

CHAPTER 3

ORGANIZED CRIME IN ZAMBIA

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1. Introduction

The Sovereign Republic of Zambia situate in Central Africa, is a land locked surrounded by eight neighbouring countries namely Angola, Namibia, Botswana, Zimbabwe, Mozambique, Malawi, Tanzania and Zaire. The country whose population is about nine (9) million people has long and open borders. The country's population is multi-racial and multi-lingual but English is the official language. People are free to move about and traverse borders both in and out of the country under the new democratic dispensation without any undue interference.

Nevertheless, crime has steadily increased particularly in its sophistication. This crime wave is usually propelled through syndicates which are highly organised. Organised crime in Zambia is both national and international given that perpetrators usually plan the crime in one country and put the plan into effect in another without regard to national boundaries.

2. Nature and Extent of Organized Crime in Zambia

Organised crime syndicates in Zambia manifest themselves in thefts of motor vehicles, drug trafficking, firearms smuggling, commercial poaching, bank frauds, and money laundering. All these are cross-border crimes whose syndicates have tentacles and have spread throughout the Southern African Region.

This paper, therefore, attempts to high light some of the major trends

of organised crime in Zambia and the legislative as well as operational measures currently in place to counter the scourge. Further, it also attempts to show the Government's future resolve. That is to say, how best the Government wishes to deal with the problem of organised crime in order to effectively diminish, if not eradicate it altogether, its impact on Civil Society.

The following is a condensed summary of the general crime situation in the country. The figures are obtained from the monthly crime returns as submitted by all Police formations in the country. See Appendix A

The vehicles which are either stolen or grabbed at gun point are either transported in broken down components or are driven across borders to be exchanged for goods or cash or/and drugs. As part of the scheme and for easy facilitation of movement of the motor vehicle or and parts or components, erasures and alterations of chassis and engine numbers are order of the day. Falsifications and forgeries of the documents relating to motor vehicles registration, movements and drivers licences frequently manifest themselves. Further, there is marked tendency, towards corruption. Public Officers such as Immigration, Customs etc or indeed any other person in the way of Organised Syndicates are either paid off or eliminated if they prove difficult to bribe.

Most vehicles stolen from Zambia find their way to Zimbabwe, Namibia, Botswana, Malawi, Mozambique, South Africa and Zaire and vice versa. Foreign nationals living in Zambia, mostly Zaireans, Zimbabweans and West Africans are behind the thefts of motor vehicles. However, these foreigners work in collusion with their counterpart syndicates comprising Zambians. Since January 1995 to date thirty-seven (37) motor vehicles stolen from either of the countries within the Southern African Region were recovered in Zambia. Similarly, fifteen (15) motor vehicles stolen from Zambia have since been recovered in the neighbouring countries. These figures refer to only those vehicles which have been positively traced to their legal owners by establishing a chain of ownership. A lot more motor vehicles are still unclaimed from Police Stations across the country. In Zambia and within the Southern African Region, a range of Japanese made motor vehicles, such as Toyota, Mitsubishi Nissan and Suzuki attract greater interest from theft syndicates.

An instance of motor vehicle theft syndicate in Zambia has been fully demonstrated by the YEBO case. Winstone Yebo Kasoka is a Zambian National who is a gang leader of criminals involved in aggravated robberies

of motor vehicles from Zambia to Zimbabwe and vice-versa. His greatest interest has been in Japanese latest models with a ready market in Zimbabwe, where he established himself and bought a mansion. The group composed of six Zambians and three Zimbabweans. The Zambians are : Winstone Yebo, Kasoka, Enesty Bweupe, Nelson Siame, Phinias Phiri, Davy Rambo and John Chiwala Banda. The Zimbabweans are: Daniel Chirikure, Trevor Chinamhora and Frank Chinamhora. The gang was stealing motor vehicles in Zambia armed with AK 47 assault rifles and was driving through Mozambique to Harare in Zimbabwe. In Harare the gang leader, Yebo was receiving the contraband and was delivering the same to pre-arranged buyers. The proceeds from the sale went to Zambia to be shared by the other gang members. Similarly, vehicles were being stolen from Zimbabwe and driven via Mozambique to Zambia where they were sold. The Yebo gang had literally infiltrated the Police, Customs and City Council licencing staff in the Revenue Section. Hence, Yebo and his men would begin by obtaining signed original blue books from the Lusaka City Council Revenue Section facilitated by an employee within the same section. Armed with the "authenticated" blue books, the gang would then fill in the particulars of the stolen vehicle as legal owners thereof and would go through the customs Entry/Exit point without difficulty since they had the capacity to bribe. Most of the motor vehicles so stolen were by way of aggravated robberies.

It became difficult to arrest these criminals because public officers, customs, immigration etc were compromised through the gang's dirty money. It is, however, gratifying to note that today all the nine members of the gang have been arrested and brought before the Criminal Justice System in both Zambia and Zimbabwe. The syndicate (gang) leader Yebo was arrested In Zimbabwe for several offences of theft of and dealing in stolen motor vehicles. He is facing trial. The rest were apprehended in Zambia and are now appearing in Court charged with aggravated robbery and theft of motor vehicles and forgery. However two have since died while awaiting trial from natural causes.

It is interesting to observe here that even a wife of gang member was involved in the whole scheme. During searches police found her in bed with an AK 47 rifle between her laps. She has since been arrested and charged with unlawful possession of a firearm. She has since appeared in court.

3. Trafficking in Illicit Drugs

In Zambia the problem of illicit drugs, that is narcotic drugs and psy-

chotropic substance, is becoming widespread and threatening to destroy the social fabric of the country. Illicit drugs surfaced on the Zambian scene in the early 1980s when a few individuals were found dealing in the same. The drugs then were mandrax and small quantities of cocaine and heroine. These hard drugs were all foreign to Zambia. Cannabis Sativa or marijuana has been widely and wildly grown in Zambia from time immemorial and used for medical purposes.

However, in 1985 the Government responded to the emerging drugs scourge by arresting and detaining a number of people, which included some prominent personalities, after which a special tribunal called the Chaila Tribunal was set up. The tribunal chaired by a High Court Judge found that the problem of trafficking in illicit drugs was real and a good number of those detained was deeply involved. This judicious revelation was only a tip of the ice berg. Presently, the country has seen a proliferation of all types of drugs. Whereas initially the country was only a transit point of these drugs en route to Botswana, South Africa and south East Asia, today most of these drugs are in fact consumed right in Zambia by all age groups. Some of the drugs peddled in Zambia include Cannabis, and other drugs such as Hashish, Hashish oil, Mandrax, Opium, Heroine, Khat/Miraa, Cocaine, Morphine Amphetamine, LSD, Diazepam, Thiopental, Scolm and Pemoline. Some of these drugs are manufactured locally in clandestine laboratories using precursor chemicals. South Africa has become a major destination for a greater quantity of these drugs where they are exchanged for stolen motor vehicles. Thus in Zambia today one finds an increasing influx of "hot" posh cars acquired through drug trafficking.

Consequently, the crime rate has soared to unprecedented heights. The drug syndicates in Zambia, involving local Zambians, Asians, West Africans, Greeks and Lebanese nationalities, have direct contacts with similar syndicates in South Africa and Asia. Most hard drugs like Mandrax, Heroine and Cocaine originate in Asia and transited through Zambia. Zambia is both a transit point and a consumption destination. From Zambia the drugs are peddled to South Africa by couriers working for influential drug Barons. The demand for these drugs mainly by the young generation in the age range of 15-30 years, is such that there is an increase in aggravated robberies, burglaries, hijacking of cars and other violent crimes. These crimes are committed in order to be able to pay for the drugs using stolen money, expensive goods such as modern electronic valuables, jewellery, motor vehicles etc., so as to sustain the drugs habit to which addicts are hooked.

These drugs addicts have therefore become the most daring and violent criminals.

In Zambia drug war is fought through an independent Police Unit called the Drug Enforcement Commission, backed by an enabling Act of Parliament. To show the nature and extent of drug trafficking in Zambia, I now wish to give some statistics pertaining to drug seizure, persons arrested and dealt with by due process of law, the type of drugs as well as quantity involved as from 1990 to September, 1996. But as is apparent from the statistical tables there has been a marked progression in the illicit drugs trend. For instance, persons arrested for drug-related offences were as follows:

Year	Number of Persons Arrested
1990	- 105;
1991	- 127;
1992	- 132;
1993	- 206;
1994	- 340;
1995	- 1032;
1996 (Jan. - Sept.)	- 1201.

