

# Can Zimbabwe Move Beyond the Sanctions Rhetoric?

Written by Hoitsimolimo Mutlokwa

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HOITSIMOLIMO MUTLOKWA, JAN 9 2020

2020 marks 19 years of the Zimbabwean government declaring that it is under sanctions and subsequent political and economic isolation. Whilst, at the same time, the government also argues that these conditions should be removed by the US and the EU – the main sources of the sanctions. There are two main narratives about sanctions in Zimbabwe. The first narrative comes from the Zimbabwean government that sanctions come about as a result of frustrated correctional land redistribution. The second narrative comes from the West, that there are no sanctions on Zimbabwe but targeted travel restrictions on specific individuals and companies who impede on democracy, human rights and the rule of law. This article does not aim to take any particular side within these narratives but will demonstrate that a rational approach is imperative in dealing with sanctions with use of political reforms.

### The Unpleasant Journey of Sanctions in Zimbabwe

In 1999, the Zimbabwean government through a constitutional referendum attempted to introduce a new constitution, which would technically mean expropriating certain commercial farming land without giving any compensation to the aggrieved former holders. The proposed new constitution was rejected by the majority of Zimbabweans who took part in the referendum. Bowing down to the pressure of angry ex-freedom fighter veterans the then President Mugabe gave the go-ahead for commercial farming land to be invaded by land-hungry peasants instigated by these ex-freedom fighter veterans in what was known as the Fast Track Land Reform Program (FTLRP). Subsequently, a spark of bad relations was ignited between Zimbabwe, the EU, and the USA. The farm invasions resulted in human rights abuses and beatings and to some extent, the murder of white farmers as well as political intimidation, murder and disappearances of opposition political supporters. On 21 December 2001 US President, George W. Bush, signed the *Zimbabwe Democracy and Economic Recovery Act* of 2001 (ZIDERA) into law – imposing economic sanctions on Zimbabwe. It would also mean that Zimbabwe would not be able take part in programmes such as the International Monetary Fund program (IMF). ZIDERA imposed a travel ban on a list of individuals considered to be high profile and linked to the ruling parties' human rights atrocities. Subsequently in the following year on 18 February 2002, the EU followed suit, through passing the Common Council Position 2002/145/CFSP as well as other subsequent directives concerning restrictive measures against individual Zimbabweans predominantly from the political ruling elite, because of violence and intimidation of political opponents and harassment of the independent media by government and the ruling party. As a result, in terms of articles 3 and 4 of *Common Council Position 2002/145/CFSP* restrictive travel measures were put on top government officials and ruling party elite in Zimbabwe, by barring them on entering any EU territory.

In the eight years into the land reform exercise, Zimbabwe went on a downward spiral, recording one of the highest inflation rates in the world, and becoming a leading recipient of humanitarian aid, with minimal farming activities taking place to secure the nation's food security. Reduced production in expropriated commercial farming land was mainly as a result of a lack of financial support given to the FTLRP beneficiaries to purchase inputs and machinery, most farms got vandalized, and some run down. Furthermore, Zimbabwe had no option but to abandon its Zimbabwean dollar currency. In the 2008 elections, the opposition party withdrew its candidature in the election re-run. They were citing political violence and intimidation of opposition supporters in most of the rural villages and smaller towns. The main political parties agreed to a government of national unity, and this saw Zimbabwe getting a new constitution of 2013, Act 20 in Zimbabwe. Amongst other provisions explicitly made clear that civil liberties and socio-economic rights are part and parcel of the bill rights. For instance, as seen in sections 14 (2), the state must at

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all times ensure that appropriate employment opportunities are in place for all Zimbabweans especially the youth, 15 (b), which states that the state must secure the proper establishment of food.

The Government of National Unity ended in 2013 and new elections had to occur, which the ruling party ZANU PF got a majority of votes. Relations with the international community went to a further downward spiral. More expropriation of commercial farms continued, and the government now targeted the foreign-owned companies through *Indigenisation Economic and Empowerment Act 14:33 of 2007*, (IEEE) this resulted in compulsory ceding of 51 per cent ownership to local Zimbabwean citizens of all foreign-owned companies. Despite repeated calls from experts that this would bring massive company closures, and thus more job losses and less revenue in taxes for the government. Although IEIEE was repealed when economic damage was already done just after the November 2017 coup, certain mining activities such as gold, diamonds and platinum are still under a compulsory 51 per cent indigenous ownership.

