



Inter-Parliamentary Union
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132nd IPU Assembly

Hanoi (Viet Nam), 28 March - 1 April 2015



Governing Council
Item 12

CL/196/12(b)-R.1
30 March 2015

Committee on the human rights of parliamentarians

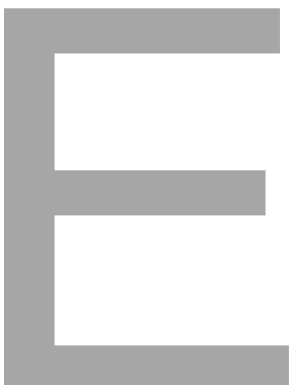
Mission report to Zambia 22-25 September 2014

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

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A. Origin and conduct of the mission

1. The situation concerns 20 Zambian parliamentarians, whose case was first submitted to the IPU Committee on the Human Rights of Parliamentarians at its 143rd session (January 2014). On that occasion, the Committee declared the case admissible and expressed some preliminary concerns about the merits of the case.

2. The Committee's concerns relate to allegations of arbitrary arrest and detention, of lack of due process in proceedings against parliamentarians, alleged violations of the rights to freedom of opinion and expression, freedom of assembly and association, allegations of ill-treatment and other acts of violence and allegations of the arbitrary invalidation of parliamentarians' mandates. The case has to be placed in the context of the legislative and presidential elections that took place on 20 September 2011 and that led to the election of Mr. Michael Sata from the Patriotic Front as the country's new President and produced a hung parliament.

3. In light of the high number of members of parliament concerned in the case, the diversity and complexity of the allegations and the relevance of the overall political context of the case, the Committee considered that it would be useful to carry out an on-site mission to Zambia for the purpose of enhancing its understanding of the issues at play through first-hand exchanges with the relevant executive, parliamentary and judicial authorities, the complainants and other interested parties. The Speaker of the National Assembly stated, at a hearing with the Committee at its 144th session (March 2014), that such a mission would be more than welcome.

4. The Committee designated its then President, Mr. Juan Pablo Letelier, to conduct the mission from 22 to 25 September 2014, dates which were mutually agreed with the parliamentary authorities. Mr. Letelier was accompanied by Mr. Rogier Huizenga, IPU Human Rights Programme Manager and Secretary of the Committee.

5. The Committee delegation met the following persons:

- Executive authorities

- Dr. Guy L. Scott, Vice-President of the Republic of Zambia
- Dr. Ngosa Simbyakula, Minister of Home Affairs
- Mr. Keith Mukata, Deputy Minister of Justice
- Mr. Gabriel Namulambe, Deputy Minister of Foreign Affairs

- Ms. Juliana Shoko Chilombo, Director, Parliamentary Business Division, Office of the Vice-President

- Judicial authorities

- Mr. Musa Mwenye, Attorney General
- Mr. Mutembo Nchito, Director of Public Prosecutions

- Parliamentary authorities and staff

- Rt. Hon. Justice Dr. Patrick Matibini, SC, MP, Speaker of the National Assembly
- Hon. Mkondo Lungu, Deputy Speaker of the National Assembly
- Ms. Doris Katai K. Mwinga, Clerk of the National Assembly
- Dr. G.H.N. Haantobolo, Deputy Clerk - Procedures

- Police authorities

- Mr. Solomon Jere, Deputy Inspector General of Police

- Political parties

- Mr. Hakainde Hichilema, President, United Party for National Development (UPND)
- Mr. W.K. Mutale Nalumango, National Chairman, United Party for National Development (UPND)
- Dr. Nevers Mumba, Leader, Movement for Multiparty Democracy (MMD)

- Members of parliament concerned

- Hon. Michael Zondani Katambo
- Hon. Garry G. Nkombo

- Hon. Howard Kunda
- Hon. Moono Lubezhi (Ms.)
- Hon. Annie Munshya Chungu (Ms.)
- Hon. Request Muntanga
- Hon. Kenneth Konga
- Hon. Maxwell Mwale
- Hon. Jack Mwiimbu
- Hon. Sarah Sayifwanda (Ms.)
- Other parliamentarians
- Hon. Ruben R. Phiri Mtolo, Party Whip, Member of Movement for Multiparty Democracy (MMD)
- Hon. Lazarus Chungu Bwalya, Vice-President, Foreign Affairs Committee
- National Human Rights Commission
- Ms. Florence Chiwesha, Director, Human Rights Commission
- Ms. Chibesa Maimbo, Principal Legal Counsel, Human Rights Commission
- Diplomatic community
- Mr. James Thornton, British High Commissioner to Zambia
- Others
- Mr. McDonald Chipenzi, Executive Director, Foundation for Democratic Process (FODEP)
- Mr. Rupiah Banda, Former President of Zambia

6. The delegation wishes to place on record its appreciation for all the steps taken by the parliamentary authorities to ensure the maximum fulfillment of its mandate. It also wishes to express its gratitude to the then Vice-President of Zambia, Mr. Guy Scott, who took time out of his busy schedule to meet the delegation twice.

