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AN EVALUATION OF THE EFFECTIVENESS OF ZAMBIA'S FORFEITURE OF PROCEEDS OF CRIME ACT IN COMBATING FINANCIAL CRIMES: RATIONALE, IMPLEMENTATION, IMPACT AND CHALLENGES

By:

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LLB22112334

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2025

DECLARATION

I, **GRACE KASAKA**, do hereby declare that this dissertation titled "**AN EVALUATION OF THE EFFECTIVENESS OF ZAMBIA's FORFEITURE OF PROCEEDS OF CRIME ACT IN COMBATING FINANCIAL CRIMES: RATIONALE, IMPLEMENTATION, IMPACT AND CHALLENGES**" which is hereby submitted to the School of Law at the University of Lusaka in partial fulfilment of the requirement for the award of a Bachelor of Laws (LLB) Degree, is my own original work and it has not been previously submitted for the award of a degree at this University or any other tertiary institution in Zambia or elsewhere. I understand what plagiarism entails and I am also aware of the University's policy in this regard. Thus, where other people's work is cited, I have duly acknowledged. The errors or omission in this work are solely mine.

GRACE KASAKA

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2025

RECOMMENDATION

I, **MONICA CHIPANTA MWANSA**, do recommend that this dissertation prepared under my supervision by **GRACE KASAKA** titled "**AN EVALUATION OF THE EFFECTIVENESS OF ZAMBIA's FORFEITURE OF PROCEEDS OF CRIME ACT IN COMBATING FINANCIAL CRIMES: RATIONALE, IMPLEMENTATION, IMPACT AND CHALLENGES**" be accepted for examination. I have carefully checked it and I am satisfied that it fulfills the requirement relating to format as laid down in the regulations governing directed research.

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MONICA CHIPANTA MWANSA

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DEDICATION

I dedicate this dissertation to the memory of my late father, **Mr FRANCIS FORTUNATE KASAKA**, whose strength, wisdom, support, love and guidance continue to inspire me every day. His memory is a beacon that has carried me through every challenge. I also dedicate this work to my late sister, **BIBISHA KASAKA**, my prayer warrior, whose unwavering faith and fervent prayers provided me with spiritual sustenance throughout this endeavour. Their legacies remain a source of inspiration and motivation in my pursuit of knowledge and excellence. May their souls continue to rest in eternal peace.

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ABSTRACT

This dissertation critically evaluated the effectiveness of Zambia's Forfeiture of Proceeds of Crime through asset forfeiture mechanisms. It explored the rationale behind the Act, its legal and institutional framework, implementation procedures and its impact on combating financial crimes such as money laundering and corruption. This study looked at how Zambia handles asset forfeiture and identified a number of challenges, including unclear laws, high evidence standards, limited resources and poor coordination among enforcement agencies. By comparing the system used in Zambia to those used in other jurisdictions such as South Africa and the United States of America, this study discovered the need to improve our framework. While the Forfeiture of Proceeds of Crime Act marked a positive advancement in the fight against financial crime, the challenges in its implementation limit its effectiveness. To make the Act more effective, the study recommends updating the law, collaborations with other countries, investing in better technology, strengthening safeguards and building agent capacity.

CHAPTER ONE

1.0 INTRODUCTION

The Forfeiture of Proceeds of Crime Act is a critical piece of legislation aimed at combating financial crimes, which include money laundering and corruption among others.[1] The illicit accumulation of wealth through financial crimes, such as money laundering, corruption, and terrorism financing, poses a significant threat to global economic stability, security and governance.[2] Corruption and financial crimes are very complicated and secretive in nature, therefore making it hard to track down illicitly obtained assets.[3]

The United Nations Convention against Corruption is an important global agreement that helps countries to fight corruption. It allows them to freeze and seize assets that are obtained through illicit means like corruption.[4] Because of this agreement, a lot of countries have passed laws that intend to take away criminals and ill-gotten gains, making it difficult for people to benefit from corruption. The rationale of this agreement was to hold individuals accountable, recover stolen assets and promote transparency.

Zambia, like many other countries enacted the Forfeiture of Proceeds of Crimes Act. The preamble of the Act expressly articulates the imperative to deprive criminals of the proceeds of crime, disrupt criminal enterprises and promote a just and accountable society, reflecting the legislative intent behind Zambia's enactment of this Law similar to many countries.[5]

By identifying and analysing the main barriers that restrict the Act's impact, this study will look at issues that impede its effective implementation.

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[1] Act No. 19 of 2010

[2] National Prosecution Authority, "Illicit Financial Flows" https://www.npa.gov.zm/index.php/2023/02/14/assetrecovery-inter-agency-coordination-framework-in-zambia/ accessed on 20th March 2025.

[3] ibid

[4] United Nations Convention against Corruption.

[5] Forfeiture of Proceeds of Crime Act,2010, preamble

1.1. BACKGROUND OF STUDY

Zambia's economy has experienced considerable transformation, propelled by massive investments in the mining sector, agriculture and infrastructure development. However, this growth has been accompanied by a rise in financial crimes including money laundering, corruption and organized crime, which compromise the integrity of the financial system and jeopardize economic stability.[6]

Financial crimes have serious consequences for Zambia's economy and society. According to the World Bank, corruption alone can reduce economic growth of a country as it is considered a major challenge to its twin goals of ending extreme poverty by 2030 and boosting shared prosperity for the poorest 40% of people in developing countries.[7]Financial crimes can harm the economy, increase poverty and undermine government trust.[8] Additionally, the International Monetary fund has emphasized about the dangers involved with financial system abuse and the need to establish strong measures to stop financial crimes.[9]

To tackle these challenges, Zambia enacted the Forfeiture of proceeds of Crime Act, a law which authorizes enforcement agencies to seize and freeze illicitly gotten assets.[10] The law aims to prevent crime and promote honesty by taking away the profits of illegal activities.

Research shows that seizing assets that are illicitly obtained can effectively fight financial crimes, however, its success relies on a number of factors. This study aims to add to

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[6] Bank of Zambia, "Annual Report" (2022)

[7] The World Bank, "Combating Corruption" https://www.worldbank.org/en/topic/governance/brief/combatingcorruption accessed on 23rd March, 2025

[8] ibid

[9] The International Monetary Fund, "Financial systems Abuse, Financial Crime and Money Laundering-Background Paper" https://www.imf.org/external/np/ml/2001/eng/021201.htm accessed on 23rd March, 2025

[10] Act No 19 of 2010

existing knowledge on the topic by exploring how well asset forfeiture works in preventing financial crimes.

1.2. STATEMENT OF PROBLEM

Despite the enactment of the Forfeiture of Proceeds of Crime Act which was aimed at combating financial crime in the country, challenges still exist in achieving its objective. Evidence shows that although the Act provides the legal framework for the identification, seizure, and forfeiture of property derived from crime, high profile cases of financial crime continue to emerge therefore undermining the economic stability and eroding public trust in the legal system.

Operational reports and case law indicate that multiple agencies including the National Prosecution Authority (NPA), Anti-Money Laundering Investigations Unit and the Anti-Corruption Commission play different roles in asset forfeiture and management, however, sometimes some of these institutions play overlapping roles. This has led to accountability gaps, inefficiencies and process delays.[10] Additionally, a notable court case of ***Sydney Mwansa v Director of Public Prosecution,*** exposed ambiguities in the law, with the court ruling that assets can only be seized if there is a direct connection to a serious crime. The court stated that mere suspicion is not adequate.[11] This places a higher standard on the prosecution and restricts the use of forfeiture, however, courts remain divided on the correct approach as illustrated by conflicting rulings from the High Court and the Court of Appeal.

Furthermore, the Act allows for non-conviction-based forfeiture, which requires less evidence hence lowering the evidential threshold while shifting the burden of proof to the accused person to prove the lawful origin of the assets as shown in the case of ***The People v Liato.***[12] This situation has raised concern about the potential for wrongful

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[10] Anti-corruption, stolen asset recovery and civil society in Zambia https://cifar.eu/wpcontent/uploads/2022/04/Zanbia-2022.pdf accessed on 30th July, 2025

[11] (Appeal No. 276/2021) [2024] ZMCA 118

[12] (Appeal No. 291 of 2014) [2015] ZMSC 26

forfeiture and erosion of due process. Additionally, issues like offenders transferring illegal assets to legitimate buyers or opting for monetary settlement instead of forfeiting property reduce deterrence. Other weaknesses such as slow asset tracing, lack of resources and lengthy court processes, hinder enforcement and wrongdoers.

This dissertation will thoroughly analyse the Act's impact and implementation. Pinpointing the obstacles to its success and suggesting reforms to improve its efficacy in fighting financial crimes.

1.3. GENERAL OBJECTIVE

This research intends to assess the effectiveness of the Forfeiture of Proceeds of Crime Act in Zambia. It will critically examine its influence on crime, pinpoint challenges in its implementation and explore possible improvements. The goal is to provide insights that can enhance evidence based policies and practices aimed at strengthening the nation's framework for preventing financial crime.

1.4. SPECIFIC OBJECTIVES

1. To analyse procedures and processes used in enforcing the Act in Zambia.
2. To evaluate the Act's impact on reducing financial crimes in Zambia.
3. To assess the legal, procedural and practical challenges in implementing the Act and compare Zambia's forfeiture framework with international best practices to identify areas for improvement.

1.5. RESEARCH QUESTIONS

1. How are the processes and procedures for enforcing the Forfeiture of Proceeds of Crimes Act implemented, particularly in the identification and seizure of assets?
2. To what extent has the Act contributed to the reduction of financial crimes in the country?

3. What are the legal, procedural and practical challenges in implementing the Act, and how does Zambia's forfeiture framework compare to international best practices in addressing financial crimes?

1.6. SIGNIFICANCE OF STUDY

This dissertation is important because it attempts to improve our present knowledge of how well Zambia's Forfeiture of Proceeds of Crime Act combats financial crime. This study will provide crucial insights for legislators, law enforcement and the judiciary by carefully examining the Act's implementation, challenges, rationale and impact. It will also guide enhancements in practice and reform in policy. Ultimately, by addressing financial crime, enhancing financial stability and supporting economic growth in Zambia, the study's findings and recommendations will help shape policy decisions, encourage accountability, transparency and safeguard the public interest. The outcomes of this research will have implications for practice, policy and future investigations, positioning it as a significant contribution to the fields of law.

