

A FRAMEWORK FOR COALITIONS IN LOCAL GOVERNMENT

prepared for the



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1 INTRODUCTION

From the first democratic local government elections in 2000, until the 2016 elections, general elections have always produced so-called 'hung councils'. A hung council arises when no political party wins more than 50% of the seats in the municipal council, thus making the formation of a coalition or minority government inevitable.

The first local government elections (LGEs) produced 29 hung councils. This increased to 31 (including the City of Cape Town) in the 2006 LGEs, before peaking to 37 hung councils in the 2011 elections. The 2016 LGEs produced the least (27) hung councils. However, this was the first time that elections in four of the eight metropolitan councils produced hung councils. This happened in the City of Johannesburg, Ekurhuleni, Nelson Mandela Bay and the City of Tshwane.

The Constitution vests legislative and executive authority in the municipal council. The effective exercise of these functions is crucial for capable and developmental local governance. As the highest decision-making body, the council must steer the municipality, determine its strategic direction and take crucial decisions. In coalitions, this requires close cooperation between coalition partners to ensure that the responsibilities of the council are carried out effectively. However, in practice, coalition governments have often been unstable and terminated before the end of the council term. Instability in a local coalition can have a severe impact as it may compromise the municipality's ability to adopt policies and by-laws, make senior management appointments, or even adopt a budget. Coalition instability ultimately compromises the municipal administration's ability to deliver services to local communities. It puts strain on the planning of the administration because it is difficult to predict whether items would pass in the council. Ultimately, local communities will continue to bear the brunt of unstable coalition politics. More stable coalitions will therefore contribute to improved service delivery.

Despite being a relatively common occurrence in South Africa, coalition governments have not become institutionalised, i.e. there are no rules or guidelines for coalitions. A political party with outright control of a council can fall back on its internal

institutionalisation, i.e. its own internal constitution to steer the voting behaviour by its councillors. The party constitution will define the values, principles, rules, procedures and sanctions that apply to its members, including those that serve as councillors. This is supposed to, and often does, constrain party behaviour and promotes party discipline. If the party discipline works well, it contributes to stable governance. Yet, in the case of a coalition, there are no rules in the Constitution or in legislation that define the principles, rules, procedures or sanctions that will apply to the political parties (and independent councillors) that attempt to govern together. They also often don't have any guidelines to follow when they enter coalition talks to establish a coalition government.

As a result, coalition governments are often unstable as illustrated by the history of problematic coalition governments in municipalities. What is lacking is thus a framework for coalition governments that can be used as a guide by political parties in structuring their coalitions in practice.

Given the increasingly competitive local elections, it is not unlikely that the general elections on 1 November 2021 will produce hung councils again. Without a framework to guide political parties in structuring and managing coalitions, political parties and independent councillors will be required to establish coalitions whilst being uncertain about the rules or mechanisms needed to maximise the incentives for cooperation in the coalition government. This can result in coalitions being unstable or short-lived.

2 PURPOSE OF THIS FRAMEWORK

Whether or not a coalition is stable is mostly determined by the political dynamics between the coalition partners. Most of those dynamics fall outside of what can be regulated by law: success depends on intangibles such as personal attitudes, political maturity, mutual respect, leadership styles etc. Furthermore, the reasons for the failure of a coalition can be many. Sometimes, a coalition will fail because of sincere policy differences between the coalition partners. Other times, a coalition will fail because of an unanticipated event with grave political consequences. However, there is no doubt that the number and scale

of failed local coalitions in South Africa is unnecessary: coalitions do not have to be a recipe for instability.

In a single-party government that controls an outright majority in the council, it is relatively easy to adopt and implement the agenda of the majority government. While this makes it easier for political parties to fulfill the policy priorities as reflected in their party manifestos, policies of single-party government are also easily replaced or amended if the political leadership changes. In addition, the losing and excluded political parties (i.e. the opposition) may not support the policies, and vehemently advocate against it in public. This is likely to change in the context of coalitions. The reason for this is that, in coalition governments, the agenda of the coalition must be determined through negotiations involving several political parties. To reach a settlement, coalition parties are forced to accommodate diverse positions to reach policy consensus. Empirical evidence suggests that there is a link between an increase in the number of parties in a government (i.e. coalition) and a decrease in the number of policy changes in successive elections. In a study examining 24 democracies, it was found that Switzerland, Italy, Israel, Belgium and Norway had reduced numbers of policy changes as a result of having more than one party governing in government. (Colomer, J 'The More Parties, the Greater Policy Stability' (2012) *European Political Science* (2012) 11(2) 239).

The law is not the decisive factor in the success or failure of a coalition. However, the law is important because it determines the parameters within which coalition partners can practice their coalition politics. Furthermore, it is possible to formulate some guidelines that, if followed, may help in making coalitions more stable.

This framework provides practical and implementable guidelines to political parties and independent councillors in coalition governments, to resolve challenges of instability, and encourage cooperation in coalitions. It sets out guidelines and introduces mechanisms that can be used to structure and manage coalitions in practice. They relate to both the formation of the coalition and the management or governance of the coalition.

2 DEFINITIONS

Bare-majority coalition: Bare-majority coalitions are the most common form of coalition governments in municipalities in South Africa. A bare-majority coalition (also called 'minimal-winning' majority or 'simple-majority') is a coalition where two or more parties and/or independent councillors come together to constitute a majority government. The number of seats in the council, taken together, must contain 50% + 1 of the total membership of the council, in order to create a bare-majority coalition government.

Chief or council whip: the councillor elected in terms of Section 41A of the Municipal Structures Act as the Whip of the Council.

Coalition: when two or more political parties agree to cooperate to govern together as a ruling coalition government. There are several different types of coalitions, namely: bare-majority coalition government, grand coalition, government of national unity (at the national level), and minority government.

Coalition agreement: a formal coalition agreement is a 'contract-like' political agreement that is negotiated between the coalition parties. The document is comprehensive and sets out, among other things, the following:

- the general **structure** of the coalition
- the **policy programme with policy priorities** agreed to by the coalition partners;
- **allocation of political positions**, i.e. political office-bearers;
- **decision-making and consultation procedures** within the coalition
- **dispute resolution** mechanisms; and
- **general rules** of coalition behaviour.

Coalition formation: that part of the coalition life-cycle that is used to negotiate the coalition before the coalition is established.

Coalition governance: that part of the coalition life-cycle that commences after the coalition is established. It covers the period from the first council sitting after the elections

until the coalition terminates (either at the end of a council term, or earlier when the coalition breaks apart, usually manifested by a motion of no-confidence in one or more of the political office-bearers).

Coalition life-cycle: refers to the entire life span of a coalition government. It consists of three main phases namely: coalition formation, coalition governance and termination.

Coalition partners: a collective term used in this document to refer to all the political parties and independent councillors in the coalition government. It refers to national, provincial and/or local parties with seats in the municipal council, but also includes independent councillors represented in the municipal council, as long as they are part of a (proposed) coalition.

Delegations: Section 59 of the Systems Act instructs the council to develop a system of delegations that will maximise administrative and operational efficiency and provide for adequate checks and balances. The council may delegate powers to any of its political structures, political office-bearers, councillors or staff members. There are, however, powers that it may not delegate. These include (but are not limited to) the powers listed in section 160(2) of the Constitution, the power to set tariffs, the power to decide to enter into a service delivery agreement in terms of section 76(b) of the Municipal Systems Act, and the power to approve or amend its integrated development plan.

Grand coalition: A grand coalition (also referred to as an oversized, surplus, or broad coalition) comprises more political parties and interests than is required for a majority. Consider the following example: Political parties A, B and C are in a coalition government with each party controlling 30 percent, collectively amounting to 90 percent of the seats in the council. The remaining 10 percent of the seats comprises the opposition parties including independent candidates and smaller political parties. If party A, B and C form a coalition, this is a grand coalition because, even if one of the political parties withdraws from the coalition, the coalition will still control 60 out of 100 seats in the council. Thus, the coalition, despite one political party's withdrawal, will then remain a majority coalition, albeit a bare-majority coalition government.

Hung council: arises when no political party wins more than 50% of the seats in the municipal council, thus making the formation of a coalition or minority government inevitable.

