

Zimbabwe's Sanctions Standoff

I. OVERVIEW

Zimbabwe must hold elections before the end of June 2013, but the reforms needed to ensure appropriate conditions are critically wanting. The regional organisation – the Southern African Development Community (SADC) – calls for the removal of sanctions, claiming they are a serious political impediment to reform. Those who have imposed the measures – in particular, the European Union (EU) and the U.S. – argue the reform deficits justify their continuation, though they have been more symbolic than drivers of change. The sanctions gridlock now reflects the broader paralysis that characterises Zimbabwean politics. Opportunity for a calibrated, full removal of sanctions before the next elections, geared to broad progress on reform, such as perhaps existed three years ago when the Global Political Agreement (GPA) was fresh and the Inclusive Government formed, has probably passed. But a chance to promote progress and break the current deadlock still exists through a coordinated approach that distinguishes types of sanctions and focuses on specific reforms needed for those elections. It should be seized.

The political situation is fragile, with growing fears the country may be heading toward new repression and conflict as the era dominated by the 88-year old President Robert Mugabe comes inevitably closer to an end, and elections draw nearer. Mugabe's Zimbabwe African National Union-Patriotic Front (ZANU-PF) claims the GPA and subsequent negotiated reform process have run their course, and conditions are conducive to a free and fair vote. The Movement for Democratic Change (MDC) formations disagree but do not specify what they consider to be the minimum necessary reforms. SADC and most international observers believe the foundation for free and fair elections has not yet been laid. There has been some economic and social progress, but major deficits and deadlock persist on core reforms and implementation of some already agreed matters. Most significantly, ZANU-PF retains full control of the security apparatus, raising legitimate fears elections could lead to a repeat of the 2008 violence and refusal to accept the democratic will of the people.

In response to human rights and election-related abuses perpetrated between 2001 and 2008, the U.S. and EU adopted a variety of measures designed to promote reform. Some are targeted at specific individuals (eg, asset freez-

es and travel bans); others involve policies that relate to the international financial institutions (IFIs) and government-to-government relations (eg, restrictions on loans, credit and developmental assistance and arms embargoes). While there are exceptions within and distinctions between many of these measures, including for humanitarian aid and basic development cooperation, this briefing applies the generic term “sanctions” to them for the sake of simplicity, but also because this is how Zimbabwean and southern African political dialogue commonly addresses the concept. Those who have imposed and maintained them have not communicated their concept effectively, as linked to specific reforms or the broader struggle for democracy, and have never gained regional support for them.

ZANU-PF manipulates the issue politically and propagandises it as part of its efforts to frustrate reform and mobilise against perceived internal and external threats to national sovereignty. It argues that reform is contingent on the removal of sanctions and accuses the MDC wing led by Prime Minister Morgan Tsvangirai (MDC-T) of reneging on GPA commitments to facilitate this. MDC-T argues it has no control over sanctions, and there would be a stronger basis for their removal if GPA violations ended, and ZANU-PF did not block reforms. Mugabe's party conflates the various measures, including restrictions from multilateral institutions, arguing “sanctions” are centrally responsible for the poor economy. MDC-T contends that the measures are relatively narrow and targeted, and it is ZANU-PF that has destroyed the economy.

SADC maintains that sanctions exacerbate already difficult conditions; do not contribute to constructive solutions; and their removal would recognise progress made and be an important confidence-building measure. There are no agreed indicators let alone guarantees, however, for how removal might enable it to resolve negotiation deadlocks and enforce implementation of agreements more effectively. MDC-T has hedged, and ZANU-PF has adopted an absolutist position, together scotching prospects for constructive compromise. It is unlikely that the GPA signatories can agree on a realistic formula linking full removal of sanctions to the reform agenda, especially as they are deadlocked on the draft election roadmap. It also seems unlikely SADC could impose such a proposal. This in turn makes it improbable the EU or U.S. would take the domestically difficult step of unilaterally lifting all sanctions.

Only bold action offers a chance to break the impasse, but the issue should not be addressed either separately from the reform agenda, particularly as it relates to the fast-approaching, potentially disastrous election season, or as an all-or-nothing matter. Any approach must proceed from a foundation – currently missing – that can provide a more substantive and nuanced basis for moving forward. The EU, U.S. and others imposing sanctions should make clear distinctions between the several categories of measures. In particular, they should:

- ❑ undertake a comprehensive review of targeted measures and their impact; make public additional detailed reasons for including specific individuals and entities; and, where appropriate, consider extending these measures to include (as several already do) adult family members;
- ❑ display greater flexibility to give targeted individuals opportunity to apply for visas for official travel, thus addressing criticism that legitimate Zimbabwe government business is hampered;
- ❑ maintain the arms embargoes but make greater efforts to engage the security sector in order to promote dialogue about its responsibilities in a democratic order and about conditions for eventual professional training; and
- ❑ initiate a comprehensive study of the impact of restrictions on government-to-government development cooperation and seek to negotiate with SADC a strategy for (a) suspension of the ban linked to implementation of key election-related reforms and (b) more vigorous SADC facilitation within an agreed timeframe.

The GPA signatories and the facilitators – SADC and especially South Africa, the lead country – must also act:

- ❑ ZANU-PF should desist from absolutist posturing, while the MDC formations (in particular MDC-T), as parties and participants in the Inclusive Government, should present a coherent plan of action for relaxation and eventual removal of sanctions.
- ❑ ZANU-PF and the MDC formations, in conjunction with the facilitators, should put realistic options on the table tying the relaxation and eventual removal of sanctions to a realistic time-bound reform agenda, as set out in the draft election roadmap; agreements must be backed by a monitored implementation framework.
- ❑ The facilitators should engage more vigorously in order to finalise the election roadmap and its implementation framework, including by exerting more pressure on GPA signatories that obstruct reform and violate existing agreements.
- ❑ SADC should help Zimbabwe and international financial institutions (IFIs) find common ground and sus-

tainable solutions on debt resolution so as to permit renewed access to credit lines and budget support.

II. SANCTIONS – WHAT SANCTIONS?

The sanctions on Zimbabwe were introduced in response to political violence, human rights abuses and rule of law violations, as well as deteriorating democratic standards that followed the violent election processes in 2000 and 2002.¹ In many respects these core problems remain. Political parties and civil society groups alike continue to refer to ongoing concerns about political violence, repression and reform deficits.²

The sanctions are neither comprehensive nor illegal, as often suggested by ZANU-PF. They include a set of “restrictive measures” introduced and modified over the last decade by the U.S., EU and other countries targeting specific individuals and entities. In addition, an arms embargo by these countries prevents the sale of weapons and other items that could be used for internal repression.³ Domes-

¹ For example, U.S. objectives are implicit in the conditions for the lifting of the Zimbabwe Democracy and Economic Recovery Act (ZDERA, P.L. 107–99, 21 December 2001): restoration of the rule of law; improvements in pre-election conditions; a free and fair election process; a “commitment to equitable, legal and transparent land reform”; fulfilment of the agreement to end the war in the Congo (DRC); and subordination of the military and police to a civilian government, (Section 4 (d) (1-5); EU “appropriate measures” are contingent on Zimbabwe honouring its commitments to human rights, democratic principles and the rule of law.

² “MDC appeals to SADC over deteriorating political situation”, Voice of the People, www.radiovop.com, 14 November 2011, “Power-Sharing Government has failed to dismantle a vicious political system”, Crisis in Zimbabwe Coalition Press Statement, 31 January 2012. For recent Crisis Group reporting detailing the situation, see Africa Report N°173, *Zimbabwe: The Road to Reform or Another Dead End?*, 27 April 2011; and Briefings N°56, *Ending Zimbabwe's Nightmare: A Possible Way Forward*, 16 December 2008; N°59, *Zimbabwe: Engaging the Inclusive Government*, 20 April 2009; N°70, *Zimbabwe: Political and Security Challenges to the Transition*, 3 March 2010; and N°82, *Resistance and Denial: Zimbabwe's Stalled Reform Agenda*, 16 November 2011. The sanctions regimes have been created in accordance with national and/or EU law. The allegation of illegality is based on the fact that they have not been approved by the UN Security Council. Zimbabwe's attorney general, Johannes Tomana, is exploring a challenge to the EU measures in the European Court of Justice. “De Beers, EU have cases to answer – Tomana”, *Sunday News* (online), 25 December 2011.

