

Calendar No. 699

111TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 111-369

**ZIMBABWE TRANSITION TO DEMOCRACY AND
ECONOMIC RECOVERY ACT OF 2010**

DECEMBER 15, 2010.—Ordered to be printed

Mr. KERRY, from the Committee on Foreign Relations,
submitted the following

REPORT

[To accompany S. 3297]

The Committee on Foreign Relations, having had under consideration the bill (S. 3297), to update United States policy and authorities to help advance a genuine transition to democracy and to promote economic recovery in Zimbabwe, reports favorably thereon, with an amendment in the nature of a substitute, and recommends that the bill (as amended) do pass.

CONTENTS

	Page
I. Purpose	1
II. Committee Action	1
III. Discussion	2
IV. Cost Estimate	5
V. Evaluation of Regulatory Impact	6
VI. Changes in Existing Law	6

I. PURPOSE

The purpose of S. 3297 is to amend the 2001 Zimbabwe Democracy and Economic Recovery Act (ZDERA) to acknowledge that conditions on the ground in Zimbabwe have changed, seize upon new opportunities to push for democracy and help lay the groundwork for economic recovery, and encourage the work of reformers in the government while recognizing the continuing role played by Robert Mugabe.

II. COMMITTEE ACTION

Senators Feingold, Isakson, Kerry, Cardin, and Durbin, introduced S. 3297 on May 4, 2010. On September 21, 2010, the committee considered S. 3297 and ordered it reported favorably, with an amendment in the nature of a substitute, by voice vote.

III. DISCUSSION

For decades Zimbabwe's dismal political and economic climate has been dictated by President Robert Mugabe and his party, the Zimbabwean African National Union-Patriotic Front (ZANU-PF). This misrule culminated in economic disaster, the collapse of health and educational systems, and extreme repression. In September 2008, after strongly contested national elections and months of political violence against opposition members and their supporters, ZANU-PF and both factions of the opposition Movement for Democratic Change (MDC), led by Morgan Tsvangirai and Arthur Mutambara signed a Global Political Agreement (GPA) as mediated by President Thabo Mbeki of South Africa. Under the GPA, the transitional government agreed to pursue the restoration of the rule of law, economic recovery, land reform, freedom of expression and political association, a new constitution, non-discrimination, and free and fair elections. Though fragile and often subject to abuse by ZANU-PF, this power-sharing agreement has created new opportunities to push for democracy and lay the groundwork for economic recovery.

The new transitional government has shown some tentative signs of progress. Under the leadership of Prime Minister Morgan Tsvangirai and Minister of Finance Tendai Biti, a series of economic reforms have been initiated, including the Short-Term Economic Recovery Program, that will halt some of the destructive activities of the previous administration while directing limited resources to the social services and infrastructure projects the population urgently needs. On the financial front more broadly, Finance Minister Biti has succeeded in arresting runaway inflation and helping to restore some productive economic activity. Store shelves are no longer barren and there has been some progress in restoring health services and reopening schools. In a step toward broader democratic values, the transitional government has also established the Media, Human Rights, and Electoral Commissions.

However, political and social progress has lagged far behind economic advancements. Governance reforms are desperately needed, political and human rights abuses continue, and unemployment remains as high as 90 percent. The committee nonetheless sees a moment of opportunity for constructive engagement, with targeted pressure and without the lifting of sanctions, which can support reformist elements of the government of Zimbabwe. These steps were strongly encouraged by a distinguished panel of outside witnesses in a hearing on September 30, 2009.

The goal of this engagement is to reinforce and encourage democratic and human rights reforms, poverty reduction, humanitarian assistance, establishment of rule of law, economic stabilization and infrastructure development. Full re-engagement with the government of Zimbabwe will only be possible when there have been clear advances toward these ends. For long term success, it is critical to support non-governmental organizations and civil society. Regional collaboration will also be crucial, particularly through the Southern African Development Community and the African Union. This legislation provides impetus for these initial steps by acknowledging changing political and economic realities and the limitations of change to date.

Section 4 affirms that it is the policy of the United States to: support the people of Zimbabwe through the continued provision of humanitarian assistance; provide resources to the agricultural, economic, education, and health sectors through non-governmental entities; promote trade with non-sanctioned entities in Zimbabwe; engage with regional governments and organizations, international financial institutions, and other donors' support for civil society organizations; assist those who have demonstrated commitment to the reforms in the GPA; continue the ban on the transfer of defense items and direct monetary assistance; and, update and renew targeted financial sanctions and travel bans against those found to be responsible for the breakdown of the rule of law, politically motivated violence, hindrance of democracy, and other ongoing illegal activities in Zimbabwe.

