

ZAMBIA

ELECTIONS AND HUMAN RIGHTS IN THE THIRD REPUBLIC

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I. SUMMARY

On November 18, 1996, Zambians voted in parliamentary and presidential elections—the second multiparty elections since the end in 1991 of twenty-seven years of authoritarian and mostly single-party rule, under former president Kenneth Kaunda. The Movement for Multiparty Democracy (MMD) won the majority of seats contested and President Frederick Chiluba was returned to office in these 1996 elections although several opposition parties, including the former ruling United National Independence Party (UNIP) boycotted them. Unfortunately, numerous human rights violations before the vote undermined the democratic process, making the playing field for these elections tilted in favor of the ruling MMD and seriously undermining the legitimacy of the elections themselves. This has set a negative tone for the country's development over the next few years.

Human Rights Watch/Africa takes no position on the political contest in Zambia, and recognizes that some of the accusations made by the opposition parties may be exaggerated. However, it is the responsibility of the Zambian government to abide by the rule of law and ensure that the voting process, the basis of any democracy, proceeds in conformity with Zambian and international law.

Zambia had been heralded as a model for democracy in Africa after a peaceful transfer of power in November 1991, when the MMD and its leader Frederick Chiluba gained a landslide victory over President Kenneth Kaunda and his UNIP party. In contrast to the authoritarian Kaunda years, Zambia initially made overall progress toward respect for civil and political rights, with some liberalizing reforms. But by 1993 these reforms appeared to have stopped and the Chiluba government increasingly resorted to the same methods used under Kaunda's rule to suppress criticism. The one-party mentality is still deeply ingrained in many of the country's new leaders: critics of the ruling MMD are often regarded as critics of "democracy."

The result is that Zambian citizens are still plagued by serious human rights violations such as restrictions on freedom of expression and assembly, intimidation of those in the legal system and harassment of opposition political parties. Some of these abuses are a legacy of the Kaunda years, but in many cases the human rights violations are the result of new initiatives by the Chiluba government. State intimidation of the opposition increased significantly in 1995 when former president Kenneth Kaunda announced a formal return to politics, with the avowed aim to contest the country's 1996 presidential elections.

The run-up to the November 18, 1996 multiparty elections saw a number of abuses. There is evidence that duplicate National Registration Cards have been issued to some voters, that the names of others have been omitted from voters rolls and that duplicate names have appeared on the rolls. There have also been incidents where registration officers asked for a fee for registration and turned away known UNIP supporters.

The ruling MMD deliberately blurred the distinction between party and state. In Lusaka's Soweto Market the MMD conducted a voter registration exercise, its militants pressuring people to put down their store numbers and to confirm affiliation to the MMD in return for registration. Human Rights Watch/Africa also obtained documentation showing a government/ruling party scheme to expand the police with MMD supporters before the elections. The government also reportedly distributed relief maize and fertilizers as a campaign tool in a by-election. Government officials have also threatened to deny state services and programs to constituencies that did not vote for the ruling MMD.

The conduct of the ruling MMD at the Moomba and Mkaika by-elections in April was marked by intimidation and violence, although UNIP supporters too resorted to violence. People were beaten up by party cadre from both sides, strategic camps of these cadres were placed close to polling stations and there were serious irregularities with the voter certificates. In Mkaika houses belonging to UNIP supporters were burnt down and there was other extensive physical violence laid to supporters of UNIP and the MMD by each other's cadres.

The main opposition party, UNIP also engaged in electoral abuses in other by-elections. UNIP cadres assaulted MMD supporters and villagers they suspected of supporting the MMD. Such inter-political clashes in the by-elections restricted freedom of movement among villagers in several constituencies. This intimidation resulted in the constituency being divided into partisan political zones which curtailed freedom of movement among the villagers in the area. Nor could politicians from both sides freely campaign, hold meetings or move around.

The government forced a radical amendment to the 1991 constitution through the MMD-dominated parliament in May 1996, rejecting demands that major constitutional reforms first be agreed by a Constituent Assembly and subjected to a referendum, as proposed by the Mwanakatwe Constitutional Review Commission in 1995. Particularly controversial was a provision in the Constitutional Amendment Act (1996) that imposed new requirements on persons seeking to hold the office of president. These included that the person be a Zambian citizen born to parents who are Zambian by birth or descent and that the person not be a tribal chief. These requirements appeared to be precisely tailored to disqualify specific opposition leaders from running for president, including former president Kenneth Kaunda. Some of the new restrictions appeared to violate the International Covenant on Civil and Political Rights, to which Zambia is a party. Articles 25 and 2 of the covenant guarantee to citizens the right “to be elected at genuine periodic elections” without “unreasonable” restrictions and without distinctions” such as birth, national origin, or political opinion. The disqualification of all but second or third generation Zambians from office appeared unreasonable, especially in light of the transparent political motivation to exclude UNIP leaders from the race.

The constitutional amendment was vigorously challenged by opposition parties, civic associations, human rights and women’s groups, in part because it would damage the opposition’s chances effectively to participate in the upcoming election. The article in effect banned UNIP leader Kaunda—who is partially of Malawian heritage—and UNIP’s vice presidential candidate—a tribal chief—from running.

In June and July 1996, a shadowy group called the “Black Mamba” was blamed by the government for a spate of bomb blasts in Zambia and killed one person and injured another seriously. Eight UNIP officials including its vice president Senior Chief Inyambo Yeta were arrested in connection with the bombings in June and were committed to the Lusaka High Court charged with treason and murder. The trial provided little evidence to suggest that these UNIP members were involved in any violent conspiracy against the state. It appeared that they were detained solely because of their political affiliation. They were acquitted of treason and murder charges by the High Court in November.

The independent press was also a target for government intimidation. *The Post* newspaper has been under particular attack. In February 1996 police arrested three of its editors and banned edition 401 before its distribution because it reported that the government was secretly planning to hold a referendum on the constitution without giving much warning to the public. That day’s on-line edition was also banned, making it the first act of censorship on the Internet in Africa. The three journalists face a minimum of twenty-five years in jail on charges under the Official Secrets Act, for receiving and publishing, “classified information.”

On February 22, 1996, the Zambian parliament made an unprecedented decision to sentence to jail for an indefinite period without a trial and in absentia *The Post’s* editor Fred M’membe, Bright Mwape, the managing editor, and columnist Lucy Sichone, for articles they wrote claiming certain parliamentarians lowered the dignity of the House. M’membe and Mwape, prisoners of conscience for the expression of their views, were released in March 1996 after the Lusaka High Court ruled that they had been wrongly sentenced in absentia.

Judicial independence came under attack from government supporters in 1996 especially after the Supreme Court in January struck down provisions of the Public Order Act, finding that the requiring of permits for meetings was a contravention of the Zambian peoples’ constitutional rights. One particular focus of these attacks has been the championing of exclusivist ethnic politics, with the judiciary characterized as mainly from Eastern Province or Malawi. Leaders of opposition parties and civic groups have also had their nationality status challenged by government officials.

The support of international aid of up to US\$1 billion a year has been vital to the progress of the economic reform program of President Chiluba. As Zambia's largest revenue earner, aid has accounted for some 70 percent of gross domestic product. In 1996 international aid pledged was down a third from the 1992 peak of \$1.2 billion in nonemergency aid. At the heart of the decline in donor commitments were issues of good governance, accountability and democratic practice.

II. RECOMMENDATIONS

Recommendations to the Zambian Government

- Based on the findings of this report, Human Rights Watch/Africa calls on the Zambian government to:
- Guarantee the independence of the judiciary as required by Zambian and international law. In particular, the government should not orchestrate the appointment or dismissal of judges solely because of their political affiliations or regional origins.
- Publicly dissociate itself from and condemn any efforts by public officials to undermine the independence of the judiciary.
- Facilitate debate of the Mwanakatwe Constitutional Review Commission proposals; call elections to a constituent assembly to review and as appropriate amend the Constitution of 1991.
- Guarantee the right to a fair trial by a competent and objective judiciary in accord with international standards. In cases where this right has been violated, submit the case for retrial or release the defendant. No one should be detained solely for the nonviolent expression of his or her political beliefs.
- Stop harassment of journalists and encourage objective reporting in the state media.
- As promised by the MMD in its election platform in 1991 and in 1996, ensure that all Zambians may exercise their rights to freedom of expression and association, that the organizations of civil society may freely operate, and that checks and balances of the different branches of government are respected. Safeguards to this end should be enacted in law.
- Guarantee that people with diverse viewpoints are given appropriate access to state-owned radio and television.
- Ensure a strict division between the functioning of government and the MMD party.
- Stop providing state funds and facilities to support the MMD's political campaigns.
- Investigate allegations of police abuse and improper treatment of those in detention, and hold those found responsible accountable before the law.
- Guarantee that prisoners' rights are respected according to international law. This includes the right to be free from torture and other cruel, inhuman or degrading treatment or punishment, and the right to adequate medical and sanitary facilities.
- Enact quickly into law the Munyama Commission's recommendation that a permanent human rights commission be established. Ensure that this commission is objective and nonpartisan to avoid the possibility of political bias.

- Provide government officials and police with special training about human rights standards and protection, while instituting procedures through which violations of human rights are the subject of effective investigation and criminal prosecution.

Recommendations to All Political Parties

To all Zambian political parties Human Rights Watch/Africa recommends:

- Publicly advocate the protection and respect for human rights in their platform and promise to hold party members who commit human rights abuses accountable.

Recommendations to the International Community

To the International Community Human Rights Watch recommends:

- Continue to pressure the government to improve its record on human rights as is integral to good governance, especially with respect to government transparency and accountability for its actions, through formal communications and other measures such as the conditioning of balance of payments support.
- Support the efforts of civic organizations to play an active role in civil society, and in particular their efforts to monitor, lobby and campaign for improved human rights standards.

Human Rights Watch/Africa calls on **The World Bank's Consultative Group for Zambia** to:

- Continue the Bournemouth meeting's agreed pressure on the Zambian government for "tangible progress on the governance issue," and include specific reference to human rights as integral to this;
- Maintain unity in the pressure for an improved Zambian government performance on human rights as integral to good governance.

Human Rights Watch/Africa calls on the **United States** to:

- Encourage new U.S. ambassador Arlene Render to act on her commitment to vigorously promote human rights in Zambia by meeting regularly with the Zambia human rights community, publicly denouncing human rights abuses, and using U.S. bilateral assistance to Zambia to achieve maximum leverage on human rights.

Human Rights Watch/Africa calls on **The Southern Africa Development Community (SADC)** to:

- Continue to press the Zambian government to improve its human rights record.
- Send a SADC Organ on Politics, Defense and Security investigative team to Zambia to report back to the Organ about how its member states can improve the human rights record in Zambia.
- Malawi must clarify its position over accepting the forced repatriation of alleged "Malawians" from Zambia, several of these individuals being prominent members of the Zambian opposition who appear arbitrarily to have been stripped of their Zambian nationalities in violation of international standards.

Human Rights Watch/Africa calls on **The Commonwealth Secretariat** to:

- Send a fact-finding mission to Zambia to investigate human rights practices across the country.

Human Rights Watch/Africa calls on **The African Commission for Human and Peoples' Rights** to:

- Send a mission to investigate Zambia's current human rights situation.

III. BACKGROUND

Zambia gained its independence from British rule in October 1964. From 1964 until November 1991 it was governed by the United National Independence Party (UNIP), the principal party in the struggle for independence, under the leadership of President Kenneth Kaunda. The constitution of the new state provided for a multiparty democracy with an executive president, and included a bill of rights guaranteeing fundamental civil and political rights. A partial state of emergency, which had been declared by the British three months before independence, was, however, kept in place for twenty-seven years. Renewed every six months, it was eventually extended indefinitely. Emergency regulations also suspended several clauses of the bill of rights, allowing the government to control political debate, giving it powers to restrict freedom of expression and association and to detain indefinitely any person "for the purpose of preserving public security."

Free political activity in Zambia was further restricted in 1973, when the constitution was amended to increase the powers of the president and to introduce a one-party state. Presidential power became increasingly dominant over the years that followed. While Zambia was spared the massive human rights violations inflicted on some of its neighbors, Kaunda's rule was decidedly authoritarian.¹

In 1990, the deteriorating economic situation and increasingly vocal opposition to his government finally forced President Kaunda to concede to demands for the restoration of a multiparty system. The ban on opposition parties was effectively lifted after the middle of the year. A new constitution adopted in August 1991 confirmed the end of the one-party state. A number of opposition parties quickly sprang up, the most important of these the Movement for Multiparty Democracy (MMD), eventually led by Frederick Chiluba, a prominent trade union leader who had himself been detained by Kaunda. In late October 1991, the MMD gained a landslide victory in general elections, winning 126 of 150 seats in parliament. Chiluba received 76 percent of the presidential vote. President Kaunda conceded defeat and Chiluba was sworn in as the new president in a peaceful transfer of power hailed as a model for Africa.

In its election campaign, the MMD had stressed the need for change, promising liberalization of the economy, which was largely under state control, and democratization of the political system. The party denounced the semi-state of emergency under which Zambia had been ruled, and committed itself to the protection of civil rights, democratic pluralism and political accountability. After the election victory, the new government moved swiftly to introduce economic reforms, reinstating structural adjustment policies agreed with the World Bank by the previous government and undertaking a radical privatization program. Government subsidies were lifted, including the subsidy on corn meal, the staple foodstuff of Zambia, leading to massive price rises. Western financial institutions, including the World Bank, rewarded the new government with substantial new loans and grants of aid.

The parallel political reforms promised by Chiluba and the MMD in the election campaign have not been approached with similar vigor. Although, after twenty-seven years, the partial state of emergency was lifted, theoretically restoring to full affect the bill of rights enshrined in Zambia's constitution, many of those rights are still restricted.

¹John Sangwa, "Zambia Human Rights After the Elections: The Need for Conceptualization of the Conception of Human Rights," paper presented at "Human Rights after the Election: the Zambia Example," conference, March 26-29, 1993, Centre for Southern African Studies, University of York.

In February 1993, the government-owned *The Times of Zambia* reported that a plot by the former ruling party, UNIP, to overthrow the government by unconstitutional means, known as the Zero Option Plan, had been uncovered. The Zero Option Plan was alleged to call for a destabilization of Zambia through industrial unrest, the promotion of violent crime, and the organization of a mass uprising against the government. The governments of both Iran and Iraq were said to have been behind the plan, otherwise masterminded by Cuthbert Nguni, a UNIP member of parliament (MP), and Wezi Kaunda, son of the former president, on UNIP's Security Committee and member of parliament. UNIP's then president Kebby Musokotwane admitted the existence of a document describing the Zero Option Plan, but denied that it had been adopted as an official policy, and rejected the measures that had been proposed.²

On March 4, 1993, President Chiluba declared a state of emergency stating that "the political climate is being systematically poisoned by a few of our citizens who are bent on plunging this nation into chaos." But he offered neither further evidence that the Zero Option represented a threat to national security nor any other justification for the declaration. Twenty-six people were eventually detained in connection with Zero Option, many of them senior members of UNIP. Releases started in early March and continued through April in an arbitrary fashion. On May 19, the Supreme Court found that, on the evidence it had been presented, the emergency regulations were not valid, but gave the government two days to present further evidence. Further releases followed though the final seven detainees including Wezi Kaunda and Cuthbert Nguni were finally charged with various offenses against the security of the state. On May 25 Chiluba lifted the state of emergency.

The government has continued to attract controversy. In April 1993, ostensibly in an attempt to eradicate government corruption, Chiluba carried out an extensive reconstruction of his cabinet; four senior ministers were dismissed, although Michael Sata, also implicated in allegations of malpractice survived. In January 1994 two prominent cabinet ministers announced their resignations, following persistent allegations and international pressure about their suspected involvement in high-level corruption and drugs-trafficking. One of the ministers, Vernon Mwaanga, a founding member of the MMD who had held the foreign affairs portfolio, had been named by a tribunal in 1985 as a leading trafficker although he was not convicted of those alleged offenses. Their resignations prompted another major reshuffle. By November 1996 the MMD government since coming to power had lost at least twenty-two of its senior members through resignations or sacking. Only one person remained in the original November 1991 portfolio, Ben Y Mwila, the defense minister.

In July 1993 Kenneth Kaunda announced he would retire from politics. His retirement was not long. Returning to politics in June 1995, he defeated incumbent Kebby Musokotwane by 1,916 to 400 in leadership elections at the UNIP Congress. Kaunda's avowed aim on election was to contest the country's presidential elections in late 1996. UNIP has, however, subsequently experienced its own internal problems, three of its MPs resigning in August 1995 and joining the MMD. UNIP's former secretary-general, Benjamin Mibenge, also leads another small faction which called in July 1996 for the party to replace Kaunda with another presidential candidate; he was expelled from the party in September.

Although events like the response to Zero Option demonstrated that the government was becoming increasingly inclined to use intimidation and other methods to maintain its grip on power. Kaunda's formal return to politics marked the start of an increase in the pace of state intimidation of the opposition.

²Africa Watch (now Human Rights Watch/Africa), "Zambia: Model for Democracy Declares State of Emergency," *News from Africa Watch*, vol.5, no.8, June 1993.

Another factor in increasing political tensions was the report of the Mwanakatwe Constitutional Review Commission. The review was undertaken because the new Constitution of 1991, although paving the way for pluralist politics, did not adequately address other basic issues such as accountable governance, additions to the Bill of Rights and limiting the powers of the office of the President. The Constitution of Zambia Act 1991, which legislated the constitution, was in effect little more than a reconciliatory instrument of governance agreed at an inter-party meeting between the UNIP government and the opposition parties in July 1991.³

When the commission submitted its report, the MMD government rejected a key recommendation that the draft constitution be adopted by a constituent assembly and referendum. A Government White Paper in late-1995 proposed that Article 79 of the Constitution of Zambia Act, 1991, which stated that, "Subject to the provisions of this Article, Parliament may alter this Constitution or the Constitution of Zambia Act, 1991," be invoked instead and debated in parliament, resulting in a Constitutional Amendment Act. In this manner parliament could alter the constitution without the alteration of the Bill of Rights, which would require a referendum.

