

The LEGAL MONITOR

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COST-FREE

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Act now to reform torture laws

HARARE-On the occasion of the United Nations International Day in Support of Victims of Torture on 26 June 2010, Zimbabwe Lawyers for Human Rights (ZLHR) stands by the numerous survivors of torture and remains completely opposed to the continued use of torture and other cruel, inhuman and degrading treatment and punishment against human rights defenders and ordinary citizens in Zimbabwe.

That this international crime continues to be perpetrated by state actors and non-state actors acting with the acquiescence, knowledge and consent of the state must be condemned in the strongest possible terms. Perpetrators – even those who are well-known, have been identified, and evidence of their crimes provided to the Attorney General's Office - continue to be shielded from prosecution by state institutions, thus reinforcing the culture with impunity in society and denying victims and survivors redress.

Torture is a heinous act. It is internationally proscribed and constitutes a crime against humanity. The ban on torture has achieved the status of customary international law and states have a duty to ensure that they respect, protect, promote and fulfil their domestic and international obligations to protect all citizens, without fear or favour, against such conduct.

ZLHR calls on the Inclusive Government of Zimbabwe – through the Inter-Ministerial Committee on Human Rights - to immediately ratify and domesticate the United Nations Convention against Torture and Other Cruel Inhuman and Degrading Treatment or Punishment, and to ensure that the state and its agents adhere to their responsibilities under the African Union's Robben Island Guidelines.

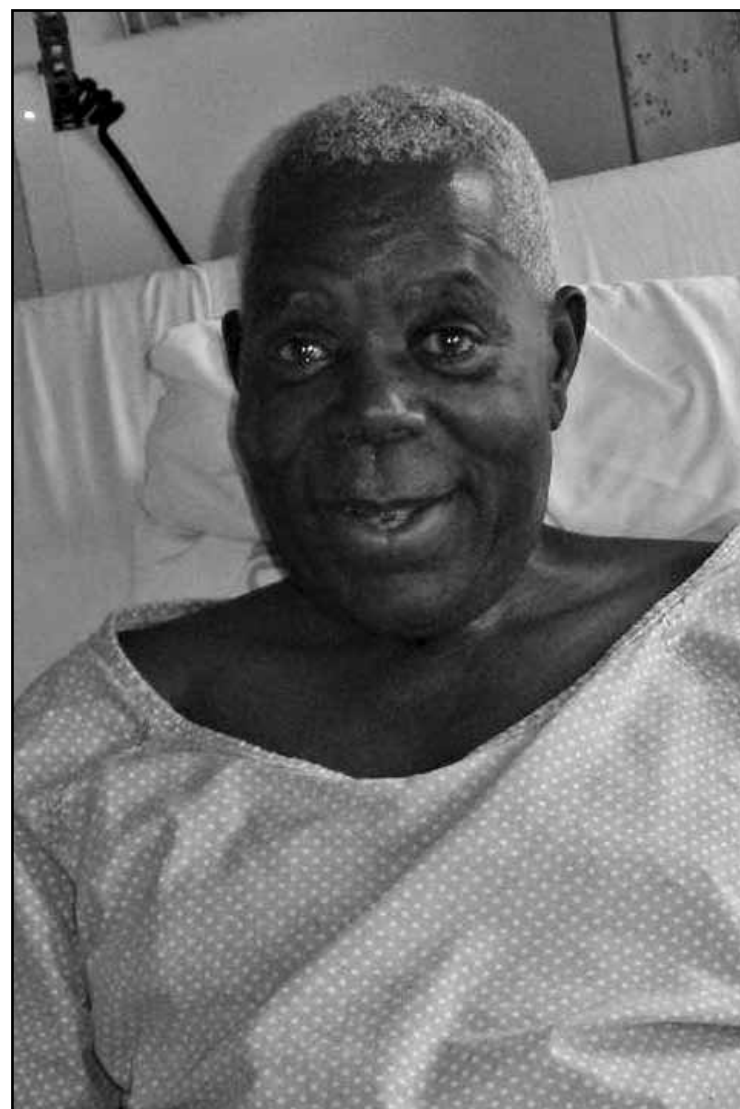
Further, the government must expeditiously take legislative measures to:

