

**U.S. CONGRESS: House Subcommittee on Africa hearing:
“The Recommended Focus of Future U.S. – Zimbabwe Relations”**



**By Ben Freeth, Executive Director,
Mike Campbell Foundation**

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We need to get the root of the problem in Zimbabwe:

- What is it that caused the fastest shrinking economy in the recorded history of the world in a peace time situation?
- What is it that brought the most industrialized country in sub-Saharan Africa - after South Africa - into a state of 85% plus unemployment?
- What is it that made the bread basket of southern Africa into a country that would have had widespread death by starvation if food aid had not come in from the U.S. and the West every year for 16 years after the farm invasions began? For example, in 2002, just two years into the chaotic farm grab, Western governments had to give the World Food Program \$300 million to feed some 5.5 million Zimbabweans, nearly 50% of the country's population. (At the height of the Ethiopian famine, international donors fed just 20% of Ethiopia's citizens.)¹
- What is that has caused an estimated 25% of the entire Zimbabwe population of between 12 and 13 million people to flee the country of their birth in such a short period of time?

Most critically:

How can Zimbabwe be rebuilt from the ruins that have been created by the 37 years of former President Robert Mugabe's reign?

THE RECOMMENDED FOCUS FOR FUTURE U.S. – ZIMBABWE RELATIONS

The U.S. needs to focus on the current drive by Zimbabwe's leaders to bring in investment and financial aid given that some of the extremely negative and counterproductive laws, policies and practices remain in place. The Zimbabwe Democracy and Economic Recovery Act of 2001 (ZDERA)², passed by the U.S. Congress in December 2001, stipulates that the restoration of the rule of law in Zimbabwe includes “*respect for ownership and title to property.*” [Section 4 (d)(1)]

Restoration and expansion of property rights

Commercial agriculture, underpinned by property rights, has always been the backbone of the economy. Prior to 2000, the year the farm invasions began, commercial agriculture with titled land accounted for approximately 30% of the land area of Zimbabwe.

This accounted for 20% of Zimbabwe's GDP, which rose to 60% when agri-based industries, including services, came into the equation. It also accounted for over 40% of national export earnings.

In addition, over 20 percent of the population lived and was employed on commercial farms, with commercial agriculture-related employment comprising a third of the formal labour force³. The destruction of property rights and the nationalisation of the vast majority of titled land has been catastrophic for the economy. On that nationalised land, no dams have been built, nor any meaningful development undertaken since the date of nationalisation. In fact, the vast majority of irrigation schemes have fallen into disuse, thousands of hectares of valuable forex-earning orchards have died, and thorn trees have begun to take over in many of the agricultural fields.



*Comparison: (Left) Communal land vs (right) property-rights titled land in 2005
(Credit: National Geographic Society)*

There is no doubt that if property rights were restored and expanded, there could be a very quick recovery in the agricultural sector. This would bring massive employment, a huge inflow of desperately needed foreign currency, a return of skills lost through the mass exodus of skilled Zimbabweans, and a revival in the local downstream industries, 60% of which were primarily focused on agriculture.

Bankable, transferable and inheritable property rights now only exist on less than 10% of the total land area in Zimbabwe. As a result, virtually no development or meaningful production and employment is able to take place because no investment is secure and nobody can take a long-term view – something essential for agriculture. Former commercial farms have become as unproductive as - or even less productive than their communal neighbours. A system of feudal patronage has developed throughout the land where everyone lives in fear, insecurity and poverty for the purposes of being easily controlled.

Three steps need to be taken to free the land, unlock its potential and bring it to life so that the remarkable human capital that Zimbabwe has available at its disposal can get involved with development, production and employment on the land:

1. Property rights need to be re-established in the recently nationalised commercial land [approximately 11 million hectares].
2. Property rights need to be re-established in the formerly nationalised commercial land that was bought by government for resettlement but on which no formal bankable or transferable property rights were given [3.6 million hectares].
3. Property rights need to be established for the first time in the communal areas [17 million hectares].

