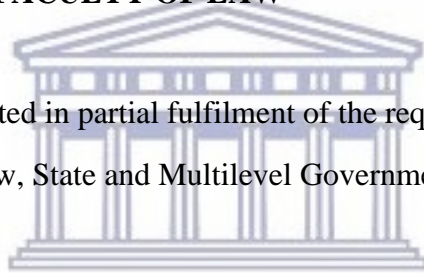




UNIVERSITY *of the*
WESTERN CAPE

FACULTY OF LAW

A research paper submitted in partial fulfilment of the requirements of an LLM in
Law, State and Multilevel Government



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Keywords: Coalition, municipal council, executive committee, coalition government, legislative powers, executive mayor, executive structure, legal framework, local government, minority government.

GENERAL DECLARATION

I, Kwazi Dladla, do hereby declare that The Impact of the Legal Framework for Local Government on Building and Sustaining Coalitions in Municipal Councils is my original work and has not been submitted for any degree or examination in any university or institution of higher learning. While I have relied on numerous sources and materials to develop the main argument presented in this thesis, all the materials and sources used have been duly and properly acknowledged.

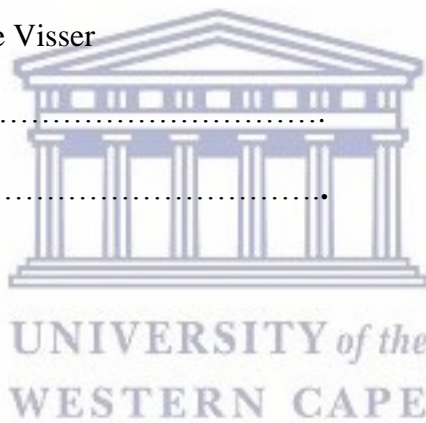
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Date.....

Supervisor: Professor Jaap De Visser

Signature.....

Date.....



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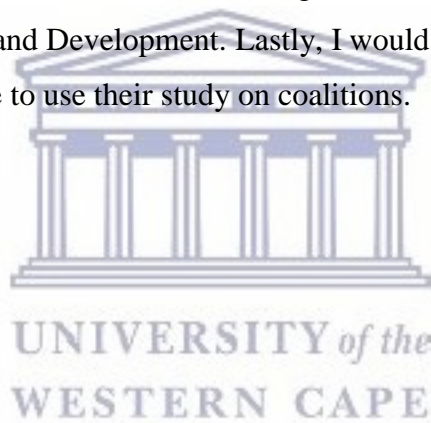
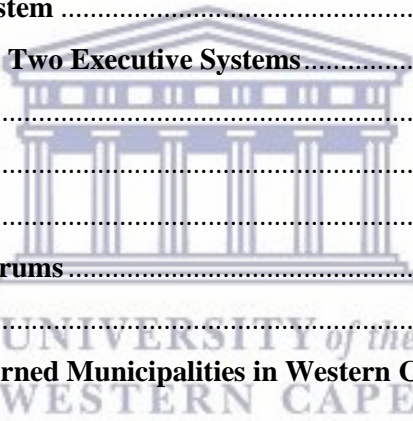


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ACRONYMS

A-G	Auditor - General
ANC	African National Congress
AUF	Active United Front
CDU	Christian Democratic Union
COPE	Congress of the People
CORD	Coalition for Reform and Democracy
DA	Democratic Alliance
EFF	Economic Freedom Fighters
ID	Independent Democrats
IEC	Independent Electoral Commission
KOP	Karoo Ontwikkelings Party
MEC	Member of Executive Council
MP	Member of Parliament
PR	Proportional Representation
SALGA	South African Local Government Association
SPD	Social Democrats



CHAPTER 1

Introduction

In any democratic society, elections are a significant mechanism for citizens to communicate with their representatives.¹ As a result, elections provide a window of opportunity to every voter to hire or fire any political party or independent representative. As an aggregated measure of popular preference, elections constitute an important means to affirm that people in any society should be free to choose their own government based on the parties political beliefs and policies that appeal to the needs of the electorates.² Powell sums up this perspective in two points; first, the voter must be able to identify the prospective future governors and have some idea of what they will do if elected. Secondly, the outcome of the elections should bring into office a coherent government whose inherent powers are clearly defined and limited.³

However, elections sometimes do not produce a single party with an absolute majority to form a government. In such an instance, a coalition or minority government becomes inevitable.⁴ It has been argued that coalitions are formed for two different yet interrelated reasons; first to pursue common goals among coalition partners. Secondly, to enable the coalition partners to share the benefits related with being in power.⁵ No matter what the intentions are for forming a coalition by the political parties, coalition governments are bound to encounter challenges.⁶ One of the challenges is the need to consult and reach consensus among coalition partners, which may not only result in government decision-making being slower but also more complex. Secondly, conflicts within a ruling coalition can make a government unstable and weak due to conflicting ideologies.⁷

1.2 Background

Coalitions are an old feature in South African local government politics and are encouraged by the applicable electoral system. Over the years, a number of political parties have found

¹Budge I & Keman H *Parties and Democracy: Coalition Formation and Government Functioning in Twenty States* (1993)1.

² Budge I & Keman H (1993) 1-2.

³ Powell G 'Conditions for Mandates: Identifiability and Majority' in *Elections as Instruments of Democracy: Majoritarian and Proportional Vision* (2000) 71.

⁴ Oyugi WO 'Coalition Politics and Coalition Government in Africa' (2006) *Journal of Contemporary African Studies Routledge* 53-79.

⁵ Oyugi WO (2006) 53-79.

⁶ National Democratic Institute: *The Oslo Centre for Peace and Human Right Coalitions- A Guide for Political Parties* (2015) 9.

⁷ National Democratic Institute (2015) 12.

coalitions to be an important and useful way to increase power and stretch resources. However, coalitions can also be hard to form and difficult to hold together. In principle, the reason behind elevating local government into a sphere of government in South Africa was to address issues of uneven development and delivery of essential services to the communities.⁸

To this end, section 152 of the Constitution provides for the objectives of local government, which include among others, a responsibility to provide democratic and accountable government to local communities.⁹ In addition, local government ensures the provision of services to the community in a sustainable manner.¹⁰ It is the duty of the elected council to ensure the provision and availability of these essential services to the community.¹¹ In order to provide essential services to communities, there is need for the council to fully exercise its legislative and executive powers.

Unlike the national and provincial spheres of government, the legislative and executive powers of a municipality are vested in a municipal council.¹² The council makes decisions regarding the exercise of all powers and functions of the municipality provided those decisions are in accordance with the Constitution and other legal statutes.¹³ For example, the municipal council exercises legislative powers to adopt by-laws, annual budgets and integrated development plans.¹⁴

Council meetings are chaired by the speaker of the council.¹⁵ The successful election of the speaker requires a party to amass a simple majority of the votes in the council.¹⁶ After the election of the speaker the council is required to elect the mayor and other office bearers to serve in the municipal council. However, the challenge arises when no party has won an outright majority of council seats. This requires political parties seeking to form a coalition to hold discussions that would result in a consensus between parties. In the absence of consensus, compromise will be required. The discussions on coalition agreements do not however always

⁸ Bekink B, *Principles of South African Local Government Law* (2006) 19.

⁹ Section 152 of the Constitution of the Republic of South Africa, 1996.

¹⁰ Sec 152(1) Constitution.

¹¹ Local Government: Municipal Structures Act 117 of 1998. Section 19.

¹² Sec 151(2) Constitution.

¹³ Steytler N & De Visser J *Local Government Law in South Africa* (2016) 3-22(4).

¹⁴ De Visser J, *Local Government Law and Policy*, the council (unpublished paper)

¹⁵ Sec 36(1) Structures Act.

¹⁶ Sec 36 Structures Act.

advocate the will of the people but the focus shifts to the individual's needs of party representatives.¹⁷

In view of the above, Patricia De Lille, who was the leader of the Independent Democrats (ID), made the following comments about the role played by ID councillors who were involved in the City of Cape town coalition negotiations;

“I could see the tension among the 23 ID Councillors. Whatever position was offered they were asking who was going to get it? They had to agree amongst themselves. For both offers, they were at great pains to decide who was going to get the speaker or deputy mayor and so forth. There was so much horse-trading and that was wrong. You have to look beyond positions; you have to be looking further. At the compatibility with whoever you are going to go into coalition with.”¹⁸

The above utterance by the Hon. Mayor De Lille raises questions with regard to underlying motives behind the formations of coalitions. Are these coalition arrangements founded on political patronage, hunger for power, or are they centred on policy agreements?

1.3 Significance of the Problem

Prior to the 2016 local government elections, coalition governed councils controlled 3.03 percent of the consolidated municipal budgets.¹⁹ However, post the 2016 local government elections coalition and minority governments control 41.8 percent of the consolidated municipal budgets.²⁰ Furthermore, coalition or minority governments control four of the eight metropolitan municipalities.²¹ This consolidated expenditure budget presents coalition governments with a significant responsibility over key municipal services such as water, roads and electricity.²²

Whether or not a coalition governed municipality is able to deliver on its mandate of service delivery is mainly dependent on a council that is able to agree on policies and other key

¹⁷ Van Onselen G ‘Anatomy of a Coalition Coup: are there lessons ahead of the August elections?’ 11 July 2016, available at <https://www.businesslive.co.za/bd/opinion/columnist/2016-07-11-anatomy-of-a-coalition-coup-are-there-lessons-ahead-of-the-august-elections> (accessed on 23 June 2017).

¹⁸ Van Onselen G ‘Anatomy of a Coalition Coup: are there lessons ahead of the August elections?’ (Accessed on 23 June 2017).

¹⁹ Gould C, Barbeton C & Abdoll C ‘What is at stake for new Councils in South Africa’ available at <https://issafrica.org/iss-today/what-is-the-stake-for-new-councils-in-south-africa> (accessed 25 June 2017).

²⁰ Gould C, Barbeton C & Abdoll C ‘What is at stake for new Councils in South Africa’ (2016).

²¹ Gould C, Barbeton C & Abdoll C ‘What is at stake for new Councils in South Africa’ (2016).

²² Gould C, Barbeton C & Abdoll C ‘What is at stake for new Councils in South Africa’ (2016).

municipal issues.²³ Without a well-defined working understanding within coalition parties, agreements on key issues may be a challenge to achieve. As a result, delivery of service and economic development may be derailed.

This paper argues that many of the challenges that are experienced by coalition governed municipalities' centres around the legal provisions that regulate this form of government. A greater focus applied to the legal provisions regulating coalition in municipalities can go a long way in improving the stability in municipal councils.

1.4 Research Question

The thesis examines the question, how does the legal framework for local government facilitate or impede the building and sustaining of coalitions in municipalities?

1.5 Literature Review

Extensive research has been done on coalitions in Western Europe. However, not much research has been conducted on this subject in Africa.²⁴ One of the reasons for this is because most African countries have opted for presidential regimes that often encourage the emergence of a dominant party.²⁵ Scholars in Africa therefore did not regard the study of coalitions as crucial as it will be in parliamentary democracy.²⁶ In *Party Coalitions in Post-Apartheid South Africa and their Impact on National Cohesion and Ideological Rapproach*, Kadima focus on the formation of coalitions and the rationale behind their formation,²⁷ but there is little or nothing on the impact of the legal framework on coalition governments. Japhet Biegon has written about coalition government in the aftermath of the disputed elections in Kenya. However, his thesis focuses on coalition government that comes to being after the incumbent has refused to vacate office, thereby establishing a sharing agreement with opposition leaders.²⁸ Hardly any literature in Africa has addressed the impact of the legal framework in coalition government and certainly not pertaining to local government. This study will seek to address that subject.

²³ 'Tumultuous times for South Africa as it enters the era of coalition politics' Mail & Guardian 24 August 2016 available at <https://mg.co.za/article/2016-08-24/tumultuous-times-for-south-africa-as-it-enters-the-era-of-coalition-politics> (accessed 05 June 2017).

²⁴ Kapa M & Shale V 'Alliances, Coalitions and Political Systems in Lesotho 2007-2012' (2014) Vol 13 *Journal of African Elections* 93-114.

