



UNIVERSITY of the WESTERN CAPE
IYUNIVESITHI yaseNTSHONA KOLONI
UNIVERSITEIT van WES-KAAPLAND



DULLAH OMAR INSTITUTE
FOR CONSTITUTIONAL LAW, GOVERNANCE AND HUMAN RIGHTS

ADMINISTRATIVE CONTINUITY DURING COALITION INSTABILITY

GUIDELINES



By: Jaap de Visser, Jennica Beukes, Johandri Wright,
Tinashe Chigwata and Curtly Stevens



Western Cape
Government
FOR YOU



Hanns
Seidel
Foundation

Bayerische Staatskanzlei



Acknowledgements

The Administrative Continuity during Coalition Instability Guidelines were developed by the Dullah Omar Institute for Constitutional Law, Governance and Human Rights at the University of the Western Cape. The Guidelines are an output of a collaborative project undertaken with the Hanns Seidel Foundation and the Western Cape Provincial Government.

The Dullah Omar Institute gratefully acknowledges the partnership and contributions of the Hanns Seidel Foundation and the Western Cape Provincial Government to the project. Particular appreciation is extended to the Bavarian State Chancellery for its financial support, which contributed to the development and publication of these Guidelines.

Copyright statement

© Dullah Omar Institute, 2026

The content of this document is the sole responsibility of the Dullah Omar Institute and can under no circumstances be regarded as reflecting the position of the Western Cape Provincial Government or the Hanns Seidel Foundation. Copyright in this publication is vested with the Dullah Omar Institute, University of the Western Cape. No part of this publication may be reproduced in whole or in part without the express permission, in writing, of the Dullah Omar Institute.

Dullah Omar Institute
University of the Western Cape
Private Bag X17
Bellville
7535
South Africa
www.dullahomarinstitute.org.za



Bayerische Staatskanzlei



**Western Cape
Government**
FOR YOU

Table of Contents

1	INTRODUCTION	1
2	DEFINITIONS	2
2.1	Coalitions.....	2
2.2	Coalition instability	2
2.3	Political office-bearers	2
2.4	Executive mayoral system	3
2.5	Municipal executive	3
3	THE IMPACT OF COALITION INSTABILITY ON THE MUNICIPAL ADMINISTRATION	4
3.1	Introduction	4
3.2	Uncertainty.....	4
3.3	Declining staff morale.....	5
3.4	Malfeasance.....	5
3.5	The role of these Guidelines	5
4	KEY LEGAL ASPECTS SURROUNDING COALITIONS	6
4.1	Introduction	6
4.2	Election of office-bearers	6
4.2.1	The procedure	6
4.2.2	Secret ballot.....	6
4.2.3	If the votes are tied	6
4.3	The speaker.....	6
4.4	The executive mayor and whip	6
4.5	Deputy executive mayor or speaker	6
4.6	Mayoral Committee.....	7
4.7	Motions of no-confidence.....	7
4.8	Other ways for office-bearers to vacate office	7
4.9	Dissolution of the mayoral committee	7
4.10	Deputy executive mayor.....	7
4.11	Designating acting political office bearers	8
4.12	Electing representatives to the district council	8
4.13	Coalition agreement	8
4.13.1	What coalition agreements should (and should not) deal with.....	8
4.13.2	Coalition agreements must be public.....	9
4.13.3	Coalition agreements are not the same as municipal policy or law.....	9
5	HOW TO ENSURE ADMINISTRATIVE CONTINUITY	10
5.1	Introduction	10
5.2	Constitutional background	10
5.3	Rules of order	10
5.3.1	Introduction and importance	10
5.3.2	Motions of no-confidence and election of office-bearers	10
5.3.3	What can the municipality do?	11

5.3.4	What practitioners said	11
5.3.5	Minimising how long a position is vacant.....	11
5.3.6	Tips for the Rules of Order	12
5.4	Terms of Reference	13
5.4.1	Terms of Reference.....	13
5.4.2	How councillors interact with officials	14
5.4.3	The role of section 79 committees.....	14
5.5	Delegations.....	15
5.6	Tips for the Terms of Reference and Delegations	15
5.7	Senior management appointments.....	16
6	LEADERSHIP	17
6.1	Introduction	17
6.2	Keep the municipality grounded while the council shifts	17
6.3	Be aware of the politics inside the administration, and set the example	17
6.4	Stay politically neutral.....	18
6.5	Maintain unity in the senior management team	18
6.6	Communication with the politicians	18
6.7	Be steadfast and stick to the rules.....	19
7	WHAT CAN THE PROVINCIAL GOVERNMENT DO?	20
7.1	Introduction	20
7.2	Disciplinary procedures	20
7.3	Advice	20
7.4	Avoid bias	21
7.5	'Coalition facilitators'?.....	21

FOREWORD

The Western Cape Department of Local Government ("DLG") is committed to strengthening capable, accountable and resilient municipalities that consistently deliver quality and sustainable services to residents and communities across the province. Achieving this requires strong institutions, professional administrations and governance systems that remain effective, irrespective of changes in political leadership.

Coalition governments have become an increasingly significant feature of South Africa's local government landscape. They reflect the diversity and maturity of our constitutional democracy, but they also present municipalities with new governance challenges. Periods of political transition should never compromise administrative stability, institutional integrity or the continuity of essential municipal services.

Building municipalities that are resilient to political change has therefore become an important priority. Effective local government depends not only on sound political leadership, but equally on robust governance arrangements, clearly defined institutional roles and professional municipal administrations that uphold the rule of law and remain focused on serving communities. As coalition governance is likely to remain a feature of South Africa's local government landscape, municipalities must be equipped with practical tools to safeguard administrative continuity and service delivery regardless of political developments. It is against this backdrop that the DLG proudly endorses these Guidelines on Administrative Continuity During Coalition Instability. Developed through the collaborative efforts of the Hanns Seidel Foundation, the Dullah Omar Institute and experienced local government practitioners, the Guidelines are informed by rigorous constitutional and legal research, together with practical insights drawn from municipal leaders and practitioners with first-hand experience of coalition governance. As such, they represent an important and independent contribution to the ongoing development of good governance practice within South African local government.

The Guidelines provide practical guidance to assist municipalities in strengthening governance systems, clarifying the respective roles of political office-bearers and administrators, supporting professional municipal leadership and ensuring that municipal administration continues to function effectively during periods of political transition. In doing so, they reinforce an important principle: while political leadership may change, the institution must remain stable and service delivery must continue uninterrupted. Ultimately, administrative continuity is not an end in itself; it is essential to ensuring that residents continue to receive reliable municipal services during periods of political transition.

Importantly, these Guidelines are not only relevant to municipalities currently operating within coalition environments. They also provide valuable guidance to municipalities seeking to strengthen governance systems proactively and prepare for changing political dynamics in the future.

This publication also highlights the critical leadership role of Municipal Managers and senior officials in maintaining political neutrality, safeguarding good governance and fostering institutional stability. Equally, it encourages political leadership to strengthen governance practices that promote accountability, respect constitutional boundaries and support the long-term interests of municipalities and the communities they serve.

The Western Cape Government remains steadfast in its constitutional responsibility to monitor, support and strengthen municipalities. These Guidelines represent another practical contribution towards building resilient municipalities that are well governed, responsive and capable of delivering on their developmental mandate.

I extend my sincere appreciation to the Hanns Seidel Foundation, Professor Jaap de Visser, the Dullah Omar Institute and the many local government practitioners whose expertise and practical experience have informed this publication. Their collaboration has produced a practical, evidence-based resource that will assist municipalities to strengthen governance, administrative continuity and institutional resilience.

