

Policing the State



**An evaluation of 1,981 political arrests in Zimbabwe:
2000-2005**

*Institute of Justice and
Reconciliation*

*Solidarity Peace
Trust*

Johannesburg, 14 December 2006



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....the [Zimbabwe] regime has become more proficient at forestalling resistance to its rule. Demonstrations are usually thwarted before they begin or broken up early. Youth militias terrorise opposition supporters. Detain-and-release cycles are applied to opposition and civic leaders, combined with endless court actions to wear down stamina and resources. At the core is violence, used in both targeted and indiscriminate ways.

International Crisis Group, April 19, 2004

“The Public Order and Security Act (POSA) was enacted in January 2002 as part of an overall strategy by the government authorities to hinder the campaigning activities of the MDC in the run-up to the presidential elections in March 2002, tighten restrictions on the independent media and give the police sweeping powers. Since its enactment POSA has been used by the authorities to target opposition supporters, independent media and human rights activists and specifically to restrict their rights to: *freely assemble; criticise the government and President; and engage in, advocate or organise acts of peaceful civil disobedience.* (Emphasis added)

Hundreds of Zimbabweans, mainly opposition supporters have since been arbitrarily arrested. The legislation has enabled the police to intimidate, harass and brutally torture real, or perceived, supporters and members of the opposition.”

Amnesty International, 2002

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Abbreviations

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|---------------|--|
| AIPPA | Access to information and protection of privacy Act |
| AU | African Union |
| CID | Criminal Investigations Department |
| CPE | Criminal Procedure and Evidence Act |
| CIO | Central Intelligence Organisation |
| Criminal Code | Criminal Law (Codification and Reform) Act |
| EU | European Union |
| Forum | Zimbabwe Human Rights NGO Forum |
| GMB | Grain Marketing Board |
| HRW | Human Rights Watch |
| LOMA | Law and Order Maintenance Act |
| LRF | Legal Resources Foundation |
| MDC | Movement for Democratic Change |
| MIP | Malicious Injury to Property Act |
| MISA | Media Institute of Southern Africa |
| MOA | Miscellaneous Offences Act |
| MP | Member of Parliament |
| NCA | National Constitutional Assembly |
| NGO | Non governmental organisation |
| OM | “Operation Murambatsvina” – Shona for “Drive out the dirt” |
| PISI | Police Internal Security Intelligence Unit |
| POSA | Public Order and Security Act |
| SADC | Southern African Development Community |
| SPT | Solidarity Peace Trust |
| USA | United States of America |
| WOZA | Women of Zimbabwe Arise |
| ZANLA | Zimbabwe Africa National Liberation Army |
| ZANU PF | Zimbabwe African Nationalist Union – Patriotic Front |
| ZAPU | Zimbabwe African Peoples Union |
| ZCTU | Zimbabwe Congress of Trade Unions |
| ZIPRA | Zimbabwe Peoples Revolutionary Army |
| ZLHR | Zimbabwe Lawyers for Human Rights |
| ZNA | Zimbabwe National Army |
| ZRP | Zimbabwe Republic Police |

Summary

“Policing the State” highlights the growth of police brutality in Zimbabwe since 2000, which has coincided with the rise of the democratic challenge to the State. During the 1990s, peaceful protest by the student movement and trades unions was tolerated to some degree, but after the forming of the Movement for Democratic Change and the loss of the February constitutional referendum in 2000, State repression escalated in all respects. The Zimbabwe government has reverted to patterns of State control established under colonialism, including mass arrests in terms of repressive legislation, combined with brutality against civilians.

The findings of this report are based on lawyers’ records from 38 legal firms in Zimbabwe, who submitted data relating to 1,981 arrests that they considered to be primarily political in motivation. These records indicate that police routinely pick up activists ahead of planned actions, knowing that they neither need, nor intend, to prove that the arrestee has committed a crime. Almost 90% of politically motivated arrests do not result in a trial, and in the few instances when cases go to trial, the State has obtained convictions in only 1,5% of cases! Laws such as POSA are not there to enforce law and order, but to undermine the rights of citizens to freedom of association, expression and movement. Police brutality is routine, with torture of arrestees occurring in 33% of cases. Cell conditions are shocking, and defending lawyers run the risk of assault, harassment or incarceration.

Political arrests peaked in 2003, when the ability of the opposition to organise was at its zenith, and arrests have declined since then, coinciding with the demise of the democratic movement’s ability to mobilise cohesively. This pattern of declining arrests is an indicator of the cumulative effects of state repression on the capacity of the opposition to confront the state, rather than an indicator of less oppression. The effectiveness of the MDC has also been severely compromised by the use of violence within its own structures in resolving internal political struggles.

Whereas in the 1990s it was possible to mass thousands of people on the streets for peaceful marches, State reaction to any such attempts is now swift and vicious. The September 2006 attempt by the ZCTU to march on the streets of Harare lasted less than two minutes, and the few activists who took part were brutally tortured. By the end of 2005, the democratic movement was in serious disarray and without an effective response to State oppression. The mass protest action threatened by the MDC never took place and the only public protests that have occurred have been small scale public demonstrations mounted by a few civic groups. The possibility of using a mass action strategy to confront the Mugabe regime will require serious reorganisation of the political opposition and coordination between the political opposition and the civic groups. One-dimensional forms of struggle will not suffice effectively to confront Zimbabwe’s ruling party and protest strategy will have to be combined with broader strategies including more effective electoral battles, and lobbying strategies that are more clearly articulated at regional and international levels.

1. A long history of state repression

Colonial repression

The pattern of State repression through the use of legislation combined with violence and impunity, has a history in Zimbabwe that dates back as far as the nation state itself. The white colonial minority established their rule in the early twentieth century by brutally suppressing dissent, as well as putting in place an extensive legislature aimed at ensuring its hegemony. With the rise of the liberation movement in the 1960s and 70s, further legislation outlawed democratic activities such as peaceful protests or gatherings. Military repression combined with atrocities against civilians kept the colonial government in power through an increasingly violent war of liberation, until it was forced to enter into an agreement with the guerrilla armies of ZANLA and ZIPRA in 1979. Two general amnesties were part of the peace deal, entrenching a system of impunity for crimes against humanity.

Repression under ZANU PF

The Law and Order (Maintenance) Act (LOMA) promulgated by the Rhodesian Front in 1960, was used throughout the 60s and 70s to silence the rising voices of black nationalists. On coming to power in 1980, the Government of Zimbabwe, having been themselves victims of LOMA, were well aware of LOMA's anti-democratic nature and unconstitutionality. However, rather than repealing LOMA, the incoming government used it to suppress ZAPU in Matabeleland during the 1980s: for the Zimbabwe Government, LOMA became as convenient a tool of repression as it had been for the previous regime.

State repression during the 1980s was not restricted to unjust laws – in Matabeleland, ZAPU's stronghold, more than 10,000 civilians were massacred and tens of thousands more were tortured and suffered property losses.¹ The "Gukurahundi" era was also typified by unjust arrests and selective application of the law. Two ZAPU leaders were charged with treason and after a long drawn out trial, they were acquitted. They were subjected to torture whilst in custody and one of them eventually died shortly after release from custody. Thousands of rural civilians were arrested and held for extended periods, many in large detention centres deep in rural districts, such as the notorious Balagwe Camp in Matobo. The vast majority of these detentions were outside of any legal or court process, and routine torture was inflicted, often on women and school children.

The perpetrators consisted mainly of the notorious 5 Brigade army unit, but included the Central Intelligence Officers (CIO) and also members of the Police Internal Security Intelligence Unit (PISI); the latter two units were involved in certainly hundreds and possibly thousands of forced disappearances, particularly ahead of the 1985 general election. By and large ordinary members of the police and army were not directly involved in the atrocities.

This period of vicious repression ended with the signing of the Unity Accord in December 1987. A general amnesty was signed in April 1988 – effectively pardoning thousands of government forces for the murder and disappearance of more than 10,000, as well as all other atrocities of this era. One hundred and twenty dissidents were also pardoned for their comparatively small number of atrocities. Once more, this entrenched the colonial pattern of guaranteeing that those

¹ Catholic Commission for Justice and Peace and Legal Resources Foundation, *Breaking the Silence – Building True Peace: a report on the disturbances in Matabeleland and the Midlands 1980-1988*, 1997. All information relating to this era is from this report.

who committed even gross crimes against humanity in the name of the government of the day would have total impunity for their actions.

A period of comparative calm followed the Unity Accord, with ZAPU effectively neutralised and absorbed into ZANU PF. Zimbabwe had become a de facto one party state, and although attempts were made to form other political parties, these had little impact.²

During the 1990s, the era of economic structural adjustment was accompanied by the growth of political liberalisation. This was characterised by the growth of the civic movement, in particular a more organised labour movement, increased student activism, expanded and intensified interventions by human rights organisations, the development of the women's movement, a strong independent press and the emergence of a broad alliance around the issue of constitutional reform. Thus this period was characterised by both the growth and coalescence of the civic movement, and their presence in the public sphere shifted the balance of political forces in the country substantially. For the first time in the post-colonial period the Zimbabwean state was confronted with a broad array of civic groups calling for greater state accountability and demanding more protection of the civic, human and constitutional rights of the citizenry. This was a language of democratisation that the ruling party had marginalised in their pursuit of one-party dominance, and its successful resurgence in the discourses of the civic movement took the state by surprise. The result was a major civic challenge to the politics of intolerant nationalism and the emergence of a more plural politics of inclusion.

Tolerance of peaceful protest: 1990s

Significantly, the State was fairly tolerant both of the unions at this stage, and of the rise of the student movement. Regular protests took place during these years, in a context of deteriorating economic conditions and increasing government corruption. While such protests were at times ruthlessly put down with the use of dogs and teargas, on other occasions, large peaceful marches were allowed to go ahead, often under an orderly police escort. The labour movement organised a successful general strike in 1997 and a series of stay-aways in the following year, while the constitutional movement expressed their demands in a series of public demonstrations, often characterised by a carnivalesque atmosphere.

However the determination of the State not to allow these movements to grow into a real threat to the ruling party became clear during the food riots of 1997. After increases in basic commodities sparked protests in Harare, the army was deployed in conjunction with the police. Twenty civilians were shot dead and a number of others were injured by gunfire. There were widespread reprisals against urban civilians. Large numbers of persons were arrested and detained and there were many reports of the use of torture. There were also some attacks on civic leaders and reminders of potential for increased repression by the state.

The Growth of Opposition Politics

The formation of the National Constitutional Assembly (NCA) in 1998 soon posed a significant threat to Government, who attempted to co-opt the process with its own version of a new constitution. This was thwarted when Zimbabweans rejected the Government's constitution in a referendum in February 2000. This was the first - and remains the only - official electoral defeat ever suffered by ZANU PF in a national poll.

² Zimbabwe Unity Movement and the Forum were two such attempts to challenge the one party system: neither survived more than a year or two, and neither had a large support base.

In September 1999, a new political party rising directly from the alliance between the ZCTU and the NCA, the Movement for Democratic Change (MDC), was born. It was this alliance that drove the “No” vote in ZANU PF’s 2000 constitutional referendum. With a national election only months away in June 2000, and an electoral defeat staring them in the face, the ruling party began a new era of repression that continues to mark Zimbabwean politics. Through a reorganisation of the various arms of the state, the ruling party intensified the use of violence as a political tool, and closed down the spaces for democratic debate and public participation. Additionally the language of authoritarian nationalism was used to revive a selective version of the history of the liberation struggle and to characterise a series of opposition forces as internal enemies of the nation sponsored by Western powers. Since 2000 the political opposition and its civic partners have faced an onslaught of state violence, legislative and political repression and an intensified policing of the political crisis.

The growing political repression has severely undermined the possibility of conducting free and fair elections, and sapped the energies of both the opposition and the civic movement. The nadir of this decline was reached in late 2005 when a split emerged in the MDC, over questions of constitutional accountability, organisational instability, violence within the party and the loss of adherence to the values on which the party was established. The events that led to this division in the MDC also indicated the general deterioration of the political culture in Zimbabwe, and the dangers of opposition politics replicating the more destructive features of ruling party politics. Thus over the last year the country has witnessed a deeply divided opposition, weakened by the cumulative effects of the continuing violent repressive politics of the state, and unable to launch a renewed bid for political power. Even in the face of the abominable assault of the State on the urban population of the country in the form of Operation Murambatsvina in 2005, the opposition was too embroiled in its own internal disputes to mobilise a public demonstration against this enormous violation of the State.

In this political environment, while civic groups such as the National Constitutional Assembly (NCA) and Women of Zimbabwe Arise (WOZA) have continued to carry out demonstrations and been subject to continued arrests, the general state of opposition and civic politics has been marked by increasing frustration over strategy and demoralisation over the deepening political stalemate. Moreover as this report indicates, while the overt levels of political violence and arrests have declined since 2003 there has been a heightened brutality in the violence that has taken place against activists in the ZCTU, NCA, WOZA and other civic and opposition members. In particular the initial severe assaults upon and the later alleged torture of the leaders of the labour movement in 2006 has drawn international criticism against the Mugabe regime.

There has been a continuing undercurrent of violence and intimidation against the political opposition in both the rural areas and urban high density suburbs. The violence is perpetrated by state agencies and militia groups. It will peak in the lead up to elections but after elections there have been many reports of reprisal attacks on members of the opposition. In the rural areas the traditional leaders now blatantly threaten opposition members with expulsion from their villages if they continue to support the opposition. Food aid continues to be used as a political weapon on behalf of the ruling party. Government has also recently announced that it will recruit youth militia members into the civil service as youth development officers who will be deployed into the rural areas. These “officers” are likely to engage in intimidation of opposition supporters.

All these factors need to be placed in the context of the devastating structural violence that has been endured by Zimbabweans through the rapid deterioration of the country’s economy. Indicators such as an estimated 1100% inflation rate, two thirds of the population living below

the poverty datum line on less than US\$1 a day, and 40% drop in GDP over the last eight years and the general crisis of social reproduction that has resulted in such calamitous conditions, give only broad brushstrokes of the immense suffering of the majority of the population. One of the major effects of this rapid economic decline has been the political demobilisation of the population, draining people of the will to engage in protest action and forcing them instead to concentrate on individualised survival strategies. Additionally, as millions have left the country, the survival of households has depended on the straddled existence of economic exiles and cross-border traders who concentrate their efforts on finding ways to ensure remittances to their families in the Zimbabwe. Thus the structural obstacles to political mobilisation have grown since the late 1990s.

2. Abuse of police powers of arrest: a façade of lawfulness

The current report is concerned with highlighting the use and abuse by police of their powers of arrest for political motives, during the period 2003-2005. This time span has been chosen because the authors have extremely good legal records of political arrests during these three years. As already mentioned, the phenomenon of politically motivated arrests and detentions on a mass scale has historical precedent, but had not been part of the Zimbabwean political scene for more than a decade. It was only in 2002 that the phenomenon became once more well established, with the passing of POSA, and political arrests peaked during 2003.

Previous reports have clearly documented the Zimbabwe government's policy to criminalise the opposition – to pass laws that label as illegal, any activity that would be regarded as part of normal democratic activity in a more liberal State.³ Apart from arrests linked to peaceful gatherings, in Zimbabwe political activists have been arrested and charged with crimes including treason, murder, assault, arson, malicious injury to property and theft. However, as this report will show, in less than 1% of all cases of arrest, has the State achieved a conviction. Seventeen amendments to the Constitution itself, as well as to the Land Acquisition Act, the Electoral Act, the Citizenship Act and the passing of the Criminal Law (Codification and Reform) act, combined with the targeting and purging of magistrates and judges that object to the State use and abuse of such legislation, has given the ruling party the ability to claim a façade of behaving legally in terms of Zimbabwe's own sovereign laws, while ruthlessly denying the most basic rights to its citizens.⁴

³ See *Disturbing the Peace*, Solidarity Peace Trust, 2004: www.solidaritypeacetrust.org for full report. Also multiple reports by Zimbabwe Human Rights NGO Forum, Amnesty International, International Crisis Group and others.

⁴ The collapse of separation of powers, and abuse of the legal system has been comprehensively dealt with by a variety of other authors and will not be covered here: see Tsunga, A, "Operating Environment of the Legal Profession in Zimbabwe in 2003", Zimbabwe Lawyers for Human Rights, January 2004. See also K Saller *The Judicial Institution in Zimbabwe* (Cape Town 2004) and *Justice in Zimbabwe* a report of the Legal Resources Foundation (Harare 2002) and *The State of Justice in Zimbabwe* A report of the Bar Councils of England, Wales and Ireland. Stephen Irwin, QC, Chairman of the Bar of England and Wales after visiting Zimbabwe in April 2004: "What is happening here is the destruction of a once fine, working justice system ... in order to hold on to political power." The government has of course on countless occasions also behaved in blatantly illegal ways, repeatedly defying court orders and acting illegally even in terms of their own draconian AIPPA and in relation to amendments to the Land Acquisition Act.



Photo 2: Peaceful march – under police escort - in 1999.



Photo 3: January 1999: peaceful demonstration against the detention of journalists Ray Choto and Mark Chavanduka, who were brutally tortured by the army.



Photos 4 and 5: Civil society marched on 1 April 2000 - the last major street march in Harare. This march was attacked by war veterans and then tear gassed. Civic leaders were arrested. However, journalists were able to go openly onto the streets and cover events, which is impossible now.



AIPPA

In addition to POSA, which is dealt with in detail ahead, the government promulgated a strict media law, the Access to Information and Protection of Privacy Act (AIPPA) in order to control the outflow of information and ensure that the people of Zimbabwe are subjected to propaganda generated by its own information ministry. This has resulted in Zimbabwe being judged the worst country for press freedom in southern Africa by the Media Institute of Southern Africa (MISA).⁵ There is now legislation in the pipeline that will allow the state to monitor electronic communications. This legislation is entitled the Interception of Communications Bill.

NGO Bill and the new Electoral Commission Act

During 2004, a new Act aimed at controlling civil society and at outlawing many of its democratic activities was passed through parliament but not signed by the President. The Non-Governmental Organisations (NGO) Bill created panic within civil society, threatening to make illegal, foreign funding for human rights and governance NGOs in Zimbabwe. While the Bill was never enacted, it remains a constant spectre which could be re-embodied at any moment.

Also ahead of the 2005 election, the new Electoral Commission Act placed voter education in the hands of government, placing stringent restrictions upon who in the NGO world can assist with voter education.

Human Rights Commission

By late 2006, the government was in an advanced stage of further co-opting and subverting NGO human rights activities, with plans to establish its own Human Rights Commission, to which all human rights violations in Zimbabwe should be referred. Considering the abuse of law and human rights in Zimbabwe over the last one hundred years, the ability of the State to police itself in this regard is highly questionable. Human rights organisations would have to be registered with the Commission before they could make reports to it of human rights violations and, presumably, foreign funded human rights organisations would not be registered and would not be able to make reports to the Commission. This would fit in well with Minister Chinamasa's statements to the United Nations Human Rights Council in which he accused human rights organisations of being paid to lie by western donors and pleaded with the Council to put a stop to financial support from western countries to human rights institutions in Africa. Additionally by pretending that a domestic remedy now exist, it would be able to play the game before the regional and international bodies that complainants should first exhaust internal remedies. It is inconceivable that the government intends to set up any sort of genuine independent institution that would expose its appalling human rights record. The main task of the Commission will be to sweep under the carpet the abuses.

Impact of repressive laws

The attacks on the justice system and the passing of draconian laws are part of a bigger strategy to hold onto power at any cost to the rest of the nation; the façade of lawfulness has replaced the concept of justice.

