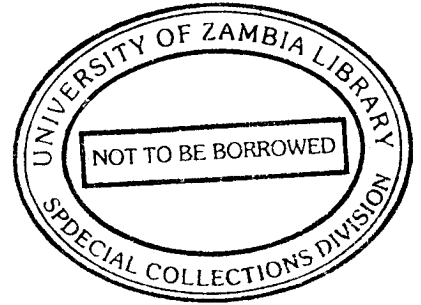


**THE DRUG TRAFFICKING SCOURGE WITHIN THE CONTEXT OF
ZAMBIA'S CRIMINAL JUSTICE SYSTEM**

BY

REAGAN KASHIMBAYA

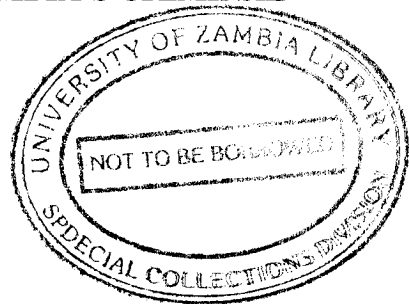


**THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW
P.O.BOX 32379
LUSAKA**

**DRUG TRAFFICKING WITHIN THE CONTEXT OF ZAMBIA'S CRIMINAL
JUSTICE SYSTEM**

BY

**REAGAN KASHIMBAYA
(COMPUTER NUMBER 22095748)**



**Being a Directed Research Paper submitted to the School of Law of the University
of Zambia in partial fulfillment of the requirements for the award of the Bachelor of
Laws (LLB) Degree.**

6th February, 2008

UNZA

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DECLARATION OF AUTHORSHIP

I, Reagan Kashimbaya do hereby declare that the contents of this Directed Research Paper are entirely based on my own findings and that I have not in any respect used any person's work without acknowledging the same.

I hereby bear absolute responsibility for the contents, errors, defects and omissions herein.

DATE

7th February, 2008

SIGNATURE



**THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

THE SUPERVISOR'S NOTICE OF CONFIRMATION (CERTIFICATE)

I recommend that the Directed Research prepared under my supervision by REAGAN KASHIMBAYA (Computer Number 22095748),

ENTITLED

“THE DRUG TRAFFICKING SCOURGE WITHIN THE CONTEXT OF ZAMBIA’S
CRIMINAL JUSTICE SYSTEM”,

be accepted for examination. I have checked it carefully and I am satisfied that it fulfils the requirement relating to the format as laid down in the regulations governing Directed Research.

DATE: 11.02.08

SIGNATURE: _____


Simon E. Kulusika
SUPERVISOR

DEDICATION

This Directed Research Paper is dedicated to my parents Justin Mwansa Kashimbaya and Grace Chileshe and my siblings Mulenga, Chewe, Mwansa and Chileshe for the love, care, encouragement and consideration received.

This paper is also dedicated to my late sister, Kalembe Kashimbaya who never got a chance to be what she may have desired. I have hope that we shall meet on the day of resurrection.

ABSTRACT

Drug trafficking is a scourge that has both national and international dimensions. Being such, it is a subject that merits our serious attention. This paper seeks to examine Drug trafficking within the context of Zambia's criminal justice system.

In order to do this, the paper evaluates the historicity of this crime in Zambia and the current trends both locally and internationally. In addition, a critical analysis is made of the Narcotic Drug and Psychotropic Substances Act (CAP 96). Further, an examination of the criminal justice system, that is, the Drug Enforcement Commission (DEC), the courts especially the subordinate court and the Supreme Court is made. The paper delves into the debates affecting the control of drug trafficking. Also, a synoptic view of the prisons service, another component of the criminal justice is made.

The paper ends with a conclusion on the scourge from Zambia's criminal justice system's vantage point and makes recommendations on how drug trafficking can better be fought.

PREFACE

The intractable nature of drug trafficking cannot be overemphasised. Left unattended, Drug trafficking can bring the entire social, economic, cultural and health, judicial administration and legislative to its very knees. Zambia as a country has over the years increased in importance as a transit point due to its central location for drug traffickers enroute to South Africa and Europe.

In addition, the country continues to face a huge problem in the growing and consumption of cannabis in addition to other established drugs such as heroine and marijuana. Zambia has taken strides in countering this scourge. In 1993 the legislature enacted the Narcotic Drugs and Psychotropic substances Act, Cap 96 of the laws of Zambia. Yet though the Act has stiffened and toughened penalties seemingly unabated.

This Directed research paper therefore seeks to delve into this intractable problem of drug trafficking looking at its social, economic and cultural costs to a nation such as Zambia and determining whether the current criminal justice system in general and the Narcotic drugs and Psychotropic substances Act in particular have, and are working effectively and if not suggesting ways and means of making them effective enough to counter this matter complicated and ever evolving crime.

ACKNOWLEDGEMENTS

First and foremost, may I thank my God Jehovah for his loyalty, love and care which have sustained me through the ups and downs of life even though I have failed him many times.

I am highly indebted to my supervisor Mr Simon E. Kulusika. His seriousness and dedication were an inspiration throughout the research. Further his timely comments guided me to make this work truly a worthwhile endeavour.

My thanks extend to my family for being there for me.

My very special thanks go to those of my friends that made my life at UNZA worthwhile. Chadzantso, Brenda, Zeniya, Caroline, Kafita, Emelda and especially my friend Joseph Gondwe who let me stay with him for three (3) of my four years at campus. It would have been impossible to go through campus without him.

My thanks would be incomplete if I failed to mention Mr Sydney Watae, the late Professor Alfred Chanda, Cecilia Hachigonta, Alex Kalikiti, Davies, Bester and Sepiso whose contributions directly or indirectly made this work possible. Many are those whom I may not mention by name but my thanks go to them too.

Last but not least my thanks go to all my lecturers and tutors for the knowledge they imparted to me.

LUSAKA 2008

REAGAN KASHIMBAYA

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INTERVIEWS

Dr .Imasiku	-	Psychology Department, UNZA
Professor P.M.Mvunga	-	School of Law, UNZA

TABLE OF ABBREVIATIONS

DEA	Drug Enforcement Agency
DEC	Drug Enforcement Commission
DPP	Director of Public Prosecutions
HRC	Human Rights Commission
Interpol	International Police
MDA	Ecstasy
SCZ	Supreme Court of Zambia
UN	United Nations
US	United States
UNZA	University of Zambia
W.H.O	World Health Organisation

METHODOLOGY

The research is qualitative. It consists of desk research of primary and secondary sources from the internet. Finally, the research has incorporated field data collected through interviews with experts, DEC publications and case law.

CHAPTER ONE

OVERVIEW OF THE RESEARCH PROBLEM

1.1 INTRODUCTION

Drug trafficking is one of the most intractable problems of our time and rightly, it has been called a scourge. Drug trafficking engenders drug abuse, promotes prostitution and is the single most important factor in the crime of money laundering. Unabated, "drug abuse and money laundering could enable some people to form a parallel government; sponsor terrorism or initiate and fuel civil unrest in the country"¹ said Dr. Kalombo Mwansa, then Home Affairs Minister. He further added:

"A nation infested with such vices was bound to witness lawlessness, corruption and economic distortions and that institutions such as the Judiciary and other law enforcement agencies might be compromised in executing their duties thereby threatening the existence of the state"²

It thus need not be emphasized that the scourge of the illegal trafficking in illicit drugs and the abuse thereof gets all of us affected.³ Former UN Chief Koffi Anan noted that drugs tore society apart, encouraged crime and the spread of diseases such as AIDS. Further they decimated the youth and stated that an "estimated 190 million" individuals around the globe were engaged in drug abuse⁴ "No country is immune. And alone, no country can hope to stem the drug trade within its borders. The globalization of the drug trade requires an international response".⁵

The above observations make it patently obvious that the drug trafficking problem is grave and ever-evolving. Zambia as a country can ill-afford to take a wait and see attitude or indifferent approach especially within its jurisdiction.

¹ <http://www.times.co.zm/news/reviews.cgi? Category = 4 & id =1119850601>

² ibid

³ Watchtower Society, "Are Drugs Taking Over the World?" Awake, Nov. 8 (1999) p.2

⁴ ibid

⁵ ibid

1.2 STATEMENT OF THE PROBLEM

The illegal trafficking in illicit drugs has been and continues to be a big and growing problem in Zambia. "Almost every week, the Drug Enforcement Commission (DEC) announces the arrest of people suspected to be involved in illegal dealing of various banned psychotropic substances as well as money laundering"⁶ Villages pose a more interesting problem. There is no dispute that consumption of cannabis (*Mbanje*) is steeped in tradition. Further, the drug is seen as a more financially viable cash crop compared to other crops such as maize. Added to this is the problem of international trafficking. Zambia stands in a unique situation. Because of its central location, it is seen and used as a transit point for drug barons or "merchants of death"⁷ as they are sometimes called. Cocaine is said to lead the market in Zambia with "80 percent of it transported to Europe and 20 percent consumed locally...."⁸ Zambia has made strides in the fight against drug trafficking. This can be seen from the enactment of the Narcotic Drugs and Psychotropic Substances Act⁹ enacted in 1993 which replaced The Dangerous Drugs (Forfeiture of Property) Act,¹⁰ to give teeth to the DEC. However, its effects are compromised by not only technical and logistical difficulties but also financial ones faced by the DEC. Further, the criminal justice system that is guided by the criminal procedure code¹¹ and part III of the constitution¹² is dogged by demotivated and under paid police officers susceptible to corruption by rich drug barons and a lack of an adequate number of members of the bench to dispose of cases expeditiously. In essence, the effectiveness of the Narcotic Drugs and Psychotropic Substances Act¹³ and the DEC visa-a-vis the criminal justice system within which they must operate has been and continues to be compromised.

⁶ The Times of Zambia Editorial, 16 June, 2007 at www.allafrica.com

⁷ United Nations, "Merchants of Death Target Africa" at www.africa-recoveryonline.org

⁸ *ibid*

⁹ Chapter 96 of the laws of Zambia

¹⁰ Act No. 7 of 1989

¹¹ Chapter 88 of the Laws of Zambia

¹² see S. 18 of the Constitution Act Chapter 1 of the Laws of Zambia

¹³ Op.cit note No. 9

1.3 OBJECTIVES OF THE RESEARCH

The research has several objectives. The first is to evaluate the performance of the Act in question and the second to evaluate the performance of the DEC. Further, the research will examine the performance of the Judiciary, and the Prisons in tackling the scourge within the context of Zambia's criminal justice system.

1.4 SIGNIFICANCE OF THE RESEARCH

This research is vital in the sense that faced with both national and transnational activities in the drugs trade, a concerted effort in understanding the causes of trafficking, a reduction both in supply and demand needs to be made. Further, the research delves into the intractable problem of drug trafficking currently evaluating its current social, economic and cultural costs to a nation such as Zambia and determining whether the current criminal justice system in general and the Narcotic Drugs and Psychotropic Substances Act in particular have been and are working effectively and if not, suggesting ways and means of making them effective enough to counter this rather complicated and ever evolving crime.

1.5 RESEARCH QUESTIONS

In order to tackle the problem at hand effectively, the essay will touch on and seek to answer the following questions:

1. What is drug trafficking?
2. What are the causes of the illicit trade in drugs?
3. How serious is the drug trafficking problem in Zambia?
4. How serious is the scourge on the world stage and how is Zambia affected?

5. What role has and is the Narcotic Drugs and Psychotropic Substances Act¹⁴ played and playing in tackling the drug trafficking scourge within Zambia?
6. How can the Act be made more effective?
7. What the social, economic and cultural costs are of drug trafficking?
8. How can both the supply of, and demand for drugs be more effectively tackled?
9. With regard to the criminal justice system, what are the roles of the Police, Subordinate Courts and Superior Courts (High Court and Supreme Court) in stemming the tide of drug trafficking while ensuring that the rights of suspects are protected?
10. Is the current system adequate in as far as coping with trans-national drug traffickers and their death dealing business is concerned?
11. In dealing with convicted drug traffickers, what theories of punishment should the judge employ?
12. Are there alternatives to the current drug enforcement regime?

1.6 SCOPE AND LIMITATIONS OF THE RESEARCH

The research revolves strictly around the problem of Drug Trafficking within the context of Zambia's criminal justice system and pertinent issues incidental thereto. Thus though the global situation, the types and effects of drugs in the trade will be looked at, they will not constitute the main thrust of the essay. Details of these are, it is respectfully submitted, beyond the scope of the research.

It is important to mention the limitations faced while conducting this research. The research faced limited time within which it could be conducted. The other problem was

¹⁴ Op.cit note No.9

that of finances and a lack of comprehensive records regarding decided cases and statistics regarding the true picture of the drug problem in Zambia as efforts to get these from the Drug enforcement Commission in spite of numerous attempts made to conduct interviews and gain access to the library and data bases of the commission.

1.7 STRUCTURE OF DISSERTATION

Having had an overview of the research problem and incidental issues thereto, the essay proceeds as follows:

The second chapter deals with a brief historical background of drug trafficking in Zambia and proceeds to look at the scourge on a global stage. The chapter defines drug trafficking and examines the reasons why drug trafficking must be stopped.

In the third chapter, a critical analysis of the Narcotic Drugs and Psychotropic Substances Act¹⁵ from an evaluative perspective is made. Further, the chapter deals with the Drug Enforcement Commission which is charged with the responsibility of fighting drug trafficking. The chapter analyses its performance amidst the constraints faced and its powers as given in the Act.

The fourth chapter specifically looks at the criminal justice in Zambia and tackling the drug trafficking scourge. In doing this the essay looks at the role and response of the police, subordinate courts and superior courts, that is the High court and Supreme court.

Finally, chapter five makes conclusions and recommendations on issues raised in the essay.

