

# ZAMBIA

## THE REALITY AMIDST CONTRADICTIONS

### Human Rights Since the 1996 Elections

I. SUMMARY AND RECOMMENDATIONS.....	3
Recommendations to the Zambian Government.....	4
Recommendations to All Political Parties .....	5
Recommendations to the International Community.....	5
II. BACKGROUND.....	6
III. THE RIGHT TO FREEDOM OF EXPRESSION .....	9
Summary.....	9
The MMD Government's Policies and Positions: on the Record .....	9
The MMD Government vs. the Independent Press.....	12
Freedom of Expression since November 1996 .....	14
The Media Council Bill.....	23
IV. HARASSMENT OF GOVERNMENT CRITICS AND INDEPENDENT VOICES.....	28
Background .....	28
After the Elections.....	29
The MMD Government and the Opposition: Theory vs. Practice .....	31
Harassment of the Opposition.....	33
Harassment of Witnesses in the Presidential Petition.....	37
The MMD Government and NGOs: Theory vs. Practice .....	39
Harassment of Civil Society and NGOs .....	40
Harassment of the Church.....	47
Intimidation of the Judiciary.....	47
V. THE DEATH PENALTY .....	49

VI. HUMAN RIGHTS COMMISSION .....	51
Summary.....	51
Background .....	51
The Human Rights Commission Act (1997).....	53
The Commission Members .....	55
The Commission's Budget.....	57
VII. THE INTERNATIONAL RESPONSE.....	58
Background .....	58
International Reaction to the Elections, Human Rights Conditions and the Political Impasse .....	61
Human Rights and Economic Assistance.....	66
The Importance of Conditionality.....	69
VIII. ACKNOWLEDGMENTS .....	71



## I. SUMMARY AND RECOMMENDATIONS

On November 18, 1996 presidential and parliamentary elections were held in Zambia, five years almost to the day after the first multiparty elections in November 1991. But these were very different elections. The 1996 election results returned President Frederick Chiluba and his Movement for Multiparty Democracy (MMD) to power with the majority of the contested seats in what was presented as a landslide victory; but, in reality, it was a hollow defeat of an opposition that had chosen to boycott the electoral process. Numerous human rights violations before the vote—centered on the MMD's manipulation of the constitutional reform process—had seriously undermined the democratic process by tilting the process strongly in favor of the MMD. As the fairness of the elections was seriously in question, President Chiluba took his second oath of office in a climate of intense hostility and resentment. International ambivalence over rights conditions in the run-up to the election had resulted in a decision by the major donors to maintain the aid freeze that specifically targeted balance of payments support. Discredited and facing near bankruptcy, the Chiluba government has made some attempts in the six months since its re-election to improve its human rights record, with a view to addressing this obstacle to aid flows being resumed. The advances on rights issues, however, have been in large part superficial.

President Chiluba has made and continues to make statements of commitments to the principles of freedom of expression. But there is a disjuncture between what he espouses and his government's current practice. While there were fewer incidents of harassment and intimidation of the independent media in the post-election period, those incidents that did occur were in blatant violation of the norms of freedom of expression. The patterns of criminalizing freedom of expression persisted in the charges before the courts against *The Post* newspaper; the three-month imprisonment in February of journalist Masautso Phiri for a newspaper column he wrote; and the imprisonment of three journalists from *The Chronicle* newspaper.

Zambia Information Service acting deputy director Mundia Nalishebo was suspended with five other journalists working for the state media on November 25 after allegations were made that they had collaborated with an election monitoring group that had found the elections neither free nor fair. Most ominously, the state tried to introduce legislation in the form of the Media Council Bill, which, by forcing journalists to register with the state, would have stripped ineligible journalists of the right to work. Those who continued to work but were not in compliance would face jail terms and fines. After considerable controversy and international outcry, the state suspended consideration of the bill in April. It has yet to be tabled.

The MMD government's record on respecting the right of assembly and association has been poor, although there was some insignificant improvement following the November 1996 elections. At his inauguration speech on November 21, President Chiluba warned nongovernmental organizations (NGOs) that they should not "instruct" the authorities, and in the following days, the government threatened to pass anti-NGO legislation if NGOs continued to act in an "anti-patriotic" manner. Following the announcement by the Committee for a Clean Campaign that the elections had not been free and fair, the situation deteriorated. On November 24 and 25, police raided the Lusaka offices of the Zambia Independent Monitoring Team (ZIMT), the Committee for a Clean Campaign (CCC), and the offices of the Inter-Africa Network for Human Rights and Development (AFRONET). Despite the intervention of lawyers who insisted that the search warrants (to look for "stolen" goods) were not valid, police seized files, documents, bank books and statements, computer diskettes and pamphlets. Many of these still have not been returned, and charges of receiving financial and material assistance from foreign governments and organizations were brought against these organizations.

The Foundation for Democratic Process (FODEP), which also concluded that the elections were not free and fair, was also targeted by the government. FODEP had received tax exempt status from the Zambia Revenue Authority (ZRA) because it was operating on a grant aimed at strengthening the democratic process, including election monitoring of parliamentary and local government elections. But On December 19, it received a tax demand for outstanding tax arrears for K27 million (approximately U.S.\$21,000): shortly afterwards, tax authorities confiscated all of the funds in FODEP's bank account.

The opposition has also been harassed in the immediate post election period. For example, the main opposition party, the United National Independence Party (UNIP), found its attempts to hold a peaceful rally in Ndola in February blocked by the police. Relatives of senior UNIP officials have also been subject to harassment: Vida Ngoma, the eighty-year-old aunt of Betty Kaunda, former President Kenneth Kaunda's wife, was detained and kept in a cell for two days—with a man's corpse—after police searched her house without a warrant.

For much of early 1997, a petition challenging the fairness of the elections and President Chiluba's constitutional right to the presidency before the Supreme Court has been a focus of Zambian political life. The petition, being heard in the Supreme Court and brought by the opposition against President Chiluba, challenges the elections and President Chiluba's constitutional right to the presidency. Some of the witnesses brought to testify in this case have been harassed, with death threats being reported by some witnesses. One witness, Theresa Mulenga Kalo, was arrested and held for several days by police after she testified, three other witnesses reportedly went into hiding, apparently out of fear of arrest.

The establishment of a permanent Human Rights Commission in March 1997 was, in principle, a welcome development. The Zambian government was to be applauded for creating an institution with a mandate to hear individuals' claims of human rights abuse and the maladministration of justice.

The commission's composition and its limited resources and powers still raise many questions. The hasty process by which the government appointed its members, most of whom lack robust human rights credentials, has drawn broad domestic criticism, and to date the commission appears to have no program and no activities to report. The commission also lacks premises and resources. The promotion of the commission's creation internationally, with a view to improving Zambia's image, has also contrasted with its public profile in Zambia. Officials of the government printing office there told Human Rights Watch that the documents concerning commission were available "only to diplomats," after initially denying they had ever been printed. These documents have, however, been widely distributed to international donors; indeed there is reason to believe that the creation of the commission was rushed so that it would be in place prior to the April 25 preliminary meeting of the Consultative Group of donors, in London. The commission has not had an auspicious start.

The international community's efforts towards seeking improved human rights and good governance practice in Zambia have been exemplary. The resolve to employ the stick and carrot approach of offering renewed balance of payments support in return for positive actions by the Zambian government has had some results. At the forthcoming July 10-11 Consultative Group meeting in Paris, agreed balance of payments resumption needs to be phased in tandem with built-in conditionality so that these minor improvements are likely to become meaningful and sustainable.

This report, based on two Human rights Watch/Africa investigative missions to Zambia in February and April, looks at the human rights record in Zambia since the 1996 elections.

### **Recommendations to the Zambian Government**

Based on the findings of this report, Human Rights Watch/Africa calls on the Zambian government to:

- Facilitate debate of the proposals of the 1995 Mwanakatwe Constitutional Review Commission 1995 proposals that major constitutional reforms first be agreed to by a constituent assembly and be subjected to a referendum;
- Facilitate the establishment of a truly independent Electoral Commission and an accurate and credible register of voters;
- Call fresh elections to a constituent assembly to review and, as appropriate, amend the Constitution of 1991 and the Constitutional Amendment Act of 1996;
- Ensure that all Zambians have the opportunity to participate meaningfully in the constitution-making and reform process through open, public debate and analysis until consensus is reached;

- Re-appoint commissioners on the permanent Human Rights Commission through a process that is transparent and open to national debate and dialogue. Ensure that commissioners are elected in a manner that is objective and nonpartisan and that is not subject to political bias;
- Abide by the international human rights treaties to which Zambia is a party, notably the International Covenant on Civil and Political Rights, taking action to this effect to:
  - guarantee the independence of the judiciary as required by Zambian and international law;
  - respect freedom of expression, lifting arbitrary restrictions on the print media and public broadcasting and ceasing harassment and arbitrary detention of journalists, political commentators and others solely for the expression of their opinions;
  - respect freedom of assembly, lifting the arbitrary restrictions imposed by law and in practice on public meetings and halting arbitrary police actions to ban or disperse such meetings and demonstrations;
  - respect freedom of association, halting arbitrary arrests, intimidation and acts of violence targeting participants in nonviolent civil organizations;
  - recognize the rights of human rights defenders in Zambia to monitor, investigate, and speak out on human rights concerns and freely to associate with others nationally and internationally in the promotion and protection of human rights;
  - investigate allegations of police abuse and improper treatment of those in detention and hold those found responsible accountable before the law;
  - provide government officials and police with special training about human rights standards and protection, while instituting procedures that ensure the effective investigation and criminal prosecution of violations of human rights, especially through the permanent Human Rights Commission.
- Abolish the death penalty in any of its forms.

#### **Recommendations to All Political Parties**

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

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

#### **Recommendations to the International Community**

Human Rights Watch/Africa recommends the international community to:

- Maintain the pressure and continue to tie assistance, particularly balance of payments support, to the achievement of clear and firm benchmarks that lead towards democratic and human rights progress. This strategic use of aid to ensure compliance is all important;
- Ensure a linkage of balance of payments support to cooperation between the government of Zambia and all national stakeholders and a respect for human rights and the rule of law;

- Utilize conditionality as a human rights instrument; but also use policy dialogue and positive measures as incentives not only to encourage change but also to maintain and perpetuate improvement in human rights observance;
- Provide further moral, financial and technical support to the efforts of organizations of civil society such that they may play an active role, particularly in monitoring, lobbying and campaigning for improved human rights standards;
- Target aid to support an independent judiciary, the development of a robust and independent Human Rights Commission and the independent media;
- Leave humanitarian or development aid unrestricted. Poverty alleviation projects should be furthered and encouraged.

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 continual pressure for an improved Zambian government performance on human rights as integral to good governance.

Human Rights Watch/Africa calls on Canada, E.U. member states, Japan, Norway, and the United States to:

- Encourage their diplomatic representatives in Lusaka to continue their commitment to the vigorous promotion of human rights in Zambia by meeting regularly with the Zambia human rights community, publicly denouncing human rights abuses and using their bilateral assistance to Zambia to achieve maximum leverage on human rights.

## II. BACKGROUND

On November 18, 1996 presidential and parliamentary elections were held in Zambia, five years almost to the day after the first multiparty elections in November 1991. These were very different elections. The 1996 election results returned President Frederick Chiluba and his Movement for Multiparty Democracy (MMD) to power with the majority of the contested seats in what was presented as a landslide victory. In reality, it was an empty conquest over an opposition that had resolved to boycott the electoral exercise. Numerous human rights violations before the vote—centered on the MMD's fervent manipulation of the constitutional reform process—had seriously undermined the electoral process by skewing it strongly in favor of the MMD. The fairness of the elections was widely challenged and President Chiluba took his second oath of office in a climate of intense hostility and resentment. International ambivalence over the run-up to the election and its outcome had resulted in a donor aid freeze that specifically targeted balance of payments support. Discredited and facing near bankruptcy, the Chiluba government has made some attempts in the six months since its re-election to improve the human rights record, with an eye to the resumption of the aid flow. But change was often superficial. In an interview on March 4, President Chiluba said: "What is incomprehensible is that because we have adopted high standards, we are now judged by those high standards."<sup>1</sup> Indeed, since the watershed of the 1991 elections, standards have been retrogressive.

By contrast, the 1991 election was considered a landmark for democracy in Africa. The fall of the Berlin Wall and the end of the Cold War had presaged a movement for change across the continent. Twenty-seven years of one-party rule under former President Kenneth Kaunda and his United National Independence Party (UNIP) were swept

---

<sup>1</sup>*The Financial Times* (London), March 4, 1997.

away by a wave of democratization that seemed to herald a new era. Zambia, at the crest of this wave, was the first country in Africa to return a popularly-elected president to power and bring in a national assembly that included the opposition. President Frederick Chiluba, a former trade union leader, reflected the hopes and aspirations of many Africans, and an overwhelming majority of Zambians supported his pledges of accountable democratic governance and a commitment to human rights. As the first former British colony to change its head of state through democratic elections and a peaceful transfer of power, Zambia was internationally regarded as having made a model transition to democracy.

The international donor community responded by showering Zambia with goodwill. In 1992 Zambia received \$1.8 billion—three times the average aid package to other African countries. Until early 1996, international donors underwrote President Chiluba's economic reform program with an aid contribution of up to \$1 billion a year. As the country's largest source of foreign exchange, aid accounted for almost 70 percent of the Gross Domestic Product.

However, the promises of the dawn of freedom under MMD rule were not to last. Fairly soon after taking office, President Chiluba and his ruling MMD-government began to renege on election pledges and promises. Mid-way through their first term of office, bitter disputes with the opposition erupted, and human rights violations abounded.

By 1993, the political climate had changed considerably. In March, President Chiluba declared a state of emergency after allegedly discovering a "plot," called the Zero Option Plan, by the former ruling party, UNIP, to overthrow the government. Twenty-six people were detained, many of them senior UNIP members. Two months later, after a Supreme Court finding that emergency regulations were not valid, all of the remaining detainees were released, and the state of emergency was lifted. Under the former one-party state, Zambia had spent almost twenty-seven years under partial emergency rule. President Chiluba and his MMD government were beginning to attract controversy and becoming increasingly inclined to use intimidation and other methods to maintain their grip on power. Relationships with nongovernmental organizations (NGOs) and other parts of civil society, including the media, the opposition and the church began to deteriorate as human rights violations, in particular violations of the rights to freedom of expression, assembly and association, increased.<sup>2</sup>

A great deal of controversy and political tension has pivoted around the Constitution of 1991, and it continues to take center stage of the Zambian political arena. Enacted in the closing months of the Kaunda-years, it was founded on little more than an inter-party agreement reached at a meeting between the UNIP government and the new opposition parties in July 1991. While the constitution paved the way for a transition from one-party rule to multiparty democracy, it did not adequately address basic issues such as accountable governance, additions to the Bill of Rights and checking the powers of the office of the president, and many were dissatisfied with its limitations. This dissatisfaction opened the way for a ground breaking report that was completed by the Mwanakatwe Constitutional Review Commission and submitted to the MMD government in June 1995. Its key recommendation was that a draft constitution be prepared and adopted by a constituent assembly and subjected to a referendum. Although President Chiluba appeared to offer a consensual approach to decision-making on constitutional provisions and had called for a referendum to coincide with the next presidential and parliamentary elections, the commission's recommendation was rejected. Instead, the government enacted the highly controversial Constitutional Amendment Act of 1996, which effectively allowed parliament to alter the constitution without altering the Bill of Rights, which would have required a referendum. The constitutional debate was to intensify.

---

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



Signaling the beginning of a new chapter of conflict, the May 1996 Amendment Act included a provision that imposed new requirements on people seeking to hold the office of the presidency. Eligible candidates had to be Zambian citizens by birth or descendants of Zambian parents and could not be tribal chiefs.<sup>3</sup> The provision was specifically tailored to bar former President Kaunda and his second-in-command in UNIP, Senior Chief Inyambo Yeta, from contesting the presidency. Kaunda's parents were from Malawi and Yeta is a tribal chief. By disqualifying the MMD's main rivals, the playing field was strongly tilted in President Chiluba's favor. From that point on, the electoral process was flawed, and the standing of the elections seriously undermined. In mid-1996, the government charged nine political opponents with treason, including UNIP Vice-President Senior Chief Inyambo Yeta.

The opposition's response was to call for a boycott of the election, which it mounted both by not fielding alternate candidates and by launching a country-wide campaign calling on people not to vote. The electorate, disenchanted with five years of the Chiluba administration, obliged, and only about a quarter of eligible voters turned up at the polls.<sup>4</sup>

---

<sup>3</sup>Emblematic of its increasingly xenophobic leanings, the Zambian government deported UNIP politicians William Banda and John Chinula to Malawi in October and August 1994, respectively, as illegal immigrants although their nationality had not been questioned previously by the authorities. President Chiluba defended the deportations on February 15, 1997, telling *The Sunday Mail* that rumors that the deported duo were declared Zambians by the Malawian court were unfounded, saying President Muluzi of Malawi had confirmed to him that the two politicians were Malawians. "They are Malawians and if they want to visit Zambia they can only do so as Malawians, Chiluba said. However, the Malawi High Court, "Miscellaneous Cause No.2 of 1995," ruled that "(1) That the applicants Steven William Banda and John Lyson Chinula have been found not to be citizens of Malawi; (2) that the coming into Malawi by the applicants was involuntary as they were deported. The stay in Malawi was for the purpose of identifying their relations in order to verify their Malawian citizenship. That exercise was conducted and it was conclusively established that they are non-citizens; (3) Mr John Lyson Chinula was born in Zambia but had Malawian citizenship up to 1974, during which he renounced his relationship and the same has not been reinstated since (4) That Steven William Banda has never been a citizen of Malawi in his life."

<sup>4</sup>See, "Zambia: Elections and Human Rights in the Third Republic," A Human Rights Watch Report, December 1996, vol. 8, no.4(A).

While the November 1996 elections were conducted fairly peacefully, they were marred. Few international observers were present. Instead, donors supported the independent election monitoring groups, most of whom described the elections as not substantially free or fair.<sup>5</sup>

---

<sup>5</sup>Committee for a Clean Campaign, *Presidential and Parliamentary Elections in Zambia: November 18 1996* (Lusaka: CCC, 1997); Fackson Banda, *Elections and the Press in Zambia: the Case of the 1996 Polls* (Lusaka: Zambia Independent Media Association, 1997); Foundation for Democratic Process, *Final Election Monitoring Report. Zambia's November 18, 1996 Presidential and Parliamentary Elections* (Lusaka: FODEP, 1997).

According to elections officer Joel Sikazwe, 2.3 million people registered as voters, and slightly more than a million actually voted. But Chiluba won 69 percent of the presidential vote with 913,770 of the 1,138,570 votes cast. His closest rival, Dean Mungomba of the Zambia Democratic Congress party, got 12 percent of the vote with 144,366 votes.<sup>6</sup> Mungomba, however, refused to accept the results, charging that the polls were rigged. He went into hiding this month after making statements that police said amounted to treason.

President Chiluba was sworn into his second term of office on November 21, 1996. On December 2 he named his new government, its composition much more dominated by Bemba speakers.<sup>7</sup>

Ten days after the vote, on November 29, four opposition parties filed petitions in the Supreme Court challenging President Frederick Chiluba's victory in the disputed polls.<sup>8</sup> Two other parties, Agenda for Zambia and National Congress, filed a petition challenging the legitimacy of the poll. They claimed that inadequate efforts to register voters, which excluded half of the 4.6 million eligible voters, and other irregularities, including vote buying, rendered the elections illegitimate. Earlier in the month, the Supreme Court had thrown out opposition petitions challenging Chiluba's origins because they were filed prematurely: under new laws effected in 1996, electoral petitions could only be made after an election has been held.

### III. THE RIGHT TO FREEDOM OF EXPRESSION

#### Summary

President Chiluba has made and continues to make statements of commitment to the principles of freedom of expression. But there is a critical disjuncture between the rhetoric that he espouses and the government's current practice. The state has continued to criminalize freedom of expression by bringing criminal charges against newspaper reporters and editors. Most significantly, the state tried to introduce a bill that would have forced journalists to register with the state, stripping many journalists who were deemed ineligible by the bill of the right to work. Those not in compliance would face jail terms and fines. It has not, as of this writing, been withdrawn. Concern has been expressed that absent the state's need to present itself in a favorable light to the donor community, the bill may be re-tabled, and other forms of harassment of the media will intensify.

#### The MMD Government's Policies and Positions: on the Record

The MMD's 1991 Manifesto, its political platform during the first and second multiparty elections, states the party's unequivocal commitment to ensuring that basic and universal human rights are recognized and enshrined in the Constitution. The manifesto makes specific mention of, among other rights, the right to free expression, and worship.<sup>9</sup>

---

<sup>6</sup>See, Committee for a Clean Campaign, *Presidential and Parliamentary Elections in Zambia: . . .*

<sup>7</sup>There are no fewer than seventy-three different ethnic groups among Zambia's indigenous population. Major groups are: the Bemba of the north-east, who are also dominant on the Copperbelt; the Nyanja of the Eastern Province, also numerous in Lusaka; the Tonga of the Southern Province and the Lozi of the west. President Chiluba is a Bemba speaker, as are the Deputy Speaker of the National Assembly and most of the cabinet.

<sup>8</sup>UNIP's position was published in the booklet, *Democracy Aborted: The manipulation of The Constitution of Zambia and the Electoral Process and the Rigging of the 18 November, 1996 Presidential and Parliamentary Elections* (Lusaka: UNIP, 1997).

<sup>9</sup>Freedom of Expression is guaranteed by Article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR), of which Zambia is a party. Article 19 states:

(2) 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.

(3) The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and

---

responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

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

Worship is guaranteed in the MMD *Manifesto* 1991.

With specific reference to the 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 an MMD-led government. All bona fide journalists, both local and foreign, will be accredited to perform their duties without hindrance.

In addition, the 1991 Constitution of Zambia, which was endorsed by the MMD, makes specific reference 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 press.

In parliamentary speeches and policy presentations, the MMD government has continued to pledge its commitment to freedom of expression. In the most recent briefing paper, the April 1997 *Brief on the Government's Governance and Economic Reform Programme*, which was distributed to the international donor community before the April 25 pre-Consultative Group Meeting, the MMD stated its commitment to freedom of expression as part of "substantial and irreversible progress" made in the implementation of a democratic and free society.<sup>10</sup> In a section entitled "Institutional Framework," the government says it fully recognizes the "critical importance of an effective institutional framework as a prerequisite for sustenance of democracy and good governance" and its need "to play another crucial role of providing checks and balances." With specific reference to the freedom of expression, the briefing states:

10 (e) Freedom of Expression—The Government fully subscribes to the principles of freedom of assembly and expression as fundamental pillars of democratic governance. It is for this reason that the Government has completely liberalized the media industry. The monopolistic ownership of the media which prevailed under the previous government is now a thing of the past. Any individual or organization is free to invest in newsprint, radio and television broadcasting. Indeed the government has granted television broadcasting licenses to individuals and private organizations. To date, three private radio stations are happily operating in the country.

---

<sup>10</sup>Government of the Republic of Zambia, *Zambia: Brief on the Government's Governance and Economic Reform Programme* (Lusaka: Government of the Republic of Zambia, April 1997) p. 4.

At the pre-Consultative meeting held in London on April 25, Finance and Economic Development Minister Penza reiterated much of what was said in the previous briefing.<sup>11</sup>

In its formal statements, the MMD government appears to be committed to freedom of expression and privatization of the media. In practice, however, the state has kept a tight rein on the media. The state continues to control television as well as the mainstream newspapers, which constitute some 90 percent of print media. They include two dailies: *The Times of Zambia* and *The Zambia Daily Mail*; two Sunday papers, *The Sunday Mail* and *The Sunday Times of Zambia*; and one weekly paper, *The Financial Mail*. All of these newspapers are posted on the Internet on the Zambian homepage, ZAMNET, at government expense.<sup>12</sup> For the most part, the state-owned media take a strong MMD-line, which is usually uncritical if not unabashedly propagandistic. This was particularly evident in the run-up to the elections.<sup>13</sup>

*The Times of Zambia* has in recent months run into financial difficulty, and pressure to privatize has been resisted. Information Minister David Mpamba told parliament in February that *The Times* and *The Daily Mail* would not be sold, despite the fact that *The Times* owes U.S.\$400,000 to the South African newsprint suppliers. He said it was essential for the government to spare government media from privatization.<sup>14</sup> *The Post* of April 24 reported that Mpamba had disclosed that taxpayers would be bailing the paper out and that 125 workers had been retrenched to cut costs.

The Government's reference to the privatization of radio is also misleading. The fact that three radio stations have been privatized is not in itself remarkable given the mushrooming of independent and community radio all over

---

<sup>11</sup>Government of the Republic of Zambia, *Zambia: Briefing on the Government's Governance and Economic Reform Programme, Report of the Proceedings of the Meeting with Donors, Held in London on 25 April, 1997* (Lusaka: Government of the Republic of Zambia, May 9, 1997) pp. 4-5. (Hereafter *Report of the Proceedings of the Meeting with Donors, Held in London on 25 April, 1997*).

<sup>12</sup>The Zambian National World Wide Web Server, ZAMNET carries daily editions of *The Times of Zambia*, *The Zambia Daily Mail*, the once-weekly *The Financial Mail*, and *The Sunday Mail*. ZAMTODAY carries news briefs from the Zambian News Agency (ZANA). *The Post* also appears on the home page. The internet address is <http://www.zamnet.zm>.

<sup>13</sup>Chris Chirwa, *Press Freedom in Zambia: A brief review of the press during the MMD's first five years in office* (Lusaka: Zambia Independent Media Association, 1997).

