

INTERNATIONAL CRIMINAL JUSTICE FOCUS ON INVESTIGATION, PROSECUTION AND ADJUDICATION—A ZAMBIAN PERSPECTIVE

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I. INTRODUCTION

Like any other country in the World, Zambia is not exempted from organized crime. There are offences such as theft of motor vehicles, drug trafficking, human trafficking, and consenting to be smuggled into the country. Money laundering is equally on the increase in Zambia. The need to disrupt these organized crimes is imperative. This paper therefore seeks to highlight the scope of organized crimes in Zambia with reference to investigations, prosecution and adjudicating. The paper will also bring out the aspects of extradition and mutual legal assistance in organized criminal matters.

II. SCOPE OF ORGANIZED CRIME

Money laundering is prevalent in Zambia. This entails earning money from prohibited business activities, which is then methodically invested in genuine businesses, thereby concealing its real origin. Such activities can be disrupted with effective investigations and the judicial system.

Further, human trafficking is a global problem, and Zambia is affected by human trafficking as a designated country of origin, transit and destination of trafficked victims. With regard to human trafficking, Zambia has ratified the United Nations Convention Against Transnational Organized Crime and other Protocols. The Anti-Human Trafficking Act No 11 of 2008 Provides for the prohibition, prevention and prosecution of human trafficking. Trafficking is defined as “the recruitment, transportation, transfer, harboring or receipt of a person within or across a Zambian border by abducting, threatening coercion, fraud or deception, illegally adopting children, destroying or denying access to identity or travel documents or threatening to use abuse of the legal system or some other form of power, or giving or receiving payments to achieve consent for the purpose of exploitation.”¹

A foreigner may consent to be smuggled into Zambia. Most often trucks which ordinarily are supposed to ferry goods are used in commissioning of such well-coordinated and organized offences. Recently, 19 persons suspected to be Ethiopians suffocated in a truck and died due to lack of air. The same were being transported by a suspected trafficking syndicate in Chembe District in Luapula Province of Zambia.

Lastly, both foreigners and Zambians have often been nabbed within the confines of Zambia for drug trafficking and accordingly have been prosecuted in the courts of law. On 24th February, 2016,² The Drug Enforcement Commission (DEC) arrested two Zambians and a Tanzanian national for allegedly trafficking in 24.1kgs of cocaine. It was the highest seizure of cocaine recorded in Zambia. The three suspects were arrested in three different locations, the Intercity Bus Terminus, Matero in Lusaka and Chirundu, with the help of the Zambia Police Service. Arresting the perpetrator is one way of disrupting organized crimes.

It is clear from the foregoing that these offences have no boundary limitations and as such the impact is massive. An offence can be planned by locals with the help of foreigners thereby making it very difficult to fully deal with the consequences. The Zambian government through Parliament has established different institutions aimed at combating and disrupting organized crime, thereby enhancing criminal justice. Criminal Justice is a very vital component of law as it is anchored on the administration of justice through different established institutions of government. The criminal justice system ensures that persons who offend the law

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¹ Anti-Human Trafficking Act, 2008.

² Daily Mail Newspaper.

are punished, thereby deterring would-be offenders. This, in principle, leads to law and order.

III. INSTITUTIONS FOR COMBATING OR DISRUPTING ORGANIZED CRIME IN ZAMBIA: THE POLICE

The Police Service is the creation of an Act of Parliament.³ Like elsewhere, the police in Zambia are charged with the responsibility of ensuring that law and order prevail. The police also play the investigative role in offences of human trafficking. The police upon receipt of a complaint or receiving information regarding transnational crime, institute their investigations. The police do not work in isolation but with other countries and institutions of government. The police, after exhausting investigation, would as a matter of law charge and arrest the accused person with the subject offence. After the accused person has been charged, the docket is transmitted to the National Prosecution Authority for perusal, issuance of instructions and possible prosecution depending on the availability of evidence. It is clear from the foregoing that the police are crucial for disrupting organized crime.

IV. DRUG ENFORCEMENT COMMISSION

The Drug Enforcement Commission (DEC) was created by an Act of Parliament. The mission of the Drug Enforcement Commission is to prevent and control illegal cultivation, production, trafficking and abuse of narcotic drugs, psychotropic substances and money laundering activities in order to contribute to socio-economic development.

