

**UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

**TOPIC: *THE SOCIAL, ECONOMIC AND POLITICAL
IMPACT OF DRUG TRAFFICKING AND MONEY
LAUNDERING.***

BY

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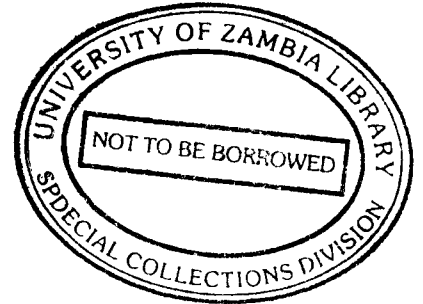
On

***THE SOCIAL, ECONOMIC AND POLITICAL IMPACT OF DRUG
TRAFFICKING AND MONEY LAUNDERING.***

By

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Being a dissertation submitted to the University of Zambia in partial fulfilment of the requirements of the Bachelor of Laws (LLB) Degree Programme.

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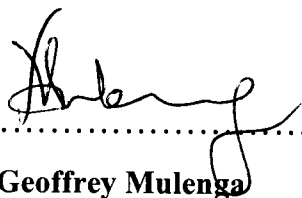
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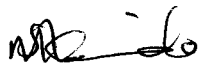
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I MAO SIKAINDO CUMPUTER NUMBER 99007665 DO HEREBY declare that the contents of this Directed Research Paper are entirely based on my own findings and that I have not in any respect used any person's work without acknowledging the same to be so.

I do not claim to write cardinal truth free from errors nor do I claim to exhaust the topic. Any errors, omissions or misstatements are entirely mine. I therefore, bear the responsibility for the contents, errors, defects and any omissions therein.

Date..... 22nd Dec, 2005

Signature..... 

DEDICATION

To my late Parents, Mrs Ruth Simonde Sikaindo and Mr Francis Sikaindo from whom I drew my greatest source of inspiration and without whom I would not have come this far. You may no longer be here with us but your memories are still fresh and your spirits will always guide us. We miss your presence and counsel. May your souls rest in peace.

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My greatest gratitude goes to my late sister who left us when we needed her most. I thank her for all the support she extended to me (that is, both emotional and material support) during my stay on campus. It is sad to think that you did not live long enough to see the fruits of your hard work. May her soul rest in eternal peace.

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To all the numerous friends whom I have failed to mention.

PREFACE

I was prompted to undertake this research because there has been so much talk about drug trafficking and money laundering in our society of late. Most people do not know the negative effects of illicit drugs to the society at large, worse still those of money laundering. Those who have an idea think that the only impacts of drug trafficking are the physical effects it has on the consumers. People even wonder why the government should spend so much money in fighting drug trafficking when massive wealth can be derived from trading in the same.

As regards the subject of money laundering, most people do not even know what money laundering is. The little that do know, do not even understand why the government should prosecute people for acquiring wealth. Their argument is that once a person has acquired wealth it follows that people around him or her will benefit as that wealth will inevitably trickle down to them. In the final analysis, it would follow that the more people who acquire property the better for every one in the country.

It is the objective of this dissertation to establish that the above assumptions are far from being true. What obtains in reality is far from these assumptions. Drug trafficking and money laundering are two interrelated evils which when they manifest themselves in any given society are capable of impacting negatively on the social, political and economic spheres of that society.

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CHAPTER ONE

1.1. INTRODUCTION

Drug Trafficking and money laundering are increasingly becoming serious problems for most developing countries. Zambia, in particular has not been spared from this scourge. The cause of the upswing in these two intertwined criminal activities is that, these vices are increasingly becoming lucrative 'business' ventures. With the rising poverty and unemployment levels, most people are tempted to venture into such activities to improve their standard of living.

The existence of such vices in a poor country like Zambia is evident in the unnerving incongruity between the lush houses and posh cars that one sees around the major cities on the one hand. On the other hand there is the existence of the shanty compounds that are sprawled on the outskirts of these cities and towns and the increasing poverty levels in rural areas. There is no discernible match between the economic activities and such display of conspicuous consumption.

It is the hypothesis of this paper that if the problem of Drug Trafficking and Money Laundering is left unchecked, it is capable of decaying the social, economic and political fibre of any society.

Although the adverse effects of these two vices are felt in all countries without exception, less developed countries (LCDs) need to do more to fight the scourge while it is still in its nascent stage. This is so because, usually, these countries have limited resources and can not be committed, at least adequately, to remedy the problems brought about by Drug Trafficking and Money Laundering.

For instance, it is estimated by press reports that in Pakistan alone, the number of people addicted has risen from virtually none to a staggering 2.5 million as of 1993.¹ This creates a strain on the resources of a country, as such a country may not have enough rehabilitation and treatment centres to attend to such a high number of addicts. However, the topic on the social, economic and political impacts of drug trafficking and money laundering will be handled in chapter two.

As will become evident after examining chapter two, the onus is on the government to ensure that there is strict implementation of the laws it has in place to tackle this problem. In this vein, chapter three will examine the present techniques and activities designed to prohibit and prevent money laundering and drug trafficking. To attain this objective, this chapter will examine all the existing legislation in Zambia whose purpose is to provide for sanctions and enforcement mechanisms in respect of all money laundering and drug trafficking cases. These pieces of legislation include **The Narcotic Drugs and Psychotropic Substances Act**, **The Anti-Money Laundering Act** and other Acts such as **The Banking and Financial Services Act** and the regulations there under. This of course will involve specifically looking at the bodies created by these Acts namely; the Drug Enforcement Commission and the Anti-money Laundering Investigative unit. The chapter will also take a look at whether the composition of these bodies is effective or not in redressing the impacts of drug trafficking and money laundering. Furthermore, the chapter will assess whether these bodies enjoy operative independence and autonomy.

In order to offset the social, economic and political impacts of drug trafficking and money laundering, there is need for the relevant bodies mandated by law to fight these vices to ensure strict adherence to the law. However, tough enforcement of the law poses the danger of falling foul of the constitution. Chapter four will examine the constitutional restraints posed as a result of some investigative techniques employed by law enforcement officers. This of course will deal with issues of search and seizures, obtaining of incriminating documents, disclosure by commercial banks and other

¹ Sunday Mail, September 26, 1993

financial institutions of clients' personal affairs without their consent, liability of innocent participants and other related elements thereto.

The social, economic and political problems brought about by trade in illicit drugs and money laundering can be offset at an earlier stage by the relevant bodies established by law as long as there is the necessary political will from the government to do so. This however takes strong will power and sacrifice on the part of the government. In this regard, chapter five will come up with the necessary recommendations that can help the government attain this end. Finally, this chapter will contain the conclusion of this dissertation, which will in essence summarise the issues that will have been covered in the entire paper.

1.2. DEFINITION OF BASIC CONCEPTS.

1.2.1 Drug Trafficking

The 1961 single convention on Narcotic Drugs as amended by the 1972 protocol defines drug trafficking merely as “cultivation or trafficking contrary to the provisions of this convention.”² This is not much of a definition. In the Zambian context, none of the statutes gives a precise definition of what drug trafficking is. The Narcotic Drugs and psychotropic substances Act merely defines the term ‘Trafficking’. So to fully understand what drug trafficking means, one has to understand first of all, what is meant by the concept “drug”?

What is a drug? The World Health Organisation (WHO) Expert Committee in 1969 defined a drug as:-

“a substance that, when taken into a living organism, may modify one or more of its functions.”³

³ Nomenclature and classification of Drugs and alcohol-related problems: A shortened version of a WHO Memorandum. “British Journal of Addiction.” 77 (1982) p.6

The WHO later on in 1982 suggested another definition of what constitutes a ‘drug’. They said “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 function and possibly structures.”⁴

An examination of what is meant by the term ‘trafficking’ as provided for under the Narcotic Drugs and Psychotropic Substances Act,⁵ will make it clear to one as to what is meant by Drug Trafficking. The Act defines ‘trafficking as:-

- (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 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 purpose of this Act”*

This definition of trafficking was further qualified by the Supreme Court of Zambia in the case of Cheta Nkumar Shantkal vs. The People⁶ where the court observed that;

“... there are two limbs to the definition of trafficking and an 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.”

⁴ Ibid.

⁶ SCZ No. 11 of 1995

Such an observation by the highest court in the land is a confirmation that the definitions of the term trafficking is qualified by circumstances of any particular case as defined by the Act itself.

The second limb of the definition requires a statutory instrument to give quantities, which will determine what constitutes ‘trafficking’. For instance, in 1995 the Former President of Zambia, Dr. FTJ Chiluba signed a statutory instrument,⁷ which provided among other things what is shown below;

(Regulation 2)

➤ Narcotic Drugs or Psychotropic Substances	Minimum Amount
Tablets and Powder	0.50 gms
Liquids or fluids	2.50ml
➤ Products of Cannabis Sativa	
Cannabis oil or hashishi oil	2.50 ml
➤ Any other cannabis products of Delta – 9 Tetrahedron cannabinal (T.H.C.)	
Solids	0.50 gms
Liquids	2.50 ml

Though international and national instruments on the subject seek to give tight definitions, the term ‘drug trafficking’ is more generally used to describe the link between the demand for and the supply of illegal drugs, basically the distribution mechanism.

1.2.2 Money Laundering

Usually criminals and people involved in illegal activities such as drug trafficking, organised crime, tax-evasion, political bribery and corruption, amass a lot of wealth.

⁷ Statutory Instrument No. 119 of 1995

Once they acquire this wealth, their first task is to ensure that this wealth looks as though it was derived from legitimate businesses. Therefore, they move their money and other criminal proceeds into the financial system without attracting attention from government agencies. This process of washing, mixing and disguising illegally obtained money through the legally operating institutions for the purposes of masking the origin of it is what is called money laundering.

In Zambia the law that is applicable to the problem of money laundering is provided for under the '*Prohibition and Prevention of Money Laundering Act No. 14 of 2001*'. This is a recent piece of legislation, which was enacted by the government when it realised how serious the problem of money laundering was becoming.

