

ZAMBIA

Misrule of law: Human rights in a state of emergency

1. Introduction

In the initial days after an attempted coup on 28 October 1997, front-page editorials appeared in the state-controlled newspapers that advocated the suspension of human rights for anyone connected with the coup. The government-owned Zambia Daily Mail newspaper told its readers in a front-page editorial: “The coup plotters ...had no regard for human rights and should not expect sympathy and human rights themselves. ...The rights of 10 million innocent citizens are more important than the rights of a few criminal elements.” The editorial added: “Human rights for coup plotters? We think criminals should not hide under human rights. Criminals deserve to lose their human rights. One individual’s human rights should not override the human rights of the whole society.”¹

The Times of Zambia, another government-owned newspaper, attacked those who expressed worries about torture and the suspension of basic rights under a state of emergency declared on 29 October 1997: “Zambians are sick and tired of pseudo human rights activists who seem totally out of touch with reality, and whose perception of danger is totally warped and at variance with the rest of the populace. Even when confronted with the sordid threat of a military coup, the so-called human rights advocates have already ganged up in defence of the wrongdoers.”² The front-page newspaper editorial attacked Ngande Mwanajiti, head of the Lusaka-based Inter-African Network for Human Rights and Development (AFRONET), by name, as well as other human rights advocates.

The editorials seemed to reflect the policy of the ruling Movement for Multi-party Democracy (MMD) party and the government. Just after the coup attempt, President Frederick Chiluba urged Zambian citizens to observe “the rule of law” if they wanted to enjoy their fundamental rights, because human rights could not be looked at in a vacuum. The President said Western donor countries should not look at the country’s human rights record in isolation from the laws of the land, as enshrined in the constitution and other statutes.³ Another top MMD official cautioned human rights groups on their reporting of human rights violations. “A criminal is a criminal and should be treated so. Are we going to protect murderers?” asked Christopher Chawinga, the ruling party’s chairman for Lusaka Province. “We should not listen to the Western world. Police should be given a chance to do their work.”⁴

¹Zambia Daily Mail (Zambia), 3 November 1997.

²Times of Zambia (Zambia), 1 November 1997.

³Ibid.

⁴Zambia Daily Mail (Zambia), 17 November 1997.

In a national atmosphere of revenge, when many basic rights as guaranteed by the Zambian constitution were suspended, Amnesty International believes that police and security officers tortured at least six individuals suspected of involvement in the coup attempt. Their cases were later documented both by independent lawyers and the Government of Zambia's own permanent Human Rights Commission (HRC). At least one appears to have died from this torture, and others were seriously injured. Other human rights violations were allowed to take place --- such as prolonged administrative detentions that violated the right to fair trial, the suppression of legitimate and peaceful opposition political activity, and severe curtailment of citizens' freedoms of expression, assembly and association --- under a state of emergency that appeared to be unnecessary.

How was the torture and other human rights violations allowed to happen? Amnesty International believes the flouting of the Constitution's procedural guarantees governing detentions under a state of emergency; the Government of Zambia's abuse of repressive laws dating back to the colonial era; the lack of safeguards in the legal system; and the limited powers of the HRC facilitated the violation of human rights, including the use of torture during incommunicado detention that lasted for days, sometimes weeks.

Four months later, after continuing calls by both the local human rights movement and the international community to "charge or release" the detainees, the government announced at the end of February 1998 that most of the total of 104 detainees, including former president and opposition leader Kenneth Kaunda, would be charged with treason or misprision of treason, while seven had been secretly released. This move appears linked to the Government of Zambia's need to improve its human rights image before the next World Bank Consultative Group meeting, scheduled to be held in Paris in April or early May 1998. In 1997, Zambia's bilateral partners suspended balance of payments assistance due to disappointments on issues of governance, including human rights.⁵ This upcoming meeting of Western donors will decide whether to release further assistance, which last year was pledged to be US\$150 million in balance of payments support, plus an additional US\$285 million in project assistance.⁶ Amnesty International appeals to Zambia's donors and the international financial institutions that are shortly to consider financial support to the country, to give a strong message to the Government of Zambia by taking the human rights situation of the country into account in their deliberations.

2. The coup attempt

⁵ Zambia Consultative Group Meeting, Paris, July 10-11 1997, Chair's Closing Statement, Ms Phyllis Pomerantz, World Bank Country Director for Zambia.

⁶ World Bank press statement, "The Consultative Group for Zambia Pledges Renewed Partnership", issued 11 July 1997, Paris.

Four days after Zambia celebrated 33 years of independence, the country woke up on the morning of 28 October 1997 to hear what many later described as a slurred, drunken-sounding voice announcing the overthrow of the Government of Zambia over the national radio station, the Zambian National Broadcasting Corporation. Identifying himself as "Captain Solo", Captain Steven Lungu claimed to speak on behalf of a "national redemption council" whose intention was "saving our nation from total collapse". In his radio broadcasts that began shortly after 6 am, Captain Steven Lungu declared the constitution suspended, political activity banned, and all airports closed. Demanding that President Frederick Chiluba surrender by 9 am, he claimed to have troops surrounding the presidential State House and criticised the government for corruption and criminal activity. Listeners agree that at no time did Captain Steven Lungu refer to former president Kenneth Kaunda, who leads the opposition United National Independence Party (UNIP), nor to other opposition politicians.

The coup attempt, described by Captain Steven Lungu as "Operation Born Again", saw a group of soldiers drive armoured cars to capture the radio station, while another band of soldiers at the Arakan army barracks in Lusaka planned to take hostage Zambian army commander Lieutenant General Nobby Simbeye. That second group, allegedly led by Captain Jackson Chiti, failed to find the commander and instead took hostage his family members and other officers, later breaking into a private bar and looting a refrigerator full of beer. The escaped lieutenant general raised an alarm, rousing troops loyal to the government.

Contrary to Captain Steven Lungu's increasingly jittery broadcast statements, there were no rebel troops surrounding the presidential State House. By 8 am, there was silence on the airwaves. Some of the mutinous soldiers at the radio station stripped off their army fatigues and ran away. Others barricaded themselves in the radio station's offices. A few tried to resist a commando unit, wearing red berets, but were quickly overwhelmed. A reported total of 15 were immediately arrested, and at least one of the rebel soldiers was fatally shot in the fighting as the troops loyal to the Government of President Chiluba regained control of the radio station. By 8:36 am, a lieutenant colonel announced to the nation over the radio that the government was in control and that all culprits would be arrested. A government national television crew later filmed and broadcast the image of Captain Steven Lungu lying on the ground as soldiers stamped on his chest.

It had taken about three hours to suppress the poorly organized, bumbling coup attempt. The Zambian security forces began a sweep of those who had fled, nabbing four soldiers who drove off in Lt. Gen. Nobby Simbeye's car. Two others were soon discovered near the radio station after school children spotted them in their hiding place. On the same day as the coup attempt, President Chiluba made two national addresses on television and radio to reassure the nation that he was firmly in control, that his government's legal, political and economic programs

would continue as usual, and that his fellow Zambians should go about their business as normal. He made a special appeal to investors, saying the country was stable and long-term investment was safe.⁷

3. The declaration of a state of emergency

In the first days after the coup attempt, marches and rallies supporting the government were staged in a number of towns across the country. The broad spectrum of Zambian society, including the political opposition, condemned the coup attempt, including UNIP, the Liberal Progressive Front (LPF) party, and the Zambia Democratic Congress (ZDC) party, led by Dean Mung'omba. Religious groups decried the coup attempt, as well as human rights organizations, such as the Law Association of Zambia, AFRONET, Women For Change and Foundation for Democratic Process (FODEP).

