

## AFRICA RISK CONSULTING Zambia Monthly Briefing May 2015

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### Zambia Summary 25 May 2015

*National and international observers watch the progress of constitutional reform as the benchmark of President Edgar Lungu's (2015- present) performance during his term in office. Opposition parties and civil society groups are trying to prevent the government from passing some clauses without a referendum. The Energy Regulation Board (ERB) unexpectedly raises the price of fuel by 20%, potentially harming the profitability of Zambian businesses. Lungu appoints a tribunal to investigate ex Director of Public Prosecutions (DPP) Mutembo Nchito. The investigation draws in other members of the so-called 'cartel', Post Newspapers owner Fred M'membe and Finance Bank chair Rajan Mahtani. However, sources allege that a political vendetta, not a desire for better governance, is behind the move.*

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### Constitutional reform considered benchmark of Lungu's performance

The campaign for a new constitution has become a main political battleground in Zambia and a test of President **Edgar Lungu's** (2015- present) brief first term in office. Justice minister **Ngosa Simbyakula** announced a two-tier or phased approach to the enactment of the constitution in March (see *ARC Zambia March 2015 Briefing*). This process will amend certain "non-contentious" clauses of the 1996 constitution through Parliament and conduct a referendum on the remaining parts, including the more controversial **Bill of Rights**, alongside the 2016 general elections.<sup>1</sup>

When the **Patriotic Front (PF)** campaigned during the 2011 elections, the promise of a new constitution was one of their main messages. Lungu also included it in his 2015 election campaign. However the PF made little progress on the issue during their first four years in government. Lungu claims that he resurrected the new constitution when former president **Michael Sata** (2011-2014) appointed him justice minister in August 2014. He points to his two-tier plan as evidence that he is committed to constitutional reform.<sup>2</sup>

Civil society groups are opposed to Lungu's plan. The **Grand Coalition**, an alliance of NGO's and civil society groups dedicated to constitutional reform, has rejected the government strategy to hold the referendum alongside the 2016 general elections.<sup>3</sup> The chairperson of the **Non-Government Organisation Coordinating Council (NGOCC)**, **Sara Longwe**, has said that the government should put the entire constitution to a national referendum.<sup>4</sup> She argues that the government's decision to hold a referendum only alongside the 2016 elections is an excuse for the PF to "cherry pick" clauses that bypass the referendum process which, according to them, are "non contentious".<sup>5</sup>

The main opposition **United Party for National Development (UPND)** also opposes Lungu's plan. It attempted to organise a countrywide demonstration on 15 May over government's failure to enact the new constitution in its entirety.<sup>6</sup> The **Zambian Police Service (ZPS)** denied the UPND a permit to demonstrate the day before it was due to happen. Despite a UPND statement saying it would go ahead with the demonstration, the party announced it had indefinitely postponed it following police advice on 23 May.<sup>7</sup>

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<sup>1</sup> Zambia Daily Mail, 16 Mar 2015

<sup>2</sup> Zambia reports, 27 Apr 2015

<sup>3</sup> Source grand coalition member, Lusaka

<sup>4</sup> NGOCC press briefing, 19 May 2015

<sup>5</sup> NGOCC press briefing, 19 May 2015

<sup>6</sup> Q FM Radio, 1 May 2015

<sup>7</sup> Zambia Daily Mail, 23 May 2015

*“The police denied the UPND a permit because they had failed to engage civil society organisations and local groups to attend... they said that nationwide demonstrations could not justify the resources needed to potentially police them.”<sup>8</sup>*

Many observers see the issue of constitutional reform as a key measure of Lungu’s success as president. Christian groups, who are highly influential and control significant numbers of votes, are among them. The **Council of Churches in Zambia (CCZ)** says it will only give an assessment of Lungu’s leadership performance when he delivers a new constitution to the Zambian people. CCZ secretary general **Suzanne Matale** says that the CCZ will fully back him if he delivers the new constitution.<sup>9</sup> On the other hand, the **Evangelical Fellowship of Zambia (EFZ)** has said they will support the government’s plan as it moves the country towards constitutional reform faster:

*“The tripartite elections are due 15 months away and conducting a referendum will require us to start with voter registration. Although, we stood firmly in the past for the referendum, this is impracticable at the moment.”<sup>10</sup>*

The international community is also watching the process to see if Lungu can move forward on constitutional reform. **United States (US)** ambassador **Eric Schultz** openly supports Lungu’s approach.<sup>11</sup> However other international figures in Zambia are more circumspect. The **German** ambassador, **Brandt Finke**, said:

*“I am a little disappointed that the debate has drifted more toward procedures and roadmaps rather than the content; you should ask which ones are the contentious and non contentious issues.”<sup>12</sup>*

