoted above.
[44] Adam Habib, 'South Africa Needs New Left Opposition', Mail & Guardian, 12-18 June 1998.

electorate's propensity to vote along racial lines[45]. The citizenry, they maintain, identify themselves in racial terms and their electoral behaviour is so governed. Electoral outcomes for Giliomee and Simkins (1999:346) then, are likely to continue to resemble a racial census, thus undermining a strong opposition.

However, this view is not generally acceptable as a number of national surveys EPOP, HRSC, IDASA etc, and the subsequent findings undertaken over a period of time gave contrary indices. Almost all would question Giliomee and Simkins "racial census" thesis, or at the very least, would tend to qualify it. One of the fascinating challenges to this thesis came from Maano Ramutsindela, about voting trends based on the November 1999 survey. It categorically demonstrates that the majority of people view themselves primarily as South Africans. This form of national identity prevailed among 61% of the respondents. Only 11% of respondents conceived of themselves in racial terms and a further 15% through a linguistic lens. This data then leads Ramutsindela to conclude, "the racial census approach neither provides insights into questions of voting behaviour in a new political environment nor illuminates continuities and changes in the choices of members of a particular group"[46].

Obviously, Ramutsindela and others like Arlene Grossberg are not arguing that race is not important. All that they maintain is that one cannot read political and electoral behaviour from the colour of one's skin. This is not only because identities constantly evolve, but also the fact that the coincidence in South Africa of racial and other categories in particular class, makes it almost impossible to reach conclusions on the basis of correlations between race categories and one or other form of political behaviour. Therefore, there is a significant challenge to the "racial census" thesis that is so commonly held in and propagated in political science circles. They suggest that identity formation and conception in South Africa is far more complex than is normally assumed and that identity and broader political behaviour may be as much influenced by class as it is by racial variables. Therefore these arguments and the analysis based on the survey suggest that the prevailing identity among the majority of South Africans is a national and not a racial and ethnic one. This result is equally

[45] Giliomee Herman and Simkin Charles (eds.); *The Awkward Embrace: One party domination and democracy*, Tafelberg Publishers, Cape Town, 1999. P346

[46] Habib Adam; 'Introduction: Public opinion and the prospects for democratic consolidation in South Africa 1999-2001' (www.hsrcpress.ac.za)

heartening particularly for analysts and political activists committed to the consolidation of democracy.

Indeed, these results suggest that the citizenry is way ahead of the political leadership and the academy in this regard. The leadership of both the opposition and the ruling party too often play the race card. In fact, simplistic racial assumptions tend to govern much of their political campaigns and the national surveys on public opinion suggest that their campaigns are at odds with the prevailing identities among the populace. In a real sense, the citizenry is facilitative of, while the political elites are becoming an obstacle to the consolidation of democracy (strong opposition) in South Africa.

The consolidation of democracy is not only dependent on the performance of governmental institutions. It is also dependent on the efficient functioning of constitutional and societal institutions that contribute to the development of what Putnam (1993) celebrated as social capital in his pioneering work entitled; ***Making Democracy Work: Civic Traditions in Modern Italy***. Social capital, the set of organizations, networks, norms and values that build trust and facilitate interactions within communities, is crucial since it constitutes the core element of the social foundation that enables the sustenance and consolidation of democracy which is built on the premise of a vigorous parliamentary opposition. An analysis of the performance of the constitutional and societal institutions that facilitate the development of this social capital is thus necessary in any assessment of the progress to democratic consolidation in South Africa.

Unfortunately, however, the prognosis is not very good. Adam Habib's and Christian De Vos paper on human rights demonstrates that constitutional institutions, those established at the dawn of South Africa's democracy for the defence of the citizenry, have not succeeded in rooting themselves among the country's populace since their establishment. They are of the opinion that the vast majority of the country's residents are unaware of and do not know how to utilize the constitutional instruments that have been established for the realization of their rights.[47]

[47] Habib Adam, 'Introduction: Public opinion and the prospects for democratic consolidation in South Africa 1999-2001'. pg9 (www.hrscpress.ac.za)

From the various viewpoints, we can say that, in as much as there are constitutional and societal institutions which may or may not be performing optimally, there is still need for a vibrant parliamentary opposition which will be a necessary requirement to facilitate the development of a social foundation that would enable the consolidation of democracy in South Africa.