After holding a special cabinet meeting on the morning of 29 October, in which the cabinet reportedly discussed how best to handle the investigation of the coup attempt,⁸ President Frederick Chiluba declared a state of emergency, as provided for by Section 30 of the Constitution. That declaration then allowed him to use Section 3 of the Emergency Powers Act (Cap.108) to adopt "Emergency Regulations"⁹ based on the Preservation of Public Security Act (Cap.112). These Regulations were first used under colonial rule to suppress African nationalist movements, and empower police to prohibit all public meetings or private gatherings; compel chiefs and headmen to attend meetings; close roads; impose curfews; take possession of land, buildings and any kind of private property; and restrict access and movement of people in any area.¹⁰

The Regulations also authorized police officers to search any premises and arrest any person without a warrant, detaining them for up to 28 days without charge. Under normal circumstances, Zambian law dictates that suspects must be charged within 24 hours of arrest. Under the Regulations based on the Preservation of Public Security Act, the President is also granted the extraordinary power to indefinitely detain any individual. There are limited safeguards for state of emergency detainees, including the stipulation in Article 26 of the

⁷ The Post (Zambia), 29 October 1997.

⁸ Times of Zambia (Zambia), 30 October 1997.

⁹ Statutory Instrument No. 126 of 1997, Supplement to the Government Gazette, 31 October 1997.

¹⁰ The Regulations have been amended and expanded over the years, and on 31 December 1997, President Chiluba adopted the Preservation of Public Security (Restricted Persons) Regulations, which set out the powers of the police in respect of the control of places of restriction and the security and treatment of restricted persons.

Constitution that, within 14 days of detention, a notice must be published in the Government Gazette giving the name, the place and the law under which they have been detained. Other safeguards include access to a lawyer, and the right to challenge a detention no sooner than three months after being taken into custody.

While they condemned the coup, much of civil society quickly criticized the imposed state of emergency as unnecessary. AFRONET's Ngande Mwanajiti said the state of emergency might "send wrong signals, about political stability, in particular as it relates to investor confidence." Lucy Sichone, the chairperson of the Zambia Civic Education Association (ZCEA), noted: "The existing laws are clear on handling situations detrimental to the peace of the nation". National Party Vice-President Daniel Lisulo declared that the President did not need the state of emergency to handle the aftermath of the coup. "At the face of it, the coup was not properly organised and was immature. Everyone saw those two drunken soldiers and it was very clear to see the coup was not serious," said Lisulo. Even those who supported the state of emergency, such as the Zambian Congress of Trade Unions (ZCTU), gave tentative backing. "In the given circumstances, a state of emergency is necessary, as long as it is not abused," said ZCTU president Fackson Shamenda, who asked that it be lifted as soon as investigations finished.

Amnesty International also believes the declaration and further renewal of the state of emergency did not conform with the requirement of Article 4 of the International Covenant on Civil and Political Rights (ICCPR) and therefore was unnecessary. There seemed to be no further threat to the life of the nation once the ring-leaders had been rounded up on the spot and those soldiers who had fled were captured. Security forces investigating the coup did not appear to need the special powers of detention -- up to 28 days' detention under a Police Detention Order or indefinite detention under a Presidential Detention Order -- in order to protect the life and safety of the nation that remained strong and stable, according to the President's own assurances on the day of the coup attempt.

Further renewal of the state of emergency in January 1998 was clearly unnecessary: Foreign Affairs Minister Keli Walubita told a Channel Africa reporter in Addis Ababa in February 1998 that the situation in Zambia was calm, and that the state of emergency was meant only to facilitate the police investigation into the attempted coup.¹¹

Zambian human rights activists and politicians have raised concerns about the Zambian authorities using the state of emergency to suppress political activity. The ZCEA's Lucy Sichone worried that "the state of emergency is just an excuse to victimise people whom the MMD government think are enemies of the state". The National Party feared government harassment of those perceived as political enemies. ZDC Secretary General Azwell Banda condemned the

¹¹ Times of Zambia (Zambia), 27 February 1998.

state of emergency as an abuse of citizens' constitutional rights. "It is a clear manifestation of President Chiluba's personal desire to destroy democratic institutions and fundamental rights as enshrined in the bill of rights contained in our constitution." UNIP's chairman, retired general Malimba Masheke, saw the state of emergency as a ploy by Chiluba to settle old scores with political opponents.

Amnesty International shared their concern. In its press statement issued on 31 October 1997, the organization urged the Zambian authorities not to use the attempted coup to justify a crack-down on the political opposition and brutal treatment of those detained. It urged that all detainees held under the state of emergency should be charged promptly with a recognizably criminal offence and fairly tried or else released. Unfortunately, Amnesty International believes its fears later proved to be correct.

4. Torture under the State of Emergency

In his speech opening parliament on 16 January 1998, President Frederick Chiluba told the house: "The fears and anxieties expressed by traditional nay-sayers regarding human rights violations during the state of emergency have proved unfounded. The state of emergency has not interfered with the normal daily lives or the fundamental freedoms and liberties of our people." But in reviewing the situation of human rights in Zambia, Amnesty International believes that the coup attempt was used by the Government of Zambia to justify an unneeded state of emergency declaration, which was then used to suppress peaceful, non-violent political activity under the guise of investigating the failed coup plot. In particular, police officers allegedly tortured at least six detainees to extract statements in an apparent attempt to implicate those perceived as political enemies.

In the early morning hours of 1 November 1997, a group of some 15 police officers began to torture ZDC leader **Dean Mung'omba**. He became the first political detainee on 31 October 1997 upon his arrest at his house by eight police officers. Dean Mung'omba had been a thorn in the side of the government since November 1996, when police sought to arrest him for calling for violent opposition to the government following his defeat as a candidate in the presidential elections. Local election monitors called the 1996 elections "not free and not fair", and at that time Mung'omba accused Chiluba of vote rigging. He went into hiding for several days at that time to escape arrest. Police did not take further action against him for almost a year.

Under the state of emergency, the police held Dean Mung'omba in incommunicado detention at police headquarters in downtown Lusaka for four days, despite both his repeated requests for legal representation and his lawyers' attempts to discover his whereabouts. This was despite the Constitutional provision in Article 26 (1)(d) which requires the authorities to

afford a detainee “reasonable facilities to consult a legal representative of his own choice”. During that time, Dean Mung’omba was tortured, and denied food, drink and sleep. He denied involvement in the plot, but police interrogators tried to torture him into naming other opposition activists as co-conspirators. His lawyers did not see their client until he appeared in court on 4 November 1997 to challenge his detention, bearing the marks of bruises and cigarette burns.

Police interrogators allegedly suspended Dean Mung’omba from a metal bar by his handcuffed hands and rope-tied legs and beat him, in a method of torture common in Zambia that is known as “the swing”¹². Later that same day, Dean Mung’omba alleges he was tortured again, and that twice his police interrogators tried to make him implicate Kenneth Kaunda. Among the torture methods said to have been used were electrical shocks to his handcuffs and the application of burning cigarettes to his arms and legs. A medical doctor later confirmed bruising and burn wounds,¹³ which Amnesty International has judged to be consistent with the torture the described. Mung’omba was also deprived of sleep, and starved of food and water for the first four days in custody.

