

AFRICA RISK CONSULTING

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Justice minister Ngosa Simbyakula says the government will partially reform the constitution before the 2016 general elections, and will seek to pass non-contentious clauses in the national assembly in June. The public will vote on the remaining issues in a referendum held at the same time as the election. The kwacha depreciates a further 10% against the dollar across March. The private sector calls on the government to take action as the rising business costs cause profits to decrease. The kwacha stabilises in response to President Edgar Lungu's (2015-present) orders to ministers to reverse the controversial mining royalties tax that has driven the currency depreciation. The energy minister threatens to revoke the licences of oil marketers after fuel shortages spark panic buying.

Government promises partial constitutional reform by 2016

Justice minister **Ngosa Simbyakula** told parliament the government intends to amend some aspects of the 1996 constitution ahead of the 2016 general elections. Civil society organisations and political parties have been pushing for reform to the constitution since 2002. In January 2014 a draft of a new constitution was leaked to the press, reigniting the debate. There is broad consensus that Zambia needs a new constitution but disagreement over the revisions needed.

In his 19 March address, Simbyakula said that the amendments would be limited to clauses with cross-party support, which would be passed as separate bills in the June 2015 sitting of parliament.¹ These are the inclusion of a 'running mate' for presidential candidates in general elections, and the implementation of 50% plus one voting. The new voting system would mean that to win an election outright, a candidate would have to achieve 50% of voter turnout plus one vote. The current system allows for a single party or candidate to form a government with a minority of the vote. This has been true of every government since 2002. Under the new system parties without an outright majority would need to form coalition governments.²

*"It is very convenient that the administration is passing the easy reforms before the election...this is about winning in 2016 more than constitutional reform."*³

The government will address separately the more contentious aspects of constitutional reform – article 79, which governs the holding of referendums, and a revised bill of rights. Particular sticking points in the 2014 draft constitution include minority group rights and softening freedom of expression clauses. Under current law, referendums are invalid if less than 50% of voters participate. The proposed constitution is contentious because it changes the need for majority participation.

Simbyakula proposed holding a referendum on the two contentious issues alongside the election in 2016 to avoid the risk that non-contentious clauses would be rejected if put to a referendum at the same time as the more contentious clauses. Combining the referendum with the general election, where Zambians elect the president, MPs and local councilors, gives a higher chance of reaching the 50% voter threshold required for referendums.⁴

¹ Post Newspapers, 19 Mar 2015

² Zambia Watchdog, 19 Mar 2015

³ Source: political analyst, Lusaka

⁴ Lusaka Times, 19 Mar 2015

The **Grand Coalition** – an association of political groups and civil society organisations that has consistently lobbied for constitutional reform – welcomed the announcement.⁵ However, the coalition expressed concern that there is little clarity on the process of holding a referendum during the elections. The referendum procedure is one of the most contentious aspects of constitutional reform. It is also not clear whether the government will hold a referendum prior to the election to pass the non-contentious clauses.⁶

“At the moment it seems the government is not ready to enact the constitution immediately...and we have received many contradictory messages from government ministers.... we have also been told that there is no money to hold a stand-alone national referendum this year.”⁷

Kwacha depreciation threatens wider economy....

The continued depreciation of the kwacha (K) against the **United States (US)** dollar is posing an increasing threat to Zambia’s economic stability. The currency depreciated 10% against the dollar from K6.89 on 1 March to K7.59 on 30 March, with a low of K7.73 on 23 March. The currency has been in freefall across 2015, depreciating 18% so far from K6.39 on 1 January. Zambia rebased its currency in 2013 and the new kwacha entered the global markets at K5.2 to the dollar in January that year. It has consistently performed poorly, depreciating 45% in two years.⁸ An ongoing dispute between the government and mining companies over a new mining royalties tax has exacerbated the currency depreciation (see below). The **Bank of Zambia (BoZ)** increased the statutory reserve ratio (the amount of currency banks are required to hold to operate in Zambia) from 14%-18% to increase fiscal stability on 23 March.⁹

The private sector is calling for urgent government intervention to stabilise the currency.¹⁰ Zambia is suffering a shortage of foreign currency and sources in the business sector are reporting a scramble for foreign currency stocks as the prices of goods begin to rise.