<sup>14</sup>*The Times of Zambia* (Lusaka), February 7, 1997.

the African continent. In Zambia, the process of deregulating the radio stations has been shrouded in secrecy, and while deregulation started in 1994, those radio licenses that have been granted, apart from the three commercial stations, have mostly gone to Christian groups.<sup>15</sup>

Radio Phoenix is one of the private commercial radio stations without a religious focus, and broadcasts mostly music. French academics, Jean-Pascal Daloz and Katherine Verrier-Frechete, from the University of Bordeaux, concluded in a study of Radio Phoenix that:

---

<sup>15</sup>*Zambia: Elections and Human Rights in the Third Republic*, p. 25.

The so-called freedom of speech enjoyed by Radio Phoenix is actually fairly limited. The station, located at the top of one of Lusaka's highest buildings, is under constant surveillance. Paying a first visit to the radio team in July 1996, one of us was surprised to encounter an armed soldier at the door of the elevator and another one guarding the broadcasting studio. Officially the aim was to deter any criminal attempt, but we suspect the real purpose to be the removal of any unwanted individual. Moreover, Radio Phoenix, being privately-owned, must rely, as any commercial radio, on advertising revenue to ensure financial survival, and eventually some profits. Once again we must wonder whether the independence of the station is not *de facto* limited by its need to please major clients. Considering the fact that the Zambian political elite and the local business community are closely intertwined, to discontent advertisers would equate to dissatisfying the government. The will to keep a certain neutrality in the hope of attracting the widest possible audience also imposes some limitation on the radio's political involvement.<sup>16</sup>

Further, the government's claims to "having completely liberalized the media industry" are false. The Constitutional Amendment Act (1996) did not include any of the Media Reform Committee's 1993 recommendations on press freedom, and none of the committee's recommendations have been implemented. These recommendations included privatizing the state newspapers and television stations and making media ethics and practice the subject of self-regulation by journalists' associations and other media groups with no statutory power. The committee also identified "at least thirteen sections of the Penal Code which directly affected freedom of the press," which it recommended be amended. 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.<sup>17</sup> None of these provisions have been modified.

Personnel of the privately-owned or independent press, comprised by newspapers such as *The Post* and *The Chronicle* that are highly critical of the MMD-establishment, have encountered serious harassment and intimidation and been subject to numerous criminal charges under the Penal Code. In the period under review, the most serious infringement of freedom of expression was the introduction of the Media Council Bill, which after protest was not tabled, but not abandoned. The bill is discussed in a separate section below.

### **The MMD Government vs. the Independent Press**

The MMD government has waged a persistent and vociferous campaign against the independent press, specifically targeting individual editors and journalists. Instead of allowing freedom of expression and opinion to flourish, the Chiluba government continues routinely to criminalize the work of journalists by resurrecting colonial legal provisions and old legislation from three decades of one-party rule. At the present, there are more court cases against journalists in Zambia, with the possibility of lengthier prison terms, than anywhere else on the continent. Seemingly, the state's intention is to jail its most outspoken critics in the media and to financially incapacitate the independent press through lengthy and expensive court cases. Further, the cases are routinely heard in courts outside the

---

<sup>16</sup>Jean-Pascal Daloz and Katherine Verrier-Frechete, "Radio Pluralism: Instrument of Political Change? Insights from Zambia," paper presented at "African Broadcast Cultures: Radio and Public Life," Conference, June 12-13, 1997, School of Oriental and African Studies, University of London.

<sup>17</sup>See Adewale Maja-Pearce, "Zambia," in *Directory of African Media* (Brussels: International Federation of Journalists, 1995), pp.335-337 and Article 19, "Zambia: Media Freedom and the 1996 Elections," *Censorship News*, issue 45, November 1996.



district of Lusaka, thereby forcing defendants to travel to and from outlying courthouses in remote districts. Editors have complained that it is difficult to publish a paper when journalists are spending their days involved in court cases.

A case study of *The Post's* relationship with the government provides numerous examples of the government's harassment of the independent media.<sup>18</sup> *The Post* was launched in 1991, several months before the MMD government came to power. In its mission statement, it made a commitment to hold the new government accountable to the electorate, thought it has never had a chance to fulfill this promise. Since it was started, *The Post* has been served with more than 100 writs. Editor-in-chief Fred M'membe and some of his senior editorial staff have spent weeks in detention, several of them facing the prospect of twenty-five-year maximum jail terms in ongoing court cases.

In the run-up to the November 1996 elections, the press underwent a barrage of assault. Human Rights Watch/Africa documented many of these instances of abuse.<sup>19</sup>

Some of the most glaring violations were:

- February 5, 1996: President Chiluba banned edition 401 of *The Post* under section 53 of the Penal Code after an article appeared that alleged that the Zambian government planned to hold a referendum to adopt a proposed constitution at little notice to the public. Armed police searched the newspaper's offices for ten hours, looking for "classified" documents. Editor-in-chief Fred M'membe, editor Bright Mwape, and reporter Masautso Phiri were arrested and charged under the State Security Act for possessing and printing classified documents. If convicted, the three defendants could have faced a maximum of twenty-five years in prison. The state sought to use State Security Act to criminalize and punish legitimate investigative journalism and to suppress discussion of public affairs. After being brought before the court several times, the three journalists were recently acquitted on May 22. Presiding judge Chitengi said that the article in question that had allegedly included classified information was about a referendum, a decidedly public matter. The judge ruled that referenda: "are the known lawful ways of asking the general citizenry to decide by plebiscite certain contentious issues which the government does not want them to decide on its own. The Zambian constitution provides provisions for referendum. . . and there can be no secret about an election in these days of transparency, the revelation of which should invite stiff penalties under the State Security Act."<sup>20</sup>
- On February 22, 1996, the Zambian parliament made an unprecedented decision to find in contempt and sentence in absentia, to prison for an indefinite term, *The Post's* editors, M'membe and Mwape, and a freelance columnist, Lucy Sichone, for publishing an article that criticized a speech made by the vice-president and other ministers. The three were summoned to appear before parliament but went into hiding. The government offered

---

<sup>18</sup>See, Francis Kasoma, "Les médias dans les années 1990," in Jean-Pascal Daloz and Jean Chileshe (eds), *La Zambie contemporaine* (Paris: Karthala, 1996), ch. 13, for an assessment of the Zambian press in the 1990s and a discussion of *The Post* newspaper.

<sup>19</sup>See Human Rights Watch/Africa, *Zambia Elections and Human Rights*, pp. 16-25.

<sup>20</sup>*The Post* (Lusaka), May 23, 1997.

a K2 million (U.S.\$1,550) reward for information leading to their arrest. On March 4, M'membe and Mwape surrendered themselves voluntarily to the police, and they were held in cells formerly used by death row prisoners until March 27. They were then released as a result of a High Court judgment by Justice Kabazo Chanda, who ruled that parliament was wrong to put them on trial and sentence them in absentia. There is speculation that this ruling influenced President Chiluba's decision to remove Justice Chanda in January 1997.<sup>21</sup>

Outstanding charges against *The Post* that are still before the courts include the following four cases:

---

<sup>21</sup>See below, "Intimidation of the Judiciary."

- “Defamation of the president”: a charge stemming from a June 13, 1995 article that claimed that President Chiluba had a child by a Zairian mistress. Fred M’membe and Masautso Phiri were detained overnight before being charged and released. There have been numerous hearings of the case before the court, but its resolution is still pending.<sup>22</sup>
- “Defamation of the president”: a charge that dates from April 1994 when M’membe and Mwape were arrested after an article reported that Princess Nakathindi Wina, a former cabinet minister on trial for alleged drug-trafficking, had said from the dock that the president was a “twit.”
- “Causing fear and alarm”: a charge that dates from August 1994 from a report that the United Nations had accused Zambia of assisting Union for the Total Independence of Angola (UNITA) rebels in neighboring Angola.
- “Defamation of the vice president”: despite Masautso Phiri having been sentenced to a three-month jail term for contempt of court, General Miyanda continues to press with the libel charges for defamation.

### **Freedom of Expression since November 1996**

The harassment and abuse of journalists has continued since the elections, though in different forms. There have not been any armed paramilitary raids and sieges of newspaper offices like the ones of *The Post* offices prior to the elections; nor have there been new charges brought under the Treason or State Security Acts. However, violations of freedom of expression have continued, albeit in more subtle forms, despite the increased international scrutiny and donors' threats to further withhold crucial balance of payments support. As one journalist remarked: “One has the sense that in the present climate the government are restraining themselves. We are bracing ourselves for what might follow.”

Immediately after the elections, criticism of the election process and results drew fire. Thereafter, reporting on the presidential petition was subject to government attacks, as were reports on possible coup attempts. From March to April, the proposed Media Council Bill dominated the dispute between the state and journalists, including those in the state-run media who also protested the bill.<sup>23</sup> Since November 18, 1996, four journalists from the independent press have been imprisoned for their writing and had criminal charges brought against them; six journalists from the state-run television and information service were suspended and then dismissed.

---

<sup>22</sup>Committee to Protect Journalists, *Attacks on the Press in 1995*, (New York: CPJ, 1996) p. 62.

<sup>23</sup>It is important to note that while the Zambian government and/or MMD have frequently violated the rights of the free press, the opposition political parties have also committed their share of abuses. On November 19, the day after the elections, Zambia Democratic Congress (ZDC) militants forced their way into the studios of ZNBC and demanded to appear live on the air to speak out against the “irregularities” of the election. On December 5, 1996, militants of the Liberal Progressive Front (LPF) opposition party threw stones at a national television crew that was covering a police search at the home of a party leader. On February 6, 1997, members of a ZNBC television crew, upon arriving late to a meeting of the opposition party UNIP, were harassed by angry party members who called them “liars” and chased them from the room while accusing them of “biased reporting.” “Zambia,” in *Reporters Sans Frontières 1997 Report* (Paris: RSF, 1997), pp. 110-111.

In the most-publicized case—the three month imprisonment of *The Post's* Masautso Phiri for contempt of court—the government's human rights record took a marked turn for the worse. Phiri was the first Zambian journalist to be jailed for contempt of court after he wrote a column that stated that “there was a rumour doing the rounds in Lusaka” that judges were accepting bribes to rule in President Chiluba's favor in the presidential petition. The most disturbing element of this case was the apparent collusion between the state, the vice-president and the judiciary to jail Phiri. Not only was Phiri's freedom of expression denied, but the case also revealed the absence of an impartial judiciary. Phiri was sentenced, with no right of appeal, by judges who held personal grievances against him for earlier articles he had written about them and their alleged misconduct.<sup>24</sup>

At his inauguration immediately after the November 18 presidential election, President Chiluba revisited the usual themes of the move from a one-party state to a democracy and the MMD's oft-stated commitment to a free press.

My government recognizes the important role the press play in the democratic process. It is for this reason that my government has given media in Zambia unparalleled freedom in the history of our country. Thus, insofar as press freedom and communication in general are concerned, our country has tremendous potential to begin the next five years confidently. Five years ago when we moved from a one-party political system that was quickly being pulled down in Africa and elsewhere in the world, media like other sectors, were a virtual monopoly of the state. Today, thanks to the deliberate policy of the MMD, and indeed the wish of the people of Zambia, the scenario has changed. . . .

But Chiluba also sounded a warning note to the press, stating:

While on this subject I want to caution our colleagues in the media that irresponsible reporting can lead to grave consequences for the country. The press freedom we enjoy today could be lost tomorrow if we ignore the concepts of responsibility, balance and fairness in our operations. It is important for the media to realize that it has a duty and responsibility towards the creation of a responsible citizenry.

During this period, the government continued to use harassment to silence its critics in the media. On the day after the elections, November 19, Musole Kaambeu, a journalist with the Zambia Information Services, was threatened with dismissal by the Lusaka provincial deputy minister, who complained about Kaambeu's coverage of his re-election.<sup>25</sup>

On November 20, *The Monitor* editor Jowie Mwiinga was questioned at Lusaka police headquarters regarding a report which claimed that the chairman of the Zambian Democratic Congress (ZDC) had asked President Chiluba to cancel the November 18 elections. Two days later, the offices of *The Monitor* were searched by police.<sup>26</sup>

---

<sup>24</sup>The three judges who heard the case but should have recused themselves were Deputy Chief Justice Bonaventure Bwepe, Justice Matthew Chaila and Justice David Lewanika.

<sup>25</sup>“Zambia,” *Reporters Sans Frontières 1997 Report*, Paris, 1997, p. 111.

<sup>26</sup>*Ibid.*

One week after the elections, on November 24, six journalists working for the state-owned and government controlled media were suspended indefinitely from their jobs after allegations that they had been on the payroll of the Zambia Independent Monitoring Team (ZIMT).<sup>27</sup> One journalist was fired immediately; two others were dismissed several months later. The ZIMT had won the government's ire for its criticism of the election process, in particular ZIMT chairman Alfred Zulu's statements that the elections were rigged. The ZIMT's former vice-president, Isaacimba, called the allegations a conspiracy at an MMD-sponsored press conference and urged the organization to "disassociate" itself from Zulu's statements (ZIMT later described Imba as a renegade and MMD plant.)<sup>28</sup> Imba named six journalists from the state broadcaster—the Zambia National Broadcasting Corporation (ZNBC)—and the Zambia Information Service (ZIS) and said that they had been paid by ZIMT "to project a positive image of the organization and promote the ideals of the opposition." He accused the six of favoring Zulu and AFRONET executive director Ngande Mwanajiti in their programs.<sup>29</sup> The six—Zambia Information Service deputy director Nalishebo Mundia, ZNBC commercial manager Abias Moyo, ZNBC sub-editor Gershom Musonda, Radio 2 manager Charles Banda, Kitwe-based ZNBC news editor Dominic Chimanyika and ZNBC TV personality Chibamba Kanyama—were indefinitely suspended from their jobs and threatened with prosecution the next day.<sup>30</sup>

This came on the heels of a directive from Information and Broadcasting Permanent Secretary Laurah Harrison who had been present at the Imba press conference. She stated that the journalists did not have the right to reply to the allegations. On November 26 Kanyama was dismissed for "dishonest conduct."<sup>31</sup> Dominic Chimanyika and Abias Moyo were reinstated on January 13, 1997. On March 14, Gershom Musonda was fired from his job at ZNBC. On the same day, Charles Banda received a letter from Mwansa Kapeya, acting controller of personnel and training, at the ZNBC stating that,

After thoroughly investigations [sic] in the matter, Management finds the allegations baseless and would therefore like to exculpate you from the matter.

The letter proceeded, however, to inform him of his dismissal on the grounds of a "conflict of interest" between a company owned by he and his wife and the broadcasting corporation.

Charles Banda is challenging this decision. Mundia Nalishebo remains suspended at the time of writing and is unable to travel as he cannot engage in international travel as part of the terms of his suspension. If he were to travel abroad without permission from ZIS, he would lose his job immediately. He told Human Rights Watch/Africa about his frustration in April.

---

<sup>27</sup>A copy of the suspension letter written to Charles Banda from the ZNBC Director of Programmes Frank Mutubila, dated November 25, 1996, is in Human Rights Watch/Africa's possession.

<sup>28</sup>Isaacimba resigned his position as vice-president of ZIMT in June 1996 in order to take part in the political process. Although Imba had not been part of ZIMT for over six months, he was deceptively presented as its vice-president on state-run television.

<sup>29</sup>*The Chronicle* of November 25, 1996 reported that Imba named the suspended journalists, some donors, diplomats and former President Kaunda as being involved in a conspiracy to declare the elections not free and fair, and that the journalists had been hand-picked to infiltrate the public media.

<sup>30</sup>Musonda, who is ZIMT general secretary, was briefly detained in an anti-NGO sweep on November 25 and charged with threatening violence for commenting on the death of police bomb disposal expert Orton Banda. Banda's death was blamed on the UNIP "Black Mamba" treason trialists, who were detained for five months in 1996, and then acquitted.

<sup>31</sup>*The Post* (Lusaka), November 25 and 26; December 4 and 10, 1996. *The Chronicle* (Lusaka), November 25, 1996 reported that two of the journalists, Mundia and Kanyama, were suspended for receiving money from the umbrella Committee for a Clean Campaign (CCC), while two other journalists were suspended for allegedly serving as paid board members of ZIMT.

I am suspended and I hear nothing although I know that people like Charles Banda have been told officially that Zimba's allegations were baseless. I can't plan anything and I can't travel outside Zambia until a decision is reached. For example I am a board member of the Southern Africa Film Festival but can not attend the April meeting in Harare because of my suspension.<sup>32</sup>

---

<sup>32</sup>Human Rights Watch/Africa interview with Mundia Nalishebo, Lusaka, April 19, 1997.

Mundia Nalishebo wrote to the acting permanent secretary of information and broadcasting services on April 18, requesting permission to travel to Harare for the meeting on April 24 and 25.<sup>33</sup> In reply MC Chalimbaba, the acting permanent secretary wrote:

I acknowledge receipt of your request of 18th April, 1997 regarding the above underlined subject matter.

However, since you are still on suspension as per the contents of MIBS/ZIS/1411 S. 57376 of 26th November your request cannot be processed.<sup>34</sup>

Mundia Nalishebo continues to wait for a decision on his case and remains banned from international travel.

On November 25, news editor Emmanuel Chilekwa and deputy editor Onassis Mandona, both of *The Chronicle*, were arrested and questioned by detectives for two hours. The interrogation regarded a report that had been published on November 22 which quoted an official of the Zambian Democratic Congress (ZDC) opposition party who called for the "isolation" of President Chiluba. Detectives demanded that the journalists reveal their sources, but they refused.<sup>35</sup>

On November 27, Electoral Commission chairman Justice Bobby Bwalya threatened *The Post* reporter Kunda Mwila with arrest for inquiring about a week-long delay in the publication of election results from some constituencies and asking when the local government elections would be held. Bwalya refused to answer questions in his office, and when he saw Mwila talking to Elections Office acting director Joel Sikazwe, he threatened the journalist that if he did not leave he would order his arrest. "Elections are over, what else do you want," Bwalya shouted.<sup>36</sup> The issue of the delay in results was later taken up by election monitoring groups as an indication of irregularity.

On December 8, the Lusaka High Court granted an interim injunction to UNIP president Kenneth Kaunda, stopping ZNBC from airing a State House-prepared documentary, *Trail of Deceit*, that alleged that Kaunda and *The Post* had robbed Zambia of donor support. The documentary asserted that donor aid had dried up because of a campaign against the MMD government launched by Kaunda in conjunction with the "gutter press." The documentary

---

<sup>33</sup>Copy of April 18, 1997 letter by Mundia Nalishebo to acting permanent secretary in Human Rights Watch/Africa's possession.

<sup>34</sup>Copy of letter, no date but reference number MIBS/ZIS/1411, to Mundia Nalishebo from MC Chalimbana, acting permanent secretary, Zambia Information Services.

<sup>35</sup>Reporters Sans Frontières, "Zambia," in *Reporters sans Frontières 1997 Report* (Paris: RSF, 1997) pp. 110-111.

<sup>36</sup>*The Post* (Lusaka), November 28, 1996.

was supposed to have been aired that night. A UNIP spokesperson said that they had been compelled to block the screening because it had not given them the opportunity to present their side of the story.<sup>37</sup> *The Post* disagreed with the injunction, saying that it set a bad precedent that could be used to block publications and broadcasters in the future. Later, on January 28, the injunction was lifted by High Court Judge Edmond Sifanu who said that an injunction should not be seen to interfere with the public's right to be informed.<sup>38</sup>

---

<sup>37</sup>Media Institute of Southern Africa (MISA), Alert- Zambia, December 20, 1996.

<sup>38</sup>MISA, Action Alert Update, January 31, 1997. (Hereafter "Alert")



On December 19, Information Minister David Mpamba accused the tabloids of mounting a crusade to smear the image of Zambia abroad. He said they needed to correct this picture.<sup>39</sup>

From mid-December, the pattern of attacks against the independent press changed. The case against *The Post's* special projects editor Masausto Phiri started on December 17 when Vice-President Brigadier General Godfrey Miyanda sued him and the Post Newspapers for criminal libel for the publication of a December 11, 1996 Post Card column, "Praising God Loudly." The column alleged that seven Supreme Court judges were offered K14 billion (approximately \$U.S. 10 million) to dismiss the opposition petition challenging President Chiluba's election. In his complaint, Miyanda alleged that Phiri and the Post Newspapers "published defamatory matter contrary to section 191 of the Penal Code, affecting the complainant. . . By this publication Phiri and Post Newspapers were understood to mean that Godfrey Miyanda had committed some crimes."<sup>40</sup> Miyanda's complaint stated that the implication was that he "had bribed or was involved in bribing" the judges; that he had conspired with other persons to defeat the course of justice; that he had been involved in killing or assassinating the party's political opponents; and that he is a thief and a drug dealer.<sup>41</sup>

The accused appeared before the court but did not offer a plea, and the matter was adjourned until January 6, 1997. On January 7, 1997 Phiri received a second summons to the Supreme Court to show why he should not be held in contempt of court. The summons was dated December 17, the same day as the complaint from Miyanda.<sup>42</sup>

By the opening of parliament on January 17, 1997, Chiluba's tone had hardened. In a speech announcing cuts in public spending as a result of decreased donor aid, President Chiluba signaled a clamp down on the media and election monitoring groups which he described as "unpatriotic."<sup>43</sup> He announced his intention to introduce legislation establishing a media council to regulate the media, sections of which were "irresponsible." He stressed the necessity of responsibility on the part of the press to justify the government's move to create a legislated body to control the media. While the NGO sector bore the brunt of the attack in the address, the media were drawn into the firing line.

---

<sup>39</sup>*The Post* (Lusaka), December 20, 1996.

<sup>40</sup>*Ibid.*, December 27, 1996.

<sup>41</sup>Complaint brought by Godfrey Miyanda against M. Phiri and Post Newspapers, Case No. SPB-80-96, December 17, 1996, and Charge in the subordinate court of the first class for Lusaka district, under section 90 of the Criminal Procedure Code (Cap.160).

<sup>42</sup>Summons for Contempt of Court, Supreme Court of Zambia, SCZ/8/247/96, December 7, 1996. Received January 7, 1997.

<sup>43</sup>*Reuter*, January 17, 1997, "Go-it-alone Chiluba to slash Zambia spending."

On February 10, Phiri appeared in the Supreme Court. In an affidavit, Phiri said that during these proceedings he was at no time called upon to plead; that as the court did not follow correct procedure, there was no contempt of court; and that his rights had been infringed on in that no person should be the judge of his own case. He argued that three of the judges who heard his case should have recused themselves but did not do so: Deputy Chief Justice Bonavenure Bweupe was in contact with Phiri over allegations that his daughter was impregnated by President Chiluba's son, leading her to have an abortion which killed her. Justice Matthew Chaila had sued *The Post* over a story that linked him to an illegal drinking club; and Justice David Lewanika had been in contact with Phiri over allegations that a private trip by the judge to Malawi had been paid for by the government.<sup>44</sup>

---

<sup>44</sup>Affidavit in support of summons to review, Masautso Phiri, February 13, 1997.

On February 11, Phiri was sentenced to three months of hard labor by a full bench of the Supreme Court. Phiri was the first journalist in Zambia to be convicted of contempt of court. What had started as a libel suit by the Vice-President against Phiri turned into a criminal case and a jail term with no right of appeal.<sup>45</sup> The case underscored the state's impulse to suppress commentary around the petition challenging Chiluba's candidacy as well as the lack of judicial impartiality.

On February 14, Amnesty International declared Masautso Phiri to be a prisoner of conscience. It wrote:

Amnesty International considers Masautso Phiri to be a prisoner of conscience because he has been imprisoned for the non-violent expression of his political beliefs. Freedom of expression is protected by Article 19 of the International Covenant on Civil and Political Rights (ICCPR). Any government institution—including the Supreme Court—should be able to withstand robust criticism, in particular by that country's national press.<sup>46</sup>

Human Rights Watch /Africa interviewed Masautso Phiri at Lusaka Central Prison on February 16, less than a week after he had been jailed, and witnessed Phiri's children being denied access to him at visiting time. The warden said that they needed ID cards. However, these cards are usually issued to those over 17 years of age, and Phiri's children are all younger.

I'm all right in here. I'm in cell with thirty-seven people. I had been in a cell with seventy but I was recently moved. The cell I'm now in measures some seven paces long by five. I'm in good spirits and I try and keep fit. I'm lucky in that I get food from outside so I try and avoid getting ill. How I ended up in this place is most unfair. Could I get a fair trial when some of the judges were part of the case? We are appealing and I hope for best. Honest justice in Zambia is what is needed.<sup>47</sup>

On March 3, Phiri was moved from Lusaka Central Prison to Mwembeshi prison to start his hard labor. He was moved back to Lusaka Central on March 6. He and M'membe appeared in court on that day on defamation charges arising from a story that reported that President Chiluba had a child outside of marriage.

---

<sup>45</sup>This violated article 14(5) of the ICCPR:

Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

<sup>46</sup>Amnesty International, "Zambian Journalists Rapid Response Action Network: Action 7, February 14, 1997.

<sup>47</sup>Human Rights Watch/Africa interview with Masauto Phiri, February 16, 1997.

When Phiri's case was heard again on March 17, he asked the Supreme Court to review its decision on his jail term. He withdrew an apology he had made before being sentenced and asked the judges to withdraw from hearing his case.<sup>48</sup> On March 27, Phiri dropped his application for review of imprisonment because two of the three judges who he had asked to withdraw from the case had refused to do so.<sup>49</sup> He was released from prison on April 11 and said that he considered the sentence "illegal." He said he had instructed his lawyers to make an application to the Supreme Court to determine conclusively the law of contempt.<sup>50</sup>

Human Rights Watch /Africa interviewed Phiri again on April 17, six days after his release. He had been moved several times during his incarceration but was released after having served two months of his sentence.

---

<sup>48</sup>MISA, Alert, March 19, 1997.

<sup>49</sup>Ibid., April 8, 1997.

