



# **Robert Mugabe Way: Constitutional Amendments and ZANU PF's 6<sup>th</sup> National Peoples' Congress**

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## **Executive Summary**

The State Constitution provides that if President Mugabe dies or retires while in office, a nominee of ZANU PF will serve out his remaining term. The nominee so appointed as State President is likely to be whoever ZANU PF chooses to take over as President and First Secretary of the Party. Thus the manner in which the ZANU PF Party President is chosen, is a matter of national, and not merely party, interest.

At ZANU PF's 6<sup>th</sup> National People's Congress amendments were purportedly made to the Party Constitution which changed the way in which all members of the Party Presidium, including the President, are to be appointed. The Presidium comprises the President, two Vice-Presidents and National Chairman. However, quite evidently, these amendments were not validly made. The Central Committee may not initiate amendments to the Party Constitution as it claimed to do. Proposed amendments may only be initiated by an organ of the party or an individual member, if the member can garner the support of 50 other members. In each case the proposed amendments must be sent to a Provincial Executive Council. A Provincial Executive Council may itself propose an amendment. The Provincial Executive Council must submit the amendment to the party's Secretary for Administration three months before the meeting of the Central Committee at which the amendment is to be considered.<sup>1</sup> The Secretary for Administration must then circulate the proposed amendment to the Provinces at least two months before the Central Committee meeting. None of these procedures were followed.

However, rather oddly, immediately after Congress ratified these amendments it, proceeded to elect Mugabe as Party President (a post within the party's Central Committee) in terms of the unamended Constitution and in terms of provisions which had but eight minutes previously been repealed. Accordingly, if the amendments are valid, Mugabe's appointment cannot be, and vice versa. A further anomaly arose in that Mugabe's appointment was made before the dissolution of the Central Committee which precedes the election of new members, including the Presidium, at each five year Congress. When the Central Committee was dissolved all members of the Presidium, including the just appointed Mugabe, technically lost their positions. In terms of the ZANU PF Constitution all members of the Presidium of the Central Committee had to be reappointed after that body's dissolution. There was no re-election of Robert Mugabe. Mugabe is thus not properly appointed as ZANU PF President, either because he was not appointed in terms of the amended Party Constitution (if those amendments were valid) or because he lost his post when the Central Committee was dissolved.

The two Party Vice-Presidents are likewise not validly appointed. This is either because the amended procedures in terms of which they were appointed (i.e. providing for appointment by Mugabe and not election by Congress as previously) are invalid or because they were appointed by a person who had no authority to do so – i.e. by Mugabe who had himself not been properly appointed as Party President.

It is also a requirement of the ZANU PF Constitution that there be a National Chairman who has numerous functions in terms of the party's Charter. It is not open to Mugabe to simply unilaterally amend the Party Constitution to do away with this post, as he claimed to do.

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<sup>1</sup> Ordinarily the Central Committee meets once every three months (section 34(7)).

As a result, none of the ZANU PF Presidium has been properly appointed and these appointments are legally void. This is largely a matter for ZANU PF. However, should it become necessary for ZANU PF to nominate a replacement for Zimbabwe's State President, the party may claim to do so in terms of provisions of its Constitution which are clearly invalid and which have not been properly introduced. This will render the succession process messy, subject to legal challenge and will have a destabilising effect upon the country.

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*"..every member of the Politburo must be thoroughly familiar with the provisions of our party's constitution so they conduct their responsibilities within the context of that constitution" – statement by President Robert Mugabe as relayed by party spokesman Simon Khaya Moyo*

### Introduction

At a Southern African Political Economy Series (SAPES), on the 22<sup>nd</sup> January, 2015 convened to discuss the aftermath of ZANU PF's 6<sup>th</sup> National People's Congress, ZANU PF Politburo member, Jonathan Moyo, speaking from the floor and responding to speakers' comments that ZANU PF does not abide by its own Party Constitution, stated:

*It makes us, those who are members of Zanu PF, feel extremely uncomfortable when non-members of our party pose as experts of our party, even experts of our constitution. I don't think you have a right to become a champion in interpreting the provisions of the Zanu PF constitution and present yourselves as better than us in understanding it.<sup>2</sup>*

However, the notion that ZANU PF's Party Constitution is a matter for members of ZANU PF alone is misplaced. This is because the State Constitution tacitly cross-references ZANU PF's Party Constitution in provisions, which attend to the contingency of the State President's death or retirement. Thus Paragraph 14(1) of Part 4 of the Sixth Schedule to the State Constitution:<sup>3</sup>

