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POSITION PAPER

ON

DISCLOSURE LAWS IN ZAMBIA

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For
Transparency International – Zambia*

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I. Introduction

Since the assumption of office by President Mwanawasa in early 2002 the fight against corruption has taken centre stage in Zambia. This fight has essentially been targeted at senior officials of the Chiluba regime, including the former President himself. However, the government has paid little attention to the legal framework for combating corruption. It is important not only to punish acts of corruption but also to prevent acts of corruption from taking place. There is an old adage that 'prevention is better than cure'.

Disclosure laws are some of the means of preventing corruption from taking place. The disclosure laws compel certain categories of public officials-

- to make declarations of their assets and liabilities at specific intervals
- to declare gifts received; and
- to make declarations of interest at meetings and other fora.

Zambia has a number of laws which require disclosure of certain types of information by politicians and public officials.

The objectives of this study are:

- (a) To identify and evaluate the disclosure laws in Zambia.
- (b) To identify the gaps and inadequacies in the disclosure laws;
- (c) To make recommendations on how these laws can be made more effective; and
- (d) To make recommendations on any other issues that may be pertinent to the above.

II. Methodology

This is essentially a desk research. The following sources have been consulted:

- (a) Primary data: Laws of Zambia; Law reports; reports by the Auditor-General, Public Accounts Committee and other relevant institutions; newspapers.

- (b) Secondary data: books, articles, reports
- (c) The Internet for laws of other jurisdictions as well as relevant commentaries on the same

The study will also use the internet in order to find out about the nature and kind of disclosure laws obtaining in other countries for comparative purposes.

III. Declaration of Assets and Liabilities:

a. The President

The *Constitution of Zambia*¹ has provisions which require certain public officials to file declarations of assets and liabilities. *Article 34(5)(b)* requires a Presidential candidate to make a statutory declaration of his assets and liabilities, which shall be open to public inspection at such time and place as may be prescribed by or under an Act of Parliament. The said statutory declaration is lodged with the Chief Justice, who is the Returning Officer for Presidential elections, at the time when candidates are filing in their nomination papers.²

However, there is no provision for the Returning Officer to carry out an investigation to determine the accuracy or truthfulness of the statutory declaration. In fact, the proviso to section 9 states that, “the contents of such documents referred to in this section shall be accepted *prima facie*, by the Returning Officer, as complying with the law as to qualification for election as President.”³

Even if the Returning Officer were empowered to verify the accuracy of the declarations this would be impossible to achieve in practice not only because of

¹ Cap. 1, Laws of Zambia.

² Section 9(1)(c) Electoral Act, 1991 as amended by the Electoral (Amendment) Act No. 23 of 1996.

³ *Ibid*, section 9(1).

the time factor but also because of lack of capacity. The Returning Officer simply has no human resources to carry out such an undertaking.

Another serious shortcoming is that there is no law that requires the President to file declarations of assets and liabilities after assuming office and for the duration of his tenure at State House. This is a serious omission. Since the arrival of the New Deal government the nation has been treated to shocking revelations of how former President Chiluba abused his office to plunder public resources. At the time of writing this Report the former President is on trial on multifarious charges of theft of public resources. The Chiluba debacle underscores the need for the President to declare his assets and liabilities on a regular basis to a body or institution with the capacity to monitor the same.

b. Ministers, Members of Parliament, etc

Article 52 of the Constitution obliges all Ministers and Deputy Ministers to conduct themselves during their tenure of office, in accordance with a code of conduct promulgated by Parliament. The said Code is also applicable to Members of Parliament. In this connection, Parliament enacted the *Parliamentary and Ministerial Code of Conduct Act*.

The object of the *Parliamentary and Ministerial Code of Conduct Act* is to establish a Code of Conduct for Ministers and Deputy Ministers for the purposes of *Article 52 of the Constitution*, and for members of the National Assembly for the purposes of *Article 71 of the Constitution*. Breach of the *Code* results in the affected Member or Minister losing his seat in the National Assembly.

Part III of the Act, which applies only to Ministers, Deputy Ministers and the Speaker, requires these officers to submit to the Chief Justice an annual declaration of assets, liabilities and income within:

- thirty days after appointment; and

- thirty days after each anniversary of their appointment to the office concerned.⁴

The annual declaration should fairly state:

- the value of the assets (other than personal and household effects) and liabilities of the officer as at the date of declaration;
- the total income of the officer, together with his income from each source, for the twelve months preceding the declaration date.

