



The Day After the Night Before: Governance implications of a gridlocked Parliament

A photograph of a multi-lane highway completely gridlocked with cars, overlaid with a blue tint. The cars are packed closely together, stretching far into the distance. In the background, there are some buildings and utility poles.

May 2024
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Table of Contents

Introduction	1
Types of gridlock	1
Background	1
Gridlock through split control of government	2
Gridlock through filibuster	2
Gridlock through physical disruption	2
Gridlock through infighting in the governing party	3
Gridlock through inability to form a stable government	4
Gridlock through a weak mandate	4
Scenarios for gridlock in South Africa	6
Background	6
Scenario A: Minority government	7
Scenario B: Confidence and supply	8
Scenario C: Adversarial NCOP and NA	8
Scenario C: Adversarial NCOP and NA	10
Conclusion	11



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Introduction

Election Day is rushing nearer and silly season has begun. And while what happens on 29 May is of vital importance, it is what comes after that is of even greater significance.

If the African National Congress (ANC) wins more than 50% of the vote (still a strong possibility that that should not be dismissed out of hand), then expect business as usual. However, what is to happen if the ANC falls under 50% at a national level? What can we expect, especially if coalitions are unstable or even non-existent?

Furthermore, whatever the outcome at the national level, it is almost a certainty that the ANC will lose its majority in Gauteng and KwaZulu-Natal, and perhaps in other provinces, too.

A situation could exist where an ANC-led coalition governs the centre but a significant number of provinces are governed by opposition-led coalitions, which brings with it a whole host of complex ramifications.

What will happen in the National Assembly (NA) with an ANC below 50% and messy coalitions or none being formed at all? Will there be legislative gridlock? What can South Africans expect?

This paper seeks to present a number of scenarios of what could happen after 29 May, especially if the ANC loses its parliamentary majority. It assesses whether the legislature could become gridlocked with governance effectively stalled, what this would look like and what it would mean for South Africa.

Given the way our various institutions are set up, there is a high chance of gridlock. But what is meant by the term 'gridlock' and what do gridlocked governments look like abroad?

Types of gridlock

Background

The expression comes – unsurprisingly – from the traffic term 'gridlock', which refers to a vehicle jam that is so bad that nothing moves. If your vehicle is in gridlocked traffic it could be some time before you are able to drive at more than 5 km/h. If a government is gridlocked it means that the government cannot easily get anything done, things tend to get stuck, and producing any forward motion takes a lot of time and effort.

One concrete example of gridlock would be that no legislation is being passed.

Some people argue that a government that is gridlocked is actually good. The idea is that a government that cannot get anything done will not be able to interfere in people's lives or pass damaging legislation. But the importance of governments cannot easily be dismissed, and a government that cannot function has serious knock-on effects, with a real impact on people's lives.

Gridlocked governments are more common in presidential systems, where presidents – or governmental chief executives – derive their mandate through a direct election, with the legislature having less oversight than in a parliamentary system. Nevertheless, gridlock can occur in parliamentary systems, as we shall see.

Below, we describe some mechanisms by which governments can get gridlocked.

Gridlock through split control of government

Gridlocked government is common in the United States (US), a prime example of a presidential system. The country's governance system, with its often adversarial relationship between the executive and the legislative branch, means that gridlock is not unusual. It occurs when the head of the executive – the president – belongs to one party while one or both of the Houses of Congress (made up of the House of Representatives and the Senate) are controlled by a different party.

Gridlocked politics is also common in other countries with presidential systems. South Korea has struggled to pass legislation in recent years, with different parties controlling the legislature and presidency in that country. Emmanuel Macron, the President of France, had also reportedly considered using referendums to overcome the issue of legislative gridlock in that country, as his party lacks a legislative majority.¹

More pertinently for South Africa, the US government has on occasion even shut down because no agreement could be reached on passing a budget, which led to the government effectively having to shutter itself for a period. This is a possibility that cannot be ruled out for South Africa and is discussed in more detail below.

Gridlock through filibuster

The use of the 'filibuster', particularly in the US Senate, also often results in gridlock. This is when a senator speaks on a piece of proposed legislation for such a long period that it is not possible to take a vote or make a decision on it.

