

# ZAMBIA

## Forcible exile to suppress dissent

### 1. INTRODUCTION

In the northern Zambian town of Kitwe, the first public rally of the now-ruling Movement for Multi-party Democracy (MMD) party took place in 1990. One of the key speakers who stood at the podium was the MMD's vice chair for operations, Frederick Chiluba, who was also the chair general of the Zambia Congress of Trade Unions. Chiluba gave a speech calling for democracy and pluralistic politics, but also added that "Zambia has seventy-three tribes and if you don't belong to any of these then you are not a Zambian."<sup>1</sup> Most interpreted his statement as a veiled political attack on then-President Kenneth Kaunda, born in Zambia to parents who emigrated from Malawi, and who had ruled the country since independence in 1964. Few could have foreseen that the issue of who was a non-Zambian would become a political tool to suppress dissent in the years ahead.

Since the landslide election of President Frederick Chiluba one year afterward in 1991, Kaunda has continued to be a consistent target for threats of forcible expulsion. Starting in 1994, the government of President Chiluba began publicly questioning the citizenship and patriotism of other members of Kaunda's United National Independence Party (UNIP), as well as members of other opposition parties and individuals who expressed criticism of government policy. In December 1994, the Zambian government announced that it was launching "background investigations" into the nationality of prominent Zambian opposition figures. According to the then-Foreign Affairs Minister, Remmy Mushota, the exercise was aimed at those who were "misleading Zambians", though he did not name any names. "We will trace the roots of all those who illegally entered Zambia and are now claiming leadership [of the Zambian people] and we will not give an ear to retrogressive advice," Mushota said.<sup>2</sup>

During the campaigning in the November 1996 presidential election, the slogan often heard at the MMD rallies had become more direct than in 1990: "Zambia for Zambians". MMD speakers often referred to issues of citizenship and loyalty to the country.

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<sup>1</sup> The Post, (Lusaka) 7 October 1994.

<sup>2</sup>Ibid

In the run-up to the election, the country's constitution was changed to allow a person to run for the presidency only if "both his parents are Zambians by birth or descent".<sup>3</sup> Through these changes, the MMD government was able to cripple its main political rival, Kaunda, whose parents were both Malawian.

George Kunda, chair of the Law Association of Zambia and himself the target of investigations into his citizenship because of his activities as a human rights activist, believes that the constitutional amendments are threatening to Zambian citizens who have foreign-born parents. "There is a perception that they are second-class citizens," said Kunda, who is a Zambian by birth but was described as "a Malawian with a hidden political agenda" in parliament.<sup>4</sup> "There is a tendency to treat all critics of government, however constructive they may be, as foreigners. Some have been deported in the past. The constitution is somehow divisive and in some cases breeding regionalism and racist feelings."<sup>5</sup>

The complex history of migration in the former Federation of Rhodesia and Nyasaland makes such accusations easy. In present-day Zambia, many citizens trace their roots to other countries through parents, grandparents or their ethnic group's legends of migration. There are close to a million Zambian citizens with family names of the Chewa, Nyanja or Ngoni ethnic groups<sup>6</sup>, all of which are found in Malawi, Mozambique, Tanzania and the Democratic Republic of Congo, as well as Zambia. Those bearing such surnames are vulnerable to denouncements as foreigners, or that they are "less Zambian" than others. Given the generally poor records kept during the colonial era of births and deaths, producing written evidence of birthplace, schooling and parentage in self-defence can be difficult.

Amnesty International believes the Government of Zambia is harassing, intimidating and trying to silence its critics through forcible expulsion, or the threat of such forcible expulsion. Those perceived as opposing government policy --- especially members of the opposition UNIP party --- have been subject to investigations of their citizenship, as well as stated or implied threats of deportation. This reflects a broader strategy of the Zambian authorities to abuse the law to intimidate journalists, non-governmental organizations and others from non-violent activities in civil society. In

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<sup>3</sup> The Constitution of Zambia (1996), Article 34(3.b)

<sup>4</sup> The Post (Lusaka) October 7, 1996.

<sup>5</sup> Letter from George Kunda, Law Association of Zambia, to Amnesty International, 10 October 1996.

<sup>6</sup> Ethnologue, 13th Edition, Barbara F. Grimes, Editor, 1996.

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the end, the question can be asked if democracy can truly function when political expression is silenced through such legal harassment.

This report focuses in particular on the three-year struggle by opposition politicians William Steven Banda and John Lyson Chinula to return to Zambia, from whence Amnesty International believes they were deported --- in a manner that amounts to forcible exile --- for their non-violent political activity. The stories of their deportations on 1 September and 26 October 1994, and the experiences of others, fit a common pattern. Investigations into the citizenship, and the deportation or the threat of deportation, are used to intimidate government critics; and these deportations, the investigations that led to them, and the procedures followed for carrying out the deportations, contravened international human rights law and standards, as well as domestic guarantees of human rights.

Amnesty International opposes forcible expulsion, or threats of expulsion, when used by governments against a person on account of his or her political, religious or other conscientiously-held belief or by reason of his or her ethnic origin, sex, colour or language, national or social origin, economic status, birth or other status. This organization believes that deportations of William Steven Banda and John Lyson Chinula were carried out because of their political beliefs, and so calls on the Zambian authorities to allow them to return to Zambia immediately. Amnesty international is recommending legal and procedural reforms to make sure that deportation procedures can no longer be abused to suppress legitimate political activity or the expression of criticism of the government.

## **2. CASE STUDIES IN FORCIBLE EXILE**

### **The Case of William Banda**

William Steven Banda was politically active in the nationalist struggle for Zambia's independence. Banda maintains he was born in 1945 to Zambian parents at their home in Mkanga Village in the Eastern Province, though this assertion has been contested in both High Court and Supreme Court hearings. He was brought up in the city of Kabwe, and as a young man, he rose up the ranks in UNIP, climbing from section chair, section secretary, section youth secretary, constituency youth chair, district chair, eventually to become Lundazi District Governor from 1983 to 1991. When he was deported in 1994, he was UNIP's district party chair for Lusaka.

Banda admits that as district governor, he blocked the MMD from contesting the 1991 presidential and parliamentary elections in his district. He believes this action led to

his deportation, and said MMD party officials announced before the elections that if they won, he would be deported from the country.<sup>7</sup> Seven days after the election, the police came to search his house. On 9 November 1991, nine days after the election, Banda was detained in Lundazi Prison, which he used to control as district governor. Later transferred to Namseche Prison in Chipata town, Banda was served with a deportation order which he refused to sign. Instead, he began a legal challenge of his impending deportation, and was finally released on bail in December 1991.

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<sup>7</sup> Amnesty International interview by telephone with William Banda, 27 February 1997.