Breach of *Part II of the Code* results in loss of a Parliamentary seat, and consequently, loss of the Ministerial position.⁵

However, backbenchers are not required by law to make similar declarations of assets and liabilities. This is a serious *lacunae* in the law as Members of Parliament play a very influential role in the operations of government. The public have a right to know whether their Members of Parliament are acquiring their wealth legitimately or whether their effectiveness and probity will be compromised by their indebtedness. It is an open secret that being a Member of Parliament is currently the fastest route to gaining wealth in Zambia. Individuals who were “walking” while they were ordinary citizens become visibly wealthy after becoming Members of Parliament. There is, therefore, an overwhelming public interest in tracing the economic fortunes of the MPs.

Yet another major shortcoming in these provisions is that they are virtually unenforceable. The Chief Justice is not vested with power to investigate the veracity of the information contained in the declarations. Moreover, the Chief Justice lacks the capacity to do so given the lack of resources, both human and financial.

⁴ The Parliamentary and Ministerial Code of Conduct Act, section 10(1) & (2).

⁵ Ibid, section 3.

Instead, the Act vests the power to enforce these provisions in the President. In this connection, *section 16 of the Code of Conduct* provides that an allegation that a person holding Ministerial office has breached the provisions relating to declaration of assets may be made to the President by any person in writing. The President is then required to furnish a copy of the complaint to the Minister concerned.⁶ However, the Act does not prescribe any sanctions should the allegations turn out to be true. It may be assumed that the President will take some action against the Minister concerned but this is entirely at his discretion. This is clearly unsatisfactory as the President may, for political reasons, not find it easy to discipline a colleague. It would be better if this were done by an independent agency or institution such as the Anti-Corruption Commission (ACC).

A further weakness of the *Act* is that it does not prescribe penalties either for failure to submit or for delay in the submission of the declaration of assets and liabilities to the Chief Justice.

Another shortcoming of the *Act* is that it does not require the concerned officers to include the assets of their spouses and children under 18 years of age or their dependants..

c. Public Officials

It may be observed that a major shortcoming of the law is that there is no legislation that requires public officials to disclose their assets and liabilities.⁷ Even officers working for a very critical institution like the National Tender Board, are not required to declare their assets and liabilities. Yet, it is a fact that some public officials, despite getting low salaries in government, are living way beyond

⁶ Ibid, section 16.

⁷ ⁷ Interview with Dr Kanganja, Chairman of the Public Service Commission and five other Commissioners held at Cabinet Office on 22nd May 2002. The Commissioners suggested that the filing of tax returns by Civil servants was a form of declaration of assets. However, not many individuals who are employed file tax returns in Zambia.

their official income. Quite a number of them, particularly senior officials, have connections with companies that supply goods and services to the government. The tender procedures, as the Auditor-Generals Annual Reports constantly show, are rarely observed.

IV. Disclosure of Conflict of Interest

a. Ministers and MPs

Section 5 of the Parliamentary and Ministerial Code of Conduct Act bars any Member from speaking in the National Assembly or in a Committee thereof unless he or she has disclosed the nature of that interest to the Assembly or Committee.

A Minister is prohibited from making unauthorized disclosures of Cabinet discussions or documents.

Section 6 of the Act requires Members who have an interest in government contracts to make a declaration to the Chief Justice of their interest in relation to the contract, specifying the nature and extent of their interest. A Member is deemed to have an interest in a contract if:

- he will derive any material benefit, whether direct or indirect, from the contract; or
- one party to the contract is a firm or body corporate and he has a material interest, whether direct or indirect, in the firm or body corporate.⁸

A Minister or Deputy Minister will lose his position if he breaches provisions under *Part II*, i.e., fails to disclose pecuniary interest in any matter before the Assembly, fails to declare interest in Government contracts, is involved in

⁸ Ibid, section 6(5).

dishonest activities, fails to make a declaration of assets or files a false declaration under section 10.⁹

Three Ministers and one MP have so far lost their parliamentary seats after they were found guilty of stealing public funds by judicial tribunals set up by the Chief Justice under the *Parliamentary and Ministerial Code of Conduct Act*.¹⁰

Occasionally, the press has accessed the statutory declarations and published their contents. But there has been no attempt to verify the accuracy of the declarations or to monitor such assets.¹¹

b. Judicial Officers

The *Judicial Code of Conduct Act*¹² regulates the ethical conduct of officers of the judiciary. A number of provisions deal with conflict of interest.

- *Section 5(2)* provides that a judicial officer shall not, in the performance of adjudicative duties, be influenced by
 - (a) partisan interests, public clamour or fear of criticism;
 - (b) family, personal, social, political or other interests
- *Section 5(3)* provides that, “A judicial officer shall not use the office or the officer’s position to advance any private interest of that officer, the officer’s spouse, child, relation or other person or make any person believe that the

⁹ Ibid, section 7.