*if the person elected President ... dies, resigns or is removed from office—*

*(a) ...*

*(b) the vacancy in the office of President must be filled by a nominee of the political party which the President represented when he or she stood for election.*

The political party, in the present case, ZANU PF, must notify the Speaker of Parliament of the nominee's name within 90 days after the vacancy occurred. The Constitution does not supply any guidance as to how the Speaker is to determine whether any nominee advanced in this manner is in fact the true nominee of the party and who within the party is entitled to articulate the party's position on the matter. ZANU PF may not speak with one voice on the issue, and, if the party is divided, it may not be possible for the Speaker to choose which of two camps is the genuine ZANU PF. It also may not be possible to resolve the issue within the constitutionally stipulated period of 90 days.

Furthermore, the manner in which the political party concerned is to determine such nominee is not stated. ZANU PF's Constitution does not deal specifically with the point. It is not beyond the

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<sup>2</sup> Moyo, Zhuwao Gang Up Against Mandaza 22.01.15 <http://www.newzimbabwe.com/news-20100->

<sup>3</sup> This forms part of transitional provisions in the new State Constitution which have a life span of 10 years. The procedure thereafter is different.

bounds of possibility that Mugabe might retire as State President, but not as Party President. He might then decide, as President and First Secretary of the Party, to submit the nominee for his replacement as State President to the Speaker, or direct the Secretary for Administration within the party to do so. It is unlikely that anyone within the party or the Speaker would challenge his authority to do so.

However, if Mugabe were to retire as both State and Party President, or were to die in office, matters become more complex. While there would be nothing within ZANU PF's Constitution to prevent the party's Politburo or Central Committee determining the nominee, it is reasonable to assume that the party would, or should, follow the procedures set out in the Party Constitution for the appointment of a new Party President, and once those procedures had been completed, to forward the name of the successful candidate to the Speaker.

Accordingly, the procedures set out in ZANU PF's Constitution for the appointment of its Party President will, in this event, determine the next president of the country. For this reason, those procedures are of interest, not only to members of ZANU PF (as claimed by Jonathan Moyo), but to the country as a whole. The State Constitution obviously intended that any nominee advanced by ZANU PF must be one who has been *properly and lawfully* so advanced. Thus, compliance with ZANU PF's Constitution in this regard is a matter in which every Zimbabwean has an interest and in respect of which every Zimbabwean would have *locus standi* to bring proceedings before the Constitutional Court if party provisions are not duly followed when selecting the nominee.

For the same reasons, any changes or amendments made to the ZANU PF Constitution which impact on these procedures are likewise of interest to the general citizenry, and not only to the ZANU PF membership. Consider, for example, if constitutional amendments were purportedly made to the ZANU PF Constitution which affect the manner in which ZANU PF is to select its nominee, should the need arise to replace President Robert Mugabe, and such amendments were not validly effected. This would mean that the name of any nominee submitted to the Speaker determined in terms of an invalid constitutional amendment would be subject to legal challenge, resulting in considerable turmoil for the succession process.

This is precisely the situation which has arisen as a result of purported amendments to the ZANU PF Party Constitution made at the December 2014 Congress. This paper outlines why this is so.

### **Procedural Problems with Purported Amendments to the Party Constitution**

At a few minutes before 3.00 p.m.<sup>4</sup> on the 6<sup>th</sup> December, 2014 ZANU PF's Secretary for Legal Affairs, Emmerson Mnangagwa, took to the Congress podium and announced:

*I stand here to present proposed amendments to our Constitution in some areas; in others we have updated the Constitution, and the Central Committee, in terms of the Constitution, has approved the amendments subject to ratification by Congress. It is now my duty to present those amendments for ratification by Congress.*

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<sup>4</sup> The time is taken from the "Live Updates" published on the *Herald* newspaper website from 02.12.14.

The proceedings of the next few hours were presented by party officials, Mnangagwa himself and then National Chairman,<sup>5</sup> Simon Khaya Moyo, as being motivated by legal imperative and being in precise accordance with the dictates of the Party Constitution. The reality was very different. The “we” in Mnangagwa’s statement quoted above concealed massive procedural deficits in the process by which the Party Constitution was purportedly amended and then presented for ratification. Who after all was the “we” referred to, and by what authority did “they” act in placing the proposed amendments before the Central Committee<sup>6</sup>?