Kingmaker: refers to a political party, or independent candidate whose vote or votes tip the balance of power in the council. In practice, the kingmaker thus decides which combination of parties will govern in a coalition.

Members of the municipal executive: This refers to the councillors that make up the executive arm of the council. In a municipality with an executive mayor, this refers to the executive mayor, the deputy executive mayor (if applicable) and the other members of the mayoral committee. In a municipality with an executive committee, it refers to all the members of the executive committee, including the mayor and deputy mayor (in applicable). All of these positions may be designated as full-time positions.

Minority government: A minority government refers to a government that is run by a political party, or coalition that does not hold a majority of the seats in the council. For a municipality with a minority government to function effectively, the minority coalition depends on opposition parties in the council lending their support on specific matters such as appointing office-bearers, adopting the budget, by-laws, or senior management appointments. The minority coalition and those other parties may conclude bi-lateral agreements with the terms and conditions for their support in the council. The supporting party and the minority government may thus be said to have formed an informal 'legislative' coalition. This is so because the supporting parties generally do not govern with the minority government in the executive. Minority governments have featured in municipalities such as Nelson Mandela Bay Metropolitan Municipality, City of Tshwane Metropolitan Municipality, and Metsimaholo Local Municipality.

Municipal executive: the municipal executive is a term used here for the executive mayor (and his or her mayoral committee), or the executive committee (headed by a mayor). The difference between the two systems is explained in para 3.16.

Party whip: the councillor appointed by a political party, as the whip of that party in the council. This is not an 'office-bearer' of the municipality, but a critical functionary of the party in the council.

Political office-bearer: This refers to a councillor occupying any of the following positions:

- speaker
- executive mayor
- deputy executive mayor (if applicable)
- mayor
- deputy mayor
- member of the executive committee
- member of the mayoral committee
- council whip

All of these positions may be designated as full-time positions

Political structure: This refers to the municipal council, or any committee or other collective structure of a municipality elected, designated or appointed in terms of a specific provision of the Municipal Structures Act.

PR councillor: a councillor elected from a party list, to represent that party in the council. A PR councillor serves in a part-time capacity (unless he or she is elected or appointed to a full-time position).

Section 79 committee: a section 79 committee is a committee of councillors, chaired by a councillor who is not a member of the municipal executive. It reports to the council (not to the municipal executive). The chairperson of a section 79 committee may be designated as a full-time councillor.

Section 80 committee: A section 80 committee is a committee of councillors, chaired by a member of the municipal executive. It reports to the municipal executive (not to the

municipal council). The functions and powers of section 80 committees are determined by the delegations adopted by the municipal council.

Subcouncil: The establishment of subcouncils is only possible in metropolitan municipalities (and most metros have not established subcouncils). A subcouncil is a geographically defined committee of a metropolitan council. It comprises the ward councillors of between three and six neighbouring wards and a number of PR councillors. It is essentially a 'committee' of councillors exercising delegated powers over an area that comprises adjoining wards. Its functions and powers will be determined by the council in its delegations. Generally, subcouncils serve to bring the metropolitan municipality closer to residents. Each subcouncil elects its own chairperson, who may be designated as a full-time councillor.

Ward councillor: a councillor elected to represent a ward. The ward councillor may represent a political party but may also be independent. A ward councillor serves in a part-time capacity (unless he or she is elected or appointed to a full-time position in the council).

3 COALITION FORMATION

3.1 Introduction

The coalition formation phase starts immediately when a general election or a by-election produces a hung council. It also starts when an existing coalition collapses, usually with the passing of a motion of no-confidence in one or more political office-bearers. This is often referred to as 'coalition bargaining' or 'coalition talks'.

It refers to the bargaining process in which different political parties (and independent councillors, if applicable) engage in coalition talks before deciding to enter into a coalition. This phase of the coalition life-cycle is important because it determines how the coalition will be structured, the terms and conditions for cooperation in the coalition, and the policies the coalition will pursue as a municipal government.

The coalition formation must be used to, as far as possible, anticipate and resolve conflict in the coalition. The coalition partners can do this through negotiating with each other, and making concessions and compromises to secure each other's cooperation in the coalition. The bargains they reach are then laid down in a coalition agreement.

3.2 Experience with coalition formation

It is now considered a standard practice for the coalition partners to adopt a coalition agreement. Coalition agreements define the policy programme of the coalition, and set out how the coalition will be organised by prescribing procedures for decision-making, coordination and dispute resolution in the coalition. The coalition agreement must anticipate and resolve conflict, in that it prescribes the terms and conditions for the behaviour of coalition partners. The coalition agreement sets out how parties will be expected to work together in the coalition.

Evidence from coalition governments in Belgium, Italy, and the Netherlands confirms that most of the policy priorities that are contained in coalition agreements are subsequently adopted as official government policy. This suggests that coalition agreements can be effective in encouraging political parties and interests to work together to fulfill the agenda of the coalition government (See Mansergh, L & Thomson R 'Election Pledges, Party Competition and Policymaking' *Comparative Politics* (2007) 39(3) 311-329; Costello, R & Thomson, R 'Election Pledges and Their Enactment in Coalition Agreements: A Comparative Analysis of Ireland' *Journal of Elections, Public Opinion and Parties* (2008) 18(3) 239-256).

In practice, coalition agreements in South African municipalities often did not result in the smooth functioning of coalition governments in municipalities. The problem has been that coalition agreements -

- are often vague;
- often do not translate into a programme for the incoming government;
- are usually not tailored to the needs of that municipality and its community;
- are often subsequently undermined by coalition parties in practice; and
- are not public.

These problems are often the result of an ineffective, rushed and incomplete coalition formation.

3.3 How should the negotiation process be structured?

Coalition negotiations generally consist of two rounds of negotiations.

In the first round, political parties and independent councillors (where applicable) must seek potential coalition parties. During this round, the discussions are aimed at determining whether the parties can find common ground, based on their political programmes as reflected in the party manifestos, and as expressed during the campaign. Could they potentially live with each other in a coalition?

Sometimes, party leaders have already firmly expressed themselves, usually during the election campaign, that they are open to coalitions with specific parties, or that they definitely 'rule out' a coalition with specific parties. These political directives are of course important, but they do not (legally) restrict a party from exploring any coalition.

This process requires that the parties further reflect on these aspects and carefully explore what concessions and compromises would be necessary to secure the cooperation of a coalition partner. If the parties cannot 'find each other', the process ends and must start afresh with other political parties and/or independent councillors.

In cases where there are no other coalition formation alternatives, the parties will have no other option but to continue to attempt to negotiate. Another option would be to establish a minority government. This will require that the party or parties of the minority coalition negotiate with opposition parties to establish the conditions for support on specific matters such as the election of office-bearers, and/or the adoption of a budget.

If the coalition partners are satisfied that there is sufficient common ground to proceed with more specific talks, they will proceed to the second round of negotiations. This round is aimed at -

- agreeing on a policy programme;
- distributing the political positions to cement the coalition; and
- designing the mechanisms to facilitate cooperation and dispute resolution.

3.4 Who may initiate coalition negotiations?

There is very little clarity on what is practically 'supposed to' happen when coalition negotiations are necessary. This causes delays in coalition talks and impacts the (little) time that is available. The absence of policy guidance raises the following questions:

- Should political parties or independent candidates **wait for an invitation** to coalition talks, or can they approach a party or candidate first?

- Can **any** of the parties and independent councillors approach each other, or is there a **particular order** that must be followed?
- **Who** must initiate coalition talks?

In countries like the Netherlands, Sweden, Belgium and Canada, the party who won the most votes in the elections generally takes the lead to initiate coalition talks with other political parties and interests. The underlying purpose of this rule is to ensure that the biggest party will be part of any initial coalition talks, and is thus most likely to become a key player in any subsequent coalition government, even though it did not receive the majority of the votes. It is only when the initial negotiations fail, that other parties take the lead. In the case of a kingmaker scenario, this suggests that both larger political parties will have an opportunity to negotiate with a kingmaker.