Human rights abuses and daily arrests take place in Zimbabwe without commentary or condemnation. Those on the receiving end of abuses feel increasingly isolated and unsupported; because of State control over dissemination of information in Zimbabwe only the State version of events is readily available to the public with the real story of what happened going

⁵ IRIN, Johannesburg, 3 May 2004. 54% of media alerts to MISA in 2003 were from Zimbabwe alone. The New York Committee to Protect Journalists has also recently listed Zimbabwe as one of the worst nations in which to be a journalist.

unreported. Other nations, particularly in Africa, have become complicit in the Zimbabwean crisis by deliberately failing to publicly criticise repressive laws in Zimbabwe, instead stating as the South African observer team did after the March 2002 election that while the election was NOT “free and fair” it was “legitimate” in terms of Zimbabwe’s own laws, without analysing the draconian nature of those laws. In early 2004, South Africa’s Foreign Minister Zuma made a similar comment in relation to Zimbabwe’s media laws and the hounding of journalists and media houses; she stated that the behaviour of Zimbabwean authorities was in accordance with Zimbabwe’s own laws, while failing to comment on the nature of AIPPA itself – a law which has been described by MISA as “one of the most effective legal instruments of state control over the media and civil society communication anywhere in the world”.⁶ Regrettably the Supreme Court has collaborated in the legitimising of this law by giving it a largely clean bill of health regarding its constitutionality and compatibility with human rights norms.⁷

3. Background and context of the POSA

The POSA, which passed into law in January 2002, is one in a long line of highly repressive Acts that has been used in Zimbabwe over the last one hundred years, whose primary intention has been to control and repress democratic activities. Civil society organisations had in the 1990s campaigned for the repeal of the colonial LOMA. The Supreme Court before it was purged systematically emasculated LOMA during the 1990s by declaring sections unconstitutional. POSA, which replaced LOMA, has effectively re-enacted those parts of LOMA already declared unconstitutional, as well as placing new repressive restrictions in the hands of the State.

It was no coincidence that POSA was drafted and rushed into law only months before the Presidential election of March 2002. Drafts of the new Bill were severely criticised by human rights lawyers and organisations on many occasions prior to its initial appearance in Parliament in late 2001. The Parliamentary Legal Committee gave the first draft of the Bill an adverse report, declaring it unconstitutional. Despite this, POSA became law in January 2002.⁸

Immediately on passing into law it was used to clamp down on the activities of the MDC, and also to prevent civil society activities, including peaceful protest, public debates and workshops. While the current report does not consider use of the POSA during 2002, as this information is not to hand in sufficient detail, the opposition claimed that POSA was used to ban in excess of 80 MDC rallies in the run-up to the Presidential election of March 2002, and to arrest hundreds of their supporters. POSA was also used to disrupt or prevent civil society workshops ahead of the election⁹.

Between the passing of POSA in 2002 and the end of 2003, more than one thousand politically motivated arrests of civilians took place, mainly targeting members or perceived supporters of the MDC, but also involving civil society activists with no clear political affiliation. Involved in arresting and harassing civilians were the Zimbabwe Republic Police, (ZRP) the Zimbabwe

⁶ IRIN, Johannesburg, 3 May 2004.

⁷ Association of Independent Journalists & Ors v Minister of State for Information and Publicity in the President’s Office & Ors S-136-02

⁸ ZANU PF, by sheer numbers, has repeatedly forced through Parliament dubious legislation and amendments to existing legislation despite the MDC voting unanimously against them.

⁹ “Report of the Commonwealth Observer Group on the Parliamentary Elections in Zimbabwe, 2000,” General Abdulsalami Abubakar, Chairperson.

National Army, (ZNA) War Veterans, Central Intelligence Organisation (CIO) and the Youth Militia. The most commonly cited Act on arrest was POSA.

The Criminal Law Code

Almost all the offences in POSA have now been transferred to the Criminal Law (Codification and Reform) Act (“the Criminal Law Code”), in some cases with drastic increases in the penalties for these offences. This Code came in operation on 1st July 2006. The portions of POSA that previously dealt with these offences have been repealed and persons accused of committing these offences must now be charged in terms of the Code. The Code has repealed those portions of POSA. The only important crime that remains in the residual POSA is the one relating to the failure by an organiser of a meeting or demonstration to give the requisite notice to the police of the holding of this event. Civil society also needs to be aware of the transference of many of the POSA offences into the Criminal Law Code and of a number of further offences contained in the Code. The Criminal Law Code has also now incorporated the provisions of the old Miscellaneous Offences Act and thus since the 1st July 2006, these offences have been charged under the Criminal Law Code.

Decline in use of POSA

This report documents that there has been *a decline in the use of POSA over the last three years* in Zimbabwe. In 2003, more than half of all political arrests were under POSA whereas in 2005 POSA accounted for fewer than a third of charges laid when political arrests were made.

Since 1 July all prosecutions for the offences under POSA that are now in the Code have been under the Criminal Law Code.

Impact of POSA on democratic groups

i. Control of gatherings

After the passing of POSA in 2002, the opposition movement has found it almost impossible to undertake what would be considered normal political activity in any democratic nation, such as peaceful gatherings, whether inside or outside buildings.

POSA sections 22 to 31 relate to control of gatherings, outlawing almost any form of meeting or peaceful demonstration. Sections 24 and 25 state that organisers of a gathering of *more than one person* in a public place must notify the police four days in advance. There is no provision for spontaneous gatherings. Any organiser who fails to notify commits an offence which attracts a fine or a term of imprisonment. He may also be held liable to pay damages to any person injured as a result of such a demonstration.

Where the regulating authority of the police believes on reasonable grounds that the meeting or demonstration will occasion public disorder, a breach of the peace or obstruction to a public thoroughfare, the police may then issue directions that are reasonably necessary for the preservation of public order and to prevent such obstruction. These directions relate to the time and place of the gathering and can include a requirement that the organizers appoint marshals and take other precautions to maintain order. The directions are effective immediately and wherever practicable a written copy must be served on the organizer. However, the regulating authority must give the organizer the opportunity to make representations in regard to the directions wherever practicable to do so and if the organizer is aggrieved by any direction issued

by the regulating authority there is a right of appeal to the Minister.¹⁰ Section 25 provides that where the regulation authority of the police believes on reasonable grounds that a public gathering will occasion public disorder it may prohibit the meeting. The prohibition is supposed to be served on the organiser wherever practicable to do so. The regulating authority is supposed to give the organizer the opportunity to make representations wherever practicable to do so and if the organizer is aggrieved there is a right of appeal to the Minister. It is a criminal offence to go ahead with a demonstration after it has been prohibited.

In practice the police simply prohibit most anti-government demonstrations. They do not go through the motions of considering whether they should allow the demonstration subject to directions.

ii. The right to “all necessary force”

In terms of section 29 of POSA the police and persons assisting the police may use all necessary force to disperse an unlawful gathering and may use reasonably justifiable force to overcome resistance and if a person is killed when using such force the killing is lawful. There is a specific provision in POSA allowing the army to be called in to assist the police and the army is now often deployed with the police. Other personnel have also assisted the police in these operations such as war veterans and youth militia. Frequently excessive force has been used to disperse anti-government demonstrations and there have been a number of court cases in which it has been found that killing or wounding was unjustifiable and unlawful. When the army is called in to assist in these operations excessive force often is used as army personnel have no conception of the use of minimum force. The frequent use of excessive force and undue brutality has obviously been a major factor in undermining civilian willingness to take part in mass actions called in the last two years.

While nobody has been shot dead while taking part in a demonstration during the period being covered by this report, several have been shot and wounded, and vicious assaults on activists are common in the process of arrest and once in custody¹¹. During the June stayaway of 2003, riot police and soldiers were out in force in every city centre in the country, armed with automatic machine guns. Tanks and helicopter gun ships patrolled the towns effectively preventing any marches from occurring. Hundreds of arrests under POSA took place during this week. In September 2006, fifteen trade unionists leaders were brutally tortured by police in Harare – assaults started in the street during arrest, and continued in police cells.

iii. Penalties under POSA

The penalties for the POSA offences now contained in the Criminal Law Code are very severe. For instance, the offence of making a false statement prejudicial to the State now attracts a penalty of up to twenty years in prison. The offence of failing to notify the police about a gathering has a maximum penalty of six months in prison.

iv. Easy intelligence

The requirement of informing the police of any gathering four days in advance means that the State knows precisely who is doing what, where and for what purpose, and to fail to give such information to the State is illegal. Having such information in very good time, allows the State

¹⁰ Min of Home Affairs, Kembo Mahadi, was ironically himself the victim of the old LOMA in the 1980s.

¹¹ More than three hundred Zimbabweans have died in political violence at the hands of the State in the last 4 years, and almost no successful prosecutions have taken place even though in many instances the murders were well witnessed, but POSA has not been invoked by the State as justification for any of these killings to date. (There have been a few prosecutions for murder and culpable homicide – see for instance the case of *S v Nhongo & Ors* HH 2003)

and its supporters to routinely prevent or disrupt activities that would be considered legitimate democratic activities in countries with a more democratic dispensation. Knowing one has to inform the State is intimidatory, and pre-empted many meetings from taking place because of the high levels of fear some people feel at having to go to a police station and report in advance.

v. Politically selective use of the law

It should further be noted that it is almost always the opposition political parties, primarily the MDC, and civil society groupings including the NCA, the ZCTU, Women of Zimbabwe Arise (WOZA), rate payers associations and others, that are routinely prevented from gathering. ZANU PF on the other hand, is able to continue with political activities without having to comply with POSA, and is seldom refused permission to gather.¹²

Activities disrupted in the name of POSA during the last few years include:

- arrests of people singing and wearing protest T-shirts at World Cricket Cup matches in Bulawayo
- arrests of women singing and handing out roses on Valentine's Day
- arrests of women sweeping the streets on Women's Day
- arrests linked to stay-aways in March and June 2003
- arrests linked to by-election and national election campaigns
- arrests linked to Trade Union demonstrations
- arrests linked to peaceful protests by the Combined Harare Rate-payers Association
- arrests linked to the NCA advocating the need for a new constitution

At times the police have been known to shut down meetings inside conference rooms, after finding out that such meetings are taking place. In 2003, the ZCTU had to seek a court order to prevent the police from insisting on attending a private committee meeting in their own building.

The pattern of use of POSA shows it is a crude way of denying all citizens perceived not to support the ruling party their rights to freedom of speech, assembly and association. It is a crude tool to retain power, and has nothing to do with removing criminals from the streets.

vi. Financial and time implications of politically motivated arrests

It is clear that the routine practice of arresting people at every opportunity is being used to ensure that a large proportion of funds that accrue to the opposition party or to civil society are used up in legal defence. The payment of admission of guilt fines, of bail applications, of lawyers fees and of medical care for the victims of violence and torture perpetrated by the government forces adds up to a huge sum each year. In this report alone, readers can assess for themselves the likely financial implications of nearly 2,000 arrests, with all of these persons being represented by law firms, with many of these arrests involving physical abuse of detainees. While some of the expenses are met through civil society support, as donor interest in Zimbabwe has waned, sourcing funds to meet costs of political arrests has become more time consuming and arduous.

The time and emotional stress that the opposition has had to devote to dealing with false charges has taken attention away from more constructive processes, and has fuelled pre-existing internal divisions. Senior leadership in the opposition have cumulatively spent the equivalent of months

¹² However, it is worth noting that during 2006, there have been instances in which people traditionally considered to be ZANU PF supporters have been arrested under POSA. For example, resettled farmers protesting about sub-standard fertilizer in Masvingo were arrested under s 24 of POSA in November 2006. As disgruntlement with ZANU PF grows across the board, including among its supporters, such arrests may become more frequent.

in the courts facing very serious charges, including treason and murder. While all officials so charged have been acquitted, the trials effectively tied up these individuals not only in the courts, but in preparatory meetings with lawyers, for the equivalent of several working months in any year. The acquittal of MDC Secretary General Welshman Ncube on treason charges, while MDC President Morgan Tsvangirai had to face the charges for another year before his acquittal, directly contributed to the final split in the MDC.¹³

4. Background to Data used in this report

The data has been collated from records provided by *38 legal firms countrywide*, over a period from January 2003 until December 2005 – three calendar years. Firms submitted information on any cases they had dealt with that they considered primarily political in intent during this time period. Arrests they dealt with came from *49 different urban and rural centres* around Zimbabwe, representing all ten provinces.¹⁴ Full details were submitted to the authors, but the identity of all firms/representing lawyers and all clients are kept confidential in this report.¹⁵

By definition, all arrests in this report are considered to have been political in motivation, as assessed by the lawyers and the authors, regardless of types of charges laid. The political nature is determined by context of arrests: it must have involved some political activity such as a rally, preparing for or participating in a political action at the time of arrest, or must involve those known, or assumed by the State to be, active in some aspect of the democratic movement, such as the MDC, NCA, WOZA etc. It is routine for perpetrators to tell victims that they are being targeted specifically for their perceived political affiliation.

How representative of all arrests in Zimbabwe is the current database?

The cases represented here are drawn from a substantial number of private legal firms over a substantial period of time, countrywide. The same firms contributed case information throughout the time period given, including running information on the same cases over time, and are those firms known by democratic forces to be sympathetic to and prepared to represent “political” cases.

The authors therefore assume that the numbers and types of arrests represented here, can be analysed and seen as representing certain trends in both state repression, and democratic response, over time.

Unreported cases

Many Zimbabweans who are arrested, whether for political reasons or not, never receive any legal support of any kind. This is likely to be the biggest group of arrestees. Many activists have

¹³ *Commission of Inquiry into disturbances at Party Headquarters*, MDC, 14 December 2004; this gives insight into the MDC internal divisions and refers to a “coup” plot to prevent Ndebele leadership from maintaining leadership positions in the event of Tsvangirai being found guilty of treason and going to prison. See also p 42 ahead.

¹⁴ Most firms were based in Harare or Bulawayo; together with lawyers in Gweru, Kadoma, Mutare, Masvingo and in a few other small centres they provided outreach services to smaller business centres that do not have resident lawyers. Therefore number of centres where arrests took place exceeds number of reporting legal firms.

¹⁵ While many of the 2003 cases in the current report overlap with cases analysed in a previous Solidarity Peace Trust report, *Disturbing the Peace* (released in 2004), the overlap is not absolute and a different data entry format has also been used to enable different forms of analysis: data for 2004/5 have not been previously analysed in any public report.

over the years become used to a routine of being arrested, and paying an admission of guilt fine to ensure speedy release.¹⁶ Many hundreds of others are arrested, held for a day or two to prevent them from taking part in mobilising for some event such as an election or stay away, and are then released without charge. The matter usually ends there, and is not recorded by any other party as having taken place, particularly in smaller centres where there may be no resident lawyer or human rights organisation. Such arrests will obviously not be reflected in this database.¹⁷

Political arrests on record elsewhere

Some activists on arrest may appeal directly to the Zimbabwe Lawyers for Human Rights (ZLHR) or to Legal Resources Foundation (LRF) for legal representation: these instances are not always in the current database, although in some cases they will be, if these organisations refer back to private law firms to take the cases.

Certain civil groups such as Women of Zimbabwe Arise (WOZA) and the National Constitutional Assembly (NCA) have in recent years organised independent sources of legal support, outside of the firms and information that we have captured here. Both these groups have in the time period under review had demonstrations and peaceful marches that have resulted in arrests that are not captured in the current database for that reason.¹⁸

The authors have therefore reviewed data from the Zimbabwe Human Rights NGO Forum (the Forum), a coalition of NGOs that collects and collates information about all political human rights violations reported to its 16 members on a monthly basis. Their database captures arrests reported to Zimbabwe Lawyers for Human Rights and Legal Resources Foundation, as well as to any other civil society partner.

ZHRNGO Forum produces monthly updates and recently produced an overview of 57 months of human rights violations, from July 2001 up to end of 2005. The current authors have relied on the ZHRNGO Forum *monthly violence reports* as a point of comparison, rather than their 57 month review, as detailed, incident-specific information relating to arrests is captured in the monthly reports rather than in the general review. We have factored their monthly violence report findings into our discussions and conclusions.

Overlap of cases: current data and Forum data

There is some degree of overlap of cases between the Forum and the cases in this database:

- some cases on our database were referred to private lawyers by the same human rights organisations that document for the Forum;

¹⁶ Those paying admissions of guilt fines usually do not believe that they are guilty of these crimes but are simply paying the fines as an expedient way of escaping quickly from horrendous jail conditions.

¹⁷ It is not possible to be categorical as to what proportion of arrests go unreported, but the authors' ad hoc experience with activists, particularly outside of urban centres, is that people may years later refer to previous arrests and explain the reasons why they did not report their arrests to anyone at the time.

¹⁸ A comparison with ZHRNGO Forum data shows, for example, that in 2005 they captured 144 arrests of WOZA/NCA that we did not. However, we captured 73 more arrests in total than the Forum in the three months running up to the election in March 2005 (230 arrests vs 157 arrests), a time period when they captured both WOZA and NCA arrests in their totals for these months.

- some of those who suffer unlawful arrest and who get legal counsel from a private lawyer, may also be referred to multiple civic organisations for non-legal support.¹⁹

It is safe to assume that as human rights organisations are operating in the same political framework, the types of cases and the trends over time should show some similarity. However, there may be information captured in the one database, which is not contained in the other.

What type of person is defended by these 38 law firms?

While precise proportions cannot be worked out from available information²⁰, a general overview of who is represented in these 1,981 arrests shows that:

- the majority are MDC party activists, who consist by and large of young men, but include women; and
- MDC Members of Parliament

However, this is by no means the only group represented on the current database. Among those arrested are:

- trade union leaders and members;
- civil society activists;
- rural women inquiring about lack of availability of food from their chief;
- bystanders who are not activists but who are arrested nonetheless;²¹
- journalists.

Differences in arrests captured in Forum database, compared to current database

A comparison of the Forum's monthly violence summaries with the lawyers' files on which the current database is reliant shows that:

- the Forum is more likely to record arrests linked to *NGO activism*, although it also records party political arrests;
- the current database is much more likely to record arrests linked to *MDC activism*, although it also records NGO activist arrests
- the current database is *more likely to record arrests in smaller centres*, particularly in the western half of Zimbabwe and Manicaland, and particularly of MDC activists, than the Forum is.
- both databases are likely to record arrests in the major centres of Bulawayo and Harare.

These similarities and differences between the two databases provide a useful point of comparison, which will be referred to in our discussions of our findings.

¹⁹ For example, an arrested individual who on release needs a safe house, or medical treatment, or social support, may deal not only with a lawyer who will refer the case on to our database, but also with one or more NGOs who will help with other services, and send the same case details on to the ZHRNGO Forum.

²⁰ Information such as whether arrestees are supporters of specific opposition parties such as MDC or civic organisations, NCA, WOZA etc is not routinely given by lawyers, although this can be deduced at times from context of arrest: if arrests take place during a WOZA march, arrestees can be assumed to be affiliated to WOZA; if during an MDC rally, then to be political activists/supporters of MDC etc. However, precise context of arrest is not always this clear.

²¹ For example, three women who went to feed detainees were themselves arrested. People in the vicinity of a march/gathering or near ZCTU offices or any other flash point are likely to be arbitrarily arrested before, during, or after such events.

5. Use of data by year and outcome

- The database represents a total of **1,981 individuals arrested**.
- These arrests are linked to **328 incidents** in which arrests took place.
- 125 incidents (38% of the total number) involved 1 person arrested
- 203 incidents involved more than one person – an average of 9 persons arrested per incident.
- The largest number of persons arrested in one incident was 204.²²

Arrests 1999-2002

Out of these total cases, 169 politically motivated arrests were carried forward to 2003 by lawyers representing clients from 31 incidents that took place in 2002. A further 70 arrests from 14 political incidents were carried forward to 2003 from 1999 –2001.

These 239 arrest cases carried forward (45 incidents) have *not* been included in the data *analysed by year* and reported on here: they cannot be considered in any way representative of total numbers of arrests during the years 1999-2002, and therefore in no way represent trends for these years. They are rather unresolved remnants of a far greater number of arrests during these 3 years.

However, these 239 arrests are included in the analysis of data relating to *outcome of cases* and on *types of charges laid* as they are relevant in this context – many of these cases remain unresolved or in abeyance four or five years after charges had been laid, and the trend of arresting people in terms of POSA was well established during 2002, when POSA became law, and these cases are relevant in these regards..

