

Your Next Nominee?

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As a journalist, I miss out on all the fun of nominating arbitrators.

And I also refrain from counseling others as to whom they should nominate to arbitral tribunals.

But, today I'd like to make an exception.

Recently, Zimbabwean President Robert Mugabe engineered the effective demise of the regional tribunal of the Southern African Development Community (SADC). These depressing developments have been chronicled in my *Investment Arbitration Reporter* newsletter, and you can find more background [here](#).

While members of the international arbitration community should be decrying this move to kick the legs out from under an international tribunal, they might also reflect that a small group of independent-minded jurists now find themselves with some free time on their hands.

Members of the SADC Tribunal generally hail from the ranks of the senior judiciary of their respective countries, and have had the further experience of interpreting and applying the SADC Treaty, an international law instrument.

Arbitration practitioners will know that there is perpetual discussion about the need to expand the pool of international arbitrators, and to draw from the ranks of developing country jurists.

While I can't vouch personally for any of the former members of the SADC Tribunal, some of them are prominent figures, including the former Chief Justice, A.G. Pillay, a retired Mauritian Judge who also serves as Chair of the U.N. Committee on Economic, Social and Cultural Rights.

Certainly, the entire Tribunal made a rather strong first impression on me by virtue of their [judgment in the Campbell case](#).

The Tribunal surprised many observers when it ruled in 2008 that Zimbabwe was liable for multiple breaches of the SADC treaty in relation to that country's abominable treatment of nationals and foreigners alike. In subsequent years, the Tribunal rebuked Zimbabwe on several occasions for flouting the Tribunal's judgment, refusing to compensate those who had lost their homes and livelihoods, and continuing to turn a blind eye to brutal beatings and political thuggery.

If you've seen the [excellent documentary](#) about the Campbell case, you may recall that Zimbabwe sought repeatedly to delay the SADC Tribunal's hearing of that case. Finally, the patience of the Judges wore thin, and one Tribunal member was seen to chastise the Zimbabwean defence counsel thusly:

“We are building a house of justice in the region, and the court finds no reason to postpone this case.”

Unfortunately, the political decision taken last month in Namibia by the SADC Heads of State has meant that this regional “house of justice” is only the latest structure to be razed to the ground by the Mugabe government.

Nevertheless, it may lie within the power of some readers of this blog to ensure that the former caretakers of that house – the Judges of the now hobbled Tribunal – are recognized for their integrity in the service of the rule of law. Considering them for appointment to future international panels strikes me as the least that the international arbitration community might do under the circumstances.

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