²⁵ Kadima D *The Politics of Party Coalitions in Africa*: 2 ed (2006) 2.

²⁶ Kadima D (2006) 3.

²⁷ Kadima D (2006) 27-33.

²⁸ Biegon J *The Advent of Unholy Alliances? Coalition Government in the Aftermath of Disputed Elections and Electoral Violence in Africa; A Case Study of Kenya* (LLM thesis, University of Western Cape, 2008).

However, a number of European scholars have covered certain aspects of this subject. In an article, titled *Minority Coalition Governance in Denmark Party Politics 2014*, Pedersen and Christiansen argue on how coalitions manage to stay together in good and bad times. One key component the authors raise, which is dealt in detail in this research, is the strength of the coalition agreements.²⁹

Further, in *Minority Government and Party Politics: The Political and Institutional Background to the “Danish Miracle”*, Green-Pedersen examines the secret behind the success of coalition government in Denmark during the 1990s. Two factors are singled out for this drastic improvement to the economic condition. First, the government was able to progressively adjust to coalitions due to improvements in the legal framework and policy. Secondly, coalitions have since been recognised as a significant feature in the make of a Danish government.³⁰

Pedersen, Christiansen and Green-Pedersen attribute the success of coalitions in Denmark to the strength of coalition agreements, and to the government abilities to progressively adjust the legal framework applicable. These aspects hold a substantial influence to the success of coalition government, and this paper will analyse the importance of a legal framework in building successful coalitions in local municipalities.

Steytler and De Visser in *Local Government Law of South Africa* address matters relating to internal proceedings within a municipal council and the legal framework regulating the council.³¹ Even though this book does not address coalition governments in particular, important matters on how councils conduct their proceedings are dealt with in detail.

In the *Anatomy of a Coalition Coup: Are there lessons to be learned ahead of the August Elections?*³² Van Onselen comprehensively addresses the negotiations and deliberations, behind coalition formations. This article was based on 2006 coalition negotiation at the City of Cape Town Metropolitan. Van Onselen gives an in-depth of the behind the scenes in the negotiations between parties. This has helped in understanding how coalitions come about and the underpinning reasons for parties to agree to be part of the coalition government. Even though it may be said that not all coalitions are formed for similar reasons as mentioned by the

²⁹ Christiansen J & Pedersen H ‘Minority coalition Government in Denmark’ (2014) 20 (6) *Party Politics* 940-949.

³⁰ Green-Pedersen C ‘Minority Government and party politics: The Political and Institutional Background to the “Danish Miracle”’ (2001) *Journal of Public Policy* 53-70.

³¹ Steytler N & De Visser J *Local Government Law in South Africa* (2016).

³² Van Onselen G ‘Anatomy of a Coalition Coup: are there lessons ahead of the August elections?’ 11 July 2016.

writer, this article gives a fair understanding on what happens in the period between the announcement of the election results and the first council meeting.

A further perspective on coalitions in South Africa is given by De Visser in '*South African Politicians will have to adjust to many more coalitions.*'³³ Here the writer discusses what happens if no party obtains an outright majority during the elections. In this article, De Visser outlines a detailed procedure to be followed when coalition governments are formed.

This research will be addressing the impact of the legal framework in coalition governed municipalities. There is no material by any author regarding this topic in our country and this study seeks to fill that gap in the literature.

1.7 Chapter Outline

The research will be structured along the following chapter division:

Chapter one is the introductory chapter, which provides the problem statement, significance of the problem, research question, primary argument, literature review and the methodology that is going to be used in the research.

Chapter two provides an overview of the general practice and theory pertaining to coalition government. This will be done by explaining what coalitions are and why they are formed. This chapter will further examine how to make coalitions sustainable and the importance of the legal framework in coalition sustainability.

Chapter three examines the legal framework underpinning coalition governments in South African municipalities.³⁴ Special attention will be afforded to internal government matters in the municipality.

Chapter four focuses on a case study of three coalition governed municipalities in Western Cape, which are Bitou, Laingsburg and Witzenberg Local Municipalities.

Chapter five consists of recommendations and a conclusion.

³³ De Visser J 'South Africa's politicians will have to adjust to more coalitions' The Conversation 16 May 2016 available at the.conversation.com/south-africas-politicians-will-have-to-adjust-to-many-more-coalitions (accessed 03 June 2017).

1.8 Research Methodology

The research method used was quantitative and qualitative desktop study with the emphasis of the study being the analysis of current literature and legislation on the subject. The study focuses on the Constitution, relevant legislation, official documents, journals, internet sources and case law as secondary data. A case study approach was used and the study was conducted in three coalition governed municipalities from the Western Cape; Bitou, Laingsburg and Witzenberg municipalities. The choice of these cases was informed by the following reasons; First, Western Cape is the province with most coalitions in the country. Secondly, very little research is available on this subject and SALGA Western Cape is one institution who has commenced a study on this regard. Lastly, the study relied heavily on the information available on the internet sources and case law.

Please note: the case study information provided is limited as SALGA had limited time within which to collect the data. The study was conducted shortly after the 2017 collapse of the ANC-AUF coalition in Bitou and the DA-KOP coalition in Laingsburg. As a result, most office bearers were not comfortable to share internal governance information.



CHAPTER 2

Coalitions: A Theoretical Framework

2.1 Introduction

In established and emerging democracies, ruling and opposition parties have formed coalitions to increase their electoral competitiveness, improve their influence in policy formulation, use their limited resources more effectively and reach agreements on programs for government.¹ In other cases, governments of national unity have helped usher countries through political crises and secure peace, providing the basis for agreement on broad-ranging reforms to improve inclusive, accountable government.² Sometimes coalitions are based on principle, but other times they can be purely opportunistic.

This chapter is divided into six sections. Section one is the introduction. Section two defines coalitions and section three discusses different types of coalitions. Section four analyses factors contributing to the sustainability of a coalition, while section five discusses regulations of coalition. Section six centres on management of coalitions and section seven gives a summary of the chapter.

2.2 Definitions

A coalition may be defined as a temporary combination of groups or individuals formed to pursue specific objectives through joint action for purposes of gaining more influence or power than the individual groups or parties can hope to achieve on their own.³ By focusing on common objectives, coalition partners can build on one another's strength and gain advantage on issues of common interest.⁴ A common objective may be that of winning an election or referendum or forming a government.⁵ Coalitions may be formed before or after elections, and they are necessitated by an absence of a majority party capable of amassing enough votes to become an outright winner.⁶ The focus of this chapter will be on post-election coalitions.

¹ Oyugi WO 'Coalition Politics and Coalition Government in Africa' (2006) *Journal of Contemporary African Studies* 53.

² Kadima D *The Politics of Party Coalitions in Africa* (2006) 15.

³ National Democratic Institute: *The Oslo Centre for Peace and Human Right Coalitions- A Guide for Political Parties* (2015) 13.

⁴ National Democratic Institute (2015) 13.

⁵ National Democratic Institute (2015) 14.

⁶ Oyugi WO (2006) 53.

2.3 Types of Coalitions

There are different types of coalitions that may be formed where elections have failed to produce a party with an outright majority. This section provides a brief overview of different types of coalitions, which include governments of national unity, grand coalitions, legislative coalitions, and majority or minority coalition governments.

2.3.1 Governments of National Unity

Governments of national unity are broad coalition governments consisting of all parties or all major parties in the legislature, usually formed when a country is faced with a national political crisis.⁷ Such governments often have a responsibility for overseeing the development of a new constitution and other fundamental reforms.⁸ The allocation of seats and responsibilities may be negotiated without necessarily adhering to the outcome of a democratic election.⁹ This mechanism is intended to ensure among other things political inclusiveness, continuity, and racial and ethnic reconciliation.¹⁰ For example, disagreement over the outcome of elections led to the governments of national unity in Kenya in 2008 and 2010 in Zimbabwe.¹¹

2.3.2 Grand Coalitions

Grand coalitions occur when the country's main political parties, those that are typically the main competitors for control of government, unite in a coalition government.¹² Grand coalitions may be formed to circumvent a national political crisis because no other configuration is attainable or to limit the influence of a particular party.¹³ For example, Germany has experienced a number of grand coalitions where the Christian Democratic Union (CDU) and the Social Democrats (SPD) who are usually opponents have come together to form a government.¹⁴ In 2018 in German, the chancellor's CDU approved the grand coalition agreement between the CDU and SPD.¹⁵ The grand coalition was further endorsed by the

⁷ National Democratic Institute (2015) 17.

⁸ Kadima D (2006) 27.

⁹ Kadima D (2006) 28.

¹⁰ Kadima D (2006) 27.

¹¹ National Democratic Institute (2015) 17.

¹² National Democratic Institute (2015) 17.

¹³ National Democratic Institute (2015) 18.

¹⁴ National Democratic Institute (2015) 18.

¹⁵ 'Angela Merkel's CDU approves grand coalition deal', available at www.dw.com/en/angela-merkel-cdu-approves-grand-coalition-deal/a-42742684 (accessed 28 February 2018).

members of the SPD, where the majority of members sanctioned the coalition deal.¹⁶ Similarly, in Italy, Israel and Austria main political parties that usually oppose each other have formed grand coalitions.¹⁷ In such instances, coalition building can be difficult to manage given the traditional rivalry between opposing parties.

2.3.3 Legislative Coalitions

Legislative coalitions refer to a group of legislators from different parties who agree to support each other in parliamentary debates and votes, thereby forming partnerships for a particular purpose.¹⁸ Legislative coalitions combine similar policy preferences of a set of representatives into a unique policy profile that becomes government policy.¹⁹ Legislative coalitions can be formed by either opposition parties or governing coalitions to achieve a particular purpose.

After Kenya's 2013 election the Coalition for Reform and Democracy (CORD), which was a pre-election coalition, transformed itself into a legislative post-election coalition in 2013 to perform the role of opposition.²⁰ Another example of a legislative coalition is the Kaotla in Morocco which was particularly effective as an opposition coalition in the 1990s. Kaotla was successful in pushing for an independent electoral commission and a directly elected parliament.²¹

There are noticeable similarities between legislative coalitions and minority governments. Whereas a legislative coalition is based on parties willing to support each other in parliamentary debates and votes, minority governments consist of a party or parties whose members do not control a majority of seats in government and depend on the legislative support from other parties.²²

Minority governments may come about due to a variety of reasons. One of the reasons is that the minority government might be the only practical option available other than another election.²³ The other reason may be that the supporting party might think the resulting coalition

¹⁶ 'Germanys SPD members approve coalition with Angela Merkel's conservatives', available at www.dw.com/en/germanys-spd-memebers-approve-coalition-with-angela-merkel-conservatives/a-42803601 (accessed 02 March 2018).

¹⁷ National Democratic Institute (2015) 17.

¹⁸ National Democratic Institute (2015) 17.

¹⁹ Cheibub J et al 'Government coalitions and legislative success under presidentialism and parliamentarism' (2004) 34 *British Journal of Political Science* 565.

²⁰ National Democratic Institute (2015) 17.

²¹ National Democratic Institute (2015) 17.

²² Strom W & McClean C 'Minority government and coalition management' at <https://www.sv.v10.no/isv/English/projects/evolution-parliamentarism/events/serminars/tel-aviv-strom-mcclean.pdf> (accessed 06 November 2017) 2.

²³ Strom W & McClean C (2015) 9.

government was a better option to the other alternatives. For instance, post the 2016 South African local government elections, the Economic Freedom Fighters (EFF) decided not to participate in any coalition formations with either the African National Congress (ANC) or the Democratic Alliance (DA) due to governance and policy differences respectively.²⁴ The non-participation of the EFF resulted in a DA governed minority government in the Tshwane and Johannesburg metropolitan municipalities.

2.4 Factors Contributing to the Sustainability of a Coalition

Coalitions operate within a legal framework. That legal framework may encourage or discourage coalitions. At times the legal framework has limited the discretion of coalition builders. It may be argued that, coalition governments have generally appeared to be more unstable when compared to single party government, all other things being equal. However, countries such as Germany, Finland, Netherlands and Ireland have demonstrated that if coalitions are rightfully managed, stability within government is feasible.²⁵

The instability of coalitions may be attributable to the electoral framework applicable, regulation of coalitions and non-adherence to coalition agreements amongst others. Therefore, it is important to take into account factors that contribute to the sustainability of coalitions.

