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## ZAMBIA

# Applying the law fairly or fatally? Police violation of human rights

April 1999

SUMMARY

AI INDEX: AFR 63/01/99

DISTR: SC/CO/GR/PO

Amnesty International, together with human rights organizations in Zambia, have documented a pattern of unlawful fatal shootings, torture and ill-treatment by law enforcement officers of the Zambia Police Service over a period of years. Many of the victims are ordinary people whose human rights have been violated in the name of combating crime. Lacking public stature, however, these victims' deaths and maimings have often gone unreported by the media and uninvestigated by police authorities.

The Government of Zambia has previously attempted police reforms and while some continue, most have either failed or the authorities lacked the political will to implement them fully. Policing authorities have admitted to Amnesty International that a thorough re-training of law enforcement officers was still necessary, but say violations are committed by a few renegades. Currently, however, police officers have continued to commit numerous and serious human rights violations with impunity.

In Zambia, there are several existing mechanisms that attempt to make police accountable to the Zambian people for human rights violations they commit; including police internal investigations; assessments in the law courts to determine if statements made by witnesses or defendants were obtained through police coercion or torture; formal judicial inquests have been held into suspicious deaths; and private civil suits. In a new development, the government's Human Rights Commission has investigated cases of police shootings and torture over the past three years, leading to a greater number of police officers being prosecuted and punished for gross human rights violations.

These existing mechanisms have had some limited success in bringing to justice those police who violate human rights. Yet flaws exist in each method of investigation

which allows police impunity to continue to be a far wider problem than simply a few individual "renegades" in the police service.

Government-initiated reviews indicate the need for wide-reaching police reform and cabinet ministers have called for such reforms, including better training for police and security personnel. Amnesty International has welcomed these stated intentions. Yet the Zambian authorities have not taken steps toward creating greater police accountability.

In this report, Amnesty International made several recommendations, including:

- Incorporate the provisions of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) treaty into domestic law. Amnesty International welcomed Zambia's accession on 7 October 1998
- Establish an independent Police Complaints Authority, composed of civilian and state representatives to investigate the public's complaints against police officers.
- Empower the Human Rights Commission to assist in oversight of the police
- Remove the need for victims to obtain a police medical report or form.
- Require full disclosure of appropriate police documents to the legal representatives of the victims of human rights violations by police.
- Prohibit police from violating, or being instructed to violate, the right to freedom of peaceful expression, association and assembly.
- Ensure paramilitary police conform with the highest policing standards.
- Train all ranks of Zambia's security forces, ranging from recruits to top commanders, in how to respect human rights in actual policing situations.
- Make a police officer's individual human rights record part of the criteria for salary increase, promotion in rank and other recognition of performance.
- Initiate a program of public awareness to make citizens aware of their rights.
- Consult the Human Rights Commission, human rights NGOs and other members of civil society before implementing any announced police reforms, including training programs, amendments to laws or creation of new oversight institutions.

Underlying all these activities must be the political will to make the reforms work. Only strong and public commitment to human rights at the top levels of the Zambian Government will ensure that police apply the law, as stated in the Zambia Police Service Mission Statement, "fairly and firmly to all".

**KEYWORDS:** POLICE1 / UNLAWFUL USE OF FIREARMS1 / TORTURE/ILL-TREATMENT1 / USE OF EXCESSIVE FORCE1 / FREEDOM OF EXPRESSION / INVESTIGATION OF ABUSES / EXTRAJUDICIAL EXECUTION / COMMON CRIMINALS / NATIONAL HUMAN RIGHTS COMMISSION / DEMONSTRATIONS / TRIALS / HUMAN RIGHTS EDUCATION / IMPUNITY

This report summarizes a 42-page document (17413 words), ZAMBIA: Applying the law fairly or fatally? Police violation of human rights (AI Index: AFR 63/01/99) issued by Amnesty International in May 1999. Anyone wishing further details or to take action on this issue should consult the full document.

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fatally?

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rights



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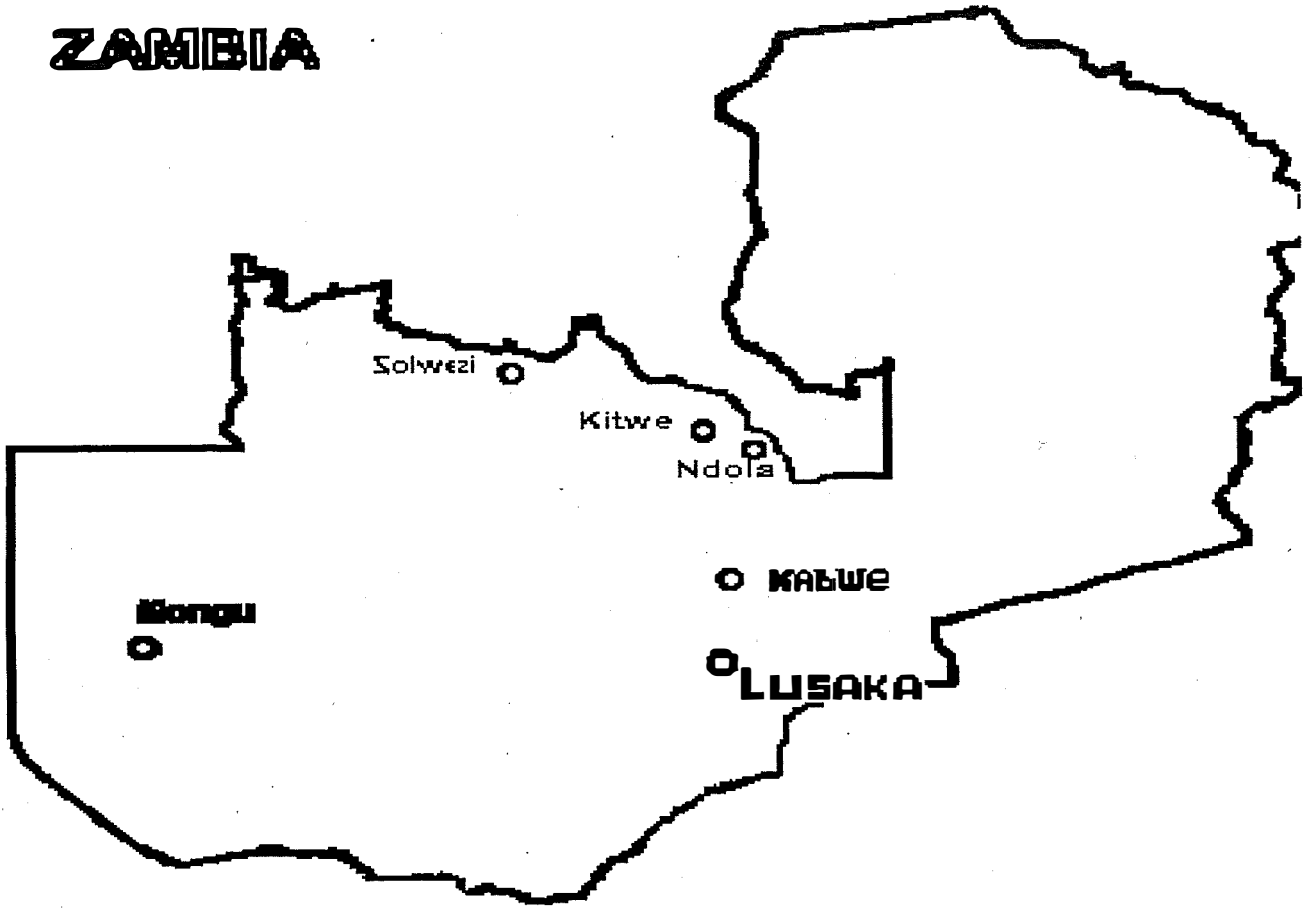
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Distr: SC/CO/GR/PO

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# ZAMBIA



# ZAMBIA

## Applying the law fairly or fatally? Police violation of human rights in Zambia

### 1. Introduction

There is political meddling in the way Zambia's 13,000 to 14,000 police officers carry out their duties. Paramilitary police use teargas and batons to break up peaceful public meetings and marches by opposition political parties and non-governmental organizations. Journalists are arrested for carrying out their legitimate work of reporting the news to the nation. Politicians are detained by police on political charges, held in custody for lengthy periods, then released.

Increasingly, however, ordinary people have become the victims of unlawful shootings, torture and ill-treatment that are justified in the name of combating crime. Lacking public stature, however, these victims' deaths and maimings have often gone unreported by the media and uninvestigated by police authorities during the "First Republic" and "Second Republic" under former president Kenneth Kaunda, as well as during the "Third Republic" under President Frederick Chiluba, who took power in 1991.

The government has announced reforms of the Zambia Police Service: some of these reforms continue, but most have either failed or the authorities lacked the political will to implement them fully. A Police Service Mission Statement was adopted in 1995 that speaks of "applying the law fairly and firmly to all", pledges to "respect individual human rights while recognizing the Community's expectations and obligations", and commits the police to "change our approaches to law enforcement methods where necessary in order to facilitate good democratic governance." The Inspector-General of the Zambia Police Service, Francis Ndhlovu, stated in a letter to Amnesty International in June 1998:

*"Our Police Reform Programme emphasises respect for human rights as aptly articulated in our Mission Statement. Indeed, we have since made teaching of human rights law a core component of training curricula in all our police training institutions. Needless to say, our Reform Programme having been approved for implementation in 1995, it may be too early to expect a complete change or transformation of traditional policing practices and habits that have been ingrained in the system over the past three decades. This fact, far from being an apology, shows in part the*

*colossal task before us and we are determined to live up to people's expectations."*<sup>1</sup>

Inspector-General Ndhlovu later admitted to an Amnesty International delegate in Zambia that a thorough re-training of his officers was still necessary: "I don't deny that there could be renegades, because the majority of serving officers are still those from the first and second republics. We have yet to make an impact on police in the area of interrogation and investigation."<sup>2</sup> Many of the reform efforts begun in 1995 appear to have become inactive, however, and police officers have continued to commit numerous and serious human rights violations with impunity.

There are existing mechanisms that attempt to make police accountable to the Zambian people for serious violations of human rights. The police service itself has investigated abuses by its officers, although the details are not often made public. Hence the conclusions reached by such internal investigations and any action taken thereafter are not widely known. Judges have ordered assessments of statements made by witnesses or defendants to determine whether they were obtained through police coercion or torture. Formal judicial inquests have been held into suspicious deaths at the hands of police. Private civil suits have been initiated on behalf of victims of police abuses. In a new development, the government's Human Rights Commission has investigated cases of police shootings and torture over the past three years, and set up provincial committees to play a monitoring role.

These existing mechanisms have had some limited success in bringing to justice those police who violate human rights, yet police accountability continues to be a far wider problem than simply a few individual "renegades" in the police service. A culture of disdain for human rights has become embedded in the police service because violations of human rights, such as extrajudicial executions and torture, have been committed for years with few police officers charged, prosecuted and punished. This impunity has meant further abuses.

Government-initiated reviews indicate the need for wide-reaching police reform and cabinet ministers have called for such reforms, including better training for police and security personnel. Amnesty International has welcomed these stated intentions. Yet the Zambian authorities have not taken steps toward creating greater police accountability; steps that include legal changes such as making torture a crime punishable under the Zambian Penal Code; administrative changes such as making paramilitary police

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1 Letter from Inspector-General Francis Ndhlovu to Amnesty International, 17 June 1998.

