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**Date:** 25 September 2022

**To:** The Technical Task Team

**From:** Helen Zille  
Thomas Walters

Dear Coalition partners

**IN RE: PROPOSAL TO RECONFIGURE GOVERNMENT UNDER COALITION AGREEMENT**

1. On 19 September 2022, at a meeting of the “Coalition Technical Committee” (Technical Committee) a number of proposals were made to renegotiate and reconfigure government in Johannesburg.
2. This discussion arose in the context of a vacancy for the position of Speaker in Johannesburg, following a Motion of No Confidence in the Speaker on the night of 31 August/1 September 2022.
3. The Speaker in Johannesburg is a position filled by a nominee of the Democratic Alliance (DA) as agreed by all parties during negotiations and recorded in a formal coalition agreement signed, first on 15 December 2021, and then later again on 22 February 2022, following changes agreed by all parties to accommodate the inclusion of the Patriotic Alliance in the coalition.
4. The current proposals to renegotiate and reconfigure government, are predicated on the Democratic Alliance not exercising its right to claim the position of Speaker at the Council meeting which will be convened to fill the vacancy on 28 September 2022.
5. An additional proposal, circulated in writing on 20 September 2022, suggested a renegotiation and reconfiguration of government in multiple municipalities.
6. These proposals were made by coalition partners acting in their capacity as parties to a

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coalition agreement with various other parties, including the Democratic Alliance. The coalition agreement regulates how the DA and other parties, govern together in various municipalities.

7. The motivation behind the proposals is to change the composition of municipal government in three municipalities: Johannesburg, Tshwane, and Ekurhuleni, is political.
8. The written presentation of these proposals intimates that the African National Congress (ANC) has made offers to parties and that the reconfiguration of the governments of the three Metros would “stabilise” the coalition – in effect saying that should the coalition agreement not be renegotiated under these circumstances the coalition government would not be stable.
9. The DA, following serious consideration at the Federal Executive, rejects any proposal to reconfigure coalition governments.
10. First, as a matter of political consideration, any re-opening of negotiations regarding government configuration will introduce significant uncertainty and delays in municipal government and service delivery. The current government configuration is a result of weeks, and in some cases, months of negotiations. The municipalities concerned are hotly contested and governed in tumultuous political conditions. To disturb the current functionality of these municipalities, only to appease political ambitions, could undermine months of hard work, undertaken by all parties, to achieve a functioning government in these municipalities. It will result in renewed horse-trading and haggling over positions, potentially involving seven different parties, across the three Gauteng Metros. Ultimately, service delivery and functionality will suffer if the coalition agreements are re-opened to negotiation.
11. The failure to abide by, and implement the terms of the coalition agreements, or follow processes envisaged therein, undermines all that the coalition agreements have achieved. This includes growing confidence among voters in the viability of coalitions, the prospects of improved service delivery, and public trust in democratic institutions.

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Following prolonged periods of negotiation, the Coalition governments must now do the job they have been tasked to do – improve service delivery.

12. It should be noted that the DA has consistently acted in the interest of the coalition, even agreeing to legal scrutiny of disputes and allegations made against office-bearers, in the interests of upholding the agreements.
13. The DA has, out of respect for the coalition agreements, refrained from seeking to renegotiate the configuration of governments in those instances where the office-bearers from other political parties have acted in a manner inconsistent with an agreement.
14. As a matter of law, clause 5 of the coalition agreement regulates the composition of government. Clause 5.1 records that “parties agree that there are certain strategic appointments in a municipality that require careful consideration”. Clause 5.2 provides that “[t]hese strategic appointments require individuals who can fulfil a strong, effective and competent leadership role within the municipality”. Clause 5.4 provides that these appointments “should be beneficial to the coalition with the view of an effective and cooperative coalition”.
15. Crucially, clauses 5.5 and 5.6 read:
  - “5.5 The parties agree that the party allocation and proposed councillors to be put forward for appointment in the strategic positions shall be agreed to during the negotiation of the coalition.
  - 5.6 The agreement mentioned in 5.5. shall be reflected and incorporated herein as listed in Annexure C hereto.” (emphasis added)
16. Clause 5.9 provides that “[a]ny changes to the agreed composition, without following due process, will constitute a major dispute in terms hereof”. Major disputes are regulated in clause 6.7.3, which requires referring major disputes to the COG.



