

Run-off Delay Fears

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Opponents fear the president plans to engineer “technical coup”.

President Robert Mugabe has delivered another shock by recalling his cabinet, which by law was suspended ahead of the March 29 elections. Some see the move as a sign that Mugabe is making plans to hold onto power well past the official date by which a second round must be held.

More than 12 days after the presidential, parliamentary and local elections, the outcome of the presidential poll has yet to be released. Asked by the opposition Movement for Democratic Change, MDC, to compel the Zimbabwe Electoral Commission, ZEC, to announce the result, the High Court in Harare has said it will only make a ruling on April 14.

Although the MDC has declared its candidate Morgan Tsvangirai the winner, it is possible that neither he nor Mugabe achieved an absolute majority of 50 per cent.

That would mean the two men contesting a second, run-off poll. By law, that has to happen within 21 days of the first vote, in other words by April 19.

Lawyers interviewed by IWPR said the incumbent president remains in place until he or his successor is sworn in, but the constitution is designed to ensure this period remains as brief as possible – in the case of a run-off, a maximum of 21 days.

Mugabe’s critics fear he may be planning to use the Presidential Powers (Temporary Measures) Act to extend the deadline for a re-run – and thereby prolong his presidency – from 21 to 90 days. One pretext he might use is that the Zimbabwe Electoral Commission does not have the funds to run another ballot so soon.

His opponents say extending his term in office would be unconstitutional.

“If there is a run-off, the period he remains in office is 21 days. Extending those days would be completely unconstitutional. That will be equivalent to extending his term of office,” argued David Coltart, a lawyer who has been elected as an MDC member of the Senate or upper house of parliament. “He cannot use the presidential powers, because there are no unusual circumstances to justify their use. I know Mugabe can do anything, but this would be illegal and unconstitutional.”

He said “it is most important that the electoral commission works expeditiously.” ZEC to act as quickly as possible”, adding, “The present delay is inexplicable.”

Wilbert Mandinde, legal officer for the Zimbabwean branch of the Media Institute of Southern Africa, said cabinet ministers held their posts by virtue of being members of parliament, and now that new legislators had been elected, restoring the powers of the previous government was illegal.

“Mugabe has recalled them illegally. He has recalled them as what? Some of them lost in the

parliamentary elections,” said Mandinde, adding, “He looks like someone who has something under his sleeve.”

In a statement justifying the decision, information minister Sikhanyiso Ndlovu said, “Cabinet ministers are still in office until a new cabinet is announced, to allow for the smooth running of government, implementation of policies and accountability.”

Mugabe’s decision was also supported by Patrick Chinamasa, one of the cabinet members he recalled. Chinamasa, the minister for justice, legal and parliamentary affairs, lost his seat to the MDC in the parliamentary elections. Ndlovu also failed to win a seat.

Chinamasa told journalists on April 9 that it was constitutional for the cabinet to remain in place until a new president is sworn in.

Apart from Chinamasa and Ndlovu, six other ministers failed to win seats in the election. Under a constitutional amendment, the president can appoint five non-legislators to the cabinet.

According to Coltart, “Chinamasa is being referred to as the minister of justice when he lost his seat. You can only be a minister if you are a legislator.”

He explained that the law did not provide for a cabinet during an interregnum of this kind because it was meant to last only for a short time, during which “the state is in limbo. It is actually a bit of a grey area.”

Coltart said presidential results were normally announced within a few days after polling and this was the first time the country had gone almost two weeks before a president was sworn in.

A lawyer whose organisation does not allow him to comment publicly on political matters said it was clear that Mugabe was trying to cling on to power and that his actions were tantamount to a coup d’etat.

“It is something of a technical coup, considering that the ZEC command centre is now closed,” he said. “Mugabe has no power to recall them [ministers] when a number of them have lost in the elections and can only be reappointed by a new president.”

“The only thing that Mugabe has done is that he has refused to acknowledge that an election was ever held,” he added.

Lovemore Madhuku, who heads the National Constitutional Assembly, a non-government pressure group, said the aftermath of the elections showed how much Zimbabwe was in need of constitutional change.

“The problem with Zimbabwe’s constitution is that we have a president with absolute power – a president who can even control the release of results,” he said. “Even though we now have members of parliament, their first sitting requires the proclamation of the president. Mugabe can go as long as six months before

calling for a parliament sitting.”

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