³ The U.S. imposed targeted sanctions pursuant to ZDERA by executive order in March 2003. The list of affected individuals and entities has been since modified by the treasury department's Office of Foreign Assets Control. At present, 121 individuals

tic U.S. legislation (not Zimbabwe-specific) and annual appropriation bills also prohibit most direct assistance to the government due to past indebtedness and loan defaults, though with exceptions for health, education, macroeconomic and democracy support; the Zimbabwe Democracy and Economic Recovery Act (ZDERA) instructs U.S. representatives in IFIs to oppose credit and loan extensions, except for basic human needs or good governance purposes.⁴

and 69 entities are covered. For additional U.S. sanctions, see below. In 2002, the EU adopted Common Position 2002/145/CFSP, which, in addition to an arms embargo, imposed an assets freeze and travel ban against individuals whose activities are considered to undermine democracy, respect for human rights and the rule of law in Zimbabwe. These measures have been reviewed and renewed annually. In February 2011, 35 individuals were removed from the visa ban and asset freeze list in response to significant progress made in addressing the economic crisis and improving the delivery of basic social services. Lack of progress on the political front, however, resulted in the extension of all other measures, including the targeted sanctions on 163 people and 31 businesses, www.consilium.europa.eu/uedocs/. For additional EU sanctions, see below. Australia introduced financial sanctions, travel restrictions and an arms embargo and downgraded government-to-government contacts and cultural links in October 2002. In 2007, it extended the sanctions to adult children of those on the lists, withdrawing student visas and deporting several individuals, including the sons of the police commissioner and the defence minister. As of 3 August 2011, 237 individuals and four entities were covered. New Zealand in 2002 focused on visa bans. In 2008, it extended travel restrictions to adult children of listed persons. As of 7 November 2011, 334 individuals were covered. Switzerland introduced targeted visa bans, financial transaction freezes and an arms embargo in March 2002. In March 2010, it extended travel restrictions to additional senior officials. As of 1 September 2010, 198 individuals and 31 entities were covered. Canada's Special Economic Measures (SOR/2008-248) in 2008 covered weapons transactions, technical support for weapons and assets of designated persons, as well as a ban on landing rights for Zimbabwe aircraft; 181 individuals and four entities are covered. Australia, New Zealand and the UK also have restricted cricketer ties. New Zealand in 2005 banned entry of Zimbabwe sportspersons, but eased this in November 2011 to allow participation in an international tournament.

⁴ FY12 Consolidated Appropriations (P.L. 112-74): (j) Zimbabwe-(1); for ZDERA, see fn. 1 above. Lauren Ploch, "Zimbabwe: The Transitional Government and Implications for U.S. Policy", Congressional Research Service, 27 October 2011, p. 23. Section 620q of the Foreign Assistance Act of 1961 provides that a country falling six months behind on debt repayments becomes ineligible for further U.S. economic and military assistance. The Brooke-Alexander amendment (1961) cuts off all non-humanitarian aid to a country more than a year in arrears. Measures against Zimbabwe can be modified by executive order if deemed in the U.S. national interest. Curt Tarnoff, "Foreign Aid: Answers to Basic Questions", Congressional Research Service, 25 March 1992.

The EU's targeted "restrictive measures" are complemented by what Brussels terms "appropriate measures" that suspend government-to-government development cooperation pursuant to Article 96 of the Cotonou Agreement. Brussels will conduct its annual review of these in February 2012.⁵

A polarised narrative has emerged between those who argue that Zimbabwe is under a broad sanctions regime that is primarily responsible for its economic woes⁶ and those who claim the sanctions are limited, and ZANU-PF policies and practices are mainly responsible for economic disintegration.⁷ President Mugabe's party lumps the targeted sanctions together with suspension of most government-to-government development aid and IFI restrictions,

⁵ The EU adopted "appropriate measures" under Article 96 of the Cotonou Agreement on 18 February 2002, <http://eur-lex.europa.eu/>, and has reviewed and maintained them annually. Since 2000 the Cotonou Agreement has been the framework for the EU's relations with 79 African, Caribbean and Pacific (ACP) states providing a framework for development cooperation and mutual obligations with respect "to aid, trade and political cooperation in order to fight poverty, support democracy, promote economic growth and foster sustainable development". "The Cotonou Agreement: A User's Guide for Non-State Actors", European Centre for Development Policy Management, November 2003. Clara Portela, "Aid Suspension as Coercive Tools? The European Union's Experience in the African-Caribbean-Pacific (ACP) Context", *Review of European and Russian Affairs*, vol. 3, issue 2 (2007), pp. 48-49. According to the Reserve Bank of Zimbabwe, average annual development assistance in the 1990s was \$138 million, but fell in 2000-2006 to \$39.9 million. "Impact of sanctions against Zimbabwe", Dr Gideon Gono, Governor of the Reserve Bank of Zimbabwe, presentation to the Pan-African Parliament, 2007, www.rbz.co.zw/pdfs/2007mid/imp1_7.pdf, para 76. Some analysts argue this has weakened government capacity to help poor communities. Bryan Sims, Sydney Masamvu, Havi Mirell, "Restrictive Measures and Zimbabwe: Political Implications, Economic Impact and a Way Forward", IDASA, November 2010, p. 21. The EU has, however, channelled substantial development aid since 2002 through a variety of UN and non-governmental organisations (see below). Recent EU support includes over a quarter of the fertiliser needs of communal farmers for 2009-2010; 80 per cent of vital medicine needs in 2010 textbooks to most primary school children and €80 million for humanitarian crises, http://eeas.europa.eu/zimbabwe/index_en.htm.

⁶ Gono, "Impact of sanctions against Zimbabwe", op. cit. "Concluding remarks on the occasion of the adoption of Zimbabwe's UPR Report by the working group of the Human Rights Council (HRC)", Justice and Legal Affairs Minister P.A. Chinamasa, 12 October 2011. Tafataona Mahoso, "Audit impact of sanctions on Zim, SADC", *The Saturday Herald*, 26 February 2011.

⁷ Gilbert Nyambabvu, "Sanctions lifted on MDC Advice: Mili-band", www.newzimbabwe.com, 21 January 2010. "ZANU-PF lying about sanctions", *Daily News*, 1 December 2011.

including suspension of balance-of-payments support.⁸ Reserve Bank Governor Gideon Gono describes the latter as “undeclared sanctions”.⁹ The combination of measures, it can be said, “has exacerbated Zimbabwe’s sovereign risk status” and “negatively affected a range of bilateral lending to Zimbabwe including from the private sector”.¹⁰

Yet, more resources have come into Zimbabwe from those imposing the sanctions over the last decade than in the pre-sanctions decade. The U.S. and EU, as well as individual EU countries, have increased humanitarian and basic needs support in response to the economic collapse and given stabilisation help to the Inclusive Government over the past three years.¹¹ Since 2002, the EU and its member states have channelled over €1.5 billion to the people of Zimbabwe;¹² since 2001, U.S. assistance has exceeded \$1.4 billion.¹³ Both have continued to trade with Zimbabwe. The EU remains its second biggest trade partner;

⁸ Zimbabwe had already been subjected to restrictions by the IMF, World Bank and African Development Bank, according to ZANU-PF as “part of a coordinated process leading to ZDERA”, “Ambassador’s meeting with Zimbabwe Minister of Agriculture”, U.S. embassy Harare cable, 26 January 2010, as published by WikiLeaks, www.wikileaks.org/cable/2010/01/10HARARE50.html.

⁹ Gono, “Impact of sanctions against Zimbabwe”, op. cit., paras 24-25.

¹⁰ Trevor Ncube, “Sanction Zimbabwe? What the West can do?”, IDASA, 18 October 2007. These are excerpts from the Second Oppenheimer Lecture delivered at the International Institute for Strategic Studies in London, 18 September 2007.

¹¹ Deteriorating economic conditions have resulted in an increase in humanitarian aid. Between 2002 and 2010, the U.S. provided \$900 million and the EU €572 million. “Background Note: Zimbabwe”, Department of State, 23 April 2010; “Commission allocates Euro 15 million to address ongoing humanitarian needs in Zimbabwe”, EUROPA, 23 July 2010. In March 2010, a Multi-Donor Trust Fund (MDTF) was launched to fund the Inclusive Government’s urgent infrastructure programs. Administered by the World Bank, IMF, African Development Bank and the UN Development Programme, its funds are received from a number of countries and multilateral institutions. By the end of August 2011, \$80.5 million was committed of which \$57.7 was released, www.afdb.org/en/topics-and-sectors/initiatives-partnerships/zimbabwe-multi-donor-trust-fund.

“ZANU-PF has thus far been hostile to humanitarian assistance channelled through NGOs and financial assistance through the Multi-Donor Trust Fund because it views it as an extension of the regime change agenda”, Bryan Sims et al., op. cit., p. 23. In addition, the U.S., approved \$86 million in FY2010 and \$97 million in FY2011 in non-humanitarian aid, largely health and education development cooperation, including technical assistance to government ministries, Ploch, op. cit., p. 23.

