

“Disturbing the peace”

**An overview of civilian arrests in Zimbabwe:
February 2003 – January 2004**

The Solidarity Peace Trust

July 2004

....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

Contents

| | Page |
|--|------|
| 1. Summary and conclusions | 3 |
| 2. Background and context of POSA | 4 |
| 3. A façade of lawfulness | 5 |
| 4. Impact of POSA on democratic groups | 7 |
| 5. Intention behind POSA | 8 |
| 6. Findings | 10 |
| 7. POSA Sections most utilised against opposition | 11 |
| 8. POSA Sections 5 to 11: 28 days detention without bail or evidence | 13 |
| 9. Treatment by arresting officers and in police custody | 14 |
| 10. Case study of arrest in 2003 | 16 |
| 11. Conclusion | 18 |
| <i>Appendices</i> | |
| Appendix One: Most common Sections of POSA in full | 19 |
| Appendix Two: Associated references | 21 |

1. Summary and conclusions

The last four years have seen a relentless clampdown on all those who are perceived as opposing the ruling party, ZANU-PF. State repression has relied on key new pieces of legislation that give the state almost unlimited powers against its own people. It is two years since the most draconian act in Zimbabwe's 24-year history was passed into law - the Public Order and Security Act (POSA). Since it was passed in January 2002, POSA has been used weekly to silence democratic voices, and hundreds have been arrested in terms of its clauses. With a general election constitutionally bound to take place within the next year, it is essential to review the state of democracy in Zimbabwe at this time, and to identify those aspects that will rule out from the onset the possibility of any election being free and fair. It is clear that the POSA is a powerful, anti-democratic weapon that has been and will continue to be used against alternative voices in Zimbabwe. POSA rules out almost every democratic activity, including the rights to freedom of speech, opinion and association.¹

This report is the first since the passing of POSA to attempt to pull together available information on arrests of civilians over a one-year period, from February 2003 to January 2004, in order to draw out trends in arrests and the specific use of POSA by the police.

Approximately 1,200 arrests from around Zimbabwe are analysed here in terms of: what charges if any were laid; outcome, if any, of cases; abuses by authorities at time of arrest. These arrests are by no means all those that took place during the time in question; lawyers from 27 legal firms in five towns have released general information on political arrests for the purposes of this study. Not available to the authors are details of arrests in which those arrested did not have legal representation, which is commonly the case in Zimbabwe particularly in smaller centres, and arrests that were processed via legal firms not involved in this study. Findings here should therefore be considered to give a good indication rather than a comprehensive overview of how the police power of arrest has been used and abused in Zimbabwe within this twelve-month period.

After analysing 1,225 arrests in Zimbabwe during a 12 month period the following conclusions can be drawn:

- Civilians in Zimbabwe are systematically arrested when attempting to undertake activities that are considered a normal part of democracy in most other nations, such as the rights to boycott, to gather peacefully and to express opinions.
- The Public Order and Security Act (POSA) is the most commonly cited Act on arrest of civilians attempting to hold public meetings
- POSA would be considered an unjust law in most other nations of the world, but having it on the Statutes allows the Zimbabwean government to retain a façade of lawfulness while suppressing its own people
- POSA is used in a politically partisan way to effectively prohibit normal democratic activities undertaken by civil society or opposition political parties,

¹ For more precise detail on clauses of the POSA, see analysis of findings ahead in this report.

while supporters of the ruling party can undertake the same activities without interference.

- Torture, assault and psychological harassment are systematically used by the police and other law enforcement agents while arresting civilians and also in custody, resulting on occasions in severe injury.
- The State has shown little inclination to pursue cases against most of those accused and detained, indicating their primary motive on arrest is to intimidate and prevent activities that would be accepted in most societies, including passive resistance and boycotts. Where the State has pursued cases related to arrests during 2003, it has failed to achieve conviction.
- The introduction from 13 February 2004, of 28 days detention without bail, evidence or charge, applicable to arrests under sections 5-11 of POSA must be condemned in the strongest terms. 16% of arrests in 2003 were in terms of these 7 sections, and included opposition party and civil society leadership.
- Bearing in mind the failure of the State to successfully prosecute those accused under POSA, and the prevalence of torture in custody, the 28 day detention law should be seen for what it is – a tool with the capacity to imprison opposition leadership without evidence for as long as it suits the State.
- POSA and the general power of arrest are being used as tools by the ruling party to maintain their power at the cost of their citizens' rights.

