

## **Annexure A - The Independence of the Judiciary**

The independence of the Judiciary is constitutionally guaranteed in Zimbabwe<sup>1</sup>. In addition the State, having ratified the African Charter on Human and Peoples' Rights, has an obligation to ensure that every individual has the right to have her/his cause heard by way of an appeal to competent national organs, and/or by an impartial court or tribunal<sup>2</sup>. A further obligation exists in terms of Article 26 thereof, which provides:

State parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.

The Report of the Fact-Finding Mission of the African Commission recommended that the Government seriously consider and apply the Principles and Guidelines on the Right to Fair Trial and Legal Assistance as a means of giving substantive effect to its obligations under the Charter.

However, the situation in respect of the Judiciary seems only to be deteriorating further as time progresses. Since January 2005, the superior courts have reinforced the perception that they lack independence and impartiality and are unable to deliver justice, especially to those who have approached the courts seeking to have their fundamental rights protected or reinforced, or where a remedy has been sought for damage already suffered. Where judicial officers have attempted to give effect to the rights of victims, court orders have been ignored or intentionally and blatantly disregarded. In the most serious affront on the principle of separation of powers and the rule of law, the state has gone on to

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<sup>1</sup> Section 79B of the Constitution of Zimbabwe states that, "*In the exercise of his judicial authority, a member of the judiciary shall not be subject to the direction or control of any person or authority, except to the extent that a written law may place him under the direction or control of another member of the judiciary.*"

<sup>2</sup> This is guaranteed under Article 7.1 of the African Charter on Human and Peoples' Rights

oust completely the jurisdiction of the courts to deal with certain categories of cases. Zimbabwe has therefore experienced a dearth in the development of a rights-based jurisprudence, whilst access to justice has been severely impaired.

### **Appointments, Judicial Tenure and Security and Removal From Office**

Judges are appointed by the President, after consultation with the Judicial Services Commission<sup>3</sup>. The Judicial Service Commission comprises six members, four of whom are directly appointed by the President, and two of whom are appointed by the President by virtue of their holding office to which they are likewise appointed by the President, in consultation with others. Therefore the Commission is directly or indirectly under the influence of the Executive, which materially affects its independence. In addition the government has not put in place provisions dealing with the procedure for selection, or guidelines for the conducting of the selection process. Therefore the process is still open to attack on the basis that judicial officers are being appointed on the basis of political patronage.

Although the Constitution ensures security of tenure, the disciplinary and removal processes are both again controlled, directly or indirectly, by the Executive. Where the issue of removal of a judge from office arises, the Constitution allows the President both to raise an objection and subsequently select and appoint a disciplinary tribunal where there is an alleged inability by a judicial officer to discharge her/his functions, or where there has been “misbehaviour”<sup>4</sup>. In addition, by virtue of the latest amendments<sup>5</sup> to the Constitution of Zimbabwe, the Judicial Service Commission is now also empowered to deal with issues relating to the employment, discipline and conditions of service of judicial officers and persons employed in the office of the

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<sup>3</sup> Section 84 of the Constitution of Zimbabwe

<sup>4</sup> Section 87(1) of the Constitution of Zimbabwe

<sup>5</sup> Constitutional Amendment (No.17) Act, 2005

Ombudsman<sup>6</sup>. Thus there is a choice (or potential for conflict) between the establishment of an *ad hoc* disciplinary tribunal, or the referral of the matter to the Judicial Service Commission. In both instances, however, the disciplinary body is subject to Executive interference.

There therefore remain two serious and unmitigated dangers: that members of the Judiciary will be appointed on the basis of perceived political affiliation or because they are considered to hold interests or viewpoints that will advance government policy and/or protect state players in positions of privilege; and that any members of the Judiciary who conduct themselves in a manner which puts such considerations in question can easily be removed by the Executive, acting through organs such as the Judicial Service Commission or disciplinary tribunals which are tainted with excessive Executive interference.

In this regard, the continuing case of High Court Judge, Justice Benjamin Paradza, proves a useful study. In 2003 Justice Paradza was arrested in his chambers at the High Court in Harare on allegations of subverting the course of justice and charged under the Prevention of Corruption Act. However, the fact that he was arrested shortly after ordering the release of the opposition Movement for Democratic Change Mayor Elias Mudzuri from police custody created a fair perception that he was being targeted for ruling against ZANU-PF and going against the wishes of the executive in the matter. The manner in which he has been treated, including his detention in conditions which the Constitutional Court found to amount to cruel, inhuman and degrading treatment, has served to demonstrate how a judge can be treated where he has made a decision against the wishes of the executive.

In the absence of transparent procedures for appointment of judicial officers and a reformed Judicial Service Commission whose members are appointed in a public process, which is transparent and accountable, which is not answerable to

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<sup>6</sup> Section 18 of the Constitutional Amendment (No.17) Act, 2005

the Executive or dependent on its patronage, and which is able to protect the interests of judicial officers in their capacity as a separate arm of government, the Judiciary in Zimbabwe can neither be considered impartial nor able to deliver justice without fear or favour.

## **Attacks on the judiciary**

### **1. The Ouster of the Jurisdiction of the Court: Constitutional Amendment No. 17**

Signed into law by the President on 14 September 2005, the Constitutional Amendment (No.17) Act ousts the jurisdiction of the courts to consider challenges to the acquisition of land by the State by any persons having a right or interest in the land<sup>7</sup>. Effectively, at least 5,000 cases which were pending in the Administrative Courts in Zimbabwe have since been withdrawn as a consequence of this constitutional amendment. Confusion abounds as to whether the litigants will be able to recover their wasted legal costs, let alone deal with the implications of such withdrawals, which effectively allows the constitutional amendment to operate with retrospective effect<sup>8</sup>.

The implications of an ouster of the jurisdiction of the courts have been considered on several occasions by the African Commission on Human and Peoples' Rights<sup>9</sup>, which has concluded that such action taken by the executive or

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<sup>7</sup> Section 2, which inserts a new section 16B in the Constitution, dealing with 'Agricultural land acquired for resettlement or other purposes', states in the relevant portion of section 16B(3)(a): "...a person having any right or interest in the land shall not apply to a court to challenge the acquisition of the land by the State, and no court shall entertain any such challenge"

<sup>8</sup> The African Commission on Human and Peoples' Rights has stated: "*To have a duly instituted court case in the process of litigation nullified by executive decree forecloses all possibility of jurisdiction being exercised by competent national organs. A civil case in process is itself an asset, one into which the litigants invest resources in the hope of an eventual finding in their favour. The risk of losing the case is one that every litigant accepts, but the risk of having the suit abruptly nullified will seriously discourage litigation, with serious consequences for the protection of individual rights. Citizens who cannot have recourse to the courts of their country are highly vulnerable to violation of their rights. The nullification of the suits in progress thus constitutes a violation of article 7(1)(a)*" in *Constitutional Rights Project and Another v Nigeria* (2000) AHRLR 235 (ACHPR 1999)

<sup>9</sup> *Civil Liberties Organisation v Nigeria* (2000) AHRLR 188 (ACHPR 1995); *Constitutional Rights Project and Another v Nigeria* op cit; *Civil Liberties Organisation v Nigeria* (2000) AHRLR 243

legislative arms of government violates Article 7 of the African Charter. The Commission has, in all cases, strongly recommended an end to this practice, which removes entire areas of law from the jurisdiction of the ordinary courts.

It is not the first time in which the Constitution has been amended in order to circumvent the jurisdiction of the courts; it is, however, the first time that the courts have been completely and unilaterally prevented from exercising their judicial and constitutionally guaranteed powers in the determination, protection and enforcement of fundamental human rights, and in which they have been unable to protect themselves from such attack<sup>10</sup>.

## **2. Defiance of Judicial Orders**

There has been an ongoing pattern of defiance of judicial orders from as far back as 1999, when the army and police refused to obey an order of the Supreme Court to produce journalists Mark Chavunduka and Raymond Choto in court after they had been illegally abducted and held by military personnel in connection with a story they had published about a failed coup in Zimbabwe<sup>11</sup>. At the time, the legal profession and the Judiciary alike were shocked and outraged at the defiance of a judicial order and the failure of the other arms of government to respect the authority of the courts.

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(ACHPR 1999); *Centre for Free Speech v Nigeria* (2000) AHRLR 250 (ACHPR 1999); *Jawara v The Gambia* (2000) AHRLR 107 (ACHPR 2000)

<sup>10</sup> There is a trend whereby the Constitution has been amended and other legislation or regulation in terms of presidential powers has been introduced to circumvent a decision made by the Judiciary (an example being when the Supreme Court found the death penalty to be unconstitutional, and it was reintroduced by way of Constitutional amendment), or to prevent the Judiciary from being allowed to exercise its function and consider cases with a considerable impact on fundamental human rights and freedoms (an example being when the President promulgated a decree purporting to nullify election petitions lodged by the opposition Movement for Democratic Change challenging the results of around 39 constituencies after the 2000 parliamentary elections. The Supreme Court subsequently found that the decree was *ultra vires* and allowed the petitions to continue)

<sup>11</sup> *Mark Chavunduka and Raymond Choto v Ministry of Defence* 2000 ZLR (S)

Attacks on the Judiciary and the defiance of court orders have been unrelenting and are now endemic within Zimbabwe's legal landscape. Since January 2005, there have been at least five high-profile cases in which various arms of Government, including the Executive, three Ministries, a statutory body, local authorities and the Police, have failed to comply with Court Orders<sup>12</sup>.

During the adjudication of the election petition relating to the 2000 parliamentary election in the Buhera South constituency<sup>13</sup> High Court judge Justice James Devittie handed down a damning judgment relating to the criminal activities that arose prior to the June 2000 poll. Two opposition Movement for Democratic Change activists, Blessing Chiminya and Talent Mabika, were extra-judicially executed by being burnt alive by named ruling party ZANU-PF activists. Justice Devittie used his powers under the Electoral Act [*Chapter 2:01*] to refer the matter to the authorities for investigation and prosecution of the named individuals. While other persons involved in the murders have been tried the persons named in Justice Devittie's judgment have not, in contempt of the court order.

### **3. Executive Interference in the Judiciary**

The Executive has indulged in public criticism, through the publicly-owned but state-run print and broadcasting media, of certain decisions of the Judiciary in sensitive matters where judges have ruled against what are perceived to be state interests. This has not abated since January 2005, and has had the continued effect of instilling fear in judicial officers and thus interfering with their impartiality and ability to fulfil their mandate without fear or favour.

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<sup>12</sup> These include the following cases: *Roy Leslie Bennett v The Constituency Election Officer, Chimanimani Constituency* EP1/05; *The State v Toby Harnden and Julian Simmonds* CR 256/3/05; *Ashtony Shumba and Other Residents of Porta Farm v Officer in Charge, Norton Police Station, Commissioner of Police, Minister of Home Affairs, City of Harare and Minister of Local Government, Public Works and Urban Development* Case No. 376/05; *Felistus Chinyuku and Other Residents of Porta Farm v The Minister of Local Government and Urban Development & 3 Ors* Case No. 3225/05; and *Zvikomborero Mashonganyika and 251 Others v Commissioner of Police & Minister of Home Affairs & City of Harare* HC 5060/05

<sup>13</sup> *Tsvangirai v Manyonda* 2001 (1) ZLR 295

**(a) *Outright Executive Intimidation and Manipulation***

An opposition Member of Parliament, Roy Bennett, submitted his nomination papers to contest as the MDC candidate for Chimanimani constituency in the March 2005 parliamentary elections. His nomination papers were rejected by the presiding officer as, at the time, he was serving a term of imprisonment imposed by Parliament for assault; Bennett challenged this refusal to accept his application.