Arrests analysed on a *yearly* basis therefore number 1,742

| | |
|---------------------|-----|
| Arrests during 2003 | 948 |
| Arrests during 2004 | 268 |
| Arrests during 2005 | 526 |

Arrests analysed on ‘charges laid’ and ‘outcome’ number 1,981

6. Summary of charges laid on arrest

Five most common charges:

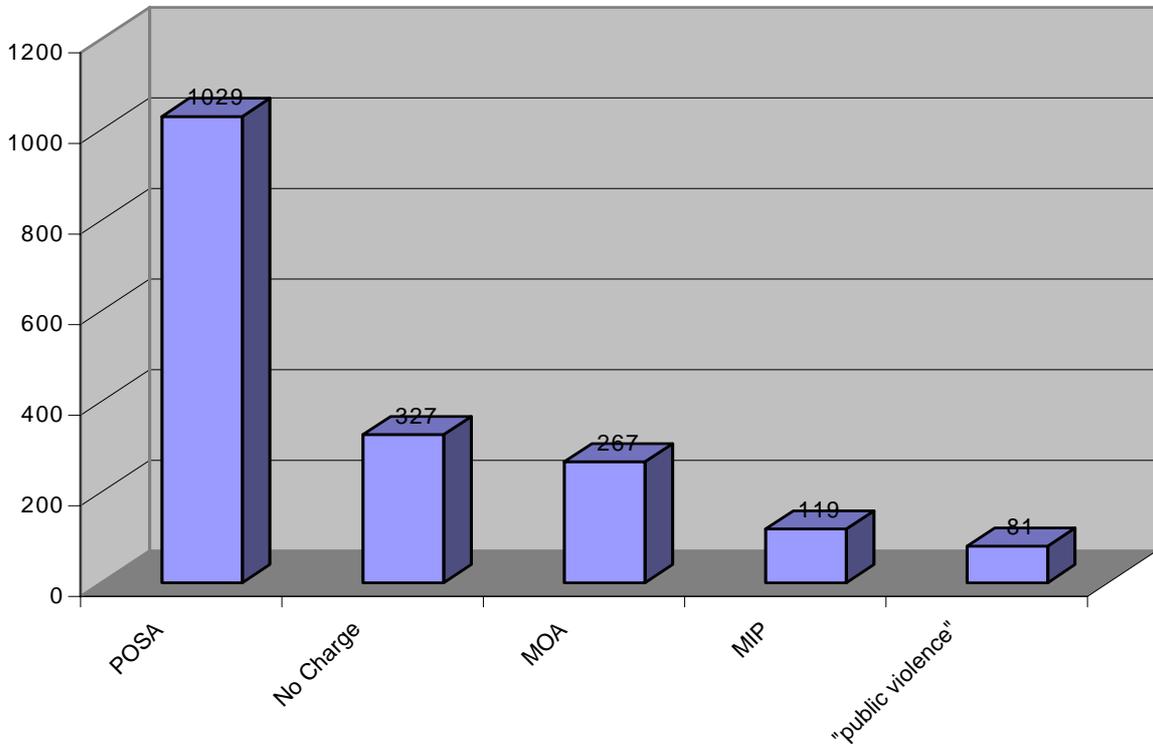
- | | | |
|--|-------|-----|
| • Public Order and Security Act (POSA): | 1,029 | 52% |
| • No charge: | 327 | 17% |
| • Miscellaneous Offences Act (MOA): | 267 | 13% |
| • Malicious Injury to Property (MIP): | 119 | 6% |
| • “Public violence” – law not specified: ²³ | 81 | 4% |

²² This was a group of women arrested in May 2005 for protesting about political discrimination of food distribution in Insiza, a rural district of Matabeleland.

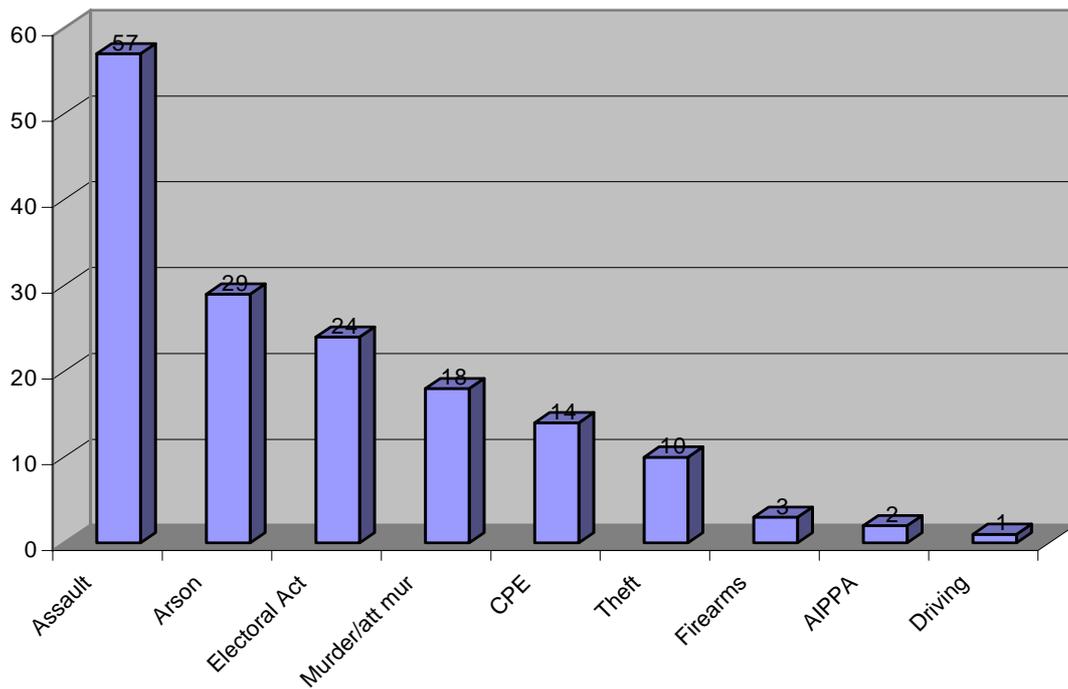
²³Section 17 of POSA is titled “public violence”: s 7 of MOA also deals with “public violence”, so “public violence” arrests could be under either of these acts. Until the coming into operation of the Criminal Law Code in June 2006, public violence used to be a common law crime as well. This crime of public violence has now been incorporated into the Criminal Law Code.

These first five categories account for: 92% of all arrests (1,823 out of 1,981 arrests)

Graph 1: Five most common charges on arrest: 92% of all arrests 2002-5



Graph 2: Charges on arrest: 8% of all charges 2002-2005



A further 9 categories of arrest account for: 8 % of all arrests (158 out of 1,981 arrests)

| | | |
|---|----|------|
| • Assault: | 57 | 3% |
| • Arson: | 29 | 1,5% |
| • Electoral Act: | 24 | 1,2% |
| • Murder/ attempted murder: | 18 | 1% |
| • Criminal Procedures and Evidence (CPE): | 14 | 0,7% |
| • Theft: | 10 | 0,5% |
| • Firearm offence | 3 | |
| • Access to Information (AIPPA): | 2 | |
| • Driving offence: | 1 | |

7. Treatment by arresting officers and in police custody

Zimbabwean law enforcement agencies have a long and well-established history of torturing civilians in their custody. Furthermore, those torturing on behalf of the State are almost never brought to justice. The pattern of violence with impunity became the norm during colonial rule, from the 1890s, and continued after Independence in 1980. Opposition to the ruling party is quickly dealt with by repressive legislation, combined with systematic brutality by the police, CIO, CID and other groupings acting with the blessing of the State, such as youth militia and war veterans.²⁴

The focus of this report is primarily on the **legislation and patterns of arrests** used to undermine democratic forces, rather than on State organised violence and torture; the issue of State violence has been extensively dealt with both by the current authors and by other national and international human rights organisations over the years.²⁵

Torture

However, it should never be forgotten that the arrests referred to in this report take place in the context of a brutal police force, an inhumane jail system and a collapsing court system. It is very common in Zimbabwe for those being taken into custody to be tortured:

- **Our data reflects that there is a one in three chance of being assaulted/tortured before, during or after arrest in Zimbabwe.**

| | | |
|-------|-----------|----------------------|
| 2002: | 61 cases | (36% of all arrests) |
| 2003: | 308 cases | (32% of all arrests) |
| 2004: | 96 cases | (36% of all arrests) |
| 2005: | 157 cases | (30% of all arrests) |

TOTAL: 622 assaults/torture (33% of all cases)

²⁴ Numerous reports by, for example, ZHRNGO Forum, Crisis in Zimbabwe Coalition, Physicians for Human Rights, Denmark, Amnesty International, International Crisis Group, Human Rights Watch documenting patterns of violations over last five years in Zimbabwe.

²⁵ See, for example, by the current authors - *No War in Zimbabwe*, November 2004; *Operation Taguta*, April 2005; also The Forum's monthly violence updates, and reports by ZLHR. Internationally, there are regular releases and longer reports by Amnesty International, Human Rights Watch and the International Crisis Group, among others.

The current database does not distinguish between assaults and torture – any assault by a State agent on a civilian in State custody meets the UN criteria for torture, inhuman and degrading treatment or punishment. Police torture can be severe, resulting in serious injuries, permanent disabilities and even death.²⁶

Conditions in holding cells

Furthermore, police holding cells in Zimbabwe are so appalling that in 2004, Wellington Chibebe, the Secretary General of the ZCTU, successfully brought a case against Matapi police station in Harare, claiming that being held in their cells amounted to “cruel, inhuman, and degrading treatment and punishment.”²⁷ Tragically, Chibebe was severely tortured in this same police station in September 2006. Political arrestees are routinely and deliberately overcrowded, with 30 or more people being kept at times in cells intended for six.²⁸ Toilets, which are in the corner of the cell, are frequently blocked and overflowing; there is routinely no food provided and inadequate access to fresh water. There are no mattresses and often no blankets, or where blankets are available they are encrusted with human waste. Cells are awash with urine and are infested with mosquitoes and lice, tormenting occupants. At times, when large numbers of people are arrested simultaneously, they are forced to stay in open courtyards, even if the weather is freezing or pouring with rain. Those who are ill, or who have been severely beaten by the police and have fractures and other injuries, are routinely denied any access to health care or medication for varying period of time.

Lawyers have observed that the process of keeping political detainees in such conditions for the maximum length of time permitted by law, which is 48 hours, and frequently longer, is done deliberately by the police who know that they will not be able to successfully prosecute these cases: being kept in filthy and degrading conditions for a few days is a form of quick sentence meted out by the police – and a deterrent to future participation in peaceful protests.

As this report will show, successful prosecutions are extremely few, but it must be remembered that all those arrested in Zimbabwe spend often days or even weeks, in detention in the degrading and inhumane conditions described above. During that time they live either with actual police violence, or with the imminent possibility of violence and torture.

Treatment of criminal suspects

It is beyond the scope of this report to deal in detail with general treatment of all Zimbabweans in police and prison custody; We acknowledge that assaults of any citizen under arrest are close to routine and that the same appalling cell conditions exist for people arrested for petty theft or other ordinary crimes as for those arrested for perceived political activity. Police torture during interrogation of criminal suspects is extremely common. Conditions of long-term jail incarceration are similarly appalling, with overcrowding and cruel treatment, and lack of access

²⁶ Tonderai Machiridza died one day after release from police custody in 2003: he had been so severely tortured he came out of custody unable to walk and barely conscious. There are multiple well-documented cases of electric shock, sodomy, falanga, water torture and severe beatings. Human Rights Watch, *You will be thoroughly beaten*, London, November 2006, refers to systematic abuse of political detainees in custody.

²⁷ Nancy Kachingwe and Wellington Chibebe and Zimbabwe Lawyers for Human Rights v The Minister of Home Affairs N.O. and the Commissioner of Police, Supreme Court case S-145-9-04. The Supreme Court decided that the conditions at Matapi were inhuman or degrading.

²⁸ Those arrested have reported that they have been forced to crowd into cells even when there are empty holding cells adjacent, illustrating that overcrowding is deliberate even when avoidable.

to decent nutrition or medical care hastens death in HIV positive people serving prison sentences.²⁹

8. Defence lawyers: an arduous and hazardous task

Police in Zimbabwe behave in an obstructive and abusive manner not just with those detained for political reasons, but towards lawyers who arrive at police stations to defend their clients' rights. Lawyers have themselves been detained, and in a few instances even severely beaten, merely because they have appeared in a police station to defend a political detainee, or because they are known to be human rights lawyers.³⁰ Lawyers and other human rights defenders are constantly harassed, receive anonymous death threats and are attacked in the government controlled media.³¹

For lawyers doing this sort of work the task of tracking down and gaining access to people arrested for political motives is daunting, unpleasant and usually extremely time consuming.

Lawyers A and B, involved in trying to gain access to people arrested a few days ahead of a major stay away called by opposition forces in June 2003, made the following observations:

“The atmosphere at ZRP Central was charged with hostility. The police were uncooperative and were refusing to allow us to gain access to our clients.”

When these lawyers eventually accessed their clients:

“.....heart rending stories of vicious attacks were narrated to us by clients. Sickening injuries were also shown to us. Notwithstanding the fact that clients were writhing in agony from injuries inflicted by state security agents, the Inspector refused to take their assault reports and afford the victims the opportunity to be treated.”³²

It is often patently clear to the defending lawyers that police have no case – and know it – but are determined to detain clients for the full 48 hours at least. For example, in one instance where the Prosecution refused to accept a request from the police for remand forms on the grounds that the police did not have sufficient facts to warrant the placing of 14 people on remand under POSA:

“The police were no longer sure of what to do. It was clear that the police had no charge to lay against the victims, but at the same time the police could not bring themselves to accept that the victims were entitled to their immediate release.”³³

²⁹ Information about general conditions for ordinary prisoners has been given to the authors by political detainees, some of whom have been held for weeks in regular prisons. The media reports large numbers of deaths of prisoners in custody.

³⁰ In Harare, Beatrice Mtetwa, a well known Zimbabwean human rights lawyer was assaulted by police after being forced off the road in her vehicle in 2004. Also in Harare, Gugulethu Moyo, another lawyer, attending to a client in police custody, was assaulted in a police station by the army commander's wife and was later badly whipped by members of the riot squad and then detained in police cells.

³¹ HRW, *You will be thoroughly beaten*, London, November 2006, refers to harassment of human rights defenders, apart from the authors' own records from lawyers.

³² Report sent to the authors by lawyer defending case linked to June 2003 stay away.

³³ Ibid.

A day later, when the lawyers were still trying in vain to get these clients released, they returned to the police station, where the number of people arrested had now multiplied to over 30:

“No-one at the police station wanted to be accountable. Everyone at the station was running away from us. We walked away from the police station after sunset, weary and without results.”

It took another 24 hours to get these arrestees released without charge. These 30 detainees were effectively in detention from 31 May to 3 June 2003, which meant they were unable to play a role in the June stay-away – which was clearly the main intention behind their arrests.

Lawyer C reported being assaulted by a police officer when he advised his clients against signing “admission of guilt” forms:

“Detective M grabbed my colleague’s jacket and violently dragged him from the charge office, shouting that lawyers did not have the power to prevent prisoners from paying admission of guilt fines.... He then charged at me, grabbed the front lapel of my winter jersey and shoved me against the wall, thereby banging the back of my head against the doorframe.”³⁴

The lawyers laid assault charges against the detective – but in the absence of the lawyers, all their accused clients were forced to sign admission of guilt forms in order to gain release.

Lawyers D and E reported that they have to work together “for security reasons” when trying to defend political detainees, and also to try and outwit the police who are continually trying to avoid them!

“One of us would for example proceed upstairs to the Criminal Investigations Department Offices, whilst the other remained at the ground floor, to check if any senior Police Officers who had a say in the cases would attempt to escape through a different point of exit. This had happened on a few occasions, especially when we sought to secure our clients’ release on the basis that they had been over detained and that the charges they were facing were materially defective. The junior officers who were left to man the CID department could not take any decisions in the ‘absence’ of their superiors who had escaped probably using the back door...”³⁵

Lawyer F reported going to a specific Harare police station to locate a client that she knew was being held there. The officers denied that he was in their custody. She therefore shouted her inquiry again, so that the occupants of the cells could hear her. The client indeed heard her shout, and was able to indicate his presence in the cells, although the lawyer was still denied access to him. On another occasion, this same lawyer was told by a police officer that there was no point in trying to get bail for her client, as the police “had instructions from above to detain him for the full 48 hour statutory period”.³⁶

Importance of legal representation

Lawyers representing political clients in Zimbabwe have to be courageous and to persevere in the face of extremely obstructive and abusive behaviour, in order simply to gain access to their

³⁴ Report written by Lawyer C on 30 June 2003.

³⁵ Report by Lawyer D written on 8 July 2003.

³⁶ Report from Lawyer F written on 27 June 2003.

clients. Considering how little respect is paid to lawyers and to clients with legal representation, unrepresented arrestees have a very little chance of finding any kind of justice in police custody, and face a correspondingly higher likelihood of abuse.

Timely intervention by lawyers has on occasion proved possibly life saving, and could arguably have prevented torture or assaults against detainees. A lawyer is the only person anyone in custody has a legal right to see. A lawyer persistently insisting on this right sends a clear message to the arresting police that somebody is aware of this person and concerned about his or her safety; this knowledge, according to lawyers interviewed, can make an officer more cautious at times as far as gross abuse is concerned. However, this is not always the case, as the torture of trade unionists in September 2006 well illustrates!

Once a lawyer has ascertained that his or her client requires medical treatment because of illness or to treat injuries inflicted by torture, he or she can demand that the police allow the client access to medical treatment. If the police refuse, or unduly delay, the lawyer will be forced to seek an urgent court order requiring the police to allow the person to receive medical treatment. Such an intervention by his lawyers may have saved Fletcher Dulini Ncube from diabetic coma and even death, during his unjust incarceration in 2001.³⁷

9. Outcome of cases

Arrests that have not resulted in a trial in a court of law

Over a three-year period, following 1,981 cases - some of which date back to 1999 - the findings are:

| | |
|-----|--|
| 327 | released without charge |
| 170 | charges dropped |
| 469 | admission of guilt fine paid |
| 601 | released on bail – no further action on case |
| 154 | no known outcome ³⁸ |

Arrests that have **not** resulted in a trial: 1,721 – or 87% of arrests

In 87% of arrests, the State has not had to produce evidence in a court of law to justify their apprehending of people.

³⁷ MDC Member of Parliament Dulini Ncube was falsely accused of being involved in the murder of Cain Nkala in late 2001: he was jailed without bail for six weeks without access to management for his very serious diabetes, and was released only after several appeals through the courts: initially prison authorities refused to abide by direct orders from the High Court to grant him bail. By the time Dulini was released, he was extremely ill. His insulin levels were such that his doctor was surprised that he was not in a coma already, and in his assessment, diabetic coma and death would have been inevitable within a few more days of incarceration – interviews with Dulini Fletcher by the authors, 2002. Dulini lost an eye as a result of his incarceration and the resulting uncontrolled infection. He was acquitted of all charges by the courts in 2004, with the court finding that the police evidence was a pack of lies.

³⁸ On discussion with a few of the lawyers concerned, their assumption is that these cases were not pursued through the courts: after release from jail, pro bono legal representation was offered and not pursued by those arrested, nor were the legal representatives approached to facilitate production of accused in court.

“Admission of guilt” fines

In Zimbabwe “admission of guilt” fines are commonly paid by arrested activists, in order to avoid spending two or three days – or more - in terrible jail conditions waiting for access to a lawyer, a court appearance and the setting of bail conditions. In most cases the persons paying such fines do not believe that they are guilty of the crimes charged; they simply pay what are comparatively small amounts so they can get out of detention. The payment of such fines suits the State because it means that the State is able to avoid having to prove their cases in court. In many instances the police know that the evidence is not there to support a conviction. In many cases, arrestees are coerced into signing such “admissions of guilt”: they are threatened with having worse charges laid against them or with being held for days in jail if they refuse to pay.

Those who refuse to pay *admission of guilt* fines, are routinely *released on bail* – but as the figures here show, this is effectively the end of the case in that the State seldom pursues these cases any further.

Arrests that have resulted in a trial: outcomes

Out of the 13% of total arrests that are known to have resulted in a case going to trial, outcomes were:

| | |
|------------|--|
| 4 | convictions |
| 137 | acquittals |
| 94 | remands |
| 25 | proceed by summons (case in abeyance) |

Out of 260 arrestees that have had a trial, only 4 people had been convicted by the end of 2005! This is 1,5% conviction rate out of the few cases that have been through the courts.

Out of a total of 1,981 arrests, only 0,2% of cases resulted in a conviction.