In 2016, in the case of *Johannes Tomana and Others v Council of the European Union and European Commission*, the government of Zimbabwe through its Attorney general lost an application in the European Court of Justice challenging the travel ban into any EU territory of 109 Zimbabwean high profile individuals composed of high ranking civil servants, top police commissioners and top army generals as well as 11 companies in Zimbabwe. The Government of Zimbabwe was challenging articles 3 and 4 of Common Council Position 2002/145/CFSP restrictive travel measures. This directive had been adopted in terms of Article 15 of the EU now Article 29 of the TEU because of serious concerns raised on freedom of opinion, freedom of association and freedom of peaceful assembly of Zimbabwean citizens. Further, Common Council Position 2002/145/CFSP was amended with Common Council Position 2004/161/CFSP of 19 February 2004 which renewed restrictive measures against Zimbabwe's list of government and ruling party elites barred from travelling into EU territory. Council Regulation (EC) No 314/2004 of 19 February 2004 was adopted and implemented the restrictive measure of Common Council Position 2004/161/CFSP. This directive was subsequently amended by Council Decision 2011/101/CFSP of 15 February 2011, which meant that in terms of Article 5(1) all funds or resources found on EU territory of the listed individuals would be frozen.

The ECJ appeal court dismissed this appeal and found that the general court of the EU was correct in paragraph 48 that;

natural persons whose activities seriously undermine democracy, respect for human rights and the rule of law in Zimbabwe and the legal persons, entities or bodies belonging to those natural persons, referred to in Articles 4 and 5 of Decision 2011/101, should not be regarded as other than persons associated with the members of the Government of Zimbabwe and the legal persons, entities or bodies belonging to such associates, but constitute, in fact, a particular category of those associates.

The November 2017 coup, which was disguised as something other than a coup, was welcomed with euphoria and confidence amongst the citizens that the government would introduce political reforms. 31 July 2018 proved that Zimbabwe still had a long way towards introducing political reforms. Just after the announcement of the election results on 01 August 2018, people took the streets in the capital city of Harare, protesting as to what they believed was yet another rigging of ballot results by the main ruling party. Quickly thereafter, the military unleashed gunfire at defenceless demonstrators resulting in 6 deaths and many injuries. To this day, the perpetrators have not been brought to justice. On the other side, the opposition brought an urgent court application, alleging that the ruling party rigged the election. To the contrary, the constitutional court gave a judgement that they were no irregularities on 03 August 2018 in the case of *Chamisa v Mnangagwa & 24 others*. This was on the basis "that the applicant had failed to place before the court, any clear, sufficient, direct and credible evidence on these irregularities."

Coincidentally on 8 August 2018, the US imposed stiffer sanctions on Zimbabwe when President Donald Trump signed the *Zimbabwe Democracy and Economic Recovery Amendment Act* of 2018 (ZIDERA 2018). ZIDERA 2018 states that Zimbabwe must restore the rule of law, remove military interference by handing over to a civilian government and holding of free elections. ZIDERA 2018 further states that there has to be an adherence to the SADC Tribunal award of the case of SADC Tribunal case of Mike Campbell and 79 other commercial farmers, 2008, where the tribunal held, amongst other reasons that amendment 17 of the Zimbabwean constitution to expropriate

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land without compensation amounted to racial discrimination. Although the expropriation conducted to address the issue of racial imbalances, it was however marred by the awarding of land to predominantly “ruling party loyalists”.

## The Situation in 2019

Many Zimbabwean citizens would perhaps wish to forget 2019. The country’s citizens faced unprecedented inflation on essential commodities, high unemployment, lack basic amenities such as electricity and clean running tap water, inadequate health care services and children requiring adequate daily balanced meals. This paper has so far demonstrated a nexus connection between political reforms (i.e. amending media and security laws) and improving on socio-economic rights as a means of ensuring the thoughts of blaming ‘sanctions for bringing untold suffering’ twisted into many contexts’, can be immediately exterminated for the sake of the wellbeing of innocent ordinary Zimbabwean citizens. For instance, one does not need to go very far in digging into the nexus connection of political reforms and socio-economic rights. Let us take a look at statements from authoritative sources that speak about a need for political and socio-economic changes in Zimbabwe made in 2019. On 27 September 2019, the United Nations Rapporteur on the rights to freedom of peaceful assembly and association stated that although the government had taken steps to amend the security law known as the Public Order and Security Act (POSA) with Maintenance of Peace and Order Bill(MOPO). However;

While I acknowledge that there is a need to enact a new law in accordance with international human rights norms and standards, the MOPO bill has worrying similarities to the POSA revealing a common scope in which the exercise of the right to peaceful assembly is not fully guaranteed. Instead the MOPO bill continues to give law enforcement agencies broad regulatory discretion and powers. The MOPO bill does not propose significant substantive amendments targeted to address the main problems prevailing in the POSA.