Electoral Court judge, Justice Tendai Uchena, found<sup>14</sup> that Bennett was qualified to stand as a candidate and that the decision of the Nomination Court should be set aside. He set a new date for the election in Chimanimani constituency, namely 30 April 2005. On 17 March 2005 the President was publicly quoted<sup>15</sup> criticising the ruling as “madness”. He went on to state at a meeting of provincial, government and party leaders in Chipinge that:

I don't understand the court's decision. We can't be held at ransom by a man who is in prison. That is absolute nonsense. We will study the decision and appeal against it... He has a case to answer. Proceed as if nothing has happened.

Shortly thereafter the Zimbabwe Electoral Commission (ZEC), one of the Respondents (which had not even opposed the initial application lodged an urgent application that the ruling of the Electoral Court be suspended pending the hearing of the review, which was granted by the Electoral Court. The appearance was that the President had influenced the ZEC to take action, which they had not wished to take and had also influenced the Electoral Court into suspending the order.

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<sup>14</sup> *Roy Leslie Bennett v The Constituency Election Officer, Chimanimani Constituency* EP1/05

<sup>15</sup> *The Herald* 17 March 2005

***(b) Inappropriate handling of cases involving the protection of fundamental human rights and freedoms***

When the government and local authorities launched Operation *Murambatsvina* and Operation Restore Order on 19 May 2005, many lawyers lodged urgent applications with the High Court and Magistrates' Courts around the country in efforts to protect the interests of clients who had been subjected to unplanned forced evictions, destruction of property and livelihoods, physical assaults and intimidation, and internal displacement without due process and in contravention of rights protected under the Constitution as well as the African Charter on Human and Peoples' Rights. Actions were also taken up on behalf of affected vulnerable groups, including children who had their schooling interrupted, the elderly, women-headed households, and the sick who had their treatment programmes disrupted by the actions of the state.

The response of the High Court was most distressing. Cases filed on an urgent basis have been ignored and remain unresolved to date<sup>16</sup>. Other cases were dismissed with minimal consideration and on judgments which fail to address key arguments and fly in the face of rights-based jurisprudence<sup>17</sup>. The Supreme Court has failed to consider matters relating to the rights of people affected by Operation *Murambatsvina* on an urgent basis. The attitude of the superior courts

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<sup>16</sup> In the case of *Batsirai Children's Care v Minister of Local Government and Urban Development & 4 Ors* HC 2566/05 urgent relief was sought against the continuing eviction of children, including those orphaned by HIV/AIDS, who had been living in an orphanage run by Dominican sisters. The matter was set down before Justice Benjamin Hlatshwayo in late May 2005. To date, the judge has continuously postponed the matter, which has had the effect of exposing the children to further human rights violations and ever-deteriorating living conditions.

<sup>17</sup> See, for example, the matter of *Dare Remusha Cooperative v Minister of Local Government, Public Works and Urban Development* HC 2467/05, where Justice Tedi Karwi stated: "*It would be naïve for me to conclude my judgment without mentioning the fact that the action taken by the respondents, however, has caused untold suffering to a number of people. I am told by the applicant that a lot of people have obviously been displaced and appear to have nowhere to go. Many have been sleeping in the open and the cold weather. Many school going children are not going to school. It is my considered view that, notwithstanding the fact that the action taken and the manner in which it was taken was lawful, hardships which have befallen the affected people would have been avoided by giving adequate notice to the affected people to relocate and re-establish themselves. A few days' notice was, in my view, not adequate. **Be that as it may, I find that the application is devoid of merit...***" (emphasis added). This is now on appeal to the Supreme Court in Case No. SC 169/05.



has been one of apathy, delay and diversionary tactics. It has given rise to the perception of judicial indifference to human suffering and constructive barricading of the courts against cases raising human rights issues. On the other hand, the Magistrates' Courts have offered speedy and effective relief to the affected parties around the country. Matters are heard within 48 hours of being filed, and provisional orders have been granted in favour of the vulnerable groups.

When it became apparent that the Magistrates' Courts had been providing protection and relief to affected groups, the judicial officers were allegedly issued with a directive removing their jurisdiction in all matters relating to Operation *Murambatsvina* and involving the local authorities.<sup>18</sup> Once again, the resort to an ouster of the courts' jurisdiction to deal with contentious issues can be clearly noted.

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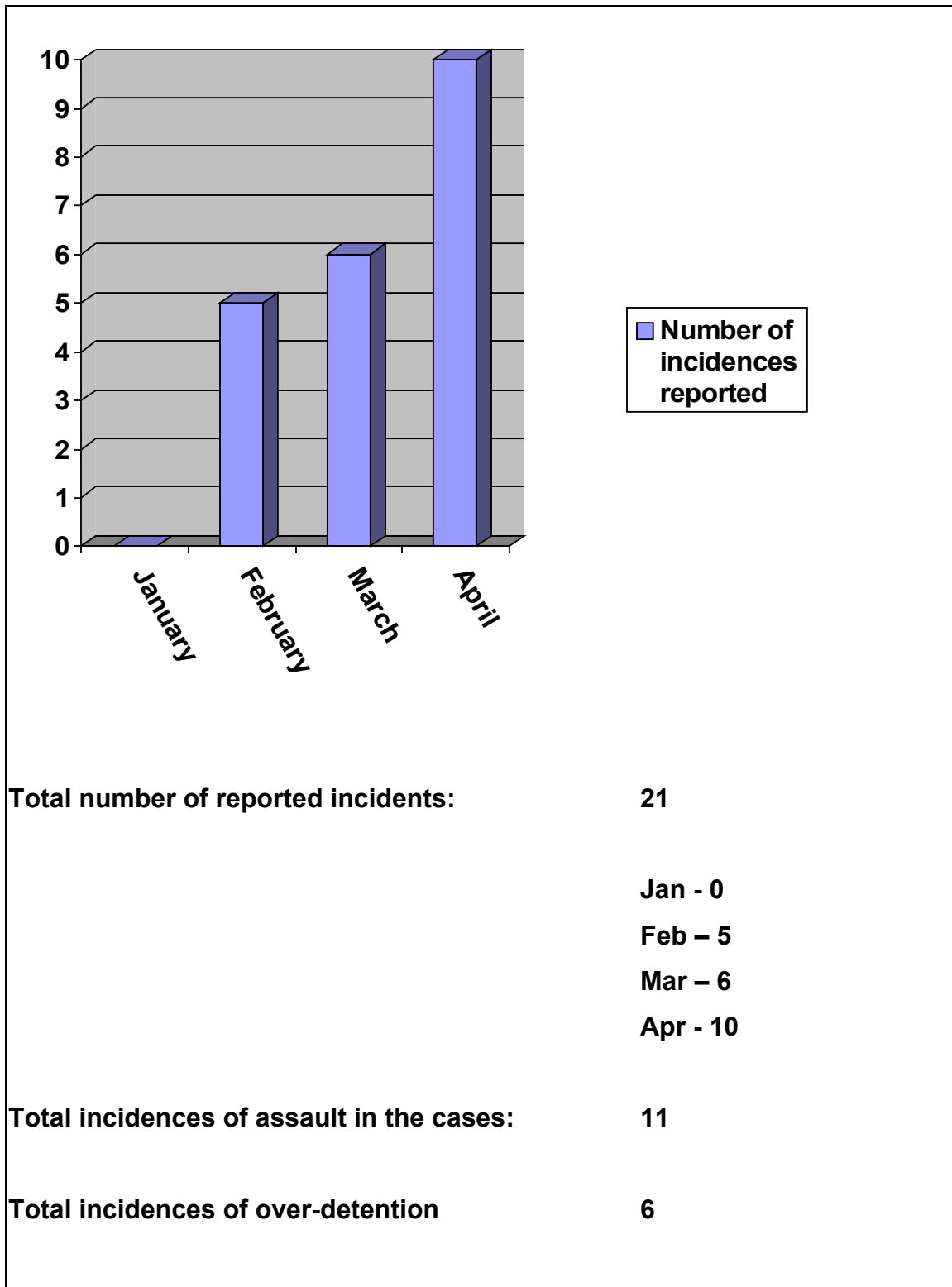
<sup>18</sup> This was confirmed to legal practitioners from Zimbabwe Lawyers for Human Rights when attempts were made to file a case in the Harare Civil Magistrates' Courts seeking relief for a group of displaced families from Mbare high-density suburb, who were again being threatened with forced eviction from the open spaces they had since been occupying: see *Zvikomborero Mashonganyika and 251 Ors v Commissioner of Police and 2 Ors* HC 5060/05

## **Annexure B - The Human Rights Defenders Project**

The Human Rights Defenders Project offers emergency legal, medical and psychosocial support services to human rights defenders who come under attack during the course of their work. These services can be accessed by any person who actively champions the promotion and protection of any of the constitutionally guaranteed rights and in the process becomes the subject of attack by any organized group including but not exclusively state agents and other functionaries.” It includes human rights defenders who are arrested, detained or otherwise impeded by State agents in the exercise of their human or constitutional right, or who have become a target of attack by the State as a result of the exercise of their human or constitutional rights, or who are attempting to assist others in the exercise of their human or constitutional rights, or who are innocent bystanders to the above.

The statistics of how many human rights defenders came under attack in 2003 (when the project was initiated) and 2004, appear graphically below:

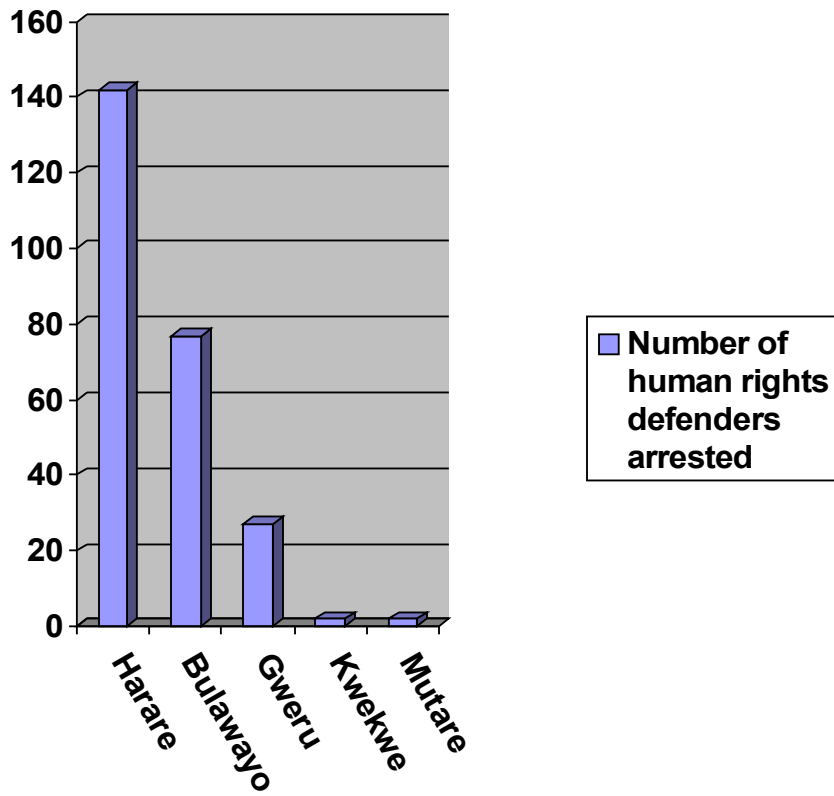
## STATISTICS FOR REPORTING PERIOD JANUARY-APRIL 2003