I encourage councillors, Municipal Managers and senior municipal officials to make full use of these Guidelines. By embedding these principles into governance practice, municipalities will be better equipped to navigate political transitions while preserving institutional stability, strengthening public confidence and ensuring that communities continue to receive the quality services they deserve.



2025/07/24

Mr Graham Pause

Head of Department

Western Cape Department of Local Government

1 INTRODUCTION

These Guidelines aim to assist municipalities, led by councils without an outright majority. They contain:

- definitions of key concepts;
- an assessment of the impact of coalition instability on the municipal administration;
- a brief outline of key legal aspects;
- guidance on how to ensure administrative continuity;
- guidance on leadership to ensure administrative continuity; and
- guidance on what support the provincial government can give.

The Guidelines are based on an analysis of -

- local government law, policy and practice; and
- a series of interviews with senior local government practitioners.

The interviewees included executive mayors, deputy mayors, municipal managers, senior managers and provincial government officials, all with experience in coalitions.



2 DEFINITIONS

2.1 Coalitions

A **coalition government** is when two or more political parties or independent councillors agree to cooperate to govern together as a ruling coalition government. Practically, this means they agree to vote together on the election of political office-bearers (such as the executive mayor, the speaker etc.) but also on policies and by-laws (such as the Integrated Development Plan, the budget, by-laws etc.).

Different forms of coalition government are possible. The classification has no legal consequences but is useful to distinguish one practice from another.

A so-called **bare-majority coalition** is when the parties in the coalition occupy just enough council seats for a majority. These coalitions are vulnerable because the loss of one or two seats (as a result of a by-election or a party pulling out of the coalition) can signal the end of the coalition. A so-called **grand coalition** is when the parties in the coalition (often from opposing ends of the political spectrum) make up a coalition with a 'comfortable' majority, i.e. well above the 50% + 1 threshold. A grand coalition comprises more political parties and interests than is required for a majority. These coalitions tend to be more stable because the loss of one or two seats, or one of the coalition partners does not always signal the end of the coalition. A so-called **government of national, provincial or local unity** is when political parties from all across the political spectrum work together to form a government. The current Government of National Unity (GNU) at national level and the Government of Provincial Unity (GPU) in KwaZulu-Natal are coalitions that sit somewhere between the grand coalition and government of national unity as defined here. A so-called

minority government is when the parties making up the coalition do not have enough seats for a majority in the council. This means that, at every council meeting, the coalition needs additional support from one or more councillors or parties to get resolutions passed (on matters such as appointing office-bearers, adopting the budget, by-laws, or senior management appointments).

2.2 Coalition instability

This guideline loosely refers to 'coalition instability', which means a period of political instability in the municipal council. This can manifest in different ways. For example, the council may have voted the (executive) mayor and/or the speaker out of office. Another example is when the mayor, the speaker, or another office-bearer has resigned. Coalition instability can also manifest in the council not meeting and key decisions not being taken, or when there are indications that key proposals such as the IDP or the budget will not be passed.

In essence 'coalition instability' refers to any political development in the governing coalition that suspends the day-to-day political decision making, be it in the municipal executive (i.e. the executive mayor and the mayoral committee) or the council.

2.3 Political office-bearers

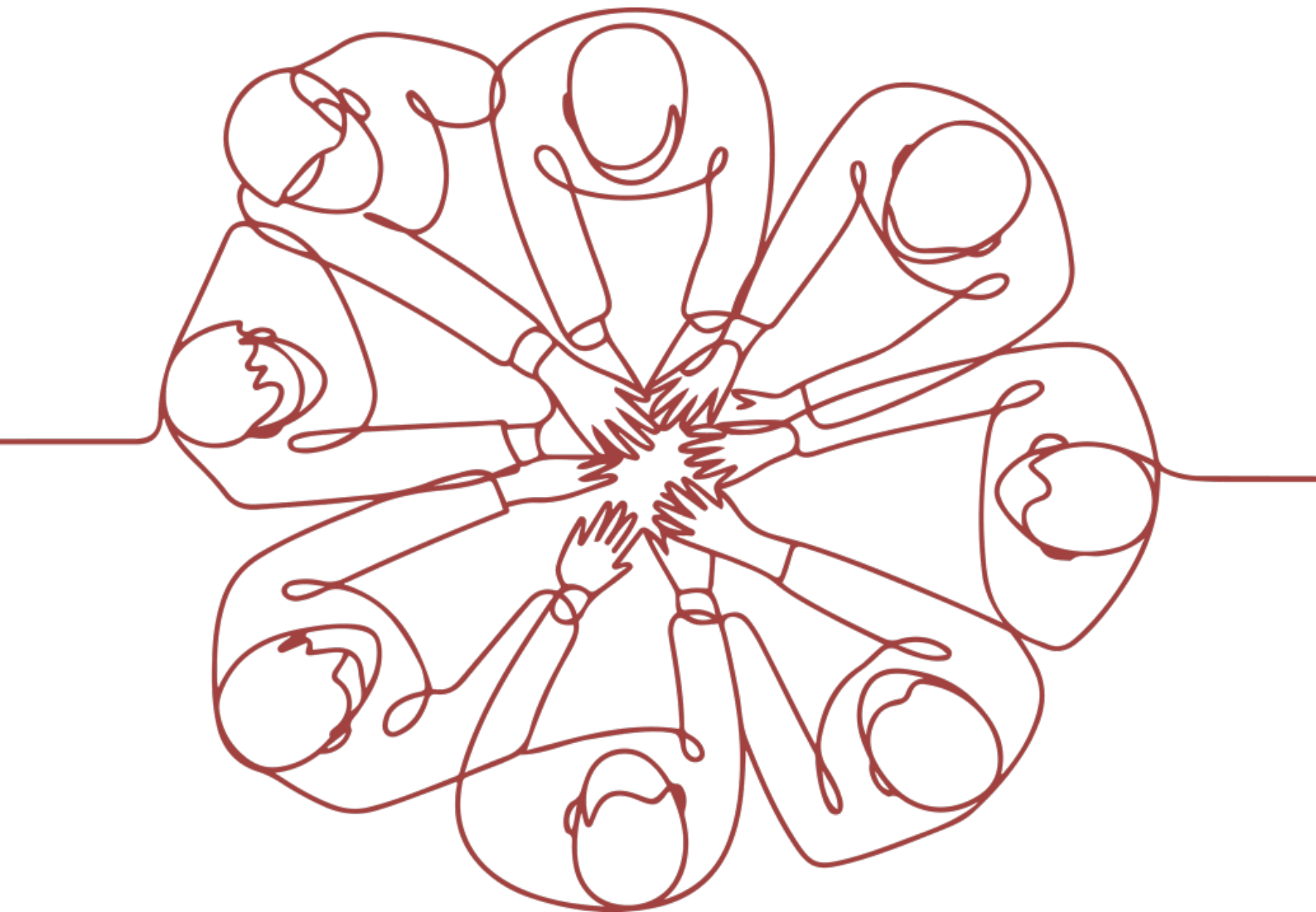
These Guidelines use the term 'political office-bearers' and they are defined in the legislation as the (Deputy) Executive Mayor, the (Deputy) Speaker, and the Whip. For the purposes of this Guideline, the Members of the Mayoral Committee are also included in this definition.

2.4 Executive mayoral system

This guideline applies to municipalities in the Western Cape, all of which have executive mayors. Therefore, it does not make reference to mayors, executive committees, or members of executive committees.

2.5 Municipal executive

When this Guideline refers to the 'municipal executive' it means the executive mayor and the mayoral committee.



3 THE IMPACT OF COALITION INSTABILITY ON THE MUNICIPAL ADMINISTRATION

3.1 Introduction

The proper functioning of municipal administrations depends on regular decision making by the municipal executive and the municipal council. This relates to fundamental policies such as the Integrated Development Plan (IDP) and the annual budget without which the administration cannot function. It also relates to by-laws, policies and a multitude of council decisions, required for the proper operation of the administration, such as the appointment of senior managers, approval of projects etc.