¹⁵ Op.cit note No.9

1.8 CONCLUSION

In giving an overview of the problem of drug trafficking, the chapter has brought several issues to the fore. Among them is the fact that drug trafficking is, within and without Zambia's borders a serious, growing and ever evolving crime. It has clearly been shown that the scourge of illegal trafficking in drugs spawns crime. That Drug Trafficking leads to drug abuse is patent; that it is a single most important catalyst to money laundering cannot be questioned nor can the fact that it can finance terrorism be winked at. Unabated, the scourge can bring the whole social, economic, health and cultural edifice of a state to its very knees. It has also been shown that the government through the legislature has made strides one of the most important being the enactment of the Narcotic Drugs and Psychotropic Substances Act¹⁶ replacing the Dangerous Drugs (forfeiture of Property) Act¹⁷ and gives more powers to the DEC in tackling drug trafficking. However, technical, logistical and financial inadequacies compromise the effect of the Act as do demotivated and underpaid police officers and an inadequate number of judges to deal with drug related cases. The next chapter takes a brief historical look at the scourge in Zambia, the problem globally, defines drug trafficking and examines the reasons why it must be fought and stopped.

¹⁶ op cit note 9

¹⁷ Act No. 7 of 1989

CHAPTER TWO

THE SCOURGE OF DRUG TRAFFICKING

2.1. WHAT IS DRUG TRAFFICKING?

A study of the scourge of drug trafficking must invariably begin with its definition. There is however, no definition for the composite term ‘drug trafficking’ in the Narcotics Drug and Psychotropic Substances Act¹⁸. This suggests then that getting to comprehend this term would entail getting definitions for the individual words constituting the term ‘drug trafficking’.

2.1.1. What is a Drug?

There is no denying that definitions for the word ‘drug’ abound and as Raymond Goldberg notes, as yet no legal definition has been coined.¹⁹ He however defines it as “any substance that alters one’s ability to function emotionally, physically, intellectually, financially or socially”.²⁰ This definition however would entail that many substances would be considered drugs.²¹ And as is admitted “Drugs encompass illegal substances, prescription medicines, and over the counter medication”.²² To work with this definition however, would go against the object and purpose of this study. In this work, when reference is made to drugs, it is those used for non-medical purposes and are distributed illegally.²³

In line with this object and purpose, the World Health Organization’s (W.H.O) current definition is adopted. It states:

¹⁸ Chapter 96 of the laws of Zambia

¹⁹ Raymond Goldberg (2003), Drugs Across the Spectrum (4th ed.). Belmont: Wadsworth

²⁰ Ibid at p.5

²¹ ibid

²² Ibid at p.4

²³ Op cit note 3

“a ‘drug’ in the broadest sense is any chemical entity or mixture of entities, other than those required for the maintenance of normal health, the administration of which alters the biological functions and possibly structure”.²⁴

This ties in with a renowned clinical psychologist’s definition which simply states that a drug is “something that one takes for pleasure or excitement.”²⁵

2.1.2. What is trafficking?

Having looked at some scholarly definitions of the word drug we must proceed to ‘complete the picture’ as they say, by defining the other constituent of the term – trafficking. Our working definition is as provided by the Narcotic Drug and Psychotropic Substances Act ²⁶ in the definitional section, 2. It defines trafficking as follows:

- (a) “Being involved directly or indirectly in the unlawful buying or selling of narcotic drugs or psychotropic substances and includes the commission of an offence under this Act in the circumstances suggesting that the offence was being committed in connection with buying or selling ; or
- (b) Being found in possession of narcotic drugs or psychotropic substances in such amounts or quantities as the president may, by statutory instrument, declare to be trafficking for the purposes of this Act.”

In the case of *Chetankumar Shantkal Vs the people*²⁷ the Supreme Court of Zambia, took time to address its mind to the definition of the term ‘trafficking’ as stated in the sub-section quoted above. It noted:

“the definition of ‘trafficking’ as provided under section 2 of Cap 96...We don’t have too much difficulty in the approach of the learned judge except to caution that there are two limbs to the definition of ‘trafficking’ and an

²⁴ Nomenclature and classification of drugs and alcohol – related problems: A shortened vision of a WHO memorandum. “British Journal of Addiction” 77 (1982) p.6 quoted in K.C. Changano, ‘an overview on Drug Trafficking and money laundering in Zambia, LLB Dissertation.

²⁵ Dr.Imasiku,Clinical Psychologist and Lecturer in the Department of Psychology,UNZA

²⁶ Chapter 96 of the Laws of Zambia, section 2

²⁷ SCZ No. 11 of 1995

offence of unlawful possession could conceivably still be caught by paragraph (a) if the circumstances suggest to the court that the offence was being committed in connection with buying and selling. This suggests to us that a trial magistrate is not precluded from applying a common sense approach where the amounts or quantities of drugs alleged in the case appear to the court to exceed what may reasonably be supposed to be for personal consumption”.

K.C. Changano observes that the opinion of the court in this matter mirrors the fact that the term ‘trafficking’ should be considered within the circumstances of each particular case.²⁸ This analysis, it must be mentioned, finds credence when one notes that section 2 (b) empowers the president to, by statutory instrument, declare such quantities as would constitute trafficking.

Hence acting in line with such power as is outlined above, the second republican president F.T.J. Chiluba brought into being a statutory instrument.²⁹ The regulations cited below show the quantities that constitute drug trafficking if exceeded:

Section 2 - THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES
(TRAFFICKING) REGULATIONS
Regulations by the President
Schedule
(Regulations 2)

<i>Narcotic drug or psychotropic substances</i>	<i>minimum amount</i>
Tablets and Powders	0.5 gm
Liquids	2.5 gm or ml
 <i>For products of cannabis sativa</i>	
Cannabis Oil or hashish oil	2.50 ml

²⁸ An overview on Drug Trafficking and Money Laundering in Zambia, LLB Dissertation, University of Zambia, 2003, p.12.
²⁹ No. 119 of 1995

Any other cannabis product

Containing detectable quantities of

Delta-a-Tetrahydrocannabinol (THC)

Solids	0.50 gm
--------	---------

Liquids	2.50 ml
---------	---------

One would be made to conclude here from that drug trafficking denotes the illegal distribution (however done) of substances that have the capability of altering perception, or behaviour which alterations are for non-medical purposes.

It should be remembered that in Chapter one it was emphasizes that the scope of this study is drug trafficking within the context of Zambia's criminal justice system. However, the words of Koffi Anan that 'no country is immune and alone, no country can hope to stem the drug trade within its borders. The globalisation of the drug trade requires an international response', are of great significance. Therefore, though on the fringes of the study, the global situation as far as the scourge is concerned merits out attention as it will help in comprehending the forces and currents that impress on the gravity of the problem in Zambia.

2.2 DRUG TRAFFICKING – A GLOBAL PROBLEM

The scourge of trafficking in illicit drugs is not only confined to Zambia. "The illegal drug trade is a global black market consisting of the cultivation, manufacture, distribution and sale of illegal drugs"³⁰. Infact "drug deals may now account for about 8 percent of all international trade, or approximately \$400,000,000,000,³¹ annually, as drug money moves around the world, it enriches gangsters, corrupts police forces, greases palms of politicians, and even finances terrorism"³². The year 2003 saw the value of the trade estimated at "US\$13 billion at production level, at US\$94 billion at the wholesale level,

³⁰ <http://en.Wikipedia.org/wiki/illegal-drugs-trade> visited 12th October,2007

³¹ As of the year 2000

³² Op cit note 3 at p.4

and US\$322 - \$400 billion based on retail prices and taking seizures and other losses into account”.³³

The trade does not seem to slow down. The US government has allocated more than \$19 billion toward its war in drugs and yet “despite this vast sums of money” and a host of tactics including military force, reducing aid to countries where drugs are provided and promoting crop substitution....”³⁴ the problem continues.

The breakup of the Soviet Union has added yet another dimension to the trade.³⁵ Destabilisation of Latin American countries through bribery and intimidation has become the norm rather than the exception.³⁶ A country perhaps best known for drug production and export is Columbia. “Its biggest export, cocaine is estimated to generate \$4 billion to \$7billion a year... Colombian drug lords seldom go to jail in their country. Judges often face the choice of receiving a payoff or having their families killed. Colombians who fight the cocaine trade are tortured and killed.”³⁷

Africa has not been spared. For the continent, the drug problem poses another obstacle to its development. From being on the margins of the World Drug Trade the continent has become a “key” drug distribution point.³⁸ “After experience in hashish and heroine smuggling west African drug cartels are looking for new contacts in Latin America to expand cocaine trafficking to the entire sub-Saharan region of Africa, the International Drugs Control Body said in a report in 2001³⁹.

It seems that ‘stopping the drug trade is like sticking your finger in a dike. No sooner is one hole plugged than another hole leaks. One proposal from the United Nations involves arresting people who oppose the war on Drugs’.⁴⁰

³³ Op cit note 30

³⁴ Op cit at p.19

³⁵ ibid

³⁶ ibid

³⁷ ibid

³⁸ www.fides.org/eng/documents/droga-in-africa-030807

³⁹ ibid

⁴⁰ Op cit note 19

2.2.1 The United Nations' Reaction

The UN has not remained dormant in the face of the onslaught from drug traffickers. This can be seen from the several conventions brought into operation beginning with the 1961 single convention on Narcotic Drugs, the 1961 convention on psychotropic substances and now the 1988 convention against illicit traffic in Narcotic Drugs and Psychotropic substances.

The 1988 convention is an escalation of the fight against drug trafficking. The convention notes the “magnitude of and rising trend in the illicit production of, demand for and trafficking in narcotic drugs and psychotropic substances, which pose a serious threat to the health and welfare of human beings and adversely affect the economic cultural and political foundations of society....” The preamble further notes that previous enforcement efforts have not stopped drug use, warning of “steadily increasing inroads into various social groups made by illicit traffic in narcotic drugs and psychotropic substances”.⁴¹

The reaction by the United Nations over the years only goes to confirm the global threat and nature of drug trafficking.

2.3 THE SERIOUSNESS OF THE PROBLEM IN ZAMBIA

It is important to appreciate that the problem of drug trafficking is not a new problem. To understand the immensity of the current problems, a historical analysis of the problem is essential.

⁴¹www.en.wikipedia.org/wiki/united_nations_convention_against_illicit_traffic_in_Narcotic_Drugs_and_Psychotropic_substances visited 12th October ,2007

2.3.1 Brief Historical Background of Drug Trafficking

The use of drugs in the Zambian Society goes back many years. Our ancestors used to, as would be witnessed in many rural communities, use drugs for a plethora of activities that included pleasure, therapeutic value and other traditional rituals. They would extract these from tree barks, roots and leaves. The devastating effects of some of these drugs were not as yet appreciated.

2.3.1.1 Colonial period

The seriousness of the problem was recognized during this era as can be seen from a flurry of legislative actions that the government undertook. K.C. Changano quotes Thayer Saudder who observed the effect of the legislative provisions as follows:

“...twenty five years ago, there were only two cash crops in the valley: hemp (cannabis sativa) and tobacco. Cash transactions involving hemp (‘lubanje’ in Tonga) have since decreased because of rigidity enforced government order proscribing cultivation”⁴²

This observation gains credence when one notes that the colonial administrative assembly did in 1923 enact the Opium and Habit forming Regulation Ordinance Proclamation.⁴³ It was based on the British Act. And this, to control the occurrence of dangerous drugs in the territory. Further, in 1926, the Dangerous Drugs Ordinance which was in tandem with the American, Harrison Act of 1914 and the British Dangerous Drugs Act of 1920. was enacted.

One would observe quite clearly that a common thread in these anti-drug legislative measures was the control in the cultivation, use and transmission of dangerous in tandem

⁴² Thayer Saudder, (1962) The Ecology of the Gwembe Tonga. Manchester: Manchester University p.89 quoted in K.C.Chingano, an overview on Drug Trafficking and money laundering

⁴³ No.10 of 1923

with international trends and conventions to which the colonial administration was a party.⁴⁴

2.3.1.2 The Independence period

After independence the new Zambian government did not take the problem any less seriously. In 1967, therefore, the Dangerous Drugs Act⁴⁵ was enacted. The evolving and complicated nature of the scourge called for alternations to the Act and on August, 26 1967 the Act became law with a changed Act No. (chapter 549). Reading the preamble of the Act makes one recognize the fact that notice had been taken of a problem that was not just but continuing from times past. It read:

“An Act to control the importation, exportation, production, possession, sale, distribution and use of dangerous drugs and provide for matters incidental thereto”.

The intention of the legislature, it would not be far fetched to conclude, was to come up with an all encompassing Act to stem the drug problem in all its facets. Things however turned out differently.

The problem of illicit drug trafficking came to a head in the 1980s when prominent Zambians were arrested abroad on charges of trafficking in illicit drug stories of which were carried in both the print and electronic media.⁴⁶ The disquiet and shame felt went to the very apex of the Zambian government. The government through the then president Kenneth Kaunda “speedily waived the immunity of an official at its London embassy [sic] suspected of drug offences in 1985”.⁴⁷

“Three governments”, he stated “supplied information to him on how Zambians had become the centre of an international syndicate for mandrax going to South Africa.”⁴⁸ The

⁴⁴ Op cit note 28

⁴⁵ Act No.42 of 1967

⁴⁶ Op cit note 28

⁴⁷ Malcom N.Shaw,(1997) International Law (4th ed), Cambridge: University Press p.537

⁴⁸ Op cit note 28, Zambia Daily Mail, April 29,1985

inadequacy of the Anti-Drug Legislation made the president to order the arrest of indicated individual under the provisions of the preservation of Public Security Regulations.⁴⁹ Not even the enacting of individual Acts, the Pharmacy and poisons Act⁵⁰; the Therapeutic Substances Act⁵¹ and the Food and Drugs Act⁵² ameliorated the situation.

