

# Challenges for Parliament in South Africa<sup>#</sup>

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## *Abstract*

It can well be argued that parliamentary democracy came to South Africa little more than a decade ago, when a parliamentary system based upon universal suffrage was established in a bicameral national parliament and in nine unicameral provincial assemblies. Whether or not the parliament of the new system was the dominant institution of the new democracy remains at issue. Assessing the nature of parliament's relationship with executive power must involve an assessment of the political context that envelopes both, and in South Africa an important aspect of that context is the particular way that the party has bound executive and parliamentary offices together. But when a party is as dominant as the ANC, questions about its internal democracy require even more attention than might needed in an older and more widely understood system of parliamentary government.

It can well be argued that parliamentary democracy came to South Africa little more than a decade ago, when a parliamentary system based upon universal suffrage was established in a bicameral national parliament and in nine unicameral provincial assemblies. The original European parliament at the Cape was established in 1854 and resembled the other representative assemblies of the Empire at the time, but it had only a limited black suffrage. The later parliaments of the Boer republics did not have even that, and the tricameral parliament of 1985 was a notorious attempt to buy off the coloured and Indian (including the Asian) communities at the expense of the black, who were intended to have representation only in the 'homelands', prompting instead a mass boycott that presaged the fall of apartheid (Gordon and

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Gordon 2001: p.390; for the regime's view of the tricameral parliament, see Government of South Africa 1989, pp. 113–19, 123–35).

The parliaments established in 1994 were new not only their universal franchise but in their institutional arrangements. The National Assembly (NA) was expanded in size from 178 to 400 members and the old Senate was replaced (after a transitional period) by a National Council of Provinces (NCOP), designed as its name suggests to guarantee representation for the nine provinces that replaced the existing four at the time of transition. A parliamentary assembly was established in each, the total membership equalling the numbers in the NA. All membership excepting that of the NCOP was determined through a list system of proportional election, with separate ballots for the national and provincial assemblies being held simultaneously for fixed terms of five years. In outward trappings the new institutions closely resembled the parliaments of the English model, with parliamentary committees and presiding officers along familiar lines — but, as a proportional system, without the bifurcated division of the chambers.

Whether or not the parliament of the new system was the dominant institution of the new democracy remains at issue. The unique invention of the constitution writers of 1991–94, heavily influenced by European and specifically German social democracy, was to marry the parliamentary institution to a presidential system of government. South Africa already had something along those lines, for the state presidency that PW Botha introduced in 1986 required the state president to be chosen by the parliament, though the candidates for the position were party nominees and not necessarily members of the parliament in their own right. The arrangements of 1994 tied the presidency closely to the parliament in one specific way: a party's nominee for president was the person selected for the first position on the party's list for the parliamentary election. Thus Nelson Mandela in 1994 and then Thabo Mbeki in 1999 and 2004 were elected first as members of parliament for the African National Congress (ANC) but ceased to be members of parliament as soon as the Assembly met to transact its first business, the election of the state president. The party's power established through the list system of voting then allowed their replacements to be drafted to the membership of the Assembly without election.

We have arrived at the first dilemma faced by those seeking to assess the significance of the South African parliament(s) within the scheme of things. There was never any doubt that Mbeki and Mandela would be their country's president, and it is their presidencies that receive attention, not their brief membership of the National Assembly. Their power has rested, in a constitutional sense, on the capacities that the constitution vests in the presidency and, in a political sense, on the overwhelming dominance of the ANC in South African politics. These are two realities that must give context to any evaluation of parliament's role. The latter is summarised in the two tables following (1a and 1b), relating to the national and to the provincial parliaments. Taken together, these show that the ANC controls the entire parliamentary system, at least as far as raw numbers are concerned.