Money laundering according to the Prohibition and Prevention of Money Laundering Act is defined as

- (a) *“engaging, directly or indirectly, in a business transaction that involves property acquired with proceeds of crime;*
- (b) *receiving, possessing, concealing, disguising, disposing of or bringing into Zambia, any property derived or realised directly or indirectly from illegal activity or*
- (c) *The retention or acquisition of property knowing that the property is derived or realised directly, from illegal activity.”*

Money Laundering is a relatively new phenomenon and is currently in vogue. However, the laundering of money by criminals is very old. It may be as old as the history of organised trade, some sectors have suggested.⁹ Traditionally, money laundering has been associated with drug trafficking and certain other organised crimes but the world has

⁹ Chisha Mwanakatwe, Developing Anti-money Laundering Regime: Recent Development and Legislative Reform. Paper presented at the Bank of Zambia Parliamentarian Seminar, Siavonga. November 2003.

increasingly started witnessing links with other crimes for instance corruption¹⁰ and terrorism.¹¹

The paper will however, focus more on the relationship that subsists between money laundering and drug trafficking, corruption and organised crime.

Although money laundering may seem complicated to a layman, it usually follows a traceable three-stage process. These stages are placement, layering and integration.¹²

- (a) Placement refers to the process of injecting the proceeds of crime into the financial system in such a way as to avoid detection by banks, other financial institutions and government authorities. At this stage criminals deposit large amounts of money in several smaller batches so as to avoid suspicion and detection.
- (b) Layering involves the distancing of illegally acquired funds from their criminal source and the erasure of the trail through a series of transactions. This is usually done through a series of wire transfers to jurisdictions with bank secrecy laws or lax record-keeping and reporting requirements.
- (c) Integration involves the re-introduction of the illegally sourced funds into the financial system from apparently legitimate or innocent sources or business.

1.3. The History of Drug Trafficking and Money Laundering Law in Zambia.

From time immemorial, our ancestors used a variety of drugs, which they derived from herbs, roots, barks, and leaves to relieve pain and to control diseases. Before the colonisation of Zambia, many Zambians were fond of smoking cannabis for pleasure. A certain writer once noted that;

“Twenty Five years ago there were only two cash crops in the valley; hemp (cannabis sativa) and tobacco.”¹³

¹⁰ In Zambia the relationship between money laundering and corruption was realised particularly following the establishment of the Task Force on corruption to investigate the alleged plunder of national resources by the former government leaders

¹¹ The events of September 11 2001 in America brought to light the convergence between money laundering and the financing of terrorism.

The control of and regulation of dangerous drugs in Zambia can be traced to 1923 when the colonial government of Northern Rhodesia enacted what was called the “*Opium and Habit Forming Drugs Regulation Ordinance Proclamation*”¹³, a replica of the British drug law. The salient features of this colonial legislation was that it was meant to control and regulate the drugs and medicines in conformity with international trends as shown in international conventions to which the colonial government subscribed.

In 1926, the Northern Rhodesia government enacted the “*Dangerous Drugs Ordinance*”¹⁴ that was similar to the British¹⁵ and American¹⁶ enactments on the subject.

After independence in 1964, the new African government revisited the colonial drug laws and enacted the “*Dangerous Drugs Act No. 42 of 1967*”¹⁷ under the portfolio of the Ministry of Health. This Act had four main attributes. Firstly, it prescribed a set of administrative and regulatory provisions in the area of drug use and drug handling. Secondly, it created restrictions and prohibitions and to a lesser degree, it created minor penalties for specified offences such as possession of drugs without a licence or authorisation. Thirdly, the Act also created a mechanism for enforcement by police officers and public officers designated as “inspectors”. Fourthly, the Act specifically recognised a number of International Conventions, which were listed under section 2(1). The new government also enacted a number of other pieces of legislation whose purpose was basically administrative and regulatory in nature without any element of criminality in them.

The enactment of this piece of legislation and all the other similar ones is clear proof that drug abuse and trafficking was becoming a serious concern for the new government.

¹² Saboi, Lufwendo. Introduction and Discussion of the Prohibition and Prevention of Money Laundering Act. Workshop For Banking and Financial Institutions. 13th-14th August 2005.

¹³ Thayer Scudder, The Ecology of the Gwembe Tonga. 1962. Manchester; Manchester University.

¹³ Proclamation No. 10 of 1923

¹⁴ cap 97 of the Laws of Northern Rhodesia.

¹⁵ Dangerous Drugs Act 1920.

¹⁶ Harrison Act of 1924

¹⁷ cap No. 42 of 1967

In the 1980s the problem of drug trafficking became pronounced. A number of renowned dignitaries were arrested abroad for drug related offences. Both the electronic and print media carried news pertaining to scandalous activities perpetuated by these characters. For instance, in 1984 the Zambia Daily Mail reported that Mrs Susan Nyauhango Chakulya,¹⁸ the wife of the former politician Mr Wilson Chakulya, was arrested in the midlands town of Dudley in England. The Police alleged that she was found with 22 Kilograms of cannabis with a street value of 25,000 pounds. She was just one of the many Zambians who were arrested abroad for drug related crimes that year alone and over the subsequent years.

Over this same period many more Zambians were arrested for dealing in Mandrax, a controlled drug which was basically alien in Zambia. In March, 1985, the then Minister, Senior Chieftainess Nkomeshya told Parliament that of the 29 Zambians detained abroad for drug related offences, 26 were found with Mandrax, 11 had cannabis while 3 had Heroin.¹⁹ This revelation was a serious shame for the government then in power. Dr. Kenneth Kaunda was prompted to act quickly. He ordered the arrest of several prominent businessmen and women in the country who were behind this drug problem. However, the laws on drug trafficking were weak and did not prohibit dealings in Mandrax. Thus, most of the perpetrators got away scot-free.

The government then made some amendments to the Dangerous Drugs Act.²⁰ This was intended to stiffen the penalty provisions. The government also decided to address the problem of methaqualon popularly known as mandrax. Since this drug was not listed among the drugs that were controlled, the government decided to commit this drug on the list of drugs appearing on the schedule of controlled drugs.

The amendment did not help improve the drug trafficking problem in Zambia. In 1989, evidence of large-scale dealings in drugs such as cocaine and heroin appeared on the

¹⁸ Zambia Daily Mail, December,9, 1984.

¹⁹ Zambia Daily Mail, March 27, 1985.

scene to the surprise of the government. Strange and fancy cars suddenly appeared on the Zambian roads. State security officers unearthed other luxurious properties. Furthermore, drug making equipment and machinery was discovered. This and other developments prompted the government of that time to enact a new and radical piece of legislation known as the “*Dangerous Drugs (forfeiture of property) Act*”.²¹ This Act was radical because for the first time the government focused attention on forfeiture of proceeds of drug ‘trafficking’ activities. This Act also gave the President powers to establish a special wing to deal with drug related cases. Thus in 1989 the Drug Enforcement Commission was established. The Dangerous Drugs (forfeiture of properties) Act was, however, inadequate for the operations of the new commission because most of the forfeiture provisions were difficult to interpret or enforce.

Because of some technicalities, soon and as expected, the Act lost its efficacy and once again was on the drawing board. This led to the enactment of a more articulate piece of legislation in the name and title of the “*Narcotic Drugs and Psychotropic Substances Act No. 37 of 1993*”.²²

The new law was ultra modern in its outlook. The most important aspects of it include a compilation of all drug-related offences such as possession, trafficking and money laundering. It also provides penalties, procedures and the prohibition of bail in certain cases.

The phenomenon of money laundering is not new. It is the financial side of any profit making crime. In Western countries the phenomenon grew side by side with the rise of organised crime. Section 22 of the Narcotic Drugs and Psychotropic Substances Act saw the first mention of money laundering in a Zambian piece of legislation.

Across the globe it has been realised that more attention needs to be paid to this phenomenon, thus, provisions have been made to extend and strengthen its prevention and detection. In Zambia, it was realised that section 22 was inadequate in and by itself to

²⁰ Dangerous Drugs Amendment Act No. 19 of 1985.

combat the vice. As the law stood, there were no adequate powers and institutions to effectively deal with money laundering. For instance, there were no means to go behind business transactions to determine their true nature. The powers that existed were geared towards combating drug trafficking which in nature is different from money laundering.

In 2000, the government decided to enact a whole piece of legislation dedicated to money laundering. Thus, in November 2001 the “*Prevention and Prohibition of Money Laundering Act No.14 of 2001*”²³ was promulgated. This came as one of the conditionalities of the IMF aid.

Having briefly examined all the necessary background information relating to both Drug Trafficking and Money Laundering, this paper will proceed to chapter two which in essence contains the main thrust of this dissertation i.e. an examination of the social, economic and political impact of the two related vices.

²³ No.14 of 2001

CHAPTER TWO

2.1. Background

As earlier alluded to in chapter one, both drug trafficking and money laundering have serious consequences on the political, social and economic spheres of any country. Thus, the thrust of this chapter is to examine the social, economic and political impacts that these two vices have on any given society. To attain this objective, the paper will draw some practical examples of how these vices impact negatively on the societies where they are prevalent.

One of the commercial crimes (enterprising crimes) that will confront the courts from time to time is drug trafficking and its related money laundering offences. The question that might come to any reader's mind is one of the relationship that exists between drug trafficking and money laundering. It would also be interesting to know the reason why the government is so keen to spend so much time and scarce resources to fight these two vices.

Briefly stated, money laundering can be said to be the money side of any drug trafficking transaction. As pointed out earlier in chapter one, drug traffickers generate huge amounts of money which they seek to hide from law enforcement agents thus they disguise this money as though it came from genuine sources. To avoid detection these traffickers share at least three characteristics:

- they need to conceal the origins and often the ownership of the money
- they need to control the money, and
- they need to change the form of the money.