“Zambia is an import dependent country. 90% of goods we see on our shelves are importedwhich means the prices will go up. If prices go up, fuel prices will rise because we have to buy our fuel abroad with US dollars. The cost of doing business and the cost of living economy is going to increase 20-30% purely because of the impact of the weakening kwacha.”¹¹

Sources in the small business community say that the weakness of the currency has led to businesses closing down. Businesses that import goods from neighbouring countries have been particularly badly hit.¹² According to the **Zambian Cross Border Traders Association (CBTA)**, trade volumes for the traders have drastically reduced and out of the 37,000 members, only 500 have paid subscription fees this year.¹³ Businesses are also concerned about the effect of the depreciated currency on unemployment:

“Trading serves as a major source of employment...if something is not done to address the depreciating kwacha, the unemployment problem will become worse.”¹⁴

...leading to reverse of mining royalties tax and rate increase to stabilise the currency

President **Edgar Lungu** (2015-present) has ordered a temporary reverse on the new mining royalties tax in order to prevent further depreciation of the kwacha. The dispute over the mining royalties tax combined with falling copper prices has exacerbated the kwacha’s fall. Mining companies have threatened to pull out

⁵ Statement by the Grand Coalition Response to Government Pronouncement on the Constitution, 20 Mar 2015

⁶ Lusaka Voice, 19 Mar 2015

⁷ Source: grand coalition organisation, Lusaka

⁸ XE.com

⁹ Reuters, 23 Mar 2015

¹⁰ Source: chief executive, Lusaka

¹¹ Source: chief executive, Lusaka

¹² Source: small business executive, Lusaka

¹³ CBTA website, 2015

¹⁴ Source: small business executive, Lusaka

of Zambia if the new tax remains in place. The government raised mining royalties from 6% to 20% in January 2015 (see *ARC Zambia January 2015 Briefing*).

In letters to finance minister **Alexander Chikwanda** and mining and energy minister **Christopher Yaluma** on 25 March, Lungu directed them to change the contentious tax before 8 April.¹⁵ He said that the new tax regime posed a challenge to some mining houses. The president acknowledged that external factors such as falling copper prices have compromised the ability of high cost mining operations to make money. He struck a conciliatory note, in contrast to the anti-corporate rhetoric he employed in the run-up to the elections:

*"I wish to take this opportunity to reiterate my government's resolve to continue putting dialogue at the centre of our governance systems. Dialogue between my government and the mines shall continue."*¹⁶

There are initial signs that the kwacha has responded positively to the presidential announcement. The currency appreciated 1.8% against the dollar from 25-26 March and has remained stable since then. Mining companies also welcomed the news. **Toronto-based Barrick** announced on 27 March that it would continue operating its **Lumwana** mine in Zambia. Barrick had said it would close Lumwana at the end of February but the president's action to halt the new tax had led them to reverse the decision:

*"We will carry on operating at Lumwana while we await details on the government's proposed solution."*¹⁷

However, it remains to be seen whether the government and mining companies can find a working compromise on the tax. Lungu has given Chikwanda and Yaluma a mandate to change the tax and to delay payments until the copper price increases. But mining companies may not accept a compromise solution. In the meantime the currency's poor performance will continue to hurt Zambian businesses:

*"In my view only when the kwacha falls below K6.5 to the dollar can the business sector begin to return to profitability."*¹⁸

Ratings agency **Fitch** kept Zambia's credit rating for March at 'B', five levels below investment grade, but revised the outlook down from 'positive' to 'stable.' It cited the currency depreciation alongside poor policy implementation as reasons for the change in outlook. The growing fiscal deficit and possibility of slower growth are also longer-term risks. However, strong growth across early 2015 makes a downgrade unlikely. An **International Monetary Fund (IMF)** mission has been in country since 27 March and is expected to deliver a report on the country's economic performance in May.¹⁹