Particularly controversial was a provision in the Constitutional Amendment Act (1996) as subsequently adopted that imposed new requirements on persons seeking to hold the office of president. These included that the person be a Zambian citizen born to parents who were Zambian by birth or descent and that the person not be a tribal chief. These requirements appeared to be precisely tailored to disqualify specific opposition leaders from running for president, including former president Kenneth Kaunda. Some of the new restrictions appeared to violate the International Covenant on Civil and Political Rights, to which Zambia is a party. Articles 25 and 2 of the covenant guarantee to citizens the right "to be elected at genuine periodic elections" without "unreasonable" restrictions and without distinctions" such as birth, national origin, or political opinion. The disqualification of all but second or third generation Zambians from office appeared unreasonable, especially in light of the transparent political motivation to exclude UNIP leaders from the race.

The constitutional amendment had been vigorously challenged by opposition parties, civic associations, human rights and women's groups, in part because it would damage the opposition's chances effectively to participate in the upcoming election. The article in effect banned UNIP leader Kaunda—who is partially of Malawian heritage - and UNIP's vice presidential candidate—a tribal chief—from running.

The decision to not call a referendum had resulted in a further deterioration in the government's relationship with opposition party leaders, the church, NGOs and other parts of civil society. The opposition tried to engage the government in inter-party dialogue to resolve this growing rift. Civil society groups met twice, in November 1995 and a Citizen's Convention between March 1 to 10, 1996 to press their concern on the proposed Constitutional Amendment Act.

On February 5, 1996 police arrested three editors of *The Post* newspaper on charges of receiving classified documents. Edition 401, which reported that the government was secretly planning to hold a referendum on the draft constitution without giving the public much advance warning, was banned. If found guilty of receiving classified information the three journalists faced a minimum of twenty-five years in jail on charges raised under the Official Secrets Act.

On April 29, 1996 a preparatory meeting for inter-party talks had failed to make any tangible progress but agreed to hold a further meeting. A second meeting on May 6, effectively a continuation of the April meeting, also failed to make any progress as there was no consensus on who would chair it. The opposition opposed the procedural suggestion that the State President would address the meeting and only listen to the opposition's grievances; they had wanted the meeting to be held on a basis of parity. This resulted in President Chiluba and his entourage walking out, closely followed by most church representatives who have been pleased by Chiluba's efforts to make Zambia a Christian State. In a press conference Chiluba stated he had been insulted when Kenneth Kaunda and twenty-nine other

³Report of the Constitutional Review Commission, June 16, 1995.

opposition party leaders failed to stand up as a sign of respect when he entered the auditorium and when the opposition denied him the chance to address them first.

The May 6 meeting had been portrayed by the government as a last minute chance for the opposition to have their voice heard before parliament started debating the constitutional amendment bill. The controversial Constitutional Amendment Act was passed in parliament on May 22 after its second reading when 121 MMD members voted for it. Two National Party MPs voted against, while UNIP's twenty two MPs walked out of parliament in protest. President Chiluba endorsed the constitution at a ceremony at State House on May 28 1996. In effect, this ended inter-party dialogue until late August although a third inter-party meeting was held on May 12, convened by the Law Association of Zambia (LAZ). Inter-party lobbying culminated in a joint public rally held on June 8, 1996 in Lusaka amidst a heavy police presence: over four hundred police officers were present. On July 3 an inter-party liaison meeting of the main opposition parties resulted in a joint statement calling for the repeal of the Constitutional Amendment Act, re-registration of voters, the repeal of the Public Order Act and the need for dialogue with the government. A further opposition inter-party meeting was held on July 29.⁴

In June and July political tensions increased further with a shadowy group called the "Black Mamba" being blamed for bomb blasts and threats in Lusaka and on the Copperbelt, in Ndola and Kitwe. Most of the bombs caused minor damage but on June 6, in an attempt to defuse a bomb planted at Lusaka International Airport, a bomb disposal expert was killed and another colleague was seriously wounded.

The arrest in early June of UNIP vice president Senior Chief Inyambo Yeta and seven other members of UNIP in connection with the bombings increased the climate of uncertainty and fear. On July 13, the eight detainees were committed to the Lusaka High Court for trial, charged with treason and murder; two were subsequently released. Their trial generated enormous public interest and increased sales of *The Post* newspaper which published transcripts of the court hearing. On September 27, 1996 the State closed its case against the six remaining UNIP leaders on charges of treason and murder. The trial provided little evidence to suggest that these UNIP members were involved in any violent conspiracy against the state. It appeared that they were detained solely because of their political affiliation. On November 1, the remaining six were acquitted of treason and murder charges, there being no evidence to prove that they were linked to the "Black Mamba." According to the judge, more than one terrorist group existed. The responsibility for the acts attributed to "Black Mamba" remains unclear, though the defense lawyers in the "Treason Trial" attempted to prove that the "Black Mamba" bombings were the work of the government. But in the judgment on November 1, Justice Peter Chitengi said there was no evidence to that effect either.

Meanwhile on August 25, President Chiluba announced that he would engage in dialogue with opposition leaders and shortly afterwards started meeting each of the leaders of the opposition parties in bilateral talks to discuss the political situation in the country. On August 30 he held his first face-to-face encounter with his predecessor, Kaunda, since the 1991 elections. On September 10, he addressed the nation and announced certain concessions, such as an independent electoral commission and a reduction in the days needed to notify the police of a rally under the Public Order Act. But the main area of contention, the Constitutional Amendment Act, was described as nonnegotiable. Chiluba and UNIP leader Kaunda were due to have a second meeting on September 9 but Kaunda turned the invitation down, demanding that there should be an inter-party meeting instead.

Parliament, which had been adjourned on May 22, following walkouts by the NP and UNIP over the adoption of the 1996 constitutional amendment, reconvened on September 24. On October 19 President Chiluba announced at a political rally in Kabwe that parliament had been dissolved and November 18 set for presidential and parliamentary elections to be held under the constitution as amended. During the Kabwe rally there were clashes between riot police and MMD supporters protesting about the naming by the MMD's National Executive Committee (NEC) of its candidate for the Kabwe constituency.

⁴Mbinji Mufalo (Jnr), "Afronet Report on Inter-Party Dialogue in Zambia, May to June 1996," draft report, September 1996.

On October 23, UNIP announced that it would not stand in the forthcoming elections unless the contentious clauses of the 1996 amendments to the constitution were removed or the unamended 1991 constitution was used. They did, however, offer to return to hold one-to-one talks with the MMD government. Some parties hoped to profit from a UNIP boycott, the ZDC called on UNIP supporters to back their candidates. Six other opposition parties joined the boycott on October 24 and the Royal Foundation of Zambia, representing many of Zambia's traditional rulers, petitioned the government on November 7 to postpone the elections and announced that they would also boycott the elections. Meanwhile mediation attempts continued to fail, including an inter-party meeting on November 10.

There were 35 registered political parties in Zambia at the time of the elections but the majority of these were known as "brief-case" parties without a serious support base. The main parties were the National Party (NP), the Movement for Democratic Process (MDP), the Zambia Democratic Congress (ZDC), the National Lima Party (NLP), UNIP and the ruling MMD.

As the election campaign got underway there were some reports of violence. Three opposition ZDC cadres were assaulted in Lusaka's Chawama constituency on October 28 by alleged MMD supporters; two of the three men required hospital treatment. Subsequently, on November 3 in Chayissa Compound, thirteen MMD cadres and UNIP militants clashed resulting in sixteen injured. The government also closed the University of Zambia (UNZA) on November 11, fearful that students might violently protest against the holding of the elections.

UNIP also began in late October to encourage voters to surrender their voters' cards to them in protest at the elections and announced they would reveal how many cards they had received after the elections. This provoked Home Affairs Minister Chitala Sampa on November 3 to threaten to arrest former president Kenneth Kaunda if he persisted in encouraging the surrender of voters' cards.

Five presidential candidates successfully filed their nomination papers: Frederick Chiluba of the MMD, Dean Mung'omba of the Zambia Democratic Congress (ZDC), Humphrey Mulemba of the National Party (NP), Akahsambatwa Mbikusita of Agenda for Zambia Party (AZP), and Chama Chakomboka of the Movement for Democratic Process (MDP).⁵ However on November 11, four opposition parties challenged in the Supreme Court the nomination of President Chiluba as a presidential candidate on the basis of his citizenship and the nationality of his parents. They also applied for an interim injunction to block the elections until the court had disposed of the petition. The Supreme Court ruled on November 14 that the petition was premature and could under electoral law only be heard after the elections. UNIP leader Kaunda also warned on November 17 that UNIP would make Zambia ungovernable through encouraging industrial action and other forms of protest after the elections.

The elections themselves passed peacefully on November 18. As widely expected the MMD won all but some twenty seats in the parliamentary elections, and Frederick Chiluba gained a significant majority of the votes in the presidential contest. There were a few upsets for the MMD. Two cabinet ministers, five deputy ministers and two MMD national executive council members lost to independent or opposition party candidates.

⁵The MMD fielded 150 parliamentary candidates; the ZDC fielded 142; the NP ninety-nine; the National Lima Party and Agenda for Zambia, eighty and eleven respectively; The National Congress, Real Democratic Party, Movement for Democratic Process and Poor Peoples' Party had a total of eight candidates. Ninety-six candidates stood as independents.

On November 20, the Committee For A Clean Campaign, a coalition of local civic groups which had monitored the election process, declared that although the elections on the polling day itself “was[sic]largely peaceful except in isolated incidences,” their analysis of the whole electoral process since 1995 concluded that the “1996 presidential and general elections can not be said to have been free and fair.”⁶ Also on November 20, the other two main independent monitoring groups, the Foundation for Democratic Process (FODEP) and the Zambian Independent Monitoring Team (ZIMT) declared that they too had concluded that the elections were not free and fair.⁷

As he was sworn in for his second and last term on November 21, President Chiluba remarked that the government would no longer allow itself to be “bulldozed” by nongovernmental organizations. A few days later, on November 24 and 25, the Lusaka premises of three human rights and election monitoring groups, the Committee for a Clean Campaign, ZIMT and the Inter-Africa Network for Human Rights and Development (Afronet), were raided by police and files and books taken away. The police also briefly detained and took to Lusaka Central Police Station ZIMT’s president, Alfred Zulu, and CCC chairman, Ngande Mwanajiti.

The MMD published its revised manifesto in August. President Chiluba described it as the manifesto that would take the country into the 21st Century.⁸ The MMD claimed that:

Numerous achievements have so far been made in the observance and protection of fundamental human rights. The major challenge for the future is to institutionalize what has been achieved so as to make Zambia the haven of human rights, not subject to disruption even in the change of government.

Beyond 1996, the MMD government will:

- Improve the criminal Justice system to allow for speedy dispensation of justice;
- Continue with the process of reforming the entire Police and Prisons machinery through professional training and de-politisation;
- Further intensify training in human rights as well as public awareness in areas related to violence against women, gender issues and child abuse;
- Strengthen civic education bodies and other NGOs involved in human rights propagation;
- Establish a permanent Human Rights Commission;
- Ratify international treaties on human rights;
- Ensure the protection of human rights as declared in the Constitution.

President Chiluba has also written about human rights. He writes that:

⁶“CCC Press Statement On The 1996 Presidential and Presidential Elections,” Lusaka, November 20, 1996.

⁷There were very few international election observers during the November 1996 multiparty elections because international organizations and governments considered that sending such observers would legitimize an election whose context was already assessed by them as flawed.

⁸MMD Manifesto 1996, full text printed in *The Sun* (Lusaka), September 2-8, 1996.

The setting up in Zambia of the Commission on Human Rights Abuses in the First and Second Republics in 1992, is not only uncovering the inhuman treatment meted out to Zambians both innocent and guilty of any crimes, but also acts as a restraint to those currently in authority. The moment people know that they are protected by the law and are entitled to its protection, no one will be allowed to abuse them.⁹

A Human Rights Commission, named the Munyama Human Rights Commission after its chairman, Lusaka lawyer Bruce Munyama, was appointed by the president on May 5, 1993. The commission's mandate was to, "Investigate and establish whether human rights were violated during the Second Republic [1972 to 1991] and after 30th October 1991 [the Third Republic]." The MMD government had originally opposed any focus on the period after 1991 but yielded to both internal and international pressure to widen the remit.

The commission commenced work on June 8, 1993 and held its last meeting on July 25, 1995 and attracted public interest. It also capitalized on high expectations, having been launched while there was still some public goodwill toward the government following the 1991 elections. The Munyama Commission could summon senior government officials such as the minister of home affairs and the inspector general of police to give evidence. It even threatened to arrest senior police officers who did not cooperate. As a result, confidence in the commission was won and complaints presented by the public.

The commission submitted its findings to the president on September 6, 1995. Munyama, its chair, reported that the commission had recommended that certain parts of the Public Order, Zambia Security Intelligence and the State Security Acts be amended. He also disclosed that there were secret detention centers throughout the country where human rights abuses by law enforcement agencies have taken place in the Second and Third Republics.¹⁰ This report suggested that close to 1,000 people had been detained under preservation of public security regulations between 1972 and 1993 in spite of the existence of a Bill of Rights. The commission also highlighted "that violations of human rights and torture by law enforcement officers is occurring on a significant scale in the Third Republic."¹¹ Although the commission also recommended compensation to be paid to victims of state security abuses it did not propose that offenders should be prosecuted.¹²

⁹Frederick Chiluba, *Democracy: The Challenge of Change* (Lusaka: Multimedia Publications, 1995), p.147.

¹⁰Zambia National Broadcasting Corporation radio, Lusaka, 1800 gmt, September 6, 1995.

¹¹ *Report of the Human Rights Commission of Inquiry*, Lusaka, September 6, 1995, section 4.3, p.58.

¹²*Ibid.*, pp.1-88.

Although a leaked copy of the commission's report was published in *The Post* on January 12, 1996 the report and the government's White Paper response were not released until October 1, 1996, almost one year after its submission. In its White Paper the government announced the establishment of a permanent human rights commission which would submit annual reports to the president and parliament. It would also have the power to investigate complaints of violations freely, visit jails and detention centers, recommend to the president and parliament effective measures to promote human rights and provide for compensation. It would also establish a research, education and information program to enhance respect for human rights and review legislation and policy from a human rights perspective. The government also said it would, in line with the commission's recommendations, ratify the U.N. Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and that it would be incorporated in domestic law. On the other hand it rejected the commission's recommendations on the judiciary, prison service and immigration department.¹³

These human rights commitments by the government in its White Paper and in President Chiluba's own remarks are encouraging on paper. But they were not reflected in governmental practices on the ground, as will be shown below in this report.

IV. THE CONSTITUTION

President Chiluba wrote in 1995 that: "The provisions of the constitution must be respected and endorsed by all the major political actors, and that requires a consensual approach to decision making. Ideally, the people should then be given an opportunity to have their say, perhaps by arranging a referendum to coincide with the next parliamentary and presidential elections."¹⁴

One year later, President Chiluba's words look less convincing. The government claims that the Constitutional Amendment Act derives from a series of constitutional reviews over a period of twenty years (the Mainza Chona Constitutional Commission in 1972, the Professor Mvunga Commission in 1991 and the Mwanakatwe Constitutional Review Commission which started work in March 1994 and gathered views and opinions from all districts in the country).

The Mwanakatwe Commission's report of June 16, 1995, which included a draft constitution, was controversial, with the opposition saying that the commission was biased towards the ruling party in its recommendations. The report also made accessible to the press four days before being handed over to President Chiluba, resulting in the publication of extracts and critical comments about it before its formal presentation to the president.¹⁵

Human rights NGOs, women's and church groups responded to the government's proposed process for review of the draft constitution produced by the Mwanakatwe Commission. In April a coalition called the Committee for a Clean Campaign (CCC) was launched comprising some twenty NGOs who either worked for the promotion of human rights or were engaged in election monitoring. The CCC itself emerged from an earlier ten day "Citizens Convention," at the Mulungishi International Conference Center between March 1 and 10, 1996. A citizens' "Green Paper," a

¹³ "Summary of the Report of the Munyama Human Rights Commission of Inquiry and Government Reaction to Recommendations," Government Paper No.2 of 1996 [White Paper].

¹⁴Frederick Chiluba, (1995), p.109.

¹⁵*The Sun* published details of the report on April 14 and *The Post* followed suit in its May 16 and 19 editions. After its presentation *The Times of Zambia* published the full report on June 26. Then on July 17, President Chiluba banned by presidential decree— Section 53 of the Penal Code—any further public debate on the draft constitution pending the completion of a cabinet White Paper on the subject.

summary of resolutions by the Citizen's Convention, deemed the 1995 Constitutional Review Commission's draft constitution a good working document which laid a good foundation for a future constitution.¹⁶ The convention also pressed the government to take steps to ensure that the Draft Constitution would go through public debate and analysis until consensus was reached, arguing that this was imperative insofar as it would be the first time Zambian citizens had a chance to participate meaningfully in the constitutional reform process.

The government refused to submit the constitutional proposals to a Constituent Assembly and referendum as had been proposed by the Mwanakatwe Constitutional Review Commission. The government preferred in contrast to seek immediate adoption by parliament of an amendment to the 1991 constitution without substantial public debate. On May 8 the Amendment Act entered its second reading. Opposition members called for it to be withdrawn in order to allow for broader consensus. The government made some concessions in debate, dropping a clause which gave presumptive constitutionality to the laws passed in parliament and a clause giving the State President powers to dismiss Supreme Court and High Court judges after parliamentary approval.

