



CTPD'S MONDAY OPINION

This is a weekly column aimed at sharing CTPD's perspective and steering public debate on various issues pertaining to Trade & Investments Law, Public Finance Management, Extractives and Human Development.

TODAYS TOPIC

Economic and Financial Crimes Court: Implications for Zambia



IN LAST week's opinion, I looked at some of the proposed reforms to the Penal Code on criminal offences in Zambia. In today's opinion, I focus on the Economic and Financial Crimes Court and economic and financial crimes (a major problem confronting the country that appears especially when one reviews the reports such as the auditor general and trends reports). In order to appreciate this discourse, it will be imperative that I first outline what constitutes an economic and financial crime. Thereafter, I will have a brief discussion on the Economic and Financial Crimes Court and make appropriate recommendations.

Although there is no precise and comprehensive definition of what constitutes economic and financial crimes ("economic crimes"), they can generally be described as those crimes that have damaging effects on the economic and political system of a country. An economic crime is seen as a criminal act done either solely or in an organised manner, with the interest of earning wealth through illegal means, by violating laws and other regulatory statutory provisions governing economic activities of the government and its administration. Economic crimes include fraud, corruption, misappropriation of public funds, money laundering, and tax evasion, to name a few.

At the beginning of 2022, the Chief Justice of Zambia, exercising his powers under Article 133 (3) of the Constitution and Section 3 of the High Court Act established the Economic and Financial Crimes Court (hereinafter called the "EFCC") as a specialised division of the High Court through Statutory Instrument No.5 of 2022. The EFCC has been given the jurisdiction to hear and determine matters relating to economic and financial crimes as well as corruption.

The EFCC, unlike the general division of the High Court, is designed to be a fast-track court, where matters relating to economic crimes are to be handled expeditiously. Its establishment is therefore commendable as it shows that the country is now recognising the serious nature of economic crimes, the serious threats it poses to the development of the country, and the need to treat the offence with the urgency it deserves.

It has not been uncommon in the past to see that many economic crimes

committed by public officials in the country often go unreported, unaccounted for and unpunished. Even where public officers have been accused and charged with committing economic crimes, their cases are unduly delayed (this may be attributed in part, to the huge backlog of cases faced by the courts and many times political interests). Consequently, impunity is sustained, and effectiveness of our criminal justice system is undermined. The EFCC if effectively implemented, thus gives a glimmer of hope to curb some of the country's problems concerning economic crimes.

While the establishment of the EFCC is a step forward in combatting economic crimes, the following few recommendations (though not exhaustive) should be considered to ensure its effective and efficient running:

1. There is need to harmonise laws providing for economic crimes into a single comprehensive law that is designed to specifically govern financial and economic crimes.

There is no comprehensive legislation governing economic crimes in Zambia. Economic crimes are constituted in various laws including the Penal Code, the Prohibition and Prevention of Money Laundering Act, the Financial Intelligence Centre Act, the Anti-Corruption Commission Act, the Public Finance Management Act, the Public Procurement Act, and the Electoral Process Act. The existence of a single law makes it easier not only for the courts and law enforcement agencies, but also citizens to clearly identify and set parameters of what constitutes economic offences, and to better prosecute such offences. We can draw lessons from fellow African nations such as Kenya, Uganda, Ghana, Nigeria, and Tanzania, all of which have enacted some kind of Economic and Financial Crimes Act that provides exclusively for economic crimes and how to deal with them.

2. There is need for statutory agencies and oversight institutions to compliment the efforts of the Judiciary to ensure the administration of justice is achieved.

Having an EFCC is redundant if statutory agencies and oversight institutions mandated to combat economic crimes (i.e., the Anti-Corruption Commission, the Financial Intelligence Centre, the Zambia Police Force,

and the Drug Enforcement Commission) are not making good use of the courts to try cases that fall under their jurisdiction. To prosecute economic crimes efficiently and effectively, all relevant authorities, including the Public Accounts Committee, will need to work together to ensure that perpetrators are brought to justice to the fullest extent possible.

3. There is need for utmost independence of Judges.

In order to achieve justice, it must be seen to it that Judges sitting on the EFCC are completely impartial, independent, and prosecute economic crimes on their merit devoid of any external influence. In the absence of this, the EFCC will be yet another court that is commendable on paper but in reality, serves no real purpose.

4. There is need for the removal of the protection of some public officers through immunity.

If there is one thing our history has taught us, it is that our former Presidents are not immune to economic crimes, citing the case of Frederick Chiluba v the People, in which the former President was prosecuted for abusing his office for personal gain while in office. For this reason, the immunity clause under Article 98 of the Constitution which protects the President or other public officials performing executive functions from criminal proceedings after the cessation of their tenure of office should be expunged, or where it remains the provision should be amended to exclude this protection in cases of financial crimes.

5. There is need for adequate resources.

The court should be adequately staffed with competent personnel, and adequate financial resources for operations should be made available, as investigating financial crimes is not cheap, and it may even necessitate people travelling outside of the country to conduct investigations.

About the author:

Luyando Muloshi is a legal researcher at the Centre for Trade Policy and Development. She holds a Bachelor of Laws Degree from the University of Zambia and is currently pursuing a Master of Laws Degree at the University of Zambia.

EXECUTIVE DIRECTOR
P.O. Box 50882, Lusaka, Zambia
Plot 3823, Manda Hill Road,
Olympia Park
Tel: +260 211 264409
Email: info@ctpd.org.zm



Centre for Trade Policy & Development



www.ctpd.org.zm



+260975876038



With support from

Save the Children