2 Interview by Amnesty International with Inspector-General Francis Ndhlovu, 17 September 1998.

better trained and more accountable; and institutional changes, such as creating a mechanism for the independent and impartial investigation of those police officers who are alleged to have violated human rights. Underlying all these activities must be the political will to make the reforms work. Only strong and public commitment to human rights at the top levels of the Zambian Government will ensure that police apply the law "fairly and firmly to all".

## **2. Police shootings**

Currently, law enforcement officers across Zambia extrajudicially execute criminal suspects unconvicted by any court of law, in violation of the right to life, as guaranteed in Article 12 of the Zambian Constitution, as well as in the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights. Zambia is a party to both these international human rights treaties.

Police frequently fatally shoot suspected criminals who are thought to be carrying weapons, in circumstances that suggest an unlawful summary execution, rather than trying to capture the person for later trial. In the Kalingalinga suburb of Lusaka, for example, a suspect identified as Pascol Phiri was "cornered" and shot dead in October 1998. Police officials said Phiri had been in and out of prison for aggravated robbery offences, but it was unclear if Phiri had been armed at the time police shot him.<sup>3</sup> At Solwezi General Hospital, 28-year-old burglar Kosamu Ngome was shot dead by police in January 1999 while he hid in the ceiling board of the hospital's pharmacy.<sup>4</sup> It appeared that Kosamu Ngome was unarmed at the time of his death. Amnesty International has received reports of more than a dozen similar cases of shooting deaths of unarmed suspects during the past two years.

An unofficial policy of shooting, rather than arresting, seems to be a long-term pattern that can be seen over the past few years. In August 1992, Minister of Home Affairs Newstead Zimba authorized police and paramilitary squads to "shoot to kill" armed robbers. By February 1993, the Home Affairs Minister reaffirmed his support for a "shoot to kill" policy towards those thought by the police to be armed robbers. Such directives are in direct contravention of the Zambian Constitution and the government's obligations under international human rights treaties. The results of this policy were clear: at least 13 people were fatally shot in 1993 alone in circumstances that suggested that excessive force, disproportionate to that needed for the situation, was used and that they may have been deliberately and arbitrarily killed.

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3 The Post (Lusaka), 15 October 1998, "Police shoot wanted criminal".

4 The Post (Lusaka), 19 January 1999, "Cops kill 'thief' in hospital ceiling".



By 1994, police reportedly shot dead at least 30 suspected criminals and in 1995, a similar number were fatally shot or otherwise injured by police officers. By 1996, local press reports detailed the killing of more than 12 people, many of whom the police alleged were trying to escape capture. The actual figure -- rather than simply those reported in the media -- may be much higher. In recent years, the pattern appeared to remain the same. From January to 20 November 1998, the Inter-African Network on Human Rights and Development (Afronet), a regional non-governmental organization based in Zambia, found that police shot dead or caused the death of more than 30 people, most of whom were alleged to be criminals.<sup>5</sup>

Amnesty International believes that in the majority of these cases, police violated the human rights of the victims, and acted contrary to international policing standards. The most precise of these international standards for policing is the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. In Principle 9, the conditions under which force can be used are clearly restricted. The standard is plain about the use of firearms as the very last resort of police and only as a life-saving action.

*"Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life."*

The police actions following the November 1998 murder of former finance minister Ronald Penza illustrates both the human rights violations that police commit and the lack of accountability of officers and their commanders. In this case, and in the other case studies that follow, police appear to have extrajudicially executed suspects and no independent investigation appears to have been initiated. Police have sought to delay any court-ordered investigations into the human rights violations, such as post mortem examinations. The case studies share another similarity: either police officers entirely escape punishment, or only one or two low-ranking police officers - out of many alleged perpetrators - are prosecuted.

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<sup>5</sup> The Monitor (Lusaka), Issue No.38, 20 November to 3 December 1998, "Police kill 30".

**Case study: Suspects in the murder of Ronald Penza**

Ronald Penza was shot to death in the early hours of the morning of 6 November 1998, when a group of six unknown men overpowered his security guards and broke into his house. Although nothing was reported stolen, the police immediately declared the incident an attempted robbery. In the hours and days after Penza's killing, police officers found eight suspects whom they claimed were connected with the Penza murder, later shooting them either during attempts to arrest them or after the suspects were in custody.

There is evidence that one of the eight dead suspects may have been tortured. On the day of Penza's killing, a group of some 17 police officers took Chanda Chayafya, a sub-inspector at Armscor Security Ltd, a private security firm, arrested him at his house on suspicion of involvement with the Penza murder. Neighbours reported that police severely assaulted Chanda Chayafya, then made him sit on the front door step of his home as he bled from a head wound. Then several police officers allegedly took Chanda Chayafya to a remote area near Chazanga township on the outskirts of Lusaka and allegedly tortured and killed him. A visual inspection of Chanda Chayafya's body by his family and his lawyer appeared to indicate that his legs had been broken after a vehicle apparently was driven over him, cigarettes were used to burn him and beatings inflicted while his hands were tied.<sup>6</sup>

Police also fatally shot a fellow paramilitary police officer, Damiano Kakeye, whose wife insisted that he was with her at the time of the Penza killing.<sup>7</sup> On 10 November, at a Lusaka petrol station, police officers shot to death Jordan Kapomba, Ackim Mumba and White Daka, whom they claimed were involved in the Penza killing. According to press reports quoting an eyewitness, one unarmed person was shot as he tried to surrender. "After failing to climb the wall, he fell down, stood up, leaned against the wall and raised his arms, but five police officers fired at him continually," the eyewitness told a local Zambian journalist.<sup>8</sup> The police said that they acted in self-defence after the "bandits" fired on them, but only one firearm was recovered.<sup>9</sup>

After an internal police investigation of the incident, police officer Kalaluka Kwibisa was charged with three counts of murder on 24 November 1998 in connection with the fatal shooting of Jordan Kapomba, Ackim Mumba and White Daka. Two other police

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6 Interview, Robert Simeza, by telephone, 25 November 1998.

7 The Post, 11 November 1998, "Another police lie".

8 The Post, 10 December 1998, "Cover-up Blown".

9 Independent (London), 19 November 1998, "Killing of minister alarms Zambia".

officers had been arrested in connection with the eight fatal shootings but to Amnesty International's knowledge they had not yet been charged or tried.

There was a lack of independent investigation into the alleged torture of Changa Chayafya. Initially, police asked the family to bury the body immediately. Assistant Commissioner of Police Benkele, who heads the Criminal Investigations Division at the Zambia Police Service, reportedly delayed the post mortem examination as the family prepared to bury the body on 12 November 1998. When the family insisted on the examination before burial, police authorities again blocked the post mortem examination for 13 days by refusing permission, citing further investigations, although there is no legal requirement of police authorization for a post mortem examination.<sup>10</sup>

Despite a court order by Magistrate Freda Chulu that the examination take place on 20 November 1998, police failed to turn up at the examination, dealing the proceedings further. Magistrate Chulu summoned Police Assistant Commissioner Emmanuel Lukonde to court to explain why the post mortem had not been conducted.<sup>11</sup> Finally, the long-delayed examination was conducted on 25 November, nearly 19 days after Chanda Chayafya's death. The findings by the state pathologist could have been more rigorous and conclusive about the manner of death of Chanda Chayafya. The cause of death was listed, without further elaboration, as multiple bullet injuries.<sup>12</sup>

Amnesty International questions whether the consultant pathologist employed by the Ministry of Home Affairs of the Zambian government might have been susceptible to political pressure to minimize the controversy surrounding a suspicious death in this particular case.<sup>13</sup> At the request of Amnesty International, Professor and State Pathologist Dr Jørgen Thomsen, of the University of Southern Denmark at Odense in Denmark, reviewed the post mortem report and ten photographs taken by lawyers at the time of the autopsy. Professor Dr Jørgen Thomsen concluded:

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10 Interview, 30 November 1998, with Robert Simeza, lawyer for the Chanda Chafya.

11 The Post, 17 November 1998, "Three more killed over Penza".

12 Autopsy report, No. 599/98, 26 November 1998, Dr Mahendra Garg.

13 Amnesty International notes, however, that Dr Mahendra Garg has publicly testified to torture in other cases involving such allegations. In the inquest into the death of Bertha Mugamanzila, a secondary school girl who died in police custody in November 1998, Dr Mahendra Garg reportedly told the court on 14 December 1998 that there was evidence of torture in the form of severe shaking. This contradicted the claims by police that she died from malaria.

*"The post mortem report is brief, mostly just mentioning the traumatic lesions without an interpretation. There are no serious attempts to estimate the bullet paths, the number of bullets, bullet calibers, the distance from where the bullets were fired, the sequence of shots and the manner of death... I agree with the conclusion that death was due to multiple gunshots, but the report does not measure up to international standards as described for instance in 'Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions,' published by the United Nations in New York in 1991."*

Although eyewitnesses described a group of some six police officers taking Chanda Chayafya into custody, to Amnesty International's knowledge none of the officers, their commander nor any police authority in charge was disciplined or charged with an offence.

Afronet and other civil society organizations condemned the killings of the eight men and called for Inspector-General Francis Ndhlovu to speak out about "the poor performance of his force" or to resign.<sup>14</sup> Thus far, the Zambian authorities have not condemned the apparent torture and extrajudicial killings that have taken place. This failure created a widespread public perception that such human rights violations will be tolerated.

#### **Case Study: John Donny Phiri**

On 16 April 1996, in the northern city of Ndola, Elias Mumba, the owner of a Toyota Corolla, reported to police that his car was stolen at gunpoint. After the vehicle was recovered that same night, he lent it to John Donny Phiri and Alech Chobe, who drove the car to the Mbulasa Inn on the outskirts of Ndola, where they parked. Police surrounded the vehicle in ambush and, without warning, opened fire and riddled the car with almost 30 gunshots. John Donny Phiri was shot in the chest twice and died on the spot. Alech Chobe was shot through the right arm and remained wounded in the car for an hour before police approached and beat him. Alech Chobe was taken first to the police station and later hospitalized for his gunshot wound.

An inquest was held on 30 September 1998 into John Donny Phiri's fatal shooting. In their sworn statements before the magistrate, police claimed he was a suspect "wanted for various crimes in many Copperbelt towns", that they fired warning shots in the air before opening fire, that they were aiming for the car's tyres, that the car tried to drive off,

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<sup>14</sup> Press Statement, Inter-African Network for Human Rights and Development (Afronet), 17 November 1998.

and that one of the two passengers fired a gun at police first.<sup>15</sup> In the final verdict delivered in Ndola Magistrate's Court on 5 September 1997, the magistrate dismissed each of these explanations as lies:

*"Police claimed they heard gun shots from the vehicle when it is not true as no firearm was found in the vehicle... What comes out clearly from all these statements is that no warning shot was given at all by the police to people in the vehicle for them to be aware of police presence and to surrender. It comes out clearly again that the first shots were not fired in the air but at the vehicle and that no chance at all was given to occupants from the way the vehicle was sprayed with bullets. No person in the vehicle could have been expected to survive more than 27 shots. It could not have been the aim of the police officers only to deflate the tyres and apprehend the suspects. The facts revealed in the case leave me with no option but to return an open verdict. It would be up to the police to either investigate or not."<sup>16</sup>*

Although the magistrate had the option of finding that the police had unlawfully killed John Donny Phiri, instead he left for the police to initiate disciplinary action. To Amnesty International's knowledge, no police officer has been investigated, prosecuted or disciplined in connection with the fatal shooting of John Donny Phiri.