2.4.1 Electoral Systems

In any democratic society, elections serve as a tool used by the public to voice their preference and exercise power necessary to effect change.²⁶ A vote for a particular representative serves as an act of trust, expecting that representative will safeguard the electorates' interest and work to attain the goal of progress, unity and prosperity within that society.²⁷ There are a large number of variations in electoral systems, but the most common systems are first-past-the-post (FPTP) or the majoritarian systems, proportional representation (PR), and the combination of the two.²⁸

²⁴ 'Tumultuous times for South Africa as it enters the era of coalition politics' Mail & Guardian 24 August 2016, available at <https://mg.co.za/article/2016-08-24/tumultuous-times-for-south-africa-as-it-enters-the-era-of-coalition-politics> (accessed 05 June 2017) 4.

²⁵ 'Europe shows coalitions can work' *The New Economy* 30 November 2001, available at <https://theneweconomy.com/home/europe-shows-coalitions-can-work> (accessed 12 December 2017) unnumbered.

²⁶ Budge *I Stability and Choice: A Review of Single Party and Coalition Government* (1998) 6.

²⁷ Powell G *Elections as Instruments of Democracy, Majoritarian and Proportional Visions* (2000) 71.

²⁸ Oyugi WO (2006) 55-6.

2.4.1.1 Majoritarian Systems

Majoritarian electoral systems encourage two party electoral competitions, which in turn promotes single party government.²⁹ In such a system, it is typically clear to voters what their vote will mean for government formation.³⁰ Voters within each constituency cast a single ballot for each candidate. The candidate with the largest share of votes in each constituency is returned and in turn, a party with an overall majority of seats forms the government.³¹ In the majoritarian system, the focus is more on effective government and greater accountability of elected representatives rather than the representation of minority views.³²

For the advocates of the majoritarian systems, the most important consideration is that elections should be conclusive about who becomes government.³³ The leading party should be empowered to implement their programs during their term of office, without depending on the support of minority parties.³⁴ Coalitions are unlikely to result from this form of electoral system. The government remains accountable for their actions to the public and further the voters are given a chance to evaluate the government performance during elections which are held at a fixed regular intervals.³⁵

2.4.1.2 Proportional Representation

Whereas the majoritarian systems emphasise governability, proportional representation (PR) focuses on the inclusion of minority voices.³⁶ The principle of proportional representation is that the seats in a house, assembly or a council that is being elected are divided according to the number of vote's casts for party lists. However, there are considerable variations on how they are implemented in different systems.³⁷ For example, party lists may be open in which voters express their preference for a particular candidate, or it may be closed, in which case voters can only select a party, and the political party determines the ranking of candidates.³⁸

²⁹ Budge I (1998) 7.

³⁰ Oyugi WO (2006) 53.

³¹ Norris P 'Choosing electoral systems proportional, majoritarian and mixed systems' (1997) 8(3) *International Political Science* 298.

³² Norris P (1997) 299.

³³ Oyugi WO (2006) 58.

³⁴ Norris P (1997) 300.

³⁵ Oyugi WO (2006) 58.

³⁶ Norris P (1997) 300.

³⁷ Norris P (1997) 301.

³⁸ Seyd B *Coalition Government in Britain: Lessons from overseas* (2002) 24.

The rank order on the party list determines which candidate is 'next in line' to be declared elected to parliament.³⁹

Advocates of proportional representation argue that the electoral system should promote a process of conciliation and coalition building within government.⁴⁰ Parties above a minimum threshold should be included in the legislature in proportion to their level of support.⁴¹ The parties in government should therefore construct policies based on a consensus among coalition partners.⁴² Moreover, the composition of governments should reflect the main divisions in the social composition of voters, so that all citizens can have a voice articulating their interest in the legislature.⁴³ In a PR system it is unusual for a party to get more than 50 percent of the seats in government.⁴⁴ This outcome generally encourages coalition building and inclusiveness of diverse and minority voices.

In a case where a member of government either leaves the party or is expelled, the member will most likely lose his or her seat and the party can decide who is next in line to be declared elected to government.⁴⁵ This approach strengthens internal party democracy and keeps the political balance that voters decided on the last elections.⁴⁶ However, some countries such as Brazil and Lesotho have adopted floor-crossing legislation, which allows Members of Parliament (MP) to change allegiance without losing their seats.⁴⁷ Allowing floor-crossing may sometimes empower Members of Parliament who feel their concerns are constantly ignored by party bosses. Conversely, floor-crossing impacts on party discipline and thus on parties' ability to hold coalitions together.⁴⁸

Moreover, floor-crossing tends to undermine the principle of proportional representation, where votes are translated into seats.⁴⁹ Where a member of a political party crosses the floor, it is argued that the balance of representation that is determined by the voters is distorted.⁵⁰ In

³⁹ Seyd B (2002) 26.

⁴⁰ Seyd B (2002) 26.

⁴¹ Norris P (1997) 301.

⁴² Seyd B (2002) 26.

⁴³ Oyugi WO (2006) 58.

⁴⁴ Oyugi WO (2006) 56.

⁴⁵ Norris P (1997) 307.

⁴⁶ Norris P (1997) 307.

⁴⁷ 'The Impact of floor crossing on party systems and representative democracy', available at www.kas.de/wf/doc/kas_11847-1522-2-30 (accessed 22 November 2017) 2-3.

⁴⁸ 'The Ace Encyclopaedia: Parties and Candidates' (2013), available at <file:///C:/Users/Admin/Downloads/Parties%20and%20Candidates%202013.pdf> (accessed 10 November 2017) 100.

⁴⁹ Kadima D (2006) 101.

⁵⁰ 'The Ace Encyclopaedia: Parties and Candidates' (2013), 101.

most cases, floor crossing favours larger parties and this can have a negative impact on the balance of power, and could foster a climate of political instability in a coalition government.⁵¹

2.4.1.3 Mixed Electoral Systems

A mixed electoral system is an electoral system that provides voters with two votes for the legislature. Those votes comprises of one vote for the candidate in the majoritarian electoral system and the other for the party list in proportional representation systems.⁵² The PR system involves voters voting for a list of candidates proposed by a party. Where on the other hand in the majoritarian system, candidates have to receive a majority of the votes to be elected.⁵³ In the mixed electoral system, a certain percentage, which is usually half the seats in the legislative chamber, is elected in a single-seat districts and the other half is elected from the party lists allocated by proportional representation.⁵⁴ Many European countries have embraced mixed electoral systems although with a variety of mixed designs.

The type of the electoral system applicable is one of the factors that influences coalition building. Proportional representation and mixed systems are closely associated with materialisation of coalition governments.⁵⁵ For example, in countries such as Italy, Netherlands, and Switzerland that use PR exclusively or a combination of PR with the majoritarian system the government that ascends out of elections is usually a coalition government.⁵⁶

2.5 Regulation of Coalitions

It is important to examine regulations applicable to coalitions. This will be done by examining the rules for coalition making, limits on the discretion to allocate executive position and the time frame applicable for forming a coalition government.

2.5.1 Rules for Coalition Making

In most countries, coalitions are an agreement between partners, and they are not legally binding.⁵⁷ However, in countries such as Kenya and Mexico various aspects of coalition

⁵¹ 'The Ace Encyclopaedia: Parties and Candidates' (2013) 101.

⁵² Norris P (1997) 301.

⁵³ Norris P (1997) 302.

⁵⁴ Norris P (1997) 301.

⁵⁵ Norris P (1997) 305.

⁵⁶ 'Electoral Systems', available at aceproject.org/ace/en/topics/es (accessed 10 March 2018). Unnumbered.

⁵⁷ Seyd B (2002) 76.

building are regulated.⁵⁸ Where coalitions are regulated, legislation may cover the definition of a coalition, requirements for registration, and timelines for submitting the necessary documents to relevant authorities.⁵⁹ For instance, in Kenya, coalitions formed after an election must submit their agreement documents within twenty one days of signing a deal to relevant authorities.⁶⁰

Regulation may also require that coalition agreement address specific coalition building issues.⁶¹ For instance, Kenya's Political Party Act outlines more than sixteen issues that a coalition agreement must address.⁶² These issues include: intra-coalition distribution of party subsidies, and how parties plan to allocate positions within a coalition. The legislation does not dictate how parties must elect their candidates but a framework outlining the procedure is required.⁶³

2.5.2 Limits on the Discretion to Allocate Executive Positions

Among the delicate issues the parties to a coalition agreement will have to discuss is the allocation of executive positions and other mutual benefits that come with being in power.⁶⁴ These benefits include partners in a coalition being able to learn from each other, and sharing of available resources. Most coalitions apply general rules of proportionality when allocating positions.⁶⁵ Fair distribution of positions promotes sustainability and partnership within a coalition.⁶⁶

The allocation of positions generally reflects the strength of each party so that parties may obtain resources and positions proportional to their electoral support and public policy contributions.⁶⁷ The main exception to this principle is the overcompensation of the junior partner that is often made. In order that the junior partner maintains their standing within a coalition and thus avoid losing public support, the junior partner is often rewarded with a higher proportion of legislative assembly seats than its strength merits, or a higher profile position.⁶⁸

There have been some instances where the constitutional rules have limited the discretion of the coalition builders in allocating executive positions. Sometimes constitutions include

⁵⁸ National Democratic Institute (2015) 26.

⁵⁹ National Democratic Institute (2015) 26.

⁶⁰ Kadima D & Owour F (2006) 205.

⁶¹ Republic of Kenya Political Party Act. Cap 7B of 2012.

⁶² Sec 10 Political Party Act 2012.

⁶³ Sec 10 Political Party Act 2012.

⁶⁴ National Democratic Institute (2015) 37.

⁶⁵ National Democratic Institute (2015) 36.

⁶⁶ Seyd B (2002) 39.

⁶⁷ National Democratic Institute (2015) 36.

⁶⁸ Seyd B (2002) 86.

principles of gender, ethnic and racial representation. In such conditions, legislators have overruled the political balance mandated by the voters. For example, Section 104(4) of the Zimbabwean Constitution makes provision for the President to be guided by considerations of regional and gender balance when appointing the executive.⁶⁹ Further, the South African Interim Constitution included a clause allowing any party with more than 20 seats in the National Assembly to claim one or more cabinet positions.⁷⁰ The Interim Constitution further provided that a party which held a minimum of 80 seats or 20 percent of the national votes was entitled to designate the executive deputy president from among the members of the National Assembly.⁷¹ However, it may be concluded that in most countries the law does give discretion to coalition partners to allocate executive positions without any interference from the legal provisions.

2.5.3 Time-frame for Forming a Coalition Government

After the announcement of election results, political parties are usually given a specific number of days to form a government before the first seating of the council, house or legislature.⁷² In the first council or legislature sitting, parties must try to elect an executive.⁷³ In most countries, the constitutional rules do not provide for any extensions even if the elections did not produce a majority government.⁷⁴ This means coalition negotiations must be concluded within the allocated periods. Time constraints can significantly affect the quality of the negotiations especially when their previous experience with coalitions is limited.⁷⁵

Coalition negotiations may be cumbersome if parties have not pre-planned for such an eventuality. The average period to conclude coalition negotiations across Western Europe is forty days.⁷⁶ It is therefore submitted that time-frames must be reasonable in order for parties to produce a well-thought comprehensive coalition agreement.

For example, parties in Ireland had three weeks to negotiate a new coalition after the 1997 elections. In spite of the limited time the negotiators thought three weeks was adequate to

⁶⁹ Section 104(4) of the Constitution of Zimbabwe, amendment no 20 of 2013.

⁷⁰ Section 88(2) Constitution of the Republic of South Africa, Act 200 of 1993.

⁷¹ Sec 84(1), 1993 Constitution. Section 84(2) went further to state, should no party hold 80 seats or more in the national assembly, the party holding the largest number of seats and the party holding second number of seats shall be entitled to designate one executive president from among the members of the national assembly.

⁷² Oyugi WO (2006) 65.

⁷³ National Democratic Institute (2015) 21.

⁷⁴ Oyugi WO (2006) 65.

