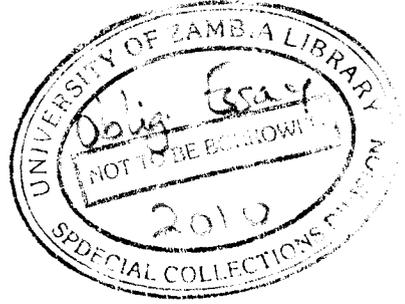


MONEY LAUNDERING IN ZAMBIA. THE CHALLENGES OF MONEY
LAUNDERING IN UNREGULATED SECTORS OF ZAMBIA.



BY

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JANUARY 2010

CERTIFICATION

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**MONEY LAUNDERING IN ZAMBIA. THE CHALLENGES OF MONEY
LAUNDERING IN UNREGULATED SECTORS OF ZAMBIA.**

Be accepted for examinations. I have checked it carefully and I am satisfied that it fulfils the requirements relating to format as laid down in the regulations governing Directed Research Essays.

Date: 12/05/2010 Rtd Judge KABASO CHANDA
(SUPERVISOR)



DECLARATIONS

I, Philimon Morgan Kancheya, Identity Number 25141775 do declare that I am the author of This Directed Research Paper entitled, “ Money Laundering In Zambia. The Challenges of Money Laundering in unregulated sectors of Zambia. I further declare that it is the work of my own ingenuity and that due acknowledgement has been made where other people’s work has been used. I truly believe that this research has not been previously presented in the School for academic work.

I therefore bear the absolute responsibility for the contents, errors, defects and any omissions therein.

Date: 7/04/10

Signed: 

TABLE OF CONTENTS

LIST OF ABBREVIATIONS AND ACRONYMS

TABLE OF STATUTES

TABLE OF CASES

ACKNOWLEDGMENT

ABSTRACT.

CHAPTER ONE: AN OVERVIEW OF THE MONEY LAUNDERING PROBLEM IN ZAMBIA

Introduction.....	1
Statement of the Problem.....	3
Objective of the Research.....	5
Specific Objective.....	5
Research Question.....	6
Rationale of the Research.....	7
Research Methodology.....	8
Literature Review.....	9

CHAPTER TWO: MONEY LAUNDERING AS A LEGAL CONCEPT

Legal Concept.....	12
Legal Framework.....	17
Evolution of Money Laundering Legislation in Zambia.....	17
International Instruments Influential to the enactment of the local Legislation.....	20
Benefits from the enactment of the Legislation.....	22
Conclusion.....	25

CHAPTER THREE: NATURE AND CONTENT OF THE ANTI-MONEY LAUNDERING ACT.

Nature and Content.....	26
Regulated Institution.....	28
Professional Bodies.....	33

Unregulated Institutions.....	36
Churches.....	36
Informal Sector.....	38
Summary.....	40

**CHAPTER FOUR: LIMITATIONS OF THE CURRENT LEGAL FRAMEWORK
AND THE WAYFORWARD**

Limitations of the Legal framework.....	42
Adequacy of the Act.....	43
Effectiveness of the mandate of the Unit.....	43
Proposed Recommendations and the way forward.....	45
The Churches.....	46
Informal Sector.....	47
Bureau de change.....	47
Conclusion.....	48

CHAPTER FIVE: SUMMARY

Summary.....	49
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ABBREVIATIONS AND ACRONYMS

1. Anti-Corruption Commission (ACC)
2. Bank of ZAMBIA (BoZ)
3. Christian Council of Zambia (CCZ)
4. Common Market for East and Southern Africa (COMESA)
5. Drug Enforcement Commission (DEC)
6. Episcopal Council of Zambia (ECZ)
7. Evangelical Fellowship of Zambia (EFZ)
8. Financial Intelligence Unit (FIU)
9. Financial Action Task Force (FATF)
10. Law Association of Zambia (LAZ)
11. Zambia Institute of Certified Accountants (ZICA)

TABLE OF STATUTES

Prohibition and Prevention of Money Laundering Act, No. 14 of 2001 of the Laws of Zambia.....	12, 17,21,22,25,26,27,42
Anti – Corruption Commission Act, No. 42 of 1996 of the Laws of Zambia.....	4
Narcotics Drugs and Psychotropic Substances Act, No 37 of 1993 of the Laws of Zambia.....	17, 18, 19
Constitution, Cap 1 of the Laws of Zambia.....	8
Dangerous Drugs (Forfeiture of Property) (Special Organizations) (Drug Enforcement Commission) Regulations, 1989.....	18, 25
Dangerous Drugs Ordinance of 1926 of Northern Rhodesia Government.....	18
Zambia Institute of Certified Accountants Act No.....	33
South African Crime Prevention Act no. 121 of 1998.	15
Banking and Financial Services Act, No 387 of 1994.....	27, 47
Computer Misuse and Crimes Act of 2004.....	10, 12
Zambia Development Agency Act no. 11 of 2006.....	2

TABLE OF CASES

Woolmington v. DPP (1935) AC 462

Stella Chibamba and Niseo Farms Ltd v. The Commissioner Drug Enforcement Commission and the Attorney General and Stanbic Bank Zambia Ltd, 2003/HP/0242

Governor and Company of the Bank of Scotland v. A Limited (2001)3 ITEL 503, CA

LAZ and Forrest Price and Company v. Zambia Revenue Authority and AG (1999) HN/412.

The People v. Benedict Ashley Disouza and Others and (The United Bank of Zambia (SSP/8/2001 and HPA /11/2003)

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I remain indebted to all those individuals too numerous to mention who helped in the process of data collection. To all of you and many more, I say thanks very much and may god richly bless you.

Lastly, but not least, I would like to thank my wife, Mrs. Felistus Kasunga Kancheya, for her unwavering support and encouragement.

Phil Kancheya
January 2010

DEDICATIONS

This thesis is dedicated to my children, Philip Micheal Kasunga Kancheya and Loziwe Margaret Kancheya, let this be an inspiration to them to aspire for greater academic achievement.

ABSTRACT

Money Laundering manifests itself in various forms, at different levels and in different sectors of society. There is money laundering in the civil service largely manifesting itself in financial irregularities in the Auditor General's reports and misappropriation of Donor funds. There is money laundering in the private sectors especially in the unshackled sectors like the church and the informal sectors. This essay focuses on money laundering in the unregulated sectors from a legal perspective. It aims to provide an understanding of money laundering in the Churches and the informal sector, causes and the efficacy of the strategies for its control.

The essay discredits the simplistic traditional approach of money laundering that limits its definition to a simple crime that occurs at three stages; namely, placement, layering and integration. In this regard, the essay looks at other predicate offences that are associated with money laundering such as drug trafficking, human trafficking and corruption.

The essay also identifies weaknesses in the legal framework pertaining to the powers of the Anti - Money Laundering Investigation Unit of the Anti - Money Laundering Authority and the shortcomings of the Administrative Financial Intelligence Units (Supervisory Authorities), in the fight against the money laundering graft. Finally, the essay acknowledges that it would be unrealistic to expect a complete eradication of money laundering in the Zambian society. However, the essay makes suggestions of how money laundering in the unshackled sectors can be controlled from a legal and broader perspective.

Phil. Kancheya
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January 2010

CHAPTER ONE: AN OVERVIEW OF THE MONEY LAUNDERING PROBLEM IN ZAMBIA.

1.1 Introduction.

The problem of money laundering in Zambia is not new although the principal Act to legislate against money laundering was only passed in 2001.¹ Prior to that, the problem of money laundering was linked to drug trafficking predicate offences. This explains the enactment of the Narcotics Drugs and Psychotropic Substances Act of 1993. To date, money laundering predicate offences in Zambia include such criminal acts as fraud, drug trafficking, corrupt practice by public officials, tax evasion, brothels and human trafficking. Money laundering as an offence was criminalized in 2001 by the enactment of the Act and later by the publication of the Bank of Zambia directives².

Money Laundering is defined by the Prohibition and Prevention of Money Laundering Act to mean:

- (a) engaging, directly or indirectly, in a business transaction that involves property acquired with proceeds of a crime.
- (b) receiving, possession, 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.³

At national level, the fight against money laundering is being fought by the Anti Money Laundering Investigations Unit housed within the Drug Enforcement Commission. The Drug Enforcement Commission is itself a department under the Ministry of Home Affairs of the Republic of Zambia.

1. The Prohibition and Prevention of Money Laundering Act, N0 14 of 2001
2. Bank of Zambia, Anti-Money Laundering Directives of 2004
3. Section 2 of Act no.14 of 2001 of the laws of Zambia.