#### **Case study: Mabvuto Nyirongo and four others**

Late on the night of 25 March 1998, police received a report of a theft in progress at the Agritech Company in Lusaka. Instead of attempting to arrest the suspects, officers opened fire on five young men who apparently were hired by businessmen Dyson Simbeye and Goddens Kainga to load tyres into a lorry at the Agritech premises. Four were killed. Mabvuto Nyirongo, Peter Mwape and two others shot to death that night were drivers and transport workers genuinely hired to transport tyres for two businessmen, according to Dyson Simbeye and Goddens Kainga, who were arrested and eventually were released uncharged after days of detention.

Dyson Simbeye and Goddens Kainga asked for an investigation to establish the manner of their employees' deaths. Police claimed the four unarmed young men were shot dead inside the lorry, although no blood was found in the vehicle. Mabvuto Nyirongo was

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15 Statements by Constable Naminda, Constable Fanwell Nihhala, and Inspector Mweshi; 22 April 1996, Magistrate's Court, Ndola.

16 Verdict in the Inquest into the death of John Donny Phiri, delivered in Ndola on 3 September 1997.

reportedly shot several times in the chest and head, and another man had been shot four times -- one bullet to the head and three to the chest.<sup>17</sup>

Police spokesman Beenwell Chimfwembe reportedly told the media that a crime was in progress and a security guard had been found strangled to death at the time police arrived, so the officers were justified in using lethal force when confronting the suspected thieves.<sup>18</sup> There was no independent investigation or court inquest into the fatal shootings and, to Amnesty International's knowledge no post mortem examination was conducted to determine conclusively the cause of death. No internal investigation by the police appears to have been made public, nor any police officer disciplined in connection with the incident.

#### **Case Study: Willie Mubangu**

In another case of a fatal shooting by a police officer, the Law Association of Zambia and Amnesty International have asked police authorities for an investigation for almost six years. To date, police appear to have blocked investigations into an incident in early October 1992, when a Zambia police officer allegedly shot into a crowd of University of Zambia students who were marching in a demonstration past the High Court in Lusaka on their way to attend a court session at nearby subordinate court buildings. The police bullets fatally injured Willie Mubangu, a uninvolved passerby standing near the path of the march.

Starting on 15 January 1993, representatives of the Law Association of Zambia sought an inquest into Mubangu's death, as provided for by Section 4 and Section 7 of Zambia's Inquest Act. Four years of correspondence with Lusaka's Central Police Station, the Zambia Police Headquarters and the Attorney General's Chambers followed, without any action being taken.

The Law Association was told that an inquest cannot proceed until a docket is opened. Police officials apparently have not cooperated by opening such a docket, despite requests by Coroner's Officer T K Mulenga and a court order by Principal Resident Magistrate S M Simachela, as well as the special appointment of Magistrate A Chulu to hear the case. Promises of assistance in expediting the case from the Attorney General at the time, Ali Hamir, did not result in a docket being opened and an investigation started.

Amnesty International believes that the undue delay contributes to a perception -- by the Zambia public and by police officers themselves -- that the police enjoy impunity from investigations that might lead to the punishment of misconduct or human rights abuse.

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<sup>17</sup> Times of Zambia, 30 March 1998, "Shooting Shock".

<sup>18</sup> Times of Zambia, 31 March 1998, "We shot suspects, insist police".

### **3. Police torture and ill-treatment**

There is a systematic pattern of torture and ill-treatment by Zambian police officers during the arrest, interrogation and detention in custody of criminal suspects. As is the case in police shootings, the majority of victims of police ill-treatment and torture are criminal suspects whose names and cases are rarely mentioned in the national media. Such obscurity allows police a free hand to abuse these ordinary Zambian citizens.

George Kunda, president of the Law Association of Zambia, told Amnesty International in April 1998 that as a lawyer, he found rural suspects are commonly tortured. "This is a matter of routine [for police] to torture, especially those who don't have a lawyer. In rural areas, there is no human rights at all. Torture is easy. No one is watching. The police are the law, they can torture you all night in cases of theft... The police will always deny it. But you can clearly see in court the evidence of beatings, and they [suspects] are gasping until squeaking from being choked. Over a long period of time, with the background of a dictatorial system, some police officers are continuing to use the same methods they learned."<sup>19</sup>

Another lawyer in private practice, who had previously worked as a state advocate, estimated that police will ill-treat or torture up to 95 percent of the suspects in a theft or robbery with complete impunity. "In the past five years, there's only one case that I know of -- in 1997 -- in which an officer was arrested for hitting or torturing a suspect."<sup>20</sup>

In a summary of cases provided to Amnesty International by the Legal Resources Foundation in April 1998, 24 different cases of police ill-treatment and torture were highlighted. In cases stretching back to 1993, police are alleged to have:

- poured a highly corrosive substance onto the genitals of a detainee
- stripped a woman naked and lashed her with a hosepipe-like instrument
- hung a man upside-down and beat him until he was paralyzed
- suspended a man from an iron bar hung between two tables and beat him with gun butts and fists in a torture method known as "kempelwa" or "swing".
- dragged a handcuffed man through town; then punched and kicked him over a period of five days
- arrested the father of a man held without charge, beating both suspect and his father

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<sup>19</sup> Interview with George Kunda, in Zambia, on 2 April 1998.

<sup>20</sup> Interview, Name withheld upon request, on 6 April 1998.

- arresting a woman and holding her for two weeks after she obtained a court order for damages after a previous unlawful imprisonment
- slapping and kicking a man who came to lodge complaint against his mother
- shot a man in the back after the man resisted arrest
- slapped and kicked two suspects who were only released when their wives agreed to pay a bribe of 20,000 Kwacha to the officer-in-charge of the police post

In its 1997 Zambia Human Rights Report, Afronet described illegal detentions, torture and harassment by police. In particular, the report singled out an incident in April 1997, in which six youths were detained by police officers from Matero Police Station in a suburb of Lusaka on suspicion of murder. In six separate accounts, each of the youths described police torture including beatings with a sledge hammer and plastic whips while being suspended upside down from a metal bar in "kampelwa".<sup>21</sup> All six were later released without charge, after being forced to stay in a dirty, overcrowded cell.

Although the Zambian Constitution -- both the 1991 and 1996 versions -- guarantees every person in Zambia protection from inhuman treatment, including torture, there is a loophole in the Zambian laws on evidence and procedure which promotes the use of torture by police. Evidence obtained by torture is admissible and can be used to convict a suspect. Law Association of Zambia (LAZ) human rights chairman Henry Chanda noted: "Because of this [loophole] police agents go on to torture suspects just to get information because they know it will be accepted by court."<sup>22</sup> In particular, officers of the Criminal Investigations Division of the Zambia Police Service appear to be the major violators.

Zambia took a positive first step toward eradicating the problem on 7 October 1998 when it acceded to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Zambia is now obliged under Article 2(1) of CAT to take "effective legislative, administrative, judicial or other measures to prevent acts of torture...". These obligations include making inadmissible as evidence in a court of law any statements obtained by torture, independent and impartial investigations into all allegations of torture, and the prosecution of perpetrators of torture. So far, however, the Zambian Government has not taken such steps.

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21 Zambia Human Rights Report - 1997, published April 8, 1998, in Lusaka, Zambia by the Inter-African Network for Human Rights and Development (Afronet).

22 The Post (Lusaka), 20 March 1998, "Mulimba says rights abuses have increased."



### Case study: Dean Mung'omba and others

In the first days after an October 1997 attempted coup, at least six people appear to have been tortured by police while in custody.<sup>23</sup> As more information came to light, it now seems that at least 12 detainees were tortured or ill-treated, including Major Musonda Kangwa, Major Bilex Mutale, Captain Stephen Lungu and Captain Jackson Chiti of the Zambia army, along with the president of the opposition Zambia Democratic Congress party, Dean Mung'omba.

After his arrest on 31 October 1997, police brought Dean Mung'omba to Police Force Headquarters, questioned him until midnight and denied his repeated requests to see his lawyers. He was denied food and water. The next day, a group of some 15 police officers began to torture him with beatings. At one point on 1 November, he was allegedly tortured in the *kapelwa* method.<sup>24</sup> Medical examinations of Dean Mung'omba showed evidence of torture, including cigarette burns, bruises and beatings on the soles of his feet and other parts of the body.<sup>25</sup>

Starting from November 1997, the High Court of Lusaka heard testimony after testimony of torture used as a means to coerce statements meant to incriminate, among others, Dean Mung'omba, former president and opposition party leader Kenneth Kaunda and detained writer Frederick Mwanza. Despite this testimony in several court hearings to determine the legality of the detentions, the government failed to take any action against the officers identified in court as torturers.

In December 1997, Human Rights Commission Chairperson Judge Lombe Chibesakunda told a press conference in Lusaka that the Human Rights Commission had found as a matter of fact that some detainees were indeed physically tortured contrary to the provisions both of international standards and the Zambia's Bill of Rights. "The commission accordingly condemns the actions of police officers who engaged themselves in such sordid activities. We call upon police authorities to take appropriate action against such officers and ensure the same conduct does not repeat itself," she said, suggesting prosecution for those involved.<sup>26</sup>

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23 Amnesty International, "Zambia: Misrule of Law", March 1998. (AFR 63/04/98).

24 Affidavit by Dean Namulya Mung'omba, in the High Court for Zambia (1997/HP/2617).

25 Medical Report on Dean Mun'gomba, 13 November 1997, by Primary Care Services Limited.

26 Times of Zambia, 2 December 1998, "7 Detainees Tortured, Says Commission".

In its February 1998 activities report, the Commission noted that several of the officers named as the perpetrators of torture were the same as those identified by a previous *ad hoc* human rights commission that had collected evidence of widespread police torture and ill-treatment over several years.<sup>27</sup> Clearly, torture is a long-term problem in Zambia. Both the state's Human Rights Commission and Amnesty International recommended that an impartial, independent investigation into the torture of the detainees be conducted immediately, and that those suspected of responsibility be brought to justice.

The state's Human Rights Commission concluded again in a written report of 30 March 1998 that at least nine detainees had been tortured, identified the types of torture and ill-treatment meted out to the victims, the verbal threats made, the location of the room where the torture occurred, and named more than 10 police officers as torturers.<sup>28</sup> Drawing back from its earlier recommendation that police torturers should be brought to justice, this time the Commission merely recommended retirement, rather than prosecution. Yet the government failed to act on even this recommended administrative measure. The Minister of Legal Affairs told parliament that the Human Rights Commission had never submitted its report to the President concerning the allegations of torture, and thus for the previous five months he claimed that had been unable to take action.<sup>29</sup>

By April 1998, Minister of Legal Affairs V Malambo replied to the Human Rights Commission that: "...such an investigation shall be undertaken during the on-going trial in the High Court, which will inevitably conduct an impartial inquiry in a trial within a trial if the accused allege that they (*sic*) confessions where (*sic*) forcibly extracted."<sup>30</sup> This apparently was a rejection of calls by international human rights organizations, and the Zambian Human Rights Commission, that an independent investigation be conducted.

By 6 May 1998, the government finally acknowledged that it had received the Commission's report, but voiced caution about any conclusion that some detainees had been tortured. In a press conference, Home Affairs Minister Peter Machungwa stressed the

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27 "Report of the Human Rights Commission on Activities Undertaken So Far," 27 February 1998.

28 "Report, Findings and Recommendations of the Human Rights Commission's Visits to Prisons and Places of Detention Made Between November 1997 and February 1998, Pursuant to Sections 9 (d) and 13 (1) of the Human Rights Commission Act no. 39 of 1996," issued by Judge Lombe Chibesakunda, Chairperson, 30 March 1998.

