



**An Assessment of the Legislative Framework for Political Party Coalition in
South Africa**

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ABSTRACT

Coalition politics is an inevitable practice in any parliamentary democracy. South Africa multiparty system, with more than a dozen parties in National Assembly, provides greater possibility for coalition formation, especially in legislatures and cabinets. The recent developments in the political landscape - the withdrawal of New National Party (NNP) from Democratic Alliance (DA), the amendment to the Constitution which resulted in elected party representatives crossing the floor to another party and the formation of new political parties, provides the rationale for assessing the legislative framework guiding coalition politics in South Africa. This paper is an exploratory attempt that seeks to analyze South African Constitution from the perspective of coalition and its interplay with the electoral system, political party policy, and parliamentary procedures. The analyses show that South Africa Constitution is silent on regulation guiding coalition politics. However, the recent amendment to the Membership Bill of national and provincial legislatures provides a glimpse into the partial legal framework guiding party coalition in South Africa.

INTRODUCTION

In South Africa, the government is based on a multiparty system. The dominance of the national political landscape by one party is often thought of as a predominately one party dominate state, in which the African National Congress (ANC) controls an overwhelming majority of seats in national and provincial legislatures comprising the tripartite African National Congress (ANC), South African Communist Party (SACP), and the Congress of South African Trade Union (COSATU). There is truth to this assertion both at the national and provincial levels of government. The ANC was given a parliamentary majority by the voters through competitive national elections. During the Convection for Democratic South Africa (CODESA) negotiations and after much deliberation, it was agreed that a constitutional provision allowing for Government of National Unity (GNU) to be formed during the first five years, thus enabling a wider political participation in the transformation and reconciliation project of the country.

Following the first multiparty elections in 1994, the National Party (NP), Inkatha Freedom Party (IFP), formed a coalition cabinet with the ANC under the constitutional agreement. This signifies the inception of cabinet coalition politics in South Africa multiparty parliamentary democracy better described as a compulsory party coalition, in comparison to instead of a coalition based on a common goal or set of goals, whereby parties agree to pool their resources together for achieving a common goal (Strom, 1995)¹. The NP took the decision

¹ Strom, K. 1995. ***Coalition Building***. In the Encyclopedia of Democracy, Vol.1. Lipset, S.M. (ed.), Routledge: London.

in 1996 to withdrawal from the coalition government (GNU); a move described by many commentators as a strategic mistake, depriving the party of the opportunity for participating in national reconstruction and development of South Africa's democracy.

The second democratic elections (1999) for national, provincial, and municipal elections witnessed the development of another coalition. This time it centered in the emergence of the Democratic Alliance (DA) between the DP, NNP, FA with its election strategy being directed towards specific provinces in the country (Western Cape, Gauteng, and Kwa Zulu Natal), where demographic and political factors appear to be on their side. But the DA only contested the 2000 local government election as a party. This meant that local government councilors were elected into offices as DA candidates and not as DP/NNP party candidates.

The inability of any political party to win an outright majority in Kwa Zulu Natal (KZN) and Western Cape provinces provided the catalyst for initiating discussions on coalition formation in these provinces. In a continue effort, the ANC and the IFP formed a coalition cabinet in KZN. The NNP, DP, and FA decided to form a DA coalition government in the Western Cape Province, directed at excluding the ANC.

The political outcomes of these processes are most likely a function of the largely invisible process of party positioning and interparty negotiation rather than a function of voter's choice. The various cabinet coalitions formed in the provinces were often fraught with tension and in-fighting between parties, often resulting in a short lived coalition because they had neither the legislative guidelines, vision, policies, strategies for seat allocations and experience in the workings and management of coalition government in parliamentary politics. How cabinet portfolios are allocated and parliamentary procedures observed remains somewhat of a mystery to ordinary observers. The question is then asked, to what extent is South African Constitution, parliamentary procedures, electoral laws, and political parties policies and procedures, sufficiently developed to enable efficient workings of coalition politics? What adaptations need to be made, and what new institution and regulations should be developed to support coalition politics in South Africa?

