

AFRICA RISK CONSULTING

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Zambia Summary 27 August 2019

The High Court of Zambia suspends hearings over the liquidation of Konkola Copper Mines (KCM), a subsidiary of United Kingdom-based mining company Vedanta Resources, until the Court of Appeal rules on whether arbitration should be heard in a South Africa-based court. Justice minister Given Lubinda says the government will move forward with plans to amend the constitution despite myriad criticisms over the proposed changes. The changes increase the president's power but also bypass key checks, such as parliament, on the executive to take on new external loans. State-owned power company Zesco Ltd announces that it will implement load shedding (scheduled blackouts to reduce pressure on the grid) due to its inability to produce enough power for all consumers.

High court stays proceedings on KCM liquidation

The **High Court of Zambia** suspended hearings on 27 August over the liquidation of **Konkola Copper Mines (KCM)**, a subsidiary of **United Kingdom**-based mining company, **Vedanta Resources**, until the **Zambian Court of Appeal** rules on whether arbitration should be heard in a **South Africa**-based court.¹ Vedanta sought an urgent court order in South Africa on 4 July to stop Zambia's state-owned mining investment firm, **ZCCM-IH**, from liquidating KCM (see *ARC Briefing Zambia July 2019*).² Vedanta holds an 80% stake in KCM, and ZCCM-IH owns 20%. Although Vedanta is unlikely to win this legal battle, the government is not expected to take similar action against other foreign mining companies operating in Zambia. The **Zambian courts** have consistently agreed that ZCCM-IH should be allowed to liquidate KCM, while Vedanta Resources has argued that arbitration should take place in South Africa, where the courts have appeared to be more in Vedanta's favour.

Vedanta has been in a legal battle with ZCCM-IH and the government since May when the government appointed a liquidator to run KCM.³ President **Edgar Lungu** (2015-present) has appeared steadfast in his resolve to liquidate KCM. Lungu refused to meet with Vedanta chairman **Anil Agarwal** during a state visit to **India**, while mines minister **Richard Musukwa** said that the government is willing to listen to any talks that lead to Vedanta's exit from KCM.⁴

Public opinion is on the government's side. According to a **Zambian-based political analyst**,

*"There is vast public support to get rid of Vedanta. They didn't pay contractors and were seen by the Zambians as exploiting the local labour. There are also rumours that they hid profits to pay less tax so did not actively support the Zambian economy. For Lungu, this is a great way to increase his popularity, but also to help himself and the [ruling] **Patriotic Front (PF)** party as well."⁵*

The source claims the main reason for the liquidation is that Vedanta stopped supporting the PF:

"Vedanta took the government for granted. They stopped funding the PF and helping to pay for the PF senior leaders' lifestyles. The fact that Vedanta is pretty much disliked by the majority of

¹ Reuters, 27 Aug 2019

² Reuters, 4 Jul 2019

³ Reuters, 27 Aug 2019 and see ARC Briefing Zambia May 2019

⁴ News Diggers, 23 Aug 2019

⁵ Source, political analyst, Zambia

*the population helped to push the government to liquidate – well, nationalise really – as did the fact that there are **Chinese** buyers waiting to take the KCM stake.”⁶*

Vedanta will hope that the court of appeal will allow the issue to be settled through arbitration in South Africa, where the company has a better chance of leaving without losing all its assets. However, High Court judge **Annessie Banda-Bobo** admitted that the chances of Vedanta winning the appeal from the 7 August high court decision to stop the liquidation and refer it to arbitration in South Africa are very low.⁷ The likely outcome is that the appeal will be rejected and Banda-Bobo will allow ZCCM-IH to continue the liquidation of KCM.

This does not mean that the government is selling off the assets, but actually the opposite:

*“The appointed liquidator, **Milingo Lungu**, is inside the PF inner circle and they want to keep the Vedanta assets and sell them off as a going concern to a new company.”⁸*

The government is unlikely to back down from this liquidation case, even with concessions from Vedanta. While this certainly increases the risk of the government bringing legal cases against other mining companies, they can mitigate this risk by learning from Vedanta’s mistakes: continuing corporate social responsibility programmes to keep public opinion positive and ensuring good relations with key stakeholders.