It is noteworthy that the statistics as provided reflect an upward spiral. See Appendix B - D

3.1 Illegal Trafficking in Firearms and Precious Stones

Upon achieving independence from the colonial masters in 1964, and because of its geopolitical situation at the time, Zambia external policy was largely influenced by the fact that other countries such as Angola, Mozambique, Zimbabwe, Namibia and indeed South Africa were still under either colonial bondage or apartheid system of Government. The Zambian people through their Government felt threatened and near strangulation since as earlier noted Zambia is a landlocked country. Zambia therefore decided to support the Liberation Movements from these countries mentioned.

The problem of armed banditry started when on the onset of independence of these countries, firearms used by the various Freedom Movements would not be accounted for. Some of these firearms were given to the friends as the fighters left for their liberated countries. These assault rifles and pistols soon found themselves in hands of bandits either by way of sale or by

sharing the proceeds from crime. These arm-caches have become the greatest source of the illegal firearms circulating in the South African Region. Related to the above scenario are the armed conflicts such as Angola, Mozambique, Rwanda and Burundi. In these countries some dissatisfied combatants have taken up arms to fight in order to usurp power from governments that have been formed after driving the colonial masters away. These are usually formed and activated on ethnic basis.

Wars based on ethnicism usually are long and drawn and take lives of innocent women, the elderly and children. Because the people are tagged on in war, they have therefore resorted to exchanging the firearms for food in the border areas with Zambia. In one week alone, for example, in August this year 1996, Police recovered more than two hundred assault rifles of different makes and large quantities of ammunition from border areas with Angola.

It is obvious that UNITA, a rebel movement led by Jonas SAVIMBI in control of that part of Angola does run out of food and are responsible for the increasing cases of firearms transactions. It is important to observe that a number of illegal firearms obtained cheaply and easily from rebel factions and villagers are transported across the national boundaries to neighbouring countries by different criminal groups. The purpose of this exercise is to find a market for these guns as well as to supply them to criminal syndicates in those countries for perpetration of criminal or illegal activities. On the other hand, Zambia loses in excess of USD and \$200 million yearly through illicit emeralds trade. It is acknowledge that Zambia's quality of emeralds is second only to Brazil in the world.

However, the illegal mining and trafficking in emeralds and other precious stones continues to flourish to the detriment of the national economy. West African nationals, the majority of whom are Senegalese and Malians, and Zairean nationals have formed germ stone cartels which are operating illegally. Some of these have influential Zambians to lean on. Consequently tax evasion is rife. These germs stones are sold in Europe, South East Asia and North America at greater value.

3.2 Bank Frauds

In recent years the country has experienced a rise in fraud cases. These range from bank frauds, insurance frauds to credit cards and computer frauds. In the recent past Meridien Bank BIO saga occurred and is still being investigated.

However, bank frauds involving cheques and other bills of exchange are more common. Available crime statistics show that over a period of five years, that is from 1991 - 1995, 15,054 cases were reported country wide. Out of this figure 2381 convictions were secured and 721 acquittals. The following is a break down of cases for each year showing the trend of bank frauds in the country. See Appendix E

3.3 Commercial Poaching

The country is in danger of losing the entire stock of its fauna due to indiscriminate killing of wild animals by commercial poachers. Rhinos, Elephants and some special species are now threatened with extinction. Poachers kill these animals for their valuable skins, horns and Ivory, as well as meat.

Commercial poachers are affluent individuals or groups of individuals who carry their illegal activities through hired poor villagers. They have modern long range communication devices and carry very sophisticated military firearms and ammunitions. They also have more reliable 4 x 4 automobiles for ease of transportation of the kill. In many cases the logistical capacity of poachers is more than that of law enforcement officers. In the past 20 years, Zambia has lost more than one hundred and eighty thousand Elephants worth over \$10 million (USA). Out of a population of two hundred thousand (200,000) elephants in 1972, only twenty thousand (20,000) now remain. The Black Rhino has become almost extinct in Zambia. Poachers have wiped them out for the horn which is believed to contain aphrodisiac qualities. The demand for it is high in South East Asia and the Arab world.

3.4 Money Laundering

A loose definition of money laundering could be given as the practice by which money earned from illicit business is systematically invested in legitimate businesses, thus concealing the real source of the funds.

In Zambia there is ample evidence of money laundering. This is often done through commercial banks which have proliferated in the midst of a declining national economy. In an economic environment where a lot of legitimate, long established businesses are struggling to survive and a good number of them already gone under, one still finds a clique of local and foreign businessmen investing huge amounts of money in the banking, transport, food and beverage sectors, unaffected by the general trend of the

economy.

It is trite knowledge that drug barons thrive on the profits gained from illicit narcotics and psychotropic substances which they supply to various parts of the world. The proceeds therefrom are often deposited in bank accounts or transferred to a different country and re-invested in some legal business. Similarly, criminal syndicates which are behind the spate of motor vehicle thefts and aggravated robberies intermingle proceeds from the sale of stolen motor vehicles with legitimate money in the banks and other investment portfolios. There are currently in Zambia a great deal of companies which are in effect "legal fronts" for money laundering. These are mostly trading companies like wholesales, bakery and confectionery, beer and liquor outlets, the public transport service and the commercial banks. It is also true to say that some foreign nationals living in Zambia are the moving force behind the legal fronts.

It has been accepted as a fact that organised criminal syndicates accumulate substantive profits from their criminal activities. Hence, every crime that has a profit as a motive necessarily involves money laundering to such an extent that if the prospect for anticipated profits were removed from the criminal activity, most crimes would vanish. The opening of our economy to the outside world under the new democratic dispensation has brought with it foreign investment. A part of that investment is from laundered money and in most cases from the proceeds of drug trafficking. As earlier observed, this dirty money is laundered through legitimate financial institutions and finally finds itself into the economy, thus causing a lot of distortions.

4. Measures Including Legislation to Combat Organised Crime in Zambia

A. The Zambian Government has put in place measures to combat organised crime. We have our law in the Penal Code which deals with thefts of movable property including motor vehicles. For instance, Section 265 of the Penal Code Chapter 146 of the Laws of Zambia makes it an offence for any person who without the consent of the legal owner (or special owner) takes away moveable property with the intention of permanently depriving the owner of the same. Section 272 of the Penal Code prescribes the penalty for theft, namely five years imprisonment.

Where for instance, the theft of a motor vehicle has been committed using a firearm or any dangerous offensive weapon, or at the time of stealing actual violence is used or threat of use of actual violence immediately

before or thereafter the perpetrators, being more than one, commit aggravated robbery under Section 294 of the Penal Code. The penalty is a custodial term of imprisonment with a mandatory minimum sentence of fifteen years. Further, the police have powers under the same law to arrest and charge a person with the offence of failing to account for property reasonably suspected to have been stolen or illegally obtained. This particular offence allows the police officer wider powers to investigate the circumstances under which a person's property such as a motor car or spare parts therefore have come into that person's possession whenever reasonable suspicion of malpractice abounds.

In another perspective, the Zambia Police Service has engaged regional co-operation with other Police Forces as an ultimate alternative to effective fight against organised crime in motor vehicle thefts. The establishment of the Southern African Regional Police Chiefs Co-operation Organisation (SARPCCO), which groups eleven countries in Southern Africa, has made it possible for Zambia to participate in joint operations. The SARPCCO members share Criminal Intelligence relating to the identification of thefts of motor vehicles syndicates, the names of persons involved and the Modus Operandi, including the routes used. In addition, all the eleven Police Chiefs are directly connected to the same data base through the E-Mail Computers Software System. So far a number of joint operations have been carried out between Zambia, South Africa, Mozambique, Malawi and Zimbabwe. These operations shift or rotate from one country to the other. In one such operation mounted right in Zambia by the Zambian Police and the South African Police in July, 1995, forty (40) vehicles were seized upon discovering that they had been stolen in South Africa and illegally sold or transferred to other persons in Zambia. At the time of writing this paper, a similar joint operation was taking place in South Africa involving the rest of the SARPCCO members.

Consequently, a sub-regional ICPO - Interpol Office was recently commissioned in Harare, Zimbabwe, which also served as the SARPCCO Secretariat. This office establishes a common data base in crime intelligence so as to identify stolen motor vehicles and to monitor their movements. Equally important, it gives personal profiles of criminals involved in motor vehicle thefts. Thus we now have in place a practicable and effective mechanism of breaking up criminal syndicates in thefts of motor vehicles in the Region.

