

REPORT

Hung Councils in South Africa: Law and Practice

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EXECUTIVE SUMMARY

Coalition politics across South Africa's municipalities have at most been turbulent. Coalition agreements, though being considered a crucial instrument to steer coalition politics in the right direction, have had limited impact to induce cooperation among coalition parties in municipalities. The instability associated with coalition governments in municipalities may cause stalemates in municipal councils and in turn place constraints on municipalities to deliver uninterrupted services to their communities.

To make coalition governments function smoothly, political parties in the coalition are required to cooperate to realise the objects of the coalition. Yet throughout the coalition life-cycle political parties are confronted with challenges that give rise to a conflict that may destabilise the coalition and contribute to its early termination. This paper shows that ideological and policy differences, scheduled elections, souring relationships between party leaders are among the main drivers of conflict in coalition governments. Resolving or minimising conflict in these instances may increase the likelihood that coalition parties will cooperate in the coalition government. Striving to limit conflict and induce cooperation among coalition parties may enable coalition parties to realise the value of coalition politics in South Africa's local government such as achieving stable multiparty governance, inclusion, policy stability and local economic development to name a few. The crucial question is therefore what mechanisms, conventions, rules and, if possible, law reform is needed to increase cooperation and manage conflict in the coalition government.

This paper shows that South Africa's local government executive-legislative relations accommodate coalitions by promoting cooperative behaviour in the council and among members of the executive and mayoral committee. The local government framework also responds with adequate sanctions such as the removal of a councillor from the council, motions of no confidence to remove executive committee members and the mayor and provincial interventions if the lack of cooperation hinders the coalition from executing their functions in the municipality. A limitation of the local government framework, however, is that it does not provide any guidelines on what should happen in the case of a hung council. This leaves parties with uncertainty concerning the following questions:

1. how will the negotiation process be structured?
2. who must initiate the negotiation process?
3. who will lead the negotiation?
4. what factors must parties consider in the negotiation process?
5. what should be covered in the coalition agreement?
6. should the coalition agreement be published?
7. when should a coalition agreement be published?
8. what areas should be covered in the coalition agreement?
9. how long many days do parties have to negotiate in the case of a by-election?

The legal framework that applies to coalitions in municipalities is silent on these aspects. This paper interrogates these questions and provides guidelines that may be useful to structure coalition governments in municipalities. Importantly, in the case of the local elections, political parties have approximately two weeks to negotiate a coalition government before the first council sitting. The

14-day timeframe may place too much pressure on political parties to establish a coalition government and may cause the coalition parties to overlook important issues to expedite the process. Conversely, in the case of a by-election, the parties may negotiate until such time that the Speaker convenes the first council meeting. This period is not fixed and may vary from time to time. Law reform may be advantageous to enable parties to negotiate effectively.

The paper also discusses the negotiation process in detail. In the first round of negotiations, this paper argues that to avoid or minimise conflict emanating from ideological heterogeneity, parties must aim to enter coalitions with political parties that have similar political ideologies. This is not to say that parties without similar political ideologies cannot govern in a coalition but they may be prompted to make more political compromises and abandon more policy goals than parties with similar ideological preferences. Secondly, the political parties must negotiate a policy programme that is informed by the policy goals of each coalition party as reflected in their election manifestos. During their campaigning, political parties also emphasise issues that they would address if they are voted into office. The paper stressed that parties attach more weight to the portfolio areas that will enable them to resolve the issues that they identified during their election campaign. Their portfolio preferences ought to be considered when chairpersonship positions for portfolio committees are distributed in the coalition which are key offices through which policy change can be affected. This strategy enables political parties in the coalition to remain responsive to their constituents whilst cooperating in the coalition government. However, to avoid instances of drifting from the terms and conditions of the coalition, parties who chair the various portfolios areas in the municipality are required to coordinate and consult with their respective coalition partners to ensure that decisions and draft policies accommodate, as far as possible, the collective preferences of the parties in the coalition. A formal mechanism that can be used to monitor the activities of the chairpersons in section 80 portfolio committees (who are members of the executive or mayoral committee) is section 79 committees through establishing a twinning strategy. That is, non-executive councillors in oversight committees should not be from the same political parties as those from the executive. This arrangement can be cemented in the coalition agreement which reflects the structure of the coalition and may be further developed in the terms of reference.

Finally, the negotiation stage must also be used to develop mechanisms for conflict resolution in the coalition to enable parties to resolve issues before they become public. The negotiation stage culminates in the coalition agreement which contains the bargains struck in the negotiation stage, the policy programme of the coalition, dispute resolution mechanisms and prescribes rules for the behaviour of the coalition parties. This paper argues that it is essential for the coalition agreement to be made public to enable local communities to participate in the affairs of the coalition beyond the elections. The coalition agreement must be published before or on the day of the first council sitting after the elections. Publishing the coalition agreement may also deter coalition parties from breaching its provisions to avoid painting a picture that they are behaving rebelliously in the coalition.

1. INTRODUCTION

In parliamentary democracies with proportional representation, it is common for no single political party to command a legislative majority in the elections. Proportional representation (PR) elections tend to produce ‘hung parliaments’ or ‘hung councils’, which refers to the instance where no single party holds a majority of the parliamentary or council seats and thus cannot constitute a government.¹ If an election does not produce an outright majority, the political parties have to decide between establishing a coalition or minority government, to ensure continued governance in the municipality. Coalitions assume many forms and may be defined as a loose confederation comprising of political parties united in allegiance.

While coalition politics have been a reality in South Africa since the country’s first national democratic elections in 1994, it is arguably the 2016 Local Government elections that paved the way for coalition governments to become common practice in the country. The local government elections of that year produced hung councils throughout the country, including the Western Cape. Some of the municipalities in the Western Cape region with hung councils include Beaufort West Local Municipality, Prince Albert Local Municipality, Nama Khoi Local Municipality, Laingsburg Local Municipality, and Kannaland Local Municipality.² Political parties in local government have become accustomed to the practices of single-party government, which continues to be the dominant form of government municipalities despite the increase in hung councils since 2016. However, the proliferation of coalition governments across South Africa’s municipalities meant that political parties were confronted with challenges that are unique to coalition politics. The legislative framework of local government also offers little to no guidance to politicians on how coalition governments ought to operate.

The rise of coalition politics in municipalities and the absence of direction in the legislative framework of local government arguably contributed to the instability of coalition governments not only in the Western Cape but across South Africa. In the City of Tshwane Metropolitan Municipality, for instance, instability in the coalition government made it difficult for the council to make decisions relating to the budget and the appointment of political office-bearers and the municipal manager

¹ Stewart J & Leach S *The Politics of Hung Authorities* (1992) 8.

² Kiewit L ‘Province’s rainmakers threaten DA’ available at <https://mg.co.za/article/2019-03-29-00-provinces-rainmakers-threaten-da/> (accessed 16 July 2020). See also Koyana X ‘KDF: Beaufort West coalition marks end of corruption’ available at <https://ewn.co.za/2016/08/12/KDF-Beaufort-West-coalition-marks-end-of-corruption> (accessed 16 July 2020).

which ultimately paralysed the administration and adversely affected service delivery.³ At the same time, the political environment within which coalitions operate also exacerbated, and in some cases gave rise to, the instability in coalition governments.

Five years later, the Independent Electoral Commission (IEC) has commenced with preparations for the local government elections which is scheduled to take within a few months. The purpose of this paper is to develop a framework that can facilitate stable coalition governance not only in the Western Cape but throughout South Africa's municipalities. This paper comprises three main themes. The first theme sets out the context within which coalition governments will be discussed, the various forms of coalition governments and elaborates on the value and challenges associated with coalition governments. The second theme discusses the institutional attributes of the electoral system that applies to municipalities as well as the legislative-executive arrangements of municipalities. The third theme discusses how cooperation may be improved in the coalition to make coalitions sustainable. The paper will conclude with recommendations to improve how coalition governments function in practice.

2. THE CONTEXT AND TYPOLOGY OF COALITION GOVERNMENT

2.1 THE CONTEXT: THE RATIONAL ACTOR'S CHOICE THEORY

This paper employs the rational actors' choice theory which regards the individuals of the various political parties in the coalition government as rational decision-makers. The rational choice theory aims to explain and predict the choices of the political actors in the coalition government.⁴ In general, rational behaviour is defined as behaviour that maximises one's personal interest or the interests of the political party that an individual (that is, a party representative) represents. In politics, rational behaviour follows the goal of setting policy, maximising the number of political offices occupied by the political party, and maximising their votes.⁵ The rational actor's theory assumes that individuals do not make decisions randomly but rather act as if they have some

³ *Democratic Alliance and Others v Premier for the Province of Gauteng and Others* (18577/2020) [2020] ZAGPPHC 119 (29 April 2020) at para 7; Mailovich C 'Joburg could be placed under administration after missed budget deadline' available at <https://www.businesslive.co.za/bd/national/2020-07-02-joburg-could-be-placed-under-administration-after-missed-budget-deadline/> (accessed 21 July 2020).

⁴ Laver M & Shepsle K *Making and Breaking Governments* (1996) 8.

⁵ Petracca M 'The Rational Choice Approach to Politics: A Challenge to Democratic Theory' (1991) 53(2) *The Review of Politics* 289.

agenda and that the decisions they make are directed at furthering this agenda.⁶ For this reason, this paper makes assumptions about the possible motivating factors that influence the choices of party representatives in the coalition. The rational actor's choice theory therefore constitutes a golden thread throughout this paper. In this paper, it is assumed that individuals' choices are motivated by policy preferences, office-seeking and to maximise their votes in subsequent elections.⁷

2.2 DEFINING COALITION GOVERNMENTS

Generally, a coalition comprises two or more political parties who form an alliance to cooperate and govern together as the ruling coalition government.⁸ Conversely, opposition political parties may also commit to joining forces in opposition to weaken the position of the ruling government. This is referred to as an opposition coalition. Coalitions are characterised as a loose confederation comprising political parties united in allegiance.

2.3 DISTINGUISHING BETWEEN COALITIONS OF DESIRE AND COALITIONS OF NECESSITY

Coalition governments can arise in one of two ways, either through desire or out of necessity.⁹ Coalitions by desire imply a pre-existing intention and agreement on the part of the various political parties to form a coalition with one another after the elections are held. Pre-electoral alliances among political parties may be indicative of a pre-existing intention among political parties to form a coalition after the elections. A pre-electoral coalition refers to the instance where political parties, before the elections, choose to coordinate their electoral strategies rather than run for office alone.¹⁰ This co-ordination can take many forms. For example, leaders of a political party proclaim their intention to enter a coalition if the parties secure seats in the local elections.¹¹ Coalitions that

⁶ Laver & Shepsle (2008) 8.

⁷ Khomenko V & Demianchuk O 'The Rational Choice Theory as the Explanation of Coalition Formation in Germany 2017-2018' (2018) 11 *European Studies* 165.

⁸ Klüver H & Spoon J 'Challenges to Multiparty Governments: How Governing in Coalitions Affects Coalition Parties Responsiveness to Voters' (2017) 23(6) *Party Politics* 794.

⁹ Golder S 'Pre-Electoral Coalition Formation in Parliamentary Democracies' (2006) 36(2) *British Journal of Political Science* 195.

¹⁰ Golder (2006) 195.

¹¹ Golder (2006) 195.

arise based on pre-electoral commitments are thus coalitions that arise by way of desire. An example of coalitions that come about as a result of desire is the government of national unity.¹²

Conversely, in coalitions of necessity, there is no pre-existing intention among the political parties to enter a coalition after the elections. The choice to enter a coalition arises where the elections do not produce an outright winner to govern. Forming a coalition (or minority) government in this instance thus becomes a necessity.

2.4 DIFFERENT TYPES OF COALITION GOVERNMENTS

Coalition formation can have several possible outcomes. Political parties may form any of the following coalition governments: majority coalition government, grand coalition, the government of national unity, and minority government. These forms of coalition governments will be discussed below.

2.4.1 Minimal-majority coalition government

Minimal-majority coalitions also called simple- or bare-majority coalitions (which is the focus of this paper) refer to a coalition where two or more parties come together to constitute a majority government. This means that the number of votes, taken together, must contain 50% + 1 of the total membership to create a bare-majority coalition government.¹³ While political parties form an allegiance to establish a majority government, they are minimal in the sense that they do not include any additional political parties in the coalition. The additional political parties are unnecessary to command a majority.¹⁴ For example, a coalition comprising three political parties that control a majority of 52 out of 100 in the municipal council (council) seats is a minimal-majority coalition government whilst the other 48 per cent make up the opposition parties in the council. The coalition is thus minimal because all three political parties are necessary to command a majority in the

¹² For a discussion on this form of coalition government see para 2.4.3 below.

¹³ Koehler D 'Legislative Coalition Formation: The Meaning of Minimal Winning Size With Uncertain Participation' (1975) 19(1) *American Journal of Political Science* 27.

¹⁴ Lijphart A 'Power-Sharing Versus Majority Rule: Patterns of Cabinet Formation in Twenty Democracies' (1981) 16(4) 397. 395-413.

council.¹⁵ Thus, should any of the political parties withdraw from the coalition, the coalition would be reduced from being a bare-majority coalition to becoming a minority government.¹⁶

Political parties in bare-majority coalitions make fewer trade-offs to establish the coalition than coalitions with a larger composition. The small number of political parties in bare-majority coalitions suggests that parties may be entitled to more political offices and portfolios that are available for distribution among the parties.¹⁷ On the other side of the coin, including more parties than is necessary to assume control over the municipality suggest that portfolios and office perks have to be divided among more political parties resulting in each party receiving fewer spoils. Further, bare-majority coalitions are prone to instability because stability and continued governance in the council are dependent on the cooperation of every political party in the coalition government. As will be seen below, their cooperation is necessary to pass budgets, make appointments and adopt motions that require the confidence of the majority in the council.¹⁸

Minimal-majority coalitions are arguably the most common form of coalition governments that are established in municipal councils across the Western Cape and the rest of South Africa. The 2016 Local Government elections, for example, produced a hung council in the Beaufort West municipality. The two largest political parties, namely the Democratic Alliance (DA) and the African National Congress (ANC) each obtained 6 seats in the council with the Karoo Democratic Force (KDF) receiving one seat.¹⁹ The tie between the ANC and the DA meant that the KDF would decide which political party would govern with them in the coalition. Consequently, the DA and the KDF entered a coalition.²⁰ Therefore, the power balance in the council was 7 to 6 in favour of the DA-KDF coalition. This coalition qualifies as a simple-majority coalition in that the coalition will be reduced to a minority government if one of the parties withdraw from the coalition. The ANC constituted the opposition in the council who may or may not form part of the executive, depending on the type of executive system of the municipality.

¹⁵ Lijphart (1981) 397.

¹⁶ See the para 2.4.4 below for further discussion on minority governments.

¹⁷ See para 4.3 below for further discussion relating to portfolio allocation and office distribution.

¹⁸ See para 3.2.1 below.

¹⁹ Independent Electoral Commission *Seat calculation detail: WC053- Beaufort West* (2016) 2.

²⁰ ENCA 'Small parties key to power in Western Cape hung councils' available at <https://www.enca.com/south-africa/small-parties-key-to-power-in-western-cape-hung-councils> (accessed 21 July 2020).

2.4.2 Grand coalition government

Unlike bare-majority coalitions, grand-coalitions (also referred to as oversized, surplus, or broad coalitions) comprise political parties above what is required to constitute a majority government.²¹ Consider the following example: Political parties A, B and C are in a coalition government with each party controlling 30 per cent, collectively amounting to 90 per cent of the seats in the council, and with the remaining 10 per cent of the seats belonging to independent candidates and smaller political parties. The coalition amounts to a grand coalition given that even if any one of the three parties to the coalition withdraws from the coalition, the remaining parties will control 60 out of 100 seats in the council. Thus, the majority status of the coalition will not be affected even if one of the political party's withdraw from the coalition. Grand coalitions are common in European countries such as Germany and the Netherlands. Germany had four grand coalition governments (1966-1969; 2005-2009; 2013-2017; 2018-current).²² Grand coalitions promote broad power-sharing among political elites.²³ In practice increasing the size of the coalition government makes the coalition less vulnerable to instability and defection.²⁴ Grand coalition governments thus promote stability, as stated by the German Chancellor, Angela Merkel, after the formation of the latest grand coalition in Germany, hailing the grand coalition as the foundation 'for a good and stable government'.²⁵ Grand coalition governments therefore offer a safety net for the parties to ensure continued governance in the council if conflict emerges between two or more parties in the coalition government.

The formation of grand coalition governments in the Western Cape municipalities and across South Africa is uncommon. Grand coalition governments connote a political will to govern together and not necessarily only to constitute a majority together as with simple-majority governments. While reasons for not forming grand coalitions are not clear, the absence of grand coalitions in South Africa's local government also illustrates that political parties generally prefer to govern alone and only enter coalitions out of necessity.

²¹ Carrubba C & Volden C 'The Formation of Oversized Coalitions in Parliamentary Democracies' (2004) 48(3) *American Journal of Political Science* 523.

²² Linhart (2020) 31; Hornung J, Rösenberg R, Bandelow N & Eckert F 'New Insights into Coalition Negotiations- The Case of German Government Formation' (2020) 36(3) *Summer Negotiation Journal* 333.

²³ Bolgherini S & Grotz F *Germany After the Grand Coalition: Governance and Politics in a Turbulent Environment* (2010) 3

²⁴ Serritzlew S, Skjaeveland A & Blom-Hansen J 'Explaining Oversized Coalitions: Empirical Evidence from Local Governments' (2008) 14(4) *Journal of Legislative Studies* 423.