29 The Post (Lusaka), 23 February 1998, "Punish Torturers".

30 Letter by Minister of Legal Affairs V. Malambo to Judge Lombe Chibesakunda, Chair, Human Rights Commission, on 23 April 1998. Ref. No. MLA/64/4/17 Conf. and undated, unsigned document "Amnesty International -- Zambia Misrule of Law: Human Rights in a State of Emergency", received by Amnesty International on 1 May 1998.

need to balance law enforcement against the protection of human rights,<sup>31</sup> apparently condoning torture. Also in May, the government announced that it would establish a further inquiry into the allegations of torture, and appointed the High Court Judge Japhet Banda to head the torture inquiry, although he was also the trial judge presiding over the trial of 75 soldiers and two politicians -- Dean Mung'omba and Princess Nakatindi Wina -- charged with treason. Amnesty International believes this appointment amounts to a move to further delay independent investigations, since the proceedings appeared set to continue well into the first half of 1999.

Donald Chanda, Special Advisor to President Chiluba, assured Amnesty International in April 1998 that an internal investigation was taking place inside the police force to determine who was involved in the torture of Dean Mung'omba and others, and that upon determination unspecified measures would be taken against them.<sup>32</sup> As of April 1999, however, no police officer had been disciplined, forced to retire or prosecuted in connection with the documented torture committed some 17 months earlier. Instead, at least one senior police official --- identified by the Human Rights Commission as the officer in charge during the torture of at least four detainees --- was promoted by presidential appointment on 25 June 1998 to be an Assistant Commissioner of the Drug Enforcement Agency.

#### **Case study: Masiye Lowendo and Siseho Sinaali**

On 11 February 1998, in Limalunga village, near Mongu city in the Western Province, police shot and killed Milupi Sitwala and shot Kalumiana Muyangwa Libuku through the stomach during an altercation with a police constable at Limalunga Police Post. After angry villagers vandalized the police post, breaking windows and starting a fire, officers arrived from Mongu Police Post at approximately 9 pm in riot gear -- including AK-47 rifles equipped with fixed bayonettes -- and beat about 30 villagers with their rifle butts. The officers broke the left arm of one villager, Josias Imasiku Mushala, and bayoneted him in the left foot three times, then denied him medical attention for eight days.<sup>33</sup> Police officers arrested about a dozen persons and took them to Mongu Police Post in Mongu. There, Masiye Lowendo and Siseho Sinaali and at least two others were allegedly tortured by beatings with a spanner, a hand axe, a metal gear shaft and short batons.

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31 Times of Zambia, 7 May 1998, "Torture probe report finally with State."

32 Donald Chanda, in discussion with Amnesty International, 23 April 1998, in London.

33 Letter from Dr P S K Tshileta, Acting Executive Director, Lewanika Hospital Board, to Department of Surgery, University Teaching Hospital, 19 March 1999, ref. no. LGH/101/7/16.

After holding the detainees for four nights in an overcrowded cell without water, food or medical treatment, nor access to family members or their lawyer, police finally allowed them to have a meal and to meet their lawyer on 15 February 1998. Most of the detainees were eventually released on bail on 19 February 1998. Only then did the injured receive medical care. Police Inspector-General Ndhlovu intervened to have Kalumiana Muyangwa Libuku flown by plane to Lusaka for treatment of his gunshot wound to the stomach. He was later returned to Limalunga by ambulance, also at police expense.

Masiye Lowendo, 20, told Amnesty International that he was in a group of eight young people walking on a road leading into Limalunga village when some 20 police officers stopped them, ordered them to kneel on the tar road, then hit them with gun butts and short batons. He was put in a van and taken to Mongu Police Post, where he recalled:

*"When we arrived, we were immediately slapped with their hands... Three officers warned me that I must speak the truth, and if I didn't I would be subjected to pain that I had never before experienced. 'You must tell us what happened at Limalunga, and you must tell it correctly', he said. I went through my story and they told me 'that is not the story' and they started beating me up, telling me to tell the truth. They were using all sorts of instruments, including a metallic gear lever about a foot and a half long, as well as short batons and fists... The beatings continued after I left the office, at the inquiries desk, and they continued to hit me with an adze [a small axe] and metal gear shaft... I was hit so hard that my hearing in my left ear is impaired... I was put in a cell that was very crowded, with worms in the soil, and waste passed in the cell in buckets, and we slept with knees up and hands crossed, knee to knee."<sup>34</sup>*

Another detainee, Siseho Sinaali, told Amnesty International about his torture:

*"At 4am they called me out of the cell and took me to CID (Criminal Investigations Division) section. They started beating me with a gear lever, causing injuries to my knees and knuckles. Now my right hand is not functioning and I can't hold something firmly.... I still have chest pains and liver/spleen pain... Every night I was beaten, and at one time I fainted. They only stopped beating me when I collapsed, and I woke up in the cell again... All four officers did it at once, with one person asking a question and the others would beat me. They asked me a statement: 'You were there when the police post was broken!' I would answer no, and they would beat me. They would ask: 'Then who broke the police station?' I would answer that I didn't see who, and they would beat me."<sup>35</sup>*

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34 Amnesty International interview with Masiye Lowendo, 6 April 1998, in Mongu, Zambia.

35 Amnesty International interview with Siseho Sinaali, 7 April 1998, Limalunga, Zambia.

In the aftermath of the incident, the people of Limalunga say the village is no longer the same because many people are still traumatised.<sup>36</sup> The villagers also complain that individuals, recruited by police as a Community Security Committee, are terrorizing the people by breaking up public gatherings and conducting searches of homes.<sup>37</sup>

Inspector-General Ndhlovu ordered an investigation after media reports of the incident conflicted with the local commanding officer's account. "Initially, the police were on the defensive because they were trying to protect themselves and the office," explained police spokesman Beenwell Chimfwembe.<sup>38</sup> Hudson Bweenzu, the officer in charge of Mongu Police Post, confirmed that two teams of police investigators not from the local area were sent to investigate the shooting.<sup>39</sup> He also confirmed that members of the Community Security Committee were involved in policing activities in Limalunga with the consent of the police, but refused to reveal how many members had been trained, what their training consisted of, or what supervision police exercised over the "Committee members" to prevent their abuse of authority to exercise police powers.

On 4 August 1998, one police constable involved appeared in court on charges of murdering Milupi Sitwala, but frequent adjournments delayed the start of the trial until 22 February 1999. On the other hand, the state speedily began the trial of four Limalunga villagers in 1998, prosecuting Siseho Sinaali and three others for allegedly assaulting police officers and damaging the police post in Limalunga. Although lawyers for the family of the late Milupi Sitwala sent a formal request for compensation to the Attorney General, the request has been ignored. Despite the police internal investigations into the incident, none of about 50 officers involved in the beatings, stabbings or torture of villagers has been disciplined or charged with any offence.

#### **Case study: Evans Kapaso**

On 7 August 1997, two constables from Mungwi Police Post in Mungwi District arrested Evans Kapaso and beat his chest and hand with a heavy wooden pestle (*Umwinsi*). Evans Kapaso had been arguing with a police constable over the cost of a live chicken, which the

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36 Amnesty International interview with Mukeya Mukeya and others, 6 April 1998, Limalunga, Zambia.

37 Ibid.

38 Amnesty International interview with Beenwell Chimfwembe, Zambia Police Service spokesman, 15 September 1998.

39 Interview with Hudson Bweenzu, Commanding Officer, Mongu Police Post, Mongu, 7 April 1998.

constable's friend had purchased at the market. The argument ended with Evans Kapaso being struck in the face by the constable, and he went to the police station to lodge a complaint and obtain a "medical report" form issued by the police for treatment. Without this permission form, it is against the law for an individual to be treated by a medical practitioner for injuries. The officer on duty arrested Evans Kapaso and accused him of assaulting a fellow officer. Upon taking him into a police cell, the officer on duty allegedly ordered five other detainees to hold Evans Kapaso down. He described what happened next:

*"Those men held me and he took a pounding stick, he struck me direct on the chest. As he kept on beating, a young man felt sorry and they drove me in the cells. I cried because of the beating. After coughing I saw blood, my chest was paining and my fingers [too]."*<sup>40</sup>

Evans Kapaso was only released the following day, after his wife allegedly paid Ka 20,000 Kwacha (US \$200) bribe to the police officers to release her husband.<sup>41</sup> Police refused to provide Evans Kapaso with a medical report form, so he only received medical attention after the intervention of a district official of the ruling party who threatened to take action against the officer in charge of Mungwi Police Post. A medical professional at the Rural Health Centre in Mungwi noted that Evans Kapaso had "general body pains especially the chest because of being beaten by someone. Shaking [loosening] of two lower teeth. Confirmed assault."<sup>42</sup>

The local authorities, in the form of the Joint Council and Ward Development Committee, wrote a letter to the police service's Northern Division Commanding Officer on 11 September 1997, identifying four officers alleged to have tortured and beaten residents of Mungwi. They cited other cases of brutality, including the incident in which a man was beaten and locked up after he tried to collect a debt from a police officer.<sup>43</sup>

Both constables alleged to have tortured Evans Kapaso were reportedly transferred to other police posts in the province, and have not been disciplined or prosecuted. The police have made no attempt to investigate the allegations. Evans Kapaso was never charged with a crime and continues to complain of permanent injuries from his ordeal.<sup>44</sup>

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40 Statement by Evans Kapaso, undated.

41 Legal Resources Foundation News, May-June 1998, "Police pounded my hand".

42 Medical Report of F. Fingayo, 8 August 1997.

43 Letter dated 11 September 1997 from R. Musepa, Secretary for the Chairman, Joint Council and Ward Development Committee, Mungwi.

44 Case Summaries, provided by Legal Resources Foundation to Amnesty International, April 1998.

#### **4. Excessive use of force by police**

According to international human rights law, such as Article 21 of the ICCPR, everyone has the right to participate in peaceful assemblies, whether political or non-political, subject only to limited restrictions imposed in conformity with the law and which are necessary in a democratic society to protect such interests as public order and public health. However, under both the previous government of Kenneth Kaunda, and the current government of President Chiluba, police have frequently prevented legitimate, non-violent public rallies and press conferences by opposition political parties, human rights activists and other critics of the government. Sometimes excessive force has been used, such as beatings of peaceful demonstrators with police batons, or using tear gas in a confined space.

The Zambian police seem to ignore completely the international standards which require them to uphold the human rights of all persons. Cruel, inhuman or degrading treatment -- which includes the beating of peaceful demonstrators -- is prohibited by Article 7 of the ICCPR and Article 5 of the African Charter. Furthermore, Article 2 of the UN Code of Conduct for Law Enforcement Officials states that "In performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons." In addition, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials call for the police to avoid using force -- including any use of firearms -- when policing unlawful but non-violent assemblies. Principle 13 indicates strict limitations on using firearms in crowd control:

*"In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9."* [as cited above]

These standards seem to have been more consistently breached than observed by the Zambia Police Service, which has often used excessive force -- including the use of firearms and tear gas -- beyond the level of force necessary for properly policing the public order situation encountered.

#### **Case study: The street vendors' riot**

In 13 August 1997, street vendors began a public protest after their stalls were burned down by unknown arsonists in Lusaka's makeshift "Soweto Market" in the downtown area. Hundreds of heavily armed paramilitary police officers began to beat both rioters and uninvolved passers-by with batons and fired tear gas cannisters at groups of people found in the downtown area. The officers continued the assaults in Chibolya, Misisi and John

Howard townships near the "Soweto Market" upon anyone they found. Jane Mwamba, a vendor who was caught up in the police assault with her baby, told a local newspaper her story:

*"I was standing innocently watching the damage caused by the fire with several other women when the police fired teargas cannisters at us. While trying to run, I fell down and a policeman came and kicked me repeatedly to an extent where I could not walk, and in the process my baby suffocated due to the teargas smoke. This happened to many mothers."<sup>45</sup>*

There were allegations by some defendants that police were so brutal that two rioters were beaten to death.<sup>46</sup> To Amnesty International's knowledge, no police officers were ever disciplined or prosecuted in connection with the injuries and alleged deaths of the street vendors during the police operation.