**Table 1a National Assembly Membership by Party 1994, 1999, 2004, 2006**

Party	1994%	NA seats	1999%	NA seats	2004%	NA seats	Flr cross 2005	Sept 2006
ANC	62.66	252	66.36	266	69.69	279	14	293
DP/DA	1.73	7	9.56	38	12.37	50	-3	47
IFP	10.54	43	8.58	34	6.97	28	-5	23
NP/NNP	20.39	82	6.87	28	1.65	7	-7	0
UDM			3.42	14	2.28	9	-3	6
ACDP	0.45	2	1.43	6	1.6	7	-3	4
ID					1.73	7	-2	5
FF/FF+	2.17	9	0.8	3	0.89	4	0	4
UCDP			0.78	3	0.75	3	0	3
PAC	1.25	5	0.71	3	0.73	3	0	3
FA			0.54	2				
MF	0.07	0	0.3	1	0.35	2	0	2
AEB			0.29	1				
AZAPO			0.17	1	0.27	1	0	1
AITUP			0.07	0				
GPGP			0.06	0				
SOPA			0.06	0	0.1	0		0
AMP	0.18	0						
AMCP	0.14	0						
DPSA	0.1	0						
FP	0.09	0						
SOCCER	0.05	0						
ADM	0.05	0						
WRPP	0.03	0						
XPP	0.03	0						
KISS	0.03	0			0.04	0		0
WLP	0.02	0						
LUSO-SA	0.02	0						
NA					0.1	0		0
PJC					0.1	0		0
OP					0.05	0		0
NLP					0.09	0		0
UPF					0.06	0		0
EMSA					0.07	0		0
CDP					0.11	0		0
NDC							4	4
UIP							2	2
FOD							1	1
UPSA							1	1
PIM							1	1
	100.00	400	100.00	400	100.0	400	400	

Sources: EISA 2004, 2005; Piper 2005: p. 80.

The ANC, it should be noted, is one member of a tri-partite 'Alliance' that includes the Congress of South African Trade Unions (COSATU) and the South African Communist Party (SACP), but candidates from those partners are usually ANC members also and run under the ANC banner in elections. The party's grip on the national assembly, as measured by votes and seats, has steadily increased at the three elections from 1994 onwards; and in the same period it has won control over all the nine provincial parliaments, strengthening its position from 1994 when two provincial parliaments had a majority of non-ANC members. Before evaluating these realities, we should first rehearse the question: is the South African system a parliamentary or a presidential democracy, or something else?

**Table 1b: Party Membership of Provincial Legislatures Election 2004**

	ANC	DA	IFP	UDM	ACDP	NNP	ID	VF+	UCDP	PAC	MF	Total
Kwa-Zulu Natal	38	7	30	1	2						2	80
Gauteng	51	15	2	1	1		1	1		1		73
East Cape	51	5		6						1		63
Limpopo	45	2		1	1							49
Western Cape	19	12		1	2	5	3					42
North West	27	2						1	3			33
Free State	25	3			1			1				30
Mpumalanga	27	2						1				30
Northern Cape	21	3			1	2	2	1				30
	304	51	32	10	8	7	6	5	3	2	2	430

Source: Independent Electoral Commission 2004

### Key to party abbreviations:

- ACDP** - African Christian Democratic Party;
- ADM** - African Democratic Movement;
- AEB** - Afrikaner Eenheids Beweging;
- AITUP** - Abolition of Income Tax and Usury Party;
- AMCP** - African Moderates Congress Party;
- AMP** - Africa Muslim Party;
- ANC** - African National Congress;
- AZAPO** - Azanian Peoples Organisation;
- CDP** - Christian Democratic Party;
- DP/DA** - Democratic Party/Alliance;
- DPSA** - Democratic Party South Africa;
- EMSA** - Employment Movement for South Africa;
- FA** - Federal Alliance;
- FF/FF+** - Freedom Front/+;
- FOD** - Federation of Democrats;

**FP** - Federal Party;  
**GPGP** - Government by the People Green Party;  
**ID** - Independent Democrats;  
**IFP** - Inkatha Freedom Party;  
**KISS** - Keep It Straight and Simple;  
**LUSO-SA** - Luso-South African Party;  
**MF** - Minority Front;  
**NA** - Nasionale Aksie;  
**NDC** - National Democratic Convention;  
**NLP** - New Labour Party;  
**NP/NNP** - National/New National Party;  
**OP** - Organisation Party;  
**PAC** - Pan African Congress of Azania;  
**PIM** - Progressive Independent Movement;  
**PJC** - Peace and Justice Congress;  
**SOCCER** - Sport Organisation for Collective Contributions and Equal Rights;  
**SOPA** - South African Political Alliance;  
**UCDP** - United Christian Democratic Party;  
**UDM** - United Democratic Movement;  
**UIP** - United Independent Front;  
**UPF** - United Peoples Front;  
**UPSA** - United Party of South Africa;  
**WLP** - Workers' List Party;  
**WRPP** - Women's Rights Peace Party;  
**XPP** - Ximoko Progressive Party.