Roles and weaknesses of the Opposition in South Africa:

The effectiveness of the party system in parliament rests largely on the relationship between the government and the opposition parties. In general, the aims of the Opposition are to:

- contribute to the formulation of policy and legislation by constructive criticism
- oppose government proposals it considers objectionable; seek amendments to government bills
- put forward its own policies in order to improve its chances of winning the next general election. [48]

The constitutional principle, role and functions of the opposition are safeguarded by the Bill of Rights, the majority rule of democracy and the rule of law - separation of powers in a horizontal and vertical sense. As far as Bill of rights is concerned, certainly freedom of speech, freedom of assembly, freedom of association, the principle of equal treatment of parties and the right to petition are solid bases to build and strengthen an opposition. According to Prof. Dr. Ulrich Karpen, there are five principles which guards opposition viz.;

(i) there is a constitutionally based right to establish and exercise a parliamentary opposition

(ii) there are constitutional duties of an opposition, namely remaining subject to the law and its principles

(iii) there must be equal chances for government and opposition

(iv) the opposition in parliament has a responsibility to control government performance, though this also applies to parliament as a whole

(v) Consequently, constitutional law must provide for a minimum standard for opposition status.[49]

[48] United Kingdom Parliament 'Government and Opposition', http://www.parliament.uk/works/pagovopp.cfm

Therefore, under the democratic principles of decision-making in a democracy is majority rule. Every citizen must be obedient to majority decisions. Notwithstanding that a majority may however be liable to making errors, obedience can be required and enforced. In a democratic constitution, minority opinion is not only accepted and respected, but allowed to have an impact on a majority decision and eventually change a minority to a majority opinion because it is possible that minority opinion may be 'right'. Majority rule and the protection of minorities can be interrelated. This requires that politicians of the opposition should not be looked at as "enemies" but rather as "competitors" in the common undertaking to decide what is best for the people. Opposition must not be suppressed by calling the suppression the "will of the people"; or calling them "enemies of transformation" as often with the ANC.

As Gerald Schmitz said, vigorous opposition in Parliament can be the chief bulwark against the temptation to "force majeure" and bureaucratic empire".[50] "The people" speak through the opposition as well as the government; through back-benchers as well as cabinet ministers. There is simply no substitute for the "checks and balances" which are brought into play in the representative and watchdog functions performed by ordinary members of parliament. Members of the opposition are called upon to act as a brake on government haste, to ensure that all legislation receives the "due process" of parliamentary deliberation and to see that diverse and opposing viewpoints have a chance to be aired and defended.

Stanley Knowles, one of Canada's greatest parliamentarians has described the importance of the legislative opposition in this way:
"I submit therefore you do not have full political democracy, let alone the economic as well as political democracy for which my party stands, unless you include along with the ingredients that are taken for granted such as universal suffrage, the secret ballot and majority rule, a full and unquestioned recognition of the rights and functions of the opposition to the government of the day.

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[49] Karpen Ulrich, 'The International Experience of Opposition Politics: Lessons for South Africa?' in Kotze Hennie (ed), *Parliamentary Dynamics: Understanding political life in the South African Parliament*, Centre for International and Comparative Politics, South Africa, 1996. P.14
[50] Schmitz Gerald, 'The Opposition in a Parliamentary System' Political and Social Affairs Division, Canada, December, 1988.

Only in this way can you protect the rights of minorities; only in this way can you make sure that the force of public opinion will be brought to bear on the legislative process, and we are indeed fortunate in Canada to have inherited from the United Kingdom a parliamentary system of government; the genius of which is the responsibility of the government to a parliament in which the rights of those who support the government and likewise the rights of those who oppose it are clearly recognized"[51]

