

## EU action on Zimbabwe and the Cotonou Agreement - a background paper

Trudy Stevenson  
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The action on Zimbabwe currently being considered by the European Union falls within the framework of the Cotonou Agreement which defines the partnership between the African, Caribbean and Pacific group of countries - ACP - and the European Union - EU.

This agreement was signed in Cotonou, Benin on 23 June 2000. It is essentially a trade agreement, replacing the Lome Convention which has defined our trading relationship with Europe up to now. The agreement reflects the changes which have occurred internationally, whereby issues of rule of law, democracy and governance are now accepted as inseparable from economic development and trade, and "sovereignty" is no longer acceptable as a criterion for non-interference in the case of serious violation of internationally accepted norms of behaviour. Thus Article 9 was being invoked a few months ago, and now the more serious Article 96 is on the table - [see below](#).

Note that nowhere in either [Article 9](#) or [96](#) is the word "sanctions" mentioned, merely "appropriate measures" - so much for Zanu-PF's ability to understand simple language! The same applies to their interpretation of the American Zimbabwe Democracy and Recovery Act, which they call the Sanctions Act!

It is interesting to recall that only 5 weeks ago, on 27 September this year, the Minister of Industry and International Trade, Dr Herbert Murerwa, fast-tracked approval of this ACP-EU Partnership Agreement - Cotonou - by Parliament, presenting it and moving for its approval all in one day! This is highly irregular, since the procedure laid down in Standing Orders is for any Bill or Agreement to be referred to the appropriate Portfolio Committee once it is presented, to allow the committee to study the matter thoroughly and make a report to the House before approval or rejection.

As it was, both Hon. Madzimore and I warned that it was a very serious document with far-reaching implications to Zimbabwe, and pleaded with the Minister to give our Committee for Foreign Affairs and Industry and International Trade time to study it and make our report. To his credit the Minister agreed to do so, however the Speaker (Mnangagwa) ruled this out of order on a technicality - the Minister had already replied to our interventions, so he had already "wound up", and could not now allow the matter to go to committee and then wind up again.

In his presentation, the Minister dealt only with the trade and strictly economic aspects of the agreement, emphasizing its importance for us to secure international trading partners and the much-needed foreign exchange. On our side we highlighted the fact that democracy and human rights are also protected in the agreement, but this aspect was given little or no importance in our "consideration" of the agreement before approving it.

It is true that all MPs were given a copy of the Cotonou Agreement some weeks before the debate, but I doubt whether more than 5 out of the 150 actually read it, or even had a copy of it to study when it was being debated!

For the benefit of the general public, including the other 145 MPs, I have extracted the clauses most relevant to our current situation, as follows:

### COTONOU

Partnership Agreement between Members of the African, Caribbean and Pacific (ACP) group of states of the one part, and the European Community and its member states (EU) of the other part.

*Signed in Cotonou 23 June 2000*

### EXCERPTS

**Preamble**

..

Acknowledging that a political environment guaranteeing peace, security and stability, respect for human rights, democratic principles and the rule of law and of good governance is part and parcel of long term development; acknowledging that responsibility for establishing such an environment rests primarily with the countries concerned;

Acknowledging that sound and sustainable economic policies are prerequisites for development;

Referring to the principles of the Charter of the United Nations, and recalling the Universal Declaration of Human Rights, .. ..

**Article 1****Objectives of the partnership**

.the Parties hereby conclude this Agreement in order to promote and expedite the economic, cultural and social development of the ACP States, with a view to contributing to peace and security and to promoting a stable and democratic political environment.

...

**Article 9****Essential elements and fundamental element**

Cooperation shall be directed towards sustainable development centred on the human person, who is the main protagonist and beneficiary of development; this entails respect for and promotion of all human rights.

Respect for all human rights and fundamental freedoms, including respect for fundamental social rights, democracy based on the rule of law and transparent and accountable governance are an integral part of sustainable development.

...

The structure of government and the prerogatives of the different powers shall be founded on rule of law, which shall entail in particular effective and accessible means of legal redress, an independent legal system guaranteeing equality before the law and an executive that is fully subject to the law.

...

Good governance, which underpins the ACP-EU Partnership, shall underpin the domestic and international policies of the Parties and constitute a fundamental element of this Agreement..

The Partnership shall actively support the promotion of human rights, processes of democratization, consolidation of the rule of law, and good governance.

These areas will be an important subject for the political dialogue.

...

**Article 10****Other elements of the political environment**

1. The Parties consider the following elements as contributing to the maintenance and consolidation of a stable and democratic political environment:

- sustainable and equitable development involving, inter alia, access to productive resources, essential services and justice;
- greater involvement of an active and organized civil society and the private

sector.

2. The Parties recognize that the principles of the market economy, supported by transparent competition rules and sound economic and social policies, contribute to achieving the objectives of the partnership.

#### **Article 11**

##### **Peace-building policies, conflict prevention and resolution**

1. The Parties shall pursue an active, comprehensive and integrated policy of peace-building and conflict prevention and resolution within the framework of the Partnership.

2. The activities in the field of peace-building, conflict prevention and resolution shall in particular include support for balancing political, economic, social and cultural opportunities among all segments of society, for strengthening the democratic legitimacy and effectiveness of governance, for establishing effective mechanisms for the peaceful conciliation of group interests, for bridging dividing lines among different segments of society as well as support of an active and organized civil society.

.....

#### **Article 96**

##### **Essential elements: consultation procedure and appropriate measures**

As regards human rights, democratic principles and the rule of law.

1. Within the meaning of this Article, the term "Party" refers to the Community and the Member States of the European Union, of the one part, and each ACP State, of the other part.

2 a) If despite the political dialogue conducted regularly between the Parties, a Party considers that the other Party has failed to fulfil an obligation stemming from respect for human rights, democratic principles and the rule of law referred to in paragraph 2 of Article 9, it shall, except in cases of special urgency, supply the other Party and the Council of Ministers with the relevant information required for a thorough examination of the situation with a view to seeking a solution acceptable to the Parties. To this end, it shall invite the other Party to hold consultations that focus on the measures taken or to be taken by the party concerned to remedy the situation.

The consultations shall begin no later than 15 days after the invitation and shall continue for a period established by mutual agreement, depending on the nature and gravity of the violation. In any case, the consultations shall last no longer than 60 days.

If the consultations do not lead to a solution acceptable to both Parties, if consultation is refused, or in cases of special urgency, appropriate measures may be taken. These measures shall be revoked as soon as the reasons for taking them have disappeared.

2b) The term "cases of special urgency" shall refer to exceptional cases of particularly serious and flagrant violation of one of the essential elements referred to in paragraph 2 of Article 9, that require an immediate reaction.

The Party resorting to the special urgency procedure shall inform the other party and the Council of Ministers separately of the fact unless it does not have time to do so.

2c) The "appropriate measures" referred to in the Article are measures taken in accordance with international law, and proportional to the violation. In the selection of these measures, priority must be given to those which least disrupt the application of this agreement. It is understood that suspension would be a measure of last resort.

If measures are taken in cases of special urgency, they shall be immediately notified to the other Party and the Council of Ministers. At the request of the

Party concerned, consultations may then be called in order to examine the situation thoroughly and if possible find solutions.

...

#### **Article 97**

##### **Consultation as regards corruption**

1. ...serious cases of corruption should give rise to consultations between the Parties.

2. such consultations shall begin no later than 21 days after the invitation and shall last no longer than 60 days.

...

**Trudy Stevenson**

**Secretary for Policy and Research**

**Movement for Democratic Change**

**Harare**

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