



31 July 2024

**Mr Nhlamulo Mathye**

Assistant Director, Department of Cooperative Governance and Traditional Affairs

For Attention: Mr Nhlamulo Mathye

Per Email: Comments.coalitionbill@cogta.gov.za

Dear Mr Mathye

**Re: MY VOTE COUNTS' SUBMISSION ON THE LOCAL GOVERNMENT: MUNICIPAL STRUCTURES AMENDMENT BILL**

We write to you in response to the Department of Cooperative Governance and Traditional Affairs call for written submissions on the Local Government: Municipal Structures Amendment Bill ("The Bill").

My Vote Counts (MVC) is a non-profit organisation (NPC 2014/046956/08) that endeavours for a democracy where every adult has equal power to influence decisions that affect them, and the principles of accountability and transparency are paramount. We believe that the electorate should have access to all information that they need to exercise their political rights and make political choices from an informed position. We believe that political parties, decision-makers, and public representatives should openly share all necessary public information timeously and in accessible formats for all. Lastly, we believe that power should be equally shared and that social mobility barriers must be removed. We believe that people must lead the drive for ensuring their rights are met, and we support popular participation, the building of grassroots organisations, equipping all people with tools to hold public representatives to account, and to be part of decision-making.

The author of this submission is Mr Joel Bregman, senior researcher at MVC.

## 1. Responses to Proposals in the Local Government: Municipal Structures Amendment Bill

Please note, the responses and recommendations with respect to the proposals that speak to limiting motions of no confidence (proposals 3, 4, 6, 7) are identical. For brevity and to avoid repetition, the responses and recommendations for proposals 4, 6, and 7 are not repeated.

### **Proposed Amendment 2: “Municipalities that must have a collective executive system”**

- 1.1 MVC supports this proposal. The instability that can occur when the entire mayoral committee is replaced under the mayoral executive system will be mitigated with the introduction of this amendment.<sup>1</sup> Due to only the position of the mayor being in jeopardy when there is a motion of no confidence (MONC) against a mayor under the collective executive system, as opposed to the entire executive, there is also less incentive for other parties to try and dislodge a governing coalition.
- 1.2 Members of the mayoral committee are, in theory, placed strategically to best implement the programs and objectives of their respective portfolios. Many of these are directly related to service delivery. This means that if the mayoral committee is replaced, it will take time for new members to come to grips with their new responsibilities, and this could negatively impact the provision of basic services.
- 1.3 Under the collective executive system, members of the executive are elected by the full council. Compared to the mayoral system, when they are appointed by the mayor, the collective system also provides greater collective buy-in amongst the public representatives in that respective council and the constituents they represent.
- 1.4 Another positive for the executive committee option is that the executive, by law, ‘must be composed in such a way that the parties and interests represented are substantially the same as those represented in the council’.<sup>2</sup> Under the mayoral system, inevitably, members of the mayoral executive are from the governing party. By having members from different political parties sit on the executive, it could lead to greater cooperation between political parties and a greater circulation of ideas and proposals within council. The composition of the mayoral committee will also be more reflective of the will of the people.
- 1.5 Additionally, the executive system is structured in a way that promotes increased transparency and accountability within the executive. This is because:

‘it proportionately reflects the interests and parties represented in council, important policy and strategic planning considerations are open to a more robust debate than would be possible in a mayoral committee – where members often belong solely to the majority party. This creates the space for internal accountability within the executive. Participation from ordinary community members is also enhanced as executive committees are obliged to hold open meetings when considering important issues like draft by-laws.’<sup>3</sup>
- 1.6 The mayoral system places more power in the position of the mayor than the executive committee system. Under the collective system, decision making is with the mayoral committee, by majority vote, as opposed to the executive mayor. Under the mayoral system, the role of the mayoral committee is more to assist and advise.

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<sup>1</sup> de Visser, J., ‘Coalition government: 6 ideas for law reform’ (2023.04.03) in *News24*, available <https://www.news24.com/news24/opinions/analysis/analysis-coalition-governments-6-ideas-for-law-reform-20230403>

<sup>2</sup> Toxopeus, M., *Municipalities I: Evaluating executive authority in municipalities*, available at <https://hsf.org.za/publications/hsf-briefs/municipalities-i-evaluating-executive-authority-in-municipalities>

<sup>3</sup> *ibid*

## Recommendation

- 1.7 Recognising that the proposal is with respect to councils in which no party secures a majority, and a coalition is required to form a government, it is worth considering whether the collective executive system would be preferable for *all* local councils, irrespective of whether they are in a coalition or not. In KwaZulu-Natal, all local councils are legally structured in this way. Given the obvious benefits of a collective system in terms of accountability, transparency, oversight, and parties needing to work together, this is worthy of consideration. It also promotes the principle of proportional representation in the mayoral executive.
- 1.8 However, it is recognized that the power to determine the legal status of a council rests with each provincial member of the executive council responsible for local government and in councils in which a single party secures a majority, there will not be an appetite for this approach. However, when one considers the benefits that the collective executive system provides, this is worthy of further interrogation.