Mung’omba was not alone in being tortured, but described to his lawyers the torture of others held in the same cell at Zambia Police Force Headquarters. On 4 November, he and other detainees were transferred from the police holding cells to Lusaka Central Prison. In a letter Dean Mung’omba smuggled out of prison to lawyer Lucy Sichone on 5 November, he described various forms of torture and ill-treatment he said had been endured by his fellow detainees at Lusaka Central Prison: “Forcing a burning match stick into someone’s mouth and forcing them to chew and swallow it. Forcing a burning cigarette into someone’s mouth and forcing them to chew and swallow it. Beating and slapping detainees over nothing except that it was pleasurable to the police officers.”¹⁴ Mung’omba also told his lawyers of seeing **Captain Steven Lungu**, the alleged coup attempt leader, lying on the floor of the police cell unconscious after a session of torture. Initially, the other detainees thought he was dead, and when he finally regained consciousness, Steven Lungu was reportedly unable to walk.¹⁵

During the hearings in the legal challenge to the detention of Kenneth Kaunda, the court heard testimony by **Capt. Jackson Chiti** that he had been tortured for six days following his

¹² Affidavit by Dean Mung’omba to the High Court for Zambia, Principal Registry, Lusaka. 1997/HP/2617.

¹³ Medical examination report by Dr P.J. Pelham-Hazeley, Chief Medical Officer, Primary Care Services Limited, on 13 November 1997 in Lusaka, Zambia.

¹⁴ Letter, undated, Dean Mung’omba, Lusaka Central Prison, Lusaka.

¹⁵ Interview with lawyer, by telephone, 4 November 1997.

detention on 28 October 1997. Like Dean Mung'omba, he said he had been suspended from a metal bar, "the swing", and beaten while police told him to admit that Liberal Progressive Front (LPF) party leader Rodger Chongwe had sponsored the failed coup. Jackson Chiti later said that he falsely implicated Rodger Chongwe, having been forced to lie because he could not withstand the pain inflicted on him by police during the interrogations.¹⁶ He also told the court he had implicated Kenneth Kaunda in the coup plot as a result of being tortured.

Police also reportedly tortured **Major Bilex Mutale**, who described being beaten by two police officers using short batons, to implicate Dean Mung'omba in the coup attempt. Bilex Mutale denied any knowledge of Mung'omba, Frederick Mwanza (a freelance journalist and member of UNIP) and the other detainees. He told the court that police officers threatened to report him as "Brought in Dead" (BID) if he did not agree that he was given money by Dean Mung'omba.¹⁷ He was also ill-treated by being denied food and water.

Major Musonda Kangwa was reportedly tortured during police interrogation after his detention on 2 November 1997. He was held in incommunicado detention until 13 November. Police earlier failed to produce him in court despite an 11 November High Court order. During the hearing on his *habeas corpus* application, he continued to complain of severe pain due to his injuries suffered under torture.¹⁸ The official grounds for his detention accused him of taking part in the coup plot, and providing money to Captains Steven Lungu and Jackson Chiti, while he said his detention was due to some petty jealousy by colleagues.¹⁹

One of the other coup detainees, **Corporal Robert Chiulo**, died in the week of 7 December at Maina Soko military hospital. Zambian authorities reportedly explained that he died of malaria, but reliable reports received by Amnesty International indicate that he died from injuries suffered during torture. His wife, Patricia Mwewa, said her husband had been shot in the thigh when he was arrested with Captain Steven Lungu at the national radio studios. She said his health had grown markedly better until, on 7 November, security officers at the hospital barred her from seeing her husband because they said he was suffering from malaria, a non-contagious disease. She was prevented from seeing her husband each day until 30 November, when they told her he had died.²⁰ The results of his post mortem examination have been reportedly withheld from her.

¹⁶ Times of Zambia (Zambia), 15 January 1997.

¹⁷ The Post (Zambia), 19 December 1997.

¹⁸ Zambia Daily Mail (Zambia), 18 November 1997.

¹⁹ The Post (Zambia), 13 January 1997.

²⁰ The Post (Zambia), 11 December 1997.

5. Political detentions and other actions under the State of Emergency

Initially, on the first day after the coup attempt, the government cleared the opposition parties of involvement in the coup. "The government is not suspicious that the opposition was behind the attempted coup," presidential spokesman Richard Sakala told reporters at a 29 October news briefing that was held while President Chiluba met with his cabinet.²¹

At the time, Amnesty International was concerned about past precedents of torture and arbitrary detention of opposition politicians. During the previous state of emergency, declared by President Chiluba in early March 1993, at least 27 senior members of UNIP were detained without charge or trial. Amnesty International considered them prisoners of conscience. At least two were tortured, according to the government's Munyama Human Rights Commission of Inquiry.²² The 1993 state of emergency was prompted by the public revelation of a document called the "Zero Option" which detailed an alleged plot by UNIP to make the country ungovernable. UNIP leaders insisted that it was merely a discussion document about a policy option eventually rejected by the party. Most of the detainees were released within days or weeks, but at least eight spent some two months in detention before their detention orders were revoked, only to be re-arrested on various political offenses. All were eventually acquitted.

Amnesty International's concern about the apparent political nature of the detentions under the state of emergency was prompted by President Chiluba's 30 October speech at a public rally of MMD supporters gathered outside State House in a show of solidarity with the government. The President said: "We had the Zero Option, maybe we moved too fast and lost the case in court. This time the evidence is there. We found them in action. But the courts will have to try them. I see a silver lining in this cloud". At the rally, MMD National Chairman Sikota Wina said that the "big fish" in the coup attempt were still in hiding. President Chiluba agreed that there were many people who could have been involved. "They usually use fools to stage this sort of thing," the President said. "So far, a lot of information has come through from those arrested. They have started telling the truth. I am enjoying this situation because everything is unfolding."

That information would later appear to have been tortured from detainees. Looking back at two months of "rampant abuse of human rights in Zambia" under the state of emergency, the chairman of the Law Association of Zambia George Kunda observed: "Cases of torture are now well documented... The torture of suspects by police leads to unfair trial and we cannot

²¹ Agence France Presse, wire service report, 29 October 1997.

²² Summary of the Report of the Munyama Human Rights Commission of Inquiry and Government Reaction to the Recommendations, government Paper No. 2 of 1996.

allow this if we have to have a fair system of justice. When people are being tortured, they implicate innocent people or admit crimes which they never committed.”²³

Amnesty International is concerned that many individuals detained under the state of emergency were targeted on account of their peaceful opposition political activities or, in the case of a journalist, his articles critical of government economic policy. It later emerged in court that interrogators using torture on several detainees had suggested, and received, incriminating statements naming the LPF’s **Rodger Chongwe** in connection with the coup. On the day of the coup attempt, he was scheduled to board a connecting flight at Harare International Airport in Zimbabwe to fly to Zambia. He was returning from the Commonwealth Heads of Government Meeting in Edinburgh, United Kingdom. Chongwe claimed that he was surprised to find four men waiting for him with the offer of transporting him back to Lusaka in a Zambian government military light aircraft, registration number 9J AF1. Rodger Chongwe said he felt suspicious, “since Mr Chiluba had never shown any such generosity to me before,” and refused the offer.²⁴ As of February 1998, Chongwe remained in Australia, fearing for his life and liberty if he returned to Zambia.