B. On the other hand, there are similar legislative and operational mea-

asures targeted at organised crime in drug trafficking. The Narcotic Drugs and Psychotropic substances Act No. 37 of 1993, classifies illicit drugs and prescribes offences and penalties for illegal possession, cultivation, manufacturing, trafficking and consumption.

The Government of Zambia, having realized the effects of Drug trafficking and money laundering, ratified the 1988 United Nations Convention against illicit traffic in Narcotic Drugs and Psychotropic substances on 28th May, 1993. This further gives the country the right platform and continue efforts at liaising and cooperating with other countries in fighting the drug scourge.

Under the Zambian Narcotics and Psychotropic substances law, any person found with drugs in tablet or powder form, other than Cannabis, with a minimum weight of 0.50 grammes or in liquid/fluid form with a minimum weight of 2.50 grammes or millilitres is taken to be a trafficker. Similarly cannabis solids or liquids with a minimum weight of 0.50 grammes or 2.50 millilitres of Delta - 9 Tetrahydrocannabinol raise a prima facie case of trafficking in drugs. The penalty is a maximum of twenty-five (25) years imprisonment.

The other measure being employed to counter drug trafficking, drug abuse is public education campaign strategy. The National Education Campaign Division (NECDD), a unit of the Drug Enforcement Commission, plans and carries out Radio and Television broadcasts about the detrimental effects on the national economy.

This message is also carried through to Primary and Secondary Schools, Colleges and other higher institutions of learning. Pamphlets and magazines are produced in addition to mobile video shows and open lectures and seminars delivered to various target groups in the urban and pre-urban communities. As at now two-thirds of the country's primary and secondary schools have formed ANTI-DRUG CLUBS. As in the case of thefts of motor vehicles, joint operations between Zambia and other SARPCCO member countries against illegal trade in narcotics do take place. A recent operation incorporating Botswana, Namibia, Zambia and Zimbabwe at Kazungula border common to all the four countries proved highly successful. A sizeable quantity of drugs, mostly cannabis, was seized and arrests made.

C. The Government is addressing the problems of commercial poaching, illegal trade in precious stones and fraud generally through legislative measures.

As for commercial poaching the law in place, namely, the National Parks and Wildlife Act, Chapter 316 of the Laws of Zambia, makes it an offence for any person, in the absence of lawfully issued licence by the Director of National Parks and Wildlife, to possess, buy or sell game meat or any trophy. The penalty is a maximum seven years imprisonment. Further it is an offence for any person to hunt any wild animal in a Game Management area without a valid licence. Moreover, any person who is convicted of hunting, wounding, molesting, or reducing, into possession any Elephant or Rhinoceros shall be liable to imprisonment for a term of five years.

Upon the conviction of any person of an offence as herein above stated, the court, upon an application made by the prosecutor, orders any wild animal, meat of any wild animal, trophy, firearm or other weapon or material or any vehicle, aircraft or boat with which the offence was committed or used in connection with the commission of the offence, to be forfeited to the state without any compensation.

A Wildlife Police Officer has power under the law to enter any land and search thereon without a warrant and to effect an arrest, if sufficient and reasonable suspicion exists that the provisions of the law are being infringed.

It is important to note that Zambia is a signatory to the LUSAKA AGREEMENT ON CO-OPERATIVE ENFORCEMENT OPERATIONS DIRECTED AT ILLEGAL TRADE IN WILD FAUNA AND FLORA. This particular protocol was adopted on 8th September, 1994. This protocol was a reaffirmation of the belief in and commitment to the principles and objectives expressed in the provisions of the African Convention on the Conservation of Nature and Natural Resources (Algiers, 1968), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (Washington, 1973), and the Convention on Biological Diversity (Rio de Janeiro, 1992). The Lusaka AGREEMENT read together with the other conventions as quoted above recognize that the intense poaching that has resulted in severe depletion of certain wildlife populations in African States is due to illegal trade and that commercial poaching will not be curtailed until such illegal trade is eliminated. Hence, the need for co-operation among states in law enforcement to reduce and ultimately eliminate illegal trade in wild fauna in particular. As states only are responsible for the conservation of their wild fauna, sharing of information, training, experience and expertise among states is vital for effective law enforcement in this regard. Ille-

gal trade in wild life refers therefore to any cross-border transaction, or any action in furtherance thereof, in violation of national laws for the protection of wild animals.

In Zambia a special law enforcement unit called the “Species Protection Unit”, an appendage of Anti-Corruption Commission, investigates all cases of commercial poaching and I or illegal trade in wild fauna. The unit gets a lot of support from the World Wide Fund for Nature (WWF). Through WWF the Species Protection Unit produces Radio Programmes and Publications for public education about the benefits of conservation and the dangers involved in poaching. Perhaps the best measure being applied is the one which involves the local rural communities which reside right in designated Game Management Areas. A non-governmental organisation working to conserve nature has devised and Integrated Rural Resource Development Project (IRRDP) within the Game Management Areas.

The organisation called ADEMADE operates on the premises that any successful Wildlife Conservation Programme which seeks to root out poaching or illegal trade in wild fauna can only be achieved once the local people are fully involved. Thus the rural communities are put in forefront of these conservation efforts by making them share in the benefits therefrom. Game meat is periodically provided for consumption to villagers. Money is also distributed arising from the proceeds of different levies collected from tourists and hunters. Other monies go to improve life though the provision of clean water, schools, health centres and other medical facilities, let alone basic infrastructure and necessities.

Accordingly, each villager in a Game Management Area becomes a law enforcement officer more than ready and willing to fight off poaching. This way organised crime in illegal trade in wild fauna is effectively countered.

D. The problem of illegal dealing in precious stones is addressed under our criminal laws. The Penal Code provides, in Section 321, that illegal possession of diamonds and emeralds that is, without the written permission of the Chief Mining Engineer, appointed as such under the Mines and Minerals Act Cap. 329, is an offence. In the same vein, it is an offence for any person to dispose of or sell any diamonds or emerald to any person or organisation without the said permission. The offence being a misdemeanour is punishable in terms of Section 38 of the Penal Code with imprisonment

for a maximum term of two years or with a fine or with both.

However, a person so convicted shall have his diamonds or emeralds forfeited to the state. Under this law and Police Officer of or above the rank of Assistant Inspector has the power to arrest without warrant any person reasonably suspected of having committed or attempting to commit an offence under the aforesaid Section.

So much for the legislative measures. Nevertheless, the Government is trying hard to frustrate illegal transactions in precious stones through the economic liberalization policy. The Ministry of Mines and Minerals Development has been encouraging prospective investors, both local and foreign, to apply for and obtain mining permits to enable them legally explore and develop mineral resources, including precious stones. A lot of people now have these mining licences.

Further, the Government through the Emeralds Miners Association of Zambia (EMAZ) continue to sponsor and promote public auctioning of emeralds and other gem stones. The registered miners have an opportunity here to display their stones, have them commercially valued by experts valuers and offer them for sale to the highest bidders. This arrangement ensures that gemstone miners realise optimum value and at the same time they are shielded from raving comment. The above arrangement has considerably reduced the number and level of criminal syndicates in precious stones in Zambia. These syndicates used to control the entire emerald/gem stone industry in the country before 1991.

Although Zambia does not have specific legislation tailored to address a particular form of economic crimes, the existing law is however adequate to respond to crimes, of economic nature such as bank frauds which are quite prevalent in the country. Thus fraud as a crime is based on the concept of "false pretence". That is to say, any representation made by words, writing or conduct, of a matter of fact or of law, either past or present, including a representation as to the present intentions of the person making the representation or of any other person, which representation is false in fact, and which the person making it knows to be false or does not believe to be true.

The above statement is the legal definition of False Pretence according to Section 308 of our Penal Code. The gist of the matter lies in the doing or saying of something, that is, undertaking an action, intending another to act upon your action to that other's detriment whilst fully realising that your action so committed is wrong or constitutes falsehood. Such then is fraudulent conduct. Bank frauds are no more than fraudulent conduct on the part

of one individual or group of individuals or persons vis-a-vis economic or financial transactions. Consequently, the acts of obtaining goods by false pretences, obtaining pecuniary advantage by false pretences obtaining execution of a security by a false pretences, obtaining credit by false pretences, cheating to defraud a person of any money or goods, forging cheques and other bills of exchange such as promissory notes, credit cards, letters of credit, bills of lading and currency counterfeit, etc., are all frauds. The Penal Code prescribes these acts as offences punishable with imprisonment for terms ranging from one to seven years.