**Total number of human rights defenders detained:**

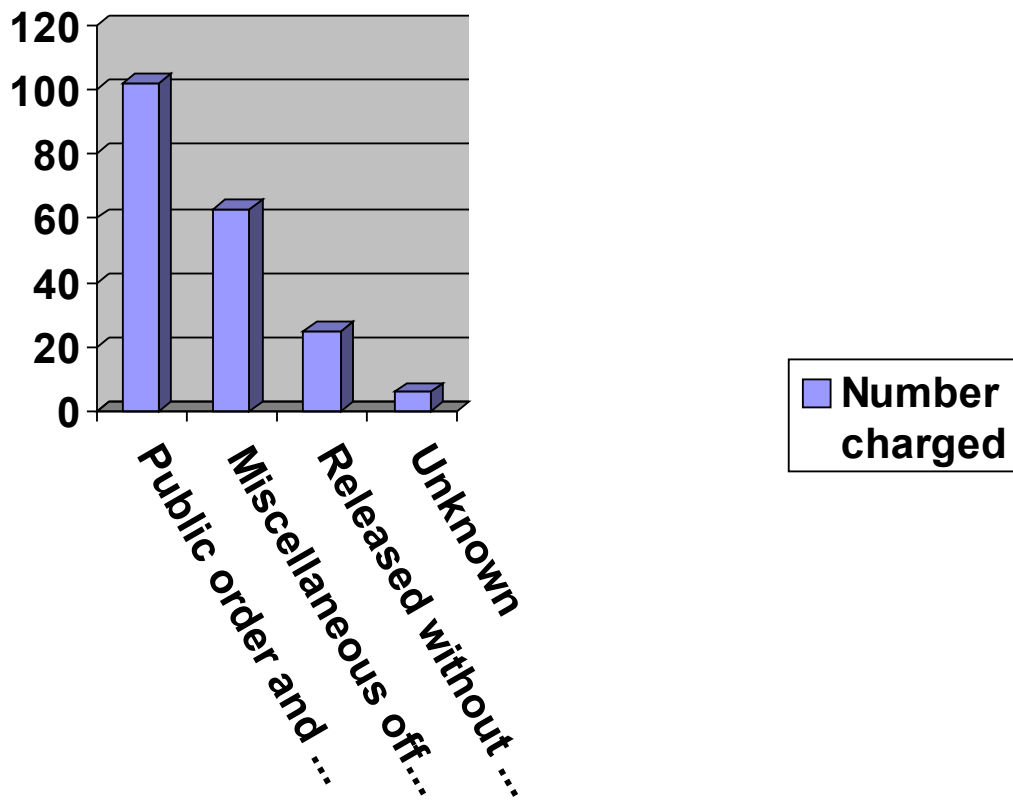
**January-April 2003:**

**250**



142-Harare  
77 – Bulawayo  
27 – Gweru  
2 – Kwekwe  
2 – Mutare

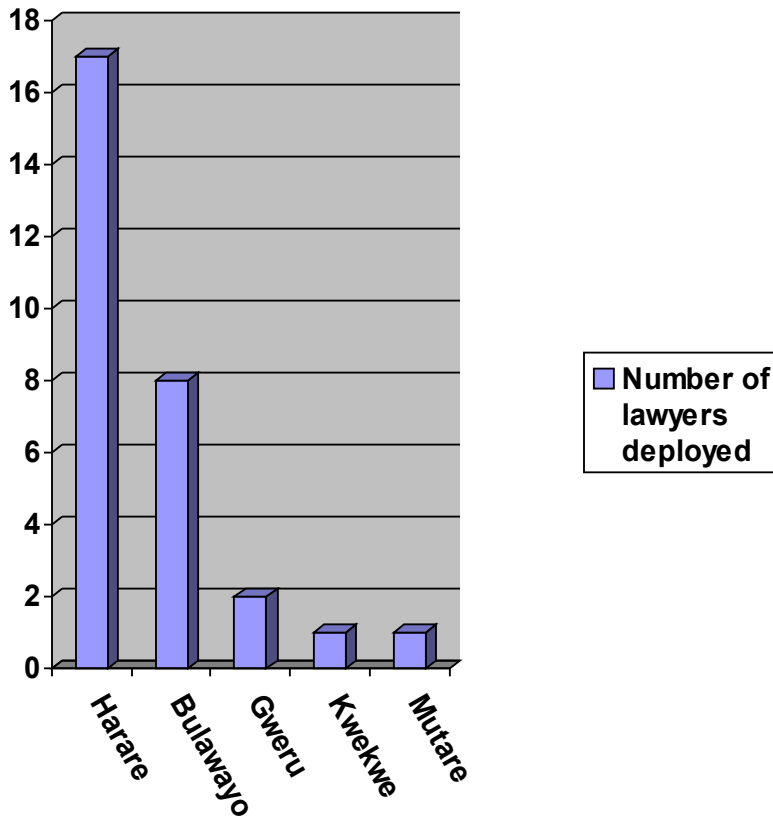
**Charges preferred**



**Charges preferred:**

**Public Order and Security Act – 102**  
**Miscellaneous Offences Act (fines) – 63**  
**Released without charge – 25**  
**Unknown – 6**  
**Successful prosecutions by State NIL**

**Total number of deployments of lawyers: 29**

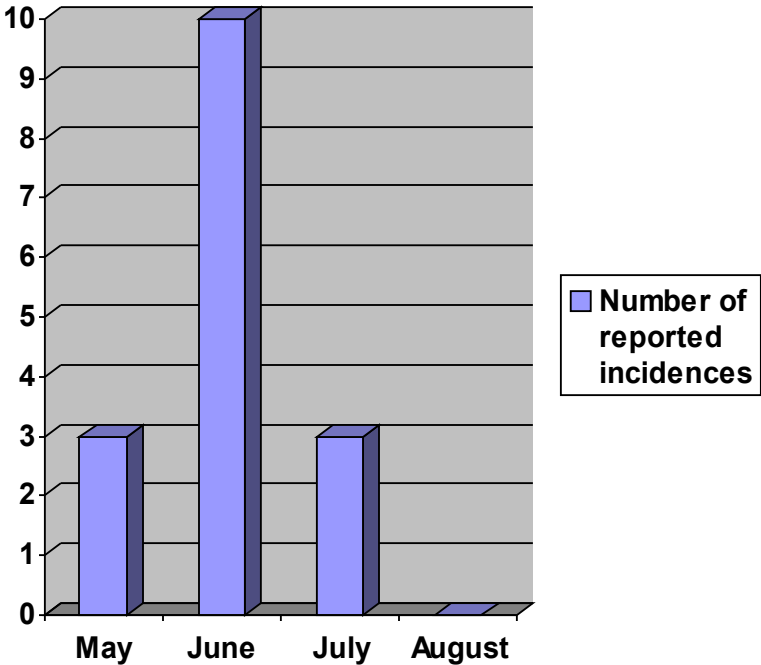


**17- Harare**  
**8 – Bulawayo**  
**2 – Gweru**

1 – Kwekwe  
1 – Mutare

**STATISTICS FOR REPORTING PERIOD MAY-AUGUST 2003**

**Total number of reported incidents: 16**

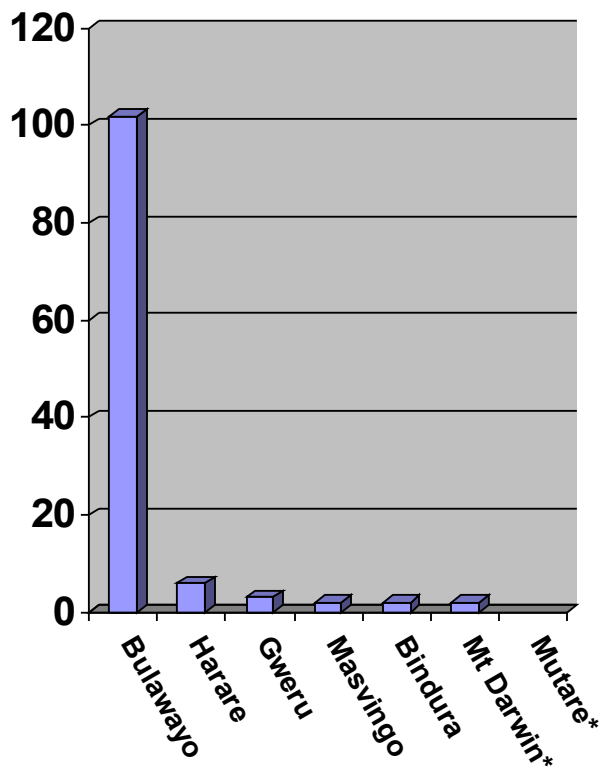


May-3  
June-10  
July- 3  
August 0

<b>Total incidences of assault in the cases:</b>	<b>6</b>
<b>Total incidences of denial of legal representation:</b>	<b>8</b>
<b>Total incidences of over detention</b>	<b>5</b>

**Total number of human rights defenders detained: 117**  
**(Excluding unnamed and uncounted human rights defenders in the incidences)**