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During the period between 1991 and 1994, Banda said he was arrested more than 15 times because of his political activities. The longest period detention came shortly after President Chiluba declared a state of emergency in early March 1993, prompted by the public revelation of a document that detailed an alleged plan by UNIP to make the country ungovernable through destabilization by civil disobedience, strikes and violent crime. UNIP responded that the document, called the "Zero Option", was not adopted party policy but simply outlined a strategy that had been discussed and rejected.<sup>8</sup> Banda was arrested on 5 March 1993, one of an eventual total of 26 people -- including many senior UNIP officials -- detained on accusations of being part of a "Zero Option plot".

Along with the former president's son Wezi Kaunda and 12 others, Banda was taken by police to Kabwe, where he alleged police tied him to a chair, threatened him with a gun, and ill-treated him by denying him food and drink. According to the government's own Munyama Commission of Inquiry, which looked into allegations of torture both during Kaunda's rule and the first years of President Chiluba's administration, at least two UNIP detainees were tortured during interrogation.<sup>9</sup> Banda was eventually released on 24 April 1993, after spending 50 days in detention.<sup>10</sup>

In his legal fight against deportation, Banda applied on 2 December 1991 for a judicial review to quash what he called the "politically motivated" decision to expel him from Zambia. That application was later heard at the High Court of Zambia in Chipata, which examined several witnesses who offered contradictory evidence about Banda's birth and parentage. He lacked written documentation of his birth, since he was born in a village and not in a hospital. In its ruling on 19 November 1992, the High Court found "on a balance of probabilities" that Banda was not a Zambian and therefore could be deported.<sup>11</sup> The judge, however, expressed his sympathy for Banda and commented on an apparent lack of natural justice in his own ruling, stating that: "If this court were empowered to declare persons like the petitioner [to] be Zambians; the petitioner would have received a favourable declaration considering his long stay in Zambia and the role he has played."

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<sup>8</sup> Amnesty International Report 1994.

<sup>9</sup> "Summary of the Report of the Munyama Human Rights Commission of Inquiry and Government Reaction to the Recommendations," Government Paper No.2 of 1996 [White Paper].

<sup>10</sup> Kaweche Kaunda and Tiyaonse Chisanga Kabwe, "Cuthbert Ng'uni: Torture and Death of an Honourable MP in Zambia", Lusaka (Own Voice Publishers) 1994.

<sup>11</sup> Judgment in the High Court of Zambia, holden at Chipata, in the case between William Steven Banda and the Chief Immigration Officer and the Attorney-General, 1991/HJ/12.

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Banda alleges that in September 1994, just weeks before he was deported, he was ushered into the presence of President Chiluba by then-Minister of Health Michael Sata. During their two hour discussion, Banda said the President offered to drop the deportation action against him if he would join the MMD party. When Banda declined, President Chiluba allegedly threatened his quick removal from the country.

Banda's appeal to the Supreme Court of Zambia in Lusaka was dismissed on 25 October 1994 by a judgment delivered by Deputy Chief Justice Bweupe. It appears to be a flawed decision on two points of fact. First, the State failed to call the principal witnesses in the case, while Deputy Chief Justice Bweupe himself introduced new evidence not argued by the State when he found: "...[I]nvestigations carried out by the State against [Banda] showed his parents came from Nkono Village, Nkotakota, Malawi.<sup>12</sup> In fact, although witnesses testified on this point, the High Court had disregarded this evidence as hearsay. An affidavit from a Malawian immigration officer, recording a statement by the alleged Malawian father of Banda, was presented in court but no witnesses were called to corroborate the evidence, and the High Court concluded: "This case was adjourned on occasions to enable the State call a witness from outside the jurisdiction of this court, namely Malawi, allegedly the father of the petitioner. The State dispensed with this witness. Had this been a Criminal matter requiring proof beyond all reasonable doubt the petitioner would have enjoyed the benefit of doubt but this is civil litigation."<sup>13</sup>

Second, Deputy Chief Justice Bweupe also appeared to err when he ruled that Banda did not prove that he had been "ordinarily or lawfully resident in Zambia". Banda had produced evidence that he was an established resident at least by 1963, when at that time no legal requirement existed for him to obtain a visa. Before Zambia's independence in 1964, individuals born in Northern Rhodesia [now Zambia] or in the Federation of Rhodesia and Nyasaland [Zambia, Zimbabwe and Malawi], and their children, freely travelled between territories. In 1963, therefore, the 19-year-old Banda was lawfully living in the territory that would become Zambia, even if born elsewhere.

In addition, Deputy Chief Justice Bweupe appeared to deviate in an inconsistent manner from the precedent set by his own 1991 ruling at the High Court, in which he reaffirmed that the state has the onus to prove an individual's citizenship if it is in dispute. [See page 16 of this report, below, for a discussion of the 1991 Mundungani judgment.]

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<sup>12</sup> Judgment in the Supreme Court of Zambia, holden at Lusaka, in the case between William Steven Banda and the Chief Immigration Officer and the Attorney-General, No. 16 of 1994.

<sup>13</sup> Judgment in the High Court of Zambia, holden at Chipata, in the case between William Steven Banda and the Chief Immigration Officer and the Attorney-General, 1991/HJ/12, p.J23.

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Despite a plea for time to wind up his affairs, Banda was immediately taken into custody the same day as the judgement was made. Banda had asked to be deported to South Africa where he has relatives. That evening, Immigration Service officers and paramilitary police officers placed Banda, blindfolded, into a police vehicle. He said they drove him around Lusaka in their vehicle until they removed his blindfold and an Immigration officer injected him with a sedative. He recalls regaining consciousness on 26 October 1994 at the Mchinji Border Post in Malawi, before being driven to the Mchinji Police Station, where the Malawian police officer in charge refused to accept custody. He was then taken to Lilongwe Police Station, where he was dumped with little money, no spare clothes or possessions.

### **The Case of John Chinula**

Until 1994, John Lyson Chinula was apparently a prosperous businessman and a politician of national standing. He told Amnesty International that he was born in the Zambian city of Ndola in 1942, to a Zambian mother and a father who originally came from Malawi but later became a naturalized Zambian.<sup>14</sup> Chinula developed a number of successful businesses, owned a farm, and was a well-known figure in Ndola, where he was involved in various civic bodies.

Early in his business career, Chinula claims that he shared an office with Frederick Chiluba before Chiluba became president, and worked closely with him. By 1994, however, President Chiluba was then three years in power and Chinula was in the opposition, a vocal critic of President Chiluba's administration. The highlights of his political career was his election as city councillor in Ndola and later selection to be UNIP chair for labour and social services, sitting on the UNIP Central Committee.

