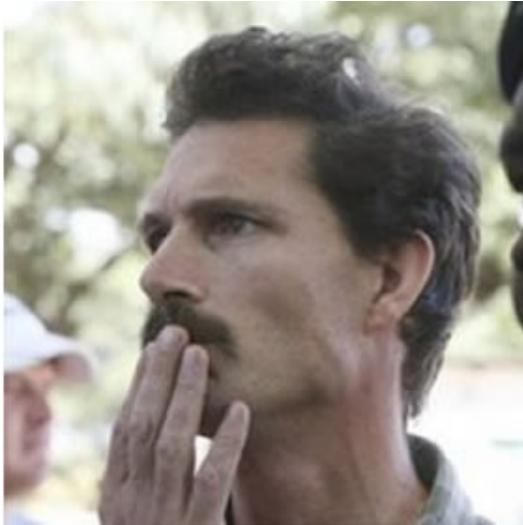


[Diaspora Diaries with Alex Bell and Ben Freeth](#)

SW Radio Africa

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Former Chegutu farmer Ben Freeth

Alex Bell: Hello and welcome to Diaspora Diaries on SW Radio Africa, Zimbabwe's independent voice. I'm Alex Bell and coming up tonight I examine how the draft constitution will impact on a ruling by the Southern African Human Rights Tribunal in 2008 which declared the land grab in Zimbabwe unlawful. The ruling of course ordered the government to compensate farmers who'd lost their land in a judgement that slammed the land seizures for being inherently discriminatory but nothing has been done in terms of justice since then and instead the court has been suspended pending a review of its mandate and functions. Justice is now set to be even further delayed with Zimbabwe's draft constitution actively undermining the Tribunal ruling. Now there's a number of issues to discuss here tonight and joining me is former Chegutu farmer Ben Freeth who now heads the SADC Tribunal Rights Watch group. Ben it's always a pleasure, thank you so much for joining us this evening.

Ben Freeth: Thank you very much, it's always a pleasure to join you.

AB: Ben let's look now at these land clauses in the new draft constitution that was released last week. There has been concern raised. Not a lot of people are talking about the land issue which I think is probably a sign of how the matter is seen. But let's get your take on what you have been able to read into this so far.

BF: Well I think there are a number of things that are extremely worrying in the new draft constitution, which incidentally both ZANU PF and MDC have obviously signed off on, and I think the first thing is that it cancels the right to anyone for compensation. It says explicitly: 'no compensation

is payable in respect of the acquisition of land', so that is obviously something very concerning. It goes against the SADC Tribunal judgement, it goes against all law relating to the compensation for things, property that have been taken away from people and at the same time it directly prevents anyone applying to a court regarding compensation for that land. No person, it says, may apply to a court for the determination of any question relating to compensation for that land. So I think that's an extremely harsh and draconian thing to write into a constitution and furthermore it actually makes it even more simple for government to go ahead and acquire the last few remaining properties, because it says that simply by a notice in the *Gazette*, the government *Gazette*, the land will then vest in the state with full title with effect from the publication of that notice. So there's no procedure, it's just a straight gazetting in the government *Gazette* and suddenly everything that you ever worked for has gone, it's just vanished into thin air and is now vested in the state.

But I think the most alarming part of this whole new constitution is the clause that says, I think 4.293c says that the acquisition 'may not be challenged on the grounds that it was discriminatory.' And that's a very, very clear indication of where I think we are in this country. You know, all the human rights statutes, all the constitutions around the world all say that we are all equal before the law; there cannot be discrimination and yet this new constitution of Zimbabwe, signed off by the democratic part of our government is saying: yes – there can be discrimination, we can go ahead and act in a discriminatory manner, take from people who happen to have a different colour skin or whatever it is. And I think this is something that even in the apartheid constitutions wasn't there so explicitly. So this is something really very, very grave and I believe, very, very serious.

AB: It's particularly, it seems almost particularly vindictive because of how closely it resembles the judgement of the SADC Tribunal in 2008 and it does seem to actively undermine that ruling and to make the pains to undermine that ruling.

BF: Well absolutely, I mean the SADC Tribunal was very clear. It was a ruling looking at the SADC Treaty, looking at international law and it said, very explicitly... that the respondent, which is the Zimbabwe government, cannot rely on its national law, it's constitution to avoid an international law obligation. And the international law obligation here is that it has to allow its citizens their opportunity to represent themselves in court if their property is taken or if other things happen to them and that there can be no racial discrimination. That is an international law obligation and it goes back to all sorts of obligations that we are signed up to: the United Nations Charter, it's very clear, there are so many clauses in the United Nations Charter that cover this.

Article One right at the very beginning says: "All human beings are born free and equal in dignity and rights"; in Article Two: "Everyone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind such as race" and it just goes on right the way through the Declaration and through subsequent human rights charters including of course the human rights, the African Charter on Human and People's Rights which aims to eliminate all forms of discrimination. Right the way through the world it is a very, very clear mandate of governments to avoid discrimination and this constitution says yes, discrimination is fine.

AB: Now Zimbabwe is a signatory to the SADC Treaty so what is this supposed to mean then in terms of the country's relationship with that leadership bloc? Obviously it means that it is never going to abide by the SADC Tribunal ruling – what about further relations with the leadership bloc?

