

GOVERNMENT OF ZAMBIA

ACT

No. 16 of 2022

Date of Assent: 10th November, 2022

**An Act to amend the Anti-Human Trafficking
Act, 2008.**

[16th November, 2022

ENACTED by the Parliament of Zambia.

Enactment

1. This Act may be cited as the Anti-Human Trafficking (Amendment) Act, 2022, and shall be read as one with the Anti-Human Trafficking Act, 2008, in this Act referred to as the principal Act.

Short title

Act No. 11
of 2008

2. Section 2 of the principal Act is amended by the—

Amendment
of section 2

(a) deletion of the definitions of “abuse of vulnerability”, “coercion”, “exploitation” “person”, “premises”, “public officer”, “public service” and “victim” and the substitution therefor of the following:

“abuse of vulnerability” in relation to trafficking in persons, means physical or psychological abuse of a person and is not limited to taking advantage of the vulnerabilities of that person resulting from—

(a) the person having entered the Republic illegally or without proper documentation;

(b) pregnancy;

(c) any disability of the person;

(d) addiction to the use of any substance;
and

(e) reduced capacity to form a judgment
by virtue of being a child;

“coercion” means violent physical or psychological pressure or persuasion and other forms of non-violent physical or psychological pressure or persuasion such as—

(a) a threat of serious harm to a person
or another person; and

(b) the abuse or threatened abuse of the
legal process;

“exploitation” includes—

(a) all forms of slavery or practices similar
to slavery, including debt bondage or
forced marriage;

(b) sexual exploitation;

(c) servitude;

(d) forced labour;

(e) child labour;

(f) the removal of body parts;

(g) forced involvement in armed conflict;
or

(h) any labour or services obtained
through threats or other forms of
coercion or the abuse of power or of a
position of vulnerability;

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“person” has the meaning assigned to the word in
the Constitution;

“premises” includes a vehicle, an offshore installation
and any other structure or shelter that is
moveable or immovable;

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“public officer” has the meaning assigned to the
words in the Constitution; and

“victim” means a person who has suffered harm or is at risk of suffering harm, including mental and physical injury, emotional suffering, economic loss or substantial impairment of the person’s fundamental human rights through acts that are a violation of this Act, and has been certified as a victim in accordance with this Act;;

(b) deletion of the definition of “police officer” and “traffic”;
and

(c) insertion of the following new definitions in the appropriate places in alphabetical order:

“authorised officer” includes a police officer, an officer from the Anti-Corruption Commission, an officer from the Drug Enforcement Commission, an anti-human trafficking officer and an immigration officer;

“court” means the High Court or the Subordinate Court;

“Department” means the Anti-Human Trafficking Department established under section 2A;

“Director” means the Director of Anti-Human Trafficking appointed under section 2B;

“State institution” has the meaning assigned to the words in the Constitution; and

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“trafficking in persons” means to recruit, transport, transfer, harbour, receive or obtain a person, within or across the territorial boundaries of Zambia, by means of the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Insertion of
Part IA

3. The principal Act is amended by the insertion of the following new Part immediately after Part I:

PART IA

THE ANTI-HUMAN TRAFFICKING DEPARTMENT

Establishment
of
Department

2A. (1) There is established in the ministry responsible for home affairs the Anti-Human Trafficking Department which shall be responsible for the administration of this Act under the general direction of the Permanent Secretary in the ministry responsible for home affairs.

(2) Subject to the other provisions of this Act, the functions of the Department are to—

- (a) co-ordinate activities of all relevant institutions on matters connected with trafficking in persons;
- (b) establish effective measures for the prevention and eradication of trafficking in persons;
- (c) investigate, arrest and prosecute cases of trafficking in persons;
- (d) sensitise and educate the public on dangers of trafficking in persons;
- (e) collect and share information related to trafficking in persons;
- (f) advise the Minister on policy matters connected with trafficking in persons;
- (g) liaise with Government agencies and non-governmental organisations to promote the rehabilitation and reintegration of victims;
- (h) develop guidelines on the establishment of the status of a victim of trafficking in persons and certify for purposes of confirming the declaration of a status of a person as a victim of trafficking in persons;
- (i) prepare guidelines for disbursements from the Fund; and
- (j) collaborate with a State institution, Government department and international organisation on matters relating to trafficking in persons.

2B. (1) The Civil Service Commission shall appoint as a public officer the Director of Anti-Human Trafficking department who shall be responsible for the administration of the provisions of this Act, subject to the general or specific directions of the Minister and the Permanent Secretary in the ministry responsible for home affairs that are consistent with the provisions of this Act.

Director,
Assistant
Directors and
other officers

(2) The Director may, subject to the other provisions of the Act, and to the general or special directions of the Permanent Secretary, delegate any of the Director's functions to an Assistant Director, an officer or a member of the Department.

(3) The Civil Service Commission shall appoint as public officers Assistant Directors and other officers as may be necessary for the administration of this Act.

2C. (1) An authorised officer shall, in consultation with the Director, investigate, arrest and prosecute cases of trafficking in persons.

