

Submission to the  
DEPARTMENT OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS  
on the  
LOCAL GOVERNMENT: MUNICIPAL STRUCTURES AMENDMENT BILL, 2024

Director-General  
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This submission is prepared by Afesis (and NGO based in East London) on behalf of the Sophakama project, which is a partnership project between Afesis, Equality Collective NPC, Governance and Livelihoods Agenda, and the Rural Democracy Trust. Please contact Sophakama Project Manager: Lindokuhle Vellem at [Lindokuhle@afesis.org.za](mailto:Lindokuhle@afesis.org.za) regarding this submission or call 043 743 3830. We thank you for the opportunity to make comments.

**Introduction:**

The Sophakama Project partners welcome the Local Government: Municipal Structures Amendment Bill and acknowledges that it has been developed to amend the Local Government: Municipal Structures Act, 1998, so as to insert the definition for coalition agreement; to change

municipalities with a mayoral executive system, in which no party obtained a majority of seats, to a collective executive system within a prescribed period; to provide for the election or removal from office of municipal office-bearers to be by a show of hands; to provide for the grounds for removal of municipal office-bearers from office; to provide for binding coalition agreements; to provide a minimum threshold of one percent of the valid votes cast during an election for a party to qualify for a seat on the council and to provide for matters connected therewith.

### **About Sophakama:**

Sophakama is directly concerned with the strengthening of social accountability in local government as a necessary step towards the improvement of service delivery, and towards the advancement and progressive realisation of socio-economic rights. The programme recognises the agency that rests with people living in former homelands and partners with rural activists and progressive community leadership structures in pursuit of improved social accountability and basic service delivery. Sophakama unapologetically contributes to the global goal of improving the quality, inclusion, respect and engagement of people in all their diversity in all spheres of public and private life.

As a collective, we note and appreciate the sentiments behind the amendments, which seek to stabilise coalition governments at the municipal level essentially because of the chaos dubbed by the media as “musical chairs” in the current local government administration. Quoting from an article published by BusinessTech on the 25th of April 2023 “As politicians continue to play musical chairs over the mayorship of the city, service delivery and city residents continue to suffer from the instability”. The article was published referencing the City of Joburg, which is a larger Metropolitan Municipality with a demographic that on average fares better than the population of residents found in the rural and outskirt municipalities of South Africa.

Research points to overwhelming evidence that poverty and unemployment are highest in former homeland provinces. Thirty years into democracy, former homelands still present the same characteristics they did under apartheid; they are geographically fragmented, have poor infrastructure, have little economic activity and limited employment opportunities. More than 17 million South Africans live in former homeland provinces.

While the Bill contains provisions that seek to define and therefore improve cooperation within local government councils - ensuring stability and proper functioning of municipal oversight bodies - as a collective we have established that the Bill is in violation of the key prescripts of a Democratic South Africa, which are the right to freedom of association, political rights found in section 19 of Chapter 2 of the Constitution of

the Republic of South Africa.

The table found on the next page summarises our review of the Bill and our recommendations.

## Municipal Structures Amendment Bill 2024

<b>Date</b>	31 July 2024
<b>Activity</b>	Municipal Structures Amendment Bill 2024 - Comments
<b>Coalition agreements (Section 1, Insertion of Section 12A, Section 43)</b>	<p>Hung municipalities require coalitions to form government and to drive this process an agreement is signed by the interested parties. However, one of the biggest issues in existing coalitions is the weakness in the agreements among parties which have been stuck on securing positions and portfolios for themselves through the agreement and not on service delivery which is the mandate of local governance. As of now, these agreements are not publicised, and communities are not consulted on how municipalities are run. Therefore, the coalition agreements being made public is a step in the right direction, in that communities can now understand the role of parties involved in the coalitions.</p> <p>However, the Bill does not stress how long the coalition agreement will be valid for stability's sake (as they have done with the tenure-ship of political heads). An example of such is the case within the City of Joburg Council, where Phalatse was initially</p>

	<p>voted into the position by a multi-party coalition comprising the DA, ACDP, FF Plus, COPE, IFP, and ActionSA, with the PA joining later. Due to political disagreements among the coalition parties, COPE and PA voted against their partners, resulting in Phalatse’s ouster. She was replaced by the ANC’s Sello Morero.</p> <p>The lack of legally binding agreements is partly to blame for councillors defecting and going against coalition agreements. Hence, there is a need for coalition agreements with carefully worded and specific terms of reference so that there is clarity on the duties of each partner. This is a great way to create a system of accountability and good governance.</p> <p><b>Recommendation:</b></p> <p>An insertion of the validity period of the coalition agreements between the parties be included in the bill. We are not fixed on exactly how long this should be but it needs to be long enough to allow parties to agreements to settle into a working relationship before renegeing on the agreement.</p>
<p><b>Removal of Executive Committee, Mayor, Deputy Mayor and Speaker (Show of hands)</b>  <b>(Section 40, 41E, 43, 53)</b></p>	<p>A municipal council may remove a speaker, chief whip, a member of the Executive Committee, a mayor, and their deputy, and to ensure that this is not abused, this can only occur after two (2) years so that the municipality is stabilised. However, in the event of a serious violation of the constitution or law, serious misconduct, or non-performance of the functions of the office a notice of intention may be given and, through a <b>show of hands</b>, the removal of officials may occur regardless of the two (2) year benchmark. This addition is much needed especially when looking at the state of municipalities under a coalition that has been riddled with dysfunction and instability as seen with the following municipalities; Ekurhuleni, Umvoti, eThekweni, and the Cape Agulhas municipalities as well as the City of Johannesburg, and the Nelson Mandela Bay Municipality. With the council space moving away from serving the people and becoming a space where politics became the rule of law, politicians abused the vote of no confidence to undertake personal business at the expense of service delivery. Some of the issues noted on</p>

this are as follows:

