

# CONSTITUTION WATCH 9/2017

[20th November 2017]

## After Impeachment, What Then?

### Introduction

At its extraordinary meeting yesterday, the Central Committee of the ruling ZANU-PF party resolved that if President Mugabe did not resign before midday today, the party's chief whip should institute proceedings in Parliament for his "recall", i.e. for his impeachment in terms of section 97 of the Constitution. That deadline has passed and the President has not submitted his resignation to the Speaker of Parliament. An impeachment motion has accordingly been filed with the papers office in Parliament.

In Constitution Watch 8/2017 of the 19th November we outlined the procedure for impeaching a President under section 97 of the Constitution. In this Constitution Watch we shall indicate what can and should be done after Parliament has completed impeachment proceedings and resolved that the President should be removed from office.

*[We shall not speculate on whether the movers of the motion will be able to muster the two-thirds majority of both Houses needed to impeach Mr Mugabe. That is a political question. We simply point out that ZANU-PF has 249 out of a total current membership of 347 members of the Senate and the National Assembly combined, and can normally count on the votes of the 18 Senator chiefs. See attachment for details.]*

### Effect of Impeachment : Removal of President

Once the Senate and the National Assembly, sitting jointly, have passed a resolution that the President should be removed from office, he immediately ceases to hold office in terms of section 97(3) of the Constitution. The passing of the resolution removes him from office without further ceremony or notice.

### Who Takes Over?

#### **What the Constitution says**

If the President ceases to hold office, the question of who takes over is determined by paragraph 14 of the Sixth Schedule to the Constitution. Under this paragraph the Vice-President takes over until the President's political party – i.e. ZANU-PF – nominates a new President and notifies the Speaker of its choice. The party has 90 days within which to make its nomination. The nominee is then sworn in as President and holds office until the next general election.

#### **What is likely to happen in practice**

In trying to work out a likely scenario we must remember that at its meeting yesterday the ZANU-PF Central Committee declared Mr Mnangagwa to be the party's candidate for President. So the party does not have to wait for its congress in December to make a nomination. It has already done so.

If therefore Parliament does resolve in terms of section 97 of the Constitution that Mr Mugabe should be removed from office, the consequences will be:

- Mr Mugabe immediately ceases to hold office as President.
- Mr Mphoko, the sole Vice-President, will take over as Acting President. The fact that Mr Mphoko may be in detention or outside the country does not matter: his assumption of office will be automatic, and will not depend on his taking an oath of office.

[If Mr Mphoko is persuaded to resign or is impeached this will not happen, because he will cease to be Vice-President upon his resignation or the passing of the impeachment motion.]

Even if Mr Mphoko does not resign or is not impeached, his term of office as Acting President may be fleeting, and will depend on how soon ZANU-PF can notify the Speaker that it has nominated Mr Mnangagwa as Mr Mugabe's successor. This may be no longer than the time it takes for the party's Chief Whip to walk to the Speaker's chair and hand in the nomination notice. Once that is done, Mr Mnangagwa will become President [*not acting President*] and will assume office when he is sworn in by the Chief Justice in terms of paragraph 14(5) of the Sixth Schedule to the Constitution.

### **What Happens Thereafter**

The new President will hold office until the next general election, which should be held not later than the 23rd August 2018.

Upon the assumption of office by the new President – i.e. when he is sworn in – all current Ministers and Deputy Ministers will go out of office in terms of section 108(1)(c) of the Constitution. They will however be eligible for re-appointment when the new President appoints his own Ministers. It is hoped that he will reduce the number in what has been an unnecessarily large Cabinet.

And what happens to Mr Mugabe? That remains to be seen.

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