



**FLOOR-CROSSING AND ITS
POLITICAL CONSEQUENCES IN
SOUTH AFRICA**

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South Africa should brace itself for another deeply unpopular floor-crossing period in September as Parliament's investigation as to whether elected public representatives should be allowed to defect will be completed only in the second half of the year. (Windham Hartley, Business Day, 31 January 2007)

Introduction

South Africa is currently bracing itself for yet another round of floor-crossing; the window period is due in September 2007. This is a process whereby elected representatives at various spheres of government (local, provincial and national) are provided a "window" of opportunity to switch party allegiances and loyalties and still retain their legislative seats. Given the controversy surrounding this practice, it is currently being subjected to scrutiny and examination by the National Assembly. This follows complaints from opposition parties, who perceive this practice as detrimental to their sustainability and effectiveness, as it tends to benefit larger parties, especially the ruling party, and thereby negatively impacts on the party system and representative democracy. A Private Members' Bill which aimed to exhort government to scrap floor-crossing legislation in South Africa was submitted to Parliament in May 2006 by a number of opposition parties, including the Democratic Alliance (DA) and the Inkatha Freedom Party (IFP). However steps aimed towards studying the future of floor-crossing in South Africa followed "a call from President Thabo Mbeki in May last year [2006] for political parties to discuss the legislation".¹

¹ Du Toit, C: "Parliament to Revisit Floor-Crossing", *The Citizen*, Tuesday 7 February 2007, p. 9

This paper discusses the impact of floor-crossing on the party system and representative democracy in South Africa. It focuses specifically on the way in which floor-crossing affects the power balance among parties and in particular the level of representation between the ruling party, the African National Congress (ANC), and opposition parties in the legislature. It also interrogates the impact of floor-crossing on South Africa's representative democracy. It is hoped that this will help to determine the extent to which floor-crossing affects parliamentary opposition in terms of its capacity to influence decision-making in legislatures, including its capacity to provide an effective system of checks and balances, in order to ensure government accountability and transparency in the governance process.

As Matlosa and Shale (2006) argue, "While floor-crossing or political migration, in and of itself, is not necessarily undesirable in a democracy, if not well-managed it accentuates the proliferation of parties, a trend that may have adverse effects upon already fragmented party systems and fledging representative democracies, such as the one prevailing in Lesotho".² From this particular point of view this paper will therefore consider the main implications that floor-crossing has on the political party system in South Africa, recognising the significant role that political parties themselves play in the consolidation of democracy, since political parties constitute a critical element of representation on behalf of the electorate in a democratic governance system. This observation finds resonance in the argument by Matlosa and Shale (2006) that "political parties are among the key political institutions that provide an anchor for a working representative democracy".³ They further argue that as such,

² Matlosa, K and Shale, V: *Impact of Floor-Crossing on Party Systems and Representative Democracy: The Case of Lesotho*, Paper presented at the EISA/KAS conference on "Impact of Floor-Crossing on Party Systems and Representative Democracy in Southern Africa", Vineyard Hotel, Cape Town, South Africa, 15 November 2006, p. 2

³ Ibid, p. 2

"representative democracy is surely unthinkable without political parties".⁴

The Context

Since its historic political transition in 1994, South Africa has been a constitutional democracy characterised by the multiparty system marked by all the key ingredients of a liberal democracy. The existence of these key ingredients of a liberal democracy are enshrined in the 1993 Constitution (Act 200 of 1993) as a way of ensuring a transparent, accountable, participatory and representative system of governance. Most importantly these systems were put in place in order to allow the legislature, the executive and the judicial branches of the state, as well as political parties in the legislature, to hold each other accountable in the execution of their respective roles in governance and in the management of public resources. Thus this separation ensures that each branch of government does not exceed its assigned authority.⁵

Gamble's (1981) description of the role of the branches of the state is particularly relevant to the South African case since it serves to explain in detail the role which the legislative branch of the state plays in a representative democracy and how this branch receives the mandate of representation from the electorate. He maintains that "the legislature would be the sovereign body, directly elected from the people, which would decide the kind of general rules that should be enforced, and vote the necessary funds to maintain the agencies that could enforce them; the executive, armed with the mandate of the legislature and the revenue from taxes, would be charged with enforcing the laws and protecting the security of the whole community; and the judiciary would interpret the laws in any clash between the executive and a private citizen or in any case where the legislature had passed a law which was in breach of the

