**OVERVIEW OF SUBMISSIONS ON LOCAL GOVERNMENT: MUNICIPAL ELECTORAL BILL (22 of 2015)**

1. **Department of Cooperative Governance and Traditional Affairs (COGTA)**

* In some municipalities minor political parties hold the balance of political power. In some instances this has given rise to purported expulsions of sitting councillors, subsequently overturned by another component of that political party.
* Prior to the 2011 Local Government Elections, there were numerous instances where municipal managers received notices of expulsion of councillors on letterheads of particular political parties. The following day, on the same letterhead, another component of the political party would indicate that the councillors were not expelled.
* In political parties, it is not always clear as to where the authority to expel a sitting councillor from a political part lies.
* This situation leads to confusion, giving rise to chaotic situations where municipal managers are not sure whether a legitimate vacancy has arisen in terms of section 27(c) or (f) of the Local Government: Municipal Structures Act, 1998.
* Currently, in KZN, a particular political party has, according to press reports, "expelled" as "Public Representatives" a large number of sitting councillors, in 23 municipalities.

**Local Government: Municipal Structures Act (117 of 1998).**

Section 27: Vacation of Office

A councillor vacates office during a term of office if that councillor-

(c) was elected from a party list referred to in Schedule 1 or 2 and ceases to be a member of the relevant party;

(f) was elected to represent a ward and who-

(i) was nominated by a party as a candidate in the ward election and ceases to

be a member of that party; or

(ii) was not nominated by a party as a candidate in the ward election and

becomes a member of a party.

Proposal: Amend Clause 1: Section 1(a) of the Act Definition as follows:

**“authorised representative”**, in relation to a party, means a natural person duly authorised by the party in accordance with its constitution to act on the party’s behalf for purposes of submitting a party list or nominating award candidate; **and for informing the Municipal Manager of a municipality where a party member, who is an elected councilor, ceases to be a member of that political party”.**

**Question to the IEC**

1. There is no reference to an authorised political representative in the Municipal Structures Act whereas it is mentioned in the Municipal Electoral Act Amendment. Why should the extension of the definition as proposed by COGTA not be amended in the Municipal Electoral Act?
2. If the informing of a vacancy is not done by the authorised representative. Whose responsibility should this be as far as the IEC is concerned?
3. If this is an issue raised by COGTA in relation to legislation it oversees, why is it making submission to the IEC? Would it have any foreseeable negative consequences if the IEC were to make changes first?
4. **Southern African Catholic Bishops’ Conference**

* By excluding ‘temporary identity certificate’ from the definition, it seems possible that someone who has lost their identity document, and who cannot obtain a new one in time to vote, will be disadvantaged.

If it is the case that a new identity card can be issued as quickly as a temporary identity document, then this objection falls away. However, we note that s 16 of the Identification Act 68 of 1997 still makes provision for the issuing of temporary identification certificates.

**Identification Act (68 of 1997)**

Section 16. Temporary identity certificates

When any person has applied for an identity card, or has for official purposes lodged his or her identity card with the Director-General, the Director-General may on application issue to the person concerned whose particulars are included in the population register in terms of section 8, a temporary identity certificate in the prescribed form and manner, which, for the period and on the conditions mentioned therein, shall for the purpose of this Act be regarded as his or her identity card.

**Proposal**: Amend Clause 1 Section 1(b) of the bill so as not to delete reference to “temporary identification certificates”.

(b) by the substitution for the definition of ‘‘identity document’’ of the following definition:

‘‘ identity document’ means:

[—(a) an identity document issued after 1 July 1986, in terms of section 8 of the repealed Identification Act, 1986 (Act No. 72 of 1986); or **(b) a temporary identity certificate**]

an identity card issued in terms of the Identification Act, 1997 (Act No. 68 of 1997), and, subject to section 25 of that Act, includes the green, bar-coded identity document contemplated in that section;’’.

* Concerned that the wording of Section 49 of the principal Act, even with the word “accidentally” removed, does not adequately convey the intention expressed in the Memorandum. It is still possible to interpret section 49 restrictively as referring to ballot papers that have been marked in a way for example that: does not disclose a clear choice; a mark outside the required box, or a mark that covers two parties.

**Proposal:** Suggest that, in order to leave no room for doubt that the voter is permitted to request a new ballot paper simply because he or she has changed their mind after validly marking their first ballot, the following wording should be included:

Clause 5: Section 49: Substitution for subsection (1) with the following subsection:

‘‘(1) If a voter [accidentally] marks a ballot paper in a way that does not indicate for whom the voter wishes to vote **or if the voter, having marked the ballot paper, changes his or her mind about whom he or she wishes to vote for**, and the ballot paper has not yet been placed in the ballot box, the voter may return that ballot paper to the presiding officer or a voting officer.’’.