In December 2016 it was reported that the Drug Enforcement Commission had apprehended a Bolivian National and three Zambians. Nelson Guzman Baldovieso, 52, an office assistant in Bolivia with three Zambian women, trafficked and imported into Zambia over one kilogramme of cocaine, a banned and highly intoxicating substance. The drugs were hidden in the metal tubes of three suitcases while travelling from Bolivia to Lusaka using an Ethiopian Airlines flight. However, Drug Enforcement Commission officers intercepted him at Kenneth Kaunda International Airport. After thorough investigation, the accused persons were accordingly charged and prosecuted. The Subordinate Court convicted the Bolivian upon his plea of guilty and sentenced him to three years imprisonment with hard labour. This is an example of combating and disrupting organized crime.

The Drug Enforcement Commission (DEC) also investigates the organized crime of money laundering. This is done in the Money Laundering Unit within the precincts of the Drug Enforcement Commission. "Money laundering" means⁴: (a) engaging, directly or indirectly, in a business transaction that involves property acquired with proceeds of crime; (b) receiving, possessing, concealing, disguising, disposing of or bringing into Zambia, any property derived or realized directly or indirectly from illegal activity; or (c) the retention or acquisition of property knowing that the property is derived or realized, directly or indirectly, from illegal activity. Once DEC is alerted, it investigates and submits the case to National Prosecution Authority for prosecution.

V. THE NATIONAL PROSECUTION AUTHORITY OF ZAMBIA

The National Prosecution Authority (NPA) is an autonomous body established by the National Prosecution Authority Act No. 34 of 2010. The Authority is in charge of prosecuting people charged with criminal offences including organized crime. Its mission is to provide an effective and efficient prosecution service to the public in an accountable and transparent manner, in order to uphold the rule of law, justice and human rights.

Article 180(1) of the Constitution⁵ provides that there shall be a Director of Public Prosecution who shall be appointed by the President, subject to ratification by the Parliament. The Director of Public Prosecution is the chief prosecutor for the Government and head of the National Prosecution Authority.

³ Chapter 107 of the Laws of Zambia.

⁴ Prohibition and Prevention of (No. 14 of 2001 Money Laundering).

⁵ Amended Constitution Act No 2 of 2016.

Article 180(4) of the Constitution provides for the powers of the Director of Public Prosecution. It states that the Director of Public Prosecution may—

- (a) Institute and undertake criminal proceedings against a person before a court, other than a court-martial, for an offence alleged to have been committed by that person;
- (b) Take over and continue criminal proceedings instituted or undertaken by another person or authority; and
- (c) Discontinue, at any stage before judgment is delivered, criminal proceedings instituted or undertaken by the Director of Public Prosecution or another person or authority.

In order to effectively prosecute cases, the National Prosecution Authority has established units. One of them is the Taxation and Financial Crimes Unit. It is a notorious fact that any form of economic activity is coupled with criminal activity. However, the effects and prevalence of crime can be curbed by an efficient and effective criminal justice system. In response to this need, the Taxation and Financial Crimes Unit has been set up in the National Prosecution Authority to contribute to the nation's fight against serious economic crimes. The unit operates closely with law enforcement agencies that are tasked with the responsibility of investigating cases of a financial and economic nature such as the Anti-Corruption Commission (ACC), the Drug Enforcement Commission—specifically the Anti-Money Laundering Unit—and the Zambia Police Service.

Due to the trans-jurisdictional nature of economic crimes and the advent of cybercrime the unit also offers assistance and guidance to law enforcement agencies on issues of Mutual Legal Assistance. This involves engaging foreign governments in order to facilitate investigations and the gathering of evidence for use in the Courts of the Law of Zambia. Once the accused persons have been successfully prosecuted, the National Prosecution Authority may apply to have the proceeds of crime forfeited to the state.

It is clear from the foregoing that the power to prosecute all criminal cases in Zambia is vested in the Director of Public Prosecution who by law also delegates said authority to State Advocates. It follows that the existence of the National Prosecution Authority is fundamental in curbing organized crime such as human trafficking and money laundering activities.

VI. ADJUDICATIVE POWER

Article 118(1)⁶ provides that the judicial authority of the Republic derives from the people of Zambia and shall be exercised in a just manner and such exercise shall promote accountability. Judicial authority vests in the courts and shall be exercised by the courts in accordance with this Constitution and other laws. The Judiciary consists of 1) the superior courts and the following courts: (a) subordinate courts; (b) small claims courts; (c) local courts; and (d) courts, as prescribed.