It is interesting to look at the country where the land nationalisation ideology that has been used in Zimbabwe originally came from. A little over a century ago, the great Russian Prime Minister and courageous reformer, Stolypin, began reforming the communal lands of Russia to give individual ownership to over 6 million peasant households in a decade. This increased total agricultural production by 50% in that decade because with individual ownership came development on those farms. Stolypin was murdered.

When Lenin took over immediately afterwards, he began his “command economy” and the peasants who had ownership had their property rights taken away with the infamous “land decree”. With property rights destroyed, Russians starved by the million, despite having such a vast agricultural land area on which they could have fed the world.

Every land nationalisation program carried out around the world since Lenin’s land decree of 26 October 1917, has had equally disastrous effects.

It is interesting to note that in line with the Leninist nationalisation in Zimbabwe, Zimbabwe has also instituted “command agriculture,” mirroring Lenin’s “command economy”. The State commands and controls farmers in terms of whether they can grow and what they grow, as well as where they must market their produce. Last year the State paid farmers double the world price for maize and sold it on for half what they bought it for. This helped lead to a good harvest; but a record loss by the Grain Marketing Board of over 200 million dollars. Such madcap schemes from a cash-strapped government and a cash-strapped people who have to pay for such schemes, are totally unsustainable.

One of the sons of the Zimbabwean soil, Allan Savory - a visionary and a man very influential in world agriculture, including in the U.S., once said: “Without agriculture it is not possible to have a city, stock market, banks, university, church or army. Agriculture is the foundation of civilisation and any stable economy.”

To be successful, agriculture has to be founded on secure, bankable and transferable property rights. The current 99-year leases with the clause that government can cancel them in 90 days, are simply perpetuating the problem of dead capital.

If we are able to marry the resurrection of currently dead land capital to the resurrection of effectively dead human capital, Zimbabwe would become the fastest growing economy in the world in a very short period of time.

Section 72 of the new Constitution (2013)

The primary focus initially needs to be on Section 72⁴ of the Zimbabwe Constitution (2013) which was struck down in its previous form (as Amendment 17 to the previous Constitution) by the Campbell Judgment⁵ in the SADC Tribunal. We need to ensure that this Judgment does not continue to be ignored.

[Amendment 17 was added to Zimbabwe's Constitution on September 14, 2005 to vest ownership of certain categories of land on the Zimbabwean government and to eliminate the courts' jurisdiction to hear any challenge to the land acquisitions. Commercial farmer Mike Campbell initiated proceedings in court on May 15, 2006, challenging the validity of Amendment 17.]

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| IN THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (SADC) TRIBUNAL | |
| | Case no. 02/2007 |
| HELD AT WINDHOEK | |
| In the matter between: | |
| MIKE CAMPBELL (PRIVATE) LIMITED | First Applicant |
| WILLIAM MICHAEL CAMPBELL | Second Applicant |
| <u>and</u> | |
| ROBERT GABRIEL MUGABE N.O. IN HIS CAPACITY AS THE PRESIDENT OF ZIMBABWE | Respondent |

Mike Campbell takes on President Robert Mugabe at the SADC Tribunal in Namibia in 2007

Section 72 allows the Zimbabwe Government to acquire any right or interests in private land by notice in the Gazette after which that land vests in the State with full title. “No compensation is payable in respect of its acquisition...” [Section 72(3)(a)]. “The acquisition may not be challenged on the grounds that it was discriminatory...” Section 72(3)(c). “An act of Parliament may make it an offence for any person, without lawful authority to possess or occupy agricultural land...”

The SADC Tribunal Judgment is a final and binding judgment. Section 72 is an anathema to human rights and the rule of law and will continue to stifle investment so long as it is not changed. No moves are being made to even discuss the removal of Section 72 – which is in conflict with the rest of the Zimbabwe Constitution - and the continued contempt of the Zimbabwe Government to the Campbell Judgment which strikes it down. Section 72 goes against the SADC Treaty, international law and all the human rights charters that Zimbabwe is signed up to.