⁷⁵ National Democratic Institute (2015) 21.

⁷⁶ Syd B (2006) 76.

conclude negotiations.⁷⁷ This was because leaders of the two political parties had held discussions prior to the elections to minimise their policy differences.⁷⁸ Thus, these discussions paved a way for a swift agreement between the parties after the elections.⁷⁹ This forward thinking approach by the parties provided a head start to iron out policy and ideological differences before the commencement of formal coalition negotiations.

2.6 The Management of Coalitions

This section focuses on managing coalitions. The first part discusses pre-planning for a coalition, the second part analyses coalition agreements, while the third part examines coalition management.

2.6.1 Preparing for a Coalition

The internal preparations made by individual political parties can have a significant impact on the prospects of a successful coalition government.⁸⁰ Political parties that believe there is a possibility of a coalition government should plan well in advance before elections. This allows parties to develop well thought-out processes and strategies to approach the negotiations. For instance, the Liberal Democrats in the United Kingdom (UK) began working on a coalition strategy six months prior to the 2010 elections.⁸¹

In the most cases, parties who have not pre-planned for a possibility of a coalition government will have less time to focus on the details of the coalition agreement, which might affect the quality of negotiations. Political parties especially those in a PR system need to accept coalitions as a possibility and inform and educate voters about it.

2.6.2 Coalition Agreements

Coalition agreements are contracts that specify the procedures and policies of a coalition.⁸² The agreement generally outlines measures to facilitate communication inside the coalition and contains conflict resolution procedures.⁸³ The agreement usually includes policy resolutions, portfolio distribution and at times procedural matters in relation to the conduct of

⁷⁷ Seyd B (2002) 38.

⁷⁸ Seyd B (2002) 38.

⁷⁹ Seyd B (2002) 39.

⁸⁰ Saalfeld T (2000) 74.

⁸¹ National Democratic Institute (2015) 72.

⁸² Christiansen F & Pedersen H (2014) 941.

⁸³ Christiansen F & Pedersen H (2014) 941.

government.⁸⁴ Further, coalition agreements may sometimes be used to inform electorates on policy agreements and as a way of expressing commitment to coalition partners.⁸⁵ It is in the bargaining party's interest to keep the negotiations a private matter, since that allows parties to make compromises and trade-offs that might otherwise upset their members and supporters.⁸⁶

In Germany, coalition agreements are considered as highly important documents. They are detailed to the extent of sometimes listing draft legislature bills, with policy commitments systematically monitored to ensure compliance.⁸⁷

Coalition agreements are not merely symbolic papers but represent an important policy document designed to facilitate inter-party cooperation and devise a policy course of the government.⁸⁸ In countries such as Denmark and Germany there is evidence to support that a majority of pledges made in coalition agreements are transferred into cabinet decisions.⁸⁹

It must be noted that coalition agreements are not legally enforceable by the courts of law.⁹⁰ It is not legally complicated for parties to break away from the coalition since there is no legally binding document in place. The only means available to the voters to hold the coalition government accountable for not meeting its commitments is through withholding their votes in the next elections. Factors that may contribute to parties breaking away from a coalition may include prospects of better promises elsewhere, policy differences or public demands.

The use of formal written agreements to underpin coalition government has become more prevalent across Europe.⁹¹ Clearly, there is no blueprint that can be identified and be transferred across countries, but there are aspects of coalition negotiations that appear to play an important role in underpinning healthy inter-party relations.⁹²

Coalition agreements serve the following purposes: they -

- help identify and defuse conflict even before the coalition is up and running;
- provide a public policy agenda against which performance of the coalition may be measured and the governing coalition may be held accountable;

⁸⁴ National Democratic Institute (2015) 56.

⁸⁵ Christiansen F & Pedersen H (2014) 941.

⁸⁶ Seyd B (2002) 71.

⁸⁷ Seyd B (2002) 80.

⁸⁸ Christiansen F & Pedersen H (2014) 941-2.

⁸⁹ Christiansen F & Pedersen H (2014) 942.

⁹⁰ Seyd B (2002) 83.

⁹¹ Seyd B (2002) 84.

⁹² National Democratic Institute (2015) 74.

- make it more difficult for member parties to violate the agreement, especially if the agreement is public; and
- reduce the uncertainty for both the public and the coalition members, thereby providing some efficiency in government.⁹³

2.6.3 Managing a Coalition

Managing a coalition can be very challenging. One of the critical challenges faced by a coalition government is to ensure that members are able to work collectively while respecting each other's identity.⁹⁴ It is important for parties to abide by collective decisions agreed upon despite opposing views.

It is a given that party discipline is easier to manage in a single party government because parties have their own internal rules and disciplinary procedures that include termination of party membership when a member flaunts party rules. In some countries, if a member has been expelled from the political party, it is usually that he or she loses her seat in the legislature.⁹⁵ Coalition governments, on the other hand, may not enforce such rules on coalition partners.⁹⁶ Coalitions typically get around this problem by establishing structures to patrol and enforce discipline within a coalition; management committees also play a role as well as the enforcement of coalition agreements.⁹⁷

Often, the committee or structure that negotiates the coalition agreement, transforms into a coalition management committee after the government is formed.⁹⁸ The coalition management committee meets regularly and is seen as an important forum for political management of the coalition. The main function of the coalition management committee is to give expression to the principle that partners enjoy equal standing.⁹⁹ Typically, a coalition committee will comprise of equal members from each party.¹⁰⁰ Junior coalition partners who may feel that their inputs are ignored when making decisions usually initiate these committees. Coalition management committee may also act as a forum for dispute resolution.¹⁰¹

⁹³ National Democratic Institute (2015) 55.

⁹⁴ National Democratic Institute (2015) 66.

⁹⁵ See footnote 81.

⁹⁶ Seyd B (2002) 86.

⁹⁷ National Democratic Institute (2015) 67-9.

⁹⁸ Seyd B (2002) 116.

⁹⁹ Seyd B (2002) 115-6.

¹⁰⁰ National Democratic Institute (2015) 70.

¹⁰¹ National Democratic Institute (2015) 67-70.

2.6.3.1 Dispute Resolution

When parties enter into a coalition, it is inevitable that they will have differences, most especially if they do not subscribe to the same ideologies and policy beliefs. For disputes that cannot be resolved at lower levels, the dispute resolution mechanism established during the negotiations phase will need to be activated.¹⁰² Most coalitions refer such differences to the leaders of the coalition member parties.¹⁰³

2.7 Conclusion

In the countries that have experienced stable coalitions, aspects such as the legal framework, coalition agreements and coalition management were the underpinning factors that contributed to the stability of coalitions.

The realisation of a stable coalition government is influenced by the regulatory framework applicable. That legal framework may promote or deter coalition building. For instance the majoritarian electoral system focuses on effective government and greater accountability of elected representative.¹⁰⁴ On the other hand, proportional representation underlines inclusion of minority voices which evidently promotes coalition building.¹⁰⁵ In cases where the time frame for forming a coalition is too restricted or where the legal framework limits the discretion to allocate executive positions, such limitations may impede coalition building.

Once individuals or parties became part of the coalition government, individual interests need to be set aside. A coalition agreement should then be elevated to a coalition-guiding document that should be respected by all members involved. Furthermore, coalition management is critical to any long-lasting existence of a coalition government. Parties need to establish a coalition management committee which must hold regular meetings to discuss policy and governance issues and to defuse conflicts and disputes that might arise. Finally, the stability and the success of the coalition is mainly dependent on each coalition partner's intentions, trust, tolerance and accommodation of different views. The next chapter focuses on the legal framework underpinning coalition government in South African municipalities, with emphasis on the electoral system applicable, and governance issues after the elections.

¹⁰² National Democratic Institute (2015) 67.

¹⁰³ National Democratic Institute (2015) 65-70.

¹⁰⁴ Oyugi WO (2006) 58.

¹⁰⁵ Norris P (1997) 300.

CHAPTER 3

The Legal Framework Underpinning Coalition Governments in South African Municipalities.

3.1 Introduction

It has been evident from the previous chapter that stable coalition governments seem to adhere to some common features. First, coalition partners have a coalition agreement that provides a *modus operandi* on how parties are supposed to work together.¹ Secondly, coalition agreement have provided for mechanisms that will assist in management of a coalition.² Moreover, parties are pre-planning for coalition government through the commencement of negotiations with like-minded parties long before elections, and through the establishment of a coalition agreement document.³ A question may therefore be posed if coalitions that happen in local government sphere are adhering to these characteristics?

Many coalition governments throughout the country have been experiencing instability, infighting within officials, and some have ended up being placed under administration.⁴ It is a common occurrence for parties to pull-out of a coalition for matters that are not related to service delivery or even for political matters outside of the jurisdiction of the municipality.

This chapter will analyse the legal framework underpinning coalitions in local government in South Africa. The chapter will be divided into seven sections. Section one is the introduction. Section two focuses on the implications of the electoral systems for coalition, section three will cover the introduction into the legal framework for council governance. Section four examines how council meeting are conducted, while section five discusses the discretion to allocate executive positions. Section six explores the differences between the two executive systems and section seven makes concluding remarks on this chapter.

¹ Christiansen F & Pedersen H 'Minority coalition government in Denmark' (2014) 20 (6) *Party Politics* 941.

² Seyd B *Coalition Government in Britain: Lessons to be Learned from Overseas* (2002) 31-2.

³ National Democratic Institute: *The Oslo Centre for Peace and Human Right Coalitions- A Guide for Political Parties* (2015) 72.

⁴ Singh K 'Hung KZN municipality placed under administration' (14 September 2017), available at www.news24.com/SouthAfrica/news/hung-kzn-municipality-placed-under-administration-20170914 (accessed 12 February 2018) 1.

3.2 Implications of the Electoral System for a Coalition

The choice of electoral system is one of the most essential institutional decisions in any democracy. The choice of a particular electoral system has profound effect on the type of government system that eventually prevails. In South Africa section 157(2) of the Constitution prescribes that the electoral system for local government must be based, either on proportional representation (PR) or on PR combined with ward representation.⁵ Moreover, section 157(3) of the Constitution provides that despite the choice made the overall results must be proportional representation.⁶

Basically ward representation is a system whereby voters in a particular area in the municipality elect an individual to represent that area in the council.⁷ Where on the other hand (PR) is a system whereby the voters vote for a political party, not an individual candidate.⁸ The electoral system for local government is mainly regulated in the Municipal Structures Act and the Municipal Electoral Act 27 of 2000.⁹ The local government electoral system combines ward and (PR) representation. The metropolitan and local councils comprise of 50 percent ward councillors (independent or nominated by a political party), and 50 percent councillors that proportionally represent the parties that participated in that election (PR councillors).¹⁰ District councils comprise of 40 percent PR councillors elected from the entire district and 60 percent councillors, appointed by local councils in the district to represent their local municipality in the council.¹¹

3.2.1 The Registration of Local Parties and Independent Candidates

The electoral system allows for the registration of local parties. A party may apply to the Independent Electoral Commission (IEC) to register a party to be registered nationally for municipal elections or a party may choose to contest for a particular municipality. If a party is registered for a particular municipality it may only participate in elections for the council of that municipality.¹² It must be noted that if the party is not yet represented in Parliament, a

⁵ Sec 157(2) of the Constitution of the Republic of South Africa, 1996.

⁶ Sec 157(3) Constitution.

⁷ Local Government: Municipal Electoral Act 27 of 2000 Sec 16(1).

⁸ Local Government: Municipal Structures Act.117 of 1998 Item 3 Sch1.

⁹ Municipal Electoral Act.

¹⁰ Item 6(b) Sch 1 Structures Act.

¹¹ Sec 157(2) Constitution.

¹² Item 6(b) Sch 1 Structures Act.

provincial legislature or a municipal council of that area, the application must be accompanied by relevant supporting documents.¹³ These supporting documents include, the party's deed of foundation, adopted at a meeting and signed by one hundred eligible voters; a fee of R200 for each municipality the party registers for; the party's name and abbreviation.

The Constitution further allows for independent candidates to stand for office without being members or aligned to a particular political party.¹⁴ This direct representation seeks to promote local inclusive politics by bringing local leaders to the council as direct representative of wards. Direct representation promotes diversity and accountability since the representatives are elected directly by the community. The fact that there is more diversity means that there is less of a chance that one big party accumulates a majority of seats.