Coalition instability can be short-lived, for example when an executive mayor or speaker vacates office but a replacement is quickly elected. An impasse on the proposed budget could be quickly resolved. In that case, there is no immediate negative impact on the administration.

However, coalition instability can persist: it can take long for the council to elect new office-bearers, or for the council to have a proper meeting, or for a majority to form behind a proposed budget. Coalition instability can also persist in that the same scenario repeats itself: office-bearers are elected but then voted out of office again shortly thereafter.

This is when coalition instability starts negatively affecting the municipal administration, as explained by practitioners in the following section.

3.2 Uncertainty

The most common impact is the slowing down, or even complete halting of decision making by

the municipal executive or the council. As one municipal manager explained:

The first thing that coalition turmoil brings about is uncertainty ... arising from the fact that the mayoral committee, for example, would change. That change simply means that **decisions that you thought were going to be a done deal, are in the pipeline, the planning has been taking place – all of that is now uncertain** as to not only whether it is going to happen but when it is going happen. Uncertainty ... has the effect of people drawing into their shells. You are not going to expose yourself; you don't know who is going to emerge as the mayor or mayoral committee members. So, there is a slowdown of normal processes.

Another interviewee explained why administrative officials may be reluctant to take decisions during coalition turmoil:

In the administration, among section 56 appointees, we see a clear sense of paralysis. You don't have explicit political motivation or political cover. So, your ability and capacity to move with confidence is immediately compromised because you don't know how the politics will play out ... when the coalition is in disarray ... by taking action, you as an official are expressing political preference when in fact you are just trying to do your job. So, the consequence is that **you stand still. You are paralysed by fear of retribution, association** and being brought to account if that element of the coalition wins the day ... grudge politics is very much still alive.

3.3 Declining staff morale

Another consequence is the decline in staff morale, as explained by this interviewee:

There's no engagement, there's no drive. Because no one is paying attention, I'm just going to do my job ... I am not going to be fired regardless of whether I do 5 or 500 potholes a week. It's institutional apathy... **the adults are at war so the kids will just do what they do** with no consequence or recourse.

Low staff morale leads to low productivity as administrators fear that acting during such periods may threaten their job security:

The moment they know ... there's going to be a change in the political principals, it has a direct implication on the morale of the administrators... In most cases, they might immediately stop implementing projects and programmes.

3.4 Malfeasance

What is perhaps the worst impact of coalition instability is the possibility of malfeasance, i.e. fraud and corruption. **When all eyes are on who is going to be the new executive mayor, or speaker, there are fewer eyes on the till.** As one interviewee explained:

No one's paying attention to the oversight mechanisms ... because the focus is on the factionalism, the internal fighting, the alignment of party-political viewpoints. That failure to exercise

oversight then provides a fertile ground for fraud and corruption, mismanagement and abuse of resources. Of course, the longer the bun fight in the coalition, the longer and more embedded these behaviours become.

3.5 The role of these Guidelines

This guideline is meant to assist municipalities in dealing with the scenario where there is no single party with a majority in the council. If there is no single party with a majority, some coalition instability is inevitable. It is also not inherently problematic or anti-democratic when the governing majority changes: that is politics. However, it must not have the abovementioned debilitating impact on the municipal administration.

The Guidelines are not only aimed at municipalities that already operate under a coalition government. They are also aimed to assist those that currently operate with an outright majority in the council. This is because the electoral system can produce a council without an outright majority in any municipality, and the need for coalitions may thus arise in any municipality. It is best to be prepared, as one of the interviewees remarked:

Forecasting helps: Let's say we're at a municipality in an environment where things are sort of stable but we know we're going into elections. What is the prediction: will it stay the same or will it be expected to change?



4 KEY LEGAL ASPECTS SURROUNDING COALITIONS

4.1 Introduction

What follows is an outline of key legal aspects surrounding coalitions. While the outline covers the most important aspects, it can never cover every possible scenario. It should also not be interpreted as legal advice, but rather as general guidance. When there is uncertainty with respect to legal issues or interpretation, it is best to seek legal advice.

4.2 Election of office-bearers

4.2.1 The procedure

The procedure for the election of office-bearers is set out in Schedule 3 of the Municipal Structures Act. This procedure applies to the election of –

- the speaker;
- the executive mayor;
- the mayor;
- the deputy executive mayor;
- the deputy mayor; and
- the Whip.

The election is chaired by the municipal manager (or, in the absence of a municipal manager, a representative of the MEC). This must happen within 14 days of the declaration of the election (see para 4.2).

4.2.2 Secret ballot

The presiding officer must see to it that councillors can cast their vote in secret. Even though coalition parties may want to ‘check’ that their councillors follow the party line, the vote must be held in secret.

4.2.3 If the votes are tied

If two candidates receive the same number of votes, another meeting must be held within seven days and the election procedure must be repeated. If, at that second meeting, the votes are tied again, the presiding officer must determine by lot who of the two candidates will hold the office.

4.3 The speaker

The council elects one of its members as the speaker (see para 3.6 above for the procedure). The functions of the speaker are set out in the Municipal Structures Act and in the municipality’s Terms of Reference and System of Delegations (see paras 4.4-4.6 below).

The position of the speaker can be critically important in a ‘bare majority’ coalition. This is because when the votes in the council are tied, the speaker may often (not always) exercise a casting vote to settle the matter.

4.4 The executive mayor and whip

The council elects one of its members as the municipality’s executive mayor. The procedure for the election of an executive mayor is set out in Schedule 3 of the Municipal Structures Act. The election is chaired by the speaker. The same applies to the election of a whip.

4.5 Deputy executive mayor or speaker

Some municipalities are permitted to also elect a deputy executive mayor and/or a deputy speaker. Whether or not a municipality may do so is determined by the provincial Minister of Local Government in the municipality’s establishment notice.

4.6 Mayoral Committee

The executive mayor appoints councillors as members of the mayoral committee. This is not an election, but the executive mayor's prerogative. The members of the mayoral committee report to the executive mayor. Furthermore, they each chair a committee of councillors, called a 'section 80 committee'. The executive mayor may decide to appoint councillors of coalition partners onto the mayoral committee.

In a coalition scenario, the composition of the mayoral committee is 'politically' determined by the coalition (and recorded in the coalition agreement) but legally decided by the executive mayor.

4.7 Motions of no-confidence

The municipal council may, by simple majority of councillors present in a properly constituted council meeting, remove an executive mayor, speaker or whip from office. If the motion passes they become regular councillors again. The motion must be dealt with in accordance with the municipality's rules and orders (see para 5.3). The relevant office-bearer must be given prior notice of the motion tabled against him or her, and all the councillors must be given adequate time to prepare for the meeting. The details of this will be in the municipality's rules and orders.

A specific reason is not legally required. The executive mayor, speaker or whip does not need to be found 'guilty' of anything, for the motion to be legally valid. Provided the motion is dealt with in the procedurally correct way, the vote alone will determine the outcome, regardless of the reason for the motion.

However, the public is entitled to a reason.

However, it is good political practice to

explain to the public why a motion of no-confidence is being tabled.

4.8 Other ways for office-bearers to vacate office

An executive mayor, speaker or whip also vacates office when he or she resigns from that office. They then continue as councillors. Finally, an executive mayor, speaker or whip vacates office when he or she is no longer a councillor, for example when they –

- resign as a councillor;
- pass away;
- are no longer qualified to be a councillor (e.g. insolvency, prison term etc);
- are no longer members of the party they represented in the council; or
- are removed from the council by the provincial Minister of Local Government for violating the Code of Conduct.

