



**Building Coalitions Post-2024 Elections:**  
A Rivonia Circle Discussion Document

# Is 14 Days Enough?

**A discussion of Sections 51(1) and  
110(1) of the Constitution - Avoiding  
limbo after the 2024 elections**

**In partnership**



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## Introduction

Since the dawn of democracy in South Africa, the country has experienced sporadic events of coalitions in its politics since 1994. At that time, the KwaZulu-Natal province was governed by a coalition between the African National Congress (ANC) and the Inkatha Freedom Party (IFP). In 1999, the Western Cape province became a coalition-led province with the New National Party (NNP) and the Democratic Party (DP). However, this arrangement changed by 2001 to an ANC-NNP coalition government.

There is nothing new about coalition governments in South Africa. However, for the first time since 1994, it appears the hegemony of the ANC as a single dominant party has reached its peak and there is a real possibility of a national coalition government. This possibility is amplified by the emergence of uMkhonto Wesizwe (MK) at a time when the ANC was already predicted to drop below 50% in KwaZulu-Natal, and this happens to also be MK's strong support base. Over the years, we have seen the ANC's strong electoral majority decline significantly, paving a new era of coalition politics in South Africa. The loss of support for the ANC was felt in the 2016 Local Government Elections in Johannesburg, Tshwane, Nelson Mandela Bay, and Ekurhuleni, which saw the beginning of coalitions emerge in large municipalities in South Africa's local government.

The countless reports in the media on a regular basis of the ongoing political, democracy, and governance crisis in the country show that without a doubt, the 2024 National and Provincial Elections are set to be one of the most significant since the dawn of democracy in 1994. The dire economic outlook, socio-economic challenges, poor governance, and low participation in democracy have left South Africans with little hope for the future, resulting in decreased trust in politicians and general politics in the country. Given the failure of some coalitions at the local government level, there is understandably a fear that the instability of coalitions at the municipal level will be replicated at provincial and national levels when the 29 May 2024 elections usher in coalitions in these spheres.

With the 2024 General Elections on the way, with many thinking that they will be hotly contested, it is undoubtedly critical to note the likelihood of a coalition government in at least two provinces - Gauteng and KwaZulu-Natal. This may be the very first for South Africa since the dawn of democracy in 1994. The single-party dominance over the past 30 years has not helped the country to develop legislation that is focused on coalition building in South Africa. For this reason, there could be serious limbo post 29 May 2024 where there is no guiding framework, and much is left to the whims of political parties. As we face the possibility of a coalition government, one we have never experienced at a national level, it is important to create various paths to identify and reform legislation and regulations that may have an influence in ensuring a quality and people-centered coalition-building process.

## **The Legislative Framework for life after Election Day**

Traditionally, after an election in South Africa, the first sitting of the National Assembly must take place at a time and on a date determined by the Chief Justice through a government gazette, but not more than 14 days after the election has been declared. As mandated by Section 51(1) states that 'After an election, the first sitting of the National Assembly must take place at a time and on a date determined by the Chief Justice, but not more than 14 days after the election result has been declared.'

Another important constitutional clause that indirectly has a bearing on coalition formation is Section 110(1), which states that 'After an election, the first sitting of a provincial legislature must take place at a time and a date determined by a judge designated by the Chief Justice, but not more than 14 days after the election result has been declared. A provincial legislature may determine the time and duration of its sittings and its recess periods.'

However, neither the Constitution nor Schedule 3 (Part A) prescribes a specific approach that involves political parties that have been elected. It is solely in the hands of the Chief Justice.

Furthermore, Rules 8 and 9 of the National Assembly do not prescribe an approach either. Considering the above, this document seeks to answer a key question as we gear up for the 2024 General Elections: when should the first sitting of the National Assembly and/or the Provincial Legislatures take place following the declaration of the election?

Furthermore, this document will serve as a collective effort to augment the legislative and policy aspects that should be addressed to improve the management and processes of coalitions in South Africa. These are the objectives of this document:

1. Discuss the validity of the 14-day rule for the National Assembly and Provincial Legislatures to commence their work post-elections.
2. Advocate for the amendment of the Constitution, specifically Sections 51(1) and 110(1), to provide greater flexibility in determining when the National Assembly and Provincial Legislatures can start operating.
3. Encourage civil society involvement by playing an active role in lobbying the Chief Justice to consult with all political leaders of the parties that are elected before finalizing the start date for both legislative bodies.

