

## **ZAMBIA**

### **MODEL FOR DEMOCRACY DECLARES STATE OF EMERGENCY**

**On March 4, 1993 President Frederick Chiluba of Zambia declared a state of emergency, alleging the existence of a plot to overthrow the government by illegal means. The plot, known as the "Zero Option Plan," was said to have been devised by members of the United National Independence Party (UNIP), the previous ruling party in Zambia, with support from the governments of both Iraq and Iran. The plot was denied by UNIP's leaders, and no real evidence of its formal adoption was offered. Over the weeks following the declaration of the emergency, twenty-six people were detained by the government under emergency regulations, though some were held for only a few days. Nine remained in detention until May 20, 1993. On May 20, the government released two and charged the remaining seven detainees with various offenses against the security of the state, and on May 25 the emergency was lifted.**

**President Chiluba, the leader of the Movement for Multiparty Democracy (MMD), was elected in November 1991, after Zambia's first freely contested elections since a one-party state had been introduced in 1972. During the campaign leading up to the elections, the MMD promised to abandon the authoritarian methods of the UNIP government, which had maintained a state of emergency in Zambia for 27 years. Although the decision to end the new state of emergency after a relatively limited time is welcome, it is extremely concerning that a state of emergency was declared at all by a government so recently elected on a platform of respect for civil and political rights.**

#### **Background**

**Zambia gained its independence from British rule in October 1964. From 1964 until November 1991 it was governed by UNIP, the principal party in the struggle for independence, under the leadership of President Kenneth Kaunda. The constitution of the new state provided for a multiparty democracy with an executive president, and included a bill of rights guaranteeing fundamental civil and political rights. However, a partial state of emergency, which had been declared by the British three months before independence, was kept in place, renewed every six months and finally extended indefinitely.<sup>1</sup> Emergency regulations suspended several clauses of the bill of rights, and allowed the government to control political debate, giving it powers to restrict freedom of expression and association, and to detain indefinitely any**

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<sup>1</sup> The constitution of Zambia has provided since 1964 for a distinction between a full state of emergency (now section 30 of the 1991 constitution), and a threatened or partial state of emergency, which may be declared when there is "a situation ... which, if allowed to continue, may lead to a state of public emergency" (now section 31 of the 1991 constitution). The government's powers when an emergency is declared are regulated by either the Emergency Powers Act (for a full state of emergency) or the Preservation of Public Security Act (for a partial state of emergency).

person "for the purpose of preserving public security."<sup>2</sup>

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

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

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<sup>2</sup> In March 1990, the Prime Minister advised Parliament that, between January 1975 and October 1989, 684 people had been detained under the Preservation of Public Security Act, of whom 72 had been held for more than two years without appearing in a court of law. *News from Africa* 14(2):11 political prisoners and detainees were released. *June 10, 1993*

In its election campaign, the MMD had stressed the need for change, promising liberalization of the economy, which was largely under state control, and democratization of the political system. The party denounced the semi-state of emergency under which Zambia had been ruled, and committed itself to the protection of civil rights, democratic pluralism and political accountability. After the election victory, the government moved swiftly to introduce economic reforms, reinstating structural adjustment policies agreed with the World Bank by the previous regime and undertaking a radical privatization program. Government subsidies were lifted, including the subsidy on corn meal, the staple foodstuff of Zambia, leading to massive price rises.<sup>3</sup> Western financial institutions, including the World Bank, rewarded the new government with substantial new loans and grants of aid.

The parallel political reforms promised by Chiluba and the MMD in the election campaign have not been approached with similar vigor. Although the partial state of emergency was finally lifted, after 27 years, theoretically restoring to full effect the bill of rights enshrined in Zambia's constitution, many of those rights have continued to be restricted. There have been improvements: in particular, respect for freedom of expression and association has increased and an independent press has sprung up. The government has acknowledged that police brutality, prison conditions and the judicial system all give serious cause for concern. However, none of the laws regulating expression under the UNIP government have been repealed or modified since the MMD came to power, despite the fact that in many cases they conflict with the protection for freedom of speech under article 20 of the Zambian constitution. Freedom of assembly continued to be regulated during 1992 through the use of the severely restrictive Public Order Act. Parliament remains subservient to presidential power. The political culture of Zambia under Kaunda is still largely unchallenged.

### **The state of emergency**

At the end of February 1993, the government-owned *Times of Zambia* reported that a UNIP plot to overthrow the government by unconstitutional means, known as the Zero Option Plan, had been uncovered. The plot was alleged to have been masterminded by Cuthbert Nguni, a UNIP member of parliament, and Wezi Kaunda, a member of parliament and former army officer who is also the son of former president Kenneth Kaunda.<sup>4</sup> The Zero Option Plan was alleged to call for a destabilization of Zambia through the use of industrial unrest, the promotion of violent crime, and the organization of a mass uprising against the government. The governments of both Iran and Iraq were said to be behind the plan. UNIP President Kebby Musokotwane admitted the existence of a document describing the Zero Option Plan, but denied that it had been adopted as an official policy, and rejected the measures it had suggested as a means of removing the MMD from power. Former president Kenneth Kaunda denied all knowledge of the plan or of any connections with Iran or Iraq.