Any of the above reasons can be the result of coalition instability, or it can trigger coalition instability.

4.9 Dissolution of the mayoral committee

When the executive mayor vacates office for any of the reasons mentioned above (see paras 4.7-4.8), the mayoral committee automatically dissolves. This is because **the mayoral committee is a committee of the executive mayor, not a committee of the council.**

4.10 Deputy executive mayor

Some municipalities have a deputy executive mayor. He or she assumes the functions of the executive mayor when the executive mayor vacates office. This ensures that someone immediately fills the vacuum of the executive mayor.

When the executive mayor leaves office, the members of the mayoral committee (MMCs)

automatically vacate office and become regular councillors. Can the deputy executive mayor appoint mayoral committee members, after taking over from an executive mayor? The opinions differ on this. On the one hand, the deputy executive mayor steps into the shoes of the executive mayor, and may exercise executive mayor's functions. *On the other hand, his or her role as acting executive mayor only lasts until there is a new executive mayor.* This Guideline takes the view that it is therefore not permitted for the deputy executive mayor to appoint mayoral committee members. When there is uncertainty on this, the best practice is to consult the provincial Department of Local Government.

4.11 Designating acting political office bearers

The law envisages that there may be a situation when a municipality will not have a mayor. When such a situation arises, section 57 of the MFMA empowers the council to designate a councillor to exercise the power/roles of the mayor under the MFMA. The power to designate an acting mayor ensures that there is no political leadership vacuum in a municipality. Similarly, section 41 of the Municipal Structures Act empowers the council to elect an acting speaker, if the speaker is absent, or not available to perform the duties of a speaker, or during a vacancy.

The council's powers to designate an acting mayor and to elect an acting speaker is there to ensure that council business and service delivery, at large, continues in cases of coalition induced political instability in a municipality. Thus, municipal councils should consider exercising these powers whenever necessary.

4.12 Electing representatives to the district council

The council of a local municipality is represented on the district council. These representatives are elected at the first meeting of the local council, after the general election. If there is no outright majority in the local council, the (potential) coalition partners may want to determine politically who represents the local municipality at the district council. However, **the election of local representatives to the district council is not a simple council decision - it is an election, managed by the Electoral Commission of South Africa (IEC).** This also applies to the filling of vacancies on the local municipality's delegation to the district council. When there is uncertainty, the best practice is to seek the advice of the provincial Department of Local Government and the IEC.

4.13 Coalition agreement

A coalition agreement is a political agreement negotiated between the coalition partners, reduced to writing. It broadly defines the policy priorities of the coalition, prescribes procedures for decision-making in the coalition, and how to resolve disputes. Practitioners have emphasised the importance of coalition agreements:

"The IDP must sit on a foundation – the policy that is missing is the coalition agreement."

4.13.1 What coalition agreements should (and should not) deal with

Coalition agreements should deal with -

- the general structure of the coalition;
- the policy priorities agreed to by the coalition partners;
- the allocation of political positions, i.e. political office-bearers;

- the decision-making and consultation procedures within the coalition;
- the dispute resolution mechanisms; and
- general rules of coalition behaviour.

The coalition agreement may not deal with administrative issues. For example, it may not deal with specific staff appointments or procurement decisions.

4.13.2 Coalition agreements must be public

The coalition agreement must anticipate conflict between coalition partners. It cannot determine the outcome of conflicts, but it can prescribe how coalition partners behave during conflict. Practitioners have pointed out the need for coalition agreements to deal with dispute resolution mechanisms:

"We also need to look at, if there is a coalition agreement, how do you resolve the issues? There's no focus or guideline on how to deal with conflict within a coalition government, instead of just running to the opposition by saying I don't want to work with them anymore. If we can get that right, it can place a halt on the turmoil."

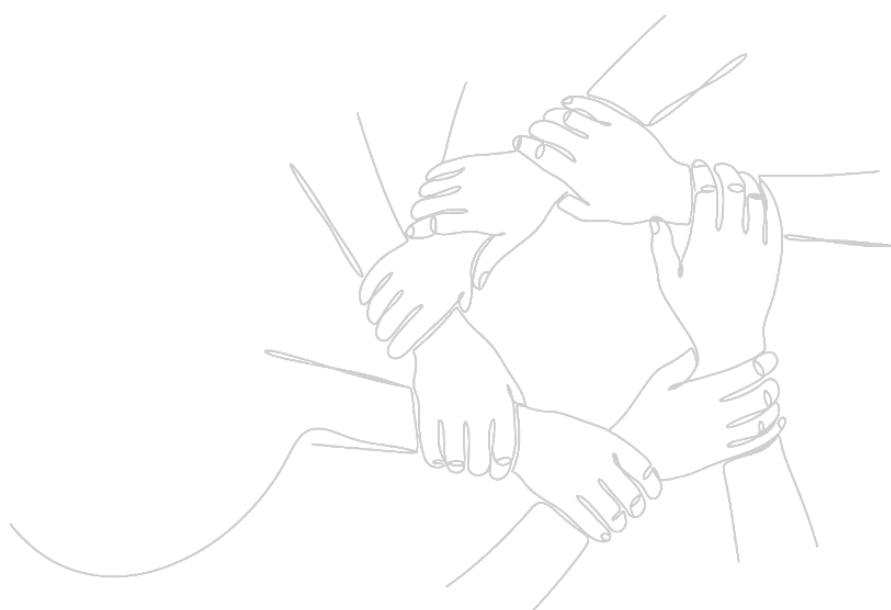
Dispute resolution arrangements can take many forms, and coalition partners will decide on a structure or mechanism that works best for their context. It is recommended to provide for a

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

4.13.3 Coalition agreements are not the same as municipal policy or law

A coalition agreement is not the same as a municipal budget, policy or by-law. It does not have any legal status until it is converted by the municipal council into municipal decisions. This means that even **after a (new) coalition is in place, the Municipal Manager is legally compelled to continue implementing the existing IDP and the budget, until there is a new or revised IDP and budget based on the coalition agreement.**

The political officebearers and other councillors, representing the coalition partners must therefore work to convert their coalition agreement into municipal policy and, where applicable, by-laws. The most important municipal policies where it must find expression is in the municipality's IDP and its budget.



5 HOW TO ENSURE ADMINISTRATIVE CONTINUITY

5.1 Introduction

When there is no outright majority in the municipal council, coalition instability may happen. Once there is coalition instability, the executive and administrative leadership of the municipality - if need be assisted by the Department of Local Government - must navigate the situation sensibly.

This section deals with a different question, namely: **what can the municipality do to prepare itself for coalition instability?**

5.2 Constitutional background

The Constitution gives the municipality considerable authority to regulate its own affairs. For example, the municipality determines –

- the rules for how council and committee meetings are conducted;
- the mandate of each council committee and committee;
- the structure of the administration;
- the mandates and reporting lines of senior managers; and
- a range of other policies, standard operating procedures etc.

The municipality can use that authority to make itself more 'coalition resilient'. This is an important part of a municipality's preparedness for a scenario when there is no outright majority. Several documents and processes are discussed below, starting with the rules of order, the terms of reference and delegations.

5.3 Rules of order

5.3.1 Introduction and importance

A coalition government officially 'comes into effect' when the councillors of the coalition vote together in a council meeting to elect office-bearers (executive mayor, speaker, chief whip etc.). One way in which it 'ends' is when the council adopts a motion to remove one or more office-bearers who are part of the coalition, i.e. a motion of no-confidence. When an office-bearer resigns (which can be as a result of coalition instability), the election of a replacement will also be a critical moment for the coalition. Furthermore, **the adoption of an IDP, budget, major policy or by-law can be big moments in the lifespan of a coalition and can 'make or break' a coalition.**

All these decisions are made in council meetings, conducted in accordance with the municipality's rules of order (or rules and orders). The council itself adopts these rules, and it may change them. Usually, they are adopted as a by-law, sometimes just as rules of order. The Provincial Department of Local Government may make a template ('standard rules of order') available, which the municipality may change to fit its own situation, and adopt.