The entry point for most criminal cases in Zambia including organized crime is the Subordinate Court. Though created by the constitution the enabling Act is the Subordinate Court Act Chapter 28 of the Laws of Zambia. The *Subordinate Courts Act* and the *Criminal Procedure Code* gives magistrates jurisdiction appropriate to their classes. The procedure followed in the Subordinate Court is as laid out in the *Subordinate Court's Act*, the *Criminal Procedure Code* and in default of any direction, in substantial conformity with the law and practice for the time being observed in England in the County Courts and the Courts of summary jurisdiction. Though the High Court has unlimited and original jurisdiction to hear civil and criminal matters, most organized crimes are heard and determined by the Subordinate Court.

Under section 5 of the Penal Code, Zambian courts have jurisdiction to hear cases where offences are committed within the boundaries of the country. This is the General Principle. However, under section 6, the jurisdiction is extended in two situations: where a Zambian citizen commits an offence under the Criminal Procedure Code outside of Zambia. *Ngati & Others v People* (2003); further, *where a foreigner commits an*

⁶ Constitution of Zambia (Amendment Act no 2 of 2016).

offence under the Criminal Procedure Code partially outside and partially within Zambia. Roxburgh v People [1972]. Due process of law is imperative in disrupting organized crime. As a matter of law, the courts upon receiving evidence through witnesses will reach a conclusion which may result in a conviction or an acquittal.

VII. NATIONAL LEGAL FRAMEWORK RELATING TO EXTRADITION LAW AND MUTUAL LEGAL ASSISTANCE

The central authority for both extradition and mutual legal assistance is the Office of the Attorney-General. Entities responsible are the Ministry of Home Affairs and the Ministry of Justice.

A. Mutual Legal Assistance in Criminal Matters

When it comes to mutual legal assistance, Parliament enacted the Mutual Legal Assistance in Criminal Matters Act, Chapter 98 of the Laws of Zambia. The Act is intended to provide for the implementation of treaties for mutual legal assistance in criminal matters. The Act defines "treaty", which means a treaty, convention or other international agreement that is in force and to which Zambia is a party, the primary purpose of which is to provide for mutual legal assistance in criminal matters.

Section 7(1) of the Mutual Legal Assistance in Criminal Matters Act provides for administrative procedures. It states that where there is no treaty between Zambia and another state, the Minister responsible for home affairs may, with the agreement of the Minister, enter into an administrative arrangement with that other state providing for legal assistance with respect to an investigation specified therein relating to an act that, if committed in Zambia, would be an indictable offence.

Where a treaty expressly states that legal assistance may be provided with respect to acts that do not constitute an offence within the meaning of the treaty, the Minister responsible for home affairs may, in exceptional circumstances and with the agreement of the Minister, enter into an administrative arrangement with the foreign state concerned, providing for legal assistance with respect to an investigation specified therein relating to an act that, if committed in Zambia, would be in contravention of an Act of Parliament.

A request by Zambia for international assistance in a criminal matter may be made by the Attorney-General. A request by a foreign state for international assistance in a criminal matter may be made to the Attorney-General or a person authorized by the Attorney-General, in writing, to receive requests by foreign states under this Act.

A request under subsection (1) shall be accompanied by:

- i. the name of the authority concerned with the criminal matter to which the request relates;
- ii. a description of the nature of the criminal matter and a statement setting out a summary of the relevant facts and laws;
- iii. a description of the purpose of the request and the nature of the assistance being sought;
- iv. details of the manner and form in which any information, document or thing is to be supplied to the foreign state pursuant to the request;
- v. details of the period within which the foreign state wishes the request be complied with.

B. Extradition

Extradition issues are governed by the Extradition Act, Chapter 94 of the Laws of Zambia. It is an Act to amend and consolidate the law relating to extradition to and from foreign and Commonwealth countries; to provide for the reciprocal backing of warrants.

1. Procedures Applicable to Extradition

Section 4⁷ provides for extraditable offences. It provides that (1) subject to subsection (2), extradition under this Part shall be granted only in respect of an offence which is punishable under the laws of the requesting country and of the Republic by imprisonment for a maximum period of not less than one year or

by a more severe penalty or for which, if there has been a conviction and sentence in the requesting country, imprisonment for a period of not less than four months or a more severe penalty has been imposed.