### **ERB announces unexpected fuel increases**

The **Energy Regulation Board (ERB)** increased fuel prices 15% on 12 May in response to the weakness of the kwacha, drawing criticism from opposition parties and industry bodies. The regulatory agency increased petrol by 15% to K8.74 (\$1.2) per litre (p/l), diesel 15% to K7.59 (\$1.03) p/l, and kerosene by 15% to K5.40 (\$0.75) p/l.<sup>13</sup> According to industry bodies the announcement of the increases was unexpected.<sup>14</sup>

*“We had no consultation or warning... the costs just went up overnight...this is not the way a government body should function.”<sup>15</sup>*

ERB board chairperson, pastor **Geoff Mwape**, said that the increase was made because of the volatility of the kwacha.<sup>16</sup> Mwape argued that price adjustments were essential to ensure full cost recovery in the supply chain and ensure enough revenue to purchase future petroleum products.<sup>17</sup> In the past year the ERB has reduced the price of a number of fuels as a result of falling international oil prices and the stabilisation of the kwacha.<sup>18</sup> The ERB last increased fuel pump prices in April 2014 and the kwacha has depreciated against the dollar over 25% in the last 12 months. The depreciation was particularly marked in the first quarter of 2015 when it fell 18% against the dollar. At time of writing the kwacha was trading at K7.14 to the dollar. It has strengthened by 4.2% against the dollar in May.<sup>19</sup>

Industry bodies have criticised the increase in tariffs. The **Zambian Chamber of Mines (ZCM)** has warned that the fuel adjustment will have a negative affect on mining firms' operating costs.<sup>20</sup> ZCM president

<sup>8</sup> Source: NGO, Lusaka

<sup>9</sup> Zambia Reports, 5 May 2015

<sup>10</sup> Source: EFZ, Lusaka

<sup>11</sup> Zambia Reports, 12 May 2015

<sup>12</sup> Zambia Reports, 21 May 2015

<sup>13</sup> Open Zambia, 13 May 2015

<sup>14</sup> Lusaka Times, 13 May 2015

<sup>15</sup> Source, business association, Lusaka

<sup>16</sup> ERB Press Statement, 13 May 2015

<sup>17</sup> ERB Press Statement, 13 May 2015

<sup>18</sup> Lusaka Times, 12 May 2015

<sup>19</sup> XE.com

<sup>20</sup> Lusaka Times, 13 May 2015

**Jackson Sikamo** said most mining companies in the country would be forced to implement cost-reduction measures to mitigate the increase in fuel prices.<sup>21</sup> According to business sources in Zambia:

*“We are under great pressure due to the weakness of the kwacha...we know the government is as well but passing it onto us stops us from making jobs and bringing in money.”*<sup>22</sup>

The opposition UPND and the **Rainbow Party**, led by former PF justice minister **Wynter Kabimba**, have also criticised the price increase. They claim that the increase puts unfair pressure on Zambians at a time when the weak currency has increased the cost of living.<sup>23</sup> However consumer price index (CPI) inflation held steady across March and April at 7.2%.<sup>24</sup> The UPND argued that a reduction in fuel pump prices in December 2014 was politically motivated and that government had the financial resources to not only keep the price the same but also to revise it downwards.<sup>25</sup>

### Lungu moves against the cartel, but his motives are unclear

Lungu has moved against members of the so-called ‘cartel’ that held great influence under previous administrations. However commentators, including from within the PF, have questioned whether he is truly cracking down on corruption or attacking his political opponents. Lungu suspended cartel member **Mutembo Nchito** from his position of Director of Public Prosecutions (DPP) in February 2015. Lungu appointed a tribunal to probe Nchito’s conduct while in office. Judge **Annel Silungwe** chairs the tribunal investigating allegations that Nchito entered into *nolle prosequi* (involuntary dismissal) agreements with regard to charges related to his own interests.<sup>26</sup> For example, on 20 February Nchito declined to prosecute a matter in which he himself was an accused. It was this case that led Lungu to order his suspension.<sup>27</sup>

The tribunal investigation into Nchito has sparked a media war between **Post Newspapers**, whose owner **Fred M’membe** is close to Nchito, and the PF. Both Nchito and M’membe are reportedly members of the so-called ‘cartel’ that also includes **Zambia Finance Bank** chairman **Rajan Mahtani**.<sup>28</sup> The cartel reportedly had unprecedented access and influence in the early years of the Sata administration, which they allegedly used for personal gain. However they backed a rival candidate to Lungu for the PF nomination following Sata’s death and are out of favour with the current administration.<sup>29</sup>

The Nchito tribunal has drawn in the other members of the cartel. The ZPS issued a summons to question Mahtani in relation to the Nchito tribunal on 14 May. The summons relates to Nchito's issuing of a suspicious *nolle prosequi* for Mahtani, after the court ruled he should face forgery charges. The tribunal alleges that Mahtani then withdrew a case to recover the value of allegedly forged goods from the government as a ‘bribe’ worth \$4.3m.<sup>30</sup> Mahtani left the country for **Canada** on 14 May, reportedly after receiving a phone call from the ZPS.<sup>31</sup> Police arrested and questioned M’membe for publishing allegedly illegally obtained documents related to the Nchito tribunal and government finances on 11 May. They released him without charge.<sup>32</sup> The Post has been fervent in its defence of Nchito, publishing regular articles and editorials attacking the government and the tribunal.<sup>33</sup>