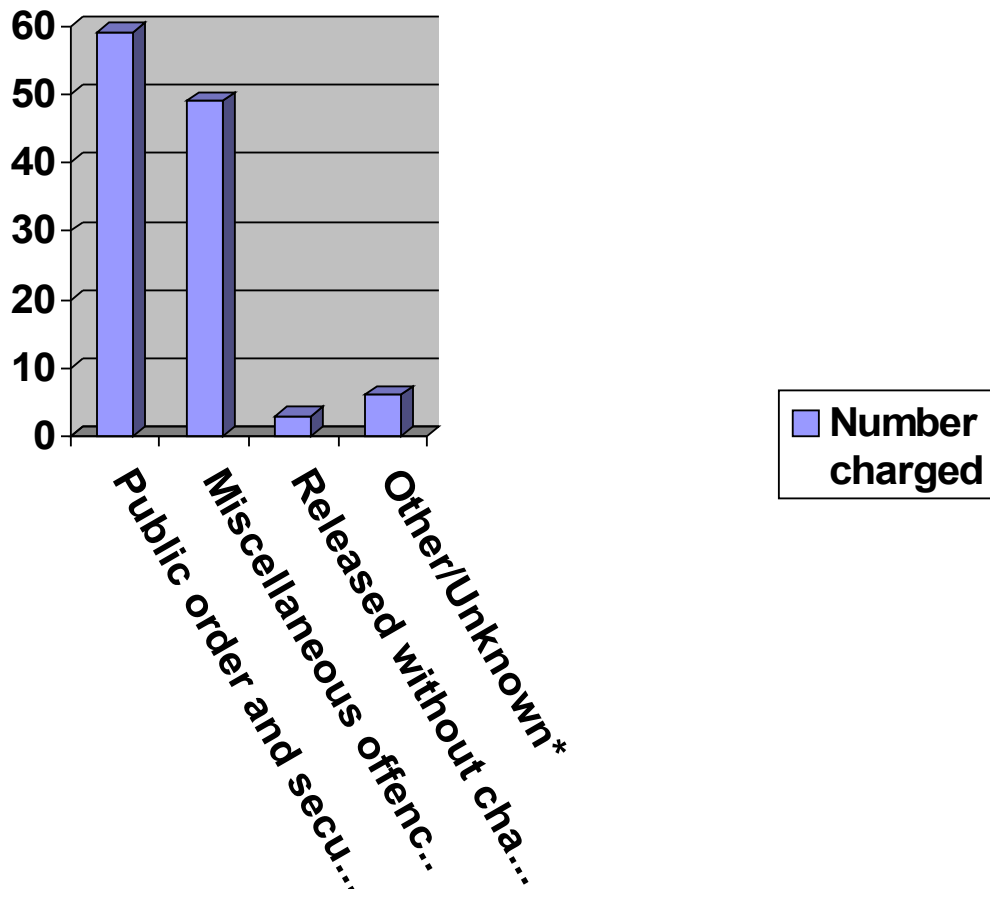


■ Number of Human Rights Defenders Detained

102-Bulawayo  
6-Harare  
3-Gweru  
2 -Masvingo  
2 -Bindura  
2 -Mt Darwin\*

- Mutare\*

Charges preferred

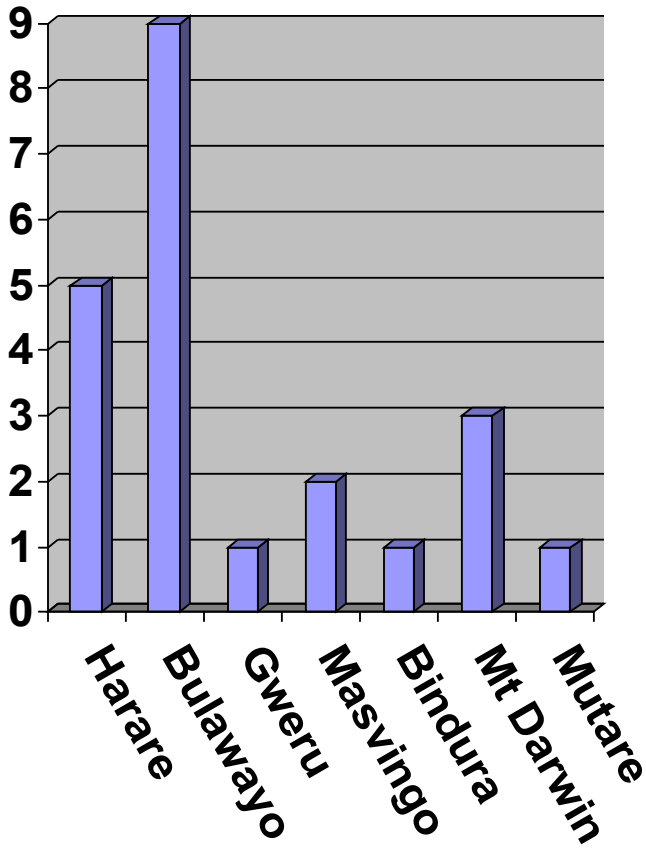


Public Order and Security Act-59  
Miscellaneous Offences Act (fines) – 49  
Released without charge – 3\*

**Other/Unknown – 6\***

**Successful prosecutions by state-Nil**

**Total number of deployments of lawyers: 22**

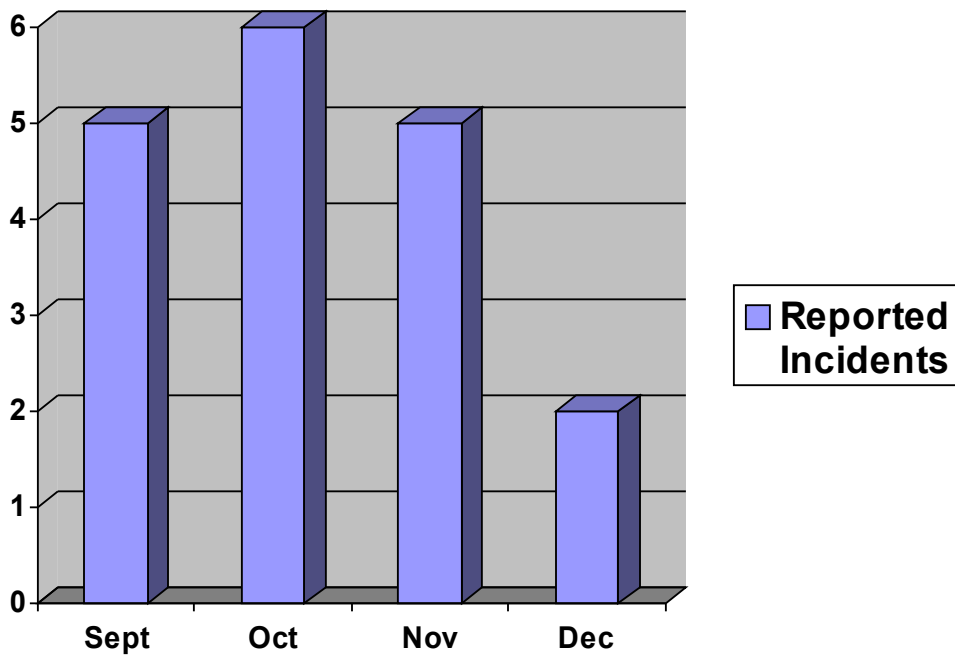


■ Number of lawyers deployed

5- Harare  
1 – Gweru  
2 – Masvingo  
1 – Bindura  
3 – Mt Darwin

**STATISTICS FOR REPORTING PERIOD SEPTEMBER-  
DECEMBER 2003**

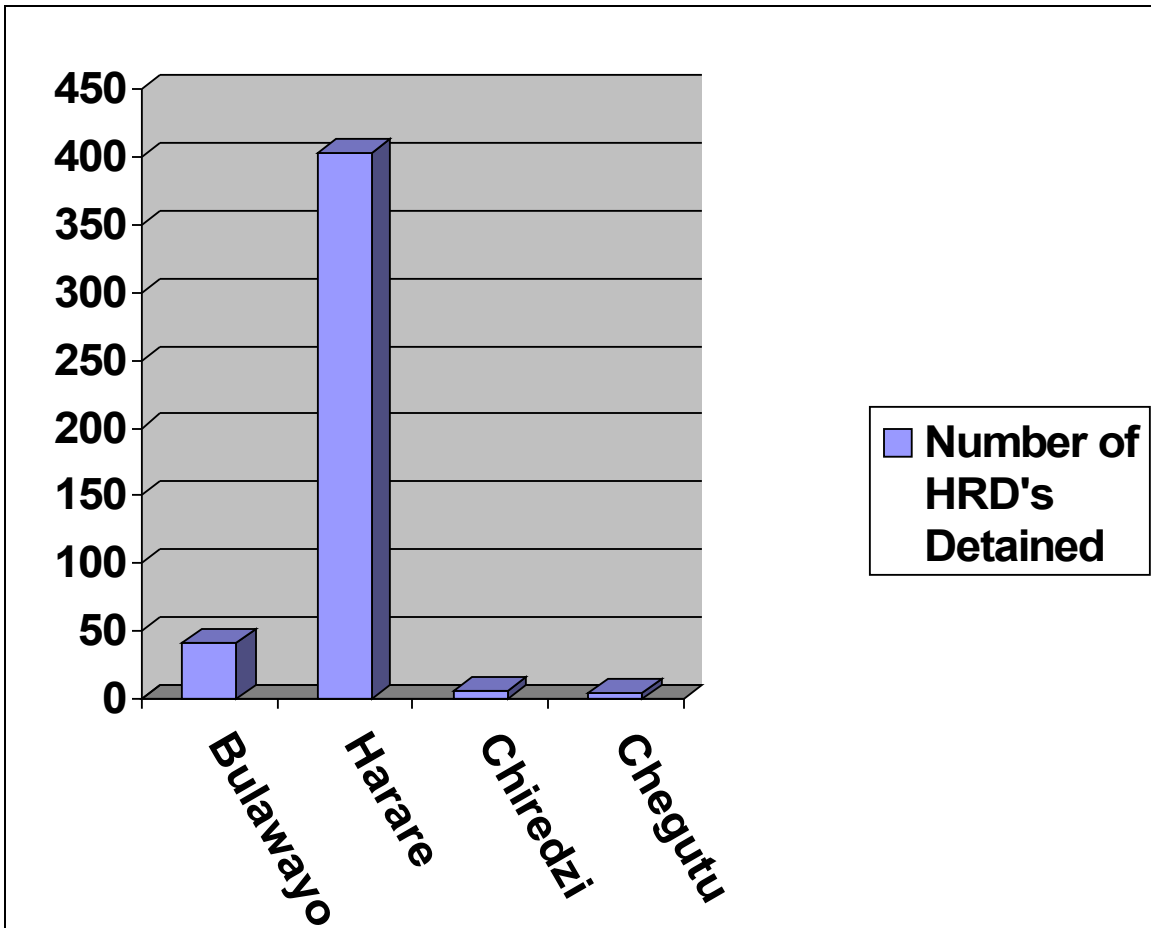
**Total number of reported incidents: 18**



	<b>Oct- 6</b>
	<b>Nov- 5</b>
	<b>Dec-2</b>
<b>Total incidences of assault in the cases:</b>	<b>3</b>
<b>Total incidences of denial of legal representation:</b>	<b>3</b>
<b>Total incidences of over-detention:</b>	<b>0</b>

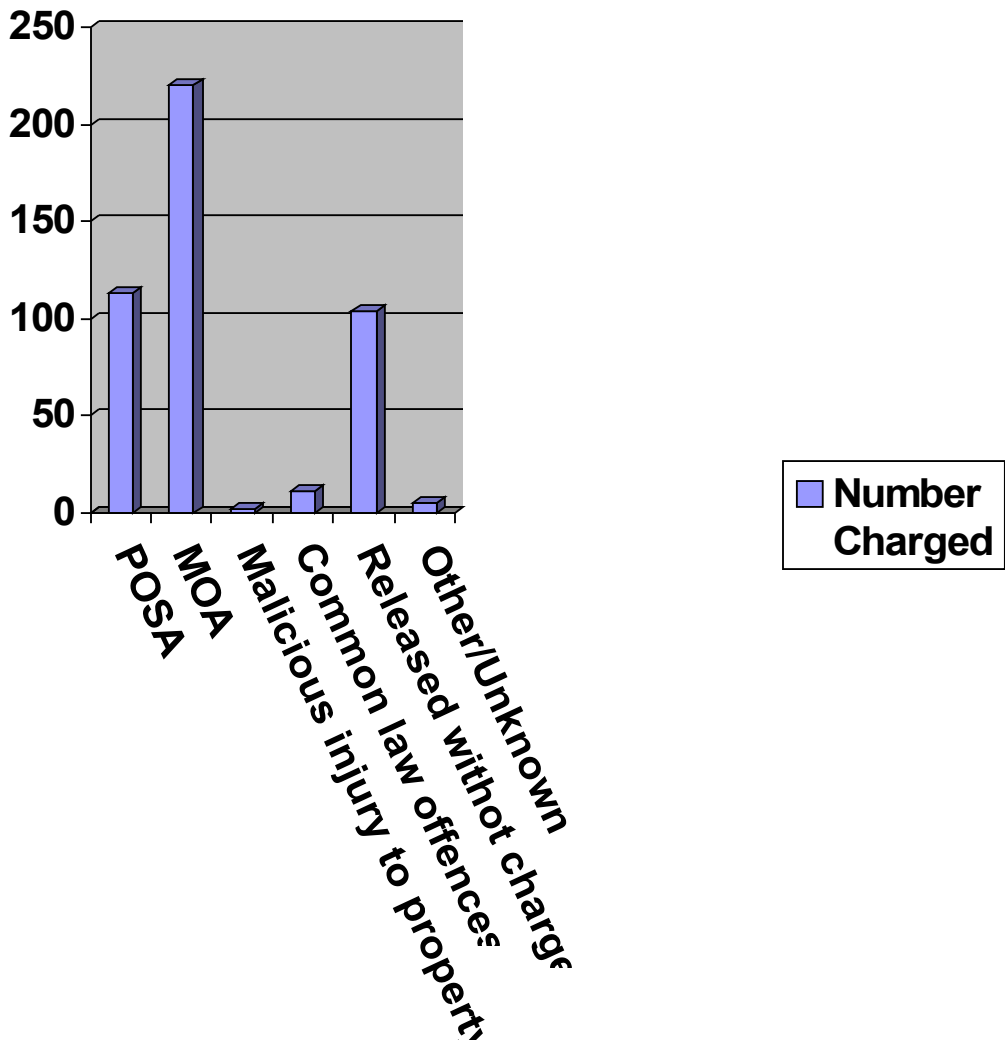
**Total number of human rights defenders detained: 455**