In cases of bank frauds, financial institutions are now getting together in seminars and workshops with law enforcement officers. The purpose is to share information, knowledge, experience and trends regarding different financial accounting procedures or systems, methods employed by fraud stars (*modus operandi*), profiles of known fraud stars and finally, to find better ways of defeating frauds. Some financial institutions have already developed a system of water marks and peculiar features on their official documents, including cheque leaves, unique to that particular institution.

E. Measures to curb money laundering in Zambia are presently inadequate. The Narcotic Drugs and Psychotropic substances Act talks only of the offence of money laundering in a very general sense. The Act does not show in what ways or by which practices this offence shall be committed and by whom and at what stage.

Further the Act does not contain any regulations pertaining to the investigative procedures, modalities of recovering laundered illegal proceeds and related matters. The Act simply states that money laundering shall be an offence. This is plainly inadequate and legally unenforceable. As of now it is difficult to discern clean money from dirty money in any given business undertaking. As such due to the weaknesses of the money laundering law in the country, a draft Money Laundering Prevention Bill is with the Ministry of Legal Affairs, Chief Parliamentary Draftsman for formal preparation.

5. Comparative Evaluation of Various Anti-Organised Crime Measures

5.1 Thefts of Motor Vehicles

The law under the Penal Code relating to Thefts of Motor Vehicles is very weak. The general law of theft applies to Motor Vehicles in the same

way as it relates to any other property or goods. The maximum penalty of five years imprisonment has not done much to deter would-be offenders considering that there is always a tendency by the courts to suspend the whole of the imposed sentence. This technically sets criminals at liberty and free from punishment. Hence, the measures under the present law have exacerbated crime rather than abate it.

On the other hand, the newly introduced operational measures under the umbrella, of SARPCCO have so far proved highly successful. In particular, the Joint Operations with neighbouring countries which allow for the mounting of random road blocks at selected points both within territorial borders and at entry/exit points. More stolen vehicles have been identified and offenders arrested in this way. Further, the requirement for Interpol Clearance in both the originating country and the intended country of consumption, coupled with the standardization of import/export clearance documentation, has ensured continued success in breaking criminal syndicates in theft of Motor Vehicles.

5.2 Money Laundering

Organised crime in thefts of Motor Vehicles, Drug Trafficking and illegal trade in wildlife (Commercial poaching), precious stones and firearms is compounded by money laundering. The present law on Money Laundering is not adequate and is far from addressing the problem of organised crime. The Narcotic Drugs and Psychotropic Substances Act states only that money laundering is an offence. The Penal Code and the National Parks and Wildlife Act have provisions which empowers the courts to forfeit to the state proceeds of crime which cannot be traced back to their lawful owners, such as recovered stolen Motor Vehicles, Emeralds and Diamonds, Government trophy such as Ivory, Rhino horns and Skins of endangered species, including Game Meat. In case of firearms, the Firearms Act and the Penal Code (for offensive weapons) provide for forfeiture of the same to the State.

However, the law has not achieved much in this direction. In fact most of the illegally obtained goods are disposed of by criminals long before the law enforcement agencies get to know. What the criminals endeavour to do is to transfer the object of crime into money or other valuable by way of investment. That is why measures such as the inspection of Bankers Books and requirement for Financial Institutions to disclose sources of deposits for questioned accounts become very important. These measures contained

in the new law on Money Laundering aim at trapping all proceeds of crime irrespective of the form and shape they take. It is thus the effective way of fighting organised crime.

6. Proposed Measures Including New Legislations to Combat Organised Crime

The Government of the Republic of Zambia has taken a resolute stand regarding what steps should be followed to combat organised crime. This includes proposed oriented legislation, especially for the most prevalent and dangerous crimes in our society.

A. Thefts of motor vehicles and illegal trade in drugs are such crimes of greater concern. The money laundering vice is a necessary implication of these two crimes.

Given the high rate at which motor vehicles get stolen in Zambia and the fact that a greater number of motor vehicles on our roads are, either stolen from neighbouring countries or fraudulently acquired, the Zambia Police Service has put forward legislative proposals to redress the situation.

A Motor Vehicle Theft Bill contains offences and penalties in connection with theft of motor vehicles. It seeks to regulate transaction in motor vehicles vis-a-vis motor dealers (i.e. manufacturers agents and other sellers) and prospective purchasers. The Bill also provides for the Police handling of stolen motor vehicles and matters connected with or incidental to that. This Bill is a consolidated legislation on thefts of and I or fraudulent transactions in motor vehicles, which matters are hitherto scattered about in different legislation, namely, the Penal Code and the Roads and Road Traffic Act, and highly inadequate to meet the new challenges of organised crime in this respect.

For instance, the offence of theft of a motor vehicle shall carry a penalty of a mandatory minimum of two years without the option of a fine. And for a second or subsequent offence, a minimum of five years imprisonment but not exceeding ten years without the option of a fine. The Bill also introduces the offences of theft of motor vehicle with violence and aggravated theft of motor vehicle. The former carries a penalty of minimum of fourteen years imprisonment with a maximum of twenty five, but without the option of a fine. The latter carries a penalty of Death, as it involves use of a fire-arm.

This is a major shift in the law from the current position which sees

most motor vehicle, thieves get away with a simple fine or a suspended sentence. Further the proposed law obliges motor vehicle dealers to report all suspected cases of tempering with motor vehicles such as erasure of the Chassis and Engine numbers and any obliteration, and disfigurement of any other identification mark. Failure to report to the Police is an offence and liable to imprisonment for two years.

The disclosure required of dealers in motor vehicles is meant to break the criminal syndicates ring. It has been observed that some motor vehicles dealers operate in league with thieves and sell stolen vehicles for and on behalf of car thieves under guise of a legitimate business. It is also proposed that vehicles bought within or imported into the country should not be registered by the motor vehicle Registration and Licensing Department before a police clearance had been received from the country of origin as well as from the Interpol - National Central Bureau.

As a further step toward eradication of organised crime in the Southern African Region, SARPCCO member countries comprising Angola, Botswana, Lesotho, Malawi, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe, realised that different vehicle registration procedures and documents were hindering effective responses to clearance requests. As a result, criminals were continually finding it easy to conceal stolen vehicles behind varying registration procedures and documentation in different countries. Accordingly, SARPCCO members have resolved to standardize Registration procedures and import/export documentation as a long term Strategy. Equally important and agreed to is the standardization of Police Clearances within the Southern African Region. Attached hereto is a specimen copy of therefore mentioned SARPCCO import-export standardized document. It is accompanied by a suspect's Profile and Criminal Activities Record Sheet.

B. As already, observed in the preceding paragraph of this paper, a draft money Laundering Prevention Bill is soon to be introduced in Parliament for enactment into Law. Hence, when it is passed by Parliament all proceeds of crimes will be forfeited to the State. The beauty about this law is that it covers all proceeds, either it be monetary or material, from any criminal activity of whatever nature.

Financial institutions will be compelled to disclose information, that is, client's bank statements or status of bank account, nature of client's business or investment portfolio source of deposits, and any other information

held in confidence by the financial institution by virtue of the Bank - client relationship. The whole object is to stop banks and other financial institutions from withholding information giving rise to money laundering.

The proposed law, goes further by making money laundering an extraditable offence. This has the effect of purging the country of foreigners who are involved in criminal syndicates whilst hiding behind the facade of legal fronts or legitimate business enterprises for purposes of laundering Proceeds of crime. It also ensures that offenders are not shielded from justice by other countries. The Bill further seeks to promote international cooperation in the Investigation of criminal activities for criminals know no national boundary especially in economic crimes. This is the main reason why the offence of money laundering has been rendered extraditable. Finally, the bill provides for the prosecution and forfeiture of proceedings of money Laundering offences.

C. The measures for curbing illegal trafficking in and proliferation of Firearms are already in place and quite adequate but only as far as legislation goes. The Firearms Act Chapter 111 of the Laws of Zambia regulates the issuance of firearms licences and certificates and provides for the control of the import, export, movement, storage, possession, sale, manufacture and repair of firearms and ammunition. It suffices to state here that whereas the legislative measure is by and large well meaning, alas it is not backed by appropriate technical and operative enforcement measures.

