

**THE EMERGENCE OF WHITE-COLLAR CRIMES IN ZAMBIA: - AN ASSESSMENT
OF THE EFFECTS AND THE EFFICACY OF THE LEGAL REGIME IN
ADDRESSING THE SCOURGE**

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ABSTRACT

White-collar crime is defined as a crime which is committed by a person of respectability and high social status in the course of his occupation. Its examples include Money laundering, Corruption, Cybercrimes, Counterfeiting, Fraud, Forgery, Embezzlement and Inside dealing. Because of the rampant increase in White-collar crimes, a need arose to conduct a study, whose main objective is to evaluate the effects of these crimes and assess the legal regime available for their regulation. The study has however restricted itself to discussing cybercrimes, specifically pornography, money laundering and corruption. In achieving the research objectives, both field and desk research were employed. Desk research involved collecting information from secondary sources such as books, journals, reports, dissertations, statutes and the internet. Field research, on the other hand, involved interviews with authorities relevant to the study.

In the case of cybercrime, it was found that efforts to curb pornography are negated, mainly because of the global nature of the internet, which makes it difficult for national enforcement agencies to regulate. For money laundering, the complexity with which the crime is committed further compromises the efficiency of such institutions as the Anti- Money laundering Unit ("Unit") and the DEC in combatting the scourge. For corruption, in spite of the many laws enacted, coupled with the unceasing political promises to fight it, the said efforts have not translated into meaningful successes over the years.

In order to effectively fight pornography, there is need to establish a special unit to investigate and prosecute cases of pornography. As regards money laundering, it is essential to enhance the capacity of both the Unit and DEC to fight the problem. Lastly, it is recommended that a successful fight against corruption requires both the simplification of procedures and strict enforcement of the principle of accountability at all levels.

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First and foremost, I would like to thank Mrs. Anne Chewe-Chanda (Assistant Dean-Undergraduate, School of Law), my supervisor who relentlessly took the painstaking task of reading, correcting and rendering valuable critic and suggestions on the content and direction of the research. Mrs. Chanda had the occasion to read every sentence of my paper, identifying even the minutest of errors and making corrections in an intelligent and meticulous manner. Admittedly, through the numerous corrections and consistent red inscriptions, she made each day of my academic interaction with her a learning experience, not only in the realms of research skills, but grammar as well. I only hope that her excellence is reflected on every page of this paper. However, I remain personally responsible for any errors that may subsist herein.

Many thanks also to Mr. Mumba Malila and Ms. Fatima Mandhu, for having nurtured my research topic, particularly during the nascent days of my research. I am also grateful to my entire family: my dad Amos, my mum Margaret, Annett (deceased), Harry, Geoffrey, Moses, John, Simon, Roy, Amos, Nkole (deceased), Adrian, Martha and Francis (deceased) for their presence, support and unconditional love. I would also like to thank the entire team of Corpus Legal Practitioners for their continued support. Thanks also to the members of my discussion group since first year: Namonje, Chewe, Precious, Jash, Kelly, Joshua, John, Kaumbi, Lily, Likando, Womba and Angelica. Special thanks also to Milan D. Desai; your true and unconditional friendship I will always treasure. To Maria K. Daka, I am particularly grateful for your confidence and encouragement you always showed to me.

To the aforesaid, I thank you all and may the Almighty God richly bless you each day of your lives and thereafter. It is my considered belief and hope that I have done my best!

DEDICATION

“For I am now ready to be offered, and the time of my departure is at hand, I have fought a good fight, I have finished my course...” (II Timothy 4:6-8)

This is a dedication to my late sister and brother: Annett and Francis, respectively; and to my mum Margaret and dad, Amos. It is mainly for the gift of your love, presence and confidence that I am profoundly indebted. To Annett and Francis, I wish you were here today to share the glory that God has bestowed in my life. May you rest in eternal peace.

LIST OF ABBREVIATIONS

ACC	Anti-Corruption Commission
DEC	Drug Enforcement Commission
DPP	Director of Public Prosecutions
FDI	Foreign Direct Investment
ICT	Information and Communication Technologies
ITU	International Telecommunications Union
MMD	Movement for Multi-Party Democracy
PPMLA	Prohibition and Prevention of Money Laundering Act
SITET	Special Investigations Team on Economy and Trade
UCE	Ungovernable Chaotic Entity
UNIP	United National Independence Party

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The Constitution of the Republic of Zambia, Chapter 1 of the Laws of Zambia

The Corrupt Practices Act, No. 14 of 1980 (Repealed by Act No. 42 of 1996)

The Electronic Communications and Transactions Act, No. 21 of 2009

The Financial Intelligence Centre Act, No. 46 of 2010

The Forfeiture of Proceeds of Crime Act, No. 19 of 2010

The Information and Communication Technologies Act, No. 15 of 2009

The Narcotic Drugs and Psychotropic Substances Act, Chapter 96 of the Laws of Zambia

The Parliamentary and Ministerial Code of Conduct, Chapter 16 of the laws of Zambia

The Penal Code, Chapter 87 of the Laws of Zambia

The Prohibition and Prevention of Money Laundering Act, No. 14 of 2001

The Public Interest Disclosure (Protection of Whistleblowers) Act, No. 4 of 2010

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CHAPTER ONE

1.0 TITLE: THE EMERGENCE OF WHITE-COLLAR CRIMES AND THE LAW IN ZAMBIA

1.1 INTRODUCTION

The problem of "White-collar crimes" may in itself seem to be an entirely new phenomenon, but its adverse effects on society have, in fact, manifested as far back as history may reckon. The phrase White-collar crime was first popularized in 1939 by an American criminologist and sociologist, Edwin H. Sutherland when he defined it thus: "a crime committed by a person of respectability and high social status in the course of his occupation."¹ It is only in the recent past, that the concept of White-collar crimes has attracted both universal and national prominence. This is mainly because of the numerous ramifications that most of the so-called White-collar crimes have brought onto society in general.

Most White-collar crimes are perpetrated in a very subtle manner, which makes it difficult for law-enforcement agencies to prosecute criminals involved. The difficulty in the prosecution of White-collar criminals arises mainly from the fact that the commission of White-collar crimes is usually characterized by the use of complex and highly sophisticated activities, which have resulted overtime from the developments in Information and Communication Technologies (ICTs). For example, in relation to financial transactions, the technicality with which funds may be transacted was illustrated by Davies L., when he illustrated, thus: "the money screamed across the wire, its provenance fading in a maze of electronic transfer, which shifted it, hid it, broke it

¹ Sutherland H. Edwin, *White Collar Crime* (New York: Dryden Press, 1949), 9.

up into manageable wads which would be withdrawn and redeposited elsewhere; obliterating its trail.”²

There are various forms of crime that primarily fall within the broad categorization of White-collar crimes. Prominent among these are the following: Money Laundering, Corruption, Counterfeiting, Cybercrimes, Fraud, Forgery, Embezzlement and Inside dealing.³ This research however, has considered only three of the most rampant forms of White-collar crimes in Zambia, namely, Cybercrimes, Money-laundering and Corruption.

The main difference between White-collar crimes and other forms of crime is that unlike street and other common forms of crime, White-collar crimes are usually nonviolent, committed in the privacy of an office or home. Usually, there is no eyewitness, such that the courts are more likely to depend upon circumstantial evidence.⁴ Moreover, the government’s ability to identify White-collar crimes is sometimes hampered by lack of resources and expertise, particularly with respect to financial crimes such as corruption and money laundering.⁵ Additionally, as White-collar criminals possess colossal sums of money, they can easily afford the best legal advice and even exploit the legal system to their advantage.

The interaction between White-collar crimes and society has had adverse effects on the latter. In terms of corruption and money laundering, for example, it is argued that the vices generally breed inefficient economic performance, impede long-term foreign and domestic investment, weaken the country’s capacity to provide essential goods and services and reduce the state’s ability to raise revenue through appropriate taxation, leading to high tax rates being imposed on

² L.C.Davies, “A Nest of Vipers.” A Paper presented at the International Association of Prosecutors, 7th Annual conference at the Institute of Security Studies (2002), 1.

³ H. Croall, *Understanding white collar crime* (Buckingham: Open University Press, 2001), 12.

⁴ A. Hopkins, *The Anatomy of Corporate Crime* (Brisbane: Queensland Press, 1978), 79.

⁵ Hopkins, 91.

fewer and fewer tax payers.⁶ It follows, therefore, that unless the scourge of White-collar crimes is adequately addressed, the attainment of development in most third world countries like Zambia will merely be a facade.⁷

In the case of *The People v Ross Ernest Moore and Hassel Shamalime*,⁸ the Supreme Court of Zambia ordered the forfeiture of 121 Kilogrammes of gold which was allegedly acquired illegally from within Zambia. The sale of the said gold by the Drug Enforcement Commission (DEC) has however, resulted into investigations as the said transaction is alleged to have been corruptly concluded by the DEC. This, in effect, demonstrates the continued proliferation of corruption in the country notwithstanding the promissory commitments by subsequent governments to alleviate the scourge.

Although Cyber-crimes are on the increase in Zambia, there have been insignificant incidences of successful prosecution of its perpetrators. It is generally believed that one of the main forms of Cyber-crime, “pornography,” has been on the increase and is even perpetrated among some College and University Students.⁹ Therefore, with the notable increase in the use of the internet and other related technologies, a remarkable increase in the commission of pornography is likely to be experienced, unless an urgent solution to the scourge is found.

⁶ Mumba Malila, “The Shifting Paradigms in the Fight against Corruption in Zambia” (2011), 1 (unpublished).

⁷ Oswaldo De Rivero, *The Myth of Development: The Non-Viable Economies of the 21st Century* (New York: St. Martin’s Press, 2001), 23.

⁸ SCZ Judgment N0.1 of 2010.

⁹ A. Mulenga, K. Chimpinde and S. Dawood, “Kaingu’s Daughter Turns a Porn Star,” *Saturday Post*, November 19, 2011, 4.