²⁵ Chazan G 'Germany's parties reach grand coalition deal' available at <https://www.ft.com/content/7469ad50-0be3-11e8-8eb7-42f857ea9f09> (accessed 10 October 2020).

2.4.3 Government of national unity

The government of national unity (GNU), or all-party coalitions,²⁶ refers to a coalition that comprises all the major political parties operating on the national level of government.²⁷ While a GNU may qualify as a grand coalition because of its composition, it is different because GNUs are constituted for a particular purpose that is generally of national importance. GNUs are often negotiated in countries that experienced conflict in the recent past that led to sharp divisions along racial, ethnic, cultural, linguistic and religious lines. The rationale for forming a GNU in such cases is to promote power-sharing among various groups, promote and maintain peaceful relations, and ensure reconciliation across these divisions.²⁸ Another purpose for which GNUs are established is to respond to the internal or external crisis that confronts a country.

Before South Africa transitioned to a democracy, the country experienced conflict and violence stemming from apartheid which caused deep divisions among contending race groups. Following a negotiated settlement that was reached by the ANC and the National Party (NP) and later cemented in the Interim Constitution of the Republic of South Africa Act 200 of 1993 (Interim Constitution), it was decided that the first democratic government of South Africa would be a GNU.²⁹ According to clause 88 of the Interim Constitution, which provided for the establishment of the GNU, a party will be allowed to participate in the GNU provided that they obtained at least 20 seats in the National Assembly (equal to approximately 5 per cent of the national votes).³⁰ The ANC, NP and the IFP qualified to participate in the GNU cabinet while the other political parties were not able to garner sufficient votes to be part of the GNU. The main objectives of the GNU were to serve as an instrument to commence a process of nation-building, racial reconciliation and inclusivity in the national assembly while the country transitions from apartheid rule to democracy, as well as to oversee the implementation of the Constitution of the Republic of South Africa, 1996. Therefore, the GNU served as an important transitional device for the country to move away from autocratic governance to becoming a newly established democracy. Since the lapse of the GNU, South Africa

²⁶ Emerson P *From Majority Rule to Inclusive Politics* (2016) 17.

²⁷ Mapuva J 'Government of National Unity (GNU) as a Conflict Prevention Strategy: Case of Zimbabwe and Kenya' (2010) 12(6) *Journal of Sustainable Development in Africa* 1524.

²⁸ Samuels K 'Postwar Constitution building: opportunities and challenges' in Sisk T & Paris R *The Dilemmas of Statebuilding: Confronting the Contradictions of Postwar Peace Operations* (2009) 183.

²⁹ Southern N 'The Government of National Unity and the Demise of the National Party in Post-Settlement South Africa' (2015) 42(2) *Politikon* 244.

³⁰ Interim Constitution of the Republic of South Africa Act 200 of 1993, s 88(2).

has subsequently been governed through a single-party majority, namely the ANC, on the national level.

2.4.4 Minority government

Apart from entering a coalition government, if none of the political parties could secure an outright majority, the party who won the most seats in the council may also form a minority government in a hung council. A minority government refers to a government that is governed by one or more political parties that do not hold a majority of the seats in the council. However, a guiding principle of parliamentary democracy is that a political party or coalition may govern in the council on the basis that they can gain and maintain the confidence of the council.³¹ This means that prior to assuming office as a minority government, the mayoral candidate of the minority government (if applicable) first has to pass a majority vote of confidence in the council. Once the minority government is in operation it has to maintain the confidence of the council. This requires the parties to enter confidence supply agreements with opposition parties to support (or express their confidence in) the local budget, by-laws, or policies to command a sufficient legislative majority in the council. Conversely, if the minority government is unable to garner a legislative majority through support from the opposition then it is likely that the minority government may subsequently fail to pass important decisions in the council which can expose their mayor to a vote of no confidence. Minority governments' survival is thus dependent on their capacity to maintain relations with the opposition, to make concessions with opposition parties, and to refrain from making policy proposals that are unlikely to receive the support of the opposition.³² Minority governments are therefore regarded as informal coalition governments that rely on the support of a sufficient number of opposition political parties to realise their government agenda in the council. The supporting parties and the minority government may thus be said to have formed an informal legislative coalition.³³ The agreement to supply the minority government with confidence votes is usually

³¹ Pehl M 'The Debate on the Constructive Vote of No Confidence in India- Trading Accountability for Stability?' (2016) 49(1) *Law and Politics in Africa, Asia and Latin America* 17.

³² Klüver H & Zubek R 'Minority Governments and Legislative Reliability: Evidence from Denmark and Sweden' (2018) 24(6) *Party Politics* 722.

³³ A legislative coalition refers to an agreement between political parties where each party undertake to from time to time supply the parties in the agreement with confidence on policy proposals that they would like to have implemented in the council subject to conditions determined by the parties. See Pedersen H & Christiansen F 'Minority Coalition Governance in Denmark', Paper prepared for the 6th ECPR General Conference, 25-27 August 2011, 6.

cemented in a contract-like political instrument which also highlights the conditions for their support in the council.³⁴

Some of the municipalities in South Africa have been governed through minority governments. The minority government of the Nelson Mandela Bay municipality is a case in point. After the 2016 local elections, the DA stated that the party will work with the EFF on an issue-by-issue basis, with the EFF confirming that they will not enter into a coalition with the DA but only support the party subject to certain conditions.³⁵ Similarly, a minority government was established by the DA in the City of Johannesburg in 2016 where the EFF undertook to support the DA in electing their mayoral candidate, Herman Mashaba, into office.³⁶

2.5 THE VALUE AND PITFALLS WITH COALITION GOVERNMENTS

Coalition governments have significant value due to their inherent power-sharing nature. However, coalition governments are not free from challenges. This part of the chapter will provide an overview of the value and pitfalls associated with coalition governments.

2.5.1 What is the value of coalition governments?

The legislative-executive relations of South Africa's local government and the PRelectoral system that applies to local government suggests that the local government framework is embedded in a democratic system of semi-parliamentary democracy. To determine the value of coalition governments, it is necessary to establish to what extent a coalition government can realise the objectives of the democratic system of government within which it is operationalised.

³⁴ Pedersen & Christiansen (2009) 4.

³⁵ Feltham L 'Malema says the EFF won't form coalitions, but will support DA in hung metros' available at <https://mg.co.za/article/2016-08-17-malema-says-the-eff-wont-form-coalitions-but-will-support-da-in-hung-metros/> (accessed 22 July 2020). See also Ndeze B 'Maimane: DA has no formal coalition agreement with EFF' available at <https://ewn.co.za/2019/06/18/maimane-da-has-no-formal-coalition-agreement-with-eff> (accessed 22 July 2020).

³⁶ Macharia J 'Herman Mashaba elected Johannesburg mayor, marking the end of ANC rule in the city' available at <https://mg.co.za/article/2016-08-22-herman-mashaba-elected-johannesburg-mayor-marking-the-end-of-anc-rule-in-the-city/> (accessed 12 February 2021).

— 2.5.1.1 The objectives of the parliamentary democratic system of government

A dominant feature by which one can distinguish whether a particular structure resembles features of the parliamentary system of government is by ascertaining whether or not that structure promotes power-sharing. Parliamentary democratic systems of government require that governing powers are shared in the legislature (i.e through broad coalitions) and the executive.³⁷ Power-sharing in the executive implies that the powers of the mayor must be exercised in cooperation with other members of the executive.³⁸ Therefore, to give effect to such power-sharing arrangements, power cannot be concentrated in one person or one party as in presidential systems. The rationale for power-sharing in parliamentary systems is to promote inclusion and deliberation. This begs the question of whether South Africa's local government promotes inclusion and deliberation?

In South Africa's local government, the municipal council (council) comprises all the political parties who secured seats in the elections to participate in the affairs of local government. The council serves as a deliberative assembly in which all who may be affected by an issue may debate and discuss that issue, through their party representatives, from the widest variety of perspectives. The advantage of considering the perspectives as advanced by various political parties is that it provides the ruling party with information from representatives who represent their constituents. The requirement to debate an issue before a decision can be taken means that the ruling party is forced to grapple with the various views and tailor their decisions to accommodate the interests of the other political parties. In terms of the executive, the mayor who is the head of the executive must cooperate with members of the mayoral committee or executive committee to oversee the implementation of their coalition programme.³⁹ Are coalitions suited to meet the purposes of the parliamentary system of government?

³⁷ Sartori G *Comparative Constitutional Engineering: An Inquiry into Structures, Incentives and Outcomes* (1994) 102; Lijphart (2008) 142.

³⁸ See para 3.1 above.

³⁹ Whereas the Structures Act maintains collegiality between members of the executive committee, under the mayoral system, however, all executive functions are vested in the mayor. The mayor may appoint members in the mayoral committee to assist him or her in the execution of his or her executive functions by delegating certain functions to them. This suggests that there is power-sharing in both systems. It is only the reporting lines that alters and the source from which executive committee members and mayoral committee members receive their authority to exercise executive functions.

— 2.5.1.2 Coalitions promote power-sharing

In paragraph 2.2 above, it was mentioned that a coalition government arises where two or more political parties ally to cooperate and govern jointly as the ruling majority. As the majority is being controlled by several political parties, an automatic consequence of coalition governments is that power that comes with governing must be shared among the coalition partners. This means that no party in the coalition shall be permitted to make important decisions without the consent of the other political parties.⁴⁰ In this regard, coalition governments meet the end sought by parliamentarism which is to share power among political representatives. Successful power-sharing in coalition governments may serve the benefit of accommodating the party goals of the coalition parties, improve service delivery and may also minimise the outbreak of service delivery protests in the municipality. In this way, effective power-sharing among the parties in the coalition government may facilitate stability both internally and externally.

— 2.5.1.3 Coalitions promote inclusion and deliberation

The question of how decisions are taken is fundamental to establish whether a government is towards inclusion.⁴¹ In coalition governments, important decisions ought to be taken only with the consent of the parties in the coalition government. Such decisions are also preceded, as in parliamentary systems of government, by a deliberation process to benefit from the various perspectives of all the parties in the coalition government. These perspectives must be considered and, where necessary, compromises must be made in the coalition government to accommodate coalition partners. Failing to consider the views of the coalition partners and failing to include them when decisions are taken may give rise to tensions between the parties in the coalition. A coalition government is only possible if parties demonstrate an interest to work together. Effective joint coalition governance, in turn, is only possible through including all coalition parties in decision-making processes.

Against the backdrop of parliamentarism, it can thus be said that coalition governments are suited to meet the ends sought to be achieved in a parliamentary democratic system of government. This makes coalition governments valuable in parliamentary systems of government. Also, in some

⁴⁰ Schneckener U 'Making Power-Sharing Work: Lessons From Successes and Failures in Ethnic Conflict Regulation' (2002) 39(2) *Journal of Peace Research* 203.

⁴¹ Emerson P *Designing an All-Inclusive Democracy* (2007) 86.

cases, coalition governments may be more democratic than single-party governments. In practice, coalition governments may also have additional benefits such as promoting policy stability, increasing oversight and accountability, and gaining influence to determine the agenda in council and committee meetings. A brief discussion of these aspects follows hereafter.

— 2.5.1.4 Coalition governments may be more democratic than a single-party government

Single or dominant party governments are often favoured over coalitions because they provide more stability than coalitions, though this can be debated.⁴² It is also assumed that single-party governments represent the majority of the people hence coalitions may come under attack when they are established to oust an existing majority in a municipality. Section 1(d) of the Constitution of the Republic of South Africa, 1996 confirms that South Africa's democracy is founded, among others, on a multi-party system of democratic government.⁴³ This section elucidates the democracy envisioned for South Africa across all levels of government. Coalitions give effect to multiparty governance by concentrating political power in several political parties. Against this background, coalition governments fit within the meaning of democracy as enunciated in s 1(d) of the Constitution. Further, at all times, including instances where they oust an existing majority party to govern in a municipality, the coalition must command the highest majority to assume office as the governing majority. Coalitions may thus be representative of a wider constituency base.⁴⁴

— 2.5.1.5 Coalition governments can facilitate policy stability

Having access to offices in the executive is a fundamental requirement to enable political parties to realise their policy goals. Indeed, establishing coalition governments is also attractive because

⁴² Consider, for instance, the current status of the ANC who is a dominant party ruling at the national level of government. The ANC is characterised by intra-party conflict and factionalism. Divisions in the political party is caused by two contesting centres of powers as Suttner refers to as one faction which is centred around the ANC State President with the other faction being centred around the ANC Secretary General, Ace Magashule. See Suttner R 'Cyril Ramaphosa's choices, constraints and the question of trust' available at <https://www.dailymaverick.co.za/article/2019-05-20-cyril-ramaphosas-choices-constraints-and-the-question-of-trust/> (accessed 23 March 2021).

⁴³ Constitution of the Republic of South Africa, 1996, s 1(d).

⁴⁴ Of course, this is not to say that single-party governments cannot be more democratic than coalition governments. Conversely, if a single party obtains an 80% majority in the elections then it is clear that the majority of citizens intended for that party to govern. The point to make here is that at all times when a coalition government arises, it is required for the coalition parties votes, taken together, to be higher than the number of votes than any other single political party.

they provide political parties with access to offices in the executive which they use as levers to implement and amend decisions and policies. It is a given that a party in a coalition will aim to occupy one or more seats in the mayoral or executive committee. This means that in coalition governments, seats in either the mayoral or executive committee are filled by members representing their party lines in the coalition government. A broad representation of the coalition parties in the mayoral or executive committee suggests that coalition governments encourage parties in the coalition to establish power-sharing executives comprising of individuals from the various political parties in the coalition. This arrangement has consequences for the mayoral executive committee system which vests all executive functions in the mayor.⁴⁵

Under the mayoral committee, the mayor appoints a mayoral committee from among the councillors to assist him or her.⁴⁶ The mayoral committee members provide the necessary assistance through exercising specific executive responsibilities or powers delegated to him or her by the mayor.⁴⁷ However, the coalition government waters down this discretion of the mayor as the composition of the mayoral committee will largely be determined by the party leaders in the negotiation process. Moreover, the authority and status of the mayor in this case also become diluted because of the structure of the coalition government as set out in a coalition agreement. This means that the political agreement reached by the coalition parties may alter, though not legally, the status of the mayor. As mentioned above, effective joint decision-making is crucial to make coalition governments sustainable.⁴⁸ This aspect requires that members in mayoral committee systems function similarly to members in the executive committee system where executive authority is delegated to the whole executive committee. Therefore, coalition governments may necessitate a reduction in the status of the mayor in the mayoral executive system and increase the status of the mayoral committee members to enjoy the same standing as in the executive committee system to enable them to exercise collective decision-making. In this case, the mayor uses his or her statutory functions to ratify decisions that were initially decided in their coalition meetings.

The executive must, through its section 80 portfolio committees, draft policies that may be approved or rejected by the council. In coalition governments, having a mixed mayoral executive that comprises members from the coalition parties means that the parties are obliged to consider the diverse views of the coalition parties when policies are drafted in their respective portfolios or run

⁴⁵ Local Government: Municipal Structures Act 117 of 1998, s 7(b).

⁴⁶ Structures Act, s 60(1).

⁴⁷ Structures Act, s 60(1)(b) and (c).

⁴⁸ See para 2.5.1.3 above.

the risk of having their policies rejected in the council. This, in turn, affords the coalition the advantage to develop policies that are more representative of the interests of the council. According to Colomer, single-party governments, such as those formed in the United Kingdom from the end of World War II to 2010, have produced high levels of policy changes and reversals.⁴⁹ This means that under single-party governments, whenever new governments come into power, policy changes are often occur to reflect the sole preferences of the new governing parties. Constant changes and reversals in policies can lead to policy instability. Maintaining policy stability in any sphere of government is crucial because it bolsters confidence among private economic actors who fear policy change and encourages them to make longer-term investments that they would hesitate to make in a riskier environment.⁵⁰ More stable investments in turn lay the foundation for a thriving local economy and local economic development.

In Switzerland, coalition governments there have tended to produce a high degree of policy stability and little policy change.⁵¹ Policy stability was achieved through the active involvement of various political parties in formulating policies. Thus, in this instance, whenever new governments were formed, thus bringing the coalition to an end, most of the policies remained in existence. The reason for remaining in existence is because the policies, at the time of being formulated, accommodated the interests of the subsequent ruling majority. The findings of Colomer suggest that coalitions through including several political parties in decision-making may promote the creation of enduring policy that can withstand subsequent government changes whilst creating incentives for local economic development in municipalities.⁵²

— 2.5.1.6 Coalitions may increase accountability and oversight in municipalities

It was mentioned above that a party in a coalition government cannot take important decisions without consent from the rest of the coalition.⁵³ With regards to the executive, the activities of each respective section 80 portfolio committee must be visible to the coalition partners. Coalition partners should maintain transparency about any developments in the various portfolios where individuals from the various political parties provide political oversight. This means that

⁴⁹ Colomer J 'The More Parties, the Greater Policy Stability' (2012) 11 *European Political Science* 229.

⁵⁰ Nooruddin I *Coalition Politics and Economic Development: Credibility and the Strength of Weak Governments* (2011) 7.

⁵¹ Colomer (2012) 230.

⁵² Colomer (2012) 231.