The Narcotics Drugs and Psychotropic Substances Act, 1993 provides that, the Drug Enforcement Commission established under the Dangerous Drugs (Forfeiture of Property) (Special Organization) (Drug Enforcement Commission) Regulations, 1989, is hereby continued as if established under this Act.⁴ It is this Unit that will also deal with sectors of the economy that are not regulated. The Anti Money Laundering Investigations Unit is also referred to as the Financial Intelligence Unit whose definition was stated by the Egmont Group as:

“A central, national agency responsible for receiving (and, as permitted, requesting) analyzing and disseminating to the competent authorities, disclosures of financial information (i) concerning suspected proceeds of crime, or (ii) required by national legislation or regulation, in order to counter money laundering.⁵

What is of paramount concern about the money laundering fight in Zambia is the fact that the Prohibition and Prevention of Money Laundering Act has made provisions for supervisory authorities to regulate institutions falling under their influence.⁶ Examples of such supervisory authorities include:

- (a) the Commissioner of Lands⁷,
- (b) the Zambia Development Agency Act no. 11 of 2006 of the laws of Zambia⁸
- (c) the Registrar of Companies appointed under the companies Act⁹
- (d) the Bank of Zambia¹⁰

4. Section 4 (i) of Act, 1993 of the laws of Zambia.

5. P.A. Schott, Reference guide to anti money laundering and combating the financing of terrorism (Washington DC: The World Bank and IMF (2003), p.1 -5

6. Section 12 of Act no14 of 2001 of the laws of Zambia

7. Cap 385 of the laws of Zambia

8. Act no.11 of 2006 of the laws of Zambia

9. Cap 414 of the laws of Zambia

10. Cap 360 of the laws of Zambia.

The supervisory authorities have a role to play in ensuring that they do not obstruct any money laundering investigations that may be instituted by the Anti Money laundering Investigations Unit. Admittedly, the challenge is how to supervise the unregulated sectors of the economy who have used the non financial banking system (Bureau de change) to “wash dirty money “through the purchase of foreign exchange and later legitimize the proceeds. Secondly, they also need to ensure that the money laundering risk is effectively managed and that in cases where institutions are insulated by professional secrecy or legal professional privilege, the Financial Action Task Force (FATF) recommendations apply.

1.2 Statement of the problem

Money Laundering is a highly complex and diverse phenomenon with many different manifestations. It is a criminal offence which occurs when financial gain is the motivation but differs from most crimes in that it is an ancillary form of crime. There are a number of competing definitions of money laundering and suffice to say that it has traditionally been associated with drug trafficking. However, lately, the mushrooming of lush housing developments and posh cars of the Hummer model in places like Chalala, in Lusaka have been associated with money laundering by civil servants and thus pose a challenge to Anti Money Laundering Investigations Unit to prove that a criminal predicate offence was committed.

The case for such assumptions has its roots in the low wages paid to civil servants and the theft by public servant case at the Ministry of Health.¹¹

11. The Post, 1st June 2009. Theft by Public Servant Case involving K29bn by Henry Kapoko, a Human Resource Officer at Ministry of Health

Money laundering cannot be divorced from corruption in Zambia, especially in the public service. In Zambia, the Anti-Corruption Commission (ACC) Act defines “corrupt” as the soliciting, accepting, giving promising, or offering of gratification by way of a bribe or other personal temptation or inducement, or the misuse or abuse of public office for private benefit.¹²

Lately, the rising number of arrests by the Drug Enforcement Commission Agency in Zambia for criminal predicate offences is a true manifestation that there is a money laundering problem especially in the informal sector, which is not regulated as it is mostly of low income people who live in the world of cash and are un banked this has also presented the challenge of tracing the movement of money.

This challenge highlights the need for legislation to encompass as many bodies in the Prohibition and Prevention of Money Laundering Act as Supervisory authorities so that they comply with statutory duties imposed on such bodies by the Act.¹³ So far, only the Bank of Zamia has issued these local supervisory directives pursuant to section 12(4) of the Act.¹⁴

It is the hypothesis of this paper that if the problem of money laundering on unregulated bodies is left unchecked, it will have a negative effect on the governments attempt to manage the scourge. Further, the attendant problems of Money Laundering on a poor economy like Zambia can not be under estimated as non compliance with international standards risk harming the country standing as an investment destination.¹⁵

12. Anti – Corruption Commission Act No. 42 of the Laws of Zambia

13. Ibid

14. Bank of Zambia, Anti – Money Laundering Directives of 2004

15. Jennifer Isern and Louise de Koker, CGAP, AML/CFT: Strengthening Financial Inclusion and Integrity, No. 56, August 2009.

1.3 Objective of the Research.

The objective of this study is to evaluate the efficacy of the Prohibition and Prevention of Money Laundering Act, No 14 of 2001 in meeting its objective with particular reference to provisions governing the supervisory authorities. It is hoped the review would provide an overview of its inadequacies, if any, in fully meeting its intended statutory objective. The focus of the study is on the effectiveness of the provision relating to the supervisory authorities and the case of money laundering in the unregulated institutions and also those insulated by professional secrecy or legal professional privilege.

1.1.3 Specific Objective.

(i) To highlight the background, rationale and objective of the Anti-Money Laundering Law in Zambia.

(ii) To review the regulatory provisions on supervisory authorities in the Act and its effectiveness in combating money laundering in the formal and informal sectors. (iii) To examine the legal powers of the Anti — Money Laundering Investigation Unit in investigating money laundering in unregulated institutions.

(iv) To attempt to spell out possible mechanisms for dealing with the inadequacies of the provision on supervisory authorities to adequately deal with the informal or unregulated sectors.

1.4 Research Question

The essay seeks to address specific questions that are posed in this research. In this regard, Chapter 1 will be the Introduction chapter. It will contain the introduction,

statement of the problem, the objective of the research, the methodology of the research and the rationale behind the research topic to be undertaken.

Chapter two will introduce the question “Money Laundering as a legal concept”. It will explain the definition of money laundering and the historical background of money laundering legislation in Zambia with a brief on international instruments and initiatives that have shaped the contours of the jurisprudence on money laundering. The legal framework currently in place to fight money laundering in Zambia and the benefits derived from enacting the legislation.

Chapter three will be ‘Nature and Content of the Money Laundering Act’ and will discuss the legal provision relating to the statutory provisions and enforcement mechanism of supervisory units. This chapter also defines a supervisory unit and the limitations of its mandate as a regulatory oversight on Money Laundering in the formal sector mainly financial institutions. The chapter will further look at the Bank of Zambia regulatory framework and its effectiveness on non bank financial institutions like Bureau de change. Furthermore, the question of how effective is the current Anti-Money Laundering regulation in monitoring unregulated sectors of the economy such as churches and the informal low income sector will be addressed.

Chapter four will look at the “Effectiveness of the current legal framework and the way forward” . It will evaluate the adequacy of the Act in meeting its objective with particular focus on the supervisory authorities. The effectiveness of the current mandate of the Anti - Money Laundering Investigations Unit as gatekeepers for all supervisory units and any recommendations for strengthening the Financial Intelligence Unit in the fight against Money Laundering.

Chapter five will be the **Conclusion**. In this chapter the essay will be concluding by looking at the way forward, summarizing the points of discussion brought out in the paper.

1.5 Rationale of the research.

The acknowledgement of the existence of money laundering in the Zambian society has posed a challenge to the Legislators in Zambia for some years now.

Initially, section 22 of the Narcotics Drugs and Psychotropic Substances Act, 1993 was the only statutory provision that criminalized the offence but was inadequate for dealing with the offence of money laundering in Zambia as a crime.¹⁶ Later in 2001, it was repealed and the current legislation, promulgated as the principal legislation to fight money laundering in Zambia.

The nature and dimension of money laundering in the informal sector and concerning public officials needs to be investigated in order to bring out the challenges for concerned parties to make viable policies and strategies in tackling the vice.

16. Section 22 of Act, 1993 of the laws of Zambia.

The informal sector is unshackled (unregulated) therefore falls outside the catchment of Section 12 of the Act. Equally, the challenges facing institutions that are supervised but insulated by the laws of client – privileges or privacy need to be addressed, more so with the creation of the Anti-Money Laundering Investigations Unit to act as an overall supervisory body in the crusade against money laundering. The rationale is to bring to the

fore the loopholes of the current legislation in monitoring unregulated bodies and other professional bodies that act as conduits for money laundering under the guise of anonymity of the solicitor – client privilege and banker-customer confidentiality, or indeed perpetuated by a culture of bank secrecy . The criminal element in the informal sector has continued to be attracted to the non-banking financial institutions like the Bureau de change because they are not heavily regulated.