- Adopt the definition of torture as enunciated in the United Nations Convention against Torture and Other Cruel Inhuman and Degrading Treatment or Punishment;
- Ensure the unqualified entrenchment of the protection against torture and other cruel, inhuman and degrading treatment in the Bill of Rights of any constitution for Zimbabwe, and ensure proper redress for survivors of such crimes and their dependents;
- Remove penal action that is tantamount to torture;

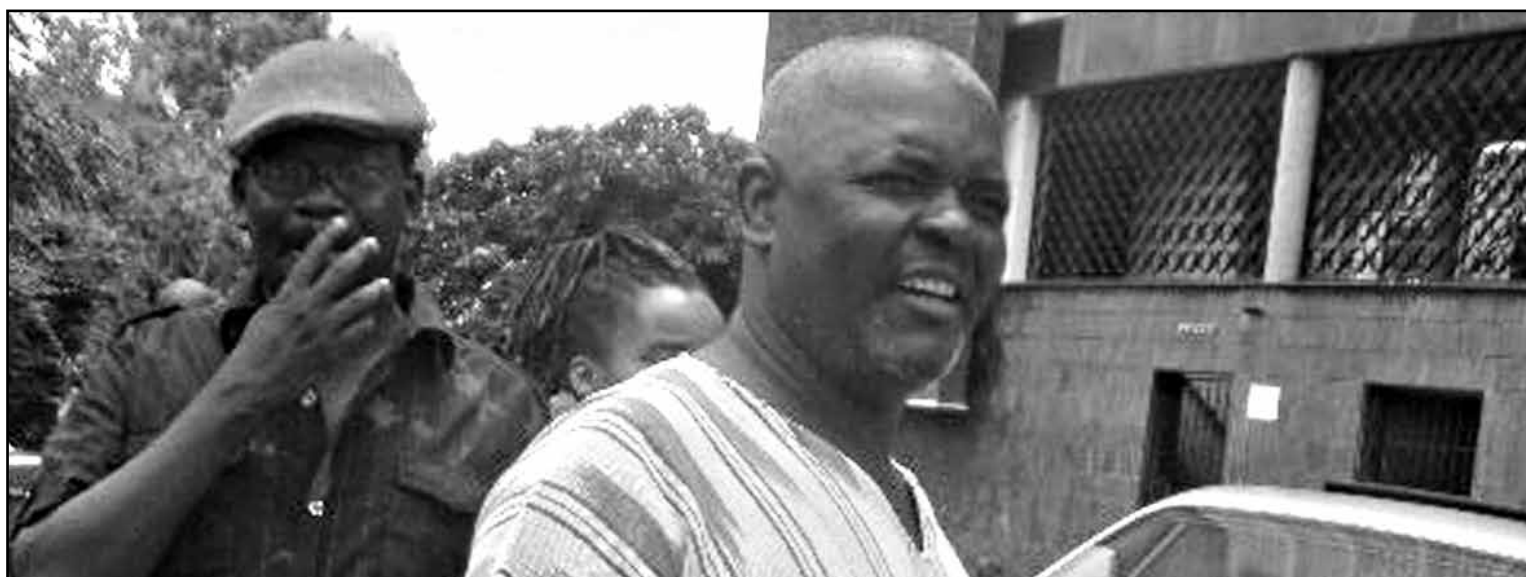
Some of Zimbabwe's torture victims...



Jestina Mukoko



Fidelis Chiramba



Broderick Takawira

- Criminalise and penalise the occurrence of torture in the Criminal Law (Codification and Reform) Act;
- Repeal provisions in the Prisons Act that facilitate acts tantamount to torture of prisoners by officials under the orders of the 'Commissioner' or 'Officers in Charge';
- Incorporate torture as one of the offences prohibited in the Police Act, which regulates the conduct of law enforcement agents in Zimbabwe.

Imprisoned Maguwu haunts Zim diamond sales quest

HARARE-Centre for Research and Development (CRD) director Farai Maguwu appears in court on Wednesday, a week after his exposes' on illegal military activities in Marange diamond fields and subsequent incarceration swayed the Kimberley Process from adopting its own monitor's recommendations for immediate exports of Marange stones.

The KP mention of Maguwu's case being a key contributor to the deadlock that characterised debate on Zimbabwe is likely to increase political hostility on the diamond activist, whose case had drawn criticism from local and international rights and lawyers' groups. The deadlock means Zimbabwe cannot offload over 4.5 million carats mined in Marange under KP certification.