So most of these traffickers would launder their money in the acquisition of motor vehicles, legitimate businesses, front companies and residential property. In Zambia the Anti-money laundering unit has identified drug trafficking as probably the principal source of illicit proceeds in the country, in the form of cash and motor vehicles.¹

¹ Goredema, Charles. Money Laundering in Southern Africa; Incidence, Magnitude and Prospects for its Control. ISS Paper 92 at <http://www.iss.co.za>

Judge Musonda noted obiter dicta in the case of **Stella Chibanda and Niseo farms limited v. The Commissioner -Drug Enforcement Commission, The Attorney General and Stanbic Bank Zambia Limited**, that ‘the objective of money laundering legislation is to keep dirty money dirty and to incapacitate the whitening of dirty money’².

The simple answer to the second concern raised is that these two vices have negative impacts on the nation as a whole. The former Republican President of Zambia Mr F. T. J. Chiluba once noted that;

*“Drug trafficking and its related money laundering activities are being viewed as a threat to the security of mankind. It is a universal threat to the political, social and economic development of many countries. Zambia has not been spared from the international traffic in narcotic drugs and psychotropic substances, which generate huge profits for its initiators and organisers.”*³

True to the former president’s word, money laundering and drug trafficking represent a threat to public safety; i.e. to a country’s economic, social and political structures. Moreover, these vices are closely linked to other enterprising crimes such as economic crimes, fraud, bribery, corruption, exchange control violations and tax evasion and even to international terrorism. Interesting enough, these enterprising crimes are characterised by criminal networks and illegal relationships popularly known as crime syndicates or cartels whose primary goals are;

- financial and or economic gain
- advancement of political power and influence
- propagate the image of the group itself.

To achieve these goals, the syndicates may engage in legal or illegal activities such as readiness to corrupt and intimidate public officials and where necessary use actual violence or threat of violence against officials standing in the way.

² Case No. 2003/HP/0242

³ National Drug Control Strategy Master Plan, Government of the Republic of Zambia, 1996 – 2002.

But it is no secret that in many ways, syndicated drug trafficking is still regarded as a core predicated activity for money laundering. In Southern Africa as in many other parts of the world, drug trafficking is most readily identified with money laundering. Dagga (cannabis) and mandrax (methaqualone) sales feature prominently among the sources of illegal funds, but they are by no means the only ones familiar to crime syndicates. Significant sums are also generated from sales of cocaine, heroin and ecstasy.⁴

It is not in dispute that both drug trafficking and money laundering are on the increase. This increase is brought about by many cultural changes being experienced world wide due to globalisation and rapid communication between different parts of the world. In the past, dirty money remained hidden and almost unproductive. However, the new generation, educated and with enhanced expectation, has been able to employ this wealth to interplay political and financial activities. Countries previously unaffected by drug problems are now reporting serious increases in drug abuse and drug related problems, especially those that lie along the new and expanding drug trafficking routes and those near drug producing areas⁵.

These problems range from increased social, medical, economic and crime problems to the loss of public confidence in government with rising corruption and the increasing power and political influence of criminals and criminal organisations.

2.2. Political Impact.

Drug trafficking and money laundering undermine government machinery and weakens the rule of law. Thus, the political life of a nation becomes perilous because the officials are corrupt. For instance, one only needs to take one look at the cocaine producing countries of Latin America to see the political impact of drug trafficking and money laundering. These countries were virtually run by the drug cartels, which fought open

⁴ supra, note 1

wars with the police and installed governments at their pleasure. Alternatively, where this was not possible they funded bloody civil wars. In Colombia money from drug Barons funds the FARC rebels.⁶ These drug traffickers usually sponsor politicians and rebel groups in order that they may be afforded protection from arrest and prosecution.

Mr Raphael Mungole the former Drug Enforcement Commission Commissioner pointed out that some of the most powerful syndicates the world over, that have been known to exert massive pressure on governments are;

*“ the Mafia (La Cosa Nostra from Italy and Sicily), the Colombian MEDELLIN and CALI cartels. Others are the Chinese Triads, the Japanese YAKUZA, the BAMBOO Gang of Taiwan, the Hispanic Gangs in United States of America, Drug Warlords in Burma, HILLBROW Gangs in South Africa and the Russian Mafia.”*⁷

With the vast resources at the disposal of drug syndicates, they are in a position to control the politics of any country by either funding political campaigns or through direct political participation. Once they have infiltrated the political machinery, they are capable of controlling the course of policy decisions on the regulation of traffic in and abuse of narcotic drugs and psychotropic substances. For example, there was a reported donation of One Million British Pounds to the British Conservative Party during election campaigns in 1994 by a Hong Kong Heroin smuggler Ma Sik Chun. The donation was made with the apparent intention of smoothing his return to Hong Kong from exile in Taiwan where he had been since 1985.⁸

In Zambia, politics are not immune to political inroads made by drug Barons. In 1993 **The Weekly Post**, a privately owned weekly newspaper in Zambia reported that;

⁵ E. Chileshe. Money Laundering. A Paper presented at the Workshop held at Barclays Bank of (Z) LTD. Lusaka- September 01, 1992

⁶ R. Mungole. 2000. The Effects of Drug Trafficking and Money Laundering: A Paper presented at the workshop for members of Parliament and Representatives of Good Governance. Kafue Gorge.

⁷ *ibid.*

⁸ The Independent Newspaper - London, January 23, 1998.

“...Vernon Mwangi the minister of Foreign Affairs invited a Cameroonian Businessman to Zambia who according to police records was later found to be in possession of dangerous drugs. ...The Foreign Affairs Minister’s alleged links to the man raises questions about his business practices, especially given his alleged involvement in illegal drug smuggling and foreign currency dealings as detailed in the report of the Chaila Tribunal.”⁹

Shortly after, in 1994 the donor community in Zambia censured government and the former president Dr F.J.T. Chiluba for appointing drug dealers to cabinet positions. They there after threatened to cut balance of payment support if the self confessed drug dealers were not removed from those positions in government.¹⁰

2.3. Social Impact.

The prevalence of drug trafficking and money laundering creates the impression that crime pays. Money laundering leads to corruption, which inevitably becomes the means by which goods, services and business are obtained and conducted. The nexus between money laundering and corruption manifests itself in one form or another, in that either the laundered assets are proceeds of corruption, or the process of laundering is facilitated by corrupting law enforcement agencies and financial institutions.

Drug traffickers and money-launderers operate by corrupting public officials, such as security officers, judges, magistrates, political leaders etc. As drug trafficking often brings along with it huge financial resources, drug traffickers and money-launderers have the ability to subvert the legal process by using bribes. Where the law enforcement agencies and financial institutions would normally be expected to detect or prevent the occurrence of a crime, they are induced to turn a blind eye or facilitate iniquitous practices. The subversion of the legal and/or justice system starts from the indictment, to the trial stage up to conviction and appeal stages. The aim here is to effectively weaken any efforts to bring illegal drug and money laundering activities to a halt. To achieve their aim drug dealers often target security officers and customs officials

⁹ The Weekly Post No. 114, September 10th – 16th, 1993.

¹⁰ The Post Newspaper, March 23rd, 2000.

including airline staff and bank officials. For instance, about 500 Police officers in Peru were disciplined and dismissed for drug corruption in 1998.¹¹ In Zambia there was the Zambia Airways saga where employees of the now defunct Airline were involved in smuggling drugs at the Lusaka International Airport.¹²

Corruption is very strong venom, which if left unchecked can lead to the poisoning of society's moral fibre. This is because one of the values that holds society together is integrity and corruption invariably taints reputation, infects political processes and economic stability and generally deprives certain people of some benefits. In short corruption robs society of whatever little integrity it had.

The high profit margin associated with trafficking in drugs is of great concern as some of these profits are used for terrorist activities. The terrorist attack of the United States of America on September 11, 2001 is a good illustration of the relationship that exists between money laundering and terrorism.¹⁴

Furthermore, money laundering also affects the integrity of banking and financial institutions. The confidence of the bank's customers rests heavily on the perception that it functions within a framework of high, legal, professional and ethical standards. Integrity is one of the major facets of a financial institution. If funds from criminal activities can easily be processed through a particular institution, either because its employees or directors have been bribed or because the institution turns a blind eye to the criminal origin of such funds, the institution can be drawn into active complicity with the criminals and thus become part of the network.

A good example is **The People vs. Benedict Ashley Disouza, Rajesh Kaushik, Manoj Gupta, Pundalika P. Shenoy, (The United Bank of Zambia) case.**¹⁵ The defendants in that case appeared before the subordinate Court in Lusaka charged with 56 counts of

¹¹ R. Mungole, Supra note 6

¹² DEC News Vol. 3 No. 3 January-March 1995

¹⁴ Chisha Mwanakatwe. Developing an Anti-money Laundering Regime: Recent Developments and Legislative reform. Bank of Zambia Parliamentary Seminar, Siavonga. November, 2003.

money laundering, forgery and failing to comply with Bank of Zambia directives. The facts of the case are that between 1st January 1999 and 28th February 2001, the accused persons opened two fictitious bank accounts using fraudulently obtained documentation in the names of different persons at the Ndola and Kitwe United Bank of Zambia Branches. The accused were all Directors of the same bank. They deposited huge sums of money in the two fictitious accounts (i.e. money acquired from illegal activities) and later on had that same money externalised out of the country. The total amount externalised out of the country during the period mentioned above almost amounted to 4 Billion Kwacha i.e. US \$ 925,879. The accused persons were all convicted and sentenced to one- (1) year imprisonment with hard labour and in addition were fined 19 Million Kwacha (about US \$ 5000). Subsequently the Bank of Zambia also closed the bank for unsound banking practices. On appeal the High Court Judge J.A. Banda dismissing the appeal noted as follows:

“As already established, these large amounts of money entered the U.B.Z Bank system through the fictitious accounts opened in the names of Lesley Mulenga and Justin Sakala. The two had no idea of the accounts purporting to be theirs. Obviously, whoever was the source of these large amounts of money did not want to be known and did not want the source of money to be known. That is the reason why the accounts were opened in fictitious names so that the true source of the money and its owner could remain concealed. It must be appreciated that concealment of the sources of money and its owner is the essence of the crime of money laundering.”