¹² “Key issues in EU-Zimbabwe relations”, www.eeas.europa.eu/zimbabwe.

¹³ “U.S. sanctions policy: Facts and Myths”, “U.S. Sanctions and Bilateral Trade with Zimbabwe: 2001-2010”, both U.S. embassy Harare, www.harare.usembassy.gov.

and UK-Zimbabwe trade increased by 85 per cent over the first five months of 2011.¹⁴ Between 2003 and 2008, commerce with the U.S. (Harare’s fourth largest trading partner) doubled; in 2009 and 2010 it was 30 per cent higher than the 2000 to 2008 average.¹⁵

A. IMPACT AND CONSEQUENCES

Targeted measures are a relatively new form of sanction, intended to constrain and change certain behaviour and promote international norms and standards, as well as meet domestic policy needs.¹⁶ Detailed evaluation of what has been undertaken and the impact in Zimbabwe, however, is missing, forcing reliance on anecdotal information. That suggests the measures have affected some senior ZANU-PF members, and there is room for extending them.¹⁷ But the parameters of travel restrictions have not been clearly defined. President Mugabe and other senior officials have been able to attend a number of international forums, exposing inconsistent interpretations and implementation of the restrictions.¹⁸ A listed individual explained that sanctions had not kept those targeted “from making money; merely added a few complications to the process”.¹⁹

Available evidence (again anecdotal) indicates that the existence of sanctions has strengthened ZANU-PF hardliners against more reformist elements and the MDC-T and provided an ostensible justification to block reforms. MDC-N representatives, as well as some in civil society,

¹⁴ “ZANU-PF lying about sanctions”, *Daily News*, 1 December 2011.

¹⁵ “U.S. sanctions policy”; “U.S. Sanctions and Bilateral Trade with Zimbabwe”, both op. cit.

¹⁶ The concept of targeted measures – as opposed to comprehensive economic embargoes – has emerged since the early 1990s. It includes a range of personal sanctions (eg, visa bans, asset freezes), selective sanctions (eg, arms embargoes) and diplomatic sanctions (eg, withdrawal of diplomatic status). Clara Portela, “Impact of Sanctions and Isolated Measures with North Korea, Burma/Myanmar, Iran and Zimbabwe as case studies”, European Parliament, May 2011.

¹⁷ See, for example, Crisis Group Africa Report N°122, *Zimbabwe: An End to the Stalemate?*, 5 March 2007, p. 15. Some argue that ZANU-PF complaints illustrate the efficacy of the measures. “Restrictive Measures against Zimbabwe”, European Scrutiny Committee, House of Commons, 9 February 2011. Anecdotal evidence also suggests there have been several incidents of inconvenience and embarrassment for some of those targeted. Bryan Sims et al., op. cit., p. 10.

¹⁸ Bryan Sims et al., op. cit., p. 12. “US Envoy explains Mugabe travel sanction busting”, *The Zimbabwe Independent*, 2 April 2006.

¹⁹ “Outsiders views of the inside of ZANU-PF”, U.S. embassy Harare cable, 30 December 2009, as published by WikiLeaks, www.wikileaks.org/cable/2009/12/09HARARE1012.html, on views of businessman and ZANU-PF backer Billy Rautenbach.

argue that the hardliners want sanctions to remain, so they can continue to justify foot-dragging and can make them an election campaign issue.²⁰ Uncertainty exists, however, about both the details of what has been put in place and implemented and the extent to which it has affected the behaviour of those targeted. Crisis Group concluded in 2006 that targeted sanctions were “irritants”, but not “active forces for change”.²¹ Research from Uppsala University the next year argued that “targeted sanctions have so far cornered the government of Zimbabwe politically and economically. It is no question that Mugabe and his circle feel the pressure”.²² But while there is little hard information, there is mounting agreement, even among former advocates, that they have not worked.²³

Some question the seriousness with which the measures were implemented. Specific objectives were not formulated,²⁴ and they have not been coordinated among implementing countries, contributing, for example, to incoherent execution of visa bans.²⁵ Freezes on assets were announced months before they were implemented, affording ample opportunity to move money and valuables.²⁶ It appears the measures have been largely symbolic, and ZANU-PF and its allies have not been “seriously affected”.²⁷

The economic impact of the targeted sanctions and other measures is unknown and in many respects incalculable. In a cable published by WikiLeaks, an undisclosed U.S. embassy interlocutor described the impact of Washington's ZDERA law shortly after it went into effect as “slashing an already deflated tire”.²⁸ The suspension of government-to-government development aid cut off an important source of revenue for the government, however, and there is considerable agreement in some quarters that in the aggregate, including credit restrictions (mostly in place before the other measures were introduced) and the more intangible chilling effects of isolation, they have contributed to the economic crisis.²⁹ A SADC mission to Europe and the U.S. in 2011 went farther, arguing that sanctions “have had detrimental economic effects on the people of Zimbabwe and the SADC region as a whole”.³⁰ Reserve Bank Governor Gono speaks of “economic warfare”, pointing inter alia to the knock-on effects of risk perceptions to export competitiveness.³¹

Such assertions have not convinced those imposing the sanctions. They cite the relatively healthy trade and humanitarian aid figures that have increased over the last decade,

²⁰ Crisis Group interview, businessman, Harare, 4 November 2011. Portela, “Aid Suspension”, op. cit., p. 48. Comments from Priscilla Misihairabwi-Mushonga, MDC-N negotiator and regional integration and international cooperation minister, at Southern Africa Political Economy Series policy dialogue, “The SADC Troika Meeting on Zimbabwe: Does this amount to intervention?”, 28 April 2011. The MDC-N, still referred to by some as MDC-M (after its former leader, Arthur Mutambara), is the smaller faction that split from the original MDC in 2005; it is currently led by Welshman Ncube, the commerce and industry minister.

²¹ Crisis Group Report N°117, *Zimbabwe: An Opposition Strategy*, 24 August 2006, p. 1.

²² Mikael Eriksson, “Targeting the Leadership of Zimbabwe: A Path to Democracy and Normalization?”, Uppsala University, 2007, p. 56. “Sanctions have not worked to remove Mugabe – David Miliband”, www.zimeye.org, 21 October 2011.

²³ Crisis Group interview, European diplomat, Harare, 21 November 2011.

²⁴ Crisis Group telephone interview, human rights defender, Harare, 20 November 2011. Jan Grebe, “And They are Still Targeting: Assessing the Effectiveness of Targeted Sanctions against Zimbabwe”, *Africa Spectrum*, vol. 45 (1), (2010), p. 17.

²⁵ “The Impact of Economic Sanctions”, vol. II, report, House of Lords, Select Committee on Economic Affairs, 2nd Report of Session 2006–2007, 27 June 2007, p. 5. To consolidate international action around strengthening measures and options for removal, ZDERA provides (Section 6) for consultation and information sharing with the EU, Canada and “other appropriate foreign countries”.

²⁶ Portela, “Impact of Sanctions”, op. cit. pp. 23–24.

²⁷ “The evidence suggests that the amounts of money frozen are so small, both in absolute terms and relative to the probable re-

sources of the targets, that it is doubtful whether asset freezes are effective as a means of inhibiting or changing the behaviour of those who are targeted”. “The Impact of Economic Sanctions”, op. cit., vol. I, 9 May 2007, para 68, p. 26. According to this report, by August 2005, £825,000 had been frozen in the UK and by 2006 a further £160,000. The committee acknowledged it had no idea what assets had been frozen elsewhere. The only publicly available U.S. figures are from 2004 and the Government Accountability Office, showing \$800,000 of assets had been seized. Grebe, op. cit., p. 18. Examples are given in Eriksson, op. cit., appendix 2, pp. 71–73.

²⁸ “XXXXXXXXXXXX's observations on the political landscape and U.S.-Zimbabwe relations”, U.S. embassy Harare cable, 10 February 2002, as published by WikiLeaks, www.wikileaks.org/cable/2010/02/10HARARE93.html.

²⁹ Crisis Group telephone interviews, Zimbabwe political analyst, 21 November 2011; SADC facilitation team member, 30 November 2011; Crisis Group interviews, SADC diplomat, Harare, 16 November 2011; Zimbabwe businessmen, Harare, 4, 10 November 2011. Agriculture Minister Joseph Made (ZANU-PF) told the U.S. embassy that sanctions against Agribank, which make loans to small farmers, hurt production. The previous month, Finance Minister Tendai Biti (MDC-T) had asked the U.S. to delist Agribank and said it would support economic reform. U.S. Ambassador Charles Ray supported this recommendation, “Ambassador's meeting”, cable, op. cit., “Recommendation on responding to Zimbabwe's Finance Minister by de-listing banks”, U.S. embassy Harare cable, 9 January 2010, as published by WikiLeaks, www.wikileaks.org/cable/2010/01/10HARARE9.html.