1.6 Research Methodology

The study will examine the various local statutes that empirically look at Money Laundering, from the Constitution ¹⁷ to the Drug Enforcement Act that have a bearing on the operations of the Anti-Money Laundering Investigations Unit. It will also look briefly at some international instruments that have helped shape the landscape of the local jurisprudence on money laundering. Interviews with officials at the Drug Enforcement Commission, LAZ, the Bank of Zambia and selected financial institutions, non Bank Financial Institutions (Bureau de change) and the informal sector will form part of the research. The study will rely mainly on the library and question based interviews. All this will be reviewed as an on going process for the duration of the research.

It is almost impossible to know the true nature and extent of money laundering since the areas being researched on are not regulated by the Prohibition and Prevention of Money Laundering Act, 2001 whereas others are protected by various laws relating to client - confidentiality and privilege. Being mindful of this challenge, the study will mostly rely on secondary data from the Drug Enforcement Commission, Anti- Money Laundering

Investigations Unit and to some extent primary data in the form of personal interviews with selected staff in institutions concerned with issues of money laundering such as compliance officers in Banks.

1.7 Literature Review.

Literature that reveals the nature, causes and devastating effects of money laundering in both Zambia and the region abounds.

For instance, Dr. Kenneth Mwenda, in his book ¹⁹ looked at money laundering as a predicate offence in the banks and the regulatory framework instituted by the Bank of Zambia. He examined the efficacy of the institutional and regulatory framework of money laundering with particular focus on the financial regulatory framework and thus does not specifically address himself to the subject of this study.

In a comparative study undertaken by Okware V.M.Ajul, ²⁰ who focused on the effectiveness of the Prohibition and Prevention of Money Laundering Act with particularly reference on the effectiveness of the local Act in his obligatory essay.

18. Cap 1, of the laws of Zambia

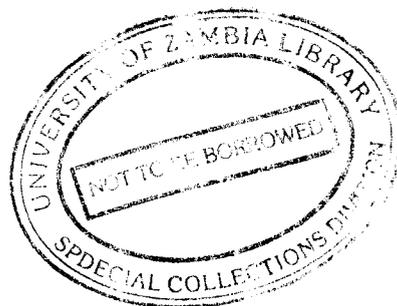
19. Kenneth Kaoma Mwenda, Anti- Money Laundering Law and Practice: Lessons for Zambia. UNZA Press 2005.

The study chronicles peoples' understanding of money laundering in Zambia; it also compares the Act with international and regional instruments on money laundering. It does not look at the inadequacies of the Act on unregulated sectors of the economy as a channel for money laundering and the weaknesses of the Financial Intelligence Unit of the Anti - Money laundering Unit in monitoring other regulated bodies.

Similarly, Chikumba Siakamwi in his research paper gives a general treatise on the challenges of combating money laundering and terrorism financing in Southern Africa.

The focus of this work was to equate money laundering and terrorism financing after the 11th September attack in America.²¹ He looks at the international instruments that have been passed to fight money laundering and terrorism financing. What he has not done is to analyse money laundering from the unregulated sectors of the Zambian economy.

Reagan Kashimbaya, in his research looked at the criminality of the drug trafficking problem within the context of the Zambian justice system; again his focus is on the drug trafficking as a predicate criminal offence within the justice system in Zambia. Reagan's research does not look at the scope of this research paper too.²²



20. Okware V.M.Ajul; 2005. Obligatory essay. The effectiveness of the Prohibition and Prevention of Money Laundering in combating the Scourge. UNZA 2005

21. Chikuba Siakamwi, 2006. Obligatory essay. The Challenges of combating Money Laundering and Terrorism financing in Southern Africa, UNZA 2006

22. Reagan Kashimbaya, 2008. Obligatory essay. The Drug trafficking Scourge within the context of Zambian justice system, UNZA, 2008.

Another attempt to study money laundering in Zambia as a result of the growing use of computer technology was made by Kenneth Lungu, who, in his research explored the effectiveness of the Computer Misuse and Crimes Act, 2004, in view of the growing use of computer technology. He too, did not examine the legal and institutional framework of the unregulated sectors and institutions in the Zambian economy. His focus was on the effectiveness of the new legislation promulgated to compliment the Anti-money laundering Act, 2001 with the growing threat of Cyber crime.²³

Lastly but not the least, Doris N, Kupumba, focused on the Computer Misuse and Crimes Act of 2004. The focus of her study was on the effectiveness of the computer legislation in combating cyber crime.²⁴

23 Kenneth A. Lungu, *Cyber Crime, 2008*, Obligatory essay. A growing phenomenon in Zambia as embrace the continual advancement of Information Technology in Zambia, UNZA, 2008. Kenneth Lungu equally focuses more on the use of technology in committing money laundering

24. Doris, N.Kupumba, 2008. Obligatory essay. The Computer Misuse and Crimes Act 2004, its effectiveness in combating Cyber Crime in Zambia, UNZA, 2006. The focus is on the linkage between cyber crime and money laundering and the effectiveness of the Computer Misuse and Crimes Act in combating money laundering.

CHAPTER TWO: MONEY LAUNDERING AS A LEGAL CONCEPT.

This Chapter considers Money Laundering as a legal concept and explains the different legal definitions of money laundering. It also looks at the genesis of money laundering legislation in Zambia and explores international instruments and initiatives that have shaped the jurisprudence of the money laundering legislation in Zambia.

2.0 Legal Concept.

The offence of money laundering is covered by the Prohibition and Prevention of money Laundering Act, 2001.²⁵ The term money laundering is defined in the Act²⁶ as:

- (a) engaging, directly or indirectly, in a business transaction that involves property acquired with proceeds of crime;
- (b) receiving, possessing, concealing, disguising, disposing 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. Critically, there are three types of activities that can lead to one committing the offence of money laundering as stated above.

25. Sections 7, 8, 9 of Act no. 14 of 2001 of the laws of Zambia.

26. Ibid 13.

Interestingly, the same Act states that “any person who attempts, aids, abets, counsels or procures the commission of the offence of money laundering or who conspires or who knows or suspects that an investigation into money laundering has been, or is about to be conducted, falsifies any material likely to be relevant to the investigation of the offence shall be guilty”²⁷.

The second definition shows that money laundering is a crime of motive rather than of activity and this is based on the Vienna Convention approach.²⁸ In the second definition, there is an element of **Tipping Off** which is an act of a Bank or Financial Officer or its Agent in disclosing information to a customer that he or she is being investigated. It happens either before or during the course of investigation to jeopardize the investigation. This is covered in the Act in situations where an institution divulges information to unauthorised persons.²⁹ The standard to prove in such a case is reasonable foresee ability which can be implied as a condition precedent. Tipping Off can also be Constructive as in where a customer of a Bank is indirectly alerted of the impending investigation by the financial institution inquisitiveness as to the source of his/her funds.

In the Case of **Governor and Company of the Bank of Scotland v. A Limited**,³⁰ the Bank became suspicious of its customer.

27. Section 9/10, of Act no 14 of 2001 of the Laws of Zambia.

28. Article 3 (i) (c), United Nations Convention Against illicit Trafficking in Narcotic Drugs and Psychotropic Substances 1988. (Vienna Convention).

29. Section 11, of Act no.14 of the 2001 of the laws of Zambia.

30. Governor & Company of the Bank of Scotland v. A Limited (2001) 3 ITEL R 503.CA

It could have taken no action and allowed itself to be susceptible to money laundering, as the opening of an account may be sufficient to constitute the actus reus of Money laundering, where it should have suspected the offence and was not diligent, on the other hand, it would have alerted the customer and so would have been guilty of Tipping Off.

The Bank then alerted the police of its suspicions, but at this juncture, it became subject to the offence under the provisions of the Criminal Justice Act 1988 of the United Kingdom. Fearing that it could be regarded as a trustee in the relevant account, the Bank applied for an *ex parte* notice for directions: without notice of the Commercial Court. The court suggested freezing order to which the bank accepted; but further suggested that A Limited could not be told of the order or the reasons for it. A Limited, became aware and applied to court. The bank made further application, which discharged the order. On appeal, it was dismissed. Lord Wolf lamented that; while the courts should be sympathetic on such applications for assistance, it should not be a substitute for financial institutions evading what should be their responsibility.

Fortunately lawyers and Legal advisers are exempt from liability from the offence of tipping off in instances where they have made reports in the context of giving legal advice to their clients or to any party in the context of actual or proposed litigation, unless it is made with the intention of furthering a criminal offence.³¹

31. Sara Chandler, money laundering in the UK, a paper presented to LAZ Seminar 2005, p6.

Closely aligned, definitions by International instruments such as the Financial Action Task Force (FATF), gives an all inclusive and succinctly definition of money laundering as “the processing of criminal proceeds to disguise their illegal origin in order to legitimize the ill gotten gains of crime” This definition capitulates the whole process of an illegal activity irrespective of where the benefits are located or committed, whether it is local or abroad. As earlier stated, money laundering crimes are serious offences and predicate offences such as money laundering should extend to conduct that occurred in another country, which constitutes an illegal activity in that country, and which would have constituted a predicate offence had it occurred domestically. Illegal activity is also qualified by Section 2 of the Prohibition and Prevention of money laundering Act, 2001. Specifically, Section 2 states:

“Illegal activity means any activity, whenever or wherever carried out which under any written law in the Republic amounts to a crime. It is worth noting that illegal activity should be seen to be illegal by reference to Zambian law even if the activity took place outside Zambia”.

