

The end of an era

THE ABOLITION OF FLOOR-CROSSING

On 30 June 2008 three important Bills proposing the abolition of the practice of floor-crossing were tabled in Parliament. If passed, the Bills will see an end to this much-debated practice and the legislation that enables it. They represent the response to a growing chorus of discontent from politicians and members of the public about the impact of floor-crossing.

Overview

The floor-crossing legislation passed in 2002 and 2003 enabled

- a member of the National Assembly, a provincial legislature or a municipal council to become a member of another political party while retaining membership of the National Assembly, provincial legislature or council; and
- an existing political party to
 - merge with another political party;
 - divide into more than one political party; or
 - divide, with any subdivision able to merge with another political party.

Both the Constitution and the Municipal Structures Act were amended to facilitate floor-crossing. These amendments created 15-day 'window periods' in the second and fourth year after an election during which municipal councillors could cross the floor without losing their seats. The Constitution Amendment Act (Act 18 of 2002) stipulated, however, that in order for members to retain their seats, a minimum of 10% of party members in the council concerned had to defect from the party. The Act also provided for a once-off 15-day period during which councillors could cross the floor without losing their seats.

The pros and cons of floor-crossing

The advantages of floor-crossing have been limited. The intention behind the floor-crossing legislation was to allow elected representatives to leave their political parties without losing their

seats. This was arguably to accommodate emerging political relations in the new South Africa. It was also intended to allow politicians to express their views freely and align themselves with the ideals of other political parties that better represented or reflected their political ideals and interests.

This intention, however, also constitutes one of the fundamental criticisms of floor-crossing in the context of the proportional representation electoral system in use in South Africa. Floor-crossing inevitably results in a degree of disproportionality, as it allows the composition of the council (or provincial legislature or National Assembly) to move away from the political composition of the votes cast in the general election.

Allowing individual public representatives to cross the floor undermines the will of the electorate. Voters generally believe that they are voting for a party, not for individuals. When voters support a particular party or individual ward councillor, only to see the party reconfigured as a result of floor-crossing, or of the ward councillor joining another party, it undermines voter confidence in political representatives. As discussed in the *Bulletin* last year (*LGB* 9(4) September/October 2007), this discontent was particularly evident in the 2006 local elections, when it was difficult for parties to hold on to wards gained through floor-crossing.

Political parties across the spectrum have therefore acknowledged, in the words of Ebrahim Fakir, a senior researcher at the Centre for Policy Studies, that "in South Africa there is a great disjuncture between what floor-crossing sought to do and the reality of the political system".

Instability at municipal level

While the floor-crossing legislation initially accommodated the opposition DA-NNP-FA alliance formed in 2002, subsequently it did not work in favour of opposition parties. By and large the African National Congress (ANC) has benefited the most from the arrangement. This is attributable to the 10% requirement for floor-crossing in the National Assembly: it would probably have been difficult to persuade 10% of the ANC's approximately 300 members of Parliament to defect.

At the municipal level, however, the situation is markedly different. The smaller numbers of councillors translate into a tighter

balance of power, with councillors able to fulfill the requirements of floor-crossing more easily. Floor-crossing has arguably had a more immediate impact on local government.

Every floor-crossing period has produced instability at the local level. Political parties, in an attempt to pre-empt the impact of floor-crossing and hold on to power, resort to political strategies to suspend and/or expel members who, they suspect, intend to cross the floor. The result is a spate of court cases that involve municipalities in protracted legal battles. These cases are not only financially costly for municipalities, but also have a profoundly negative effect on how communities see their municipal council.

In the aftermath of floor-crossing, municipalities also increasingly focus inward on the reconfiguration of the council and administration. Disputes regarding the reconstitution of the council and the reshuffling of the administration to reflect the new balance of power often divert the council's attention from service delivery, and that presents a real impediment to the fulfillment of its constitutional duties.

Floor-crossing lends itself to bribery and corruption. Increasing concern has been expressed on this issue, even in the ranks of the ANC. An area of contention stems from the inducements offered to opposition councillors to defect. These 'compromises' are at times at the expense of the interests of faithful party members. As Deputy Minister of Justice and Constitutional Development Johnny de Lange succinctly put it during the second reading of the Amendment Bills in Parliament: "Floor crossing undermines the principle of participatory democracy envisioned by the Constitution... [and] is bad for internal party politics."

The Amendment Bills

The Amendment Bills therefore seek to abolish the practice of floor-crossing at all levels of government: the Constitution Fourteenth Amendment Bill does so for the National Assembly and the provincial legislatures, and the Constitution Fifteenth Amendment Bill for municipal councils. The General Laws (Loss of Membership of National Assembly, Provincial Legislature or Municipals Council) Amendment Bill seeks to amend all other legislation affected by the abolition of floor-crossing. At local government level, for example, certain provisions in the Municipal Structures Act must be amended to reflect the position that pertained prior to the promulgation of the floor-crossing legislation. The amended section 27 of the Structures Act will therefore reflect the new position, according to which a councillor vacates office if he/she

- was elected from a party list and ceases to be a member of that party;



- was nominated to a ward by a party and ceases to be a member of that party; or
- was not nominated to a ward but becomes a member of a party after an election.

Other provisions in the Structures Act will become obsolete once floor-crossing is abolished. For example, section 29(3) of the Act, which requires the speaker to convene a meeting to deal with any changes in membership after a floor-crossing window period, will become obsolete.

Importantly, these Bills must be passed and implemented before 1 September 2009, when the next window period for floor-crossing is scheduled to open at local government level.

Looking ahead

Abolishing the practice of floor crossing cannot – however much we might wish it – remove the opportunistic tendencies of certain politicians and political parties. These Amendment Bills, however, represent a meaningful attempt, at the very least, to remove the formal mechanisms that have incentivised and facilitated some of these practices. In the absence of floor-crossing, it is hoped that a stronger culture of accountability to the electorate will emerge and that, as we move into campaigning mode for the 2009 elections, the principles of participatory democracy will be deepened.

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For the full speech by Deputy Minister Johnny de Lange go to www.info.gov.za/speeches/2008/08082112451001.htm

For a full analysis of floor-crossing legislation, see the report by Sueanne Isaac of the Parliamentary Research Unit at www.pmg.org.za/files/docs/080820isaac.rtf