### **Proposed Amendment 3: Amendment of section 40, removal of speaker**

- 1.9 MVC rejects this proposal. The limitation of the process to remove the Speaker of a municipality will remove a key check and balance, removing not only power from the council itself to hold a crucial position to account, but the power of the voter that has been delegated to that council. It will allow speakers that are not performing well to stay in their positions.
- 1.10 We recognise the circumstances under which a speaker may still be removed under this proposal, but these are problematic. With respect to the first point, we operate under the principle of innocent until proven guilty. Removal on the grounds of ‘a serious violation of the Constitution or law’ is problematic because of the timelines associated with such processes. If a speaker violated the law or the Constitution, it would likely take a long time for this to be determined.
- 1.11 With respect to points two and three under which such a motion can be brought, ‘serious misconduct’ and ‘inability to perform the functions of office’, respectively, these are open to interpretation and subjectivity and could be open to political interpretation and manipulations. They are also processes that may take extensive time to conclude. A speaker removed under such provisions would likely have recourse to appeal such decisions, further adding to the timeline that would make such processes impractical.
- 1.12 We recognise that MONCs have been abused and remain open to abuse by councillors and political parties. The Mapungubwe Institute for Strategic Reflection’s (MISTRA) identified the abuse of MONCs as one of the key issues requiring intervention and causing instability in local government.<sup>4</sup> What we have witnessed at municipal level are political attacks on coalition governments from opposition parties who politick smaller parties to cross the floor in exchange for valuable MEC positions should the incumbent coalition successfully be removed by way of a MONC.
- 1.13 What we see in practice is motions of no confidence being used as a political tool, rather than for the mechanism it was originally intended, being a process to remove a speaker or mayor from office due to them not fulfilling their duties adequately. In fact, these motions are brought on spurious grounds only because the opposition coalition has 50% +1 of the votes to pass the motion.

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<sup>4</sup> MISTRA, ‘Policy Brief - Marriages of Inconvenience: The politics of coalitions in South Africa’ (2021), available at <https://mistra.org.za/wp-content/uploads/2021/07/MISTRA-POLICY-BRIEF-COALITIONS.pdf>

- 1.14 However, we do not support this proposal because it will allow poorly performing speakers to remain in their positions for far too long, without the ability to remove them. It does not adequately strike a balance between efforts to ensure stability in a council and having the tools necessary to remove a speaker.
- 1.15 With the introduction of coalition agreements, there should be a greater likelihood for parties to maintain coalitions, which will make MONC unsuccessful and therefore, in practice, could limit the frequency that they are brought.

### **Recommendation**

- 1.16 MVC proposes that this proposal is removed from the Bill. If the proposal remains, then the amount of time between which MONCs can be brought should be reassessed. The 24-month period is arbitrary, and a shorter period may provide more balance between the desire for stability, the check and balance as well as accountability provided by a MONC.

### **Proposed Amendment 4: Amendment of section 41E, removal of whip**

- 1.17 For the same reasons as given with respect to proposed amendment 3 (removal of the speaker), MVC rejects this proposal. The same recommendation is provided as given with respect to proposed amendment 3.

### **Proposed Amendment 5: Amendment of section 43, binding coalition agreements**

- 1.18 While the desire to have coalition agreements that are binding is understandable, this is not possible and there will be no legal basis that creates an actual contract between parties. Under South African law coalition agreements are not legal contracts<sup>5</sup> and nor should they be. It would be incongruent with the nature of politics, which is fluid and requires manoeuvring. Coalition agreements are only in force as long as the parties that are signatories decide to be part of the agreement. To try and enforce coalition stability through binding agreements would not be legally enforceable.
- 1.19 We support and stress the importance of having coalition agreements that are public documents and easily accessible. This will serve as a tool against which the public can measure a coalition government's performance, and to decide whether to support or sanction.
- 1.20 Whether the Minister should determine the content of the agreements is questionable. While a coalition agreement should require a minimum base, it should be up to the respective coalitions in each municipality to determine the exact nature of the agreement. What may be useful is ensuring that there are well considered dispute resolution processes in coalition agreements.