For instance, the Act makes it an offence punishable with a fine of Seven thousand and five hundred kwacha or imprisonment to a term not exceeding fifteen years or both. if any person is convicted of purchasing, acquiring or having in his possession a firearms or ammunition without holding a firearms licence in respect thereof. In spite of the above provision one finds that people still have in their possession firearms and ammunition without the relevant legal authorization. But that is precisely what the law entails - procedure and with it inevitable bureaucracy. This situation has resulted in a lot of illegal transfers of firearms from one person to another. It has incidentally encouraged corruption and forgery. This assertion is best exemplified by one known case: The MABENGA AND KUNZLEY Syndicate.

In this case two Zambians and one Swiss national got into a loose Partnership to mine emeralds on the Copperbelt Province of Zambia. Over time the three started an illegal trade in firearms. The Swiss national would

leave the Country and stay in South Africa for a while and dispatch a fax message to his Zambian partners advising that he had obtained an export order and supplier or dealer's quotation for firearms to be shipped to Zaire. He would then ask his Zambian friends to obtain and send over a tourist's import permit. However, this Swiss national did not qualify for a tourist's import permit which could only be issued, according to the Act, to a person who is visiting Zambia in the course of a journey to a destination outside the country and whose stay does not exceed six months. The Swiss had been in the country for some years, and engaged in business. Further as he was not a holder of a firearm dealer's licence, he could not import any firearms and / or ammunition into the country.

The Zambian managed to get one copy each of a Firearms Provincial Certificate Application Form and a Tourist's Import Permit Form and Reproduced as many forms. He filled them in and forged the signature of The Firearms Registrar. Thereafter the tourist Import permit was f.axed to South Africa on the basis of which the Swiss purchased the guns. Nevertheless these guns were never declared at customs entry point but found their way in. The licensing authorities were presented with forged Provisional Firearms Certificates and believing the same to be genuine, acted on them to issue Firearms licences and Blue Books for legal ownership. Later the guns were sold out to unsuspecting purchasers together with the Blue Books purporting to effect change of ownership.

Police investigations have come to uncover this racket and members of this syndicate have since been identified and arrested. About seventeen guns (rifles and handguns) were recovered from the suspects. The suspects were using a registered Mining Company called MUKUMBE MINING LIMITED as a legal front for their illegal transactions. Proceeds from criminal activities, such as illegal trade in firearms, were laundered through the said mining company. It is interesting to note that between 1995 and 1996 Zambia Police recovered one hundred and twenty six (126) firearms comprising shotguns, rifles and handguns. Two thirds of these were Pistols. Forged firearms certificates had been presented to a rural licensing authority which had then issued out the licenses in different names.

One cannot however rule out conspiracy between those forging the Firearms Certificates and the Licensing Officers to whom the forged documents had been uttered. Consequently, it has become apparent that this form of organised crime can best be circumvented by legislating to empower the Zambia Police through the office of the Central Firearms Registrar to ap-

prove and issue both all Firearms Certificates and the Firearms Licences with Blue books, used for first legal ownership and subsequent change or transfer of ownership.

In view of the above it is now settled that the solution lies in establishing a Central Firearms Registry for the whole Region incorporating SARPCCO. This Central Firearms Registry must be founded on the central Database with accurate up to date information about all registered firearms in the Region, profiles of licensed holders and their movements.

In consequence of the MABENGA Case aforesaid, the Zambia Police have intercepted several applications for change of ownership of firearms upon finding that most of these firearms were fraudulently acquired. As the bulk of these cases involve handguns, the Zambia Police Service have slapped a temporary ban for two years on any further approval by the office of the Inspector General of such applications. This shall allow the Police time to carry out thorough investigations into suspected illegal possession and trade on firearms and ammunition. Especially handguns.

7. Conclusion

Organised Crime in Zambia is a reality. It is a serious problem which transcends national boundaries and today, more than ever before and calls for concerted Regional and International efforts.

Criminal syndicates so perverse and pervasive threaten to ruin the economies and the social fabric of societies. The best approach is keeping organised crime at bay and to close ranks in form of international co-operation. That is why Zambia values its membership of the Southern African Regional Police Chiefs Co-operation Organisation (SARPCCO) created to counter the threat of organised crime in the Southern African Development Community (SADC) Region.

Harmonization of legislation in criminal matters such as thefts of motor vehicles, trafficking in Firearms, Narcotic Drugs and Psychotropic substances money laundering, Frauds or illegal transfers of money and commercial poaching (illegal trade in fauna), is necessary to deprive criminals of easy sanctuaries whenever they are subjects of criminal justice systems.

It goes without saying that mutual legal assistance in criminal matters and the relaxation of national immigration procedures Vis-a-Vis International Police Investigations are a sine qua non to successful combatting of organised crime worldwide.

Abstract

The paper is a purview of organised Crime in Zambia. But it is also an admission that this organised crime is a product of International Syndicates, whose transgression defies National Boundaries.

The main crimes have been shown to be Motor Vehicle Theft, Drug Trafficking, Illegal Trade in Firearms, Bank Frauds, Commercial Poaching, Illegal Trade in Precious Stones (mostly Emeralds), and Money Laundering. These crimes occur as Cross-Border crimes within the Southern African Region.

It is also acknowledged that the motive for organised crime in Zambia is monetary gain. As such, crime syndicates encompass even professionals like Lawyers, Accountants, Public service Officers and other Advisers who are quick to take advantage of any legal loopholes, tax evasion opportunities and the ability to transfer illegally obtained cash or assets to legitimate business ventures within the country or abroad. Thus corruption is seen as a facilitator of organised crime. Money Laundering, which has become deeply entrenched in our country, has made organised crime even more complicated.

The paper highlights some of the legislative and operational measures being applied to tackle organised crime. There is however a realisation that Zambia cannot legislate for other countries in order to stem the tide of crime within its own borders. Hence, as a long term solution to the problem of organised crime, the Zambia Police service has sought Regional and International Co-operation. On the Regional plane, the country is closely co-operating with the eleven countries of the Southern African Regional Police Chiefs Co-operation Organisation (SARPCCO). The aim of SARPCCO is the Eradication of Organised, Cross-Border Crime in the Region.

Some practical operational measures have been identified as pivotal to the fight against crime - that is:

Establishment of a Central Database for the SARPCCO Region to provide Criminal's Profiles. Modus Operandi, and their movements or routes. Establishment of Central Firearms Registry Database for the monitoring and control of all registered Firearms in the Region. Linking of all Chiefs of Police in the Region to the same pool of Crime Intelligence through the E-Mail (software) facility. Joint Operations by SARPCCO law enforcement officers targeted at specific crimes in identified areas or flash points. Harmonization of criminal laws in the Region, as well as training for law en-

forcement officers. Facilitate quick return of recovered property and movement of investigators between SARPCCO countries. Increased Foot and Mobile Patrols in crime prone areas and the involvement of local communities in policing efforts. Finally, the paper further brings out proposed legislation in two of the critical areas in Zambia, namely, Motor Vehicle Thefts and Money Laundering, with a view to creating a much, more deterrent environment for criminal syndicates.

It is, therefore, hoped that the substance of the main paper will make a little contribution toward appreciating the social and economical impact of organised crime in the world today and efforts at its eradication within the context of Zambian experience.

Sources

Legislative

1. Copy Rights and Performance Rights Act No. 44 of 1994.
2. Customs and Excise Act Cap. 662.
3. Firearms Act Cap. 111.
4. Motor Vehicle theft Bill (Proposed).
5. Mutual Legal Assistance in Criminal matters Act No. 19 of 1993.
6. Narcotic Drugs and Psychotropic substance Act No. 37 of 1993.
7. National Parks and Wildlife Act Cap. 316 as amended by Act No. 10 of 1991.
8. Penal Code Cap. 146.
9. Prevention and Control of Money Laundering Bill (proposed).

Others

10. Lusaka Agreement on Co-operative Enforcement Operations Directed at illegal Trade in Wild Fauna and Flora: Adopted 8 September 1994.
11. Zambia Drug Enforcement Commission Crime Statistics.
12. Zambia Police Service Crime Returns.