5.3.2 Motions of no-confidence and election of office-bearers

The municipality's rules of order thus also determine the rules for tabling and voting on a motion of no-confidence. The election of office-bearers is regulated in Schedule 3 of the Municipal Structures Act (see para 4.2 above) but the rules of order will determine how the council meeting is conducted.

Frequent motions of no-confidence destabilise the municipality. On the other hand, a properly adopted motion of no-confidence expressed the will of the democratically elected majority in the council. A balance must be found between those two realities.

5.3.3 What can the municipality do?

Every municipal council should revisit its rules of order and ask the question: can we improve these rules to make us more 'coalition-resilient'? Are there aspects in the rules of order that can be amended to avoid the abuse of motions of no-confidence?

The municipality can, for example, make the tabling motions of no-confidence harder by adding procedural or substantive requirements.

5.3.4 What practitioners said

The practitioners we interviewed warned against restricting councillors from tabling motions of no confidence:

"You can't throw a policy at a councillor at a time when he wants to take over. You are making him more aggressive."

"It's just creating more chaos if you try to prevent the majority from getting power because each vote will count in council."

Another interviewee recalled an instance where the rules prevented a motion of no-confidence:

"I received a notice from the majority of the councillors to request a meeting. Initially I said it is within the 3 months [a common rule in the rules of order that you cannot submit the same motion within a 3-month period, see below at para 5.3.6], therefore it cannot serve. However, we were waiting for probably just a few weeks later. But in those few weeks, you sit with councillors who have the majority votes in council, but do not have the mayoral seat."

Another practitioner pointed out that a coalition is formed outside of the council, and this can happen during the council's term. If the law

prevents that coalition from bringing their coalition into effect by removing an office-bearer, it destabilises the municipality:

"That would be problematic. The majority will sit on the outside, creating chaos in council and although they don't have the seats of mayor and speaker – all other decisions will have to pass through them. With the budget – they will insist that the budget is not correct, they will not pass it. Everything the mayor submits will be changed. If the same majority has the mayor seat – they will agree with what is tabled. But just because it is the opposition, they will not agree."

In summary, restricting councillors from tabling motions of no-confidence must be treated with caution.

5.3.5 Minimising how long a position is vacant

It is especially destabilising when an office-bearer (such as the executive mayor) is removed from office and the position remains vacant for a long time. For as long as the position of executive mayor is vacant, there is no mayoral committee. One interviewee explained it as follows:

When the executive mayor resigns, the MAYCO ceases to exist ... There is no other way around that. You can't manage your way out of it, except to try and limit the time that the municipality will be without a mayoral committee ... Even if you have a deputy mayor, it may mean that you have a level of executive authority but that is more for the day-to-day stuff. As soon as you have to submit items to the council or have a MAYCO meeting, you can't do that.

The municipality cannot function properly when key political positions are vacant. **Vacancies left by the removal or resignation of an office-bearer must thus be filled as soon as possible.** The Municipal Structures Act currently does not provide a deadline but the

municipality's rules of order can. One interviewee indicated as follows:

So, the issue is around the time period: ... If you can quickly convene and call a council meeting for the purpose of electing a mayor, then that must be done and maybe that must be written into the rules of order.

In particular, **the speaker (or if there is no speaker, the municipal manager) must not give in to attempts to delay the election to suit one or more parties in the council.** The scheduling of an election to fill the vacancy must be automatic, and decided objectively, based on the rules of order.

Some municipalities deal with a motion of no-confidence and the election of the new incumbent in one meeting:

"... as soon as there is a notice of no confidence motion in a full-time political office-bearer, we will, within that agenda, also include the item to deal with the election of the speaker, mayor or deputy. It is exactly to deal with that vacuum. It has worked for us in the past. It ... forces the party that comes with the notice to also start applying their minds and not to wait to see whether the motion will succeed because that will leave you with that situation. Because you will pick up [beforehand] whether they have the numbers or don't have the numbers."

This is not always possible, and in other municipalities, a different approach is followed:

"You would have to call a meeting for that purpose [i.e. electing a new incumbent]. That is what the Structures Act requires. So, if there is still a mayor, then I think it is one step too far. It does not make sense to call a meeting to elect a mayor while there is still a mayor in place. But now you say you're first going to have a motion of no confidence just before that, you may be accused of anticipating or assuming a fact that is not yet in evidence ... because anything can happen. The meeting cannot take place, people walk out, there's contestation as to how many people walk out ... all kinds of things are possible. So, I would be

If the municipality is uncertain as to which approach to follow, best practice is to seek the advice of the provincial Department of Local Government.

Constructive motion of no-confidence?

Some countries only allow so-called constructive motions of no-confidence. These are motions that combine two proposals, namely (1) a proposal to remove an office-bearer and (2) a proposal for a new incumbent to be elected instead. In other words: in one resolution, the council votes one person out, and another person in. This has two advantages. First, it makes it harder to table a motion of no-confidence because the councillor who table the motion must have the support for both the removal from office and the new incumbent. Second, it avoids vacancies, and the instability that comes with that, altogether. The Municipal Structures Act currently does not permit municipalities to insist, in their rules of order, on a constructive motion of no-confidence. But it could be considered for law reform.

5.3.6 Tips for the Rules of Order

The municipality must ensure that its Rules of Order contain clear rules on -

- **special council meetings** (to deal with a motion of no-confidence and/or the election of office-bearers)
- The council has a predetermined schedule of ordinary meetings. A special meeting can be convened by the speaker. The speaker must convene a meeting when a majority of councillors makes a request. There **are specific rules in the Municipal Structures Act for when the speaker refused to convene a meeting.**
- **when a council meeting can be convened on an urgent basis;**
- The rules of order may provide that a council meeting can be convened on short notice to deal with an urgent matter. This would normally be reserved for

emergencies. **The wish to remove or elect an office-bearer is not automatically an emergency and should be dealt with in a regular or special council meeting.**

- **the minimum notice period for a motion of no-confidence;**
- The Municipal Structures Act provides that an office-bearer must be given 'prior notice' of the intention to remove him or her. The notice of a meeting (see above) will normally give the office-bearer (and all the councillors) sufficient prior notice.
- **a deadline for filling vacancies in full-time positions;** and
- See above. **The rules of order must provide for the scheduling of an election as quickly as possible after the position becomes vacant.**
- **when a motion is disallowed**
- The rules of order must have basic rules for the tabling of a motion. Some rules will be procedural (for example, it must be lodged in time, seconded by another councillor etc), other rules will be substantive (the motion must not be frivolous or ask for something illegal). The rules should prohibit the tabling of the same motion that was rejected less than three months ago. This prevents a (new) coalition from tabling a motion of no-confidence and, when it fails to pass, to try the same things two weeks later.

The next instrument that the municipality may use to prepare itself for the possibility of coalitions, are the terms of reference and the delegations.

5.4 Terms of Reference

Municipalities can minimise the negative effect of coalition instability on the administration by

ensuring clarity surrounding the roles and responsibilities of –

- political structures (such as the council, the mayoral committee and council committees;
- political office-bearers (such as the executive mayor, the speaker, and chairpersons of committees)
- the municipal manager;
- the administration; and
- other structures such as the audit committee.