In dramatic testimony during the month of December 1997, the four military detainees named above recounted how police tortured them to incriminate innocent people in the coup attempt, including **Dean Mung’omba**. On the day Dean Mung’omba was arrested, the party’s general secretary, **Azwel Banda**, went into hiding after security men broke into his apartment at the University of Zambia in his absence. A few days later authorities reportedly removed all his belongings from the apartment, taking them to an unknown place. Azwel Banda told a newspaper that he would not come out of hiding “until the government finishes what it is doing,” referring to the state of emergency.²⁵ Azwel Banda has reportedly fled the country and reportedly received political asylum in South Africa in December 1997.²⁶

Priscilla Chimba, Dean Mung’omba’s personal secretary, was arrested on 12 November 1997 at her house, released and then re-detained. For more than a week, Priscilla Chimba was denied legal representation as police initially refused to confirm whether she had been arrested and later, the reason for her arrest or her whereabouts. On 15 December 1997, Priscilla Chimba told the Lusaka High Court, when her challenge to her detention was heard, that she had been detained because she gave an interview to The Post newspaper that embarrassed the police officers who had interrogated her by commenting in public on their poor

²³ The Post (Zambia), 8 January 1997.

²⁴ E-mail correspondence, Rodger Chongwe, 24 February 1998.

²⁵ The Post (Zambia), 4 November 1997.

²⁶ The Sowetan (South Africa), 1 March 1998.

English.²⁷ Eventually she was provided the grounds for her detention, which state that between 1 December 1995 and 31 December 1995 in Lusaka, she attended meetings that included Dean Mung'omba and Major Kangwa at which they planned the overthrow of the Government of Zambia. No mention of the year 1995 appears in the grounds for detention given to both Dean Mung'omba and Major Kangwa. The grounds for Priscilla Chimba's detention also specify similar meetings she attended between 1 September 1997 and 30 September 1997, at which the two men allegedly plotted a coup.²⁸ Priscilla Chimba was reported to have been secretly released from detention without charge or trial on 28 February 1998, more than three months later, without government comment.

Frederick Mwanza, a freelance journalist and member of UNIP, was arrested in the early morning hours of 14 November 1997 by a group of police, intelligence and army officers who searched his home and removed a file containing articles he had written. During questioning at police headquarters in Lusaka he was assaulted by a security officer who allegedly threw an electric fan at his face. Neither his family nor his lawyers knew Frederick Mwanza's whereabouts until he appeared in court in Lusaka on 19 November 1997. Mwanza later reported that from 14 to 19 November he had been held at Mukobeko Maximum Prison in Kabwe, some 120 kilometres north of Lusaka, where, he claimed, he had been fed only once in those five days. The denial of food amounts to ill-treatment, which is prohibited by Article 15 of the Zambian Constitution, Article 7 of the ICCPR and Article 5 of the African Charter on Human and Peoples' Rights.

Frederick Mwanza challenged the grounds for detention provided in his detention order which made detailed allegations that he was present at a meeting with other coup plotters, at a farmhouse, at which plans for the coup were made. At subsequent hearings, after the owner of the farmhouse denied this allegation, the state withdrew the specific details and instead claimed that Frederick Mwanza attended a "meeting or meetings held between 1 October and 27 October 1997". All four witnesses named in his "grounds of detention", three soldiers and Dean Mung'omba, denied knowing Frederick Mwanza and denied that he was involved in meetings allegedly held to plan the attempted coup. In addition, all four testified to the court that they were tortured in police custody, apparently in order to persuade them to implicate Frederick Mwanza in planning the attempted coup. Frederick Mwanza has denied all allegations linking him to the attempted coup. On 25 February 1998 Frederick Mwanza was secretly released from prison without being charged or tried. Legal Affairs Minister Vincent Malambo announced the

²⁷ The Post (Zambia), 16 December 1997.

²⁸ Grounds for Detention, Priscilla Chimba.

prosecution of 73 out of a total of 104 people detained in connection with the coup, but refused to identify seven other detainees who had been released, citing “security reasons”²⁹.

Police officers detained UNIP’s head of physical security, **Moyce Kaulung’ombe**, on 23 December 1997 for questioning about the failed coup attempt. Lawyers and family members were granted immediate access to him in custody. Moyce Kaulung’ombe was furnished with the grounds for his detention as ordered on 31 December 1997 and again on 12 January 1998. They described vague allegations that on 27 October 1997, he went to the Why Not Bar along the Great East Road in Chelstone, outside of Lusaka, where he met with “unknown persons at which meeting you discussed the removal of Government by unconstitutional means”.³⁰ At that meeting, the grounds for detention quoted Moyce Kaulung’ombe as saying “these monkeys will soon go down”, demonstrating his prior knowledge of a conspiracy to overthrow the government. Notification of his detention was not published in the Government Gazette until 27 January 1998, 12 days beyond the 14-day period stipulated in Article 26 (1)(a) of the Constitution. On 12 February, High Court Judge Irene Mambilima found his detention to be illegal and ordered him released after 51 days of detention without charge or trial. He had only minutes of freedom before being re-detained that same day on criminal charges of misprision of treason.

Initially, the Government of Zambia exonerated former president **Kenneth Kaunda** of involvement in the coup. Presidential spokesman Richard Sakala told reporters at a 29 October news briefing: “It may be mere coincidence that the coup attempt came shortly after Kaunda warned of an explosion,” Sakala said. On October 27, the day before the coup attempt, The Post newspaper had printed an article by journalist Dickson Jere that quoted Kenneth Kaunda warning of “an explosion soon” unless there was genuine dialogue between the ruling Movement for a Multi-Party Democracy (MMD) and opposition parties. “Something big will come and of course MMD will blame UNIP for that,” warned Kaunda, who was interviewed by telephone in South Africa. He added: “But it won’t be UNIP. It will be the people of Zambia who are going to act.” Asked by Dickson Jere when and how a possible political insurrection would occur, Kaunda said he didn’t know, but “...I just know that it will involve the people.” Police sought to detain journalist **Dickson Jere** because of his interview with Kenneth Kaunda.

Kenneth Kaunda’s statement later became central in justifying his arrest without charge on 25 December 1997. More than 100 heavily armed police, some of them in a troop carrier, surrounded his house just three days after he returned to Zambia from two months’ travel to the United States, India and the United Kingdom. World reaction was swift. At the White House, United States President Bill Clinton released a statement condemning the arrest and detention

²⁹ ZNBC radio broadcast, 19 February 1998.

³⁰ Grounds of Detention, Moyce Kaulung’ombe.

of Kenneth Kaunda.³¹ Commonwealth Secretary General Emeka Anyaoku said regional leaders were concerned at Zambia's failure to charge the veteran politician formally. Zimbabwean President Robert Mugabe expressed concern, while South African President Nelson Mandela described "the detention without trial of political opponents as contrary to the basic principles of a democratic polity" and called on the authorities to bring Kenneth Kaunda to trial immediately or to release him.³²

After spending the night at Kamwala Remand Prison in Lusaka, incarcerated in a cell with more than a dozen convicted criminals³³, Kenneth Kaunda appeared on 29 December in court closely guarded by almost 20 police officers. Afterwards, a police helicopter whisked Kenneth Kaunda off to Mukobeko Maximum Security Prison in Kabwe, about 120 kilometres to the north, without informing his lawyers. Kenneth Kaunda began a hunger strike that ended five days later, after former Tanzanian president Julius Nyerere intervened, visiting him in prison and persuading him to eat.