The filibuster has a long history, with a similar tactic having been used in the senate of ancient Rome. It is also used in other legislatures across the world, often in the Anglophone world, but some countries, notably Australia, set a limit on how long lawmakers can speak. (Mangosuthu Buthelezi holds the record for the longest legislative speech ever given, when he spoke for 30 hours in the KwaZulu legislature, but this was not a filibuster.)²

Some political actors see filibusters as a valid form of political contestation. Engaging in filibustering is a way of producing gridlock and not allowing any legislation to pass. It is seen by some as a legitimate way of using the legislature to make a political point.

Gridlock through physical disruption

Gridlock can also occur when a legislature is physically shut down by opposition parties. This has arguably happened in South Africa already, with the Economic Freedom Fighters (EFF) often having acted in such a way that the National Assembly was unable to function. Such disruption has been seen at various state-of-the-nation addresses (SONAs) under Presidents Zuma and Ramaphosa, an issue that was resolved in 2024 by banning EFF members of parliament (MPs) from that year's SONA.

At the local government level, too, the EFF has often physically disrupted municipal council sittings, something the ANC has also done in the past. This is done in a number of ways, for instance through chanting and singing to make it impossible for the speaker of other legislators to be heard or by calling caucus breaks lasting hours, making it difficult to get anything done.

But this tactic is not unique to South Africa. A parliamentary system which has seen gridlock through the (often physical) shutting down of the legislature is India. In that country the Bharatiya Janata Party (BJP), which now governs but was in opposition for many years, viewed the physical disruption of parliament as being ‘in favour of democracy’ if the legislature was ‘used to ignore issues’.

Gridlock through infighting in the governing party

Another possibility for gridlock is when party infighting in the governing party makes it difficult for it to pass legislation – even if it holds a majority.

This happened in the United Kingdom (UK) when the country was trying to finalise Brexit – the process by which the country left the European Union (EU).

There were a number of votes in the British Parliament over which Brexit deal to accept. This was a difficult compromise to reach because a number of exit deals were rejected by so-called Brexiteers. As a result, they would often find themselves making common cause with those on the other side – ‘Remainers’. These strange alliances would see people who generally had little in common in the way of ideology jointly voting against various proposed Brexit deals.

In this situation, an outsider would have found it baffling that large number of MPs from the Conservative Party (Tories) would vote against their own government to scupper various proposed Brexit deals. This would have been because they would have felt that the deals did not go far enough in separating the UK from the EU.

A vote agreeing to an exit deal was finally only successful in late 2019, after a general election had been held in early December 2019. It had taken five years, three Prime Ministers, and far more voting procedures than was customary to pass legislation.

This gridlock had happened because of internal rebellions within the Tories. Of course, given South Africa’s electoral system, where MPs are appointed by party bosses, rather than directly elected in geographical constituencies, this type of open rebellion by governing party MPs against their government is highly unlikely – especially when voting in the National Assembly is not secret, as is usually the case. However, this does not mean that internal party rebellions in South Africa would be impossible. They could still make governing difficult.

Gridlock through inability to form a stable government

In South Africa, legislatures – whether this is the NA, any of the nine provincial legislatures, or any of the nearly 300 municipal councils – must elect a speaker and an executive leader (President in the case of the NA, premier in the case of a province, mayor in the case of a municipality) within fourteen days of the election.

In other countries which have PR systems, much more time is allowed to form and arrange coalitions. A recent election in Belgium saw 500 days pass before a government could be formed. This might be considered somewhat excessive. But in the Netherlands, for example, which has an electoral system similar to South Africa's, it can take a significant amount of time before a government is formed. Elections were held in the Netherlands in November 2023 and at the time of writing (April 2024) no government had yet been formed.

Something to be remembered is that while Belgium sat for over a year without a government and things carried on relatively smoothly, Belgian institutions and administrations are robust and well-run. South Africa is perhaps not quite in the same position.