1.7. SCOPE OF STUDY

This study focuses on evaluating the effectiveness of the Act in combating financial crimes, with a geographical scope that includes Zambia and other jurisdictions with similar legislation. This study will examine the provisions of the Act, implementation and outcomes in Zambia while drawing reference from international best practices and comparative studies of other countries experiences with forfeiture legislation.

1.8. LITERATURE REVIEW

Edwin Mbewe, claims that the requirement to link property to a specific serious offense makes it difficult to enforce Zambia's Forfeiture of Proceeds of Crime Act, particularly the non-conviction-based forfeiture sections 29-31. Non-conviction-based forfeiture necessitates a higher standard of proof because mere differences between lifestyle and known income of the person are insufficient for forfeiture, whereas conviction-based forfeiture under section 71 can proceed on 'reasonable suspicion'. In order to illustrate the shortcomings of the Zambian system, he gave examples from Kenya and England, pointing out that both countries have civil recovery procedures that are less dependent on establishing a direct link to a particular crime. Nonetheless, there is a deficiency of empirical evidence regarding the actual effect of these issues on asset recovery and enforcement.[13] This dissertation supports Mbewe's findings and aims to contribute to the existing body of knowledge. It will go a step further by including frameworks from other countries not covered by Mbewe. Additionally, this research will build upon Mbewe's critique by incorporating stakeholder perspectives to gain a deeper insight into the practical application of evidential standards, thereby connecting theoretical discussions with real-world implementations.

Musa Bah's research offers a thorough examination of the main components of the Act, clarifying their legal intentions and procedural framework involved. It highlights ambiguities and weaknesses in the legislation that may hinder enforcement, while also pointing out significant benefits like the law's capacity to deter illegal enrichment and enhance accountability. By situating Zambia's approach within the international forfeiture trends framework, he underscores common challenges faced by other nations in enforcing similar laws. Because it thoroughly examines the Act's provisions and places Zambia's strategy in a worldwide context, this material is very helpful to this research.[14] The purpose of this study is to add the body of literature by assessing the efficacy of the Act as well as discuss better ways to remedy the challenges in its implementation.

THE FINANCIAL TASK FORCE (FAFT), is acknowledged globally for establishing benchmarks in the battle against the funding of terrorists and money laundering. It emphasizes that successful asset recovery depends on inter-agency collaboration, enough resources, clear legal authority and international cooperation. In addition to

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[13] Edwin Mbewe, 'Challenges of Non-Conviction Based Forfeiture Application under the Forfeiture of Proceeds of Crime Act No. 19 of 2010 (LinkedIn, 5th July, 2024) https://www.linkein.com/pulse/challenges-non-convictionbased-forfeiture-edwin-mbewe-ffbcf accessed 7th April, 2025

[14] Musa Bah, 'A Commentary on the Confiscation Regime in Zambia by way of Reviewing of the Forfeiture of Proceeds of Crime Act No.19 of 2010' (2013) https://dspace.unza.zm/items/96d0a465-e92d-4043-842644c8a50fdc54

identifying structural problems such poor agency coordination, poor asset tracking capabilities. It has published extensive studies and assessments of asset recovery systems that provide vital information about the efficacy of regional and national frameworks. A proactive and coordinated strategy to locating and recovering illicit assets is encouraged by the FATF's Best Practices on Confiscation and Guideline on Asset Recovery. These resources highlight the necessity of inter-agency cooperation, sufficient funding, unambiguous legal authority and international cooperation for easy and successful recovery of assets. They act as crucial standards for assessing the effectiveness of a country's recovery strategies. [15] This research will contribute by examining how Zambia's suggested inter-agency asset recovery institutions align with FAFT recommendations and identify shortcomings that impede adherence to global best practices, especially regarding operational independence, inter-agency collaboration and cross-border cooperation.

SCRIVEN MUKANGE in his dissertation critically evaluated the application of non-conviction-based forfeiture laws in Zambia, he highlighted that while the laws aim to disrupt criminal activities by targeting illicit assets without requiring a criminal conviction, particularly regarding the presumption of innocence, property rights and due process. The study reviews frequent abuse during law enforcement operations, including misuse of search warrants, lack of transparency and political influence which exacerbate violations of individual rights. He supported reforms aimed at improving accountability, transparency and protection including increasing the burden of proof and providing compensation to victims, in order to strike a balance between effective crime control and the respect for constitutional rights.[16] This work is important because it provides a thorough analysis of the legislation on the non-conviction-based forfeiture framework in Zambia, highlighting

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[15] Financial Action Task Force, Best Practice on Confiscation and a Framework for Ongoing Work on Asset Recovery (FAFT, 2012) https://www.faft-gafi.org/en/publications/methodsandtrends/Best-Practice-on-Confiscation-and-aFramework-for-Ongoing-work-on-Asset-Recovery.html Accessed 7th April, 2025

[16] Scriven Mukange, A Critical Evaluation Of The Application Of Non-Conviction Based Forfeiture Laws In Zambia: Balancing The Law Enforcement And Individual Rights (University of Lusaka, 2024) https://drive.google.com/file/d/1hhyq_fBqeU62docuweDgZgihAnIZBh0h/view?usp=drivesdk Accessed 31st July, 2025

the need to strike a balance between the protection of individual rights and efficient enforcement of the law. However, the study does not cover conviction-based forfeiture, in order to provide more thorough policy insights, this research will broaden its scope by carefully analysing both conviction-based and non-conviction-based forfeiture mechanisms, assessing legal protections, evidentiary requirements and procedural fairness throughout Zambia's entire forfeiture framework. .

Cassandra Soko provides a critical analysis of Zambia's asset recovery system in her thesis, with a particular emphasis on the Forfeiture of proceeds of Crime Act No 19 of 2010. Her study compares Zambia's legislative provisions with asset recovery laws in other regions and evaluates how they align with international norms like those put forth by the United Nations Convention against Corruption (UNCAC). Soko highlights significant challenges, including the implementation of international treaties, the necessity for adherence to constitutional standards and the effectiveness of non-conviction-based forfeiture strategies. The dissertation concludes with recommendations designed to improve Zambia's asset recovery efforts, making it an important resource for understanding the intricacies and possible reforms in this domain. [17] This thesis is very insightful to this research because it provides challenges and potential solutions to the challenges. This dissertation will build on the foundation layered by Soko by assessing the practical implementation and effectiveness of Zambia's recovery framework in the recent years, particularly by referring to new regulatory amendments, stakeholder insights and case law.

Civil Forum for Asset Recovery (CiFAR), Zambia Country Profile (2022), this report provides a comprehensive analysis of Zambia's asset recovery situation in 2022. It draws attention to the current legal frameworks, points out regulatory gaps especially with regards to facilitation payments and information freedom and emphasizes the challenges faced in asset recovery processes. In addition to making recommendations aimed at enhancing Zambia's asset recovery procedures, it also looks at the importance of

[17] Cassandra Soko, An Evaluation of Zambia's Asset Recovery Laws (LLLM thesis, University of Western Cape, 2013) https://uwcscholar.uwc.ac.za/items/34409e0-eea5-8fbc-01ab18c2bf3b Accessed 9th April, 2025

accountability and transparency in the management of recovered assets. It offers a thorough evaluation of Zambia's recovery environment including unclear guidelines in the law and challenges in its implementation. Building on to this report, this research will provide an in-depth analysis of the current practical implementation of asset recovery and the impact of the proposed legislative reforms.

Fr Alex Muyeba in his article critically examined the FPOCA and its use of non-conviction-based forfeiture (NCB) as an anti-corruption tool highlighting the tension between effective asset recovery and the protection of property rights and due process. It focused on recent high profile cases involving known property owners while comparing with the provisions of the United Nations Convention Against Corruption specifically article 54 which permits non-conviction-based forfeiture primarily when criminal prosecution is impossible e.g. in cases of death, where the owner is unknown, missing person or where the person is immune from prosecution. He highlighted how Zambia has departed from the international standard/ guidance, stating that more than often, the state opts for non-conviction-based forfeiture even when there is enough evidence to pursue a criminal prosecution therefore raising serious policy and constitutional issues. Notably the erosion of property rights, due process and fair trail guarantees. He pointed out that the procedures might be abused, reduce public confidence and lessen of convictions.[18] Although Muyeba's work identifies important policy challenges, additional research is required to understand how these problems affect enforcement. This dissertation seeks to add to the already existing body of knowledge by obtaining information from stakeholders and law enforcement agencies.

The International Monetary Fund (IMF) "Zambia: Technical Assistance Report-

Diagnostic Report on Governance and Corruption" (2023), with an emphasis on the achievement of the Asset Forfeiture Department, this report offers a thorough analysis of

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[18] Fr Alex Muyeba S.J, 'Non-conviction based forfeiture of assets as a tool to fight corruption: some policy considerations' 2023 (Jesuit Centre for Theological Reflection) https://repository.jctr.org.zm/bitstream/handle/20.500.14274/1797/20230626-non_conviction_based_forfeiture_of_assets_as_a_tool_to_fight_corruption-V01.pdf?sequence=&isAllowed=y Accessed 30th July, 2025

Zambia's governance and corruption environment. It highlights important issues that require attention such as capacity gaps, insufficient inter-agency coordination, lack of proper data collection mechanisms and management of assets.[19] The IMF report offers a thorough analysis of asset recovery in Zambia, identifying key challenges. However, it doesn't capture the on-the-ground difficulties faced by those implementing asset forfeiture. This research fills that gap by gathering first-hand insights from Zambia's forfeiture institutions.

1.9. METHODOLOGY

This research will primarily be a qualitative analysis, reference will be made to statutes, reports, internet resources, textbooks, journals article and case law as well as other relevant research materials that shall contribute towards this research.

1.9.1. RESEARCH DESIGN

This research employs a qualitative approach specifically evaluation research, to examine the Forfeiture of Proceeds of Crime Act, collecting and analysing data to assess the laws impact and effectiveness in confiscating proceeds of crime and combating illicit activities.

1.9.2. RESEARCH TYPE

This research is analytical in nature as it seeks to analyse the effectiveness of the Forfeiture of Proceeds of Crime Act in Zambia specifically in relation to its provisions and application in confiscating proceeds of crime and preventing further illicit activities.