At 1.30 am on 31 August 1994, several armed police arrived at Chinula's house without an arrest warrant, telling him that they were ordered to take him to the local police station to answer a few questions. Placing him in a four-wheel drive police vehicle, the police took Chinula to the police station in Ndola. He did not stay there long, but was then told that he was being taken to the Chief Immigration Officer in the capital city of Lusaka. Upon arriving at the outskirts of Lusaka at about 4am, however, Chinula said that the officers drove directly to Lusaka International Airport. Chinula claimed he heard the police officers tell the airport immigration officials that he was a deportee to Malawi. Chinula said he did not see any deportation order at that time.

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<sup>14</sup> Amnesty International interview with John Chinula, Lilongwe, Malawi, 24 November 1996.

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Word spread that the deportation was in progress, and several UNIP officials, with lawyers, arrived at the airport. After an angry standoff with a growing crowd of party supporters, the police took Chinula into Lusaka to the Immigration Service offices. The police then told Chinula they would take him back to his home in Ndola, or to UNIP headquarters in Lusaka. As the police officers drove Chinula through Lusaka, the vehicle was pursued by his lawyers and UNIP officials following in their own vehicles. Then police suddenly sped off to the airport again for a second attempt at deporting him. Asking to use the toilet, Chinula found a telephone instead and called UNIP headquarters and his lawyers. When his lawyers demanded to know the legal grounds for Chinula's expulsion, police officers finally produced a deportation order signed by Minister of Home Affairs Chitalu Sampa stating Chinula was a threat to Zambia's peace and security. Chinula said he tore up the deportation order, and the police officers present then arrested him for destroying government property, taking him into custody.

Chinula was taken in a police vehicle, followed by his lawyers, to Woodlands Police Station in Lusaka, where the police informed him he would be held until a remand hearing the next day, 1 September 1994. After his lawyers left, however, Chinula claims that another group of police officers and Immigration Service officials arrived. One of the group, an Immigration officer, allegedly forcibly injected Chinula with a sedative. His next memory, according to Chinula, was waking up in Lilongwe Police Station in Malawi after having been left there by Zambian officers. He was never given a chance to appeal this deportation, in violation of both domestic Zambian law and international human rights law.

Deputy Minister for Commerce, Trade and Industry L J Shimaponda later justified the deportation of Chinula by arguing that, in the opinion of the then-Minister of Home Affairs, Chinula's presence in the country or his conduct was judged likely to be a danger to the peace and the good of Zambia. "Thus non-Zambians like John Chinula can be deported pursuant to a warrant under the hand of the minister," Shimaponda said. "They do not have to be initially convicted of any criminal offence before deportation. Besides, what is relevant is not the opinion of the general public or journalists but that of the minister."<sup>15</sup>

More than two years after his deportation, the state-controlled Zambia Daily Mail newspaper claimed to have obtained documents that purported to show that Chinula was a Malawian citizen, born in Genda village, near Mzimba town in Malawi.<sup>16</sup> Other documents alleged that in 1974, the then-Home Affairs Minister Aaron Milner rejected

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<sup>15</sup> The Post (Lusaka), 11 October 1994

<sup>16</sup> Zambia Daily Mail (Lusaka), 23 December 1996

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Chinula's appeal against a deportation order against him at that time, and that Chinula arrived in Zambia when he was six years old. To Amnesty International's knowledge, none of these purported documents were presented at any hearing or deportation review.

### **Banda and Chinula's Failed Attempts to Find Justice in Malawi**

Just a week after Chinula's forcible deportation from Zambia on 1 September 1994, an independent Malawian paper quoted Malawi's Foreign Affairs Minister Peter Fatchi as saying that: "Chinula is a Malawian who was in exile. He is very free in his own country."<sup>17</sup> In a prominent public clarification, Malawi's Home Affairs Minister W W M Nakanga (now deceased) also claimed: "When investigations were carried out, it was determined that the two gentleman's country of origin was Malawi and that's why we had to accept them."<sup>18</sup>

The same version has been continuously repeated by Zambian authorities. Zambia's High Commissioner to Malawi, Colonel Lawrence Haamaundu, reportedly said in March 1997 that the fact that the two men had managed to stay in Malawi for such a long time meant to him that they were where they belonged.<sup>19</sup> And President Chiluba, upon his arrival back in the country from a state visit to Malawi on 16 February 1997, held a press conference at which he told the assembled local news media about his discussions with Malawi's President Bakili Muluzi. President Chiluba asserted that the Malawi president confirmed to him that the two exiles were in fact Malawian citizens. "They are Malawians and if they want to visit Zambia they can only do so as Malawians," President Chiluba said.

Yet the truth appears to be very different from what the authorities claim. In response to the Malawi authorities' public statements, Banda and Chinula applied to the High Court in Lilongwe for judicial review of the Malawi government's decision to accept them, including demands for a declaration that they were not Malawians and that the Malawi government, having wrongfully accepted the Zambian government's claims that they were Malawians, should arrange for their repatriation back to Zambia. The Attorney General of Malawi decided, after reviewing the facts, that the two were not Malawi nationals and offered an out-of-court settlement which was agreed.<sup>20</sup> The High

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<sup>17</sup> IPS report, 9 September 1994 "Rights groups challenge deportation of opposition leader".

<sup>18</sup> Daily Times (Blantyre), 16 October 1995

<sup>19</sup> Bulletin by Global Alternative Media Association, 15 March 1997, distributed by HURINet - The Human Rights Information Network.

<sup>20</sup> "Summary notes on the meeting on Zambian deportees", Malawi Human Rights Commission, 12 June 1996.

Court of Malawi issued the Consent Order on 13 March 1995 that "conclusively established" that Banda and Chinula were not citizens of Malawi, that they were deported involuntarily to Malawi, and that the Malawi government was not willing to keep the two any longer.<sup>21</sup> The High Court also ordered the Malawi government to facilitate their exit from Malawi, in returning back to Zambia.

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<sup>21</sup>Consent Order, Miscellaneous Cause No. 2 of 1995, in the matter of an Application for Judicial Review and in the Matter of Steven William Banda and John Lyson Chinula, 13 March 1995.

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After negotiations involving the Centre for Human Rights and Rehabilitation, the lawyers for the two men, and the Government of Malawi, the authorities announced that the two would be sent back to Zambia on 20 March 1995. On that date, both men were ready for departure at the Malawian Department of Immigration in Lilongwe and boarded a state vehicle provided by the authorities. Immigration officers, however, reportedly received a call from Minister of Home Affairs W W M Nakanga, who ordered that Banda and Chinula be taken to his ministry building, where the two were to be addressed by the Principal Secretary.<sup>22</sup> After being kept waiting for several hours, they were taken back to the Immigration Offices where they were told that there would be no Malawi state assistance in leaving the country. For almost a year afterward, the Malawi authorities were silent about the issue, despite a letter of appeal to Malawi's President Muluzi, and further correspondence to the Minister of Home Affairs and other government authorities by the Lilongwe-based Centre for Human Rights and Rehabilitation on behalf of the exiles.