B. Information gathered during the mission

1. The context of the case: The alleged persecution of the political opposition

On the basis of the conversations that the Committee delegation had with the authorities, complainants and other interested parties, it was clear that the following issues provided the essential backdrop for understanding the case of the individual members of parliament before the Committee:

- The September 2011 legislative elections produced a hung parliament with sixty seats for the Patriotic Front (PF), 55 for the Movement for Multiparty Democracy (MMD) and 28 for the United Party for National Development (UPND). Members of parliament belonging to the opposition told the delegation that after the elections the balance of power in parliament swiftly changed in favour of the PF as a result of:
 - (i) court petitions asking for the disqualification of all 55 MMD seats (several of those petitions were subsequently withdrawn);
 - (ii) offers of ministerial and deputy ministerial posts made to members of MMD and UPND.
- The contents, use and interpretation of the Public Order Act, including with regard to the role and discretion of the police. 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 regarding the Act, but stated that everything was being done to administer it fairly.
- Several government and judicial officials stated that there were real concerns about corruption for which there had to be zero tolerance. The opposition, however, stressed that most, if not all, of the cases brought against political opponents were not based on any evidence, but were politically motivated. In this respect, it should also be noted that it was often mentioned that clear and comprehensive rules governing the financing of political parties and political campaigns were absent.

- Discussions about a new political constitution that would provide a different blueprint for Zambia's state structures, including with regard to the powers of the President, which the opposition held were too excessive.

2. Concerns related to the Public Order Act

2.1. Controversy over the Public Order Act

2.1.1 The Public Order Act (POA) dates back from colonial times and aims at regulating public gatherings in the interest of ensuring public order. In a 1995 landmark decision, the Supreme Court ruled that the requirement that organizers of such public meetings had to obtain a police permit for holding public gatherings contravened the constitution and was therefore illegal. When the act was amended, the permit requirement was replaced by a requirement for organizers of meetings and processions to give fourteen days' written notice to the police and to provide marshals, among other things, who would cooperate with the police to ensure peace. The fourteen days' notice was subsequently reduced to seven through a further amendment. However, although the act includes a grievance procedure in cases where the police have not permitted a meeting, it still states that announced meetings and processions may not be held if the police determine that they would not be able to ensure law and order. Opposition members of parliament have emphasized therefore that in practice the "notice" requirement has had the same effect as the "permit" requirement in the past.

2.1.2 In a statement made to the National Assembly on 17 July 2013, the Minister of Home Affairs stated that, under the POA, informing the police was in no way intended to be a pre-condition for parliamentarians to hold their public meetings. He stated that they "may hold such meetings or public rallies without informing the Zambian police at their own peril if trouble should arise in distant places where the Zambian police are not present and aware of such public meetings or public rallies." He concluded that "members of parliament are free to proceed to their constituencies anytime, any day to go and perform the functions of their offices." In a statement to the National Assembly on 24 September 2013, the same Minister mentioned that the notification for a public rally or march had to be lodged with the Zambian police in writing seven days before the event and had to contain the details required under the POA. He stated that he did not "practise selective application of the POA whenever it comes to the issue of holding public rallies or protests." The IPU delegation was also informed that a circular by the Home Minister had been sent to all members of parliament confirming their right to assemble and associate freely. The circular letter was the result of a meeting with the Speaker and Party Whips in response to concerns of members of parliament. The circular letter mentioned that members did not require police authority to meet constituents in the course of their duties or merely as visitors. It did, however, encourage members to inform the police of such activity to enable them to help provide services to members.

2.1.3 Yet, despite these developments regarding the POA, several interlocutors, including the then Vice-President of Zambia, acknowledged to the IPU delegation that challenges still persisted. While successive governments had insisted that the POA was impartially administered, the opposition felt that its administration was biased towards the Government. From time to time, the matter arose even on the floor of the Parliament.

2.1.4 The different views and challenges that were presented during the mission by the complainants and authorities with regard to the POA can be summed up as follows:

- There are very different views on the level of discretion that the police have under the POA to oppose rallies. Some opposition members of parliament claim that the police often kept insisting on the need for a permit, rather than simply complying with the requirement to give a week's notice. In the view of the opposition, as long as the basic information required for under the POA was presented in the notification, there was no justifiable reason for the police to oppose a meeting. It also emphasized that the Minister of Home Affairs' statement that the police notification was not a pre-condition for parliamentarians to hold public meetings in their own constituencies had not been implemented by the police. It should be noted that, in the meeting with the IPU delegation, the National Human Rights Commission mentioned that the police, certainly their officers stationed in more remote areas, did not necessarily have a copy of the act and were therefore sometimes unaware that permits were no longer required and what, if any, their margin of discretion was;

