

Who is Parliament Watch?

Parliament Watch is a collective of independent organisations working towards the advancement of social justice, the realisation of human rights, and strong constitutional democracy in South Africa. Collaborators include the Dullah Omar Institute, UWC (DOI); Equal Education Law Centre (EELC); Livity Africa (LA); Parliamentary Monitoring Group (PMG); Public Service Accountability Monitor (PSAM); The Right to Know Campaign (R2K); Social Justice Coalition (SJC); and Women on Farms Project (WFP).

PARLIAMENT WATCH



Why this Fact Sheet?

The National Assembly is considering a Motion of No Confidence in the President. The Constitutional Court has been asked to force a secret ballot. In a separate case, the Constitutional Court has been asked to rule on the impeachment of the President. This is a brief summary of what the Constitution provides about how the President is removed from office.

For more information

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fact sheet

ON RULES for removal of the PRESIDENT



How is the President elected?

The President is elected by the National Assembly in a secret ballot.



How is the President removed from office?

There are three options:



Impeachment

How?

National Assembly adopts a resolution to remove the President from office.

On what grounds?

- ☛ Serious violation of the constitution or the law
- ☛ Serious misconduct,
- ☛ Inability to perform the functions of office.

What is the Constitutional Court case on 'impeachment' about?

EFF, UDM and COPE have asked the Constitutional Court to instruct the Speaker of the National Assembly to start the process to impeach the President. Their request is based on the Nkandla judgment which stated that he 'failed to uphold, defend and respect the Constitution'.

By what kind of majority?

Two-thirds majority **1/3 1/3**

How many votes is that?

267 votes

What happens to the rest of cabinet?

- They remain in office.

Does the President receive benefits (pension, security etc.) after leaving office?

- No benefits

Who takes over?

Deputy President

How is the vacancy filled?

- Within 30 days, the Chief Justice must preside over the election of a new President.

May MPs vote however they want?

The law does not force MPs to vote in a particular way. However, MPs tend to vote in accordance with a position adopted by the party's leadership. There is a concern that a party's position on a particular matter may differ from the view of its constituents (i.e. those who voted for the party). If an MP votes against the party line, the party is likely to discipline that MP. It will probably mean that he or she will be removed from Parliament and replaced by another party member. This is only different when 1) there is no party line, i.e. the party allows its MPs to vote according to their own beliefs or conscience, or 2) when the vote is secret so the party leaders will not know how each MP voted.

Does voting on the election of the President happen in a secret ballot?

- Yes, the President is elected by secret ballot.

Does voting on a Motion of No Confidence or a resolution to impeach happen in a secret ballot?

- No. The Rules of Parliament do not provide for a secret vote for a Motion of No Confidence or for a resolution to impeach. So this is done in an open vote.

Has this rule been challenged before?

Yes. In 2015, AGANG SA, COPE and the UDM asked the Western Cape High Court to rule that voting on the removal of a President should be by secret ballot. The Court ruled that it didn't have the power to tell Parliament how it must organise voting procedures and that Parliament itself must decide. During the 2015/2016 review of the Rules of Parliament, several parties suggested that the Rules provide that a Motion of No Confidence be voted by secret ballot. This was not accepted by the majority party.

Is it nevertheless legally possible for a secret ballot to happen?

Yes. The Speaker may rule that the ballot will be secret. The National Assembly may also agree to a secret ballot. An MP may bring a motion suggesting that a particular decision be voted on by secret ballot. For such a motion to pass, it needs the support of a majority of the National Assembly.

What is the Constitutional Court case on the 'secret ballot' about?

On 11 April 2017, the UDM asked the Constitutional Court to force Parliament to have a secret ballot on the Motion of No Confidence. The UDM is arguing that the ANC's threats to discipline those MPs who vote in favour are undemocratic.



Motion of No Confidence

National Assembly passes a Motion of No Confidence in the President. The President must then resign.

National Assembly no longer has confidence in the President (i.e. a political decision).

What is the Constitutional Court case on 'impeachment' about?

n/a

simply majority **50% +1**

201 votes

- All ministers and deputy ministers also resign.

- Entitled to benefits

Speaker, until the National Assembly designates another member.

- All ministers and deputy ministers also resign.

- Entitled to benefits

Deputy President

n/a

n/a

n/a

n/a

n/a

n/a



Resignation

President informs Speaker of the National Assembly of his or her resignation.

political/personal decision

n/a

n/a

n/a



Outside Parliament, there are procedures within the **ANC** to **recall a president,** as was the case when former **President Thabo Mbeki** was recalled by the **ANC** and resigned.