<b>42- Bulawayo</b>
<b>402- Harare</b>
<b>6 -Chiredzi</b>
<b>5-Chegutu</b>



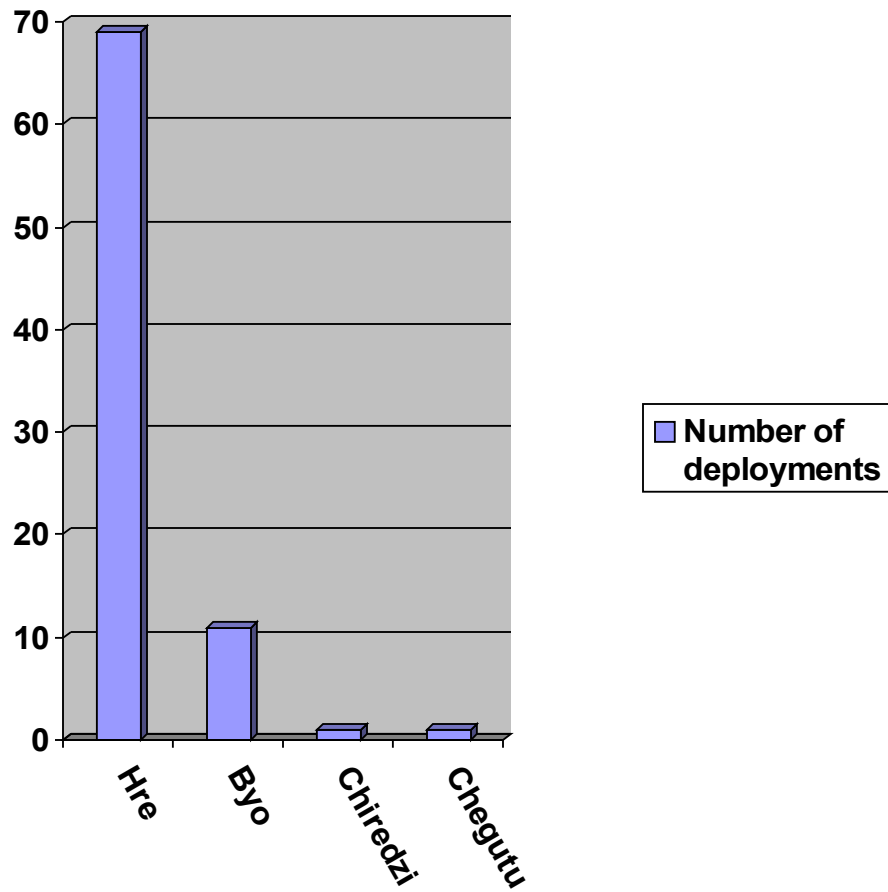
**Charges Preferred**

Public Order & Security Act	113
Miscellaneous Offences Act	220
Malicious Injury to property	2
Common Law Offences	11
Released without charge	104
Other/Unknown	5
Successful prosecutions by State	NIL



**Total number of deployments of lawyers: 82**



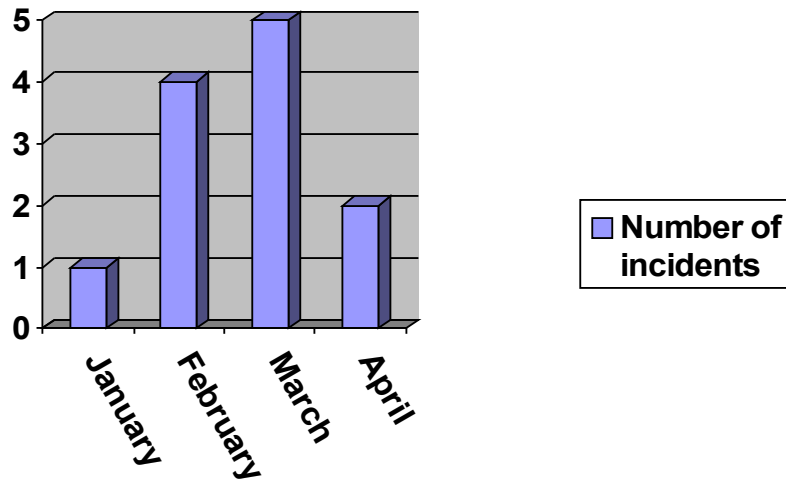


69– Harare  
11– Bulawayo  
1 – Chiredzi  
1 – Chegutu

**Total Number of incidents; 12**

# Statistics for the period January-April

2004



Jan-1

Feb-4

Mar-5

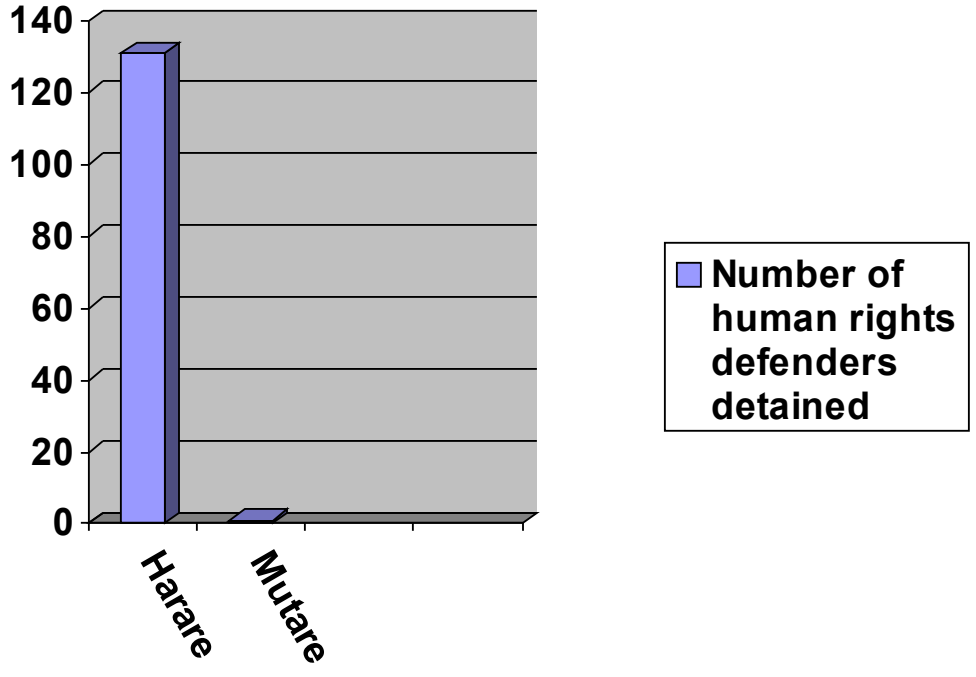
Apr-2

Total incidences of assault in the cases: 3

Total incidences of denial of legal representation: 1

Total incidences of over-detention: 1

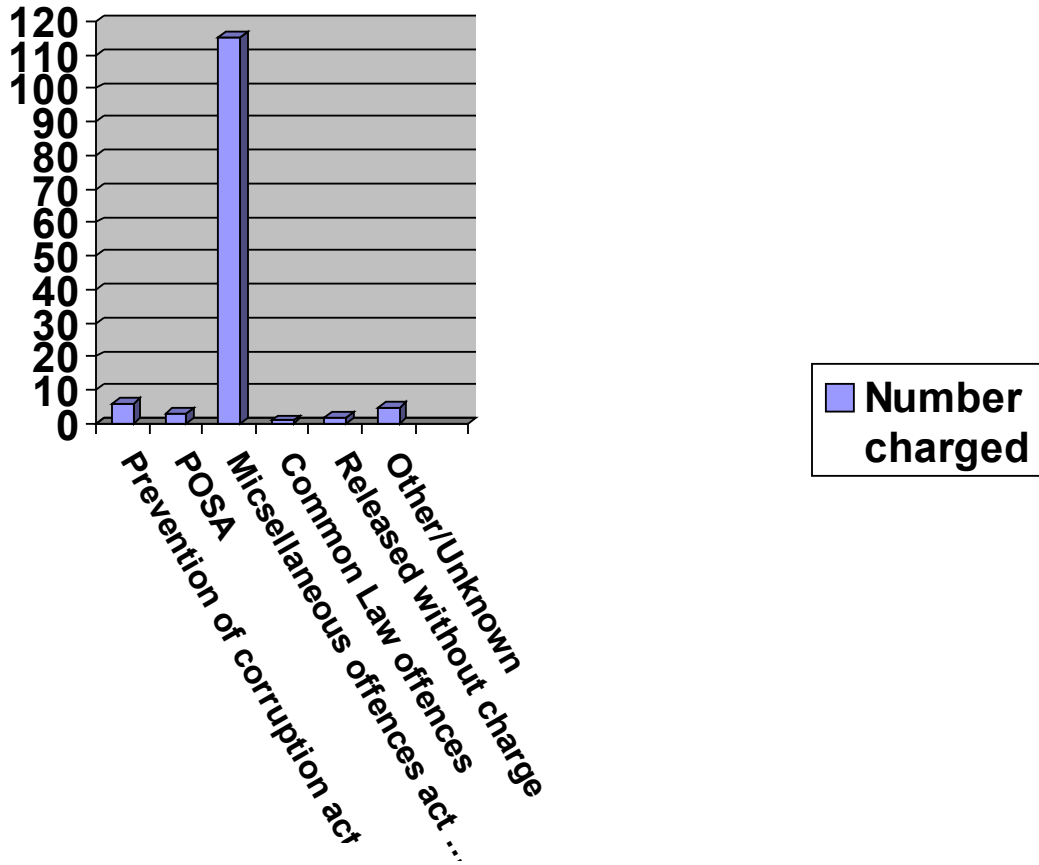
**Total Number of Human Rights Defenders Detained: 132**