Section 21 of the ZANU PF Constitution sets out the powers of Congress. One such power given is that of amending the Party Constitution. Subsection 21(9) provides that “*Congress shall have the power to amend the party Constitution*”. However, it is clear that section 21 is intended merely to enumerate the powers of Congress and not to establish such powers, accomplished by other Articles in the Constitution. The primary power to amend the Constitution in fact lies with the Central Committee in terms of Article 30 Section 253, which is as follows:

*“The power to amend the Constitution shall vest in the Central Committee subject to ratification by Congress”.*

A two-thirds majority of delegates of Central Committee present and voting is required for the adoption by the Central Committee of the proposed amendment to the Constitution. A similar two-thirds majority of delegates at Congress is required to ratify the amendments proposed by the Central Committee. Congress’ power to amend the Party Charter exists only in the sense of ratifying or declining amendments advanced by the Central Committee for ratification at Congress.

It is important to note, however, that the Central Committee may not initiate amendments to the Constitution. This process is provided for in Section 253, which allows proposed amendments to be initiated by an individual member, if the member can garner the support of 50 other members. The proposed amendment must then be submitted to the District Co-ordinating Committee<sup>7</sup> for onward transmission to the Provincial Executive Council. A proposal to amend the Constitution may also be made by an organ of the party, whereupon it must be submitted to the next highest organ of the party for onward transmission to the Provincial Executive Council. A Provincial Executive Council may itself propose an amendment. In all cases, the Provincial Executive Council must submit the amendment to the party’s Secretary for Administration three months before the meeting of the Central Committee at which the amendment is to be considered<sup>8</sup>, The Secretary for Administration must circulate the proposed amendment to the provinces at least two months before the Central Committee meeting.

It is readily apparent that the amendments put to the Congress by Mnangagwa were a long way from meeting these procedural requirements. The amendments were not initiated by any person or organ authorised to do so; they were not transmitted to the Secretary for Administration through a Provincial Executive Council, nor submitted to the Secretary for Administration at all, nor circulated to the provinces two months ahead of the Central Committee meeting which

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<sup>5</sup> The term “chairman” rather than chairperson is used in the ZANU PF Party Constitution, though “chairperson” is used in respect of other organs of the party.

<sup>6</sup> If that is what in fact happened.

<sup>7</sup> Purportedly disbanded, but see below.

<sup>8</sup> Ordinarily the Central Committee meets once every three months (section 34(7)).

allegedly approved them. It is not known, and no minutes were presented to indicate as much, whether a two-thirds affirmative vote of the Central Committee for the amendments had been obtained as required.<sup>9</sup>

Although Mnangagwa and Khaya Moyo claimed to be acting with procedural scrupulousness by presenting the amendments to Congress for ratification, even this process was deeply flawed. Mnangagwa appears to have read out select changes to the Constitution for ratification. Much of the updating (possibly amending other affected sections) seems to have been omitted.<sup>10</sup> The Congress was then asked to, and did, ratify *all* the changes by “acclamation”<sup>11</sup> and not by the two-thirds majority which the Constitution requires. The Central Committee thus approved unprocedural amendments. The same were solemnly presented to Congress, and Congress delegates adopted them all by giving loud and enthusiastic approval to they knew not exactly what.

### **The Purported Amendments**

The first part of Mnangagwa’s address consisted of reading out extensive amendments to the preamble to ZANU PF’s Constitution for ratification. These amendments were of little import, embellishing the preamble with further detail pertaining to the armed struggle for independence. The substance of the later amendments submitted for ratification was, however, of profound importance, not only for ZANU PF, but also the country. Given the potentially far-reaching consequences of these amendments, it is quite remarkable that only two proposed amendments were reported in the press: these were the changes providing for the appointment of the Party Vice-Presidents by the Party President rather than election by Congress, and the expansion of the Central Committee from a stated 245<sup>12</sup> to 300 members.

The purported amendment changing the manner and procedure by which the Party President is to be elected, was received by seemingly disinterested delegates, passed without comment in the media, and was not reported in the press. Yet these are the procedures which may well govern, indirectly, the manner in which the next president of the country is selected. The fact that these purported amendments were procedurally flawed should thus be the cause for considerable concern. The purported amendments will also deeply affect the dynamics within ZANU PF around succession to the Presidency.