Drug abuse usually leads to the problem of tolerance and the compulsive use of illicit drugs sometimes commonly referred to as drug addiction and to its attendant ramifications. The problem of drug addiction affects the quality of the addicts' life either to a greater or lesser extent. However, it is not plausible to minimise the dark side of the drug scene. Cocaine users are capable of injecting themselves several times in a single session, converting their bodies into needle-pricked, bloody, and bruised messes. Deaths have been reported due to drug overdoses. Some drugs usually damages nerve

¹⁵ Case No. SSP/8/2001 and Case No. HPA/11/2003

fibres in the brain and reduces serotonin levels.¹⁶ Such damage is in some cases permanent.

The loss of self-control through drug addiction is not only harmful to the individual concerned but also to society as a whole. The illicit trade erodes the moral fibre on which the very existence of society depends. A drug addict has such a craving for the drug that they go to any extent to procure the drugs and invariably they turn to crime when all efforts have failed. Thus, crimes such as murders that are abhorred by society are committed with ease and increasing frequency.

For instance, since the early 1980s then drug industry has been known to influence trends in 'downstream' crimes, notably vehicle theft, smuggling, corruption housebreaking, armed robbery and murder.¹⁷ Ultimately, drug addiction leads to unbecoming and rowdy behaviour and has been cited to be one of the major ingredients of crime in society.

The rate at which people are getting addicted to drugs is alarming. In Zambia, research by the Drug Enforcement Commission (D.E.C) has revealed a worrying 5,250 cases of addiction from a previous zero addiction level.¹⁹ This creates an inevitable strain on the resources especially of less developed countries (LDCs) with their few and inadequate rehabilitation and treatment centres for drug addicts.

Drug trafficking and money laundering are also capable of ruining a nation's reputation internationally. The negative reputation resulting from these activities diminishes legitimate global opportunities and sustainable growth while attracting international criminal organisations. This can result in diminished development and economic growth.

¹⁶ Mukutulu Sinyani. Identification of Drugs. Paper presented at an Induction course at Niscol college. Chalimbana.

¹⁷ Goredema, Charles, *supra* note 1 at page 2

¹⁹ DEC News. Volume 1 June 1997. P.13

2.4.Economic Impact.

At first sight the problem of drug trafficking and money laundering may not seem to have any serious impact as the problem itself is 'big business' and may in certain circumstances induce artificial increase in the level of economic development of third world countries. The flow of drug money into the economy is usually fast and substantial but as intimated earlier on, it is artificial and short term, as the illicit trade does not facilitate the development of other more stable economic activities.

And since laundered money invariably passes through the financial system, money laundering has several effects on the financial system as a whole and the bank in particular. Money-launderers usually target banks because by their very nature they are capable of handling huge sums of money transactions. Banks are also able to transmit cash transactions efficiently and are assumed to be trustworthy in keeping their clients' financial transactions confidential.²¹ Money-launderers use banks and other financial institutions to disguise their proceeds from criminal activities.

Money-laundering arising from illegal drug trafficking has the capacity to undermine and destroy the entire economy of a country. The reason being that while dealers reap huge profits in drug trafficking and organized crime syndicated activities, nations and governments where these activities flourish often have to pay costs of consumption and production. Usually there are a number of factors at play in such an economy. For instance, drug based economies are dependent economies especially in terms of balance of payments support and provision for social services. In some cases these governments even draw up paper budgets without any money to implement projects. Moreover, such a drug induced and money-laundering economy generates little interest for local products.

²¹ Chisha Mwanakatwe, Developing an Anti-Money Laundering Regime: Recent Developments and Legislative Reform. Siavonga. Supra note 14.

Money laundering threatens a government's fiscal and monetary policies. This means that the government can not control the economy through traditional means of economic control. One of the most noticeable effects of money laundering is an increase in inflation as well as a thriving black market.²² Inflation comes about because of the large volumes of money in circulation not passing through the Central Bank's control. A thriving black market means lower government revenues through tax. Money laundering by its very nature implies tax evasion, which also contributes to low revenues.²³

Drug infested and money laundered economies also suffer from the Dollar-Syndrome. This is where business transactions are quoted in dollars rather than in the local currency. This makes it difficult for local goods to compete in both domestic and foreign markets.

Money laundering also has a negative impact on legitimate businesses because companies operating with resources from proceeds of crime do not follow the cost structures of production obtaining in the economy.²⁴ These companies popularly known as front companies have access to huge sums of ill-gotten money which they inject in their businesses allowing them to subsidise their products and/or services at below production cost. The consequence of this is that companies that get their capital from legitimate sources fail to compete with such companies hence they end up folding.

Moreover, a narcotic-drug infested and money- laundered economy usually does allow and virtually discourages long-term investment and launderers focus on short-term speculative liquid investment. Furthermore, they will invest their money in ventures, which are not economically beneficial to the country. They invest in low quality ventures where their ill-gotten proceeds will not be detected. For example, money-launderers have been known to invest in construction and hotel industries. Once these

²² Goredema Charles, *supra* note 17

²³ *ibid*

²⁴ Chisha Mwanakatwe *supra* note 21

industries no longer suit them, they abandon them causing a collapse of the sector and serious damage to the economy of the country.²⁵

Narcotic drug traffickers and money launderers pay no taxes to the state and employ accounting methods, which evade paying taxes. By its very nature money laundering makes governments' tax collection difficult. This subsequently diminishes governments' tax revenues, which are very important for carrying out various developmental projects. In order to recover the lost revenue the government has to set higher tax rates than would normally be if the untaxed proceeds of crime were legitimate.²⁶

The above repercussions of the illicit trade were aptly summarised by the former United Nations Secretary General Javier Perez de Cuellar in his 1989 report on the work of the United Nations in the following terms;

*“ The misery caused by drug addiction is immeasurable, moreover, in a number of countries the vast profits derived from this illicit production and traffic have the direct effect of making sections of economies dependent on the trade and thus creating militant constituencies for its continuance. In some cases administrative and judicial structures are being undermined to the extent of endangering political stability.... ”*²⁷

Having comprehensively examined the adverse effects of both drug trafficking and money laundering on the society, the next chapter will be devoted to the analysis of the existing legislation put in place by the government to control these vices. The chapter will also examine some of the cases on the subject to understand how effective the existing laws have been in controlling the scourge. Furthermore, the chapter will evaluate the extent to which the government has shown political will in fighting these vices.

²⁵ ibid at page 4

²⁶ ibid

CHAPTER THREE

Crime in whatever form is a phenomenon which, given the level of our underdevelopment and poverty, poses the greatest challenge to the process and programmes of economic and social development. We must appreciate that crime is the language of the underworld and the misfits; and so is drug abuse. It is the underworld and the misfits who practice tax evasion; large scale Bank and insurance frauds; illegal currency and capital manipulation, smuggling, theft of public funds; acts of bribery and corruption, etc. These offences involve a diversion of public resources, which would otherwise have been available to the state for funding programmes of education, health, local government, and other social services that have direct economic benefits to the people and to the nation.

Drug trafficking and money laundering in particular do not only violate the law and distort the economy, but they also bring about anti-social activities. For instance, they bring about misbehavior rebellion and disrespect for authority and violence in general. This threatens the stability of the society and undermines the social foundation and values among our communities and people.

Mr. Justice Gregory S. Phiri once remarked in his closing speech at a workshop for members of parliament and representatives of good governance that the delegates should not leave the fight against drug trafficking and money laundering to the Drug Enforcement Commission and the central government alone. He lamented that:

“As popular leaders, you are the people on the ground and the fight against drugs cannot be significant without your individual and collective efforts. This should be our way forward. If this is not done, the people of this country will continue to cry for stiffer laws

²⁷ The United Nations and Drug Abuse Control. United Nations. New York. 1989. P.1

when actually the law is already as stiff as it should be but it is ourselves who are weak and ineffective through inattention.”²

The above observation only goes to show that the fight against drug trafficking and money laundering should not be left to the institutions that are mandated by law to do so, but all should get aboard and compliment their efforts. As will become clear after this chapter, it is not always right to assume that when you have good laws in place then it follows that the problem will be eradicated. To solve the problem completely, it is cardinal to have good laws in place, which should be enforced by effective and efficient enforcement machinery that should comprise an autonomous executive body in charge of investigations and arrests, and the judiciary. These should be supplemented by the necessary political will to ensure that all the policies put in place are carried out.

The Narcotic Drugs and Psychotropic Substances Act No. 37 of 1993 (Now Cap 96 of the Laws of Zambia under volume 7) repealed and replaced Act No. 7 of 1989. It came into effect on the 1st of November 1993 through Statutory Instrument No. 139 of 1993. The new Law was ultra modern in its outlook. This Act domesticated some of the International protocols on drugs and narcotic substances. For this reason it was a more articulate piece of legislation having taken note of the developments in other jurisdictions; particularly in Europe, America and Asia.³

The most important aspects of this Act include a compilation of all drug-related offences inclusive of possession, trafficking and money laundering. It also provided stiffer penalties where trafficking carries a penalty of 25 years and for procedures and the prohibition of bail in certain cases. The Act further exhibited a good articulation with the existing criminal law in Zambia. It introduced several new offences and penalties as well as legal modalities of investigation, arrest, seizure and forfeiture of illegal property.

² Justice Gregory Phiri. “The Development of Drug Control Legislation and the way Forward” A paper presented at a Workshop for Members of Parliament and Representatives of Institutions of Good Governance. 14th July, 2000.

³ Ibid.

A birds-eye view of this law also reveals that this piece of legislation exhibits all modern and international trends in the fight against drug abuse and drug related substances inclusive of substances that are on their own harmless but have the potential to be blended into dangerous drugs when mixed with other substances. When one looks at the United Nations model drug legislation, one immediately notices significant similarities to our present law. In fact, the *Act No. 37 of 1993 (Cap 96)* was a result of a long process of internal collaboration and international consultations whose provisions comply with the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.⁴

This piece of legislation represents the Zambian expression of a growing global consensus on the measures required to be taken in order to effectively respond to profit motivated crime in the modern age and time. The international consensus is that these measures are based on the premises that the best deterrent and punishment for drug dealers is the confiscation of the assets acquired from illegal use of drugs in addition to imprisonment.