BF: Well absolutely, all the legal people within SADC are going to look at this and say: Zimbabwe is out of kilter here. This is something that even the apartheid government didn't actually put in place. It goes against the SADC Treaty, it goes against the United Nations Convention for the elimination of all forms of racial discrimination, it goes against that incredible convention that was put in place

regarding apartheid itself where it talks of apartheid, in the United Nations in the convention on the suppression and punishment of the crimes of apartheid, it talks about that convention or those people that actually take part in that being partakers in crimes against humanity. So this is something that SADC is going to have to look at very carefully I believe and they are going to have to say: 'well do we allow Zimbabwe just to get away with this' as well as quite clearly, the people do not endorse it. I do not believe if we were to look back at all the consultations that cost millions of dollars, I do not believe that the people said that discrimination should be allowable in Zimbabwe. This is something that has been put in by our politicians without any thought as to what the people said at all. It goes against the whole principles of democracy which SADC stands by or is supposed to stand by within the Treaty. This is I believe a real crunch, crunch time that we are going through; I think it's a real shaking time and people that do not stand up against this, these clauses in this constitution... You mentioned at the beginning that everyone seems to be very silent about it all, obviously (they) do not believe in democracy, human rights and the rule of law which are the founding principles of SADC.

AB: Speaking of SADC of course, it's about being a development community and promoting the development of southern Africa as a region and yet the one thing that also stands out in the land clause in this new constitution is what seems to be the legitimising of the state to completely erase title and put the state's name and register the state's title over all land in acquisitions. This seems a clear sign to property rights and surely that's going to once again further distract from any kind of meaningful or any kind of investment in Zimbabwe at all?

BF: Well absolutely, I think both internally and externally everyone is waiting for property rights to be endorsed by our government for the rule of law to come back. To say that if people take away a property from you, you are due compensation, you are due a hearing in the court. To allow theft, which essentially is what this constitution is endorsing, to allow theft to be able to take place, everyone is saying 'well there's no way we are going to invest' and even the guys that have actually taken the farms or have been given offer letters by the government for farms, they are not being given any security whatsoever. The government can come along tomorrow and say 'thank you very much, we are taking your farm from you, we are giving it to someone else who's more loyal to the party' or whatever it is. So all those, none of those people will be able to invest or develop what they have taken from us, so it's a lose-lose situation all round. The only people that are winning are ZANU PF essentially and I just don't understand why MDC is endorsing this.

AB: I spoke to the MDC-T spokesperson Douglas Mwonozora yesterday and he was very adamant that at least under this new agreement no land would be seized outside of the law and everything would be within the constitution. Do you think that's a good enough excuse to legalise state acquisition of land so that it's within the bounds of the law?

BF: Well I go back to the 1940s where the Nazi regime made all sorts of laws so that they could do things by the law and they were able to loot from the Jews, they were able to eventually send the Jews to their death and it was all legal. There was a legal structure that allowed them to be able to do that. This is why in 1948, the Human Rights Charter was formed so that that would be the guideline, that would be the underpinning foundation to stop governments going outside the law. And when constitutions are written that go beyond the call of the human rights charters that various governments have signed up to, they're not acting by the law, they may be acting by Zimbabwe law but there's an obligation to act by the human rights charters that they have signed up to. There's an obligation I believe that the Ten Commandments which were received by Moses on Mount Sinai all those years ago, they are the underpinning theme to what all good law is about. And this clearly flies in the face of that so I think the MDC spokesman either hasn't read the constitution or else is very seriously out of kilter with what is right.

AB: Ben we're sitting in a situation now where the SADC Tribunal does remain suspended. We're not entirely sure what's actually happening with that court. This constitution then it does seem to put another nail in the coffin of that (the SADC Tribunal's) ruling; what do you think is going to happen as we move forward?

BF: Well I believe the ruling obviously will stand; it is a final and binding judgement. What we are waiting for is a government that is respectful of its people, is respectful of the rule of law and so long as we have a government that does not respect those things, we will continue to have any international judgements that are being trampled upon. It simply isn't in the government's interest to abide by them. So yes, for the moment it obviously defers any time of rebuilding, it defers any time of getting to a place where the country is food secure, where jobs are being created, where development is taking place. It defers all that and we wait, we wait in Zimbabwe, we wait until the time where the rule of law is respected and then we believe things will start to move forward very quickly. I believe that Zimbabwe at the moment is like a Rolls Royce and it's got its handbrake on and at some stage our politicians will realise that they need to take the handbrake off, they need to bring the rule of law back and then we will take off. But until that time it's going to be a very difficult and slow and torturous journey for many, many Zimbabweans.

AB: You have been listening to Diaspora Diaries here on SW Radio Africa. I've been speaking to Ben Freeth who heads the SADC Tribunal Rights Watch group about the new constitution and some of the implications of it. Now if you would like to look at the constitution yourself, it is available on our website: www.swradioafrica.com. For now though Ben, thank you once again for joining us on the show, it's really such a pleasure.

<http://www.swradioafrica.com/2012/07/27/diaspora-diaries-with-alex-bell-and-ben-freeth/>