APPENDIX A

CRIME STATISTICS ON TRENDS IN ALL CRIMES REPORTED TO THE POLICE AS FROM 1ST JANUARY, 1990 TO 31ST DECEMBER, 1995.**"NATIONAL"**

YEAR	REPORTED	CLEARED	NOT CLEARED	CONVICTIONS	ACQUITTALS
1990	133,669	30,239	33,535	65,109	4,786
1991	132,717	22,355	46,955	59,186	4,221
1992	137,459	33,520	48,749	49,828	5,362
1993	117,567	30,873	48,021	34,411	4,262
1994	126,203	40,915	40,747	39,796	4,745
1995	129,187	34,725	57,176	32,464	4,822
TOTAL:	776,802	192,627	275,183	280,794	28,198

SOURCE: ANNUAL CRIMERETURNS.

APPENDIX B STATISTICAL DATA FOR DRUG SEIZURES

YEAR	TYPE OF DRUG	QUANTITY
1990	Mandrax	1,322,000 tablets
1991	Cannabis	8.0 tons
	Mandrax	755,697 tabs. (377.85kg)
	Heroin	3.84 kg
1992	Cannabis	472.904 tons
	Mandrax	730,548 tabs. (365.27kg)
	Hashish	74 gms
	Heroin	50.003 kg
1993	Cocaine	2.210 kg
	Cannabis	472.904 tons
	Hashish	2.028 kg
	Hashish Oil	750 ml (0.562kg)
	Opium	10.5 gms
	Morphine	14,673 tabs (7.34kg)
	Heroin	75.79 kg (757,866gms)
1994	Mandrax	319,805 tablets
	Cannabis	870 tons
	Cannabis Seed	375 gms
	Hashish	47.108 gms
	Mandrax tabs	122,230 tablets
	Mandrax powder	2,991 kg
	Khat/Miraa	30.99 kg
	Opium	6,436 kg
	Raw Opium	48.86 kg
	Morphine powder	379 gms
	Morphine tabs	90 tablets
	Cocaine	3,773 kg
	Heroin	2,444 kg
	Benzoyl ecgonine	253 gms
1995	Cannabis	4,291,498 gms
	Cannabis Seed	191,941 gms
	Cocaine	1,761.20 gms
	Mandrax tablets	19,550,489 gms
	Opium	195.27 gms
	Heroin	152.617 gms
	Hashish	258.219 gms
	Khat/Miraa	39,888.789 gms
	Diazepam tabs	20,715 tablets
	Diazepam powder	477 gms
	Morphine	500 gms
	Thiopental	19 ampules
Scolin	20 ampules	

	Pemoline	225.2 gms
	Amphetamin epowder	282.289gms

SOURCE: ANNUALCRIMERETURNS.

APPENDIX C DRUG ENFORCEMENT COMMISSION STATISTICS

1990	
Number of reports received	85
Number of persons arrested	105
Number of persons prosecuted	36
Number of persons convicted	24
Number of persons acquitted	06
Number of persons discharged	00
Number of persons with cases withdrawn	24
Number of persons with cases pending	15
1991	
Number of persons arrested	127
1992	
Number of reports received	
Number of persons arrested	132
Number of persons prosecuted	108
Number of persons convicted	68
Number of persons acquitted	10
Number of persons discharged	10
Number of persons with cases withdrawn	00
Number of persons with cases pending	18
1993	
Number of reports received	184
Number of persons arrested	206
Number of persons prosecuted	206
Number of persons convicted	169
Number of persons acquitted	08
Number of persons discharged	16
Number of persons with cases withdrawn	04
Number of persons with cases pending	04
1994	
Number of reports received	240
Number of persons arrested	340
Number of persons prosecuted	340
Number of persons convicted	247
Number of persons acquitted	27
Number of persons discharged	29
Number of persons with cases withdrawn	15
Number of persons with cases pending	22

1995	
Number of reports received	906
Number of persons arrested	1,032
Number of persons prosecuted	964
Number of persons convicted	528
Number of persons acquitted	39
Number of persons discharged	66
Number of persons with cases withdrawn	86
Number of persons with cases pending	313

APPENDIX D

**DRUG ENFORCEMENT COMMISSION
1ST JANUARY TO 30TH SEPTEMBER, 1996**

(a)

Number of reports received	670
Number of persons arrested	1,201
Number of persons prosecuted	1,021
Number of persons convicted	561
Number of persons acquitted	38
Number of persons discharged	95
Number of persons with cases withdrawn	34
Number of persons with cases pending	473

(b)

TYPE OF DRUG	QUANTITY	VALUE (ZMK)
Cannabis	7,243,205.377 gms	K1,810,801,344.00
Cannabis Seed	41,438 gms	20,719,000.00
Hashish	1,072.73 gms	804,547.50
Heroin	939.7426 gms	328,909,910.00
Cocaine	4,443.79 gms	1,999,705,500.00
Diazepam	470.751 gms	376,600.00
Diazepam tablets	17 tbs.	3,400.00
Ephedrine	503.229 gms	22,645,305.00
Lidocaine	20 ml	900,000.00
Mandrax	2,784,854 gms	10,025,474.40
Opium (raw)	2,028.18 gms	50,704,500.00
Opium	316.571 gms	79,142,750.00
Phenobarbitone	10 mg	25.00
Lorazepam	16 tbs.	3,200.00
Bromazepam	10 tbs.	2,000.00
Lorazepam	2.7684 gms	44,294.40
	TOTAL	K4,324,787,850.30

(c) NATIONALITIES

Zambian	1,147
American	01
Korean	01
Malawian	07
Pakistani	01
Zimbabwean	05
Malian	02
Ghanaian	01
South African	02
Congolese	01
Zairean	11
Brazilian	01
Tanzanian	06
Tswana	01
Angolan	06
Greek	01
Lebanese	02
Somalian	01
Nigerian	01
British	01
Kenyan	01
Ugandan	01
TOTAL	1,201

(d) ZAMBIANS ARRESTED ABROAD

Botswana	14
Mauritius	01
Zimbabwe	03
South Africa	01
Britain	03
TOTAL	22

APPENDIX E

**CRIME STATISTICS ON FRAUDS GENERAL AS FROM 1ST JANUARY,
1991 TO 31ST DECEMBER, 1995**

"NATIONAL"

YEAR	REPORTED	CLEARED	NOT CLEARED	CONVICTIONS	ACQUITTALS
1991	2,696	735	1,307	528	126
1992	2,932	923	1,405	420	184
1993	3,136	1,007	1,457	530	142
1994	2,880	963	1,287	492	138
1995	3,410	813	2,055	411	131
TOTAL	15,054	4,441	7,511	2,381	721

SOURCE: ANNUAL CRIME RETURNS.

APPENDIX G

**BILL NO. OF 1996 MOTOR VEHICLE THEFT ACT (ACT NO. OF 199)
DATE OF ASSENT**

An act to provide for offences and penalties in connection with theft of motor vehicles and to regulate transactions in motor vehicles by motor Dealers and other persons and to provide for police handling of stolen motor vehicles and to provide for matters connected therewith and incidental thereto. (1996)

ENACTED by the Parliament for the Republic of Zambia.

COMMENCEMENT

This Act shall come into operation on the date as the President shall, by Statutory Instrument, appoint; and on such different dates for different provisions of the Act.

Short Title

1. This Act may be cited as the Motor Vehicle Theft Act 1996.

Interpretation

2. In this Act unless the context otherwise requires "motor vehicle" and "motor dealer" have the meanings respectively assigned to those expressions in Section 2 of Roads and Road Traffic Act Cap. 766;
"Steal" has the meaning assigned to that expression in section 265 of the Penal Code Cap. 146;
"Receive" has the meaning assigned to that expression in Section 318 and 320 of the

Penal Code Cap.146;

“Motor Vehicle Breaking” has the meaning assigned, *Mutatis Mutandis*, to the expression “house-breaking” in Sections 300 and 301 of the Penal Code Cap. 146.

Theft of Motor Vehicles

3. (1) Any person who steals or receives a motor vehicle, knowing it to be stolen, or having reason to believe that the same has been stolen or illegally obtained, shall be guilty of an offence, and notwithstanding the provisions of any other written law, shall be liable for the first offence, to imprisonment for minimum of two years, without the option of a fine; and for a second or subsequent offence to imprisonment for a minimum of five years, but not exceeding ten years, without the option of a fine.

Theft of Motor with Violence

- (2) Where, for the purpose of stealing a motor vehicle, or in the course of stealing a motor vehicle, violence or the threat of violence is used, the penalty referred to in sub-section (1) shall in this case be a minimum of fourteen years imprisonment, but not exceeding twenty-five years, without the option of a fine.

