

CHAPTER 5

THE PRESIDENT AND NATIONAL EXECUTIVE

83. The President

The President –

- (a) is the Head of State and head of the national executive;
- (b) must uphold, defend and respect the Constitution as the supreme law of the Republic; and
- (c) promotes the unity of the nation and that which will advance the Republic.

84. Powers and functions of President

- (1) The President has the powers entrusted by the Constitution and legislation, including those necessary to perform the functions of Head of State and head of the national executive.
- (2) The President is responsible for –
 - (a) assenting to and signing Bills;
 - (b) referring a Bill back to the National Assembly for reconsideration of the Bill's constitutionality;
 - (c) referring a Bill to the Constitutional Court for a decision on the Bill's constitutionality;
 - (d) summoning the National Assembly, the National Council of Provinces or Parliament to an extraordinary sitting to conduct special business;
 - (e) making any appointments that the Constitution or legislation requires the President to make, other than as head of the national executive;
 - (f) appointing commissions of inquiry;
 - (g) calling a national referendum in terms of an Act of Parliament;
 - (h) receiving and recognising foreign diplomatic and consular representatives;

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- (i) appointing ambassadors, plenipotentiaries, and diplomatic and consular representatives;
- (j) pardoning or reprieving offenders and remitting any fines, penalties or forfeitures; and
- (k) conferring honours.

[General Note: Honourable tributes instituted in Government Gazette 24155 of 6 December, 2002 and Government Gazette 25213 of 25 July, 2003].

85. Executive authority of the Republic

- (1) The executive authority of the Republic is vested in the President.
- (2) The President exercises the executive authority, together with the other members of the Cabinet, by –
 - (a) implementing national legislation except where the Constitution or an Act of Parliament provides otherwise;
 - (b) developing and implementing national policy;
 - (c) co-ordinating the functions of state departments and administrations;
 - (d) preparing and initiating legislation; and
 - (e) performing any other executive function provided for in the Constitution or in national legislation.

86. Election of President

- (1) At its first sitting after its election, and whenever necessary to fill a vacancy, the National Assembly must elect a woman or a man from among its members to be the President.
- (2) The Chief Justice must preside over the election of the President, or designate another judge to do so. The procedure set out in Part A of Schedule 3 applies to the election of the President.

[Sub-s. (2) substituted by s. 6 of Constitution Sixth Amendment Act of 2001].

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- (3) An election to fill a vacancy in the office of President must be held at a time and on a date determined by the Chief Justice, but not more than 30 days after the vacancy occurs.

[Sub-s. (3) substituted by s. 6 of Constitution Sixth Amendment Act of 2001].

87. Assumption of office by President

When elected President, a person ceases to be a member of the National Assembly and, within five days, must assume office by swearing or affirming faithfulness to the Republic and obedience to the Constitution, in accordance with Schedule 2.

88. Term of office of President

- (1) The President's term of office begins on assuming office and ends upon a vacancy occurring or when the person next elected President assumes office.
- (2) No person may hold office as President for more than two terms, but 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.

89. Removal of President

- (1) The National Assembly, by a resolution adopted with a supporting vote of at least two thirds of its members, may remove the President from office only on the grounds of –
 - (a) a serious violation of the Constitution or the law;
 - (b) serious misconduct; or
 - (c) inability to perform the functions of office.
- (2) Anyone who has been removed from the office of President in terms of subsection (1)(a) or (b) may not receive any benefits of that office, and may not serve in any public office.

90. Acting President

- (1) When the President is absent from the Republic or otherwise unable to fulfil the duties of President, or during a vacancy in the office of President, an office-bearer in the order below acts as President:
 - (a) The Deputy President.
 - (b) A Minister designated by the President.
 - (c) A Minister designated by the other members of the Cabinet.
 - (d) The Speaker, until the National Assembly designates one of its other members.
 - (2) An Acting President has the responsibilities, powers and functions of the President.
 - (3) Before assuming the responsibilities, powers and functions of the President, the Acting President must swear or affirm faithfulness to the Republic and obedience to the Constitution, in accordance with Schedule 2.
 - (4) A person who as Acting President has sworn or affirmed faithfulness to the Republic need not repeat the swearing or affirming procedure for any subsequent term as Acting President during the period ending when the person next elected President assumes office.
- [Sub-s. (4) added by s. 1 of Constitution First Amendment Act of 1997].

91. Cabinet

- (1) The Cabinet consists of the President, as head of the Cabinet, a Deputy President and Ministers.
- (2) The President appoints the Deputy President and Ministers, assigns their powers and functions, and may dismiss them.
- (3) The President –
 - (a) must select the Deputy President from among the members of the National Assembly;
 - (b) may select any number of Ministers from among the members of the Assembly; and
 - (c) may select no more than two Ministers from outside the Assembly.

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- (4) The President must appoint a member of the Cabinet to be the leader of government business in the National Assembly.
- (5) The Deputy President must assist the President in the execution of the functions of government.