This law on drug trafficking demonstrates the Government's policy to provide a concerted enforcement effect to strip the profits and incentives from those who engage in illegal drug trade. Over and above, the new law confirms to the world that Zambia is still prepared to live up to its international commitments and will not serve as a haven for drug barons and their surrogates. The people's expectations have been raised to their highest.

In order to live up to the international consensus based on the premise of confiscation of the assets acquired from proceeds of ill gotten money and thereby, denying the drug traffickers and other criminals the opportunity to enjoy their ill gotten money, the Zambian parliament did pass into law, in November 2001, the *Prohibition and Prevention of Money Laundering Act No. 14 of 2001*. The Act was passed because the Zambian legislators realised the seriousness of the problem and did agree with the rest of the international community that the best deterrent for drug dealers was to deny them the

⁴ *ibid.*

enjoyment of their ill gotten cash. Moreover, money laundering itself is considered to have negative repercussions on the political, economic and social spheres of the country as noted in the previous chapter. Section 7 of the Act prohibits any dealings in money laundering by providing as follows:

“A person who, after the commencement of the Act, engages in money laundering, shall be guilty of an offence and shall be liable, upon conviction to a fine not exceeding one hundred and seventy thousand penalty units or to imprisonment for a term not exceeding ten years or to both.”⁵

Other than attracting a custodial sentence, an offender may be fined or may have his property forfeited to the state. Since one penalty unit is equivalent to one hundred and eighty kwacha, it follows that the fine to be slapped on a conviction for money laundering will not exceed thirty million and sixty thousand kwacha.

Mr. Kulusika, a criminal law lecturer at the University of Zambia, aptly summarised the main objectives of the ***Prohibition and Prevention of Money Laundering Act*** as being:

“(a) To prevent money laundering by instituting certain measures such as the collection, evaluation, procession and investigating of financial and other business transactions suspected of being part of money laundering, or a conspiracy to commit such an offence.

(b) To enhance regional and international co-operation with enforcement bodies responsible for the investigation of money laundering with a view to preventing and combating such crimes.

(c) To enable relevant authorities conduct investigations and prosecution of money laundering offences.

(d) To authorise the government, through its agencies, adopt measures for seizure and forfeiture of property derived or acquired from the proceeds of crime.

(e) To punish persons convicted for the crime of money laundering by the imposition of appropriate fines or imprisonment for certain terms or to both.

⁵ Act No. 14 of 2001.

(f) To establish appropriate machinery e.g., the authority under section 3, establishes the Anti Money Laundering Authority whose purpose is to assist the government develop and adopt measures necessary for the prevention, detection and suppression of money laundering.”⁶

The provisions of the Act are not just of concern to those who might intentionally violate them or the criminal law, but these provisions will impact on virtually every sector of the business and professional community. The provisions of the Act are couched in a language that is so broad that anyone dealing with an property that may be viewed as being derived from acts that would arguably be criminal under the Act would be considered a potential suspect who has violated the provisions.

Before Act No.14 of 2001 was enacted, money-laundering offences were taken before the court using section 22 of the Narcotic Drugs and Psychotropic Substances Act. The main body then, which was in charge of money laundering, was the Drug Enforcement Commission. Now Act No. 14 established under section 5 an Anti- Money Laundering Investigations Unit whose purpose is to attain the objectives of the Act. This unit falls under the auspices of the Drug Enforcement Commission. The unit has been given the sole jurisdiction to investigate and prosecute money-laundering offences. The unit is to collect, evaluate, process and investigate financial information.⁷

Being a crime designed to hide other illegal activities, money-laundering activities are very difficult to detect. Thus it follows that even proving such cases in court is very difficult. From the perception of the law interpreters (i.e. the judiciary) particularly in the subordinate courts, they argue that the Act i.e. the ***Prohibition and Prevention of Money Laundering Act***, is couched in such language which makes it difficult to effectively apply by the law enforcers and difficult sometimes to interpret in the courts of law.

Because of this most cases fail when they are taken before the courts of law. For instance, one Lusaka magistrate Sharon Andersons noted that the problem lies with the indictments

⁶ Kulusika, S.E. Zambia Law Journal. volume 33, 2003. University of Zambia Press. Lusaka: Zambia. P.120

⁷ Section 13(1)(c) of the Prohibition and Prevention of Money Laundering Act.

that the Ant-Money Laundering Unit Officers normally prepare. She observed that because the indictments are normally faulty, it follows that most of their cases fail.

Another magistrate also based in Lusaka, her Honour Mrs. Bibiana Kearns observed that the legislators were in too much of a hurry to enact the Act. The result is that both the law interpreters particularly the lay magistrates and the law enforcement offices themselves have problems with understanding the Act very well. She noted that the result has been gross misapplication of the Act. She gave cited two cases to demonstrate her point, the first of which involved one food supplier who was quite wrongly charged with money laundering. She said that the accused, a supplier, was contracted to supply beans to the Ministry of Defence and was paid K1,073,000,000 = 00 but no goods were supplied.⁸ She observed that this man should not have been charged with money laundering but should have been charged for the offence of theft. She also gave an example of the *Stella Chibanda case*.

In that case i.e. *Stella Chibanda and Niseo Farms Limited v. Commissioner – Drug Enforcement Commission, The Attorney General and Stanbic Bank (Z) limited*, Judge Phillip Musonda observed that while the objective of money laundering legislation is to keep dirty money dirty and to incapacitate the whitening of dirty money, the affidavit in question averred that the applicant was being investigated for theft of monies. The deponent in that case overbroadly classified theft by servant investigations as money laundering. He observed that the application of the Money Laundering Act in that case was misapplication of the law thus was caught by illegality.⁹

Mrs. Kearns ended by saying that she knows that the Act was enacted to be consistent with the provisions of international drug treaties. She thinks that such an Act can only work effectively and efficiently in developed countries where conditions and the enforcement machinery is properly suited for the better understanding of the definitions and provisions of the Act.

⁸ *Capital Milling Ltd. & Others v. Commissioner Drug Enforcement and Attorney General*. High Court Judgement No. 2003/HP/1194

However, a senior officer based at the Anti Money Laundering Investigative Unit Mr. Kakoma Changano, does not agree with the two magistrates. He argues that the problem seems to be with the people who are charged with the task of handling money laundering cases. He said that both officers and law interpreters lack the necessary knowledge and skill required to investigate and adjudicate over such complex cases. He said that with more time and practice this problem will be over. Whichever way one looks at this issue, there seems to be general agreement both from the law enforcers' and the interpreters' point of view that there is a problem with Money Laundering Act and the cases in general.

The drug trafficking legislation, i.e. cap 96 appears from the general perception of the above people talked to, to be elaborate and comprehensive enough. This means that the laws as regarding drug trafficking are adequate, the only problems have to do with sentencing. Having said so the paper will now take a close examination at the sole body, which is mandated by law to investigate and bring the drug dealers and money launders before the law.

In the area of law enforcement, the country did establish a specialised organisation called the Drug Enforcement Commission (D.E.C) in 1989 whose primary task was to fight the drug scourge in the country. The Drug Enforcement commission was established under section 33 of *The Dangerous Drugs (Forfeiture of Property) Act No. 7 of 1989* and continued under section 4 of Chapter 96 of the Laws of Zambia.

The inception of the Drug Enforcement Commission saw with it an almost immediate rise in the amount of drug seizures, arrests and subsequent prosecutions of drug traffickers. By September 1990, barely a year after its inception the Drug Enforcement Commission seized a total of 1,043,090.45 grams and 1,504,321 Tablets of narcotic drug

⁹ High Court Judgement No. 2003/HP/0242

and psychotropic substances.¹⁰ Six years later in 1996 drugs with a street value of K3,115,837,810.06 were seized by the commission in the first six months alone.¹¹

So far the Drug Enforcement Commission has been recording good results, having major seizures of drugs in the region and has managed to identify the drug trafficking trends and their major routes making their work easier. The commission has continued to grow from strength to strength such that it now incorporates the Anti-Money Laundering Unit which is mandated to investigate money laundering cases. Though the commission has recorded positive progress in money laundering cases, the commission has continued to lose a number of such cases. However, such is not the case with drug trafficking cases where there have been a lot of convictions recorded compared to the number of cases lost.

In the recent past the commission made a significant contribution to the Southern African sub region by making serious investigations regarding stolen motor vehicles. This involved the interplay between drug trafficking and organised crime. Stolen motor vehicles from South Africa were being exchanged for drugs, in particular methaqualone. Several countries were involved such as Tanzania, Malawi, South Africa and Zimbabwe. The Drug Enforcement Commission did very well in these operations.¹²

However, it should be noted that the Drug Enforcement Commission should be supported by an efficient, competent, capable and impartial criminal justice system, which will ensure the arrest, prosecution and sentencing of drug traffickers as well as money launderers.

¹⁰ The 1990 Drug Enforcement Commission Annual Report.

¹¹ A Country Profile Report by Commissioner R. Mungole.

¹² "A Revised African Common Position on Drug Abuse and Illicit Trafficking Control in Africa". An OAU Report. 1998

Dr Kenneth Kaunda the former president of Zambia once expressed his view over the judiciary when he said *“it is ridiculous that because of the constraints of the law a magistrate could give a K50 bail to a person on a mandrax trafficking charge.”*¹³

A statement like this one only goes to show that government places the onus on the judiciary to interpret the law judiciously and render judicious decision in a manner that is reasonable in the National interest. It would not do to give a high profile drug dealer receive a very small fine which does not compliment the degree of crime committed. It is cardinal for the judiciary to bear in mind the effort that officers put in fighting these criminals. It is very demoralising for the officers to see a person they have spent so much time and tax payers' money on fined only a very small fine and is allowed to go back on the streets to go and do more harm. A good example of such a case is the Chileshe case, which provoked so much debates from the general public. When Mr. Chileshe was given a fine instead of a custodial sentence and very small fine for that matter, many interest groups and the public in general complained.