If a request is made for extradition in respect of an offence to which subsection (1) applies and the request includes also any other offence which is punishable under the laws of the requesting country and of the Republic but does not comply with the conditions as to the period of imprisonment which may be, or have been, imposed, then extradition may, subject to the provisions of this Part, be granted also in respect of the latter offence.

The evidence adduced should disclose a prima facie case that would warrant and justify committal for trial. This position is provided for in section 10 of the above Act. It provides that (1) Where a person claimed is before a magistrate pursuant to section *eight or nine* and- (a) there is adduced before such magistrate- (i) in the case of a person who is accused of an extraditable offence, such evidence as would, in the opinion of the magistrate, according to the law, justify the committal for trial of the person if the act constituting that offence had taken place in the Republic.

2. Existence of a Treaty

It is imperative to note that the existence of a treaty is a necessary requirement for extradition. Suffice to mention that where there is no treaty the Minister of Home Affairs can enter into an agreement with the Minister of Justice, called an administrative arrangement, with the requesting state to provide legal assistance with respect to the specific request. The Magistrate seized with the conduct of the matter may issue a search warrant for the search and seizure of any property which may be deemed vital to help with investigation and prosecution of the case.

3. What Should the Extradition Request Include?

- i. Original or an authenticated copy of the conviction and sentence or external warrant or other order;
- ii. Statement of each offence for which extradition is requested specifying, as accurately as possible, the time and place of commission, its legal description and a reference to the relevant provisions of the law;
- iii. Copy of the relevant enactments of the requesting country or, where this is not possible, a statement of the relevant law;
- iv. As accurate a description as possible of the person claimed, together with any other information which will help to establish his identity and nationality.

It is important to note that requests are addressed to the competent authority, who is the Attorney General. When it comes to conducting a search and seizure, the Criminal Procedure Code⁸ comes into play. Once the request has been successfully received, the Attorney General notifies the Magistrate to issue a warrant of arrest. Section 8 provides that the Warrant of Arrest can be executed in any part of Zambia.

4. Grounds for Refusal

- i. Extradition shall not be granted where a prosecution is pending in the Republic against the person claimed for the offence for which extradition is requested (Section 36)
- ii. Extradition shall not be granted where the offence for which it is requested is regarded under the law of the Republic as having been committed in the Republic (Section 35)
- iii. Extradition shall not be granted where a person claimed is a citizen of the Republic, unless the relevant extradition provisions otherwise provide (Section 34)
- iv. Extradition shall not be granted for offences under military law which are not offences under ordinary criminal law (Section 33)

⁷ Extradition Act Chapter 94 of the Laws of Zambia.

⁸ Chapter 88 of the Laws of Zambia.

- v. Extradition shall not be granted if there are substantial grounds for believing that a request for extradition has been made for the purpose of prosecuting or punishing the person claimed on account of his race, religion or nationality or that the position of the person claimed may be prejudiced for any of these reasons (Section 32)
 - vi. If the alleged offence is a political offence or an offence connected with a political offence, the Attorney-General shall refuse extradition
5. Refusal of Mutual Legal Assistance in Criminal Matters
- i. The request relates to the prosecution or punishment of a person for an offence that is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, an offence of a political character
 - ii. There are substantial grounds for believing that the request has been made with a view to prosecuting or punishing a person for an offence of a political character;
 - iii. There are substantial grounds for believing that the request was made for the purpose of prosecuting, punishing or otherwise causing prejudice to a person on account of the person's race, sex, religion, nationality or political opinions;
 - iv. The request relates to the prosecution or punishment of a person in respect of an act or omission that if it had occurred in Zambia would have constituted an offence under the military law of Zambia but not also under circumstances in which it is alleged to have been committed or was committed, an offence of a political character;
 - v. The granting of the request would prejudice the sovereignty, security or the national interest of Zambia;
 - vi. The request relates to the prosecution of a person for an offence in a case where the person has been acquitted or pardoned by a competent tribunal or authority in the foreign state, or has undergone the punishment provided for by the law of that country, in respect of that offence or of another offence constituted by the same act or omission as that offence;
 - vii. The foreign state is not a state to which this Act applies; or
 - viii. The request relates to the prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Zambia would not have constituted an offence.

VIII. CONCLUSION

This paper has endeavoured to highlight some of the procedures for disrupting organized crime. It has brought to the fore the scope of organized crime in Zambia, the role of investigations, prosecution and adjudicative power in dealing with the organized crime.