



# What happens post the election?

SOUTH AFRICA

*There is a significant amount of investor and market uncertainty about what will happen post the national and provincial elections next year. In this note we delve into key events that follow a national election. These events will be particularly important if the 2024 elections do not produce an outright winner. Much of the uncertainty is justified given that there will potentially be modalities for coalitions to consider. Much of these events take place in parliament and include the first National Assembly sitting, election of the president, government formation, coalition formation modalities, passing legislation, removing the president and more. The timeline within which these events must take place is significant as the constitution provides very tight deadlines. For instance, the National Assembly has 14 days to elect a president after the election result is declared. In a coalition setting, this may be difficult considering negotiations that have to take place between parties – where we believe pre-election day agreements will count for little.*

With coalitions as baseline minds are turning to what happens immediately after the elections next year (still expected on the second or fourth Wednesday in May). Unlike many other emerging markets (EMs) South Africa's constitution and other laws actually provide very little guidance beyond timing of what must happen in such situations.

## Events after the election

In national elections South Africans vote for parties who then get a share of National Assembly (NA) seats proportional to their vote share. Parties deploy their members to parliament to occupy these seats, typically based on party lists that parties draw up and submit to the Independent Electoral Commission (IEC) before the election. Many parties are currently in the process of drawing up these lists for the 2024 elections with a deadline that is expected to be March 2024. Traditionally, parties rank their public representative candidates to ensure their preferred candidates are eligible for a parliamentary seat. The African National Congress (ANC) starts its national candidate list with its president as the first candidate. The names that follow usually indicate who can be expected to be appointed into cabinet. A similar ranking unfolds for provincial legislatures, with the first name on the list usually being that of the individual most likely to be nominated as premier.

Importantly, independent candidates will in 2024 be competing for half of the 400 NA seats for the first time. Voters do not vote directly for the president of the country. Instead, members of the NA nominate candidates from among themselves to contest the position of president during the first sitting of the NA. Should an independent candidate be nominated for president, he/she would need the support of the other members of parliament to be elected. The chances of the country having an independent candidate as a president are therefore extremely low.

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### KRUTHAM 2024 BASELINE

ANC 47 [57.5] (balanced risk)  
DA 25 [20.8] (downside risk)  
EFF 12 [10.8] (downside risk)  
ACSA 4 [-] (balanced risk)  
IFP 5 [3.4] (balanced risk)  
Proto 5 [-] (downside risk)  
Other 3 [7.6] (Upside risk)  
Turnout -8 to -10pp

Note we have reinforced the upside risks we see for ANC though not changed the numerical forecast yet

### TOPICS

Politics

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## Election of president and parliamentary presiding officers

After an election, the NA must sit at a time and date decided by the chief justice, but which is within 14 days of the declaration of the election results by the IEC.<sup>1</sup> The IEC must declare the results within seven days after elections are held.<sup>2</sup> Traditionally this has been done within three or four days in a closing ceremony at the national results centre. In 2019, the election was on 8 May, election results were declared on 11 May, and the first NA sitting was on 22 May.

At the first NA sitting, the chief justice (or another judge designated by him) presides over the swearing-in of NA members. He then presides over the election of the NA speaker. The speaker then presides over the election of the deputy speaker. The Democratic Alliance (DA) has often fielded candidates for these positions despite the ANC's dominance. During this first sitting, the chief justice also presides over the election of the president of the country. The president is only elected after the speaker and deputy speaker.<sup>3</sup> Upon election, the president ceases to be a member of the NA and is given five days to assume office through swearing or affirming faithfulness to the country and obedience to the Constitution.<sup>1</sup> Cyril Ramaphosa was sworn in on 25 May 2019 in an inauguration ceremony in Tshwane. He appointed his cabinet on 29 May, which was an unusually long period after inauguration, leading to rumours of disharmony and indecision.