Both Banda and Chinula allege that there was active collusion between figures in the Malawian and Zambian Home Affairs ministries to thwart their return. Contacted by local reporters, then Malawi Minister of Justice Collins Chizumila (now deceased) asked: "What appears to be the problem? Ask the Home Affairs people. Chinula is free to go."<sup>23</sup> On 23 June 1995, the Malawi High Court issued a warrant for the arrest of the Minister of Home Affairs for contempt of court in blocking compliance with the court order. Although served on the police by the court, police officers never effected the arrest.

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<sup>22</sup> Daily Times, (Blantyre), 12 April 1995.

<sup>23</sup> Affidavit filed in High Court of Malawi in Miscellaneous Cause Number 2 of 1995.

The two filed a further legal action<sup>24</sup> in October 1995 charging the Government of Malawi with contempt of court for failing to repatriate them. In March 1996, there began several months of inconclusive meetings and correspondence with Malawian authorities, including the Malawi Human Rights Commission, composed of Ombudsman James Chirwa and Law Commissioner E M Singini; Solicitor General Stephen Matenje; Acting Chief State Advocate F A U Assani; and other representatives of the justice and home affairs ministries. The High Court of Malawi issued a judgement in May 1997 against the Attorney General of Malawi that awarded Malawi Kwacha 81,197,098 (approximately US\$ 4.6 million) in damages to Banda and Chinula for not facilitating their exit as agreed.<sup>25</sup> The Malawi government did not defend itself in that civil suit, which detailed Banda and Chinula's lost business earnings in Zambia and the cost of supporting themselves in exile. The High Court of Malawi issued a second judgement in June 1997, which detailed how the Attorney General was to "facilitate" their exit by providing transportation, exit documents, and Malawi Immigration officers to hand the two men over to the Zambian authorities at the border.<sup>26</sup> As of October 1997, the Malawi government has ignored the judgments of its own courts and failed to facilitate the return of the two men to Zambia.

Both men said they remain frightened by the possibility of being assassinated trying to cross the border without an official Malawian escort to the Zambia side of the border crossing or proper travel documents.<sup>27</sup> "We refuse to go back unless it's official, because it's too dangerous for us and we are scared," John Chinula said. "Without a passport, what would happen if they would drop us off in the middle of the bush? If we go there on our own, perhaps the Zambians would kill us." Yet in Zambia, the Home Affairs Minister has reiterated that Chinula and Banda were not going to be allowed back into Zambia. "We have not changed our stance on the matter and I think we reserve the right to decide whether to take him back or not," Minister Chitalu Sampa said.<sup>28</sup> Zambian Immigration Service Public Relations Officer Irene Poso expressed the threat more bluntly, saying that if Chinula tried to enter the country, he would suffer the

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<sup>24</sup> Ibid.

<sup>25</sup> Judgement, High Court of Malawi, Lilongwe District, in Civil Cause No.504 of 1996, 23 May 1997.

<sup>26</sup> Judgement, High Court of Malawi, Lilongwe District, in Miscellaneous Cause No. 2 of 1995, 30 June 1997.

<sup>27</sup> Amnesty International interview with John Chinula, 24 November 1996, Lilongwe, Malawi and Amnesty International interview with William Banda, by telephone, 27 February 1997.

<sup>28</sup> Zambia Daily Mail (Lusaka), 21 December 1996.

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consequences. "We have not changed our mind on the issue and when he turns up we shall take appropriate action against him."<sup>29</sup>

### **3. BACKGROUND TO THE DEPORTATIONS**

#### **The Pattern of Threats of Forcible Exile**

In a 1995 newspaper editorial, a spokesman of the ruling MMD party defended how Zambian authorities had "flushed [deportees] out of this country after discovering they were not genuine citizens" and decried the uproar over the expulsion of "big names" like William Banda and John Chinula. "The explanation as to why more people are deported to Malawi is because [former president] Kaunda is a Malawian who brought his kith and kin and gave them influential positions in the government and other sectors."<sup>30</sup>

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<sup>29</sup> Zambia Daily Mail (Lusaka), 27 December 1996.

<sup>30</sup> The Post (Lusaka), 24 October 1995.

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Amnesty International believes a more accurate explanation is that the Government of Zambia is pursuing a policy of intimidation of those perceived to be political opponents. One human rights activist, speaking anonymously, said many fellow activists with Malawian surnames or maiden names feel themselves to be hostages to threats of deportation. "Although they have been in Zambia for 40 or 50 years, a lot of activists stopped talking because they felt at risk of deportation after Chinula and Banda were sent out," she said.<sup>31</sup>

The first attempt at forcible exile came soon after the MMD came to power, but appeared to be more personal than political: Newstead Zimba, while acting as President Chiluba's first home affairs minister, reportedly attempted in 1991 to deport Winston Gumboh, former president of the Football Association of Zambia and well-known soccer referee, after a "social difference".<sup>32</sup> Gumboh was held in detention for several hours, pending deportation, until his subsequent release after pressure by his political supporters.<sup>33</sup>

Subsequent citizenship investigations have been reportedly undertaken into the citizenship of senior UNIP officials, such as Rupiah Banda, Muhabi Lungu, Dr Lucas Moyo, Crispin Mtonga, and Sebastian Zulu. A common pattern emerged from accounts given of such investigations: Immigration officers interview them about their citizenship, claiming to have information indicating they were actually foreigners. For example, according to reports received by Amnesty International, those acting on behalf of the MMD government reportedly told UNIP Lundazi District Chair Crispin Mtonga in 1995 that if he become too politically active he could be deported.

Other accounts indicate Immigration officers also visit the relatives of those targeted for intimidation to ask questions about their parentage. For example, former secretary to the cabinet Sketchley Sacika wrote a 15 November 1995 letter to Home Affairs Minister Sampa, protesting that Immigration officials were visiting his relatives in a village in the Northwestern Province to probe his origins. "I am concerned that my relatives in the village should be subjected to such an uncalled for and intimidating inquiry," Sacika told Sampa.<sup>34</sup> Chief Immigration Officer Philip Mutantika later denied that any of his officers had been making enquiries into Sacika's background.

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<sup>31</sup> Anonymous Interview with Amnesty International, by telephone, 16 June 1997.

<sup>32</sup> The Post (Lusaka), 7 October 1994.

<sup>33</sup> The Post (Lusaka), 28 October 1994.

