



Inter-Parliamentary Union

For democracy. For everyone.

## Zambia

|                                    |                                  |
|------------------------------------|----------------------------------|
| ZM01 - Michael Kaingu              | ZM11 - Maxwell Mwale             |
| ZM02 - Jack Mwiimbu                | ZM12 - Kenneth Konga             |
| ZM03 - Garry Nkombo                | ZM13 - Annie Munshya Chungu (Ms) |
| ZM04 - Request Muntanga            | ZM14 - Howard Kunda              |
| ZM05 - Boyd Hamusonde              | ZM15 - Michael Katambo           |
| ZM06 - Moono Lubezhi (Ms.)         | ZM16 - James Chishiba            |
| ZM07 - Dora Siliya (Ms.)           | ZM17 - Hastings Sililo           |
| ZM08 - Mwalimu Simfukwe            | ZM18 - Lucky Mulusa              |
| ZM09 - Sarah Sayifwanda (Ms.)      | ZM19 - Patrick Mucheleka         |
| ZM10 - Lt. Gen. Ronnie Shikapwasha | ZM20 - Eustacio Kazonga          |

***Decision adopted unanimously by the IPU Governing Council at its 196<sup>th</sup> session (Hanoi, 1<sup>st</sup> April 2015)***

The Governing Council of the Inter-Parliamentary Union,

*Referring* to the case of the above-mentioned individuals, all elected in the September 2011 parliamentary elections as members of political parties that are now in the opposition, and the decision which it adopted at its 195<sup>th</sup> session (October 2014),

*Considering* the report of the on-site mission that the then president and current member of the Committee, Senator Juan Pablo Letelier, conducted to Zambia from 22 to 25 September 2014 at the invitation of the Speaker of the National Assembly (CL/196/12(b)-R.1), *considering also* the information provided by the Speaker of the National Assembly at the hearing with the Committee on 27 March 2015,

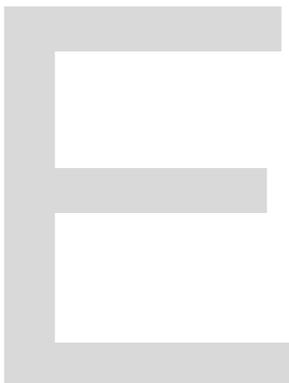
*Considering* that the mission report underscores that the following issues provide the essential backdrop for understanding the cases of the individual members of parliament before the Committee:

- The results of the 2011 legislative elections

The September 2011 legislative elections produced a hung parliament with 60 seats for the Patriotic Front (PF), 55 for the Movement for Multiparty Democracy (MMD) and 28 for the United Party for National Development (UPND). As a result of several successful court petitions asking for the disqualification of opposition seats, party switching and the acceptance of offers of ministerial and deputy ministerial posts by members of MMD and UPND while remaining members of their original parties, the balance of power in Parliament was altered;

- The existence and application of the Public Order Act

The contents, use and interpretation of the Public Order Act, including with regard to the role and discretion of the police, have given rise to controversy. According to the opposition parliamentarians, the act was being used discriminately as a tool to intimidate and harass them. The authorities acknowledged that there were challenges, but stated that everything was being done to administer the act fairly;



- The fight against corruption

Although the government and judicial officials underscored the need to show zero tolerance for corruption, the opposition stressed that most, if not all, of the corruption-related cases brought against political opponents were not based on any evidence, but were politically motivated. In this respect, it should be noted that it was often mentioned during the mission that clear and comprehensive rules governing the financing of political parties and political campaigns were absent;

- Constitutional reform

Discussions have been ongoing about the need for a new Constitution that would provide inter alia a different blueprint for Zambia's state structures, including with regard to the powers of the President, which the opposition held were excessive,

*Considering* that the original complaint made reference to allegedly politically motivated legal proceedings against several opposition parliamentarians and that, taking into account, as well the information provided by the Speaker of the National Assembly at the hearing with the Committee, the current situation for those listed below appears to be as follows:

- Mr. Konga is not subject to any legal proceedings and all restrictions on his property have been lifted;
- The petition challenging Ms. Sayifwanda's election was dismissed and she was declared validly elected;
- Mr. Simfukwe was acquitted on a charge of abuse of authority in February 2013;
- Mr. Hamusonde is not subject to any legal action;
- Mr. Mwale was sentenced on 25 February 2015 at first instance to a 12-month prison term on the charge of abuse of authority; he was acquitted on the charge of possession of property suspected of being the proceeds of crime; Mr. Mwale and the prosecution have appealed the verdict on the first and second charge respectively,

*Considering* that Mr. Mulusa, Ms. Siliya and Lt. Gen. Shikapwasha, the latter two being allegedly subjected to politically motivated proceedings on charges of abuse of authority, were not available at the time of the mission and that no information has been forthcoming from the complainants on their situation since the mission,

*Considering* that Mr. Kaingu and Mr. Chishiba have switched political parties and are now members of the ruling Patriotic Front, with Mr. Kaingu having been appointed Minister of Education, Science and Technology by the new President of Zambia, Mr. Lungu, who was elected in the by-election held on 20 January 2015,