3.2.2 The Prohibition of Floor Crossing

Floor-crossing while permitted between 2002 and 2008 is no longer legal.¹⁵ Once a councillor has been elected on a party ticket be it as a PR councillor or a party aligned ward councillor, a change of membership means that council membership ends. The same applies to a councillor elected as an independent ward councillor, if he or she joins a party, council membership ends. The main reason for this prohibition is that floor crossing disrupts the proportionality between election outcomes and seat allocation. The prohibition on floor crossing has made it a little easier to manage coalitions, because it allows the member party to fill the seat if there is a vacancy, and it prevents the distortion of proportionality of the seats. However if the ward councillor loses his or her seat the municipality will have to go for a by-election.

3.3 Introduction into the Legal Framework for Council Governance

The Constitution places all legislative and executive powers of the municipality in a municipal council.¹⁶ The council makes decisions concerning the exercise of all the powers and the performance of all the functions of the municipality.¹⁷ This is done in accordance to the applicable relevant legislation. This section will analyse the role of the council in the

¹³ Sec 3-11 Municipal Electoral Act.

¹⁴ Sec 158(1) Constitution.

¹⁵ Sec 27 (c) and (f) Structures Act.

¹⁶ Sec 151(2) Constitution.

¹⁷ Sec 160(1) (a) Constitution.

municipality. This will be done by looking at the roles and functions of the speaker of the council. Further this section will examine how meetings are conducted in the council.

Important decisions in relation to the governance of the municipality are decided by the council. The municipal council exercises legislative power to adopt by-laws and the power to adopt the annual budget. It also exercises executive powers, for example when it adopts a policy or a rate on property. Finally, the council also exercise certain administrative powers, for example when it makes certain staffing appointments.

The effectiveness of the powers exercised by the council will only be realised when all its members adhere to the rules. For example, councillors need to attend council meetings even if they are against some items on the agenda.

3.3.1 Role of the Council

The success of a municipality is underpinned by a stable and competent municipal council. Practically, if the municipal council is unstable it has a negative effect on the administration and executive, which ultimately affects service delivery.¹⁸ It is for this reason that the legal provisions pertaining to coalition government need to be specific in order to circumvent challenges that comes with this form of government.

3.3.2 The Role and Functions of the Speaker

After the council has been declared elected, a municipal council must have its first sitting within 14 days. This first meeting is presided by the municipal manager or a person designated by the Member of the Executive Council (MEC) for Local Government. The first item on the agenda is usually the election of the speaker. The successful election of the speaker requires 50 percent plus one of the votes by the municipal council.¹⁹ In terms of the Structures Act, the speaker has the following duties:

- Preside over council meetings;
- maintain order during council meetings;
- performs the duties and exercises the powers delegated to the speaker;
- ensure council meetings are conducted in accordance with the rules and orders of the council;
- ensure compliance in the council and its committees with the Code of Conduct;

¹⁸ De Visser J, Steytler N & May A (2009) 8.

¹⁹ Item 6 Sch 3 Structures Act.

- must ensure that the council meetings are conducted in accordance with the rules and orders of the council.²⁰

The election is conducted in terms of Schedule 3 of the Municipal Structures Act.

3.4 How Council Meetings are Conducted

Over the years there has been legal uncertainty around matters relating to council meetings, quorums, decision-making within a municipal council. Most issues centres on what constitute a majority in a meeting, councillors not attending meetings for political reasons, and the limitation of the speaker's casting vote when there is a deadlock in a meeting. These issues are even more important in coalition governed councils, where numerical advantage is critically important.

3.4.1 Council Meetings

Primarily, the speaker is in charge of the legislative function of the municipal council.²¹ It is therefore his or her responsibility to make sure the council meetings are conducted according to the rules and orders of the council.²² Every municipal council must adopt its own rules and orders.²³ A municipal council may not discuss an item that has not been properly placed on the council agenda.²⁴

A majority of the councillors must be present at a meeting of the council before a vote may be taken on any matter.²⁵ Decisions taken without the necessary quorum are invalid.²⁶ In the coalition governed municipalities the above provision is sometimes abused for accomplishing political points. For example, a coalition partner will abandon the meeting forcing it to collapse due to the internal disputes they might have within the coalition.

In *Kham and Others v Electoral Commission and another*, the Constitutional Court made the following remarks in response to the argument that councillors could possibly refuse to attend council meetings in order to boycott its proceedings:

If parties were to boycott council proceedings to prevent it from operating, that would be gravely irresponsible. Councillors are elected to undertake the work of the council

²⁰ Sec 37 Structures Act.

²¹ Sec 37 Structures Act.

²² Sec 37(f) Structures Act.

²³ *Blaaw v Oudtshoorn Municipality* [2009] JOL 24367 (C) para 24-26

²⁴ *Molefe v Dihlabeng Loccal Municipality* [2008] JOL 22365 (O) para 12.

²⁵ Sec 30(1) Structures Act.

²⁶ *Taug Local Municipality v Mofokeng (J536/2011)* [2011] ZALCJHB30. Para 9.

on behalf of the whole citizenry. Sometimes the tides of politics will place one party in the majority and sometimes another. But it remains a duty of all councillors to facilitate and not obstruct the workings of the council. For councillors to continue to draw their salaries and seeking thereby to stultify the workings of a council would be a breach of the obligations as councillors.²⁷

Councillors must attend meetings of the council or committees of which they are members unless they have obtained leave of absence in terms of applicable national or provincial legislation or the council's rules and orders.²⁸ The council may impose a fine for a councillor not attending a meeting that he or she is required to attend or for failure of a councillor to remain in attendance for such a meeting.²⁹ Further, the Systems Act empowers the council to make a recommendation to the MEC to remove from office the councillor who has failed to attend three or more consecutive council or committee meetings without having obtained leave of absence.³⁰ These legal provisions are particularly important in coalition governed municipalities where margins are thin and non-attendance to a crucial meeting may have a negative impact on the majority. Surprisingly, these legal provisions calling for the removal of councillors who decide not to attend municipal council meetings are rarely applied even though they have been accessible to the council for use.

3.4.3 Decision Making

Generally, the decisions are made by a majority of votes cast.³¹ This means that the majority of the councillors present in a particular meeting must vote in favour of a particular motion before a decision is taken.³² In case there is an equal number of votes on the issue before the council, section 30(4) of the Municipal Structures Act provides that if on any question there is an equality of votes, the speaker as a presiding officer must cast an extra vote to break the deadlock.³³

The speaker's casting vote is important particularly in smaller councils and coalition governed councils. Primarily where the speaker casting vote may tilt the balance in favour of a ruling party or a ruling coalition. However, in *Provincial Minister for Local Government*,

²⁷ *Kham and others v Electoral Commission and another* (CCT64/15) [2015] ZACC 37, para 122.

²⁸ *Blaauw v Oudtshoorn Municipality* [2009] JOL 24367 (C).

²⁹ Item 3 Sch 1 Systems Act.

³⁰ Item 4(1) (a) and (b) Sch 1 Systems Act.

³¹ Sec 30(3) Structures Act.

³² Sec 160 (3) (c) Constitution.

³³ Sec 30 (4) Structures Act.

Environmental Affairs and Developmental Planning, Western Cape the Constitutional Court held that the casting vote by the speaker of a council does not apply when the issue before the council concerns a by-law, the budget, the raising of loans, and the imposition of rates and other taxes.³⁴ So if the coalition hinges on that casting vote, it is in danger every time an issue concerning passing of by laws or approving the budget, comes up. It is concluded that this provision makes coalitions more complicated.

3.5 Discretion to Allocate Executive Position

As previously stated, the Constitution does not provide for a separation of powers at local government level.³⁵ However, by providing for the election of the executive committee, the Constitution does envisage the existence of a municipal structure that exercises executive authority but it do so on behalf of the council.³⁶

There are two executive systems in local government, namely the executive committee and the executive mayoral system.³⁷ The Municipal Structures Act empowers the MEC to determine the executive system that is applicable to the municipality.³⁸ The executive system applicable to the municipality has a significant influence on how a coalition distributes executive positions in order to reinforce the coalition government. It is important to note that in either the executive committee or mayoral executive setting the law does not prescribe or guide who becomes mayor. It is entirely up to the council and thus up to the coalition to elect any councillor of their choice for the position.

3.5.1 The Executive Committee

The Constitution provides that a municipal council may elect an executive committee, subject to national legislation.³⁹ The executive committee is the principal committee of the municipal council.⁴⁰ In an executive committee system, political parties and interests that are represented in the council are represented in the committee of the council. The council elects one member of the executive committee to serve as a mayor. The mayor presides over meetings of the

³⁴ *Provincial minister of local government, environmental affairs and developmental planning, Western Cape v Municipal Council of Oudtshoorn Municipality and others* (CCT05/15) [2015] para 32.

³⁵ Sec 151(2) Constitution.

³⁶ Sec 44(1) Structures Act.

³⁷ Sec 42 and 54 Structures Act.

³⁸ The third option, which is referred to, as plenary executive type, one where there is no dedicated executive, is applicable to smaller councils that have less than ten councillors.

³⁹ Sec 160 (1) (c) Constitution.

⁴⁰ Sec 44(1) (a) Structures Act.

executive committee and performs functions assigned to him or her by the municipal council or the executive committee.⁴¹

The executive committee members must be elected within 14 days after the council's election.⁴² Section 43 of the Structures Act provides that the executive committee must be composed in such a way that parties and interests represented in the municipal council are represented in the executive committee in substantially the same proportion they are represented in the council.⁴³ The executive committee must be composed in a manner that is "consistent with democracy" and allows for parties and interest to be "fairly represented."⁴⁴ The first condition means, simple put that the majority in the council must also be the majority in the executive committee. The second condition means the executive committee is not the preserve of the ruling party or the ruling coalition. The committee must also include councillors that do not belong to a ruling party or ruling coalition. The municipality may determine any alternative mechanism for the election of the executive committee, provided that it complies with section 160(8) of the constitution.⁴⁵ The executive committee model was designed to compel opposing parties to work together in the interest of service delivery.⁴⁶

The council determines how executive committee members are elected but it must adhere to section 43 of the Structures Act which provides the council with two choices. It may adopt a system based on proportionality or it may adopt an alternative system provided it complies with the above mentioned democracy and fairness requirements. The interpretation of the proportionality requirement in section 43 of the Structures Act was at the centre of dispute in the City of Cape Town in *Democratic Alliance v ANC And others*.⁴⁷ In the City of Cape Town where the ANC had a majority of seats adopted a mechanism whereby the council appointed eight out of ten executive committee seats. The DA argued that two seats left for opposition were too few and they were not proportional to its share of council seats which was around 36 percent. Clearly this mechanism did not guarantee proportional representation of all parties.

The Court held that the City had chosen not to adopt a system based on proportionality but an alternative system as permitted by the Municipal Structures Act.⁴⁸ Furthermore, the Court ruled

⁴¹ Sec 49(1) Structures Act.

⁴² Sec 45 Structures Act.

⁴³ Sec 43(2) Structures Act.

⁴⁴ Sec 43(2) Structures Act.

⁴⁵ Sec 43(3) Structures Act.

⁴⁶ De Visser J, *Local Government Law and Policy*, Municipal executive (unpublished paper) 4.

⁴⁷ *Democratic Alliance v ANC and Others* 2002 JOL 10389 (C) at 19-23.

⁴⁸ See Sec 43 Structures Act.

that the system was fair as it permitted the participation of minority parties in the executive committee. The Court concluded by stating that a municipality has a choice between adopting a mechanism that promotes proportionality representation and adopting a mechanism that meets the lower standard of fair representation. This pronouncement by the Courts affords the executive council powers to choose between proportional representation and fair representation which is consistent with the Constitution.

