



New Laws to Stabilise Local Government

1. Introduction

It would be something of an understatement to say that local government in South Africa is in a mess. As we approach the municipal elections on 4th November, the media is full of stories of service delivery failures, institutionalised corruption, political infighting, and mayors and councillors who spend more time jostling for position than actually running their municipalities.

In her most recent report (2024/25) on the state of local government, the Auditor-General awarded clean audits to only 39 of the 257 municipalities – a paltry 15 per cent. While 72 councils had improved their audit performance since 2020/21, 38 had regressed, and 145 had not improved their position (and two failed to submit their financial statements altogether). As the AG points out, this is not just about balancing the books:

High levels of non-compliance were evident across most areas that we audit and were particularly pronounced in areas such as the quality of financial statements; the prevention of unauthorised, irregular, and fruitless and wasteful expenditure; procurement and contract management; expenditure management; and consequence management. The financial and non-financial costs of non-compliance remained significant, contributing to losses, weakened accountability and a lack of transparency, which had a negative effect on financial viability, performance and service delivery.¹

Many factors are responsible for this situation. Some municipalities may not be financially viable; some small local councils are marginalised and deprived of resources by the district municipality under which they fall; cadre deployment and the appointment of unqualified staff have resulted in a skills deficit; local government, and senior administrative appointments, have become

over-politicised, with national political issues overshadowing the real business of municipal governance; and the emergence of more and more hung councils, with shaky coalitions, has led to instability and frequent changes in the leadership of local government.

There are various moves to address these factors. For example, some smaller municipalities may be assisted to bolster their income streams; and the new White Paper on Local Government stipulates that merit-based appointments must replace cadre deployment, and that councillors in key roles must have proven capability. But there is also a need for legislative reform, particularly to improve stability – and it is this last point which is the focus of this briefing paper.

2. The Local Government: Municipal Structures Amendment Bill

Unstable coalitions have bedevilled governance for years in major metropolitan municipalities such as Johannesburg, Tshwane and Nelson Mandela Bay, district municipalities like the Garden Route DM, and local municipalities like Knysna, Kannaland and Matzikama in the Western Cape. As political alliances have shifted there have been regular votes of no confidence, leading to the replacement of mayors, deputy-mayors and council speakers, sometimes followed by changes in senior administrative staff as well. Notoriously, since the 2016 local government elections (LGE), Johannesburg has had eight mayors, two of whom served twice – thus 10 changes of mayor.

(It is important, before proceeding, to note that not all municipal coalitions are unstable or dysfunctional. One study found that of the 82 coalition municipal councils formed after the 2021 LGE, 32 were unstable; the other 50, presumably, were stable.² Also, coalition

governance has many positive aspects provided it is approached in the right spirit: compromise is encouraged; the over-concentration of power is avoided; supporters of junior coalition partners feel that their views are represented; and, hopefully, the best policies and most able politicians of the various parties come to the fore. Nevertheless, the effects of persistent instability in a council as important as that of Johannesburg, for example, with its huge population and a budget of R97 billion, are only too clear.)

It is with strengthening and stabilising the coalition system that the Amendment Bill is mostly concerned. It attempts to do this via three reforms:

- It introduces coalition agreements;
- It extends the time available for coalition negotiations after an election; and
- It reduces the scope for repeated votes of no confidence in municipal office-bearers.

2.1. Coalition agreements

The Amendment Bill introduces the idea of a compulsory written coalition agreement in cases where no party achieves a majority of seats in an election, or where a party loses its majority between elections. The agreement must regulate the participation of parties, and independent councillors if applicable, “in the governance of the municipality during the term of the council”. At first glance it appears that the intention is for the agreement, once reached, to remain in force for the five years – the term of the council – until the next elections. However, there is provision for amendments to be made to the agreement, which suggests some degree of impermanence. It is also not clear whether an agreement can be amended by a simple majority vote of the coalition partners, or whether consensus is required.

