

Two ways to oust a President

Anton Katz SC examines two legal routes – a motion of no confidence and impeachment – to the removal of a President in an article on the [Daily Maverick](#) site. Noting different processes and consequences apply to no confidence and impeachment motions, Katz says for a motion of no confidence to pass a majority of members of the National Assembly must support it. If the motion succeeds the President and all members of the Cabinet, including the Deputy President, must resign. Katz says two consequences of a successful motion are of interest. **First, unlike a successful impeachment process, the President retains all the benefits and rights of a former President**, such as the hefty pension he or she would receive, and may serve in public office in the future. Impeachment may and usually does have a different result. Impeachment requires two thirds of the members of the National Assembly to support a vote. This may only occur in three situations: First, if he or she commits a serious violation of the Constitution or the law; second, if he commits serious misconduct; and third, if he is unable to perform the functions of the office. Removal on the first two grounds of impeachment results in the loss of all benefits of the President's office. Katz, notes, too, that in an impeachment situation it is only the President who is removed, not the entire Cabinet.

Katz also questions the lawfulness of the ANC 'recalling' a President as it did in the case of President Thabo Mbeki. He was 'recalled' by the majority party, and simply resigned. Was that lawful or did it require the members of the National Assembly to pass a resolution, he asks in the [Daily Maverick](#) analysis. Should the National Assembly vote Zuma out of office, who acts in his place is determined by which legal process was employed. But what surely cannot be lawful is for a political party to simply 'recall' the President, argues Katz. He notes this may be of crucial importance in the future. There is the obvious possibility of coalition government in the future. Let's say three parties each win 30% of the popular vote; and the National Assembly as part of a political deal elects a person from a small party which won 10% of the vote. Katz questions whether the Constitution allows for a small party on its own to recall the President. If Jacob Zuma one day decided he wanted to retire to Nkandla could he simply make an appearance on national television and announce his 'retirement' as President? Again, Katz says he doubts it. **It seems the Constitution has given both the power to elect the President and the power to remove and replace the President to the National Assembly.** Even if the people of SA conclude that it is time for Jacob Zuma to leave the Union Buildings it is necessary that the removal be exacted in a lawful and constitutional process. The rule of law and a society based on constitutional values demands no less.