SOUTH AFRICA CONSTITUTION AND PARTY COALITION

The South Africa political system since the inception of multiparty democracy in 1994, has witnessed conclusive elections resulting in the formation of a Government of National Unity in the name of coalition for the sake of national peace and stability. Although the Constitution of South Africa is silent on regulating coalition between parties, the recent amendment to the Membership Bill alluded to above provide some insight into the partial legal framework guiding party coalition in South Africa. In terms of item 23A of Schedule 2 to the Constitution of the Republic of South Africa, 1993, (Act No. 200 of 1993) members

of the legislatures are prevented from changing party membership, merge, or subdivide into another party. In effect, political parties representatives in all spheres of government were prohibited by law to “cross the floor” from one political party to another. This is based on the electoral system of proportional representation whereby party members are elected to legislatures through close party list system.

During June 2002, the Parliament of South Africa passed four Acts that sought to enable a member of legislature or municipal council to change party membership without losing membership of that legislature or council as well as allowing an existing party to merge with another party; or to subdivide into more than one party, or to subdivide and any one subdivision to merge with another party. The affected Acts are: *Constitution of the Republic of South Africa Amendment Act, 2002* (Act No. 18 of 2002); *Local Government: Municipal Structures Amendment Act, 2002* (Act No. 20 of 2002); *Constitution of the Republic of South Africa Second Amendment Act, 2002* (Act No. 21 of 2002); and *Loss or Retention of Membership of National and Provincial Legislatures Act, 2002* (Act No. 21 of 2002).

The President assented to the Acts on 19 June 2002, and all four Acts were published in the *Gazette* of 20 June 2002. This enactment (floor crossing legislation) brought into political debate the pertinent issues surrounding South Africa’s electoral system (PR system). The United Democratic Movement (UDM) and others launched a legal case against the President of the Republic of South Africa and others (Case CCT 23/02)² on the constitutional validity of the Acts. On 4 October 2002, the Constitutional Court held that “floor-crossing” legislation for national, provincial, and local government was not as such, inconsistent with the constitution. But regarding the *Loss and Retention of Membership of the National and Provincial Legislatures Act, 2002* (the Membership Act), the court ruled that the Parliament did not have the power to effect the provisions contemplated in that Act by means of an ordinary Act of Parliament as opposed to an Act amending the Constitution. Given this procedural defect, the Membership Act was found to be inconsistent with the constitution and invalid and the other three Acts were found to be consistent with the Constitution and valid.

The amendment to the Constitution enables a member of the National or Provincial legislatures to become a member of another party while retaining membership of that legislatures, and enables an existing party to merge with another party, or to subdivide into more than one party, or to subdivide and any one subdivision to merge with another party. The provisions of the Membership Bill are modeled largely on the amendments effected to the Constitution by the *Constitution of the Republic of South Africa Amendment Act, 2002*, which inserted the provisions related to the “crossing of the floor” in the local government sphere in the Constitution. In adhering to the principles embodied in

² ***Constitution of Republic of South Africa*** Fourth Amendment Bill (B69-2002)

these provisions, the Membership Bill gave effect to the Legislature's stated objective:

"to amend the Constitution of the Republic of South Africa, 1996, in order to enable member of the National Assembly or a provincial legislature to become a member of another party whilst retaining membership of the National Assembly or that provincial legislatures, to enable an existing party to merge with another party, or to subdivide into more than one party, whilst allowing a member of a legislature affected by such changes to retain membership of that legislature; and to provide for matters connected therewith" (Constitution of the Republic of South Africa Amendment Act No. 2, 2003 Assented to 19 March 2003)³.