On March 4, 1993, President Chiluba declared a state of emergency stating that "the political climate is being systematically poisoned by a few of our citizens who are bent on plunging this nation into

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<sup>3</sup> Previous attempts by Kaunda and the UNIP government to increase maize prices had resulted in food riots, and the renewed economic reforms have once again created serious discontent with the regime.

<sup>4</sup> Wezi Kaunda had recently been suspended from parliament for three months for absenting himself from its debates for an extended period.

chaos." However, he offered no further evidence that the Zero Option Plan represented a threat to national security nor any other justification for the declaration. He stated that the government would "deal ruthlessly with the law breakers," although freedom of expression would continue to be respected, and "law-abiding Zambians should not be afraid of [the] stern measures aimed at protecting them and the democracy they cherish."<sup>5</sup> Over the days following Chiluba's declaration, leading members of UNIP began to be detained. On March 11 the government cut off diplomatic relations with Iran and Iraq.

The state of emergency declared was originally a partial state of emergency under Article 31 of the constitution, similar to that in effect under Kaunda's government. However, because of a drafting error in the derogation clause of the 1991 constitution, this was no longer sufficient to allow the suspension of guarantees in the bill of rights. In particular, it did not allow the detention without charge of individuals deemed to be a threat to national security, and the detentions that had already taken place were therefore illegal. Once this was realized, on March 8, a full state of emergency was declared under article 30. Fresh detention orders against those who were already in custody were issued to comply with the new declaration. On March 12, the Zambian parliament ratified the full state of emergency, by 114 votes to 23, for a period of three months. An MMD caucus was called before the vote at which it was made clear that ratification was expected; only three MMD members of parliament eventually voted against the ratification.

Twenty-six people were eventually detained for at least some time. They were:

**Rupiah Banda**, former Minister for Foreign Affairs, and District Governor for Lusaka;  
**William Banda**, former District Governor for Lundazi province;  
**Rabson Chongo**, former Minister for Commerce and Industry;  
**Patrick Goma**, former intelligence officer;  
**Slanda Ilukona**, former intelligence officer, compulsorily retired by the MMD, the only detainee not a member of UNIP;  
**Betty Kabosha**, secretary at UNIP's office;  
**Henry Kamima**, former Director-General of the Zambia Intelligence Security Service;  
**Panji Kaunda**, Member of Parliament and former army officer;  
**Wezi Kaunda**, Member of Parliament and chair of UNIP committee on security, former army officer and Minister of State for Home Affairs. Panji Kaunda and Wezi Kaunda are both sons of former president Kenneth Kaunda;  
**Peter Lishka**, former Provincial Political Secretary, chair of Lusaka province for UNIP;  
**Philemon Lwabila**  
**McPherson Mbulo**, a former army officer twice detained by UNIP during the 1980s, vice-chair of the UNIP committee on security;  
**Stanley Mhango**  
**Steven Moyo**, lecturer at the University of Zambia, former head of the Zambia National Broadcasting Corporation;  
**Bweendo Mulengola**, lecturer at the University of Zambia, former government-appointed editor of the Times of Zambia;  
**Stan Mutanga**, a businessman and UNIP trustee for the copper belt;  
**Christopher Muyoka**, former intelligence officer compulsorily retired by the MMD;

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<sup>5</sup> South African Press Association, March 5, 1993.

**Kwalombota Mwanaie, intelligence officer;**  
**Peter Mwanza, schoolteacher;**  
**Cuthbert Nguni, Member of Parliament;**  
**Chibembe Nyalugwe, chair of UNIP youth section;**  
**Lucy Sichone, chair of UNIP political and legal committee;**  
**Lemmy Suwisha, intelligence officer;**  
**Bonnie Tembo, schoolteacher;**  
**Wilfred Wanani, former Minister of State for Foreign Affairs, chair of the UNIP committee on local government and housing;**  
**Ackim Zimba, schoolteacher.**

In addition to the detentions, the passports of UNIP leader Kebby Musokotwane and of over twenty other UNIP officers, including some of those detained, were confiscated. Several detainees, including Lucy Sichone, Kwalombota Mwanaie and Chibembe Nyalugwe, were released after only a few days; others, including Philemon Lwabila, Peter Kwanza, Stanley Mhango and Ackim Zimba, were released on March 17. In early April, those still detained brought two separate actions of habeas corpus in the High Court to challenge their detention, on the grounds that the emergency regulations had not been properly approved by parliament.<sup>6</sup> On April 26, it was announced that seven other detainees had been released, including Rupiah Banda, Rabson Chongo and McPherson Mbulo. On May 19, the Supreme Court found that, on the evidence it had been presented, the emergency regulations were not valid, but gave the government two days to present further evidence.

