



ePoliticsSA – Edition 03, 2007

**A product of the Political Information and Monitoring Service (PIMS) at
IDASA**

Floor-Crossing and its Discontents

On 1 September a perfect storm of floor-crossing will implode on South Africa's system of representative democracy. For the first time since the passing of floor-crossing legislation in 2002 and 2003, the "window of opportunity" which allows representatives to defect from the parties they were elected to and cross to a new or existing party, will coincide at all three levels of government: national, provincial and local.

This edition of ePoliticsSA will trace the impact of floor-crossing on our democratic edifice, and advocate for the scrapping of the regime.¹

¹ The Institute for Democracy in South Africa (IDASA) has been principally opposed to the institution of floor-crossing within the context of the South African electoral system since the inception of the debate on the subject in 2002. IDASA acted as *amicus curae* to the United Democratic Movement's (UDM) constitutional challenge at the Constitutional Court in 2002.

What is Floor-Crossing²?

The purpose and effect of the South African floor-crossing legislation passed in 2002 is to permit the defection of members from the party under whose aegis they were elected, as well as the merger and subdivision of political parties at all levels of government. The laws were originally passed to allow elected representatives to move from one party to another between elections ostensibly on the basis of principle and conscience. The legislation prescribes a window of opportunity for representatives, twice in each term, in which they can exercise their choice to move to, or establish, a new party. The law requires that in order to cross the floor, a threshold of 10% of representatives in any given party, in a particular legislature, must be met before any individual member can move.

The immediate contradiction legislated through the promulgation of floor-crossing legislation is that South Africa's electoral systems are premised on proportional representation. Except in the ward component of the Local Government vote, South African citizens vote for parties not individuals. When representatives defect from one party to another, they distort the balance of representation dictated by citizens through the ballot box. Defection, moreover, is performed without recourse to the electorate who must wait up to four years to reassert accountability over the composition of the legislatures who govern them.

Floor-crossing thus attempted to force a square peg into a round hole by addressing a shortcoming in our electoral system. The composite unintended and systemic problems arising from floor-crossing far outweigh the intended benefits of the system as we shall see below.

² For the political and legislative origins of floor-crossing see *ePoliticsSA 06, 2004* at http://www.idasa.org.za/index.asp?page=output_details.asp%3FRID%3D545%26oplang%3Den%26TID%3D6%26OTID%3D5

Trends and Consequences

In total 1126 public representatives have crossed the floor since the inception of floor-crossing in 2002³. It has resulted in changes of administration in two provinces and in a plethora of municipalities.

The pattern of floor-crossing over the total period has generally resulted in the strengthening of the ruling party's representation to the detriment of the opposition. The coherency of opposition has not only been undermined by declining representation but by the further fragmentation of the opposition in legislatures. In total 15 new parties have been established at the National and Provincial level⁴. Only one of these parties, the Independent Democrats has been returned to either of these spheres of representation by citizens through the ballot box, calling into question the legitimacy of the other fourteen nascent political entities.

The South African system of representative democracy is premised on proportional representation (PR). Glenda Fick, of Wits University's Law School, has observed that "The South African electoral system is valued for its simplicity... its inclusivity (all votes count, there are no votes that are excluded) and its representivity (the electoral system is capable of accommodating a wide range of political parties and issues in a legislative body, thereby giving effect to multi-party democracy)"⁵. In national and provincial elections the total number of valid votes cast, constitutes 100% of the vote. Subsequent to elections, the votes accruing to each party are tallied proportionately, and seats are assigned accordingly in line with a formula for representation⁶.

³ In 2002 555 local government councillors crossed the floor; in 2003 23 Members of Parliament (MP) and 21 Members of Provincial Legislatures (MPL) crossed the floor; in the 2004 municipal floor-crossing 486 councillors defected; and in 2005 25 MPs and 26 MPLs used the window of opportunity to defect to new or existing parties.

⁴ In 2003 the Independent Democrats, National Action (Nasionale Aksie), African Independent Movement, Alliance for Democracy and Prosperity, and the Peace and Justice Congress were formed in the National Assembly. The Peace and Development Party, Independent Democrats and New Labour were formed at the provincial level in 2003.

In 2005 the Federal Democrats, Progressive Independent Movement, United Party of South Africa, United Independent Front, and the National Democratic Convention were formed in the National Assembly. The United Independent Front, National Democratic Convention, the Christian Party, Alliance of Free Democrats, and the Federal Alliance were formed at a provincial level.

⁵ Fick, Glenda. *"Elections and Democracy: Is there free and fair selection of decision makers?"* in Calland, R. & Graham, P. (Eds). *Democracy in the Time of Mbeki*. (2005) Institute of Democracy: Cape Town

⁶ In the local sphere, a mixed PR and first past the post system is utilised.