Further, some legislative measures taken backfired or proved wholly inadequate in curing the mischief sort. An example is the amendment made to the Dangerous Drugs Amendment Act, S.19A which completely overhauled S.19 but instead of creating an offence created a penalty. In the event, the mischief for which the amendment was targeted continued seemingly unabated.⁵³

“The arrested culprits of drug abuse through mitigation in courts took advantage of the option of the fine for every first offender which was two thousand kwacha and a number of convicts could afford this amount created under S.19A of the Dangerous Drugs Amendment Act”.⁵⁴

This sort of outcome was predicated on legal precedent. It was held in the case of *Lungu Vs. the people*⁵⁵ that where an Act gives an option of imprisonment or a fine, the court is requested as a matter of law to give a fine for every first offender. Additional amendments were made during the ensuing years but to no avail.

In 1989 the government enacted the Dangerous Drugs (Forfeiture of property) Act⁵⁶. It had provisions similar in Article 5 of the UN Convention Against illicit Traffic in Drugs and Psychotropic Substances⁵⁷, which requires its parties to confiscate proceeds from drug offences. It also requires its parties empower its courts or other competent

⁴⁹ Chapter 106 of the laws of Zambia

⁵⁰ Chapter 536, now chapter 299 of the laws of Zambia

⁵¹ Chapter 533, now chapter 298 of the laws of Zambia

⁵² Act No.19 of 1985

⁵³ Op cit note no.28

⁵⁴ Ibid at p.7

⁵⁵ (1977) Z2 208

⁵⁶ No.7 of 1989; now embodied in the Narcotics Drug and Psychotropic Substances Act chapter 96 of the laws of Zambia

⁵⁷ of 1988

authorities to order that bank, financial, or commercial records be made available or seized. The convention further states that a party may not decline to act on this provision on grounds of bank secrecy. The preamble to the Act read:

“An Act to provide for an offence in relation to property connected with dangerous drugs and for the seizure and forfeiture of property connected with activity related to offences under this Act, the Dangerous Drugs Act; for consistence to foreign countries in matters relating to or connected with Dangerous Drugs; and for matters connected or incidental to the foregoing”

The Act represented a break with the past drastic rethink about the approach to the scourge - like offence of drug trafficking. For the first time in line with the relevant UN Convention, the Act went further than convicting for the offence. In addition, assistance for foreign states was provided for, opening the way for regional and international coordination in fighting the illegal trade in illicit drugs. It was a giant step into making inroads in the drugs trade and its resultant effects.

2.3.1.2 The Third Republic

Perhaps one of the things that the first ten years of the Movement for Multi-party Democracy (MMD) Government will be remembered for, and sadly so, is the near institutionalisation of illicit drug trafficking and the impunity with which it was done by key figures in the cabinet of F.J.T.Chiluba. The president had the audacity to appoint self confessed and convicted drug traffickers to his cabinet. Though this was challenged in *Stora Mbuji and others Vs Attorney General*⁵⁸, the case was dismissed on the technicality of the petitioners lacking locus standi.

The donor fraternity however demanded action and threatened to withhold balance of payment support and other laws which the government desperately needed. The culprits among them were Vernon Mwanga then minister of Foreign Affairs and Sikota Wina and

⁵⁸ SCZ Judgment No. 10 of 1993

wife Nakatindi, resigned to pave way for investigations. It is no wonder that the then minister for Home Affairs Newstead Zimba lamented:

“I am disappointed to say with conviction that the decay
Of the Zambian Society is a result of the desire to get
Rich quickly...I am equally convinced that in the
Business sector, dominated by some foreign immigrants
Some people are using work permits...merely as fronts
to cover up the operations in drug dealing”.⁵⁹

2.4 THE SCOURGE IN ZAMBIA IN RECENT TIMES

In his written speech when sanctioning the drug master plan, the former president F.J.T.Chiluba that:

“Zambia has never been spared from the international traffic in narcotic drug and psychotropic substances which generate huge profits for its initiators and organizers... there is need for a new approach in the fight against drug scourge. This new approach is today reflected in this master plan...to eradicate the scourge of illicit narcotic drugs from Zambia and beyond our borders. This is the challenge and I commit my Government to this challenge”.⁶⁰

Has there been a drastic reduction or eradication as envisaged? Evidence suggests otherwise. As late as 2005 the then Home Affairs minister stated that the commercial cultivation and trafficking of cannabis in Zambia has continued to pose a serious threat to government’s agricultural policy and the maintenance of internal security.⁶¹ He urged the DEC to concentrate on achieving the intended goals of eradicating both drug trafficking and money laundering activities in Zambia.⁶²

The then DEC Commissioner Mr. Mukutulu Sinyani emphasized that:

⁵⁹ The drug trade, “Southern African Economist”, vol.15 sept 1992,p 12 quoted in K.C. Changano,an overview on Drug Trafficking and money laundering

⁶⁰ National Drug Control Strategy Master Plan,GRZ,1996-2002

⁶¹ “Monitor all Drug Trends; Minister urges DEC”, DEC News Vol.21,April (2005) p.7

⁶² *ibid*

“The DEC would continue with its vigorous attack on drug trafficking and money laundering adding that the commission had a determination to overcome the drug problem by a balanced application of the demand production and trafficking of illicit drugs”.⁶³

The above statements quite clearly show that illicit drug has continued seemingly unabated. One single most important problem as the author discovered, that politicians whose duty it is, to implement policies have instead of critically thinking and looking for ways to solve the inherent problem, chosen rhetoric, paying lip service. Take the following statement attributed to DR. Kalombo Mwansa:

“...government wanted to see excellence and Professionalism to continue driving the DEC operations adding that the commission should not be discouraged by inadequate resources...”

One wonders how a commission no matter how dedicated, would be professional without funding – adequate funding for that matter. It is a well known fact that the problem with stemming drug trafficking is the huge profits. There from, drug barons can easily corrupt poorly paid officers, to continue their trade. Government must move from rhetoric and face the drug problem fair and square. Only then can progress be made. It is not the number of speeches that are made nor the number of Acts enacted but the will to be practical in facing this scourge that counts.

2.5 STOPPING DRUG TRAFFICKING

While many acknowledge the harm that illicit drugs cause to the users, the question of how to stop the illegal trafficking in drugs is one that has become an issue of hot even acrimonious debate in recent years. The debate has really ranged between conservatives and libertarians (or liberals). The latter group “believes that we should completely rethink our national drug policy. In general, they would prefer to define drug abuse as a public

⁶³ Op.cit note 61 at p.18

health problem”⁶⁴. They ultimately, seek the legalisation of drug use and trafficking. The fundamental question is: should a person be covered into abstaining from behaviours he or she finds desirable or necessary?⁶⁵ “Ethan Nadelmann’s 1989 article in science magazine”, “Drugs prohibition in the United States...” noted:

“Criminal prohibition has not eliminated or even reduced drug use; we spend billions of dollars a year in this seemingly futile effort; the war on drugs produces numerous harmful side effects, including corruption and damage to poor and minority neighbourhoods...”⁶⁶

“The logic of legislation, he argues, consists of two main points: that most illegal drugs are not as dangerous as is commonly believed and that abuse of the most dangerous will not rise significantly under legislation”.⁶⁷

This sort of reasoning has led Samuel Walker to state and ask the following profound questions:

“What would happen if we legalized drugs? Obviously, the answer depends on which form of legalization we are talking about. The effect of radical legalization would be very different from the moderate or conservative alternatives. Whichever policy were adopted, these questions arise: (1) Would drug use increase or decrease? (2) Would predatory crime such as robbery and burglary increase or decrease? (3) How much money would in fact be saved? (4) What would happen to the drug-related criminal syndicates? (5) What would be the overall impact on the criminal justice system? (6) Would there be fewer violations of individual rights? (7) Finally, what would be the overall effect on the quality of life...?”⁶⁸

As may be clearly appreciated the policy makers ought to seriously consider the above in their desire to fight the drug trafficking scourge.

⁶⁴ ibid

⁶⁵ Samuel Walker (2001), sense and nonsense about crime and drugs (5th ed), Belmont: Wadsworth.

⁶⁶ ibid at p.271

⁶⁷ Op cit note 59

⁶⁸ ibid at p. 272

The conservatives on the other hand “emphasize law enforcement to eradicate drug abuse, believing that we simply need to get tougher than we have been. Enforcement strategies include both supply and demand reduction, designed to decrease people’s desire to use drugs”.⁶⁹ The Zambian approach, it is submitted is in the main in line with the conservative approach. This can be seen from former DEC commissioner Mukutulu Sinyani’s words reiterating the DEC’s continuance of a pointed assault on the illicit trade in drugs and the laundering of money doing so with appropriate maneuvering to diminish the demand for, propagation of, and bargaining in illegal drugs⁷⁰.

While it is true that drug trafficking fighting strategies such as interdictions, supply reduction and an escalation in brutal attacks on the scourge have not worked as has been alluded to already in this essay, it in no way justifies decriminalising the trade by legislating it. It is a shallow argument indeed that people should be left to do what they want because it is their right. There are laws against murder, theft and corruption in virtually every country on earth. Has this stopped murders, theft and corruption? No. Should these crimes then be made legal because people have a right to do what they want? Preposterous’ some would say. Jeremy Bentham (1748 – 1832) postulated that “the business of government ... was to promote the happiness of the society by furthering the enjoyment of pleasure and affording security against pain”.⁷¹ It is “the greatest happiness of the greatest number that in the measure of right and wrong”⁷².

The effects of drug trafficking are great. Left to ride freely, drug trafficking would threaten the security, stability even the very existence of our nation. “The illicit drug economy and organized crime are more or less interdependent”.⁷³

“In order to keep drugs flowing smoothly from one area to another, the traffickers try to corrupt or intimidate Officials. Some even operate their own private armies. The huge profits made by drug barons also create problems

⁶⁹ *ibid*

⁷⁰ *op.cit* note 61

⁷¹ Edgar Bodenheimer, (2004), *Jurisprudence*.(Revised ed.). Delhi: Universal Law Publishing at p.85

⁷² *ibid*

⁷³ *Op cit* note 3 at p.7

Their enormous cash inflow could easily incriminate them
If the money were not laundered, so banks and lawyers are
employed to cover the tracks of the drug money”.⁷⁴

The effect on the economy from the above can be devastating. Drug money operates outside the economy of a country and it no way benefits a country. Huge withdrawals can wreak havoc in the banking system and eventually wreak the whole economy.

The health effects also take a tremendous toll on the end users in the drugs trade. Dr. Imasiku quoted earlier,⁷⁵ lists dizziness, pulse pressure decrease, disease, trembling, loss of coordination; depression and distortion of one's own emerge as the results of drug abuse. He notes that the work performance and productivity in general goes down. Zambia can ill-afford to have a population like that. A sick human resource spells doom for development which the country craves.

Therefore as “Robert Dupont... argued...legislation would increase drug use, addiction and drug related deaths”⁷⁶. We expect muggings, robberies, prostitution would escalate and exponentially so.

It is clear from what has been discussed here above that neither methods of fighting drug trafficking is satisfactory. What is suggested is an integrated dynamic approach that combines the threat aspect with education and rehabilitation.

2.6. CONCLUSION

In looking at the scourge of drug trafficking this chapter has, by combining the two constituent words in the term, both from scholars and the Narcotic Drug and Psychotropic Substances Act⁷⁷ defined ‘drug trafficking’. It was shown that drug trafficking is not only confirmed to Zambia but that it is a global problem that different governments have

⁷⁴ ibid

⁷⁵ Op cit note 22

⁷⁶ Op cit note 19 at p.85

⁷⁷ Op.cit note 9

expended huge resources in fighting but to no avail. The concern for this human tragedy has moved the UN to come up with several conventions the latest being the 1988 UN convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. In addition took a synoptic view of the seriousness of the problem in Zambia by giving a brief historical background from the colonial period to date. Finally, the chapter delved into the debate that has engrossed the drug trafficking scourge in recent times between advocates for legislation and those who support the continued vigorous attacks on traffickers and users. The chapter concluded that there are many compelling reasons why trafficking in illicit drugs should be stopped, but proposed an integrated approach. The next chapter makes a critical analysis of Zambia's Narcotic Drug and Psychotropic Substances Act⁷⁸ and the operations of the Drug Enforcement Commission.

⁷⁸ Chapter 96 of the laws of Zambia, Act No. 37 of 1993

CHAPTER THREE

LEGISLATION: A CRITICAL ANALYSIS OF THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT⁷⁹

3.1 INTRODUCTION

The Narcotic Drugs and Psychotropic substances Act, is as far as Zambia is concerned, the most authoritative, most complete and most detailed statement of government policy on the scourge of drug trafficking within and without Zambia. It goes without saying therefore, that an examination of the Act in question will help in gauging (in legislative terms at least) the importance attached to fighting the illicit trade in illegal drugs. The chapter will therefore focus on pertinent provisions of the Act and how they have shaped and continue to shape the crusade against the scourge of drug trafficking. But first let us explore what can be deduced from the name of the Act.

3.2 WHY THE ACT WAS SO NAMED

The Narcotic Drugs and Psychotropic Substances Act⁸⁰ repealed and thereby replaced the Dangerous Drugs (forfeiture of property) Act, 1989⁸¹. It will be obvious from looking at the names of the two Acts that the former seems to be more specific and more lucid than the latter. This cannot be construed to, by any stretch of the imagination, mean that the drugs targeted by the 1989 Act have become less portent or dangerous nor has the focus changed.

