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# Call for Comment: Local Government: Municipal Structures Act Amendment Bill B-2024

## Contents

Introduction .....	2
Local Government: Municipal Structures Act 117 of 1998 and the amendments .....	2
About our submission.....	3
Comments on the MSA Amendment Bill .....	4
Potential for political overreach .....	4
Removal of office bearers.....	6
Minimum vote threshold.....	7
Removal of the option of a secret ballot.....	7
Conclusion .....	8

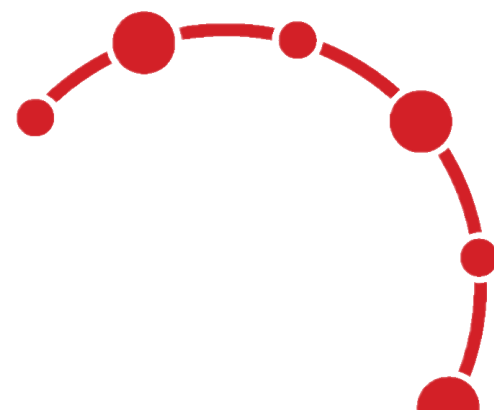
### ORGANISATION UNDOING TAX ABUSE NPC

Reg No.: 2012/064213/08

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## Introduction

1. The Organisation Undoing Tax Abuse (OUTA) is a proudly South African, non-profit civil action organisation, comprising of and supported by people who are passionate about improving the prosperity of our nation. We envision a prosperous country, with an organised, engaged and empowered civil society that ensures responsible use of tax revenues.
2. OUTA assists its members, supporters and the public in developing public positions based on its engagement programmes, industry research, information dissemination, government liaison and action on legislation.
3. OUTA has launched an initiative focused on local government known as the Community Action Network (CAN).
4. This submission has been made by the CAN Team.
5. The purpose of CAN is to empower communities across the country to meaningfully participate in the affairs of their municipalities in order to ensure good service delivery.
6. CAN strives to unite local communities, fostering organisation, advancing co-governance and facilitating coordinated efforts to drive positive change within their respective municipalities.
7. CAN is dedicated to build a network of like-minded communities and equipping them with the necessary tools to do their work effectively.
8. Part and parcel to CAN's mission is to review, comment, respond and provide input to draft legislation and regulations affecting local government.

## Summary of the Local Government: Municipal Structures amendments

9. In its current form the Municipal Structures Act aims to establish municipalities according to specified categories and types; to set criteria for determining the

category of a municipality in an area; define permissible types within each category, and; appropriately divide functions and powers among them. It also regulates the internal systems, structures, and office-bearers of municipalities, provides for suitable electoral systems, and addresses related matters.

10. The Municipal Structures Act Amendment Bill, which comes in two parts, was put out for public comment until July 5, 2024, to gather feedback on proposed changes aimed at improving governance and stability in municipal councils.

11. Key matters raised by the amendment include:

- i. **Minimum vote threshold:** The bill introduces a minimum 1% vote threshold for parties to secure council seats, intended to reduce fragmentation and promote stable governance.
- ii. **Secret ballot removal:** The amendment proposes replacing secret ballots with votes by show of hands for electing and removing municipal office-bearers, aiming to increase transparency but raising concerns about potential coercion and loss of voting independence.
- iii. **Coalition agreements:** The bill mandates written coalition agreements in municipalities without an outright majority, aiming to prevent manipulation by smaller parties and ensure clearer, more stable governance structures.
- iv. **Office-bearer stability:** It limits the frequency of no-confidence votes and introduces a two-year "cooling off period" to reduce instability caused by frequent changes in leadership.

## About our submission

12. The Municipal Structures Act is a key piece of legislation that governs how our municipalities are governed. It provides safeguards for both the municipal administrators and the elected councillors while attempting to provide certainty and consistency to the electorate on how local government must function.

13. However some of the current amendments up for discussion traverses delicate ground and, if not designed appropriately, may go against the spirit of our Constitution and impede democracy in local government.