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[19] International Monetary Fund, ' Zambia Technical Assistance Report on Governance and Corruption' (IMF Country Report No. 2023/003, 2023) https://www.elibrary.imf.org/view/jornals/002/2023/003/article-A001-en.xml Accessed 15th April, 2025

1.9.3. STUDY POPULATION

The population of this study will be derived from Zambia's population which currently stands at 21 million

1.9.4. SAMPLE SIZE

The size of the sample will be 30 as per the requirement of the institution

1.9.5. SAMPLING TECHNIQUES

This research will employ the quota sampling technique as it will target key stakeholders from relevant institutions such as law enforcement agencies, judiciary and legal professionals to gather in-depth insight and perspectives on the Forfeiture of Proceeds of Crime Act, ensuring a diverse representation of views and expertise.

1.9.6. DATA COLLECTION AND ANALYSIS

Majority of the information that will be used in this study will be secondary data that will be gathered from Acts, books, journal articles and regulations supplemented by primary data collected through interviews with targeted stakeholders to analyse the Act through qualitative data analysis

1.9.7. ETHICAL CONSIDERATION

This research shall be in line with the essential ethical standards that shall be encountered during the period of carrying it out. The researcher will make certain that all information and knowledge obtained in confidence in the pursuit of this research shall continue to be confidential and therefore, there shall be no forms of misinformation and misuse of the said information to the disadvantage of the source from which such information is acquired. Further, all information obtained during the course of this thesis shall purely be for academic purposes.

CHAPTER TWO

TO ANALYSE PROCEDURES AND PROCESSES USED IN ENFORCING THE ACT IN ZAMBIA

2.0. INTRODUCTION

This chapter critically analyses the procedures and processes involved in the enforcement of the Forfeiture of Proceeds of Crimes Act (FPOCA) in Zambia. It outlines how the Act provides a legal framework for the identification, seizure, and confiscation of assets. The chapter examines the roles of key institutions such as the Drug Enforcement Commission (DEC) and the National Prosecution Authority (NPA) among others.
Additionally, the chapter will highlight critical procedural steps like the issuance of notices and application of forfeiture orders, investigation and tracking of tainted property.

2.1. LEGAL FRAMEWORK AND INSTITUTIONAL STRUCTURE

The legal framework underpinning the FPOCA in Zambia is primarily constituted by the Act itself. This law allows Zambia to identify, seize and forfeit assets obtained through crime. By doing so, Zambia is following its commitment to fighting corruption and money laundering.

The Act is enforced by different institutions each playing different and distinct roles. These institutions include the Drug Enforcement Commission, National Prosecution Authority, Zambia Police Service (ZP), Anti-Money Laundering Unit, Anti-Corruption Commission, etc.

2.1.1. THE NATIONAL PROSECUTION AUTHORITY'S ROLE IN ENFORCING THE ACT

The National Prosecution Authority (NPA) was established by **section 3 of the National Prosecution Authority Act** as the primary prosecutorial agency, the NPA is mandated to institute criminal proceedings on behalf of the state, playing a vital role in the enforcement of various laws including the FPOCA.[20] The NPA has an established vibrant, innovative and specialised department known as the Asset Forfeiture Department which is mandated to implement the provisions of the Act.[21]

The NPA plays a critical role in the forfeiture of proceeds of crime in Zambia. According to **Section 7 (1) of the National Prosecution Authority Act**, the NPA has a board of authorities which consists of the Director of Public Prosecution (DPP) among others.[22] The NPA, led by the DPP pursue both conviction based and non-conviction based forfeiture proceedings to recover assets linked to serious crimes such as money laundering, illegal foreign exchange trading, corruption and drug trafficking.

As highlighted in **Section 4 (1) of the Forfeiture of Proceeds of Crime Act**, in cases of conviction-based forfeiture, when someone is convicted of a serious offense, the DPP is empowered to apply to a court for either a forfeiture order to seize property linked to the crime or a confiscation order to recover benefits derived from the offense, provided that the application is made within a reasonable time frame after the conviction, unless the DPP has reasonable grounds for the delay.[23]

Additionally**, Section 29 of the Forfeiture of Proceeds of Crime Act**, gives the DPP power to apply to a court for an order forfeiting to the state all or any property that is tainted property.[24] Therefore empowering the DPP with the power to prosecute or apply for forfeiture orders even when there is no conviction provided that the DPP is able to satisfy the court on a balance of probabilities that the property is tainted property. In such a proceedings, the DPP initiates an action against the tainted property itself, rather than the person or the owner of the property.[25] This approach aligns with the provisions of the

[20] Act No. 34 of 2010

[21] National Prosecution Authority, "Asset Forfeiture" https://www.gov.zm/index.php/asset-forfeiture/ accessed 7th August, 2025

[22] ibid

[23] Act No. 19 of 2010

[24] ibid

[25] National Prosecution Authority, "Press Release" https://www.npa.gov.zm/index.php/2023/11/19/press-release/ accessed on 7th August, 2025.

Act, which enables the NPA through the DPP to target the proceeds of crime directly without the need for a conviction.

The NPA plays a crucial role in the management of forfeited and seized property. The NPA through the Asset Forfeiture Department effectively manages forfeited assets with other stakeholders to ensure their optimal utilization. The forfeited assets are usually allocated to various stakeholders to address specific needs. Additionally, forfeited properties are being repurposed for the benefit of vulnerable members of society.[26]

2.1.2. THE ANTI-CORRUPTION COMMISSION AND ITS ROLE IN ENFORCING THE ACT

The Anti-Corruption Commission is an autonomous body established to fight corruption.[27] The Anti-Corruption Commission (ACC) of Zambia plays a critical role in the fight against the illicit enrichment of individuals. **Section 8(1) of the Anti-Corruption Act** mandates the Commission to report offenders to the appropriate bodies tasked with handling such offenses after conducting investigations.[28]

Section 62 of the Anti-Corruption Act, gives the Commission power to commence proceedings for the forfeiture of unexplained property against a person where after due investigations the Commission is satisfied that the person owns unexplained assets provided that the said person was afforded a reasonable opportunity to explain the disproportion between the assets concerned and the person's known legitimate sources of income and the said explanation is inadequate.[29]

The ACC investigates corruption, arrests offenders and prosecutes cases after obtaining consent from the DPP. Under the FPOCA, A key case example showing the role of the ACC in Zambia with regards to forfeiture cases is the ***Anti-Corruption Commission v.***

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[26] National Prosecution Authority, "Asset Forfeiture" https://www.gov.zm/index.php/asset-forfeiture/ accessed 7th August, 2025

[27] Act No. 3 of 2012

[28] ibid

[29] ibid

Faith Musonda and Ors. The EFCC in this case ordered the forfeiture to the state of Musonda's property worth over K21 million, which were reasonably suspected to be proceeds of crime. This followed an investigation by the ACC where Musonda was found in possession of large sums of money and property suspected to have been acquired through corruption and illegal activities.[30]

This case shows the ACC's proactive role in pursuing and obtaining forfeiture orders for corruptly acquired assets under Zambian Law.

2.1.3. THE DRUG ENFORCEMENT COMMISSION AND ITS ROLE IN ENFORCING THE ACT

The Drug Enforcement Commission (DEC) is established to prevent and control illegal cultivation and production of drugs in the country. According to **Section 14(1) of Narcotic Drugs and Psychotropic substances,** the Commission can, after investigations into alleged offences under the Act, make report and recommendations to the appropriate institution.

Just like ACC, **Section 58 (1) of the Narcotic Drugs and Psychotropic Substances** gives investigation officers powers to seize any property where they reasonably believe that it was derived or acquired from trafficking or from an illegal activity.[32] The Act also mandates DEC to identify and report any illicitly obtained assets as well as any individual who is illicitly enriched after the illegal cultivation and production of drugs.

2.1.4. THE ECONOMIC AND FINANCIAL CRIMES COURT (EFCC)

Article 133(1) of the Constitution establishes the High Court which is divided into different divisions dealing with different types of cases. **The Constitution in Article 133(1) (c)** gives the Chief Justice the power to constitute through a statutory instrument a specialised court to hear specific matters. This constitutional power is equally reflected in the **High Court Act** which provides that the Chief Justice may prescribe specialised

[30] (2023/HPEF/38) [2024] ZMHC 296 (20 December 2024)

courts by statutory instrument.[31] In line with the provision of the Constitution, the current Chief Justice Dr Mumba Malila SC through **Statutory Instrument No. 5 of 2022, the Economic and Financial Crimes (Division of Court) Order** exercised the powers legally bestowed on him effectively and established the Economic and Financial Crimes division of the court.[32]

With regards to jurisdiction, the matters triable by this specialised court are matters relating to economic and financial crimes and corruption.[33] Additionally, the Statutory Instrument also confers powers generally vested in the High Court under the Constitution on the EFCC. These powers include the unlimited and original jurisdiction in civil and criminal matters, the appellate and supervisory jurisdiction as prescribed as well as the jurisdiction to review decisions of lower courts. In digesting the jurisdiction of the EFCC, it is important that this court is established solely for purposes of adjudicating upon matters that relate to economic and financial crimes.

There is also **Statutory Instrument No. 10 of 2024, The Criminal Procedure (Economic and Financial Crimes Court) Rules, 2024** which applies to both the Economic and Financial Divisions of the High Court and Subordinate Court and provides for procedural rules in criminal trials and appeals.

Matters that are currently being heard in the EFCC include, inter alia, applications for forfeiture, restraining and confiscation orders which are all commenced by either summons or originating notice of motion. **According to Section 5 of the Forfeiture of Proceeds of Crime Act**, the court has jurisdiction to make a forfeiture order irrespective of the value of the property.[34]

[31] Chapter 27 of the Laws of Zambia
[32] SI No. 5 of 2022
[33] ibid
[34] Act No. 19 of 2010

2.1.5. THE ANTI-MONEY LAUNDERING UNIT

The Anti-Money Laundering Unit in Zambia is established under the **Prohibition of Money Laundering Act of 2021.** This law provides the legal framework for the constitution of the investigative unit within the country's financial and law enforcement institutions. Specifically, **Section 5 of the Act** provides for the establishment of the unit which is composed of the commissioner and other officers who are appointed by the commissioner.[35] The Act empowers the unit to collect, evaluate, process and investigate financial information relating to transactions suspected to be part of money laundering offenses.

Regarding the role of the unit when it comes to forfeiture cases, the unit collects and analyses financial intelligence to build cases for the forfeiture of assets deemed to be proceeds of crime, particularly in cases involving money laundering. A concrete example is illustrated in the case of ***Director of public prosecution v. Esther Nyawa Tembo Lungu*** where the court ordered the forfeiture of luxury properties belonging to the former first lady.[36] The Anti-Money Laundering Unit was instrumental in securing this forfeiture by providing all the necessary investigation and evidence that the assets were acquired through illicit means.