¹⁰ Legal Affairs Minister Remmy Mushota and Patrick Katyoka, Mandevu MP (K210 million scandal). Both lost their parliamentary seats. In 2001, Peter Machungwa (Minister of Home Affairs) and Godden Mandandi (Works and Supply Minister), were found guilty of diverting K2 billion from the National Assembly to the MMD. Guy Scott, then Minister of Agriculture, was found innocent of allegations that he had received a kickback on a government contract. He had requested the Chief Justice to set up a tribunal to investigate the allegations against him. See *The Times of Zambia*, 8th August 1996, “Mushota is fired and that’s final.”

¹¹ Austin Mbozi, *Report and Recommendations on the Declaration of Assets in Zambia*. Lusaka: Transparency International Zambia, 2002

¹² Act No. 13 of 1999.

officer's spouse, child, relation or other person is in a position to influence the officer in any manner.”

- *Section 10(2)* prohibits a judicial officer from undertaking any assignment or other responsibility that would create a potential conflict of interests between the judicial officer and the Judicial Service Commission.
- *Section 6(1)* bars a judicial officer from adjudicating on or taking part in any consideration or discussion of any matter in which the officer or the officer's spouse has any personal, legal or pecuniary interest whether directly or indirectly.
- *Subsection 2 of section 6* disqualifies a judicial officer from adjudicating or taking part in any consideration or discussion of any proceedings in which the officer's impartiality might reasonably be questioned on the grounds that-
 - the officer has a personal bias or prejudice concerning a party or a party's legal practitioner or personal knowledge of the facts concerning the proceedings;
 - the officer served as a legal practitioner in the matter;
 - a legal practitioner with whom the officer previously practised law or served is handling the matter;
 - the officer has been a material witness concerning the matter or a party to the proceeding;
 - the officer individually or as a trustee, or the officer's spouse, parent or child or any other member of the officer's family has a pecuniary interest in the subject matter or has any other interest that could substantially affect the proceeding; or
- a person related to the officer or the spouse of the officer-
 - is party to the proceeding or an officer, director or a trustee of a party;
 - is acting as a legal practitioner in the proceedings;
 - has any interest that could interfere with a fair trial or hearing; or

- is to the officer's knowledge likely to be a material witness in the proceeding.
- As regards disclosure, *section 7(1)* requires a judicial officer disqualified under *section six*, at the commencement of the proceedings or commencement of the matter, to disclose the officer's disqualification and to request the parties or the parties' legal representatives to consider, in the absence of the officer, whether or not to waive the disqualification.
- *Section 7(2)* stipulates that where a judicial officer has disclosed an interest other than personal bias or prejudice concerning a party to the proceedings, the parties and their legal representatives may agree that the officer adjudicators on the matter.
- A disclosure or an agreement made under *subsection (2)* shall form part of the record of the proceedings in which it is made.¹³

A "judicial officer" is defined as the Chief Justice, the Deputy Chief Justice, a judge, a Chairman, Deputy Chairman, registrar, magistrate, justice of a court or other person having power to hold or exercise the judicial powers of a Court."¹⁴

The *Act* has a number of weaknesses. First, non-judicial officers such as the Chief Administrator, the Deputy Permanent Secretary, other senior professional and administrative staff are not covered by the Act. The need for a Code of Conduct for such staff cannot be overemphasised given the pivotal role they play in managing the affairs of the Judiciary.

Second, the *Act* does not require judicial officers to declare their incomes, assets and liabilities. Since judicial officers are highly susceptible to corruption it is imperative that they be compelled to file declarations of their incomes, assets and liabilities on an annual basis.

¹³ Judicial (Code of Conduct) Act, No. 13 of 1999, section 7(3).

¹⁴ *Ibid*, section 2.

With regard to extra-judicial activities, Judicial officers are banned from conducting activities outside the office that, *inter alia*, create conflict with judicial responsibilities.¹⁵ However, a judicial officer may receive compensation and reimbursement for services rendered and expenses incurred for any extra-judicial activities which are not contrary to the provisions of the Act.¹⁶ Such compensation or reimbursement:-

- Shall not exceed that which is reasonable and commensurate with the services rendered or expenses incurred;
- Shall not exceed what a person who is not a judicial officer would receive as compensation or reimbursement; and
- In the case of reimbursement, shall be limited to the actual cost of travel, food, lodging and other expenses reasonably incurred by the officer and, where authorised by the officer's spouse.¹⁷

The Act imposes a duty on a judicial officer who receives any compensation or reimbursement to make a report to the Judicial Service Commission stating-

- The amount of compensation or reimbursement received;
- The date on which the payment is received;
- The place where the payment is made and the nature of the activity for which the officer received the payment; and
- The name of the person, institution or organisation making the payment.¹⁸

¹⁵ The Judicial (Code of Conduct) Act, section 11(1)(a).

