

The LEGAL MONITOR

For feedback please email ZLHR on: info@zlh.org.zw

A newsletter published by Zimbabwe Lawyers for Human Rights for members & human rights defenders



22 February 2010

Edition 33

COST-FREE

ZANU PF 'thugs' evicted

HARARE-A ZANU PF supporter who forcibly occupied a house belonging to a Mbare resident during the run up to the sham 27 June 2008 presidential election has been forced to vacate the premises by a Harare court.

The ruling by Harare Magistrate Priscilla Chigumba last week likely sets the stage for more claims against the party's hardliners who looted several properties from defenceless Zimbabweans at the height of the political violence that the Movement for Democratic Change (MDC) says left more than 200 of its supporters dead.

Lovemore Pfori and a group of ZANU PF thugs led by Earnest Rutsvaru and Chamunorwa Mavhiri evicted Shilla Musimbirachako from her Matapi Flat in Mbare where she had resided since August 2001, court papers show. They looted her belongings, which they later sold.

Musimbirachako, who has been living in Chitungwiza after her eviction, is one of many Mbare residents and some MDC supporters countrywide who were evicted from their homes and had their property illegally seized as punishment for supporting the MDC.

MDC leader Morgan Tsvangirai handed President Robert Mugabe his first electoral defeat in the March 2008 presidential election but failed to garner enough votes to avoid a run-off. Tsvangirai pulled out of the planned re-run poll citing gross human rights abuses and political violence against members of his MDC party.

"Various members of the group (then) ordered me out of the flat, stating that it belonged to ZANU PF and that as an MDC supporter, I was to leave the property. The invading group immediately started taking and wantonly looting my belongings as I attempted to hold on to what I could," said Musimbirachako in court papers.

"Earnest Rutsvaru then proceeded to assault me all over the body together with my child and my housemaid," she added.

Musimbirachako reported the matter at Matapi police station, but the officers refused to pursue the complaint.

"Much to my surprise, the Member in Charge of Matapi Police Station simply asked me, rhetorically, whether I did not know that there was a ruling party. As such, no docket was opened and no assistance was offered by the Zimbabwe Republic Police Officers at Matapi Police Station," Musimbirachako says in the court papers.

But a Harare Magistrate last week ordered Pfori to vacate Musimbirachako's flat within 24 hours of the delivery of the order after Musimbirachako filed for eviction.

"First Respondent (Pfori) and all those acting through him are ordered to vacate Block 9A13

Matapi Flats, Mbare with immediate effect, that is to say, within 24 hours of the delivery of this order, all their wares and other persons so occupying the property must have been ejected from the property and all locks used at the property must have been surrendered to the applicant," Magistrate Chigumba said.

Musimbirachako is just one of several Mbare residents who lost their properties after ZANU PF supporters went on the rampage in the suburb and forced occupants to leave their homes and seek alternative accommodation.

Besides the Mbare residents several villagers in the rural areas were forced to surrender their livestock, grain and other belongings to some ZANU PF supporters. However, the villagers have teamed up to demand and repossess their belongings.

Set a thief...

BEITBRIDGE-Andrew Kumire, the contemptuous prosecutor who evaded serving jail time after being convicted of contempt of court, is leading the prosecution of another State prosecutor who is accused of criminal abuse of office as the Attorney General (AG)'s Office intensify its onslaught on judicial officers.

Kumire, the Harare area public prosecutor, who was sentenced to five days in jail by former Harare Magistrate Chiwoniso Mutongi after the contempt conviction last October is leading the prosecution of Tarcisius Moyo, a public prosecutor based at Beitbridge Magistrates Court.

The State alleges that Moyo and Sibanengi Ncube, a law officer in the Attorney General (AG)'s Office based in Harare intentionally facilitated documents admitting Hudson Mhlanga, who is charged with incitement to kidnapping and assault, to bail when he was not a suitable candidate last November.

Moyo is accused of receiving a bribe to admit Mhlanga to bail. He argues that he admitted Mhlanga to bail after receiving a consent letter from Joyce Shumba of Mwonzora and Associates Law Firm and he executed the consent and released Mhlanga.

Besides Kumire, the Director of Public Prosecutions in the AG's Office Florence Ziyambi travelled to Beitbridge to testify against Moyo.

