



REPUBLIC OF ZAMBIA

REPORT

OF THE

COMMITTEE ON NATIONAL SECURITY AND FOREIGN AFFAIRS

ON THE

ANTI-HUMAN TRAFFICKING (AMENDMENT) BILL, N.A.B. NO. 16 OF 2022

FOR THE

SECOND SESSION OF THE THIRTEENTH NATIONAL ASSEMBLY

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REPORT OF THE COMMITTEE ON NATIONAL SECURITY AND FOREIGN AFFAIRS ON THE ANTI HUMAN TRAFFICKING (AMENDMENT) BILL, N.A.B. NO. 16 OF 2022 FOR THE SECOND SESSION OF THE THIRTEENTH NATIONAL ASSEMBLY

1.0 MEMBERSHIP OF THE COMMITTEE

The Committee consisted of: Brig Gen Morgan Sitwala (Rtd), (Chairperson); Ms Sibongile Mwamba, MP (Vice Chairperson); Mr Cliff Mpundu, MP; Mr Lusale John Simbao, MP; Mr Mweemba Malambo, MP; Mr Siphon Hlazo, MP; Mr Sunday Chanda, MP; Mr Philemon Twasa, MP; Mr Christopher Chibuye, MP; and Mr Walusa Mulaliki, MP.

The Honourable Madam Speaker
National Assembly
Parliament Buildings
LUSAKA

Madam,

The Committee has the honour to present its Report on the Anti Human Trafficking (Amendment) Bill, N.A.B. No. 16 of 2022, for the Second Session of the Thirteenth National Assembly, referred to it on 29th July, 2022.

2.0 FUNCTIONS OF THE COMMITTEE

The functions of the Committee are set out in Standing Orders No. 197 (k) and 198 of the National Assembly of Zambia Standing Orders, 2021. Standing Order No. 198(j) specifically mandates the Committee to study and review Bills referred to it by the House.

3.0 MEETINGS OF THE COMMITTEE

The Committee held ten meetings to consider the Anti Human Trafficking (Amendment) Bill, N.A.B. No. 16 of 2022.

4.0 PROCEDURE ADOPTED BY THE COMMITTEE

In order to acquaint itself with the provisions and ramifications of the Anti Human Trafficking (Amendment) Bill, N.A.B. No. 16 of 2022, the Committee sought both written and oral submissions from the stakeholders listed at Appendix II.

5.0 OBJECT OF THE BILL

The object of the Bill was to amend the *Anti-Human Trafficking Act, No. 11 of 2008* so as to:

- (a) prohibit the trafficking of children;
- (b) provide for the certification of victims of trafficking in persons;
- (c) establish the Anti-Human Trafficking Department and provide for its functions;
- (d) reconstitute the Committee on Human Trafficking and provide for its functions; and
- (e) provide for matters connected with, or incidental to the foregoing.

6.0 BACKGROUND TO THE BILL

The Committee was informed that the Anti Human Trafficking (Amendment) Bill, N.A.B. No. 16 of 2022 sought to amend the *Anti-Human Trafficking Act* in order to strengthen the legal framework that prohibits the trafficking of children and to establish the Anti-Human Trafficking Department, among other things.

The Committee was informed that the *Anti-Human Trafficking Act* was enacted to, among others, prohibit, prevent and prosecute human trafficking and establish the Committee on Human Trafficking and define its functions. However, there were certain gaps that remained unaddressed under the principal Act that needed to be attended to in order to align the law relating to human trafficking to international standards.

It was from this premise that the Government introduced the Anti-Human Trafficking (Amendment) Bill, N.A.B. No. 16 of 2022 in order to amend the principal Act by prohibiting the trafficking of children and establishing the Anti-Human Trafficking Department, among other things.

7.0 PROVISIONS OF THE BILL

The salient features of the Bill were as set out below.