As long as POSA remains on the statutes in Zimbabwe, freedom of association, speech and movement will be officially illegal. The existence of POSA alone, gives grounds to conclude that any election in Zimbabwe at this time cannot be considered free and fair, as this statute prohibits normal democratic activities. Before any further elections are held in Zimbabwe, there is therefore a need to repeal POSA and to re-educate the police on the responsibilities of law enforcement agencies to respect the rights of all its citizens in an impartial way.

2. Background and context of the POSA

The Public Order and Security Act (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. 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 as it had been for the previous regime.

Civil society organisations, which gradually gained a stronger voice in the 1990s, campaigned for the repeal of LOMA. The Supreme Court systematically emasculated LOMA during the 1990s by declaring sections unconstitutional. POSA, which has

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 2002.²

Immediately on passing into law it was used to clamp down on the activities of the most widely supported alternative voice in Zimbabwe, the Movement for Democratic Change (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, and to arrest hundreds of their supporters. POSA was also used to disrupt or prevent civil society workshops ahead of the election³.

During 2003 well over 1,200 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 National Army, (ZNA) War Veterans, Central Intelligence Organisation (CIO) and the Youth Militia. The most commonly cited Act on arrest was POSA.

3. A façade of lawfulness

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. In this, the ZANU PF regime is similar to other fascist states, such as apartheid-ruled South Africa or Nazi Germany. Under cover of obeying these new anti democratic laws, the arms of the State are persecuting their fellow Zimbabweans; the façade of lawfulness has replaced the concept of justice.

Amendments to the Land Acquisition Act, the Electoral Act, the Citizenship Act, the Criminal Law 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

² ZANU PF, by sheer numbers, has repeatedly forced through dubious legal acts and amendments in Parliament despite the MDC voting unanimously against them.

³ “Report of the Commonwealth Observer Group on the Parliamentary Elections in Zimbabwe, 2000,” General Abdulsalami Abubakar, Chairperson, plus most other election reports.

ability to claim a façade of behaving legally in terms of Zimbabwe's own sovereign rights and laws, while ruthlessly denying the most basic rights to its citizens.⁴

The government has promulgated a strict new 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 Particularly since the closure of *The Daily News*, there has been almost no access to information for the ordinary citizens of Zimbabwe, who now live in ignorance of what is happening countrywide.

Human rights abuses and daily arrests take place in Zimbabwe without commentary or far reaching condemnation. Those on the receiving end of abuses feel increasingly isolated and unsupported, with only the State version of events readily available and crimes against them going unreported. Other nations, particularly in Africa, have entered into complicity 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. 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 refused to say the banning of the *Daily News* was wrong, as the banning had been reinforced by Zimbabwe's courts⁶. Yet Zuma failed to comment on the AIPPA itself – a law that 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".⁷

The reason for extreme measures on the part of the Zimbabwean government is clear. Since similar repressive behaviour saw the demise of ZAPU in 1987, ZANU PF's hegemony has been unchallenged. The MDC is the first viable national political alternative to ZANU-PF since the late 1980s, and it is no surprise to see the ruling party returning to the repressive measures used against ZAPU. The ruling elite has no intention of losing power, for to do so would be to face prosecution for multiple crimes, including crimes against humanity for the massacres of civilians in Matabeleland in the 1980s, and for thousands of crimes perpetrated in the last four years. To lose power would mean certain disgrace, imprisonment and the loss of ill-gotten gains.

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. Also statement from 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, defying repeated court orders and acting illegally even in terms of their own draconian AIPPA and in relation to amendments to the Land Acquisition Act.

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.

⁶ *The Mail and Guardian*, Johannesburg, 13 February 2004

⁷ IRIN, Johannesburg, 3 May 2004.

Also part of the ZANU PF strategy to retain power has been the incorporation into the forces of repression of the Zimbabwe National Liberators War Veterans Association (ZNLWVA), and since late 2001, the conscription of youth into national service training and deployment of youth militia against perceived MDC supporters. The government now has at its disposal for the harassment of the opposition and for the punishment of citizens who are perceived to be supporters of the opposition, the police, the army, the CIO, the war veterans and the youth militia. These government agencies have been responsible for murder, torture, property destruction and intimidation throughout the nation over the last four years.⁸

4. Impact of POSA on democratic groups

Control of gatherings

Since the passing of POSA, the opposition MDC, ZANU-Ndonga⁹ and civil society groupings have 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. The police then have the right to ban the meeting. Any organiser who fails to notify will go to jail or be fined. There is no provision for spontaneous gatherings.