### **The Changes to the Manner in Which the Party President and Vice-Presidents are Appointed**

Prior to the purported amendments made at the Congress, the means by which the Party President was appointed was provided for in Article Seven, Section 32<sup>13</sup> of the Party

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<sup>9</sup> In fact, when calling upon Mnangagwa to present the amendments, the National Chairman stated that the amendments had merely been discussed in the Politburo and Central Committee.

<sup>10</sup> If this was not done then the Constitution contains several sections which do not make sense in light of the amendments, are obsolete or impliedly repealed.

<sup>11</sup> I.e. by those who approved making more noise than those who did not.

<sup>12</sup> While the unamended Constitution stated that the Central Committee is to comprise 245 members it then proceeded to set out a body of only 240 members.

<sup>13</sup> The provision was (before amendment) basically as follows: *There shall be a Central Committee which shall be the Principal organ of Congress and shall consist of 245 members as follows:- Four members being: President and First Secretary; Two Vice Presidents and Second Secretaries one of whom shall be a woman; and The*

Constitution as follows. An aspirant candidate had to secure nomination by six of the ten provinces. Provincial Co-ordinating Committees sat as electoral colleges for the purpose of determining the nominees. The names of the nominees were then forwarded to the five yearly Congress which, in terms of Section 32, then “directly” elected the President. In practice, from the time ZANU PF has been able to properly convene its Congresses to the present, only one candidate has been nominated by the provinces and presented for election by Congress – Robert Mugabe.

The amended process is as follows. A party presidential candidate need now secure the nomination of only *two* provinces. Once again the Provincial Co-ordinating Committees sit as electoral colleges for this purpose. However, rather than Congress electing the candidates, a nation-wide poll of members is taken by secret ballot. This election is to be supervised by a newly established ZANU PF Election Commission,<sup>14</sup> “*responsible for conducting elections to all organs of the party*” (including, therefore, the Central Committee of which the Presidency and Vice-Presidencies are part), taking over a role formerly played by the commissariat. The nine member Electoral Commission is to be appointed by the Party President.<sup>15</sup>

While the position pertaining to the appointment of the Vice-Presidents before the purported amendments was identical to that of the Party President - that is elected by Congress after nomination by at least six of the provinces - the change to the manner of their appointment is markedly different. They are not to be elected at all, but appointed by the Party President. The claimed justification for this was a supposedly belated (by 27 years) realisation that the Party Constitution ought to be brought into alignment with the 1987 Unity Accord between the then warring ZANU and ZAPU parties, and which provides:

*Zanu PF shall have two second secretaries and Vice-Presidents who shall be appointed by the First Secretary and President of Zanu PF.*<sup>16</sup>

It was also ostensibly claimed to be to ensure only one centre of power within the party.<sup>17</sup>

Section 32(1)<sup>18</sup> of the ZANU PF Constitution, as amended<sup>19</sup> now reads as follows:

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*National Chairman of the Party all of whom shall be elected by Congress directly upon nomination by at least six Provincial Co-ordinating Committees of the Party, meeting separately in Special Session called for that purpose.*

<sup>14</sup> In terms of a new section 269.

<sup>15</sup> The astute reader will immediately note that the body to supervise the election of the President, is itself to be appointed by the President. If, at that juncture, there is no incumbent, an intractable “chicken and egg” procedural problem develops, as in fact transpired.

<sup>16</sup> Clause 4. Interestingly, it is frequently claimed that it is a requirement of the Unity Accord that one Vice-President be a member, or former member, of ZAPU, and the practice of appointing a ZAPU cadre as National Chairman merely a “gentleman’s agreement”. In fact, as the quoted clause makes clear, there is no legal requirement that one Vice-President be from ZAPU and the practice is likewise merely a “gentleman’s agreement”. It should also be noted that it is also a requirement of the Unity Accord that *President Mugabe shall be First Secretary and President of Zanu PF* (clause 3). Accordingly, if the ZANU PF Constitution is to be aligned with the Unity Accord there is no need for electoral procedures to select the Party President as this is already been determined by the Accord.

<sup>17</sup> VPs Appointed • Mnangagwa, Mphoko Land Posts • 33-Member Politburo Named *The Herald* 11.12.14.

<sup>18</sup> It is uncertain whether the section number has changed or not.