1.2 REGULATION OF WHITE-COLLAR CRIMES IN ZAMBIA

Historically, efforts to curb some White-collar crimes in Zambia have proven futile. For instance, in 1971, the Special Investigations Team on Economy and Trade (“SITET”) was set up to uncover corruption where it occurred. However, following Zambia’s economic liberalization in 1991, SITET collapsed.¹⁰ Additionally, out of a total of fifty-two (52) Acts passed by the Zambian Parliament in the year 2010, four new pieces of legislation are bound to fundamentally impact on the fight against the scourge.¹¹ Taken in the order in which the new pieces of legislation were passed, they include the Public Interest Disclosure (Protection of Whistleblowers) Act,¹² the Forfeiture of Proceeds of Crime Act,¹³ the Anti-Corruption Act¹⁴ and the Financial Intelligence Centre Act.¹⁵

It is evident that overtime, there have been remarkable developments in the field of Information and Communication Technologies (“ICTs”). Notwithstanding the numerous advantages resulting from such developments, these developments have also brought about increased incidences in the number of proscribed activities mainly in relation to the use of computers, otherwise known as “Cybercrimes.”¹⁶ According to the International Telecommunications Union (“ITU”) as of June 2010, Zambia had over 127 500 internet subscribers, against a background of only over 30,000 as of year 2005. This amounts to about 6 per cent of the country’s population.¹⁷

¹⁰ Malila, 5 (unpublished).

¹¹ Malila, 3 (unpublished).

¹² Act No. 4 of 2010.

¹³ Act No. 19 of 2010.

¹⁴ Act No. 38 of 2010.

¹⁵ Act No. 46 of 2010.

¹⁶ P.V.Mahoney, “Russell Island Investigation.” Internal Report, Queensland Fraud squad (November, 1978), 16.

¹⁷ Marco Gercke, “Understanding Cybercrime: A Guide for Developing Countries.” [http:// www. cybmail@itu.int](http://www.cybmail@itu.int) (accessed December 13, 2011).

Against the background of cybercrimes, the Zambian Parliament, in 2004, enacted the Computer Crimes and Misuse Act.¹⁸ The essence of the said Act was to prohibit any unauthorized access to, or interference with, a computer and to criminalize certain cybercrimes which mainly include hacking, denial of service attacks, unauthorized access and modification of data. In order to cope with the changing trends in the field of technology, the Computer Crimes and Misuse Act was repealed by the Electronic Communications and Transactions Act of 2009.¹⁹

1.3 STATEMENT OF THE PROBLEM

The emergency of White-collar crimes in Zambia such as corruption and money laundering, have continued to destabilize the economic, social, political and cultural frameworks of the country. In addition, the steady development in Information and Communication Technology (ICT) has led to the general increase in the commission of computer-related crimes, otherwise known as cybercrimes.

In spite of the available laws to address White-collar crimes in Zambia, efforts to fight the scourge have not yielded the much desired result. The problem of White-collar crimes has continued to manifest, even amidst promises and efforts by political regimes to bring an end to it. As such, the following questions remain to be determined: firstly, is the existing legal regime sufficient to address the scourge? secondly, what are the economic, social, political and cultural constraints which the scourge of White-collar crimes has brought onto society?

¹⁸ Act No. 13 of 2004.

¹⁹ Act No. 21 of 2009, Section 113.

1.4 OPERATIONAL DEFINITIONS

Corruption: the soliciting, accepting, obtaining, giving, promising or offering of a gratification by way of a bribe or other personal temptation or inducement, or the misuse or abuse of a public office for private advantage or benefit.”²⁰

Culture: shared beliefs and values of people; the beliefs, customs, practices and social behavior of a particular nation or people, or the patterns of behavior and thinking that people living in social groups learn, create and share.²¹

Cybercrime: a crime that involves the use, stimulated environment or state of connection or association with electronic communications or networks, including the internet.²²

Economy: a social science concerned with the production, distribution, exchange and consumption of goods and services.²³

Information and Communication Technology (ICT): the application of modern communications and computing technologies to the creation, management and use of information through the utilization of hardware, software, networks and media for the collection, storage, processing, transmission and presentation of information and related services.²⁴

Money Laundering: engaging, directly or indirectly, in a business transaction that involves property acquired with proceeds of crime....²⁵

²⁰ Anti-Corruption Act, Chapter 91 of the Laws of Zambia, Section 3 (Repealed by Act No. 38 of 2010).

²¹ J.H., Bodley, “Culture.” Microsoft Student 2009 [DVD] Redmond, W.A: Microsoft Corporation, 2008.

²² Electronic Communications and Transactions Act, No. 21 of 2009, Section 2.

²³ L. Robert, “Economics.” Microsoft Student 2009 [DVD]. Redmond, WA: Microsoft Corporation, 2008.

²⁴ Information and Communications Technologies Act, No. 15 of 2009, Section 2.

²⁵ Prohibition and Prevention of Money Laundering Act, No. 14 of 2001, Section 2.

Politics: associated with the government; the theory and practice of government, especially the activities associated with governing, with obtaining legislative or executive power, or with forming and running organizations connected with government.²⁶

Society: the web of relationships and interactions among human beings.²⁷

White-collar crime: a crime committed by a person of respectability and high social status in the course of his occupation.²⁸

1.5 OBJECTIVES OF THE RESEARCH

1. To demonstrate the existence of some of the most rampant White-collar crimes in Zambia namely, cybercrimes (for example, pornography), money laundering and corruption.
2. To analyse the effects of the aforesaid White-collar crimes in Zambia, with particular reference to the economic, social, political and cultural aspects.
3. To analyse the current legal regime as regards regulation of White-collar crimes in Zambia; and
4. To advocate for, and recommend various legal and institutional mechanisms, particularly aimed at addressing the prevalence of White-collar crimes in Zambia.

1.6 RATIONALE AND JUSTIFICATION

This research is important and comes timely, when the commission of White-collar crimes is being facilitated by the numerous developments in Information and Communication Technology (ICT). Invariably, such developments have the effect of complicating criminal activities, making

²⁶ John Dryzek, "Political Science." Microsoft Student 2009 [DVD]. Redmond, W.A: Microsoft Corporation, 2008.

²⁷ "Society." Microsoft Student 2009 [DVD]. Redmond, WA: Microsoft Corporation, 2008.

²⁸ Ellen, S. Podger, "100 Years of White- Collar Crime in 'Twitter.'" [http:// www.law.stetson.edu.com](http://www.law.stetson.edu.com) (accessed October 22, 2011).

it difficult for law-enforcement agencies to investigate or prosecute White-collar criminals. The difficulty faced by law-enforcement agencies in prosecuting White-collar criminals is further compounded by the fact that with the influx of internet technology, countries all over the world are now connected by a form of international communication system, which renders national boundaries and jurisdictions irrelevant.

It is noteworthy that generally, White-collar crimes tend to adversely affect society. In the same vein, it has been argued that the existence of certain White-collar crimes, such as corruption and money laundering, are attributable to the poor economic performance of Zambia.²⁹ In spite of manifest incidences of corruption and Money laundering in Zambia, perpetrators of such crimes rarely find themselves before courts of law; and if they do, they are usually set-free as they are able to manipulate the legal system, using their economic and social status in society.³⁰ It is against such trends therefore, that a prompt research has been conducted before the effects of White-collar crimes in Zambia become fatal, and worse still, irreversible.

1.7 SIGNIIFICANCE OF THE STUDY

This study is aimed at assessing the numerous effects of White-collar crimes in Zambia, and to determine whether or not the legal framework is adequate to successfully address the scourge. The practical importance of this study therefore, is that once an effective mechanism to curb White-collar crimes has been devised, there would be remarkable development in every aspect of society.

²⁹ G. Chanda, "Chipimo Urges Strong Will in Corruption Fight," Sunday Post, January 1, 2012.

³⁰ Maluba, Jere, "Law Association of Zambia (LAZ) Wants Inept Judges Removed," The Post, January 16, 2012.

1.8 RESEARCH QUESTIONS

1. What is the common conception of White-collar crimes and what are the main examples of such?
2. What are the possible effects of White-collar crimes, with particular reference to the economic, political, social and cultural aspects?
3. What laws in Zambia regulate White-collar crimes?
4. Are the current laws on White-collar crimes adequate in addressing the scourge?
5. What must be done, in terms of the law and other relevant institutions, to eliminate the problem of White-collar crimes in Zambia?

1.9 METHODOLOGY

This research has been carried out using both field and desk research. Field research primarily involved conducting interviews with relevant authorities, such as the Drug Enforcement Commission (DEC), the Zambia Police (ZP) Service, the Anti-Corruption Commission (ACC), the Zambia Information and Communication Technology Authority (ZICTA) and other persons relevant to the research. Additionally, secondary sources in form of books, journals, scholarly articles, reports, statutes and the use of internet facilities have been employed.

1.10 OUTLINE OF CHAPTERS

In order to achieve a systematic approach to this research, the research has been broken down into five chapters, as hereinafter indicated:-

Chapter One

1.0 Introduction

1.1 Statement of Problem

1.2 Operational Definitions

1.3 Objectives of the Study

1.4 Rationale and Justification

1.5 Significance of the Study

1.5 Research Questions

1.6 Methodology

1.7 Conclusion

Chapter Two

2.0 Introduction

2.1 The general nature of cyber-crimes

2.2 The crime of pornography

2.3 Economic effects of pornography

2.4 Social effects of pornography

2.5 Political effects of pornography

2.6 Cultural effects of pornography

2.7 Zambia's legal framework on cybercrimes generally, and pornography, in particular

2.8 Conclusion

Chapter Three

3.0 Introduction

3.1 The nature of Money laundering

3.2 The process of Money laundering

3.3 The economic effects of Money laundering

3.4 The social effects of Money laundering

3.5 The political effects of Money laundering

3.6 The cultural effects of Money laundering

3.7 Zambia's Legal Framework on Money laundering

3.8 Conclusion

Chapter Four

4.0 Introduction

4.1 The nature of Corruption

4.2 The economic effects of Corruption

4.3 The social effects of Corruption

4.4 The political effects of Corruption

4.5 The cultural effects of Corruption

4.6 Zambia's current legal framework on Corruption

4.7 Conclusion

Chapter Five

5.0 Analysis on the findings of the research

5.1 General conclusion

5.2 Recommendations

1.11 CONCLUSION

In conclusion, this chapter has provided the general overview of the research. It has indicated that although the phrase "White-collar" crime is sparingly used, its effects on society are evident. Unlike other common forms of crime, White-collar crimes are usually non-violent, perpetrated by persons of high economic status in society. The remarkable development in the Information and Communication Technologies (ICTs) entails that the general occurrence of White-collar crimes is likely to increase. In Zambia, such crimes as pornography, money laundering and corruption have had numerous economic, social, political and cultural ramifications. The next chapter looks at one of the forms of White-collar crime, cybercrime, in which pornography has been considered as an example.