**Harare-131**

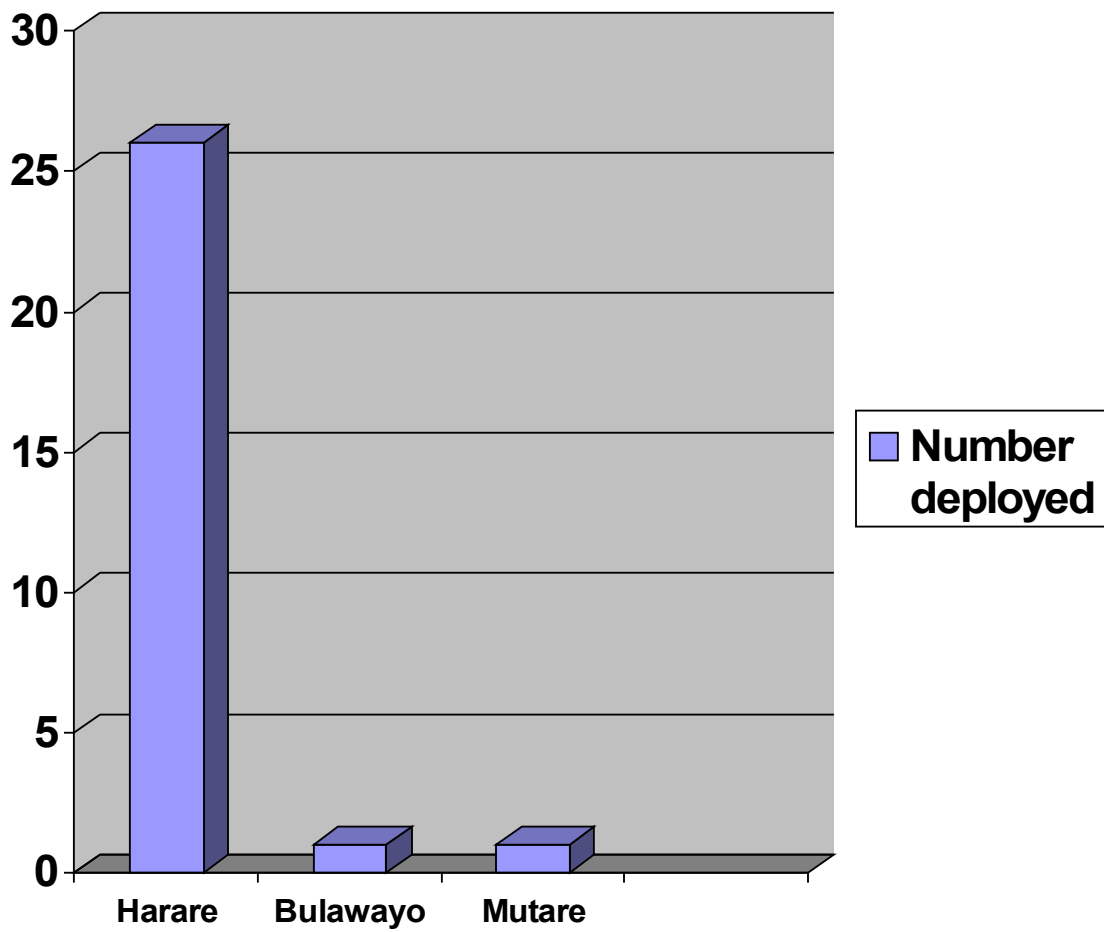
**Mutare-1**

## Charges Preferred



Public Order and Security Act	3
Prevention of Corruption Act	6
Miscellaneous Offences Act (fines)	115
Common Law Offences	1
Released without charge	2
Other/Unknown	5
Successful prosecutions by state-	Nil

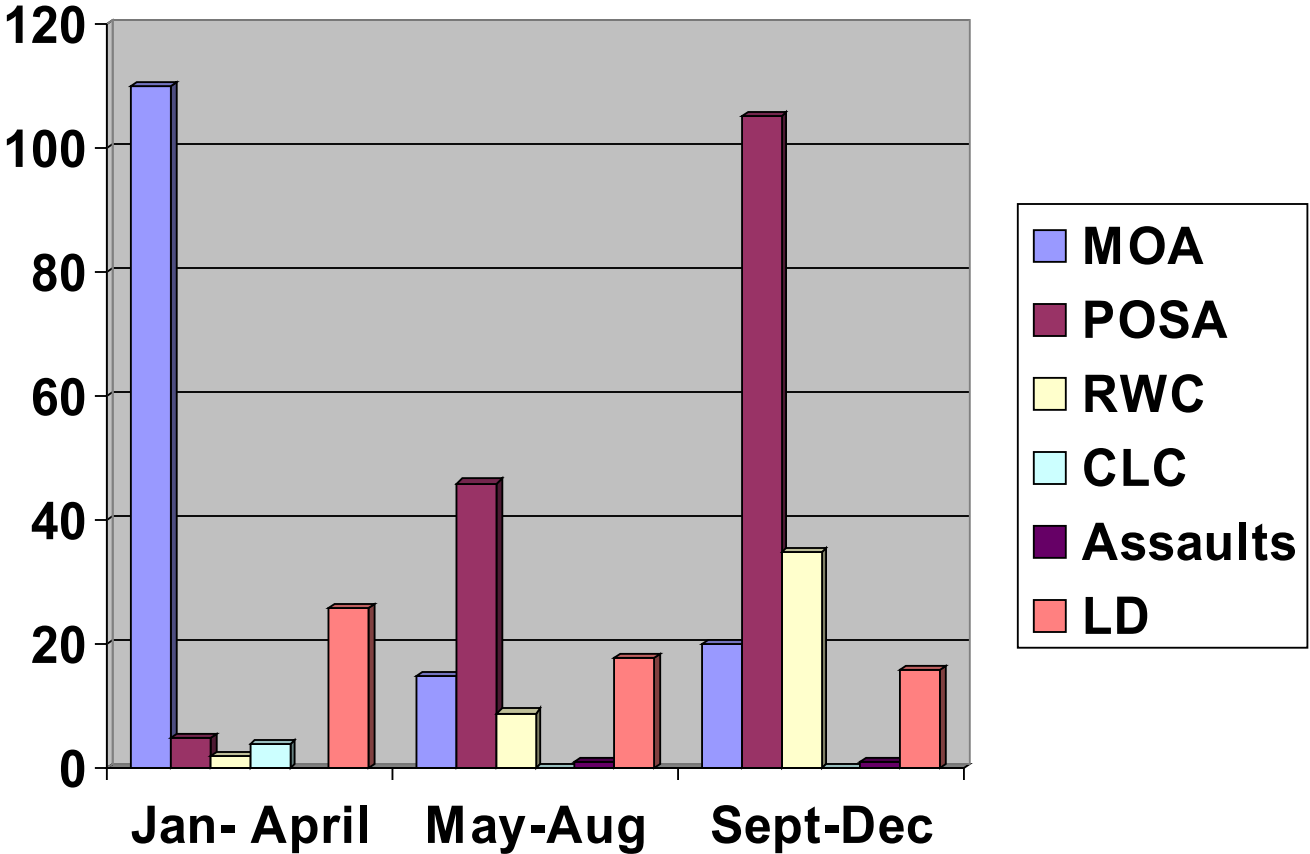
**Total Number of deployment of lawyers:28**



26-Harare

1-Bulawayo  
1-Mutare

2004



Key-            MOA                            Miscellaneous Offences Act  
                      POSA                           Public Order and Security Act  
                      CL                                 Common Law Charges  
                      RWC                              Released Without Charge  
                      LD                                 Lawyers Deployed

Annexure C: Health National Population Survey: Zimbabwe

	Most Recent Year	Data
<b>Socioeconomic context</b>		
Total population (000s)	2003	13,102
GNI per capita, Atlas Method (US\$)	2001	480
Expected years of schooling	2002	9
Adult literacy rate (% of population ages 15 +)	2002	90
<b>Demographic indicators</b>		
Average annual population growth rate (%)	1990-2003	1.9
Age dependency ratio (dependents as a proportion of working-age population)	2003	0.9
Total fertility rate (births per woman)	2003	3.6
Adolescent fertility rate (births per 1,000 women ages 15-19)	2003	81
Contraceptive prevalence rate (% of women ages 15-49), any method	1999	53.5
<b>Health status indicators</b>		
Life expectancy at birth (years)	2003	39
Infant mortality rate (per 1,000 live births)	2003	78
Under-5 mortality rate (per 1,000)	2003	126
Maternal mortality ratio (per 100,000 live births), modeled estimates	2000	1,100
Prevalence of child malnutrition--underweight (% of children under age 5)	1999	13
<b>Health care indicators</b>		
Child immunization rate, measles (% of ages 12-23 months)	2003	80
Child immunization rate, DPT3 (% of ages 12-23 months)	2003	80
Births attended by skilled health staff (% of total)	1999	72.5
Physicians (per 1,000 people)	2002	0.1
Hospital beds (per 1,000 people)	1990	0.5
Tuberculosis treatment success rate (% of registered cases)	2002	67



DOTS detection rate (% of estimated cases)	2003	43
<b>Health finance indicators</b>		
Health expenditure, total (% of GDP)	2002	8.5
Health expenditure, public (% of GDP)	2002	4.4
Health expenditure, public (% of total health expenditure)	2002	51.6
Health expenditure per capita (\$)	2002	118.0
<b>Risk factors and future challenges</b>		
Prevalence of HIV, total (% of population ages 15-49)	2003	24.60
Prevalence of HIV, female (% of population ages 15-24)	2001	33.00
Tuberculosis incidence (per 100,000 people)	2003	660
Tuberculosis death rate (per 100,000 people)	2002	55

Source: [www.worldbank.org/hnpstats](http://www.worldbank.org/hnpstats)

## **Annexure D Violations of civil and political rights of Tertiary Students**

International law makes clear the impermissibility of any retrogressive measures taken in relation to the right to education, as well as other rights enunciated in the Covenant on Economic, Social and Cultural Rights. If any deliberately retrogressive measures are taken with regards to the right to education, the Zimbabwean Government just like any other state has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the State party's maximum available resources.<sup>19</sup> Thus the Government of Zimbabwe cannot for example purport to expel students, close universities or institutions of higher learning on grounds such as national security or the preservation of public order as it has previously done.

### **Human Rights Violations 2006**

**On 31 January 2006** 4 members of a student team carrying out research on Operation Murambatsvina were arrested around 14:30 hours at Hopley Farm. They were released without charges after the intervention of Zimbabwe Lawyers for Human Rights (ZLHR) and were able continue with the research.

**On 15 February 2006** 200 Students were arrested after students from 3 Bulawayo colleges, including NUST, Bulawayo Polytechnic and United College of Education engaged in a protest with the government security against tuition fee hikes by the government. After some screening the police remained with 21 who were charged with malicious injury to property and public violence.


**On 21 February 2006** police in Masvingo briefly arrested 15 students from the Masvingo Polytechnic before releasing them later in the day. Among the students were 3 ZINASU leaders. One of the student leaders is receiving treatment in

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<sup>19</sup> The nature of states parties obligations (Art 2, para 1): 14/12/90 General Comment 3 in Compilation of General Comments General recommendation adopted by the Human Rights Treaty Bodies, UN Doc/HRI/Gen/1/Rev.7 (May 12, 2004) para 9.

Masvingo for a fractured leg, an injury sustained when the police attempted to arrest him. The students who had boycotted classes that day, preferred to gather outside the office of the Principal. There was heavy police presence as the students attempted to demonstrate against the fee hikes at tertiary institutions.

**On 22 February 2006** 22 students were arrested for demonstrating at NUST Campus against the Government instigated fee hikes at tertiary institutions. They were taken to Bulawayo Central Police Station. Three other students were also arrested when they brought food to the detained students. They were later released without charges being preferred against them.

**On 27 February 2006** the University of Zimbabwe students were arrested after they attempted to peacefully meet with the Vice Chancellor to address concerns pertaining to fees and other conditions at the institution. The university security guards, namely, Chief Security Officer Tarambiwa and Security Officer Kanonga, assaulted the students. The two officers in question are alleged to have assaulted two of the students with clenched fists resulting in injuries, namely injury to the eye and ear of Tineyi Sande and Wellington Mahohoma respectively. Tineyi Sande also had his jacket torn and ZW\$6million stolen from him by unidentified security officers. Those arrested are; 

ZLHR Rapid Reaction Unit & SST's Rapid Solidarity & Support Team attended and tried to secure the release of the students who had not yet been formally charged nor had any charge been preferred against them at the time of their arrest. The police then took them to the condemned Matapi Holding Cells in Mbare, where the students are alleged to have spent the night before being taken to Harare Central Police Station.

Those who were in need of medical treatment for their assault injuries were denied access at the Central Police Station by the Officer Commanding Law And Order and the Officer Commanding Harare Suburban District who also refused to

disclose the charge preferred against the students. At Matapi Cells, the Officer in Charge, one Inspector Mukuze also refused the students medical treatment claiming that in using his police discretion he saw no need for urgent medical attention. Tineyi Mukweva was also assaulted by the police during the demonstration and threatened with death but he was not arrested.