<sup>19</sup> For the sake of brevity the adjective “purported” will be omitted henceforth but must be considered implied.

32. *There shall be a Central Committee which shall be the principal organ of the party in between Congress and shall consist of 300 members as follows:*

- (1) *Four (4) members being:-*
  - (a) *President and First Secretary nominated by at least two provinces and elected nationally by party members for his or her<sup>20</sup> probity, integrity and commitment to the party in its ideology, values, principles and policies.*
  - (b) *Two (2) Vice Presidents and Second Secretaries appointed in accordance with the Unity Accord by the President for their skill, experience, probity, integrity and commitment to the party ideology, values, principles and policies.*
  - (c) *The National Chairman of the party appointed by the President and First Secretary for his for her skill, experience, probity, integrity and commitment to the party ideology, values, principles and policies.<sup>21</sup>*

Procedures of the National Disciplinary Committee and related procedures, particularly those exercised through votes of no confidence, were also changed with the clear intention of giving legitimacy, *ex post facto*, to the purges of party members which had taken place ahead of the Congress. A new section 266 was added to the Constitution specifically to allow for votes of no confidence in respect of leaders in any party organ on various grounds, including a somewhat Stalinist one of being “disloyal or treacherous”. The penalty, if the vote of no confidence is passed on this basis, is expulsion from the party.<sup>22</sup>

### **The Abandonment of Constitutionality**

What occurred next in the proceeding of the Congress would have appeared to anyone who had already adhered to Mugabe’s enjoinder to “*be thoroughly familiar with the provisions of our party’s constitution*” to have been an attempt by Simon Khaya Moyo to cram as many violations of the Party Constitution into one hour as was conceivably possible. Emmerson Mnangagwa was called upon to have the pleasure of moving a motion, and Oppah Muchinguri to second the same, to elect Mugabe as Party President in terms of section 21(2)<sup>23</sup> of the Party Constitution. This section reads:

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<sup>20</sup> This deviates from the formula used below, omitting “skill and experience” as criteria, but this may merely be an omission by Mnangagwa when reading the amendments a task in which he showed himself to be surprisingly inarticulate and seemingly uncomfortable using English. This quotation is a transcript of the video footage of the Congress broadcast by ZTV, the amended ZANU PF Constitution not being generally available, even to members of the party.

<sup>21</sup> It is worth noting here that the amendment has the effect of removing the requirement that one of the Vice-Presidents be a woman considered to be an urgent and indispensable necessity in 2004. The pertinent clause previously read “*four members...being two Vice Presidents and Second Secretaries one of whom shall be a woman.*”

<sup>22</sup> No time period for readmission is given.

<sup>23</sup> This was announced as being section 24(4) of the Constitution but the different section numbering may have been occasioned by the amendment.

*Congress shall elect the President and First Secretary, two Vice Presidents and Second Secretaries and the National Chairman of the Party.*

As noted, section 21 does not establish, but only lists the powers of Congress. The power of Congress to appoint the President was established by section 32 and not section 21(2). But Mnangagwa was anxious to avoid reference to section 32: section 32 had just been amended “by acclamation” literally a mere eight minutes before to provide that the President was ***not to be elected by Congress***. Under the amended section 32, a candidate must be nominated by at two of the provinces, an Electoral Commission must supervise the election of the Party President, and the election must be by a poll of the party membership nationally. Section 21(2) had been expressly or impliedly repealed. However, at that stage Mugabe’s candidacy was unopposed, and, had an Electoral Commission been in place, it would have declared Mugabe duly elected without the need for a poll, there being only one candidate. But the possibility exists that Mugabe was unopposed under the new provisions because other candidates believed that they needed the support of six and not only two provinces.

The election of Mugabe thus proceeded in terms of the old Constitution - disingenuously and incorrectly under section 21(2). Section 21(2) provided that one power of Congress was to elect the President ***and*** the Vice-Presidents and National Chairman. This clause was implicitly or expressly removed and new procedures introduced in respect of all four posts referred to in the clause on account of the amended section 32. But it seems that the amendment was magically somehow not to apply immediately to Mugabe, but only to the Vice-Presidents and National Chairman, all of whom were now to be appointed by Mugabe and not elected by Congress.