Kumire, who was convicted on contempt after noisily disapproving a court ruling did not serve jail term after he appealed against both sentence and conviction in questionable circumstances.

Human rights lawyers Kucaca Phulu and Matshobana Ncube of Zimbabwe Lawyers for Human Rights (ZLHR) who are representing Moyo will next week apply for discharge at the end of the State case, which has now been moved to Bulawayo's Tredgold Magistrates Courts.

"We will apply for discharge because there is no *prima facie* case that has been established against Moyo to warrant his placement on defence," said Ncube.

Moyo is just one of several judicial officers who have been arbitrarily charged with criminal offences such as "committing criminal abuse of duty as a public officer", which has had a chilling effect on their ability to execute their professional duties without fear or favour.

Recently, a Rusape Magistrate Hosea Mujaya set free Livingstone Chipadze, the Mutare Provincial Magistrate who was arrested for admitting Deputy Agriculture Minister-Designate Roy Bennett to bail.

Chipadze had been charged with criminal abuse of office after he allowed Bennett to deposit bail and comply with other conditions as set out by the High Court last year.



Public Prosecutor Florence Ziyambi

Human rights lawyers say the coalition government should immediately take steps to deal proactively with offensive legislative provisions and malicious administrative practices implemented by the police and the Office of the Attorney General to undermine the work of judicial officers. These steps include, but are not limited to the establishment of an independent

parliamentary committee to expeditiously, transparently and publicly investigate the continued use and abuse of provisions of the Criminal Law (Codification and Reform) Act and other legislation by the Office of the AG and other state organs, including provisions relating to "obstruction or defeating the course of justice" and "committing criminal abuse of office".

Abductees denied bail

HARARE-Two Banket Town councillors facing murder charges, will remain interned in remand prison after a High Court Judge dismissed their bail application last week.

High Court Judge Justice Yunus Omerjee refused to admit to bail the two councillors, Emmanuel Chinanzvavana and Fani Tembo, and Givemore Hodzi, who are accused of murdering Lancelot Zvirongwe, a ZANU PF councillor in the Mashonaland West town.

Hodzi, and the two councillors who were themselves victims of abduction and torture by State security agents two years ago, deny causing or arranging the death of Zvirongwe, a ZANU PF special interest councillor for Banket.

The councillors state that at the time the deceased was allegedly abducted they were attending to a Save the Children activity at Kuwadzana Hall in Banket while Hodzi was in Harare.

The trio argued that their names were only mentioned in text messages, which are vague and contradictory in tense, meaning and sense.

But Justice Omerjee dismissed the councillors' bail application and gave the State prosecutor Edmore Nyazamba two weeks to wrap up investigations into the murder case. Thereafter they would be allowed to lodge a fresh bail application.

Nyazamba had alleged the police were still receiving information from the abductees' associates and neighbours. He however failed to substantiate or enumerate what that information was.

The State alleges that Chinanzvavana, Tembo and Hodzi kidnapped Zvirongwe between Banket and Chinhoyi and dragged him to an area in Banket where they killed him with an unknown weapon and dumped his body into Kingston Dam.

Prosecutors claim that the deceased sent some mobile text messages to Zimbabwe Broadcasting

Corporation (ZBC) radio presenter Richmond Siyakurima, Assistant Inspector Chidakwa and to an unnamed District Administrator fingering Tembo, Chinanzvavana and Hodzi for kidnapping him.

Chinanzvavana was abducted by State security agents in October 2008 together with his wife Concillia and other Banket residents and accused

of plotting to topple President Robert Mugabe's previous administration. He is currently awaiting the Supreme Court's determination on his application for a permanent stay of prosecution together with several other political and human rights activists on the basis that their constitutional rights were violated as a result of their abduction, torture and *incommunicado* detention.

Tembo was abducted together with Terry Musona and Lloyd Tarumbwa from their Banket homes at the same time as Chinanzvavana in 2008. He was later located in Harare.

The police claimed at the time that they were in protective police custody as they were to be used as State witnesses against the other abductees.

Constitution dress rehearsals continue

HARARE-An update on political events by the Zimbabwe Election Support Network (ZESN) has revealed disturbing incidents of intimidation in rural areas that could render the result of the constitution making process a dress rehearsal.