**On 7 March 2006** 7 NUST students were arrested in Bulawayo when they marched to the Governor's office to try and seek audience with him over hiked fees in tertiary institutions<sup>20</sup>

**On 10 March 2006** Mfundo Mlilo, Collen Chibango and Wellington Mahohoma were suspended for life from the University of Zimbabwe for "addressing students at the Great Hall and advising them not to pay tuition fees, leading a group of students to the administration building for unknown intentions and leading a small group of students to the campus taxi rank and disrupting business there on 27 February 2006 around 13:00 hrs, there by breaching ordinance 30". Because of this the students were expelled from the university and the letter did not state whether it was for the usual 2 years or for life. This was supposedly supposed to help the expelled students and other students to appreciate the need to make the university a reputable institution. Before their expulsion, Riot police had maintained a heavy presence at the university since the 6th of March in order to discourage any further demonstrations.

**On 26 March 2006** about 28 NUST students were arrested for demonstrating against tuition fee hikes in tertiary institutions. Five of them were released and another 5 were due to appear in the Magistrates court.<sup>21</sup>

**On 26 April 2006:** it is reported that riot police disrupted University of Zimbabwe students' campaign rally for Student Representative Council (SRC) elections. Seven students were arrested and these were Collen Chibango, Mfundo Mlilo,

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<sup>20</sup> Source: SST Information alert

<sup>21</sup> Source: SST Information alert

Garikai Kajau, Abisha Dube, Wellington Mahohoma, Zwelithini Viki and Hentchel Mavuma .The students were only released following intervention by their lawyer Dumisani Nkomo who however could not ascertain what the charges were. <sup>22</sup>

**On 7 May 2006:** *it is* reported that on May 5 police in Harare arrested and detained 48 student leaders from universities and tertiary institutions around the country for allegedly vandalizing President Robert Mugabe's portrait at the Zimbabwe National Students Union (ZINASU)'s congress held in Harare a week before. The paper quoted the students' lawyer Alec Muchadehama as saying out of the 48 students arrested all but 10 were still detained at Rhodesville Police Station the following day. The 10 were charged with malicious injury to property for removing the picture from its frame.<sup>23</sup>

**On 8 May 2006,** the police following the class boycotts and demonstrations that had taken place at Bindura University on the same day picked up 27 students. Through a vetting system, which seemed to benefit largely students perceived to be loyal to ZANU PF, 11 of the students were released leaving 16 students including 4 ladies. All the arrested students were subjected to severe assaults and torture at the hands of the Police, CIO Operatives and ZANU PF activists working with the police. The students were made to crawl all the way to the Charge Office from the car park area. They were then subjected to a form of torture called "drinking whisky". This involved each student touching the ground with his/her finger then being forced to run in circles around his/her finger until he felt dizzy and fell. The students were forced to walk in a bending posture as if they were going underneath an imaginary fence, wire or line. They were also forced to frog-jump all the way from the charge office to the Police holding cells, a distance of between 60-70 meters away from the charge office. In the process the police were clapping them with open hands and forcing them to say 'thank you' each time they were clapped.<sup>24</sup>

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<sup>22</sup> Sources: SW Radio Africa & SST Information Alert

<sup>23</sup> Source; SST Information Alert & The Standard News Paper

<sup>24</sup> Source: Joint SST & ZINASU Alert " Inside the Lions Den"

There were no blankets in the cells notwithstanding the very cold nights. The female students were made to sleep in a cell whose toilet had long broken down and could not flush and smelling heavily not of fresh but decomposing human waste. They were later transferred to Chikurubi Maximum Prison, a remand prison for convicted criminals before they were released on bail on 16 May 2006.

**On 12 May 2006** 10 of 11 students including members of the Student's Representative Council were followed up and arrested by the police in Harare and Bindura in connection with the burning a laboratory at Bindura State University. The police assaulted all the 10 and some of them were arrested and later released. Two of the students were suspended from the University of Zimbabwe, namely Abisha Dube and Zwelithini Vicki. The 10 students were subjected to torture upon arrest. The torture included being forced to get intimate with the floor while being interrogated and being forced to strip naked. They were also assaulted under their feet. One of the students, Givemore Chari, the Bindura University SRC President, did not get arrested but was on the run, as he feared for his life after the police inserted adverts and stories in newspapers that they were looking for him and Promise Mkwanzani, the ZINASU President in connection with the arson. Givemore skips the country and begins living in exile in South Africa, while Promise went into hiding until he was finally cleared with the apprehension of the real arsonists who were Bindura University faculty members.

**On 12 June 2006** several students from the National University of Science and Technology (NUST) were arrested following a skirmish at the Mhlahlandela Government Complex. The students, together with members of the Bulawayo Residents Association (BORA) were petitioning for a downward review of public transport fares.

**On 16 June 2006: SW Radio Africa** reported that police arrested and assaulted an unknown number of university students for demonstrating against

unaffordable fee increases on The Day of the African Child. The radio station quoted Zimbabwe National Students' Union (ZINASU) president, Promise Mkwanzani as saying the march was intended to end at the Parliament Building but the police descended on the students who had been granted clearance to march, assaulted them, dispersed some and arrested others. Most the demonstrators were detained at Harare Central Police Station. He said the police also confiscated the activists' banner believed to be worth more than a hundred million dollars.

**On 8 September 2006** anti - riot police in Harare arrested 8 Zimbabwe National Students Union (ZINASU) leaders for holding a workshop, which was reportedly aimed at protecting the student's interests.<sup>25</sup> According to SW Radio Africa, station the ***“students were working on a petition demanding accessible education for all in Zimbabwe.”*** The radio quoted Zimbabwe Lawyers for Human Rights (ZLHR), Rapid Reaction Unit lawyer Tafadzwa Mugabe as saying he was denied access to his clients. The radio was unable to get a police report.

**On 9 September 2006** personnel from the Zimbabwe Republic Police arrested and detained members of the ZINASU executive committee at Wise Owl Motel. The students were Promise Mkwanzani, Lynette Mudehwe, Samuel Mangoma, Mellisa Ndlovu, Tellington Kwashira and Makomborero Phebeni. They were made to pay a fine for breaching Section 41 of the Criminal Law (Codification and Reform) Act in that they engaged in disorderly conduct. They had been initially detained for holding a meeting without notifying the police.

**On September 14 2006: SW Radio Africa** reported that state security agents together with University of Zimbabwe security officers arrested Benjamin Nyandoro, Zimbabwe National Students' Union (ZINASU) programmes officer

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<sup>25</sup> Those arrested were identified as ZINASU Vice President Gideon Chitanga, Secretary General Beloved Chiweshe, and President of the Bulawayo Polytechnic Milward Makwenjere, George Makoni, Fungai Mageza, Lawrence Mashungu, Clayton Njova and Terrence Chimhavi.

and ZINASU President Promise Mkwanzani, in connection with the ZCTU protest.<sup>26</sup> There was no comment from the University or the police.

**On 14 September 2006: SW Radio Africa** reported that on 13 September police in Masvingo arrested 8 student activists at Masvingo State University in connection with the ZCTU demonstration.

**On 27 September 2006: SW Radio Africa** reported that police in Harare disrupted a meeting of ZINASU members by destroying the material that was supposed to be used in a protest they had planned for the week before 27 September. The students' body failed to hold the protest because of the interruptions by the police.

**On 5 October 2006: SW Radio Africa** reported that on 4 October police in Harare arrested Promise Mkwanzani the president of the Zimbabwe National Students Union (ZINASU) and several members of the executive for holding a protest march demanding better education. Human Rights Activists Pedzisai Ruhanya who observed the protest confirmed the arrest and was quoted as saying, ***“some of the students were assaulted while in custody”***. ***The Financial Gazette*** made the same report on 12 October 2006.

**On 24 October 2006** the police in Masvingo arrested 12 student activists of the Masvingo State University Students' Representative Council for allegedly holding an illegal general meeting with students. Washington Katema who coordinates ZINASU activities was quoted by SW Radio Africa as saying ***“no charges had so far been placed”***.<sup>27</sup>

**On 25 October 2006: Voice of America** reported that police in Bulawayo arrested at least 45 University students as the students tried to deliver a petition

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<sup>26</sup> ZCTU organized a demonstration that led to the torture and arrest of many activists including Wellington Chibhebhe the ZCTU Secretary General.

<sup>27</sup> Amongst those arrested was the Vice president of ZINASU Gideon Chitanga, Edison Zhou, Wilflom Mugwigwi, George Makamure, Nicholas Govo, Wilfred Manyeruke, Ogylive Makova, Chatambudza Charlton, Liberty, Ndaba Ngwenya, Hlathswayo Edison and one who could only be identified as Shoko.



concerning soaring tuitions and living conditions to a regional official. The ZINASU president Promise Mkwanzani was quoted as saying ***“the marchers managed to present the petition to the governors office despite the intervention by the security forces”***.

**On 27 October 2006: SW Radio Africa** reported that on October 27 police in Bulawayo arrested the ZINASU president, Promise Mkwanzani for taking pictures with his camera phone during a solidarity protest by students.

**On 27 October 2006:** 7 students from Hillside Teachers' College, and 5 from the United College of Education (UCE), were handed with letters of expulsion for participating in a the march which had occurred on 25 October.

**On 8 November 2006: SW Radio Africa** reported that on 7 and 8 November police in Masvingo and Harare arrested a total of 18 students for holding demonstrations without police clearance. The radio station quoted Zimbabwe National Students union (ZINASU) coordinator, Washington Katema as saying *“the arrested were demonstrating in support of the staff on strike and denouncing unaffordable university fees and bungled exam papers”*. Reporting on the same incident, *The Herald* of November 11 quoted Chief Inspector Phibion Nyambo as saying *“the students were facing charges of contravening the Section 24 of the Public Order and Security Act (POSA)”*.<sup>28</sup>

On 17 November 2006: *The Zimbabwe Independent* reported that the government had introduced stringent college entry requirements to all aspiring students to be recruited at the School of Journalism and Media studies at the Harare Polytechnic. According to the paper the students should have undergone National Youth Service training among other relevant courses .The Vice Principal of the academic institution, Runyararo Magadzire was quoted as saying *“the*

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<sup>28</sup> *The Financial Gazette* reported the arrest on November 9 and *The Standard* made the report on November 19.