The Financial Action Task Force (FATF) is an intergovernmental body which sets standards and develops and promotes policies to combat money laundering. The FATF forty recommendations have been recognized by the International Monetary Fund and World Bank as the International Standards for combating money laundering.³²

32. FAFT 40 Recommendations 20 June 2003 (incorporating the amendments of 22 October 2004), p 1.

The U.S Department of Justice, Money Laundering Unit describes money laundering as an endless number of techniques, procedures, or processes in which funds obtained through illegal activities are converted into other assets in such a way as to conceal their true origin, ownership, or any other factors that may indicate an irregularity.³³

Finally, the South African Prevention of Crime Act³⁴, defines money Laundering as” acts performed in respect of proceeds of unlawful activities, derived directly or indirectly in South Africa or elsewhere”. This prescription is closely aligned to the Prohibition and Prevention of money laundering Act, 2001 in section 2 (a) on money laundering.

The penalty for committing an offence of money laundering is qualified in the Prohibition and Prevention of money laundering Act. Specifically, Section 7 states that:

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

Further, as a crime, money laundering must be proven beyond reasonable doubt. More specifically, Section 22(1) of the Act states; “every offence under this Act shall be a cognizable offence for the purposes of the Criminal Procedure Code”. In Zambia, like other common law countries, the burden of proof in criminal law cases, including predicate offences of money laundering, lies on the prosecution and the standard is beyond reasonable doubt.³⁵

33. Gregory D. Meacham U.S.Department of Justice, white –collar crime facts and cases.PriceWaterHouseCoopers, 1997.

34. Act no. 121, of 1998 of the Republic of South Africa.

35. Woolmington v. DPP (1935) AC 462. where it was stated that, as an exception to the rule that the burden of proof lies on the prosecution, is where insanity is relied upon, the defendant must establish the defence.

The prosecution team must prove that one has violated the law and committed the offence of money laundering as prescribed by the Prohibition and Prevention of Money Laundering Act, 2001 Sections 7, 8, 9, 10 and 11.

2.1 Legal Framework.

The principal legislation to fight the scourge of money laundering in Zambia is the Prohibition and Prevention of money laundering Act no. 14 of 2001. Before its enactment, section 22 of the Narcotics Drugs and Psychotropic Substances Act, 1993 was the first statutory provision to specifically mention the term money laundering. This was however, repealed by section 31 of the current principal legislation. In addition to the principal legislation, in 2004, the Bank of Zambia passed the Anti Money Laundering Directives in pursuant to the powers contained in section 12 (4) of the Prohibition and Prevention of Money Laundering Act. The Bank of Zambia, Anti - Money Laundering Directives are designed to regulate institutions licensed or supervised by the Bank of Zambia under the Banking and Financial Services Act.³⁶ These directives have also criminalized the offence of money laundering.³⁷

2.2 Evolution of Money Laundering Legislation in Zambia.

The genesis of money laundering legislation in Zambia can be traced to the passage of the Narcotics Drugs and Psychotropic Substances Act of Zambia of 1993,³⁸ (now Cap 96 of the laws of Zambia under volume 7).

36. Cap 387, of the laws of Zambia.

37. Section 23, of the Bank of Zambia Directives 2004

38. Act no. 37 of 1993

The Narcotics and Psychotropic Substances Act repealed and replaced the Dangerous Drugs (Forfeiture of Property) (Special Organisation) (Drug Enforcement Commission) Regulations, Act no.7 of 1989. The Narcotic Drugs and Psychotropic Substances Act was promulgated on 1st September, 1993 by statutory Instrument no. 139 of 1993. This Act included such offences as the importation and exportation, production, possession, trafficking and the use of narcotic drugs and psychotropic substances including money laundering.³⁹ This was the first time in the history of Zambia's legislation that the activity known as money laundering was defined and proscribed in an Act. The Act also provided for stiffer penalties and the forfeiture of illegal property.

This legislation did not address money laundering per se but was instrumental in the conceptual foundation of the Drug Enforcement Commission which was created to prevent trafficking in narcotic drugs and psychotropic substances. It is worth noting that money laundering was linked to drug trafficking at the time and this can be traced to the enactment of the Dangerous Drugs Ordinance in 1926 by the Northern Rhodesia government as a result of the abuse of cannabis by some local tribes.⁴⁰

Additionally, this Act did not criminalize money laundering and had many shortcomings in addressing the predicate offence of money laundering in Zambia. The provision relating to money laundering was inadequate as the offence of money laundering was too complex to be properly prosecuted using this Act.

39. Section 22, of Act no.87 of 1989 of the laws of Zambia.

40. Proclamation no. 10 of 1923 of the Northern Rhodesia Government.

The legislation of the Narcotic Drugs and Psychotropic Substances Act by the Zambian government was in recognition of the drug trafficking problems especially mandrax trafficking by some prominent Zambian nationals ⁴¹and also as a follow up to the enactment by the United Nations of the Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act of 1988 (The Vienna Convention).

Recognizing the inadequacy of the Narcotic Drugs and Psychotropic Substances Act in addressing the problem of money laundering, the government in 2000 enacted the Money Laundering Prevention and Prohibition Act, No. 14 of 2001 to address the money laundering challenges at the height of the mandrax trafficking incidents involving Zambian nationals being arrested abroad. There was also conditionality for aid to the new government of Frederick Jacob Titus Chiluba, following threats by donors on aid for appointing a self confessed drug trafficker to the Cabinet. ⁴²

The effectiveness of the new legislation was captured in the case of **Stella Chibamba and Niseo Farms Limited v. The Commissioner, Drug Enforcement Commission and the Attorney General and Stanbic Bank Zambia Ltd.**⁴³ Judge Philip Musonda held that “the objective of money laundering legislation is to keep dirty money dirty and to incapacitate the whitening of dirty money”.

41. Zambia Daily Mail, December, 9 1984. referring to the arrest of Mrs. Susan Nyauhango Chakulya in India for trafficking in mandrax tablets.

42. The Post Newspaper, March 23, 2000. referring to the appointment of Mr. Vernon Johnson Mwaanga to the new Cabinet of Movement for Multiparty Democracy (MMD) after he had publicly confessed to trafficking in mandrax tablets.

43. 2003/HP/0242

2.2 International instruments Influential to the enactment of the local legislation.

The fight against money laundering in Zambia has to a large extent been shaped by international instruments and initiatives as this has traditionally been linked to the international fight against Narcotic drugs and Psychotropic Substances. The most prominent of these instruments is the enactment of the United Nations Convention Against Illicit Traffic in Narcotic and Psychotropic Substances (1988) (The Vienna Convention) whose purpose was to address more effectively the various aspects of illicit traffic in narcotic drugs and psychotropic substances, the Basel Principles on the Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering (December 1988). Subsequently, the Zambian government also passed the Narcotic Drugs and Psychotropic Substances Act of 1993, and prior to that, the Drug Enforcement Commission was established in 1989 under the Dangerous Drugs (Forfeiture of Property)(Special Organisations)(Drugs Enforcement Commission) Regulations 1989.⁴⁴

The Financial Action Task Force on Money Laundering (FATF): The forty recommendations (1996), The Kingston Declaration on Money Laundering (5-6 November 1992), The United Nations Model Money Laundering and Proceeds of Crime Bill (2000).

44. SI no. 87 of 1989 of the laws of Zambia.

The European legal instruments and initiatives also helped develop the contours of the Zambian jurisprudence on money laundering, these included technical assistance to the Drug Enforcement Commission. Notable among these instruments are the Egmont Group of Financial Intelligence Units (The Hague, 13 June 2001) and the Wolfsberg Principles.⁴⁵ Furthermore, the terrorist attacks of September 11, 2001 in the United States of America greatly intensified the momentum of putting into force an effective mechanism to counter terrorism financing and money laundering. This period saw the enactment of the current Anti Money Laundering legislation in Zambia, the Prohibition and Prevention of Money Laundering Act, 2001.