¹⁶ Ibid, section 11(2).

¹⁷ Ibid, section 11(3).

¹⁸ Ibid, section 12(1).

The said report “shall be made within twenty-one days from the date of receipt of the compensation or reimbursement by the judicial officer, and shall be filed as a public document with the Clerk of the Court on which the officer serves or such office as the Chief Justice may designate.”¹⁹

c. Public Officials and Senior Personnel of Statutory Corporations

There is no code of conduct or ethics for public officials. However, some statutes require board members and staff of statutory corporations to declare any pecuniary or other interest they or their spouses may have in a government contract or a matter that is being considered by the corporation in question. The following examples may be given.

Anti-Corruption Commission Act (ACC Act)

Section 13 of the ACC Act provides that if any person is present at a meeting of the Commission or any Committee at which any matter is under consideration, and in which matter that person or his spouse is directly interested in a private capacity, that person shall declare such interest and shall not, unless the Commission or the Committee otherwise directs, take part in any consideration or discussion of, or vote on, any question touching such matter.

Such a disclosure of interest must be recorded in the minutes of the meeting.²⁰ Failure to make such a disclosure is an offence that attracts a fine of up to 5000 penalty units.²¹

Similar provisions are replicated in *The Zambia Revenue Authority Act*,²² *The Human Rights Commission Act 1996*,²³ *The Examination Council of Zambia*

¹⁹ Ibid, section 12(2).

²⁰ ACC Act, section 13(2).

²¹ Ibid, section 13(3).

Act,²⁴ *The National Road Safety Council Act*,²⁵ *The National Youth Development Council Act*,²⁶ *The Persons with Disabilities Act*,²⁷ *The Zambia Law Development Act*,²⁸ *The Zambia National Broadcasting Corporation Act*,²⁹ *The Electoral Commission Act 1996*,³⁰ *The Small Enterprise Development Act*,³¹ *The Tolls Act*, *The Zambia Institute of Diplomacy and International Studies Act*³², *The University Act, 1996*³³ *the Judicial (Code of Conduct) Act*³⁴, and *The Bank of Zambia Act*.³⁵

The Privatisation Act

The Privatisation Act has provisions which are a replica of *section 13 of the ACC Act*.³⁶ In addition, the *Act* requires political leaders and public officers to publicly disclose their intention to bid for the purchase of shares in a state owned enterprise.³⁷

d. Local Government

*Section 27 of the Local Government Act*³⁸ requires any councillor who has any pecuniary interest, direct or indirect, in any contract, proposed contract or of other matter and is present at a meeting of the council at which the contract or other matter is being considered, to disclose the fact. He or she is barred from taking part in the consideration or discussion of, or vote on any question with

²² Cap. 321, section 17(1) & (2).

²³ Act No. of 1996 section 16.

²⁴ Cap. 167, section 14.

²⁵ Cap. 471, section 11.

²⁶ Cap. 144, section 11.

²⁷ Act No. 33 of 1996, Schedule, Part 1, section 7.

²⁸ Cap. 32, Schedule, Part II, section 11.

²⁹ Cap. 154, Part II, section 15.

³⁰ Part II, section 10. The penalty for violating the section is a fine of up to ten thousand penalty units or imprisonment for a term not exceeding three years or both.

³¹ Act No. 29 of 1996, Schedule, section 5.

³² Cap. 22, section 12.

³³ First Schedule, Part 1, section 9.

³⁴ No. 13 of 1999, Part IV, section 29.

³⁵ No. 43 of 1996, Part III, section 20. The penalty for contravening this section is a fine not exceeding thirty thousand fee units or imprisonment for a term not exceeding three years or both.

³⁶ Privatisation Act, Cap. 386, sections 11 and 14.

³⁷ Ibid, section 26.

³⁸ Cap. 281.

respect to, the contract or other matter. Failure to disclose constitutes an offence.³⁹

However, the provision does not extend to Council officers.

V. Gifts and Hospitality

a. Public Officials

Under *Order 79 of the General Orders*, which apply to the Civil Service, officers are forbidden to give or to receive valuable presents whether in the form of money, goods or passages except with the specific approval of the responsible officer of a Ministry or Province concerned except in respect of:

- an officer permanently leaving the service; or
- the family of an officer who dies in the service.

An officer who infringes this *Order* commits misconduct. Moreover, officers who receive gifts abroad are required, as a matter of practice, to report such gifts to their superiors upon return. But there are no registers to record gifts and there is no monitoring mechanism.

