

Waiting for Power-sharing: A False Promise?

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Mugabe was re-elected as President in the run-off on June 27 2008 after the MDC's Morgan Tsvangirai withdrew from the contest because of the high levels of political violence and other conditions that made a free and fair election impossible. Days after Mugabe was sworn in for another five-year term, the African Union (AU) encouraged the formation of an inclusive government and expressed support for the continuation of the Southern African Development Community's (SADC's) mediation efforts.¹ On July 21 2008, all three party leaders signed the Memorandum of Unity (MOU) committing them to establish an inclusive government.² Taking much longer than the envisaged two weeks in the MOU, they signed a power-sharing agreement that provided for the creation of a new government on September 15.³ The agreement has yet to be implemented.

All the evidence suggests that President Mugabe remains uncommitted to genuine power-sharing with the two MDC formations led by Morgan Tsvangirai (MDC-T) and Arthur Mutambara (MDC-M) respectively. Mugabe took unilateral

actions that violated the MOU and more recently the power-sharing agreement. He can be expected to exploit the substantial powers he enjoys in terms of the agreement and to use other flaws in its design to minimize the compromises he must make with the opposition. That ZANU PF by itself will not be able to solve the mounting humanitarian, political and economic crises in the country seems not to be a major concern for Mugabe or his party.

The MOU required that the parties not take any decisions or measures which had a bearing on the agenda of the negotiations "save by consensus". Such decisions or measures included, but were not limited to, the convening of parliament or the formation of a new government (Paragraph 9). Other provisions of the MOU required each party to take all necessary measures to terminate political violence and to ensure the security of persons and property, and also to desist from using language that might incite political intolerance (Paragraph 10).

Mugabe violated Paragraph 9 of the MOU by unilaterally appointing provincial governors, who are also ex officio senators, and by convening parliament. On August 25, some three weeks after the MOU had expected a power-sharing agreement to be in place, Mugabe appointed eight of ten provincial governors. He held off appointing two provincial governors, evidently hoping to use these positions to entice the MDC-M House members to vote with ZANU PF to support an MDC-M candidate, Paul Nyathi, as Speaker of the House. The vote for Speaker took place later on August 25, after House and Senate members had been sworn in. When the MDC-T MP, Lovemore Moyo, was elected Speaker with the support of some MDC-M MPs (and some ZANU PF MPs), Mugabe filled the two provincial governorships with ZANU PF appointees. Mugabe opened parliament the next day. The MDC had opposed the convening of Parliament as a violation of the agreement.

Mugabe and ZANU PF also violated Paragraph 10 of the MOU relating to political violence and hate speech. The state media continued to (and still do)

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1. African Union Summit Resolution on Zimbabwe. Adopted at the 11th Ordinary Session of the African Union Assembly, July 1 2008, Sharm El Sheikh, Egypt.

2. Memorandum of Understanding between the Zimbabwe African National Union (Patriotic Front) and the two Movement for Democratic Change Formations. July 21 2008.

3. Agreement between the Zimbabwe African National Union-Patriotic Front (ZANU-PF) and the two Movement for Democratic Change (MDC) Formations, on Resolving the Challenges Facing Zimbabwe. September 15 2008.

denigrate the MDC and Tsvangirai and to acclaim President Mugabe and ZANU PF. The party did not dismantle (and still has not dismantled) its youth or war veterans' militia who continued to engage in political violence, albeit at much lower levels.

The power-sharing agreement specifies how many of the 31 ministries each party shall be allocated – ZANU PF (15), MDC-T (13), and MDC-M (3) - but leaves open their allocation among the parties. On October 10 President Mugabe unilaterally allocated the ministries among the three parties, thus violating the agreement, which stipulates that the President and the Prime Minister, elsewhere designated as Morgan Tsvangirai, must agree on the allocation of ministries (Article 20.1.2f). Mugabe identified all the key ministries for ZANU PF, including justice, foreign affairs, local government, information, mining, and home affairs. The finance ministry was not allocated. This allocation leaves the MDC parties chiefly with the ministries in control of the provision of services: education, health, water, and so forth. The MDC has rejected Mugabe's allocation as a violation of the agreement, and Thabo Mbeki is due to try to mediate the dispute. Notwithstanding its threats, the MDC is unlikely to withdraw from the agreement even if it fails to get the ministries it covets. Its top leaders are too eager to enjoy the spoils of power. Lovemore Moyo, the new Speaker, reportedly already has his Mercedes Benz.