This principle of expecting the largest party to initially take the lead, corresponds with democracy. After all, it follows the wishes of the voters who expressed the most confidence in the largest party to be in government. Of course, there is no guarantee or 'right' of the largest party to be in government. However, it is democratically legitimate to ensure that the largest party is included in the first discussions about the formation of a coalition government. In practice, it is also often difficult to have coalition discussions without the largest political party because its share of votes is often essential for a majority.

The freedom of political parties and independent councillors to negotiate must not be unduly constrained by forcing them to enter coalition talks with parties or councillors that they are not interested in. However, coalition formation must be guided by the wishes of the electorate. This can be achieved by requiring the largest party or interest to initiate coalition talks with other parties, and for other parties and interests to 'wait for their turn'.

3.5 Transparency in the first round?

It goes without saying that coalition negotiations cannot be conducted in the public domain. The issues are politically sensitive. No party or councillor wants to 'show his or her hand' in public, and thus allow other parties or councillors to derive political benefit

from that. More specifically, no party or councillor wants to compromise any future coalition talks with other parties or councillors, should this one fail.

However, the Constitution vests the public with a right to know how elected representatives use the mandate that the voters have entrusted them with. In local government there are specific constitutional demands on local politicians to promote transparency and encourage citizen participation. Because the electoral system envisages the possibility of coalitions, a vote for a party or independent councillor is also a vote for that party or councillor's approach to coalitions. It follows that voters have a right to know how the party or councillor they voted for, behaves in the arena of coalitions.

So while the negotiations are a private matter between the parties and councillors, it is 'constitutionally appropriate' for parties and councillors to keep the voters informed of basic information, such as with whom they have entered into coalition talks, and to explain why they have, or have not entered into a coalition with certain parties or councillors.

3.6 Political parties must consider local input into the negotiations

Generally, coalition negotiations in municipalities have been driven by national and/or regional party leaders. This does not apply to local parties or independent candidates who don't 'account' to regional or national structures. However, most often, national or regional party leaders conduct coalition negotiations on behalf of the political party at municipal level. Local actors may end up playing a minimal role.

National or regional involvement in coalition negotiations is understandable because political parties have party-wide preferences and policy positions on coalitions. However, if party leaders negotiate without local input, it reduces the effectiveness of the local bargaining process. This is because national or regional leaders are not always able to bargain effectively with respect to the government programme for a specific municipality. What are the specific challenges in that municipality? What are the needs, aspiration of the community in that municipality? What are the specific local dynamics that will make a

coalition successful or not? See para 3.8 for more guidance the balancing act between regional/national issues and local issues in the coalition agreement.

In practice, the absence of local input into coalition negotiations has translated into coalition agreements that do not contain local coalition programmes that are tailored to the challenges of that specific municipality. Once the party leaders 'leave the scene' after the coalition has been agreed to, local parties and councillors then have to go into government without a clear understanding of what their collective mandate is for that specific municipality.

This increases the likelihood of *ad hoc* decision-making by the municipal executive. The municipal executive must resolve issues that were not foreseen by the national or regional party leadership, and thus not negotiated between the coalition parties in the bargaining phase. Evidence suggests that coalition parties are more inclined to cooperate with respect to commitments that were made in a coalition agreement. In cases where commitments are not clearly outlined in a coalition agreement, parties are more likely to retreat to their individual preferences, making the coalition more unpredictable and likely to fail.

This can be avoided if political parties include local actors, i.e. councillors elected in that specific municipality, in the negotiations, for example by including them in the negotiation team. Their input must be carefully considered. This will ensure that subsequent commitments reached by the coalition parties are specific to the needs of the municipality.

3.7 'Agree to disagree' in a coalition agreement?

The main aim of coalition agreements is to reflect the points of agreement among the coalition partners as reflected in the negotiated settlement. However, coalition agreements may also be used to include priority areas that are important to the coalition partners, but that remain contested between them. This demonstrates to the public that the negotiation process was informed by discussions on policy priorities that divide the coalition partners but that they have arrived at an agreement that is sufficient to bring together a coalition. Areas of contestation remain, and the agreement then clearly states

where each political party stands on those contentious matters. This is a sign of mature politics, and sets the boundaries for the extent to which coalition partners will compromise in order to be in a coalition. This may also bring more stability to the coalition because it demonstrates to the public, and other political parties that the coalition partners are not in conflict, but still 'agree to disagree' on specific matters.

3.8 Including national and regional matters in a local coalition agreement?

In identifying topics for inclusion in the coalition agreement, it is important that political parties also take cognisance of the political environment within which they are bargaining. This means that coalition partners may also decide to include topics of high relevance for the public at the time of writing the coalition agreement even if these topics are not attainable at the local level. In this case, the coalition parties may also include their stance in relation to matters that fall within the competency areas of the national and provincial government. This is not to suggest that the coalition partners are committing to resolving those matters but the coalition agreement then serves a symbolic function to illustrate to the public where the coalition stands on those matters. It would otherwise be inappropriate for coalition parties to further negotiate about matters that fall within the legislative competence of the national and/or provincial government. Coalition partners therefore refrain from including policy priorities in their coalition agreement that they cannot fulfil due to the lack of legislative competence.

It will be explained later (para 3.11) that the policy programme on a coalition agreement must deal with matters within the mandate of local government. This restriction does not apply to the areas where the coalition partners 'agree to disagree'. It is perfectly acceptable, and perhaps even useful, to spell out on which national or provincial issues the coalition partners 'agree to disagree'. This explains to the public that the coalition partners may disagree vehemently on, for argument's sake, matters of foreign policy, but that they have found sufficient consensus around service delivery priorities in the municipality.

3.9 Political parties must consult internally on coalition negotiations

The negotiations must be aimed at establishing conditions for lasting cooperation. In the case of regional or national parties, the dynamics within the broader party can have a direct impact on a coalition in a specific municipality. For this reason, the negotiation process must be informed by the inputs of the rest of the party, i.e. members other than the party leaders. Political parties should enter the negotiation process, armed with priority policy positions that emanate from their internal party structures. Furthermore, the negotiators should have a clear mandate from their party, but be required to consult with other members of their political party to motivate why a compromise may be favourable in the circumstances. It is thus important that party leaders also consult and share information with their party members while negotiations are ongoing. This will make the outcome more sustainable. Of course, this does not apply to local parties or to independent councillors.

3.10 Coalition partners must develop a policy programme

Coalition negotiations must be aimed at a coalition agreement that represents a broad alignment of interests and, importantly, serves as an agenda for the incoming coalition government. This is achieved by including a policy programme. The policy programme must set out the objectives that the coalition wants to achieve in that municipality over the five-year council term. The coalition agreement cannot just be about the distribution of political positions. It must also detail the policy programme that the coalition will adopt in response to the challenges in the municipality, such as challenges in water, sanitation, health, electricity, housing, roads, child care services etc. Furthermore, it must respond to governance challenges in the municipality which could relate to how the coalition intends to combat corruption, how it intends to address weaknesses in financial management, improve staff recruitment processes etc.

Importantly, if the coalition includes a policy programme in the coalition agreement, this can be the starting point for that municipality's integrated development plan (IDP) and

budget (see para 4.5). This will ensure that the policy programme agreed to by the coalition partners, is ultimately translated into municipal decisions).

3.11 'Wise pragmatism' in formulating joint policy positions

In developing incentives for cooperation, political parties should avoid agreeing to policy positions or cooperation conditions that are certain to give rise to conflict in the future or that are not implementable. The negotiating parties must instead be pragmatic, and aim to adopt policy commitments that are implementable, and are more likely to pass without conflict. This means that parties should consider the following:

- **Is the policy commitment realistically attainable within the mandate of the municipality?** For example, it is not realistic to insist on a policy commitment to increase social grants, to improve higher education or to change the boundaries of the municipality. These are not matters within the mandate of the municipality. It is important to focus the policy programme on matters that are within the municipality's control.
- **Is the policy commitment one that all coalition parties are inclined to support, or is it certain to cause conflict?** For example, if a coalition partner insists that the other partner must endorse its political ideology, it is likely to cause conflict. Similarly, if a coalition partner insists that the other partner must express itself on matters that have always kept the two parties apart, it is likely to cause conflict. See para 3.7 above about allowing the coalition agreement to express areas where the coalition partners 'agree to disagree'.
- **Is the policy commitment feasible and financially attainable?** For example, it is not realistic to agree on a policy commitment that will surely bankrupt the municipality, or that will require technical solutions or expertise that are outside of the municipality's reach.