### *Parliamentary or Presidential Democracy?*

Observers have answered this question differently, with the majority preferring to elide the issue. Southall (2000: p.156) terms the South African system 'semi-presidential', and Lane and Ersson (1997, cited Southall 2000: p.168) find it a 'combination of semi-presidentialism with parliamentarianism'. Reynolds (1999: p.129) on the other hand all too straightforwardly describes it as 'Parliamentary government headed by a prime minister ... [with] the title of state president'. The issue seems especially important in an African context where, according to a recent observer, 'the Westminster model may have inspired and legitimated a pattern of parliaments that have been reactive and subordinate, and neither inclined nor able to assert themselves against the dominating leaders who emerged from national independence movements' (Bach 2006: p.484). To acknowledge that increasingly strident criticism has been directed at a concentration of power in Mbeki's presidential office is not to say that South Africa is following that pattern. Those criticisms should be examined coolly. In an institutional sense, the presidency is indeed tied to the parliament in a way that is unique to South Africa; the link is constitutionally mandated and thus difficult, but not impossible, to alter.

South Africa's 'second wave' of 1994 was distinctly 'parliamentary', as the office of president was filled by the parliamentary nomination of the top-listed candidate of the dominant party in the Assembly. The president can be said to be popularly and directly elected, but only as the leading candidate on a parliamentary slate. Necessarily Mbeki was the ANC's first retirement from the National Assembly, immediately on taking office as president in 1999. His successor, businessman E.P. Mogale, had been just below the "cut" on the national list at the election; reflecting the politics of the Alliance that had built the list, he was a member of the South African Communist Party (SACP), and, as it happened, was a few months later also replaced by another. Having been elected to the National Assembly and then dispatched immediately to the state presidency, a South African president has no need to appear further in the parliament, and Mandela in fact seldom did. Mbeki has been a more frequent attendee, but, with only two cases to observe, we cannot yet say whether that is a matter of idiosyncratic style or an emerging convention.

South Africa is thus a parliamentary system to the extent that the president is elected to parliament as a member, and then elected by the parliament to the state presidency. The system is also parliamentary in that the extensive powers of the presidency are potentially circumscribed by the parliament, which possesses the power not just to elect (in the way just described) but also to de-select, or dismiss, the president. A two-thirds vote of the NA can 'remove the President from office' for a serious violation of the Constitution or the law, serious misconduct or inability to perform the functions of the office (*Constitution Act* s 89 (1)). It is hard to imagine in current circumstances of an overwhelming ANC majority that this could happen, but in any such eventuality it is critical that the parliament should contain, as it does, the ruling cadre essential to constitute such a two-thirds majority. This is perhaps the critical sense in which the system is 'parliamentary'.

### ***Political and Parliamentary Leadership***

Conventions are important here, and most important is the fact that the ANC's political leadership is indeed found overwhelmingly in the National Assembly, especially in the ministerial cabinet and to a lesser extent the junior ministry. The constitution requires all but two ministers to be drawn from the Assembly, and two currently are indeed not elected parliamentarians. We cannot assume that the party's political leadership is necessarily found in the parliament: its unambiguous location is rather within the party's National Executive Committee (NEC), whose executive and sixty members are elected at periodic party conferences by competitive vote. The party deploys these core members or cadres as it sees fit, subject of course to negotiation within its own ranks, and it is striking that the National Assembly, and in particular the cabinet, is the destination of most (Hawker 2003). Of the twenty-six current ANC members of the Cabinet, all but five are also members of the NEC (and one of the five, Martinus van Schalkwyk, is a former party leader in opposition to the ANC, who entered the cabinet in a brokered deal as his old party folded). A further five NEC members are found in the junior ministry.