The Bill further provides for: 10% thresholds – change of party membership is only permitted if such change represent not less than 10% of the seats held by the party concerned (New section 158A (2).); window periods (September 2nd and 4th year) in a five year term within which floor crossing can be effected; protection of political representatives from disciplinary proceedings by political parties during window period to create an environment for freedom to cross; legislatures and councils to reconstitute their structures following the crossing the floor; and transitional arrangements consequences are to apply during the first crossing starting from 21 June 2002, which begins with the 15-day window period.

Political parties' response to these Act vary from out right support to complete rejection of the Acts, as will be briefly demonstrated by reviewing the attitudes of the relevant parties. According to the ANC, "the Bill is intended to give members of Parliament and members of Provincial Legislatures who no longer share the same views and objectives as their parties the opportunity to move without losing their seats. The ANC therefore support the principle of the Bill..." (Mr. S.H. Gqobaba, ANC Chief Whip in the Eastern Cape – Daily Hansard⁴). According to DP, "...floor crossing be allowed at all levels of Government to complete the exercise so that any members who might still be in our ranks who wish to succumb to the ANC can be exorcised...fundamentally lodge our total objection to the legislation being retrospective." (Mr. R.A.P. Trollip, DP Provincial Leader in the Eastern Cape). NNP, support the Bill in the spirit of patriotism whilst to the PAC, the Bill indicates the maturity of South Africa's. The only objection to the Bill came from UDM. According to UDM, "the bill ignores the choices of voters as expressed in the previous elections because the previous election is an expression of the will of the voters. Allowing public representatives to cross the floor before an electoral system with constituency elements has been implemented, is irresponsible and undemocratic. It is undemocratic unless it can be honestly claimed and proved that a public representative crossing the floor has the support of his or her voters" (Ms. W.H. Nel, the Provincial Leader in the

³ **Constitution of the Republic of South Africa** Amendment Act No. 2, 2003 Assented to 19 March 2003

⁴ Gqobaba, S.H. 2003. **Justice and Constitutional Development Portfolio Committee** - Constitution of the Republic of South Africa Fourth Amendment Bill: Hearing. In Daily Hansard

Eastern Cape, Daily Hansard transcript⁵). Many other commentators have expressed similar sentiment echoed by the UDM on the Bill. The floor crossing legislation is “deeply and blatantly non-democratic” (Schlemmer, 2002)⁶ in a closed party list system where elections are not contested as individuals but as parties.

The Bill was crafted with scrupulous conditions and restrictions on how and when party representatives could cross the floor to allow minimal loss of party membership of bigger parties and major losses of smaller parties’ representation. In the Western Cape for example, it was politically expedient for the NNP to form a coalition cabinet with ANC because it afforded NNP the opportunity to become a party in the executive branch of provincial government and thus providing access to important resources such as political appointment, the drafting of legislation and regulations, and the implementation of laws. This gave the ANC in coalition with the NNP, the perfect opportunity to take control of the Western Cape and Kwa Zulu Natal. These had been the only two provinces outside ANC control.⁷

There is no doubt that power sharing and political control by political parties lies at the heart of coalition formation. Yet, power sharing creates a completely different framework for parliamentary politics. Nevertheless, there are compelling reasons why political party coalitions need regulation. Firstly, in South Africa, political parties are given special status through the electoral system based on closed party list underlying the proportional representative system. As institutions of democracy, their practices and behaviour need to be guarded and subjected to rule of law. Mergers between private limited liability corporations and other corporations are closely regulated and monitored by law to protect the interest of all stakeholders. Similarly citizens interest as stakeholders in political processes need to be protected from manipulation and abuse of political mandate by political parties. Secondly, the fact that parties compete against each other in elections raises the possibility of conflict and violent clashes between supporters and incumbent party officials. Unless each party has the right to protect its name and be protected by law, party candidates may seek to gain votes by adopting party names, symbols for grabbing power and control. According to Butler (1986), “there is no change that would have more reaching implication for political system than hung parliaments to become the norm⁸.” It is argued and rightly so that, multiparty system must be treated as a specific type of government with its own conventions and rules, all flowing from the

⁵ Nel, W.H. 2003. **Justice and Constitutional Development Portfolio Committee** - Constitution of the Republic of South Africa Fourth Amendment Bill: Hearing. In Daily Hansard

⁶ Schlemmer, L. 2002 **Coalition and floor crossing: how will the voters respond?** Helen Suzman Foundation, Focus 28.

