



Impact and Future of the Floor Crossing Legislation

Political forum report

Forum Date	22 June 2006
Venue	Southern Sun- Elangeni
Guest Speaker	Mr Zakhele Ndlovu (UKZN) Dr. John Daniel (HSRC)

Introduction

On 22 June 2006 the Democracy Development Programme (DDP) has held a political forum on floor crossing. Over 60 participants representing various political parties NGO's, civil society organizations, youth, academics, and municipalities showed up. The purpose of this forum was to discuss and debate the merits and demerits of the controversial Floor Crossing Legislation.

The floor crossing legislation has been a source of much controversy. Many opposition parties have vehemently taken a stand against the Floor Crossing Legislation. Political parties that had originally supported the passing of the legislation are now bidding to reverse it. They argue that the legislation is undermining the basic tenets of democracy. Another perception is that floor crossing favours the ruling party and was designed to collapse opposition parties through cheque book politics and other promises. Recently, President Mbeki responding to questions in parliament, asked parliamentarians to explore this issue further.

Critical issues to be explored are:

- Has the president acknowledged the shortcomings of this legislation?
- What does the floor crossing bill mean for democracy?

- How has floor crossing impacted on ordinary voters?
- Is the issue of floor crossing related to voter apathy in South Africa?
- Why have various opposition parties and civil society been raising objections to the practice of “floor crossing”? Are the objections justified?
- What are the conditions which necessitated the institution of the floor crossing legislation?
- What would be an ideal alternative policy to those who feel they should listen to their consciences?
- Is there a need for an electoral process review as recommended by Dr. Van Zyl Slabbert?

Background Information

Floor crossing is not a new phenomenon -it has been a traditional feature of politics for many years in various countries across the globe. It is premised on the assumption that elected representatives have a right, if their consciences so it fit, to take decisions contrary to the collective will of the parties to which they belong.

In politics, crossing the floor is to vote against party lines, especially where this is considered unusual or controversial. The term originates from the British House of Commons, which is configured with the Government and Opposition facing each other on rows of benches. Votes, or divisions, are taken by entering lobbies to the left and right of the chamber to have one's vote tallied; the "Ayes Lobby" is on the Government side and the "Noes Lobby" on the Opposition side. If one wishes to vote against one's party, one must quite literally cross the floor to get to the other lobby.

The term has passed into general use in other Westminster parliamentary democracies, such as Australia, Canada, New Zealand, and South Africa even though most of these countries have semicircular or horseshoe-shaped debating chambers and mechanisms for voting without members leaving their seats. It is most often used to describe members of the government party or parties who defect and vote with the Opposition against some piece of government-sponsored legislation.

It is also sometimes used to describe a member who leaves their party entirely and joins the opposite side of the House, such as leaving an opposition party to support the government (or vice versa), or even leaving one opposition party to join another. This usage exists not only in Westminster system parliaments, but also in legislatures in presidential systems. In Canada, the term "crossing the floor" is used exclusively to refer to switching parties which occurs occasionally at both the federal and provincial levels.

In April 2006, Manitoba's premier Gary Doer (NDP) proposed banning crossing the floor of the Manitoba legislature. The legislation would be the first of its kind in Canada and, according to Mr Doer, it "responds to the concern some voters have expressed over the high-profile defections of three federal MPs from their parties in just over two years" (Michelle Macafee, Proposed reforms would ban floor-crossing in Man., Canadian Press, April 11, 2006). *Source: From Wikipedia, the free encyclopedia*

The South African Case

Floor crossing becomes an important issue now that the municipal elections are over. Ordinary citizens, political parties and analysts alike considers the issue of floor crossing at local government level and questions its implications for the value of our vote in the previous municipal election. The Constitutional Court has made a ruling on the floor crossing legislation in June 2002 hence floor crossing is a legal practice in South Africa. The ruling has particular significance to the local sphere of government. The ruling was accepted across the political fraternity with cynicism and ambivalence.

In June 2002 three legislative amendments and one Bill were tabled in Parliament to facilitate the floor crossing regime: the Constitution of the Republic of South Africa Amendment Act 18 of 2002 (*"the Constitution Amendment Act"*); the Local Government: Municipal Structures Amendment Act 20 of 2002 (*"the Municipal Structures Amendment Act"*); the Constitution of the Republic of South Africa Second Amendment Act 21 of 2002 (*"the Constitution Second Amendment Act"*); and the Loss or Retention of Membership of National and Provincial Legislatures Act 22 of 2002 (*"the Membership Act"*). Sources: ***Political Information and Monitoring Service (PIMS) at IDASA-SA***

In the South African context, Floor-Crossing is generally understood as a phenomenon in Parliament where a Member of Parliament defects to another party without losing his/her legislative seat.