It might equally be noted, it is true, that all the ANC cabinet ministers and junior ministers who have not been elected to the NEC have in recent years been appointed to it as ‘observers’; from this point of view, the extended meetings of the NEC are the only occasion at which all ministers in the National Assembly are likely to be found together! Still, it seems apparent that political leadership in the ANC carries with it a strong expectation of parliamentary membership and likely of ministerial office. Only a small minority of NEC members are deployed elsewhere, and in particular only a small minority to business — despite some claims to the contrary (Adam, Van Zyl Slabbert and Moodley 1998). In this sense, the ANC is truly a ‘parliamentary party’ and its internal tensions are bound to take on a parliamentary dimension to some degree.

### *Functions of the Parliament*

Can we go further, and substantiate the constitutional requirement (s 56) that parliament ensures ‘that all executive organs of state in the national sphere of government are accountable to it’ and that it ‘maintain(s) oversight of ... national executive authority’? There is no doubt that the parliament carries the formal weight of accountability for major organisations in the new democratic order, including the so-called ‘Chapter 9 institutions’ of oversight — the Auditor General, the Public Protector, the Human Rights Commission, the Commission for Gender Equality, the Electoral Commission and the Independent Authority to Regulate Broadcasting — that are meant to entrench the freedom of the media and the rights of citizens to have access to information needed to protect their rights (Sole 2005: p.94). Other state organs support the parliament, potentially the most significant of which is the Financial and Fiscal Commission (FFC), modelled to some extent on the Australian Grants Commission to make recommendations about the sharing of revenue between the national, provincial and local spheres of government.

The full panoply of parliament appears to be in operation in other ways too. Parliament meets frequently and its committee system is extensive (Hughes 2005). The meetings of committees are given wide publicity and attract a considerable visiting audience. In addition, the membership of parliamentary committees is not quite as the ANC numbers might suggest. Despite the overwhelming weight of the ANC majority, the opposition parties with one exception have a representation on committees that is somewhat in excess of their numbers on the floor of the Assembly, as shown in Table 2. The exception is the Democratic Alliance (DA), the major opposition party that is locked in deeply antagonistic relations with the ANC. It seems on the face of it that the ANC is prepared to give opposition parties generally a level of representation that might enhance their effectiveness in committee work though this consideration does not extend to the DA.

In the Westminster tradition, the chair of the Standing Committee on Public Accounts (SCOPA) rests with an opposition party. To be sure, that is now the smallest of the opposition parties (AZAPO), in contrast to an earlier period when

SCOPA was headed by an Inkatha member, and Inkatha governed one province in opposition to the ANC and still saw itself as an effective rival to the ANC nationally. Now Inkatha is in decline and, as important, SCOPA has endured the humiliation of the 'arms crisis', considered below, when its independence was sapped.

**Table 2 Membership of Standing Committees National Assembly 2006**

Committee	ANC	DA	IFP	UDM	In Dem	ACDP	FF+	UCDP	PAC	MF	UIF	AZAPO	Other	Totals
For Aff	21	5	3	1			1	1	1	1		1		37
Saf & Sec	16	2	3	1		1	1	1		1				26
Agric	14	3	2	1	1			1	1			1		24
Educ	13	2	2	1	1	1	1	1	1	1				24
Home	13	2	2	1		1	1	1	1					22
Water	13	2	1	2	1	1		1	1					22
Arts	12	3	2		1		1	1		1				21
Hous	11	2	2	1	1			1	1	1	1			21
Pub S	14	2	2	1	1			1						21
Soc D	12	2	2		1	1		1	1	1				21
Trade	14	2	2						1	1		1		21
Heal	10	2	2	1	1	1		1	1	1				20
ProvLG	12	2	2		1			1	1	1				20
Defence	12	2	2	1			1		1					19
Labour	11	2	2		1		1		1	1				19
Pub Ent	13	2	3						1					19
Works	12	2	2		1	1			1					19
Justice	11	3	2	1		1								18
Science	11	2	2		1				1			1		18
SCOPA	11	2	2	1					1	1				18
Trans	9	2	2	1	1	1		1				1		18
Mineral	10	2	2		1		1		1					17
Sport	10	2	2	1	1					1				17
Corr S	9	2	2			1		1		1				16
Environ	9	3	2		1									15
Finance	10	1	2		1							1		15
Communic	7	2	2		1		1							13
JSC Defe	15	3	2											20
Jt Budget	13	2	1											16
JSC Women	12	3	1		1						1			18
JS Ch Y Dis	11	2	2		1						1			17
Const Rev	9	2	1			1								13
Totals	380	72	63	15	20	11	9	14	17	13	3	6		625
% total	<b>60.8</b>	<b>11.5</b>	10.0	2.4	3.2	1.8	1.4	2.2	2.7	2.1	0.5	1.0		100
%seats	<b>73.3</b>	<b>11.8</b>	5.8	1.5	1.3	1.0	1.0	0.8	0.8	0.5	0.5	0.3	1.8	100



