



## **FACT SHEET ON RULES FOR REMOVAL OF PRESIDENT**

**11 April 2017**

### **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).

### **Why this Fact Sheet?**

On 18 April 2017, the National Assembly will consider 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 PRESIDENT

<b>How is the President elected?</b>	The President is elected by the National Assembly in a secret ballot.
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<b>How is the President removed from office?</b>	<b>Impeachment</b>	<b>Motion of no confidence</b>	<b>Resignation</b>
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<b>How?</b>	National Assembly adopts a resolution to remove the President from office.	National Assembly passes a motion of no confidence in the President. The President must then resign.	President informs Speaker of the National Assembly of his or her resignation.
<b>On what grounds?</b>	<ol style="list-style-type: none"> <li>1. serious violation of the constitution or the law</li> <li>2. serious misconduct; or</li> <li>3. inability to perform the functions of office</li> </ol>	National Assembly no longer has confidence in the President (i.e. a political decision)	political/personal decision
<b>What is the Constitutional Court case on 'impeachment' about?</b>	<p>EFF, UDM &amp; COPE have asked the Constitutional Court to instruct the Speaker of the National Assembly to start the process to impeach the President.</p> <p>Their request is based on the Nkandla judgment which stated that he "failed to uphold, defend and respect the Constitution".</p> <p>The Court has not decided yet.</p>	n/a	n/a

<b>How is the President removed from office?</b>	<b>Impeachment</b>	<b>Motion of no confidence</b>	<b>Resignation</b>
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<b>By what kind of majority?</b>	Two-thirds majority	simply majority (50% +1)	n/a
<b>How many votes is that?</b>	267 votes	201 votes	n/a
<b>What happens to the rest of cabinet?</b>	They remain in office	All Ministers and Deputy Ministers also resign	All Ministers and Deputy Ministers also resign
<b>Does the President receive benefits (pension, security etc.) after leaving office?</b>	No benefits	Entitled to benefits	Entitled to benefits
<b>Who takes over?</b>	Deputy President	Speaker, until NA designates another member	Deputy President
<b>How is the vacancy filled?</b>	Within 30 days, the Chief Justice presides over the election of new President	Within 30 days, the Chief Justice presides over the election of new President	Within 30 days, the Chief Justice presides over the election of new President
<b>May MPs vote however they want?</b>	The law does not force MPs to vote in a particular way. However, the tendency has been for MPs 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 votes 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.		n/a

How is the President removed from office?	Impeachment	Motion of no confidence	Resignation
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Does voting on the election of the President happen in a secret ballot?	Yes, the President is elected by secret ballot.	n/a
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.	n/a
Has this rule been challenged before?	<ul style="list-style-type: none"> <li>• 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.</li> <li>• During the 2015/16 review of the Rules of Parliament, several parties suggested that the Rules provide that a Motion of no Confidence be voted by secret ballot (<a href="#">see EFF proposal</a>). This was not accepted by the majority party.</li> </ul>	n/a
Is it nevertheless legally possible for a secret ballot to happen on 18 April?	Yes, the National Assembly itself may 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.	n/a
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 that vote in favour are undemocratic.	n/a