The nomenclature of the current Act makes an apparent distinction between Narcotic Drugs and Psychotropic substances. This is vitally important for there indeed is a difference between the two:

⁷⁹ Op.cit note 9

⁸⁰ ibid

⁸¹ S.49 of cap 96 of the laws of Zambia

3.2.1 NARCOTIC DRUGS

Narcotic Drugs (or simply narcotics) are defined as:

“Active substances that have a dulling stimulating effect on the central nervous system and whose use can lead to dependency. Drugs such as heroin or cannabis, known as “illegal drugs”, belong to this category, as do a larger number of substances used for medical/therapeutic purposes. These latter include morphine, fentanyl and methadone. Such substances may only be prescribed by physicians and veterinarians...”⁸²

3.2.2 PSYCHOTROPIC SUBSTANCES

Swiss medic defines psychotropic substances as:

“Substances that affect the human psyche...change an individual’s psyche or consciousness. The term ‘psycho-active substances’ is also used. The substances can numb, dull or reduce consciousness, but also excite, stimulate or expand it. A difference is made between stimulants, hypnotes and hallucinogens.”⁸³

It thus is obvious that there are valid reasons for naming the Act in the way it has. As Dr Yusuf Badat, former Member of Parliament for Kafue stated in a debate on the bill leading to this Act, “The intention...is to keep with time, adapt to changing conditions, social needs and problems and public opinion.”⁸⁴ The Act has listed in its second schedule (section 2) part I-Narcotic Drugs and part II-Psychotropic substances.⁸⁵

3.3 OBJECT AND PURPOSE OF THE ACT

We noted from the previous chapter that numerous efforts had, before this Act, been made in as far as anti-drug legislation is concerned but to no avail. The laws we stated, remained weak with a lot of loopholes. Infact, in presenting the bill to parliament, the

⁸² <http://www.swissmedic.ch/html/content/FAQ-Betm-e.html> visited on 13th december,2007.

⁸³ Ibid

⁸⁴ Parliamentary debates of the second session,13th -29th july,1993,p.514

⁸⁵ See index in this text for the list reproduced from CAP 96 of the laws of Zambia

then minister of home affairs Newstead Zimba stressed that numerous complaints from the international community, the Courts and the “law abiding” citizenry had been received on the weakness of the law regarding drug trafficking.⁸⁶ “The ultimate aim of Government...” he said, “...is to strengthen the law which has remained very weak for many years so that it can now meet the present challenges we are encountering in this area.”⁸⁷ That determination is reflected in the preamble to the Act. It states:

“ An Act to continue the Drug Enforcement Commission; revise and consolidate the law relating to narcotic drugs and psychotropic substances; incorporate into Zambian law certain international conventions governing illicit drugs and psychotropic substances; control the importations, exportation, production, possession, sale, distribution and use of narcotic drugs and psychotropic substances; provide for the seizure and forfeiture of property relating to ,or connected with, unlawful activities involving narcotic drugs and psychotropic substances; repeal the Dangerous Drugs (Forfeiture of property) Act, 1989; and provide for matters connected with or incidental to the foregoing.”⁸⁸

This certainly represented a radical nay drastic rethink in anti-drug policy, but much more than that, it demonstrated the government’s attitude (legislatively at least) towards the fight against drug trafficking. The Act revised and consolidated “the law relating to illicit use of ,or dealing in ,narcotic drugs and psychotropic substances and introduced “stiffer penalties for persons who unlawfully use or deal in...dangerous drugs or substances....”⁸⁹

3.4 STRUCTURE AND SUBSTANTIVE PROVISIONS OF THE ACT

3.4.1 STRUCTURE

The Act is divided into six parts translating into 49 sections which are: preliminary; Drug Enforcement Commission; Offences and penalties; investigations; arrest and seizure and forfeiture of property and general - in that order. Further, the Act has in it, a first schedule

⁸⁶ Op.cit note 84

⁸⁷ Op.cit note 84 at p.477

⁸⁸ Op.cit note 9

⁸⁹ Op.cit note 84 at p.477

which is about the DEC and second schedule which lists Narcotic Drugs and Psychotropic substances. Appended to the Act is subsidiary legislation in the name of statutory instruments numbers 119 of 1995 concerning trafficking regulations and 51 of 1994 regarding Drug Enforcement Commission (staff) rules.

3.4.2 SUBSTANTIVE PROVISIONS

Section 2 is the definitional section of the Act. It among other things defines “conviction”, “illegal property”, “manufacture”, “narcotic drug”, “psychotropic substance”, “securities”, and most importantly, as we saw in chapter 2 of this essay, “trafficking.”

We have already stated that the Narcotic Drugs and Psychotropic substances Act⁹⁰ repealed the Dangerous Drugs (forfeiture of property) Act 1989⁹¹ from which the DEC was a consequential creation. By section 4(1) of the current Act however, “The Drug Enforcement Commission..., is continued as if established under this Act.” Thus under no circumstances was the work of the DEC interrupted by this law. In fact, what the commission found the morning after was a stronger mandate with the full blessings of parliament. Section 4(2) states that “the commission shall be a department in the ministry responsible for Home Affairs and shall be under the control and supervision of the minister responsible for Home Affairs.” However, when you refer to the first schedule concerning the DEC you note that the commissioner and his deputy are appointed by the president.⁹² Further, there is no security of tenure for the two important officers. It could be argued that this opens the commission to a lot of political interference and whimsical decisions regarding these key positions. The government’s reaction to this fear has been that:

“The commissioner is a head of an investigative wing, which is part of the Government’s forces dealing with enforcement. It is only correct, therefore, as in the case of the Inspector-General of police, the commanders of the Army, the

⁹⁰ Op.cit note 9

⁹¹ Op.cit note 81

⁹² See S1(i) and S2(i)

Air Force and the National Service, and the Commissioner for the Drug Enforcement Commission should be appointed and removed by the president.”⁹³

3.4.2.1 Offences and Penalties

Part III of the Act deals with offences and penalties. Section 67 prohibits trafficking in narcotic drugs or psychotropic substances. If found guilty of contravening this section one shall be liable upon conviction to imprisonment for a term not exceeding twenty-five years. This section may be read together with statutory instrument No.119 of 1995 as illustrated in *Gideon Hammond Millard v the people*⁹⁴ the court stated:

“We can not accept that possession of 9.37kg of drugs can genuinely be said to be in the realm of consumption. We take note that the legislature deliverately[sic] defined what quantities constitute trafficking in drugs....The appellant was...properly convicted of trafficking even accepting that 9.37kg was for consumption.”

Section 7 makes importing or exporting of narcotic drugs or psychotropic substances an offence punishable upon conviction by imprisonment not exceeding twenty years. This is five years less than the maximum penalty for trafficking. Section 23(1) states that “every drug trafficking and drug manufacturing offence shall be a cognizable offence for purposes of the criminal procedure code.”⁹⁵ The interpretation of this section in line with section 7 was a bone of contention in *Lanton, Edwards and Thewo v The people*⁹⁶. Both the subordinate court and High court concluded that the appellants were not entitled to bail as the importation of drugs for which they had been charged, like trafficking, was a cognizable offence. The Supreme Court disagreed stating that “We are satisfied that under the Act the offence of importation is not the same as the offence of trafficking and therefore not a cognizable offence.” Possession and cultivation by sections 8 and 9 are prohibited and attract maximum terms of fifteen and ten years respectively. In *Vefeem Fofana Alias Mutombo Wa Mutombo v The people*⁹⁷ noting that “the history of this legislation has been to make the penalties more and more severe as we go along

⁹³ Op. cit 84 at p.514

⁹⁴ [1998] S.J. 34 (S.C.)

⁹⁵ Chapter 88 of the laws of Zambia

⁹⁶ [1998]S.J.30(S.C)

⁹⁷ [1992]S.C.Z.Judgment No.8

“concluded that “the sentence of 6 years imprisonment with hard labour for an obvious case of trafficking (possession of dangerous drugs) was condign; it was not one day too long.”

Zambia has ratified the UN 1988 convention on Drugs. By Article 3 of that convention, nations may be required to ban possession of drugs for personal use. In our Act section 10 prohibits the use of narcotic drugs and psychotropic substances. This, Dr Imasiku⁹⁸ calls confusing because when you look at S.48, the minister may, by statutory instrument, make regulations for the establishment and management of drug rehabilitation. How sure will one be sure of not being arrested if the Act says he ought to be for being in possession and for consuming illicit drugs? The emphasis is so much on punitive measures which scares off addicts who thus continue to be a market for traffickers. He suggests an integrated approach where all stakeholders including medical doctors, psychologists and the DEC are involved in tackling the drug problem.

Other matters that constitute offences under the Act include attempts; abetting and soliciting; conspiracy to commit drug offences; unlawful manufacture of psychotropic substances or narcotic drugs; inducing another to take narcotic drugs or psychotropic substances; unlawful possession of instruments or utensils for administering narcotic drugs or psychotropic substances; permitting premises to be used for unlawful use of narcotic drugs or psychotropic substances prohibited; unlawful supply of narcotic drugs or psychotropic substances; impersonation of commission's officers; use of property for narcotic drugs or psychotropic substances; possession of property obtained through trafficking and money laundering, covered under part III sections 11 to 22.

3.4.2.2 Investigation, Arrest and Seizure

By section 24, if the commissioner reasonably believes that on any property liable for forfeiture under the Act or to which an offence under the Act is suspected, he may, by order of writing, authorise a drug enforcement officer or police officer to enter such

⁹⁸ Op. cit note no. 25

premises, search and seize such property as is liable to seizure, arrest person on the premises who is in possession of such property. Sub section gives further powers to the officer in question to break open any outer or inner door or window of any premises and other means necessary.

Professor Patrick Mvunga⁹⁹ questions this wideness of powers. He states that the commissioner is an interested party and by virtue of being an interested party he should not sign warrants. To maintain checks and balances, to curb malice, ill-will or arbitrariness, a neutral arbiter such as a magistrate (which in fact is the normal course of matters) should be the one to decide whether such warrant should be given upon application by the commissioner.

Section 25(1) empowers an officer to search any person he reasonably suspects has drugs on them. A more interesting and necessary provision is to be found in S. 25 (2).It reads: “A search of a person under this Act may extend to a medical examination of his body, both externally and internally, by a medical practitioner.” People have been known to swallow prohibited drugs and this provision is meant to tackle that situation.

Section 26(1) restricts the power to take photographs, measurements, fingerprints, hand prints and footprints to officers of or above the rank of sergeant. Professor Mvunga¹⁰⁰ thinks this is necessary as certain tasks such as the ones covered in this subsection will require a certain level of skill and experience.

By section 27(1) “Notwithstanding the provisions of any other law, a judge may, if he considers that any communication or postal article is likely to contain any information or substance which is likely to be relevant for the purpose of any investigation into an offence under this Act, or any corresponding foreign law, or for the purpose of a drug enforcement officer or police officer, authorize any such officer-

⁹⁹ AHCZ and Lecture in the School of Law, UNZA. He was a member of parliament for kasenengwa at the time the bill to the Act was being debated and participated in the debate thereto.

¹⁰⁰ ibid

- a) To intercept, detain and open any postal article in the course of transmission by post; or
- b) To intercept any message transmitted or received by any telecommunication.

At first glance, this provision seems to contravene Article 17(1) of the constitution¹⁰¹ which states that “Except with his own consent, a person shall not, be subjected to search of his person or his property...” However, if one considers the derogation in Act.17(2) (a), such interception as is provided for above can be said to be reasonably required in the interest of defence, public safety, public order, public morality, public health...”¹⁰²

Section 28(1) empowers drug enforcement officers or police officers to use fire arms but under specified conditions. Perhaps importantly S.28 (3) states that “the use of a firearm under this section shall as far as possible be to disable and not to kill.” This is meant to make the latter case an exception and not the norm. But many times, police have used firearms to kill and not to disable thereby violating this provision. The interesting thing is that the Act does not provide for a penalty for the contravention of this section. This leaves suspects at the mercy of the police who have tended to be trigger happy at times.

3.4.2.3 Seizure and Forfeiture of Property

“Failure or refusal to disclose information or to produce accounts, documents or articles” required for investigations under the Act makes “one liable upon conviction to imprisonment for a term not exceeding ten years.”¹⁰³ In addition, obstruction of any or all of the forms mentioned under S.30 will make one “... guilty of an offence and liable upon conviction to a fine of not less than ten thousand penalty units or to imprisonment for a term not exceeding twelve months or both.”

Section 31 provides for seizure of property. Such property should be such as “a drug enforcement officer or police officer reasonably suspects to be the subject-matter of an

¹⁰¹ *ibid*

¹⁰² S.29

¹⁰³ S.29

offence under this Act, or which has been used for the commission of that offence or is illegal property¹⁰⁴ shall be liable to seizure.” Such property if it is concluded that it is not liable for forfeiture or required for investigation can be released.¹⁰⁵ Where however there are no proceedings against seizure or claim for the property within six months the property will be forfeited to the state.

Upon conviction for a drug trafficking or related offence under the Act, the court may in addition to the penalty under the Act, order “the narcotic drug or psychotropic substance, and any movable property used to commit the offence be forfeited to the state. This is in consonance with the provisions of the UK Misuse of Drugs Act 1971 where “...by section 27...only those assets which directly relate to an offence committed by the accused, under that Act, may be forfeited...”¹⁰⁶

The simple reason for following this concept is the long recognised common law maxim “*exturpi causa non oritur actio*.” In line with this, Sir Samuel Evans stated in Re Crippen¹⁰⁷ “... no person can obtain or enforce any right resulting to him from his own crime, neither can his representative claiming under him obtain or enforce any such rights.” It is a view that was followed in The people v Samson Yamalezi¹⁰⁸ where the court stated: “...the respondent be charged with appropriate charges for vehicles which were connected in any crime and that the seizure of the motor vehicles by the officers was in order.”

Thus;

“...if the prosecution can prove that payment, a payment or reward was received by the defendant at anytime and if it can be proved to be connected with drug trafficking, then such payments represent the “proceeds” of drug-trafficking for the purpose of the Act.”¹⁰⁹

¹⁰⁴ What constitutes illegal property is stated in S.2 of Cap 96

¹⁰⁵ S.32(1)

¹⁰⁶ Rudi Fortson, (1988), The law on the misuse of drugs. London: Sweet and Maxwell at p.195

¹⁰⁷ [1911-13] ALL ER 207

¹⁰⁸ HPA/49/93

¹⁰⁹ Op.cit note 106 at p.202

Section 35(1) provides that the DPP will have to apply to the court for forfeiture of any property he believes to be illegal. Such application must contain all information as outlined by S.35 (2). In addition a forfeiture notice will have to be given to the person “holding or owning the property, commanding that person to attend before the court on a date specified in the notice, which date shall not be less than thirty days from the date of notice.”¹¹⁰ Further, S.37 (1) provides for instances when property, where the owner is untraceable will be forfeited. All property forfeited will be forfeited to the state.¹¹¹

3.4.2.4 General Part

Hereunder, disorderly behaviour at the DEC premises may land one a fine or a prison sentence not exceeding 12 months.¹¹² “Assaulting drug enforcement officers and police officers makes one “guilty of an offence and shall be liable upon conviction to a term not exceeding four years.”¹¹³ Perhaps one of the most contested clauses in the bill leading to the Act was clause 43 now section 43. That section provides:

“Whenever any person is arrested or detained upon reasonable suspicion of his having committed a cognizable offence under this Act, no bail shall be granted when he appears or is brought before any court.”