Magistrates and judges should understand the drug laws as provided for by various statutes and address the mischief, which the law wants to address. Emphasis here should be on a just and fair judiciary, which should be seen to treat suspected drug dealers equally regardless of their class. It is quite disheartening to see suspects who come from poor backgrounds receive custodial sentences while well to do suspects are given light sentences in the form of fines, which they can easily pay. Moreover, these same rich drug dealers are the source of the drugs and it hurts to see them having a good day in court.

Since the Act on drug trafficking is modeled on international model legislation, we can no longer argue that the Zambian drug Act is weak in one way or the other. The courts are therefore reminded to upgrade and improve on the understanding and interpretation of the drug Act.

¹³ Zambia Daily Mail, April, 25, 1985.

The former president Dr. FTJ Chiluba at one time requested all stakeholders including the judiciary to support efforts of the government and the Drug Enforcement Commission. He stated that,

*"I call upon all Zambians to support fully the current effort of my government to eradicate the scourge of illicit narcotic drugs from within Zambia and beyond our borders."*¹⁴

This was a positive move on the part of the political sector of the country. By doing so the political leadership showed the country that they were also concerned about the problem of drug trafficking that the country faced.

It should be noted that the *Narcotic Drug and Psychotropic Substances Act* has several offences to which the Zambian courts should contribute positively by interpreting those provisions judiciously and justifiably. There are many good examples of how the courts have interpreted the provisions of the Act. Among many such instances is the case of *VAFEEN FOFANA alias MUTOMBO WA MUTOMBO VS. THE PEOPLE*. The Supreme Court observed as follows;

*"in our considered opinion, the sentence of six years does not induce any shock given the fact that this was an obvious case of trafficking which fact was established by the quantities and the manner in which the drugs were brought into this country. Six years with hard labour IHL was condign; it is not one day too long..."*¹⁵

The court further noted that;

*"...it is obviously the duty of the court to discourage transborder trafficking. Indeed the court can lose sight of the fact that drug trafficking is no longer a matter for domestic interest only but has assumed international proportions and the whole international community is concerned about this cancer. This country too should be seen to be playing its part in eradicating trafficking, especially that across borders..."*¹⁶

¹⁴ National Drug Control Strategy Master Plan, Government of the Republic of Zambia. 1996-2002.

¹⁵ SCZ Judgement No. 8 of 1992.

¹⁶ Ibid.

It should be noted that the comments of the Supreme Court in the above cited case can not be over emphasised because they are positive comments in the right direction towards lower courts if the principle of stare decisis is to be strictly observed.

The Supreme Court also gave a positive direction to lower courts in the interpretation of the term 'Trafficking' as defined under the Narcotic Drugs and Psychotropic Substances Act. This was in the case of *Cheta Nkumar Shantkal Parek vs The People*. In that case the court observed that;

"we do not 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 offence of unlawful possession could conceivably still be caught by paragraph (a) if the circumstances suggests to the trial 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 supported to be personal consumption".¹⁷

This observation can be said to be a commonsense approach for magistrates when considering the issue of trafficking and in fact it is positive approach towards drug trafficking offences.

And in the High Court case of *Chetan Dilikumar vs The People*, it was stated inter alia that:

".... as a final observation , I would say that I found nothing wrong in the trial magistrate's judgment to justify any interference. Even the judicial notice taken by the magistrate that cases involving narcotic drugs have tarnished the image of the country was properly made because drug abuse has now become a widely known phenomenon in Zambia and therefore, a notorious fact. This fact is more notorious than the fact that ZCBC shops in Zambia are guarded by security guard..."¹⁸

In another High Court case of *The People Vs Samson Yamalez*; Honourable Judge L.P. Chibesakunda held inter alia that;

¹⁷ SCZ No. 119 of 1995.

¹⁸ HP/25/1995.

*"...on the other hand, we have to consider the interest of society at large in tracking wrong doers and repressing crime. These two interests have to be balanced."*¹⁹

It would seem that the higher courts' view of drug trafficking offences has been in a positive direction in trying to indicate how serious drug offences are. It remains to the lower courts where the trials of most cases take place.

The area of sentencing for drug related offences need proper legal guidance than there is now. This is because there are a lot of imbalances in the sentencing system of the courts as was noted earlier on. During the colonial era judge Robinson A.C.J gave a practical example with a view to demonstrate that drug related offences need legal guidance.

In the case of *R v Loti Misepo*, the accused was sentenced to six months with hard labour for being in possession of cannabis by a magistrate court. Upon review in the High Court, Justice Robinson A.C.J. stated inter alia that;

*"...a fair balance should be struck between the social gravity of the offence to the community and the practical penal consequences to the offender."*²⁰

This observation was brought out because at that time in 1945, the courts of Northern Rhodesia throughout the country had widely different standards of sentencing or punishment. The court therefore, was of the view that some similarity in typical cases was necessary.

Even now the attitude towards drug cases creates a situation whereby some people end up serving sentences which are more severe than expected for possession of a small quantity while one with a large quantity may end up being given a suspended sentence, a fine, community work or a very lenient sentence at the expense of officers' efforts in arresting such offenders. This is grossly unjust and unfair.

¹⁹ HPA/49/93.

²⁰ NRLR Vol. 4 P.76.

It is in this area of sentencing that the lower courts are requested and certainly not dictated to that they should act judiciously and impartial after taking into account the environment of the drug offender and the quantity of drugs evolved.

The courts also have a duty to order any property that is connected in any crime under the Narcotic Drugs and Psychotropic Substances Act to be forfeited to the state upon conviction. In forfeiture proceedings, money can also be forfeited to the state and the standard of proof required basically is on the balance of probabilities. In some instances where the offender is found with any cash and drugs and information was that he is a drug trafficker then the state can request the court to forfeit the same to the state under section 34(1) (2) of the Narcotic Drugs and Psychotropic Substances Act.

The court took such measures of forfeiture of property because the civil law had long recognised the maxim: “*ex turpi causa non oritur actio*” as it was applied in the case of *Re Crippen*, where Sir Samuel Evans stated that;

*“... 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”.*²¹

So far it is evident that in terms of statutory enactment and consequent drug interdiction Zambia is doing it's level best, within its financial means, to meet the problem head on. The question that is brought to the fore is whether the enforcement efforts themselves are helping to ameliorate the drug problem. The enforcement of the provisions has led to arrests and convictions, the number of people and the amount of drugs involved in the drug trade has in no way decreased. In fact there has been an experienced up swing in the number of arrests and convictions and the amount of drugs seized. One is bound to ask whether arrests and subsequent convictions do deter drug peddlers in any way.

Contrary to common beliefs, research in other jurisdictions has revealed that the imposition of stiff penalties actually leads to an increase in drug related offences. People

²¹ (1911-13) ALL ER 207.

are tempted to engage in such vices because of the economic benefit usually related to drug trafficking. There is more money in this business because the increased risk involved tends to push the prices of the illicit products up, this is in substantial conformity with the economic rule of high risks- high profits. An instructive example is the American prohibition laws under which alcohol was outlawed. The legalisation of the importation of alcohol saw a sharp decrease in business activities in this field with the result that groups and syndicate abandoned it for other illegal activities such as gambling and drug trafficking which is more lucrative.

Furthermore, the 'big fish' who are the real brains behind the scourge are rarely directly involved in the actual traffic themselves. In terms of arrests and prosecutions most of the people prosecuted are the pawns in the trade who are in any case dispensable and replaceable as shown by a United States of America Senate report which stated;

“Despite known arrest records and well documented criminal reputations, the leading hoodlums in the country remain for the most part immune from prosecution and punishment although underlings of their gangs may on occasion be prosecuted and punished.”²²

Further there is evidence from research that there is an intimate connection between certain economic factors such as unemployment and the upswing in the incidence of crime. This poses an added problem for a country such as Zambia where unemployment has become rampant and personal survival is based on initiative and ingenuity. Considering the profits involved in drug trafficking people are unlikely to be deterred by stiff sentences unless the profits are removed from the trade.

Although deterrence basically targets the potential offender and innocent member of society it must be also aimed at the actual drug offender to prevent the repeat of the offence or recidivism. The slapping of stiff custodial punishment in this regard, in the

hope of eradicating the drug problem in Zambia is doubtful. The argument for this assertion is simple. Firstly, the astronomical profits from the trade far outweigh the threat of possible imprisonment. Secondly, the incarceration itself may lead to an enhanced criminal behaviour on the part of the offender upon release. Daniel Glaser once noted that;

“Once a person has been involved in criminality whether because of the early enculturation in delinquency or later conversions and particularly when he has been arrested, committed to a penal institution and released with the stigma of a criminal record, his criminal norms and his access to criminal means have been reinforced by his different association and identification.”²³

Empirical research in the United States of America revealed as early as the 1950s that between 40% and 80% of people released from prison are returned for repeated offence.²⁴ As to offences relating to possession the people most frequently in possession of drugs are the drug abusers who are usually drug addicts. Thus “illegality of the purchase and possession of opiates and similar drugs makes a drug user a delinquent ipso facto”.²⁵ It is clear that custodial sentences will not deter a drug addict and that unless treated and rehabilitated the rate of recidivism is even higher among this class of people.

In conclusion, one must hasten to state here that the imposition of stiff custodial sentence per se has very little deterrent value and that at best the worthiness of these sentences is retributive. Thus drug offenders are to be punished because they have committed a crime and deserve punishment and not because their punishment will deter them or potential offenders from committing the same offense. It is submitted that to deter offenders, the best method is to remove the very reason offenders engage in drug trafficking. The profit motive is the single most important motive of the trafficker and if it is removed

²² ORGANISED CRIME IN THE UNITED STATES – U.S. Senate Third Interim Report of the Special Committee to Investigate Organised Crime in Interstate Commerce. (Washington D.C, U.S Govt. Printing Office, 1951) P.4

²³ Daniel Glaser and Kent Rice “Crime, Age and Employment” American Sociology Review XXIV October 1959, P.683.

²⁴ Donald Clemmer “Observation on Imprisonment as a source of Criminality,” Journal of Criminal Law and Criminology. XLI (September – October, 1950) at P.317.