⁵³ See para 2.5.1.3 above.

chairpersons who are responsible to oversee the implementation of the coalition programme in a particular portfolio area are required to make regular reports to the coalition to enable the parties in the coalition government to, in turn, oversee the efficient implementation of their coalition programme.⁵⁴ This arrangement effectively constrains the coalition partners to tailor decisions and policies to their political party's sole preferences and drift from the agreed terms and conditions as set out in the coalition programme. The openness created by this arrangement has the potential to position the various political parties to hold their respective coalition partners accountable for how they perform their functions and exercise their powers in their portfolio areas. This transparency may, in turn, limit opportunities for elected officials to abuse their position and engage in corrupt activities. The coalition partners thus act as the first level of assurance to ensure that public resources are utilised per the stated aims of the coalition government. Coalition governments thus have the potential to promote the efficient utilisation of state resources which may, in turn, enhance public trust and legitimacy.⁵⁵ However, corruption and abuse of public resources may also proliferate in coalition governments as more political parties have access to the public purse. Whether coalition governments result in enhanced accountability and oversight or the opposite is dependent on the prevailing political culture. It is thus crucial for the coalition parties to demonstrate a commitment to realise good governance practices.

— 2.5.1.7 Acquiring influence to determine the agenda in the council

Political parties in the coalition government, especially smaller political parties, derive certain benefits from governing as the ruling majority. The coalition government controls the agenda in the council and members of the coalition deployed in the mayoral or executive committee assume political control of various portfolios areas in the municipality.

Parties in coalitions have more teeth to influence the government agenda than opposition parties in the council. The ruling coalition will secure control over most, if not all, the offices that exercise agenda-setting powers such as the Speaker, who acts as chairperson of the municipal council, and section 79 and section 80 committee chairperson positions. The office of the Speaker and chairpersons in the municipality are valuable to political parties because they provide the different

⁵⁴ See para 4.2 for further discussion on the coalition programme.

⁵⁵ Rahman T *Parliamentary Control and Government Accountability in South Asia: A Comparative Analysis of Bangladesh, India and Sri Lanka* (2008) 8.

political parties to exercise influence in determining the business of the municipality (the agenda). Parties who participate in the coalition therefore derive the ability to influence the agenda for council and committee meetings. The Speaker and the various chairpersons in the coalition can use their agenda-setting functions to control the direction of these meetings by deciding those issues that will be addressed in council and committee meetings. In terms of policies and by-laws, agenda-setting functions also enable coalition parties to influence the scope of policy and by-law change as well as to prevent existing policies and by-law gains from being altered.⁵⁶ The agenda-setting powers are often used as a political tool to prevent items from the opposition parties to be placed on the agenda or to delay the implementation of a policy until the circumstances to do so are more favourable. For example, a coalition government may decide to only adopt a policy after the local elections to mitigate instances where any one of the political parties may suffer electorally because of the proposed policy. The agenda-setting powers may thus be used to reflect the priorities of the parties in the coalition government.⁵⁷ For this reason, it may be said that controlling key offices such as that of the Speaker and committee chairpersonship directly influences political outcomes in the government.⁵⁸ This also finds application in the context of South Africa's local government.

The rules and order of a municipality determine how the Speaker and committee chairpersons may exercise their agenda-setting functions. Each municipality adopts their own rules and orders for its internal arrangements and its business and proceedings.⁵⁹ For illustrative purposes and convenience, this paper shall refer to the Standing Rules and Orders model prepared by the South African Local Government Association (SALGA). Item 8.1 of this model provides that 'no business shall be transacted at a council meeting or any committee meetings other than that specified on the relevant agenda'.⁶⁰ Parties in a coalition government with access to agenda-setting powers thus find themselves in a favourable position compared to opposition parties who may have greater difficulty having their items placed on the agenda. This also illustrates that while the votes of councillors from opposition in the council have equal status as members from the coalition, the parties from the coalition still wield more political power because of their agenda-setting powers in

⁵⁶ Aleman E & Tsebelis G *Legislative Lawmaking in Latin America* (2016) 1.

⁵⁷ Otjes S 'No Politics in the Agenda-Setting Meeting: Plenary Agenda Setting in the Netherlands' (2019) 42(4) *West European Politics* 732. 728-754

⁵⁸ Aleman & Tsebelis (2016) 5.

⁵⁹ Constitution (1996), s 160(6)(a) and (b).

⁶⁰ South African Local Government Association *Standing Rules and Orders for the Meetings of the Council and its Committees* (2016) 7, Item 8.1

the council and committee meetings. In this way, coalition parties are afforded more teeth to influence service delivery.

- 2.5.1.8 Political parties in the coalition may chair one or more portfolios in the municipality

Depending on how the executive is structured, coalition parties may exercise absolute control over the executive (as in the mayoral executive system) or dominate the executive where the structure of government reflects the balance of political forces as in the council (i.e as in the executive committee system).⁶¹ The coalition parties may thus exercise authority over all or most of the portfolios. The chairpersons in the respective portfolios areas are afforded discretion to make decisions relating to these portfolios and to implement policies.⁶² This discretion results from an executive member's position as chairperson of a portfolio area to act on matters that are not determined by the council. As chairpersons in section 80 portfolio committees, members of the executive also have the advantage to significantly affect the substance of specific proposals on matters within his or her portfolio area and which do not come before the council for a decision.⁶³

2.6 What are the pitfalls of coalition governments?

In practice, coalition governments may encounter obstacles to maintain effective governance. The challenges that will be discussed can be categorised under two main themes namely: the unity-distinctiveness dilemma and conflict in the coalition government.

⁶¹ The executive mayoral system vests all executive functions in the mayor who may appoint a mayoral committee to assist him or her. The mayoral committee members are accountable to the mayor who must in turn account to the council. Under the executive mayoral system, the mayor is entitled to choose members to serve on the mayoral committee without having to represent all of the parties or interest before the council. In contrast to the executive mayoral system, the executive committee system vests executive functions in all members of the executive committee who are collectively responsible to account to the council. Currently, s160(8) of the Constitution requires that there be fair representation of the parties and interests in the executive committee. This section is broadly construed and affords a coalition government wide discretion to structure the composition of the executive in a way that the coalition parties dominate the executive committee. However, the Structures Amendment Bill will soon amend this position by prescribing a uniform formula to determine the composition of the executive committee to ensure that the parties and interests in the council is represented in a substantially proportional fashion.

⁶² Shepsle K *Analyzing Politics: Rationality, Behavior, and Institutions* (2010) 506.

⁶³ Laver M (1996) 33.

2.6.1 The unity-distinctiveness dilemma in coalition governments

To recall from paragraph 2.1 above, individuals in political parties are rational actors whose behaviour or choices are influenced by whether a particular decision will maximise his or her personal interest or the interests of the political party that he or she represents. This means that parties may sometimes stand to benefit if they make decisions that pull them away from the coalition, in which case they will appear as a distinct party in their own right. Their choice may thus contribute to divisions within the coalition. Yet other times, the members of the various parties in the coalition may exercise decisions in favour of the coalition because the interests of the political party and the coalition are in alignment. In the latter case, cohesion (unity) increases in the coalition because the parties appear to act cooperatively. Cohesion refers to the ability of the coalition parties to act as a unit through cooperation. In coalition governments, the parties thus face the challenge of balancing cohesion, on the one hand, with distinctiveness or differentiation on the other.⁶⁴ This is referred to as the unity-distinctiveness dilemma which confronts parties in coalition governments throughout the life-cycle of the coalition government. Why is unity essential in coalition governments? Why do coalition parties sometimes appear distinct in coalition governments? How can unity be reinforced in coalition governments? These questions will be discussed below.

— 2.6.1.1 Unity in coalition governments

According to Giannetti and Benoit, unity in a coalition government is crucial if coalition partners are to ensure that the coalition government will be durable.⁶⁵ This also finds expression in the context of municipalities. In municipalities, the mayor or any of the members of the executive committee may be removed from office through a vote of no confidence.⁶⁶ In *De Lille v Democratic Alliance and Others*,⁶⁷ the High Court observed that a motion of no confidence ‘constitutes a threat of the ultimate sanction. It is a sword that hangs over the head of the mayor to force him to always do the right thing’.⁶⁸ This means that reasonably disciplined and cohesive parties are necessary to maintain sound governance practices in the executive and thus retain the confidence of the coalition government. Party discipline in the context of coalitions means that political parties in the

⁶⁴ Bullock D & Boston J ‘Experiments in the Executive Government Under MMP in New Zealand: Contrasting Approaches to Multi-Party Governance’ (2009) 7 *New Zealand Journal of Public and International Law* 41.

⁶⁵ Giannetti D & Benoit K *Intra-Party Politics and Coalition Governments* (2009) 10.

⁶⁶ Structures Act 117 of 1998, s 53(1) read with s 58.

⁶⁷ (2153/18) [2018] ZAWCHC 22.

⁶⁸ *De Lille v Democratic Alliance and Others* at para 24.

coalition government occasionally have to commit themselves to policy positions that neither they nor their constituents may favour.⁶⁹ Party cohesion in this context refers to the degree to which the political representatives of any of the parties in a coalition government act cooperatively and consistently.⁷⁰ Party cohesion is promoted by ensuring that there is effective coordination among the various section 80 portfolio committees⁷¹ in their respective portfolios areas when they develop policy proposals that are subsequently submitted for approval in the council. This implies that unity in the coalition is further dependent on closer collaboration between the various section 80 portfolio committees in their portfolio areas to ensure that policy proposals are tailored to accommodate the interests of the respective coalition parties. Closer collaboration in between the different chairpersons across the various portfolios areas is necessary to facilitate regular consultation and cooperation among the coalition parties. The advantage of this is that it can minimise any potential stalemates that may arise in the council when the coalition partners were not adequately informed or consulted on the affairs of the portfolio, for instance, in the formulation of the proposed policy or budget.

Political parties who enter coalitions have a seat share in the council that is insufficient to enable them to pass decisions on their own like a single-party majority. Similarly, in the coalition, the party can only pass their decisions if they have the support of their coalition partners in the council. Therefore, as with the executive, cooperation among the coalition members in the council is also cardinal to prevent stalemates in the council. Individuals (PR councillors) who are deployed in the council to represent their political parties ought to cooperate to approve or amend budgets, make appointments and adopt policies, plans, strategies and programmes that are necessary to ensure continuous service delivery.⁷² Cooperation in the council among the coalition parties may promote stability and contribute to achieving the goal of delivering uninterrupted services in the municipality. The maintenance of unity therefore requires effective coordination and consultation in the executive which, in turn, is a prerequisite to ensure that the party representatives cooperate in the council.

⁶⁹ Strøm K & Müller W 'Parliamentary democracy, agency problems and party politics' in Giannetti D & Benoit K *Intra-Party Politics and Coalition Governments* (2009) 30.

⁷⁰ Strøm & Müller (2009) 30.

⁷¹ Section 80 committees are established to assist the executive committee or executive mayor.

⁷² Local Government: Municipal Systems Act 117 of 1998, s 11(3)(a) read with s 11(3)(h).

— 2.6.1.2 Party distinctiveness in coalition governments

Political parties in the coalition government may occasionally distance themselves from the coalition government to appear as a distinct party in their own right. This can occur for several reasons, including differentiation in policy preferences, souring relationships among the party leaders, scandals involving any one of the political parties, and scheduled elections that are imminent.

Policy differences among coalition parties

Section 79 and s 80 of the Structures Act authorises the council and executive committee or mayor to establish committees to assist them in exercising their functions in the municipality.⁷³ Section 79 committees report to the council and mainly execute oversight functions on behalf of the council whereas section 80 committees are concerned with overseeing the implementation of policies and report to the executive mayor or executive committee. The City of Cape Town has, for instance, established several s 79 portfolio committees to assist the council in the following portfolio areas: urban management, finance, water and waste, transport and spatial planning and environment.⁷⁴ Many municipalities, however, often establish section 80 committees than section 79 committees.⁷⁵ For example, section 80 committees that are established in the Drakenstein Local Municipality comprises, *inter alia*, corporate services, financial services, community services and planning and development.⁷⁶ Each portfolio committee is chaired by a member of the executive. As chairpersons, they have formal jurisdiction over a set of particular policies that relates to their portfolio area. In this regard, chairpersons who are deployed in the particular portfolio area will exercise jurisdiction to develop and review by-laws, to develop and review policy and to make recommendations to the council in this case.⁷⁷ In this case, the particular party representative who holds the chairpersonship in the committee has the powers to affect the substance of the specific by-laws and policies that come before the council. This means that the party representative, as a chairperson of the respective portfolio area, has significant lee-way to tailor policies to meet the preferences of his or her political party. Occupying the chairperson office, therefore, affords a

⁷³ Structures Act, s 79(1) and s 80(1).

⁷⁴ City of Cape Town *System of Delegations* (2020) 44.

⁷⁵ Fessha J 'Holding the Municipal Executive to Account' (2008) 10(2) *Local Government Bulletin* 2.

⁷⁶ Drakenstein Local Municipality 'Portfolio Committees' available at <http://www.drakenstein.gov.za/about-us/political-leadership/portfolio-committees> (accessed 23 March 2021).

⁷⁷ City of Cape Town (2020) 44.

political party and the coalition with a measure of control in determining the substantive content of the policies and by-laws as well as the direction of developments within the portfolio area.⁷⁸

In the context of coalition governments, the parties who chair the various portfolios are required to coordinate and consult with the coalition parties to ensure that the policies accommodate, as far as possible, the collective preferences of the parties in the coalition. Failing to maintain effective coordination and consultation across the portfolios chaired by the different party representatives may result in the development of partisan policies. In this case, policy differences among the members in the council may result in some members of the coalition voting nay to block a party from implementing a partisan policy proposal for which, if accepted, they will be held collectively responsible.⁷⁹ Differentiation in policy preferences may affect the levels of unity in a coalition government. This problem may become more pronounced as the size of the coalition government increases.⁸⁰

Souring relationships between party leaders

Party leaders of political parties exercise significant influence over the decision-making of their members in the council. That is, how councillors vote on fundamental issues in the council is often motivated by the instruction they received from the top.⁸¹ It pays off for councillors who act as party representatives in the council to abide by the commands of their party leaders because party leaders exercise important functions such as determining which officials are appointed to serve on committees and may influence their nomination for re-election.⁸² The closed-list PR system of local government implies that party leaders are responsible for nominating candidates that will subsequently appear on the party-list that are presented at the elections.⁸³ In this case, party leaders control resources that are critical to their political career prospects.⁸⁴ Councillors that want to advance the prospects of their political careers, may thus be inclined to implement the

⁷⁸ See paragraph 2.5.1.7 above.

⁷⁹ Otjes (2019) 734.

⁸⁰ Strøm & Müller (2009) 31.

⁸¹ Carey J 'Competing Principals, Political Institutions and Party Unity in Legislative Voting' (2007) 51(1) *American Journal of Political Science* 93.

⁸² Carey (2007) 93.

⁸³ See para 4.3.3 below.

⁸⁴ Carey (2007) 93.

instructions of their party leaders. What happens party leaders provide their party representatives with contrasting instructions regarding a matter before the council?

Disagreements between the senior members of the political parties can adversely impact how the coalition parties govern in the council. This implies a top-down vertical effect of internal coalition politics. In terms of larger political parties that govern at national and subnational governments, the possibility also exists where issues between the political parties at the national level or regional level become politicised at the local level and adversely affect sound governance practices at the grassroots. Consider, for instance, if the party leaders disagree on a fundamental issue such as the budget or a policy that should subsequently be voted on in the council. Whether the proposed budget or policy will be adopted by the majority in the coalition is largely influenced by the instructions from their senior party lines. The internal politics of the coalition government can therefore find its way into the council and interrupt sound governance in the council. The divisions in the council arising from differences between party leaders lower cohesion and cause the councillors to appear as distinct political parties. This, in turn, raises the likelihood for instability to arise in the coalition government. For this reason, it is cardinal for good relationships to be maintained between party leaders at the top. Maintaining good relations at the top sets the tone for party officials operating in the council and increases trust between the coalition partners which is crucial for stability.⁸⁵

Scheduled elections

Political parties in coalition governments may elect to appear distinct from their coalition partners when elections are imminent to protect their electoral support and potentially gain new votes in the upcoming elections. This may cut across all parties in the coalition government given that they will compete against each other in the elections. Political parties who want to remain distinctive can demonstrate their commitment to their preferences by departing from the concessions previously made in the coalition government. Such a departure is demonstrated by, for example, abstaining from voting on a particular decision or by voting against a proposal brought forward by the coalition government.⁸⁶ Though a party may abstain from voting with the intent to satisfy their electorate, abstaining from voting in the council may destabilise the coalition government as abstentions

⁸⁵ Hazell & Yong *The Politics of Coalition: How the Conservative-Liberal Democrat Government Works* (2012) 51.

⁸⁶ Strøm & Müller (2009) 34.

amount to nay-votes because of their effect on the outcome.⁸⁷ To use the above example of the DA-KDF coalition in paragraph 2.4.1 above, the composition for the coalition in the Beaufort West Local Municipality was 7 to 6 in favour of the DA-KDF coalition.⁸⁸ Suppose the KDF abstains from voting with the DA on a matter in the council along with the ANC voting against the proposed motion. The consequence of the KDF's abstention is that the DA would fail to command a supporting majority in the council. The result may be that the coalition will be deterred from passing important decisions that require a majority vote in the council.⁸⁹

Political parties, especially smaller parties, stand to benefit from their decision to appear distinct in the run-up to the elections because it increases their chances of being re-elected. Failure by the parties to remain visible to their electorate throughout the governance term, especially during the run-up to the elections, can be electorally damaging. Therefore coalitions may become turbulent when the elections approach.