Government plans to push ahead with constitutional changes despite criticism

Justice minister **Given Lubinda** said the government will move forward with plans to amend the constitution despite myriad criticisms over the proposed changes. The changes increase the president’s power but also bypass key checks, such as parliament, on the executive to take on new external loans. The government released the **Constitution of Zambia (Amendment) Bill** for public comment on 21 June, outlining proposed changes to the 2016 constitution.⁹ The bill proposes a number of changes, the most important of which are to:¹⁰

- *“Revise the Preamble in order to reaffirm the Christian character of Zambia;*
- *Revise the electoral system for elections to the **National Assembly**;*
- *Revise the composition of the Cabinet;*
- *Revise the functions of the Public Protector;*
- *Revise the powers of the **Bank of Zambia** (central bank);*
- *Revise the functions of the Auditor-General.”¹¹*

The bill also provides for a coalition government if there is no outright majority in elections and removes a requirement that parliament approve all new state loans.

The **Law Association of Zambia (LAZ)** has spoken out against the amendments and petitioned the constitutional court to stop the passage of the proposed bill.¹² The LAZ argues that the first passage of the bill through parliament contravened the current constitution.¹³ Attorney-general **Likando Kalaluka** asked the constitutional court to dismiss the LAZ’s petition as the constitutional court’s jurisdiction does not extend to this case.¹⁴ The constitutional court is due to rule on the matter on 28 August.¹⁵

⁶ Source, political analyst, Zambia

⁷ Zambia Reports, 27 Aug 2019

⁸ Source, political analyst, Zambia

⁹ Africa Blogging, 12 Aug 2019

¹⁰ Amendment bill 10, 2019

¹¹ Amendment bill 10, 2019

¹² Daily Mail, 28 Aug 2019

¹³ Daily Mail, 28 Aug 2019

¹⁴ The Mast, 22 Aug 2019

¹⁵ The Mast, 22 Aug 2019

Human rights NGO **Chapter One Foundation** has also petitioned the constitutional court, arguing that the amendments violate national values and principles of the current constitution and that the bill should be withdrawn.¹⁶

Despite these criticisms, parliamentary chief whip **Brian Mundubile** called on Zambians on 20 August to make their submissions regarding the amendments, showing no sign that the PF plans to amend the bill.¹⁷ The bill will require two-thirds support of all National Assembly members before President Edgar Lungu can sign it into law.

The amendments would increase the risk that the government could continue to borrow without checks and balances, exacerbating an already large external debt. Additionally, the amendments increase presidential power, increasing the risk of political conflict if Lungu and the PF win the 2021 presidential elections. Conservatives may also use the change in the preamble to “*Christian*” to continue a crackdown on homosexuality in the country, worsening the human rights situation.¹⁸

Zesco to continue power cuts due to low water levels and station faults

State-owned power company **Zesco Ltd**, announced on 22 August that it would implement load shedding (scheduled blackouts to reduce pressure on the grid) due to its inability to produce enough power for all consumers.¹⁹ The load shedding will negatively affect the economy, as businesses will be forced to close during the blackouts, including larger mining companies that will either be forced to shut down or to use expensive generators. Zesco said that a fault at **Maamba Collieries** power station necessitated the load shedding, which will continue indefinitely.²⁰ Sources state that load shedding could increase from the current four hours to six to ten hours per day. The capital, **Lusaka**, experienced 10 hours without power on 20 August.²¹

Power cuts have been detrimental to the economy, as mining companies are forced to use expensive generators to remain in operation and smaller businesses are forced to close during the blackouts. Load shedding will continue due to Zambia’s reliance on hydroelectricity for power. Almost 90% of Zambia’s electricity is produced via hydropower, but persistent drought has caused low water levels, which have hampered generation at the **Kariba** power dam.²² The level of the dam, which generates electricity by running water through a turbine from the lake to a river, has dropped from 86% full on 8 July 2018 to just 27% a year later. The lower ‘dead water’ is unusable for electricity generation as it is below the inlet pipe to the turbines.

¹⁶ Daily Mail, 27 Aug 2019

¹⁷ Daily Mail, 28 Aug 2019

¹⁸ The Mast, 26 Aug 2019

¹⁹ News Diggers, 22 Aug 2019

²⁰ News Diggers, 22 Aug 2019

²¹ News Diggers, 22 Aug 2019

²² RFI Afrique, 22 Jul 2019

Planner

28 Aug 2019 **Lusaka (Zambia)** Constitutional Court ruling on constitutional amendments;

24 Oct 2019 **(Zambia)** Independence Day;

20 Nov 2019 **Lusaka (Zambia) Bank of Zambia** (central bank) Monetary Policy Committee media briefing;

2020 **(Zambia)** Construction scheduled to begin on **Batoka Gorge Power Plant**;

