

## AFRICA RISK CONSULTING

## Zambia Monthly Briefing February 2018

## Zambia Summary 15 February 2018

*Zambia's constitutional court adjourns the case testing President Edgar Lungu's (2015-present) eligibility to contest the 2021 presidential election. The case, which four opposition parties brought to clarify whether Lungu can run in 2021, cannot be heard until a complaint lodged against constitutional court president, Justice Hilda Chibomba, is resolved. Zambia's mines minister, Christopher Yaluma, states that annual copper output is expected to rise to 1.5 million tonnes, mainly due to a boost in electricity supply. Zambia's high court dismisses Canada-based First Quantum Minerals' bid to stop the lawsuit of state-owned mining company, ZCCM-IH, which aims to sue First Quantum for \$1.4 billion. Ethiopia-based Ethiopian Airlines signs an agreement with Zambia to relaunch the national carrier, Zambia Airways, which went into liquidation in 1994.*

## Constitutional court adjourns case to decide Lungu's eligibility for 2021 election

Zambia's constitutional court has adjourned the case testing President **Edgar Lungu's** (2015-present) eligibility to contest the 2021 presidential election.<sup>1</sup> Four opposition parties – the **Christian Democratic Party**, **Zambia Republican Party**, **New Congress Party**, and the **Citizens Democratic Party** – brought the case on 18 January 2017 to clarify whether Lungu can run in 2021. The four petitioning parties are reportedly allied with Lungu and his **Patriotic Front** party and wish to see him run in 2021.<sup>2</sup> However, according to Justice **Anne Sitali**, the case cannot be heard until a complaint lodged against constitutional court president, Justice **Hilda Chibomba**, is resolved.<sup>3</sup> The four petitioners filed a complaint with the **Judicial Complaints Commission** that Chibomba shares the same lawyers, **Malambo and Company**, with **Hakainde Hichilema's** opposition party, the **United Party for National Development (UPND)**.<sup>4</sup> Sources state that Lungu will hope to remove Chibomba and replace her with the deputy-president of the constitutional court, **Mugeni Mulenga**, who reportedly

*"...helped Lungu assume the party presidency in 2014 and later helped him to become the PF's presidential candidate. Her promotion to deputy president is largely perceived as a reward for the favour she did for Lungu."<sup>5</sup>*

Other parties, such as the UPND and civil society organisations, such as the **Law Society of Zambia**, have applied to join the proceedings. These parties are arguing that Lungu is currently serving his second term, having served his first term after Lungu won a 2015 election to assume the presidency after the death of President **Michael Sata** (2011-2014) in 2014.<sup>6</sup> The issue is whether this first election counts as Lungu's first term, which would mean that he is now in his second, and constitutionally mandated final, term. However, a clause in the 2016 constitution also states that if an election is held due to the removal of a president, that period would only be considered a full term if it is three years before the next general election.<sup>7</sup> Thus, if the term was less than three years, it would

<sup>1</sup> Africa News, 31 Jan 2018.

<sup>2</sup> Lusaka Times, 18 Jan 2017.

<sup>3</sup> Africa News, 31 Jan 2018.

<sup>4</sup> Africa News, 31 Jan 2018.

<sup>5</sup> Source, political analyst, Lusaka.

<sup>6</sup> Lusaka Times, 21 Feb 2017.

<sup>7</sup> Africa News, 31 Jan 2018.

not be considered a full term. Lungu served for one year and six months for his first term.<sup>8</sup> According to a Zambia-based political analyst,

*“President Lungu was already serving a term under the 1996 Constitution and therefore does not enjoy the provisions of the 2016 amended constitution as far as re-election is concerned, under Articles 106, but his vice-president, would should he die or resign as president. Therefore, President Lungu does not qualify under the current provisions being advanced by his party and the surrogate political parties. The law cannot be applied in retrospect.”<sup>9</sup>*

Following the 1996 constitution, article 35 states that “a person who has twice been elected as president shall not be eligible for re-election to that office.”<sup>10</sup> Lungu will thus hope that the constitutional court finds that the 2016 constitution applies in this matter, allowing him to run in 2021, whereas the UPND will hope the 1996 constitution applies. However, before the court can issue a ruling, it must first resolve the allegations against Chibomba.