2.2. INVESTIGATION AND PROSECUTION PROCEDURES

In Zambia, forfeiture procedures for proceeds of crime involve investigation, prosecution and court orders. The process can be initiated through conviction-based and non-conviction-based mechanisms. Key aspects include seizure of property, notification of interested parties and opportunities for affected persons to challenge the forfeiture.

[35] Act No. 14 of 2001

[36] (2023/HPEF/23) [2024] ZMHC 4 (11 March 2024)

The first step is identification of the property as tainted property, this identification can be done by any law enforcement authorities such as the ACC and DEC, which investigate individuals suspected of having assets disproportionate to their known legitimate income.

These authorities then report to the National Prosecution Authority, where a docket is opened and investigation is launched. The investigator investigates the report by obtaining physical evidence and all other necessary information such as financial records and witness testimonies. Once investigations are concluded, it is the duty of the DPP to decide whether or not to prosecute the matter.[37] If the DPP decides to prosecute, they must make an application to court.

2.2.1. INVESTIGATION AND PROSECUTION PROCEDURE UNDER CONVICTIONBASED FORFEITURE

Under conviction based forfeiture, once an individual is convicted of a serious offence, the DPP may apply to court for forfeiture order against tainted property. This application is made based on the conviction and is linked directly to the offence for which the person has been convicted for. The investigation and prosecution for this type of forfeiture begins after an individual has been criminally convicted of a serious offence. According to **section 4 of the Forfeiture of Proceeds of Crime Act,** the DPP, who is responsible for enforcing the Act initiates the forfeiture process by filling a formal application with the court for a forfeiture or confiscation order.[38] This application is usually supported by an affidavit which outlines the relevant facts that link the property to the offence.

However, it is important for the DPP to ensure that there is enough evidence to support this application. The evidentiary standard rests primarily on the criminal conviction, showing guilt beyond reasonable doubt. However, the Supreme Court in the case of ***The People v Liato*** clarified that the standard needed to prove possession of property suspected to be proceeds of crime under **Section 71 of the Forfeiture of Proceeds of**

[37] The National Prosecution Authority, 'Criminal Justice Procedure' https://www.npa.gov.zm/index.php/criminaljustice-procedure/#:~:text=and%20Supreme%20Court.-,Decision%20to%20Prosecution,can%20influence%20the%20DPP's%20decision. Accessed 14th August 2025

[38] Act No. 19 of 2010

Crime Act, can be "reasonable suspicion," a lower threshold allowing forfeiture where there is a credible link between the property and a criminal activity[39]

Additionally, **Section 6 of the Act** mandates that the DPP gives a written notice to any person who is reasonably believed to have interest in the said property. If the DPP fails or omits to notify any other interested party, that person has the right to appear and present evidence at the hearing of the application.[40] The court may also order public advertisement of the application to invite any additional interested parties. This gives opportunity for affected parties to assert ownership or challenge the tainted status.

According to **Section 8 of the Forfeiture of Proceeds of Crime Act**, the court in determining forfeiture application cases has the discretion to consider the transcript of any proceedings against the person for the offence when determining forfeiture application cases. Furthermore, if an application is made to the same court that convicted the person while the court has not yet passed sentence, it may defer passing sentence until the application is determined, provided the court believes it is reasonable to do so.

The last step is the court making a forfeiture order against the tainted property. The Act in **Section 10** states that where the court is satisfied that the property is tainted, the court may order that the property is forfeited to the state.[41] The effect of this order is that once it is made by the court, the property vests absolutely in the state, however, where the order is made against registrable property such as land, the said property only vests in the state in equity but does not vest in the state at law not until all the applicable requirements have been complied with.[42]

2.2.2. INVESTIGATION AND PROSECUTION PROCEDURES UNDER NON-CONVICTION-BASED FORFEITURE

In Zambia, non-conviction-based forfeiture allows for confiscation of assets believed to be the proceeds of crime, even without a criminal conviction. The process involves

[39] [2015] ZMSC 26
[40] ibid
[41] ibid
[42] ibid

investigation, application to the court and a shift in the burden of proof to the asset holder to demonstrate the legitimate origin of their wealth.

Similar to conviction-based forfeiture cases, authorities such as DEC, ACC and the Anti-Money Laundering Unit, investigate individuals suspected of having assets disproportionate to their known legitimate income. Having done their investigations, the law enforcement agencies must pass on the results of their investigation to the Director of Public Prosecution who upon examining the results makes an application to court for an order for forfeiture pursuant to **Section 29 of the Forfeiture of Proceeds of Crime Act**.

Unlike conviction-based forfeiture which requires a prior criminal conviction for a serious offence before an application can be made, non-conviction-based forfeiture does not require any conviction to be made. This means that with or without any conviction, an application for civil forfeiture can be made so long as there are reasonable grounds to suspect that the property is tainted. Non-Conviction forfeiture processes are opened where authorities show a manifest disparity between legitimate earnings and the assets owned by the targeted individual. Once the discrepancy is demonstrated, the person concerned will have to prove on a balance of probabilities in order to satisfy the court that the assets where legally obtained.[43]

According to Section 30 of the Forfeiture of Proceeds of Crime Act, the public prosecutor has the duty to give written notice within 30 days of the application to any person who is known to have interest in the tainted property in respect of which the application is being made. Alternatively, any interested party has the right to appear before the court and present evidence proving that the property is not tainted. Additionally, the court can also order the public prosecutor to advertise the application publicly in the

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[43] The National Prosecution Authority, 'Case Comment' https://www.npa.gov.zm/index.php.2024/12/30/casecomment-sydneymwansa-v-director-of-public-prosecutions-dpp-and-non-conviction-based-forfeitureorders/#:~:text=Non%20conviction%20processes%20are%20opened,Agency%20(Jamaica%2C%202015%20PC. Accessed 14th August, 2025

Gazette or newspaper of general circulation in Zambia in order to ensure that the notice of the application is brought to the attention of other interested parties.[44]

And lastly, if the court is satisfied that property is indeed tainted, then it can make an order pursuant to **Section 31 of the Forfeiture of Proceeds of Crime Act** ordering the same to be forfeited to the state regardless of whether or not there is a conviction.[45]

2.3. ASSET FORFEITURE AND MANAGEMENT PROCESSES

The asset forfeiture and management processes in Zambia are primarily governed by the FPOCA, alongside the Forfeiture of Proceeds of Crime (Fund and Property Management) Regulations, 2023. These legal frameworks establish a comprehensive system for confiscating, managing and disposing of property derived from serious offences ensuring that crime does not pay while safeguarding due process and property rights.

The management of forfeited assets is regulated under **Forfeiture of Proceeds of Crime (Fund and Property Management) Regulations, 2023. Section 3 of these regulations.** It establishes the Forfeiture Asset Fund Committee which is responsible for managing and administering the Asset Forfeiture Fund in accordance with part VI of the FPOCA.[46]

These regulations provide for the appointment of administrators. Duties of these administrators are outlined in **Section 15 of the Regulations** which include the duty to secure, preserve and manage seized and forfeited property when administering the seized property in accordance with the Act. In doing so, the administrator may sell or otherwise dispose seized property that is perishable or property that is most likely to lose its value if stored for long. Where the seized and forfeited property comprises of assets of a trade or business, the administrator has the duty to carry on or appoint another person

[44] Act No. 19 of 2025
[45] ibid
[46] Statutory Instrument No. 13 of 2023 [49]
ibid

to carry on the trade or business. The administrators are also empowered to incur necessary expenses related to the upkeep and disposal of such assets.[49]

Zambia has established institutional structures to operationalize this regime effectively. The Asset Forfeiture Department (AFD) under the National Prosecutions Authority not only prosecutes forfeiture cases but also manages the practical challenges of asset recovery and management. The department engages collaboratively with various stakeholders, including law enforcement agencies and international partners, to enhance the capacity and the coordination in asset recovery and management. For example, forfeited assets such as vehicles and houses have been redistributed to support community policing, witness protection in vulnerable groups, demonstrating a reinvestment of recovered assets for public benefit.

2.4. CONCLUSION

In summary, Zambia's Forfeiture of Proceeds of Crime Act shows promise in tackling financial crime and asset recovery. However, its implementation has been inconsistent, particularly in complex cases. The reasons behind these challenges and their impact on fighting financial crime will be discussed further in subsequent chapters.

CHAPTER THREE

TO EVALUATE THE FORFEITURE OF PROCEEDS OF CRIME ACT'S IMPACT ON THE REDUCTION OF FINANCIAL CRIME IN ZAMBIA

3.0. INTRODUCTION

This chapter examines the effectiveness of Zambia's legal system in combating financial crime, emphasizing real outcomes above merely the goals of the legislation. It seeks to comprehend the practical effects of the law and pinpoint areas for improvement by looking at crime trends, successful asset seizures and stakeholder insights.

3.1. FINANCIAL CRIME TRENDS IN ZAMBIA

In Zambia, financial crime is a major issue that is becoming worse. Many illegal activities are involved and they're hurting the country's economy. Data from authorized sources such as the Financial Intelligence Centre (FIC) and Transparency International Zambia (TIZ) provide comprehensive insights into these trends.

Predominant financial crime types identified include money laundering, tax evasion, and fraud. Money laundering is the most frequently reported predicate offense. It is often facilitated by misuse of corporate entities to conceal ownership and perpetuate the pervasive use of cash in commerce. Corruption-related suspicious transactions have reportedly declined in some periods, but remain a significant concern coupled with an increase in cyber enabled financial crimes such as online fraud and illicit fund transfers via prepared cards. Illicit financial flows connected to illegal mining and timber logging operations further complicate the financial environment.[47]

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[47] Financial Intelligence Centre, 'Gains in Government Fight Against Financial Crime ' Available at https://www.openzambia.com/politics/2025/7/23/fic-report-shows-gains-in-government-fight-against-financialcrime Accessed 27th August 2025

Intelligence reports by the Financial Intelligence Centre based on analysed Suspicious Transaction Reports (STRs) have increasingly provided actionable information to law enforcement agencies, with 129 reports disseminated in 2022 indicating a 193% increase from the previous year. However, the data shows ongoing problems.[48]

In conclusion, money laundering, corruption and cybercrime are among the persistent financial crime dangers that Zambia faces. Although awareness is rising, the nation is vulnerable due to its cash economy and complicated transactions. When fighting financial crimes, there is need for constant attention to detail and flexibility.