### **5. Public meetings suppressed**

In its 1998 "State of the Nation" review on the current socio-economic situation in Zambia, the Roman Catholic Commission for Justice and Peace noted the criminalization of the opposition in the country, in which there has been "a systematic design to present the opposition as violent, unlawful, evil and bent on ill-will for the nation. The police, for instance, employ total force and disruptive tactics to opposition programmes while closing their eyes to certain excesses of the ruling party, the Movement for Multi-Party Democracy (MMD). For instance, political marches organized by the opposition are met with police in full riot gear while the same police escort marchers sympathetic to causes of the ruling party."<sup>47</sup> Political bias in police authorities' decisions about public gatherings was also noted in an Afronet message to other NGOs in Southern Africa:

*"Lack of uniformity in both police action and application of law... has the potential of turning the police into a militia force for the ruling party. The police are on record as having refused any public gathering on the ground that it is not safe under a state of emergency [shortly after the army crushed an attempted coup of October 1997]. But the same police allowed ruling MMD cadres to march to state house without any notice."<sup>48</sup>*

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45 National Mirror of Zambia, "Police brutality condemned", August 17 -23, 1997.

46 The Post (Lusaka), 6 November 1997, "Police killed riot detainee".

47 "The State of the Nation: A comprehensive statement on the current situation in Zambia," published by the Catholic Commission for Justice and Peace, Lusaka, 2 February 1998.

48 Afronet, E-mail message to the Southern African Human Rights NGO Network, 9 January 1998.



Another example of such uneven decisions occurred shortly after a Supreme Court ruling dismissed an opposition party challenge -- popularly termed the "Presidential Petition" -- about the lawfulness of President Chiluba's 1996 reelection because of alleged vote rigging and questions over the President's citizenship. After the 10 November 1998 court decision, Zambia Democratic Congress Vice President Wynter Kabimba alleged that the police allowed supporters of the ruling party to march to State House without obtaining a police permit to celebrate the decision, while at the same time the police blocked an opposition group which wanted to march in protest.<sup>49</sup>

In 1999, the United Party for National Development (UPND) accused police of employing double standards in issuing police permits. "The UPND is also saddened and wishes to condemn the Zambia Police for being biased in its operations by allowing MMD youths to undertake protest marches without police permit while police demand such from other youths from other political parties."<sup>50</sup>

Under Zambia's Public Order Act, police could deny permits to those organizing meetings, and then declare peaceful, non-violent assemblies as unlawful. Police arrested trade unionists, civic activists and opposition politicians on numerous occasions in 1995 for holding rallies without permits. The Zambian Supreme Court ruled the Public Order Act unconstitutional in January 1996, and the government then amended the Act to require that meeting organizers give 14 days advance notice to police in order to obtain a police permit for a public event. This requirement was reduced to seven days' notice in the run-up to the 1996 general elections, but has been ignored by both the opponents to and the supporters of the government. Police have continued to attempt to suppress meetings by opposition parties by, for example, declaring them a public danger, citing insufficient police resources to protect the safety of persons participating in such an assembly.

#### **Case Study: The 1997 Kabwe rally**

The denial of a police permit for a public assembly has been used to justify police assault on non-violent opposition party gatherings. Most Zambians remember 23 August 1997, as the day that police in Kabwe shot and wounded opposition leaders Kenneth Kaunda, president of the United National Independent Party (UNIP) and Rodger Chongwe, chairman of the Liberal Progressive Front (LPF). Before the shooting, some 400 paramilitary police officers dispersed those gathering for an opposition rally which had been scheduled without organizers obtaining a police permit. In the process of deliberately ill-treating and beating

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49 The Post (Lusaka), 1 December 1998, "Police appeal for good will from govt, public".

50 Times of Zambia, 8 February 1999, "Police accused of political bias".

hundreds of individuals, dozens of non-violent demonstrators who posed no threat to the police or anyone else were injured, like John T C Nkole, who recalled:

*"I was the punching bag of Lilayi [Police] Training School as tens of these Para-[military] Police descended on me beating me indiscriminately... I took up the beating. This became worse where one of them said this is one of the officials we saw him at police station this morning and these are the people who insult us. These remarks made those young men unprofessionally trained to become mad in beating us. The one who held me continued to hold me in the same position as they continued beating me with long batons and gun-butts when eventually I realised I could no longer walk as I was being dragged here and there when my left knee got injured. I was still being dragged despite my cry to them to stop beating me. I could no longer talk, the beating became normal as I felt no more."*<sup>51</sup>

The Zambia Independent Monitoring Team, a human rights NGO, estimated that nine out of more than 30 detainees who were arrested after the rally was broken up were treated at Kabwe General Hospital for serious injuries from severe beatings. One victim told Amnesty International that he needed hospital treatment after his spine was damaged by police.<sup>52</sup> Another remembered walking toward police with his hands up in surrender, and still being assaulted. "They beat me, four or five officers beat me from behind with long batons, and two from the left used butts of AK-47s. On the shoulders, legs, back and ribs. I and two of our friends were badly hurt, but they refused to get medical help."<sup>53</sup>

The police ill-treatment of those gathered in Kabwe appears not to have been investigated by the government. No officers faced disciplinary action, nor has any compensation been granted for those injured from the beatings.

### **Case study: Tear gas used in opposition headquarters**

On 30 July 1997, a coalition of opposition political parties planned to march to Lusaka city centre to protest against a Supreme Court ruling that was unfavourable to the coalition's court challenge to President Chiluba's re-election victory in 1996. A heavy police presence broke up the march with tear gas. A large number of demonstrators -- many of them women with small children -- rushed into Freedom House, a UNIP building, to seek refuge.

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<sup>51</sup> Written report of John T.C. Nkole, UNIP District Party Secretary.

<sup>52</sup> Amnesty International interview with UNIP Central Province Chairman Chair Richard Banda, in Lusaka, on 9 March 1998.

<sup>53</sup> Amnesty International interview with David Kasuba, President, National Salvation Party, in Lusaka, on 8 March 1998.

An estimated 100 police officers gathered at the entrance of the building with riot batons, at about 9:45am that day. The police siege lasted until 10:00 pm that night. To force people from the building into the street outside, where police officers beat them with batons, tear gas canisters were shot into the building. Several witnesses confirm that police gave no warning before stepping inside and shooting tear gas from a gun launcher down the internal corridors of the building. Rabbison Chongo, a UNIP official, recalled:

*I've never seen so much tear gas. They broke the doors of Freedom House and they fired tear gas into the building. So much tear gas, you couldn't see down the hall five feet in front of you. So much that you can't get air in the lungs, you can't breathe.*"<sup>54</sup>

Another person in the building that day, Melania Chipungu, said she did not know what was worse, suffocation because of the tear gas inside or the beating by police outside:

*"The smoke in this office was terrible. I tried to wash my face. I wanted to go upstairs to the first floor. I couldn't see in front of me, about five feet in front, I couldn't see because it was like chili in my eyes. I was following the wall to go out and up the stairs. Then someone was pulling me out. A hand was pulling me out. It was the police. They started beating me. Three police men, they hit me with batons, wooden batons: a club with a handle on the side. They tore my skirt and threw me in a van. What I saw when I looked out was guns. The police were going in with guns. They opened the door [to Freedom House] and would shoot tear gas, then they closed the door again."*<sup>55</sup>

The police reportedly prevented the Zambian Red Cross from providing medical assistance to those affected by police beatings and tear gas. Another UNIP official, Melian Sebente Akuffo, was at a UNIP office elsewhere in Lusaka. She telephoned the police authorities to relay pleas by UNIP officials inside Freedom House to stop throwing tear gas inside the building. Melian Sebente Akuffo told Amnesty International that the policeman with whom she spoke said: "We'll tear gas them until they die and those who come out of the building we will break their necks." She said when she asked, "Are you a policeman for the [ruling party] MMD or for the Republic [of Zambia]?" he banged down the receiver.<sup>56</sup>

UNIP leader Kenneth Kaunda, who drove to the site of the police siege, said he witnessed the violence of the police. He told Amnesty International:

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54 Amnesty International interview on 7 November 1997 with Rabbison Chongo in London.

55 Amnesty International interview with Melian Sebente Akuffo, Lusaka, 8 April 1998.

56 Amnesty International interview with Melian Sebente Akuffo, Lusaka, 8 April 1998.

*"We stood outside the building and we saw 10 or 15 young men come out panting. Two hundred police men jumped on them.... We drove to the police station and found the ones taken away were bleeding. A woman was bleeding badly. District Police Commander Wynter Kabwiko was there, present at the station. We saw him, and I asked him why have these people not been taken to hospital?" ...When I was at the police station, Kabwiko agreed to meet us outside of Freedom House. But he arrived and then drove away. It appeared to be the signal to tear gas us. I had three tear gas cartridges shot at me. Mr (Moyse) Kaulun'gombe, UNIP head of security, protected me. He stepped in front of me, to shield me. They hit him instead in the leg, but they would have hit me."*<sup>57</sup>

To Amnesty International's knowledge, no investigation was conducted into the police assault of unarmed, peaceful members of the political opposition at Freedom House, nor into the use of teargas in a confined area, which is contrary to international standards.

## **6. The paramilitary police**

In past incidents of ill-treatment of non-violent demonstrators, police paramilitary units have usually been involved. The official objectives of the police paramilitary battalion is to provide a strike force in disturbed areas, guard vital installations and provide training courses at their own school in the town of Kafue, south of Lusaka.<sup>58</sup> A second paramilitary police force, called the Mobile Unit, is trained and based in Kamfinsa, outside of the city of Kitwe. Their duties are defined as the reinforcement of police stations during outbreaks of crime beyond the control of the normal police detachment. The Mobile Unit members receive special training in riot control, unlike other officers. Both paramilitary forces have their own command structures, which ultimately report to the police Inspector-General.

In recent years, there has been a tacit recognition by police authorities of the problems of accountability that arise from paramilitary and Mobile Unit police officers operating under separate training and command from regular uniformed police officers. "We are trying to phase out the paramilitary," according to the Commanding Officer at the Zambia Police Training College, Solomon Jere. "Those at the paramilitary camp are being brought in to be retrained. The old guard is being retired or retrained."<sup>59</sup>

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57 Amnesty International interview with Kenneth Kaunda, London, 7 November 1997.

58 Force Standing Orders, Government of the Republic of Zambia, Government Printing Office, 1965.

59 Interview with Officer Solomon Jere, Zambia Police Training College, Lilayi, Zambia, 17 September 1998.

In an effort toward reform, the Mobile Unit recruits are supposed to be deployed to ordinary police posts upon completing training, rather than being retained as a separate force. In addition, in-service courses now emphasize bringing together the regular police constables, sergeants, inspectors and station commanders for training with Paramilitary and Mobile Unit officers of the same rank.<sup>60</sup> These changes are a good first step by police authorities, but the record shows that police need greater shielding from political pressure.