The task facing the opposition parties in South African politics was always unenviable. With the ANC's hegemony guaranteed, the problem was how to convince the electorate of their relevance. The major problem for the parties in the opposition was that they combined an inability to launch a convincing attack upon the government's policies, notably upon the economy, with their appeal to only limited segments of the population. All the major parties' economic platforms were, in essence, so similar that the opposition was simply reduced to saying, and unconvincingly too, that "we could do better". Where they differed significantly, like with the DA's demands for an increased pace of privatization, criticisms of ANC policy on Zimbabwe and Mbeki's support for deposed President Aristide of Haiti, they ran against anti-colonial sentiment that remains deeply entrenched amongst black voters. Moreover, they were confronted by the particular ANC gimmick of ignoring them as individual entities, to the particular frustration of the DA, which was determined through its robust and adversarial confrontation, ready to differentiate itself as a potential alternative government. But this has never worked out as the ANC always chipped away at the opposition parties' constituencies and rendered the reasons for voting for them far less convincing.

Be that as it may, the proportional representation system, baring its anticipated advantages also encouraged further fragmentation by bringing up smaller parties who spring up at the slightest opportunity and are hopeful to throw their hats into the ring – although in the national elections of 2004, it was only Patricia de Lille's ID party that was thought likely to make its way into parliament to join the DA, NNP, IFP, UDM, ACDP, FF+, UCDP and PAC on the opposition benches. Opposition parties had always had to contend with internal dissidence, loss of seats during the floor-

[51] Knowles Stanley, 'The Role of the opposition in Parliament', Address to the Empire Club of Canada, Toronto, 21 March, 1957 cited in Schmitz Gerald, *The Opposition in a Parliamentary System* Political and Social Affairs Division, December, 1988.

crossing manipulations and the ANC's largely successful wooing of party chieftains and as a result had lost significant ground.

As can be seen from the proliferation of parties, it seems that what some of the minority parties and their leaders want in this democracy is "an entitlement to votes", whether or not they identify with, and speak to, the wishes and aspirations of majority of voters. They seem to forget that "fear of a one-party state, promoted by minority parties, is not enough to attract voters, and elections will not be won by the politics of fear".[52] The determining factor in making any meaningful impact in subsequent elections will be the ability of parties to espouse policies with which the electorate identifies. For political parties to assume that they are entitled to win votes in spite of their policies and without regard to issues that affect majority voters is to underrate the maturity of the electorate. The challenge before the opposition parties is to organize themselves as alternatives to the ruling party. This will require that they promote policies and causes that benefit the majority of the citizens.

It is common cause and conventional principle in contemporary liberal democracies that serious debate of alternative political visions and programmes is a sine qua non of any healthy democracy. This is why the opposition in South Africa should brace for the challenges facing them and which have been acknowledged by the official opposition leader himself; when he outlined a set of challenges which they need to confront. According to him (Tony Leon), opposition need to provide South Africa with a sound analysis of the state of the transition to full democracy in the country; second, they need to outline clearly why they reject the ANC's programmes of "transformation" which informs all ANC policy and behaviour. Third, opposition need to offer an alternative liberal democratic vision of the future and among other things, need to articulate a policy programme in support of that vision that can inspire South Africans and win their support.[53]

But notwithstanding these views as expressed by Leon, the current composition of the DA, especially its white-dominated leadership, as well as its policy stances, makes it ill-suited for the task of providing a real political alternative. The DA does itself no good with its "Fight back philosophy". To most blacks, this means reversing the gains of freedom including those resulting from affirmative

[52]Omano Edigheji, 'Fear versus Freedom: Minority parties and the ANC', in Election synopsis.P.17
[53] Tony Leon's speech to the JHB Press Club; Thursday 10th June 2004.

action and the black economic empowerment (BEE). To workers, the fight-back philosophy of the DA means a flexible labour market policy and more privatization and commercialization of public enterprises and social services. Any party that advocates a minimalist state and reliance on market forces as the most efficient allocator of resources which are more likely to entrench existing income and wealth inequalities along racial and gender lines, will not endear itself to the majority of voters; especially those that have been at the receiving end of apartheid social, economic and political exclusion.

Another major factor currently militating against the opposition in South Africa is floor-crossing by parliamentarians. As adversaries of the ruling party, the opposition is weakened by floor-crossing to the ruling party and which poses a serious setback to the strengthening of the opposing parties. During the 1960's, several African states democracies effectively became one party states before their constitutions changed as a result of floor crossing[54]; this is why this warning signal should be taken seriously in South Africa.

