

appointment and only for very serious businesses. The ordinary citizen feels inadequate to approach these high- ranking officials. Therefore, the AMLA composition and structure should be simplified as much as possible in order to encourage the public to come forward with confidence that they will be treated with courteous. Indeed, the current composition is too highly-profiled and intimidating for ordinary Zambians who are the potential whistle blowers and informers. One would think that the ordinary Zambians are implicitly segregated from making STRs as they would have reservations in interacting with people of such high standing in society as the Attorney General and his team.

- vii) In terms of the legal duty of reporting suspicious transactions, and other reportings, the PPMLA should be revised to remove ‘absolute’ discretion from the concerned officers and establish some kind of standardised threshold of what transactions ought to be reported notwithstanding the concerned officer’s judgement. This would reduce the arbitrariness and complacency perpetuated by the wide latitude of discretion¹⁶⁰ under the current law.
- viii) With reference to fugitive perpetrators, Zambia needs to emulate jurisdictions like the USA,¹⁶¹ in strengthening its grip and fervency in soliciting countries hosting perpetrators to extradite them back to Zambia for possible trial. A properly formulated approach in this direction has since been held not to be a risk to international relationships.¹⁶² The same goes for *Letters Rogatory*; which are special court orders used in other jurisdictions to order the release of documents held in a foreign country but which documents are relevant to the prosecution of a case at hand.¹⁶³ Zambia should emulate the drafting and use of this important document in money laundering.

¹⁶⁰ *The United States v All Monies from Account Po-204 01327947-0011840 Wpe Somateria Foundation*, 91 F. 3d 160

¹⁶¹ *Proceeds of Crime Act* of 2002.

¹⁶² See the *Obiter dicta* of Cynthia Holcomb Hall, Circuit Judge in *United States v. Saccoccia*, 8 F.3d 795.

¹⁶³ See L. Fernandez, “Prosecutions and Assets Forfeiture” *op cit*

- ix) Zambia should take a deliberate policy of holding regular public debates and forums on which relevant information concerning the scourge of money laundering may be disseminated. This may include topics on the general awareness and consequences of money laundering as well as the laid down procedure of reporting suspicious transactions to the relevant authorities.
- x) The law corresponding to money laundering such as contempt proceeding need to be enhanced. The current trend tends to erode the independence of the judiciary and legitimacy of court decisions in that government leaders, including the incumbent President, have continued to issue sub judicial and contemptuous statements in the press concerning the on- going prosecutions of economic crimes. Most of all, the sensational Chiluba's acquittal is being openly commented on notwithstanding the fact that is a subject of judicial review proceedings in the High Court.¹⁶⁴
- xi) Zambia should emulate Nigeria in adequately training money laundering enforcement agencies on basic subjects of Human Rights and Constitutional Law for them to observe and respect the rights of suspected persons. They should be trained to appreciate the role of the public as suppliers of information and partners in crime detection and prevention.
- xii) Zambia should create an effective data collection and record-keeping methods in relation to the crime of money laundering and its predicate offences.
- xiii) Zambia needs to financially strengthen key institutions such as the police and ensure that the judiciary is independent, free and adequately funded. Money laundering is a crime directly involving huge volumes of cash and near cash instruments and persons involved in

¹⁶⁴ *Josephine Mumbi Phiri v The DPP ex parte FTJ Chiluba, op cit.*

its investigation and adjudication should not be left open to be tempted by bribery and other undue influences.

Of course Zambia, like most jurisdictions, with the exception of a few such as Germany,¹⁶⁵ has closed down some companies before but only for the actual commission of the crime¹⁶⁶ and not for failure to report suspicious transactions by their clients or allies. Secondly, there should be an exhaustive listing of all forms of illegal activities that could be considered to be predicate offences of the money laundering crime. Such listing could be in form of an annexure to the PPMLA.¹⁶⁷

xiv) In terms of constitutional considerations, the exercise of most the powers under the PPMLA such as divulging of bank secrecy, seizing and forfeiting of suspected property, *inter alia*, must not only comply with but be seen to be complying with the basic tenets of the rule of law so as to eliminate arbitrariness in the process. Therefore, in practice the courts should strike a balance of safeguarding the constitutional rights of the accused persons and serving society's demand to curb crime through retribution. That is to say, the author proposes that the courts should not apply the law "straight-jacket" by always aiming for property seizure and forfeiture in all cases as stipulated by the PPMLA, but should consider other relevant factors like the accused perpetrator's constitutional right to own property. Ultimately, the author's view, which might not be applauded by most scholars in

¹⁶⁵ Under Germany Criminal Law only natural persons, not legal entities, are subjects of criminal prosecutions as explained in R. Klinger and A. Sebok, "Survey Response, Laws of Germany" in Fafo, *Commerce, Crime and Conflict: A Survey of Sixteen Jurisdictions* (2006), 8- 10.

¹⁶⁶ See the Supreme Court decision in *Bank of Zambia v Aaron Chungu, Access Leasing Ltd and Access Financial Services Ltd*, SCZ Judgment No.15 of 2008 also cited as Appeal No. 163 of 2005.

¹⁶⁷ See detailed modalities of how to adopt this approach at www.aee/secsys/2005/rue/ml_in_ecowas_reviewd, 14.

the field, is that the ordinary and traditional sanctions of imprisonment and fining should be given priority over property forfeiture.¹⁶⁸

- xv) To strengthen the weak institutional framework, there should be a deliberate policy to pursue civil forfeiture and not criminal forfeiture as the forfeit property is administered by a judicial fund that can spend the proceeds of sold property to strengthen the police, buy cars for the AMLA, inter alia, in line with international practices.¹⁶⁹

Word count: 11, 907 excluding footnotes.



¹⁶⁸ However, in very complex and deserving cases, for ease of prosecution and considering lack of expertise, the prosecutors may opt for civil forfeiture, which is easier to accomplish because its threshold of the standard of proof is relatively lower than that for criminal forfeiture.

¹⁶⁹ See L. Fernandez, "Investigating Money Laundering 2" (September 2009), 2.

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