

Local Government Municipal Structures Amendment Bill (‘Coalitions Bill’) 2024:

Submission of Public Comment to the Department of Cooperative Governance

30 July 2024

- a) The Public Affairs Research Institute (PARI) welcomes the opportunity to comment on the Local Government: Municipal Structures Amendment Bill, as recently published for public comment by the Department of Cooperative Governance (DCOG) (Government Gazette No. 50682). And we welcome DCOG’s initiative to introduce regulatory measures aimed at bringing some stability and greater public scrutiny to coalition government at local government level.

Public voting versus secret ballot

- b) We support amendments that require *public* removal of office bearers from the positions of speaker, whip and so forth (i.e. by show of hands, versus secret ballot as is currently the practice) (as outlined in clauses 3, 4, 6, 7 and 9). This measure could help counteract individual vote buying (though not party vote-buying). It may improve intra-party cohesion and discipline and thus might contribute to political stability. The amendment also introduces a 2-year period between votes of no confidence, unless there is good cause (as outlined in the proposed amendments).
- c) We note, though, in relation to these votes being made public, that there is some risk of party members not feeling able to vote against their party when, in good conscience, they feel they need to. Perhaps amendments might consider allowing for secret votes in the case of those motions of no confidence brought under the proposed section 58(b) (i.e. violation of the law, serious misconduct, or inability to perform). Given that these grounds are justiciable, courts might provide a check on abusing such motions, and secrecy increases the likelihood of them succeeding, and therefore establishing stronger incentives for probity.
- d) Perhaps the amendments might also consider, as others have explored¹, that each proposed motion of no confidence must be accompanied by a simultaneous nomination of a new executive ("constructive motion of no-confidence").

¹ See for example, analysis by Jaap De Visser and others at the Dullah Omar Institute: De Visser, J. ‘Coalition governments: 6 ideas for law reform’ in *News24*, 3 April 2024: <https://www.news24.com/news24/opinions/analysis/analysis-coalition-governments-6-ideas-for-law-reform-20230403>.

Changing to a collective executive system under conditions of non-majority government

- e) We have some hesitation regarding the proposal to provide for the MEC to change municipalities with a mayoral executive system in which no party obtained a majority of seats, to a collective executive system (clause 2).
- f) First, we appreciate that when a mayor is removed in the mayoral executive system, all members of the executive must vacate office. However, the Bill already contains amendments aimed at reducing cynical motions of no-confidence against the executive mayor (see clause 7) i.e. there is already a proposal to reduce the turbulence caused by frequent removal of the executive mayor from office.
- g) The amendment in clause 2 may have more far-reaching consequences than are being currently considered. We agree that there are possible advantages to the collective executive system. It may support greater deliberation and consensus building across coalitions. But there may also be disadvantages: for example, the potential for greater paralysis in council in the absence of a central figure (the executive mayor) with hefty powers to co-ordinate the work of council and set direction for the administration. In other words, because the mayoral executive system concentrates power in a single office it can potentially facilitate quick and coherent decision-making, and more clearly locates accountability for this decision-making. It can potentially reduce backroom dealing associated with fractious executive committees.
- h) The Bill also sets the threshold for transition to a collective executive system high, requiring significant and potentially disruptive changes in executive power within thirty days after a party loses a majority of seats in council. This may not be fully warranted in situations where the party in question retains a commanding plurality, of say 45%, of seats on council.
- i) The Bill is also silent on what happens when a party regains a majority of seats on council: this proposed amendment can thus be read as implying an abandonment of the mayoral executive system in perpetuity. In other jurisdictions internationally, concentrating executive power has often been an important basis for pushing through good government reforms. Thus, the loss of the mayoral executive system may have significant negative consequences in the long term that are not being considered in these amendments.
- j) We also argue that these two amendments should not be introduced at the same time (i.e. the proposal aimed at preventing cynical no-confidence votes against the executive mayor – clause 7, and the proposal to change the executive system under conditions of non-majority government). Perhaps a more considered reform process might start with the amendments outlined in clause 7 on frequent motions of no confidence, and then track what impacts these have on stabilising coalitions, before considering the amendments, if needed, on changing the collective executive system. This approach would not prevent provinces from experimenting with collective executive systems in local governments, which will generate an evidence base for legislative amendments in future.