- (I) Clause 1 ó Short Title
- (II) Clause 3 ó Insertion of Part 1A and 2A
- (III) Clause 4 ó Repeal and replacement of section 3
- (IV) Clause 5 ó Insertion of Section 3A
- (V) Clause 6 ó Repeal and Replacement of Section 4
- (VI) Clause 7 ó Amendment of section 5
- (VII) Clause 8 ó Amendment of section 6
- (VIII) Clause 9 ó Amendment of section 7
- (IX) Clause 10 ó Amendment of section 9
- (X) Clause 11 ó Amendment of section 19
- (XI) Clause 12 ó Amendment of section 22
- (XII) Clause 13 ó Insertion of section 22A

- (XIII) Clause 14 ó Repeal and replacement of section 24
- (XIV) Clause 15 ó Insertion of section 94A
- (XV) Clause 16 ó Repeal and replacement of section 101
- (XVI) Clause 17 - Amendment of section 110
- (XVII) Clause 18 ó Amendment of Schedule
- (XVIII) Clause 19 ó General Amendment

8.0 SUBMISSIONS AND CONCERNS BY STAKEHOLDERS

General Concerns

- (i) Most stakeholders who appeared before the Committee supported the proposal to amend the *Anti-Human Trafficking Act*, No. 11 of 2008 in order to strengthen the legal framework that prohibits the trafficking of children and to establish the Anti-Human Trafficking Department, among other things.
- (ii) In supporting the amendment, stakeholders stated that the current legislation was inadequate in dealing with many issues related to the prevention of human trafficking. Stakeholders stated that by amending the principal Act, it would strengthen enforcement mechanism, administration and bring it in line with international best practices. Accordingly, the amendments would provide for a comprehensive approach in dealing with new and emerging issues.
- (iii) Stakeholders stated that the *Anti-Human Trafficking Act*, did not provide for the definition of "child trafficking". The amendments would therefore provide for the definition of "child trafficking", and provide for specific offences against child trafficking.

Specific Concerns

Clause 2 – Amendment of Section 2

Stakeholders stated that the clause defined a list of authorised officers who included a police officer, an officer from the Anti Corruption Commission, an officer from the Drug Enforcement Commission and an Immigration Officer. Stakeholders however noted that the list of authorised officers left out officers from the Immigration Department and the Ministry of Community Development and Social Services. Stakeholders recommended that officers such as an "Immigration Officer", "Child Development Officer", "Child Welfare Inspector" and "Probation Officer" be included to the list of authorised officers for enhanced coordination in human trafficking issues.

Stakeholders stated that the definition under 2 (e) of a "child" needed to be broadened so that it could read as "reduced capacity to form a judgment by virtue of being a child, illness, infirmity or disability."

Stakeholders stated that the amendment defined child trafficking in line with the international standards and instruments. Stakeholders however stated that it was imperative to explicitly state that force, fraud, or coercion did not need to be present to prove a case of child trafficking. In this regard, stakeholders stated that doing so would avoid confusion in the application of the law by law enforcement officers, prosecutors, and the judges.

Clause 3 – Insertion of Part 1A and 2A

Stakeholders stated that the establishment of an Anti-Human Trafficking Department would provide for a dedicated institution to deal with human trafficking. Stakeholders stated that the absence of a dedicated department had been cited as one of the major gaps in dealing with human trafficking because institutions that were currently dealing with the issue had other competing primary mandates. This resulted in coordination, protection, prevention, partnership and prosecution challenges.

Stakeholders stated that the establishment of a dedicated and adequately staffed department would strengthen the national institutional framework for a national response to trafficking in persons. In the same vein, stakeholders noted that section 2A (2)(e) indicated that the Department of Human Trafficking would investigate cases of trafficking. Stakeholders were, however, wondering if there would be law enforcement dedicated to this Department to investigate cases of trafficking or it would interface with the Zambia Police Service. Stakeholders submitted that there was need for a clear line of responsibility between the Department and law enforcement in a manner that would ensure that the appropriate authority took necessary actions for effective collaboration.

Clause 4 – Prohibition of trafficking in persons

Stakeholders stated that clause 4(1) stated that any person who recruits, transports, transfers, harbors, receives or obtains a child, within or across the territorial boundaries of Zambia, for the purpose of exploitation, commits an offence and was liable, on conviction, to imprisonment for a term of not less than thirty years and may be liable to imprisonment for life. Stakeholders submitted that the punishment included for perpetrators of human trafficking was firm enough to deter would be offenders.