On average governments take ninety days to be formed in the Netherlands and 75 days in Austria. In the Netherlands, once a prime minister has submitted his or her resignation to the monarch, the outgoing government immediately becomes a caretaker government. The prime minister and the other members of cabinet stay on in their roles until a new prime minister is elected. On average, these caretaker governments stay in office for ninety days while the next government is formed, but at least one has stayed on for as long as seven months. Similar provisions generally apply in other countries such as Austria, with the incumbent staying on as a caretaker.

That South African legislatures only have fourteen days in which to elect the executive means that there is very little time for sustainable coalition deals to be drawn up, making it more likely that governments will be built on unstable foundations, threatening their longevity and ability to govern. Gridlock is a likely outcome.

(As an aside: The next administration should urgently consider legislation to amend the period allowed for the formation of a government. Fourteen days is simply too short to draw up a comprehensive and satisfactory coalition agreement. More time should be allowed to do this because negotiations between potential coalition partners are often adversarial and complex. However, it is important to place some limit on the amount of time allowed to form a new government. Research has shown that caretaker governments which stay in power for a long period can weaken democratic accountability as the caretakers have no mandate and limited policy-making ability.)

Gridlock through a weak mandate

Governments with a weak mandate, including pure minority governments and minority governments supported through confidence-and-supply agreements, may also find it difficult to govern. A minority government is one where a party governs without an overall majority, meaning that it has to secure the support of other parties for all legislation, including budgets.

A confidence-and-supply arrangement is similar but here a party will secure the in-principle support of another party or parties to support it on specific votes, such as budgets and confidence votes, but without any commitment or obligation to support the government on any other votes.

Minority governments have functioned well in some countries, such as Scotland and New Zealand, but these are countries with a significantly different political culture from South Africa, and have historically also not been dominated by a single party as South Africa has.

Elsewhere in the Anglosphere Canada has had a number of minority governments, which have generally been weak and have failed to pass legislation or implement policy.

One advantage for a party governing as a minority is that there are no coalition dynamics to be concerned with. Such a party can, in fact, maintain its strategic and policy vision while governing as a minority. However, the risk is that complex and time-consuming negotiations must be undertaken before any legislation can be passed to ensure that the government has enough votes to pass it.

According to research by the Institute of Government in the United Kingdom, minority governments in Canada have been less successful than they might have been because they have not expended enough effort on consensus-seeking, often acting as if they were majority governments. By contrast, minority governments in New Zealand and Scotland have acted differently.³

A key point in the British research is that a minority government does not always imply the existence of a majority opposition. This will certainly be the case in South Africa should the ANC attempt to govern as a minority. The National Assembly will likely have the most parties it has ever had, all with divergent aims and policy goals for the country. If the ANC operates as a minority government it will not be facing a united opposition bloc.

While one of the great founding myths of modern South Africa is that it was formed on the basis of consensus, this is not really true. While the 1990-1994 transition was marked by consensus, politics became more adversarial – some would say more normal – after the 1994 election, and especially after the 1996 signing of the final constitution, and consensus seeking became less common. This saw the New National Party leave the Government of National Unity, for example.

It remains to be seen whether a present-day ANC minority government would be able to do as its counterparts in New Zealand and Scotland have done, or would be closer to those in Canada.

Nevertheless, minority governments in Canada have managed to pass a similar amount of legislation as majority governments. Minority governments in New Zealand and Scotland have generally passed less legislation, with the decline being particularly precipitous in Scotland.⁴

However, even if a minority government manages to pass as much legislation as its majority counterparts, it generally needs more time to shepherd legislation through parliament. Given the glacial nature with which much South African legislation is passed, it is likely that an ANC minority government, or one reliant on confidence-and-supply, could take even longer to manage legislation.

In such a scenario it is quite possible that the amount of legislation passed will decline significantly.

Scenarios for gridlock in South Africa

Background

While there is a possibility that the ANC could form a stable majority with other parties which governs effectively and manages to pass legislation, this is unlikely, given the experience of the party in various coalitions across the country. Legislative chaos is more likely. In this section we therefore discuss various scenarios describing how gridlock could come about in South Africa.