The KP is a joint government, civil society and industry body formed 10 years ago to stop the trade of conflict diamonds, following bloody conflicts in countries such as Angola and the



Farai Maguwu

Democratic Republic of the Congo.

Civil society groups and some governments that are part of the 75-member body argued in Israel that Zimbabwe was yet to meet conditions set

through a Joint Work Programme (JWP) agreed in Namibia last year.

The JWP, under which Chikane was appointed as monitor, should result in the demilitarisation of Marange fields to stop illegal mining and human rights abuses by soldiers controlling the fields. Despite having been in remand prison for three weeks, Maguwu, arrested allegedly following a tip-off by Chikane to the police, loomed large at the Israel meeting.

"The meeting convened in light of the second report of the KP monitor to Zimbabwe. In question was the continued implementation of the Joint Work Plan (JWP), agreed upon at the Plenary meeting in Swakopmund, Namibia in November 2009. The meeting was clouded by the arrest of NGO activist Farai Maguwu by the Zimbabwean authorities three weeks earlier and the reports of his condition," read a statement released by the KP after the Israel meeting, which had to be extended by a day to try and find common ground on Zimbabwe.

Maguwu's court appearance on Wednesday, where lawyers are expected to continue pressing for bail, will return Zimbabwe's rights situation on the international spotlight. Magistrate Don Ndirowei remanded Maguwu to Wednesday to allow police to complete their investigations. Defence lawyers will ask the court to keep its promise to release the director of Mutare-based CRD once investigations are finalised.

Lawyers however, say judicial officers should only be guided by the law and resist political pressures when dealing with such high-profile, politically sensitive cases.

Josphat Tshuma, the Law Society of Zimbabwe President said security agents should stop interfering in lawyers' discharge of their duties in the case. This follows the harassment of Blessing Nyamaropa, the Zimbabwe Lawyers for Human Rights regional manager for Manicaland Satellite Office, who represented Maguwu's relative Lisbern in a related case last month.

MP removed from remand

BINDURA-Magistrate Ruramai Chitumbura on Friday removed from remand Epworth Member of Parliament Eliah Jembere, who had been charged with insulting and undermining the authority of President Robert Mugabe.

Jembere, who belongs to Prime Minister Morgan Tsvangirai's Movement for Democratic Change (MDC) party and Gilbert Kagodora, who were represented by Jeremiah Bamu of Zimbabwe Lawyers for Human Rights (ZLHR) were arrested early this month in Shamva, Mashonaland Central for allegedly contravening Section 33 of the Criminal Law (Codification and Reform) Act Chapter 9:23 by undermining the authority of or insulting President Mugabe.