*aspiring students should be 21 years old and have passed through training centers, have undertaken community work, and possesses 5 Ordinary levels passes and 2 passes at advanced level”.*

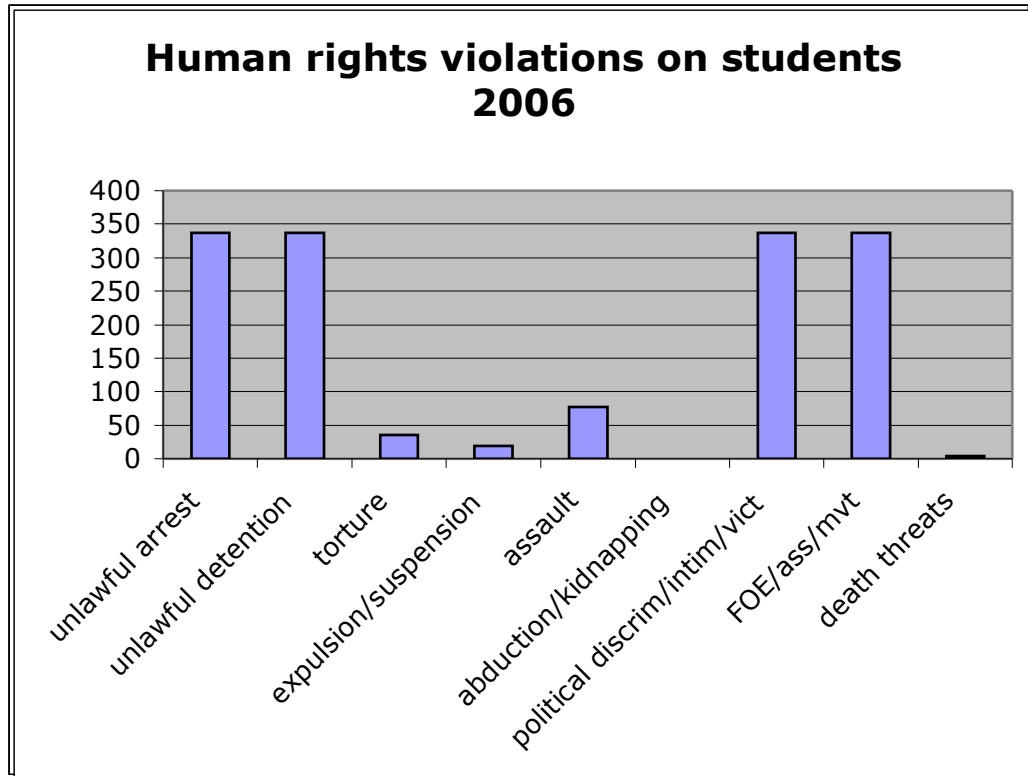
On 23 November 2006: SW Radio Africa reported that on 22 and 23 November police in Zimbabwe arrested a total of 54 students in Harare, Bulawayo and other centers for marching peacefully around the institutions’ campus beating drums and pots and singing revolutionary songs. ZINASU president, Promise Mkwanzani was quoted as saying *“16 students were arrested in Bulawayo, 5 in Harare and 33 at Kaguvi Centre between Kwekwe and Gweru”*. According to the radio station on November 22 *“the students were arrested as a group of Zimbabwean non governmental organizations (NGO’s) held the first of a planned series of five minute lunch time protests across Zimbabwe”*.

On 23 November 2006: *The Chronicle* reported that on November 22 police in Bulawayo arrested four students in the National University of Science and Technology (NUST) Student Representative Council (SRC) for allegedly taking part in an illegal demonstration at the university campus. Chief Superintendent Oliver Mandipaka was quoted as saying *“the students were arrested for allegedly masterminding the protest and they will be charged under Section 36 of the Criminal Law (Codification and Reform) Act for violence and disturbing the peace at the university”*.

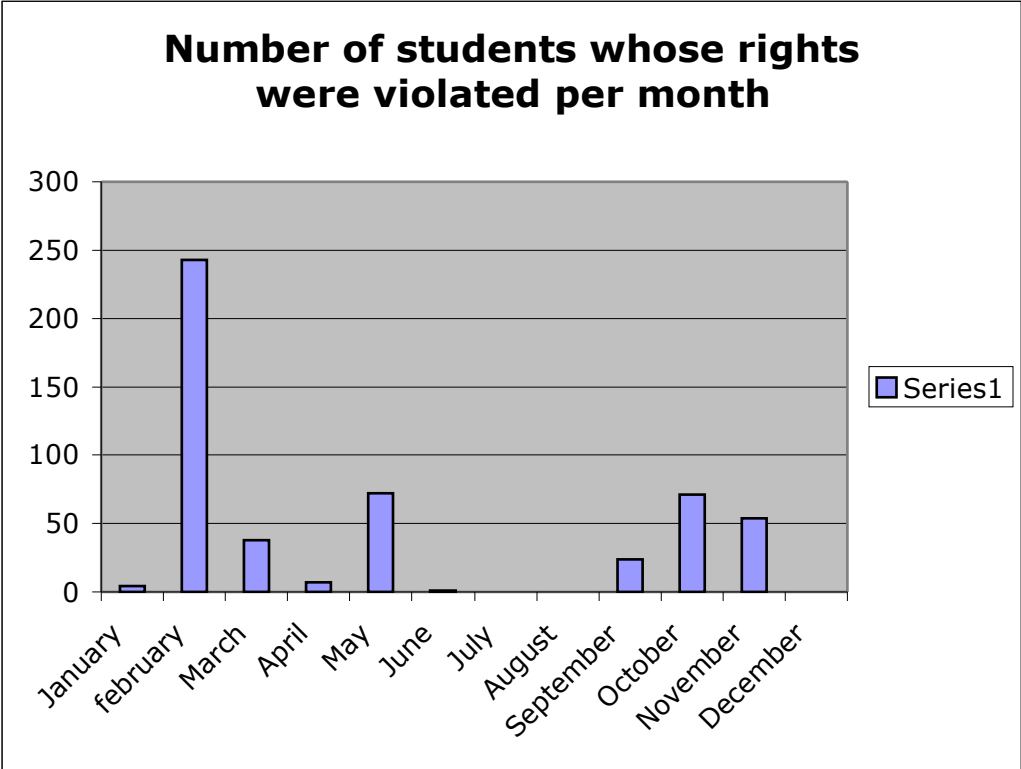
On December 4 2006: The ZINASU President, Promise Mkwanzani, and university of Zimbabwe SEC members, Maureen Kademaunga, and Zwelithini Vhiki were barred by University security guards from sitting for their examinations. Promise was told that he was no longer a student at the University anymore, while the other two were informed that confirmation of their acquittal by the Students Disciplinary committee, had not yet been sent through by the Vice Chancellors office thus they could not sit for their examinations.

**On December 15 2006:** Police in Masvingo released a notice to other police stations of Promise Mkwanzani as a wanted person, in connection with student demonstrations held in Masvingo in July and November 2006.

**6. Totals: 1 January- 31 December 2006**



The graph above depicts the number of violations throughout the year, which total 1483. Each student might have been subjected to more than one violation at a time.



**Total number of students whose rights were violated was 514. Some students had their rights violated more than once a month and some had more than one right violated at a time. 514 are a minimum since in some instances the number of students whose rights were violated during a demonstration is not known hence one is used as a minimum.**

Month	Number of students
January	4
February	243
March	38
April	7
May	72
June	1 <sup>29</sup>
July	0
August	0
September	24
October	71
November	54
December	0
Total	514

Category of right violated	Number of times the rights were violated in 2006
Unlawful arrest	337
Unlawful detention	337
Torture	35
Expulsion/suspension	19
Assault	77
Political discrimination/victimisation	337
Freedom of expression/ass/mvt	337
Death threats	4
Total	1483

## **Analysis**

<sup>29</sup> One is a minimum since the exact number of students whose rights were violated is not known

The year 2006 saw a number of unwelcome and catastrophic developments for students and the student movement. The rights that were most violated during the year were the rights to freedom of expression/association/movement, political discrimination/ intimidation victimization, freedom from arbitrary and unlawful arrest and detention. These rights recorded 337 violations in the year. This was mainly due to the existence of repressive legislation in the name of POSA among others. This was further exacerbated by the fee hikes, which constituted the centre of most demonstrations by students in the year. Incidents of assaults and torture were also fairly high recording 77 and 35 respectively. The torture itself was so gross that it could never be justified in any circumstances and especially being perpetrated against defenseless students. It almost became the order of the day as the police tortured students to get information about their leaders but also as a form of punishment as if to warn students never to demonstrate peacefully again.

The practice of torture is proscribed in all international human rights instruments. To which Zimbabwe is party. The Universal Declaration on Human Rights (Article 5), the International Covenant on Civil and Political Rights (Article 7 and 10) the African Charter on Human and Peoples' Rights (Article 5) all unequivocally prohibit the practice of torture. Zimbabwe is party to the ICCPR and ACHPR and joined the two in 1986 and 1986 respectively. The provisions in these international human treaties are legally binding on states parties and Zimbabwe has every obligation to adhere to the norms enshrined therein. The fundamental nature of the human right to be free from torture is emphasized by the fact that under the major international human rights instruments no derogation is permitted from this right either in times of "public emergency which threatens the life of the nation"<sup>30</sup> or "in time of war, or other public emergency threatening the life of the nation" or "in time of war, public danger, or other emergency that threatens the independence of Security of a State Party."

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<sup>30</sup> International Covenant on Civil and Political Rights, Article 4.

This means that there can never be any justification for torture, worse still against an unarmed and defenseless student. On 8 May Bindura saw possibly the worst part of the year as regards torture by state agents on students. This was a dark day for the student movement as students were subjected to all kinds of torture, inhuman and degrading treatment and punishment at the hands of the police, state security agents and ZANU-PF activists. This situation cannot be condoned. The UN Basic Principles on the Use of Force and Firearms by Law Enforcement officials and the Code of Conduct for Law Enforcement Officials provide that law enforcement officials should apply non – violent means in carrying out their duties and only use force when strictly necessary.<sup>31</sup> When the use of force is unavoidable, it should be used in proportion to the seriousness of the offense and the legitimate objective to be achieved, and shall minimize damage and injury.<sup>32</sup> Thus the SST urges the Government of Zimbabwe to sanction the perpetrators of these abuses and offer the students an effective remedy thereby adhering to international human rights norms in the process.

The arrests in the year seemed to be a way of punishing students since most of the arrests did not lead to prosecutions or to the students having charges preferred against them. The students would be arrested and then later released after having been heavily assaulted and tortured by the police. The police therefore became not only arresting officers but also judicial officers as well meting out all kinds of punishment on the students. In this situation, there seemed to be no need to take the students to court. In any case, if they had been taken to court they would have most likely won the cases, much to the chagrin of the police officers, state security agents and ZANU-PF activists. The students were regarded more and more as opposition rather than mere students requiring the protection of the state.

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<sup>31</sup> Basic Principles on the Use of Force and Firearms by law enforcement officials (the Basic Principles), adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 1990. Principle 4. United Nations Code of Conduct for Law Enforcement Officials, adopted December 17, 1979, G.A res 34/169, annex, 34 U.N. GAOR Supp. (No.46) at 186, U.N. Doc. A/34/46 (1979), article 3.

<sup>32</sup> Basic principles, principle 5.



Nineteen students were suspended or expelled in the year compared to the 7 recorded for 2005. In terms of monthly violations, vacation months recorded the least number of violations in the year. This shows that violations occurred only when students were in colleges and also during peaceful demonstrations. The highest number of students whose rights were violated was recorded in February. This was the beginning of the semester/year when the Government announced without adequate notice that tuition fees and accommodation fees had gone up far beyond what the students could afford. This shock announcement was followed by peaceful demonstrations after the Government and tertiary colleges had denied students who had not paid the unreasonably high fees access to education. This in reality meant that more than half the students at these institutions could not attend lectures.

The second highest number of students whose rights were violated was recorded in May, towards the end of the semester. This included the gruesome torture of students at Bindura State University. SST urges the Government to respect the right of students to freedom of expression, a right which is guaranteed in the Constitution of the country, in the African Charter on Human and Peoples' Rights and in the UN Charter among many other international human rights instruments. SST would also like to reiterate the obvious by urging the Government and law enforcement officials to respect the right not to be subjected to torture, cruel, inhuman and degrading treatment or punishment. More specifically SST would like the Government to take note of Article 3 of CAT, which states, "No state may permit or tolerate torture or other cruel, inhuman and degrading treatment or punishment". Even if the police say move and you do not move as the President of Zimbabwe stated, that does not give the police the right to torture. Statements like these show that in Zimbabwe torture is not only permitted and tolerated but it is actually encouraged by the head of state.