3.5.2 The Executive Mayoral System

The executive mayoral system is characterised by a powerful mayor, who is assisted by a mayoral committee. The executive mayor appoints the members of the mayoral committee comprising of councillors and they report directly to him or her.⁴⁹ The mayoral committee may not have more than 10 members or 20 percent of the council, whichever is the least.⁵⁰

The mayoral committee is not a committee of, and does not report to the council. Its purpose is to assist the executive mayor in executing his or her mandate.⁵¹ The executive mayor may delegate specific responsibilities or powers to members of the mayoral committee. Further, the executive mayor may dismiss the member of the mayoral committee.⁵²

In municipalities with more than nine council members, the executive mayor must appoint a mayoral committee from among the councillors.⁵³ They remain in office for the term of the executive mayor who appointed them.⁵⁴ The mayoral committee is tasked with assisting the executive mayor in executing his or her duties. It dissolves automatically when the executive mayor vacates office.⁵⁵

The question arises as to whether the composition of the mayoral committee is subject to section 160(8) of the Constitution. This provision was at the core of the dispute in *Democratic Alliance v Masondo*.⁵⁶ This provision prescribes that members of the municipal council are entitled to participate in its proceedings and those of its committees in a manner that allows parties and interests reflected within the council to be fairly represented.⁵⁷

⁴⁹ Sec 60(1) (a) Structures Act.

⁵⁰ Sec 43(1) Structures Act.

⁵¹ Sec 60(1) (a) Structures Act.

⁵² Sec 60(1) (d) Structures Act.

⁵³ Sec 60(1) (a) Structures Act.

⁵⁴ Sec 60(4) Structures Act.

⁵⁵ Sec 60 (5) Structures Act.

⁵⁶ *Democratic Alliance v Masondo* 2003 (2) BCLR 128 (CC).

⁵⁷ Sec 160(8) Constitution.

In this case, the African National Congress (ANC) won 59 percent of the seats in Johannesburg metropolitan municipality in 2003.⁵⁸ The executive mayor Amos Masondo appointed a mayoral committee with ANC members only, despite the fact that the Democratic Alliance (DA) had won 33 percent of the votes. The DA instituted proceedings against the executive mayor, arguing that the exclusion of minority parties was unconstitutional as it was in conflict with section 160(8) of the Constitution.⁵⁹ The DA wanted the Court to declare section 60(1) (a) of the Structures Act, unconstitutional if it was found not to require minority party representation.⁶⁰

The Court held that the mayoral committee is not a committee of the council for the purpose of section 160(8) of the Constitution and the mayoral committee composition is not in conflict with the Structures Act or the Constitution.⁶¹ The executive mayor appoints it and its term automatically terminates when the executive mayor ceases to hold office.⁶²

3.6 Key Differences between the Two Executive Systems

Section 12 of the Municipal Structures Act authorises the Member of the Executive Committee (MEC) for Local Government to determine the executive system applicable to the municipality.⁶³ The municipality's discretion over its internal affairs does not include choosing an executive system against the wishes of the MEC.⁶⁴ For municipalities that are governed by coalitions, the type of system applicable may be the difference between a stable and unstable council.⁶⁵

The fundamental differences between the two systems is that the executive committee is appointed and is accountable to the municipal council,⁶⁶ while on the other hand the mayoral committee is appointed and is accountable to the executive mayor.⁶⁷ Secondly, the composition of the executive committee must be in such a way that parties and interests represented in the

⁵⁸ *Democratic Alliance v Masondo*.

⁵⁹ *Democratic Alliance v Masondo* para 15.

⁶⁰ *Democratic Alliance v Masondo* para 34

⁶¹ *Democratic Alliance v Masondo* para 82.

⁶² Sec 60(5) Structures Act.

⁶³ Sec 12 Structures Act.

⁶⁴ De Visser J, *Local Government Law and Policy*, Municipal executive (unpublished paper) 2.

⁶⁵ De Visser J 'South Africa's politicians will have to adjust to more coalitions' (DATE), available at the.conversation.com/south-africas-politicians-will-have-to-adjust-to-many-more-coalitions (accessed 03 June 2017).

⁶⁶ Sec 44(1) Structures Act.

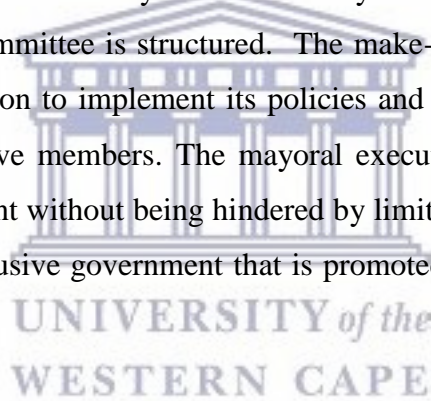
⁶⁷ Sec 60 Structures Act.

council are represented in the executive committee.⁶⁸ On the mayoral executive, the mayor may, but is not obliged to include opposition councillors in the mayoral committee.⁶⁹

The mayoral executive system provides substantial powers to the executive mayor.⁷⁰ In actual fact this system is characterised by a powerful mayor who is assisted by a mayoral committee. The executive mayor can dismiss the members of the mayoral committee as they are directly accountable to him or her.⁷¹ If these powers are used erratically they have a potential of destabilising a coalition government and create factions within the mayoral committee. However, the coalition agreement should provide for procedural guidelines which must be adhered to by coalition partners.

The *Democratic Alliance v ANC and Others* judgement, confirmed the discretion afforded to the council to elect its executive.⁷² The powers afforded to a coalition to elect its own executive is limited by section 43 of the Municipal Structures Act.

It may therefore be concluded that the mayoral executive system supports coalition building in as far as how the mayoral committee is structured. The make-up of the mayoral committee empowers the winning coalition to implement its policies and ideologies without delay and resistance from other executive members. The mayoral executive system is empowered to convert a coalition arrangement without being hindered by limitations in law. However, this is done at the expense of inclusive government that is promoted by the executive committee system.



3.7 Conclusion

The South African legal framework does not explicitly recognise party coalitions. Coalitions are founded on non-formal agreements between partners that are not legally binding. As a result, coalition partners find it easy or beneficial to them, to breach a coalition agreement in pursuit of better offers elsewhere. Furthermore, these agreements in most cases remains a well-guarded secret between coalition partners at the exclusion of everyone including the voters who put those political parties in power.

However, a few countries including Kenya regulate various aspect of coalition building. Where coalitions are regulated, legislation may cover the definition of a coalition, requirements for

⁶⁸ Sec 160(8) (a) and (b) Constitution.

⁶⁹ Sec 60 (1) (a) Structures Act.

⁷⁰ Sec 56 Structures Act.

⁷¹ Sec 60 (1) (d) Structures Act.

⁷² *Democratic Alliance v ANC and Others* 2002 JOL 10389 (C).

registration and timelines for submitting the necessary documentations to the relevant authorities.⁷³ Moreover in Kenya regulations also require that coalition agreements address precise issues. For instance Kenya's political Parties Act outlines sixteen issues that coalition agreements must address.⁷⁴ The question may therefore be posed if the South African legal framework should not take a cue from Kenya and develop its own legal framework to provide guidelines for coalition formation and building.

3.7.1 The Electoral System

The coalition government formations have remained prevalent in local government throughout the country despite the dominance of the ANC at national elections. This departure from the national trend may be attributed to the electoral systems that is predominantly PR and encourages coalitions as it is hard for parties to achieve an outright majority, and the electoral system that encourages independent candidates and local parties to participate in local elections. The mixed electoral system that is used at local government elections promotes inclusive government, small parties and independent candidates are represented in the municipal council. The fact that the electoral system allows independents candidates and local parties adds more diversity to the councils and thus makes coalitions more likely. The design of the mixed electoral system makes it hard for parties to receive above 50 percent of the seats during local government elections.⁷⁵

3.7.2 Executive Systems

The Municipal Structures Act provides a framework for executive systems in municipalities.⁷⁶ The executive system that applies to a particular municipality is largely determined by the provincial government.⁷⁷ The main difference between the two executive systems is that the executive committee structure is based on proportionality or at least fairness.⁷⁸ The council is obliged to include opposition parties in the executive council thereby restricting the discretion of coalition partners. On the other hand on the mayoral executive, the executive mayor does not have to include opposition councillors in the mayoral committee.⁷⁹ It is therefore concluded

⁷³ National Democratic Institute (2015) 25-6.

⁷⁴ Republic of Kenya Political Party Act. Cap 7B of 2012.

⁷⁵ De Visser J, *Local Government Law and Policy*, Local Government elections (unpublished paper) 1-2.

⁷⁶ Chpt 4 Structures Act.

⁷⁷ Sec 12 Structures Act

⁷⁸ Sec 43(2) and (3) Structures Act.

⁷⁹ Sec 60 (1) (a) Structures Act.

that the mayoral executive structure promotes coalition building since the coalition has the latitude to appoint its own executive without consulting the opposition.

3.7.3 Timeframes and Appointment of the Executives

The 14 day period from the announcement of result and the first council meeting may be a very limited period if parties did not prepare for the eventuality. Parties need to allocate enough time for the discussions of policy and procedural matters. The first item on the first meeting agenda is usually the election of the speaker. The successful election of the speaker requires 50 percent plus one of the votes by the municipal council. The law does not prescribe who becomes mayor, in a coalition government it is possible for a mayor to come from the junior partner.

3.7.4 Council Meetings and Quorums

In small councils or coalition governed councils, rules have been instrumental in how contention between parties get decided. The main bone of contention centres on meeting attendance and quorums in meetings. Item 3 Schedule 1 read together with item 4(1) (a) of the Municipal Systems Act makes provisions for the procedures to be followed when a councillor member is absent at a council meeting⁸⁰ but surprisingly these provisions are hardly applied in councils. This lack of adherence to the provisions in the Municipal Systems Act by municipal councils hampers coalition building and derails service delivery since decisions taken without the necessary quorum are invalid.⁸¹

⁸⁰ Item 3 Sch 1 and Item 4(1) Systems Act.

⁸¹ Sec 30(1) Structures Act.

CHAPTER 4

A Case Study on Coalition Governed Municipalities in Western Cape

4.1 Introduction

In 2017 SALGA Western Cape conducted a survey to review how coalition governments function in local government. Furthermore the survey examined the success and challenges faced by these coalition governments and whether the model of government, is suitable or hinders governance in municipalities governed through a coalition.¹

As indicated in the previous chapters, single party governments tend to be more stable when compared to a coalition government.² However coalition governments tend to perform better on other measures like inclusiveness and social welfare.³ Coalitions require extra pre-planning, comprehensive management and commitment from all parties involved. It is against this background that this chapter will conduct a case study on three coalition governed municipalities in the Western Cape, which are Bitou, Laingsburg and Witzenberg. This will be done by briefly examining their background, and the internal governance matters will be analysed using the findings on the study on coalitions conducted by SALGA Western Cape. Finally this chapter will examine the factors contributing to the sustainability of coalition in these municipalities.

4.2 Bitou Municipality

4.2.1 Background

After the 2016 local government elections, Bitou municipality became one of 27 hung municipalities in the country.⁴ The 2016 local government elections was the repetition of the 2011 elections where no party obtained the majority with ANC and DA winning six seats each, while the Active United Front (AUF) secured a single seat.⁵ Before the unpleasant 2018

¹ SALGA Western Cape, Coalition Government Questioner (2017).

² See Chapter 2 footnote 95.

³ Lijphart *A Patterns of Democracy* 2ed (2012) 287.

⁴ Fisher S 'AUF to form coalition with ANC in Bitou Municipality' (11 August 2016), available at ewn.co.za/2016/08/11/AUF-to-form-coalition-with-ANC-in-Bitou-municipality (accessed 15 January 2018).

⁵ Fisher S 'AUF to form coalition with ANC in Bitou municipality' (2016).

Auditor - General (A-G) report, Bitou Municipality received three clean audit outcomes. This clean audit were achieved despite the fact that the municipality was controlled by a coalition government.

In the wake of election results, the AUF conducted meetings with their members to seek a mandate on the way forward. These meetings were conducted in all the wards where the AUF gained support. Further, other parties who were part of the council were invited to make submissions on why they were suitable coalition partners. After extensive considerations the choice of a partner was proclaimed to have been based on policy and ideology similarities.⁶ Following the coalition agreement, AUF's Mr. Lobese was inaugurated as the mayor of Bitou, while the ANC's Ms. Phaki was elected to the position of the speaker of the council.⁷ The AUF which was a junior partner got the mayoral position.