A key part of the analysis is that many of the rules and procedures which govern how laws are made and how the executive is elected were drawn up with the implicit expectation that South Africans would not need to deal with messy coalitions. This is even though the electoral system chosen during the transition was a highly proportional one, with no explicit thresholds, making coalitions likely.

Generally, proportional representation (PR) systems result in coalitions, as a party's proportion of seats in a legislature closely matches its overall share of the vote. In most democracies it is rare for one party to receive more than 50% of the vote, meaning that coalitions are common in PR systems. To put it another way, in PR systems coalitions are a feature, not a bug.

Most democracies which use proportional representation implement some sort of threshold so that parties must exhibit a minimum level of support to be represented in the legislature, a measure also designed to help prevent excessive fragmentation across many parties. Thresholds vary from country to country but are generally between two and five percent.

South Africa only has an implicit, rather than an explicit threshold: a party needs about 0.2% of the vote to secure a single seat. In the current National Assembly, Al Jama-ah won a single seat with 0.18% of the vote in 2019, while the Pan Africanist Congress of Azania (PAC) won a seat with 0.19% of the vote.

Many of the procedures drawn up to govern proceedings in the legislature were created with the expectation that South Africa would be governed by a single majority party, rather than coalitions made up of adversarial partners.

Since 1994, the ANC has dominated South African politics at the national level, as well as dominating in most of the provinces, and still, to a large degree, in most municipalities. Although this situation is changing, most legislatures – whether Parliament, most of the provincial legislatures, and a large number of municipal councils – have been places where the ANC has received an outright majority of the votes, a relative anomaly in PR systems.

But in future, coalitions, which have become the norm notably in the metros, will be needed at a national level and provincially. This is likely to lead to difficulties in law-making and the election of executives, as outlined above.

Scenario A: Minority government

A minority government is one in which the party in government does not command a majority in the legislature. Instead of setting up an agreement with other parties to build a coalition majority, it would seek the support of other parties on a case-by-case basis, whether that be for electing the president, for passing budgets or for ordinary legislation.

This scenario is not as outlandish as it sounds, and the ANC may indeed decide to govern as a minority government. This is because – as outlined above – the South African constitution allows for very limited time in which to form a government after an election. A legislature only has fourteen days after an election in which to elect a chief executive (president, premier, or mayor) and a speaker.

This means that there is little time – perhaps too little – for parties to come together to form coalitions with agreements that suit all partners.

While there is no precedent for minority governments nationally or provincially in post-apartheid South Africa, minority governments have operated in a number of municipalities across the country. These have primarily been DA governments, but there have been some other examples, notably when the ANC governed Johannesburg as a minority government for a period before the 2021 local government elections.

Globally minority governments are relatively common, with about a third of the world's democracies being governed by a party which does not hold a majority of parliamentary seats.⁵

In a minority government the governing party will need to seek support ahead of each vote, whether that be votes for positions such as speaker, budget votes, or ordinary legislation. This can slow down the legislative process, with negotiations needing to precede each vote. Smaller parties can secure outsize influence in law-making by only voting with the government if their policy positions are supported.

Nonetheless, research from abroad has shown that minority governments are not inherently more unstable than majority governments, and minority governments can succeed in seeing their legislative agenda succeed. However, much of this global experience has been from European countries and Canada, where democracy is arguably more entrenched than in South Africa, and where there is more experience with minority governments.

A minority government in South Africa at national level would be something of a 'brave new world' for this country. Initially, at least, expect some measure of chaos as the country gets to grips with a new way of doing things. If the government continuously fails to secure majorities to pass legislation this will see the business of Parliament grind to a halt.

Another way in which gridlock can be created under a minority government is through quorum denial. If the NA fails to secure quorums during voting, no legislation can be passed. What could happen is that opposition parties, instead of simply voting against legislation, could refuse to attend in sufficient numbers to form a quorum.

To vote on a Bill or an amendment a quorum is defined as half of the members of the National Assembly. In a scenario where the ANC governs as a minority government or in a confidence-and-supply agreement (outlined below), opposition parties could decide simply not to show up to votes, thereby denying a quorum.

A similar situation applies with regard to committees. A quorum in a committee is defined as a ‘majority’ in the rules for the National Assembly, so opposition parties could do something similar in committees.