<sup>34</sup> The Post (Lusaka), 20 November 1995.

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The list of leading members of civil society who have been questioned by Immigration officials or have been publicly attacked as foreigners reads like a Who's Who list of Zambian human rights activists: Lucy Sichone of the Zambia Civic Education Association (ZCEA); Alfred Zulu, president of the Zambia Independent Monitoring Team (ZIMT); Roger Chongwe, a human rights lawyer and president of the Liberal Progressive Front (LPF) political party; Emily Sikazwe, of the women's rights group Women for Change; Bishop John Mambo, former president of the Forum for Democratic Progress (FODEP), and George Kunda, chair of the Law Association of Zambia (LAZ).

Kunda, for example, protested in a 6 October 1996 press statement that the Zambian government was trying to intimidate him into silence by "malicious investigations of my nationality and that of my parents" by Immigration officers.<sup>35</sup> Kunda said that ever since he was elected LAZ chair, Immigration officers had on several occasions interviewed him, his wife and parents about his origins and parents' background. He said the government's motive was clear: the LAZ publicly criticized the new constitution favoured by President Chiluba. Kunda noted that he was born in Zambia, as were his parents.

Kunda came under public attack from Valentine Kayope, the Deputy Minister for Information and Broadcasting, who told parliament in a 30 September 1996 speech that Kunda was a Malawian whose behaviour was loaded with a hidden political agenda.<sup>36</sup> Those allegations were repeated by Minister Without Portfolio Michael Sata on 6 October 1996 at a press briefing. Kayope made similar allegations in May 1996 against Father Joe Komakoma of the Catholic Commission for Justice and Peace, stating that "Zambia is ours and not even foreigners in priestly cassocks should dictate to us."<sup>37</sup>

### **Kaunda as a Target for Forcible Exile**

Threats of forcible exile appear to have been initially motivated by the political comeback of former president Kenneth Kaunda. Retired from active political life since August 1992, Kaunda announced his intent to return to the political arena almost two years later in July 1994.<sup>38</sup> Kaunda began a speaking tour of the country, gaining a great deal of publicity. By August 1994, the Zambian government reportedly placed Kaunda

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<sup>35</sup> Press release, Law Association of Zambia, 6 October 1996.

<sup>36</sup> The Post (Lusaka), 7 October 1996.

<sup>37</sup> The Times of Zambia (Lusaka), 12 May 1996.

<sup>38</sup> *ANB-BIA Supplement*, 15 November 1994.

under surveillance "to preserve the peace and security of the nation", according to Home Affairs Minister Sampa.<sup>39</sup> The minister said the surveillance was motivated by government worry about foreign backing for Kaunda's bid to re-enter politics.<sup>40</sup>

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<sup>39</sup> *Agence France Press*, 17 October 1995.

<sup>40</sup> Radio Botswana, Gaborone, 17 August 1994, quoted in the *Foreign Broadcast Information Service Bulletin* (AL/2078 A/8) 19 August 1994.

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As Kaunda's popularity grew in 1995, newspapers in Zambia reported that Kaunda faced criminal prosecution for "masquerading as a Zambian" while president.<sup>41</sup> Home Affairs Minister Sampa asserted again that Kaunda would be deported as soon as the ministry completed some paperwork because Kaunda "was in fact stateless" and would be dealt with "just like any other alien".<sup>42</sup> On 15 October 1995, Lands Minister Chimabonda stated on national TV that the former president was stateless and it was not clear to which country he should be deported.<sup>43</sup> These public attacks appeared linked to Kaunda's re-election as the leader of UNIP. Later in October, Zambian authorities announced the investigation into Kaunda's citizenship had been dropped so as to avoid civic unrest, although Kaunda claimed the issue was shelved after pressure from foreign diplomats.<sup>44</sup>

Yet further remarks by Home Affairs Minister Sampa in December 1995 showed the government still determined to pursue its strategy of expelling Kaunda because of his non-violent political activity. "Kaunda is a Malawian who has not renounced his citizenship and he risks being deported if he continues to threaten Zambia's peace," Sampa said. "The government is watching his activities."<sup>45</sup> There was nothing to indicate that the activities or presence of Kenneth Kaunda or UNIP in Zambia posed any legitimate security concerns.

Kaunda claims that his father, the Rev. David Kaunda, and his mother, Helen, came from Malawi and settled at Lubwa mission of the London Missionary Society in Chinsli in Zambia's Northern Province. Kaunda says he was born there in 1924, and that he renounced any claim to Malawian citizenship six years after becoming Zambia's first president in 1964. The government has attacked Kaunda's citizenship claiming that Kaunda was actually born in Malawi, that he failed to renounce his Malawian citizenship in accordance with the Northern Rhodesian Citizenship of Zambia Act, No 61 of 1964, and that his later efforts to acquire Zambian citizenship were flawed.

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<sup>41</sup> *Agence France Press*, 17 October 1995.

<sup>42</sup> *Voice of America*, 17 October 1995., broadcast at 1403 UTC.

<sup>43</sup> ZNBC Radio, 17 October 1995, reported in BBC SWB 19 October 1995.

<sup>44</sup> InterPress Service report, 19 October 1995.

<sup>45</sup> "Zambian Church Leaders Oppose Nationality Probe", APS News and Features Bulletin, 16 January 1995.

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In January 1996, national tensions rose as the nation discussed constitutional amendments that would effectively bar Kaunda from running for a third term as president by requiring both parents of all presidential candidates to be Zambians by birth or descent. Kaunda began to warn of a possible civil war if prevented from standing as a candidate.<sup>46</sup> At that time, a deputy minister speaking at a government rally in Chingola town warned that Kaunda could be imprisoned and deported to Malawi if he flouted the new constitution, adding that the presidency should be occupied by an indigenous candidate, while Kaunda was an alien.<sup>47</sup>

In March 1997, former Legal Affairs Minister Remmy Mushota and former Member of Parliament for Mandevu city, Patrick Katyoka, filed a suit in the High Court of Zambia in Ndola city challenging all decisions made during the 27-year rule of Kaunda, because he allegedly was not a true Zambian citizen.<sup>48</sup> President Chiluba had appointed Mushota to be a member of the government's Citizenship Board, just a few months after Mushota was dismissed from office after a Ministerial and Parliamentary Code of Conduct Tribunal convicted him on 11 July 1996 of "subverting laid down procedures" involving a large government financial transaction. Though that first suit was thrown out by the court on a legal technicality, Mushota and Katyoka filed a second suit in May 1997. Kaunda's attorneys argued that the suit be dismissed because the matter should have been taken to court within three months from that time, or at least after Kaunda was out of office, if Mushota and Katyoka were afraid of reprisals by Kaunda.<sup>49</sup> The case continues.