CHAPTER TWO

2.0 CYBERCRIMES IN ZAMBIA AND THE AVAILABLE REGULATORY FRAMEWORK

2.1 INTRODUCTION

Throughout the past decades, there have been numerous advances in Information and Communications Technology (the “ICT”). Technologies such as home computers, the internet, cellular phones, pagers, palm pilots have added another dimension to crime. Previously, most crimes usually involved a criminal breaking into a victim’s house, or grabbing a purse from a person on the street. “Today, criminals can commit crimes from the comfort of their own homes against people who live on the other side of the world through the use of computers.”¹

The proliferation of ICT in Zambia and the world over, has brought with it tremendous positive changes in socio-economic growth and development within the regions. On the other hand, it has inevitably led to increased criminal activities in relation to their use. For example, “unintended issues such as child pornography, e-mail scam, identity theft, organized crime and solicitation for prostitution are some of the vices that have become rampant with increased use of the internet.”²

2.2 THE GENERAL NATURE OF CYBER CRIMES

“Cybercrimes present unique problems because of the global nature of the internet.”³ This uniqueness of computer crime, coupled with the internet’s disregard of national borders, poses significant difficulties for law enforcement officials who mainly operate within national

¹ M. Kunz, & Patrick Wilson, “Report to the Montgomery County Criminal Justice Coordinating Commission: Computer Crime and Computer Fraud” (University of Maryland Department of Criminology and Criminal Justice Fall, 2004), 3

² L. Kvasny, “Criminal Uses of Information & Communication Technologies in Sub-Saharan Africa: Trends, Concerns and Perspectives” *Journal of Information Technology Impact* (Pennsylvania, 1973), 155.

³ Kunz & Wilson, 4.

boundaries. Additionally, the principle of ‘National Sovereignty’ does not generally permit a country to carry out investigations within the territory of another country without permission from local authorities.⁴

There are several reasons why cybercrime flourishes in the online environment and the internet. Firstly, cybercrimes are on the increase due to the fundamentally insecure nature of the internet, which leaves computers vulnerable to exploitation by less-than-trustworthy internet users; secondly, the huge number of computers connected to the internet gives cyber criminals a wide array of targets; and thirdly, the unregulated nature of the internet makes it inherently difficult to control the content and data traversing the network.⁵

2.3 DEFINING CYBERCRIME

In view of the diversity of computer-related crimes, a universally-accepted definition of cybercrime is almost untenable. However, as per section 2 of the Electronic Communications and Transactions Act, “cyber” refers to the “use, simulated environment or state of connection or association with electronic communications or networks including the internet.”⁶ Therefore, cybercrime refers to “any violation of criminal law that involves the utilization of computer-technology for its perpetration, investigation or prosecution.”⁷

Cyber-crime is a generic term comprising a myriad of crimes. However, of particular relevance to this chapter is the crime of ‘Pornography.’ This consideration has been necessitated by the fact

⁴ B. Roth, “National Sovereignty is a fundamental principle in International Law: State Sovereignty, International Legality, and Moral Disagreement,” (2005), 1

⁵ P. Twomey, “Australian Computer Society, Submission 38 ICANN, Transcript of Evidence” (October, 2009), 2

⁶ Electronic Communications and Transactions Act, No. 21 of 2009, Section 2

⁷ M.Y. Aslan, “Global Nature of Computer Crimes and the Convention on Cyber Crimes”³ (winter 2006), 131

that as a crime, pornography has become rampant, mainly because of the ever-increasing number of people accessing internet technology.⁸

2.4 THE CRIME OF PORNOGRAPHY

It is argued that sexually-related content, otherwise known as pornography, was among the first content to be commercially distributed over the Internet.⁹ The Electronic Communications and Transactions Act thus defines Pornography as “material that visually depicts images of a person engaged in explicit sexual conduct.”¹⁰

Although in many jurisdictions like the United Kingdom (UK) emphasis is had on child pornography,¹¹ Zambian law regulates both adult and child pornography. This can be seen from section 177 (1) (a) of the Penal Code, which provides as follows:

any person who makes, produces or has in his possession any one or more obscene writings, drawings, prints, paintings, printed matter, pictures, posters, emblems, photographs, cinematograph films or any other object tending to corrupt morals.... is guilty of a misdemeanor...

What is critical to the aforesaid section is to determine what amounts to “obscene” material. In making such a determination, therefore, it may be helpful to take into account the nature of the society in question, as well as to establish, from an objective point of view, what the public is generally likely to deem as obscene. The undesirability of the crime of pornography is evident from the economic, social, political and cultural effects that it has had on society.

⁸ Government of Zambia, “National Information and Communication Technology Policy,” April 2006 (launched March 2007) <http://www.mct.gov.zm/pdf/ict.pdf> (accessed 10 April 2007).

⁹ Marco Gercke, “Understanding Cybercrime: A Guide for Developing Countries.” <http://www.cybmail@itu.int> (accessed December 13, 2011).

¹⁰ Act No. 21 of 2009, Section 2.

¹¹ Protection of Children Act, 1999 (UK legislation).

2.5 ECONOMIC EFFECTS OF PORNOGRAPHY

As one of the main forms of cybercrime, pornography is an expensive crime to control because of its global nature. As national borders are meaningless on the internet, it entails that traditional security measures within the country may not be adequate to fight the scourge and as such, requires intervention at both the national and international level. This ordinarily demands colossal financial expenditure in terms of manpower, as well as machinery to fight the vice. Furthermore, as huge sums of money would have to be spent to fight pornography, it follows that there is likely to be minimum financial expenditure in other vital sectors of the economy, such as agriculture, education and infrastructure development. This ultimately retards the process of development in a country.

2.6 SOCIAL EFFECTS OF PORNOGRAPHY

A number of views have been advanced to account for the social effects of pornography. For example, it is argued that exposing children to internet technology or worse still pornography, from the day they are born in this age of technological availability, poses risks at later life stages for such children.¹² This arises mainly from the fact that there is usually a tendency for children to want to practice what they experience in their everyday interaction with the environment. This insatiable desire by children to practice what they perceive may increase their exposure to sexual activities. Consequently, this increases the risk of contracting sexual-related infections.

Furthermore, it is generally argued from a conservative perspective, that pornography corrupts moral virtue and social order. It poses a social effect on society because “it encourages

¹² Dumbledore, “Effects of Computer Addiction, Cyber-crime, and Unethical Behavior” (November 17, 2010), 85

impersonal desire and recreational sex, thereby constraining relationships between men and women in society, which subsequently undermines marriage.”¹³

Furthermore, the nature of the crime of pornography has exponentially increased access to prohibited material, especially among children. Although age disclaimers are present on the sites, children can easily lie about their age and easily access those prohibited sites. Thus, internet makes materials accessible to children, which can be harmful to their mental development. This is compounded by the fact that generally, children do not have the responsibility or ability to distinguish between what is morally acceptable and that which is not.

2.7 POLITICAL EFFECTS OF PORNOGRAPHY

It is generally contended that pornography poses a huge challenge on the country’s law-makers and law-enforcers to fight it. Although Parliament in Zambia may make laws to regulate pornography, the success of such laws largely depends on the viability of the enforcement mechanism. In this regard, enforcement mechanisms may include security wings such as the police to investigate and prosecute perpetrators, as well as a viable judiciary to adjudicate on cases relating to pornography. In addition, the problem encountered in combatting the crime of pornography is compounded by the fact that it is a global phenomenon and that pornographic material can easily be accessed mainly through the internet.¹⁴

In addition, as the crime of pornography is a global problem, it means that its successful eradication inevitably requires universal collaboration to fight it. However, because such global commitment has not yet been attained, it follows that the responsibility is left to the state, to

¹³ D.A., Donald, “Pornography.” Microsoft Student 2009 [DVD]. Redmond, WA: Microsoft Corporation, 2008.

¹⁴ Mc Connell International, “Cyber Crime and Punishment? Archaic Laws Threaten Global Information.” <http://www.mcconnellinternational.com> (accessed December 21, 2011).

devise mechanisms on how to successfully fight the scourge. Invariably, this is a daunting task on any country seeking to address the problem in isolation. Therefore, politically, the crime of pornography compromises the state's capacity to fight it, as it requires international collaboration which has not yet been realized.

Furthermore, the crime of pornography risks destabilizing the government machinery and weakening the rule of law. Although pornography is criminalized, its commercialization has proven lucrative to perpetrators. In turn, as these perpetrators possess colossal sums of money obtained from illegal activities, they are able to control a country's politics in various ways, such as sponsoring opposition groups seeking to form government by whatever means possible.

2.8 CULTURAL EFFECTS OF PORNOGRAPHY

It is argued from a cultural point of view, that the primary concern relates to how pornography contributes to the inequality and subordination of women in society. In this view, pornography is not necessarily about sexuality, but about dominance. That is to say, pornography reflects and reinforces male power and sexuality by depicting women as sex objects who exist to fulfill the pleasure of men. In addition, pornography leads to cultural erosion. This is because in the Zambian cultural setting, it is unethical for persons, worse still children, to have access to obscene materials which are generally seen as lacking in moral content.