When an individual MP crosses the floor it distorts the balance of representation as determined by citizens through the ballot box. Fick observed that "One difficulty presented by... South Africa's floor-crossing provisions [is to] permit the outcome of an election to be changed by the subsequent actions of individual members of the legislature between closed-list [proportional representation] elections. Such a system translates the electorate's preference for a particular party during the election into a number of seats. If politicians are subsequently able to change this number by crossing the floor, the political will of voters is flouted".⁷

In the National Assembly each of the 400 seats represents approximately 0.25% of the vote. In 1999 15,977,142 valid votes were cast in the National component of the election. In this context each National Assembly seat accounted for 39,943 votes. In the context of the 2004 elections, when 15,612,667 valid votes were cast, each seat accounted for the representation of 39,032 voters. Consequently it can be argued that the 23 MPs who crossed the floor in 2003, and the 25 MPs who crossed the floor in 2005, nullified the voter intention of 918,686 and 979,792 voters respectively. These voters represented 5.75% and 6.25% of the valid votes cast in the respective elections.

At the local level, South African utilizes a mixed proportional representation and first past the post system. Ward councillors are directly elected by communities and are accountable to their communities at election time. If a ward councillor resigns mid-term, a by-election is held, retaining the electoral balance as dictated by voters. Absurdly, floor-crossing allows ward councillors to unilaterally change the representation accorded to their constituents without recourse to the will of the community through a by-election.

Opinion polls have shown consistently that the effects of floor-crossing do not channel public opinion. In other words, a 2% shift toward a party through floor-crossing does not necessarily reflect a concurrent shift in voter intention towards that party⁸.

⁷ Fick, G. *Op Cit.*

⁸ See the Mail & Guardian article *South Africans are Disillusioned with Politics* at <http://www.idasa.org.za/gbOutputFiles.asp?WriteContent=Y&RID=415>

Electoral performance can make a case for serious distortions in representation relative to the will of the electorate: the New National Party (NNP) effectively came off a base of zero in the 2002 local government floor-crossing window, and finished with representation of over 340 councillors. Yet this “increase” in representation coincided with the party’s most precipitous decline in support, as evidenced in the 2004 election results when the NNP lost 76.5% of the vote that had accrued to it in 1999. Moreover the proliferation of small, new opposition parties in all legislatures has not held up to public scrutiny. Of the five new parties formed in the National Assembly through the 2003 floor-crossing window, only one, the Independent Democrats, was returned to the legislature through the 2004 election.

The 2006 Local Government election results for Cape Town highlight further distortions in representation: Through two Local Government floor-crossing windows the African National Congress (ANC) increased its representation in the 200 member city council from 77 seats (on the back of 38.54% support in the 2000 elections) to 105 seats (or 52.5% of representatives). The Democratic Alliance (DA) saw its representation shrink from 107 seats (53.49% support in 2000) to 70 (35% representation). In the 2006 election the ANC was returned to an expanded 210 seat council with 81 seats representing 37.91% of the 2006 result. The DA won 90 seats with 41.85% of the vote. The effect of the two defection periods in the first term of Local Government thoroughly skewed representation for the two major parties in the City of Cape Town council. When held up to public scrutiny through the ballot box, the correction was significant. Equivalent distortions in representation are evidenced through elections data for other legislatures in all three spheres of government.

Public Money

Floor-crossing also has a substantive impact on the provision of public money to political parties through the Represented Political Parties fund as administered by the Independent Electoral Commission.

The IEC formula for allocating funds (90% proportional, 10% equitable) is applied below. For the purpose of the exercise below a hypothetical sum of R10million is dispersed through the fund according to the applicable formula:

Equity: The equity allocation is divided among the provinces according to the proportion of seats that province has in relation to the total number of provincial seats. There are 430 seats in all nine legislatures; the Western Cape legislature which has 42 seats thus receives 9.767% ($42/430$) to be disaggregated equitably between the parties represented in that legislature. In other words if R1m is to be distributed through the equity component of the formula, the Western Cape will receive R97, 674.42 which is then divided equitably among the parties represented in that chamber. This scenario is repeated across the other eight provinces. The equity component of the allocation formula does not take into account representation in the National Assembly.

Proportional: The proportional allocation is applied according to the total representation of each party across all nine provincial legislatures (430 seats) and the National Assembly (400 seats). For example the African Christian Democratic Party (ACDP) prior to floor-crossing in 2005 had 15 seats across the ten legislatures. The formula would assign the ACDP R18, 072.29 if R9m were allocated through the proportional component of the formula ($15/830 \times R9,000,000$).