If the new Zimbabwe Government was to decide to comply with the court orders that President Mugabe chose to defy (instead of continuing to be in contempt of court)⁶ and the Campbell Judgment was to be recognised, there would be no stronger or better signal that investment and financial assistance could now pour into Zimbabwe. This would be the clearest possible signal to herald significant and immediate recovery of the agricultural sector and the economy as a whole.

Until the Zimbabwe Government complies with the court orders – and does so publicly - it is important that financial institutions and governments continue to raise the issue as a prerequisite for normalisation of relations and financial assistance.

Restoration of the rule of law

At the root of the Zimbabwe problem is the breakdown of the rule of law and its replacement with “rule by law.” We have a “command economy” with a military system of command in Government.

We have already covered the **Campbell farm case** in relation to Section 72 of the Constitution. My father-in-law, Mike Campbell, was abducted and severely beaten – and later died because he took President Mugabe to court in the regional court, the SADC Tribunal. This is what has happened in the past to those standing for the rule of law. Mike gained a final and binding judgment from the Tribunal in November 2008.⁷ This needs to be recognised and adhered to.



(Left): Ben Freeth and Mike Campbell in hospital after their abduction and torture at the hands of President Mugabe’s youth militia, 30 June 2008

The Gondo torture case: In January 2011, the SADC Tribunal awarded damages of nearly US\$17 million to nine Zimbabwean torture victims, in a landmark ruling that yet again exposed Harare's flagrant disregard of the rule of law. The judgment in the Gondo case⁸, which was handed down on 9 December 2010, followed a case in which the victims of organised violence and torture sued the Zimbabwean government for failing to comply with the orders of the country’s High Court.

After the Zimbabwe Government was found to be in contempt of court in the Campbell case, and the ruling of the Tribunal in the Gondo case was handed down, Mugabe managed to persuade the SADC Heads of State to suspend the SADC Tribunal in May 2011. The following year the SADC Heads of State closed down the Tribunal, depriving 277 million people in the 15 countries in southern Africa of a court of last resort when the justice systems in their own countries failed them.

The decision to do this and attempt to sign a new Protocol into place in 2014, the mandate of which would be confined to interpretation of the SADC Treaty and Protocols relating to *disputes between Member States*, thus blocking the Tribunal from hearing any human rights cases at all, is currently being challenged in the region. I am one of the applicants in a case against former South African President Jacob Zuma⁹ for his part in the process. We expect a judgment before the date of this Congressional Hearing.

Other Laws: Detrimental laws remain in place despite lip service to their removal.

- The Indigenisation and Economic Empowerment Act of 2008¹⁰ effectively stops white Zimbabweans or foreign investors from having a controlling share in any business;
- The Gazetted Land (Consequential Provisions) Act of 2006¹¹ continues to prosecute white farmers criminally for still farming their land and living in their homes as per Section 72 of the 2013 Constitution;
- The Public Order and Security Act (POSA)¹² of January 2002 and
- The Access to Information and Protection of Privacy Act (AIPPA)¹³ of 2002 continue to stifle fundamental freedoms.

There is only one case where a white farmer has been restored to his farm. Rob Smart, his son Darryn and their families were evicted violently by police last year after a bishop, reportedly connected to former first lady Grace Mugabe's 'G40' political faction, was given the farm.

Regrettably Rob Smart's restoration is against Zimbabwe law as it now stands. The court order that evicted him has not been revoked and nothing has yet been put in place to change the law that led to his eviction. This demonstrates how we live in a rule by decree State. Laws need to be reformed so that violence against people and their property is able to be curbed.

[The Smarts have been told they will get a 99-year lease where, having received no compensation for their farm - which is now considered State land - they can lease their homes and land back from the State for an as yet unspecified amount of money each year. In the convoluted 48-page 99-year lease agreement, the State can evict the lessee with 90 days notice – even if he has crops in the ground].