¹⁶Citizens' *"Green Paper," Summary of the Resolutions by the Citizens' Convention on the Draft Constitution*, no date, UNZA printer.

The Constitutional Amendment Act (1996) was passed in the MMD-dominated parliament on May 22, 1996 after its third reading and President Chiluba endorsed the amendment to the constitution at a ceremony at State House on May 28, 1996.¹⁷ Particularly controversial was a provision that imposed new requirements on persons seeking to hold the office of president. Article 34 (3) of the 1996 Constitutional Amendment Act states that

A person shall be qualified to be a candidate for election as President if—

- (a) he is a Zambian citizen;
- (b) both his parents are Zambians by birth or descent;
- (c) he has attained the age of thirty-five years;
- (d) he is a member of, or sponsored by, a political party;
- (e) he is qualified to be elected as a member of the National Assembly; and
- (F) has been domiciled in Zambia for a period of at least twenty years¹⁸

Another condition is that a presidential candidate must have not already been elected to that office twice, as written in Part IV, Article 35 (2).

Requirements (a) and (b) appeared to be precisely tailored to disqualify specific opposition leaders from running for president, including former president Kenneth Kaunda, who is barred by both the citizenship clause and the condition that a presidential candidate can only be elected to office twice. UNIP's vice-president Senior Chief Inyambo Yeta was also barred by Article 129 of the amended constitution which provides that: "A person shall not while remaining a chief join or participate in partisan politics," thereby barring traditional chiefs from standing. The ZDC president Dean Mung'omba also risked exclusion from the presidential elections because he had not been domiciled in Zambia for the last twenty years. However, his registration papers were accepted by the Chief Justice on November 6 without comment.

When the Constitutional Amendment Act was approved by parliament on May 22 the behavior of many MMD MPs was telling. Celebrating in the building, they chanted "We have got him," and "now we will win."¹⁹ But it is not just MMD MPs who have seen former President Kaunda as a potential threat to reelection. A MMD party worker in Lusaka explained to Human Rights Watch/Africa his reaction to President Chiluba's address to the nation on September 10. His view illustrates the understanding in MMD party circles on what the Constitutional Amendment Act really stands for:²⁰

Eh, I watched the president's speech on television and was so nervous. We had made sure that we had Charles Musonda [Zambian mid-field soccer player] in mid-field, that the referee was ours and that they had people sent off before the game started. We worried that the president would change the rules and allow KK to play: he is their Kalusha Bwalya [Zambian mid-field soccer player]. I had lots of beer after the Chiluba's address. We cannot risk having KK [Kenneth Kaunda] back.

The constitutional amendment was vigorously challenged by opposition parties, civic associations, human rights and women's groups, in part because it would damage the opposition's chances effectively to participate in the upcoming election.

¹⁷The Constitution of Zambia (Amendment) Bill, 1996, N.A.B 17, 1996.

¹⁸This article replaces Article 34 (3) of the 1991 Constitution which stated: "A person shall be qualified to be a candidate for election as President if he—(a) is a citizen of Zambia;(b) has attained the age of thirty-five years;(c) is a member of, or is sponsored by, a political party; and (d) is otherwise qualified to be elected as a member of the National Assembly."

¹⁹*Daily Parliamentary Debates*, May 9 to 22, 1996, no's. 104f to 104m.

²⁰Human Rights Watch/Africa interview. Lusaka, September 11, 1996.

Some of the new restrictions in the Constitutional Amendment Act appear to violate the International Covenant on Civil and Political Rights (ICCPR), which Zambia ratified in 1984. Articles 25 and 2 of the covenant guarantee to citizens the right “to be elected at genuine periodic elections” without “unreasonable” restrictions and without distinctions” such as birth, national origin, or political opinion. The disqualification of all but second or third generation Zambians from office appeared unreasonable, especially in light of the transparent political motivation to exclude UNIP leaders from the race. Article 25 of the ICCPR states that “Every citizen shall have the opportunity...without unreasonable restrictions..to be elected at genuine periodic elections.” Article 2 effectively prohibits discrimination on “race...political or other opinion, national or social origin..birth or other status.”

Some restrictions on candidacy may be acceptable under these norms, such as age requirements; however, to be acceptable, they must be “reasonable.” Whenever a person or class is prevented from seeking office, the restriction must be adequately and specifically justified.²¹ The requirement that not only the candidate, but the candidate’s parents be born in the country appears extreme and unreasonable, even to secure the interest that holders of political office be loyal to the state and familiar with its history and culture.²² This is particularly true where the restriction appears designed for the specific purpose of disqualifying or denying rights to political rivals.

According to the Norwegian Institute of Human Rights and the Norwegian Helsinki Committee’s *Manual for Election Observation*, which is drawn up from a survey of international standards including the Universal Declaration of Human Rights and the ICCPR.²³

Often extra restrictions are introduced for being a candidate such as having had residence in the country for some period of time before the elections, or having residence in the constituency, or having reached a higher age than the minimum voting age. Such restriction may well be acceptable.

Provisions must not be introduced for the purpose of damaging specific political forces.

V. THE RIGHT TO FREEDOM OF EXPRESSION

International Standards

Freedom of expression is guaranteed by Article 19 of the International Covenant on Civil and Political Rights (ICCPR), to which Zambia is a party. Article 19(2) states:

Everyone shall have the right to freedom of expression; this right shall include the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any media of his choice.

Article 19(3) of the ICCPR, sets forth the narrow grounds for limitations of this right that:

are provided by law and are necessary:

²¹Manfred Nowak, *United Nations Covenant on Civil and Political Rights: CCPR Commentary*, p.446 (1993).

²²Compare the case of *Six individual communications against Uruguay*, in which the UN Human Rights Committee found unreasonable a law stripping political rights from candidates who previously had been enrolled in Marxist political parties, in Nowak, *supra*, note 6 pp.442-43.

²³Norwegian Helsinki Committee & Norwegian Institute of Human Rights, (no date given, but 1995), “Manual for Election Observation.” This manual is a synthesis of universal principles governing elections including those established in the ICCPR and the Universal Declaration of Human Rights.

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order, or of public health or morals.

The term “provided by law” requires more than mere codification of a law. A law must meet fundamental principles of legality, including “knowledge of the existence of the law and accessibility to it by those affected and sufficient definiteness as to content and meaning.”²⁴

The requirement that a restriction be “necessary” is identical to that contained in the European Convention on Human Rights, Article 10(2), which was interpreted by the European Court of Human Rights to mean that a restriction must meet a “pressing social need”; it is insufficient that its purpose merely be “useful,” “reasonable” or “desirable.”²⁵

Moreover, any limitation must clearly be for the purposes enumerated in Article 19(3)(a) and (b). With regard to the purpose of protecting the “rights and reputations of others,” the Siracusa Principles state that this limitation “shall not be used to protect the state and its officials from public opinion or criticism.”²⁶ This does not bar a civil cause of action for libel or slander where appropriate, but underscores the principle that a free and open society must tolerate criticism of the government. Similarly, the purpose of security, order, health and morals must be narrowly interpreted to apply to individuals rather than shield the governing institutions from criticism. As the European Court of Human Rights noted in a famous case concerning political defamation,

[t]he limits of acceptable criticism are accordingly wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance.²⁷

According to the ICCPR, Article 19, no restriction on freedom of expression or information on the ground of national security may be imposed unless the government can demonstrate that the restriction is prescribed by law and is necessary in a democratic society to protect a legitimate national security interest. The burden of demonstrating the validity of the restriction rests with the government. Mere criticism of government leaders does not ordinarily threaten an imminent breach of the peace, nor does it threaten the existence of the state, the respective hallmarks of danger to public order and national security.

Background

²⁴Karl Josef Partsch, “Freedom of Conscience and Expression and Political Freedoms,” in *The International Bill of Rights: The Covenant on Civil and Political Rights* (New York: Columbia University Press, 1981), p.220.

²⁵*Sunday Times v. United Kingdom*, Judgment of 26 April 1979, Series A, no.30, para 59.

²⁶Principle 37. The Siracusa Principles were the result of a 1984 meeting in Siracusa, Sicily, of thirty-one legal experts from several countries convened by the United Nations Center for Human Rights and other organizations. The aim of the conference was to examine the limitations and derogation provisions of the ICCPR. See, (no author) “Symposium Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights,” *Human Rights Quarterly*, no.7. February 1985.

²⁷*Lingens v. Austria*, Judgment of July 8, 1986, Series A, no.103, para. 42.

The MMD has given tremendous lip service to the principle of freedom of expression, but in practice MMD officials have waged a campaign to undermine the independent press.²⁸

According to the MMD's 1991 Manifesto, the party is "determined and fully committed to ensuring that basic and universally recognized human rights are enshrined in the Constitution—the right to life; privacy of property; freedom of conscience and the freedoms of expression, association and worship."²⁹

With specific reference to the mass media the manifesto states:

The MMD believes that freedom of expression and the right to information are basic human rights. As such, journalists will have to play an important role in promoting democracy and development in a MMD-led government. All bona fide journalists, both local and foreign, will be accredited to perform their duties without hindrance....Under the MMD government, state-owned media will serve as vehicles to promote national unity, reconstruction, development and international cooperation....

Apart from the reference in the MMD Manifesto, the 1991 Constitution of Zambia refers to the press in Article 20 (1) of Part III, which says:

20 (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to impart and communicate ideas and information without interference, whether the communication be to the public generally or to any person or class of persons;

(2) subject to the provisions of this Constitution no law shall make any provision that derogates from freedom of the press.

When he spoke to the National Press Club in Washington D.C. on February 19, 1992 President Chiluba stated that:

²⁸ In its first few months the MMD's first minister of information and broadcasting services, Reverend Stan Kristofar, ordered the banning of a Muslim radio program scheduled for broadcast by ZNBC on the grounds that Zambia was a Christian country. After international protest the ban was subsequently lifted.

²⁹MMD Manifesto 1991.

... We decided that Press freedom must not only be observed, Press freedom must be promoted so that whatever we are trying to bury under the carpet, and whatever may be passed in that House by our (MMD) majority will not escape the notice of society, and society must call us to account for it if the Press remains free.³⁰

President Chiluba also wrote in 1995 that:

The state's monopoly of the electronic media is to end. The further development of responsible journalism will make an important contribution to democratization.³¹

Barely one year after taking office in 1991, then Minister of Information and Broadcasting Services Dipak Patel convened a three-day seminar on "Media and Democracy" to discuss how press freedom could be best protected. Out of this meeting a committee was formed, charged with producing a report on media reform. In September 1993 this Media Reform Committee, made up of twenty six representatives of all relevant media institutions, submitted its recommendations to the Ministry of Information and Broadcasting. The report targeted "five critical areas which require the attention by government": constitutional and legal reform, privatization of the state-run press, strengthening of media associations, including the training of journalists; reducing government interference in the operation of the Zambia National Broadcasting Corporation (ZNBC); and the establishment of a media resource center.³²

The committee identified "at least thirteen sections of the Penal Code which directly affected the freedom of press." These included Section 53, "Prohibited Publications," which empowers the president to ban publications in the public interest; Section 60, "Seditious Intention," which makes it an offense to "excite disaffection against the government"; and Section 69, "Defamation of the President," which is punishable by up to three years' imprisonment. The committee also recommended that the government should open up broadcasting to private enterprise; state newspapers should be privatized as soon as possible and that media ethics and practice should be the subject of self-regulation by journalists' associations and other media groups with no statutory powers.

None of the many recommendations on the freedom of the press was included in the legal reforms of the Constitutional Amendment Act (1996). A member of the government, Eric Silwamba MP, the deputy minister for "Special Duties" informed Article 19, the London-based freedom of expression organization, in October 1996 that the report and recommendations of the Media Reform Committee had been debated in cabinet and that certain recommendations had been adopted by the government as the basis for future legislation.³³ However, by November 1996, no further action had been taken in regard to preparing legislation in conformity with the recommendations of the Media Reform Committee.

The Print Media

³⁰Cited in, Zambia Independent Media Association, "Freedom of the Press in Zambia: a brief review of the press during the period 1991-96," draft report, July 1996.

³¹Frederick Chiluba, (1995), p.88.

³²Adewale Maja-Pearce, "Zambia," in, *Directory of African Media* (Brussels: International Federation of Journalists, 1995) pp.335-37.

³³Article 19, "Zambia: Media Freedom and the 1996 Elections." *Censorship News*, issue 45, November 1996.

The independent *The Post* newspaper has been the focus of much of the government's attention on the press. Through public demonstrations in Ndola and Lusaka in 1995 and 1996, the newspaper has been intimidated and its offices in Lusaka attacked, mainly by MMD supporters. Fred M'membe, *The Post's* editor, pointed out that it was not just outright intimidation that the paper faced, "Most banks don't advertise with us, although Standard is an exception. The lowest advertising rates in the region are for state media. It isn't a very fair market place for us to compete in but we also know people can be afraid of what government will do to them if they advertise with us. The Zambia Revenue Authority is also very vigilant with us, unlike other commercial ventures."³⁴

The Post has also been the target of illegal telephone tapping by the police. The Police Inspector General of Police told a hearing of the UNIP "treason trialists" in court that detective Chief-Inspector Muleshi was directed to bug the telephone at *The Post* and that he did not get permission from anyone. This is a violation of the Telecommunications Act of 1994 which allows only the Drug Enforcement Commission and the Intelligence Services to tap phone lines without court permission.³⁵

On February 5, 1996 President Chiluba banned edition 401 of *The Post* under Section 53 of the Penal Code (Chapter 146). The article in *The Post* was about the purported Zambian government plan to hold a referendum to adopt a proposed constitution at little notice to the general public in March.

Subsequent to the banning of edition 401 there was a ten-hour search of the newspaper premises for "classified documents." This resulted in the delayed production of edition 402 of *The Post* of February 6, 1996. Any member of the Zambian public who possessed a copy of the banned edition, with the knowledge that it was a prohibited publication, was liable to face a two-year prison term. Fred M'membe, Bright Mwape, and Masautso Phiri of *The Post* were arrested by the police the same day and charged under the State Security Act for possessing and printing classified documents, referring to edition 401. If convicted of violating the act, the three defendants could face a maximum of 25 years in prison.

The three editors of *The Post* pleaded "not guilty" in the Lusaka High Court on August 14 to accusations that they had received and published classified information in contravention of Section 4 of the State Security Act. They first appeared before the High Court on August 12 to make a plea in a hearing that was postponed due to what the judge called "lack of clarity" in the state's charges. The state also dropped the charge of "possession" of classified information, but maintains the charge of "receiving" classified information.

The State Security Act is vague in its definition of "classified document," an ambiguity that could be used to criminalize and punish legitimate investigative journalism and suppress discussion of public affairs. The State Security Act appears to go beyond the restrictions allowed by Article 19 of the ICCPR and the African Charter to suppress journalists' peaceful freedom of expression.

The Post has been the object of more than one hundred writs since its launch in 1991. It lost its first case on February 13, 1995 when Chief Justice Matthew Ngulube awarded then Health Minister Michael Sata (US\$1,500) in damages for defamation. A number of cases are still in court, while others were dismissed, notably an injunction on behalf of the National Assembly Speaker Dr Robinson Nabulyato. Outstanding cases against *The Post* include President Chiluba's suit over a story published on June 13, 1995 alleging that the president had a daughter with a Zairian lover. The charge was that this violated Section 69 of the Penal Code on defamation of the Republican President. Mulenga Chomba and Fred M'membe of *The Post*, in turn, were charged with sedition, for "inciting the army to mutiny and cause false alarm," for publishing a story about discontent in the army.

³⁴Human Rights Watch/Africa interview with Fred M'membe, Lusaka, September 10, 1996.

³⁵*The Chronicle*, (Lusaka), August 23-29, 1996; See also, The Telecommunications Act, no.23, 1994.

On February 22, 1996 the Zambian Parliament's Standing Orders Committee took an unprecedented decision to find in contempt and sentence to prison for an indefinite period in absentia *The Post's* editors, Fred M'membe and Bright Mwape, and freelance columnist Lucy Sichone for publishing articles that criticized a speech made in Parliament by the vice-president, Godfrey Miyanda and other ministers. In the ruling passed by the Standing Orders Committee on February 22, the Speaker of the National Assembly, Robinson Nabulyato, had explained that M'membe had been found guilty of "libeling and publishing inflammatory and contemptuous remarks" which lowered the dignity of the House. The two co-defendants were also said to be guilty of libel and contempt for authority.³⁶ The three writers were then summoned by the Speaker to appear at the bar to be informed (not to be tried) of the decision of the House. They failed to go to Parliament and were ordered again to present themselves before Parliament but failed to appear at the designated time on February 26. The Speaker then made a further statement that the trio were now in "contempt of parliament" for their failure to answer a summons, and he directed the Inspector General of Police to arrest them. The government offered a K2 million (US\$1007) reward for information leading to the arrest of the three, who had gone into hiding.

This parliamentary initiative was taken under Sections 20 (1) and (2) of the 1991 Constitution of Zambia and Sections 19 and 27 of the National Assembly Act, Chapter 17 of the Laws of Zambia.

Section 19 of Chapter 17 defines the offenses of Contempt of Parliament as punishing anyone who:

- (d) shows disrespect in speech or manner towards the Speaker; or
- (e) commits any other act of intentional disrespect to or with reference to the proceedings of the Assembly or to any person presiding at such proceedings.

The speaker stated that articles by M'membe, Mwape and Sichone in the January 29, 1996 edition of *The Post* were: "highly malicious against Vice President Brig-Gen. Godfrey Miyanda, the Speaker, Energy and Water Development Deputy Minister, Ernest Mwansa and the House in general. It is unacceptable to attack or insult members of Parliament for what they say in the House. The media should respect the integrity and personality of MPs instead of using reckless adjectives, let us criticize with respect and use polite language."