Parliament has also, as an institution, worked hard to publicise its activities and sought to open itself up to public scrutiny and participation. 'People's assemblies', for example, have brought together representatives of the national and provincial parliaments in meetings that gave voice to problems of access to parliamentary processes for those millions of citizens barred by poverty, and lack of transport, education, language skills and confidence (Parliament of South Africa 2006a). Parliaments at the sub-national level, though not our major focus in this paper, have trialed their own innovations to address these issues: the Gauteng legislature, for example, is said to have 'pioneered a petitions procedure ... provides citizens with a cheap form of administrative justice' (Cachalia 2003: p.3). In this context it seems remarkable and impressive that the female membership of parliament is relatively high in both African and world terms. Female membership in the Assembly now approaches one-third of the total and in the provincial parliaments ranges from 26% (Free State) to 42% (Gauteng) (EISA 2004). At least until recently, an increasing public confidence in the honesty of MPs seemed to be manifest. The Afrobarometer survey coordinated by Institute for Democracy in South Africa (IDASA) showed that one-half of all South Africans interviewed in 2000 felt that 'all' or 'most' MPs were engaged in corruption. By 2004, that figure had fallen to just under one-quarter (24%) (IDASA 2005). On both occasions these were markedly better figures than for government officials generally and for police in particular, though whether that growing confidence will withstand the recent spate of controversy around 'Travelgate' (see below), another scandal to equal the 'arms affair', might be doubted.

### *On the Other Hand ...*

In other respects, however, it is hard to argue that the daily work of parliament — in debates in the Assembly and in the hearing and reports of committees — has much discernible impact on the course of executive government. There has been only one private members motion debated since 1994 (Welsh 2004: p.15) and legislation is very rarely amended on the floor of the House and not then as a result of amendments proposed by committees. The effectiveness of some of the 'Chapter 9' institutions has been questioned and the FFC criticised throughout its life for being distant from the parliament and uninvolved in its committee work in any detail, and for its subservience to the department of finance (Wehner 2001, 2003).

Especially striking is the non-implementation of s 77 of the Constitution: though this section gives parliament the right of amendment over money bills, it also requires the passage of an Act to 'to provide for a procedure to amend money Bills' to trigger it (s 77 (2)), and such an Act has not yet been introduced let alone passed. Thus, 'unlike most relatively serious parliaments in the world', the South African parliament 'still cannot amend the budget' (SACP 2006: p.23; see also Krafchik and Wehner 1998: pp.514–15; IDASA 2003a). Parliament must limit itself to 'merely rubberstamping the executive's draft budget and the division of revenue' (Wehner 2003: p.10).

There is unfinished business too around issues of campaign finance. Though the register of members' interests is relatively transparent — with details being publicly accessible by internet access — the private funding of political parties is almost entirely shrouded from view, and campaigns, notably by IDASA, for political parties to make public the names of donors granting more than R 50 000 have failed (Southall and Daniel 2005: p.44). The Auditor General has complained about the management of parliament, including 'a high absenteeism rate among employees .. a breakdown in asset management, an inefficient switchboard and slow internet connections' (*Beeld*, 1 March 2005). The International Press Institute has complained that the swelling number of ANC numbers after the 2004 election forced the removal of the press gallery to premises distant from parliament, claiming that 'the size of the ANC's majority means that it no longer needs to worry about the media' (International Press Institute 2004).