Farm workers and their children were overjoyed when commercial farmers Darryn Smart and his father, Rob, were allowed to return to their Lesbury farm in December 2017

The U.S. continues to play a crucial role in Zimbabwe

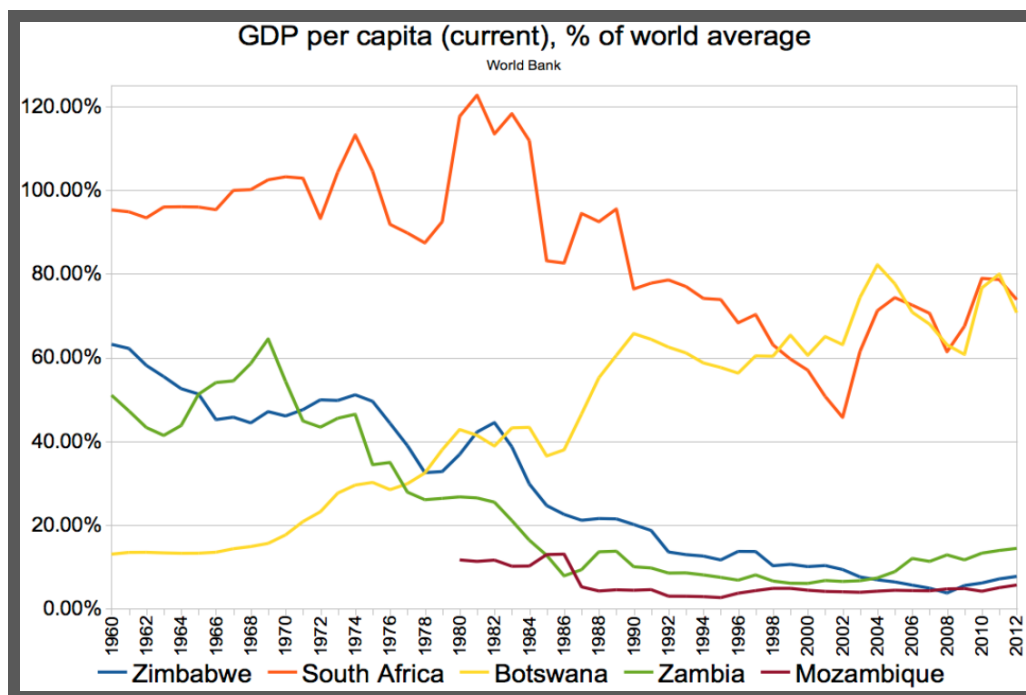
America's values continue to guide foreign policy in Zimbabwe by supporting democratic movements and human rights organizations, as well as contributing very significantly to humanitarian projects.

We are deeply grateful to the U.S. for continuing to post exceptional diplomats such as former Ambassador James D. McGee to Harare. Ambassador McGee was prepared to risk his life by going out to witness state-sponsored violence against Zimbabweans in the rural areas first-hand - with the press.