According to a ZESN update on political developments in 45 rural constituencies, people are unaware of how the constitution making process will unravel resulting in some traditional leaders taking advantage of the ignorance to influence the process.

Article 6 of the Inter Party Agreement which forms the basis for the new charter acknowledges that "it is the fundamental right and duty of the Zimbabwean people to make a constitution by themselves and for themselves".

But, not only are the people unaware of the process, members of the Constitutional Parliamentary Committee (COPAC) supposed to collect views from the public have no clue on how they will do their job, according to ZESN.

"ZESN notes with concern that some participants remain unaware of how



Tinoziva Bere ZESN chairperson

involving the process is, and seem to lack experience and knowledge of what they are expected to do," reads part of ZESN's Ballot Update.

The Ballot Update is a periodic review of political developments in "systematically selected" rural constituencies. The constituencies were selected according to criteria noting areas with pending by-elections, areas that experienced high levels of violence as well as those which had a candidate winning by a small margin in the last election.

ZESN noted that civil society remained sceptical over the government-led constitution reform exercise because indications are that the process is open to abuse by the country's three governing parties.

ZANU PF is whipping up its supporters, including traditional chiefs to bully villagers into supporting the Kariba Draft, a document negotiated by the three political partners in government.

Bennett back in court

HARARE-The high profile treason trial of Movement for Democratic Change (MDC) party treasurer Roy Bennett is expected to resume today two weeks after it had been deferred due to an industrial action by civil servants.

"We have been notified by High Court officials that the trial will now resume on Monday," one of the defence lawyers, Harrison Nkomo, said over the weekend.

High Court Judge Chinembiri Bhunu postponed the trial after court officials joined the industrial action by civil servants who are demanding at least US\$600 for the lowest paid worker, from the current meager monthly salary of less than US\$150.

Justice Bhunu is expected to rule on whether the defence materials can be used in the trial to cross-examine State witness Precious Nyasha Matare – a typist from the President's Office in Mutare, who claims to have printed key State witness Michael Peter Hitschmann's emails that allegedly implicate Bennett to the terrorism charges.



An artist impression of Roy Bennett
Pic courtesy of Tatenda "TC" Chinyuku

The emails implicating the MDC politician were allegedly printed from Hitschmann's laptop in 2006. But defence lawyers had asked Bhunu to reject them saying they could have been forged.

Defence lawyer Beatrice Mtetwa had produced fake emails emanating from 'Johannes Tomana' to prove that emails can be forged. This was after Justice Bhunu had allowed the State to use controversial email evidence supposedly written by Bennett and Hitschmann.

AG Johannes Tomana - who is leading the prosecution - had asked Justice Bhunu not to allow Mtetwa to use the fake emails saying that would be tantamount to "caricaturing," 'embarrassing' and "demeaning" the person of the AG. Tomana added that the defence was "infringing" on the AG's right to "prosecute without fear, favour and prejudice".

In his ruling, Justice Bhunu said Hitschmann's alleged emails were vital and relevant to the just determination of the case, given that they had been written before Hitschmann had been tortured by State security agents and could therefore not be regarded as confessions.

Mtetwa was visibly disturbed by the ruling given that the State had not indicated when the emails had been allegedly written. The State had not even stated whether or not Hitschmann had not

been forced to write the emails in question. Other materials – videos and hand written statements - implicating Bennett were last month thrown out by Justice Bhunu on the grounds that they had been obtained under torture.

Prosecutors allege that Hitschmann was paid by Bennett to buy weapons to assassinate President Mugabe. State lawyers allege that Hitschmann implicated Bennett in 2006 when he was arrested after being found in possession of firearms.

Hitschmann was acquitted of the charge of being in possession of dangerous weapons with the intention of committing banditry, insurgence, terrorism and sabotage, the charge that Bennett is facing.

Hitschmann was however convicted of a lesser charge of being in possession of weapons of war without a licence.

Bennett, who faces a possible death sentence if convicted in a case that has heightened tensions in the country's fragile 12-month old transitional government – has pleaded not guilty to the treason charges levelled against him.

Murehwa snubs POSA meeting

MUREHWA-Not a single person from Murehwa attended a public hearing on the Public Order and Security Act (POSA) amendment Bill, showing how rural people lack interest in matters of the law.