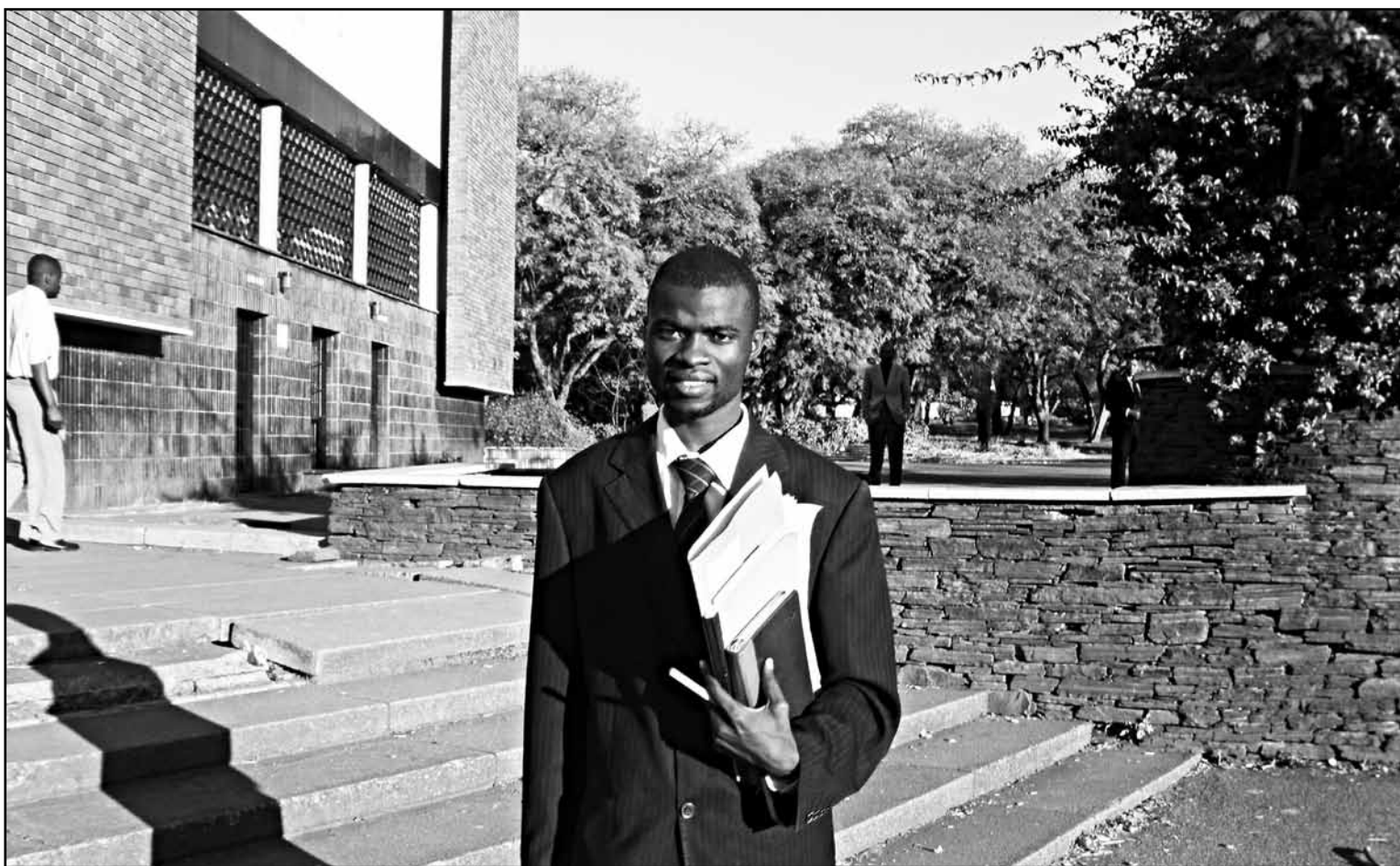
The State alleged that Jembere insulted President Mugabe when he addressed party supporters at a constitutional awareness meeting by saying "Mugabe mudenga, ZANU PF mudenga, vabatanidzei, roverai roverai pasi," which the police interpreted as meaning to say "Mugabe up, ZANU PF up, bring them together and drop them down."

On Kagodora, the State alleged that he uttered a slogan, which denounces President Mugabe when in his address to party supporters said; "Mugabe mudenga, Grace mudenga, vabatanidzei, roverai pasi," which the police deduced to mean "Mugabe up, Grace up, bring them together and drop them on the ground."

But on Friday Magistrate Chitumbura removed Jembere and Kagodora from remand after their lawyer Bamu applied for refusal of further remand.

On Thursday Jembere was fined \$10 for reporting late to court.

Jembere, who is a member of the Constitutional Parliamentary Committee (COPAC) outreach



Jeremiah Bamu of Zimbabwe Lawyers for Human Rights (ZLHR)

team deployed to Makonde District, Mashonaland Central arrived at the Bindura Magistrates Court around 09:30hrs for his routine remand after traveling from Chinhoyi, where he was accommodated for the night by COPAC.

By the time Jembere arrived, a warrant of arrest had been issued against him.

Although the legislator explained to the court during the default inquiry that he had been delayed and bogged down by his participation in the constitution making process, Magistrate Chitumbura confirmed his warrant of arrest and fined him \$10.

Magistrate Chitumbura held that court business is paramount to all other issues, even the COPAC process.

Magistrate Chitumbura said Jembere should have made arrangements to travel to Bindura on Wednesday, June 23 to be early for court.

Kagodora, the MDC Provincial Treasurer for Mashonaland Central who is also charged with insulting President Mugabe and against whom a warrant of arrest had also been issued, had his warrant of arrest cancelled.