### Mines minister expects copper output to rise to 1.5 million tonnes

The now former mines minister, **Christopher Yaluma**, stated on 6 February that annual copper output is expected to rise to 1.5 million tonnes, mainly due to a boost in electricity supply.<sup>11</sup> Yaluma made the comments at the **African Mining Indaba** held in **Cape Town (South Africa)** from 5-8 February.<sup>12</sup> Yaluma stated that previously the mining sector was restricted to 70% power availability and that with an increase to 100%, copper production can rise from 800,000 tonnes per year to 1.5 million tonnes.<sup>13</sup> Zambia’s copper output increased 100,000 tonnes year-on-year in 2017, reaching 850,000 tonnes produced.<sup>14</sup> President Lungu replaced Yaluma with a new mines minister, **Richard Musukwa**, on 14 February, though has not yet given reasons for the change.<sup>15</sup>

Yaluma’s announcement came as several mining companies announced increased copper output. **Australia-based EMR Capital** stated on 14 February that it plans to double production at its **Lubambe** copper mine to above 40,000 tonnes per year;<sup>16</sup> **Konkola Copper Mines (KCM)** plans to lift copper production to 500,000 tonnes per year now that it has secured funding after **Vedanta Resources** invested into KCM, according to CEO **Steven Din**, on 12 February;<sup>17</sup> and **Canada-based First Quantum Minerals’** subsidiary, **Kansanshi Mining**, recorded a 10% rise in copper output year-on-year in 2017.<sup>18</sup> The stable copper price has helped to drive increased output.<sup>19</sup>

While investors may see Yaluma’s announcement as positive, mining analysts do not see the numbers as reachable.

*“To base the production increase on a perceived resolution of power constraints is to base it on shifting sands. The increased supply will be dependent on improved and constant electricity supply, consistency in market policies, stable fuel prices and foreign exchange rate stability and volatility of international markets. However, as of 13 February, the **Energy Regulation Board (ERB)** announced an increase in fuel prices, and electricity is dependent on hydro power stations, reliant on natural rains. Already, the rain has not been good this season. If there is a slight shock*

<sup>8</sup> Africa News, 31 Jan 2018.

<sup>9</sup> Source, political analyst, Lusaka

<sup>10</sup> Source, political analyst, Lusaka

<sup>11</sup> IOL, 8 Feb 2018.

<sup>12</sup> IOL, 8 Feb 2018.

<sup>13</sup> IOL, 8 Feb 2018.

<sup>14</sup> Times of Zambia, 29 Jan 2018.

<sup>15</sup> Zambia Reports, 14 Feb 2018.

<sup>16</sup> Mining Weekly, 14 Feb 2018.

<sup>17</sup> Lusaka Times, 12 Feb 2018.

<sup>18</sup> Lusaka Times, 9 Feb 2018.

<sup>19</sup> Times of Zambia, 29 Jan 2018.

*in any of these factors, the government's expectation to double copper outputs in one year may be a mirage.”<sup>20</sup>*

### High court rules ZCCM-IH case against First Quantum Minerals can proceed

Zambia's high court on 26 January dismissed First Quantum Minerals' bid to stop the lawsuit of state-owned mining company, **ZCCM-IH**, which aims to sue First Quantum for \$1.4 billion.<sup>21</sup> ZCCM-IH sued First Quantum in October 2016 for \$1.4 billion, claiming that First Quantum borrowed \$2.3 billion from its Zambia-based subsidiary, Kansanshi Mining, without informing ZCCM-IH, which is a minority shareholder in Kansanshi Mining.<sup>22</sup> ZCCM-IH argues that First Quantum used the funds as cheap financing for other operations.<sup>23</sup> First Quantum asked the high court in February 2017 to dismiss the lawsuit, which First Quantum argued was taken without the approval of the ZCCM-IH board, which was dissolved when proceedings began.<sup>24</sup> According to high court judge **Winnie Mwenda**, the case will go ahead, as

*“...the issues raised by the parties in their respective affidavits are, in my view, so contentious that disallowing them to go to trial would not serve justice well.”<sup>25</sup>*

According to ZCCM-IH CEO **Pius Kasolo**, an out-of-court settlement could be reached, but the court case will run in parallel with discussions.<sup>26</sup> ZCCM-IH's \$1.4 billion claim includes \$228m in interest on the \$2.3 billion loan, as well as 20% of the principal amount, which equals \$528m.<sup>27</sup> According to a mining analyst, the ZCCM-IH is claiming for \$1.4 billion because that is the exact amount the government requested as a bailout from the **International Monetary Fund (IMF)** but the bailout

*“...was not given due to the high indebtedness of the country and the need to broaden the tax base and compliance levels. Since the money was 'borrowed' from a local company, the money could have been used to reduce Zambia's financial stress.”<sup>28</sup>*