3.12 Seeking the advice of the municipal manager

In determining whether the proposed policy commitments are indeed implementable, it may be useful to seek advice from the municipal manager on the municipal administration's capacity to implement the policy proposals in the municipality.

The existing municipal manager's employment contract may not extend beyond one year after the general election, and the incoming council will inevitably have to decide whether or not to renew the municipal manager's contract. However, the municipal manager's employment contract is certainly not terminated by the election. In fact, the municipal manager is crucial in facilitating the transition to the new council, and must ensure that the work of the municipal administration continues without disruption. He or she is the primary liaison between politics and the administration in the municipality. This may also extend to a technical advisory role to potential coalition partners. It is very important, however, that the municipal manager's role is limited to technical advice, pertaining to issues such as the legal, technical and financial feasibility of proposals of the coalition partners. The municipal manager may not be involved in the political negotiations.

3.13 Each coalition partner must be visible in the policy programme

For a coalition to be successful, the coalition programme must reflect electoral policy commitments of all the coalition partners. It is not the coalition programme of the biggest party in the coalition. Ultimately, the negotiation process must be used to increase the probability for cooperation in the coalition of all the partners. Political parties must negotiate in a manner that enables each coalition party to derive long-term benefit. Each partner must be encouraged, throughout the life cycle of the coalition, to continue cooperating even when there is no or little short-term benefit from their cooperation in the coalition.

This can be achieved by including one or more electoral policy priorities of each coalition party in the coalition agreement. In other words, each coalition partner must be visible in

the coalition. Each coalition partner must be able to claim victories, other than having seats on the municipal executive. This is important because it is policy victories, rather than having had full-time seats, that will convince voters to 'reward' those parties for their participation in the coalition at the next election.

For example, if a party campaigned strongly on the environment and is a potential coalition partner, the coalition will benefit from including a policy commitment that reflects that party's commitment to the environment (such as, for argument's sake, a commitment to the rollout of recycling to all communities). Similarly, if a party campaigned strongly on improving road infrastructure in the municipality, the coalition will be more sustainable if that aspect is given specific attention in the coalition agreement.

This creates a constant incentive for coalition partners to cooperate in the coalition. It enables each partner to be visible in the coalition, so that it can account for its performance to its constituents and be 'rewarded' at the next election.

3.14 Distribution of political positions

The institutional arrangements of a coalition government shape the incentives for cooperation in a coalition. An important part of this is the distribution of political positions. During the bargaining process, coalition parties must consider how political offices will be distributed in the coalition. Importantly, the distribution of political positions in the coalition must also be equally informed by the underlying principle to consider the knowledge, skills and experience of the individual to ascertain whether he or she will be capable to effectively discharge his or her governance role and responsibilities.

The political offices that can be distributed in the coalition are set out below. Importantly, councillors who are appointed to these positions become political office-bearers. Generally, they can be designated by the council as full-time councillors under section 18(4) of the Structures Act and the National Policy Framework for the Designation of Full-Time Councillors. The actual designation of full-time status depends on a decision of the municipal council, in line with the determination of the MEC.

Speaker: The speaker presides over council meetings but also has further responsibilities set out in the Municipal Structures Act. Importantly, in the event of an equality of votes on a matter before the council, the speaker may often (not always) cast an additional vote. Therefore, in a scenario of a bare majority coalition with a tight margin, the position of the speaker is crucial. Furthermore, the speaker decides when and where the council meets. The speaker is elected in accordance with Schedule 3 of the Municipal Structures Act (see para 3.15). This must take place within 14 days after the declaration of the election results (in the case of general elections) or when necessary to fill a vacancy.

Council whip: It is not compulsory for the municipal council to elect a council whip, but it may do so at its first sitting after a general election, or when necessary to fill a vacancy. The council whip is elected in accordance with Schedule 3 of the Structures Act (see para 3.15).

Mayor (in an executive committee system): The mayor presides over the executive committee and has the functions and powers determined by the council in its delegations to the mayor. The mayor is elected in accordance with Schedule 3 of the Municipal Structures Act. This must take place within 14 days after the declaration of the election results (in the case of general election) or when necessary to fill a vacancy.

Deputy Mayor (in an executive committee system): with the prior approval of the MEC for local government, a municipal council may elect another member of the executive committee as the deputy mayor. The deputy mayor is elected in accordance with Schedule 3 of the Municipal Structures Act.

Executive Mayor (in an executive mayor system): The executive mayor performs the executive functions of the municipality, as determined by the delegations in its delegations to the executive mayor. He or she also is assisted by a mayor committee. The executive mayor is elected in accordance with Schedule 3 of the Municipal Structures Act (see para 3.15). This must take place within 14 days after the declaration of the election results (in the case of general election) or when necessary to fill a vacancy.

Deputy Executive Mayor (in an executive mayor system): with the prior approval of the MEC for local government, a municipal council may elect a deputy executive deputy mayor. The deputy executive mayor is elected in accordance with Schedule 3 of the Municipal Structures Act (see para 3.15).

Members of the executive committee (in an executive committee system): see para 3.14-3.16 below.

Members of the mayoral committee (in an executive committee system): see para 3.14-3.16 above.

Chairperson of section 79 committees: a section 79 committee is a committee of councillors, chaired by a councillor who is not a member of the municipal executive. Generally, the municipality has discretion to decide on the number and mandate of section 79 committees (except for the Municipal Public Accounts Committee, see below). Not all municipalities have section 79 committees for all portfolios. The municipal council appoints the members to these committees and also appoints the chairperson. The chairperson may be designated as a full-time councillor. These positions may be 'allocated' to a coalition partner, as part of the coalition negotiations and may thus serve as additional incentives to secure the cooperation of coalition partners. It reports to the council (not to the municipal executive). Because it is chaired by a 'non-executive' councillor and reports directly to the council, a section 79 committee is best suited for oversight.

Chairperson of Municipal Public Accounts Committee (MPAC): As stated earlier, the municipality decides on the number and mandate of its section 79 committees. However, one section 79 committee is compulsory, namely the Municipal Public Accounts Committee. Section 79A of the Structures Amendment Act makes it compulsory to establish a Municipal Public Accounts Committee (MPACs). The MPAC is the municipality's main internal political oversight body. Its role is set out in section 79A of the Municipal Structures Act and focuses on exercising oversight over the municipality's finances. Members of the municipal executive may not be members of the MPAC. In this way, it establishes a separation of powers between the executive and the council.

The Chairperson of the MPAC may be a full-time office-bearer. This position may be 'allocated' to a coalition partner, as part of the coalition negotiations. However, it is better for good governance and transparency if the Chairperson of the MPAC is not a member of the ruling party or the ruling coalition. It is encouraged for the MPAC to be chaired by a councillor who is not in the ruling coalition. This will ensure that opposition parties exercise oversight over the coalition and hold the coalition to account. This is, for example, also the practice in the National Assembly. Therefore, coalition partners must be reluctant to allocate the chairperson of MPAC to one of 'their own', and rather consider allowing a member of the opposition to occupy that position.

Chairperson of subcouncils (in a metropolitan municipality): this only applies to metropolitan municipalities that have decided to use subcouncils (see para 3.14). The procedure for the election of a chairperson in a subcouncil may vary between municipalities and is determined by that metropolitan municipality's subcouncil by-law. The subcouncil itself elects one of its members to be the chairperson of that subcouncil. The Chairperson of the subcouncil may be a full-time office-bearer. These positions may be 'allocated' to a coalition partner, as part of the coalition negotiations. Whether or not the coalition can actually rally the necessary votes to ensure a coalition partner becomes chairperson, will depend on the exact composition of the subcouncil and thus be harder to predict during coalition negotiations. This composition is determined in terms of section 63 of the Municipal Structures. Essentially, the subcouncil comprises the ward councillors plus an additional contingent of PR councillors.