This was after Kagodora explained to the court that he had first attended a COPAC briefing, in which he specifically made a request to be excused from the proceedings to enable him to attend court.

The court queried why he had not advised the State, to which he said he had been hoping that he would quickly excuse himself from the COPAC meeting and be in court on time.

The duo also reasonably believed that their matters would appear in court at 11:00hrs. This arises from the fact that the court they were scheduled to appear in, Court 3 in Bindura, sits as a civil court in the morning.

They have now been advised that before the courts presides over civil matters it disposes of all remand matters, except initial remands which are heard at 11:00hrs.

Outreach in false start

BINDURA-The country's constitution making outreach programme finally started last week amid skepticism over whether people's views would be reflected in the final document given the high levels of intimidation, violence and glitches that characterized the start of the process.

The outreach programme – which involves consulting Zimbabweans on the drafting of the new constitution - was supposed to have ended last November, according to timetables set in the Inter-Party Agreement, which is also known as the Global Political Agreement. But the process only started last Wednesday and even then only Manicaland and Midlands provinces started the process smoothly.

By Friday, many scheduled consultative meetings still failed to take place and threats of violence continued.

Douglas Mwonozora co-chairman of the Constitutional Parliamentary Committee (COPAC) remained optimistic.

“Yes, the situation did not get off at the speed we wanted but the engine is now fully running and we are flying high now,” said Mwonozora. “We are now on top of the ball. We have managed to get over the glitches we experienced on Wednesday leading to only Manicaland and Midlands provinces starting on the day.”

Besides recording equipment not being in the respective provinces by late Thursday, there were incidents of disruption or intimidation in Mashonaland East and Central provinces.

On Thursday, a group of activists in Bindura which kept on referring to itself as “having fought for this country,” was moving from one COPAC meeting point to another and dominating the proceedings.

“We want the current constitution to remain,” said one of the group's members at Bindura Primary School. He repeated the same line at Tendai Hall, Chipindura Primary School and Joyno Shopping Centre.



COPAC co-chairpersons: Douglas Mwonozora of the Movement for Democratic Change and Zanu PF's Paul Munyaradzi Mangwana



Prime Minister Morgan Tsvangirai's Movement for Democratic Change party said it was worried by reports of violence and intimidation coming from Bulawayo, Manicaland and Mashonaland West and East provinces.

“More than 200 uniformed soldiers today marched in Chikangwe and Chiedza suburbs in Karoi, Mashonaland West chanting Zanu PF slogans and threatening to bring war to the doorsteps to those who will give different views to those of Zanu

PF in the constitution consultation meetings. In Matabeleland North, the process has been delayed as the province is said to be still recruiting drivers and other personnel for the outreach team,” said the MDC in a statement. It added that four homes belonging to MDC supporters were burnt down last week.

Mwonozora confirmed reports of violence, but quickly said they were “very isolated” and did not warrant much concern.

The outreach exercise runs until October, after which a draft constitution should be subjected to a referendum before it becomes a new governance charter for Zimbabwe. Drafting a new constitution is part of the power sharing agreement President Robert Mugabe and Prime Minister Morgan Tsvangirai signed in 2008 before forming a transitional government last year.

Some issues to be debated include guaranteed freedoms for Zimbabweans, presidential powers, and the death penalty, which the current constitution still upholds.

Bhebhe's aide languish in cells

NKAYI-Joram Dube, a convener for former Nkayi South Member of Parliament Abednico Bhebhe's campaign meetings, is languishing in police cells after he was arrested last week on unspecified charges.

Dube was arrested on Thursday 17 June around 11pm and was not advised of the reasons for his arrest.

ZLHR project lawyers Lizwe Jamela and Nosimilo Chanayiwa, who attended to Dube at Nkayi Police Station, were informed by Chief Inspector Tshabangu, the Officer in Charge that there was no charge against

Dube but there was a warrant for his arrest, which was given on the instruction of the District Police Commanding Officer (DISPOL) Chief Superintendent Chiwota.

Chief Inspector Tshabangu referred all questions pertaining to the said warrant of arrest to Chief Superintendent Chiwota, who was said to be out of Nkayi.

Chief Inspector Tshabangu refused to assist the lawyers in any way and informed them that he was acting on the instruction of the DISPOL. A fortnight ago Nkayi police defied a court order granted by the Magistrates Court barring them

from interfering with a campaign rally organised by Bhebhe.