The main thrust of argument for those against the clause was that it was unconstitutional as it affected the rights of an individual and eroded the constitution.¹¹⁴ But according to the government “clause 43 was [to]”¹¹⁵ be included because they thought it would defer “the stages connected to drug trafficking.”¹¹⁶ The bail restriction had been inserted so as to make the bill (now Act) self containing as regards bail matters. The provision does not contradict the constitution. According to Article 13(1)(e) “a person shall not be deprived of his personal liberty except as may be authorized by law...upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in

¹¹⁰ See S.36(1)

¹¹¹ See S.39

¹¹² See S.41

¹¹³ See S.42

¹¹⁴ Op.cit note 84 at p.481

¹¹⁵ Emphasis added

¹¹⁶ Ibid at p.480

force in Zambia. The non availability of bail for certain crimes is patently clear. For example the proviso to section 123(1) of the Criminal Procedure Code¹¹⁷ in dealing with provisions for bail states:

- (i) “murder, treason or any other offence carrying a possible or mandatory capital penalty;
- (ii) misprision of treason or treason-felony; or
- (iii) aggravated robbery;

Shall not be granted bail by either a subordinate court, the High Court or Supreme Court or be released by any Police Officer.”

Owing to the seriousness of the stated crimes, the legislature saw it fit not to grant bail to suspects thereof. This provision has not been attacked as unconstitutional. In the same analogy the seriousness of the drug trafficking scourge need to be treated with the seriousness it deserves. Not granting bail as provided in section 43 is therefore justifiable and an inbuilt deterrent for would be traffickers for amongst the most cherished of all rights is that of liberty. People have died fighting for it. Drug trafficking is a cognizable offence and should not be treated any less seriously and its commission must be sanctioned in a way that sends a clear message of its undesirability. Granting bail would send mixed messages on the government’s will to fight the scourge.

This view was endorsed by the Supreme Court in *Lanton, Edwards and Thewo V The people*¹¹⁸ when it stated inter alia “that no bail can be granted when a person is charged with a cognizable offence.” Trafficking in illicit drugs is one such offence. Besides as was held in *Chetankumar Shantkal Parekh v The people*¹¹⁹:

“Where any trial is unreasonably delayed through no fault or stratagem of the accused, the arrested person must be released on what one might call ‘constitutional bail. Such bail is available and dearly overrides any prohibitions in the lesser laws so that article 13(3) would apply to any unreasonably delayed case, whatever the charge and whatever S.43 of the Act, or S.123 of the C.P.C. or any other similar law may say.”

¹¹⁷ Chapter 88 of the laws of Zambia

¹¹⁸ S.C.Z judgment No.9 of 1998(541)

¹¹⁹ S.C.Z judgment No 11 of 1995

S. 45 is interesting in stating that for any offence if committed by a drug enforcement officer or police officer, such enforcement officer or police officer shall receive double the stipulated sentence, the section acts as a deterrent and also instills discipline and confidence in the commission. Extradition and international legal assistance as regards trafficking offences in the Act are covered in sections 46 and 47 respectively.

3.5 SHORTCOMINGS OF THE ACT

In spite of the fact that the Act is a tremendous improvement over its predecessor, it still retains certain deficiencies. There is no provision precluding those convicted from holding public offices once they have served their sentences. This has to be included in that it “has an important demonstrative and symbolic value to outsiders that may still doubt Government’s commitment to the elimination of drug trafficking in Zambia”.¹²⁰ Further, the Act does not put emphasis on the commission conducting campaigns especially in rural and other areas where Cannabis growing is rampant putting emphasis on its legal status nor does it provide for the decentralisation of the food and drug laboratory to strengthen drug identification nor has it provided for the creation of a data base so that the DEC can effectively coordinate its work with other law enforcement agencies. These and other matters alluded to in this chapter need to be looked at to enhance the drugs fight.¹²¹

3.6 CONCLUSION

This chapter has shown, that the Narcotic Drugs and Psychotropic substances Act¹²² represents for Zambia at least, the most comprehensive, most authoritative and clearest policy direction, in legislative terms as regards drug trafficking within and without Zambia. It was enacted in response to the international community’s courts’ and law abiding citizens’ call for a more robust anti drug regime. The Act “introduces stiffer

¹²⁰ www.gdu.gov.zm/publications/Governance_agenda.pdf 20/6/07

¹²¹ *ibid*

¹²² Chapter 96 of the laws of Zambia

penalties for persons who unlawfully use or deal in these dangerous drugs.”¹²³ But certain provisions are doubtful. For example, the lack of security of tenure for the commissioner and deputy commissioner is rather unsettling in as far as autonomy nay interference are concerned. The Act puts too much emphasis on punitive measures forgetting to pay close attention to addiction, education and rehabilitation. It must be noted here that the Narcotic Drugs and Psychotropic substances is a good Act. However, a lack of sufficient funds has seriously affected its effective application and if this continues to be the case, the war against drugs may be lost.

¹²³ Op.cit note 84 at p.77

CHAPTER FOUR

THE CRIMINAL JUSTICE SYSTEM AND TACKLING THE SCOURGE

4.1 INTRODUCTION

Fighting a crime as complicated as drug trafficking requires more than an Act of Parliament, it requires more than political pronouncements. It demands that a properly functional system is in place to counter it. Such a system is referred to as a criminal justice system. A criminal justice system in general “involves the people and agencies that perform criminal justice functions. The three basic divisions of the criminal justice system are the police, courts, and corrections.”¹²⁴ To effectively counter the scourge of drug trafficking, the criminal justice system must not only be alert but ready willing and able to arrest, prosecute and convict, acquit or discharge suspects within a reasonable time. This aim of this chapter is to take an overview of Zambia’s criminal justice system and how the different components have reacted to the scourge and to see if they are coping and if there is need to improve in dealing with the scourge of drug trafficking. We shall begin with the Drug Enforcement Commission, move to the courts and end with the prisons (or corrections).

4.2 THE DRUG ENFORCEMENT COMMISSION

The Drug Enforcement Commission was established in 1989 through a statutory instrument.¹²⁵ Its continuation is provided for under the Narcotic Drugs and Psychotropic substances Act.¹²⁶ As a law enforcement agency, the DEC is charged with fighting the

¹²⁴ Erika Fairchild and Harry R. Dammer, (2001), Comparative Criminal Justice Systems (2nd ed.), Belmont: Wadsworth/Thomson learning

¹²⁵ Statutory Instrument No. 87 of 1989

¹²⁶ Op. Cit note 9, S.4(1)

illicit trafficking in illegal drugs in Zambia and its attendant crimes of narco-terrorism money laundering and corruption.¹²⁷

Section 5 of the Narcotic Drugs and Psychotropic Substances Act¹²⁸ outlines the commission's functions stating that "they shall be to:

- (a) collect, collate and disseminate information on narcotic drugs and psychotropic substances;
- (b) receive and investigate any complaint of alleged or suspected breach of ... Act and, subject to the directives of the Director of Public Prosecutions, prosecute for offences under Act;
- (c) address and advise Government Ministries and departments, public bodies, companies, institutions, statutory bodies and corporations on ways and means of preventing prohibited activities relating to narcotic drugs and psychotropic substances and suggest measures, procedures or methods of work compatible with the proper performance of their duties which in the opinion of the commission, would reduce prohibited activities relating to narcotic drugs and psychotropic substances;
- (d) disseminate information intended to educate the public on the evils and dangerous effects of abusing drugs or psychotropic substances and the effect of dealing in property acquired from drug trafficking; and
- (e) enlist and foster public support against the abuse of drugs or psychotropic substances and in this connection, liaise with similar authorities outside Zambia."

4.2.1 PERFORMANCE OF THE COMMISSION

The performance of the commission as regards the above functions under circumstances it has found itself, commendable. For example, the commission works in coordination with the US Drug Enforcement Agency, Interpol and is an active participant in regional initiatives. Further, the commission has engaged in several campaigns to inform the public. In this regard, it has encouraged the formation of Anti-Drug Clubs in Primary

¹²⁷ DEC, "message from the Commissioner", DEC News Vol. 20, July (2004) p. 2

¹²⁸ Op. Cit note 9

and High Schools. It publishes a monthly magazine called DEC News in which it educates the public about the dangers of illicit drugs and trafficking. The commission has further established a website¹²⁹ on which further information on anti-trafficking strategies is given. In addition a synopsis of the prevalent drugs such as cannabis, heroin, khat/miran and cocaine is given.

The Education campaign however has not been perfect. Due to either lack of funding or technical ability, the rural areas where the major problem is, according to former DEC Commissioner, the cultivation of cannabis¹³⁰, has not been adequately reached. Simply put, chiefs and their subjects have not been educated. As Chief Inyambo Yeta of Sesheke said “some traditional leaders are still ignorant about the dangers associated with cannabis.”¹³¹ Is it any wonder that just within a period of six months of 2006 70 metric tones of cannabis were seized “compared to the 17 metric tones that was confiscated the whole of” the previous year?¹³² Clearly the commission has failed in this area and must intensify its efforts in its education campaign. It seems to have “... decided to cure the symptoms and not the disease ...”¹³³ and so the problem continues seemingly unabated.

4.2.1.2 Designer Drugs and the DEC

We have striven to show in this essay the evolutionally nature of drug trafficking. In this light a discussion of drug trafficking would be incomplete without making a note on designer drugs. A designer drug has been defined as “a drug synthesized specifically to mimic the psychotropic effect of an existing (usually illegal) substance, with slightly modified molecular structure to avoid classification as an illicit drug, typical examples

¹²⁹ <http://deczambia.gov.zm> visited on 7th December, 2007

¹³⁰ Doreen Kambangaji, ‘chiefs are still ignorant about the dangers of cannabis-Inyambo’, The Post, 2nd June, 2006

¹³¹ *ibid*

¹³² *.ibid*

¹³³ Dr Isaac Lusunzu “The significance of intelligence driven clandestine laboratory investigations in controlling the supply of illicit drugs – The Southern African perspective and experience”, ICC, Durban, 3-7 Dec 2001

being ecstasy (2), MDA and MPPP.”¹³⁴ It is clear that the main aim is to circumvent the law. However, these drugs can be dangerous even fatal when used. The danger however, that is the drugs are relatively new and so little or no research has been done into their toxicity or pharmacology. “Unlike better known drugs like alcohol or marijuana, which have been used by millions of people worldwide, research chemicals are new....”¹³⁵ It may seem that some of these chemicals fall out of Zambia’s drugs regime. However, the chemical compositions of these drugs fall within the schedule of drugs and psychotropic substances the trafficking of which has been made illegal by the Narcotic Drugs and Psychotropic Substances Act¹³⁶. The DEC, in our considered view, lacks both the financial and technical ability to respond adequately to this new face of drug trafficking. Drastic measures are required in this area. Further, it would not be far fetched to suggest that the Act be broadened so as to “cover millions of compounds that have never been made, simply on the basis that they bear a vague resemblance to one of the drugs on the illegal list.”¹³⁷

There must be a realisation in practice that the drug problem is one that involves winning hearts and minds. Motivations for drug trafficking and use, sociological, economic, psychological and otherwise must be researched in if the DEC is to enlist and foster public support. In this line Raymond Goldberg notes:

“In our constantly changing society, people sometimes turn to drugs to cope. Drugs are easy to use, work quickly, and are transported easily. Other reasons for using drugs range from seeking pleasure to escaping boredom, to peer influence, spiritual purposes, self discovery, social interaction, and rebellion. Others use drugs to cope with anxiety and depression”¹³⁸

¹³⁴ www.encyclopedia.com/dod1087-designerdrug.html visited on 2/02/08

¹³⁵ <http://www.en.wikipedia.org> visited on 2/02/08

¹³⁶ Chapter 96 of the laws of Zambia.

¹³⁷ Op.cit note No.135

¹³⁸ Op.cit note No. 19 at p.69

4.2.2. STRATEGIES EMPLOYED

4.2.2.1 Drug Supply Reduction

The Commission claims on its website to attach great importance to supply reduction and so states:

“in this program, the Commission aims to fight the drug scourge from the source, thereby reducing on what goes on to the street. In this program, DEC aims to stop the cultivation of cannabis by some peasant and commercial farmers. ...The Commission does not end at cannabis. The fight against hard drugs such as cocaine, mandrax, heroine, etc ...”¹³⁹

But as the Commission itself admits these sources are not easy to find. For Zambia this takes on an added dimension when it is noticed as we have in this essay that it is a transit point for many drugs going to South Africa and Europe. Clearly, this strategy that may call for an increase in number of officers has, as statistics show, been ineffective when used alone.¹⁴⁰

4.2.2.2 Demand Reduction

This is the second strategy used by the commission and it is one “favoured by most liberals [it]¹⁴¹ includes ... education and treatment.”¹⁴² As you may have noted earlier in the chapter, the Commission has engaged in numerous educational campaigns in print and electronic media and exhibitions at trade shows. All education campaigns involve the following strategies. Information dissemination ... fear arousal ... moral appeal [and] affective education ...”¹⁴³ Again like the former, this can never be a stand alone strategy and must be integrated with criminal sanction to have a modicum of success.

¹³⁹ Op.Cit note no 129

¹⁴⁰ Ibid.