Consultation
with Director

(2) A person other than an authorised officer shall, when handling a case relating to trafficking in persons, consult the Director.

(3) A person who contravenes subsection (2), commits an offence.

4. The principal Act is amended by the repeal of section 3 and the substitution therefor of the following:

Repeal and
replacement
of section 3

3. (1) Subject to subsections (2) to (10), a person who intentionally engages in trafficking in persons commits an offence and is liable, on conviction, to imprisonment for a term of not less than twenty years and not exceeding thirty years.

Prohibition
of
trafficking in
persons

(2) Where a victim of an offence under subsection (1) is trafficked for the purpose of sexual exploitation, the offender is liable, on conviction, to imprisonment for a term of not less than twenty-five years and may be liable to imprisonment for life.

(3) Where a victim of an offence under subsection (1) is abducted, the offender is liable, on conviction, to imprisonment for a term of not less than twenty-five years and not exceeding thirty-five years.

(4) Where the trafficking in persons results in the death or grievous bodily harm of a victim, the offender is liable, on conviction, to imprisonment for a term of not less than thirty-five years and may be liable to imprisonment for life.

(5) Where the offender is a public officer and uses that person's office in furtherance of an offence under this section, the offender is liable, on conviction, to imprisonment for a term of not less than twenty-five years and not exceeding thirty-five years.

(6) Where the offender is a person who is concerned in the management of an institution or organised criminal group engaged in trafficking in persons, the offender is liable, on conviction, to imprisonment for a term of not less than twenty-five years and not exceeding thirty-five years.

(7) Where the offender is charged with and convicted by a court for the commission of five or more counts of trafficking in persons, the offender is liable, on conviction, to imprisonment for a term of not less than twenty-five years and not exceeding thirty-five years.

(8) Where the victim is trafficked for the purpose of the removal of the victim's body parts, the offender is liable, on conviction, to imprisonment for a term of not less than twenty-five years and may be liable to imprisonment for life.

(9) In order to establish the liability, in terms of subsection (1), of an employer or principal, the conduct of an employee or agent or any other person acting on behalf of the employer or principal may be attributed to the employer or principal if that person is acting—

- (a) within the scope of the employee's or agent's employment;
- (b) within the scope of the employee's or agent's actual or apparent authority; or
- (c) with the express or implied consent of a director, member or partner of the employer or principal.

(10) Subsection (9) does not exclude the liability of an employee or agent or any other person acting on behalf of the employer or principal for committing the offence of trafficking in persons.

(11) A finding by a court that an employer or principal has contravened subsection (1), shall constitute a ground for revoking the licence or registration of the employer or principal to operate.

(12) In this section, “organised criminal group” means a structured group of three or more persons acting in concert with the aim of committing one or more serious crimes or offences under this Act in order to obtain directly or indirectly a financial or other benefit.

5. The principal Act is amended by the insertion of the following new section immediately after section 3:

Insertion of section 3A

3A. (1) A person who recruits, transports, transfers, harbours, receives or obtain a child, within or across the territorial boundaries of Zambia, for the purpose of exploitation, commits an offence and is liable, on conviction, to imprisonment for a term of not less than thirty years and may be liable to imprisonment or life.

Prohibition of trafficking of children

(2) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation, without proof of force, fraud or coercion, is sufficient to establish the offence of trafficking of a child.

(3) Despite subsection (1), where the offender is a parent, guardian or a person having parental responsibility for a child and the offender trafficks a child or permits the trafficking of the child, the offender is liable, on conviction, to imprisonment for a term of not less than thirty-five years and may be liable to life imprisonment.

(4) Despite subsection (1), where the trafficking results in the death or grievous bodily harm of a child, the offender is liable, on conviction, to imprisonment for a term of not less than thirty-five years and may be liable to imprisonment for life.

6. The principal Act is amended by the repeal of section 4 and the substitution therefor of the following:

Repeal and replacement of section 4

4. (1) A person who intentionally engages in conduct that causes another person to enter into a situation of debt bondage commits an offence and is liable, on conviction, to imprisonment for a term of not less than fifteen years and not exceeding twenty-five years.

Debt bondage

(2) It shall be a defence for a person charged with an offence under subsection (1) to satisfy the court that the person did not know and had no reasonable cause to believe that the act done would cause another person to enter into a situation of debt bondage.

Amendment of section 5 7. Section 5 of the principal Act is amended by the deletion of the words “and unlawfully” immediately after the word “intentionally”.

Amendment of section 6 8. Section 6 (1) of the principal Act is amended by the deletion of the words “and unlawfully” immediately after the word “intentionally”.

Amendment of section 7 9. Section 7 of the principal Act is amended by the—
(a) deletion of subsection (1) and the substitution therefor of the following:

(1) A person shall not—

(a) knowingly transport a victim or be in charge of a conveyance which facilitates any offence under this Act;

(b) knowingly lease or sublease or allow any room, house or building or premises to be used for the purpose of harbouring a victim; or

(c) knowingly advertise, publish, print, broadcast, distribute or cause the advertisement, publication, printing, broadcasting or distribution of information that facilitates the trafficking in persons by any means, including the use of internet or other information knowingly;

(b) insertion of the following new subsection immediately after subsection (1):

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to the same penalty as if the person had been convicted of an offence under this Act.; and

(c) renumbering of subsection (2) as subsection (3).