⁴ Ibid, p. 2

⁵ Seedat, S: "Proposed Changes to the Judiciary Debated" in http://www.idasa.org.za/index.asp?output_details.asp%3FRID%D885%26OTID%3D4%26TID%D5

constitution”.⁶ Gamble’s description of the branches of the state is particularly important in that it helps to draw a clear picture of how these branches interact with one another. It also indicates how this interaction helps to ensure a system of checks and balances in a democracy, whereby the legislature, the executive and the judicial branches are able to hold each other to account to ensure a transparent and accountable system of governance based on their respective democratic mandates. However, even though each branch of state enjoys some degree of jurisdiction in the execution of its specific mandates and all have, in theory, equal powers, some scholars argue that “one branch (invariably, the elected legislature) is supreme, and other branches are subservient to this supreme branch”.⁷ The supreme nature of the legislative branch seems to emanate from its power to make laws that provide the basis for the mandate of both the executive (government) and the judicial branches. However, in practice, the executive tends to reign supreme over both the legislature and the judiciary and this practice undermines the democratic principles of checks and balances and separation of powers.

South Africa has a bicameral parliamentary system which consists of two legislative chambers, namely the National Assembly and the National Council of Provinces. The National Assembly consists of between 350 and 400 seats which are filled by representatives of political parties using the electoral system of proportional representation (PR), while the National Council of Provinces consists of nine provincial delegations nominated by provincial legislatures to represent the interests of the provinces in Parliament. Each delegation has a total of ten representatives, including four special delegates and six permanent delegates, in order to ensure equity in terms of representation for all the nine provinces of

South Africa. Of the 400 seats in the National Assembly, 170 are allocated to national representatives of political parties following an election, while the remaining 230 seats are allocated to provincial (or regional) representatives of political parties, also following the general election.

Proportional representation is an electoral system that ensures a close congruity between the votes that political parties obtain in elections and the allocation of parliamentary seats.⁸ One example of proportional representation is the party-list PR system which is currently used in South Africa to allocate seats in the National Assembly to political parties based on their respective electoral performance in elections. In a party-list PR system, each party submits a list of its national and provincial candidates to represent the party in the National Assembly. In South Africa the party-list PR system is “used to maximise representation by translating votes into seats in the National Assembly”⁹ and “by means of a list submitted by registered political parties, which must include a deposit and a declaration of eligibility of those listed and a declaration by each candidate of acceptance of the code of conduct”.¹⁰ Each party is allocated a number of seats in the legislature based on the number of votes it has received in elections and then “fills those seats according to the priority designated on the [party] list”.¹¹ A party which acquires 60% of the votes receives approximately 60% of the seats in the legislature. As a result this system is used to measure a level of representation allocated to a party based on the exact outcome of an election.

⁸ Majola, X, Saptoe, E and Silkstone, C: *Floor Crossing: Germany, United Kingdom, Canada, Brazil, Lesotho and Kenya*, Paper prepared by the Information Services Section: Research Unit, January 2007, p. 3

⁹ *EISA Election Observer Mission Report: Mozambique*, EISA, Johannesburg, 2005, p. 14

¹⁰ Electoral Commission Act 1996, p. 27, from <http://www.eisa.org.za>

¹¹ Knight, R: “A Decade of Democracy: Government and Elections in South Africa”, <http://www.southernafrica.homestead.com/files/governmentandelections2004.html>

⁶ Gamble, A: *Liberalism: An Introduction to Modern and Political Thought*, Macmillan, London, 1981, p. 76