³⁰ “Report of the SADC Senior Officials Mission to Britain, the United States and the European Union Headquarters, 26 April–2 May 2011”, SADC/EOS/2/2011/5, paras 8, 11.

³¹ Gono, “Impact of sanctions against Zimbabwe”, op. cit., paras 11, 20, 22.

say the economy was already collapsing when sanctions were imposed, and they are not responsible for the country's uninviting investment climate and history of renegeing on IFI payment obligations. Zimbabwe has serious foreign debt problems, owing almost \$9 billion, about \$6 billion of which are in arrears. In most instances, however, the IFIs do not mention sanctions as a primary concern with respect to economic recovery.³² In purely economic terms, addressing fundamental economic policies and errant practices is more important than what is done about sanctions.³³

The arms embargoes are inefficiently enforced and monitored.³⁴ They are not comprehensive, and Zimbabwe has been relatively successful in finding alternative sources, especially in China,³⁵ though it has concerns about the quality of some of what has been acquired.³⁶ Without changing existing measures, the U.S. and EU member states would have room to engage Zimbabwe's military, police and even intelligence apparatus in a dialogue about the responsibility of security services in a democratic society. Given wide concern that the unreconstructed and partisan attitudes of those services are among the chief threats to free, fair and peaceful elections in which the people's will is respected, it would be useful to pursue such a dialogue.

³² Sanctions are not mentioned, for example, in the African Development Bank's 2011 report, "Infrastructure and Growth in Zimbabwe: An Action plan for Sustained Strong Economic Growth". The IMF's "2011 Article IV Consultation", Country Report No.11/135, mentions sanctions only as having been raised by some Zimbabwe officials who felt they hindered economic recovery. A World Bank paper argues that Zimbabwe's potential for raising additional funding for infrastructure will improve "particularly when the international sanctions are lifted", Nataliya Pushak and Cecilia M. Briceño-Garmendia, "Zimbabwe's Infrastructure: A Continental Perspective", Policy Research Working Paper, 5816, September 2011.

³³ Crisis Group interview, Zimbabwean economist, Harare, 31 August 2011.

³⁴ Grebe, op. cit., pp. 13-14.

³⁵ Brian Johnson-Thomas and Peter Danssaert, "Zimbabwe – Arms and Corruption: Fuelling Human Rights Abuses", International Peace Information Service, July 2009, reports "irresponsible arms transfers" in 2008, including 53 tons of ammunition from the Congo (DRC) in August and a well-publicised arms shipment from China in April. Reliance on alternative sources has led to quality concerns. "Zimbabwe's Security Forces – A Profile", *Southern Africa Report*, July 2011.

³⁶ Crisis Group interview, security analyst, Pretoria, 19 September 2011.

B. PROPAGANDA AND POLITICS

Sanctions have given ZANU-PF, which presents itself as a victim of external machinations, a propaganda narrative that reinforces its anti-imperialist rhetoric.³⁷ A resolution at its December 2009 congress instructed the party leadership and negotiators to prevent:

movement on the concerns of the MDC Formations without corresponding and simultaneous redress of ZANU-PF's concerns such as the illegal Western sanctions, Western-funded pirate radio broadcasts and Western interference in Zimbabwe's internal politics through the funding of parallel government structures and the sponsoring of political activities of NGOs as a force multiplier for the MDC Formations.³⁸

This demand for reciprocity, which has no basis in the GPA, became a party mantra during 2010, was noticeably absent during the 2011 negotiations over the election roadmap but continues to resonate at senior levels.³⁹ ZANU-PF also uses the sanctions issue to mobilise its own party structures as well as to berate MDC-T for failing to deliver on promises and GPA obligations.⁴⁰ It is expected that sanctions (along with the indigenisation program) will be central to ZANU-PF's election campaign.⁴¹

Sanctions have remained divorced from the popular struggle for democracy. Many civil society groups, as well as

³⁷ "Sanctions create an 'uneven' playing field", *The Herald*, 23 November 2011.

³⁸ Extract from the resolutions of the ZANU-PF Congress, Harare, 9-13 December 2009.

³⁹ Crisis Group telephone interview, human rights defender, Harare, 21 November 2011; interview, ZANU-PF politburo member, Harare, 7 November 2011, who said, "if the sanctions are removed, ZANU-PF is willing to re-engage the West". For detail on the election roadmap and the politics surrounding it, see Crisis Group Briefing, *Resistance and Denial*, op. cit.

⁴⁰ Crisis Group interview, ZANU-PF politburo member, Harare, 7 November 2011. ZANU-PF claims it secured over 2.2 million petition signatures opposing sanctions. "Zimbabwe's ZANU-PF to highlight anti-sanctions petition at regional summit", *Voice of America News*, 20 July 2011. The pro-ZANU-PF attorney general says he is presently exploring options to bring a case against the European Commission at the European Court of Justice to establish that sanctions are illegal. "Zim legal team ready to face EU, says AG", *The Sunday Mail* (online), 27 October 2011.

⁴¹ Crisis Group interviews, Harare, November 2011. "Sanctions create an 'uneven' playing field", *The Herald*, 23 November 2011. The Indigenisation and Empowerment law provides that businesses with a certain asset value must cede a controlling interest of not less than 51 per cent to indigenous Zimbabweans within five years. Premised on redressing historical injustices, it is politically and economically controversial, with concerns that it will only benefit a small minority.

MDC-T, are ambivalent about engagement with the issue and maintain they have limited influence over it.⁴² ZANU-PF's claims have dominated the public space with arguments that evoke a measure of sympathy from southern African neighbours and the continent more generally.⁴³ MDC-T denies that it takes direction from Washington and London, and U.S. embassy cables confirm its leadership has urged the Obama administration to progressively lift the sanctions.⁴⁴ Former UK Foreign Secretary David Miliband told Parliament the Labour government would be guided by the MDC-T on sanctions.⁴⁵ Tsvangirai acknowledges that his public support for lifting sanctions contradicts private conversations that tie easing them to reform benchmarks. His party is committed through the GPA to removal, but not to ZANU-PF's position that this should be unconditional, and it has yet to debate the topic thoroughly.⁴⁶

The U.S. holds Zimbabwe's political leaders responsible for implementing the reforms to which they have committed. These include "the holding of free, fair and interna-

tionally monitored elections" and the delinking of state institutions from ZANU-PF. The UK argues that full GPA implementation and free and fair elections are the "quickest and most effective way of transforming relations between Zimbabwe and Britain", a point similar to what the senior EU foreign policy figure has said applies broadly to Brussels' policy on Zimbabwe.⁴⁷

But full GPA implementation within the lifetime of the current power-sharing arrangement is unlikely, and sanctions will do little to further it.⁴⁸ Limited public debate has prevented coherent discussion about sanctions, why they were imposed and what can be done to ensure they are lifted. Neither MDC nor civil society has tied the issue to mobilisation or to building opposition, solidarity or advocacy strategies, domestically or internationally. There has been a fundamental failure by the EU and U.S. to communicate the intentions of the sanctions adequately.⁴⁹ The reasons for targeting specific individuals and entities have not been expressly shared with ordinary citizens, who are bombarded by state media and ZANU-PF, so it is not surprising that, according to some polls, most believe sanctions target the general populace and should be removed. Nevertheless, it is not a burning issue; the debate is largely among elites.⁵⁰

⁴² Nyambabvu, op. cit. Then-Foreign Secretary David Miliband told the UK House of Commons that regarding lifting sanctions, "above all (we will) be guided by what the MDC says to us about conditions under which it is working". This and information in U.S. embassy Harare cables released by WikiLeaks has reinforced perceptions that London and Washington work closely with the MDC-T on sanctions policies. "MDC-T working with West on sanctions – Wikileaks", *The Herald*, 7 February 2011. "Tsvangirai asks the West for help in changing the status quo", U.S. embassy Harare cable, 24 December 2009, as published by WikiLeaks, www.wikileaks.org/cable/2009/12/09HARARE1004.html.

⁴³ Eriksson, op. cit., pp. 36-41.

⁴⁴ In December 2009, following the MDC-T's return to the Inclusive Government after a temporary suspension of participation and the ZANU-PF congress where Mugabe said there would be no further reform without sanctions being lifted, Tsvangirai urged the U.S. "to 'give' some modest reward for modest progress". The U.S. embassy, though sceptical that reforms would result, noted that "changing the status quo here will require some risk taking on everyone's part". "Tsvangirai asks the West for help", cable, op. cit.