10. Section 9 (1) of the principal Act is amended by the deletion of the words “or who consents to being smuggled” after the word “smuggling”. Amendment of section 9

11. Section 19 of the principal Act is amended by the— Amendment of section 19
(a) deletion of subsection (1) and the substitution therefor of the following:

- (1) A person shall not—
- (a) engage directly or indirectly in a business transaction that involves any property acquired with the proceeds of an offence under this Act;
 - (b) receive, be in possession of conceal, disguise, dispose of or bring into the Republic any property derived and realised directly or indirectly from an offence under this Act; or
 - (c) retain or acquire any property knowing that the property is derived or realised, directly or indirectly from an offence under this Act.;

(b) insertion of the following new subsection immediately after subsection (1):

- (2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding one hundred and seventy thousand penalty units or to imprisonment for a term not exceeding ten years.; and

(c) renumbering of subsection (2) as subsection (3).

12. Section 22 of the principal Act is amended by the deletion of the words “person is” before the word “whether” and the substitution therefor of the words “to certify a person as”. Amendment of section 22

13. The principal Act is amended by the insertion of the following new section immediately after section 22: Insertion of section 22A

22A. (1) A person shall be considered a victim of trafficking in persons if that person is certified by the Department as a victim of trafficking in persons in accordance with the procedure as prescribed. Certification of victims of trafficking in persons

(2) Where the declaration of the status of a victim of trafficking has been granted to a person, that person shall be issued a certificate in the prescribed form.

(3) Where the declaration of the status of victim of trafficking in persons is not granted to a person, that person may appeal against the decision to the Court.

(4) A certificate granted in accordance with this section may be terminated where it is found that the decision to grant a declaration was based on false information.

(5) A person who submits false information in accordance with subsection (4), commits an offence and is liable, on conviction, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a term not exceeding three years, or to both.

Repeal and replacement of section 24

14. The principal Act is amended by the repeal of section 24 and the substitution therefor of the following:

Immunity from prosecution

24. Despite the provisions of any other written law, a victim of trafficking in persons shall not be criminally liable for an offence regarded as illegal in the Republic or for a criminal act that is a direct or indirect result of being trafficked.

Insertion of section 94A

15. The principal Act is amended by the insertion of the following new section immediately after section 94:

Mutual Legal Assistance in Criminal Matters Cap. 98

94A. The Mutual Legal Assistance in Criminal Matters Act, applies to offences under this Act except where the provisions of the Mutual Legal Assistance in Criminal Matters Act are inconsistent with this Act.

Repeal and replacement of section 101

16. The principal Act is amended by the repeal of section 101 and the substitution therefor of the following:

Functions of Committee

101. The Committee shall—

- (a) recommend policy guidelines to the Department;
- (b) promote institutional linkages; and
- (c) co-ordinate the preparation of trafficking in persons reports.

17. Section 110 of the principal Act is amended by the insertion of the following new paragraph immediately after paragraph (f):
- (g) the certification of victims of trafficking in persons. Amendment of section 110
18. The Schedule to the principal Act is amended— Amendment of Schedule
- (a) by the deletion of paragraph 1 and the substitution thereof of the following:
1. (1) The Committee shall consist of the following part time members appointed by the Minister: Composition of Committee
- (a) one representative each from the ministries responsible for—
- (i) home affairs;
 - (ii) social welfare;
 - (iii) information; and
 - (iv) labour;
- (b) one representative each from—
- (i) the Department of Immigration;
 - (ii) the Zambia Police Service;
 - (iii) the Judiciary;
 - (iv) the Gender Equity and Equality Commission; and
 - (v) the National Prosecution Authority;
- (c) a representative of the Attorney-General;
- (d) a representative of a non-governmental organisation dealing with matters relating to trafficking in persons; and
- (e) the Director as an *ex-officio* member.
- (2) The ministries, institutions or organisations under paragraph (1)(a) to (d) shall nominate their representatives for appointment by the Minister.
- (3) The Minister shall appoint the Chairperson of the Committee, and the members shall elect the Vice-Chairperson of the Committee from among themselves.

(4) A person shall not be nominated or appointed as a member of the Committee if that person—

(a) is not a citizen;

(b) is an undischarged bankrupt;

(c) is legally disqualified from performing the duties of a member; or

(d) is convicted of an offence under any other written law and sentenced to a term of imprisonment exceeding six months without the option of a fine.; and

(b) in paragraph 2, by the—

(i) deletion of subparagraph (2); and

(ii) renumbering of subparagraph (3) as subparagraph (2).

General
amendment

19. The principal Act is amended by the deletion of the words “police officer” wherever the words appear and the substitution therefor of the words “authorised officer”.