⁷ “Separation of Powers”

http://en.wikipedia.org/wiki/Separation_of_powers

Revisiting the Floor-Crossing Discourse in South Africa

Until its promulgation in 2002, floor-crossing was initially prohibited by an anti-defection clause contained in the 1994 transitional Constitution because “it was felt at the time that permitting representatives to change parties would disturb the electoral balance chosen by the electorate”.¹² According to this clause it was the main prerogative of a political party represented in Parliament to fill any of its vacant legislative seats in the event that any of its members decided to leave the party by vacating its seat in Parliament. The first provision of section 44 of the 1993 transitional Constitution argues (that) “... If a member of the National Assembly vacates his or her seat, the vacancy shall be filled by a person nominated in terms of subsection (2) by the party which nominated the vacating member”.¹³ The second provision argues (that) “...the party entitled in terms of subsection (1) to fill a vacancy shall nominate a person -(a) whose name appears on that list of candidates of that party, compiled in terms of section 2, from which the vacating member was nominated to the National Assembly”.¹⁴ The anti-defection clause therefore made it impossible for members of legislatures at all spheres of government, including local government, to change party memberships in between elections.

The anti-defection clause contained in the Constitution as such “forced members of a party who are elected by virtue of the inclusion of their names [into legislatures], to remain loyal to that party”.¹⁵

The first attempts towards the legalisation of floor-crossing started in 2000 when the Democratic Party (DP), the New National

Party (NNP) and the Federal Alliance (FA), desperate to form a coalition to challenge the ANC in the local government elections of the same year, started to petition for the scrapping of the anti-defection constitutional clause. Together these parties (DP, NNP and the FA) formed a coalition known as the Democratic Alliance in June 2000 and participated in the local government elections of December 2000 as the newly formed DA. Since at national and provincial levels these parties had not yet registered as the DA, the result was that after the 2000 local government elections the elected councillors of these parties came to be known as the DA, FA or NNP members of the legislatures. These parties continued at national and provincial level as the DA and the NNP as they had contested the 1999 general election as such. According to Kadima (2003) the alliance partners campaigned under a single banner in the 2000 local government election and were planning to transform the coalition into a political party by the 2004 general elections.¹⁶ Given the fact that the DP became the second largest party after the 1999 general elections, with a total of 9.56% of the votes, its leader, Tony Leon, was appointed as national leader of the coalition. The leader of the NNP, Martinus van Schalkwyk, was appointed his deputy since the NNP became the third major opposition party (although the fourth major party) with a total of 6.87% of the votes in the 1999 general elections. However, after the local government election of 2000, the coalition faced a leadership crisis which led to the breakaway of the NNP from the DA alliance. Kadima (2003) argues that “Tony Leon’s leadership was questioned in the Western Cape by the NNP faction where the latter had received more votes than Leon’s DP in the 1999 provincial

¹² Faull, J: *Floor Crossing Briefing: Legislative and Political Background, and the Procedural Framework*, IDASA, Cape Town, 2004, p. 1

¹³ See Constitution of the Republic of South Africa, Act 200 of 1993

¹⁴ Constitution of the Republic of South Africa, Act 200 of 1993

¹⁵ Laurence, P: “Why Electoral Reform Slips Through the Grid”, in *Focus* Issue 36, 4th Quarter 2002, p. 31

¹⁶ Kadima, D: *Political Party Coalition Building and Splitting in Post-Apartheid South Africa: Effects on Representative Democracy and Party System*, Paper presented at an EISA Roundtable on Political Party Coalitions – Strengthening Democracy through Party Coalition Building, Vineyard Hotel, Claremont, Cape Town, 19 June 2003, p. 6

election”.¹⁷ The parties split at national and provincial level, whereas at the local government level, according to Professor Dirk Kotzé (2006), “the challenge for NNP councillors and supporters was that they were ‘caught’ in the DA and could not rejoin the NNP without losing their seats”,¹⁸ due to the anti-defection clause that prohibited members of legislatures from switching party allegiances and loyalties.

By this time the ANC was eyeing the provincial leadership of both the Western Cape and KwaZulu-Natal, the two provinces in which the ANC was not in power. Hence the ANC saw the collapse of the DA alliance as a golden opportunity to align itself with the NNP in order to oust the DA from the Western Cape and for the ANC to assume the provincial leadership. The two parties came closer to each other. This was followed by negotiations that saw the formation of a new coalition between the ANC and the NNP in 2001. It was however clear that each of the parties entered into the new alliance in order to further its own self-serving partisan political agendas. For instance, the NNP switched alliance (from the DA) in order to continue to control political power in the Western Cape and, for Van Schalkwyk, to fulfil an old dream of becoming the premier of the Western Cape.¹⁹ Both parties, however, argued at the time that they had entered into the new alliance in order to curb racial polarisation in the Western Cape.