⁴⁵ Nyambabvu, op. cit. On MDC and civil society influence on UK and EU positions, Crisis Group interviews, Brussels, London and Harare, October-December 2012.

⁴⁶ "Tsvangirai asks the West for help", cable, op. cit. Crisis Group interview, Morgan Tsvangirai, 12 December 2011. Article IV of the GPA, "Sanctions and Measures", acknowledges the parties have agreed "(a) to endorse the (March 2007) resolution on sanctions concerning Zimbabwe, (b) that all forms of measures and sanctions against Zimbabwe be lifted in order to facilitate a sustainable solution to the challenges that are currently facing Zimbabwe; and (c) commit themselves to working together in engaging the international community with a view to bringing to an end the country's international isolation". As with other GPA provisions, it is sufficiently ambiguous to allow for varying interpretations.

⁴⁷ Testimony of Ambassador Johnnie Carson, Assistant Secretary of State for African Affairs, House Foreign Affairs Committee, Subcommittee on Africa, Global Health and Human Rights, Washington, DC, 2 November 2011. UK Ambassador, Deborah Bronnert, quoted at a press conference in Bulawayo, 29 November 2011. "ZANU-PF lying about sanctions", *Daily News*, 1 December 2011. "Declaration by High Representative Catherine Ashton on behalf of the EU on Zimbabwe", February 2011, www.consilium.europa.eu/uedocs/.

⁴⁸ The notion of "full implementation of the GPA", albeit a powerful mantra, is somewhat unrealistic, as a number of its provisions are essentially aspirations for achievement over a longer timeframe than what a government can be expected to accomplish in a single term. Article VII (1) (a) for example, states that "the new government will ensure equal treatment of all regardless of gender, race, ethnicity, place of origin ...".

⁴⁹ Brian Raftopolous, "The Sanctions Debate on Zimbabwe", Solidarity Peace Trust, September 2007. Grebe, op. cit., p. 23. Communication options were hampered by local media restrictions, but there were alternative ways to disseminate information about sanctions. Crisis Group telephone interview, human rights defender, Harare, 21 November 2011.

⁵⁰ Only the EU sanction list includes limited detail on why specific individuals and entities are targeted. No criteria are provided on what action can or should be taken to be removed from the list. Of 1,200 persons surveyed in May-June 2009, 69 per cent said "sanctions are hurting ordinary Zimbabweans and should be removed"; 23 per cent said "sanctions are only targeted at few individuals who are resisting change and should be maintained". "Round 4 Afrobarometer Survey in Zimbabwe",

A cabinet re-engagement committee, chaired by Foreign Minister Simbarashe Mumbengegwi, was established in 2009 to explore ways of normalising Harare-EU relations.⁵¹ In February 2010, Gordon Moyo, then minister of state in the prime minister's office, complained that the committee had not reported. It travelled again to Europe in April 2010 and July 2011, but no details have been forthcoming, except a general notice of no significant progress.⁵² It is unclear how the committee engages with SADC on sanctions and with the EU-Zimbabwe political dialogue that was initiated in June 2009 (see below).

III. DAMNED IF YOU DO, DAMNED IF YOU DON'T

Sanctions were intended to respond to human rights abuses and misrule and to press the government for reform. In light of at best limited reform, implementing countries have argued that their removal would be inappropriate.⁵³ This suggests a belief they can still produce change or at least a constructive dialogue on the subject. It seems unlikely, however, given the core nature of the issues the measures are meant to influence and the indications that some important elements in ZANU-PF regard their continuation as benefiting the party's propaganda efforts. If that is so, retention of sanctions may further entrench polarisation and further undermine the capacity of countries implementing them to influence events.⁵⁴

Several commentators have called for a calibrated lifting as a third way between unconditional removal and retention until full achievement of the reform agenda.⁵⁵ Crisis Group recommended in 2007 that SADC, the EU and U.S. "adopt a joint strategy with a clear sequence of bench-

marks leading to a genuinely democratic process for which the removal of sanctions and resumption of international aid to government institutions could be used at the appropriate time as incentives".⁵⁶

There is some measure of support for this approach within MDC-T and among those imposing the measures.⁵⁷ A flexible approach distinguishing between persons and entities, in particular state enterprises, could potentially produce economic and political benefits. Both the EU and U.S. have already demonstrated a measure of such flexibility, including removal by Brussels of some individuals and entities from the Europeans' sanctions list in February 2011 and introduction of an option for bilateral negotiations with specific member states over possible reconsideration of asset freezes. Similar flexibility might be directed toward travel bans that impinge on legitimate government business.⁵⁸ The U.S. has also modified its target lists⁵⁹ and did not oppose Zimbabwe regaining International Monetary Fund (IMF) voting rights. Neither the government, nor SADC have publicly taken notice of these moves, and ZANU-PF has not acknowledged calibration as option, maintaining instead that sanctions are illegitimate in their entirety so must be lifted completely and unconditionally.⁶⁰

The 2008 GPA could have been an opportunity for a new approach, but it soon became evident that the spirit of that uneven power-sharing arrangement was not being adhered to, reforms were being resisted, and abuses were continuing. An EU-Zimbabwe political dialogue was initiated in June 2009, in response to formation of the Inclusive Government in February and in an effort to explore options for normalising relations that could result in lifting both the targeted sanctions and the measures imposed under Arti-

Mass Public Opinion Institute and Michigan State University. Crisis Group interviews, November 2011.

⁵¹ "Zimbabwe: Efforts to normalise Zim, EU relations gain momentum", *The Herald*, 15 June 2009.

⁵² "Zimbabwe-EU re-engagement – no progress", www.bulawayo24.com, 12 July 2011.

⁵³ Explanatory memorandum from the UK Europe minister, 3 February 2011, noted in report on "Restrictive Measures against Zimbabwe", European Scrutiny Committee, House of Commons, 9 February 2011. Carson testimony, op. cit. Crisis Group interviews, London and Harare, November-December 2011.

⁵⁴ Ncube, op. cit. Constructive engagement seeks to augment contacts and utilise incentives rather than sanctions as the best means of influencing policy and practice. Ncube, the owner of South Africa's *Mail and Guardian*, and Zimbabwe's *The Sunday Standard*, *The Zimbabwe Independent* and *Newsday*, argues that those imposing sanctions have "experienced a dramatic erosion of their diplomatic influence in and on Zimbabwe".

⁵⁵ "Zimbabwe: are targeted sanctions smart enough? On efficacy of international restrictive measures", Institute for Security Studies, Pretoria, 4 June 2010. Bryan Sims et al., op. cit., p. 29.

⁵⁶ Crisis Group Report, *Zimbabwe: An End to the Stalemate?*, op. cit., pp. i-ii.

⁵⁷ Crisis Group interviews, Harare, November, December 2011. "Tsvangirai asks the West for help", cable, op. cit. Bryan Sims et al., op. cit., p. 10.

⁵⁸ Article 4 of Council Decision 2011/101/CFSP, 15 February 2011, presently provides that EU member states may grant exemptions where "travel is justified on urgent and imperative humanitarian grounds, or in exceptional cases on grounds of attending intergovernmental meetings, including those promoted by the European Union, where a political dialogue is conducted which directly, immediately and significantly promotes democracy, human rights and the rule of law in Zimbabwe".

⁵⁹ Crisis Group interview, U.S. government officials, Washington, DC, 6 December 2011. Periodic reviews to remove or add individuals take place. No comprehensive regular review of overall impact of sanctions occurs separate from periodic inter-agency policy reviews concerning Zimbabwe.

⁶⁰ Crisis Group interviews, ZANU-PF politburo members, Harare, August, September, November 2011. The agriculture minister told the U.S. ambassador that if consideration was being given to lifting sanctions against parastatals, it should be done en masse. "Ambassador's meeting", cable, op. cit.

cle 96 of the Cotonou Agreement. Meetings the following year agreed “to intensify the dialogue in Harare” and tasked the Zimbabwe parties “with defining the indicators, setting the timetable for the achievement of concrete objectives based on their respective roadmaps of commitments, and monitoring the progress”.⁶¹ Nevertheless, the EU has maintained its Cotonou measures because the essential elements with respect to human rights, democratic principles and the rule of law, referred to in Article 9 of the Agreement, continue to be violated.⁶²

While pointing to the steps they have already taken as indications of flexibility,⁶³ the U.S., EU and UK express further willingness to review measures in response to tangible progress on reforms. Their positions have not always been consistent, however, and there is anecdotal evidence that diplomats in the field are more open to exploring options than their counterparts in capitals.⁶⁴ A recommendation by Zimbabwe's MDC-T finance minister, Tendai Biti, for lifting sanctions against banking institutions such as Agribank that was endorsed by the U.S. embassy in Harare, for example, was not followed through.⁶⁵

Although ZDERA has some flexibility on bilateral debt relief and multilateral financing restrictions, its measures can only be withdrawn as a whole if the U.S. president certifies that conditions relating to the rule of law; elections; equitable, legal and transparent land reform; and subordination of the security forces to civilian control have been met.⁶⁶ Isolated congressional efforts to modify or repeal the law⁶⁷ have not gained traction, so Washington, like Brussels, remains committed to retaining sanctions until it sees delivery on the reform agenda.