3.15 How are political office-bearers elected?

Schedule 3 of the Municipal Structures Act prescribes specific voting procedures for electing the following office-bearers:

- speaker
- executive mayor (in an executive mayor system)
- deputy executive mayor (in an executive mayor system)
- council whip

- mayor (in an executive committee system)
- deputy mayor (in an executive committee system)

The election procedure set out in Schedule 3 includes procedures that determine how councillors should be nominated, the mechanism for decision-making and what happens in the case of a deadlock in which no decision can be reached. Distributing seats in the municipal executive

How the distribution of seats in the municipality works, depends on whether the municipality has an **executive mayor** or **executive committee** system.

This is not a municipal decision, it was determined by the MEC for local government in the municipality's so-called 'section 12 notice', issued in terms of section 12 of the Municipal Structures Act. Any changes to a section notice must be preceded by consultation between the MEC, organised local government and the affected municipality and published in the *Provincial Gazette*. The main differences between these two systems are set out below.

Where executive power is located	
Executive mayor	Executive committee
Executive functions vest in the executive mayor.	The municipality's executive functions vest in the executive committee. The committee, as a collective, takes executive decisions
Regardless of which executive system applies in a municipality, the coalition parties must adopt a consensus approach to executive decision-making. Even if a coalition is established in a municipality with an executive mayor system, that executive mayor will still be required to regularly consult the coalition partners and other members of the mayoral committee before he or she takes a decision	

Who appoints or elects the (executive) mayor	
Executive mayor	Executive committee

Both the executive mayor and the mayor (in an executive committee system) are elected in the same way, namely according to the procedure set out in Schedule 3 of the Municipal Structures Act. Essentially it is by ordinary majority vote.

How is the political composition of the municipal executive decided?	
Executive mayor	Executive committee
<p>The members of the mayoral committee are appointed by the executive mayor. The mayoral committee is a committee that assists the executive mayor. The executive mayor has discretion to appoint councillors to the mayoral committee. He or she may, but does not have to, include members of the opposition.</p> <p>This means that all mayoral committee seats can be used for members of the coalition government.</p>	<p>Members of the executive committee are appointed by the council. One of them is elected as the mayor (see above).</p> <p>Section 160 (8) of the Constitution prescribes 'fair representation' for all parties and interests in all committees of the council. (This section does not apply to the mayoral committee but it does apply to the executive committee.)</p> <p>The mayor does not appoint the members of the executive committee. The political composition of the executive committee is determined by a formula (in s 43 of the Municipal Structures Act). This formula ensures that the executive committee 'mirrors' the municipal council.</p> <p>To a large extent, the law thus 'pre-determines' the political composition of the executive committee. An important consequence for a coalition is this: the coalition may not be entitled to all the seats of the executive committee. The formula may result in opposition parties also having seats on the executive committee.</p> <p>Another consequence, in a coalition context is this: the smallest coalition partners may not automatically qualify for a seat on the executive if their share of the votes is insufficient. This could become a stumbling block if the smaller party (or independent councillor) insists on</p>

	<p>representation on the municipal executive. The law provides a way out: it is permissible for a party that is represented on the executive committee to 'donate' one or more of its seats to another party. This could be made part of a coalition agreement. However, it may not be at the expense of the representation that the opposition is entitled to according to the formula.</p> <p>The limits on the discretion to decide on the political composition of executive committee does not detract from the fact that -</p> <ul style="list-style-type: none"> • the election of the mayor, from among the members of the executive committee, is done by majority vote. The coalition can therefore agree on who becomes the mayor. But it may have to 'tolerate' opposition councillors on the executive committee that the mayor presides over. •
<p>Coalition partners decide unilaterally which councillor fills its allocated seats on the municipal executive, be it a mayoral committee or an executive committee. They don't need permission from any party.</p>	

<p>Who decides on the names of the councillors to take up seats in the municipal executive?</p>	
<p>Executive Mayor</p>	<p>Executive Committee</p>
<p>In the executive mayor system, the decision is ultimately made by the executive mayor. He or she legally appoints the members of the mayoral committee.</p>	<p>Each party or interest with seats on the executive committee may unilaterally decide which councillor fills those seats. Legally, it does not need the approval of any other party, including coalition</p>

	<p>partners.</p> <p>The mayor has no decision making power or legal veto over who fills the other seats on the executive committee.</p>
<p>In both scenarios, it is crucial that coalition partners put forward councillors with the required knowledge, skills and experience to effectively discharge the governance role and responsibilities.</p> <p>Second, it is not wise to put forward councillors, knowing that they are particularly controversial or will certainly 'upset' coalition partners. Each coalition partner will have to balance the other party's right to determine its own internal affairs with the risk that a particular name will jeopardise the agreement.</p>	

Reporting lines	
Executive Mayor	Executive Committee
The mayoral committee is not a committee of the council. It does not report to the council but to the executive mayor.	The executive committee is a committee of the council and therefore reports to the council.

How are members of the executive removed from office?	
Executive Mayor	Executive Committee
The council may remove the executive mayor from office with a resolution supported by a simple majority, and passed in a duly constituted council meeting. The executive mayor and the council must be given prior notice of the intention to remove the executive mayor from office.	<p>The council may remove members of the executive committee (including the mayor) from office with a resolution supported by a simple majority, and passed in a duly constituted council meeting. The affected councillors and the council must be given prior notice of the intention to remove the mayor from office.</p> <p>The council has the power to remove</p>

<p>The council does not have the power to remove individual members of the mayoral committee. This is because they are appointed by the executive mayor. The council may remove the executive mayor (and thereby the entire mayoral committee, see below).</p>	<p>individual members of the executive committee by passing a motion of no-confidence in an individual member</p>

<p>What happens to the other members of the executive, when the (executive) mayor vacates office?</p>	
<p>Executive Mayor</p>	<p>Executive Committee</p>
<p>If the council removes the executive mayor from office, the entire mayoral committee dissolves.</p> <p>In a bare majority coalition context, this means the following: if any of the coalition partners vote with the opposition on a motion of no-confidence in the executive mayor, the entire mayoral committee must vacate office.</p>	<p>If the council removes the mayor from office, the executive committee remains in office.</p> <p>In a bare majority coalition context, this means the following: if any of the coalition partners vote with the opposition on a motion of no-confidence in (just) the mayor, the mayor must vacate office but the other members of the executive committee remain in office.</p>

3.16 How many seats on the executive for each coalition partner?

The question as to how the seats on the municipal executive are distributed between the coalition partners is an important issue in the coalition negotiation.

As explained above, in municipalities with an **executive committee**, the law already determines the political composition of the executive committee to a very large extent. Each coalition partner will receive a share of the seats on the executive committee that is proportional to their share of the seats in the municipal council. The same applies to those

parties and councillors that are not part of the coalition: the formula may allocate them seats on the executive committee. However, it is left open to the parties to determine *who* will fill those seats.

This formula does not apply to municipalities with an **executive mayor** system. The executive mayor (of course informed by the coalition agreement) has a free hand in deciding which councillors will serve on the mayoral committee. So what should the principle be? Are there any guidelines for the distribution of seats on the mayoral committee?

Research on coalition governments in countries where coalition governments are the norm shows that fairness in the allocation of executive seats is often achieved through applying ‘Gamson’s law’. According to Gamson’s law, “any participant will expect others to demand from a coalition a share of the payoff that is proportional to the amount of resources which they contribute to a coalition”. In other words, each coalition partner is allocated a share of the seats in the executive that is proportional to their share of the votes.

To ensure fairness in the allocation of seats on a mayoral committee, the coalition parties may adopt a similar approach to the one prescribed for executive committees, in other words: allocate seats proportionally to the size of the coalition partner in the council.

- It will often not be possible to achieve strict proportionality: the mayoral committee only has a limited number of seats. It may be necessary to include other incentives, particularly for smaller parties (see para 3.18).
- Furthermore, deviations from strict proportionality may be necessary to reward smaller parties with a seat, even in cases where their vote share does not automatically ‘qualify’ them for a seat on the executive.

3.17 Why portfolios matter

Members of mayoral committees and members of executive committees have significant power in their specific portfolio area. The precise extent depends on what powers the

municipal council delegates to individual members of the municipal executive. The municipality will have an existing system of delegation. However, it is legally compelled to review this after the elections.