Aggravated Theft of Motor Vehicle

- (3) If the violence used or threat involves the use of a firearm or other dangerous weapon, the penalty therefore shall be death.
- (4) A person charged under Section 3 (1) may be convicted of the offence of stealing or receiving a motor vehicle notwithstanding that the person stated in the charge to be the owner of the vehicle is wrongly named as the owner thereof.
- (5) Any person who procures, hires, incites, directs or instigates another person to contravene the provisions of sub-section (1) shall be guilty of an offence and liable to the same penalties as the person who contravenes those provisions.
- (6) Any sentence imposed in respect of an offence under this section shall be consecutive to and not concurrent with any other sentence imposed on the same accused person, and no sentence or any part of any sentence imposed in respect of an offence under this section shall be suspended.

Presumptions

4. A person who :
- (1) is found in possession of a motor vehicle reasonably suspected of being stolen;
 - (2) is found in possession of a motor vehicle of which the engine or chassis numbers, or the registration marks or number or other identification marks have been altered, disfigured, obliterated or tampered with in any manner;
 - (3) is found in possession of any forged registration book, papers or other docu-

ments of registration or ownership in relationship to a motor vehicle;

(4) has imported into Zambia a motor vehicle in contravention of any law for the time being in force in relation to the importation of motor vehicles; shall be presumed to have committed an offence under section 3 (1) in relation to the motor vehicle concerned, unless the contrary is proved.

Reporting by Motor Dealers

5. (1) Any motor dealer or manager of a motor dealer's business who discovers or has reasonable grounds to suspect that the registration number, engine or chassis number of or any other identification mark on a motor vehicle or motor vehicle engine delivered to him or received by him in the course of his business has been altered disfigured defected, obliterated or tampered with in any manner, shall forthwith report the matter to the nearest, police station, and the police may thereafter, in the absence of any satisfactory explanation, seize the motor vehicle in question or the engine as the case may be.

(2) Any motor dealer or manager of a motor dealer's business who fails to comply with the provisions of subsection (1) shall be guilty of an offence and liable to imprisonment for two years and a fine of K3,000,000.00 in default an additional two years imprisonment.

(3) Any sentence imposed under this section shall not run concurrently with any other sentence imposed on the accused person, and no such sentence or any part of such sentence shall be suspended.

Disposal, Purchase or Sale of Motor Vehicles

6. (1) Any person who:-

(a) Sells, transfers or otherwise disposes of a motor vehicle who, at the time of such a sale, transfer or disposal fails to furnish to the purchaser or to the person whom such motor vehicle is transferred or delivered a document affecting such sale, transfer or disposal; or

(b) Purchases or receives or accepts delivery of a motor vehicle and, at the time of such purchase, or delivery, does not demand and receive from the seller, transferor, or deliverer a document affecting such purchase, transfer or delivery, shall be guilty of an offence and liable to imprisonment for three years and a fine of K3,000,000.00.

(2) Subject to the the provisions of subsection (1), a document effecting the transfer of ownership of a motor vehicle shall be a declaration or certificate Specifying the motor dealer's full names, business name and address and affirming that the motor vehicle or engine in question has been lawfully sold or transferred to the purchaser, and such declaration or certificate shall be duly signed or endorsed by the seller or transfer or; and:-

CUSTOMS AND INTERPOL CLEARANCE

(a) In the case of a motor vehicle purchased outside Zambia such declaration or certificate is produced to a customs officer at the point of entry where upon he shall cause the document to be stamped upon satisfying himself that it complies with Import and Export Customs regulations, and thereafter, the document together with the motor vehicle, will be passed on to Interpol officer stationed at the point of entry, or if the Interpol office is at Lusaka or at a place of some considerable distance from the point, within three days of declaring the motor vehicle at customs entry point, for physical inspection and verification for purposes of issuing an Interpol clearance certificate;

(b) in case of a motor vehicle purchased in Zambia the purchaser presents the vehicle, together with the declaration or certificate to a police station within three days of the purchase of the vehicle, for verification by the police and Interpol clearance.

(3) Any dealer who refuses or fails to issue a declaration or certificate as required under subsection (1) (a), or who issues a false declaration or certificate and any purchaser who fails to present a motor vehicle and a declaration or certificate to a police station as required under sub-section 2 (a) (b), shall be guilty of an offence and liable to imprisonment for three years and to a fine of K3,000,000.00.

(4) Notwithstanding the provisions of subsections (1) and (3), if the motor vehicle is proved to be a stolen vehicle, the accused person or dealer concerned shall be liable to the penalties provided in section 3.

Tempering with Motor Vehicles

7. Any person who knowingly tempers with alters or assists in the tampering, alteration or repair of a motor vehicle so as to, or be likely to, conceal or disguise the identification of such vehicle, engine or part, shall be guilty of an offence and liable to imprisonment for three years and a fine of K3,000,000.00.

False Identification Plates etc.

8. (1) Any person who, on any road drives or is in charge or control of a motor vehicle which bears false identification plates, or no identification plates, shall be guilty of an offence and liable to imprisonment for five years and to a fine of K2,000,000.00.

(2) For purposes of subsection (1), every motor vehicle shall have affixed to it a reflex reflecting vehicle number plate exhibiting the registration mark of a vehicle and the background to the registration mark shall consist of reflex - reflecting material, attached to a suitable backing material;

(a) every reflex - reflecting number plate shall be designed in accordance with the Zambian Standard technical requirements prescribed and supervised by the Zam-

bia Bureau of Standards relating to metric properties and tests for impact resistance, strength of bonding, and resistance to impact, bending, vibration, corrosion, petrol, bonding separation, water extremes of temperature and abrasion;

(b) a chromium based hologram, suitable for out door use on vehicle number plates, showing the Zambia Bureau of Standards certificate mark shall be mandatory security feature on every such number plate and the certification mark shall operate as prima facie proof of compliance with the Zambia Standard;

(c) in addition, a Consecutive serial number issued to a manufacturer of number plates, certified by the Zambia Bureau of Standards, shall be burnt into the foil, preferably by means of a laser, below the national Coat of arms on the reflex - reflecting number plate;

(d) the third number plate shall be a validation sticker to be affixed inside of the windscreen with a holographic film and shall have all the information of the vehicle number plate save for the serial number, and such sticker shall have the words: the Roads and Road Traffic Act (Regulations) Cap. 766" written thereon. Notwithstanding anything contained in any other written law, the Zambian Standard of the reflex-reflecting number plate with the attendant security features outlined in this subsection, shall represent official national documents and shall be protected against any kind of counterfeiting and forging, and any failure to comply with the requirements of this subsection will raise the presumption of theft subject to the provision of section 3 (1).

(3) Any person who unlawfully possesses, manufacturers or causes to be manufactured any number plate, key, stamp, book, instrument, or other device or document used or designed or likely to be used or adapted for use in the commission of an offence under this Act shall be guilty of an offence and liable to imprisonment for three years and to a fine of K3,000,000.00.

Breaking into a Motor Vehicle

9. (1) Any person who breaks into a motor vehicle without consent of the owner thereof, or the person in lawful possession thereof, shall unless the contrary is proved be presumed to have broken into it with the intention of stealing, and shall be guilty of an offence and liable to imprisonment for three years and to a fine of K3,000,000.00.

(2) Any conviction and sentence imposed in terms of subsection (1) shall be in addition to any conviction and sentence imposed in respect of the theft of the vehicle concerned or of the theft of anything in the vehicle.

Competent Verdicts

10. (1) Where any person has been charged with an offence under section 3 or section 8(2) the court trying him may convict him in any of the following offences not-

withstanding that he was not originally charged with such offence; That is to say:-

- (a) attempting to steal a motor vehicle.
 - (b) attempting to receive a motor vehicle knowing or having reason to believe it to be stolen.
 - (c) conspiring with any other person in the commission of the offence.
 - (d) selling, disposing of or assisting in the sale or disposal of a motor vehicle knowing or having reason to believe it to be stolen.
- (2) Any person convicted of an offence under subsection (1) shall be liable to imprisonment for 5 years and to fine of K5,000,000.00.

Dealing in Stolen Motor Vehicles

11. (1) Any person who engages in the business of stealing, or the selling of stolen motor vehicles or of any other fraudulent dealings in motor vehicles, shall be guilty of an offence and liable to imprisonment for 15 years and to a fine of K15,000,000.00 and in addition shall forfeit to the government all assets traceable to such business.
- (2) Any sentence imposed in respect of an offence under subsection (1) shall be consecutive to and not concurrent with any other sentence imposed on the accused person, or any part thereof and no such sentence or any other part thereof shall be suspended.