M'membe and Mwape eventually surrendered themselves voluntarily to the police on March 4, 1996 and were imprisoned. Amnesty International immediately declared them to be prisoners of conscience and put them on its Urgent Action list.³⁷ They were subsequently released from prison on March 27, 1996 under a Lusaka High Court judgment, Justice Kabazo Chanda ruling that parliament was wrong to put them on trial and sentence them in absentia. The three journalists had been charged and a sentence pronounced, without any effort to examine witnesses or permit a defense. Justice Chanda also found M'membe innocent but recommended that M'membe and Sichone needed to defend themselves for contempt. He also ruled that, "indefinite jail terms are incompatible with our legal system and unorthodox disciplinary procedures cannot be allowed."³⁸ He did, however, acknowledge that parliament had the power and authority to imprison people if an individual were first given a chance to defend himself of the charge.³⁹

³⁶The committee sentenced the three to custody for an indefinite period from February 23, 1996 until they became "contrite" or until the House resolved to discharge them. Each of them was also ordered to pay a K1,000 fine (less than US\$1.00).

³⁷Amnesty International, "Zambia: A human rights review based on the International Covenant on Civil and Political Rights," London, March 1996, AI index: AFR 63/01/96.

³⁸"Fred M'membe and Bright Mwape v The Speaker of the National Assembly and The Commissioner of Prisons and The Attorney General 1996," (1996/HCJ/X).

³⁹The former National Party member of parliament for Mongu Central, Akashambatwa Mbikusita-Lewanika, was expelled from parliament by its Speaker after he wrote a letter to the speaker of the National Assembly, Robinson Nabulyato, disassociating himself from the decision by the Parliamentary Standing Orders Committee to commit the three journalists from *The Post* to

indefinite jail terms. On August 3 Deputy Chief Justice Bweupe noted that Section 28 of the National Assembly (Powers and Privileges) Act did not allow the parliament to expel a member. He declared that an MP could only be suspended by parliament and that leave had been granted for judicial review. The Supreme Court ruled that the order of the Parliamentary Standing Orders Committee related to his expulsion from the National Assembly should be stayed until the results of a judicial review.

The speaker's actions, as already discussed above, were contrary to procedures established by law. The conviction, sentence and imprisonment without a fair trial before an independent tribunal are also guaranteed by Article 14 of the ICCPR and Articles 7 and 26 of the African Charter on Human and People's Rights (ACHPR). Section 27 of the *Zambian Parliamentary (Powers and Privileges) Act*, which covered the offense of "contempt" was also broken. This states:

No prosecution shall be instituted for an offence under this Act except by the Director of Public Prosecutions upon information given in writing by the speaker.

This did not happen, because the speaker never referred the case to the Director of Public Prosecutions in the first instance. As a result of the circumvention of the procedure laid down under the *Parliamentary (Powers and Privileges) Act*, the trial and sentencing of the three journalists was not consistent with international standards as might have been the case if the prosecution had been undertaken by the Director of Public Prosecutions as is specified by the same legislation.

The European Court of Human Rights has made clear also that "[t]he limits of permissible criticism are wider with regard to the Government than in relation to a private citizen" and that "the dominant position which the Government occupies makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where there are other means available for reply to the unjustified attacks and criticisms of its adversaries in the media."⁴⁰

The United Nations Human Rights Committee which met in New York between March 26 and 27, 1996 to hear Zambia's second periodic report on its compliance with the International Covenant on Civil and Political Rights also strongly criticized the *Zambian parliament* for its decision to jail the journalists. The members of the committee described parliament's decision to "order the indefinite imprisonment of two newspaper editors as serious violation of the International Covenant on Civil and Political Rights (ICCPR) as well as Zambia's own laws."⁴¹

In 1995, just prior to the publication of an editorial by *The Sun* on the "New Constitution," reporter Aston Kuseka was abducted at gunpoint by a gunman who criticized a December 6, 1993 article by Kuseka claiming *Zambian soldiers on peace-keeping operations abroad were on half pay*. He was reportedly warned that the gunman knew where all *The Sun* journalists lived and that the journalists should "behave" themselves. Shortly after this incident the paper's news editor, Lweendo Hamusankwa was picked up for police questioning about an article, "New Constitution Shatters Kaunda's Dream." He was held for four days for questioning on April 25, 1995 before release without any charges.

⁴⁰*Castells v. Spain*, Judgement of 1992, Series A, vol. 236 para. 46. See also, *Lingens v. Austria*, Judgment of 8 July 1986, Series A, no.103, para.42.

⁴¹U.N. Human Rights Committee "Press Release," New York, April 1, 1996. Also, Voice of America interview between Luisa Piette and UNHRC committee member Judge Rajsoomer Lallah, April 4, 1996, 1:40 pm gmt, in English.

The Sun, a tabloid, was bought by John Mwanakatwe from businessman Zahid Nizam on August 9, 1995, who said that he was a MMD supporter, but that, "If MMD is going wrong, the paper is free to expose it but that should not be done with malice simply to destroy the party."⁴² Despite Mwanakatwe's original undertaking, he dismissed editors Joe Chilazya and Jowie Mwiinga in October 1995, reportedly because of their attempts to increase the paper's critical coverage of the MMD's performance. In April 1996 ownership of *The Sun* again changed hands. Its new owners are MMD Chairman Sikota Wina and his wife, Princess Nakatindi Wina. The transfer of ownership led again to the dismissal of a number of journalists who tried to report stories critical of the MMD.

The government has for its part maintained its direct control of two daily newspapers, *The Times of Zambia* and *The Zambia Daily Mail*, two Sunday newspapers, *The Sunday Mail* and *The Sunday Times of Zambia*, and one weekly paper, *The Financial Mail*.

In the opening address to parliament on January 21, 1994, President Chiluba attacked the media for inflamed reporting. He called for "self-surgery" of the media which, he said, should conduct a critical evaluation of its style and content and determine its relevance to national aspirations. The government-owned media had a duty of reinforcing a collective national consciousness that could cut across interest groups such as political parties.

In a November 17, 1994 report to the Paris Club meeting on Zambia, the minister of finance, Ronald Penza pointed to the existence of several privately owned papers and magazines and argued that the state owned media—*The Times of Zambia*, *The Zambia Daily Mail* and the Zambia National Broadcasting Corporation—were not "interfered with" in their operations. There were also plans, he said, to relinquish government shares in one of the papers.

The Times of Zambia also reported on May 1, 1995 that it and *The Zambia Daily Mail* would be privatized and the then deputy minister of information and broadcasting services Eric Silwamba told the Press Club in Kitwe that, "Contrary to what some quarters are saying we are not clinging to the media for any secret agenda. The state-owned media shall be privatized."

On March 15, 1996, however, the Minister of Information and Broadcasting Services, A Mwanamwambwa, declared that the government would maintain its ownership of *The Times of Zambia* and *The Zambia Daily Mail* but would not interfere with editorial independence and day to day operations. At the time of writing, the state still controls some 90 percent of the print media, which usually provides uncritical support for the government and the ruling party.

There have been some attempts within the state media to gain more independence. The circumstances surrounding the termination of the contract of Arthur Simuchoba, then acting managing editor of *The Times of Zambia* in early September 1995 are unclear. But the Zambia Union of Journalists (ZUJ) claim he was replaced by Emmanuel Nyirenda, editor of another government newspaper, *The Zambia Daily Mail*, because he had been trying to make the paper more independent of government.

Human Rights Watch/Africa received many reports of harassment of Zambian journalists. In the period 1994 to 1996 these included:

- January 29, 1994 *The Weekly Post* (later called *The Post*) photographer Sheikh Chifuwe was detained by Lusaka Central Police for photographing police beating a suspect. Chifuwe's film was confiscated but released on February 2, 1994.
- February 1, 1994 *The Weekly Post* Special Projects Editor Masautso Phiri was detained in Lusaka remand prison for one night for "loitering," an apparent act of harassment.
- February 2, 1994 *The Weekly Post* reporter, Bright Mwape was threatened with detention at Kafue Police Station for following up a story about the shooting of a criminal suspect in police custody.

⁴²ZIMA, "Freedom of the Press in Zambia," (forthcoming).

- March 15, 1994 Zambia Air Force (ZAF) Commander Lt. Gen. Ronnie Shikapwasha threatened to shoot *The Post's* then acting managing editor, Bright Mwape if he wrote about the ZAF.
- April 29, 1994 *The Post's* Managing Director Fred M'membe and reporter Bright Mwape, were arrested and charged with defaming President Chiluba.
- August 23, 1994 *The Post's* Fred M'membe was arrested on five counts of alleged criminal libel; reporter Bright Mwape was arrested on two counts of criminal libel and two other reporters Goliath Mungonge and Nkonkomalimba, were both charged with one count each of alleged criminal libel.
- September 16, 1994 A van carrying an edition of *The Post* for distribution was ambushed on road between Ndola and Lusaka. Thousands of copies of the newspaper were set ablaze and the driver beaten up by armed men.
- December 8, 1994 Armed police sealed off the printing plant of *The Times* Newspapers and Printpak Zambia Ltd printing plant in Ndola and temporarily suspended the printing of *The Post's* December 9, 1994 edition. In Lusaka, armed policemen stormed *The Post* offices with a search warrant looking for "seditious and defamatory material."
- December 15, 1994 *The Post* reporter, Mulenga Chomba, based in Lusaka, complained that seven police officers twice visited his parents' home in Kitwe with a search warrant with a view of arresting Chomba in an act of harassment.
- April 1995 Managing Editor, Reverend Steward Mwila and Deputy Editor George Malunga of the *Weekly Crime News* interrogated after publishing an article on pornography and nudity that was illustrated by pictures of a Zimbabwean sculpture and a Kenyan political cartoon. Both images were taken from the February/March 1995 edition of *Free Press*, the media magazine published by the Media Institute of Southern Africa, and were used to illustrate a serious story. The act was believed to be directed at undermining the Media Institute of Southern Africa's efforts in Zambia to campaign for a free press.
- June 15, 1995 MMD cadres and evangelical pastors in Ndola staged a combined march to demonstrate against *The Post* and call for the arrest of the paper's managing director for peddling "lies" bent on tarnishing the reputation of President Chiluba.
- June 17, 1995 MMD cadres, waving placards denouncing *The Post* newspaper, declared that the paper will no longer be sold in Kitwe. Copies of the newspaper were publicly burnt. Meanwhile two shareholders in the newspaper, the MMD Finance Secretary Enock Kavindele and Finance Minister Ronald Penza called for it to be closed down.
- September 10, 1995 UNIP president Kenneth Kaunda threatened journalists working for the state-owned media with repercussions when UNIP "returned to power" if they support the MMD government.
- December 18, 1995 The special projects editor at *The Post*, Masautso Phiri and his wife Faith, were attacked physically by MMD supporters at the University of Zambia, Lusaka as they drove through the campus.
- December 19, 1995 President Chiluba warned of drastic action against *The Post* newspaper if it did not refrain from publishing "lies" against him.

- February 5, 1996 President Chiluba banned edition no.401 of *The Post*. The paper's offices and residences of senior staff were searched by the police. The day's on-line edition was also banned, making it the first act of censorship on the Internet in Africa.⁴³
- February 7, 1996 *The Post's* Managing Director Fred M'membe, Special Projects Editor, Masauto Phiri and Managing Editor Bright Mwape were committed to the High Court for summary trial on charges of receiving and publishing prohibited information and having a prohibited publication.
- February 27, 1996 Parliament handed down an indefinite prison sentence to *The Post's* Fred M'membe, Bright Mwape and Lucy Sichone for contempt through articles they wrote in the Post.
- April 1, 1996 *The Sun* newspaper dismissed eight employees for unexplained reasons: employees claimed it was because of their attempts to criticize the MMD.
- May 23, 1996 Emmanuel Nyirenda, Samuel Ngowa and Kondwani Chirambo, managing editor, features editor and political correspondent of *The Times of Zambia* were reported to have received death threats in leaflets posted outside the newspaper's printing house in Ndola in the name of a group called "Black Mambas".
- May 31, 1996 A bomb exploded outside *The Times of Zambia* building, Ndola, but nobody was hurt.
- May 31, 1996 Elias Kamanga and Brian Malama, journalists of *The Post* were briefly detained while covering President Chiluba's official tour of an agricultural show in Kitwe. Their cameras were confiscated and both men were roughly taken to a police unit for questioning.
- July 11, 1996 Armed police searched the house of *The Post* reporter Brian Malama in Kitwe in act of harassment.
- October 17, 1996 The chief government spokesperson, Amusaa Mwanamwambwa, issued a press release which criticized *The Post* editor Fred M'membe and the rest of his editors as "unpatriotic" and "peddlers of lies" after M'membe was awarded the Astor Award by the Commonwealth Press Union.
- October 28, 1996 State owned and controlled ZNBC suspended its controller of television, Ben Kangwa, for allowing a UNIP political advertisement in which UNIP president Kaunda announced his party's decision to boycott the November 1996 elections to be broadcast with the caption, a ZNBC production.

The government-linked press did not always suppress reporting of events that were uncomfortable for the government. *The Sunday Mail* on October 20, 1996 factually reported the riots at a MMD rally in Kabwe when President Chiluba's announced that Paul Tembo, a less popular MMD candidate, would stand for the Kabwe Central seat.

Broadcast Media

Deregulation of radio stations started in March 1994. This has been the only sign to date that the government has been at all serious about its 1991 election promises on deregulation. But the process has been shrouded in secrecy. Most licenses have gone to Christian groups—the Baptist Communications Center, the Roman Catholic Diocese of Ndola for Radio Chungulo, Trinity Radio, linked to Deputy Minister Rev. D. Pule's Dampo ministries, and the Christian Voice of Lusaka. Christian Voice went on the air on December 1, 1994, allowed to broadcast on short wave, although the Telecommunications Act restricted SW to state radio. It was also controversial because the SW frequency

⁴³*The Post's* Internet host provider displayed the banned issue for two further days before being taken off the net. Edition 401 was banned around 2.00 pm well after it had sold out.

allocated to Christian Voice belonged to Radio Sweden. Uni-Holdings Ltd and Hickey Studios have teamed-up to operate a second FM commercial radio station in Lusaka, Radio Phoenix.

Regulatory Body

The government has also tried to control the press through a draft bill for the Press Association of Zambia (PAZA) and a bill for a Media Council (or a Media Association) of Zambia. Information Minister Keli Walubita announced on June 17, 1995 that the cabinet had given him sixty days to draw up legislation which would “transform PAZA into a more viable professional body.” Because of the lack of government consultation with PAZA over this initiative PAZA filed a petition for judicial review in the High Court to determine whether the government’s moves to establish a Media Council were in order. The court granted leave on July 18 1995 for a judicial review and all proceedings by the government towards establishing a Media Council of Zambia were stopped.⁴⁴

A more positive development occurred in March 1996 when the Ministry of Information and Broadcasting Services released its national Information and Media policy document.⁴⁵ This outlined information policy as a means “to promote civic education on people’s rights, duties and responsibilities in order to enable them to participate fully in the democratic governance of the country.” The ministry would also “review” laws that impede press freedom, and would “grant editorial independence to *The Times of Zambia* and *The Zambia Daily Mail*.” During elections it would collaborate with “the Elections Office and NGOs in disseminating information about civic rights, responsibilities and duties.” It did, however, advocate “the creation of a self-regulatory professional body for journalists, backed by the law, to enforce ethics and standards.”

There is clearly much to welcome in this document which could provide a baseline from which efforts to improve journalistic standards and freedom of expression in Zambia can be built in conjunction with respect for international standards, notably Article 19 of the ICCPR. This requires transparency, dialogue and goodwill. But the government’s record over the past three years toward the independent press has been very negative and it needs to show that its commitments in its *Information and Media Policy* booklet are serious and not just paper promises.

VI. HARASSMENT OF GOVERNMENT CRITICS AND INDEPENDENT VOICES

The Right of Peaceful Assembly

The full participation of political opposition groups and parties in the political process has been obstructed by restrictions of the right to assemble peaceably. In this, and other interferences with nonviolent political protest and campaigning, Zambian authorities have sometimes invoked legal provisions regulating demonstrations to institute arbitrary bans on opposition activity.

International Standards

⁴⁴Media Institute of Southern Africa, *Free Press*, No.3, 1995.

⁴⁵Ministry of Information and Broadcasting Services, *Information and Media Policy*, March 1996.

“The right of peaceful assembly shall be recognized,” according to Article 21 of the ICCPR. The only permissible restrictions are those in conformity with law and necessary in a democratic society, including those necessary for public order. “The right of assembly is subject only to one condition, that it be exercised peacefully,” according to one legal authority.⁴⁶

The Public Order Act

In Zambia the right to peaceful assembly is guaranteed in the Bill of Rights and regulated by the Public Order Act. While the original Public Order Act permitted the police to cancel any meeting or demonstration at short notice, the police had, in practice, allowed MMD officials to hold meetings at very short notice. This was a legacy of the Kaunda years of single-party rule when in most cases requiring police permits were unnecessary, on the grounds that most top party officials were ministers.

The opposition found that under the MMD government permits remained difficult to obtain or they were revoked at short notice. For example, fifteen leaders of civic groups, including Father Joe Komakoma of the Catholic Commission for Justice and Peace and Lucy Sichone of the Zambia Civic Education Association, were detained by paramilitary police during a peaceful rally on October 10, 1995 to protest the manner in which the government was amending the Zambian constitution.⁴⁷ The police had endorsed the permit for the meeting on October 5 with an official stamp, but this was orally revoked without explanation by the police on October 9, 1995.⁴⁸ The civic leaders who were charged at the time with unlawful assembly were acquitted by Lusaka resident magistrate John Silavwe on January 23, 1996, because the Supreme Court had already ruled on January 11 that Sections 5(4) and 7(a) of the Public Order Act were unconstitutional, finding that the provisions requiring people to get police permits to hold meetings or assemblies was a contravention of the Zambian peoples’ constitutional rights.⁴⁹

In upholding an appeal against the requirement for permits by the UNIP opposition party, Chief Justice Mathew Ngulube stated:⁵⁰

The broader question arising in this appeal is whether in this day and age, with only four years to go to the twentieth century [sic], it is justifiable in a democracy that the citizens of this country can only assemble and speak in public with prior permission which is not guaranteed and whether the law under attack is consistent with guaranteed freedoms of assembly and speech.