## Coalition timeframe

There is a developing consensus that 14 days is not enough to build coalitions that prioritize policy over positions. Coalitions are complex to build because political parties are forced into a space of negotiation and compromise since they did not amass enough support from the electorate to govern alone. Coalition building in South Africa may face a bleak future due to the political instability and poor service delivery experienced over the years at the local government level. The 14 days prescribed in Sections 51(1) and 110(1) of the Constitution, mandating that Parliament and the Legislatures must hold their first sitting after election results have been declared, may not provide enough time for political parties to establish a transparent and smooth coalition government process. The lack of provision of a clear approach in the Constitution, Schedule 3 (Part A), and the rules of the National Assembly may often lead to political parties focusing on finalizing the 14-day mandate for position sharing, rather than coalescing on issues of policy, societal improvement, and governance.

With international best practices in mind, this section of the paper serves as a guideline for other countries that have undergone the process of forming coalitions, particularly focusing on the time it typically takes for countries to decide on coalition management, stability, and political strategies. Denmark has a long-standing experience of coalition politics that spans beyond a century. A common feature of Denmark and South Africa is that political parties win a proportional number of seats in Parliament compared to their votes. In Denmark, coalitions are typically formed within a timeframe of at least 4 weeks. The government negotiations after the national elections that took place on 1 November 2022 lasted for 44 days. This was the longest government negotiation in Danish democratic history. At a municipal level, the Danish city council needs to agree on a mayor within 5-6 weeks of the local elections.

In Germany, the process of forming a new government alliance mandates that the first sitting of the federal parliament must take place no later than 30 days after election day. Those in office continue to serve until a new government has been sworn in. The official negotiations between the parties aiming to form a government have varied in duration, ranging from two to more than six weeks in the past. Participation is not limited to newly elected national MPs, but includes other party members such as state politicians, outgoing ministers, and members of the European Parliament. A common feature of Germany and South Africa is that, in Germany's parliamentary democracy, MPs elect the chancellor; the population does not vote directly. As of 2021, the official negotiations between the parties aiming to form a government have ranged from two to more than six weeks in the past. The initial weeks are typically dedicated to policy questions, followed by each party's nomination and recommendation of individuals for ministerial positions.

In the African continent, coalition governments are relatively new but are becoming a common feature of African governments. Furthermore, coalitions within African governments have proven to be a more successful form of leadership compared to liberation or independence movements, one-party, military, or dictatorial governments. In the post-independence period in Africa, coalition governments that emerged in countries such as Mauritius, Zimbabwe, Congo Kinshasa, Nigeria, and Cape Verde have produced the highest economic growth rates, inclusive development, and peace. Just like South Africa, coalition governments in Mauritius, Malawi, and Kenya have been riddled with instability and turmoil. Taking into consideration the negative impacts coalitions have had on the African continent, the only way forward politically in Africa is through a structured re-orientation of the constitution.

The hasty timeframe of 14 days in South Africa creates grounds for coalition negotiations to be determined by politicians who prioritize bargaining for positions, with little discussion on governance strategies, ideological alignment, and service delivery. The timeframe proves to be a constraint to effective coalition building because it does not allow adequate time to properly transition practices as one government replaces another.

It is critical that the period to form coalition governments be extended to at least 30 days. This will allow parties more time to build highly structured and organized coalitions. A key part of a new framework must involve granting the public service power to continue with government while coalitions are built or during transitions from one government to another.

## **Coalition agreements**

Leading up to the 2024 elections, the debate about coalition governments and their effect on political stability is rapidly increasing because the governing party appears to be at risk of losing its single-party victory over the last 30 years, both nationally and provincially. As a result, we can expect to see a coalition government nationally and in some provinces. With a coalition government looming nationally, many South Africans are worried about political instability and poor service delivery that has occurred under previous coalitions at the local government level since 2016.

Currently, the Constitution mandates the Chief Justice to determine the time and date of the first sitting of the National Assembly and provincial legislatures, but not more than 14 days after election results have been declared. However, this mandate does not consider nor allow for measuring the timing and progress of political party leaders' coalition building discussions, as well as the various consultative engagements being made public for South African citizens to be well informed and involved. Part of the reason to call for these consultative processes with the Chief Justice and political parties to be made public is to ensure that the democratic process of openness and transparency to the public takes place adequately.