Section 5 authorizes the President, in accordance with section 531 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2346), to provide technical assistance to ministries of the transitional Government and to the Parliament of Zimbabwe to provide the expertise and support necessary to ensure progress on economic, political, and security sector reforms. As per the amended language, this notwithstanding authority will expire on September 30, 2014. The transitional Government is expected to work to enact the reforms under the GPA and the Parliament should work to make the government accountable for its actions. To strengthen the efforts of reformers, the committee believes the United States should continue to provide technical assistance that will lead to capacity building in the ministries and offices that have shown commitment to reform and to Parliamentary efforts to address legislation that violates democratic principles.

The committee believes two efforts are particularly critical to economic progress: land reform and food distribution and production. Given the absence of respect for property rights in Zimbabwe, S. 3297 seeks to support efforts to conduct a comprehensive and non-partisan land audit that will serve as a step toward the establishment of accountability and security of tenure. The committee believes that efforts related to food distribution and production should be supported, including the encouragement of policies that incentivize agricultural production and institutions that provide support to the agricultural sector. Though existing problems with land tenure, including violent seizures of land by ZANU-PF and its supporters, may limit some efforts, the committee believes support of market-based mechanisms for agricultural production and the processing of agricultural commodities would be important for further economic progress.

Section 7 amends Section 4 of the Zimbabwe Democracy and Economic Recovery Act of 2001 to reflect the 2008 Global Political Agreement and the evolving political conditions that require the United States to employ greater flexibility in dealing with the International Financial Institutions while still maintaining strong conditions on relevant actors. In becoming party to the GPA, ZANU-PF and MDC have committed themselves to working together to prioritize the restoration of economic stability and growth and the creation of conditions for a new constitution that respects human rights and democratic principles. In amending the previous legislation, S. 3297 requires the Secretary of the Treasury, in con-

sultation with the Secretary of State, to gather information on the debt incurred by Zimbabwe and the feasibility and advisability of restructuring, rescheduling, or eliminating such debt in the future. The legislation requires the Secretary of the Treasury to instruct U.S. executive directors to each international financial institution to oppose any extension of loans, credit, or guarantees unless there is sufficient oversight and it can be ensured the relevant funds are not administered through ministries that have not demonstrated commitment to reform and responsible fiscal management or the Reserve Bank of Zimbabwe, unless governance problems within the Reserve Bank have been addressed. Section 7 further provides that funds cannot be administered by individuals or institutions sanctioned by the United States. The legislation does not lift any current sanctions. It further requires that the Secretaries of the Treasury and State notify appropriate Congressional committees if the United States votes in favor of any loan, credit, or guarantee to the Government of Zimbabwe by an international financial institution. The President is able to waive the conditions on multilateral financing upon notification that it is in the national interest of the United States to do so.

Section 8 amends the Department of State, Foreign Operations, and Related Programs Appropriations Act of 2010 to prohibit assistance to the central government of Zimbabwe unless funds are used toward macroeconomic growth, health, and education assistance. If the Secretary of State determines and reports to the appropriate committees that rule of law has been restored in Zimbabwe the underlying prohibition is removed.

Section 9 directs new attention to ZANU-PF's illegal activities in the diamond sector, finding that: armed forces of Zimbabwe continue to exert control over diamond mines; the Government of Zimbabwe has been non-compliant with the minimum standards of the Kimberley Process; there are serious concerns, particularly related to smuggling and grave violence in and around the Marange diamond fields; and, the army and police forces continue to serve ZANU-PF and fuel efforts to undermine democratic processes and institutions. The committee is seriously concerned about the issue of Zimbabwean diamond production and Zimbabwe's certification under the Kimberley Process. It also finds that there should be improved regional efforts to help stop the flow of illegal diamonds as well as efforts to identify and prepare bilateral or other sanctions on individuals and entities that are undermining democratic processes through illegal activities involving diamonds.

Section 10 encourages the review and update of targeted sanctions related to Zimbabwe, paying attention to the ways that individuals or entities support efforts to undermine democratic processes, the role and function of these entities in activities critical to economic recovery, and how sanctions could be strengthened against them.