The engagement relations with the EU after the Military coup of November 2017 has taken another nose dive. On 21 November 2019, the EU issued a memo stating that arrests and abductions of political activists in Zimbabwe have; “reinforced the impression that the democratic space is being curtailed again” Furthermore, touching on the issue of socio-economic rights the United Nations Special Rapporteur on the right to food, declared in a report on 28 November 2019 that; ‘Man-made starvation is “slowly making its way into Zimbabwe” and most households in the country are unable to obtain enough food to meet their basic needs’. Without any doubt, these statements show that political and socio-economic reforms are needed in Zimbabwe so citizens can move away from more human-made suffering. A humanitarian catastrophe might explode, thus culminating into an uprising against the government if the situation goes unabated in 2020 and 2021.

## Attempts for Zimbabwe’s Road to Recovery

While the government of Zimbabwe has made attempts to restore the rule of law, an inference can be drawn that there is still a long road to recovery if political reforms are not immediately taken into consideration by the government. In desperate attempts to rescue Zimbabwe from economic isolation, the president has since 2018 made numerous travel escapades to different countries. For instance, bilateral treaties have been renewed or signed for the first time with nations such as Russia, Azerbaijan, Kazakhstan, Belarus and ‘all-time weather friend’ China under the objective of securing investments also popularly known as mega deals. Such mega deals seen as a rhetoric by many are meant to benefit citizens by through creation of employment opportunities. Still, no tangible results have been seen, as the citizens continue to languish in hardships of struggling to make ends meet. Many civil servants have declared themselves incapacitated due to the economic difficulties and regularly face serious threats when they embark on demonstrations for better wages. With this in mind, a further inference can be drawn that again the issue of political reforms is necessary before Zimbabwe can unleash its potential in taking care of socio-economic rights.

## Conclusion

Political reforms are a starting point for Zimbabwe to socio-economically recover as well as restore confidence that it is not a failed state. The start of 2020 presents an opportunity for Zimbabwe to expedite issues linked to the respect of human rights, the rule of law and democracy – for instance, less police or military brutality on demonstrations by

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people demanding to exercise their rights peacefully. Zimbabwe is dogged with corruption, especially within the political elite, therefore naming, shaming and prosecution of the ruling elite linked to highly corrupt activities is essential. The state measures of attempting to silence people who demonstrate their displeasure in the high cost of living impedes on the rule of law, thus turning away potential investors and delaying attempts to lift the US ZIDERA legislation as well as EU restrictions. At the same time, regional bodies such as the Southern African Development Community and the African Union must castigate the Zimbabwean government where wrongs are done in terms going backwards on political reforms. As long as the playing field is not level, inequality between the political elite and the ordinary citizen will ensure that Zimbabwe remains politically unstable and a humanitarian concern.

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Constitution of Zimbabwe Act 20 of 2013.

Zimbabwe Democracy and Economic Recovery Act of 2001

Zimbabwe Democracy and Economic Recovery Amendment Act of 2018

Indigenisation Economic and Empowerment Act 14:33 of 2007

Chamisa v Mnangagwa & 24 Others (CCZ 42/18) [2018] ZWCC 42 (24 August 2018)

Johannes Tomana and Others v Council of European Union and European Commission Case C-330/15 P

*Mike Campbell (Pvt) Ltd and Others v Republic of Zimbabwe (2/2007) [2008] SADCT 2* (28 November 2008)

Common Council Position 2002/145/CFSP

Common Council Position 2004/161/CFSP

Council Decision 2011/101/CFSP

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**Hoitsimolimo Mutlokwa** is studying towards attaining a PhD in Public Law at Koc University, Istanbul Turkey, with a special focus on social inclusion from a planning law perspective comparing Turkey and South Africa. The author has worked as a Research Assistant for an ongoing project focusing on welfare in emerging markets located at Koc University, funded by the European Research Council.