On February 27, the Zambian government presented parliament with an amendment to the Public Order Act designed to reinstate government control over public assemblies. This passed through parliament in record speed, three readings being completed in one day. This amendment (Chapter 104), enacted by parliament on March 3, adds an additional requirement to the original Public Order Act (Chapter 104) that:

⁴⁶Partsch, “Freedom of Conscience and Expression,” in *The International Bill of Rights* pp.222-23., citing Tomuschat, U.N. DOC. CCPR/C/SR.128, para 20 (1979).

⁴⁷*The Times of Zambia*,(Lusaka), October 11, 1995.

⁴⁸Human Rights Watch/Africa has in its possession the original application form with the police approval stamp on it.

⁴⁹Supreme Court of Zambia, Judgment on civil jurisdiction between “Christine Mulundika and 7 others (appellants) and the people (respondents),” January 10, 1996. Section 5(4) of the Public Order Act (Chapter 104) stated: “Any person who wishes to convene an assembly, public meeting or to form a procession in any public place shall first make application in that behalf to the regulating officer of the area concerned, and, if such officer is satisfied that such assembly, public meeting or procession is unlikely to cause or lead to a breach of the peace, he shall issue a permit in writing authorising such assembly, public meeting or procession and specifying the name of the person to whom it is issued and such conditions attaching to the holding of such assembly, public meeting or procession as the regulating officer may deem necessary to impose for the preservation of public peace and order.” Section 7(a) stated, “Any assembly, meeting or procession—(a) for which a permit is required under subsection (4) of section five and which takes place without the issue of such a permit.”

⁵⁰*Ibid.*

(4) Any person intending to assemble or to convene a public meeting, procession or demonstration shall notify the police in writing of such intent fourteen days before the meeting.

This definition was very broad, allowing the police to use their discretion in defining what events might fall under the terms of the Public Order Act, and therefore open to abuse.

The police were also authorized to turn down an application “to assemble” up to five days before the date of the public meeting. Any rejection can be appealed against. In this event, the law requires the minister of interior to make a decision on the issue within five days of the appeal.

On September 10, President Chiluba announced that the notice needed for the police to approve a permit to hold a meeting would be cut from fourteen to seven days. Little in practice changed. Through this amendment the government appears to have been creating the same conditions that had previously resulted in the abuses of such regulations to suppress the freedom of peaceful assembly. The biased nature of police enforcement under the Amended Public Order Act is shown by the three examples below:

- Six armed police were detained for two hours on April 14, 1996 Zambia Democratic Congress (ZDC) delegate for Eastern Province Andrew Banda for holding a press conference without a permit.⁵¹
- Police allowed an MMD “Constitution Solidarity March” to pass the Freedom Statute to State House on May 28, 1996 without the fourteen days notice required under the Public Order Act. The MMD had asked for permission from the Lusaka Divisional Police only on May 23.⁵²
- In October 1996 police refused UNIP leader Kenneth Kaunda permits to hold rallies on these three occasions with no clear justification.⁵³

Harassment of Opposition Political Parties

Intimidation of opposition political parties and other groups was not limited to election periods, but ongoing. Senior government officials sought to frighten anyone who even contemplated publicly criticizing the government.

Some methods of intimidation are used by the government to undermine the credibility of potential opposition. When Dipak Patel resigned from his government post in protest at the manner in which the constitution was amended, the inspector general of police promptly announced that he was under “investigation for illegal scrap metal dealing.” Nothing further was heard of this allegation. Similarly, the late Baldwin Nkumbula, when president of the National Party (NP), was threatened with an inquiry into his tax affairs.

Government officials have also warned people not to attend opposition rallies. President Chiluba himself commented on June 7, 1996 in Kitwe that the opposition inter-party liaison joint rally scheduled for June 8 1996 planned to cause chaos and confusion in the country. An inter-party rally held at Kafue roundabout in Lusaka monitored, but passed without incident, by 400 police officers.

⁵¹*The Post*, (Lusaka), April 17, 1996.

⁵²*The Post*, (Lusaka), May 28, 1996.

⁵³Telephone interview. UNIP press office. Lusaka, October 20, 1996.

The police were also used to intimidate opposition leaders, calling them in for questioning after they made contentious public statements. Shortly after Zambia Democratic Congress (ZDC) President Dean Mung'omba told a press conference that his party would not recognize President Chiluba and his party after October 31, Mung'omba was reportedly ordered to report to police headquarters to be interviewed. Mung'omba took legal advice and decided to ignore the request.⁵⁴

The "Treason Trial"

On the evening of June 3, 1996 five members of UNIP were arrested in connection with bomb blasts for which responsibility was claimed in the name of the clandestine "Black Mamba." They included retired Brigadier General Nicholas Zulu, retired Brigadier General Joseph Chintomfwa, former Air Force Captain Selemani Phangula Banda and Morris Kaulun-g'ombe, a bodyguard of former president Kenneth Kaunda. On June 4, police also arrested UNIP Head of Security Patrick Goma, UNIP chairman for finance Rabson Chongo, UNIP press officer Muhabi Lungu and UNIP vice-president Senior Chief Inyambo Yeta. UNIP Vice Secretary for Youth Affairs Samson Moyo was detained and released on the same day. The Lusaka High Court denied bail to the eight detainees from UNIP. On July 13, the remaining eight were committed to the Lusaka High Court for trial, charged with treason and murder.

A police search of the men's homes, apparently looking for bomb-making materials, guns or incriminating documents, reportedly found no evidence but the defendants were still not allowed bail. Two of them, Rabbison Chongo and Muhabi Lungu were, however, released on September 10 after the state discontinued the prosecution for "treason" and "murder."

On September 27, 1996 the state closed its case against the remaining six, a total of forty three witnesses having been called by it over sixteen High Court sittings. The trial provided little evidence to suggest that these UNIP members were involved in any violent conspiracy against the state. It appeared that they were detained solely because of their political affiliation. On November 1, the remaining six were acquitted of treason and murder charges, there being no evidence to prove that they were linked to the "Black Mamba."⁵⁵

The III-Treatment of Political Prisoners *International Standards*

There is no dispute that torture and cruel or degrading treatment or punishment are forbidden in international law. Article 7 of the ICCPR, to which Zambia is a party, provides: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Article 10(1) states "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

Deaths resulting from torture or mistreatment in detention also violate the individual's right to life set forth in Article 6(1) of the ICCPR:

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

The Convention Against Torture or Other Cruel Inhuman or Degrading Treatment, which the Zambian government indicated on October 1, 1996 that it would sign and ratify, states in Article 2: "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture."

The U.N. Human Rights Committee issued General Comment 7(1) under the ICCPR, stating:

⁵⁴*The Post*, (Lusaka), October 21, 1996. The press reported the summons having been issued on October 16, for an appearance on October 19 and that no reason was given.

⁵⁵The "Treason Trial" judgment by High Court Judge Peter Chitengi was reproduced in full in consecutive sections by *The Post*, (Lusaka), in its November 4 to 8, 1996 editions.

Complaints of ill-treatment must be investigated effectively by competent authorities. Those found guilty must be held responsible, and the alleged victims must themselves have effective remedies at their disposal, including the right to obtain compensation⁵⁶

The abuses documented below violate Articles 6, 7, and 10 of the ICCPR, which Zambia is bound by treaty to respect. The U.N. Body of Principles for the Protection of All Persons Under Any Form of Detention and Imprisonment and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provide further relevant standards.

Examples of Ill-Treatment

Of particular concern to Human Rights Watch/Africa were reports that during the March to May 1993 State of Emergency three of the government's detainees, Cuthbert Nguni, Harry Kamima and Bonnie Tembo were ill-treated while held in custody. Medical reports ordered by the court tended to confirm that they had been ill-treated. However, rather than taking corrective measures, Minister of Home Affairs Newstead Zimba made statements to the press condoning ill-treatment of the detainee. Cuthbert Nguni reportedly died of a ruptured kidney on September 21, 1994, an injury sustained in prison when police tried to force him to sign a confession.⁵⁷

Several of the UNIP "treason trialists" were taken ill in 1996, blaming poor prison conditions for this. Gen. Nicholas Zulu was admitted to Lusaka's University Teaching Hospital (UTH) on July 7, 1996 because of illness. Senior Chief Inyambo Yeta was taken ill several times and was hospitalized on June 27. He was interviewed by Human Rights Watch/Africa at Lusaka Central Prison.⁵⁸ He described the appalling conditions he and his colleagues were being kept under:

The greatest challenge for me and my colleagues is to remain healthy. We are usually allowed only visits of two minutes by friends and family, not sufficient to have a proper discussion. Sleeping at night is impossible, we are in a cell built for twenty people but with eighty. There is no room to lie down. The result is that one person sits down and puts their back against the wall and open their legs wide. The next one sits between the legs and so on. We sit in rows and suffer bad sores on our backsides. We all suffer in silence. We try and not breathe too much because of condensation.

The indignity of this is difficult to cope with. We thought we would be treated as political detainee, not remand prisoners...There is TB and dysentery in the prison and the longer we are there the more at risk we become.

The prison is badly congested, is little room made worse by the smoke from wood fires and dust. We are locked up from 4pm to 8am in our inhuman cells. One or two of the warders are OK, but the majority are of the Old Order and we are not treated as human beings. You only get health treatment if you are a hopeless case. They usually just give you an aspirin and send you back. There is a clinic but its usually too late if you are referred to hospital. On average thirty people a year die in here of curable diseases. I have seen three cases including one Zimbabwean and a West African who died because they received medical treatment much too late, although they had been seeking medical attention days before. I fear October with the summer heat. It's already too hot with all these human bodies pushed together.

⁵⁶U.N. Centre for Human Rights, Human Rights and Pre-trial Detention, p.36; see United Nations Body of Principles for the Protection of All Persons under Any form of Detention or Imprisonment, G.A. res. 43/173, annex, 43 U.N. GAOR Supp. (no.49),p.298, U.N. Doc A/43/49 (1988), Principle 34.

⁵⁷Kaweche Kaunda and Tiaonse Kabwe, *Cuthbert Ng'uni. Torture and Death of an Honourable MP in Zambia* (Lusaka: Own Voice Publishers, 1994).

⁵⁸Human Rights Watch/Africa interview with Senior Chief Inyambo Yeta, Lusaka Central Prison, September 12, 1996.

The so-called ablution blocks are terrible, they are flushed with buckets of water but are blocked. Flies are breeding everywhere. A Judge came the other day, we had to clean everything for his visit, including the toilets and we were stopped from using them until he had gone.

This is political pay back, in conditions like this. I believe this vicious cycle of revenge has to come to a stop. We need a leadership that equates justice with fair play.

Deaths in Disputed Circumstances

International Standards

Several opposition parties blame government agents for the killing of their supporters. The individual's right to life is set forth in Article 6(1) of the ICCPR: "Every human has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."

Recent Reports

Human Rights Watch/Africa believes that the deaths of opposition members documented below occurred in disputed circumstances and require further investigation.

- Baldwin Nkumbula, the former National Party president, was found dead in a crashed car on August 27, 1995. Patrick Mubanga Kafuti, who was in the car at the time of accident, has said that Nkumbula was killed by State House agents. Human Rights Watch/Africa saw a video recording of Kafuti's allegation but found it inconclusive. Although there has been a Commission of Inquiry into the death there has never been an inquest: an autopsy and inquest could throw light on the cause, manner, and circumstances of death.⁵⁹
- Rex Mashamushi, a NP provincial treasurer, was shot dead by unknown assailants in suspicious circumstances on August 31, 1996. There was reportedly no inquiry.⁶⁰
- Clement Busa Bulanko, a NP candidate in Luapula constituency for the November elections, was murdered in July 1996. There was reportedly no police inquiry.⁶¹
- Harry Kamima, former director general of intelligence died in early 1995 of unknown causes. UNIP alleges he was murdered by government agents.⁶²

⁵⁹Human Rights Watch/Africa saw the Kafuti video, Lusaka, September 19, 1996.

⁶⁰Human Rights Watch/Africa interview with NP staff, Lusaka, September 12, 1996.

⁶¹Ibid.

⁶²Human Rights Watch/Africa interview with UNIP staff, Lusaka, September 8, 1996.

- Weston Haundu was admitted to Maina Soko Military Hospital on May 7, 1996 suffering from malaria, but died a day later from complications after being transferred to the University Training Hospital (UTH). Haunda's family claim he was an intelligence officer, from "B" branch of the Office of the President, who was charged for communicating an operational order for the 1995 UNIP Congress to unauthorized persons, in particular *The Post*, on June 23, 1995. The family allege he was murdered because the Office of the President was not confident in winning the case. They allege that before his death Haundu was warned by friends to be careful of his movements, not least drinking places.⁶³ *The Post* also claims that Haunda's death certificate contained errors and the person who signed it from the UTH, Rosemary Mulugwa, is an intelligence officer working under cover.⁶⁴

The Judiciary, the Legal Profession and NGOs

President Chiluba wrote in 1995 that, "the executive arm of government should not interfere in the internal workings of the judiciary. Where it wishes to see a change of course, the proper procedure is to lay legislative proposals before parliament and leave it to the judiciary to apply and interpret the law as approved by parliament.... The Ministry of Legal Affairs is currently looking at ways of further strengthening the independence of the judiciary."⁶⁵

Human Rights Watch/Africa observed a different situation, one in which the judiciary was increasingly fragile and its independence threatened. During the 1996 parliamentary debates over the Constitutional Amendment Act, the government proposed under Article 98(3) of the proposed amendments to the constitution that, "a judge of the Supreme Court or High Court shall be removed from office by the President, subject to ratification by the National Assembly, for gross misconduct." Only when the senior judiciary threatened to resign in large numbers was this proposal dropped.

The judiciary and the legal profession have come under increasing attack in 1996 from the government and its supporters for being independent minded. The attacks have been led by former Legal Affairs Minister Remy Mushota, who was dismissed from office and expelled from parliament after a Ministerial and Parliamentary Code of Conduct Tribunal found him guilty on July 11, 1996 of "subverting laid down procedures." The charge was based on his attempt to claim K210 million (US\$105,793) drawn for the publication of constitutional documents. Mushota had attempted to cash the check on April 4, 1996 but the Bank of Zambia refused to honor it, insisting that the government should issue it in the names of the contractors concerned and that it then follow the right clearing procedure. It emerged that another cheque for the same job worth K110 million (US\$52,891) had already been issued to a print firm connected to an MMD member of parliament. Patrick Katyoka, former Mandevu MP, was also expelled from parliament by the tribunal for his involvement in the scandal.

⁶³Human Rights Watch/Africa interview with family member, Lusaka, September 12, 1996. UNIP's leader Kenneth Kaunda also told Human Rights Watch/Africa of several incidents in which he believes he was the target of government sponsored attacks on his life. Although Human Rights Watch asked for further documentation, these were not forthcoming. *The Post* on June 23, 1995 also published details of what it claimed were security service documents dated May 29, 1995, which it said revealed that "a National Campaign Committee for the re-election of President Frederick Chiluba has been formed and is prepared to assassinate the former president." Intelligence officer Weston Haundu appeared in court on June 26, 1995, accused of "conveying information to unauthorized people."

⁶⁴*The Post*, (Lusaka), June 17, 1996.

⁶⁵Frederick Chiluba. (1995), p.107.

Mushota's high profile attacks on the judiciary were followed by attacks from others, including campaigns of character assassination in the pro-MMD press. *The Confidential* front page story "Chief Justice Rapes Widow: Honorable Ngulube Tore My Pants" discrediting the Chief Justice in a story later shown to be unfounded was an example of this.⁶⁶

The story alleged that Chief Justice Mathew Ngulube raped a High Court cleaner, Charity Chanda, after midnight at a Lusaka hotel and gave her K5,000 for transport home. Human Rights Watch/Africa interviewed *Confidential's* junior editor Nick-Venter Shamilimo about the Chief Justice story.⁶⁷ He admitted that his checking with the police, the Chief Justice's office and the hotel reception where the incident allegedly took place all produced no confirmation of the story. He also admitted that the draft article contained some of these denials but that the editor, Reverend Steward Mwila, edited them out.⁶⁸

In a press statement the Chief Justice put *The Confidential* story into context, saying⁶⁹:

The false allegation of rape, serious as it may be is nonetheless just another shameless lie by enemies of an independent judiciary who have since the Supreme Court judgement on the Public Order Act, and more recently my decision to appoint the Tribunal under the Ministerial and Parliamentary Code of Conduct Act, launched a vicious and sustained campaign aided and abetted by papers like *The Confidential* to force me to resign my position as Chief Justice.

Exceptionally, Michael Sata, the MMD national secretary, condemned this article and defended the Chief Justice.⁷⁰

The legal profession, and the Law Association of Zambia in particular, have come under increasing attack from government officials since 1996 for their role in contesting the Constitutional Amendment Act and defending an independent judiciary. The MMD's national secretary condemned the Law Association of Zambia as being double-faced and no longer representative of the views of the legal profession. The government spared little expense in trying to undermine what it saw as "opposition" lawyers. Its efforts ranged from trying to push through its own candidate for the chair of the Law Association of Zambia at its annual general meeting in March 1996 to trying to undermine the reputation and to question the Zambian citizenship of individual lawyers. For example:

⁶⁶*The Confidential*, (Lusaka), September 12-17, 1996.