### ***The National Council of Provinces***

In this litany of weakness, it seems necessary to include the upper house, the National Council of Provinces. The fact that it has been possible barely to mention it until now is some indication of its status and functioning. The national parliament was constructed as a bicameral system with an upper house modelled on the German Bundesrat. It was explicitly a 'house of the provinces', intended 'to ensure that provincial interests are taken into account in the national sphere of government' (*Constitution Act* s. 42(4)). Delegations of equal size, consisting of both permanent and special or rotating members, are appointed by the provincial parliaments and led by the provincial premiers, and participate 'in the national legislative process and [provide] a national forum for public consideration of issues affecting the provinces'. The assent of the NCOP is required for all 'Section 76' legislation as it is called, that is, legislation affecting the functions and powers of the provinces when each province votes as a single bloc with one vote. Provincial powers are however very limited and even in 1994 it was clear that the national government held the important cards. Thus the provinces have very few autonomous powers and they are of a lower order. Set out in Schedule 5, these cover only abattoirs, ambulance services, archives, museums and libraries other than national ones, liquor licenses, provincial planning, cultural matters, recreation, roads, sport and veterinary services. Whilst these are not trivial things, it is important to note that all can be over-ridden by national legislation under stated circumstances; there are no absolutely separate provincial powers in this sense.

Whether the NCOP is or might become a powerful upper house that represents provincial interests against the centre is still debated but any such development seems unlikely unless ANC control of the provinces is challenged. A detailed report on intergovernmental relations by the national department of provincial and local government in 1999 found that section 76 bills were indeed frequently amended in the NCOP but most amendments were 'not .. substantial, being limited to the correction of textual errors and some fine-tuning' (DPLG 1999: p.91). Other

problems related to the quality of members, especially the rotating members who were seen to be very much junior players in comparison with NA members and indeed members of the provincial parliaments. The two most sympathetic commentators on the NCOP, Richard Simeon and Christina Murray, writing in 2001, observed that provincial delegations 'often act more as representatives of their party than of distinct regional interests' (Simeon and Murray 2001: p.76) and that 'intergovernmental relations at the executive level are far more effective than at the legislative level thought the NCOP' (2001: p.86). They noted also that 'there is little evidence that the party leadership takes the NCOP seriously, in any sense other than as a minor chamber of second thought' (2001: p. 79). There has been recent confirmation of this, at least in the case of the ANC. The elected president of the NCOP since 1994 has been an ANC member distinguished by their membership of the party's NEC; but in May 2005, Naledi Pandor was succeeded by James Mahlangu, not an NEC member, though co-opted to the NEC after his rise to the leading position in the NCOP. This speaks volumes about the ANC's attitude to the chamber.

### *ANC Control*

Thus we return to the issue of the relationship of the dominant party to the legislature. Of course any assessment of the capacity of parliament to control or check the executive must acknowledge the overwhelming strength of the dominant party, unequalled almost anywhere in the world. It is not simply a matter of an electoral mandate, as summarised in Table 1 above, but of the way in which the ANC is able to manage its parliamentary caucus in the periods between elections. Two issues are crucially involved: the provisions relating to 'floor crossing' introduced in 2002 and implemented on two occasions since, and the 'deployment' policies of the ANC that enable the party to move members freely between parliaments and indeed between public and private sectors more broadly. These can be regarded as techniques of parliamentary management that, taken together, give the dominant party the power to augment its strength even further. In fact, we will suggest, the mere possession of such power does not guarantee that it will be used effectively. Rather, we will argue, is the ANC challenged in this way, and that is important for the parliamentary institution as an arena of democratic struggle.

But the capacity of the ANC must first be acknowledged. Floor crossing was introduced in 2002 as an antidote to the list system of voting which, though highly proportional, bound members to their party of origin for the life of a parliament. They thus lacked freedom to move as their conscience might dictate. Now it is possible, during a short, prescribed period of time, for members to move to another party while retaining membership of the legislature, and for an existing party to merge with another, or to sub-divide into several parties or to sub-divide and for one subdivision to merge with another party (Olaleye 2003). All these things have happened, and the outcomes have favoured the already dominant ANC (see the right hand columns in Table 1 for the impact on membership and party

composition in the NA). Opposition to the practice has been expressed widely through the civil society.