### **Recommendation**

- 1.21 Remove the reference to 'binding' coalition agreements. In addition (and perhaps this is more relevant to any Regulations that are developed), coalition agreements should be made available in all official languages, print and online, and for people that require other formats (braille, audio). Further, when coalition agreements are amended, these changes must be made public.

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<sup>5</sup> Beukes, J., *Coalition governments: Guidelines for coalition agreements* (2021), available at <https://dullahomarinstitute.org.za/multilevel-govt/local-government-bulletin/archives/volume-16-issue-1-march-2021/coalition-governments-guidelines-for-coalition-agreements>

**Proposed Amendment 6: Amendment of section 53 of Act 117 of 1998: removal of one or more or all the members of its executive committee**

1.22 For the same reasons as given with respect to proposed amendment 3 (removal of the speaker), MVC rejects this proposal. The same recommendation is provided as given with respect to proposed amendment 3.

**Proposed Amendment 7: Amendment of section 58 of Act 117 of 1998, removal of executive mayor or deputy executive mayor**

1.23 For the same reasons as given with respect to proposed amendment 3 (removal of the speaker), MVC rejects this proposal. The same recommendation is provided as given with respect to proposed amendment 3.

**Proposed Amendment 8: introduction of 1% electoral threshold**

1.24 MVC rejects this proposal. With an electoral threshold any registered party will still be able to contest elections, but their prospect of winning a seat will diminish. The rationale behind the introduction of a threshold is recognised. However, one must consider the effect that this will have on the political system and political rights, and whether excluding parties from representation and producing more wasted votes is worth the desire for stability. Further to this, we must assess the extent to which the introduction of a threshold will provide greater stability in coalitions.

1.25 In a country like South Africa, with such a diverse population and a history of political disenfranchisement, it is important for people to have a wide range of parties to choose from, and they should pick those that they feel best represent their interests. There are more than 500 political parties registered with the Electoral Commission. More than 50 parties contested the 2024 general election, and more than 300 parties contested the most recent Local Government Elections in 2021.

1.26 Electoral thresholds exist in many countries, generally ranging from 1% to 5%. However, each country has its own history, dynamics, and political systems and thus there is the need to consider whether introducing thresholds in South Africa will lead to stability, or if it will limit political choice, and at what cost. The introduction of thresholds will limit political choice and cement the well-established parties into dominating representation on councils.

1.27 We also need to consider whether the introduction of a 1% threshold will lead to disproportionate impacts on the outcomes of the composition of councils. In councils with a handful of seats up to approximately 40, the introduction of the 1% threshold will have no material effect. Parties will still need to win well more than 1% to secure a seat. For example, in councils with ten seats, parties will need to win approximately 10% of the vote to secure a single seat.

1.28 But in the eight metros, and larger councils, the introduction of a 1% threshold will dramatically change the composition of representation and the number of wasted votes.

1.29 With respect to the metros, based on the 2021 Local Government Election results:<sup>6</sup>

1.29.1 Buffalo City:	6 parties with less than 1% won a seat in 2021 Representing 4,7% of the vote
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<sup>6</sup> Electoral Commission, Results of Elections, available at <https://results.elections.org.za/home/downloads/me-results>

1.29.2 City of Cape Town:	5 parties with less than 1% won a seat in 2021 Representing 1,42% of the vote
1.29.3 City of Ekurhuleni:	5 parties with less than 1% won a seat in 2021 Representing 1,38% of the vote
1.29.4 City of Johannesburg	7 parties with less than 1% won a seat in 2021 Representing 1,67% of the vote
1.29.5 City of Tshwane:	6 parties with less than 1% of the vote won a seat in 2021 Representing 1,06 of the vote
1.29.6 eThekweni:	10 parties with less than 1% of the vote won a seat in 2021 Representing 2,73% of the vote
1.29.7 Mangaung	2 parties with less than 1% of the vote won a seat in 2021 Representing 1,32 of the vote
1.29.8 Nelson Mandela Bay:	3 parties with less than 1% of the vote won a seat in 2021 Representing 1,56 of the vote