⁶⁷Human Rights Watch/Africa interview with Nick-Venter Shamilimo, Lusaka, September 17, 1996.

⁶⁸Ibid. According to Shamilimo there seemed to have been an attempt to block publication at the printers, Zambia Educational Publishing House. On September 10, the firm said they had no ink to print and on September 11 they claimed there was a power-cut until representatives of *The Monitor* and *The Chronicle* papers appeared to collect their print-run and power was resumed.

⁶⁹"Press Statement by the Chief Justice of the Republic of Zambia," Mathew Ngulube, September 13, 1996. The administration in charge of recruitment and dismissal of staff at the Supreme Court issued a statement on September 13 claiming that none of the details in *The Confidential's* story matched its records, and that there had never been a female cleaner in that office. At a press conference Charity Chanda appeared confused and contradicted her original story, weakening further the credibility of the account.

⁷⁰*The Post*, (Lusaka), September 14, 1996.

- Sakwiba Sikota, a prominent member of the Law Association of Zambia, and a former chairman, was part of the defense team for the UNIP “treason trialists” and one of *The Post’s* lawyers. The government alleged that he “masqueraded” as a lawyer. He claimed that the Police Inspector General had ordered an investigation into his qualifications. This included Zambian diplomatic staff being sent to check his Keele University qualifications and his high school certificate in Switzerland. They even contacted Zambian Professor Muna Ndulo, who was Director of the Law Practice Institute in Lusaka and is currently at Cornell University, to check that he had completed his law exams.⁷¹

NGOs have also been undermined by the government. Ruling party threats to disrupt a proposed demonstration by NGOs, intended to press for the adoption of a new constitution through a constituent assembly, were made through the government’s *The Times of Zambia* in 1996 in a front page article quoting Stephen Bwalya, MMD provincial youth chairman under a headline “MMD youths breathe fire over demo.” Bwalya is cited as warning that, “We will clash with police if they attempt to stop us from saying ‘no’ to the NGOs and their demonstration. We will meet them with stones.” Lusaka district MMD chairman Harrison Mukupa said that MMD’s top leadership supported this and that any MMD cadres arrested by police would be “rescued.”⁷²

In the run-up to the November 18 elections the government embarked on a campaign to discredit local NGOs, especially those whose mandate included monitoring them. *The Times of Zambia* in a front page headline feature reported that there was an “Elections Plot” sponsored by two Western countries who had “offered huge sums of money as rewards to established local election monitors who have been asked to oversee the electoral process at all costs and declare the poll unfree and unfair,” *The Times of Zambia* quoted statements by MMD campaign committee chairman Vernon Mwaanga and MMD national secretary Michael Sata.⁷³ The government also warned that it might be compelled to regulate NGOs, “ostensibly to check those suspected to be engaged in nefarious activities.”⁷⁴ The chairman of the Committee for a Clean Campaign coalition, Ngande Mwanajiti, told Human Rights Watch/Africa that these sort of statements, “undermine our efforts to campaign for a clean electoral contest and the role of NGOs in general. The government is trying to make the NGOs scapegoats for the crisis they have helped create. It is these very NGOs that they attack which in 1990 and 1991 challenged Kaunda’s authoritarian rule and helped create the climate in which the MMD achieved power. Without them the MMD would never have won the 1991 elections.”⁷⁵

Ngande Mwanajiti also told Human Rights Watch/Africa that he had become the focus of state-sponsored intimidation in the run-up to the elections. Mwanajiti gave as an example an incident on November 14 when three police officers visited his home and picked up one of his home helpers for questioning. The worker that evening asked for two days of leave to attend a funeral. The next day it transpired that he had packed all his things and left. According to Mwanajiti a friend to his worker had told him that police officers had picked up his worker for questioning and had told him not to disclose anything to Mwanajiti.⁷⁶

This harassment continued after the elections. On November 24 and 25, the Lusaka premises of three human rights and election monitoring groups, the Zambia Independent Monitoring Team (ZIMT), the Committee for a Clean Campaign (CCC) and the offices of Inter-

⁷¹Human Rights Watch/Africa interview with Sakwiba Sikota, Lusaka, September 11, 1996.

⁷²*The Times of Zambia*, (Lusaka), January 25, 1996.

⁷³*The Times of Zambia*, (Lusaka), November 8, 1996.

⁷⁴*The Times of Zambia*, (Lusaka), November 12, 1996.

⁷⁵Telephone interview with CCC chairman, Ngande Mwanajiti, Lusaka, November 13, 1996.

⁷⁶Human Rights Watch/Africa telephone interview with Ngande Mwanajiti, Lusaka, November 19, 1996.

Africa Network for Human Rights and Development (Afronet) were raided by police. Police removed many files and books from ZIMT and Afronet for examination on November 25. The bank accounts of the CCC, ZIMT, and Afronet were also frozen by the authorities.⁷⁷

The police also briefly detained and took to Lusaka Central Police Station for questioning ZIMT's president, Alfred Zulu, and CCC chairman, Ngande Mwanajiti, on November 24, ZIMT general secretary, Gershom Musonda, was also detained for several hours and charged with threatening violence for commenting on the death of police bomb disposal expert, the late Orton Banda.

The raids followed President Chiluba's remarks as he was sworn in for his second and last term on November 21. He said that the government "would no longer allow itself to be bulldozed by nongovernmental organizations."

Playing the "Ethnic Card"

Government officials in their efforts to undermine, intimidate and silence the opposition have also increasingly questioned the ethnic origins of their critics. The nationality of many of these individuals had been recognized without challenge from the inception of the Zambian state in 1964 until the current government identified them as opposition.

UNIP's president Kenneth Kaunda has been the focus of many such threats. A notable example was that from Home Affairs Minister Chitalu Sampa, who threatened on October 17, 1995 to strip him of his nationality: "the government is satisfied the former president is not a Zambian and necessary work is being done to see that the law is applied...We are still investigating and shall accordingly deal with just like any other alien."⁷⁸ This threat to exile Kaunda, in the guise of the denial of his Zambian nationality, raised political tensions, not least by its chilling effect on the tens of thousands of Zambians whose ancestry might be challenged according to ad hoc and highly partisan acts of exclusion. Although Kaunda held dual citizenship between 1964 and 1970, he had renounced his Malawian citizenship.⁷⁹ As a person born in what is now Zambia he was entitled to citizenship at the time of independence, took up such citizenship, and was in no way an "alien" under Zambian law.⁸⁰ Following international and domestic pressure the government compromised. On October 20, the home affairs minister ordered the police to halt any arrest or questioning of former President Kaunda. The issue was not publicly raised again.

⁷⁷Human Rights Watch/Africa interview with Ngande Mwanajiti, Lusaka, November 25, 1996.

⁷⁸*The Independent*(London), October 18, 1995.

⁷⁹What are now the independent states of Zambia, Zimbabwe and Malawi were from 1953 part of the British-ruled Federation of Central Africa until 1963. At independence in 1964, citizens of these territories became what are today Zambians, Zimbabweans and Malawians.

⁸⁰Article 4(1) of the 1991 Constitution of Zambia states, "Every person who immediately before the commencement of this Constitution was a citizen of Zambia shall continue to be a citizen of Zambia after the commencement of this Constitution."

Other prominent UNIP members were, however, put under prolonged pressure, their Zambian origins and right to nationality challenged. Henry Mtonga, a former inspector general of police and a prominent opposition UNIP figure came under investigation on August 29, 1995 when immigration department officials questioned his nationality. Officers had already visited his home village in Lundazi and interviewed his mother. Mtonga told the press in August 1996 that if the immigration department wanted to deport him they should take him to South Africa's Natal province because, "my great grandfather was part of Zwangendaba's impis when they were crossing Zambia in mid 1800. I am a very interested person to establish my roots, and I have done that. I know my great grandfather immigrated from South Africa and was a warrior in Zwangendaba's army. And when they were crossing the Zambezi he decided to marry chief Mwas'e daughter—my great grand mother."⁸¹ Mtonga was born in what is now Zambia.

Some UNIP officials have been deported, their cases vigorously and arbitrarily pursued by the state in an effort to undermine the party. William Banda, a senior member of UNIP, who had lived in Zambia since independence in 1964, was arrested on the grounds that he was not a Zambian, but a Malawian. The Chipata High Court which tried him held that he was not a Zambian because he could not prove that he had been born in the Zambian village he claimed to be from. He was hastily deported to Malawi on August 31, 1994 as a "prohibited immigrant" because he did not have any valid permit to stay in Zambia despite protests from his lawyers. In the Chipata High Court ruling, the judge disclosed that he doubted the State's case but that it would finally have to be decided on appeal.

The Supreme Court appeal upheld the original judgment, claiming that:⁸²

the appellant must satisfy the Immigration Authorities that he has been ordinarily and lawfully resident in Zambia or former protectorate of Northern Rhodesia or both for him to qualify as an established resident. From the facts on record the appellant has not proved that he was ordinarily and lawfully resident in Zambia. The appeal cannot succeed on this ground also. Even if he was, he was liable to deportation on the ground that he was deported i.e. being inimical to the interest of Zambia....The appellant deliberately lied about his father, mother, brothers, sisters and place of birth. He failed to prove that he was born in Zambia while the investigations carried out by the State against him showed his parents came from Nkomo village, Nkota, Nkota in Malawi.

UNIP politician John Chinula was also deported to Malawi in September 1995. He claims that police injected him with a strong sedative shortly before his deportation. Chinula had never had his nationality challenged until immigration officials questioned him, his father and his father's two wives in January 1995 about their origins. Chinula claims that everything about him and his family are Zambian; his parents still live on his farm in Copperbelt province and have not been deported. Richard Sakala, President Chiluba's press secretary, defended the deportation on October 11, 1995, saying that Chinula had been accepted by the Malawians and "if he was not their citizen they should have deported him by now."

The chairperson of the Zambia Civic Education Association, Lucy Sichone, claims her Association has established that Chinula was taken to Malawi without immigration formalities being completed and that the Ministry of Home Affairs in Lilongwe (Malawi) holds documentary proof that Chinula is a Zambian. She also claimed that a letter she had seen in Malawi from Zambian Minister of Home Affairs Chitalu Sampa was deceptive because it implied Chinula never left Malawi, that he visited Zambia two or three times a year on business and that he was being deported for "economic crimes."⁸³

⁸¹*The Post*, (Lusaka), August 22, 1996.

⁸² Supreme Court Judgment no. 16 of 1994, "William Steven Banda and The Chief Immigration Officer and The Attorney-General."

⁸³*The Post*, (Lusaka), September 9, 1995.

UNIP is not the only party to have had the ethnic identity of its officials scrutinized. Dean Mun'gomba, the president of the Zambia Democratic Congress was put under investigation on the allegations that he is really "a Tanzanian."

Former Legal Affairs Minister Remmy Mushota, who was dismissed from office after a Ministerial and Parliamentary Code of Conduct Tribunal found him guilty on July 11, 1996 of "subverting laid down procedures," attacked members of the tribunal, emphasizing their ethnic origins in line with the ruling party's broader campaign to challenge opposition leader's rights to Zambian nationality. In an affidavit filed on August 1 after the tribunal found him guilty, he wrote:⁸⁴

Justice Ernest Sakala and other members of the tribunal have Malawian origins and they are amongst those people in Zambia who do not like my total opposition to foreigners becoming presidents of Zambia which belief I have founded not only on sound political basis but also on Biblical principles. And this is the law since 28th May 1996.

He also argued that:

the Tribunal itself was by persons with Malawian/Eastern Province origins i.e. the Chairman Justice E.L. Sakala, Ms Justice Florence Ndepele Mwachande (Mumba) of Yao or Chawa extraction grown up in Mufulira and Mr Justice Sanderson Silomba from Malawi but now accredited to Isoka District. The Secretary is a niece to the Chief Justice and a daughter to a staunch UNIP KK supporter and cadre.... Then there is a Mr Shanzi from the same origins who assisted the Tribunal Secretary and did the tape recordings.

Mushota has also called for a parliamentary or public commission of inquiry to probe the professionalism of judges and financial indiscretions of some judges and magistrates.⁸⁵

Despite attacks on the judiciary, championing of exclusivist ethnic politics and his conviction for corruption, President Chiluba appointed Mushota to the Citizenship Board of Zambia on August 31, 1996. After the elections on November 24, Mushota renewed his attack on the judiciary. At a press conference he said, "There should be no government by the judiciary in this country. And foreigners must not interfere with our human rights. Zambia is for Zambians," he said. Few government officials have publicly condemned Mushota's attacks on the judiciary and there has been no condemnation from the Office of the President.⁸⁶

Lawyers have also had their nationality challenged by the state. When George Kunda became chairperson of Law Association of Zambia in 1996 his wife and parents were visited twice by immigration officials from Ndola and Serenje. In mid-1996 these immigration officials visited his home village of Musamani to check Kunda's origins and insisted that his parents travel to Serenje Boma with them to establish the Kunda family origins in front of chieftainess Serenje. There had been several press reports that Kunda was a "Malawian," an allegation repeated in parliament in early October by Vice-Minister Valentine Kayope and on October 3 by Michael Sata, the MMD National Secretary. Kunda claims he is from the Lala tribe and that both his parents are Zambian by birth or descent. The increasing

⁸⁴ Affidavit in the matter between Dr Remmy Mushota and Patrick Katyoka and Attorney-General, 1996/HP/3232.

⁸⁵ *The Zambia Daily Mail*, (Lusaka), September 7, 1996.

⁸⁶ *The Post*, Lusaka, November 25, 1996.

number of references to Kunda's origins by government officials is undoubtedly linked to the Law Association of Zambia's criticism of the 1996 Constitutional Amendment Act.⁸⁷

⁸⁷Human Rights Watch/Africa interview with George Kunda, Lusaka, September 16, 1996; letter by Kunda to Human Rights Watch/Africa Executive Director Peter Takirambudde, dated October 10, 1996.

Leaders of civil society have also had their nationality challenged. Bishop Mambo, until September 1996 president of the Forum for Democratic Process (FODEP), was called a “non-Zambian” as was Alfred Zulu, president of the Zambia Independent Monitoring Team (ZIMT). In mid-1996 immigration officials also questioned the mother and a work colleague of Lucy Sichone, the chairperson of the Zambia Civic Education Association about Lucy Sichone’s nationality. In May 1996, Deputy Minister for Information and Broadcasting Valentine Kayope also attacked Zambian citizens Morse Nanchengwa and Fr. Joe Komakoma of the Catholic Commission for Peace and Justice, claiming “that the constituent assembly is as foolish as it is bankrupt...Zambia is ours and not even foreigners in priestly cassocks should not dictate to us.”⁸⁸ These civic leaders’ nationality had been recognized without challenge from the inception of the Zambian state in 1964 until the current government identified them as critics.

VII. ELECTORAL LAW AND ITS ADMINISTRATION

International Standards

Under the Universal Declaration of Human Rights, Article 21:

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives;
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 25 of the ICCPR also guarantees the right to participate in government and free elections. It provides that everyone shall have the right:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors...

These principles are also found, albeit with a slightly different wording, in other international instruments, such as the European Convention for the Protection of Human Rights and the American Convention on Human Rights.

Free and fair elections are a matter of human rights in two ways. Firstly, free and fair elections secure the individual’s right to participate in government. Secondly human rights are an essential precondition for the guarantee of free and fair elections.

According to the Norwegian Institute of Human Rights and the Norwegian Helsinki Committee’s *Manual for Election Observation*, the right to vote must be given to all citizens of the country on equal terms, provided they have reached a pre-described age. The manual comments that:⁸⁹

Sometimes, however, it can be a problem to define who are citizens. Especially in transition periods the definition of a citizen has caused conflicts. People meeting the requirements of age and who have lived in the country as de facto citizens for a reasonable number of years, should be given the opportunity to obtain citizenship.

⁸⁸*The Times of Zambia* (Lusaka), May 12, 1996.

⁸⁹Norwegian Institute of Human Rights and the Norwegian Helsinki Committee, “Manual for Election Observation,” no date given, but 1995.

There must be no provisions that would support any discrimination due to ethnic inheritance, religion, sex or the like. If needed, provisions giving special protection to weak groups may be included in the law.

In regard to the freedom to campaign the manual states that:

The rights of freedom of expression, freedom of association and freedom of assembly must, if not previously secured on a permanent basis, be ensured in sufficient time prior to the election so as to allow political organization and campaigning, securing information to voters on candidates taking part in the elections must be given the possibility to agitate and promote themselves or their political positions.

It also advocates security against fraud requiring that:

The system must be sufficiently secured against fraud. This is done by the representation in all bodies that handles [sic] votes by well respected, neutral authorities or by multi-party representation, by secure control systems for voters, by secure storing and transportation of ballots, and by results being published at all relevant levels.

National Law

Article 75 of the Constitution of Zambia (1991 as amended) provides for the franchise of the citizen as follows:

(a) Every citizen who has attained the age of eighteen years shall, unless he is disqualified by Parliament from registration as a voter for the purposes of elections to the National Assembly, be entitled to be registered as such a voter under a law in that belief, and no other person may be so registered;

(b) Every person who is registered in any constituency as a voter for the purposes of elections to the National Assembly shall unless he is disqualified by Parliament from voting in such elections on the grounds of his having been convicted of an offence in connection with elections or on the grounds of his having been reported guilty of such an offence by a court trying an election petition or on the grounds of his being in lawful custody at the date of the election, be entitled so to vote in that constituency in accordance with the provisions made by or under an Act of Parliament and no other person may so vote.

The right to vote in Zambia is therefore dependent on whether a person holds a criminal record, whether the individual is in lawful custody, and the satisfactory fulfillment of registration requirements.