The Parliamentary Portfolio Committee on Home Affairs and Defence had travelled 90 kilometres to Murehwa Centre to hear views from the public on MDC MP, Innocent Gonese's Private Members' Bill to amend harsh provisions of POSA. But three presentations from Zimbabwe Law Students Association (ZLSA) members who, like the MPs, had travelled from Harare were all the committee received. People went about their business at Murehwa Centre and expressed ignorance over both the meeting and the law being debated when interviewed by *The Legal Monitor*.

Members of the committee said more should be done to make rural people aware of the law, as well as their rights.

"This is a waste of resources. People are not aware of the laws that affect their everyday lives and their no show here tells us they are not interested. It means we are wasting time in Parliament when we should be here conscientising people so that we create debate," said Dick Maños, MP for Mt Darwin North and a member of the committee.

Murehwa was the only rural area the committee visited in its outreach programmes, which took it to Mutare, Masvingo, Bulawayo, Gweru and Kadoma. The last meeting will be held in Harare at Jubilee Christian Centre (formerly Harry Margolis Hall) today.

"We have to do this again. As it is we cannot say we heard views from Murehwa when no-one from Murehwa gave presentations. The three people who spoke gave quality presentations but it would have been better if local people participated," said Douglas Mwonzora, another member of the committee.

Chairman of the committee, Paul Madzore, said lack of publicity affected attendance. The meeting, which lasted less than 30 minutes, was only advertised in the local press without the involvement of local structures.

"Most people have no access to local media. Public hearings are an extension of Parliament as part of our bid to take Parliament to the people so it is critical that we revise our ways of mobilising for participation," said Madzore.

Gonese's Bill seeks among other things to vest the powers to prohibit a public gathering in the hands of Magistrates and will also seek to redefine a public gathering so as to be relevant only to those gatherings which pose a threat to public safety.

As such, the regulating authority, in terms of the Bill, will only be able to apply to a judicial officer to impose conditions on a public gathering, rather than arbitrarily restrict peaceful protests.

All ZLSA members who made representations supported provisions of the amendment Bill, arguing that people's rights enshrined in the constitution should take precedence over issues of security.

Police arrest WOZA

MUTARE-Two members of Women of Zimbabwe Arise (WOZA) in Mutare spent three days in police cells after participating in a peaceful protest in the eastern border city on Tuesday.

Sibongile Matupe and Rose Rukwewo were arrested as police sniffed out activists who participated in the peaceful protest in a door-to-door campaign in Sakubva Township.

They were only released after Zimbabwe Lawyers for Human Rights (ZLHR) projects lawyer for Manicaland Blessing Nyamaropa intervened. The release did not come with ease, though. Initially, the police denied lawyers access to the two women who



Jenni Williams

were kept at Mutare Central police station. "On Friday, we went to court and the prosecutor assessed the docket and concluded that there was no sufficient

evidence to sustain the charge. The accused were (later) freed," said Nyamaropa.

In a statement, WOZA coordinator Jenni Williams said that the police behaviour was "pure" harassment.

Talking about the WOZA protest held last Tuesday, Williams said: "We were very strategic in selecting the times of our demonstration. We knew that in Sakubva Hall, MP (Innocent) Gonese was meeting with members of that community and the police were present - debating on the issues of the reform of the Public Order and Security Act (POSA). And as they were talking about it, we were testing it in central Mutare, in the town."

WOZA is amongst rights groups that have described POSA as an unjust law that takes away people's freedoms. Hon. Gonese, the MDC-T Chief Whip in Parliament, introduced a Private Members Bill in the House to amend the notorious legislation.

A Parliamentary Portfolio Committee on Home Affairs has been holding a series of hearings to get public views on the Bill.

Williams added: "And now they have gone and arrested people. It's very obvious that these public meetings are just talk and there will be nothing about reforming POSA."

The pressure group held demonstrations in Harare and Bulawayo and marched to the offices of the State controlled newspapers the Herald and the Chronicle, to test media and civic freedoms under the inclusive government.

They also handed out Valentine cards, red roses and abbreviated copies of WOZA's report on the state of democracy in Zimbabwe.