- The opposition claimed that the police, despite not having the powers to do so, regularly prevented opposition demonstrations from taking place, often invoked the lack of manpower or the presence of a threatening security environment as an excuse. It pointed out in this regard that there was no problem for demonstrations organized by the ruling party to take place, even if there were serious security concerns;
- Several of the authorities stated that it was critical for the police to be informed in time of planned rallies and gatherings, so as to ensure law and order. If there were challenges in ensuring the security of a particular demonstration in light of availability of police staff or of competing demonstrations, the police always offered alternative dates and/or venues to the organizers of the demonstrations. The authorities felt that the organizers often dismissed too easily the option of holding the demonstration at a slightly different time and place. They also underscored that the organizers could challenge any decision by the police before the Minister of Home Affairs and subsequently the Courts, but that this available legal route was rarely followed;
- In response to the authorities' defence that they prevented certain opposition meetings from taking place in the light of intelligence reports that members of another party were planning to attack the authorized procession, parliamentarians from the opposition questioned why the police disrupted the meetings rather than arrest those who were planning to attack a legitimate procession.

2.2. Incidents of arbitrary arrests of opposition parliamentarians under the POA

2.2.1 *The arrest and detention in December 2012 of Ms. Annie Chungu, Mr. Michael Katambo¹, Mr. Howard Kunda (all members of parliament for the MMD) and Mr. James Chishiba (first MMD, but then PF)*

The aforesaid members of parliament, with the exception of Mr. Chishiba, provided extensive details to the IPU delegation about the alleged arbitrary arrest and detention to which they had been subjected for having allegedly committed the offence of unlawful assembly in breach of the POA and Chapter 113 of the Laws of Zambia. On or around 10 December 2012, they, along with their party President, Mr. Nevers Mumba, had driven Ms. Chungu to her constituency of Lufwanyama to meet constituents. During the visit, the MMD party also organized a private meeting, where Mr. Mumba spoke to registered members of the party. As the four individuals made their way back to Lusaka, they were stopped at a new checkpoint at the edge of town, but were subsequently allowed passage and stopped for lunch. On their way to Kitwe, they were stopped at another checkpoint and told to follow the police to the Central Police Station. When they arrived, their drivers were fined for dangerous driving, which fine was paid immediately. As they were returning to their cars, a commanding officer called them back in to speak with a "senior man." The four individuals were detained until 11 p.m. without being informed or charged and then all placed in a single cell in another police station for the night under trying conditions. The following morning, the "senior man" had arrived, claiming to be an arresting officer from the Copperbelt region, and charged the members with unlawful assembly. Pending the bail hearing, all the detained members were sent to Kamfinsa maximum security prison, where they spent the night in a cell with others convicted of murder, and not provided with any food or water. On 12 December 2012, all the victims posted bail and were able to travel back to Lusaka. By that time, they had gone two days without food, water or proper hygiene. Judicial proceedings began on 29 January 2013, with the State entering a *nolle prosequi* plea on 11 March 2014, effectively dropping the charges. Mr. Katambo told the IPU delegation that he had been told by the Magistrate never to repeat the same offence. The members of parliament affirm that the *nolle prosequi* entered by the prosecution was being abused by the State to avoid any charge of wrongful detention.

2.2.2 *Mr. Patrick Mucheleka (Independent)*

The IPU delegation had an extensive meeting with Mr. Mucheleka. According to Mr. Mucheleka, he faced arbitrary arrest, preventing him from visiting his supporters on 5 June 2013. According to the member, he was arrested by police in full combat gear for not obtaining permission from the authorities to venture into his constituency. The police reportedly further claimed that the member had committed an offence by engaging in a discussion on the removal of subsidies on fuel and maize. Mr. Mucheleka allegedly complained to the Speaker of the National Assembly about the harassment and

¹ On 10 February 2015, the Supreme Court upheld the decision of the Ndola High Court to nullify the election of MMD Masaiti member of parliament, Mr. Michael Katambo, because it was marred with corrupt activities.

the use of the Public Order Act by the police to prevent his meetings. A further complaint in this regard was submitted by Mr. Mucheleka to the Inspector-General of the Zambian police.

2.2.3 *Mr. Mwiimbu and Mr. Nkombo*

2.2.3.1 Despite the authorization granted by the High Court of Zambia for the opposition UPND and several members of Parliament – among them Mr. Mwiimbu and Mr. Nkombo – to hold a public meeting with other opposition leaders on 9 September 2012, the Zambian police sealed off the venue and violently stopped the meeting, which was being held in Lusaka's Kanyama compound. The police action prevented opposition members of Parliament from explaining issues before the National Assembly to the general public. According to the information provided by the National Assembly, on 9 September 2012, the Zambian police stopped the public meeting because, at the time, intelligence reports had indicated that political party members opposed to the planned meeting intended to clash with UPND supporters. To this end, the police suggested a suitable venue and date to UPND organizers to guarantee public safety.