Defection was not permitted in South Africa. Members of parliament were expected to remain faithful to the political party under whose banner they were elected for their full term of office. If they decided to leave their party in mid-term, then they automatically lost their seat in parliament. The seat was then filled by the next person on the party's election list.

When the new law was introduced in parliament in June 2002 to allow floor crossing, it was extremely controversial. The matter was taken to the Constitutional Court to test whether floor crossing was permissible in terms of the constitution or not. Supporters of the idea argued that floor crossing was a matter of conscience and integrity. If members begin to disagree seriously with their party's policies, then they should be allowed to move to a party that better represents their views. People holding this position felt that a member of parliament could continue to represent voters even when switching to another party. On the other hand, a lot of people argued that this only works when voters have elected a specific candidate in a specific constituency. Under a PR (Proportional Representation) system, when people cast their vote for a party and not for an individual candidate, it is more difficult to justify floor crossing, as the member of parliament decide to swell the ranks of another party which voters did not support in the first place. In the end the Constitutional Court ruled floor crossing would not be damaging to democracy in SA.

For some time now various opposition parties and others in our society have been raising objections to the practice of "floor crossing" by our elected representatives. Among other things, they argue that this practice is:

- Undemocratic in that it shows disrespect for the will of the people as expressed in our regular democratic elections.
- They also say that it serves to corrupt our political system, in that, allegedly, the ANC entices representatives from other parties by bribing them with positions in our movement and government.

- Opposition leaders believe that floor crossing is constitutional theft, because the crossitee takes a party's seat away and give it to another party, against the will of the voters. Nobody voted for that crossitee, they voted for the party.
- Floor crossing is seen to have given rise to abuse and the protection of self-interest by individual politicians directly in conflict with the wishes of the people, and had effectively reduced the inclusive function of the electoral system.
- Floor crossing is not appropriate for consolidating democracy in our country.
- The floor crossing is actually a 'cheque-crossing' because people are made all kinds of secret offers

Floor Crossing For Local Government Councillors

The Constitution provides for two window periods for floor crossing during the term of municipalities, i.e. the first 15 days of September in the second and fourth year of the term of municipalities.

What can be done during the period of floor crossing?

(a) In respect of councillors, the following can be done:

* A councillor may change membership of his or her party. This would be the case where a PR councillor (i.e. a councillor elected on a party list) or a ward councillor who represents a party, leaves that party and joins another party (the new party), irrespective of whether the new party has participated in an election or not. The latter means that a councillor may cross to a newly established party (this possibility is discussed in paragraph 6 below).

* A councillor may become a member of a party. This would be the case where an independent ward councillor now joins a party. Again it is not necessary for such a party to have participated in an election.

* A councillor may cease to be a member of a party. This would be the case where a ward councillor who represents a party now becomes an independent ward councillor.

A councillor may only perform the above-mentioned actions once by informing an officer designated by the Electoral Commission thereof in writing. Where a councillor changed membership of a party, or has become a member of party, the councillor must also submit a written

confirmation to the designated officer that that new party has accepted him or her as a member. Usually, the Electoral Commission designates the municipal manager as the person to whom the written notices must be submitted, but councillors should ascertain from the Electoral Commission who has been so designated.

(b) In respect of political parties, the following may be done:

- * A party may merge with another party.
- * A party may subdivide into more than one party.
- * A party may subdivide, and any such subdivision may merge with another party.

A party may only perform the above-mentioned actions once by informing an officer designated by the Electoral Commission thereof in writing. Such notification must also include a confirmation from the party of all the names of councillors involved in a merger or subdivision, and that it has accepted a merger where that takes place. Usually, the Electoral Commission designates the municipal manager as the person to whom the written notices must be submitted, but parties should ascertain from the Electoral Commission who has been so designated.

Protection

During the period allowed for floor crossing, no party represented in the municipal council concerned may suspend or terminate the party membership of a councillor representing that party in that council, or perform any act that may cause such a councillor to be disqualified from holding office as a councillor in that council.

A few rules applicable to floor crossing

* Where a councillor who has represented a party in a municipal council either as a PR councillor or a ward councillor wishes to join another party, or wants to cease being a member of that original party (only a ward councillor can do this), such a councillor, whether by himself or herself, or together with other members of the original party, must represent not less than 10% of the total number of seats held by the original party in that municipal council. In practical terms that means that at least 10 % of a party's councillors in a municipal council must "cross the floor" in the sense

of leaving that original party, irrespective of whether they join the same party, join different parties or cease to be members of that original party.