### *The Power of Deployment*

Commentators have identified the party list system of voting as a key mechanism influencing political development in South Africa, very negatively according to most. Whilst the linked but distinct method of proportional representation also adopted in South Africa has strong supporters as well as opponents, the list system has few supporters beyond the dominant party, the ANC. Though the party originally favoured a constituency based system (Pottie 2001: pp.30–31), it found in office that the list system allowed it to choose, move and remove parliamentary representatives in convenient ways — that flout norms of responsibility and accountability between representatives and electors, it is said, and devalue parliamentary activity when members whose careers rest with the party become mere ‘lobby fodder’ (Southall 2000: p.158). The system ‘constrains the free flow of changing opinion in a democracy’ (Kotze 2001: p. 40). Members, without a base in a constituency, ‘have little incentive ... to champion any cause which may run counter to party policy or practice’ (Bridgman 2002: p.72). The system has ‘allowed the ANC to effectively close down dissent within the party’ and ‘effectively marginalised Parliament’ (Gilliomee, Myburgh and Schlemmer 2001: p.173; see also Adam, Van Zyl Slabbert and Moodley 1998: pp.86–88).

The political strategies guiding the use of deployment have been defended by the ANC at different times as part of a broader strategy of institutional change, achieved through the positioning of cadres in key positions of the public and private sectors and requiring individuals to be mobile as circumstances change. Elected representatives are special, but accountability is achieved, it is said, by a better defined place for the parliament within the polity and by a parliamentary membership that adheres to new norms of representation in race, sex and place — those values instilled in the ‘Chapter Nine’ institutions of the constitution, noted above, that balanced both parliament and presidency.

An examination of the ANC’s management of its parliamentary cohort of members in the National Assembly in the 1999-2004 parliament shows that the movement of members in and out of the Assembly was frequent against most imaginable measures. Of the original 266 members of June 1999, seventy were no longer members by May 2003. In the period of less than three years since the 2004 election, at least a further one hundred members of the ANC in the NA have left for other posts or for retirement (Parliament of South Africa 2006b). The history of the ANC’s handling of its deployed cadre has received attention elsewhere (Hawker 2003) and here it is necessary to add only that the ANC’s policies extend to the chief parliamentary officials, certainly to the position of secretary of the parliament, the chief official who works to both NA and NCOP. Two have held this post since 1994, Sindiso Mfenyana and Zingili Dingane. Mfenyana was an official in the civil

service unit at ANC headquarters in the period leading to the transition of 1994 and served for a decade as the first black African secretary to the parliament (the equivalent of the Clerk in other systems), retiring in 2004 to become South Africa's ambassador to Tanzania. Though he had a background as an ANC cadre, his length of service and even-handedness in the parliamentary job seems to have exempted him from criticism as a 'party-political' appointment. At least, after moving to the diplomatic service, he received praise from DA leader Tony Leon for his 'leading and distinguished role' as secretary (Leon 2006).

Zingili Dingani was more obviously an appointee of political weight. He was a member of the NEC of the ANC in 1994–97, and a member of the National Assembly and chair of its finance committee before moving to the provincial legislature of the Free State and a role of front-line significance as chair of the provincial party. In late 2006 he followed an increasingly worn track to big business as chair of a conglomerate company, the Makhubu Group. Despite receiving much criticism for dismissing the finance officer seen to be the 'whistle-blower' in the Travelgate affair (see the series of articles in the *Mail and Guardian*, e.g. 27 January 2006 when it was said that he had 'shown himself unable to rise above the influence and dictates of the ANC caucus in Parliament'), Dingani's status as a cadre of the ANC seems not to have attracted much criticism from opposition parties, a measure of the acceptance, perhaps resigned acceptance, of the ANC's deployment policies.

### *'The Scandals'*

We have shown that policies of deployment and the augmentation of parliamentary majorities through floor-crossing are tools in the hands of the dominant party, but have also suggested that the successful management of such tools may be another matter. The pool of human talent is not necessarily very deep, even in a disciplined party like the ANC, and problems have arisen that a large majority does not solve — and indeed may worsen. Especially testing have been two scandals of recent years, which are still unfolding, involving the purchase of armaments and the personal behaviour of parliamentarians.