Further, different countries of the world have different perceptions towards pornography. The notable difference in attitude to pornography may influence other cultures to regard pornography as an acceptable behaviour. For instance, in some western jurisdictions, pornography may not be regarded as a crime, contrary to the Zambian perspective. Therefore, if this global

perception towards pornography remains at variance, there is likelihood that other societies would subsequently adopt pornography as an acceptable norm.

2.9 ZAMBIA'S LEGAL FRAMEWORK ON CYBERCRIME GENERALLY

One of the main factors which precipitated the enactment of the first-ever piece of legislation on cybercrime involved hacking of the State House website. Hacking simply refers to “gaining unauthorized access to a computer system either for the purpose of exploration or causing damage once inside.”¹⁵ The State House website was hacked, to the effect that the caricature (a small and modified portrait) of the then Republican President Dr. Frederick Jacob Chiluba was posted on it. However, the action to prosecute the hacker for defamation of the president failed, as the action was inappropriately commenced under section 69 of the Penal Code which essentially relates to defamation of the President.”¹⁶ The action would only have succeeded if it were brought under the crime of “hacking.” However, there was no law then to criminalise it.

What was clear from this incident was the inadequacy in the Zambian legislation relating to regulation of cybercrime. As a result, the Law Development Commission presented a report in 1998, stressing an urgent need to enact the Computer Misuse and Crimes Act. Against this background, the Computer Misuse and Crimes Act was enacted in 2004.¹⁷ The essence of the Computer Misuse and Crimes Act was the “prohibition of any unauthorized access, use or interference with a computer, including the criminalization of cybercrimes which mainly included hacking and denial of service attacks.”¹⁸ It would seem that at the time that the Computer Misuse and Crimes Act was enacted, problems associated with internet use were not

¹⁵ Aslan, 133.

¹⁶ Doris, Nyirenda Kapumba, “The Computer Misuse and Crimes Act 2004: Its Effectiveness in Combating Cyber Crime in Zambia” (dissertation, University of Zambia, 2006), 2.

¹⁷ Computer Crimes and Misuse Act, No. 13 of 2004 (Repealed by Act No. 21 of 2009).

¹⁸ Preamble to the repealed Act, No. 13 of 2004.

very pronounced. Further, an analysis of the Computer Misuse and Crimes Act reveals its failure to address other forms of cybercrime such as pornography which, with the increase in the use of the internet, has reached alarming proportions.

Due to the inadequacy of the Computer Misuse and Crimes Act in addressing the problems of cybercrime, the Act was repealed by the Electronic Communications and Transactions Act of 2009.¹⁹ The Act criminalises various forms of cybercrime which include the following: pornography, unauthorised access to, interception of or interference with data, computer-related extortion, fraud and forgery, hacking, cracking, denial of service attacks and spamming.²⁰ Unlike under the repealed Computer Misuse and Crimes Act, the Electronic Communications and Transactions Act particularly proscribes pornography. Another piece of legislation which is bound to fundamentally impact on the regulation of cybercrime in Zambia is the Information and Communication Technologies Act²¹ which provides, among others, for the regulation of information and communication technology.

2.10 ZAMBIA'S LEGAL FRAMEWORK ON PORNOGRAPHY

The Penal Code is the oldest piece of legislation which provides for the criminalisation of pornography although it employs the phrase “obscene matter or things.” It is apparent that at the time the Penal Code was enacted in the colonial era, it was not envisaged that the internet would later on, be used as a medium to perpetrate pornography. Section 177 (1) of the Penal Code provides as follows: any person who-

(a) makes, produces or has in his possession any one or more obscene writings, drawings, prints, paintings, printed matter,

¹⁹ Act, No. 21 of 2009, Section 114.

²⁰ Act, No. 21 of 2009 Part XV (repealing section).

²¹ Preamble to Act No. 15 of 2009.

pictures, posters, emblems, photographs, cinematograph films or any other object tending to corrupt morals; or

(b) imports, conveys or exports, or causes to be imported conveyed or exported, any such matters or things, or in any manner whatsoever puts any of them in circulation; or

(c) carries on or takes part in any business, whether public or private, concerned with any such matters or things, or deals in any such matters or things in any manner whatsoever, or distributes any of them, or exhibits any of them publicly, or makes a business of lending any of them; or

(d) advertises or makes known by any means whatsoever with a view to assisting the circulation of, or traffic in, any such matters or things, that a person is engaged in any of the acts referred to in this section, or advertises or makes known how, or from whom, any such matters or things can be procured either directly or indirectly; or

(e) publicly exhibits any indecent show or performance or any show or performance tending to corrupt morals; is guilty of a misdemeanour and is liable to imprisonment for five years, or to a fine of not less than fifteen thousand penalty units nor more than seventy-five thousand penalty units.²²

It was not until the repeal of the Computer Misuse and Crimes Act by the Electronic Communications and Transactions Act, that there was a law to expressly criminalise pornography. The Electronic Communications and Transactions Act provides that a person who-

(a) produces pornography for the purpose of its distribution through a computer system;

(b) offers or makes available any pornography through a computer system;

(c) distributes or transmits any pornography through a computer system;

(d) procures any pornography through a computer system for oneself or of another person; or

(e) Possesses any pornography in a computer system or on a computer data storage medium; commits an offence and is liable, upon conviction, to a fine not exceeding nine hundred thousand penalty units or to imprisonment for a period not exceeding ten years, or to both.²³

²² Chapter 87 of the Laws of Zambia, Section 177.

²³ Act No. 21 of 2009, Section 102.

As seen from the aforesaid legal provisions, the Penal Code criminalises pornography generally, notwithstanding the medium in which obscene material may be obtained. Conversely, the Electronic Communications and Transactions Act is specific, in that it criminalises pornography only in instances where a computer has been employed as a medium of its commission. This is probably because the Electronic and Communications Transactions Act was enacted against the background of increased criminal activities arising mainly from increased use of computers. Thus, for correct interpretation and where justice so demands, recourse should be had to section 177 of the Penal Code which is couched in much broader terms, so as to encompass any mode of accessing pornographic material.

2.11 CONCLUSION

In conclusion, it is evident that the development of Information and Communication Technology (“ICT”) has precipitated the emergency of a new group of crimes, known as “cybercrime.” The global nature of cybercrimes makes it extremely difficult for law enforcement agencies to effectively combat the scourge. As one of the most rampant forms of cybercrime, pornography has been perpetrated and exacerbated by increased access and use of the internet. The numerous economic, social, political and cultural ramifications excerpted above, demonstrate the undesirability of pornography. In Zambia, the Penal Code and the Electronic Communications and Transactions are the two principal pieces of legislation which specifically provide for the regulation of pornography. The next chapter looks at one of the most common forms of White-collar crime, referred to as money laundering.

CHAPTER THREE

3.0 TITLE: THE EMERGENCE OF MONEY-LAUNDERING ACTIVITIES AND THE LAW IN ZAMBIA

3.1 INTRODUCTION

It has been observed that “since 1988, the international community has voiced increasing concern over the impact of transnational crime and the financial activities associated with such crime.”¹ One of the main forms of crime falling within the broad category of financial activities is “Money laundering.” In the recent past, a number of factors have contributed to the increased incidences of money laundering activities, which mainly include the basic elements of ‘globalization,’ that is, “improvements in speed and access factors for transportation, step-level improvements in ease of communication, the lowering of tariff barriers, removal of restrictions on the flow of currency and other developments.”²

Money laundering is a global activity which, like other illegal activities underlying it, does not respect national or international borders. In this regard, current estimates of the size of the global annual “gross money laundering product” range from \$500 billion to \$1.5 trillion. Only within the past dozen years or so has the world community begun to realize and recognize the threat money laundering poses to the orderly and open development of international financial systems and world trade.³

¹ Castle, Allan & Bruce Broomhall, “Money Laundering in the Asia Pacific: Working Paper No. 5: Socio-economic consequences of money laundering and related financial crime in the Asia Pacific” (March, 1999), 2.

² Castle, Allan & Bruce, 18.

³ Abel, S., and James S. Gerson, “The CPA’s Role in Fighting Money Laundering,” *The Journal of Accountancy AICPA* (June-July, 2001):17.

In many instances, professionals are being used to conceal the origin or source of the proceeds of crime and manage the investment into assets such as real estate, stock, bonds and legitimate businesses.⁴ With the numerous developments in the Information and Communication Technology (ICT), coupled with the use of experts who mainly possess financial accounting skills to launder money, money laundering activities have become more complex, posing a huge challenge on the national security system to adequately address the crime.

3.2 DEFINING MONEY LAUNDERING

As defined by the Financial Action Tasks Force, money laundering refers to “the process by which the proceeds of crime, as well as the true owners of such proceeds, are changed so that the proceeds appear to derive a legitimate source.”⁵ In terms of the law in Zambia, the Prohibition and Prevention of Money Laundering Act (the “PPMLA”) defines Money Laundering 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 realized directly or indirectly from illegal activity; or
- (c) the retention or acquisition of property knowing that the property is derived or realized, directly or indirectly, from illegal activity.⁶

In an interview with Mr. Sangwa, a senior lawyer and lecturer at the University of Zambia, he observed that the definition of money laundering as provided under the Act is not adequate to fully capture the true meaning of money laundering. He further asserted that every crime requires the presence of *mens rea* (guilty intention) and *actus reus*

⁴ Marco Gercke, “Understanding Cybercrime: A Guide for Developing Countries.” http://www.unodc.un.or.th/money_laundering (accessed March 21, 2012).

⁵ Naderah Gray-Farquharson, “The Observed Effects of Money Laundering for Jamaica” (dissertation, UWI, Mona, Jamaica, 2007), 4.

⁶ Act No. 14 of 2001, Section 2.

(unlawful act). However, the presence of *mens rea* is not expressed in the definition as provided under the Act.

3.3 THE NATURE OF MONEY LAUNDERING

Money laundering can be categorized into two, namely, “financial transactions money laundering” and “financial institutions money laundering.”