A further problem is that the Bill does not specify what a coalition agreement needs to cover. It has been suggested, for example, that such an agreement should set out “the coalition’s mission, organisational structure, membership criteria, decision rules, accountability frameworks, and conflict resolution protocols”.³ Of these, only the last is mentioned in the Bill, as something that the responsible minister may prescribe. Without more detail as to the contents of these agreements, they risk becoming mere tick-box exercises. In addition, the Bill says nothing about what happens if the parties fail to conclude

a coalition agreement, or if one of them later breaches it.

On the positive side, it is provided that the agreements must be made public. This is an important step towards accountability, which will help voters to identify which parties are abiding by the agreement and which ones are violating it. In an area of our politics which has been marked by back-room deals and broken commitments, such transparency will be welcome.

Lastly, in its attempt to make coalition agreements compulsory, the Bill seems inadvertently to make coalition governance itself compulsory. The relevant clause reads: “In a municipality in which no party has a majority of seats on the council, parties [...] must enter into a coalition agreement to regulate their participation in the governance of the municipality...” The issue is that, before there can be an agreement as to the terms of a coalition, there must first be an agreement to have a coalition at all. However, there are other governance options in cases where there is no majority party. For example, so-called ‘confidence and supply agreements’, in terms of which one party governs without a majority and another party or parties agree not to support no-confidence motions against it, and to vote in support of its budget – subject, of course, to various conditions. Such supporting parties are free to vote against the governing party on other matters, which they would not be if they were in a formal coalition. And there is simple minority governance, in which a party lacking a majority (but usually the party with the most seats) governs by attracting the support of one or other of the smaller parties on a case-by-case basis. As currently worded, the Bill appears not to recognise such possibilities.

2.2. Time periods

Currently, the Municipal Structures Act prescribes 14-day periods for various things to happen: the first meeting of a council after an election; the appointment of local council representatives to district councils after the local council has been elected; the choosing of a council’s executive committee members; or, depending on the system the municipality uses, the election of an executive mayor.

While 14 days may be enough for these procedures when a single party wins a majority, experience shows that more time is usually needed when

a coalition has to be negotiated. The division of important positions is often a sticking-point in such negotiations, as is the decision around whether to adopt an executive committee or executive mayor system. The Bill addresses this by extending these 14-day periods to 30 days. This is intended to give the potential partners enough time to agree on the composition and proportions of a coalition before they have to make the required appointments. Whether 30 days will be sufficient, only time will tell, but it is certainly an improvement on the current very tight schedule.

(As an aside, the Constitution prescribes similar 14-day periods for the national and provincial spheres of government. For example, the first sitting of the National Assembly, and of the provincial legislatures, must take place not more than 14 days after the declaration of an election result. And at the Assembly's first sitting it must elect one of its members to be President of the Republic. As we saw in 2024, two weeks is far too short a period for calm, considered coalition talks to be concluded, and many commentators argue that an extension is needed here too; unfortunately, this would require full-scale constitutional amendment, rather than the simple legislative amendments possible at local government level.)

2.3. No confidence votes

One of the chief causes of instability in municipal coalition governments has been the frequent use – or misuse – of what are called ‘motions of no confidence’ in order to replace one mayor, deputy-mayor or municipal speaker with another. Such motions usually have little or nothing to do with whether or not the person concerned has been good or bad at their job, and thus deserving of being retained or replaced, and more to do with factionalism, shifts in party alliances and sheer opportunism. Either way, at present all such office-bearers are permanently only a motion away from losing their positions; consequently, many of them spend far too much of their time fighting off challenges and shoring up support, rather than actually running their municipalities, with consequences that are obvious.

The Bill seeks to remedy this situation by limiting a council's freedom to remove its senior office-bearers. Whereas the Act currently provides simply that “a municipal council, by resolution may remove its executive mayor or deputy-

executive mayor from office” and that prior notice of intention to move such a resolution must be given, the Bill stipulates that such a resolution may only occur once in any period of 12 months. There are similar clauses pertaining to the members of the executive committee, the speaker and the municipal whip. By limiting such resolutions (which will no doubt still be referred to as motions of no confidence) to once a year, it is hoped to provide office-bearers with a degree of job security that will enable them to ignore political intrigues and focus on their responsibilities – at least for a while.