Up to now, parliament has not disqualified any Zambian from registration as a voter for elections to the National Assembly which is the only occasion when the state can lawfully disenfranchise an individual. This means that for those voters not registered as voters despite their attempts to do so, the state has not only failed to advance their rights but has also actually itself denied them the right.⁹⁰

⁹⁰Under Article 75 of the 1996 Constitution there are some exceptions to who can vote. It states that "(2) Every person who is registered in any constituency as a voter for the purposes of elections to the National Assembly shall, unless he is disqualified by Parliament from voting in such elections on the grounds of his having been reported guilty of such an offence by the court trying an election petition or, on the grounds of his having been reported guilty of such an offence by the court trying an election petition or, on the grounds of his being in lawful custody at the date of the election, be entitled so to vote in that constituency in accordance with the provisions made by or under an Act of Parliament, and no other person may so vote."

Under the Elections Act, registration of an individual as a voter requires the production of a National Registration Card. a potential voter must also register as a voter under the Elections Act. Upon registration they will be given a voters card which has to be produced on the day of the elections. A voter who loses his voter's card cannot vote but must get a "voter's certificate." This is issued by the Elections Office in Lusaka to Polling Districts who distribute them to polling stations. There is great controversy over these certificates. In by-elections in 1995 and 1996 there were reports that some of these were forged and also that the manner in which the Elections Office handled them was unfair. In some instances certificates were stolen while in transit to polling districts by party officials who distributed them only to their own party members who had lost cards. There have also been cases of party officials intimidating voters into giving them their voter's cards, destroying them and replacing them with voter's certificates in the hope this would encourage support for the party.

This is said to have happened in the Msanzala (Eastern province) by-election where the MMD won despite it being previously a strong UNIP constituency. When the Electoral Commission banned the use of voter's certificates in the Kalabo by-election in Western Province, the fortunes were reversed, UNIP winning the seat from the National Party.

Registration

Some 2.6 million people voted in the October 1991 multiparty elections, 43 per cent of the registered 3.5 million. In 1988, under the one party structure, there had been some 2.6 million registered voters; in 1983, there had been 2.37 million. For the November 1996 election, 2.3 million voters had registered although around 50,000 of these were rejected for what were described as technical reasons.⁹¹ Despite this low registration, the government expanded significantly the number of polling stations across the country in an exercise which opposition parties claimed was focused on areas that were most likely to vote for the ruling MMD.

To prepare for the 1996 elections the Zambian government awarded an electoral registration contract to NIKUV of Israel, on a bid quoted at US\$18,700,000.⁹² Justifying this contract in a speech on September 5, 1996, Defense Minister Ben Mwila said that an American firm had offered to do the job at \$27 million while a British company made a bid of \$22 million. Pressure had been exerted on the government to consider the bids from the two countries but Zambia spurned them he told his audience.⁹³

⁹¹*The Post*, (Lusaka), September 25, 1996.

⁹²For full details of the registration controversy see, Judgment in "Sebastian Zulu & Roger Chongwe v. Attorney General & NIKUV Computers Ltd," May 2, 1996. According to this the Electoral Commission had preferred one of the South African bids and had visited it.

⁹³*The Zambia Daily Mail*, (Lusaka), September 6, 1996. Defense Minister Mwila is incorrect. According to Lusaka-based diplomatic sources, there were ten tenders of which the NIKUV bid was one of the highest. The tenders were: Denel Infomatics (South Africa), US\$11,700,000 to \$9,000,000; Q Date Consultants (South Africa), \$4,405,000; Zambia Postal Services Corporation, \$5,335,000; VWL International (South Africa), \$25,400,000; Big Bang Trade Services Ltd.(Zambia), \$4,500,000 (price was exclusive of software); Thomas De La Rue (UK), \$6,500,000; NIKUV Computers (Israel), \$18,700,000; NCSI (UK), \$1,595,000; Ernest and Young (South Africa), \$3,237,885; Polaroid (UK), \$6,000,000.

The government's award of the electoral registration contract to NIKUV was challenged by the opposition. Judgment was delivered on May 2, 1996 in a High Court civil case between Sebastian Zulu (Secretary General of UNIP) and Roger Chongwe (President of the Liberal Progressive Front) and the Attorney General and NIKUV Computer (Israel) Limited.⁹⁴

The Judge concluded that the lack of transparency in the awarding of the contract and its classification as "Secret" was wrong. He also added that he took "judicial notice of the fact that the registration exercise had to be extended on three occasions in order to cajole more eligible voters to register. But he concluded that: "to nullify the recently concluded registration of voters would not only be disruptive but would not serve any useful purpose to this country. Thus while I acknowledge that this exercise was fraught with irregularities, I reluctantly refuse to nullify the registration of voters and to order a fresh registration of voters exercise."

The registration of voters had opened in December 1995 and was concluded on March 15, 1996 after three extensions. NIKUV admitted in September 1996 that 52,703 duplicate National Registration Cards (NRCs) have been entered into their data base. These errors did not originate in the computer firm, it said, but from the wrong information supplied by individuals. By September 13, 1996 there were 2,162,907 registrations; 1,348,616 people had collected their cards.⁹⁵

Reports of problems in the registration process came from across the country throughout 1996. In August 30,000 names were reported to have been omitted from the provisional voters lists in Eastern Province. Four thousand had been sent back to NIKUV Computers for corrections following the discovery of parallel errors between the provisional registers at eight centers. In mid-August the Luangwa district provincial register recorded more than 3,000 extra names and in Ndola more than 150 people were barred from collecting their voters cards because they had been registered at several polling stations.

As the voter register verification exercise came to a close in early September it was reported that 10,000 eligible voters in Ndola Rural and Luanshya were unable to collect their voters cards because of omissions in the register and the misplacement of cards. A September survey of polling stations by *The Monitor* revealed that several thousand cards destined for Luanshya and Ndola Rural were marooned in Mfulira and Ndola and efforts to dispatch them to their respective polling stations had failed.⁹⁶

⁹⁴See, Judgment, May 2, 1996. Human Rights Watch/Africa has in its possession a copy of the "Contract to Carry Out The Registration of Voters and Production of Voters Cards Exercise Between The Government of Zambia and NIKUV Computers (Israel) Limited," November 1, 1995.

⁹⁵*The Times of Zambia* (Lusaka), October 18, 1996.

⁹⁶*The Monitor* (Lusaka), no.13, September 6 to 12, 1996.

The registration process has also been clearly flawed and abused by the MMD. On the Copperbelt thousands of young people demonstrated in Ndola after failing to get their NRCs. In Lusaka there were allegations of corruption. At Soweto Market in Lusaka, the MMD Office was conducting the voter registration process. Only one officer was a properly accredited registration officer, a teacher at a primary School in Lusaka appointed by the Director of Elections. In addition to providing details of their NRCs, people registering at this post were also being asked to put down on a separate sheet of paper prepared by the branch officials their market store numbers and to confirm affiliation to the MMD in return for registration. This additional information was obviously for use to intimidate the voters: those who had not registered or were affiliated with the MMD could easily be traced.⁹⁷ UNIP supporters also intimidated people in Lusaka's markets, attempting to maintain UNIPs grip in the face of increasing MMD efforts to gain advantage.⁹⁸

Similarly, the MMD ward chairman for Ngwerere Ward, north of Lusaka was busily supervising the voter registration exercise at Ngwerere Police Station in the midst of law enforcement officers. One young man, Chris Mutale, disclosed that he could not get his NRC from the mobile NRC office until he bought an MMD card, though he had been going there for close to two weeks. After he was issued with the NRC, he was registered as a voter by the MMD chairman himself, who took over the function from the two teachers hired as registration officers.⁹⁹

Human Rights Watch received other accounts of registration abuse. Several pro-MMD members reportedly asked prospective voters for a fee of K1,000.00 in order to register them. Several UNIP members told us that they were turned away from registration offices on the grounds that there was no film, although they saw other people being photographed. In the Copperbelt, in the middle of a registration program President Chiluba announced that the MMD would deploy its security personnel at voter registration centers to supervise the exercise.¹⁰⁰

Appropriation of State Resources for the MMD's Electoral Efforts

The opposition has frequently complained that the electoral playing field is imbalanced because the MMD uses all the resources of the state to further its cause of reelection. This was illustrated by a letter setting out a plan for MMD-police collaboration in preparation for elections dated February 15, 1996, from SK Walubita, chairman of the MMD's National Security Committee, to the MMD's provincial chairmen. In this letter, a copy of which is appended he writes:¹⁰¹

I am working hand in hand with the Ministry of Home Affairs for MMD cadres to also be recruited into the Zambia Police Force. There are two recruitment schemes at present and you are urgently requested to send names of your candidates to me by 15th March without fail....

Each Province is requested to submit at least fifty (50) names i.e at least ten (10) names from each District.

This is an urgent request in readiness for the Presidential and General Elections in as far as Law Enforcement is concerned.

Although SK Walubita admitted in September in the Supreme Court that he wrote the letter, he claimed that the initiative failed to get any response from the provincial chairman and died a "natural death."

⁹⁷Human Rights Watch/Africa interviews in Soweto market, Lusaka, September 17, 1996.

⁹⁸Human Rights Watch/Africa interview with UNIP supporter, Lusaka, September 18, 1996.

⁹⁹Ibid.

¹⁰⁰Human Rights Watch/Africa interview with FODEP, Lusaka, September 16, 1996.

¹⁰¹See Appendix.

However, Human Rights Watch/Africa interviewed a senior police officer in Lusaka who admitted (on condition of anonymity):¹⁰²

Yes MMD is trying to fill up the police with its police. It's happened at senior level and now its moving down the ranks. They don't want an independent police force and their efforts have increased in the run-up to the elections. How can you reform the police if at the same time you are politizing them? Its a contradiction.

Human Rights Watch also received reports of purges and early retirements in the army and airforce of suspected UNIP supporters and their replacement by MMD sympathizers. A serving soldier told us that this is "normal, but the trend has increased a lot in 1996."

¹⁰²Human Rights Watch/Africa interview, Lusaka, September 18, 1996.

At President Chiluba's Kitwe rally, on August 31, 1996, the use of state resources for MMD political purposes was apparent. During it a clearly marked Zambian military helicopter dropped thousands of leaflets of Chiluba's face into the middle of the rally.¹⁰³ At the same time, the National Party complained that on several occasions it was refused permission to hire the public address systems of the Zambia Information Services, unlike the MMD which enjoyed unhindered access to these and other state resources.¹⁰⁴

The government also reportedly distributed relief maize and fertilizers as a campaign tool in by-elections. In Chikankata by-election in 1995 the late Baldwin Nkumbula, then president of the National Party (NP) claimed on television that he was shocked to see farmers who complained about poor MMD agricultural policies flocking to MMD rallies because the government was distributing relief maize and other fertilizers at them. Vice President Brigadier General Godfrey Miyanda acknowledged the distribution of maize at this time but said it was not done to win votes.¹⁰⁵

A critical issue was whether those Zambians who wished to register to vote were able to. The controversy over the contract for technical support of the elections process undermined confidence in the actual registration process, spurred by evidence that some citizens were arbitrarily blocked from an effective registration process. This raised suspicions that the government was afraid of registration and was seeking an election with a low turn-out so as to enhance its electoral chances. The diversion of state funds to the ruling party and the building-up of a politically partisan police force tended further to confirm a worrying trend in the run-up to multiparty elections.

Abuses by the MMD and UNIP in By-Elections

The conduct of both major parties in the most recent by-elections in 1995 and 1996 presented a pattern of abuse and intimidation. The summary descriptions of four recent by-elections below are based on eyewitness accounts and reports by the electoral monitoring groups Forum for Democratic Process (FODEP) and the Zambia Independent Monitoring Team (ZIMT). Human Rights Watch/Africa observed from this research that both the MMD and UNIP were involved in the physical intimidation of the others' supporters and the general electorate in their efforts to obtain votes.

a) Mandevu, September 19, 1995¹⁰⁶

Despite the huge crowds the MMD and UNIP pulled at their rallies prior to the by-election, the voter turn out was low, some polling stations recording less than 2 percent of the registered voters, showing a high rate of voter apathy.

¹⁰³A video recording of the rally is in Human Rights Watch/Africa's possession. There was live state television coverage from 3pm to 5.10pm and the rally also enjoyed a twenty minute feature on the evening news. Opposition rallies never attracted more than a few minutes television coverage by the state media.

¹⁰⁴Human Rights Watch/Africa interview with Akashambatwa Mbikusita-Lewanika, then National Party MP for Mongu Central, Lusaka, September 12, 1996.

¹⁰⁵Human Rights Watch/Africa interviews with NP and FODEP officials, Lusaka, September 12 and 13, 1996.

¹⁰⁶FODEP, "Mandevu Constituency By-Election Report," September 19, 1995.

In the state owned media, the Zambia National Broadcasting Corporation (ZNBC), *The Times of Zambia* and *The Zambia Daily Mail* in particular continued to favored the ruling MMD. On the eve of the elections the ZNBC televised extensive parts of President Chiluba's campaign address in Mandevu.¹⁰⁷ In contrast Kenneth Kaunda's rally was only briefly shown in the same broadcast, with no footage of the crowd he was addressing.

There was also some intimidation. A gang of UNIP youth militants at Mutambe Primary School jeered the MMD candidate when he went to observe how the voting progressed. The UNIP youths threatened to beat him unless he left the polling station immediately.

B) Lundazi, October 10, 1995¹⁰⁸

Only the ruling MMD and UNIP competed. Supporters of both parties sung provocative songs attacking their opponents and sometimes deliberately visited their rival's campaign rallies or offices to provoke them.

There was some intimidation. The MMD women's provincial secretary Helen Tembo was roughed up by UNIP supporters at Castle Motel in Lundazi after a bitter exchange of party slogans. Another MMD official, Robby Kondowe, had his shirt torn by UNIP supporters who found him consulting a voter's register in order to make a door to door campaign. Some vehicles were stoned as party cadres taunted each other. At a farm called "Zanini" a hut belonging to an MMD district branch chairman was burned by suspected opponents.

On election day itself, a presiding officer of the polling station Maxwell Mtonga was roughed up and a UNIP cadre, Crarous Kalyangile, who was accompanying him, was punched in the face by UNIP supporters at Kambaza polling station after UNIP supporters reportedly saw them at 4.45am carrying a ballot box from Mtonga's house before voting began. UNIP officials said they suspected that the box might have been stuffed with marked ballot papers and that the ballot box should have been taken from the civic center to the polling station, not from the presiding officer's house. Media coverage was imbalanced as only the state-owned media sent reporters to the constituency.

C) Moomba, April 12, 1996¹⁰⁹

This by-election was contested by UNIP and MMD. The polls registered a turnout of 2,491 out of a total of 9,000 registered voters (27.7 percent). FODEP found the presiding officers partisan (at Kayola and Chona Schools in favor of UNIP and at Ntambo in favor of the ruling MMD).

There were also intimidatory speeches. According to FODEP:

Honorable Madeyenkuku [Madeyenkuku] is reported to have threatened voter[s] in Chona area when he addressed a meeting on the 9th March at Chona local court. He is reported to have said that "if you people of Chona don't vote for the MMD, you will face the elbow and will be denied development."

At a meeting addressed by President Chiluba on March 11 at Mwanza School, Lupunga used derogatory remarks about UNIP and Kenneth Kaunda whom he called, "Vomit, insane and thieves." UNIP's election meetings were in turn characterized by verbal abuse of the MMD.

At Moomba, Nadongo, Kaumba and Ntambo polling stations incidents of intimidation and violence were reported. At Moomba a group of up to sixteen UNIP youths tried to beat up traditional leader Headman Matulo. They

¹⁰⁷This appeared in a one-hour program entitled "President Chiluba reacts to the disclosure of tunnels" shortly after the 7pm news, September 18, 1995.

¹⁰⁸FODEP, "Lundazi By-Election Report," October 10, 1995.

¹⁰⁹FODEP, "Moomba Constituency By-Election Report," no date given.

also pushed and beat Josephine Simugande as she prepared to go to the polling station. FODEP traced the militants to Monze town and said the vehicle that ferried them was owned by George Collins of Mubanga farms. UNIP youths from Monze were reportedly found to have hired the lorry for the day.

At Ntambo Polling station FODEP established that a MMD campaign team camped at the school next to the polling station throughout the campaign period on polling day. They provide a local drink (Chibwantu) and cooked meals as a way of enticing local people to vote MMD. When confronted with this the presiding officer justified the presence of the MMD team in the school on the grounds that the MMD was the party in power.

UNIP members also engaged in intimidation, ambushing and fighting with MMD rivals going to vote at Mujika and Muntemba polling stations. One of the MMD cadres, Christopher Chambwe, was beaten up UNIP youths.

The Electoral Law stipulates that campaigning should end a day before polling day. In Moomba not only was the regulation not observed, but both parties placed strategic camps near polling stations. These cadres would try and hide when they saw FODEP approach a polling station to monitor the voting.

D) Mkaika, April 12, 1996¹¹⁰

This by-election occurred following a High Court ruling on January 24, 1996 declaring the seat vacant because of electoral irregularities during the 1991 elections. Although the number of registered voters was 20,651 in 1991 only 4,139 people voted in the by-election. The winning UNIP candidate, Bernard Phiri, polled 2,519, the MMD candidate 1,380.

FODEP reported that violence in the run-up to the by-election was caused by "Lusaka commercial political agents" from both parties. Houses were burnt and some people stabbed with iron objects to intimidate villagers. Before the arrival of political cadres from Lusaka, the political mood in Mkaika was calm, demonstrating the impact of outside intimidation."

Police attempted to stop UNIP youth from Lusaka reaching the constituency by mounting two roadblocks, but these proved unsuccessful, as the UNIP militants traveled in different buses, making them look like ordinary passengers.

