

Tom Lantos Human Rights Commission Congressional Briefing

Human Rights in Zimbabwe

18 October, 2012

I would like to take this opportunity to thank the Co-Chairs of the Tom Lantos Human Rights Commission, Representative Jim McGovern and Representative Frank Wolf, for hosting this important briefing today. Crisis Group has produced 27 reports and briefings on Zimbabwe and our South Africa project is based in Johannesburg. Today I will be discussing Crisis Group's concerns leading up to the anticipated 2013 election and broader political context; the role of the Southern African Development Community (SADC) as described in Crisis Group's 15 October report on *Implementing Peace and Security Architecture for South Africa*; the security sector; and steps for US policy on Zimbabwe. In Crisis Group's November 2011 testimony before the House Foreign Affairs subcommittee on Africa, Global Health, and Human Rights, we highlighted our concerns regarding state sponsored violence and detailed the needed electoral reform changes. I do want to take this opportunity to emphasize the fragility of the political situation in Zimbabwe and the growing concern about movement towards a potential new repression.

Political Context

The Global Political Agreement (GPA) has been in place for over four years and has almost run its course. Despite major reform deficits, Zimbabwe is once again heading towards elections, which are expected between March and November of 2013. The political playing field remains uneven. Institutional reforms designed to strengthen democracy and the rule of law have only been partially implemented and have not dealt with the political contamination of the institutions. Widespread impunity and insecurity feeds into ongoing political instability, which is increasingly compounded by surging factionalism and uncertainty around Zimbabwe African National Union – Patriotic Front (ZANU-PF) succession dynamics. This is further exacerbated by the increased political role of elements of the security services, who continue to play an active public role in political developments. The constitutional reform process, almost two years behind schedule, was presented in the GPA as a pre-requisite for new elections, but the process is fraught. SADC, the co-guarantor of the GPA (along with the African Union), has failed to push forward the momentum for reform and it now remains to be seen what the substantive import of this guarantee really is in the run-up to forthcoming elections.

The agreement was intended to provide for a period of stabilization and reform, and to enable the generation of a new legal framework (i.e. constitution), institutional reform and the development of enabling conditions for an election process that would deliver a legitimate outcome that would

in turn promote economic and political normalization after a decade of decay and ostracism. Brokered by SADC, the arrangement sought to return Zimbabwe to the path of constitutionalism and the rule of law, without further excavating or overtly pointing the finger at the primary perpetrators of abuse – namely ZANU-PF leadership and its proxies, surrogates and security services – who immediately violated the spirit of the agreement by unilaterally retaining their monopoly on hard power.

As Zimbabwe approaches elections, the distorted power relations and fragility of the Global Political Agreement (GPA) expose an array of uncertainties that threaten prospects for a sustainable political settlement. Inter party polarities and competing agendas continue to impede the implementation of pre-election reforms. The GPA – whose five year term expires in 2013 – was signed as a transitional arrangement designed to facilitate reform before the holding of an election, and to put in place institutions and processes that would avert a recurrence of the problems that arose in 2008. But there are growing concerns that elections may be held without key reforms being in place.

Role of SADC

After the disputed March 2008 presidential election run-off in Zimbabwe, SADC's mediation led to the signing of the GPA in September 2008 and the formation of the inclusive government in February 2009. SADC and the AU were “guarantors” of the agreement. After the signing of the GPA, the two Movement for Democratic Change (MDC) formations repeatedly complained about the ZANU-PF's deliberate flouting of the agreement and its reluctance to implement some of the key clauses. Security sector and media reforms, law and order considerations and risks of political violence were central to these concerns. In turn, ZANU-PF painted the MDC's as agents of regime change and until mid-2012 accused Prime Minister Morgan Tsvangirai's MDC-T in particular of undermining GPA demands for the removal of sanctions on Zimbabwe.

The GPA provided for the formation of the Joint Monitoring and Implementation Committee (JOMIC) tasked with overseeing compliance with and implementation of the agreement. Due to political polarization and limited interaction with SADC, JOMIC was ineffective in ensuring comprehensive monitoring, let alone full implementation of the GPA. In an effort to remedy this situation, SADC gave ultimatums to the parties in November 2009 and August 2010, without notable compliance. This exposed the regional bloc's limitation in enforcing the implementation of a deal it had brokered. Others attributed that to the vagueness of the role of “guarantors” to the agreement, while ZANU-PF insisted that the sovereign authority and mandate of implementation lay with the GPA parties only and not any external stakeholders.

At the SADC meeting in Livingstone, Zambia, in March 2011, the troika of the organ was requested to dispatch three members to work with JOMIC to strengthen its oversight of the GPA. Despite endorsement by the heads of state summit in Sandton in June, it was a further year before two officers were sent. This followed protracted resistance by ZANU-PF, which interpreted this measure as interference in the domestic affairs of a sovereign member state. At the same Livingstone meeting, SADC's mediator, President Jacob Zuma, presented a report that accused President Robert Mugabe and his ruling party of holding back reforms. The report triggered considerable anger within ZANU-PF and Mugabe insisted that his party had the right to formally reject Zuma's mediation should the “interference” continue. Though ZANU-PF did not

formally make such a request, the attack exposed the fragility and multiple interpretations of SADC peace and security processes, especially in cases where regional leaders have been censured.

Zuma's position as mediator at the Livingstone summit had been informed by the incessant delays in implementing agreements that had been made by the GPA signatories. The communiqué called for the establishment of an election roadmap, and in early July the GPA negotiating teams signed off on a draft document that highlighted some key areas of disagreement. Progress with negotiations and mediation slowed visibly over the following ten months, and it was only at the extraordinary heads of state summit in Luanda in early June 2012 that SADC reiterated the imperative of reform implementation before elections. Reform efforts, however, are now limited to the eight issues outlined in the roadmap, thus ostensibly excluding other key aspects in the GPA.