“Remanding” and “Proceeding by Summons”

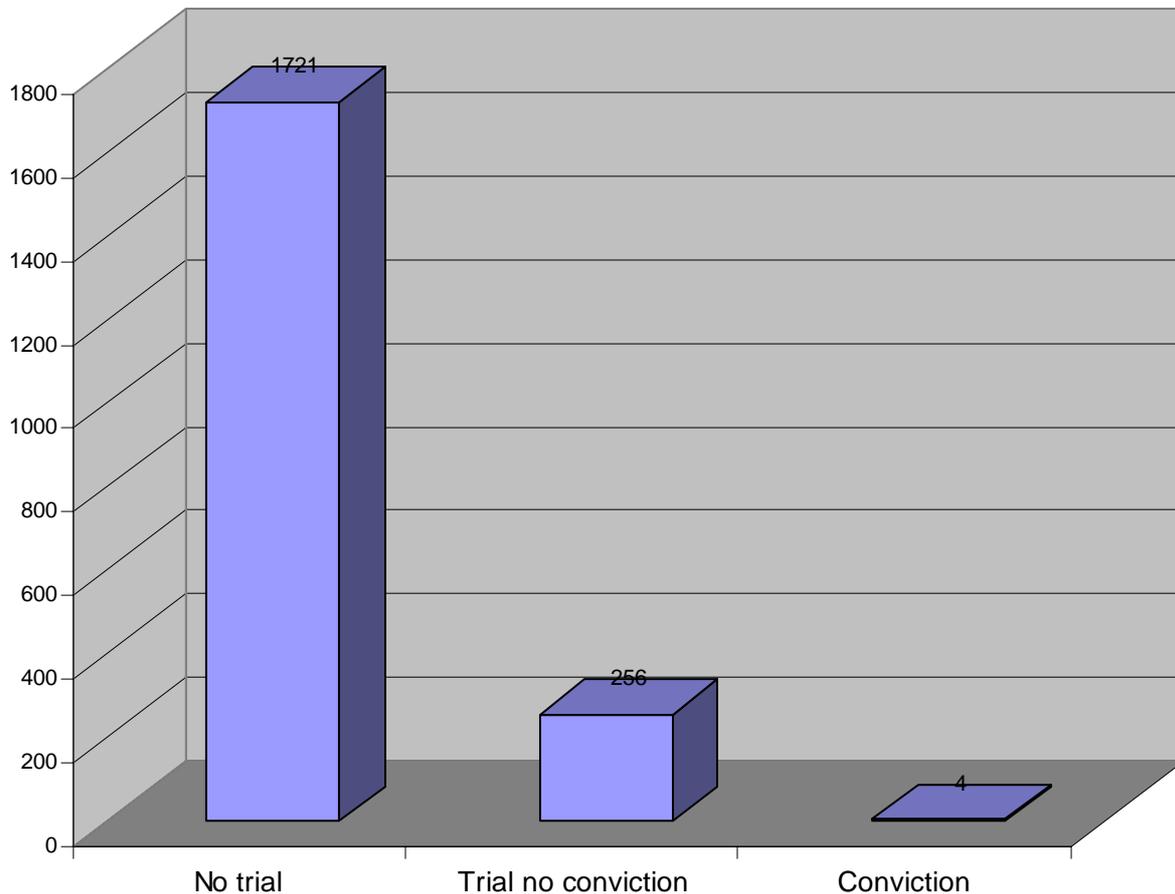
In 755 of the cases of arrest in which charges were laid, no trial has taken place. The State will repeatedly request further remands of such cases on grounds that the State is still not ready to proceed with trial. The judge or magistrate has the power to decide to refuse to remand a case further if he or she finds that there has been unreasonable delay in bringing the matter to trial. However, this power is rarely used and in many of these cases the accused persons will remain on remand for very lengthy periods. Eventually, the accused is told that the State will “proceed by summons”, meaning that the case is in abeyance until such time as the State has decided it has the necessary evidence on which to prosecute, at which point the accused can be put on trial. In a further 119 cases that have gone to trial, there has been no final outcome.

The procedure of “remanding” and “proceeding by summons” is a form of ongoing harassment of the accused. The State is aware that there is a very small chance of a successful prosecution in most of these instances of arrest: in particular in relation to POSA arrests, it is useful to an oppressive State to hang the charges unresolved over the head of the accused.

Obviously it is stressful for activists to have an unresolved political charge hanging over them knowing that there is a chance that they might finally be put on trial. Many of the charges laid against activists carry very severe penalties – up to twenty years in jail without the option of a

fine is possible under one frequently used section of POSA. Having an unresolved case can also be an inhibiting factor when taking part in further democratic activities, as the old case could be revived if there is a further arrest.³⁹ The pending case can also be used as an excuse to take the accused back into custody for further interrogation at any time.

Graph 3: Outcome of all cases

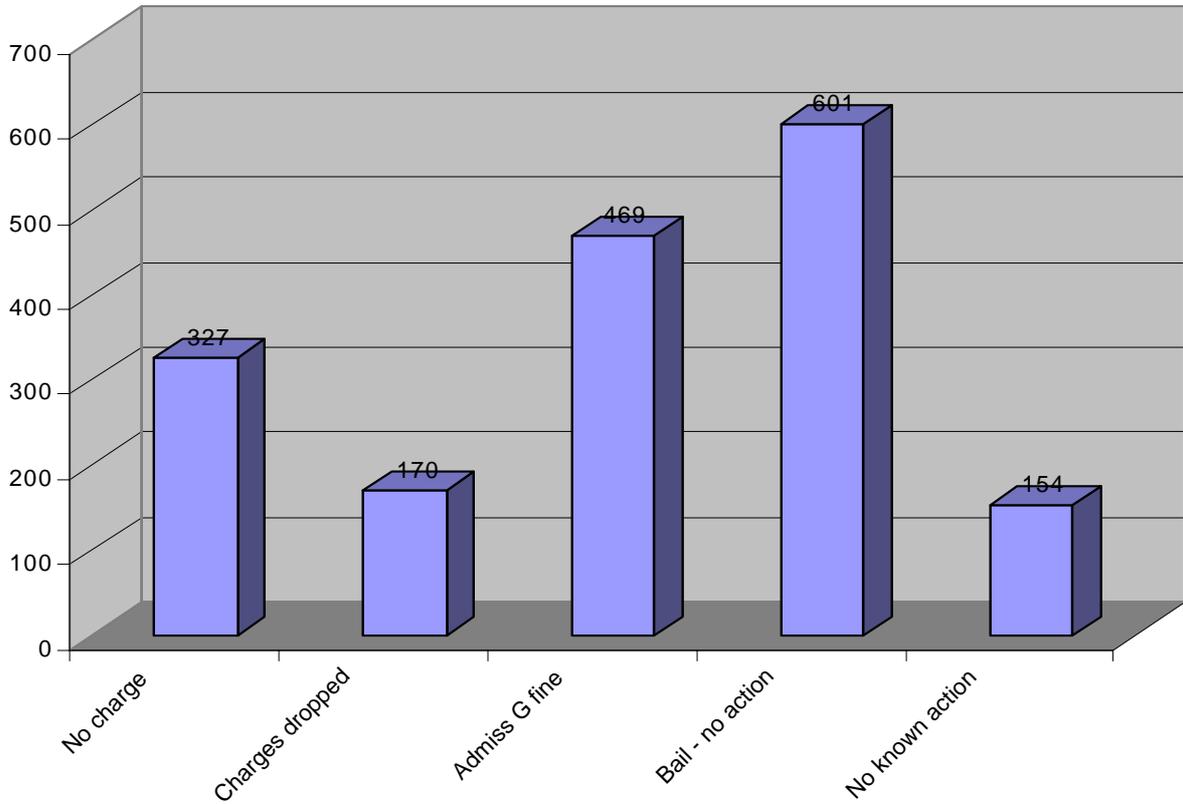


“Reasonable time”

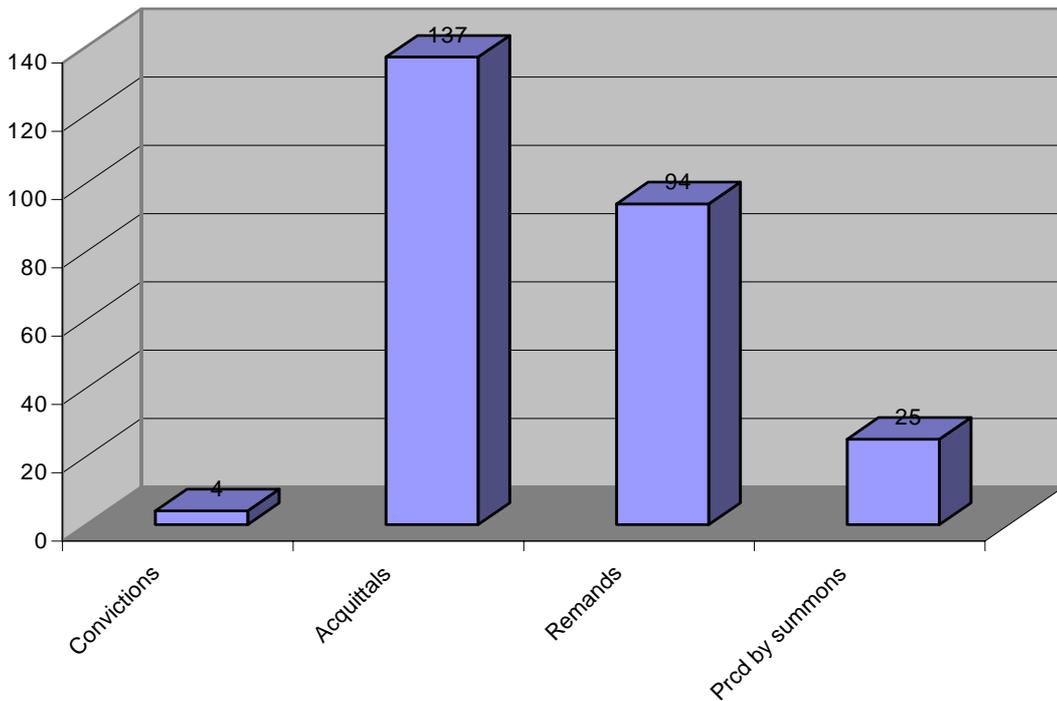
Section 18 of the Constitution states that prosecution of a case must be in “reasonable time”. What this actually means has to be decided by the Supreme Court on a case-by-case basis and depends on the context of each case. In straightforward cases in respect of charges that will attract a light penalty, such as charges under section 17 or 24 of POSA, “a reasonable time” would not be a period of not in excess of a couple of months. When police fail to prepare evidence for a simple case repeatedly, and repeatedly request remand, six months is a reasonable time after which an accused can apply to a court for an order that he be taken off remand. However, where this happens, the State still has the option of proceeding by way of summons and resuscitating a matter many months later. Whilst in theory an accused can apply to the

³⁹ The lack of outcome even years down the line is very typical in the Zimbabwean legal setting. This does not apply only to politically motivated arrests: the entire court system is under resourced and collapsing in line with the general economic collapse. Magistrates in particular are often very inexperienced, are open to bribery and in some instances magistrates or judges can be highly politicised.

Graph 4: Cases in which there has been no trial: 87% of all arrests



Graph 5: Outcome of cases that resulted in a trial: 13% of all arrests



Supreme Court for a dismissal of the charge, this is a very costly and time-consuming exercise and is a remedy available to very few of those affected, unless they have free legal assistance to process their applications.

It is quite clear that “reasonable time” for a trial to take place and to be completed has been exceeded – often deliberately as a form of harassment – in the vast majority of cases under review.

Convictions

A review of the 4 convictions shows that:

- 2 people were found guilty of insulting the President – s 16 of POSA
- 2 people were found guilty of theft.

Out of more than one thousand arrests under POSA analysed in this report, not a single conviction had been obtained by the end of 2005 for those sections of POSA that relate to public order or public gatherings – yet these are the sections most commonly charged.

Conclusion

The police abuse the rights of citizens by routinely arresting them when they have no intention of ever proving a crime in terms of the law. Almost 90% of politically motivated arrests do not result in a trial, and in the few instances when cases go to trial, the State almost inevitably fails to prove its case. Out of the nearly 2,000 cases followed in this report, the State has a conviction rate of 0,2% !

Laws such as POSA are not there to enforce law and order, but to undermine the rights of citizens to freedom of association, expression and movement. During the period under review, it is clear that the police routinely cited POSA, MOA and other statutory provisions in order to clear the streets or pick up activists ahead of planned actions, knowing that they neither needed, nor intended, to prove that the arrestee had committed a crime.

10. Analysis of data on a year-by-year basis: 2003 - 2005

There are two notable, related findings when the database is analysed on a yearly basis.

1. Decrease in number of incidents involving political arrests

Since 2003 there has been a general decrease in numbers of incidents involving political arrests.

- In 2003, there were 178 incidents resulting in a total of 948 political arrests.
- In 2004, the number of incidents *dropped by 68%* to 32% of 2003 figures, with 57 incidents resulting in 268 arrests.
- By 2005, the number of incidents resulting in political arrests had been further reduced to 29% of the 2003 number, with 51 political incidents leading to arrests – and a total of 526 arrests.⁴⁰

⁴⁰ A close analysis of the monthly violence reports of the Forum shows that they recorded 49 incidents involving arrests in 2005, compared to our 51, and close to the same number of total arrestees as we did.

2. General downward trend in number of individuals arrested

If *number of individuals arrested* is analysed, as opposed to *arresting incidents*, this clear downward trend of arrests over time is less obvious, but still visible.

- In 2003: 948 individuals were arrested.
- In 2004: 268 individuals were arrested – a reduction to 28% of 2003 arrests.
- In 2005: 526 individuals were arrested

2005 arrests were almost double the previous year's arrests but only 55% of the number of arrests in 2003. It should nonetheless be noted that 526 political arrests is a substantial number, and shows that the police power of arrest has remained a key weapon of oppression throughout the period under review. It is not surprising that arrests rose in 2005 compared to 2004, considering that there were two national elections during the year, and government repression generally rises strongly during election months. Both the 2000 and 2002 elections involved widespread arrests, torture and intimidation.

However, it could be seen as surprising for precisely this reason, that arrests in 2005 were significantly lower than arrests in 2003, considering that 2003, like 2004, was *not* an election year.

2003: a year of activism

The high number of arrests in 2003 is very directly linked to the staging of several national mass stay aways during this year. In the wake of what was widely regarded as a very unfair Presidential election in 2002, the opposition movement, led by the MDC and the ZCTU, organised protests in early 2003 to voice its dissatisfaction with the way the country was being governed. As living conditions deteriorated and inflation escalated, workers were increasingly desperate. Several major attempts were made during 2003 to put pressure on the government to agree to the need for a new constitution, multi-sector talks and improved living conditions for workers.

There were widespread mass stay aways on 18-19 March and another week-long action from 2-6 June, which became known as the "final push". In April, a three-day stay away called for by the ZCTU was less well supported, and finally in October, the unions demonstrated against high taxation and violations of human rights.

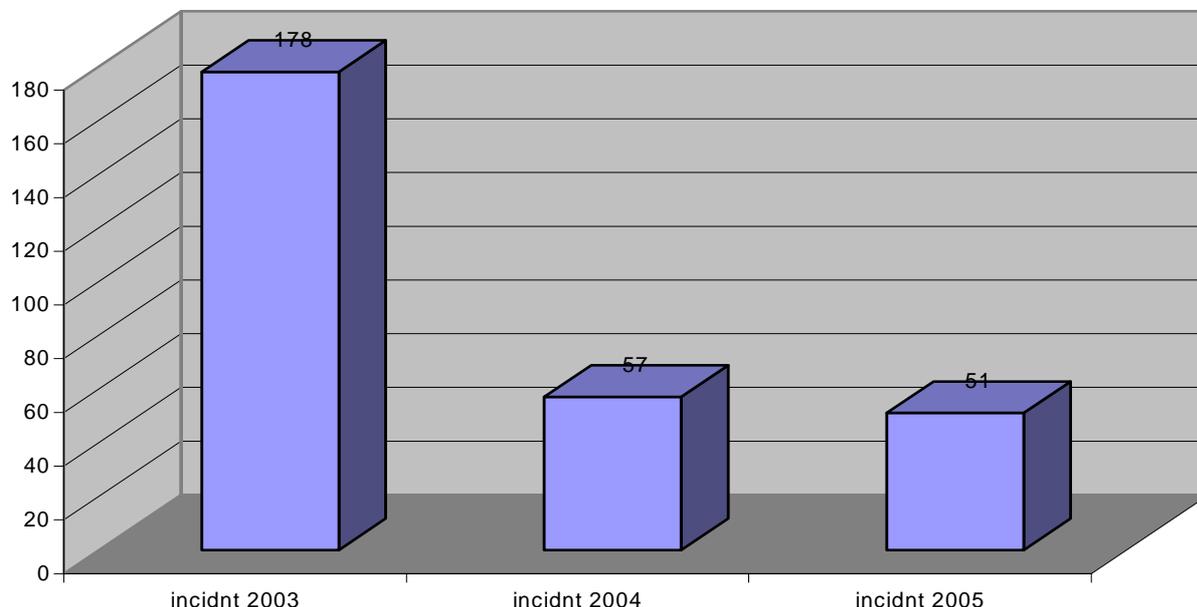
All of these political events resulted in correspondingly vicious State clampdowns, with violence and brutality and also high number of arrests, particularly of POSA arrests. Although the stay aways were very effective, with major centres almost totally closed down, army trucks bristling with guns patrolled the streets and effectively prevented mass street protests. People were arrested and tortured. There was a high number of arrests in Bulawayo at this time, with the persons arrested being charged with contravening s 5 of POSA, which concerns "subverting constitutional government", and carries a twenty year jail term.

2004 and 2005: a lack of political activism

The political activism of 2003 stands in sharp contrast to the drop in levels of activism during 2004, and more surprisingly, during 2005, in view of the elections in this year. The 55% drop in arrests from 2003 to 2005 indicates a pattern of fewer arrests over time among the sort of clientele that this database mainly represents, namely *party political activists*. This in turn

indicates a combination of a decrease in the sorts of activities by the political opposition that has systematically led to widespread arrests in the past; and a partial change in State strategy.

**Graph 6: Total number of incidents of political arrest, all charges:
2003-2005**



2005: two incidents – 69% of arrests

A closer analysis of incidents involving arrests in 2005 shows that two incidents accounted for 69% of the year's total, with a further 49 incidents accounting for the remaining 165 arrests over the year. There is no similar bias towards one or two incidents accounting for most arrests in either 2003 or 2004.

Insiza: in particular, the arrest of 204 women deep in rural Insiza, Matabeleland, pushed the 2005 annual total for arrests up by 60% (from 322 to 526), with an incident that was extraordinary in every way; no similar event has been documented in rural areas before or since. These women sent four representatives to speak to their rural chief to ask why they were not able to access maize. The chief had them arrested for holding an illegal gathering, and a further 200 women went to the police station and demanded to be arrested in solidarity. This large single arrest is atypical of the overall pattern of arrests in Zimbabwe, mainly because of its deep rural nature and also because the women undertook this action in their own right, and not in the name of any political party or civil society organisation. For this reason, the current authors have factored the Insiza arrests out of *some* annual totals, to see what sort of remaining pattern emerges when this one unusual incident is excluded – for example when trying to gauge general ability of the formalised democratic movement to organise resistance. When this exclusion is made it is always fully noted, and it should be assumed the Insiza arrests are included in general totals unless it is clearly stated that they are omitted.

Harare rally: the second major arrest, of 157 people attending a rally in Harare during the run up to the 2005 election, is considered typical of the arrests this database usually documents, even if involving more individuals than most arrests. It is included in all calculations. They were charged under Miscellaneous Offences Act.

Two national elections – and Murambatsvina

2005 not only saw two national elections but also became, in the wake of the parliamentary elections, the year of the worst violations by the State since the massacres of the 1980s. From late May to July, “Operation Murambatsvina”, or “Discarding the Filth”, resulted in countrywide demolitions and a crackdown on informal trading that saw 700,000 people lose their homes or livelihoods, and a further 2,4 million suffering related losses.

Yet there was no organised response from the political opposition or civil society, including the trade unions. The State arrested around 90,000 informal traders during this time as part of their “Murambatsvina” clampdown – but almost no political activists.