2.2.3.2 The members of parliament were also part of the group of members of parliament who had informed the Inspector General of Police of Zambia by letter of 16 May 2013 of the organization of nationwide rallies and demonstrations. The same letter stated that relevant police commissioners in all 10 provinces of Zambia would be informed of the specifics of each of the events. By letter of 17 May 2013, the Director of Operations, signing for the Inspector General of Police, responded that the Police "do not support your intended meetings and processions on various grounds, among them lack of clarity on venues, dates, timings, routes and security plans for the events. While the police appreciate your intention to inform the various police commissioners in respective provinces, we would have appreciated if the specifics of each event were provided in your correspondence. This would have created the basis upon which to consider the appropriateness of your intended events."

2.2.4 *Mr. Kaingu²*

The IPU delegation was told that, despite sufficient notice, on 5 October 2012, police in Mongu, Western Province, blocked the opposition MMD from holding an indoor meeting of provincial party leaders and ordinary members that was supposed to be addressed by the party Vice-President for Political Affairs, Mr. Kaingu, also a member of parliament. On Sunday 9 October 2012, however, the police allowed the ruling Patriotic Front to hold a public meeting in Chilanga, Lusaka Province. The information provided by the National Assembly on 25 September 2013 confirms that Mr. Kaingu was prevented by police from holding an indoor meeting on 5 October 2012, while the ruling party, the Patriotic Front, was allowed to do so on 9 October 2012. The National Assembly explains this by referring to the fact that, during October 2012, the general security situation in the Western Province was volatile, particularly in Mongu. The volatility was attributed to a pro-secession group called Linyungandambo, which was holding clandestine meetings with a view to seceding from the rest of Zambia and declaring the independence of Barotseland. Owing to this situation, the Zambian police could not guarantee the security of the organizers of the meeting, and hence decided to block it.

2.3. Other alleged unlawful actions regarding the holding of political meetings

It was not possible for the delegation to obtain further information on allegations regarding several other alleged unlawful disruptions of past public meetings that formed part of the original complaints. This included the following incidents:

- On 17 December 2012, the police stopped a meeting being addressed by opposition UPND member of parliament Ms. Moono Lubezhi (UPND) and took her to Namwala police station, where she was interrogated for many hours. According to the information provided by the National Assembly, that day the Zambian police had stated that Ms. Lubezhi had addressed a meeting at a school within her constituency without notifying the police, as provided for under the Public Order Act. However, the police denied having interrogated her, stating that Ms. Lubezhi had merely been summoned to the police station and questioned over her disregard for the Public Order Act;

² In February 2015, while remaining a member of MMD, Mr. Kaingu was given the post of Minister of Education, Science and Technology in Zambia's new cabinet.

- On 6 June 2012, police disrupted a UPND meeting and procession that was moving towards the High Court of Zambia to present a petition. The meeting included UPND members of parliament. According to the National Assembly, on that day the Lusaka Police Division Command of the Zambian police force had disrupted the meeting and refused to allow UPND members to go ahead with the procession for the following reasons: (a) The Command had received intelligence reports that a group of political party members opposed to the procession had plotted to attack and disrupt it so as to prevent the UPND demonstrators from delivering their petition to the High Court; and (b) the organizers of the procession had already instituted legal proceedings against the police over how the Public Order Act was being administered and, therefore, policing the procession could have been construed as being in contempt of court. They had therefore been forced to disband it;
- In December 2012, the police stopped a public meeting that was to be held jointly in Lusaka by the opposition political parties Alliance for Democracy and Development (ADD), the United Liberal Party (ULP), the MMD and the UPND. The police sealed off the venue with thousands of riot police and beat anyone attempting to force their way into the meeting area.

3. Criminal cases brought against members of parliament: Alleged lack of due process

According to the original complainant, immediately following the legislative and presidential elections on 20 September 2011, the Patriotic Front Government started using the pretext of the “anti-corruption fight” to eliminate political competition. According to the complainant, apart from a few isolated cases that have gone to trial, the Patriotic Front’s accusations against opposition members have proved groundless. In some cases, the unsubstantiated prosecutions have been abandoned, but in others, the Government continues to press on despite the absence of evidence.

3.1. The case of Mr. Maxwell Mwale (former member of the Movement for Multiparty Democracy (MMD) and now member of the United Party for National Development (UPND))

3.1.1 On 3 February and 28 March 2012, Mr. Mwale was arrested and charged with two offences, namely: abuse of authority in violation of Section 99 of the Criminal Code and Chapter 87 of the Laws of Zambia, and possession of property suspected of being proceeds of crime in violation of Section 71 of the Forfeiture of Proceeds of Crime Act, No. 19 of 2010, respectively.

3.1.2 According to the indictment, Mr. Mwale, in the first count, is alleged to have abused his authority as Minister of Mines when he facilitated the issuance of mining licences to the Zhongui International Mining Industry Group in breach of the legal procedure governing the issuance of mining licences. On the second count, Mr. Mwale is alleged to have brought into Zambia, and retained, 5,000 bicycles reasonably suspected of being the proceeds of crime.