92. Accountability and responsibilities

- (1) The Deputy President and Ministers are responsible for the powers and functions of the executive assigned to them by the President.
- (2) Members of the Cabinet are accountable collectively and individually to Parliament for the exercise of their powers and the performance of their functions.
- (3) Members of the Cabinet must –
 - (a) act in accordance with the Constitution; and
 - (b) provide Parliament with full and regular reports concerning matters under their control.

93. Deputy Ministers

- (1) The President may appoint –
 - (a) any number of Deputy Ministers from among the members of the National Assembly; and
 - (b) no more than two Deputy Ministers from outside the Assembly, to assist the members of the Cabinet, and may dismiss them.
- (2) Deputy Ministers appointed in terms of subsection (1)(b) are accountable to Parliament for the exercise of their powers and the performance of their functions.

[S. 93 substituted by s. 7 of Constitution Sixth Amendment Act of 2001].

94. Continuation of Cabinet after elections

When an election of the National Assembly is held, the Cabinet, the Deputy President, Ministers and any Deputy Ministers remain competent to function until the person elected President by the next Assembly assumes office.

95. Oath or affirmation

Before the Deputy President, Ministers and any Deputy Ministers begin to perform their functions, they must swear or affirm faithfulness to the Republic and obedience to the Constitution, in accordance with Schedule 2.

96. Conduct of Cabinet members and Deputy Ministers

- (1) Members of the Cabinet and Deputy Ministers must act in accordance with a code of ethics prescribed by national legislation.
- (2) Members of the Cabinet and Deputy Ministers may not –
 - (a) undertake any other paid work;
 - (b) act in any way that is inconsistent with their office, or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests; or
 - (c) use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person.

97. Transfer of functions

The President by proclamation may transfer to a member of the Cabinet –

- (a) the administration of any legislation entrusted to another member; or
- (b) any power or function entrusted by legislation to another member.

98. Temporary assignment of functions

The President may assign to a Cabinet member any power or function of another member who is absent from office or is unable to exercise that power or perform that function.

99. Assignment of functions

A Cabinet member may assign any power or function that is to be exercised or performed in terms of an Act of Parliament to a member of a provincial Executive Council or to a Municipal Council. An assignment –

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- (a) must be in terms of an agreement between the relevant Cabinet member and the Executive Council member or Municipal Council;
- (b) must be consistent with the Act of Parliament in terms of which the relevant power or function is exercised or performed; and
- (c) takes effect upon proclamation by the President.

100. National intervention in provincial administration

- (1) When a province cannot or does not fulfil an executive obligation in terms of the Constitution or legislation, the national executive may intervene by taking any appropriate steps to ensure fulfilment of that obligation, including –
 - (a) issuing a directive to the provincial executive, describing the extent of the failure to fulfil its obligations and stating any steps required to meet its obligations; and
 - (b) assuming responsibility for the relevant obligation in that province to the extent necessary to –
 - (i) maintain essential national standards or meet established minimum standards for the rendering of a service;
 - (ii) maintain economic unity;
 - (iii) maintain national security; or
 - (iv) prevent that province from taking unreasonable action that is prejudicial to the interests of another province or to the country as a whole.

[Sub-s. (1) amended by s. 2 (b) of Constitution Eleventh Amendment Act of 2003].

- (2) If the national executive intervenes in a province in terms of subsection (1)(b) –
 - (a) it must submit a written notice of the intervention to the National Council of Provinces within 14 days after the intervention began;
 - (b) the intervention must end if the Council disapproves the intervention within 180 days after the intervention began or by the end of that period has not approved the intervention; and

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- (c) the Council must, while the intervention continues, review the intervention regularly and may make any appropriate recommendations to the national executive.

[Sub-s. (2) substituted by s. 2 (c) of Constitution Eleventh Amendment Act of 2003].

[S. 100 amended by s. 2 (a) of Constitution Eleventh Amendment Act of 2003].

- (3) National legislation may regulate the process established by this section.

101. Executive decisions

- (1) A decision by the President must be in writing if it –
 - (a) is taken in terms of legislation; or
 - (b) has legal consequences.
- (2) A written decision by the President must be countersigned by another Cabinet member if that decision concerns a function assigned to that other Cabinet member.
- (3) Proclamations, regulations and other instruments of subordinate legislation must be accessible to the public.
- (4) National legislation may specify the manner in which, and the extent to which, instruments mentioned in subsection (3) must be –
 - (a) tabled in Parliament; and
 - (b) approved by Parliament.

102. Motions of no confidence

- (1) If the National Assembly, by a vote supported by a majority of its members, passes a motion of no confidence in the Cabinet excluding the President, the President must reconstitute the Cabinet.
- (2) If the National Assembly, by a vote supported by a majority of its members, passes a motion of no confidence in the President, the President and the other members of the Cabinet and any Deputy Ministers must resign.