It is astonishing that no group mounted protest action against such a widespread onslaught against the urban poor, including large-scale arrests, despite the fact that there would have been substantial public support for this and there had been numerous calls for such action in the independent media.⁴¹ In 2003, nearly 1,000 political arrests were documented. Yet in 2005, around only half this number were arrested, in spite of two elections, and the most widespread attack by this government on its own population in the last two decades. (Excluding the Insiza arrests, one third as many arrests took place in 2005 as in 2003.)

Discussions with lawyers involved in reporting cases to our database confirm this general impression: i.e. this does not seem to be a simple case of under reporting. It was also clear that because of the cumulative effects of state repression on civil society organisations and the MDC, as well as divisions in the political opposition, both were in a weaker position to launch an effective response to unfolding events during the two months or more of demolitions.

Division in the Opposition

During 2004/5 serious internal disputes were beginning to immobilise the MDC. What the database findings illustrate in part, is the increasing challenges to the democratic forces, in particular the MDC and the trade unions in undertaking the sort of activities that would have resulted in State arrests, such as organised protest marches, stay aways, or public meetings on a large scale.

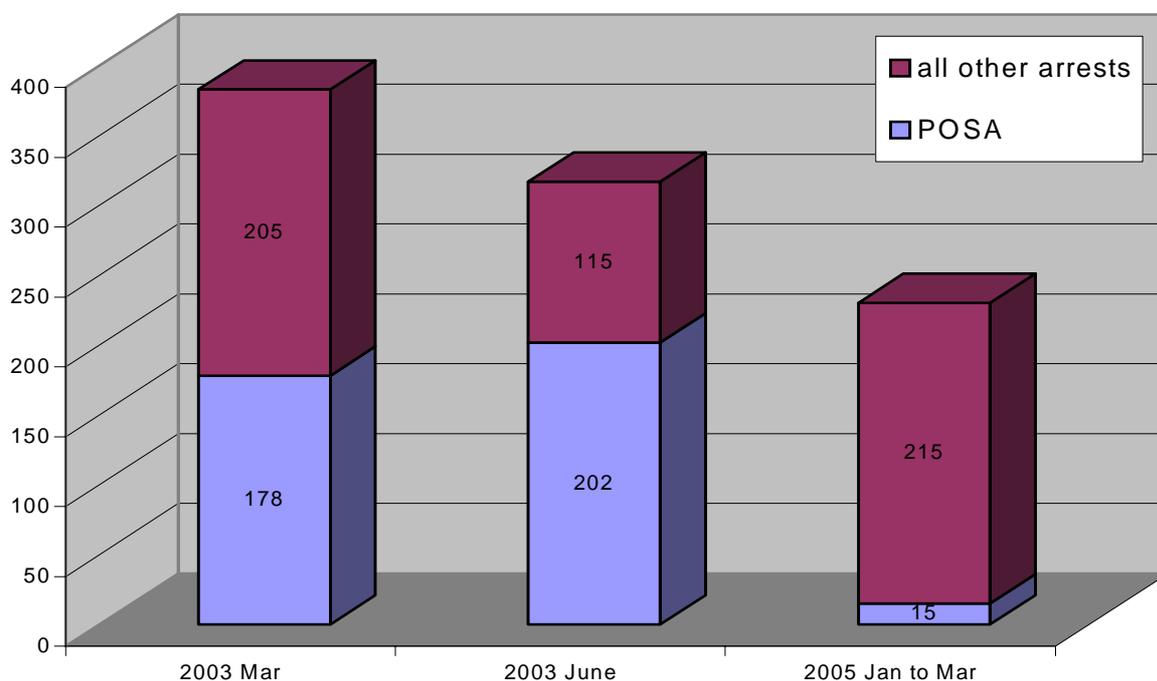
Comparison of key months in 2003 with 2005

The following graph clearly illustrates the high numbers of arrests during the March and June stay aways. During the two five-week periods of 2003 graphed here, there were **three times as many combined arrests**, at 700, than in the twelve week period running up to the parliamentary election of 2005, when only 230 arrests took place!⁴² Furthermore, the arrests in these 2003 mass actions encompassed **26 urban and rural centres, big and small**, spread across all ten provinces of the nation. At no time since have there been such high numbers of arrests spread across the entire country simultaneously.

⁴¹ WOZA undertook a protest march leading to some arrests, but apart from this, nothing was done in terms of street action.

⁴² Our findings for arrests Jan-Mar 2005 coincide closely with those of the Forum: both databases document 15 incidents in total involving arrests during this 3 month period, and the Forum records 157 arrests from these incidents, compared to our 230 arrests. (Incidents recorded are only partly overlapping). The Forum has far less comprehensive records of arrests in 2003 than we seem to have, for the reason that our database seems more likely to pick up a wider range of party-political arrests than theirs, as described earlier in this report. We recorded 62% more arrests in 2003 than they did. Our findings for arrests in the first three months of 2005 also coincide closely with ZLHR who documented 226 arrests, compared to our 230.

Graph 7: POSA arrests and all other political arrests during two mass actions of 2003 and during the parliamentary election period, January to March 2005
(first two columns cover five weeks each, third covers three months)



Comment on arrests in 2006

Although 2006 is outside of the time scope of this report, the authors note that there have been very few arrests during this year of people claiming their primary allegiance is to MDC, as opposed to a civil society grouping. There have been no national mass actions or actions of any kind called for by either of the two MDCs and until September, there was no attempt to stage a national action or stay-away called for by the ZCTU, the MDC's major alliance partner.

On the civil society front, WOZA and the NCA have conducted several protests during 2006. Arrests in February, May, August and September 2006 amounted to a total of more than 500 arrests in these two organisations, with some activists being arrested more than once, with demonstrations taking place only in Harare, Bulawayo and Mutare. In many instances, activists were beaten during and after arrest.⁴³ University students have staged protests linked to fee structures at the beginning of each semester this year, and this has resulted in some arrests, as well as torture of selected student leaders.⁴⁴

In the first eight months of 2006, the trend of reduced party political or trade union resistance to the State and correspondingly low numbers of political activist arrests remains consistent with our findings for 2004-2005. However, waves of civic demonstrations by WOZA, NCA, students and rate payers associations are likely to continue in a few major centres into 2007 and this may well see arrests rising to higher levels than those documented in 2005.

⁴³ HRW, November 2006, op cit, refers to WOZA and NCA actions and arrests during 2006.

⁴⁴ Ibid.

11. Downward trend in arrests: the reasons

i. State strategy: a change

The State strategy of repression changed during the early months of 2005 ahead of the parliamentary election. After the controversy around the 2002 election the State was determined to present hand picked international observers with an election that they could more easily rubber stamp.⁴⁵ The Zimbabwe government had realised that even within the SADC region, there was a growing embarrassment at Zimbabwe's gross human rights violations such as torture. After a fact-finding trip to Zimbabwe in 2003, the Human Rights Commission of the African Union finally released their report in 2004, after much pressure from the Zimbabwean government not to. Among other findings, this report stated that there was systematic torture of the political opposition by the State in Zimbabwe.

Under pressure from the AU and SADC, the Zimbabwean Government signed "the SADC Principles and Guidelines Governing Democratic Elections" in August 2004. In the wake of this, they were aware of the need, nominally at least, to abide by these principles. In the run-up to the election, there were fewer cases of overt torture, for example, and greater freedom of campaigning, although some rallies were still prevented or interfered with. The strategy changed to less obvious but still pervasive forms of oppression.

The pattern of use of POSA is explored in more depth in sections following, but the obvious drop in its use during the 2005 pre-election period could be owing in part to State recognition that it is a bad law in terms of public relations – particularly with international observer teams in the country - and one from which it is very hard to get convictions.

While the 2005 general election was once again accompanied by some violence and blatant repression, there was a consensus that there were fewer gross human rights violations including torture than in 2000 or 2002. People's rights were nonetheless significantly curtailed in other ways:

...ZANU PF won the election in a way that was neither free nor fair, not due to stuffed ballot boxes, but by creating a captive electorate dependent upon the favours of the ruling party and one which was starved of information, free choice and food.⁴⁶

Food as a weapon

The use of food as a political weapon was a major strategy in rural Zimbabwe in early 2005. Allegations of withholding food from those perceived not to support ZANU PF are hard to prove. Unless an impartial witness is actually present during food distribution activities, whether or not this has in fact happened becomes a matter of one group's word against another's. However, the ruling of the High Court judge in the Makoni North election appeal judgment is instructive, in that the judge made a clear finding that there had been political abuse of food in

⁴⁵ In 2002, the Commonwealth Observer team were unable to endorse the election, and the SADC Parliamentary Forum also found the election not free and not fair: the election was also widely condemned by EU nations, Britain and the USA, as well as by Zimbabwean observers. However, other mainly African and Third World observers, including the South Africans, endorsed the election. It was no surprise therefore that in the 2005 election period, the EU, Britain, USA, SADC Parliamentary Forum and any other group perceived to be hostile, were denied accreditation to observe the elections, which were observed primarily by a handful of friendly Third World nations!

⁴⁶ ZHRNGO Forum, *Of stuffed ballots and empty stomachs. Reviewing Zimbabwe's 2005 Parliamentary and Post-election period.* July 2005, Harare.

the constituency, with MDC supporters being denied access to GMB maize.⁴⁷

At one level, therefore, the reduced number of arrests in early 2005 could be seen as a reflection of ZANU PF carefully orchestrating a somewhat more free urban voting environment than in the 2002 election – knowing that a minority of voters live in urban areas, and that a majority of election observers remain in these urban areas; yet in rural areas, a coercive environment was created, not through obvious physical violence but through tactics such as deprivation of food.

Intimidation by the chiefs

Traditional leaders have used their authority to pressurise villagers to vote for the ruling party. These partisan tribal authorities threaten to expel villagers who do not vote for the ruling party or who vote for the opposition. They also regiment villagers at the time of elections in a manner that ensures that they will vote for the ruling party. This misuse of the powers of the traditional leaders was evident at the time of the 2005 elections⁴⁸ and has manifested itself even more strongly in the rural district council elections in 2006⁴⁹.

ii. Effects of State strategy since 2000

The State *seems at times* to be less oppressive because its long-standing policies of ruthless repression have worked so well. The policies of infiltration, torture, threats and use of abusive legislation have had a demoralising effect on the Zimbabwean people, who for the moment appear no longer either willing or able to undertake the sorts of mass actions that typified 2003. Although the 2003 actions were limited in their success, in that they did not result in the intended widespread street protests, opposition forces attempted to make their protests heard in organised ways. The current database reflects how comparatively successful and how widespread these actions were, by tracking how widespread was State reaction! Such organised protests are now seldom attempted on more than a very localised scale, and there are correspondingly fewer arrests.⁵⁰ They are also more likely to be carried out in the name of civil society groups or the unions than in the name of the MDC directly.

iii. Division of organised opposition

Part of the success of the State strategy has been the division of opposition forces, in particular the splitting of the MDC in October 2005. The final split of the MDC had its roots in issues relating to organisational incapacity, accountability of structures, strategic differences and the use of violence to conduct internal political battles. The split over the senate question in October 2005 was the site on which these longer term issues were fought. Three commissions of inquiry into internal politically motivated violence in the MDC show that the party faced internal

⁴⁷ The case in question is *Magoma v Mutasa* Election Petition 12 of 2005.

⁴⁸ ZHRNGO Forum, *Of stuffed ballots and empty stomachs. Reviewing Zimbabwe's 2005 Parliamentary and Post-election period*. July 2005, Harare.

⁴⁹ In October 2006 Chief Charumbira, president of Chiefs' Council and a former junior member of the Mugabe Cabinet, publicly told villagers that they would be expelled from their villages if they did not vote for ZANU PF. He told them that the persons expelled would have nowhere to go because other chiefs across the country had also adopted the same policy of banning supporters of the opposition. He made this threat at a function organised by the United Nations' Food and Agriculture Organisation in rural Masvingo province to mark World Food Day. (Source Zimonline 26 October 2006)

⁵⁰ The NCA and WOZA, for example, continue to mount street marches several times a year, but numbers of activists involved in these valiant efforts do not compare with those involved from 26 different centres across the country in 2003.



Photo 6: June 2001:

Archbishop Pius Ncube leads a “religious procession” on the streets of Bulawayo to commemorate the first anniversary of the forced disappearance of MDC activist Patrick Nabanyama. This procession of over one thousand activists was the last major march of civil society on the streets of Zimbabwe. Religious events are the only public activities for which four days prior notice to the police is NOT required.



Photos 7 and 8:

September 2006: in contrast to the crowd above, Wellington Chibebe (in yellow jersey) heads a march of eleven unionists on the streets of Harare: their march lasted less than two minutes before arrest.



Photo 9: Within five more minutes, police outnumber protestors two to one: they are bundled into a truck, along with an accredited journalist (on left) who is also arrested.



Photos 10 and 11: Policemen take turns beating the arrested unionists through the back door of the truck.

divisions as early as 2001 and that these had become extremely serious by 2004.⁵¹ These divisions have allegedly been fuelled by the State over the years, so that by 2004, the MDC was seriously immobilised by its internal battles. These tensions peaked in the months ahead of the verdict in MDC president Morgan Tsvangirai's treason trial in October 2004; it was anticipated that the State might find him guilty and jail him, and internal splits were exacerbated by this possibility, resulting in violence and disunity within the MDC headquarters.⁵² This helps to explain why 2004 was such a quiet year in terms of major attempts to confront the State - with a correspondingly low number of arrests. While the MDC rallied for a while in early 2005, the loss of the parliamentary elections and the resulting disputes and demoralisation linked to this would lead ultimately to the October split.

The split in the opposition also divided opinion in the civic movement and generated a great deal of despondency. Effectively, the State no longer needed to be as openly repressive as it was before, certainly on a continuous basis – an extended period of state repression, combined with a major split in the MDC has led to a serious demobilisation of opposition and civic forces

A further outcome of the split in the MDC, and the last six years of lived experience under a repressive regime, is that people now have much less faith in the idea that peaceful protests can lead to peaceful change. Moreover the imperative of a daily battle for livelihood survival has created a pervasive atmosphere of demobilised frustration and despair.

iv. The old strategy – still there when necessary

The Government of Zimbabwe has, at the time of writing this report in late 2006, shown that when required, it is still capable of meting out extreme and blatant oppression. The 13th September arrest and brutal torture of 15 trade union activists in Harare indicate that the leopard has not changed its spots: when the State feels threatened it will still react in the old way of extreme force, and as before, those carrying out the torture will be provided with total impunity from the highest office in the land. It is no coincidence that when they were arrested and very systematically tortured, trade union leaders were trying to mobilise the first ZCTU street marches since the split in the opposition. It is also an indication of the tragic loss of momentum in the democratic movement at this time that the arrest of a few score of ZCTU leaders led to the effective end of what should have been a three day action.

The authors have no doubt that if opposition forces start becoming more organised again, they will once more feel the full wrath of the State, and that torture and arrests will once more rise. In fact, during the closing months of 2006, the State has indeed reacted viciously to civil action by the unions and the NCA, meting out beatings and arrests in response to attempts to hold street marches. The beatings were carried out openly in full view of the public in the middle of the City of Harare. The obvious intention was to provide a public display of the fate that awaits protestors to the public. After being beaten, the protestors were then told to run away. A number of other protests have been dealt with in this way. When this happens the police probably believe that it is a more effective deterrent to punish the protestors on the spot in view of the public rather than arresting them, with little chance of being able to obtain convictions, and then disperse them instead of arresting them.

⁵¹ *Report of Commission of Inquiry*, MDC, 7 November 2001; *Commission of Inquiry into disturbances at Party Headquarters*, MDC, 14 December 2004; *Report of the Commission of Inquiry into the disturbances and beatings at Harvest House*, MDC 17 May 2005.

⁵²MDC, December 2004, *ibid*: transcripts of interviews with youth involved with intra party violence reveals huge schisms within the MDC at this time, and a high degree of ethnic division and anti-Ndebele hate speech.

As long as the State feels relatively secure and perceives that the opposition is not a serious threat, gross violations such as torture and political arrests will be sporadic and strategic, to send “reminders”, but as soon as any meaningful challenge is posed, as in 2000, violations will rise correspondingly.



Photo 12: 1st November 2006. Police force NCA members to lie down in Unity Square and then beat them.

12. Use of POSA over time

There has been a clear shift in the use of POSA over the three years under review. In 2003, POSA was the most common ground for arrest, but by 2005, fewer than one third of the incidents involving political arrests resulted in POSA charges (Insiza incident included).

- 2003: 52% of incidents
- 2004: 47% of incidents
- 2005: 31% of incidents

In terms of numbers of individuals arrested under POSA, there has also been a clear falling off over time, if the Insiza arrests are considered separately. The falling off could be attributed to a variety of factors.

- Firstly, as indicated previously, since 2003 there has been a tangible reduction in the sort of opposition activities that lead to POSA arrests, such as mass actions and street marches.
- Furthermore, there was a clear change in policy in the election campaign period in 2005, in that for the first time in five years, there was a brief window within which the MDC was allowed to hold rallies and therefore fewer POSA arrests linked to “illegal” campaigning occurred than might have been predicted.
- Thirdly, there has been a shift particularly in Harare, away from using POSA as the grounds for arrest. For example, 157 people arrested in Harare during the 2005 campaign

period for allegedly attending an unauthorised rally, were charged under the Miscellaneous Offences Act, and not under POSA. WOZA activists staging a Harare public prayer vigil on the night of the election, were also arrested and charged under a section of MOA related to “obstruction of traffic”, and not POSA. Yet these were the sorts of activities that in 2003 resulted in POSA charges.

The findings of the Zimbabwean Lawyers for Human Rights (ZLHR) are in general accordance with our own figures for the years 2003- 2005, although as with the Forum, our database continues to reflect much higher numbers of arrests in 2003. In terms of political arrests, ZLHR document:⁵³

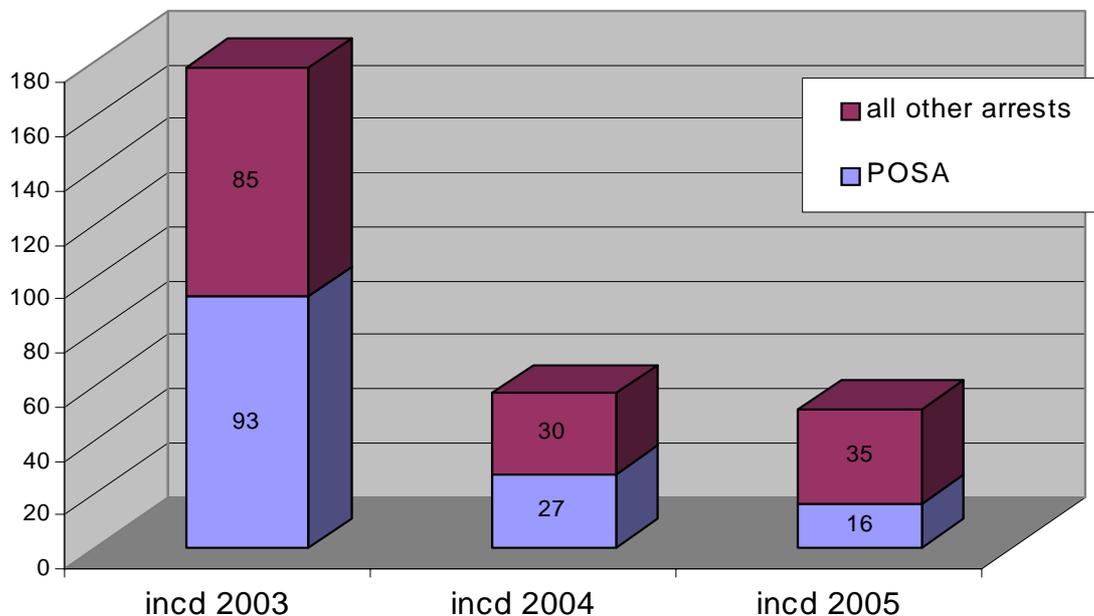
| | | | |
|-------|-------------|------------|------------------------------------|
| 2003: | 638 arrests | whole year | (POSA 274, MOA 332, no charge 132) |
| 2004: | 384 arrests | whole year | (POSA 132, MOA 180, no charge 72) |
| 2005: | 226 arrests | Jan – Mar | (POSA 38, MOA 158, no charge 30) |

ZLHR figures show an even more marked falling off of POSA arrests, than our recorded cases.

| | | |
|-------|-----|--|
| 2003: | 43% | of arrests are POSA |
| 2004: | 34% | of arrests are POSA |
| 2005: | 17% | of arrests are POSA (election period only) |

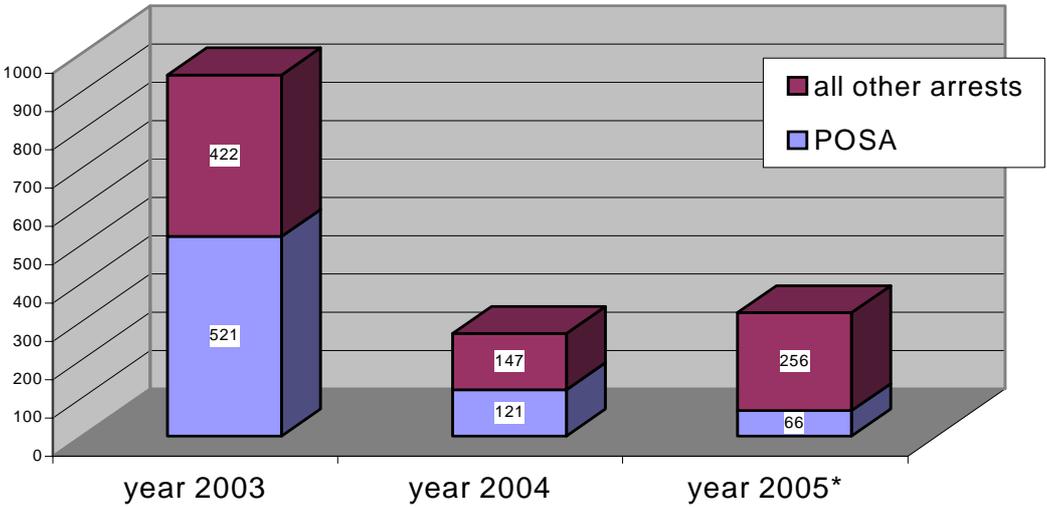
There is a dramatic increase in the number of MOA charges laid over time according to ZLHR records: by 2005, these account for 70% of arrests, compared to the few POSA charges.