In the end, both the NNP and the ANC realised that it was inevitable for both parties to petition for the amendment of the anti-defection constitutional clause if they were to receive NNP councillors who were trapped in the DA at local government level as a result of the anti-defection legislation. As Christelle du Toit (2007) argues, “The ANC did not initially

support this [calls for the amendment of the anti-defection clause], but when the NNP withdrew from the [DA] alliance in 2001, the ANC championed a constitutional amendment to facilitate floor-crossing”.²⁰ Hence, the constitutional and legislative amendments were required to enable floor-crossing for the realignment of parties and representatives.²¹

In 2002 Parliament passed three legislative amendments and one Bill aimed at amending the anti-defection clause in the Constitution, and allowing for floor-crossing. These are (1) the Constitution of the Republic of South Africa Amendment Act 18 of 2002; (2) the Local Government: Municipal Structures Amendment 20 of 2002; (3) the Constitution of the Republic of South Africa Second Amendment Act 21 of 2002; as well as (4) the Loss or Retention of Membership of National and Provincial Legislatures Act 22 of 2002 Bill. Together these Bills came to be known as the floor-crossing legislation. Their sole objective was to allow members of Parliament to switch party allegiances and loyalties in between elections while still retaining their legislative seats. The following rules were also set up in order to provide requirements for floor-crossing:

- “The defector must be a member of the national or provincial or local government legislature;
- The defection must represent not less than 10% of the total number of seats held by the party which the defector is leaving;
- The defector must defect within the first 15 days in the second year following the date of an election of the legislature.”²²

Unravelling the Political Consequences of Floor-Crossing

While South Africa’s party system is fairly robust, it is also marked by one-party dominance. Clear evidence of this is the ruling party’s massive legislative

¹⁷ Ibid, p. 6

¹⁸ Kotze, D: *Floor Crossing in South Africa*, Paper presented at the EISA/KAS conference on “Impact of Floor-Crossing on Party Systems and Representative Democracy in Southern Africa”, Vineyard Hotel, Cape Town, South Africa, 15 November 2006, p. 2

¹⁹ Kadima, D: op.cit, p. 7

²⁰ Du Toit, C: op.cit, p. 9

²¹ Kotze, D: op.cit, p. 3

²² Faull, J: *Floor Crossing: Submission to the Joint Constitutional Review Committee*, IDASA, Cape Town, May 2006

supremacy since 1994. Following the 1994 general election, the ANC emerged victorious with 62.65% of the votes, whereas in the 1999 and 2004 general elections the party emerged with 66.35% and 69.68% of the votes respectively. It is evident therefore that the ANC has increased its electoral dominance vis-à-vis opposition parties since 1994.

In the literature, South Africa's party system is described as "*a dominant party system*" (see Matlosa and Karume, 2004). Matlosa and Karume define this system as one "in which despite the multiparty situation, only one party is so dominant that it directs the political system and is firmly in control of state power over a fairly long duration of time that even opposition parties make little if any dent on the political hegemony of a dominant party".²³ According to Southall (2001), dominant political parties are "those that manage to establish electoral dominance for an uninterrupted and prolonged period; dominance in the formation of governments, and dominance in determining the public agenda, notably with regard to its successful pursuit of a 'historic project'".²⁴ The dominant party system as such is not a positive recipe for the consolidation of effective representative democracy since parliamentary opposition is often marginalised especially in decision-making processes. In the South African case, this means that the opposition is deprived of the necessary space to influence the direction of government policy-making, including the opportunity to "present a viable and sustainable alternative to the ANC".²⁵ The argument here is that one-party dominance adversely impacts on the role and position of opposition parties in Parliament. As has already been mentioned, this has been the