The "Floor-crossing Legislation" was amended in 2002 to allow floor-crossing at the local government level and in 2003 at the national and provincial level. The legislation was widely criticized as a deliberate ploy by the ANC to strengthen itself as it allows councilors to cross the floor to another party without losing their seats, while also stipulating that they can only do so if at least 10% of party members wish to cross. This has conveniently protected the ANC from losing members to the opposition as it is very unlikely that as many as 10% of its members will wish to cross; this has deprived "smaller parties" of a vital shield.[55] Recently in September 2005, 14 lawmakers joined the ANC during the bi-annual two-week period of floor-crossing without losing their seats.

Table Showing Floor Crossing Movements

Floor Crossing Results 2002 (Local Government Level), Movements to the ANC	
Party	No of Councillors

[54] Lodge Tom, 'Politics in South Africa: From Mandela to Mbeki', David Philip, Cape Town, 2002. P165
[55] Myburgh J., 'Floor Crossing adds new muscle to ANC', Focus, Helen Suzman Foundation, Johannesburg, 2003.P34

Action Independent Peoples Party	1
African Christian Democratic Party	2
Alliance for the Community	1
Azanian People's Organization	1
Breedevallei Onathanklik	1
Civic Alliansie/Alliance	1
Democratic Alliance	51
Independents	6
Independent Civic Organization of South Africa	1
Inkatha Freedom Party	7
Middelburg Residents Organization	1
Pan Africanist Congress	10
People's Forum	1
United Christian Democratic Party	3
United Democratic Movement	16
Verenigde Gemeenskap Organisasie	1
Witzenberg Onafhanklike Vereeniging	1
Ximoko Party	1
Zibambeleni Development Organization	1
Total	107

Source: IEC 2002

Table Showing Floor Crossing Results 2004 (National and Provincial Level), Movements to the ANC	
Party	No of Councillors
ACDP	4
Alliance 2000	1
AZAPO	2
Dabalorivhuwa Patriotic Front 1	1

DA	31
Independents	6
IFP	25
NNP	195
PAC	17
Simunye in Christ Organization	1
Thembisa Concerned Residents Organization	1
UCDP	7
UDM	45
Total	336

Source: IEC 2004 Floor Crossing Results

It is to be pointed out here that before the amendment on floor-crossing, the interim constitution stated that sitting members should only be able to cross the floor and join another party if they received a new mandate through a bye-election (bye-elections are only permissible at local level).[56] The prohibition on floor-crossing was agreed to by the Constitutional Assembly and the new constitution reads: 'A person loses membership of a legislature to which this schedule applies if that person ceases to be a member of the party which nominated that person as a member of the legislature'.[57] However, the constitution enabled the parliament to pass legislation, to enable a member of the legislature to remain in office after leaving the party that originally nominated him/her.

Those who argued against this often referred to the principles as contained in the Interim Constitution which were designed to structure the final constitution. First, principle viii provided for representative government, multiparty democracy, regular elections, universal suffrage, a common voters' roll and in general, proportional representation; and second, principle xiv called for the provision of participation of minority parties in the legislative process.[58] The constitutional court ruled that the anti-defection clause could be reconciled with these requirements for a democratic

[56] Constitutional Talk, official newsletter of the Constitutional Assembly, working draft edition, P.18
[57] 'The Constitution of the Republic of South Africa', 1996, Sec.23 A (1)
[58] Constitution (1993) Schedule 4

system of government since it meets the expectation of voters who gave their support to a particular party and expect to see their votes translated into seats for that party on the basis of proportional representation.[59]