<sup>50</sup>Ibid., April 14, 1997.

I was taken to Mwembeshi prison for three nights. But I had no problems there. I was treated well by the warders. I was then returned to Lusaka Central. It remained tough inside but I survived. By the time I was released there were only eighty-one people in my cell. I was relieved to be released; a third of the sentence was dropped because of good behavior.<sup>51</sup>

As of this writing, the state continues to try to bring additional charges against him. State action against *The Chronicle* intensified ten days after the initial Phiri charges in mid-December 1996.

Concurrent with the Phiri case, the state prosecuted journalists who worked on the privately-owned *The Chronicle* newspaper. Three journalists were arrested in the space of a few days. On December 26, *Chronicle* reporter George Jambwa was arrested by Zambia Army soldiers and detained overnight at the Arakan military barracks when he went to the barracks to deliver a written press query to Army Commander Lieutenant General Nobby Simbeye, following reports that the commander was under house arrest. According to his subsequent account, his hands and legs were chained for several hours while he was interrogated by seven defense personnel. Defense Secretary Jack Mubanga telephoned and wanted to talk to the soldiers who detained him, but they were not there. The next morning, the army handed Jambwa over to the Zambia Police Service who took him to the Lusaka Central Police Station. He was held there for the day and charged with criminal trespass. *The Post* said a police source told it that they had been instructed to keep Jambwa in a separate cell which had been declared unfit for human habitation.<sup>52</sup> *The Post* had reported this was a result of President Chiluba's fear of rumors of a post-election military coup. Jambwa was reportedly arrested on instruction from a senior officer minutes after sentries had allowed him into the barracks and had issued him with a pass.

ZIMA chairman David Simpson commented on the detention: "Particularly disturbing is the fact that proper information as to his whereabouts, or any action being taken against him was not made available to his editor, family, or the public."<sup>53</sup>

---

<sup>51</sup>Human Rights Watch/Africa interview with Masautso Phiri, Lusaka, April 17, 1997.

<sup>52</sup>*The Post* (Lusaka), December 30, 1996.

<sup>53</sup>*The Post* (Lusaka), December 30, 1996.

In another incident that involved both *The Post* and *The Chronicle*, a second journalist of *The Post* was detained. On January 22, reporter Kunda Mwila was arrested and held at Woodlands police station for several hours after conference guards detained a police intelligence officer who was “under cover” and masquerading as a *Chronicle* newspaper reporter. At a Common Market for East and Southern Africa (COMESA) press conference, the secretary general challenged the officer, Detective Constable Innocent Kanunga, who had introduced himself as a *Chronicle* reporter, to prove his identity. Mwila overheard the conversation and asked the officer questions about the newspaper’s location. A *Zambia Daily Mail* reporter, who had formerly worked for *The Chronicle*, asked Kanunga about other journalists on the paper. Kanunga fumbled, and Mwila called the conference security officers to arrest him. Under questioning, Kanunga admitted he was impersonating. “It was part of our professional tactics. We have a right to cover in any way which you can’t know. I have been attending all the press conferences in Zambia. We are sent by the state. If I am not here how do you expect the President to know what is happening,” he said. Mwila and the security officer confiscated Kanunga’s false identity card and took him to Woodlands police station. On arrival, the tables turned, and Kanunga charged Mwila with conduct likely to cause breach of peace. Mwila was locked up for several hours. *Chronicle* editor Lweendo Hamusankwa said he was going to protest the impersonation to the inspector general of police and the home affairs minister. “We have reports that we are being followed,” he said. “This move by the police to impersonate us may be one of the attempts to monitor our employees.”<sup>54</sup>

Two weeks later, the ministry of information announced it would “expose” journalists who sent “negative” reports abroad on Zambia, tarnishing the government’s image internationally. The “false” reports would be given to Zambians so that they may judge their validity, the February 7 issue of *The Times of Zambia* reported.<sup>55</sup>

On February 15, State House agents, including presidential aide Evaristo Mutale, abducted *Chronicle* reporter George Jambwa at gun point at Lusaka’s Mabvuto Motel. Earlier that day, Mutale had gone to the newspaper’s office three times to look for Jambwa. He threatened *Chronicle* editor Lweendo Hamusankwa with a gun to retract a story that had appeared in the previous day’s edition of the newspaper, entitled, “Presidential aide driving stolen vehicle”. That evening, in the company of three friends at a club house, Jambwa was spotted by a state security informer, who alerted Mutale that Jambwa was at the club. Minutes later Mutale arrived with another presidential aide.<sup>56</sup> Jambwa was forced into a car by four men who questioned him demanding that he reveal his source for the article. He was detained for ten hours at the Lusaka Central Police Station and then released without charge. According to Jambwa, “They asked me if I was ready to take on the state. I’m afraid for my life but I won’t be intimidated. No one has the right to stop me from practicing. It’s my constitutional right.”

At 5 a.m. the next morning, *Chronicle* editor Lweendo Hamusankwa was picked up at his home by police for “publishing false stories.” He was detained for two days, questioned, and charged with criminally libeling President Chiluba’s aide by publishing a story in the February 11-13 edition, alleging that arms and ammunition had been stolen from Mikango Barracks in Lusaka.

On February 18, Defense Minister Ben Mwila admitted before parliament that a storeroom for the Zambia Air Force (ZAF) detachment on the outskirts of Lusaka had been broken into on January 9, as reported by *The Chronicle*.<sup>57</sup> But, he insisted that the report had exaggerated the magnitude of the theft and that no arms or ammunition had been stolen from the Mikango Barracks armory.

---

<sup>54</sup>*The Post* (Lusaka), January 23, 1997.

<sup>55</sup>*The Times of Zambia*, February 7, 1997, “False News Purveyors to be Exposed.”

<sup>56</sup>*The Post* (Lusaka), February 17, 1997.

<sup>57</sup>The article said guns and ammunition had been stolen from the Zambia Army 64 regiment.

On the same day, George Jambwa appeared in court and was charged with criminal trespass for going to the Arakan military barracks the previous December. Jambwa's arresting officer told the court that the press's query, which was intended to verify rumors that the commander was under house arrest in the wake of the coup plots, was insulting; and, moreover, the officer insisted that the contents of the query were inciting rebellion among the soldiers against the MMD government. His claims that Jambwa did not have a gate pass were suspicious since the visitor's book showed that Jambwa had in fact signed for one.<sup>58</sup> Jambwa was ultimately acquitted on April 4. The magistrate, Chibesakunda Muwowo, called the charge a conspiracy to cover up the inefficiency of the military security system, saying she saw no evidence of a crime having been committed.<sup>59</sup>

During this period, another *Chronicle* reporter, Boyd Phiri, was arrested and detained at Woodlands police station with Hamusankwa. Police suspected that Phiri had written the article on the alleged missing arms and ammunition. He, too, was detained until the court appearance two days later. On Monday, February 17, Hamusankwa and Phiri were jointly charged with publication of false news intended to cause alarm.

That evening, Human Rights Watch/Africa interviewed *Chronicle* editor Hamusankwa at the Woodlands police station.

I was only charged this evening at Lusaka Central for criminal libel, which is non-bailable. I am also charged for causing alarm. That's why you find me here in the police cell. They picked me up early in the morning yesterday, armed to the teeth. It was as if I was a gun-runner or drug-dealer, not a newspaper editor. But I'm okay here at Woodlands, they treat me well. I do have to sort out my own food and drink, but that's normal.

---

<sup>58</sup>*The Post* (Lusaka), March 24, 1997.

<sup>59</sup>*The Post* (Lusaka), April 7, 1997.

They have picked on *The Post*. It's our turn. It's to do with the run-up to this Media Council and is all part of a strategy to show that the independent media is irresponsible. That's why George Jambwa, myself and Boyd Phiri are all being harassed. The police are clearly reluctant, but its those State House boys that force them to do such things.<sup>60</sup>

Hamusankwa and Phiri pleaded not guilty to two criminal charges: in the first count they were charged with publishing false news with intent to cause fear and alarm contrary to section 67 of the Penal Code; and in the second count, they were charged with libel contrary to section 79 of the Penal Code for an article about Evaristo Mutale, senior private secretary to Chiluba, which reported that he was driving a stolen vehicle. The state prosecutor argued that bail should not be granted because the journalists would pose a danger to Mutale's life if released. However, they were each released on a bail of K500,000 (U.S.\$386). A trial date for March 20 was set.

When Human Rights Watch/Africa interviewed Boyd Phiri in April, we were told that Phiri's arrest was a case of mistaken identity.

On Monday, plainclothes policemen came with Nellie Mutti, my lawyer, and we went down to the police force headquarters where we recorded a statement. I denied that I was the author of the story in question and [said] that my name had been left there by mistake. The by-line was forgotten to be deleted from the previous edition. I was formally charged at 17.00 hours after having been detained for a day—[it was] March 24.<sup>61</sup>

Human Rights Watch/Africa visited at *The Chronicle* offices and was also told that Phiri's by-line had been placed inadvertently from a paste-up of a previous edition of the newspaper. A layout person told us he had made the mistake.<sup>62</sup>

As of the publication of this report, *The Chronicle* editor Lweendo Hamusankwa and reporter Boyd Phiri still face charges of causing fear and alarm. Hamusankwa still faces another criminal libel charge for the February 14 article alleging that Mutale was driving a stolen car.

---

<sup>60</sup>Human Rights Watch/Africa interview with Lweendo Hamusankwa, Lusaka, February 17, 1997.

<sup>61</sup>Human Rights Watch/Africa interview with Boyd Phiri, Lusaka, April 17, 1997.

<sup>62</sup>Human Rights Watch/Africa visit to *The Chronicle* offices, Lusaka, February 19, 1997.



The government's crackdown of critical reports continued. At a March 22 Freedom Forum meeting in Lusaka, Richard Sakala, President Chiluba's assistant and the only government official present, held up a copy of Human Rights Watch/Africa's November 1996 report on Zambia and said: "This is a good example of the sort of misinformation circulated about the Zambian government in the press."<sup>63</sup>

In mid-April, Health Minister Katele Kaluma banned the Central Board of Health from advertising in *The Post*. An official said that they had been told to place advertisements in *The Times of Zambia* or *The Zambia Daily Mail* instead.<sup>64</sup>

### **The Media Council Bill**

The threat of further legislation to control journalists and the press has been a red thread running through MMD government pronouncements for years. Several months after the November election, the threats were translated into draft legislation, and the Media Council Bill (MCB) was tabled. President Chiluba introduced the concept for the bill in his speech on the opening day of parliament.

The intention was to regulate the media and its "irresponsible reporting," he said. "Integrity demands that media practitioners adhere to a standard of ethics that have respect for truth and fairness. . . it is a notorious fact that the nation and indeed the press itself has been brought into disrepute by a section of the media that has chosen to betray the country by publishing and distributing false information about Zambia. This is regrettable and a matter of grave concern," he said.<sup>65</sup>

Drafted by the attorney general's office and released on April 7, the draft bill requires all journalists to be licensed by a media council that is appointed by the minister of information. Journalists who are not in compliance are subject to a three month jail term, a fine, or both. To qualify for a license, journalists must be eighteen or older and have a Bachelor of Arts in mass communications or journalism from a university or college that is recognized by the council; or they must have completed at least a two-year course in journalism. Under the act, journalists are required to apply for a license or "accreditation" to the registrar of the council who will keep a register of all "accredited" journalists. Accreditation is not automatic, but it is subject to the outcome of investigations of applicants. Applicants are required to pay a fee and submit certificates of academic qualifications, or, for companies, certificates of incorporation. Journalists are required to renew their accreditation annually. Foreign media organizations are required to have Zambian-born partners.<sup>66</sup>

Among other punitive measures for non-compliance, the bill provides for three months imprisonment for practicing without a license or for giving false details when applying for accreditation. There is also a provision for disciplining journalists who conduct themselves in a manner contrary to "the profession of a journalist" or who engage

---

<sup>63</sup>Told to Human Rights Watch/Africa by an information officer of ZIMA, Sipwa Kapumba in Lusaka on April 16, 1997.

<sup>64</sup>MISA, Alert, May 5, 1997.

<sup>65</sup>Ibid., January 17, 1997.

<sup>66</sup>*Electronic Mail and Guardian* (Johannesburg), April 15, 1997, "Alarm over Zambia media clamp down."

“in any occupation which is inconsistent with the profession of a journalist.” Such journalists would be liable to reprimand, suspension or expulsion.

The draft would allow the public to place complaints with the media council, which is to be empowered to “demand an apology or compensation” from the journalist or media institution for aggrieved members of the public. If found guilty, journalists can be de-registered. The bill states that any journalist who has been de-registered, whose certificate of accreditation has been withdrawn or canceled, has resigned, is not accredited, or whose accreditation has ceased shall not be entitled to practice. Newspapers would not be allowed to hire non-licensed journalists. Many other journalists would also be stripped of the right to work in their chosen profession.

The bill’s intention is clearly to target individual journalists. Because he is an accountant by training, Fred M’embe, editor-in-chief of *The Post*, would not qualify for a license and therefore would not be allowed to practice as a journalist, serve as a publisher, or own a newspaper. Despite having run a newspaper for six years, this would not be sufficient grounds to qualify for a license, and it would be illegal for him to continue working.

Response to the proposed legislation was immediate. On January 19, the Zambia Independent Media Association (ZIMA) said the bill was unacceptable to the independent media: there was no acceptable substitute to self-regulation. In reaction to the press council announcement, Fred M’embe said President Chiluba was striving to control and manipulate the media. “How can a democrat have the government own and control over 99 percent of the news media?” The intended regulation is not in conformity with democratic principles,” he said.<sup>67</sup>

Deputy Minister of Information and Broadcasting Ernest Mwansa defended the government plan. He told parliament on February 6 that a press council was necessary “to promote democracy and freedom of the press.” He continued: “Do we have to wait 300 years and evolve like the United States did just so that we can emulate what they did?” Mwansa accused Zambians who worked for foreign media of lacking patriotism, lying and deliberately distorting information, and abusing freedom of expression. “This freedom seems to have gone slightly out of course” he said.<sup>68</sup> On February 20, Information Minister Mpamba announced in parliament that the government had completed the preliminary draft of the Media Council Bill and that it would soon be presented to the House.<sup>69</sup>

On February 21, Zambia Independent Media Association (ZIMA) established the Independent Media Council (IMC) which it said was to uphold the freedom of the media while ensuring high professional standards and adherence to the principles of responsible and factual reporting. It shared the same constitution and code of ethics as the International Federation of Journalists (IFJ), which sets the basic standard for the performance of the independent media in Zambia. The council was also designed to provide a mechanism for registering and investigating complaints against the media and taking appropriate measures. ZIMA argued that the Independent Media Council, rather than a legislated body, was the best way of maintaining the vital role of the independent media in fostering an open society and democratic governance.<sup>70</sup>

ZIMA's members include sixty-five individuals, mostly journalists from six independent media organizations: *The Post*, *The Chronicle*, *Profit* (a financial monthly), the PANOS Institute, *The National Mirror* and the Palesa broadcasting agency. ZIMA is also setting up a legal aid fund to assist its members, whether companies or individual

---

<sup>67</sup>*The Post* (Lusaka), January 20, 1997.

<sup>68</sup>MISA, Alert, February 11, 1997.

<sup>69</sup>Ibid., February 27, 1997.

<sup>70</sup>MISA, press release MISA/ZIMA, February 25, 1997.

journalists and has persuaded a group of nine lawyers to restrict their fees for handling such cases. The independent council's members are:

- Florence Mumbe, judge
- Dr. Nevas Mumba, Protestant priest
- Ignatius Mwebe, Roman Catholic priest, secretary of the bishops' conference
- John Sangwa, lawyer
- Aick Opok'mensa, Ghanaian journalist, director of PANOS Institute
- Abbe Maine, journalist, head of Panesa news agency
- Jowie Muwinga, Reuters correspondent in Lusaka
- Lucy Sichone, lawyer and columnist
- Arthur Simuchoba, former editor of *The Times of Zambia*, now with *The Post*.

The government published its draft Media Council Bill on April 7, and the country's media organizations immediately rejected it and petitioned the government to withdraw it. In a joint statement, the Commonwealth Press Union (CPU), Press Association of Zambia (PAZA), Zambia Media Women's Association (ZAMWA) and the Zambia Union of Journalists (ZUJ) described the bill as "draconian, evil, oppressive, obnoxious and undemocratic."<sup>71</sup> Decrying the "punitive criminalization" of press freedom, the protest statement said that freedom of expression was not a privilege "to be handed down at the grace of any power but a fundamental constitutional right." The statement went on to reject the jail terms and fines for journalists who were not or could not be accredited, arguing that journalism should not be regulated like fields such as law and medicine because "one has a constitutional right to one's opinion without requiring a license from anyone."<sup>72</sup>

The International Federation of Journalists (IFJ) rejected the bill on the grounds that "it was drafted without genuine consultation with the profession." Likewise, the bill lacked reference "to the rights of freedom of expression and access to information," instead providing a "detailed and dangerously wide reference to disciplinary procedures to be taken against journalists." Further, "provisions to incarcerate journalists should not be contained in a press bill. . . a Media Council should not have the authority to deprive a person of his/her liberty." IFJ added that if registration was required, it should not be legislated by government officials; nor should it be handled by the same body responsible for disciplining journalists.<sup>73</sup>

In reaction to the bill, the state media and independent journalists formed a new alliance that was nearly as strong as the already established relationships between independent journalists. Journalists in the state-run media also saw the need to improve standards and objectivity, but felt the solution did not lie in increasing government control. In the months before the Media Council Bill was withdrawn, the state-owned press carried a number of articles that openly criticized the government's proposal. It was a rare instance of public debate. A headline in the April 16 issue of the *Sunday Mail* read "Who needs a Media Council?" The *Times of Zambia* of April 12 carried a story: "FODEP joins human rights groups to condemn proposed Media Council Bill." *The Sun*, an MMD-partisan paper, ran an article

---

<sup>71</sup>MISA, Alert, April 9, 1997.

<sup>72</sup>*The Mail and Guardian* (Johannesburg), *ibid*.

<sup>73</sup>*Africa News Online*, April 17, 1997, "IFJ Comments on Zambian Press Bill."

entitled, "Journalists against Media Council Bill" in its April 14-20 issue, while the April 6-12 edition of the *National Mirror* featured an article called "Government gears to gag journalists." And Zambia's business magazine, *Profit*, ran an article on the Freedom Forum meeting that said that the government legislation was unwelcome and called for the privatization of state-owned media.<sup>74</sup> In the April 8 edition of *The Post*, the headline simply stated: "MCB denounced."

---

<sup>74</sup>*Profit* (Lusaka), April 1997, No. 5/11.

In an article in *The Times of Zambia* that explained the government's position, Information and Broadcasting Permanent Secretary Laurah Harrison called the reaction to the bill a "hysterical outburst from the media" and said that the creation of a regulatory framework as proposed in the bill was the most transparent way of doing things. Mpamba, minister of information and broadcasting services, criticized the position of journalists in the state-controlled media: "Why are those in government media attacking us. You cannot work for the government and attack government. I think there is a myopic perception that government wants to undermine journalists."<sup>75</sup>

Opposition to the bill—on the part of donors, journalists and human rights groups—resulted in a ten kilometer protest march by hundreds of journalists on April 12. Marching journalists from both the state and independent press were joined by the public and representatives from the NGOs. Chanting anti-censorship slogans and carrying placards with messages such as "It's your right to write," the demonstration served to force the government's hand.<sup>76</sup> Three days later, Information and Broadcasting Minister David Mpamba withdrew the bill, saying that it had been postponed until further consultation took place with special interest groups. Mpamba said the government was only trying to "ensure professionalism. We have made an undertaking to foreign donors that this Bill will be subjected to public debate. This is purely a discussion paper. It is not yet law."<sup>77</sup>

He also alluded to the protests mounted by the media: "In order to allow for further consultation of all stakeholders, and principally the electors, the government has deferred the Media Council Bill. . . . The draft bill, published as a discussion paper, has generated considerable debate and emotion among media practitioners and the general public. This is expected in a free society like ours. In order to provide further opportunities for consultation and debate the Ministry of Information and Broadcasting Services will provide optimal opportunities for debate and exchange of views."<sup>78</sup> But he cautioned: "Those who express themselves on the pros and cons of the proposed bill should always bear in mind that their views are not the only ones, nor do they exhaust all the views on the matter. Democrats have an inescapable duty and obligation to respect other people's views. . . . Democratic long term survival rests on mutual tolerance of divergent views."

Disillusioned with the donors who had challenged the bill's provisions, Mpamba stated: "It is a matter of profound regret that some diplomats accredited to Zambia have taken it upon themselves to issue very crude instructions to the government of the Republic of Zambia. Established norms and etiquette dictate that diplomats conduct affairs in the countries they are accredited to through normal diplomatic channels."<sup>79</sup>

---

<sup>75</sup>*The Times of Zambia* (Lusaka), April 9, 1997.

<sup>76</sup>*Panafrikan News Agency* (PANA), April 14, 1997. A similar march in the Copperbelt town of Kitwe failed to take place because journalists there were denied police permission to march. But a crowd was addressed by an official from the Zambia Union of Journalists (ZUJ) who condemned the proposed laws.

<sup>77</sup>*Electronic Mail and Guardian*, April 18, 1997, "Zambia pulls media bill for now."

<sup>78</sup>*The Post* (Lusaka), April 16, 1997, "Media bill withdrawn".

<sup>79</sup>*Ibid.*

The introduction of the bill illustrated the Zambian government's practice of projecting a reformed image on the international stage while trying to enact policies at home that directly undermined human rights principles. The draft bill was published, however, just two weeks before the April 25 London donors meeting. Indeed, in the Briefing Paper that international donors received before the pre-Consultative Group meeting in London, the Zambian government tried to downplay the restrictiveness of the Media Council Bill:

10(f) Concern has been expressed regarding the Government's proposal to form a Media Council of Zambia (MCZ). There is some suspicion that the establishment of the Council is intended to control the media and to reduce freedom of the press. However, that is NOT the Government's intention. The objective of the Council is to protect and enhance professional journalism. Draft Legislation has been published in the National Media and lively debate on the provisions of the draft Bill is taking place. The final legislation will take into account the concerns of the stakeholders.

However, in a concluding section sub-headed "Next Steps," the government detailed its determination to forge ahead with this aspect of its governance reform agenda as quickly as possible. The brief states:

11(e) Freedom of Expression—the Bill for the setting up of the Media Council will be presented to Parliament as soon as the on-going consultation with stakeholders are completed.

In his opening remarks to donor countries at the pre-Consultative meeting in London on April 25, Finance and Economic Development Minister Penza restated the government's withdrawal of the draft of the Media Council Bill in order to allow for further debate.<sup>80</sup>

There is little doubt that the bill was withdrawn because of both domestic and international pressure. Within Zambia's borders, the bill served as a rallying point for civil society and focused attention on the need for the continued involvement of the international community. After the journalists' demonstration, Robby Makayi, chairperson of the Media Liaison Committee, a committee formed to protest the bill, touched on the need for the international community to play an ongoing role in Zambia: "We will make sure that the issue is on the agenda of the Consultative Group meeting. It should be realized that this is an issue of good governance. . . The government should not accuse the media of denting their image because they are doing so themselves. They have made a lot of bad laws, and this is one of them."<sup>81</sup> Several ambassadors had raised the matter with the government, and it is apparent that the timing of the consultative meeting was one of the factors that helped force the government's hand. But it remains to be seen, however, in the absence of pressure, if the bill will be dropped or if it will reemerge in another form.<sup>82</sup>

In his closing remarks at the pre-Consultative meeting in London on April 25, Penza made a claim that the Government of Zambia had neither previously asserted nor subsequently mentioned: speaking before donor nations, Penza said that Zambia would welcome it "if the media were to develop themselves an institutional framework for self-regulation. Under no circumstance would Government regulate the media itself."<sup>83</sup>

---

<sup>80</sup>Government of the Republic of Zambia, *Report of the Proceedings of the Meeting with Donors, Held in London on 25th April, 1997* (Lusaka: Government of the Republic of Zambia, May 9, 1997) pp. 4-5.

<sup>81</sup>*The Post* (Lusaka), April 10, 1997.

<sup>82</sup>It is not unknown for controversial bills to be withdrawn and then resubmitted to parliament and then rushed through at short notice. The Land Act Bill was first introduced as Bill No. 43 on August 23, 1994 and had its second reading on August 25, but then was deferred. It was re-introduced as Bill No. 32 on August 10, 1995, received its second reading on August 11, and went before committee on August 15. It was enacted into law by President Chiluba on September 6, 1995.

<sup>83</sup>Government of the Republic of Zambia, *Report of the Proceedings of the Meeting with Donors, Held in London on 25th April, 1997* (Lusaka: Government of the Republic of Zambia, May 9, 1997) p. 27.

At the Independent Media Council meeting on May 9, Justice Florence Mumba was elected chairperson of ZIMA. After being elected, Justice Mumba said that she believed it to be a good thing that the independent media has led the way in forming a self-regulatory body for its journalists: "The onus is now on the Council to instill confidence in the public by the decisions it will make."<sup>84</sup>

---

<sup>84</sup>*The Post* (Lusaka), May 13, 1997.

The independent council's code of conduct has not yet been finalized but its stated aim is to work something like the British Press Complaints Committee, a self-regulatory body that is not state imposed. The council's decisions will not be binding and will only apply to those concerned on a voluntary basis.<sup>85</sup>

The conflict was of state regulation versus self-regulation conflict. Not surprisingly, all media organizations opposed the government plan, calling it an attempt to curtail press freedom through a statutory censorship council. The Independent Media Council, in contrast, was represented by them as providing a voluntary and self-regulatory body that would work to ensure that the press acted responsibly and was free of government involvement.