²³ Matlosa, K and Karume, D: "Ten Years of Democracy and the Dominant Party System in South Africa". *Election Update 2004: South Africa*, Number 5, EISA, Johannesburg, 30 March 2004, p. 10

²⁴ Southall, R: "Opposition in South Africa: Issues and Problems", in *Opposition in South Africa's New Democracy: Seminar Report*, Number 2, Konrad-Adenauer-Stiftung, Johannesburg, 2001, p. 17

²⁵ Kadima, D: op.cit, p. 9

case since the first election in 1994. As Brooks (2004) put it, "The ongoing debate surrounding South Africa's dominant party system has gained increased significance over the nation's three democratic elections",²⁶ i.e. the 1994, the 1999 and the 2004 general elections, all of which the ANC won with a landslide victory.

In the 1994 general election, the ANC entered into the Government of National Unity (GNU) with a total of 63.65% of votes, alongside the National Party – later the New National Party – which obtained a total of 20.39% of the votes, as well as the IFP, which obtained 10.54% of the votes. It was initially agreed during the transitional negotiations that led to democratisation in South Africa that the GNU governance system was to be adopted in order to prevent any potential violence that might come to characterise the new democratic South Africa. For instance, former State President FW de Klerk argued that "failure to reach inclusive agreement on transitional measures within the envisaged time frames will inevitably delay institution of a Government of National Unity and [therefore] exacerbates the country's political, economic and social problems".²⁷ De Klerk argued further that "power sharing, as a democratic principle, is particularly relevant to South Africa, and in practice it means that that the party that gains fifty-one percent of the vote should not obtain [one] hundred percent of the power at all levels of government".²⁸ Hence the ANC, the NNP and the IFP formed a power-sharing system of government in 1994. The GNU therefore incorporated "the three largest parties, each representing major racial and ethnic

²⁶ Brooks, H: *The Dominant Party System: Challenges for South Africa's Decade of Democracy*, EISA Occasional Paper, Number 25, EISA, Johannesburg, October 2004, p. 4

²⁷ "Statement by President FW de Klerk on the Timetable for Further Constitutional Reform", in www.anc.org.za/ancdocs/history/transition/timetable.html

²⁸ Ibid, www.anc.org.za/ancdocs/history/transition/timetable.html

segments of the electorate” (Schlemmer, 1999:281-282).²⁹

In the 1999 general election, the ANC consolidated its electoral dominance with a total of 66.35% of the votes. It became evident that while the ANC consolidated its electoral performance the same could not be said about the opposition parties. The NP dropped from the 20.39% it had received in the 1994 poll to 6.87%. As a result the party lost its status as the second largest party in Parliament, or the official opposition. The DP – which became the Democratic Alliance in June 2000 – became the official opposition party in Parliament with 9.56% of the votes. It was followed by the IFP, which obtained 8.58%. The United Democratic Movement (UDM) obtained 3.42% of the votes.

The 2004 general election also saw the dramatic growth of the ANC as the dominant party in South Africa. This time the ruling party comfortably secured a total of 69.68% of the votes, followed by the DA, which retained its position as the official opposition party in Parliament, after securing 12.37% of the votes. The result of the election further confirmed the growing ANC dominance of the country’s party system. It also resulted in the consolidation of the country’s dominant party system, especially in the national legislature, where the opposition was increasingly weakened.

According to Brooks (2004), “The 2004 election has fuelled growing concerns over the future of democracy in South Africa as results indicated a consolidation of the dominant party system”.³⁰ Table 1 summarises the results of the 1994, 1999 and 2004 elections, which indicate the increasing popularity of the ANC against declining support for the opposition parties save the three biggest ones, namely the DA, IFP and UDM: (See Table 1 below)