On 31 December 1997, President Chiluba ordered the 73-year-old opposition leader transferred to house arrest as a "restricted person", under Section 3.3(a) of the Preservation of Public Security Act and Regulations 16(1) of the Preservation of Public Security Regulations.³⁴ On 31 December 1997, in order to regulate the restriction of Kenneth Kaunda, President Chiluba adopted the Preservation of Public Security (Restricted Persons) Regulations, which defined the police powers of control on places of restriction and the safety and treatment of restricted persons. It also created offense which prohibited loitering near places of restriction and the delivery or removal of any articles or letters from a restricted place. These Regulations also stipulate the circumstances in which force and weapons may be used by a police officer or guard against a restricted person.

These Regulations also banned Kenneth Kaunda from political activity, prohibited him giving interviews to the press, and restricted his access to visitors. Armed paramilitary policemen set up camp around his house, putting up barbed wire and disconnecting telephone lines to the house. Initially, his lawyers were prevented from seeing him, contrary to the provisions of Article 26(1)(d) of the Constitution. UNIP National Chairman retired general Malimba Masheke was also barred. Four UNIP activists also claimed security force officers prevented them from visiting Kenneth Kaunda on 24 February 1998. Frank Musonda, Barry Mwape, Danny Zimba

³¹ Reuters, wire service report, 26 December 1997.

³² Reuters, wire service report, 27 December 1997.

³³ Reuters, wire service report, 29 December 1997.

³⁴ Statutory Instrument No. 151 of 1997, Supplement to Government Gazette, 31 December 1997.

and Dr. Kaunda's photographer, Sunday Musonda, allege that police told them they would not be allowed to see their political party leader.³⁵ Officially, all visitors are restricted to one day a week; all interviews may last just 20 minutes, and only in groups of five or fewer people.

The HRC described the Regulations as unconstitutional and called for their repeal. "Bearing in mind that Dr Kaunda, in terms of the constitution, must be presumed innocent until proven guilty, he must not be prevented from the enjoyment of other human rights and fundamental freedoms apart from the loss of freedom of movement," said Justice Lombe Phyllis Chibesakunda, the Commission chair and a member of the Supreme Court.

Police detained the MMD National Chairperson for women's affairs and member of parliament, **Princess Mirriam Nakatindi Wina**, on 28 January 1998. She was the only senior member of the ruling party to be arrested as of the end of February 1998. Princess Nakatindi Wina and her husband, MMD National Chairman Sikota Wina, had been forced to resign their Cabinet posts in 1994 by Western donor-nation pressure, after allegations surfaced of their involvement in drug trafficking. On 30 October 1997, she had given a speech to hundreds of pro-government demonstrators who marched to show their support to President Chiluba, in which she blamed the President for ignoring her warning that a coup attempt was in the offing, which reportedly indicated prior knowledge of the plot.³⁶ After 37 days of detention without charge or trial, she was reportedly formally charged with treason in her hospital bed at Maina Soko Military Hospital on 5 March 1998.

Other soldiers who have not been identified by name to Amnesty International have been reported to have been arrested for celebrating the coup attempt. One army officer in Mansa town was said to have been arrested following his expression of pleasure upon hearing Captain Steven Lungu's broadcast, while in the northern mining town of Kitwe, a housewife was reportedly arrested and charged with defaming the president after she danced joyfully and made insulting remarks about the president, after hearing Captain Steven Lungu make his coup announcement.³⁷

Following the detention of members of the Zambian Army, many of their families who lived in military housing were evicted without prior notification by the military authorities. Defence Minister Ben Mwila told a local newspaper that the families were not being evicted but simply moved from their homes for their own safety.³⁸ Yet non-governmental organizations

³⁵ Times of Zambia (Zambia), 27 February 1998.

³⁶ New African magazine (London), December 1997.

³⁷ British Broadcasting Corporation, Focus on Africa magazine (London), January-March 1998.

³⁸ The Post (Zambia), 6 November 1997.

and churches noted that the women and children of those detained without charge or trial had been left without shelter and HRC Chairperson Justice Chibesakunda expressed concern about the plight of the children and wives, whose rights she said appeared to have been violated.³⁹ The Legal Resources Foundation has since sued the Army Regimental Commander Colonel Frank Mfula, on behalf of the detainees' families, for arbitrary eviction without due notice.

Amnesty International concludes that the state of emergency has been used to arbitrarily detain critics of the government and has shielded such detentions from judicial scrutiny, in some cases during the first weeks of detention. The secret release without charge or trial of Priscilla Chimba and Frederick Mwanza indicates that there may not have been sufficient basis for their detention.

6. How was it possible to violate human rights? The lack of legal protection

Amnesty International believes that the violations of human rights under the state of emergency could have been avoided, had existing safeguards been enforced or more effective safeguards been in place.

Constitutional guarantees were derogated from and safeguards flouted

Amnesty International believes that the Constitution, under a state of emergency, allows derogations of certain basic human rights, the derogation of which are not permissible under international law. The newest version of the Constitution was significantly revised from the 1991 version by an amendment passed by parliament in 1996 amid great controversy over provisions that disqualified Kenneth Kaunda, and UNIP vice president Chief Inyambo Yeta, from contesting the November 1996 elections. The uproar over changes that narrowed the field of presidential candidates distracted from other concerns about possible suspension of fundamental rights and freedoms under the new constitution.

In its report submitted in June 1995, the government's Mwanakatwe Constitutional Review Commission noted a general criticism that "there are too many derogation clauses to the guaranteed rights and freedoms".⁴⁰ The Commission recommended that "any limitation should be required to be deemed reasonable and justifiable in an open and democratic society, and should not negate the essential content of the rights and freedoms under consideration". The

³⁹ Sunday Mail of Zambia (Zambia), 9 November 1997.

⁴⁰ Report of the Constitutional Review Commission, 16 June 1995.

government explicitly rejected this suggestion⁴¹, allowing internationally guaranteed rights to be derogated from under a state of emergency.

Article 4 of the ICCPR, to which Zambia acceded in 1984, clearly indicates that some fundamental human rights cannot be suspended or limited. A state is prohibited from derogating from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18, which include the right to life and to freedom from torture or cruel, inhuman or degrading treatment or punishment; the right to recognition as a person before the law; the right not to be subjected to arbitrary or unlawful interference with privacy, family, home or correspondence or to attacks on one's honour or reputation; and the right to freedom of thought, conscience and religion. Article 4 requires that rights and freedoms may only be limited "to the extent strictly required by the exigencies of the situation", that measures taken "are not inconsistent with (the state's) other obligations under international law" and that they "do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin."

The Constitution of Zambia, however, allows the derogation from guarantees of rights that the ICCPR has indicated are non-derogable, such as the right to privacy of home and other property, the right to freedom of conscience, and the right to protection from discrimination on the ground of race, tribe, sex, place of origin, marital status, political opinion, colour or creed. Amnesty International believes that Article 25 of the Constitution is not in conformity with Zambia's obligations under the ICCPR and views this as a serious flaw to the protection of human rights in the country.⁴²

The Constitution also lacks any clear definition of the extent to which rights are limited, conferring excessively broad vindication of any act by the authorities if it can be shown that such actions were "reasonably required for the purpose of dealing with the situation in question."⁴³ While the ICCPR recognizes that there are times of national crisis when emergency powers may legitimately be used, the United Nations also sees the danger to human rights when such sweeping emergency powers are granted. The UN Human Rights Committee noted that "measures taken under article 4 [relating to a state of emergency] are of an exceptional and temporary nature and may only last as long as the life of the nation concerned is threatened and

⁴¹ Government Paper No. 1 of 1995, Summary of the Recommendations of the Mwanakatwe Constitutional Review Commission and Government Reaction to the Report.