Veritas explains proposed POSA changes

The MDC-T Chief Whip, Hon. Innocent Gonese, introduced a private members Bill in the House of Assembly to amend the Public Order and Security Act [POSA] on 2nd February. The House agreed that the Bill could be introduced and it follows the procedures for all Bills.

How will the Bill Amend POSA

Clause 2: New definitions of "public demonstration" and "public meeting":

Demonstrations hit by POSA will be limited to those large enough to make it reasonably possible that they will cause public disorder, serious breaches of the peace or substantial obstruction of streets. The new definition of "public meeting" [more than 15 persons] will make it clear that domestic meetings of political parties and trade unions are not hit by POSA, and that political parties are free to hold meetings in private places and in halls and other public places that are indoors.

Clause 3: Protection of freedoms of assembly and association: This clause requires police and others administering POSA to bear in mind the constitutional right to engage in peaceful assembly and that public meetings, demonstrations and processions may only be prohibited by a magistrate. The Commissioner-General must ensure that police administering the Act undergo appropriate awareness training.

Clause 5: Notice of public gatherings: this clause seeks to reduce to four days the notice that must be given to the police by organisers of public gatherings, and also to decriminalise failure to give such notice.

Clauses 6 and 7: Giving the courts, not the police, the power to ban public gatherings: this clause will give magistrates the power, currently exercised by the police, to prohibit public gatherings and demonstrations.

Clause 8: Repeal of ban on gatherings near Parliament, courts and protected areas: This clause will repeal the standing ban on

these gatherings, so that in future they must be dealt with like all other gatherings.

Clause 9: Civil liability of organisers of gatherings: Section 28 of POSA saddles the organiser of a public gathering with civil liability for damage caused by disorder resulting from the gathering in certain cases, such as where the gathering was not notified to police or police directions are not followed. This clause will allow the organiser to escape liability for compensation where he can prove that there would probably have been disorder even if police had been notified and police directions followed. In addition, the clause will remove a provision obliging a court to award damages to injured persons whenever convicting an organiser of breaching the Act; this will now be left to the court's discretion.

Clause 10: Removal of obligation to carry IDs: The clause will repeal section 32 of POSA, which requires the carrying of IDs in public places and allows police to stop people at random and demand production of IDs.

Criticisms of the Bill

The Permanent Secretary for Home Affairs Mr Melusi Matshiya, told the PC that the Bill "waters down the powers of the police and renders [their] operations ineffective" and a senior police officer said it would "put State security at risk". In particular, they criticised the following provisions of the Bill:

Clause 5: Notice of public gatherings.

Clauses 6 and 7: Giving the courts, not the police, the power to ban public gatherings.

Is there any substance in these criticisms?

Clause 5: Notice of public gatherings: The first point to remember is that everyone has a constitutionally-guaranteed right to convene and attend public meetings and processions. That right must not be diluted or diminished unless it is necessary to do so in the interests of public safety or public order, and any restrictions on the right must be reasonably justifiable in a democratic society [Constitution, section 22].

The second point to note is that at present section 25 of POSA requires only five days' notice to be given of public meetings [the seven-day notice period applies only to public processions and demonstrations] and during elections the notice period for meetings is reduced to three days.

The requirement to give seven days' notice of a procession or demonstration is onerous and not always necessary, and it prevents the holding of spontaneous demonstrations and processions. There is no provision in the Act allowing the police to accept shorter notice. If three days is sufficient notice for meetings during election periods, when political passions are running high, it seems unreasonable to insist on seven days for processions at other times.

Mr Matshiya's opposition to the abolition of the crime of failing to give notice of a gathering can be countered. The threat of criminal sanctions has not stopped unnotified demonstrations taking place and is unlikely to stop them in future. If it does not serve its purpose, there is no point in retaining it. Besides, anyone who suffers loss or injury from a gathering which was not notified to the police has a civil remedy against the organisers under section 28 of POSA - and Mr Gonese's Bill will not remove that remedy.