This is something that has already happened in South Africa.

For example, the DA and other opposition parties decided not to vote on a controversial finance bill in 2019, the Financial Matters Amendment Bill. The DA took issue with a section in the Bill which would have allowed for the creation of state-owned banks. Because the DA caucus decided to not attend and because some ANC delegates were absent, the NA was one short of the quorum of 201.⁶

Political parties could coordinate in not attending NA votes, thereby denying a quorum – which would make it difficult to pass any legislation, without votes even having to be taken.

Scenario B: Confidence and supply

This scenario is a variation on the minority government scenario. In its most restricted sense, under a confidence-and-supply agreement, a smaller party will agree to supply the governing party with the votes it needs to pass budgets, and provide confidence by not supporting no-confidence votes in the government.

The confidence-and-supply agreement can be extended to include other commitments. For instance, the smaller party could support the larger one in electing the executive, such as the head of government, and in the election of the speaker. It can do this by voting for the larger party’s candidate or by abstaining. In return, the larger party can commit to providing the smaller one with positions such as committee chairpersonships or even that of speaker. The smaller party retains the right to vote against the government in votes on ordinary pieces of legislation.

This differs from a coalition, where the junior party would be entitled to posts in the cabinet and executive and would be expected to support the governing party in passing legislation.

Scenario C: Adversarial NCOP and NA

South Africa’s Parliament consists of two houses: the lower house, the National Assembly (NA), where seats are allocated to parties based on the party’s share of the vote nationally; and the upper house, the National Council of Provinces (NCOP), which is designed to represent regional interests. All legislation must be considered by both the NA and the NCOP. This means the law-making process could slow down dramatically if both houses are not controlled by the same party.

The details of this potential conflict deserve exploring. The NCOP is analogous to the US or Australian senates, but unlike those bodies, representatives are not directly elected. Rather, they are delegates from the nine provincial legislatures, with each province appointing six permanent delegates.

Each province must also appoint four temporary delegates, the membership of which can change. Temporary delegates may or may not include the Premier of the province. Temporary (officially known as special) delegates are rotated and seconded depending on the legislation under consideration.

Delegations proportionally reflect the political party makeup of the relevant provincial legislature.

The NCOP votes on all legislation, but depending on the legislation each provincial delegation either gets one vote per delegation, or each delegate can vote.

Ordinary bills that affect the provinces (so-called Section 76 bills) can be introduced by the NA or by the NCOP. A Section 76 bill must be passed, amended or rejected by the NCOP. For Section 76 legislation each of the nine provincial delegations gets one vote, in accordance with a voting mandate given by its provincial legislature. At least five of the nine provinces must vote in favour for the bill to pass. However, if a Section 76 bill was introduced in the NA, then the NA can override the NCOP through a two-thirds majority vote. In other words, the NCOP can prevent a Section 76 bill from passing only if the bill was introduced in the NCOP.

Ordinary bills that do not affect the provinces (so-called Section 75 bills) can only be introduced by the NA. After being passed by the NA, they must be sent to the NCOP. Delegates in the NCOP vote individually and a bill must secure a majority of the votes of delegates present to pass. If the bill is rejected or amended, it must be returned to the NA. However, the NA can then choose to ignore the NCOP's amendments or its rejection, and still pass the bill. In other words, the NCOP can delay a Section 75 bill, but it cannot prevent it from being passed.

A situation may arise where the NA and NCOP are at loggerheads on a Section 76 bill. It is possible that a coalition manages to secure a majority in the NA, but this particular coalition could lack a majority in enough of the provinces to pass legislation (i.e. this particular coalition would not be in government in five of the provinces). In addition, such a coalition would likely lack the two-thirds majority in the NA to override the NCOP, meaning that it would be difficult to pass any Section 76 legislation.

In addition, it would be difficult to amend the Constitution. This is because for most constitutional amendments to pass a two-thirds majority is required in the NA, and six of the nine provinces also have to vote for the constitutional amendment.