#### IV. HARASSMENT OF GOVERNMENT CRITICS AND INDEPENDENT VOICES

The MMD-government's human rights record on the rights to freedom of assembly and association is in stark contrast to its professed commitment to uphold these rights.<sup>86</sup> President Chiluba's background makes this particularly

---

<sup>85</sup>Reporters Sans Frontières, *Zambia. A hard-hitting press subjected to harassment: investigative mission to Lusaka, May 1997* (Paris: Reporters Sans Frontières, 1997) pp.16-17.

<sup>86</sup>The right to freedom of association is enshrined in Article 22 (1) of the ICCPR which provides:

Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

The permissible limits on the right to association appear in Article 22 (2):

No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others

.....

With respect to the right to peaceful assembly, Article 21 of the ICCPR provides:

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than



ironic, since, as a trade unionist, he was fervently opposed to one-party rule. The president was also detained for the non-violent expression of his views when Kenneth Kaunda served as president. The MMD government has not escaped the past. Its practice of dealing harshly with critics and independent voices is cause for great concern.

## Background

---

those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

The right of peaceful assembly in Zambia is guaranteed in the Bill of Rights and regulated by the Public Order Act. Starting in 1991, the Public Order Act was re-activated in the context of a multiparty democracy. However, many organizations—the opposition, NGOs, and civil society groups—found that provisions of the act were routinely used against them. Government permits to hold meetings were difficult to obtain or were revoked at short notice. In the latter-half of 1995 and throughout 1996, numerous groups were denied permission to meet. In order to further control public gatherings, parliament enacted an amendment to the act (Chapter 4 enacted on March 3, 1996) to require fourteen days prior notice to request police permission to hold meetings, processions, or demonstrations. No set number of days were previously required. It also authorized police to turn down an application to assemble up to five days before the date of the public meeting.<sup>87</sup> The amendment was enacted after the Supreme Court had declared the Public Order Act unconstitutional on the grounds that the provisions requiring people to get police permits to hold meetings or assemblies was a contravention of the Zambian people's constitutional rights.<sup>88</sup> Under pressure President Chiluba shortened the notice needed for the police to approve a permit from fourteen to seven days. However, little in practice has changed. In the run-up to the election, several opposition rallies and a march were refused permission.<sup>89</sup>

Harassment of the opposition intensified in the months leading up to the elections. Opposition leaders were routinely called into police stations to be questioned about public statements. Eight senior UNIP leaders, including UNIP Vice-President Senior Chief Inyambo Yeta, were detained from June to November 1996 on trumped-up charges of treason and murder in connection with bomb blasts that were allegedly committed by the clandestine “Black Mamba” group. Two of the defendants were released in early September, and by September 27, the state had dropped its cases against the six who were still being detained. There was little evidence to suggest that the UNIP members were involved in any violent conspiracy against the state. Instead, it appeared that they were detained solely because of their political affiliation and to paralyze UNIP in the run-up to general elections. This appeared to have been confirmed on November 1 when the six were acquitted of treason and murder charges and released. The court’s ruling was that there was “no case to answer.” Thus, the accused were not put on their defense.

The NGO sector was particularly hard-hit as the government embarked on a campaign to discredit local NGOs, specifically which were to monitor the elections. The government-owned newspapers ran articles that reported that two governments, Japan and Sweden, had offered huge sums of money as rewards to local election monitors to declare the polls unfree and unfair. The government took the opportunity to warn the NGOs that they could be regulated “to check those suspected to be engaged in nefarious activities.”<sup>90</sup>

### **After the Elections**

The days after the November 18 elections and before the results were tallied were turbulent and emotional. The seven opposition parties which boycotted the election charged that the results had been rigged and refused to accept

---

<sup>87</sup>See Human Rights Watch/Africa November 1996 Zambia report, op cit., pp. 27-34.

<sup>88</sup>Supreme Court of Zambia, Judgement on civil jurisdiction between Christine Mulundika and seven others (appellants), January 10, 1996.

<sup>89</sup>Ibid. pp. 27-28.

<sup>90</sup>*The Times of Zambia* (Lusaka), November 12, 1996.

them. They launched a civil disobedience campaign that was underway by the end of the month and filed a petition with the Supreme Court challenging the results and President Chiluba's constitutional claim to office. Opposition parties that had participated in the election but suffered severe electoral defeat joined ranks with those which had been involved in the boycott, pledging their allegiance to the Interparty Alliance.

At the inauguration for his second (and, under the 1991 constitution, last) term in office on November 21, 1996, President Chiluba set the stage for the period of intimidation and harassment that would follow. Claiming victory in an election marred by the opposition boycott and a low turnout, he dismissed charges from the opposition, NGOs and the international community that his landslide victory was rigged. "I will not talk about whether the elections were free and fair. We all know they were transparent," he said.<sup>91</sup> His first salvo was to issue a series of warnings to his external and internal critics, advising them that his security forces were prepared for any political unrest. "The army is. . . alert, and very alert, ready and willing to reinforce the police and air force. They are not only in the rearguard, they are very much in the forefront to ensure that peace is maintained in the nation, on the borders and everywhere."<sup>92</sup> He warned Zambia's neighbors that his new government would not tolerate interference, and friendship would be based on mutual respect. He castigated NGOs for what he termed their anti-government stance, cautioning them that he would not tolerate a climate in which NGOs appeared to be "instructing" the authorities and overstepping their boundaries. "Let us have genuine and indigenous NGOs. We love freedom of expression and freedom of speech and we will promote NGOs but they have to be genuine in their operations," *The Zambia Daily Mail* reported a government spokesman as saying.<sup>93</sup>

President Chiluba also reiterated the need for opening the lines of communication with groups who opposed his political party: "Without dialogue democracy is at stake and it cannot succeed. I invite my colleagues in all parties to come and dialogue with me." Improving communication, however, did not mean he would tolerate the mounting calls for a civil disobedience campaign. He warned "anarchists" that their efforts would be swiftly thwarted: "My resolve is to be firm but fair. I am in control and my government has a duty to maintain law and order."<sup>94</sup>

Open dialogue was not the route that President Chiluba followed as groups began voicing their lack of confidence in the election results. Within days, Chiluba's government issued warnings and confronted NGOs and opposition organizations that were challenging the validity of the November 18 election results. Large numbers of heavily-armed police were dispatched to counter what the state media portrayed as an offensive attack on the state, resulting in arrests and criminal charges. The pattern of using the police and the courts to intimidate and repress political opponents continued.

NGOs took the brunt of the response to the "anti-patriotic" fervor. The intimidation worsened with charges that the NGOs had received foreign funding without the president's consent. The government threatened to pass anti-NGO legislation and characterized them as "political troublemakers." The president's promise to hold more conversations with the opposition appeared more and more feeble as the government began a round of harassment, forcing some opposition leaders into hiding.

---

<sup>91</sup>*Reuter* (Lusaka), November 21, 1996.

<sup>92</sup>*Reuter*, *ibid.*

<sup>93</sup>*The Zambia Daily Mail* (Lusaka), November 22, 1996. The distinction made between "indigenous" and "non-indigenous" NGOs, by which was meant those that received foreign funding and those that did not, furthered the dispute with donor countries which even prior to the election had been accused of aiding local election monitoring groups. See section VI. The International Response.

<sup>94</sup>*The Zambia Daily Mail* (Lusaka), November 22, 1996.

In an editorial entitled "Repression" in the November 25 edition of *The Post*, the editorial writers described President Chiluba's attack on the NGO sector as an attempt to crush political dissent. By classifying NGOs as either indigenous or non-indigenous, he was attempting to discredit the work of those who were challenging his policies and actions and keep a tighter rein on freedom of expression and association. The editorial went on to describe the means of harassing independent and opposition voices—the use of police, courts, public prosecution and "reckless issuance of search warrants to the police by magistrates"—as political abuse of the judicial process. It also observed that while President Chiluba was highly critical of foreign-funded NGOs, neither the government nor his political party could survive without financial support from the international community.

### **The MMD Government and the Opposition: Theory vs. Practice**

In the briefing paper it prepared for a pre-Consultative Group meeting with the donor community on April 25, the Zambian government portrayed itself as having made considerable progress towards democratization and implementing good governance initiatives. The key measures that supported this claim were the following:<sup>95</sup>

7a] Dialogue with the Opposition—The President held one-on-one consultations with practically all leaders of the opposition parties and took on board many of the concerns expressed.

In his speech at the pre-Consultative meeting in London on April 25, Finance and Economic Minister Penza reiterated that “the President remains committed to the dialogue with Opposition Parties and has invited several of them to exchange views with him on matters of national interest.”<sup>96</sup>

In practice, however, the government did not enter into dialogue with the opposition, hold consultations or address any of the concerns expressed by the opposition. The opposition sued President Chiluba for presiding over a flawed electoral process and challenged his constitutional right to office based on the nationality provisions that he had backed in the 1996 Constitutional Amendment Act. It was also debatable how much common ground exists between the government and the opposition, given the depth of disagreement over the introduction of the 1996 constitutional amendment. The opposition’s oft-stated position is that fresh elections need to be held.

On June 9, 1997, the International Institute for Democracy and Electoral Assistance (IDEA) held a roundtable in Stromsborg, Stockholm, Sweden, to facilitate discussion between the MMD and opposition parties. The roundtable aimed to “systematically approach the short, medium, and longer-term strategies for building sustainable democracy in

---

<sup>95</sup>Government of the Republic of Zambia, *Zambia: Brief on the Government’s Governance and Economic Reform Programme* (Lusaka: Government of the Republic of Zambia, April 1997) p. 2.

<sup>96</sup>Government of the Republic of Zambia, *Report of the Proceedings of the Meeting with Donors, Held in London on 25th April, 1997* (Lusaka: Government of the Republic of Zambia, May 9, 1997) p. 5.

Zambia.”<sup>97</sup> Present at the roundtable were representatives of the MMD, UNIP, Agenda for Zambia and the National Party as well as observers from the international community.<sup>98</sup> These parties agreed to the following:<sup>99</sup>

1. The Secretaries General of all political parties in Zambia will meet within twenty-one days after the Stromborg statement has been adopted to initiate an all-party meeting to establish the agenda and programme of action addressing sustainable democracy programme;
2. the ruling party in Government, the MMD, will initiate the first meeting;
3. facilitator(s) from international IDEA will be present in the meetings and facilitate the process.

Because of the dangerously sour ambience that surrounds relations between the Zambian government and the political opposition, IDEA’s timing could not be better. But because of the government’s decidedly unilateral and exclusivist approach to decision-making, shown particularly in the run-up to the elections, and because of the roadblocks that could emerge because of the government’s intransigence and intimidatory methods towards the major opposition political parties, the IDEA project will be difficult to pull off.

---

<sup>97</sup>International IDEA, *The Stromborg Statement on building sustainable democracy in Zambia*, Zambia Roundtable, Stockholm, Sweden, June 9-10, 1997.

<sup>98</sup>Present at the IDEA roundtable were: Representing the MMD: Minister of Finance and Economic Development, R.D.S. Penza; Minister of Tourism, A.K. Mwanamwamba; Minister of Information and Broadcasting Services and Chief Government, S.D. Mpamba; Deputy National Secretary, P. Tembo; Economic and Personal Assistant to the Minister of Finance and Economic Development, O. Chiboola. Representing Agenda for Zambia: President of the Agenda for Zambia, A.M. Lewanika. Representing the National Party: Secretary General of the National Party, R.L. Sondashi. Representing UNIP: Secretary General, S.S. Zulu; Chairman for Economy and Finance, R. Chongo; Press and Public Relations Special Assistant to Dr. Kaunda, M. Lungu. International observers present: Sweden, U.S.A, the World Bank, Japan, Malawi, the Netherlands, Norway, Denmark, E.U., U.K., Finland, Germany, and UNDP. In addition, facilitators from IDEA were present.

<sup>99</sup>*The Stromborg Statement on building sustainable democracy in Zambia*, Zambia Roundtable, Stockholm, Sweden, June 9-10, 1997.

On June 22, twelve opposition parties met and issued a statement explaining that they were willing to resume dialogue with the MMD government, provided that talks focus on repealing the 1996 constitution.<sup>100</sup> The twelve opposition parties formed a coalition, called the National Patriotic Coalition, and met with the MMD on June 24 to prepare ground for a series of inter-party talks by presenting collective positions on various contentious issues. At this meeting, the opposition accused the MMD of trying to facilitate dialogue merely to impress the donor communities.<sup>101</sup> However, IDEA representative B.T. Costantinos met with the National Patriotic Coalition in Lusaka on June 25 and tried to assure the opposition that despite having been invited to Zambia by the government, the timing of the IDEA meetings has nothing to do with the upcoming Consultative Group meeting in Paris: "I must dispel fears that this is being stage-managed for the Consultative Group."<sup>102</sup>

The pre-Consultative Group briefing paper had also pledged that elections would be guaranteed by an independent Electoral Commission:

[b] Electoral Commission—to ensure a fair and free [sic] election process, the Government established a permanent and independent electoral commission comprising well regarded and highly respected Zambians (High Court judges, etc.) to manage the elections.

At the pre-Consultative meeting in London on April 5, Penza reaffirmed that an effective and independent Electoral Commission would provide for free and fair elections.<sup>103</sup>

Given that the playing field is not level and that not all Zambians may contest elections on the basis of national origin, it is debatable if free and fair elections could be held in the present situation, according to a report issued by ZIMT. The recent February 20 Itezi-Tezhi parliamentary byelection confirms that many of the irregularities that occurred in the November election were repeated.<sup>104</sup>

The Electoral Commission, touted in the briefing paper and subsequently lauded by Minister of Finance and Economic Development Penza at the April 25 London meeting, remains gravely handicapped by a lack of credibility and universal acceptance. Absent a major restructuring effort designed to bring about representation in the commission

---

<sup>100</sup>*The Times of Zambia* (Lusaka), May 23, 1997.

<sup>101</sup>*The Daily Mail* (Lusaka), May 25, 1997.

<sup>102</sup>*The Post* (Lusaka), May 26, 1997.

<sup>103</sup>*The Stromborg Statement on building sustainable democracy in Zambia*, Zambia Roundtable, Stockholm, Sweden, June 9-10, 1997.

<sup>104</sup>See, Zambia Independent Monitoring Team, Itezi Tezhi Parliamentary By-Election (20-02-97) Report, ZIMT, March 3, 1997.

by broadly respected, neutral personalities, or by multi-party representation, its believability and popular endorsement will be difficult to achieve.

The briefing paper's references to campaigning, in turn, made a virtue out of having first extended then reduced the period within which meetings required permits.

[c] Public Order Act—To protect freedom of assembly and to allow opposition parties to campaign freely, the Government amended the Public Order Act by reducing to one half the time required as notice prior to holding public meetings. The amendment also removed the requirement for obtaining police permits prior to addressing public gatherings. This amendment was welcomed by all opposition parties as a major step in terms of leveling the playing field.

While the Public Order Act was amended to cut the time required to give notice of a public meeting from fourteen days to seven, the requirement of requesting (and receiving) police permission has not been abolished. Since the election, the opposition has held rallies only after obtaining permission, which in some cases has been denied. The opposition did not welcome this amendment as a "major step." Freedom of association and assembly remain curtailed in post 1996-election Zambia.

### **Harassment of the Opposition**

On November 22, four days after the elections, the Zambia Democratic Congress (ZDC), an opposition party which had participated in the election and suffered heavy electoral defeat, announced that it would file a petition in Supreme Court against President Chiluba. Derrick Chitala, ZDC general secretary, said: "We want to petition against all the malpractices that have been committed during the elections."<sup>105</sup> The ZDC also announced that it had mended fences with UNIP and the Interparty Alliance.

Four days later on November 26, *The Post* reported that the president of the ZDC, Dean Mung'omba, and two of his party colleagues had gone underground out of fear for their lives. ZDC General Secretary Derrick Chitala said that the ZDC had received information warning them that the police were going to arrest Mung'omba after he called for the formation of an interim government. Chitala said that Mung'omba's life was threatened because of the pattern of events that had taken place since the elections. "There is a general terror being unleashed going by police harassment of NGOs," he said.<sup>106</sup> Chitala also said that police were denying the party permits to hold peaceful processions to protest the elections.

At the same time, the Opposition Alliance chairman, Roger Chongwe, who is also chairman of the Liberal Progressive Front (LPF), also started being harassed after he wrote a letter to President Nelson Mandela, in his capacity as chairman of the Southern African Development Community (SADC). The letter warned leaders in the region of a possible military takeover in Zambia if the political impasse was not addressed. Chongwe described the elections as flawed and called on SADC to impose sanctions on Zambia. The contents of the letter, dated November 21, appeared in an article in *The Post* of November 27, written by Masautso Phiri.

---

<sup>105</sup>*The Post* (Lusaka), November 22, 1996.

<sup>106</sup>*The Post* (Lusaka), November 27, 1996.



A day later, on November 28, two plainclothes police went to Chongwe's home looking for him.<sup>107</sup> The next day, police summoned Chongwe to Lusaka Central Police Station to be interviewed in connection with *The Post* article. Chongwe told Human Rights Watch he refused, saying: "To express an opinion which government does not agree with is not an offence." That weekend, the police visited his home twice more. The second visit was by fifteen police and paramilitary officers. In a dawn raid the next day, three armed paramilitary and two plainclothes police scaled the wall surrounding Chongwe's property and entered his home with a search warrant that authorized them to look for a "subversive letter". Chongwe was not home. Further searches at his home and office for "seditious materials" followed in subsequent days, but because they found nothing, police could not arrest him. Former president Kenneth Kaunda was present during the search of Chongwe's office. On December 6, Chongwe said police tried to force him to sign a "warn and caution statement" for an offence related to causing alarm to the nation. But in an interview with *The Post* of December 10, Chongwe said that he had refused to be 'cautioned' as an individual since the letter to SADC had been signed by all leaders of the Opposition Alliance. Chongwe described the police action as selective harassment. "We have made it clear that if police arrest one member of the alliance then they have to arrest everyone." At month's end, the police said that they had confiscated the SADC letter and that Chongwe would be charged with sedition. UNIP president Kenneth Kaunda, a co-author of the letter, was not questioned, nor was his home or office searched by police.

On November 30, the civil disobedience campaign was launched with calls for a public revolt against the MMD.

On December 5, a senior and founding member of the opposition UNIP, Mainza Chona, was summoned by police to appear before a magistrate because of a statement he had made three weeks earlier (November 14) about a bomb being planted in the home of the UNIP president Kenneth Kaunda. The summons accused him of making statements intended to cause public alarm, contrary to section 67 of the Penal Code. This followed an earlier attempt by the police to arrest Chona at his law offices. The December 11 *Post* reported that Chona was charged with publication of false news with intent to cause fear and alarm to the public and that he had made the statement knowing or having reason to believe that such statement was false.

On December 12, police summoned ZDC President, Dean Mung'omba, to Central Police Station for "interviews." He was told to report to the divisional criminal investigations officer, but did not.<sup>108</sup>

On December 19, John Kampengele, a resident of Lusaka, was detained on suspicion of having helped expose double voting in the November 18 elections. "I still do not understand why I was picked up and detained like that as if I am a common criminal," he said.<sup>109</sup>

On January 20, Gerald Mutti was fired as managing director of the Zambia Telecommunications Company, Zamtel. It did not appear coincidental that his wife is Nellie Mutti, a prominent lawyer on the presidential petition who had also defended the treason trialists and *The Chronicle* cases. The January 17 issue of *The Post* cited State House sources who reported that Mutti was about to be dismissed "in a move engineered by President Chiluba." A special

---

<sup>107</sup>Human Rights Watch/Africa interview with Roger Chongwe, Lusaka, February 13, 1997. The response that follows is based on this interview and press reports.

<sup>108</sup>*The Post* (Lusaka), December 13, 1996.

<sup>109</sup>*The Post* (Lusaka), December 19, 1996.

board meeting of the state-owned company had been called, and a “loyal majority” had been identified. In an interview with Human Rights Watch/Africa in Lusaka on February 19, Nellie Mutti spoke of her concern that her husband had lost his job because of her high-profile legal defense work:

It is difficult defending people that the state sees as opposition. You worry about your family and you can lose clients who in turn worry about how this might affect their relationship with government. For example, in the run up to the Treason Trial last year, I was phoned in May by Kalima, the principal registrar of the Industrial Relations Court [now Director of Public Prosecutions] and warned that if I joined the defense team, my husband Gerald, then managing director of ZAMTEL, might find problems with his job. This worried me for a while, I have to think of my husband’s career also. But by June it came clearer that Gerald’s problems were linked more to his attempts to professionalize Zamtel and his regional origin. The president’s unprecedented attack on him at Kitwe trade fair in June last year strengthened my resolve to keep my independence and when Gerald’s contract was terminated on January 20, it came as no surprise to either of us.

But it is a tough job being independent and I am sure that representing people that are seen by government to oppose it also loses us clients. The pulling out of the Lusaka Cooperative Union from us recently could be such an example. Being independent has a high price to it in Zambia.<sup>110</sup>

On February 5, police forcibly broke up a UNIP demonstration in Ndola that had been held without police permission as part of the organization's post-election civil disobedience campaign. The crowd, led by the UNIP party chairman, retired general Malimba Masheke, ignored calls by police to disperse. Police reacted to this by firing tear gas canisters into the crowd and beating protesters with batons and quirts. Three demonstrators were arrested. The previous week, Home Affairs Minister Sampa had ordered police to be “very brutal” when dealing with “arrogant members of the public” who disobeyed their instructions. An order for General Masheke’s arrest was issued by a senior police officer, but UNIP officials whisked him away.<sup>111</sup>

Human Rights Watch/Africa interviewed Pickson Chitambala, UNIP’s vice-secretary of public information, about the demonstration, which was barely mentioned in the state media.

The usual notice was given to the police in writing. Police said go ahead. Usually the police say don’t go ahead. We provided the names of the marshals for the march and the police kept quiet until Tuesday February 4th. They then said that they were canceling the meeting because of Zaire/Zambia tensions and because the council was worried about an outbreak of cholera. They would not even allow the meeting to take place in our offices. Since people were coming distances to the meeting in Ndola we decided to go ahead, the notice of the canceling of the meeting being too short.

At 10 p.m. on February 4, the leadership arrived from Lusaka. We went into the UNIP office. Women leaders decided to sleep in the office that night and the police again warned them that the rally should not take place. Then between 4 and 5 a.m. on February 5 the police raided our office and the women scattered. Our office had been raided and police encircled Ndola City Council with paramilitary police.

We went straight to the office when we heard about the raid. The police tried to block us but we asked them by what law they were trying to stop us getting access to our property. General Masheke

---

<sup>110</sup>Human Rights Watch/Africa interview with Nelli Mutti, Lusaka, February 19, 1997.

<sup>111</sup>*The Post* (Lusaka), February 6, 1997, “UNIP demo foiled.”

addressed a crowd outside the office although the man in charge, Mr. Kantongo of Ndola Police, warned him that he might be arrested. During the raid of our office the police took away all our mielie meal, meat, valuables and other food to the police station. We have not seen these again. The rally did not take place, but some came to the office and heard Masheke speak.<sup>112</sup>

---

<sup>112</sup>Human Rights Watch/Africa interview with Pickson Chitambala, Lusaka, February 15, 1997.

Human Rights Watch/Africa obtained the correspondence between UNIP and the Ndola authorities and police. On January 28, UNIP wrote to the Ndola town clerk requesting permission to use the major roads in the city center and promised that UNIP would provide tight security to control demonstrators.<sup>113</sup> At the same time, UNIP wrote to the district commanding officer of the Zambia Police stating that “the purpose of the demonstration will be to express our views and feelings on the current political developments taking place in the Nation.”<sup>114</sup>

On January 30, the Commanding Officer of the Ndola District Headquarters of the Zambia Police refused the group permission, stating that UNIP had not “come to discuss it with us as should have been the case.” It continued: “However, I am sorry to inform you that due to the pressure of work on our part, it will not be possible for the Police to adequately police your peaceful demonstration. . . because of other duties which will be undertaken by us on that same day.”<sup>115</sup> On January 31, the Officer Commanding sent a handwritten note to the UNIP district chairman, asking him to come and see him.<sup>116</sup>

On February 3, UNIP sent the police a list of the names of marshals who would “maintain law and order during the peaceful procession,” as well as the names of the convener and speakers which included General Masheke.<sup>117</sup> On February 4, the Zambia Police responded, saying that they regretted to inform UNIP “that due to the current security situation that is prevailing in the District we are unable to allow you to go ahead.”<sup>118</sup> The deputy commissioner of police also wrote UNIP refusing permission.<sup>119</sup> The same day, February 4, the town clerk wrote UNIP stating: “Owing to the

---

<sup>113</sup>Copy of letter by P. Simukwai to Town Clerk, Ndola, dated January 28, 1997.

<sup>114</sup>Copy of letter by P. Simukwai to The District Commanding Officer, Zambia Police, Ndola, dated January 28, 1997.

<sup>115</sup>Copy of letter by R.S. Kantango, Officer Commanding, Zambia Police, Ndola District Headquarters, dated January 30, 1997, and addressed to district UNIP chairman.

<sup>116</sup>Copy of hand-written note by Officer Commanding, Zambia Police, Ndola, sent to UNIP District chairman Mr. Simukwai, dated January 31, 1997.

<sup>117</sup>List of marshals sent to the Commanding Officer, Zambia Police, Ndola on February 3, 1997.

<sup>118</sup>Letter by R.S. Kantongo, Officer Commanding, Zambia Police, Ndola, to UNIP district Party chairman, dated February 4, 1997.