Clauses 6 and 7: Giving the courts, not the police, the power to ban public gatherings. If Mr Matshiya is correctly reported as saying that it is the constitutional role of the police, rather than the courts, to protect people, that would reflect a fundamental misunderstanding of the Constitution. In any society that respects the rule of law, the courts are there to protect fundamental rights and freedoms. The police have the function of maintaining law and order, but the courts must ensure that they do so without infringing peoples' rights and democratic freedoms. It is therefore perfectly appropriate for a magistrate, rather than a police officer, to be given the task of deciding whether or not a meeting or demonstration should be allowed to take place. The decision involves weighing the conflicting interests of freedom of assembly, on the one hand, and the maintenance of public order on the other. That decision unquestionably falls within the role of the courts rather than the police. [This is especially so in view of the police record on public gatherings.

There is an overwhelming public perception of past and present police application of POSA so as to favour the former ruling party and suppress the legitimate activities of other parties and organisations on political rather than public order grounds.]

Clause 4: Banning of Catapults and Traditional Weapons: Another misunderstanding of the law has appeared in press reports that clause 4 of the Bill will curtail the power of the police to ban the possession of traditional weapons by restricting that power to when there has been a serious breach of peace, whereas under POSA at present they may do so at the slightest occurrence of a breach of the peace. In fact, section 14 of POSA allows senior police officers to ban the possession of catapults, axes and traditional weapons if they believe that carrying them is likely to cause a breach of the peace, however trivial. There is no need for a breach of the peace to have actually occurred before the ban can be imposed; all that is necessary is for a senior police officer to believe that one is likely to occur. Clause 4 of the Bill will simply require a police officer to foresee a serious breach of the peace before imposing a ban.

In both cases - i.e. under the present Act and under POSA as amended by the Bill - the police will retain their ordinary powers to deal with breaches of the peace, both serious and trivial, which actually occur.

Conclusion

- Mr Gonese's Bill will not reduce the ability of the police to maintain law and order. It will simply ensure that they do not overstep their legitimate powers.
- There are many people who would like POSA reformed more radically. But as the Bill has to be passed by both Houses of Parliament, it needs the support of all parties, and Hon Gonese has crafted a Bill that should be acceptable to all.

Source: Veritas

It never rains but pours for Tembani

RUSAPE-The daughter of tormented former Nyazura farmer Luke Tembani has once again been forced to drop out of school for failing to pay tuition fees.

Authorities at Mavhudzi High School last week expelled Mildred Tembani, a Form Three student at the government run school and the daughter of the successful pioneer indigenous commercial farmer after the family failed to pay tuition fees amounting to \$595.

School authorities say \$345 is outstanding from last term and \$250 is owing for the current term.

Mildred's expulsion from school is confirmed in a pass signed by the school's Senior Mistress only identified as Musa authorising her to travel to Rusape where her parents have relocated to after their eviction from their Nyazura farm.

This is the second time that Mildred has dropped out of school after she was initially expelled from school last November for failing to settle school fees amounting to \$445.

So insulting and distressing is the fact that Tembani built a farm school at his Minverwag Farm at Clare Estate Ranch, in 1986 which provided free education to 321 pupils from Grade 1 to Grade 7.

Tembani said the huge cost incurred during the construction of the farm school was one of the reasons why he ended up failing to service his debts to Agribank formerly the Agriculture Finance Corporation (AFC).



Tembani, battling to come to terms with new life after losing his farm

Education, Sport, Arts and Culture Minister David Coltart promised to investigate the matter.

"If he (Tembani) has any complaints he must write to me. I will investigate the matter," said Coltart.

Tembani, who became one of the country's first black commercial farmers shortly after independence in 1980 was evicted from his Nyazura farm in Manicaland which he has

occupied for the past 26 years in defiance of a Southern African Development Community (SADC) Tribunal ruling barring his eviction.

The Windhoek-based Tribunal recently ruled that the repossession and sale of the farm by the State-run Agribank in order to recoup an outstanding loan was "illegal and void."

The Tribunal ordered the government to take all the necessary measures through its agents not to

evict Tembani or his family from the property and to stop interfering with his use and occupation of the farm.

But the government has refused to comply with the regional Tribunal's orders. Justice and Legal Affairs Minister Patrick Chinamasa unilaterally pulled Zimbabwe out of the SADC Tribunal, a decision which was disproved by Prime Minister Morgan Tsvangirai.

Tortured lawyer's case nears finality

BANJUL-The African Commission on Human and People's Rights (ACHPR) has begun working on a case in which an exiled lawyer wants Zimbabwe to be held liable for torture.