2.6.2 Conflict in the coalition government

Conflict arises throughout the life cycle of a coalition government. The problems that parties in a coalition government encounter constitute an invisible level of politics. This means that those who look into the coalition government from the outside such as the general public, media and other political parties, may not necessarily be aware of any contestation among parties in the coalition government. Generally, conflict in the coalition government becomes visible to external stakeholders when tensions between the parties influence the behaviour of the party representatives in the council or the media. Two main types of conflict arise in coalitions namely intra- and inter-party conflict. Intra-party conflict refers to a conflict between the members of the same political party. Inter-party conflict involves a dispute between two or more political parties within a coalition. Evidence from coalition practices in European countries suggests that coalitions there mostly terminate as a result of inter-party conflict among the coalition parties.⁹⁰

Due to the confidential nature of coalition politics in South Africa, it is difficult to establish which type of conflict mainly accounts for the early termination of coalition governments in municipalities. However, media reports of coalition politics in South Africa's local government leads one to draw the

⁸⁷ Carey (2007) 97.

⁸⁸ See paragraph 2.4.1 above.

⁸⁹ Although, in this case a decision may be passed if the Speaker places a casting vote in favour of the DA.

⁹⁰ Müller & Strøm (2000) 586.

inference that inter-party conflict mainly accounts for instability in coalitions. This enables one to make predictions of some of the challenges that the coalition parties may encounter and to make recommendations to mitigate challenges that can contribute to inter-party conflict in the coalition.

Heterogenous ideologies and portfolio preferences as the main drivers of inter-party conflict in coalition governments

Political parties are organised groups of individuals that share a common political ideology and who seek to have their ideology realised through the implementation of policies. During their electoral campaigning, political parties articulate their policy priorities to the public to gain their electoral support during the elections.

Political parties that govern together through coalition governments are thus required to balance their competing policy priorities and accommodate them as far as possible. Sartori, however, contends that inter-party conflict arises in coalition governments because of two main motivations namely, conflict based on the ideological diversity among the political parties and conflict emerging as a result of their portfolio preferences.⁹¹ In terms of the former, ideology diversity in coalitions constitutes a challenge to coalition governments as it provides a starting point for differentiation during the life cycle of a coalition government.⁹² A political ideology is defined as a set of beliefs, values and opinions that a political party uses to justify, explain, contest or change the social and political arrangements of a political community and society. Factors that shape a party's political ideology includes whether a party is operating on a left-right continuum, ethnic, racial and religious cleavages, political differences stemming from the history of the country and socioeconomic inequalities.⁹³ Depending on the identity of the political party, these factors may affect the political parties in varying ways and constitute an ideological distance between political parties on pertinent issues. Parties different ideologies influence their programmatic stances on challenges confronting a municipality.

⁹¹ Sartori G *Parties and Party Systems: A Framework for Analysis, Volume I* (2005) 68. It is important to note that ideology and policy preferences are closely connected as ideology informs the policy positions of a political party.

⁹² Atkins *Conflict, Co-operation and the Rhetoric of Coalition Government* (2018) 5.

⁹³ Lijphart (2008) 142.

Applying this to the local government context, it may be argued that ideological divisions between political parties may at times influence coalition politics in municipalities.⁹⁴ A political party's decision to take a specific approach to resolve an issue may be justified in terms of their political ideology which provides them with a vision of the goals they want to achieve as a political party. Their political ideology makes it possible for a political party to identify why an issue is worth pursuing.

A party's ideology may be determined from their party manifestos as well as their political colours. Consider, for instance, the EFF. The red colour of the EFF paints a picture of their prevailing ideology. The EFF's red colour is traditionally indicative of a political party that operates on the left-wing continuum. Indeed, the EFF confirmed that the party aims to build a socialist future thus suggesting that the EFF is a leftist party.⁹⁵

Suppose, for example, the DA and the EFF are in a coalition and are required to address the issue of tender fraud in the municipality. According to the *EFF 2016 Municipal Elections Manifesto* the Economic Freedom Fighters political party has committed to, *inter alia*, abolish the usage of consultants in municipalities, and the gradual abolition of tenders.⁹⁶ In response to tender-fraud, the DA differs from the EFF and argues to retain the tender system but provide more transparency in the awarding of tenders to avoid political interference in the tender processes.⁹⁷ The EFF's programmatic stance on the issue of tender-fraud is arguably linked to their socialist ideology. As a left-wing party, the EFF's ideology implies that the party's ideological value is to abandon systems that seek to retain a class system in which there is a ruling-class who makes the decisions and earn most of the wealth and a working-class who do the work.⁹⁸ In light of this, the EFF's policy goal to abolish the tender system appears to be in line with their ideology to abolish systems that promote class retention.

⁹⁴ Although, most of the time issues between and within political parties are unrelated to ideologies but there are instances in which political differences stem from ideological diversity among the political parties.

⁹⁵ IOL 'We should build a socialist future, says Julius Malema at EFF second NPA' available at <https://www.iol.co.za/the-star/news/we-should-build-socialist-future-says-julius-malema-at-eff-second-npa-39235345> (accessed 26 March 2021).

⁹⁶ Economic Freedom Fighters *EFF 2016 Election Manifesto* (2016) 7.

⁹⁷ Democratic Alliance *The Manifesto for Change: One South Africa for All* (2016) 40. Though it cannot be said that their views are grounded in a rightist ideology, unlike the EFF the DA is yet to confirm their ideological preferences. This is not to say that they do not act from an ideological basis but that there is insufficient evidence to make any claims at this stage.

⁹⁸ AMIEU 'Politics 101: Left vs Right' available at <https://newcastle.amie.uq.edu.au/politics-101-left-vs-right/> (accessed 23 March 2021).

The EFF's political ideology is further illuminated when national issues are brought into consideration. Consider, for example, the National Health Insurance Bill which seek to provide universal health care and abandon private health in South Africa. The EFF, confirmed in an official notice that they welcome the National Health Insurance Bill, citing that the dual nature of South Africa's healthcare distinguishes between the rich and the poor.⁹⁹ Their policy stances are arguably premised on their political ideology. Their reasons provided may be construed as grounds that parties use to justify their programmatic stance which, in turn, is derived from their ideologies.

Getting back to the issue of tender-fraud in municipalities, while both political parties agree that tender-fraud in municipalities is a challenge and must be addressed, the parties differ in their approach which may be grounded in their political ideology. In this case, one of the parties will have to make a compromise. This may, in turn, cause stalemates in the council if neither is willing to accept the position of the other. Therefore, though it may not be apparent to the public, the causes for instability in the council is likely to have arisen because of their inability to make political compromises to establish consensus on their approach to resolve a particular issue.¹⁰⁰

Inter- and intra-party conflict and office-seeking

It was stated above that individuals' decisions are influenced by whether taking a particular decision will maximise, among others, their self-interest like, for example, their career prospects. It is thus not surprising that inter-party and intra-party conflict may arise in the coalition because of a personal struggle for power between different party leaders and other party members of the coalition.¹⁰¹ This type of conflict is usually about power (gaining more influence in decision-making) or careers (being offered certain political offices).¹⁰² To advance their self-interest, individuals may defect from their political party and join another political party or establish their own political party if they cannot maximise their self-interest in the current coalition government.¹⁰³ This practice tends to occur when the elections are imminent. The elections can cause shifts in the bargaining power of the coalition and may trigger a new round of coalition bargaining (those who are unhappy with

⁹⁹ EFF 'EFF Welcomes the National Health Insurance Bill' *EFF* 22 June 2018.

¹⁰⁰ Warwick P *Government Survival in Parliamentary Democracies* (1994) 63.

¹⁰¹ Luebbert G *Comparative Democracy: Policymaking and Governing Coalitions in Europe and Israel* (1986) 52.

¹⁰² Luebbert (1986) 52.

¹⁰³ The EFF is a case in point. Following the expulsion of the ANC Youth League President, instead of exercising his right to appeal his expulsion, Julius Malema established the EFF who is among the main political parties in South Africa.

the existing terms may renegotiate for more favourable terms).¹⁰⁴ This suggests that the personal interests of the members of the political parties are also an important factor that ought to be accommodated in the coalition government.

Intra-party conflict can arise, *inter alia*, when there is a breakdown of consensus on fundamental issues within the political party. Consider, for instance, a policy that is favoured by some but not all of the members of a political party. If the party representatives in the council subsequently accept the conflictual policy proposal without reaching consensus first, their actions may generate internal dissent, and a lack of support from some of the party members. In the case where a coalition is a minimal-winning majority coalition, intra-party conflict may threaten not only the stability of the coalition but also its duration.

2.6.3 Summarising the main points from the discussion thus far

The preceding section discussed the different types of coalition governments. Coalitions are sometimes a product of a desire among the political parties to share political power and pool their respective resources to achieve a common goal. In other instances, coalitions arise primarily because of the PR electoral results and competitive local elections that compel political parties to enter a coalition government or establish a minority government. In both cases, the political parties will find themselves in the same system of government: a coalition. The unity-distinctiveness dilemma demonstrates that the parties sometimes have the motive to appear as a party in its own right that may necessitate a departure from the coalition government thus reducing unity in the coalition. Lowered cohesion in the coalition poses challenges to the coalition to ensure uninterrupted service delivery because continuous service delivery is contingent on the cooperation of the parties in the coalition government. It can therefore be predicted that coalition parties will encounter challenges due to the external political environment as well as the competing forces within the coalition government.

The remaining section of this paper discusses the various mechanisms, conventions, written rules and possible law reform that are needed to make coalitions sustainable. In line with the prediction of the rational theory, politicians base their decisions to maximise their own interest or serving the interests of the political party. In developing a framework (system) for the coalition, it is cardinal

¹⁰⁴ Lupia A & Strøm 'Coalition Termination and the Strategic Timing of Parliamentary Elections' (1995) 89(3) *The American Political Science Review* 649.

that these two factors be accommodated if any coalition framework is to have any prospects of success in practice. The next theme will discuss the institutional structure of South Africa's local government.

3. THE INSTITUTIONAL STRUCTURE OF SOUTH AFRICA'S LOCAL GOVERNMENT

3.1 THE IMPORTANCE OF THE INSTITUTIONAL STRUCTURE OF LOCAL GOVERNMENT

An 'institution' refers to a collection of rules and practices such as constitutional, legislative rules and codes of conduct and conventions that are aimed at empowering or constraining political actors to act within a logic of appropriate action. In the context of coalitions, a logic of appropriate action refers to behaviour that induces cooperation among coalition partners. In municipalities, councillors' conduct is regulated in legislation namely the Local Government: Municipal Systems Act 32 of 2000 and the Local Government: Municipal Structures Act 117 of 1998 which defines their mandate and responsibilities as councillors. The legislation constrains councillors behaviour by making certain things easier to do and other things harder to do.¹⁰⁵ An example of how their behaviour can be constrained is through sanctions. Sanctions such as the dissolution of the council or the removal of a councillor have the potential to make cooperative behaviour among coalition partners in the council more attractive because the alternative is not in their favour; councillors risk losing their office as councillors and thus power in the municipality as well as their income. In this case, the Structures Act assumes that conflict may emerge which can cause coalition partners to split and fuse. Internal party turmoil among coalition partners that manifest in the municipal council can have devastating consequences for service delivery. It is therefore useful to examine the current local government framework to determine whether it accommodates coalition politics in municipalities. This section will discuss the electoral system that applies to local government and elaborate on the legislative-executive relations in municipalities and elaborate on its impact on coalition governments.

¹⁰⁵ Goodin R *The Theory of Institutional Design* (1998) 16.

3.2 THE ELECTORAL SYSTEM OF LOCAL GOVERNMENT AND ITS IMPLICATIONS FOR COALITIONS

The Constitution prescribes that the electoral system must result, in general, in proportional representation.¹⁰⁶ The electoral system that applies to municipalities in South Africa is a combination of closed-list proportional representation (PR) and first-past-the-post (FPTP) for ward elections.¹⁰⁷ In metropolitan municipalities, the municipal council comprises 50 per cent PR councillors and 50 per cent ward councillors who may be independent candidates or nominated by a political party.¹⁰⁸ District councils comprise 40 per cent of PR-councillors that is elected from the district with the remaining 60 per cent being appointed by local councils in the district to represent their local municipality in the council.¹⁰⁹

PR-councillors are elected from party-lists that reflect the political party's order of preference whereas ward councillors are either directly elected by the voters or deployed by political parties.¹¹⁰ Ward councillors may include individuals who contested the election as independent candidates or individuals that were nominated by political parties. Most ward councillors in municipalities are sponsored by political parties.¹¹¹ To understand how these arrangements impact coalition governments, it is necessary to discuss in-depth the effect of these institutional attributes of the electoral system. This will be discussed below.

3.2.1 Electing PR-councillors under closed-list PR

Proportional representation (PR) councillors are elected from a list of candidates that are submitted by the relevant political party that is contesting the local elections. The party-list is ranked in the party's order of preference and commences with the candidate that is first preferred and ends with the last.¹¹² This means that the PR elections use a closed-list system whereby seats are allocated according to the hierarchy established by the party in its list. With the closed-list system, voters cannot express their preference for a specific candidate. Closed-list PR requires that citizens cast their votes for a particular political party. Consequently, candidates' positions on the list will remain

¹⁰⁶ Constitution, s 157(3).

¹⁰⁷ See Structures Act, s 8 and s 9.

¹⁰⁸ Structures Act, s 22(2).

¹⁰⁹ Structures Act, s 23(2)(a).

¹¹⁰ See para 3.2.1 and 3.2.2 below.

¹¹¹ *New Nation Movement NPC and Others v President of the Republic of South Africa and Others* [2020] ZACC 11 at para 79.

¹¹² Structures Act, s 10 read with s 11(2).

fixed on the party-list. The benefit of the closed-list PR is that it avoids competition for a personal vote that may arise in the case of, for example, open-list and ordered-list PR where the voters can influence the ranking of the candidates on the party-lists. Closed party-lists may, however, increase the incentives for intra-party factionalism through promoting intra-party competition among individual party members for a spot at the top of the party-list. Factionalism refers to divisions on issues ranging from elections to local affairs that gives rise to various factions within the same political party.¹¹³ In the council, intra-party factionalism can manifest in various ways. Councillors may vote against the motions of their political party as an act of retaliation and instead favour the motions put forward by the opposition members.¹¹⁴

At the time of writing, the 2021 local government elections were months away. Interestingly, during this time there was an increase in cases where party members vote against the motions brought forward by their political parties. In 2020, a year before the local elections, three DA councillors in the George Local Municipality voted in favour of a motion of the ANC party to suspend the municipal manager of the municipality which then caused the DA's motion to fail in the council.¹¹⁵ In Lekwa Local Municipality, an ANC-led municipality, something similar happened where some of the ANC councillors voted in favour of two motions of no confidence brought forward by the DA opposition to remove the Mayor and the Speaker who were both members of the ANC.¹¹⁶ Recently, the ANC-majority lost the office of the speaker to the opposition of the council in Dihlabeng Local Municipality. The council comprises 39 seats with the ANC occupying 25 of the 39 seats and the remaining 14 seats comprising of the DA (eight seats), EFF (three seats), Freedom Front Plus (one seat) and two independent councillors. Four ANC councillors voted in favour of the DA's candidate to be elected as Speaker in the council.¹¹⁷ While these are examples of majority-led municipalities, the cases are illustrative of the rising trend of factionalism in political parties ahead of the local

¹¹³ Fun C & Hung S 'Is Party Factionalism Harmful or Beneficial to Party Development: The Case of Hong Kong Democratic Party' (2020) 9(1) *Asian Education and Development* 92.

¹¹⁴ Beukes J '2021 Local Elections, Governance and Stability' (2020) 15(3) *Local Government Bulletin*, 3 September 2020 1.

¹¹⁵ Felix J 'DA fires 3 councillors who voted against its own motion' available at <https://ewn.co.za/2020/02/24/da-fires-3-councillors-who-voted-against-its-own-motion> (accessed 1 November 2020).

¹¹⁶ Viljoen B 'ANC councillors join DA to remove Standerton's ANC mayor and speaker' available at <https://www.news24.com/news24/southafrica/news/anc-councillors-join-da-to-remove-standertons-anc-mayor-and-speaker-20200211> (accessed 1 November 2020).

¹¹⁷ Makinana A 'DA scores as divided ANC elects opposition speaker in Free State municipality' available at <https://www.timeslive.co.za/politics/2020-11-30-da-scores-as-divided-anc-elects-opposition-speaker-in-free-state-municipality/> (accessed 1 November 2020).

government elections. This raises speculations that intra-party factionalism may be a common recurrence in the run-up to the local elections.

It should be noted that coalitions in municipalities are a combination of bare-majority coalition governments and minority governments. Bare-majority coalitions require the support of every coalition member to pass decisions, adopt pass budgets and appoint office-bearers and municipal managers. Intra-party factionalism may thus place constraints on the coalition government to pass their motions in the council and potentially contribute to deadlocks in the council. Intra-party factionalism may thus, in turn, destabilise the coalition during the run-up to the local elections.

3.2.2 Electing ward councillors through the FPTP system

The FPTP system is regarded as a majoritarian electoral system because its election outcomes always produce an outright winner. Under the FPTP system, voters vote for their preferred candidate by simply making a cross next to his or her name or the name of the political party on the ballot paper. The winner is the candidate who receives the most votes, but not necessarily an absolute majority of the votes.¹¹⁸ This means that for a candidate to be the winner, he or she requires a simple plurality, that is, only one vote more than the candidate with the second-highest votes.

In South Africa's local government most ward candidates are elected on a party ticket with independent candidates who are directly elected. In terms of the former, the nomination and selection criteria for ward councillors vary among the political parties. However, in all cases, the guiding principle is that an individual can only be deployed as a ward councillor if he or she wins a candidacy in the political party's internal elections. This means that members of the same political party must compete against each other to secure a candidacy before they can be deployed as ward councillor. In this case, there is a danger that only those who are favoured by senior party members may secure a candidacy in the internal elections despite the existence of a fair nomination procedure. Given that individuals are required to compete against members of their political party, intra-party conflict may be heightened when the elections are imminent. There are thus elements of the electoral system that arguably contributes to conflict and instability in coalition governments.