After November 2010, President Zuma's next visit to Zimbabwe was on 15 August 2012, and as of October 2012, he is still faced with resolving the impasse over the finalization of a draft constitution that must precede a much-anticipated referendum. His protracted period of absence, which has been blamed on domestic and international commitments, is seen by some as having sustained the election roadmap gridlock. The second stakeholders meeting is scheduled for 21-23 October and this must be followed by a parliamentary process requiring support of a two-thirds majority.

SADC must step up its game, but must navigate carefully if it is to promote reform without excluding key elements of the Zimbabwean equation. There has been post-summit movement toward finalization of the draft constitution, deployment of SADC representatives to the GPA's internal monitoring body and steps taken to create an implementation mechanism for the roadmap.

Security Sector

State security forces, working with proxies and surrogates (i.e. war veterans, youth militia) were primarily responsible for the campaign of terror and intimidation between April and June 2008 that resulted in an estimated 300 deaths and more than 15,000 human rights abuses and other attacks. The ZANU-PF's informal militia infrastructure has not been held accountable for violations, despite an explicit commitment in the GPA to do so (Article XVIII) and has not been dismantled. MDC and civil society groups see those security forces as continuing to pose a threat across the country, especially during a critical election. ZANU-PF categorically denies responsibility for state sponsored violence and accuse the MDC and civil society groups of utilizing this issue as an integral part of their regime change agenda.

The provisions for security sector reform (SSR) in the GPA are relatively weak and have yet to produce a significant shift in the one party domination of security forces. Security concerns are exacerbated by destabilizing political statements from senior defense force members and widespread impunity for past and current violations. The National Security Council (NSC) – a key GPA creation – has not been operationalized, and the security sector has not adequately demonstrated a professional, non-partisan commitment, raising profound concerns about election-related security.

There have also been ongoing incidents of human rights abuses, public violence and systemic impunity, perpetrated by Zimbabwe security forces and militia directed by ZANU-PF adherents. Senior elements of the security services have made it very clear they would not accept an MDC-T victory, underscoring concerns about their partisan involvement in the election process and their potential to block a democratic outcome from the polls.

With limited options, JOMIC, set up under the GPA, appeared to be the preferred mechanism for investigating allegations of violations. However, deployments promised by SADC to staff JOMIC were long-delayed. The Human Rights Commission was appointed in 2009 but lacked a budget or a legal framework. The Human Rights Commission Bill was signed into law this month but with an important caveat: the commission investigations will be limited to post-2009 incidents and has no capacity, and so will have to rely on police. The New Electoral Act was signed into law at the same time.

As was described in Crisis Group's July 2012 op-ed, "The security sector – who controls it, to whom or what it is loyal – remains a crucial and potentially destabilizing factor. As do issues relating to intimidation, violence and impunity, and the complicity of the criminal justice sector. In light of the violence that accompanied the 2008 elections, and the partisan rhetoric of some senior security officials, Zimbabwe should not be expected to go to new elections without firm assurances that history will not repeat itself."

Diamond revenues

Earlier this summer, Zimbabwe's Deputy Minister of Mines, Gift Chimankire, confirmed to parliament that the Zimbabwe Defense Industries, an army-owned company, holds a 40% stake in the Anjin diamond mining operation. Finance Minister Tendai Biti (MDC-T) has repeatedly criticized diamond operators in the country for underpayment of revenues to Treasury, most recently claiming the government received a total of \$41 million from an estimated \$456 million worth in sales this year to date. The lack of revenue had forced Biti to seek a \$100 million bailout from South Africa and a \$50 million credit loan facility from Angola. The Finance Minister and MDC have raised concerns about the transparency of revenues from diamond mining and rumors continue about the potential for ZANU-PF to use diamond revenues to influence the upcoming election. As the United States is the chair of the Kimberley Process this year, with South Africa in the Deputy role, there are opportunities to engage on this issue, such as calling for a study to better understand the diamond smuggling routes from Zimbabwe.

US Recommendations

There are opportunities for the role of the United States. The U.S. has, in fact, provided nearly one billion dollars in humanitarian relief and health-related assistance to Zimbabwe in the last six years. As the new US Ambassador to Zimbabwe Bruce Wharton described in his 12 July Senate Foreign Relations confirmation hearing: "The full implementation of the Global Political Agreement, progress on the Southern African Development Community's roadmap toward elections, and well-managed and credible elections will be a trigger for the US to open a much more dynamic relationship with one of Africa's most important countries. The United States remains open and willing to work with the government to support free and fairly elections."

The U.S. should consider:

- On the issue of sanctions, 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;
- Consult with SADC on how and whether a calibrated suspension of sanctions in response to actual reforms could provide SADC and its facilitation team with additional political leverage in terms of achieving key reforms that are vital to permit a more credible electoral process;
- Increasing support for South Africa and SADC to press Zimbabwe parties to complete the roadmap as the highest priority and strengthen JOMIC and a robust monitoring and observation presence for SADC and AU in pressing implementation of that roadmap;
- Supporting efforts, through SADC, to strengthen the capacity of the Zimbabwe Electoral Commission, standing behind SADC in its efforts to secure a more professional and balanced ZEC secretariat;
- Providing, in the future, support for SADC deployment of election monitors into rural areas, perhaps through the SADC Parliamentary Forum and AU peace and Security Council;
- Supporting SADC efforts to promote security sector reform emphasizing the need for a commitment of non interference in the next election process by security forces and respect for the outcome of those elections.