

South Africa: Central Institutions

Executive Branch

South Africa officially has a *parliamentary system* of executive government, with the leader of the majority party in parliament elected as prime minister. There are some differences between this system and what is normally considered parliamentary institutions, however. The prime minister is known as a *president*, and has both head of state and head of government powers. The president serves a term of three to five years, dependent upon parliament.

Powers of the President:

- The president selects a *Cabinet* of ministers to oversee various areas of government, both foreign and domestic;
- Introduction of proposed legislation into the legislature;
- Signing or veto of legislation passed by the legislature;
- Can also send legislation to the public as national referenda;
- Can dissolve the National Assembly (lower house), as long as a majority of the NA supports this and three years have passed since the last election;
- If the president has concerns about the constitutionality of legislation before it is signed, he/she can forward it to the Constitutional Court (as in France);
- The president appoints judges of the Constitutional Court and lower courts, after consultation with the Judicial Services Commission;
- As head of state, the President is the representative of South Africa to the outside world, and commander in chief of the armed forces..

Presidents can be removed from office before elections through a vote of no confidence by 2/3 of the National Assembly, and only for legal/constitutional violations, abuse of power or other misconduct, or inability to perform the office's functions. This makes the presidency a stronger position than in other parliamentary systems, where parties can force prime ministers to step down within the party. The executive-legislative relationship in this state has particular safeguards to ensure that the two branches are actually separate and balanced. So far, the NA has not issued a vote of no confidence, nor has the president had to dissolve the NA.

Legislative Branch

South Africa has a bicameral legislature, with the *National Assembly (NA)* serving as the more powerful "lower house," and the *National Council of Provinces (NC)* serving as the upper house. The NA currently has 400 members, and unless it is dissolved early the members serve five-year terms. The primary powers of the NA are:

- Election and removal of the president;
- Preparation, discussion, amendment and voting of legislation;
- Consideration of the national budget;
- Discussion of the current state of the nation through a weekly "question time," where the president and cabinet are asked by NA members about any issue they wish to discuss.

The National Council is the equivalent of the U.S. Senate, with members representing the various provinces within South Africa. South Africa has nine provinces, whose legislatures appoint 10 delegates each to the NC, in the same party proportions as in each regional legislature. Provincial premiers (or their chosen representatives) are automatically leaders of

delegations. There is also a delegation representing the association for local governments in SA, but this does not vote. There is no set term for members of delegations, as they are party representatives in the council; party composition shifts during the provincial elections that happen every five years, but parties may decide to keep members in positions after elections or remove them, and if there is a shift in the party composition of the regional legislature, new seats may go to other parties requiring a shuffle. All NC members must be regional legislature members (remember France?). The NC's primary powers:

- Review, discuss and pass legislation, depending on the subject matter of the bills;
- National legislation that does not directly affect the provinces (defense, national security) is reviewed by the NC, with a simple majority of the council members required to pass bills.
- Bills that directly affect the provinces are considered and voted upon by delegation (so each delegation has one vote). A simple majority of five out of nine delegations is needed to pass these bills. If the NC refuses to pass a bill that affects domestic policy, the NA may override them with a 2/3 vote; more often, the two bodies create a mediation committee to “hash out the differences” in a bill before it is sent to the president to sign. If a bill cannot be accepted by this committee in 30 days, it will lapse.

The Judiciary

Thanks to its convoluted history, South Africa has one of the most complicated legal systems in existence. This is because compared to other countries considered in this course, SA has a combination of *common* and *civil* law in its legal system.

In order to make a real transition within the legal system, and to ensure that the 1996 constitution would fulfill the goals of a democratic regime, the *Constitutional Court (CC)* was founded in 1994.

The CC is staffed through a Judicial Services Commission, made up of members chosen by the president, members chosen by the National Assembly, the Chief Justice of the Supreme Court of Appeal, the actual president of the CC, and a representative of the regional courts. The Judicial Services Commission compiles a list of possible candidates from which the president may select justices, a major change from the old regime, when the president could make these choices without any consultation. CC justices are appointed for terms of twelve years, or until they are 70 years old. All CC justices are legal professionals, with at least four of them required to be actual practicing judges at the time of appointment.

The CC was given very large (and very vague) powers of constitutional review, including both review of legislation before passage, legislation after passage, and constitutional review of cases during and after they are heard in lower courts. Lower courts may consider the constitutional issues of cases before them, but their decisions are not valid until the CC also looks over the case and “certifies” it.

In terms of who can approach the CC, only the president can approach the CC with legislation in process; the NA and other political players can approach only after laws are passed. Ordinary citizens may approach the CC with constitutional issues related to legislation after passage, but the CC has been very strict about accepting these cases and only will do so if there is a major constitutional issue involved, or if it “is in the interest of justice.” Other cases will be sent to lower courts, or to the Supreme Court of Appeal.