14. Our submission has its foundation in respecting the separation of powers and that the Constitution must be respected at all times while we acknowledge that action is required to stabilise municipalities in the age of coalition government.
15. We recognise these amendments matter and could in time act as a template and a working example for provincial and national government coalition government legislation.
16. Our comment is focused on the first part of the amendment, as Gazetted on 21 May 2024, No. 50682.

## Comments on the MSA Amendment Bill

17. The current amendment bill has been dubbed the “Coalition Bill” because the key changes proposed are almost entirely centred around coalition governments.
18. The spirit of the amendment is clearly defined with the proposed insertion of the phrase “Coalition Agreement” in Section 1 of the Act.
19. The pros of this change will include enhanced clarity and transparency, improved stability in governance, increased accountability, and effective conflict resolution mechanisms. These benefits align with common law principles of legal certainty, stable governance, accountability, and order.
20. However, there are potential cons, such as increased complexity and rigidity, the exclusion of smaller parties, an added administrative burden, and the possibility of disputes over the terms of the agreements. These drawbacks need to be carefully managed to ensure that the formalisation of coalition agreements enhances governance without introducing new challenges.

## Potential for political overreach

21. The insertion of section 12A under the headline “Municipalities that must have a collective executive system” does provide significant potential for conflict.
22. It reads as follows:

**12A.** *A municipality with a mayoral executive system, in which no political party obtains a majority of seats when the municipal council is declared elected or after a by-election contemplated in section 25, must, in accordance with section 16, be changed to a type of municipality with a collective executive system by the MEC for*

*local government within 30 days after the municipal council was declared elected or after a by-election contemplated in section 25.”*

23. We are concerned that this requirement could lead to political manipulation by a provincial minister. The amendment gives the provincial MEC (Member of the Executive Council) for Local Government the authority to intervene in another sphere of government. This centralisation of power could potentially be used for political manoeuvring, allowing provincial authorities to influence the governance structure of municipalities in ways that align with their political interests.

24. We believe additional democratic safeguards are needed. Before the MEC is allowed to autonomously trigger the decision, it should first be decided by the municipal council through a vote. If this vote fails to occur, there should be mediation via an independent panel and then only once these options are exhausted, should the MEC step in. To accommodate these safeguards, adequate time must be given to the process.

25. This will protect municipalities from political interference and potential unnecessary litigation.

26. Furthermore, the amendment of section 43 requires every coalition government to make their agreement public. This is a win for transparency.

27. It states:

*“(4) (a) In a municipality in which no party has a majority of seats on the council, any two or more political parties may enter into a binding coalition agreement, which must be made public, to regulate their participation in the governance of the municipality during the term of the council.*

28. However, it is the second part of the amendment that is concerning.

*(b) The Minister may make regulations regarding for the details of the agreement contemplated in paragraph (a)”.*

29. Key points to consider include regulatory power which can influence the detailed requirements and conditions of these agreements; the potential for manipulation where the minister could design the regulations to favour certain political parties; checks and balances where the overarching control by national government could lead to it being duplicitous.

30. While the authority granted to the Minister of Local Government to regulate coalition agreements has the potential for political manipulation, we believe effective oversight and transparency measures are essential to counter. Therefore we propose that the issue of drafting regulations should rather be placed before an independent institution and not rest only with the Minister.

#### Removal of office bearers.

31. Amendments to Section 40, 41E, 53 and 58 sets out the rules that governs the removal of the Speaker, Chief Whip, Members of the Executive Committee and the Executive Mayor and/or the Executive Deputy Mayor.

32. The wording in each is almost identical and essentially states that a municipal council, by resolution taken by a show of hands, may remove the member(s) from office “provided that two years have passed” since they were elected. This is geared to stop the abuse of what is commonly known as Motions of No Confidence.

33. The 24 month restriction aims to prevent frequent attempts to remove office bearers to promote stability within the council.