A. CAN SADC DELIVER?

Many were deeply sceptical about the 2008 GPA, but it had the backing of the main political formations inside Zimbabwe, as well as the regional power bloc – SADC – that brokered it. The provisions on sanctions attempted to accommodate both ZANU-PF and MDC perspectives, treating the measures imposed by the EU and U.S. and those laid down in the IFIs alike and pledging to work towards their lifting and an end to international isolation. The African Union (AU) and SADC also committed, as GPA guarantors, to work toward the lifting of sanctions.⁶⁸

SADC opposed sanctions from their inception and renewed its call for their lifting when it took on the role of facilitating a solution to Zimbabwe's political crisis in March 2007.⁶⁹ The GPA article was consequently not unexpected, although its language was sufficiently opaque to allow varying interpretations. The EU and others adopted a “wait-and-see” approach, and in some respects, their caution was validated by ZANU-PF's unilateralism during the last months of 2008.⁷⁰ In early November, exasperated by slow implementation, SADC heads of state appealed to the parties to form an inclusive government without further delay and made no mention of sanctions.⁷¹ In January 2009, the EU, which had been agitating for a response to the 2008 electoral violence, concluded there had been inadequate progress, added 26 ZANU-PF names to its travel ban list and increased the number of companies whose assets were frozen from four to 40.⁷² This set the tone for future relations between the sanctioners and the sanctioned.

⁶¹ “EU-Zimbabwe political dialogue: moving towards enhanced cooperation”, EU10-121EN, 2 July 2010. The Zimbabwe ministerial team so tasked included Patrick Chinamasa (ZANU-PF), Elton Mangoma (MDC-T) and Priscilla Misihairabwi-Mushonga (MDC-N).

⁶² Beginning in 2003, the Council has extended the period of application of the “appropriate measures” nine times for a further twelve months, most recently Council Decision 2011/106/CFSP, 15 February 2011.

⁶³ In July 2010, for example, the EU noted that in response to the formation of the Inclusive Government, it had provided €200 million to Zimbabweans for health, education, food security and governance. “EU-Zimbabwe political dialogue”, op. cit. See also Carson testimony, op. cit.

⁶⁴ Crisis Group interviews, Western diplomats, Harare, November-December 2011.

⁶⁵ See fn. 29 above.

⁶⁶ Section 4 (d) (1-5). The one condition that has been met involved the end of Zimbabwe's participation in the Congo war.

⁶⁷ House of Representatives 5971, “Zimbabwe Renewal Bill of 2010”, 29 July 2010; Senate, S.1646. “To repeal the Zimbabwe Democracy and Economic Recovery Act of 2001”, 4 October 2011.

⁶⁸ Article IV. Article XXII (7): “The Parties and the new Government shall seek the support and assistance of SADC and the AU in mobilizing the international community to support the new Government's economic recovery plans and programmes together with the lifting of sanctions taken against Zimbabwe and some of its leaders”.

⁶⁹ “Communiqué: Extraordinary Summit of the SADC Heads of State and Government”, Dar es Salaam, 29 March 2007.

⁷⁰ Crisis Group Briefing, *Zimbabwe: Engaging the Inclusive Government*, op. cit. A series of disagreements emerged almost immediately around details of the power-sharing arrangement, including ministerial and senior civil servant appointments. The GPA provided for Mugabe-Tsvangirai consultation on key appointments, but Mugabe unilaterally renewed Attorney General Johannes Tomana and Reserve Bank Governor Gideon Gono, both ZANU-PF loyalists. In December 2008, several MDC and civil society activists were abducted and tortured. Other concerns related to allegations of human rights abuses by security forces in the Marange diamond fields. See, Knox Chitiyo, “The Case for Security Sector Reform in Zimbabwe”, occasional paper, Royal United Services Institute, September 2009, pp. 6-7.

⁷¹ “Communiqué: Extraordinary Summit of the SADC Heads of State and Government”, South Africa, 9 November 2008.

⁷² “Conclusions on Zimbabwe”, Foreign Affairs Council, 26 January 2009, www.consilium.europa.eu/uedocs/; and Com-

The Inclusive Government was finally established in February 2009, and in March SADC called for removal of “all forms of sanctions”, arguing that their continuation would “undermine (Zimbabwe) and SADC efforts to normalise the situation”.⁷³ Brussels and Washington, however, had at this stage already committed to the opposite formula, namely that reform must happen first, and they retained a “maximalist logic” around Mugabe’s removal from power and ZANU-PF illegitimacy that left them doubtful about the feasibility of the SADC-South Africa objective of an inclusive negotiated settlement.⁷⁴ Critics fault the Western powers with some justice for failing to grasp the importance of building understanding and support for their position among key regional players, so as to construct unity around the reform agenda.⁷⁵ The deficit in strategy and tactics on the sanctions issue was by extension a demonstration of the lack of faith in SADC’s ability to deliver a sustainable result that would address the democratic deficit.

SADC’s record on the crisis was suspect from the point of view of those imposing sanctions. It had been silent about multiple abuses that gave rise to the measures and appeared to give ZANU-PF the benefit of the doubt consistently, an attitude of solidarity with roots in shared liberation history and relations between the national movements that fought colonialism in the region.⁷⁶ Its point role was delegated to the South African president, Thabo Mbeki, who while critical of ZANU-PF, exposed himself to allegations of partisanship when he engaged it as “the

party of liberation”, as opposed to the MDC, which he described as the “forces of opposition”.⁷⁷ This set a tone the MDC formations have been unable to change and from which the region appears unwilling to fully depart.⁷⁸

The GPA signatories and SADC never put a formula on the table that tied the lifting of sanctions to reform implementation. Meanwhile ongoing violations of the GPA and the non-implementation of reforms hardened the position of those who had imposed the measures. The SADC mission of senior officials that visited London, Washington and Brussels in April-May 2011 to engage on the issue was told that the UK, U.S. and EU were willing to be flexible but needed to see greater progress on reforms.⁷⁹ That the exercise failed to translate into development of a benchmarked framework exposed SADC’s lack of traction with all sides of the issue.

SADC’s public stance toward the Zimbabwe parties – especially ZANU-PF – hardened perceptibly during 2011, notably in the language used by the Organ Troika in its March 2011 communiqué and endorsed by the heads of state in June, but this has not translated into significant change on the ground (even if it did generate considerable consternation within ZANU-PF).⁸⁰ In November, ZANU-PF and the MDC formations referred to the facilitation team sixteen issues relating to areas of deadlock and non-implementation that they felt unable to resolve. President Zuma is to take them up when he meets with the GPA principals in early 2012.⁸¹ The delays in arranging that

mission regulation amending the Council regulation 2004, <http://eur-lex.europa.eu/>.

⁷³ “Communiqué: Extraordinary Summit of the SADC Heads of State and Government”, Swaziland, 30 March 2009.

⁷⁴ Vincent Darraq, “Quelle politique pour l’UE au Zimbabwe aujourd’hui”, occasional paper, Institut d’Etudes de Sécurité de l’Union européenne (EUISS), 2010, quoted in Portela, “Impact of Sanctions” op. cit., p. 25.

⁷⁵ Ozias Tungwarara, “Sanctions: In aid of transition or an obstacle to democracy”, in Richard Lee (ed.), “Zimbabwe at the Crossroads”, Openspace, Open Society Initiative for Southern Africa, June 2011, p. 113. Similar criticism could be made about SADC’s and Zimbabwean parties’ failure to promote a formula tying sanctions lifting to a clear reform agenda.

⁷⁶ Eldridge Adolfo, “The Collision of Liberation and Post-Liberation Politics within SADC: A Study on SADC and the Zimbabwean Crisis”, FOI – Swedish Defence Research Agency, June 2009. Relations between liberation movements in the region are neither homogenous nor exclusively rooted in comradeship and shared historical positions. Indeed, there is some evidence that a contrived history of the past is used to renew liberation-struggle solidarity. Relations are not static, and ZANU-PF has “actively sought to endear itself to those former liberation movements with which it had weak links prior to 1980”. Sabelo J. Ndlovu-Gatsheni, “Reconstructing the Implications of Liberation Struggle History on SADC Mediation in Zimbabwe”, South African Institute for International Affairs, Occasional Paper no. 92, September 2011.