Police control who can attend meetings, how long they last and the routes to be taken to and from such meetings. Appeals against the decision of the police on whether a meeting can go ahead or not, have to be made to the Ministry of Home Affairs (ie the police) and not to the courts.¹⁰

The right to kill

In terms of section 29, 2: the police may use all necessary force to disperse an unlawful meeting in terms of other sections, and if a person is killed by the police – or any other person assisting them during dispersal - this killing shall be considered lawful. This effectively means that if the police – or the army, the “war veterans” or youth militia who may be “assisting” the police – kill a civilian, this is legal if the person killed was part of an “unauthorised gathering” of two or more at the time. Government authorities in all their various forms have been given carte blanche to kill on the streets by this clause, and

⁸ See numerous sources for documentation of violations, including Zimbabwe Human Rights NGO Forum monthly reports, Physicians for Human Rights, Denmark, reports in January, May, November 2002, multiple Amnesty International releases since 2000. Appendix Two lists some reports.

⁹ A small political party with one seat in Parliament and a long established following of twenty years plus.

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

knowledge of this fact within the general populace has been a major factor in undermining civilian willingness to take part in mass actions called in the last two years.

While nobody has yet been shot dead while taking part in a demonstration, 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 stay away of 2003, riot police and soldiers were out in force in every city centre in the nation, armed with automatic machine guns, and tanks and helicopter gun ships patrolled the towns effectively preventing any marches from occurring. Hundreds of arrests under POSA took place during this week.

Penalties under POSA

Depending on the section under which a person is arrested, penalties vary from fines of Z\$ 10,000 to 100,000, and from six months in jail, to twenty years in jail without the option of a fine. Section 5 which has a jail term of twenty years, is one of the most commonly used sections on arrest, although nobody has yet been convicted in terms of this – or almost any other – section of POSA. The penalties for the four sections most commonly used on arrest by the police are given in more detail under findings.

5. Intention behind POSA

The Government would doubtless claim that the POSA is needed to clamp down on criminal elements and to bring riotous criminals to justice.

However, as this report shows, the State has not managed to use POSA to incriminate anybody arrested in Zimbabwe during 2003, and has shown a failure to pursue convictions with any energy. There have been no successful prosecutions under POSA in relation to the cases reviewed here¹². The few cases that the State has bothered to bring before the Courts related to 2003 arrests have all resulted in acquittals. The vast majority have been remanded from one month and even from one year to the next without the State bringing any evidence against those accused.

The real intention of POSA can thus be seen to be to declare any opposition voices illegal and to stifle them at every opportunity. By citing POSA, the State can clear the streets of any gathering of more than one person at any time. The police can arrest first and ask questions later, and this is what is routinely done. This report also shows that in more than 50% of arrests, the State uses violence, both within and without the police station, frequently causing severe injuries and even permanent disability.

¹¹ More than three hundred Zimbabweans have died in political violence at the hands of the State in the last 4 years, and 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.

¹² This report is restricted to arrests in 2003. One person from Binga charged under sect 16 of POSA for “publishing or making a false statement” in August 2002, was found guilty in June 2003 and sentenced to 3 months in jail. He has appealed. No other conviction of any person has been recorded in relation to the 1,225 cases from 2002 or in relation to more than 600 cases carried over by contributing lawyers from 2002 into 2004.

POSA shows the State is nervous of the possibility of a popular uprising and being overthrown in a Yugoslavian or Georgian type of scenario. POSA allows for the State to make continual pre-emptive strikes to prevent this. POSA makes the concept of a spontaneous gathering illegal, also for precisely this reason.

Furthermore, it provides the State with easy intelligence. The requirement of informing the police of any gathering 4 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 and its supporters to routinely prevent or disrupt activities that would be considered legitimate democratic activities in any other nation. Knowing one has to inform the State is intimidatory, and pre-empts 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.

It should further be noted that it is always the opposition political parties, primarily the MDC, and civil society groupings including the National Constitutional Assembly, the Zimbabwe Trades Union, Women of Zimbabwe Arise, 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.

Activities disrupted in the name of POSA during 2003 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
- arrests linked to by-election campaigns in Highfields and Kawudzana
- arrests linked to peaceful Trade Union demonstrations
- arrests linked the Combined Harare Rate-payers Association attempting to meet with the Harare City Council on council business
- arrests linked to the National Constitutional Assembly that is advocating the need for a new constitution

At times the police have been known to shut down meetings inside conference rooms, after being informed of intention to hold such meetings. The Zimbabwe Congress of Trades Union 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.

Financial implications

It is clear that POSA and the routine practice of arresting people at every opportunity is being used to ensure that whatever funds accrue to the opposition party or to civil society are used up in legal defence. The payment of admission of guilt fines, of bail, 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 financial implications of over 1,200 arrests, all of them represented by law firms, with over half of these arrests involving physical abuse of detainees.