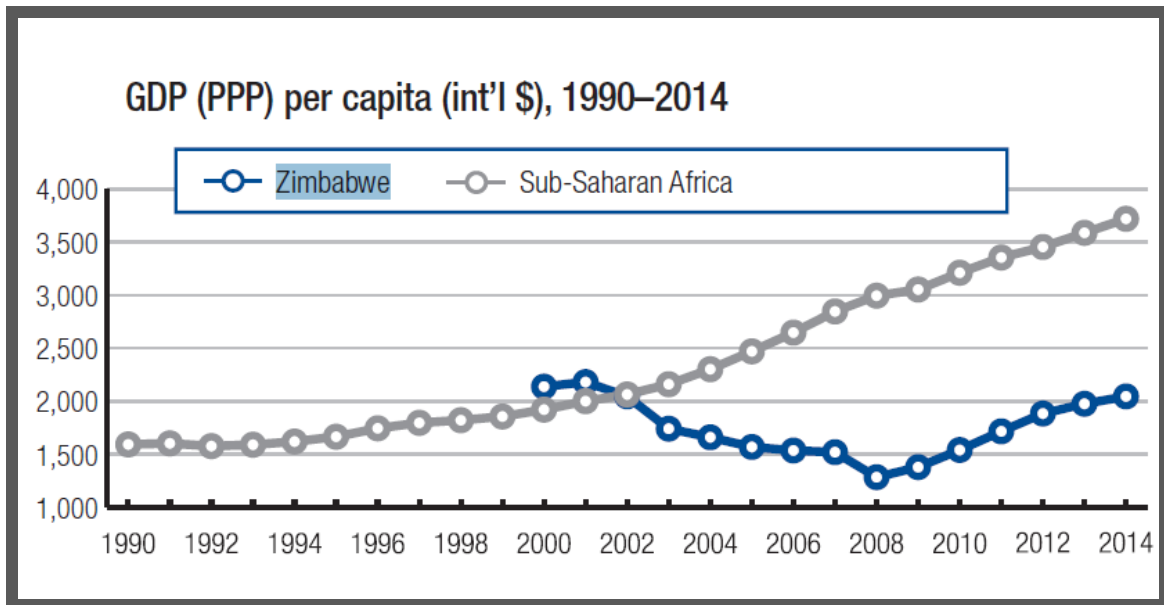
On February 24, 2009 shortly after the swearing in of Zimbabwe's Government of National Unity, Ambassador McGee addressed students at the African University in Mutare. His words apply equally today to the new government led by President Emmerson Mnangagwa:

"Despite all the challenges I remain hopeful that true change is coming. I hope that the new [unity] government represents a beginning. We are watching closely and will judge this new government on its actions. If it takes concrete steps to meet the conditions the international community laid out long ago for re-engagement, the United States will be at the forefront in providing assistance.

"However before that can happen, we need to see restoration of the rule of law, commitment to the democratic process and respect for human rights, a commitment to timely and internationally supervised elections, full and equal access for all Zimbabweans to humanitarian assistance, and commitment to macroeconomic stabilization in accordance with guidance from relevant international agencies. An important and necessary first step is the release of all political detainees. If we see signs that this is taking place our support will expand. If we do not see these signs, we will continue to provide humanitarian relief while pushing for these changes...."