The next remarkable event in the proceedings requires an appreciation of section 22(6) of the Party’s Constitution which provides:

*there shall be a Presidium consisting of the President and First Secretary, two Vice Presidents and Second Secretaries and the National Chairman, who shall preside over proceedings of Congress as directed by the President and First Secretary of the Party; provided that following a dissolution of the Central Committee immediately preceding the election of a new Central Committee in terms of Section 32 of this Constitution, the Presidium established under this section shall continue in office until the conclusion of the business of Congress.*

Congress is presided over by the Presidium comprising the President, his Vices and the National Chairman – all of whom are part of the Central Committee. The extant Central Committee must be dissolved at Congress, such dissolution precedes the election of new members, and, by virtue of such dissolution, members of the Presidium, being part of the Central Committee cease to hold office. This was a fact emphasized with some glee by the National Chairman.<sup>24</sup> With members of the Presidium losing office upon dissolution of the Central Committee, demonstrating a prescience not apparent elsewhere in the Constitution, the drafters noted that there would now be no one able to preside over the remainder of the proceedings of Congress. It was thus provided that, notwithstanding such dissolution, members of the previous Presidium would continue in office, but only until the conclusion of the Congress.

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<sup>24</sup> See the footage at about 15.45 p.m. on the 6<sup>th</sup> December, 2104.

The important point to note here is the sequencing: the Central Committee is first dissolved and then the election of the members of new Central Committee takes place. The dissolution of the Central Committee precedes the election of the Party President whose position is part of the Central Committee, and who is the most important member of the body. This is obvious enough to not really require stating.

Yet Mugabe was appointed to the Central Committee before the dissolution took place. Once the Committee was dissolved, Mugabe, like all other members, ceased to be a member of the Central Committee, and required subsequent re-election – and re-election in terms of the amended section 32, which ought to have applied to him as much as to the Vice-Presidents and National Chairman. But, although having lost his position as a member of the Central Committee by virtue of its dissolution, Mugabe was not re-elected to the body - not in terms of the old version of the ZANU PF constitution, and not in terms of the amended version. Unfortunately Mr. Mugabe, in terms of the ZANU PF Constitution, thus ceased to be Party President at the conclusion of the business of Congress.

Had due procedure been followed, the Central Committee would have been dissolved, Robert Mugabe, continuing as President by virtue of clause 22(6) cited above, would have appointed the ZANU PF Electoral Commission; the Commission would have declared him elected unopposed;<sup>25</sup> Mugabe would have proceeded to appoint the two Vice-Presidents and National Chairman, and the Electoral Commission would have supervised the appointment of the remaining members of the Central Committee.

However, when viewing the proceedings of the Congress, one gains the impression that one is watching the footage in reverse. And the *Herald* newspaper's live updates, make much more sense if read from top to bottom, rather than from the bottom to the top of the page, as intended. It was if Khaya Moyo had started from the foot of the agenda and worked upwards.

To accomplish what was wanted, the order should have been as follows:

- the dissolution of the Central Committee;
- the appointment of Mugabe as president in terms of the unamended constitution;
- the amendment and ratification of the amendments;
- the appointment of the ZANU PF Electoral Commission;
- the appointment of the remainder of the Central Committee.

In the event, matters proceeded in almost entirely the reverse order.<sup>26</sup>

### **Other illegalities**

The purported appointments of the Vice-Presidents were made after the conclusion of Congress.<sup>27</sup> If the new section 32 was to be followed, they ought to have been made by the

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<sup>25</sup> Though this would still have presented the difficulty that potential opposing candidates would not have had the opportunity of endeavouring to obtain the support of two provinces. The problem highlights the need for care in sequencing when making constitutional amendments.

<sup>26</sup> Mnangagwa's dissembling use of section 21(2) would then have been entirely unnecessary.

<sup>27</sup> On 10.12.14.

person duly elected as Party President. Not occupying that post, Mugabe had no authority to make such appointments, which ought to be considered invalid on this basis alone.