Stakeholders stated that the proposed amendment to the *Anti-Human Trafficking Act* in section 4(12) referred to “committing one or more serious crimes”, which was not clearly defined as to what amounted to serious crimes. Stakeholders, therefore, recommended that there was need to clearly define what these serious crimes were for easy reference.

Stakeholders stated that the amendment of the *Anti-Human Trafficking Act* in section 3 provided for the revocation of a license or deregistration of the employer or principal on the finding by the Court that a person had intentionally engaged in the trafficking in persons. In this regard, stakeholders submitted that the grounds for deregistration of a company under the *Companies Act*. did not include this premise.

Clause 5- Insertion of section 3A

Stakeholders stated that the Anti Human Trafficking (Amendment) Bill, No. 16 of 2022 would strengthen the implementation of child development programmes through enforcement of laws that promoted and protected the rights of the child, youth and women.

Stakeholders stated that the Anti Human Trafficking (Amendment) Bill, No. 16 of 2022 once enacted into law would create a safe and friendly environment and would provide a legal framework that would protect the lives of the youth, sports persons, artists and women seeking employment opportunities within and outside Zambia. Further, the Bill once enacted into law would offer protection for youth and children seeking to access quality education, employment opportunities and decent work within and outside Zambia, by ensuring authenticity of the recruiting agency.

Clause 9 – Amendment of section 7

Stakeholders stated that the *Anti-Human Trafficking Act* criminalised people that unknowingly provided transport or harboured victims of trafficking. In this regard, bus and taxi operators, truckers, or transporters may not be aware that the people they ferried were actually victims of trafficking. The amendment therefore sought to correct this situation by repealing this section of the principle Act, so as to only criminalise those that knowingly transported or harboured victims of trafficking.

Stakeholder stated that under section 9(2) of the Bill, the penalty for the offence was not stated. Stakeholders stated that the absence of a penalty under this section would create uncertainty in the law once enacted.

Clause 10 – Amendment of section 9

Stakeholders submitted that related to the amendment in section 9 was the penalties relating to the smuggling of people. Stakeholders proposed that cases related to the smuggling of people should be moved to the *Immigration and Deportation Act, No.18 of 2010*. Stakeholders stated that doing so would avoid conflating trafficking in persons and smuggling of persons. In this regard, stakeholders submitted that retaining provisions of migrant smuggling in the anti-human trafficking law would create confusion for the criminal justice practitioners who would require to differentiate between human trafficking and migrant smuggling because the two were different crimes. Stakeholders submitted that migrant smuggling would be more appropriate to be dealt with as an immigration offence, and not a human trafficking issue.

Clause 11 – Amendment of section 19

Stakeholders stated that human trafficking was a predicate offence to money laundering, where proceeds generated from trafficking in persons could be laundered to purchase high value properties. Stakeholders noted that clause 11 of the Bill sought to amend

section 19 of the principal Act. Stakeholders further noted that the penalty provided for in section 19(2) of the Bill which included the option of a fine was too lenient. They recommended that the penalty for transacting in proceeds of human trafficking should be stiff in order to deter other would be offenders. In the same vein, stakeholders stated that due to the nature and seriousness of the offence of human trafficking, the option of a fine for the perpetrator should be removed and replaced with the penalty of imprisonment for a term not exceeding thirty years.

Clause 13 – Insertion of section 22A

Stakeholders stated that this clause would address gaps in enforcement of laws pertaining to the protection of the youth, sports persons, artists and women from all forms of human trafficking such as forced labour and sexual slavery, since these categories were prone to such vices.

With regards to the certification of victims, stakeholders stated that certification should not be included in the law for reasons which included the following:

- (i) limited capacity to conduct certification, which might delay cases and negatively impact on the victims' protection and return;
- (ii) stigmatization and labeling of the victims which may lead to trauma arising from the outcome of certification; and
- (iii) undue pressure on the victim resulting from the certification process and the need to meet the criteria.

Stakeholders were also concerned as to who would be responsible for the certification of the victims. In this regard, stakeholders submitted that there was need for the Bill to be clear on who will be certifying individuals as victims since the current Bill did not expressly state who would be performing the function.