## **Civil society expectations are as follows:**

1. The Chief Justice must be seen consulting political leaders who have made it to Parliament and actively engaging with the public domain in the most transparent way, attempting to gauge from them how far they are in the formation of coalitions. In this way, we can avoid the Chief Justice calling a Parliament or Legislature sitting without being aware of the progress made by political parties and crucial actors in this process.
2. Send a letter to the Chief Justice asking if he would be open to holding the first sitting of the NA after consulting with all leaders of the parties elected to NA. Nothing in the law mandates this, but as part of the possibility of a hung parliament, it would be wise to suggest this.
3. Pave the way towards a formalized process to improve legislation that ensures stringent and adequate guidelines for the commencement timelines towards coalition government building and ways in which these legislative bodies function in South Africa, with regular consultation with civil society and citizens of the country.
4. We seek a more transparent way to engage in the reconsideration of how the 14-day rule stipulated in the Constitution is executed.

## Conclusion

Coalitions have the potential to produce more stability because policies are negotiated to create a moderating effect between positions of political parties. Thus far, South Africa has been unable to foster a coalition governance culture that prompts public servants to make compromises for the greater good of public service delivery, leadership maturity that rises above ego, power plays, and party interests, while ensuring accountability and transparency. Coalition building in South Africa has often revealed that power and positions are more important than working together to make South Africa a well-governed country with a better society. Thus, it is critical for political parties to engage in a coalition-building process that does not focus solely on power, but on important issues they resonate with and specific areas of reform they want to advance in society once the coalition government is in power. It is for this reason that the 14-day mandate may not be sufficient, especially at the national government level.

Furthermore, as our country grapples with the idea of a national coalition government and in some provinces, South Africa does not have a clear framework on coalition building to help guide the process. Hence, the importance of this work to create a collective effort aimed at enhancing the legislative process. There is a need for our political parties to put their coalition agreements on paper and set action targets, whether on societal issues, governance, legislative reforms, or service delivery. Unlike South Africa, Denmark focuses on a deliverable program of government that does not try to solve every issue but focuses on what coalition partners agree on and can implement during their term of office. Following the recent collapse of coalition governments at the local government level, this step, particularly for the national government, has never been more urgent than now.

## Webinar feedback

A webinar was held on April 23, 2024, to enhance the discussions outlined above in this document. The webinar was engaging and raised further questions for interrogation. We welcome inputs on some of these questions as we expand the conversation on coalition building post the national and provincial elections on May 29, 2024. For further discussion, please feel free to contact us at: [info@rivoniacircle.org](mailto:info@rivoniacircle.org).

These are some of the questions that gave rise to a robust conversation:

1. Does Parliament have to decide on the composition of government?
2. Elections are over a month away. Is it late to advocate for a change in the number of days allocated before the Chief Justice can make his declaration?
3. What is the exact effect of what happens if, and when the coalition talks fail, or the majority cannot forge the first sitting?
4. How much room does civil society have to influence how negotiations take place at a party level?
5. Is there room to ask for more transparency where those negotiations are concerned? Should we not be able to get whatever we envision in terms of how the 14 days should roll out?
6. Can we, at a minimum, get a form of transparency where the negotiations take place?
7. Does anyone know the status of that meeting convened by the Deputy President last year around coalitions?
8. What options do we then have as civil society to challenge the 14 days, seeing that we might be out of time for a constitutional amendment?

9. Schedule 3 does make provision for an elimination procedure that is “repeated until a candidate receives a majority,” but even if it comes down to two candidates, it is not clear on what happens if MPs abstain (as they will if they don’t like the candidates on the table) and therefore no one receives a majority. Is a majority of votes cast for a candidate vs. the other sufficient, or will a failure to obtain 50% outright at the first sitting necessitate a rerun of the election?
10. If the incumbent is not re-elected to be President on the day that he has been sworn in as an MP, what is he? The President of the country cannot be an MP legally or constitutionally because if negotiations must continue, what is the status of this person? Is he an ordinary MP? Following this, what then is the status of the leadership of the country? There is this gap of legal status in the Constitution of the legal incumbent after the election.
11. What happens if the 14 days lapse without a successful sitting of any legislature? Unlike at the local government where interventions are properly spelled out, there exists a gap at the national and provincial government levels.