However, seven months later, the ANC-AUF coalition collapsed.⁸ Amongst the reasons that were advanced by the mayor for the collapse of the coalition were that the ANC frustrated any attempts to establish clean administration and failed to address the difficulties faced by the community of Bitou. Secondly, the mayor alleged that the ANC had failed to implement the coalition agreement.⁹

Subsequent to the collapse of ANC-AUF coalition, the AUF is now in coalition with DA. The AUF still holds the position of the mayor and the DA councillor was elected to the position of the speaker. The new DA-AUF coalition which has been termed "a pro-poor co-operation agreement, seeks to grow the local economy and improve the lives of the people". The parties had also agreed to put structures in place to monitor and implement the provisions of the agreements.¹⁰

4.2.2 Feedback from the SALGA Study

The feedback from the study conducted was the following:

The collapse of the ANC-AUF coalition has created instability within the council. As usual the new coalition (DA-AUF) has brought forth a change in executive positions. The change has

⁶ Fisher S 'AUF to form coalition with ANC in Bitou municipality' (2016).

⁷ Knysa-plett Herald 'Bitou Mayor ends coalition with ANC in Plett' (2016) 1-2.

⁸ 'Bitou Mayor ends coalition with ANC in Plett' (5 April 2017), available at <https://www.algoafm.co.za/article/local/84563/Bitou-mayor-ends-coalition-with-ANC-in-Plett> (accessed 15 January 2018) 1.

⁹ Knysa-plett Herald 'Bitou Mayor ends coalition with ANC in Plett' (2016) 1-2.

¹⁰ 'Bitou Mayor ends coalition with ANC in Plett' (2017) 1.

also affected the administration which resulted in the resignation of the Municipal Manager, Chief Financial Officer (CFO) and various heads of departments.¹¹

Many officials felt the executive system does not assist coalitions as it gives the executive mayor (who is coming from a minority party) exclusive executive powers to make decisions for a majority of electorates. Further, the general feeling from officials was that the mayoral committee has only advisory powers.¹² It was also pointed out that officials often receive inconsistent messages from councillors which sometimes leads to low work morale and compromised work ethics.¹³ Lastly, communication between coalition partners was said to be non-existent.¹⁴

During the finalisation of this research paper the DA-AUF coalition was at the verge of collapse.¹⁵ This is after this municipality has experienced a motion of no confidence passed against the speaker and the deputy mayor, with the mayor voting with the opposition in this motion. In addition, the mayor is facing corruption charges that have been brought by the DA which is the coalition partner in this municipality. To add to the woes, the municipal manager is under suspension.¹⁶

This turmoil has led to the MEC for local government in Western Cape to commence with Section 106 of the Municipal Systems Act.¹⁷ This means the MEC is investigating allegations of corruption and maladministration against the municipality and the council will be presented with an opportunity to clarify the allegations.¹⁸

4.2.3 Factors Contributing to the Sustainability of Coalitions.

4.2.3.1 Coalition Management

During the course of the study it was apparent that coalition management was lacking in Bitou municipality. The main reasons that were raised by the mayor of Bitou who was also the secretary general of AUF were issues that could have been resolved by a coalition committee.¹⁹ If such a committee fails to resolve the disputes the coalition agreement should provide for

¹¹ Salga Western Cape *Bitou Coalition Government Questioner* (2017).

¹² Salga Western Cape Bitou coalition (2017) 3.

¹³ Salga Western Cape Bitou coalition (2017) 5.

¹⁴ Salga Western Cape Bitou coalition (2017) 6.

¹⁵ 'Bitou ANC calls for political stability', (2018), available at <https://showme.co.za/plettnews/Bitou-anc-calls-for-political-stability> (accessed 17 May 2018).

¹⁶ 'Bitou ANC calls for political stability' (2018).

¹⁷ Local Government: Municipal Systems Act 32 of 2000 Sec 106.

¹⁸ Sec 106 Systems Act.

¹⁹ 'Bitou Mayor ends coalition with ANC in Plett' (5 April 201) 1.

dispute resolution mechanisms which will include the meeting of top leadership as the last resort. Another matter that led to the instability within the coalition was that coalition management was only the responsibility of the members of the executive.²⁰ Coalition partners were passive on lookers and did not actively contribute to the management of the coalition. Relevant parties in the council and even party structures themselves need to take more responsibility when it comes to coalition management.

4.2.3.2 Executive Structure Applicable

Bitou municipality like most municipalities in the Western Cape uses the mayoral executive system. The mayoral executive system affords powers to the mayor to appoint a mayoral committee to assist him or her in the execution of his or her duties. In municipalities that have smaller parties (who hold the deciding vote), the position of a mayor is sometimes offered to smaller parties in order to lure them into coalition. Looking at the type of challenges that have been faced by this coalition government it raises questions if it was the best solution to give the mayoral position to the junior partner.

If a coalition has a comprehensive coalition agreement in place that sufficiently covers policy, procedural matters and allocation of positions, it makes it a bit less likely for that coalition to suffer from coalition management related matters. This is because such coalitions provide for stringent measures for the management of the coalition.

4.3 Laingsburg municipality

4.3.1 Background

Laingsburg municipal council consists of seven council members.²¹ In the 2016 local government elections no party was able to garner a majority of seats. The ANC and DA won three seats each and a single seat was won by the Karoo Ontwikkelings Party (KOP).²² Soon after the 2016 elections, an agreement was concluded between the DA and KOP.²³ However the coalition only lasted for seven months which prompted KOP to enter into a new coalition

²⁰ Salga Western Cape Bitou coalition (2017) 5.

²¹ Etheridge J, 'DA Secures coalitions in Karoo municipalities district' (12 August 2016), available at <https://www.news24.com/elections/news/DA-secures-coalitions-in-Karoo-municipalities-district-20160812> (accessed 15 January 2018) 1.

²² Etheridge J, 'DA Secures coalitions in Karoo municipalities district' (2016) 1.

²³ Etheridge J, 'DA Secures coalitions in Karoo municipalities district' (2016) 1.

with the ANC.²⁴ Again this coalition that was proclaimed as a coalition of like-minded parties did not last even a year, it collapsed ten months later.²⁵ As a result, DA and KOP have renegotiated their agreement which has resulted in a third change of a coalition government in 16 months.

Initially the DA and KOP formed a coalition to govern the municipality, but in March 2017 the KOP broke with the DA and formed a new coalition with the ANC. However the ANC-KOP coalition did not last either. The collapse of ANC-KOP coalition has resulted in DA and KOP forming a coalition once again.²⁶ The recent coalition between DA and KOP has witnessed a mayor with no local government experience ascend to the highest office from a party that won a mere 220 votes at the 2016 local government elections.²⁷ The two biggest parties in the municipality seem to have accepted that the position of mayor in this municipal administration belongs to the junior partner.

The chief whip of the ANC in the municipality made the following remarks after the appointment of the mayor “democracy is strange - 200 votes and they are calling the shots”.²⁸ The mayoral position that has been offered to KOP in exchange of them supporting a coalition government does not equate to the level of influence, support, or capabilities enjoyed by this party in this municipality. In actual fact this mayoral position has exposed KOP lack of capabilities and personnel in the municipality.

4.3.2 Feedback from the SALGA Study

The study was conducted shortly after the formation of a new coalition between the ANC and KOP. The environment was hostile. As a result, most office bearers were not willing to disclose internal governance issues.²⁹ However, those who were willing to share were adamant about the new coalition, even though they did not share much. The coalition agreement was proclaimed to be ‘the most genuine coalition in the country’.³⁰ The party’s ideologies and

²⁴ Fisher S ‘DA forms coalitions with KOP in Laingsburg again’ (24 January 2018), available at ewn.co.za/2018/01/24/da-forms-coalitions-with-KOP-in-Laingsburg-again (accessed 16 January 2018) 1.

²⁵ Fisher S ‘DA forms coalitions with KOP in Laingsburg again’ (2018) 1.

²⁶ Fisher S ‘DA forms coalitions with KOP in Laingsburg again’ (2018) 1

²⁷ Jordan B ‘Meet Laingsburg “mayor by mistake” coalition politics catapults ex-petrol jockey into power’ (17 March 2018), available at <https://www.timeslive.co.za/sunday-times/news/2018-03-17-meet-laingsburgs-mayor-by-mistake/> (accessed 12 May 2018).

²⁸ Jordan B ‘Meet Laingsburg “mayor by mistake” coalition politics catapults ex-petrol jockey into power’ (17 March 2018).

²⁹ Salga Western Cape Laingsburg coalition (2017) 6.

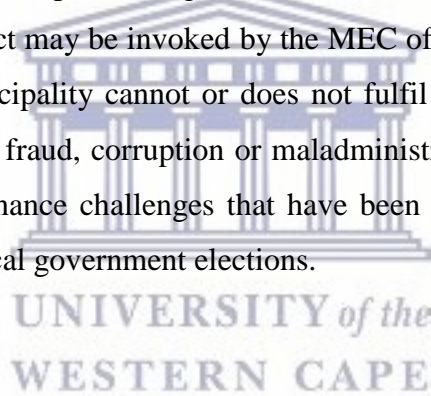
³⁰ Salga Western Cape Laingsburg coalition (2017) 4.

similar policies were emphasised as the underlining reasons for smooth and hassle free coalition negotiations.

In 2017 Laingsburg municipality received a qualified audit opinion.³¹ This outcome illustrates that the financial statements contain material incorrect or omitted information in specific amounts, or there is insufficient evidence to conclude that specific amounts included in the financial statements are not materially misstated.³²

The basis for a qualified opinion were irregular expenditure, where substantial amounts could not be accounted for. Reasonable steps were not taken to prevent unauthorised expenditure.³³ The council was not effective in ensuring that the municipality adhered to good governance practises. The council failed to act on the audit recommendations made in the previous year and did not carry out the previous recommendations.³⁴

During the finalisation of this paper the MEC for local government in Western Cape had already started the process of implementing section 106 of the Municipal Systems Act.³⁵ Section 106 of the Systems Act may be invoked by the MEC of Local Government if there is reason to believe that a municipality cannot or does not fulfil a statutory obligation on the municipality or in the case of fraud, corruption or maladministration.³⁶ This involvement by the MEC confirms the governance challenges that have been experienced by this coalition government since the 2016 local government elections.



³¹ Report of the Auditor-General to the Western Cape Provincial Parliament and the council on the Laingsburg municipality, (2017), available at [file:///users/Laingsburg%202016-17%20-%20Auditors%20report%20-%20final%20\(1\).pdf](file:///users/Laingsburg%202016-17%20-%20Auditors%20report%20-%20final%20(1).pdf) (accessed 16 January 2018).

³² Report of the Auditor-General to the Western Cape Provincial Parliament and the council on the Laingsburg municipality (2017) 1-3.

³³ Report of the Auditor-General to the Western Cape Provincial Parliament and the council on the Laingsburg municipality (2017) 4.

³⁴ Report of the Auditor-General to the Western Cape Provincial Parliament and the council on the Laingsburg municipality (2017) 5.

³⁵ Pienaar M George, 'Bitou and Laingsburg municipalities to be placed under administration' *The Citizen* (17 May 2018) available at <https://citizen.co.za/news-cns/1928793/george-bitou-and-laingsburg-municipality-to-be-placed-under-administration/> (accessed 03 June 2018) 1-2.

³⁶ Sec 106 (1) Systems Act.

4.4 Witzenberg Municipality

4.4.1 Background

The municipality consists of 23 elected council members.³⁷ There was no party that was able to win a majority of seats in 2016 local government elections, resulting in a hung council.³⁸ The municipality is governed by a DA-Cope coalition.³⁹ Witzenberg municipality is one of the ten best run municipalities in the country according to the government performance index.⁴⁰ Moreover the municipality has achieved seven unqualified audit opinions over the years.⁴¹

Unlike the other two coalition governments discussed earlier, the Witzenberg executive structure has seen the executive mayor coming from the DA which is the senior partner in the coalition and the speaker coming from Congress of the People (COPE) which is the junior partner. This coalition has been able to disregard the disproportionate influence that has been enjoyed by the junior partners in other coalition arrangements.