¹¹⁸ Blais A *To Keep or to Change First Past the Post? The Politics of Electoral Reform* (2008) 1.

The picture that emerges from the above discussion is that councils that are governed by coalition governments may become unstable when the local elections are imminent. The reasons for the instability may be associated with intra-party conflict emanating from the ordering of the party-lists; competition is further created by the internal elections of a party for ward councillors where members of the same party must compete against each other to secure their candidacy.

Intra- and inter-party conflict may be reduced but not necessarily resolved through prescribing an open-list PR system. In terms of the open-list PR system, the ballot structure allows the voters to express their preference for a candidate whose name appears, among several others, on a list submitted to them by the political party.¹¹⁹ Under the open-list PR system, the candidates that obtain the highest number of votes are seated consecutively until the total number of seats assigned to the party based on the party's total number of seats are filled.¹²⁰ Unlike the closed-list PR system where citizens vote for a party who deploys PR candidates in the council following the order of preference determined by the party, the open-list PR system removes the political party's ability to determine the order of preference and enables the voters to determine the electoral fate of the candidate.¹²¹ The open-list PR may reduce intra-party conflict and factionalism by providing an individual with a fair chance to be elected in a manner that is more democratic. However, it cannot negate conflict altogether. Elections must be free, fair and competitive. Due to the competitive nature of the elections, conflict may inevitably emerge where parties compete to gain control over the same limited resources in the council. For this reason, when elections are imminent, a measure of conflict among coalition parties should be expected regardless of the prevailing electoral system.

3.2.3 The absence of threshold requirements in the electoral system of local government

The electoral system that applies to municipalities does not prescribe a legal threshold requirement which requires political parties to obtain a minimum share of the votes to be allocated seats on the council. The benefit of this institutional attribute is that it opens the gate for smaller political parties

¹¹⁹ Kselman D 'Public Goods Equilibria Under Closed- and Open-List Proportional Representation' (2020) 32(1) *Journal of Theoretical Politics* 121.

¹²⁰ Cingranelli D & Filippov M 'Electoral Rules and Incentives to Protect Human Rights' (2010) 72(1) *The Journal of Politics* 246.

¹²¹ Katz R 'Preference Voting in Italy: Votes of Opinion, Belonging or Exchange' (1985) 18(2) *Comparative Political Studies* 230.

to secure seats on the council. On the other side of the coin, party-fragmentation may be more pronounced in South Africa's councils.

Fragmentation in the council may cause frequent political deadlocks in the council and adversely impact governance in the council. The PR elections without threshold requirements also imply that the number of parties and the degree of party fragmentation will be greater than parties with threshold requirements.¹²² For coalition governments, another implication is that the size of the potential coalition government may also be increased and comprise of a larger number of smaller parties who each obtained a small share of the votes. However, while the number of parties may increase due to fragmentation, there remains a finite number of portfolios and political offices available for distribution in the municipality. According to Zheng, Pezzola, Fidalgo and Cao, a more fragmented party system often represents a higher level of heterogeneity in policy preferences which presents more obstacles for policymaking and implementation.¹²³ This suggests that coalition governments comprising of smaller parties may thus have more difficulty reaching a consensus. It also suggests that the coalition partners will have to make more compromises in determining how the portfolios and offices will be distributed among the coalition partners. Given that more compromises would have to be made in such cases, the bargaining process may also become more complex.

While it can be argued that the electoral system may be reformed by imposing threshold requirements to avoid any of the above possibilities which emanate from not prescribing an electoral threshold, this argument will not be favoured here. The absence of threshold requirements has resulted in the largest political parties namely the ANC and the DA's electoral support declining with citizens increasingly placing their trust in smaller parties. Conversely, if threshold requirements are imposed, citizens may adopt the strategy of voting for larger political parties to avoid wasting their vote for smaller parties who may not get representation. The imposition of threshold requirements in South Africa's local government may reverse how competitive the local elections became over the years. Further, at 23 March 2021, 533 political parties were registered to contest

¹²² Coleman S 'Dynamics in the Fragmentation of Political Party Systems' (1995) 29 *Quality & Quantity* 141.

¹²³ Zheng S, Pezzola A, Fidalgo A & Cao X 'Electoral Competition, Party System Fragmentation, and Air Quality in Mexican Municipalities' (2020) *Environmental Politics* 2. This should not be construed as a reason to enforce threshold requirements. Any policymaking process that must weigh different interests will be complex compared to a policymaking process that only incorporate the preferences of a dominant party. However, as referred to in paragraph 2.5.1.5 above, considering the interests of various parties in the council has the potential to promote policy stability. Therefore, while the process may be more complex than in single-party governments, there are also payoffs to derive from engaging in this process.

the 252 municipalities in the 2021 local elections.¹²⁴ The Chief Electoral Officer of the Independent Election Commission (IEC) has time and again lamented that the large number of political parties and independent candidates contesting the local elections poses a challenge to the IEC who must produce a large number of ballot papers for the local elections.¹²⁵ Introducing threshold requirements to address the issue of ballot papers is perhaps too extreme. Another way of addressing this challenge is for the IEC to make the transition to online voting systems. Moreover, although many parties are registered to contest the local elections, generally in the case of a hung council, only a few political parties gain representation in the council. It is uncommon for coalition governments to comprise a large number of political parties (more than 10 political parties). That is to say, that the absence of threshold requirements in South Africa's local government has not necessarily caused a significant increase in the number of parties in a coalition government. Admittedly, because the absence of threshold requirements broadens the political spectrum by introducing more parties into the political arena, not having thresholds inevitably contributes to heterogeneity in policy preferences which presents more obstacles for policymaking and implementation. However, this is not necessarily undesirable in a multiracial democracy that represents a broad array of interests. Besides, paragraph 2.5.1.5 above demonstrated that accommodating the interests of various political parties in the policymaking process has the potential to produce policy stability and promote local economic development. Finally, the absence of threshold requirements is a unique institutional attribute of South Africa's local government electoral system and the decision to not include thresholds was intentional. In *Rahube v Rahube*,¹²⁶ the Constitutional Court stated that 'the historical context within which a particular provision operated, or in response to which it was enacted, has been used as an interpretive tool by this Court on a number of occasions'.¹²⁷ During the apartheid era, the black majority of people in South Africa were denied political rights which were enjoyed by a white minority. The purpose of not imposing threshold requirements is thus to ensure that every individual not be constrained to represent the polity as before. Therefore, in considering whether threshold requirements ought to be introduced in South Africa's local context, it must be determined whether the drafters of the Constitution intended for threshold requirements to be a part of South Africa's local politics. Importantly, the purpose of introducing threshold requirements must be considered and it ought to be determined

¹²⁴ Independent Electoral Commission 'Political parties statistics' available at <https://www.elections.org.za/pw/StatsData/Political-Parties-Statistics> (accessed 23 March 2021)

¹²⁵ Beukes J '2021 Local Elections, Governance and Stability' (2020) 15(3) *Local Government Bulletin* 1.

¹²⁶ [2018] ZACC 42.

¹²⁷ *Rahube v Rahube and Others* at para 22.

whether there are less stringent means available to achieve the stated purpose. At best, electoral thresholds can serve the purpose of reducing the number of parties who gain representation in the council (although currently, the number of parties who gain representation is not high) but it cannot do much to address the challenges of coalition governments which relate to why they collapse.

3.2.4 The coalition bargaining time-frame

Coalition negotiations are by their nature confidential. What parties consider when they make concessions and agreements before entering a coalition government is often unclear to outsiders. The literature on coalitions makes assumptions that generally, the coalition bargaining stage is used to identify potential coalition partners, to establish alignment around the political programmes of the coalition parties, to allocate portfolios, distribute political offices and devise a written coalition agreement. These elements should be carefully considered in the negotiations to prevent the coalition from collapsing after its formation.

In South Africa's local government, political parties in hung councils commence with coalition negotiations or bargaining after the election results have been announced. The legislative framework for local government is silent on how the negotiation process should be initiated. This makes coalition negotiations a messy affair in South Africa and contributes to uncertainty among the coalition parties. However, the legislative framework sets the parameters within which the coalition negotiations must be conducted. Section 29(2) of the Structures Act provides that the first council meeting of the municipality must be held within 14 days after the council has been declared elected. The first order of business at the council meeting is to elect a speaker from among the councillors.¹²⁸

The timeframe between the elections and the first council sitting is thus 14 days.¹²⁹ This means that parties in hung councils have approximately two weeks to structure the coalition government in line with the above considerations. Of course, the situation changes drastically in the case of a by-election. A by-election is an election that occurs during the council term. The necessity for by-elections arises when the Independent Electoral Commission does not declare the result of the elections in a municipal council, a court sets aside the election of the municipal council, if the

¹²⁸ Structures Act, s 36(2).

¹²⁹ Structures Act, s 29(2).

council is dissolved or when a vacancy arises in the council.¹³⁰ In this case, the political parties must conclude their negotiations and establish a coalition before the Speaker convenes the first meeting.

Compared to established coalition practices in European countries, the two-week period appears to be the shortest timeframe for parties to form a coalition government. The duration for coalition government formation on the national level in European countries such as Bulgaria, Czech Republic, Estonia, Hungary, Latvia and Poland takes, on average, about a month to form a coalition government.¹³¹ This period may be longer because national coalition negotiations are complex. National negotiations may be more complex because of the wider scope of policy considerations that arise at the national level. However, this is not to say that coalition negotiations at the local level are not complex. What makes the negotiations complex is not necessarily the types of policy considerations but rather how to use the negotiation process to achieve stable coalition governance. A central consideration, in this case, relates to how the coalition government will be structured and the mechanisms they will develop to support that structure. It may thus be, in the case of South Africa's local government, that parties are not provided with sufficient time to carefully negotiate coalition governments due to time constraints. These time constraints may have adverse consequences for the coalition government because parties overlook important factors to conclude their negotiations within the prescribed timeframe. In the case of a by-election, parties may have more or less time available to negotiate but there ought to be finality to the negotiation process which can be achieved through regulation.¹³² Law reform may thus be desirable to afford parties a broader timeframe to negotiate effectively and to regulate the period within which coalition negotiations must be concluded.

¹³⁰ Structures Act, s 25(1)(a) to (c).

¹³¹ Bergman, Ilonszki G & Müller W 'The coalition life-cycle in Central Eastern Europe' in Müller W, Bergman T & Ilonszki G *Coalition Governance in Central Eastern Europe* (2019) 537.

¹³² Belgium currently holds the record for the longest coalition formation period that took 521 days before being established. Therefore, to avoid situations like this it is desirable to regulate the period for coalition formation.

3.3 THE LEGISLATIVE-EXECUTIVE RELATIONS OF LOCAL GOVERNMENT

3.3.1 The fusion of legislative and executive power in the municipal council

This section discusses the legislative-executive arrangements of the municipal council. The legislative-executive arrangements ought to be conducive to encourage the parties to cooperate in the coalition government.

The Constitution vests both the legislative and executive powers of a municipality in the municipal council.¹³³ The effect of this arrangement is that it positions the municipal council as the highest decision-making body within the municipality. The fusion of legislative and executive powers in the municipal council affirms that the local government system resembles elements of the parliamentary democratic system of government. This is an important observation for coalition governments. Labuschagne argues that the success of a coalition is, to a large degree, dependent on the democratic system of government to accommodate stability in coalitions.¹³⁴ The fusion of legislative and executive powers in the municipal council places a high premium on cooperation between coalition partners to deliver services in municipalities. Conversely, in presidential systems of government, coalitions tend to be characterised by a higher level of instability and fragmentation because of the formal separation between the legislature and the executive.¹³⁵

In South Africa's local government, the lack of formal separation of powers between the council and the executive calls for closer collaboration between them. This is because the members of the executive committee or mayoral committee, as the case may be, are elected from among the members in the council. For a coalition government, this arrangement implies that the council, in considering the motions of the executive, must consider two factors when voting on any important issues. That is, the members of the council must cast their votes not only on the merits of the particular issue but also on keeping the executive in office.¹³⁶ Failing to consider the latter when voting on important issues such as the budget or a policy may expose the executive to a vote of no confidence and trigger the collapse of the coalition. Closer collaboration can also minimise any potential disagreements that can arise in the coalition and promote stability. This institutional arrangement of South Africa's local government thus affects coalition politics in that the survival

¹³³ Constitution (1996) s 151(2).

¹³⁴ Labuschagne P 'South Africa, Coalition and Form of Government: Semi-Presidentialism A *Tertium Genus*?' (2018) 43(2) *Journal of Contemporary History* 99.

¹³⁵ Labuschagne (2018) 99.

¹³⁶ Lijphart (2008) 146.

and stability of the coalition government is contingent upon the maintenance of unity demonstrated through acting cooperatively in the council and the executive.

3.3.2 Taking decisions through a majority vote

Save for matters listed in s160(2) of the Constitution and the dissolution of council, decisions before the council are made by a majority of the votes cast.¹³⁷ A majority of the votes cast means that the majority of the councillors present in a quorate council meeting must vote in favour of the motion before the council for a decision to be lawfully taken.¹³⁸ For example, if a council comprises 24 councillors, at least 13 of those councillors must be present for the council meeting to be quorate. A majority of the votes cast would require 7 of the 13 councillors to support a motion before a decision can be made. If the motion, however, concerns the approval of a budget, passing of by-laws, imposition of rates and other taxes, levies and duties and the raising of loans; or the dissolution of the council, decisions taken by the council in that instance will require a supporting vote of a majority of its members.¹³⁹ This means that to pass, for example, a budget, a majority of all the councillors must vote in favour of the budget before a decision can be made. For example, if a council comprises 24 councillors then it is required that at least 13 councillors vote in favour of the particular motion to obtain a supporting majority. The Structures Act read with s 160(2) of the Constitution therefore envisages two different decision-making processes in respect of the various motions that are brought before the council. In both respects, however, for any motion to pass a majority vote must first be secured. What does this mean for the coalition government in the council?

Parties in the coalition government must cooperate in the council through supporting the motions brought forward by the coalition partners. In the context of bare-majority coalition governments, the cooperation of every coalition partner is necessary to ensure continued governance and implement the policy priorities of the various coalition partners. Failure by any one of the coalition partners in a bare-majority coalition to cooperate in the council will result in a problem for the municipality and the coalition. For the municipality, the implication is that decisions cannot be reached which inevitably impacts service delivery. For the coalition government, it means that the coalition cannot implement the programme of government thus resulting in ineffective outcomes of the council

¹³⁷ Structures Act, s30(3) read with s160(3)(c) of the Constitution.

¹³⁸ De Visser J & Steytler N *Local Government Law of South Africa* (2007) 3-18(1).

¹³⁹ Structures Act, s30(2) read with s160(3)(b) of the Constitution.

meetings. Therefore, the majority vote requirement demands cooperation among the coalition parties, particularly bare-majority coalitions to avoid any gridlocks in the council and interruptions in the delivery of services.

3.3.3 The relationship between the Speaker and the Mayor

The first order of business at the first council meeting is to elect a speaker from among the councillors.¹⁴⁰ The speaker performs the role of chairperson including the duty to police the enforcement of the Code of Conduct for Councillors in the council and to oversee the executive.¹⁴¹ The functions of the speaker are set out in 37 of the Structures Act (as amended) and are as follows:

- (a) *To preside over council meetings;*
- (b) *Perform the duties and exercise the powers delegated to the Speaker in terms of s59 of the Systems Act;*
- (c) *Ensure that the council meets at least quarterly;*
- (d) *Maintain order during meetings;*
- (e) *Ensure compliance in the council and council committees with the Code of Conduct as set out in Schedule 7 of the Structures Act;*
- (f) *Ensure that council meetings are conducted in accordance with the rules and orders of the council;*
- (g) *Ensure that the legislative authority of the municipality functions effectively;*
- (h) *To be responsible for the effective oversight over the executive authority of the municipality;*
- (i) *Ensure the effectiveness of the committees of the municipal council established in terms of s79;*
- (j) *Responsible for the ethics and accountability of the municipal council; and*
- (k) *Ensure the effectiveness and functionality of ward committees and the public participation processes.¹⁴²*

The nature of the Speaker's functions is such that the Speaker plays a central oversight role in both the council and the executive. As mentioned above, as chairperson of the council, the Speaker possesses the ability to control and influence the council agenda.¹⁴³ Another way in which the Speaker can influence the outcome of a particular decision in the council is by exercising a casting vote in the council. Section 30(4) of the Structures Amendment Bill provides that 'if on any question, other than a matter mentioned in s160(2) of the Constitution, there is an equality of votes, the councillor presiding must exercise a casting vote in addition to that councillor's vote as a councillor'. This means that the Speaker, through exercising a casting vote, may tip the balance in favour of the

¹⁴⁰ Structures Act, s 36(2).

¹⁴¹ Structures Act, s 36(1) read with s 13.

¹⁴² Structures Amendment Bill, s 37(a)-(k).