In Hwange, the trial of Lovemore Ndlovu, the finance officer for Zimbabwe Election Support Network (ZESN), who is accused of convening a public meeting without notifying the police, commenced.

Ndlovu's lawyers, Jamela and Chanayiwa, argued that their client was not the convener of the alleged meeting as it was convened by the local chief assisted by his coordinators for his subjects pertaining to matters affecting them. The lawyers

argued that Ndlovu was simply invited to facilitate at the alleged meeting.

Jamela and Chanayiwa applied for discharge at the close of the State case. The matter was postponed to 14 July for a ruling on Ndlovu's application for discharge.

On Thursday High Court Judge Justice Nicholas Ndou ordered the police to take Dube to court by the close of business on Friday after Chanayiwa filed an urgent chamber application seeking his immediate release from police custody.

High Court judge warns against interference

HARARE-High Court Judge Charles Hungwe has warned politicians in government against influencing decisions of the courts, saying tension between the judiciary and the executive was healthy for democracy.

Presenting a paper at a workshop organised by ZLHR for MPs and human rights defenders on legislative processes, Justice Hungwe said the independence of the judiciary was paramount in any democratic society.

“Ministers must not seek to influence particular judicial decisions through any special access to the judiciary,” said Justice Hungwe in a paper on Understanding Legislative and Judicial Relations.

“Consequently a certain degree of tension between the judiciary and the executive is inevitable and healthy because from time to time the judiciary are called upon to adjudicate under the judicial review procedure and in other ways on actions of the executive, and there are not many people who completely welcome their activities being judged, particularly if they are found to have failed.”

MPs, human rights defenders and rights activists attended the workshop, held on 12 June this year.

Hungwe said courts would ensure that the government always acted within the law, adding that it was the government’s responsibility to avoid lawlessness.

“The government must be able to point to some basis for its actions that is regarded as valid by the relevant legal system. The rule of law requires that legal rules should be capable of guiding one’s conduct in order that one can plan one’s life,” said Justice Hungwe. He said the need to safeguard the independence of the judiciary should not be used as a weapon to block criticism of court decisions

“It does not mean the judiciary need to be insulated from scrutiny, general accountability for their role or properly made public criticism of conduct inside or outside the court room. It means ministers and all those responsible for matters relating to the judiciary or otherwise to the administration of justice must uphold the continued independence of the judiciary,” said Justice Hungwe.

• Below are some of the pictures of the workshop.