Furthermore, what constitutes a valuable gift or present is not defined. According to the Public Service Commission (PSC), the nature of the gift is more important than the amount of the gift. In its view, few Civil Servants, if any, do receive valuable gifts because of the nature of their work.⁴⁰

However, the Commission's view does not reflect reality. Corruption is rampant in the Civil Service because, among other things, civil servants routinely solicit or accept gifts from members of the Public who deal with them. Thus, food

³⁹ Local Government Act, section 27(7).

⁴⁰ Interview with the Chairman and Members of the Public Service Commission held at Cabinet Office on 22 May 2002.

suppliers, for example, provide valuable gifts to those who sit on tender committees.⁴¹

b. *Ministers and Parliamentarians*

An MP or Minister is considered to have breached the *Code* if he knowingly acquires any significant pecuniary advantage, or assists in the acquisition of pecuniary advantage or assists in the acquisition of pecuniary advantage by another person by:

- (a) improperly using or benefiting from information which is obtained in the course of his official duties which is not generally available to the public;
- (b) disclosing any official information to unauthorized persons;
- (c) soliciting or accepting transfer of economic benefits, other than:
 - benefits of nominal value including hospitality and token gifts;
 - gifts from close family members; or

transfers pursuant to an enforceable right of the member or pursuant to a contract for which full value is given.⁴²

However, there is no register for registration of gifts. Moreover, the legislation does not prescribe the maximum value of allowable gifts or hospitality. Ministers have been known to receive gifts of significant value even from non-relatives. No Minister has ever been punished for soliciting or accepting gifts of significant value.

Ministers and Parliamentarians who violate *section 4(e) of the Parliamentary and Ministerial Code of Conduct Act* may lose their seats if found guilty by a judicial tribunal set up by the Chief Justice after receipt of a complaint from members of the Public.

⁴¹ Kebby Malila, *Corruption in the Public Sector Procurement* 1THE CORRUPTION EYE 3 (Issue No. 1, September 2001).

⁴²The Parliamentary and Ministerial Code of Conduct Act, section 4.

Furthermore, *section 22 of the National Assembly (Powers and Privileges) Act* makes it an offence punishable with a fine not exceeding ten thousand penalty units or to imprisonment of up to three years or both, for an MP to demand, accept, or receive directly or indirectly any gift, bribe, or reward as an inducement for him to vote in a particular manner on any Bill, Resolution, matter or issue submitted to the National Assembly.

No MP has ever been charged with receiving illegal gifts or hospitality. In fact there is no public register for recording gifts.

Mechanism for dealing with complaints: Ministers and MPs

Complaints that a Minister or Member of Parliament has violated the provisions of the *Code* should be made in writing to the Chief Justice giving particulars of the breaches or alleged breaches.⁴³ Furthermore, a member affected by the Act may himself lodge a complaint with the Chief Justice where such allegations have appeared in the public media.⁴⁴ The Chief Justice shall then notify the President and the Speaker of the allegation and shall appoint a tribunal to investigate the allegations.⁴⁵

A tribunal must be composed of three persons appointed from serving or former High Court or Supreme Court Judges.⁴⁶ It must conduct its inquiry in public and submit a report on its findings within 45 days to the President, the Speaker and the member concerned.⁴⁷

⁴³ Ibid, section 13.

⁴⁴ Ibid, section 13(2).

⁴⁵ Ibid, section 13(3).

⁴⁶ Ibid, section 14 (1).

⁴⁷ Ibid, section 13(4).

The tribunal is entitled to engage the services of technical advisors, experts, the police, the Anti-Corruption Commission and the Commission for Investigations.⁴⁸ It may make such recommendation as to administrative actions, criminal prosecutions or other further actions to be taken as it thinks fit.⁴⁹

It is clear that this enforcement mechanism is solely dependent on a complaint of misconduct being made to the Chief Justice and the Chief Justice being convinced that the complaint merits further investigation.

A major *lacunae* in the law is that it does not extend to the president. Thus, the president is not required to disclose gifts or hospitality he may receive.

c. Judicial Officers

Section 15(1) of the Judicial (Code of Conduct) Act provides that a judicial officer or member of the officer's family residing in the judicial officer's household, shall not accept a gift, bequest, favour or loan from any person for purposes of a bribe, corrupt practice so as to influence the officer in the execution of the officer's duties.

However, "gift", "bequest" or "favour" does not include-

- a gift incidental to a public testimonial, a book, tape or other resource material supplied by a publisher on a complimentary basis;
- an invitation to the judicial officer's spouse or other family members to attend a function or an activity related to the improvement of the law, the legal system or the administration of justice;
- a gift, award or benefit incidental to the business, profession or other activity of a spouse or other family member of a judicial officer;
- a gift , award or benefit for use by the spouse, other family member and the judicial officer;

⁴⁸ Ibid, section 14(6) & (7).

