

JUSTICE AND LEGAL ACCOUNTABILITY, THE RULE OF LAW AND PROPERTY RIGHTS: COURT CASES



The MCF took the courageous decision to use the law to focus on justice and legal accountability and to establish a workable legal foundation for property rights in Zimbabwe in the future. This has included a number of ground-breaking court cases, for example:

1. The Campbell case in the Supreme Court of Zimbabwe and subsequently in the regional human rights court, the SADC Tribunal:

When the late Mike Campbell, assisted by his son-in-law, Ben Freeth, could not obtain justice through the Zimbabwean courts, they took their Mount Carmel farm case to the regional human rights court of the Southern African Development Community, the SADC Tribunal, in 2007 as a test case on behalf of the commercial farming community. Seventy-seven additional farmers were subsequently given permission to join the case as interveners. In 2008, a final and binding judgment was made by the SADC Tribunal, the highest court in the 15-country southern African bloc. This judgment established property rights and ruled against the nationalisation of farms in Zimbabwe, as well as the racism employed to dispossess the country's white commercial farmers.

2. The Compensation Case in the SADC Tribunal:

The MCF then put forward a case to set the parameters for compensation of commercial farmers already forced off their farms.

3. The Contempt of Court cases:

The Zimbabwe Government was held in contempt of court on three occasions to bring pressure to bear on the Government for the future.

4. The African Commission on Human and People's Rights (ACHPR) case:

When the Heads of State illegally and undemocratically closed down the SADC Tribunal regional court, denying the 280 million people in southern Africa access to justice, the lawyers working on behalf of the MCF's Executive Director went to the ACHPR to seek a ruling showing the illegality of the closure of the court and ordering its re-establishment. While the ruling was very positive, it evaded the issue on a technicality, stating that the African Charter did not speak to "regional" courts and thus it could not condemn the actions of the SADC Heads of State.

5. The Registration of the SADC Tribunal Judgment case:

The SADC Tribunal judgment was registered in South Africa. It was appealed by the Zimbabwe Government every step of the way, but the High Court - as well as all five judges in the Supreme Court of Appeal and the 10 judges in the Constitutional Court - all ruled in the MCF's favour. Their legal representatives were then able to attach and sell off a Cape Town house belonging to the Zimbabwe Government to cover a costs award from the SADC Tribunal. This was a major triumph.

6. The President Jacob Zuma Case:

Together with the Law Society of South Africa, a case was lodged against former South African President Jacob Zuma and his government for his part in the illegal closure of the SADC Tribunal. The South African Constitutional Court found in favour of the Executive Director of the MCF and the group of Zimbabwean farmers that former President Jacob Zuma was acting unlawfully and unconstitutionally when he - together with other leaders of SADC - took part in the suspension and dissolution of the SADC Tribunal's activities.

7. Compensation claim against the South African Government:

With the support of a South African civil rights group, the Executive Director of the MCF lodged papers in South Africa's High Court in April 2019 for a claim totalling R1.9 billion against the South African government and presidency by 25 Zimbabwean commercial farmers and farming businesses that suffered damages as a result of the dissolution of the SADC Tribunal by the SADC Heads of State, including former president Jacob Zuma. Since then, 65 additional farmers have joined the case and their papers have been submitted.

8. The Crimes Against Humanity case:

The MCF's Executive Director initiated the collection of affidavits, mostly from farm workers on farms technically protected by the SADC Tribunal, to demonstrate the crimes against humanity that had taken place on these "protected" farms. Evidence that these farms had instead been targeted for increased harassment included: farm workers being shot by police; farm workers being tortured by police; farm workers' houses being petrol bombed with the complicity of police; massive theft of crops, tractors, and other personal property with the aid of police; the burning of properties with complicity of police and contempt of court by police. The docket was submitted to South Africa's National Prosecuting Authority (NPA) and the South African Police Service (SAPS) in 2013.

Since South Africa has deliberately avoided any action in this regard, the case could be extended to the UK under the Rome Statute of the International Criminal Court.

- 9. The SADC Protocol on Finance and Investment case:** Work has been undertaken to bring together a compensation case under this SADC protocol for commercial farmers and farming enterprises whose investments have been taken away by the Zimbabwean government.

Legal Accountability

Integral to the regime's deliberate destruction of the justice system and thwarting of the rule of law is protection of the perpetrators. Campaigns of violence, strategised at the highest level, have been carried out mainly by the military, the police, the Central Intelligence Organisation and the youth militia. In the case of the farm invasions, the youth militia, ZANU PF supporters and unemployed government-sponsored youths (so-called "war veterans") were largely responsible for the violence. The police were instructed not to assist the farmers or their workers and, in many instances, were also complicit.

It is essential to ensure that the perpetrators of violence and lawlessness on the farms – and the destruction of people’s homes and livelihoods - can be held accountable for their crimes in an international court, ideally the International Criminal Court. It is also important to ensure that there will be just compensation and restitution for the damages sustained by the farming community.

In monetary terms, “pain and suffering” or even “severe pain and suffering” - which is otherwise defined as “torture” - have a significant value in law. For example, the Von Pezold family case involved dual Swiss and German nationals who should have been protected by a Bilateral Investment Promotion and Protection Agreement but they too lost their valuable businesses and properties. Their case was heard by the International Center for Settlement of Investment Disputes (ICSID) in Washington. The court’s award of US\$196 million in 2015 for land and production losses if title to the farms was not restored included an amount of US\$1 million in moral damages for one member of the family whom the Zimbabwean police had failed to protect from death threats and physical violence perpetrated by “settlers” on his farm.

Initiatives in this regard are important to pursue.



A farm manager's wife, with her two-year-old twins, were held captive by war veterans in their house on a farm in the Centenary district, 150km north of Harare, on March 29, 2000. The war veterans and their supporters who invaded the farm, barricaded the house gate while her husband was away, and refused to let her leave. (AP PHOTO/Rob Cooper)

Gross human rights abuses: With regard to the gross human rights abuses perpetrated by the regime, the MCF’s Executive Director has visited the UN in Geneva twice and has met with the office of the Special Rapporteur on Torture at the Ludwig Boltzmann Institute for Human Rights in Vienna.

To find out more about our “Seeking Justice” initiatives, visit our website:

<https://www.mikecampbellfoundation.com/copy-of-what-the-mcf-is-doing-now>



In pursuit of the law and justice