⁷⁷ “The Mbeki-Mugabe Papers”, August 2001. *New Agenda* (South Africa) published an edited version of this 37-page memorandum, allegedly by Mbeki, in June 2008. Jacob Zuma took over the point role in the facilitation when he succeeded Mbeki as South Africa’s president in 2009.

⁷⁸ Ndlovu-Gatsheni, op. cit. pp. 13-17.

⁷⁹ “Report of the SADC Senior Officials Mission”, op. cit. The UK representatives, for example, pointed out that London was willing to “gradually consider the lifting of targeted sanctions if they were satisfied that concrete steps were put in place by the government of Zimbabwe to curb violence and observe the rule of law”, *ibid*, para 16, p. 4. The mission included representatives from Namibia, Zambia and South Africa, as well as the SADC Secretariat.

⁸⁰ Crisis Group Briefing, *Resistance and Denial*, op. cit.

⁸¹ “Post Maputo Dialogue: Memorandum of Understanding on Progress since May 2011”, 23 November 2011. The sixteen issues are failure (i) to establish a National Economic Council; (ii) of the re-engagement committee and SADC to re-engage the EU with respect to lifting sanctions and other measures; and (iii) to set up a Land Commission and carry out a land audit; (iv) disagreement over allegations regarding the closure of political space; failure (v) of GPA principals to meet with the attorney general, commissioner of police and heads of security and intelligence; and (vi) of the GPA negotiators to meet with the commissioner general of police, (vii) disagreement over allegations of partisanship of state organs; (viii) unfinished busi-

visit have generated scepticism about what is likely to be achieved, not least because even the summit's June decision to deploy a technical team to strengthen the Joint Monitoring and Implementation Committee (JOMIC) has not yet been carried out.⁸²

Those imposing sanctions welcome the changes in SADC's tone and in the style of the Zuma-led facilitation team and assert confidence SADC will not allow elections to proceed unless conditions are conducive,⁸³ but they remain unsure what leverage it has or is willing to use to break deadlocks over outstanding issues and enforce implementation of agreed items.⁸⁴ In many respects, SADC's resolve has yet to be tested. In May 2011 its justice ministers suspended operation of the SADC Tribunal in what appeared a concession to ZANU-PF, which was angered at its rulings against the previous ZANU-PF government regarding the land reform process.⁸⁵ While the international response

has been "muted",⁸⁶ the suspension has raised concerns about the region's commitment to upholding the rule of law, a central issue for those deciding whether to ease the sanctions regime.

B. A WAY FORWARD?

For some, the opportunity to put in place a structured process for lifting sanctions tied to GPA reform has now passed, and ongoing abuse "demands intensified isolation of those responsible".⁸⁷ Others agree that current circumstances are not promising but suggest a bold move to remove or suspend at least specific elements could provide the space SADC needs to be more effective.⁸⁸ Suspension would also allow for reintroduction or even expansion of measures should reform not be forthcoming and/or violations continue.

The October 2011 decision of the Kimberley Process Certification Scheme (KPCS) to authorise the sale of Marange diamonds, despite governance and human rights concerns, resulted from EU-led talks. Although a distinct process, it showed the extent of compromise the EU is prepared to entertain, however controversial, something that has been absent from sanctions discussion.⁸⁹ The decision itself was problematic – especially as the government has only partial oversight of operations and revenue in the absence of effective regulation – but SADC and ZANU-PF should see it as a confidence-building indication of the kind of flexibility Brussels and Washington say they are ready to demonstrate more widely if performance justifies.⁹⁰

ness relating to the legislative agenda (including the Human Rights Bill, amendments to the Electoral and Criminal Procedures Act and realignment of laws with the forthcoming Constitution and related transitional arrangements); (ix) disagreements on causes of political violence and the role of the police; outstanding issues on (x) media reform and regulation and (xi) appointments, (xii) JOMIC delays establishing an inquiry to investigate violence, intimidation, harassment and other violations; disagreements on (xiii) electoral reform as defined in the election roadmap; (xiv) rule of law as defined in the election roadmap and (xv) freedom of association and assembly; and (xvi) violations of GPA provisions on the rule of law, free political activity and respect for the constitution and other laws.

⁸² Crisis Group Briefing, *Resistance and Denial*, op. cit. JOMIC was established pursuant to Article XXII of the GPA as "the principal body dealing with issues of compliance and monitoring of the Agreement". SADC, its facilitation team and the GPA signatories have increasingly realised its potential importance for addressing allegations of GPA violations and non-compliance.

⁸³ Crisis Group interviews, Western diplomats, Harare, 2 September, 21 November 2011, Brussels, 26 October 2011, London, 31 October 2011. Carson testimony, op. cit.

⁸⁴ Crisis Group interviews, diplomats, Brussels, London, Harare, September-December 2011.

⁸⁵ The SADC Tribunal was established in 1992 by Article 9 of the SADC Treaty and became operational in 2005. It has responsibility for ensuring adherence to the SADC treaty and its subsidiary instruments and for adjudicating disputes referred to it by individuals as well as member states. It had ruled that a number of white farmers had been denied access to legal remedy in Zimbabwe and been discriminated against on grounds of race. It found the government in breach of treaty obligations and directed it to pay compensation and halt further actions against the applicants, case no.2/2007. The government first ignored, then violated the ruling. In June 2009, the Tribunal declared it in breach and referred the matter to the SADC summit "for appropriate action", case no.3/2009. SADC took no action, generating speculation that the subsequent suspension was partially designed to avoid having to deal with the matter. Crisis

Group telephone interview, human rights defender, Harare, 20 November 2011. "Regional Court's Future Hangs in the Balance: Q & A: The SADC Tribunal", Human Rights Watch (undated).

⁸⁶ "SADC leaders slammed over tribunal shutdown", *Mail and Guardian Online*, 1 July 2011.

⁸⁷ Tungwarara, op. cit., p. 113.

⁸⁸ Crisis Group interview, Zimbabwe analyst, London, 2 November 2011; telephone interview, SADC facilitation team member, 30 November 2011.

⁸⁹ NGOs involved in the KPCS have distanced themselves from this agreement, "Kimberley Process lets Zimbabwe off the hook (again)", Joint statement, Global Witness, Green Advocates, Centre for Research and Development, Partnership Africa Canada, 2 November 2011. On 5 December, Global Witness formally withdrew from the KPCS.

⁹⁰ Crisis Group interview, Western diplomat, Harare, 21 November 2011. The subsequent U.S. decision to add two companies, cleared for trading by the KPCS, to its sanctions list, by virtue of their relationship with the Zimbabwe Minerals Development Corporation (ZMDC), which is already on the list, was criticised by Finance Minister Biti (MDC-T) as "self-defeating ... and contrary to the spirit of engagement and harmful to the generality of Zimbabweans". "Biti attacks US government",

Those imposing sanctions should do a careful cost/benefit analysis of what has been undertaken and achieved, as well as of continued appropriateness in current circumstances. It should include reflection on the implicit challenge to the legitimacy of their efforts that results from the region's non-support. Having agreed they want SADC to lead on Zimbabwe, they should explore options – including on sanctions – that could position them more favourably to put the regional body under pressure to be more proactive, while at the same time removing a central ZANU-PF justification for inaction. Any sanctions decision should be made after consultation with SADC that in turn should lead to more effective, ongoing channels of communication with it.

The mixed messages MDC-T has been sending on sanctions undermines its credibility inside Zimbabwe and beyond. It should be encouraged to state its position clearly at last. It does not control decisions on the issue, but its opinion counts, and it has an opportunity to help produce a constructive linkage between the measures and reform. In contrast, ZANU-PF must make its position more nuanced if it is to assist in finding a solution. Acknowledging some responsibility for the current state of affairs would be an important step toward constructive engagement and necessary compromise.

SADC, as facilitator and GPA co-guarantor, must ultimately seek to promote a coherent position on sanctions among the negotiating parties and a constructive dialogue with the EU and U.S. To date, it has little tangible to present in Brussels and Washington that addresses concerns over reform deficits. Obtaining movement on sanctions, as on other contested GPA areas, requires a clear identification of where the blockages lie, as well as of who and what are responsible for those blockages; and SADC has still to determine how it can or will hold the Zimbabwe parties to account. The failure of those parties, through either the EU-Zimbabwe political dialogue or the re-engagement committee, to advance constructive proposals on a timetable with defined indicators based on concrete objectives, has seriously weakened its efforts to promote the lifting of sanctions.⁹¹

The resigned November 2011 referral to Zuma of in effect all outstanding issues, including sanctions, reflects the limited progress made in the SADC process, as well as the

absence of constructive bilateral energy, and underscores the need to augment the body's leverage over the GPA parties to comply with agreements and to hold them accountable for violations. In this regard, SADC should expedite deployment of its monitors to JOMIC, so as to enhance its capacity to monitor and report developments on the ground. But it needs also to consider what more it might do if non-implementation and violations of the GPA continue.