⁴⁹ Ibid, section 14(8).

- ordinary social hospitality;
- a gift from a relative or a friend, for a special occasion including a wedding, anniversary or birthday, where the gift is commensurate with the occasion and relationship;
- a gift, bequest, favour or loan from a relative or personal friend;
- a loan from a lending institution on the same terms available to persons who are not officers;
- a scholarship or fellowship awarded on the same terms and criteria applied to other applicants; or
- any other gift, bequest, favour or loan, from a person who is not a party or is not a person who is or is likely to come or whose interest is or is likely to come before the officer. This is on the condition that the gift, award or benefit could not reasonably be perceived as a bribe or corrupt practice or an intention to influence the officer in the performance of judicial duties.⁵⁰

Mechanism for enforcing judicial ethics

A Complaints Committee, comprising five members who have held or are qualified to hold high judicial office, is constituted. The members, who are appointed by the President subject to ratification by the National Assembly, elect the chairperson from among themselves. The Committee is serviced by a Secretary, who is appointed by the President.⁵¹ Under *section 24 of the Act* the functions of the Committee are listed as:-

- to receive any complaint or allegation of misconduct and to investigate any complaint or allegation made against a judicial officer;
- to submit its findings and recommendations to-
 - the appropriate authority⁵² for disciplinary action or other administrative action; and

⁵⁰ The Judicial (Code of Conduct) Act, section 15(2).

⁵¹ The Judicial (Code of Conduct) Act, section 20.

⁵² “Appropriate authority” means-

(a) in the case of the Chief Justice, the President;

- the Director of Public prosecutions for consideration of possible criminal prosecution

Section 25 provides that any member of the public who has a complaint against a judicial officer or who alleges or has reasonable grounds to believe that a judicial officer has contravened the *Act* shall inform the Committee. The same duty to report to the Committee is cast on a judicial officer who alleges or has reasonable grounds to believe that any other officer has contravened the *Act*. The complaint procedures, including investigations, are entirely confidential and not open to public scrutiny.⁵³

This is a major weakness of the law as transparency is paramount in ensuring honesty and accountability. Moreover, in terms of separation of powers it would be preferable if members of the Complaints Committee were appointed by the Judicial Service Commission rather than the President.

VI. Money Laundering and Disclosure

*The Prohibition and Prevention of Money Laundering Act*⁵⁴ prohibits money laundering, establishes the Anti-Money Laundering Authority and the Anti-Money Laundering Investigations Unit, provides for the disclosure of information on suspicion of money laundering activities by supervisory authorities and regulated institutions, authorises forfeiture of property of persons convicted of money

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- (b) in the case of a judge, the Chief Justice, who may admonish the judge concerned and in the case of a breach requiring removal under article 98(2) of the Constitution, the Chief Justice shall inform the President;
 - (c) in the case of the Registrar, the Chief administrator, who shall inform the Judicial Service Commission;
 - (d) in the case of a magistrate, the Director of Local Courts or any other judicial officer, the Registrar, who shall report to the Commission for action; and
 - (e) in the case of a local court officer or justice, the Director of Local Courts, who shall report to the Commission for action.

⁵³ Ibid, section 25(8).

⁵⁴ Act No. 14 of 2001.

laundering, provides for international cooperation in investigations, prosecution and other legal processes of prohibiting and preventing money laundering.⁵⁵

The *Act* also established the Anti-Money Laundering Investigations Unit, consisting of the Commissioner of the Drug Enforcement Agency and such other officers as the Commissioner may appoint.⁵⁶ Among the functions of the Unit are to:-

- collect, evaluate, process and investigate financial information including that from regulated institutions, and supervisory authorities, relating to financial and other business transactions suspected to be part of money laundering for the purpose of preventing and suppressing money laundering offences;
- to conduct investigations and prosecutions of money laundering offences;
- to assist in developing training programs for use by regulated institutions and Supervisory Authorities in the implementation of the Act;
- to cooperate with law enforcement agencies and institutions in other jurisdictions responsible for investigations and prosecutions of money laundering offences; and
- to supervise the reporting requirements and other administrative obligations imposed on regulated institutions and supervisory Authorities under the Act.ⁱ

Since every offence under the Anti-Money Laundering Act is deemed to be a cognisable offence an authorized officer of the Investigation Unit can effect an

⁵⁵ Money laundering means:-

- 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.

The Act defines “illegal activity” as any activity whenever or whenever carried out which under any written law in the Republic amounts to a crime.