3.2. IMPACT OF FINANCIAL CRIME, ORGANISED CRIME AND ILLICIT FINANCIAL FLOWS

Financial crimes, organized crime and illicit money flows pose a threat to Zambia's economic and social foundations these interconnected issues have worsened social inequality, hampered economic growth, damaged institutions and had a detrimental impact on government revenue. This study examines the various ramifications of these illicit activities in Zambia and evaluates how they impact the country's financial stability, governance and general well-being using up-to-date statistics, official reports and reliable research.

Illicit financial flows in Zambia mainly result from tax evasion, trade mis-invoicing and corruption, especially in mining and infrastructure. It's estimated that Zambia lost over $9 billion in the last decade, with around $3.5 billion lost in 2024 alone.[49] The huge loss of funds deprives Zambia of vital resources needed for public services and poverty reduction.[53] The impact of financial malfeasance is exacerbated by the nation's battle with

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[48] ibid

[49] Tax Justice Network Africa, 'Illicit Financial Flows in Zambia and Africa' (2024). Available at https://tizambia.org.zm/2024/09/illicit-financial-flows-iffs-in-zambia-and-in-africa/ accessed 3rd September 2025

[53] Parliamentary Monitoring and Research Centre (PMRC) Zambia , 'Effects of Illicit Financial Flows on the Budget and its Sustainability in Zambia' (2023) Available at https://pmrczambia.com/wp-content/uploads/2023/02/PMRCParliamentary-Presentation-Effects-Of-Illicit-Financial-Flows-On-The-Budget-And-its-Sustainablility-in-Zambia.pdf accessed 3rd September 2025

organized crime. Due to regulatory obstacles brought up by Zambia's sizable informal economy, illicit monies can remain undetected sustainable development is hampered as a result of massive revenue losses, widening budget deficits and rising debt. Human trafficking, illegal mining, animal trafficking and drug trafficking are just a few of the organized crime operations that Zambia faces. Transnational networks that take advantage of open borders and involve dishonest public officials frequently carry out these crimes.[50] Such networks' entrenchment threatens the rule of law and makes it more difficult for legal and regulatory systems to be effectively enforced. Additionally, combating organized crime weakens governmental institutions by diverting resources and attention.[51]

Financial crimes promote corruption, undermine trust in government and delay economic growth. This weakens public services, intensify poverty and increases social inequalities. The mining sector, a major economic driver in Zambia, is particularly a victim of dubious deals and lack of transparency. Because of the deals and lack of transparency, Zambia is unable to obtain as much revenue as it should.

3.3. FINANCIAL CRIME IN ZAMBIA: PRE AND POST ENACTMENT OF THE FORFEITURE OF PROCEEDS OF CRIME ACT 2010

Financial crime in Zambia predates the enactment of the Forfeiture of Proceeds of Crime Act. Before the enactment, the state relied on various other statutes to address offenses. These statutes alone, however, proved inadequate in effectively deterring and dismantling financial crime networks. In order to know whether the Act is truly serving its purpose, it is necessary to compare the state of financial crime before and after its enactment.

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[50] Financial Intelligence Centre, ' Financial Crime and Money Laundering Trends Reports' (2023) Available at https://www.fic.gov.zm/departments/79-fic-news/122-trends-report-2023 accessed 3rd September 2025

[51] National Prosecution Authority, ' Zambia's Milestone In Financial Investigations and Asset Recovery' (2025)Available at https://www.npa.gov.zm/index.php/2025/03/15/zambia-milestone-in-financial-investigationsand-asset-recovery/ accessed 2nd September 2025

3.3.1. ZAMBIA'S LEGAL AND INSTITUTIONAL FRAMEWORK BEFORE THE ENACTMENT OF THE FORFEITURE OF PROCEEDS OF CRIME ACT

Before the enactment of the Act, Zambia's approach to financial crime was fragmented, with several statutes targeting specific offences but lacking a comprehensive regime for asset recovery. One key statute used during this period was the Penal Code, which criminalised theft, fraud, forgery, and many other offenses, however, the Penal Code did not address modern day financial crime nor did it provide clear mechanisms for asset forfeiture.[52]

Another statute that was utilized before the enactment of the Act was the Prohibition and Prevention of Money Laundering Act, 2001, which criminalised money laundering and allowed for asset forfeiture. However, this Act relied on criminal convictions thereby limiting the state's ability to recover assets if prosecution failed.[53]

Furthermore, the state also employed the Anti-corruption Act which was enacted to investigate and prevent corruption, however, just like the Prohibition and Prevention of Money Laundering Act, the Act could not be used to seek forfeiture of assets without securing a criminal conviction first.[54]

The institutional framework for investigation and prosecution of financial crimes involved key agencies responsible for investigation and prosecuting financial crime for specific offenses. For example the Drug Enforcement Commission focused primarily on drug related offenses and financial investigations related to narcotics. While the Anti-Corruption Commission concentrated on corruption cases.

Despite these efforts, the pre-enactment framework exhibited several weaknesses.

Zambia's fight against financial crime was weak before 2010. Laws and agencies were disjointed, making it easy for criminals to get away with their crimes. Due to the weak

[52] Chapter 87 of the Laws of Zambia
[53] Act No. 14 of 2001
[54] Anti- Corruption Commission Act of 1996, chapter 91 of the laws of Zambia

framework that existed before 2010, it was hard for law enforcement agencies to recover illicitly gained assets.

3.3.2. POST ENACTMENT OF THE FORFEITURE OF PROCEEDS OF CRIME ACT IN ZAMBIA

The enactment of the Act in 2010 was a game-changer in the fight against financial crime in Zambia. It introduced a whole new system that lets authorities to seize assets without the need to secure a conviction first, making it easier to recover proceeds of crime. This provision addressed one of the most significant pre-enactment weakness, enabling more proactive disruption of criminal financial networks.

Another major post-enactment development was the establishment of the Financial Intelligence Centre (FIC) under the Financial Intelligence Centre Act, 2010. The FIC centralizes financial intelligence functions by receiving, analysing and disseminating suspicious transaction reports from banks and other reporting entities.[55] Its intelligence sharing role has empowered other agencies including DEC, ACC, and NPA among others to initiate investigations and prosecution with stronger evidential basis.

Operationally, **Section 41 of the Forfeiture of Proceeds of Crime Act** gives the public prosecutor the power to apply to the court for a grant of a restraining order where there is reasonable grounds to suspect that any property is property in respect of which a forfeiture order may be made under Sections ten and eighteen.[56] This allows authorities to prevent criminals from gaining from or utilising assets before a court order is granted, thereby, preserving the assets and ultimately forfeited to the state. The Act also gives law enforcement agencies the power to get monitoring and production orders to enable them to trace and freeze assets that are suspected to be proceeds of crime. This proactive capability increased asset recovery rates and reduced the ability of offenders to dissipate criminal proceeds. Empirical evidence supports this impact. This can be seen through the

[55] Act No. 46 of 2010
[56] Act No. 19 of 2010

increased substantive seizures of money, property and other assets.[57] These high profile recovers demonstrate that indeed the Act has at least strengthened the state's ability to deter financial crime and disrupt criminal networks.

Overall, if we compare the forfeiture frameworks before and after the enactment of the Forfeiture of Proceeds of Crimes Act, the Act has really improved the forfeiture framework in Zambia. It has been a significant tool in the fight against financial crime in Zambia because it provides law enforcement agencies with robust legal tools and enhances institutional coordination among agencies.

3.3.3 TABLE 1: SUMMARY OF PRE AND POST ENACTMENT OF THE FORFEITURE OF PROCEEDS OF CRIME ACT IN ZAMBIA

LEGAL ASPECT	PRE-2010 (BEFORE FPOCA)	POST 2010 (AFTER FPOCA)
Legal Framework	Fragmented laws addressing specific offences	Unified and comprehensive framework
Key Institutions	-DEC (drug related financial investigations) -ACC (corruption) -NPA (prosecution) -PPMLA (money laundering related cases)	DEC, ACC, NPA and the Anti-Money Laundering Unit with enhanced powers, FIC established to centralise financial intelligence

[57] Financial Intelligence Centre, Annual Reports 2022, >https://acazambia.org/wpcontent/uploads/2023/04/ANNUAL-REPORTS-2022.pdf>. Accessed 28th August 2025

Asset Recovery Mechanisms	-Conviction dependant forfeiture -Limited powers to freeze, seize or trace assets	- Civil and Convictionbased forfeiture - Enhanced monitoring, and restraining powers to freeze and trace assets
	- Lack of civil forfeiture provisions	
Impact/Effectiveness	-Low asset recovery rates -Fragmented enforcement -Weak inter-agency coordination	-Increased asset recovery rates -Proactive and Coordinated investigations -Increased inter-agency coordination and collaboration

In conclusion, the Act has greatly strengthened Zambia's fight against financial crime, allowing for more effective assets recovery and better enforcement of the law. For example, the Act has enabled authorities to obtain restraining and production orders that more effectively freeze and seize illicit assets, disrupting criminal financial such as those money laundering and corruption. However, the persistence prevalent of financial crimes including sophisticated money laundering schemes, cyber-enabled fraud and illicit financial flows in sectors like mining demonstrates that the Act is not fully effective.

CHAPTER FOUR

TO ASSESS THE LEGAL, PROCEDURAL AND PRACTICAL CHALLENGES IN IMPLEMENTING THE ACT AND TO COMPARE ZAMBIA'S FORFEITURE FRAMEWORK WITH THOSE OF SOUTH AFRICA AND THE UNITED STATES OF AMERICA

4.0. INTRODUCTION

Criminal networks use increasingly sophisticated financial systems all across the world, making it difficult for authorities to recover illicit gains and enforce the law. The Forfeiture of Proceeds of Crime Act (FPOCA) was passed in Zambia to address this issue by depriving criminals of the proceeds of their crimes and strengthening the integrity of the country's financial system. However, the FPOCA's implementation has revealed substantial legal, procedural and practical barriers that limit its efficacy. Effective asset recovery is at the core of financial integrity and good governance.

The National Prosecution Authority (NPA) acknowledges that asset forfeiture in Zambia is notably in its infancy stages.[58] This explicit statement indicates that the forfeiture regime remains relatively undeveloped and still faces challenges. The infancy of the system implies that jurisprudence, implementation, mechanisms and institutional experiences are limited, making consistent effectiveness of the Act difficult. This chapter takes a critical look at these issues and places Zambia's framework in the context of global best practices, learning from countries with established asset forfeiture laws and norms. In doing so it identifies weaknesses, assesses institutional capability and investigates methods to fertility asset forfeiture as a pillar of accountability, justice and financial governance in Zambia.