Sanctions cannot be dealt with in isolation from broader challenges, but insistence that their removal requires virtually full implementation of reform has stymied exploration of innovative approaches, while masking important support provided to Zimbabwe by the EU and U.S. An option built around distinguishing types of measures that have been lumped together under the sanctions rubric and seeking an agreed formula with SADC on when and how to suspend one set of them would not guarantee progress on reform. ZANU-PF might dismiss it out of hand; it would be difficult to justify to some constituencies, in Zimbabwe and in the West, who would argue that it unfairly rewarded Mugabe's party for its recalcitrance; some civil society organisations have also raised concerns that ZANU-PF would use it for propaganda purposes, as evidence that it has been correct to play hardball.⁹² The very mechanics of suspension (and possible reintroduction) would present practical and political challenges. New resources might be required, for example, for enhanced monitoring, communications and coordination.

But moving in this direction would reflect a willingness to resolve the impasse, blunt the proposition that sanctions inhibit reform and improve the opportunity for Brussels and Washington to stimulate a more vigorous SADC facilitation. At the same time, a partial suspension option becomes more feasible and promising if the EU, U.S. and SADC can define together a coherent common framework with respect to objectives and the stages for achieving them. In the absence of such a framework that links sanctions and reforms, neither may see much progress.

IV. CONCLUSION

The political climate in Zimbabwe is one of uncertainty and fear, with two, linked centres. One involves the prospect that a fierce struggle among ZANU-PF barons and security service strongmen to take over the mantle of the ancient and ill Mugabe may be near; the other that the next election, which cannot be much more than a year off, is likely to be as violent and its result as unrepresentative of

The Sunday Mail (online), 15 January 2012. It has also generated questions about the selective application of sanctions, as other companies involved in the diamond trade and linked to ZMDC remain exempt.

⁹¹ Given their failure to engage on proposals, some SADC diplomats privately say the parties do not regard sanctions removal as a particularly serious issue. Crisis Group interviews, Harare, November and December 2012.

⁹² Crisis Group interview, Zimbabwe European Network, Brussels, 24 October 2011.

the popular will as its predecessor unless progress is quickly made on electoral reforms, and something is done about the unreconstructed security services.

The handling of sanctions has become an excessive distraction from gauging progress toward and prospects for a sustainable solution to the country's crisis. All interested parties claim they support rescinding sanctions, at least as an objective, yet initiatives to this end have failed to gain traction. The GPA negotiating parties have been unable to reach a common position, and the SADC facilitation has been unable to present the EU and U.S. with a foundation upon which to build a common framework for practical engagement on the issue. Brussels and Washington, while maintaining that an easing of the measures must still be tied to reform, insist they are willing to be flexible in their approach, but neither has presented a thorough assessment of how the measures have or can in current circumstances usefully contribute to reform.

Progress with respect to key reforms that address the democratic and human rights deficits that brought about the sanctions in the first place is inadequate and presently stalled. Further movement is rejected by ZANU-PF, which portrays demands by the MDC formations as promotion of an external agenda and is pushing instead for an end to the Inclusive Government and an expedited election process that by any objective standard the country is not ready for. In this context, the sanctions standoff is more likely to be treated as a political football than a problem to be resolved.

The continued conflation by ZANU-PF of targeted sanctions with restrictions on government-to-government development aid and proscriptions on credits and loans from IFIs has hampered the disaggregation of these issues and identification of pragmatic options that might be employed to deal with them. MDC-T has indicated some interest in approaching removal of sanctions by stages, and there have been individual calls for the easing of restrictions on specific entities, but the party has not put a comprehensive plan on the table or identified what specific actions should be taken in relation to particular measures. Nevertheless, sanctions are back on the SADC facilitator's agenda, to be taken up with the GPA principals. This provides an opportunity for all concerned, including the EU and U.S., to move beyond absolutist positions and ambivalence, re-engage on the issue and seek practical options for breaking the political deadlock.

All that will require a degree of political commitment that has largely been absent, but if it can be summoned, there may yet be a chance to put in place – if not the full agenda of GPA reforms – at least the minimum conditions, including restraints on the security services, needed for a genuine election by 2013.

Johannesburg/Brussels, 6 February 2012

APPENDIX A

MAP OF ZIMBABWE



APPENDIX B

ABOUT THE INTERNATIONAL CRISIS GROUP

The International Crisis Group (Crisis Group) is an independent, non-profit, non-governmental organisation, with some 130 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international decision-takers. Crisis Group also publishes *CrisisWatch*, a twelve-page monthly bulletin, providing a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world.

Crisis Group's reports and briefing papers are distributed widely by email and made available simultaneously on the website, www.crisisgroup.org. Crisis Group works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The Crisis Group Board – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring the reports and recommendations to the attention of senior policy-makers around the world. Crisis Group is chaired by former U.S. Ambassador Thomas Pickering. Its President and Chief Executive since July 2009 has been Louise Arbour, former UN High Commissioner for Human Rights and Chief Prosecutor for the International Criminal Tribunals for the former Yugoslavia and for Rwanda.

Crisis Group's international headquarters are in Brussels, with major advocacy offices in Washington DC (where it is based as a legal entity) and New York, a smaller one in London and liaison presences in Moscow and Beijing. The organisation currently operates nine regional offices (in Bishkek, Bogotá, Dakar, Islamabad, Istanbul, Jakarta, Nairobi, Pristina and Tbilisi) and has local field representation in seventeen additional locations (Baku, Bangkok, Beirut, Bujumbura, Cairo, Damascus, Dili, Guatemala City, Jerusalem, Johannesburg, Kabul, Kathmandu, Kinshasa, Port-au-Prince, Sarajevo, Seoul and Tunis). Crisis Group currently covers some 60 areas of actual or potential conflict across four continents. In Africa, this includes Burundi, Cameroon, Central African Republic, Chad, Côte d'Ivoire, Democratic Republic of the Congo, Eritrea, Ethiopia, Guinea, Guinea-Bissau, Kenya, Liberia, Madagascar, Nigeria, Rwanda, Sierra Leone, Somalia, Sudan, Uganda and Zimbabwe; in Asia, Afghanistan, Bangladesh, Burma/Myanmar, Indonesia, Kashmir, Kazakh-

stan, Kyrgyzstan, Nepal, North Korea, Pakistan, Philippines, Sri Lanka, Taiwan Strait, Tajikistan, Thailand, Timor-Leste, Turkmenistan and Uzbekistan; in Europe, Armenia, Azerbaijan, Bosnia and Herzegovina, Cyprus, Georgia, Kosovo, Macedonia, Russia (North Caucasus), Serbia and Turkey; in the Middle East and North Africa, Algeria, Egypt, Gulf States, Iran, Iraq, Israel-Palestine, Jordan, Lebanon, Libya, Morocco, Saudi Arabia, Syria, Tunisia and Yemen; and in Latin America and the Caribbean, Bolivia, Colombia, Ecuador, Guatemala, Haiti and Venezuela.

Crisis Group receives financial support from a wide range of governments, institutional foundations, and private sources. The following governmental departments and agencies have provided funding in recent years: Australian Agency for International Development, Australian Department of Foreign Affairs and Trade, Austrian Development Agency, Belgian Ministry of Foreign Affairs, Canadian International Development Agency, Canadian International Development and Research Centre, Foreign Affairs and International Trade Canada, Royal Danish Ministry of Foreign Affairs, Dutch Ministry of Foreign Affairs, European Commission, Finnish Ministry of Foreign Affairs, German Federal Foreign Office, Irish Aid, Principality of Liechtenstein, Luxembourg Ministry of Foreign Affairs, New Zealand Agency for International Development, Royal Norwegian Ministry of Foreign Affairs, Swedish International Development Cooperation Agency, Swedish Ministry for Foreign Affairs, Swiss Federal Department of Foreign Affairs, Turkish Ministry of Foreign Affairs, United Kingdom Department for International Development, U.S. Agency for International Development.

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February 2012



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Crisis Group also operates out of over 25 different locations in Africa, Asia, Europe, the Middle East and Latin America.

See www.crisisgroup.org for details.

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