*Considering* that, according to the Speaker, the appointment by the current President and subsequent ratification by the National Assembly of the Chief Justice in February 2015 should help accelerate the treatment of the petitions requesting the Supreme Court to allow Mr. Mwale, Mr. Siliilo and Ms. Siliya to re-contest their seats in Parliament,

*Considering* the allegations contained in the mission report about specific incidents of violations under the Public Order Act, namely the arbitrary arrests in December 2012 of Ms. Chungu, Mr. Katambo, Mr. Kunda and Mr. Chishiba, the arbitrary arrest of Mr. Mucheleka in June 2013, and the arbitrary obstructions by police of three rallies. Mr. Mwiimbu and Mr. Nkombo participated in the first rally, organized in Kanyama in September 2012 with the authorization of the High Court. Mr. Kaingu participated in the second rally in Mongu in October 2012, while Ms. Lubezhi participated in the third rally in Namwala in December 2012; *considering* also that since the mission there have not been any new reports of alleged violations of member of parliaments' rights to freedom of assembly and to liberty under the Public Order Act,

*Considering* that the Speaker of the National Assembly stated that the current President of Zambia was taking steps to promote several legislative reforms and had proposed a two-pronged approach to the adoption of a new Constitution, the draft of which had been released to the public in October 2014; with the exception of the bill of rights, which adoption would require a referendum to be simultaneously held with the general elections in 2016, all other matters covered by the draft Constitution, in which several of the issues at stake in the cases at hand had found their way, could be taken up as early as June 2015 when the National Assembly reconvened,

*Considering* also that the Speaker stated that he was committed to promoting discussion and agreement on a new version of the Public Order Act, that he had spoken to the President of Zambia for this purpose and that discussions on a modernized version of the latter act should start soon and hopefully lead to a concrete outcome by 2016,

1. *Thanks* the Speaker and the other Zambian authorities for the full cooperation that they have extended to the mission, including the extensive documentation that they have provided;
2. *Endorses* the conclusions and recommendations contained in the mission report;
3. *Notes with concern* the report's references to incidents in 2012 and 2013 in which reliance on the Public Order Act appears to have run counter to member of parliaments' rights to freedom of assembly and to liberty;
4. *Is pleased* therefore at the prospect that effective action will be taken to modernize the Public Order Act; *trusts* that the authorities will put in place for this purpose a national consultative process involving all political parties, the police, the National Human Rights Commission, as well as other interested parties, with a view to ensuring that the concerns and challenges that have arisen in the cases at hand are properly addressed, including by giving due consideration to the recommendations made to this end in the mission report; *assures* that the IPU stands ready to assist in those efforts, including by sharing relevant experiences from other countries, should that be requested;
5. *Trusts* that, in the light of the announced revision of the Public Order Act and the absence of allegations of any new abuses in the last two years, there will be no repeat of the aforesaid incidents under the act; *requests* therefore Ms. Chungu, Mr. Katambo, Mr. Kunda, Mr. Mucheleka, Mr. Mwiimbu, Ms. Lubezhi and Mr. Kazonga to state whether they see any further need at this stage for the Committee to continue examining their case; also *requests* Mr. Muntanga to pronounce himself on this question with regard to his own situation;
6. *Is pleased* that progress is being made to promote a new Constitution; *wishes* to be kept informed of developments in this regard, in particular inasmuch as the discussions concern the regulation of issues related to public funding of political parties, fundraising, campaign spending and financial disclosure;
7. *Considers* in light of the need to ensure proper and timely representation of all Zambian citizens in the National Assembly that it is absolutely essential that the Supreme Court adopt without further delay a ruling on the petitions regarding the possibility for Ms. Siliya, Mr. Sililo and Mr. Mwale to re-contest their seats; *trusts* that the renewed impetus given to this matter will bring about a swift ruling; *wishes* to be kept informed in this regard;
8. *Is concerned* that the alleged attacker of Mr. Nkombo during the incident at a police station in February 2013 was not held to account, despite the existence of a report detailing his complaint and injury; *considers* that, even though Mr. Nkombo could have availed himself of legal avenues to pursue his claim civilly, his account of the incident and the medical report should have pushed the relevant authorities to establish full accountability for what occurred at the police station; *wishes* to know whether any further steps remain possible in this regard;
9. *Decides* to close the examination of the cases where legal proceedings against parliamentarians are not or no longer pending, including with regard to Mr. Konga, Ms. Sayifwanda, Mr. Simfukwe and Mr. Hamusonde; *decides* also to close the cases of Mr. Kaingua and Mr. Chishiba in the absence of any updated information on their part;
10. *Appreciates* the commitment expressed by the Speaker to make available a copy of the ruling in the case against Mr. Mwale; *requests* Ms. Siliya and Lt. Gen. Shikapwasha to indicate to the Committee whether they wish it to continue the examination of their case and, if so, on what grounds; also *requests* Mr. Mulusa, who was also not available to meet the mission in September 2014, to state whether or not he would like to see further examination of his case by the Committee;

11. *Requests* the Secretary General to convey this decision to the relevant authorities, the complainant, the parliamentarians directly concerned, and any third party likely to be in a position to supply relevant information;
12. *Requests* the Committee to continue examining this case and to report back to it in due course.