### **7. Political interference**

The Zambian authorities appear determined to continue to use the paramilitary police services to suppress political opposition. In 1997, addressing the passing-out parade of the mobile police at Kamfinsa Training School outside of Kitwe, Home Affairs Minister Chitalu Sampa told some 300 new officers that the government wanted them to arrest people who are “fanning anarchy” in the country and who are continuously “insulting” the government “without any justifiable reasons”.<sup>61</sup> Minister Sampa ordered graduates at Lilayi Police Training School that those criticizing police conduct should also be arrested, since they were a threat to police officers’ good morale. “I order you to deal with such people instantly, failure to which you yourselves will be fired,” Sampa told new officers.<sup>62</sup>

Evidence exists that indicates political party supporters were deliberately recruited into the police ranks. Amnesty International has obtained a copy of a letter, sent by S K Walubita, the chairman of the MMD’s National Security Committee, to the MMD party chairmen in each of provinces. In this letter, dated 16 February 1996, he states that:

*"I am working hand in hand with the Ministry of Home Affairs for MMD cadres to be recruited into the Zambia Police Force... This is an urgent request for the Presidential and General Elections in as far as Law Enforcement is concerned."*

In this letter, he also asks each provincial chairperson to submit at least 20 names of candidates to be recruited into the police force, and at least 50 names of potential recruits for the Zambia police reserve force. Human Rights Watch, a human rights organization based in the United States, noted that S K Walubita admitted in September 1996 in the

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60 Interview, Police spokesperson Beenwell Chimfwembe, Lusaka, 15 September 1998.

61 The Post, 25 August 1997, “Chiluba has now incited war, warns KK”.

62 The Post (Lusaka), “Sampa orders cops to deal with critics”, 9 May 1997.

Supreme Court that he indeed wrote the letter, but he claimed that the initiative failed to get any response from the provincial chairmen and so did not produce the desired results.<sup>63</sup>

But Amnesty International confirmed that in 1996, in the months in the run-up to the November elections, the Government of Zambia began recruiting a large number of supporters of the ruling MMD party into the police reserve. Police spokesman Beenwell Chimfwembe confirmed to Amnesty International that the recruitment of reservists involves a formal appointment by Police Force Headquarters.<sup>64</sup> Some three months before the elections, the number of reservists rose from 400 to several thousands. An independent observer from a foreign embassy spoke with one police reservist who was quite clear about his role, which he defined as "to maintain the government in power".<sup>65</sup>

### **8. Investigations of police violation of human rights**

In Zambia, there are currently several routes that can be taken to pursue an investigation of police violations of human rights. The police themselves can investigate allegations of wrong-doing by fellow officers; a judicial authority can order a "trial within a trial" to determine if a suspect's statement has been obtained by torture; an inquest can be held by a magistrate into a suspected wrongful death; private lawyers can initiate a civil suit against the state; and the state's Human Rights Commission can look into incidents reported to it.

#### **Police internal investigations**

The Zambia Police Service does not have an "internal affairs" or other special unit of police to investigate wrong-doing, despite the strong recommendation in the 1995 by the police Strategic Development Plan to establish a Police Complaints Authority Board.<sup>66</sup> Instead, when a complaint is lodged of a wrongful death or torture, commanding officers in charge of an area's police station can open up an "inquiry file" on an incident involving officers under their command, and can also order disciplinary action if sufficient grounds exist.

There is no mechanism to ensure that a commanding officer opens an inquiry, however, because acknowledging and investigating possible human rights violations can

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63 Human Rights Watch/Africa, Vol 8, No. 4(a), December 1996, "Zambia: Elections and Human Rights in the Third Republic".

64 Interview with Officer Beenwell Chimfwembe, police spokesperson, in Lusaka, 15 September 1998.

65 Name withheld at the request of the source, interview in London, 27 October 1998.

66 Zambia Republic Police, 1995 Strategic Development Plan (1995-2000), p.26.

become a "black mark" against a police official.<sup>67</sup> Should an inquiry file be opened and completed, it is then transferred to the commanding officer of the province, who decides whether to open a docket and formally charge the officer with a criminal offence. The Director of Public Prosecutions then determines if the officer will be prosecuted.

Amnesty International notes that during the past four years, the number of arrests and trials of police officers on charges of assault or homicide has increased, judging from the increase in the reports in the national newspapers of high-profile prosecutions in cases of police wrong-doing. Many recent prosecutions into police corruption, torture or shootings of innocent bystanders were initiated by the Inspector-General, who appoints senior officers to investigate a situation.<sup>68</sup> Often, it appears cases are brought to his attention by reports published in the press. In cases of torture, Ndhlovu told Amnesty International: "Normally, judges will write to me and when they do, I personally appoint an investigator."

In the case of the 2 February 1998 shooting of Theo Mijoni, and Felix and Sydney Chitama, a police investigation led to the prosecution of Police Sub-Inspector Cornwell Ngoma, who was alleged to have murdered the three men who were standing next to their broken down car in the Kabulonga area of Lusaka. Theo Mijoni was a top-ranked squash player, and son of a former editor of the Times of Zambia, so his shooting death attracted public scrutiny and prompted the police inquiry. The officer's trial continued in April 1999.

Yet higher ranking officers, such as the officer-in-charge of a police station, have rarely been prosecuted. Far more often, it is the low-level individual police officers who have been prosecuted in killings or shootings. In one such case, in September 1997 the High Court in Ndola sentenced police officer Lifat Munsaka to death for an unlawful killing.<sup>69</sup>

Articles in Zambia's media about the prosecution of police officers have become more frequent than in previous years, yet torture and unlawful shootings appear to be continuing at an undiminished rate. Amnesty International believes that these successful prosecutions are only a fraction of the total number of cases of police violation of human rights.

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67 Interview with a Zambia Police Service official. Name withheld upon request.

68 Interview with Beenwell Chimfwembe, spokesman for the Zambia Republic Police, 15 September 1998

69 The People vs Lifat Munsaka, HN 71/97, 2 September 1997, ruling in the High Court of Zambia at Ndola.

**Case study: Barnabus Chibwe**

The flaws of an internal police investigation, as opposed to an independent and impartial inquiry, are evident in the *Zambian Police Service* inquiry into the fatal police shooting of Barnabus Chibwe on 22 October 1997 in Lumumba Road, Lusaka city centre. There are two conflicting versions of events. According to the police inquiry file made available to Amnesty International by the police, Mr Chibwe was suspected of involvement in a burglary and theft at Mulungushi International Conference Centre in Lusaka. The officer involved reported that, after he and another officer had taken Barnabus Chibwe into custody, the suspect first tried to wrestle with one officer, then tried to grab his gun. "As we approached the police post he manhandled me again trying to get the pistol from me. During the scuffle the gun went off and unfortunately the bullet went through his neck and he died on the spot."<sup>70</sup> The file noted that relatives of the deceased say Barnabus Chibwe had 80,000 Kwacha in his pocket, which went missing after his death.

The independent press tells a different story. Eyewitnesses told a reporter that Barnabus Chibwe had been urinating in a nearby ditch when two police officers tried to detain him. When Barnabus Chibwe tried to bolt, eyewitnesses say one officer drew his pistol and shot him in the chest.<sup>71</sup> The police inquiry file contained further statements by the officer's commander and a copy of the post mortem report into Barnabus Chibwe's death, but no attempt appears to have been made by police investigators to interview the eyewitnesses, nor the journalists who collected the conflicting accounts.

On 11 December 1997, Director of Public Prosecutions M Kalima closed the inquiry. The inquiry thoroughly investigated Chibwe's alleged involvement in a crime, but Amnesty International believes police investigators failed to look adequately into the allegations of a wrongful shooting. In particular, they failed to consider whether the use of a firearm in the circumstances was in accordance with international standards for policing.

**The "trial within a trial"**

Most cases of police torture have come to light during a court trial, when an accused person alleges police coercion or inducement to involuntarily make a statement incriminating himself. The lawyers for the defence will raise various objections and a judge or magistrate can order a "trial within a trial". This sole objective of this court procedure is to determine whether the statement submitted as evidence is admissible in a trial through a determination

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70 Inquiry File investigation into death of Barnabus Chibwe (IF No.217/10/97).

71 The Post (Lusaka), 22 October 1997.



about if the statement was made freely and voluntarily. Even if there is such a determination, evidence obtained through coercion may still be allowed to be presented.

A "trial within a trial" assists greatly in the legal defence of criminal suspects by disqualifying evidence that might have been obtained under duress -- either from others or from the defendants themselves. However, Amnesty International notes that a "trial within a trial" does not determine the culpability of those involved in torture, nor whether suspected perpetrators of torture are liable to be prosecuted. If a confession that may have been obtained by torture is not introduced as evidence, there is no "trial within a trial". If no objection is raised by defence attorneys to the evidence, on the grounds that the statement was obtained by torture, then there is no "trial within a trial". Suspects tortured by police interrogators will probably feel intimidated from making such a complaint. And if the police withdraw the coerced confession, such proceedings are usually dropped.

Often torture is not detected in court proceedings, since a confession obtained by torture is seldom presented in court. In the words of one prominent criminal lawyer:

*"They are fond of using short-cuts, like torture, since it tends to pay because they get evidence... Normally police don't need to produce a confession because they already have independent evidence produced by torture. For example, a theft suspect will lead police to the stolen goods after they have tortured him."<sup>72</sup>*

If there is a finding that evidence was coerced involuntarily from a suspect, there is no legal requirement for the implicated officer to be prosecuted. It is left to the discretion of the policing authorities to determine if the officer found to have committed the torture is to be disciplined in any way. Police officers have been reprimanded by senior policing officials when a "trial within a trial" has uncovered torture. Yet often officers are not reprimanded sufficiently after a "trial within a trial" finds them responsible for torture, according to one Zambia Police Service official who wished to remain anonymous.<sup>73</sup>

Although it may benefit the legal defense of an accused person, the "trial within a trial" is clearly inadequate as an investigatory mechanism into torture. The UN Convention against Torture places an obligation upon the Zambian authorities to institute "a prompt and impartial investigation, whenever there is reasonable grounds to believe that an act of torture has been committed" (Article 12). The "trial within a trial" procedure is not

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72 Interview with George Kunda, in Zambia, on 2 April 1998.

73 Amnesty International interview with police official. Name and date withheld by request.

appropriate for dealing with allegations of torture and does not fulfil the obligations under Article 12 of the Convention.

### **Judicial inquests**

In instances of suspicious deaths, an inquest can be held by a magistrate into the circumstances of a police killing at the request of the deceased's family members. This can become a long process, with proceedings stretching into years. Also, such state-supported investigations are often under-resourced and not aggressive in seeking evidence of wrongdoing. The interested party must often hire a private lawyer to pursue the inquest and introduce evidence of police misconduct, which can be prohibitively expensive.

Such inquests have led to the prosecution of Zambian police officers in the past. Just as often, however, successful inquests do not lead to the prosecution of the police officers involved in torture or unlawful killings. The purpose of an inquest is to establish whether a death was unlawful and, if so, to establish who was responsible. It is then left to the Director of Public Prosecutions (DPP) to order the prosecution of those held responsible by the inquest. If the DPP decides to prosecute, then a criminal trial will ensue which may not necessarily end in the conviction of the perpetrators. George Kunda, the president of the Law Association of Zambia, explained: "If a person dies in custody or is shot, an inquest can be ordered in the magistrates court. It's quite common and a family can insist on that but, to get a conviction, that's another story. It's very rare."<sup>74</sup> Convictions can be rare because of the lack of evidence, as noted above.

### **Civil suits**

Private legal actions have been initiated against the Zambian state for compensation when a person's rights have been violated. In such suits, the Attorney General and other government officials are sued for false imprisonment, wrongful death and other violations of human rights. Like the inquest mechanism, however, the cost of private legal action can be expensive and beyond the means of most Zambian citizens.