Graph 8: Incidents involving POSA arrests compared to all other political arrests: 2003-2005



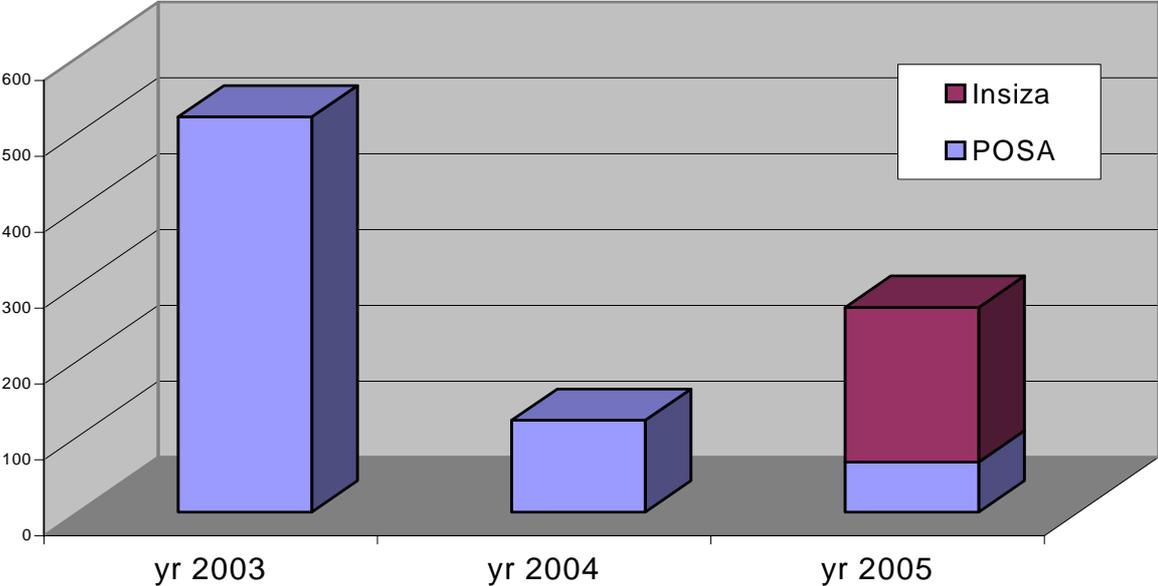
⁵³ Figures here are taken from ZLHR, *Report on the March 2005 Parliamentary Elections*, pages 13 and 21.

Graph 9: POSA arrests compared to all other political arrests nationwide*: 2003-2005

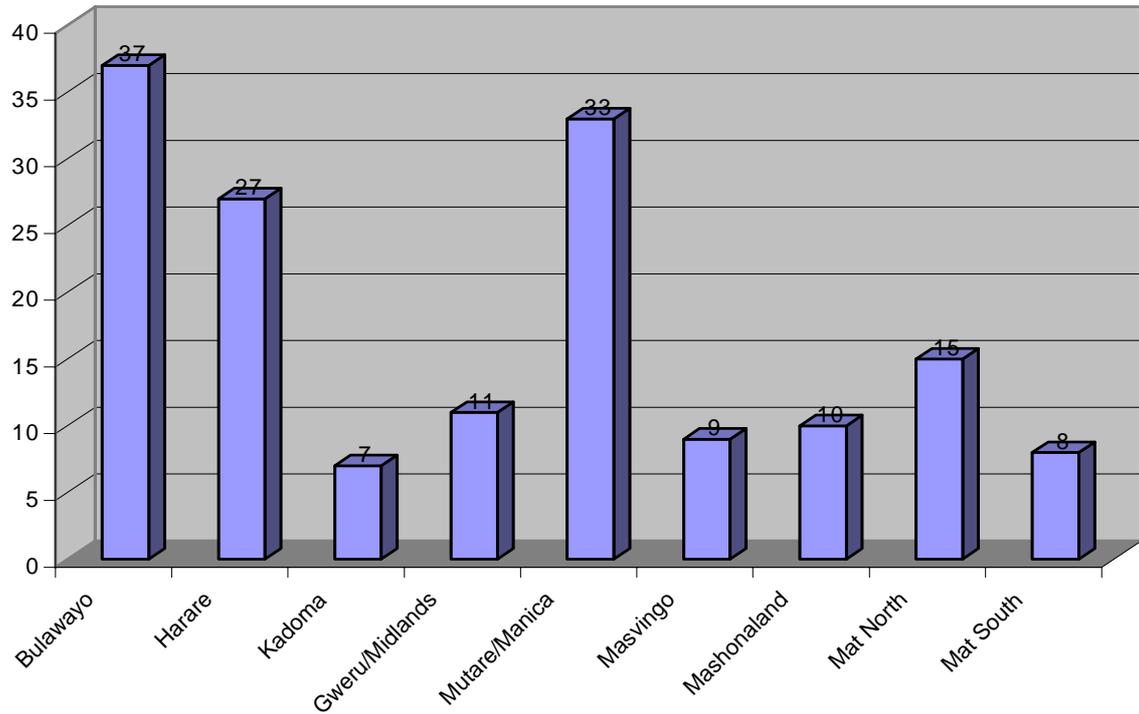


** For reasons of clarifying the trend, the Insiza incident has been left out of the 2005 POSA arrest total. In the following graph, Insiza arrests have been indicated separately, but in the same column as other 2005 POSA arrests to show the total POSA arrests over three years.*

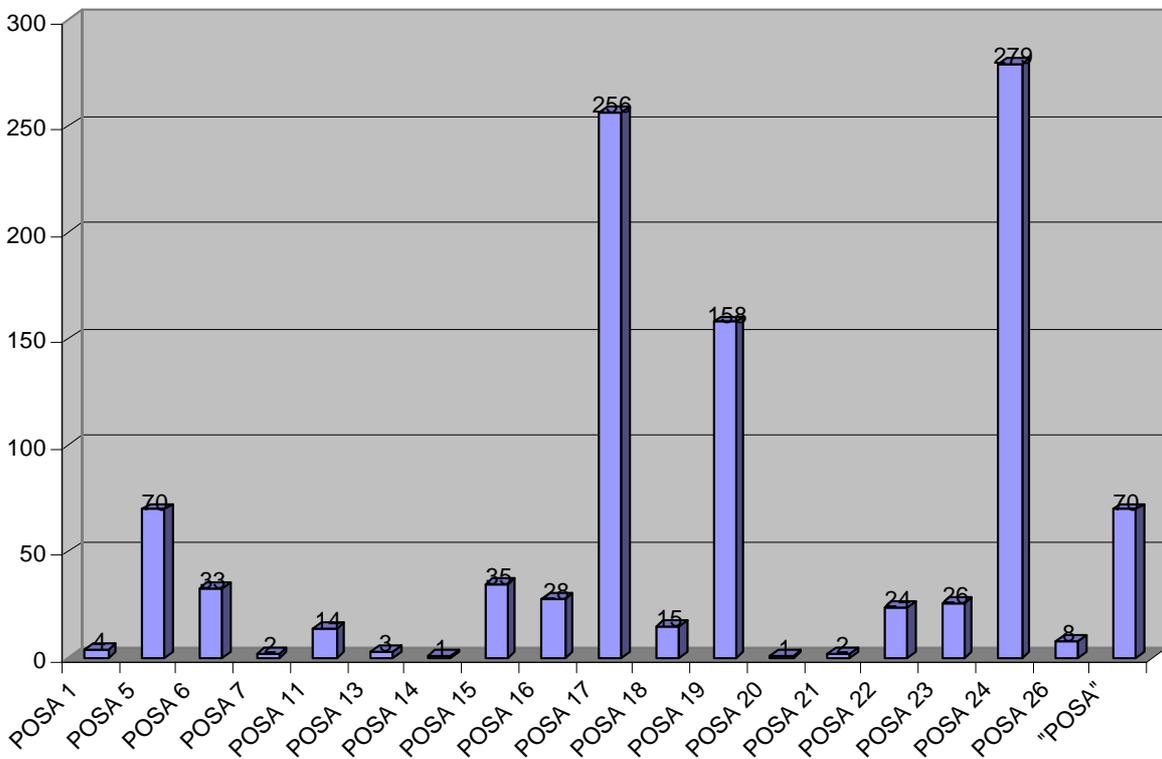
Graph 10: POSA arrests nationwide by year



Graph 11: Number of incidents in which POSA arrests took place, by region: 2000-2005



Graph 12: Total POSA arrests nationwide by section



13. POSA sections most utilised

Across all centres in Zimbabwe, 18 different provisions of POSA out of a possible 27 sections have been used to justify arrest. There were 70 arrests in which a precise section of POSA was not specified on arrest. Furthermore, there were 27 arrests which were made in the name of sections that do not specify any crime - one arrest under section 1 (which is the provision that supplies a short title for the Act) and 26 arrests under section 23 (which simply provides interpretive provisions)!

The only *convictions* our data records are under section 16 of POSA: two people have been found guilty of insulting the President.

POSA is clearly used in an arbitrary fashion to get people off the streets or to shut down something that may or may not be about to happen as far as the State is concerned. The State seldom bothers to pursue these cases in the courts, and when they do, they do not achieve convictions.

The wide variety of sections cited at the time of arrest is an indication of the arbitrariness of the use of POSA: certain policemen in certain police stations seem to favour certain sections of POSA, and at other stations other sections are favoured. This is demonstrated by an analysis of what sections are used more commonly, and where they are used bearing in mind that, by and large, politically inspired arrests take place nationwide in the same general contexts: ie to thwart mass action, public gatherings, rallies, civic meetings, peaceful marches and demonstrations.

POSA unspecified, and interpretative section arrests

The fact that 70 people nationwide were arrested under “POSA – section not specified”, is the clearest example of the fact that police, particularly in small rural centres, know that POSA is what you cite when you undertake political arrests, but they may have no clear idea as to how precisely to apply the act! Sixty out of the 70 “POSA – no section” arrests took place in rural or small town settings, with only 5 each in this category in Bulawayo and Harare. Similarly, the 27 arrests under sections 1 and 23, took place in small centres. These 97 arrests in which meaningless and legally⁵⁴ invalid charges were laid, make up 9% of all POSA arrests, which is a sizeable proportion.

Section 24:

“illegal gatherings”

POSA 24 is one of the most undemocratic and repressive sections of the Act. In terms of it, if “more than one” person are going to meet or stage a demonstration, the organiser must inform the police four days in advance and this requirement of notification applies whether such meetings take place in public or private venues! This rules out the possibility of spontaneous gatherings, This definition gives the police the right to declare virtually any activity an illegal gathering – having a spontaneous conversation on a street corner, or eating with a friend in a public restaurant, or any other sort of meeting of two people, can be declared illegal in terms of this definition. The police have regularly over the years used s 24 (2) (c) which refers to the right to ensure gatherings do not lead to public violence, to effectively ban many public gatherings or rallies by the opposition or civil society, on the grounds that they might infringe

⁵⁴ The failure to cite a specific section is in fact unlawful a person may only be arrested because he or she has committed or is reasonably suspected of having committed a specific crime

the rights of others or result in a disturbance.

With 279 arrests, this section is numerically the most commonly used in the period under review. However, the figure has been dramatically inflated by the fact that the 204 women in rural Insiza who were arrested for appealing to their chief for maize, were all 204 of them charged under POSA 24! This is a patently ridiculous use of this section. The Act makes reference to the fact that only one organiser needs to notify the police, so it is impossible for 204 people to have all been guilty of this offence. In a bizarre judgement, the four organisers were acquitted on the grounds that the court accepted their argument that it was untraditional to have to get permission from the police in order to visit a traditional leader, that it was customary to appeal to one's chief – but the 200 women who besieged the police station after the arrest of their colleagues were all forced to pay admission of guilt fines for violating s 24 of POSA!

If this one incident of arrests is factored out, there were 75 arrests under s 24 of POSA.

Section 24 – constitutional challenge

During 2003, section 24 was challenged in the Supreme Court on the grounds that it was unconstitutional as it undermines the rights of Zimbabweans to freedom of association, expression and movement. However, in a judgement widely perceived to be highly political, Chief Justice Chidyausiku found that s 24 did not violate the constitution.⁵⁵

Section 24 – politically biased application

There have been very few recorded incidents in Zimbabwe in which the organisers of any gathering by any grouping aligned to the Ruling Party, has been charged with violating the requirement to give notice of gatherings to the police. ZANU PF supporters and their affiliates such as youth militia and war veterans, are able to meet and stage demonstrations without any interference by the police, while MDC and other perceived opposition groupings are routinely arrested and charged for holding unauthorised meetings, or have meetings prohibited.⁵⁶

Sections 17 and 19

40% of all arrests were in terms of these two sections.

There were 256 arrests under section 17, which relates to “public violence”. This states:

“Any person who, acting in concert with one or more other persons, forcibly disturbs the peace, security or order of the public or any section of the public; or invades the rights of other people; intending such disturbance or invasion or realising that there is a risk or possibility that such disturbance or invasion may occur...is guilty of an offence”

In most centres, this was the most commonly used section on arrest, with the notable exceptions of *Bulawayo*, where arrests under s 5 of POSA were most common, and Masvingo, where no arrests at all took place under s 17 of POSA. In *Masvingo* s 19 of POSA was routinely used instead. This section relates to “gatherings conducing to riot, disorder or intolerance”, and apart from referring once more to disturbing the peace, it criminalises the performance of any action, utterance or writing that is obscene or threatening or intending to provoke a breach of the peace as criminal. This means that just about any comment in a public place that does not meet official approval could be a crime.

⁵⁵ See *Khuphe v Officer in Charge, Law and Order Section, ZRP Bulawayo Central Station & Ors S-79-2005*.

⁵⁶ As noted earlier, in November 2006, resettled farmers protesting in Masvingo were arrested and charged under POSA 24: this is a rare example of a group who, as beneficiaries of the land reform exercise, would almost certainly vote for the Ruling Party, being arrested under POSA.

In Mutare and Manicaland, both s 17 of POSA (45 arrests) and s 19 (43 arrests) were used extensively – but a person was almost as likely to get arrested under “POSA – section not specified” – this accounted for 40 arrests.

Section 17 and 19 can attract severe sentences with the maximum sentence being up to ten years in jail.

Sections 5 and 11 of POSA

There were 119 arrests under POSA 5 to 11, which are sections that are to do with subversion and terrorism. The penalties are extremely severe, with up to twenty-year jail terms. Since an amendment in February 2004, police have had draconian powers when arresting in terms of sections 5 to 11: any person suspected of being involved in various specified crimes, may be held in custody **for 28 days**, merely on suspicion of an offence, without producing either charge or evidence. No bail application can be considered during this time. The introduction of 28 days without bail, charge, or evidence is one of the most regressive events in Zimbabwe’s history, and is clearly aimed at stifling opposition voices.

Section 5

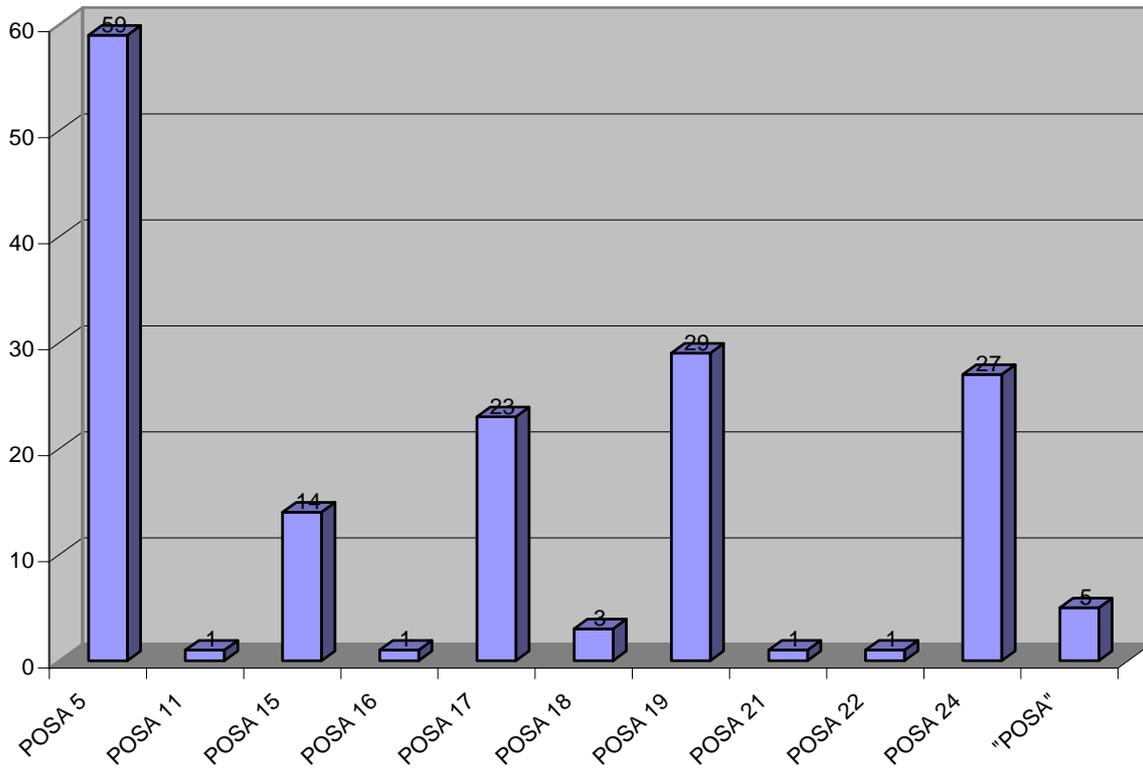
This refers to “Subverting or coercing constitutional government”, and the penalties for a conviction are very severe, with up to 20 years in prison without the option of a fine.