This problem did not arise in the case of the National Chairman. An extract from a report in the Herald newspaper captures most of what needs to be said in this regard:

*The President started by announcing the abolition of the position of National Chairman before naming the Presidium. "We are reducing that top heaviness, the two vice presidents have no real function except that they are my deputies and I can give them work to do. "We feel it's not necessary that if you have the two vice presidents you have the chairman. They can rotate so we want to do without the chairman," the President Mugabe said. "At the top is President Mugabe. There are two vice presidents one of whom would be drawn naturally from Zanu and one from Zanu and from Zanu it is Emerson Mnangagwa and we say congratulations to him and from Zanu side it is Report (Phelekezela) Mphoko. "It is the three who will be known as the presidium now, the rest would be heads of departments."*<sup>28</sup> [the typographical errors in this paragraph are in the original]

Once again the mysterious "we" appears as the agent for the events, though, in this case it must be noted Mugabe often uses the "royal 'we'". The ZANU PF Constitution provides, in numerous clauses, for functions to be carried out by the National Chairman, such as presiding over Congress and heading the National Disciplinary Committee, which, cannot, in consequence be properly constituted without a National Chairman. Whoever "we" might be, it is obvious that the ZANU PF Constitution cannot simply be amended by the dictat of "we", be it royal or plebian. It is a Constitutional requirement that a National Chairman be appointed.

The result then, is that the entire ZANU PF Presidium has not been validly appointed. A word of caution, however, is perhaps apposite here for any party member who thus might seek to challenge these appointments. Section 252(1) of the Party Constitution provides:

*Any issue or matter arising in connection with the interpretation or application of this Constitution which cannot be resolved otherwise under this Constitution shall be referred for determination to the Central Committee whose decision thereon shall be final.*

This suggests that the jurisdiction of the court has been ousted in the matter, and the court cannot hear any complaint on the subject. However, the complaint would not be one pertaining to the application or interpretation of the Constitution. It is in fact the non-application of the constitution which is the cause for concern. A court will not lightly interpret a clause as ousting its jurisdiction; the more so when the clause in question places the resolution of the matter in the hands of a body which itself cannot be properly constituted, if only on the basis that an important component of the body, the Presidium, is not itself properly in place. The invalidly constituted Central Committee cannot be a judge in its own cause.

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<sup>28</sup> *The Herald* of 11.12.14 *loc cit*. If the top heaviness is caused by two Vice-Presidents who have no work to do, it seems that it would have been more logical to remove one or both of these since the National Chairman has a great deal of work to do in terms of the ZANU PF Constitution.

Finally, there was also no mention of the District Co-ordinating Committees in Mnangagwa's address. In mid-2012, the Central Committee had sought to amend the Constitution by abolishing District Co-ordinating Committees and removing them as a party organ.<sup>29</sup> This amendment required ratification at the 2014 Congress to become effective. The amendment may possibly have been part of the "updating" mentioned by Mnangagwa, but not read to the Congress.

## **Conclusions**

The purported amendments to the ZANU PF Party Constitution made at the 2014 6<sup>th</sup> National Peoples' Congress violated the procedures provided for in the party's Constitution in numerous respects. They cannot be held to have been validly made. Yet these amendments may be claimed to govern the manner in which a nominee is submitted to the Speaker of Parliament as Mugabe's successor in the event of President Mugabe's death or retirement. Furthermore, even if the amendments were valid, Robert Mugabe was not appointed as Party President in accordance with these amendments.

If the amendments are invalid, Mugabe is not rescued by the fact that he was appointed in terms of the unamended provisions, as his appointment was made prior to the dissolution of the Central Committee, and Mugabe had to be elected after such dissolution in order to assume the position of Party President. If the amendments were valid, Mugabe had no authority (not being properly elected as President himself in terms of these amendments) to appoint the Vice-Presidents of the party, whose appointments are thus likewise improper. If the amendments were null and void, the Vice-Presidents' appointments remain invalid as having been made on the basis of these invalid amendments.

Mnangagwa may not have read out the minutiae of all changes made to the Party Constitution. He may have done so out of consideration – to avoid boring delegates with lengthy and, to the delegates, seemingly tedious legal technicalities. He also might have thought it wise not to inform delegates that section 21(2) of the Constitution, which indicates the power of Congress to appoint the President, had either been expressly or impliedly repealed. Had he done so it might have been apparent to even the most inattentive delegate that the delegates had enthusiastically appointed Mugabe as President in terms of a clause which they had only minutes before repealed with (almost) equal enthusiasm.

Contents of the ZANU PF Constitution remain obscure. The ZANU PF Party Constitution and the amendments made are not readily available to the public or even to party cadres, notwithstanding the fact that the changes are of national, let alone party, interest. The possibility thus exists that unknown clauses were inserted into the Constitution which attend to the problems raised here. The probability, however, is otherwise.

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<sup>29</sup> ZANU PF DCCs Disbanded *The Herald* 30.06.12.