1. What is a serious violation of the constitution/the law?

There have been many instances of political heads of municipalities being involved in one scandal or another who have been able to keep their jobs even with community outcries. In the case of the Enoch Mgijima Local Municipality, the Executive Mayor, Madoda Papiyana, was previously arrested in 2020 and 2021 for driving under the influence of alcohol. The 2020 incident contravened the Disaster Management Act because the sale of alcohol was prohibited under lockdown level 5. This occurred when he was serving as the chief whip in the Chris Hani District Municipality as well as the regional treasurer. The case was dropped by the National Prosecuting Agency, whose funding has been gutted. Post this period, Madoda Papiyana was chosen as the Executive Mayor of the Enoch Mgijima Local Municipality, a municipality under administration due to its dysfunction. As a chief whip in charge of maintaining the municipality's discipline among councilors, leading by example is key. Even though Madoda resigned on both occasions, he was brought back to the already suffering Enoch Mgijima municipality. Thus, is drunk driving not enough reason for the municipal council to remove Madoda, especially for a municipality already in need of morally strong leaders? How would this change with the amendments in the Bill?

This amendment could reduce the responsiveness of the municipal government to contextual changes, including mechanisms to address dissatisfaction or misconduct promptly. 24 months restriction on the motion of no confidence may be too long, although reduced frequency to one or two a year makes sense. As an additional safeguard, we propose that any submission for the removal of an office bearer should first be debated on its merits before being considered.

<https://www.dispatchlive.co.za/politics/2021-07-29-controversial-eastern-cape-councillor-quits/>

2. Show of hands as opposed to secret ballots

The biggest change in the amendment bill is that when removing political heads, the process would be done by a show of hands and the use of secret votes would be a thing of the past. This was proposed to prevent the influencing of votes when done in secret. Although valid, this is not reason enough to offset the risk of voting in public. In 2023, South Africa recorded 131 targeted killings, with 24% being politically motivated. This figure has been grossly undercounted and under-reported. These political killings have damaging effects on governance and democracy. Therefore, forcing councillors to oust powerful political heads spells more trouble than good and will not prevent the influencing of votes but rather place councillors at risk of intimidation, which would make a vote by a show of hands more dishonest.

In addition, this amendment could reduce the independence of council members and lead to a less transparent and accountable process. We understand that the secret ballot is intended as a safeguard against this. Rather than removing secret ballots from the legislation, better regulations are needed on how to manage it?

<https://www.ecr.co.za/news/news/debate-over-secret-ballot-kaunda-no-confidence-motion/>

**Recommendations:**

1. A comprehensive list on the violations be included as an addendum on the bill and that a disciplinary body is appointed to ascertain the severity of the offense. We also recommend that this be a call from the public or opposition parties if the disciplinary body does not make the call.
2. That a secret ballot remains for voting members out of office as the least intimidating option and that opportunities to influence secret ballots be stopped/blocked.

	<p>3. Any submission for the removal of an office bearer should first be debated on its merits before being considered.</p>
<p><b>Threshold of votes to form part of the council.</b>  <b>(Amendment of Schedule 1, item 13)</b></p>	<p>The Bill states that henceforth all parties/independent candidates should receive at least 1% of the valid votes per the quota to be considered part of the municipal council. The current municipal council of the Enoch Mgijima Local Municipality had three parties, African Transformation Movement (ATM), Patriotic Action (PA) and United Democratic Movement (UDM) that received less than 1% of the votes but were able to get one (1) seat each. This allowed for smaller parties and independent candidates a chance to join the council and represent the voices of the electorates as the country moves away from a one to two-party dominant party system to a multi-party system.</p> <p>In the case of Enoch Mgijima, had the threshold been applied, the council would only have five (5) parties instead of nine (9) parties/independents. In a municipality, each ward is often made up of groups of people who all vote for a specific candidate who is popular in that/those wards and in the grand scheme of things therefore receives less than 1% of the total vote. This means that if the threshold is applied, some wards might not get a representative on the council, thereby eliminating the community voice of some wards. Thus, making the whole practice unconstitutional especially as voter turnout continues to deteriorate and there is a proliferation of independent candidates at a local government level. By eliminating the smaller parties, there is the risk of stripping the municipal council of fully achieving its objectives as set out in section 152 of the constitution, which includes involving communities in matters of local government. Disregarding the droop system would disadvantage smaller parties and independents in the municipality. Also, as the sphere of government closest to the people, with set mandates to improve the lives of communities through service delivery and foster local economic development, the involvement of people in the local communities is crucial.</p>

	<p><b>Recommendations:</b></p>
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Remove the 1% threshold clause allowing smaller parties to continue to be seen as part of the municipal council. The droop system should not be disregarded.