“Coercion” in terms of this section can consist of physical force, violence or the threat thereof. *Significantly, it also includes, if accompanied by physical force or violence, “boycott, civil disobedience or resistance to any law, whether such resistance is active or passive, or threats to apply or employ any of these means.*

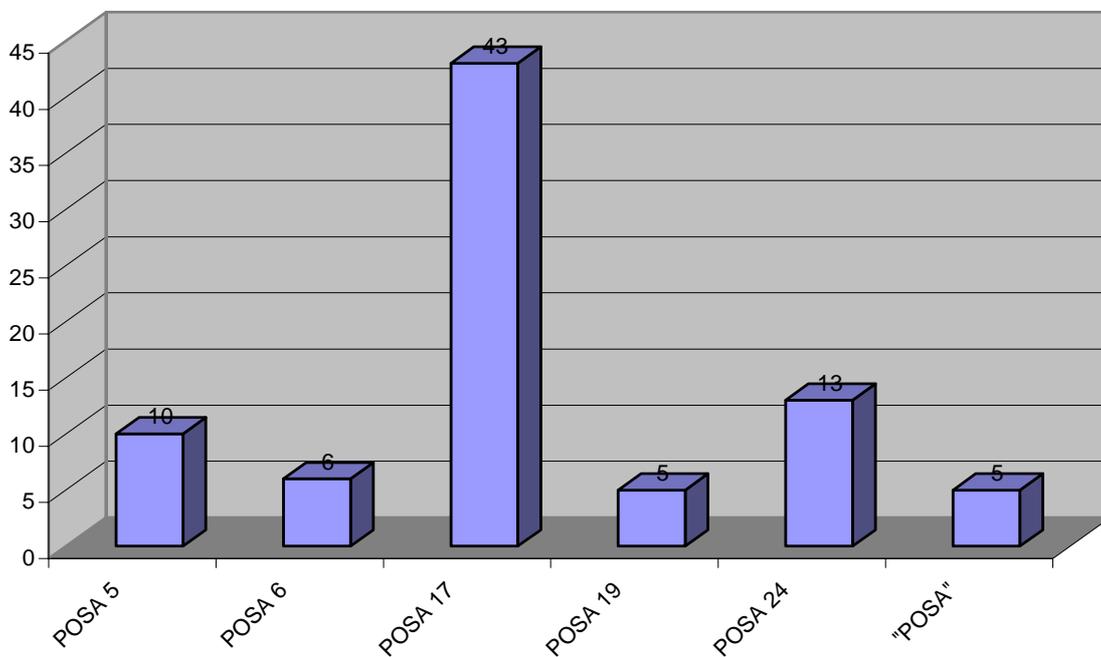
This section outlaws normal democratic activities, such as boycotts, stay-aways and passive resistance to a law if these are accompanied by violence, and declares such activities to be “subverting government” and subject to 20 years in jail without option of a fine. Even to organise such events is illegal. In Bulawayo, where the majority of section 5 arrests have taken place, 5 MDC Members of Parliament, including the Party Spokesperson and Vice President, were charged under section 5 in relation to allegedly being involved in organising the mass stay aways in March or June. Dozens of Trade Union leaders and members of the opposition have been charged with “subverting Government” in terms of this section, although the State has failed to successfully prosecute any of them, and there have been more than a score of acquittals on this charge, including of all the MPs who were so charged..

In Bulawayo, the most common arresting section of POSA is section 5, with 59 arrests (36% of all Bulawayo POSA arrests) under this charge. POSA arrests also took place in Harare under this section and one in Matabeleland South.

Graph 13: Bulawayo: total POSA arrests by section



Graph 14: Harare: total POSA arrests by section



For graphs of POSA arrests by section, all other areas of Zimbabwe, see appendices.

Sections 6 to 11

These relate to saboteurs, terrorists and bandits, and include references to training, harbouring, supplying with weapons, as well as undertaking acts of sabotage, terrorism or banditry. There have been 49 charges laid under these 6 sections:

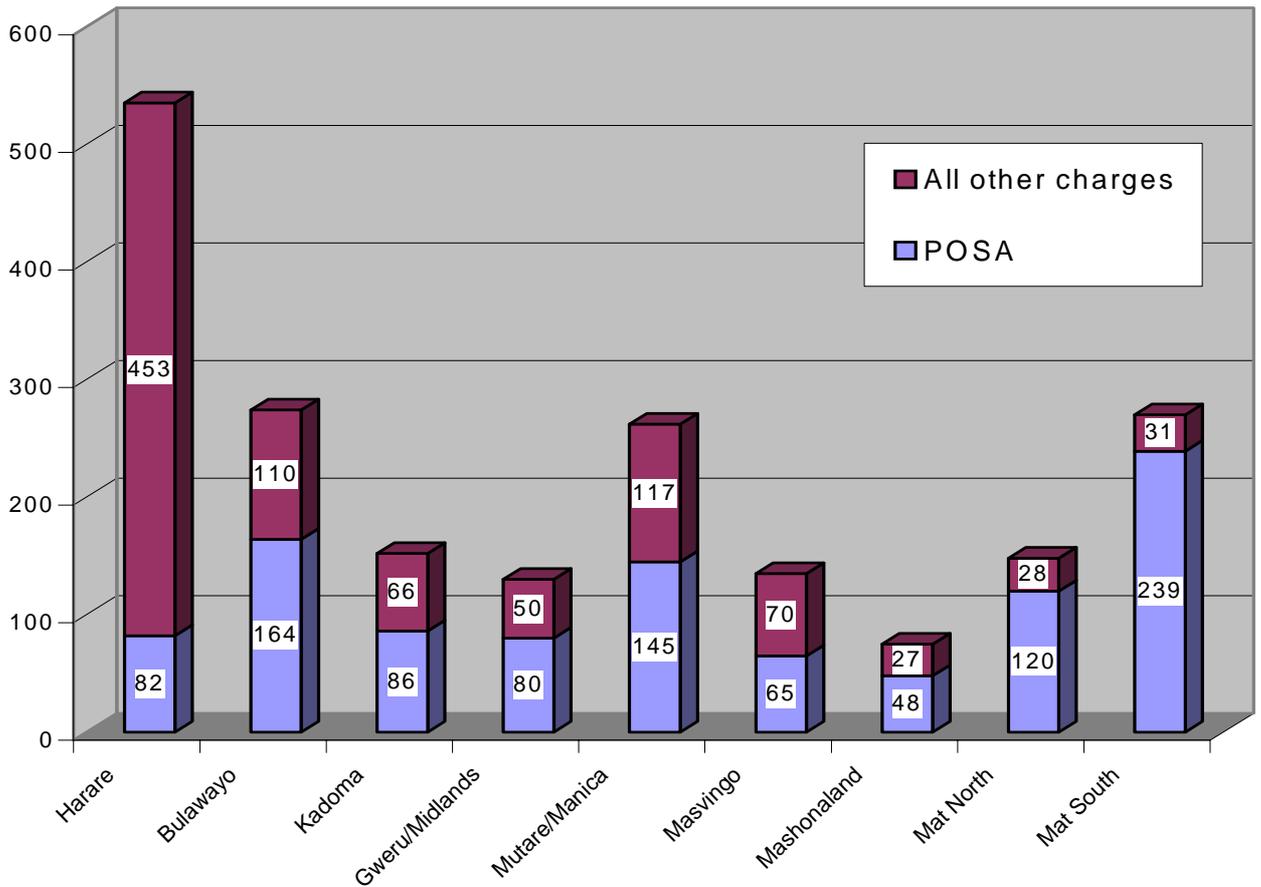
Section 6 of POSA: 33 Section 7 of POSA : 2 Section 11 of POSA : 14

27 people were charged in Kadoma under section 6 , with six such charges in Harare. This section outlaws acts of “insurgency, banditry, sabotage and terrorism”.

S 7 of POSA relates to “recruiting for training of insurgents, bandits, saboteurs, terrorists”. Two people were charged in Kadoma under section 7 in relation to the same incident in which 27 people were charged under section 6. This involved alleged acts of violent sabotage by MDC youth during the mass actions and Kadoma by-election of 2003, in which ZANU PF tuck shops were damaged.

Bulawayo (1), Matabeleland North (5), Mutare (1), Masvingo (3) and Gweru (4) have all charged people under section 11. This relates to “harbouring or failing to report insurgents, bandits, saboteurs.”

Graph 15: Total POSA charges compared to total of all other political charges: by region



14. Regional differences in frequency of POSA arrests

Harare: lowest proportion of POSA arrests

In Harare, *POSA charges were laid on individuals in only 15% of all cases of political arrest that lawyers reported*. Harare had fewer individuals arrested under POSA than most other regions – yet it has by far the highest number of political arrests nationwide.

In every other centre in Zimbabwe, POSA arrests were the most numerous, apart from a near-even split in Masvingo. POSA was most likely to be used on arrest in Bulawayo, followed by Mutare.

It is not clear why there have been comparatively fewer POSA arrests in Harare than in other centres in Zimbabwe, although discussions with lawyers have brought forward some ideas. Lawyers who have had to work directly with the police in dealing with political arrests, acknowledge that POSA has a bad reputation with some police, who know that POSA cases are hard to achieve convictions on – as the record shows!

There has also been extensive writing and public lobbying on the unconstitutionality of certain POSA sections, which clearly infringe the enshrined rights to freedoms of association, expression and movement. The State including the police force is not ignorant of this, and in Harare, where police may be assumed to be closer to the heart of the government, and to the criticism of it, there may be an uneasiness about arresting under POSA as a result. There may be less awareness about the intense controversy that has developed around POSA over time in smaller centres around the country – although there has been a clear dropping off of all POSA arrests across the entire nation over three years, as previous graphs highlight.

ZLHR note in their “Report on the March 2005 Parliamentary Elections” that there has been a reduction in use of formal charges in relation to political arrests because:

“... lawyers have been deployed with increasing frequency and speed to situations of arrest of human rights defenders. This has caused pressure to be brought to bear on law enforcement officials. They are more likely to scrutinise their actions and release people without charge rather than charge them in the presence of a lawyer who will query the legitimacy of the charges they intend to confer.”⁵⁷

Certain judges, prosecutors and police are undoubtedly aware that as soon as there are convictions under certain sections of POSA, there are likely to be constitutional challenges immediately following, and they would want to avoid this process. Therefore these factors may collectively, either implicitly or explicitly, be discouraging POSA arrests – again Harare is at the centre of such awareness. Lawyers anecdotally report that they have witnessed irritation being expressed by prosecutors towards police when they are presented with POSA cases to prosecute in the courts. These cases are often dismissed on lack of evidence before proceeding.

As this report shows, the process of arresting activists is not necessarily about achieving convictions, but rather about smashing any political resistance, by preventing a particular march or meeting on a particular day, so it is preferable to arrest on some pretext that will not give (as much) fuel to those who criticise the State.

⁵⁷ ZLHR, *Report on the March 2005 Parliamentary Elections*, page 21. HRW, November 2006, *op cit*, cite examples of Harare arrests where police hold activists for several days and then release without charge.

15. Criminal Law (Codification and Reform) Act: (Criminal Code)

The drop off in POSA arrests could be seen in some ways as a successful outcome for those human rights groups who have advocated its repeal tirelessly since it was instituted! It seems that the State may be to a certain degree avoiding POSA arrests because of the bad name that is now inextricably attached to this statute. However, this does not mean that unreasonable political arrests will not continue. As this report has illustrated, hundreds of politically motivated arrests have taken place under Acts other than POSA over the last three years, particularly in Harare.

Furthermore, much of POSA has already been rehashed and reintroduced within the body of the Criminal Law (Codification and Reform) Act ("the Criminal Law Code), This came into effect in July 2006.

After the Criminal Law Code came into operation the police were obliged to charge all former POSA offences now contained in the Code under the Code itself. For example, the trade unionists arrested and tortured in September 2006 were charged under the Criminal Code and not under POSA. Several incidents resulting in WOZA arrests in 2006 have also resulted in Criminal Code charges.

The introduction of one Act that consolidates a wide range of criminal offences is generally perceived to be a good development by lawyers interviewed, even a development that has been long overdue in Zimbabwe. The new Criminal Code is a very wide ranging Act that encompasses criminal activities that variously include everything from: *crimes against the person* - including unlawful termination of pregnancy; sexual crimes and crimes against morality; crimes involving bodily injury; homicide; bigamy; witchcraft and witch-finding; also *property crimes* – including theft, trespass, fraud etc, as well as many other common crimes previously encompassed by a variety of other statutes and by Roman Dutch Law in Zimbabwe.

However, there are offences in the Code that continue to make criminal activities that in most countries would be considered legitimate democratic activities, such as legitimate opposition and the rights to freedom of association, expression and movement. This makes lobbying against the relevant parts of the Criminal Code, a more difficult task. It is possible to demand "the repeal of POSA", as almost the entire Act is clearly aimed at the repression of democratic freedoms, but it is much more cumbersome to call for the repeal of the Criminal Code chapters III and IV, particularly as not all sections of these chapters are obviously targeting democratic activities.⁵⁸ One really needs to specify sections when criticising the new Act.

The provisions relating to public gatherings remain in the residual POSA Act. The Criminal Code was drafted with the intention of amending or repealing (among others) three of the Acts under which political arrests have most commonly taken place:

- It amends the Public Order and Security Act;
- It repeals the Miscellaneous Offences Act and incorporates its provisions into the Code;
- It amends the Criminal Procedure and Evidence Act.

⁵⁸ For example, apart from dealing with "public violence" chapter IV of the Criminal Code includes sections dealing with obstruction of traffic, which could or could not be politically applied, and "dealing in or possession of prohibited knives", which most nations would agree is a legitimate issue to legislate with regard to!

Comparison of POSA and Criminal Code

Chapters III and IV of the Criminal Code are close to verbatim versions of POSA Parts II and III. POSA sections 5 to 19 are encompassed almost in their entirety in the Code, as are sections 30 and 31.

Chapter III of the Criminal Code is entitled “Crimes against the State”, and corresponds almost exactly to POSA Part II, entitled “Offences against Constitutional Government and Public Security” which encompasses sections 5 to 16 of POSA.

Chapter IV of Criminal Code is entitled “Crimes Against Public Order” and includes those sections in POSA Part III, “Offences against Public Order”. However, this chapter of the Criminal Code is more wide-ranging and also includes offences that are less clearly aimed at political actions, such as Sections 39, 40, 43 that deal with possession of prohibited knives, possession of articles for criminal use, and possession of offensive weapons at public gatherings respectively. One could anticipate that most nations have sections in Acts similar to these and that they could be applied in a variety of non-political contexts, such as pop concerts.

Section 24 of POSA

This section that deals with control of public gatherings remains in POSA and has not been incorporated into the Criminal Law Code.

16. Conclusion

The current State oppression is part of a long national history of political violence and impunity in Zimbabwe, which was established under colonialism. Unjust laws combined with State violence have been central to maintaining power for all governments over the last one hundred years. Since Independence in 1980, the levels and tools of oppression have changed over time.

In the 1980S ZAPU was ruthlessly destroyed using a combination of massacres and beatings in rural areas, the use of extra judicial detentions and disappearances, as well as the laying of false charges against the leadership. During the 1990s, the era of economic structural adjustment was accompanied by the growth of political liberalisation. This period was characterised by both the growth and coalescence of the civic movement. For the first time in the post-colonial period the Zimbabwean state was confronted with a broad array of civic groups calling for greater state accountability. Significantly, the State was fairly tolerant both of the unions at this stage, and of the rise of the student movement, and peaceful protest was possible. However, the limits of this tolerance were well illustrated when 20 people were shot dead and many were injured during the food riots of 1999.

Since the formation of the MDC, the State has responded in a predictably repressive way. In the wake of the referendum defeat in February 2000, with a national election only months away, the ruling party reorganised the various arms of the state. It intensified the use of violence as a political tool, and closed down the spaces for democratic debate and public participation.

The growing political repression has sapped the energies of both the opposition and the civic movement. The nadir of this decline was reached in late 2005 when a split emerged in the MDC, over questions of constitutional accountability, organisational instability, violence within the

party and the loss of adherence to the values on which the party was established. The events that led to this division in the MDC also indicated the general deterioration of the political culture in Zimbabwe, and the dangers of opposition politics replicating the more destructive features of ruling party politics.

This relentless political repression has occurred in the context of devastating structural violence: the rapid deterioration of the country's economy that has been endured by Zimbabweans has resulted in the political demobilisation of the population, draining people of the will to engage in protest action and forcing them instead to concentrate on individualised survival strategies. Additionally, as millions have left the country, the survival of households has depended on the straddled existence of economic exiles and cross-border traders.

Over the last 26 years, the forms of legislation used to repress dissent have mutated from the use of the colonial LOMA, to the use of POSA and AIPPA, as well as by amendments to other statutes and to the constitution itself.

Over the years, POSA has been less frequently used as grounds for arrest, and it is likely that this downward trend will continue unless the ruling party is again confronted by a serious threat to its hegemony. POSA has been successfully labelled as contentious by lobbyists and has been shown to a difficult law from which to gain convictions. However, POSA is no longer needed by the state as it has been incorporated into the recently passed omnibus Criminal Code. This has replaced or amended a host of pre-existing statutes. This includes POSA, with most of the important POSA offences having been placed intact within chapters III and IV of the Criminal Code. The only important offences not now in the Code are those relating to the control of meetings and gatherings.

During 2005, the country witnessed a deeply divided opposition, weakened by the violence and repressive politics of the state, and unable to launch a renewed bid for political power. This was reflected in a reduced numbers of incidents leading to arrests, as direct challenges to the state became less frequent, and involving only a few score of protestors. Whereas in the 1990s it was possible to mass thousands of people on the streets for peaceful marches, state reaction to any such attempts is now swift and vicious. The September 2006 attempt by the ZCTU to march on the streets of Harare lasted less than two minutes, and the few activists who took part were brutally tortured.

During 2006, WOZA and the NCA have staged frequent small, unannounced marches, which has seen the number of civic activist arrests rising. It is likely that in 2007 these protests will continue and that numerous arrests and detentions, mainly of civic group members in Harare and Bulawayo, will take place. However, the possibility of using a truly nationwide mass action strategy to confront the Mugabe regime will not be possible without a serious reorganisation of the political opposition, and coordination between the political opposition and civic groups. One-dimensional forms of struggle will not suffice effectively to confront Zimbabwe's ruling party. Protest strategy will have to be combined with broader strategies, including more effective electoral battles, and lobbying strategies that are more clearly articulated at regional and international levels.

APPENDICES

1. **Public Order and Security Act (POSA) – with cross reference to Criminal Law (Codification and Reform) Act**
2. **Graphs showing POSA arrests by section: smaller centres and rural areas**

APPENDIX ONE

Public Order and Security Act (POSA) – with cross reference to Criminal Law (Codification and Reform) Act

POSA is divided by the Act into:

Preliminary - first four sections involve interpretation etc.

“Offences against constitutional government and public security” – sections 5-16

“Offences against public order – sections 17-22

“Public gatherings” – sections 23 – 31

“Enforcement and preservation of public order and security” 32-35

In the outline of each section below, those sections under which people have been charged during 2002-2005 are asterisked *

On the right hand side of the page, the equivalent Criminal Code section is listed opposite the original POSA section for the same offence.

POSA -PART II

Criminal Code – Chapter III⁵⁹

“Offences against Constitutional Government and Public Security”

“Crimes against the State”

| | POSA | Criminal Code |
|---|---------|---------------|
| • Subverting constitutional government | (5) * | (22) |
| • Insurgency, banditry, sabotage and terrorism | (6) * | (23) |
| • Recruiting for training of insurgents, bandits, saboteurs, terrorists | (7) * | (24) |
| • Training of “ “ “ | (8) | (25) |
| • Supplying weaponry to “ “ “ | (9) | (26) |
| • Possessing weaponry for “ “ “ | (10) | (27) |
| • Harboursing or failing to report “ “ “ | (11) * | (29) |
| • Causing disaffection among Police Force or Defence Forces | (12) | (30) |
| • Possession of dangerous weapons | (13) * | (28) |
| • Temporary prohibition of all weapons | (14) * | |
| • Publishing or communicating false statements prejudicial to the State | (15)* | (31) |
| • Undermining authority or insulting President | (16) *. | (33) |

⁵⁹ Only section 14, “temporary prohibition of possession of certain weapons within particular police districts”, is not covered by the Criminal Code. A new section in Criminal Code III, makes it illegal for the general public to own or wear camouflage items in public – section 32.