Evidently, the result of floor-crossing in South Africa speaks volumes regarding the impact of this phenomenon on the country’s party system and representative democracy. This phenomenon adversely

affects parties’ effectiveness and their representation in the legislature as it tends to worsen inter-party relations, particularly between the ruling party and opposition parties. Since its inception in 2002, floor-crossing results pertaining to the national legislature show that the ruling ANC has been the major beneficiary of these defections, more than any other party. In the first window period in March 2003, the ANC increased its representation in Parliament from 252 to 275 seats, obtaining a two-thirds majority.³¹ Kotzé (2006) argues that “the dominant party – the ANC – has increased its majority in the three general elections (252 in 1994 – 266 in 1999 – 279 in 2004); the two floor-crossings in 2003 and 2005 followed the same trend: 275 – 293”.³² At the same time it has become evident that whilst the dominant ANC continues to increase its legislative representation in Parliament, smaller parties in the opposition, such as the UDM, NNP, and Pan Africanist Congress (PAC), among others, are continuously suffering as a result of defections. The UDM dropped from 14 seats in the national legislature to four seats during the 2003 floor-crossing window period, for instance.

During the 2004 floor-crossing window period, the UDM dropped from nine to six legislative seats. Loosely translated, this means that the party lost a total of ten legislative seats in the March/April floor-crossing period and a total of three legislative seats in the September 2005 floor-crossing period. Tables below illustrate the results of floor-crossing in 2003 and 2005.

From this data, it is clear that the already dominant ANC has been the major beneficiary of floor-crossing since its inception in 2002. Opposition parties, especially smaller ones, have experienced a decrease in the number of seats that they occupy in Parliament.

²⁹ Brooks, op.cit, p. 5

³⁰ Brooks, ibid, p. 6

³¹ Du Toit, C: op.cit, p. 9

³² Kotzé, D: op.cit, p. 17

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Table 1: The election result of the 1994, 1999, and the 2004 general elections

| Party | Election Results: % of Votes and Number of Seats | | | | | |
|-------------------|--|------------|-------|------------|-------|------------|
| | 1994 | Seats | 1999 | Seats | 2004 | Seats |
| ANC | 62.65 | 252 | 66.35 | 266 | 69.68 | 279 |
| NNP/ NP | 20.39 | 82 | 6.87 | 28 | 1.65 | 7 |
| IFP | 10.54 | 43 | 8.58 | 34 | 6.97 | 28 |
| DA/ DP | 1.73 | 7 | 9.56 | 38 | 12.37 | 50 |
| UDM | - | - | 3.42 | 14 | 2.28 | 9 |
| ID | - | - | - | - | 1.73 | 7 |
| ACDP | 0.45 | 2 | 1.43 | 6 | 1.6 | 6 |
| FF+ (FF) | 2.17 | 9 | 0.80 | 3 | 0.89 | 4 |
| MF | 0.07 | 0 | 0.30 | 1 | 0.35 | 2 |
| FA | - | - | 0.54 | 2 | - | - |
| AEB ³³ | - | - | 0.29 | 1 | - | - |
| AZAPO | - | - | 0.17 | 1 | 0.27 | 2 |
| UCDP | - | - | - | 3 | - | 3 |
| Total | | 400 | | 400 | | 400 |

Source: Electoral Institute of Southern Africa, 1994, 1999; Independent Electoral Commission, 2004

Table 2: The Results of Floor-Crossing Defections on Political Parties' Representation in Parliament: March/April 2003 and September 2005 Floor-Crossing Window Periods

| Party | 1994 | 1999 | | 2004 | |
|--------------------|-------------|-------------|-----|-------------|-----|
| | No of Seats | No of Seats | +/- | No of Seats | +/- |
| ANC | 252 | 266 | +14 | 279 | +13 |
| DA (DP) | 7 | 38 | +31 | 50 | +12 |
| IFP | 43 | 34 | -9 | 28 | -6 |
| UDM | - | 14 | +14 | 9 | -5 |
| ID | - | - | - | 7 | +7 |
| NNP (NP) | 82 | 28 | -54 | 7 | -21 |
| ACDP | 2 | 6 | +4 | 6 | |
| FF+ | 9 | 3 | -6 | 4 | +1 |
| UCDP | - | 3 | +3 | 3 | |
| PAC | 5 | 3 | -2 | 3 | |
| MF | 0 | 1 | +1 | 2 | +1 |
| AZAPO | - | 1 | +1 | 2 | +1 |
| AEB | - | 1 | +1 | - | -1 |
| FA | - | 2 | +2 | - | -2 |
| Total seats | 400 | 400 | | 400 | |

Source: Independent Electoral Commission (IEC), 2005.