Given concerns over fraud and violence during the 2008 elections and the lack of clarity on upcoming elections, Section 11 sets out the sense of Congress that the United States develop a coordinated strategy to help prepare for future elections. This should be done in concert with international partners and regional governments, aiming to reduce the likelihood of fraud and the potential for outbreaks of violence.

Section 12 requires the Secretary of the Treasury, the Secretary of State, and the Administrator of the U.S. Agency for International Development to provide a briefing to appropriate congressional committees that is to include (1) A description of technical assistance that has been provided to ministries of the transitional Government and to the Parliament of Zimbabwe, how this has contributed to progress on economic and political reforms, and any ways U.S. law and policy should be changed to strengthen the likelihood of success for democratic and economic reforms; (2) Steps taken to investigate and address the connection between illegal activities involving diamonds and efforts to undermine democratic processes and institutions; (3) Steps taken to review and update targeted sanctions, focusing on how specific entities undermine democratic processes, the role of these entities to economic recovery, and how sanctions can be strengthened against them; and, (4) Efforts toward a regional coordinated strategy in preparation for future elections in Zimbabwe. This briefing is to be provided no later than 180 days after the enactment of this legislation.

IV. COST ESTIMATE

In accordance with Rule XXVI, paragraph 11(a) of the Standing Rules of the Senate, the committee provides this estimate of the costs of this legislation prepared by the Congressional Budget Office.

UNITED STATES CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 3, 2010.

Hon. JOHN F. KERRY,
*Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 3297, the Zimbabwe Transition to Democracy and Economic Recovery Act of 2010.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Sunita D'Monte.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure

cc: Hon. RICHARD G. LUGAR, *Ranking Minority Member.*

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

*December 3, 2010.***S. 3297****Zimbabwe Transition to Democracy and Economic Recovery Act of 2010**

AS ORDERED REPORTED BY THE SENATE COMMITTEE ON FOREIGN RELATIONS ON SEPTEMBER 21, 2010

S. 3297 would authorize the President to use the Economic Support Fund (ESF), a Department of State assistance program to provide technical assistance to Zimbabwe to support economic, political, and security-sector reforms in that country. That authority would expire in 2014. Assistance would be provided to the Parliament and ministries of the transitional government. CBO estimates that implementing the bill would cost \$19 million over the 2011–2015 period, assuming appropriation of the necessary amounts. Enacting S. 3297 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

S. 3297 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The estimated budgetary impact of S. 3297 is shown in the following table. The costs of this legislation fall within budget function 150 (international affairs). For this estimate, CBO assumes that the estimated authorizations will be appropriated each fiscal year and that outlays will follow historical spending patterns for similar and existing programs.

Changes in Spending Due to S. 3297

By Fiscal Year, in Millions of Dollars

	2011	2012	2013	2014	2015	2011–2015
Estimated Authorization Level	6	6	6	6	0	24
Estimated Outlays	1	3	5	5	5	19

In 2010, the Department of State received an appropriation of \$8.8 billion for ESF. Of that amount, almost \$6 million was allocated for technical assistance to the Parliament of Zimbabwe and certain ministries. Based on information from the department, CBO estimates that implementing the bill would require appropriations of \$6 million a year over the 2011–2014 period. The bill also would expand the potential uses of existing appropriated funds by authorizing assistance to the central government for health and education programs; however, the department has no plans to use such authority.

The CBO staff contact for this estimate is Sunita D'Monte. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to Rule XXVI, paragraph 11(b) of the Standing Rules of the Senate, the committee has determined that there is no regulatory impact as a result of this legislation.

VI. CHANGES IN EXISTING LAW

In compliance with Rule XXVI, paragraph 12 of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman).

ZIMBABWE DEMOCRACY AND ECONOMIC RECOVERY
ACT OF 2001, P.L. 107-99

* * * * *

SECTION 1. SHORT TITLE.

This Act may be cited as the “Zimbabwe Democracy and Economic Recovery Act of 2001”.

SEC. 2. STATEMENT OF POLICY.

It is the policy of the United States to support the people of Zimbabwe in their struggle to effect peaceful, democratic change, achieve broad-based and equitable economic growth, and restore the rule of law.

SEC. 3. DEFINITIONS.

* * * * *

[(SEC. 4. SUPPORT FOR DEMOCRATIC TRANSITION AND ECONOMIC RECOVERY.