### **President Chiluba's own citizenship challenged: The Presidential Petition Case**

Just days before President Chiluba was re-elected on 18 November 1996, UNIP and the Liberal Progressive Front party (later joined by others) submitted a petition to the Supreme Court of Zambia challenging the citizenship of President Chiluba and his parents, thereby calling into question his qualifications for the presidency. The petitioners also asked that the election be postponed. That first petition was dismissed on the grounds that the Electoral Amendment Act stipulates that such challenges must be filed within 14 days after the election. A second petition was filed alleging, among other things, that President Chiluba made a false declaration of his citizenship<sup>50</sup> because he

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<sup>46</sup> *Reuters*, 31 January 1996.

<sup>47</sup> ZNBC Radio, Lusaka, 1800 GMT 6 April 1996.

<sup>48</sup> *Zambia Today* (Lusaka), 22 May 1997.

<sup>49</sup> *Times of Zambia*, (Lusaka), 4 June 1997.

<sup>50</sup> *The Post* (Lusaka), 19 March 1997.

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was not born to parents who were both Zambian citizens, or perhaps not even born in the country.

In the bizarre, lengthy hearings that continued throughout 1997 before the Supreme Court, more than a dozen witnesses were presented by the petitioners to demonstrate inconsistencies in the President's own statements about his name, his birthplace and his father's name. The confusion surrounding the president's identity is exemplified by the variety of reports relating to his name and place of birth. According to petitioner's witness Bartholomew Sikongwa Tilase, a supervisor at the government passport office, President Chiluba used different names on passport applications: Frederick Jacob Chiluba (1970 and 1997), Frederick Chiluba (1975), and Frederick Jacob Titus Chiluba (1991).<sup>51</sup>

The identity of the President's father, not just his name, was also the focus of scrutiny because, under the 1996 constitutional amendments, the citizenship of an individual's parents also impinge upon the person's eligibility to run for President. Petitioner's witness Luka Kafupi Chabala, a Zambian mine worker who claims to be President Chiluba's father, asserted that the President was born Titus Mpundu.<sup>52</sup> Witness John Jamale Chaziya contradicted this testimony, claiming that President Chiluba's father is Jim Zherari, his relative. Jim Zherari is a Mozambican herbalist who lived in Wusakile Township outside of the city of Kitwe. Chaziya claims that President Chiluba was born Titus Jim Zherari.<sup>53</sup>

Reports concerning the place of the president's birth are no less convoluted. In his 25 October 1996 affidavit in support of his presidential candidacy, President Chiluba claims he was born in Musangu Village, Mwense District, Luapula Province of Zambia.<sup>54</sup> In his book "Democracy, the Challenge of Change", however, President Chiluba writes that he was born in Wusakile Township outside of Kitwe.<sup>55</sup> Other witnesses have suggested that President Chiluba was born at a mission hospital in Chibambo in Zaire.<sup>56</sup>

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<sup>51</sup> The Post (Lusaka), 24 March 1997.

<sup>52</sup> Ibid.

<sup>53</sup> The Post (Lusaka), 15 May 1997.

<sup>54</sup> The Post (Lusaka), 27 March 1997.

<sup>55</sup> "Democracy, the Challenge of Change", by Frederick Jacob Titus Chiluba, Lusaka: Multimedia Publications, 1995.

<sup>56</sup> The Post (Lusaka), 24 March 1997.

On 23 July 1997, the Supreme Court ruled against the petitioner's motion asking that President Chiluba submit himself to a DNA test to determine his parentage. The petitioners appealed that ruling, and the full bench of the Supreme Court began reviewing the decision. As of October 1997, hearings were suspended pending the outcome of that review. It remains to be decided by the Supreme Court whether the petitioners have produced enough evidence to call into question President Chiluba's parentage and thereby his eligibility as a presidential nominee, thus invalidating his November 1996 election to the presidency.

### **A Zambian legal precedent on the forcible deportations**

Shortly before President Chiluba came to power, the High Court of Zambia made an important ruling concerning citizenship and forcible expulsion in June 1991. In the case of Isdore Mundungani, the then-Minister of Home Affairs in December 1989 declared Isdore Mundungani a "prohibited immigrant" and signed an order to deport him. Mundungani, who was born in Zimbabwe to a Zambian-born father but emigrated to Zambia in 1972, had obtained a National Registration Card by fraudulently claiming he had been born in Zambia.<sup>57</sup> The deportation was appealed.

In that case, Justice B K Bweupe, who is now Deputy Chief Justice of the Supreme Court, ruled in November 1991 that the Home Affairs Minister failed to act in good faith by not informing Mundungani of the impending deportation order being sought against him, nor afforded him the opportunity to be present and to be heard by a review tribunal.<sup>58</sup> This ruling applies to the case of John Chinula, who was not given the chance to challenge his deportation. Bweupe also cited a decision in *R vs. Home Secretary* (1916) 179 A.E.R 523 to support his contention that: "In the event of it being disputed that the subject of a deportation order is an alien, the matter must be determined by the Court and unless it be proved that the person is an alien the order must be quashed as made without jurisdiction."

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<sup>57</sup> Judgment of the High Court for Zambia at Lusaka in *Mundungani Isdore C.P. vs. Chief Immigration Officer, Minister of Home Affairs and Attorney General*, 1989/HP/1949, 27 June 1991.

<sup>58</sup> In a further legal citation in his ruling, Bweupe also noted paragraph 1358 of Halsbury's *Laws of England*, Vol. 30, 3rd Edn., which states: "All persons exercising judicial or quasi-judicial functions must have due regard to the dictates of natural justice. These require that the parties to proceedings shall be duly notified when and where they may be heard and shall then be given full opportunity of stating their views, the matters in dispute being decided honestly, impartially and without bias by a tribunal, no member of which has an interest, either pecuniary or otherwise in the matter."

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Justice Bweupe's ruling indicated that if an individual contends that he is Zambian, the onus is on the State to prove otherwise, that deportation is unlawful where authorities have failed to establish that the person is not a national, and that "natural justice" was violated when an accused individual is not allowed the opportunity to be heard. Justice Bweupe ordered the deportation order quashed, affirming that the appellant was a citizen by virtue of his father's citizenship, as stated in the Constitution of Zambia.<sup>59</sup> This earlier decision appears to contradict his later Supreme Court ruling in William Banda's case, in which he found Banda had not proven Zambian citizenship and could be deported.

#### **4. AI'S POSITION ON FORCIBLE EXILE**

Forcible exile is when governments force individuals to leave their own country on account of their political, religious or other conscientiously-held beliefs or by reason of their ethnic origin, sex, colour, language, national or social origin, economic status, birth, or other status and prohibit their return, or, if they are already outside their own country, prevent them from returning for the same reasons.