The Municipal Systems Act contains two important instruments in that regard, namely –

- terms of reference; and
- delegations

5.4.1 Terms of Reference

The Municipal Systems Act instructs each council to adopt a policy called a 'Terms of Reference'. This policy outlines the roles and responsibilities of all the above actors. These roles inform their delegations, i.e. the formal transfer of delegated power to take decisions. The terms of reference is a general internal policy document. It is not a by-law and it doesn't grant anyone any legal authority. However, it is important, as one of the interviewees explained:

Having clear roles and responsibilities helps a lot. At the first meeting of council, you take a document to council setting out the roles and responsibilities, which must be linked to the delegations.

Another interviewee explained:

These documents are very real. They form the basis of the delegations. We often look at the terms of reference of the audit committee because we had to tighten a few things... it is important because if there is contestation, that is where you go. If the audit wants to know 'on what basis have you done this?', then you say

'it's there in my section 53 Terms of Reference and it is strengthened through the system of delegations'. That is where the power would originate from.

5.4.2 How councillors interact with officials

In a coalition scenario, there are often accusations of –

- councillors interfering in the administration;
- officials frustrating the majority; or
- officials frustrating opposition councillors who want to exercise oversight.

Many of these can be avoided by having a clear **terms of reference policy. It is the right policy to deal with key relational issues that help to keep a coalition healthy.** For example, it can be used to determine how councillors and officials should interact.

The relationship between senior managers and councillors is particularly important. Councillors may not interfere with the administration because the municipal manager is in charge of the administration and should not be by-passed. However, how must councillors relate to senior managers?

There are different approaches in that respect. In some municipalities, councillors liaise directly with senior managers. They may approach senior managers directly, request information, and raise issues with them. As one municipal manager explained:

One of the things I advocate is that: it is not only for them to approach the municipal manager but with the whole senior management team. If there is a problem, engage with the director so that we can assist and make sure they are appreciated.

However, other municipalities adopt a different approach. They prefer communication between councillors and senior managers to go

via the mayor to the municipal manager. As two municipal managers explained:

We operate on a Chinese wall approach: there needs to be separation. We decided that the mayor will be the interface between the administration and the councillors. Only the mayor will talk to the administration. No one else.

I use legislation, they can't interfere in my administration. The buck stops with me. If you interfere, I will report you to the MEC. I just say – no director takes no instruction from no councillor.

One approach is not necessarily better than the other. Much depends on issues such as the size of the municipal administration, the institutional culture, and the approach of the executive and administrative leadership of the municipality.

However, it is crucial to set out the approach clearly in the terms of reference and workshop this with the councillors and senior management.

5.4.3 The role of section 79 committees

It is not always clear what the role is of section 79 committees, i.e. the committees of the council, chaired by non-executive councillors. How are they different from section 80 committees, chaired by the members of mayor committees? Section 79 committees are essential for oversight but this is not always easily defined.

The terms of reference can deal with this by defining the role of section 79 committees. As one interviewee explained:

It determines what a section 79 oversight committee can request and also how they do it... so it is very important. These [the TOR] are things that we rely on regularly in order to ensure that we can give guidance and get to a particular committee in a lawful manner.

5.5 Delegations

The council may delegate powers to any of its political structures, political office-bearers, councillors or staff members. To make this happen, each municipality must adopt a system of delegations which sets out the powers of the speaker, executive mayor, their deputies (if applicable), members of mayoral committees, the municipal manager, senior managers and other key officials.

A municipality can make itself more coalition-resilient by ensuring that the delegations adequately deal with a situation when one or more political office-bearers or structures is temporarily vacant. It must deal with question such as:

- Who exercises the powers of the speaker when he or she has vacated office?
- Who exercises the powers of the executive mayor when he or she has vacated office?
- Who exercises the powers of the municipal manager when this post is vacant?
- How can delegations for senior managers and other key municipal officials ensure that the administration keeps running, even when the political leadership is in instability?

A proper system of delegations will go a long way in mitigating the disruptive effects that coalition instability has on the administration. As one municipal manager observed:

Currently, with the delegations, your administration can run and report to council if need be. Other than that, the accounting officer has all the powers; the service providers can continue. You can still clean the streets, tar the roads, you can still do everything. We are not at a stalemate.

Can the municipal manager temporarily exercise the powers of the executive mayor or even of the council during coalition instability? Could the delegations provide that, when there is no executive mayor or deputy executive mayor, the municipal manager assumes their powers until new office-bearers are elected? Similarly, could it provide that, when the council persistently fails to meet, the municipal manager assumes the powers of the council until it meets again? To 'close the loop', once new political office-bearers are elected and/or the council meets again, the municipal manager could submit the decisions he or she took for ratification. This may seem attractive to ensure continuity during coalition instability. However, practitioners also expressed concerns:

It is not practical because of the intricacies of reverting a decision like that. *Oudekraal*¹ says that thing is done until it is set aside by a competent court of law. Now, if you allow a municipal manager to run the municipality for 30 days and then, as a matter of principle, the politicians afterwards say 'no, we now set aside each decision'.. to undo that omelet is going to serious havoc. So, no. That is not something that I will propagate... I would be careful.

5.6 Tips for the Terms of Reference and Delegations

The municipality can make sure that –

- it has a proper terms of reference policy in place with clear roles and responsibilities for all key actors in the municipality as well clear reporting lines, dispute resolution mechanisms etc – when the exact mandate or a political structure, office-bearer or official is not immediately clear or when there is uncertainty about who should communicate with whom, the terms of

¹ In *Oudekraal Estates (Pty) Ltd v City of Cape Town and Others* [2004] 3 All SA 1 (SCA); 2004 (6) SA 222 (SCA) (28 May 2004) the Supreme Court of Appeal determined that

administrative decisions (even if legally doubtful) remain legally valid, binding, and capable of producing legal consequences until formally set aside by a court.

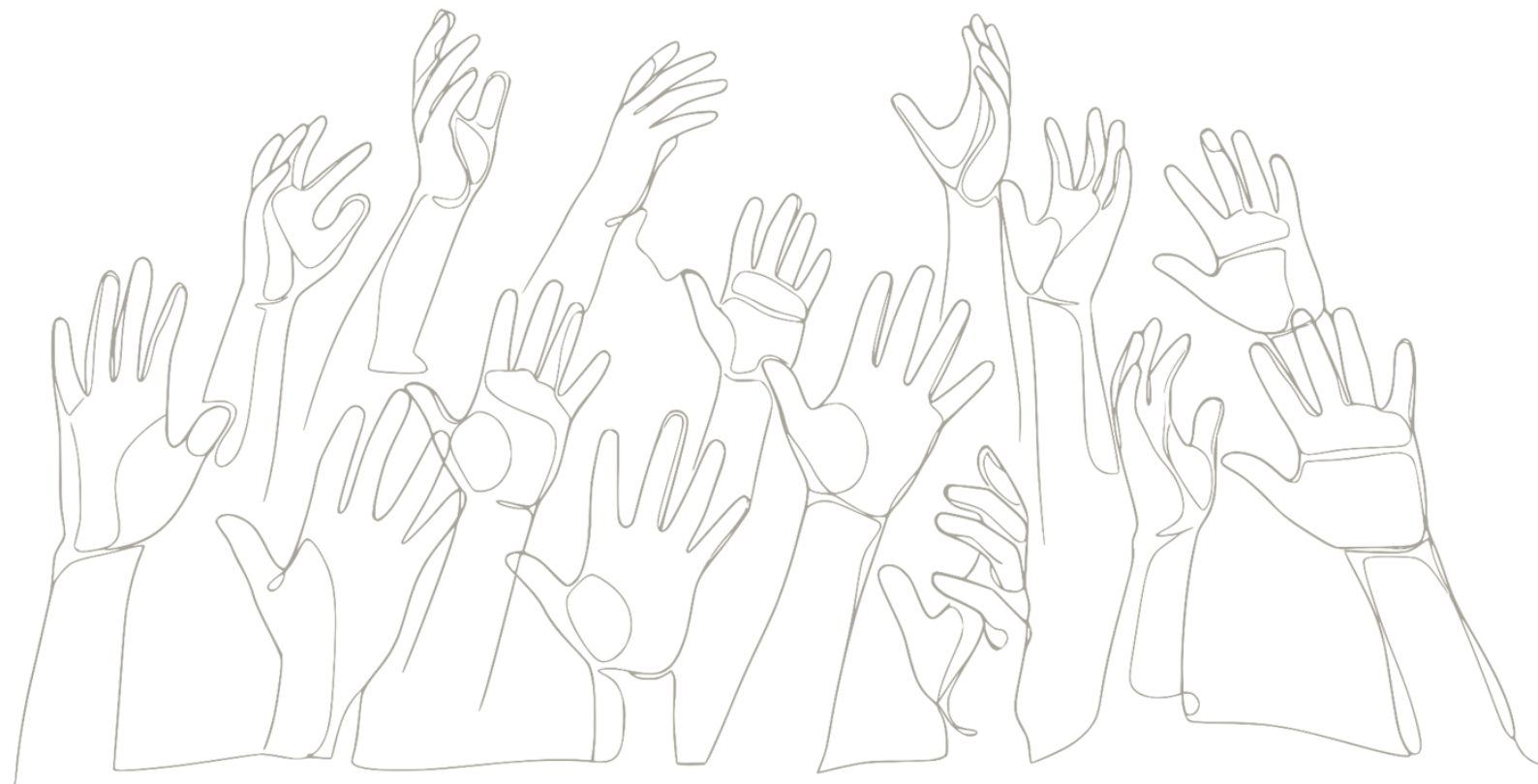
reference can be turned to for additional guidance;