Making coalition agreements public

- k) We support the amendment to make coalition agreements public (clause 5). However, we suggest that regulation by the Minister for Cooperative Governance should tread lightly in this regard. The regulations could make suggestions, in broad form, for the kinds of details such agreements should include (such as outlining policy priorities and conflict resolution mechanisms). In this light, the phrase “the details of the agreement” contained in the proposed section 43(4)(b) seems too broad to foreclose ministerial interference in legitimate democratic processes in local government.
- l) Further, we suggest that coalition agreements should not be made legally binding. Coalition agreements will often confront new political realities not foreseen when they were drafted. These could range from changing policy contexts (as would be produced by new national legislation affecting local government and changing economic conditions) to new lines of programmatic political conflict (arising due to inconsistent policy preferences within local coalitions or from realignments between national parties).
- m) Broader issues of enforceability arise where coalition agreements conflict with constitutional and legal prerogatives, as was made apparent when the agreement to forge a government of national unity was rendered subordinate to the President’s constitutional power to appoint a Cabinet. An overly rigid legal approach to regulating the political sphere may have little positive impact on accountability while reducing the room for strategic flexibility on the part of coalition partners.
- n) Once changes to make coalition agreements public have been brought into effect, DCOG should track how these changes shape practice: to see to what extent, and in what ways, public pressure builds for coalition agreements to function as accountability mechanisms. Public measurement of coalitions’ performance against these agreements may be essential to the efficacy of the suggested reform.

Introducing a threshold for seats on council

- o) Clause 8 is supported i.e. to introduce a 1% threshold of valid votes cast for a political party, for that party to qualify for a seat on the municipal council. The justification provided in the Bill is sound.
- p) However, it may be necessary to consider situations where small parties merge or enter into electoral alliances to exceed the 1% threshold. In some jurisdictions these circumstances invite a higher threshold, which in South Africa could be set at 2% or 3%. (See Ebrahim Fakir on the issue of thresholds).²

² Fakir, E. ‘Coalition politics and government – a power and predation roller coaster ride, or means of curbing excess?’ in *Daily Maverick*, 3 August 2023: <https://www.dailymaverick.co.za/opinionista/2023-08-03-coalition-politics-and-government-a-power-and-predation-roller-coaster-ride-or-means-of-curbing-excess/>

Extending the time for the formation of coalition government

- q) We propose the Bill also includes an amendment to extend the time provided after elections for appointing office bearers from 14 days to, say 30 days, to provide more time for making these critical appointments, and to help ensure these appointments flow from coalition agreements, rather than preceding them.

Addressing political interference in municipal administrations

- r) The risk of coalition negotiations extending to the allocation of staff appointments and procurement contracts is widely recognised. This sort of interference is already unlawful, yet its widespread presence across municipal governments in South Africa justifies a more robust approach to enforcement. This could include the statutory elaboration of independent checks on appointment and procurement process, more elaborate rules around the sorts of instructions and communications allowed between political and administrative office-bearers, special reporting requirements on officials who are subjected to or who become aware of interference, and stronger sanctions on those who commit it.
- s) The transmission of political instability associated with coalition governments into municipal administrations generates especially high costs for state capacity and for wider political stability. Stronger, more autonomous administrations are the most important constraint on political instability. We propose, therefore, that more consideration be given to fortifying *municipal administrations* through legislative reforms. PARI offers its support in deliberating on such proposals.

PARI's research on coalition government in metropolitan government

- t) Finally, and related to our comment just made, PARI is currently in the process of undertaking work on coalition government and the political-administrative interface in metropolitan local government. We hope this research will contribute empirical data to assist deliberations on reforms in this area. We would welcome the opportunity to present this work to DCOG and other stakeholders towards the end of the year.

Contact:

Submission developed by the State Reform Programme and the Local Government Programme at PARI. Contact: Dr Sarah Meny-Gibert sarahmq@pari.org.za