On February 9 this year, the ACHPR wrote to Shumba saying it would make a determination on the case before the African Commission's meeting in Tunisia this May.

This was after the Zimbabwe government filed its submissions, denying that the torture ever happened.

"The secretariat is of the view that it now has sufficient information to draft an opinion for the consideration of the African Commission. It intends to submit such an opinion for consideration at the 47th Ordinary Session, which will be held in Tunis, Tunisia from 12 to 26 May 2010," wrote Dr Mary Maboreke, secretary to the commission.

Shumba told *The Legal Monitor* on Saturday that the government had held up the case by delaying submitting its defence to the ACHPR. The government was obliged to submit its defence after the ACHPR ruled that Shumba's case was admissible following spirited resistance from Zimbabwe representatives.

Gabriel Shumba, who fled Zimbabwe in 2003 following death threats has been trying to get the ACHPR to make a final determination on the case since 2004. Shumba says he was electrocuted on his genitals and in the mouth and forced to drink his own blood after being arrested for representing former MP Job Sikhala and other opposition activists. He says he was urinated upon before being forced to sign a confession implicating him in treason.

He appeared in a Zimbabwean court after his arrest with visible torture marks, forcing then Magistrate Caroline-Anne Chigumira to order medical treatment, as well as an investigation. Shumba contends that the government violated Articles 4, 5, 6, 7, 10 and 14 of the African Charter which prohibit torture and degrading abuse of people, as well as granting citizens' rights to legal recourse.

"It is interesting that the government is denying torture when evidence in the form of medical affidavits and records have been presented," Shumba said.

"If it (Zimbabwe) does not comply with a ACHPR that will be in my favour, then it may face censure from the African Union, or I could take up my case with the newly established African Court," said Shumba, who is now executive director of the Pretoria based Zimbabwe Exiles Forum.

Citizens veto COPAC process

HARARE-A majority of Zimbabweans say they prefer a people-driven constitutional reform process advocated for by the National Constitutional Assembly (NCA) and have vetoed the government-led constitution making process.

The findings are contained in a national survey conducted recently by the respected Mass Public Opinion Institute (MPOI), which sought the opinion of the people on the government-led constitution making process against that advocated by some civil society organizations notably the NCA.

Parliament through the Constitutional Parliamentary Committee (COPAC) established by the transitional government last year is leading the current stalled exercise to craft a new governance charter.

But the MPOI survey shows that the majority of Zimbabweans prefer the task to craft a new constitution to be people driven and not left to politicians as is the case at the moment.

"Significantly, among those who have heard about the constitution, a plurality (42 percent) prefer the NCA "people-led" approach to constitution-making compared to 28 percent who prefer the PSC (Parliamentary Select Committee) approach," read part of the MPOI survey findings released this month.

The NCA which successfully campaigned against an earlier attempt by the government to draft its own constitution has teamed up with militant allies such as the Zimbabwe Congress of Trade Unions and the Zimbabwe National Students Union to oppose the current parliament-led constitution making process saying it would not result in a people driven constitution.

The NCA and its allies, who have for years campaigned for a new and democratic constitution for Zimbabwe, say the fragile coalition government's parliament-led procedure is undemocratic, defective and will produce a flawed document. The civic groups argue that parliamentary representatives cannot adequately represent the people because they are by-products of a negotiated political settlement. They want to see more civic representation in the process, including all interest groups.

The group and its labour and student partners have been traditional allies of Prime Minister Morgan Tsvangirai.

But a potentially costly rift has emerged between the allies after the former opposition party agreed with President Robert Mugabe's ZANU PF party to put Parliament in charge of drafting a new constitution for Zimbabwe.

In 1999, the NCA led Zimbabweans to reject a government draft constitution in a referendum that handed President Robert Mugabe his first defeat in a ballot. Tsvangirai was once chairman of the NCA.

Meanwhile, 51 percent of the total survey respondents applauded the dollarisation policy introduced early last year against 23 percent who opposed it.

On re-introduction of the local currency only 19 percent support its immediate reintroduction, 22 percent think it should be abandoned entirely and 52 percent would want the Zimbabwe dollar sometime later.

About 49 percent disapproves amnesty to people who committed political crimes against 45 percent who support such amnesty.