⁵⁶ Ibid, section 5.

arrest without warrant. Officers of the Unit can, if granted a warrant by a competent court:-

- enter any premises and search for, seize and detain any property, book or document reasonably suspected to relate to an offence under the Act.
- search any person who is suspected or connected with the offence in or on the premises, and take that person into custody in order to facilitate investigations;
- arrest any person who is in or on the premises in whose possession any property liable for service for forfeiture under the Act is found or whom the officer reasonably believes to have concealed or deposited on the property;
- break, open, examine and search any premises, article container or receptacle suspected or concerned with the offence; or
- stop, search and detain any conveyance.⁵⁷

It is an offence for any person who knows or suspects that an investigation into money laundering has been, is being or is about to be committed, to falsify, conceal, destroy or otherwise dispose of, cause or permit the falsification of material which is or is likely to be relevant to the investigation of the offence.⁵⁸

Divulging details of an impending investigation to another person without lawful authority is an offence that attracts a fine of up to one hundred and thirty nine thousand penalty units or a term of imprisonment not exceeding five years or both.⁵⁹

⁵⁷ Ibid, section 15,

⁵⁸ Ibid, section 10.

⁵⁹ Ibid, section 11.

Part V of the *Act* contains measures aimed at preventing money laundering. The supervisory authorities listed below are under an obligation to disclose or cause to be disclosed to the Anti-Money Laundering Investigations Unit information they obtain that a business transaction indicates that any person has or may have been engaged in money laundering. Any officer of a supervisory unit who obstructs investigations may, on conviction, be subject to imprisonment for a term not exceeding five years or to a fine of up to one hundred thousand penalty units or to both.⁶⁰ The supervisory authorities are:-

- the Bank of Zambia
- the Registrar of Building Societies
- the Registrar of Banks and Financial institutions
- the Registrar of Co-operatives
- the Registrar of Insurance
- the Commissioner of the Securities and Exchange Commission
- the Registrar of Companies
- the Commissioner of Lands
- the Investment Board
- the Licensing Authority under the *Casino Act* any other authority which may be established by law as a supervisory authority.⁶¹

These institutions can issue directives to regulated institutions, subject to approval by the Unit, which may be necessary to prevent and detect money laundering.⁶² Regulated institutions are under an obligation, *inter alia*, to:-

- report to the Unit the identity of persons involved in any business transaction, in particular cash transactions which give any officer of the regulated institution reasonable grounds to believe that a money laundering offence is being, has been or is about to be committed;

⁶⁰ Ibid, section 12.

⁶¹ Ibid, section 2.

⁶² Ibid, section 12(4).

- comply with any directives issued to it by the supervisory authority with respect to money laundering activities;
- permit any authorized officer with a warrant to enter into the premises of the regulated institution during working hours and inspect records suspected of containing information relating to money laundering and to make notes or take copies of the whole or any part of the record; and
- designate an officer in each branch or local office to be responsible for reporting all transactions suspected of being related to money laundering.⁶³

A regulated institution should not obstruct any investigations into money laundering that may be instituted under the Act.⁶⁴ Any, regulated institution, which contravenes these provisions commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units.⁶⁵

Where any regulated institution is guilty of an offence under the Act any officer or employee of the institution who is responsible for, or causes, the regulated institution to commit the offence is guilty of an offence and liable upon conviction to a fine not exceeding one hundred and twelve thousand penalty units, or to imprisonment for a term not exceeding three years or to both.⁶⁶

It is not unlawful for any person to make any disclosure in compliance with the Act.⁶⁷

Any property which has been seized and is in the possession or under the control of a person convicted of a money laundering offence and which property is

⁶³ Ibid, section 13(1).

⁶⁴ Ibid, section 13(2).

⁶⁵ Ibid, section 13(4).

⁶⁶ Ibid, section 13(5).

⁶⁷ Ibid, section 13.

derived or acquired from proceeds of the crime shall be liable to forfeiture by the court.⁶⁸ The Court can only make an order of forfeiture if-

- The Commissioner has given notice by publication in the Gazette and in one national newspaper to the effect that property which has been seized under the Act shall be liable to vest in the State if it is not claimed within three months; and
- Three months after the giving of the said notice the property remains unclaimed.⁶⁹

Any property forfeited under the Act vests in the State.⁷⁰

A person who is convicted of wilfully failing or refusing to disclose any information or producing any accounts, documents or articles to an authorized officer during an investigation may be fined up to 200 penalty units or be jailed for a term not exceeding five years or both.⁷¹

Any person commits an offence punishable by imprisonment of a term not exceeding five years without the option of a fine if he/she, *inter alia*:

- refuses to furnish to any authorized officer on request, any particulars or information to which the authorized officer is entitled under the Act;
- fails to comply with any lawful demand of an authorized officer under the Act;
- wilfully or recklessly gives any authorized officer any false or misleading particulars or information with respect to any facts or particulars to which the authorized officer is entitled under the Act;
- fails to produce, conceals or attempts to conceal any property, document or book in relation to which there is reasonable ground to

⁶⁸ Ibid, section 17.