In general, these office-bearers will have the authority to develop policies and prepare decisions for the entire executive, or for the council. Often they have delegated authority to make certain decisions themselves.

Studies on coalition governments in other countries suggest that a coalition partner attaches the most value to portfolio areas that relate to policy areas that are 'close to its heart'.

This may be an important principle to consider in the allocation of seats on the municipal executive to coalition partners. For example, a political party that has elevated public transport to a key priority in its manifesto, is likely to prefer the transport portfolio over, let's say, a corporate services portfolio. Similarly, a party or independent councillor with a strong emphasis on greening the local economy, will favour an environmental portfolio over a public safety portfolio. Lastly, a party that campaigns strongly on public safety, may prefer the law enforcement portfolio over a community services portfolio. In dividing the seats in the municipal executive, the coalition must try to include as many coalition parties as possible. At the same time, in appointing members of the executive, the mayor or the council must consider the importance of a particular portfolio area for that specific coalition partner by considering their party policy priorities in the coalition agreement. It is equally important that the councillor appointed to the municipal executive possess the necessary knowledge, skills and/or experience to effectively carry out his or her functions in the respective portfolio area.

3.18 Strategic allocation of offices

If the coalition adopts a strict proportionality approach in the division of seats on the municipal executive, it may result in smaller coalition partners not being represented on the executive. Political offices can be used as an alternative means to secure their

cooperation in the coalition government. Similarly, a combination of representation in the executive and other political offices can increase the incentive for that party to cooperate. This ensures that each coalition party derives the maximum possible benefit from cooperating in the coalition, and reduces the chances of one or more party (or independent councillor) defecting from the coalition.

Coalition parties must be strategic and maintain a long term view when distributing political offices. For example, the position of speaker, mayor and deputy mayor should generally be reserved for the largest coalition partners (see also para 3.21). Other positions, such as the chairperson of section 79 committees, if applicable, could be allocated to smaller coalition partners who do not have seats in the executive.

The internal composition of section 79 and section 80 committees, i.e. the question who serves as a member on the committee, may also assist in giving expression to the coalition. The coalition parties may agree to distribute their councillors across the various committees in a manner that ensures that the coalition is adequately represented on each committee. This will enable the coalition to monitor the activities of the executive and to hold it accountable from within the coalition. This assists the various coalition partners to monitor governance and administration across the various portfolios and know when decisions stray from what is agreed upon in the coalition.

3.19 Electing district representatives

Every local council must elect its representatives to the district council. 60% of the district council comprises of representatives of the local municipalities in the district. The number of district representatives that a local council may elect is pre-determined, on the basis of the number of registered voters in that local municipality. The election of representatives to the district must take place within 14 days of the declaration of the results of a general election. This is managed by the IEC. It is not a decision that is simply within the discretion of the majority of the council (i.e. a ruling coalition). **The local council (i.e. the ruling coalition) does therefore not decide the composition of the delegation to the district council. This is determined by the IEC.**

If the local council may send more than one representative, an election must be conducted. Each party or individual councillor may submit a list with candidates. These are not 'party lists'. They are lists of candidates, put together by a party, or by a councillor. The list may comprise candidates from one singly party, but it may also comprise candidates from multiple parties and/or independents. This is particularly relevant in the case of a coalition because **the coalition partners can put together a joint list for election to the district council**. It makes sense for a coalition at local municipality level to consolidate its power in the district council representation. District representatives are not remunerated separately but may receive compensation for expenses. The IEC determines who fills the seats on the district council reserved for the local municipality.

It is not uncommon for the local council to 'recall' one or more of its representatives to the district council. It may do so by ordinary council resolution. This could be the result of the collapse of a coalition. However, the vacancy that results from the council 'recalling' a district representative is **filled by the IEC**, not by the council. When a local representative to the district council vacates office, the IEC goes back to the candidates' list and declares elected whose name is at the top of the list. Before the IEC fills the vacancy, the party or candidate who submitted the list may change it (within 21 days) and thus determine who is next in line. Therefore, it is important for coalition partners to note this: **the person or party that submits the list to the IEC will always have the authority to decide who replaces any district representatives that are 'recalled' by the local council**. This applies even after the coalition has ended. It may therefore be wise to include a clause in the coalition agreement that spells out how this will be addressed, should the coalition terminate.

3.20 Negotiate staff appointments or procurement decisions?

Coalition partners may be tempted to include in their coalition talks issues related to staff appointments and procurement decisions. Who gets to appoint the municipal manager? How many staff members may be appointed by each coalition partner? Can we promise that certain municipal procurement decisions will favour a potential coalition partner, just to make sure that this partner joins the coalition? These types of negotiations are illegal.

It is not appropriate or lawful for any coalition talks to include discussions on staff appointments. Staff appointments are strictly regulated. Senior management appointments (the municipal manager and managers reporting to him or her) may be made by the council, but according to a strictly regulated process, and based on clear criteria. It is inappropriate and illegal for coalition partners to preempt that process by negotiating an outcome. The legally prescribed recruitment process must be followed and the appointment must meet the legally prescribed criteria. After the appointment, a report must be sent to the MEC for local government. The MEC must take action if the appointment was done illegally, and this may result in the appointment being set aside by a court.

Other staff appointments are decided by the municipal manager (or an official with delegated authority) in terms of the Labour Relations Act and the applicable collective agreement. Councillors may not concern themselves with making those appointments in any event.

The Code of Conduct for Councillors provides that “a councillor may not, except as provided by law, interfere in the management or administration of any department of the municipal council unless mandated by council”. Coalition talks about staff appointments amount to encouraging or participating in illegal conduct that contributes to maladministration in the council. It is therefore prohibited under Item 12 of the Code of Conduct for Councillors.

Similarly, political parties are not permitted to negotiate about procurement processes in municipalities. Procurement decisions are made in the administration by the relevant structures and officials, designated in terms of the Supply Chain Management Policy and the municipality’s system of delegations. Councillors may not concern themselves with making procurement decisions. Section 117 of the Municipal Finance Management Act (MFMA) expressly bars councillors from serving as members on municipal bid committees or any other committee responsible for evaluating or approving tenders, contracts or other bids. Councillors are not even permitted to attend any such meeting as observers. Section 118 of the MFMA also makes it clear that no person may interfere with

supply chain management or amend or tamper with any tenders, quotations, contracts or bids after their submission.

Therefore, coalition negotiations may not include matters pertaining to specific staff appointments and may not include matters pertaining to specific municipal procurement decisions.

The coalition may negotiate and agree on certain policy changes pertaining to human resources and/or the municipal procurement. For example, the coalition may want to change the extent to which the municipality will use consultants, or how the municipality seeks to use procurement to stimulate the local economy. Similarly, it could deal with a policy on how to effectively recruit staff, or a policy on staff wellbeing. However, all of this must remain strictly within the applicable laws and collective agreements. They may never extend to specific staff appointments or procurement decisions.

3.21 How to compensate kingmakers?

It has become common in local coalitions for kingmakers to claim the most powerful positions, such as the position of executive mayor or speaker. The party or independent councillor with the smallest number of seats in the coalition can drive a hard bargain and demand to be rewarded with the most prestigious political office. Oftentimes, the larger coalition partners have felt forced to agree. Almost without exception, these coalitions have failed.

Coalition negotiations are unpredictable, and there is no predetermined formula for success. However, the practice of rewarding kingmakers with the most powerful positions is undemocratic. This is why they very often fail. Rewarding the kingmaker with the most powerful position assumes that the voters intended for that party or councillor to be in charge of the municipal executive, or of the council. But the outcome of the elections was that the voters did not. Therefore, while it is not illegal and may work in exceptional circumstances, the practice of rewarding kingmakers with the most powerful position goes against what the voters intended.

This is not to say that kingmakers cannot be compensated for their willingness to join the coalition. The reality is that the kingmaker has a positional advantage in the coalition negotiations. Without the kingmaker, the coalition will not materialise. There is also a 'political risk' for the kingmaker: the kingmaker will be judged by the voters on his or her participation in the coalition. The kingmaker may have a limited say on decisions of the coalition (because of the smaller vote share) but will be held accountable for decisions of the coalition. So it is appropriate for the kingmaker to be 'overcompensated', i.e. become more powerful than the size of the representation on the council suggests.