⁴² The Human Rights Committee, in its General Comment on Article 4 of the ICCPR, has stated: "...A State party may derogate from a number of rights to the extent strictly required by the situation. The State party, however, may not derogate from certain specific rights and may not take discriminatory measures on a number of grounds".

⁴³ Article 25 of the Constitution of Zambia, as amended in 1996.

that, in time of emergency, the protection of human rights becomes all the more important, particularly those rights from which no derogations can be made.¹⁴⁴

The African Charter on Human and Peoples' Rights does not allow derogations from the rights enshrined in that treaty, even during a state of emergency. The African Commission has stated: "The African Charter, unlike other human rights instruments, does not allow for state parties to derogate from their treaty obligations during emergency situations."⁴⁵ Safeguards contained in the Zambian Constitution were also violated during the state of emergency. It should be noted that Article 15 of the Zambian Constitution, the prohibition against torture or inhuman, degrading punishment, is not derogated from under a state of emergency. As shown above, that right was flouted in at least six cases. There was also failure to comply with Article 26 (1)(b) of the Constitution, which stipulates that within 14 days, the name, place of detention and the law under which the individual is detained during a state of emergency must be published in the Government Gazette. The Zambian government attempted to provide the grounds of detention to most of the detainees. In some cases, however, this Constitutional provision was violated by the government, yet some detainees who were denied this right remained in detention under new charges, defeating the purpose of this Constitutional safeguard.

The laws of Zambia facilitated the violation of human rights

Amnesty International is concerned about the broad, ill-defined range of powers granted to the President under the Emergency Powers Act (Cap 108). In particular, Section 3.3 empowers the authorities to make orders and rules for any purposes, without any specific limitation on the scope of such orders and rules. Further, Section 4 specifies that the state of emergency regulations, and any orders or rules that are created under this Act, would supersede all other enactments, irrespective of the inconsistencies that might arise.

Amnesty International believes that the Emergency Powers Act opened the door for the President to give himself and the security forces broad powers that facilitated the violation of the human rights. When the President declared a state of emergency, it enabled him under the Emergency Powers Act to invoke the Preservation of Public Security Act. Under that act, he promulgated the Preservation of Public Security Regulations, which allow police to detain an individual for 28 days under a Police Detention Order. When it appeared that those 28 days of permissible detention were about to elapse, the detainees were then served with a Presidential Detention Order, also authorized under the Regulations, for an indefinite period of detention.

⁴⁴ General Comment 5, Para. 4, (A/36/40) (1981) in the 36th session, 1981.

⁴⁵ Commission nationale des jurists de l'homme et des libertes v. Chad, 74/92, 9th Annual Activity Report of the African Commission on Human and Peoples' Rights, Annex VIII, AHC/207 (xxxii).

Amnesty International views this extension of detention as prolonged administrative detention, defined as detention without charge or trial, imposed by a non-judicial authority, and with no intention of charging or trying the individual. International standards allow for limited use of such a practice. However, in Zambia, administrative detention has been used in an arbitrary way to violate the detainees' rights, including the right to be informed promptly and fully of the reasons for their detention, and the right to a trial without undue delay (Article 14, Section 3a and 3b, of the ICCPR).

The legal system of Zambia lacked safeguards to prevent the violation of human rights

The UN Special Rapporteur on torture, Nigel Rodley, has noted that torture often takes place within the first hours of detention, and often when the detainee is held incommunicado. "Legal provisions should ensure that detainees be given access to legal counsel within 24 hours of detention," he noted, embracing this short time frame as a way to protect detainees from torture and ill-treatment. "...In all circumstances, a relative of the detainee should be informed of the arrest and place of detention within 18 hours."⁴⁶

In Zambia, detainees were kept in incommunicado detention for days, sometimes weeks, without access to their lawyer, in violation of Article 26(1)(d) of the Constitution, which stipulates the right of a detainee to be "afforded reasonable facilities to consult a legal representative of his own choice". This incommunicado detention facilitated torture.

An important procedural safeguard of human rights is the right to legally challenge one's detention in a court of law, known in legal terms as a *habeas corpus* application. Article 26(1)(c) of the Constitution allows a detainee to have his detention under a state of emergency reviewed after a minimum of three months by an independent and impartial Tribunal presided over by a judge of the High Court. However, the Zambian courts have entertained applications for *habeas corpus* from detainees, seemingly without considering the restriction of three months placed by Article 26(1)(c).

In many cases, these applications became the first if not only opportunity for detainees to find out why they were detained. The *habeas corpus* mechanism seems to have benefited the detainee in more than one case. For example, on 3 November 1997 Lusaka High Court Judge Timothy Kabalata ordered a writ of *habeas corpus* to produce Dean Mung'omba, while he was held in incommunicado detention. As it was later learned, he had been tortured during his four days of secret detention and according to Dean Mung'omba this court order made an

⁴⁶ UN Doc. E/CN.4/1995/34 - Report of the Special Rapporteur on torture to the Commission on Human Rights, p. 173, para. 926d.

impact on his interrogators, who stopped their torture at that time.⁴⁷ On 5 November, during further hearings on the *habeas corpus* application, Judge Kabalata ordered that Dean Mung'omba be given food, water, clothes, access to visitors and medical attention while his detention continued.

While the Zambian courts could order a detainee produced, they lacked the power to supervise effectively the detention of prisoners or to call into question the activities of the security services. The court did not have the mandate to take protective measures for Dean Mung'omba and other detainees, once it was learned they had been tortured, such as ordering their release or transfer. Although Dean Mung'omba, Steven Lungu, Jackson Chiti, Bilex Mutale and Musonda Kangwa all appeared in court bearing the marks of torture, they were returned to the custody of those who allegedly tortured them.

In many cases, the presidential authority to order the indefinite detention of individuals rendered *habeas corpus* applications of no practical significance. In the case of Musonda Kangwa, for example, there were two *habeas corpus* applications brought on his behalf. Police initially failed to bring Musonda Kangwa to court, as directed by High Court Judge Tamula Kakusa. Principal State Advocate John Siame claimed that the writ of *habeas corpus* specified Lusaka Central Prison, which was the wrong address, and so could not be effected. Judge Kakusa reminded the state that the order was for the Inspector General of Police to produce Musonda Kangwa in court, since no one knew where he was. The first *habeas corpus* action was dismissed in November 1997. The second was successful, the judge finding the Police Detention Order to be illegal because the grounds were not published within the stipulated 14 days, but would not order his release because the Police Detention Order had been superseded by a Presidential Detention Order.

Even after some *habeas corpus* challenges to a Presidential Detention Order appeared to have been successful, the Zambian government ordered further detention under criminal charges. In the case of Moyse Kaulung'ombe, for example, police detained him again on criminal charges of misprision of treason, just minutes after a judge ruled his detention illegal and authorized his release. Amnesty International believes the further detention was contrary to the course of justice, and constituted administration detention.

After more than two months of court hearings in the *habeas corpus* application by Kenneth Kaunda, the police informed him that he was to be further charged with the crime of misprision of treason which carries a maximum sentence of life imprisonment. Regardless of the outcome of the legal challenge to his presidential detention order, then, Kenneth Kaunda will

⁴⁷ Affidavit by Dean Mung'omba to the High Court for Zambia, Principal Registry, Lusaka. 1997/HP/2617.

remain in detention as a “restricted person”. Treason, punishable by a death sentence, is a non-bailable offence. Dean Mung’omba, who lost the first challenge to his detention before High Court Judge Timothy Kalalata on 1 December 1997, further appealed that decision to the Supreme Court on 15 December 1997. The outcome of that appeal does not matter, since he has now been charged with treason.