On May 20, the government released two further detainees, Sianda Ilukena and Patrick Goma, and finally charged the seven remaining detainees with various offenses against the security of the state. Those charged are Cuthbert Nguni, Wezi Kaunda, Peter Lishika, Bonnie Tembo, Lemmy Suwisha, Christopher Muyoka and Henry Kamima. Cuthbert Nguni and Wezi Kaunda face the most serious charges, of "treason felony." All seven were released on bail. On May 25, Chiluba lifted the state of emergency, stating that it "had served its purpose." The basis for the charges that have been preferred is apparently only the preparation and distribution of the allegedly seditious Zero Option plan and other documents, rather than any action directly linked to the commission of specific crimes. Moreover, some of those who are known to have been in possession of the Zero Option document have not been charged. Unless more concrete evidence of criminal action is offered by the government, the charges look dangerously like a simple effort to restrict political opposition to the MMD.

Of particular concern to Africa Watch are allegations that three of the detainees, Cuthbert Nguni, Henry Kamima and Bonnie Tembo, were illtreated while held in custody. Although the detainees had the right to have a lawyer present during interrogation, they were held in different prisons often hours from Lusaka, making it extremely difficult for lawyers acting for the detainees to be available to their clients and

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<sup>6</sup> Because of the confusion over which article of the constitution should be invoked as authority for the emergency, the emergency regulations were never re-ratified when Parliament approved the declaration of a full state of emergency. In order to prove that this was the case, lawyers acting for the detainees obtained a court order that the Speaker of Parliament should release the transcript of the parliamentary proceedings. The Speaker refused to comply with the court order, and the Solicitor-General appealed the High Court's decision to the Supreme Court.

to check such abuse.<sup>7</sup> When Nguni appeared in court for the first time, he was unable to walk unaided. The court ordered that the detainees should be medically examined, and that both the government and the detainees should have the right to appoint a doctor for this purpose, in order to determine whether torture had taken place. Medical reports were prepared and presented to the court confirming that the three detainees had been illtreated. However, instead of immediately taking measures to ensure that such an infringement of the detainees' rights under the Zambian constitution would not be repeated, Minister of Home Affairs Newstead Zimba made statements to the press condoning illtreatment of the detainees.<sup>8</sup> Police brutality is an acknowledged problem in Zambia, and statements of this type can only encourage an impression of impunity among the officers responsible for interrogating people held in police custody.

Although no action was taken under the emergency regulations against political parties or press critical of the government, Chiluba acted to remove potential rivals or critics of his position within the MMD. In early April, he dismissed four senior ministers, including the architect of the new economic reforms, Emmanuel Kasonde. One of those dismissed, Education Minister Arthur Wina, responded by accusing the government of corruption, inefficiency and of losing sight of all the ideals that it had aimed for when it came into office. The well-respected Minister for Legal Affairs Rodger Chongwe was moved - in what was interpreted as a demotion - into the ministry for local government. He had been reported in the press as being the only minister to argue strongly against the declaration of the emergency, and had made public statements condemning the use of torture and confirming that security officers discovered to have tortured detainees should be dismissed. These cabinet changes, while within the legal power of the president, reinforce the impression that Chiluba is becoming increasingly unwilling to accept criticism of his regime.

## **Conclusion**

The declaration of a state of emergency has confirmed the concerns that many in Zambia had developed by the end of 1992 that the new government's promise would not be fulfilled. Although the government has pushed through radical economic reforms, despite popular discontent, it has not made the protection of civil liberties and promotion of democratic pluralism a similar priority. In some respects, the MMD seems to be on the way to reproducing the UNIP regime, rather than replacing it. Unless action is quickly taken to restore respect for human rights to the place it took in the MMD's election platform, Zambia risks losing all the gains that have brought it a reputation as a model for democratization in Africa.

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<sup>7</sup> Although an order was initially obtained that all the detainees should be held in one location, the government successfully appealed the court's decision, on the grounds that investigations would be prejudiced if the detainees were in one place.

<sup>8</sup> Zambia's constitution provides in Article 17 that "No person shall be subjected to torture or to inhuman or degrading punishment or other treatment;" Zambia is also a party to the International Covenant on Civil and Political Rights, which provides in Article 7 that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

## **Recommendations to the Zambian government**

- 1. In prosecuting individuals for security offences, distinguish clearly between action and opinion, to ensure that political opponents are not tried simply for their opposition. If there is evidence linking individuals to specific crimes, sufficient to warrant prosecution, then those charged should be speedily brought to trial and their rights to due process of law fully respected, as guaranteed by the Zambian constitution and international instruments to which Zambia is a party.**
- 2. Investigate the reports of illtreatment of Cuthbert Nguni, Bonnie Tembo and Henry Kamima while in custody, and prosecute those found responsible, at all levels of authority.**
- 3. As promised by the MMD in its election platform in 1991, ensure that all Zambians may exercise their rights to freedom of expression and association, that the organizations of civil society may freely operate, and that the checks and balances of the different branches of government are respected.**

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***Africa Watch is a non-governmental organization created in May 1988 to monitor human rights practices in Africa and to promote respect for internationally recognized standards. Its Executive Director-designate, who will take his position in July 1993, is Abdullahi An-Na'im; Janet Fleischman and Karen Sorensen are Research Associates; Alex Vines and Abdelsalam Hasan are consultants; Bronwen Manby is Orville Schell Fellow; Ben Penglase and Urmi Shah are Associates.***

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