6. Findings

Methodology

Lawyers in 27 law firms in five centres, Harare, Bulawayo, Gweru, Mutare and Masvingo were invited to submit general details of cases of political arrest during 2003. The law firms, lawyers and clients are anonymous to protect confidentiality and security of all concerned.

Results

The survey dealt only with political arrests during 2003 and a total of 1,225 cases were reviewed to obtain the information contained in this report. A breakdown shows the following:

735 or 60% were charged under POSA;
266, or 22% under the Miscellaneous Offences Act;
23 or 2% under the Criminal Procedure and Evidence Act;
17 or 1% were charged with Incitement to Violence;
51 or 4% were charged with various offences ranging from murder to malicious injury to property.
133 or 11% were not charged at all.

Outcome of cases

By the end of 2003, only 190 or 16% of these cases were reported to have been concluded, with 902 or 73% unresolved

In not a single case, has a prosecution and guilty verdict occurred

In 133 cases or 11% detainees were released without charges ever being laid
In 85 cases or 7% those arrested were acquitted by the courts
In 55 cases or 5%, deposit or admission of guilt fines have been paid
In 50 cases or 4% charges have been withdrawn.

The paying of a fine does not indicate guilt in Zimbabwe, but is merely a convenient method of being released from custody, without the State having to provide evidence of wrong doing.

This means that in 27% of cases in this sample, a figure that represents 323 or more than one in four arrests, the State itself has failed to justify arrest.

“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. For a simple case, such as that implied by an arrest under Section 24 of POSA, “reasonable time” could be anticipated to be a few months, in accordance with similar rulings by the Supreme Court on cases involving maximum sentences of six 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 could appeal to the courts for acquittal on grounds of failure of the State to produce a case.

In the 902 unresolved cases to hand, many of these involve arrests up to and prior to the 2-6 June 2003 stay away, which means the majority of cases are now beyond the limit of what could be considered “reasonable time”. Many of the arrests relate to World Cup Cricket, Valentines Day gatherings, a stay away and two parliamentary by-elections, all of which took place in February, March and April of 2003, and the accused have therefore been remanded for up to one year.

Effectively, the outstanding 902 “accused” are still on remand, which from the cases to hand means repeated court appearances at great expense to the respondents in terms of legal fees and time, only to have their cases rolled over without being heard month after month. It is predictable that in the course of the next year, the vast majority of these 900 respondents will either have had their cases dismissed for lack of state evidence, or they will still be on endless remand, with the state repeatedly requesting more time to compile evidence for the case.¹³

7. POSA Sections most utilised against Opposition

For full legal version of sections summarised here, see appendix

¹³ A further 650 cases of politically-motivated arrests during 2002, which are not the primary focus of this report, have also failed to result in convictions, with the exception of one person sentenced to 3 months by a magistrate (see previous footnote). All of these carried-forward cases from 2002 are well beyond the limits of “reasonable time”, with cases now outstanding for up to two years.

735 arrests in terms of POSA were analysed. The vast majority of cases relate to arrests in Bulawayo or Harare and the rest have been grouped with these two major cities, with Gweru included with Bulawayo (total of 300 arrests) and all other arrests grouped with Harare (435 arrests).

Section 17

Throughout the country, Section 17 is the most common section of POSA used on arrest. This section involves “public violence” which is defined as

“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...”

239 arrests or around one third of all arrests are in terms of violating Section 17.

Harare: 149
Bulawayo: 90

If found guilty of public violence, the defendant may be sentenced to a fine of up to Z\$100,000 or up to ten years in jail.

Section 24

In Harare, Section 24 is almost as commonly used on arrest as Section 17, but has been very seldom used in Bulawayo. This section relates to the **responsibility of organisers of public gatherings to notify the police in writing, 4 days in advance**, of the details of a gathering. It is important to note that the section only refers to notification, not to the need to request police approval. However, the police use 24 (2) (c) which refers to their right to ensure gatherings do not lead to public violence as defined above, to effectively ban most public gatherings by the opposition or civil society, on the grounds they may infringe the rights of others or result in a disturbance.

153 arrests or around 21% of arrests overall were in terms of Section 24

Harare: 146
Bulawayo: 7

If found guilty of failure to notify, organisers may be fined Z\$10,000 or jailed for up to six months.

Section 19

This section refers to Gatherings conducing to riot, disorder or intolerance, and apart from referring once more to disturbing the peace, it designates 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 a comment in a public place that does not meet official approval could be a crime.