[(a) FINDINGS.—Congress makes the following findings:

[(1) Through economic mismanagement, undemocratic practices, and the costly deployment of troops to the Democratic Republic of the Congo, the Government of Zimbabwe has rendered itself ineligible to participate in International Bank for Reconstruction and Development and International Monetary Fund programs, which would otherwise be providing substantial resources to assist in the recovery and modernization of Zimbabwe’s economy. The people of Zimbabwe have thus been denied the economic and democratic benefits envisioned by the donors to such programs, including the United States.

[(2) In September 1999 the IMF suspended its support under a “Stand By Arrangement”, approved the previous month, for economic adjustment and reform in Zimbabwe.

[(3) In October 1999, the International Development Association (in this section referred to as the “IDA”) suspended all structural adjustment loans, credits, and guarantees to the Government of Zimbabwe.

[(4) In May 2000, the IDA suspended all other new lending to the Government of Zimbabwe.

[(5) In September 2000, the IDA suspended disbursement of funds for ongoing projects under previously-approved loans, credits, and guarantees to the Government of Zimbabwe.

[(b) SUPPORT FOR DEMOCRATIC TRANSITION AND ECONOMIC RECOVERY.—

[(1) BILATERAL DEBT RELIEF.—Upon receipt by the appropriate congressional committees of a certification described in subsection (d), the Secretary of the Treasury shall undertake a review of the feasibility of restructuring, rescheduling, or eliminating the sovereign debt of Zimbabwe held by any agency of the United States Government.

[(2) MULTILATERAL DEBT RELIEF AND OTHER FINANCIAL ASSISTANCE.—It is the sense of Congress that, upon receipt by the appropriate congressional committees of a certification described in subsection (d), the Secretary of the Treasury should—

[(A) direct the United States executive director of each multilateral development bank to propose that the bank should undertake a review of the feasibility of restructuring, rescheduling, or eliminating the sovereign debt of Zimbabwe held by that bank; and

[(B) direct the United States executive director of each international financial institution to which the United States is a member to propose to undertake financial and technical support for Zimbabwe, especially support that is intended to promote Zimbabwe's economic recovery and development, the stabilization of the Zimbabwean dollar, and the viability of Zimbabwe's democratic institutions.

[(c) MULTILATERAL FINANCING RESTRICTION.—Until the President makes the certification described in subsection (d), and except as may be required to meet basic human needs or for good governance, the Secretary of the Treasury shall instruct the United States executive director to each international financial institution to oppose and vote against—

[(1) any extension by the respective institution of any loan, credit, or guarantee to the Government of Zimbabwe; or (2) any cancellation or reduction of indebtedness owed by the Government of Zimbabwe to the United States or any international financial institution.

[(d) PRESIDENTIAL CERTIFICATION THAT CERTAIN CONDITIONS ARE SATISFIED.—A certification under this subsection is a certification transmitted to the appropriate congressional committees of a determination made by the President that the following conditions are satisfied:

[(1) RESTORATION OF THE RULE OF LAW.—The rule of law has been restored in Zimbabwe, including respect for ownership and title to property, freedom of speech and association, and an end to the lawlessness, violence, and intimidation sponsored, condoned, or tolerated by the Government of Zimbabwe, the ruling party, and their supporters or entities.

[(2) ELECTION OR PRE-ELECTION CONDITIONS.—Either of the following two conditions is satisfied:

[(A) PRESIDENTIAL ELECTION.—Zimbabwe has held a presidential election that is widely accepted as free and fair by independent international monitors, and the president-elect is free to assume the duties of the office.

[(B) PRE-ELECTION CONDITIONS.—In the event the certification is made before the presidential election takes place, the Government of Zimbabwe has sufficiently improved the pre-election environment to a degree consistent with accepted international standards for security and freedom of movement and association.

【(3) COMMITMENT TO EQUITABLE, LEGAL, AND TRANSPARENT LAND REFORM.—The Government of Zimbabwe has demonstrated a commitment to an equitable, legal, and transparent land reform program consistent with agreements reached at the International Donors' Conference on Land Reform and Resettlement in Zimbabwe held in Harare, Zimbabwe, in September 1998.

【(4) FULFILLMENT OF AGREEMENT ENDING WAR IN DEMOCRATIC REPUBLIC OF CONGO.—The Government of Zimbabwe is making a good faith effort to fulfill the terms of the Lusaka, Zambia, agreement on ending the war in the Democratic Republic of Congo.

【(5) MILITARY AND NATIONAL POLICE SUBORDINATE TO CIVILIAN GOVERNMENT.—The Zimbabwean Armed Forces, the National Police of Zimbabwe, and other state security forces are responsible to and serve the elected civilian government.