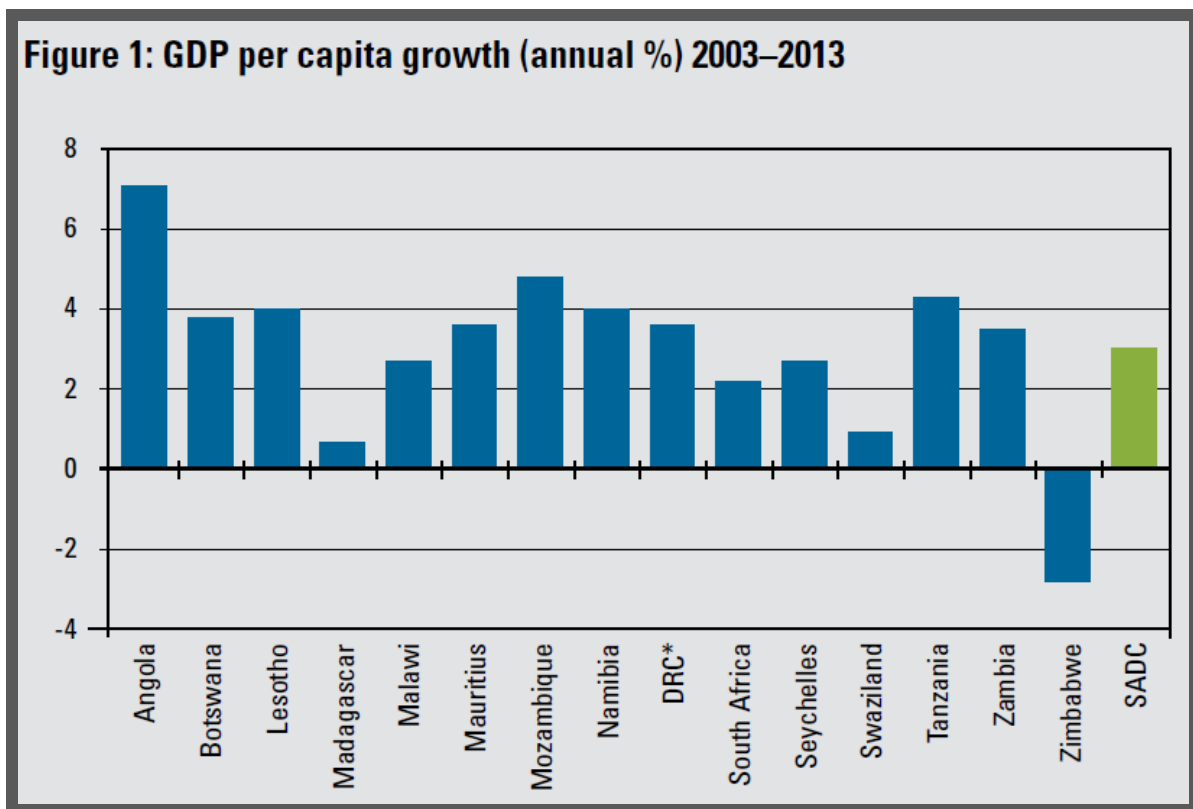


Zimbabwe's GDP per capita, compared to neighbouring countries, 1990-2012



Zimbabwe's GDP (PPP) per capita compared to sub-Saharan Africa, 1990-2014
World Economic Forum

http://www3.weforum.org/docs/qcr/2015-2016/Global_Competitiveness_Report_2015-2016.pdf



Source: World Bank, *World Development Indicators*, <http://data.worldbank.org/data-catalog/worlddevelopment-indicators>, accessed 22 October 2014

Ben Freeth MBE

Executive Director

Mike Campbell Foundation – Zimbabwe Website: www.mikecampbellfoundation.com

Mobile: +263 773 929 138 E-mail: benfreeth7@gmail.com; info@mikecampbellfoundation.com

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- ² The Zimbabwe Democracy and Economic Recovery Act of 2001 (ZDERA)
<https://www.congress.gov/107/plaws/publ99/PLAW-107publ99.pdf>
- ³ “Agriculture: The tale of Zimbabwe’s sleeping giant” by NewsDay, 19 September 2013:
<https://www.newsday.co.zw/2013/09/agriculture-tale-zimbabwes-sleeping-giant/>
- ⁴ Section 72 of the new Zimbabwean Constitution of 2013, analysis by Dr Dale Doré, 10 March 2013:
<http://www.thezimbabwean.co/2013/03/the-good-the-bad-and/>
- ⁵ Mike Campbell (Pvt) Ltd v Zimbabwe, case summary on Wikipedia:
[https://en.wikipedia.org/wiki/Mike_Campbell_\(Pvt\)_Ltd_v_Zimbabwe](https://en.wikipedia.org/wiki/Mike_Campbell_(Pvt)_Ltd_v_Zimbabwe)
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<http://www.mikecampbellfoundation.com/page/the-campbell-case-background-rulings-461>
- ⁶ “The Zimbabwe Government remains in contempt of court and continues to flout the rule of law”, opinion by Sir Jeffrey Jowell QC, The Zimbabwean, 18 May 2017:
<http://www.thezimbabwean.co/2017/05/zimbabwe-government-remains-contempt-court-continues-flout-rule-law/>
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<http://www.saflii.org/sa/cases/SADCT/2008/2.html>
- ⁸ The Gondo torture case judgment, World Courts website, 9 December 2010:
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- ⁹ Hearing of SADC Tribunal court case set down for 5-7 February 2018, PoliticsWeb, 2 February 2018:
<http://www.politicsweb.co.za/politics/hearing-of-sadc-tribunal-case-set-down-for-5-to-7->
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[https://en.wikipedia.org/wiki/Access_to_Information_and_Protection_of_Privacy_Act_\(Zimbabwe\)](https://en.wikipedia.org/wiki/Access_to_Information_and_Protection_of_Privacy_Act_(Zimbabwe))