The capacity of parliament to oversight the executive was severely tested in the events surrounding the 'arms deal', when the government's decision, initially secret, to spend (as later was claimed) some R30b on arms purchases unapproved by parliament led to criticism by the Auditor General, and to a critical report by SCOPA, chaired in the Westminster tradition by an opposition party member (Gavin Woods, Inkatha). Accused of benefiting personally were ANC government members and officials. A number of resignations and 'redeployments' took place around these issues, in which could be included the jailing of Ben Yengeni, the former ANC chief whip in the Assembly, in August 2006 for closely related offences. The leading ANC member of SCOPA, Andrew Feinstein, claimed that 'it had become increasingly difficult, if not impossible, for independent-minded MPs to work for the ANC in Parliament' and that he was concerned 'about our

accountability mechanisms in Parliament'. The arms affair has not yet been fully resolved or explained, but it is certain that issues of presidential and parliamentary power have sharpened rather than settled (for recent summaries, see Hughes 2005; Sole 2005).

More recently, 'Travelgate' has emerged as a major test of parliamentary capacity, in both institutional and personal senses. The fraudulent travel claims lodged by many members — possibly by as many as 100 members of the Assembly, a quarter of the total membership — is under active investigation at present and has brought a number of casualties at both parliamentary and official levels (see e.g. *Daily Mail and Guardian* 27 January 2006). Parliamentary members and staff have been roundly criticised, the Speaker especially for her 'refusal to release the Pricewaterhousecoopers Report commissioned by Parliament regarding the scandal', which was 'a missed opportunity for Parliament to reassert its authority on the matter and communicate optimally with the public' (IDASA 2003b).

The management of a parliamentary institution that contains, from the point of view of the ANC, some 600 parliamentarians in ten parliamentary assemblies across the country is no small task when the tasks of government and policy-making are in themselves immense. Parliament mobilises popular support for the party and is the expression of the victory that was won in 1994, but its management can also challenge the party, and expose its weaknesses as well as its strengths. As Southall has argued, critics may 'overstate the capacity of the ANC to impose itself upon society'. The party's 'efforts to curb dissent may be interpreted as much an indication of its weakness as its strength' (Southall 2001: p.282).

### ***Conclusion: The Coming Choice***

These points are well understood within the ANC itself, and perhaps even more within the other two organisations of the tri-partite Alliance, the Congress of Trade Unions and the Communist party, that formally constitute the government of the country. It is often suggested that the partners may split and that members of COSATU or the SACP might run their own candidates in local and national elections; they might then 'remain in parliamentary coalition with the ANC but ... not be subject to ANC parliamentary discipline as they are now' (Prevost 2006: p.176). There are at least equally good reasons to think that the Alliance will stick together if its junior partners consider that their places at the table of government will be risked in any moves to a more independent existence. However that may be, the reality of intra-Alliance and intra-party conflict is real enough, around both substantive policy issues (the social wage, housing, education) and how the 'rules of the game' are played out (who is deployed to what position, how dissidents are dealt with). Assessing the nature of parliament's relationship with executive power must involve an assessment of the political context that envelopes both, and in South Africa an important aspect of that context is the particular way that the party has bound executive and parliamentary offices together. But when a party is as

dominant as the ANC, questions about its internal democracy require even more attention than might be needed in an older and more widely understood system of parliamentary government.

As it happens, an event to illuminate the ANC's internal life is fast approaching, and its outcome will have profound implications for the executive-parliamentary relationship. President Mbeki is bound to the state presidency for a maximum of two terms totaling ten years (*Constitution Act* s 88 (2)), ending in 2009. His presidency of the ANC, the precedent post for him to occupy the first place on his party's list for the public elections of 1999 and 2004 that made him state president, is however due to end at the next party congress in late 2007. If he follows Mandela's lead of 1997, when Mandela surrendered the party leadership to Mbeki and signaled that he would surely be the next state president, Mbeki will support a successor similarly into the 'dual presidency'. But if he remains party president, that nexus will be broken and the ANC's commitment to the parliamentary form of government will be much diminished. Mbeki has long since foresworn any effort to abolish the two term limit on the state presidency – that indeed would have been an strong attempt to assert presidential power over the parliament – but another important choice lies soon ahead of him. Following Mandela's precedent will imply a firming of the conventions described above that bind the party to a parliamentary path. To do otherwise will take the country some way down a different path. ▲

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