Amnesty International considers forcible exile to be a grave violation of the rights to freedom of conscience and expression and freedom from discrimination. The organization's opposition to forcible exile is based on the belief that governments should be prevented from removing their political opponents from the country just as much as from imprisoning them, because in both cases they effectively take away their opportunity to act in public life. In opposing exile, Amnesty International takes no position on the political beliefs of the person exiled.

Even in cases where the person concerned may have used or advocated the use of violence, which does not appear to be true in the case of William Banda or John Chinula, international law and standards would still not allow the government to forcibly exile the person. Where a government alleges that the person exiled has committed violent crimes and that exile is therefore necessary to protect national security, Amnesty International still opposes forcible exile, insists on return, and argues that any evidence of criminal activity or intent should be tested in a court of law, in accordance with international standards for fair trial. Amnesty International further indicates that if the person is to be charged with a recognizably criminal offence, then their trial must be in accordance with international standards for fair trial.

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<sup>59</sup> Constitution of Zambia (1991), Article 5.

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Protection against forcible exile is not strictly limited to citizens of a country. Although states have a wide measure of discretion to deport or expel non-nationals, international human rights law and standards impose important restraints. For example, individuals should be able to challenge the legality of the decision to deport them, it may not be permissible to split up a family, and the collective expulsion of non-nationals is prohibited.

Non-citizens who have no other country of citizenship have a right not to be forcibly exiled from their country of habitual residence where all the circumstances of the case show it is their "own country". If a person was born in a country and has never resided in any other country, that is a good indication that the country of birth is his or her "own country", despite cultural, linguistic and religious affiliations to another country. If the parents were also born and resided in the same country as the child, then this is a very strong indication that for the child at least this is his or her "own country".

Similarly, in cases of persons who have a second country of citizenship, a deportation or expulsion order from the country of residence might amount to forcible exile if that person's real and substantial ties are to his or her country of residence. A deportation order in such circumstances may amount to forcible exile provided the reason for the deportation is on account of his or her political, religious or other conscientiously held beliefs or by reason of his or her ethnic origin, sex, colour, language, national or social origin, economic status, birth, or other status. This is particularly true where the person might theoretically be entitled to citizenship of a second country but their citizenship is unrealized and they are not formally registered as citizens of the second country.

Amnesty International also opposes laws which require or allow for the imposition of forcible exile. Amnesty International's concerns on forcible exile extend to measures taken to de-nationalize people (especially if the efforts amount to an attempt to denationalize a particular minority group), or, especially in newly independent countries, to new citizenship laws that make it difficult for some groups of people to acquire citizenship, if the legal effect of the denial of citizenship means that expulsion is likely, or the purpose of the measure seems designed to allow for expulsions in the future.

## **5. INTERNATIONAL LAW AND STANDARDS ON FORCIBLE EXILE**

The Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) clearly support Amnesty International's position of opposing forcible exile when it is imposed as a formal measure on account of people's beliefs or identity.

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Article 9 of the Universal Declaration of Human Rights (UDHR) states that: *"No one shall be subjected to arbitrary arrest, detention or exile."* The debates at the time the UDHR was drafted and adopted make clear that exile on account of one's political beliefs, or for reasons similar to those for which AI would oppose exile, would always be "arbitrary". In other words, even if proper and fair procedures are followed, the substantive reasons for exile can be considered arbitrary. The UDHR is not a legally binding treaty, though its provisions are considered customary international law, binding on all member states of the United Nations.

The International Covenant on Civil and Political Rights (ICCPR) is binding on Zambia, which acceded to the ICCPR in April 1984. There is no express prohibition on exile in the ICCPR, but this is because Article 12(4) of the ICCPR guarantees the right of return to one's own country: *"No one shall be arbitrarily deprived of the right to enter his own country."*

This provision implicitly prohibits forcible exile, since an order to leave the country is in effect a prohibition on return. It should be noted that, unlike other freedom of movement rights in Article 12, the right to return is not subject to express limitations such as those based on public order, public health, and other instances. Like many of the rights enumerated in the ICCPR, the right to return can be restricted in some circumstances if there is a state of emergency in the country. In this case, however, no state of emergency exists at present in Zambia.

The African Charter on Human and Peoples' Rights (ACHPR), which Zambia ratified in January 1984, also states a right, albeit qualified, to return to one's country in Article 12 (2): *"Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality."*

Amnesty International believes that such a right would be violated by a state's forcible exile of a citizen from his or her country of origin solely because of his or her involvement in a non-violent opposition activity, and that "national security" or "law and order" are not legitimate reasons for such politically motivated expulsion.

In a recent finding by the African Commission on Human and Peoples' Rights, a politically-motivated deportation without a chance of appeal would constitute a human rights violation. In its 10th Annual Activity Report to Heads of State and Government Summit of the Organization of African Unity held in Zimbabwe in June 1997, the Commission found that, in the case of John Modise, Botswana authorities had flagrantly

violated several of the rights guaranteed by the African Charter.<sup>60</sup> Modise, a founding member and leader of an opposition party in Botswana, has tried for 16 years to regain his citizenship as a Botswana citizen despite being deported four times in that period.

Modise's father was a Botswana citizen who went to work in South Africa, married a South African woman and had a son. After his mother's death shortly after birth, Modise was sent to Botswana where he grew up. The Government of Botswana arrested and deported Modise -- without bringing him before any tribunal -- soon after he founded an opposition political party in 1978. This deportation by the Government of Botswana was a move that appeared "designed to hamper his political participation", the Commission said.<sup>61</sup>

In subsequent attempts to return, he was arrested and deported from Botswana to South Africa three more times. Because Modise did not have South African citizenship, he was forced to live in the former "homeland" of Bophuthatswana for seven years, until the "homeland" authorities deported him. Modise spent five weeks in the no-man's land between Bophuthatswana and Botswana, before being allowed into Botswana on humanitarian grounds under a temporary three-month residence permit. While the Botswana authorities finally granted Modise citizenship by registration in 1995, such citizenship can be withdrawn at any time and does not qualify one to be a candidate for the country's presidency.

## **6. CONCLUSIONS AND RECOMMENDATIONS**

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<sup>60</sup>The case of John K. Modise/Botswana, No. 97/93, from the Tenth Annual Activity Report of the African Commission on Human and Peoples' Rights, 1996/97.

<sup>61</sup> Ibid.