Section 19 is very commonly used on arrest and is the second most common section used in Bulawayo and the third most common in Harare.

141 arrests or around 19% of all arrests are under Section 19

Harare: 68

Bulawayo: 73

Penalties under section 19 include up to ten years in jail.

Section 5

Section 5 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.

Section 5 is the 3rd most popular section for arrest by the police in Bulawayo, with more than 15% of arrests being under this section. In Harare, Section 5 has been less commonly used, but is still the 4th most commonly used section.

81 arrests or 11% of all arrests are under Section 5

Harare: 35

Bulawayo: 46

“Coercion” in terms of this section could be physical force, violence or the threat thereof. *Significantly, it also includes “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, and declares such activities to be “subverting government” and subject to 20 years in jail without option of a fine.

Even to suggest such events is illegal.

8. POSA Sections 5 to 11: 28 days detention without bail or evidence

On 13th February 2004, an amendment to the Criminal Procedure and Evidence Act was passed under the Presidential Powers Regulations, which give the President the power to change the law without consulting Parliament. The February amendment authorises the police to arrest and hold in custody any person suspected of being involved in various specified crimes, for 28 days, merely on suspicion of an offence, without producing either charge or evidence. No bail application will be considered during this time.

This amendment was presented in the Government-controlled press as being an anti-corruption move, but an examination of the amendment shows that also subject to 28 days detention without bail are those charged under Sections 5, 6, 7, 8, 9, 10 or 11 of POSA.

This amendment has serious implications for democracy in Zimbabwe. The introduction of 28 days detention without evidence or bail is a repressive step reminiscent of Apartheid in South Africa, and the way it has been used already in Zimbabwe shows its effectiveness in keeping people indefinitely detained: the first person to be detained under this amendment in February had yet to set foot outside a prison, 4 months later¹⁴.

From the cases to hand, 126 arrests were made in terms of POSA 5, 6 and 11 combined.¹⁵ Anyone arrested in the future under these sections will face 28 days of detention without possibility of bail and without the need to lay charges during this time.

126 arrests constitute 16% of all arrests under POSA examined in this report.

Evaluation of last year's civilian arrests show that POSA Section 5 was the third most common section of POSA cited on arrest in Bulawayo, and the 4th most common nationwide. This section was also used against senior members of the opposition and Members of Parliament. These arrests of senior MDC office bearers and charges under Section 5 were linked to the mass stay aways in March and June. It is easy to predict that in the event of the MDC organising stay aways during 2004, the Criminal Procedure and Evidence Act amendment will be invoked and used to lock up leadership for as long as it suits the State. The Vice President and Party Spokesperson of MDC were both detained for a week in April 2003 on Section 5 charges, and both were acquitted by the courts. But anyone picked up today in terms of this clause will wait 28 days in custody before even being brought before the courts.

In summary, 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 all opposition voices.

9. Treatment by arresting officers and in police custody

The evidence of torture and brutality by the ZRP, the CIO, the military and latterly the war veterans and the youth militia is well recorded¹⁶. The evidence of the current study indicates that the practice of torture by state authorities continues unabated.

In 658 out of the 1,225 reported cases, those arrested were the victims of brutal beatings by the arresting officers during or after the arrest.

Of these 89 cases were confirmed by medical reports¹⁷. The types of brutality that caused the wounds were most often simple beating with fists, batons, sjamboks (leather whips),

¹⁴ James Makamba was detained in February on corruption charges linked to externalising foreign currency.

¹⁵ No arrests in terms of POSA 7-10 were made; 16 arrests were made under sect 6, and 19 under sect 11.

¹⁶ Amnesty International has issued reports on torture in Zimbabwe since 1985 to the present; other reports documenting torture include: multiple reports by Catholic Commission for Justice and Peace; multiple reports from the Danish Physicians for Human Rights during 2002; Zimbabwe Human Rights NGO Forum; the International Crisis Group; the Solidarity Peace Trust [see appendix two for full references to these].

and occasionally, broomsticks and pick handles. On several occasions *falanga* (beating the soles of the feet) was used. But many cases were reported in which the victims were kicked with booted feet, trodden on and in one case, jumped on, which resulted in two broken ribs.

In one case a Member of Parliament was ambushed and shot at on the road and then struck on the head with an axe resulting in a severe injury, before being arrested.

A vicious assault on one individual caused irreparable damage to his ear. Another lost an eye. Such brutality is commonplace in Zimbabwe and no effort is made by the authorities to curb it, indicating once again the implementation of the strategy of intimidation and punishment.