¹⁴³ See paragraph 2.5.1.6 above.

coalition government or, if the coalition partners conflict, in favour of his or her political party. The office of the Speaker is thus a valuable resource for the coalition government and ought to be afforded to one of the senior political parties in the coalition government.¹⁴⁴

The mayor is the head of the executive and may be elected in one of two ways depending on whether a municipality has an executive committee or mayoral executive system. In terms of an executive committee system, a mayor, and where necessary a deputy mayor, should be elected from the executive committee.¹⁴⁵ If a municipality has a mayoral executive system, as with all 30 municipalities in the Western Cape, the council must elect the mayor, and if necessary a deputy mayor, from among its members on the same day when the Speaker of the council is elected at the first council meeting or when a vacancy must be filled.¹⁴⁶ The functions of the executive mayor and the executive committee are set out in s56(1)-(3) and s44(1)-(3) respectively. Apart from the mayor also performing a ceremonial role as determined by the council,¹⁴⁷ the functions and powers of the mayoral executive and the executive committee are virtually the same. To avoid repetition, the functions of the executive mayor and the executive committee are listed below. In both instances, the executive mayor and the executive committee must:¹⁴⁸

- (a) Identify and prioritise the needs of the municipality;*
- (b) Review and evaluate those needs in order of priority;*
- (c) Recommend strategies, programmes and services to the municipal council to address those priority needs through the integrated development plan (IDP), and the estimates of revenue and expenditure, taking into account any applicable national and provincial development plans;*
- (d) Recommend or determine the best way, including partnerships and other approaches, to deliver those strategies, programmes and services to the maximum benefit of the community;*
- (e) Identify and develop criteria for evaluation of progress in the implementation of the IDP and the budget, including key performance indicators;*
- (f) Evaluate progress against those key performance indicators;*
- (g) Review the performance of the municipality in order to improve the municipality's:*

¹⁴⁴ A senior political party refers to a political party who garnered the highest or second highest votes in the elections.

¹⁴⁵ Structures Act, s 48(1).

¹⁴⁶ Structures Act, s 55(1) read with s 36(2).

¹⁴⁷ Structures Act, s 56(7).

¹⁴⁸ See s 56(1)-(3) and s 44(1)-(3) of the Structures Act.

- i. *Economy, efficiency and effectiveness*
 - ii. *Efficiency of credit control and revenue and debt collection services; and*
 - iii. *Implementation of by-laws*
- (h) *Monitor the management of the municipality's administration in accordance with council policy;*
- (i) *Oversee the provision of services in a sustainable manner;*
- (j) *Annually report on the involvement of communities and community organisations in municipal affairs;*
- (k) *Ensure that regard is given to public views and report on the effect of consultation on the decisions of the council.*

The positions of the speaker and mayor may be regarded as the most senior positions in the municipality where the speaker acts as a gatekeeper in the council and the mayor act as head of the executive. For this reason, it may be useful to distribute these offices to the political parties who received the most votes between the coalition parties. The fusion of legislative and executive powers in the council implies that for coalitions to be successful in municipalities, the relationship between the mayor and the speaker must be based on cooperation and a concerted effort to maintain good relations between them. Any conflict that arises between the speaker and the mayor must be responded with a concerted effort to address their opposing differences. Failure to address any conflict between them may adversely impact governance in the council and ultimately on service delivery. The Speaker may, for example, use his or her agenda-setting powers to refuse the mayor from placing important matters on the agenda until he or she deems the circumstances more appropriate. The institutional arrangement of dual leadership¹⁴⁹ between the speaker and the mayor thus calls for the maintenance of cooperation and good relations to reduce differences between the two positions and ensure continuous service delivery in municipalities.¹⁵⁰

3.3.4 The need to establish a quorum to conduct council meetings

Section 30 of the Structures Act deals with quorums and decisions. A quorum refers to the number of persons who must be present for a meeting to be validly constituted.¹⁵¹ Section 30(1) of the

¹⁴⁹ The term dual leadership here suggests that while it is generally accepted that the Mayor governs a municipality, the Speaker also performs a crucial role including overseeing the functions of the Mayor. This suggests that the offices of the Speaker and the Mayor are of similar value and not necessarily subordinate to each other.

¹⁵⁰ Labuschagne (2018) 112.

¹⁵¹ *De Vries v Eden District Municipality & Others* (9164/09) [2009] ZAWCHC 94 at para 31.

Structures Act read with section 106(3)(a) of the Constitution requires that a majority of the councillors be present at a council meeting before a vote may be taken on any matter.¹⁵² If the quorum is not present, matters before the council such as the passing of by-laws, approval of budgets, imposition of rates and taxes, levies and duties, and the raising of loans, cannot be decided.¹⁵³ It follows that if cooperation collapse in a minimal-majority coalition, it is likely that council meetings may also collapse. For example, according to Rule 7.2 of the City of Cape Town's *Rules of Order Regulating the Conduct of the Meetings of the Municipal Council of the City of Cape Town*, if no quorum is fixed, the Speaker of the council must suspend the meeting for 30 minutes, and if at that period there is still no quorum, the meeting must be adjourned to another time.¹⁵⁴ A meeting must also be adjourned where a quorum was fixed at the beginning of the meeting but is subsequently lost during the meeting (that is if the meeting becomes inquorate). A meeting becomes inquorate when, for example, if a group of councillors that walks out of a council meeting is big enough so that the quorum is disrupted in which case the meeting must end.¹⁵⁵ Consider, for example, the case of the City of Tshwane Metropolitan Municipality where the municipal council was paralysed due to the inability to convene and conduct meetings and take important decisions such as appointing a municipal manager because of walkouts by the ANC and the EFF. The walkouts of the ANC and EFF caused the council meeting to collapse because it deprived the municipal council of the necessary quorum.¹⁵⁶ The inability to establish a quorum, therefore, has the potential to halt service delivery and render a municipality powerless as it can only continue the business of the day provided that it has a quorum to make decisions in the municipal council. The survival of the coalition government may be on the line if the coalition demonstrates an inability to prioritise the basic needs of the local communities over their political agendas. Therefore, it pays off for the coalition to perform their functions in the best interest of the local community through cooperating at times when a breakdown in cooperation in the council is imminent. The High Court in *Democratic Alliance and Others v Premier for the Province of Gauteng and Others*¹⁵⁷ reiterated that councillors have to attend council meetings as reflected in the Code of Conduct for Councillors.¹⁵⁸ The Code of

¹⁵² See paragraph 3.3.2 above.

¹⁵³ Constitution (1996) s160(2), see para 3.3.2 above.

¹⁵⁴ City of Cape Town *Rules of Order Regulating the Conduct of Meetings of the Municipal Council of the City of Cape Town* (2019), Rule 7.2

¹⁵⁵ De Visser J 'Gauteng High Court Deals Decisively with Councillor-Walk-Outs' (2020) 15(2) *Local Government Bulletin* 1.

¹⁵⁶ *The Premier for the Province of Gauteng and Others v Democratic Alliance and Others* (394/2020) [2020] ZASCA 136 (27 October 2020) at para 8.

¹⁵⁷ (18577/2020) [2020] ZAGPPHC 119.

¹⁵⁸ *Democratic Alliance and Others v Premier for the Province of Gauteng an Others* at para 106. See also Item 3 of Schedule 5 of the Structures Act.

Conduct for Councillors permits councillors to be absent from a council meeting only if leave of absence was granted and if a councillor is required to withdraw from the meeting.¹⁵⁹ Walkouts do not fall within any of these parameters and are thus illegal. The court emphasised that walkouts from council meetings have dire consequences for service delivery and goes against the interests of the community who councillors must serve.¹⁶⁰

The conflation of legislative and executive functions in the municipal council directs the coalition partners to work together to ensure that the coalition programme is implemented and services are delivered without interruptions. The requirement that decisions be taken through majority votes also creates an incentive for the coalition partners, especially concerning bare-majority coalitions which could be almost equal in number to the opposition, to cooperate in the council or risk having their motions rejected in the council. The conflation of legislative and executive functions also implies that the maintenance of good relations between the Speaker who is the chairperson of the council and the mayor who acts as head of the executive is crucial to establish an environment that is conducive for stable coalition governance. Quorum requirements further require that the coalition parties commit to attending all council meetings to enable the coalition to take important decisions and to ensure continuous service delivery in the municipality. It may thus be argued that the institutional features of the council accommodate coalition governments because it encourages cooperation among the coalition government. This inference is further supported by how the system responds to a breakdown in cooperation in the council. This will be discussed below.

3.3.5 Responding to cooperation challenges in the council and the executive

Any breakdown in cooperation becomes problematic when it has adverse consequences for service delivery in the municipality. In the council, a breakdown in cooperation may materialise, for instance, when party representatives abstain or vote against the motions brought forward by the coalition which then hinders the coalition from implementing the coalition programme. In this case, the political party may request that the councillor vacate his or her seat for failing to vote according to the instructions of the political party.

¹⁵⁹ Item 3(a) and (b) of Schedule 5 of the Structures Act.

¹⁶⁰ *Democratic Alliance and Others v Premier for the Province of Gauteng and Others* at para 88.

In terms of the executive, s 58 of the Structures Act authorises the council to adopt a resolution to remove the mayor from office.¹⁶¹ If the mayor is removed through a vote of no confidence, he or she must vacate his or her office. In the case of the mayoral executive system, upon the removal of the mayor, the mayoral committee will also dissolve automatically. In terms of the executive committee system, the council may adopt a resolution to remove one or more members from the executive committee.¹⁶² The Structures Act does not expressly mention that such a resolution constitutes a vote of no confidence but practically and politically, the resolution achieves the same end as a vote of no confidence. The advantage of this arrangement, however, is that all members of the executive committee do not have to vacate office where one member, including the mayor, faces a resolution to have him or her removed from the executive committee. This safeguards the offices of the rest of the members of the executive committee.

Finally, if a coalition government demonstrates a consistent inability to cooperate to deliver services in the council, the Constitution authorises the provincial executive to intervene by issuing a directive, assuming responsibility, or dissolving a municipal council.¹⁶³ In *Premier of the Western Cape and Others v Overberg District Municipality and Others*,¹⁶⁴ the Court held that the decision to dissolve a municipal council is the most drastic step that the Provincial Executive can take while issuing a directive and assuming responsibility in the municipality is generally pursued before deciding to dissolve a council.¹⁶⁵ If the Provincial Executive decides that it is appropriate to dissolve the council and appoint an administrator, fresh elections must be held in the municipality thus confirming that the coalition government will terminate early.

In 2020, the coalition between the EFF and the DA became so toxic that the EFF later conducted walkouts from council meetings along with the ANC, the opposition in the council, to disrupt council meetings. Given that the EFF and the DA was a bare-majority coalition, the walkouts deprived the council of the necessary quorum thus bringing the council to a stalemate. Consequently, the council could not make important appointments and take decisions that are crucial for the effective functioning of the municipality.¹⁶⁶ The MEC of the Gauteng Executive Council responded by intervening in the City of Tshwane Metropolitan Municipality. The MEC invoked s 139(1)(c) of the

¹⁶¹ Local Government: Municipal Structures Act 117 of 1998.

¹⁶² Structures Act, s 53(1).

¹⁶³ Constitution (1996) s139(1)(a)-(c).

¹⁶⁴ (2011) ZASCA 23.

¹⁶⁵ *Premier of the Western Cape and Others v Overberg District Municipality and Others* (2011) at para 20.

¹⁶⁶ See *Democratic Alliance and Others v Premier for the Province of Gauteng and Others* at paras 7-8.

Constitution to intervene and decided to dissolve the municipal council.¹⁶⁷ In this case, the coalition ought to have terminated which in turn would have triggered fresh elections. However, before this could happen, the DA appealed to the Supreme Court of Appeal. The DA was successful not necessarily because the High Court judgment was incorrect but rather because of the surrounding circumstances. At the time, the COVID-19 pandemic prompted the IEC to postpone all by-elections during the lockdown. However, according to s 159(2) of the Constitution if a municipal council was dissolved then fresh elections must be held within 90 days from the date the council was dissolved. The effects of COVID-19 on the IEC caused the provincial administrator to be in office for longer than the 90 days as an election could not be held within this timeframe. The court decided to overturn the High Court judgment on the basis that it could not allow an unelected administrator to remain in office for longer. The effect of having an administrator governing in the municipality implied that the municipality is being governed by an unelected official who is accountable to the provincial sphere of government and not the community. Consequently, the choices of voters at the municipal level would be disregarded and the autonomy of local government would be undermined.¹⁶⁸ Therefore, the success of the DA to overturn the High Court judgment centred on a technicality and not necessarily the main issue as in the High Court. In other words, but for COVID-19 which prevented the IEC from having fresh elections within the 90-day timeframe, the coalition would have terminated prematurely.

The authority to remove a councillor if they fail to vote according to their party instructions is a political instrument that can be used to reinforce party discipline in the council. The authority of the council to remove councillors from the council and the executive as well as the MEC to intervene in a municipality constitutes formal mechanisms that can stabilise the council when turmoil in the coalition government disrupts sound governance practices in the municipality. For this reason, the local government framework provides sanctions to respond adequately to uncooperative coalition governments.

This section, however, identified a shortcoming of the local government framework relating to the electoral system. The framework does not allow for adequate timeframes to permit the parties with sufficient time to engage in coalition negotiations. In the case of a by-election, the framework is silent on the timeframe between the elections and the first council sitting. This affords parties some

¹⁶⁷ *Democratic Alliance and Others v Premier for the Province of Gauteng and Others* at para 13.

¹⁶⁸ *The Premier for the Province of Gauteng and Others v Democratic Alliance and Others* (394/2020) [2020] ZASCA 136 (27 October 2020) at para 44.

lee-way to negotiate longer than the prescribed 14-day period as with the local government elections. However, regulation is desirable because it brings finality to the negotiations and avoids a situation like in Belgium where the coalition negotiations continued for more than a year.

To improve coalition negotiation outcomes, coalition parties ought to be afforded sufficient time to carefully consider the various issues to be decided such as the delineation of the policies to be pursued, the allocation of offices, the relations between the coalition partners and the drafting of mechanisms to ensure smooth and effective functioning of the coalition government, as well as how their decisions will impact on their political party in subsequent elections. These issues must be carefully considered to structure the incentives for cooperation. For this reason, it can be said that the negotiation process is complex and important issues may be overlooked if the parties are rushed to conclude the negotiations within a two-week timeframe. Law reform in this area may be feasible to improve coalition governments in municipalities.

4. DEVISING INCENTIVES FOR COOPERATION IN THE COALITION GOVERNMENT

The negotiation process is essential to influence the extent to which individuals and political parties can meet their personal goals or the goals of the political parties. The next section will discuss the strategies that may be employed to establish incentives for cooperation when these issues are considered as well as the mechanisms that may be created to manage conflict in the coalition government.

4.1 Finding suitable coalition partners

In European countries where coalition governments are the norm, it is common practice for the party who won the most votes in a hung council (called the *formateur*) to commence the negotiations by inviting political parties to enter negotiation talks. In paragraph 2.6.2 above, it was mentioned that a political party's political ideology, as reflected by their party brand and their election manifestos, often constitutes the first point for differentiation among coalition partners, and informs the policy choices of the party. To recall, a political ideology is defined as a set of beliefs, values and opinions that a political use to justify, explain, contest or change the social and political arrangements of a political community.¹⁶⁹ The first round of negotiations is thus aimed at finding

¹⁶⁹ See para 2.6.2 above.

'coalitionable' parties who demonstrate a capacity for coalitions. A political party demonstrates a capacity for coalitions when they share similar ideologies as that of the *formateur* and have shared commitments in respect of their policy objectives (which is closely related to their ideologies).

Budge and Laver argue that the parties' ideological closeness is regarded as indispensable to the stability of the coalition government.¹⁷⁰ Atkins thus posits that neglecting ideological differences in coalition formation is a serious oversight.¹⁷¹ This is because the ideological views of political parties, as discussed above, inform their political thinking and programmatic stances on issues.¹⁷² Policy diversity among coalition parties arises as a result of the starting point of differentiation namely, the ideologies of the parties.¹⁷³ The souring relationships between the EFF and the DA in their former alliance in the City of Tshwane is a case in point. One of the most debated issues between the EFF and the DA, though to the competence of the matter that lies with the national government, is the Land Expropriation Bill. Whereas the EFF's land policy seeks to do away with private property rights and to vest the right to land ownership and control of the land in the hands of the state; the DA is of the view that the implementation of such a policy would undermine the core values of our Constitution.¹⁷⁴ The EFF leader removed the mayor in a vote of no confidence after the DA failed to support the EFF's motion in the National Assembly to amend the Constitution to allow for land expropriation without compensation.¹⁷⁵ This also illustrates how national politics can find its way into municipal councils and influence how decisions are made on the local level. It is thus a prerequisite for coalition partners to consider the ideological closeness or divergence between them before entering a coalition government.

¹⁷⁰ Budge I & Laver M 'Policy, Ideology and Party Distance: Analysis of Election Programmes in 19 Democracies' (1986) 11(4) *Legislative Studies Quarterly* 607.

¹⁷¹ Atkins J (2018) 6.

¹⁷² Atkins (2018) 6.

¹⁷³ See para 2.6.2 above.

¹⁷⁴ Mantshantsha S 'EFF land dream: Turning South Africa into one big Bantustan- for the impoverishment of the people' available at <https://www.dailymaverick.co.za/article/2019-12-16-eff-land-dream-turning-south-africa-into-one-big-bantustan-for-the-impoverishment-of-the-people/> (accessed 10 August 2020); Democratic Alliance 'DA will not make any submissions on Draft section 25 amendment bill' available at <https://www.da.org.za/2019/11/da-will-not-make-any-submissions-on-draft-section-25-amendment-bill/> (accessed 10 August 2020).

¹⁷⁵ News24 'UDM wants apology from DA in new Nelson Mandela Bay coalition' available at <https://www.news24.com/news24/southafrica/news/udm-wants-apology-from-da-in-new-nelson-mandela-bay-coalition-talks-20200116> (accessed 17 August 2020).