Search, Seizure and Arrest

12. (1) Any police officer may without a warrant stop search and arrest any person found driving or in possession or charge or control of a Motor Vehicle, if he believes, on reasonable grounds that the vehicle is a stolen vehicle, whether or not that person has stolen it himself or received it knowing or having reason to believe it to be stolen, or has assisted in stealing the vehicle, and such vehicle and any documents relating thereto may then be seized.
- (2) A police officer who has arrested any person or seized any motor vehicle in accordance with the provisions of subsection (1), shall as soon as possible take that person and that vehicle and any documents seized relating to the vehicle to the nearest police station.
- (3) Any person arrested, or any motor vehicle seized in accordance with the provision of this section, shall within a reasonable time, not exceeding 72 hours from the time of arrest and/or seizure, be brought before a court of law.
- (4) The court before which a motor vehicle is brought in accordance with the provisions of subsection (3) shall not release such vehicle until the conclusion of any prosecution relating to such vehicle and unless within six months of date of such conclusion or the date of seizure thereof whichever is the later, application

is made for such release supported by satisfactory documentary proof of lawful ownership or lawful possession thereof and if at the conclusion of such period of six months the vehicle remains unclaimed it shall be handed back to the police to be dealt with as an unclaimed vehicle in accordance with the provisions of sections 42 and 43 of the Zambia Police Act Cap. 133.

Bail

- 13.** (1) Any person charged with an offence under this Act shall not be released from custody on his own recognisance.
- (2) A person charged with an offence under section 3 or section 4 shall not be released on bail for an amount less than half of the value of the motor vehicle concerned, as determined by court.
- (3) A person charged with any other offence under this Act shall not be released on bail for an amount less than half of the maximum fine prescribed for such offence.

Drivers Licences

- 14.** (1) The court sentencing a person for an offence under section 3 or section 4 of this Act shall endorse the driving licence of such person and disqualify him from driving for a period twice the term of imprisonment to which he is sentenced, and where such driving licence has been so endorsed three times the court shall, on the third occasion disqualify him from driving or from obtaining another driving licence for life.
- (2) Any person who obtains or attempts to obtain another driving licence during any period when he is disqualified in accordance with the provision of this subsection (1) shall be guilty of an offence and liable to imprisonment for not less than one year or more than three years.

Orders of Compensation

- 15.** (1) Where, on a conviction for an offence under this Act, it is proved that any person has suffered loss or damage as a result of such offence, the court may order the accused person to pay compensation for such loss or damage to the person who has suffered it, and such an order may include paying to the victim the principal amount of money stolen and interest at prevailing bank rate, and where more than one person is convicted jointly for the offence any such order or compensation may be made against any one of the accused persons, or against them all, or against any number of them jointly and severally.
- (2) Any order of compensation made under this section shall be in addition to and irrespective of any other sentence imposed on the accused, and may include the actual loss suffered as well as loss arising as a result of or attributable to the offence.

Forfeiture of Assets Derived from Theft

16. (1) Upon application made by the police to the High Court, the Court may order on investigation by the police into the dealings and assets of any person reasonably suspected of being engaged in the business of stealing or receiving motor vehicles, or any other fraudulent activities in relation to motor vehicles.
- (2) If, upon such investigation, it is found that any assets of such person have been derived from or are attributable to any of the activities referred to in subsection (1) the court shall order the forfeiture of such assets to the Government.
- (3) For the purpose of subsection (1) and (2), the court may make an order:-
- (a) authorising the police to search for and seize any assets of the person concerned, pending the investigation;
 - (b) requiring any person to make available to the police any document relevant to the location or identification of any assets of such person;
 - (c) prohibiting any dealing in any assets of such person without an order of the court; or
 - (d) requiring any bank or other financial institution to produce to the police any information relevant to any assets of such person.
- (4) Any person who has any interest in any assets seized or forfeited under this section may apply to the court to have such assets released to him; Provided that any person so applying shall satisfy the court with undisputed documentary proof of his legitimate, legal claim of right to establish his interest in the assets.
- (5) Any person who deals with any assets, which are subject to an order of the court under this section, in breach of or contrary to the terms of such order shall be guilty of an offence and liable to imprisonment for five years and to a fine of K5,000,000.00

Unclaimed Motor Vehicles

17. (1) Any motor vehicle seized by the police in accordance with the provisions of this Act and of which the owner is not known or cannot be found, and any motor vehicle found abandoned on any road or in any public place or premises may be removed to a police holding ground, and if not previously claimed by its owner, which claims shall be supported by satisfactory proof and all relevant documents, shall be dealt with in accordance with the provisions of subsection (2).
- (2) The police officer in charge of the police holding ground for the custody of abandoned or seized motor vehicles shall cause to be published in three editions of the Gazette at monthly intervals, and similarly in at least one newspaper circulating in Zambia, a notice giving particulars of the vehicles concerned, or where no particulars are available a fair description of the vehicles, and a warning that if

any of the vehicles remain unclaimed after a reasonable period of time, which shall not be less than six months after the date of the first notice published, they shall be forfeited to the Government and dealt with as the Minister may direct, which may include sale by public auction.

(3) Any vehicle seized, or taken into custody, by the police before the commencement of this Act, because it is suspected to have been stolen, or because the person lawfully entitled to it is unknown or cannot be traced shall, within one month from the commencement of this Act, or within six months of its being seized or taken into custody, which ever is the longer period, be dealt with in accordance with the provisions of subsection (2).

MISCELLANEOUS PROVISIONS

Default of Payment of A Fine

18. Whenever a person is sentenced to a term of imprisonment and in addition, a fine and such person fails to or defaults on the payment of a fine, the court shall order that he be imprisoned for an additional term equivalent to the fine so imposed, that is to say, that a default on a fine of K2,000,000 attracts 2 more years.

Police Holding Gound

19. Where the police takes into Police Holding Ground any motor vehicle which has been abandoned by the owner or seized or impounded subject to investigations, and if the lawful owner desires to claim such motor vehicle and assume custody of same, the Police shall subject the owner to payment of a fee the rate per day of which shall be determined and fixed from time to time by Gazette Notice by the officer-in-charge responsible for each Police Holding Ground.

Repeal and Transitional Provisions

20. (1) The Roads and Road Traffic Act 766 is hereby amended by the repeal and substitution thereof of the following provisions under the Motor Vehicle Theft Act:
- (a) Section 229 of the Roads and Road Traffic Act Cap. 766 is amended by the deletion of subsection (2), (7) which are now referred to sections 9 (1) and 15 of this Act.
 - (b) Section 239 of the Roads and Road Traffic Act Cap. 766 is repealed and replaced by sections 4, 7 and 8 of this Act.
- (2) The Penal Code Cap. 146 is hereby amended by the repeal and substitution therefore of the following provisions under the Motor Vehicle Theft Act:
- (a) Sections 318 (1), (2); 319; 320 of the Penal Code are repealed and referred to section 3 (1) of this Act;
 - (b) Section 293 of the Penal Code shall, *Mutatis Mutandis*, be replaced with Section 3 (2) of this Act whenever the object of an assault is a Motor Vehicle;

(c) Section 294 of the Penal Code shall, *Mutatis Mutandis* be replaced with section 3 (3) of this Act whenever the object of an aggravated theft is a Motor Vehicle; and

(d) Section 272 of the Penal Code shall, *Mutatis Mutandis*, be replaced with section 11 (1) of this Act whenever the alleged fraudulent dealing involves a Motor Vehicle:

Provided that any proceedings under the said Acts Pending before any court at the commencement of this Act shall be continued and concluded, and any judgement given may be enforced, in every respect as if the particular provisions in the said Acts had remained in force.

Rules

21. The Minister may, by Statutory Instrument, make rules generally for the better carrying into effect of the provisions of this Act, and, in particular, and without prejudice to the generality of the foregoing, may make rules for the purchase following or any of them:
- (a) prescribing the forms which may be used for carrying out the provisions of this Act;
 - (b) prescribing the manner of exemption and registration of local and foreign motor vehicles;
 - (c) regulating and/or restricting the manufacture and sale of Zambian Standard Certified motor vehicle number plates; and
 - (d) prescribing and/or regulating the security features for motor vehicles through established inspection pits and other technical inspection modes for effective control of the integrity of the blue books, vehicle inspection certificates and licence plates to eliminate fraudulent practices and ensure greater security and a reduction in the illegal importation of vehicles.