¹⁴¹ Emphasis added

¹⁴² Op.cit note 65 at p. 263

¹⁴³ Ibid

4.3 ENFORCEMENT AND RIGHTS OF SUSPECTS

Perhaps the noteworthy feature of the DEC has been the veracity with which it has investigated and prosecuted suspects of drug trafficking. The very nature of Narcotic Drugs and psychotropic substances Act has made this obvious. It is an overwhelmingly punitive Act. Out of the 49 substantive serious only one talks about rehabilitation centre creation. And as will be seen from the part dealing with the courts, in this chapter, the commission, with the help of the office of Director of Prosecutions which prioritises Drug trafficking cases, the DEC has been hugely successful in the prosecution of drug offenders.

The overwhelming powers given to commission officers¹⁴⁴ may render themselves to arbitrariness and contravention of the constitutional rights of suspects.¹⁴⁵ Torture, proscribed under the constitution is still practiced by officers. However “law enforcement officials in every society, such as the Drug Enforcement Commission, are entrusted with a variety of powers for the purpose of enforcing law and maintaining order.”¹⁴⁶ The nature of criminal justice is such that it protects rights and punishes their violation. Thus it is a tool – if only to protect individual rights and freedoms.¹⁴⁷ If this be the case rights and freedoms even of drug trafficking must be protected, even when convicted such rights must be protected. Hence “certain fundamental human rights cannot be taken away under any circumstances, such as, among others, the right to life (except justifiable homicides), freedom from torture, freedom from slavery and servitude and recognition everywhere as a person before the law.”¹⁴⁸

¹⁴⁴ See part iv of the Act on investigation, arrest and seizure and part v dealing with seizure and forfeiture of property

¹⁴⁵ Articles 11 to 26, constitution Act, Chapter 1 of the laws of Zambia

¹⁴⁶ Lufwendo Saboi, “Law enforcement and Human Rights” , DEC News Vol. 20 July 2004 p.6

¹⁴⁷ *ibid*

¹⁴⁸ *ibid*

The DEC must instill these fundamental principles of criminal justice in its officers even as they enforce the law regarding drug trafficking. A person how obvious the crime is always innocent until proven guilty and so has rights take anybody else.

4.4 THE COURTS

No criminal justice would be complete without a court system. “The function of courts is to settle, authoritatively and according to predefined legal norms, the many disputes that arise in a society ... The disputes ... may be [as in a drug trafficking case]¹⁴⁹ between the state and a party accused of a criminal violation.”¹⁵⁰ The question we will explore in this section is how the Court system has reacted to the scourge of drug trafficking.

4.4.1 SUBORDINATE COURTS

The question we will explore in this section is how the Court system has reacted to the scourge of drug trafficking. Commenting on the work of subordinate in handling criminal cases (which include drug-related cases) Lawrence Nyeleti makes this scathing attack:

“The performance of the subordinate Courts in handling of criminal law case [sic] in Zambia’s legal system leaves much to be desired considering the adverse results produced which are clear for all to see. In most of the subordinate court [sic], the standard and quality of arguments are pathetic, the trend that has persisted since independence to date.”¹⁵¹

It cannot be said that this opinion holds for all the courts. It is important to note however as Nyeleti himself admits, that the inefficiency of the subordinate courts has been because

¹⁴⁹ Emphasis added

¹⁵⁰ Op. Cit note 124 at p. 190

¹⁵¹ An Analysis of the Role of The Performance of, and challenges faced by the Subordinate Courts in the Administration of Criminal Justice in Zambia, LLB Dissertation, University of Zambia, 2006 p. 35.

of overwhelming problems such as inadequate manpower; delays issuing the fiat by the DPP and shortage of courtrooms among others.¹⁵² In spite of this, the subordinate courts remain the single most important starting point of drug trafficking cases and so merit attention in their delivery of justice of drug trafficking suspects among others. There is also need to understand the Narcotic Drugs and Psychotropic Substances Act¹⁵³.

4.4.2 THE SUPREME COURT'S REACTION

The Supreme Court of Zambia is for all intents and purposes, the nation's highest and final court of appeal. It follows then that it gives guidance as to what the interpretation of the law is. In several drug trafficking and related cases that have come before it, the court has made several valuable pronouncements and observations which should guide to lower courts in their dispensation of justice. It did so in defining drug trafficking in *Chetankumar Shantkal Parekh V The People*.¹⁵⁴ The Court has also recognized the international dimensions of drug trafficking. It stated in *Vafeen Fofana Alias Mutombo Wa Mutombo V The People*.¹⁵⁵

“... In our considered opinion ... it is obviously the duty of the courts to discourage transborder trafficking. Indeed the court cannot lose sight of the fact that drug trafficking is no longer a matter for domestic interest only but has assumed international proportions and the while international community is concerned about this cancer. This country too should be seen to be playing its part in eradicating trafficking, especially that across border.”

Further, the Supreme Court has not shied away from protecting the rights of the accused and cautioned courts to carefully interpret the different sections of the Drugs Act. It did so in *Lanton, Edwards and Thewo V The People* ¹⁵⁶when it stated that unlike the

¹⁵² Ibid

¹⁵³ Op.cit note No.9

¹⁵⁴ Op. Cit note 27

¹⁵⁵ SCZ Judgment No. 8 of 1992

¹⁵⁶ [1998] S.J. 30 (S.C.)

unbailable offence of trafficking, the importation of drugs is not a cognizable offence and is therefore bailable.

The court has however upheld the constitutionality of the bail limitation section 43 of the Act. It stated in *Parek's case*.¹⁵⁷

“There is nothing in the constitution which invalidates a law imposing a total prohibition on release on bail of a person reasonably suspected of having committed a criminal offence, provided that he has been arrested and detained ... section 43 under debate and other sections depriving accused persons of bail are not unconstitutional.”

In the same case however, the court outlined grounds for a granting of constitutional bail provided for in Article 13(3) of the Constitution¹⁵⁸ which overrides both S. 43 of the Act and S. 123 of the C.P.C.

The Supreme Court has also moved swiftly to protect other fundamental rights. In *Cuthbert Mambwe Nyirongo V The Attorney-General*¹⁵⁹ where the appellant was deprived possession of his passport the court held that:

“A Zambian citizen has a right to the issue of a passport subject always to the restrictions referred to in art. 24(3) (1a) of the Old Zambian Constitution, which article has now been replaced by Article 22 of the present constitution.”

¹⁵⁷ Op. Cit note 27

¹⁵⁸ Constitution Act, Chapter 1 of the laws of Zambia

¹⁵⁹ [1990-1992] Z.R. 82 (S.C)

4.5 COURT'S POWER TO PUNISH TRAFFICKING OFFENDERS, THEORIES OF PUNISHMENT AND SENTENCING

Simon E. Kulusika postulates that:

"It would be a serious oversight if a statute [such as CAP 96]¹⁶⁰ or code or act [sic] authorising the infliction of criminal sanction were to provide simply: 'the trial judge is mandated to impose any sentence he thinks fit under the circumstances of the offence charged.' This sort of authorisation is not only devoid of any characteristic of legality, but also it says nothing regarding the factors to be taken into account in sentencing."¹⁶¹

Such oversight as is talked about above cannot be said of the Narcotic Drugs and Psychotropic substances Act¹⁶² for as we saw in the last chapter, it is a highly punitive Act on which the courts have based convictions, sentencing any punishment.¹⁶³

One would ask what the legislature hoped society would gain from such punishments as provided for in the Act.

"The classic answer is that one or more of the following should be accomplished:

- **Retribution:** The offender should "pay back" society for the harm he or she has done.
- **Rehabilitation:** The offender should be transformed into a law abiding person through programs of medical, psychological, economic or educational improvement.
- **Deterrence:** The offender, through various devices, such as certainty of punishment or length or severity of punishment, should come to the conclusion that crime is not worth the risk of the resulting punishment.
- **Incapacitation:** The offender, usually through prison or exile, should be denied the opportunity to commit further crimes."¹⁶⁴

¹⁶⁰ Emphasis added

¹⁶¹ Simon E. Kulusika, (2006), Criminal Law in Zambia. Lusaka: UNZA Press p. 798.

¹⁶² Chapter 96 of the laws of Zambia

¹⁶³ The Penal Code, Chapter 88 of the laws of Zambia, S. 24 empowers magistrates and judges to inflict various punishments among them imprisonment and fines, death and forfeiture

¹⁶⁴ Op. Cit note 124 at pp 215-16

The above matters are to be taken into consideration by the sentencer. The Act in question does give sentencers relative freedom in determining the sentence to be imposed. It is important that the sentencer understands that "... the need for a uniform approach to the determining of sentences is a basic requirement in any criminal justice system for the demands of justice may otherwise be defeated."¹⁶⁵ Indispensable to this are particular facts of each case. These must carefully be considered but the same principles should be taken note of.¹⁶⁶

It must be noted that in line with the spirit of the Act the courts have favoured retribution, deterrence and incapacitation and seldom rehabilitation in dealing with drug trafficking offenders. One deduces this from the Supreme Court's pronouncement in *Vefeen Fofana*¹⁶⁷ in which the court refused the appellants' proposal for a fine. It noted with approval that "the history of this legislation has been to make the penalties more and more severe as we go along."

What criteria then have to be followed in sentencing trafficking offenders? In *Nsokolo*¹⁶⁸ Law C.J. set out the following principles:

1. The intrinsic value of the subject matter;
2. The antecedents of the accused;
3. The youth of the accused;
4. The conduct of the accused at his trial, particularly with regard to his plea;
5. The prevalence of the particular crime in the neighbourhood.

¹⁶⁵ John Hatchard and Muna Ndulo (1994), Readings in Criminal Law and Criminology in Zambia. Lusaka: Multimedia Publication p. 97

¹⁶⁶ Ibid

¹⁶⁷ Op. Cit note 135

¹⁶⁸ 2 NRLR 85 Approved in Chipata 1970 SJZ 189

Hatchard and Ndulo state that “these principles were discussed before the Supreme Court of Kenya in *Kogo*¹⁶⁹ and are based on a number of English authorities which were referred to in that case. They are now to be regarded as authoritative in Zambia.”¹⁷⁰ We now turn to the last but by no means least component in the criminal justice system.

4.6 AFTER CONVICTION: THE PROBLEM OF PRISON¹⁷¹

The prison or correctional service in Zambia is an integral part of the criminal justice system. Since most convictions under the Act will invariably result in the incarceration of the drug trafficking convict a synoptic view of this component is necessary.

The prison service in Zambia is regulated by the Prisons Act.¹⁷² The preamble to the Act states that it is;

“an Act to provide for the establishment of prisons, for a prison service, for the discipline of prison officers for the management and control of prisons and prisoners lodged therein; to provide for youth corrective training centres and extra-mural penal employment to provide for compulsory after care orders; and to provide for matters incidental to or connected with the foregoing.”

In 1995 the United Nations adopted what have come to be known as the standard minimum rules for the Treatment of Prisoners. A look at the prisons Act will show that it has integrated these into its provisions. In S. 55 Admission of Prisoner is provided for. S. 57 demands that particulars of a prisoner should be recorded. S. 58 regulate the search of prisoners. In S. 59, the custody and disposal of money and other effects of prisoners is provided for. Other provisions are to be found in part IX-classification, custody and removal of prisoners; part X – employment of prisoners; part XII – Civil and convicted prisoners and part XV – discharge and parole.

¹⁶⁹ XV KLR 115

¹⁷⁰ Op. Cit note 164 at p. 99

¹⁷¹ Op. Cit note 124 at p. 249

¹⁷² Chapter 97 of the Laws of Zambia

Unfortunately the conditions of the prisons and resources are a far cry from the provisions in the Act. Overcrowding, poor sanitation, a lack of adequate food; delays in court appearances; female inmates with infants without provision for nursing; torture and refusal to give police bonds are the order of the day.¹⁷³

The government admits “the fact that the manner in which prisons are operated and managed in Zambia may constitute [it actually does]¹⁷⁴ a prima facie breach of fundamental rights and freedoms as provided in the constitution, the Prisons Act and the UN minimum standards, of treatment of persons deprived of liberty.¹⁷⁵ And the excuse for this is standard: ‘a lack of finances’. It is an excuse that has so over used, it has lost meaning and even credence in the ears of many. The facile argument does nothing for the Prisoners who include trafficking convicts. Any sentence it seems is tantamount to debate in these conditions. Alternatives to imprisonment must seriously be considered. They include fines, community service, and home confinement. “... Prisons should be used only for violent offenders who have not been deterred by prior punishments.”¹⁷⁶

4.6 CONCLUSION

The Chapter has taken a synoptic view of the criminal justice system which include in the context of drug trafficking, The DEC as an enforcer; the courts and prisons, it has been shown that too much emphasis has been put on fighting symptoms rather than the cause of trafficking. Further, it was shown that the magistrate courts should improve their justice delivery system and follow the lead and guidance that the Supreme Court has given on several matters involving the interpretation of the Act. Finally the prisons service is in urgent need of help if it is to operate as provided for in the constitution and the prisons Act. Hatchard and Ndulo have noted that if the criminal justice system is to

¹⁷³ Human Rights Report – 2004. Please see Appendix for general conditions of Prisons in Lusaka

¹⁷⁴ Emphasis added

¹⁷⁵ www.statehouse.gov.zm visited on 12th October, 2007

¹⁷⁶ Op.cit note 124 at p.271

have the confidence of the public, an aura of consonance and candidness must be evident. If a uniform approach is maintained, the system of criminal justice can be admired and supported. However, if such consistency is lost, public confidence will quickly be forfeited.”¹⁷⁷

¹⁷⁷ Op. Cit note 164 at p. 113

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1 CONCLUSION

Having critically discussed the drug trafficking scourge within the context of Zambia's criminal justice system, it is the conclusion of this directed research paper that after years of continued political and legislative initiatives drug trafficking still remains a huge conundrum within and without Zambia's borders- a serious, growing and evolving crime. It was shown clearly in Chapter One that in addition to spawning crime, drug trafficking leads to drug abuse and that it is the single most important factor in money laundering. Left unabated, the scourge can bring the whole social, economic, health and cultural edifice of a state to its very knees. This is why it must be stopped. But how?