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

Chronology

25 Aug 2019 **Lusaka (Zambia)** *Reuters*. Agriculture minister **Michael Katambo** introduces a cap on the maize price of \$198 per tonne to keep it affordable;

23 Aug 2019 **Lusaka (Zambia)** *Lusaka Times*. A **South African** high court refuses Zambia's state-owned mining company **ZCCM-IH** request for leave to appeal over a previous ruling that stopped the government's liquidation of **Vedanta Resources' Konkola Copper Mines**;

23 Aug 2019 **Lusaka (Zambia)** *Reuters*. Finance minister **Bwalya Ng'andu** says that **Zambia** will avoid a default and rein in debt despite worries over the country's rising external debt;

22 Aug 2019 **Lusaka (Zambia)** *Lusaka Times*. The government says it will find a new investor for **Konkola Copper Mines** after the court processes are concluded, a sign the government does not plan to stop the liquidation of the **United Kingdom**-based **Vedanta Resources** asset;

21 Aug 2019 **Lusaka (Zambia)** *Lusaka Times*. President **Edgar Lungu** calls for increased bilateral trade with **India** during a state visit;

20 Aug 2019 **Lusaka (Zambia)** *Reuters*. President **Edgar Lungu** says he will not meet with **Anil Agarwal**, the chair of **United Kingdom**-based **Vedanta Resources**, over the liquidation of Vedanta subsidiary **Konkola Copper Mines**, while on a state visit to **India**;

16 Aug 2019 **Kampala (Uganda)** *BBC*. The **Ugandan** and **Zambian** governments reject claims that they asked **China**-based telecommunications company **Huawei** to hack into opposition leaders' accounts;

14 Aug 2019 **Lusaka (Zambia)** *The Lusaka Times*. President **Edgar Lungu** refuses to stop the liquidation of **Konkola Copper Mine** despite a meeting with **Anil Agarwal**, the chairman of parent company, **United Kingdom**-based **Vedanta Resources**;

13 Aug 2019 **Lusaka (Zambia)** *Bloomberg*. The **Law Association of Zambia** asks the constitutional court to block the government's plan to change the constitution which would remove the requirement that parliament approves all new government loans;

13 Aug 2019 **Lusaka (Zambia)** *Lusaka Times*. A court adjourns a corruption trial involving former social welfare minister **Emerine Kabanshi** until September in a case that prompted some donors to freeze aid;

9 Aug 2019 **Lusaka (Zambia)** *africanews*. The mining ministry asks **Switzerland**-based mining company **Glencore** to rescind its decision to close two shafts at the **Nkana** mine;

7 Aug 2019 **Lusaka (Zambia)** *MoneyWeb*. A **Lusaka** high court refuses **United Kingdom**-based **Vedanta Resources'** application to halt the government's liquidation of its subsidiary, **Konkola Copper Mines**, and plans to review the ruling;

5 Aug 2019 **Lusaka (Zambia)** *IOL*. Finance minister **Bwalya Ng'andu** says **Zambia** will delay implementing a new sales tax until January 2020;

4 Aug 2019 **Lusaka (Zambia)** *Zambia Reports*. The **International Monetary Fund** expresses concern over Zambia's debt, which currently stands at 78% of GDP, but welcomes the **Bank of Zambia's** monetary tightening measures;

31 Jul 2019 **Lusaka (Zambia)** *The East African*. **United Kingdom**-based mining company **Vedanta Resources** launches arbitration proceedings in **South Africa** over the government's attempt to liquidate its subsidiary, **Konkola Copper Mines**;

29 Jul 2019 **Lusaka (Zambia)** *Lusaka Times*. The high court hears **United Kingdom**-based **Vedanta Resource's** application to stay the winding-up of its subsidiary, **Konkola Copper Mines**, which state-owned mining company **ZCCM-IH** is attempting to liquidate;

25 Jul 2019 **Lusaka (Zambia)** *Lusaka Times*. The **Central Statistical Office** says that inflation rose 0.2% month-on-month to 8.8% in June 2019;

25 Jul 2019 **Lusaka (Zambia)** *Yahoo!* Finance minister **Bwalya Ng'andu** says the economy will grow 2.5% in 2019, down from a forecasted 4%;

23 Jul 2019 **Lusaka (Zambia)** *Reuters*. A **South African** high court orders the **Zambian** government to stop the sale of **Konkola Copper Mines**, a subsidiary of **United Kingdom**-based **Vedanta Resources**, until arbitration is completed.

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