However, coalition partners must be restrictive in *how* kingmakers are overcompensated. Instead of rewarding kingmakers with the most powerful political positions in the municipality, coalition negotiators must consider other types of 'compensation', such as awarding a kingmaker a seat in the executive, or the position as chairperson of a section 79 committee, where applicable.

3.22 Does size matter?

Most coalitions in local government have been bare-majority coalitions, or minority coalitions with additional *ad hoc* support from political parties external to the coalition. Many of them were unstable because there was no margin: if one partner pulls out, the coalition collapses.

Research on coalitions elsewhere suggests that 'grand coalitions' are generally more stable than 'bare-majority' coalitions. This is because of their size. Depending on the numbers, when one partner leaves the coalition, it does not necessarily mean the collapse of the coalition.

Therefore, coalition partners should consider including an additional political party or independent councillor in the coalition to increase its size and create 'margin'. With additional political parties or councillors on board, times of conflict between some of the coalition parties does not have to result in a collapse. Of course, adding a party or

councillor may often be impossible, given the numbers or given the diametrically opposing views. However, where possible, it should be considered.

3.23 How much time is there?

The deadline for concluding a coalition agreement depends on whether the need for a coalition arises after a general election, after a by-election or after the collapse of a coalition.

After a **general election**, the council must meet within 14 days after the declaration of the election results. The first council meeting is convened by the municipal manager, and the very first agenda item is likely to be the election of the speaker, followed by the election of other office-bearers. If there is a coalition agreement in place before the first meeting, the coalition partners will know whom to nominate for these positions, and they can exercise their votes to ensure that their preferred candidates are elected.

After a **by-election** or the **collapse of a coalition**, there is no statutory instruction to meet within a specific time period. However, the council has a schedule of meetings that applies and/or a special council meeting can be convened. A majority of councillors can also demand that a special council meeting be convened.

Importantly, the election of office-bearers must happen at a properly constituted council meeting. In other words, all the provisions in the council's rules of order must be followed, relating to the convening of the meeting, giving proper notice etc. A hastily convened, 'informal' meeting is not legally capable of electing office-bearers, even if there are sufficient councillors to form a quorum.

3.24 What to do when coalition negotiations take longer?

If there is no agreement before the meeting at which office-bearers are elected, the election of office-bearers is unpredictable, and will be determined by what happens in that first council meeting. This is democracy. However, it is not good for the municipality if office-bearers are elected and then shortly thereafter removed again. Therefore, it can be

appropriate to delay the convening of the council meeting so as to allow coalition talks to continue. However, there are important considerations to consider.

First, a majority of councillors may force the convening of a council meeting at the time set out in its request. If there is a petition, supported by a majority of councillors to convene a meeting, a meeting must be convened.

Second, after a general election, the law demands that the first meeting takes place within 14 days of the declaration of the election results. It is illegal for a council to wait longer than that. If it does happen that a council fails to meet within 14 days, this opens up the possibility of the MEC for local government intervening on the basis of section 139 of the Constitution. The precise type of intervention will depend on the seriousness of the situation. If coalition negotiations are ongoing, and there is a risk of failing to meet within 14 days, a practical solution may be for a meeting to be convened but then immediately 'adjourned' to buy more time for the coalition partners to conclude an agreement.

Third, even though there is no deadline for the convening of a council meeting after a by-election or the collapse of a coalition, the municipal council is required by law to meet at least every quarter. Furthermore, the municipality will have its own rules and order that stipulate the frequency of council meetings. Both these laws must be adhered to.

4 COALITION GOVERNANCE

4.1 Introduction

The coalition governance phase commences after the coalition partners have finalised negotiations, concluded an agreement, and established a coalition government by ensuring their office-bearers are elected/appointed into office by the council and or the executive mayor.

4.2 The coalition agreement

The conclusion of the negotiation stage must culminate in the conclusion of a coalition agreement. The coalition agreement reflects the outcome of the negotiation process on key matters including -

- the general **structure** of the coalition
- the **policy programme with policy priorities** agreed to by the coalition partners;
- **allocation of political positions**, i.e. political office-bearers;
- **decision-making and consultation procedures** within the coalition
- **dispute resolution** mechanisms; and
- **general rules** of coalition behaviour.

The coalition agreement cements the outcomes of the political negotiations and should serve to anticipate, and resolve conflict between the coalition partners.

4.3 Are coalition agreements legally enforceable?

When a coalition partner reneges on the agreement, by voting with the opposition, another political party or councillor could try to ask a court to force that party or councillor to abide by the coalition agreement. However, it is extremely unlikely that a court will interfere with the choice of a political party or councillor to vote in a particular way. This will only be different if the vote is in any event illegal. But then the basis of the court case

is the legality of the municipality's decision, not the failure to adhere to a coalition agreement. So it must be assumed that coalition agreements are not legally enforceable.

It is common practice in other countries with coalitions that coalition agreements are political settlements that cannot be enforced in a court of law. In an Israeli case, *Yosef Zersevsky v The Prime Minister* (1991) 45(i) P.D 749, a country with a long history of coalition governments, the Court cautioned against subjecting the coalition agreements to judicial review. The Court highlighted the danger of entertaining the matter such as the overloading of the judiciary, the politicisation of the courts and the ever-widening of the *locus standi* to approach a court. The Court concluded that coalition agreements are indeed binding upon the coalition partners but they were beyond the scope of judicial determination. The proper judge of such agreements is the public to whom political parties are accountable, as well as political parties. It is for this reason that it is important for coalition agreements to be public.

4.4 Coalition agreements must be public

The first order of business for the coalition partners, after the conclusion of the coalition agreement, must be to **publish** the coalition agreement. The publication of the coalition signals to the public that the coalition negotiations are concluded, and that a coalition is in place.

So far, in South Africa, coalition agreements have not been made public. This may be one of the reasons why coalitions are so unstable. This is because publishing coalition agreements -

- help to **formalise** the coalition;
- makes coalition governance more **transparent**, and more **accountable** to the public, meaning voters, communities, civil society but also the media and opposition parties in the council - this is what the Constitution demands of local government in section 152(1)(a) and (e) of the Constitution;
- enables **the public** to consult the agreement, and assess the choices made by the coalition on policy matters and the distribution of political offices; and
- enables the public to **hold the parties and councillors in the coalition accountable for promises** made in the coalition agreement;

Publishing the coalition agreement can work in favour of **coalition stability**. It is no secret that, in the past, coalition partners did not not hesitate to violate coalition agreements. The fact that there was no transparency surrounding coalition agreements made this easy: the public had no knowledge of the commitments made by the coalition partners so there was no fear of an electoral backlash when one of the partners opted out. However, if the public is aware of the contents of the coalition agreement, it will be more difficult for a coalition partner to violate the agreement. The public will know that this political party or councillor reneged on a commitment it signed. This can (but does not have to) be electorally damaging for that political party or councillor.

In Western European countries such as Finland, Belgium, Ireland and the Netherlands with a long tradition of coalitions, it is standard for coalition agreements to be public. The content of these agreements also receives broad media coverage. During the governance period, the media also reports on the success or failure of the coalition in fulfilling the policy priorities of the coalition agreement or coalition programme (Eichorst, J 'Explaining Variation in Coalition Agreements: The Electoral and Policy Motivations' (2014) 53 *European Journal of Political Research* at 100).

Ideally, the coalition agreement should be published before the council meeting, during which the coalition government is constituted (i.e. the election of office-bearers). This ensures that by the time the coalition begins its official business in the council, the key matters listed in paragraph 3.14 are resolved. If there is no agreement before the meeting at which office-bearers are elected, the election of office-bearers is unpredictable and will be determined by what happens in that first council meeting.

The existence and publication of a coalition agreement of course does not guarantee a stable coalition. Coalition bargaining continues throughout the life-cycle of the coalition. Issues will come up that were not anticipated in the coalition agreement, and they can give rise to conflict between the coalition partners.

The coalition agreement should prescribe decision-making procedures and dispute resolution mechanisms that help with the ongoing coalition bargaining and conflict resolution. This part of the framework is therefore concerned with these mechanisms that can be used during the coalition governance phase.