<sup>119</sup>Letter by Deputy Commissioner of Police Ndola, A. Nakai to P Simukwai, UNIP district chairman, dated February 4,

inadequacy by the Zambia Police to provide security and furthermore the prevalence of cholera outbreaks in the city," consent to the demonstration could not be granted.<sup>120</sup>

Former President Kenneth Kaunda, in an interview with Human Rights Watch/Africa in Lusaka on February 16, discussed the state's tactics:

Remmy Mushota and Patrick Katyoka are suing me for illegally ruling Zambia between 1964 and 1991. My chairman Malimba Masheke is also being sued. Why it is in the Ndola High Court I don't know, we all work and live in the Lusaka area. The police presence is also excessive. We are an opposition party, they are doing this to try and frighten our supporters.

In an interview with UNIP central committee member Rupiah Banda, he told Human Rights Watch/Africa that other forms of intimidation were used in the Eastern Province.

---

1997.

<sup>120</sup>Letter by E.T. Chenda, Ndola town clerk to UNIP district party chairman, dated February 4, 1997.

There are MMD paramilitary militias in Eastern Province these days. The reason why they are there is to intimidate our people. Have you also noticed that the houses of the judiciary have increased security around them. Sometimes ten paramilitaries, this is not just for protection, but to intimidate.<sup>121</sup>

The February 26 issues of *The Post* reported intensified surveillance of the UNIP leadership. UNIP Secretary General Sebastian Zulu said that state security personnel had been stalking UNIP's legal affairs committee chairperson, Mwangala Zaloumis, who is also a member of the legal team representing the opposition in the presidential petition. She was also on the legal team that defended the UNIP "Black Mamba" treason trialists. According to Zaloumis, strange people had been calling at her home in Lusaka's Rome township, and on February 24, a car trailed her home from an opposition alliance meeting at the Liberal Progressive Front (LPF) offices. Each evening there were "broken down cars" on her road, but as she passed them, they drove off. Zulu also reported that a helicopter had hovered over his house, its occupants craning their necks to look into his house.

In another incident, the eighty-year-old aunt of Betty Kaunda—former President Kenneth Kaunda's wife—was reportedly detained and kept in a cell with a corpse for two days.<sup>122</sup> The police searched her house without a warrant, ostensibly looking for weapons. Harassment of family members of political figures is not new in Zambia; but this incident demonstrates the hardly subtle targeting of family members of high profile leaders.

Human Rights Watch/Africa interviewed Betty Kaunda's aunt, Vida Ngoma, who lives in Chilenje South, Lusaka.<sup>123</sup>

A stranger came to the house and asked if this was Mr. Mwali's house very early in the morning on February 12. I replied that this was not Mr. Mwali's home and he went away. A little while later some people in uniforms came back in two vehicles. Three police entered the house and said they were searching for guns. They had no paper to say they could do this. Other police stayed outside.

Then the police took me to the Zambia Police Force (ZPF) headquarters in Lusaka and from there to Kawata police station. I and a friend, Mary Zulu, were then kept two days in a small cell with a body of a dead man in it. There were also two other men locked up with us. During these times we were given no food, nothing to drink.

It was only when UNIP heard about our plight that we were taken to court on February 14 and charged with unlawful possession of voters cards. Bail has been set at 500,000 kwacha [U.S. \$386.39], but we don't have the money.

I'm eighty years old and can hardly walk. How can I run away? Why they do this I don't know. I'm not involved in politics. It must be that members of my family have been in the past. That's why this happened.

### **Harassment of Witnesses in the Presidential Petition**

---

<sup>121</sup>Human Rights Watch/Africa interview with Rupiah Banda, Lusaka, February 15, 1997.

<sup>122</sup>Human Rights Watch/Africa interview with Vida Ngoma, Lusaka, February 17, 1997.

<sup>123</sup>Ibid.

Starting in early 1997, the presidential petition was the main focus of Zambian political life. The petition, heard in the Supreme Court and brought by the opposition against President Chiluba, challenged the elections and President Chiluba's constitutional right to be president on the basis that his father was not Zambian. The petitioners brought forward more than sixty witnesses to support the allegation that the president's father was from Zaire or Mozambique and that Chiluba himself was born in Zaire. The Constitutional Amendment Act of 1996, engineered by President Chiluba to keep UNIP president Kaunda and others from contesting the presidency, had stated that a person running for office had to have been born in Zambia and be of Zambian parents. The opposition's objective was clearly to hoist President Chiluba by his own petard.

Kenneth Kaunda, who had been excluded from running for president because of the amendment, supported UNIP's decision to pursue the legitimacy of the MMD government through the petition: "We have taken a bold step by going to court and depending on the outcome of this case, Mr. Chiluba may no longer be eligible to govern this country."<sup>124</sup>

One of the witnesses in the nationality case, who was billed as the star witness, was Luka Kafupi Chabala, a Mozambican miner who was presented as the president's long-lost (but hitherto unacknowledged) biological father. Known as Kafupi, which means short in Swahili and a number of other Zambian languages, Chabala bears a close physical resemblance to the president, who is also a man of short stature. Chabala testified that the president was his son, born out of wedlock, after he had had an affair with the president's mother, who was married at the time. He said the mother's family had not wanted to acknowledge Chabala as the father, as he was "poor, short and unemployed."<sup>125</sup>

Lawyers for the petition alleged that their witnesses (on both the nationality question and election irregularities) were being harassed and intimidated. To protect them, the identity of witnesses were withheld until a day or two before their court appearances. In March, Chabala went into hiding. Another witness who had probed the president's roots, John Simusokwe, also went underground. The state-run *Daily Mail* reported that Chabala "was abducted by an opposition party from Masangu village in Luapula province in February" and that his son, Jack Chabala, said his 76-year old father was abducted with the intention to "force him" to testify against President Chiluba in the petition."<sup>126</sup>

Witnesses called concerning election irregularities were clearly subject to intimidation. Pressure was put so they would not testify and some of those who testified were arrested: a warning signal to others still scheduled to appear. Theresa Mulenga Kalo, the nineteenth witness to be called, was arrested and held for several days after testifying that she had voted twice in the November election, "out of loyalty" to the MMD, who had promised her financial reward that she never received. In a letter to the inspector general of police, one of the petition lawyers, Sachika Sitwala, said that Kalo was being threatened by security officers, which influenced all of the witnesses: "The effect of this episode is that your police are warning all those witnesses who are ready to testify in this petition only to do so if they are ready to sleep in cells."<sup>127</sup>

---

<sup>124</sup>*The Post* (Lusaka), March 11, 1997.

<sup>125</sup>*The Post* (Lusaka), March 24, 1997.

<sup>126</sup>*The Zambia Daily Mail*, March 12, 1997.

<sup>127</sup>*The Post* (Lusaka), April 23, 1997, "Petition witness in danger."

Four days after Kalo testified on April 3, police arrived at the house where she was staying as a guest with a search warrant, issued by a Lusaka magistrate, to look for "illegal documents, forged blue books, National Registration Cards, invoice books."<sup>128</sup> In her affidavit, Kalo said that the police officer, Detective Sergeant Mwangala, had lied to obtain the search warrant, which was solely intended to harass Kalo and her hostess. Kalo stated that the search demonstrated the "malice with which police are dealing with me as a witness in this petition."<sup>129</sup> Kalo was arrested on April 9 and charged with unlawful possession of more than one national registration card, and held until her lawyers got her released on bail of K60,000 (U.S.\$46.40) on April 17. She has pleaded not guilty to these charges. UNIP Vice President Senior Chief Inyambo Yeta described Kalo's arrest as official harassment and intimidation, reminding the police that their job was to serve the nation, not the MMD.<sup>130</sup>

Since the Kalo incident, there are reports of three other witnesses disappearing, apparently out of fear about the possibility of being arrested. Professor Patrick Mvunga, a member of the petitioner's team, told the court that three witnesses who were expected to come from Chipata and Lusaka's Mandevu compound had vanished, and eight town clerks who had been subpoenaed were reluctant to give evidence. "Right now they are afraid and their apprehensions are understandable in a fragile environment like ours," Mvunga told the court.<sup>131</sup> The witnesses were slated to testify about their participation in a "ghost voting" exercise in Kabwe's Bwacha constituency.<sup>132</sup>

### **The MMD Government and NGOs: Theory vs. Practice**

The brief distributed by the government prior to the pre-Consultative Group meeting in London in April claimed that the MMD government's relationship with NGOs had made "substantial and irreversible progress." It reads:<sup>133</sup>

10e] Government's relationship with the NGO Community—The Government recognizes the role of civil society in economic development, poverty alleviation and enhancement of the democratic

---

<sup>128</sup>Republic of Zambia, Search Warrant for Stolen Goods, issued by the Subordinate Court of 1st Class, Lusaka district, dated April 7, 1997.

<sup>129</sup>Affidavit sworn by Theresa Mulenga Kalo, April 11, 1997, Lusaka.

<sup>130</sup>*The Post*, April 23, 1997.

<sup>131</sup>*The Zambia Daily Mail* (Lusaka), April 25, 1997, "Petition Witness 'Chicken Out'."

<sup>132</sup>*The Post* (Lusaka), April 30, 1997.

<sup>133</sup>Government of the Republic of Zambia, *Zambia: Brief on the Government's Governance and Economic Reform Programme* (Lusaka: Government of the Republic of Zambia, April 1997) p. 4.



process. It recognizes and appreciates the comparative advantages of the NGO community for service delivery in some vital fields. To facilitate close collaboration, Government officials working as a joint committee with NGO representatives have developed a collaboration policy framework. The policy was developed through extensive consultations with most NGOs, government ministries as well as the donor community. The policy framework has been approved by the Cabinet. Both the NGOs and the Government are happy and highly optimistic about this development and its potential for enhanced collaboration between the two key stakeholders.

In the section on next steps, the government claims it is “determined to forge ahead with its governance reform agenda as quickly as possible”:

11d] NGOs—The final version of the policy framework is under review by Cabinet. The next stage will be to identify concrete projects and activities where Government, NGOs and other stakeholders can work jointly.

In his speech before donor countries at the pre-Consultative meeting in London on April 25, Minister of Finance and Economic Development Penza echoed the government’s consideration of “the particular advantages of the NGO community for service delivery in several vital fields.”<sup>134</sup>

The briefing and Minister Penza’s London speech provide prime examples of how the government adjusts its rhetoric to what it believes the donor community wants to hear, while missing the mark in action by a wide margin. Although the MMD government recognizes NGOs as key participants on paper, its statements on the role of NGOs also reveal its discomfort with the variety of roles that NGOs play. The briefing recognizes many possible NGO contributions—encouraging the expression of diversity of views and opinions; providing service delivery; fostering economic development; and alleviating poverty—but not the promotion of human rights or election monitoring elections, both of which are part of fostering the democratic process. The government presents NGOs as being part of a big close-knit family. In truth, the creation of a civil society—and the role of NGOs in nurturing it—has been subject to intense government hostility in Zambia.

The brief tacitly states that democracy in Zambia is still a “work in progress” and that “all stakeholders are still in a learning mode regarding rights and responsibilities under a democratic system.”<sup>135</sup> Although the government portrays NGOs as its partners, NGOs that have been involved in the arena of civil and political rights were deliberately excluded from the government’s “collaboration framework” meeting. When the government convened a meeting in January 1997 to develop an NGO policy, the only group invited was AFRONET, with less than a day’s notice. The government is keen to promote organizations that it views as non-threatening, but those that have criticized government policy and practice and tried to foster democracy by monitoring elections, investigating land issues and advocating for human rights have taken the brunt of government intolerance, with the government threatening to pass harsher laws to make it illegal for them to receive foreign funding without the president’s consent. Again, this exemplifies the government’s drive to control institutions, organizations or organs of civil society that are and should remain, by their nature, independent of the government.

### **Harassment of Civil Society and NGOs**

The NGOs that conducted independent monitoring of the elections have fallen victim to intensified harassment since the elections. In particular, the umbrella coalition of the Committee for a Clean Campaign (CCC), the Zambia Independent Monitoring Team (ZIMT), the Foundation for Democratic Progress (FODEP) and the Inter-Africa

---

<sup>134</sup>Government of the Republic of Zambia, *Report of the Proceedings of the Meeting with Donors, Held in London on 25th April, 1997* (Lusaka: Government of the Republic of Zambia, May 9, 1997) p. 6.

<sup>135</sup>Brief on the Government’s Governance and Economic Reform Programme, (1) (8) p.2.

Network for Human Rights and Development (AFRONET) took the brunt of state intolerance for expressing the view that the elections were not free or fair.

The government has continued to be suspicious of the national origins of NGOs, as part of their effort to undermine their critics. After receiving the credentials of the new ambassadors of Sweden, China and South Africa in late December 1997, President Chiluba accused several NGOs of serving foreign interests and warned that “non-indigenous” NGOs were potential sites of mercenary operations. He charged that Zambia had no indigenous NGOs. “Those who profess to be Zambian are pretending to be doing so. Those ones are conveyor belts of outside NGOs. They have no members and the decisions they make come from outside. If we allow them then we will be creating grounds for mercenary operations.”<sup>136</sup> He added that without immediate action, problems would face Zambia.<sup>137</sup>

---

<sup>136</sup>*The Post* (Lusaka), December 20, 1996.

<sup>137</sup>*The Zambia Daily Mail* (Lusaka), December 20, 1997, “Chiluba blasts secret agenda NGOs.”

On election day, *The Post* carried an article that reported that the Committee for a Clean Campaign (CCC)'s chairman, Mwanajiti, was being pursued and threatened by state security agencies that were displeased with his work at CCC. This alleged that an operative, posing as an academic from Mozambique, had offered to broker a dialogue between him and police officers who were interested in offering him protection. On other occasions, it said he had been threatened with statements such as "you will lose whatever you may have."<sup>138</sup>

Less than a week after the elections, the police raided the Lusaka offices of the ZIMT, the CCC and the offices of AFRONET. Despite the intercession of lawyers who insisted that the search warrants to look for "stolen" goods were not valid, police seized files, documents, bank books and statements, computer diskettes and pamphlets.<sup>139</sup> The police also arrested ZIMT President Alfred Zulu and CCC chairman and AFRONET director Ngande Mwanajiti at their homes early on the morning of November 24 for declaring the elections not free and fair. After being questioned at the Lusaka Central Police Station, the two leaders were transported to their respective offices where the raids were in progress. Police told them they were looking for "material inimical to the state."<sup>140</sup>

ZIMT General Secretary Gershom Musonda was also detained at Lusaka Central for several hours and charged with threatening violence, for commenting on the death of a police bomb disposal expert.<sup>141</sup>

Later that day, police froze the bank accounts of CCC, ZIMT and AFRONET after obtaining court orders to do so. The warrant stated: "Accounts to remain closed until further investigations are completed."<sup>142</sup> This marked the beginning of the government's strategy of attacking human rights NGOs by freezing their assets and threatening their financial stability. The police ignored a court order to revoke and suspend the search warrant and continued to search other places belonging to the organizations.<sup>143</sup> ZIMT President Alfred Zulu told *The Post*: "They have gone away with almost all our documents which we require to function, including cheque books and bank account books. We are now paralyzed."<sup>144</sup>

---

<sup>138</sup>*The Post* (Lusaka), November 18, 1996.

<sup>139</sup>*The Post* (Lusaka), November 25, 1996.

<sup>140</sup>*The Post* (Lusaka), November 25, 1996.

<sup>141</sup>Human Rights Watch/Africa interview with Alfred Zulu, president of ZIMT, Lusaka, February 15, 1997.

<sup>142</sup>Human Rights Watch/Africa interview with Gershom Musonda, ZIMT general secretary, Lusaka, February 15, 1997.

<sup>143</sup>Copy of warrant in Human Rights Watch/Africa's possession.

<sup>144</sup>Human Rights Watch/Africa interview with Alfred Zulu, president of ZIMT, Lusaka, February 15, 1997.

AFRONET filed a motion against the state, requesting the police to suspend the action and to revoke the search warrants. After hearing both parties, a magistrate issued orders suspending the execution of the warrants, staying the search and ordering that items that were seized should be returned. The following week, the Director of Public Prosecutions wrote to the Registrar of the High Court asking that the matter be placed before a judge for review.<sup>145</sup>

---

<sup>145</sup>Human Rights Watch/Africa correspondence with Ngande Mwanajiti, April 22, 1997.

On December 9, a High Court judge, Peter Chitali, ordered the government to re-open the bank accounts of CCC. He added that the decision by a subordinate court to order the police to submit the seized documents from ZIMT, CCC and AFRONET was unlawful.<sup>146</sup> However, police action was upheld, and the plaintiffs were told they could take civil action against the attorney general for wrong actions of public officers. Subsequently, they appealed to the Supreme Court on the grounds that the action of the police had violated their fundamental human rights, a matter not addressed by the High Court.<sup>147</sup>

A week later, the police summoned Mwanajiti for “interviews” on the financial operations of his organizations after the government-owned *Zambia Daily Mail* newspaper reported that CCC, as an NGO umbrella for election monitoring, had spent almost K400 million (U.S. \$310,000) on its elections operations. The government said that it needed to know the source of the money through the ministry of legal affairs. Mwanajiti was out of the country and did not present himself to the police. A similar summons was sent to ZIMT President Alfred Zulu who said he would not present himself unless his lawyer, Nellie Mufti, was present. Police sent another summons demanding his presence at force headquarters. The summonses represented a clear change in the government's method of attacking NGOs, but followed the government's suspicion that NGO were agents of foreign powers that were trying to unseat the government.

On December 30, police charged Zulu with five counts of receiving financial and material assistance between 1991 and 1996 from foreign governments and organizations, contrary to section 4 of Cap 109 of the Laws of Zambia. If convicted, Zulu faces up to two years of imprisonment. Zulu's lawyers, Nellie Mutti and Sachika Sitwala, said that the Societies Act, which had not been used since 1966, was intended to enable the president to control organizations which he perceived as political. There was no law, they said, that required organizations to seek the president's permission before receiving funding.<sup>148</sup> On his return to Zambia, Mwanajiti was charged under the same act. The police statement read: “You are warned that police are making enquiries into cases of accepting assistance from foreign governments or agents. The allegations surrounding you are that between 1991 and 1996 you received assistance from foreign countries for your organization AFRONET and the CCC.”<sup>149</sup>

---

<sup>146</sup>*The Post* (Lusaka), December 10, 1996.

<sup>147</sup>Human Rights Watch/Africa correspondence with Mwanajiti, April 22, 1997.

<sup>148</sup>*The Post* (Lusaka), December 31, 1996.

<sup>149</sup>Copy of police statement in Human Rights Watch/Africa possession.

On January 2, Sakwiba Sikota challenged the government to close down foreign embassies it suspects of funding NGOs and called for the abolition of the act because it limits freedom of association.<sup>150</sup> "This prosecution is being done in bad faith. The state knows very well that the President has not made a declaration which is required under the Act," said Sikota. According to the act, the president must make a gazetted declaration of those organizations which cannot receive funding without his knowledge. This was not done for ZIMT or AFRONET.<sup>151</sup>

---

<sup>150</sup>On April 16, at a press conference to release the CCC election report at which Human Rights Watch/Africa was present, Ngande Mwanajiti, who was chairman of the CCC until its dissolution, made public the organization's funding. It operated on donor funds of U.S. \$ 750,000 (K750 million) to run its activities in the election. \$300,000 was from U.S.A.I.D. with the full authority of the Legal Affairs permanent secretary; \$100,000 was from the Norwegian Development Agency (NORAD); K100 million (U.S. \$80,000) from the Finnish embassy; the Danish International Development Agency (DANIDA) gave \$150,000, while the embassy of Japan gave \$44,928. The Canadian International Development Agency (CIDA) gave \$30,000 and the Dan Church Aid through the Christian Council of Zambia gave \$25,000.

<sup>151</sup>*The Post* (Lusaka), January 3, 1997, "Government challenged."

In the midst of the legal actions taken against him, ZIMT President Alfred Zulu also suffered personal harassment. In an interview with Human Rights Watch/Africa, Zulu said on January 3 that a MMD member of parliament, Samuel Miyanda, shouted at him at the Masiye Motel in Lusaka: "You NGOs want to cause chaos, you will start a war."<sup>152</sup>

On January 20, another MMD member of parliament, Ntondo Chindoloma, said at a public reception at the Holiday Inn in Lusaka, "You think you are advocating democracy. Do you think this is Great Britain? This is Zambia, you should watch out." Zulu said that the levels of harassment were sufficient that his friends and acquaintances were afraid to be associated with him.

Despite the government's rhetoric on its more enlightened attitude towards NGOs, neither the documents nor the bank account books that were seized by the police have been returned to either ZIMT, CCC or AFRONET. More menacing, the charges have not been amended or dropped against Mwanajiti and Zulu, and the two still face up to two years in jail if convicted. There is speculation that the Director of Public Prosecutions (DPP) is still trying to decide whether to prosecute.

Those connected to NGOs also fell victim to government harassment. For example, a University of Zambia secretary, Gertrude Mwewa, was suspended from her job on allegations that she was working for Alfred Zulu and ZIMT. Mwewa was doing some part-time typing work for ZIMT to earn extra cash to supplement her secretary's income, a common practice in Zambia.

In an interview with Human Rights Watch/Africa, she described what happened:

On November 25, at the University at 3PM Michael Tandeo and Peter Mpande of the university confronted me about reports that I had been doing work for Mr. Zulu and ZIMT.

They kept me in the office for one and a half hours and looked through my discs and opened documents. They told me to surrender my keys to the office. On the 26th they took my computer away and had some foreign technicians gain access to the hard drive where various documents were saved, including the ZIMT press release declaring the elections not free and fair. There were seven to nine other documents there.

My case was then transferred to the security people who confronted me. They showed me the documents and said that I was the person who typed them. I do not deny that I typed them. Like everybody at the university, I use my spare time, lunch breaks and so on to be productive. Otherwise you cannot survive, you starve. I type for everybody who pays. In the documents they retrieved there was a speech of President Chiluba I typed for the MMD, student work and lecturers papers. Mr. Zulu is also part of the university, so I saw no problem with working with him.

The university has suspended me, saying that my connection with Mr. Zulu has brought them into disrepute. But as you see his typing was only one of many things.<sup>153</sup>

---

<sup>152</sup>Interview with Human Rights Watch/Africa in Lusaka February 17, 1997.

<sup>153</sup>Human Rights Watch/Africa interviewed Mwewa on February 17 in Lusaka, and obtained a copy of the letter of suspension.

Human Rights Watch/Africa obtained a copy of the letter of suspension. Dated November 25, 1996 and signed on behalf of the Registrar of the University of Zambia, it reads:

I wish to inform you that you are with immediate effect suspended from employment for allegedly using University facilities to print and publicise literature which has put the University of Zambia in disrepute. You will remain on suspension until investigations have been carried out and the matter resolved. While on suspension, you will be on half pay.

As of this writing, Mwewa had not been reinstated. She was called before a university tribunal to testify in April but has not received its verdict.<sup>154</sup>

While NGO leaders were being harassed and their organizations being drained of financial resources, the government set out to pass legislation to control them. The twenty-three page White Paper emphasized three main themes: that NGOs have been committing a crime in financial dealings with foreign governments, that NGOs have shifted from their traditional role as charities to partisan players and that NGOs needed a legislated body to check their operations.<sup>155</sup>

The policy paper called for the creation of a mechanism for regulating NGOs. "The absence of appropriate legal framework to govern NGOs has hampered the development of this sector. This may have made it easier for unscrupulous individuals to take advantage and to bring the sector as a whole into disrepute," the paper said.<sup>156</sup> Except for organizations with budgets less than \$5,000, the government wanted to ensure that NGOs were audited by the authorities, partly to enforce Cap 109 section 4(1).

The government's definition of NGOs as charitable organizations "established to act on concerns and issues for the benefit of the people of Zambia," was seen as an effort to outlaw NGOs that did not undertake charitable work, instead "having, in the opinion of the president objects of a political nature." The draft policy, however, recognized the vague definition of "political nature" and said that the law would be repealed in future. On an NGO Regulatory Council, the paper proposed legislating with the help of the Zambia Law Development Commission.

The government invited NGOs that were not critical of the government to a consultative workshop in Kafue George to discuss the proposed legislation. AFRONET was invited on the afternoon before the meeting and sent word around to ensure that other organizations attended.<sup>157</sup> Not surprisingly, NGOs rejected the government's move to create a bureau to regulate them, instead drafting their own policy document which they hoped government would consider

---

<sup>154</sup>Human Rights Watch/Africa telephone interview with Alfred Zulu of ZIMT, Lusaka, May 30, 1997.

<sup>155</sup>*The Post* (Lusaka), January 27, 1997, "NGOs objections ignored by government."

<sup>156</sup>*The Post* (Lusaka), January 27, 1997.

<sup>157</sup>*The Post* (Lusaka), January 27, 1997.



before arriving at a final policy. The meeting ended with a compromise: NGOs should be regulated by existing laws, which should be revised to keep in line with the 'new political dispensation.'<sup>158</sup>

However, since the agreement was reached, the government's position has not changed significantly. As Ngande Mwanajiti expressed it: "The bottom line is that government simply does not know how to respond to NGO pressures. The response, so far, has been to accuse NGOs of partisan alliance, but this is not working at all. In fact, it is not all NGOs but human rights and related groups."

---

<sup>158</sup>Human Rights Watch/Africa communication with Mwanajiti.