In addition, private lawyers representing victims of human rights violations by a police officer, or their families, have difficulties getting official evidence from the police. Documents such as the police station Occurrence Book, which records the details of a person detained in police custody, remain secret. In the magistrate's court, which conduct inquests into suspicious deaths, police dockets are withheld. Lawyers have no right in law to examine the actual police statements. Medical evidence is not presented to the defense

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<sup>74</sup> Interview in Ndola with George Kunda, Law Association of Zambia, 3 April 1998.

until it is produced by the police in court. Even at the High Court level, private lawyers can only get a typed summation of the police docket, not the original file.

While the families of victims of police human rights violations can bring a civil action for an unlawful death, getting the Government of Zambia to pay can be difficult. In 1983, for example, a man suspected of being part of a gang of armed robbers was shot dead by paramilitary police in Ndola city. Witnesses accurately identified the police officers involved in taking the suspect from a supermarket to the police station, where he was killed. The lawyer for the dead man's family filed the civil suit in 1994 and sent a legal summons to the Attorney General. The state admitted liability, and while there was no ruling by the court, a consent order from the court noted that the Government of Zambia admitted liability and ordered the Registrar of the High Court of Zambia to assess the damages at some 15 million Zambian kwacha. That amount has yet to be paid, five years after the assessment of damages was concluded and the government ordered to make payment.<sup>75</sup>

### **The Human Rights Commission**

One of the most important documents on human rights in Zambia is the report of the Munyama Human Rights Commission of Inquiry, which sat from 1993 to 1995. The *ad hoc* Commission investigated prison conditions and human rights violations from 1972 to 1993, probed allegations of torture, and made recommendations for reform. Victims came from all over Zambia to testify about police abuses. The Commission also made spot-checks on police stations, finding widespread evidence of human rights violations and torture by police, military and state security officers. Its report lists 23 types of torture methods it found security forces using against suspects, including electric shock; beating with hose-pipes, planks and iron bars; forcing suspects to exercise for hours on end; squeezing detainees' testicles with pliers and suspending suspects from shackles in *kampelwa* method.

In its findings, the Munyama Commission expressed concern that the police fail to investigate complaints against police officers, and recommended that an independent Police Complaints Authority be established. The Commission also concluded that such human rights violations, including torture, continued at the time of making its report in 1995 "on a significant scale". No one, to Amnesty's knowledge, was ever prosecuted on the basis of the Commission's findings. In its 1996 "White Paper" response to the Munyama Commission report, the government accepted some recommendations, including the creation of a permanent human rights commission.

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<sup>75</sup> Musopelo vs Attorney General, 1994.

The permanent Human Rights Commission began operation in July 1997. Now in its second year of operation, the Commission has achieved success in tackling cases of human rights violations that do not have a high political profile. The Human Rights Commission summarized 50 cases of unlawful detention, excessive use of force, torture or ill-treatment and shootings by police arising from some 708 complaints from the public received between 12 June 1997 to 26 May 1998. Out of the 50 cases, there were a total of 73 victims, of whom 17 died at the hands of the police. Some of the cases of unlawful killing included:

- Noah Kausa, who was arrested on 8 August 1997 for alleged theft of tyres at Magnum Security where he was working. He was suspended on a swing while being tortured and died during interrogation.
- Joseph Phiri, who was arrested and detained on 7 October 1997 at Kabanana Police Post where he was tortured and died during interrogation on 8 October 1997. The post mortem examination report revealed he had internal multiple injuries sustained from a gunshot wound.
- Joshua Zando Mwale, who in November 1997 was killed by police while in their custody at Lusaka Central Police Station.
- Fabian Sagonda, Phineas Phiri, Chilufya Zulu and Chigala, who were all shot and killed on 26 November 1997 by Westwood Police on the suspicion that they were about to commit a robbery. They were killed while drinking beer at a farmers' bar.
- Davies Mwamba Chileshe, who died in police custody on 10 November 1997 after he was apprehended by police after a squabble at a night club. He was assaulted by police and died while in the cells at Kasanda Police Station at Kabwe.
- Greenford Chipili Kosamu, who was arrested on 18 January 1998 for burglary and theft. He was kept in the cells for two weeks at Mufulira Central Police Station. He was brutally tortured and denied food and water. He was later taken to Kamuchanga Hospital where he died on 2 February 1998. The post mortem examination report states that he died of head injuries.
- Victor Mwenya Ng'ambi who, while in the company of others, was joined on 24 October 1997 by a police constable of Ngwerere Police Station after a beer drinking spree. On the way home, the policeman decided to take the group to the police station to charge them with drunkenness but they resisted. The policeman then opened fire and killed Victor Mwenya Ng'ambi.<sup>76</sup>

Despite the Human Rights Commission's growing track record as an effective investigatory body, Amnesty International sees the need for an institution with more expertise and powers to look into policemisconduct. The mandate of the HRC excludes any powers in a matter that is pending before a court, so cases of torture are excluded if subject

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<sup>76</sup> "Cases involving police brutality," HRC/101/36, compiled on 28 May 1998.

to the "trial within a trial" process.<sup>77</sup> In attempting to investigate life-threatening human rights violations such as torture, the Commission presently can make recommendations only, and cannot enforce those recommendations through a court of law. The power to subpoena witnesses and documents also appears to be lacking. The Commission itself recommended the creation of a police oversight body, which would have such powers to compel cooperation by authorities through imposing administrative or legislative sanctions when the exercise of its power to investigate and take remedial action is obstructed.

The Commission has been hampered by a lack of resources, and a lack of independence because it remains dependent upon the goodwill of President Chiluba's administration to ensure a minimum level of funding and for the appointment of its commissioners. While the Commission has succeeded in lower profile cases, an investigation into a high profile case involving the political opposition has become stalled.

#### **Case Study: Investigation into the Kabwe shooting**

On the morning of 23 August 1997, opposition leaders Kenneth Kaunda and Rodger Chongwe were driven away in a car from the aborted rally (see also above, page 20). As the drove, a bullet was fired into the car, apparently by a police sharpshooter, according to expert analysis of the evidence obtained by Human Rights Watch.<sup>78</sup> As substantiated by medical reports by doctors who examined the two men after the incident, the shrapnel grazed Kaunda's head and seriously injured Chongwe in the cheek and neck.<sup>79</sup> Kaunda and Chongwe have alleged that the government tried to assassinate them, an allegation which President Chiluba denied. The President said police commanding officer for Kabwe, Nungu Sassali, had been suspended and that investigations were being conducted.

Amnesty International and Human Rights Watch, along with non-governmental organizations in Zambia, called for an impartial and independent investigation into the incident. The Zambian authorities changed their version of the incident. Initially, they said paramilitary officers mistakenly used live ammunition to disperse the opposition rally. President Chiluba expressed concern about the shooting while in the United Kingdom for the Commonwealth Heads of Government Meeting. Just weeks later, back in Zambia, Chiluba stated: "We are not for excessive use of force, but there is no way we can let the country go to the dogs -- or allow the dogs to come to the country." Subsequently,

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

78 Human Rights Watch, "Zambia: No Model for Democracy", May 1998. Vol 10, No.2(A).

79 Medical Report, August 27, 1997. Correspondence from Kabwe Hospital to Permanent Secretary, Ministry of Health, Lusaka, Zambia. Ref. KG11/01/11/8.

President Chiluba expressed doubts about if the incident actually took place, an assertion he has continued to repeat in public.<sup>80</sup>

The Human Rights Commission began its own investigation, creating a video tape reconstruction of the incident at a reported cost of tens of thousands of US dollars.<sup>81</sup> But by October 1998, the Commission halted its investigations. Commission Chairperson Judge Lombe Chibesakunda said that it needed to hold a public hearing before concluding its probe, and that it had failed to raise 65 million Zambian Kwacha (US\$50,000) from the government needed to conduct such a hearing. Despite her pledge that "we will publish whatever we come across without fear or favour,"<sup>82</sup> nothing of the investigations was made public. To Amnesty International's knowledge, no officer was prosecuted in connection with the shooting. The commanding officer in charge of the police operation, although briefly suspended, was not formally disciplined. No further investigation has taken place.

## **6. Government-initiated policing reforms**

Amnesty International acknowledges initial efforts by the Inspector-General of Police, Francis Ndhlovu, who began in 1995 to introduce some reforms in the police service. Inspector-General Ndhlovu raised the educational qualifications for recruitment of new police officers, instituted some training for new recruits in human rights, and initiated other mechanisms designed to restore discipline and professionalism, such as community-based policing methods. Mid-level and senior officers of the force were encouraged to attend human rights training seminars at the Police Academy. Identification tags were introduced for all police so that erring officers could be reported to the authorities. In another reform, a Victim Support Units in the police service were created to assist victims of wife battery, child abuse and "property grabbing" after the death of a spouse.

Yet many of these initiated reforms have remained under-resourced or have fallen away, while many officers who have violated rights with impunity influence their colleagues to do the same. In the wake of several shootings by reserve police officers, Police Commissioner Ryan Chitobo ordered reservists in March 1998 to turn in their firearms. Yet reservists appear to continue to carry and use assault rifles, both in Lusaka and in the rest of the country. In-service courses, which in part address human rights law, have been offered for constables, sergeants, inspectors and other senior officers in the

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80 Zambia Daily Mail, 14 November 1997, "Chiluba Dares KK".

81 Human Rights Watch, "Zambia: No Model for Democracy", May 1998. Vol 10, No.2 (A).

82 The Post (Lusaka), 2 December 1998, "Arrest all torturers, demands Chibesakunda".

Paramilitary Police and Mobile Unit.<sup>83</sup> They are, however, not mandatory for career advancement.

While recruits are exposed in the classroom to issues of human rights during their six months of training, they find great resistance from their own officers-in-charge, who indoctrinate them at the police station to methods of brutality and torture. No further human rights awareness training takes place for trainee constables; after deployed in the field, and divisional training officers in the provinces are not required to address human rights, according to Commanding Officer Solomon Jere, who heads the Zambia Police Training College in Lilayi, outside of Lusaka.<sup>84</sup> Jere noted that lack of resources often hampers such extended human rights training in the field, as well as recruit training at the college.

Following reports of the torture of those detained in connection with the October 1997 coup attempt, the Government of Zambia faced hard questioning by governments providing Zambia with bi-lateral aid at the World Bank Consultative Group meeting in Paris on 12-13 May 1998. In the run-up to the meeting, Home Affairs Minister Peter Machungwa told a news conference on 6 May that his government would carry out major policing reforms. This, he said, would include the establishment of an independent inquiry to probe allegations of police torture of "coup plot" detainees; a thorough and systematic analysis of training problems in the Criminal Investigations Department (CID) with an aim to developing a comprehensive training program; and intensified human rights training for the police, Drug Enforcement Commission, Prisons Service and Immigration Service, using a manual on human rights training for the police that was drawn up by the United Nations Office of the High Commissioner for Human Rights. Minister Machungwa also said that the government would amend the Zambia Police Act to harmonise police operations with new developments such as community policing concepts. And he announced new legislation to establish a Police Complaints Authority, to be composed of eminent persons nominated by organizations outside of law enforcement agencies.<sup>85</sup>

Amnesty International cautiously welcomed these initiatives, but warned that to ensure the effectiveness, accountability and independence of any human rights institution, such as the proposed Police Complaints Authority, it should be shielded in its founding legislation from political interference; composed of members of civil society who are independently

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83 Amnesty International interview with Beenwell Chimfwembe, police spokesman, on 15 September 1998, Lusaka, Zambia.