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On 28 May 1996, the Government of Zambia pushed through major changes to the country's 1991 constitution. President Chiluba's main political rival was disqualified from contesting the November 1996 presidential election by some of these changes, by requiring presidential candidates to be born of Zambian parents. After President Chiluba signed the amended constitution into existence, western donors including United States of America and United Kingdom, suspended aid to Zambia in protest. The US-funded National Democratic Institute also closed its office in Zambia, noting: "Actions that have curtailed electoral competition and participation, political discourse and freedom of expression raise serious questions about the prospects for meaningful elections."<sup>62</sup>

The government's political manipulation of citizenship remains a threat to free political participation, open public discourse and freedom of expression in Zambia, and thus to human rights. The basis for dialogue between civil society and the state is undermined when the country's laws permit the politically motivated expulsion of people on account of their political or other conscientiously held beliefs or activity, or their ethnic, national or social origin or similar status.

In this report, Amnesty International has described how the Government of Zambia has forcibly exiled political opponents and intimidated others into silence and acquiescence. The human rights organization believes that the expulsion of William Banda and John Chinula serves as a continuing threat to those active in the political or civic sphere of Zambian society that they could be deported next. Therefore, Amnesty International believes steps must be taken to redress this injustice, and ensure that Zambia's laws on citizenship and their application are never again used to allow for the forcible exile -- or threats of forcible exile -- of individuals on account of their non-violent opposition to the government. To that end, Amnesty International is making several recommendations to the Government of Zambia, the Government of Malawi and the international community.

#### **To the Zambian government**

- 1. Banda and Chinula should be allowed to return to Zambia immediately.**

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<sup>62</sup> *Reuters*, 17 June 1996.

Amnesty International believes Banda and Chinula have been forcibly exiled because of their political beliefs, in violation of international law and standards, and so should be able to return to Zambia. International norms of human rights impart the right to return to citizens of a country as well as to those who have not been formally recognized as citizens by the country to which they wish to return, where all circumstances indicate that this should be considered their "own country". Banda and Chinula, having lived in Zambia most of their lives and significantly contributed to its political life, consider Zambia to be "their country". In the words of High Court Judge Tamula Kakusa, commenting on the apparent injustice of his own ruling allowing the expulsion of Banda: "If this court were empowered to declare persons like the petitioner [to] be Zambians; the petitioner would have received a favourable declaration considering his long stay in Zambia and the role he has played."<sup>63</sup>

In the cases of both Banda and Chinula, if the Government of Zambia sincerely believes them to be a threat to public order and security as stated in their deportation orders, then it should charge them with a recognizably criminal offence and try them in a court of law, in accordance with international standards for fair trial. In the case of Chinula, he should have been allowed the right to appeal his deportation before a properly constituted tribunal or court of law.

**2. The Immigration and Deportation Act - Chapter 122 of the Laws of Zambia should be reformed in line with international human rights law and standards to prevent forcible exile. Some of the legal reforms would include addressing the following areas:**

- Section 28 of the Act, which unfairly places the burden of proof of citizenship upon an individual who has been served with an order of deportation. In keeping with both domestic Zambian precedents and international law, the law and standards should be reformed to provide for the presumption of citizenship of an individual if it is in dispute, and the onus should be on the authorities to prove otherwise.
- Section 26 of the Act, which empowers the Minister of Home Affairs with sweeping authority to deport any person "whom the minister judges by his presence or conduct to be a danger to the peace and good order in Zambia". Such broad power should be more narrowly defined to prevent politically motivated abuse.

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<sup>63</sup> Judgment in the High Court of Zambia, holden at Chipata, in the case between William Steven Banda and the Chief Immigration Officer and the Attorney-General, 1991/HJ/12.

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- The silence of the Act, in regards to appeals against such deportation orders to a higher tribunal or court of law, which appears to violate the guarantee to a fair trial in Article 7(1a) of the ACHPR. In keeping with Article 13 of the ICCPR, which guarantees the right to have one's case "reviewed by, and be represented for the purpose before, the competent authority...", those to be expelled should be allowed to have their case reviewed by, and be represented before, a competent, independent and impartial authority, court or tribunal.

### **3. The Citizenship Board, as provided for in the Citizenship Act of Zambia - Chapter 121 of the Laws of Zambia, should be reformed.**

In view of the politicization of the citizenship issue in Zambia, which has led to forcible exile, Amnesty International urges that steps be taken to reform procedures by which citizenship issues are formally reviewed by the state. In particular, the organization calls upon the Government of Zambia to make sure that the Citizenship Board of Zambia is an impartial and independent body, because this quasi-judicial body acts in a manner similar to a court of law by determining the rights of an individual and making decisions that have a bearing on an individual's life and liberty. These reforms should include mechanisms for ensuring that the laws governing the investigation and determination of citizenship are not used in order to deprive political opponents of their citizenship in an arbitrary manner in order to facilitate their deportation. Such reforms could include:

- Section 3 of the Act, which provides for the President to directly appoint the four members of the Citizenship Board, which is chaired by the Minister of Home Affairs as the fifth member; and Section 4 of the Act, which allows the President wide latitude to remove a Board member from office. To create greater accountability, the mechanism for selection of Board members should be de-politicized to allow for parliament, civil society or an independent commission to participate in selecting and de-selecting the Board membership.
- Section 9 of the Act, which expressly prevents the decisions of the Board from being appealed or reviewed by any court or tribunal; and Section 28 of the Act, under which deliberations of the Board remain secret, and disclosure of any information about the Board's activities or discussions is punishable by a fine or six months' imprisonment. Ousting the jurisdiction of the courts is in contravention of Article 7(1a) of the ACHPR. The Act also does not provide for legal representation before the Board during proceedings, nor the right of people accused of unlawfully being in the country the right to face their accusers directly. In keeping with international law and standards for fair trials, reforms should be introduced to guarantee the rights of the accused to be informed of the legal action against him or her, to have legal representation, to face their accusers

and to cross examine witnesses, and to appeal a Board decision to an independent oversight mechanism or tribunal.

### **To the Malawian Government**

Amnesty International calls upon the Malawi government to abide by the judgment issued by its own High Court on 13 March 1995 requiring it to facilitate the exit of Banda and Chinula from Malawi to Zambia, and the subsequent High Court judgment in 1997 detailing the requirements of how to "facilitate" their exit, namely by providing: transport to the Zambian border post with Malawi; an official escort to facilitate their safe crossing from Malawian territory, through the "No Man's Land", and up to the Zambian border post; and exit documents for the two men. The Malawi government should obtain guarantees from the Zambian government for the safety of Banda and Chinula upon their return to that country.

### **To the International Community**

The international community should use their links with the Zambia and Malawi governments to raise concerns about the forcible exile of Banda and Chinula, in the context of the politicization of the issue of citizenship in Zambia. Foreign governments in dialogue with the Zambian authorities should actively encourage their counterparts in the Government of Zambia to make reforms which would de-politicize the manner in which citizenship is investigated and prevent further forcible exile from being carried out.