Drug trafficking is a world wide phenomenon and so is not confined to Zambia. The country's position in this international scourge is mainly that of a transit point for drugs mainly mandrax from India and heroine and marijuana that is exported to South Africa and Europe. The very nature of this global problem has moved the UN to come up with several conventions the latest being the 1988 UN convention against illicit Traffic in Narcotic Drugs and Psychotropic substances. The history of Drug trafficking in Zambia has been influenced by tradition (in the case of cannabis) and hugely because of the immense profits involved. As to how to tackle this problem two schools of thought have emerged. One that postulates that the whole drug enforcement regime that encourages tougher and longer sentences, interdictions and violent stoppages of traffickers has not worked and that drugs should be legalised and people left to do what they like. Another is the one that encourages even tougher sentences and supply reduction is the main strategy. We gave more than enough compelling reasons as to why Zambia cannot legalise the trafficking and abuse of drugs. The social, health and economic well being of society will be jeopardised. The biological, physiological and psychological consequences that would result would be too ghastly to contemplate.

The Zambian legislature enacted, in 1993, the Narcotic Drugs and Psychotropic substances Act¹⁷⁸. We noted that this Act represented a drastic break with the past, it is the most comprehensive, most authoritative and clearest policy direction for the Zambian government on drug trafficking. The Act as we saw in chapter three, introduces stiffer penalties for the unlawful use of drugs. The Act however, is a hugely punitive one. It takes a hawkish approach towards drug trafficking and demonises traffickers even drug abusers criminalising the latter with severe sanctions. This as was shown, is an ineffective approach. Education, rehabilitation and societal integration must be encouraged both in word and deed. The rural areas continue to produce huge quantities of cannabis largely because of the ignorance of the harm that they bring. Let's face it, the battle against drug trafficking is a battle to win hearts and minds of society and no success can be expected without the full practical participation of the society.

A properly functioning criminal justice system as we discovered, is indispensable to fighting the scourge of drug trafficking. The components of this system are the enforcement agency (DEC in our case), the courts and the prisons service. While the Supreme Court has been exemplary in the pronouncements it has made regarding the interpretation of the Act, the subordinate courts have however, performed below par mainly due to the lack of adequate training and a lack of understanding of the provisions of the Act. Further, funding and a lack of court rooms has been another though this has been ameliorated somewhat by the building of the new court complex in Lusaka.

We note however, that the Supreme Court has favoured in its sentencing- retribution, deterrence and incapacitation at the expense of rehabilitation. The courts have been unwilling to give non-custodial sentences such as fines. You could say the courts have their hands tied by the punitive nature of the Act but still, a critical analysis of each case by its own facts would go a long way in ameliorating this. The court system must use the relative room for maneuver within the Act to instill a sense of justice both to the offender and public.

¹⁷⁸ Op.cit note 9

The prison service to which most of the drug trafficking convicts will invariably go is anything but impressive. There is an Act- the prisons Act for the regulations of prisons and prisoner conditions. However, overcrowding; poor sanitation; a lack of adequate food; long detentions without trial; torture and all; are the norm rather than the exception and on the unenviable excuse of the lack of funds prisoners are subjected to inhuman conditions that contravene the provisions of the constitution and the UN minimum standards of persons (like drug trafficking convicts) deprived of liberty.

5.2 RECOMMENDATIONS

(i) FINANCIAL ALLOCATIONS

One well known fact is that drug traffickers are rich people with intricate networks and such financial power that they will corrupt anyone even commission officers to get their way. To counter this, government must seriously consider increasing its financial allocations to the DEC. This must be based on recommendations made by the commission itself and not what the government feels. One way the government can increase allocations is to let the DEC dispose of confiscated drug related property and use the money for its operations.

(ii) INTEGRATED APPROACH IN FIGHTING DRUG TRAFFICKING

The commission has concentrated too much on fighting traffickers and paid very little attention to drug abusers. Education of the masses has not received as much attention as the DEC would like us to believe. Psychologists, Psychiatrists and Medical doctors should be organised into a network outside the DEC framework to deal with drug abusers without the fear that they will be arrested. This is what happens now as DEC is associated more (in the minds of the public) with arrests and interdictions.

(iii)USE OF THE MEDIA

The DEC should move vigorously use print but especially electronic media to inform the masses. The benefits of being drug free must be taught. This can be done in prime time. The DEC News magazine should be made freely available to schools, colleges, universities and work places. Further, seminars on drug trafficking and abuse and how to help abusers in work places should be intensified A deliberate programme of visiting schools and competitions concerning anti-drugs topics must be encouraged in schools.

(iv)AMENDMENT OF THE ACT

We have consistently referred to the overwhelming punitive nature of the Act. The Act gives very little room, as has been demonstrated in Supreme Court cases, for the courts to give any other sentence apart from imprisonment. This as we saw, has led to overcrowding in prisons and violations of the rights of prisoners. While we accept that drug trafficking is detrimental to the health, social and cultural fabric of the country, we do not agree that stiffer penalties as provided by the Act are the panacea. The Act should provide for non custodial sentences such as fines, community service and house confinement providing specifically that courts will have the discretion to give such in the interest of controlling prison populations. Prison must be left only for those committing the most aggravated forms of drug trafficking and repeat offenders. It should further get rid of the minister's power to, by statutory instrument establish drug rehabilitation centres but provide that such drug rehabilitation centres be created as a matter of law. The Act should give cognisance to the fact that drug abuse unlike trafficking, is a health problem and must be treated as such.

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APPENDICES

SECOND SCHEDULE

(Section 2)

PART I

NARCOTIC DRUGS

Acetorphine-(3-0-acetyl-tetrahydro - 7a- (1-hydroxy-1-methylbutyl) -6, 14 endoetheno-orphine).

Acetylmethadol-(3-acetoxy-6-dimethylamino-4, 4-diphenylheptane).

Allylprodine-(3-allyl-1-methyl-4-phenyl-4-propionoxy- piperidine).

Alphacetylmethadol-(alpha-3-acetoxy-6-dimethylamino-4, 4-diphenylheptane).

Alphameprodine-(alpha-3-ethyl-1-methyl-1-4-phenyl-4 propionoxyperidine).

Alphamethadol-(alpha-6-dimethylamino-4, -4 diphenyl-3-heptanol).

Alphaprodine-(alpha-1, 3-dimethyl-4-phenyl-4 propionoxy piperidine).

Anileridine-(1-para-aminophenethyl-4-phenylpiperidine-4- carboxylic acid ethyl ester).

Benzethidine-(1-(2-benzoyloxyethyl)-4-phenylpiperidine-4- carboxylic acid ethyl ester).

Benzylmorphine-(3-benzylmorphine).

Betacetylmethadol-(beta-3-acetoxy-6-dimethylamino-4, 4-diphenylheptane).

Etomeridine-(1-[2-(2-hydroxyethoxy)-ethyl] -4-phenylpiperidine 4-carboxylic acid ester).

Fentanyl-(1-phenethyl-4-N-propionylanilinopiperidine).

Furethidine-(1-(2-tetrahydrofurfuryloxyethyl) -4-phenylpiperidine-4-carboxylic acid ethyl ester).

Heroin-(diacetylmorphine).

Hydrocodone-(dihydrocodeinone).

Hydromorphenol-(14-hydroxydihydromorphine).

Hydroxypethidine-(4-meta-hydroxyphenyl-1-methylpiperidine-4- carboxylic acid ethyl ester)

Isomethadone-(6-dimethylamino-5-methyl-4,4-diphenyl-3-hexanone)

Ketobemidone-(4-meta-hydroxyphenyl-1-methyl-4- propionylpiperidine).

Levomethorphan-(-)-3-methoxy-N-methylmorphinan).

Levomoramide-(-)-4-[2-methyl-4-oxo-3, 3-diphenyl-4-(1- pyrrolidinyl) butyl] morpholine).

Levophenacymorphinan-(-)-3-hydroxy-N-phenacymorphinan).

Levorphanol-(-)-3-hydroxy-N-methylmorphinan).

Metazocine-2'-hydroxy-2, 5, 9-trimethyl-6, 7-benzomorphinan)

Methadone-(6-dimethylamino-4, 4-diphenyl-3-heptanone).

Methadone Intermediate-(4-cyano-2-dimethylamino-4, 4-diphenylbutane).

Methyldesorphine-(6-methyl-delta-6-deoxymorphine).

Methyldihydromorphine-(6-methyldihydromorphine).

Metopon-(5-methyldihydromorphine).

Moramide Intermediate-(2-methyl-3-morpholino-1, 1- diphenylpropane carboxylic acid)

Morphine

Morphine Methobromide and other pentavalent nitrogen morphine derivatives.

Morphine-N-Oxide

Myrophine-(myristylbenzylmorphine).

Nicomorphine-(3, 6-dinicotinylmorphine).

Noracymethadol-((+)-alpha-3-acetoxy-6-methylamino-4, 4-diphenylheptane).

Norlevorphanol-((-)-3-hydroxymorphinan).

Normethadone-(6-dimethylamino-4, 4-diphenyl-3-hexanone).

Normorphine-(demethylmorphine).

Norpipanone-(4, 4-diphenyl-6-piperidino-3-hexanone).

Opium

Oxycodone-(14-hydroxydihydrocodeinone).

Oxymorphone-(14-hydroxydihydromorphinone).

Pethidine (1-methyl-4-phenylpiperidine-4-carboxylic acid ethyl ester)

The Laws of Zambia

PART II

PSYCHOTROPIC SUBSTANCES

The Laws of Zambia

In other non-proprietary or trivial names

Chemical name or trivial names

1.	DET	N,N-diethyltryptamine
2.	DMPH	3-(1,2-dimethylheptyl)-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenz[b,d] pyran
3.	DMT	N,N-dimethyltryptamine
4.	(+)-LYSERGIDE LSD, LSD-25(+)	N,N-diethyllysergamide (d-lysergic acid diethylamide)
5.	Mescaline	3,4,5-trimethoxyphenethylamine
6.	Parahehyl	3-hexyl-1-hydroxy-7,8,9,10-tetrahydro-6H-dibenzo [b,d] pyran
7.	Psilocine	3-(2-dimethylaminoethyl)-4-hydroxyindole
8.	Psilocybine	3-(2-dimethylaminoethyl)-indol-4-yl dihydrogen phosphate
9.	STP, DOM	2-amino-1-(2, 5-dimethoxy-4-methyl) phenylpropane
10.	tetrahydrocannabinols, all isomers	-1-hydroxy-3-pentyl-6a,7,10,10a-tetrahydro 6,6, 9-trimethyl-6-H disbenzo [a,d] pyran.
11.	Amphetamine	(-) 2 amino-1-phenylpropane
12.	Dexamphetamine	(+)-2-amino-1-phenylpropane
13.	Methamphetamine	(+)-2-methylamino-1-phenylpropane
14.	Methamphetamine	2-phenyl-2-(2-piperidyl)acetic acid, methyl ester
15.	Phencyclidine	1-(1-phenylcyclohexyl) piperidine
16.	Phenmetrazine	3-methyl-2-phenylmorpholine
17.	Amobarbital	5-ethyl-5-(isopentyl) barbituric acid
18.	Cyclobarbitol	5-(1-cyclohexen-1-yl)-5 ethylbarbituric acid
19.	Glutethimide	2-ethyl-2-phenylglutarimide
20.	Pentobarbital	5-ethyl-5-(1-methylbutyl) barbituric acid
21.	Secobarbital	5-allyl-5-(1-methylbutyl) barbituric acid
22.	Amfepramone	2-(diethylamino) propiophenone 5,5 -diethylbarbituric acid
23.	Barbital	
24.	Ethchlorvynol	1-chloro-3-ethyl-1-penten-4-yn-3-ol
25.	Ethinamate	1-ethynylcyclohexanol-carbamate
26.	Meprobamate	2-methyl-2-propyl-1,3 propanediol dicarbamate
27.	Methaqualone	2-methyl-3-O-tolyl-4 (3H)-quinazolinone
28.	Methylphenobarbital	5-ethyl-1-methyl-5-phenyl barbituric acid
29.	Methpyrrolon	3, 3-diethyl-5-methyl-2, 4 piperidine-dione
30.	Phenobarbital	5-ethyl-5-phenylbarbituric acid
31.	Pinradrol	1. 1-dihydro-2-naphthylamine

DRUG ENFORCEMENT COMMISSION

STATISTICS – 1990 TO 2002

YEAR	ARRESTS	PROSE CUTED	CONVI CTED	ACQU ITTED	DISCH ARGED - 88(A) OF CPC	WITHD RAWN	PEN DING
1990	105	36	24	6	0	24	15
1991	127						
1992	132	108	68	10	10	0	18
1993	206	206	169	8	16	4	4
1994	340	340	247	27	29	15	22
1995	1,032	964	528	39	66	86	313
1996	1,642	1,398	940	55	196	46	403
1997	1,640	1,398	790	64	159	143	486
1998	1,604	1,238	728	75	185	*	468
1999	1,867	1,390	1,012	47	120	120	402
2000	2,362	2,082	1,296	48	234	185	261
2001	3,341	2,970	2,060	71	361	145	704
2002	3,825	3,475	2,385	53	653	250	508
TOTAL	14,398	12,098	7,862	450	1,376	768	-
TOTAL	18,223						

HOW ILLEGAL DRUGS AFFECT YOUR LIFE

lucrative—and practically the biggest—business on earth. Drug deals may now account for about 8 percent of all international trade, or approximately \$400,000,000,000 annually. As drug money moves around the world, it enriches gangsters, corrupts police forces, greases palms of politicians, and even finances terrorism.

Can anything be done to curb the drug problem? To what extent does the drug trade affect your pocketbook, your security, and the lives of your children?

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fects, and a new designer drug called ice may be among the most destructive of all.