“The *habeas corpus* application has turned into an academic exercise, since our clients cannot be released because treason and misprision of treason is an unbailable offense,” said an attorney with the Legal Resources Foundation, which has represented several detainees.⁴⁸ Amnesty International believes that indefinite administrative detention in Zambia contravened the right to a fair trial, as guaranteed under Articles 9 and 14 of the ICCPR and Articles 6 and 7 of the African Charter.

The Human Rights Commission (HRC) lacked the power to protect human rights

Amnesty International believes the creation of the HRC, set up formally in March 1997, was an important step in protecting human rights in Zambia. The organization acknowledges the public, forthright manner in which the HRC pointed out human rights violations by the Zambian authorities. These public statements indicate a measure of independence. Yet the HRC has limited effectiveness during the state of emergency in protecting the citizens of Zambia from the violation of their human rights, including the torture of those detained in connection with the attempted coup.

For more than 10 days the HRC was denied access by the police to more than 30 detainees who were being interrogated -- some allegedly tortured -- at Zambia Police Force headquarters. The Commission was reportedly blocked from visiting the Police Headquarters in Lusaka, where the torture had taken place in the first days after the coup attempt. On 5 November 1997 the HRC announced that it would immediately visit all persons detained in connection with the attempted coup to determine their physical health and access to lawyers. The HRC, however, was turned away from Lusaka Central Prison (also known as Chimbokaila Remand Prison) in its initial attempt to gain access to the detainees on 7 November. This occurred despite its mandate to “investigate human rights violations” and “visit prisons and places of detention or related facilities with a view to assessing and inspecting conditions of the persons held in such places and make recommendations to redress existing problems...”⁴⁹

HRC Chairperson Justice Lombe Phyllis Chibesakunda described the failure of her first attempt to visit the detainees in prison as a “breakdown in communication between her

⁴⁸ Telephone interview, lawyer, 26 February 1998.

⁴⁹ Article 9(d) of The Human Rights Commission Act, No. 39 of 1996.

organisation and prison authorities". In a statement released on 9 November 1997, the Inter-African Network for Human Rights and Development (AFRONET) noted that the Commission had not investigated the treatment of detainees, and expressed concern that the HRC was imposing self-limitations in failing to carry out its duties until the President's office gave its approval.

By 9 November, when the HRC was first able to visit detainees being held at Lusaka Central Prison, Justice Chibesakunda announced they were all in good health apart from Dean Mung'omba and another detainee, who said they had been tortured, and two others who complained of ill-treatment. All complained of overcrowding. The HRC would later hold a press conference on 1 December 1997 to confirm that it had found physical evidence that several other detainees, not only Dean Mung'omba, had been tortured.

Inexplicably, after her initial determination that torture had occurred, Justice Chibesakunda and three other Commissioners decided to leave Zambia on 9 November 1997 for a one-week study tour in Sweden to study how to protect human rights. Justice Chibesakunda claimed at the time that arrangements were made to visit detainees being held in other prisons, but to Amnesty International's knowledge such visits were delayed until after her return. By the end of November, when a delegate of Human Rights Watch - Africa visited the country, the Zambian authorities blocked his access to detainees who allegedly were tortured. Justice Chibesakunda tried -- unsuccessfully -- to intervene with police and prison authorities to gain access for the independent international observer.

Despite a public call on 1 December 1997 by the HRC for the prosecution of those in the police force who allegedly committed torture, and who have been publicly named by their alleged victims, as of the end of February 1998 no apparent steps have been taken by authorities to bring to justice those responsible. The alleged torturers remain on the job as police and security officers, in positions of authority, able to torture again with impunity. The HRC can only recommend prosecution, but does not have the power to institute criminal proceedings against perpetrators of human rights violations or to instruct the Director of Public Prosecutions to institute such proceedings.

Legal Affairs Minister Vincent Malambo told parliament on 19 February 1998 that the Government of Zambia could not investigate or prosecute those responsible for the torture of detainees until the HRC sends a written report of their findings with recommendations to the appropriate authority for "remedial measures". Amnesty International considers Minister Malambo's bureaucratic reasoning indicative of the Government of Zambia's lack of political will to seriously address the problem of torture. The HRC chairperson, Justice Chibesakunda,

commented that she would have to “study the statement of the Honourable Minister of Legal Affairs before responding”.⁵⁰

To secure effective investigations into human rights violations, the HRC must be independent so its work is not affected by government or party politics, yet the independence of Zambia’s HRC has not been clearly defined in its founding legislation, the Human Rights Commission Act of 1996. Questions remain about the autonomy of the HRC in relation to the government, since the President directly appoints its members, without formal statutory requirement of input from civil society on appointees. The commissioners serve three-year renewable contracts, with renewal subject to presidential and parliamentary approval.⁵¹

7. Restrictions on freedom of expression

Freedom of expression, curtailed under the state of emergency, came under further attack by the authorities. A radio broadcaster, forced by the coup plotters to announce the coup was reportedly suspended from duty for sounding too jubilant, while two television journalists were reportedly dismissed in connection with a radio programme produced about the coup.⁵² Defence Minister Ben Mwila warned a journalist from an independent newspaper against printing articles critical of post-coup events: “If you are not careful, we are going to ban your paper and you will have nowhere to appeal, so advise your friends.”⁵³ Police suppressed press coverage of various court hearings connected to detentions, impeding the work of the South African Broadcasting Corporation, Reuters, Agence France Presse, Pan African News Agency, the Zambia Daily Mail and assaulting a Cable News Network cameraperson in an effort to seize what they believed to be video footage of Kenneth Kaunda. HRC Chairperson Justice Chibesakunda denounced these police actions, recommending that “harassment and battering of journalists and confiscation of their equipment will be a practice of the past in Zambia”.⁵⁴

8. Amnesty International’s recommendations

⁵⁰ Telephone conversation with Amnesty International, 27 February 1998.

⁵¹ “Zambia: The Reality Amidst Contradictions - Human Rights Since the 1996 Elections,” Human Rights Watch/Africa, July 1997.

⁵² Media Institute of Southern Africa, Action Alert - Zambia, “Victimisation of Journalists at the State-Broadcaster Heightens”, 26 November 1997.

⁵³ The Post (Zambia), 3 November 1997.

⁵⁴ Action Alert - Zambia, Media Institute of Southern Africa, 13 January 1998.

Under international law, a public emergency is that “which threatens the life of the nation”, and such an emergency justifies suspending some human rights guarantees “to the extent strictly required by the exigencies of the situation”.⁵⁵ On 29 January 1998 a motion was introduced in parliament -- with little or no advance notice -- to extend the state of emergency for another three months. It was overwhelmingly approved. Vice-President Lieutenant-General Christon Tembo, who introduced the motion, said the nature of the investigations was complex and required more time to bring them to conclusion, a justification echoed by Legal Affairs Minister Vincent Malambo. Agricultural Minister Edith Nawakwi explained that investigations had been hampered by numerous *habeas corpus* hearings. In debating the motion, former Foreign Affairs Minister Valentine Kayope insisted that Western nations need to seriously strike a balance between the observance of individual human rights and the preservation of public security. He said Zambia’s human rights record should instead be hailed because it allowed the “luxury” of *habeas corpus* applications even when there was a proven danger to the nation.⁵⁶ All such reasoning does not conform with the requirements of Article 4 of the ICCPR, so the continuation of the state of emergency seems unrelated to any threat to the life of the nation, and appeared to be contrary to international law.⁵⁷

Western donor government reaction was swift. The United Kingdom’s Foreign Office Minister Tony Lloyd, expressing deep concern on behalf of the European Union (EU), urged an end to the state of emergency at the earliest opportunity and an investigation into the torture allegations. The Central and Eastern European countries associated with the EU, and the EFTA countries Iceland and Norway, aligned themselves with the declaration. The US government released a statement to “deplore” its extension. Denmark froze funds for a US\$43 million road building aid project to Zambia. Amnesty International believes that if those governments supplying foreign assistance are searching for signs of improvement in the human rights situation in Zambia, then the repeal of the state of emergency is not enough to constitute a true reform in public policy and practice.