- 1.30 Based on the above, introducing a 1% threshold will have an impact on representation in all the metros. With a 1% threshold, supporters of parties that have historically won a seat despite securing less than 1% of the vote may choose to not participate in elections. Knowing that their party is unlikely to secure a seat, they may choose to not vote. Alternatively, they may still decide to vote for their party of choice or choose another party to support. Parties that win a small share of the vote often represent minority interests. While their impact in a council may be somewhat limited, to create this hurdle could have the unintended consequence of shrinking our political space and options and could unfairly circumscribe a voter's choice.
- 1.30 A study from Germany interrogating the impact of the removal of a 5% electoral threshold in the federal state of Hesse, suggests that this can lead to greater political participation in elections. This is because, 'Once the threshold was abolished, voting for their preferred small party might have become more worthwhile for this subset of the electorate'.<sup>7</sup>
- 1.31 We also need to assess whether the 1% threshold will have the desired impact. Part of the rationale behind this proposal is that it will limit the power of parties with a single seat to act as kingmakers, and to have disproportionate power in the context of coalition politics. While this would be somewhat mitigated with a 1% threshold, the same problem will remain. Parties that manage to secure a single seat or two seats still can act as kingmakers. Coalitions that secure just more than 50% of the seats in a council would still be susceptible to instability if smaller parties decide to throw their lot in with other parties seeking to break the governing coalition.

## Recommendation

- 1.32 Remove this from the Bill. Introducing a 1% threshold will unnecessarily limit our political space, and will likely disproportionately impact the rights of minorities, that are often represented by smaller parties that secure a seat or two seats.

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<sup>7</sup> Baskaran, T. and Lopes de Fonseca, M., 'Electoral thresholds and political outcomes: Quasi-experimental evidence from a reform in Germany' (2013) p.8. at <https://www.econstor.eu/bitstream/10419/88566/1/77454807X.pdf>

## **Proposed Amendment 9: vote by show of hands**

- 1.33 MVC supports this proposal. Voting by show of hands, will deepen transparency and accountability, limit corruption and the potential for interests to be bought. The public has a right to know how publicly elected representatives are voting on such issues.
- 1.34 Votes in a council, on matters that are clearly of public interest, cannot be equated with the privacy required when one goes to vote in an election. As Prof de Visser writes, ‘The councillor, however, has been elected into office to carry out a party-political or independent mandate. The public is entitled to know how he or she carries out that mandate’.<sup>8</sup> Further, when votes are cast publicly, it will ensure greater party discipline, which will assist in coalition stability.

## **2. Additional Proposals**

- 2.1 MVC notes that two proposals related to coalition stability, and that have been a common feature of conversations and research over the past years are not in this Bill. These are 1) extending the time to form a government after an election and 2) insulating the public service from changes to the political leadership. MVC believes that these proposals are worthy of consideration in the development of this Bill.

### **Extending time to form a government**

- 2.2 When no party secures a majority and there is a need to form a coalition government, the 14-day period currently provided for, has proven in some cases to be too short.<sup>9</sup> Some have proposed that this timeframe is extended, to allow for proper negotiations, and the development of well-considered coalition agreements.<sup>10</sup> If the time period is extended – and measures are put in place to ensure that there is continuity in the business of a council – it may prove to have long-term benefit to the stability and functioning of that government.

### **Insulating public service from changes to the political leadership**

- 2.3 Calland and Law propose introducing measures that will limit the negative impact on the public service, and its ability to provide services, when there are changes in government. As they explain:

‘at the moment, far too many senior positions in public service are tied to who is in power. When there is persistent instability or uncertainty in government as a result of frequent changes to the coalition arrangements, it all too often leads to paralysis in governance and public service delivery, which harms people and the economy’.<sup>11</sup>

- 2.4 While this proposal is not aimed at strengthening coalition stability per se, it mitigates an issue that arises when coalitions collapse.

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<sup>8</sup> de Visser, J., ‘Coalition government: 6 ideas for law reform’ (2023.04.03) in *News24*, available <https://www.news24.com/news24/opinions/analysis/analysis-coalition-governments-6-ideas-for-law-reform-20230403>

<sup>9</sup> *ibid*

<sup>10</sup> Sithole, N., ‘Coalitions in South African local municipalities: is the constitution enabling democracy or not?’ in *Journal for Inclusive Public Policy* (Vol 3, issue 2, 2023) available at <https://www.inclusivesociety.org.za/post/coalitions-in-south-african-local-municipalities-is-the-constitution-enabling-democracy-or-not>

<sup>11</sup> Calland, R. and Law, M., ‘Coalitions are here to stay: How can we make them better?’ (2022.11.09) in *News24*, available at <https://www.news24.com/news24/opinions/analysis/richard-calland-and-mike-law-coalitions-are-here-to-stay-how-can-we-make-them-better-20221109>

### **3. Appearing Before the Committee**

3.1 MVC requests that the organisation be given the opportunity to make an oral presentation to the Committees, based on our submission.

Contact details:

Please refer correspondence to the authors of this submission:

Mr Joel Bregman      [joel@myvotecounts.org.za](mailto:joel@myvotecounts.org.za)  
072 769 0100

[ENDS]