Fuel shortage leads to anti-oil marketing rhetoric

A fuel shortage across Zambia has led to increased anti-corporate rhetoric by the government as it blames oil firms for the lack of fuel. Fuel stocks at petrol stations across the country fell in March, draining reserves at fuel distribution centres. The **Lusaka** fuel depot reported a 100% increase in fuel uptake from 300,000 to 600,000 litres per day on 13 March. Media outlets have reported continuing long queues and petrol stations across the country, which have regularly run out of fuel.²⁰

The government attributed the shortage of fuel to delays in shipping petroleum from suppliers. Zambia has imported enough fuel to supply the country but delays in distribution sparked panic buying. Energy minister Christopher Yaluma has accused oil marketing companies (OMCs) of stockpiling fuel deliveries in order to drive up the price of petrol.²¹ He threatened to revoke licences of OMCs if he found them "wanting" over

¹⁵ Mwebantu Media, 25 March 2015

¹⁶ Press statement, 25 Mar 2015

¹⁷ Reuters, 27 Mar 2015

¹⁸ Source: chief executive, Lusaka

¹⁹ Bloomberg, 13 Mar 2015

²⁰ Lusaka Times, 13 Mar 2015

²¹ Times of Zambia, 17 March 2015

the fuel shortages.²² The government offers considerable subsidies on fuel imports, making Zambia a profitable market for OMCs. The companies have blamed media speculation leading to panic buying for the shortage. Yaluma's strong rhetoric worries them as businesses are wary of the difficult experience of the copper mining industry with the Zambian government:

*"The Zambian government is clearly not afraid of taking drastic action...where there is panic buying there is little OMCs can do in response."*²³

The government claimed on 18 March that the situation had stabilised.²⁴ However, a check in the mining town of **Chingola** in the **Copperbelt Province** by an ARC source revealed that fuel is still a problem.

*"I witnessed the problem in Chingola where out of three filling stations only one had fuel stocks which were also said to have arrived that day (25 March). I queued for 30 minutes to have my vehicle refueled...the attendant said that the station had had no fuel for four days."*²⁵

Implications

Tackling the thorny issue of constitutional reform in stages will allow the Lungu administration to claim some success prior to the 2016 election. By tying a referendum in with the general election the ruling **Patriotic Front** also ties its electoral fortunes to constitutional reform. If they win the election and the referendum, they can claim full credit and cement their popularity. However, they risk sacrificing constitutional reform to their electoral fortunes. If this is indicative of the Lungu administration's attitude towards policy, legislation will be geared more towards success in 2016 than immediate benefit to Zambia in the short and medium term.

The government may not have the luxury of forward looking legislation if it cannot bring the kwacha under control. The conciliatory measures with the copper companies are a positive step and, combined with the ZRB's actions, have stabilised the situation for now. However this is not sufficient to improve the prospects for Zambian businesses. A long term solution for the disputes with copper miners and sensible macro-economic policy will gradually increase market confidence. If Lungu cannot manage this and the currency slide begins to take a serious economic toll, then Zambia risks repeating the economic problems of **Ghana** – continued currency devaluation, rising unemployment, public protests and a deeply unpopular IMF bailout.

Zambia has enough fuel for all its motorists but a lack of oversight of the distribution network and no regulation limiting fuel purchases makes panic buying very difficult to control. The government's threats towards importers are a distraction from the continued fuel supply problems across the country. The president's actions over the copper royalties tax are a sign that, unlike the administration of his predecessor, **Michael Sata** (2011-2014), Lungu's government will show more restraint in its dealing with the private sector.

²² Lusaka Times, 16 March 2015

²³ Source: oil trader, Johannesburg

²⁴ Zibani Zambia, 18 Mar 2015

²⁵ Source: ARC correspondent, Lusaka

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