【(e) WAIVER.—The President may waive the provisions of subsection (b)(1) or subsection (c), if the President determines that it is in the national interest of the United States to do so.】

SEC. 4. SUPPORT FOR DEMOCRATIC TRANSITION AND ECONOMIC RECOVERY.

(a) *FINDINGS.*—Congress finds that the parties to the September 15, 2008, Global Political Agreement between the Zimbabwe African National Union-Patriotic Front (ZANU-PF) and the Movement for Democratic Change (MDC) committed themselves by law to work together to chart a new political direction for Zimbabwe, to prioritize the restoration of economic stability and growth, and to create conditions for the drafting of a new constitution that respects human rights and democratic principles.

(b) *SENSE OF CONGRESS.*—It is the sense of Congress that, in order for the United States to most effectively support a transition to democratic and economic recovery in Zimbabwe to the greatest effect, United States policy should, to the extent possible, reflect new political conditions and opportunities created by the Global Political Agreement.

(c) *DEBT RELIEF.*—The Secretary of the Treasury, in consultation with the Secretary of State, shall gather information on the debt incurred by Zimbabwe held by international financial institutions and private financial institutions, and the feasibility and advisability of restructuring, rescheduling, or eliminating such debt in the future, including by using the resources of the International Monetary Fund, the International Bank for Reconstruction and Development, and other appropriate international financial institutions.

(d) *MULTILATERAL FINANCING CONDITIONS.*—The Secretary of the Treasury shall instruct the United States executive director to each international financial institution to oppose any extension by the respective institution of any loan, credit, or guarantee to the Government of Zimbabwe unless the proposed extension meets the following conditions:

(1) *There are sufficient controls for transparency and international oversight of the use of relevant funds.*

(2) *Relevant funds, in cases where the international financial institutions are providing direct funding to or through the Government of Zimbabwe, will not be administered through or in coordination with—*

(A) *ministries that have not demonstrated a commitment to reform and responsible fiscal management; or*

(B) *the Reserve Bank of Zimbabwe, unless there are sufficient guarantees and a pattern of evidence that governance problems within the Reserve Bank of Zimbabwe have been addressed such that relevant funds will not be redirected for extra-legal purposes.*

(3) *Relevant funds will not be administered by or directly accessible to individuals or financial institutions sanctioned by the United States.*

(e) **NOTIFICATION.**—

(1) **IN GENERAL.**—*If the United States votes in favor of any loan, credit, or guarantee to the Government of Zimbabwe by an international financial institution, the Secretary of the Treasury, in coordination with the Secretary of State, shall notify the appropriate congressional committees within 30 days of such vote and provide appropriate information on such vote pertaining to the conditions in subsection (d).*

(2) **APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.**—*In this subsection, the term “appropriate congressional committees” means—*

(A) *the Committee on Foreign Relations, the Committee on Banking, Housing, and Urban Affairs, and the Committee on Appropriations of the Senate; and*

(B) *the Committee on Foreign Affairs, the Committee on Financial Services, and the Committee on Appropriations of the House of Representatives.*

(f) **WAIVER.**—*The President may waive the provisions in subsection (d) and (e) if the President determines that it is in the national interest of the United States to do so.*

Department of State, Foreign Operations, and Related Programs Appropriations Act of 2010

* * * * *

TITLE VII

GENERAL PROVISIONS

* * * * *

AFRICA

SEC. 7070. (a) Expanded International Military Education and Training.—

* * * * *

[(i) ZIMBABWE.—

[(1) The Secretary of the Treasury shall instruct the United States executive director to each international financial institution to vote against any extension by the respective institution of any loans to the Government of Zimbabwe, except to meet

basic human needs or to promote democracy, unless the Secretary of State determines and reports in writing to the Committees on Appropriations that the rule of law has been restored in Zimbabwe, including respect for ownership and title to property, freedom of speech and association.

【(2) None of the funds appropriated by this Act shall be made available for assistance for the central government of Zimbabwe, except for macroeconomic growth assistance, unless the Secretary of State makes the determination pursuant to paragraph (1).】

(i) ZIMBABWE.—None of the funds appropriated by this Act may be made available for assistance for the central Government of Zimbabwe, except for macroeconomic growth, health, and education assistance, unless the Secretary of State determines and reports in writing to the Committees on Appropriations that the rule of law has been restored in Zimbabwe, including respect for ownership and title to property and freedom of speech and association.