It is also stipulated that the office-bearer concerned must be given a certain time in which to respond to notice of a motion for their removal. For reasons that are not apparent, a whip is given seven days, a mayor, deputy-mayor or member of an executive committee will have five days, and a speaker will have “a reasonable opportunity”, whatever that may be.

Then, having introduced these measures to shield mayors, etc. from dismissal for flimsy reasons, the Bill rows things back somewhat by providing that a motion for removal may be tabled at any time, regardless of the 12-month period, on the following grounds:

- (a) a violation of the Constitution;
- (b) a conviction for an offence in terms of the Criminal Procedure Act, the Prevention and Combating of Corrupt Activities Act, or any other legislation applicable to local government;
- (c) any financial misconduct in terms of section 173(4) or (5) of the Local Government: Municipal Finance Management Act;
- (d) a serious breach of a provision of the Code of Conduct for Councillors; or
- (e) an inability to perform the legislated and delegated functions of office.

Some of these grounds are relatively clear and specific, like the convictions mentioned under (b) and the misconduct under (c), but others are vague. For example, what exactly constitutes a violation of the Constitution? And what defines a serious breach of the Code of Conduct? One can also foresee a lot of argument around ‘inability’ in (e). Overall, this provision is an improvement on the existing state of affairs, where new motions of no confidence follow hot on the heels of each other, and it should offer greater stability

in municipal leadership, but it may be expected that there will still be plenty of attempts to launch such motions on these grounds. We do not yet have the level of political maturity that treats positions in local government as a service to the community rather than as a stepping-stone to power and personal advancement.

2.4. Other provisions

The Bill contains two other noteworthy provisions. One concerns municipal public accounts committees. Currently, the independence of such a committee rests on a provision that no one in leadership (mayor, deputy-mayor, speaker, whip) may serve on it. The Bill strengthens the position by stipulating that the committee chairperson may not be from a party to which any member of municipal leadership belongs, or which is in a municipal coalition (unless all the parties with seats on the council are members of a coalition). Also, the chairperson may only be removed from office on reasonable grounds and with the concurrence of the provincial MEC for local government. These are welcome additional safeguards.

The other notable provision is certainly well-intentioned, but its practical application will be difficult. It reads: "A councillor elected as a municipal office bearer or chairperson of a committee [...] must possess the experience, skills or qualifications relevant to local government or be capacitated to perform such functions optimally to promote the efficiency of the municipality." Again, this provision suffers from vagueness. There is no indication as to what 'experience, skills or qualifications' are 'relevant to local government'. Neither is there any clarity about how he or she will be 'capacitated' or whether this must happen before they assume office or afterwards – and if the latter, how long afterwards. The word 'optimally' is also open to wide interpretation.

3. Electoral Thresholds

It has been argued in some quarters that another reason for municipal instability and underperformance is the presence of various small parties which, while attracting only a tiny percentage of votes, can become 'kingmakers' in coalition negotiations or, as in Johannesburg recently, can even hold the office of mayor – though at the pleasure, and for the purposes, of one or more of the larger parties. Such parties,

it is claimed, are apt to offer their support to the highest bidder, and this can lead to frequent, destabilising changes in municipal leadership. They can also exert an influence, especially in coalitions, out of all proportion to their electoral support.

The Bill does not address this issue. It appears that the main reason for this is the belief that our pure proportional representation system (which governs the election of half of the members of a municipal council, the other half being elected for a specific ward) offers a voice to niche groups and minorities who would otherwise be unrepresented. To impose a threshold in terms of which a party must obtain, say, five per cent of the vote before it qualifies for seats on a council would be effectively to disenfranchise voters who choose to support parties which cannot hope to achieve that level of support. At a CPLD event in August this year, the Minister of Co-operative Governance and Traditional Affairs, Mr Velenkosini Hlabisa, was of the view that, for this reason, such thresholds would be unconstitutional.