Table 3: Political Parties' Parliamentary Representation after the September 2005 Floor-Crossing:

| Party | Votes | % Votes | Seats | Gained | Lost | No. of Seats |
|--------------|-------------------|---------------|------------|-----------|-----------|--------------|
| ANC | 10 808 915 | 69.68 | 279 | 14 | 0 | 293 |
| DA | 1 931 201 | 12.37 | 50 | 2 | 5 | 47 |
| IFP | 1 088 664 | 6.97 | 28 | 0 | 5 | 23 |
| UDM | 355 717 | 2.28 | 9 | 0 | 3 | 6 |
| ID | 269 765 | 1.73 | 7 | 0 | 2 | 5 |
| NNP | 257 824 | 1.65 | 7 | 0 | 7 | 0 |
| ACDP | 250 272 | 1.60 | 7 | 0 | 3 | 4 |
| FF+ | 139 465 | 0.89 | 4 | 0 | 0 | 4 |
| UCDP | 117 792 | 0.79 | 3 | 0 | 0 | 3 |
| PAC | 113 512 | 0.78 | 3 | 0 | 0 | 3 |
| MF | 55 267 | 0.35 | 2 | 0 | 0 | 2 |
| AZAPO | 39 116 | 0.25 | 1 | 0 | 0 | 1 |
| Others | 113 161 | 1.12 | 0 | 0 | 0 | 0 |
| NADECO | ... | ... | ... | 4 | 0 | 4 |
| UIF | ... | ... | ... | 2 | 0 | 2 |
| FD | ... | ... | ... | 1 | 0 | 1 |
| UPSA | ... | ... | ... | 1 | 0 | 1 |
| PIM | ... | ... | ... | 1 | 0 | 1 |
| Total | 15 612 671 | 100.38 | 400 | 25 | 25 | 400 |

Source: IEC, Report on the National and Provincial Elections, 2004; Parliament of South Africa, "State of Parties after Floor-Crossing as at 15 September 2005", Cape Town (mimeo).

³³ Afrikaner Eenheids Beweging

Since democracy and a multiparty political system are two interrelated concepts, the role of political parties is to compete for votes in elections in order to represent the interests of the wider electorate in decision-making processes. There is no doubt that the stronger parties, such as the ANC in the case of South Africa, represent the interests of a large section of the electorate by virtue of votes, whilst smaller parties represent interests of a smaller section of the electorate. The weakening of opposition parties' representation in the legislature through floor-crossing therefore poses a critical challenge to the political and legislative representation of minority groups in society whose interests also deserve to be adequately addressed and represented. In a case whereby the parliamentary opposition continues to gradually lose a level of legislative representation as determined by the number of votes it secured in an election, there is no doubt that its capacity to adequately represent the interests of its electorate is negatively affected. This is especially the case where the democratic principle of majority rule is applied in decision-making processes or where a majority of votes are mandatory for most decisions to be approved, as is currently the case in the South African Parliament. In such cases it is mainly the leading parties which have the power to shape and influence decisions of the legislatures. There are a number of instances whereby the ANC successfully passed legislative Bills which were unpopular, taking advantage of its high level of representation and influence in the legislature. The example that immediately comes to mind is the Civil Union Bill, which the ruling ANC bulldozed through Parliament despite massive objection from opposition parties.

While floor-crossing undoubtedly poses a serious challenge for South Africa's multiparty political system and its representative democracy, there is no doubt that defections also pose a challenge towards the main objectives of the proportional representation electoral system. Faull (2006) observes that due to floor-crossing, the PR allocation of seats in the legislature is to some degree

distorted.³⁴ It is possible, for example, for a party to lose its membership of the legislature where all members decide to defect into different political parties.³⁵ Hence the members of the electorate who voted for such a party are therefore left without any form of representation in the legislature, despite their having participated in voting for that party in an election. In a situation such as this, floor-crossing constitutes a betrayal of the party's supporters by their elected representatives. Floor-crossing "undermines the representation of the voters' interests as communicated through the proportional representation formula, in turn undermining the constitutional principles of participatory and representative democracy".³⁶ This is in view of the fact that the PR electoral system is used to allocate legislative seats ensuring fair representation for all the parties based on their electoral performance. Floor-crossing, therefore, undermines the key principles and objectives of the PR electoral system which is used in South Africa. For Glenda Fick (2005), the "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 elections 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."³⁷