The MMD also hired a bus to ferry thirty-two of its youths from Lusaka to Katete on April 6. Early on April 7, they were involved in a fight with UNIP youths. UNIP, unprovoked, stoned the bus, shattering its front windscreen. About ten of the MMD youths were injured and taken to hospital. Police identified those who stoned the vehicle but were prevented from arresting them by UNIP local youth secretary Sam Moyo and the UNIP local chairperson Lizzy Kapala. The police later detained Moyo and Kapala in Chipata from April 6 to 11; it is not known if charges were brought. Other incidents included the following:

- April 2, four houses in Mkaika belonging to UNIP supporters were burned.
- April 3, UNIP youths besieged Muchacha village and beat up an MMD youth, Lawrence Banda. Headman Muchacha and his wife were assaulted; his wife was injured on the left side of the ribs and taken to hospital.
- April 8, 1996 MMD youths stoned and smashed the front wind-screen of a van belonging to the UNIP MP for Sinda, Mitusalemu.
- April 9, MMD supporters in three vans drove to the UNIP camp in Mkaika. UNIP supporters alleged that the group had intended to set houses ablaze. Police averted a violent clash by firing tear gas.

¹¹⁰FODEP, "Mkaika Constituency Parliamentary By-election Report," April 12, 1996.

- April 12, Lusaka based MMD supporter Robin Miyanda of New Chilenje township threatened to shoot UNIP supporter Winford Misuzi of Chipata with a pistol identified as Beretta Serial No: 80035. Police immediately picked up Miyanda and charged him with two counts of possessing a firearm without a license and threatening violence.

Similar incidents of violence were reportedly frequent during the Mkaika election campaign. A Zambia Independent Monitoring Team claimed to have confiscated weapons such as axes, hoes and knobkerries in an effort to reduce tensions.¹¹¹

UNIP leader Kenneth Kaunda neither condemned the violence nor appealed to his supporters to refrain from violence during the Mkaika by-elections. Although President Chiluba condemned political violence at a rally on March 10, he then remarked “for every 100 political thugs UNIP can produce, MMD can produce a thousand youths who can smash them within five minutes.” At another level of threat, the Deputy Minister for Education Newton Ng’uni announced that while there were 660 desks to be delivered in various schools in Mkaika before the end of April “if you vote for a UNIP candidate I will not deliver the desks.”¹¹²

FODEP therefore concluded that the pre-election campaign was not free and fair and that:

the two competing political parties, UNIP and MMD had divided the constituency into partisan political zones. This ignited inter-political clashes and naturally curtailed freedom of movement among the villagers in the area. Politicians from both sides could not also go about their campaign freely as some areas were no go areas for them due to these political demarcations. This was evidently so for the ruling MMD which was not allowed to campaign in Mkaika village where their UNIP rivals had camped throughout their campaign period.

Intimidation by party youths increased in 1996 in many parts of Zambia. Human Rights Watch interviewed one young man in Lusaka who worked for the MMD during elections who described this:¹¹³

I’m twenty and from Lusaka West. I’ve been with the MMD for a bit. They pay my food and transport and traveling to elections is exciting. I’ve been to Kalabo and Moomba for the party. Myself and friends are there to encourage people to vote MMD. We encourage them by singing MMD songs and by warning them of the problems they might face if they vote UNIP. It can get violent, but only if we are provoked. King Cobra [MMD National Secretary, Michael Sata] is the chief. Transport and funds are through his office.

UNIP also recruits amongst the young in Lusaka, but the several UNIP youth who had worked for the party in by-elections who were approached by Human Rights Watch refused to discuss in detail what they did, referring us to Freedom House, the party headquarters.

¹¹¹*The Zambia Daily Mail*, (Lusaka), April 13, 1996.

¹¹²FODEP, “Mkaika Constituency Parliamentary By-Election Report,” April 12, 1996.

¹¹³Human Rights Watch/Africa, interview in Lusaka, September 18, 1996.

The misuse of voter certificates was also a potentially serious development. For the Kalabo by-election in November 1995, the Electoral Commission said 2,300 voter certificates were issued. But the District Executive Secretary there has said that only 2,004 certificates had been issued, suggesting the disappearance of 294 certificates. FODEP also recorded serious irregularities in the handling of the voter certificates during the Moomba by-election in April 1996.¹¹⁴

Inflammatory remarks by ministers also fueled the climate for violence and frightened voters. At Malole by-election in Kasama, MMD ministers tried to scare the largely ethnic Bemba electorate from voting for the NP by alleging its former MP, Emmanuel Kasonde, had sold the Bembas to the Lozi tribe because the NP had a number of Lozi's in its senior leadership. Such an assertion could be deemed a criminal offence under the Penal Code as an incitement to tribal hatred. Similarly Deputy Minister for Defense Chitalu Sampa reportedly threatened to send soldiers to the area to shoot people unless they voted MMD.¹¹⁵

On September 10, 1996, President Chiluba addressed the nation on radio and television. He announced the setting up of an independent electoral commission. The Election Office had been under the control of the office of the vice-president but this would be transferred and brought under the direct control of the Electoral Commission, which would enjoy autonomous status. Three members of the commission would be appointed from among suitably qualified people such as high court or supreme court judges who would be subject to ratification by parliament. He also announced that counting of votes would take place at polling stations and that the Electoral Commission would assist in giving all parties fair and equitable access to the state-owned media. Five members of the new Electoral Commission, among them a retired magistrate, judges and two professional women were ratified by parliament on October 17 after parliament passed the Electoral Commission Bill.

With the general elections scheduled for November 18, the new Electoral Commission had just a month to become operational, build up its reputation and gain the confidence of all the electorate and the political opposition parties. There was too little time for this to happen.

VIII. THE INTERNATIONAL RESPONSE

¹¹⁴Judgment in "Sebastian Zulu & Roger Chongwe v. Attorney General & NIKUV Computers Ltd," May 2, 1996.

¹¹⁵Human Rights Watch/Africa interview with NP and FODEP officials, Lusaka, September 13, 1996.

Aid of up to US\$1bn a year has been central to the economic reform program of President Chiluba. Production of copper, which accounted for more than 95 percent of export earnings, was steadily falling, only partially compensated by a rise in world prices. Aid, the country's largest source of foreign exchange, accounts for some 70 percent of gross domestic product. The dependency on it was growing. In 1992, Zambia received about \$1.2bn in nonemergency aid, three times the average in Africa, as well as \$400m in emergency aid. In 1996 the aid pledged was just \$800m, down a third from the 1992 figure. At the heart of the debate on the role of aid in economic reconstruction were issues of good governance, accountability and democratic practice.¹¹⁶

The World Bank's Consultative Group for Zambia met in Bournemouth in the United Kingdom on December 14 and 15, 1995. It concluded that:¹¹⁷

The aid partners emphasized the importance of transparent and participatory processes for voter registration and constitutional reform and welcomed the Government's decision to invite observers to monitor the electoral process prior to and during next year's elections. Participants underscored the need for transparent and efficient use of public funds and agreed to a continuing dialogue on the evolving legal framework, including the reinforcement of the effectiveness and the independence of the Anti-Corruption Commission. There was general agreement that progress on the governance issue was fundamental....The aid partners gave indications of over US\$300 million in project and commodity support. The external aid partners indicated that this level of support for 1996, as well as future support, would be available provided that the government maintains the momentum in the economic reform program and achieves tangible progress on the governance.

A much stronger demarche was handed over by the Consultative Group to Zambian Finance Minister Penza at the end of the Bournemouth meeting.¹¹⁸

As 1996 progressed, the government showed little inclination to follow up on the commitments made in Bournemouth towards good governance and Western donors began to cut back bilateral aid, particularly balance of payment support. On March 25, Norway led the way, suspending its balance of payments support and expressing concern about the Zambian government's good governance record.¹¹⁹

In the following months European Union countries followed Norway's lead. Britain withheld UK£10 million in balance of payments support because of violations of good governance norms. Denmark and the Netherlands also said that they were reconsidering their bilateral aid programs to Zambia; Denmark suspended debt relief totaling 40 million Danish Krona. The French Embassy in Lusaka announced on June 5, 1996 that it was "attentive to the evolution of democracy in this country, particularly the presidential elections."¹²⁰

¹¹⁶"Chiluba's hard choice: Backing away from a big mistake," *Africa Analysis*, (London), June 28, 1996.

¹¹⁷World Bank, "Consultative Group for Zambia Recognizes Four Years Of Progress, Urges Further Reform," Bournemouth, Press Release, December 15, 1995.

¹¹⁸Diplomatic sources, London and Lusaka, October 1996.

¹¹⁹Norwegian Embassy, Lusaka, Press Release, March 25, 1996.

¹²⁰*The Post*, (Lusaka), June 6, 1996.

At a press conference at the British High Commission in Lusaka, on August 2, Baroness Chalker, the British minister for overseas development stated, "I made it clear to President Chiluba and his colleagues Britain's and the concern of other donors about recent developments including the absence of dialogue with Opposition parties on ways of ensuring elections which all Zambians and the international community can accept as fair...as you already know we and other donors have suspended programme aid—that is Balance of Payments Support. We shall review our assistance at the end of 1996 in the light of developments in the period leading up to the elections in accordance with our good governance criteria."¹²¹

For its part the Japanese Embassy, when issuing a press release in Lusaka on August 14, announcing grants to three Zambian NGOs, went on to emphasize that, "The Government of Japan regards democratization and good governance in Zambia as an extremely important factor for her future security and prosperity." Comments of this kind from a Japanese diplomatic mission were very unusual. Japan had already suspended an aid program for small businesses because the government had failed to account for most of the US\$200 million granted to the scheme since 1987.¹²²

The U.S. view was also set out by AID which announced on July 17 that it was cutting its aid to Zambia by more than 10 percent, worth \$2.5 million, because:¹²³

[The U.S.] government is concerned that the recent constitutional amendments limit the right of Zambian people to choose their president freely and seriously threaten the integrity and credibility of the electoral process. The amendments are seen to reverse the commitments to the open, multiparty democratic political system included in the agreement signed by the government of Zambia at the outset of the Democracy and Good Governance Project in 1992.

USAID funding was mainly cut from four projects with budgets totaling one million dollars. These included a project to assist the government in its public services reforms, a project to upgrade equipment at the Zambia Institute of Mass Communications and support to the Washington-based National Democratic Institute (NDI), which pulled out at the end of June. A USAID program to assist parliament to improve its internal procedures had been earlier suspended after Chiluba signed the Constitutional Amendment Act into law on May 28. The U.S. government would also reduce bilateral assistance for the 1996 fiscal year from \$19,024,000 to \$17,500,000.

USAID's assistance program in Zambia remained under continuous review and additional cuts, including in the 1997 financial year program, were possible. NDI suspended its operations in Zambia on June 30 stating that the political environment prevailing in Zambia threatened to undermine the forthcoming elections.¹²⁴

Arlene Render, the U.S. ambassador-designate to Zambia strongly criticized the Zambian government's performance on good governance when she told a U.S. Senate hearing on her nomination on June 20, 1996 that: "We have, not only in public statements but in private, encouraged the government of Zambia to reverse these constitutional amendments," and that "recent actions by the Zambian government... threaten to seriously damage the electoral process and weaken Zambia's new democracy. Deeply concerned by these actions, the Administration recently urged the government to renew its commitment to democracy and to ensure that the elections are free and fair."¹²⁵

¹²¹British High Commission, Lusaka, Press Release, August 2, 1996.

¹²²Embassy of Japan, Lusaka, Press Release, August 14, 1996.

¹²³*The Post*, (Lusaka), July 17, 1996.

¹²⁴National Democratic Institute, "Statement by NDI President Kenneth Wollack on Suspension of Program Activities in Zambia," Washington D.C., June 17, 1996.

¹²⁵Cited by USIS, AEF507 06/21/96; AEF506 06/21/96.

Senator Nancy Kassebaum, the chair of the Senate Africa Subcommittee during the hearings, expressed her “real sorrow” and “keen disappointment” over recent anti-democratic developments in Zambia.¹²⁶ Senator Edward Kennedy and Nancy Kassebaum, who are leading proponents of human rights in the Democratic and Republican parties, wrote jointly to President Chiluba on June 20 to “raise serious questions about Zambia’s commitment to democracy and stability.” The letter was received at State House, Lusaka, on July 9.

Former United States president Jimmy Carter tried to phone President Chiluba several times in July. On each occasion he was told the president was busy but would return the call. Carter had played an important role in the October 1991 multiparty elections by helping to convince President Kaunda to accept electoral defeat with dignity.

Although the European Union collectively did not take the lead in the pressure on Zambia for the improved human rights observance integral to good governance, its member states being divided over tactics to this end, some converging of views was apparent during 1996, with the exception of Ireland whose diplomatic mission in Lusaka appeared less enthusiastic on publicly defending human rights. In May 1996 the E.U. issued a demarche over the Constitutional Amendment Act, especially the apparent exclusion of the UNIP leader from running for the presidency. This was followed on September 28 by demarches to both the government and opposition urging them to enter into “intensive dialogue”; the E.U. presidency also issued a declaration on Zambia in October, calling on the “need for the highest standards of all sides in the run-up to the elections, in the holding of the elections themselves and in the conduct of public office generally.”¹²⁷ E.U. aid gave Europe considerable leverage for pressing reforms if it cared to use it. Since the signing of the 1991 National Indicative Program (NIP) between the E.U. and Zambia, the total pledged funding from all sources under the Lome IV treaty (NIP IV) amounted to 352.63 million ECU. In 1995 16.8 million ECU was provided for Zambia’s Structural Adjustment Program, including National Indicative Program-funded balance of payment support.

The Commonwealth of Nations was also becoming involved. The Commonwealth Human Rights Initiative sent a three-person team to Zambia from August 27 to September 5, 1996. Its report, released on September 23, urged dialogue and compromise by all sides and called for donor unity to be maintained.¹²⁸ Commonwealth secretary general Emeka Anyaoku visited Zambia on September 15 to 17 and met President Chiluba twice. In diplomatic briefings in Lusaka the secretary general announced that the Commonwealth would only send election observers if there was consensus amongst Zambia’s political parties and civil groups that they do so.

The Southern African Development Community (SADC) was on the other hand weak on Zambian issues. At a summit of the heads of state or government of the SADC in Gaborone on June 28, 1996 to launch the SADC Organ on Politics, Defence and Security, the Zambian delegation successfully blocked discussion of the Zambia domestic issue, successfully arguing that events in Zambia were not in the category of the Angolan peace process or the KwaZulu crisis in Natal province, South Africa.

Individual initiatives from SADC members were, however, stronger. Most SADC countries, with the exceptions of Malawi and Tanzania, expressed their dismay at political developments in Zambia in strong terms through diplomatic and presidential channels. The “Zambia Crisis” was to have been brought up at a regional heads of state summit meeting in Lesotho on August 24, 1996. However, President Mandela asked that the matter be discussed privately. As a result presidents Chiluba and Mandela met in Pretoria on August 25 to discuss events in Zambia. This resulted in President Chiluba engaging in bilateral meetings with the opposition parties when he returned home.

¹²⁶Ibid.

¹²⁷“Declaration by the Presidency on Behalf of the European Union on the Elections in Zambia,” Dublin and Brussels, October 31, 1996. This declaration was also supported by Bulgaria, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovak Republic and Slovenia.

¹²⁸Commonwealth Human Rights Initiative, “Mission to Zambia, 27 August to 5 September 1996: Conclusions and Recommendations,” September 23, 1996.

On November 12, 1996 presidents Chiluba and Mandela met again in Pretoria, an eleventh hour effort by Mandela, in his capacity as SADC chairman, to try and mediate some sort of compromise formula prior to the elections. Although President Chiluba hinted after this meeting that there might be room for compromise the Zambian government issued a statement the following day saying that the elections would go ahead as scheduled on November 18.¹²⁹ President Mandela responded to the Zambia announcement by revealing to the press details of his meeting with President Chiluba. President Mandela told the press that he had told President Chiluba that the “elections would lack legitimacy” if Kaunda was not allowed to run for office, and that President Chiluba agreed to seek a way to postpone the elections. The Zambian president had given him two options under which an election could be postponed: an Electoral Commission announcement or the declaration of a state of emergency by himself.

President Mandela also dispatched South African Judge Richard Goldstone to Lusaka as his special envoy to confer with the Electoral Commission on November 14 and push the point that the elections needed to be postponed.¹³⁰ Later the same day Mandela sent a fax message to President Chiluba in a last minute attempt to persuade him to postpone the elections, in which he wrote:

“The recommendation of judge Goldstone and your judge who is the chairman of the Electoral Commission is that you have two options regarding the forthcoming general elections on Monday, 18 November, 1996. You can either declare a state of emergency or use your prerogative to postpone the date of election. I urge you to adopt one of these options for the sake of peaceful settlement in the interest of the Government and the people of Zambia.”¹³¹

President Chiluba replied, “Mr President we thank you for your genuine concerns and wish to assure you the elections will proceed peacefully. Our commitment to democracy and good governance are irrevocable...”¹³²

¹²⁹Vice President, Brigadier General Godfrey Miyanda, Lusaka, Press Release, November 13, 1996.

¹³⁰*The Business Day*, (Johannesburg), November 14, 1996.

¹³¹*The Times of Zambia*, (Lusaka), November 16, 1996.

¹³²*Ibid.*

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Human Rights Watch/Africa thanks all those organizations and individuals in Zambia who assisted it. Human Rights Watch tried for ten days on a daily basis to meet with senior government officials while in Lusaka to discuss human rights issues, but found all doors closed. On our final day, we gained access to the MMD National Secretary and a minister without portfolio, Michael Sata, who was not prepared to talk to us. He did however refer us to the government's Permanent Secretary at the Legal Affairs Ministry, Eva N'Jala who immediately told us that she was too busy and referred us to Judge Chimbomba, the Principal State Advocate for International Law and Agreements, who was unable to comment on domestic human rights issues.

Human Rights Watch/Africa

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APPENDIX