Internationally, the money laundering fight had a new concept of terrorist financings and activities. By contrast, this was not the case in Zambia, as the offence of money laundering is mainly associated with drug trafficking, child and women (human) trafficking, Prostitution, corruption, fraud and certain forms of organized crime. Again, during this time, the Zambian economy was liberalized and there was an influx of new smaller banks that entered the Zambian financial market, shortly however, a good number of them collapsed due mainly to bank fraud and money laundering offences.⁴⁶

45. Basel Committee on Banking Supervision. Customer Due Diligence for Banks (October 2001); Guidance for dealing with "Politically Exposed Persons" issued in response to the Sani Abacha money laundering corruption scandal.

46. The People v. Benedict Ashley Disouza and Others and (The United Bank of Zambia)SSP/8/2001 No. HPA/11/2003 when magistrate Mwamba Chanda jailed 4 Manager of United Bank of Zambia for money laundering activities.

2.4 Benefits from enactment of the Legislation.

The benefits underpinning the legislation of the Prohibition and Prevention of Money Laundering Act, 2001 in Zambia are designed to ensure that there is an internationally accepted, effective and efficient risk management instrument that is in compliance with international measures to counter money laundering activities.

The genesis of this enactment goes back to the passing of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act 1988 (The Vienna Convention). It must be mentioned that the first conference to sensitize the public on money laundering was held in Lusaka in March 1995 at which the government made its case for an effective anti money laundering legislation to cure the money laundering mischief. Some of the benefits in enacting this piece of legislation are premised on the following:

- (a) To mitigate the reputational risk arising from erosion of investor confidence in the country's financial system/market. This enactment will steer investor confidence in the financial system and ultimately encourage Foreign Direct Investment.
- (b) To deter would be launderers by showing that crime does not pay and that there is no amnesty to perpetrators of serious economic crimes. Money Laundering as a predicate offence is a serious crime which should be treated as an economic crime.
- (c) Government complying with international donor's aid conditionality of good governance after the third republic under the Movement of Multiparty Democracy (MMD) ushered in multipartism and liberalized the economy.

- (d) To restore the country's international image as this was a period that saw a rising number of drug related predicate offences especially mandrax trafficking peddled by prominent Zambian nationals outside the country and the image of the government was eroding as a safe investment destination.⁴⁷
- (e) To mitigate the legal risk to Banks arising from potential lawsuits due to failure to observe the internationally accepted standards for combating money laundering.⁴⁸
- (f) To mitigate thriving criminal offences such as illegal child and women (human) trafficking, prostitution, corrupt practices by public officials and drug trafficking.
- (g) To mitigate the potential risk associated with corrupt activities during the privatization of government run parastatal companies. This benefit became evident as the government after 1991 began the privatization of government owned companies, but whether corruption was mitigated during this phase of economic liberalization is another case to be proved.
- (h) To mitigate the risk inherent with loss of government revenue associated with tax evasion, as a predicate offence.
- (i) To mitigate the risk associated with a thriving informal sector which is un banked and where the government does not collect any tax. This was particularly evident with the closure of the government owned companies due to privatization and the resultant thriving black market which evidently meant low government revenue through tax collections.

47. Ibid no.41

48. Financial Action Task Force (FATF) 40 recommendations. These have been recognized as the international standards for combating money laundering and financing of terrorism. They include such control measures as know your customer (kyc), suspicious transactions, customer due diligence.

(j) The legislation of the Act was going to reduce losses due to fraudulent activities associated with the financial industry as there was no effective legislation to fight the scourge. This led to the enactment of the Computer Misuse and Crimes Act 2004 to address the threat of money laundering using Cyber crime in the financial industry.

(k) To fight all forms of serious economic crimes and corruption in general.

(l) To mitigate economic distortions and instability as money launderers are often not interested in profit generation from their investment but rather in concealing their identities and source of proceeds.

Conclusion.

This Chapter has looked at the conceptual foundation of the money laundering legislation in Zambia. Acknowledging that the problem of money laundering has since colonization been associated with the offence of drug trafficking and particularly cannabis smoking by the local tribes in the Gwembe valley. The colonial government passed the Dangerous Drugs Ordinance Proclamation No. 42 of 1923. From this Chapter, it is also clear that money laundering is more than just drug trafficking but includes other forms of criminal predicate offences such as fraud, child and women (human) trafficking, prostitution and corruption.

In Zambia, money laundering as a crime was first legislated against with the enactment of the Narcotic Drugs and Psychotropic Substances Act of 1993, this was later repealed and replaced by the current legislation, the Prohibition and Prevention of Money Laundering Act, 2001.

International instruments and initiatives have helped shape the contours of money laundering legislation in Zambia, there is testimony to the fact that the problem of money laundering is an international criminal offence with no boundaries. The myriad definitions of money laundering so far explored are useful and will be used in understanding the nature of money laundering in the unregulated sectors of the economy. The next stage examines the mandate of the supervisory authorities under the Act and the extent of its supervisory influence on the informal sector and the non financial sectors which are the focus of this paper.

CHAPTER THREE: NATURE AND CONTENT OF THE ANTI-MONEY LAUNDERING ACT.

3.0 NATURE AND CONTENT.

The Prohibition and Prevention of Money Laundering Act has statutory provisions for Supervisory authorities to regulate institutions that they supervise. The main thrust of their responsibility is the disclosure of information, on suspicion of money laundering activities by regulated institutions to the anti money laundering investigations unit. Supervisory authorities include any institution that plays a supervisory role as stated in the Act.⁴⁸ This inclusion of many supervisory authorities has dispelled the traditional notion that money laundering follows a traceable three stage process of placement, layering and integration.

The placement stage involved the placement of the illegal proceeds into the legitimate financial system (banks), the layering stages involves the ‘washing’ of the illegal money through a series or ‘churning’ of transactions so as to obfuscate the audit trail and render the money untraceable. And the last stage of integration involved the repatriation of the money by the criminal offender either in cash or property. These three stages form the traditional money laundering techniques and are closely associated with drug trafficking and financial crimes such as bank fraud, credit card fraud, and investment fraud. The essence of fraud in these activities is that the perpetrator was enriched at the expense of the victim through the use of a scheme or artifice to defraud.

48. Article 2 of the Act.

In addition to the financial sector related activities, new typologies are emerging which involve cyber payments technology, re-insurance payments through the insurance industry, corruption, human trafficking and explains the inclusion of other sectors of the economy as supervisory authorities in the Act.

This Chapter will look at the legal provision relating to the Supervisory authorities and the various enforcement mechanisms that have been instituted as regulatory frameworks.

The statutory provision in the Prohibition and Prevention of Money Laundering Act, 2001 which deals with Supervisory authorities is section 12. The Section also provides for the duties of the supervisory authority. Specifically, Section 12 provides that:

- (1) Where a Supervisory Authority obtains any information, that a business transaction indicates that any person has or may have been engaged in money laundering, the Supervisory Authority shall, disclose or cause to be disclosed that information to the Unit.
- (2) A Supervisory Authority shall not obstruct any investigation into money laundering that may be instituted by the Unit under this Act.
- (3) Any Officer of a Supervisory Authority who is responsible for or causes the Supervisory Authority to obstruct any investigations under this Act shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding five years or to both.

(4) A Supervisory Authority shall issue such directives as may be approved by the unit which may be necessary for the regulated institutions to prevent and detect money laundering.

3.1 Regulated Institution.

A regulated institution is defined in section 2, of the Act, as an institution regulated by the Supervisory Authority. It is expected that Supervisory Authorities will issue directives to the regulated institutions in compliance with the provision in Section 12(4). Suffice to say that pursuant to this section, the Bank of Zambia issued the Anti- Money Laundering Directives of 2004 to regulate Banks or financial institutions that are licensed and supervised by the Bank of Zambia ⁴⁹ under the Banking and Financial Services Act. ⁵⁰. Failure to follow these directives can be fatal for Banks as illustrated in the case of **The People v. Benedict Ashley Disouza and Others and (The United Bank of Zambia)**. ⁵¹ The defendants in that case appeared before the subordinate Court in Lusaka charged with 56 counts of money laundering, forgery and failing to comply with Bank of Zambia directives. The facts of the case are that between 1st January 1999 and 28th February 2001, the accused persons opened two fictitious bank accounts using fraudulently obtained documentation in the names of different persons at the Ndola and Kitwe United Bank of Zambia Branches. The accused were all directors of the same bank.

49. Section 2 of the Bank of Zambia Anti-Money Laundering Directives, 2004

50. Cap. 387 of the laws of Zambia.

51. SSP/8/2001 and HPA/11/2003

They deposited huge sums of money in the two fictitious accounts (i.e. money acquired from illegal activities) and later on had that money externalized out of the country.