[58] National Prosecution Authority, Asset forfeiture department, available at https://www.npa.gov.zm/index.php/asset-forfeiture/ accessed 10th October, 2025

4.1. LEGAL CHALLENGES

The Forfeiture of Proceeds of Crime Act (FPOCA) was introduced as a bold legal tool to strip criminals of illicit gains and strengthen Zambia's fight against financial crime. However, its purpose has been tempered by legal hurdles that have complicated enforcement and undermined its effectiveness. Below are some legal challenges that obstruct the effectiveness of the Act in Zambia.

4.1.1. JUDICIAL INTERPRETATION OF THE EVIDENTIARY THRESHOLD IN FORFEITURE PROCEEDINGS

The recent court of Appeal decisions in the cases of ***Sydney Mwansa v. Director of Public Prosecution, Nathan Mbaya and Another v. Director of Public Prosecution,*** *and* ***Elvis Haatila and Another v. Director of Public Prosecution*** illuminate a complex legal challenge in the enforcement of Zambia's FPOCA, particularly regarding the evidentiary standards for non-conviction-based forfeiture.

In these cases, the court overturned High Court forfeiture orders primarily on the grounds that the state failed to prove a direct and specific connection between the assets and a particular predicate offence. The court emphasized that even in non-conviction-based cases which are civil in nature, the identification of the offence allegedly committed is cardinal. The court required that the property be proven to be tainted as defined by **Section 2 of the Forfeiture of Proceeds of Crime Act**, meaning it must be shown to be wholly or partly derived from a serious offence, which includes offences punishable by death or imprisonment of at least twelve months.[59]

However, this judicial interpretation imposing a requirement for direct proof or a clear nexus contrasts starkly with the Act's provision. The FPOCA, through **Sections 29-31,** allow the court to order forfeiture if it is satisfied on the balance of probabilities that property constitutes tainted property, reflecting a civil standard of proof. This evidentiary

[59] Act No.19 of 2010

standard permits reliance on a range of evidence including circumstantial evidence such as unexplained wealth or inability to provide a legitimate source for the property. **Section 33 of the Act** strengthens this framework by explicitly stating that non-conviction-based forfeiture procedures under the Act are civil in nature and employ civil evidentiary rules rather than the more stringent criminal evidentiary rules.[60]

A major obstacle to the Act's efficient functioning is the conflict between these statutory provisions and the Court of Appeal's high evidentiary standard. Given the intricate and frequently hidden nature of proceeds of crime in financial and corruption offenses, the Act's architecture reflects the legislative goal to allow asset recovery even in the absence of a criminal conviction and direct proof.

Legal commentators like **Edwin Mbewe** have drawn attention to the difficulties presented by the FPOCA's evidentiary standards, noting that judicial interpretations have raised the evidentiary bar by requiring direct and specific proof connecting property to predicate offenses, which limits the Act's practical enforcement effectiveness.[61]

In summary, these judicial decisions show that in order to ensure that the FPOCA operates successfully as an asset recovery mechanism within Zambia's legal framework, legislative reform or more precise judicial guidelines are necessary to harmonize evidentiary requirements in the Act with practice.

4.1.2. CONSTITUTIONAL AND HUMAN RIGHTS CONCERNS

A central legal challenge is the potential conflict between the FPOCA's civil forfeiture powers and constitutional guarantees, especially **Article 16 of the Constitution of Zambia**, which protects the right to property and **Article 18** of the Constitution, which guarantees a fair trial.[62] The FPOCA allows the state to restrain or forfeit property

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[60] ibid

[61] Edwin Mbewe, 'Challenges of Non-Conviction based Forfeiture Applications under Forfeiture of Proceeds of Crime Act No. 19 of 2010' (LinkedIn, 4 July, 2024) https://www.linkedin.com/pulse/challenges-non-convictionbased-forfeiture-edwin-mbewe-ffbcf Accessed 8th October 2025.

[62] Chapter 1 of the Laws of Zambia

suspected to be proceeds of crime without a prior criminal conviction, under many circumstances (e.g. restraining orders under **section 42** and disposal orders under **section 70** of the Forfeiture of Proceeds of Crime Act).[63] These provisions may result into deprivation of property even before all criminal processes are complete, raising constitutional questions of whether such deprivation is arbitrary or disproportionate because such mechanisms may simultaneously infringe upon constitutional protections by enabling deprivation before due judicial determination.

To make sure that forfeiture does not amount to an arbitrary deprivation of property, courts have had to carefully construe these laws. The Supreme Court stressed in the case of ***Attorney General v. Roy Clarke*** that statutory powers that affect constitutional rights must be used strictly in accordance with the Constitution.[64] Even though it did not involve forfeiture, this case demonstrates the judicial approach to defending rights in circumstances where statutory measures run the risk of going too far. The FPOCA's efforts continue to revolve around this tension.

4.1.3. LACK OF CLEAR TIME GUIDELINES IN THE ACT

A notable structural deficiency in the Act is the absence of explicit statutory time limits governing the duration and progression of key procedural steps such as restraining orders, preservation orders and forfeiture proceedings. The protection of property rights and the right to a fair trial under the Zambian constitution are greatly affected by the absence.

Under **Section 42(1) of the Act**, even before someone has been found guilty of a crime, a court can impose a restraining order to stop someone from getting rid of or otherwise dealing with anything that is reasonably suspected to be the proceeds of crime.[65] The provision allows such orders to be ex parte, meaning there is no need to notify the affected person beforehand. However, the Act doesn't say how long a restraining order should last

[63] Act No.19 0f 2010
[64] (2008) ZR 38 VOL 1
[65] Act No.19 of 2010

nor does it require the court to check on the order to determine whether the grounds for its continuation still exist. In practice, this means that restrained property may remain frozen for indefinite periods while investigations and related criminal proceedings are still pending.

Similarly, while **Section 45** of the FPOCA provides that a restraining order shall be served on the affected person as soon as practicable, it also empowers the court to delay service if doing so would be in the public interest.[66] The Act however fails to define what constitutes public interest or to prescribe any maximum permissible delay. Additionally, it does not set a specific time frame when service should be done. As a result, a person may remain unaware that their property has been restrained, thereby being denied an effective opportunity to challenge the order in a timely manner.

Further, the Act does not prescribe when forfeiture proceedings must be instituted once a restraining order is obtained. Nor does it mandate that criminal charges be laid or investigations concluded within a specified period. This absence of procedural timeframes can result in prolonged restraints of property, even in cases where investigations do not yield sufficient evidence of criminal conduct.

The consequence of this omission is that affected individuals may experience what amounts to de facto deprivation of property contrary to **Article 16 of the Constitution**, which guarantees protection from arbitrary deprivation of property and **Article 18** which enshrines the right to a fair hearing.[67] If courts don't evaluate things enough, enforcement agencies may keep control over restricted property permanently. This creates uncertainty and could lead to abuse of discretion. In other cases, this may undermine public confidence in the equity and proportionality of Zambia's asset recovery system.

[66] ibid

[67] Chapter 1 of the Laws of Zambia

4.2. PROCEDURAL CHALLENGES

Procedural challenges in the implementation of the FPOCA have made it less successful in the fight against financial crime. The Asset Forfeiture Department (AFD) of the National Prosecution Authority (NPA) has first-hand knowledge of procedural inefficiencies, judicial delays and coordination issues that frequently impede enforcement of the Act, despite its comprehensive legal framework intended to deprive criminals of illicit gains. In the past, workflow irregularities and sluggish case advancement were caused by the division of important institutions,

Historically, fragmentation among key agencies including the Drug Enforcement Commission, Zambia Revenue Authority, Financial Intelligence Centre and the Nation Prosecution Authority created workflow inconsistencies and slow case progression. The lack of effective inter-agency coordination resulted in communication breakdowns and procedural lapses such as late or defective service of notice which have led to forfeiture applications being dismissed on technical grounds. A pertinent example is the case of ***The Director of Public Prosecution v. Assorted Property (General Eric Chimese and Others),*** where despite substantive evidence, the forfeiture application was dismissed because procedural requirements for timely and properly formatted notice delivery to interested parties were not met.

Despite recent developments, such as the creation of an inter-Agency Cooperation and Coordination in Asset Recovery in January 2023 with the aim of streamlining cooperation, challenges still exist. Complicated multi-agency investigations, slow administrative processes for obtaining forfeiture orders and a limited number of specialist courts with heavy caseloads all contribute to longer case timelines. These delays pose the risk of eroding both the financial deterrence and public confidence due to the potential for asset depreciation or dissipation prior to case conclusion.

The 2023 Zambia Diagnostic Report on Governance and Corruption also identifies insufficient institutional accountability, openness and coordination within anti-corruption systems. By maintaining impunity and ineffective asset recovery, this has a negative impact on the country's ability to fight corruption, money laundering, economic growth, investment and fiscal revenue mobilization.[68]

In conclusion, procedural obstacles to the Act's implementation highlight systemic problems that are deeply ingrained and impede the law's efficacy. These obstacles not only cause delays in the administration of justice but also jeopardize the ability to effectively deter financial crime. The requirement for a coherent and robust legal procedure within the larger governance framework is highlighted by the procedural difficulties that function as a significant barrier between legislative purpose and practical enforcement.

4.3. PRACTICAL CHALLENGES

The effectiveness of any forfeiture regime depends on the validity of its legislative framework as well as the practical skill of the institutions responsible for its enforcement. Zambia enacted the FPOCA to stop criminals from making money off of their illegal activities. However, despite the law's progressive provision, its intended goals have not been achieved due to a number of practical implementation challenges. The administrative, institutional and infrastructure flaws in the different authorities involved in asset tracing, restraint and forfeiture are the main causes of these difficulties. The barriers to the FPOCA's efficacy are listed below.