In the first instance, “financial transactions money laundering” takes place when property obtained from certain unlawful activities is utilized in financial transactions to achieve several aims as indicated hereinafter: firstly, to advance a criminal activity that generated the property and secondly, to conceal property acquired from the criminal activity. In the second instance, “financial institutions money laundering” arises where “illegitimate” money is deposited into financial institutions in order to obscure its origin. In this sense, the financial institutions may either be banking or a non-banking, such as savings societies and insurance companies.⁷

3.4 THE PROCESS OF MONEY LAUNDERING

While the activities and methods of money laundering have become increasingly complex and ingenious, its “operations” tend to consist of three basic stages or processes. These are placement, layering and integration.

Stage 1: Placement- At this stage, the money launderer places the proceeds of an illegal activity into a bank or non-bank financial institution in order to more easily manipulate the funds. It is during the placement stage, that physical currency enters the financial system and illegal

⁷ R.E., Powis, *The Money Launderers* (Chicago: Probus Publishing Company, 1992), 308-311.

proceeds are most vulnerable to detection. Therefore to avoid detection, elaborate means are used by money launderers, which may involve the use of separation of money into smaller units, or the use of 'front' businesses such as bars, restaurants. In the context of drug trafficking, placement will typically involve depositing or otherwise converting amounts of cash that would be unusually large by normal commercial standards.⁸ Once the cash has been placed, it may then be moved with greater ease and less suspicion through the economy.

Stage 2: Layering- Once the money derived from criminal activity has been converted to a bank account balance or a financial instrument, the next step in laundering the funds is to 'layer' the money. At this stage, the launderer seeks to insert layers of transactions between the original criminal activity and the seemingly legitimate re-emergence of the funds into the legal economy. This may be accomplished in several ways, but the goal remains the same, that is, to render the path of the funds and their ownership as obscure as possible.⁹ It is at this stage that the crime of money laundering becomes particularly transnational, as multiple jurisdictions are often used in further efforts to cloud the audit trail.

Stage 3: Integration: Integration is the final stage in the laundering process in which illicit funds are integrated with monies from legitimate commercial activities as they enter the mainstream economy. The goal of the placement and layering phases is to make it impossible to trace the funds to their original source.¹⁰ Once this condition has been achieved, the criminal assets may then be integrated into the legal economy. This may occur under the auspices of a company domiciled in the criminal's own jurisdiction which conducts 'business' with offshore shell companies used in the layering process, or via returns on 'investments' in those companies.

⁸ T. Graham, Evan B., & Nicholas E., *Money Laundering* (London: Cromwell Press, 2003), 5.

⁹ Graham, Evan & Nicholas E, 5.

¹⁰ Graham, Evan & Nicholas E, 5.

It may also take the form of loans with highly favourable or negligible terms of repayment, real estate investments, or other related transactions.

The undesirability of Money laundering has been illustrated in the numerous effects that it has posed onto society. These include the economic, social, political and cultural effects.

3.5 ECONOMIC EFFECTS OF MONEY LAUNDERING

It has been established that there exist a relationship between money laundering prevention activities and economic growth, which can be enhanced through investment. One major form of investment that is central to economic growth therefore, is Foreign Direct Investment (“FDI”), whose benefits include, among others, employment creation and transfer of technology. However, critical to attracting FDI is the creation of a good investment climate which is negated by money-laundering activities. Thus, money laundering activities are likely to scare away foreign investors from investing in a country and investment is subsequently curtailed.

Furthermore, the consequences of money-laundering operations can particularly be devastating to developing economies. Left unchecked, money launderers can manipulate the host’s financial systems to operate and expand their illicit activities. Apparently legitimate, but criminally owned, businesses financed by laundered capital can quickly undermine the stability and development of established institutions.¹¹ In addition, Money laundering distorts the economy in that it promotes inflation. Simply stated, inflation refers to a situation where there is too much money circulating in the economy, chasing very few goods and services. In such instances, the general prices of goods and services in the economy tend to be unreasonably high.

¹¹ J.M., Sylph, *Anti-Money Laundering* (New York: Butterworths, 2004), 8.

As a result, ordinary persons, apart from perpetrators themselves, usually find it difficult to sustain their basic requirements.

3.6 POLITICAL EFFECTS OF MONEY LAUNDERING

In the political sense, money laundering tends to frustrate the implementation of various policies by the government. This mainly arises from the fact that proceeds of crime are not subject of tax, and that most perpetrators tend to evade tax payments, thereby reducing the revenue capacity of a country. The relevance of tax in every jurisdiction of the world is that it contributes to the government revenue, which constitutes a substantial part of the national budget. Thus as most money launderers avoid payment of tax, it follows that the government's revenue base is compromised, making it difficult, if not impossible, to implement development programmes.

Furthermore, manifestations of money laundering in the country tend to threaten existing relationships with foreign governments. For example, the former Minister of Foreign Affairs Vernon Mwaanga had invited a Cameroonian businessman to Zambia who, according to police records, was later found to be in possession of dangerous drugs. The subsequent appointment of Mr. Vernon Mwaanga to a ministerial position amidst money laundering allegation gave rise to court proceedings, as illustrated in the case of *Maxwell Mwamba and Solomon Stora Mbuzi v Attorney General*,¹² in which the Appellants sought a declaration, alleging that the President had acted unconstitutionally by appointing Mr. Vernon Mwaanga as a Minister and Mrs. Mirriam Wina as a Deputy Minister. Although it was held in the premises that there was no violation of the Constitution, the donor community in Zambia censured government and the former president Dr. F.J.T. Chiluba for appointing drug dealers to Cabinet positions. The donor community also

¹²SCZ Judgment No. 10 of 1993.

threatened to cease the balance of payment support to Zambia, unless the alleged drug dealers were relieved of their ministerial positions.

3.7 SOCIAL AND CULTURAL EFFECTS OF MONEY LAUNDERING

From the social perspective, Money laundering affects the integrity of banking and financial institutions. In this sense, it is usual that the perception of the financial institutions by its customers heavily depends on its professionalism and reputation maintained by banks. Since financial institutions such as banks are the medium through which illegally obtained money is transmitted to obscure its origin, money laundering, if detected, may lead to their subsequent collapse, as the public would have lost confidence in the banking system.

Furthermore, as drug-trafficking is the most common form of illegal activity leading to money laundering, continued use of illicit drugs may sometimes lead to adverse effects such as drug dependence, tolerance and addiction. Drug dependence entails a psychological and sometimes physical state characterized by the urge to use a drug to experience psychological or physical effects. Thus, continued use of drugs generally affects individual's health, which subsequently leads to increased death rates, or at least, unproductivity in society.

From a cultural perspective, money laundering is perceived as a moral derogation. Therefore, as integrity is an essential attribute in every society, it follows, then, that if left unregulated, money laundering may destroy the moral fibre of society.

3.8 ZAMBIA'S LEGAL FRAMEWORK ON MONEY LAUNDERING

In Zambia, the first piece of legislation on the regulation of money laundering was precipitated by the events of the 1980s, when some prominent Zambians were detained on charges of drug

trafficking. In view of the increasing incidences of money laundering in Zambia, a Conference on Money Laundering was convened in 1995, which eventually culminated in the promulgation of the Narcotic Drugs and Psychotropic Substances Act¹³ of the same year.

One of the most fundamental provisions under the Psychotropic and Narcotic Drugs Act in the fight against money laundering is section 4 which establishes the Drug Enforcement Commission (the “DEC”). The functions of the DEC as enacted under section 5 of the Act include, *inter alia*, to collect, collate and disseminate information on narcotic drugs and psychotropic substances; and to receive and investigate any complaint of alleged or suspected breach arising under the Act. The relevance of the said section therefore, is that the DEC has supplemented the institutional framework in prosecuting money laundering cases in Zambia.

In 1998, it was generally felt that a more comprehensive piece of legislation was required to regulate money laundering in Zambia. This was mainly because money laundering activities became more complex, arising from a myriad of illegal activities not necessarily restricted to drug trafficking (which was the basis of the Narcotic Drugs and Narcotic Substances Act). Against the said background, Parliament, in response to recommendations from the DEC, enacted the Prohibition and Prevention of Money Laundering Act (the “PPMLA”).¹⁴ Some of the most progressive provisions introduced by the PPMLA relate to the extended definition of money laundering as provided in section 2, and the creation of the Anti- Money Laundering Unit which, among others, conducts investigations and prosecutions of money laundering offences. In this respect it can be

¹³ Chapter 96 of the Laws of Zambia.

¹⁴ Act No. 14 of 2001.

said that the PPMLA is the principal piece of legislation as regards regulation of money laundering in Zambia.

There are other pieces of legislation which are bound to fundamentally impact on the fight against money laundering in Zambia. Prominent among these are the following: (i) the Forfeiture of Proceeds of Crime Act,¹⁵ (b) the Financial Intelligence Centre Act¹⁶ and (iii) the Public Interest Disclosure (Protection of the Whistleblowers) Act.¹⁷

In relation to the Forfeiture of Proceeds of Crime Act, it essentially provides for the confiscation of proceeds of crime, as well as the deprivation of any person, of any proceeds, benefit or property derived from the commission of any serious offence. In this way, the Act assists in the regulation of money laundering. The Financial Intelligence Act in Part III provides for the Prevention of Money Laundering, Terrorist Financing and other Serious Offences. Furthermore, the Whistleblowers Act essentially provides for the disclosure of conduct such as money laundering, which is seen as adverse to the public interest in the private and public sectors.

3.9 CONCLUSION

In conclusion, it is evident that money laundering is a global phenomenon, whose occurrence has been increased by the global interaction between and among countries. Zambia has not been spared from the numerous effects of money laundering as demonstrated hereinbefore. Basically, the process of money laundering consists of three main stages, namely, placement, layering and integration. Although the earliest law in

¹⁵Act No. 19 of 2010.

¹⁶Act No. 46 of 2010.

¹⁷Act No. 4 of 2010.

Zambia (the Narcotic Drugs and Psychotropic Substances Act) was restricted to drug trafficking as the main source of money laundering activities, the latter Act (The Prohibition and Prevention of Money Laundering Act) is broader in its definition of Money laundering, as shown in section 2 thereof. Thus, in view of the adverse effects of money laundering, there is need for the legal regime to respond in addressing the emerging problems of money laundering. One other form of crime whose effects are just as devastating as money laundering is corruption. As such, the crime of corruption forms the basis of the next chapter.