The total amount externalized out of the country during the period mentioned almost amounted to four (4) billion kwacha i.e. US\$925,879.00. The accused persons were all convicted and sentenced to one (1) year imprisonment with hard labor and in addition were fined nineteen (19) million kwacha i.e. US\$5,000.00. Subsequently, the Bank of Zambia also closed the bank for unsound banking practices.

On appeal, the High Court Judge, J.A.Banda dismissing the appeal noted as follows” as already established these large amounts of money entered the United Bank of Zambia system through the fictitious accounts opened in the names of Lesley Mulenga and Justin Sakala. The two had no idea of the accounts purporting to be theirs. Obviously, whoever was the source of these large amounts of money did not want to be known and did not want the source of the money to be known. That is the reason why the accounts were opened in fictitious names so that the true source of the money and its owners could remain concealed. It must be appreciated that concealment of the sources and its owners is the essence of the crime of money laundering”.

The Bank of Zambia Directive was issued to include non financial institutions such as the Bureau de change and the micro- financial institutions. However, most of the directives do not apply to the bureau de change and these include subsections (3) and (4) of section 6 of the directives and also directives 7B, 8, and 9. Specifically, subsection (3) of section 6 states that;

A regulated financial institution shall identify the beneficial owner of an account opened with it and any person using remittance and safe custody facilities, and if the regulated institution fails to ascertain the identity of such owner or person, it shall make a report to the Anti Money Laundering Investigations Unit.

And subsection (4) states; A regulated institution shall establish clear procedure on how to identify a customer who applies to open an account through the internet or other electronic means, and shall not permit a customer to establish a business relationship through this means unless the identity documents of the customer have been verified or confirmed.

This exclusion is also covered by the FATF Standards.⁵²

Specifically, directive 7B deals with the verification of names and addresses of an individual desiring to open an account with the institution. Directive 8, deals with the verification of corporate customer's names and addresses. This is so because Bureau de change do not maintain customer accounts. As stated earlier, Bureau de change pose an increasing money laundering threat because they tend not to be as heavily regulated as traditional financial institutions.

As they are not heavily regulated, there is an increasing exposure from criminal elements who in most cases do not maintain accounts with the bureau de change but will transact through these institutions, and can thus hid the source of their ill gotten funds through the currency transactions.

52. Ibid no 48.

The author of this paper conducted a survey among the local bureau de change in Lusaka to check compliance with the Bank of Zambia, Anti money laundering Directives 2004 on the sale and purchase of foreign currency.

Additionally, FAFT recommendation no. 17, encourages countries to ensure that effective, proportionate and dissuasive sanctions, are available to deal with natural or legal persons that fail to comply with anti-money laundering requirements. The Prohibition and Prevention of Money laundering Act has complied with this requirement through section 13 (4) (5) which provides for sanctions in case of non compliance.

It is a Bank of Zambia requirement that every transaction be accompanied by a receipt BDC form 5 which is audited by Bank of Zambia officials to confirm compliance with the daily foreign exchange sales and purchases and these are supported by the currency transaction report. The maximum amount of foreign currency an individual can transact either by way of selling or purchasing is only US\$1,000.00 per day. The survey revealed that the rules are merely designed to restrict transactions in excess of US\$1,000.00 from one bureau de change per day, but they do not restrict any body from transacting from more than one bureau de change in a day. Further, it is possible for one to transact from one bureau amounts in excess of the threshold limit of US\$1,000.00 as some bureau de change do not issue transaction receipts to customers. This in itself has made the directive an exercise in futility unless stringent measures are put in place to regulate these business enterprises.

This whole scenario is similar to **Surfing**, a term used to describe a laundering technique/method Scheme that involves criminals making multiple transactions of less

than the reporting threshold in order to cause financial institutions to avoid filing currency transaction reports. This increases the risk of money launderers abusing the system and thereby cleaning their ill gotten funds and also makes the currency operations regime porous.

In Ghana, the regulatory requirement is that one can only cash the equivalent of US\$10,000.00 per day as a regulatory control mechanism, similarly, an individual is allowed to take out of the country the equivalent of US\$10,000.00. This requirement is the same for the Republic of South Africa. In Zambia, any amounts in excess of the US\$1,000.00 will require the involvement of the treasury money market dealers in each and every registered Commercial Bank but does not apply to the Bureau de change. This is in compliance with the Act, as the Bureau de change do not carry out due diligence requirements on customers. Fears have also been raised by a leading Economic Consultant, Mr. John Kasanga,⁵³ who stated that “Zambia’s foreign exchange system was open –ended it could be used by unscrupulous businessmen for money laundering purposes”

This has been evidenced by the increase in trading companies (and other brief case companies) being setup to act as funnels for foreign exchange repatriation.

This can be done through portfolio investments whereby in the quest to attract investment the government is attracting investors to bring in foreign exchange and take out their foreign currency as profits hassle free.

53. Times of Zambia, 1st December 2009.

A similar interview was conducted with some traders in the informal sector, specifically, at Comesa market as they use foreign currency to buy their commodities from the Comesa countries. It was evident that the majority do not maintain bank accounts and buy their foreign currency from Bureau de change.

These exceptions will not apply to some micro financial institutions which now maintain customer accounts and take in deposits. It is expected that these new lending institutions will be heavily regulated by the Bank of Zambia Anti-Money laundering directives, 2004, where the guidelines for purchase of excess foreign currency is done through the treasury money market dealers.

3.2 Professional Bodies

The Accounting profession has also included the anti money laundering requirements in the ZICA Act. However, the challenge for Accountants has been that most of the money laundering offences involve Accountants in the public sector who are not members of ZICA therefore not regulated by the ZICA Act. In an interview ⁵⁴ with Mr. Chintu Mulendema, the President of ZICA who stated that they have compelled the government to ensure that all senior government employees who profess to perform the accountants function must join as members of the institute.

Further, the Accountants Act requires that any employer who does not comply with the above provision is bound to pay a fine of K90m or be imprisoned for a period of 5 years.

The last provision on penalties is in line with section 13(5) of the money laundering Act 2001.

54. Interview: date 27th November 2009

All these measures are designed to effectively regulate individuals who perform the Accountants function by ensuring that they comply with the Anti money laundering provisions both in private and public offices. It can be argued however, that the Accounting institute can go a step further by issuing directives on money laundering so that they are in compliance with the provisions relating to supervisory authority especially in view of the many financial irregularities highlighted in the annual Auditors General's reports.

The Law Association of Zambia on the other hand is the Supervisory authority for the legal profession. Like the Accounting profession, it has not issued directives as a supervisory authority. This is so because the Legal profession is generally protected by the client's legal privileges and this has tended to offer the launderers the anonymity of the solicitor- client privilege and at the same time crooked lawyers have used it to foster their criminal activities.

A new trend is emerging among lawyers to launder money through inflated legal claims as they spin webs of intricate transactions to mask the origin of these criminally derived funds. The recent case of two Lusaka Lawyers who were arrested by the Drug Enforcement Commission (DEC) for alleged money laundering activities involving inflated legal claims amounting to K2 billion on legal fees arising from debt collection is a case in point.⁵⁵

55. The Sunday mail, November 8th 2009. involving Nicholas Okware a private lawyer and Steven Simwanza , a Senior State Advocate at the Attorney General's Office in Lusaka

The question begging answers is what regulatory mechanism does Law Association of Zambia have in place to regulate the profession conduct of lawyers apart from merely imposing the penalty of withdrawing the lawyers practicing certificate and banning the lawyer from practicing law in Zambia for a stipulated period of time. It would seem that the Drug Enforcement Commission, Anti Money Laundering investigation Unit will have to pursue the criminal element of money laundering where a prima facie case has been established by a competent court of law and it might lead to seizure of property and/or a possible sentence upon conviction.

In the case of **LAZ and Forrest Price and Company v. Zambia Revenue Authority and AG**,⁵⁶ Justice S.M.Simachela held” ...it becomes an unpardonable procedure and a strange one to the legal practitioners to be compelled to open up books of accounts before strangers, revealing the financial standing of their clients”

This he emphasized, “Is based on the client’s legal privilege, a principle upon which the legal profession is founded and has been preserved not only in Zambia but within the entire common wealth”.

Interestingly also, lawyers, notaries, other independent legal professionals and accountants acting as independent legal professionals, are not required to report their suspicions if the relevant information was obtained in circumstances where they are subject to professional secrecy or legal professional privilege, unless the information is used to further criminal activities.⁵⁷

56. (1999) HN/412

57. FATF Standards – FATF 40 Recommendations, recommendation no. 16 p. 6

3.3 Unregulated Institutions (Sectors).

The challenge with the Prohibition and Prevention of Money Laundering Act seriously involves institutions that are not regulated such as the churches and the traders in the informal sector.