ZANU PF and Mugabe also have violated the provision in the agreement in which all three parties agreed to a twelve-month moratorium on by-elections in the event of a vacancy during which time the party holding the seat prior to the vacancy would fill the vacancy (Article 21). ZANU PF National Commissar Elliot Manyika told the state media that his party was preparing to contest elections in two constituencies – those vacated following the election of Speaker of the House (MDC-T) and President of the Senate (ZANU PF). And in one of the constituencies, ZANU PF was

reportedly using intimidation to regain the constituency.⁴

The agreement also leaves President Mugabe with substantial and unambiguous powers. Given Mugabe's unilateral actions in violation of the MOU and power-sharing agreement, Mugabe is likely to use these powers to bolster his own position rather than promote power-sharing. In terms of the agreement President Mugabe chairs the Cabinet; he can declare war and peace; he can proclaim and terminate martial law; he grants pardons and can reduce, suspend, or remit sentences, on the advice of the Cabinet; he appoints the Prime Minister, the two Deputy Prime Ministers (one from MDC-T and one from MDC-M), the Ministers, and Deputy Ministers, and chairs the National Security Council. Subject merely to consultation with the Prime Minister, the President also has the power to dissolve parliament, to make key appointments as required in terms of the Constitution or any Act of Parliament, and to appoint service/executive Commissioners in terms of the Constitution. Likewise, the President has the power to allocate ministerial portfolios merely after consultation with the Vice Presidents, the Prime Minister, and the Deputy Prime Ministers. In contrast, many of the powers of the Prime Minister and the Council of Ministers, which he chairs, are vague (Articles 20.1.3 to 20.1.6).

Another major flaw of the agreement which plays into the hands of President Mugabe's resistance to power-sharing is its lack of time frames for implementation. The power-sharing structures in the agreement, and in particular the president's appointment of Prime Minister Tsvangirai, depend on the passage through parliament of a constitutional amendment bill (No. 19) which the parties agreed to support (Article 24). But there is

4. ZESN, Post-Election Update. July to September 2008. The power-sharing agreement essentially sets aside the provision in the Electoral Act that requires the official announcement of a by-election polling date within 14 days of notification of a senate or house vacancy by the House Speaker or Senate President.

no time frame for the introduction of the constitutional amendment to introduce the power-sharing government apparatus. Mugabe continues to use his old cabinet, even though eight cabinet ministers were not re-elected to parliament or appointed as senators when parliament opened, and should therefore have relinquished their posts according to the constitution (section 31E(2)).⁵ There is nothing to stop Mugabe from appointing a cabinet but his Minister of Justice (one of the ministers who was appointed a senator and is thus in compliance with the constitution) said the new government would only come into existence after the passage of the necessary constitutional amendment.⁶

Further reason for concern about the agreement being hijacked by President Mugabe and ZANU PF is that it only provides for explicit internal monitoring mechanisms that depend on the three parties themselves (Articles 22 and 23). The agreement says that its implementation shall be guaranteed and underwritten by the Facilitator (now former President Mbeki), the AU, and SADC, but there is no explicit monitoring or enforcement role for the AU and SADC (Article 22.6). And though the new President of South Africa, and the AU and SADC have confirmed their support for the continuing role of Thabo Mbeki as the mediator, one can assume that Mugabe will exploit to his advantage Mbeki's loss of formal power.

The future seems to offer, at best, more of the status quo: continued ZANU PF rule, increasing humanitarian aid from the West, more investment in the mining sector, and heavy reliance on foreign remittances from Zimbabweans in the diaspora. None of this is surprising, and the only surprise the future could hold is real power-sharing.

5. Veritas, Bill Watch 34/2008, August 30 2008; Bill Watch 35/2008, September 6 2008.

6. Veritas, Bill Watch 37/2008, September 22 2008.