*“There are questions over whether this is truly an anti-corruption crusade or just two rivals sizing each other up.”*<sup>34</sup>

<sup>21</sup> ZNBC, 14 May 2015

<sup>22</sup> Source: business association, Lusaka

<sup>23</sup> Lusaka Voice, 18 May 2015

<sup>24</sup> Lusaka Times, 30 Apr 2015

<sup>25</sup> Zambia Watchdog, 15 May 2015

<sup>26</sup> Zambia Daily Mail, 23 May 2015

<sup>27</sup> Zambia Daily Mail, 23 May 2015

<sup>28</sup> Zambia reports, 20 Nov 2014

<sup>29</sup> Zambia reports, 20 Nov 2014

<sup>30</sup> Zambia Reports, 20 May 2015

<sup>31</sup> Zambia Watchdog, 14 May 2015

<sup>32</sup> Times of Zambia, 12 May 2015

<sup>33</sup> Post Newspapers, Mar, Apr, May 2015

<sup>34</sup> Source: thinktank director, Lusaka

*“The cartel was part of the problem of corruption in Zambia; weakening their power is a good thing... but will Lungu tackle corruption when it doesn’t benefit him politically?”<sup>35</sup>*

Lungu has a clean corruption record as a minister that appears to have extended into his presidential term. **Kaiza Zulu**, a senior political adviser to the presidency, has been the target of the only corruption allegation of Lungu’s presidency so far. Sources within government alleged that Zulu solicited \$200,000 for access to Lungu from a **Chinese** construction company.<sup>36</sup> The **Anti-Corruption Commission (ACC)** investigated the incident but found that the allegations were false and cleared Zulu in April.<sup>37</sup> Lungu claims his clean record is evidence that a desire to decrease corruption is behind the moves against Nchito and Mahtani.<sup>38</sup> However, sources within the PF believe that the tribunal and related actions are more about taking out rivals than ensuring good governance. Some also argue that the removal of Nchito stops his investigation into former **Movement for Multiparty Democracy (MMD)** president **Rupiah Banda** (2008-2011):

*“I am not impressed with the President... he has embraced corrupt elements in his government and corruption must be fought earnestly...if you remove a DPP so that certain people [implying Banda] who are being prosecuted can have a way out, what do you call that?”<sup>39</sup>*

## Implications

Lungu’s political reputation now appears to rest on his ability to enact constitutional reform – a key manifesto promise of the PF’s 2011 election campaign – in the final two years of the ruling party’s mandate. However, the current plan of a two-step adoption of a new constitution raises questions over what the government considers “uncontroversial” enough to bypass direct democracy. With important donors such as the US backing the reforms and the highly influential CCZ sitting on the fence, Lungu needs to make his plan a reality. He has a slim nine-seat majority in the national assembly and it is unlikely that PF MPs will rebel against the bill. The NGOs that are the bill’s most vocal opponents draw their support primarily in the cities, away from the PF’s more rural voter base. Lungu, like his predecessor, can afford to ignore them and the “non-controversial” aspects of reform will likely pass.

The ERB’s price increases are necessary in the context of a fluctuating kwacha. Zambia centrally purchases all petroleum products that come into the country and refines them prior to selling them on to oil marketing companies who handle distribution. This makes the price of fuel highly sensitive to currency fluctuations. The ERB’s fuel price increase will have an effect on Zambian businesses which will see a rise in costs and will also lead to an increase in CPI inflation in May. Zambia’s fuel importing system is comparatively costly due to the number of organisations that handle the fuel. The Lungu government has yet to release any plans for either improving the single pipeline and refinery that handle all petroleum imports or deregulating the sector to allow for competition.

The ‘cartel’ of Nchito, Mahtani and M’membe has operated with impunity in Zambia for years. They have increased the risk of doing business – allegedly orchestrating the expropriation of **Zambezi Portland Cement** from **Italy-based Ventriglia** to Mahtani in December 2013.<sup>40</sup> If the allegations against Nchito turn out to be true, then they will have also undermined the judiciary. Lungu’s desire to hold them accountable for their actions is, in some ways, justified. However, the risk that corruption poses to businesses will not decrease unless Lungu also ensures that the anti-corruption mechanisms in Zambia are independent and powerful. If this is not the case, then Lungu’s actions against the cartel are an example of a leader interfering with judicial process, not taking on corruption.

<sup>35</sup> Source: anti-corruption expert, Johannesburg

<sup>36</sup> Politico Zambia, 1 May 2015

<sup>37</sup> Zambia Reports, 27 Apr 2015

<sup>38</sup> Politico Zambia, 1 May 2015

<sup>39</sup> Source: senior PF figure, Lusaka

<sup>40</sup> Zambia Reports, 19 Mar 2015

### About Africa Risk Consulting:

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