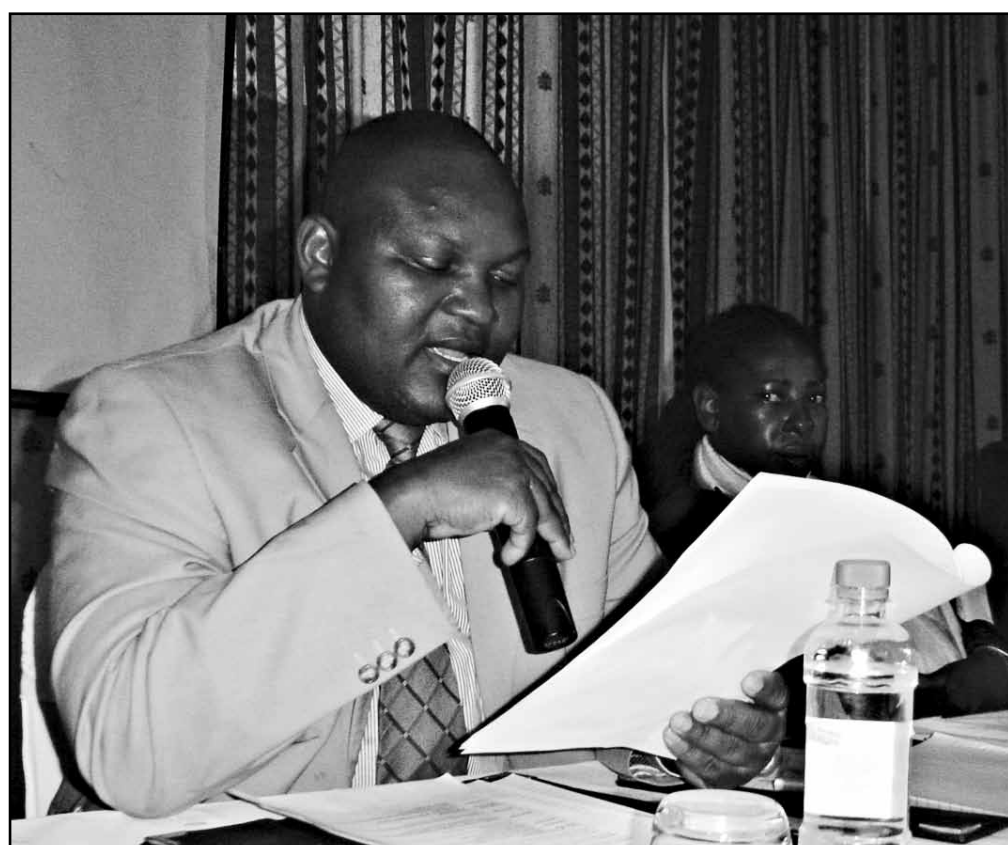
Justice Charles Hungwe



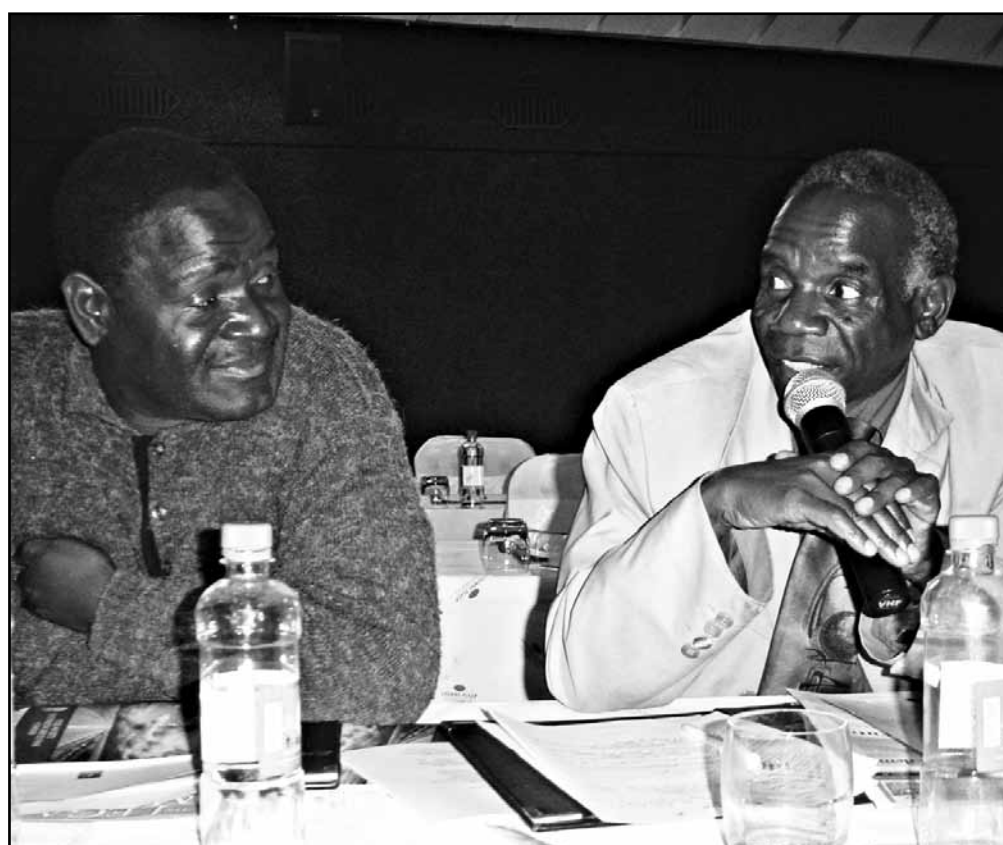
Wilbert Mandinde: Law Society of Zimbabwe Deputy Secretary



Matamisa Editor (holding mic): Member of House of Assembly for Kadoma Central



Tongai Matutu: MP for Masvingo Urban



Mishek Shoko: MP for Chitungwiza South and James Makore (holding mic) Senator for Chitungwiza