A new round of government anti-NGO statements and threats spelled further suspicion and hostility toward civil society. On January 17, at the opening of parliament, President Chiluba said that local election monitors who questioned the legitimacy of the November poll were “unpatriotic” and that the government intended to introduce new legislation to regulate such “wilful” behavior. He said he planned new laws “which would make election monitoring teams and all NGOs accountable to both their members and to society.”<sup>159</sup>

A deputy minister, speaking in parliament, accused some NGOs of being agents of imperialists and called for stiffer legislation to keep them in check. Labor and Social Security Deputy Syacheye Madyenkuku said that the government’s intention to bring a bill to legislate NGO operations in the country was long overdue. “When this Bill comes to the House, it will be supported,” he said.<sup>160</sup>

On January 29, Legal Affairs Minister Vincent Malambo told parliament that his party, the MMD, did not harass any people in the country who had dissenting views. Reacting to an independent MP who had accused the MMD of intolerance he said: “There is no-one in this country who has been harassed or persecuted because of their dissenting views. People who break the law will be prosecuted under the law. That is not harassing. . . we know what is contained in our Bill of Rights in our Constitution but this can only be enjoyed to the extent of the length of one’s arm. The minute you touch someone else’s arm, then you break the law. We will tolerate law breakers only if they don’t injure somebody else’s rights.” He also said that if no agreement with NGOs is reached after consultations, then government will legislate as it sees fit.<sup>161</sup>

On January 30, Home Affairs Minister Chitalu Sampa called on police to be “very brutal” in dealing with arrogant members of the public “who disobeyed their instructions.” Addressing parliament, Sampa said any citizen who “tried to be pompous or show wrinkles to the police” in the course of their duty would be manhandled and arrested with force. He warned the House that he was ready to become “a dictator” and halt disobedience by the “so-called” human rights activists and NGOs to ruin the country. “We shall not allow a situation for people to continue talking carelessly in a country where peace is prevailing. We have entered a period of discipline, from now and I mean up to the year 2001 we will not tolerate anyone to be talking anyhow, we have to act.” He added: “We were gathered in Lusaka with police chiefs and observed that people are just talking too carelessly. And therefore I have instructed Zambia Police that if anyone approaches with impunity or is disobedient to them, they should not use police service but police force. They should just catch him or her and if the lawyer also tries to be pompous they should also catch him or her.”<sup>162</sup>

---

<sup>159</sup>*Reuter* (Lusaka), January 17, 1997, “Go-it-alone Chiluba to slash Zambia spending.”

<sup>160</sup>*The Zambia Daily Mail*, January 30, 1997, “NGOs must be controlled—minister.”

<sup>161</sup>*The Post* (Lusaka), January 30, 1997.

<sup>162</sup>*The Post* (Lusaka), January 31, 1997, “Cops ordered to be brutal”.

He told the House that a stiffer bill on NGOs had been drafted and it would contain grave punishment for any NGO which secured funds from the donors without the government's knowledge. "We have so many NGOs in the country and those NGOs must now toe the lines of democracy. Money which comes from donors without the knowledge of the government shall be confiscated and the culprits be punished severely."<sup>163</sup>

Speaking on the same day, Vice-President Godfrey Miyanda told parliament that legislating on NGOs and knowing their sources of funding was in the national interest. He said this was not to "bash" NGOs, but some of them were destructive.<sup>164</sup>

---

<sup>163</sup>*The Post*, *ibid.*

<sup>164</sup>*The Post* (Lusaka), January 31, 1997, "NGOs funding worries government."

In line with these government statements and threats, a pattern emerged of less overt, but more damaging intimidation and harassment of NGOs on financial grounds. Human Rights Watch/Africa interviewed FODEP President Alfred Chanda, who described how the Zambian Revenue Authority (ZRA) had targeted FODEP with a massive tax bill, contrary to earlier agreements that NGOs operating on grants should be tax-exempt.<sup>165</sup> FODEP, under the Zambia Democratic Governance Project and funded by U.S.A.I.D. through Southern University, has undertaken a number of activities aimed at strengthening the democratic process, including election monitoring of parliamentary and local government elections.<sup>166</sup>

Under the contract our sponsors, Southern University were not prepared to pay tax. The government had agreed that we should be exempt from paying tax. This was agreed in 1992. Just before the elections in September we began negotiations with the ZRA about tax arrears.

At the first meeting, ZRA insisted we were liable to pay tax. Later, another group said we were exempt and that the agreement was very clear. They said they would put this in writing by November 18. However, instead we received a big bill of K27 million (U.S. \$20,000), backdating to 1991. They did not tell us how they made this assessment. There was also a penalty of K29 million (U.S. \$23,000) with seven days to settle. We challenged this and the sum was reduced to K26 million (U.S. \$20,000).

At the end of December our financial manager sent his assistant to the bank to get our monthly statement. It came to zero.

The ZRA had taken all the money from our account at Standbic. They had also told the bank not to notify us, which the bank obliged. This must be against banking norms.

This whole thing is about us declaring the elections not free and fair. They didn't raid us in public but decided on a more subtle form of intimidation. They knew exactly how much money we had in our account and how to cripple us. We were unable to pay the rent or salaries and other things. We are now preparing a court case.

---

<sup>165</sup>Human Rights Watch/Africa interview with Alfred Chanda, Lusaka. February 16, 1997.

<sup>166</sup>FODEP's mission is "to work to empower the Zambian citizens with knowledge to build, strengthen and sustain institutions and operations of democracy." Since 1992, it has monitored elections in Zambia and South Africa, and with United Nations international observer status in Kenya, Mozambique and Malawi.

The correspondence between the ZRA and FODEP confirms the attempt to extract massive taxes.<sup>167</sup> Human Rights Watch/Africa contacted the bank to ask how a bank account could be accessed and emptied by the ZRA without the consent of the owner, but the bank refused to enter into discussion.

This financial attack is further confirmed by a comment made by Samuel Mulafulagu of the Catholic Commission of Justice and Peace who said that a senior manager of the ZRA said in January: “we have been told to clamp down on NGOs.”

---

<sup>167</sup>FODEP received three letters from the Zambia Revenue Authority, Direct Taxes Division dated November 1, December 19 and 24, 1996. The November 1 letter requests monthly payments of Pay As You Earn (PAYE) tax, and states that Zambians working for “foreign companies” are not tax exempt. It states that “as the Accountant is obstructing us in carrying out our duties, we have no alternative but to estimate the tax due from FODEP from 1991 to date which is K27 million (U.S. \$21,000).” The December 19 letter states the outstanding tax arrears from 1991/92 to 1996/97 as K27 million and penalties as K29.7 million (U.S. \$23,000), with seven days to pay, or proceedings will be commenced. The December 24 letter, signed by the assistant commissioner of taxes, in response to a FODEP letter, while seeming to implicitly accept that there was a tax-exempt agreement, states that “law must supersede an agreement”, and that penalties are not negotiable.

In an attack against NGOs that occurred one week before the London pre-Consultative Group meeting, Minister Without Portfolio Michael Sata warned NGOs to stick to their “non-partisan objectives” or else the government would treat them as political opponents. He called the government “too tolerant with some of these NGOs which have abused their objectives and authority. We shall be compelled to deal with them as political parties if they continue to cross their boundaries by misinforming the public on governance. . . . we accept criticism which is an accepted norm even in the developed democracies, but not insults leveled against the presidency under the guise of freedom of expression.”<sup>168</sup>

### **Harassment of the Church**

The Catholic Church, the most outspoken and united of the churches in Zambia, has also been a victim of harassment. Following the release of the 1997 Budget, the Church criticized Finance Minister Ron Penza for ignoring the plight of the poor and called for a wider public debate on alleviating poverty.<sup>169</sup>

Government response was swift. In the March 2 - 8 edition of *The National Mirror*, a Catholic-oriented weekly independent newspaper, Finance Minister Penza accused Catholics of trying to incite people by adapting populist positions: “The Catholic Bishops are creating dissidency in the country,” he said. “These are the populist ideas of the previous regime that ruined this country for 27 years. . . . No amount of talking, lobbying or crusading will pull us out of poverty.”

In response, Father Ignatius Mwebe, secretary of the Episcopal Conference, said bishops would not back down from criticizing the government or from calling for improvements in the welfare of the underprivileged: “Our concerns voiced out in our pastoral letters are not meant to mislead people as implied by Penza, but serve as our policy and guide. The statement on the 1997 budget was made in good faith with the intention of contributing to the ongoing debate. . . there is no reason why Minister Penza should panic and become so controversial about it.”

The government dealt with the churches in the same subtle ways it had dealt with NGOs: by imposing high taxes on the goods they had received from foreign NGOs. The April 21 issue of *The Times of Zambia* reported that the Overseer of the Church of God Bishop John Mambo said that the lack of serious dialogue between the church and state had given the church no choice but to publicize troublesome issues, one of which “was the high tax it was charged by the Zambia Revenue Authority (ZRA) on donated goods by foreign NGOs.”<sup>170</sup>

### **Intimidation of the Judiciary**

---

<sup>168</sup>*The Zambia Daily Mail* April 18, 1997, “Sata Turns on NGOs.”

<sup>169</sup>*Social Dimensions of the 1997 Budget of the Government of the Republic of Zambia—A Contribution to the Debate*, statement of the Catholic Commission on Justice and Peace (Lusaka), February 14, 1997. The statement commented: “The most striking thing to notice about the 1997 Budget Address is the absence of any mention whatsoever of the major problem facing the economy of Zambia, the massive poverty of our people. According to official Government statistics, over 80% of the people live in households below a poverty line.”

<sup>170</sup>*The Times of Zambia* (Lusaka), April 21, 1997, article “Religious desk has failed to dialogue.”

Throughout 1996, the judiciary and legal profession came under increasing attack from the government and its supporters for being independent-minded and criticizing the Constitutional Amendment Act.<sup>171</sup>

In a move that received international attention, President Chiluba exercised his constitutional powers and suspended an independent-minded Lusaka High Court judge Kabazo Chanda on January 11, 1997. President Chiluba appointed a three-person tribunal—two Supreme Court judges and a judge from Malawi's Supreme Court—to investigate whether Chanda should be relieved of his duties.<sup>172</sup> The January 14 issues of *The Times of Zambia* reported that once the tribunal started sitting, a charge sheet would be prepared outlining what necessitated the measure: "According to the Constitution, a judge can be removed from office for reasons including inability, incompetence or misbehavior." The tribunal will reportedly commence in July.<sup>173</sup>

Justice Chanda's history of criticizing the president and the country's human rights record was long.<sup>174</sup> In March 1996, he overruled the efforts of the speaker of parliament, Dr. Robinson Nabulyato, to sentence journalists Fred M'membe and Bright Mwape to indefinite prison terms for contempt of parliament. Chanda argued that the speaker and parliament had no right to imprison people.<sup>175</sup> Earlier in 1997, Chanda released fifty-three prisoners, some of whom had been awaiting trial since 1992, on the grounds that the prosecutor failed to bring them to court speedily. His justification centered on the argument that justice delayed was justice denied.<sup>176</sup>

---

<sup>171</sup>See "The Judiciary, the Legal Profession and NGOs," Human Rights Watch/Africa, *Zambia: The Elections and Human Rights*, pp. 31-32, op cit.

<sup>172</sup>The tribunal is composed of Supreme Court judges: Justice Robert Kapembwa as chairman, and Justice Brian Gardner, and Leonard Unyolo, a Malawian Supreme Court judge, *The National Mirror*, January 12-18, 1997.

<sup>173</sup>*The Post* (Lusaka), June 23, 1997.

<sup>174</sup>*Electronic Mail and Guardian* (Johannesburg), "Chiluba suspends top judge", January 24, 1997.

<sup>175</sup>*The Mail and Guardian* (Lusaka), ibid. See also Human Rights Watch/Africa, pp. 20-21 for a discussion of Justice Chanda's ruling "Fred M'membe and Bright Mwape v The Speaker of the National Assembly and the Commissioner of Prisons and The Attorney General 1996," (1996/H CJ/X).

<sup>176</sup>*The Mail and Guardian* (Johannesburg), ibid. January 24

Many saw a direct link between Judge Chanda's judicial independence and the president's action. The Magistrates' and Judges' Association of Zambia (MJAZ) called the president's suspension of Justice Chanda's "intimidatory" and warned that "this tribunal might be a tool to undermine the independence of the judiciary."<sup>177</sup>

LPF chairman Roger Chongwe said the suspension signaled that Chiluba and his ruling party would not tolerate judges who frustrated their interests. "The action was political. It has nothing to do with performance. It's a warning to other judges. If they don't toe the line of Chiluba's politics, they will suffer the same fate."<sup>178</sup>

ZDC President Dean Mung'omba commented: "This amounts to intimidation of the judiciary by the executive. In normal democratic systems the executive should not have such muzzling powers.. The aim is to control the judiciary."<sup>179</sup>

---

<sup>177</sup>Ibid.

<sup>178</sup>Ibid. January 24, 1997.

<sup>179</sup>*The National Mirror* (Lusaka), January 12-18, 1997, "Chiluba gags judiciary".



The *Mail and Guardian* cited “reliable” sources in the judiciary who connected the suspension to petitions pending in the Supreme Court<sup>180</sup> which had been filed by opposition groups challenging Zambia’s recent elections and Chiluba’s legitimacy as president.”<sup>181</sup>

Human Rights Watch/Africa will closely follow developments connected with Justice Chanda’s inquiry. In particular, Human Rights Watch/Africa will be concerned that such proceedings shall be conducted in a manner that accords with the United Nation’s *Basic Principles on the Independence of the Judiciary*, specifically.<sup>182</sup>

17. A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge.

18. Judges shall be subject to suspension or removal only for reasons of incapacity or behavior that renders them unfit to discharge their duties.

19. All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.

20. Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the high court and those of the legislature in impeachment or similar proceedings.

## V. THE DEATH PENALTY

---

<sup>180</sup>However, in a statement on June 23, 1997, Justice Chanda said, “I finally received the three charges last week and contrary to what most people thought, there is no political or social charges which has been framed against me. . . . I want the nation to know that my suspension has nothing to do with the state per se or with my social conduct. It is purely a conspiracy within the judiciary to get rid of me because of my contribution during the re-introduction of multi-party system in Zambia.” *The Post* (Lusaka), June 23, 1997.

<sup>181</sup>*Ibid.*

<sup>182</sup>*Basic Principles on the Independence of the Judiciary*, Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, August 26 to September 6 1985, U.N. Doc. A/CONF. 121/22/Rev. 1 at 59 (1985).

While the Zambian government has adopted the language of support for human rights, the Chiluba administration has in reality taken several steps backward in human rights observance. On January 24, eight condemned prisoners at Mukobeko Maximum Prison were executed on the same day that President Chiluba pardoned 600 inmates, according to the January 27, 1997 edition of *The Times of Zambia*.<sup>183</sup>

---

<sup>183</sup>ZNBC Radio Lusaka reported on January 24 at 1600 GMT: "President Chiluba has released 600 prisoners from various prisons throughout the country under the presidential amnesty. According to a statement released from Cabinet Office today and signed by Secretary to the Cabinet Aldridge Adamson, the prisoners will be formally released today. The prisoners walking into their freedom have been serving various sentences for different types of offenses, namely those of a minor nature."

The Zambia Independent Monitoring Team (ZIMT) applauded President Chiluba for granting the prisoners amnesty. ZIMT President Alfred Zulu said releasing 600 prisoners from prisons to commemorate the opening of parliament would positively affect the reform process of convicts. With the execution of the eight still secret at the time, Zulu called for the abolition of the death penalty.<sup>184</sup>

The first confirmation of the execution of the eight was carried in a front page article, "FTJ's secret executions" in the March 24 edition of *The Post*. In a statement issued two days earlier, a Catholic priest, Father Peter Henriot, said that President Chiluba had secretly signed an order for the execution of eight prisoners on death row at Mukobeko Maximum Prison earlier in the year. "We want to know. Who are these people. Let them tell us their age, sex, names and the crimes they committed," asked Father Henriot.

Citing sources at the Mukobeko Maximum Prison and the High Court for Zambia in Lusaka, *The Post* confirmed that President Chiluba had authorized the executions. Ministry of Home Affairs Permanent Secretary Kalombo Mwansa, in commenting on the executions, appeared to accept that the government was under an obligation to bring about the abolition of the death penalty, while insisting that "this should be done by also ensuring that measures to satisfactorily protect and compensate victims of crime and abuse of power are progressively implemented as required by international law."<sup>185</sup>

As of this writing, neither the names of the eight or their alleged crimes have been officially released. But Human Rights Watch/Africa confirmed that they were executed on January 24, 1997, obtained the names and prison identification numbers of the eight, and identified the courts where they were sentenced and the crimes for which they were convicted. All of the executed prisoners had spent many years on death row—between ten and fifteen years in some cases. Notably, all of the condemned prisoners were sentenced to death during the Second Republic, years before the MMD government came to power in 1991. It is unclear why President Chiluba ordered their execution in January and whether any of the prisoners had any outstanding rights of appeal. The following is a list of the eight prisoners who were executed:

1. KBW/6/82 Nelson Ngundano.<sup>186</sup>  
Sentenced to death on March 19, 1982 by the Livingstone High Court. Convicted of murder.
2. KBW/32/83 Robert Yulumbi  
Sentenced to death September 26, 1983 by the Ndola High Court. Convicted of murder.
3. KBW/11/85 Denis Chisela Chembe  
Sentenced to death April 29, 1985 by the Lusaka High Court. Convicted of murder.
4. KBW/14/85 David Kapanga  
Sentenced to death June 21, 1985 in the Kitwe High Court. Convicted of murder and armed robbery.

---

<sup>184</sup>*The Times of Zambia*, January 27, 1997, from a ZIMT statement of January 26.

<sup>185</sup>*The Post* (Lusaka), March 24, 1997.

<sup>186</sup>According to information obtained by Amnesty International, this prisoner had become senile and was unaware of what was happening to him.

5. KBW/07/87 Joseph Masaiti Chilanda

Sentenced to death August 15, 1987 in the Lusaka High Court. Convicted of murder.

6. KBW/20/87 Christopher Mwanza Oldfield

Sentenced to death August 15, 1987 by the Lusaka High Court. Convicted of murder.

7. KBW/11/88 John Gumbo

Sentenced to death January 21, 1988 by the Lusaka High Court. Convicted of murder.

8. KBW/10/90 Abraham Kasongo

Sentenced to death on June 5, 1990 by the Kasama High Court. Convicted of murder.

As of April 1, 1997, there were 127 prisoners on death row, one of whom is a woman, Joyce Kasongo, who was sentenced to death by the Ndola High Court and is held in isolated confinement in Mukobeko Maximum Prison in Kabwe. The High Court under the MMD-government has continued to sentence prisoners to death, although Human Rights Watch has not determined how many of the 127 death row inmates have been sentenced since 1991. Most recently, in April, Olivia Mpofofwana, 32, of Mungule Village in Kabwe, was found guilty of strangling her two-year-old and dumping the body in a well and was sentenced to death.<sup>187</sup>

According to judges, their hands are tied by the law "Zambian law requires that anyone who is found guilty of murder should be sentenced to death and the Court has no discretion to rule otherwise,"<sup>188</sup> Lusaka High Court Commissioner Anthony Ngangulu said after he sentenced two men convicted of murder to the death penalty. Condemned prisoners in Zambia are executed by hanging.

Human Rights Watch opposes the infliction of capital punishment in all cases: because of its inherent cruelty, because it is most often carried out in a discriminatory manner, and because the fallibility of all criminal justice systems assures that even when full due process of law is respected innocent persons are sometimes executed—and such miscarriages of justice can never be corrected.

## VI. HUMAN RIGHTS COMMISSION

### Summary

Given Zambia's generally poor human rights record, the establishment of a permanent Human Rights Commission (HRC) in March 1997 was, in principle, a welcome development. The Zambian government is to be applauded for creating an institution to hear individual claims of human rights abuse and maladministration of justice.

Yet there are substantive problems with it, and its creation raises many questions. Does this commission represent change? Or is this a mirage of legal change?

Although the Zambian government has portrayed the Human Rights Commission as a permanent and autonomous human rights "watch dog," the most pressing question is whether the commission really has "muscle," as well as the will to use it.

---

<sup>187</sup>*The Post* (Lusaka), April 25, 1997, "Death row Olivia's children speak out."

<sup>188</sup>*The Chronicle* (Lusaka), January 10-13, 1997, "Courts should expedite justice."

## Background

In August 1996, three months before the election, the MMD published its revised manifesto, the party's political platform for its election campaign. Echoing presidential campaign rhetoric in the United States, President Chiluba described the manifesto as a blueprint to take the country into the 21st century. The document's preamble claimed that since 1991, the MMD-government had made numerous steps towards observing and protecting fundamental human rights and stated that one of its major challenges was to "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."<sup>189</sup>

Beyond 1996, the revised manifesto pledged the government's commitment to establish a Human Rights Commission; to ratify international treaties on human rights; and to provide for the protection of human rights as declared in the constitution. On other human rights issues, the manifesto also promised to improve the criminal justice system; to reform the police and prisons systems by improving training and de-politicizing them; to intensify training in human rights generally, including in areas related to violence against women, gender issues, and child abuse; and to strengthen civic education bodies and other NGOs involved in human rights propagation. On paper, the government renewed its commitment to human rights recognitions, but in reality, the 1996 manifesto shared much with the 1991 manifesto. The best that could be said was that the government set into motion progress towards some of its earlier goals.

Three years earlier in May 1993, the Munyama Human Rights Commission, named after its chairman, Lusaka-based lawyer Bruce Munyama, had been appointed by President Chiluba. Its mandate was to investigate and establish violations of human rights during the Second Republic years (1972 to 1991) as well as violations that occurred in the Third Republic (after October 30, 1991 when the MMD came to power). Initially the MMD had opposed investigation of violations during its term, but yielded to internal and international pressure to widen the remit.<sup>190</sup>

The commission operated for two years in a generally favorable and cooperative climate until July 1995. In the findings it submitted to the president in September 1995, the commission recommended that certain parts of the Public Order Act, Zambia's Security Intelligence, and the State Security Act be amended. The report exposed the existence of secret detention centers throughout the country where human rights abuses took place in both the Second and Third Republic years. Close to 1,000 people had been detained between 1972 and 1993 under the public security regulations. Significantly, the commission's findings also highlighted that violations of human rights and torture were occurring on a significant scale in the MMD Third Republic years.<sup>191</sup> The commission recommended that victims of state security abuses be compensated, but it did not propose that offenders be prosecuted.

---

<sup>189</sup>MMD *Manifesto* 1996, full text printed in *The Sun* (Lusaka), September 2-8, 1996.

<sup>190</sup>For a fuller discussion of the Munyama Commission see Human Rights Watch/Africa's November 1996 report on Zambia, pp. 11-13.

<sup>191</sup>*Report of the Human Rights Commission of Inquiry*, Lusaka, September 6, 1995, section 4.3, p. 58.

The government's White Paper response was not released until a year later, October 1, 1996.<sup>192</sup> In it, the government announced its intention to establish a permanent human rights commission that would submit annual reports to the president and parliament. It granted the commission the power to investigate complaints of violations freely, visit jails and detention centers and make recommendations to the president and parliament on effective measures to promote human rights and provide compensation.<sup>193</sup>

---

<sup>192</sup>A leaked copy of the commission's report was published in *The Post* (Lusaka), on January 12, 1996.

<sup>193</sup>*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}.

Although the White Paper was released on October 1, copies were difficult to obtain. When Human Rights Watch/Africa visited the Government Printer in Lusaka on February 19 and asked the Sales and Advertisements official for copies of the Summary of the Munyama Human Rights Commission, Human Rights Watch/Africa was informed that it had not been printed yet. When Human Rights Watch responded that we had already received one copy in London, the official reluctantly admitted that they had been printed but that the "Office of the president had taken them all." At the dispatch section of the Government Printer, another official admitted that they had plenty of copies, that we should ask for Government Paper No.2 of 1996 and that it cost K2,500 (U.S.\$1.90). The official of the Sales and Advertisements department who refused to give his name, when confronted with this information, said he was under State House orders only to sell summaries to diplomats.<sup>194</sup> Likewise, it was difficult to obtain a copy of the law that established the Human Rights Commission, which had been circulated to diplomats in Lusaka in late February by the State House. After being told they were unavailable at the Government Printer, Human Rights Watch/Africa obtained a copy from a foreign diplomat in Lusaka.<sup>195</sup>

After the publication of the White Paper, there was little official talk about the Human Rights Commission. The November 1996 elections and their outcome clearly monopolized the government's attention until late March 1997 when the Human Rights Commission Act was signed into law. The opposition did not submit nominees, as part of its boycott of the election and subsequently, the workings of the National Assembly. A parliamentary select committee was responsible for the nomination process.

### **The Human Rights Commission Act (1997)**

The Human Rights Commission Act of 1997 was passed by the Zambian parliament on March 13 and signed into law by President Chiluba the next day. On the same day, the Electoral Act of 1997 was made law. Both acts took effect on March 31, 1997.

The Human Rights Commission Act has been billed as a central pillar of the MMD's efforts of legal reform. The state-run Zambian press described the bill as "two democratic legislatures [sic] which are being set into law for the first time," whose purpose is to "enhance and consolidate foundations of democracy."<sup>196</sup> Commenting on his government's reform efforts, President Chiluba said, "The rule of law was not popular in the Second Republic in which leaders were above the law, but in less than six years of our reign, we have set into motion the law reform programme which we promised."<sup>197</sup> *The Zambia Daily Mail* credited the government with setting up an autonomous judicial system and a Human Rights Commission and creating a Parliamentary and Ministerial Code of Conduct Act.

---

<sup>194</sup>Human Rights Watch/Africa visit to the Government Printer, Lusaka, February 19, 1997.

<sup>195</sup>The Human Rights Commission Act, No. 39 of 1996.

<sup>196</sup>Zambian News Agency (ZANA), on ZAMTODAY on the Zambian National World Wide Web Server, on the Internet, March 14, 1997.