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17. The coalition agreement thus provides that specific parties are to propose and determine appointments to strategic positions while negotiating the coalition agreement. The parties to the agreement duly did so. Their agreement is recorded in Annexure C to the coalition agreement. The annexure is part and parcel of the agreement. Annexure C, in virtue of clause 5.6, forms part of the coalition agreement. The annexure cannot be amended without amending the coalition agreement.
18. Clause 5 has critical legal implications.
19. All parties to the agreement, are bound by clause 5.5 and Annexure C. The proposals aired on 19 and 20 September 2022 intend to contradict and contravene clause 5.5 and Annexure C. Parties agreed to how political appointments were to be made during negotiations. The proposals contradict this. They intend to reconfigure government after the conclusion of negotiations on the coalition agreement. Parties seeking to do this intend to go back on their word.
20. Parties agreed on the appointments; and parties are now bound by that agreement. To renege on the agreed terms of the coalition agreement, including Annexure C, mere months after its conclusion, is a repudiation of the coalition agreement. The DA cannot accept this.
21. The Constitutional Court has stressed the importance of the principle of pacta sunt servanda (agreements, freely and voluntarily concluded, must be honoured) and the need for certainty in the law of contract. Parties should be bound by the terms and conditions of agreements they concluded. Contracts would not be worth the paper on which they are written if parties could renege on their agreements without any consequence. This is especially true of coalition agreements. Certainly, as the prospect looms of coalition agreements at a national level, political parties cannot just disregard political undertakings.
22. The signatories to the agreement, as autonomous political parties, participated in the negotiations of the coalition agreement. All members of the coalition, freely and

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voluntarily agreed to the terms of the agreement, including the appointments in Annexure C. The parties were free to negotiate their appointments. All parties entered the agreement fully informed and aware of all relevant facts. Parties cannot now renege on their promises and duties.

23. The stability of coalition agreements, especially in context of failing service delivery, is paramount from the perspective of municipal residents and voters. The Constitutional Court has repeatedly held that adhering to the terms of a contract promotes parties' rights, and the constitutional values of freedom and dignity. The Constitutional Court made this finding in the context of private contracts.
24. But the finding also holds true in the context of coalition agreements between political parties. Political parties' constituents need to know that, when a party enters a coalition agreement, the agreement is more than "a thing writ in water". The agreement creates, at the very least, an expectation of certainty and stability in municipal government.
25. Coalition agreements, given the proximity local government has to residents' lives, impact on residents' "ability to regulate one's own affairs", which is "the very essence of freedom and a vital part of dignity". Voters' and residents' right to dignity is thus implicated when political parties, on a whim, disregard the set terms of a coalition agreement. Residents' right to dignity is implicated when, contrary to clear terms of governance, political parties renege on their promises and the clear expectations set in coalition agreements.
26. The principle of legality must also be taken into account in this matter. Courts have consistently held that political parties can exercise public power. This public power must be lawful and rational; otherwise, it is inconsistent with the Constitution of the Republic of South Africa. Courts have reviewed political parties' decisions when those decisions have a direct impact on individuals, as in cases of party discipline. Courts have held that such decisions are "certainly reviewable on the basis of the principle of legality, which requires that the party can only act in terms of its constitution and its rules".

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27. These principles apply forcefully to a party's decision to depart from the terms of a coalition agreement. A decision to depart from a coalition agreement, especially when a departure disturbs service delivery and results in a reconfiguration of government, directly impacts on municipal residents and voters. The decision directly affects the public powers of a municipality and a municipality's ability to fulfil its constitutional duties. The decision, accordingly, must be lawful and rational. Parties, to borrow the Constitutional Court's phrase, cannot depart from or ignore coalition agreements "willy-nilly".
28. In any event, if there is to be any review of the coalition agreement, then such review is, in terms of the coalition agreement itself, meant to be a structured and careful review, and cannot be done on an ad hoc basis. The matter must be referred, as required by clause 6.7.3, to the Coalition Oversight Group (COG) for proper resolution.
29. For these reasons, the DA opposes any departure from the composition of government set out in Annexure C to the coalition agreement. Parties agreed to this coalition agreement, and they must stick to it. They cannot depart from it whenever they see a half-chance to seize political advantages for themselves. Otherwise, the value of coalition agreements, and the provision of services, will be completely undermined.

Kind regards

**HELEN ZILLE**  
**CHAIRPERSON OF FEDERAL COUNCIL**

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**DEPUTY CHAIRPERSON OF FEDERAL COUNCIL**

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#### **FOOTNOTES:**

<sup>1</sup> *Beadica 231 CC and Others v Trustees for the time being of the Oregon Trust* [2020] ZACC 13; 2020 (5) SA 247 (CC); 2020 (9) BCLR 1098 (CC) at para 35.

<sup>2</sup> *Barkhuizen v Napier* [2007] ZACC 5; 2007 (5) SA 323 (CC); 2007 (7) BCLR 691 (CC) at para 57; *Beadica 231 CC and Others v Trustees for the time being of the Oregon Trust* [2020] ZACC 13; 2020 (5) SA 247 (CC); 2020 (9) BCLR 1098 (CC) at para 35.

<sup>3</sup> *De Lille v Democratic Alliance* [2018] ZAWCHC 81; [2018] 3 All SA 684 (WCC) at para 30.

<sup>4</sup> *Economic Freedom Fighters v Speaker of the National Assembly; Democratic Alliance v Speaker of the National Assembly* [2016] ZACC 11; 2016 (5) BCLR 618 (CC); 2016 (3) SA 580 (CC) at para 67.