To accuse a government of torture and political repression is a serious charge. A government’s response to allegations of torture and other human rights violations can often provide further evidence of its implicit approval of such abuse. In the case of the Government of Zambia, the response to such allegations has been outright denial. Minister of Information and Broadcasting Services S. David Mpamba wrote a letter to Amnesty International claiming that the state of emergency was not designed to silence political adversaries, and that alleged victims

⁵⁵ Article 4, International Covenant on Civil and Political Rights.

⁵⁶ The Post (Zambia), 29 January 1998.

⁵⁷ Zambia also failed to specify which specific human rights had been suspended under the state of emergency, contrary to the provision of Article 4(3) of the ICCPR.

of human rights violations were simply wooing support from the rest of the world. "It is quite clear, at least judging by the dissenting voices I continue to receive from some quarters of Amnesty International, that coup plotters, suspects and a few local journalists, are taking advantage of the first-ever democratic Government in Zambia to lobby the international community and advance their cases of alleged torture,"⁵⁸ Mpamba said.

Amnesty International is urging the Government of Zambia to recognize and investigate the serious human rights violations that have taken place, and to implement reforms that will bring to an immediate end the torture and other human rights violations which have characterised the state of emergency in the country. Furthermore, Amnesty International is appealing to Zambia's donors and the international financial institutions that are shortly to consider financial support to the country, to give a strong message to the Government of Zambia by taking the human rights situation of the country into account in their deliberations. While World Bank Consultative Group meetings are concerned with economic development rather than political concerns, it is also increasingly self-evident that the political and economic elements of "good governance" are inextricably linked and that sound economic management and development are unlikely where such gross violations of human rights are taking place.

1. Take immediate corrective action on current violations of human rights

Amnesty International recommends the immediate repeal of the state of emergency. The Government of Zambia should ensure that all detainees held in connection with the coup attempt receive a fair trial, in accordance with international standards, now that they have been charged with the criminal offences of treason or misprision of treason.

The organization also recommends the removal from positions of authority all those who are alleged to have tortured or condoned the torture of detainees, pending the thorough, impartial investigation of the torture allegations. Such investigations should result in criminal prosecutions being instigated against those who participated in torture, those who incited it, covered it up or otherwise were directly implicated in its use. Commanding officers should be held accountable for torture committed by police and security officers under their command.

Amnesty International further recommends that immediate assistance be provided to torture victims, including medical rehabilitation as needed and financial compensation. If the death of Robert Chiulo or others is found to be the result of torture or ill-treatment, the family should receive compensatory damages from the state.

2. Officially condemn torture and other human rights violations

⁵⁸ Letter MIBS/6/7/31, from Minister S. David Mpamba, 16 December 1997.

Amnesty International urges President Frederick Chiluba, his cabinet ministers and the highest authorities of Zambia's criminal justice system to demonstrate in a public and categorical way that they are opposed to torture and other violations of human rights by recognizing and condemning the torture that has been documented to have occurred under the state of emergency, and by making it clear to all members of the police, military and security forces, and criminal justice system that the violation of human rights -- including torture -- will not be tolerated at any time and under any circumstances.

3. Amend the Constitution to protect human rights under a state of emergency

The Constitution of Zambia should be amended to conform to the provisions of the ICCPR, particularly Article 4 of the ICCPR, which prohibits the suspension of specific rights at any time, including a state of emergency or war. The Constitution should also list core rights which are non-derogable.

Article 26 of the Constitution should be amended so that it provides adequate safeguards for detainees, including the right to have their detention reviewed by the High Court at any time and to have unrestricted and confidential access to a lawyer, to ensure that a detainee is provided adequate protection of his rights from the moment of his detention. The provisions of Sections 5 and 6 of Article 26 of the Constitution should be amended to exclude any sanctioning of secret trials, from which the public would be excluded.

4. Reform laws governing a state of emergency

Amnesty International recommends the repeal or reform of emergency legislation, such as the Emergency Powers Act (Cap 108) and the Preservation of Public Security Act (Cap. 112), that facilitate the abuse of authority and the violation of human rights. Such laws governing states of emergency should have incorporated into them the safeguards provided by Article 26 of the Constitution, including the stipulated 14-day period to specify the grounds for detention, the publishing of such a notice in the Government Gazette and, in addition, judicial review of the detention by the High Court at any stage of detention and access to legal representation at all times.

5. Strengthen human rights safeguards in the justice system

Amnesty International recommends that legislation should be adopted to confirm the role of the courts in safeguarding human rights, including giving the courts a mandate to supervise effectively the detention of prisoners, supervise and call into question the activities of the

security services, and order the release or transfer of those detainees who appear in the court's judgment to have been tortured.

Further safeguards for the human rights of those detained should be legislated, including requiring assurances of access to doctors, lawyers and family members; information about their rights be given to them; judicial review without delay of their detentions; an absolute time limit on their detentions with the requirement that police must explain to a judicial authority why detention should be extended. Regular reporting by the President to parliament during a state of emergency should also be required under law.

Amnesty International also recommends that an act of torture should be made an explicit, punishable offence under criminal law. All statements and other evidence obtained through torture should be prohibited by law from use in any legal proceedings, except against a person accused of torture as evidence that the statement was made.

All current police officers, as well as recruits, should be properly trained to respect the human rights of the Zambian people they serve, in accordance with internationally-accepted human rights standards governing the conduct of the police. Other sectors of the criminal justice system, including members of the prosecution service, should also receive training in human rights.

6. Ratify international treaties containing human rights safeguards

Amnesty International notes that in 1996 the Government of Zambia indicated that it would ratify the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and incorporate relevant provisions of the Convention into domestic law, but appears not to have done so. Amnesty International recommends that the government make ratification of the Convention a priority.

7. Strengthen the powers of the Human Rights Commission

Amnesty International recommends that a more powerful, broader mandate should be provided for the HRC to compel cooperation by the authorities, through imposing administrative or legislative sanctions when the exercise of its power to investigate and take remedial action is obstructed. The HRC should be empowered to enforce its recommendations through a court of law. Its mandate should be expanded to include monitoring issues of judicial process, such as the right to fair and speedy trial, the right not to be compelled to confess guilt, and the right to

review by a higher court. Presently, the mandate of the HRC excludes any powers in a matter that is pending before a court.⁵⁹

To ensure effectiveness, procedural guidelines for HRC investigations should be established to ensure prompt investigation into life-threatening human rights violations such as torture, and to prevent statements or information obtained as a result of alleged torture being used as evidence in any trial against the detainees. The system of presidential selection of Commissioners, and the further renewal of their contracts by the President and parliament, should be changed to buffer the HRC from possible political influence.

⁵⁹ Article 10(5) of The Human Rights Commission Act, No. 39 of 1996.