Whereas in 2019 President Ramaphosa was elected unopposed, if the ANC loses its majority in 2024, we could have at least two candidates for the presidency, one from the ANC and another from the Multi-party Charter for SA. In 2009, the Congress of the People's Mvumelwano Dandala was nominated for presidency but lost to Jacob Zuma by 277 to 47 votes. Importantly, the term of office of the president only ends when his successor, if there is one, officially assumes office. We must mention that although Ramaphosa was first elected president in February 2018, he is still entitled to a final full five-year term because the period between February 2018 and May 2019 does not contribute to his term as it is regarded as a period in which he was filling a vacancy left by Jacob Zuma.

Upon election, the president appoints his cabinet consisting of the deputy president, ministers and himself as its head. Theoretically, the president may appoint any member of the NA as a minister or deputy president. However, presidents naturally appoint members of their parties. Coalitions and the inclusion of independents can change this. We must mention that presidents have in the past appointed a limited number of opposition party MPs as ministers or deputy ministers. GOOD's Patricia De Lille currently serves as the minister of tourism. In addition, the president can appoint a maximum of two non-NA members as ministers. Tito Mboweni was not a NA member when Ramaphosa appointed him finance minister.

The president can also appoint members of the NA as deputy ministers to assist members of the cabinet. Although deputy ministers are not cabinet

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<sup>1</sup> The Constitution of RSA. 1996.

<https://www.justice.gov.za/legislation/constitution/saconstitution-web-eng.pdf>

<sup>2</sup> South African Government. 1996. "Electoral Commission Act 51 of 1996". *South African Government*.

[https://www.gov.za/sites/default/files/gcis\\_document/201409/act51of1996.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/act51of1996.pdf)

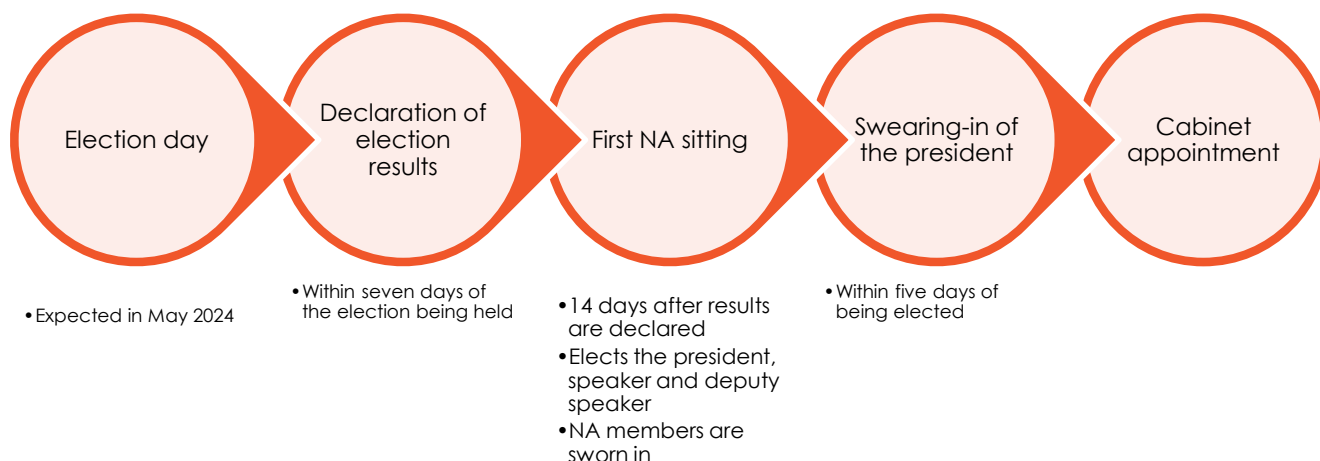
<https://www.elections.org.za/content/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=987>

<sup>3</sup> Parliament of RSA. 2016. "Rules of the National Assembly: 9<sup>th</sup> edition".