⁶⁹ Ibid, section 18(2).

⁷⁰ Ibid, section 20.

⁷¹ Ibid, section 27.

suspect that an offence has been or is being committed under the Act;
and

- before or after any seizure, destroys anything to prevent the seizure or securing of that property or article.⁷²

These are indeed laudable provisions, which if implemented fully are likely to reduce the scourge of money laundering, which is a serious problem in Zambia.

VII. RECOMMENDATIONS

Ministers, MPs and the President

- The *Parliamentary and Ministerial (Code of Conduct) Act* should extend to the Republican President. He/she should be obliged to disclose his income, assets and liabilities as well as gifts and hospitality he/she receives on an annual basis.
- The declaration of assets and liabilities should be done regularly, at intervals of a year.
- The declaration should indicate how the incomes, assets and liabilities were acquired.
- The declaration should also cover the assets and liabilities of the spouse and dependent children under the age of 18.
- The declarations of assets, liabilities and gifts should be filed with the Anti-Corruption Commission, rather than the Chief Justice. This will entail an expansion in the capacity of the Commission so that it can accommodate this new responsibility. A special unit within the ACC could be created to

⁷² Ibid, section 26.

deal with the declarations. Once a declaration is filed, the ACC would have to verify the accuracy of the data without waiting for a complaint being lodged by members of the public.

- The Code of Conduct should prohibit ministers and MPs from taking on other paid work.
- Ministers, and MPs should be required to disclose gifts above ten dollars, which should be recorded in a register which should be open to the public.

Senior Officials in the Public Service, and Statutory Corporations

- A Code of Conduct for public officers should be enacted, requiring them to disclose their incomes, assets and liabilities as well as those of their spouses and dependent children on an annual basis without prejudice to the rights of the officers' spouses, children and dependants to independently own property.
- Public officers should be required to disclose gifts above ten dollars.
- A gift or donation to a Minister, MP, or public officer on any public or ceremonial occasion, or commission to the affected official on any transaction should be treated as a gift or donation or commission to the Government or institution represented by the said official and should be declared to the ACC.
- Each Ministry, department, local government, parastatal or statutory corporation should maintain a register of gifts.
- The provisions relating to disclosure of interest under various statutes governing statutory corporations need to be enhanced in the following ways:-

- An officer must not participate in the deliberations of a public body or board or council or commission or committee, of which he or she is a member at any meeting at which he or she has a personal interest is to be discussed.
 - An officer attending such a meeting must disclose the nature and extent of his or her personal interest.
 - Before an officer deals with a matter in the course of his or her duties in which he or she has a personal interest, he or she must inform the person or public body or institution concerned, of the nature and extent of his or her interest
- The expression “personal interest” in relation to an officer, includes the personal interest of a spouse, child, dependant, agent, or business associate of which the officer has knowledge or would have had knowledge if he or she had exercised due diligence having regard to all circumstances
 - An officer who breaches these provisions should-
 - i. cease to be member of that public body, board, council, commission, or committee; and
 - ii. where any loss is caused, make good the loss;
 - iii. pay a big fine or be imprisoned or both.

Local Government

- A code of conduct similar to that applicable to public officers should be enacted and applied to Local government councillors and senior council officials.

Judiciary

- A code of conduct similar to that being proposed for public officers should also apply to senior non-adjudicative staff of the Judicature.

Freedom of Information

- It is imperative that government administration be opened up to public scrutiny through the enactment of a Freedom of Information Act. Such an Act should give everyone the right of access to any information held by the state as well as any information that is held by another person and that is required for the exercise or protection of any rights.

Protection of Whistle-Blowers

- Zambia does not have any legislation that protects whistle-blowers. To increase transparency and accountability in government there is evident need for the government to enact necessary legislation protecting persons who reveal malpractices by officials, from victimisation.

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The Privatisation Act, Cap. 386
The Zambia Revenue Authority Act, Cap. 321
The Anti-Corruption Commission Act, Cap. 91
The Electoral Commission Act, 1996
The Human Rights Commission Act 1996
The Bank of Zambia Act
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The Tolls Act, Cap. 465
The National Road Safety Council act, Cap. 471
The National Youth Development council Act, Cap. 144
The University Act, 1996
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The Zambia Institute of Diplomacy and International Studies Act, Cap. 22

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