4.3.1. INADEQUATE INSTITUTIONAL CAPACITY AND RESOURCE CONSTRAINTS

The inadequate ability of the enforcement and prosecuting institutions entrusted with its implementation is a significant practical obstacle to the full realizations are frequently hampered by a lack of professionals with financial and forensic investigation training, poor budget and insufficient staffing. Transparency International Zambia (TIZ) in its 2025

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[68] International Monetary Fund, Zambia Diagnostic Report on Governance and Corruption (Technical Assistance Report, Government of Zambia 2023) available at https://www.imf.org/en/Publications/CR/Issues/2023/01/09/Zambia-Technical-Assitance-Report-Diagnostic-Report-on-Governance-and-Corruption-527982 accessed 13th October, 2025

statement on the national budget reportedly highlighted this difficulty pointing out that the ACC's 2026 budget allocation is still far less than what is needed to support complex corruption and asset recovery investigations.[69] Limited financial resources have direct implications on the ACC's and DEC's operational reach, as complex forfeiture cases require specialized expertise in financial intelligence, asset valuation and tracing illicit funds through sophisticated financial systems.

Furthermore, reports show that the NPA's Asset Forfeiture Department (AFD) still lacks sufficient staff and logistical assistance to handle the rising volume of forfeiture cases, despite the AFD's establishment in 2012 being a major institutional accomplishment.[70] As a result, asset recovery initiatives frequently end up in the investigation phase, lessening the deterrent effect that the FPOCA aims to accomplish.

4.3.2. LACK OF A CENTRALIZED ASSET MANAGEMENT MECHANISM IN THE FORFEITURE PROCESS

Due to the lack of a centralized entity in charge of confiscated assets during the forfeiture process, managing forfeited property in Zambia poses a significant challenge. The Public Finance Management Act and the FPOCA both deal with handling and disposal of assets, however their provisions mostly take effect after a forfeiture order is issued, creating a vacuum in the pre-forfeiture stage.

Part VII of the FPOCA outlines the framework for the management and disposal of forfeited property and establishes the Forfeited Assets Fund under **Section 73** to receive proceeds derived from forfeiture.[75] These provisions, however, are primarily directed at the post-forfeiture stage, dealing with property that has already been declared forfeited by the court. The Act does not expressly designate any institution to manage or preserve

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[69] Transparency International Zambia, 'TI-Z Statement on the Anti-Corruption Commission's 2026 Budget Allocation' (2025) available at https://tizambia.org.zm/2025/10/ti-z-statement-on-the-anti-corruptioncommissions-2026-budget-allocation/. Accessed 13th October 2025
[70] CIFAR, 'Anti-Corruption Commission, Stolen: Zambia 2022 Report' (2022) available at https://cifar.eu/wpcontent/uploads/2022/04/zambia-2022.pdf accessed 13th October, 2025 [75] Act No.19 of 2010

assets that are merely seized or restrained pending final judgement. Consequently, in practice, the institutions that effect the seizure such as law enforcement and investigative agencies retain custody of the assets during proceedings, often without the technical or financial capacity to maintain them properly.

Similarly**, Section 42 of the Public Finance Management Act** vest the Secretary to the treasury with the responsibility to manage and dispose forfeited property, acting on the recommendation from a Committee of Survey established under **Section 43(3).**[71] The Act emphasizes transparency, accountability and proper valuation in the disposal process. However, its provision only become operational after the property has been legally forfeited and it does.

In conclusion, a major procedural flaw in Zambia's forfeiture system is the lack of a clear statutory requirement for a centralized interim asset management, even if both Acts offer procedures for the disposal and post-forfeiture administration of property. Because of this fragmented system, different institutions have different management techniques. Which causes problems like asset deterioration, value depreciation and accountability issues.

4.3.3. LIMITED TECHNOLOGICAL INFRASTRUCTURE

Accurate financial data and digital investigation tools are essential for the effective execution of the FPOCA. Nonetheless, the majority of Zambia's law enforcement organization continue to manage assets and maintain records using outdated or manual methods. It is challenging to effectively trace illicit property due to the lack of integrated databases connecting the banking industry, land register and other asset registries. The accuracy and speed of asset tracking procedures are seriously hampered by this digital infrastructure mismatch.

[71] Act No. 1 of 2018

4.3.4. LIMITED INTERNATIONAL COOPERATION

Strong international cooperation is necessary to execute the FPOCA since money laundering and illegal financial flows are cross-border. However, bureaucratic obstacles and the lack of current bilateral or multilateral agreements have made it difficult for Zambia to get mutual legal aid and asset repatriation from foreign jurisdictions. Due to this challenge, Zambia is not fully capable to recover assets that have been hidden or laundered abroad, which lessens the overall deterrence effect of the forfeiture regime.

4.4. ANALYSING FORFEITURE FRAMEWORKS IN SOUTH AFRICA AND THE US: IDENTIFYING EFFECTIVE MEASURES ZAMBIA CAN ADAPT

Learning from nations with sophisticated forfeiture systems will help improve Zambia's asset recovery system. Both the United States of America and South Africa have developed robust legal and administrative systems through asset seizure that effectively disrupt the financial foundation of criminal activity. By closely examining their frameworks, this study aims to find practical strategies and concepts that Zambia may apply to handle its own enforcement problems. This comparative study demonstrates how following recognized international standards could enhance Zambia's forfeiture proceedings, effectiveness, efficiency and justice while also showcasing tried-and-true best practices.

4.4.1. A COMPREHENSIVE ANALYSIS OF SOUTH AFRICA'S FORFEITURE FRAMEWORK

The Prevention of Organised Crime Act of 1998 (POCA), a comprehensive tool designed to combat organised crime, is the main law governing South Africa's asset forfeiture scheme. The POCA creates procedures for both criminal and civil forfeiture, enabling the seizure of property either with or without a conviction. Early enforcement tools like preservation orders and restraints are made possible by this dual strategy, preventing asset dissipation while investigations are underway.

The South African framework benefits immensely from the presence of the Asset

Forfeiture Unit (AFU), a specialized unit within the country's national prosecuting authority tasked with offering expertise on asset tracing, restraint orders, asset freezing, forfeiture litigation and strategic partnership with other enforcement agencies. This specialty facilitates effective, well-coordinated investigations and asset recovery initiatives. Restraints freeze assets while investigations are continuing, whereas preservation orders protect properties until final forfeiture.[72] In order to protect innocent third parties who could seek exemptions, courts oversee these orders and strike a balance between enforcement and procedural safeguards, therefore enhancing procedural fairness.[73]

Furthermore, because the POCA extends accountability to assets transferred to third parties, its broad definition of property and proceeds of crime improves the efficacy of asset recovery. It also ensures constitutional conformity and prevents unfair property deprivation through judicial oversight, appeal procedures and procedural safeguards.[74]

The Act incorporates important provisions that make money laundering, racketeering. Organised crimes and inciting gang activity illegal, it also provides subsequent penalties at law meant for law breakers. By penalizing offenders and disrupting criminal enterprises at the same time, this combination of forfeiture and criminal sanctions increase the deterrence effect of the Act. Research that supports the use of the proportionality principle to strike a balance between the public's interest in asset recovery and constitutional property rights supports the approach used by the POCA. In forfeiture proceedings, South African courts have devised a complex methodology that guarantees asset deprivation is legitimate, essential and proportionate with desired outcomes.[75]

Like any other forfeiture framework, POCA's implementation is hindered by a variety of problems, including a lack of funding, the challenges in tracking assets that are in other

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[72] Global Initiative, 'Prosecution with the Prevention of Organised Crime Act' (March 2023) available at https://globalinitiative.net/wp-content/uploads/2023/03/paper34.pdf accessed 15th October 2025

[73] ibid

[74] B Prinsloo, 'The Constitutional Application of the Prevention of Organised Crime Act No. 121 of 1998' (University of Cape Town, 2022) available at https://open.uct.ac.za/bitstreams/edf781d1-414f-4c09-89fc1621e70b9691/download accessed 14th October 2025

[75] Peter JD, 'Prevention of Organised Crime Act 121 of 1998: A constitutional Analysis of Section 2,4,5,6, Chapter 5 and 6' available at https://ir.unisa.ac.za/handle/10500/21517 accessed 29th October 2025

countries, and intermittent evidentiary barriers to linking property to illicit activities. However, these challenges are mitigated by continued inter-agency coordination and continuous capacity building.

Overall, the Prevention of Organised Crime Act continues to be a model for forfeiture laws, offering governments that are looking to enhance their asset recovery systems and fight complex organised crime through integrated civil and criminal enforcement tactics important lessons.

In conclusion, South Africa's **Prevention of Organised Crime Act (POCA)** provides a great model for efficient asset forfeiture by combining criminal and civil forfeiture procedures with strong institutional specialisation through its asset forfeiture procedures with strong institutional specialisation through its asset forfeiture section. Early and efficient asset forfeiture is ensured by judicially supervised restraints and preservation orders as well as third party rights and constitutional principles are upheld by clear procedural guidelines and procedural safeguards. Zambia has problems with institutional capacity, coordination and procedural clarity even though it has similar civil and criminal forfeiture legislation with South Africa. Lessons from South Africa emphasize the importance of specialised enforcement units, consistent execution of asset protection orders such as preservation orders, enhanced inter-agency cooperation, judicial oversight and capacity building for both the judiciary and enforcement agencies. Adopting these best practices can significantly strengthen Zambia's forfeiture system, improving asset recovery outcomes and reinforcing the fight against organized crime within a rights respecting legal framework.

4.4.2. A COMPREHENSIVE ANALYSIS OF THE UNITED STATES OF AMERICA'S FORFEITURE FRAMEWORK

Because of its dual approach, which includes both civil and criminal forfeiture measures, the United States' forfeiture framework is considered to be thorough and efficient. In the States, civil forfeiture operates without need of a criminal conviction, enabling authorities to seize assets that are suspected to be proceeds of crime even in cases where there is no criminal conviction.

The **Civil Asset Forfeiture Reform Act (CAFRA) of 2000** is the primary law that governs forfeiture in America. It strikes a balance between increased procedural protection for owners and broad government authority to seize proceeds of crime. Where there is a "preponderance of evidence" criterion, civil forfeiture allows seizure without a criminal conviction as long as the property has a significant connection to criminal activity. It introduces significant safeguards such as the right to legal representation, notice to owners and procedures for a quick recovery of innocent property owners.[76]

The goal of the U.S Department of justice's extensive Asset Forfeiture Programs is to disrupt criminal enterprises by depriving them of illicit proceeds while making sure that administration complies with fiscal responsibility and public policy.[77] This includes judicial supervision and proactive seizure planning to minimize unlawful forfeitures and optimize the benefits of law enforcement. Effective reinvestment in crime prevention is further demonstrated by the fact that federal agencies use seized assets to pay for law enforcement operations and compensate victims. In order to combat transnational crime, the framework also places a strong emphasis on collaboration between national, local and international law enforcement organisation.