In practice the current formula favours larger parties in the application of both the equitable and proportional components of the allocation. Parties with representation across all 3 or more provinces receive a larger sum of the equitable component of the fund than parties with regional representation. It is in this way that the ACDP currently receives 30% more of the equity transfer than the Independent Democrats (ID), despite the fact that the ID won more votes than the ACDP in the National component of the election. Similarly, the ACDP which had 8 MPLs in 6 legislatures prior to the floor-crossing window received a larger share of the equity transfer than the IFP who had 32 MPLs, but only in 2 legislatures. Parties with representation in the National Assembly but without any representation in the provinces (e.g. Azanian Peoples' Organisation - AZAPO) receive no

money through the equity transfer. Given that the proportional transfer weighs provincial *and* national seats equally, a party like AZAPO which received sufficient votes in the National component of the general election to garner a seat in the house (0.25% of representation, or 1/400, in the NA) receives 0.12% (1/830) of the proportional transfer, and none of the equity transfer.

Floor-crossing has further distorting effects on allocations under the current formula. The 2005 defection period resulted in a number of single member parties in both the national and provincial legislatures. The application of the equity component of the formula at provincial level only means that single member parties in provincial receive larger shares of the total fund than single member parties in the National Assembly who, if they have no provincial representation, receive nothing from the equity transfer. The provincial bias of the equity component also means that a new party like the United Independent Front with 2 MPs in the National Assembly, but six MPLs across 4 provincial legislatures will now receive a larger share of the total fund than the United Democratic Movement who have 6 MPs and 5 MPLs, but importantly only in two provinces.

The table in APPENDIX 1 disaggregates the hypothetical dispersal of R10m through the fund as it would apply after the 2005 National and Provincial floor-crossing period.

The application of the formula shows significant distortions. One example is the fact that the Christian Party, a one person party in Mpumalanga (formed through the defection of the single representative of the Freedom Front Plus) that has never contested or won representation through an election, accrues more than three times the amount of money allocated to AZAPO, a party that won sufficient votes in the 2004 elections to win representation in the National Legislature.

Public money, in this way, is afforded to new parties formed through floor-crossing although these parties have not tested their ideas with the electorate. If citizens do not approve of new parties receiving public money, they must wait until the following election to vote them out their

positions. In the interim millions of rands of public money is arguably dispersed in a problematic and unaccountable manner⁹.

Floor-crossing also exacts punitive costs to the public purse through the fragmentation and contingent proliferation of parties. Each new party formed through floor-crossing at National and Provincial level receives funds to support their legislative activity (administration, research, etc). The leaders of the new parties also receive higher salaries accorded to the status of "party leader".

Public Opinion, Public Trust, Political Culture and Participation

10.3 Do you approve or disapprove of Parliamentary representatives leaving their political party and joining another party, also known as "floor crossing?"

	Black	Coloured	Indian	White	Total
Approve strongly	18	12	8	5	16
Approve somewhat	16	20	9	14	16
Disapprove somewhat	21	35	21	17	21
Disapprove strongly	41	27	58	57	42
Don't know	4	6	2	7	4
Refused	*	1	1	*	*

Source: http://www.washingtonpost.com/wp-srv/politics/polls/vault/stories/sapoll_10years.pdf

For all the reasons highlighted above, it is not surprisingly many citizens feel aggrieved by the system of floor-crossing as it is currently legislated in South Africa. A survey released by the Washington Post, Kaiser Family Foundation and Harvard University in 2004, asked citizens "Do you approve or disapprove of Parliamentary representatives leaving their political party and joining another party, also known as 'floor crossing'?" Results indicated high levels of antipathy towards defection: 32% of respondents indicated "some" or a "strong" level of approval for floor-crossing. In contrast a total of 63% of respondents indicated "some" or "strong" disapproval of the regime. The largest group of respondents, 42% of the sample, disapproved "strongly".

Data also suggests that floor-crossing reinforces perceptions of alienation among sections of the South African voting public. In 2004, turnout of

⁹ See <http://www.businessday.co.za/Articles/TarkArticle.aspx?ID=1681174> for additional opinion on this matter.

voters in KwaZulu Natal and the Western Cape, the two provinces most effected by the 2003 national and provincial defection period, registered the lowest levels of voter turnout for polls across the country, 73.51% and 73.05% respectively.

When weighing up the advantages of exercising democratic citizenship with spending the morning in bed on Election Day, it must be tempting for supporters of smaller parties to veer for the latter when the net beneficiary of floor-crossing at all levels has been the ruling party at the expense, and fragmentation, of opposition *in toto*. The ANC, effectively protected by the clause requiring 10% of a caucus to cross before any individual may move, is yet to lose a national or provincial seat in any legislature through floor-crossing. Unsurprisingly, the system is perceived as unfair.

Voter apathy in the context of a PR system has a substantive effect on electoral outcomes. Voters impact on the result whether they vote or stay at home. If 2 people vote or if 20 million people vote, the sum of the votes is formulated into a 100% figure and divided up proportionately. When people stay at home they thus increase the proportional and representational “power” of every vote that *is* cast.