* Where a party subdivides into more than one party, or subdivides and any one subdivision merges with another party, the members of the subdivision must represent not less than 10% of the seats held by the original party in the municipal council concerned. In practice, this threshold of 10% would prevent a small faction (not meeting that threshold) of forcing a subdivision on the original party.

* Where a councillor has joined a new party, the seat held by that councillor is deemed to have been allocated to the new party of which the councillor has become a member. The same principle applies where a party subdivides or merges with another party.

New parties

As has been indicated, a councillor may cross to a party that has not participated in an election for that council, or a party may merge with a party that has not participated in such an election. In terms of section 12 of the Local Government: Municipal Structures Amendment Act, 2002 (Act No. 20 of 2002), such a new party must be registered in accordance with applicable law during the window period for floor crossing. It follows, therefore, that where the creation of a new party forms part of a "floor-crossing exercise", councillors should be mindful of the timing imperatives.

7. What happens after floor crossing?

* Where a local municipality (category B) has been reconstituted as a result of "floor-crossing", the municipality has a further 15 days after the window period for "floor-crossing" to again appoint its representatives to the district municipality concerned.

* A local municipality (category B) or a metropolitan municipality (category A) that has been reconstituted as a result of "floor-crossing", must reconstitute its structures and committees within 30 after the window period for "floor-crossing". The same obligation applies to district municipalities (category C), however, the period of 30 days is in effect shorter, since the reconstitution of its structures and committees can only take place after local municipalities who have been affected by "floor crossing" have again appointed their representatives to the district municipality.

Summary of issues that transpired during presentation and discussion

According to Zakhele Ndlovu, political analyst and political science lecturer at UKZN, floor crossing is not a phenomenon that is unique to South African democracy. The practice of floor crossing in South Africa is very new, however its impact has generated a raging debate and much controversy across opposition parties, civil society and political analysts. It was the DA who initially proposed the institution of the legislation and until recently had taken a strong objection. Zakhele stated that the ANC initially opposed to floor crossing for its own strategic reasons until it realized that its cooperative arrangement with the NNP would deliver the necessary seats to win some elusive parts of the country such as the W. Cape and possibly KZN. The legislation not only benefited the ANC, as he noted, there have since been other beneficiaries in the form of individual politicians such as de Lille of the ID and Jiyane of NADECO who have since established new political parties, adding to the already saturated market. NADECO mainly gained most its seats not through the ballot but through the practise of the floor crossing legislation, he said.

For him, the parties that oppose floor crossing, despite their convincing arguments, it has become increasingly apparent that, in fact party advantage and interests supersede any consideration including that of democracy

Zakhele is of the opinion that the debate around floor crossing can not be thoroughly resolved through legal means, but rather through political corridors and require political compromise, as indeed the Constitutional Court ruled that the floor crossing is 'not as such inconsistent wit the Constitution'.

Commenting on the effects of floor crossing, Zakhele stated that several other actors, besides political parties have been affected with varying degrees and these include voters, politicians and interests groups. For established political parties, floor crossing has come at a very high costs, the lost of their seats has significantly curtailed their influence in shaping public policy and contribution to the debate. He advised that, in order to get a holistic picture of the impact of floor crossing, it is imperative to examine and review the overall electoral system, which as it stand does not give voters adequate powers to hold elected representatives accountable

Dr. John Daniel, Research Director at the HSRC in Durban, vigorously opposed the practice of floor crossing, and commented that floor crossing is a perversion of the democratic process in South Africa. It undermines it, very damaging, he added. He argued that the damaging impact of floor crossing is reflected on the ever increasing voter apathy and declining respect for parliament and its institutions. There is probably no other piece of legislation passed by parliament which has done more harm to our emerging brand of democracy than this floor crossing legislation, he added.

Dr. Daniel is convinced that the legislation has dealt a heavy blow to the very principles of accountability and undermines the rights of voters. He believes that there were no any good grounds for the original passage of this legislation. There are now however very good grounds for the ban on floor crossing, he argued. For him floor crossing was conceived for basically selfish reasons and therefore does not see any future for this legislation. A constituency based system is an alternative electoral system for South Africa, he added.

The overwhelming majority of the participants shared the same sentiment that floor crossing weakens our emerging democracy, and does not lead to competitive democracy, but rather encourages corruption and should be scrapped with immediate effect. The majority of participants representing various opposition parties and NGOs felt that the floor crossing legislation was introduced too soon in the development of our democracy and thus far has not yielded any plausible results. It has been asserted that the practise of floor crossing is appropriate in a PR electoral system. Participants also questioned the legitimacy of the 10% rule and therefore should be scrapped because it makes it almost impossible for members of the ruling party to cross to other parties.