In a separate incident, “The accused by then had been seriously injured and had to be taken tohospital, where he spent several days. He sustained serious other bodily injuries and he is still on medication. The youths (Militia) who had assaulted the accused and laid false charges against him have to date not been arrested, despite the seriousness of the injuries sustained by the accused and despite the fact that the assault took place in full view of certain police officers.”

Humiliation is another tool of the authorities. One report indicates that a female and a male were arrested together, were forced to strip in the police station and then forced to walk or jump up and down in front of police persons of both genders.

A lawyer handling one case describes the humiliation thus: “The two accused persons were picked up by members of the PISI (Police Internal Security and Intelligence) section of the ZRP in Dangamvura and taken to Mutare Rural police station. At night on 2 June 2003 they were transferred to Zimunya police station and it was on the way that they were beaten up by police and state security agents using batons and sjamboks. They were forced to perform sexual acts on the sand and drink dirty stream water.”

Illustrating the fact that the law was used merely to harass and intimidate, a lawyer from Gweru reports: “From the foregoing, it is clear that all the accused persons (19 male and Female) were arrested without any justifiable grounds and/or without reasonable suspicion. There was no need for any of the accused persons to be detained in the manner in which it was done. Those of the accused persons who were made to sign admission of guilt fines under the Miscellaneous Offences Act did that under duress so much that it could be successfully challenged in court.”

Another tactic employed by the police was to cause great difficulty for the legal representatives by moving those arrested between police stations or simply refusing to acknowledge that a particular individual was being held. In several cases in Bulawayo and Mutare the victims were moved on more than one occasion, in order to hide the fact of the arrest from the lawyer.

¹⁷ In some other instances, detainees were reportedly kept in jail until bruises and abrasions had healed.

10. Case study of arrest in 2003

Samuel Khumalo: Male, aged 40 years

Trade Unionist leader, and Bulawayo Ward 13 (Pelandaba) City Councillor for MDC.

Date of Incident: 8 October 2003

Place: Bulawayo

Date of Interview: 9 October 2003

Context of events

The Zimbabwe Congress of Trade Unions (ZCTU) planned a demonstration to coincide with the reading in Parliament of the supplementary budget for 2003. The demonstration was meant to convey to the government, the concern of workers over high levels of taxation, the high cost of living, the shortage and high cost of transport as a result of the fuel price increases, shortage of cash, and the gross violations of human and trade union rights. The ZCTU wrote a petition to Government, which was signed by ZCTU leadership, and the intention was to march with the petition to Mhlahlandlela Government Complex in Bulawayo, in order to hand the petition to the Governor.

Account of incident

Mr Khumalo was one of a handful of trade unionists that gathered near the government offices ahead of the scheduled march on the morning of 8 October. Police quickly dispersed those who were gathering, and Khumalo was among around six people who walked to Basch Street nearby to decide what to do next.

A police vehicle pursued them and riot police disembarked. Another vehicle stopped in front of Mr Khumalo and he had no option but to stand still and wait for arrest. Mr Khumalo is an easily recognised figure, as he had long dread locks and is a well known Bulawayo person, being a city councillor. The riot police targeted him personally, and one ran towards him and hit him extremely hard in the centre of the forehead with a baton stick. Khumalo was knocked to the ground by this blow, and the policeman then hit him again in the centre of the forehead while he was prone on the ground, rendering him unconscious for a moment. Blood began streaming over Khumalo's face. He was forced to his feet by the police, who then dragged him by his dreadlocks around one kilometre to the Police Drill Hall. They pulled many of his dreadlocks out of his head in the process, which was extremely painful, and were hitting him and swearing at him as they dragged him.

Once at the Drill Hall, Khumalo was knocked to the ground and severely assaulted by several policemen simultaneously, with baton sticks, fists and boots. Others were being beaten at the same time, and one of them gave the names and addresses of another trade union leader. Khumalo and one other trade union member who had been picked up in Basch Street were put into a police vehicle and driven to this address, where the other trade union leader was detained. All three men were then driven by two policemen out of town, about twenty kilometres along the road to Victoria Falls and off into the bush. The men were blindfolded, but Khumalo was facing forward and could see a little through the

blindfold. Although he was in deep pain and bleeding profusely still, he tried to keep track of the twists and turns, as he could hear the police talking and knew the plan was to torture them and abandon them in the bush.

The police vehicle finally stopped, and the three were forced out of the vehicle and made to lie face down on the ground. They were still blindfolded. The three were then brutally tortured, being beaten all over the body with hard, blunt objects, which they assumed were baton sticks and boots.