POSA – PART III

“Offences against Public Order”

Criminal Code Chapter IV

“Crimes against Public Order”

| | POSA | Criminal Code |
|---|-------|---------------|
| • Public violence | (17)* | (36) |
| • Throwing articles at persons, motor vehicles etc | (18)* | (38) |
| • Gatherings conducing to riot, disorder or intolerance | (19)* | (37) |
| • Assaulting or resisting peace officer | (20)* | |
| • Undermining of police authority | (21)* | |
| • Intimidation | (22)* | |

POSA – PART IV ⁶⁰

“Public Gatherings”

Criminal Code – Chapter IV

“Crimes against Public Order”

| | POSA | Criminal code |
|--|------------|---------------|
| • Interpretation in Part IV | (23) * (!) | (35) |
| • Organiser to notify regulating authority of intention to hold public gathering | (24) * | |
| • Regulation of public gatherings | (25) | |
| • Prohibition of public gatherings to avoid public disorder | (26)* | |
| • Temporary prohibition of holding of public gatherings within particular police districts | (27) | |
| • Civil liability in certain circumstances of organiser of public gathering | (28) | |
| • Dispersal of unlawful public gatherings | (29) | |
| • Prohibition of offensive weapons at public gatherings | (30) | (43) |
| • Disrupting public gatherings | (31) | (44) |

POSA PART V⁶¹

“Enforcement and preservation of public order and security” 32-35

| | | |
|---|------|--|
| • Persons to carry identity documents | (32) | |
| • Cordon and search | (33) | |
| • Powers of stopping and searching | (34) | |
| • Powers of police officers in relation to aircraft, aerodromes and airstrips | (35) | |

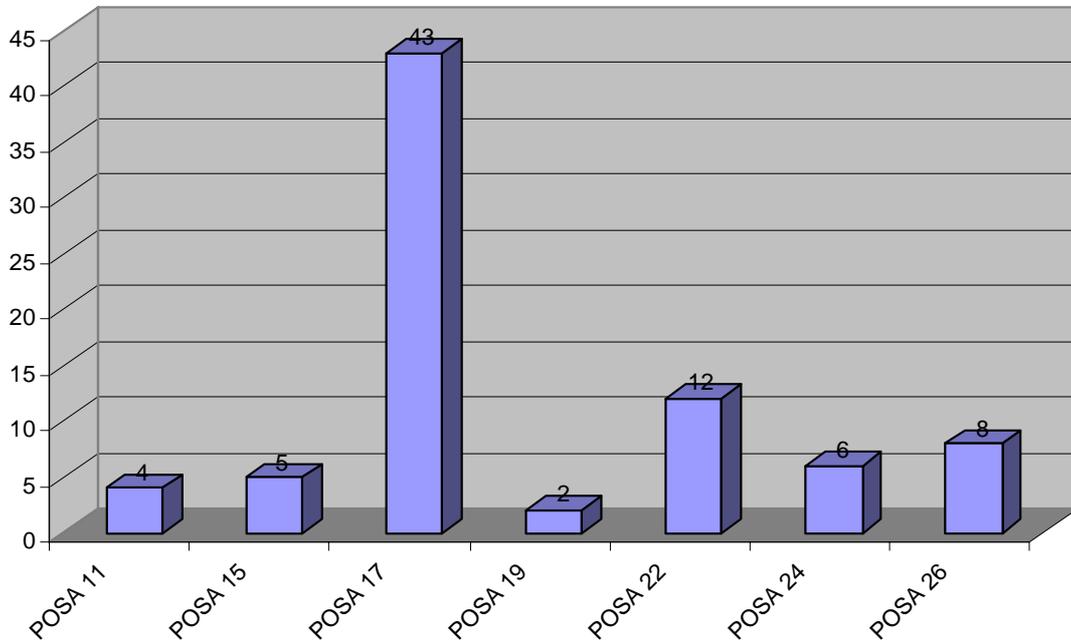
⁶⁰ All sections relating to notification of public meetings, responsibility of organisers etc have not been incorporated into the Code.

⁶¹ There are no sections in chapters III and IV of the Criminal Code that correspond to Part V of POSA. However, no arrests under these sections of POSA have been reported in the current period in any case.

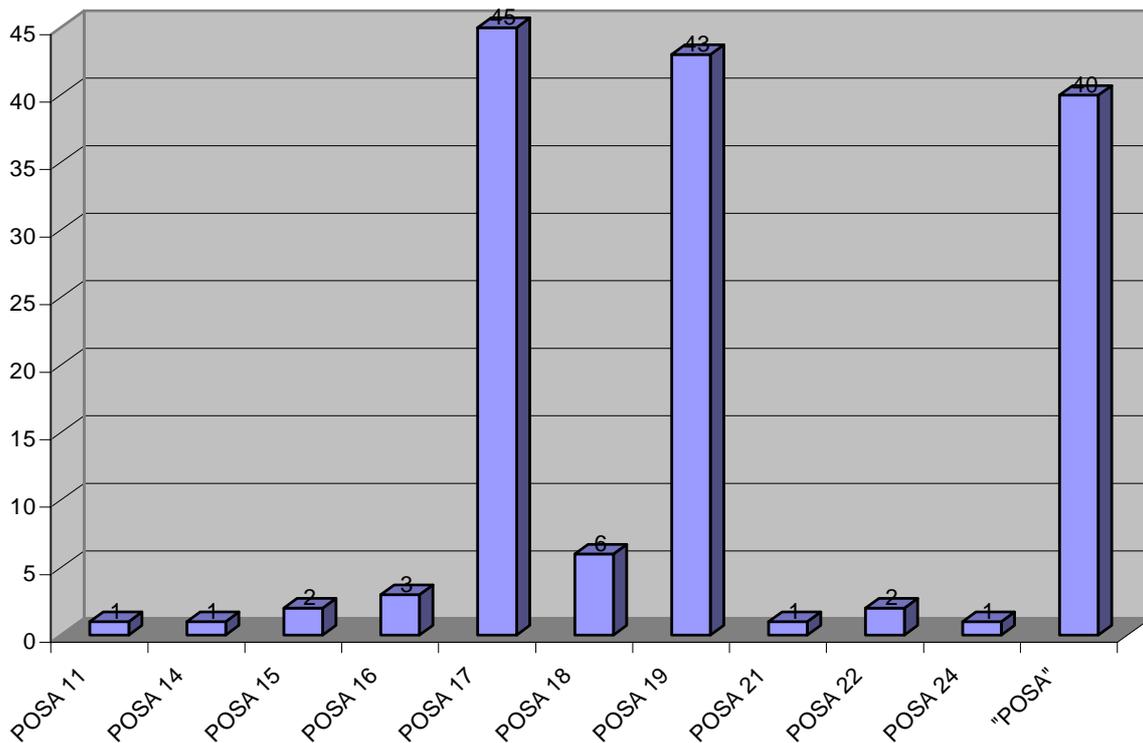
APPENDIX TWO

Graphs showing POSA arrests by section: smaller centres and rural areas

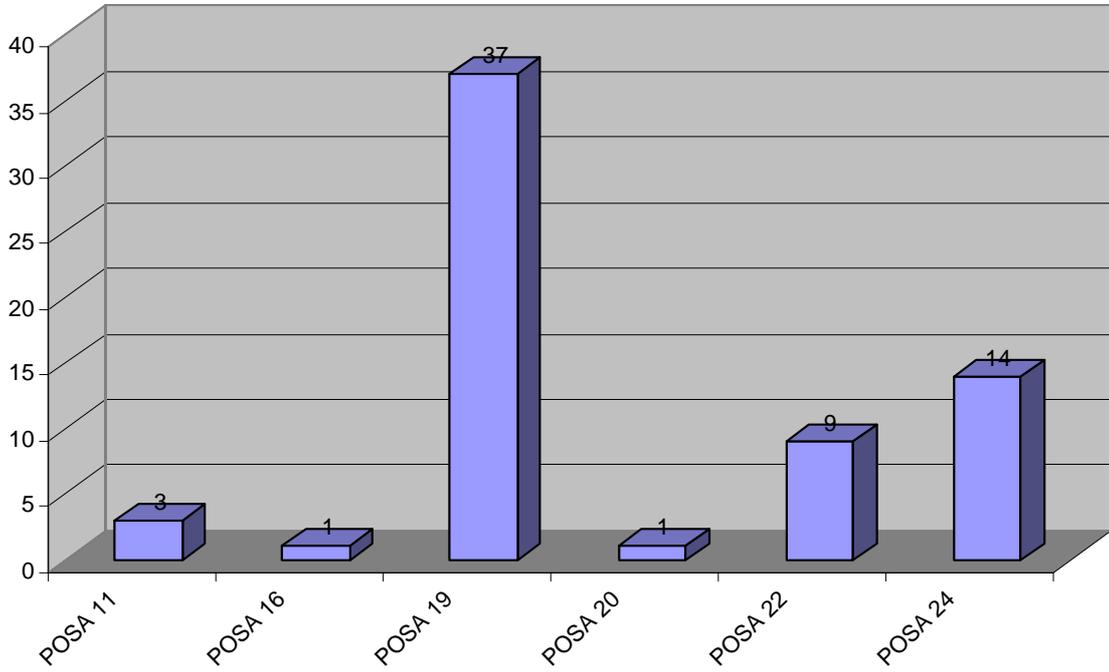
Graph 16: Gweru and Midlands: total POSA arrests by section



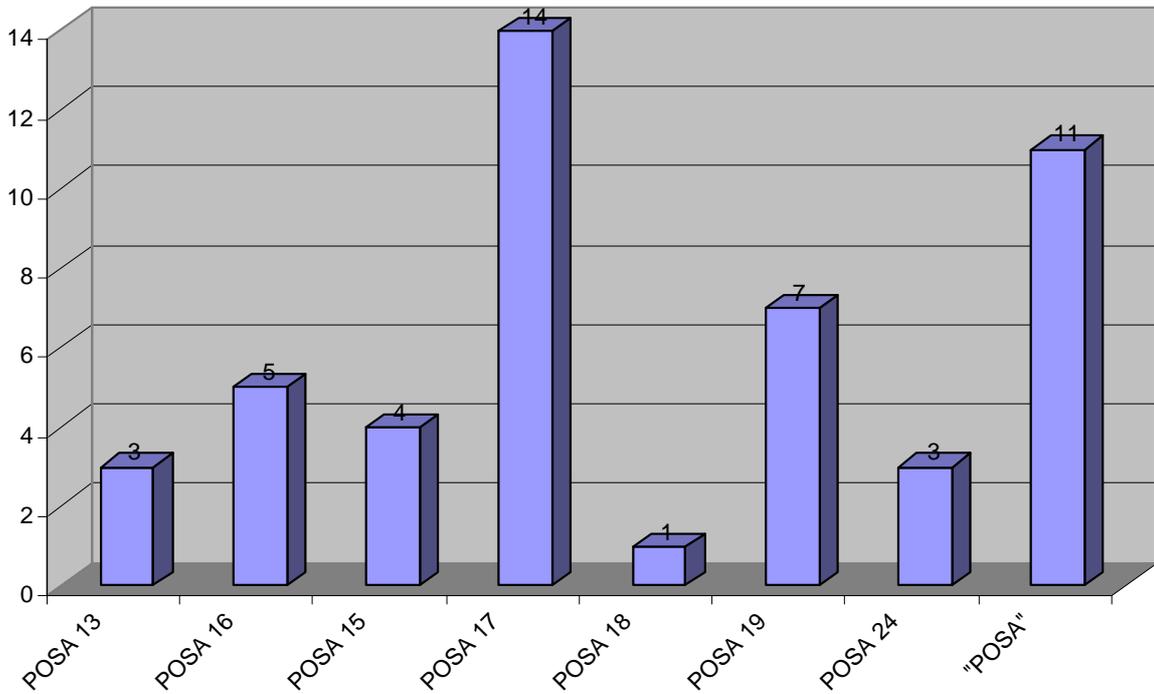
Graph 17: Mutare and Manicaland: total POSA arrests by section



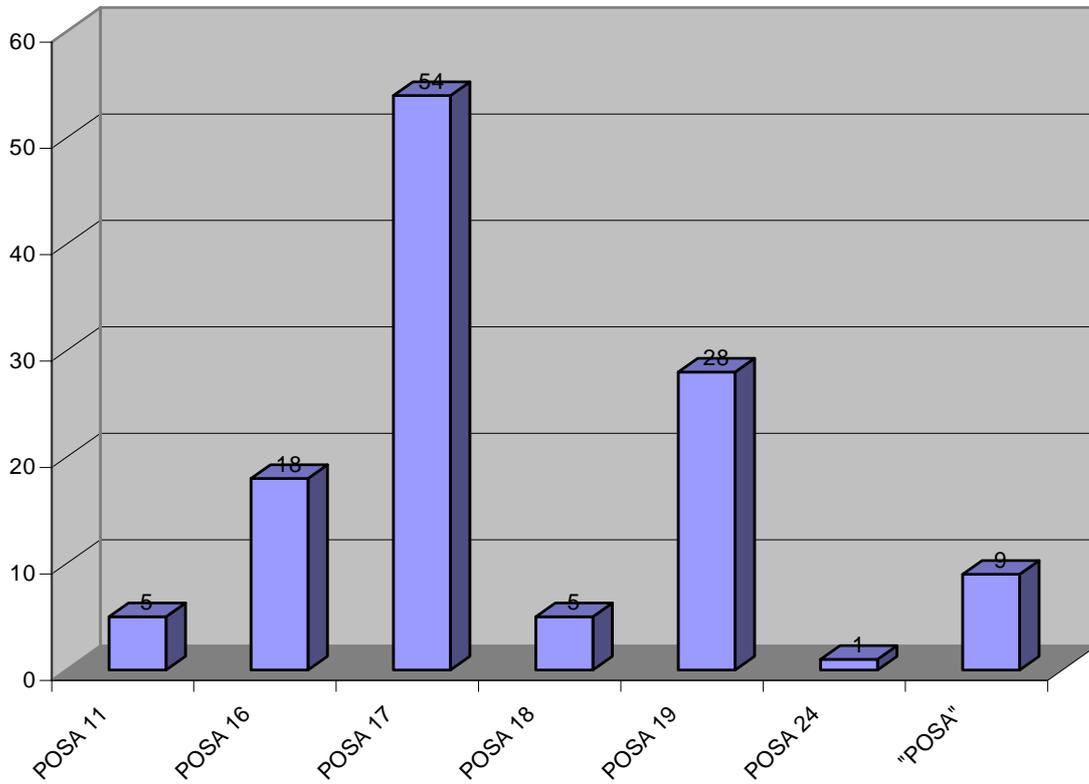
Graph 18: Masvingo: total POSA arrests by section



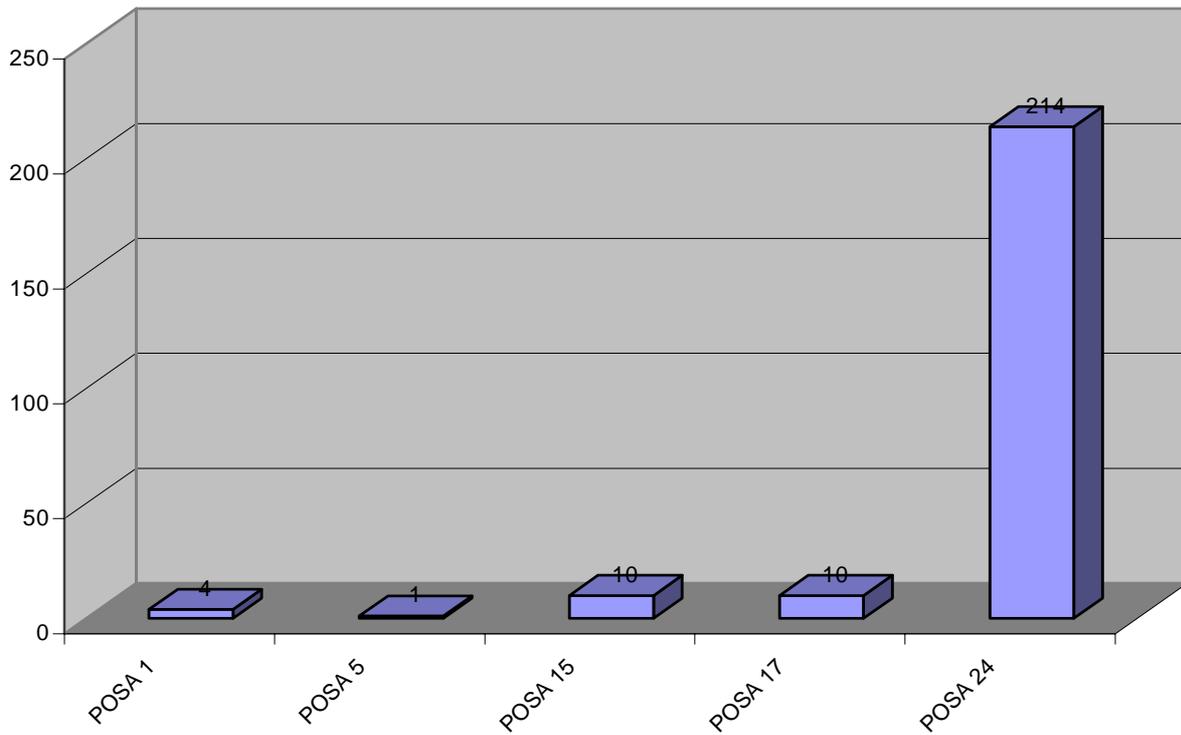
Graph 19: Mashonaland: total POSA arrests by section



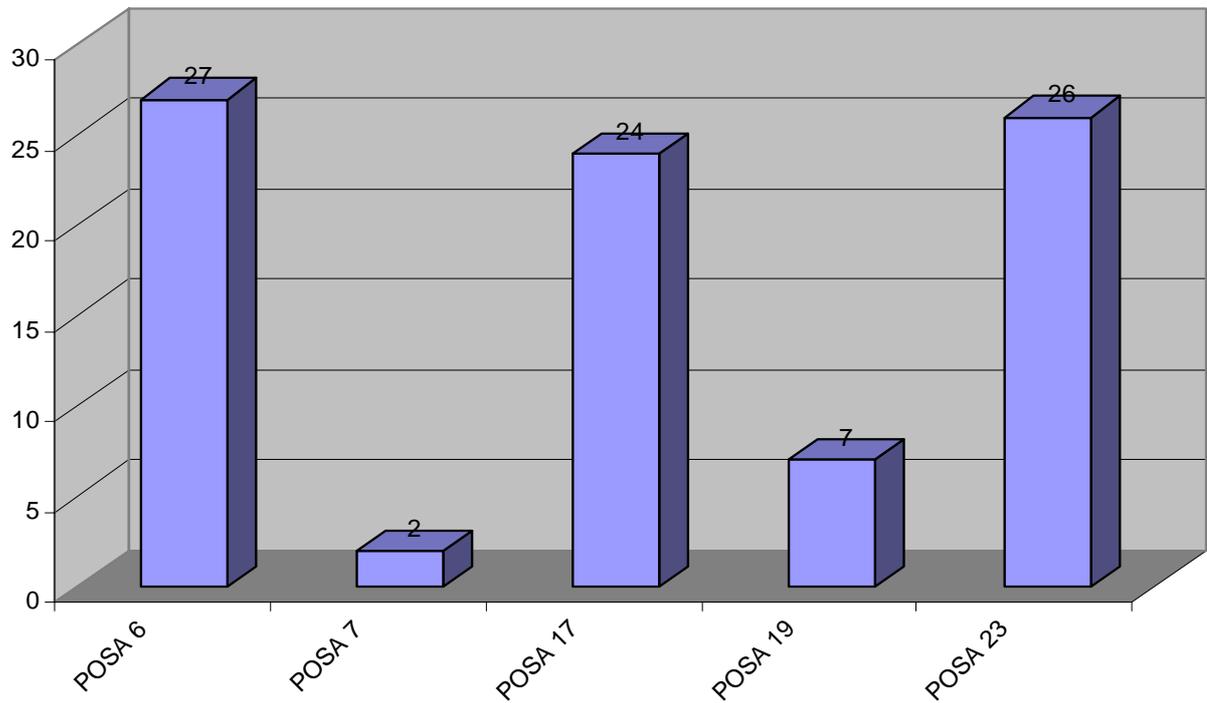
Graph 20: Matabeland North: total POSA arrests by section



Graph 22: Matabeland South: total POSA arrests by section



Graph 15: Kadoma: total POSA arrests by section



Back cover: Archbishop Pius Ncube leads over one thousand citizens of Bulawayo on a peaceful first anniversary commemoration march for MDC activist Patrick Nabanyama, forcibly disappeared in June 2000.