<sup>197</sup>*The Zambia Daily Mail* (Lusaka), March 15, 1997, "Revised Laws to be Effected March 31." The article also mentioned the launch of the new law books, the revised laws of Zambia—funded by World Bank at an initial cost of U.S. \$ 2

Quoted on ZNBC radio, Vice-President Godfrey Miyanda said the creation of the commission to investigate human rights abuses was an indication of the government's effort to uphold democracy and the rule of law in the country. He said that the opposition parties "were also invited to send representatives to the commission but they declined because of alleged mistrust between the government and the opposition."<sup>198</sup>

In a section on the Human Right Commission that the government included in its brief to the donors before the pre-Consultative Group meeting, the Government portrayed the commission as part of its "institutional framework" that indicated the "substantial and irreversible progress" the government had made. According to Section 10(d):

Human Rights Commission (HRC)—Parliament passed a Human Rights Act (No. 39 of 1996) to provide for the establishment of a permanent and autonomous Human Rights Commission to be a watch dog on human rights violations and maladministration of justice. It will also oversee the implementation of the recommendations of the temporary Human Rights Commission which was appointed in 1994, under the chairmanship of Mr. Bruce Munyama. The President signed the enabling Statutory Instrument (No. 34 of 1997) on March 14, 1997. The Commissioners, led by an eminent judge, have been ratified by Parliament and were sworn in on 4 April, 1997.

---

million—as part of the MMD government's efforts towards law reform.

<sup>198</sup>ZNBC Radio, Lusaka, March 21, 1997, 1800 GMT (BBC Monitoring Service).



Finance and Economic Development Minister Penza, in his speech at the pre-Consultative meeting in London on April 25, highlighted the Government of Zambia's creation of the Human Rights Commission as a measure of its commitment to human rights.<sup>199</sup>

The real test of the commission will be in its actions. The commission's record over its first year will go some way toward answering the following pivotal questions:

- Does the HRC possess real investigatory capacity?
- Can the HRC institute real and serious investigations?
- Will the HRC go beyond perfunctory investigations and pursue an agenda that encompasses issues of national importance?
- Does the HRC have the requisite budget and infrastructure?
- Does the HRC have the independence required to investigate the government's actions and make public its findings?

To sum up the questions differently, one might ask, does the commission have the will and the means to perform the tasks given it by law?

According to Section 9 (a-f) of the Human Rights Commission Act (1996), the commission's functions are to:

- (a) investigate human rights violations;
- (b) investigate any maladministration of justice;
- (c) propose effective measures to prevent human rights abuse.

Its investigatory powers include the power to investigate any rights abuse. According to section 10 (2), the commission is empowered to:

- (a) issue summons or orders requiring the attendance of any authority before the Commission.

However, the weak link is in section 13 (1), "Recommendations" which grants the commission the power to:

- (a) send written reports of its findings to the parties concerned; and
- (b) dependent on the findings made, make such recommendations as it considers necessary to the appropriate authority.

In short, the act gives the commission no power to enforce its findings beyond that implicit in its capacity, should it choose to use it, to make public its findings. Instead, it has the power to make recommendations to the appropriate authority, which has the power to enforce or reject its recommendations. A human rights commission that does not have the necessary investigative capability and the will and means to make its findings and recommendations heard may prove to be a paper tiger.

---

<sup>199</sup>Government of the Republic of Zambia, *Report of the Proceedings of the Meeting with Donors, Held in London on 25th April, 1997* (Lusaka: Government of the Republic of Zambia, May 9, 1997) p. 6.

The creation of a human rights regime with clout represents a law-making process whereby the participants limit “some of their own future options by establishing a set of criteria under which they could henceforth be criticized” by public opinion and possibly be removed from power in terms of the legal symbols established by the human rights regime.<sup>200</sup>

The HRC may indeed prove to be an institution that was never expected to perform its watchdog function. Should the commission fail to show independence and energy in the defense of human rights, its efforts to create the impression that it effectively protects human rights will be subject to challenges.

### **The Commission Members**

To date, the HRC appears to have no operational program, with no significant activities on record, except for the announcement of the appointment of HRC members, most of whom lack robust human rights credentials. The president appointed the commission members quickly, and a select committee of parliament approved them in one day. Many of the nominees were approached by a letter or phone call from the president on March 19 or 20, invited for an audience at the State House, or asked to attend a Select Committee hearing on March 22 with little time for briefing.<sup>201</sup> Vernon Mwaanga chaired the committee, along with ten other parliamentarians, none of whom have had any human rights experience. According to individuals who attended the hearings, few questions related to human rights were asked, and much of the background briefing on the candidates was from the State House. Even within MMD circles, there was consensus that the ratification of the appointees had been rushed without opportunity for debate or discussion. In fact, the proceedings were so quick that many have wondered whether the government was trying to have the commissioners sworn in before the April 25 pre-Consultative Group meeting in London.<sup>202</sup>

The greatest concern is that most of the commissioners do not have human rights credentials or records of commitment to human rights. Of greater concern is that as presidential appointees, the new commissioners may not have the moral weight or authority to present or assert independence or to break away from the governmental status quo. The commissioners are on three-year renewable contracts, and renewal is subject to presidential and parliamentary approval.

---

<sup>200</sup>W. Michael Reisman, “Through or Despite Governments: Differentiated Responsibilities in Human Rights Programs”, *72 Iowa Law Review* (1987), p. 392.

<sup>201</sup>State House Minister Eric Silwamba played an important background role in approaching the commissioners.

<sup>202</sup>On March 25, in addition to a major reshuffle of the judiciary, Meebelo Kalima was appointed Director of Public Prosecutions (DPP), and appointments were made for the Human Rights Commission, the High Court and Anti-Corruption Commission.

An ominous sign of the probable structural and decisional dependence of the Human Rights Commission is that the cabinet office has told the commissioners that their desire to conduct a study mission on how the Human Rights Commission works in South Africa would need President Chiluba's permission. Such behavior suggests that the government does not intend to allow this commission to operate with autonomy.<sup>203</sup>

The commissioners appointed were the:

- Ndola High Court Judge, Justice Lombe Chibesakunda as chairperson
- Former UNIP MP Lavu Mulimba
- Former member of the Constitutional Review Commission John Sakulanda
- Human Rights Association of Zambia President Dixon Konkola
- Retiring Principal of Justo Mwale Theological College, and former Foundation for Democratic Process (FODEP) President Foston Sakala
- Lusaka principal resident magistrate Francis Nsokolo, who was appointed to the HRC in a letter dated March 20, signed by President Chiluba, which said that Nsokolo would take up the appointment as soon as it was ratified by parliament.<sup>204</sup>

According to the law, one additional appointment can be made. Although it was reported in the press that Lavu Mulimba is the vice-chair of the commission, his letter of appointment does not mention this; Human Rights Watch/Africa understands that the government has found it difficult to fill, and the position remains vacant. A number of people reportedly approached rejected the offer, including Alfred Chanda, president of FODEP, who was invited to be director of the commission but turned it down. Michelo Hasungule, a respected Zambian academic from the University of Lund, Sweden, was also reportedly offered the position of vice-chair and rejected it. Minister of Finance and Economic Development Ronald Penza in his address at the London pre-Consultative Group meeting on April 25, 1997, stated that.<sup>205</sup>

I wish to recall that in response to the Government's invitation to Opposition Parties and civic society to suggest nominations for membership of the Permanent Human Rights Commission, FODEP nominated a candidate who became member of the Commission. A further prominent personality with a UNIP background was also included as a permanent member in the Human Rights Commission.

---

<sup>203</sup>Information provided to Human Rights Watch by anonymous source, Lusaka, June 1997.

<sup>204</sup>President Chiluba said that the nomination was still under scrutiny by the parliamentary select committee, which was established to scrutinize members of the Commission after which recommendations would be made to the appointing authority, *The Zambia Daily Mail* (Lusaka), April 3, 1997, "Nsokolo Joins Rights Body."

<sup>205</sup>Government of the Republic of Zambia, *Report of the Proceedings of the Meeting with Donors held in London on 25th April, 1997* (Lusaka: Government of the Republic of Zambia, May 9, 1997) p. 31.

However, despite an invitation to do so, all the main opposition parties, including UNIP and ZDC, refused to nominate candidates for the commission and the main NGOs too. Human Rights Watch/Africa asked FODEP whether they had nominated anybody but were told by FODEP President Chanda that, "Foston Sakala is a trustee of FODEP, but we certainly never nominated anybody to be a candidate for the Human Rights Commission. That is not true. We have many questions about how this Commission can really function."<sup>206</sup>

---

<sup>206</sup>Human Rights Watch/Africa telephone interview with Alfred Chanda, president of FODEP, June 20, 1997.

Human Rights Watch/Africa has also established that the Cabinet Office recently allocated K2 million (U.S.\$154,560) for the setting up of the commission and an assistant director has been hired, although the commissioners estimate they need at least two billion kwacha. At the time of writing, the commission continued to use a borrowed room in the High Court; its chair, Justice Lombe Chibesakunda, still resides in Ndola and is hearing cases there, traveling occasionally to Lusaka; and the stipends to be paid to the commissioners have yet to be determined. The Cabinet Office has also told the commissioners that their desire to conduct a study mission to learn how the Human Rights Commission works in South Africa would need President Chiluba's permission.<sup>207</sup>

Human Rights Watch/Africa interviewed a number of commissioners who wished to remain anonymous but confirmed problematic areas in the Human Rights Commission.<sup>208</sup> With regards to the selection process, they identified the following issues of concern:

- the parliamentary Select Committee that interviewed the commission nominees was an ad hoc body;
- the process was rushed;
- in-depth human rights questions were not asked of the nominees;
- each candidate was interviewed for only thirty minutes;
- most of the commissioners do not have human rights backgrounds or experience; and
- no provision for training has been made, although the ministry of finance has said it will find some start-up funds.

With regard to the commission itself, these members identified the following issues:

- the lack of a sufficient budget;
- that the only term of reference is the Human Rights Commission Act;
- that they will only be able to produce recommendations and not be able to make a proper impact.

The announcement of the HRC appointments generated intense debate. The lack of transparency and accountability in the selection process drew angry responses from civil society leaders. The government went to some length to portray the establishment of the Human Rights commission as a success and to deflect criticism. On April 2, for example, Vice-President Brigadier-General Godfrey Miyanda told Malawi's high commissioner to Zambia that as always the "armchair critics" were criticizing the recently ratified composition of the HRC. The appointees, he said, all had credible records and were "citizens of unquestionable record who would carry out their duties without being partisan." He said Zambia was among the few countries in the world that could boast of having established a permanent HRC, and that when the MMD took office, it had established a temporary commission to investigate abuses in the Second and Third Republics.<sup>209</sup> The state-run newspapers carried a number of articles that echoed this message. The April 5 issue of *The Daily Mail* ran a story with the upbeat headline, "Rainbow Monitors Okays HRC."

While support for the establishment of an effective HRC was apparent, criticism of the actual process of appointments and the act creating the body was strong. John Sangwa, a lawyer who specializes on human rights issues

---

<sup>207</sup>Information provided to Human Rights Watch by an informed source, Lusaka, June 1997.

<sup>208</sup>Human Rights Watch/Africa interviewed a number of commissioners in April 1997.

<sup>209</sup>*The Post* (Lusaka), April 3, 1997, "Miyanda Defends Rights Commission."

in Lusaka, told Human Rights Watch/Africa: "The Human Rights Commission is cosmetic. It's just to keep the donors happy; it has no powers and few resources. Many of the commissioners also have questionable credentials. It is a great disappointment."<sup>210</sup>

### **The Commission's Budget**

The issue of the HRC budget is a source of considerable concern. The commissioners that Human Rights Watch/Africa interviewed were themselves worried by the fact the commission has no budget or facilities. The ministry of finance was responsible for finding start-up funds for the commission, but such support was not present in the annual budget, and by the end of May, funds were still not forthcoming. Since the commission was formed in March, the commissioners have been temporarily housed in a small room provided for them at the High Court building. The lack of an independent financial base and the fact that provisions for funding the commission were not included in the act means that the commission is subject to government control, if not whim. To carry out its mission, the commission needs a budget and the capacity to hire supporting and investigative staff, including lawyers and researchers. It must also move into an appropriate facility with sufficient resources, such as a documentation center, in order to create and maintain institutional memory.

---

<sup>210</sup>Human Rights Watch/Africa interview with John Sangwa, Lusaka, April 18, 1997.

Until the matter of funding is resolved, it is impossible to know how these issues will be tackled. What is clear is that an underfunded commission will not be able to execute its mandate. Human Rights Watch/Africa has established that the Cabinet Office recently allocated K200,000 (U.S.\$154.50) million for the setting up of the Commission and an assistant director has been hired, although the commissioners estimate they need at least two billion Kwacha (U.S. \$1545.59). At the time of writing, the Commission remains squatting in a room in the High Court, its chair, Justice Lombe Chibesakunda, still resides in Ndola and is hearing cases there, traveling occasionally to Lusaka and the salaries of the commissioners have yet to be agreed.<sup>211</sup> Comparisons with other human rights commissions across the continent also underscore the importance of funding. The African Commission on Human and Peoples' Rights, for example, established under the auspices of the Organization of African Unity (OAU) in 1986, is widely regarded as having failed to fulfill its mission to address human rights violations across the continent. The reasons are manifold, but in large part it is because it appears to have been deliberately underfunded. Financial control by governments of an institution whose purpose is to criticize and challenge their human rights conduct is one way of ensuring that the state's authority and power base are not eroded. In short, operational ineffectiveness and inefficiency need not be accidental but may be built into the design of a human rights regime, intended to not succeed.

FODEP Chairman Alfred Chanda commented to Human Rights Watch/Africa: "It will be sad if the commission will be reduced to the impotence of other commissions which have virtually become moribund due to lack of necessary resources."<sup>212</sup>

## VII. THE INTERNATIONAL RESPONSE

### Background

Aid of up to U.S. \$1 billion a year has been central to the economic reform program of President Chiluba. As the country's largest source of foreign exchange, aid accounts for some 70 percent of gross domestic product. A decline in the production of copper, which in previous years accounted for more than 95 percent of export earnings (a fall only partially compensated by a rise on world prices), has created a growing dependency on aid. In 1992, at the height of donor goodwill, Zambia received \$1.2 billion in non-emergency aid, three times the average in Africa, as well as \$400 million in emergency aid. In 1996 the aid pledged was just \$800 million, down a third from the 1992 figure.

The differences between the 1992 and 1996 figures are the result of Zambia's increasing aid needs being met with tougher conditions set by the international donor community. At the heart of the debate on the role of aid in economic reconstruction are issues of good governance, accountability and democratic practice.

As Zambia's model transition to democracy and restructuring of the economy earned it economic kudos, the Zambian government's default on its earlier democratic commitments was met with a consensus that progress on governance issues was fundamental to further and continued support. From mid-1996, donors started cutting back bilateral aid resulting in a donor freeze which specifically targeted the crucial balance of payments support. While different conditions linking aid to good governance are set by different countries in accordance with their foreign policy standards, for the most part, the Western donors agreed that Zambia had not met the set standards—hence, the conditionalities set for balance of payments support. For the multilateral lenders, the World Bank and the International Monetary Fund (IMF), the benchmarks are more narrowly defined in terms of economic performance.

---

<sup>211</sup>Information provided to Human Rights Watch by an anonymous source, Lusaka, June 1997.

<sup>212</sup>Alfred Chanda, Lusaka, April 18, 1997.

Good governance criteria for continued donor support were emphasized at the World Bank's Consultative Group meeting for Zambia in Bournemouth in the United Kingdom in December 1995. There was general consensus that aid for 1996 would be available provided that the Zambian government maintained momentum in its economic reform program and achieved tangible progress on governance.<sup>213</sup>

Throughout 1996, as the government showed little inclination to follow up on the commitments made at Bournemouth, donors began to cut back aid. On March 25, Norway suspended its balance of payments support, expressing concern about the Zambian government's good governance record. In the following months, the European Union countries followed. The Constitutional Amendment Act of May 1996 was a major reason for the imposition of the aid freeze: the radical amendment was considered a departure from good governance, which for many donor countries is a condition for aid. Britain, Denmark, the Netherlands, Japan, and the United States cut aid. Britain withheld UK 10 million pounds because of violations of good governance norms. Denmark suspended debt relief of 40 million Danish Krona. The United States, through U.S.A.I.D., cut its aid package by more than ten percent (\$2.5 million). The U.S. government reduced bilateral assistance for the 1996 fiscal year by almost \$2 million, from \$19,024,000 to \$17,500,000.

The European Union collectively did not take the lead, as the member states were divided in approach. But a convergence of views grew through 1996, with the exception of Ireland, whose diplomatic mission in Lusaka did not take a forceful stand on linking human rights recognitions with continued aid. In May 1996, the E.U. issued a demarche over the Constitutional Amendment Act. This was followed on September 28 by demarches to both the government and the opposition urging them to enter into "intensive dialogue." The E.U. presidency issued a declaration to Zambia in October calling on all sides to maintain the "highest standards" in the forthcoming elections.

E.U. aid gave Europe considerable leverage for pressing for reforms. 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 payments support.

---

<sup>213</sup>World Bank, "Consultative Group for Zambia Recognizes Four Years of Progress, Urges Further Reform," Bournemouth, press release, December 15, 1995.



Southern African Development Community (SADC) initiatives were generally frail. Most SADC countries, with the exceptions of Malawi and Tanzania, expressed dismay at the political developments in Zambia through diplomatic or presidential channels. But South African President Nelson Mandela, who had asked that the matter be dealt with bilaterally and privately, invited President Chiluba to Pretoria in August 25 to discuss the situation in Zambia. They met again on November 12 in an eleventh hour attempt by President Mandela, in his capacity as SADC chairman, to mediate a compromise before the election. He told Chiluba that the “elections would lack credibility” if Kaunda was not allowed to run for presidential office and asked President Chiluba to delay the election. President Chiluba agreed to find a way to do so. President Mandela dispatched South African Judge Richard Goldstone to Lusaka on November 14, four days before the election, as his special envoy to confer with the Electoral Commission and convince them that elections needed to be postponed: either by a commission announcement or by the declaration of a state of emergency.<sup>214</sup> President Chiluba replied to a fax sent him by President Mandela two days before the election: “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.”<sup>215</sup>

The high-profile international election monitoring of the 1991 election was not repeated in the 1996 election. Notably absent were the Carter Center and the National Democratic Institute, two U.S. organizations that had monitored the previous election. No European country sent official observers either. However, Western donors did provide funding for local NGOs and election monitoring groups to observe the elections.

Two Consultative Group meetings, scheduled for December 1996 and March 1997, were deferred, presumably with the purpose of putting further pressure on the Zambian government to reform. The decision to lift the aid freeze would be agreed upon at a consultation meeting. On April 25, 1997, at the Zambian government’s request, a pre-Consultative Group meeting with the donors was held in London. The Zambian government presented itself as having made considerable progress on governance and economic reform. On the basis of that meeting, the donors agreed to convene the next Consultative Group meeting in Paris on July 10-11 1997 at which time they would decide whether the aid freeze would be lifted or continued.

At the pre-Consultative Group meeting in London in April, on behalf of the U.K., the director of the Africa Division of the Overseas Development Administration for the United Kingdom, Peter Freeman, explained that “The ability of the U.K. to provide new balance of payments support for 1997 was limited.”<sup>216</sup> Thus, owing to the limitations of the current fiscal year, the U.K. would likely not have the finances necessary even if the bilateral donor nations were to agree, at the Consultative Group meeting in July, to continue sending aid to Zambia. The U.K.’s statement was echoed in Denmark’s speech which followed it at the pre-Consultative meeting; it can be inferred from the lack of disagreement that the U.K. spoke on behalf of many donor nations when it referred to the fiscal improbability of aid to Zambia for 1997.

In London, the World Bank expressed its intention to continue aid when decisions are made at the Consultative Group meeting in Paris. Speaking for the World Bank, Country Director for Zambia Phyllis Pomerantz explained that the World Bank’s principal concern was economic management: “It is the political part of the governance agenda that the Bank’s Articles of Agreement precluded the Bank from pursuing.”<sup>217</sup> While the World Bank is ready to commit to giving aid to Zambia because it has determined that it is in financial need, it remains hesitant to either give exact figures

---

<sup>214</sup>*Business Day* (Johannesburg), November 14, 1996.

<sup>215</sup>*The Times of Zambia* (Lusaka), November 16, 1996. Cited in Human Rights Watch/Africa November Zambia report, p. 50.

<sup>216</sup>Government of the Republic of Zambia, *Report of the Proceedings of the Meeting with Donors, Held in London on 25th April, 1997*. (Lusaka: Government of the Republic of Zambia, May 9, 1997) pp. 23-24.

<sup>217</sup>*Ibid.*, pp. 25-26.

or go ahead with the financial support without the agreement and support of bilateral donors. In October 1996, the World Bank released its balance of payments support without full backing from the bilateral donors, a move which caused tension and unhappiness from various contributing nations. Owing to this previous experience, the World Bank remains reluctant to commit on 1997 economic assistance to Zambia. In an interview with Human Rights Watch/Africa, John Todd, the Country Economist for the Southern Africa Department in the World Bank, said:

Due to the fact that the Consultative Group meeting on Zambia will not occur until July 10-11, 1997, there are no concrete figures at this time. Discussions with the Zambians of what needs to be pledged and what will be pledged are currently happening. In these discussions, factors such as the copper numbers and the events of this year are being analyzed.

Overall, a rough estimate for what is potentially available from the World Bank in aid for 1997 is \$120 million—in comparison to last year's \$140-150 million—providing all loan criteria have been met.

These are all very rough estimates since these figures are presently being discussed and calculated (including what the Zambian government will say they need in aid).<sup>218</sup>

At the pre-Consultative meeting, Country Director for Zambia Pomerantz clarified that within the World Bank, "As regards Balance of Payments support, there were two pending (second) tranche releases of adjustment operations: one (ERIP) for U.S. \$70 million and another one (ESAC II) for U.S. \$45 million,"<sup>219</sup> neither of which were seen as fully committed. Owing to the lack of commitment by the bilateral donor nations, it remains an open question how the World Bank will proceed after the July Consultative Group meeting in Paris.

Similarly, during the pre-Consultative meeting, on behalf of the International Monetary Fund, Assistant Director of the Africa Department, Reinold van Til, explained that its financial negotiations with Zambia would be contingent upon both the World Bank and the agreement of the bilateral donors.<sup>220</sup>

### **International Reaction to the Elections, Human Rights Conditions and the Political Impasse**

In the days immediately following the elections, a former vice-president of the Zambia Independent Monitoring Team (ZIMT), Isaac Zimba, who had resigned six months earlier to enter politics, told a news conference packed with MMD cadres and state security officers that ZIMT had been paid to declare the elections fraudulent by the British High Commission and the Japanese, United States, and Swedish embassies. Zimba said that these embassies together with

---

<sup>218</sup>Human Rights Watch/Africa telephone interview with John Todd, Principal Economist for Zambia, London, June 12, 1997.

<sup>219</sup>Government of the Republic of Zambia, *Report of the Proceedings of the Meeting with Donors, Held in London on 25th April, 1997* (Lusaka: Government of the Republic of Zambia, May 9, 1997) p. 26.

<sup>220</sup>*Ibid.*, p. 24.

UNIP president Kenneth Kaunda were linked to a plot to sponsor three monitoring groups, ZIMT, FODEP and the CCC to declare the elections not free and fair.<sup>221</sup>

The response of donors was incredulity. The British High Commission challenged Zimba to substantiate his "bizarre accusations." Deputy High Commissioner Barrie Jones said his mission had not provided any bilateral funding for NGO monitoring.<sup>222</sup>

---

<sup>221</sup>*The Zambia Daily Mail* (Lusaka), November 26, 1996. The press conference was held November 24. ZIMT President Alfred Zulu subsequently disassociated the organization from Zimba, who was described as an "MMD plant."

<sup>222</sup>*Ibid.*

Adding grist to the mill, Patriotic Rescue Monitors (Paremo) demanded that Britain, the United States, Japan, and Sweden publicly state whether or not they had been involved in activities aimed at unseating the government. Chairman of Paremo Sidney Muchela said that Paremo had proof that some of the embassies were meddling in Zambia's affairs, but did not disclose the nature of the evidence.<sup>223</sup>

Japan called the allegations "malicious." "Japan categorically denies the allegations made against Japanese embassy staff. . . as they are totally baseless, a mere fabrication and a very malicious attempt to defame our good name in Zambia," the Japanese embassy said in a statement. "Such malevolent, irresponsible allegations may discourage the goodwill of our embassy staff and in turn influence the decline of the mutual friendship and cooperation currently existing between Japan and Zambia," it added.<sup>224</sup>

The Swedish embassy, which funded election monitoring groups, denied it was part of a plot to discredit the polls. "Linking Sweden to any kind of political plot or accusing her of doctoring monitoring reports is absurd. There are no malevolent intentions behind any of the Swedish. . . projects."<sup>225</sup>

The United States denied any involvement.<sup>226</sup> A statement from the U.S. embassy in Lusaka stated: "The U.S. embassy regrets that false allegations about an imaginary election conspiracy continue to be publicized. We encourage Zambia to focus its energies on the challenges of development and democratization that lie ahead."<sup>227</sup>

Within a week of the election, the Zambian government had clamped down on election monitoring groups, in particular those who called the elections not free and fair. The NGOs—the Committee for a Clean Campaign (CCC), AFRONET and the Zambian Independent Monitoring Team (ZIMT)—were raided and searched, documents seized, and the leadership briefly detained. They were charged with receiving funding from foreign sources. In the months since the election these issues have persisted. President Chiluba has taken particular issue with the donor community for supporting these groups he sees as opposed to him. He has classified NGOs into "indigenous" and "non-indigenous" categories: in essence, those that are funded by the donors and those that are not.

---

<sup>223</sup>*ZNBC radio*, Lusaka, in English 0500 GMT, November 26, 1996. BBC Monitoring Summary of World Broadcasts, November 27, 1996.

<sup>224</sup>*Reuter* (Lusaka), November 29, 1996.

<sup>225</sup>*Reuter*, *ibid.*

<sup>226</sup>*ZNBC radio*, November 26, 1996.

<sup>227</sup>*The Post* (Lusaka), November 28, 1996, "United States dismisses conspiracy allegations."