3.1.3 Mr Mwale affirms that, with respect to the charge of abuse of authority, the prosecution is acting maliciously since, at the time the licence was being issued, Mr. Mwale was not the Minister of Mines, as shown in the letter dated 8 September 2008 from Zhongui International Mining Industry Group to the then Minister of Mines, Dr. Kalombo Mwansa. The complainant emphasizes that the exploration licence was issued through a committee and signed by the Director of the Geological Survey Department at the time, Mr. Liyungu. The investment licences were issued by the Zambia Development Agency (ZDA), an organization normally coming under the supervision of the Ministry of Commerce and Industry. Mr. Mwale stressed that he was being prosecuted because he was one of those former ministers in the former MMD government perceived to have been very close to former President Banda. He pointed out that all the documents to which he refers are in the possession of government departments.

3.1.4 With regard to the second count, Mr. Mwale stated that he had not committed any crime: the 5,000 bikes had been given by donors to several persons for the election campaign and had been assigned to him. Mr. Mwale also pointed out that he had first been charged with possession of stolen goods, which charge³ had subsequently been changed to possession of goods suspected of being the proceeds of crime.

³ On 25 February 2015, the Lusaka Magistrate Court found Mr. Mwale guilty of the first count but acquitted him on the second. He was subsequently sentenced to a 12-month prison term and released on bail pending his appeal.

3.2. The case of Mr. Kenneth Konga (MMD)

3.2.1 The IPU delegation had an extensive meeting with Mr. Konga, member of parliament for Chavuma. According to him, on 30 May 2012, he collapsed after being interrogated for many hours by a joint team of over nine interrogators from the Zambian police force, the Drug Enforcement Commission, the Anti-Corruption Commission and the Zambia Security and Intelligence Services in Lusaka. He was rushed to Saint John's Hospital, but was later moved to the University Teaching Hospital, the country's biggest public hospital, where it was confirmed that he had suffered a stroke. A letter from the hospital confirming the stroke was provided by him. The letter also added that, on 4 September 2013, Mr. Konga remained a patient and had been unable to make proper use of his dominant hand, which was clear for the delegation to see. Mr. Konga also pointed out that in November 2011, two months after President Michael Sata was elected, he had been summoned by a joint team of more than 15 interrogators. After a nine-hour search of his Kabulonga residence, Mr. Konga's parliamentary vehicle was seized; an affidavit was made by Mr. Konga supporting this claim. The vehicle was confiscated, despite the fact that Mr. Konga produced documents from the National Assembly certifying that the vehicle was purchased by the National Assembly using funds available to members of parliament for car loans. Two campaign motorcycles were also seized from the former minister's residence. According to Mr. Konga, the search of his residence had taken place without a warrant and had simply been done for the purpose of "finding information" to help the authorities in their legal case against former Head of State, Mr. Banda. Mr. Konga also stated that, in December 2011, one of his businesses had been the subject of an unlawful search.

3.2.2 In the meeting with the Deputy Minister of Justice, the Attorney-General and the Director of Public Prosecutions, they stated to be unaware of any complaints regarding Mr. Konga's interrogations or the searches to which he had been subjected. The delegation was told that Mr. Konga had testified in the trial proceedings against former Head of State Mr. Banda. It was not clear to the delegation whether Mr. Konga himself was currently the subject of any specific charges.

3.3. The case of Ms. Dora Siliya (MMD)

3.3.1 Ms. Siliya was unfortunately not available to meet with the Committee delegation. It was therefore not possible to receive further information and clarity on the allegations previously made, according to which she was the subject of politically motivated legal proceedings in the following two cases against her:

- Charges on two counts, both relating to abuse of authority in breach of Section 99(1) of the Criminal Code and Chapter 87 of the Laws of Zambia. The first count relates to cancellation of a duly awarded contract to supply, deliver, install and commission the Zambia Air Traffic Management Surveillance Radar System at the then Lusaka International Airport. In the second count, Ms. Siliya is alleged to have breached procedures when she accepted a purportedly free offer from Selex Systemi Integrati for the repair of a Radar Head at Lusaka International Airport, an act prejudicial to the interests of the Government. According to the complainant, both cases involving Lusaka Airport were concluded and Ms. Siliya was cleared of any wrongdoing by two government commissions of the current PF Government and the former government, as well as by the High Court and Supreme Court. However, according to the complainant, Mr. Mutemba Nchito, then Director of Public Prosecutions and allegedly an individual affected by Ms. Siliya's refusal to extend the credit facility of the Airport, had decided to revive the cases in order to harass Ms. Siliya. Although this was not explicitly confirmed to the IPU delegation, it appears that these charges are still before the courts;
- Charges related to her role as then Minister of Communications and Transport in awarding RP Capital Partners of the Cayman Islands a contract worth US\$2 million to RP Capital Partners of the Cayman Islands to value ZAMTEL assets without due regard for or compliance with the provisions of the Zambia National Tender Board Act. The delegation was told that this matter has already been dealt with by the courts, without any specific information on what the outcome was.

3.3.2 In the meeting with the Deputy Minister of Justice, the Attorney-General and the Director of Public Prosecutions, all emphasized that corruption under the previous government was a real problem in Zambia and that the authorities had to show zero tolerance. The case against Ms. Siliya had to be seen in that context.