Stakeholders stated that as contained in the Bill, where the declaration of the status of victim of trafficking in persons was not granted to a person, that person may appeal against the decision to the Court. Stakeholders however stated that there was need to amend this provision so that an aggrieved person would exhaust the administrative channel by appealing to the Minister before challenging such a decision in the Court.

Clause 14 – Repeal and replacement of section 24

Stakeholders stated that the amendment of the definition of *“abuse of vulnerability”* would strengthen the protection of victims of trafficking and ensure that perpetrators were arrested and charged. Stakeholders submitted that the amended definition corresponded generally to an excerpt from the definition of article 3 of the Palermo Protocol on Trafficking in Persons, which provided that the consent of a victim of trafficking in persons to the intended exploitation shall be irrelevant.

Clause 18 – Amendment of Schedule

Stakeholders stated that the clause reconstituted the composition of the National Committee on Human Trafficking in order to include key stakeholders and strengthen partnerships by putting in place a Committee on Human Trafficking. Stakeholders stated that the composition was critical as it would enhance coordination among relevant stakeholders.

9.0 RESPONSES BY THE MINISTER OF HOME AFFAIRS AND INTERNAL SECURITY

The Committee also interacted with the Minister of Home Affairs and Internal Security in a quest to clarify concerns raised by various stakeholders. The Minister responded as set out hereunder.

Regarding the need to intensify inspections of religious and charity organisations arising from the concern by stakeholders that human trafficking was being perpetrated by some religious and charity organisations, the Minister assured the Committee that inspection of religious and charity organisations would be intensified to detect and intercept any form of human trafficking taking place in these institutions.

In response to the concerns raised regarding the process of vetting individuals who came to Zambia in the guise of being investors and the raise in the cases of human trafficking, the Minister stated that regulations that guided company registration would be revisited to take into consideration the purported investors and the raise in the cases of human trafficking.

The Minister noted that porous border towns with related citizens in neighbouring countries made it difficult to monitor and prevent human trafficking. However, he assured the Committee that patrols along these boarders would be intensified in order to address human trafficking.

Regarding the removal of the word “intention” of the person in trafficking in person from the Bill, the Minister stated that the word “intention” should not be removed from the Bill as it was very important in proving that indeed the person had committed a crime. It was also important in the protection of innocent citizens.

The Minister further informed the Committee that the Government was ready to establish the Anti- Human Trafficking Department and an allocation was already included in the 2023 National Budget.

Asked to state which institution would head the Anti-Human Trafficking Department, the Minister stated that the Department would be headed by an officer from the Immigration Department. The Minister further informed the Committee that officers from the Immigration Department had received adequate training the area of human trafficking.

In responding to whether there was need to revisit the legislation that supported the adoption process, considering that human trafficking could be perpetrated through the guise of adoption, the Minister agreed that there was need to be alert and to thoroughly scrutinise the adoption processes in order to avoid aiding human traffickers.

The Minister informed the Committee that training for law enforcement officers would have to take into consideration the monitoring and prevention of human trafficking.

10.0 COMMITTEE’S OBSERVATIONS AND RECOMMENDATIONS

Following the interactions with various stakeholders, the Committee supports the Bill and makes observations and recommendations as set out below.

- (i) The Committee observes with great concern that the reconstituted list of authorised officers on human trafficking under clause 2 section 2, does not include key stakeholders such as “Child Development Officer,” “Child Welfare Inspector” and “Probation Officer” as provided for in the *Children’s Code Act, No. 12 of 2022*.

In this regard, the Committee recommends that the list of authorised officers should include “Child Development Officer,” “Child Welfare Inspector” and “Probation Officer” for enhanced coordination among relevant stakeholders. In the same vein, the Committee urges the Executive to consider including officers from the Immigration Department as part of the authorised officers.