CHAPTER FOUR

4.0 TITLE: CORRUPTION, ITS EFFECTS AND THE ADEQUACY OF ZAMBIA'S LEGAL REGIME IN ADDRESSING THE PROBLEM

4.1 INTRODUCTION

It has been argued that “corruption is to society what cancer is to the body... it saps slowly but surely the vitality of the society, the ability of it to grow.”¹ The problem of corruption is a global one, whose effects on society are devastating. In the Zambian context, “successive governments since the one party state of Kenneth Kaunda have made marked contributions in their efforts to reduce the scourge.”²

Notwithstanding the numerous efforts by both the past and present regimes to effectively fight corruption in Zambia, such efforts have been met with limited success. Against the background of poor economic performance amidst vast mineral resources in Zambia, there is growing need and calls for greater emphasis to combat corruption in both public and private lives. Therefore, this chapter looks at the nature of corruption, its effects, as well as the various laws that impact on the fight against it.

4.2 DEFINING CORRUPTION

Although there is no universally-agreed definition of corruption, it generally refers to “an abuse or misuse of resources or office by a public official for personal or private gain.” In other words, corruption comprises efforts to secure wealth or power through illegal means for private gain at

¹ Kombe Chimpinde, “US Calls for Widening of Corruption Fight,” Sunday Post, January 29, 2012.

² Malila, 1 (unpublished).

the expense of the public.”³ The Anti-Corruption Act of 1996 defined corruption as “the soliciting, accepting, obtaining, giving, promising or offering of a gratification by way of a bribe or other personal temptation or inducement, or the misuse or abuse of a public office for private advantage or benefit.”⁴ What is clear from the above definitions is the fact that corruption involves acquiring of a certain advantage, financial or otherwise, for private gain at the expense of the general public.

4.3 THE LEVELS OF CORRUPTION

Essentially, there are three levels at which corruption manifests, namely, grand corruption, middle corruption and petty corruption. As regards grand corruption, it is committed mainly by major government or private actors. In Zambia, an example of grand corruption is the trial of former and now late President of Zambia, F.T.J. Chiluba for “plunder of the national economy.”⁵ The case involved the Zambia Intelligence Security Services Zam-troop account abuses that were the subject of the former president’s prosecution.⁶

Contrary to the expectations of the people of Zambia, F.T.J. Chiluba was subsequently acquitted of all corruption charges by a magistrate court, in circumstances that left many citizens and tax payers questioning the independence of the Judiciary, while the DPP withdrew the appeal against the magistrate court’s judgment. On the other hand, a number of other high profile individuals including former service chiefs such as Lt. Geogiago Musengule, Gen. Christopher Singogo, Lt

³ E., Abiodun, Obayelu, “Effects of Corruption and Economic Reforms on Economic Growth and Development: Lessons from Nigeria,” A paper prepared and submitted For 2007 African Economic Conference, 2.

⁴ Chapter 91 of the Laws of Zambia, section 3 (Repealed by Act No. 38 of 2010).

⁵ Peter, J. Henriot, “Corruption in Zambia: Is it Inevitable? Can we stop it?” <http://www.jctr.org.zm> (accessed November 21, 2011).

⁶ Attorney General v Dr. Frederick Jacob Titus Chiluba and 7 Others (2007) HP/FP/004.

Gen. Sunday Kayumba and other senior civil servants were successfully tried and convicted for corruption.⁷

In relation to middle corruption, it mainly involves theft of public funds by public servants. On the other hand, petty corruption involves junior government officials which in some instances, includes “facilitation fees,” improperly so called.⁸ For example, it may involve paying a police officer a small amount, to either avoid a large fine or detention. However, this research has concentrated on grand corruption, simply because its effects on society are the most devastating and that it perfectly illustrates what generally amounts to a “White-collar crime.”

4.4 THE CAUSES OF CORRUPTION

In order to effectively respond to the numerous problems resulting from corruption, it is imperative to understand what its causes are. Firstly, it is generally believed that vesting of excessive power in an individual encourages corruption. In this regard, it is argued that the more activities public officials control or regulate, the more opportunities exist for corruption.⁹ This is because it is the abuse of that same power for the advancement of an official’s private gain that brings about corruption.

Secondly, corruption arises where the security or investigative system of a country is weak or ineffective. A weak security system presents low risk of detection of such perpetrators, who, more often than not, become more comfortable in engaging in more corrupt practices.¹⁰ Thirdly, lengthy and complicated procedures in public institutions, coupled with lazy officers, may

⁷ Malila, 12 (unpublished).

⁸ Henriot, 2.

⁹ AusAid, “Tackling Corruption for Growth and Development: A policy for Australian Development Assistance on Anti-corruption” (March, 2007), 12.

¹⁰ Center for Democracy and Governance, “A Handbook on Fighting Corruption” (Washington D.C., Technical Publication Series, February, 1999), 15.

precipitate the occurrence of corruption; for example, where the acquisition of licences or passports are unnecessarily long and technical, individuals may resort to offering incentives, financial or otherwise, to authorities in order to subvert normal procedure. Furthermore, it can be pointed out that poor conditions of service such as low wages increase the likelihood of certain officers being corrupt in order to meet their daily requirements.

To this end, it is noteworthy that corruption comes with its various effects on society, which may be categorized as economic, social, political and cultural effects.

4.5 ECONOMIC EFFECTS OF CORRUPTION

One of the direct consequences of corruption is that it leads to underdevelopment of a country. In this regard, it is argued that one of the most important agents of development is the promotion of Foreign Direct Investment (FDI).¹¹ Some of the notable benefits of FDI include the creation of employment to local individuals, transfer of technology, payment of taxes to the government and so forth. However, for such investors to have confidence in a country, it must not have a culture of corruption. Consequently, as corruption tends to scare away potential investors, a country loses out on the benefits of investments and underdevelopment inevitably follows.

Secondly, corruption leads to high inflation levels in a country. Simply stated, inflation is a situation where there is so much money in circulation against very few goods and services. This mainly arises from the fact that money that is illegally obtained tends to compromise market forces as such money is not obtained by way of investment and is not taxable.¹² As such, the performance of the economy is compromised, to the effect that the prices of goods and services increase exponentially. Thirdly, it has been stated that “corruption reduces the government’s

¹¹ Bright Mukwasa & Moses Kuwema, “Corrupt Judges Shaken,” The Post, February 6, 2012.

¹² Kombe Chimpinde, “Corruption Tag Hitting MMD-Mutati,” The Post, February 21, 2012.

precipitate the occurrence of corruption; for example, where the acquisition of licences or passports are unnecessarily long and technical, individuals may resort to offering incentives, financial or otherwise, to authorities in order to subvert normal procedure. Furthermore, it can be pointed out that poor conditions of service such as low wages increase the likelihood of certain officers being corrupt in order to meet their daily requirements.

To this end, it is noteworthy that corruption comes with its various effects on society, which may be categorized as economic, social, political and cultural effects.

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¹¹ Bright Mukwasa & Moses Kuwema, “Corrupt Judges Shaken,” The Post, February 6, 2012.

¹² Kombe Chimpinde, “Corruption Tag Hitting MMD-Mutati,” The Post, February 21, 2012.

resources and hence the capacity for investment, since tax revenues are depleted by tax evasion.”¹³ Thus, as the resource base of the government reduces, it follows that government’s capacity to promote other investment ventures is compromised.

4.6 POLITICAL EFFECTS OF CORRUPTION

From a political point of view, corruption negates democracy and rule of law. The concept of rule of law entails that “everything must be done according to the law.”¹⁴ Therefore, if leaders are corrupt, it follows that rule of law is compromised. Subsequently, lack of rule of law in a country negates investment prospects and relations with other countries.¹⁵ Furthermore, individual’s rights risk being violated as a result of lack of respect for the rule of law in the country. Additionally, corruption leads to incompetence in management.¹⁶ As corruption may involve assuming public positions through dubious means regardless of one’s qualifications, it entails that the credibility of persons in high positions is compromised. Given such a situation, very little can be expected from those superintending over national policies. In extreme cases, corruption leads to the general dissatisfaction of citizens in a country, resulting in economically-motivated chaos, and such countries are generally referred to as Ungovernable Chaotic Entities (UCE_S). In Africa, some of the examples of UCE_S include Somalia, Kenya and Sudan.

In addition, corruption compromises effective implementation of policies. Where officials involved in the actual implementation of policies are themselves corrupt, effective implementation of such policies is threatened. Similarly, implementation of national policies is adversely affected in the sense that corruptly-acquired money is not amenable to taxation.

¹³ Sunil Sondhi, “Combating Corruption in India: The Role of the Civil Society” (July, 2000), 14.

¹⁴ H.W.R. Wade & C.F. Forsyth, *Administrative Law*, 9th ed. (Oxford: Oxford University Press, 2004), 20.

¹⁵ Allan Mulenga, “Rule of Law Attracts Investor Confidence, Says Storella,” *The Post*, February 23, 2012.

¹⁶ Center for Democracy and Governance, 15.

Therefore, as taxation forms a substantial basis of government revenue, corruption reduces the revenue base, making it difficult to effectively implement various national programmes.

4.7 SOCIAL AND CULTURAL EFFECTS OF CORRUPTION

From a social perspective, corruption subjects individuals to paying tax at unreasonably high rates. As corruption discourages foreign investors who normally pay various forms of tax, it follows that a country's revenue base is reduced. Therefore, in order to offset the inadequate revenue or deficit, the government may resort to raising taxes on individuals whose salaries may already be minimal.

Furthermore, corruption leads to poor development of infrastructure.¹⁷ In view of the fact that corruption generally reduces the government's revenue, it follows that there may not be adequate funds available to effect any meaningful development of infrastructure such as hospitals, schools, roads and so forth. Worse still, the available funds meant for implementation of various programmes usually end up in individual's private pockets, thereby exacerbating the situation.