Zambia can learn from the United States' emphasis on asset reinvestment, institutional expertise, procedural justice and transparency. The critique of forfeiture regimes that lack safeguards is addressed by the addition of notification requirements, court oversight and unequivocal owner protection. By increasing operational capacity, decreasing abuse and increasing trust, adopting similar elements would strengthen Zambia's forfeiture framework.

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[76] Civil Asset Forfeiture Reform Act 2000

[77] U.S. Department of Justice, Asset Forfeiture Policy Manual (2025) available at https://www.justice.gov/criminal/criminal-afmls/file/839521/dl?inline= accessed 16th October 2025

4.5. CONCLUSION

The implementation of Zambia's FPOCA faces significant challenges that hinder its effectiveness, hence there is a pressing need to make significant changes to some provisions of the Act as well as draw lessons from countries with well-established forfeiture frameworks such as South Africa and the United States of America.

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.0. INTRODUCTION

By summarising the main findings of this study, this chapter offers a persuasive conclusion that highlights the overall significance of the research. This chapter also provides specific recommendations aimed at fixing the challenges that where discussed earlier.

5.1. GENERAL CONCLUSION

This dissertation was written for the purpose of analysing the legal framework governing the Forfeiture of Proceeds of Crime in Zambia. The study aimed to evaluate the effectiveness of Zambia's Forfeiture of Proceeds of Crime Act and its enforcement mechanisms. It seeks to identify gaps and challenges within the current regimes and compare Zambia's laws with international best practices, particularly from South Africa and the USA. The study examines practical issues with institutional coordination and procedural execution in the implementation of forfeiture laws.

Overall, this dissertation shows that although the Act offers a strong basis for combating financial crimes in Zambia, its full potential is hindered by issues such as insufficient institutional collaboration, enforcement capacity and procedural clarity. The importance of domesticating international norms is further shown by the comparison with different jurisdictions. The findings deepen our understanding of the practical and legal aspects of forfeiture in Zambia and highlight areas that need to be improved going forward to ensure that the Act is fully effective.

5.2. SUMMARY OF CHAPTERS

This thesis consists of five chapters which analyse the effectiveness of Zambia's forfeiture of proceeds of crime Act (FPOCA) in combating financial crime. It also draws comparative insights from other jurisdictions.

5.3. SUMMARY OF CHAPTER ONE

The first chapter identified the fundamental legal problem that provides the foundation for this study, which is the persisting challenges impeding the effective implementation of the Act. This chapter highlighted the increasing prevalence of financial crime such as money laundering and corruption, which undermine Zambia's economic stability and governance. It highlights the challenges and uncertainties in the current legal framework that hinder the Act. The chapter also outlines the research objectives as well as stress the importance of the study thereby laying a strong foundation for in-depth analysis in the chapters to come.

5.4. SUMMARY OF CHAPTER TWO

This chapter provides an in-depth analysis of the procedures and processes involved in enforcing the Forfeiture of Proceeds of Crime Act in Zambia. It emphasizes the institutional functions, legal framework and crucial actions that support asset forfeiture, such as identifying, seizing and confiscating assets obtained via illegal activity. It examines the crucial roles that organizations like the National Prosecution Authority, Anti-Corruption Commission, Anti-Money Laundering Unit and the specialized Economic and Financial Crimes Court play in detecting, investigating and prosecuting asset forfeiture cases. The Act also makes a distinction between forfeiture procedures that are based on convictions and those that are not, pointing out that the latter have a different standard of proof to recover assets even in the absence of a criminal conviction.

5.5. SUMMARY OF CHAPTER THREE

This chapter provides a critical evaluation of how the Act has helped reduce financial crimes in Zambia. It explains how the introduction of the Act marked a significant advancement by establishing a unified, comprehensive legal foundation that allows for both civil and conviction-based asset forfeiture. It highlights how the Act has empowered law enforcement agencies with more power to seize and freeze assets that are reasonably suspected to be proceeds of crime. It discusses how coordination among agencies and asset recovery have improved since the introduction of the Act in 2010. The chapter goes further to state that despite the massive improvement in the forfeiture framework in Zambia after the introduction of the Act, the Act is not fully effective because it faces a lot of challenges.

5.6. SUMMARY OF CHAPTER FOUR

The chapter critically examines the significant legal, procedural and practical challenges encountered in implementing the Act in Zambia, it indicates how these challenges hinder the Act's ability to fight financial crimes effectively. It also highlights the conflict between judicial interpretation and the provisions of the Act, particularly in terms of evidentiary standards and constitutional safeguards related to property rights and right to a fair trial. The chapter also explains about procedural problems that affect the Act. It also goes a step further and draws attention to the difficulties that are faced in practice. The chapter ends with a comparison of Zambia's forfeiture framework to more advanced systems used in the US and South Africa. From the comparison, it underlines that in order to ensure that the Act operates effectively, there is an urgent need for reforms and capacity enhancement.

5.7. RECOMMENDATIONS

Having discussed in depth the legal, procedural and practical challenges of the Forfeiture of Proceeds of Crime Act, the following are the suggested recommendation for a more effective forfeiture framework in Zambia.

5.7.1. LEGISLATIVE REFORM

To ensure that the Act operates uniformly and effectively there is need for legislative reform to reconcile the conflict between judicial interpretation and statutory provisions.

5.7.2. INSTITUTIONAL CAPACITY BUILDING

To strengthen specialised enforcement teams, more funding, dedicated personnel and ongoing training tailored to financial investigations and forensic analysis are all required. This will help with case management skills and prosecution effectiveness in asset recovery.

5.7.3. CENTRALIZED ASSET MANAGEMENT

In order to ensure accountability, preservation of the valued of assets as well as prevent depreciation, there is need to establish a centralized body that will be in charge of all assets both prior and after the forfeiture order is passed by the court.

5.7.4. INTER-AGENCY COORDINATION

The legal framework must clarify roles and formalize communication protocols among the Drug Enforcement Commission, Zambia Revenue Authority, Financial Intelligence Centre, the NPA and all other institutions that are involved in the enforcement and implementation of the Act. To reduce operational errors and improve enforcements results, collaborative operations and organised information sharing must be institutionalised.

5.7.5. TECHNOLOGICAL INFRASTRUCTURE

The accuracy and efficiency of asset tracing, investigative coordination and case management are highly dependent on technological advancement. Therefore, government investment in integrated digital systems and asset registries will greatly improve the forfeiture framework in Zambia. This is because the technological development will cut down on administrative delays making it very fast, accurate and efficient.

5.7.6. INTERNATIONAL COOPERATION

Mutual Legal Assistance Agreements need updating and expansion to streamline cross-border asset recovery and repatriation processes, reflecting the transnational scope of financial crimes. There is a need to recognise the transnational nature of financial crimes, and the fact that there is need for more bilateral and multilateral agreements that facilitate mutual legal assistance and cross-border asset recovery. These cooperative frameworks will improve international enforcement by facilitating the efficient tracking, freezing and repatriation of assets held overseas.

5.7.7. PROCEDURAL SAFEGUARDS AND RIGHTS PROTECTION

Explicit protection for property owners such as required notification, legal representation, and procedures for innocent owners to reclaim assets should be incorporated into the Act. To protect constitutional rights and preserve public trust, judicial oversight on restraint and forfeiture orders must be strengthened.

5.7.8. SPECIALISED COURTS

To address the challenges of heavy court dockets and limited specialised courts for economic and financial crimes, it is recommended that Zambia establishes additional specialised courts dedicated to handling forfeiture and financial crime cases. Additionally, these courts should be supported by enhanced case management systems to minimize adjournments and expedite proceedings.

5.7.9. CIVIL SOCIETY AND PUBLIC INTEREST PARTICIPATION

It is advised that Zambia puts up systems that will improve public and civil society involvement in the assets forfeiture procedure. This includes developing procedures for public reporting on the use of recovered assets, allowing civil society organisations to keep an eye on asset disposal and encouraging transparency by making data on asset recovery and reinvestment easily accessible.

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UNIVERSITY of LUSAKA

SCHOOL OF LAW

L400B / Dissertation II – DIRECTED RESEARCH (OBLIGATORY ESSAY)

RESEARCH CLEARANCE FORM

NAME: GRACE KASAKA **STUDENT NUMBER:** LLB22112334

SUPERVISOR: MONICA CHIPANTA MWANSA

TOPIC: AN EVALUATION OF THE EFFECTIVENESS OF ZAMBIA's FORFEITURE OF PROCEEDS OF CRIME ACT IN COMBATING FINANCIAL CRIMES: RATIONALE, IMPLEMETATION, IMPACT AND CHALLENGES

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Chapter 4 –	Write short clear sentences. The comparison with South Africa is not deep and not clear. See tracked document for more comments.	23/10/2025	23/10/2025
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2 3 4 5 6 7 8 9 10 11 12 13 14 16 17 18 19 20 21 24 26 28 35 36 37 38 SCHOOL OF LAW AN EVALUATION OF THE EFFECTIVENESS OF ZAMBIA'S FORFEITURE OF PROCEEDS OF CRIME ACT IN COMBATING FINANCIAL CRIMES: RATIONALE, IMPLEMENTATION, IMPACT AND CHALLENGES By: GRACE KASAKA LLB22112334 AN OBLIGATORY ESSAY SUBMITTED TO THE UNIVERSITY OF LUSAKA IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF THE BACHELOR OF LAWS (LLB) DEGREE. 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 26 28 29 30 31 32 33 34 35 37 38 2025 DECLARATION I, GRACE KASAKA, do hereby declare that this dissertation titled "AN EVALUATION OF THE EFFECTIVENESS OF ZAMBIA's FORFEITURE O F PROCEEDS OF CRIME ACT IN COMBATING FINANCIAL CRIMES: RATIONALE, IMPLEMENTATION, IMPACT AND CHALLENGES" which is hereb y submitted to the School of Law at the University of Lusaka in partial fulfilment of the requirement for the award of a Bachelor of Laws (LLB) Degree, is my own original work and it has not been previously submitted for the award of a degree at this University or any other tertiary institution in Zambia or elsewhere. 1 2 3 4 5 6 7 8 9 12 13 14 15 16 17 18 19 20 21 22 23 26 28 29 30 31 33 34 36 I understand what plagiarism entails and I am also aware of the University's policy in this regard. 1 2 3 5 6 8 9 12 13 14 15 16 17 18 19 20 21 22 23 26 28 29 30 31 33 34 Thus, where other