- (ii) The Committee is greatly concerned that the clause 4(12) of the Bill refers to “committing one or more serious crimes”, and the words “serious crimes” have not been clearly defined. The Committee, therefore, urges the Government to consider defining the words “serious crimes” for easy reference when dealing with matters of Anti Human Trafficking.
- (iii) The Committee notes that the Bill in clause 3 provides for the revocation of a license or deregistration of an employer or principal upon the finding by the Court that the person had intentionally engaged in the trafficking in persons. The Committee further notes that the grounds for deregistration of a company under the *Companies Act, No. 10 of 2017* does not include this premise for deregistration. In this regard, the Committee recommends that deregistration of an employer or principal should be done in accordance with the provisions of the *Companies Act, No. 10 of 2017* where the employer of a principal is a company.
- (iv) The Committee notes with great concern that the Bill has linked aspects of the use of force, fraud, or coercion as what may be termed or defined as child trafficking, yet not only does child trafficking occur where use of force, fraud and coercion has been applied. This is likely to let some forms of child trafficking take place unnoticed, and it is also likely to cause confusion in the

application of the law by law enforcement officers, prosecutors, and the judges. In this regard, the Committee urges the Executive to explicitly state that child trafficking may occur even in the absence of use of force, fraud, or coercion.

The Committee notes that clause 2A (2)(e) of the Bill provides for the establishment of the Department of Human Trafficking which will investigate cases of human trafficking. The Committee recommends that in addition to the establishment of the Department, there should also be law enforcement dedicated to the Department to carry out investigations on cases of trafficking. The newly established Department could also interface with the Zambia Police Service. To ensure effective collaboration, the Committee urges the Executive to explicitly state the line of responsibility between the Department of Human Trafficking and the law enforcement agencies.

- (v) The Committee is greatly concerned that the penalties relating to trafficking in persons and smuggling of persons are both being considered under the Anti Human Trafficking (Amendment) Bill, N.A.B. No. 16 of 2022, yet the issues were different. The Committee urges the Executive to consider moving penalties relating to smuggling in persons to the *Immigration and Deportation Act*. The Committee is of the view that retaining provisions of migrant smuggling in the anti-human trafficking law will create confusion for criminal justice practitioners who will require to differentiate between human trafficking and migrant smuggling.
- (vi) The Committee is greatly concerned that there is an aspect of certification of victims in the Bill. The Committee is concerned with who will be responsible for the certification of these victims since the Bill does not expressly state who will be performing the certification function. The Committee is of the view that certification should not be included in the law for reasons which includes the following:
 - (i) limited capacity to conduct certification, which might delay cases and negatively affect the victims' protection and return;
 - (ii) stigmatization and labeling of the victims which may lead to trauma arising from the outcome of certification; and
 - (iii) undue pressure which the certification process might exert on the victims in their plight to meet the criteria.
 - (iv) Should the need for certification be maintained, the Committee recommends that the Bill should be clear on who will be certifying individuals as victims.

- (vii) The Committee is greatly concerned that the penalty provided for Bill under clause 19 (2) includes the option of a fine to be paid by a perpetrator of human trafficking. The Committee observes that this is too lenient and recommends that the penalty for transacting in proceeds of human trafficking should be stiff in order to deter other would be offenders. In the same vein, the Committee recommends that considering the nature and seriousness of the offence of human trafficking, the option of a fine for the perpetrator should be removed from the Bill, and the penalty should be imprisonment for a term not exceeding thirty years.
- (viii) The Committee notes with great concern that under clause 9(2) of the Bill, the penalty for the offence cited in clause 9(1) is not stated. The Committee observes that the absence of a penalty under this clause will create uncertainty in the law once enacted. In this regard, the Committee recommends that clause 9(2) should expressly provide the penalty for the offence to ensure certainty in the law.
- (ix) The Committee notes with great concern that according to clause 13, section 22A(2) of the Bill, where the declaration of the status of the victim of trafficking in persons is not granted, the victim may appeal against the decision to the Court. The Committee notes that there is no administrative process involved in seeking to address the matter before referring the matter to the courts of law. The Committee recommends that the provision should be amended to allow an aggrieved person to exhaust the administrative channel by appealing to the Minister before challenging such a decision in the Court.

11.0 CONCLUSION

The Committee wishes to express its gratitude to all the stakeholders who appeared before it and rendered both oral and written submissions. The Committee also wishes to thank you, Madam Speaker and the Clerk of the National Assembly for the support rendered to it.

We have the honour, to be, Madam, the Committee on National Security and Foreign Affairs mandated to consider the Anti Human Trafficking (Amendment) Bill, N.A.B. No. 16 of 2022 for the Second Session of the Thirteenth National Assembly.