4.2 Devising a coalition programme

If the *formateur* party is satisfied with the identified political parties, the second step of the negotiation process is to devise a coalition programme. The programme of the coalition government is a document that reflects the coalition government's policy priorities that they want to achieve during their governance term. This may highlight priorities that the coalition wants to achieve and which they deem necessary to improve service delivery in the municipality such as, for instance, addressing fraud and corruption in municipalities and ensuring that schools and households in their jurisdiction have access to water. Also, the programme provides the measures that the coalition will adopt to address the selected policy priority areas. The coalition programme is generally published as part of the coalition agreement; and in other cases, it constitutes a separate document that is published after the publication of the coalition agreement. The drafting of the coalition programme usually resides within the competence of the actors who were responsible for compiling the respective party's election manifestos.¹⁷⁶

4.3 Dividing the spoils: Portfolio and office distribution

The third of negotiation rounds is aimed at dividing the spoils which entail the distribution of chairpersonship across the various portfolio committee and political offices.¹⁷⁷ The chairpersons of the section 80 portfolio committees must be carefully distributed to accommodate the interests of the political parties. Political offices may also be distributed to office-seeking individuals to counteract potential breakdowns emanating from their decision to form new alliances to advance their personal interests. According to Weale, if parties are aware that they may derive more long-term benefits from cooperating in the coalition then they will choose to cooperate even at times when they may derive a short term gain from not cooperating in the coalition.¹⁷⁸ In the context of coalition governments, this means that parties may avoid short-term pay-offs that they can attain from defecting in the coalition provided that they can attain ongoing benefits throughout the coalition life-cycle from cooperating in the coalition government.

What are the long-term advantages of cooperating in the coalition government? Dissolution is costly because the parties face the possibility of not being included in future coalition governments.¹⁷⁹

¹⁷⁶ Hazell & Yong (2012) 36.

¹⁷⁷ Baron (2018) 80.

¹⁷⁸ Weale *A Democratic Justice and the Social Contract* (2013) 104.

¹⁷⁹ Indridason I 'Live for Today, Hope for Tomorrow? Rethinking Gamson's Law' (2015) *Working Paper, University of California Riverside* 21.

Political parties often look at a political party's behaviour in previous coalitions to discern whether a political party may be trusted to cooperate in the long run. At the same time, if a coalition government dissolves, the coalition parties will also lose their offices and their ability to implement their government agenda. In contrast, the continued cooperation in the coalition government improves a party's chances of influencing the agenda of the government and chairing one or more of the portfolios areas in the municipality. Moreover, where coalition parties have established good relationships to work together in a coalition government, they may decide to form pre-electoral alliances to continue to govern together regardless of the electoral outcome in subsequent elections. This, in turn, safeguards a party's position as a political party of the majority in the government. The strategic allocation of portfolios and offices therefore creates conditions for coalition members to exercise restraint and in turn, increases the probability for cooperation in the coalition government.

4.3.1 The formateur's advantage in portfolio and office distribution

The party that initiates the negotiations is also required to allocate portfolios and offices. This means that it is the *formateur* party who must exercise the task of establishing conditions for cooperation through portfolio and office distribution.

According to Dumont and Bäck, the *formateur* party is the most important predictor of the government that forms.¹⁸⁰ This is because it is the *formateur* party that leads and controls the agenda of the coalition formation process.¹⁸¹ This is referred to as '*formateur* advantage'.¹⁸² The *formateur* advantage enables the party with the largest number of votes to make take-it-or-leave-it offers in the negotiation process. In the context of portfolio allocation (that is, when executive members are appointed as chairpersons in the respective portfolio areas), the *formateur* advantage enables the *formateur* party to, for example, assume control of most of the seats in a mayoral committee and consequently also over the chairpersonships in section 80 committees.¹⁸³ However, making take-it-or-leave-it offers in the coalition negotiation will undermine any effort to establish conditions for cooperation in the coalition. While such a strategy may indeed result in short-term

¹⁸⁰ Dumont P & Bäck H 'Making the First Move: A Two-Stage Analysis of the Role of Formateurs in Parliamentary Government Formation (2008) 135(3-4) *Public Choice* 355.

¹⁸¹ Lin N, Stevenson R, Tromborg M & Fortunato D 'Gamson's Law and Voters' Perceptions of Portfolio Allocations' (2017) 56 *European Journal of Political Research* 916.

¹⁸² Indridason (2015) 4.

¹⁸³ Baron (2015) 108.

gains for the *formateur* party, the coalition itself may be short-lived. A coalition that has unhappy coalition partners, will be unstable.¹⁸⁴ Therefore, to provide the coalition with security against instability arising from a breakdown in cooperation, the *formateur* party is encouraged to produce offers that accommodate, as far as possible, the interests of all the coalition parties.

4.3.2 The strategic distribution of portfolios in coalition governments

It was mentioned in paragraph 2.6.2 above that when political parties campaign for the upcoming elections, the parties articulate various policy priorities that they would like to implement if they are voted into office. Voters, in turn, vote for the political parties whose policy preferences they favour. A good strategy for the distribution of portfolios in the coalition government is thus informed by its ability to enable the political parties to retain some connection with their voters through realising their policy aspirations.¹⁸⁵ According to Browne and Feste, certain portfolio areas are regarded by coalition partners as important because it reinforces the loyalty of their voters on which they depend for their parliamentary standing.¹⁸⁶ This captures the famous statement of Anthony Downs that 'parties formulate policies to win elections, rather than win elections to formulate policies'.¹⁸⁷

To retain the votes of their constituents, the political parties in the coalition will aim to implement the policy priorities on which they campaigned before the elections. It can thus be assumed that, in most cases, the political parties in the coalition will be heterogeneous in their policy preferences or assume different programmatic stances about issues that falls within the same policy domain.¹⁸⁸ For example, a 'Green' party may favour portfolios over the environment over those that pertain to corporate governance. The Green party would thus find it advantageous to be allocated a chairpersonship in a portfolio area where they can exercise power to advance their policy objectives in that regard. In doing so, the Green party is also afforded the means to be responsive to their electorate who voted for them due to the policy goals that they promised to pursue if they are elected into office. This is confirmed by an empirical study conducted by Bäck, Dumont and Debus

¹⁸⁴ Indridason (2015) 4.

¹⁸⁵ Dahl R *Polyarchy* (1971) 1; Powell G *Elections as Instruments of Democracy: Majoritarian and Proportional Visions* (2000) 3.

¹⁸⁶ Browne E & Feste K 'Qualitative Dimensions of Coalition Payoffs' (1975) 18 *American Behavioural Science Review* 533.

¹⁸⁷ Downs A 'An Economic Theory of Political Action in a Democracy' (1957) 65(2) *Journal of Political Economy* 137.

¹⁸⁸ Laver & Shepsle (1996) 33.

which found that saliency matters when parties bargain over portfolios.¹⁸⁹ The results of the study therefore support the argument that parties prefer, and aim to control, portfolios areas that enable them to address issues which they stressed during the election (and reflected in their manifestos).¹⁹⁰

It was mentioned above that policy differences between the parties in the coalition government may adversely affect cooperation. This can occur when a party does not want to accept a policy proposal that is contrary to their preferences thus causing them to adopt a distinct stance on the matter. However, tensions emanating from policy differences may be mitigated if a party is afforded the chairpersonship in a portfolio area that enables them to control the policy areas that are salient (important) to them. Bäck *et al* further provide that this degree of autonomy over the relevant portfolio area means that the policy outputs of that portfolio area depend on the policy views of the party chairing the portfolio area.¹⁹¹ With regards to the above example, if the Green party chairs the corporate portfolio area and thus have the power to determine the content for policies relating to corporate governance but not the environment, then it would not be advantageous to the Green party to cooperate in the coalition because they would not be positioned to fulfil their promises to their electorate nor remain distinct while they are in the coalition. The strategic distribution of the chairperson positions in section 80 portfolio committees among the coalition partners is thus an example of how existing resources can be used to create payoffs for cooperation through accommodating the interests of the political parties.

4.3.3 The issue of size in portfolio allocation

In every government, there exists a finite number of portfolios that is available for distribution among the coalition parties. In municipalities, this number decreases further depending on whether a municipality is a metropolitan, local or district municipality. A coalition that comprises more political parties than is necessary to constitute an overall majority (a grand coalition) implies that each political party will receive fewer portfolios and office perks than the political parties in bare-majority coalitions. Therefore, as the number of parties in the coalition increases, it becomes increasingly difficult for the coalition to provide the coalition parties with control over portfolio areas

¹⁸⁹ Bäck H, Dumont P & Debus M 'Who Gets What in Coalition Governments? Predictors of Portfolio Allocation in Parliamentary Democracies' (2011) 50 *European Journal of Political Research* 466.

¹⁹⁰ Bäck, Dumont & Debus (2011) 466.

¹⁹¹ Bäck, Dumont & Debus (2011) 449.

of their choice. The increase in the number of parties in the coalition also implies that the parties may have to make more compromises in the negotiations to cater to the interests of all the parties. Given that there is only a handful of key chairpersonship positions in the portfolio committees, it is doubtful whether the coalition will be able to accommodate the interests of every political party in the coalition. This, in turn, reduces the incentives for cooperation in the coalition government. For this reason, it may be useful for parties to form minimum-winning or bare majority coalitions.¹⁹² However, forming bare-majority coalitions increases the stakes for instability because the coalition will be dependent on the cooperation of every coalition partner, failing which may cause a stalemate and block decisions that require support from the majority.¹⁹³

4.3.4 Incorporating the principle of proportionality in portfolio distribution

Apart from considering *how* portfolios ought to be distributed in the coalition government, another important consideration relating to portfolio distribution has to do with *how many* portfolios each party in the coalition government will receive. Failing to consider the latter may account for one or more of the parties' defection in the coalition because they believe that the coalition deprives them of their due share of political power.¹⁹⁴ The proportionality theory as developed by William Gamson in 1961 seeks to explain how many portfolios each coalition partner should receive. 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 number of resources which they contribute to a coalition'.¹⁹⁵ Browne and Franklin further developed this theory to mean that the percentage share of portfolios that a party receives by participating in the coalition and the percentage share of that party's seats in the legislature should be proportional.¹⁹⁶ This means that if party A obtained only one-third of the seats in the legislature, then party A will only be entitled to one-third of the portfolios. Empirical results, however, find that while Gamson's law receives the strongest empirical support, which indicates that coalition partners distribute portfolios per the number of seats a party has obtained, there are

¹⁹² See Riker's Theory on why parties form minimum-winning coalitions in Robinson J 'Decision-Making and Coalition Building: A Review: William H. Riker, *The Theory of Political Coalitions*' (1963) 7(4) *Journal of Conflict Resolution* 763-768; Riker W *The Theory of Political Coalitions* (1962).

¹⁹³ Therefore, it may pay off to include an additional political party to guard against the possibility of stalemates materialising from the non-cooperation of one of the political parties in the coalition government.

¹⁹⁴ Hatzistavrou A 'Faction' in Deslauriers M & Destree P *The Cambridge Companion: Aristotle's Politics* (2013) 278.

¹⁹⁵ Gamson W 'A Theory of Coalition Formation' (1961) 26 *American Sociological Review* 376.

¹⁹⁶ Browne E & Franklin M 'Aspects of Coalition Payoffs in European Parliamentary Democracies' (1973) 67 *American Political Science Review* 457. 453-469

slight deviations in achieving a pure proportionality.¹⁹⁷ These slight deviations may be as a result of the *formateur* party who exercises political leadership in most of the portfolios areas because of their *formateur* advantage as discussed above. In other cases, smaller parties often receive bonus portfolios area that causes deviations from pure proportionality in the allocation of portfolios because of, for instance, their kingmaker status.

In South Africa's local government smaller political parties often come out as kingmakers who ultimately have to decide the fate of larger political parties. The AUF-DA coalition in Bitou Local Municipality is a case in point. In this case, the two dominant political parties namely the DA and the ANC each won six seats while the African United Front (AUF) won one seat in the council. The AUF became the kingmaker because the party would ultimately decide who will govern between the DA and the ANC. This increased the AUF's bargaining advantage significantly and it provided them with the advantage of aiming for the highest office in the municipality: the mayor. Consequently, the AUF was afforded the office of the mayor, despite being electorally the weakest party.¹⁹⁸ The office of the mayor provides the party with access to wide decision-making powers and control in the executive. For this reason, parties attach more weight to the office of mayor and it may be construed as the equivalent of two chairpersonship positions in a section 80 portfolio committee.¹⁹⁹ Rewarding kingmakers with the highest office because of their bargaining advantage creates a situation in which political agreements overshadow the will of the citizens who arguably did not intend for the smallest party to be the head of the executive. It may be better to instead afford a smaller political party a bonus position as chairperson in a portfolio committee or to assume complete control over a specific portfolio committee.

¹⁹⁷ Freschette G, Morelli M & Kagel J 'Gamson's Law Versus Non-Cooperative Bargaining Theory' (2004) 51 *Games and Economic Behaviour* 388; Indridason (2015) 11.

¹⁹⁸ Bitou Local Municipality 'DA/AUF coalition breaks down in Plettenberg Bay' available at <https://thegremlin.co.za/plettenberg-bay-news/wordpress/2018/04/27/da-auf-coalition-breaks-down-in-plettenberg-bay/> (accessed 11 November 2020).

¹⁹⁹ A coalition in Sweden was formed between the Centre party, the Conservatives and the Liberals. The Centre party (*formateur*) received the most votes and elected the Prime minister (equivalent of mayor in municipalities). According to the election results, Gamson's law required that the Centre party obtain 9 portfolios, the Conservative party 6 portfolios and the Liberals 4 portfolios and 1 portfolio for an independent candidate. The *formateur* party instead divided the portfolios as follow: 8 for the Centre party, 6 for the Conservative party, 5 for the Liberal party and 1 for an independent candidate. The *formateur* party argued that their own party was given the most important post namely, the prime ministerial post. Therefore, it could be seen as if they had 9 posts if only the weights of the portfolios were considered.

4.3.5 Office distribution in the coalition government

The rational actors' theory explains that coalitions and politics, in general, are not a mere collection of politicians who seek to advance only the rights of those they represent. In practice, there exists in politics also those who want to advance their self-interest. These individuals may be referred to as 'office-seeking politicians. The agreement that is devised in the negotiation should also consider how payoffs can be structured to accommodate the interests of office-seeking individuals in the coalition. According to Jenyns, unless one appeals to the self-interest office-seeking individuals, they 'will have no star to steer by but must sail without a compass, just as the gales of favour, resentment, popular absurdity, or their own, shall direct them'.²⁰⁰ This means that office-seeking individuals participate in politics to derive some benefit for themselves; and if he or she perceives that the coalition does not take interest in his or her welfare, or that he or she obtains no benefit from participating in the coalition, and the office-seeking individual will have reason to depart from the terms of the coalition and to defect (and possibly motivate others to do the same). Therefore, in such cases, office distribution provides self-interested individuals with an incentive to cooperate in the coalition government. In this way, office distribution serves as a condition for cooperation as the benefit of enjoying office spoils throughout the coalition's life-cycle may deter an individual from engaging in non-cooperative behaviour to realise short-term gains.

Among the offices that can be distributed in municipalities is that of the speaker, deputy speaker (if applicable), council whip, mayor, deputy mayor, executive committee members, s 79 and s 80 committee chairpersons, chairpersons of sub-councils. These are full-time positions whose remuneration is regulated under the Remuneration of Public Office Bearers Act 20 of 1998. The Act provides a breakdown of the remuneration packages that each political office bearer may be entitled to receive depending on the grading of their municipal council. The upper limits of allowances *in re* the mayor, speaker and deputy speaker, executive committee or mayoral committee members and chairpersons are set out below:²⁰¹

²⁰⁰ Selinger (2019) 56.

²⁰¹ Remuneration of Public Office Bearers Act 20 of 1998 regulations in GN 1477 GG 27138 of 21 December 2004, Regulation 5.

GRADE	TOTAL REMUNERATION PACKAGE			
	EXECUTIVE MAYOR OR MAYOR	SPEAKER, DEPUTY EXECUTIVE MAYOR OR DEPUTY MAYOR	MEMBER OF THE EXECUTIVE COMMITTEE OR MAYORAL COMMITTEE, WHIP OR CHAIRPERSON OF A SUBCOUNCIL	CHAIRPERSON OF A SECTION 79 COMMITTEE
6	1,350,250	1,090,488	1,027,223	997,090
5	1,006,728	805,382	755,045	732,898
4	859,471	687,575	644,603	625,693
3	827,749	662,200	620,813	608,340
2	775,063	620,051	586,833	569,619
1	752,483	607,716	569,732	553,020

The mayor of a plenary type municipality should be remunerated according to the total remuneration package column of executive mayor or mayor.

It is thus clear that political office bearers in municipalities receive good salaries. Further, s 158(1) of the Constitution permits any person, subject to the conditions set out in s 158(1)(a)-(e), to become a councillor provided that he or she is qualified to vote for a municipal council. A person is deemed qualified to vote for a council if he or she is 18 years or older at the time of the elections. This means that any person that is 18 years or older may qualify as a councillor regardless of their educational qualifications, skills and experience requirements. Individuals, especially those who lack educational qualifications and experience to be employed in a high paying occupation, may thus be attracted to local government because they can receive a lucrative income.

In terms of the mayoral position, Lin, Stevenson, Tromborg and Fortunato provides that it is an established practice for the party who obtained the most votes in the elections party to almost always obtain the office of the mayor. Given that such a party exercises the role of distributing the portfolios and offices, it is not surprising that the party will elect a representative from their party to assume the office of mayor in a municipality. Of course, the *formateur* party may also decide to distribute the office of mayor to another political party. The distribution of the other offices is generally determined by the negotiation process.