[https://www.parliament.gov.za/storage/app/media/Rules/NA/2016-09-28\\_NA\\_RULES.pdf](https://www.parliament.gov.za/storage/app/media/Rules/NA/2016-09-28_NA_RULES.pdf)

members, these positions will come in handy in coalition arrangements as they enable parties to legally dispense patronage. The president similarly has two deputy minister positions to offer non-NA members. Members of Ramaphosa's cabinet were sworn-in the day after they were appointed. Importantly, when there is an election, cabinet and deputy ministers remain functional until the newly elected president assumes office. The new president then appoints his own cabinet.

**Figure 1: Timeline of key events after the election**



The swearing-in of members of the National Council of Provinces (NCOP) and election of its office bearers follows the same pattern as the processes in the NA. The first NCOP sitting usually takes place the day after the first sitting of the NA. However, the NCOP requires the provincial legislatures to each determine their 10 delegates before members can be sworn in. The Constitution allows a maximum period of 30 days for this. Traditionally, it has never taken this long. With possible coalitions in some provinces, these 30 days may be useful.

## Election process

For the positions of president, speaker and deputy speaker, if only one candidate is nominated, the presiding official must declare that candidate elected. However, if there is more than one candidate, members vote through a secret ballot. This could be crucial in a coalition scenario. If no candidate receives a majority of the votes, the candidate who receives the least number of votes is eliminated and a further vote is taken on the remaining candidates.<sup>1</sup> The process is repeated until one candidate wins a majority.

## Dissolution of the National Assembly

The constitutional provisions to dissolve the NA may come into play if a coalition government is deemed unstable. The president of the country must dissolve the NA if it adopts a resolution to dissolve itself with a supporting vote of a majority of its members after three years of its election. The acting president can also dissolve the NA if there is a vacancy in the office of the president and it fails to elect a new president within 30 days of the vacancy occurring. If the NA is dissolved the president must proclaim an election

which must take place within 90 days of the dissolution. These provisions will be important in a coalition scenario where deal making after the ousting of a president can collapse at any point. Moreover, coalition set ups can be dysfunctional and thereby necessitate the dissolution of the NA in the hope that a subsequent election will produce an outright winner or at least workable coalition scenarios. Furthermore, NA dissolution may become a reality under a coalition scenario should political parties fail to finalise a coalition agreement - and on the back of that to elect a president - within the 14-day period the National Assembly is allowed before its first sitting. The clock will start ticking towards uncharted waters.

## Removal of the president

The NA can oust the president through a resolution or a motion of no confidence. To remove the president through a resolution (which is basically an impeachment process), the NA needs a supporting vote of at least two thirds of its members. The president can only be removed in this manner on the grounds of a serious violation of the Constitution or the law, serious misconduct, or inability to perform the functions of office. This is a long-drawn-out process, starting with a motion that must be approved to lead to an independent panel to assess if there is merit and only once the independent panel's report is adopted in the NA will MPs start impeachment hearings. The findings of this panel must also be adopted by the House to take effect.

To remove the president through a motion of no confidence, the Assembly needs the majority of its members to support the motion. In the case that the motion passes, the president, other cabinet members and deputy ministers must resign. The Assembly can also pass a motion of no confidence in the cabinet excluding the president with a supporting vote of a majority of its members. In that case, the president must reconstitute the cabinet. With motions of no confidence being a frequent feature in coalition-governed municipalities, these constitutional provisions will be important if indeed the 2024 elections result in a coalition government.