Brig Gen Morgan Sitwala (Rtd), MP
(CHAIRPERSON)

October, 2022
LUSAKA

APPENDIX I - NATIONAL ASSEMBLY OFFICIALS

Mr F Nabulyato, Principal Clerk of Committees (SC)
Mrs C K Mumba, Deputy Principal Clerk of Committees (SC)
Mrs A M Banda, Senior Committee Clerk
Mr E Chilongu, Committee Clerk
Miss A C Mulale, Administrative Assistant
Ms G Chikwenya, Typist
Mr D Lupiya, Committee Assistant
Mr M Kantumoya, Parliamentary Messenger

APPENDIX II – LIST OF WITNESSES

MINISTRY OF HOME AFFAIRS AND INTERNAL SECURITY

Mr J J Mwiimbu, MP, Minister of Home Affairs and Internal Security

ZAMBIA CORRECTIONS SERVICE

Mr K Bwalya ó Deputy Commissioner General

Mr C Nsamba ó S/SUPT ó Legal Officer

Ms R Chellah ó S/SUPT

ANTI-CORRUPTION COMMISSION

Ms G M Muyunda ó Acting CLPO

Ms S Mulenga ó Acting DL

Mr N Kanyimbo ó Acting CLPO

Ms V Tembo ó SLPO

PRISON CARE AND COUNSELLING

Dr G Malembeka, Executive Director

Mr C Mumba ó Health Officer

DRUG ENFORCEMENT COMMISSION

Ms R M Chanda ó Deputy Director General

Mr J Akapelwa ó Director Legal Services

Mr R Chulu ó Assistant Director Research and Planning

DEPARTMENT OF IMMIGRATION

Dr V Lishomwa ó Director General Immigration

Mr E Nyirenda ó ADC

Mr B Mulenga ó Senior Immigration Officer

Ms C Chabala ó Immigration Officer

Ms I Mushota ó Senior Immigration Officer

Mr C Lishuno ó Senior Immigration Officer

INTERNATIONAL ORGANISATION FOR MIGRATION

Mr K Mareyanadzo ó OIC

Ms N P Wonani ó Protection Consultant

Ms C Kazowa ó Protection Consultant

MINISTRY OF COMMUNITY DEVELOPMENT AND SOCIAL SERVICES

Ms A C Kawandami ó Permanent Secretary

Mr P Choolwe ó Director Planning

Ms B Moya ó Director Child Department

Mr C Chibuta ó SWO

Ms S Musonda ó PLO

MINISTRY OF HOME AFFAIRS AND INTERNAL SECURITY

Mr B Mulenga ó Co-ordinator Secretariat on Trafficking

Mr A Mukisi ó Acting Principal Planner

Mr R Nendo ó Acting Security Planner

Mr D Matembo ó PS ó CRIAR

MINISTRY OF JUSTICE

Mr M Kamanga ó Parliamentary Counsel

MINISTRY OF YOURTH, SPORT AND ARTS

Mr K Chileshe ó Permanent Secretary

Ms W Kangwa ó Acting Director Youth

Ms W C Kampyongo ó Chief Planner

Ms A Mwila ó Monitoring and Evaluation

Mr L Mwanza ó Director of Finance

Mr J C Zulu ó Director of Sport

MINISTRY OF FOREIGN AFFAIRS AND INTERNATIONAL RELATIONS

Ms A I Lemba ó PS (IRTC)

Ms P M Mushabati ó Legal Counsel

Ms C Mubanga ó Planner

ZAMBIA NATIONAL AIRPORTS CORPORATION

Ms G Mazimba ó Finance Director

Ms S Chatora ó Corporation Secretary

Mr J Mvula ó Acting Director Airports

Mr H Bweembelo ó Acting Manager Auditor Security

**NON-GOVERNMENTAL GENDER ORGANISATIONS COORDINATION
COUNCIL**

Ms A M Anamela ó Executive Director

Ms L Mulenga ó Assistant Legal Officer

Mr W Mulobela ó Coordinator Commissioner Advisory and networking

CIVIL AVIATION AUTHORITY

Mr G Lesa, Director General

Mr P Nkhoma, Board Chairman