In addition, the inflation brought about by corruption renders the prices of goods and services on the market high.¹⁸ The other cause of such high prices is that due to massive corruption, government may not have the capacity to provide extra goods and services for the people in the market, or at least, provide subsidies to the people. As such, most individuals in society are unable to acquire the necessary goods and services for their sustenance. Corruption also leads to increase in criminal or illegal activities, as persons normally resort to any means possible just to fend for themselves.

¹⁷ Obayelu, 2.

¹⁸ Kombe Chimpinde, "Corruption Tag Hitting MMD-Mutati," The Post, February 21, 2012.

Culturally, corruption negates the spirit of entrepreneurship. Simply defined, an entrepreneur is one who assumes the responsibility and the risk for a business operation with the expectation of making a profit.¹⁹ Undoubtedly, promotion of entrepreneurship is regarded as cardinal to attainment of development. On the contrary, corruption entails, among others, acquiring financial advantage at the expense of others, without taking any genuine initiative to invest or develop a viable business. In this way, the culture of entrepreneurship is negated which, subsequently, compromises a country's capacity to attain sustainable economic development.

4.8 EARLY LEGISLATIVE ATTEMPTS TO FIGHT CORRUPTION IN ZAMBIA

It has aptly been observed that “the Zambian government did not in the beginning have a comprehensive strategy to fight corruption and the approach in this regard had been piecemeal.”²⁰ The first corruption laws that applied in the territory now called Zambia include the United Kingdom Public Bodies' Corrupt Practices Act of 1889, the Prevention of Corruption Act of 1906 and the Prevention of Corruption Act of 1916. These were imported as English statutes of general application in Zambia pursuant to the English Law (Extent of Application) Act. The relevant section therefore provides as follows: “subject to the provisions of the Constitution of Zambia and to any other written law - the statutes which were in force in England on the 17th August, 1911 shall be in force in the Republic.”²¹

Following Zambia's independence in 1964, the then government attempted to fight corruption through a number of locally-passed legislation such as the Penal Code, as we know it today.²²

The section of the Penal Code relevant to the fight against corruption relates to “abuse of

¹⁹ Michael, P. Todaro & Stephen, M.S., *Economic Development* (New York: Pearson Education, 2009), 213.

²⁰ Alfred, W. Chanda, “Regional Integrity Systems, Country Study Report.” (Lusaka, 2002), 57.

²¹ English Law (Extent of Application) Act, Section 2 (c).

²² Penal Code, Chapter 87 of the Laws of Zambia (formerly Chapter 146 of the laws of Zambia), Section 56.

authority of office,” which provides that “any person who, being employed in the public service, does or directs to be done, in abuse of the authority of his office, any arbitrary act prejudicial to the rights or interests of the Government or any other person, is guilty of a misdemeanor...”²³

Clearly, and rather unfortunately, this provision is concerned with corruption offences by persons employed in the public service and does not cover corruption by or with private bodies or agents.

In an effort to strengthen the institutional framework in the fight against corruption, there was set up, in 1971, a body called the Special Investigations Team on Economy and Trade (“SITET”). Essentially, SITET was a body designed to investigate economic crime in the country and therefore, to uncover corruption where it occurred. However, following Zambia’s economic liberalization in 1991, it collapsed. To this end, one opines that it is almost impossible to account for the collapse of SITET, except for the fact that the 1991 government was merely desirous of changing whatever had been initiated under the one-party state.

In 1980, the Corrupt Practices Act was enacted.²⁴ As the first Act specifically designed to deal exclusively with corruption, it provided, *inter alia*, for the establishment of the Anti-Corruption commission, a separate body to investigate and prosecute corruption cases.²⁵ The body was also mandated to investigate and prevent the occurrence of corruption in public and private bodies and to disseminate information on the evils and dangers of corruption. Clearly, the main point of departure of the Corrupt Practices Act from the Penal Code was that it applied to both the public and private sectors.

To this end, it is clear that the one-party state under President Kaunda had demonstrated commitment to fighting corruption. It is further submitted that the minimal prevalence of

²³ Chapter 87 of the Laws of Zambia, Section 99.

²⁴ Act No. 14 of 1980 (Repealed by Act No.42 of 1996).

²⁵ Act No. 14 of 1980, Section 9.

corruption between 1964 and 1972 can be attributed mainly to the relative political and economic stability during that period. However, the situation changed between 1973 and 1990 when copper prices collapsed and when major industries and copper mines were nationalized.”²⁶ The comparatively low incidences of corruption during the Kaunda era may be attributed to the fact that Kaunda demanded loyalty from government officials and government controlled literally every form of economic activity.

In 1991, there was a change in Zambia’s political dispensation, as the Movement for Multi-Party Democracy (MMD) took over power in November after defeating Kaunda’s UNIP convincingly. The starting point of the MMD government was to enact the Parliamentary and Ministerial Code of Conduct Act,²⁷ which required Ministers and Members of Parliament to file declarations of assets and liabilities with the Chief Justice. This meant that members of the public could now lay complaints before the Chief Justice about the corrupt conduct of a Minister or Member of Parliament.

However, it would seem that the return in 1991 to multi-party democracy signaled the liberalization not only of the political and economic dimensions of the country, but also of corruption scandals.²⁸ No sooner had the MMD assumed political control than scandals of corruption began to emerge. For example, three Cabinet Ministers in the Chiluba regime, namely Ronald Penza, Boniface Kawimbe and Dean Mungomba accused their named colleagues of being involved in corruption which led to the resignation of some of them. To further demonstrate the prevalence of corruption in government, the then Vice-president, late Levy P.

²⁶ Malila, 7 (unpublished).

²⁷ Chapter 16 of the Laws of Zambia.

²⁸ Malila, 8 (unpublished).

Mwanawasa resigned his position, citing corruption as the reason.²⁹ Clearly, the above incidences of corruption illustrate how the scourge had permeated the government machinery.

Against the background of incalculable corruption scandals, The MMD Government facilitated the enactment of the Anti-Corruption Commission Act³⁰ of 1996. The Act, which made provision for the Anti-Corruption Commission as an autonomous body, also aimed at removing the president's direct control of the Anti-Corruption Commission as provided under the old Act.³¹ Surprisingly, at the helm of President Rupiah Banda's leadership, a new Anti-Corruption Act was passed which repealed the 1996 Anti-Corruption Commission Act.³² Noteworthy about the new Act is the repeal of section 37 (the abuse of office clause) from the list of corruption offences it created and the abolishment of the Task Force on Corruption. Today, one wonders if at all the repeal of the "abuse of office clause" was done in good faith. However, the current National Assembly presented the Anti-Corruption Commission Bill before Parliament, whose principal object as per section 21, is to bring back the abuse of office clause.³³

4.9 THE NEW LEGAL FRAMEWOK ON THE FIGHT AGAINST CORRUPTION IN ZAMBIA

In the year 2010, the Zambian Parliament passed a total of fifty-two (52) Acts of Parliament, four (4) of which are likely to impact on the fight against corruption. These include the Public Interest Disclosure (Protection of Whistleblowers) Act,³⁴ the Forfeiture of Proceeds of Crime Act,³⁵ the

²⁹ Malila, 8 (unpublished).

³⁰ Act No 42 of 1996 (Repealed by Act No. 38 of 2010).

³¹ Act No. 14 of 1980 (Repealed by Act No. 42 of 1996).

³² Chapter 91 of the Laws of Zambia.

³³ Staff Reporters, "PF Brings Back Abuse of Office," The Post, March 8, 2012.

³⁴ Act No. 4 of 2010.

³⁵ Act No. 19 of 2010.

Anti-Corruption Act³⁶ and the Financial Intelligence Centre Act.³⁷ Thus, the following are the ways in which the new pieces of legislation are likely to impact on the fight against corruption:-

The Public Interest Disclosure (Protection of Whistleblowers) Act- Essentially, the Act is intended to provide for the disclosure of conduct adverse to the public interest in both the public and private sectors. In this context, a whistle blower is any person who reports incidences of corruption in good faith and on reasonable grounds to competent authorities.³⁸ Under the Act, public interest disclosures may be made to the Anti-Corruption Commission, the Police Public Complaints Authority, the Judicial Complaints Authority, the Drug Enforcement Commission, the Investigator General or the Auditor General. In this way, the Act impacts on the fight against corruption as it guarantees protection of individuals who may be reporting actual cases or suspicions of corruption.

The Forfeiture of Proceeds of Crime Act- The essence of this Act, as per its preamble, is to provide for the confiscation of the proceeds of crime; secondly, to provide for the deprivation of any person of any proceed, benefit or property derived from the commission of any serious offence and to facilitate the tracing of any proceed, benefit and property derived from the commission of any serious offence. It is in pursuance of section 71 (1) of the Proceeds of Crime Act, that the former Minister of Labour Austin Liato was charged with “possession of property (K2.1 Billion) suspected to be proceeds of crime.”³⁹ In this way, corruption is checked under the Act in that on application, the Court may make various orders such as the forfeiture and confiscation orders in relation to certain property, proceed or benefit which may be subject of corruption.

³⁶ Act No. 38 of 2010.

³⁷ Act No. 46 of 2010.

³⁸ Malila, 13 (unpublished).

³⁹ Maluba Jere, “Court Finds Liato with a Case to Answer,” Saturday Post, March 31, 2012.

The Anti-Corruption Act- This Act repealed the Anti-Corruption Commission Act of 1996, while providing for the continued existence of the Anti-Corruption Commission. It would appear that most of the provisions of the repealed Act, except for section 37, have been retained in the new Act. Section 37 of the repealed Act dealt with the variety of corruption by public officers that has effectively come to be known as abuse of authority. Notwithstanding the omission of section 37, the Anti-Corruption Act mainly impacts on the fight against corruption through the continued existence of the Commission whose functions include among others, to prevent and take necessary and effective measures for the prevention of corruption in public and private bodies and provides for the forfeiture of proceeds or property that may have been corruptly acquired.⁴⁰

The Financial Intelligence Centre Act- This Act seeks to establish the Financial Intelligence Centre and provide for its functions, as well as to provide for the duties of supervisory authorities and reporting entities. Therefore, some of the functions of the Centre as provided under the Act are to receive, request and analyse suspicious transaction reports as required to be made under the Act or any other written law and to provide information, advice and assistance to law enforcement agencies in furtherance of an investigation. In this way, the Act helps in ensuring that any suspicions of corruption are brought to the attention of the relevant investigative bodies.