⁷ With the forming of coalition cabinet in the Western Cape, the ANC now controls 6 of the 11 cabinet portfolios while the remaining 5 controlled by NNP.

⁸ Butler, D. 1986. **Governing without a majority: Dilemmas for hung parliaments in Britain**, London: Palgrave Macmillian.

fundamental principle of power sharing (Bogdanor, 1983)⁹. It is a generally acceptable proposition among analysts that political institutions such as constitution, parliaments/legislatures, electoral systems, and political parties play a key role in shaping the nature of coalition politics. The role of the electoral system and its relationship with coalition politics is crucial in understanding the formation and practices of coalition in South Africa.

ELECTORAL SYSTEM AND PARTY COALITION

Electoral system and coalition politics are different sides of the same coin: both are inseparable from each other. Coalition politics are influenced by what politicians must do to get elected and electoral politics by what politicians do after they have been elected into public offices. The focus in this section, is on assessing the impact of South Africa national list system of proportional representation (PR) with no minimum fixed proportion of the total number of votes (i.e. a threshold) required for parties to secure representation in parliament or provincial legislature on coalition politics. The choice of this electoral system was an outcome of a negotiation process that produced the democratic settlement due to its simplicity, representativeness and inclusivity. It should be underscore that the adoption of PR system was not a product of public debate and broadly based internal political consensus. It was part of the package of a negotiated settlement between political elites.

An electoral system is one of the most important instruments through which coalition politics are shaped. It refers to an instrument employed by different countries in translating votes cast by citizens in an election into parliamentary seats. Giovanni Sartori¹⁰ described an electoral system as the most specific manipulative instrument of politics. It is designed in many instances to achieve particular outcomes. In South Africa, the electoral system was designed to maximize the legitimacy and ensure a degree of electoral consent to government formation and to facilitate an environment of compromise and reconciliation as opposed to exacerbating tendencies toward violent conflict.

The PR system is not a consensus enforcement mechanism but rather a method of ensuring mutual recognition of opposing views in the political system. Like all systems, the PR system is not a perfect solution for the country's problems. It is not a perfect system because there is no perfect system. The PR system is known to give rise to coalition government, with disadvantages such as party system fragmentation and governments' instability; and weak linkages between a representative and her or his geographical electorate. Although it is expected that voters vote for parties instead of individuals, it is difficult, if not impossible, for this system to operate in a society with loose party structures as South Africa. Anecdotal evidence suggests that voters are dissatisfied with the PR, in particular

⁹ Bogdanor, V. 1983. *Multi-party politics and the constitution*, Cambridge: Cambridge University Press.

¹⁰ Sartori, G. 1976. *Parties and Party System*, Cambridge: Cambridge University Press.

serious concerns have been raised by supporters and leaders of smaller parties. This dissatisfaction stems from the lack of accountability of public representatives and the opportunity that exists within the system for public representatives to change party membership without losing parliamentary or provincial seats. This widely held view is seen to be against the principles of democracy and preying on the intelligence of the voters. The PR system has been successful in creating parties and/or party representatives in national and provincial legislatures with no history of electoral competition as a party and public representatives without a constituency¹¹. As depicted in the table, the ANC and DA are the only parties that benefited hugely from the floor crossing legislation, with increased representation and the UDM losing 10 of its seats in national parliamentary seats.

¹¹ Through the floor crossing – as at 5 April 2005, the state of parties represented in National Assembly increased from 15 to 19.

No of Political Parties Represented in the National Parliament by Seats: Before and After “floor Crossing” legislation Amendment.