3.4. The case of Ret. Lt. Gen. Ronnie Shikapwasha (MMD)

3.4.1 Lt. General Shikapwasha was unfortunately not available to meet with the Committee delegation. It was therefore not possible for the delegation to receive further information from him directly with regard to the complaint that the charges he is facing on two counts, relating to abuse of authority in breach of Section 99(1) of the Criminal Code and Chapter 87 of the Laws of Zambia, were politically motivated. In this regard, the complainant has affirmed the following in the past: On 9 January 2013, the Joint Team of Investigators summoned Lt. Gen. Ronnie Shikapwasha, former Minister of Information and Broadcasting Services, together with the journalist and film-maker Chanda Chimba III and the former Permanent Secretary in the Ministry of Information and Broadcasting Services, Dr. Samson Phiri, to appear for questioning. According to the complainant, this was in connection with the investigation into the publication and airing of Mr. Chanda Chimba III's "Stand Up For Zambia" television series, which was critical of then opposition leader Michael Sata. Lt. Gen. Shikapwasha had nothing to do with the production, as confirmed by Mr. Chimba himself. The records at the Ministry of Information show that Lt. Gen. Shikapwasha had no involvement in the matter. The complainant points out in this regard that, even though Lt. General Shikapwasha was the Minister of Information at the time of the publications, the screening of the documentary was done commercially, which circumstance does not involve the minister. The complainant has affirmed that despite all this information being available to investigators, the authorities have decided to take the case against Lt. General Shikapwasha to court.

3.4.2 In the meeting with the Deputy Minister of Justice, the Attorney-General and the Director of Public Prosecutions, mention was made that state facilities had been misused in this case and that bills for the use of such facilities had not been paid, and that the State therefore suffered financial losses as a result.

3.5. The case of Ms. Sarah Sayifwanda (MMD)

Ms. Sayifwanda stated to the IPU delegation that police illegally confiscated four hammer mills from her, which she was to distribute to her constituents in 2012. The allegation against Ms. Sayifwanda stems from the electoral petition that had been filed against her by an aggrieved and losing candidate during the September 2011 general elections. The petitioner alleged that Ms. Sayifwanda, using her position as minister in the former government, distributed four hammer mills to her constituents in order to win over the voters to herself and her political party. After Ms. Sayifwanda had undergone several interrogations, the High Court of Zambia declared Ms. Sayifwanda validly elected and accordingly dismissed the petition and ruled that the items should be returned to her. According to Ms. Sayifwanda, the hammer mills were given to constituencies as a matter of state policy, there was therefore no substance for any claims that she was corrupt.

3.6. The case of Mr. Mwalimu Simfukwe (MMD)

The member of parliament for Mbala, Mr. Simfukwe, was not available to meet the IPU delegation. It was therefore not possible for the delegation to obtain direct information with regard to the background to his case. It should be noted in this regard that Mr. Simfukwe had been arrested in January 2012 and charged with the offence of abuse of authority, in breach of Section 42(1)(c) of the Public Procurement Act, No. 12, of 2008 of the Laws of Zambia. He was acquitted on 1 February 2013. The magistrate stated that the matter should not have been brought to court in the first place. In his ruling, the magistrate noted that the prosecution had failed to produce witnesses to prove that Mr. Simfukwe had employed favouritism in awarding contracts or to show how he had benefited from the contracts ultimately approved.

3.7. Mr. Boyd Hamusonde (United Party for National Development, UPND)

The member of parliament for Nangoma, Mr. Hamusonde, was not available to meet the IPU delegation. It is alleged that on 19 February 2013, during a press briefing at State House, President Michael Sata reportedly threatened BH Diesel Electric Ltd, a company owned by Mr. Boyd Hamusonde. The President threatened BH Diesel Electric Ltd. because the company had made financial donations to the UPND. The complainant has affirmed that the President's threats are an attempt to intimidate Mr. Hamusonde and to stop him from associating with his political party and participating in its affairs. In the course of the IPU delegation's mission, no one was able to corroborate or deny this allegation.

4. Assault and prosecution of Mr. Garry Nkombo and Mr. Request Muntanga (UPND) in the context of the Livingstone by-election (February 2013)