They were ordered to sing ZANU PF jingles and songs praising the government as they were being tortured. Their shoes were removed and they were severely beaten on the soles of their feet. The police told the three that the ZCTU was anti-government and pro-MDC, and that their activities would not be tolerated.

The police would rest when they were tired and then resume beating them. The beating continued until after the sun was overhead, until early afternoon. All three men were in agony by then and were sliding in and out of consciousness. Their throats were raw from screaming. Eventually, the two policemen got back into their vehicle and drove off, leaving the three men abandoned in the bush.

Khumalo and the other two then managed to get off their blindfolds. The other two were in worse shape than Khumalo and had no idea where they were. Khumalo used his recollection of where the main road might be and they started to walk in that direction. Movement was very hard as all three were in deep pain, including on the soles of their feet, and one of the three could hardly walk and the other two had to support him. They stopped frequently because all three felt dizzy and nauseous, and had to keep lying down. They discovered that one of them still had a cell phone that worked, and when they came within network range, they phoned the ZCTU offices and asked for help. They asked a vehicle to patrol the Victoria Falls road and tried to head for this. They eventually heard vehicles and knew they were heading in the right direction for a main road.

They were eventually rescued just before dark, 20 km out of town, and were taken to Bulawayo General hospital for treatment. At the hospital, the staff were nervous at the sight of them, covered in blood, and when they heard they were victims of police assault, some staff refused to treat them, saying they needed police authorisation to do so. However, other staff administered basic treatment and stitched up the two lesions in Khumalo's head. The hospital acknowledged that the three men should be kept overnight for observation, but refused to admit them because they were afraid, as the cases were political.

Khumalo and the other two torture victims were treated by a private doctor the following day.

11. Conclusion

After analysing 1,225 arrests in Zimbabwe during a 12 month period the following conclusions can be drawn:

- Civilians in Zimbabwe are systematically arrested when attempting to undertake activities that are considered a normal part of democracy in most other nations, such as the rights to boycott, to gather peacefully and to express opinions.
- The Public Order and Security Act (POSA) is the most commonly cited Act on arrest of civilians attempting to freely associate.
- POSA would be considered an unjust law in most other nations of the world, but having it on the Statutes allows the Zimbabwean government to retain a façade of lawfulness while suppressing its own people.
- POSA is used in a politically partisan way to effectively prohibit normal democratic activities undertaken by civil society or opposition political parties, while supporters of the ruling party routinely undertake the same activities without interference.
- Torture, assault and psychological harassment are systematically used by the police and other law enforcement agents while arresting civilians and also in custody, resulting on occasions in severe injury.
- The State has shown little inclination to pursue cases against most of those accused and detained, indicating their primary motive on arrest is to intimidate and prevent activities that would be accepted in most societies, including passive resistance and boycotts. Where the State has pursued cases related to arrests during 2003, it has failed to achieve conviction.
- The introduction from 13 February 2004, of 28 days detention without bail, evidence or charge, applicable to arrests under sections 5-11 of POSA must be condemned in the strongest terms. 16% of arrests in 2003 were in terms of these 7 sections, and included opposition party and civil society leadership.
- Bearing in mind the failure of the State to successfully prosecute those accused under POSA, and the prevalence of torture in custody, the 28 day detention law should be seen for what it is – a tool with the capacity to imprison opposition leadership without evidence, in appalling conditions, for as long as it suits the State.
- POSA and the general power of arrest is thus being used as a tool by the ruling party to maintain their power at the cost of their citizens' rights.

As long as POSA remains on the statutes in Zimbabwe, freedom of association, speech and movement will be officially illegal. The existence of POSA alone gives grounds to conclude that any election in Zimbabwe at this time cannot be considered free and fair, as this statute prohibits all democratic activities. Before any further elections are held in Zimbabwe, there is therefore a need to repeal POSA and to re-educate the police on the responsibilities of law enforcement agencies to respect the rights of all its citizens in an impartial way.

APPENDIX ONE: MOST COMMON SECTIONS OF POSA

5 Subverting constitutional government

In this section—

“**coercing**” means constraining, compelling or restraining by—

- (a) physical force or violence or, if accompanied by physical force or violence or the threat thereof, boycott, civil disobedience or resistance to any law, whether such resistance is active or passive; or
- (b) threats to apply or employ any of the means described in paragraph (a);

“**unconstitutional means**” means any process which is not a process provided for in the Constitution and the law.