Party Politics

There is also an argument to be made that floor-crossing is bad for internal party politics in a number of ways. Political parties are generally formed by collectives of citizens who share common grievances and aspirations. These citizens band together and form a party to represent their interests, and elect leadership to advance their cause. These leaders are, in turn, accountable to their members, whom they represent and can be removed or rewarded according to the membership’s assessment of their performance. Parties then test their ideas and practices with the broader electorate to compete for representative office through democratic elections.

In the case of floor-crossing, the organic process of party formation is turned on its head. At the moment of the party’s birth it has representation in a legislature or council, but no membership or grass-roots infrastructure.

These structures and membership are then sought out and established through a top down inversion of established political practice.

The lack of leadership's accountability to existing structures can lead to petty squabbles leading to entrenched factionalism very soon after the establishment of a party. Access to state resources, through representation in office, can then lead to patronage politics asserting itself through the nascent structures in order to further the political cause and longevity of particular personalities and personality cults. The fractures and protracted court cases relating to formation of the National Democratic Convention (NADECO), the United Democratic Movement (UDF), and, to a lesser extent, the Independent Democrats, are all a function of the perversion of party formation affected through floor-crossing.

The defection of disillusioned representatives through floor-crossing also affects existing and established political parties. The 2005 floor-crossing window saw, for example, the IFP, a party already in electoral decline, haemorrhage representation to the a new political entity, NADECO. Representatives who have left the IFP for NADECO have cited various reasons for their departure: from clashes with the leader of the party, to a lack of vision on the part of the organisation.

The defection of these members from the IFP has robbed that organisation of an important internal debate, and one which potentially could have changed or renewed the organisation. Floor-crossing encourages disaffected members to withdraw from party disagreements, sucking the life-blood from the internal debates that drive political parties to remain relevant to the concerns, grievances and aspirations of citizens more generally.

The temptation to jump ship rather than engage one's colleagues in substantive debate appears to be an increasing reality in South African politics. This is unhealthy in the context of a developing political culture.

Conclusion

For democracy to sustain itself, it has to win the trust of its citizens. In the context of the transition from an anti-democratic, authoritarian government to democracy, in which new democratic structures must assert their relevance and representivity in opposition to lived memories and experiences of institutional impunity, floor-crossing, moreover, has the potential to undermine the integrity of aspects of the transition and the consolidation of our democracy.

Current data suggests that Parliament's long haul towards establishing legitimacy in the eyes of the public has been largely successful, but it remains work in progress. The 2005 Afrobarometer survey found that 23% of citizens trusted the institution of Parliament "a very great deal" while a further 29% trusted it "a lot". The 2004 Washington Post/Kaiser Foundation survey reported that 45% of respondents had a "great deal" or "quite a lot" of confidence in Parliament. The largest single segment, 30%, remained ambivalent, indicating "some" confidence in the institution; a further 23% indicated "not much" confidence or "none at all".

Proposals to amend or scrap floor-crossing are currently before Parliament, and have been referred to ANC's branch structures in order to prepare a resolution for the National Conference in December 2007¹⁰. Parliament and the ruling party should reflect on the unintended consequences of the legislation, and use the opportunities available to them to scrap the practice in lieu of a more comprehensive review of our electoral system which can be implemented in the medium term.

It is our view that perceptions of expedience driving the defection of representatives, public antipathy towards the regime, the distorting effects of floor-crossing on representation and participation, the apparent relationship between rising levels of voter apathy and floor-crossing, and the negative effect of defection on the development of political parties, collectively mitigate the intended benefits of the legislation. The

¹⁰ The ANC had hoped that structures would give leadership a mandate through the debates at the National Policy Conference in June 2007. However, the two Legislature and Governance Commissions convened at the Conference returned to plenary with contradictory recommendations: one commission advocated the scrapping of floor-crossing, while the other remained partial to the status quo.

contradictions arising at the intersection of a proportional representation, party list electoral system and floor-crossing, as currently legislated, indicate the need for either electoral reform, or the reform or scrapping of floor-crossing.

Data clearly indicates that the citizens of South Africa care dearly about this. The commitment to addressing these grievances on the part of our representatives, however, remains questionable.

This edition of ePoliticsSA was written by Jonathan Faull of the Political Information and Monitoring Service at the Institute for Democracy in South Africa (IDASA).

For further comment please contact:

*Jonathan Faull
Political Researcher
Political Information and Monitoring Service (PIMS)
IDASA
Tel: 021 467 7603
Mobile: 082 415 0197
Email: jonathan@idasact.org.za*

*For permission to reproduce please contact the editor of ePoliticsSA:
Jonathan Faull*

*To subscribe or unsubscribe from this list please visit:
<http://mail.pta.idasa.org.za/mailman/listinfo/e-politics>*