4.1. The IPU delegation had extensive meetings with Mr. Nkombo, and one with Mr. Muntanga. According to both men, on 26 February 2013, during the Livingstone constituency by-election campaign, Mr. Nkombo, an opposition member of parliament, sustained a broken arm and bruised ribs when allegedly assaulted, in full view of the police at Livingstone Central Police Station, by Mr. Obvious Mwaliteta, a deputy minister in the Patriotic Front Government. Mr. Nkombo, who was in the company of another member of parliament, Mr. Muntanga, had gone to the police station to report an incident caused by members of the ruling party at the UPND campaign centre. According to the complainant, after assaulting Mr. Nkombo, the Minister ordered the police to arrest the two opposition parliamentarians forthwith. Mr. Nkombo was reportedly denied medical attention for several days, until the courts ordered that he be taken to hospital, where it was confirmed that he had sustained a broken arm and bruised ribs. A copy of the court order, together with the medical report from Livingstone Hospital, was provided by the complainant. Mr. Nkombo and Mr. Muntanga were among several suspects picked up for questioning following the hacking to death of a member of the Patriotic Front on 25 February 2013 by suspected UPND supporters, who had set up a campaign port at a known place in Livingstone. The police confirmed that Mr. Nkombo was subsequently jointly charged, along with eight others, with murder, and that he was remanded at Livingstone State Prison pending instructions from the Director of Public Prosecutions. However, on 17 March 2013, the case was discontinued following a *nolle prosequi* plea entered by the Director of Public Prosecutions. With regard to Mr. Muntanga, he had also been apprehended for the same murder case but, following interviews and because of insufficient evidence connecting Mr. Muntanga to the death, he was released. However, owing to his behaviour within the police precincts on the day of his release, he was re-arrested and charged with the offence of discreditable conduct. Mr. Muntanga was released on police bond, after which the docket was sent to the Director of Public Prosecutions (DPP) for instructions. However, on 11 February 2014, Mr. Muntanga had been cleared of criminal charges following a *nolle prosequi* entered by the Director of Public Prosecutions.

4.2. With regard to civil and legal claims for the assault, according to the National Assembly, in its letter dated 24 February 2014, Mr. Nkombo has never asserted his rights to press criminal or civil charges against the alleged perpetrators. In the absence of such action, it stated that there could be no subsequent investigation into the matter.

5. Revocation of parliamentary mandate of Mr. Maxwell Mwale, Ms. Dora Siliya and Mr. Hastings Sililo

On 28 July 2013, the Supreme Court nullified the seats of Ms. Siliya, Mr. Mwale and Mr. Sililo, all opposition members. On 9 August 2013, the Electoral Commission of Zambia (ECZ) reportedly issued a statement claiming that the candidates would not be allowed to re-contest the Petauke seat. In addition to the unusual style of the ruling – namely the use of a press statement – the complainant also argued that the ruling violated the Electoral Act, since neither of the candidates was accused of corruption. The Lusaka High Court rejected the ECZ ruling on 3 September 2013, ordering the body to accept the candidates' nomination papers. However, triggered by an appeal filed by the Attorney-General of the PF party, the Supreme Court subsequently moved to block the nominations on 6 September 2013, granting a stay of execution to the High Court judgment. At the time of the IPU mission, the seats of Ms. Siliya, Mr. Mwale and Sililo remained vacant pending a final court decision.

6. The case of Mr. Lucky Mulusa (MMD)

Mr. Lucky Mulusa was not available to meet the IPU delegation. It was therefore not possible to obtain his views on the original complaint, according to which on 5 October 2013 he had been the victim of multiple violent attacks in early September 2013 during the Mkaika by-elections. Mr. Mulusa was threatened with violent attacks before being saved by other MMD members and was attacked with axes and machetes during an episode that led to the abduction of the son of former President Rupiah Banda. Mr. Mulusa also suffered another attempted attack by alleged PF cadres on 22 July 2013.

C. Observations and recommendations, including in light of developments since the mission

1. The IPU delegation deeply appreciated the frank exchanges it had with the authorities, complainants and other interested parties, which attest to the spirit of openness and dialogue that characterized the mission.
2. It is clear that the case of the individual members of parliament before the Committee has to be seen in the context of the 2011 parliamentary elections and the fact that this produced a hung parliament. The IPU delegation is concerned that, in response to this unique situation for Zambia, numerous petitions for disqualification of elected MPs were filed and several members of the opposition were enticed, against the will of their own parties, to join the PF, thereby finally altering the balance of power in parliament. The delegation is also concerned in this regard that some petitions for the disqualification of seats still have not been ruled on, despite the fact that several years have gone by since the 2011 elections took place. The delegation urges the relevant authorities to remedy this situation without any further delay.
3. The delegation is concerned about the violence that accompanied several of the by-elections that took place in 2012 and 2013. The delegation believes that this violence may be partly explained by the grievances challenging the reasons for holding the by-elections in the first place, but also by a lack of action on the part of political leaders to keep their supporters in check. In this regard, the delegation is particularly concerned about the incidents of political harassment and violence in 2012 and in February 2013 in Livingstone. The delegation is nevertheless encouraged that the year 2014 appears to show a much better picture, as evidenced by the by-elections held in August 2014 in relatively peaceful circumstances.
4. With regard to the question of "political stability", the delegation fails to understand the ease with which individual members of parliament can change party, let alone how individual members of parliament can become ministers or deputy ministers while remaining members of their opposition parties and against the latter's will. The delegation is also concerned about the lack of clear rules on the financing of political parties and campaigns. The delegation hopes that the new Constitution, along with other legislative steps, will help bring clarity to these issues.
5. The delegation fully understands the need for ensuring law and order and the police's role therein. It also understands that the contents and application of the Public Order Act have evolved with a view to ensuring full respect for the fundamental right to freedom of assembly. The delegation appreciates in this regard the efforts by the Speaker of the National Assembly and the Minister of Home Affairs to help ensure that parliamentarians can meet with their constituents freely and without hindrance. That said, the delegation also considers that the Public Order Act in its present form is outdated, that its wording, despite advances on how it should be implemented, remains vague and can easily be used by anyone in power with ill-intent to repress the opposition. In this regard, the delegation was much struck by the remark that was repeatedly made by interlocutors on all sides that the Public Order Act was strongly criticized by the opposition, but that when the opposition was brought to power, it felt that the law was quite convenient and therefore kept it as it was.
6. The delegation therefore recommends the following with regard to the Public Order Act:
 - Amend the Public Order Act (POA) so as to reduce the discretion and powers of police to handle public gatherings, as well as to reduce the scope of the POA to meetings that may truly interfere with public order;
 - Reprimand the police when and where they continue to insist on the need for a permit for members of parliament, or abuse their discretion to cancel or postpone without due justification duly announced public meetings;
 - Take steps to instill within the police, ideally accompanied with a message from the Government, the need for an even-handed approach at all times with regard to political meetings, irrespective of which party it concerns;
 - Ensure that all police officers are fully aware of the POA and its provisions;
 - Give full support to the National Human Rights Commission's work aimed at identifying and discussing solutions for human rights challenges that have arisen in the application of the