Although drug users may be in the minority, their numbers are sufficient to grant immense power to the drug barons, the men who organize the production and distribution of drugs. These unscrupulous individuals

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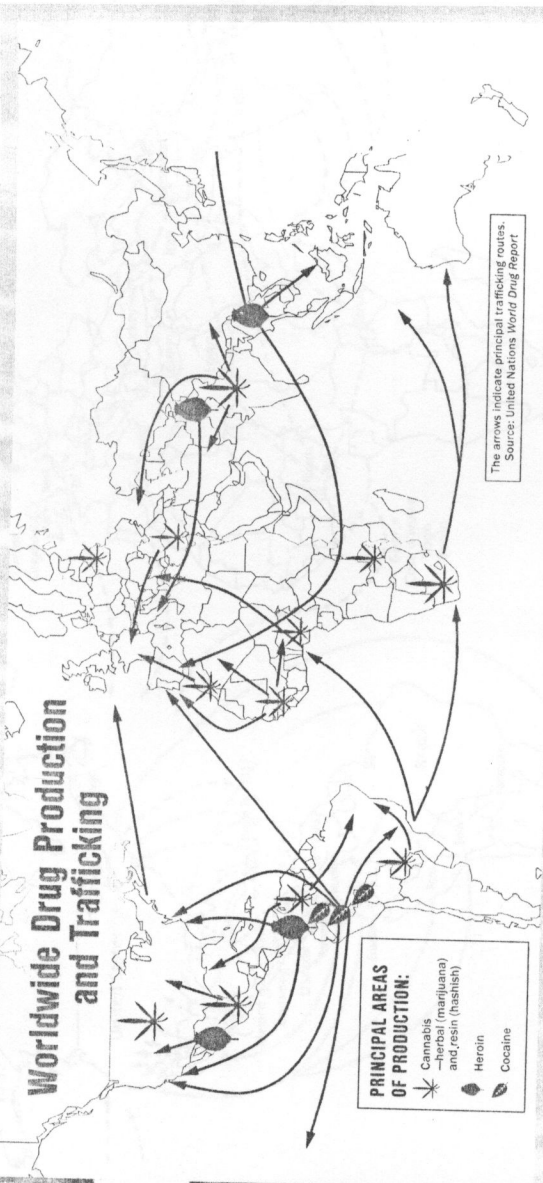
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The arrows indicate principal trafficking routes. Source: United Nations World Drug Report

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Awake! November 8, 1999

IKE the dry rot that eats away the wooden beams of a house, drugs can corrode the whole structure of society. For human society to function properly, it must have stable families, healthy workers, trustworthy governments, honest police, and law-abiding citizens. Drugs corrupt every one of these fundamental elements.

One reason governments have banned nonmedical drug use is the damage that it does to the health of their citizens. Every year thousands of drug addicts die of an overdose. Many more die of AIDS. Indeed, some 22 percent of the world's HIV-positive population are drug users who injected themselves with infected needles. With good reason, at a recent United Nations conference, Nasser Bin Hamad Al-Khalifa, from Qatar, warned that "the global village is about to become a communal tomb for millions of human

beings as a result of the illicit drugs trade."

But more than the health of the user is affected. About 10 percent of all babies born in the United States are exposed to an illicit drug—in most cases, cocaine—while in the womb. Painful withdrawal symptoms are not the only problem they face, for drug exposure in the womb may cause the newborns to suffer other damaging effects—both mental and physical.

Easy Drug Money—The Irresistible Lure

Do you feel safe in your neighborhood after dark? If not, likely it is because of drug dealers. Muggings and street violence go hand in hand with drugs. Drug users often resort to crime or prostitution to finance their habit, while rival gangs fight and kill to maintain their control over drug distribution. Understandably, police in many cities consider drugs to be a factor in the majority of murders that they investigate.

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Awake! November 8, 1999

SOURCE:HUMAN RIGHTS REPORT-2004

Condition of Police Stations/Police Posts

NAME OF POLICE STATION/POST	STATE OF CELLS	STATE OF TOILETS	WATER SUPPLY AND SEWER SYSTEM
Lusaka Central Police Station	The general state of the police cells was very impressive and the cells were not congested.	The toilets were fairly clean at the time of the visit.	Had adequate water flow. The sewer system was okay.
City Market Police Post	There were only two cells; a female and male cell. The cells were dirty. At night inmates used buckets to answer the call of nature.	No toilet.	
Intercity Police Post	Only one police cell. The cell was dirty and filthy at the time of the Commission's visit.	The toilet was dirty.	No water.
Millennium Police Post	The cells were clean.	No toilet.	
Comesa Police Post.	There was one cell for male inmates. Poorly ventilated and no lighting.	There was no toilet in the cell. At night the inmates used buckets to answer the call of nature.	The police post had no water. They use a communal tap with the marketeers.
Zambia Paint Police Post	At the time of the visit the cells were empty and clean.	The toilet was clean.	Water supply and sewer system was okay.
Kabwata Police Station.	The station had three cells; male, female and juvenile cell. The juvenile cell had 2 mattresses and blankets. The cells were dirty.	The toilets were dirty.	There was no water and the sewer system was blocked.
Kamwala Police Post	There was only one male cell, a container.	There was no toilet at this police post.	No water.
Woodlands Police Station	The cell was found clean at the time of the visit. To protect the inmates from sleeping directly on the floor, the officers put a carpet in the cell.	Though clean, the toilet had no water.	There was no water but the sewer system sewer system was okay.
Chilenje Police Station	The cells were found in a clean state. The only problem was that the cell had no lighting and was poorly ventilated.	Toilet very clean with a flushing unit. The only problem was that it had to be flushed from outside.	There was adequate water and the sewer system was okay.
Nyumba Yanga Police Post.	The police cell had no ventilation and at the time of	The toilet was found in a filthy state.	Erratic water supply.

		the visit the cell had no power.		
12	Chawama Police Station	At the time of the visit the cell was filthy and heavily congested. The cell had no lighting and was poorly ventilated.	The pit latrine was very dirty.	The water situation was pathetic. The station had no water most of the time.
13	Emmasdale Police Station	The police cells were fairly clean and at the time of the visit were not congested.	Had pit toilets in cells, which were fairly clean.	Water supply and sewer system was alright.
14	Garden Police Post	The Police cells were very clean.	The toilet was not very clean due to none availability of running water.	Inadequate water supply.
15	Northmead Police Post	The cell was fairly clean.	The toilet was not very clean due to none availability of running water in the cell.	The sewer system was okay but the problem was inadequate water supply,
16	Manda Hill Police Post	Very clean.	Clean with water borne and flushing toilet.	Plenty of water and good sewer system.
17	Chaisa Police Post	There were two police cells in a deplorable state. On the day of the visit the cells were congested.	Dirty pit latrine.	No water.
18	Chipata Police Post.	The cells were filthy and on the day of the visit the cell was terribly congested with 23 inmates for a capacity of only 10 inmates.	Very dirty	No water.
19	Kabanana Police Post	The cell was not overcrowded at the time of the visit. The cell was generally dirty.	Very dirty	The post had problems with water supply but the sewer system was okay.
20	Longacres Police Post	The police cell was clean. This is a newly opened police post and has a lot of community support.	The toilet was equally clean.	The sewer system and water situation was okay.
21	Kalingalinga Police Post	The cells were dirty.	No toilet.	No water
22	Mtendere Police Post	This had one of the dirtiest cells visited. There was no lighting and no ventilation.	Very dirty.	
23	Chelstone Police Station	Only one cell for males. The cell was dirty.	No toilet.	
24	Airport Police Station	The cells were very clean and at the time of the visit there was no inmate	The toilet was clean.	Adequate water supply and good sewer system.
25	Ng'ombe Police Post	The cell was very spacious.	The toilet was very dirty.	There was no water at the police post and the sewer system was bad.
26	Munali Police Post	The condition of the cell was deplorable.	Very dirty toilet.	No water.
27	Kamanga Police	The cell was spacious and	There was no toilet in	The post had no water.

	Post.	generally clean. At the time of the visit the cell was empty.	the cell. Inmates were taken to a nearby pit latrine.	The officers had to draw water from a communal tap some meters away.
8	Mwembeshi Police Post.	The cell was a transit cell. It was clean and at the time of the visit there were only two inmates.	The cell had no toilet; the inmates use a container to answer the call of nature.	No water supply.
9	Matero Police Station.	There were three big cells. The juvenile cell was very impressive; it had blankets and a bathroom. The station even had a juvenile officer who takes care of juveniles.	The toilets for the male inmates were not clean but other toilets were okay.	Erratic water supply.
10	Matero East Police Post.	There were two cells, one for males and one for females. The cells were not very bad.	No toilet in the cells.	No water.
11	Barlastone Police Post	The post only had one male cell. It was a transit cell and at the time there was only one inmate.	There was no toilet.	No water.
12	Chunga Police Post.	At the time of the visit the cell was very clean.	Toilet though not in the cell, was well maintained.	The post had good water supply and the sewer system was okay.
13	Kabangwe Police Post	The post had one big cell with two compartments; male and female. Though fairly clean on the day of the visit, the cell was completely dark with poor ventilation.	The toilets were fairly clean.	Water from a borehole.
14	Westwood Police Station.	One of the dirtiest police cells. In the corner of the cell there was a heap of sand where inmates helped themselves.	There was no toilet.	Had water supply but blocked sewer system.
15	George Police Post	The police cell though clean on the day of the visit, had poor ventilation.	There was no toilet in the police cell; inmates were escorted to the nearby pit latrine.	Water was available and the sewer system was okay.
16	Muchinga Police Post	At the time of the visit the cell was empty and clean.	Toilet was fine.	Not connected to any water supply line.
17	Buyantanshi Police Post	Cells were clean, the police post was new.	Very clean.	Adequate
18	Salima Police Post	The station only had one transit cell, which was fairly clean on the day of the visit. The only problem was poor ventilation.	Toilet outside cell but well maintained.	Water was rationed but the sewer system was fine.
19	Kanyama Police Station	The cell was dirty and there was no electricity	No toilet in the cell.	No water supply.

40	Kanyama West Police Post.	There were two cells; male and female. At the time of the visit the cells were empty. The cell was clean.	The toilet was clean.	No water
41	Mosque Road Police Post.	The general state of the cell was fairly good despite poor ventilation.	The toilet was dirty at the time of the visit.	No water.
42	Chinika Police Post.	Very dirty cell at the time of the visit.	Blocked toilet.	No water.
43	Los Angeles Police Post	Both cells, male and female were clean at the time of the visit. The police post was still new.	The post had a waterborne toilet with operational flushing unit.	Water was adequate and the sewer system was fine.
44	Makeni Police Station.	The cell was dirty with litter all over.	The toilet was in a deplorable state.	The station had problems with water supply; the borehole pump was broken down. The sewer system was blocked.
45	Shibuyunji Police Post	The cell had no toilet inside. It was generally dirty. Apart from this state of affairs, it was not fit to keep inmates because the roof was almost ripped off.	No toilet.	No water supply.
46	Chilanga Police Station	There were two cells; male and female with shower provisions inside the cells. At the time of the visit the Commission found the cells were under renovation.	Under renovation	The station had water problems because the tank was old and broken to it cannot hold water. The sewer system was earmarked for overhaul.
47	Musamba Police Post	The cell was extremely clean.	The toilet was very clean.	No water supply.
48	Mount Makulu Police Post.	This was a transit cell but it was clean.	No toilet.	
49	Kafue Police Station.	The cells were under renovation.	Under renovation.	No water supply.
50	Shimabala Police Post.	The cell was clean though small.	No toilet for inmates.	
51	Linda Police Post.	There were two cells; male and female. The cells were very clean at the time of the visit.	Very clean with flushing toilet.	Water was readily available and the sewer system was excellent.
52	Kafue Estates Police Post.	The cell was clean.	The toilet was clean but not water borne.	Water was readily available.
53	Helpers Police Post.	It was a transit cell (a container); at the time of the visit the cell was clean.	The toilet was outside the cell and was well maintained.	Water was readily available and the sewer system was fine.
54	Palabana Police Post.	The cell was not in use at the time of the visit owing to a damaged roof.	There was no toilet.	
55	Chalimbana Police Station.	The police cell was clean. The cell was big with good ventilation. At the time of the	There was a toilet in the cell but it was blocked. The inmates	Adequate water supply.

		visit the Commission found blankets for inmates in the cell.	used a bucket.	
56	Chinuynyu Police Post	Cell was big and clean but needs improved ventilation.	There was no toilet in the cell.	No water supply.
57	Luangwa Police Station	The station had 3 big cells with washing basins. There was water in the cells and the cells were clean. There was even a kitchen where officers prepared meals for inmates.	The toilets were very clean though they had no flushing units. Inmates had to pour water after use.	Water was readily available and the system was okay, courtesy of good management by the officer in charge.
58	Rufunsa Police Post.	The cell was the initiative of the officers and the surrounding community. It was still new but the ventilation had not been done well.	The toilet was fairly clean.	No water supply.
59	Chitope Police Post.	The cell was a transit one. At the time of the visit the facility was under renovation	Under renovation.	No water supply.
60	Town Centre Police Post (Lusaka)	The cell was dirty and poorly lit.	No toilet.	No water supply.
61	Misisi Police Post.	There was only one cell, which was in a deplorable state. The whole station was not connected to electricity.	Inmates use a bucket.	There was a water tap behind the police post.
62	Kamwala South Police Post.	The post was still under construction; the female cell had a waterborne toilet and shower.	The toilet was clean.	Adequate water supply but not yet connected to sewer system.
63	Kabulonga Police Post.	The Post only had one male cell. The cell was clean.	The toilet was clean.	The water and sewer system was fine.
64	Chazanga Police Post.	The cell was clean and spacious.	The toilet was clean.	Water supply was erratic.
65	Castle Police Post	The cell was clean and well ventilated.	There was no toilet for the inmates.	No water supply.
66	Villa Lucia Police Post.	The post was still under construction.	Under construction.	Under construction.
67	Lutheran Police Post.	The post was still under construction	Under construction	Under construction
68.	Industrial Police Post.	The cell was clean. At the time of the visit the Commission found two blankets for inmates in the cell.	The toilet was clean.	Adequate water and excellent system.