Before Floor Crossing		After Floor Crossing	
Political Party ¹²	No of Seats After 1999 Elections	Political Party	No of Seats As at 5 April 2003 after floor crossing
African Christian Democratic Party (ACDP)	6	ACDP	7
AEB	1	AEB	0
African National Congress (ANC)	266	ANC	275
AZAPO	1	AZAPO	1
Democratic Party (DP)	38	DP	0
Democratic Alliance (DA)		DA	46
Federal Alliance (FA)	2	FA	2
Freedom Front (FF)	3	FF	3
Inkatha Freedom Front (IFP)	34	IFP	31
MINORITY FRONT (MF)	1	MF	1
New National Party (NNP)	28	NNP	20
Pan Africanist Congress of Azania (PAC)	3	PAC	2
United Christian Democratic Party (UCDP)	3	UCDP	3
United Democratic Movement (UDM)	14	UDM	4
African Independent Movement (AIM)*	0	AIM	1
Alliance for Democracy and Prosperity (ADP)*	0	ADP	1
Independent Democrat (ID)*	0	ID	1
Peace and Justice Congress (PJC)*	0	PJC	1
TOTAL	400	19	400

Source: Parliamentary Monitoring Group

A highly unlikely backlash could possibly be the threat of a boycott or the boycott of the next general elections (2004) by opposition parties should there be no effective agreement or workable solution on the electoral system. The challenge, therefore, is to find the least imperfect and potentially most accessible system for democracy in South Africa. In arriving at a final decision,

¹² Political parties with asterisks are those formed after the amendment to the Membership Bill.

trade-offs have to be made between the representativeness of parliament and coherency of government; the complexity of electoral competition and range of choices presented to the voters; proportionality of parliaments and geographical linkage with MPs; and the means and level of accountability within the system.

PARTY POLICY AND COALITION POLITICS

One of the primary purposes of this project was to analyze political parties' policies and procedures on coalition practices. This was achieved through interviews, with practitioners (political party officials and elected members of parliament or legislators), commentators, and a review of local and international literature on coalition and parliamentary politics, based on proceedings from national and provincial portfolios committees and political parties' constitutions. Political parties interviewed include: the ANC, DA, FA, FF, UCDP, and UDM. These approaches allow for the assessment of formal and informal structures and practices within which coalition actors work. However, the issues identified by political parties during the interview process include:

- weak party structures;
- weak mechanism for electing leadership – creating one party list
- seat allocation
- lack of resolving conflict;
- personality differences and personal political ambitions;
- lack of common objectives within the alliance;
- financial implication;
- lost of political identity;
- inability to work within alliance;
- representation in more than one party list;
- ideological differences - principles;
- vote splitting, especially at the local government level;
- disappearance of smaller parties
- lack of clarity on functioning of alliance before and after elections;
- representatives loose direct connection and accountability to the party;
- lack of legislative framework;
- need to change the electoral system;
- alliance formation is about power and political control;
- lack of trust.

In summary, there appears to be a general acknowledgement among political parties that some kind of guideline and research is necessary to guide the coalition practice. The general sentiment expressed is that without legislation more chaos will continue to dominate South Africa's political landscape. Some of the ideas suggested include visit to countries such as Denmark, Germany, Holland, Ireland, and Sweden. A possible way forward is to facilitate an explicit commitment to maintaining coalition within political parties by having a clause

on “party coalition” in the parties’ constitution. In reviewing political party constitutions¹³ for party position on the issue, it was discovered that no single party mentioned “coalition” in their constitution. Indication were given at different points that party would seek to work or co-operate with any movement or organization acting for the improvement of the conditions of the people and that policies will be formulated with regard to managing coalitions and partnership established with other political parties and organizations. The procedures and behaviour appropriate to power sharing forms of government pose a major challenge for political parties in South Africa. Political parties have little experience of forming coalitions.