Office spoils may influence a councillor to judge favourably of the coalition's motions, in cases where he is doubting to cooperate in the council.²⁰² Consider, for instance, cases where conflict arises as a result of policy differences between the parties in the coalition government. The long-term benefit of office rewards in the coalition may nonetheless prompt individuals to tolerate a less favourable policy by accepting it in the council.²⁰³ Office rewards, like strategic portfolio area allocation, can

²⁰² Selinger (2019) 53.

²⁰³ Baron (2017) 99.

thus increase cooperation in the coalition government at times when parties tend to become uncooperative.

4.4 Mechanisms for stable coalition governance

The above section on coalition negotiations provided an account of how incentives for cooperation and self-restraint can be devised at the bargaining stage to promote cooperation, minimise conflict and produce stable coalition governments. However, as in single-party governments, conflict may nonetheless emerge during the life-cycle of the coalition government. It is thus important for the negotiations to devise mechanisms that can facilitate conflict-management, dispute resolution and oversight in the coalition government. These mechanisms are discussed next.

4.4.1 The coalition agreement

— 4.4.1.1 Cementing the bargains and compromises of the coalition negotiations

It is customary for coalition negotiations to be concluded with a coalition agreement that cements the terms and conditions made by the political parties to establish the coalition government. The fundamental function of a written coalition agreement is thus to bind coalition partners to the full range of concessions made among the coalition partners in the bargaining process.²⁰⁴ The coalition agreement may be either formal or informal. A formal coalition agreement is a contract-like document or political agreement that is comprehensive in that it covers a broad range of policies and procedural rules.²⁰⁵ In Bulgaria, for instance, the coalition agreement covers matters such as the policy priorities of the coalition, portfolio allocation, decision-making procedures, and the general rules of coalition behaviour.²⁰⁶ Coalition agreements are important documents as the agreement serves as a point of reference for the concessions made in the negotiation stage whenever issues arise in the coalition government. In this way, coalition agreements, have the potential to manage conflict and facilitate stability in coalition governments.

The coalition agreement is an important political instrument to ideologically divided coalition partners. Parties with heterogeneous ideologies tend to use the coalition agreement to negotiate detailed policy agenda on matters on which they are ideologically divided. This is done to set the

²⁰⁴ Müller, Bergman & Ilonszki (2019) 19.

²⁰⁵ Müller, Bergman & Ilonszki (2019) 20.

²⁰⁶ Kolarova R & Spirova 'Bulgaria: Stable coalitions of unstable parties' in Müller W, Bergman T & Ilonszki G *Coalition Governance in Central Eastern Europe* (2019) 110-111.

parameters within which the parties must act concerning that policy area. This is done to constrain the political parties, especially those who occupy the chairperson position in the portfolio area, from drifting from the preferences of the coalition government.²⁰⁷ Furthermore, Klüver and Bäck found that in countries such as Denmark, Finland, Estonia, the Netherlands, Norway, Poland and Portugal coalition partners tend to focus their attention in coalition agreements to positional issues on which parties have very distinct policy positions,²⁰⁸ suggesting that coalition partners devote more time and attention to potentially divisive policy issues in the bargaining process. Conversely, issues on which parties are not divided often receive less attention in the coalition agreement.²⁰⁹ This suggests that coalition partners in these countries use the coalition agreement to highlight and regulate issues over which they foresee conflict may arise in future. Coalition agreements may thus be viewed as a document demonstrating the commitment by the coalition parties to address any issues that they foresee at the bargaining stage, and which may constitute a threat to cooperation and stability in the coalition government. However, a limitation of the coalition agreement is that it is not legally binding on the coalition partners nor enforceable in a court of law.

— 4.4.1.2 The legal status of coalition agreements

Coalition agreements are regarded as political instruments that create only moral obligations for the contracting parties. The negotiated agreements are referred to as ‘gentlemen agreements’ where negotiators and parties undertake solely moral pledges.²¹⁰ This means that the coalition agreement may not be able to rule out criticism, rebellion or defection in terms of the coalition agreement but merely serves as a mechanism that can be utilised to refer to a party’s earlier acceptance of a certain arrangement as covered in the coalition agreement.²¹¹ For example, in the former coalition of the Nelson Mandela Bay municipality, a member of the United Democratic Movement (UDM) was alleged to have breached ‘every provision in the coalition agreement’ of the

²⁰⁷ Indridason I & Kristinsson G ‘Making Words Count: Coalition Agreements and Cabinet Management’ (2013) 52 *European Journal of Political Research* 828.

²⁰⁸ Klüver H & Bäck H ‘Coalition Agreements, Issue Attention and Cabinet Governance’ (2019) 52 (13-14) *Comparative Political Studies* 2009.

²⁰⁹ Klüver & Bäck (2019) 2009.

²¹⁰ Von Munch I ‘A German Perspective on Legal and Political Problems of Coalition Governments’ (1999) 30(1) *Victoria University of Wellington Law Review* 69.

²¹¹ Müller, Bergman & Ilonszki (2019) 19-20.

coalition government.²¹² In this case, the UDM was in a coalition with the DA, ACDP and COPE. The UDM defected from the coalition and joined the ANC and EFF to oust the former mayor Athol Trollip who was part of the coalition under the DA. It appears that the reason for the UDM's defection was because the UDM wanted the position of mayor which was held by the DA coalition partner. Consequently, after the UDM's defection, a new mayor, Mongameli Bobani who was a member of the UDM party, was installed. Regardless, of the existence of a coalition agreement, nothing prevents a political party from drifting from the coalition agreement. Political parties may, however, be constrained from drifting from the provisions of the coalition agreement where the coalition agreement is made public. the question as to whether coalition agreements may be enforced by a court of law?

In a foreign case, the court had the opportunity to consider whether coalition agreements may be enforceable in a court of law. In *Yosef Zervesky v the Prime Minister* (199) 45(i) P.D 749, the issue before the court was whether the court must enjoy the authority to entertain conflictual matters relating to coalition agreements and whether it was not more fitting for political issues to be solved by the public instead. The court highlighted the danger of allowing courts to deal with issues arising from coalition agreements such as the overloading of the court role, the politicisation of the courts and the ever-widening of the *locus standi* to approach the court.²¹³ The court concluded that coalition agreements are indeed binding and of legal force but they were beyond the scope of judicial determination. The proper judge of such agreements is the public to whom political parties are accountable.²¹⁴ This case illustrates that while courts cannot intervene, the coalition agreements ought to be made public to enable voters to assess to what extent their political party has remained committed to their pledges and accountable to their constituents.

In South Africa, coalition negotiations are usually conducted behind closed doors and the outcome of these negotiations as reflected in coalition agreements also remain out of the public eye. Admittedly, it may be appropriate for certain parts of the coalition agreement which contains politically sensitive issues to remain confidential, however, other issues ought to be transparent to the public. In another foreign case from India, the court confirmed that coalition agreements must be made public subject to certain conditions. In the case of *Shalit v M.K Shimon Peres & Others*

²¹² The Citizen 'Talks to take place to form new coalition in Nelson Mandela Bay' available at <https://www.oudtshoorncourant.com/News/Article/Politics/talks-to-take-place-to-form-new-coalition-in-nelson-mandela-bay-202001150320> (accessed 17 August 2020).

²¹³ Landau A 'Yosef Zervesky v the Prime Minister (199) 45(i) P.D 749' (1992) 26(4) *Israel Law Review* 438.

²¹⁴ Landau (1992) 440.

H.C.J 1601/90 where the court held that the disclosure of coalition agreements is necessary to allow for effective public scrutiny of the contents of the coalition agreement and to enhance public confidence in the government. However, the duty to disclose is not absolute as other interests or the need for political negotiations to be held away from the full glare of publicity may, in certain instances, require non-disclosure.²¹⁵ The information that ought to be made public pertains to, among other things, the structure of government, the policy priorities of the coalition and the policy areas of the various coalition partners to enable the public to hold their representatives accountable. The outright refusal to make any parts of the coalition agreement available as in South Africa waters down the ability of the public to participate in politics beyond the elections. Further, if coalition parties are aware that a coalition agreement will be made public, the coalition agreement may have more persuasive value to encourage the parties to abide by the terms and conditions of the agreement. The public nature of the coalition agreement may also encourage the coalition parties to negotiate fairly in determining the content of the coalition agreement. Conversely, if the coalition agreement is not made public it becomes easier for political parties to stray from the coalition agreement.

4.4.2 Mechanisms for dispute resolutions

Due to the confidential nature of the coalition negotiations in South Africa's local government, it is unclear how conflicts are resolved in coalition governments. It may be that the reason for instability in councils is because of the absence of appropriate structures in the coalition government that parties can use to resolve conflict.

In countries such as Romania, Hungary and Lithuania, it is common practice for parties to establish a body whose function is to resolve a serious conflict between coalition partners.²¹⁶ This body is referred to as a coalition committee or coalition council.²¹⁷ Other formal mechanisms that coalitions use to manage the conflict are *ad hoc* committees such as party summits, inner cabinets, and issue-specific committees.²¹⁸ Coalitions in municipalities ought to have similar structures in place to resolve inter-party conflict whereas intra-party conflict is managed through the internal party structures. Adopting conflict resolution mechanisms is essential because it provides coalition

²¹⁵ *Shalit v M.K Shimon Peres & Others* H.C.J 1601/90, para 5.

²¹⁶ Mansfeldová Z & Lacina T 'Czech Republic: declining bipolarity and new patterns of conflict' in Müller W, Bergman T & Ilonszki G *Coalition Governance in Central Eastern Europe* (2019) 148.

²¹⁷ Müller, Bergman & Ilonszki (2019) 583.

²¹⁸ Müller, Bergman & Ilonszki (2019) 583.

partners with channels to voice their complaints to each other without necessarily destabilising councils when the commitments of the coalition agreement are not being adhered to.

4.4.3 Maintaining oversight in the coalition government

Like in single-party governments, the actions of coalition partners are continuously subjected to scrutiny and control. This is necessary to ensure that outputs, as envisaged in the coalition agreement, are achieved and that parties' behaviour is informed by the terms set out in the coalition agreement. Oversight is therefore crucial in coalition governments. Oversight in the context of coalition governments is particularly useful for stability in that it affords coalition partners with tools to monitor the implementation of the coalition agreement and to resolve issues before it can give rise to conflict in the coalition government. Oversight in the coalition government may be exercised through asking questions in the council, strategically structuring section 79 and section 80 committees and maintaining good relations between coalition partners through informal coalition talks.

— 4.4.3.1 Questioning in the council

Questioning is a useful mechanism for coalition partners to extract information from each other. In terms of the Rules of Order model of SALGA, non-executive councillors may table a question in the council insofar the questions concern any matter related to the effective performance of the functions of the municipality and the exercise of its powers. All questions must be responded to in writing.²¹⁹ This feature of local government enables coalition partners who do not form part of the executive to exercise a measure of oversight over the executive to police the implementation of the coalition programme. This, in turn, also strengthens accountability among the coalition partners as it promotes transparent behaviour among the coalition partners.

²¹⁹ SALGA *Standing Rules and Orders for the Meetings of the Council and its Committees*, Item 37.1

— 4.4.3.2 Section 79 and section 80 committees

It was mentioned above,²²⁰ that a party whose member is the chairperson of section 79 and section 80 portfolio committee has significant influence over the content of the policies that are devised in the respective portfolio. Coalition partners may thus want to monitor the activities of the various portfolio areas to ensure that chairpersons from the various political parties comply with the coalition agreement with regards to policy issues arising under his or her portfolio. One way to police the enforcement of the coalition agreement is to appoint coalition members who are from different political parties (from within the coalition) and task him or her with the responsibility to act as watchdogs. This can be achieved through section 79 committees to whom the executive must report.

Although the council is in theory collectively responsible for taking decisions on all affairs of local government, in practice the tasks involved are simply too great for every decision to be taken in the council. In terms of s 79 of the Structures Act, a municipal council may establish one or more committees necessary for the effective and efficient performance of its functions and any of its powers. The members of the section 79 committees are appointed from among the councillors in the council.²²¹ The council must appoint a chairperson for each committee.²²² The functions of the committee vary between municipalities and are determined by the terms of reference drawn up for the committee in terms of s 53 of the Systems Act. Generally, these committees are established to exercise oversight regarding the IDP, budgets, policies, rendering of services, strategic objectives and priorities and by-laws.²²³ For coalition members who do not have members serving on the executive, the portfolio committees established under s 79 of the Structures Act may be useful to exercise oversight in the executive and, if necessary, align the practices of the executive following the prescripts of the coalition programme. The section 79 committee structures can do so through exercising its function to review and make recommendations to the council on matters such as the IDP, tariffs, levies, taxes, budget, business plans, strategic plans, policies and programmes insofar it relates to the specific functional area of the particular committee. Given that section 79 committees perform an oversight role *in re* the executive, for purposes of increasing oversight in the coalition, it is submitted that members of section 79 committees and chairpersons from section 80 committees (who make up the executive) should not belong to the same political parties. This

²²⁰ See paragraph 2.6.1.2 above

²²¹ Structures Act, s 79(1)(b).

²²² Structures Act, s 79(2)(c).

²²³ City of Cape Town *System of Delegations* (2020) 46.

strategy may be referred to as ‘twinning’. The twinning structure would thus establish a cross-check arrangement that enables non-executive coalition members to keep tabs on how their coalition partners are performing in the executive. In this way, section 79 committee structures can be used to facilitate cooperation in the coalition government. This ‘twinning’ strategy can improve communication, policy coordination and trust between the various coalition partners.²²⁴ Accountability may also be strengthened where the different coalition partners are better positioned to exercise oversight in the portfolio area where their coalition partners exercise autonomy.

— 4.4.3.3 Maintaining good relations through regular informal coalition talks

The failure to consult properly with coalition partners on matters that affect the coalition may prompt the collapse of the coalition government. It is thus pivotal for the coalition government to make provision for informal forums that can be used to have regular meetings between the various party leaders including the speaker and the mayor. These forums ought to be used to resolve disputes before they reach coalition committees or to consult with each other on items for inclusion on the council agenda. The duty to consult constitutes a primary requirement for coalitions. Countries such as Belgium, Germany, Britain and New Zealand have incorporated conditions to consult before taking any major decisions in their coalition agreements. For example, the national coalition of New Zealand provides that regular consultation among coalition partners necessary and policies cannot be implemented if they were not yet debated between the coalition parties during informal talks.²²⁵ This illustrates that a crucial part of governing together is for parties to consult regularly and practice joint decision-making in the coalition. Further, the Speaker of the council ought to consult with the coalition before he or she determines the agenda for the council. This may in turn enhance trust among the parties in the coalition government and minimise the culture of secrecy that can only result in detrimental outcomes for the coalition government.

²²⁴ Hazell & Yong (2012) 19.

²²⁵ Hazell & Yong (2012) 20.

5. CONCLUSION AND RECOMMENDATIONS

Bare-majority coalition governments are the most common form of coalition government in municipalities. Bare-majority coalitions are almost equal in number to the opposition parties in the council, and cooperation among the coalition partners is therefore a *sine qua non* to prevent the council from becoming a stalemate or to shift the power in favour of the opposition parties in the council. The closed-list PR electoral system suggests that coalition parties can expect turbulence to arise when the local elections are looming. The closed-list PR can contribute to intra-party factionalism through promoting competition among individual party members for a spot at the top of the party-list. To reduce intra-party emanating from an individual's spot on the party-list, it may be useful to consider the adoption of open-list PR which removes a political party's power to structure the party-list and transfer this power to citizens who may vote for a candidate of their preference. Elections are free, fair and competitive. Individuals will still compete against their party members for a sufficient number of personal votes to be elected. Therefore, the adoption of an open-list PR system will not rule out intra-party conflict completely. Like the closed-list PR system enables parties to structure the hierarchy of the party-list, the political parties decide who is fielded as ward candidates. The internal elections of each political party also suggest that members of the political party must compete with their party members to secure their candidacy in the coalition. This may also contribute to intra-party conflict in the coalition. The legislative-executive relations of the municipality are, however, accommodative to coalition governments as the arrangements are structured in a way that promotes cooperation among the coalition partners and, in turn, attracts sanctions when there is a breakdown in cooperation. Apart from having an institutional framework to enable parties in the coalition government to cooperate in the municipality, political parties and individuals in the coalition should also be motivated to work together in the coalition government.

The following recommendations are important to improve coalitions in municipalities:

1. Parties are encouraged to find coalition partners with similar ideologies as them. Of course, parties with heterogeneous ideologies may govern together though it may be necessary for such coalition parties to make greater concessions or otherwise be vulnerable to instability whenever the parties do not share the same policy positions;
2. Coalition parties must devise a programme for the government that accommodates the interests of each coalition partner;
3. Coalition parties must devise incentives for cooperation. This can be achieved through strategically allocating portfolios and political office distribution;
4. Portfolio distribution may be allocated in proportion to the seats won in the council but slight deviations may be permitted where the weight of the portfolios are considered or to afford a bonus portfolio to kingmakers;
5. Coalition agreements must be developed to reflect the policy priorities of the coalition, portfolio allocation, office distribution, and institutional processes for the smooth and effective functioning of the coalition;
6. Coalition agreements must be made available to the public;
7. The coalition should devise dispute resolution mechanisms to manage tensions and conflict within the coalition governments;
8. The coalition may use existing mechanisms at their disposal in the municipality such as section 79 and council questioning to hold coalition parties accountable;
9. Appoint members in the section 79 committee to exercise oversight in the portfolio areas of the coalition partners. Ensure that the members who are appointed in the relevant portfolio area, are not from the same party as the chairperson in the section 80 portfolio committees.
10. Maintain good relations with coalition partners by having regular informal coalition talks to ensure that party leaders are properly consulted on matters that have to be ratified by their party representatives in the council; and
11. Consider whether law reform is necessary to provide parties with more time to negotiate coalitions.

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