## Coalition formation modalities

The biggest difference about next year's election to previous ones is the high probability of no party attaining an outright majority. Such an eventuality would necessitate the formation of a coalition government. In 2021, we witnessed a delay in the formation of governing coalitions in several municipalities. Even when they were formed, some of these coalitions were fragile. While it is not the answer, it may be helpful for parties to start negotiating possible coalitions before next year's polls. This is obviously easier for opposition parties, such as members of the Multi-party Charter for SA, who acknowledge that they will not individually muster an outright majority. It would not be wise for the governing ANC to publicly declare pre-election coalition negotiations hence the party maintains that it will win the 2024 elections. The challenge here is that parties will only have 14 days to negotiate after the election as they need to elect a president within that period. Several parties have expressed a wish for the extension of this period. The DA's coalition stabilisation bills propose that this period be expanded to 30 days at all government levels.

If no party musters an outright majority, a minority government can take power. A minority government is likely to produce instability as it must rely on issue-by-issue support from the "opposition" on legislative matters, statutory

appointments and just about every issue that may crop up in parliament. More importantly, a minority government can be toppled at any point if "opposition" parties decide to join forces as they can easily muster a majority. A government of this type is therefore undesirable as it could lead to instability in the country which would have far-reaching consequences.

Note that while there is much chatter of "coalition legislation", much of the discussions on this centre on frameworks that relate to municipalities and metros, not national government. Equally we still think legislation would not be binding on the political sphere anyway after an election. In any case we see it as impossible that any new piece of legislation could be passed now if tabled straight away.

## Passing legislation and the budget

Apart from exceptional cases, before the NA may vote on a bill or an amendment to a bill, a majority of NA members must be present.<sup>1</sup> For a vote on any other question, at least one third of members must be present and all questions are decided by a majority of the votes cast. Additionally, the member (typically the speaker) presiding over an NA meeting must cast a deciding vote when there is a tie over a question. Although this member has no deliberative vote, he/she can cast a deliberative vote when a question must be decided by at least a two-thirds majority.

A bill passed by the NA must be referred to the NCOP if it must be considered by the NCOP's delegates. Similarly, a bill passed by the NCOP must be referred to the NA. Section 1 of the Constitution may be amended by a bill passed by the NA, with a supporting vote of at least 75% of its members and the NCOP with a supporting vote of at least six provinces. Chapter 2 (Bill of Rights) may be amended by a bill with the support of at least two thirds of NA members and six provinces in the NCOP. Other provisions of the Constitution may be amended by a bill passed by the NA with the support of at least two thirds of its members, and also by the NCOP with the support of at least six provinces if the amendment relates to a matter that affects the Council, alters provincial boundaries, powers, functions or institutions, or amends a provision that deals specifically with a provincial matter.<sup>1</sup>

The NA passes legislation categorised either as a Section 75 Bill, which requires the NCOP to concur, or a Section 76 Bill which requires a full legislative process by the NCOP, including public hearings. A Section 76 Bill is one deemed to have an impact on provinces. If the NCOP makes any changes to the bill it receives from the NA, the NCOP approved legislation returns to the NA which must approve the changes by another vote. The bill then goes to the president for signing into effect. In a coalition scenario instability is likely as partners could disagree on a particular legislative proposal or statutory appointment. This would stall parliamentary approval. A minority government could face similar hurdles.

Crucially, while the Constitution assigns parliament as the legislative sphere of state (meaning that a member or committee of the NA may introduce a bill in the NA) the practice has been to wait for ministers to table their draft laws. The ANC majority in parliament has not challenged the ANC in cabinet to timeously produce legislation, which has resulted in a crunch as the end of term looms. This means, for example, key legislation like the Electricity Regulation Amendment Bill is set to pass only the NA hurdle before next year's elections, particularly if held in May. It would then be up to the new NCOP to revive this legislation and complete the law-making process.

An important function of the NA is to scrutinise and oversee executive action. Due to its majority (230 of the 400 seats), the ANC has been able over the years to shield its executive from accountability. A prime example of this is the Phala Phala scandal where the party used its majority to block the DA's motion to establish an ad hoc committee to investigate allegations relating to the matter. The party also used this majority to reject the Section 89 panel report which would have led to impeachment proceedings against President Ramaphosa had it been adopted.