4.10 CONCLUSION

In conclusion, it is clear that even amidst numerous laws, the fight against corruption has not yielded the much desired results. Inevitably, it follows that successful fight against corruption requires not only a myriad of progressive laws, but also a good law enforcement mechanism,

⁴⁰ Act No. 38 of 2010, Section 5.

high integrity leadership and a good judicial system. The economic liberalization brought about by the MMD in 1991 also meant liberalization of corruption. Further, the motive behind the repeal of section 37 (abuse of office clause) under the Anti-Corruption Commission Act of 1996 has been received with mixed feelings by well-meaning Zambians. However, the current National Assembly presented the Anti-Corruption Bill whose main object, as per section 21 is to bring back the abuse of office clause. Once the Bill is enacted into law, it still remains to be determined whether or not Government will fully commit itself to implementing the law.

The preceding chapters have indicated the various forms of White-collar crime and the available legal framework. The next (concluding) chapter, therefore, provides an analysis of the preceding chapters and recommendations on how the various effects of White-collar crimes can be addressed.

CHAPTER FIVE

5.0 CONCLUSION AND RECOMMENDATIONS

5.1 INTRODUCTION

On the basis of the four preceding chapters, this chapter provides a general conclusion on the emergence of “White-collar” crimes in Zambia, their effects and the available laws in regulating the scourge. In view of the problems brought about by the emergence of White-collar crimes in Zambia, this chapter provides recommendations, the object being to find a lasting solution to the numerous problems identified. A conclusion provided at the end of the chapter gives an overview of this chapter.

5.2 GENERAL CONCLUSION

The basic conception of crime by society is that it only includes those criminal activities that are ordinarily committed, such as assault, defilement, theft and so forth. However, there is a more complex form of crime, usually committed by highly respectable and affluent individuals, referred to as “White-collar crime.” Unlike other common forms of crime, White-collar crimes are usually non-violent and may be committed by persons in the comfort of their private domains. This accounts for the lack of effective prosecution of White-collar criminals. There are numerous examples of White-collar crimes, but only those relevant to the research have been considered, namely, cyber-crimes, to which pornography is an example, money laundering and corruption.

As regards cyber-crimes, they are mainly committed through the use of the internet facility. Although the development of Information and Communications Technology (ICT) has benefitted society for example, by enhancing research and effective communication, it has however led to

increased criminal activities relating to their use, such as pornography. One of the main problems identified in attempting to combat pornography relates to the global nature of the internet, which makes it difficult for a country's law enforcers as their mandate is only limited to their country.

In addition, pornography is a cultural concern, in that it may be unlawful only in certain jurisdictions, thereby making domestic efforts to fight it less effective. The legal inadequacy identified in the fight against pornography includes the fact that there is no obligation on the service providers to monitor incidences of pornography.¹ Secondly, the Electronic Communications and Transactions Act is narrow in scope, in that it criminalises pornography only where the internet is used as the medium of its perpetration.

As regards money laundering, it has been observed that financial transactions have today become more complex, especially with the development of Information and Communication Technology (ICT). One of the problems identified as militating against successful criminalization of money laundering, is the fact that its definition under the PPMLA is not adequate as to capture the *mens rea* element of the crime. Furthermore, the Drug Enforcement Commission (DEC) as established by law² to prosecute money laundering activities has limited mandate and lacks a comprehensive capacity and procedural framework upon which money laundering activities can be prosecuted.

In relation to corruption, it is aptly observed that traditional approaches to combating corruption have met with very limited success. From the preceding chapter, it is apparent that even with the availability of many laws on corruption, the fight against the scourge has not been the most successful, perhaps because more emphasis is put on amending and changing laws on corruption, as opposed to actual implementation of such laws. Similarly, it is observed that "even the New

¹ Act No. 21 of 2009, Section 62.

² Chapter 96 of the Laws of Zambia, Section 5.

Anti-Corruption Bill currently under Parliament risks being repealed as soon as it is enacted, simply because it ignores various Constitutional provisions such as the right to privacy, the right to property and the right of an accused person to remain silent³...and that corruption is a difficult crime to fight as it normally occurs between two people.”⁴

5.3 RECOMMENDATIONS

To this end, it can be seen that the problem of White-collar crimes in Zambia has continued to manifest, even amidst numerous laws and unwavering Government pronouncements to fight the scourge. Thus, the following recommendations have been made with the view to finding a lasting solution to the problem of White-collar crimes:-

5.4 CYBERCRIME (PORNOGRAPHY)

5.4.1 Impose a legal obligation on service providers to monitor pornography

A service provider is defined as “a public or private entity authorized to provide or offer electronic communications by means of a computer system.”⁵ It has been established under the Electronic Communications and Transactions Act⁶ that there is no general obligation on service providers to monitor incidences of pornography, which makes efforts to prosecute pornography cases difficult. Therefore, it is recommended that section 62 of the Electronic Communications and Transactions Act be amended, so as to make it mandatory for service providers to monitor and report incidences of pornography.

³ Chapter 1 of the Laws of Zambia, Articles 17 & 18.

⁴ An interview with Professor Mvunga, M.P. (Senior Lecturer at the University of Zambia) April 13, 2012.

⁵ Act No. 21 of 2009, Section 2.

⁶ Act No. 21 of 2009, Section 62.

5.4.3 Establish a special unit to specifically investigate and prosecute pornography cases

An analysis of both the Penal Code and the Electronic Transactions Act reveals that although pornography is generally criminalized, there is no legal body or unit (similar to the Anti-Money Laundering Unit) specifically created to investigate and prosecute cases of pornography. Therefore, it is recommended that the relevant laws on corruption be amended, to provide for the creation of a Special Unit to investigate and prosecute cases of corruption. Furthermore, such a proposed body should be provided with adequate financial capacity and competent personnel, which would enable it effectively achieve its functions.

5.5 MONEY LAUNDERING

5.5.1 Improve the Institutional Capacity of the Anti-Money Laundering Investigation Unit

In this regard, it is noteworthy that the Anti-Money Laundering Investigations Unit as established under Part III of the Prohibition and Prevention of Money Laundering Act is mandated to investigate and prosecute money laundering offences. However, in order for the Unit to effectively carry out its mandate, there is need for government to provide adequate funding. Furthermore, the composition of the unit should comprise personnel with expertise and an understanding of the nature of money laundering. In addition, as the definition of money laundering under section 2 of the PPMLA is rather vague, the same should be amended to enable it clearly capture the *mens rea* element of the crime

5.5.2 Empowerment of the Drug Enforcement Commission (the “DEC”)

As established under the Narcotic Drugs and Psychotropic Substances Act, the DEC is mandated to receive and investigate any complaint of alleged or suspected breach of this Act and to

prosecute for offences under the Act. However, in view of increased cases of drug trafficking and other related offences, there is need to expand its mandate in respect of qualification, functions and prosecutorial powers. Furthermore, there ought to be specific legislation governing the DEC and clearly setting out its functions and the procedure to be employed in investigating illegal activities that are subject of money laundering.

5.6. CORRUPTION

5.6.1 Review of the Public Interest Disclosure (Protection of Whistleblowers) Act

The Whistleblowers Act apparently emphasizes the disclosure of conduct adverse to the public interest arising within an employment set up and does not appear to deal extensively with disclosures occurring outside the employment setting. In fact, a great deal of corrupt or illegal activities still occurs outside employment arrangements. Therefore, the Act should be amended to allow disclosure of corrupt practices in a much broader setting than employment.

5.6.2 Simplification of procedures

As indicated in the preceding chapter, one of the causes of corruption is the presence of lengthy and complicated procedures in various institutions and offices. Therefore, it is recommended that where such procedures are provided by law, such laws should be amended, so as to provide for more flexible and simple procedures, for instance, in relation to the acquisition of licences or permits or collection on National Registration Cards (NRC_S). In this way, persons would be able to abide by the laid down procedure without the urge to offer incentive in return for favours.

5.6.3 Strict enforcement of the principle of Accountability at all levels

In this regard, it is recommended that various officials and offices should account for their actions to ensure that they are within the law. Inevitably, decisions are made at various levels of the government in which exercise of discretionary power may be involved. As such, persons involved should be held accountable so as to justify their decisions. Therefore, there is need for public officers and ministries to account for their expenditure. This could be done by strengthening both the internal and external audit mechanisms; and such auditing offices should be adequately funded to effectively discharge of their mandate.

5.7 CONCLUSION

This chapter has provided an overview of the entire study, while at the same time drawing a conclusion and effectively making recommendations on how to curb White-collar crimes.

Addressing the problem of pornography is particularly difficult because of the global nature of the internet. Therefore, establishing a special unit to specifically investigate and prosecute pornography cases is necessary to address it. As regards money laundering, its incidence has been compounded by the fact that financial transactions have today become so complex that illegal proceeds of crime are easily integrated into the economy with minimum risk of detection. Thus, there it is desirable to expand the legal and institutional capacities of the Anti-Money Laundering Investigation Unit and the Drug Enforcement Commission (DEC). Clearly, the fight against corruption has not yielded the much desired result. In this regard, it is recommended that simplification of procedures and strict adherence to the principle of accountability may help curb the problem. Thus, to effectively address the problem of White-collar crimes in Zambia, there is urgent need to strengthen both legal and institutional frameworks relating to the scourge.

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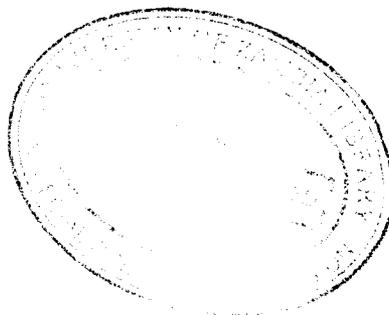
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