84 Interview with Commanding Officer Solomon Jere, Zambia, 17 September 1998.

85 Zambia Daily Mail, "Detainee's torture probe demand okayed," 7 May 1998.

selected; properly empowered to investigate complaints; and adequately resourced in a funding system autonomous from the President's office. Amnesty International has continued to recommend that these and other reforms, listed below, be enacted to help prevent torture and other human rights violations. To Amnesty International's knowledge, however, the majority of the promised reforms have not been established as of April 1999.

## **7. Recommendations to increase police accountability**

The Zambian people have a right to be policed by impartial officers who respect and protect their human rights, and they should be able to remove those police who violate their rights. Efforts to create this police accountability must be based on effective investigations. After reviewing the various mechanisms for the investigation of police violations of human rights, Amnesty International has demonstrated that they are not systematic or effective in ensuring that those responsible will be brought to justice. This failure creates the perception -- in the minds of the Zambian public and police officers themselves -- that the police enjoy impunity from investigations that might lead to the punishment of misconduct. Providing more human rights training to police officers, raising the educational requirements for new officers or other reforms cannot make up for the lack of impartial, systematic and effective investigation into the violation of human rights by police officers.

Police reforms will take time to implement, but the Zambian authorities can take immediate action to ensure that investigations are undertaken, and suspected violators are brought to justice in a fair trial. Amnesty International makes the following recommendations to put respect for human rights -- and accountability for human rights violations -- at the heart of policing in Zambia:

### **1. Demonstrate that police violations of human rights will not be tolerated.**

From its experience in advocating human rights reforms, Amnesty International believes that the first, solid step towards changing from an unprofessional police culture that facilitates the violation of human rights into one that safeguards those rights is through the exercise of political will at the top of the political hierarchy.

Amnesty International calls upon President Frederick Chiluba, Home Affairs Minister Katele Kapumba, and Inspector-General Francis Ndhlovu to send a clear public message to all police and security force personnel that human rights violations will not be tolerated; that all people have human rights and those suspected of having committed a crime are innocent until proven guilty; and that criminal suspects should not be unlawfully killed, tortured or ill-treated. The organization renews its appeal to President Chiluba to publicly condemn torture by police or any other security force.



The Home Affairs Minister and the heads of law enforcement agencies should also pledge themselves publicly to ensuring fundamental changes in policing to ensure that the police, prisons and immigration services are accountable, representative and responsive to the whole community. Some of those reforms are detailed below.

## **2. Fulfill Zambia's obligations under the Convention against Torture.**

While the ratification of the CAT is a very important achievement, Zambia should now incorporate the provisions of the treaty into domestic law. In particular, evidence shown to have resulted from torture should be made inadmissible in a court of law, in conformity to Article 15 of the Convention against Torture.

Torture by members of the government law enforcement officers and other security forces should be legislated as a criminal offence, with punishments commensurate with the serious nature of the crime, excluding the death penalty. Where allegations of torture or extrajudicial execution are well-founded, suspected perpetrators must be suspended from duty, in order to protect the integrity of investigations and the safety of witnesses. Independent and impartial investigations should be carried out, and prosecution of perpetrators undertaken. If convicted they must be barred from positions of authority where they are likely to commit human rights violations, including responsibility for persons in custody and from the use of force or firearms.

Any legislation governing policing should also incorporate explicit references to international human rights standards relevant to policing. Police legislation should require officers to report any misconduct by colleagues and should protect those who report incidents of human rights violations, including torture and unlawful killings.

## **3. Ensure independent and internal investigation of police human rights violations.**

The Zambian Government rejected the Munyama Human Rights Commission recommendation in 1996 that it establish an independent Police Complaints Authority, composed of civic, religious and professional representatives to investigate the public's complaints against police officers. The government argued that a permanent Human Rights Commission would be sufficient to investigate police wrong-doing.<sup>86</sup>

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

Yet the creation of a truly independent police complaints authority could ensure the proper investigation of human rights violations by police. An independent authority would receive citizens' complaints, investigate them, and take criminal and/or disciplinary action against police officers found to have perpetrated human rights violations. To be truly effective, such an authority should have full powers under law to deal effectively with received complaints, including enabling powers to order the release of persons unlawfully held, and powers to order its immediate access to police dockets, statements and post mortem examination reports.

As proposed by the present Human Rights Commission again in 1998, the composition of an Independent Tribunal on Complaints Against Police, Immigration and Prison Officers would ensure proper community involvement in such a body. The Human Rights Commission proposed membership of such a body be drawn from members of the Human Rights Commission; representatives of the Prison, Police and Immigration Services at senior command levels; representatives from the Law Association of Zambia and other NGOs, Church Organizations, Medical Association of Zambia, Nursing Association of Zambia, and other civil society organizations concerned with police and prison issues.

Internally, a system for police investigation into corruption and violation of human rights should be established. A review and redrafting of the police disciplinary code should be carried out from a human rights perspective, with a statutory basis provided for the code.

#### **4. Empower the Human Rights Commission to assist in oversight of the police.**

Amnesty International sees the role of the Human Rights Commission as an important one in ensuring civilian oversight over law enforcement agencies, but notes that a separate complaints authority would have greater capacity and expertise in reviewing police operations. Nevertheless, the Human Rights Commission should have powers to pursue its own independent investigations, including the power to ensure access to police records, interview witnesses, and take corrective action in cases of torture or unlawful shooting. Amnesty International has previously recommended that the Human Rights Commission be empowered through legislation to compel cooperation by the police, through imposing administrative or legislative sanctions when the exercise of its power to investigate and take remedial action is obstructed. In May 1998, the government responded that this recommendation was noted, that the Commission was in its infancy and that "amendments to improve the functioning of the Human Rights Commission will be made through legislative means."<sup>87</sup> Amnesty International awaits further legislative action to improve the Commission's effectiveness.

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<sup>87</sup> Government of Zambia response to the allegations of torture, unsigned document, 1 May 1998.

**5. Remove the need for victims to obtain a police medical report or form.**

Zambia continues to require those people seeking medical treatment for injuries suffered from violence by the police to obtain a Medical Treatment Report form from the police before health professionals may treat the victim. This requirement often prevents victims from getting medical attention, out of fear of the police. Amnesty International believes that dropping this requirement will promote prompt medical attention for those who are victims of police assault, as well as encouraging the independent documentation by a health professional of any injuries caused by police torture and ill-treatment.

**6. Improve access by legal representatives to police documents.**

Appropriate access to information held by police authorities concerning criminal cases involving human rights violations by police officers should be given to those legal representatives directly concerned with the case, such as private lawyers, human rights organizations acting on behalf of victims or their families, and oversight bodies including the Human Rights Commission. One way in which this could be done is to amend the Criminal Procedure Code to impose a statutory requirement on police to provide full disclosure of appropriate police prosecution documents to victims' legal representatives.

**7. Protect the right to free expression, association and assembly.**

Police should not be allowed, or instructed by the Zambian authorities, to violate the right to freedom of peaceful expression, association and assembly. Zambian law and its application by police appears to be too restrictive on these rights, and therefore should be amended to bring it into conformity with the ICCPR, which guarantees them. The ICCPR states that no restrictions may be placed on the exercise of these rights "...other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others."

The strategies and tactics of police public order policing should be reviewed to determine how they can be reformed to avoid human rights violations. Improved tactics and training in public order policing should aim to increase police officers' understanding that they should avoid the use of force when policing peaceful public assemblies. When the use of force is unavoidable in such situations, it should be used in accordance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

Any review and subsequent training should emphasize restraint in the use of force, and the gradual escalation of response -- in proportion to the seriousness of the offence and the

legitimate objective to be achieved -- rather than immediate, excessive use of force. Training in public order policing should also indicate that firearms shall not be used in the policing of non-violent assemblies. In the dispersal of violent assemblies, police officers should be instructed that they may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary, and only to prevent death or serious injury or the commission of a particularly serious crime involving grave threat to life.

#### **8. Make the paramilitary police more accountable.**

Amnesty International believes that the parallel command structures of the paramilitary and regular police has contributed to the lack of accountability by these officers. Amnesty International recommends that steps be taken to make paramilitary police conform with the highest standards for policing. Accountability may be enhanced by creating a combined command structure for regular and paramilitary officers. All officers should receive the same, standard training that should include human rights awareness, non-coercive interrogation techniques, and the applicability of the Zambian constitution's guarantee of rights to practical policing situations.

#### **9. Provide training in human rights.**

Human rights training, such as proposed by the Zambian authorities, can be an important corner-stone for improving law enforcement agencies' human rights record. Such training, however, should become mandatory for all ranks of Zambia's security forces, ranging from recruits to top commanders. All officers should have consistent human rights training that is regularly reinforced with refresher courses. The training should include knowledge and application of the rights guaranteed in the Zambian Constitution and international standards, including the Standard Minimum Rules for the Treatment of Prisoners, the Code of Conduct for Law Enforcement Officials, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

Training in human rights awareness should not be a one-time event, but should continue throughout an officer's career. An officer should develop expertise in judging "real life" situations from a human rights perspective, and therefore any training should be based on practical exercises involving situations that involve the human rights of suspects. Human rights as a topic should not be isolated as a single subject, to be covered in a given period of time and then set aside, but should be integrated as an aspect into other topics of training, such as interrogation and investigation techniques, use of firearms and arrest procedures.

Specialized training and resources should be available for government doctors who conduct post mortem examinations to enable them to adhere to the international standards for examinations and reporting that are required in a serious human rights investigation.

#### **10. Make human rights important to law enforcement officers.**

Amnesty International believes that unless human rights are promoted at the basic level of the police station, they will remain abstract and unimportant to a police officer when he is making decisions about his conduct as a law enforcement official. Human rights should therefore be included in the official inspection criteria for police stations. Statistics and nature of complaints registered against officers at any given police station should become part of the inspection criteria when evaluating the effectiveness of police management.

Amnesty International further recommends that awareness of and performance in relation to human rights be included in the official criteria in evaluating any officer for promotion within the police service, and the effectiveness of the highest levels of command. In addition to his or her successful completion of human rights training courses, an officer's individual human rights record, including the number and seriousness of complaints against him or her, should become part of the criteria for salary increase, promotion in rank and other recognition of performance.

#### **11. Promote public awareness of human rights.**

Amnesty International suggests that a program of public awareness be initiated at the community level to make citizens aware of their rights, including their right to complain about the treatment they receive from law enforcement officers. Such a rights awareness program consists of more than a simple poster or "mission statement" posted on the walls of a police station. It entails pamphlets, advertisements and discussion seminars which would involve Zambian human rights NGOs in planning, preparation and implementation.

In Zambia, the Human Rights Commission has begun this task, but a special focus on educating the public about their rights vis-a-vis the police could be productively tackled by the police service, working with the community, including human rights organizations.

#### **12. Involve NGOs in the police reform process.**

Amnesty International believes the manner in which the police service is reformed is as important as the content of the reforms. Amnesty International remains convinced that human rights violations by police can be reduced when a climate of cooperation and trust

is established, by removing the barriers to scrutiny of police by civil society. By being more accountable, the police may be able to deal with crime more effectively.

This organization therefore urges the Government of Zambia to thoroughly consult the Human Rights Commission, human rights NGOs and other members of civil society before implementing any announced police reforms, including training programs, amendments to laws or creation of new oversight institutions. There should be a statutory requirement on police and other relevant agencies to consult effectively with the community and the appropriate guidelines development for this consultation.