- the terms of reference is discussed and/or workshopped at the beginning of the term of office, with all councillors and senior managers – in particular newly elected councillors;
- the system of delegations deals adequately with vacancies in senior political and administrative positions; and
- the system of delegations provides the municipal manager, senior managers, and where applicable other officials sufficient signing powers to make sure the administration continues even during coalition instability.

5.7 Senior management appointments

A professional and coherent senior management team is essential to the

municipality's success, and it can help weather the storms of coalition instability. Therefore, **the council must give the municipal manager sufficient space to put together his or her own senior management team.** The final decision to appoint managers reporting to the municipal manager vests with the council and councillors may be tempted to allow politics to determine who is appointed. For example, coalition partners may want 'their' candidate appointed. Even worse: there may be explicit or implicit agreements between coalition partners as to how many senior managers each coalition partner 'gets to appoint'. These agreements and practices are illegal. In any event, they are a recipe for problems. The recruitment process, and the municipal managers' input must determine who is appointed.



6 LEADERSHIP

6.1 Introduction

The following section moves from the formal, legal and governance issues to the issue of leadership. It goes without saying that, during coalition instability, the municipal manager plays a critical role, as one interviewee remarked:

You need strong administrative leadership. The municipal manager plays a pivotal role.

But what does that mean in practice? Based on the inputs of practitioners, the following issues emerged, mainly from the point of view of practitioners.

6.2 Keep the municipality grounded while the council shifts

The municipal manager must project a reassuring, calming presence during political shifts. As two interviewees remarked:

The main goal of the municipal manager is to bring the temperature down, to assure the administration that as far as we can, things are going ahead, operations continue, the items that you need to prepare for governance structures – continues, discipline – continues, spending the budget – continues... and together, with that, a very clear exposition of what the next steps are and what is being done in order to make those things happen.

The municipal manager needs to be calm in a situation like that, don't panic. Even if they come with demands, one needs to stay and remain focused on what should be done and what is allowed.

Another interviewee gave this pragmatic advice:

It all starts at the top. The municipal manager and directors need to set the tone. They need a strategy for how to

deal with the coalition turmoil. In a closed meeting, they need to come together to discuss the chaos in council and discuss how they will treat this, they need to determine their internal rules and say this will be the instructions for all their managers.

6.3 Be aware of the politics inside the administration, and set the example

Municipal managers (and other senior managers) must set the example of professionalism during coalition instability. The administration comprises individuals who have their own personal or party-political preferences with regard to who 'wins the day' during coalition instability. However, these preferences should not matter for how they execute their tasks. In the words of one of the interviewees:

Your administration has employees that come from different political parties and have different political ideologies. So, in a time like that, some of the employees will either back [one side], or say no they will not get involved, or try to make it difficult for whoever wants to oppose. This is why it is important that you send a message to everyone: 'Don't get involved, focus on the issue, increase your monitoring of what's happening in the municipality'. If we stay calm at the top, it will filter down.

Furthermore, the municipal manager must be aware of the fact that, in the administration, 'all eyes are on them', which makes it critical to set the right example:

Your broader administration will always look at what senior management is doing... It is important for us as senior management to ensure that the rest of the administration also stays out of any takeover or political instability. We need to focus on what we need to do.

6.4 Stay politically neutral

Municipal managers can successfully guide their administrations through turbulent coalition environments by upholding strict political neutrality, and enforcing the same standard among their senior managers. As these two interviewees explained:

What I did from the start was to instil in my management team, one ethical golden line, that we never get involved in the politics of the day. We don't choose sides, although sometimes either the coalition or the new government are applying pressure, we need to be stable. We need to ensure that at all times we comply with the legislation, and do the normal things that we are used to. We have been very successful in that.

As an administrator you need to demonstrate, every day, you're not going to side with any of the parties. You're going to stay neutral and objective and criticize both sides. Sometimes people think it is difficult but councillors value it more if you're open, honest and criticise them when they do something wrong.

6.5 Maintain unity in the senior management team

Coalition instability may drive a wedge into the senior management team. Officials come from diverse political backgrounds and have diverse political ideologies. The municipal manager must make sure that the senior management team is unified and shielded from the instability as far as possible. In the words of an interviewee:

It is important to get your senior management team right. There is often infighting within the senior management team. There are challenges where you have, for example, a manager of legal services meeting everyday with the opposition and giving them information, writing documents for them – that creates mistrust in the administration, which can spill over to the politicians. When there is

absolute unity in the senior management team – that creates stability in the administration.

With regard to shielding the senior management team from the instability, one interviewee had this to say:

I try to be hands-on with matters going on within the municipality. I am actively engaged with directors to ensure that they are comfortable with what they are doing and not under undue pressure. I believe I need to be that shield for them with the political leadership. If there is tension between a councillor and section 56 appointee, I try to bring them together, we discuss it and resolve it without a sense of you are right and this one is wrong.

6.6 Communication with the politicians

The municipal manager is the primary connection between the executive mayor and the council on the one hand, and the administration on the other. Once political instability 'arrives', in the form of a resignation, motion of no-confidence etc., the municipal manager will have to determine the immediate course of action, based on the applicable laws and procedures. It is easier for the municipal manager to do this, if he or she has an open communication with the executive mayor and gets a 'heads up', as it were. As one municipal manager remarked:

When I started here, one of my first interactions with the then mayor was to alert him to the reality that there may be decisions that are taken outside of the municipality [i.e. in political parties] that have an impact on what is happening inside the municipality. My request to him was, simply, if something like that should happen, please inform me before you act so that I can measure the impact and try to mitigate the effect it might have on the running of the administration.

This must not be misunderstood as the municipal manager getting involved in the politics of the

council. It is about **the municipal manager being informed timeously of political decisions affecting the coalition. This will enable him or her to provide professional advice before the decision is taken,** and to step up to deal with the impact of the decision.