²⁵ “Law and Contemporary problems”, Duke University School of Law, vol. 22 No. 1 1957 Pp 53-54

drug traffickers would not have a reason to engage in the scourge. The modalities of how to do this are subject of the last part of this dissertation.

The next chapter particularly will be based on the constitutional issues that arise as a result of the mode of investigations that are employed in detecting both money laundering and drug trafficking cases. It will examine matters of search and seizure, disclosure of client information by banks and other financial institutions among others.

Chapter Four

4.1. Introduction.

It is the duty of the Drug Enforcement Commission to ensure that the rate of drug trafficking and money laundering is reduced to minimum levels possible. The nature of these crimes requires a degree of diligence and sophistication on the part of the law enforcers. It is a known fact that as the Commission embarks on this important task, it might encounter the danger of falling foul to the issues that surround the constitution i.e. infringing other peoples guaranteed rights under Part III of the constitution. Investigations of these vices require the employment of tough methods, which might led to the interference of other peoples' rights.

Therefore, this chapter will be dedicated to an examination of the constitutional infringements that usually arise as a result of the application of tight enforcement and detection mechanisms. The section will deal with issues of search and seizures, which result in the recovery of incriminating evidence, disclosure by banks and other financial institutions of clients' personal affairs without their consent, forfeiture of people's property and liability of innocent parties.

4.2. Search and seizures.

In order to address the questions that fall under this section, it is cardinal to start by examining some of the procedures employed in investigating the alleged perpetrators of these crimes. There are several stages involved in investigating these matters, one of which is the receipt of information. Upon receipt of information, the officers will organise themselves so that they can conduct a search. Article 17 of the Constitution, which deals with the protection for privacy of home and property states that;

“Except with his own consent, a person shall not be subjected to the search of his person or his property or the entry of others on his premises.”

This right is not an absolute right for it has four claw back clauses under article 2. One of these derogation which falls under Article 17(2)(d) allows a person to be searched without his/her consent for “the purpose of enforcing the judgement or order of a court in any civil proceedings, the search of any person or property by order of a court or entry upon any premises by such order.”

This Article requires that in order for a search to be legal it must be conducted under the authority of an order of the court otherwise known as a search warrant. Therefore, it is important that a search warrant be obtained unless in exceptional cases of ‘hot pursuit’ and in public places. Under Section 24 of the Act,²⁶ the commissioner, Drug Enforcement Commission is empowered to issue and sign search warrants. Section 118 of *The Criminal Procedure Code Act*²⁷ confers the power to issue search warrants on the courts of law. These two sections appear to clash because the provisions of the Criminal Procedure Code also apply to the DEC regime. The assumption however, is that the provisions of the two statutes can be applied in the alternative. With a search warrant, the enforcement officers are empowered to detain and seize any property suspected of being or connected with an offence under the Act. Items such as drugs, documents, diaries, motor vehicles, and firearms can be seized under the Act.

Section 31 of the Act gives powers to the officers to seize property reasonably suspected to be the subject matter of an offence under the Act or which has been used for the commission of that offence or is illegal property. It is important in this regard that a seizure notice be issued for all the property seized from the suspect. The seizure notice can be used in court as proof of that certain items had been seized from the accused person.

Where drugs had been seized and the accused is charged for either drug trafficking or possession, the Analyst Report is a fundamental piece of evidence attaching to the very

²⁶ Narcotic Drug and Psychotropic Substances Act No.37 of 1993

²⁷ Chapter 88 of the laws of Zambia.

essence of the charge. In the High Court case of *Lyambo v. The People*,²⁸ the court acquitted Lyambo on the charge of illegal possession of narcotic drugs on the ground that as an accused he was not allowed to present at the laboratory when the drugs were being tested. Because of this decision, subordinate courts in Lusaka acquitted many drug cases using the Lyambo case as a precedent.

However, the same court in the subsequent case of *Leonard Sibooli v. The People*²⁹ held that there is no legal requirement that the accused person or his representatives should be present at the laboratory where drugs are being tested by the public analyst. This is the approach that was adopted in the later Supreme Court case of *Chetan Dilipkumar Parmar*.³⁰

Questions may be asked as to whether an officer searching for drugs may seize other property he reasonably thinks to be illegal property. It is a cardinal principle of the law as enshrined in the constitution that an individual has a right to privacy and to possession of any property and that such property cannot be invaded except in most compelling circumstances and that there has to be due process of law.³¹

In the Zambian High Court case of *The People v. Samson Yamalezi*³² Judge L. P. Chibesakunda held as follows:

“On the other hand, we have to consider the interest of society at large in tracking wrong doers and repressing crime. These two interests have to be balanced...”

The learned Supreme court Judge cited Lord Denning in the case of *Chic Fashions (West Wales) Ltd. v. Jones*³³ where it was held that:

“when a constable enters the house by virtue of a search warrant for stolen goods, he may seize not only the goods which he reasonably believes to be covered by the warrant, but also any other goods which he believes on reasonable grounds to have been stolen and to be material evidence on charges of stealing or receiving against the person in his possession of them or associated with him.”

²⁸ High C

²⁹ High Court Judgement No. HPA/13/94

³⁰ SCZ Appeal No. 111 of 1995.

³¹ Article 17 (26).

³² High Court Judgement No. HPA/49/1993.

³³ (1968) Q.B. 297.

The facts of the matter in the *Samson Yamalezi* case are very brief. Drug Enforcement Commission officers found firearms, thirteen motor vehicles and two tablets of mandrax. The mandrax tablets were found in the BMW motor vehicle belonging to the Respondent. He was convicted on the firearms and the mandrax tablets. The BMW where the officers found the mandrax was forfeited to the state while the subordinate court ordered the other thirteen motor vehicles to be released. The state appealed against the release of the thirteen motor vehicles. The majority of these cars were reported stolen from outside Zambia. The High Court ordered that the respondent be charged with the appropriate charges for vehicles, which were connected in any crime, and that the seizure of the vehicles by officers was in order.

In general terms, illegally obtained evidence resulting from an irregular search is not admissible and courts have stated clearly that any violations of the constitutional right to privacy by law enforcement officers is not to be acceptable. However, the court in the 1976 Supreme Court the case of *Liswaniso v. The People*³⁴ made a fundamental decision regarding the admissibility of illegally obtained evidence. In this case Chief Justice Silungwe stated that evidence illegally obtained as a result of an illegal search and seizure is, if relevant, admissible on the ground that such evidence is a fact regardless of whether or not it violates the constitution. The *Zambian* decision in the *Liswaniso* case is supported by some English decisions. For instance, it was observed in the *R v. Governor of Pentonville Prison Ex-parte Chinoy*³⁵ case that;

“the detection and proof of drug trafficking offences might involve the employment of unlawful means and those means did not provide sufficient grounds for excluding the evidence so obtained.”

Article 18(2)(a) states that every person charged with any criminal offence shall be presumed innocent until he is proved or has pleaded guilty. The mens rea of drug offences is presumed by the mere possession of the drugs unless rebutted by very strong

³⁴ Supreme Court of Zambia. (1976). Reproduced in Turner and Ndulo at 486-497.

³⁵ (1992) 1 ALL ER at 317.

evidence of non- possession. The actus reus is also presumed from the mere possession of the drug. In the case of *Kho Aik Siew v. Public Prosecutor (1993) 2 SLR P.599 (CA)*, the appellant was charged with illegal possession of 679 grammes of diamorphine, a prohibited drug. Counsel for the appellant argued that the presumption of mens rea and actus reus could be rebutted by showing its absence. The court held that the actus reus and mens rea of drug trafficking and illegal possession of drugs is presumed and can only be rebutted if accused produces or adduces evidence to show that he/she is not in actual or constructive possession of the drugs. In short it is becoming common judicial thinking that in enterprising crimes such as drug trafficking, a person is presumed guilty unless he proves himself innocent. This argument of course would contravene the Zambian Constitutional theory of a suspect being innocent until proved guilty. Therefore, it would appear as though this argument of the person being guilt until proved innocent in Zambia as the Constitution guarantees the fundamental right of an individual to be innocent until proved guilt.

4.3. The question of Bail.

The effect of the presumption of innocence is that the accused person should be entitled at least to bail. There is a general right to bail and where it has been denied reasons should be given. The aim of the bail is to grant someone some liberty while court proceedings are pending. This is because one is innocent until the courts of law have proved him or her guilty. Under section 43 of the *Narcotic Drugs and Psychotropic Substances Act* ³⁶ any person who has been arrested and is suspected of having trafficked, cultivated and/or manufactured any prohibited drugs is not entitled to bail.

It can be argued that denial of bail to an accused person means that there is no justice done as that accused person is confined for some time thus punishing him/her even before it has been proved that he/she committed any crime. On the basis of the presumption of innocence, the accused person should not be subject to punishment by being deprived of his right to personal liberty before he is finally convicted. Bail is in fact a Constitutional right, which is recognised under Article 13(3). The wording of this Article seems to

suggest that bail is a right and yet it is denied to some accused persons in certain cases such as trafficking offences.

The main reason for the denial of bail is that by keeping the accused in confinement the prosecution is assured that the accused will turn up for trial. Moreover, in most drug cases, the accused is usually presumed guilty because of the nature of the crime. Evidence in such cases is usually so overwhelming such that to let the accused be on bail is quite risky and experience has proved that suspected drug dealers are usually more likely to skip bail than other accused persons. For instance, in the matter of David Torkoph the chairman of Aero Zambia Airline Company, the accused David Torkoph was found in possession of twelve tablets of Valium. He was arrested and detained by the Drug Enforcement Commission officers. He was later released on bail, as the crime he committed i.e. of possession is bailable. Three weeks later he was reported to have fled the country on a chartered plane³⁷.

4.4. Disclosure of clients' information by banks.

The relationship of banker and customer is of a confidential nature. As a general rule, a banker is under a duty to keep his customers' affairs secret. The leading case on the duty of secrecy is *Tournier v National Provincial Bank of England*.³⁸ The court in this case considered the question whether the banker's duty of secrecy was absolute or whether it was qualified.