This is not the view of the DA MP George Michalakis, who introduced a private member's Bill early last year which calls for a threshold.⁴ In effect, Mr Michalakis calls for an end to practice whereby parties (or independent candidates) can gain a single seat by way of what is called the 'highest surplus' or 'highest remainder', rather than by earning enough votes to win a seat outright.⁵ Regardless of the technicalities, this change, were it to be adopted, would constitute a threshold.

The question of the constitutionality of thresholds is best understood with reference to our national and provincial elections, where we already have an effective threshold. For example, in order to win one of the 400 seats in the National Assembly, a party must obtain a quarter of one per cent of the national vote – in 2024 that amounted to roughly 40 000 votes. Parties, or independent candidates, which won less than that number did not earn a seat. That affected some 34 parties which, between them, won well over half a million votes.

It is consequently difficult to see why a threshold in a municipal election, excluding only parties which earn extremely low numbers of votes, would be unconstitutional. Of course, the higher the threshold was set, the weightier the argument of unconstitutionality would become.

4. Conclusion

The intended amendments should go some way to improving the stability of municipal coalitions, especially if the envisaged written coalition agreements contain matters of substance. Mayors and other office-bearers ought to be able to focus more on their primary tasks of running their towns and cities if they no longer have to worry about incessant no confidence votes. And allowing a full month for parties to negotiate their agreements is far more realistic than expecting them to get it done in a fortnight.

All of which makes it very frustrating that the provisions of this Bill will not become law before the coming local government elections; with only a month to go it has not even been published for public comment by the relevant

portfolio committee. Given that Mr Michalakis's private member's Bills, which cover much the same ground, were tabled early in 2025, and given that the subject matter is relatively simple and uncontroversial, it is a mystery why this Bill was not introduced with enough time to ensure that its reforms would be in place before the November 4th vote.

All predictions are that the number of hung councils will increase, and that it will include some of the biggest and most important metropolitan areas. Unfortunately, the parties will still have only two weeks to negotiate, and the result of those negotiations will not necessarily be binding; nor will it have to be made public. A flurry of no confidence votes may be expected. It could, and should, have been managed better than this.

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¹ <https://www.agsa.co.za/storage/app/media/reporting/mfma-2025/MFMA-GR-24-25-Exec-Summary-ENGLISH.pdf> See page 5

² <https://www.accord.org.za/publication/a-historical-overview-of-coalition-governments-in-the-province-of-kwazulu-natal/>

³ <https://dullahomarinstitute.org.za/our-work/multilevel-govt/local-government-bulletin/archives/volume-21-issue-3-june-2026/coalition-governance-and-municipal-stability-in-south-africa-institutional-challenges-and-reform-imperatives>

⁴ Mr Michalakis's Bill also deals with extension of the time periods from 14 to 30 days mentioned earlier in this paper, and in a further private member's Bill he deals with the restrictions on motions to remove office bearers more than once in 12 months. While these aspects of his Bills have been taken up in the official government Bill now before Parliament, his proposals about thresholds have not so far been accepted.

⁵ Clause 7 of Schedule 2 of the Local Government: Municipal Structures Act sets out how this works:

"The total number of valid votes cast for each party must be divided by the quota of votes for a seat. The result is the total number of seats to which each party is entitled. If the Calculation in subitem (1) yields a surplus not absorbed by the seats awarded to a party, that surplus must compete with similar surpluses accruing to any other party or parties, and any undistributed seat or seats must be awarded to the party or parties concerned in sequence of the highest surplus." From this it can be seen that a party with the second or third highest surplus could be awarded a seat, even though its total votes might be well below the number ordinarily needed to earn a seat – the 'quota of votes for a seat'.

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