3.3.1 Churches

Lieutenant General Ronnie Shikapwasha, the Zambian government spokesperson stated that most church members go into Pastor hood for monetary gain only.⁵⁸ After declaring Zambia a Christian nation in 1991, there has been a proliferation of private churches mostly Pentecostal churches whose church leaders have either purchased or built mansions and driven posh cars within a short period of establishing a church.

These churches are usually family or individually oriented in nature i.e. they are managed by an individual Pastor and/or in some instances by a husband and wife.

A recent incident involving a church Pastor who established a church in Kanyama compound of Lusaka and within a short period of its establishment, the Pastor decides to sell the church building and disappears with the sale proceeds, without the knowledge and consent of the poor church members who would have sacrificed the little money they possessed in life is a case in point.

A phone in radio programme on one of the local radio stations on the mushrooming churches, the general consensus by the callers was that most Pastors go into this calling for employment purposes, whilst others alleged that it was purely for monetary gain and that their activities are suspect as they are not rigorously regulated.⁵⁹

58. Zambia Daily Mail, 20th November, 2009

59. Sky Radio, sky discussion forum, 25 the November 2009 at 09:00hrs.

Another example of a Pastor of Congolese Origin, who was charged with the offence of human trafficking, is also a case in point. The Pastor was charged with the offence after customs officers at Chirundu border post bordering Zimbabwe found more than thirty children from Congo enroute to South Africa to allegedly be sold as prostitutes and pimps.

And to exemplify the suspicious activities involving these Pastors, recently a local Pastor was swindled out of US\$62,000.00 in a deal involving the purchase of gold.⁶⁰ One would wonder how the church would involve itself in such dubious business transactions when its line of business is to preacher the word of god!

In an interview conducted with Ms Susana Matale,⁶¹ the General Secretary of the Christian Council of Zambia, who acknowledged the challenges relating to money laundering vices within the church in Zambia. She reiterated that it was difficult for the church mother bodies to regulate the activities of the Pastors as they were not involved in the vetting process of these church Pastors during registration with the registrar of societies.

Furthermore, there are three different Christian church mother bodies in Zambia today namely the Christian Council of Zambia regulating the traditional churches, The Zambia Episcopal Council regulating the Pentecostal and the Evangelical Fellowship of Zambia for the Evangelical churches.

60. Post newspaper, 14th December 2009, referring to Pastor Danny Pule who was swindled out of us\$62,000.00 in a fake gold transaction

61. Interview: dated 30th November, 2009.

This has made the task of regulating the churches very difficult. For example, the Christian Council of Zambia can not discipline a Pastor under the Evangelical Fellowship of Zambia and vice versa.

Empirical evidence so far suggest that these vices are common among Pastors in the Pentecostal churches where the proliferation of churches has been phenomenon compared with the traditional churches since the declaration of Zambia as a Christian nation in 1991.

To compound the situation further, most financial institutions take in church deposits as mere contributions without querying the source of the money. This has also contributed to making this sector porous to money launderers.

An interview with Mr. James Kalambata, ⁶²the Senior Compliance Manager at Barclays Bank who confirmed that the Banks in taking deposits from Churches will assume that the funds are weekly contributions by the church members, it is almost impossible to suspect any money laundering vices. He was quick however, to state that the suspicious transactions guideline will always apply where the Bank suspects that the amount is at variance with the normal deposits of the church. It is difficult to determine what would be a normal weekly deposit in any case.

3.3.2 Informal Sector

The informal sector comprising mostly of cross border traders is another case of unshackled (unregulated) sectors of the Zambian economy, and by its very nature money laundering implies tax evasion.

62. Interview: dated 4th December 2009.

The informal sector is comprised of individuals who mostly do not maintain bank accounts and don't pay tax. In the case of Zambia, this is noticeable, where there is a thriving informal economy without a corresponding increase in tax collections by the Zambia Revenue Authority.

The change from a COMESA Free Trade Area to a COMESA Customs Union has come with its challenges for the Zambian traders. The dollar syndrome which has become a common phenomenon of doing business in the COMESA region coupled with the fact that the Zambian economy is mostly a trading economy with a small manufacturing base compared with other COMESA countries.

An interview with a member of the Cross Border Traders Association of Zambia who opted to remain anonymous,⁶³ he lamented that the sector is not regulated and as such they do not know how the members source their financing given that most of them do not maintain bank accounts and at the same time lack collateral for any borrowing.

It is clear that recent events involving church Pastors requires that this sector self regulates by having anti - money laundering guidelines in compliance with the supervisory authority requirements of the Act.

Equally, the thriving informal sector needs a supervisory authority which should be regulated.

63. Interview: dated 30th November, 2009

Conclusion.

This chapter has looked at the financial supervisory authority of the Bank of Zambia in relation to the Banks and non Bank financial institutions like the Bureau de change. It is clear that the Banks follow a regulated supervisory regime from the recruitment of the topmost executives to the account opening procedures. The Banks are also guided by the FATF Standard guidelines on the account opening requirements and the Basel Principles on the Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering. All these are designed to ensure that the Prohibition and Prevention of money laundering Act 2001, is adhered to and that in cases of non compliance, punitive action is taken accordingly. In addition, the chapter examined the challenges of money laundering in the Zambian banking sector after the liberalization of the market with its attendant money laundering challenges.

The Bureau de change is not heavily regulated and there is evidence that this area can be exploited by the criminal mind to foster their money laundering activities. The central bank will need to give further local guidelines to regulate this area more.

The chapter also alluded to money laundering challenges in the two professional areas of Accountants and Lawyers. These two belong to a class of professional money laundering “facilitators” whose services are employed to assist in the disposal of criminal proceeds and profits through client accounts. They however, enjoy the anonymity of professional secrecy and solicitor-client privilege. The accountants have embraced the Anti-money laundering Act, 2001 by including their oversight responsibility in the ZICA Act.

Also, the chapter examined and highlighted the supervisory shortcomings of the unshackled areas which include the churches and the thriving informal sector. These two pose the biggest challenge as they have no effective supervisory authority to check their activities. This is an area which can not be left to the small team of Anti -Money laundering investigation officers at the Drug Enforcement Commission, as the task and challenges in this area is huge. Whereas, the weakness in the church have been linked to a lack of coordination and involvement of the three Christian church mother bodies in vetting the registration process of the new churches, the informal sector weaknesses have been characterized by lack of an effective supervisory monitoring mechanism with appropriate sanctions especially with the world cup in South Africa looming on the horizon.

CHAPTER FOUR: THE WAY FORWARD.

4.0 Limitations of the Legal Framework.

The current legal framework against money laundering activities is governed by the Prohibition and Prevention of Money Laundering Act, 2001 of the laws of Zambia.

The Anti-Money Laundering Investigations Unit under the Drug Enforcement Commission is responsible for all money laundering investigations. The Act has made statutory provisions for Supervisory Authorities which are responsible for institutions they supervise.

The Bank of Zambia issued its Directives on money laundering activities and these are meant for financial institutions that are gatekeepers. Along the same lines, it is argued that other Supervisory bodies including organizations responsible for regulating gatekeeper, emulate the Bank of Zambia and issue similar directives on money laundering activities.

4.1 Adequacy of the Act.

The Anti-Money Laundering Act has adequate provisions to address the challenges of money laundering in Zambia. However, it has limitations which have been identified and were not envisaged at the time of its crafting. The challenges of money laundering activities in the public sector have compelled the Zambian Government to propose the creation of the Financial Intelligence Unit (FIU) at the Ministry of Finance to deal with

financial crimes by civil servants who have acquired properties beyond their means
⁶⁴...this mandate according to the Money Laundering Act constitutes a predicate offence of money laundering. ⁶⁵ The question then is what role is the FIU at the Ministry of Finance going to play? Will it have a Supervisory Authority role, Investigate role or will it perform the same function as the Anti-Money Laundering Investigations Unit? Depending on the typology of this FIU, it may end up with only Administrative and Investigate powers on financial crimes in the public service only and leave the prosecuting powers with the Anti- Money Laundering Investigation Unit which has the expertise to prosecute such matters in the current mandate.

4.2 Effectiveness of the mandate of the Unit.

The Anti-Money Laundering Investigations Unit's mandate to investigate and prosecute money laundering cases is governed by the Prohibition and Prevention of Money Laundering, Act 14 of 2001.⁶⁶

Whilst it is argued that the effectiveness of the Unit is compromised by its politically charged organizational setup, especially the sharing of the same Head with the Drug Enforcement Commission, it is also true that this has resulted in the Unit having no political independence and accountability.

The Unit's statutory functions are shrouded in the Act ⁶⁷as follows:

1. To collect, evaluate, process and investigate financial information including that from regulated institutions and supervisory Authorities, relating to financial and other business transactions suspected to be part of money laundering offences.