Prof. Lodge favoured this arrangement, given past experiences in many newly independent African countries. He argues that the embargo on floor-crossing, a corollary of the list system as well as the subject of a provision in the constitution, is probably politically beneficial at this stage, in that it most likely functions to protect opposition parties more than the governing party but the reverse is the case in South Africa. In one-party dominant systems in which alternation of government is unlikely, the major incentive for crossing the floor will be to win higher political office. Massive floor-crossing led to the creation of de-facto one party states in several African countries in the 1960's, well before the formal demise of their liberal constitutions.[60] In this regard at least, the prohibition of floor-crossing may therefore be justified on the basis of enhancing the development of more effective opposition political parties. This is because in the debates around the South African transition, the focus was not only on the representation of majority and minority interests but in giving effective voice to those interests. The significance of these political re-alignments is that they entail a loss of accountability to supporters and diminishing competitiveness of the multi-party system. As Myburgh states, 'there is little incentive for a defector to the ANC to represent the interests of his electorate once he has crossed over. From the moment a defector joins his new party, he falls under its discipline, inter alia, there is no real mechanism by which aggrieved voters can make such defectors answerable to their actions either'[61]and again as Southall noted "the floor crossing legislation passed during the second democratic parliament had the unintended effect of spawning a ramp of new political parties.[62]

A political analyst Aubrey Matshiqi rightly observed that "We now have more opposition parties but less opposition capacity…. and this further deepens the crises of the opposition whose seats have

[59] Southall Roger, 'Opposition in South Africa: Issues and Problems' in Southall Roger (ed) *Opposition and Democracy in South Africa*, Frank Cass Publishers, London, 2001. P34
[60] Lodge Tom, 'Which criteria are most important in choosing an electoral institute for post-1999 South Africa?' Paper presented to Electoral Systems Roundtable, Electoral Institute of South Africa, 14-15 Aug. 1998, Cape Town, South Africa. P5
[61] Myburgh J., 'Floor Crossing adds new muscle to ANC', Focus, Helen Suzman Foundation, Johannesburg, 2003.P36
[62] Southall Roger, 'Small Parties to face oblivion', The Citizen, 14th January, 2004.

been on the decline since the 1999 elections. He noted that there is growth in the number of opposition parties but with reduced capacity to perform their oversight functions … this strengthens the dominance of the ANC while the crisis of the opposition might deepen in the 2009 elections".[63]The leader of Inkatha Freedom Party (IFP) dubbed the controversial legislation "Crosstitution" and criticized it as helping to consolidate a one-party state in South Africa. Noting that "South Africa must decide whether to accept the results of the floor-crossing legislation and rapid consolidation of a one-party state or whether it would rather choose democracy".[64]

Another area of weakness of the opposition is in the area of the type of electoral system being operational in the country and party funding. In a new democracy, an appropriate electoral system is one which encourages organizations to behave in a civil fashion to their opponents, to function efficiently, to develop consistent policies, to govern effectively and to acquire support sufficiently diversified that they are not seen by certain social groups as overtly threatening.[65]An electoral system which imposes huge expenses or very complex tasks upon political organizations (as can be the case with multi-member constituencies) may weaken parties or encourage abuse. Currently, South African electoral expenses are disproportionately high for a lower middle-income country and given that the largest party fought the (then) 1994 election depending primarily on foreign financial help,[66] which the current opposition parties may not have the privilege, the local costs of electioneering at their present level are probably unsustainable. Keeping arrangements simple and cheap according to Lodge, will probably facilitate the progress of party electoral organization.[67] Opposition parties don't have the same resources as the Government and the Executive, so they have to work twice as hard to get same results as the ruling party who continue to dig deep into the national treasury and use official resources to out-compete opposition parties.

Having seen some of the factors which had worked against the strengthening of the opposition in the current democratic dispensation we will then analyze the past democratic elections in the country,

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[63] Ibid
[64] IFP document September 2005.
[65] Lodge Tom, 'Which criteria are most important in choosing an electoral system for post-1999 South Africa?' Paper presented to Electoral Systems Roundtable, Electoral Institute of South Africa, Cape Town 14-15 August, 1998. P.3
[66] The ANC's 1994 campaign budget totaled R168 million, The Star, 6 November'93.
[67]Lodge Tom, Which criteria are most important in choosing an electoral system for post-1999 South Africa? In Electoral Systems Roundtable, (Electoral Institute of South Africa, Cape Town 14-15 August, 1998) P.4

looking at the performances of the opposition parties, their areas of strengths and weaknesses and the current attitude of the electorate towards the conduct of elections. This will help in the making prognosis on the future of the parliamentary opposition in South Africa.