Professor Hans-Joachim Veen (2006) however attributes the root cause of floor-crossing defection by MPs in South Africa to a lack of party patriotism. He argues that the "frequent floor-crossing, ..., in the Republic of South Africa ...[is]..., in my opinion, an indicator ...[of]... a

³⁴ Faull, J: op.cit, p. 8

³⁵ Ibid, p. 8

³⁶ Ibid, p. 9

³⁷ Fick, G: "Elections and Democracy: Is There a Free and Fair Selection of Decision-Makers?" in Calland, R and Graham, P (Eds) *Democracy in the Time of Thabo Mbeki*, IDASA, Cape Town, 2005

rudimentary party system with an underdeveloped party loyalty, and underdeveloped cohesion among members and party officials and an underdeveloped identification with the party”.³⁸ More powerful parties tend to benefit more from floor-crossing than smaller parties due to the opportunities they are able to offer by virtue of their being the powerful forces in the legislature. This view is also held by Anthony Butler (2005), who argues that as such “MPs had succumbed to ‘chequebook politics’ and boarded a ‘political gravy train’”³⁹ while forgetting the mandate of representation they received from their nominating party and its electorate. The general impression is that while floor-crossing has been used as a mechanism to form party coalitions, and as a mechanism to allow members of legislatures at all levels of government to change party memberships in between elections, it is unfortunately posing a critical challenge for South Africa’s party system and representative democracy. It has contributed to further weakening parliamentary opposition and to destabilising the country’s political party system as well as threatening the foundations of the country’s representative democracy.

Conclusion

This paper has argued that the introduction of floor-crossing legislation and its implementation present enormous challenges for democratic governance in South Africa. It has reviewed the impact or consequences of floor-crossing on the party system and representative democracy in the country. It concludes that floor-crossing tends to mainly benefit the largest parties, namely the DA and ANC. The ruling party, given its advantageous position, has tended to claim

the lion’s share of these benefits. The main losers in floor-crossing have been smaller opposition parties including the UDM, NNP, IFP and the African Christian Democratic Party, among others.

The paper observes that floor-crossing goes against the spirit, principles and objectives of the PR electoral system which aims to allocate the seats of the national legislature in close proportion to the number of votes the parties receive in elections. Defections therefore shift the balance, resulting in a distorted configuration of power in Parliament that fails to tally with previous election results. This adversely affects the representation of political parties in Parliament, which in turn changes public opinion, hence public representation as expressed by the electorate through their vote. According to Kadima⁴⁰ (2004), “The future of representative democracy and the party system in South Africa will heavily depend on the emergence of political parties that would come together in the form of viable, well-structured and organised coalitions aimed essentially at standing for the interest of the poor majority whose interests are currently inadequately represented”. There is currently a debate in Parliament regarding the future of floor-crossing in South Africa. In 2006 a number of opposition parties, including the DA and IFP, among others, submitted a Private Members’ Bill urging Parliament to scrap the floor-crossing legislation in view of its impact on the country’s party political system and representative democracy. In his response, President Thabo Mbeki argued that parties in Parliament should discuss floor-crossing and agree whether it is time to do away with this phenomenon. However it remains to be seen whether the current parliamentary debate on floor-crossing will lead to the scrapping of this practice in South Africa.

³⁸ Veen, H: *A Strong Party System as a Condition of Representative Democracy*, Paper presented at the EISA/KAS conference on “Impact of Floor-Crossing on Party Systems and Representative Democracy in Southern Africa”, Vineyard Hotel, Cape Town, South Africa, 15 November 2006, p. 5

³⁹ Butler, A: “Floor Crossing: In Defence of Crosstitution”, in *Business Day*, 11 November 2005

⁴⁰ Kadima, D: op.cit, p. 9

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