PARLIAMENTARY PROCEDURES AND COALITION POLITICS

The allocation of parliamentary and provincial portfolios is another factor influencing in coalition politics. In South Africa parliament, the Speaker who is elected through nomination in the National Assembly is the most senior parliamentary official and has wields considerable power and influence in parliamentary procedures. The primary function of the Speaker is to: “preside over debates...responsible for the administration and financial management of the parliament...ensure Bills are passed...protect freedom of speech and rights of minorities...promote the adherence to the principle of impartiality and independence, acting above sectional interests and party political influences¹⁴. Its within the jurisdiction of the Speaker through the parliamentary technical and programme committees,¹⁵ to decide on the allotted time equitable by seats allocation in parliament. There are 27 portfolio committees¹⁶ in parliament and each comprises of 17 members. Based on the proportional representation, the ruling party has 10 members represented in each portfolio committee while the remaining 7 seats are shared between the various opposition parties represented in parliament. Problems often arise when decisions are taken on legislation and there is not even a quorum because members are absent from parliament. According to the rules of parliament, a legislative Bill becomes a law after it has passed the required eight steps and then signed into law by the President. It becomes operational when published in the Government Gazette¹⁷.

¹³ Political parties constitution analyzed include: ACDP, ANC, SOPA, AZAPO, PAC, FA, FF, DA/DP, UCDP, IFP, MF, NNP and UDM.

¹⁴ PHILA. 1999. *An Induction Manual for Parliamentary Committees on Health*, Mowbray: Cape Town, South Africa

¹⁵ All major committees in parliament are chaired by the ruling party (ANC), including members of the technical and programme committees who decide on parliament agenda

¹⁶ All the portfolios chairpersons in the National Parliament are ANC members except for Public Works, which is chaired by IFC and the Standing Committee on Public Accounts chaired by DA.

¹⁷ The Bill is referred to a Committee for discussion and Cabinet endorsement and then referred to the State Law Advisors, who check the Bill rewrite it to conform to legal requirements. The bill is then tabled and either in the National Assembly or in the National Council of Provinces (NCOP). If accepted, the Bill is then referred to the portfolio committees, which then decide whether to call public hearings on the Bill. This is where in-depth discussion on the Bill usually takes place. After discussion, it is referred to the National Assembly for vote. If passed by simple

This procedure promotes coalition practice in parliamentary politics because legislative portfolios are avenues through which party representatives exert influences and control over policy formulation. The extent to which parties are able to influence policy will be dependent on their ability to influence legislative committee processes. Committees' membership and agenda setting powers are important determinant in coalition practices. Policy making in parliament is a process of bargaining between parties, which leads to coalition between parties in parliament. It is then critical to understand how institutions designed to encourage a particular outcome. How is trust going to be developed and maintained within governments formed by different parties in parliament and provincial legislatures? How can allocations of portfolios between coalition's partners' best be managed to ensure collective responsibility while retaining distinct party identities and contribute toward strengthening the nature of party politics in South Africa?

CONCLUSION

Coalition practices are a strategies used by political parties to gain representation and power in politics. Political institutions – the constitution, electoral system, political parties, and parliamentary procedures do influence the strategies that political parties adopt to achieve this goal. Just as proportional representation places demands on what political parties must do to become elected, it must also protect the interest and will of the voters who gives political parties mandate through competitive elections.

It is the author's view that appropriate legislation that seeks to regulate the behaviour of parties is necessary for deepening democratic practices in South Africa; the freedom and important role of political parties in democracy makes it desirable to restrict the scope of such legislation. Its is noted that where regulations are intended to produce a level playing field, the possibility always exist that they will benefit some parties at the expense of other. It is acknowledged that it is difficult given the best political will, to devise a neutral and all embracing regulation.

While this exercise has been exploratory, its conclusions are suggestive and therefore require further investigation.

majority, it goes to the NCOP for further deliberation. The Bill discussed in different provincial legislatures, if supported in at least five of the nine provinces, it goes to the President for signature. If signed, it becomes an Act of Law and publishes in Government Gazette.