In a post-election diplomatic cold shoulder, President Chiluba's December 2 press conference to announce his new twenty-five-member cabinet was, according to the independent media, "visibly shunned by members of the diplomatic corps."<sup>228</sup> President Chiluba expressed regret that he was unable to appoint loyal members of the MMD to his cabinet due to donor pressure and objections. "It's a burden on me," he said. He was unable to appoint MMD National Chairman Sikota Wina, his wife Princess Nakatindi, and former Foreign Affairs Minister Vernon Mwaanga, who stepped down from government amid drug-trafficking charges from other members of the cabinet and from donors.<sup>229</sup>

---

<sup>228</sup>*The Chronicle* (Lusaka), December 3 - 5, 1996.

<sup>229</sup>*The Post* (Lusaka), December 3, 1996.

Reaction to the election result was mixed. In a declaration by the presidency, the E.U. said it regretted the country's elections because they were not held on a basis acceptable to all parties and urged the government and its opponents to resolve their differences peacefully. The E.U. said it was "concerned that the absence of political consensus might result in a further decline in the previous standards of governance," and urged all parties to avoid confrontation and engage in dialogue to resolve their differences peacefully. It noted that the elections had been held in a peaceful and orderly manner.<sup>230</sup> The central and eastern European countries associated with the European Union and the associated countries Cyprus and Malta aligned themselves with the declaration.<sup>231</sup>

The Southern African Development Community (SADC) commended Zambians for holding peaceful, free, and fair elections. The SADC executive secretary, Kaire Mbuende, in a letter of congratulations assured President Chiluba of his highest regard and consideration.<sup>232</sup>

The United States said it regretted Kaunda's exclusion from the election and the legislation by which Chiluba's government had "limited the rights of the Zambian people to chose their leaders freely." The U.S. embassy in Lusaka added a statement which urged the "government of Zambia to begin demonstrating, at the earliest opportunity, a strengthened commitment to political and economic reform processes that have been underway since 1991."<sup>233</sup>

The Japanese embassy in Lusaka expressed regret that the elections did not accommodate all political competitors. Embassy Counselor Etakayaki Miyashita said that while it was not the intention of the Japanese government to intervene in internal matters, the political misunderstanding between the government and opposition parties raised concern, "It is our hope that a peaceful solution to the current confusion will be found soon."<sup>234</sup>

A month after the election, on December 19, when President Chiluba received credentials from the new ambassadors of Sweden, China and the South African high commissioner to Zambia, he used the occasion to again accuse some NGOs of serving foreign interests and warned that "non-indigenous" NGOs were potential grounds for mercenary operations in Zambia.

---

<sup>230</sup>*Reuter*, Africa Economic Digest, November 25, 1996. "Zambia: E.U. regret elections."

<sup>231</sup>*Reuter*, November 25, 1996.

<sup>232</sup>*ZNBC radio*, Lusaka, in English 1800 GMT, November 27, 1996. BBC Monitoring Summary of World Broadcasts, November 29, 1996.

<sup>233</sup>*Reuter* (Lusaka), November 21, 1996.

<sup>234</sup>*The Post* (Lusaka), December 6, 1996.

Swedish ambassador Kristina Svensson congratulated President Chiluba on his re-election and thanked him for voting for Sweden as one of the new members of the United Nations Security Council. She commented that her own country's development had proved to them the importance of a strong civil society and particularly the importance of a strong and independent NGOs.<sup>235</sup> The Chinese ambassador, Wang Yunxiang, hailed the Zambian government for supporting the peace process in the region. He said that the government had worked tirelessly to improve the economy and identify a political system that suited Zambians. President Chiluba said China was a genuine friend and had not abandoned Zambia at any time.<sup>236</sup>

American ambassador Arlene Render took a strong stand against the Chiluba government, calling for change and the implementation of democratic values in society. In her speech when she presented her credentials in early 1997, Arlene Render announced,

---

<sup>235</sup>*The Post* (Lusaka), December 20, 1996.

<sup>236</sup>*The Times of Zambia* (Lusaka), December 20, 1996, "Victorious Chiluba Hailed."

Political stability is essential to economic viability. The building blocks of political stability were put into place in 1991 with your election in the first multi-party democratic election. Maintaining a democracy is a continuous growth process. Freedom of expression, tolerance of differences, respect for the principle of inclusion and the rule of law are pillars of the democratic base. Often these pillars are attacked from one quarter or another, but under no circumstances must we allow the pillars to fall. As an African-American, I know first hand why these pillars must never be allowed to fall. It was the courts and my government's commitment to respect the rulings of its institutions that made it possible for me to stand here today.<sup>237</sup>

Making a link between struggles for rights in the U.S. and in Zambia, Arlene Render celebrated the contribution of Martin Luther King Jr. to the creation of the "pillars of democracy" in the United States. Making an address at a reception at her residence in February, Ambassador Render said that Zambia had faced down many challenges to its freedom and that democratic pillars were just as important to Zambians as they are for Americans: "The sixties happened because America had a strong civil society. A vibrant, challenging, strong civil society should not be seen as a threat but as an engine and balancing force for change or transformation. Zambia's civil society should be embraced."<sup>238</sup>

However, the American emphasis on rights recognitions was taken amiss by Zambian government officials. Minister Without Portfolio Michael Sata accused the United States government of hostility toward the Zambian government and of taking a hard-line stance despite the country being considered a yardstick for democracy in Africa.<sup>239</sup> "You have treated us with utmost hostility for the past few years, through your undeclared sanctions," said Sata. He said that if the government had not acted with tact, an uprising could have occurred in the country." But U.S. Ambassador Render and a visiting State Department deputy director for Southern Africa said that Washington would be unrelenting in its demand for good governance in Lusaka, which the U.S. saw as inseparable with economic performance.<sup>240</sup>

The next day, Sata said he had no apology to make and did not regret his verbal attacks of the U.S. because "there was a need for frank and open dialogue on all issues pertaining to relations between Zambia and her cooperating partners, such as the U.S." He added it was wrong for the U.S. to prevail over other countries to deny aid to Zambia over perceived bad governance. Sata contended that Zambia had met all the political and economic benchmarks.<sup>241</sup>

---

<sup>237</sup>Text of speech by U.S. ambassador Arlene Render on presentation of her credentials to President Chiluba, Lusaka, no date given.

<sup>238</sup>Ambassador Render addressed a large reception at her residence, in honor of Martin Luther King, Jr. on February 19, 1997.

<sup>239</sup>*The Times of Zambia* (Lusaka), April 17, 1997, "Sata Attacks Hostile U.S.."

<sup>240</sup>*Panafrikan News Agency*, April 16, 1997, "Washington, Lusaka Differ on Good Governance."

<sup>241</sup>*The Times of Zambia* (Lusaka), March 19, 1997, "No apologies says Sata."



The new Swedish ambassador to Zambia, Kristina Svensson, also underlined her government's continued concern about human rights practice during a speech she gave at a ceremony of signing an extension of an agreement on development between Sweden and Zambia on February 13, 1997. Ambassador Svensson stated that:<sup>242</sup>

As newly appointed ambassador, and with a personal background as a member of the Swedish Parliament, I naturally take a deep interest in issues of democracy and human rights. For me personally, and indeed for my government, it is of primary importance to contribute to the promotion of civil rights, Good Governance, democratic procedures and all other aspects which characterize as the pluralistic and open society.

However, while rights violations were less visible than before, a number of developments provoked response from the donors. In particular, the Zambian government's attempted introduction of the Media Council Bill drew sharp criticism. The Irish embassy chargé d'affaires, Brendan Rogers, said that the government should ensure that the draft bill was discussed with all stakeholders before it became law.<sup>243</sup> In previous months, the Irish government had not taken a firm position on rights recognitions.

*The Times of Zambia* ran a story on April 14, "Political Strides Cheer Envoy," which said that the Swedish ambassador considered Zambia to have done well, but that the proposed Media Council Bill would go against this. "Good governance is one of the conditions attached to aid, especially the balance of payment [sic] support. But the Media Council Bill is a clear violation of this condition. The Bill will stifle the media. As one of the major donors we welcome the establishment of a permanent Human Rights Commission and the new Anti-Corruption Commission team, but we are definitely opposed to the Media Council Bill. The government should just put it in a drawer and forget about it."

Pressure was unrelenting, and the government was forced to back down by suspending consideration of the bill. Vice-President Godfrey Miyanda assured the Norwegian ambassador, Jon Lomey, that his government would not implement the media council legislation without consulting the media. The Zambian government would first get the feelings of journalists before tabling the bill, he said.<sup>244</sup>

At the pre-Consultative meeting held in London on April 25, many international participants expressed their concern for the future of human rights in Zambia. Specifically, concerned donor nations seemed to focus on the importance of both good governance and progress. While many nations praised Zambia for implementing reforms such as the creation of the Human Rights Commission (HRC), they went on to assert that unless such reforms were actively followed up, they would amount to little more than rhetoric. For example, speaking on behalf of Germany, the desk officer for Zambia and Southern Africa at the Ministry for Economic Cooperation and Development, Marita Steinke, began by expressing appreciation for the steps being taken by the Government of Zambia to facilitate an international dialogue, but continued to insist that "Work was not completed simply by passing a Human Rights Act. The work must

---

<sup>242</sup>"Her Excellency Ambassador Kristina Svensson's Speech at the ceremony of signing the extension of the agreement on development cooperation between Sweden and Zambia," Lusaka, February 13, 1997.

<sup>243</sup>*The Times of Zambia* (Lusaka), April 15, 1997, "Consult on media bill, state urged."

<sup>244</sup>*Panafrican News Agency* (PANA), March 26, 1997.

start afterwards and must be supported by the political will to act and political actions following it." Similarly, on behalf of Sweden, the head of the Southern African Division at the Ministry of Foreign Affairs, Anders Mollander, expressed the need for strong institutions to bolster a framework within the Zambian government in order to "welcome continued practical measures aimed at the creation of a truly democratic culture in Zambia." Speaking for Japan, First Secretary at the Embassy of Japan in London Shinji Urabayashi noted his country's concern for the lack of dialogue between the ruling government and the opposition parties and expressed that it would continue to pay careful attention to Zambia's support of its newly-implemented reforms.

### **Human Rights and Economic Assistance**

Throughout the period leading up to the pre-Consultative Group meeting in London on April 25, relations with the donor community were strained. The Zambian government requested the meeting in a bid to present itself as having made considerable progress on its governance and economic programs. Donor reactions were mixed about whether the freeze on aid would be lifted.

The Japanese embassy had earlier stated: "Our donor aid towards balance of payment [sic] will largely depend on how the government resolves the current political crisis. As of now I don't think it is urgent for us to dispatch any money to this government," said Japanese Counselor Etakayaki Miyashita.<sup>245</sup> He added: "We want to reduce poverty and illiteracy in Africa but as regards Zambia we have to wait until the government renews its commitment to the democratization process."<sup>246</sup>

In early December, the Zambian opposition sent a message to the Paris Club dissuading donors from recognizing the elections, which they said were fraudulent and rigged.<sup>247</sup>

On December 9, the German embassy announced that it had cut part of its bilateral aid to Zambia in protest against the political impasse. An announcement stated: "We were supposed to release about \$38 million as aid allocation to Zambia. Unfortunately, we have acted on our reservations expressed earlier this year regarding the constitution and as such we are only releasing \$21 million, for ongoing projects." The German decision was the first response by a donor country to the November election.

In mid-February, the Swedish ambassador said that Sweden would not resume its balance of payments support until the country reviewed its initiative in upholding good governance.<sup>248</sup>

---

<sup>245</sup>*The Post* (Lusaka), December 6, 1996.

<sup>246</sup>*The Post* (Lusaka), December 6, 1996.

<sup>247</sup>*The Post* (Lusaka), December 11, 1996.

<sup>248</sup>*The Post* (Lusaka), February 14, 1997, "Aid freeze continues."

On March 4, Finance Minister Penza informed parliament that the IMF, following a mid-term review of Zambia's performance under Enhanced Structural Adjustment (ESAF), would grant Zambia \$14 million. Penza said that the favorable outcome was an indication that Zambia was on course with the implementation of its economic recovery program. He said that the decision would pave the way for Zambia to formalize the 1996 agreement with the Paris Club for a 67 percent reduction in external debt service obligations.<sup>249</sup> Penza attributed the success of the economic program to reduced inflation levels of 35 percent in 1996.<sup>250</sup> Zambia had been given the money because it had met the benchmarks set for its economic recovery program, said Penza. IMF Resident Representative in Zambia Elwaleed Taha said the money, for balance of payments support, was released following successful completion of the first year of the three year ESAF program.<sup>251</sup>

On March 13, the European Union, through the European Commission, granted Zambia 183 million ECU (\$ 200 million) to be paid over the next five years. Fifty-four percent of the funds would be spent on development, twenty-four percent on education, training, and health reform, and fifteen percent would be used for balance of payments support.<sup>252</sup> Athanassios Theodorakis, deputy director for development representing the European Commission, with Zambia Finance Minister Penza, signed the National Indicative Programme (NIP) for cooperation under the second protocol of the Fourth Lome Convention between the Republic of Zambia and the European Union. Representatives of the E.U. member states and diplomatic corps were present.<sup>253</sup>

The 15 percent balance of payments support allocation was presented by the state-run Zambian newspapers as indicative of E.U. resumption of this aspect of the aid package. The *Times of Zambia* reported that the E.U. had given Zambia "a staggering K270 billion (\$200 million) grant of which a substantial amount will be channeled towards the balance of payment [sic] support. The agreement . . . signifies the resumption of the balance of payment [sic] support which most donors withheld during the run-up to the last general elections as a condition for good and democratic governance."<sup>254</sup>

In an interview with Human Rights Watch/Africa, Brian Kelly, desk officer for Zambia at the European Commission, said that the signing of the development cooperation package had been taken by the Zambian newspapers as a resumption of balance of payments support. However, this support would not be released yet; it was meant to spread over a five-year period, to be paid at a later stage. The amount had to be included now as part of NIP otherwise the budget allocation would not have been made. If there is resumption of balance of payments, this will first be discussed with the member states. Only after consultation will the Commission take a decision on resuming this support. Agreements would need be made under NIP, which is the framework of cooperation.<sup>255</sup>

On March 14, German ambassador Dr. Peter Schmidt said that his government was still studying the democratic situation before making a commitment on its bilateral support ties. "We have continued assisting with

---

<sup>249</sup>*The Post* (Lusaka), March 5, 1997. "IMF gives Zambia U.S.\$ 14m."

<sup>250</sup>*Zambia Today*, March 3, 1997. The Paris Club meeting was attended by Austria, Brazil, Canada, France, Germany, Italy, Japan, the United Kingdom and the United States.

<sup>251</sup>*The Zambia Daily Mail* (Lusaka), March 4, 197, "Zambia back in IMF good books."

<sup>252</sup>*Reuter* (Lusaka), March 13, 1997, "E.U. grants Zambia \$200 million over next five years."

<sup>253</sup>Press release, European Union Delegation of the European Commission to Zambia, March 13, 1997.

<sup>254</sup>*The Times of Zambia*, March 14, 1997, "Zambia in \$200m fillip".

<sup>255</sup>Human Rights Watch/Brussels communication with European Commission.

project aid and debt relief at the Paris Club but no funding has been budgeted for this year's bilateral aid. We are still closely monitoring the country's record."<sup>256</sup>

The issue of the aid freeze remained a focus of bilateral relations and a source of tension. On April 15, the *Times of Zambia* ran an article headlined, "Sweden drops aid conditions", which said that there had been a policy shift on aid conditions.

This prompted an immediate press release:

---

<sup>256</sup>*The Post* (Lusaka), March 14, 1997, "Zambia receives E.U. BOP support."

The Embassy wishes to correct the wrong impression given by today's headlines in the *Times of Zambia* that "Sweden drops aid conditions." None of the statements in yesterday's interview could possibly have formed a basis of such an interpretation. Sweden is currently reviewing its Africa policy at a more equal relationship between partners— therefore the new name: "Partnership Africa." This is an effort undertaken by the Swedish government by the end of this year. The document is still being worked on and concrete proposals are not yet known. In the process extensive consultations with African counterparts are taking place, culminating in a conference in Stockholm June 28-30, 1997. In Sweden's bilateral relations to Zambia, levels of assistance are still pegged to the development of the economic reform program and to the progress in the area of good governance. It is envisaged that further consultations will take place with the Zambian government in the very near future.<sup>257</sup>

Two days later, on April 17, *The Post* ran a story with the headline, "Sweden maintains aid conditions."

The April 25 meeting in London with the donors, with its purpose of restoring normal aid flows, was met with different expectations. The deputy German ambassador, Axel Ziedler, said that the meeting might not pave the way for the resumption of aid, but it would present an opportunity for Western governments to listen to Zambia's case. The Swedish embassy said that Sweden's relations with Zambia depended on the implementation of economic reforms and progress in the area of good governance." Finance Minister Penza commented: "I think the outcome of the meeting will be very positive."<sup>258</sup>

Following the meeting, which the World Bank and IMF also attended, donors said that they were willing to discuss renewed aid after preliminary talks with the Zambian government had been held. "Most delegates said they were prepared to have a Consultative Group meeting," said deputy German Ambassador Axel Ziedler. The CG meeting had been deferred twice in the past six months. While conceding that the meeting was an important first step to normalizing relations, diplomats said that their governments were still concerned about governance issues.

On May 2, the Norwegian ambassador, Jon Lomay, said that Norway had budgeted \$40 million for bilateral aid to Zambia, but this did not include balance of payments support. He said \$20 million would be used on project support while the remaining amount would be used on special projects, which included strengthening of the democratic process.<sup>259</sup> Norway was still concerned about the implementation of good governance and would continue to monitor the situation closely. "We feel there is a need for major political parties to come together and create rules which will be acceptable to all players. We are also concerned about the way the media issue is being handled.. What we would like

---

<sup>257</sup>Press release from the Swedish embassy, Lusaka, April 15, 1997. Partnership Africa, a new Swedish initiative, focusses on democracy, the global economy, aid and therelationships between Sweden and Africa. Its aim is to build partnerships: development cooperation is still needed, but it needs be changed to reduce the negative aspects of aid dependency.

<sup>258</sup>*Panafrican News Agency* (PANA), April 19, 1997, "Zambia to meet donors in London" and *Reuter*, April 17, 1997, "Zambia set for Western donor talks".

<sup>259</sup>*Zambia Daily Mail* (Lusaka), May 3, 1997.

to see is the media and the government opening up dialogue and jointly agreeing on the media's self regulation and not government regulation," said Ambassador Lomay. "While there is considerable satisfaction with the economic reform program and the privatization of the copper industry, this is not to say everything has gone as we, the donors would have liked."<sup>260</sup>

---

<sup>260</sup>*The Post* (Lusaka), May 5, 1997.

Ambassador Lomoy announced on May 27 that Norway decided to continue project aid to Zambia, continuing to withhold the balance of payments support program in order to encourage reform. "We commend the government for establishing a human rights commission and for assurances that it will not control the media, but this does not mean we are satisfied in all areas," explained Ambassador Lomoy. The Norwegian government froze project aid in 1996 to protest the constitutional changes that barred certain candidates from participating in the general elections.<sup>261</sup>

According to an article in *The Times of Zambia* in May, Britain was to resume balance of payments support. British High Commission First Secretary, Commercial and Consular Affairs, Roger Clark was quoted as saying, "Balance of payments support was withheld on the grounds of governance issues. But we have been encouraged by recent developments in the area of good governance in Zambia."<sup>262</sup> However, according to a more recent interview with Julian Chandler of the Foreign and Commonwealth Office, Britain's position had not changed, and "full balance of payments resumption remains dependent on further meaningful progress by the Zambian government in good governance."<sup>263</sup>

Similarly, Sweden reiterated on June 6 that it also decided to withhold balance of payments support in order to encourage reform. According to Kristina Svensson, Swedish ambassador to Zambia, "My country Sweden is supporting a political dialogue because in a democracy all parties must give their contribution to peaceful and prosperous development of the nation. When we see this dialogue taking place, we will consider to release our balance of payment [sic] support."<sup>264</sup>

### **The Importance of Conditionality**

The international donor community would squander much of the leverage it has available to convince the Chiluba government to improve its human rights performance, if it were to suspend conditionality for balance of payments support in the immediate or short-term. The pressure applied thus far has generated some positive response, but serious and deep-seated problems remain. Lifting the aid freeze before real change has been effected would remove the incentive toward further, sustainable improvement. The continued strategic and targeted use of this dimension of the aid package to ensure compliance is of critical importance.

The essential question to ask about Zambia's human rights record is whether real change has occurred; or whether the change is illusory. Are the changes structural? Are they substantive? Are the visible, albeit slight, improvements liable to be reversed, and, most importantly, are they sustainable? Has there been a demonstrated change in the government's attitude toward civil society and the opposition as well as a wide range of other institutions that are crucial to democratic development and consolidation? The speeches by all major donor representatives at the April 25 pre-Consultative meeting were laced with grave doubts that this was the case.

---

<sup>261</sup>*The Post* (Lusaka), May 5, 1997. "97 freeze continues, says Jon Lomay."

<sup>262</sup>*The Times of Zambia* (Lusaka), May 24 1997.

<sup>263</sup>Human Rights Watch/Africa telephone interview with Julian Chandler, Foreign and Commonwealth Office, London, June 2, 1997.

<sup>264</sup>*The Post* (Lusaka), June 6, 1997.

This report, which examines human rights in Zambia since the November 1996 elections, finds that there has been scanty improvements in the human rights record. In many cases, there is an apparent correlation between international pressures and internal changes, and actions such as the aid freeze have made a difference. Lifting it before substantive change has occurred would close the door on concrete improvements and open up the possibility of regression.

The human rights situation remains far from acceptable. Human rights violations have continued. In contrast to the past, these attacks have not been directed against high profile opposition and civil society leaders. Instead, they have been aimed at people who do not make the headlines. Judicial independence is fragile; the political opposition is hamstrung; the media continues to be hounded and journalists jailed; the highly controversial Media Bill has been suspended, but not withdrawn; and threats and criminal charges against the NGO sector continue.

More importantly, the government has avoided addressing the root cause of the human rights problem. Not only is there no meaningful dialogue with the opposition or national discourse with all of the country's people, there has also been no talk of addressing the Constitutional Amendment Act of 1996 and creating a more consensual approach to constitutional reform. The amendment's highly discriminatory provisions largely stripped the November election of meaning. Based on a deeply flawed premise, the election delivered was deeply flawed. At the time, the international donor community was sufficiently affronted by this development to reach a consensus to suspend balance of payments support. At this point, it would be inconceivable for this aid freeze to be lifted unconditionally since no real changes have taken place in Zambia to date.

The Zambian government is acutely cognizant of its human rights image and has in recent months devoted considerable time and resources to rebutting domestic and international criticism. The briefing paper submitted to the international donor community in advance of the London April 25 pre-Consultative Group meeting and Minister Penza's speech at that meeting illustrated a shift away from the government's previous unwillingness to discuss human rights issues to an acknowledgment, albeit muted, of its international obligations to uphold internationally recognized rights, particularly civil and political rights.

Pressure has generated some positive response from the Zambian government, although domestic critics and the political opposition continue to face human rights abuse. A very clear awareness of the international concern over its human rights practices has informed its presentations to donor governments. The continued connection of support, especially balance of payments support, to clear and firm progress toward benchmarks on democratic and human rights progress should provide a further incentive to see through the reforms promised but not implemented and to reverse the proposals to further restrict fundamental rights—like the Media Bill—that have been temporarily shelved in the face of domestic and international protest.

The call to the donor community is therefore to continue to use political conditionality and withhold bilateral and multilateral aid to ensure the linkage of economic assistance to respect for human rights and the rule of law. If the aid freeze is hastily lifted, the Chiluba government may find it too easy to ignore both domestic and international demands for democratic and human rights reforms. Political conditionality should, however, be strategically calibrated to progressively reward progress toward clearly specified benchmarks. In particular, economic assistance should be conditioned on the achievement of greater tolerance for a vigorous but loyal political opposition, civil society, rule of law and democratic accountability. These, in turn, require a free press, an independent judiciary, a credible electoral system and competitive elections whose results are acceptable to all parties.



## VIII. ACKNOWLEDGMENTS

The research for this report, based upon missions to Zambia in February and April 1997, was done by Alex Vines, research associate at Human Rights Watch/Africa, and archival research was done by Jennifer Pogrund, consultant to Human Rights Watch/Africa. Jennifer Pogrund, Stephanie Reents, consultant to Human Rights Watch/Africa, and Alex Vines wrote the report. The report was edited by Peter Takirambudde, the executive director of Human Rights Watch/Africa. Production assistance was provided by Ariana Pearlroth, associate at Human Rights Watch/Africa, Hetty Eisenberg and Olajumoke Osode, interns at Human Rights Watch/Africa.

### *Human Rights Watch/Africa*

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. The staff includes Kenneth Roth, executive director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Robert Kimzey, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Africa division was established in 1988 to monitor and promote the observance of internationally recognized human rights in sub-Saharan Africa. Peter Takirambudde is the executive director; Janet Fleischman is the Washington director; Suliman Ali Baldo is the senior researcher; Alex Vines is the research associate; Bronwen Manby and Binaifer Nowrojee are counsels; Ariana Pearlroth and Juliet Wilson are associates; and Alison DesForges is a consultant. William Carmichael is the chair of the advisory committee and Alice Brown is the vice chair.

Web Site Address: <http://www.hrw.org>

Gopher Address: <gopher://gopher.humanrights.org:5000/11/int/hrw>

Listserv address: To subscribe to the list, send an e-mail message to [majordomo@igc.apc.org](mailto:majordomo@igc.apc.org) with "subscribe hrw-news" in the body of the message (leave the subject line blank).