34. This stipulation can be seen as reducing the responsiveness of the municipal government to changing circumstances or the will of the council and electorate. In a democratic system, mechanisms to address dissatisfaction or misconduct promptly are crucial for maintaining trust and efficacy in governance.

35. We are concerned that the 24 month period is too long. Councils are political spaces and politics are an expression of the people. We recommend that such timeframe restrictions on motions of no confidence should be removed. However we do recommend that such motions should be limited in frequency in a municipal calendar year.

36. If additional safeguards are needed, any submission for the removal of an office bearer could be first directed to an ad-hoc multi-party committee to debate the merits of the motion before it is brought to the floor.

## Minimum vote threshold

37. The amendment of Schedule 1 aims to reduce fragmentation within municipal councils by ensuring that only parties with substantial voter support are represented. The goal is to promote stability and effective governance, particularly in coalition-led municipalities, where a high number of small parties can complicate coalition agreements and decision-making processes.
38. We believe a threshold of between 1%-2% is viable in order to create stable local governments across the country. However, there needs to be safeguards as to not reduce minority representation from government.
39. Consideration should be given to transferring the adoption of minimal thresholds to provincial legislators in order to adapt to localised needs and requirements.

## Removal of the option of a secret ballot.

40. Amendment of Schedule 3 has removed the option for secret ballot.
41. We understand that this amendment is part of broader efforts to enhance the governance and operational efficiency of municipal councils. We are concerned that the proposal to replace the secret ballot with a show of hands for electing or removing municipal office-bearers could be seen as counter-productive.
42. Eliminating the secret ballot might undermine democratic principles by exposing council members to potential coercion, intimidation, and pressure from party leaders and other council members.
43. The threat of loss of life is a real threat to councillors and this needs to be recognised.
44. This change could diminish the independence of council members and lead to a less transparent and accountable process. The secret ballot is traditionally seen as a safeguard against these issues.
45. There should always be room for the Secret Ballot. Instead of its removal from legislation, a better set of regulations should be drafted to manage the use of the secret ballot.
46. We do not support the removal of a secret ballot as an option for voting.

## Conclusion

47. The current amendment bill, dubbed the “Coalition Bill,” primarily focuses on coalition governments, explicitly mentioning the inclusion of the term "Coalition Agreement" in Section 1. According to the amendment bill, the proposed changes aim to enhance clarity, transparency, stability, accountability, and conflict resolution in governance.
48. However, potential downsides include increased complexity, exclusion of smaller parties, additional administrative burdens, and possible disputes over agreements.
49. A major concern is Section 12A, which allows a provincial MEC to change a municipality’s executive system if no party wins a majority, potentially leading to political manipulation. CAN suggests that this decision should first go through a municipal council vote, followed by mediation if necessary, before MEC intervention, to avoid political interference and litigation.
50. Another amendment, Section 43, requires coalition agreements to be public, promoting transparency. However, the regulatory power granted to the Minister of Local Government to detail these agreements could lead to political bias. CAN proposes that an independent institution oversee these regulations instead.
51. Amendments to Sections 40, 41E, 53, and 58 impose a 24-month restriction on motions of no confidence to stabilize councils. CAN argues this period is too long, recommending instead limiting the frequency of such motions within a municipal calendar year.
52. The amendment of Schedule 1 introduces a minimum vote threshold to reduce council fragmentation. CAN suggests a 1%-2% threshold to balance stability and minority representation. Consideration should be given to making this a provincial competency.
53. Lastly, the removal of the secret ballot in Schedule 3 could expose council members to coercion, undermining democratic principles. CAN advocates for retaining the secret ballot option with better regulations to manage its use.
54. These proposed changes necessitate careful management to enhance governance without introducing new challenges. Additional democratic safeguards and oversight measures are essential to maintain balance and fairness in municipal governance.

If there is an opportunity for an oral submission, please consider ours. Please provide feedback and any additional information on any further developments to [info@can.org.za](mailto:info@can.org.za) for the attention of **The CAN Team**.