

## **The mechanics of getting rid of Zuma**

**13 February 2018**

The ANC has at last taken the political decision to get rid of Jacob Zuma. This has taken a long time. The decision that he is recalled was delivered to him this morning; ironically by two of his staunchest erstwhile allies, Ace Magashule and Jessie Duarte. It must have been a case of swallowing bitter pills all round.

However, true to his personality and consistent with past behaviour, all indications are that Zuma has refused to go voluntarily. If he does not go, he will have to be removed against his will. What are the options for doing that?

The first point to note is that internally the ANC is impotent if Zuma refuses to step down. Rule 12.2.21.1 of the ANC's constitution empowers the NEC to "recall any public representative", but what if that representative refuses to oblige? The ANC can apply moral persuasion, but not much more. It must then turn to the public body where that representative serves and deal with the matter there. If Zuma does not go voluntarily, the ANC will have to turn to Parliament, more specifically the National Assembly, to get rid of Zuma.

There are two ways of getting rid of a SA president: a motion of no-confidence and impeachment and both processes take place in the National Assembly.

### **Impeachment**

There is much misunderstanding about impeachment – or as the Constitution puts it "Removal of President" (sec 89). The removal process requires that the president must be found guilty of a serious violation of the Constitution or the law; or serious misconduct; or inability to perform the functions of the office. This implies that charges must be drafted, evidence presented to a committee of the National Assembly and a recommendation made by that committee to the Assembly that the President is indeed guilty of transgressing sec 89. This is not a process that will be concluded in a day or two – it is more likely to take a few weeks.

In addition, a two-thirds majority of the members of the National Assembly must approve the recommendation. The Assembly has 400 members, so it will require 266 votes to impeach a president.

Apart from a lengthy process and the two-thirds bar, a serious impediment to impeachment is that rules to give effect to the above principles of sec 89 have not been written yet. The Constitutional Court, in the case brought by the EFF against Parliament, has ordered parliament to draft such rules, but that job has not been completed yet.

I therefore seriously doubt that this process will be used in the current *impasse* with Zuma. It is more likely that a motion of no confidence will be used to remove him.

### **Motion of no confidence**

A motion of no confidence is allowed in terms of sec 102 of the Constitution. It is much easier than impeachment as it requires only "a vote supported by the majority of its members". That means 201 votes and not 266 as with impeachment.

The process is also easier than impeachment in that Parliament does not first have to make a finding that the president committed a serious violation of the law; committed serious misconduct; or is unable to perform the functions of his office (the requirements of sec 89). One merely has to put the motion to the Assembly, debate it and vote. It can be done in an afternoon, as we saw last year. Much easier than impeachment.

### **Consequences of motion of no confidence**

A successful motion against the president requires that he, the deputy-president and all members of the Executive (i.e. cabinet and deputy ministers) must resign. Thus dep-pres Ramaphosa, together with the 71 cabinet ministers

and deputy ministers, will have to step down. In practice the ministers will probably all stay on in an acting capacity until the newly elected president has appointed a new cabinet.

The Speaker of Parliament will then act as president until the Assembly elects from its ranks a new president (sec 90(1)(d)). The Chief Justice must fix a date for parliament to convene and conduct such an election and it cannot be more than 30 days after the vacancy arose (sec 86(3)). The person so elected must assume office as president within 5 days of his/her election (sec 87).

### Parliament carries on

A successful motion of no confidence does not dissolve Parliament. It carries on with its duties, the Chief Justice determines the date on which it must convene to elect a new president and life goes on. Members will of course be distracted and a bit pre-occupied .....

### Ramaphosa can still serve two terms

Cyril Ramaphosa's election now will not influence the two terms that he can serve (sec 88(2)). The section is quite clear: "when a person is elected to fill a vacancy in the Office of President, the period between that election and the next election of a President is **not regarded as a term.**" (my emphasis). So Ramaphosa could be president for 11 years and a bit – from now till 2029 (assuming the ANC wins future elections and he is re-elected as ANC president).

### Dissolution of Parliament

Yesterday the opposition parties in parliament formed a united front and decided to ask for the dissolution of the National Assembly and for elections to be held.

The Assembly can adopt a resolution by the majority of its members (i.e. 201 of 400 members) to dissolve. The President must then issue a notice to dissolve Parliament, provided three years have passed since the Assembly was elected (sec 50).

Since the last elections were in 2014, the three year test is met. So the Assembly can decide on its own accord to dissolve and the President must then issue a notice of dissolution (sec 50(1)). However, if the ANC does not support the motion, it will not meet the bar of "a majority of its members" (i.e. 201 votes) and the motion will fail. The Opposition parties on their own do not have enough votes to force a dissolution.

Clearly they are busy with their own contribution to getting Zuma out (piling pressure on the ANC) rather than with a viable strategy to get Parliament dissolved.

### What about benefits

Sec 89 is very clear – a person who is impeached forfeits all benefits and may not serve in another public position.

A motion of no confidence does not have that consequence – it is treated in the same way as a resignation and the benefits that apply will be as for a resignation. Whether Zuma resigns or is forced out through a motion of no confidence will make no difference to his retirement package.

### So What? - Two possible timelines

- The ANC has conveyed to Zuma the recall decision. Should he oblige, the issue can be resolved fairly quickly and country can have a new president by the end of this week.
- Should he not oblige, which looks fairly certain, the motion of no confidence route must then be traversed. That will take a bit longer.
- Currently the EFF's motion of no confidence is scheduled for Thursday the 22<sup>nd</sup>. But the ANC would be very reluctant to vote in favour of an opposition sponsored motion of no confidence. They will thus have to table their own motion with the Speaker of the National Assembly – say on Thursday this week.
- In the normal course of events a debate on that motion can take place early next week, say Tuesday the 20<sup>th</sup>.

(Parliament normally meets from Tuesday till Thursday). The Speaker can however schedule it for Monday, or even over the weekend (she has the discretion).

- Once the motion is adopted (say by Tuesday evening the 20<sup>th</sup>) the Chief Justice can call a session of the National Assembly for Wednesday or Thursday to elect a new president. The new president can be sworn in the same day.
- Under this timeline SA will have a new president towards the middle/end of next week.
- The first time line (Zuma going voluntarily) suggests that the budget, scheduled for Wednesday the 21<sup>st</sup>, can still be delivered.
- The second time line (Zuma must be forced out) suggests it will be quite a rush to get everything done before next Wednesday; the budget may have to be postponed by a day or two. That in itself is not a train smash; we will see over the next 48 hours.