POA, including by responding to specific concerns that the police may have in ensuring law and order;

- Ask members of parliament who consider that, under the POA or any other law, the police have abused their rights, to make effective use of national legal means of recourse;
- Ask members of parliament to work with the police when their announced public gatherings are justifiably deemed to have important security implications.

7. The delegation is deeply concerned about specific incidents in which the POA was invoked, most notably the arbitrary arrests of and legal criminal action against members of parliament in December 2012 regarding Ms. Chungu, Mr. Katambo, Mr. Kunda and Mr. Chishiba. The delegation is concerned that no steps appear to have been taken to hold those responsible to account. Likewise, the delegation is concerned about lack of due process surrounding the arrest and detention in February 2013 of Mr. Nkombo and Mr. Muntanga. The delegation is deeply concerned that they were held for close to three weeks on the basis of accusations which later turned out to be unsubstantiated and which pointed, rather than to their responsibility or of that of their party's supporters, to the involvement of a supporter from the majority party. The delegation calls on the authorities to do everything possible to avoid a repeat of such situations in future.

8. The delegation is concerned that the alleged attacker of Mr. Nkombo during the incident at a police station in February 2013 has not been held to account, despite the existence of a report detailing his complaint and injury. Although the delegation considers that Mr. Nkombo could have availed himself of legal avenues to pursue his claim civilly, it believes that 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.

9. The Committee remains puzzled about the cause of Mr. Konga's stroke and regrets that no specific steps have been taken to shed further light on this. It is not clear to the delegation whether Mr. Konga is currently the subject of criminal proceedings. Official information from the authorities on this question would therefore be welcome. The delegation is also keen to know whether the complaints by Mr. Konga about the unlawful continued confiscation of several of his possessions, including campaign vehicles and limitations on his property, have finally been dealt with.

10. With regard to the other cases of accusations of corruption, the delegation takes note of Mr. Mwale's conviction on one count and would appreciate receiving a copy of the court ruling. With regard to the cases of Ms. Siliya and Ret. Lt. Gen. Shikapwasha, the delegation regretted that it was not able to obtain further clarity on the status of legal proceedings against them and to hear from them if they believed that their case warranted further examination by the Committee. If so, the delegation encourages them to submit specific and concrete allegations, supported by documentation, that their rights to due process are being violated. Failing such information, the delegation suggests that the Committee close the further examination of their cases. In the meantime, the delegation suggests to the Committee that it close the examination of the cases concerning Ms. Sayifwanda - whose election was validated by the High Court -, Mr. Simfukwe, who was acquitted on a charge of abuse of authority in February 2013, and Mr. Hamusonde, where allegations that former President Sata made threats against him and one of his companies because of the financial donations to the UPND are now moot. The delegation is also inclined to suggest, with regard to Mr. Kaingu and Mr. Chishiba, who have both joined the Patriotic Front since the complaint was first submitted, closing the examination of their cases due to lack of interest on their part.

11. Finally, the delegation notes that the political situation in Zambia has evolved significantly since the mission took place, due to the sad passing-away of President Michael Sata and the election in January 2015 of a new President, Mr. Edgar Lungu. The delegation notes with great interest that it was President Lungu, in his capacity as Minister of Home Affairs, who addressed Parliament in 2013 to appease concerns about the Public Order Act and to promote respect for the right of members of parliament to assemble freely and without undue interference. The delegation is encouraged to see that President Lungu has publicly stated his commitment to review the Public Order Act. The delegation is also encouraged by the President's statements about the need to advance towards the adoption of a new Constitution for Zambia. Given the importance of both matters for the cases at hand, the delegation sincerely hopes that the President will succeed in delivering on these commitments.