The plaintiff in that case brought an action against the bank for damages for slander and for breach of an implied term of the contract between him and the bank that the bank would not disclose to third persons the state of his account or any transaction relating to it. The court of first instance entered judgment for the bank. On appeal, it was *held* by the Court of Appeal that the obligation of secrecy went beyond the state of the account and extended to all transactions that go through the account and to the securities if any.

³⁶ Chapter 96 of the laws of Zambia.

³⁷ DEC News. Vol. 20th July, 2004. P. 10; A Drug Enforcement Commission Magazine Printed Quarterly.

BANKES L.J at p. 471-3 stated as follows “at the present day I think it may be asserted with confidence that the duty is a legal one arising out of contract and that the duty is not absolute but qualified. It is not possible to frame any exhaustive definition of the duty. The most that can be done is to classify the qualification, and to indicate its limits... On principle I think that the qualifications can be classified under four heads; (a) where disclosure is under compulsion by law; (b) where there is a duty to the public to disclose; (c) where the interests of the bank require disclosure; (d) where the disclosure is made by the express or implied consent of the customer”.

*The principle in Zambia is the same. The Banks can disclose clients' information in certain cases where the law requires it to do so. There are various pieces of legislation under which a banker may be compelled to disclose account details. The banker may be compelled to do so to government authorities such as the Zambia Revenue Authority, the Anti Corruption Commission, and the Drug Enforcement Commission, or where in the course of court proceedings the bank is subpoenaed to produce its customer's account details.*³⁹

This paper will however not go into a detailed discussion of the constitutional restraints posed by the investigative techniques employed by the law enforcers because it is not the object of this dissertation to do so. All that will be done here is to comment on them. The next chapter will basically be based on the recommendations that the government should adopt to mitigate some of the impacts of both drug trafficking and money laundering.

³⁸ (1924) 1K.B. 461

³⁹ Mumba Malila. Commercial Law in Zambia; Cases and Materials. (forthcoming and not yet published)

CHAPTER FIVE

Recommendations and Conclusion.

5.1. CUSTODIAL PENALTIES

The enactment of the *Narcotic Drugs and Psychotropic Substances Act* was a major step in the pursuit to join the international match against drug trafficking, but it was not the first national initiative. Historically Zambia has shown a consistent desire since the colonial era to stiffen penalties meted out to drug offenders. The question that arose in chapter two of this dissertation is whether custodial sentences help in the reduction of the scourge.

Statistics drawn countrywide show that there has been an increase in the number of people involved in the illicit drug trade and the amount of drugs seized is fast reaching alarming proportions.⁴⁰ Thus, in Zambia as in any other country the stiffening of custodial penalties per se has shown massive failure in the reduction of the occurrence of the drug offenses. By and large the deterrent effect of stiff custodial penalties to both actual and potential drug offender is doubtful.

5.2. SEIZURE, CONFISCATION AND REHABILITATION

It is not advocated here that there be a complete eradication of stiff penalties or that the same be relaxed but it is suggested that the solution to the problem of illicit trafficking in narcotic drugs should not be centered around long custodial sentences. Custodial sentences should only constitute one limb in the fight against the illicit drugs scourge with the other two being in the rehabilitation of drug addicts and the identification, tracing and freezing of property and proceeds derived from trafficking respectively. The last two limbs form what is to this writer the very core of the solution to the problem. Thus it is recommended that amendments be made to the law to accommodate the above.

⁴⁰ A Country Profile Report. 1998. By former commissioner R. Mungole. At P. 1

The deterrence of actual or potential traffickers and the reduction in the demand for illicit drugs revolves around taking the profit out of this illicit business as Berger J, observed in the Canadian case of *R. v. Kotrbaty*

"The extent to which lengthy sentences of imprisonment act as a deterrent in trafficking cases is uncertain. I have no doubt that many traffickers are of the same mind, yet are willing to take the risk. If we are to deter them we must take the profit out of the trade".

The deterrence of drug traffickers is best done with the identification, tracing and freezing of illicit gains. As shall be seen later, this can best be done with the assistance of financial institutions and technical investment bodies such as the investment center.

Interviews with Mr. Lufwendo Saboi, the head of the prosecutions and legal department of the DEC revealed that only drugs and motor vehicles have been the subject of seizure and subsequent forfeiture to the state and that nothing in the form of real property of interests in businesses has been the subject of investigation and subsequent confiscation. The problem is compounded by the recently introduced liberalization and open market policies adopted in Zambia making it perhaps the most open economy in the sub-continent. The policies though aimed at ameliorating the economy, may drive Zambia towards being the Colombia of Africa as it will be a haven for illicit money from other countries. Although in the short term the advantages may abound, the long-term effects may lead to abandoned businesses and militate businesses dependent on drug trafficking. Thus particular attention has to be paid to the Investment Act i.e. the Investment Act requires to be amended so that it can be the means to sensor the inflow of money into the economy in the name of foreign direct investment.

In respect of the above, it is suggested that reform towards the deterrence of potential and actual drug traffickers should start from the very echelons of political power. A complete overhaul of policy on investment should be made.

5.3. THE BANKING AND FINANCIAL SERVICES ACT

The Banking and Financial Services Act should be amended to provide for stricter control on banking transactions by enforcement agencies. In this respect section 50 of the Act should be repealed. This provision prohibits banks from revealing any information in connection with a client's account except under a court order or with the client's own consent. Invariably with respect to tracing the funds derived from drug trafficking the requirement of a court order may give the drug trafficker the time to think of devices to frustrate enforcement efforts.

Further it is not to far fetched to make the same provisions as the United States and Australia where financial institutions are required to file a currency transaction report, with the internal revenue service (US) or the currency transaction reporting agency (Australia), on any cash transaction of about US\$ 10,000. In the US banks must log transactions between US\$ 3,000 and US10,000 and provisions also need to be made for financial institutions to get a detailed history of a potential customer including the source of the money to be deposited, permanent postal and residential address, nationality or a valid identification of the depositor.

This will invariably inconvenience genuine customers with genuine money but it is the price we have to pay if the drug trade and money laundering are to be stemmed. In any case a person pursuing an honest business or property employed will freely and openly divulge information required, as they have nothing to hide. To this end therefore, the law should make it mandatory, through the Banking and Financial Services Act, for financial institutions to comply by incorporating these requirements. This can be done by providing criminal and civil penalties for non-compliance in the form of fines, public censures and imprisonment or a combination of these.

In relation to the establishment of banks, Section 7 makes provision for the Registrar of banks to investigate persons (natural or otherwise) who have applied for a banking license.⁴¹ The investigation would however only relate to, inter alia, the capital adequacy of the applicant and the other associates, and the character of the directors and major shareholders. It is not clear what the character of the directors or shareholders means but it is imperative that the DEC be involved in the determination of this character. Thus the provision should be reinforced to require close liaison between Enforcement Agencies and the Registrar of Banks. The legal framework for the attraction of investment (foreign or local) is provided for by the Investment Act No 39 of 1993. Although this Act may very well be a comprehensive Act in relation to the attraction of investment, it offers Zambia as a safe haven for illicitly gained money.

The weakness of the Act lies in part III, which provides for procedures for obtaining an investment license in Zambia. The procedure is too liberal in the sense that back ground information on the applications does not have to be substantiated and the previous business conduct of the applicant is not taken into account in issuing the license. Thus, drug traffickers are given an opportunity to venture into business under the pretext of being investors when in fact the investment only promotes drug trafficking and provides channels to legitimize the money realized from the trade. The Act as a matter of principle needs to address under section 9 the need for information as to previous business dealing of the applicant and also the need to adequate substantiation of the information given. It is also cardinal that the applicant be required to produce a clearance report from the jurisdiction in which they last conducted business.

5.4. REHABILITATION

Furthermore, concerted effort should be made towards the construction of a rehabilitation center. Unlike in the past Zambia is no longer just a transit point for illicit drugs but it is an emerging market. This has brought with it the problem of drug addiction.

⁴¹The Bank and Financial Services Act.

Drug addiction ensures major profits for traffickers, as the demand for the drugs is certain. The rehabilitation of addicts is a major step towards removing the profit from the business. Interviews with Mr. Lufwendo Saboi showed that rehabilitation in Zambia is done at Chainama Hills Hospital and Maina Soko Military Hospital. He admitted that the former hospital's involvement with the treatment of mental patients poses a problem because addicts are reluctant to submit themselves for fear of suffering the stigma attached to mentally ill patients. The latter hospital on the other hand is ill equipped for the role of a rehabilitation center.

It is therefore suggested that for the net of rehabilitation to be widened, funds should be sourced for the construction of a specialised rehabilitation center. This can be done with the help of Zambia's technical and co-operating partners in the form of grants or technical aid or indeed with the forfeited proceeds of crime.

5.5. DRUG ENFORCEMENT COMMISSION (DEC)

Enforcement of the law on Narcotic drugs and psychotropic substances is principally the duty of the Drug Enforcement Commission (DEC), therefore the aforementioned recommendations will primarily fall within its jurisdiction. The DEC however has its own weaknesses that need addressing.

Section 4 of the Narcotic Drugs and Psychotropic Substances Act places the DEC under the overall supervision of the Minister of Home Affairs. The President at the stroke of the pen can fire the Commissioner of the DEC, by statutory Instrument No.65 of 1993. Having seen how influential drug dealers can be in the politics of any given country, it is suggested that the DEC be made answerable to parliament only and that its autonomy be made a priority. For the DEC to operate freely, it needs to be kept free from government interference. If the senior officers can be appointed and dismissed at any time, then it follows that the DEC as an institution with a very important function to carry out is not independent at all. Decisions of DEC officers must not be influenced at all. The DEC can only operate efficiently and effectively if it is allowed to operate autonomously and without any interference.

To further ensure the smoothness and professional execution of the DEC functions, it is recommended that the officers of the DEC be accorded the same constitutional protection as that given to the office of The Auditor General. Since the Auditor General acts as a check to Government officers, the DEC Commissioner should also be given the added task of acting as a check on the possible infiltration of drug dealers in the policy making function of government.

5.6. CONCLUSION

Based on the suggestions it is recommended that the highest political considerations be given to the suggestions and that policy reforms be made accordingly.

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