Another scenario exists where a party acts as part of the government in the NA, but as opposition to that same government in the NCOP. For example, the IFP could decide to form part of a governing coalition with the ANC in the NA, but in KwaZulu-Natal it might decide to remain in opposition, perhaps forcing the ANC in that province to govern as a minority government.

A further complication is that different provinces have different procedures when it comes to deciding what an NCOP's delegation will be. For example, in KwaZulu-Natal a committee in the provincial legislature can confer a mandate on its provincial delegation if 75% of a committee's members agree. However, in other provinces, such as the Western Cape and KwaZulu-Natal, only provincial legislatures, as a whole, can confer mandates. It is not clear whether conferring a mandate would be done through a simple majority, or what the exact procedure would be.

This is another example which shows how the legislative design does not cater to messy coalitions, instead assuming that parties would govern with comfortable majorities.

Scenario D: Unstable coalitions, volatile governments

Coalitions at national level in South Africa could be severely unstable, hampering law-making and ultimately affecting the lives of ordinary South Africans.

One of the primary reasons for this is that legislatures need to meet 14 days after the election results have been released. This gives little time for coalition agreements to be drawn up, potentially resulting in agreements which are incomplete or unsatisfactory. As noted above, in other countries it sometimes take months for agreements around coalitions to be reached.

In addition, politicians could be more preoccupied with managing coalitions and politicking than governing.

The experience in at least some coalitions in South Africa has been that parties are more interested in extracting rents than implementing effective governments. Examples include Ekurhuleni, Johannesburg, and Nelson Mandela Bay, where the ANC and the EFF have worked together to install mayors from very small parties. Speculation has abounded that this has allowed the two larger parties to divvy up the spoils of the municipality, with little fighting over which party secures the mayoralty.

This has, however, led to instability, with Johannesburg having had two mayors from Al Jama-ah, a minor party that holds only three seats in the 270-seat council. For a while, Ekurhuleni also had a mayor from a very small party when Sivuyile Ngodwana from the African Independent Congress (AIC) briefly held the position. The AIC had only three seats in the 224-member council. Ngodwana served for just over a year before being ousted and replaced by an ANC mayor, Nkosindiphile Xhakaza, in April 2024.

Such instability means it is difficult to get any kind of policy coherence, in both design and implementation, with ordinary citizens bearing the brunt of governance failures.

If more time were given to coalition negotiations, agreements could have clauses to prevent such flipflopping and instability.

There is no reason to think that coalitions at provincial and national level will inherently be more stable than they have been at the local government level. The chaos in places like Ekurhuleni could easily be replicated at higher levels of government.

Other reforms to South African legislatures and the electoral system need to be considered, such as the possible introduction of thresholds, but that is not the focus of this paper.

Conclusion

The consequences of legislative gridlock would not be entirely negative. It would make it far harder to pass damaging legislation, such as the National Health Insurance Bill or the Expropriation Bill (both of which are, at the time writing, awaiting the President's signature).

However, where positive legislation gets held up – or where the repeal of existing, harmful legislation gets blocked – this would be to the country's disadvantage. A number of municipalities around the country have shown how service delivery is hampered when governance is gridlocked.

At the national level, a recent example illustrates how the inability to pass legislation would have been harmful.

In March 2024 the National Assembly processed and passed a bill in just a few months. This was the South African Institute for Drug-Free Sports (SAIDS) Amendment Bill. It had to be passed to bring the country in line with global best practice on anti-doping requirements, after the World Anti-Doping Agency (WADA) said the previous amendment bill (from 2006) was not in line with current requirements.

If the Bill had not been passed, South African sports teams would have faced the risk of not being able to play under the national flag at events and the country could have lost WADA funding.

The amendment Bill was introduced in November 2023 and passed by the National Assembly in March 2024, likely a record for the passing of legislation in post-apartheid South Africa. There had also been enough time to hold public hearings which passed muster as having met the requirements for sufficient public participation, according to expert legal opinion.

Had the Bill not been passed, it would have had real consequences for South African sport broadly, and for the people who earn their living from it. In an environment where the legislative process is gridlocked a scenario could emerge where it is simply not possible to pass legislation at all, and certainly not as speedily as this piece of legislation was passed.