(2) Any person who, whether inside or outside Zimbabwe—

- (a) organises or sets up or advocates, urges or suggests the organisation or setting up of, any group or body with a view to that group or body—
 - (i) overthrowing or attempting to overthrow the Government by unconstitutional means; or
 - (ii) taking over or attempting to take over Government by unconstitutional means or usurping the functions of the Government of Zimbabwe; or
 - (iii) coercing or attempting to coerce the Government;or
- (b) supports or assists any such group or body in doing or attempting to do any of the things described in subparagraphs (i), (ii) or (iii) of paragraph (a);

shall be guilty of an offence and liable to imprisonment for a period not exceeding 20 years without the option of a fine.

17 Public violence

(1) Any person who, acting in concert with one or more other persons, forcibly—

- (a) disturbs the peace, security or order of the public or any section of the public; or
- (b) 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, shall be guilty of public violence and liable to a fine not exceeding \$100,000 or imprisonment for a period not exceeding 10 years or both.

(2) It shall be an aggravating circumstance if, in the course of or as a result of the offence of public violence—

- (a) there was an attack on the police or on other persons in lawful authority; or
- (b) bodily injury or damage to property occurred; or
- (c) the person who has been convicted of the offence instigated an attack on the police or other persons in lawful authority or instigated the infliction of bodily injury or the causing of damage to property.

(3) A person accused of any contravention of subsection (1) may be charged concurrently or alternatively with the common-law offence of public violence.

19 Gatherings conducive to riot, disorder or intolerance

(1) Any person who, acting together with one or more other persons present with him in any place or at any meeting—

- (a) forcibly—
 - (i) disturbs the peace, security or order of the public or any section of the public; or
 - (ii) invades the rights of other people;intending to cause such disturbance or invasion or realising that there is a risk or possibility that such disturbance or invasion may occur; or
- (b) performs any action, utters any words or distributes or displays any writing, sign or other visible representation that is obscene, threatening, abusive or insulting, intending thereby to provoke a

breach of the peace or realising that there is a risk or possibility that a breach of the peace may be provoked; or

- (c) utters any words or distributes or displays any writing, sign or other visible representation—
 - (i) with the intention to engender, promote or expose to hatred, contempt or ridicule any group, section or class of persons in Zimbabwe solely on account of the race, tribe, nationality, place of origin, national or ethnic origin, colour, religion or gender of such group, section or class of persons; or
 - (ii) realising that there is a risk or possibility that such behaviour might have an effect referred to in subparagraph (i);

shall be guilty of an offence and be liable to a fine not exceeding \$50,000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

(2) An offence under subsection (1) is committed whether the action constituting it is spontaneous or concerted, and whether the place or meeting where it occurred is public or private.

24 Organiser to notify regulating authority of intention to hold public gathering

(1) Subject to subsection (5), the organiser of a public gathering shall give at least **four** clear days' written notice of the holding of the gathering to the regulating authority for the area in which the gathering is to be held:

Provided that the regulating authority may, in his discretion, permit shorter notice to be given.

(2) For the avoidance of doubt, it is declared that the purpose of the notice required by subsection (1) is—

- (a) to afford the regulating authority a reasonable opportunity of anticipating or preventing any public disorder or a breach of the peace; and
- (b) to facilitate co-operation between the Police Force and the organiser of the gathering concerned; and
- (c) to ensure that the gathering concerned does not unduly interfere with the rights of others or lead to an obstruction of traffic, a breach of the peace or public disorder.

(3) Any Saturday, Sunday or public holiday falling within the **four**-day period of notice referred to in subsection (1) shall be counted as part of the period.

(4) Where there are two or more organisers of a public gathering, the giving of notice by any one of them in terms of subsection (1) shall be a discharge of the duty imposed upon the other or others by that subsection.

(5) This section shall not apply to public gatherings of a class described in the Schedule.

(6) Any organiser of a public gathering who fails to notify the regulating authority for the area of the gathering in accordance with subsection (1) shall be guilty of an offence and liable to a fine not exceeding \$10,000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

29 Dispersal of unlawful public gatherings

(1) A police officer and any person assisting him may do all things reasonably necessary for—

- (a) dispersing the persons present at a public gathering the holding or continuance of which is unlawful by virtue of any direction or order under section 25, 26 or 27; and
- (b) apprehending any such persons;

and, if any such person makes resistance, the police officer or the person assisting him may use such force as is reasonably justifiable in the circumstances of the case for overcoming any such resistance.

- a. (2) If a person is killed as a result of the use of reasonably justifiable force in terms of subsection (1), where the force is directed at overcoming that person's resistance to a lawful measure taken in terms of that subsection, the killing shall be lawful.

APPENDIX TWO

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