64. The Post, Tuesday January, 26, 2010

65. Ibid, s. 2

66. Ibid, s. 6(1) (b)

67. Ibid, s.6 (1)

2. To conduct investigations and prosecutions of money laundering offences.
3. To liaise with other law enforcement agencies in the conduct of investigations and prosecutions of money laundering offences.
4. to supervise the reporting requirements and other administrative obligations imposed on regulated institutions and Supervisory Authorities under the Prohibition and Prevention of Money Laundering Act, 2001
5. to assist in developing training programmes for use by regulated institutions and Supervisory Authorities in the implementation of the Prohibition and Prevention of Money Laundering Act, 2001 and
6. To cooperate with law enforcement agencies and institutions in other jurisdictions responsible for investigations and prosecution of money laundering offences.

It is clear from the above functions that its mandate is heavily linked to regulated institutions and Supervisory Authorities. This has created inherent weaknesses in the fight against money laundering in the unshackled sectors of the society.

The effectiveness of the Unit's mandate in unshackled sectors is therefore not good. It is for this reason that recommendations are proposed to address some of the shortcomings in these sectors.

4.3 Proposed Recommendations and the Way Forward.

4.3.1 Creation of Public Financial Intelligence Unit.

The formation of the Financial Intelligence Unit (FIU) under the Ministry of Finance will help tackle money laundering challenges associated with plush housing developments

and acquisition of posh cars by junior civil servants whose source of income is linked to alleged financial misappropriations. The presence of qualified personnel at the Ministry of Finance on financial matters will help run the new Financial Intelligence Unit which will be based on a hybrid of administrative and investigative powers on financial irregularities in the public sector.

4.3.2. Reformation of current legislation.

The reformation of the current legal framework on money laundering to address the shortcomings and take into account the Financial Intelligence Unit being created at the Ministry of Finance and National Planning.

To further mitigate the money laundering weaknesses identified in the unregulated sectors of the economy, the following recommendations are proposed:

4.4 The Churches

4.4.1 Formulation of Directives

There is need for the three Church Mother bodies namely the Evangelical Fellowship of Zambia (EFZ), the Christian Council of Zambia (CCZ) and the Episcopal Council of Zambia (ECZ) to come together and formulate Anti-Money Laundering Directives for the churches to adhere to. This is in line with the provisions under section 12 of the Money Laundering Act, 2001 on Supervisory Authorities responsible for gatekeepers. The Bank of Zambia Directives are a good example cited in this research paper meant to regulate institutions supervised by the Bank of Zambia.

4.4.2. Vetting Process.

The three Church mother bodies (CCZ, ECZ, and EFZ) in the proposed Directives to request that they be involved in the vetting process of any new church before it is

registered with the Registrar of Societies. This vetting process will ensure that bogus and Pastors of unquestionable characters will not be allowed to form new churches. It will also empower the Church mother bodies to deal with any ailing Church/Pastor on money laundering matters. This act will provide a steer going forward as lack of coordination and guidelines on Money Laundering matters between the three Church mother bodies and the Registrar of Societies is currently an impediment.

4.4.4. Sanctions

The inclusion of punitive measures will deter would be money launderers from joining the Pastor hood. The measures to include de-registration of the Church concerned, barring the Pastor involved from preaching for a certain number of years and imprisonment where the courts of law are able to establish a prima facie case against the Pastor. These are punitive measures taken by other Supervisory Authorities such as LAZ and ZICA.

4.5 Informal Sector.

The following proposals are made to counter the high prevalence of money laundering incidents mostly involving individuals in the informal sector;

4.5.1. Strengthening of FIU.

The strengthening of the Anti-Money Laundering Investigations Unit with sufficient resources to enable it effectively and independently investigate and prosecute money laundering incidents in the Informal sector.

4.5.2. Training

The extension of Anti-Money Laundering training activities by the Anti-Money Laundering Investigations Unit in modern money laundering techniques to the

unshackled sectors, especially in view of the up coming world cup event in South Africa. It is expected that the incidents and occurrences of money laundering activities is likely to increase in the region.

4.5.3. Increased Funding.

The government to increase funding to the Anti- Money Laundering Unit so that it can effectively undertake and extend its monitoring activities to the unregulated sectors and actively sensitise the public about the existence of the FIU and services they offer, the dangers of money laundering to the society .

4.6 Bureau de Change

The Bureau de change, although supervised by the Bank of Zambia, they are still not heavily regulated largely because they do not open customer accounts for them to do a due diligence check. However, it is still argued that the weaknesses identified in this research paper can still be mitigated by;

4.6.1. Training.

Compelling the Bureau owners to train Anti- Money Laundering staff serving in the Bureau de change. Most staff in the Bureau de change do not possess the requisite knowledge and expertise regarding matters of anti-money laundering, therefore training is necessary to equip them with the necessary skills so that they can fulfill their Anti-Money Laundering obligations.

4.6.2. BOZ Regular checks

Bank of Zambia to institute regular and effective checks of the Bureau de change by ensuring that they comply with the transaction reporting and mandatory completion of the

Form 5 (BDC) for each transaction in line with the Banking and Financial Services Act (BFSA).

4.6.3 Review of BOZ Directives on Non Banks.

Bank of Zambia to revisit the current Anti- Money Laundering regulatory framework on Bureau de Change so that it complies with the advances in financial and economic trends. The challenge is particularly on the non Banking Financial Institution Division of Bank of Zambia.

Conclusion.

This chapter has looked at the weaknesses of the current mandate of the Anti-Money Laundering and Investigations Unit of the Anti- Money Laundering Authority. Whilst the function of the Anti- Money Laundering Authority is to advise measures required to prevent and detect money laundering in the country, the Unit has not seriously focused on the unregulated sectors of the economy in the preventing and detection of money laundering.

The chapter has made recommendations to assist in mitigating money laundering activities in the Church and the Informal sectors which are not regulated and supervised. Further, recommendations have been made to the Bank of Zambia which is the Supervisory Authority of the Non Banking Financial institutions such as the Bureau de change.

CHAPTER FIVE: SUMMARY

Money Laundering is a complex phenomenon that has and will continue to affect us all, whether it is committed in the public sector by civil servants or by private individuals. The Anti - Money Laundering Act 14, of 2001 looks at ways of controlling money laundering activities in Zambia today. The Act provides the regulatory framework in the fight against the hideous predicate offence of money laundering. Since its enactment in 2001, other subsidiary legislations have been passed to enhance the fight against money laundering. Notable among them has been the Computer misuse and Crime Act of 2004 enacted to address money laundering activities associated with computer crime especially in the financial system.

The Anti Money Laundering Investigations Unit of the Money Laundering Authority is the gatekeeper of the Anti money laundering legislation and has both Investigative and prosecution powers . The other administrative Financial Intelligence Units are the Supervisory Authorities, like the Bank of Zambia who have issued Anti Money Laundering directives directed at the financial institutions which it regulates. Their functions relate to the administrative supervisory role they play and they report any case of money laundering activities to a law enforcement Agency notably the Police and Anti-Money Laundering Unit of the Money Laundering Authority who have powers to prosecute.

The thesis has also provided the genesis of the fight against money laundering in Zambia starting with the Colonial period under the British South African Company to the enactment of the current Anti - Money laundering Legislation. It has highlighted the development of the current law starting with the formation of the Drug Enforcement

Commission to fight unlawful activities involving narcotic drugs and later to the creation of the Money Laundering Authority under the Drug Enforcement Commission.

Further, the thesis identified the weaknesses of the current Anti- Money Laundering Legislation in the fight against money laundering activities, especially in the public sector where glaring financial irregularities are common and the unregulated sectors of the economy. The unregulated sectors included the church and the informal sector. Other weaknesses identified have been among professional bodies such as Lawyers, Notaries, and Accountants. It is important to acknowledge that outright elimination of money laundering activities is generally unrealistic. Hence the term 'controlling' money laundering activities is preferred.

Finally, the thesis has made possible suggestions in which the current legal framework can be reformed to address the new challenges which were not envisaged at the time of framing the law. Also, recommended possible suggestions on how the church can be regulated against money laundering activities, given the numerous Press reports on money laundering activities involving pastors. These suggestions included exploring the involvement of the three church mother bodies in vetting the registration of new churches and the issuance of Anti money laundering Directives to regulate the conduct of the churches/pastors.

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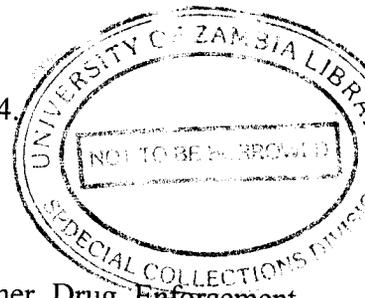
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