4.4.2 Feedback from the SALGA Study

Besides the desire to govern and provide quality services to the community, Witzenberg office bearers claim that the DA-COPE coalition has been primarily based on trust between partners involved, the shared vision and values of partners, and the ability to differentiate between personal gain and the community interest.⁴² Parties are wary of a possibility of a hung council, therefore they identified possible coalition partners long before elections.⁴³ Municipal officials assert that identifying possible coalition partners early and ironing out differences eases the burden on coalition negotiations.⁴⁴ There is open communication and transparency within partners and if disputes arise there are dealt with internally through formal and informal processes.⁴⁵ Further, the coalition agreement makes provision for the intervention by the provincial and/or national leadership if the disputes persists.⁴⁶

³⁷ 'Witzenberg Local Municipality' (2016), available at <https://municipalities.co.za/management/1211/Witzenberg-local-municipality> (accessed 16 January 2018) 1.

³⁸ Witzenberg Local Municipality (2016) 1.

³⁹ 'Witzenberg-Democratic Alliance' available at <https://www.da.org.za/da-governed-municipalities/witzenberg> (accessed 16 January 2018) 1.

⁴⁰ Witzenberg-Democratic Alliance (2017).

⁴¹ Witzenberg-Democratic Alliance (2017).

⁴² Salga Western Cape Witzenberg coalition (2017) 3.

⁴³ Salga Western Cape Witzenberg coalition (2017) 3.

⁴⁴ Salga Western Cape Witzenberg coalition (2017) 6.

⁴⁵ Salga Western Cape Witzenberg coalition (2017) 2.

⁴⁶ Salga Western Cape Witzenberg coalition (2017) 2.

This municipality has been stable since the 2016 local government elections. There have been no changes of the executive, the mayoral committee and the administration. All the office bearers interviewed did not see a problem with the mayoral structure applicable. They claim different viewpoints are taken into account before reaching any decision.⁴⁷ The stability in government, good working environment, trust within officials, effective communication are among the factors that have resulted in Witzenberg municipality being amongst the best run municipalities in South Africa. Witzenberg has to a certain extent dismissed the perception that coalition government are unstable and unmanageable. Further, the fact that the coalition agreement was not founded on offering the junior partner the position of the mayor seems to have been another contributing factor that assisted in creating stability in the municipal council.

4.4.3 Factors Contributing to the Sustainability of a Coalition

It has been observed in many countries that have experienced stable coalitions that certain factors contribute in upholding coalition survival. Most often if these factors are missing the coalition government is likely to encounter challenges along the way. These factors include pre planning, coalition agreement and coalition management.

It is essential for parties to prepare for coalition government well in advance. This pre-planning includes engaging with like-minded parties, consulting your constituency and preparing or laying a foundation for negotiations. In Bitou the AFU consulted after elections with its constituency for them to advise on which party was most suitable as a coalition partner. Likewise, in Witzenberg parties had engagements before elections to iron out policy differences. These tactics by parties assisted in limiting the issues on the agenda during coalition negotiations and helped to iron out some differences.

4.4.3.2 Coalition Agreements

The design of a coalition agreement affords coalition partners the opportunity to promote coalition discipline. Parties are afforded enough time to deal with policy issues given that negotiations are held much earlier.⁴⁸ The fact that parties identify like-minded partners who share similar vision and values is the premise to the success of these negotiations.⁴⁹ The

⁴⁷ Salga Western Cape Witzenberg coalition (2017) 4.

⁴⁸ Salga Western Cape Witzenberg coalition (2017) 3.

⁴⁹ Salga Western Cape Witzenberg coalition (2017) 4.

coalition agreement further makes provision for mediation from senior leadership if coalition members cannot resolve a dispute.⁵⁰

4.4.3.3 Executive Structure Applicable

It is interesting to note that in all office bearers interviewed during the SALGA Laingsburg questioner the issue of the executive structure (i.e. the mayoral system) did not come up as a hindrance to coalition building.⁵¹ On the contrary, the executive structure applicable was applauded by all members interviewed. It was stated that the system is appropriate however, it depends on the coalition partners involved.

This therefore raises questions, how does the executive structure applicable impact/influence the stability of the municipality, and is the impact significant to warrant a change of the executive structure?

4.4.3.4 Summary of the Study

The following points emerge from the case study

First, preparing for a coalition is essential for a stable coalition. Secondly, to enter into coalition with a party that subscribes to the same policies and ideologies does not guarantee stability within a coalition. However, it is the trust between partners and the management of the coalition that matters. How a coalition is managed, or lack thereof significantly impacts on the duration or stability of a coalition. Thirdly, effective communication and coalition management are critical in holding a coalition together.

Fourthly, in municipalities where coalitions have been unstable, parties did not pay attention to important elements such as coalition agreements and coalition management. Without these fundamental elements in place, coalitions are bound to experience challenges which usually lead into a collapse of the coalition.

Lastly, all three municipalities investigated were using the executive mayor system. Two of the three municipalities were experiencing challenges with the internal governance of the municipality and how executive position were distributed. The municipal officials interviewed places much of the blame on the non-inclusive mayoral executive structure applicable in these

⁵⁰ Salga Western Cape Witzenberg coalition (2017) 4.

⁵¹ Salga Western Cape Witzenberg coalition (2017) 7.

municipalities. The distribution of executive position is not based on fairness or proportionality as is the case with executive committee system.⁵² It is a common occurrence in these municipalities for junior partners to be elevated to mayoral positions. However, the Witzenberg municipality did not experience similar challenges. It is submitted that this was due to parties preparing beforehand for such a possibility and the willingness of parties to work together. Further, awarding of the mayoral position to the senior partner have contributed in sustaining the stability in this municipality since the distribution is based on proportionality and fairness.



⁵² Sec 43(2) Structures Act.

CHAPTER 5

Conclusion and Recommendations

5.1 Introduction

Over the years South Africa has experienced lots of disorder and commotion in municipalities that are governed by coalition councils. These disruptions in councils have resulted in some municipalities collapsing thereby derailing the provision of essential services to the communities

During the finalisation of this research paper the MEC of Local Government in Western Cape had already commenced with invoking section 106 of the Municipal Systems Act, in Bitou and Laingsburg municipalities, due to the alleged maladministration and fraud taking place in these coalition governed municipalities.¹ The Bitou municipality is facing a crisis with the municipal manager under suspension, the mayor is facing a criminal investigation and a motion of no confidence in the deputy mayor and speaker has succeeded.² Likewise the Laingsburg coalition is facing the challenges of its own. A mayor from a party that accumulated 220 votes, with no local government experience (his only experience is as a petrol attendant and a construction worker) has been handed the highest office in the municipality.³ These instabilities are instigated mainly by the lack of pre-planning for a possibility of a coalition government, insufficient detail and attention to the coalition agreement, lack of legal provisions regulating coalitions and coalition management.

5.2 Preparing for a coalition

Lack of pre-planning for a possibility of a coalition government by political parties, results in the 14 day period prescribed by the Municipal Structures Act not being enough. Parties need to accept changing political dynamics and accept coalitions as a possibility in local government. It is therefore suggested that parties should strategise for any outcome well in advance of elections, in order to iron out differences. In addition, parties need to educate the voters of such possibilities.

¹ Pienaar M George, 'Bitou and Laingsburg municipalities to be placed under administration' (2018) 1-2.

² Stander Y 'Bitou's DA-AUF marriage over?' (10 May 2018), available at <https://www.knysapletherald.com/news/article/general/political/woes-in-bitou-201805101248> (accessed 14 May 2018) unnumbered.

³ Jordan B 'Meet Laingsburg "mayor by mistake" coalition politics catapults ex-petrol jockey into power (17 March 2018).

5.3 Coalition Agreement

Coalition agreements are designed to promote cohesion among coalition parties. It is suggested that the coalition agreement should cover the area of policy that can be agreed between the parties, allocation of portfolios and the procedures by which the coalition will operate. The main functions of a coalition agreement are to bond leaders of different parties, improve communication between them, and contain inter party conflict or facilitate its resolutions. Following the conclusion of negotiations between parties, a coalition agreement should then be elevated to a coalition-guiding document that should be respected by all members involved.

5.4 Coalition Management

A coalition may be defined as a marriage of convenience between two or more political parties or independents. A coalition involves a compromise of ideological positions and principles between parties in a move to form a government. It is within the above context that by their very nature coalition governments are prone to disintegration if parties do not lay an efficient and effective coalition management framework. Coalition management should include appropriate structures for information sharing, coalition management committees that must meet on a regular basis, and a dispute resolution mechanism to diffuse any conflict and dispute that might arise.⁴

Coalition management is critical to any long-lasting existence of a coalition government. The stability and the success of the coalition is mainly dependent on its member's intention, trust, tolerance and accommodation of different views. Trust between partners, subscribing to the same vision, need to be promoted and encouraged in every coalition government.

5.5 Municipal Council Internal Matters

Section 12 of the Municipal Structures Act empowers the MEC for Local Government to choose the executive structure applicable.⁵ The executive structure applicable can have a considerable effect on coalition building and sustainability in municipalities. It has been observed that the mayoral executive system supports coalition building as far as electing the executive structure is concerned. However, the unilateral powers afforded to the executive mayor at the expense of the council and the mayoral committee have been singled out in the case study as one of the factors that impedes coalition sustainability.⁶

⁴ See chapter 2 footnote 95.

⁵ Local Government: Municipal Structures Act 117 of 1998 Sec 12(3).

⁶ Salga Western Cape, Bitou coalition (2017) 7.

It is therefore suggested that in municipalities that uses the mayoral executive system, the coalition agreement should include a resolution on how certain decisions should be made. This may include proper consultation of all parties, establishment of the coalition management committee and effective structures for exchange of information.

Further this paper suggests that the law should be changed in order to prevent a situation such as the one that occurred in Laingsburg municipality, where a party which garnered 220 votes in local government elections being overly compensated at the expense of good governance. There is nothing wrong with overcompensating junior partners however, this paper argues, offering a junior partner the top seat in the executive is taking it too far.⁷

It is submitted that the Municipal Structures Act should be changed to say that the mayors should come from the biggest party to avoid “kingmakers” becoming mayors as seen in Laingsburg and Bitou municipalities. In fact section 43(2) of the Structures Act makes a comparable assertion where it provides that an executive committee must be composed in such a way that parties and interest represented in the executive committee must be represented in the executive in substantially the same proportion they are represented in the council.⁸

The Constitution further provides that the executive committee must be composed in a manner that reflects ‘democracy’.⁹ The scenario in Laingsburg does not comply with the above Constitutional requirement. If these suggested amendments are approved, they will specifically affect section 48 and section 55 of the Municipal Structures Act, which address the election of mayors.¹⁰ This change to the law will further limit parties that get into coalition for the primary purpose of attaining the mayoral position instead of advancing the needs of their constituencies.

5.5.1 Council meetings

In order for any decision to be made in a council it will require a majority of councillors to be present and vote in favour of a particular motion. Decisions taken without the necessary quorum are invalid.¹¹ Councillors often abuse the above provision in coalition governed councils for political reasons thereby hindering implementation of services to the community. It is however surprising that the provisions provided by Item 3 Schedule 1 read with Item 4(1) (a) of the Systems Act have hardly been applied.¹² The municipal council needs to take

⁷ See chapter 2 footnote 68.

⁸ Sec 43(2) Structures Act.

⁹ Sec 160(8) (b) Constitution.

¹⁰ Sec 48 and Sec 55 Structures Act.

¹¹ Sec 30(1) Structures Act.

¹² Item 3 Sch 1 and Item 4(1) Systems Act.

councillors to task and apply the above provision without fear or prejudice since failure to adhere compromises coalition building and sustainability.

The 2011 and 2016 local government elections have asserted that coalitions are here to stay. Parties, voters and legislators need to accept this form of government as a permanent feature in South African politics. International experience has demonstrated that parties of opposing ideological views can work together, it all depends on the planning and attitude of members involved.

This thesis has highlighted a few gaps in the law that may need to be revisited by the legislatures in order for coalitions at local government to progressively adjust to this form of government.



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