### Ethiopian Airlines acquires a stake in Zambia Airways

**Ethiopia**-based **Ethiopian Airlines** signed an agreement on 16 January with Zambia to relaunch the national carrier, **Zambia Airways**, which went into liquidation in 1994.<sup>29</sup> Ethiopian Airlines acquired a 45% stake in the firm, while the Zambian government will remain the majority 55% shareholder.<sup>30</sup> Zambia Airways will focus on national and regional destinations before embarking on international flights.<sup>31</sup> The budget for the first year is estimated at \$30m, and operations are expected to start in 2018.<sup>32</sup> Ethiopian Airlines CEO **Tewolde Gebremariam** said,

*“The [re-]launching of Zambia Airways will enable the travelling public in Zambia and the Southern African region to enjoy greater connectivity options, thereby facilitating the flow of investment, trade and tourism, and contributing to the socio-economic growth of the country and the region.”<sup>33</sup>*

Currently, the high cost of local and regional air travel forces most Zambians to opt for road transport, which is more affordable. According to an analyst in Lusaka,

<sup>20</sup> Source, mining analyst, Zambia.

<sup>21</sup> Business Day, 26 Jan 2018.

<sup>22</sup> Business Day, 26 Jan 2018.

<sup>23</sup> Business Day, 26 Jan 2018.

<sup>24</sup> Business Day, 26 Jan 2018.

<sup>25</sup> Business Day, 26 Jan 2018.

<sup>26</sup> Business Day, 26 Jan 2018.

<sup>27</sup> Business Day, 26 Jan 2018.

<sup>28</sup> Source, mining analyst, Lusaka.

<sup>29</sup> Reuters, 16 Jan 2018.

<sup>30</sup> Reuters, 16 Jan 2018.

<sup>31</sup> Reuters, 16 Jan 2018.

<sup>32</sup> Xinhua, 17 Jan 2018.

<sup>33</sup> Business Daily Africa, 17 Jan 2018.

*“Many Zambians do not see the benefit of a national airline other than cosmetic national pride for the ruling elites. The airline business is not lucrative in Zambia, due to the low local market opportunities and there have been calls to halt the project until the economy is more sound.”<sup>34</sup>*

However, Ethiopian Airlines may be able to properly manage Zambia’s airline. According to the **International Air Transport Association (IATA)**, Ethiopian Airlines is the largest airline in **Africa** by revenue and profit.<sup>35</sup> Ethiopian Airlines also operates and manages **Malawi Airlines** and **Togo-based ASKY**.<sup>36</sup> Zambia’s transport and communications ministry plans to refurbish or build new airports in all ten provincial towns, including a \$350m upgrade for **Kenneth Kaunda International Airport** and airports in **Ndola** and **Livingstone**.<sup>37</sup> Zambia is expected to earn up to 50% of the estimated \$1.5 billion revenue generated by ticket sales, which is currently split between 10 foreign carriers which transport 1.5 million passengers from Zambia.<sup>38</sup> While the airline expects to be a budget airline, it notes that the target market is public service officials and business travellers, as well as international tourists.<sup>39</sup>

## Planner

2021 (**Zambia**) Scheduled presidential elections;

## Chronology

15 Feb 2018 **Lusaka (Zambia)** *Reuters*. President **Edgar Lungu** (2015-present) appoints **Margaret Mwanakatwe** as finance minister and **Richard Musukwa** as mines minister;

14 Feb 2018 **Lusaka (Zambia)** *Mining Weekly*. **Australia-based EMR Capital** plans to double production at **Lubambe** copper mine;

12 Feb 2018 **Lusaka (Zambia)** *Lusaka Times*. **Konkola Copper Mines** plans to increase copper production to above 500,000 tonnes;

9 Feb 2018 **Lusaka (Zambia)** *Lusaka Times*. **First Quantum Minerals’** subsidiary, **Kansanshi Mine**, records 10% rise in copper production year-on-year in 2017;

7 Feb 2018 (**Zambia**) *IOL*. Zambia expects annual copper output to rise to 1.5 million tonnes;

31 Jan 2018 **Lusaka (Zambia)** *Africa News*. Constitutional court adjourns case testing President Edgar Lungu’s eligibility for 2021 presidential election;

26 Jan 2018 (**Zambia**) *Business Day*. Zambian high court dismisses First Quantum Minerals’ bid to stop ZCCM-IH \$1.4 billion case against First Quantum;

16 Jan 2018 (**Zambia**) *Reuters*. **Ethiopian Airlines** acquires a 45% stake in **Zambia Airways** as it plans to revive the national airline;

<sup>34</sup> Source, analyst, Lusaka.

<sup>35</sup> Reuters, 16 Jan 2018.

<sup>36</sup> Reuters, 16 Jan 2018.

<sup>37</sup> The Southern Times, 19 Jan 2018.

<sup>38</sup> The Southern Times, 19 Jan 2018.

<sup>39</sup> The Southern Times, 19 Jan 2018.