Another example are efforts around removing South Africa from the 'grey list' of the Financial Action Task Force (FATF). The FATF is a global body which assesses how countries combat illicit financial flows. South Africa was placed on the list because of legislative deficiencies around money laundering and terrorist financing. Being placed on the grey list makes it harder for money to move in and out of South Africa, with money being sent from South Africa abroad having to come under additional scrutiny. It can also damage a country's attractiveness for investment.

South Africa had a number of legislative deficiencies which were flagged by the FATF, along with other issues, which helped see the country greylisted.

This saw the country pass a bill to meet the requirements of the FATF. The bill was introduced to the National Assembly in late August 2022 and was signed into law by the President just before Christmas that year.⁷

While South Africa is still greylisted at the time of writing, it has made significant progress towards being removed from the list, and part of this progress was because of legislative amendments.

Not passing the amendment would have had more serious implications than the WADA bill. It is easily conceivable that the required FATF amendments would not have passed in a gridlocked parliament.

This illustrates that a gridlocked Parliament could have real consequences for governance in the country. A number of municipalities across the country have shown the consequences of councils that are gridlocked, with infighting breaking out and service delivery being affected.

In addition, sometimes the NA is instructed to change legislation to meet certain constitutional requirements. For example, the NA had to amend the Electoral Act to allow for independents to stand for Parliament and the nine provincial legislatures. After the Electoral Act was found to be unconstitutional, the Constitutional Court gave the NA a set period of time in which to amend the Act. Although it missed this deadline, and was granted an extension, this could become more common if the NA and NCOP are gridlocked. The NA could miss legislative deadlines, which would undermine the authority of the courts and reduce public trust in parliament.

In conclusion, parliamentary gridlock is not simply a thought experiment. Given South Africa's political system and current environment, there is a real possibility that the national legislature could at some point find itself significantly hampered or even unable to function. South Africans need to prepare for this possibility and start thinking about how gridlock can be prevented and how deadlocks can be broken.

Endnotes

1. Jong Eun Lee, *The Conversation*, 22 March 2024, available at: <https://theconversation.com/breakaway-parties-threaten-to-disrupt-south-koreas-two-party-system-can-they-al-so-end-parliamentary-gridlock-224478>
2. *Le Monde*, 23 August 2023, available at: https://www.lemonde.fr/en/france/article/2023/08/23/macron-considers-referendums-as-a-way-to-break-parliamentary-dead-lock_6105135_7.html
3. *BusinessTech*, 9 September 2023, available at: <https://businesstech.co.za/news/government/717444/mangosuthu-buthelezi-has-died-aged-95/>
4. Jason Felix, Bongekile Mcupe, and Amanda Khoza, *News24*, 8 February 2024, available at: <https://www.news24.com/news24/politics/ramaphosa-delivers-emotional-speech-at-drama-free-sona-20240208>
5. *Indian Express*, 29 July 2022, available at: <https://indianexpress.com/article/political-pulse/parliament-gridlock-democracy-bjp-8057195/>
6. A Ecker and TM Meyer, 15 December 2015, *Research & Politics*, available at: <https://journals.sagepub.com/doi/10.1177/2053168015622796>
7. *Ibid*
8. Robert Hazell and Akash Paun (eds.) with Mark Chalmers, Ben Yong and Catherine Haddon, *Making Minority Governments Work: Hung parliaments and challenges for Whitehall and Westminster*, available at: <https://www.instituteforgovernment.org.uk/sites/default/files/publications/Making%20minority%20government%20work.pdf>
9. *Ibid*
10. *Ibid*
11. Bonnie Field and Shane Martin, *London School of Economics*, 5 December 2022, available at: <https://blogs.lse.ac.uk/europpblog/2022/12/05/understanding-minority-governments-in-parliamentary-democracies/>
12. Linda Ensor, *BusinessLive*, 12 March 2019, available at: <https://www.businesslive.co.za/bd/national/2019-03-12-no-quorum-in-national-assembly-for-vote-on-crucial-finance-bill/>
13. *Parliamentary Monitoring Group*, available at: <https://pmg.org.za/bill/1098/>



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