4.5 Following through on the coalition agreement

As explained earlier (see para 3.10), the coalition agreement must include a policy programme. It cannot only deal with the distribution of political positions. At the same time, a policy programme in a coalition agreement is not the same as a municipal policy, let alone a municipal budget or a municipal by-law. A municipality conducts its business by adopting a range of decisions: municipal policies on a wide variety of municipal issues, municipal by-laws, an annual budget, specific council resolutions etc. A policy programme in a coalition agreement has no legal status in the municipality; its content must be translated into municipal decisions for it to have effect. It will thus be the task of the office-bearers and other councillors, representing the coalition partners to follow through on the coalition agreement. In this respect, one of the most important processes to consider is the municipality's IDP.

- The IDP is a municipality's five-year strategic plan, which the municipality develops in consultation with its communities, and which is informed by the plans of 'the whole of government' in its municipal space.
- The IDP informs the municipality's annual budget.
- The budget, in turn, is implemented through the municipality's annual service delivery and budget implementation plan (SDBIP), adopted by the mayor. The SDBIP contains measurable objectives, indicators and targets that the council must hold the executive accountable to.
- Finally, the objectives, indicators and targets of the SDBIP form the basis for the performance agreements of the municipal manager and the senior managers reporting to him or her. This secures the cascading down of the IDP into the municipal administration.

After a general election, the existing IDP remains in force only until the incoming council adopts a new IDP. The council may adopt an entirely new IDP, or it may adopt the existing IDP, and carry that forward into its term of office. However, the law compels the municipality to revisit aspects of it. So it is fair to say that, in any event, the **municipality must revisit its IDP at the beginning of its term**. Even if a full review of the IDP is not

possible in the short time between the general elections and the adoption of the next budget, the council may review the IDP each year.

It is therefore important that the **coalition partners pursue a link between the policy programme in the coalition agreement and the municipality's IDP**. This does not mean that the policy programme of the coalition partners is a blueprint to be followed blindly in the IDP. After all, the IDP must be informed by the input of communities and by the plans of other government actors in the municipal space. However, if the coalition agreement does not find expression in that IDP, the commitments made in the coalition agreement will exist outside of this edifice of the municipality's strategic plan, and outside of its operationalisation into the municipal executive and administration.

4.6 The 'coalition caucus': consultation before decision

The coalition agreement must set out a mechanism for regular consultation between the coalition partners. Ideally, before a matter reaches the agenda of the municipal executive or the municipal council, the coalition partners should have reached agreement on it. In these consultations, the coalition partners must be represented by the key actors in the municipality's decision making structures, for example the mayor, deputy mayor, council whip and key members of the municipal executive.

Of course, the political office-bearers that belong to political parties may have to consult their party structures on certain matters, in order to obtain a party mandate. However, it is important that the negotiations in this 'coalition caucus' over specific agenda items are conducted by the municipality's political office-bearers themselves. They should not be conducted by party officials that are not office-bearers in the municipality. Otherwise, 'unelected' party officials become too involved in the daily running of the municipality. This blurs the line between party and state and will inevitably cause problems.

4.7 The role of the chief whip and party whips

The Municipal Structures Act permits a municipal council to elect a chief whip from among the councillors (see para 2 above). Section 41B of the Municipal Structures Act mandates the chief whip to exercise the following functions:

- liaise with different political parties to ensure representation in the council and council committees;
- maintain sound relations between various political parties;
- inform the whips of all parties on important matters on the council agenda;
- assist the speaker to count votes in the council meeting;
- facilitate interaction between the executive and legislative oversight structures in the municipality; and
- resolve disputes between the speaker, mayor or executive mayor or members of the mayoral committee.

These functions suggest that the chief whip, in collaboration with the party whips, can play an important role in ensuring stability in a coalition. An effective chief whip can -

- ensure that quorum requirements are met to ensure council business continues, and deadlocks are avoided;
- implement what is provided in the coalition agreement with regard to the distribution of councillors across section 79 and section 80 committees (see para 3.18); and
- help resolve disputes between coalition partners, particularly if disputes exist between office-bearers.

The party whips of coalition partners (at least those that are political parties), also play an important role in maintaining coalition stability. Of course, each councillor carries his or her own responsibility for voting in the council and council committees. However, once a coalition agreement has been concluded, the task of the party whip of a coalition partner is to ensure that the councillors of his or her party vote to implement the coalition agreement.

4.8 Conflicts during the coalition governance phase

If a conflict emerges concerning a matter that was settled in the negotiation process, it must be resolved in line with the coalition agreement. In other words, the coalition partners must do as they promised in the coalition agreement.

Conflicts on matters that were not foreseen in the coalition agreement must be resolved through dispute resolution mechanisms. That is why the coalition agreement must include dispute resolution arrangements.

4.9 Dispute resolution

Dispute resolution arrangements can take many forms and coalition partners are of course free to decide on a structure or mechanism that works best for their context.

It may be advisable to provide for a dispute resolution committee in the coalition agreement. The dispute resolution committee can comprise senior (national or provincial) leaders of the parties involved in the coalition. Its main function will then be to resolve those disputes, which the coalition partners are unable to resolve themselves at local level.

Para 3.6 addressed the balance between a political party's national/regional involvement in coalition bargaining, and allowing local actors to make input and manage the actual coalition. That principle is also applicable here. When conflicts arise, the first resort must be for the major role players in the coalition to attempt to resolve it at their, municipal, level. Only if this fails, should it be escalated up to dispute resolution structures that involve regional or national party officials.

4.10 Oversight within the coalition

It is important that the coalition partners monitor the implementation of the coalition agreement on an ongoing basis. This is to avoid so-called 'coalition agreement drifting', where the coalition government strays too far from the coalition agreement.

4.11 Using committees for oversight within the coalition

As explained earlier, the municipal council may establish committees. In fact, committees are the engine of the council. They are obviously smaller in size, generally more frequent, focus on specific (combinations of) portfolios and provide much greater opportunity for engagement than the council meeting. They are a critical tool for coalition partners to monitor the implementation of the compromises struck in the coalition agreement.

Section 80 committees are chaired by members of the municipal executive and report to the executive. Section 79 committees report directly to the council and are chaired by councillors that are not members of the municipal executive. Section 79 committees are generally well-suited for oversight over the municipal executive and the administration. They are also often used for broader council matters, such as ethics (enforcement of the Code of Conduct for Councillors). One so-called section 79 committee is compulsory for every municipality, namely the Municipal Public Accounts Committee (see para 2). The chairpersons of these committees are appointed by the council and the council must determine the functions and powers of these committees in its delegations.

All committees, in one way or another, play a role in overseeing whether the municipal executive and the administration are delivering services in line with the IDP, budget, service delivery budget implementation plan (SDBIP) and other policies and decisions of the council.

In the context of a coalition, the IDP and the budget will be an expression of the coalition agreement (see para 4.5). The coalition partners can thus use their representation on committees to monitor the implementation of the coalition agreement. This is important because it is not always possible for the leaders of the coalition partners to know everything that happens in the municipality. By the time that the issue reaches a member of the municipal executive, it could have traveled a long way in the council's committee system. It is also important to consider that matters for decision by the municipal executive or the council will often emanate from the administration and are likely to first serve in one

or other committee. The agendas of, and discussions in these committees are thus a critical thermometer of the state of implementation of the coalition agreement.

If a committee engages on a matter, and it suggests that the municipality is deviating from the coalition agreement, the coalition-aligned councillors on those committees can raise this early with their coalition partners. This will enable the coalition partners to engage early on in the process of decision making on that matter. It can help to avoid a scenario where one or more of the partners is confronted with a fait-accompli, or a major, public fall-out.

4.12 Using questions in the council and in committees

The rules and orders of the municipal council will permit councillors to pose written and/or verbal questions in council meetings. These questions are generally directed at members of the municipal executive. The same applies to committee meetings, even though these are often conducted more informally.

Coalition partners can use this mechanism to monitor the implementation of the coalition agreement. Non-executive members of the coalition may use these questions to solicit information from the relevant members of the municipal executive regarding its progress in the implementation of the coalition programme.