The ANC has also used its majority to have its way legislatively. In addition to the NA majority, the ANC has 29 delegates in the NCOP while the other parties have a combined 25. We must however clarify that NCOP members are theoretically more delegates of provinces rather than parties hence each province typically has one vote on legislative issues. However, when the NCOP votes on a question in terms of section 75 of the Constitution (ordinary bills not affecting provinces) each delegate has one vote, at least one third of the delegates must be present before a vote may be taken on the question, and the question is decided by a majority of the votes cast.<sup>1</sup>

Should the ANC lose its majority, its ability to shield the executive from accountability would be drastically curtailed and should it be removed from the executive (which is not the baseline), its ability to hold the new executive accountable would be limited. Moreover, a coalition scenario could lead to a more diverse policy environment emerging as other parties would be able to lobby support for their bills.

## The budget process

The minister of finance tables the annual national budget (with the proposed fiscal framework) in the NA together with the Division of Revenue Bill which specifies how money will be equitably divided among the spheres of government and provinces, a swathe of tax bills, and the Appropriation Bill which sets aside money for national government and states how it will be divided among the various national departments and state institutions.<sup>4</sup> After relevant committees hold public hearings and deliberate on these bills, they send them to the NA, which votes on them. The NA first considers and approves the Division of Revenue Bill before moving to the Appropriation Bill and votes on each departmental allocation.<sup>5</sup> Once the NA adopts the bills, they are transferred to the NCOP for concurrence.

Due to its majority, the ANC has not struggled to pass the budget. Indeed, except at the behest of National Treasury (NT) the budget is almost never amended. A coalition scenario may change this as parties will look to ensure that their interests (be it provinces they govern, departments they lead or the local government sphere broadly) are allocated a portion of the budget that is enough to enable them to implement certain projects or dispense patronage. We have already seen some coalition-governed municipalities failing to pass budgets on several occasions. The City of Tshwane is a fitting example.

Failure to pass a budget however means that the prior year's spending framework remains which given the effects of inflation and assuming some uptick in revenues – would mean the worst (political/parliamentary) scenario

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<sup>4</sup> Parliament of RSA. N.d. "Parliament and the Budget". *Parliament of RSA*. <https://www.parliament.gov.za/storage/app/media/EducationPubs/parliament-and-the-budget.pdf>

<sup>5</sup> Parliament of RSA. 2022. "The budget process". *Parliament of RSA*. <https://www.parliament.gov.za/press-releases/budget-process>

is actually quite the consolidation in the fiscal position as nominal spending would remain flat with large real cuts.

This however could create problems for SOEs in particular which require year by year legislated bailout spending which would possibly be insufficient (in reality though Eskom for instance sees lower values of bailouts in the coming years) assuming the ZAR66bn bailout for 2024/25 was passed pre-elections then the following year it is ZAR40bn only).

There is clearly scope for 'mistakes' to be made in this environment though if intra-year emergency appropriation bills could not be passed – say for SOEs. NT does however have Public Finance Management Act Section 16 powers where it can spend monies without parliamentary authorisation in emergencies. This is capped at 2% of the total authorised expenditure for the year and parliament must be informed immediately when this happens.

Note, importantly, that NT does not require parliamentary authority to issue debt (unlikely many other EM countries and the US etc), as such there is no real impact on funding from a purely authorisation/logistically perspective.

## Conclusion

Details on post-election official activities have not received much attention in the past due to the ANC's dominance. However, with the possibility of a coalition government at national level and in some provinces, these details will be important as they may be the difference between the successful formation of a government and the passing of legislation or the failure thereof. The time the parties have between the declaration of the results and the election of the president (14 days) will be crucial. Provisions on motions of no confidence will also be important. In this regard, we must mention that the DA currently has bills in parliament meant to regulate and limit the regularity with which motions of no confidence can be tabled. We do not see these bills being passed before the election, even if the ANC supports them.

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