It can sometimes also work the other way around. The municipal manager, as the central figure in between the administration and the coalition, may pick up on political tension in the coalition that could jeopardise the coalition. It may then be prudent to alert the mayor, as one interviewee explained:

One partner could be unhappy with the mayor and I will then say: 'Mayor, you need to be careful. I'm picking up on unhappiness. See how you can resolve that'. That is the closest I will go. I will not address the issue, I will just alert.

6.7 Be steadfast and stick to the rules

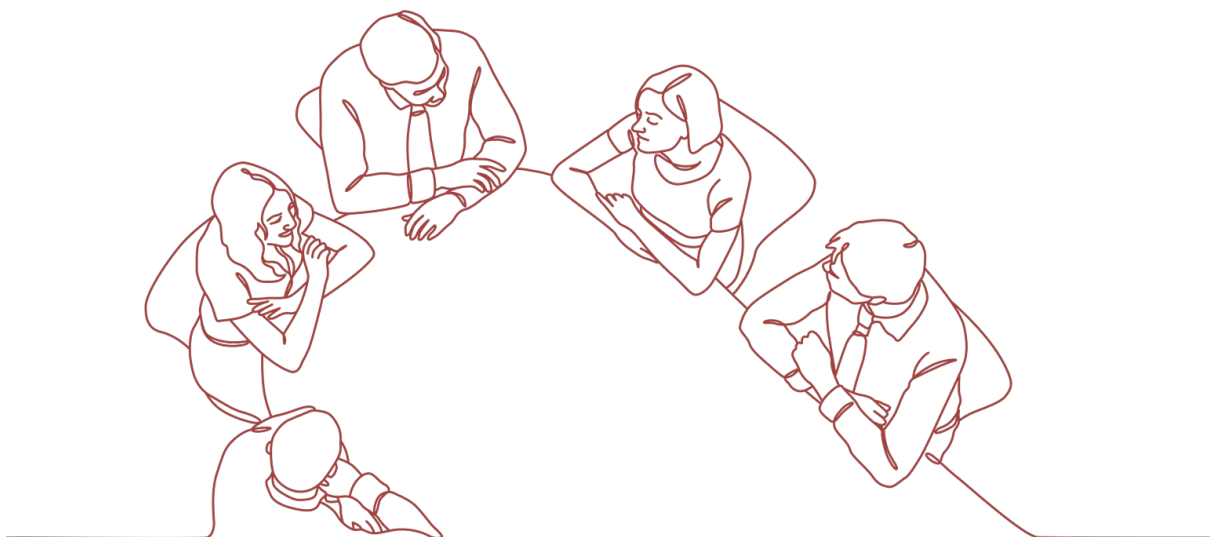
Decisions taken by the municipal manager to manage a period of coalition instability must be based on the applicable rules and procedures. Interviewees stressed the importance of the rule of law, not just as a principle but also as a safety net for municipal managers.

It is important to stick to the rules. I found that to be a good sanctuary.

One way to address those challenges is to be steadfast in your responsibility, understand your job description and the delegations. As senior managers, we have far-reaching delegations, you can sign contracts ... you have extensive powers that allow you to act. If you act responsibly and neutrally then you should avoid any misguided association.

Another interviewee explained the importance of advising political office-bearers and political structures of the correct position and documenting such advice to protect themselves from the consequences that may flow from executing unlawful instructions:

Even if [political actors] come with demands, one needs to stay calm and remain focused on what should be done and allowed ... If you want to look after your own position, mistakes can creep in, wrong decisions can be taken. This is normally when there is irregular expenditure ... irrespective of the consequences, one needs to give the correct advice and document the advice. If they do not take it, you are covered in the event of irregular expenditure.



7 WHAT CAN THE PROVINCIAL GOVERNMENT DO?

7.1 Introduction

The final question for these Guidelines is what role the provincial government can play. The provincial government has a constitutional duty to monitor and support municipalities. This duty is not addressed generally here because it encompasses a wide range of laws, departments, policies and instruments. Instead, the focus is on what the provincial government can do when a municipality experiences coalition instability. A few examples and suggestions are discussed below.

7.2 Disciplinary procedures

One of the key manifestations of coalition instability is the use (and abuse) of disciplinary procedures. This can be disciplinary proceedings initiated against one or more senior managers in terms of the Disciplinary Regulations for Senior Managers and/or the Regulations on Financial Misconduct Procedures and Criminal Proceedings. If disciplinary hearings are conducted, the municipality must report the outcome to the provincial government. This enables the Minister to monitor the developments and advise the municipality where needed.

Coalition instability can also manifest in disciplinary proceedings initiated against a councillor in terms of the Code of Conduct for Councillors or it can manifest in a council failing to do so when it should. The authority to initiate an investigation against a councillor lies with the speaker and/or the council, and not with the provincial government. The provincial government only comes in when the council finds a councillor guilty and wants him or her to be removed from office. The provincial

government then conducts its own investigation to determine whether the councillor must be removed from office. However, if the municipality fails to investigate an alleged transgression of the Code of Conduct, the provincial government may have it investigated and recommend a sanction. This last rule is an important provincial mechanism for when coalition instability results in councillors violating the Code of Conduct with impunity. As one of the interviewees indicated:

That is where the [provincial] Minister comes in, [namely] to utilise item 16(5) of the Structures Act, if the council fails to take action. [The Minister] would press on the speaker to take action against the implicated councillor.

The provincial government can also be called in to observe critical council meetings during coalition instability. As one of the interviewees remarked:

The provincial government sent senior officials to come and monitor some of the council meetings, and the procedures with the election of the political office bearers. There has been a close working relationship between the [provincial government] in facilitating workshops to see how you can calm the storm.

7.3 Advice

The most important role for the provincial government is to provide informal guidance and advice. As one interviewee pointed out:

Municipal Managers want to operate within the law. If there is hesitancy, they pick up the phone to ask if the province can assist them

The provincial government can also assist accounting officers in ensuring accountability. One interviewee commented as follows:

When you raise an issue, for instance, to say that councillors are failing to do this ... if there is a breach of the Code of Conduct .. [the provincial government] will immediately take action. Councillors must know that there can be consequences if we contact the province. **As an accounting officer, you're not on your own.**

7.4 Avoid bias

The provincial Minister is ultimately also a politician, which means the perception of political bias is real. As one of the interviewees remarked:

Even if you call on [the Department of] Local Government to come and assist to see how they can deal with the turmoil; they always see the provincial government as being partisan because the MEC is from a political party. Those that are in control or those attempting, if they are not from the same party, they see it as the MEC wanting to take sides, which can sometimes escalate the problem.

In assisting municipalities that experience coalition instability, the Minister must not only be unbiased, but also be seen to be unbiased.

7.5 'Coalition facilitators'?

It may help for political parties and/or councillors to seek the assistance of an independent facilitator. The independent facilitator must be a person who -

- specialises in negotiation and dispute resolution;
- is independent of the municipality, or any organ of state;
- has sufficient knowledge of local government; and
- is not politically aligned but commands respect across the political spectrum.

The MEC for local government could consider establishing a panel of such facilitators from

which the negotiating coalition partners could choose a facilitator. The panel must exist at sufficient distance from the MEC, who him- or herself is a political actor. The task of the facilitator would be to help prepare a coalition agreement.

This suggestion would need to be worked out in greater detail but can represent a pro-active approach.



**Address:**

Dullah Omar Institute
University of the Western Cape
New Social Sciences Building
Robert Sobukwe Road
Bellville 7535
Cape Town

 Tel: +27 21 959 2950
 Facebook: Dullah Omar Institute
 X: @UWC_DOI
 www.dullahomarinstitute.org.za
 YouTube: Dullah Omar Institute UWC
 LinkedIn: Dullah Omar Institute